

BIRMINGHAM CITY COMMISSION AGENDA

DECEMBER 21, 2020

7:30 P.M.

VIRTUAL MEETING

MEETING ID: 655 079 760

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Pierre Boutros, Mayor

II. ROLL CALL

Alexandria Bingham, City Clerk Designee

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

Announcements

- The City has reinstated the hotline to provide residents with information about City and County COVID-19 resources. Elderly, quarantined and immuno-compromised individuals are encouraged to use the hotline to request assistance with essential functions, and obtaining necessary supplies Call 248-530-1805, Monday through Friday from 8 a.m. – 5 p.m, excluding holidays.
- The City Commission wishes to thank Cheryl Arft for her 8 years of service to the City Clerk's office and congratulate her on her retirement.
- Commissioner Hoff's Birthday.

Proclamations:

- Recognition of City Manager Joseph A. Valentine

Appointments:

- A. Cable Board
 - 1. Jim Cleary

To appoint _____ to the Cablecasting Board as a regular member to serve a three-year term expiring March 30, 2022.

- B. Advisory Parking Committee
 - 1. Mary-Claire Petcoff

To appoint _____ to the Advisory Parking Committee as a regular member who is a restaurant owner to serve the remainder of a three-year term to expire September 4, 2023.

To appoint _____ to the Advisory Parking Committee as an alternate to serve the remainder of a three-year term to expire September 4, 2023.

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

V. CONSENT AGENDA

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

- A. Resolution approving the City Commission meeting minutes of December 7, 2020.
- B. Resolution approving the warrant list, including Automated Clearing House payments, dated December 9, 2020, in the amount of \$675,477.46.
- C. Resolution approving the warrant list, including Automated Clearing House payments, dated December 16, 2020, in the amount of \$1,215,810.62.
- D. Resolution approving the contract with Royal-West Roofing & Sheet Metal, LLC. in an amount not to exceed \$71,300.00 to perform City of Birmingham Adams Fire Station Roof Replacement from account #101-336-000-977-0000; and to direct the Mayor and City Clerk to sign the agreement on behalf of the City.
- E. Resolution approving the intergovernmental Water Service Agreement with Bloomfield Township and the property owners to permit construction of the water service connection for 295 Abbey Road to the City water main along Abbey Road, and also to authorize the Mayor to sign the agreement on behalf of the City.
- F. Resolution authorizing the IT department to submit the 2020-2021 payment of \$59,823.00 and to continue the 4 year payment agreement with SHI for the Darktrace security Appliance to be charged to account #636-228.000-973.0400.
- G. Resolution to adopt the Resolution of the City of Birmingham to Concur in the Rules and Regulations Concerning Industrial Pretreatment Program as Adopted by the Great Lakes Water Authority, as presented.
- H. Resolution approving the purchase of eleven (11) Dumor benches and ten (10) trash receptacles for a total purchase price of \$34,963.00 from the sole source vendor, Penchura, LLC. Further, to waive the formal bidding requirements. Funds have been budgeted in fiscal year 2020-2021 Parks Operating Supplies, Account #101-751.000-729.0000 for this equipment purchase.
- I. Resolution authorizing the IT department to purchase the License and support renewal for the Arc GIS software from ESRI Inc. Total cost not to exceed \$9,450.00. Funds are available in the Computer Maintenance fund account # 636-228.000-933.0600.
- J. Resolution approving the Michigan Uniform Video Local Franchise Agreement with WideOpen West effective December 21, 2020 and authorize the Mayor and Clerk to sign on behalf of the city.
- K. Resolution approving a call for entry for artwork with the following terms for fiscal year 2020-2021:

- 1.) Timeframe options include a loan with a minimum 3-year term, or an accepted donation to the City.
- 2.) The five locations indicated on the call-for-entry map are prioritized, however the Public Arts Board may recommend other sites more suitable within the City;
- 3.) Each artist will coordinate with the relevant City Departments for requirements related to installation;
- 4.) Each artist is to be provided a stipend of \$2,000 for approved artwork, for a total amount not to exceed \$10,000 from the General Administration Budget, account #101-299-000-811-0000.

VI. UNFINISHED BUSINESS

- A. Public Hearing – Lot Combination – 34350 Woodward Avenue & 907-911 Haynes Street - Lavery
 1. Resolution to deny the proposed lot combination of 34350 Woodward and 907-911 Haynes, parcel # 19-36- 281-022 and parcel #19-36-281-030, as the resulting parcel would not be consistent with the requirements for the MU-5 and MU-7 Zones, nor consistent with the recommendations in the Triangle District Plan.
- B. Resolution to deny the request by The Pearl to be included in the Parking Assessment District.
 OR
 Resolution to set a public hearing to consider the request to be included in the Parking Assessment District by The Pearl.
- C. Resolution to authorize the 10 plots sold but not authorized in Sections B, e.g.:
B, Row 9-A, Plots 7, 14, 19 and 20; B, Row 10-A, Plot 16; B, Row 11-A, Plots 19, 20, and 24; B, Row 13-A, Plot 1; and B, Row15-C, Plot 6.
AND
 To release 24 plots for sale in Section C; 10 plots in Row 18-A and 14 plots in Row 19-A.
OR
 Resolution to authorize the 10 plots sold but not authorized in Sections B, e.g.:
B, Row 9-A, Plots 7, 14, 19 and 20; B, Row 10-A, Plot 16; B, Row 11-A, Plots 19, 20, and 24; B, Row 13-A, Plot 1; and B, Row15-C, Plot 6.
AND
 To release up to 40 additional unspecified plots for sale in Section B and C.

VII. NEW BUSINESS

- A. Resolution to accept the Ad Hoc Unimproved Street Committee's Final Report, approve its recommendations and direct the administration to begin implementation of the report in future capital improvement programs.
- B. Resolution to amend the Schedule of Fees, Charges, Bonds and Insurance, in the following sections, as stated in this report: Engineering and Fire Department.

- C. Resolution to approve the expenditure of funds in a not-to-exceed amount of \$56,500 to award an additional eight (8) additional hours of personal leave for full-time employees and four (4) additional hours of personal leave for benefits-eligible part-time employees, effective January 1, 2021. Further, to approve the appropriation and amendment to the Fiscal Year 2020-21 General Fund Budget as follows:

General Fund

Revenues:

101-000.000-400.0000	Draw from Fund Balance	<u>\$56,500</u>
Total Revenues		\$56,500

Expenditures:

101-299.000.709.0000	Wage Adjustment Expense	<u>\$56,500</u>
Total Expenditures		\$56,500

- E. Commission Discussion on items from prior meeting.
- F. Commission Items for Future Discussion. A motion is required to bring up the item for future discussion at the next reasonable agenda, no discussion on the topic will happen tonight.

VIII. REMOVED FROM CONSENT AGENDA
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IX. COMMUNICATIONS

X. REPORTS

- A. Commissioner Reports
- B. Commissioner Comments
- C. Advisory Boards, Committees, Commissions' Reports and Agendas
- D. Legislation
- E. City Staff
 - 1. Ad Hoc Joint Senior Services Update

INFORMATION ONLY

XI. ADJOURN

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).



NOTICE OF INTENTION TO APPOINT TO THE CABLECASTING BOARD

At the regular meeting of Monday, December 21, 2020 the Birmingham City Commission intends to appoint one regular member to serve the remainder of a three-year term expiring March 30, 2022. Applicants must be residents of the City of Birmingham.

Interested citizens may submit an application available at the City Clerk's office or online at www.bhamgov.org/boardopportunities. Applications must be submitted to the City Clerk's office on or before noon on Wednesday, December 16, 2020. These applications will appear in the public agenda for the regular meeting at which time the City Commission will discuss recommendations, and may make nominations and vote on the appointments.

Duties of the Cablecasting Board

- 1) Advise the municipalities on matters relating to cable communications;
- 2) Monitor the franchisee's compliance with the franchise agreement and the cable communications ordinance;
- 3) Conduct performance reviews as outlined in Chapter 30, Article VII of the city code;
- 4) Act as liaison between the franchisee and the public; hear complaints from the public and seek their resolution from the franchisee;
- 5) Advise the various municipalities on rate adjustments and services according to the procedure outlined in Chapter 30; Article VI
- 6) Advise the municipalities on renewal, extension or termination of a franchise;
- 7) Appropriate those moneys deposited in an account in the name of the cablecasting board by the member communities;
- 8) Oversee the operation of the education, governmental and public access channels;
- 9) Apprise the municipalities of new developments in cable communications technology;
- 10) Hear and decide all matters or requests by the operator (Comcast Cablevision);
- 11) Hear and make recommendations to the municipalities of any request of the operator for modification of the franchise requirement as to channel capacity and addressable converters or maintenance of the security fund;
- 12) Hear and decide all matters in the franchise agreement which would require the operator to expend moneys up to fifty thousand dollars;
- 13) Enter into contracts as authorized by resolutions of the member municipalities;
- 14) Administer contracts entered into by the board and terminate such contracts.

Applicant(s) Presented For City Commission Consideration:

Applicant Name	Criteria/Qualifications
	Must be a resident of Birmingham
Jim Cleary	Resident

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

SUGGESTED ACTION:

To appoint _____ to the Cablecasting Board as a regular member to serve a three-year term expiring March 30, 2022.



CABLECASTING BOARD

Chapter 30 - Section 30-226 - Birmingham City Code
Meeting Schedule: 3rd Wednesday of the month - 7:45 A. M

The Board shall consist of 12 members, which includes 7 members who are residents of the City of Birmingham. Each member community shall also appoint one alternative representative. (30-226)

Last Name Home Address	First Name	Home Business E-Mail	Appointed	Term Expires
Abraham 898 Arlington	George	(248) 642-1257 <i>georgeabrahamjr@outlook.com</i>	5/14/2018 Birmingham resident	3/30/2021
Alam 1528 Bowers St	Rabbi	(816) 372-1873 <i>info@mdalam.us</i>	11/23/2020 ALTERNATE	3/30/2022
Eick 559 Greenwood	R. David	(248) 231-8067 <i>eickhouse@comcast.net</i>	12/14/2015 Birmingham resident	3/30/2021
Fenberg 908 Chesterfield	Michael	(248) 310-7373 <i>michael.fenberg@bakertilly.com</i>	3/13/2017 Birmingham resident	3/30/2023
McLain 425 N Eton, #302	Elaine	(248) 225-9903 <i>ekmclain@gmail.com</i>	1/9/2006 Birmingham resident	3/30/2023

For Cable Inquires:

Cathy White 248-336-9445
P.O. Box 165, Birmingham, MI 48012

Last Name	First Name	Home Business E-Mail	Appointed	Term Expires
Home Address				

Shand	Donovan	(248) 330-0747	12/4/2017	3/30/2023
1645 Buckingham Ave.		<i>dgshand@gmail.com</i>	Birmingham resident	

VACANT				3/30/2022
			Birmingham resident	

For Cable Inquires:

Cathy White 248-336-9445
P.O. Box 165, Birmingham, MI 48012



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

APPLICATION FOR CITY BOARD OR COMMITTEE

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

Information on various Boards and Committees and a list of current openings can be found on the City website at

(Please print clearly)

Board/Committee of Interest CABLECASTING BOARD

Specific Category/Vacancy on Board PERMANENT or ALTERNATE (see back of this form for information)

Name Jim Cleary

Phone 248 840-8416

Residential Address 2001 FAIRWAY

Email * clearyjp@gmail.com

Residential City, Zip BIRMINGHAM 48009

Length of Residence 31 years (1989)

Business Address RETIRED

Occupation RETIRED MARKETING PROFESSOR

Business City, Zip —

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

MARCH 2020 I APPLIED FOR A POSITION OF THE PARKS + REC BOARD AND DIDN'T MAKE IT. AT THE TIME, I WAS ENCOURAGED TO CONSIDER OTHER BOARD OPENINGS, MY HOPE IS TO CONTRIBUTE AND GIVE BACK TO OUR COMMUNITY.

List your related employment experience I'VE TAUGHT MARKETING AND ADVERTISING FOR THIRTY YEARS. PERHAPS I'VE GOT SKILLS + KNOWLEDGE WHICH COULD BE TRANSFERABLE TO THE CABLECASTING BOARD.

List your related community activities COMPLETED THE 2016 BIRMINGHAM CITIZENS ACADEMY, MEMBER BIRMINGHAM SENIOR MEN'S CLUB

List your related educational experience BBA 1968, UNIVERSITY OF NOTRE DAME
MBA 1986, CENTRAL MICHIGAN UNIVERSITY

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

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

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

Signature of Applicant James B. Cleary

Date 11/25/2020

Return the completed and signed application form to: City of Birmingham, City Clerk's Office, 151 Martin, Birmingham, MI 48009 or by email to or fax to 248.530.1080.

Updated 11/18/2020

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



NOTICE OF INTENTION TO APPOINT TO THE ADVISORY PARKING COMMITTEE

At the regular meeting of Monday, December 21, 2020, the Birmingham City Commission intends to appoint one regular member who is a restaurant owner to the Advisory Parking Committee to serve the remainder of a three-year terms expiring September 4, 2023, and one alternate member to serve the remainder of a three year term expiring September 4, 2023.

Interested citizens may submit an application available at the City Clerk's Office or online at www.bhamgov.org/boardopportunities. Applications must be submitted to the City Clerk's Office on or before noon on Wednesday, December 16, 2020. These documents will appear in the public agenda for the regular meeting at which time the City Commission will discuss recommendations, and may make nominations and voter on appointments.

Committee Duties

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

Applicant(s) Presented For City Commission Consideration:

Applicant Name	Criteria/Qualifications
	Downtown commercial large retail business.
Mary-Claire Petcoff	Resident

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

SUGGESTED ACTION:

To appoint _____ to the Advisory Parking Committee as a regular member who is a restaurant owner to serve the remainder of a three-year term to expire September 4, 2023.

To appoint _____ to the Advisory Parking Committee as an alternate to serve the remainder of a three-year term to expire September 4, 2023.



ADVISORY PARKING COMMITTEE

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

Terms: Three years

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

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

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

The Advisory Parking Committee shall provide guidance to the City Commission in the management of
Birmingham's Auto Parking System. The committee shall recognize parking requirements of the CBD and

Last Name	First Name	Home Business E-Mail	Appointed	Term Expires
Astrein	Richard	(248) 399-4228	12/9/2019	9/4/2021
13125 Ludlow			BSD member	
Huntington Woods	48070	<i>richard@astreins.com</i>		
Black	Aaron	(248)283-4200	12/8/2020	9/4/2022
2243 Dorchester Rd			Resident Shopper	
Birmingham	48009	<i>ablack@daxtonhotel.com</i>		
Honhart	Anne	(248) 644-3678	9/4/1984	9/4/2021
197 E. Frank			Resident	
Birmingham	48009	<i>ahonhart@atlaswelding.com</i>		
Kalczynski	Steven		11/26/2012	9/4/2023
100 Townsend		(248) 642-7900	Large Retail	
Birmingham	48009	<i>skalczynski@yahoo.com</i>		

Last Name Home Address	First Name	Home Business E-Mail	Appointed	Term Expires
Krueger 348 Ferndale Ave Birmingham	Lisa 48009	(248) 921-0099 <i>lisakrug21@gmail.com</i>	3/30/2015 Downtown Employee Member	9/4/2023
Paskiewicz 560 Woodland Birmingham	Judith 48009	248-642-3337 <i>judithpaskiewicz@hotmail.com</i>	Professional Firm	9/4/2022
Silverman 1200 Latham Birmingham	Lisa 48009	248-642-3337 <i>lilas229@aol.com</i>	10/7/2019 Resident	9/4/2022
VACANT			Alternate	9/4/2023
VACANT			Restaurant Owner	9/4/2023
Vaitas 2633 Endsleigh Drive Bloomfield Village	Algirdas 48301	(248) 593-3177 <i>alvorth@aol.com</i>	11/13/2006 Small Retail	9/4/2021
Yert 490 Park St. Birmingham	Jennifer 48009	617-308-0080 <i>sulesq@yahoo.com</i>	8/13/2018 Alternate (Downtown Employee)	9/4/2023



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

APPLICATION FOR CITY BOARD OR COMMITTEE

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

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

(Please print clearly)

Board/Committee of Interest Advisory Parking Committee

Specific Category/Vacancy on Board ~~Representative of a professional firm within the Parking Assessment District~~ (see back of this form for information)

Alternate Member

Name Mary-Claire Petcoff

Phone 410-991-1460

Residential Address 463 Henley St.

Email mcp@wwrplaw.com

Residential City, Zip Birmingham, MI 48009

Length of Residence 4 years in Birmingham

Business Address 380 N. Old Woodward Ave., Ste. 300

Occupation Attorney at Williams, Williams, Rattner and Plunkett, PC

Business City, Zip Birmingham, MI 48009

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

I am an attorney who both lives and works in Birmingham. I would like to apply my skills (see below) to assist my city in solving its unique parking challenges.

List your related employment experience As an attorney with experience in land use and zoning matters, I am adept at reading and understanding the City of Birmingham Zoning Ordinance, Master Plan, parking studies and other sources of law and guidance relevant to the Advisory Parking Committee's work.

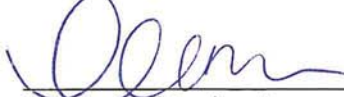
List your related community activities Friends of the Baldwin Public Library, State Bar of Michigan, Oakland County Bar Association, Christ Church Cranbrook Member, Parent

List your related educational experience University of Maryland Francis King Carey School of Law (JD 2016), Bucknell University (BA 2013)

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

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

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


Signature of Applicant

10/27/20
Date

BIRMINGHAM CITY COMMISSION MINUTES

DECEMBER 7, 2020

7:30 P.M.

VIRTUAL MEETING

MEETING ID: 655 079 760

Video Link: <https://vimeo.com/event/3470/videos/482921125/>

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Pierre Boutros, Mayor, opened the meeting with the Pledge of Allegiance.

II. ROLL CALL

Alexandria Bingham, City Clerk Designee, called the roll.

Present: Mayor Boutros (location: Birmingham, MI)
Mayor Pro Tem Longe (location: Birmingham, MI)
Commissioner Hoff (location: Birmingham, MI)
Commissioner Host (location: Birmingham, MI)
Commissioner Nickita (location: Birmingham, MI)
Commissioner Sherman (location: Birmingham, MI)

Absent: Commissioner Baller

Administration: City Manager Valentine, City Clerk Designee Bingham, Police Chief Mark Clemence, Planning Director Ecker, Police Operations Commander Grewe, City Attorney Kucharek, Consulting City Engineer Surhigh

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

Announcements

- The City has reinstated the hotline to provide residents with information about City and County COVID-19 resources. Elderly, quarantined and immuno-compromised individuals are encouraged to use the hotline to request assistance with essential functions, and obtaining necessary supplies Call 248-530-1805, Monday through Friday from 8 a.m. – 5 p.m, excluding holidays.
- The City Commission would like to thank JC Cataldo for 12 years of service on the Triangle District Corridor Improvement Authority.
- The City Commission would like to thank Laura Keener for 4 years of service on the Stormwater Appeals Board.
- The City Commission plans to recognize departing City Manager Joe Valentine for his exceptional work and service to the City of Birmingham at the beginning of the regularly scheduled City Commission Meeting on December 21, 2020.
- Mayor Boutros' Birthday.

Appointments

12-257-20 Appointments of Samuel Oh and G.A. "Kip" Cantrick to the Birmingham Triangle District Improvement Authority

The Commission interviewed Samuel Oh and G.A. "Kip" Cantrick.

Mayor Boutros appointed Messrs. Oh and Cantrick to the Birmingham Triangle District Improvement Authority, with Mr. Oh to serve a three-year term ending December 15, 2023 and Mr. Cantrick to serve a four-year term ending December 15, 2024.

Commissioner Sherman specified that the Birmingham Triangle District Improvement Authority requires a majority of the appointees to live in or operate a business in the District. It does not require that every appointee lives in or operates a business in the District.

City Attorney Kucharek concurred with Commissioner Sherman.

MOTION: Nomination by Commissioner Host, seconded by Commissioner Sherman:
To concur with the Mayor's appointments of Messrs. Oh and Cantrick to the Birmingham Triangle District Improvement Authority.

ROLL CALL VOTE: Ayes, Commissioner Host
Commissioner Sherman
Mayor Pro-Tem Longe
Commissioner Nickita
Commissioner Hoff
Mayor Boutros

Nays, None

12-258-20 Appointment of Lester Richie to the Board of Review

Mr. Richie was not present. It was noted that this was a reapplication on the part of Mr. Richie since he currently serves on the Board of Review.

MOTION: Nomination by Commissioner Nickita:
To appoint Lester Richie to the Board of Review as a regular member to serve a three-year term to expire December 31, 2023.

ROLL CALL VOTE: Ayes, Commissioner Nickita
Commissioner Sherman
Commissioner Hoff
Mayor Boutros
Commissioner Host
Mayor Pro-Tem Longe

Nays, None

12-259-20 Appointment of Guy DiPlacido to the Board of Review

Mr. DiPlacido was not present. It was noted that this was a reapplication on the part of Mr. DiPlacido since he currently serves on the Board of Review.

MOTION: Nomination by Commissioner Sherman:

To appoint Guy DiPlacido to the Board of Review as a regular member to serve a three-year term to expire December 31, 2023.

ROLL CALL VOTE: Ayes, Commissioner Sherman
 Commissioner Nickita
 Commissioner Hoff
 Mayor Boutros
 Commissioner Host
 Mayor Pro-Tem Longe

Nays, None

12-260-20 Appointment of Erin Rodenhouse to the Board of Zoning Appeals

The Commission interviewed Erin Rodenhouse for the appointment.

Commissioner Hoff noted that currently all the members of the Board of Zoning Appeals are men and stated she would like to see a woman on the Board.

Commissioner Nickita noted that it is the Commission's general practice to allow an interested member of a board to continue serving in their position unless there is some exceptional reason to discontinue that person's service. He noted that Jerry Attia was presently serving as an alternate member to this Board, and that he had reapplied for the position.

Commissioner Hoff observed that Mr. Attia has only attended 27% of the meetings since joining the Board. She said she would normally ask Mr. Attia about his low attendance rate, but in light of his absence at both the past and present Commission meetings where his potential renomination was to be discussed she had not been able to.

Commissioner Nickita recommended, out of respect for the City's serving board members, postponing this consideration until Mr. Attia was available to speak with the Commission. Commissioner Nickita explained that a 27% attendance rate for an alternate member is not necessarily a problem, since they serve more infrequently in general.

Mayor Boutros observed that Mr. Attia was aware his renomination was to be discussed at both the past and present Commission meetings and was absent from both meetings. He asked City Clerk Designee Bingham whether Mr. Attia had offered any additional information regarding his absence from the renomination discussions.

City Clerk Designee stated Mr. Attia had not, and that he had been generally difficult to reach in regards to missing information on his application.

Mayor Boutros said Mr. Attia's absence from both discussions of his potential renomination gave him pause. He said that while Mr. Attia may have valid reasons, the Commission has not been able to ascertain what those reasons may be.

Commissioner Sherman suggested the Commission attempt once more to interview Mr. Attia at the next Commission meeting. He said that if Mr. Attia were again absent then the Commission would have more clarity about how to proceed. Commissioner Sherman did note that on most of the occasions of Mr. Attia's absence from the BZA he actually would have been called on to vote due to other Board members' absences so his absences were not insignificant.

Commissioner Host noted that Mr. Attia had two opportunities to participate in a discussion of his renomination and attended neither. He shared his impression that Ms. Rodenhouse was enthusiastic about serving in the alternate role, and said he would be pleased to have the opportunity to vote for her appointment this evening.

MOTION: Nomination by Commissioner Hoff:

To appoint Erin Rodenhouse as an alternate member to the Board of Zoning Appeals to serve the remainder of a three-year term to expire 2/17/2023.

ROLL CALL VOTE: Ayes, Commissioner Hoff
Mayor Boutros
Commissioner Sherman
Commissioner Host
Mayor Pro-Tem Longe

Nays, Commissioner Nickita

12-261-20 Appointment of Steven Lemberg to the Historic District Commission

The Commission interviewed Steven Lemberg for the appointment.

MOTION: Nomination by Commissioner Hoff:

To appoint Steven Lemberg to the Historic District Commission as an alternate member to serve the remainder of a three-year term to expire September 25, 2022.

ROLL CALL VOTE: Ayes, Commissioner Hoff
Commissioner Nickita
Mayor Boutros
Commissioner Sherman
Commissioner Host
Mayor Pro-Tem Longe

Nays, None

12-262-20 Appointment of Aaron Black to the Advisory Parking Committee

The Commission interviewed Aaron Black for the appointment.

Noting Mr. Black's position as the General Manager of the soon-to-open The Daxton hotel, Commissioner Host asked Mr. Black how he would reconcile the interest The Daxton has in a variety of parking matters

with his service on the APC. Commissioner Host stated it could be a significant source of potential conflicts of interest.

Mr. Black stated that The Daxton's success will be tied to the thriving of all the businesses in close proximity to the hotel. He said that serving on the APC would afford him more opportunities to be a good listener and a good neighbor to the Birmingham business community.

Mayor Pro Tem Longe suggested Mr. Black be nominated as an alternate and not as a resident shopper since his background is not primarily that of a resident shopper.

Commissioner Sherman stated the Commission has had applicants in the past who meet the qualifications of more than one board position, and that the Commission has generally allowed any applicant to join a board in any position they qualify for. Since Mr. Black is a resident of Birmingham, Commissioner Sherman stated his serving as a resident shopper would be appropriate.

MOTION: Nomination by Commissioner Sherman:

To appoint Aaron Black to the Advisory Parking Committee as a regular member who is a resident shopper to serve the remainder of a three-year term to expire September 4, 2022.

ROLL CALL VOTE: Ayes, Commissioner Sherman
 Commissioner Hoff
 Commissioner Nickita
 Mayor Boutros
 Commissioner Host
 Mayor Pro-Tem Longe

 Nays, None

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

Al Vaitas, chairman of the Advisory Parking Committee, welcomed Mr. Black to the APC.

Jennifer Hammond said she would like to see more of an initiative on the part of the City to support restaurants during the winter while indoor dining is closed as a result of the pandemic. She recommended potentially allowing further closing of the streets to allow more outdoor dining, music in Shain Park, or outdoor hot cocoa or other beverage areas on weekend evenings all of which could also spark further interest in shopping in the City.

V. CONSENT AGENDA

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

12-263-20 Consent Agenda

The following item was pulled from the Consent Agenda:

Commissioner Hoff: Item I – Removal of Parking Meters in Front of 298 S. Old Woodward

MOTION: Motion by Commissioner Host, seconded by Commissioner Nickita:

To approve the Consent Agenda with the exception of Item I.

ROLL CALL VOTE: Ayes, Commissioner Host
 Commissioner Nickita
 Commissioner Sherman
 Commissioner Hoff
 Mayor Boutros
 Mayor Pro-Tem Longe

 Nays, None

- A. Resolution approving the City Commission meeting minutes of November 23, 2020.
- B. Resolution approving the warrant list, including Automated Clearing House payments, dated November 25, 2020, in the amount of \$658,291.66.
- C. Resolution approving the warrant list, including Automated Clearing House payments, dated December 2, 2020, in the amount of \$876,749.94.
- D. Resolution approving the contract with Wolverine Power Systems in an amount not to exceed \$39,500.00 to perform City of Birmingham Adams Fire Station Upgrade Emergency Generator from account #101-336-000-977-0000; and to direct the Mayor and City Clerk to sign the agreement on behalf of the City.
- E. Resolution to appoint City Manager Thomas M. Markus as Representative and DPS Director Lauren Wood as Alternate Representative of the City of Birmingham on the SOCRRA Board of Trustees for the remainder of the fiscal year starting January 1, 2021.
- F. Resolution to appoint Consulting City Engineer Jim Surhigh as Representative and City Manager Thomas M. Markus as Alternate Representative of the City of Birmingham on the SOCWA Board of Trustees for the remainder of the fiscal year starting January 1, 2021.
- G. Resolution to appoint Thomas M. Markus to serve as the alternate member to SEMCOG on behalf of the City of Birmingham.
- H. Resolution to authorize the IT department to renew the Laserfiche support contract with MCCi for a total cost of \$12,775.00. Funds are available in the IT Computer Maintenance Fund Account: 636-228.000-933.0600
- J. Resolution to adopt the Performance Resolution for Governmental Agencies with the Michigan Department of Transportation (MDOT), and furthermore, to authorize James J. Surhigh, Consulting City Engineer, Lauren Wood, Director of DPS, and Scott Zielinski, City Construction Engineer to apply to MDOT for the necessary Annual Permit, and other Individual Permits for work within the State Highway Right-of-Way on behalf of the City of Birmingham.
- K. Resolution to approve the interlocal agreement with Oakland County and authorize Mayor Boutros to sign the agreement on behalf of the City Commission.
- L. Resolution to adopt the Resolution for Designation of Street Administrator, with James J. Surhigh, Consulting City Engineer, as the authorized designee.

12-264-20 (Item I) Removal of Parking Meters in Front of 298 S. Old Woodward

Commissioners Hoff and Nickita opined that this item was significant enough that it should not have been included on the Consent Agenda.

In reply to questions from Commissioner Hoff, CM Valentine stated the public valet stand currently in front of Vinoteca would be shifted south to be in front of The Daxton and operated by the hotel for the benefit of both the public and hotel guests. He stated that if this proposal were approved the City would promote this valet location as one of the public valet parking options. The City also gained four or five public parking spaces in the area near The Daxton since the public parking went from parallel to angled.

Police Chief Clemence stated that The Daxton would be granted use of two extra parking spaces in front of the hotel for special events at the discretion of the Police Department. The Daxton would compensate the City for use of those spaces. He said there was no set lead time for requesting the use of those spaces, but that he anticipated The Daxton would notify the Police Department well in advance of the events so that the use of the spaces was secured.

Gayle McGregor, attorney for The Daxton, said this proposal has The Daxton working with less valet space than the valet space allotted to other comparable Birmingham businesses.

Rick Rattner, attorney for The Daxton, stated that a traffic study regarding the feasibility of moving the valet stand to Brown Street determined that such a move would cause traffic backups all the way to Pierce. He noted that The Daxton added an extra level of underground parking to better ensure that there would be sufficient parking onsite.

The Daxton General Manager, Mr. Black, stated The Daxton anticipates opening in February 2021.

There was consensus that the information provided for this item was insufficient, and that the item needed to be presented at a future Commission meeting with more information. Commissioners requested:

- Information on the regular utilization of the valet stand in front of Vinoteca;
- Clarity regarding the economics of shifting the valet stand from being in front of Vinoteca and run by the City to being in front of The Daxton and run by the hotel;
- Information regarding whether it would be appropriate for the City to agree to pay a flat fee of \$150 on days where there are free parking promotions given that the City is being asked to waive \$22,464 in parking meter revenues;
- Diagrams of all proposed traffic flows in the area from Vinoteca to the curb at Brown, all on-street painting of traffic and parking indicators, and the ingress and egress to the underground parking; and,
- Information on how The Daxton would prevent instances of higher-than-usual valet usage on the part of its guests from negatively impacting the public's use of the valet stand at the same time.

No action was taken on this item.

VI. UNFINISHED BUSINESS

12-265-20

Public Hearing – 34350 Woodward & 907-911 Haynes – Lot

Combo

City Attorney Kucharek explained the applicant wanted to submit supplemental information to their application. She said that since the application was reviewed by the Planning Board before going to the Commission, this item should be returned the Planning Board for a review of the additional information.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Nickita:
To direct this item to the Planning Board.

Public Comment

Jason Canvasser, attorney for the applicant, stated that the lot combination was not reviewed by the Planning Board, and as a result any supplemental information for the application would be most appropriately submitted to the Commission. He said only the SLUP for this item was reviewed by the Planning Board. He noted that the applicant did request a postponement of the item for a number of reasons, including granting the public additional opportunity to review the supplemental information.

Planning Director Ecker clarified that the lot combination was the topic of discussion during the Planning Board's discussion of the relevant SLUP.

In light of the fact that the Planning Board did not review the lot combination separate from the SLUP, Commissioner Hoff withdrew her motion and Commissioner Nickita withdrew his second.

Mayor Boutros opened the public hearing at 8:52 p.m.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Nickita:
To postpone the public hearing of the Public Hearing – 34350 Woodward & 907-911 Haynes – Lot Combo to December 21, 2020.

ROLL CALL VOTE: Ayes, Commissioner Sherman
Commissioner Nickita
Commissioner Hoff
Commissioner Host
Mayor Boutros
Mayor Pro-Tem Longe

Nays, None

There was no closure of the public hearing.

12-266-20 Cost Sharing Agreement with Oakland County Road Commission

Consulting City Engineer Surhigh summarized the item.

Commissioner Sherman stated that this was a very routine item and accordingly moved the suggested resolution.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Host:
To approve the cost sharing agreement with the Road Commission for Oakland County, agreeing to pay

the City of Birmingham's share of the cost to replace the traffic signal at the intersection of Coolidge Highway and Maple Road, at a cost not to exceed \$75,000, to be charged to account number 202-303.001-971.0100. Also, to authorize the Mayor to sign the agreement on behalf of the City.

In reply to a question from Commissioner Nickita, CCE Surhigh stated that the RCOC will commence the intersection upgrade designs pending the approval of this motion by the City Commission. He stated that Birmingham has been invited by the RCOC to provide input on the design.

Commissioner Nickita said this is one of the most dangerous intersections for pedestrians in Birmingham. He said that two matters of high priority for the intersection must be the addition of continental pattern crosswalks to the south and east sides, and the addition of pedestrian signals that actually function as the current ones seem never to change from 'Don't Walk'.

ROLL CALL VOTE: Ayes, Commissioner Sherman
 Commissioner Host
 Commissioner Nickita
 Commissioner Hoff
 Mayor Boutros
 Mayor Pro-Tem Longe

Nays, None

12-267-20 Request for Planning Board Review of Proposed Ordinance Amendments

Planning Director Ecker presented the item.

Some Commissioners wanted the Planning Board's review to take into account findings of what worked or what did not work over the winter of '20-'21, while other Commissioners wanted the review done more expeditiously so restaurant owners could know which purchases for outdoor dining could be used during both winter '20-'21 and winter '21-'22. After discussion there was a general understanding among the Commissioners that even if this review were requested now the Planning Board's findings would not likely be available until late spring 2021 at the earliest, which meant that the circumstances of winter '20-'21 could be factored into the review but that by necessity restaurant owners would not be able to use the findings to guide their purchases for outdoor dining for the '20-'21 season.

Commissioners asked that the Planning Board consider the following topics during their review, including that:

- The outdoor dining structures should be taken down in the summer;
- The approvals of outdoor seating should be considered vis-a-vis the type of license already held by the restaurant (bistro, Class C, etc.);
- The size of the tents should be maximized where possible since the sizes of the aisles inside the tents are dictated by building code;
- Issues that have already arisen with outdoor dining during the winter of '20-'21 should be discussed; and,
- The differences between outdoor dining that would be on public or private property, offer alcohol or not, or other potential variations should be addressed.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Sherman:

To direct the proposed ordinance amendments Chapter 126, Zoning, Article 4, Section 4.44 to the Planning Board for their review and recommendation.

ROLL CALL VOTE: Ayes, Commissioner Hoff
 Commissioner Sherman
 Commissioner Nickita
 Commissioner Host
 Mayor Boutros
 Mayor Pro-Tem Longe

Nays, None

12-268-20 Continuation of Free Parking in All Structures Through March 31, 2021

Op. Cmdr. Grewe presented the item.

Commissioner Sherman said he would move the motion because it would benefit City businesses without any cost to taxpayers, and because the likely impact on the parking fund balance would be relatively minor.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Hoff:
To approve the continuation of free parking in all structures through March 31, 2021.

Commissioner Host noted the City does not have data on parking structure usage as long as the gates are not down, and said he would like to start gathering data on February 1, 2021. He suggested the City could charge a nominal fee at first when it restarts charging. He also said that since the parking fund is the City's, a decrease in its balance does seem to represent a loss for the City's taxpayers.

Mayor Pro Tem Longe said she would also like data and would want the gates down April 1, 2021. She agreed the fee could be nominal to start. She said she was not supportive of providing relief to permit parkers that would not be granted to transient parkers, and said she wondered why Royal Oak and Ferndale were not offering similar changes to their parking.

Commissioner Nickita said that the cityscapes of Royal Oak and Ferndale are more complex than Birmingham's, especially since Birmingham has more office space downtown. He stated that charging surface lot and on-street parking is appropriate in Birmingham in order to encourage parking turnover which benefits the restaurants and retailers. Maintaining a good business environment downtown is essential to the financial success of the City, and he said he would be in favor of rethinking parking charges in the spring.

Commissioner Sherman noted that the City's taxpayers only contribute to the parking fund when they pay to park on-street, in a surface lot, or in a parking deck. These are the same charges paid by anyone parking in Birmingham. There are no additional charges assessed to residents for the parking fund.

Mayor Boutros said he was in full support of the motion given the relief it would offer the City's businesses.

Public Comment

Richard Astrein, owner of Astrein's Creative Jewelers on Maple, stated that the current pandemic is the worst crisis for retail businesses he has seen in the 50 years he has been in business. He noted that business owners in Birmingham pay for their staff to park in the City and pay assessments for parking, and that as regular contributors to the parking fund they deserve the relief it can offer. He said that there would likely no situation more appropriate for offering business owners relief than the current one, and given the parking fund's balance of nearly \$20 million the Commission should not hesitate to pass the current motion.

Andrew Haig said the City should look into ways to still collect data without charging for a period of time. He also recommended the City consider temporarily closing one or two decks to reduce the maintenance needs across the decks while people are not paying and parking demand is down.

Dr. Vaitas, chairman of the APC, said he was in favor of the motion and that passing it would really help small businesses.

David Bloom noted that the balance of the parking fund decreased by nearly \$1 million as a result of not charging for parking during most of 2020. He agreed with Mr. Haig's suggestion that data should be collected without payments, and suggested that other compromises be considered like temporarily increasing free parking in the decks to four hours or temporarily lowering permit costs for small businesses in order to help maintain the fund balance.

ROLL CALL VOTE: Ayes, Commissioner Sherman
 Commissioner Hoff
 Commissioner Nickita
 Mayor Boutros
 Mayor Pro-Tem Longe

Nays, Commissioner Host

VII. NEW BUSINESS

12-269-20 Public Hearing – 470 N. Old Woodward - EM Bistro

1. Resolution to approve the Final Site Plan and Design and Special Land Use Permit at 470 N. Old Woodward to allow for the operation of a new bistro, EM, at 470 N. Old Woodward.

Mayor Boutros opened the public hearing at 10:10 p.m.

PD Ecker and Joe Bongiovanni, owner of EM, reviewed the item.

A number of Commissioners expressed concern regarding the proposed intensity of the use. Some felt that the coexistence of EM Bistro and Market North, given the shared ownership and shared resources such as restrooms, made the operation seem more like a Class C than a bistro. There was the feeling that the proposed outdoor seating made EM Bistro a more intensive use than bistros intend, even though it was pointed out that both the indoor and outdoor seating would be within the bistro license limits. It was noted that the plans proposed to remove a parking space for seating, which would reduce the amount of parking available in the area even though there are other parking-intensive uses nearby, like the salon above EM Bistro. Concerns were also raised that the bathrooms would be insufficient for the number of patrons served even though the plans did meet the building code requirements.

Other Commissioners noted that the plans met all the bistro and building code requirements and that EM Bistro would pay for the use of the parking space if outdoor dining were staged there. They noted that EM Bistro and Market North are two separate establishments with two separate concepts, and therefore deserved to be considered for licenses separately.

Commissioner Nickita noted that the seating allowances for bistros were studied extensively at the Planning Board and Commission level before they were instituted. He said the Commission should not impose a requirement for lesser seating at this particular bistro since the City has decided on a standard and it would be unfair to impose different standards on one operator seeking a bistro license versus another.

Public Comment

Mr. Bloom expressed concern about the bathroom-to-patron ratio. He suggested that the project get a Class C license since he viewed it as a larger establishment.

Ms. Hammond stated that Market North is primarily a restaurant, not a bar, and that EM Bistro would be the same. She said she is grateful to have these establishments in the area in order to get reliably good meals at most hours of the day. She said there has never been an issue with waiting for the bathrooms here or at most other restaurants in Birmingham, and that there is generally no issue with parking in the area. If concerns about overflow parking in the little San Francisco neighborhood were the issue, then the City could prohibit parking there. She concluded that she would rather reliably competent operators like the Bongiovannis continue to invest in Birmingham than having other people who come in, run an establishment for a year, and have to close it. She said Birmingham was lucky to have the Bongiovannis' investment and that the City should actively work to maintain that relationship.

Mayor Boutros closed the public hearing at 11:07 p.m.

MOTION:

Motion by Commissioner Nickita, seconded by Commissioner Host:
To approve the Final Site Plan and Design and Special Land Use Permit to allow for the operation of a new bistro, EM, at 470 N. Old Woodward.

ROLL CALL VOTE: Ayes, Commissioner Nickita
 Commissioner Host
 Mayor Boutros

 Nays, Commissioner Sherman
 Commissioner Hoff
 Mayor Pro-Tem Longe

After further discussion, the dissenting Commissioners suggested approving the revised plans allowing for 52 indoor seats plus ten at the bar, and allowing for the 28 outdoor seats adjacent to the restaurant on its private property to be maintained. They said the 36 proposed for the parking space and the public sidewalk should be removed.

Commissioner Sherman said EM Bistro could always return to the Commission in the future with a request to expand its outdoor seating if need be, like Toast did in the past.

Mr. Bongiovanni said he would prefer the unanimous support of the Commission to gaining the seating in the parking space. He said he would like to maintain the outdoor seating proposed for the public sidewalk if at all possible as a way of creating vibrancy in the area.

Public Comment

Amy Gooch echoed many of Ms. Hammond's previous points, stating that the City was lucky to have the Bongiovannis and that there is never an issue with lines for restrooms in Birmingham establishments. She said the City needs to step up for its businesses and that approving the proposal as-is would be a way to do that.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Host:
To approve the revised Final Site Plan and Design and Special Land Use Permit, with the exclusion of the platform, the seating on the platform, and the seating that would have been on the public sidewalk and the inclusion of the 52 interior seats, plus ten at the bar, and the 28 outdoor seats adjacent to the establishment on private property to allow for the operation of a new bistro, EM, at 470 N. Old Woodward.

ROLL CALL VOTE: Ayes, Commissioner Sherman
Commissioner Host
Commissioner Nickita
Mayor Boutros
Commissioner Hoff
Mayor Pro-Tem Longe

Nays, None

12-270-20 Birmingham Museum Collection Policy

Museum Director Pielack presented the item. She stated that the Museum has sufficient capacity to further receive appropriate items via donation, and that donations that would create redundancies in the Museum's collection are recommended to other institutions.

MOTION: Motion by Commissioner Nickita, seconded by Mayor Pro Tem Longe:
To accept the proposed Birmingham Museum Collection Policy.

ROLL CALL VOTE: Ayes, Commissioner Nickita
Mayor Pro-Tem Longe
Commissioner Sherman
Commissioner Host
Mayor Boutros
Commissioner Hoff

Nays, None

12-271-20 Birmingham Museum Heritage Zone

Museum Director Pielack presented the item.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Host:
To accept the proposed final design for the Birmingham Museum Heritage Zone and plan for implementation of its first phase elements of primary signage, fencing modifications and gates, and installation of three Pioneer elm trees.

ROLL CALL VOTE: Ayes, Commissioner Sherman
Commissioner Host
Commissioner Nickita
Mayor Pro-Tem Longe
Mayor Boutros
Commissioner Hoff

Nays, None

12-272-20 Greenwood Cemetery Grave Release in Sections B and C

Museum Director Pielack presented the item.

Commissioner Hoff said she remains opposed to releasing lots for sale in Sections B and C since those sections are at least partially historic. She noted that Section D is not full and could be utilized instead. She added that the GCAB intends to use GIS mapping and ground-penetrating radar in the future to hopefully locate additional available lots outside of the historic areas.

Mus. Dir. Pielack said there are only six lots available in Section D. She said the majority of known available lots are in Sections B and C.

Mayor Pro Tem Longe agreed with Commissioner Hoff that the GIS mapping and ground-penetrating radar should be used to locate more lots. She also said that although the GCAB recommends that 50 lots be released, there was no map to indicate which 50. She suggested the Commission authorize the remaining lots in Section D and await further information from the GCAB regarding which lots in Sections B and C are recommended for release.

MOTION: Motion by Commissioner Sherman, seconded by Mayor Pro Tem Longe:
To authorize that the six grave sites in Section D be made available for sale and to request that additional information be provided to the Commission regarding the additional 50 requested grave sites in Sections B and C.

ROLL CALL VOTE: Ayes, Commissioner Sherman
Mayor Pro-Tem Longe
Commissioner Host
Commissioner Nickita
Mayor Boutros
Commissioner Hoff

Nays, None

12-273-20 Greenwood Cemetery Grave Release - Single Lot Authorization

Mus. Dir. Pielack confirmed for Commissioner Sherman that the one lot sold that exceeded the authorized lot sales was in either Section B or Section C.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Host:
To authorize that the one lot that was sold that exceeded the authorized lots be authorized.

ROLL CALL VOTE: Ayes, Commissioner Sherman
Commissioner Host

Mayor Pro-Tem Longe
Commissioner Nickita
Mayor Boutros
Commissioner Hoff

Nays, None

**12-274-20 REQUEST TO MEET IN CLOSED SESSION IN ACCORDANCE
WITH SECTION 8(E) OF THE OPEN MEETINGS ACT**

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Hoff:
To go into closed session to review pending litigation in the matter of Lyons v City of Birmingham
pursuant to Section 8(e) of the Open Meetings Act, MCL 15.261 – 15.275.

ROLL CALL VOTE: Ayes, Commissioner Sherman
Commissioner Hoff
Commissioner Host
Commissioner Nickita
Mayor Boutros
Mayor Pro-Tem Longe
Nays, None

The City Commission adjourned to Closed Session at 12:05 a.m.

Mayor Boutros reconvened the meeting at 12:19 a.m.

Commission Discussion on items from prior meeting.

None.

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

None.

VIII. REMOVED FROM CONSENT AGENDA

IX. COMMUNICATIONS

X. REPORTS

- A. Commissioner Reports – Notice of intent to appoint to the Public Arts Board & the Storm Water
Utility Appeals Board
- B. Commissioner Comments
- C. Advisory Boards, Committees, Commissions' Reports and Agendas
 - 1. Ethics Majority Opinion for case # 2020-01
 - 2. Ethics Minority Opinion for case # 2020-01

Commissioner Nickita said he wanted clarity regarding the implications of the findings of case #2020-01
for Commissioners. He suggested a study session at a future Commission meeting.

City Attorney Kucharek said such a study session would be appropriate as long as it focuses on generalities and not on any of the specific facts or details of case #2020-01. She said the Chair of the Board of Ethics could be requested to offer such a training.

Commissioner Nickita confirmed that would be his request.

Mayor Pro Tem Longe voiced her support for a training with the Board of Ethics.

It was discussed that the training could also be held as a workshop between the Board of Ethics as a whole and the Commission.

- 3. Greenwood Cemetery Annual Report
- 4. City Commission Sub Committee to Recognize City Manager Joe Valentine
- D. Legislation
- E. City Staff
 - 1. Outdoor Dining Enclosure Status Report

CM Valentine summarized the item.

City Attorney Kucharek stated that five of the six establishments have reached out to the City to ask how best to come into compliance with the requirements. One establishment has not reached out to the City and has received additional violation tickets.

INFORMATION ONLY

XI. ADJOURN

Mayor Boutros adjourned the meeting at 12:20 a.m.

City of Birmingham
Warrant List Dated 12/09/2020

Meeting of 12/21/2020

Check Number	Early Release	Vendor #	Vendor	Amount
<u>PAPER CHECK</u>				
276721	*	000855	48TH DISTRICT COURT	200.00
276722		MISC	911 MECHANICAL	3,980.00
276724		MISC	ABSOLUTE EXHIBITS	1,395.00
276726		003708	AIRGAS USA, LLC	244.07
276728	*	006686	ALLTRONICS SYSTEMS LTD	2,125.00
276730	*	MISC	ASSURED WALLCOVERING	100.00
276731	*	007216	AT&T	96.59
276733	*	003839	MATTHEW J. BARTALINO	47.59
276734	*	MISC	BEN HUBERT	3,144.90
276735		002231	BILLINGS LAWN EQUIPMENT INC.	248.04
276736		MISC	BOLTON, JORDAN S	200.00
276737		003526	BOUND TREE MEDICAL, LLC	1,946.59
276738	*	MISC	BRENDAN MCGAUGHEY	60.00
276739	*	007313	CABINET ONE, INC.	23,500.00
276740		009078	CANON SOLUTIONS AMERICA INC	163.20
276741		007732	CAPITAL TIRE, INC.	208.36
276742	*	MISC	CARLO MATERAZZO	867.20
276745	*	000444	CDW GOVERNMENT INC	138.80
276746		000605	CINTAS CORPORATION	201.40
276748		009187	CLEARVIEW CAPTIONING LLC	1,543.75
276749	*	002191	COCHRANE SUPPLY AND ENG INC	284.04
276750	*	008955	COMCAST	436.02
276751	*	007774	COMCAST BUSINESS	1,256.20
276752	*	000627	CONSUMERS ENERGY	700.33
276753		006115	CORRIGAN MOVING SYSTEMS	2,226.00
276755	*	005742	CRAIN'S DETROIT BUSINESS	79.00
276756		003923	CUMMINS BRIDGEWAY LLC	86.42
276757		004386	CYNERGY PRODUCTS	1,692.93
276758		MISC	DANIS CONSTRUCTION CO.	200.00
276759	*	005125	DEVIN DEROECK	60.00
276762	*	000190	DOWNRIVER REFRIGERATION	216.44
276763		MISC	DROBOT CUSTOM BUILDING INC	500.00
276764	*	000179	DTE ENERGY	318.58
276765	*	000179	DTE ENERGY	20.83
276766	*	000179	DTE ENERGY	55.10
276769		004671	ELDER FORD	474.11
276771		008970	ENCODEPLUS, LLC	4,250.00
276772	*	009100	ENZO WATER SERVICE	500.00
276773		001495	ETNA SUPPLY	2,310.00
276774		000936	FEDEX	107.38
276775		MISC	FELLER, ROBERT EMIL	200.00
276776		007136	FERGUSON ENTERPRISES, INC.	206.67

City of Birmingham

Warrant List Dated 12/09/2020

Meeting of 12/21/2020

Check Number	Early Release	Vendor #	Vendor	Amount
276777		008498	FRANK'S SHOE SERVICE	75.00
276778		002510	GAMCO INVESTORS INC	13,497.00
276779		006868	GOVERNMENT FINANCE OFFICERS ASSN.	530.00
276780		007342	H2A ARCHITECTS, INC.	420.00
276781		005820	HENKE MFG	1,516.35
276782	*	001956	HOME DEPOT CREDIT SERVICES	4,165.49
276783		007690	HORTMARK	1,280.00
276784		000948	HYDROCORP	1,315.00
276785	*	007889	YACOB ISEID	1,080.49
276786		008564	JERRY'S TIRE INC	626.08
276787	*	007002	SHON JONES	62.00
276789		008831	KIESLER POLICE SUPPLY, INC	1,325.00
276791	*	000362	KROGER COMPANY	9.96
276792		MISC	LABYRINTHS IN STONE	100.00
276793	*	MISC	LERETA	387.90
276794		006817	LEXISNEXIS RISK DATA MANAGEMENT INC	100.00
276795		MISC	MAC CONSTRUCTION, INC.	100.00
276796		001669	MACP	280.00
276797		001106	MAPERS	200.00
276798		008793	MERGE MOBILE, INC.	73.00
276799	*	009085	MGSE SECURITY LLC	260.00
276804		001194	NELSON BROTHERS SEWER	210.00
276806		001686	OAKLAND CO CLERKS ASSOC	20.00
276807		005337	OCACP	30.00
276809	*	000481	OFFICE DEPOT INC	1,406.28
276810	*	008785	KEVIN ONG	306.70
276811		MISC	ONSITE SOLUTIONS INC	100.00
276812	*	MISC	PATRICK ROCK	1,883.55
276813		000486	PLANTE & MORAN PLLC	4,108.50
276814		008866	PRECISION CONCRETE CUTTING INC	6,630.00
276815	*	008586	ROBERT PREW	221.61
276816		MISC	PRIME MANAGEMENT	300.00
276817	*	006729	QUENCH USA INC	120.00
276818	*	000492	REGISTER OF DEEDS	60.00
276820		002566	REYNOLDS WATER	140.00
276821		MISC	RJL COMPANY, LLC	100.00
276822		MISC	ROOF ONE LLC	100.00
276823		MISC	SCHRODER, JEFFREY M	100.00
276824	*	MISC	SHARMA, DIVYESH	1,747.78
276825	*	MISC	SSLREM LLC	964.51
276826		009201	STEPHEN SHUKWIT	1,000.00
276828		006749	SUPERIOR SCAPE, INC	32,467.00
276831		MISC	TREMONT MANAGEMENT	15,000.00

City of Birmingham
Warrant List Dated 12/09/2020

Meeting of 12/21/2020

Check Number	Early Release	Vendor #	Vendor	Amount
276834	*	000158	VERIZON WIRELESS	128.14
276835	*	000158	VERIZON WIRELESS	985.91
276836	*	000158	VERIZON WIRELESS	734.15
276837	*	000158	VERIZON WIRELESS	415.01
276838	*	000158	VERIZON WIRELESS	76.02
276840	*	000158	VERIZON WIRELESS	1,082.57
276843	*	006285	WASHINGTON ELEVATOR CO, INC	1,594.40
276846		001490	WEST SHORE FIRE INC	7,848.85
276847	*	008391	XEROX CORPORATION	29.25
276848		009185	ZOOM VIDEO COMMUNICATIONS INC	464.83
SUBTOTAL PAPER CHECK				\$164,368.87
<u>ACH TRANSACTION</u>				
3169	*	008847	ABS- AUTOMATED BENEFIT SVCS, INC	22,651.57
3170	*	002284	ABEL ELECTRONICS INC	601.99
3172	*	000282	APOLLO FIRE EQUIPMENT	3,202.00
3174	*	007345	BEVERLY HILLS ACE	30.53
3175	*	008840	BIRMINGHAM PUBLIC SCHOOLS-TAXES	66,043.14
3176		009246	CITY OF BIRMINGHAM #243	8,142.98
3178	*	001077	DUNCAN PARKING TECH INC	9,762.75
3179	*	000207	EZELL SUPPLY CORPORATION	1,138.59
3180	*	007314	FLEIS AND VANDENBRINK ENG. INC	177.00
3181	*	007465	IN-HOUSE VALET INC	3,000.00
3182		000261	J.H. HART URBAN FORESTRY	4,720.50
3183	*	002576	JAX KAR WASH	96.00
3184	*	003458	JOE'S AUTO PARTS, INC.	304.80
3185	*	005550	LEE & ASSOCIATES CO., INC.	160.30
3187	*	007856	NEXT	1,350.00
3188	*	006359	NYE UNIFORM COMPANY	951.00
3189	*	008843	OAKLAND COUNTY TREASURER- TAX PYMNT	104,616.61
3190	*	002767	OSCAR W. LARSON CO.	247.50
3191	*	001062	QUALITY COACH COLLISION	984.00
3192	*	003554	RKA PETROLEUM	8,590.98
3193		000254	SOCRRA	155,376.00
3194	*	001097	SOCWA	116,958.40
3195		005787	SOUTHEASTERN EQUIPMENT CO. INC	1,101.95
3196	*	004320	TRI-COUNTY POWER RODDING, INC	900.00
SUBTOTAL ACH TRANSACTION				\$511,108.59

City of Birmingham
Warrant List Dated 12/09/2020

Meeting of 12/21/2020

Check Number	Early Release	Vendor #	Vendor	Amount
GRAND TOTAL				\$675,477.46

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 12/16/2020

Meeting of 12/21/2020

Check Number	Early Release	Vendor #	Vendor	Amount
<u>PAPER CHECK</u>				
276850		005430	21ST CENTURY MEDIA- MICHIGAN	1,134.00
276851		MISC	A & R LAWN & LANDSCAPE SERVICES INC	275.00
276852	*	005686	ADVANCED MARKETING PARTNERS INC	1,268.00
276853	*	007266	AETNA BEHAVIORAL HEALTH LLC	1,192.52
276854		003708	AIRGAS USA, LLC	230.47
276858	*	006759	AT&T	293.54
276859	*	004027	AUTOMATED BENEFIT SVCS INC	12,066.37
276862	*	001086	JACK TODD- PETTY CASH	416.08
276863	*	004465	BMI	364.00
276864	*	000546	KAREN D. BOTA	3,300.00
276865		003526	BOUND TREE MEDICAL, LLC	47.12
276867		007933	CARDNO, INC.	11,930.00
276868		008243	CHARTER TOWNSHIP OF BLOOMFIELD	7,200.00
276869	*	009122	CLAIRE CHUNG	120.00
276870		000605	CINTAS CORPORATION	124.56
276871		009194	CLARKSTON ANIMAL MEDICAL CENTER	138.90
276872		009187	CLEARVIEW CAPTIONING LLC	3,843.75
276872	*	009187	CLEARVIEW CAPTIONING LLC	540.00
276873	*	004026	COFINITY	1,512.00
276874	*	008955	COMCAST	568.33
276875	*	000627	CONSUMERS ENERGY	941.53
276876		004386	CYNERGY PRODUCTS	62.00
276878		006969	DAVEY RESOURCE GROUP	1,330.00
276879		000177	DELWOOD SUPPLY	53.19
276880	*	006999	CHRISTOPHER DEMAN	634.50
276881	*	006907	DENTEMAX, LLC	149.40
276883	*	009130	DOG WASTE DEPOT	366.30
276884	*	000190	DOWNRIVER REFRIGERATION	65.40
276886	*	000179	DTE ENERGY	160.55
276887	*	000179	DTE ENERGY	83.23
276888	*	000179	DTE ENERGY	95.85
276889	*	000179	DTE ENERGY	161.77
276890	*	000179	DTE ENERGY	504.02
276891	*	000179	DTE ENERGY	71.60
276892	*	000179	DTE ENERGY	1,524.10
276893	*	000179	DTE ENERGY	114.99
276894	*	000179	DTE ENERGY	818.16
276895	*	000179	DTE ENERGY	124.29
276896	*	000179	DTE ENERGY	2,194.43
276897	*	000180	DTE ENERGY	43,855.04
276898		007505	EAGLE LANDSCAPING & SUPPLY	127.50
276899		001063	EASTMAN FIRE PROTECTION INC	533.73

City of Birmingham

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Check Number	Early Release	Vendor #	Vendor	Amount
276900	*	007702	EASY PICKER GOLF PRODUCTS, INC	42.09
276902	*	007538	EGANIX, INC.	720.00
276904	*	004615	ENGLISH GARDENS	712.00
276905	*	009100	ENZO WATER SERVICE	210.00
276906		001056	GALLS, LLC	365.79
276907	*	MISC	GEORGIA QUALITY CARPET OUTLET	2,445.54
276908	*	004604	GORDON FOOD	36.98
276909	*	008293	GRAINGER	360.82
276913		000344	J.T. EXPRESS, LTD.	868.60
276914	*	003823	JAY'S SEPTIC TANK SERVICE	249.60
276915	*	009249	JOHN C COOK	100.00
276917		008553	L.G.K. BUILDING, INC	59,700.00
276918	*	005932	LANSING COMMUNITY COLLEGE	499.00
276919		MISC	LYNCH CUSTOM HOMES	7,190.00
276920	*	004855	MAMC	126.00
276921	*	009214	KYLE MCCANHAM	30.71
276922		008611	MCCI	12,775.00
276925	*	000377	MICHIGAN MUNICIPAL LEAGUE	2,025.00
276928		000230	MIKE SAVOIE CHEVROLET INC	1,986.90
276929		007163	MOBILE HEALTH RESOURCES	684.58
276931		007665	NATIONWIDE POWER SOLUTIONS INC.	3,694.39
276932		001194	NELSON BROTHERS SEWER	300.00
276933		000477	OAKLAND COUNTY	352,890.37
276934	*	004370	OCCUPATIONAL HEALTH CENTERS	150.00
276936	*	000481	OFFICE DEPOT INC	1,690.63
276939	*	009151	PARAGON LABORATORIES INC	328.00
276940	*	009151	PARAGON LABORATORIES INC	246.00
276941	*	009151	PARAGON LABORATORIES INC	246.00
276943	*	006625	PTS COMMUNICATIONS	78.00
276944		003447	RAFT	1,200.00
276947	*	003483	SHERWIN WILLIAMS COMPANY	163.08
276948		007142	SHERWIN-WILLIAMS COMPANY	110.30
276949	*	004202	SHRED-IT USA	232.28
276950	*	008073	SITEONE LANDSCAPE SUPPLY, INC	12,568.34
276951		MISC	SIX RIVERS LAND CONSERVANCY	94.00
276953		001104	STATE OF MICHIGAN	418,581.40
276954	*	006556	STO-COTE PRODUCTS, INC.	1,521.09
276955		006749	SUPERIOR SCAPE, INC	2,869.00
276956		008748	TECHSEVEN COMPANY	2,023.75
276957		000275	TIRE WHOLESALERS CO INC	912.76
276959		000931	VARSITY SHOP	159.78
276960	*	000158	VERIZON WIRELESS	80.10
276961	*	000158	VERIZON WIRELESS	152.45

City of Birmingham
Warrant List Dated 12/16/2020

Meeting of 12/21/2020

Check Number	Early Release	Vendor #	Vendor	Amount
276962	*	000158	VERIZON WIRELESS	98.50
276963		004125	VERSALIFT MIDWEST	470.00
276965	*	000301	PAUL WELLS	304.07
276966	*	008391	XEROX CORPORATION	485.19
276967	*	000309	ZEP SALES AND SERVICE	191.11
SUBTOTAL PAPER CHECK				\$993,505.42
<u>EFT TRANSFER</u>				
" "		008732	AMAZON.COM, INC	248.75
" "		MISC	BRYCER LLC	15.00
" "		008730	FACEBOOK HEADQUARTERS	51.91
" "		MISC	GOOGLE	599.83
" "		005741	INTERNATIONAL CODE COUNCIL	219.00
" "		MISC	MIFMA- MI FARMERS MARKET ASSOC.	250.00
" "		009228	PCB PIEZOTRONICS INC	3,256.00
" "		MISC	QR-CODE GENERATOR	179.97
SUBTOTAL EFT TRANSFER				\$4,820.46
<u>ACH TRANSACTION</u>				
3200	*	008847	ABS- AUTOMATED BENEFIT SVCS, INC	31,920.77
3201	*	002284	ABEL ELECTRONICS INC	1,608.81
3203	*	009186	BILL PEASLEY	2,043.75
3204		008667	APOLLO FIRE APPRATUS REPAIR INC	51.10
3205	*	000517	BEIER HOWLETT P.C.	41,965.25
3206	*	000542	BLUE WATER INDUSTRIAL PRODUCTS INC	115.50
3207		007875	CANFIELD EQUIPMENT SERVICE INC.	4,990.00
3208	*	007575	HANNAH CHUNG	120.75
3209	*	003825	DEERE ELECTRIC INC	181.65
3210	*	009181	DELTA TEMP SERVICES INC	1,304.08
3211	*	007359	DETROIT CHEMICAL & PAPER SUPPLY	219.29
3212	*	000565	DORNBOS SIGN & SAFETY INC	101.96
3213		001077	DUNCAN PARKING TECH INC	56,924.00
3214		007684	ELITE TRAUMA CLEAN-UP INC.	70.00
3215	*	000207	EZELL SUPPLY CORPORATION	272.00
3216	*	000243	GRAINGER	269.35
3218		000331	HUBBELL ROTH & CLARK INC	36,406.75
3218	*	000331	HUBBELL ROTH & CLARK INC	7,586.04
3219		000261	J.H. HART URBAN FORESTRY	17,360.25
3220	*	003458	JOE'S AUTO PARTS, INC.	21.63
3222	*	007827	HAILEY R KASPER	147.00
3223	*	000891	KELLER THOMA	2,722.50
3224	*	005550	LEE & ASSOCIATES CO., INC.	1,557.70
3227	*	009124	ALEXANDRA MERCURIO	67.50
3228	*	001035	MUNICIPAL EMERGENCY SERVICES INC	355.00

City of Birmingham
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Check Number	Early Release	Vendor #	Vendor	Amount
3229	*	006359	NYE UNIFORM COMPANY	143.50
3230	*	000478	ROAD COMM FOR OAKLAND CO	6,037.64
3231	*	003785	SIGNS-N-DESIGNS INC	65.00
3232		005787	SOUTHEASTERN EQUIPMENT CO. INC	710.31
3233		000273	TERMINAL SUPPLY CO.	364.79
3234	*	007278	WHITLOCK BUSINESS SYSTEMS, INC.	1,780.87
SUBTOTAL ACH TRANSACTION				\$217,484.74
GRAND TOTAL				\$1,215,810.62

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: December 4th, 2020

TO: Joseph A. Valentine, City Manager

FROM: John Galik, Superintendent Designee
Carlos Jorge, Facilities Superintendent

SUBJECT: Adams Fire Station Roof Replacement

INTRODUCTION:

- The original flat roof of the Adams Fire Station has reached the end of its useful life. In order to avoid further emergency repairs, funds were budgeted in this fiscal year for its replacement.

BACKGROUND:

- A Request for Proposals was posted to MITN. Interested firms were required to register for and attend a mandatory pre-bid meeting. The pre-bid meeting was scheduled to review, tour the facility, and answer any questions regarding the request for proposals. Five interested firms attended the pre-bid meeting, and four firms submitted bids for the City of Birmingham Adams Fire Station Roof Replacement contract. The firms and bid amounts submitted are as follows:

Firm		Total Amount
J.D. Candler		\$93,285.00
Royal Roofing Company Inc.		\$80,900.00
Newton Crane Roofing		\$79,700.00
Royal-West Roofing & Sheet Metal, LLC.		\$71,300.00

- After reviewing all bids and directing staff to verify references and the ability for each firm to perform the requested service as outlined in the Request for Proposals, we requested additional information and clarification from the firm submitting lowest cost proposal.
- The lowest bidder, Royal-West Roofing & Sheet Metal, LLC. based on their response, presented the best and most qualified proposal and met all of the City requirements for this contract.
- It is recommended to award the City of Birmingham Adams Fire Station Roof Replacement contract to Royal-West Roofing & Sheet Metal, LLC., for \$71,300.00.

LEGAL REVIEW:

- City Attorney Tim Currier has provided a legal review of the contract agreement for City of Birmingham Adams Station Roof Replacement with Royal-West Roofing & Sheet Metal, LLC.

FISCAL IMPACT:

- This item was included in the approved 2020-2021 budget in account # 101-336-000-977-0000.

SUMMARY

- In light of the project specifications and review of the proposals received in response to the Request for Proposals for City of Birmingham Adams Fire Station Roof Replacement, Royal-West Roofing & Sheet Metal, LLC., has met the requirements and has presented the best and most qualified proposal. It is therefore recommended that the contract award for City of Birmingham Adams Fire Station Roof Replacement go to Royal-West Roofing & Sheet Metal, LLC., for the amount not to exceed \$71,300.00.

ATTACHMENTS:

- Request For Proposals
- Addendum 1
- Attachment B, C & D
- Attachment A - Agreement

SUGGESTED RESOLUTION:

- To approve the contract with Royal-West Roofing & Sheet Metal, LLC. in an amount not to exceed \$71,300.00 to perform City of Birmingham Adams Fire Station Roof Replacement from account #101-336-000-977-0000; and to direct the Mayor and City Clerk to sign the agreement on behalf of the City.



REQUEST FOR PROPOSALS
City of Birmingham Adams Fire Station Roof Replacement

Sealed proposals endorsed **Adams Fire Station Roof Replacement**, will be received at the Office of the City Clerk, 151 Martin Street, Birmingham, Michigan, 48009 until **11:00AM on November 24th, 2020** after which time bids will be publicly opened and read.

PLEASE NOTE: Due to Covid-19 the Municipal Building at 151 Martin is closed to the public with the exception of the Police Station vestibule on the East side of Pierce St. of the building. Inside the vestibule, there is a drop box. Proposal must be clearly labeled: Attention City Clerk - Adams Fire Station Roof Replacement.

Bidders will be required to attend a mandatory pre-bid meeting at **10:00AM on November 10th, 2020** at the Adams Fire Station located 572 South Adams Birmingham, MI 48009. Bidders must register for the pre-bid meeting by **November 9th, 2020** by contacting Carlos Jorge at **248-530-1882**.

The City of Birmingham, Michigan is accepting sealed bid proposals from qualified professional firms to furnish a proposal including design, equipment required, accessories and incidentals necessary for the installation of a new roof system for the Adams Fire Station. This work must be performed 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: Carlos Jorge.

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:	October 28 th , 2020
Mandatory Pre-Bid Meeting:	10:00AM November 10 th , 2020 (RSP November 9 th) Adams Fire Station 572 South Adams Birmingham, MI 48009
Deadline for Submissions:	11:00AM on November 24 th , 2020
Contact Person:	Carlos Jorge, Maintenance Supervisor P.O. Box 3001, 151 Martin Street Birmingham, MI 48012-3001 Phone: (248) 530-1882 Email: cjorge@bhamgov.org



REQUEST FOR PROPOSALS
City of Birmingham Adams Fire Station Roof Replacement

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INTRODUCTION

For purposes of this request for proposals the City of Birmingham will hereby be referred to as "City" and the private firm will hereby be referred to as "Contractor."

The City of Birmingham, Michigan is accepting sealed bid proposals from qualified professional firms to furnish a proposal including design, equipment required, accessories and incidentals necessary for the installation of a new roof system for the Adams Fire Station. This work must be performed in accordance with the specifications outlined by the Scope of Work contained in this Request For Proposals (RFP).

During the evaluation process, the City reserves the right where it may serve the City's best interest to request additional information or clarification from proposers, or to allow corrections of errors or omissions. At the discretion of the City, firms submitting proposals may be requested to make oral presentations as part of the evaluation.

It is anticipated the selection of a firm will be completed by December 7th, 2020. An Agreement for services will be required with the selected Contractor. A copy of the Agreement is contained herein for reference. Contract services will commence upon execution of the service agreement by the City.

REQUEST FOR PROPOSALS (RFP)

The purpose of this RFP is to request sealed bid proposals from qualified parties presenting their qualifications, capabilities and costs to provide installation of a flat roof system for the Adams Fire Station in accordance with specifications for the City of Birmingham, Michigan

MANDATORY PRE-BID MEETING

Prior to submitting a bid, interested firms are required to attend a pre-bid meeting to conduct an on-site visit of the location and access to the project location to make inquiries about the RFP. The pre-bid meeting will be held at **10:00AM on November 10th, 2020 at the Adams Fire Station located 572 South Adams Birmingham, MI 48009. RSVP by November 9th.**

INVITATION TO SUBMIT A PROPOSAL

Proposals shall be submitted no later than **11:00AM on November 24th, 2020** to:

City of Birmingham
Attn: City Clerk
151 Martin Street
Birmingham, Michigan 48009

PLEASE NOTE: Due to Covid-19 the Municipal Building at 151 Martin is closed to the public with the exception of the Police Station vestibule on the East side of Pierce

St. of the building. Inside the vestibule, there is a drop box. Proposal must be clearly labeled: Attention City Clerk - Adams Fire Station Roof Replacement.

One (1) original and one (1) copy of the proposal shall be submitted. The proposal should be firmly sealed in an envelope, which shall be clearly marked on the outside, **Adams Fire Station Roof Replacement**. Any proposal received after the due date cannot be accepted and will be rejected and returned, unopened, to the proposer. Proposer may submit more than one proposal provided each proposal meets the functional requirements.

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: Carlos Jorge, Building Superintendent, City of Birmingham, 151 Martin Street, Birmingham, MI 48009 or cjorge@bhamgov.org. Such request for clarification shall be delivered, in writing, no later than 5 days prior to the deadline for submissions.
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 with the lowest price and the contract will require the completion of the work pursuant to these documents.
5. Each respondent shall include in his or her 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 evaluation panel will consist of City staff and any other person(s) designated by the City who will evaluate the proposals based on, but not limited to, the following criteria:

1. Ability to provide services as outlined.
2. Related experience with similar projects, Contractor background, and personnel qualifications.
3. Quality of materials proposed.
4. Overall Costs.
5. 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. The successful bidder will be required to furnish a Performance Bond in an amount not less than 100% of the contract price in favor of the City of Birmingham, conditioned upon the faithful performance of the contract, and completion on or before the date specified.
7. 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.

8. The Contractor will not exceed the timelines established for the completion of this project.
9. 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 - p. 16)
 - b. Cost Proposal (Attachment C - p. 17)
 - c. Iran Sanctions Act Endor Certification Form (Attachment D - p. 18)
 - d. Agreement (p. 10 ☐ **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 (p. 9).
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 projects utilizing the same materials included in the Contractor's proposal.
8. The Contractor will be responsible for the disposal of all material and any damages which occur as a result of any of employees or subcontractors of the Contractor during this project.
9. The contractor will be responsible for getting the building and parking permits at no cost to the contractor.
10. The successful bidder shall provide a Performance Bond in an amount not less than 100% of the contract price in favor of the City of Birmingham, conditioned

upon the faithful performance of the contract, and completion on or before the date specified.

11. 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

1. The City will provide a designated representative to work with the Contractor to coordinate both the City's and Contractor's efforts and to inspect and verify any work performed by the Contractor.
2. The City will provide access to the City of Birmingham during regular business hours or during nights and weekends as approved by the City's designated representative.

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 abandoned 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.

PROJECT TIMELINE

Project shall begin on a mutually agreed upon start date and be completed within 2 to 3 weeks thereafter.

The Contractor will not exceed the timelines established for the completion of this project.

SCOPE OF ☐ OR ☐

The Contractor shall perform the following services in accordance with the requirements as defined and noted herein:

The project consists of installing Carlisle's Sure-Seal (black) Adhered Roofing System or equal as outlined below:

1.- Apply the Fully Adhered EPDM Roofing System in conjunction with 20 psi InsulBase and Primed Dens Deck ☐ R-30 after tear off of the existing ballasted EPDM membrane and insulation to expose the existing deck for verification of suitable substrate as specified in this specification.

2. All components of the specified roofing system shall be products of Carlisle SynTec or City approved substitute's products as compatible or equal to specifier.

3.- Unless otherwise approved by the specifier and accepted by the membrane manufacturer, all products (including insulation, fasteners, fastening plates and edgings) must be **manufactured and supplied** by the roofing system manufacturer and covered by the warranty.

4.- Submit a letter of certification from the manufacturer which certifies the roofing contractor is authorized to install the manufacturer's roofing system and lists foremen who have received training from the manufacturer along with the dates training was received.

General ☐ ork :

A. Comply with the manufacturer's instructions for the installation of the membrane roofing system including proper substrate preparation, jobsite considerations and weather restrictions.

B.- Installation: Ensure surface of existing roof deck is dry prior to installing insulation. Place insulation over the surface and fasten to the deck with Carlisle fasteners and plates in accordance with this Carlisle Specification.

C.- The roofing system must be installed by an applicator authorized and trained by the manufacturer in compliance with shop drawings as approved by the manufacturer. The roofing applicator shall be thoroughly experienced and upon request be able to provide evidence of having at least ten (10) years successful experience installing single-ply EPDM roofing systems and having installed at least one (1) EPDM roofing application or several similar systems of equal or greater size within one year.

D.- The applicator shall, upon request, be able to document three (3) installations completed more than two years prior to issuance of the contract documents, utilizing components of the proposed manufacturer, that are comparable to those required for the work and similar in scope and complexity. Provide complete contact information, warranty history for previous installations and demonstrate in-service performance.

FLASHING

- A. Wall and curb flashing shall be cured EPDM membrane. Continue the deck membrane as wall flashing where practicable. Use Pressure-Sensitive Curb Wrap when possible to flash curb units.
- B. Follow manufacturer's typical flashing procedures for all wall, curb, and penetration flashing including metal edging/coping and roof drain applications.

Prior to the manufacturer's inspection for warranty, the applicator must perform a pre-inspection to review all work and to verify all flashing has been completed as well as the application of all caulking.

Upon completion of the installed work, submit copies of the manufacturer's final inspection report to the specifier prior to the issuance of the manufacturer's warranty.

Certification of the manufacturer's warranty reserve.

Provide manufacturer's 30 year Edge-to-Edge Total System Warranty covering both labor and all materials with no dollar limitation. The maximum wind speed coverage shall be peak gusts of 55, mph measured at 10 meters above ground level. Certification is required with bid submittal indicating the manufacturer has reviewed and agreed to such wind coverage.

Note:

Warranty Length	Minimum Membrane Thickness
30 year	.090-mil Sure-Seal

1. The contractor shall be responsible to perform daily clean-up to collect all wrappings, empty containers, paper, and other debris from the project site. Upon completion, all debris must be disposed of in a legally acceptable manner.

2. The Contractor shall operate in a safe manner and will observe all MIOSHA guidelines.
3. The Contractor shall provide any and all manuals and/or warranty information related to this project to the City upon completion of the project.
 - a. Provide a 30 year Total System Warranty
4. This section and referenced documents shall constitute the Scope of Work for this project and as such all requirements must be met.

ATTACHMENT A - AGREEMENT
City of Birmingham Adams Fire Station Roof Replacement

This AGREEMENT, made this _____ day of _____, 2020, by and between CITY OF BIRMINGHAM, having its principal municipal office at 151 Martin Street, Birmingham, MI (hereinafter sometimes called "City"), and Royal West Roofing "Sheet Metal, LLC, having its principal office at 51 Summit St., Brighton, MI 48116 (hereinafter called "Contractor"), provides as follows:

WITNESSETH:

"EREAS, the City of Birmingham, through its Maintenance Department, is desirous of having work completed to remove and replace an existing roof system at the Adams Fire Station in the City of Birmingham.

"EREAS, the City has heretofore advertised for bids for the procurement and performance of services required to perform Adams Fire Station Roof Replacement, and in connection therewith has prepared a request for sealed proposals ("RFP"), which includes certain instructions to bidders, specifications, terms and conditions.

"EREAS, 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 Adams Fire Station Roof Replacement.

NO, 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 Adams Fire Station Roof Replacement and the Contractor's cost proposal dated November 23, 2020 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 \$71,300.00, as set forth in the Contractor's November 23, 2020 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 applicable types of insurance coverage and minimum limits as set forth below:

A. Workers' Compensation Insurance:

For Non-Sole Proprietorships: 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.

For Sole Proprietorships: Contractor shall complete and furnish to the City prior to the commencement of work under this Agreement a signed and notarized Sole Proprietor Form, for sole proprietors with no employees or with employees, as the case may be.

B. Commercial General Liability Insurance: 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 (☐CU) Exclusions, if applicable.

C. Motor ☐ehicle Liability: Contractor shall procure and maintain during the life of this Agreement Motor ☐ehicle 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 ☐ehicle 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. Pollution Liability Insurance: Contractor shall procure and maintain during the life of this Agreement Pollution Liability Insurance, with limits of liability of not less than \$1,000,000, per occurrence preferred, but claims made accepted.
- G. Owners Contractors Protective Liability: The Contractor shall procure and maintain during the life of this contract, an Owners Contractors Protective Liability Policy with limits of liability not less than \$3,000,000 per occurrence, combined single limit, Personal Injury, Bodily Injury and Property Damage. The City of Birmingham shall be named Insured on said coverage.
- H. Cancellation Notice: Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.
- I. 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.
- ☐ 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.
- K. 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: Carlos Jorge
151 Martin Street
Birmingham, MI 48009
1-248-530-1882

Royal West Roofing & Sheet Metal, LLC
Attn: Jason Wilkerson
51 Summit St.
Brighton, MI 48116
1-810-360-0412

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:

Royal West Roofing Sheet Metal, LLC

By: _____
Jason Wilkerson
Its: Member

CITY OF BIRMINGHAM

By: _____
Pierre Boutros
Its: Mayor

By: _____
Alexandria Bingham
Its: City Clerk

Approved:

Carlos Jorge, Facilities Supervisor
(Approved as to substance)

Mark Gerber, Director of Finance
(Approved as to financial obligation)

Tim J. Currier, City Attorney
(Approved as to form)

Joseph A. Valentine, City Manager
(Approved as to substance)

ATTACHMENT B - BIDDER'S AGREEMENT
City of Birmingham Adams Fire Station Roof Replacement

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

DATE

☐ **Print Name**

TITLE

DATE

AUTHORIZED SIGNATURE

E-MAIL ADDRESS

COMPANY

ADDRESS

PHONE

NAME OF PARENT COMPANY

PHONE

ADDRESS

ATTACHMENT C - COST PROPOSAL

City of Birmingham Adams Fire Station Roof Replacement

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
Materials <input type="checkbox"/> Equipment	<input type="checkbox"/>
Labor	<input type="checkbox"/>
Miscellaneous (Attach Detailed Description)	<input type="checkbox"/>
TOTAL <input type="checkbox"/> BID AMOUNT	<input type="checkbox"/>
ADDITIONAL BID ITEMS	
	<input type="checkbox"/>
	<input type="checkbox"/>
GRAND TOTAL <input type="checkbox"/> AMOUNT	<input type="checkbox"/>

Firm Name _____

Authorized signature _____ Date _____

ATTACHMENT D - IRAN SANCTIONS ACT VENDOR CERTIFICATION FORM
City of Birmingham Adams Fire Station Roof Replacement

Pursuant to Michigan Law and the Iran Economic Sanction Act, 2012 PA 517 (the "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.

PREPARED BY
[Print Name]

DATE

TITLE

DATE

AUTHORIZED SIGNATURE

E-MAIL ADDRESS

COMPANY

ADDRESS

PHONE

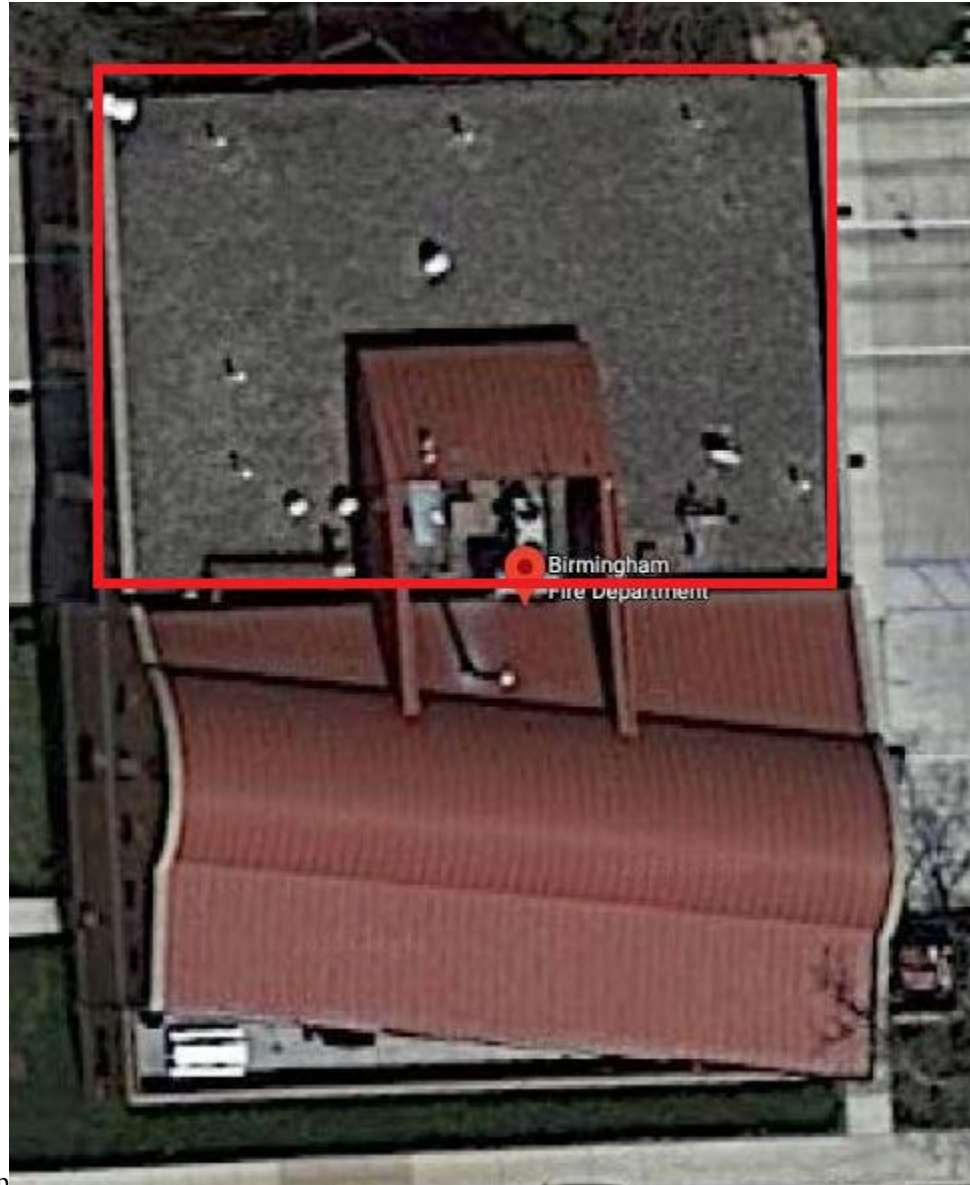
NAME OF PARENT COMPANY

PHONE

ADDRESS

TAXPAYER I.D.#

ATTACHMENT E □ Aerial Pics Roof to be replaced
City of Birmingham Adams Fire Station Roof Replacement



A. incorp



ADAMS FIRE STATION ROOF REPLACEMENT ADDENDUM 1

The City of Birmingham would like to thank you all for your participation in the Adams Fire Station Roof Replacement Pre-Bid meeting.

Below are the items that were determined needed clarification. These items shall be considered Addendum 1 to the original Request For Proposals as submitted by the City and as such shall hereafter alter the original Scope of Work. Please include these considerations in your proposal.

- Insulation shall be 1 layer of 1.5" ISO and 1 layer of 2" SecureShield HD Compostie
- Insulation will all be adhered in Flexible Fast Adhesive
 - 1st layer to the metal deck
 - 2nd layer to the 1st layer of ISO
- The disconnecting and reconnecting of the condensation lines and electrical for the 1 AC unit will be the responsibility of the City of Birmingham. This will allow the awarded contractor to properly roof and flash the rail curbs.
- The base bid shall include the removal of 1 abandoned 2' x 2' curb.
- The front canopy shall be included in the base bid.
 - The measurements are approximately 9' x 24' x 2'
 - One layer of 1.5" insulation to be installed
- The existing roof hatch shall be replaced with a new 30" x 36" roof hatch
- Edge metal will match existing color and will be 24 GA Steel

Thank you and we look forward to opening your proposals.

Sincerely,

Carlos Jorge

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.

ADDRESS _____

- ADDENDUM # 1 INCLUDED

- ROOFING TO BE DONE IN 2021 WHEN WEATHER PERMITS

ATTACHMENT C - COST PROPOSAL


City of Birmingham Adams Fire Station Roof Replacement

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
Materials & Equipment	\$ 37,400.00
Labor	\$ 33,900.00
Miscellaneous (Attach Detailed Description)	\$ —
TOTAL BID AMOUNT	\$ 71,300.00
ADDITIONAL BID ITEMS	
	\$
	\$
GRANDTOTAL AMOUNT	\$ 71,300.00

Firm Name Royal West Roofing

Authorized signature  Date 11-23-2020

ATTACHMENT D - IRAN SANCTIONS ACT VENDOR CERTIFICATION FORM
City of Birmingham Adams Fire Station Roof Replacement

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.

JASON WILKINSON 11-23-2020
PREPARED BY DATE
(Print Name)

MEMBER
TITLE DATE

[Signature] Jason@royalwestroofing.com
AUTHORIZED SIGNATURE E-MAIL ADDRESS

Royal West Roofing
COMPANY

51 Summit St. Brighton, MI 48116
ADDRESS PHONE

810-360-0412
NAME OF PARENT COMPANY PHONE

ADDRESS

30-0126306
TAXPAYER I.D.#

ATTACHMENT A - AGREEMENT

City of Birmingham Adams Fire Station Roof Replacement

This AGREEMENT, made this _____ day of _____, 2020, by and between CITY OF BIRMINGHAM, having its principal municipal office at 151 Martin Street, Birmingham, MI (hereinafter sometimes called "City"), and Royal West Roofing & Sheet Metal, LLC, having its principal office at 51 Summit St., Brighton, MI 48116 (hereinafter called "Contractor"), provides as follows:

WITNESSETH:

WHEREAS, the City of Birmingham, through its Maintenance Department, is desirous of having work completed to remove and replace an existing roof system at the Adams Fire Station in the City of Birmingham.

WHEREAS, the City has heretofore advertised for bids for the procurement and performance of services required to perform Adams Fire Station Roof Replacement, 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 Adams Fire Station Roof Replacement.

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 Adams Fire Station Roof Replacement and the Contractor's cost proposal dated November 23, 2020 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 \$ 71,300.00, as set forth in the Contractor's November 23, 2020 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 applicable types of insurance coverage and minimum limits as set forth below:

A. Workers' Compensation Insurance:

For Non-Sole Proprietorships: 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.

For Sole Proprietorships: Contractor shall complete and furnish to the City prior to the commencement of work under this Agreement a signed and notarized Sole Proprietor Form, for sole proprietors with no employees or with employees, as the case may be.

B. Commercial General Liability Insurance: 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. Pollution Liability Insurance: Contractor shall procure and maintain during the life of this Agreement Pollution Liability Insurance, with limits of liability of not less than \$1,000,000, per occurrence preferred, but claims made accepted.
- G. Owners Contractors Protective Liability: The Contractor shall procure and maintain during the life of this contract, an Owners Contractors Protective Liability Policy with limits of liability not less than \$3,000,000 per occurrence, combined single limit, Personal Injury, Bodily Injury and Property Damage. The City of Birmingham shall be "Name Insured" on said coverage.
- H. Cancellation Notice: Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.
- I. 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.
- J. 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.
- K. 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: Carlos Jorge
151 Martin Street
Birmingham, MI 48009
1-248-530-1882

Royal West Roofing & Sheet Metal, LLC
Attn: Jason Wilkerson
51 Summit St.
Brighton, MI 48116
1-810-360-0412

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:


Royal West Roofing & Sheet Metal, LLC

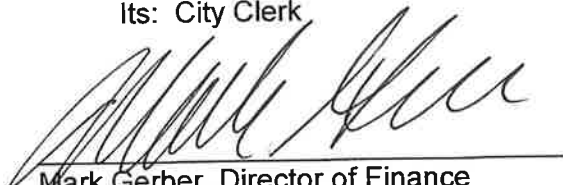
By: 
Jason Wilkerson
Its: Member


CITY OF BIRMINGHAM

By: _____
Pierre Boutros
Its: Mayor

By: _____
Alexandria Bingham
Its: City Clerk

Approved: 
Carlos Jorge, Facilities Supervisor
(Approved as to substance)


Mark Gerber, Director of Finance
(Approved as to financial obligation)


Tim Cooper, City Attorney
(Approved as to form)


Joseph A. Valentine, City Manager
(Approved as to substance)

DATE: December 16, 2020

TO: Joseph A. Valentine, City Manager

FROM: James J. Surhigh, Consulting City Engineer

SUBJECT: Intergovernmental Agreement with Bloomfield Township and James and Mary Casazza for Providing Water Service at 295 Abbey Road

INTRODUCTION:

James and Mary Casazza own the home at 295 Abbey, which is located in Bloomfield Township, and abuts Abbey Road, which is a City Street. They currently have a private well for their water supply that is malfunctioning, and Bloomfield Township is not able to provide water service to the parcel at this time. They have requested to be connected to the City water system. Because the property is located in Bloomfield Township, an intergovernmental Water Service Agreement is required to allow the City to provide water to the residence and directly bill the property owners for water use.

BACKGROUND:

Birmingham currently provides water service to several parcels located outside the City that abut City street right-of-way. In these rare cases, the neighboring community does not have their water supply system present at those locations to provide water to their residences. 275 Abbey Road, which is the neighbor to 295, is one of the parcels that is currently served by the City.

In a similar fashion, Bloomfield Township provides sewer service to several Birmingham residences where the City sewer system is not able to provide that service.

Bloomfield Township has requested that Birmingham permit the construction of the new water service connection for 295 Abbey Road to the City water main on Abbey Road. Birmingham will bill the property owner for water usage at the current water rates approved by Commission, in the same manner as Birmingham property owners are billed.

The form of the agreement is similar to other agreements the City has with Bloomfield Township for providing water service to Bloomfield Township residents. A copy of the agreement is attached to this report, and original documents with Bloomfield Township and property owner's signatures have been provided to be executed by the City, and recorded with Oakland County, as required.

A map showing the parcels is included for reference.

LEGAL REVIEW:

The City Attorney's office has reviewed the agreement, and they have no concerns with the language as presented.

FISCAL IMPACT:

As stated in the agreement, there is no direct cost to Birmingham for this project. The property owner will be paying all costs related to construction water connection and water meter, as well as any associated City permit fees. The City will bill the property owner for water use in the same manner as Birmingham residences are billed.

SUMMARY

Bloomfield Township has requested that a new water service be permitted by the City for a Bloomfield Township residential parcel that abuts Abbey Road, which is a City Street. Bloomfield Township is not able to provide water service for this parcel at this time. The City will bill the property owner for water use in the same manner that it bills Birmingham residences.

ATTACHMENTS:

- Intergovernmental Water Service Agreement
- Property Location Map

SUGGESTED RESOLUTION:

To approve the intergovernmental Water Service Agreement with Bloomfield Township and the property owners to permit construction of the water service connection for 295 Abbey Road to the City water main along Abbey Road, and also to authorize the Mayor to sign the agreement on behalf of the City.

**WATER SERVICE AGREEMENT
BETWEEN CITY OF BIRMINGHAM, BLOOMFIELD
TOWNSHIP AND JAMES AND MARY CASAZZA**

THIS AGREEMENT is made and entered into on this _____ day of _____, 20____, between the **CITY OF BIRMINGHAM** ("Birmingham"), having its principal municipal office at 151 Martin Street, Birmingham, Michigan, **TOWNSHIP OF BLOOMFIELD** ("Bloomfield"), whose principal municipal office is at 4200 Telegraph Road, Bloomfield Hills, Michigan, and **JAMES AND MARY CASAZZA** ("Customer"), whose address is 295 Abbey St., Birmingham, Michigan.

WHEREAS, Customer owns property (the "Property") located in Bloomfield Township, Oakland County, Michigan, more particularly described as follows:

T2N, R10E, SEC 25 BLOOMFIELD MANOR SUB LOT 26

Commonly known as 295 Abbey, Birmingham, Michigan
Tax I.D. No. C-19-25-251-003; and

WHEREAS, Customer resides on the above-described Property and is in need of connecting to a public water system;

WHEREAS, it has been determined that Customer's water connection to the systems located in Bloomfield Township is not cost effective and/or possible at this time;

WHEREAS, Birmingham does have a nearby water system on Abbey Road near to the Property, and is available to service the water needs for the Property;

WHEREAS, Birmingham is willing to enter into this Agreement with Bloomfield Township and Customer to provide water service to the Property until such time as it may become possible and cost effective for Customer to utilize and tap into Bloomfield's water system;

WHEREAS, this Agreement and the Township's permission to tap into the existing public water main owned by the City of Birmingham shall not operate to exclude the Property from participation in a special assessment district, developer payback agreement, utility connection fee, or other reimbursement method the Township utilizes for any future extension of the public water main system to be owned and operated by Bloomfield Township that includes the Property; and

WHEREAS, the Township is agreeable to permitting Owners to presently tap into the said public water main owned by the City of Birmingham in order to serve the Property, provided that

the Owners agree, for themselves, their heirs, administrators, executors, and assigns, that if and when public water main to be owned and operated by Bloomfield Township is extended by any means along or adjacent to the Property, to share in the cost of the improvements whether it be financed by a special assessment, developer payback agreement, utility connection fee, or other method the same as any other property in the area being serviced by the public water main extension. Owners further agree to irrevocably appoint the then Bloomfield Township Supervisor of the Township as their attorney-in-fact with full power and authority to sign a petition for said special assessment or other agreement with the same force and effect as they might do themselves. Owners further agree that any such special assessment, payback amount, utility connection fee, or other reimbursement method will be promptly paid upon the acceptance of the public water main extension into the Bloomfield Township Water System.

NOW, THEREFORE, for and in consideration of the respective agreements and undertakings herein contained, the parties agree as follows:

1. The Township agrees to permit Owners to presently connect to the existing public water main owned by the City of Birmingham in order to serve their Property, conditioned upon the Owners agreement that if and when public water main to be owned and operated by Bloomfield Township is extended along or adjacent to the Property by way of a special assessment, developer payback agreement, utility connection fee, or other method, the Owners shall share in the cost the same as any other property owner in benefiting from the public water main extension to be owned and operated by Bloomfield Township.

2. Owners irrevocably appoint the then Supervisor of the Township as their attorney-in-fact with the full power and authority to sign a petition for the special assessment or other financing agreement with the same force and effect as they might do themselves, or in the alternative to voluntarily sign a petition or other financing agreement for said extension. Owners agree to indemnify and hold harmless the Supervisor and the Township from any liability arising out of the Supervisor signing such petition. The Owners agree, for themselves, their heirs, administrators, executors, and assigns, that if and when public water main to be owned and operated by Bloomfield Township is extended by any means along or adjacent to the Property, to share in the cost of the improvements whether it be financed by a special assessment, developer payback agreement, utility connection fee, or other method, the same as any other property in the area being serviced by the public water main extension and that any such special assessment, payback amount, connection fee, or other reimbursement amount will be promptly paid upon demand of the Township and the acceptance of the public water main extension into the Bloomfield Township Water System.

3. Customer shall hire Customer's own contractor to install the water lines from the Abbey Road water system, across the Property and connect to the residence to be constructed on the Property. Customer shall be responsible for and shall make payment for any and all costs and fees associated with this Agreement, including but not limited to all constructions costs, permit fees, site restoration costs, tap-in fees, etc. Neither Birmingham nor Bloomfield shall be responsible for any such costs.

4. Customer shall apply to Bloomfield for permits necessary under Bloomfield's ordinances to connect to Birmingham's water system. After providing Bloomfield with all documentation, charges and fees required under its ordinances, Customer is authorized by Bloomfield to apply to Birmingham for permits necessary under Birmingham's ordinances to connect to Birmingham's water system. Customer shall likewise obtain any necessary permits from Oakland County and Oakland County Health Department to make the attachment to Birmingham's lines. All permits shall be obtained prior to commencing of the work necessary to make the connection.

5. Birmingham shall, upon receiving all documentation, charges and fees required for issuance of permits under its ordinances, as well as all the precedent permits as stated above, issue a permit to Customer allowing connection to Birmingham's systems to provide water service to the Property. The charges to be paid by Customer to Birmingham shall be paid in full before connection.

6. Both Birmingham and Bloomfield may supervise, inspect, test and approve the construction of any lead connecting to Birmingham's systems. Bloomfield and Birmingham shall directly bill Customer for their respective costs of supervising, inspecting, testing and approval, and Customer shall pay such bill within thirty (30) days.

7. After final construction of any lead connecting to Birmingham's systems, Birmingham and Bloomfield may inspect, test, repair or replace any portion of the lead, appurtenances or equipment as necessary. The parties shall direct their respective costs of inspecting, testing, repairing or replacing to the Customer, who shall pay such bill within thirty (30) days.

8. Customer shall respect and comply with all state, Bloomfield and Birmingham's ordinances, rules, regulations and standards relative to cross-connections and Birmingham may inspect the connections at any reasonable time to verify compliance. Birmingham shall notify Customer of any non-compliance or need for corrective action or maintenance. If Customer does not undertake the necessary corrective action or maintenance within a reasonable time, Birmingham may perform the corrective action or maintenance and charge the cost thereof to Customer. With respect to necessary emergency repairs or maintenance, Birmingham may, without advance notice to Customer, perform the same and charge the cost thereof to Customer.

9. Bloomfield agrees to pay Birmingham their established rates based on the water meter readings to the Property. Customer shall pay to Bloomfield the same rate that Birmingham charges for water use plus a 5% administration and handling fee.

10. Any charges billed, pursuant to this Agreement, by Bloomfield to Customer, but not paid by Customer by the due date, shall be considered delinquent. Bloomfield shall notify Birmingham of any charges which are delinquent for six (6) months or more, and Bloomfield shall be entitled to place any applicable surcharges and late payment charges as required under its ordinance and pursuant to common practice, on the next Bloomfield tax bill (July of each year) as a lien on the Property, to be collected and enforced in the same manner as general property taxes against the Property are collected and the lien thereon enforced. In addition to the foregoing,

Bloomfield may direct Birmingham to discontinue service to the Property if Customer's payment of charges is more than thirty (30) days delinquent, and Birmingham shall not be required to re-establish service until all delinquent charges, penalties, interest and turn-on charges have been paid, as required under Bloomfield's ordinance, and upon receipt of confirmation from Bloomfield as to the status of the account.

11. In the event that Bloomfield determines that service from Bloomfield becomes economical/feasible to service the Property, Customer shall, with at least sixty (60) days written notice thereof, disconnect from Birmingham's systems, connect to Bloomfield's system and pay Bloomfield any additional charges that may be due pursuant to Bloomfield's ordinance provisions in effect at that time. The customer shall pay all costs for said disconnection including any and all costs incurred by Bloomfield or Birmingham. The determination whether to disconnect from Birmingham's system and connect to Bloomfield's system is within and the sole discretion of Bloomfield. Upon disconnection from Birmingham's system, and payment of all outstanding charges, fees and bills, this Agreement shall terminate. Furthermore, Birmingham reserves the right to discontinue service to the Property upon Customer's neglect or failure to disconnect as required under this paragraph. Birmingham may discontinue water service to the Property and terminate this Agreement after giving both Bloomfield and Customer five (5) days notice, in writing, of its intention to do so, because of the failure of Customer to fulfill any obligations or conditions provided in this Agreement. The discontinuance of service for such cause shall not release Customer from any obligation to pay any and all bills due in accordance with this Agreement. In the event Birmingham discontinues service pursuant to this paragraph or the previous paragraph, Birmingham shall have no obligation to reimburse or pay Customer for costs or damages incurred by Customer as a result of this discontinuance.

12. In addition, either Bloomfield or Birmingham may temporarily discontinue service when necessary for repair, replacement or maintenance, and Customer waives any claim Customer may acquire for damages for such discontinuance against Bloomfield or Birmingham, or their respective officials, employees, or agents, provided that whenever Bloomfield or Birmingham anticipates a temporary discontinuance, as distinguished from an unforeseen or emergency discontinuance, Bloomfield or Birmingham shall attempt to provide reasonable advance notice to Customer. Temporary discontinuance for service pursuant to this paragraph shall not release Customer from Customer's obligation to pay all amounts due under this Agreement.

13. To the fullest extent permitted by law, the Customer agrees to be responsible for any liability, defend, pay on behalf of, indemnify and hold harmless Bloomfield and Birmingham, including but not limited to their respective elected and appointed officials, employees and volunteers and others working on behalf of Bloomfield and Birmingham against any and all claims, demands, suits, or loss, including all costs connected therewith, and for any damages which may be asserted, claimed or recovered against or from Bloomfield or Birmingham, including but not limited to their respective elected and appointed officials, employees, volunteers or others working on behalf of Bloomfield or Birmingham by reason of personal injury, including bodily injury and death and/or property damage, including loss or use thereof which arises out of or is in any way connected or associated with this Agreement.

14. Customer shall provide the name of the contractor(s) who will be performing the connection work, including a copy of that person or entity's insurance policy covering the work to be performed and shall name Bloomfield Township and the City of Birmingham as additional insured under such policy, with an insurance company acceptable to both Bloomfield and Birmingham.

15. Customer acknowledges and agrees that since Abbey Road and right of way is owned by Birmingham, Customer is subject to any future roadway improvement or any assessable improvements such as sewer system and water system modifications/upgrades. Further, Customer acknowledges and agrees that Customer is subject to the appropriate tax levy based on the applicable apportionment of tax levy's for sewer and water for residents, including any other costs levied for those services by way of bond or otherwise.

16. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided by law.

17. This Agreement shall be recorded at the Oakland County Register of Deeds, and the obligations stated herein shall bind the parties, their successors, grantees and assignees and shall run with the land.

18. This Agreement remains subject to cancellation in the event a court of competent jurisdiction restricts or limits Birmingham's right to obtain, sell or contract for service.

19. Any disputes arising under this Agreement shall be settled either by commencement of a suit in Oakland County Circuit Court or by compulsory arbitration, at the election of Bloomfield and/or Birmingham. The Customer shall notify Bloomfield and Birmingham of any dispute Customer has arising out of this Agreement and shall demand that Bloomfield and/or Birmingham elect whether the dispute is to be resolved by submitting it to compulsory arbitration or by commencement of a suit in Oakland County Circuit Court. Bloomfield and Birmingham shall make its election in writing within thirty (30) days from receipt of such notice. If Bloomfield or Birmingham elects to have the dispute resolved by compulsory arbitration, it shall be settled pursuant to Chapter 50 of the Revised Judicature Act for the State of Michigan, with each of the parties appointing one arbitrator and, if two parties are involved, the two appointed arbitrators appointing a third. In the event Bloomfield and Birmingham fail to make such an election, any dispute between the parties may be resolved by the filing of a suit in the Oakland County Circuit Court.

20. 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.

21. This Agreement shall be governed by and performed, interpreted and enforced in accordance with the laws of the State of Michigan. Customer and any person performing work under this Agreement 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.


22. This Agreement shall remain in effect until terminated as herein provided. This Agreement constitutes the full agreement of the parties and supercedes any prior agreements or understandings. Any amendments shall be made in writing, executed by all the parties.

CITY OF BIRMINGHAM

By: _____
Pierre Boutros, Mayor

By: _____
Cheryl Arft, City Clerk

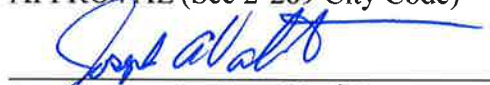
TOWNSHIP OF BLOOMFIELD

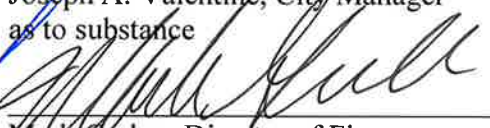
By: 
Its: Supervisor



James Casazza

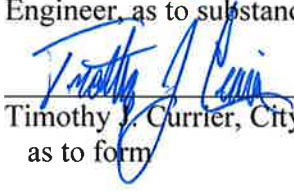
Mary Casazza

APPROVAL (Sec 2-289 City Code)


Joseph A. Valentine, City Manager
as to substance


Mark Gerber, Director of Finance
as to financial obligation


James J. Surhigh, P.E., Consulting City
Engineer, as to substance

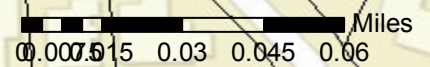

Timothy J. Currier, City Attorney
as to form

295 Abbey St, Bloomfield Township

The map displays a residential neighborhood with the following streets and lot numbers:

- Harrow Cir:** 1230, 245, 275, 295, 270, 290, 210, 240, 295 (highlighted), 275, 210, 240, 289, 267, 207, 205, 175, 147.
- Abbey St:** 295 (highlighted), 275, 270, 290, 210, 240, 289, 267, 207, 205, 175, 147.
- Oxford Rd:** 1300, 1250, 1210, 1170, 1130, 1088, 1064, 1091, 1075, 1055, 359, 972, 950, 971.
- Henley Dr:** 359.

A red outline highlights the property at 295 Abbey St. A red arrow points from a "CITY LIMITS" label to the intersection of Abbey St and Oxford Rd. A scale bar at the bottom right indicates distances in miles (0.000 to 0.06), and a north arrow is also present.





MEMORANDUM

IT Department

DATE: 12/21/2020

TO: Joseph A. Valentine, City Manager

FROM: Eric Brunk, IT Manager

SUBJECT: Purchase of Darktrace Network Security Appliance and Support

Introduction:

In January of this year the City purchased a network security appliance from DarkTrace through their vendor of choice SHI on a 4 year contract. Total cost of the unit was \$239,292.00 this cost was broken down into 4 annual installments of \$59,823.00. The second installment of this purchase is due in January of 2021.

Background:

In the past the City has had attacks attempted on our network. While most of these attacks were thwarted by our existing safeguards there were instances where attempts have gained a foothold in our network. During those events viruses had to be manually tracked and removed from machines, data restored from backup, or recreated, causing downtime for departments and a duplication of work. After each foothold situation the IT department tightened security on the network. It was determined that no matter how tight external security is, diligent attackers and the human factor (users inside our network) would still allow unplanned access to the network. We needed a safeguard in place for any activity that may find its way past our external security measures.

The IT department settled on Darktrace as our solution of choice. The system is housed onsite, has an autonomous component (AI) that monitors the network and takes needed action, has the ability to notify the IT staff of actions that it is taking and allows us to adjust those actions, if needed, remotely.

The appliance has surpassed all of our expectations for ease of use, additional security on the network, minimal requirements on existing resources, and the amount of data that we can review on the operation and security of the environment.

Legal Review:

This is a continuation of the current contract in place – no review required

Fiscal impact:

Total cost of the unit was \$239,292.00 this cost was broken down into 4 annual installments of \$59,823.00. The first installment was payed in January of 2020. The next installment is due January of 2021. The installment cost was included in the 20-21 budget.

Summary:

The IT department recommends the City of Birmingham continue with the 4 year contract with Darktrace and pay the next installment on our contract agreement.

SUGGESTED RESOLUTION:

Authorize the IT department to submit the 2020-2021 payment of \$59,823.00 and to continue the 4 year payment agreement with SHI for the Darktrace security Appliance to be charged to account #636-228.000-973.0400



Pricing Proposal
Quotation #: 18343311
Created On: 1/22/2020
Valid Until: 1/31/2020

City of Birmingham

Eric Brunk

M
United States
Phone: (248) 530-1855
Fax:
Email: ebrunk@bhamgov.org

Inside Account Executive

Michael Vassos

290 Davidson Ave.
Somerset, NJ 08873
Phone: 732-564-8566
Fax: 732-564-8078
Email: Michael_Vassos@shi.com

All Prices are in US Dollar (USD)

Product	Qty	Your Price	Total
1 Enterprise Immune System Year 1 Darktrace - Part#: DCIP-EIS Contract Name: Michigan Master Computing Program Contract (MiDEAL) Contract #: 071B6600113 Subcontract #: 071B6600113-MiDEAL Note: Year 1	1	\$59,823.00	\$59,823.00
2 Enterprise Immune System Year 2 Darktrace - Part#: DCIP-EIS Contract Name: Michigan Master Computing Program Contract (MiDEAL) Contract #: 071B6600113 Note: Year 2	1	\$59,823.00	\$59,823.00
3 Enterprise Immune System Year 3 Darktrace - Part#: DCIP-EIS Contract Name: Michigan Master Computing Program Contract (MiDEAL) Contract #: 071B6600113 Note: Year 3	1	\$59,823.00	\$59,823.00
4 Enterprise Immune System Year 4 Darktrace - Part#: DCIP-EIS Contract Name: Michigan Master Computing Program Contract (MiDEAL) Contract #: 071B6600113 Note: Year 4	1	\$59,823.00	\$59,823.00
5 Medium Appliance Darktrace - Part#: DCIP-M	1	\$0.00	\$0.00
6 Antigena Network Software Darktrace - Part#: DC IP-ANTI	1	\$0.00	\$0.00
7 SaaS-Gsuite Darktrace - Part#: SaaS-Gsuite	1	\$0.00	\$0.00
8 Threat Visualizer, Virtual Instructor - Public Darktrace - Part#: DC IP-TV-PT	1	\$0.00	\$0.00

Total	\$239,292.00
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Additional Comments

Thank you for choosing SHI International Corp! The pricing offered on this quote proposal is valid through the expiration date listed above. To ensure the best level of service, please provide End User Name, Phone Number, Email Address and applicable Contract Number when submitting a Purchase Order. For any additional information including Hardware, Software and Services Contracts, please contact an SHI Inside Sales Representative at (888) 744-4084.

SHI International Corp. is 100% Minority Owned, Woman Owned Business.
TAX ID# 22-3009648; DUNS# 61-1429481; CCR# 61-243957G; CAGE 1HTF0

The Products offered under this proposal are resold in accordance with the [SHI Online Customer Resale Terms and Conditions](#), unless a separate resale agreement exists between SHI and the Customer.

DATE: December 3, 2020

TO: Joseph A. Valentine, City Manager

FROM: James J. Surhigh, Consulting City Engineer

SUBJECT: Great Lakes Water Authority Industrial Pretreatment Program Rules Adoption

INTRODUCTION:

Great Lakes Water Authority (GLWA) implements and enforces an Industrial Pretreatment Program (IPP) to regulate the discharge of commercial and industrial wastewater. The rules for the IPP were revised earlier this year, and adopted by GLWA Board of Directors. GLWA requires every municipality whose wastewater flow goes to their wastewater treatment facilities to pass a resolution adopting the full, updated set of rules.

BACKGROUND:

GLWA implements and enforces an Industrial Pretreatment Program (IPP) to regulate the discharge of commercial and industrial waste and wastewater. The IPP includes the following elements:

- Pretreatment Program
- Surcharge (High Strength) Program
- Special Discharge and General Permit Program
- Hauled-in Waste Program

While most of these rules do not impact domestic and typical commercial wastewater generated in the City, there are certain industries and commercial operations that are governed by these rules. When commercial or industrial sanitary sewer permit applications are submitted, the City Engineering Department and Oakland County Water Resources Commissioner consider these rules before issuing any permits.

Attached is the resolution that GLWA would like the City to adopt concerning the IPP rules. The Frequently Asked Questions brochure distributed by GLWA regarding the update to the rules is attached for reference, along with the full version of the rules, as adopted by GLWA.

LEGAL REVIEW:

The attached resolution was reviewed by the City Attorney, who did not object to the language of the resolution as presented.

FISCAL IMPACT:

There is no additional cost to the City for adopting this resolution. Fees that are assessed by GLWA for the specific businesses that are governed by the rules are passed on to those specific customers as part of the normal billing process for sewer service.

PUBLIC COMMUNICATIONS:

None

SUMMARY:

GLWA has updated IPP rules that relate to certain commercial and industrial wastewater generators. GLWA is requiring all municipalities whose wastewater flow goes to the GLWA system for treatment adopt a resolution to concur with the latest rules and regulations related to the IPP.

ATTACHMENTS:

- Resolution of the City of Birmingham to Concur in the Rules and Regulations Concerning Industrial Pretreatment Program as Adopted by the Great Lakes Water Authority
- "Frequently Asked Questions" document by GLWA regarding their update rules
- Industrial Pretreatment Rules, as Adopted by GLWA Board of Directors, November 13, 2019

SUGGESTED ACTION:

To adopt the Resolution of the City of Birmingham to Concur in the Rules and Regulations Concerning Industrial Pretreatment Program as Adopted by the Great Lakes Water Authority, as presented.

**RESOLUTION OF THE CITY OF BIRMINGHAM
TO CONCUR IN THE RULES AND REGULATIONS CONCERNING
INDUSTRIAL PRETREATMENT PROGRAM AS ADOPTED
BY THE GREAT LAKES WATER AUTHORITY**

WHEREAS, the Great Lakes Water Authority ("GLWA") is a Michigan municipal authority and public body corporate organized and existing pursuant to the provisions of Michigan Public Act No.233 of 1955, as amended, MCL 124.281, *et seq.* ("Act 233"), for the purpose of establishing a regional sewage disposal system to operate, control, and improve the sewage disposal system leased from the City of Detroit; and

WHEREAS, pursuant to Act 233, the CITY OF BIRMINGHAM is a constituent municipality of the GLWA; and

WHEREAS, as authorized by Act 233, GLWA and the constituent municipalities are required by state and federal law to adopt binding rules and regulations (Exhibit A, attached hereto and incorporated herein by reference) as part of an Industrial Pretreatment Program (IPP) in order to comply with all applicable state and federal laws, including, without limitation, the requirements of the Federal Water Pollution Control Act, 33 USC Section 1251, *et. seq.*, the General Pretreatment Regulations for Existing and New Sources of Pollution, 40 CFR 403, and the National Categorical Pretreatment Standards contained in 40 CFR Sections 405-471; and

WHEREAS, these rules and regulations were adopted by GLWA as a uniform code to: (1) regulate wastes and wastewaters discharged into the collection system for all participating municipalities; (2) prevent the introduction of pollutants into the wastewater systems which will interfere with the operation of the system, contaminate the resulting sludge, or pose a hazard to the health, safety or welfare of the people, the communities or to employees of GLWA; (3) prevent the introduction of pollutants into the wastewater system which will pass inadequately treated through the system and into the receiving waters, the atmosphere, and the environment, or will otherwise be incompatible with the system; (4) provide for the recovery of costs from users of the wastewater collection system sufficient to administer regulatory activities and meet the costs of operation, maintenance, improvement and replacement of the system; and

WHEREAS, after a 45-day public comment period and public hearing, the Board of the GLWA approved the IPP Rules on November 13, 2019.

NOW THEREFORE BE IT RESOLVED that the governing body of CITY OF BIRMINGHAM, in compliance with Act 233 and state and federal law, hereby concur in the IPP rules and regulations attached hereto as Exhibit A; including any subsequent amendments thereto, which amendments, if any, shall not require the approval of this governing body; and

BE IT FURTHER RESOLVED that the adoption and approval of the rules and regulations contained in Exhibit A shall be contractually binding on the parties, and no governing body of CITY OF BIRMINGHAM shall be authorized or empowered to rescind or change the approval granted in this resolution without 180 days prior written notice to the GLWA.

ON MOTION OF _____ SUPPORTED BY _____ the foregoing Resolution was adopted by the following vote:

ROLL CALL: ABSENT _____ AYE _____ NAY _____

What is the Industrial Pretreatment Program?

The Great Lakes Water Authority (GLWA) implements and enforces an Industrial Pretreatment Program (IPP) to regulate the discharge of commercial and industrial waste and wastewater.

The IPP includes the following elements:

- **Pretreatment Program** – regulates the discharge of toxic pollutants to the sewer collection system and performs inspection, monitoring, enforcement control and administration of industrial and commercial wastewater discharges. All Users must comply with general requirements and Significant Industrial Users must comply with permit-based requirements.
- **Surcharge (High Strength) Program** – is a cost recovery program for commercial and industrial waste discharging conventional pollutants above Domestic Levels and payment of additional treatment costs (\$/lb) associated with these Users.
- **Special Discharge and General Permit Program** – authorizes the discharge of special wastes and wastewaters including groundwater, construction water, spent products, and other short-term projects through a permit program.
- **Hauled in Waste Program** – authorizes the discharge from waste haulers of septic tank and septage, and other domestic wastewater through a permit and ticket/token payment program.

What are the new IPP rules, and why were they changed?

GLWA maintains a set of rules by which it implements and enforces the IPP. On November 13, 2019 the GLWA Board of Directors passed a resolution to add language to the rules regarding regulation of PFAS compounds. The full set of rules—with the added language—can be found online at www.glwater.org/iwc.

What do I need to do?

The governing body of every municipality whose wastewater flow goes to the WRRF must pass a resolution adopting the full, updated set of rules (see page 2 for a sample resolution). Please email a copy of the adopted resolution to Stephen Kuplicki, PE, JD – GLWA Manager-Operations, Industrial Waste Control at Stephen.Kuplicki@glwater.org by September 1, 2020.

Who do I contact with questions?

Please contact Mr. Kuplicki, at Stephen.Kuplicki@glwater.org or (313) 297-5804 with any questions or concerns.

**SAMPLE
RESOLUTION OF THE CITY/COUNTY OF _____
TO CONCUR IN THE RULES AND REGULATIONS CONCERNING
INDUSTRIAL PRETREATMENT PROGRAM AS ADOPTED
BY THE GREAT LAKES WATER AUTHORITY**

WHEREAS, the Great Lakes Water Authority ("GLWA") is a Michigan municipal authority and public body corporate organized and existing pursuant to the provisions of Michigan Public Act No.233 of 1955, as amended, MCL 124.281, *et seq.* ("Act 233"), for the purpose of establishing a regional sewage disposal system to operate, control, and improve the sewage disposal system leased from the City of Detroit; and

WHEREAS, pursuant to Act 233, the _____ City/County of is a constituent municipality of the GLWA; and

WHEREAS, as authorized by Act 233, GLWA and the constituent municipalities are required by state and federal law to adopt binding rules and regulations (Exhibit A, attached hereto and incorporated herein by reference) as part of an Industrial Pretreatment Program (IPP) in order to comply with all applicable state and federal laws, including, without limitation, the requirements of the Federal Water Pollution Control Act, 33 USC Section 1251, *et. seq.*, the General Pretreatment Regulations for Existing and New Sources of Pollution, 40 CFR 403, and the National Categorical Pretreatment Standards contained in 40 CFR Sections 405-471; and

WHEREAS, these rules and regulations were adopted by GLWA as a uniform code to: (1) regulate wastes and wastewaters discharged into the collection system for all participating municipalities; (2) prevent the introduction of pollutants into the wastewater systems which will interfere with the operation of the system, contaminate the resulting sludge, or pose a hazard to the health, safety or welfare of the people, the communities or to employees of GLWA; (3) prevent the introduction of pollutants into the wastewater system which will pass inadequately treated through the system and into the receiving waters, the atmosphere, and the environment, or will otherwise be incompatible with the system; (4) provide for the recovery of costs from users of the wastewater collection system sufficient to administer regulatory activities and meet the costs of operation, maintenance, improvement and replacement of the system; and

WHEREAS, after a 45-day public comment period and public hearing, the Board of the GLWA approved the IPP Rules on November 13, 2019.

NOW THEREFORE BE IT RESOLVED that the governing body of _____ City/County, in compliance with Act 233 and state and federal law, hereby concur in the IPP rules and regulations attached hereto as Exhibit A; including any subsequent amendments thereto, which amendments, if any, shall not require the approval of this governing body; and

BE IT FURTHER RESOLVED that the adoption and approval of the rules and regulations contained in Exhibit A shall be contractually binding on the parties, and no governing body of _____ City/County shall be authorized or empowered to rescind or change the approval granted in this resolution without 180 days prior written notice to the GLWA.

ON MOTION OF _____ SUPPORTED BY _____ the foregoing Resolution was adopted by the following vote:

ROLL CALL: ABSENT _____ AYE _____ NAY _____

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PREAMBLE

WHEREAS, the GREAT LAKES WATER AUTHORITY (the “GLWA”), a municipal authority and public body corporation organized and existing under and pursuant to the provisions of Act No. 233, Public Acts of Michigan, 1955, as amended (“Act 233”), for the purpose of establishing a regional Sewage Disposal System to operate, control, and improve the Sewage Disposal System leased from the City of Detroit;

WHEREAS, the GLWA has been incorporated for the purpose of, among other things, acquiring, owning, leasing, improving, enlarging, extending, financing, refinancing, and operating a sewage disposal system, including stormwater collection and treatment system, or combination of such systems.

WHEREAS, the GLWA promulgates these rules and regulations for the protection of the environment, the public health and safety by abating and preventing pollution through the regulation and control of the quantity and quality of sewage, industrial wastes, and other wastes admitted to or discharged into the sewerage systems, and sewage treatment facilities under the jurisdiction of the GLWA and enabling the GLWA to comply with all applicable state and federal laws required by the Federal Water Pollution Control Act, being 33 U.S.C. 1251, et. seq.; the General Pretreatment Regulations for Existing and New Sources of Pollution (40 CFR 403); and the National Categorical Pretreatment Standards at 40 CFR 405 – 471.

WHEREAS, the GLWA seeks to create a uniform code for the regulation of wastes and wastewaters discharged into the collection system for all participating municipalities; prevent the introduction of pollutants into the wastewater systems which will interfere with the operation of the system; contaminate the resulting sludge; would pose a hazard to the health or welfare and safety of people, their communities and to employees of the GLWA; prevent the introduction of pollutants into the wastewater system which will pass inadequately treated, through the system, into receiving waters, the atmosphere, the environment or otherwise be incompatible with the system; provide for the recovery of the costs from Users of the wastewater collection and treatment system sufficient to administer regulatory activities and meet the costs of the operation, maintenance, improvement or replacement of the system;

WHEREAS, the GLWA promulgates these rules and regulations to establish additional requirements and limitations for classes of wastewater originating from non-domestic sources, and those qualifying under one or more of the promulgated National Pretreatment Standards, establishes systems for authorizing and permitting wastewater discharges and the enforcement of the limitations and requirements stated herein.

NOW, THEREFORE, THE GREAT LAKES WATER AUTHORITY ENACTS THESE RULES AND REGULATIONS AS FOLLOWS IN CHAPTERS I – VIII:

CHAPTER I - DEFINITIONS

There are a number of regulatory phrases and terms which are used in these Rules and Regulations that warrant definition. The terms included in this Chapter apply to all successive chapters and rules that have been or may be developed by the Control Authority. Where applicable, the terms reference the applicable federal regulation. Terms that have not been listed and defined here have their standard and ordinary meaning.

The meaning of the terms used in these Rules and Regulations shall be as follows:

“Act”, or **“Clean Water Act”** means the Federal Water Pollution Control Act as amended by the Clean Water Act of 1977 (Pub. L. 95-217), 33 U.S.C. 1251, et seq. It establishes responsibilities of Federal, State, and local government, industry and the public to implement National Pretreatment Standards to control pollutants which pass through or interfere with treatment processes in Publicly Owned Treatment Works (“POTWs”) or which may contaminate sewage sludge.

“Administrator” means the Administrator of the USEPA.

“Authorized Representative” means:

(1) If the Industrial User is a corporation; (a) the president, vice-president, secretary, or treasurer of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or (b) the manager of one or more manufacturing, production, or operation facilities employing more than two hundred fifty (250) persons or having gross annual sales or expenditures exceeding twenty-five million dollars (\$25,000,000.00) in second-quarter 1980 dollars, if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures; or

(2) If the Industrial User is a partnership or sole proprietorship: a general partner or proprietor respectively; or

(3) if the Industrial User is a Federal, State or local government facility: a director or highest official appointed or designated to oversee the operation and performance of activities of the government facility, or their designee.

The individual described in sub-paragraphs 1 through 3, above, may designate another duly-Authorized Representative if the authorization is in writing; the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for the environmental matters for the company; and the written authorization is submitted to the GLWA.

“Baseline Monitoring Report” or **“BMR”** means the report containing information required by 40 CFR 403.12(b) from any Industrial Users subject to a Categorical Pretreatment Standard.

“Best Management Practice Plan” or **“BMP”** means schedules of activities, prohibitions of practices,

maintenance procedures, and other management practices to implement the prohibitions listed in 40 CFR 403.5(a)(1) and (b). BMPs include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

“Biochemical Oxygen Demand” or “BOD” means the quantity of dissolved oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure five (5) days at twenty (20) degrees centigrade expressed in terms of mass and concentration (milligrams per liter (mg/l)) as measured by standard methods.

“Board” means the Board of the Great Lakes Water Authority.

“Bypass” means the intentional diversion of wastestreams from any portion of an Industrial User’s treatment facility.

“Categorical Significant Industrial User” or “CSIU” means a Significant Industrial User subject to a categorical pretreatment standard or a categorical standard.

“Categorical Pretreatment Standard” or “Categorical Standard” means any regulation containing pollutant discharge limits promulgated by EPA in accordance with sections 307(b) and (c) of the Act (33 U.S.C. 1317) that apply to a specific category of Industrial Users and that appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.

“Centralized Waste Treatment Facility” or “CWT” means any facility that treats any hazardous or nonhazardous industrial waste received from off-site by tanker truck, trailer/roll-off bins, drums, barges, or any other forms of shipment including: a facility that treats industrial waste received exclusively from off-site; and a facility that treats industrial waste generated on-site as well as industrial waste received from off-site.

“Chief Compliance Officer” means the Chief Compliance Officer for GLWA or his/her designee.

“Chief Executive Officer” means the Chief Executive Officer of the GLWA, or his or her designee.

“Code of Federal Regulations” or “CFR” means the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the United States Government.

“Collection System” means the sewers, pump stations, force mains, air release valves, vacuum release valves, flow meters, sampling equipment, regulators, and other appurtenant equipment or devices used to convey sewage to the Water Resource and Recovery Facility.

“Combined Wastestream Formula” means the formulae contained in 40 CFR 403.6(e) for calculating alternative concentration limits or alternative mass limits where regulated wastewater is mixed prior to treatment with unregulated and diluting wastewater; and necessary for determining compliance with categorical pretreatment standards.

“Control Authority” means the GLWA, upon being officially designated as such by the State of Michigan under the provisions of 40 CFR 403.11, and the persons included in the designation enumerated in Chapter II, Article I.

GLWA Rules

“Cooling Water” means the noncontact water discharged from any use, including but not limited to air conditioning, cooling or refrigeration, and whose only function is the exchange of heat.

“Daily Maximum” means the arithmetic average of all effluent samples for a pollutant collected during a 24-hour period used to represent a day.

“Daily Maximum Limit” means the maximum allowable discharge limit of a pollutant during a 24-hour period used to represent a day. Where Daily Maximum Limits are expressed in units of mass, the daily discharge is the total mass discharged over the course of the day. Where Daily Maximum Limits are expressed in terms of a concentration, the daily discharge is the arithmetic average measurement of the pollutant concentration derived from all measurements taken that day.

“Days” mean consecutive calendar days for the purpose of computing a period of time prescribed or allowed by these Rules.

“Direct Discharge” means the discharge of treated or untreated wastewater directly into the waters of the State of Michigan.

“Discharger” means a person who, directly or indirectly, with or without intent, contributes, causes, or permits wastewater to be discharged into the POTW by means of, but not limited to, pipes, conduits, pumping stations, ditches or tank trucks and all constructed devices and appliances appurtenant thereto.

“Domestic Sewage” means the liquid and water-carried waste and wastewater typically generated from humans or household operations which is discharged to, or otherwise enters, a treatment works from sanitary activities such as kitchens, bathrooms, lavatories and toilets.

“Domestic Strength of Sewage” means the pollutant and pollutant concentrations adopted by the Board for the purpose of representing waste and wastewater contributions from Domestic Sources for the Surcharge Program for High Strength Wastewater.

“Domestic Source” means residential dwellings including single family and multifamily (regardless of size) from which only domestic sewage is discharged.

“Environmental Remediation Wastewater” means wastewater in the form of leachate or wastewaters from clean-up actions pursuant to Comprehensive Environmental Response, Compensation, and Liability Act, or sites of leaking underground storage tanks which are discharged to and commingled with sewage and conveyed to the GLWA sewerage system.

“Existing Source” means any facility that is not a “New Source.”

“Fats, Oils and Greases or “FOG” mean organic polar and non-polar compounds. Polar compounds are derived from animal and/or plant sources that contain multiple carbon chain triglyceride molecules. Organic non-polar fraction of oil and grease (petroleum hydrocarbons) is identified as Silica gel treated n-hexane extractable materials (SGT-HEM) in the pretreatment standards.

“Hazardous Waste” means any industrial waste, production residue, sewage or sludge which is classified as a hazardous waste pursuant to 40 CFR 261.

“High Strength Wastewater” includes any wastewater discharged from a User in excess of the

Domestic Strength of Sewage maximum level, and for which a Pollutant Surcharge has been developed and adopted.

“Michigan Department of Environment, Great Lakes, and Energy” or **“EGLE”** means the Agency of the State of Michigan responsible for Environmental Protection and designated by US EPA as the Approval Authority.

“Indirect discharge” means the discharge or the introduction of pollutants into the POTW from any non-domestic source regulated under 33 U.S.C. § 1317(b), (c) or (d).

“Industrial User” or **“IU”** means a User who is a source of indirect discharge.

“Industrial Waste” means the liquid and water-carried wastes and all solid, liquid or gaseous waste components thereof, resulting from any commercial, industrial, manufacturing, agricultural, trade or business operation or process or from the development, recovery or processing of natural resources, but does not include Domestic sewage.

“Industrial Waste Control Group” or **“IWC”** means the organizational group responsible for administration, implementation and enforcement of the Industrial Pretreatment Program, Surcharge r Program, Hauled Waste Program and similar regulatory programs on behalf of the Control Authority.

“Industrial Waste Control Operations Manager” means the Operations Manager of Industrial Waste of the Control Authority, and authorized staff of the Industrial Waste Control Group.

“Infiltration” means water entering a sewer system, including sewer service connections from the ground through such means as, but not limited to, defective pipes, porous pipes, pipe joints, connections or manhole walls. Infiltration does not include, and is distinguished from, inflow.

“Inflow” means water discharged into a sewer system, including service connections, from such sources as, but not limited to, roof leaders, cellars, yards, and area drains, foundation drains, cooling water discharges, drains from springs and swampy areas, manhole covers, cross connections from storm sewers and combined sewers, catch-basins, stormwater, surface run-off, street wash-waters, or drainage and river inflow. Inflow does not include, and is distinguished from, infiltration.

“Instantaneous Limit” means the maximum concentration of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composited sample collected, independent of the industrial flow rate and the duration of the sampling event.

“Interference” means a discharge which, alone or in conjunction with a discharge or discharges from other sources, both: (i) inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and (ii) therefore is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent state or local regulations): Section 405 of the Act, the Solid Waste Disposal Act (“SWDA”) (including Title II, more commonly referred to as the Resource

Conservation and Recovery Act (“RCRA”), and including state regulations contained in any state sludge management plan prepared pursuant to Subtitle D of the SWDA, the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research and Sanctuaries Act.

“**Member Community**” means any county, township, city or village receiving wastewater services from the GLWA.

“**Minor User**” a User who does not meet the definition of a Significant Industrial User but is authorized to discharge to the POTW.

“**Monthly Average**” means the sum of all “daily discharges” measured during a calendar month divided by the number of “daily discharges” measured during that month.

“**National Pretreatment Standard**”, “**Pretreatment Standard**” or “**Standard**” means any regulation containing pollutant discharge limits promulgated by the USEPA in accordance with Section 307 (b) and (c) of the Act, which applies to Industrial Users. This term includes prohibitive discharge limits established pursuant to 40 CFR 403.5.

“**National Pollutant Discharge Elimination System**” or “**NPDES**” means the permit and regulation system governing direct discharges into navigable waters administered by the EGLE and USEPA.

“**New Source**” means any building, structure, facility or installation from which there is or may be the discharge of pollutants, the construction of which is commenced after the publication of proposed regulations prescribing a standard of performance under Section 307(c) of the Act which will be applicable to such source if such standard is thereafter promulgated in accordance with section 307(c) of the Act.

“**Non-detect**” means the achievable laboratory testing quantification level for ascertaining the amount of a pollutant in a wastestream using analytical methods specified in or approved under 40 CFR 136, or pursuant to rules adopted by the EGLE or the USEPA.

“**North American Industrial Classification System**” or “**NAICS**” means a standard used by Federal statistical agencies to classify business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the United States business economy, as developed by the Office of Management and Budget (OMB), and adopted in 1997 to replace the Standard Industrial Classification (SIC) system.

“**Rules and Regulations**” mean the Sewage and Waste Control Rules and Regulations of the Control Authority and any rules, regulations and orders adopted by the Board pertaining thereto.

“**Pass-through**” means a discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW’s NPDES permit (including an increase in the magnitude or duration of a violation).

“**Person**” means any individual, partnership, co-partnership, firm, company, corporation, association, joint venture, joint stock company, sole proprietorship, trust, estate, co-partnership, unit of government, school authority, or private corporation organized or existing under the laws of the State of Michigan or any other

state or country.

“PFAS Compounds” mean the list of perfluoroalkyl and polyfluoroalkyl substances that the EGLE has identified as emerging contaminants; which includes: Perfluorotetradecanoic acid (PFTeA), Perfluorotridecanoic acid (PFTriA), Perfluorododecanoic acid (PFDoA), Perfluoroundecanoic acid (PFUnA), Perfluorodecanoic acid (PFDA), Perfluorononanoic acid (PFNA), Perfluorooctanoic acid (PFOA), Perfluoroheptanoic acid (PFHpA), Perfluorohexanoic acid (PFHxA), Perfluoropentanoic acid (PFPeA), Perfluorobutanoic acid (PFBA), Perfluorodecanesulfonic acid (PFDS), Perfluorononanesulfonic acid (PFNS), Perfluorooctanesulfonic acid (PFOS), Perfluoroheptanesulfonic acid (PFHpS), Perfluorohexanesulfonic acid (PFHxS), Perfluoropentanesulfonic acid (PFPeS), Perfluorobutanesulfonic acid (PFBS), Perfluorooctanesulfonamide (PFOSA), Fluorotelomer sulphonic acid 8:2 (FtS 8:2), Fluorotelomer sulphonic acid 6:2 (FtS 6:2), Fluorotelomer sulphonic acid 4:2 (FtS 4:2), 2-(N-Ethylperfluorooctanesulfonamido) acetic acid (N-EtFOSAA), 2-(NMethylperfluorooctanesulfonamido) acetic acid (N-MeFOSAA); or as amended.

“pH” means the intensity of the acid or base condition of a solution, calculated by taking the negative base-ten logarithm of the hydrogen ion activity. Activity is deemed to be equal to concentration in moles per liter.

“Pollution” means the man-made or man induced alteration of the chemical, physical, biological and radiological integrity of water.

“Pollutant Strength Level” means the concentrations of BOD, TSS, Phosphorus and FOG determined to be present in the wastewater discharged from a User and used to calculate the Surcharge for the High Strength Wastewater contributed by the User.

“Phosphorus” means the total concentration of all forms of organic and inorganic phosphorus compounds as measured by standard methods, expressed in mg/l.

“Pretreatment” means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to, or in lieu of, introducing such pollutants into a POTW. This reduction or alteration can be obtained by physical, chemical or biological processes; by process changes; or by other means, except by diluting the concentration of pollutants unless allowed by an applicable Pretreatment Standard.

“Pretreatment Requirements” means any substantive or procedural requirement related to pretreatment, other than a National Pretreatment Standard, imposed on an Industrial User.

“Process Wastewater” means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product or waste product.

“Publicly Owned Treatment Works” or “POTW” means a treatment works as defined by 33 U.S.C. 1292(2)(A) which is owned by a state or municipality, as defined in 33 U.S.C. 1362, including: Any devices and systems used in the storage, treatment, recycling, or reclamation of municipal sewage or industrial

wastes of a liquid nature; or sewers, pipes and other conveyances only if they convey wastewater to a POTW treatment plant; or the municipality, as defined in 33 U.S.C. 1362, which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works. For these Rules and Regulations, POTWs include the Control Authority's wastewater facilities.

“Regulatory Activities” mean all programs and activities conducted by the Industrial Waste Control Group to meet its obligations under the NPDES Permit MI 0022802 and the Clean Water Act, and any rules adopted by the Board, including, but not limited to, an Industrial Pretreatment Program; Surcharge Program; Hauled Waste Program, Groundwater and Special Discharge Program.

“Septage” or “Septage Waste” means Domestic Sewage generated by sources without a direct connection to the sewerage system, including untreated and partially treated sewage solids, liquids, and sludge of human or domestic origin that is removed from a wastewater system for disposal through truck or other hauling.

“Sewerage System” means sewers, intercepting sewers, pipes or conduits, pumping stations, force mains, constructed drainage ditches, surface water intercepting ditches, and all other constructions, devices and appliances appurtenant thereto used for collecting or conducting sewage, industrial waste or other wastes to a point of treatment or ultimate disposal.

“Significant Noncompliance” means any Significant Industrial User who violates one (1) or more of the criteria of 40 CFR 403.8(f)(2)(viii)(a)-(h); or any Industrial User who violates one (1) or more of the criteria of 40 CFR 403.8(f)(2)(viii)(c), (d) or (h). (See Article XIII).

“Significant Industrial User” or “SIU” means any User who discharges to the POTW and which:

- (1) Has an average discharge flow of twenty-five thousand (25,000) gallons per day or more of process wastewater excluding sanitary, boiler blowdown, and noncontact cooling water; or
- (2) Has discharges subject to the national categorical pretreatment standards; or
- (3) Requires pretreatment to comply with the specific pollutant limitations of these Rules; or
- (4) Has in its discharge, toxic pollutants as defined pursuant to 33 U.S.C. 1317, or other applicable federal and state laws or regulations, that are in concentrations and volumes which are subject to regulation under these Rules as determined by the Control Authority; or
- (5) Is required to obtain a permit for the treatment, storage or disposal of hazardous waste pursuant to regulations adopted by this state or adopted under the Federal Solid Waste Disposal Act, as amended by the Federal Resource Conservation and Recovery Act, as amended, and may or does contribute or allow waste or wastewater into the POTW including, but not limited to, leachate or runoff; or
- (6) Is found by the Control Authority to have a reasonable potential for adverse effect, either singly or in combination with other contributing industries, on the POTW operation, the quality of sludge, the POTW's effluent quality, or air emission generated by the POTW.

“**Sludge**” means liquid and precipitated or suspended solid material therein contained, generated from the treatment of water, sewage, industrial waste or other wastes.

“**Slug Discharge**” means any discharge of a non-routine, episodic nature, including, but not limited to, an accidental spill or non-customary batch Discharge, which has a reasonable potential to cause interference, pass-through, or in any other way to cause a violation of the Rules and Regulations, local limits or Permit conditions.

“**Standard Industrial Classification** or “**SIC**” means a classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, 1987, as amended.

“**Standard Methods**” means the *Standard Methods for the Examination of Water and Wastewater*, published by the American Public Health Association, and the version(s) approved for use by 40 CFR 136.

“**Storm Water**” means any waste or wastewater occurring during or following any form of natural precipitation and resulting therefrom.

“**Surcharge or Pollutant Surcharge**” means a fee representing the cost of service determined by the Control Authority for each pollutant comprising Domestic Sewage, expressed in Dollars per pound (\$/lb.).

“**Total Suspended Solids**” or “**TSS**” means the total suspended matter which floats on the surface of, or is suspended in, water, wastewater or other liquids, and is removable by laboratory filtration or as measured by standard methods.

“**Total Phenolic Compounds**” means the sum of the individual analytical results for each of the following phenolic compounds during any single sampling event: 2-Chlorophenol, 4-Chlorophenol, 4-Chloro-3-methylphenol, 2,4-Dichlorophenol, 2,4-Dinitrophenol, 4-Methylphenol (p-cresol), and phenol.

“**Total Poly-Chlorinated Biphenyls**” or “**Total PCB**” means the sum of the individual analytical results for each of the following PCB aroclors 1016, 1221, 1232, 1242, 1248, 1254, and 1260 during any single sampling event with any aroclor result less than the quantification level, or non-detect, being numerically treated as zero.

“**Toxic Pollutant**” means any pollutant or combination of pollutants designated as toxic in regulations promulgated by the Administrator of the USEPA under the provisions of the Clean Water Act, being 33 U.S.C. 1317, or included in the Critical Materials Register promulgated by the EGLE, or by other federal or state laws, rules or regulations.

“**Upset**” means an exceptional incident in which there is unintentional and temporary noncompliance with limits imposed under these Rules or with national categorical pretreatment standards due to factors beyond the reasonable control of the Industrial User but does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.

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“**Users**” or “**Nondomestic User**” or “**Industrial User**” means an industry, commercial establishment, or other entity that discharges wastewater to a publicly owned treatment works other than, or in addition to, sanitary sewage; and is a source of indirect discharge.

“**United States Environmental Protection Agency**” or “**USEPA**” means the Environmental Protection Agency of the United States Government and its designated agents.

“**Wastewater Treatment Facilities**” mean any method, construction, device, arrangement or appliance appurtenant thereto, installed for the purpose of treating, neutralizing, stabilizing, disinfecting, or disposing of sewage, industrial wastes or other wastes, or for the recovery of by-products from such sewage, industrial waste or other wastes and includes sewers, pipes and other conveyances if they convey wastewater to a POTW.

“**Waters**” mean all accumulations of water, surface and underground, natural or artificial, public or private or parts thereof which flow through the territory of the GLWA.

“**Wastewater**” or “**Sewage**” means the liquid and water-carried wastes of dwellings, commercial buildings, industrial facilities, and institutions, whether treated or untreated, which are contributed to or permitted to enter the POTW including Infiltration and Inflow water, Storm Water and Cooling Water.

“**Wastewater Discharge Permits**” mean a control mechanism issued by the Control Authority in accordance with these Rules specifying the Pretreatment Standards and Requirements, pollutant discharge limitations, reporting and monitoring requirements, and other conditions under which an Industrial User may discharge to the sewerage system.

“**Wholesale Sewer Contract Customer**” means any county, township, city or village that has contracted for sewerage services with the GLWA.

For purposes of these Rules, the following acronyms shall have the meanings designated by this section:

Term	Full Term Description	Term	Full Term Description
		EGLE	Michigan Department of Environment, Great Lakes, and Energy
BMP	Best Management Practice Plan		
BMR	Baseline monitoring report	mg/l	milligrams per liter
BOD	Biochemical Oxygen Demand	NPDES	National Pollutant Discharge Elimination System
CSIU	Categorical Significant Industrial User		
CFR	Code of Federal Regulations	POTW	Publicly Owned Treatment Works
		RCRA	Resource Conservation and

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				Recovery Act, being 42 U.S.C. § 6901 et seq.)
FOG	Fats, Oils and Grease	SDP		Special Discharge Permit
GLWA	Great Lakes Water Authority	SIU		Significant Industrial User
HIW	Hauled-in Waste	SNC		Significant Noncompliance
IWC	Industrial Waste Control	SWDA		Solid Waste Disposal Act, being 42 U.S.C. § 6901 et seq.
IU	Industrial User	TSS		Total Suspended Solids
IPP	Industrial Pretreatment Program			
USEPA	Environmental Protection Agency	ug/l		Micrograms per liter

**CHAPTER II – RULES GOVERNING IMPLEMENTATION,
ADMINISTRATION AND ENFORCEMENT OF INDUSTRIAL
PRETREATMENT PROGRAM REQUIREMENTS**

The Board has adopted an Industrial Pretreatment Program and received approval from the State of Michigan for GLWA to be a Control Authority to implement, administer and enforce the program within the GLWA Service Area. The following rules have been adopted to describe a uniform means of carrying out the duties and obligations placed upon the GLWA as the Control Authority.

Article I CONTROL AUTHORITY RESPONSIBILITIES

The Board assigns and authorizes the Chief Executive Officer as the person responsible for carrying out the administration, duties, and enforcement responsibilities as the Control Authority, consistent with the intent of these rules.

Article II GENERAL SEWER USE REQUIREMENTS

Section II-201. Unlawful Discharges

It shall be unlawful for any Person to discharge Industrial Waste or Wastewater from non-Domestic Sources, directly or indirectly, into the Sewerage System, without authorization from the Control Authority; or to discharge any Wastewater in violation of the terms and conditions contained in these rules or contrary to any discharge authorization granted by the Control Authority.

Section II-202. Lawful Discharges

It is the duty of every Person seeking to lawfully discharge Sewage, Industrial Wastes, or other wastes or Wastewater of any kind directly or indirectly, into the Sewerage System to conform to the criteria or effluent quality standards established and/or adopted hereunder, and to seek authorization from the Control Authority in accordance with these rules; to comply with these rules, as amended from time to time; and to provide notice to the Control Authority of any substantial changes in the volume, quality, or character of their discharge.

- a) Users and Minor Users who were previously authorized, whether by permit or a letter of authorization, by the Detroit Water and Sewerage Department in its prior capacity as the Control Authority, and have and are complying with such authorization, shall be deemed authorized by the GLWA, as the new Control Authority, until (i) a subsequent survey application, permit application or Baseline Monitoring report is filed with or requested by the GLWA; or (ii) a subsequent permit or a letter of authorization is issued by GLWA.

Section II-203. General Pollutant Prohibitions

No User shall discharge or cause to be discharged into the POTW, directly or indirectly, any pollutant or

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Wastewater which will cause Interference or Pass-through. These general discharge prohibitions shall apply to all Users of the POTW whether or not the User is subject to national categorical pretreatment standards or to any other federal, state, or local pretreatment standards or requirements. In addition, it shall be unlawful for any User to discharge into the POTW:

- a) Any liquid, solid or gas, which by reason of its nature or quantity, is sufficient either alone or by interaction with other substances to create a fire or explosion hazard or to be injurious in any other way to persons, to the POTW, or to the operations of the POTW. Pollutants, which create a fire or explosion hazard in a POTW, include, but are not limited to, wastestreams with a closed cup flash point of less than 140°F or 60°C using the test methods specified in 40 CFR 261.21; or
- b) Any solid or viscous substance in concentrations or quantities, which are sufficient to cause obstruction to the flow in a sewer or other encumbrances to the operation of the POTW, including, but not limited to, grease, animal guts or tissues, bones, hair, hides or fleshing, entrails, whole blood, feathers, ashes, cinders, sand, cement, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, strings, fibers, spent grains, spent hops, wastepaper, wood, plastics, tar, asphalt residues, residues from refining or processing of fuel or lubricating oil, mud or glass grinding or polishing wastes, or tumbling and deburring stones; or
- c) Any Wastewater having a pH of less than 5.0 units or greater than 11.5 units; or
- d) Any Wastewater containing petroleum oil, non-biodegradable cutting oil, products of mineral oil origin, or toxic pollutants in sufficient concentration or quantity either singly or by interaction with other pollutants to cause Interference, or Pass through, or constitute a hazard to humans or animals; or
- e) Any liquid, gas, solid or form of energy, which either singly or by interaction with other waste is sufficient to create toxic gas, vapor, or fumes within the POTW in quantities that may cause acute worker health and safety problems, or may cause a public nuisance or hazard to life, or are sufficient to prevent entry into the sewers for their maintenance and repair; or
- f) Any noxious or malodorous liquids, gases, solids, or other Wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or a hazard to life, or to prevent entry into the sewers for maintenance or repair; or
- g) Any substance which is sufficient to cause the POTW's effluent or any other product of the POTW, such as residue, sludge, or scum to be unsuitable for reclamation processing where the POTW is pursuing a reuse and reclamation program. In no case shall a substance discharged into the POTW cause the POTW to be in noncompliance with sludge use or disposal criteria guidelines or regulations developed under 33 U.S.C. 1345, with any criteria, guidelines, or developed and promulgated regulations affecting sludge use or disposal developed pursuant to the Solid Waste Disposal Act, the Federal Clean Air Act, the Federal Toxic Substances Control Act, or with state criteria applicable to the sludge management method being used; or

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- h) Any trucked or hauled pollutants, except at discharge points designated by the POTW and authorized by the Control Authority (see Chapter IV); or
- i) Any substance which will cause the POTW to violate the NPDES permit; or
- j) Any discharge having a color uncharacteristic of the wastewater being discharged; or
- k) Any wastewater having a temperature which will inhibit biological activity in the POTW treatment plant resulting in interference, but in no case wastewater with a temperature at the introduction into a public sewer which exceeds 150°F or which will cause the influent at the wastewater treatment facility to rise above 104°F (40°C); or
- l) Any pollutant discharge which constitutes a Slug; or
- m) Any wastewater containing any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established in compliance with applicable federal or state regulations; or
- n) Any floating FOG which are sufficient to create an obstruction in the collection system, cause interference with the collection system or pass through the POTW; or
- o) Any solid materials having a specific gravity greater than 1.2 or a cross section dimension of one-half (½) inch or greater which are sufficient to cause interference with the POTW; or
- p) Wastewater causing a reading on an explosion hazard meter at the point of discharge into the POTW, or at any point in the POTW, of more than 20 percent (20%) of the Lower Explosive Limit of the meter; or
- q) Any pollutant, including oxygen demanding pollutants (BOD, etc.) released in a Discharge at a flow rate and/or pollutant concentration which will cause interference with the POTW.

Section II-204. Specific Pollutant Discharge Limitations

- a) National Categorical Pretreatment Standards. All Industrial Users shall comply with the applicable National Categorical Pretreatment Standards and requirements promulgated pursuant to the Act as set forth in 40 CFR Subchapter N, Effluent Guidelines and Standards, which are hereby incorporated by reference and with all other applicable standards and requirements. Affected dischargers shall comply with applicable reporting requirements under 40 CFR Part 403 and as established by the Control Authority. The National Categorical Pretreatment Standards that have been promulgated as of the effective date of this section are delineated in Appendix A.
- b) Local Pollutant Discharge Limitations. The Control Authority has developed specific Local Pollutant Discharge Limitations to protect the sewage disposal system from (pollutant) Interference, Inhibition or Pass-through, and worker health & safety in accordance with 40 CFR 403.5(c), which are to be deemed as Pretreatment Standards pursuant to Section 307(d) of the Act. The following specific Local Pollutant Discharge Limitations are adopted, and shall be enforced by the Control Authority:

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1) Compatible Pollutants:

Pollutant Name & Symbol	Daily Maximum Limitation (mg/l)
Biochemical Oxygen Demand (BOD)	10,000
Total Suspended Solids (TSS)	10,000
Fats, Oils, and Grease (FOG)	1,500
Total Phosphorus (P)	150

2) Metals

Pollutant Name & Symbol	Daily Maximum Limitation (mg/l)
Arsenic (As)	1.0
Cadmium (Cd)	3.0
Chromium (Cr)	25.0
Copper (Cu)	3.0
Cyanide, Amenable (CNA)	1.5
Lead (Pb)	1.0
Mercury (Hg)	0.01
Nickel (Ni)	5.0
Silver (Ag)	1.0
Zinc (Zn)	12.0

3) Organic Pollutants

Pollutant Name & Symbol	Daily Maximum Limitation (mg/l)
PCB, Total	Non-detect

4) Phenolic Compounds

- i) The limitation for Total Phenolic Compounds shall be 1 mg/l using the 4AAP method.
- ii) A Significant Industrial User may elect, in lieu of the limit for Total Phenolic Compounds specified in sub-paragraph i above, to substitute the specific limitations for the individual eight (8) phenolic compounds identified in the following table:

Pollutant Name & Symbol	Daily Maximum Limitation (mg/l)
2-Chlorophenol	8.0
4-Chlorophenol	8.0
4-Chloro-3-methylphenol	3.0
2,4-Dichlorophenol	6.0
2,4-Dinitrophenol	30
4-Methylphenol	40.0
Phenol	86

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Upon written election, the wastewater discharge permit shall be modified to incorporate these substituted parameters and a Significant Industrial User shall be responsible for monitoring and reporting compliance with these parameters.

- c) Non-Detectable Limitations. For any pollutant parameter which has a Local Pollutant Discharge Limitation of Non-detect, a User will be in violation of the limitation when the measurement result exceeds by any magnitude the method detection level of the pollutant, using analytical methods authorized under 40 CFR 136, unless a higher level is appropriate because of demonstrated sample interference.

- 1) Total PCB shall not be discharged at detectable levels, based upon USEPA Method 608, and the quantification level shall not exceed 0.2 ugms/l, unless a higher level is appropriate because of demonstrated sample interference.

Any User may develop and implement a Best Management Practice Plan in accordance with Section II-1006 to demonstrate compliance with a Non-detect local pollutant discharge limitation

- d) Applicability of most stringent limitation. Where a National Categorical Pretreatment Standard includes a pollutant parameter that also has a Local Pollutant Discharge Limitation, the Control Authority shall apply the most stringent Daily Maximum limitation for that pollutant parameter in a permit issued to the discharger. Where a 4-day, monthly or 30-day limitation contained in a National Categorical Pretreatment Standard is greater than the Local Pollutant Discharge Limitation Daily Maximum limitation, the Control Authority shall apply the more stringent value as the applicable average.
- e) Development of Pollutant Discharge Limitations. The Control Authority may periodically review and re-evaluate new or existing wastewater pollutant discharge limitations in accordance with 40 CFR 403.5(c). The Control Authority reserves the right to establish additional or more stringent limitations or requirements on discharges to the POTW.
- f) Development of Pollutant Concentration and Mass limits. When limits in a categorical pretreatment standard are expressed only in terms of mass of pollutants per unit of production, the Control Authority may convert the limits to equivalent limitations expressed either as mass of pollutant discharged per day or effluent concentration for purposes of calculating effluent limitations applicable to individual Significant Industrial Users. Equivalent limitations shall be calculated in accordance with Sections 40 CFR 403.6(c)(3) and/or 40 CFR 6(c)(4) and shall be deemed pretreatment standards for the purposes of 33 USC 1317(d) and of these rules. Significant Industrial Users will be required to comply with the equivalent limitations in lieu of the promulgated categorical standards from which the equivalent limitations were derived.

Section II-205. Net/Gross Determinations

An Industrial User, subject to a Categorical Pretreatment Standard may obtain a net/gross adjustment to a Categorical Pretreatment Standard in accordance with the following paragraphs of this Section.

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- a) Categorical Pretreatment Standards may be adjusted to reflect the presence of pollutants in the Industrial User's intake water. Any Industrial User wishing to obtain credit for intake pollutants must make application to the Control Authority. Upon request of the Industrial User, the applicable Standard will be calculated on a "net" basis (i.e., adjusted to reflect credit for pollutants in the intake water) if the requirements of paragraph (2) of this Section are met.
- b) Criteria.
 - 1) Either (i) the applicable Categorical Pretreatment Standards contained in 40 CFR subchapter N specifically provide that they shall be applied on a net basis; or (ii) the Industrial User demonstrates that the control system it proposes or uses to meet applicable categorical Pretreatment Standards would, if properly installed and operated, meet the Standards in the absence of pollutants in the intake waters.
 - 2) Credit for generic pollutants such as biochemical oxygen demand (BOD), Total Suspended Solids (TSS), and fats, oil and grease should not be granted unless the Industrial User demonstrates that the constituents of the generic measure in the Industrial User's effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.
 - 3) Credit shall be granted only to the extent necessary to meet the applicable Categorical Pretreatment Standard(s), up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with Standard(s) adjusted under this Section.
 - 4) Credit shall be granted only if the Industrial User demonstrates that the intake water is drawn from the same body of water as that into which the POTW discharges. The Control Authority may waive this requirement if it finds that no environmental degradation will result.

Section II-206. Prohibition of Dilution

Except where expressly authorized to do so by an applicable Pretreatment Standard or Requirement, an Industrial User cannot increase the use of process water, or in any other way attempt to dilute prior to discharge as a partial or complete substitute for adequate pretreatment to achieve compliance with a discharge limitation unless expressly authorized by an applicable Pretreatment Standard or requirement. The Control Authority may impose mass limitations on Industrial Users who are using dilution to meet applicable Pretreatment Standards or Requirements, or in other cases when the imposition of mass limitations is appropriate.

Article III PRETREATMENT OF WASTEWATER

Section II-301. Pretreatment Facilities

- a) Industrial Users shall provide Wastewater Treatment Facilities, as necessary, to comply with these rules

and shall achieve compliance with all Categorical Pretreatment Standards, Local Pollutant Discharge Limitations, and other requirements of these rules within the time limitations specified by EPA, the State, or these rules. Any Wastewater Treatment Facilities necessary for compliance shall be provided, operated, and maintained at the Industrial User's expense. Detailed plans describing such Wastewater Treatment Facilities and operating procedures shall be submitted to the Control Authority for review, before such Wastewater Treatment Facilities are constructed. The Industrial User shall obtain any plan approvals required from any member community or Wholesale Sewer Contract Customer prior to submitting them to the Control Authority for review. The review of such plans and operating procedures shall in no way relieve the Industrial User from the responsibility of modifying such Wastewater Treatment Facilities, as necessary, to produce a discharge that will meet any Wastewater discharge permit, or necessary to comply with these rules.

- b) Additional Pretreatment Measures - Whenever deemed necessary, the Control Authority may require Industrial Users through written notice, to restrict their discharge during peak flow periods, designate that certain Wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage wastestreams from industrial wastestreams, and such other conditions as may be necessary to protect the POTW and/or to determine the Industrial User's compliance with the requirements of these Rules and Regulations. This written notice shall state the reasons for the restriction and be incorporated into an individual Wastewater discharge permit, or equivalent control mechanism.
- c) As part of the Collection System and Combined Sewer Overflow Plans required by NPDES Permit MI0022802, the Control Authority may require any Person discharging into the POTW to install and maintain, on their property and at their expense, a suitable storage and flow-control facility to ensure equalization of flow. Before such action is taken, a written notice stating the reasons for the requirements shall be given to the User and incorporated into an individual Wastewater discharge permit or equivalent control mechanism. An individual Wastewater discharge permit, or equivalent control mechanism, may be issued solely for flow equalization.

Section II-302. Pretreatment Protection Requirements

- a) Protection from Flammable and Combustible Substances - All Users who discharge wastewater containing a flammable and combustible substance shall install, operate and maintain a combustible gas monitoring system acceptable to the Control Authority which provides a method of early detection and recording of any discharge of a flammable or combustible substance so that preventive measures can be taken to avoid loss of life, damage to the Sewerage System, and/or damage to public and/or private property.
 - 1) Flammable and combustible substances include, but are not limited to, gasoline, benzene, naptha, solvents, fuel oil; or any other liquid, solid, or gas that would cause or tend to cause flammable or explosive conditions to result in the Sewerage System.

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- 2) Applicability: Petroleum refineries, gasoline storage and transfer facilities, and chemical manufacturing plants having a discharge of 25,000 gallons or more per day of process Wastewater per day shall be required to submit a plan and schedule to install and implement a combustible gas monitoring system, within ninety (90) days, and complete implementation of the plan and schedule within 6 months of these rules adoption or upon commencement of discharge,
- 3) The Control Authority may issue written notice to any User requiring the installation of a combustible gas monitoring system upon a finding of 15% or greater of the Lower Explosive Level (LEL) from the User's discharge to the POTW.
- 4) Specific requirements for a combustible gas monitoring system shall be included by the Control Authority in a Significant Industrial User's Wastewater discharge permit, and include the following basic requirements:
 - i. The system shall be continuous and fixed (permanent rather than portable) and shall be installed near the company's approved monitoring location (where applicable).
 - ii. The system shall have an indicator as well as an automatic continuous recorder capable of maintaining a permanent record of readings (i.e., chart recorder).
 - iii. The system shall be equipped with a two-stage alarm system that is adjustable. The upper alarm level must be set at 20% LEL (Lower Explosive Limit).
 - iv. The system shall be calibrated for methane detection.
 - v. The control unit for the combustible gas detection meter should be located where the alarm will be heard and acted upon promptly (i.e., control room)
- b) pH Monitoring Plan and Monitoring Requirement. All Significant Industrial Users, as specified below, who process acidic and/or caustic wastes and Wastewaters; or whose pH is adjusted on-site, whether done for operational or treatment purposes; shall (i) develop an approvable pH Monitoring plan, and (ii) install appropriate pH monitoring and recording devices.
 - 1) pH Monitoring Plan – In accordance with sub-paragraph 2) below, a pH monitoring Plan shall be provided within 90 days and complete implementation of the plan and schedule within 6 months of the adoption of these rules or included with a new permit application or Baseline Monitoring Report, which shall include the following:
 - i. A description of the location of the pH monitor(s)
 - ii. Equipment specifications identifying the manufacturer & model of the (a) pH meter; (b) pH probe; (c) pH transmitter (if applicable); and (d) the pH recorder (chart, electronic, other)
 - iii. Maintenance procedures to be used for cleaning the pH monitoring system used, including the frequency of cleaning. A step by step description of the calibration procedure used shall be maintained by the SIU

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- iv. Calibration procedure information including (a) whether the probe can or cannot be removed for calibration; (b) whether the direct or indirect method is used for calibration; (c) whether the pH meter is capable of temperature compensation; (d) the pH buffers (reagents) used; and (e) the frequency of meter calibration, with weekly (as a minimum)
 - v. All records shall be retained for a minimum of three years and shall be made available to the Control Authority's representative upon request. A summary of records shall be provided with the six-month report to demonstrate compliance during the period. This may be submitted as a hard-copy or in electronic form.
- 2) pH Monitoring - shall be provided by all Significant Industrial Users as follows:
- i. The following Significant Industrial Users will provide a pH monitoring plan addressing continuous monitoring for pH consistent with USEPA method 150.2 using appropriate pH monitoring and recording devices:
 - a. All SIUs classified as a Centralized Waste Treatment facility in accordance with 40 CFR 437.
 - b. All SIUs who discharge 25,000 gpd or more of Wastewater and who process acidic and/or caustic wastes and Wastewaters; or whose pH is adjusted on-site, whether done for operational or treatment purposes.
 - ii. Significant Industrial Users who discharge less than 25,000 gpd of Wastewater will provide a pH Monitoring Plan and monitor for pH using appropriate pH monitoring and recording devices, which are representative of the period of discharge.
 - iii. The Control Authority may require any User to install pH monitoring upon finding pH levels below 5.0 or greater than 11.5, and by serving written notice to the User.
- 3) The pH monitoring plan shall be acknowledged within the Wastewater discharge permit for the SIU. The following criteria shall also be included in the permit:
- i. No individual excursion from the range of pH values shall exceed 15 minutes.
 - ii. Where continuous pH monitoring is used, the maximum and minimum pH readings will be reported. Regardless of the number of pH measurements recorded for each day, only one violation per day shall be determined.
 - iii. A summary of pH monitoring records shall be provided with the six-month report to demonstrate compliance during the period. This may be submitted as a hard-copy or in electronic form.

Section II-303. Protection from Accidental Discharges

- a) All Users shall provide protection from accidental discharge, spill or Slug discharge of materials prohibited by these rules, contained in any raw materials, chemicals and/or wastes kept on the premises.
- b) Users shall develop detailed plans against accidental discharge and/or spill discharge, and construct facilities, develop and implement measures reasonably necessary to avoid loss of life, damage to the

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Sewerage System, and/or damage to public and/or private property. These shall be implemented, provided, and maintained at the owner's or User's cost or expense.

- c) At a minimum, plans against accidental discharge and/or spill discharge will be required when prohibited materials or substances are kept on the premises in a form which could readily be carried into the POTW; constitute a concentration of five (5%) percent or greater in the raw material, chemical solution or waste material; or are stored in volumes of more than fifty-five (55) gallons. Such plans shall include the following information:
 - 1) Description of facilities and operating procedures to be implemented to provide protection against such accidental discharge, spill or slug discharge. Such facilities and measures to prevent and abate these discharges shall be implemented, provided, and maintained at the owner's or User's cost or expense.
 - 2) Provide the approximate average and maximum quantities of such prohibited materials or substances kept on the premises in the form of raw materials; chemicals and/or waste therefrom and the containment capacity for each.
 - 3) Identify facility contacts responsible for implementation and keeping the plan current.
 - 4) Include notification procedures and post such requirements advising employees whom to contact in the event of any accidental, spill or slug discharge.
 - 5) Include information on the secondary containment capacity available and the capacity available for containing rainfall or freeboard. Supporting calculations shall be maintained by the User and made available to the Control Authority upon request.
 - 6) Include a certification statement signed by the facility's Authorized Representative.
- d) Significant Industrial Users shall develop plans to control Slug discharges, as defined by 40 CFR 403.8(f)(2)(v). The Control Authority shall evaluate whether any Significant Industrial User is required to develop, modify or revise a slug discharge plan at a frequency of at least once every two (2) years.
- e) Existing Users who are required to develop any plan under sub-section b and/or c shall complete and submit such a plan within sixty (60) days of the effective date of these rules. Users who have previously filed such plans are not required to resubmit these plans unless the information has been revised or changed. New Users shall submit plans under sub-section b and/or c prior to the time they commence discharging.
- f) The User shall promptly notify the Control Authority of changes or modifications to the plan including, but not limited to, a change in the contact person(s), or substance inventory.
- g) The User shall immediately notify the Control Authority of any change at its facility affecting the potential for a Slug discharge.
- h) The Control Authority shall include as a requirement in a Wastewater discharge permit issued under these Rules, the development, revision and submittal of these plans described in sub-section b and/or c.

Article IV CLASSIFICATION OF WASTEWATER SOURCES

Section II-401. Specific Wastewater Source Classifications

- a) The Control Authority shall recognize the following specific Wastewater source classifications for purposes of these Rules:
 - 1) Septage and waste haulers.
 - 2) Groundwater sources and occasional or special waste sources.
 - 3) Grease, oil and solid sources; and
 - 4) Utility wastes and Wastewater.
- b) The Control Authority may establish additional Industrial User classifications where necessary to efficiently carry out the intent of these Rules, or to administer the requirements of these Rules on a defined Industrial User group.

Section II-402. Septage and Waste Haulers

- a) The Control Authority has developed a program for the regulation of Septage and hauled wastes that are authorized for treatment from non-point sources. The regulatory requirements for this program are more fully described in Chapter V of these rules.
- b) Domestic Sewage and Wastewater from recreational vehicles, individual portable toilets, and vessels and ships shall also be authorized in accordance with Chapter V of these rules.
- c) The Control Authority shall not accept any waste or wastewater at its POTW on 9300 West Jefferson delivered by truck, rail or dedicated pipeline, other than Septage Waste and the contents of domestic waste septic tanks, cesspools, seepage pits, sewage lift stations and portable toilets may be discharged to the Sewerage System by haulers authorized to unload such materials and subject to the requirements of the Chapter V rules.
- d) Hauled-in industrial wastes, other than described in paragraph b, shall not be discharged into the Sewerage System either directly or indirectly because of the risk potential to the well-being of the system and the receiving waters. Such wastes are to be disposed of in commercial facilities specializing in the reclamation, rendering, disposal, destruction or burial of non-hazardous, hazardous or potentially hazardous wastes.

Section II-403. Special Discharge Environmental Remediation, Groundwater Sources and Occasional or Special Waste Sources may not be discharged unless authorization has been granted by the Control Authority.

- a) The Control Authority has developed a program for the regulation of Environmental Remediation, Groundwater Sources and Occasional or Special Waste Sources that are authorized for treatment from non-point sources. The regulatory requirements for this program are described in Chapter V of these rules.

- b) Special wastes and Wastewaters not described by subparagraph (a) above, may be authorized for discharge if they do not pose harm or risk of harm to the sewerage system as determined by the Control Authority in its reasonable discretion. Such wastes include, but are not limited to, spoiled beer, wine, milk or other beverages, non-hazardous waste materials, and water and Wastewater from tanks or vessels, ships, freighters or barges.

Section II-404. Grease, Oil and Solids Interceptors

The contributions of FOGs and the discharge of solid or viscous pollutants can cause or contribute to obstructions in the POTW and collection system. The installation and maintenance of grease, oil, and solids interceptors can minimize these occurrences. The Control Authority will work with Member Communities and/or Wholesale Sewer Contract Customers to correct improper handling from sources found to cause or contribute to obstructions in the POTW and collection system.

- a) Grease, oil, and solids interceptors shall be provided when, in the opinion of the Control Authority, they are necessary for the proper handling of Wastewater containing excessive amounts of grease and oil, or solids; except that such interceptors shall not be required for Domestic Sources. All interception units shall be of a type and capacity acceptable to the User's Member Communities and/or Wholesale Sewer Contract Customers and the Control Authority.
- b) The Control Authority may require Users to provide records or other information concerning the inspection, cleaning and maintenance practices of the User.
- c) The Control Authority may require any User to install and/or repair, maintain and operate grease, oil, and solids interceptors when, in the opinion of the Control Authority, they are found to cause or contribute to obstructions in the POTW and collection system. The Control Authority shall notify the User of grease, oil and solids sources in writing of such requirement(s).
- d) All interception units shall be of a type and capacity acceptable to the local Health Department, community agency or Member Community, and the Control Authority. Such interceptors shall be regularly inspected, cleaned, and repaired by the User at their expense.

Section II-405. General Permits.

- a) The Control Authority may authorize the discharge of utility wastes and Wastewater resulting from maintenance and related activities of telephone, gas, steam, or electrical utilities, whether public or private, through the use of general permits. Subject to appropriate reporting requirements, the general permit shall authorize discharge in accordance with the terms of the permit.
- b) General Permits may be used by the Control Authority to carry out these rules, for Users other than Significant Industrial Users, to authorize the discharge from User's activities. General Permits shall authorize discharge in accordance with the terms of the permit and include appropriate reporting requirements.

Article V REPORTING AND NOTIFICATION REQUIREMENTS

The Control Authority may require any User to provide any of the reports or notifications described within this section whenever there is a reasonable potential or actual finding.

Section II-501. General Notification Requirements

- a) Notification requirements. Within one (1) hour of becoming aware of a discharge into the POTW which has the potential to cause, or does cause, the User to implement any accidental discharge, spill or Slug discharge, or to report the occurrence of an unanticipated by-pass or upset event, the User shall telephone the Control Authority at its System Control Center (313-267-6000), and notify the Control Authority of the discharge event.
 - 1) The notification shall include the name of the caller, the location and time of discharge, the type of Wastewater, the estimated concentration of excessive or prohibited pollutants and estimated volume, and the measures taken, or being taken, to abate the discharge into the POTW.
 - 2) Within five (5) calendar days after the discharge, the User shall submit a detailed written report to the Control Authority describing the cause of the discharge and the measures to be taken by the User to prevent similar future occurrences and, when required by the Control Authority, the User's Wastewater discharge permit may be modified to include additional measures to prevent such future occurrences.
- b) Such notification shall not relieve the User of any expense, cost of treatment, loss damages or other liability which may be incurred as a result of, among other things, damage to the POTW, fish kills, or any other environmental impairment or any other damage to persons or property.
- c) Recovery of costs. Any User discharging in violation of any of the provisions of these rules, which produces a deposit or obstruction or causes damages to or impairs the POTW, or causes the Control Authority to violate its NPDES permit, shall be liable for any expense, loss, damage, penalty or fine incurred because of said violation or discharge. Prior to assessing such costs, the Control Authority shall notify the User of its determination that the User's discharge was the proximate cause of such damage, obstruction, impairment, or violation of the NPDES permit and the intent to assess such costs to the User. Any such notice shall include written documentation which substantiates the determination of proximate cause and a breakdown of cost estimates. Failure to pay the assessed costs shall constitute a violation of these rules. Such charge shall be in addition to, and not in lieu of, any penalties or remedies provided under these rules, or this Code, or other statutes and regulations, or at law or in equity.

Section II-502. Specific Notification Requirements

- a) All Users, whether required to have a Wastewater discharge permit, Authorization or not, shall notify the Control Authority at its System control center (313-267-6000) of any discharge or release that is contrary to the requirements of these rules.

- b) The Control Authority may identify additional requirements for notice through a Wastewater discharge permit or authorization to discharge.

Section II-503. Hazardous Waste Notification

- a) All Industrial Users, who discharge into the Sewerage System, shall notify the Control Authority in writing of any discharge of a substance which, if otherwise disposed of, would be a hazardous waste as set forth in 40 CFR 261. Such notification must comply with the requirements of 40 CFR 403.12(p).
- b) At a minimum, any Significant Industrial User regulated under a Wastewater discharge permit issued by the Control Authority shall review their previous notification(s) and report any additions or other changes to the hazardous wastes discharged, in accordance with 40 CFR 403.12(j), to the POTW and provide the current information specified in paragraph (a) above at the time of seeking a Permit Renewal.
- c) This provision does not create a right to discharge any substance not otherwise permitted to be discharged by these rules, or any permit issued thereunder, or any applicable Federal or State law.

Section II-504. Authorized Representative.

The Authorized Representative, or a duly Authorized Representative if applicable, shall sign and certify any survey, permit application or re-application, Baseline Monitoring Report, 90-day report, or periodic report or a request for reconsideration or appeal hearing. Other documents, responses or reports may be signed by any other agent as long as the agent's name, role and any limitations of the agency, are made known to the Control Authority in writing.

Section II-505. Best Management Practice Plans and Pollution Prevention Plans

The Control Authority shall allow Users to develop and to implement Best Management Practice Plans and Pollution prevention plan initiatives as a partial response to non-compliance and incorporate such plans as an enforceable part of a Wastewater discharge permit. Upon demonstration of compliance, the User may request to be relieved of the Best Management Practice Plans and Pollution prevention implementation requirement.

Section II-506. Centralized Waste Treatment Facility Requirements

A Centralized Waste Treatment Facility receive hazardous and non-hazardous materials for treatment and disposal through the local POTW and collection system.

- a) Any new or existing Industrial User who operates a Centralized Waste Treatment Facility as described by 40 CFR 437, Subpart D (Multiple Wastestream Subcategory), shall provide an Equivalent Treatment that satisfies the requirements of 40 CFR 437.2(h), and applicable certification statement to the Control Authority when applying for a new Wastewater discharge permit, when submitting its Baseline Monitoring Report, or when re-applying for a Wastewater discharge permit. The statement shall be certified by a professional engineer registered in the State of Michigan. The statement must be provided with the Baseline Monitoring Report, or Wastewater discharge permit application or reapplication form.
- b) Any new or existing Industrial User who operates a Centralized Waste Treatment Facility as described

by 40 CFR 437, Subpart A, B or C shall provide a statement that the Centralized Waste Treatment Facility has treatment processes capable of treating the Wastewater received or collected by the Centralized Waste Treatment Facility, and necessary to meet the applicable discharge limitations. The statement shall be certified by a professional engineer registered in the State of Michigan. The statement must be provided with the Baseline Monitoring Report, or Wastewater discharge permit application or reapplication form.

- c) A Centralized Waste Treatment Facility granted a permit under this section shall provide supplemental information with the periodic reports required under section II-705, that includes the volume (in gallons) of Subpart A (metal bearing wastes), Subpart B (oily wastes), and Subpart C (organic bearing wastes) received each month, held in inventory or removed off-site each month, and discharged to the sewer system each month.
- d) A Centralized Waste Treatment Facility granted a permit under this section shall maintain records which, at a minimum, identify the source, volume, character, and constituents of the Wastewater accepted for treatment and disposal. These records may be reviewed at any time by the Control Authority.

Article VI INSPECTION & MONITORING REQUIREMENTS

Section II-601. Right of Entry: Inspection and Monitoring.

- a) The Control Authority shall have the right to enter the premises of any User to determine through inspection and monitoring, whether that User is complying with all requirements of these rules; and any Wastewater discharge permit issued hereunder. Such rights shall also permit the Control Authority to collect independent samples at the facility and install and retrieve monitoring equipment and instrumentation. The Control Authority shall perform these activities at reasonable times, and in a reasonable manner.
- b) Users shall allow the Control Authority, or the Control Authority's representative, ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties authorized by these rules. The Control Authority may access any easement, street or other public location without notice.
- c) Upon arrival at the User's premises, the Control Authority's representative shall notify and inform the User, or the User's employees, of their purpose. The Control Authority's representative shall bear proper credentials and identification, and at the User's option may be accompanied by a representative authorized by the User.
- d) Where a User has security measures in force, the User shall make prompt and necessary arrangements with the security personnel so that, upon presentation of appropriate credentials, the Control Authority's representative will be permitted to enter for the purposes of performing their specific responsibilities.

The Control Authority shall neither refrain from, nor be prevented or delayed from, carrying-out its

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inspection or sampling duties due to the unavailability of the Authorized Representative of the facility.

- e) While performing work on private property, the Control Authority shall observe all reasonable safety, security and other reasonable rules applicable to the premises as established by the User.
- f) Should the Control Authority require photographs of the User's facilities, the User shall be notified, provided a consent form, and provided with electronic or printed copies of any such photographs within 48 hours. If requested by the User, these may be transmitted electronically.
- g) Upon the request of the Control Authority, Users shall furnish access to information and records relating to discharges into the POTW. The User shall be notified, provided a consent form, and the Control Authority shall be permitted to photograph or copy such records.
- h) Noncompliance with this subsection shall be addressed in accordance with the enforcement authority available through Article X of these rules.

Section II-602. Inspection, sampling and record-keeping.

- a) Significant Industrial Users shall sample and analyze their discharge in accordance with the provisions of their permit. The Control Authority may require such samples to be split for the Control Authority's independent analysis.
- b) Significant Industrial Users shall maintain records of all information from monitoring activities required by these rules, or by 40 CFR 403.12(o), for no less than three (3) years. This period of record retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the Industrial User, or the operation of the Control Authority's Industrial Waste Program, or when requested by the Control Authority, by the State, or by the USEPA.
- c) In the event the Control Authority obtains samples, and analyses are made of such samples, a copy of the results of such analyses shall be promptly furnished upon written request by the Industrial User's Authorized Representative.
- d) When requested by the Industrial User, the Control Authority's representative shall leave with the Industrial User, a portion of any sample of the Industrial User's discharge taken from any sampling point on or adjacent to the premises for the Industrial User's independent analysis. Users must provide their own containers for receipt of such samples. Where the sampling protocol, e.g. grab-sampling, would affect the integrity of the sample, the User may be provided with a contemporaneously collected sample.
- e) In cases of disputes arising over shared samples, the portion taken and analyzed by the Control Authority shall be controlling unless proven invalid. The Industrial User may request a conference with the Control Authority to review and discuss the shared sample results in dispute, including pertinent supporting materials and documents. The Control Authority shall issue a written conference report following such discussion.

Section II-603. Sampling Plans

- a) All Significant Industrial Users shall provide a sampling plan describing the manner and form intended

for representative wastewater self-monitoring. At a minimum, the plan shall include:

- 1) A description of the sample collection method(s) based on grab, flow-proportional composite or time-proportional composite methods.
 - 2) Designate applicable requirements for batch and/or continuous discharges, including the release time.
 - 3) If applicable, the sampler settings, such as pulse, time, sample volume; and
 - 4) If applicable, the flow-measurement equipment.
- b) The sampling plan shall be submitted to the Control Authority and shall be implemented by the Significant Industrial User.

Section II-604. Sample Collection Methods

- a) Users shall collect representative samples of the waste and Wastewater discharges using sampling procedures described by 40 CFR 403, Appendix E.

Except for samples for oil and grease, temperature, pH, cyanide, total phenols, sulfides, and volatile organic compounds, wastewater samples must be collected using 24-hour flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the Control Authority. A Significant Industrial User may request the use of time-proportional composite sampling or grab sampling rather than flow-proportional composite sampling by demonstrating that the use of time-proportional composite sampling or grab sampling will provide samples representative of the SIU's discharge. The User shall provide supporting documentation including any statistical analysis submitted in support of the request.

- 1) The Control Authority may authorize the use of alternative sampling methods, where such methods are representative of the Significant Industrial User's Discharge and shall document its decision in the SIU file.
- 2) If granted by the Control Authority, the authorization shall be limited to the duration of the Wastewater discharge permit. A Significant Industrial Users shall request re-authorization of a waiver request with any permit re-application form filed with the Control Authority. The Control Authority shall review any such request *de novo*.

Section II-605. Sampling & Monitoring Facilities

- a) All Significant Industrial Users, and any other Industrial User who discharge under an effective Wastewater discharge permit or other control mechanism, shall provide, operate, and maintain at their own expense a sampling and monitoring facility to enable the Control Authority to conduct such other monitoring and sampling as required for determining compliance. The sampling and monitoring facility include but is not limited to, a manhole or special structure to facilitate monitoring, inspection, sampling, and flow measurement of the facility's discharge, if applicable.
- b) Consistent with Section II-603(a), the Industrial User shall provide the following technical information to the Control Authority:

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- 1) A drawing or sketch showing all sewer connections and sampling manholes by the size, location, elevation, and points or places of discharges into the POTW; and
 - 2) A flow schematic showing (i) the connections receiving each national categorical process wastestreams, (ii) connections receiving other process wastestreams, storm water, sanitary water or Cooling Water, and (iii) any conveying a combined wastestream; and
 - 3) A sampling plan in accordance with section II-603 above.
 - 4) Where flow-proportional composite sampling is performed on-site, information describing the Industrial User's flow monitoring instruments, including make and model number; recording devices used, including make and model number; and must include a non-resettable flow totalizer; and
 - 5) Where flow-proportional composite sampling is performed on-site, the specific criteria for sampling is described in Chapter VI of these rules shall also be followed.
- c) In the event the Control Authority determines that the monitoring facility identified in the permit application is inadequate, or fails to include Wastewater regulated under these rules, a new monitoring facility must be identified, or provided by the Industrial User, which shall allow for collection of a representative sample of the Wastewater discharged from the facility, by serving written notice to the Industrial User.
- d) The sampling and monitoring facility should be situated on the Industrial User's premises in a location readily accessible to the Control Authority. There shall be ample room in or near such sampling or monitoring manhole or facility to allow accurate sampling and preparation of samples for analysis. The facility and any permanently installed sampling and measuring equipment shall be maintained at all times in a safe and proper operating condition at the expense of the Industrial User.
- e) When such a location would be impractical or cause undue hardship to the Industrial User, the Industrial User may seek approval for the facility to construct the sampling manhole in the public streets, or sidewalk area when there is room and the location will not be obstructed by landscaping or parked vehicles. It shall be the responsibility of the Industrial User to obtain any necessary approvals which may be required from other government entities for the location and construction of monitoring facilities. Whether constructed upon public or private property, the sampling and monitoring facilities shall be provided in accordance with all applicable local construction standards and specifications.
- f) The sampling and monitoring facility shall be properly operated, kept clean, and maintained in good working order at all times. The failure of an Industrial User to keep its monitoring facility in good working order shall be grounds for the Control Authority to issue a written finding that sample results are unrepresentative of the Industrial User's discharge.

Article VII WASTEWATER DISCHARGE PERMITS & OTHER CONTROL MECHANISMS

Section II-701. Survey, Permit Applications and Baseline Monitoring Reports

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- a) Duty to apply. No User may discharge Wastewater, other than Domestic Sewage, without receiving authorization from the Control Authority. Any new or existing User who has not obtained authorization for discharge shall comply with the following:
 - 1) Any new or existing User, who does not have an effective Wastewater discharge permit but meets the definition of a Significant Industrial User after the effective date of these rules, is required to submit a complete permit application in accordance with Section II-703, to the Control Authority and obtain a Wastewater discharge permit for its discharge. The permit application must be provided by a new User at least ninety (90) days prior to the commencement of any discharge; or for an existing User (as of the effective date of these rules), within thirty (30) days of the effective date of these rules. A failure to apply is a violation of these rules.
 - 2) Any new or existing Industrial User who performs an operation covered by a National Pretreatment Standard shall file a Baseline Monitoring Report in accordance with Section II-702 to the Control Authority and obtain authorization for its discharge.
 - 3) All other new or existing Users discharging Wastewater, other than Domestic Sewage and Cooling Water, must file a survey application and receive authorization from the Control Authority for its discharge.
 - 4) Users who have previously filed a survey, permit application, or Baseline Monitoring Report with the Detroit Water & Sewerage Department or GLWA prior to the effective date of these rules and have received an effective Wastewater Discharge Permit or Letter of Authorization, are not required to resubmit their survey, permit application, or Baseline Monitoring Report.
- b) The Control Authority may require any User to complete a survey or permit application to determine whether the User is a Significant Industrial User or is subject to other regulatory requirements (described in Chapter III, IV, or VII). Users shall comply within thirty (30) days of receiving written notice. Failure of the Control Authority to so notify a User, shall not relieve the User of its duty to obtain a wastewater discharge permit as required by these rules.
- c) Upon receipt of any survey, permit application, or Baseline Monitoring Report, the Control Authority shall notify the User that:
 - 1) The User is not authorized to discharge. The notice will be in writing and shall indicate what additional information, pretreatment facilities, monitoring facilities or other requirements are necessary for authorization.
 - 2) The User is a Significant Industrial User and is authorized to discharge, conditioned upon issuance of a Wastewater discharge permit or other control mechanism; or
 - 3) The User is not a Significant Industrial User and is authorized to discharge as a Minor User under a Wastewater authorization letter.

Section II-702. Baseline Monitoring Report Requirements

- a) Within one hundred eighty (180) days after the effective date of a Categorical Pretreatment Standard,

or one hundred eighty (180) days after the final administrative decision made upon a category determination submission under Section 40 CFR 403.6(a)(4), whichever is later, existing Industrial Users subject to such Categorical Pretreatment Standards and currently discharging into or scheduled to discharge into the POTW, shall submit to the Control Authority, a report containing the information listed in 40 CFR 403.12(b)(1-7).

- b) At least ninety (90) days before commencement of any discharge, each new source and any existing sources that become Industrial Users after the promulgation of an applicable Categorical Pretreatment Standard, shall submit to the Control Authority, a report which contains the information listed in 40 CFR 403.12(b)(1-5). In such report, new sources shall include information concerning the method of pretreatment that the source intends to use to meet applicable Categorical Pretreatment Standards. New sources shall provide estimates of the information requested in 40 CFR 403.12(b)(4) and (5).
- c) The USEPA has established regulations at 40 CFR 405 through 471, National Categorical Pretreatment Standards applicable to specific industrial activities. The Control Authority adopts these by reference, as listed in Appendix A, of these rules.
 - 1) Any Industrial User subject to a National Categorical Pretreatment Standard, or any Industrial User who becomes subject to a new or revised National Categorical Pretreatment Standard, shall apply for a Wastewater discharge permit within ninety (90) days after the promulgation of the applicable National Categorical Pretreatment Standard, unless an earlier date is specified or required by 40 CFR 403.12(b).
 - 2) The Control Authority may require any Industrial User to complete a Baseline Monitoring Report to determine whether the Industrial User performs an operation described by a National Categorical Pretreatment Standard. The Industrial User shall provide information demonstrating that it does not perform an operation described by a National Categorical Pretreatment Standard or provide a Baseline Monitoring report within thirty (30) days of being so notified.
 - 3) New Sources. Industrial Users who meet the New Sources criteria shall install, maintain in operating condition, and "startup" all Pollution control equipment required to meet applicable Categorical Pretreatment Standards and requirements before beginning to discharge. Within the shortest feasible time and not to exceed ninety (90) days, new sources must meet all applicable Categorical Pretreatment Standards.

Section II-703. Contents of Survey or Permit Application

- a) In support of a survey, permit application or re-application, the User shall submit, in units and terms appropriate for evaluation, the following information:
 - 1) Corporate or individual name, any assumed name(s), address, and location of the discharging facility.
 - 2) Name and title of the Authorized Representative of the User who shall have the authority to bind the User financially and legally. Where the Authorized Representative is represented by an agent,

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the authorized representative shall also identify the agent and any applicable limitations or restrictions of their agency.

- 3) The Standard Industrial Classification codes of all processes at this location according to the Standard Industrial Classification manual, issued by the Executive Office of the President, Office of Management and Budget, 1987, or the equivalent based upon the North American Industrial Classification System (NAICS), as amended.
- 4) Actual or proposed Wastewater constituents and characteristics for each parameter listed in the permit application form. At a minimum, such parameters shall include the applicable Categorical Pretreatment Standards from any applicable National Categorical Pretreatment Standard or any pollutant parameter for which there is a local Pollution discharge limitation; and any other toxic pollutants known or suspected to be present in the discharge, regulated in the previous permit, or specifically requested by the Control Authority. For each parameter, the expected or experienced maximum and average concentrations during a one (1) year period shall be provided.
- 5) For industries subject to National Categorical Pretreatment Standards, the data requested herein shall be separately shown for each categorical process wastestream. Combined wastestreams proposed to be regulated by the combined wastestream formula shall also be identified. Sampling and analysis shall be performed in accordance with procedures established by the USEPA pursuant to 33 U.S.C. 1314(g) and contained in 40 CFR 136, as amended. Where 40 CFR 136 does not include sampling or analytical techniques for the pollutants in question, sampling and analysis shall be performed using validated analytical methods approved by the administrator.
- 6) A listing and description of activities, facilities and plant processes on the premises, and the pollutants associated with each process. Those processes, which are subject to National Categorical Pretreatment Standards, shall be so designated.
- 7) A listing of raw materials and chemicals which are either used in the manufacturing process or could yield pollutants requiring pretreatment prior to discharge to the Sewerage System. Any User claiming immunity from having to provide such information for reasons of national security shall furnish acceptable proof of such immunity.
- 8) A description of typical daily and weekly operating cycles for each process in terms of starting and ending times for each of the seven (7) days of the week.
- 9) Information on the average and maximum twenty-four (24) hour wastewater flow rate based on actual measurements, or estimated and the means of estimation, of (i) each process wastestream subject to a National Categorical Pretreatment Standard, (ii) each process wastestream not subject to a National Categorical Pretreatment Standard, (iii) non-process wastestreams including but not limited to Cooling Water, sanitary water, or any other Wastewater. This information shall include any applicable daily, monthly or seasonal variations for each wastestream.
- 10) Each combined wastestream, specifying the flow rate of regulated, unregulated and diluting

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wastestreams.

- 11) A drawing showing all sewer connections and sampling manholes by the size, location, elevation and points or places of discharges into the POTW; also a flow schematic showing which connections receive each national categorical process wastestream and which connections receive Storm Water, sanitary water or Cooling Water; also show which lines handle each combined wastestream;
- 12) The rate of production as pertains to processes subject to production-based limits under the National Categorical Pretreatment Standards.
- 13) A statement regarding whether or not the requirements of these rules and of the National Categorical Pretreatment Standards and requirements are being met on a consistent basis and, if not, what additional operation and maintenance work and/or additional construction is required for the Industrial User to meet the applicable standards and requirements. This statement shall be reviewed and signed by the Authorized Representative and, as appropriate, certified by a qualified professional.
- 14) Basic information on the program for the prevention of accidental discharges.
- 15) Proposed or actual hours of operation of each pretreatment system for each production process.
- 16) A schematic and description of each pretreatment facility which identifies whether each pretreatment facility is of the batch type or continuous process type.
- 17) The source of any intake water if other than through the GLWA and the basis for measurement.
- 18) The volume of any discharge water other than potable water obtained through any source and the basis of measurement.
- 19) If additional construction and/or operation and maintenance procedures will be required to meet the requirements of these rules and the National Categorical Pretreatment Standards, the shortest schedule by which the Industrial User will provide such additional construction and/or implement the required operation and maintenance procedures.
- 20) Identify whether the Industrial User has conducted a waste minimization assessment or audit of its operations in order to identify all feasible source reduction and recycling practices that may be employed to reduce or eliminate the generation of pollutants and other wastes at the facility; and
- 21) Any other information as may reasonably be required to prepare and process a Wastewater discharge permit.

Section II-704. Permit Issuance

Upon receipt of any survey, permit application, or Baseline Monitoring Report, the Control Authority shall review the information and advise the User of:

- a) The User does not meet the definition of a Significant Industrial User and is authorized to discharge as a Minor User under a Wastewater authorization letter; or
- b) The User meets the definition of a Significant Industrial User and is authorized to discharge under a

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Wastewater discharge permit or other control mechanism; or

- c) The User meets the definition of a Significant Industrial User and is conditionally authorized to discharge under an administrative order including schedules for additional information, pretreatment facilities, monitoring facilities or other requirements are necessary for processing a Wastewater discharge permit; or
- d) The User is not authorized to discharge. The Control Authority may withhold issuance of a permit to a Significant Industrial User, which has not submitted an adequate or timely report, or permit application, to the control authority in accordance with the reporting requirements of 40 CFR 403.12, or whose discharge is in violation of these rules. The failure of the Industrial User to cease discharging following notification shall be considered a violation of these rules.
- e) Procedure for Permit Issuance. Only one (1) facility location shall be included in each permit. If the Control Authority determines that the User meets the definition of a Significant Industrial User, is required to have a Wastewater discharge permit, and has evaluated and accepted the data furnished, the Significant Industrial User will be notified by U.S. mail, using certified mail.
 - 1) Draft Wastewater Discharge Permit. The notification shall contain a copy of the draft permit, so marked, for review. A Significant Industrial User has thirty (30) days from the date of mailing to file comments and/or a response to the draft permit. The Control Authority will evaluate the comments and response to the draft permit and consider them for inclusion in a final Wastewater discharge permit.
 - 2) Final Wastewater Discharge Permit. Following expiration of the thirty (30) day comment period, or consideration of any comments or responses made, the Control Authority shall prepare a Final Wastewater discharge permit. The Final Wastewater discharge permit will be transmitted by U.S. Mail. The Significant Industrial User has twenty (20) days from the date of mailing to file a request for reconsideration and/or appeal hearing in accordance with Chapter VIII. During the appeal process, the SIU will comply with all uncontested terms or conditions which shall be in full force and effect. Upon disposition of any contested terms or conditions, the Wastewater discharge permit shall be issued as final.

Section II-705. Types and Contents of Wastewater Discharge Permits

- a) The Control Authority shall develop Wastewater discharge permit formats meeting the needs of Significant Industrial Users as well as the special Wastewater sources discharging to the Sewerage System. Such formats include, but are not limited to, general permits for multiple location facilities, special discharge permits, and unloading permits for hauled-in wastes and Wastewater.
- b) Every Wastewater discharge permit shall contain all requirements of 40 CFR 403.8(f)(1)(iii) and shall be deemed to incorporate all provisions of these rules, other applicable laws, rules, regulations, and charges and fees established by the Control Authority without repetition therein.
- c) A Wastewater discharge permit may also contain the following:

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- 1) The Wastewater discharge permit shall specify the wastes and Wastewaters which the Control Authority authorizes an Industrial User to discharge to the Sewerage System; and identify any wastes or Wastewater for which the request to discharge is denied; and the wastes and Wastewater requiring imposition of special conditions in order to comply with the permit.
- 2) Limits on the average and maximum Wastewater constituents or characteristics which are equivalent, more restrictive than, or supplemental to the numeric limits enumerated in these rules, or the applicable National Categorical Pretreatment Standards.
 - i. Limits on average, and/or maximum rate and time of discharge or requirements for flow regulation and equalization.
 - ii. Limits on the average volume, and/or maximum volume of Wastewater that is authorized for discharge. The ratio of average to maximum volume shall not exceed three (3), except where seasonal variations of the average and/or maximum volume are noted in the permit.
 - iii. Requirements for installation, operation, and maintenance of discharge sampling manholes and monitoring facilities by the Significant Industrial User.
 - iv. Restrictions on which of the Significant Industrial User's discharge wastestreams are to be allowed to be discharged at each point of connection to the POTW.
 - v. Specifications for Significant Industrial User monitoring programs which may include sampling locations, frequency and type of sampling, number, types and standards for tests and reporting schedules.
 - vi. Requirements for the prevention of accidental discharges and the containment of spills or Slug discharges.
 - vii. Restrictions based on the information furnished in the application.
 - viii. Additional reporting requirements:
 - a. All permittees shall submit a report on the form prescribed by the Control Authority, or on an alternative form approved by the Control Authority, indicating the status of compliance with all conditions enumerated or referred to in the Wastewater discharge permit, or made applicable to the permit by these rules. Unless required more frequently, the reports shall be submitted on a periodic basis (generally six months), on a schedule to be established by the Control Authority. Analytical data generated by the Control Authority shall not be submitted in lieu of the facility's own self-monitoring data as required by the Wastewater discharge permit.
 - b. The report shall show the concentration of each substance for which there is a specific limitation in the permit. The report will include all calculations necessary to demonstrate compliance with any 4-day, 30-day or monthly average, or mass limitation that may be included in the permit.
 - c. Permittees subject to National Categorical Pretreatment Standards shall submit

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compliance reports at the times and intervals specified by federal regulations and by the Control Authority. A compliance report shall be submitted to the Control Authority no later than ninety (90) days following the final compliance date for a National Categorical Pretreatment Standard, or in the case of a New Source, no later than ninety (90) days, following commencement of the introduction of wastewater into the POTW, and in accordance with 40 CFR 403.12(d).

A ninety (90) day report shall also be provided where the facility's treatment system(s) are upgraded, modified or replaced so as to demonstrate compliance with applicable limitations.

- d. A report on continued compliance shall be submitted at six-month intervals thereafter on the schedule established by the Control Authority and incorporated into the Significant Industrial User's discharge permit. The reports shall be either on a form prescribed by the Control Authority or on an alternative form approved by the Control Authority, and shall indicate the nature and concentration of all pollutants in the discharge from each regulated process which are limited by National Categorical Pretreatment Standards, or which there is a specific limitation in the permit, or which may be identified by the Control Authority. The report shall include a record of measured or estimated average and maximum daily flows for the reporting period for the discharges regulated by the permit. The combined wastestream formula may be used for reporting purposes after the initial information has been furnished to the Control Authority, provided there have been no changes to the elements composing the combined wastestream.
- e. Reports shall contain the results of representative sampling performed during the period covered by the report and of the discharge and analysis of pollutants contained therein, and, for Significant Industrial Users subject to production based standards, shall be cross-referenced to the related flow or production and mass as required to determine compliance with the applicable pretreatment standards. The frequency of monitoring shall be as prescribed in the applicable general pretreatment regulations, being 40 CFR 403, or by the Control Authority, but no less than is necessary to assess and assure compliance by the Significant Industrial User with the most stringent applicable pretreatment standards and requirements. All sampling and analysis shall be performed in accordance with applicable regulations contained in 40 CFR 136 and amendments thereto. Where 40 CFR 136 does not include sampling or analytical techniques for the pollutants in question, sampling and analysis shall be performed using validated analytical methods approved by the Administrator.
- f. If any Significant Industrial User monitors any pollutant more frequently than

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required by the Control Authority, collects the sample(s) at monitoring locations specified in the wastewater discharge permit, and analyzes such samples using approved analytical procedures, the results of this monitoring shall be included in such report.

- g. The report shall state whether the applicable pretreatment standards are being met on a consistent basis and, if not, what additional operation and maintenance practices and/or pretreatment system improvements or changes are necessary to bring the Significant Industrial User into compliance with the applicable pretreatment standards.
 - h. All Significant Industrial Users shall include the following certification statement with the periodic (six-month) report: *"I certify under penalty of law that this document and all attachments were prepared under my direction, or supervision, in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of a fine and/or imprisonment for knowing violations."* Said certification shall be signed by the facility's Authorized Representative. If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of the Authorized Representative must be submitted to the Control Authority prior to, or together with, any reports to be signed by an Authorized Representative.
 - i. If sampling performed by a permittee indicates a violation, the Significant Industrial User shall notify the Control Authority within twenty-four (24) hours of the time said Significant Industrial User knows, or should have known, of the violation. In addition, the Significant Industrial User shall repeat the sampling and analysis, and submit the results of the repeat analysis to the Control Authority within thirty (30) days after said Industrial User becomes, or should have become, aware of the violation in accordance with its Wastewater discharge permit.
- d) In the event the Control Authority determines that any Significant Industrial User is discharging substances in quality, quantity or at locations which may cause problems to the POTW, or the receiving stream, the Control Authority has the authority to develop and enforce effluent limits applicable to the Significant Industrial User. To the extent the Control Authority seeks to impose restrictions in a permit

which are more restrictive than established in these rules, the Control Authority shall provide written documentation to explain its rational basis for the greater restriction, or protection against pass through, interference, or violation of the NPDES permit, to the Significant Industrial User;

- e) Requirement for pollution prevention plan initiatives or Best Management Practice Plans; and
- f) Other requirements reasonably necessary to ensure compliance with these rules.

Section II-706. Permit Duration, Notification of Changed Conditions, Modification and Transfer

- a) Permit duration. Any permit issued by the Control Authority shall be issued for a specified time period, but in no case shall a permit have a term greater than five (5) years. The effective date and the expiration date shall be included in every permit issued by the Control Authority.
- b) Notification of Changed Conditions. It is the duty of each Significant Industrial User to promptly notify the Control Authority of (i) material or substantial changes to its facility or operation, (ii) substantial change in the volume of Wastewater discharged, or (iii) changes in the characteristics of its effluent, including the listed or characteristic Hazardous Wastes for which initial notification under 40 CFR 403.12(p) has been made. The Significant Industrial User shall notify the Control Authority by filing a completed permit application form at least thirty (30) calendar days prior to the change identifying the changes and including supporting documentation. The Control Authority will evaluate the permit application in accordance with sub-paragraph (d) below. The failure of the Significant Industrial User to so apply shall be considered a violation of these rules.
- c) Finding of Changed Conditions. Where the Control Authority finds or discovers (i) material or substantial changes to a Significant Industrial User's facility or operation, (ii) substantial change in the volume of Wastewater discharged, or (iii) changes in the characteristics of its effluent, including the listed or characteristic Hazardous Wastes for which initial notification under 40 CFR 403.12(p), it shall require the Significant Industrial User to provide a permit application and supporting documentation within 30 days. The Control Authority will evaluate the permit application in accordance with sub-paragraph (d) below. The failure of the Significant Industrial User to so apply shall be considered a violation of these rules.
- d) Permit modification. The terms and conditions of the permit may be subject to modification and amendment by the Control Authority during the term of the permit. The modification may be based upon information provided by the Significant Industrial User or discovered by the Control Authority, which includes:
 - 1) A permit application provided in accordance with Section II-706. Sub-paragraph b or c.
 - 2) Changes in the monitoring location or method of sampling.
 - 3) Typographical errors or omissions discovered in permits.
 - 4) Amendments or changes to the limitations or pretreatment standards and requirements identified in Section II-204.
 - 5) Material or substantial changes to a Significant Industrial User's facility or operation, or changes

in the characteristics of its effluent.

- 6) A Significant Industrial User's noncompliance with portions of an existing permit.
 - 7) A finding of interference or pass through attributable to the Significant Industrial User.
 - 8) A change of conditions within the POTW.
 - 9) Embodiment of the provisions of a legal settlement or of a court order.
 - 10) Change(s) in the Control Authority's NPDES permit.
 - 11) Any changes necessary to fulfill the Control Authority's role under federal or state law.
 - 12) Amendments to, or promulgation of, national categorical pretreatment standards or requirements including 40 CFR 403 and those delineated in Appendix A of these rules.
- e) Permit modification Procedure. The Control Authority shall inform the Significant Industrial User of any proposed change in its permit. The Control Authority will issue a draft permit using certified mail and provide the Significant Industrial User thirty (30) days to file a response to the draft modified permit. Thereafter, the Control Authority will issue a final permit and, unless appealed, the permit will become effective twenty (20) days after issuance.
- f) Permit custody and transfer. Wastewater discharge permits are issued to a specific person as defined herein for a specific discharge. A Wastewater discharge permit shall not be reassigned or transferred or sold to a different person, new owner, new Significant Industrial User, different premises, or a new or changed operation without notice to and written approval of the Control Authority and providing a copy of the existing permit to the new owner or operator. It shall be the permit holder's duty to notify the Control Authority of any such change at least thirty (30) days before the date of the change. Wastewater discharge permits, which do not receive the written approval of the Control Authority prior to the change, shall be null and void regardless of reassignment, or transfer, or sale. If it determines that an unreported change has occurred, the Control Authority may revoke a permit. If a change takes place, the Control Authority may require the application for a new or modified permit. Any succeeding person shall comply with the terms and conditions of any existing permit which the Control Authority allows to be retained.

Section II-707. Permit Re-application.

A Significant Industrial Users whose Wastewater discharge permit is expiring apply for reissuance of the permit by submitting a complete permit re-application form a minimum of ninety (90) days prior to the expiration date of its existing permit. The permit re-application form shall include all information specified in Section II-703, which includes, but is not limited to, updates and re-certification of the spill or Slug control plans, updates to the 40 CFR 403.12(p) Hazardous Waste notifications, and for a Centralized Waste Treatment Facility, the current equivalent treatment study or treatment statement in accordance with Section II-506. The evaluation and review of a permit re-application by the Control Authority will be *de novo*, and in accordance with Section II-705.

- a) Where a Significant Industrial Users has submitted a complete and timely re-application form, the

existing permit shall be automatically extended until a permit is issued as final by the Control Authority.

- b) Where a Significant Industrial Users has not submitted a complete or timely re-application form, the Control Authority may issue an administrative order authorizing the discharge for a period not to exceed six (6) months.
- c) Where a Significant Industrial Users fails to submit a permit re-application, or submits the re-application after the permit expiration date, the Wastewater discharge permit will be expired as of the date specified in the permit. The failure of the Significant Industrial Users to so apply shall be considered a violation of these rules.

Article VIII SIGNIFICANT INDUSTRIAL USER REQUESTS

Section II-801: Periodic Compliance Reporting Frequency

- a) Significant Industrial Users may request modification and an offset of the time period included in their periodic compliance report. Example, where a Significant Industrial User is required to submit data on the discharge for a six-month period of January through June, or July through December, the Significant Industrial User may request an offset period of December through May and June through November.
- b) The Control Authority may authorize the modifications requested by the Significant Industrial User as long as it does not violate any federal or state requirement, or court order. When authorized, the Wastewater discharge permit or permit addendum shall be issued by the Control Authority.

Section II-802. Electronic Reporting

The Control Authority may choose to receive electronic documents and notices described in these rules, upon satisfaction of the electronic reporting requirements of 40 CFR 3. The Control Authority will notify Users if electronic (digital) documents can be accepted in accordance with 40 CFR 3, and the specific requirements for submission of such documents. Users that send electronic (digital) documents must satisfy the specific requirements of the Control Authority.

Article IX. PUBLIC INFORMATION AND CONFIDENTIAL INFORMATION

Section II-901. Public information

- a) All information and data on any User obtained from a User or created by the Control Authority, from any written reports, questionnaires, permit applications, permits and monitoring programs, and from inspections, or any other sources shall be available to the public or other governmental agencies without restriction unless the User specifically requests and is able to demonstrate that the release of such information would divulge information, processes, or methods of production entitled to protection as confidential information under State law.
- b) Any person may request the above information in accordance with the written procedures and guidelines of the Control Authority found at www.glwater.org.

Section II-902. Confidential information

- a) A User claiming a submission contains confidential information must assert such claim at the time of submission of the information or data; and demonstrate that such information should be held confidential or disclosure would pose a risk to trade secrets or secret processes and mark the information and documentation accordingly. The Control Authority's Office of General Counsel shall determine whether the information requested is to be treated as confidential information and provide their decision in writing.
- b) Where the User has demonstrated that confidential information is present in the submission, those portions of the report shall not be made available for inspection by the public, but shall be made available immediately upon request to governmental agencies for uses related to the NPDES program or pretreatment program, and in enforcement proceedings involving the person furnishing the report.
- c) Wastewater constituents and characteristics and other effluent data, as defined at 40 CFR 2.302, shall not be recognized as confidential information and shall be available to the public without restriction.
- d) A User may appeal the decision of the Control Authority's Office of General Counsel in accordance with the Michigan Freedom of Information Act.

Article X ENFORCEMENT

Section II-1001. Enforcement Response Guide

The Control Authority has developed an enforcement response guide to include a range of enforcement responses available to the Control Authority to effectively enforce the terms and conditions of its rules. The Control Authority shall implement the industrial pretreatment program and enforce these rules in accordance with the enforcement response guide approved by the EGLE.

The Control Authority, using information provided by a User or independently collected by the Control Authority's representative, shall identify any User violating these rules and initiate the remedies enumerated in the enforcement response guide to abate the violation and/or restore the User to a compliant condition through administrative and judicial enforcement remedies authorized by these rules.

Section II-1002. Test of Good Faith Effort

The Control Authority may consider the good faith of a User as a factor in determining the enforcement response(s) to invoke to an incident of noncompliance. The good faith of a User may be established by considering the cooperation and efforts made by a User in achieving and maintaining compliance with these rules; and in the promptness with which a User responds to resolution of an incident of noncompliance. If the User appears to be acting in good faith to comply with the rules, the Control Authority may choose an enforcement action on a more conciliatory level than if the User does not appear to be acting in good faith to comply with the rules.

Section II-1003. Violations

- a) Violations shall include any act or conduct by a User that includes:
 - 1) The failure of a User to provide a permit application, Baseline Monitoring Report or other

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application form for any discharge of Wastewater to the Sewerage System prior to the commencement of discharge, whether from a new or existing source.

- 2) The failure of a User to completely and/or accurately report the Wastewater constituents and/or characteristics of the User's discharge.
- 3) The failure to report significant changes in the User's operations or Wastewater constituents and/or characteristics within the time frames provided in Section II-706 (b) of these rules.
- 4) The failure or refusal to grant reasonable access to the User's premises, waste discharge, or sample location for the purpose of inspection or monitoring.
- 5) Restricting, locking out or preventing, directly or indirectly, access to any monitoring facilities constructed on public or private property. The locking or securing of the monitoring facility shall not constitute a violation pursuant to this subsection, provided, that upon request, reasonable access to the facility is promptly provided to the Control Authority representatives.
- 6) Restricting, interfering, tampering with, or rendering inaccurate any of the Control Authority's monitoring devices including, but not limited to, samplers.
- 7) Failing to obtain a Wastewater discharge permit prior to discharging Wastewater to the POTW.
- 8) Failing to comply with any condition or requirement of the User's Wastewater discharge permit, or other control mechanism.
- 9) Failing to provide notification of any self-monitoring violation, accidental release, or other notice required under these rules.
- 10) Failing to comply with any limitation, prohibition, or requirement of these rules, or order issued hereunder. Users acting in full compliance with wastewater discharge permits issued prior to the effective date of these rules shall be deemed to be in compliance with the requirements of these rules, and such permits shall remain in effect and be enforceable under these rules until a superseding permit is effective.
- 11) Users shall comply with applicable National Categorical Pretreatment Standards on the date specified in the Federal Regulations regardless of compliance schedules.

Section II-1004. Administrative Enforcement Actions

The Control Authority shall initiate the appropriate administrative enforcement action, except in the case of an emergency or a flagrant violation, in order to compel the User to eliminate or to remedy such violation as soon as possible. These administrative enforcement actions include:

- a) Notice of Violation - The Control Authority shall take care to enforce these rules and use reasonable efforts of on-site inspections, records review and independent authority monitoring, to identify violations of the rules. Except in the case of an actual or threatened discharge as specified in subparagraph (g) of this section, whenever the Control Authority has reason to believe that any User has violated or is violating these rules, whether as an individual event or pattern, the Control Authority shall serve a written notice upon such User, stating the nature of the violation including its date, time

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and place, and the action and/or response required from the User.

- b) Issuance of Citation of Violation – The Control Authority is authorized to enforce these rules and issue a citation ticket to any person or User who is reasonably believed to have violated these rules. The following fines are authorized for inclusion with the citation:

Violation Type	Criteria	Event	Within a Calendar Year (per violation)	
			First Violation	Succeeding Violation
Reporting Violation	>45 days after specified due date	Any occurrence	\$ 250.00	\$ 500.00
Notification Violation	>24 hrs. beyond specified time	Any occurrence	\$ 100.00	\$ 250.00
Effluent Violation	Pollutant parameter exceeds applicable TRC (See Article XII)	Daily Maximum	\$ 100.00	\$ 250.00
Effluent Violation	Pollutant parameter exceeds applicable TRC (See Article XII)	Monthly Average	\$ 250.00	\$ 500.00
Effluent Violation	Pollutant parameter exceeds applicable chronic criteria (See Article XII)	Daily Maximum	\$ 250.00	\$ 500.00
Effluent Violation	Pollutant parameter exceeds applicable chronic criteria (See Article XII)	Monthly Average	\$ 500.00	\$ 1,000.00
Effluent Violation	Stipulated penalty as part of administrative enforcement	Daily Maximum	\$ 250.00	\$ 500.00
Effluent Violation	Stipulated penalty as part of administrative enforcement	Monthly Average	\$ 500.00	\$ 1,000.00

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The Citation shall be in writing and shall specify the date, time and violation alleged, signed by the Control Authority and be served on the Authorized Representative in person or by certified mail. The User may appeal any written citation under the reconsideration and appeal procedures of these rules.

- c) Conferences - The Control Authority may order any person, who violates these rules, to attend a conference wherein the Control Authority may endeavor to establish a program wherein the User agrees to eliminate or remedy the violation pursuant to an enforceable compliance schedule. Any notice of violation ordering attendance to a conference, shall be served at least ten (10) days before the scheduled conference and shall set forth the date, time, and place thereof. The conference shall be conducted by the Control Authority or its designated representative. The User may present a plan and schedule for achieving compliance with these rules. Nothing contained herein shall require the Control Authority to accept or agree to any proposed plan or schedule, or to prevent the Control Authority from proceeding with a show cause hearing as set forth in subsection (4) of this section. If the attendees agree upon a compliance schedule, the User and the Control Authority may enter, by consent, into a compliance agreement or an administrative order setting forth the terms of such agreement. A User must exhibit good faith and expeditious efforts to comply with these rules and any procedures, requirements, and agreements hereunder.
- d) Compliance schedules - The User and the Control Authority may agree upon a schedule which sets forth the terms and conditions, and time periods or schedules for completion of actions to remedy or to eliminate the causes of violation. These schedules may be developed as part of a conference compliance agreement, or administrative consent order. Schedules developed under this subsection shall adhere to the following conditions:
 - 1) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of upgraded or additional pretreatment facilities, or to the implementation of additional operation and maintenance procedures required for the User to meet the applicable pretreatment requirements and standards including, but not limited to, hiring an engineer, completing preliminary plans, completing final plans, executing contracts for major components, commencing construction, and completing construction;
 - 2) No single increment referred to in subsection (1) of this section shall exceed nine (9) months.
 - 3) Not later than fourteen (14) days following each date in the schedule and the final date for compliance, the User shall submit a progress report to the Control Authority including, at a minimum, whether it has complied with the increment of progress to be met on such date and, if not, the date which it expects to comply with this increment of progress, the reason(s) for delay, and the steps being taken by the User to return to the established schedule; and
 - 4) Any deviation from the compliance schedule may result in the User being found in violation of these rules or being recommended for an escalated enforcement action.

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- e) Administrative orders - The Control Authority may order any User, who violates or continues to violate these rules or duly issued permit, to install and to properly operate devices, treatment facilities, or other related appurtenances. In addition, orders may contain such other requirements as might reasonably be necessary and appropriate to address the violation including the installation of pretreatment technology, additional self-monitoring and management practices, implementation of a waste minimization assessment to identify and implement feasible source reduction, and recycling practices to reduce the generation or release of pollutants at the facility. An order may be either an administrative consent order, which is the result of an agreement, or a unilateral administrative order.
- f) Show cause hearing - Where a conference, compliance agreement or administrative order has not been effective in remedying the violation(s), or are deemed an inadequate response to an actual or threatened discharge to the POTW, the Control Authority may order any User who violates these rules or allows such violation to occur, to show cause why a proposed enforcement action should not be taken.

A notice shall be served upon the User specifying the time and place of a hearing regarding the violation, and the reason(s) why the show cause action and proposed enforcement action is being taken. The notice of the hearing shall be served personally, or by, registered or certified mail with return receipt requested, at least ten (10) days before the hearing. Service shall be made upon the Authorized Representative, or to its agent.

 - 1) Hearing proceeding. The hearing shall be conducted by the Control Authority's Chief Compliance Officer or his/her designee, who shall serve as hearing officer and conduct the show cause hearing and take the evidence, and may:
 - i) Issue notices of hearing requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in such hearing.
 - ii) Prepare a report of the evidence and hearing, including transcripts and other evidence.
 - iii) Transcript. At any show cause hearing held pursuant to these rules, testimony shall be recorded by a court reporter.
 - 2) Actions. After a show cause hearing has been conducted, the hearings officer shall issue an order directing any of the following actions:
 - i) A finding that the User has demonstrated by a preponderance of the evidence that the violation(s) contained within the show cause notice did not occur.
 - ii) A finding that the User has failed to demonstrate by a preponderance of the evidence that the violation(s) contained within the show cause notice did not occur, and that the following additional actions are required.
 - iii) Immediate compliance with the User's Wastewater discharge permit and/or control mechanism; or with any applicable limitation, condition, restriction or requirement of these rules, or applicable local, state or federal law or regulation.
 - iv) Pretreatment of wastes and Wastewater by installation of adequate treatment equipment,

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monitoring facilities, or proper operation and maintenance of existing treatment equipment be accomplished within a specified time period.

- v) Submission of periodic reports on effluent quality and quantity determined by self-monitoring analysis throughout the final period set by a compliance date.
 - vi) Control of discharge quantities or volumes.
 - vii) Payment of costs for reasonable and necessary inspection, monitoring, and administration of the User's activities by the Control Authority during compliance efforts; and/or
 - viii) Any such other orders as are appropriate including, but not limited to, immediate termination of sewer or wastewater treatment services, revocation of a wastewater discharge permit, or orders directing that following a specified time period sewer or Wastewater treatment service will be discontinued unless adequate treatment facilities, devices, or operation and maintenance practices have been employed;
 - ix) The User may appeal the decision of the hearing officer in accordance with Chapter VIII.
- g) Emergency suspensions and orders - The Control Authority may order suspension of the sewer or Wastewater treatment service and/or a wastewater discharge permit where, in its opinion, such suspension is necessary to stop any actual or threatened discharge which presents or may present an imminent or significant hazard to the health or welfare of persons or to the environment, interferes or may interfere with the POTW, or causes or may cause the Control Authority to violate any condition of its NPDES permit. Any person notified of a suspension of the sewer or wastewater treatment service and/or the wastewater discharge permit shall immediately stop or eliminate the contribution.
- 1) In the event the Control Authority provides verbal notification under this section, written confirmation providing a detailed written statement from the Control Authority and the basis of its findings in support of its order to suspend contributions by the User, within twenty-four (24) hours of such action, and include the specific recourse available to the User. In any event, the written confirmation order shall provide the User with an opportunity for a hearing before the Control Authority, or its designated representative, within ten (10) days of such action. The User shall submit a detailed written statement at the hearing describing the causes of the harmful contribution and the measures taken to prevent any future occurrence, or, if the hearing has been waived, a report describing the causes of the harmful contribution and the measures taken to prevent any future occurrence shall be provided to the Control Authority within fifteen (15) days of the written confirmation order. Upon proof of elimination of the noncomplying discharge, the Control Authority shall reinstate the Wastewater discharge permit and/or the sewer or Wastewater treatment service.
 - 2) In the event of a failure of the person to comply voluntarily with any suspension or revocation order, the Control Authority shall take such judicial enforcement actions as deemed necessary, including immediate severance of the sewer connection or services, to prevent or minimize

damage to the POTW system or danger to any individual or the environment.

- 3) Where the Control Authority has issued a show cause order, or hearing decision in paragraph (g)(1) above, calling for the suspension of the sewer or Wastewater treatment service and/or a wastewater discharge permit, and where the Control Authority has not reinstated the wastewater discharge permit and/or the sewer or wastewater treatment service, the User may exercise the appeal provision in Chapter VIII. The Show Cause order and the hearing transcript and report shall substitute for the Reconsideration statement requirement of Chapter VIII of these rules.

Section II-1005. Judicial Enforcement Actions

Where administrative enforcement actions have been unable to eliminate or to remedy the violation(s) or where in the case of emergency or flagrant violation, the Control Authority determines that the enforcement action should be escalated to compel the User to eliminate or to remedy such violation as soon as possible, the following judicial enforcement actions are authorized:

- a) Civil action: Whenever the Control Authority has reasonable grounds to believe that a User is violating, or has violated, a provision of its wastewater discharge permit, a pretreatment standard or requirement or any requirement of these rules, including the failure to pay any fee, fine, charge or surcharge imposed hereby, the Control Authority may commence a civil action to compel compliance in a court of competent jurisdiction to enjoin the User from discharging, and/or to obtain appropriate legal and/or equitable relief to remedy the violations and impose the fees, fines, charges and surcharges requested. The commencement of a suit neither constitutes an exclusive election of remedies nor prohibits the Control Authority from commencing action in federal court for discharges believed to be in violation of these rules, state and federal requirements contained in the Clean Water Act, the NPDES permit, or other applicable laws or requirements. In addition, the Control Authority may recover the reasonable attorney fees, court costs, court reporters' fees, and other unusual expenses related to enforcement activities or litigation against the person found to have violated these rules, or the orders, rules, regulations and permits issued hereunder.
- b) Criminal action:
 - 1) Any User, who knowingly makes any false statement, representation of certification, is guilty of a misdemeanor, punishable by imprisonment for not more than ninety (90) days, or a fine of not more than \$500.00, or both. Each violation constitutes a separate and distinct offense.
 - 2) Any User, who knowingly tampers with or alters a monitoring device or process, causing inaccurate readings or results, is guilty of a misdemeanor, punishable by imprisonment for not more than ninety (90) days, or a fine of not more than \$500.00, or both. Each violation constitutes a separate and distinct offense.
 - 3) For all other violations of a rule or regulation adopted and promulgated herein, a User shall be punished by a civil fine not to exceed one thousand dollars (\$1,000.00) for each violation

per day.

- 4) The Control Authority is hereby authorized, through its general counsel, to seek prosecution of criminal charges against any person violating any provision of these rules.
- c) Any fines, costs, and penalties which are imposed by any court of competent jurisdiction shall be payable to the Control Authority.

Section II-1006. Supplemental Enforcement Actions

- a) Pollution Prevention Plans and Best Management Practice Plans. The Control Authority may require a User to develop and implement pollution prevention plans or Best Management Practice Plans, designed to eliminate or reduce pollutant contributions beyond the levels required by these rules. Where required, the plans shall be incorporated into a modified or revised Wastewater discharge permit; and include a schedule for periodically reporting implementation progress and results for the plan(s).
- b) Local Pollutant Discharge Limitations for Total PCB. In the event where one (1) or more of the measurements taken for Total PCB during a six (6) month period exceeds by any magnitude the method detection level of 0.2 ugms/l, the Control Authority may require a User to develop and implement Pollution prevention plan initiatives or a BMP, as part of its response to the exceedance. Upon acceptance of the Pollution prevention plan initiatives or BMP, the Control Authority will recognize continued performance under the Pollution prevention plan initiative or BMP as continued compliance. Upon approval of the Control Authority, these Pollution prevention plan initiatives or BMPs, shall be made an enforceable part of the Wastewater discharge permit.
- c) Local Pollutant Discharge Limitations for Mercury (Hg). In the event where one (1) or more of the measurements taken for Hg during a six (6) month period exceeds by any magnitude the limitation of 10 ugms/l, the Control Authority may require a User to develop and implement Pollution prevention initiatives or a BMP, as part of its response to the exceedance. Upon acceptance of the Pollution prevention plan initiatives or BMP, the Control Authority will recognize continued performance under the Pollution prevention plan initiatives or BMP as continued compliance. Upon approval of the Control Authority, these Pollution prevention plan initiatives or BMPs, shall be made an enforceable part of the Wastewater discharge permit.
- d) PFAS Compounds:
 - 1) General Requirement: Any User who manufactured PFAS Compounds; previously used, currently uses, or plans to use materials containing PFAS Compounds; and who has a discharge of wastes and Wastewaters to the POTW, shall be required to develop, submit and implement plans for the reduction and elimination of the PFAS Compounds.
 - i) Plans shall be submitted to the Control Authority and shall include, but not limited to, monitoring, treatment, product substitutions, BMP or other management protocols, that the User will implement.

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- a) For existing Users, these plans shall be submitted to the Control Authority within ninety (90) days of the effective date of these rules.
- b) For Users initiating discharge after the effective date of these rules, these plans shall be submitted to the Control Authority within ninety (90) days of the commencement of discharge to the POTW.
- c) Any monitoring program shall be conducted in accordance with sample collection methods defined by the EGLE or USEPA and analyzed in accordance with 40 CFR 136 or other approved methods recognized by the State of Michigan; or where USEPA or the State of Michigan has not established sample collection methods or approved analytical methods in 40 CFR 136, the methods shall be specified by GLWA.
- ii) The Control Authority may require any User to conduct discharge monitoring; or the development and implementation of additional source reduction, control and elimination actions for PFAS Compound through a Wastewater discharge permit or equivalent control mechanism.
- iii) This paragraph shall not apply to facilities classified as a Centralized Waste Treatment Facility or any active/inactive landfill.
- iv) This paragraph does not apply to domestic sources or activities involving commercial maintenance activities for carpet & upholstery cleaning.
- 2) Centralized Waste Treaters & Landfills: Any Centralized Waste Treatment Facility or an active/inactive landfill who either (i) accepts wastes and Wastewater containing PFAS Compounds for treatment and/or disposal, or (ii) who identifies PFAS Compounds in any wastes or Wastewaters received in accordance with paragraph II-1006-d)(2)(i), or (iii) who becomes or is made aware of PFAS Compounds present in the wastes and Wastewaters from any source, and discharges to the POTW, or (iv) who is notified by the Control Authority that its discharge contains PFAS Compounds; shall, develop, submit and implement a comprehensive “PFAS Compound Program” describing methods and procedures to identify, control, reduce, dispose of, eliminate and/or treat wastes and Wastewaters containing PFAS Compounds. At a minimum, the PFAS Compound Program shall include the following information, as appropriate:
 - i) The PFAS Compound Program must describe the method(s) and procedures used for screening and monitoring program for PFAS Compounds that may be present in any wastes or Wastewaters received for treatment or disposal.
 - a) Any monitoring program shall be conducted in accordance with sample collection methods defined by the EGLE or USEPA and analyzed in accordance with 40 CFR 136 or other approved methods recognized by the State of Michigan; or where USEPA or the State of Michigan has not established sample collection methods or approved

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analytical methods in 40 CFR 136, the methods shall be specified by GLWA.

- b) The screening and monitoring program shall include a protocol for notifying the Control Authority when wastes and Wastewaters containing PFAS Compounds are identified.
 - c) All results and information from the screening and monitoring program shall be available to the Control Authority and copies of such information shall be made available upon written request.
- ii) The PFAS Compound Program must describe the waste and Wastewater treatment or disposal protocols and practices used, and any disposal and/or treatment technologies used to remove and/or treat wastes and Wastewaters containing PFAS Compounds.
- a) This information shall be supported by technical documentation defining the effectiveness of such treatment protocols and/or practices used, including the removal efficiency based on mass loadings (lbs.) of PFAS Compounds before and after treatment, and account for dilution effects resulting from the combination of other waste streams, if applicable. Such demonstration may be made through bench-scale testing or site-specific data. Where site-specific data is used, a minimum of one (1) week of data must be collected.
 - b) The facility shall assess or re-assess, the removal efficiency of its operations for PFAS Compounds at least annually.
- iii) The PFAS Compound Program must describe a self-monitoring program acceptable to the Control Authority. This self-monitoring program shall include the discharge to the POTW and may include samples within the treatment process. The self-monitoring program shall identify the sampling protocols and methods of analysis used, and the authority for such methods or analysis (if other than the State of Michigan or USEPA).
- iv) The PFAS Compound Program must describe a Recordkeeping Program that at a minimum, documents the volume(s) of PFAS Compounds wastes and Wastewaters received; the mass of PFAS Compounds in pounds received by the facility and any mass (in pounds) removed by treatment, discharged to the POTW and disposed of through any other off-site source. Such information shall be summarized for each calendar month and submitted to the Control Authority by the 10th of the succeeding month.
- v) The PFAS Compound Program may include BMP or other management protocols that will be used to control, reduce or eliminate PFAS Compounds from their discharge. Where a User develops BMP or other management protocols, it may submit such plans to the Control Authority for acceptance and incorporation into the facility's Wastewater discharge permit.
- vi) The requirements of subparagraphs (i) – (v) shall be submitted as a Material and Substantial

change and request for Permit Modification within ninety (90) days of the effective date of these rules or ninety (90) days from the commencement of discharge.

- vii) The Control Authority may require any Centralized Waste Treatment Facility or an active/inactive landfill to conduct discharge monitoring; or to develop a PFAS Compound Program; or the development and implementation of additional source reduction, control and elimination actions for PFAS Compound through a Wastewater discharge permit or equivalent control mechanism.

Following acceptance of the facility's PFAS Compound Program, the Control Authority shall review and incorporate its PFAS Compound Program into a Wastewater discharge permit or equivalent control mechanism, as an enforceable part of the permit.

- 3) Perfluorochemical Fire-fighting Foams and Agents – Any user who stores or uses Firefighting foams using Perfluorochemicals with a carbon chain of 6 or more, shall develop and implement the following plans:

- i) Specific reference and controls for contained in a spill/Slug control plan and submit this to the Control Authority. At a minimum, such plans shall identify areas where the Fire-fighting Foams and Agents would be contained and have no potential to reach a drain or sewer; and areas that are not contained and have a potential to reach a drain or sewer and shall be reviewed and updated as necessary but shall not exceed three (3) years.
- ii) Training Operations and Exercises – Plans for the proper use and storage and use of firefighting foams during the exercise and shall employ best environmental and public health practices for the use of Perfluorochemical Fire-fighting Foams and Agents in training including but not limited to containment, and proper disposal.
- iii) Fire or Emergency Events – (Potential to drain to sewer) – For those areas where there is a potential for the Fire-fighting Foam and Agents to reach a drain or sewer, the User shall provide notice to the POTW within forty-eight (48) hours of a Fire or other emergency event where Perfluorochemical Fire-fighting Foams and Agents were used including:
 - a) Purpose for use of foam or agent.
 - b) Physical address where foam or agent was used.
 - c) Actual or estimated quantities of foam or agent concentrate used, and quantity of water used to produce foam
 - d) Name(s) of water bodies potentially affected by foam and agent or other firewater to storm or combined sewer
 - e) Practices employed for cleanup and disposal of materials contaminated by the foam or firewater.

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- iv) Fire or Emergency Events (No potential to drain to sewer) – For those areas where there is no potential for the Fire-fighting Foam and Agents to reach a drain or sewer, the User shall collect, clean-up and dispose of the Fire-fighting Foam and Agents and any fire-fighting water, in accordance with their BMP. A report shall be provided to the POTW addressing the completion of the clean-up and disposal of the materials within 5-days of the event and, as applicable, include a schedule for completion of the clean-up and disposal.
- v) A BMP or other management program shall be established and implemented for the collection and disposal of Perfluorochemical Fire-fighting Foams and Agents with a carbon chain of six or greater. The plan shall include any efforts to identify alternative products.
- vi) Any monitoring program shall be conducted in accordance with sample collection methods defined by the EGLE or USEPA and analyzed in accordance with 40 CFR 136 or other approved methods recognized by the State of Michigan; or where USEPA or the State of Michigan has not established sample collection methods or approved analytical methods in 40 CFR 136, the methods shall be specified by GLWA.

Copies of these plans shall be submitted to the Control Authority within ninety (90) days of the effective date of these rules.

- 4) The GLWA may assign any User who has previously used or received, or will use or receive PFAS Compounds, to a User Class for reimbursement of costs incurred by GLWA to monitor and enforce this requirement, and for which the Board determines costs should be assigned.
- 5) The GLWA reserves the right to take enforcement action for any violations as described in Section II-1003, and as described in Sections II-1004 and II-1005.
- f) The Control Authority may require any User to implement Pollution prevention plan initiatives, or BMP, as part of an enforcement response, or as necessary to comply with its NPDES permit.
- g) A User may seek to terminate a BMP when it has demonstrated compliance for a twelve (12) month period supported by a minimum of four (4) analytical test results and a report describing the management and operating procedures used to support the compliance status. Upon acceptance of this demonstration of compliance, the User shall be relieved of this implementation requirement.

Section II-1007. Remedies Nonexclusive

The remedies provided for in these rules are not exclusive. Enforcement of pretreatment violations will generally be in accordance with the Control Authority's enforcement response plan. However, the Control Authority may take other action against any User when the circumstances warrant. Further, the Control Authority is empowered to take more than one enforcement action against any noncompliant User.

Article XI AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS

Section II-1101. Upsets.

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An upset shall constitute an affirmative defense to an action brought for noncompliance with National Categorical Pretreatment Standards where the requirements of subsection (a) of this section are met.

a) An Industrial User who wishes to establish an upset as an applicable affirmative defense shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence, that:

- 1) An upset occurred and the Industrial User can identify the cause(s) of the upset.
 - i. At the time, the facility was being operated in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures.
 - ii. The Industrial User has submitted the following information to the Control Authority, orally or in writing, within twenty-four (24) hours of becoming aware of the upset and, where this information is provided orally, a written submission must then be provided within five (5) days:
 - a) A description of the discharge and cause of noncompliance.
 - b) The period of noncompliance including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
 - c) Steps being taken and/or planned to reduce, eliminate and prevent recurrence of the noncompliance.
- 2) In any enforcement proceeding, the Industrial User seeking to establish the occurrence of an upset shall have the burden of proof.
- 3) The Industrial User shall control production of all discharges to the extent necessary to maintain compliance with these rules upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost or fails.

Section II-1102. Bypass.

A bypass includes any intentional diversion of a wastestream from any portion of an Industrial User's treatment facility. A bypass shall constitute an affirmative defense to an action brought for noncompliance with national categorical pretreatment standards and/or local pollutant discharge limitations where the requirements of subsection (a) of this section are met.

a) The affirmative defense of bypass may be claimed where:

- 1) The bypass is for essential maintenance to ensure efficient operation of the treatment system and does not cause a violation of pretreatment standards or requirements.
- 2) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage.
- 3) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated waste, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise

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- of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and
- 4) The Industrial User properly notified the Control Authority as described in subsection (2) of this section.
- b) Notice of Bypass Event. An Industrial User shall have properly notified the Control Authority as follows:
- 1) Anticipated bypass. Any Industrial User anticipating a bypass shall submit notice to the Control Authority at least ten (10) days in advance of the anticipated date.
 - 2) Unanticipated bypass. The Industrial User shall submit oral notice of an unanticipated bypass that exceeds applicable pretreatment standards within twenty-four (24) hours from the time the Industrial User becomes, or should have become, aware of the bypass.
 - 3) For any bypass event, a written submission shall be provided to the Control Authority within five (5) days of the time the Industrial User becomes, or in the case of an unanticipated bypass, should have become aware of the bypass. The written submission shall contain a description of the bypass including exact dates and times, and if the bypass has not been corrected or the anticipated time it is expected to continue; and the steps taken or planned to reduce, eliminate and prevent reoccurrence of the bypass.
- c) Bypass approval. Where it meets all conditions in subsections (1) and (2) of this section, the Control Authority shall recognize the affirmative defense. However, the Industrial User may still be held liable for costs and fees incurred by the Control Authority as a result of the bypass, including treatment costs, charges and surcharges.

Article XII PUBLICATION OF INDUSTRIAL USERS IN SIGNIFICANT NONCOMPLIANCE

Section II-1201. Public notification of significant noncompliance.

The Control Authority shall publish in the largest daily newspaper published in the jurisdictional limits of the Control Authority, a list of all Users which, at any time during the previous twelve (12) months, were in significant noncompliance with applicable pretreatment standards and requirements.

Section II-1202. Significant Noncompliance Criteria.

A Significant Industrial User (or any Industrial User which violates paragraphs (c), (d), or (h) of this section) is in significant noncompliance if its violation meets one or more of the following criteria:

- a) Chronic violations of wastewater Discharge limits, defined here as those in which 66 percent or more of all of the measurements taken for the same pollutant parameter during a 6-month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including instantaneous limits, as defined by 40 CFR 403.3(l);

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- b) Technical Review Criteria (TRC) violations, defined here as those in which 33 percent or more of all of the measurements taken for the same pollutant parameter during a 6-month period equal or exceed the product of the numeric Pretreatment Standard or Requirement including instantaneous limits, as defined by 40 CFR 403.3(l) multiplied by the applicable TRC (TRC=1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH);
- c) Any other violation of a Pretreatment Standard or Requirement as defined by 40 CFR 403.3(l) (daily maximum, long-term average, instantaneous limit, or narrative Standard) that the POTW determines has caused, alone or in combination with other Discharges, Interference or Pass Through (including endangering the health of POTW personnel or the general public);
- d) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority under paragraph (f)(1)(vi)(B) of this section to halt or prevent such a discharge.
- e) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance.
- f) Failure to provide, within 30 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules.
- g) Failure to accurately report noncompliance.
- h) Any other violation or group of violations, which may include a violation of Best Management Practices, which the POTW determines will adversely affect the operation or implementation of the local Pretreatment program.

Section II-1203. Publication Process.

Any User who is identified for publication as being in Significant Noncompliance shall be notified in writing at least thirty (30) days before the proposed publication; provided with a copy of the proposed notice to be published; the proposed time frame for the publication; and allowed an opportunity to comment. The Control Authority shall incorporate any comments with the proposed publication, or incorporate any comments with a revised publication, but may exercise its discretion to summarize any comments where space or word count is deemed excessive. In addition, the Control Authority may place this information on its web page at www.glwater.org.

Article XIII FEES AND CHARGES

Fees and charges may be established by the Board to meet the costs of the operation, maintenance, improvement or replacement of the system and regulatory programs, or as provided by law or by Board action. The specific fees and charges are discussed more fully in Chapter V of these rules.

Article XIV APPEAL PROCEDURES

The decisions and actions taken by the Industrial Waste Control Group and the Control Authority affecting the administration, implementation, and enforcement of the industrial pretreatment program requirements are subject to review through a two-step appeal process. Although the majority of disputes are resolved through open communication, there may be a point where a User seeks to formalize their objection(s) and seek administrative review. The appeal procedures recognized under these rules are described in Chapter VIII.

Article XV STATUTES, LAWS AND REGULATIONS

Section II-1501. Unless otherwise provided, any reference in these rules to a code, standard, rule, regulation, or law enacted, adopted, established, or promulgated by any government or private organization, or by any element or organization of government other than the Control Authority shall be construed to apply to such code, standard, rule, regulation, or law in effect or as amended or promulgated, from the date of enactment of these rules.

Section II-1502. The National Categorical Pretreatment Standards defined in 40 CFR Chapter I, Subchapter N, Parts 405-471, shall be and are incorporated by reference herein and made a part hereof.

Section II-1503. The Board may amend these rules or adopt additional rules necessary and proper for carrying out the conditions and intent of these rules.

Section II-1504. Nothing in these rules shall be deemed to limit the Control Authority from developing explanatory policies, guidance, or opinions to carry out the terms of the industrial pretreatment program which is not in conflict or otherwise prohibited by these rules.

Appendix A – National Categorical Pretreatment Standards (NCPS) Categories

NCPS Category	CFR Reference	NCPS Category	CFR Reference
Aluminum Forming	40 CFR Part 467	Meat Products	40 CFR Part 432
Asbestos Manufacturing	40 CFR Part 427	Metal Finishing	40 CFR Part 433
Battery Manufacturing	40 CFR Part 461	Metal Molding and Casting	40 CFR Part 464
Builder's Paper and Board Mills	40 CFR Part 431	Metal Products and Machinery	40 CFR Part 438
Canned and Preserved Fruits and Vegetables	40 CFR Part 407	Mineral Mining and Processing	40 CFR Part 436
Canned and Preserved Seafood Processing	40 CFR Part 408	Nonferrous Metals Forming	40 CFR Part 471
Carbon Black Manufacturing	40 CFR Part 458	Nonferrous Metals Manufacturing I	40 CFR Part 421
Cement Manufacturing	40 CFR Part 411	Nonferrous Metals Manufacturing II	40 CFR Part 421
Centralized Waste Treatment	40 CFR Part 437	Ore Mining and Dressing	40 CFR Part 440
Coal Mining	40 CFR Part 434	Organic Chemicals, Plastics, and Synthetic Fibers	40 CFR Part 414
Coil Coating	40 CFR Part 465	Paint Formulating	40 CFR Part 446
Copper Forming	40 CFR Part 468	Paving and Roofing Materials	40 CFR Part 443
Dairy Products Processing	40 CFR Part 405	Pesticide Chemicals	40 CFR Part 455
Dental Office (Mercury Amalgam)	40 CFR Part 441	Petroleum Refining	40 CFR Part 419
Electrical and Electronic Components I & II	40 CFR Part 469	Pharmaceutical	40 CFR Part 439
Electroplating	40 CFR Part 413	Phosphate Manufacturing	40 CFR Part 422
Explosives Manufacturing	40 CFR Part 457	Photographic	40 CFR Part 459
Feed Lots	40 CFR Part 412	Plastics Molding and Forming	40 CFR Part 463
Ferroalloy Manufacturing	40 CFR Part 424	Porcelain Enameling	40 CFR Part 466
Fertilizer Manufacturing	40 CFR Part 418	Pulp, Paper, and Paperboard	40 CFR Part 430 and 431

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Glass Manufacturing	40 CFR Part 426	Rubber Manufacturing	40 CFR Part 428
Grain Mills	40 CFR Part 406	Soap and Detergent Manufacturing	40 CFR Part 417
Gum and Wood Chemicals Manufacturing	40 CFR Part 454	Steam Electric	40 CFR Part 423
Hospital	40 CFR Part 460	Sugar Processing	40 CFR Part 409
Ink Formulating	40 CFR Part 447	Textile Mills	40 CFR Part 410
Inorganic Chemicals Manufacture (I & II)	40 CFR Part 415	Timber products	40 CFR Part 429
Iron and Steel	40 CFR Part 420	Transportation Equipment Cleaning	40 CFR Part 442
Landfills	40 CFR Part 445	Waste Combusters	40 CFR Part 444
Leather Tanning & finishing	40 CFR Part 425		

CHAPTER III: SURCHARGE PROGRAM FOR HIGH-STRENGTH WASTEWATER DISCHARGES

The Control Authority's POTW receives Wastewater from residential, commercial and industrial sources for treatment and discharge under its NPDES Permit MI0022802. The sewer charge rate charged to Member Communities is based upon the Domestic Strength of sewage. A Surcharge program for High Strength Wastewater discharges has been established to capture the additional treatment and operations costs incurred for Wastewater conveying additional pollutants to the Control Authority's POTW for specific Users.

The purpose of these rules are to establish an orderly and fair system whereby the operations, maintenance, and replacement costs incurred by the Control Authority in treating and disposing of the sewage, Industrial Wastes, and other wastes generated by each User is charged to that User for its use of the Control Authority's POTW, as required by the Federal Water Pollution Control Act Amendments of 1972 and the Clean Water Act of 1977 (33 U.S.C. 1251-1387) and the rules of the USEPA, promulgated pursuant thereto. These rules are promulgated pursuant to the statutory authority contained in Act No. 233, Public Acts of Michigan, 1955, as amended ("Act 233").

Article I Domestic Strength of Sewage

The Control Authority has established the following Domestic Strength levels for wastewater discharged to the POTW.

Domestic Strength Levels	
Biochemical Oxygen Demand (BOD)	275 mg/l
Fats, Oils & Grease	100 mg/l
Phosphorus (P)	12 mg/l
Total Suspended Solids (TSS)	350 mg/l

Article II: High Strength Wastewater Sources

Section III-201. Applicability: Domestic Sources

Domestic Sources shall not be subject to a surcharge for High Strength Wastewater where a property is used for the exclusive purpose of a residential dwelling, including but not limited to single or multi-family units or apartments.

Section III-202. Applicability: Users

Users and any source who does not qualify as a Domestic Source under section III-201 of these rules, are subject to the Surcharge program for High Strength Wastewater sources, as follows:

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- a) Users, who as of the date of adoption of these rules have been previously assigned Pollutant Strength Levels (or “Surcharge basis”) by the Detroit Water and Sewerage Department, or the GLWA, shall retain these Pollutant Strength Levels, until changed under Article IV.
- b) All other Users will be assigned the Pollutant Strength basis equivalent to the Domestic Strength Levels of Article I, until changed under Article IV.

Article III. Surcharge and Surcharge Formula

Section III-301. Domestic Strength Levels.

As part of the annual rate-making process, a surcharge fee will be established for each pollutant included in the Article I Domestic Strength Level, which reflects the actual cost of treating the pollutant by the Control Authority. The Control Authority, through the Board, shall approve the Surcharge Rates as part of its annual Rate-making process.

Section III-302. Surcharge Fee Calculation.

The Surcharge fee will be calculated for each User in accordance with the following formula:

Total Surcharge Fee =

$$0.0624 \times \text{Volume} \times [a (\text{BOD}-275) + b (\text{TSS}-350) + c (P - 12) + d (\text{FOG}-100)]$$

Where the terms constituting the total surcharge fee shall have the following meaning:

TERM	Description	Units of Measurement
0.0624	Conversion factor	
Volume	Volume of Wastewater Discharged for a billing period	Thousand Cubic Feet (Mcf)
BOD	BOD Strength Level	Milligrams/liter (mg/l)
TSS	TSS Strength Level	Milligrams/liter (mg/l)
P	Phosphorus Strength Level	Milligrams/liter (mg/l)
FOG	The Fats, Oils & Grease Strength Level	Milligrams/liter (mg/l)
a, b, c, d	The Surcharge Rate	\$ per pound

Note: Where the difference between the pollutant strength level and domestic strength level is less than zero (0), the difference shall be deemed zero (0).

Article IV Determination of Pollutant Strength Levels of High Strength Wastewater

Following the adoption of these rules, the Pollutant Strength Levels of High Strength Wastewater may be established or revised in accordance with any of the following methods. The Control Authority or User

shall not seek to revise the Pollutant Strength Levels of High Strength Wastewater more frequently than every 12-months.

Section III-401. Pollutant Strength Levels from Historical Data Records

A User, or the Control Authority, may use historical data to establish or revise its Pollutant Strength Levels. The Pollutant Strength Level will be determined using a numerical average of the self-monitoring and Control Authority monitoring data for the surcharge pollutant parameters that have been collected in a 12-month period.

a) User Initiated use of Historical Data

- 1) Where the User performs this calculation, it shall complete a Waste Strength Determination Form and provide it to the Control Authority, with all supporting data and calculations.
- 2) No data shall be excluded from the above calculation unless the User or the Control Authority can demonstrate that the data is non-representative of the facility's discharge and actual operations.
- 3) Within fifteen (15) days of receiving the report, the Control Authority will review all data and the User's detailed report and accept or reject the report. If rejected, the Control Authority will provide the reasons for rejection in writing. If not rejected, the new values shall be applied to the next billing cycle following receipt of the User information.

b) Control Authority use of Historical Data

- 1) Where the Control Authority performs this calculation, it shall notify the User in writing of the calculated Pollutant Strength Levels. The User has thirty (30) days to file a waste strength determination form and propose a Sample Test (see Section III-402), and unless rejected, the results shall be used for billing purposes.

Section III-402. Pollutant Strength Levels from Sample Test Period Data

a) A User may, on its own initiative, or upon receipt of written notice under section II-401(2) above, file a waste strength determination form and propose a sample test and sampling plan. The sampling plan shall be based upon a 5-day, 6-day or 7-day operating week for all Pollutant Surcharge parameters.

- 1) The sampling plan must be provided in writing to the Control Authority no less than fourteen (14) calendar days prior to commencement of the sampling program.
- 2) The sampling plan must include the following:
 - i) Locations of sampling
 - ii) Method(s) of sampling at each location
 - iii) Date(s) of sampling
 - iv) Measurement or determination of volume of Wastewater discharged during the testing period
 - v) Sample collection for all Pollutants Surcharge (BOD, FOG, P, and TSS).

b) The sampling plan shall be submitted to the Industrial Waste Control Group by one of the following methods:

- 1) U.S. mail addressed to the Industrial Waste Control Group.

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- 2) Facsimile transmission sent to 313-297-5860; or
- 3) PDF sent via electronic mail to IWC@GLWATER.org.
- c) These submittals shall be considered “not received” if deficient or incomplete, including for any of the following reasons:
 - 1) The sampling plan has not been signed and dated by the User.
 - 2) The User has failed to enclose all supporting documents necessary to aid in the Control Authority’s review of the sampling plan.
- d) The User shall be authorized to implement the Sampling Plan unless it receives a written notice from the Control Authority specifying whether the sampling plan is deficient or incomplete.
- e) The Control Authority shall have the right to observe the User's sampling techniques, sample preservation, flow measurements, and other sampling protocols during the sampling program.
- f) Within sixty (60) calendar days of completion of the sampling plan, the User shall forward the findings and supporting documentation to the Control Authority; including field sample collection logs/notes, chain of custody reports, certified laboratory reports, daily incoming meter readings, daily direct discharge meter readings, and any other supporting documentation.
 - 1) If the User fails to notify the Control Authority prior to the sampling or fails to submit the report within the sixty (60) day period the use of the User's data for purposes of User charge calculation will be rejected, and the findings will not be allowed.
 - 2) The User shall provide a calculation of the numerical average for each Pollutant Surcharge which shall be applied as the Pollutant Strength Level for purposes of billing.
 - 3) If an User considers any self-monitoring data inappropriate for inclusion in calculating its User charges, the User must submit such data with its Report, together with a written report detailing the basis for the User’s assessment that such data were not representative for purposes of inclusion when calculating its User charges. The Control Authority will accept or reject the inclusion or exclusion of the data.
 - 4) Within fifteen (15) days of receiving the report, the Control Authority will review all data and the User’s detailed report and accept or reject the report. If rejected, the Control Authority will provide the reasons for rejection in writing. If not rejected, the new values shall be applied to the next billing cycle following receipt of the User information.

Section III-403. Pollutant Strength Levels Using Table Values.

The Control Authority has adopted Table A to assign average Pollutant Strength Levels for commercial or industrial groups performing operations known to produce High Strength Wastewater.

- a) A User who performs a commercial or industrial activity identified in Table A based upon (i) the Standard Industrial Classification Code (SIC); and/or (ii) North American Industrial Classification System (NAICS); or (iii) consistent with the Description of an SIC or NAICS code shall be subject to the applicable Surcharge for the High Strength Wastewater.

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- b) The Control Authority will notify the User in writing of their classification, and the assignment of the average Pollutant Strength Levels as described in Table A. The new values shall be applied to the next billing cycle unless the User files a waste strength determination form and performs the sample test in accordance with Section III-402 within thirty (30) days of receiving the written notice.
- c) Where the User files a waste strength determination form under Section III-403, the Control Authority will evaluate and process it in accordance with Section III-402.
 - 1) If the waste strength determination form is accepted, the new values shall be applied to the next billing cycle following receipt of the User information.
 - 2) If the waste strength determination form is rejected, the Table A values shall be applied to the User until an acceptable pollutant strength test is performed.
- d) A User who does not have an existing monitoring location and discharges less than 25,000 gallons of wastewater per day may elect to use the values specified in Table A in lieu of performing self-monitoring. The election shall be in writing.

Section III-404. Control Authority Test Data

- a) The Control Authority may, on its own initiative, conduct sampling at a User location, to establish the actual Pollutant Strength Level of a User's wastewater. Where this action is taken, the sampling shall be based upon a 5-day, 6-day or 7-day operating week, applicable to the User, for all Pollutant Surcharge parameters. The Control Authority shall review the results of the sampling program and determine whether a revision of the Pollutant Strength Levels is required. Upon such determination, the Control Authority will notify the User in writing.
- b) The new values shall be applied to the next billing cycle unless the User files a waste strength determination form and performs the sample test in accordance with Section II-402 within thirty (30) days of receiving the written notice.
- c) Where the User files a waste strength determination form under Section III-404, the Control Authority will evaluate and process it in accordance with Section III-402.
 - 1) If the waste strength determination form is accepted, the new values shall be applied to the next billing cycle following receipt of the User information.
 - 2) If the waste strength determination form is rejected, the Control Authority's findings will be applied to the User until an acceptable pollutant strength test is performed.

Section III-405. Periodic Review of User and Control Authority Sampling Data

The Control Authority shall periodically review the User's self-monitoring data and its own sampling data, to assess whether a change or revision in the Pollutant Strength Levels is warranted. The Control Authority shall provide written notice to the User where these findings determine a revision of the Pollutant Strength Levels is warranted.

Section III-406. Sampling and Analytical Methods

The measurement and determination of the Pollutant Strength Levels shall be in accordance with 40 CFR 136 and the latest edition of Standard Methods for the Examination of Water and Wastewater, published jointly by The American Public Health Association, The American Water Works Association, and the Water Environment Federation.

Article V. Appeal

Section III-501. The decisions and actions taken by the Industrial Waste Control Group and the Control Authority affecting the administration, implementation, and enforcement of the Surcharge of High Strength Wastewater program are subject to review through a two-step appeal process. Although the majority of disputes are resolved through open communication, there may be a point where a User seeks to formalize their objection(s) and seek administrative review. The Appeal procedures recognized under these rules are described in Chapter VIII.

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SIC Number	SIC Description	NAICS Number	NAICS Description	BOD	TSS	Phosphorus	FOG
				* Signifies Domestic Strength Level			
2011	Meat Packing Plants	311611	Animal (except Poultry) Slaughtering	1200	800	*	400
2013	Sausages & Other Prepared Meat Products	311612	Meat Processed from Carcasses	800	700	*	150
		311613	Rendering and Meat Byproduct Processing				
2022	Natural, Processed, and Imitation Cheese	311513	Cheese Manufacturing	2000	500	50	*
2023	Dry, Condensed, and Evaporated Dairy Products	311511	Fluid Milk Manufacturing	1000	500	20	*
		311514	Dry, Condensed, and Evaporated Dairy Product Manufacturing				
2024	Ice Cream and frozen Desserts	311520	Ice Cream and Frozen Dessert Manufacturing	*	*	25	*
2026	Fluid Milk	311511	Fluid Milk Manufacturing	1100	500	*	500
		311514	Dry, Condensed, and Evaporated Dairy Product Manufacturing				
2035	Pickled Fruits and Vegetables, Vegetable Sauces and Seasonings, and Salad Dressings	311421	Fruit and Vegetable Canning	1000	500	*	*
		311941	Mayonnaise, Dressing and Other Prepared Sauce Manufacturing				
2037	Frozen Fruits, Fruit Juices, and Vegetables	311411	Frozen Fruit, Juice, and Vegetable Manufacturing	1000	500	*	*
2038	Frozen Specialties, Not Elsewhere Classified	311412	Frozen Specialty Food Manufacturing	1000	500	*	*
2041	Flour and other Grain Mill Products	311211	Flour Milling	1600	*	*	*
2043	Cereal Breakfast Foods	311230	Breakfast Cereal Manufacturing	1600	*	*	*
		311920	Coffee and Tea Manufacturing				
2044	Rice Milling	311212	Rice Milling	1600	*	*	*
2045	Prepared Flour Mixes and Doughs	311824	Dry Pasta, Dough, and Flour Mixes Manufacturing from Purchased Flour	1600	*	*	*
2046	Wet Corn Milling	311221	Wet Corn Milling	1600	*	*	*
		311225	Fats and Oils Refining and Blending	1600	*	*	*
2047	Dog and Cat Food	311111	Dog and Cat Food Manufacturing	1600	*	*	*

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SIC Number	SIC Description	NAICS Number	NAICS Description	BOD	TSS	Phosphorus	FOG
				* Signifies Domestic Strength Level			
2048	Prepared Feed and Feed Ingredients for Animals and Fowl, except Dogs & Cats	311119	Other Animal Food Manufacturing	1600	*	*	*
2051	Bread and other Bakery products, except Cookies and Crackers	311822	Commercial Bakeries	3800	1100	*	260
2052	Cookies and Crackers	311822	Commercial Bakeries	800	*	*	*
		311821	Cookie and Cracker Manufacturing				
		311919	Other Snack Food Manufacturing				
2053	Frozen Bakery Products, except Bread	311813	Frozen Cakes, Pies, and Other Pastries Manufacturing	800	*	*	*
2076	Vegetable Oil Mills, except Corn, Cottonseed, and Soybean	311224	Soybean and other Oilseed Products	650	2000	*	500
		311225	Fats and Oils Refining and Blending				
2077	Animal and Marine Fats and Oils	311613	Rendering and Meat Byproduct Processing				
		311710	Seafood Product Preparation and Packaging	650	2000	*	500
2079	Shortening, Table Oils, Margarine, and Other Edible Fats and Oils, Not elsewhere classified	311224	Soybean and other Oilseed Products	1000	*	*	200
		311225	Fats and Oils Refining and Blending				
2082	Malt Beverages	312120	Breweries	1400	600	*	*
2086	Soft Drinks	312111	Soft Drink Manufacturing	600	*	*	*
		312112	Bottled Water Manufacturing				
2090	Miscellaneous Food Products						
2091	Canned and Cured Fish and Seafoods	311710	Seafood Products Preparation and Packaging	1000	500	*	150
2092	Prepared Fresh or Frozen Fish and Seafoods	311710	Seafood Products Preparation and Packaging				
2095	Roasted Coffee	311920	Coffee and Tea Manufacturing	1000	500	*	150

GLWA Rules

SIC Number	SIC Description	NAICS Number	NAICS Description	BOD	TSS	Phosphorus	FOG
				* Signifies Domestic Strength Level			
2096	Potato Chips, Corn Chips, and Similar Snacks	311919	Other Snack Food Manufacturing	1000	500	*	150
2097	Manufactured Ice	312113	Ice Manufacturing				
2098	Macaroni, Spaghetti, Vermicelli and Noodles	311824	Dry Pasta, Dough, and Flour Mixes Manufacturing from Purchased Flour				
2099	Food Preparations, Not Elsewhere Classified	111998	All Other Miscellaneous Crop Farming				
		311212	Rice Milling				
		311340	Non-chocolate Confectionery Manufacturing				
		311423	Dried and Dehydrated Food Manufacturing				
		311824	Dry Pasta, Dough, and Flour Mixes Manufacturing from Purchased Flour				
		311830	Tortilla Manufacturing				
		311911	Roasted Nuts and Peanut Butter Manufacturing				
		311920	Coffee and Tea Manufacturing				
		311941	Mayonnaise, Dressing, and Other Prepared Sauce Manufacturing				
		311942	Spice and Extract Manufacturing				
		311991	Perishable Prepared Food Manufacturing				
		311999	All other Misc. Food Manufacturing				
2620	Paper Mills	322121	Paper (except Newsprint) Mills	*	480	*	*
		322122	Newsprint Mills				
2640	Converted Paper Products			300	1500	*	*

GLWA Rules

SIC Number	SIC Description	NAICS Number	NAICS Description	BOD	TSS	Phosphorus	FOG
				* Signifies Domestic Strength Level			
2810	Industrial Inorganic Chemicals						
2812	Alkalis and Chlorine	325180	Other Basic Inorganic Chemical Manufacturing	*	2000	*	*
2813	Industrial Gases	325120	Industrial Gas Manufacturing				
2816	Inorganic Pigments	325130	Synthetic Dye and Pigment Manufacturing				
		325180	Other basic Inorganic Chemical Manufacturing				
2819	Industrial Inorganic Chemicals, Not elsewhere classified	211112	Natural Gas Liquid Extraction				
		325130	Synthetic Dye and Pigment Manufacturing				
		325180	Other basic Inorganic Chemical Manufacturing				
		325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing				
		331311	Alumina Refining				
2830	Drugs						
2833	Medicinal Chemicals and Botanical Products	325411	Medicinal and Botanical Manufacturing	500	500	*	*
2834	Pharmaceutical Preparation Manufacturing	325412	Pharmaceutical Preparation Manufacturing				
		325412	Pharmaceutical Preparation Manufacturing				
2835	In Vitro and In Vivo Diagnostic Substances	325413	In-Vitro Diagnostic Substance Manufacturing				
2836	Biological Products, except Diagnostic Substances	325414	Biological Product (except Diagnostic) Manufacturing				

GLWA Rules

SIC Number	SIC Description	NAICS Number	NAICS Description	BOD	TSS	Phosphorus	FOG
				* Signifies Domestic Strength Level			
2840	Soaps & Detergents						
2841	Soap and Other Detergents, except Specialty Cleaners	325611	Soap and Other Detergent Manufacturing	600	*	*	200
2842	Specialty Cleaning, Polishing, and Sanitation Preparations	325612	Polish and Other Sanitation Good Manufacturing				
2843	Surface Active Agents, Finishing Agents, Sulfonated Oils, and Assistants	325613	Surface Active Agent Manufacturing				
2844	Perfumes, Cosmetics, and other Toilet Preparations	325620	Toilet Preparation Manufacturing				
2850	Paints & Allied Products						
2851	Paints, Varnishes, Lacquers, Enamels, and Allied Products	325510	Paint and Coating Manufacturing	*	*	15	200
2860	Industrial Organic Chemicals						
2861	Gum and Wood Chemicals	325194	Cyclic Crude, Intermediate and Gum and Wood Manufacturing	500	500	20	150
2865	Cyclic Organic Crudes and Intermediates, and Organic Dyes and Pigments	325110	Petrochemical Manufacturing				
		325130	Synthetic Dye and Pigment Manufacturing				
2869	Industrial Organic Chemicals, not elsewhere classified	325120	Industrial Gas Manufacturing				
		325180	Other Basic Inorganic Chemical Manufacturing				
		325193	Ethyl Alcohol Manufacturing				
		325199	All Other Basic Organic Chemical Manufacturing				

GLWA Rules

SIC Number	SIC Description	NAICS Number	NAICS Description	BOD	TSS	Phosphorus	FOG
				* Signifies Domestic Strength Level			
		325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing	500	500	20	150
2890	Miscellaneous Chemical Products						
2891	Adhesives and Sealants	325520	Adhesive Manufacturing	400	*	*	*
2892	Explosives Manufacturing	325920	Explosives Manufacturing				
2893	Printing Ink	325910	Printing Ink Manufacturing				
2895	Carbon Black	325180	Other Basic Inorganic Chemical Manufacturing				
2899	Chemicals and Chemical Preparations, Not Elsewhere Classified	325199	All Other Basic Organic Chemical Manufacturing				
		325510	Paint and Coating Manufacturing				
		325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing				
3010/1	Tire & Inner Tubes	326211	Tire Manufacturing (except Retreading)	*	500	*	*
3060	Fabricated Rubber Products						
3061	Molded, Extruded, and Lathe cut Mechanical Rubber Goods	326291	Rubber Product Manufacturing for Mechanical Use	*	500	*	*
3069	Fabricated Rubber Products, Not Elsewhere Classified	313320	Fabric Coating Mills				
		314910	Textile Bag Mills				
		315280	Other Cut and Sew Apparel Manufacturing				
		315990	Apparel Accessories and Other Apparel Manufacturing				
		326199	All other Plastics Products Manufacturing				
		326299	All other Rubber Products Manufacturing				

GLWA Rules

SIC Number	SIC Description	NAICS Number	NAICS Description	BOD	TSS	Phosphorus	FOG
				* Signifies Domestic Strength Level			
		339113	Surgical Appliance and Supplies Manufacturing	*	500	*	*
		339920	Sporting and Athletic Goods Manufacturing				
		339930	Doll, Toy and Game Manufacturing				
5085	Drums & Barrels - Reconditioning			1200	800	16	1500
5090	Miscellaneous Durable Goods						
5091	Sporting and Recreational Goods and Supplies	423910	Sporting and Recreational Goods and Supplies Merchant Wholesalers	400	500	*	150
		425110	Business to Business Electronic Markets				
		425120	Wholesale Trade Agents and Brokers				
		451110	Sporting Goods Stores				
5092	Toys and Hobby Goods and Supplies	423920	Toy and Hobby Goods and Supplies Merchant Wholesalers				
		425110	Business to Business Electronic Markets				
		425120	Wholesale Trade Agents and Brokers				
		451120	Hobby, Toy, and Game Stores				
5093	Scrap and Waste Materials	423930	Recyclable Material Merchant Wholesalers				
		425110	Business to Business Electronic Markets				
		425120	Wholesale Trade Agents and Brokers				
5094	Jewelry, Watches, Precious Stones, and Precious Metals	423940	Jewelry, Watch, Precious Stone, and Precious Metal Merchant Wholesalers				

GLWA Rules

SIC Number	SIC Description	NAICS Number	NAICS Description	BOD	TSS	Phosphorus	FOG
				* Signifies Domestic Strength Level			
		425110	Business to Business Electronic Markets	400	500	*	150
		425120	Wholesale Trade Agents and Brokers				
		448310	Jewelry Stores				
5099	Durable Goods, not elsewhere classified	423990	Other Miscellaneous Durable Goods Merchant Wholesalers				
		425110	Business to Business Electronic Markets				
		425120	Wholesale Trade Agents and Brokers				
		444190	Other Building Material Dealers				
		451110	Sporting Goods Stores				
		451120	Hobby, Toy, and Game Stores				
7213	Linen Service	812331	Linen Supply	500	*	*	200
7218	Industrial laundries	812332	Industrial Launderers	600	600	*	400

CHAPTER IV: SEPTAGE AND HAULED WASTES

The majority of wastes and Wastewater treated at the Control Authority's POTW are discharged to and conveyed by the Sewerage System through point-source connections from Domestic and User Sources. However, additional wastes may be conveyed to designated locations via rail, truck, ship or vessel or other equivalent means; hauled to the Control Authority POTW from locations within and outside of the Service Region of the Control Authority. These rules address these sources of *Hauled Wastes*.

Article I General Provisions

Section IV-101. It shall be unlawful for any Person to discharge any waste or Wastewater, directly or indirectly, by rail, truck, ship or other similar means, without authorization from the Control Authority; or to discharge any Wastewater in violation of the terms and conditions contained in these rules or contrary to any discharge authorization granted by the Control Authority.

Article II Authorized Unloading Locations

Section IV-201. The Control Authority's POTW shall not receive or accept any wastes or Wastewater that are directly transported via rail, truck, dedicated pipeline, ship or vessel, or other similar means, at the Control Authority's POTW located at 9300 West Jefferson, Detroit Michigan 48209, except those identified in Section IV-202.

Section IV-202. The Control Authority's POTW shall accept wastes or Wastewater that are directly transported via truck from Septage Waste Hauler with a valid permit. Mobile Food Trucks, Recreation Vehicles and Individual Portable Toilets are not permitted to use the Control Authority's POTW and must use public or private facilities to dispose of their wastes.

Section IV-203. The Control Authority will only accept wastes and Wastewater transported to Authorized Unloading Locations specified in these rules or that may be added upon authorization by the Control Authority.

Section IV-204. The usage of any Authorized Unloading Location shall be restricted to authorized Users who possess a hauled in waste permit issued by the Control Authority, in accordance with the terms and conditions of the permit.

Article III Categories of Authorized and Unauthorized Hauled Wastes**Section IV-301. Authorized Wastes**

The following groups of waste and Wastewater may be authorized by the Control Authority.

- Septage Waste and Wastewater

- Sanitary Wastewater from Vessels and Ships

The procedures for obtaining authorization are enumerated in Article IV below.

Section IV-302. Unauthorized Waste Sources

The following sources of waste and Wastewater are not authorized by the Control Authority and will not be accepted unless there is an exigent condition or public health concern for which the Control Authority shall authorize disposal.

- Grease Trap Wastes
- Industrial and Commercial Wastes
- Municipal Sludge
- Collection System Solids and Cleanings

Article IV Procedures for Authorization – Septage Waste Hauler

Section IV-401. A Septage waste hauler seeking authorization from the Control Authority to discharge at the Control Authority's POTW or other authorized unloading location shall require the owner/operator of the vehicle to (i) possess a valid Septage hauler license issued by the EGLE; and (ii) obtain a valid Control Authority Septage hauler permit.

Section IV-402. A Septage waste hauler seeking authorization from the Control Authority to discharge at the Control Authority's POTW or other authorized unloading location shall complete an application for a HIW permit. Information will be provided including the vehicles, tank capacities and applicable vehicle licenses for each vehicle; the general area being serviced, and which authorized unloading sites the septage hauler is requesting access.

Section IV-403. The Septage hauler shall letter the vehicles or affix the truck number shown on their HIW permit on each side and rear of the hauling vehicle covered by their permit in clearly visible locations in black numerals and letters six (6) inches high on a white background of at least eight (8) inches in height. The line width of each letter shall be three-fourths of an inch.

Section IV-404. Upon receipt of a Septage hauler application form, the Control Authority will process the application and accept or reject the application. Permits issued by the Control Authority shall contain information including, but not limited to, that specified in Section II-704. A Septage waste hauler seeking authorization from the Control Authority to discharge at the Control Authority's POTW or other authorized unloading location shall only discharge the contents from domestic waste septic tanks, cesspools, seepage pits, sewage lift stations and portable toilets; after receiving a permit.

Section IV-405. The Control Authority shall have the unrestricted right to observe loading, hauling and unloading of Septage hauling vehicles; to obtain representative samples of the vehicle's contents at the unloading site prior to or during the unloading activity; to examine the vehicle operator's EGLE service seal and business license and the unloading permit. The vehicle operator shall cooperate with the request

of any properly credentialed the Control Authority's employee and assist in providing a sample of the tank's contents.

Article V Procedures for Authorization – Recreational Vehicle and Individual Portable Toilets

Section IV-501. Mobile Food Trucks, Recreation Vehicles and Individual Portable Toilets are not permitted to use the Control Authority's POTW and must use public or private facilities to dispose of their wastes.

Article VI Procedures for Authorization – Vessels and Ships

Section IV-601. The Control Authority may accept Domestic Sewage from vessels and ships at authorized locations, or from firms servicing vessels and ships traversing the Great Lakes. Individuals or firms shall request authorization from the Industrial Waste Control Group before discharging any Wastewater, and discharge at an authorized unloading location.

Article VII Other Conditions

Section IV-701. Any Person authorized under these rules for Septage and hauled waste or wastewater is subject to the requirements for permits, inspection, monitoring and enforcement, as enumerated in Chapter II.

Section IV-702. Any permit or authorization granted by the Control Authority shall also include the following conditions:

- a) Applicable terms and conditions, surcharges, fees or rates as established by the Board.
- b) The specific unloading facility location designated by the Control Authority for discharge.
- c) As necessary, additional specific limitations and requirements necessary to protect the wastewater treatment plant and collection system.
- d) Any applicable surcharge for High Strength Wastewater applicable to the specific contents being hauled under Authorization by the Control Authority; and
- e) Any charges or fees established by the Board.

Article VIII. Appeal

The Decisions and Actions taken by the Industrial Waste Control Group and the Control Authority affecting the administration, implementation, and enforcement of the Septage and hauled waste Program are subject to review through a two-step appeal process. Although the majority of disputes are resolved through open communication, there may be a point where a User seeks to formalize their objection(s) and seek administrative review. The Appeal procedures recognized under these rules are described in Chapter VIII.

CHAPTER V: REVENUES TO SUPPORT REGULATORY PROGRAMS

The Control Authority has promulgated these rules for the protection of the environment, the public health and safety by abating and preventing pollution through the regulation and control of the quantity and quality of sewage, industrial wastes, and other wastes admitted to or discharged into the sewerage system. The Control Authority seeks to provide for the recovery of the costs from Users of the Wastewater collection and treatment system sufficient to administer regulatory activities and meet the costs of the operation, maintenance, improvement or replacement of the Sewerage System.

Fees and charges may be established by the Board to meet the costs of the operation, maintenance, improvement or replacement of the Sewerage System and regulatory programs, or as provided by law or by Board action.

- a) The Board shall adopt charges and fees which shall include, but not be limited to:
 - 1) Fees for reimbursement of costs of establishing, operating, maintaining, or improving the industrial waste control and pretreatment programs (See Article I below); and
 - 2) User fees (surcharges) based upon volume of waste and concentration or quantity of specific pollutants in the discharge, and treatment costs including sludge handling and disposal (See Article II); and
 - 3) Reasonable fees for reimbursement of costs for hearings including, but not limited to, expenses regarding hearings officers, court reporters, and transcriptions; and
 - 4) Other fees, which the Board may deem necessary, to carry out the requirements contained herein, or as may be required by law.

Article I Industrial Waste Control Charges

Section V-101. The Control Authority is required to implement and enforce an Industrial Pretreatment Program and perform other related duties as required by the NPDES Permit MI 0022802 and the Clean Water Act. To accomplish these duties and requirements, the Control Authority must have a revenue source which insures adequate funding. The Control Authority hereby adopts the following method of funding these regulatory activities:

- a) An IWC water meter charge shall be established by the Board to recover the costs incurred in administering, implementing and enforcing the regulatory activities and obligations under the NPDES Permit MI 0022802 and the Clean Water Act, and any rules adopted by the Board.
- b) The IWC water meter charge shall be based on the size of the water meter on a proportional basis and assessed on any non-residential water meter with the following exceptions:
 - 1) The IWC water meter charge shall not be assessed on any meter dedicated for Fire Protection

- purposes only.
- 2) The IWC water meter charge shall not be assessed on any meter dedicated for Irrigation purposes only.
 - 3) The IWC water meter charge shall not be assessed on any meter from a multi-family residential dwelling; public and private elementary and secondary school which are part of a government school district; colleges, universities, professional schools, junior colleges and technical institutes; and local, state and federal government facilities.
- c) Member Communities shall periodically report the quantity, number and size of non-residential meters, and any exempt meters (as described in paragraph 2).
 - d) The Control Authority shall prepare a bill to each Member Community using the information provided in paragraph 3 and forward the bill for payment either through the Wholesale Sewer Contract Customer (if applicable) and/or Member Community, indicating the terms and conditions of payment.
 - e) Each Member Community is responsible for assessing these fees on applicable Users and collection thereof in accordance with the delegation and service agreements; and for reporting changes in the number of meters reported in paragraph 3.
 - f) The Control Authority reserves the right to collect any and all outstanding amounts in accordance with applicable law.

Article II Pollutant Surcharges

Section V-201. The Control Authority has adopted rates necessary to recover the cost of service based upon the unit volume of Wastewater discharged; and has adopted Pollutant Surcharges applicable to High-Strength Wastewater discharges from Users which will be assessed to these Users so that the proportional share of the cost of service may be recovered.

- a) The specific rules and procedures for establishing High Strength Wastewater levels, and administering a program thereof is included in Chapter II of these rules.
- b) Member Communities shall report the applicable water and/or sewage meter information to the Control Authority who shall prepare a bill based upon the established High-Strength Wastewater level of a User.
- c) The Control Authority shall prepare a bill to each Member Community using the information provided in paragraph 2 and forward the bill for payment either through the Wholesale Sewer Contract Customer (if applicable) and/or Member Community, indicating the terms and conditions of payment.
- d) Each Member Community is responsible for assessing these fees on applicable Users and collection thereof in accordance with the delegation and service agreements.
- e) The Control Authority reserves the right to collect any and all outstanding amounts in accordance with applicable law.

Article III Other Fees

Section V-301. The Appeal Procedures described in Chapter VIII will incur costs for hearings officers, court reporters, and transcriptions. The cost of conducting these appeal procedures shall be equally shared between the Control Authority and the User(s). A deposit may be requested by the Control Authority to cover a portion of these expenses. Where a User fails to pay all fees incurred, the Control Authority shall recover these fees through direct invoicing and using all means authorized by law.

Section V-302. Other fees, which the Board may deem necessary, to carry out the requirements contained herein, or as may be required by law.

CHAPTER VI: FLOW-METERING

The Control Authority requires Users to employ accurate and valid methods for measuring and reporting the volume of water consumed and discharged from their properties to satisfy regulatory and monitoring requirements. Each Member Community may establish its own criteria for metering the wastewater discharged into the Sewerage System which is not in conflict with these rules.

Article I General Requirements

The Control Authority recognizes the role of the respective Member Community in prescribing the water and/or sewage meters installed at a User's property. The Control Authority will recognize a User's use of these methods to represent the water usage and/or wastewater discharge as follows:

Section VI-101. Users obtaining all of their water supply from the GLWA shall, unless modified or changed by contract, base the volume of water consumed upon one or more water meters installed at the User's property. Any questions that the GLWA may have concerning the accuracy and validity of a water meter will be directed to the User and the Member Community

Section VI-102. Users obtaining all, or any portion, of their water supply from sources other than the GLWA and who discharge water, wastes and wastewater inclusive of these foreign sources to the GLWA for conveyance and Wastewater treatment, shall base the volume of Wastewater discharged through gauging, metering or using any other equitable method of measuring, the volume of all Wastewater discharged. Acceptance of the Wastewater discharged shall be conditioned upon the acceptance of such methods by the Member Community. Any questions that the GLWA may have concerning the accuracy and validity of a water meter will be directed to the User and the Member Community

Section VI-103. Users obtaining all, or any portion, of their water supply from the GLWA, but also receiving other wastes and Wastewater via truck, rail, vessel or ship, dedicated pipeline, or any other means of transportation shall base the volume of Wastewater discharged through gauging, metering or using any other equitable method of measuring the discharge volume. Acceptance of the Wastewater discharged shall be conditioned upon the acceptance of such methods by the Member Community. Any questions that the GLWA may have concerning the accuracy and validity of a water meter will be directed to the User and the Member Community.

Article II Sub-metering of Water or Sewage Volumes

Section VI-201. Any owner of a premise or User of the system may install, at their own expense, a water sub-meter for determining the utility services used by certain areas or processes. Such meter will not be

recognized for purposes of usage, addition or reduction, billing or other regulatory purpose, unless the meter complies with section VI-202.

Section VI-202. Where a Member Community has recognized and accepted a User's sub-meter(s) to gauge the volume of water, for determining the utility services used by certain areas or processes,), the GLWA shall recognize the purpose and readings of the sub-meter for purposes of usage, addition or reduction, billing or other regulatory purpose described by these rules.

Article III Requirements for Water or Sewerage Metering

Section VI-301. Where the GLWA, in conducting its regulatory responsibilities described by these rules, identifies an unmetered water or sewerage source, a non-functioning water or sewerage meter or sub-meter, or requires other gauging or metering to fulfill the requirements of its NPDES permit, it shall notify the User in writing of its findings and requirements as well as the Member Community.

Section VI-302. Any water or sewer meter installed by a User must be periodically calibrated by the User and maintained by the User at its own expense. All records of calibration or maintenance shall be provided to the GLWA upon its request.

Article IV Sewage Metering Requirements for Flow-proportional Sampling

Section VI-401. All Significant Industrial Users shall provide, operate, and maintain at their own expense a sampling and monitoring facility which complies with Section II-605.

Section VI-402. Significant Industrial Users required to collect wastewater samples using 24-hour flow-proportional composite sampling techniques, shall provide the Control Authority with a sampling plan in compliance with section II-603 and the following information about the flowmeter and other devices used:

- a) The specifications and information describing the flow monitoring instruments, including make and model number.
- b) The recording devices used, including make and model number; and
- c) Specifications indicating that the meter is equipped with a non-resettable flow totalizer.

Section VI-403. Significant Industrial Users required to collect Wastewater samples using 24-hour flow-proportional composite sampling techniques, shall provide the appropriate interface hardware and cable sufficient to reach the sampler location from the flow metering system's contact point, as follows:

- a) Ensure that the flow metering system using an analog output signal, furnish the Control Authority with a flow meter to sampler 4-20 mA input interface: ISCO Part # 60-5314-281, or equivalent.
- b) Ensure that the flow metering system using a pulse output signal, furnish the Control Authority with a signal specification of 5 to 15 VDC pulse, with 25 millisecond isolated contact closure using a sampler connection interface cable ISCO Part # 60-1394-077, or equivalent.
- c) The Significant Industrial User shall provide an interface port for 6 pin military spec amphenol

connector and a parallel or Y-connector for simultaneous sampling event.

- d) In the event that an equivalent or new technology is available which permits the Control Authority to collect a Flow-composite based sampling from the User's facility using equipment other than or different than that enumerated in sub-paragraphs a-c above, the Control Authority will permit such technology to be implemented and used at the User's site. User's must, however, notify the Control Authority in writing.

Article V Appeal

The decisions and actions taken by the Industrial Waste Control Group and the Control Authority affecting the administration, implementation, and enforcement of the Flow Metering Program are subject to review through a two-step appeal process. Although the majority of disputes are resolved through open communication, there may be a point where a User seeks to formalize their objection(s) and seek administrative review. The Appeal procedures recognized under these rules are described in Chapter VIII.

**CHAPTER VII: RULES GOVERNING THE WASTES AND WASTEWATER
FROM ENVIRONMENTAL REMEDIATION, GROUNDWATER AND
OCCASIONAL OR SPECIAL WASTES SOURCES**

The purpose of these Rules is to regulate and control the quality and quantity of wastes and Wastewater derived from Environmental Remediation, Groundwater and Occasional or Special Wastes Sources occurring within the sewer Area under the jurisdiction of the Control Authority to ensure that these sources are not discharged into the local environment without authorization and in quantity and/or concentrations as may cause or contribute to adverse impact upon the environment or the status of the Control Authority's POTW with regard to environmental regulations impacting those facilities.

Article I General Requirements

Section VII-101. The Control Authority may authorize the discharge of wastes and Wastewater derived from Environmental Remediation, Groundwater and Occasional or Special Wastes Sources from facilities located in areas served by the Control Authority's Sewerage System.

Section VII-102. Environmental Remediation Wastewater, Groundwater and Occasional or Special Wastes Sources from facilities located in areas not served by the Control Authority's Sewerage System will not be accepted except where a public health or similar exigent condition exists. In response to such public health or exigent condition, the Control Authority may accept and evaluate an application, and will notify the Board of its findings and determination prior to authorizing the discharge.

Article II Prohibitions

Section VII-201. Unlawful Discharges

It shall be unlawful for any Person to cause or allow the discharge of Environmental Remediation Wastewater, Groundwater and Occasional or Special Wastes Sources from combined sewer areas into the Control Authority's Sewerage System, unless such person has been authorized by the Control Authority and is in possession of a current and valid permit authorizing the discharge of the Environmental Remediation Wastewater, Groundwater and Occasional or Special Wastes Sources.

Section VII-202. Pollutant Discharge Limits

The Control Authority shall apply or develop pollutant discharge limitations necessary to protect the Control Authority's Sewerage System, and at a minimum include:

- a) The General Pollutant Prohibitions (Chapter II, Article II) shall be applied to all permit authorizations.
- b) The Specific Pollutant Prohibitions (Chapter II, Article III) shall be applied to all permit authorizations.

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- c) For Underground Storage Tank and *Petroleum* clean-up projects, the additional discharge limitations shall be applied:

Benzene	20 ug/l
Toluene	20 ug/l
Ethylbenzene	20 ug/l
Xylene	20 ug/l

- d) As necessary, the Control Authority may develop special pollutant discharge limitations in concentration or mass necessary to carry out the intent of these rules. The determination of any such special pollutant discharge limitations shall be attached to any permit granted under these rules.

Article III Special Discharge Permits

Section VII-301. Special Discharge Permit Application

Any Person seeking permission to discharge Environmental Remediation Wastewater, Groundwater and Occasional or Special Wastes Sources wastewater shall complete and submit to the Control Authority (on forms supplied by the Control Authority) a Special Discharge Permit Application (SDP Application). At a minimum, the application shall include the following information:

- a) The address, or other description of the location, which is the source or origin of the proposed discharge.
- b) The name and address of the (i) officers or principal owners of the real property; (ii) name of the person who will be responsible for operation of the facilities; (iii) any agents for these parties; and; (iv) any other persons seeking the special discharge permit.
- c) The applicant shall provide at least one sample analysis which includes the 126 priority pollutants. Additional samples may be tested for pollutants above detection levels or which are present or expected to be present in the discharge.
- d) Any information concerning the nature of operations conducted, or previously conducted at the property.
- e) Any additional information or documentation necessary to support the application.
- f) The SDP Application shall be executed by an Authorized Representative of the person.
- g) Acceptance by Member Community. Applications shall be reviewed by the municipality or other unit of local government having jurisdiction over the geographical location for which the SDP is requested and must be certified acceptable to such municipality or other unit of local government prior to submittal to the Control Authority. The certification shall be inclusive of any metering or payment requirements. This acceptance must be in writing.

Within 30 days of receipt of a completed SDP Application, the Control Authority shall notify, in writing, the person submitting the application of its approval or denial, and the reason(s) for denial. If approved, the special discharge permit shall be issued by the Control Authority to the owner of the real property from

which the Wastewater originates as permittee and to the agents of the owner as co-permittees who will be responsible for operation of the facilities.

Section VII-302. Special Discharge Permit

The Control Authority shall develop a special discharge permit form that shall contain, at a minimum, the following conditions:

- a) Statement of duration, which for special discharge permits shall not exceed one (1) year. The one (1) year term may be renewed upon receipt of an SDP Application petitioning renewal of the permit for an additional one (1) year term if submitted ninety (90) days prior to the expiration date of the existing special discharge permit.
- b) A provision against non-transferability of the special discharge permit.
- c) Effluent discharge limitations authorized under Section II-202 of these rules.
- d) Self-monitoring, sampling, reporting, notification and recordkeeping requirements, including identification of the pollutants to be monitored, sampling points, sampling frequency and sample type. Sample collection and analysis shall conform to the requirements specified by the Control Authority.
- e) Requirements for specific treatment, if applicable, including best available technology. Justification for such treatment shall be made in writing and attached to the special discharge permit.
- f) Acknowledgement from Member Community.
- g) Other requirements including those specified in Section II-704.

Section VII-303. Monitoring of Environmental Remediation Wastewater, Groundwater and Occasional or Special Wastes Sources

- a) Each person subject to the terms of these rules shall install and maintain, at its own expense, a control manhole or sampling site, including sampling and flow measurement operations applicable to the discharge.
- b) All sampling and analysis shall be performed in accordance with applicable regulations contained in 40 CFR 136 and amendments thereto.
- c) Any Flow Monitoring installation shall conform to the requirements and specifications of Chapter VI.

Article IV. Other Provisions

Section VII-401. Representatives of the Control Authority may enter upon the premises for which the special discharge permit has been issued, during reasonable hours, to perform gauging and sampling operations, for inspecting or examining facilities, premises, installations and processes, for inspection and copying of records, and for reviewing pretreatment operating procedures and to determine compliance with the terms and conditions of special discharge permit.

Section VII-402. Fees

GLWA Rules

- a) Persons subject to the provisions of these rules are responsible for payment of applicable sewer charges, including any applicable Surcharges.
- b) Where the volume of Wastewater discharged under a special discharge permit exceeds 1,000,000 gallons per annum, the Industrial Waste control fee shall be assessed and paid prior to commencement of the discharge.

Article V Enforcement

The Control Authority shall enforce compliance with the special discharge permit in accordance with Chapter II, including a temporary suspension of the special discharge permit or revocation of the special discharge permit. Where the Control Authority has revoked the special discharge permit, the special discharge permit holder may appeal the revocation order in accordance with Article VI of these rules.

Article VI Appeal

The decisions and actions taken by the Industrial Waste Control Group and the Control Authority affecting the administration, implementation, and enforcement of the Environmental Remediation Wastewater, Groundwater and Occasional or Special Wastes Sources Wastewater Program are subject to review through a two-step appeal process. Although the majority of disputes are resolved through open communication, there may be a point where a User seeks to formalize their objection(s) and seek administrative review. The Appeal procedures recognized under these rules are described in Chapter VIII.

CHAPTER VIII: ADMINISTRATIVE APPEAL PROCEDURES

The following rules describe the Administrative Appeals Procedures developed and adopted by the Control Authority to resolve disputes with the technical subject matter of these rules or resolve disputes on the meaning of these rules. A User who believes it is aggrieved of the actions of the Authority in enforcing these Rules may appeal to the Control Authority for the relief of that dispute. An appeal shall be made as follows:

Article I APPEAL PROCEDURE

Section VIII-101. Appeal Request

- a) The appeal request must be in writing, directed to the Chief Compliance Officer and received within 21 days of the decision or act that is the subject of the appeal. The appeal request shall be made in triplicate and shall set forth the specific act or matter complained of and in dispute. Additionally, the appeal request shall include all documentation which supports the User's position.
- b) The Chief Compliance Officer shall within thirty (30) days of receipt of a written appeal request, acknowledge such receipt in writing to all interested parties. Thereafter, the Chief Compliance Officer shall arrange for a hearing to be held in accordance with Section 3 of this Chapter, or if appropriate, direct a representative of the IPP Program (IPP Representative) to schedule a conciliation meeting with the appellant as soon as practicable, at the mutual convenience of the parties to resolve the dispute.

Article II CONCILIATION MEETING

Section VIII-102. Conciliation Meeting Procedure

- a) If a conciliation meeting is held, it shall be open to all interested parties and their representatives. The meeting may be adjourned to a mutually acceptable date or dates.
- b) If the User or IPP Representative determines that the dispute cannot be resolved through the conciliation meeting process, the parties shall so inform the Chief Compliance Officer in writing and request a hearing in accordance with Section 3 of this Chapter. If future conciliation meetings are no longer needed, the Chief Compliance Officer shall notify the parties involved and issue a decision within fifteen (15) days, in writing, by mail, to the interested parties to the dispute.
- c) If it is determined by all interested parties and the IPP Representative that the dispute has been satisfactorily resolved through the conciliation meeting process, within thirty (30) days of the last conciliation meeting, the IPP Representative shall reduce such resolution to the form of a written agreement or order for signature by the interested parties.

Article III HEARING PROCEDURE

Section VIII-103. Hearing Procedure

- a) In the event a hearing is required pursuant to Sections 1 or 2(b) of this Chapter, the Chief Compliance Officer shall promptly appoint a disinterested hearing officer with suitable qualifications to conduct an administrative hearing and to receive testimony and evidence presented by the aggrieved party. The hearing officer shall also receive testimony and evidence from the Control Authority or others as he or she deems necessary.
- b) The hearing officer shall conduct the hearing and file a written report of said hearing with the Chief Compliance Officer or his designee within thirty (30) days of his/her appointment. The hearing officer shall have the right to extend this thirty-day period for good cause. However, in such event, his/her report will be submitted to GLWA Chief Compliance Officer within fifteen (15) days of the conclusion of the hearing and the taking of testimony and evidence.
- c) The hearing officer's report shall include a brief statement of factual matters at issue, the nature of the testimony and evidence received and shall include a recommendation to either uphold or modify the decision or action in question on such terms as the hearing officer deems equitable.
- d) Upon receipt of the hearing officer's report, the Chief Compliance Officer shall render his/her decision in writing within fifteen days of the receipt of the report. In any event, the Chief Compliance Officer shall not be bound by the recommendation of the hearing officer. The decision of the Chief Compliance Officer shall be final and enforceable at law, unless the appeal involves a citation and a subsequent appeal is made within sixty (60) days and the Authority grants a review of the Chief Compliance Officer's decision. The decision of the Authority shall be final.
- e) A person or Member Community aggrieved by a final decision of the Chief Compliance Officer or the Authority may petition to the Wayne County Circuit Court for judicial review. The petition shall be filed not later than sixty (60) days following the receipt of the final decision. An aggrieved person or municipality shall exhaust all administrative remedies provided in this Section before seeking judicial review.
- f) With respect to the hearing conducted, the hearing officer shall not be bound strictly by the rules of evidence which would apply in a court of competent jurisdiction. The hearing officer shall have the authority to receive such evidence as he/she deems relevant and material and to give the evidence received such weight and probative value as, in the hearing officer's discretion, is deemed proper.

SAVINGS CLAUSE

If any provision, paragraph, section or article of these rules are invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, sections and articles shall not be affected and shall continue in full force and effect.

Approved: 11/13/2019

Published:

Effective:

Board Approved



MEMORANDUM

Department of Public Services

DATE: December 14, 2020

TO: Joseph A. Valentine, City Manager

FROM: Lauren A. Wood, Director of Public Services

SUBJECT: Benches and Trash Receptacles Purchase

INTRODUCTION:

The City currently uses a sole source vendor, Dumor Site Furnishings, sold through Penchura LLC for the purchase of site furnishings downtown, including trash receptacles and city benches, in select parks and for our Recognition Program. This is the result of previous reviews and evaluations of other providers to supply the City of Birmingham with equipment in the approved "Birmingham Green" color, style and custom lettering. Penchura, LLC is the only vendor that can provide the approved style and color from Dumor. Therefore, no competitive bids were obtained for this purchase.

BACKGROUND:

In order to continue providing standardized equipment throughout downtown and City Parks, the Department of Public Services recommends the purchase of eleven (11) Dumor Steel Benches, and ten (10) trash receptacles, for a total amount of \$34,963, from Penchura, LLC. This purchase will be used to supplement trash receptacles in our newly beautified downtown and replenish our inventory of site furnishings and recognition program benches.

LEGAL REVIEW:

A legal review is not required for this purchase

FISCAL IMPACT:

The City has not purchased inventory from this vendor since 2018. At that time, the cost per bench was \$1,288, and the cost for a trash receptacle was \$1,350. The 2020 pricing as shown on the quote is \$1,558 per bench, and \$1,350 per trash receptacle. The pricing for the benches on this order is a bit higher due to their "plaque-ready" design, built with an insert area for the plaque.

This total purchase amount of the benches and trash receptacles includes freight, custom lettering and the custom color green. This was included in the 2020-2021 approved budget. Funds are available from the Parks Operating Supplies account.

PUBLIC COMMUNICATIONS:

Does not apply for this purchase.

SUMMARY:

In order to continue providing standardized equipment and furnishing throughout downtown and City Parks, the Department of Public Services recommends the purchase of eleven (11) Dumor Steel Benches, and ten (10) trash receptacles, for a total amount of \$34,963.00, from our sole source vendor, Penchura, LLC. This purchase replenishes the site furnishings we provided in our newly beautified downtown and will supplement our inventory for replacement furnishings. Once ordered it takes approximately six weeks for the product to arrive.

ATTACHMENTS:

- Cost Proposal from Penchura dated 12/4/2020
- Iran Sanctions Act Vendor Certification Form

SUGGESTED RESOLUTION:

To approve the purchase of eleven (11) Dumor benches and ten (10) trash receptacles for a total purchase price of \$34,963.00 from the sole source vendor, Penchura, LLC. Further, to waive the formal bidding requirements. Funds have been budgeted in fiscal year 2020-2021 Parks Operating Supplies, Account #101-751.000-729.0000 for this equipment purchase.



Make all P.O.s, Contracts, and Checks to:
Penchura, L.L.C.
889 S. Old US 23
Brighton, MI 48114

Proposal

Date	Project #
12/4/2020	20-1080

Bill To
City of Birmingham P.O. Box 3001 151 Martin Street Birmingham, MI 48012-3001

Ship To
City of Birmingham Public Services (#2552) Carrie Laird, 248-530-1714 851 S. Eton Birmingham, MI 48009

Customer Contact	Customer Phone	Customer Fax	Terms	P.O. No.	Rep
Carrie Laird	248-530-1714	248-530-1754	Net 30		LAS

Item	Description	Qty	Weight	Price	Total
	Site Furnishings				
63-947-32-BT-1	Dumor 32 Gal Steel Receptacle, W/Old Bonnet Top	10		1,475.00	14,750.00
19-50-Q30	DuMor 5' Bench, Steel, 2 arms, Insert for 4 x 6 Plaque, Custom Color and Lettering for City of Birmingham	11		1,558.00	17,138.00
CL1	CAST-57-000265	1		200.00	200.00
CUST-1	IFS # PLSF-32284PT PARK BENCH GREEN	1		1,500.00	1,500.00
Freight	Freight	1		1,375.00	1,375.00

Proposal good for 30 days.

Ship Via: common carrier

Delivery contact name and number: _____

Customer signature below constitutes a purchase order.

Subtotal \$34,963.00

Sales Tax (0.0%) \$0.00

Total \$34,963.00

889 S. Old US 23, Brighton, MI 48114
Office: (810) 229-6245 Fax: (810) 229-6256 Toll Free: (888) 778-7529

ATTACHMENT E - IRAN SANCTIONS ACT VENDOR CERTIFICATION FORM

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.

PREPARED BY
(Print Name) Leslie Stempek

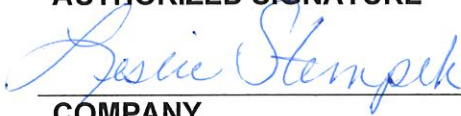
DATE
12/14/2020

TITLE Bookkeeper

DATE
12/14/2020

AUTHORIZED SIGNATURE

E-MAIL ADDRESS



leslie@penchura.com

COMPANY

Penchura LLC

ADDRESS

PHONE

889 S. Old US 23-Brighton, MI 48114

810-229-6245

NAME OF PARENT COMPANY

PHONE

ADDRESS

TAXPAYER I.D.#

20-4755812

DATE: 12/21/2020

TO: Joseph A. Valentine, City Manager

FROM: Eric Brunk, IT Manager

SUBJECT: ESRI ArcGIS software license and maintenance renewal

INTRODUCTION:

Licensing and maintenance for our Esri ArcGIS software is setup on a yearly renewal. Our current software license and maintenance is up for renewal.

BACKGROUND:

The City of Birmingham has ArcGIS server and desktop software in community development purchased from ESRI, Inc. for the purpose of mapping and tracking city infrastructure and resources.

We currently have 3 licenses of server, 5 licenses of Desktop, one license of 3D analyst and 7 licenses of Arcpad that need to be renewed.

LEGAL REVIEW:

This is a renewal of the existing licenses and maintenance contract – no changes have been made.

FISCAL IMPACT:

Total expense for the renewal is \$9,450.00 and is a budgeted item. Funds were set aside in the Computer Maintenance fund account # 636-228.000-933.0600

PUBLIC COMMUNICATIONS:

Not applicable

SUMMARY:

The IT department would like authorization to renew our Arc GIS software and support at a total cost of \$9,450.00

ATTACHMENTS:

The quote from ESRI for the license and support renewal.

SUGGESTED RESOLUTION:

Authorize the IT department to purchase the License and support renewal for the Arc GIS software from ESRI Inc. Total cost not to exceed \$9,450.00. Funds are available in the Computer Maintenance fund account # 636-228.000-933.0600

**esri**[®]

380 New York Street
Redlands, CA 92373
Phone: 909-793-28533864

Quotation

Date: 12/06/2020**Quotation Number:** 25995922**Contract Number:** 318946

City of Birmingham
Information Technology Dept
PO Box 3001
P.O. Box 3001
Birmingham MI 48012-3001

Attn: Eric Brunk**Customer Number:** 151933

For questions regarding this document, please contact Customer Service at 888-377-4575.

Send Purchase Orders To:

Environmental Systems Research Institute, Inc.
380 New York Street
Redlands, CA 92373-8100
Attn: Reyna HERNANDEZ

Please include the following remittance address on your Purchase Order:

Environmental Systems Research Institute, Inc.
P.O. Box 741076
Los Angeles, CA 90074-1076

Item	Qty	Material#	Unit Price	Extended Price
10	1	52384 ArcGIS Desktop Advanced Concurrent Use Primary Maintenance Start Date: 03/07/2021 End Date: 03/06/2022	3,000.00	3,000.00
1010	1	87194 ArcGIS Desktop Basic Concurrent Use Primary Maintenance Start Date: 03/07/2021 End Date: 03/06/2022	700.00	700.00
2010	3	87195 ArcGIS Desktop Basic Concurrent Use Secondary Maintenance Start Date: 03/07/2021 End Date: 03/06/2022	500.00	1,500.00
3010	1	87198 ArcGIS 3D Analyst for Desktop Concurrent Use Primary Maintenance Start Date: 03/07/2021 End Date: 03/06/2022	500.00	500.00
4010	2	109842	500.00	1,000.00

Quotation is valid for 90 days from document date.

Any estimated sales and/or use tax has been calculated as of the date of this quotation and is merely provided as a convenience for your organization's budgetary purposes. Esri reserves the right to adjust and collect sales and/or use tax at the actual date of invoicing. If your organization is tax exempt or pays state taxes directly, then prior to invoicing, your organization must provide Esri with a copy of a current tax exemption certificate issued by your state's taxing authority for the given jurisdiction.

Esri may charge a fee to cover expenses related to any customer requirement to use a proprietary vendor management, procurement, or invoice program.

Issued By: Reyna HERNANDEZ**Ext:** 3864

[CSBATCHDOM]

To expedite your order, please reference your customer number and this quotation number on your purchase order.



esri[®]

380 New York Street
Redlands, CA 92373
Phone: 909-793-28533864

Quotation

Page 2

Date: 12/06/2020

Quotation Number: 25995922

Contract Number: 318946

Item	Qty	Material#	Unit Price	Extended Price
ArcGIS for Server Workgroup Standard One Core Additional Migrated Maintenance Start Date: 03/07/2021 End Date: 03/06/2022				
5010	7	114511	250.00	1,750.00
ArcPad Maintenance Start Date: 03/07/2021 End Date: 03/06/2022				
6010	1	109845	1,000.00	1,000.00
ArcGIS for Server Workgroup Standard Up to Two Cores Migrated Maintenance Start Date: 03/07/2021 End Date: 03/06/2022				

Item Subtotal	9,450.00
Estimated Tax	0.00
Total	USD 9,450.00

DUNS/CEC: 06-313-4175 CAGE: 0AMS3



esri[®]

380 New York Street
Redlands, CA 92373
Phone: 909-793-28533864

Quotation

Page 3

Date: 12/06/2020

Quotation Number: 25995922

Contract Number: 318946

Item Qty Material#

Unit Price

Extended Price

Renewal Options:

- Online: Renew through My Esri site at <https://my.esri.com>
 - Credit Card
 - Purchase Order
 - Email Authorization
- Email or Fax: Email Authorization, Purchase Order or signed quote to:
 - Fax: 909-307-3083
 - Email: service@esri.com

Requests via email or signed quote indicate that you are authorized to obligate funds for your organization and your organization does not require a purchase order.

If there are any changes required to your quotation please respond to this email and indicate any changes in your invoice authorization.

If you choose to discontinue your support, you will become ineligible for support benefits and services. All maintenance fees from the date of discontinuation will be due and payable if you decide to reactivate your support coverage at a later date.

The items on this quotation are subject to and governed by the terms of this quotation, the most current product specific scope of use document found at <http://assets.esri.com/content/dam/esrisites/media/legal/product-specific-terms-of-use/e300.pdf>, and your applicable signed agreement with Esri. If no such agreement covers any item quoted, then Esri's standard terms and conditions found at <http://assets.esri.com/content/dam/esrisites/media/legal/ma-full/ma-full.pdf> apply to your purchase of that item. Federal government entities and government prime contractors authorized under FAR 51.1 may purchase under the terms of Esri's GSA Federal Supply Schedule. Supplemental terms and conditions found at <http://www.esri.com/en-us/legal/terms/state-supplemental> apply to some state and local government purchases. All terms of this quotation will be incorporated into and become part of any additional agreement regarding Esri's offerings. Acceptance of this quotation is limited to the terms of this quotation. Esri objects to and expressly rejects any different or additional terms contained in any purchase order, offer, or confirmation sent to or to be sent by buyer. Unless prohibited by law, the quotation information is confidential and may not be copied or released other than for the express purpose of system selection and purchase/license. The information may not be given to outside parties or used for any other purpose without consent from Esri. Delivery is FOB Origin.

In order to expedite processing, please reference the quotation number and any/all applicable Esri contract number(s) (e.g. MPA, ELA, SmartBuy GSA, BPA) on your ordering document.



esri[®]

380 New York Street
Redlands, CA 92373
Phone: 909-793-28533864

Quotation

Page 4

Date: 12/06/2020

Quotation No: 25995922

Customer No: 151933

Contract No: 318946

Item Qty Material#

Unit Price

Extended Price

US FEDERAL CUSTOMERS: If you are a federal customer or a contractor purchasing on behalf of a federal customer a purchase order is required to receive an invoice. Please email the purchase order to service@esri.com

By signing below, you are authorizing Esri to issue a software support invoice in the amount of USD _____ plus sales tax, if applicable.

Please check one of the following:

☐ I agree to pay any applicable sales tax.

☐ I am tax exempt. Please contact me if Esri does not have my current exempt information on file.

Signature of Authorized Representative

Date

Name (Please Print)

Title

MEMORANDUM

DATE: December 4, 2020
TO: Joseph A. Valentine
FROM: Timothy J. Currier
SUBJECT: WOW! Cable Franchise Renewal

INTRODUCTION:

- In August of 2010 the City entered into a franchise agreement with WideOpen West pursuant to the Uniform Video Service Provider Act to provide a Uniform Franchise Agreement. That Agreement has expired. WOW! is requesting a renewal of its franchise.

BACKGROUND:

- The relationship with WOW! has been ongoing for several years and primarily monitored by the Birmingham Area Cable Board. The general provisions are the same universally in the State of Michigan. The City would continue to receive a 5% franchise fee based on the revenues collected as defined in the Franchise Agreement and an additional 2% for public education and government access fees. They are requesting an additional 10 years commencing on the approval date which is December 21, 2020.

LEGAL REVIEW:

- The Agreement is complete and I have informed WOW! that pursuant to the Uniform Video Service Franchise Act, its notice of completeness, had to be submitted within 15 business days. The City must act upon approving the Agreement within 30 days overall. We will need to act on this matter on December 21, 2020. To not act on this would allow WideOpen West to have the Agreement approved by default with potentially no fees involved whatsoever.

FISCAL IMPACT:

- This will create revenue which in part will go to the Birmingham Area Cable Board, but a portion will stay with the General Fund for the City. The total impact depends upon the usage of the residents of the City who select WideOpen West as their video service provider.

SUMMARY:

- As this appears to be normal in all respects, it provides a benefit for the City and the Birmingham Area Cable and, therefore, we request that it be approved.

ATTACHMENTS:

- Mr. Terrell Priester's letter of November 20, 2020.
- My letter of December 4, 2020 notifying the provider of the completeness of the application.
- A copy of the proposed Uniform Video Local Franchise Agreement

SUGGESTED RESOLUTION:

- To approve the Michigan Uniform Video Local Franchise Agreement with WideOpen West effective December 21, 2020.
- Authorize the Mayor and Clerk to sign on behalf of the City.



32650 North Avis Dr.
Madison Heights, MI 48071

November 20, 2020

Joseph Valentine
Birmingham
151 Martin Street
Birmingham, MI 48012

Dear Mr. Valentine,

The Cable Communications System Franchise Agreement between Birmingham and WideOpenWest Michigan, LLC, dated August 03, 2010 has expired. Please find enclosed two copies of Michigan's *Uniform Video Service Local Franchise Agreement* for The City of Birmingham. Both copies are signed by Terrell Priester, WOW's Senior Director of Operations. The first two pages are the instruction sheets from the Michigan Public Service Commission's website.

I have listed the section of the Agreement that requires the Board's action and affixed a "sign here" tab at each section.

Section VI. Fees, A., ii asks the City to enter a franchise fee from 0% to 5%. The Cities current franchise fee is 3%. This amount is the percentage of the customer's bill (residing in the city) that is added to the customer's bill each month in the form of a franchise fee. WOW! collects these fees on behalf of the City and will begin sending these checks to the City quarterly.

Section VIII. PEG Fees (Public, Education & Governmental access fees), 1, 2 and 3, is not applicable. You can either leave them blank or enter zeros (0).

Page 9 of the Agreement and page 2 of Attachment 1 are signature pages. On page 9, *Date submitted* is the date you received the Agreement from WOW! and *Date completed and approved* is the date of the Board's action.

Please keep one copy of the Franchise agreements as the cities original. Then send one of the completed Agreements to my attention in the enclosed envelope as soon as it's complete. Please let me know if I can be of assistance. My direct phone in Madison Heights is 248-677-9080.

RRegards,

A handwritten signature in blue ink, appearing to read "TPR", is written over a blue horizontal line.

Terrell Priester
terrell.priester@wowinc.com
[Phone \(248\) 677-9080](tel:2486779080)

December 4, 2020

Mr. Terrell Priester
32650 North Avis Dr.
Madison Heights, MI 48071

Re: City of Birmingham Notice of Completeness to WideOpen West

Dear Mr. Priester:

Pursuant to the mandates of 2006 Public Act 480, M.C.L.A. §484.3301 *et seq*, known as the Uniform Video Services Local Franchising Act, the City of Birmingham provides you with the following notification. The City received the “Uniform Video Service Local Franchise Agreement” and “Attachment 1- Uniform Video Service Local Franchise Agreement” on November 24, 2020. The City provides you this Notice of Completeness on December 4, 2020 the 7th business day after receiving the above referenced Agreement and Attachment.

Upon review of the “Uniform Video Service Local Franchise Agreement” and “Attachment 1- Uniform Video Service Local Franchise Agreement”, and upon review of Section 3 of M.C.L.A. §484.3301 *et seq*:

☒ The “Uniform Video Service Local Franchise Agreement” and “Attachment 1- Uniform Video Service Local Franchise Agreement” are determined to be complete pursuant to the mandates of the statute.

☐ The “Uniform Video Service Local Franchise Agreement” and “Attachment 1- Uniform Video Service Local Franchise Agreement” are determined not be complete pursuant to the mandates of the statute.

Be advised that while the “Uniform Video Service Local Franchise Agreement” and “Attachment 1” are deemed to be administratively complete, we are recommending that the City of Birmingham require PEG Fees pursuant to Section VIII of the Agreement to be in the amount of 2% of gross revenues, as this is the amount of PEG Fees paid by the incumbent provider. You will find enclosed a proposed Resolution.

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
cc: Mr. Joseph A. Valentine, City Manager

INSTRUCTIONS FOR UNIFORM VIDEO SERVICE LOCAL FRANCHISE AGREEMENT

Pursuant to 2006 Public Act 480, MCL 484.3301 *et seq.*, any Video Service Provider seeking to provide video service in one or more service areas in the state of Michigan after January 30, 2007, shall file an application for a Uniform Video Service Local Franchise Agreement with the Local Unit of Government ("Franchising Entity") that the Provider wishes to service. Pursuant to Section 2(2) of 2006 PA 480, "Except as otherwise provided by this Act, a person shall not provide video services in any local unit of government without first obtaining a uniform video service local franchise as provided under Section 3." Procedures applicable to incumbent video service providers are set forth below.

As of the effective date (January 1, 2007) of the Act, no existing franchise agreement with a Franchising Entity shall be renewed or extended upon the expiration date of the agreement. The incumbent video Provider, at its option, may continue to provide video services to the Franchising Entity by electing to do one of the following:

1. Terminate the existing franchise agreement before the expiration date of the agreement and enter into a new franchise under a uniform video service local franchise agreement.
2. Continue under the existing franchise agreement amended to include only those provisions required under a uniform video service local franchise.
3. Continue to operate under the terms of an expired franchise until a uniform video service local franchise agreement takes effect. An incumbent video Provider with an expired franchise on the effective date has 120 days after the effective date of the Act to file for a uniform video service local franchise agreement.

On the effective date (January 1, 2007) of the Act, any provisions of an existing Franchise that are inconsistent with or in addition to the provisions of a uniform video service local Franchise Agreement are unreasonable and unenforceable by the Franchising Entity.

If, at a subsequent date, the Provider would like to provide video service to an additional Local Unit of Government, the Provider must file an additional application with that Local Unit of Government.

The forms shall meet the following requirements:

- The Provider must complete both the "Uniform Video Service Local Franchise Agreement" and "Attachment 1 - Uniform Video Service Local Franchise Agreement" forms if they are seeking a new/renewed Franchise Agreement, and send the forms by mail (certified, registered, first-class, return receipt requested, or by a nationally recognized overnight delivery service) to the appropriate Franchising Entity. Until otherwise officially notified by the Franchising Entity, the forms shall be sent to the Clerk or any official with the responsibilities or functions of the Clerk in the Franchising Entity. "Attachment 2 - Uniform Video Service Local Franchise Agreement" is not required to be filed at this time *unless* it is being used regarding amendments, terminations, or transfers pertaining to an existing Uniform Video Service Local Franchise Agreement. (Refer to Sections X to XII of the Agreement, as well as Section 3(4-6) of the Act.)
- Pursuant to Section 11 of the Act: Except under the terms of a mandatory protective order, trade secrets and commercial or financial information designated as such and submitted under the Act to the Franchising Entity or Commission are exempt from the Freedom of Information Act, 1976 PA 442, MCL 15.231 to 15.246 and **MUST BE KEPT CONFIDENTIAL**.
 1. The Provider may specify which items of information should be deemed "confidential." It is the responsibility of the provider to clearly identify and segregate any confidential information submitted to the franchising entity with the following information:

"[insert PROVIDER'S NAME]
[CONFIDENTIAL INFORMATION]"

2. The Franchising Entity receiving the information so designated as confidential is required (a) to protect such information from public disclosure, (b) exempt such information from any response to a FOIA request, and (c) make the information available only to and for use only by such local officials as are necessary to approve the franchise agreement or perform any other task for which the information is submitted.
 3. Any Franchising Entity which disputes whether certain information submitted to it by a provider is entitled to confidential treatment under the Act may apply to the Commission for resolution of such a dispute. Unless and until the Commission determines that part or all of the information is not entitled to confidential treatment under the Act, the Franchising Entity shall keep the information confidential.
- Responses to all questions must be provided and must be amended appropriately when changes occur.
 - All responses must be printed out, typed, signed/dated (where appropriate), and mailed (certified, registered, first class, return receipt requested, or by a national recognized overnight delivery service) to the appropriate party.
 - The Agreement and Attachments are templates. Tab through the documents and fill in as appropriate, use the appropriate "dropdown box" (City/Village/Township) when indicated.
 - For sections that need explanation, if the Provider runs out of space, the Provider should then submit the application with typed attachments that are clearly identified.
 - The Franchising Entity shall notify the Provider as to whether the submitted Franchise Agreement is complete as required by this Act within 15 business days after the date that the Franchise Agreement is filed. If the Franchise Agreement is not complete, the Franchising Entity shall state in its notice the reasons the franchise agreement is incomplete. The Franchising Entity cannot declare an application to be incomplete because it may dispute whether or not the applicant has properly classified certain material as "confidential."
 - A Franchising Entity shall have 30 days after the submission date of a complete Franchise Agreement to approve the agreement. If the Franchising Entity does not notify the Provider regarding the completeness of the Franchise Agreement or approve the Franchise Agreement within the time periods required under this subsection, the franchise agreement shall be considered complete and the Franchise Agreement approved. The Provider shall notify both the Franchising Entity and the Michigan Public Service Commission of such an approved and completed Agreement by completing **Attachment 3 - Uniform Video Service Local Franchise Agreement**.
 - For changes to an existing Uniform Video Service Local Franchise Agreement (amendments, transfers, or terminations), the Provider must complete the "**Attachment 2 - Uniform Video Service Local Franchising Entity**" form, and send the form to the appropriate Franchising Entity.
 - For information that is to be submitted to the Michigan Public Service Commission, please use the following address:

Michigan Public Service Commission
Attn: Video Franchising
6545 Mercantile Way
P.O. Box 30221
Lansing, MI 48909

Fax: (517) 241-2400

Questions should be directed to the Service Quality Division, Michigan Public Service Commission at (517) 2416100.

UNIFORM VIDEO SERVICE LOCAL FRANCHISE AGREEMENT

THIS UNIFORM VIDEO SERVICE LOCAL FRANCHISE AGREEMENT ("Agreement") is made, pursuant to 2006 PA 480, MCL 484.3301 *et seq.* (the "Act") by and between the City of Birmingham, a Michigan municipal corporation (the "Franchising Entity"), and WideOpenWest Michigan, LLC., a Delaware corporation doing business as WOW Internet Cable Phone.

I. Definitions

For purposes of this Agreement, the following terms shall have the following meanings as defined in the Act:

- A. "Cable Operator" means that terms as defined in 47 USC 522(5).
- B. "Cable Service" means that terms as defined in 47 USC 522(6).
- C. "Cable System" means that term as defined in 47 USC 522(7).
- D. "Commission" means the Michigan Public Service Commission.
- E. "Franchising Entity" means the local unit of government in which a provider offers video services through a franchise.
- F. "FCC" means the Federal Communications Commission.
- G. "Gross Revenue" means that term as described in Section 6(4) of the Act and in Section VI(D) of the Agreement.
- H. "Household" means a house, an apartment, a mobile home, or any other structure or part of a structure intended for residential occupancy as separate living quarters.
- I. "Incumbent video provider" means a cable operator serving cable subscribers or a telecommunication provider providing video services through the provider's existing telephone exchange boundaries in a particular franchise area within a local unit of government on the effective date of this act.
- J. "IPTV" means internet protocol television.
- K. "Local unit of government" means a city, village, or township.
- L. "Low-income household" means a household with an average annual household income of less than \$35,000.00 as determined by the most recent decennial census.
- M. "METRO Act" means the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act, 2002 PA 48, MCL 484.3101 *et seq.*
- N. "Open video system" or "OVS" means that term as defined in 47 USC 573.
- O. "Person" means an individual, corporation, association, partnership, governmental entity, or any other legal entity.
- P. "Public rights-of-way" means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easements dedicated for compatible uses.
- Q. "Term" means the period of time provided for in Section V of this Agreement.
- R. "Uniform video service local franchise agreement" or "franchise agreement" means the franchise agreement required under the Act to be the operating agreement between each franchising entity and video provider in this state.
- S. "Video programming" means that term as defined in 47 USC 522(20).
- T. "Video service" means video programming, cable services, IPTV, or OVS provided through facilities located at least in part in the public rights-of-way without regard to delivery technology, including internet protocol technology. This definition does not include any video programming provided by a commercial mobile service provider defined in 47 USC 332(d) or provided solely as part of, and via, a service that enables users to access content, information, electronic mail, or other services offered over the public internet.
- U. "Video service provider" or "Provider" means a person authorized under the Act to provide video service.
- V. "Video service provider fee" means the amount paid by a video service provider or incumbent video provider under Section 6 of the Act and Section VI of this Agreement.

II. Requirements of the Provider

- A. An unfranchised Provider will not provide video services in any local unit of government without first obtaining a uniform video service local franchise agreement as provided under **Section 3 of the Act** (except as otherwise provided by the Act).
- B. The Provider shall file in a timely manner with the Federal Communications Commission all forms required by that agency in advance of offering video service in Michigan.
- C. The Provider agrees to comply with all valid and enforceable federal and state statutes and regulations.
- D. The Provider agrees to comply with all valid and enforceable local regulations regarding the use and occupation of public rights-of-way in the delivery of the video service, including the police powers of the Franchising Entity.
- E. The Provider shall comply with all Federal Communications Commission requirements involving the distribution and notification of federal, state, and local emergency messages over the emergency alert system applicable to cable operators.
- F. The Provider shall comply with the public, education, and government programming requirements of Section 4 of the Act.
- G. The Provider shall comply with all customer service rules of the Federal Communications Commission under 47 CFR 76.309 (c) applicable to cable operators and applicable provisions of the Michigan Consumer Protection Act, 1976 PA 331, MCL 445.901 to 445.922.
 - i. Including but not limited to: MCL 445.902; MCL 445.903 (1)(a) through 445.903(1)(cc); MCL 445.903(1)(ff) through (jj); MCL 445.903(2); MCL 445.905; MCL 445.906; MCL 445.907; MCL 445.908; MCL 445.910; MCL 445.911; MCL 445.914; MCL 445.915; MCL 445.916; MCL 445.918.
- H. The Provider agrees to comply with in-home wiring and consumer premises wiring rules of the Federal Communications Commission applicable to cable operators.
- I. The Provider shall comply with the Consumer Privacy Requirements of 47 USC 551 applicable to cable operators.
- J. If the Provider is an incumbent video provider, it shall comply with the terms which provide insurance for right-of-way related activities that are contained in its last cable franchise or consent agreement from the Franchising Entity entered before the effective date of the Act.
- K. The Provider agrees that before offering video services within the boundaries of a local unit of government, the video Provider shall enter into a Franchise Agreement with the local unit of government as required by the Act.
- L. The Provider understands that as the effective date of the Act, no existing Franchise Agreement with a Franchising Entity shall be renewed or extended upon the expiration date of the Agreement.
- M. The Provider provides an exact description of the video service area footprint to be served, pursuant to **Section 2(3)(e) of the Act**. If the Provider is not an incumbent video Provider, the date on which the Provider expects to provide video services in the area identified under **Section 2(3)(e) of the Act** must be noted. The Provider will provide this information in Attachment 1 - Uniform Video Service Local Franchise Agreement.
- N. The Provider is required to pay the Provider fees pursuant to **Section 6 of the Act**.

III. Provider Providing Access

- A. The Provider shall not deny access to service to any group of potential residential subscribers because of the race or income of the residents in the local area in which the group resides.
- B. It is a defense to an alleged violation of Paragraph A if the Provider has met either of the following conditions:
 - i. Within 3 years of the date it began providing video service under the Act and the Agreement; at least 25% of households with access to the Provider's video service are low-income households.
 - ii. Within 5 years of the date it began providing video service under the Act and Agreement and from that point forward, at least 30% of the households with access to the Provider's video service are low-income households.
- C. [If the Provider is using telecommunication facilities] to provide video services and has more than 1,000,000 telecommunication access lines in Michigan, the Provider shall provide access to its video service to a number of households equal to at least 25% of the households in the provider's telecommunication

service area in Michigan within 3 years of the date it began providing video service under the Act and Agreement and to a number not less than 50% of these households within 6 years. **The video service Provider is not required to meet the 50% requirement in this paragraph until 2 years after at least 30% of the households with access to the Provider's video service subscribe to the service for 6 consecutive months.**

- D. The Provider may apply to the Franchising Entity, and in the case of paragraph C, the Commission, for a waiver of or for an extension of time to meet the requirements of this section if 1 or more of the following apply:
- i. The inability to obtain access to public and private rights-of-way under reasonable terms and conditions.
 - ii. Developments or buildings not being subject to competition because of existing exclusive service arrangements.
 - iii. Developments or buildings being inaccessible using reasonable technical solutions under commercial reasonable terms and conditions.
 - iv. Natural disasters
 - v. Factors beyond the control of the Provider
- E. The Franchising Entity or Commission may grant the waiver or extension only if the Provider has made substantial and continuous effort to meet the requirements of this section. If an extension is granted, the Franchising Entity or Commission shall establish a new compliance deadline. If a waiver is granted, the Franchising Entity or Commission shall specify the requirement or requirements waived.
- F. The Provider shall file an annual report with the Franchising Entity and the Commission regarding the progress that has been made toward compliance with paragraphs B and C.
- G. Except for satellite service, the provider may satisfy the requirements of this paragraph and Section 9 of the Act through the use of alternative technology that offers service, functionality, and content, which is demonstrably similar to that provided through the provider's video service system and may include a technology that does not require the use of any public right-of-way. The technology utilized to comply with the requirements of this section shall include local public, education, and government channels and messages over the emergency alert system as required under Paragraph II(E) of this Agreement.

IV. Responsibility of the Franchising Entity

- A. The Franchising Entity hereby grants authority to the Provider to provide Video Service in the Video Service area footprint, as described in this Agreement and Attachments, as well as the Act.
- B. The Franchising Entity hereby grants authority to the Provider to use and occupy the Public Rights-of-way in the delivery of Video Service, subject to the laws of the state of Michigan and the police powers of the Franchising Entity.
- C. The Franchising Entity shall notify the Provider as to whether the submitted Franchise Agreement is complete as required by the Act within 15 business days after the date that the Franchise Agreement is filed. If the Franchise Agreement is not complete, the Franchising Entity shall state in its notice the reasons the Franchise Agreement is incomplete. The Franchising Entity cannot declare an application to be incomplete because it may dispute whether or not the applicant has properly classified certain material as "confidential."
- D. The Franchising Entity shall have 30 days after the submission date of a complete Franchise Agreement to approve the agreement. If the Franchising Entity does not notify the Provider regarding the completeness of the Franchise Agreement or approve the Franchise Agreement within the time periods required under **Section 3(3) of the Act**, the Franchise Agreement shall be considered complete and the Franchise Agreement approved.
- i. If time has expired for the Franchising Entity to notify the Provider, The Provider shall send (via mail: certified or registered, or by fax) notice to the Franchising Entity and the Commission, using Attachment 3 of this Agreement.
- E. The Franchising Entity shall allow a Provider to install, construct, and maintain a video service or communications network within a public right-of-way and shall provide the provider with open, comparable, nondiscriminatory, and competitively neutral access to the public right-of-way.
- F. The Franchising Entity may not discriminate against a video service provider to provide video service for any of the following:
- i. The authorization or placement of a video service or communications network in public right-of-way.
 - ii. Access to a building owned by a governmental entity.
 - iii. A municipal utility pole attachment.
- G. The Franchising Entity may impose on a Provider a permit fee only to the extent it imposes such a fee on incumbent video providers, and any fee shall not exceed the actual, direct costs incurred by the Franchising

Entity for issuing the relevant permit. A fee under this section shall not be levied if the Provider already has paid a permit fee of any kind in connection with the same activity that would otherwise be covered by the permit fee under this section or is otherwise authorized by law or contract to place the facilities used by the Provider in the public right-of-way or for general revenue purposes.

- H. The Franchising Entity shall not require the provider to obtain any other franchise, assess any other fee or charge, or impose any other franchise requirement than is allowed under the Act and this Agreement. For purposes of this Agreement, a franchise requirement includes but is not limited to, a provision regulating rates charged by video service providers, requiring the video service providers to satisfy any build-out requirements, or a requirement for the deployment of any facilities or equipment.
- I. Notwithstanding any other provision of the Act, the Provider shall not be required to comply with, and the Franchising Entity may not impose or enforce, any mandatory build-out or deployment provisions, schedules, or requirements except as required by **Section 9 of the Act**.
- J. The Franchising Entity is subject to the penalties provided for under Section 14 of the Act.

V. Term

A. This Franchise Agreement shall be for a period of 10 years from the date it is issued. The date it is issued shall be calculated either by (a) the date the Franchising Entity approved the Agreement, provided it did so within 30 days after the submission of a complete franchise agreement, or (b) the date the Agreement is deemed approved pursuant to **Section 3(3) of the Act**, if the Franchising Entity either fails to notify the Provider regarding the completeness of the Agreement or approve the Agreement within the time periods required under that subsection.

B. Before the expiration of the initial Franchise Agreement or any subsequent renewals, the Provider may apply for an additional 10-year renewal under **Section 3(7) of the Act**.

VI. Fees

- A. A video service Provider shall calculate and pay an annual video service provider fee to the Franchising Entity. The fee shall be 1 of the following:
 - i. If there is an existing Franchise Agreement, an amount equal to the percentage of gross revenue paid to the Franchising Entity by the incumbent video Provider with the largest number of subscribers in the Franchising Entity.
 - ii. At the expiration of an existing Franchise Agreement or if there is no existing Franchise Agreement, an amount equal to the percentage of gross revenue as established by the Franchising Entity of 5 % (percentage amount to be inserted by Franchising Entity which shall not exceed 5%) and shall be applicable to all providers
- B. The fee shall be due on a quarterly basis and paid within 45 days after the close of the quarter. Each payment shall include a statement explaining the basis for the calculation of the fee.
- C. The Franchising Entity shall not demand any additional fees or charges from a provider and shall not demand the use of any other calculation method other than allowed under the Act.
- D. For purposes of this Section, "gross revenues" means all consideration of any kind or nature, including, without limitation, cash, credits, property, and in-kind contributions received by the provider from subscribers for the provision of video service by the video service provider within the jurisdiction of the franchising entity.
 - 1. **Gross revenues shall include all of the following:**
 - i. All charges and fees paid by subscribers for the provision of video service, including equipment rental, late fees, insufficient funds fees, fees attributable to video service when sold individually or as part of a package or bundle, or functionally integrated, with services other than video service.
 - ii. Any franchise fee imposed on the Provider that is passed on to subscribers.
 - iii. Compensation received by the Provider for promotion or exhibition of any products or services over the video service.
 - iv. Revenue received by the Provider as compensation for carriage of video programming on that Provider's video service.
 - v. All revenue derived from compensation arrangements for advertising to the local franchise area.
 - vi. Any advertising commissions paid to an affiliated third party for video service advertising.
 - 2. **Gross revenues do not include any of the following:**
 - i. Any revenue not actually received, even if billed, such as bad debt net of any recoveries of bad debt.

- ii. Refunds, rebates, credits, or discounts to subscribers or a municipality to the extent not already offset by subdivision (D)(i) and to the extent the refund, rebate, credit, or discount is attributable to the video service.
 - iii. Any revenues received by the Provider or its affiliates from the provision of services or capabilities other than video service, including telecommunications services, information services, and services, capabilities, and applications that may be sold as part of a package or bundle, or functionality integrated, with video service.
 - iv. Any revenues received by the Provider or its affiliates for the provision of directory or internet advertising, including yellow pages, white pages, banner advertisement, and electronic publishing.
 - v. Any amounts attributable to the provision of video service to customers at no charge, including the provision of such service to public institutions without charge.
 - vi. Any tax, fee, or assessment of general applicability imposed on the customer or the transaction by a federal, state, or local government or any other governmental entity, collected by the Provider, and required to be remitted to the taxing entity, including sales and use taxes.
 - vii. Any forgone revenue from the provision of video service at no charge to any person, except that any forgone revenue exchanged for trades, barter, services, or other items of value shall be included in gross revenue.
 - viii. Sales of capital assets or surplus equipment.
 - ix. Reimbursement by programmers of marketing costs actually incurred by the Provider for the introduction of new programming.
 - x. The sale of video service for resale to the extent the purchaser certifies in writing that it will resell the service and pay a franchise fee with respect to the service.
- E. In the case of a video service that is bundled or integrated functionally with other services, capabilities, or applications, the portion of the video Provider's revenue attributable to the other services, capabilities, or applications shall be included in gross revenue unless the Provider can reasonably identify the division or exclusion of the revenue from its books and records that are kept in the regular course of business.
- F. Revenue of an affiliate shall be included in the calculation of gross revenues to the extent the treatment of the revenue as revenue of the affiliate has the effect of evading the payment of franchise fees which would otherwise be paid for video service.
- G. The Provider is entitled to a credit applied toward the fees due under **Section 6(1) of the Act** for all funds allocated to the Franchising Entity from annual maintenance fees paid by the provider for use of public rights-of-way, minus any property tax credit allowed under **Section 8 of the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (METRO Act)**, 2002 PA 48, MCL 484.3108. The credits shall be applied on a monthly pro rata basis beginning in the first month of each calendar year in which the Franchising Entity receives its allocation of funds. The credit allowed under this subsection shall be calculated by multiplying the number of linear feet occupied by the Provider in the public rights-of-way of the Franchising Entity by the lesser of 5 cents or the amount assessed under the **METRO Act**. The Provider is not eligible for a credit under this section unless the provider has taken all property tax credits allowed under the **METRO Act**.
- H. All determinations and computations made under this section shall be pursuant to generally accepted accounting principles.
- I. Any claims by a Franchising Entity that fees have not been paid as required under **Section 6 of the Act**, and any claims for refunds or other corrections to the remittance of the Provider shall be made within 3 years from the date the compensation is remitted.
- J. The Provider may identify and collect as a separate line item on the regular monthly bill of each subscriber an amount equal to the percentage established under **Section 6(1) of the Act**, applied against the amount of the subscriber's monthly bill.
- K. The Franchising Entity shall not demand any additional fees or charges from a Provider and shall not demand the use of any other calculation method other than allowed under the Act.

VII. Public, Education, and Government (PEG) Channels

- A. The video service Provider shall designate a sufficient amount of capacity on its network to provide for the same number of public, education, and government access channels that are in actual use on the incumbent video provider system on the **effective date of the Act** or as provided under **Section 4(14) of the Act**.
- B. Any public, education, or government channel provided under this section that is not utilized by the Franchising Entity for at least 8 hours per day for 3 consecutive months may no longer be made available to the Franchising Entity and may be programmed at the Provider's discretion. At such a time as the

Franchising Entity can certify a schedule for at least 8 hours of daily programming for a period of 3 consecutive months, the Provider shall restore the previously reallocated channel.

- C. The Franchising Entity shall ensure that all transmissions, content, or programming to be retransmitted by a video service Provider is provided in a manner or form that is capable of being accepted and retransmitted by a Provider, without requirement for additional alteration or change in the content by the Provider, over the particular network of the Provider, which is compatible with the technology or protocol utilized by the Provider to deliver services.
- D. The person producing the broadcast is solely responsible for all content provided over designated public, education, or government channels. The video service Provider shall not exercise any editorial control over any programming on any channel designed for public, education, or government use.
- E. The video service Provider is not subject to any civil or criminal liability for any program carried on any channel designated for public, education, or government use.
- F. If a Franchising Entity seeks to utilize capacity pursuant to **Section 4(1) of the Act** or an agreement under **Section 13 of the Act** to provide access to video programming over one or more PEG channels, the Franchising Entity shall give the Provider a written request specifying the number of channels in actual use on the incumbent video provider's system or specified in the agreement entered into under **Section 13 of the Act**. The video service Provider shall have 90 days to begin providing access as requested by the Franchising Entity. The number and designation of PEG access channels shall be set forth in an addendum to this agreement effective 90 days after the request is submitted by the Franchising Entity.
- G. A PEG channel shall only be used for noncommercial purposes.

VIII. PEG Fees

- A. The video service Provider shall also pay to the Franchising Entity as support for the cost of PEG access facilities and services an annual fee equal to one of the following options:
 - 1. If there is an existing Franchise on the effective date of the Act, the fee (enter the fee amount 2%) paid to the Franchising Entity by the incumbent video Provider with the largest number of cable service subscribers in the Franchising Entity as determined by the existing Franchise Agreement;
 - 2. At the expiration of the existing Franchise Agreement, the amount required under (1) above, which is % of gross revenues. (The amount under (1) above is not to exceed 2% of gross revenues);
 - 3. If there is no existing Franchise Agreement, a percentage of gross revenues as established by the Franchising Entity and to be determined by a community need assessment, is N.A. % of gross revenues. (The percentage that is established by the Franchising Entity is not to exceed 2% of gross revenues.); and
 - 4. An amount agreed to by the Franchising Entity and the video service Provider.
- B. The fee required by this section shall be applicable to all providers, pursuant to Section 6(9) of the Act.
- C. The fee shall be due on a quarterly basis and paid within 45 days after the close of the quarter. Each payment shall include a statement explaining the basis for the calculation of the fee.
- D. All determinations and computations made under this section shall be pursuant to generally accepted accounting principles.
- E. Any claims by a Franchising Entity that fees have not been paid as required under **Section 6 of the Act**, and any claims for refunds or other corrections to the remittance of the Provider shall be made within 3 years from the date the compensation is remitted.
- F. The Provider may identify and collect as a separate line item on the regular monthly bill of each subscriber an amount equal to the percentage established under **Section 6(8) of the Act**, applied against the amount of the subscriber's monthly bill.
- G. The Franchising Entity shall not demand any additional fees or charges from a Provider and shall not demand the use of any other calculation method other than allowed under the Act.

IX. Audits

- A. No more than every 24 months, a Franchising Entity may perform reasonable audits of the video service Provider's calculation of the fees paid under **Section 6 of the Act** to the Franchising Entity during the preceding 24-month period only. All records reasonably necessary for the audits shall be made available by the Provider at the location where the records are kept in the ordinary course of business. The Franchising Entity and the video service Provider shall each be responsible for their respective costs of the audit. Any additional amount due verified by the Franchising Entity shall be paid by the Provider within 30 days of the Franchising Entity's submission of invoice for the sum. If the sum exceeds 5% of the total fees which the

audit determines should have been paid for the 24-month period, the Provider shall pay the Franchising Entity's reasonable costs of the audit.

- B. Any claims by a Franchising Entity that fees have not been paid as required under **Section 6 of the Act**, and any claims for refunds or other corrections to the remittance of the provider shall be made within 3 years from the date the compensation is remitted.

X. Termination and Modification

This Franchise Agreement issued by a Franchising Entity may be terminated or the video service area footprint may be modified, except as provided under **Section 9 of the Act**, by the Provider by submitting notice to the Franchising Entity. The Provider will use Attachment 2, when notifying the Franchising Entity.

XI. Transferability

This Franchise Agreement issued by a Franchising Entity or an existing franchise of an incumbent video service Provider is fully transferable to any successor in interest to the Provider to which it is initially granted. A notice of transfer shall be filed with the Franchising Entity within 15 days of the completion of the transfer. The Provider will use Attachment 2, when notifying the Franchising Entity. The successor in interest will assume the rights and responsibilities of the original provider and will also be required to complete their portion of the Transfer Agreement located within Attachment 2.

XII. Change of Information

If any of the information contained in the Franchise Agreement changes, the Provider shall timely notify the Franchising Entity. The Provider will use Attachment 2, when notifying the Franchising Entity.

XIII. Confidentiality

Pursuant to Section 11 of the Act: Except under the terms of a mandatory protective order, trade secrets and commercial or financial information designated as such and submitted under the Act to the Franchising Entity or Commission are exempt from the Freedom of Information Act, 1976 PA 442, MCL 15.231 to 15.246 and MUST BE KEPT CONFIDENTIAL.

- A. The Provider may specify which items of information should be deemed "confidential." It is the responsibility of the provider to clearly identify and segregate any confidential information submitted to the franchising entity with the following information:
 "[Insert PROVIDER'S NAME]
 [CONFIDENTIAL INFORMATION]"
- B. The Franchising Entity receiving the information so designated as confidential is required (a) to protect such information from public disclosure, (b) exempt such information from any response to a FOIA request, and (c) make the information available only to and for use only by such local officials as are necessary to approve the franchise agreement or perform any other task for which the information is submitted.
- C. Any Franchising Entity which disputes whether certain information submitted to it by a provider is entitled to confidential treatment under the Act may apply to the Commission for resolution of such a dispute. Unless and until the Commission determines that part or all of the information is not entitled to confidential treatment under the Act, the Franchising Entity shall keep the information confidential.

XIV. Complaints/Customer Service

- A. The Provider shall establish a dispute resolution process for its customers. Provider shall maintain a local or toll-free telephone number for customer service contact.
- B. The Provider shall be subjected to the penalties, as described under **Section 14 of the Act**, and the Franchising Entity and Provider may be subjected to the dispute process as described in **Section 10 of the Act**.
- C. Each Provider shall annually notify its customers of the dispute resolution process required under **Section 10 of the Act**. Each Provider shall include the dispute resolution process on its website.
- D. Before a customer may file a complaint with the Commission under **Section 10(5) of the Act**, the customer shall first attempt to resolve the dispute through the dispute resolution process established by the Provider in **Section 10(2) of the Act**.
- E. A complaint between a customer and a Provider shall be handled by the Commission pursuant to the process as described in **Section 10(5) of the Act**.
- F. A complaint between a Provider and a franchising entity or between two or more Providers shall be handled by the Commission pursuant to the process described in **Section 10(6) of the Act**.
- G. In connection with providing video services to the subscribers, a provider shall not do any act prohibited by Section 10(1)(a-f) of the Act. The Commission may enforce compliance to the extent that the activities are not covered by **Section 2(3)(I) in the Act**.

XV. Notices

Any notices to be given under this Franchise Agreement shall be in writing and delivered to a Party personally, by facsimile or by certified, registered, or first-class mail, with postage prepaid and return receipt requested, or by a nationally recognized overnight delivery service, addressed as follows:

If to the Franchising Entity:
(must provide street address)

If to the Provider:
(must provide street address)

City of Birmingham:

City of Birmingham

151 Martin Street

Birmingham, MI 48012

Attn: Joseph Valentine, City Manager

Fax No.: 248-530-1110

WideOpenWest Michigan, LLC

32650 North Avis Dr.

Madison Heights, MI 48071

Attn: Terrell Priester

Fax No.: 248-677-9021

Or such other addresses or facsimile numbers as the Parties may designate by written notice from time to time.

XVI. Miscellaneous

- A. **Governing Law.** This Franchise Agreement shall be governed by, and construed in accordance with, applicable Federal laws and laws of the State of Michigan.
- B. **The parties to this Franchise Agreement are subject to all valid and enforceable provisions of the Act.**
- C. **Counterparts.** This Agreement may be signed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement.
- D. **Power to Enter.** Each Party hereby warrants to the other Party that it has the requisite power and authority to enter into this Franchise Agreement and to perform according to the terms hereof.
- E. **The Provider and Franchising Entity are subject to the provisions of 2006 Public Act 480.**

IN WITNESS WHEREOF, the Parties, by their duly authorized representatives, have executed this Franchise Agreement.

City of Birmingham, a Michigan Municipal Corporation

WideOpenWest Michigan, LLC, a Delaware corporation doing business as WOW! Cable Internet Phone

By
Pierre Boutros
Print Name
Mayor
Title
151 Martin Street
Address
Birmingham, MI 48012
City, State, Zip
248-530-1808
Phone
248-530-1110
Fax
Email

By: _____
Alexandria D. Bingham, Clerk

By
Terrell Priester
Print Name
Senior Director of Operations
Title
32650 North Avis Dr.
Address
Madison Heights, MI 48071
City, State, Zip
248-677-9080
Phone
248-677-9021
Fax
terrell.priester@wowinc.com
Email

FRANCHISE AGREEMENT *(Franchising Entity to Complete)*

Date submitted: November 24, 2020
Date completed and approved: December 21, 2020

ATTACHMENT 1

UNIFORM VIDEO SERVICE LOCAL FRANCHISE AGREEMENT (Pursuant To 2006 Public Act 480) (Form must be typed)

Date: November 20, 2020		
Applicant's Name: WideOpenWest Michigan, LLC d/b/a WOW! Internet Cable Phone		
Address 1: 32650 North Avis Dr.		
Address 2:		Phone: 248-677-9080
City: Madison Heights	State: MI	Zip: 48071
Federal I.D. No. (FEIN): 04-3561701		

Company executive officers:

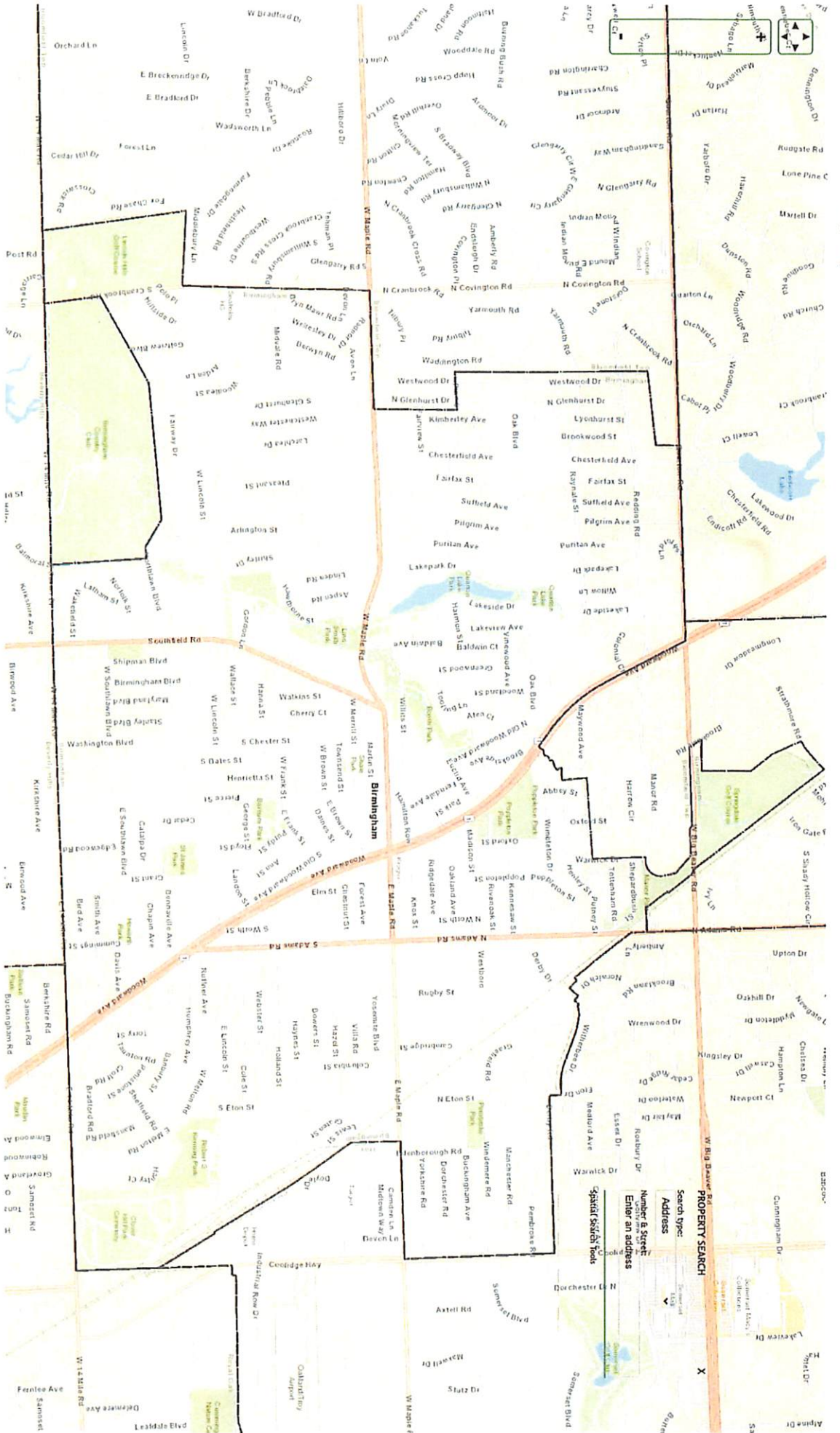
Name(s): Teresa Elder, Henry Hryckiewicz, Shannon Campain, Don Schena, Bill Case, David Burnick & John Rego
Title(s): CEO, CTO, CCO, CXO, CIO, CHRO & CFO

Person(s) authorized to represent the company before the Franchising Entity and the Commission:

Name: Terrell Priester		
Title: Senior Director of Operations		
Address: 32650 North Avis Dr.; Madison Heights, MI 48071		
Phone: 248-677-9080	Fax: 248-677-9021	Email: terrell.priester@wowinc.com

Describe the video service area footprint as set forth in Section 2(3e) of the Act. (An exact description of the video service area footprint to be served, as identified by a geographic information system digital boundary meeting or exceeding national map accuracy standards.)

Refer to the set of area system prints provided in this package.



PROPERTY SEARCH

Search type:
☐ Address
☐ Number & Street
☐ Enter an address
☐ Spatial Search Tools

Map

Close



[**Option A:** for Providers that Options B and C are not applicable, a description based on a geographic information system digital boundary meeting or exceeding national map accuracy standards]

[**Option B:** for Providers with 1,000,000 or more access lines in Michigan using telecommunication facilities to provide Video Service, a description based on entire wire centers or exchanges located in the Franchising Entity]

[**Option C:** for an Incumbent Video Service Provider, it satisfies this requirement by allowing the Franchising Entity to seek right-of-way information comparable to that required by a permit under the METRO Act as set forth in its last cable franchise or consent agreement from the Franchising Entity entered into before the effective date of the Act]

Pursuant to Section 2(3)(d) of the Act, if the Provider is not an incumbent video Provider, provide the date on which the Provider expects to provide video services in the area identified under Section 2(3)(e) (the Video Service Area Footprint).

Date: August 2010

For All Applications:

***Verification
(Provider)***

I, Terrell Priester, of lawful age, and being first duly sworn, now states: As an officer of the Provider, I am authorized to do and hereby make the above commitments. I further affirm that all statements made above are true and correct to the best of my knowledge and belief.

Name and Title (printed): Terrell Priester, Senior Director of Operations

Signature:

Date:

(Franchising Entity)

City of Birmingham, a Michigan municipal corporation

By

Pierre Boutros

Print Name

Mayor

Title

151 Martin Street

Address

Birmingham, MI 48012

City, State, Zip

Phone

248-530-1110

Fax


Email

Date

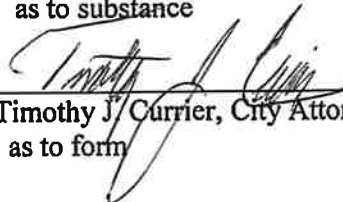
By:

Alexandria D. Bingham, City Clerk


APPROVALS



Joseph A. Valentine, City Manager
as to substance



Timothy J. Currier, City Attorney
as to form



Mark Gerber, Director of Finance
as to financial obligation

DATE: December 21st, 2020

TO: Joseph A. Valentine, City Manager

FROM: Brooks Cowan, City Planner

APPROVED: Jana Ecker, Planning Director

SUBJECT: Public Arts Board Sculpture Call for Entry

INTRODUCTION:

The Public Arts Board is proposing to conduct a call for entry to recruit new works of art to the City of Birmingham. Doing so was one of the Board's goals at the beginning of the year for 2020. The Board has identified five locations which they would like to prioritize for recruiting, however they are open to other suggested locations from interested artists. Three of the prioritized locations are Terminating Vistas while the other two are located in Birmingham Parks. The Public Arts Board has also requested to use \$10,000 of the \$12,000 allocated in the Fiscal Year 2020-2021 budget to provide installation stipends for approved artwork.

BACKGROUND:

Birmingham has sixteen sculptures located in public space, eleven of which are owned by the City while the remaining five are on loan. The Public Arts Board would like to conduct a call-for-entry to recruit new works of art which are either donated or loaned to the City. The Board has prioritized five locations which were selected due to a combination of available budget, prioritized terminating vistas, and prioritized public park spaces. The Board referenced the Terminating Vista Plan and the Prioritized Public Art Location map to determine the locations. These five locations include Poppleton Park, Linden Park, and the three Terminating Vistas of the green space at the intersection of S. Old Woodward and Woodward, the intersection of Henrietta and W. Maple, and the intersection of Hamilton Row and N. Old Woodward.

Conducting a call for entry was a part of the Recommendation and Implementation Priorities section of the Public Arts Board's Terminating Vista report. Recommendation 1 is to use public art such as sculptures, artistic furniture, artistic utilities, landscaping and wall art to enhance the City's Terminating Vistas. On September 21st, 2020, City Commission was presented with a Recommendation and Implementation Framework Table and Timeline Goals where Priority 1 includes creating a call for entry, and also indicates a request for funding to assist with installation.

In order to help incentivize art donations and loans to the City, as well as help mitigate the fiscal impact on artists who wish to donate or loan art to the City, the Public Arts Board has recommended allocated budget funds to be used as a stipend for approved artwork. The Public Arts Board has recommend \$2,000 for each approved art work, up to 5 sculptures total for an amount not to exceed \$10,000. The Public Arts Board recommends that artwork which is donated to the city receive the full \$2,000 stipend after installation. The Public Arts Board also recommends that art on loan be a for a minimum term of 3 years, and that artwork on loan to the city receive

\$1,000 after installation, and then the other \$1,000 after the 3 year term is completed. The amount of \$2,000 per piece if approved, no more than \$10,000 total per year, was included in the Terminating Vista Recommendation and Implementation Framework Priority 1 Cost column presented to the City Commission September 21st, 2020.

Staff has worked with the Public Arts Board to create a packet that provides information about the call for entry and the locations which the Public Arts Board has prioritized. If approved, the call for entry packet will be sent to various art galleries and art organizations. The packet recommends that interested artists visit the City's public art section of the website where they can find more information about the City's public art program including an application for art on loan or donation, the Terminating Vista Report, The Art in Public Spaces report highlighting all of the City's sculptures, and the pinterest page with various images of public art. If the call for entry is approved in December, the packet will be sent out afterwards and the Public Arts Board will begin reviewing applications in March.

It is of note that an application for a sculpture donation was received while the Public Arts Board was formalizing the Call for Entry. The Board believes that Linden Park is an ideal location for the proposed donation of "Pyramid Earth" by Teghan Kazian, and recommended the sculpture be located at one of the prioritized locations in the call for entry. However, given the pending status of the call for entry and the "Pyramid Earth" donation, the Board did not want to amend their call for entry recommendation down to four locations. Therefore, if Pyramid Earth is approved in the future, the call for entry packet will be amended accordingly for four locations before it is sent out to the art community.

On November 18th, 2020, the Public Arts Board approved a motion to recommend the call for entry.

On December 1st, 2020, the Parks and Recreation Board reviewed the prioritized locations with an emphasis on the location in the park space and also approved a motion to recommend the call for entry.

LEGAL REVIEW:

The City Attorney has no concerns. Installation agreements will be drafted for artists applying to loan work to the City.

FISCAL IMPACT:

The Public Arts Board has recommended \$2,000 for each approved artwork, not to exceed a total of \$10,000 for the fiscal year of 2020-2021. Funds in the amount of \$12,000 were allocated in the Fiscal Year 2020-2021 budget from the General Administration Other Contractual Services account #101-299-000-811-0000.

If a sculpture is approved before June 30th, 2021, a Purchase Order will be created from the Board's budget and held for the artist. The stipend would then be distributed once the sculpture is installed. Artwork that is donated to the city will receive the full \$2,000 stipend upon installation, while artwork that is loaned to the city will receive \$1,000 upon installation, and then another \$1,000 after 3 years.

Also, the green space at the intersection of S. Old Woodward and Woodward does not currently have a concrete base pad, therefore the Public Arts Board will have to coordinate with potential artists and the Engineering Department's sidewalk program for the installation of a base pad. As

a reference for cost, the current concrete base pads at Linden Park and Poppleton Park are 6'x6' and had a line item cost of \$200 each in the 2019 sidewalk concrete program.

PUBLIC NOTIFICATION:

Information regarding the call for entry has been on multiple Public Art Board agendas.

SUMMARY:

The Public Arts Board is requesting approval from the City Commission of a call for entry for artwork for the five prioritized locations by the Public Arts Board and the approval of a \$2,000 stipend for selected artwork, up to five sculptures total for an amount not to exceed a total of \$10,000.

ATTACHMENTS:

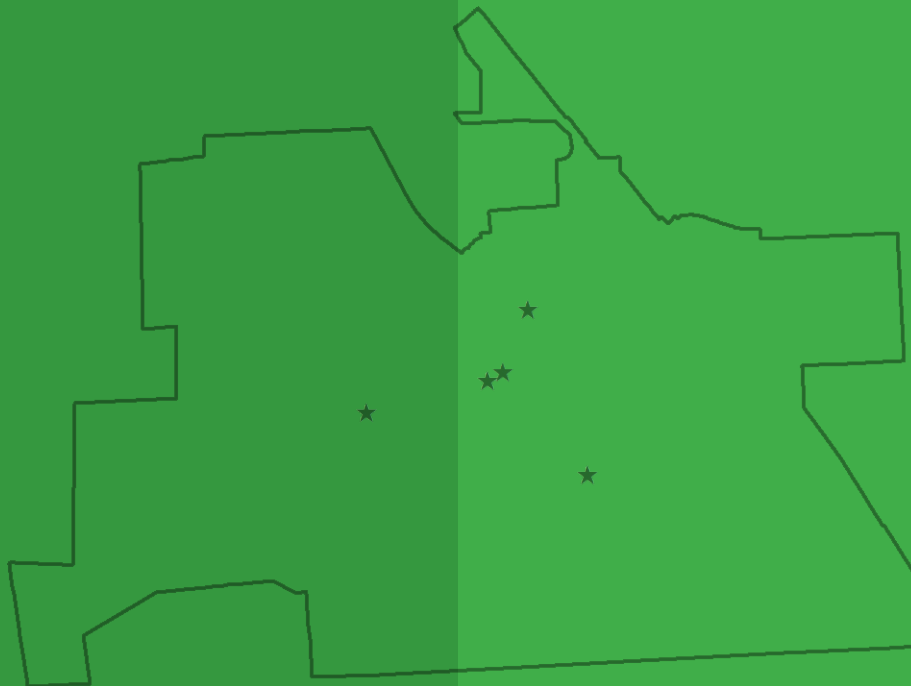
- Call for entry packet
- Prioritized Locations Map
- Sculpture Map
- Terminating Vista Recommendations and Implementation Timeframe
- Art in Public Spaces Sculpture Packet
- Public Arts Board Memo
- Parks and Recreation Board Memo
- Relevant Minutes

SUGGESTED RESOLUTION:

To approve a call for entry for artwork with the following terms for fiscal year 2020-2021:

- 1.) Timeframe options include a loan with a minimum 3-year term, or an accepted donation to the City.
- 2.) The five locations indicated on the call-for-entry map are prioritized, however the Public Arts Board may recommend other sites more suitable within the City;
- 3.) Each artist will coordinate with the relevant City Departments for requirements related to installation;
- 4.) Each artist is to be provided a stipend of \$2,000 for approved artwork, for a total amount not to exceed \$10,000 from the General Administration Budget, account #101-299-000-811-0000.

Birmingham Michigan Sculpture Call For Entry



The City of Birmingham, Michigan is seeking applications for sculpture donations and loans for five locations throughout the City. Birmingham is able to provide a \$2,000 stipend to artists for approved art work.

Please visit the Birmingham Public Arts Board website to find more details about the suggested locations, to learn more about Birmingham's Art in Public Spaces program and to download an application.

https://www.bhamgov.org/culture/public_art.php

You can also find images of Birmingham's various sculptures located on their Pinterest Page.

<https://www.pinterest.com/BhamPublicArt/>

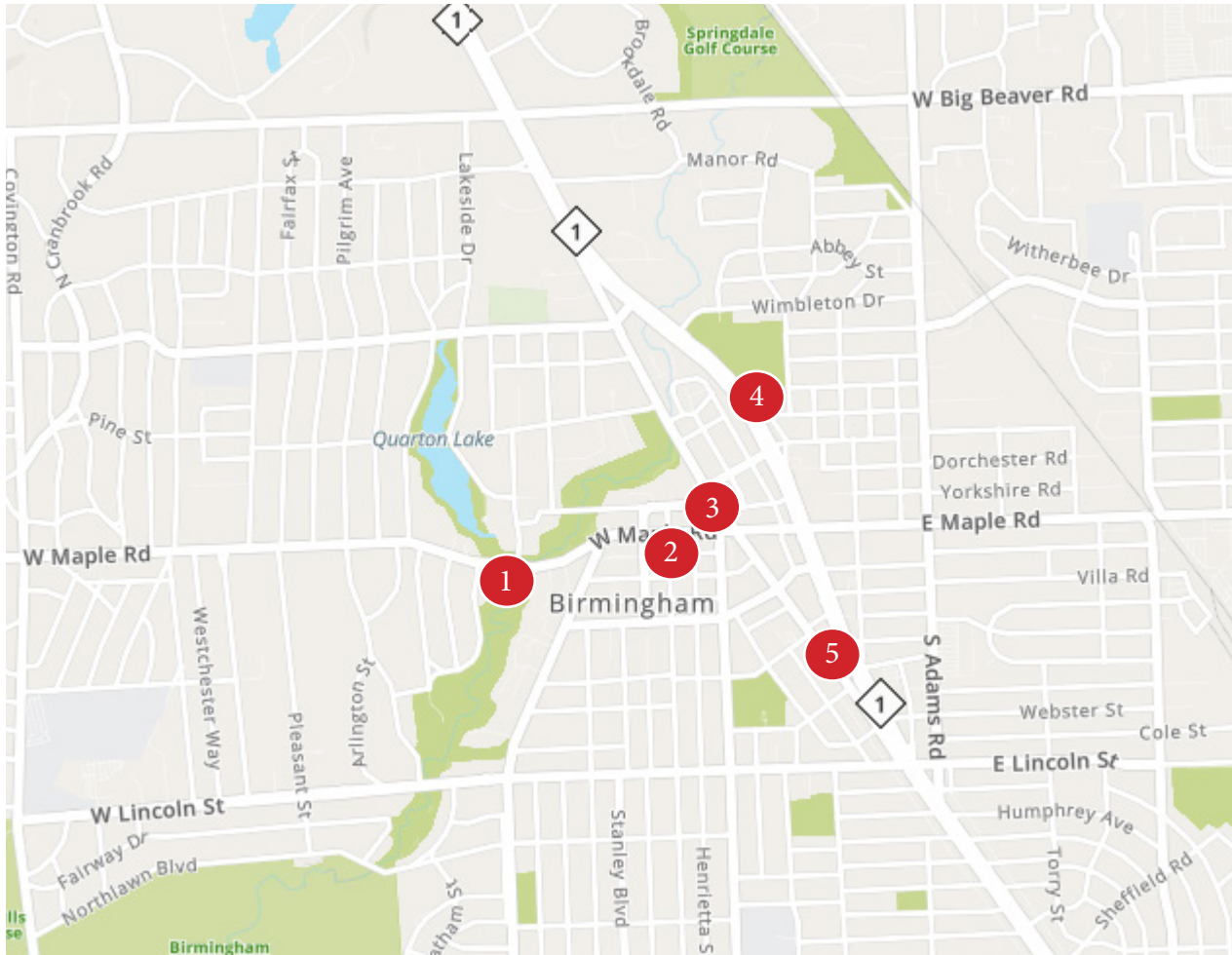
For more information, please contact:

Brooks Cowan

BCowan@Bhamgov.org

(248) 530-1846

**ART IN
PUBLIC
SPACES**





Site 1:

Linden Park, south of W. Maple

Surrounding:

Greenspace, Rouge River, forest and Linden Trail. Quarton Lake and Quarton Lake Trail is directly north across Maple Road.

Access:

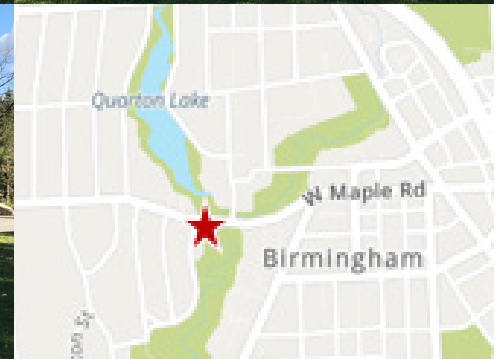
In between the sidewalk and the road, just west of Linden Trail. There is a midblock crossing nearby to the west, connecting Linden Trail to Quarton Lake Trail.

Visibility:

Visible from Maple Road heading east and west, as well as from the sidewalk, Quarton Lake Trail, and Linden Trail. Background consists of greenery and forest.

site:

6' x 6' concrete pad that is 8 inches deep.





Site 2

W. Maple and Henrietta

Surrounding:

Sidewalk, planters, and historical district buildings. Anthropologie currently located behind the pad.

Access:

sidewalk along W. Maple.

Visibility:

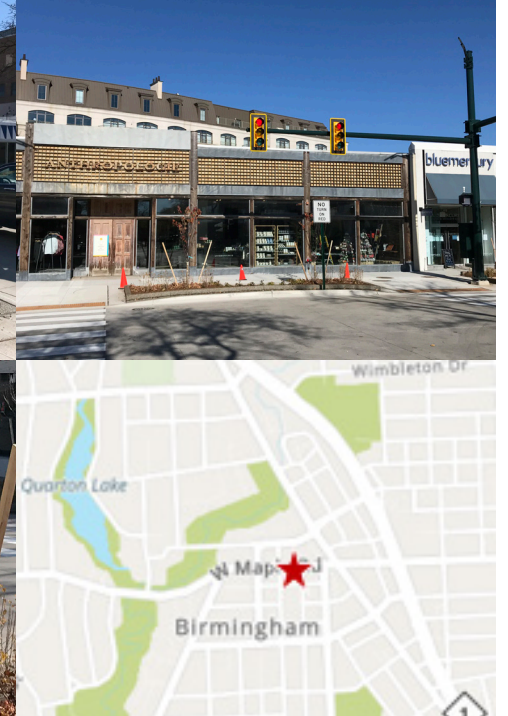
Visible from Maple Road heading east and west, as well as north-bound on Henrietta.

Site:

concrete pad surrounded by plantings.

Terminating Vista:

This location is a Terminating Vista which requires enhanced design features as per Birmingham's Zoning Ordinance requirements. Please see Birmingham's Terminating Vista Report for more information.





Site 3

Electrical Box at N. Old Woodward and Hamilton Row

Surrounding:

Sidewalk, planters, and historical district buildings.

Access:

sidewalk along N. Old Woodward.

Visibility:

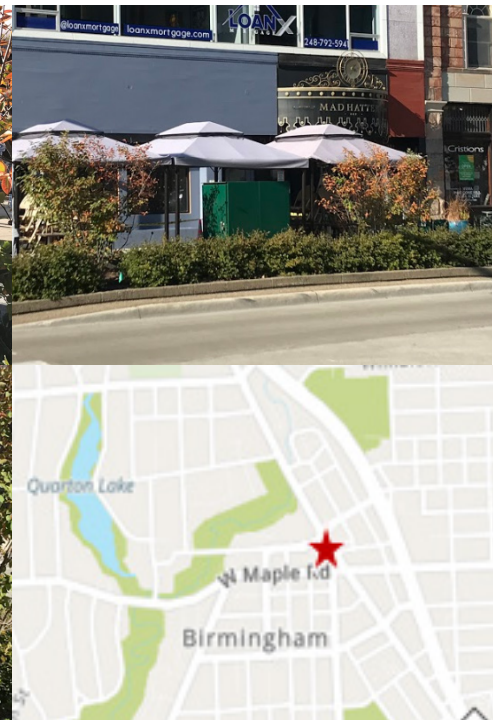
Visible from N. Old Woodward northbound and southbound, as well as westbound on Hamilton Row.

Site:

Electrical box on concrete pad surrounded by planter

Terminating Vista:

This location is a Terminating Vista which requires enhanced design features as per the Birmingham Zoning Ordinance requirements. The City is seeking an artistic design for the electrical box to enhance the aesthetics of the space in the right of way. Please see Birmingham's Terminating Vista Report for more information.





Site 4:

Poppleton Park at the intersection of Woodward Avenue and Madison Avenue.

Surrounding:

Poppleton Park and the Poppleton residential neighborhood.

Access:

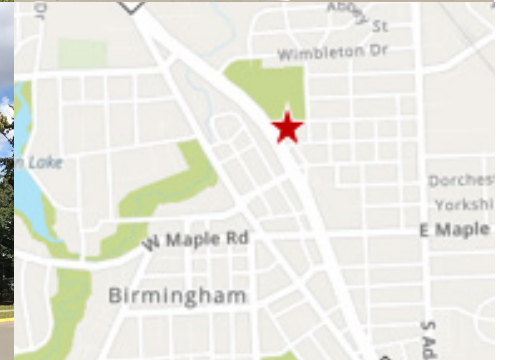
sidewalk along Woodward Avenue and Madison Avenue.

Visibility:

Visible from northbound and southbound Woodward Avenue, as well as entrance and exit for Madison Avenue. MAY also be viewed from southwest portion of Poppleton Park.

Site:

6' x 6' concrete pad that is 8 inches deep





Site 5

Greenspace at intersection of Woodward and S. Old Woodward.

Surrounding:

555 Building, Woodward Avenue to east, S. Old Woodward to the west.

Access:

sidewalk along S. Old Woodward

Visibility:

Considered a gateway to downtown Birmingham.

Site:

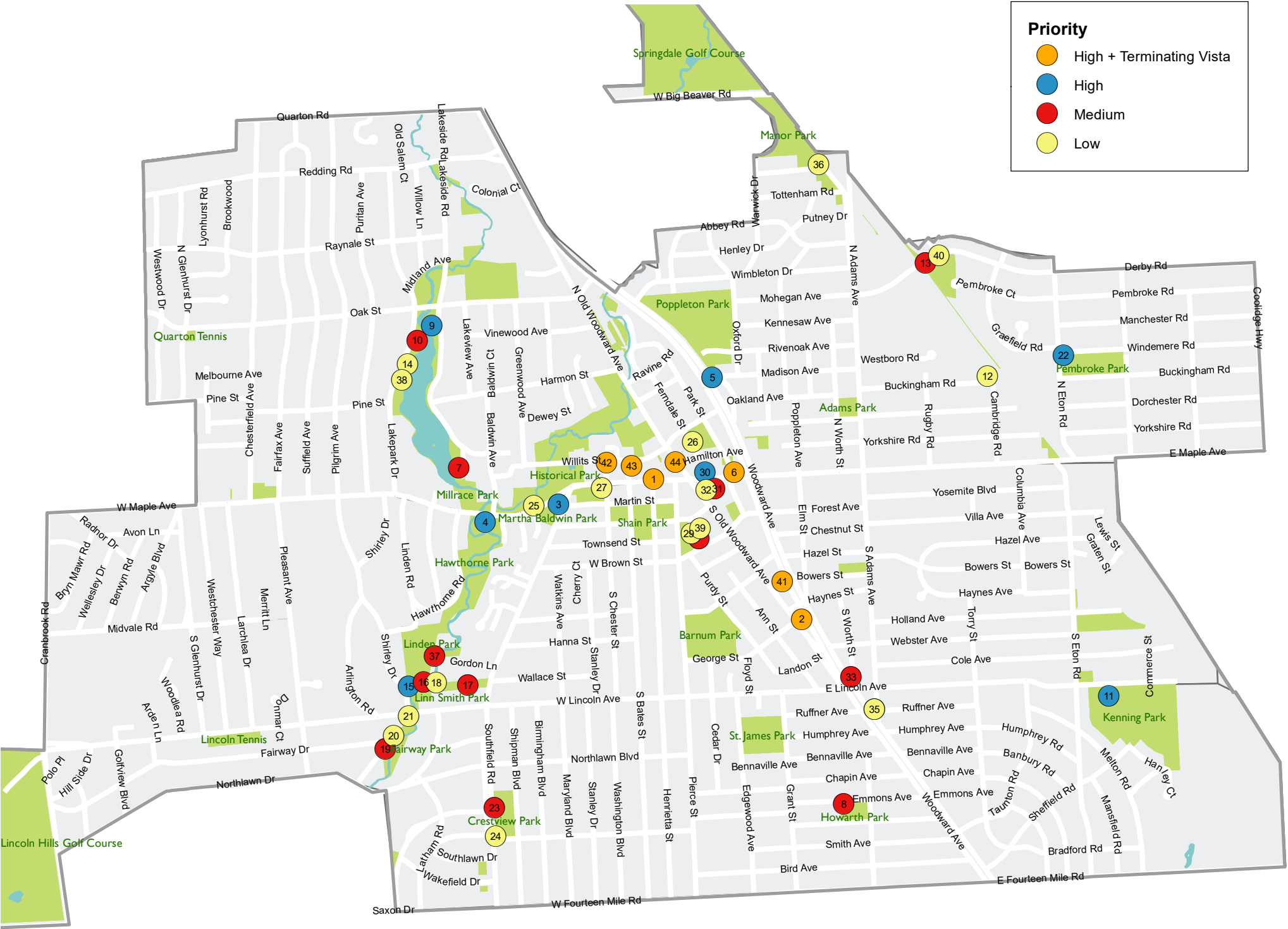
Greenspace with required base pad yet to be determined. Will be based upon side of sculpture proposed.

Terminating Vista:

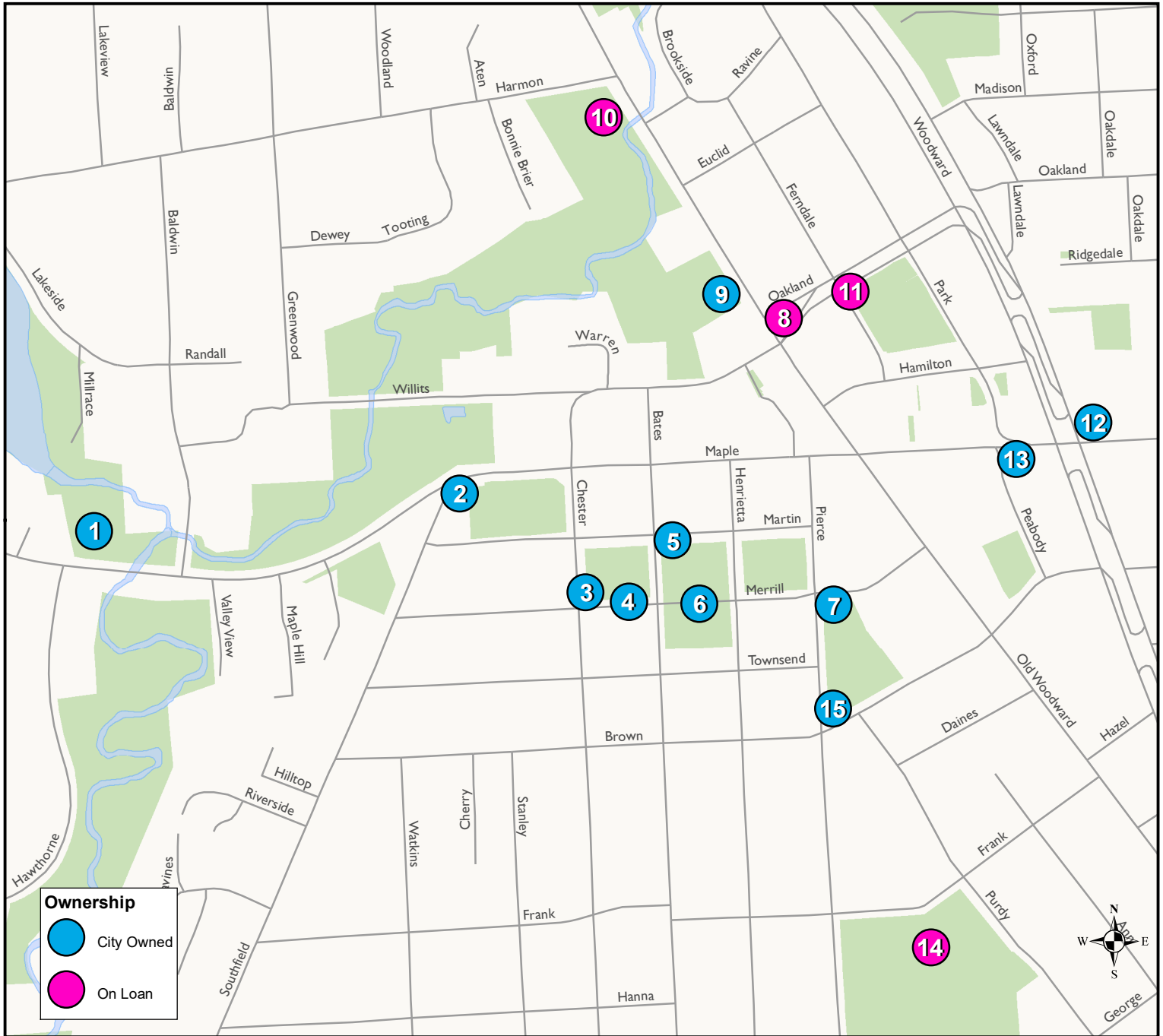
This location is a Terminating Vista which requires enhanced design features as per the Birmingham Zoning Ordinance requirements. Please see Birmingham's Terminating Vista Report for more information.



City of Birmingham Prequalified Public Art Locations



Birmingham Sculpture Locations



- | | |
|--------------------------------|-------------------------|
| 1, Dancing Fish | 9, The Counselor |
| 2, Upcast | 10, Eastern Hophornbeam |
| 3, Michigan Spring | 11, Untitled |
| 4, Siberian Ram | 12, Sound Heart |
| 5, Peace Memorial | 13, L.O.L. |
| 6, Freedom of the Human Spirit | 14, Windswept |
| 7, Wind Rapids | 15, X-Ray Man Ray |
| 8, Torso | 16, Breakaway - Form #3 |



Recommendation and Implementation Priorities

Recommendation 1: Use public art such as sculptures, artistic furniture, artistic utilities, landscaping and wall art to enhance the City's Terminating Vistas

Implementation: Actively seek artists to provide various forms of artwork. Advertise in the art community for the type of art the City is seeking.

Recommendation 2: Revise the sculpture installation process to incentivize sculptures on loan and to make the installation process more efficient for artists and City staff.

Implementation: Establish an agreement with a professional sculpture installation specialist to consult and assist with sculpture installations in Birmingham. Amend the City's art on loan agreement to require approval of sculpture installation from installation consultant.

Recommendation 3: Revise City policy towards city-standard furniture and utilities to allow for an occasional artistic variation.

Implementation: Amend the Zoning Ordinance to allow an occasional deviation from city-standard benches and light poles where such items may be replaced by an artistically designed light or bench.

Recommendation 4: Create a new policy and review process to allow murals and other various forms of wall art to be placed on the exterior of a building.

Implementation: Amend Zoning Ordinance and Sign Ordinance to allow for placement of temporary and permanent murals and other various forms of wall art. The amendment should include review process by all relevant boards.

Recommendation 5: Establish a public notification policy for art projects on public property.

Implementation: Create a provision in the Public Art Section of the Municipal Code to require public notifications to be sent to residents for public art projects proposed within their area.



Terminating Vista Recommendation and Implementation Framework

Priority	Recommendation	Background	Implementation	Costs	Approval Process
1	Use public art such as sculptures, artistic furniture, artistic utilities, landscaping and wall art to enhance the City's Terminating Vistas.	Public Arts Board is responsible for recruiting and recommending public art in various locations throughout the City.	<ol style="list-style-type: none"> Public Arts Board creates call for entry to recruit art donations and loans. This includes a request for an artist stipend fund to assist with installation before sending out. Public Arts Board reviews art pieces submitted and selects artwork for recommendation. 	\$2,000 per piece if approved, no more than \$10,000 total per year.	<ol style="list-style-type: none"> Public Arts Board Parks and Recreation Board (if on greenspace) City Commission
2	Revise the sculpture installation process to incentivize sculptures on loan and to make the installation process more efficient for artists and City staff.	<p>Issues have arisen regarding responsibility for installation and removal.</p> <p>City Employees may not have expertise to install unique pieces of art.</p> <p>Sculpture installation requirements have varied over the years, particularly related to concrete pads.</p>	<ol style="list-style-type: none"> Public Arts Board recommends revisions to art on loan agreement to allow City to assist with installation and removal to ensure quality control and manage liability. Public Arts Board creates RFQ for sculpture installation specialist to assist with mount fabrication and consult on installation process if necessary. Public Arts Board coordinates with Engineering Department's annual sidewalk program to install concrete base pads. 	<p>Up to \$5,000 for art installation specialist per year.</p> <p>Costs associated with concrete base pad installation (Much more cost efficient to incorporate with Engineering sidewalk program).</p>	<ol style="list-style-type: none"> Public Arts Board City Commission <p>* Input from Engineering and DPS strongly recommended</p>
3	Revise City policy towards city-standard furniture and utilities to allow for an occasional artistic variation in Terminating Vistas.	City-standard benches and lightpoles are required in the downtown.	<ol style="list-style-type: none"> Planning Board reviews Terminating Vista report to consider additional Terminating Vista locations as well as possible ordinance changes to permit artistic furniture and utilities. 	No Cost (In house)	<ol style="list-style-type: none"> Planning Board City Commission
4	Create a new policy and review process to allow murals and other various forms of wall art.	The Sign Ordinance currently prevents wall art.	<ol style="list-style-type: none"> Design Review Board considers definition for wall art in Sign Ordinance and Zoning Ordinance to help clarify difference between art and commercial signage. Design Review Board considers review process for wall art that possibly includes Public Arts Board. 	No Cost (In house)	<ol style="list-style-type: none"> Design Review Board Public Arts Board City Commission
5	Establish a public notification policy for art projects on public property.	There is no formal public notification process for art proposals on public property.	<ol style="list-style-type: none"> Public Arts Board reviews public notification options for public art and makes recommendations for notifications process. 	No Cost (In house)	<ol style="list-style-type: none"> Public Arts Board City Commission

Terminating Vista Recommendation and Implementation Framework Suggested Timeline Goals

Recommendation Priorities

- 1 Recruit public art
- 2 Revise installation process
- 3 Allow artistic City furniture and utilities
- 4 Permit wall art such as murals
- 5 Establish public notification policy for artwork proposals

Priority	Implementation	Sep-20	Oct-20	Nov-20	Dec-20	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21
1	1 - Create Call for Entry to recruit new artwork	Public Arts Board		Parks and Rec	City Commission						
	2 - Application for artwork review and recommendation								Public Arts Board	Parks and Rec	City Commission
2	1 - Consider revisions to Art on Loan Agreement			Public Arts Board			City Commission				
	2 - RFQ for sculpture installation specialist			Public Arts Board		City Commission					
	3 - Coordinate basepads with Engineering's Sidewalk Program								Public Arts Board		
3	1 - Planning Board review Terminating Vista report										TBD - Joint Meeting
4	1 - Design Review Board consider permitting wall art		Design Review Board				Public Arts Board	City Commission			
	2 - Design Review Board consider wall art review process		Design Review Board				Public Arts Board	City Commission			
5	1 - Establish Public Notification Process for Public Art					Public Arts Board			City Commission		

	City Commission
	Public Arts Board
	Planning Board
	Design Review Board
	Parks and Recreation Board

Art in Public Spaces

Program of the Public Arts Board

HISTORY

The City of Birmingham recognizes the importance of having a rich cultural environment. In 2001, Birmingham affirmed this commitment to its civic heritage by establishing a Public Arts Board. Ordinance #1773 assigned the Birmingham Public Arts Board with the responsibility for reviewing and making recommendations to the City Commission as to the placement and display of loaned, donated and/or commissioned works of art within the City.

MISSION STATEMENT

The Mission of the Birmingham Public Arts Board is to develop Public Art Programs that will enhance the cityscape, enrich the lives of residents and visitors, and promote a vital arts community.



OBJECTIVES

1. Create a vision and develop guidelines and procedures for the placing of public art within the city.
2. Identify potential sites for the display of public art.
3. Establish strategies for identifying and securing sources of public funding and support for public art.
4. Work with organizations, businesses, individuals and the city to maximize the opportunity for public art to be an integral part of all public and commercial projects.
5. Foster the exchange of information and ideas on public art.

It is recognized that public art projects may be presented in a variety of forms and that each proposal is unique. Because of the city's limited resources, the Public Arts Board will only be able to recommend programs that further the objectives of City Commission.



SITE AND PLACEMENT GUIDELINES

To ensure the thoughtful placement of sculptures in the City of Birmingham and to further the City's vision to enhance public spaces, the Public Arts Board shall consider the following guidelines in their review of art in public spaces:

Public art shall be located in a site where it will effectively enhance and activate the pedestrian and streetscape experience;

Public art shall be placed in areas of congregation or in a location that experiences high levels of pedestrian traffic;

Public art shall be placed in a site where it is not overwhelmed by the scale of the adjacent architecture or signage;

Public art shall be placed in a location where it will be visible to the most people;

Public art shall not be placed in a given location if the landscaping and maintenance requirements of that site cannot be met; and

Public art shall not block windows or entranceways, nor obstruct normal pedestrian circulation in and out of a building (unless such alteration is specifically a part of the experience or design of the artwork).



PROCEDURES FOR LOANS, GIFTS, AND PURCHASE OF WORK OF ART

The Birmingham Public Arts Board will consider the loan, gift, bequest or purchase of works of art under the following criteria:

The Owner/Agent for Owner must complete an Art in Public Spaces application and submit it to the City at least two weeks prior to a regularly scheduled Public Arts Board meeting for review by the Board. The Art in Public Spaces Application must include all of the following information before it can be considered:

Name of applicant donor/owner, or agent (dealer)
Artist/project name, title, date, dimensions, materials and inscriptions
Complete description of the work of art
Design load (i.e. wind and dead loads)
Location and condition
Footing/foundation requirements
Rationale for gift or loan of the sculpture
Relationship of dealer/agent to the artist
Digital images or slides of the artwork
Resume of the artist

The application must be filled out to indicate whether it is for a loan, gift or bequest and be submitted to the City. Upon receipt, city staff will then route application to the Cultural Council of Birmingham Bloomfield (CCBB) and the Public Arts Board for simultaneous review. The Public Arts Board will conduct its standard review of the sculpture while the CCBB determines whether the sculpture meets its criteria for providing insurance free of charge to the artist.

Loans: All loans will be for a specified amount of time and will be documented and monitored while under the responsibility of the City of Birmingham. The Public Arts Board must provide a recommendation for the approval and placement of all public art loans. The appropriate city agencies must review of the recommended placement, safety concerns and address any other issues as identified. The City Commission has the right of final approval of the acceptance and placement of all public art loans. There will be an agreement between the Owner/Agent for Owner and

the City prior to receipt and installation of the loan. The terms of the agreement, its renewal and return status will comply with applicable laws governing the City of Birmingham. The City shall not absorb the costs to install, maintain, or insure loaned sculptures. However, should the lender wish to seek financial assistance for the temporary installation of a sculpture, they are encouraged to apply for funding for the required insurance from the Cultural Council of Birmingham Bloomfield (CCBB) by signing and attaching the agreement to the application. By attaching the executed agreement, the applicant agrees to all terms stated within prior to review.

Gifts, Bequests and Purchases must be duly vetted when offered by an artist, dealer or related party or by the spouse of family of any of the above. The Public Arts Board is responsible for reviewing this information to ensure compliance with City of Birmingham ordinances and policies and for making a recommendation to the City Commission. The Owner/Agent for Owner must submit proof of clear title of the work of art and available provenance data before any work shall be accepted for gift or purchase. The appropriate city agencies must review the recommended placement, and address any safety concerns and other issues as identified. The City Commission has the right of final approval of the acceptance and placement of all public art gifts, bequests and purchases. A Deed of Gift transferring title of a work of art shall be signed by the Donor/Agent for Donor.



PROCEDURES FOR APPOINTING JURORS & CURATORS

The Public Arts Board may select or appoint a jury or hold a competition for the review of any public art project. The jury or competition for any public art project shall serve the Public Arts Board as an ad hoc committee for the duration of the project only.

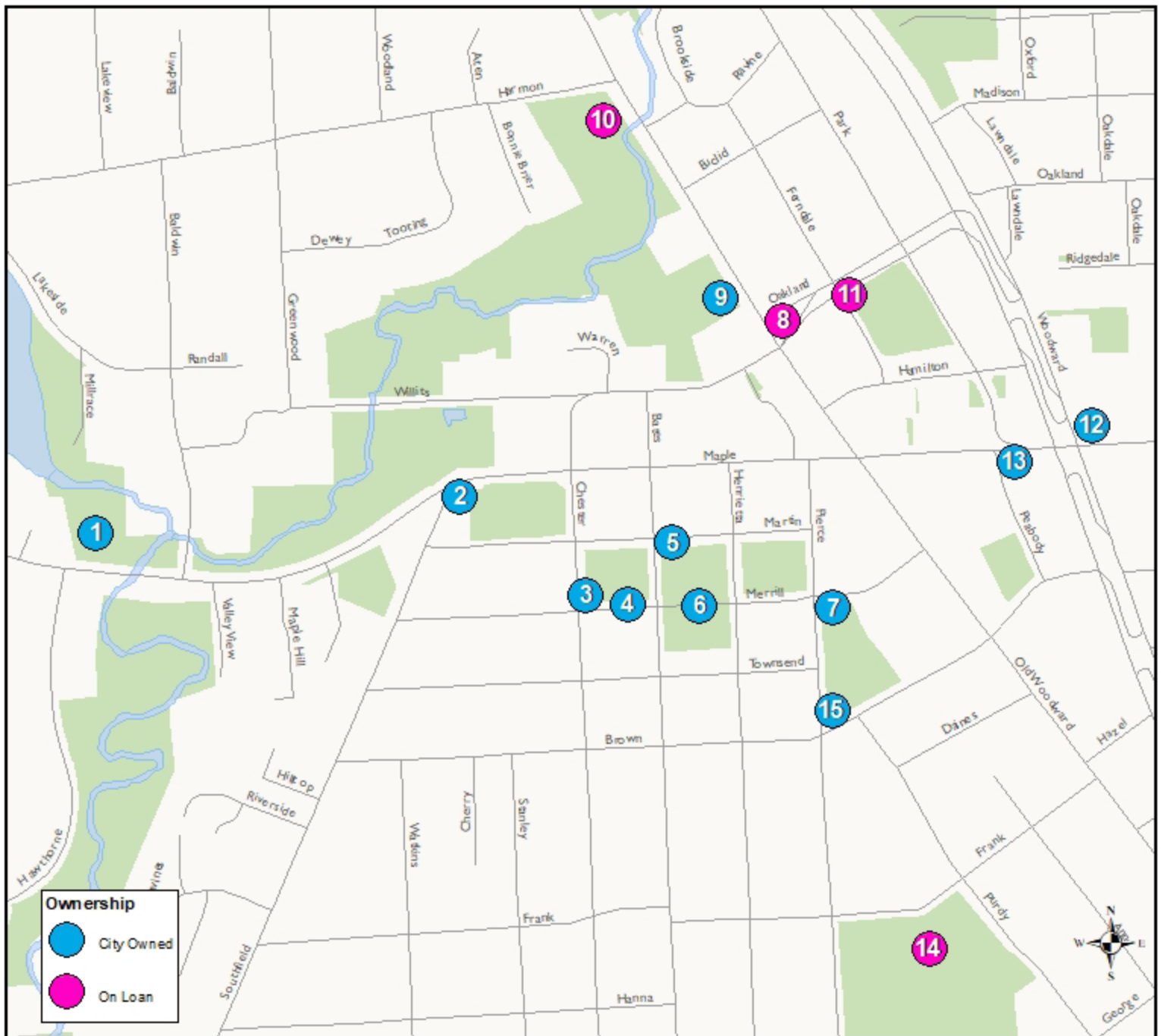
The Board may appoint an individual to serve as curator for an artwork display or public art program. A curator shall serve at the discretion of the Board.

Prior to appointment of any curator, the curator will present his/her qualifications to the Board for consideration along with a detailed program plan and associated budget of the program's full expenses. Any deviations from this submitted plan and budget must be presented to the Board for further approval. Upon approval by the Board, the curator shall implement the approved program plan consistent with these Rules of Procedure. Failure to comply may result in termination of the curator arrangement. The curator will report to the Board on the status of the program at the regular meetings of the Board or as requested by the Board.

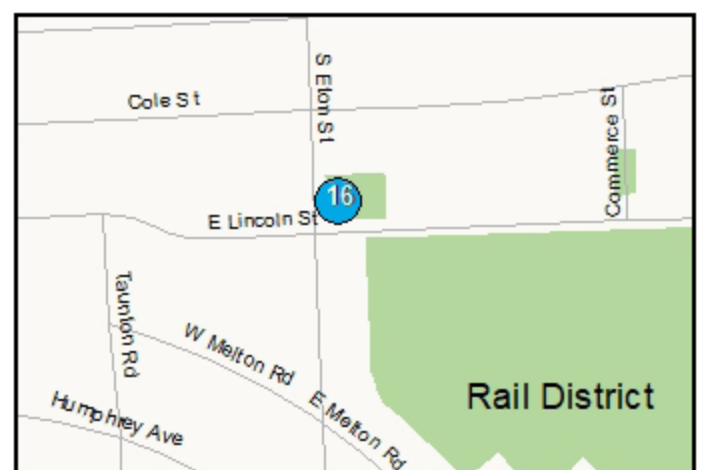
If you are interested in offering public art for display in the city or becoming involved in the promotion of public art in the city, please contact Brooks Cowan at (248) 530-1846 or bcowan@bhamgov.org.



Birmingham Sculpture Locations



- | | |
|--------------------------------|-------------------------|
| 1, Dancing Fish | 9, The Counselor |
| 2, Upcast | 10, Eastern Hophornbeam |
| 3, Michigan Spring | 11, Untitled |
| 4, Siberian Ram | 12, Sound Heart |
| 5, Peace Memorial | 13, L.O.L. |
| 6, Freedom of the Human Spirit | 14, Windswept |
| 7, Wind Rapids | 15, X-Ray Man Ray |
| 8, Torso | 16, Breakaway - Form #3 |



ART IN PUBLIC SPACES



In an ongoing effort to promote art in public spaces and enhance the community, the Cultural Council of Birmingham Bloomfield has collaborated with the City of Birmingham's Public Arts Board to create an outdoor sculpture program. The program is managed under the terms of the existing Birmingham outdoor sculpture agreement between the City and the Cultural Council of Birmingham Bloomfield and allows for the temporary installation of art on public property.

The objective of Art in Public Spaces is to enhance the visual character of Birmingham and to promote a rich, diverse, and stimulating cultural environment for residents and visitors. By placing the work of artists into the community, ideas can be encountered and explored on a daily basis.

- | | | |
|---|--|---|
| 1. James Clover
"Dancing Fish"
CityScapes (1993) Donated by
the artist (2007)
Quarton Lake Park | 6. Marshall M. Fredericks
"Freedom of the Human
Spirit"
Community gift in honor of
the City's 50th Anniversary
Shain Park | 12. Jay Lefkowitz
"Sound Heart"
Donated by Christina and
Richard Heidrich (2015)
Maple Rd. and Woodward
Ave. |
| 2. Clement Meadmore
"Upcast"
Donated by Frederick A. and
Barbara M. Erb (2007)
Maple Rd. and Southfield Rd. | 7. Russell Thayer
"Wind Rapids"
CityScapes (2006)
Donated by the artist (2017)
Pierce St. & Merrill St. | 13. Kirk Newman
"L.O.L."
On loan from Catalyst
Development Co.
Maple Rd. and Peabody St. |
| 3. James Miller-Melberg
"Michigan Spring"
A Gift of the family of the
Artist (2019)
Baldwin Public Library | 8. Herb Babcock
"Torso"
Cityscapes (2006)
Old Woodward & Oakland | 14. Gary Kulak
"Windswept"
Art in Public Spaces (2018)
Barnum Park |
| 4. Marshall M. Fredericks
"Siberian Ram"
Donated by Fidelity Bank
(1966)
Baldwin Public Library | 9. Chris Yockey
"The Counselor"
Cityscapes (2008)
N. Old Woodward Parking
Structure - east face | 15. Terry Lee Dill
"X-Ray Man-Ray"
Cityscapes (2006)
Donated by Dr. Mark
Berman (2010)
Pierce St. & W. Brown St. |
| 5. Marshall M. Fredericks
"Peace Memorial"
Donated by Birmingham
Rotary Club (1952)
Shain Park | 10. Robert Lobe
"Eastern Hophornbeam"
Art in Public Spaces (2019)
Old Woodward & Harmon | 16. Daniel LaRue
"Breakaway - Form #3"
Donated by June Lieberman
(2011)
Eton Rd. & Lincoln Ave. |
| | 11. Nathan Diana
"Untitled"
Cityscapes (2008)
Oakland Ave & Ferndale St. | |

SCULPTURES IN BIRMINGHAM



Dancing Fish

James Clover (b.1938)
painted aluminum, 1993
Donated by the Artist 2007
Quarton Lake Park

Having received his MFA from Tulane University in New Orleans, James Clover is an internationally known sculptor who taught at Grand Valley State University. Many of Clover's sculptures are abstractions from nature such as fish, birds and plants involving water or the heavens and stars and inspired by the structures of jazz music. This piece was originally installed at the Baldwin Public Library as part of the 1993 CityScapes program. It was subsequently donated to the city, restored and moved to its current location in 2008 with the stepped waterfall as its backdrop.



Upcast

Clement Meadmore (b.1929 - 2005)
Bronze, 1987
Donated by Frederick A & Barbara M. Erb 2007
Southfield Road and Maple Avenue

Meadmore was a renowned mid-century modern sculptor who received his training at the Royal Melbourne Institute of Technology and was awarded a Guggenheim Fellowship for Creative Arts in 1975. This sculpture is signed number 3 of 6 small versions created in 1987 of an original 1985 sculpture commissioned by a Cleveland dealer/owner. A single "V" squared tube pedestal twists upward to join a massive "V" shaped section which then divides and turns once more. An illusion of lightness is created as the dark horizontal piece balances effortlessly despite its weight height and length.

SCULPTURES IN BIRMINGHAM



Michigan Spring

James Miller-Melberg (b. 1929- 2018)

Cast aluminum, 2012

A Gift from the Family of the Artist 2019

Baldwin Public Library Plaza

Trained at the Cranbrook Academy of Art and l'Ecole de la Grand Chaumiere in Paris, this Birmingham modernist artist created sculptures, playscapes and playground equipment that have been featured around the world. This piece, cast at a Milan, Michigan foundry, was created for the 2014 ArtPrize in Grand Rapids. Look for another example of his work "*The Tortoise*" in Shain Park.



Siberian Ram

Marshall M. Fredericks, (b.1908-1998)

Limestone

Donated by Fidelity Bank, 1966

Baldwin Public Library

Fredericks did a series of small, often humorous animal sculptures such as the Siberian Ram. Originally carved in 1941, the Library's version is one of two executed in limestone; all other versions were done in plaster or bronze. In general, these animal sculptures differ from his figurative sculptures in that the forms tend not to be elongated but are overlapping, probably dictated by the shape of the material.

SCULPTURES IN BIRMINGHAM



Peace Memorial

Marshall M. Fredericks, (b.1908-1998)
bronze relief, white Indiana limestone, 1951
Donated by Birmingham Rotary Club, 1952
Shain Park – Merrill Plaza

This may look like the “Great Seal of the United States” on the Veterans Memorial Building (now UAW-Ford Program Center) in Detroit, except Fredericks, Birmingham’s internationally known sculptor, added berries to the branch and removed the large star on the shield. In a 1950 letter to the foundry, Fredericks refers to this piece as “Eagle and Nimbus.” Originally installed at Seaholm High School, the relief was moved to the City Municipal Building in the 1990s, and to its prominent location in Shain Park in 2010.



Freedom of the Human Spirit

Marshall M. Fredericks, 1908-1998
Bronze, 1983
Community Gift in Honor of the City’s 50th
Anniversary
Shain Park – Merrill Plaza

With restrained simplified forms, attenuated proportions, well-defined facial features and linear stylization characteristic of Art Deco, the original version of this sculpture was commissioned in 1960 by the City of New York and installed at the 1964 New York World’s Fair at Flushing Meadow-Corona Park. Shain Park’s full-scale casting was commissioned by the City of Birmingham and dedicated in 1988 with the support of many donors.

SCULPTURES IN BIRMINGHAM



Wind Rapids

Russell Thayer, (b. 1934)
Aluminum, 2006
Donated by the Artist 2017
Merrill and Pierce Street

This elegant sculptural form is influenced and complemented by the forces of nature and architecture. The artist describes that “when water flows around obstacles in a stream, so does the wind, creating currents in the sky.” Thayer was Associate Professor of Art History, Drawing and Sculpture and Chairman of the Art Department at Delta College for over 30 years, taught at the University of Michigan (U of M), and was the Director and Exhibition Chairman of the Saginaw Art Museum.



Torso

Herb Babcock (b.1946)
Cast glass, bronze, Michigan stone, 2005
On loan from the Artist, 2008
North Old Woodward and Oakland

The artist is Professor Emeritus at the College for Creative Studies in Detroit, where he served as the Glass Department Chairman for 40 years. He is a graduate of the Cleveland Institute of Art, Cranbrook Academy of Art, and studied sculpture at the Skowhegan School in Maine and Glass at the Toledo Museum of Art. He says this piece deals with precarious balance both physical and metaphysical, “...when life is in its most precarious moments, we sometimes realize the most of what it means to be alive.”

SCULPTURES IN BIRMINGHAM



The Counselor

Christopher Yockey (b. 1976)

Painted steel, 2008

City of Birmingham Purchase, 2019

East face of N. Old Woodward parking structure

Now living in Long Island City, this Michigan artist is a graduate of Cranbrook Academy of Art and assists Mark di Suvero at Spacetime Studio. His pieces are inspired by the way he perceives and interacts with motion and form. An avid hockey player, Yockey has long been interested in the poetic movements of skaters and respect for special relationships of the game with the opposing players, which is translated into his work. He describes this colorful sculpture as “twisted bands of intertwined steel.”



Eastern Hophornbeam

Robert Lobe (b. 1945)

hammered and tempered aluminum, 1993

On loan from the Artist, 2019

Booth Park

On loan courtesy of Tim Hill Gallery and the artist. This Detroit born artist was a National Endowment for the Arts Fellow in 1979 & 1984 and recipient of a Joan Mitchell Foundation award in 2001. His works are created in nature as sculptural echoes of natural form, usually rocks or trees. The signature process Lobe uses is an adaptation of repoussé, an ancient technique in which metal is hammered to create designs or shapes. The fusion of natural beauty and metal handiwork show the wildly disorganized aspect of nature, rather than the tranquil one presented in a park setting.

SCULPTURES IN BIRMINGHAM



Untitled #2

Nathan Diana (b.1974)

painted steel, 2008

On loan from the Artist, 2008

Southeast corner, Oakland Ave. and Ferndale

While the artist, with an MA degree from Cranbrook Academy of Art, is said to be influenced by aircraft and mechanized machinery, he describes his sculptures as “a mix of AC/DC and Smooth Jazz.”. He currently lives in New York and creates unique pieces that can engage the environment and architecture of a site. Viewers may spot bits of medieval heraldry in the maroon and gold markings on the shield-like parts.



Sound Heart

Jay Lefkowitz (b. 1952)

Corten steel, 1989

Donated by Christina and Richard Heidrich in 2015
Maple Road and Woodward Avenue

An abstract artist who works in a wide variety of media and styles, Lefkowitz is graduate of Columbus College of Art and Design, who worked in Paris and Carrara, Italy before returning to his hometown of Detroit. From stone and metal sculpture, to paintings and monoprints on paper, he manages to capture the fluidity and vibrancy of motion and life with matter.

SCULPTURES IN BIRMINGHAM



L.O.L.

Kirk Newman, (b. 1926 - 2017)

Bronze, 2013

On loan from the Catalyst Development Co.
Maple Road and Peabody Street

Born in Dallas, this prominent Midwest sculptor was a graduate of the University of Michigan and Director of Education at the Kalamazoo Institute of Arts. The artist's work is meant to convey the "fleeting, constantly changing nature of the human image in the digital age." The title LOL refers to abbreviated text jargon that can mean "lots of love" or "lots of luck," or even "lots of laughs." Newman said the double meaning is meant to suggest a mixed message regarding our fast-paced lives.



Windswept

Gary Kulak (b. 1953)

Powder coated steel, 2014

On loan from the Artist, 2018
Barnum Park

A graduate of Hunter College and Cranbrook Academy of Art, Kulak is the Artist in Residence and Head, Department of Fine Arts at Cranbrook-Kingwood Schools. He is best known for his work that utilizes the "chair" form as metaphors and symbols. Representing the human spirit and the effects of nature, this sculpture was created for the 2014 ArtPrize in Grand Rapids was also exhibited in Art in Public Places in Knoxville, Tennessee. The 27' high by 8' long x 6' wide chair seems less tall when viewed through the former school entrance archway.

SCULPTURES IN BIRMINGHAM

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X-Ray ManRay

Terry Lee Dill (b.1950)

Poly-Glass and Steel, 2005

Donated by Dr. Mark Berman in 2010

Northeast corner of Brown and Pierce streets.

The sculptor is an associate professor at the College for Creative Studies and holds degrees from the University of Iowa, Drake University and the Cranbrook Academy of Art. He refers to this sculpture as “a landmark type work, designed as a locator.” In addition to being 8’high x 12’long x 10’wide, its yellow center rivals the noonday sun. You can’t miss it and after a while, you don’t want to.

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Breakaway – Form #3

Daniel LaRue Johnson (b. 1938-2017)

Corten steel, 1970

Donated by June Lieberman in 2011

Eaton Road and Lincoln Avenue

The painter, sculptor, and printmaker LaRue Johnson, was closely associated with Los Angeles’s African American artist movement of the mid-20th century, which developed as a response to the country’s social, political, and economic changes. His varied body of work includes politically charged collages as well as meticulously rendered color abstractions. Executed in the figural abstract style, this work is based on a colossal obelisk with steel shapes on top that suggest a humanoid face.



MEMORANDUM

Planning Division

DATE: November 18th, 2020

TO: Public Arts Board Members

FROM: Brooks Cowan, City Planner

APPROVED: Jana Ecker, Planning Director

SUBJECT: Sculpture Call for Entry

Birmingham has a number of preferred locations for sculptures throughout the City. In 2019, four sculpture pads were installed in various locations and two have yet to have to be designated for a sculpture. Meanwhile, two sculptures were removed at key entryways into the City on Woodward and Maple. The Board has also updated its map of preferred sculpture locations. The Public Arts Board has previously discussed doing a larger call for entry and possibly offering financial incentives.

On January 15th, 2020, the Public Arts Board discussed recruiting new sculptures as one of their goals for 2020. On May 15th, 2020 the Public Arts Board reviewed a rough draft flyer for a call for entry and discussed possible information to include with it. There was general consensus that the Board wanted to pursue sculptures for the vacant pads at Linden Park and Poppleton Park, as well as the Terminating Vista location at Henrietta and W. Maple Road.

The Board had also determined that they would like to see what happens with the budget for 2020-2021 which begins July 1st, 2020 because they are interested in asking City Commission to provide an installation stipend for artists who install their work in Birmingham. They also wanted to wait until the construction is done on Maple before posting a call for entry so that artists know what the area is like. The Public Arts Board would also like to finalize the report for Terminating Vista recommendations before pursuing a sculpture for Henrietta and W. Maple as well.

On August 19th, the Public Arts Board reviewed suggested locations and discussed potential others. The green space south of the 555 building was discussed where S. Old Woodward intersects with Woodward. The former Mark DiSuvero sculpture was removed and the Board felt that something should go there in its place. The Board also discussed the location at Hamilton Row and N. Old Woodward with the electrical box as a potential site but were undecided whether to continue with the Crayon Box recommendation or to seek other artistic proposals.

Providing financial assistance to the artists who are willing to donate or loan their work to the City was also discussed. Doing so would be ideal to incentivize new art because it could assist with materials, transportation, and installation. Considering the budget, there was general consensus from the Public Arts Board that \$2,000 was a reasonable stipend. The Public Arts Board will request this amount from City Commission once their call for entry is near finalization.

In regards to terms for potential sculptures, the Public Arts Board recommends a 3-year term for art work on loan, especially if it receives a stipend. The Public Arts Board also recommended that the Birmingham Bloomfield Cultural Council only insure sculptures valued up to a certain amount as to not exceed the BBCC's insurance budget. The highest valued sculpture the City has previously insured includes *Journey Home* by Dennis Oppenheim valued at \$85,000, and *Choopy* by Mark DiSuvero valued at \$50,000. These sculptures have since been removed, increasing amount available for insurance. The sample language would be provided at the next meeting for consideration.

On August 24th, 2020 , the Public Arts Board's Terminating Vista Report was presented to City Commission. The report received positive reviews and City Commission requested a framework for implementation to help put recommendations into action.

On September 21st, 2020, the recommendation and implementation framework for terminating vistas was reviewed by City Commission in the staff reports section and the general consensus was that it provided a detailed and acceptable timeline. Priority 1 of recruiting new art included a cost of up to \$10,000 for artwork per year which recommends \$2,000 for each artist, up to five total.

On October 21st, 2020, the Public Arts Board motioned to recommend a call for entry to City Commission with a number of conditions. However, since this motion, an artist has indicated interest in donating a sculpture to be installed at the Linden Park site. If this sculpture is approved, it is recommended that the Public Arts Board reduce the preferred locations to four.

A map of the five recommended locations to pursue for sculptures is provided below, as well as terms of the call for entry. Staff has also created a flyer to distribute to art organizations, and an informational pamphlet they would be directed to on the website in order to find more information about the sites.

SUGGESTED RESOLUTION:

Motion to recommend a call for entry for artwork with the following terms:

- 1.) The five locations indicated on the call-for-entry map are prioritized, however the Public Arts Board may recommend other sites more suitable within the City;**
- 2.) The artist is provided a stipend of \$2,000 for approved artwork which includes funding for installation and removal. The Public Arts Board recommends up to five sculptures total with an annual budget not to exceed \$10,000;**
- 3.) The artwork is insured up to \$100,000 in value. If the total value of the artwork exceeds \$100,000, the artist(s) and/or the artist(s) organization will be responsible for additional insurance costs;**
- 4.) The artist will coordinate with the relevant City Departments for requirements related to installation;**
- 5.) Timeframe options include a loan with a minimum 3-year term, or an accepted donation to the City.**

DATE: December 1st, 2020

TO: Parks and Recreation Board

FROM: Brooks Cowan, City Planner

APPROVED: Jana Ecker, Planning Director

SUBJECT: Call for Entry

The Public Arts Board has recommended a Call for Entry to recruit new sculptures and artwork for the City of Birmingham. The Board has prioritized five locations, three of which are located in park space. One being a vacant concrete pad at Poppleton Park at the intersection of Woodward and Madison Street. A second being the triangular green space at the intersection of Woodward and Old Woodward at the former site of Mark Di Suvero's red metallic sculpture titled "Choopy". A third being Linden Park which the Public Arts Board has recently recommended a sculpture "Pyramid Earth" be located.

On November 18th, 2020, the Public Arts Board made to following motion:

- 1.) The five locations indicated on the call-for-entry map are prioritized, however the Public Arts Board may recommend other sites more suitable within the City;
- 2.) The artist is provided a stipend of \$2,000 for approved artwork which includes funding for installation and removal. The Public Arts Board recommends up to five sculptures total with an annual budget not to exceed \$10,000; with \$2,000 allocated to Pyramid Earth at Linden Park.
- 3.) The artwork is insured up to \$100,000 in value. If the total value of the artwork exceeds \$100,000, the artist(s) and/or the artist(s) organization will be responsible for additional insurance costs;
- 4.) The artist will coordinate with the relevant City Departments for requirements related to installation;
- 5.) Timeframe options include a loan with a minimum 3-year term, or an accepted donation to the City.

Three of the locations are located in park space, therefore the Parks and Recreation Board is required to review to recommendation before it goes to City Commission. However, the Parks and Recreation Board is not required to comment on the Public Arts Board recommendation of budget expenditure.

SAMPLE MOTION LANGUAGE:

To recommend the Call For Entry for artwork that prioritizes the five locations as indicated on the map.

Public Arts Board Minutes

Rooms 202 & 203 Birmingham City Hall – January 15th, 2020

A. Roll Call:

Members Present: Linda Wells, Barbara Heller, Natalie Bishae, Monica Neville, Jason Eddleston, Anne Ritchie

Members Absent:

Administration: Brooks Cowan, City Planner

B. Approval of Minutes – November 20th, 2019

Motion to approve minutes made by Linda Wells, seconded by Jason Eddleston.

Yeas: 6 Nays: 0

The motion carried.

C. New Business

The PAB reviewed a rough draft of the annual report that would be submitted to City Commission. The Board's comments included wanting to elaborate on their goals for 2020 by adding how they want to enhance online exposure for artists who loan and/or donate work to the City. They also wanted to highlight how the PAB events in 2019 gained some of the most likes and views on the City's social media pages. Upon review of 2019 accomplishments, the Board was fairly content with what they accomplished. Final edits would be submitted to City Commission.

The PAB considered a new logo for Art in Public Spaces created by Olivia Steele. The Board discussed the distance of the lines from the text, and eventually reached an agreement on what was proposed.

Motion to approve a new logo for Art in Public Spaces was made by Linda Wells, seconded by Jason Eddleston.

Yeas: 6 Nays: 0

The motion carried.

The PAB then reviewed a rough draft of a pamphlet highlighting all sculptures in Birmingham. Comments included making the font the same as the logo, a magazine style layout, and the descriptions should all be relatively the same size. Updates would be brought to the next meeting for review.

D. Unfinished Business

The PAB reviewed a list of Agenda Items to align with their goals for 2020 and discussed other projects they want to accomplish this year. Suggested projects included canvas murals in Willits Alley, creating coloring books of Birmingham sculptures, coordinating a scavenger hunt with BSD, and a summer long sidewalk chalking event.

The Public Arts Board reviewed the updated map of preferred pre-qualified Public Art Locations. The Board had identified their top six preferred terminating vistas, and there was general consensus that they would like to see a rough draft Terminating Vista report at the next meeting.

E. Communication

The piano was removed from Shain Park in December and the City continues to coordinate on getting the Library sculpture installed.

F. Comments

G. Adjournment

The meeting adjourned at 7:45 p.m.

Public Arts Board Minutes

Public Meeting on Zoom – August 19th, 2020

A. Roll Call:

Members Present: Barbara Heller, Monica Neville, Jason Eddleston, Anne Ritchie, Annie VanGelderren, Linda Wells, Natalie Bishae

Members Absent:

Administration: Brooks Cowan, City Planner

Members of the Public: Kathy Walgren

B. Unfinished Business

The Board then reviewed an updated memo for considerations in a call for entry to recruit new sculptures. Linden Park, Poppleton Park, and Maple & Henrietta had previously been discussed as ideal location for recruitment. The Board also agreed that Hamilton & N. Old Woodward as well as the intersection of Woodward and S. Old Woodward would be good locations to add. Three of these locations are Terminating Vistas so the Public Arts discussed how they should wait until the Terminating Vista report is accepted before pursuing public art for these locations.

The Board then discussed requesting an installation stipend to be issued for approved art work. There was general agreement from the Board to request an approval of a \$2,000 installation stipend for artists who loan or donate their work. The Board recommended a minimum loan period of 2-3 years in order to receive a stipend. The Board also recommended including a cap on the amount insurable and to notify artists of this beforehand. These details would be included in the next meeting's call for entry draft.

The meeting adjourned at 7:45 p.m.

Public Arts Board Minutes

Public Meeting on Zoom – September 16th, 2020

A. Roll Call:

Members Present: Barbara Heller, Monica Neville, Jason Eddleston, Anne Ritchie, Annie VanGelderren, Linda Wells

Members Absent: Natalie Bishae

Administration: Brooks Cowan, City Planner

Members of the Public:

B. Approval of Minutes – August 19th, 2020

Motion to approve minutes by Jason Eddleston, seconded by Annie Van Gelderen.

Yeas: 6 Nays: 0

The motion carried.

C. Unfinished Business

The Board discussed terms for pursuing a sculpture call for entry which included 5 sculptures at agreed upon locations, insuring each approved piece up to \$100,000, and also requesting a stipend of \$2,000 for each piece from City Commission. Three of the locations are considered Terminating Vistas. The Board was notified that a framework for implementation for the Terminating Vista report was going to City Commission on September 21st, 2020. The framework indicated requesting a budget of up to \$10,000 to provide a stipend of \$2,000 for each piece of art approved. The Public Arts Board agreed it would be best to wait for any comments on the Terminating Vista framework and implementation plan before moving forward with a call for entry recommendation.

D. New Business

No new business

E. Communication

The Public Arts Board discussed the new sculpture installed at the Library, Michigan Spring, and how they believe it is a nice addition. The Board was also notified that staff had not been able to get ahold of the artist of Pyramid Earth to schedule an in person sculpture visit.

F. Comments

G. Adjournment

The meeting adjourned at 7:15 p.m.

Public Arts Board Minutes

Public Meeting on Zoom – October 21st, 2020

A. Roll Call:

Members Present: Barbara Heller, Monica Neville, Annie VanGelderren, Jason Eddleston, Linda Wells

Members Absent: Natalie Bishae, Anne Ritchie

Administration: Brooks Cowan, City Planner

Members of the Public:

B. Approval of Minutes – September 21st, 2020

Motion to approve minutes by Annie Van Gelderen, seconded by Jason Eddleston.

Yeas: 5 Nays: 0

The motion carried.

C. Unfinished Business

Staff presented the Terminating Vista Framework for Implementation that was presented to City Commission weeks earlier. The Public Arts Board found the framework to be a reasonable timeline for recommendations.

The Public Arts Board's Call for Entry was then brought back for discussion as the next item, however the Board wished to move it to the end of the meeting in order to discuss the Pyramid Earth lending or donation before it.

Motion to move the Call for Entry item to the end of the meeting was made by Annie Van Gelderen, seconded by Linda Wells.

Yeas: 5 Nays: 0

The motion carried.

D. New Business

A study session discussion regarding revisions to the art on loan agreement was then held. Some of the difficulties staff has encountered with sculpture installations was presented to the Board to initiate the discussion. Coordinating the art on loan program with the engineering department and DPS was recommended to simplify the process and reduce cost. Staff indicated they would get feedback from DPS and bring it back to the Board for the next meeting.

The next study session item was related to requesting a sculpture installation specialist. Having a liaison between staff and the artist donating / loaning work could help streamline the process. The Public Arts Board discussed creating a Request for Qualifications to bring on an installation specialist with desired attributes including licensed with forklifts, carries liability insurance for installation, experience with ground level and wall installations, mount fabrication ability, and providing contacts and references. This item would also be discussed with DPS for their feedback to be presented at the next meeting.

E. Unfinished Business (Continued)

In regards to the sculpture donation application for Pyramid Earth, Board members had previously indicated an interest in conducting a site visit to see it in person. Board members Annie Van Gelderen and Barbara Heller were able to visit the sculpture the weekend before the Board meeting and provided the members with additional photos. The location south of the 555 building was discussed, as well as the need for a new sculpture pedestal due to the prior one cracking. There was consensus from the Board that the sculpture should be elevated and not installed directly at ground level.

The Board mentioned it could be open to recommending a location and some financial assistance to create a new pedestal, but wanted to know how the mount would look with the sculpture. Staff noted that it would contact the artist and request a rendering of a pedestal with the sculpture in a recommended location.

The Public Arts Board's Call for Entry was the next item brought for discussion. Staff had prepared a document for the call for entry with a map of 5 preferred locations along with multiple photos of each location and a site description. This document could be sent to various art galleries and organizations who may be interested in donating work. The Board noted that the five locations listed were preferred, but were open to other location recommendations from artists interested in loaning or donating work. In regards to loan terms, the Board felt that if the applicant is receiving a stipend, they loan term should be for a minimum of 3 years. For the final recommended motion, the board also felt the terms for the call for entry in the Memo should be included in the motion.

A motion to recommend a call for entry with the following terms was made by Annie Van Gelderen, seconded by Jason Eddleston:

- 1.) The five locations indicated on the call-for-entry map are prioritized, however the Public Arts Board may recommend other sites more suitable within the City;
- 2.) The artist is provided a stipend of \$2,000 for approved artwork which includes funding for installation and removal. The Public Arts Board recommends up to five sculptures total with an annual budget not to exceed \$10,000;
- 3.) The artwork is insured up to \$100,000 in value. If the total value of the artwork exceeds \$100,000, the artist(s) and/or the artist(s) organization will be responsible for additional insurance costs;
- 4.) The artist will coordinate with the relevant City Departments for requirements related to installation;

5.) Timeframe options include a loan with a minimum 3-year term, or an accepted donation to the City.

Yeas: 5

Nays: 0

The motion carried.

F. Communication

Laurie Tennent's artwork had been installed along the trail networks surrounding Laurie Tennant.

G. Comments

E. Adjournment

The meeting adjourned at 7:15 p.m.

FINAL

Public Arts Board Minutes

Public Meeting on Zoom – November 18th, 2020

A. Roll Call:

Members Present:	Barbara Heller, Monica Neville, Annie VanGeldereren, Jason Eddleston, Linda Wells, Anne Ritchie
Members Absent:	Natalie Bishae
Administration:	Brooks Cowan, City Planner
Members of the Public:	Vahe Tazian, Charlie Neff

B. Unfinished Business

The Call for Entry was discussed next. The Board has previously motioned to recruit new artwork for five locations. Since Pyramid Earth was discussed for one of the locations, staff brought the item back for discussion for any potential amendments. The Board indicated that they would like it to be included in the minutes and the art-on- loan contract that if artwork on loan is approved for a 3 year term, the artist would receive \$1,000 after installation and \$1,000 after removal. Artists who donate their work would receive the \$2,000 after installation.

The Board discussed amending the sample motion language to be reduced to \$8,000 for the total budget due to Pyramid Earth reducing the locations from 5 to 4, however they decided against this due to uncertainty of Pyramid Earth receiving final approval. The Board agreed to maintain the \$10,000 recommendation, and to mention that \$2,000 be allocated to Pyramid Earth.

Requested amendments to the sample motion language included mentioning the budget request be for the fiscal year of 2020-2021, and that \$2,000 of that be allocated for the Pyramid Earth donation.

Annie VanGeldereren made a motion which was seconded by Monica Neville to recommend a call for entry for artwork with the following terms for the fiscal year of 2020-2021:

- 1.) The five locations indicated on the call-for-entry map are prioritized, however the Public Arts Board may recommend other sites more suitable within the City;
- 2.) The artist is provided a stipend of \$2,000 for approved artwork which includes funding for installation and removal. The Public Arts Board recommends up to five sculptures total with an annual budget not to exceed \$10,000; with \$2,000 allocated to Pyramid Earth at Linden Park.
- 3.) The artwork is insured up to \$100,000 in value. If the total value of the artwork exceeds \$100,000, the artist(s) and/or the artist(s) organization will be responsible for additional insurance costs;
- 4.) The artist will coordinate with the relevant City Departments for requirements related to installation;

5.) Timeframe options include a loan with a minimum 3-year term, or an accepted donation to the City.

Yeas: 6

Nays: 0

The motion carried.

DRAFT

DATE: October 30th, 2020

TO: Joseph A. Valentine, City Manager

FROM: Brooks Cowan, City Planner

APPROVED: Jana Ecker, Planning Director

SUBJECT: Lot Combination of 34350 Woodward Avenue and 907-911 Haynes Street, Parcel # 19-36-281-022 - T2N, R10E, SEC 36 BOWERS ADD LOT 3 EXC THAT PART TAKEN FOR HWY, ALL OF LOTS 4 & 5, ALSO LOT 6 EXC ELY PART BEG AT NE LOT COR, TH W 1.35 FT ALG N LOT LINE, TH SLY 65.50 FT PARA TO E LOT LINE, TH SELY 52.89 FT TO SE LOT COR, TH NLY ALG LOT LINE TO BEG and Parcel # 19-36-281-030 – T2N, R10E, SEC 36 BOWERS ADD ELY PART OF LOT 6 BEG AT NE LOT COR, TH WLY 1.35 FT ALG N LOT LINE, TH S 01-00-00 W 65.50 FT PARA TO E LOT LINE, TH SELY 52.89 FT TO SE LOT COR, TH NLY 118.42 FT ALG E LOT LINE TO BEG, ALSO ALL OF LOTS 7, 8 & 9, ALSO WLY PART OF LOT 10 MEAS 10.14 FT ALG N LOT LINE & 10.58 FT ALG S LOT LINE

INTRODUCTION:

The owner of 34350 Woodward Avenue and 907-911 Haynes Street is seeking approval for a lot combination of two parcels into one in order to accommodate additional parking for the Fred Lavery Porsche Dealership.

BACKGROUND:

The subject properties are located on the northeast corner of the intersection at Haynes Street, Elm Street, and Woodward Avenue. The Fred Lavery Porsche Dealership is located at 34350 Woodward while a two story commercial building is located at 907-911 Haynes Street. The applicant is proposing to combine the two parcels, demolish the current building at 907-911 Haynes, and expand the surface parking lot to accommodate more parking and display space for the Fred Lavery Porsche dealership. Auto sales agencies and auto show rooms within the MU-5 and MU-7 Zone require a Special Land Use Permit (SLUP), which the applicant obtained November 8th, 2010 for the 34350 Woodward parcel only.

In 2016, the applicant received a temporary SLUP amendment to use the 907-911 Haynes property as an office for the Porsche sales and management team for one year while renovations were made to the Porsche dealership at 34350 Woodward. Conditions of approval were that the applicant could not have cars for sale parked on 907-911 Haynes Street and that the applicant provide proof of adequate parking lot landscaping. On January 22nd, 2020, the applicant appeared before the Planning Board for a SLUP amendment which included the proposed lot combination for expanding the parking lot for auto sales, but no motion was finalized due to the applicant withdrawing their application during the meeting.

At this time, the applicant has submitted an application for a lot combination and has requested to appear before the City Commission for a decision on the proposed lot combination prior to returning to the Planning Board to continue the SLUP Amendment process.

The Combination of Land Parcels Ordinance (Chapter 102, Section 102-83) requires that the following standards be met for approval of a lot combination.

- (1) *The Combination will result in lots or parcels of land consistent with the character of the area where the property is located, Chapter 126 of this Code for the zone district in which the property is located, and all applicable master land use plans.*

In regards to character of the area, the property is located within the City's Triangle District. The area is surrounded by a variety of uses and buildings ranging from one story to five stories in height which are mostly surrounded by surface parking.

In regards to zoning, 34350 Woodward is zoned MU-7 in the Triangle Overlay District while 907-911 Haynes Street is zoned MU-5. Both parcels are zoned B-2 in the underlying Zoning District. As previously mentioned, auto sales and auto showrooms are permitted with approval of a Special Land Use Permit in the MU-5 and MU-7 Zones. The subject property's SLUP application in 2010 was for one parcel only at 34350 Woodward and expanding the auto sales and auto showroom use requires a SLUP amendment. **The applicant appeared before the Planning Board on January 22nd, 2020 for a SLUP amendment to expand the auto showroom use, but withdrew their application during the meeting. Therefore, the applicant has yet to obtain SLUP approval to expand the use of the auto show room and auto sales.**

Article 3, Section 3.06(A)(3) of the Zoning Ordinance states that *"Any expansion to an existing use or building that requires site plan approval from the Planning Board shall be subject to the requirements of the Triangle Overlay District and shall be brought into compliance with the requirements of the Triangle Overlay District."* **No changes to the building footprint for the Fred Lavery Porsche Dealership have been proposed. Therefore, it does not appear that the proposed site plan complies with the requirements of Triangle Overlay District.**

In regards to front yard and building frontage requirements for the Triangle Overlay District, the MU-5 and MU-7 Zones require that the building façade be built within 5 feet of the frontage line for a minimum of 75% of the street frontage length. The proposed lot combination does not indicate a building with a front setback within 5 feet for 75% of the street frontage along Elm and Haynes. **Therefore the proposed site that would be created by the lot combination does not satisfy the front yard and building frontage standards and thus is not compliant with the Triangle Overlay District requirements.**

In regards to building height requirements for the Triangle Overlay District, the MU-5 and MU-7 Zones require a minimum of three stories for building height. **The proposed lot combination indicates a one story building with surface parking only, and therefore does not satisfy the minimum building height standards and thus is not in compliance with the Triangle Overlay District requirements.**

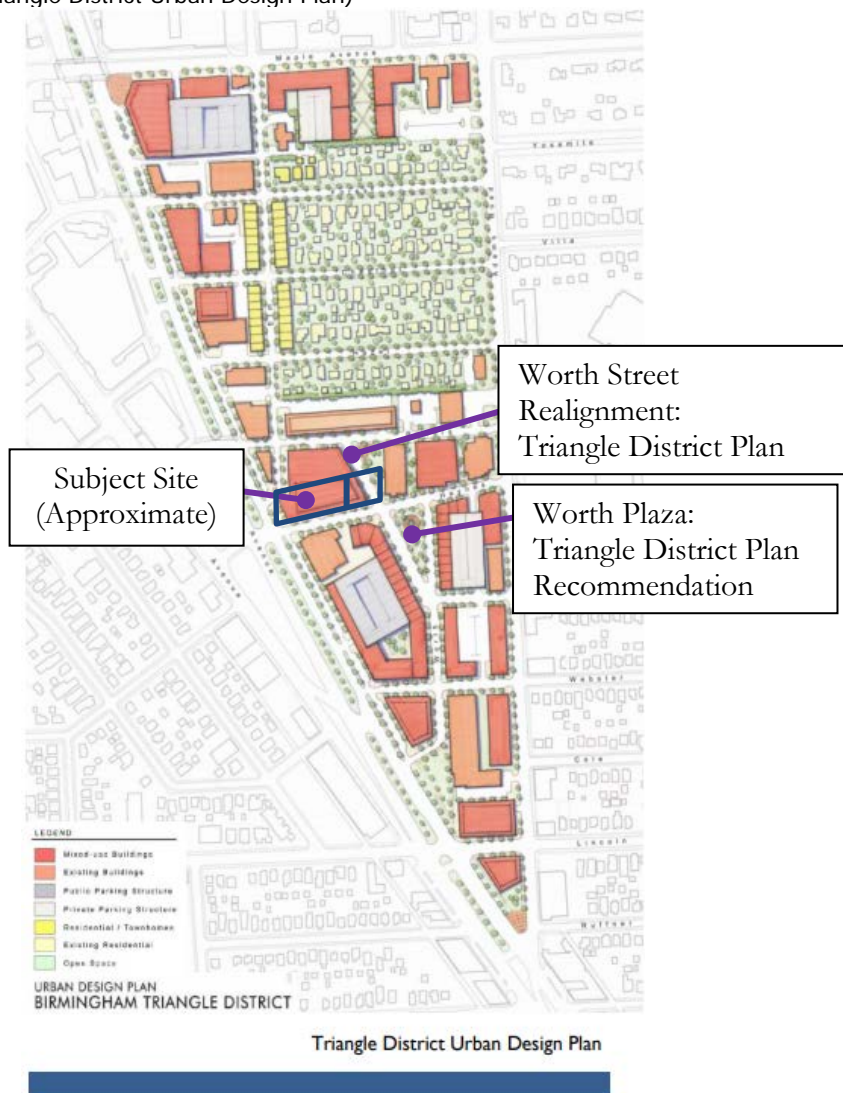
In regards to the placement of the building and parking, Article 3.06(G)(1)(b) requires that corner lots have the building located at the corner of the lot adjacent to the intersection, and

that no more than 60 feet of the frontage be occupied by parking. The proposed lot combination does not indicate a building at the corner of the lot adjacent to the intersection, nor does the proposed lot combination indicate 60 feet or less of parking along the frontage line. **Therefore the proposed site that would be created by the lot combination does not satisfy the parking and building requirements of the Triangle Overlay District.**

In regards to applicable Master Plans, the Triangle District Plan recommends infill development and redevelopment while advocating for an increase in building density to replace the large surface parking areas that currently exist. **The applicant's lot combination is proposed for the purpose of expanding surface parking which does not align with the recommendations of the Triangle District Plan.**

It is also of note that the Triangle District Plan recommends that Worth Street be realigned to connect Bowers Street to the proposed Worth Plaza to improve connectivity within the Triangle District as pictured below in Figure 1. The Triangle District Plan recommends the realignment of Worth Street through the rear of the Walgreens parking lot as well as through the property located between Bowers and Haynes included in the proposed lot combination.

(Figure 1: Triangle District Urban Design Plan)



In regards to the Draft Master Plan which is currently under review, the plan makes no mention of extending Worth Street from Haynes to Bowers, however the renderings related to the proposed Haynes Square and connection to Worth Plaza suggest an infill of commercial space instead of a road extension at the applicant's site.

Accordingly, the lot combination proposal does not meet the requirements of #1.

- (2) *All residential lots formed as a result of a combination shall be a maximum width of no more than twice the average lot width of all lots in the same zone district within 300 feet on the same street.*

The proposed combination is commercial, not residential, therefore this requirement is not applicable.

- (3) *All residential lots formed as a result of a combination shall be a maximum area of no more than twice the average lot area of all lots in the same zone district within 300 feet on the same street.*

The proposed combination is commercial, not residential, therefore this requirement is not applicable.

- (4) *The combination will result in building envelopes on the combined parcels that will allow for the placement of buildings and structures in a manner consistent with the existing rhythm and pattern of development within 500 feet in all directions in the same zone district.*

The Triangle District has a variety of buildings types ranging in height and size, many of which are surrounded by large surface parking lots. **Given the existing conditions of the lower Triangle District, the proposed lot combination and building envelope appear to meet this requirement.**

- (5) *Any due or unpaid taxes or special assessments upon the property have been paid in full.*

There are no outstanding taxes due on this property. **The proposal meets this requirement.**

- (6) *The combination will not adversely affect the interest of the public or the abutting property owners. In making this determination, the City Commission shall consider, but not be limited to the following:*

a.) The location of proposed buildings or structures, the location and nature of vehicular ingress or egress so that the use or appropriate development of adjacent land or buildings will not be hindered, nor the value thereof impaired.

Based on the attached survey the proposed lot combination and building envelope appear to meet this requirement.

b.) The effect of the proposed combination upon any floodplain areas, wetlands and other

natural features and the ability of the applicant to develop a buildable site on the resulting parcel without unreasonable disturbances of such natural features.

The property is not located in a floodplain or wetlands, nor adjacent to a floodplain or wetlands.

c.) The location, size, density and site layout of any proposed structures or buildings as they may impact an adequate supply of light and air to adjacent properties and the capacity of essential public facilities such as police and fire protection, drainage structures, municipal sanitary sewer and water, and refuse disposal.

The proposed lot combination does not appear to impact the supply of light and air to adjacent properties or the ability of the City to provide essential services.

LEGAL REVIEW:

The City Attorney has reviewed the application and has no concerns.

FISCAL IMPACT:

Not applicable.

PUBLIC COMMUNICATIONS:

Prior to the application being considered by the City Commission, the City Clerk's office will send out notices to all property owners and tenants within 300 feet of both 34350 Woodward Avenue and 907-911 Haynes Street seeking public comment on the proposal.

SUMMARY:

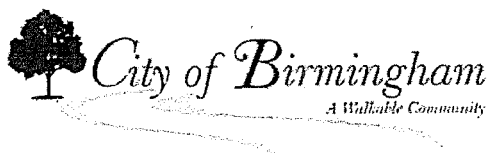
The Planning Division finds that the proposed lot combination is not consistent with the Zoning Ordinance, nor the applicable Master Plan for the Triangle District, therefore the Planning Division recommends that the City Commission deny the applicant's request to combine the two lots for the purpose of accommodating additional surface parking for the Fred Lavery Porsche Dealership.

ATTACHMENTS:

- Application
- Letter to the City
- Proof of ownership
- Registered Land Surveys
- Relevant Planning Board and City Commission minutes for prior SLUP hearings from 2010, 2016, and 2020 related to 34350 Woodward (Formerly 835 Haynes Street)

SUGGESTED ACTION:

To deny the proposed lot combination of 34350 Woodward and 907-911 Haynes, parcel # 19-36-281-022 and parcel #19-36-281-030, as the resulting parcel would not be consistent with the requirements for the MU-5 and MU-7 Zones, nor consistent with the recommendations in the Triangle District Plan.



Combination of Platted Lots Application

Planning Division

Form will not be processed until it is completely filled out.

1. Applicant

Name: Lavery Michigan Dealership No. 1, LLC
Address: _____
440 Lake Park, Birmingham, MI 48009
Phone Number: _____
Fax Number: _____
Email address: _____

2. Property Owner

Name: Lavery Michigan Dealership No. 1, LLC
Address: 440 Lake Park, Birmingham, MI 48009
Phone Number: _____
Fax Number: _____
Email address: _____

3. Applicant's Attorney/Contact Person

Name: Stuart Schwartz
Address: _____
500 Woodward Ave., Suite 3500, Detroit, MI 48226
Phone Number: 313-965-8335
Fax Number: 313-309-6935
Email address: SSchwartz@clarkhill.com

4. Project Designer/Developer

Name: PEA, Inc.
Address: _____
2430 Rochester Ct., Ste. 100, Troy, MI 48083
Phone Number: 248-689-9090
Fax Number: 248-689-1044
Email address: tshelly@peainc.com

5. Project Information

Address/Location of Property: 34350 Woodward Ave./907-911 Haynes
Sidwell #: 19-36-281-030 and 19-36-281-022
Parcel #: _____
Current Zoning: MU5/MU7 Triangle Overlay B-2

Legal Description: See attached survey

6. Required Attachments

- I. Two (2) copies of a *registered* land survey showing:
 - i. All existing and proposed platted lot lines;
 - ii. Legal descriptions of proposed lots;
 - iii. Locations of existing/surrounding structures for at least 500 ft. in all directions;
 - iv. Footprints of proposed development including proposed building envelope with front, side and rear setbacks clearly marked;

- II. One (1) digital copy of plans;
- III. Proof of ownership;
- IV. Written statement of reasons for request;
- V. A letter of authority or power of attorney in the event the application is made by a person other than the property owner;
- VI. Sketches of proposed development (*optional*);
- VII. Other data having a direct bearing on the request.
- VIII. Any other data requested by the Planning Board, Planning Department, or other City Departments.

7. Details of the Proposed Development (attach separate sheet if necessary)

See attached summary.

(I), (We), the undersigned, do hereby request to combine lots of record in the City of Birmingham, Oakland County, Michigan.
(I), (We), do hereby swear that all of the statements, signatures, and descriptions appearing on and with this request are in all respects true and accurate to the best of (my), (our), knowledge.

By providing your e-mail to the City, you agree to receive news notifications from the City. If you do not wish to receive these messages, you may unsubscribe at any time.

Signature of Property Owner:  Date: 8/11/20

Print Name: Fred Lavery member

Signature of Applicant:  Date: 8/11/20

Print Name: Fred Lavery member

Office Use Only

Application#: _____ Date Received: _____ Fee: _____

Date of Approval: _____ Date of Denial: _____ Reviewed By: _____

Combination of Platted Lots

Overview of the Process:

Step 1 – Make an appointment with a city planner: A conceptual survey plan must be presented to a city planner prior to acceptance of an application for Combination of Platted Lots. This meeting is intended for information sharing and general guidance.

Step 2 – Combination of Platted Lots Application filed: An application is deemed complete upon submission and acceptance of the completed application form and all required documentation. Once an application is deemed complete, a petitioner will be scheduled for a public hearing before the Birmingham City Commission, which will be at least 15 days after submission of the application.

Step 3 – Departmental Review: Submitted survey plans are sent to appropriate departments for review. Comments are returned to the Planning Division prior to final review by Planning Division personnel.

Step 4 – Notices of Public Hearing: Notices are sent by the City Clerk to all property owners within 300' of the subject property at least 15 days prior to the City Commission Public Hearing meeting at which the application will be considered.

Step 5 – Review Report: The Planning Division reviews the application and prepares a report to the City Commission for consideration at the public hearing.

Step 6 – Public Hearing at the City Commission: Birmingham City Commission meets to consider the application for Combination of Platted Lots. Petitioner appears before City Commission to answer any questions.

Step 7 – Decision: The City Commission approves, denies, or postpones the Combination of Platted Lots application.

Combination of Platted Lots Application Requirements:

1. A complete Combination of Platted Lots application is to be submitted to the Community Development Department.
2. The application must be completed in its entirety and signed by the owners or applicants.
3. The application must be accompanied by the following supporting documentation:
 - a. Proof of ownership
 - b. Written statement of reasons for request
 - c. A letter of authority or power of attorney in the event the application is made by a person other than the property owner
 - d. Two (2) copies of a **registered** land survey showing:
 - i. All existing and proposed platted lot lines
 - ii. Legal descriptions of proposed lots
 - iii. Locations of existing/surrounding structures and setbacks for at least 500 feet in all directions
 - iv. Footprints of proposed development including proposed building envelope with front, side and rear setbacks clearly marked.
 - v. One set of survey plans mounted on display boards
 - vi. Any other data having a direct bearing on the request
4. All taxes and special assessments must be paid at the time of application.
5. All water bills must be paid at the time of application.
6. All building permits must be obtained at the time of application.
7. Signatures from the City of Birmingham Treasurer, Water Department, and Building Department are required.
8. Signatures of the property owner and applicant are required.
9. Fee: \$200.00 per parcel affected in the request, minimum fee: \$400.00

TO
THE
ORDER
OF

CLARK HILL

Stuart M. Schwartz
T (313) 965-8335
F (313) 309-6935
Email:SSchwartz@ClarkHill.com

Clark Hill PLC
500 Woodward Ave., Suite 3500
Detroit, MI 48226
T (313) 965-8300
F (313) 309-6935

clarkhill.com

August 27, 2020

VIA US MAIL AND E-MAIL

City of Birmingham
Planning Department
Attn: Ms. Jana Ecker
151 Martin St.
Birmingham, MI 48009
jecker@bhamgov.org

**RE: 34350 Woodward Ave. (the “Woodward Property”) and 907-911 Haynes,
Birmingham, MI 48009 (the “Haynes Property”)**

Dear Ms. Ecker:

Clark Hill PLC is legal counsel to Lavery Michigan Dealership Properties No. 1, LLC (“LMDP”), the owner of the Woodward Property and the Haynes Property (collectively, “Lavery Properties”). Enclosed herewith, please find the following documents relative to LMDP’s application to combine the Woodward Property and Haynes Property into one lot:

1. Combination of Platted Lots Application;
2. Two (2) copies of the registered land survey;
3. Proof of ownership;
4. Sketches of the proposed development; and
5. One digital copy of plans.

In addition, this letter shall serve as LMDP’s details of the proposed development.

In 2010, LMDP received a Special Land Use Permit (“2010 SLUP”) for the Woodward Property to operate a Porsche car dealership within the B2 Zone and MU-7 Triangle District Overlay. Auto show rooms and sales agencies are permitted uses in the MU-5 and MU-7 zones of the Triangle Overlay District pursuant to a Special Land Use Permit. It is our understanding that in 2016, the Planning Board and City Commission approved an amendment to the 2010 SLUP to allow for the temporary use of the Haynes Property as an office for the Audi sales and management team, while renovations were being completed at the Lavery Audi dealership located at 34602 Woodward Ave., Birmingham, MI (the “Temporary SLUP Amendment”). Under the Temporary SLUP Amendment, LMDP could use the Haynes Property as offices for the Audi car dealership while Spa Mariana remained on the second floor. LMDP now proposes

to modify the site plan of the Woodward Property in combination with the Haynes Property pursuant to the enclosed site plan in order to accommodate changes in Porsche's dealership requirements. To be clear, at this time, LMDP is not requesting a change to the 2010 SLUP or the Temporary SLUP Amendment. Rather, LMDP is only requesting that the Lavery Properties be combined into one lot. LMDP is also not making any modifications to the Porsche dealership or the existing use associated with the Porsche dealership. Upon approval of that combination, LMDP will then seek an amendment to the 2010 SLUP as described below.

By way of background, newly enacted United States and European Union regulations require that Porsche have an all-electric (full electric and hybrid electric) fleet of vehicles by 2025. This new fleet of vehicles requires dealerships to install a new electric vehicle infrastructure. Four parking spaces at the Woodward Property will be converted for electric vehicle charging stations and will no longer be available for customer and inventory parking. Those spaces will be available to the public's use. In order to accommodate customer and inventory parking, spaces will need to be relocated to the Haynes Property. In furtherance of this plan, LMDP will be adding extensive landscaping and a screening wall along Haynes Street as more particularly depicted on the accompanying site plans and drawings.

It is no secret that parking remains a major concern throughout the City of Birmingham. As set forth in the 2007 Triangle District Urban Design Plan, "[p]arking needs to be provided more efficiently than the current configuration of disjointed surface parking lots. Redevelopment should incorporate multi-level parking structures and maximize the use of on-street parking. More efficient use of shared parking facilities will allow for redevelopment that is more pedestrian oriented and less dominated by parking lots." "A more efficient means of accommodating parking is needed in the Triangle District. In the short term, a shared parking program may reduce parking demand. As the Triangle District redevelops, this plan recommends a managed parking system with a combination of parking on-street, in structures and in limited surface lots to ensure that convenient parking is provided to the uses with the greatest demand and that there is efficient use of land. ***Construction of a parking structure is an imperative element of the plan and should be implemented during the first phase.***" (emphasis added). Unfortunately, to date, the City has not constructed a parking structure. After more than a decade since this plan was created, there is no managed parking system for the Triangle System, no parking garage, and no public plans to implement a managed parking system.

LMPD's proposal is meant as a short-term measure until the City can implement the vision set forth in the Triangle District Urban Design Plan, build a parking garage and implement a managed parking system. The use of the combined lots is an appropriate place-holder that will cause the demolition of a dilapidated building and the beautification of the Haynes Property. It is not possible and would not be prudent to redevelop these lots without adequate parking capacity. By approving this lot combination, the land will remain available for future development in accordance with the Triangle District Plan.

August 27, 2020
Page 3

Please schedule this request for the earliest available hearing. If you need any additional information or if you would like to discuss, do not hesitate to contact me.

Sincerely,

CLARK HILL PLC

/s/Stuart M. Schwartz

Stuart M. Schwartz

SMS:at
Enclosure

cc: Mr. Brooks Cowan, City Planner (via email to bcowan@bhamgov.org)

OAKLAND COUNTY TREASURER'S CERTIFICATE
This is to certify that there are no delinquent property
taxes as of this date owed to our office on this property.
No representation is made as to the status of any taxes,
penalties or fines owed to any other entities.

MAY 15 2015

1.00

ANDREW E. MEISNER, County Treasurer
Sec 135, Act 206, 1993 as amended

LIBER 48188 PAGE 142
\$22.00 DEED - COMBINED
\$4.00 REMONUMENTATION
\$17,200.00 TRANSFER TX COMBINED
05/18/2015 03:32:24 PM RECEIPT# 56415
PAID RECORDED - Oakland County, MI
Lisa Brown, Clerk/Register of Deeds



WARRANTY DEED

THEODORE N. MITCHELL AND KATHY MITCHELL, husband and wife, GREGORY MITCHELL AND ATHINA MITCHELL, husband and wife, AND MARK MITCHELL AND MARTHA MITCHELL, husband and wife (collectively, "Grantor"), whose address is 339 N. Center Street, Northville, Michigan 48167 ("Grantor"), conveys and warrants to Lavery Michigan Dealership Properties, a Michigan limited liability company ("Grantee"), whose address is 33583 Woodward Ave. Birmingham, the premises situated in the City of Birmingham, Oakland County, Michigan, more specifically described as: ****HI 48009**

*No. 1, LLC, a Michigan limited liability company

See Exhibit A hereto

for the sum set forth on the Real Estate Transfer Tax Valuation Affidavit filed herewith, subject only to the exceptions set forth on Exhibit B hereto.

If the land being conveyed is unplatted, the following is deemed to be included:

Grantor grants to Grantee the right to make all division(s) under Section 108 of the Land Division Act, Act No. 288 of the Public Acts of 1967, as amended.

This property may be located within the vicinity of farmland or a farm operation. Generally accepted agricultural and management practices which may generate noise, dust, odors, and other associated conditions may be used and are protected by the Michigan Right to Farm Act.

Dated: April 30, 2015

OK-LB

SP
A
Cert

[SIGNATURES BEGIN ON NEXT PAGE]

Warranty Deed

1508076

26

RECEIVED
OAKLAND COUNTY
REGISTER OF DEEDS
2015 MAY 13 AM 10:59

GRANTOR:

Theodore N. Mitchell

Theodore N. Mitchell

Kathy Mitchell

Kathy Mitchell, his wife

Gregory Mitchell

Gregory Mitchell

Athina Mitchell

Athina Mitchell, his wife

Mark Mitchell

Mark Mitchell

Martha Mitchell

Martha Mitchell, his wife

STATE OF MICHIGAN

COUNTY OF OAKLAND

ss.

The foregoing instrument was acknowledged before me in OAKLAND County, Michigan, this 16 day of June, 2010, by Theodore N. Mitchell and Kathy Mitchell, his wife.

Sandra J. Melki

Print name: Sandra J. Melki

Notary Public

State of Michigan, County of _____

My commission expires _____

Acting in the County of _____

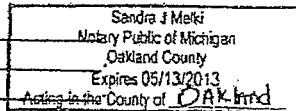
Sandra J Melki
Notary Public of Michigan
Oakland County
Expires 05/13/2013
Acting in the County of <u>OAKLAND</u>

Warranty Deed

STATE OF MICHIGAN)
COUNTY OF Oakland) ss.

The foregoing instrument was acknowledged before me in Oakland County, Michigan, this 6th day of June, 2010, by Gregory Mitchell and Athina Mitchell, his wife.

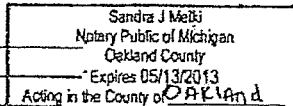
Sandra J. Meeki
Print name: Sandra J. Meeki
Notary Public
State of Michigan, County of _____
My commission expires _____
Acting in the County of _____



STATE OF MICHIGAN)
COUNTY OF Oakland) ss.

The foregoing instrument was acknowledged before me in OAKland County, Michigan, this 10th day of June, 2010, by Mark Mitchell and Martha Mitchell, his wife.

Sandra J. Meeki
Print name: Sandra J. Meeki
Notary Public
State of Michigan, County of _____
My commission expires _____
Acting in the County of _____



Drafted by and when recorded return to:
Howard N. Luckoff, Esq.
Honigman Miller Schwartz and Cohn LLP
2290 First National Building
660 Woodward Avenue
Detroit, MI 48226

Send subsequent tax bills to: Grantee

Recording Fee: \$ _____

Transfer Tax: See Real Estate Transfer Tax Valuation Affidavit

Warranty Deed

EXHIBIT A

LEGAL DESCRIPTION

Land situated in the City of Birmingham, Oakland County, Michigan, more particularly described as:

Lot 3 of "Bowers Addition", according to the plat thereof recorded in Liber 8 of Plats, Page 26, Oakland County Records, except that part taken for highway; also together with:

All of Lots 4 and 5 of "Bowers Addition", according to the plat thereof recorded in Liber 8 of Plats, Page 26, Oakland County Records; also together with

Lot 6 of "Bowers Addition", according to the plat thereof recorded in Liber 8 of Plats, Page 26, Oakland County Records, except the Easterly part, beginning at the Northeast Lot corner; thence West 1.35 feet along the Lot line; thence Southerly 65.50 feet parallel to the East Lot line; thence South 52.89 feet to the Southeast Lot corner; thence Northerly along said Lot line to the beginning.

Sidwell #: 19-36-281-022
Commonly Known As: 835 and 845 Haynes Street

EXHIBIT B

EXCEPTIONS

1. Taxes and assessments for the year 2010 and thereafter which constitute a lien on the Property but are not yet due and payable.
2. Highway Easement recorded in Liber 53, Page 355 of Miscellaneous Records, Oakland County Records, Michigan.

OAKLAND.1841170.1

OAKLAND COUNTY TREASURERS CERTIFICATE
I HEREBY CERTIFY that there are no TAX LIENS or TITLES
held by the state or any individual against the within description
and all TAXES on same are paid for five years previous to the
date of this instrument as appears by the records in the office
except as stated.

JUN 06 2014

ANDREW E. MEISNER, County Treasurer
Sec. 135, Act 206, 1893 as amended

1.00

00-1862

LIBER 47102 PAGE 586
\$19.00 DEED - COMBINED
\$4.00 REMONUMENTATION

06/06/2014 03:17:34 PM RECEIPT# 53438
PAID RECORDED - Oakland County, MI
Lisa Brown, Clerk/Register of Deeds

COVENANT DEED

Agim Bardha and Sheriban Bardha, husband and wife (collectively, "Grantor"), whose address is 550 Bates, Birmingham, Michigan 48009, hereby sells, conveys, grants and bargains to Lavery Michigan Dealership Properties No. 1, LLC, a Michigan limited liability company ("Grantee"), whose address is 440 Lake Park Drive, Birmingham, Michigan 48009, the premises situated in the City of Birmingham, Oakland County, Michigan, more specifically described as:

See Exhibit A hereto

for the sum set forth on the Real Estate Transfer Tax Valuation Affidavit filed herewith.

Grantor, for itself, its successors and assigns, covenants, grants, bargains, and agrees to and with Grantee, its successors and assigns, that, subject to the exceptions set forth on Exhibit B hereto, Grantor has not done, committed or knowingly suffered to be done or committed any act, matter, or thing whatsoever, whereby the premises hereby granted, or any part thereof, is, or shall or may be, charged or encumbered in title, estate or otherwise.

If the land being conveyed is unplatted, the following is deemed to be included:

Grantor grants to Grantee the right to make all division(s) under Section 108 of the Land Division Act, Act No. 288 of the Public Acts of 1967, as amended.

This property may be located within the vicinity of farmland or a farm operation. Generally accepted agricultural and management practices which may generate noise, dust, odors, and other associated conditions may be used and are protected by the Michigan Right to Farm Act.

[SIGNATURES ON NEXT PAGE]

OK = LG

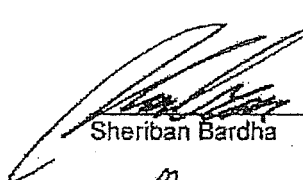
RECEIVED
OAKLAND COUNTY
REGISTER OF DEEDS
2014 JUN -6 PM 3:17

REVENUE TO BE AFFIXED
AFTER RECORDING


Covenant Deed
Page 1 of 2

**SIGNATURE PAGE TO COVENANT DEED FROM
SHERIBAN AND AGIM BARDHA TO LAVERY MICHIGAN DEALERSHIP
PROPERTIES NO. 1, LLC**

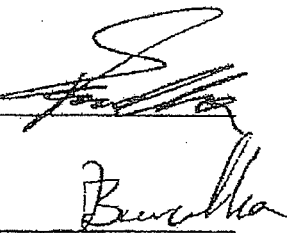
GRANTOR:



Sheriban Bardha



Agim Bardha

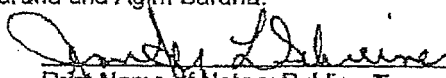


Agim Bardha

Dated as of June 2, 2014

STATE OF MICHIGAN)
) SS.
COUNTY OF OAKLAND)

This instrument was acknowledged before me in Oakland County, Michigan, on the 2nd of June, 2014, by Sheriban Bardha and Agim Bardha.



Print Name of Notary Public: Jennifer L. Schreiner
Notary Public, State of Michigan, County of Oakland
My commission expires: 4/14/20
Acting in the County of Oakland

~~Drafted by and when recorded return to:~~

Sarah Baumgartner, Esq.
Honigman Miller Schwartz and Cohn LLP
660 Woodward Avenue
2290 First National Building
Detroit, MI 48226-3506

When Recorded Return to:

Title Source, Inc. -
Commercial Team
662 Woodward Avenue
Detroit, MI 48226
TSI#: 58767941

Send subsequent tax bills to: Grantee

Recording Fee: \$ _____

Transfer Tax: See Real Estate Transfer Tax Valuation Affidavit

Covenant Deed
Page 2 of 2

EXHIBIT A - LEGAL DESCRIPTION

Tax ID Number(s): 19-36-281-030

Land Situated in the City of Birmingham in the County of Oakland in the State of MI

Town 2 North, Range 10 East, Section 36, BOWERS ADDITION SUBDIVISION, as recorded in Liber 8, Page 26 of Plats, Oakland County Records. Easterly part of Lot 6 beginning at Northeast lot corner, thence Westerly 1.35 feet along North lot line, thence South 01 degrees 00 minutes 00 seconds West 65.50 feet parallel to East lot line, thence Southeasterly 52.89 feet to Southeast lot corner, thence Northerly 118.42 feet along East lot line to beginning, also all of Lots 7, 8 and 9, also Westerly part of Lot 10 measures 10.14 feet along North lot line and 10.58 feet along South lot line.

Client Reference: 907 & 911 Haynes St., Birmingham, MI 48009

EXHIBIT B

EXCEPTIONS

1. Lease dated June 3, 2010 between Sheriban and Agim Bardha and Spa Mariana, LLC, successor in interest to Corpo Chair Massage, LLC.

CERTIFICATE OF SURVEY
ORIGINAL PARCEL CONFIGURATION

LEGAL DESCRIPTION
(Per Survey Oakland)

19-36-281-030
T2N, R10E, SEC 36 BOWERS ADD ELY PART OF LOT 6 BEG AT NE LOT COR, TH WLY 1.35 FT ALG N LOT LINE, TH S 01-00-00 W 65.50 FT PARA TO E LOT LINE, TH SELY 52.89 FT TO SE LOT COR, TH NLY 118.42 FT ALG E LOT LINE TO BEG, ALSO ALL OF LOTS 7, 8 & 9, ALSO WLY PART OF LOT 10 MEAS 10.14 FT ALG N LOT LINE & 10.58 FT ALG S LOT LINE

LEGAL DESCRIPTION
(Per Survey Oakland)

19-36-281-022
T2N, R10E, SEC 36 BOWERS ADD LOT 3 EXC THAT PART TAKEN FOR HWY, ALL OF LOTS 4 & 5, ALSO LOT 6 EXC ELY PART BEG AT NE LOT COR, TH W 1.35 FT ALG N LOT LINE, TH SLY 65.50 FT PARA TO E LOT LINE, TH SELY 52.89 FT TO SE LOT COR, TH NLY ALG LOT LINE TO BEG



PEA, Inc.

2430 Rochester Ct, Ste 100
Troy, MI 48063-1872
t: 248.689.9090
f: 248.689.1044
www.peainc.com

CLIENT:
Lavery Michigan Dealership Properties No. 1, LLC
909 HAYNES STREET
BIRMINGHAM, MICHIGAN 48009

SCALE: —

JOB No: 2019-344

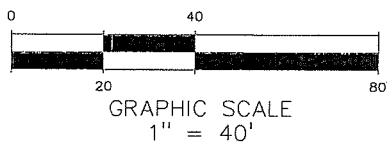
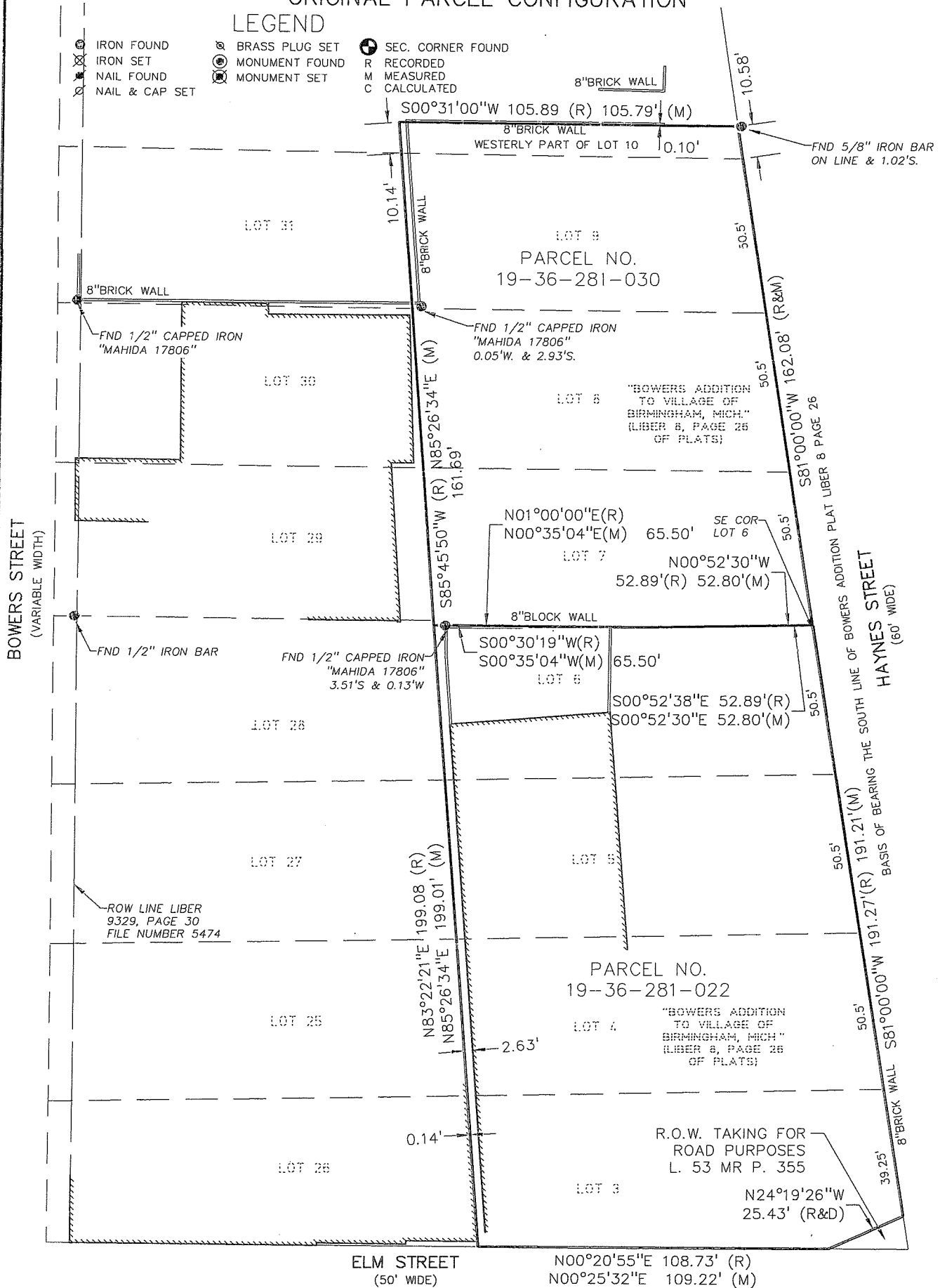
DATE: 9/18/19

DWG. No: 1 of 4

CERTIFICATE OF SURVEY ORIGINAL PARCEL CONFIGURATION

LEGEND

- | | | |
|--|--|---|
| <ul style="list-style-type: none"> ⊗ IRON FOUND ⊗ IRON SET ⊗ NAIL FOUND ⊗ NAIL & CAP SET | <ul style="list-style-type: none"> ⊗ BRASS PLUG SET ⊗ MONUMENT FOUND ⊗ MONUMENT SET | <ul style="list-style-type: none"> ⊙ SEC. CORNER FOUND R RECORDED M MEASURED C CALCULATED |
|--|--|---|



CLIENT:
Lavery Michigan Dealership Properties No. 1, LLC
909 HAYNES STREET
BIRMINGHAM, MICHIGAN 48009

SCALE: 1" = 40'

JOB No: 2019-344

DATE: 9/18/19

DWG. No: 2 of 4

PEA, Inc.

2430 Rochester Ct, Ste 100
Troy, MI 48063-1872
t: 248.689.9090
f: 248.689.1044
www.peainc.com

CERTIFICATE OF SURVEY
PROPOSED PARCEL CONSOLIDATION

LEGAL DESCRIPTION

(Per PEA Inc.)

Combined Parcel

Land situated in the City of Birmingham, County of Oakland, State of Michigan
Described as follows:

A parcel of land lying in "Bowers Addition" being a part of Section 36, Town 2 North, Range 10 East, including all of lots 3, 4, 5, 6, 7, 8, 9, and the westerly 10.14 feet along the northerly line of Lot 10 and the westerly 10.58 feet along the southerly line of Lot 10, excluding a portion taken for Right-of-Way purposes, as described in Liber 53 Miscellanies Records, Page 355,, more particularly described as;

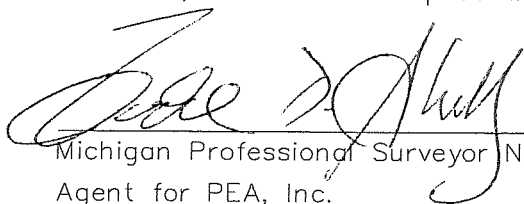
Commencing at the southwest corner of Lot 3, thence N81°00'00"E, 10.79 feet along the south line of said Lot 3 to the Point of Beginning;
thence N24°19'26"W, 25.43 feet;
thence N00°25'32"E, 109.22 feet along the West Line of said Lot 3 and the East Line of Elm Street;
thence N85°26'34"E, 360.70 feet along the North Line of Lots 3-10 of said Bower's Addition;
thence S00°31'00"W, 105.79 feet;
thence S81°00'00"W, 353.29 feet along the South Line of said Lots 3-10 and the North Line of Haynes Street to the Point of Beginning.
Containing 0.99 Acres more or less.

Basis of bearing the south line of Bowers Addition Plat Liber 8 Page 26

CERTIFICATION

I, Todd D. Shelly, being a Licensed Professional Surveyor, hereby certify, that I have surveyed and mapped the parcel(s) heron described and that the relative positional precision of each corner is within the limits accepted by the practice of professional surveying and that all the requirements of P.A. 132 of 1970, as amended, have been complied with.

DATE


Michigan Professional Surveyor No. 41111
Agent for PEA, Inc.

9-19-19



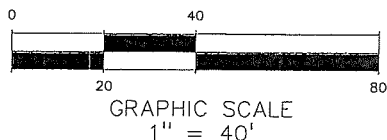
PEA, Inc.

2430 Rochester Ct, Ste 100
Troy, MI 48063-1872
t: 248.689.9090
f: 248.689.1044
www.peainc.com

CLIENT: Lavery Michigan Dealership Properties No. 1, 909 HAYNES STREET BIRMINGHAM, MICHIGAN 48009	SCALE: — LC	JOB No: 2019-344
	DATE: 9/18/19	DWG. No: 3 of 4

LEGEND

- SEC. CORNER FOUND
 R RECORDED
 M MEASURED
 C CALCULATED



2430 Rochester Ct, Ste 100
Troy, MI 48063-1872
t: 248.689.9090
f: 248.689.1044
www.peainc.com

DWG. No: 4 of 4

S:\PROJECTS\2019\2019-344 LAVERY-BARDHA PARCEL CONSOLIDATION\SURVEY-DEPT\19344BND\DWG\19-344 Parcel consolidation.dwg; RAT

Luckenbach Ziegelman Gardner Architects PLLC

555 South Old Woodward Suite 27L
Birmingham, Michigan 48009
248.644.0600

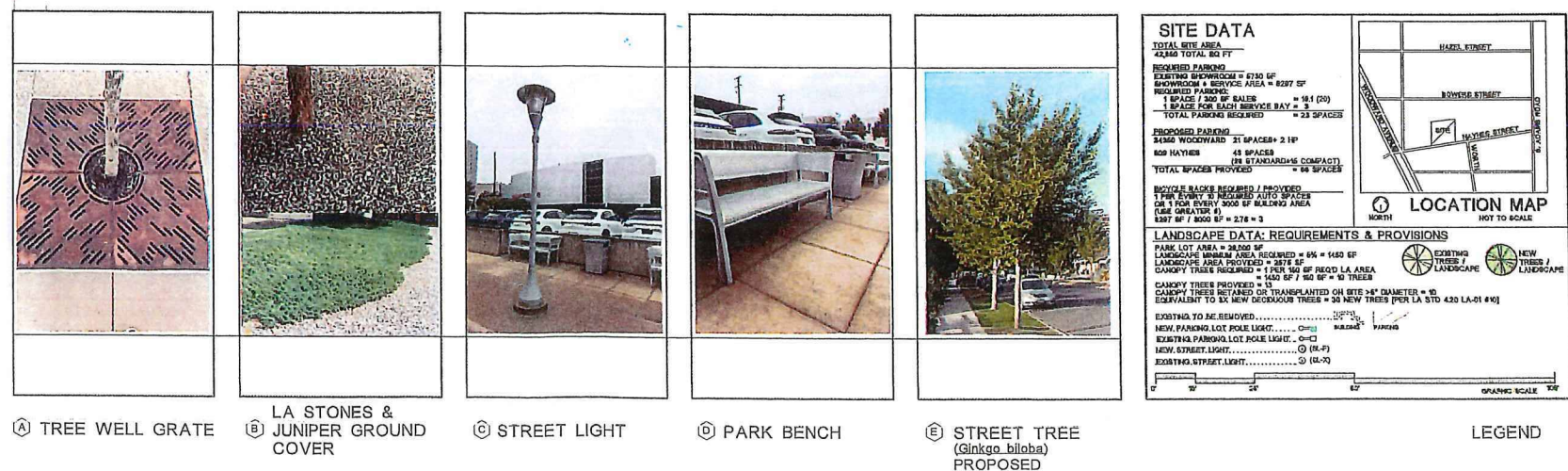
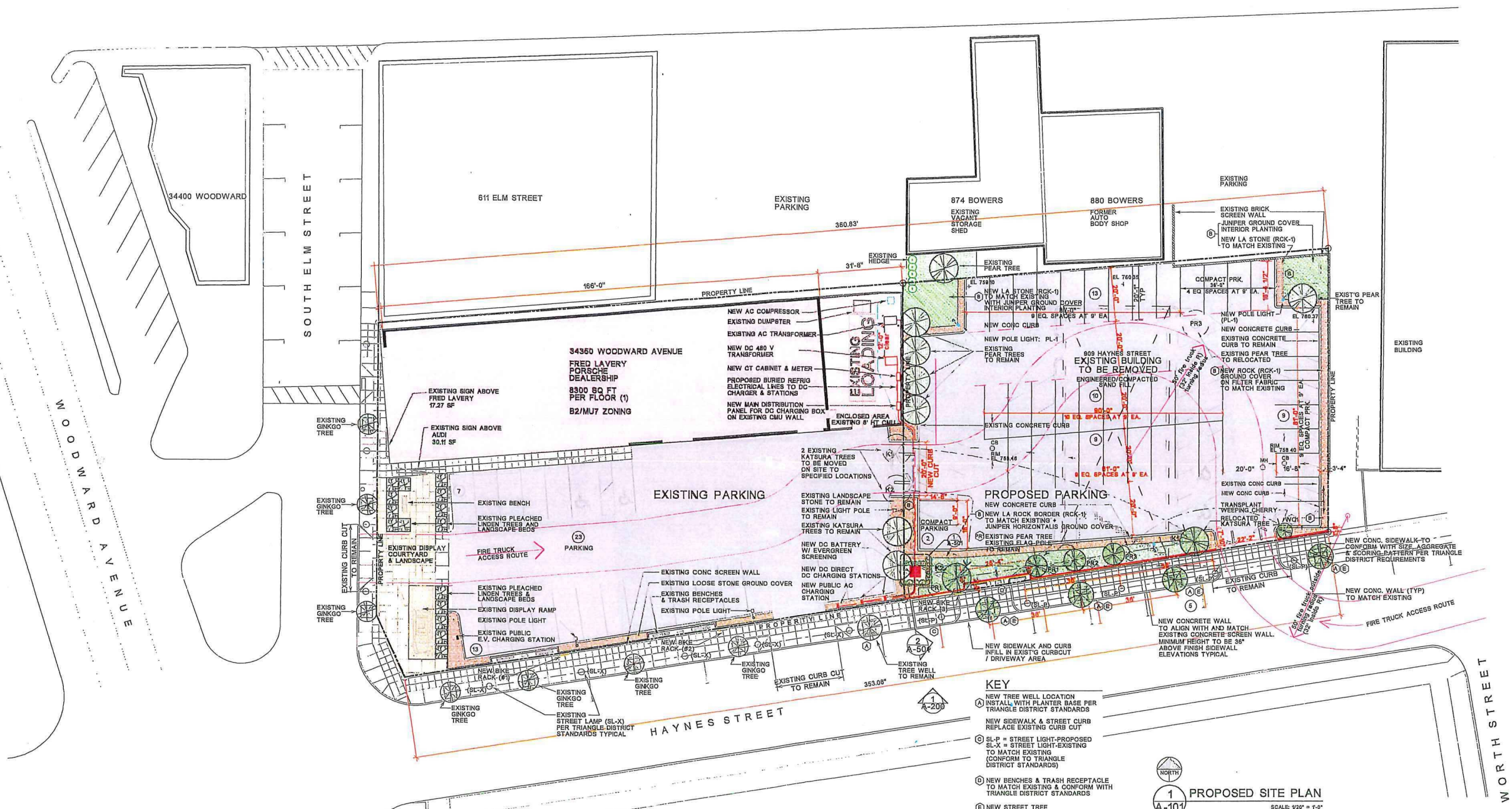
project:
**Fred Lavery
PORSCHE**
Special Land Use
Permit Review
835 Haynes Street
Birmingham, Michigan

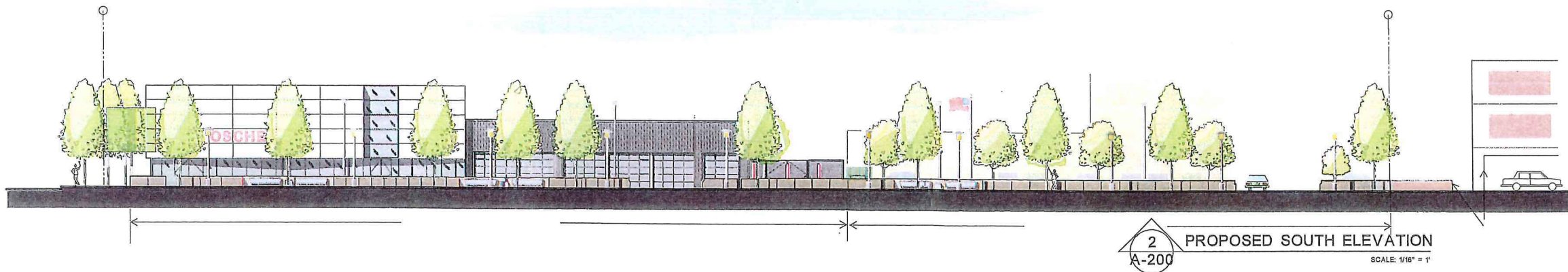
client use:
**PROPOSED SITE PLAN
FOR SPECIAL LAND
USE PLANNING
AMENDMENT**

date issued:
09.23.2019 OWNER REVIEW
09.29.2019 OWNER REVIEW
10.14.2019 OWNER REVIEW
10.16.2019 OWNER REVIEW

project number:
LZG 2019.0025

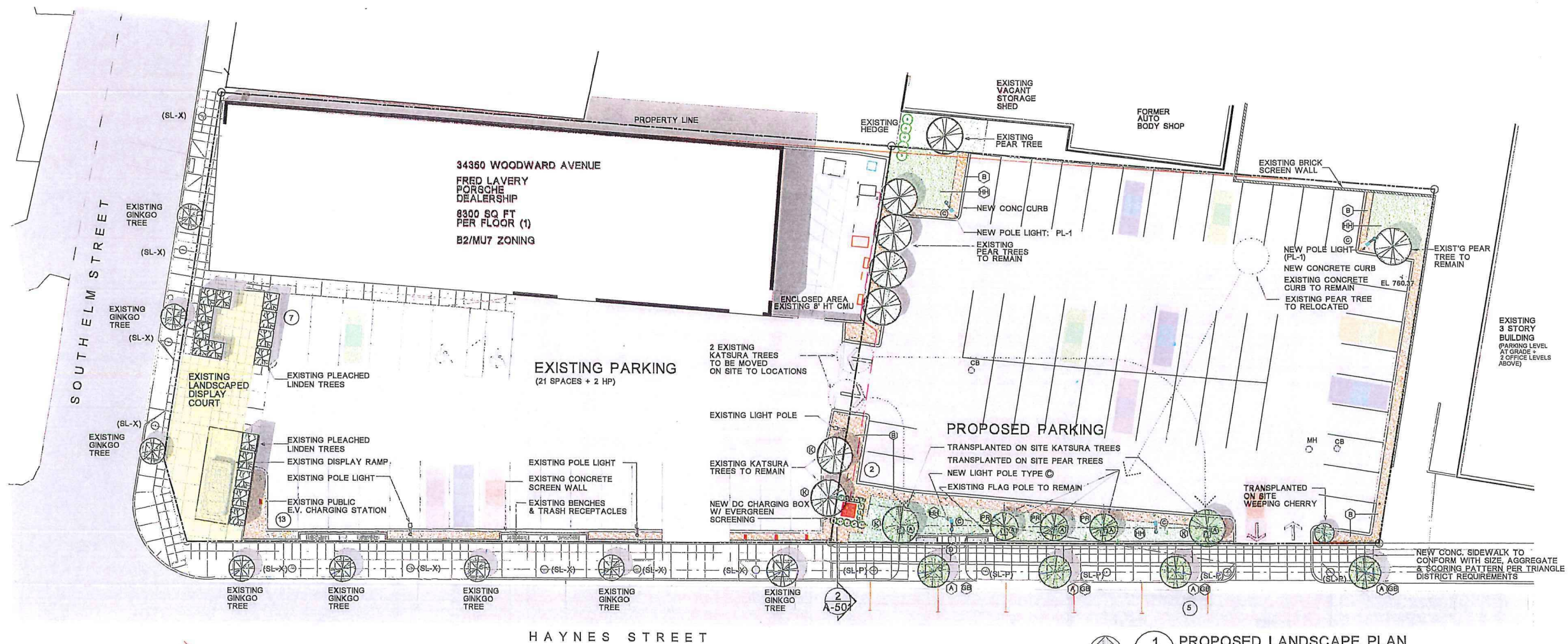
sheet number:
A-101





Luckenbach
Ziegelman
Gardner
Architects
PLLC

555 South Old Woodward Suite 27L
Birmingham, Michigan 48009
248.644.0600



project:
Fred Lavery
PORSCHE
Special Land Use
Permit Review
835 Haynes Street
Birmingham, Michigan

sheet title:
PROPOSED

date issued:

1 PROPOSED LANDSCAPE PLAN
A/LA-200
SCALE: 1/16" = 1'

LANDSCAPE KEY

- (A) NEW TREE WELL LOCATION
INSTALL WITH PLANTER BASE PER
TRIANGLE DISTRICT STANDARDS
Ginkgo biloba, "Autumn Gold"
- (B) EXISTING STONE (1" DIA) VOLCANIC STONE
(Washed Decorative Stone: Midnight Granite)
- (D) NEW BENCHES & TRASH RECEPTACLE
- (K) KATURA TREE (Existing - Transplanted on Site)
(Cercidiphyllum japonicum)
- (P) FLOWERING PEAR TREE
(Existing - Transplanted on Site - Pyrus sp)

LIGHTING KEY

- (A) Auraltight 12V LED Micro well Uplight
- (B) Lumenation Street Light Model PT90 - 42W
TO MATCH EXISTING
(CONFORM TO TRIANGLE
DISTRICT STANDARDS)
- (C) PARKING LIGHT POLE
Cooper Lighting - Lumark
Model MPTR (match existing)

project number:
LZG 2019.0025

sheet number:

A-200

LEGAL DESCRIPTION

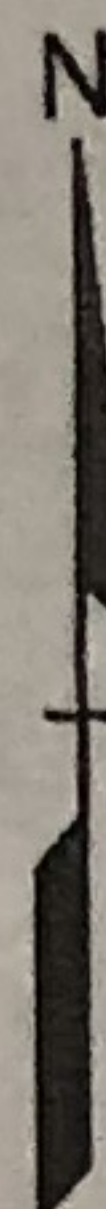
(Per PEA Map)

Land located in the City of Birmingham, County of Oakland, State of Michigan described as follows:

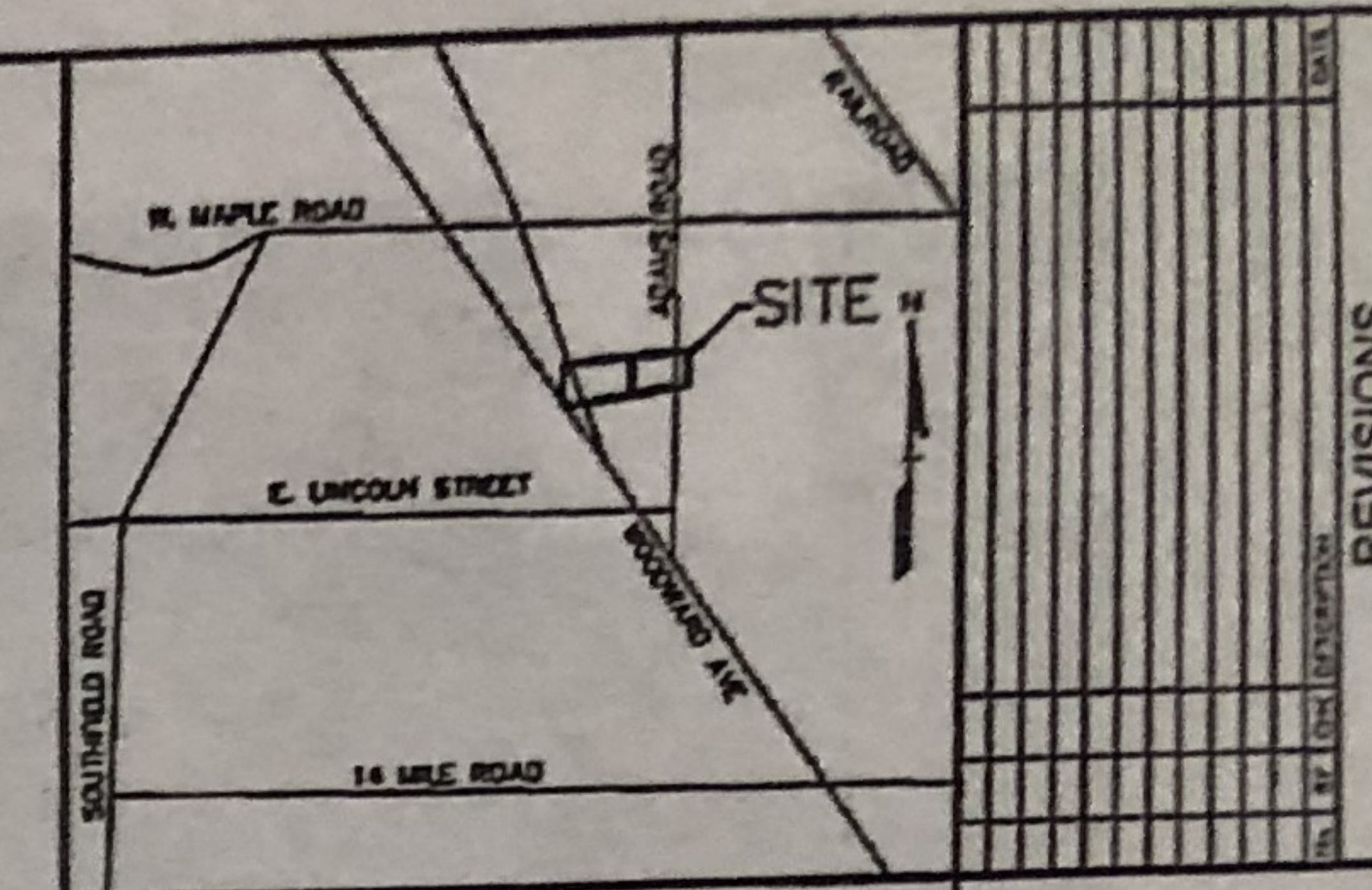
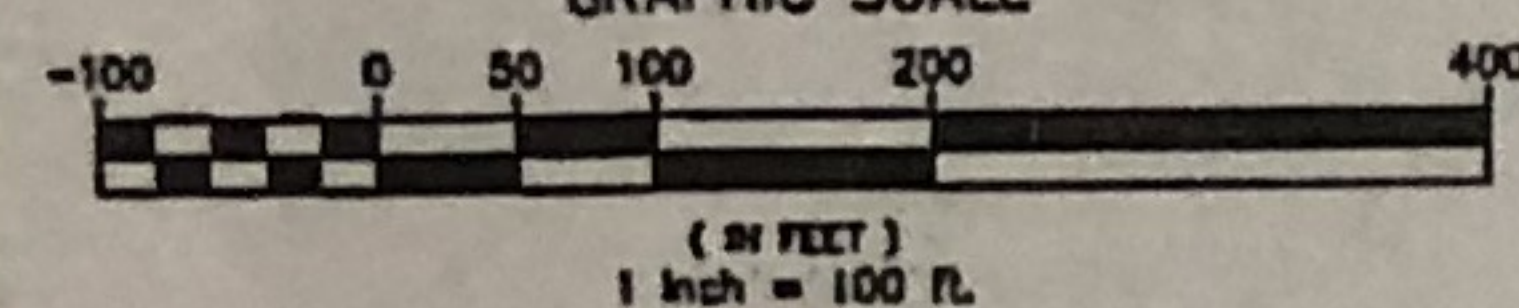
A parcel of land lying in "Bowers Addition" being a part of Section 36, Town 2 North, Range 10 East, including all of lots 3, 4, 5, 6, 7, 8, 9, and the westerly 10.14 feet along the northern line of Lot 10 and the westerly 10.58 feet along the northern line of Lot 11, including a portion (later for Right-of-Way purposes, as described in Liber 53 Miscellaneous Records, Page 255, more particularly described as:

Commencing at the southeast corner of Lot 3, thence N81°00'00"E, 10.79 feet along the south line of said Lot 3 to the Point of Beginning;
thence S24°17'25"W, 15.43 feet;
thence S69°23'23"E, 108.22 feet along the West Line of said Lot 3 and the East Line of the Street;
thence S82°24'54"E, 100.70 feet along the North Line of Lots 3-10 of said Bowers Addition;
thence S00°21'00"W, 105.79 feet;
thence S81°00'00"W, 333.29 feet along the South Line of said Lots 3-10 and the North Line of Haynes Street to the Point of Beginning.
Containing 0.95 Acres more or less.

Beats of bearing the south line of Bowers Addition Plat Liber 8 Page 26

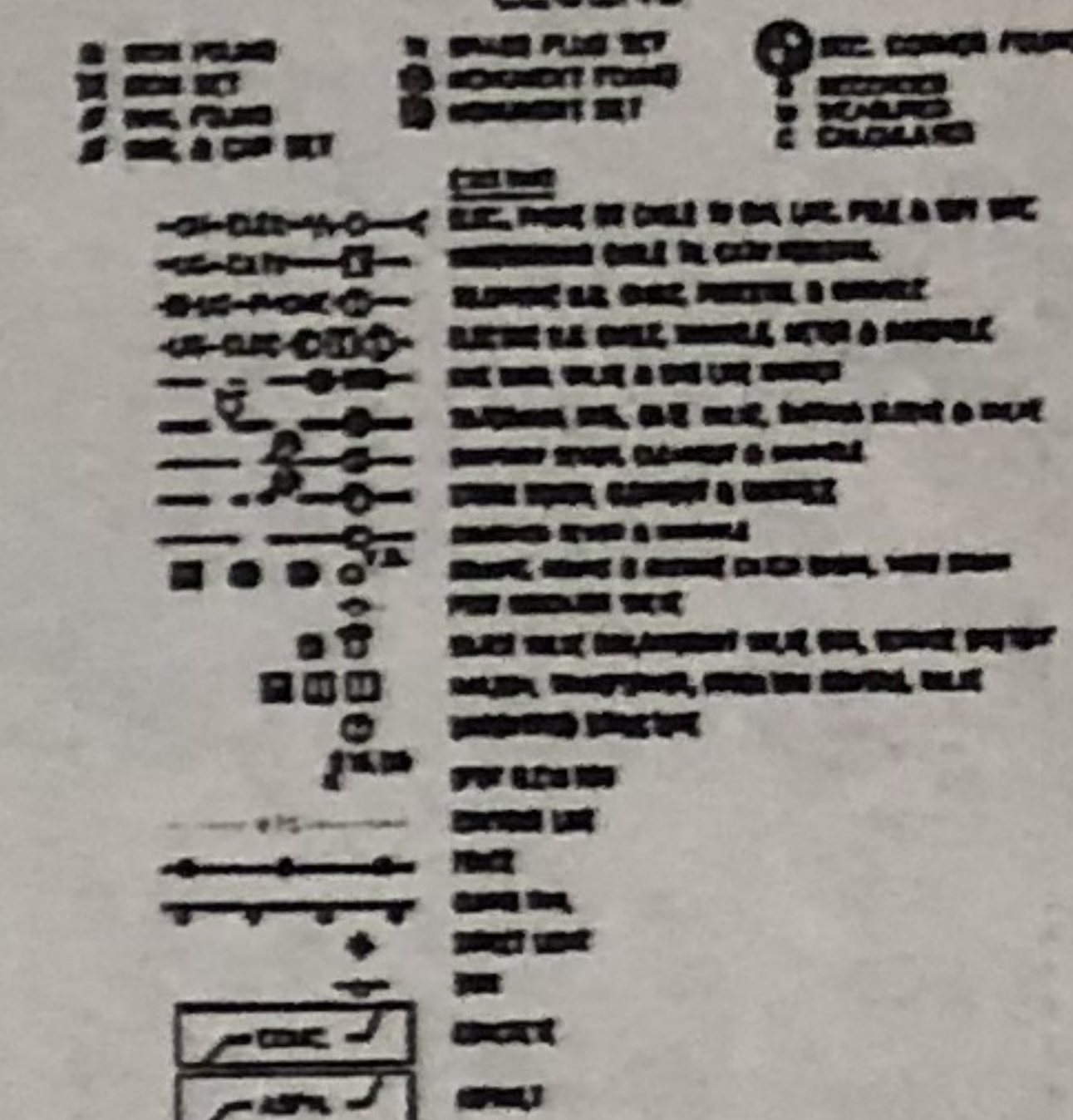


GRAPHIC SCALE



LOCATION MAP - NOT TO SCALE

LEGEND



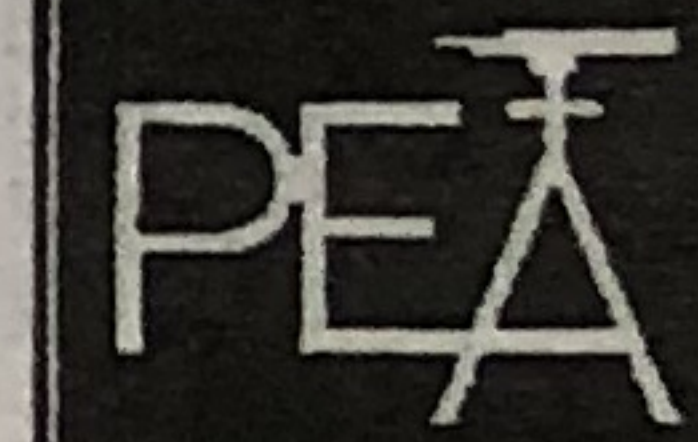
CAUTION:
This plat is a legal description of land and should not be used for any other purpose. It is the responsibility of the user to verify the accuracy of the information and to consult with a professional surveyor or attorney for any questions or disputes. The user agrees to hold the surveyor and the surveying firm harmless from any and all claims, damages, or expenses, including reasonable attorneys' fees, that may be asserted against them by any third party as a result of the use of this plat for any purpose other than that for which it was prepared.

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F: 248.689.1044
www.peainc.com

Lavery Michigan Dealership Properties No. 1, LLC
600 HAYNES STREET
BIRMINGHAM, MICHIGAN 48009
LAND COMBINATION SURVEY
BOWERS ADDITION
PART OF THE NORTH 1/4 OF SECTION 36, TOWN 2N, RANGE 10E
CITY OF BIRMINGHAM, OAKLAND COUNTY, MICHIGAN
DES. DATE SURV. DATE P.M. TDS

ORIGINAL ISSUE DATE:

September 10, 2010

PEA JOB NO. 2010-344

SCALE: 1" = 100'

DRAWING NUMBER:

1

CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, SEPTEMBER 22, 2010
Commission Chamber, City Hall
151 Martin Street, Birmingham, Michigan

Minutes of the regular meeting of the City of Birmingham Planning Board held September 22, 2010. Chairman Robin Boyle convened the meeting at 7:30 p.m.

Present: Chairman Robin Boyle, Board Members Scott Klein, Bert Koseck, Gillian Lazar (arrived at 7:53 p.m.), Chantelle Whipple-Boyce, Bryan Williams, Student Representative Aaron Walden

Absent: Board Member Carroll DeWeese

Administration: Matthew Baka, Planning Intern
Chana Ecker, Planning Director
Carole Salutes, Recording Secretary

09-170-10

SPECIAL LAND USE PERMIT ("SLUP") REVIEW

835 Haynes St., Porsche Showroom and Sales

Request approval of a SLUP to allow an automobile sales agency in an existing building

FINAL SITE PLAN REVIEW

835 Haynes St., Porsche Showroom and Sales

Request approval of a SLUP to allow an automobile sales agency in an existing building

Mr. Baka explained the subject site is located on the east side of Woodward Ave., on the northeast corner of Haynes and Elm. The parcel is zoned B-2 Business-Residential and MU-7 in the Triangle Overlay District. The applicant, Fred Lavery Company, is seeking approval of an auto sales agency and showroom. The Birmingham Zoning Ordinance requires that the applicant obtain a SLUP and approval from the City Commission to operate an auto sales agency and showroom in the MU-7 District.

Accordingly, the applicant will be required to obtain a recommendation from the Planning Board on the Final Site Plan and SLUP, and then obtain approval from the City Commission for the Final Site Plan and SLUP.

Mr. Baka explained that the applicant is planning minimal changes to the actual site. They are basically looking at some improvements to the screening, lighting and also landscaping. The parking lot is over 7,500 sq. ft., which would kick in the 5 percent landscaping rule. However, because this area is identified as one of the gateways to the Triangle District, the Planning Division thought it would be more beneficial to pedestrians to locate the landscaping at the west end of the site on the outside of the screenwall.

The materials board was passed around for viewing.

The applicant proposes to install two name letter signs and one two-sided ground sign. The total linear building frontage is 165 ft. This permits 165 sq. ft. of sign area per the requirement of Article 1.0, section 104 (B) of the Birmingham Sign Ordinance, Combined Sign Area. The total area of all signs will be 128.59 sq. ft. which meets this requirement.

The proposed Porsche and Fred Lavery sign letters will be constructed of silver finished fabricated aluminum. The proposed Porsche ground sign will be a fabricated aluminum cabinet with an internal aluminum frame.

The Porsche name letter sign will be internally lit with 15mm red neon lamps. The Fred Lavery name letter sign will be halo backlit with 15mm white neon tubes. The Porsche ground sign is proposed to be internally backlit with fluorescent tubes.

Mr. Robert Ziegelman, Luckenbach Ziegelman Architects, PLLC, was present with Messrs. Lavery and Lavery□Mr. Pat Taylor from his office□along with Mr. Mark Daringowski, representing Porsche Cars North America. Mr. Ziegelman indicated they are not touching the footprint of the building. Mr. Koseck observed that floor plans would help to understand why the entry points are where they are.

Ms. Lazar arrived at this time.

Ms. Whipple-Boyce received clarification that the applicant is proposing roughly 700 sq. ft. of landscaping in the parking lot. 600 sq. ft. is required. Moving the screenwall to the inside of the landscaping would take the requirement down significantly.

Chairman Boyle suggested a Porsche display in the parking lot would be astonishingly attractive.

Mr. Fred Lavery, the owner and operator of the Porsche dealership, said they did not consider a car display because it wouldn't be seen as a result of the screenwall requirement.

Mr. Williams was not in favor of the display because it is not easy to negotiate out onto Woodward Ave. from Haynes and the display might be a distraction.

Mr. Koseck noted the existing aisles in the parking lot are 24 ft. wide and they exceed the required width by 4 ft. He thought the width could be reduced and that would allow additional room for landscaping. Further, he expected the main entrance to the building would be at the southwest corner so a pedestrian would not be forced to walk through the parking lot to enter. Mr. Lavery explained there are two pedestrian entrances. The second pedestrian entrance is also used for vehicles. He noted they adhere to the Porsche standards which they have no control over. The entire inside of the showroom is oriented towards the main entrance. Mr. Koseck then pointed out that the upper left hand section shows a thin wall that extends up, as opposed to wrapping around. The elevation that faces to the north is even thinner yet and they both look as though they were glued onto the building.

Ms. Lazar thought perhaps Porsche could offer the applicant some latitude given the fact that they are rehabbing the building.

Mr. Lavery went on to state that parking is an important part of their operation. His experience has been that the parking standards are minimal for a car dealership. They have always utilized other parking spaces in addition to those that have been required on-site.

Mr. Daringowski explained the Porsche concept of a jewel box with all of the Porsches illuminated inside that box. Their flexibility for change is minimal, but they will work with the comments that have been made tonight.

The chairman took the discussion to members of the public at 8:25 p.m.

Mr. James Ellsman, owner of the building immediately to the north, expressed his concern that this building offers no consistency with the concept of the Triangle District. At the entrance point to the Triangle District only a one-story renovated building is being considered. He asked about the longevity of the project.

Mr. Ted Mitchell, the owner of the building, verified that the term of the lease is five years.

Mr. Williams noted this is an area of at times very high traffic congestion and people driving too fast. So he is not troubled by moving access to the building away from Elm, far away from the intersection, He doesn't think that many people will actually walk to the Porsche car dealership.

Mr. Clein was not in favor of giving up on the pedestrian. Rather, implementing the streetscape improvement standards in conjunction with moving the screenwalls should be considered.

Ms. Whipple-Boyce thought that Mr. Koseck's proposal makes a lot of sense—but that said, the main entrance is further east where the interior of the building is oriented. She thinks Mr. Lavery made it clear that rather than turning the three extra parking spots that

aren't required into landscaping, he needs the parking. However, she agrees that the screenwall should be moved to the interior of the parking lot so that the pedestrian side gets all of the greenery. Landscaping might look better than benches along the sidewalk.

Chairman Boyle said he is glad to see that the applicant is coming in to improve this property. A little trees and grass doesn't really help the attractiveness of this particular piece of property. Benches are to be encouraged. This dealership should be vibrant, colorful, lit at night, and have a red, shiny Porsche on display.

Mr. Williams thought the reality is that a five-story building is not going to be built on that site right now. This proposal is a significant improvement over what exists.

Motion by Mr. Williams

Seconded by Mr. Clein that the Planning Board recommends approval of the applicant's request for Final Site Plan and a SLUP to permit an auto sales agency and showroom at 834 Haynes with the following conditions:

- 1□ The applicant adds a canopy tree to each of the two landscaped areas□**
- 2□ The applicant moves the west facing screenwalls to expose the landscaped areas to the street□ and**
- 3□ The applicant install tree grates around street trees and implement sidewalk standards along Haynes and Elm.**

Mr. Koseck reiterated that the extended fascia doesn't return on itself and he thinks it will look weird from two vantage points. Mr. Lavery indicated they will certainly suggest that to Porsche. He thinks the return on Elm St. is more critical than the return on Haynes because the building to the east screens that side of the facade. Mr. Daringowski is sitting in the audience and will ultimately be involved in that decision. Mr. Williams was not inclined to make the return on the parapets a condition of his motion.

Mr. Koseck said he will not approve the motion because there are subtle things that can be done that would make huge improvements to the plan.

Ms. Whipple-Boyce expressed her feeling that it is important for the parapets to become part of the motion because as proposed they are unlikely to be attractive to the community. She cannot support the motion without that addition.

The chairman opened discussion to the audience at 9 p.m.

Ms. Dorothy Conrad, 2252 Yorkshire, said that as a resident of the City of Birmingham she hopes that the motion will include the suggestions that have been discussed in great detail tonight. Shame on the board if it doesn't.

Motion failed, 3-3.

□OICE □OTE

Yeas: Williams, Clein, Boyle

Nays: Koseck, Lazar, Whipple-Boyce

Absent: DeWeese

Motion by Ms. □hipple-Boyce

Seconded by Ms. □azar based on review of the site plan submitted the Planning Board recommends approval of the applicant's request for Final Site Plan and S□UP to permit an auto sales agency at 835 □aynes with the following conditions:

- 1□ The applicant adds a canopy tree to each of the two landscaped areas□**
- 2□ The applicant moves the west facing screenwalls to expose the landscaped areas to the street□**
- 3□ Install tree grates around street trees and implement sidewalk standards along □aynes and Elm□ and**
- 4□ Create returns on the parapet wall on both □aynes and Elm to disguise the bracing.**

Mr. Williams indicated he would vote in favor of the motion because he thinks the project needs to move forward. Mr. Koseck did not see the urgency. He was uncomfortable because the board has not been provided with readings or a floor plan.

There were no final comments from members of the public at 9:05 p.m.

Mr. Ziegelman said they would be more than happy to discuss improvements with staff.

Motion carried, 5-1.

□OICE □OTE

Yeas: Whipple-Boyce, Lazar, Boyle, Clein, Williams

Nays: Koseck

Absent: DeWeese

BIRMINGHAM CITY COMMISSION MINUTES

NOVEMBER 8, 2010

MUNICIPAL BUILDING, 151 MARTIN

7:30 P.M.

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Rackeline J. Hoff, Mayor called the meeting to order at 7:30 PM.

II. ROLL CALL

ROLL CALL:	Present,	Mayor Hoff Commissioner Dilgard Commissioner McDaniel Commissioner Moore Commissioner Nickita Mayor Pro Tem Rinschler Commissioner Sherman
	Absent,	None

Administration: Manager Markus, Attorney Currier, Clerk Broski, Assistant Manager Valentine, Planning Director Ecker, Planner Baka, City Engineer O'Meara, Assistant City Engineer Cousino, Finance Director Ostin, Building Official Johnson, Fire Chief Metz, Fire Marshall Monti, PSD Director Heiney, Assistant to the Manager Wuerth

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

11-269-10 ORGANIZATION OF THE CITY COMMISSION

MOTION: Motion by Rinschler:

To nominate Rackeline Hoff as Temporary Chair of City Commission for purposes of conducting the Mayor and Mayor Pro Tem election.

VOTE: Yeas, 7
Absent, None

MOTION: Motion by McDaniel:

To nominate Commissioner Rinschler as Mayor.

VOTE: Yeas, 7
Absent, None

MOTION: Motion by Moore:

To nominate Commissioner Nickita as Mayor Pro Tem.

VOTE: Yeas, 7
Absent, None

- 7) The applicant submit revised plans with all of these changes to the Planning Dept. prior to going to the City Commission so the Commission would see the revisions when they consider this issue; and
- 8) All work must be completed in concurrence with the installation of the TV screens, to be completed by June 1, 2011.

WHEREAS, The applicant has agreed to comply with all conditions for approval as recommended by the Planning Board on September 22, 2010;

WHEREAS, The Birmingham City Commission has reviewed the Speedway SuperAmerica LLC Special Land Use Permit Amendment application as well as the standards for such review as set forth in Article 7, section 7.34 of Chapter 126, Zoning of the City Code,

NOW, THEREFORE, BE IT RESOLVED, The Birmingham City Commission finds the standards imposed under the City Code have been met, subject to the conditions below and the Speedway SuperAmerica LLC application for a Special Land Use Permit Amendment is hereby approved, subject to the attached site plan, and subject to the following conditions:

- 1) Repair the cap on the dumpster enclosure walls and repair the dumpster gate;
- 2) Repair the existing screenwalls on the site;
- 3) Improvement of the existing landscape areas on Woodward Ave. to include the installation of several large canopy trees in each bed along with smaller shrubs and perennials;
- 4) Repair damaged portions of the existing sidewalk and approach off of Chestnut;
- 5) Installation of a shield on the wall pack fixture located on the rear of the building and repair of the existing parking lot light fixtures;
- 6) Repair all items on the list that Speedway provided and previously had agreed to repair;
- 7) The applicant submit revised plans with all of these changes to the Planning Dept. prior to going to the City Commission so the Commission would see the revisions when they consider this issue; and
- 8) All work must be completed in concurrence with the installation of the TV screens, to be completed by June 1, 2011.

BE IT FURTHER RESOLVED, That failure to comply with any of the above conditions shall result in termination of the Special Land Use Permit.

BE IT FURTHER RESOLVED, Except as herein specifically provided, the Speedway SuperAmerica LLC Company and its heirs, successors and assigns shall be bound by all ordinances of the City of Birmingham in effect at the time of the issuance of this permit, and as they may be subsequently amended. Failure of Speedway SuperAmerica LLC Company to comply with all the ordinances of the City, may result in the Commission revoking this Special Land Use Permit.

VOTE: Yeas, 7
 Nays, None
 Absent, None

11-274-10 PUBLIC HEARING TO CONSIDER SPECIAL LAND USE PERMIT 835 HAYNES

Mayor Rinschler opened the Public Hearing to consider approval of a Special Land Use Permit application for 835 Haynes to allow the operation of an auto sales agency and showroom 8:34 PM.

In response to a question from Mayor Pro Tem Nickita, Bob Ziegelman, Luckenbach, Ziegelman Architects, explained there are two entry locations - one from the sidewalk and one from the parking lot. He explained that there are two four-foot doors.

Mayor Pro Tem Nickita explained that this is a gateway site. He stated that the planning division recommended the planning board consider additional enhancements to the corner of

the site at Haynes and Elm. He stated that in the submitted rendering the enhancements are minimally addressed.

Mr. Baka explained there was discussion about enhancing the corner. He stated that it is appropriate to fully implement the streetscape standards.

Mr. Ziegelman confirmed that the owner is willing to comply with the streetscape standards.

Brad Lavery, owner, confirmed for Mayor Rinschler that new and used cars will be parked in the parking lot.

James Ellsman, owner of 635 Elm Street, commented that this is an underperforming site.

Mayor Rinschler closed the public hearing at 9:08 PM.

Discussion ensued regarding the streetscape. Mr. Lavery agreed to do the additional streetscape improvements which are a considerable expense.

MOTION: Motion by Nickita, seconded by Hoff:

To approve the request for a Special Land Use Permit at 835 Haynes to allow the operation of an auto sales agency and showroom for Porsche with the following conditions:

- The applicant implements the complete streetscape standards, including exposed aggregate and pedestrian scale lighting.
- In addition to consider the redevelopment of the corner at Haynes and Elm by incorporating enhancements in the adjacent parking space and additionally the entrance at the northwest corner of the parking lot, including the incorporation of parking lot there as well for administrative approval.

WHEREAS, Lavery Porsche has applied for a Special Land Use Permit to operate a Porsche automobile sales agency 835 Haynes,

WHEREAS, The land for which the Special Land Use Permit Amendment is sought is located on the northeast corner of Elm and Haynes,

WHEREAS, The land is zoned B-2 General Business, which permits automobile sales agencies with a Special Land Use Permit,

WHEREAS, Article 7, section 7.34 of Chapter 126, Zoning, requires a Special Land Use Permit Amendment to be considered and acted upon by the Birmingham City Commission, after receiving recommendations on the site plan and design from the Planning Board for the proposed Special Land Use;

WHEREAS, The Planning Board reviewed the proposed Special Land Use Permit request on September 22, 2010 at which time the Planning Board voted to recommend approval of the Final Site Plan and SLUP to the City Commission with the following conditions:

- 1) The applicant adds a canopy tree to each of the two landscaped areas;
- 2) The applicant moves the west facing screenwalls to expose the landscaped areas to the street;
- 3) Install tree grates around street trees and implement sidewalk standards along Haynes and Elm; and
- 4) Create returns on the parapet wall on both Haynes and Elm to disguise the bracing.

WHEREAS, The applicant has agreed to comply with all conditions for approval as recommended by the Planning Board on September 22, 2010;

WHEREAS, The Birmingham City Commission has reviewed the Lavery Porsche Special Land Use Permit Amendment application as well as the standards for such review as set forth in Article 7, section 7.34 of Chapter 126, Zoning of the City Code,

NOW, THEREFORE, BE IT RESOLVED, The Birmingham City Commission finds the standards imposed under the City Code have been met, subject to the conditions below and the Lavery Porsche application for a Special Land Use Permit is hereby approved, subject to the attached site plan, and subject to the following conditions:

- 1) The applicant adds a canopy tree to each of the two landscaped areas;
- 2) The applicant moves the west facing screenwalls to expose the landscaped areas to the street;
- 3) Install tree grates around street trees and implement sidewalk standards along Haynes and Elm; and
- 4) Create returns on the parapet wall on both Haynes and Elm to disguise the bracing.

BE IT FURTHER RESOLVED, That failure to comply with any of the above conditions shall result in termination of the Special Land Use Permit.

BE IT FURTHER RESOLVED, Except as herein specifically provided, Lavery Porsche and its heirs, successors and assigns shall be bound by all ordinances of the City of Birmingham in effect at the time of the issuance of this permit, and as they may be subsequently amended. Failure of Lavery Porsche to comply with all the ordinances of the City may result in the Commission revoking this Special Land Use Permit.

VOTE: Yeas, 7
 Nays, None
 Absent, None

**11-275-10 REQUEST FOR WAIVER
 LOT 229, FOREST HILLS SUBDIVISION**

Mr. Johnson explained that the property owners of Lot 229 in the Forest Hills Subdivision are seeking a waiver from the provisions of Chapter 102 of the city code to allow a home to be built on a substandard sized lot that has been reduced from its original size.

The Commission received a communication from Daniel Share, Barris, Sott, Denn & Driker, PLLC.

Rick Rattner, representing the petitioner, spoke in favor of the request for waiver to build on the lot.

Daniel Share, representing the adjacent property owner, spoke in opposition to the request for waiver.

Commissioner Sherman questioned whether the attorneys and their clients have spoke with each other to resolve this matter. Mr. Share confirmed that there had been discussion. Mr. Share commented that his clients would be fine with having another discussion. Mr. Rattner commented that further discussion would not be helpful as his client wants to build on the lot.

Commissioner McDaniel moved to waive the requirements of Section 102-51 (1) of the Birmingham City Code for Lot 229 of the Forest Hills Subdivision (19-25-257-001), to allow the construction of a home on said lot in compliance with all zoning regulations of Chapter 126 of the City Code except minimum lot area and minimum lot width. With no second, Commissioner McDaniel withdrew his motion.

The following spoke in opposition to the request:
Dan Roovers, 205 Wimbleton

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, APRIL 27, 2016
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on April 27, 2016. Chairman Scott Clein convened the meeting at 7:30 p.m.

Present: Chairman Scott Clein, Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Gillian Lazar, Lisa Prasad, Lanelle Whipple-Boyce, Student Representative Colin Cusimano

Absent: Board Member Bryan Williams, Alternate Board Member Daniel Share

Administration: Matthew Baka, Senior Planner
Brooks Cowan Asst. Planner
Lana Ecker, Planning Director
Carole Salutes, Recording Secretary

04-73-16

UNFINISHED BUSINESS

Special Land Use Permit SLUP Review

Final Site Plan Review

835-909 Haynes

Fred Lavery Porsche/Audi

Request for a SLUP Amendment to allow the temporary expansion of the existing SLUP at 835 Haynes to include 909 Haynes to allow an Audi sales facility for a maximum of one year. (postponed from March 23, 2016)

Mr. Baka noted the subject site is located on the north side of the street between Woodward Ave. and Elm St. The parcel is zoned B-2 General Business and MU-5 in the Triangle Overlay District. The applicant, Fred Lavery Co., owns the adjacent property to the west, 835 Haynes St., which received a SLUP in 2010 to operate a Porsche car dealership within the B-2 Zone and MU-7 in the Triangle District Overlay.

The applicant is conducting renovations to the existing Audi dealership at 34602 Woodward Ave., and wishes to amend its existing SLUP at 835 Haynes St. to temporarily include 909 Haynes St. while the building on Woodward Ave. is being renovated. The applicant is requesting temporary use of the first floor of 909 Haynes St. for office space and business operations for their Audi car dealership for no more

than 12 months. Along with the dealership, there is an existing beauty spa on the second floor of 909 Haynes St., Spa Mariana.

The Birmingham Zoning Ordinance requires that the applicant obtain a SLUP Amendment and approval from the City Commission to expand the auto sales agency and showroom to temporarily include the property at 909 Haynes St.. Accordingly, the applicant will be required to receive a recommendation from the Planning Board on the Final Site Plan and SLUP Amendment, and then obtain approval from the City Commission for the Final Site Plan and SLUP Amendment.

On March 23, 2016 the Planning Board reviewed the proposal to temporarily expand the SLUP to include 909 Haynes for one year. However, at that time the architect indicated that the property owner would like the expansion to be permanent. The Planning Board and Planning Staff indicated that a permanent expansion would not be considered without the level of details normally provided for a SLUP Amendment. The applicant was postponed until the April 27, 2016 meeting to allow them time to consider how they wished to proceed. The applicant has now indicated that they intend to proceed with the temporary proposal and apply at a later date for a permanent expansion of the SLUP.

The applicant is now proposing to install the five (5) required canopy trees and create three (3) new landscaped areas in the interior of the parking lot. The applicant must provide the dimensions of the landscaped areas to determine if they meet the size requirements mandated by the Zoning Ordinance.

The applicant is not proposing any changes to the existing streetscape. The current streetscape in front of the subject building does not match the Triangle District standard as installed on the Porsche site.

The design for the building on Woodward Ave. has been approved by the Design Review Board and the applicant is getting ready to start the renovations.

Design Review

No changes to the facade are proposed.

Signage Review

The 909 Haynes St. building has 40 ft. of street frontage□therefore a total of 40 sq. ft. of signage is allowed, per the City of Birmingham's Sign Ordinance. The applicant has revised their signage proposal to bring the amount of signage down to 40 sq. ft. so that it complies with the regulations of the Sign Ordinance.

Ms. Ecker explained that because there were violations going on with the storage of vehicles, Code Enforcement went out, but enforcement activities have been put on hold until it is determined if the temporary SLUP is feasible.

Mr. Fred Lavery noted they will not display cars in the building□it will only contain offices for the sales staff and sales manager. They will probably park their demonstrators in the spaces that are not required to meet the parking requirement for the building. The Audi building on Woodward Ave. is being renovated to Audi's current corporate image.

Chairman Clein called for public comments at 8:32 p.m.

Mr. James Ellsman business owner at 635 Elm, asked if the approval of an amended SLUP is a guarantee that the Triangle District restrictions against car dealerships is waived. Ms. Ecker clarified the Triangle District doesn't prohibit the use for car sales agencies, but it only allows it with the strict control and regulation of a SLUP because of the potential impact on the neighborhood. In this case the car dealership is only requesting approval for a period of one year.

Mr. Koseck commented that this is not his vision for the Triangle District. By granting this request it takes the property out of contention for other developments over the next 12 months. After the temporary SLUP amendment has expired he will not support this because the property has a higher and better use. Mr. Lavery responded that a seven story building cannot be constructed on this property without public parking. Only when public parking becomes available will there be a higher and better use for this property. Therefore, the proposed use bridges the gap so he doesn't have a \$7 or \$8 million investment that produces no visible revenue stream until public parking gets approved and constructed.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Boyle that based on a review of the site plans submitted, the Planning Board recommends approval of the applicant's request for Final Site Plan and a SLUP Amendment to the City Commission to allow the temporary expansion of the auto sales agency and showroom for up to one \$1year at 835 \$aynes to include 909 \$aynes with the following condition:

- Applicant provides the dimensions of the parking lot landscaping islands to verify that they comply with the requirements of the Zoning Ordinance.**

There were no comments on the motion from members of the audience at 8:40 p.m.

Motion carried, 7-0.

ROLLCALL NOTE

Yeas: Whipple-Boyce, Boyle, Clein, Jeffares, Koseck, Lazar, Prasad

Nays: None

Absent: Williams

BIRMINGHAM CITY COMMISSION MINUTES
JUNE 27, 2016
MUNICIPAL BUILDING, 151 MARTIN
7:30 P.M.

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Rackeline J. Hoff, Mayor, called the meeting to order at 7:33 PM.

II. ROLL CALL

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

Administration: City Manager Valentine, City Attorney Currier, Clerk Pierce, City Planner Ecker, City Engineer O'Meara, Finance Director Gerber, Deputy Treasurer Klobucar, DPS Director Wood, Police Chief Clemence

06-200-16

**PUBLIC HEARING TO CONSIDER
TEMPORARY SPECIAL LAND USE PERMIT
835 & 909 HAYNES, LAVERY PORSCHE**

Mayor Hoff opened the Public Hearing at 10:37 PM to consider the Revised Final Site Plan and Temporary Special Land Use Permit Amendment – 835 & 909 Haynes, Lavery Porsche.

City Planner Ecker explained that renovations are being done to the Audi building. The applicant would like to use 909 Haynes temporarily for the sales office. She noted that the request is to use the building for a period of twelve months. She noted that the Planning Board had a few comments regarding landscape and screening in the parking area. She noted that twenty-four parking spaces are required by ordinance and there are thirty-six dedicated parking spaces for this site. She pointed out that vehicles for sale or lease are not allowed to be stored within the twenty-four spaces required for the building.

Fred Lavery, applicant, explained that the sales staff and managers will have to be relocated due to the renovation to the Audi building. He noted that the twenty-four parking spaces are for the occupants of the building. The difference between the twenty-four required spaces and thirty-six spaces will be used for the storage of cars.

A resident at 635 Elm Street expressed his support of the request, but only for one year.

The Mayor closed the Public Hearing at 10:54 PM.

MOTION: Motion by Nickita, seconded by Bordman:

To approve the Revised Final Site Plan and Temporary Special Land Use Permit Amendment of one year for 835 & 909 Haynes – Lavery Porsche with the condition that applicant provides the dimensions of the parking lot landscaping islands to verify that they comply with the requirements of the Zoning Ordinance.

WHEREAS, Lavery Porsche has applied for a Temporary Special Land Use Permit Amendment of one year to operate an Audi automobile sales agency on the first floor of the building located at 909 Haynes,

WHEREAS, The land for which the Temporary Special Land Use Permit Amendment is sought is located on the north side Haynes east of Elm,

WHEREAS, The land is zoned MU-5, Mixed Use 5, which permits automobile sales agencies with a Special Land Use Permit,

WHEREAS, Article 7, section 7.34 of Chapter 126, Zoning, requires a Special Land Use Permit Amendment to be considered and acted upon by the Birmingham City Commission, after receiving recommendations on the site plan and design from the Planning Board for the proposed Special Land Use;

WHEREAS, The Planning Board reviewed the proposed Temporary Special Land Use Permit Amendment request on April 27, 2016 at which time the Planning Board voted to recommend approval of the Final Site Plan and SLUP to the City Commission with the following condition:

1) Applicant provides the dimensions of the parking lot landscaping islands to verify that they comply with the requirements of the Zoning Ordinance.

WHEREAS, The applicant has agreed to comply with all conditions for approval as recommended by the Planning Board on April 27, 2016;

WHEREAS, The Birmingham City Commission has reviewed the Lavery Porsche Temporary Special Land Use Permit Amendment application as well as the standards for such review as set forth in Article 7, section 7.34 of Chapter 126, Zoning of the City Code,

NOW, THEREFORE, BE IT RESOLVED, The Birmingham City Commission finds the standards imposed under the City Code have been met, subject to the conditions below and the Lavery Porsche application for a Temporary Special Land Use Permit amendment is hereby approved for one year from the date of approval, subject to the attached site plan, and subject to the following conditions:

1) Applicant provides the dimensions of the parking lot landscaping islands to verify that they comply with the requirements of the Zoning Ordinance.

BE IT FURTHER RESOLVED, That failure to comply with any of the above conditions shall result in termination of the Special Land Use Permit.

BE IT FURTHER RESOLVED, Except as herein specifically provided, Lavery Porsche and its heirs, successors and assigns shall be bound by all ordinances of the City of Birmingham in effect at the time of the issuance of this permit, and as they may be subsequently amended. Failure of Lavery Porsche to comply with all the ordinances of the City may result in the Commission revoking this Special Land Use Permit.

VOTE: Yeas, 7
Nays, None
Absent, None

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, JANUARY 22, 2020**

City Commission Room
151 Martin Street, Birmingham, Michigan

Minutes of the regular meeting of the City of Birmingham Planning Board held on January 22, 2020. Chairman Scott Clein convened the meeting at 7:30 p.m.

A. ROLL CALL

Present: Chairman Scott Clein; Board Members Bert Koseck, Daniel Share, Janelle Whipple-Boyce, Bryan Williams; Alternate Board Members Jason Emerine, Nasseem Ramin

Absent: Board Member Robin Boyle, Stuart Jeffares

Administration: Jana Ecker, Planning Director
Brooks Cowan, City Planner
Nicholas Dupuis, City Planner
Laura Eichenhorn, Transcriptionist

01-13-20

F. Special Land Use Permit Reviews

1. 34350 Woodward (previously 835 Haynes, Fred Lavery Porsche) & 907 - 911 Haynes (former Barda Salon Building) - Amendment of Special Land Use Permit at 34350 Woodward to include the property at 907-911 Haynes to allow demolition of the existing Barda Salon Building and construction of a surface parking lot on 907 – 911 Haynes to provide additional parking for the Porsche dealership at 34350 Woodward

City Planner Cowan, Fred Lavery, owner, John Gardner, architect, and Rick Rattner, attorney, reviewed the item for the Board.

Chairman Clein asked Mr. Rattner:

- How the Board could support approval of this proposal when it does not seem to support the purpose of the Triangle District as required by ordinance; and,
- Whether the Board's approval of the proposal would amount to the expansion of a legal non-conforming use, which the Board is not permitted to do.

Mr. Rattner said the proposal supports the Triangle District plans because the surface lot would function as a placeholder for the eventual Worth Street realignment. He said it would not be expanding a legal non-conformity because the lot combination would be allowed under a SLUP as an auxiliary use.

Mr. Share noted that the combined lot could require a variance since the parking lot frontage would be greater than ordinance allows.

After Board discussion, Planning Director Ecker received confirmation from the Board that they were requesting clarification from the Building Official and City Attorney regarding whether the Board has authority to consider granting the requests put forth by the applicant, what impediments exist to granting the requests, and what the remedies to the impediments could be. She said the remedies could include a variance if the City chose to allow more than 25% of the frontage to be parking, an expansion of an existing non-conformity because the lots will be combined, or some other factor in a lot combination that could affect the result.

Motion by Mr. Share

Seconded by Mr. Koseck to postpone consideration of the SLUP amendment for 34350 pending a response from the City Attorney and/or Building Official regarding whether the Board has authority to consider granting these requests, what impediments exist to granting the requests, and what the remedies to the impediments could be.

Mr. Rattner said it would be useful to know what effect an agreement with the City would have vis-a-vis resolving these problems. Mr. Rattner then stated that Mr. Lavery requested to withdraw his application for the SLUP amendment.

The Board allowed Mr. Lavery to withdraw his request and accordingly took no action on the motion.



MEMORANDUM

Police Department

DATE: December 11, 2020

TO: Joseph A. Valentine, City Manager

FROM: Scott Grewe, Operations Commander

SUBJECT: Request by The Pearl (Inclusion in the Parking Assessment District)

INTRODUCTION:

The City received a request from the property owner at 856 N. Old Woodward, The Pearl, to be included in the Parking Assessment District. Frank R. Simon of FLS Properties #5, LLC, submitted a letter with a request to be part of the Assessment District (see attached).

BACKGROUND:

The construction of The Pearl included the required parking for the originally proposed retail use of the first floor space. The Pearl has proposed new businesses (salons and food service establishments) that require additional onsite available parking per the City's Zoning Ordinance. As a result, The Pearl requested the City Commission approve the use of the public parking abutting the property, in the public right-of-way, to be counted towards the building's parking requirements. At the November 9, 2020 City Commission meeting, the request was reviewed and the commission voted to deny approval of the use of the public spaces towards the parking requirement. The City Commission suggested the building owner apply for inclusion in the Parking Assessment District.

After the denial for the use of on-street parking, The Pearl submitted a letter requesting inclusion in the Parking Assessment District. Properties that are part of this assessment district are not required to meet the zoning requirements for onsite parking for any commercial uses, including retail, salons and food service establishments. Currently, the Pearl is outside of the Parking Assessment District. The property to the south, at 800 N. Old Woodward, is the last property within the district. The Pearl is the next building north of this location.

The Advisory Parking Committee (APC) reviewed the request from The Pearl at their December 2, 2020 meeting. Finance Director Mark Gerber provided a memo and spreadsheet outlining the formula for determining the assessment fee (see attached). The APC discussed the matter, which included conversation regarding the high demand for parking in this area prior to the pandemic. Also, that the building was originally approved with sufficient onsite parking for the propose retail use that would not add any additional demand to the area. The APC voted unanimously to recommend the denial of the request.

LEGAL REVIEW:

The City Attorney reviewed and approved the attached contract.

FISCAL IMPACT:

Finance Director, Mark Gerber, prepared a memo and spreadsheet identifying the assessment fee that would be charged to The Pearl to become part of the assessment district (see attached).

Based on this process, the assessment fee would be \$2,524.

SUMMARY:

Frank R. Simon submitted a request for The Pearl to be included in the Parking Assessment District after being denied by the City Commission to count the on-street parking towards their parking requirement. If they are part of the district, all commercial uses are exempt from the parking requirements contained in the City's Zoning Ordinance. All residential uses are still required to provide parking on site. Three proposed tenants, by zoning ordinance, require more onsite parking than The Pearl was built to accommodate. Therefore, Mr. Simon has requested to be part of the district.

The Advisory Parking Committee reviewed the request at their December 2, 2020 meeting. The APC discussed concerns for parking demand in the area of N. Old Woodward as well as original plans submitted by the Pearl and their intended use. The APC voted unanimously to recommend denying the request to be included in the Parking Assessment District. (See attached minutes)

ATTACHMENTS:

1. Request letter submitted by Frank R. Simon.
2. Memo from Finance Director, Mark, Gerber, outlining assessment fees.
3. Current map of the Parking Assessment District borders.
4. March 20, 2001 Memo – Parking Assessment Formula
5. Memo to the APC.
6. Minutes from the December 2, 2020 APC meeting.
7. Parking Assessment District contract.

SUGGESTED RESOLUTION:

To deny the request by The Pearl to be included in the Parking Assessment District.

Or

To set a public hearing to consider the request to be included in the Parking Assessment District by The Pearl.

FLS PROPERTIES #5, LLC
P.O. BOX 689
BLOOMFIELD HILLS, MICHIGAN 48303
TELEPHONE: 248-680-1401
FACSMILIE 248-720-0293

November 13, 2020

Cmdr. Scott Grewe
Birmingham Police Dept.
151 Martin Street
Birmingham, MI 48009

Re: The Pearl, 856 N. Old Woodward – Request for Parking Assessment District
Inclusion Application

Dear Cmdr. Grewe:

Please accept this letter as our formal request for an application for the parking spaces located at/around The Pearl at 856 N. Old Woodward to be included in the Parking Assessment District in that particular area of Birmingham.

Thank you in advance for your time and consideration. I look forward to receiving the parking assessment district inclusion application and proceeding in the process for approval of same.

Very truly yours,

FLS PROPERTIES #5, LLC



Frank R. Simon

cc: Joe Valentine
Mayor Pierre Boutros



MEMORANDUM

Finance Department

DATE: November 18, 2020

TO: Scott Grewe, Operations Commander

FROM: Mark Gerber, Director of Finance/Treasurer

SUBJECT: 856 N. Old Woodward Parking Assessment District Fee

Per your request, I have calculated the fee that would need to be paid in order for 856 N. Old Woodward were to be added to the parking assessment district. The parking assessment fee is based on the amounts and methodology that were in effect at the time the original special assessment for each structure was assessed. This is the same process that has been applied for other properties that have joined the parking assessment district.

There are 3 factors that determine the cost of the assessment: parking demand, merchandising, and distance.

The parking demand is determined based on the zoning ordinance requirements. The total demand for 856 N. Old Woodward retail space is 40 which is a low demand so they get a factor of 1.

The merchandising factor is determined by the distance the building is from the Maple/Old Woodward intersection. The thought here is that the closer to the center of the business district you are the more likely you will be to generate parking demand. 856 N. Old Woodward is the furthest building from this intersection, therefore, it gets a rating of 1.

The distance factor is determined by the distance the building is from a particular parking structure. The closer your business is to a structure the more likely it will be used by your customers. 856 N. Old Woodward is also the furthest building from any parking structure, so it gets a rating of 1.

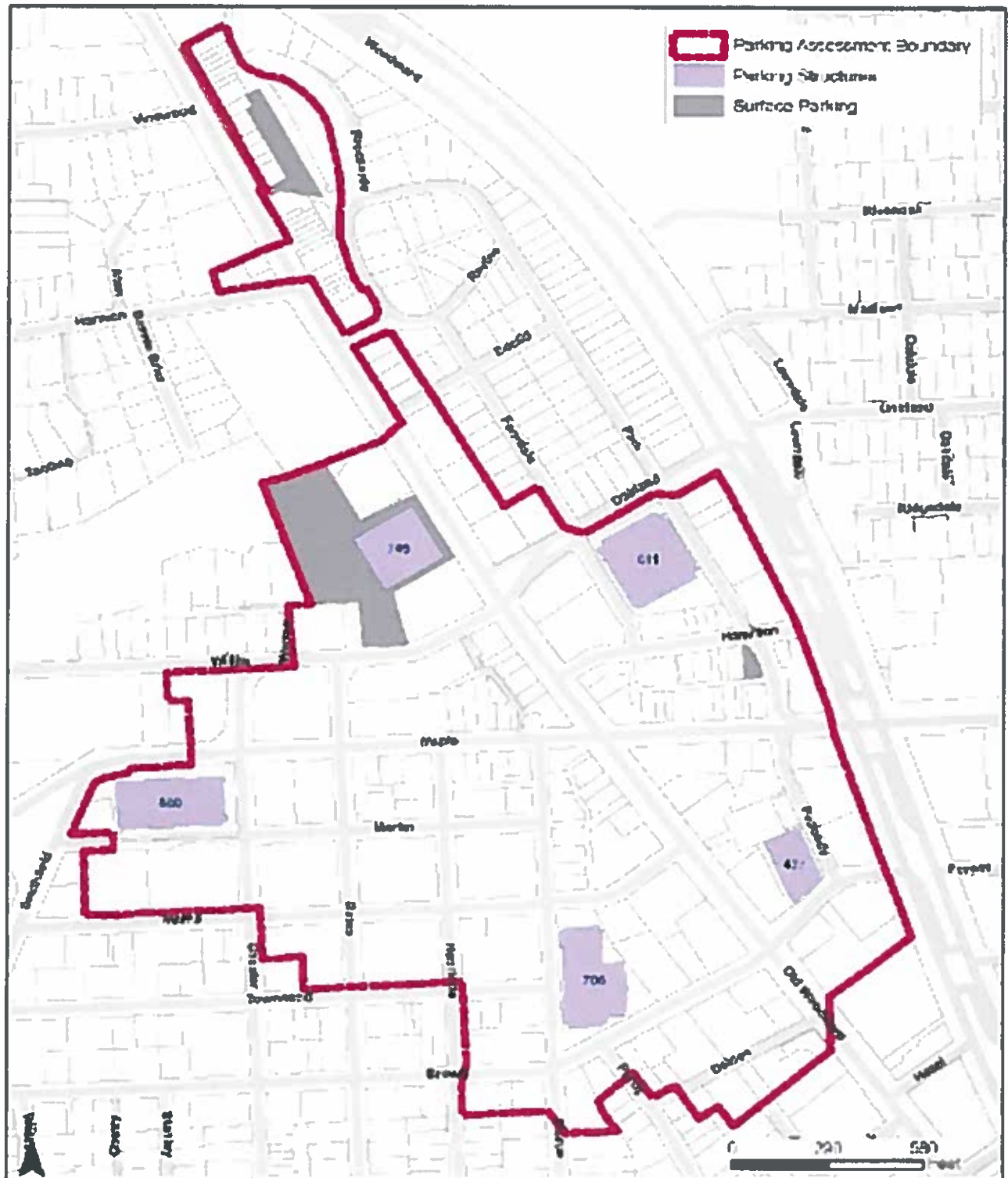
The total special assessment is allocated between the following categories: building frontage 25%, land square footage 25%, and existing business square footage 50%. Each of the factors above are multiplied by the individual building frontage, land square footage, and existing business square footage categories to come up with a weighted amount per category. The total amount of the special assessment per category is divided by the total weighted amounts for each category to come up with a weighted dollar amount per frontage or square foot. The individual property's measurements are multiplied by these weighted dollar amounts to come up with the special assessment for the property.

Based on this process, the amount that would be required is \$2,524.

ATTACHMENTS:

1. 856 N. Old Woodward parking assessment fee per structure.

City of Birmingham Parking Assessment District



March 20, 2001

TO: Thomas M. Markus, City Manager
FROM: Sherry A. Lee, City Assessor
RE: **PARKING ASSESSMENT FORMULA**

Last month, the Commission directed that the cancellation provision of the deferred assessment component in the parking assessment formula (City Ordinance Section 94-15(3)) be revisited to determine whether or not it was equitable, in view of the way in which the central business and parking districts have been developed since the mid-1980s.

Background

With increased commercial and retail activity, growth in traffic volume, as well as the inadequacy of surface lots to meet the demand for automobile parking in the central part of the city, the first of an eventual five municipal parking structures was constructed in 1966. Predicated on the fact that the availability of parking benefited properties in the Central Business District (CBD), the original parking assessment formula, which was designed in the early 1950s, provided that 40% of the cost of constructing parking structures was to be borne by property owners in the parking district as a special assessment and 60% was funded by the City's automobile parking system (APS). The parking assessment formula provided for equitable assessments, primarily, because the formula used various distance, size and location factors, which weighted the assessment heavily toward potential benefit. Further, of the special assessment district (SAD) share, the formula gave a very significant (90%) weighting to land size and a very small (10%) weighting to existing building size. The theory under which this formula was derived was that substantial future development would take place in the CBD during the 1950's, 60's and 70's and that equity would be best served by assessing for parking based upon future potential development. Vacant land, therefore, was weighted heavily.

In 1982, the City Commission directed that the parking assessment formula be studied to determine whether or not it continued to provide equitable special assessments in view of the way in which the Central Business District had developed over the past several decades. Presumably, the study was conducted in preparation for development of the Peabody parking structure. A committee of three Commission members was formed to work with the Assessor in reviewing the procedure. After several meetings, many of which included representatives from the Chamber of Commerce and other City officials, the Committee determined that the assessment formula should be revised.

After studying current parking needs, uses, costs and projected future demand, the Committee determined that the assessment formula should be changed to place additional emphasis upon existing buildings and less emphasis upon land which is not built upon and creates no current parking demand. The primary reason for this decision was that the CBD had been substantially developed relative to the development that existed twenty years prior. Also, due to the fact that there existed at the time a Floor Area Ratio (FAR) limitation of 2.0 in the

CBD, substantial future development that does not provide some of its own parking was not foreseen. FAR is the gross floor area of a building, exclusive of the basement, divided by the area of the lot it is constructed on.

The goal sought by the Committee was to develop a formula that would assess properties that create a great deal of parking demand at higher levels than those properties that create very little parking demand. Properties such as parking lots, green space or unused vacant land would be assessed at the lowest rates. The new formula should shift the weighting from potential use to current use, while still maintaining distance, size and location factors that further provide an assessment based upon benefit.

There was also a desire to include a provision in the formula that would allow for a future payment to become due should an underutilized property that has a low assessment be developed at some future time. This would not only create an awareness of how further development creates parking demand but would provide a mechanism to fund the cost of such parking. Such a mechanism was deemed to be equitable since the property being developed has benefited from the existing parking system. This is true because the parking system has helped to stimulate the need for the proposed development through the maintenance of a viable CBD.

Current Parking Assessment Formula

The parking assessment formula was revised to a fifty-fifty allocation between land and building. Rather, of the total SAD share, the current formula gives a 50% weighting to land size and a 50% weighting to existing building size. This recognizes the fact that the CBD has become substantially more developed over time. It also recognizes the fact that, while buildings create parking demand, vacant land benefits from a viable parking system through increased market values. Further, although 40% of the project cost is levied as a special assessment against each property in the district, the City's parking system funds 36% of the cost. However, with the future payment or deferred assessment feature of the formula, 24% of the cost is advanced by the parking system, but is to be repaid in part or in full at some time in the future by owners of underutilized property in the district upon further development.

As with the original formula, the current parking assessment formula has within each weighting category (i.e. Land Frontage, Land Area, Building Area) several factors that are used to determine the benefits each particular piece of property receives from a given parking project. As outlined in Attachment "A", these factors are as follows:

- a. Distance Factor: This factor is determined by a property's distance from the proposed parking facility. The theory is simply that the further a property is located from the facility, the less it benefits from that facility. This factor is weighted from 1 to 10 and was not changed from the existing formula.
- b. Merchandising Factor: This factor is a location factor determined by the property's distance from the Maple-Woodward intersection. The theory is that the closer a property is located to the center of the CBD, the more it benefits from the parking system. This factor was reduced in weight from 5-50 to 1-3 because it was felt to be of somewhat less significance than in the past.

- c. **Parking Demand Factor:** This factor only relates to the building portion of the overall assessment. A factor from 1 to 5 is computed based upon the actual parking demand created by a particular building. The parking demand is calculated based upon the guidelines in the zoning ordinance. The theory behind this factor is that the greater demand a building creates, the more it benefits from the parking system.

This factor replaces the Building Use Factor, which attempted to do the same thing as the Parking Demand Factor, but in a more subjective manner.

Deferred Parking Assessment

The deferred assessment component of the formula is a relatively progressive concept. The deferred assessment stems from the desire to lessen the special assessment burden on currently underutilized property while maintaining an appropriate future burden that becomes due upon future development.

To concur with FAR reductions made in the Zoning Ordinance, the FAR for parking assessment districts was changed from 2.0 to 1.0 in 1989. Therefore, under the formula, each property with a FAR of less than 1.0 would have a deferred assessment computed based upon the difference between 1.0 and its current FAR. This assessment would be calculated in the same manner as the primary assessment and would approximate what the additional primary assessment would be if the building were built to its maximum potential at the time of assessment. It is called a "deferred" assessment because it would only become due if and when the existing site was to be further developed.

Under the formula the deferred assessment would be payable in full at the time a building permit was pulled to further develop the site so as to increase the floor area by five percent or more or increase the floor area ratio to 1.0. A property owner would have the option, however, to pay his deferred assessment in advance at the time the primary assessment was due. By electing this option, the owner could have his deferred assessment financed over the same period as the primary assessment if he felt further development of his site were imminent and did not wish to deal with a lump sum payment at some later date. A final feature of the deferred assessment, added in 1985, is that it would be canceled at the time of development if the building constructed or enlarged were residential or primarily residential in character. A primarily residential building is defined as any building with two or more stories in which the first floor or any portion thereof is occupied by a commercial or business use and all additional stories are utilized for residential purposes.

Impact of the Parking Assessment Formula

In 1982, it was believed that the use of the special assessment formula, as revised, would have three major impacts:

1. **Equity:** The formula would provide for greater equity among property owners because it is more directly connected to present benefits and future benefits are not paid for until received.

2. The burden of the primary assessment (generally forty percent of total project cost) would be substantially shifted from vacant and underutilized properties, which create very little parking demand to developed properties, which create the lion's share of the parking demand.
3. More revenues for the parking system will be raised through the deferred assessments which will be collected in addition to the primary forty percent share.

Considerations

The current special assessment formula, as revised in 1982, was implemented with the construction of the Peabody/Brownell parking structure in 1984 and, as subsequently amended, with the construction of the Chester Street structure in 1989.

Special Assessment Roll No. 701 Peabody Parking Structure was confirmed on May 2, 1983 (Attachment "B"); Special Assessment Roll No. 729 Chester Street was confirmed on March 20, 1989 (Attachment "C").

Any deferred assessment not confirmed within twenty years from the date on which the special assessment roll was confirmed, shall no longer be considered a potential assessment against a lot. Therefore, unconfirmed deferred assessments in the Peabody parking district are not valid after May 2, 2003 and those in the Chester Street district are no longer valid after March 20, 2009.

APPENDIX "E"

PE: Parking Structure Special Assessment Formula

For your information, I have briefly outlined the parking structure special assessment formula used to create a special assessment roll.

Formula:

Land Frontage	
Overall Weight	25%
Factors:	
Distance	1-10
Merchandising	1-3
Land Area	
Overall Weight	25%
Factors:	
Distance	1-10
Merchandising	1-3
Building Area	
Overall Weight	50%
Factors:	
Distance	1-10
Merchandising	1-3
Parking Demand	1-5

Additional feature: Deferred assessment for underdeveloped property.

Typical project cost allocation:

Current SAD share	40%
Parking system share*	60%

*The parking system share includes the deferred assessments. The deferred SAD share would be advanced by the parking system to be potentially repaid in part or in full at some time in the future. The deferred assessments portion of the parking system share is computed using the procedure outlined in Attachment A.

Within each weighted category of the special assessment formula (i.e., Land Frontage, Land Area, Building Area), there are several factors used to determine the benefits each particular piece of property receives from a given parking project. These factors are described as follows:

- a) Distance Factor - This factor is determined by a property's distance from the proposed parking facility. The theory is simply the further a property is located from the facility,

the less it benefits from that facility. This factor is weighted from 1 to 10.

- b) Merchandising Factor - This factor is a location factor determined by the property's distance from the Maple-Woodward intersection. The theory is that the closer a property is located to the center of the central business district, the more it benefits from the parking system. This factor is weighted from 1 to 3.
- c) Parking Demand Factor - This factor only relates to the building portion of the overall assessment. A factor from 1 to 5 is computed based upon the actual parking demand created by a particular building. The parking demand is calculated based upon the guidelines in the zoning ordinance. The theory behind this factor is that the greater demand a building creates, the more it benefits from the parking system.

Deferred Parking Assessments: * This concept stems from the desire to lessen the special assessment burden on currently under-utilized property (with little current parking demand) while maintaining an appropriate future burden which becomes due upon future development. Under the current formula, each property with a Floor Area Ratio (FAR) of less than 2.0 would have a deferred assessment computed based upon the difference between 2.0 and its current FAR. This assessment is calculated in the same manner as the primary assessment and would approximate what the additional primary assessment would be if the building were built to its maximum potential at the time of assessment. The deferred assessment is labeled "deferred" because it only becomes due if and when the existing site is further developed. The deferred assessment is payable in full at the time a building permit is pulled to further develop a site. A property owner has the option to pay his deferred assessment, in advance, at the time the primary assessment is due. By electing this option, the owner can have his deferred assessment financed over the same period as the primary assessment if he feels further development of his site is imminent and does not wish to deal with a lump sum payment at a later date. A final feature of the deferred assessment is that it is prorated based upon development to an FAR of less than 2.0.

* ORDINANCE AMENDMENT, ADOPTED 3-13-89, CHANGED FAR FROM 2.0 TO 1.0 TO CONCUR WITH ITS REDUCTION IN ZONING ORDINANCE.

Original Formula

Land Frontage

Overall weight	45%
Factors:	
Distance	1-10
Merchandising	5-50

Land Area

Overall weight	45%
Factors:	
Distance	1-10
Merchandising	5-50

Building Area

Overall weight	10%
Factors:	
Distance	1-10
Merchandising	5-50
Building Use	1-5

Typical Project Cost Allocation:

SAD Share	40%
Parking System Share	60%
Total Cost	100%

Current Formula

Land Frontage

Overall weight	25%
Factors:	
Distance	1-10
Merchandising	1-3

Land Area

Overall weight	25%
Factors:	
Distance	1-10
Merchandising	1-3

Building Area

Overall weight	50%
Factors:	
Distance	1-10
Merchandising	1-3
Parking Demand	1-5

Typical Project Cost Allocation:

Primary SAD Share	40%
Deferred SAD Share	24%*
Parking System Share	36%
Total Cost	100%

*The Deferred SAD Share would be advanced by the Parking System to be repaid in part or in full at some time in the future.

Special Use Factor

The special use factor is used for properties that have, primarily, weekend and evening use of the structures, for example, churches and the Community House.

This factor is applied to the land only and is calculated at $\frac{1}{3}$ of the land frontage factor. All other parcels are calculated at 1.0 times the land frontage factor.



MEMORANDUM

DATE: November 24, 2020

TO: Advisory Parking Committee

FROM: Cmdr. Scott Grewe, Police Department

SUBJECT: Request by The Pearl (856 N. Old Woodward)

The City has received a request from the property owner at 856 N. Old Woodward, The Pearl, to be part of the Parking Assessment District. Frank R. Simon of FLS Properties #5, LLC submitted a letter with a request to be part of the Assessment District (see attached).

Currently, the Parking Assessment District ends at the property bordering the south side of The Pearl. Adding The Pearl into the district would be a seamless continuation of the existing border.

If The Pearl becomes part of the Parking Assessment District, they will have the benefit of being able to purchase monthly parking permits at any structure at their normal price. Those outside of the district are asked to pay double. Also, once a property have become part of the district, all commercial uses are exempt from the parking requirements contained in the zoning ordinance. All residential uses are still required to provide parking on site.

Finance Director, Mark Gerber, prepared a memo and spreadsheet identifying the assessment fee that would be charged to The Pearl to become part of the assessment district (see attached).

Suggested Recommendation:

To approve the request by The Pearl and FLS Properties #5, LLC to be part of the Parking Assessment District.

City of Birmingham
ADVISORY PARKING COMMITTEE
REGULAR MEETING

Held Remotely Via Zoom And Telephone Access
Wednesday, December 2, 2020

MINUTES

These are the minutes of the Advisory Parking Committee ("APC") regular meeting held on Wednesday, December 2, 2020. The meeting was called to order at 7:30 a.m. by Chairman¹ Al Vaitas.

Op. Cmdr. Grewe and CP Cowan reviewed the item.

CP Cowan stated the applicants want more intensive retail uses in the building which would necessitate parking over the amount currently available. He stated the applicant would have enough parking available for regular retail uses.

Dr. Paskiewicz suggested that Lot #6 be added to the parking assessment ranking system the City uses.

Dr. Paskiewicz also recalled that The Pearl came before the APC in the past and assured the APC that their plans included sufficient parking for both residential and retail.

Dr. Vaitas concurred with Dr. Paskiewicz's recollection. Dr. Vaitas expressed concern that it was somewhat of a backwards process for the applicant to assure the APC originally that there would be sufficient parking for regular retail uses, and then to come back later with a proposal for more intensive retail uses that would require admission to the Parking Assessment District (PAD).

Mr. Kalczynski said he wondered how an approval might create precedent for future requests for admission to the PAD.

Mr. Astrein said he would also be concerned about the amount the applicant would be charged for admittance to the PAD, and that if they paid too little that could set a precedent as well.

Motion by Dr. Paskiewicz

Seconded by Mr. Astrein to deny the request by The Pearl and FLS Properties #5, LLC to be part of the Parking Assessment District.

Motion carried, 6-0.

ROLL CALL VOTE

Yeas: Paskiewicz, Astrein, Yert, Kalczynski, Krueger, Vaitas

Nays: None

CONTRACT WITH THE PEARL APARTMENTS TO BE INCLUDED IN SPECIAL ASSESSMENT PARKING DISTRICT

This Contract is entered into this _____ day of _____, 2020, by and between **THE PEARL APARTMENTS**, ("Pearl") whose address is 856 N. Old Woodward, Birmingham, Michigan 48009 and the **CITY OF BIRMINGHAM**, a Michigan Municipal Corporation, whose address is 151 Martin Street. Birmingham, Michigan 48012 ("City").

RECITALS:

WHEREAS, Pearl is the owner of certain property located in the City of Birmingham at 856 N. Old Woodward, Birmingham, MI 48009 ("Property"); and,

WHEREAS, the City has a Parking Assessment District, and Pearl is located immediately adjacent to the District; and,

WHEREAS, Pearl desires to enter into this Contract so as to have the Property included in the Parking Assessment District.

NOW, THEREFORE, the parties agree as follows:

1. It is mutually agreed by and between the parties that Pearl located at the above address shall be part of the Birmingham Parking Assessment District and said property shall have all the benefits of the Parking Assessment District provided the fees required hereby are paid, current, or in full.

2. Pearl shall pay the City of Birmingham \$2,524.00 as compensation upon execution of this Agreement by both parties.

3. This Contract shall run with the land and be binding upon and apply and inure to the benefit of the parties hereto and their respective assigns, heirs, personal representatives, and successors. The covenants, conditions, and the agreements herein contained are hereby declared binding on the CITY and Pearl. 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 contract without prior approval, in writing, of the other. Any attempt at assignment without prior written consent shall be void and of no effect.

4. 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 § 600.3201 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 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.

5. To the fullest extent permitted by law, Pearl and any entity or person for whom Pearl 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.

6. This Contract shall be governed by and performed, interpreted and enforced in accordance with the laws of the State of Michigan.

7. If any provision of this Contract is declared invalid, illegal or unenforceable, such provision shall be severed from this Contract and all other provisions shall remain full force and effect.

IN WITNESS WHEREOF, the parties hereby execute this Contract as of the date set forth above.

THE PEARL APARTMENTS

By: _____

Its: _____

CITY OF BIRMINGHAM

By: _____
Pierre Boutros, Mayor

By: _____
Alexandria D. Bingham, Clerk

Approved:

Thomas M. Markus, City Manager
(Approved as to substance)

Timothy J. Currier, City Attorney
(Approved as to form)

Mark Gerber, Director of Finance/Treasurer
(Approved as to financial obligation)



MEMORANDUM

Clerk's Office

DATE: December 21, 2020

TO: Joseph A. Valentine, City Manager

FROM: Alexandria Bingham, City Clerk Designee
Leslie Pielack, Museum Director

SUBJECT: Greenwood Cemetery Advisory Board Release of Graves Request-Update

INTRODUCTION:

The sale of graves in Greenwood Cemetery has depleted the number of plots released by the City Commission in 2015. Interest in purchasing plots has continued in recent months, and the Greenwood Cemetery Advisory Board believes interest will continue in the near future. The GCAB recommends the release of additional graves for public sale in Sections B and C of the cemetery.

BACKGROUND:

In 2015, 530 potential grave plots were identified in Sections B, C, D, K, L, and O. On August 10 of 2015, the City Commission released 240 of these newly identified plots in Sections B and C for sale and directed the Greenwood Cemetery Advisory Board to provide further recommendations for sale once the sales of these plots exceeded 200.

By December 31, 2018, 199 of the 240 released spaces in Sections B and C had been sold. With grave sales continuing to reduce the available sites during early 2019, the GCAB voted at its June 7, 2019 meeting to recommend that the city release an additional 60 plots for sale in Sections B and C, which would have brought the total of recently released plots to 300. At its July 8, 2019 meeting, the City Commission took no action on the recommendation, and asked for clarification on the market price for cemetery plots and whether additional plots in Sections B and C should be sold.

Subsequently, at its August 16, 2019 meeting, the GCAB determined that the current pricing at Greenwood was appropriate and voted to recommend to the City Commission to keep the price at \$3,000. In addition, the Board voted to recommend that sales in Section B be suspended and that 30 plots in Section C be released for sale. This revised recommendation, however, was not brought to the City Commission for final review and action. Grave sales continued, and by June 30, 2020, an additional 50 graves had been sold; 42 of these were in Sections B and C, bringing the total sold to 241, exceeding by one plot the original 240 released by the Commission in 2015.

The GCAB once again reviewed the situation of available graves for sale on November 6, 2020 as part of its Annual Report and recommendations to the City Commission. At the

time, the available data suggested that as of June 30, 2020, 229 plots were available in Section B and 10 in Section C, for a total of 239 plots in Sections B and C combined. An additional 6 plots were understood to be available in Section D.

On December 7, 2020, the Commission reviewed the GCAB's recommended release of 50 graves in Sections B and C. The Commission expressed concern about the specific location of the available graves in B and C, since portions of these sections are historic, and further requested more information and a map to identify the specific plot locations of available graves before re-considering release of further graves in those sections. The Commission did take action to authorize the 1 grave that exceeded the previously authorized group of 240, and also authorized the sale of the 6 sites believed to remain in Section D.

The data presented to the Commission on December 7 was believed to be accurate at the time the report was prepared for agenda packet on November 30. However, discrepancies have been identified subsequent to the Commission meeting as new information has become available and the requested follow-up research and mapping was being done. These discrepancies are primarily the result of different forms of recordkeeping by the cemetery management contractor and City, communication error, and the lag in reporting monthly sales information. These issues have now been corrected as the clerk's office recieved training, met with Creative Colaborations, and has updated their methods for communicating cemetery information.

The corrected information regarding grave sales and availability is presented in the table below and summarized as follows:

- A total of 251 graves have been sold to date
- Unsold graves in Sections B and C total 187, rather than 239 as previously reported
- No grave plots remain in Section D as was previously reported
- Due to continued demand, 10 more graves have been sold and/or reserved over the authorized threshold of 241 than were reported

The 10 additional graves were sold from July 1 through November 30, 2020, as interest in grave sales has continued during the pandemic. Other sales are pending at this time. The cemetery management contractor has suspended sales pending Commission action.

Updated Grave Sales Detail, January 2019 - December 15 2020

	Jan-Dec 2019	2020 (to date)	TOTAL SOLD	No. Sold Exceeding Authorized	Sec B	Sec C	B + C	Sec D	Sec K	Sec L	Sec O	Other
# sold by Section					42	10	52			2	4	2
Total sold	42	19	61*	10								
TOTAL REMAINING , yet to be authorized					163	24	187	0	0	0	0	0

*At of the end of June, 2020, the available plots from the original release of 240 had been sold, and had been exceeded by 1 plot. This plot was authorized on 12/7/2020 by the City Commission, bringing the total of authorized plot sales to 241 as of that date.

Reference maps of the graves available (see Attachment) indicate the following:

- There are no remaining graves available for sale in any other section of the cemetery but B and C
- Section B is much larger than Section C, as can be seen by the gold boundary lines, and is closest to the very oldest section of the cemetery, Section A
- All graves made available since 2015 in Sections B and C are arranged in rows that are adjacent to the larger historic lots represented by outlined rectangles
 - Those sold as part of the authorized 241 highlighted in purple
 - Those sold over the 241 threshold since July highlighted in gold
 - Those remaining available to sell highlighted in turquoise
 - At the extreme west end of Section C, laid out plots were found to interfere with existing monuments or irregular grave locations, and therefore are not usable (highlighted in orange)
- Section B has 163 remaining, yet to be authorized
- Section C has 24 remaining, yet to be authorized

Most plot sales in B and C have been single plots or in groups of two, and are determined by purchasers' individual preferences or proximity to other family members. As a result, both the sales that have occurred and the remaining available grave sites are scattered throughout the two adjoining sections. To maintain the integrity and aesthetic of the historic lots, monuments for new graves in these areas are required to be flush installations, which has proven to visually distinguish the historic from the more recent graves.

Interest in grave purchases at Greenwood is expected to continue, but protecting the most historic areas is also of concern. Should the Commission wish to limit graves released by physical location, 24 graves are available in Section C, Rows 18-A (10) and 19-A (14), and are the most distant from the oldest area of Section A. Or, should the Commission wish to limit grave released for sale by total number, a fixed number could be authorized that could be sold throughout B and C, leaving a larger portion in reserve for potential future sale.

LEGAL REVIEW:

None.

FISCAL IMPACT:

For each plot sold in Greenwood Cemetery, \$3,000 is deposited in the Greenwood Cemetery Perpetual Care Fund (Fund). The purpose of the Fund is to account for the investment earnings on the sale of City-owned plots, and donations, which will be used for the perpetual care and maintenance of the cemetery. Estimated basic annual maintenance costs (lawn, forestry, snow removal, etc.) for Greenwood Cemetery are \$60,000.

Under the current allocation of the portfolio, which is intended to generate income and growth, an additional 385 graves would need to be sold to reach the portfolio

target size of \$2 million in order to generate sufficient income to pay for basic annual maintenance.

The portfolio's ending fund balance on November 30, 2020, was \$929,235.

SUMMARY

Due to the depletion of available grave plots over the past five years and continued interest in ongoing grave sales, a release of additional grave plots is recommended. Adjustments have been made to data regarding recent sales and available grave plots remaining, which are located only in Sections B and C. Efforts are underway to improve efficiency and accuracy of sales data and other records between the cemetery management contractor and the Clerks office, and to plan for completion of the GIS mapping to help reduce inconsistencies. In addition, the cemetery management contractor has suspended sales pending Commission action on release of additional graves.

ATTACHMENTS:

1. Excerpt, Greenwood Cemetery Advisory Board Minutes, June 7, 2019
2. Excerpt, City Commission Minutes, July 8, 2019
3. Excerpt, Greenwood Cemetery Advisory Board Minutes, August 16, 2019
4. Excerpt, Greenwood Cemetery Advisory Board Draft Minutes, November 6, 2020
5. Excerpt, Commission Draft Minutes, December 7, 2020
6. Maps, Greenwood Cemetery and Graves Sold/Available

SUGGESTED RESOLUTION:

To authorize the 10 plots sold but not authorized in Sections B, e.g.:

B, Row 9-A, Plots 7, 14, 19 and 20; B, Row 10-A, Plot 16; B, Row 11-A, Plots 19, 20, and 24; B, Row 13-A, Plot 1; and B, Row15-C, Plot 6.

AND

To release 24 plots for sale in Section C; 10 plots in Row 18-A and 14 plots in Row 19-A.

OR

To authorize the 10 plots sold but not authorized in Sections B, e.g.:

B, Row 9-A, Plots 7, 14, 19 and 20; B, Row 10-A, Plot 16; B, Row 11-A, Plots 19, 20, and 24; B, Row 13-A, Plot 1; and B, Row15-C, Plot 6.

AND

To release up to 40 additional unspecified plots for sale in Section B and C.

Attachment 1 - Excerpt, Greenwood Cemetery Advisory Board Minutes, June 7, 2019

Ms. Peterson asked how many plots are available for sale in Section F North at the cemetery. Mr. Stern replied that there are 169 occupied graves in that section, and about 75 owned but not occupied.

VOTE: Yeas, 6
 Nays, 0

Chairperson Gehringer opened discussion on the Robertson monument, and asked if it fulfills the requirements for monuments at Greenwood.

Mr. Stern felt the Board may have been encroaching on legal matters and was hesitant to move forward. He said that he is not sure the Board has the ability to review a monument after it is erected. He suggested that legal counsel look at it.

Chairwoman Gehringer feels that Mr. Robertson's monument proposal was a blatant disregard for the rules in terms of using a flush base. She expressed that it is the Board's job to point it out to the City Commission. Ms. Suter agreed.

Mr. Stern asked what regulation the Robertson and Callaghan families violated.

Ms. Peterson interjected that a deal is a deal and deserves respect.

Chairperson Gehringer said that her point remains that Mr. Robertson proposed a flush base supporting the monument and it is not what was installed.

Ms. Suter suggested if the rules do not require monument bases to be flush, they should.

Mr. Schneider wants to verify that Mr. Robertson conformed to the rules that were in effect at the time that his monument was erected. He also thinks the Board is doing a good job of considering his request, due to the tight spot for both this Board and the Commission. He also asked if there is anything else he could do to convince the City Commission to rescind the rule and get rid of the monuments that are in place. He was advised by Vice Chair Buchanan to attend the City Commission meeting with additional supporters.

B. Consideration to release additional gravesites for sale.

Mr. Stern mentioned he attended a session with Bob Gibbs and his associates at one of the citywide master-planning meetings. Mr. Gibbs said it was important to look at supply and demand. Mr. Stern agreed with Ms. Suter that Mr. Gibbs did not suggest slowing down sales.

Chairperson Gehringer agreed that it is a good idea to reserve a certain number of spots for the future.

Ms. Suter recommended releasing 50 additional plots for sale.

Mr. Stern left the meeting at 10:01 a.m., and said he will not be able to attend the August meeting if it is rescheduled to August 16.

Vice Chair Buchanan noted that it would be simple to come back and meet to consider releasing more plots.

MOTION: Motion by Ms. Schreiner, seconded by Ms. Suter:

To recommend the release of 60 additional plots in Sections B & C bringing total allowable sales to 300, and when sales reach 270 the GCAB will review and make a recommendation to the City Commission on releasing additional plots.

VOTE: Yeas, 5
 Nays, 0

C. Consideration to reschedule August 2, 2019 regular meeting to August 16, 2019.

Chairperson Gehringer stated, as Chairperson, she can change a meeting date without a vote of the Board. Chairperson Gehringer changed the August meeting date to August 16. She stated if there is no quorum, the Board will not meet.

V. UNFINISHED BUSINESS

Items under Unfinished Business will be presented as a status update to the Board and may not require action at this time.

A. Finalization of Master Plan/Historical Collaboration Priority List

City Clerk Mynsberge presented the item, explaining that the City Commission wants the Cemetery Advisory Board to develop a priority list of Master Plan/Collaborative Preservation Projects.

Vice Chair Buchanan said that Potter's Field (Item 3) could be eliminated fast. After some research, she found that Gilbert Lake Cemetery held many pioneers and underwent some changes in 1918. Their remains were moved to three different cemeteries: Greenwood, Franklin, and Roselawn. Right at that time the Cemetery Association (the City did not own the cemetery) decided that it wanted to sell more spots. In order to do that they wanted to move some of the remains that were at Potters Field. These people were poor, indigent, and without markers. Circa 1900, these remains were moved under the main road north of Section C)⁴. Military remains are on the South edge of Western part of Section C. and documented. Land developers eventually bought Gilbert Lake.

City Clerk Mynsberge led a discussion on the work plan and the Board decided to table until the August 16, 2019 meeting. She will label items A, B, C, etc. for that meeting.

Ms. Peterson left at 10:24 a.m.

B. Ground Penetrating Radar

MOTION: Moved by Ms. Suter, seconded by Vice Chair Buchanan:

To issue a Request for Proposals (RFP) for Ground Penetrating Radar services for the entire cemetery.

⁴ As corrected on August 16, 2019.

Attachement 2 - Excerpt, City Commission Minutes, July 8, 2019

with significant opposition, and suggested that the consultant look at the extension as part of the 2040 Plan. He was advised by the City Attorney that political speech was out of order.

07-180-19 REVISED 2019-2020 PLANNING BOARD ACTION LIST

Planning Director Ecker presented the item.

Mayor Bordman asked if the Planning Board decided the order of the list. Director Ecker said no, not since the joint meeting. She expressed that solar panels, balcony and terrace enclosures were added in as a suggestion, in this order, because everything else is addressed by the master plan; therefore, these two items moved up in priority.

Commissioner DeWeese wanted to note that many of the items are priority but recommended that they be considered part of the master plan process. Make sure that staff is working closely with that team so that it is actually part of the process and integrated into the plan.

Commissioner Hoff asked about the solar panel review process; also #14 refers to sustainable urbanism and discussions of solar power; but the panels are a little bit different. Director Ecker said that they are because regulations governing the panels already exist. Commissioner Hoff also asked about the definition of retail. Director Ecker confirmed it is being considered in the master plan.

Commissioner Hoff asked if D-5 zoning would be included in the master plan process. Director Ecker responded that it would not be that site in particular, but zoning in general along Woodward by density and other general questions for that area.

MOTION: Motion by Commissioner Sherman, and seconded by Commissioner Hoff:
To approve the revised 2019-2020 Planning Board Action List as provided, with the understanding the order is temporary until we have master plan when the priority order may change.

VOTE:	Yeas,	7
	Nays,	0

07-181 -19 RECOMMENDATION TO RELEASE ADDITIONAL GRAVES FOR SALE AT GREENWOOD CEMETERY

City Clerk Mynsberge presented the item.

Commissioner Harris asked about the portfolio target that aspires to sell approximately 622 graves but the 2015 study shows that there are only 530 graves available. Clerk Mynsberge explained she asked the finance director to develop a projection for the number of lots needed to be sold to get the portfolio to a place that would earn the annual maintenance costs.

Commissioner Hoff noticed that 480 spots are in Section B and C and only 50 are in Sections D, K, L, and O; why is that? Clerk Mynsberge replied that there were fewer spaces in those sections available for sale to begin with. Commissioner Hoff is not in favor of selling any plots in Section B and C until there are no more plots available in the other sections.

Commissioner Sherman asked if pricing has been evaluated. Clerk Mynsberge answered that it has not been analyzed. She also reminded the commission that a portion of the lot sales goes to the perpetual care fund.

George Stern, member of the Greenwood Cemetery Advisory Board (GCAB), in thinking about long term planning, advised the Commission to consider cremation, which is currently 60% of all burials. Moving into the future, creating attractive columbarium that fits into the historic nature of the cemetery would be the way to go.

Linda Buchanan, member of the GCAB, in response to Mr. Stern, agreed that there is a trend toward cremation more than full burials; but plots can hold up to three cremations. Therefore, if you purchase a plot you do not have to have a full burial. Basically, the Cemetery Board is not shocked at the marked decline in sales because cemeteries are very generational; younger generations/millennials are not in favor of traditional burials. Sales are consistent with the size of the cemetery, and low sales should not alarm anyone. As a historic preservationist, she would like to see no more sales in section B.

Margaret Suter, member of the GCAB, was not in favor of sales in Section B. She suggested, in planning, we should look at pricing to insure that we are competitive. As far as columbaria, they have to be constructed and it would cost money; money better used to find additional plots. Columbaria would distract from the park like setting that exist today. Relative to the historical significance of Section B, headstone damage after new burials is occurring.

Michael Schneider, 251 Strathmoor, Bloomfield, expressed that it is wonderful that there are still some grave sites available and encouraged cemetery management not to be in a hurry to sell them all; you have an opportunity to have multiple generations of families buried in the same cemetery.

Commissioner Harris wanted to take heed of the comments that the pricing should reflect our goal of funding annual maintenance. He also asked would it be appropriate for the board to consider whether additional plots should be sold at all in Section B.

Generally, the Commission was in favor of:

- Releasing no additional plots until the GCAB studies the appropriate market price of plots.
- Considering not selling additional plots in the historic sections B & C.

Mayor Bordman stated the GCAB will be using Ground Penetrating Radar (GPR) to find additional spaces, and was not in favor of selling additional spaces in sections B & C until the GPR work is completed. She noted a decision will need to be made as to when the cemetery is defined as "filled" and suggested it could be considered filled without further disturbing the historic areas.

City Manager Valentine pointed out the philosophy for establishing the Perpetual Care Fund was to generate funding to pay for annual maintenance of the cemetery in order for it not to fall as a burden on taxpayers.

Attachment 3 -Excerpt, Greenwood Cemetery Advisory Board Minutes, August 16, 2019

2 August 16, 2019

planning board, and the city commission. She also suggested a “no later than” date be set to allow for the project award and commencement by the spring thaw of 2020.

Linda Buchanan and Chairperson Gehringer thought that previous request for proposals had been out for bid for 30 days. However, Ms. Buchanan felt that the date for contract execution should be expressed as “TBD”, because of the variables involved.

The board agreed with the chairperson by consensus that:

- Contract execution would be 14 days after contractor selection.
- Project commencement would be scheduled for April 2020.
- Project completion would be set for May 2020.

MOTION: Motion by Ms. Suter, seconded by Ms. Peterson

To recommend approval of the Request for Proposal for the Ground Penetrating Radar of Greenwood Cemetery as revised.

VOTE: Ayes, 5

Nays, 0

Absent, 2

D. Evaluation and Recommendation to City Commission:

1. Market Pricing for Cemetery Plots

Assistant to the City Manager Gallagher presented this item.

- a. Laura Schreiner asked if there was feedback from Ms. Arcome as to whether or not potential purchasers chose not to buy at Greenwood when price was a factor.
- b. There was no data available to support any input from Ms. Arcome.
- c. Based on the data presented comparing regional cemetery pricing, the board concluded that the current pricing at Greenwood was fair and reasonable.

MOTION: Motion by Ms. Schreiner, seconded by Vice Chairperson Buchanan To recommend, based on the data presented, that the City Commission keep pricing for cemetery plots at \$3,000.00 per plot.

VOTE: Ayes, 5

Nays, 0

Absent, 2

2. Future of Sales in Sections B and C

Linda Buchanan gave a brief overview of what occurred at the City Commission meeting of July 08, 2019. Margaret Suter, Laura Schreiner, and George Stern also attended. • Prior to this meeting, the GCAB recommended selling 60 plots in Sections B and C, stopping at 300, conducting a reanalysis of sales at 270.

- There was hesitation from the Commission with respect to selling in Section B. • Ms. Buchanan was in favor of revisiting the analysis and maybe only releasing plots in Section C. She also felt that the situation could be re-evaluated at any time and more plots could be released for sale at a later date.
- The GCAB recommended that the City Commission be prudent in making sure there are plots available for future purchases.

3 August 16, 2019

- Ms. Shreiner reminded the board that this decision had to go through the GCAB cycle and the City Commission.
- Ms. Suter expressed that if the cemetery fills up, Section B may be revisited. The focus should be on Section C and the other remaining sections.
- Commissioner Hoff commented there were 57 plots in other sections of the cemetery that should be sold before selling in Section B and C. No one could affirm that number. • Section A was designated pure historical and there are no plots available for sale. • There are many Birmingham pioneers in Section B, suggesting it is historical as well. • Approximately, 206 plots have been sold in Section B.
- It was noted that overall sales have slowed down to a normal pace at this time.

MOTION: Motion by Vice Chairman Buchanan, seconded by Ms. Peterson To recommend for the City Commission approval that sales in Section B be suspended and 30 plots in Section C be released for sale.

VOTE: Ayes, 5

Nays, 0

Absent, 2

V. UNFINISHED BUSINESS

Items under Unfinished Business will be presented as a status update to the Board and may not require action at this time.

A. Finalization of Master Plan/Historical Collaboration Priority List Chairperson Gehringer presented a list of Master Plan/Collaborative Preservation Projects from the City Commission and the Greenwood Cemetery Advisory Board prioritized the list as follows: 1. Ground Penetrating Radar Services (in process)

2. Potter Field (in progress)
3. Digitizing and Mapping Cemetery Records (in process)
4. Match Cemetery Records with Headstones
5. Historic Headstone Inventory
6. Update Greenwood
7. Alternate Sources of Revenue
8. Review Contract with Elmwood
9. Long-term financial status
10. Maintenance and Landscaping

MOTION: Motion by Ms. Suter, seconded by Ms. Peterson:

To recommend the removal of Columbaria from the Finalization of Master Plan/Historical Collaboration Priority List.

VOTE: Ayes, 5

Nays, 0

Absent, 2

MOTION: Motion by Vice Chair Buchanan, seconded Ms. Peterson To recommend the Finalized Master Plan/Historical Collaboration Priority List as revised.

- Members discussed a meeting schedule for calendar year 2021 and agreed by consensus to schedule meetings for the first Friday of the month at 8:30 AM if in person, at 10:00 AM if virtual.

Members reviewed the proposed 2019-2020 Annual Report.

- Burial and inurnment services will be added to the report.
- Priority items will continue from the current action list, and two items will be added;
 - 5) conduct a study and inventory of markers in the historic area of the cemetery to assess condition and need for training, cleaning or restoration;
 - 6) Develop a long-term plan for cemetery care and preservation.
- Members agreed to recommend to the City Commission that an additional 50 graves be released for sale in Sections B & C.

MOTION: by Suter, seconded by Peterson:

To make noted changes to the report and submit it to the City Commission.

VOTE: Yeas, 5
Nays, 1

- Members discussed budget items for FY 2021/22, and agreed by consensus to request \$20,000 for Ground Penetrating Radar and \$5,000 for the historic marker study/training/restoration plan.

V. UNFINISHED BUSINESS

None.

VI. REPORTS

- A.** Members reviewed reports provided by city's Finance Department for March and June, 2020 for sales and . There was one sale and two burials in July, 2020 and no sales or burials in August, 2020. September and October data is not yet available.
- B.** Museum Director Pielack provided an update on the Taylor monument project, which has received over \$15,000 for the installation of their monument and additional cemetery preservation projects, to be held in a dedicated account by the Friends of the Birmingham Museum.

VII. OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA

There were no public comments.

Attachement 5 - Excerpt, Commission Draft Minutes, December 7, 2020

ROLL CALL VOTE: Ayes, Commissioner Sherman
 Commissioner Host
 Commissioner Nickita
 Mayor Pro-Tem Longe
 Mayor Boutros
 Commissioner Hoff

Nays, None

12-272-20 Greenwood Cemetery Grave Release in Sections B and C

Museum Director Pielack presented the item.

Commissioner Hoff said she remains opposed to releasing lots for sale in Sections B and C since those sections are at least partially historic. She noted that Section D is not full and could be utilized instead. She added that the GCAB intends to use GIS mapping and ground-penetrating radar in the future to hopefully locate additional available lots outside of the historic areas.

Mus. Dir. Pielack said there are only six lots available in Section D. She said the majority of known available lots are in Sections B and C.

Mayor Pro Tem Longe agreed with Commissioner Hoff that the GIS mapping and ground-penetrating radar should be used to locate more lots. She also said that although the GCAB recommends that 50 lots be released, there was no map to indicate which 50. She suggested the Commission authorize the remaining lots in Section D and await further information from the GCAB regarding which lots in Sections B and C are recommended for release.

MOTION: Motion by Commissioner Sherman, seconded by Mayor Pro Tem Longe:
To authorize that the six grave sites in Section D be made available for sale and to request that additional information be provided to the Commission regarding the additional 50 requested grave sites in Sections B and C.

ROLL CALL VOTE: Ayes, Commissioner Sherman
 Mayor Pro-Tem Longe
 Commissioner Host
 Commissioner Nickita
 Mayor Boutros
 Commissioner Hoff

Nays, None

12-273-20 Greenwood Cemetery Grave Release - Single Lot Authorization

Mus. Dir. Pielack confirmed for Commissioner Sherman that the one lot sold that exceeded the authorized lot sales was in either Section B or Section C.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Host:
To authorize that the one lot that was sold that exceeded the authorized lots be authorized.

ROLL CALL VOTE: Ayes, Commissioner Sherman
 Commissioner Host

Mayor Pro-Tem Longe
Commissioner Nickita
Mayor Boutros
Commissioner Hoff

Nays, None

**12-274-20 REQUEST TO MEET IN CLOSED SESSION IN ACCORDANCE
WITH SECTION 8(E) OF THE OPEN MEETINGS ACT**

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Hoff:
To go into closed session to review pending litigation in the matter of Lyons v City of Birmingham
pursuant to Section 8(e) of the Open Meetings Act, MCL 15.261 – 15.275.

ROLL CALL VOTE: Ayes, Commissioner Sherman
Commissioner Hoff
Commissioner Host
Commissioner Nickita
Mayor Boutros
Mayor Pro-Tem Longe
Nays, None

The City Commission adjourned to Closed Session at 12:05 a.m.

Mayor Boutros reconvened the meeting at 12:19 a.m.

Commission Discussion on items from prior meeting.

None.

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

None.

VIII. REMOVED FROM CONSENT AGENDA

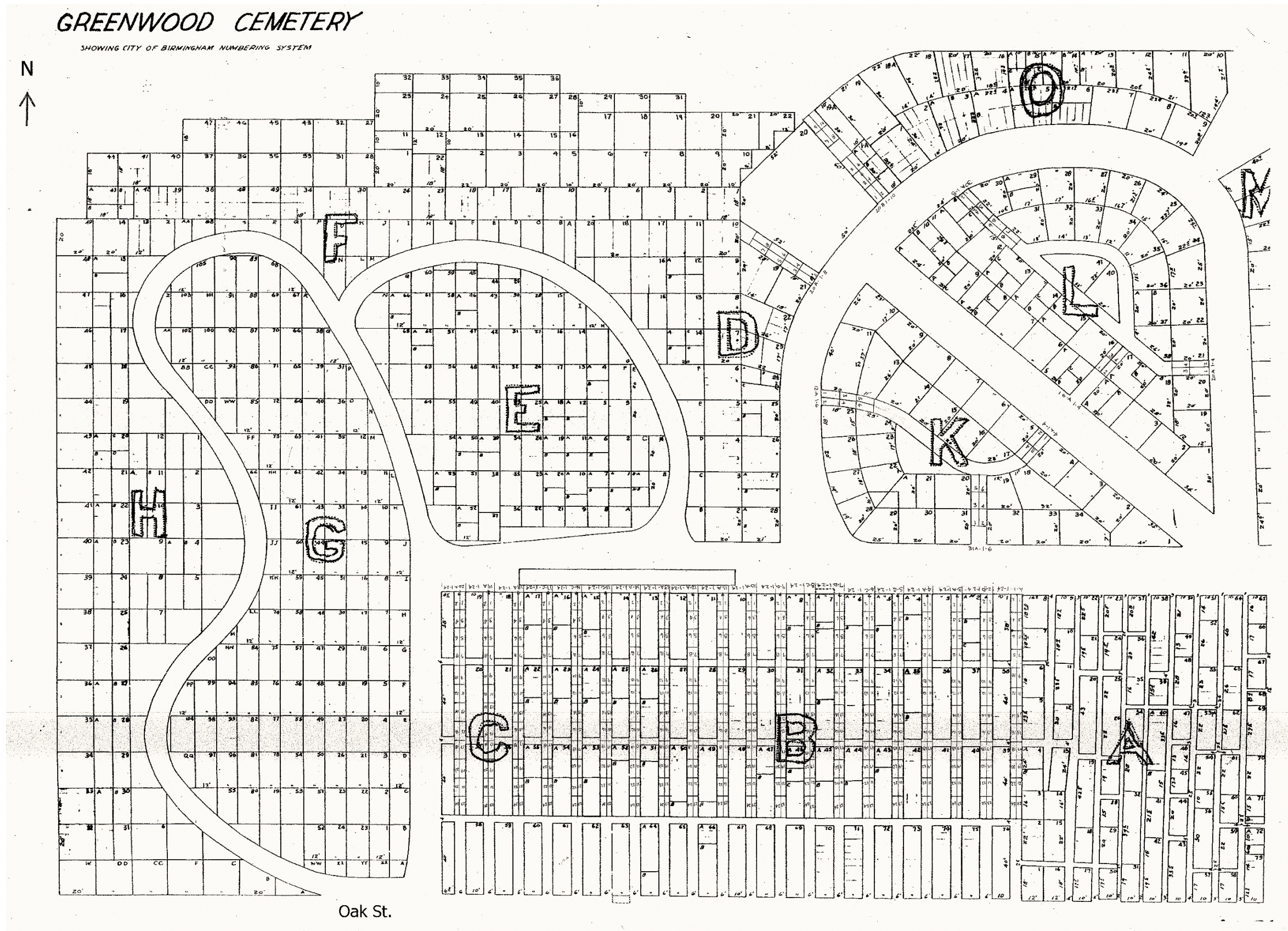
IX. COMMUNICATIONS

X. REPORTS

- A. Commissioner Reports – Notice of intent to appoint to the Public Arts Board & the Storm Water
Utility Appeals Board
- B. Commissioner Comments
- C. Advisory Boards, Committees, Commissions' Reports and Agendas
 - 1. Ethics Majority Opinion for case # 2020-01
 - 2. Ethics Minority Opinion for case # 2020-01

Commissioner Nickita said he wanted clarity regarding the implications of the findings of case #2020-01
for Commissioners. He suggested a study session at a future Commission meeting.

GREENWOOD CEMETERY OVERVIEW



GREENWOOD CEMETERY

SHOWING CITY OF BIRMINGHAM NUMBERING SYSTEM

N
↑

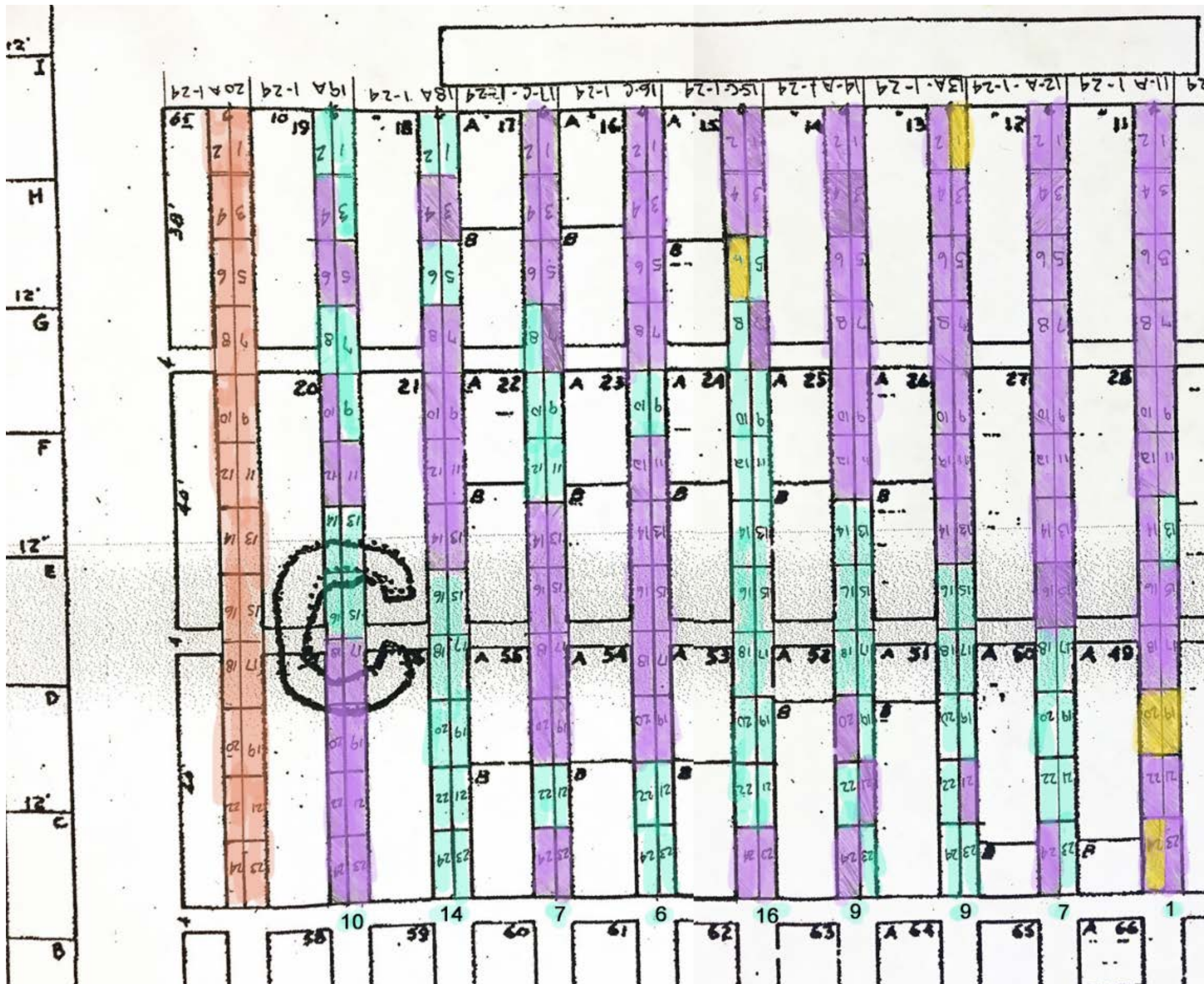
Oak St.

Dividing line
between
Sections

GREENWOOD CEMETERY GRAVES STATUS – Lots B and C

As of **December 15, 2020**, 187 grave plots are available in both B and C. No grave plots are available for sale to the public in any other section of the cemetery.

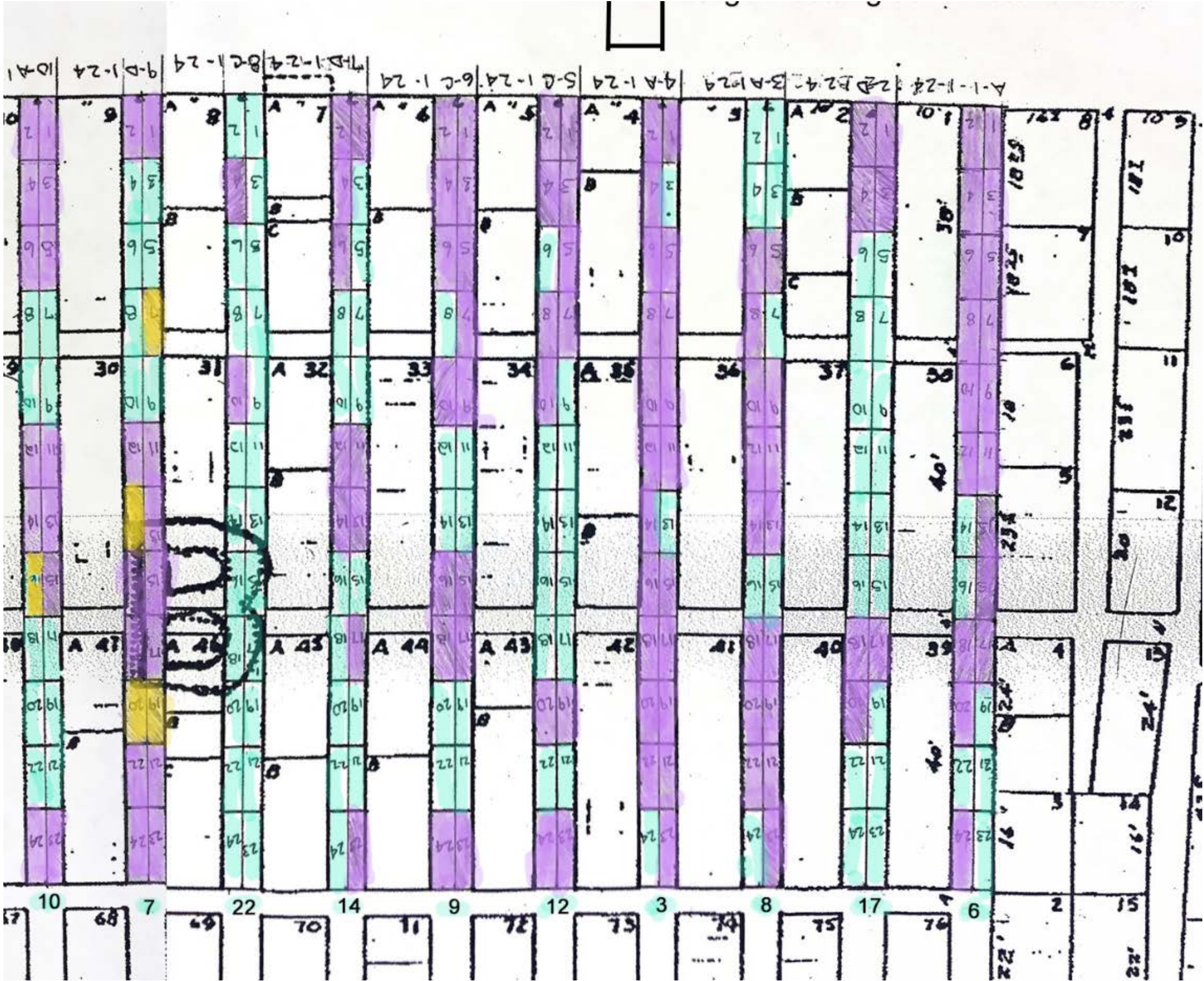




Detail, Section C
and Section B-
West

Number of available
graves shown at
bottom of rows

Detail, Section
B - Central and
B - East



Number of available
graves shown at
bottom of rows

DATE: December 15, 2020

TO: City Commission

FROM: Joseph A. Valentine, City Manager

SUBJECT: Unimproved Streets Committee Final Report

INTRODUCTION:

In recognition of the 26 miles of unimproved streets in the city and the increasing concerns from residents about these streets, the City Commission created the Ad Hoc Unimproved Streets Study Committee to conduct a city-wide study of the unimproved streets and provide a recommended approach outlining a long-term plan for these streets. The committee has concluded their task and have provided the attached final report with recommendation for consideration by the City Commission.

BACKGROUND:

The Ad Hoc Unimproved Streets Study Committee is a citizens committee of seven residents comprising the following roles:

- 2 members of the City Commission
- 3 residents living on an unimproved street
- 1 resident living on an improved street
- 1 resident with a background in road design

Given the technical nature of this committee's task, they initiated their work with a series of educational sessions focused on the history and evolution of the city's road system. This was followed by a review of the special assessment, petition and billing processes. A review of the road surface types and the current cape seal program was also conducted with the support of a professional engineering firm. In addition, a peer review was completed to assess how other communities with unimproved streets managed and maintained them. Further, a draft financial model was developed to assess costs and funding options for the committee's review.

The committee's report focuses on three key areas. These include 1) the initiation of the petition process, 2) selection of the road surface, and 3) identification of funding sources. As outlined in the attached report, the focus of the committee's recommendations are in the following key areas:

1. The committee recommends changing the initiation process so that project initiation begins with the City and not the homeowners.
2. The committee recommends that all unimproved streets being reconstructed be constructed in concrete, with the understanding that the final decision for material to be used for road improvements should be made by the Engineering Department.

3. The committee recommends using General Fund transfers to fund just the road component of the improvement with bonds providing the funding for the water and sewer improvements.

The attached full report further expands on these recommendations. Most other aspects of the capesal program and conversion to improved streets remains unchanged.

The committee's report was presented at two public engagement meetings held on October 22, 2020 and November 12, 2020. Based on input received from each meeting modifications were made to the report and the final report was adopted by the committee on November 19, 2020 with a resolution to recommend its approval to the City Commission.

LEGAL REVIEW:

The final report was developed in consultation with legal counsel in the applicable areas.

FISCAL IMPACT:

A full funding overview is included in the final report. The committee recommends a pay-as-you-go approach by incorporating the needed street reconstruction costs in the capital improvement program and transferring the required funds from the General Fund for the street improvements and bonding for the costs necessary for replacement of any required water and sewer mains. The current costs to fully reconstruct 1 mile of a street includes about \$2.3 million in street costs, \$1.1 million in water main replacements and 1.2 million in sewer line replacements for a total cost of \$4.55 million per mile. With roughly 26 miles of unimproved streets this brings a total project cost of \$118 million in current dollars. The pay-as-you-go approach will allow for appropriate funding to be planned and budgeted with the applicable elements bonded in order to achieve the implementation of this program.

SUMMARY:

The committee has completed their task and is recommending approval of the report by the City Commission. If approved, staff will begin updating the capesal maintenance schedule and review those streets in conjunction with the water and sewer infrastructure on those streets to establish an annual priority schedule for inclusion in the city's capital improvement program. Additionally a water and sewer bond will need to be established in conjunction with this program.

ATTACHMENTS:

- Ad Hoc Unimproved Streets Study Committee Final Report
- Public communications on the report
- Minutes of committee's public engagement meetings on October 22nd and November 12th
- Minutes of the committee's final meeting on November 19th

SUGGESTED RESOLUTION:

To accept the Ad Hoc Unimproved Street Committee's Final Report, approve its recommendations and direct the administration to begin implementation of the report in future capital improvement programs.

**AD HOC UNIMPROVED STREETS COMMITTEE
FINAL REPORT**



COMMITTEE MEMBERS

Chairperson Scott Moore

Pierre Boutros

Jason Emerine

Micheal Fenberg

Katie Schafer

Stuart Sherman

Janelle Whipple-Boyce

Executive Summary

There are ninety (90) miles of existing roadway in the City of Birmingham. Approximately 30% (26 miles) of them are classified as “unimproved” streets. An unimproved road is a gravel road, with or without curbs, that has been maintained with chip or cape seal to provide a relatively smooth and dust-free driving surface. These unimproved streets exist due to the majority of neighborhoods in the City being subdivided and open for development prior to 1930. During this time local streets were built with gravel roads with no provision for storm drainage. Residents with unimproved roads often experience issues with flooding and deteriorating road surfaces as a more common occurrence than their neighbors with improved roads. Today, unimproved streets may be converted with engineered pavement and drainage only when a majority of residents on a residential block submit a petition the City for such an improvement. In order, to convert a road from unimproved to improved, residents must pay a percentage of the total cost via special assessment.

The City Commission heard an increasing number of complaints from residents over the past several years concerning issues with drainage and the condition of the road surface on unimproved streets. In response, the Commission passed a resolution creating an Ad Hoc Unimproved Street Study Committee (AHUSC). The charge of the committee is to conduct a City-Wide study of unimproved streets and provide a recommendation outlining a long-term plan for these streets.

The AHUSC held its first meeting in June 2018 and for several months received a series of education sessions and engages in dialogue regarding unimproved streets policy:

June 2018	– History /Evolution of City Road System
July 2018	– Special Assessment Districts (Petition Initiation and Billing Process)
	– Local Street Surface Types (Pavement Methods and Policies)
	– Cape Seal/Chip Seal Program Overview
August 2018	– Peer Review: Street Upgrade Policies in Neighboring Communities
	– Road Improvement Funding Options
September 2018	– Comparative Analysis: Differences between Improved and Unimproved Streets
	– Document Review of Related City Policies
	– Establishing Priority Roads – Infrastructure Ranking Considerations
October 2018	– Special Assessment District Process Evaluation and Refinement Discussion
April 2019	– Financial Model Presentation: Funding Unimproved Road Conversions
May 2019	– Consultant to Conduct Trade-Off Analysis of Road Design Options
August 2019	– Trade-Off Analysis Completed: Road Design Options and Cost Presentation
	– Initial Draft Recommendations : Committee and Public Feedback
January 2020	– First Draft of Policy Document Presented

The substance of this document will provide additional detail regarding each of these items as presented in the preceding timeline of committee activities and followed by an actionable recommendation to adapt the City’s existing policy and procedures associated with converting a road from unimproved to improved. The Committee unanimously acknowledges that there are three key areas that should be the focus of the recommendation to either change or reaffirm. These include the 1) initiation of the petition process, 2) selection of the road surface and design alternatives, and 3) identification of funding sources that may allow the City to accelerate the conversion of unimproved roads.

1) Initiation of the Petition Process

The current process for initiating a petition has historically begun when residents become dissatisfied relative to the condition of their street pavement often know little about why their street is in the condition it is. Frequent problems can include rough riding surface or drainage problems. A telephone call to City Hall will be directed to the Engineering Dept., where an explanation of the City's policies begins. Staff explains that a special assessment district must be created in order to raise the funds to pay for such a project. The City Commission has not been inclined to create such a district unless it has clear indication that the majority of property owners agree with the idea. In order to start the process, a petition needs to be created that demonstrates that a majority of the property owners are in favor. Staff offers to email a blank petition form prepared for the specific street being discussed, and also tries to provide the resident with the basic information needed in order to start conversations with neighbors about the idea. It is the responsibility of the neighbors to obtain a majority of signatures from homeowners in favor of improving the road before any official action can be considered by the City Commission.

The committee has discussed the difficulties associated with having homeowner's initiate a petition process to have their road improved. It has caused disputes and frustration and as a result, homeowners are less likely to initiate the process. The Committee has asked staff to explore the possibility of a City initiated process.

The AHUSC recommends changing the initiation process so that project initiation begins with the City and not the homeowners.

2) Selection of Road Surface and Design Alternatives

The practice of the City has been to engineer new roads with concrete. There has been feedback received from residents at the committee meetings that there should be another alternative to concrete. The Road Design Options report presented in August 2019 provides a recommendation for committee consideration to allow asphalt as a possible option when doing a road conversion. The committee ultimately concluded that concrete be utilized for new improved streets, however, the cost differential between the two alternatives over time should be considered in the selection of a street surface. Knowing that the City must fund all maintenance of the new street into the future, and knowing that financially a concrete street will prove to be less of a burden to the street fund over time, the City Engineer will make the determination on the appropriate pavement material for a respective road improvement project with concrete being the default selection.

The Committee recommends using concrete for new improved streets and allowing for the consideration of asphalt as an alternative road surface material at the determination of the City Engineer when reviewing such factors as long term costs, maintenance requirements, limited use areas such as courts and dead end streets that experience considerably less traffic counts.

3) Identification of Funding Sources

There are generally four sources of funding for roads: Act 51 distributions from the Michigan Department of Transportation, property taxes by way of transfers from the City's General Fund, special assessments from property owners directly benefiting from a road improvement, and road bonds. Currently, the City receives from funding from all of the sources except for road bonds. The source of funding used to support conversion of unimproved roads currently comes from a combination of special assessments and the general fund. Eighty-five percent (85%) is funded through special assessment, while fifteen percent (15%) is paid by the general fund.

Special assessments are used as a funding source to offset a portion of the cost of a road where it is being upgraded to an improved road or when the road is being cape sealed. For these projects, the City will pay for the improvement in advance and bill the property owners. The payback from the property owners differs depending on the type of road improvement being done. When a road is being improved, the special assessment is generally set for 10 years. When a road is being cape sealed, the special assessment is generally billed only once. City ordinance does not allow for special assessments greater than 10 years. Typically, the City collects approximately half of the total special assessment in the first year of a ten year assessment period and then smaller amounts the following years.

Capital improvements are projected out for six years to assist in long-range financial planning. When a neighborhood determines that they want an improved road, that project is then added to the long-range planning process to determine which budget year the City can afford to do the project. The City then must consider both funding for the road as well as funding for water and sewer improvements if those utilities need to be updated as part of the same project, which is often the case.

Depending on what other projects are planned, the combination of road, water and sewer costs to upgrade an unimproved road can create financial strain and lead to decreases in reserves in the General Fund. Bonding for the water and sewer improvement components of the road improvement would help reduce some of that financial strain.

The AHUSC engaged in an on-going dialogue regarding opportunities to adjust the percentage share for residents or pursuing additional sources of funding to accelerate the program and more quickly convert unimproved roads. A review and discussion of the financial model is included in this report.

The committee is recommending the following process:

Pay-as-you-go

- Road improvements are scheduled as part of the City's long-term capital improvement planning process and are initially financed from existing levels of transfers from the general fund to the local street fund. Property owners will be special assessed for the road and will reimburse the local street fund.
- Water and/or sewer improvements would be financed through current water/sewer rates. Optionally, enhanced water/sewer rates which would include additionally funding for improvements could be approved. A \$1 increase in either rate would generate approximately \$828,000 in additional revenues per year.
- A road millage is not available since the City is a 20-mill charter city. A Headlee override to the City's existing operating millage would be the only way to create additional property tax revenues. This would require a vote of the citizens to approve.

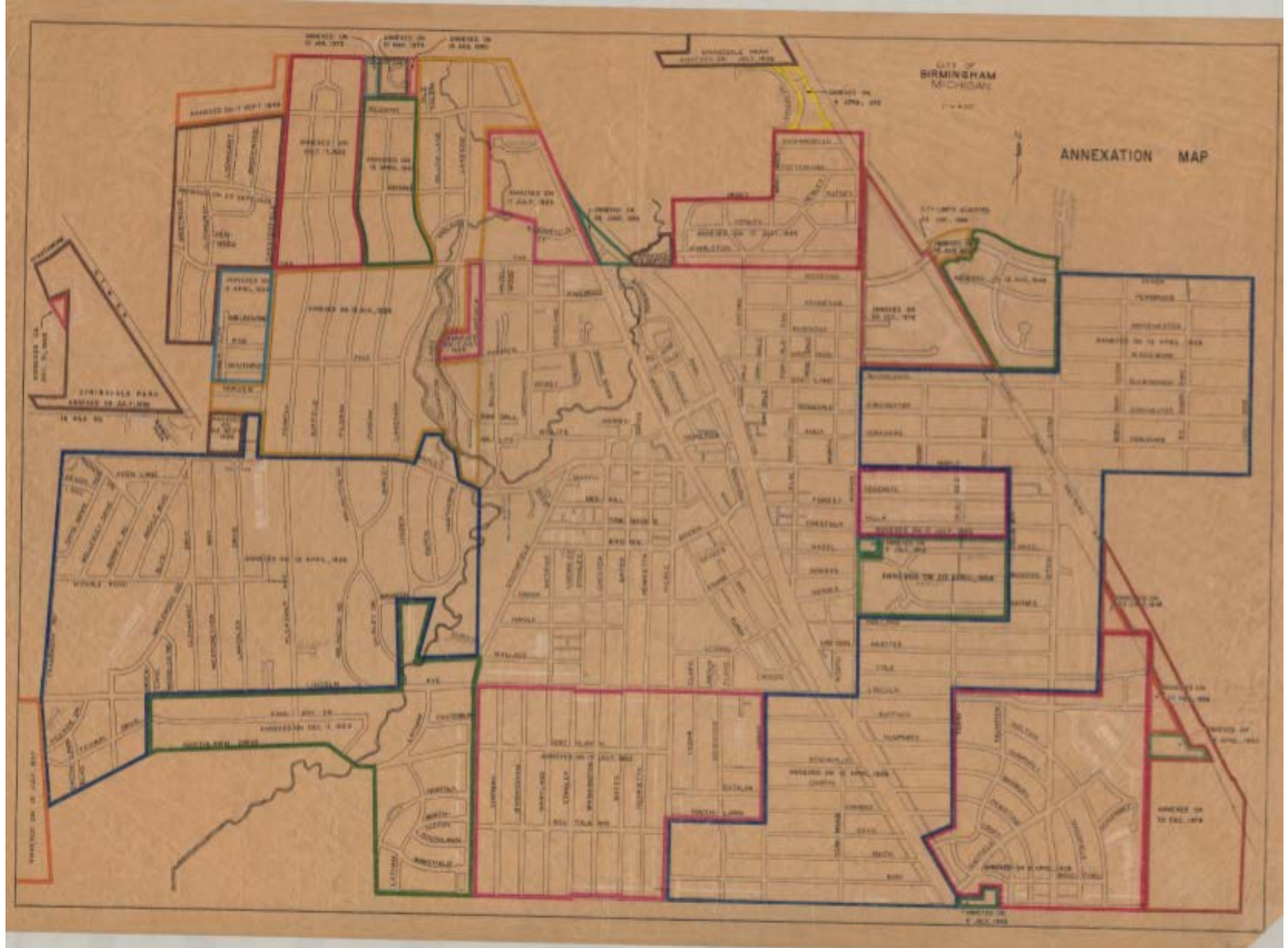
The Committee recommends using General Fund transfers to fund just the road component of the improvement with bonds providing the funding for the water and sewer improvements.

UNIMPROVED STREETS: HISTORY/EVOLUTION

MUNICIPALITIES AND VILLAGES

Birmingham was first incorporated as a village in 1864. **Figure 1** provides an illustration that documents the original square mile that constituted the Village of Birmingham, as well as the multiple annexations that occurred between 1925 and 1978. Birmingham became a municipality in 1933, following the multiple annexations that occurred in the latter 1920's.

Figure 1: Annexation History



Statewide milestones in road building include the creation of the State Highway Dept. in 1905, which focused on the construction of main trunklines in the state, including what is now known as M-1 (Woodward Ave.), and the McNitt Act of 1933, which organized the system of county road commissions in the state. The latter act took the responsibility of road building away from townships, which were having a difficult time raising funds, and placed it at the county level. Cities and villages retained the responsibility of road building within their jurisdictions. The state legislation known as Act 51, passed in 1951, is still in use today. This act helped establish how gas tax funds raised each year from the sale of gasoline would be distributed through the three-tiered system known as state highways, county road commissions, and local municipalities/villages. Like all other cities and road commissions, the cost of initial construction of a road is generally sourced by two means:

- a) By the developer of a property, as when a plot of land is subdivided into smaller lots for sale (in which case the price of the individual lots reflects the value of the newly constructed road).
- b) By the creation of a special assessment district, wherein the value of the construction can be distributed by a local formula as established by the local jurisdiction.

IMPROVED VS. UNIMPROVED

In Birmingham, prior to World War II, when a road was constructed for the first time, be it by the local jurisdiction or by a land developer, the expectation was that it would have a gravel surface. Most local roads were given rudimentary engineering, without much provision for drainage. Most of the early special assessment districts (in the 1920's) were actually for sanitary sewer improvements. Given that the construction of combined sewers was the norm, it appears that the first priority was the construction of sanitary sewers, so that individual septic systems could be abandoned. By sizing sewers larger, they could then take on the duty of storm water drainage as well.

Figure 2: Improved, Unimproved with Curb and Gutter, and Unimproved in Birmingham



Referring to **Figure 2**, local streets can be categorized into three main categories:

1. Unimproved – These streets represent streets that were originally constructed as a gravel surface. Starting in the late 1940's, a City program to oil and then later chip seal these streets eliminated gravel street conditions in Birmingham.

2. Improved – Streets that have been constructed with a permanent, engineered pavement, controlling drainage with the use of a curb and gutter system.
3. Unimproved Streets with Curb & Gutter – In many cases, the Village constructed a curb and gutter drainage system on local streets, while leaving the road surface gravel.

As can be observed by the map in Figure 2, the majority of remaining unimproved streets in the City are west of the Rouge River. While there may be various reasons for this, the one reason that seems apparent is the differing soil characteristics. East of the river, clay soils dominate. Drainage is poor, and storm water that is left standing along the side of the road can take a long time to absorb into the ground.

Unimproved roads in these conditions tend to be more difficult to maintain and would age faster. West of the river, sandier soils dominate. Storm water sitting along the edge of the streets absorbs relatively quickly, allowing these streets to drain faster and last longer. Since the decision to install a permanent pavement (as detailed below) tends to be most influenced by the majority of the property owners, drainage conditions along the edge of the road tend to be the most significant factor in determining whether a street will be paved or not.

HISTORY OF STREET IMPROVEMENTS - POST WORLD WAR II

Approximately 90% of residentially zoned areas within the City of Birmingham were subdivided prior to 1930. Since demand for new construction dropped to very little in the period between 1929 and 1945, many neighborhoods had a relatively small number of developed lots at the end of the war. It is assumed that most streets were relatively simple gravel construction, with little provision for drainage.

As demand for new housing jumped after the war, development in Birmingham picked up quickly. As streets became more populated, interest in addressing the problems inherent in gravel streets rose. According to Bob Kenning, former Dept. of Public Services Director and City Manager, groups of residents would pool their funds together and pay for the street to be oiled. An oiled street helped stabilize the gravel, and reduce dust during dry summer days.

Starting in 1948, the first special assessments were created by the City for “dustproofing,” a term likely applied to a form of oil treatment on the gravel surface in order to reduce airborne dust problems coming from gravel surfaces. About 1951, the City purchased equipment to allow the City to take a more active role in maintaining and improving its gravel streets, using City staff. Graders were purchased to scarify the compacted oiled surface, and regrade it again, to improve drainage and rideability. Bitumen (the black sticky material still used today in asphalt pavements) could be applied by a City owned truck, to also stabilize and dustproof the street. Such treatments would be done under a special assessment.

By 1960, the oil and bitumen surfaces had become so hard and compressed that the graders could no longer break it up to fix grade issues. The City purchased a pulverizer to break up road surfaces. Streets could then be regraded and treated again.

By the late 1970’s, the Dept. of Public Services ceased its efforts to seal and grade unimproved streets with its own staff. Since then, maintenance has consisted of pothole patching. Improved technology has led to better pavement treatments, including the current process known as cape sealing.

Interestingly, from what we can determine, other cities in the area that were developed in the same era such as Clawson, Royal Oak, Berkley, and Huntington Woods, took advantage of the pro-public works environment of the 1950’s, and routinely scheduled road paving special assessment districts, with the goal that the large majority, if not all, of its streets should be improved with a permanent, long lasting, well-draining pavement.

Such assessment districts were scheduled whether a majority of the owners were in favor or not. Mr. Kenning also recalled in the early 1950's that the Birmingham City Commission took an interest in getting its streets paved, as the ongoing maintenance challenges and poor ride quality in now fully developed subdivisions were considered a detriment to the neighborhoods. Then, like now, requests for new pavements coming from residents were received, but only in small numbers, leaving a large number of streets still unimproved. The Commission began to schedule some assessment districts on its own initiative, however, within a short time this was discontinued, in response to strong negative feedback from impacted property owners. Since that time, except in rare circumstances, it appears that street pavement projects have been initiated by residents asking for such a project.

No streets were paved between 2008 and 2014. Three streets have been constructed recently under a special assessment.

Because the policy for funding the conversion of unimproved streets to improved streets has been done through special assessment dating back to the 1940's, a change in the policy to eliminate special assessment and share costs among all residents now would charge many properties twice; once for the improvement on their own street when it was completed and again for improvements to other streets now. As a result, the committee did not support eliminating the special assessment process.

The Committee acknowledges that the current policy may prevent homeowners from initiating the process, which might explain why so few streets have been improved in recent years.

SPECIAL ASSESSMENTS DISTRICTS/ CURRENT PETITION PROCESS

SPECIAL ASSESSMENT DISTRICTS

The City has the right to create a special assessment district for a variety of improvements. Recent assessment districts have included charges for:

- Engineered, permanent street pavement
- Cape Seal treatment (maintenance on unimproved roads)
- Water or sewer lateral replacement
- Improved sidewalk streetscape (within a commercial district)
- Public street lighting (within a commercial district)
- Public sidewalk (where none existed previously)

The City has 26 miles of unimproved streets. Constructing a permanent pavement on these streets is a substantial investment. The City has the opportunity to create a special assessment district to help defray the cost of the improvement. The creation of an assessment district requires that all parties within the potential district be notified by mail in advance of a public hearing before the City Commission. Rarely does staff initiate a project that would require a special assessment without positive input from a majority of the involved property owners. Exceptions generally involve streets where a majority or all of the properties involved are commercial in nature.

The following is a detailed description of the petitioning process for a typical, generally residentially zoned street.

INITIAL RESIDENT CONTACT

Residents become dissatisfied relative to the condition of their street pavement and often know little about why their street is in the condition it is. Frequent problems can include rough riding surface or drainage problems. A call to City Hall will be directed to the Engineering Dept., where an explanation of the City's policy begins. Staff explains that a special assessment district must be created in order to raise the funds to pay for such a project. The City Commission is not inclined to create such a district unless it has clear indication that the majority of property owners agree with the idea. In order to start the process, a petition needs to be created that demonstrates that a majority of the property owners are in favor. Staff offers to email a blank petition form prepared for the specific street being discussed, and also tries to provide the resident with the basic information needed in order to start conversations with neighbors about the idea.

PETITION PROCESS (INITIATION: PHASE I)

The petition format was originally developed with assistance from the City Attorney, and modified as needed over the years. The following describes the various parts of the petition form:

- a. The beginning language makes it clear to the signer that this is a citizen-initiated request for a public improvement, directed to the City Commission, the body that has the authority to declare a special assessment district.
- b. Most streets are constructed as described on this sample, that being a 26 ft. wide concrete pavement, measured from the face of the curbs, with parking allowed on both sides. Items of note include:
 - 1) The City's policy of building local streets at 26 ft. wide with parking on both sides has been in place since 1997.
 - 2) The City has required concrete streets for its new special assessment districts since 2011.

- 3) The new street width and grade will almost always be different than the current street, therefore, the project automatically includes the cost of new driveway aprons being installed between the sidewalk and the new edge of the street.
- c. The actual street being petitioned is typed in by the Engineering Dept., as well as the limits of the project.

The first paragraph preceding the signatures notifies the signers that a new pavement invokes a more detailed review of the current underground utilities, such as the water and sewer system. Often, the existing water and sewer systems are deemed past their prime and are slated for replacement as a part of the project.

Improvements to the public water or sewer systems are generally included in the construction contract, and are charged to the respective Water and Sewer Funds. That is, replacements within the public water and sewer system have no impact on the special assessment. The ongoing maintenance of the water and sewer laterals, that is, the individual pipes that connect each house to the public mains, however, is considered a private property owner expense. Until 2005, City streets were constructed with no active maintenance of these private lines. However, as the pipelines age, and as house replacements became more frequent, the need to cut open a new pavement to make repairs to these lines necessitated an evolution to the policy:

- 1) In 2005, the City implemented a voluntary process wherein property owners could agree to participate in the cost of the replacement of their sewer lateral, set at the cost the contractor was charging the City for the replacement (per foot). The cost was typically about 25% of what an owner would pay to have the sewer replaced if done on their own, and represented a great value. While some owners participated, the City determined that it would be in the best long term interest of the street pavement if all sewer laterals older than 50 years were replaced with new PVC pipe, as a separate special assessment district. The new forced assessment policy was instituted in 2007. Due to the low cost of this work (typically between \$1,000 and \$2,000 at the time), there has been very little protest against this policy.
 - 2) While water laterals tend to have a much longer service life, a related but different problem also caused additional cuts in the pavement. Most older homes currently are served by a $\frac{3}{4}$ inch diameter pipeline for fresh water supply. However, as part of a building permit, new homes must be serviced by a minimum 1 inch pipe. As a result, even though sewer laterals were being replaced, too many cuts in the pavement were still resulting as new homes get built. Therefore, starting in 2017, all water services less than 1 inch diameter must be removed and replaced with paving projects. All lead pipe, no matter what size, must also be replaced (a much less frequent issue). The cost of the water lateral replacement, generally set at the rate charged by the contractor to the City, is then passed along to the homeowner in the form of an assessment. The cost of the water lateral is typically 50% - 75% of the cost of the sewer lateral replacement. In 2017, only a small number of homes were charged with the water lateral replacement assessment to date.
- d. The petition carrier must then get at least one signature from each property within the district to count as a "yes" vote. Once the petition carrier is finished and turns the document over to the City, each signature is compared to the owner records at City Hall. Owners' names that do not match a record of what is on file are rejected and not counted as "yes" votes. The petition carrier has the opportunity to review the signatures that were rejected, and if it is determined that a unique circumstance has occurred, such as new ownership, or a recent name change, written proof that can validate the signatures can change the status of a signature. Tenant signatures are never counted in favor of the project.
 - e. On the last page, the petition carrier must have their own signature notarized, verifying that they witnessed the signatures, and attest that the document is a true representation of what is being stated.

After the signatures are checked for accuracy, if a simple majority in favor still exists, the petition moves to the next phase of the process.

PETITION PROCESS (INFORMATIONAL BOOKLET: PHASE II)

Over the course of the next several weeks, the Engineering Dept. will prepare a booklet specific to the suggested project at hand. The most recent project that went through the process and had a petition prepared was Villa Ave., from Adams Rd. to Columbia Ave. (2 blocks). The booklet that was prepared is attached for your reference in **Appendix A**. Similar to the petition form itself, a detailed description of the various parts of the booklet can help the reader understand the level of involvement required by the petitioner to move the project through the necessary approval process:

- a. The booklet is mailed with an introductory cover letter, inviting residents to a neighborhood meeting. The meeting is typically held on a weeknight evening at City Hall. There is no formal agenda. Rather, the meeting is intended to give people an opportunity to find out more information, ask questions, and talk about the project with their neighbors. Often, less than 50% of the owners are represented.
- b. The introduction helps explain why the booklet was prepared and mailed out, which is important for those that were not contacted by the petition carrier.
- c. A thorough description of the intended project is spelled out.
- d. The multiple step approval process is outlined. By statute, the City Commission must hold a public hearing before making a decision about whether to proceed with the project or not.
- e. The construction section helps residents understand the various phases of the project, and how much access they will have during this period, should the project be approved.
- f. A chart helps explain how the typical property will be charged, and how the project costs can be financed over 10 years. Owners are charged for a paving improvement as follows:
 1. The City takes 15% of the total cost of the project to help reduce the charge to residents, and to show support for the process. The contribution can be justified given the reduced cost in maintenance that a new street pavement provides.
 2. The cost of the drive approaches is taken out of the base cost calculation. The remaining costs are divided by the total front footage of the project, considering both sides of the street. This provides a base price per foot, which is now estimated at \$190 per foot for a new concrete street.
 3. The cost of the drive approaches is based on actual measurements for each property, times the actual cost being charged by the contractor to the City.
 4. On corner properties, the City charges only 33% of the long side of the property (if that is the side being constructed). The other 67% is charged to the Local Street Fund.
 5. If there are City-owned properties along the street frontage, they are charged to the City as any other property would be so as to not change the cost per foot in a detrimental way to the property owners.
- g. Once the street is paved, residents will have the opportunity to rake their leaves into the new curb and gutter section. Bagging of leaves will no longer be required. The report also clarifies that once this assessment is paid, the City will not proceed with other assessments for pavement improvements in the future.

PETITION PROCESS (FINAL APPROVAL: PHASE III)

The tone of the neighborhood can often be gauged at the neighborhood meeting. If someone is working against the project, and people that signed want to change their mind, they must submit an email or letter

to the Engineering Dept. to confirm their position, at which point they will be taken off the petition. Likewise, if there are owners that did not sign that wish to do so after the meeting, they may submit an email or letter to the Engineering Dept., and they will then be included in the final calculation.

A few weeks are allowed to pass intentionally to give people a final chance to decide their position. If a majority of owners (50%+) still remain on the petition, the issue will be moved forward to the City Commission. At the time the issue is presented to the Commission, a calculation based on front footage is also provided, with the expectation that that will also show support in excess of 50%. (The front footage calculation becomes important if there are varying sized properties. If a small number of larger properties are all voting in one direction, that can throw the percentage above or below 50%. Therefore, it is important for the Commissioners to know which owners are in favor and which ones are not. The topic will be introduced to the Commission, and a request will be made by staff to set a public hearing of necessity.

At least three weeks must pass to provide sufficient notice to the public. Postcards are mailed to all owners notifying them of the hearing date. The Commissioners hold the hearing at a regular meeting, and then decide whether to proceed or not. If they pass a motion approving the project, a second public hearing is then scheduled for the next meeting, to confirm the assessment roll. Owners have the opportunity to verify their estimated assessment with staff prior to the second hearing. If the roll is approved at the hearing, the assessment lien is then placed on all properties within the district.

The project design then begins, with construction generally scheduled for the next construction season. Invoices for the first annual payment are not sent out until the project is generally finished, giving the City an opportunity to determine final costs and billing accordingly.

PROJECT LIMITS

When first initiating a project, the question of the limits of the project can be an issue. The petition carrier often understands that they are starting a potentially difficult process, and in an effort to make it simpler, may be inclined to just want to seek signatures on their particular block. However, if the particular block would not make a logical project limit, then City staff will encourage them to look at the bigger picture.

Here are three situations that can come up that should be considered in a final policy:

1. If the subject street that is unimproved is two blocks long, and the middle intersection is a "T" intersection, stopping the paving at the "T" can be awkward. Stopping the project at its logical starting and ending is better for the long term viability of the street, and allows the entire length to have its long term paving needs addressed in one project.
2. In areas where long sections of street are unimproved, a street paving project could potentially extend as long as one mile. Contacting that many homeowners can seem like a daunting task. A potential solution would be to require projects of this sort to extend at least one-half mile. For example, if Pilgrim Ave. is being considered for paving, a viable project would be to build the section from Quarton Rd. to Oak St., or Oak St. to Maple Rd. Another example would be if Larchlea Dr. was being paved, the entire half mile would be appropriate, from Maple Rd. to Lincoln Ave., even though there is a logical stopping point in the middle.
3. If an adjacent side street will be potentially left unfinished, it should be included when a petition is received. For example, if a petition is received for Yosemite Blvd., the City should require that Yankee Ave. be paved as a part of the same project, so that it is not left unfinished well into the future.

When crafting a final policy recommendation, staff recommends that the Committee consider language that speaks to the need to create logical boundaries that are in the best long-term interests of both the City and the neighborhood at-large.

COMMITTEE RECOMMENDATION:

The Committee recommends revisions to the initiation process that will simplify that start of the process, increase awareness, and address the concerns with creating logical boundaries.

BILLING PROCEDURE

As described above, homeowners in a paving assessment district will be charged based on two factors:

1. The front footage of their property times the set rate per foot, which is calculated based on actual costs, minus 15%.
2. The square footage of their drive approach(es) times the actual cost per square foot that the contractor charges for a new concrete drive approach.

If the homeowner owns a house that is served by non-compliant water and sewer service laterals, then a separate assessment to cover those costs will also apply.

The following outlines unique circumstances, and how they are handled:

A. Corner Properties

Almost every corner lot has a long side and a short side. If the short side is the side being paved, the homeowner is charged the full length of that side, and is typically charged about the same as the other homeowners in the area. If the long side is being paved, the homeowner is charged 33% of the long side's length. The City pays the remaining 67%. This ratio typically works well in that the corner houses pay about the same as the other houses on the block that may actually face the street.

In the rare case that both streets are being paved as a part of the same assessment district, then the owner would be responsible for both sides at the same time, or about double what the typical charge is.

In determining the short or long side, the way that the house is facing, or the street that is used for the address are not determining factors. Only the measurements where one side is longer than the other is used.

The reduction factor is only applied to residential zoned properties. Commercial properties are billed at 100% of their frontage, even when located on a corner.

B. City-Owned Properties

If a project includes an intersection where a public right-of-way is being crossed, the width of the public right-of-way is not included in the footage charged for the project. The cost of that area is blended into the overall rate that is charged to all properties.

If a project has frontage on other City properties, such as park land, City buildings, etc., the City will pay the full 100% cost of that frontage. During the petitioning phase, the footage is taken out of the

calculation so that it does not impact a determination relative to whether the majority of the owners are in favor or not.

C. Federal or Public School District Owned Properties

There is no expectation that the City will receive any funding from federal institutions, such as the U.S. Post Office, or Birmingham Public School District, when a special assessment is applied to their properties. As a result, the City typically pays the cost of these frontages. Since this is the case, for petitioning purposes, they are treated as neutral properties, similar to properties actually owned by the City, as described above in paragraph B.

D. Condominiums

Certain residential streets may be primarily single-family residential, but have one multi-family residential property on its frontage that is owned by many parties. For billing purposes, each owner gets an equal share of the cost, regardless of where they are situated on the property. For example, if the street being paved has a 200 ft. frontage adjacent to the condominium, and there are 10 owners, each owner will be charged for 20 ft., as well as 1/10 of the cost of the driveway approach. While some owners may have a unit located directly adjacent to the street being built, and others are relatively far away, that does not factor into the billing.

A condominium can sometimes have a high percentage of the owners on a residential block, but not necessarily that much frontage. As noted above, percentages in favor are calculated both by percentage of owners and percentage of front footage, to help understand that a true majority is reflected both ways.

E. Unimproved Streets with Shared Jurisdiction

On certain unimproved residential streets, properties on one side of the road may be City of Birmingham residents, while those on the other side are residents of other municipalities. In general, the City would expect the residents of the other municipality on these streets to share in the cost of the benefit of the improved street that they use and reside on.

For potential projects on streets with shared jurisdictions, additional pre-planning effort would be required to gain the cooperation of the other municipality to facilitate the special assessment. The City does not have the authority to directly assess the residents outside the City, and would, in effect, have to charge the neighboring municipality their portion of the costs, who in turn, could then special assess the individual property owners that are receiving the benefit of the improved street.

On these unimproved streets with shared jurisdiction, there is a risk that the neighboring municipality may not be cooperative in participating in the project. For most of the streets in this category, the City maintains jurisdiction over the entire right-of-way, and it would be possible to complete any needed sewer and water system improvements, as well as road improvements without their cooperation. If that were to occur, the City could consider the properties outside of the City to be neutral properties and pay the cost so as not to overburden the City residents along the particular street.

The exception to this is Saxon Drive, between Southfield Road and Norfolk Drive, and Pine Street, between the City Limit east of N. Glenhurst Drive and the City Limit west of Westwood Drive. On these two streets, the road right-of-way is split with the neighboring municipality. The south side of Saxon Drive is in the Village of Beverly Hills, and the south side of Pine Street is in Bloomfield Township, whose roads are under the jurisdiction of the Road Commission for Oakland County. The City must gain the permission of these neighboring municipalities or agencies to construct any work in the part of the right-of-way under their

jurisdiction. An intergovernmental agreement would have to be entered for projects on these streets, which would define how costs for road improvements would be shared.

This summarizes the petitioning and billing process established by the City for special assessment districts.

COMMITTEE RECOMMENDATION:

The Committee agrees that the billing process should remain unchanged.

PAVEMENT/ROAD SURFACE TYPE

PAVEMENT AND ROAD SURFACE TYPES

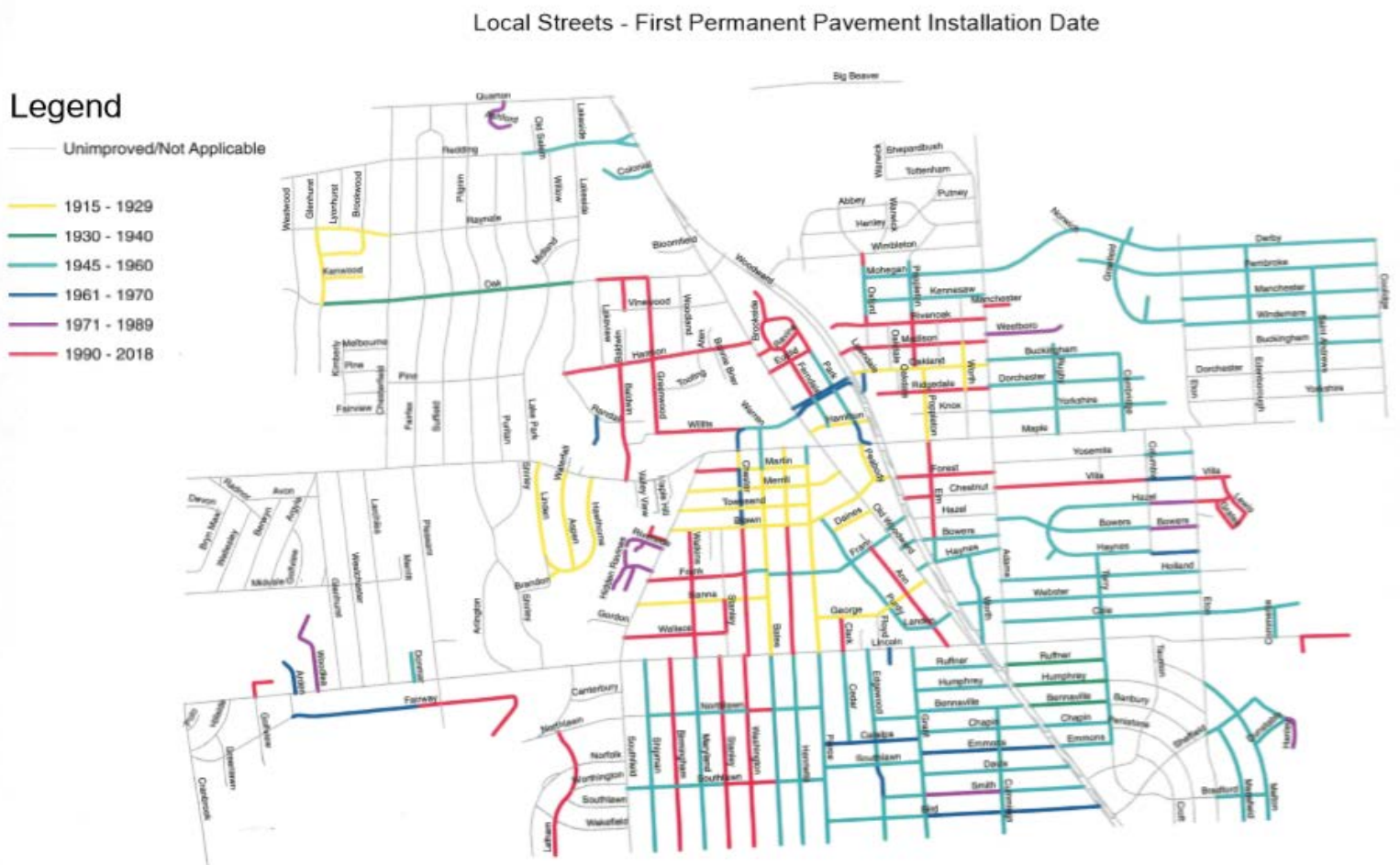
Like most road agencies, Birmingham has a variety of different types of pavements that have been installed over the years. The following is broken into two main categories. The first section attempts to explain the various permanent road surface types used in Birmingham. The second section attempts to explain the maintenance policies and how they differ from each other.

PAVEMENT SURFACE TYPES

Streets can be broken into the categories of improved/engineered pavements, and unimproved pavements. There is no clear indication in the Engineering files as to how a pavement surface type was selected. The following information is provided from general observations:

Figure 3, provides an illustration of the first permanent pavement installation date throughout the City, the map has been broken down into subcategories that help the reader understand the various phases of development within the City. For example, the 1915-1929 category (yellow) tends to be centered on streets located within the original square mile of the village of Birmingham. Even in this early era, a mixture of concrete and asphalt streets were installed. Some remnants of these oldest pavements still remain, although most have been completely rebuilt.

Figure 3: Pavement by Installation Dates



Only a small number of streets were paved between 1930-1940 (green) during which time asphalt was the pavement type of choice. These streets have all been reconstructed within the last 20 years.

After World War II, the City experienced a significant building boom, with many local streets being paved in the period of 1945-1960 (teal). In the earlier years of this period, or if a developer was involved, it appears that asphalt was the more common type used. Streets that were designed and built through the Engineering Dept. were generally concrete, likely paid for by special assessment. As most of the City was developed by 1960, not many streets were paved during the following three decades 1961-1989 (blue and purple). This time period also saw a tendency toward concrete, as most streets being paved would have been designed and built through the Engineering Dept.

In the late 1980's, the Engineering Dept. moved to construct streets with a deeper asphalt section. As demand for special assessment projects increased from 1990 through 2007, all streets were constructed of asphalt.

Figure 4: Asphalt vs. Concrete

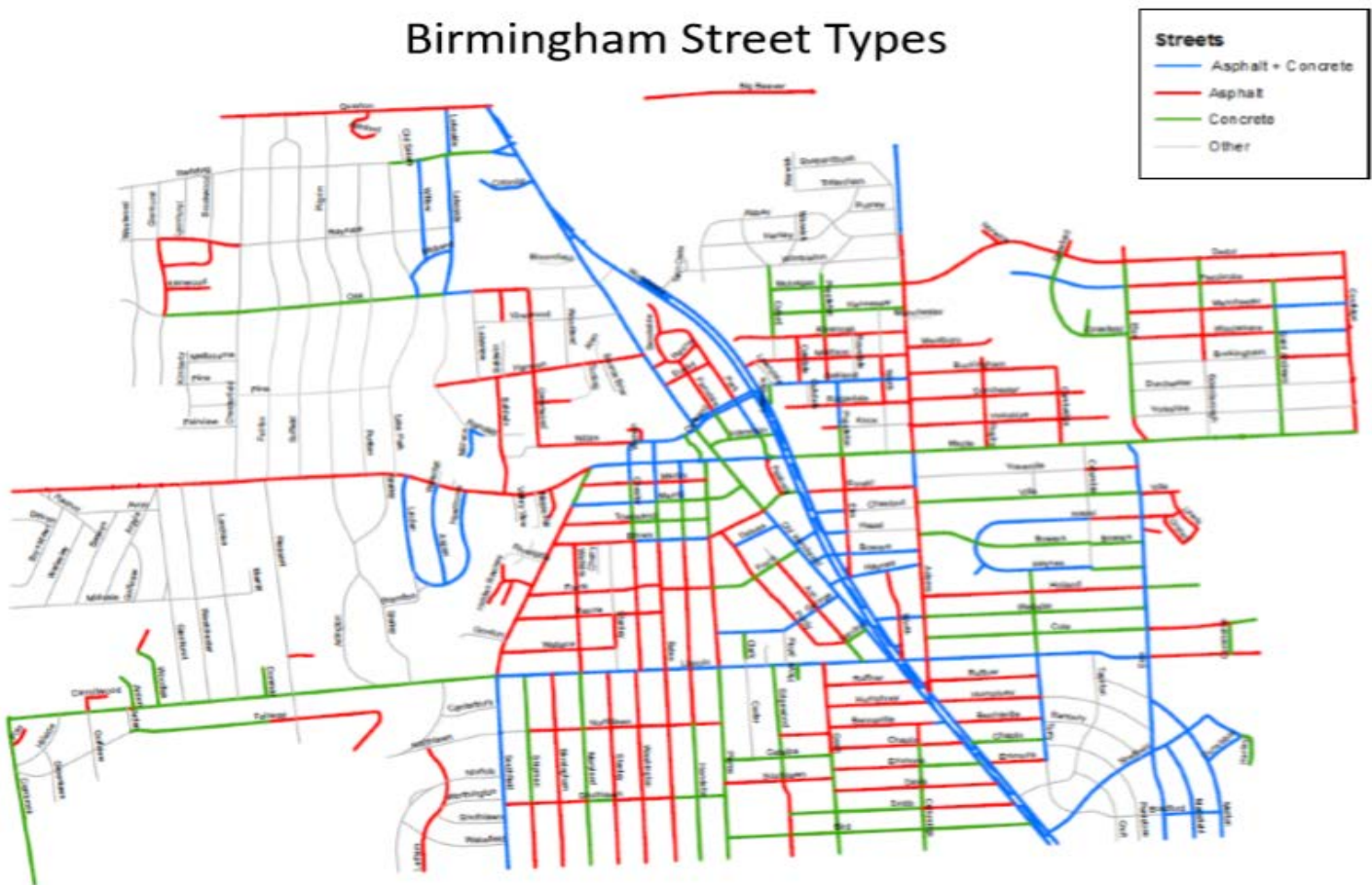


Figure 4, provides information pertaining to whether a permanent pavement was built with concrete (green) or asphalt (red). In certain situations, it can be beneficial to overlay a deteriorated concrete pavement with a thin asphalt pavement in order to extend the life of the overall pavement further (blue). The following general observations can be made relative to both pavement types:

CONCRETE VS. ASPHALT

1. Initial construction costs for concrete streets are typically higher when compared to asphalt. The cost to those in the assessment district has averaged about 25% more when concrete is installed. However, the service life of concrete is typically significantly longer, making the overall lifecycle cost potentially less, particularly since the City is fully responsible for long term maintenance.
2. Concrete streets are more difficult to construct, especially on occupied streets. An asphalt street would require a period of closing access to all driveways of less than 10 days. With concrete streets, it is about three to four weeks.
3. The installation of a concrete street can be considered a significant change in the look of the neighborhood that was used to a dark cape sealed surface historically. The number of residents that raise this issue are relatively few. Concrete can be colored to reduce the bright white look. The City has resisted these ideas, as it tends to fade back to its original white color with time, and it is impossible to match in the future as sections are removed and replaced.
4. Typical residential concrete streets in our area consist of 6 to 7 inches of concrete, while typical residential asphalt streets consist of 3 to 4 inches of asphalt. The thicker “rigid” concrete is generally more durable and able to carry significantly more traffic loads than the thinner “flexible” asphalt. This directly contributes to the overall longevity expected from concrete streets.
5. The Engineering Dept. preferred installing concrete streets from the 1950’s to 1980’s. For reasons that are not clear, deep strength asphalt was used starting in the late 1980’s. The City Commission in the 1990’s indicated an informal preference to asphalt for aesthetic reasons. As the aging process on newer asphalt streets became more apparent, the Engineering Dept. began reconstructing local streets (those not being assessed) with concrete in 2009. All recent special assessment districts have been paved with concrete as well, given its preferred maintenance characteristics.

IMPROVED STREET MAINTENANCE

Asphalt road maintenance in Birmingham currently takes the following steps:

1. When an asphalt road surface is first placed, the City hires a separate contractor that installs an “asphalt rejuvenator.” This chemical compound is placed on the top of the new surface within weeks of finishing. It reactivates the asphalt materials to bond with each other again, creating a deep waterproofing sealer. We have found that it is a worthwhile expenditure in adding years to the service life.
2. Between years 5 and 10, the street is checked for its condition. If it is aging normally, it will be crack sealed and another coating of asphalt rejuvenator is applied.
3. Between years 10 and 20, if possible, the deteriorating spots should be removed and patched with asphalt. A thin layer less than 1 inch deep is milled at the concrete gutter pan, and cracks are sealed. A micro-layer of asphalt (less than 1 inch deep) is placed to cover the original top surface, and extend the life of the pavement.

The steps taken above are allowing streets to have their life extended. However, these processes take time and money and were not always implemented. On asphalt streets where they were not implemented, a more significant resurfacing project is needed between years 15 and 25, wherein 1.5 to 2.5 inches of asphalt are removed. Bad spots are patched full depth, cracks are sealed, and a new layer of 1.5 to 2.5 inches of asphalt are replaced.

The resurfacing process can continue again into the future, depending on how the street is aging. Some asphalt streets have been successful in having their life extended up to 70 years, although by doing so, the surface will have been rather poor for a considerable amount of time.

Concrete road maintenance in Birmingham currently takes the following steps:

1. As a part of the initial construction, the new pavement is sawcut and joints are sealed. No additional measures are taken unless a section cracks prematurely, which is addressed as warranty work.
2. Between years 10 and 15 – the joints are monitored and sealed if needed. Miscellaneous deteriorating concrete sections (usually few) are replaced as needed.
3. Between years 40 and 60 – Depending on the nature of the deterioration, the concrete can be:
 - a. Milled and overlaid with a thin asphalt layer, 1.5 to 2 inches thick. This is generally only done now on low traffic streets. It is then treated as an asphalt road for future maintenance cycles, but can be successful in extending the life of the concrete street another 25 years or more.
 - b. Concrete is spot patched as needed to extend the life of the street indefinitely.

The amount of effort and funds needed to extend the life of the pavement is more with respect to asphalt. There was a period in the late 1990's where concrete failed prematurely, but those mix design issues have been addressed and no longer seem to be prevalent.

The committee ultimately concluded that concrete be utilized for new improved streets, however, the cost differential between the two alternatives over time should be considered in the selection of a street surface. Knowing that the City must fund all maintenance of the new street into the future, and knowing that financially a concrete street will prove to be less of a burden to the street fund over time, the City Engineer will make the determination on the appropriate pavement material for a respective road improvement project with concrete being the default selection.

COMMITTEE RECOMMENDATION:

The committee conducted a thorough review of surface type and road design options that will be discussed in the Trade-Off analysis section of this report. They agreed that providing a choice between concrete and asphalt that was cost neutral and based on the determination of the Engineering Department.

UNIMPROVED STREET CAPE SEAL / CHIP SEAL PROGRAM

In the meantime, what does the City do to maintain unimproved roads?

Cape seal surface treatment is the primary maintenance method used by the Department of Public Services to maintain Birmingham's unimproved streets.

Cape seal is a *chip seal* street surface treatment that is followed by an application of a slurry or micro-surface. It can be applied to existing pavements in order to extend service life, or be applied to gravel roads in order to reduce dust and improve drivability.

The following report summarizes how treatment projects are administered and explains the cape seal process.

Project Administration

Cape seal projects, although performed by a contractor, require significant staff resources to plan and administer. Tasks include condition review, planning, budgeting, contract bidding, and communications, among other functions. The following provides a brief summary.

Condition Review

Cape seal projects begin with an informal review of existing street surface conditions on unimproved streets. The Department of Public Services examines street surface age, overall condition, and driveability in determining which streets to include in any potential maintenance project.

Planning and Budgeting

The scope of any cape seal project is necessarily limited to available resources – both in terms of staff and dollars. Although the majority of project costs are assessed to property owners, initial outlays are made from the major/local street funds, and the city is responsible for roughly 15% of costs. Once it has been determined that a cape seal project is warranted, rough costs are estimated and included as part of the regular budgeting process.

Contract Bidding

A request for proposals to perform chip seal maintenance is posted in advance of each project and seeks per-square-yard prices for double-chip seal, slurry seal, and optional surface pulverization. It also requests prices for optional spray patch surface preparation (per ton) and manhole adjustments (each).

Submitted bids are reviewed, and an award recommendation is presented to the City Commission.

Special Assessment District

Each property adjacent to a proposed cape seal project is identified in drafting a preliminary special assessment district parcel roll. This involves a parcel-by-parcel review of the project area, and the determination of each property's assessable footage.

Using property records, field measurements, and bid prices, improved cost and assessment estimates are produced for use in subsequent public hearings.

Public Hearing of Necessity & Confirmation of the Assessment Roll

The Public Hearing of Necessity is the first of two public hearings required for the establishment of a special assessment district. Typically held at a regular meeting of the city commission, the hearing involves a presentation of the proposed project, a demonstration of its necessity, and preliminary cost estimates. Property owners have the opportunity to address the City Commission and express support or opposition to the project before it votes to determine necessity.

If the determination of necessity is affirmed, the listing of properties to be assessed is presented to Commission for confirmation at a subsequent meeting. Public input during this Confirmation of the Assessment roll is limited to matters related to the assessment roll.

Both hearings are subject to advance notification requirements including public announcements in locally-circulated newspapers, public postings, and notices mailed to each affected property owner.

Other Communications

In addition to the required hearing notifications, the Department of Public Services sends an informational mailing to affected properties well in advance of any project. The letter introduces the tentative project, answers many frequently asked questions, and provides guidance to owners interested in exploring the option of a full improvement.

The most recent cape seal project also featured a community meeting hosted by DPS and the Engineering Department. It shared project details, addressed questions and concerns, and again provided guidance to owners interested in a full improvement alternative.

Throughout the course of the project, schedule updates are provided on a designated web page – bhamgov.org/cape seal.

Assessment Methodology

Project costs are assessed to property owners based on the following method:

85% of front-foot costs for all property fronting the improvement;
25% of side-foot costs for all residential property siding the improvement;
85% of side-foot costs for all improved business property siding the improvement and;
25% of side-foot costs for all unimproved business property siding the improvement.

Cape seal assessments are required to be paid in one installment, and are otherwise subject to interest charges for unpaid balances.

Costs

Prices for double chip application and slurry seal have increased annually an average of 6% and 3% respectively between 2014 and 2017, as indicated by DPS bid award records.

Using the current project as an example, an average 80' lot fronting a street that will be pulverized and resealed will see an assessment of approximately \$850 - \$1000.

Work Processes

Cape seal field work typically spans the course of 3-4 weeks, depending on the size and scope of a project. Work is spread among three phases: preparation, chip, and slurry. Each phase requires approximately one day of work on each street segment.

Street-side parking restrictions are required during most work days, and are communicated via street signage and the city's other communication platforms.

Surface Preparation

Existing street surfaces are prepared through one of two methods: spot patching or surface pulverization. On streets with a relatively flat profile, hot- or cold-mix patch product is used to repair potholes and areas of significant deterioration. On streets with pronounced crowning, surface pulverization is the preferred preparation method. Crowning results from multiple chip seal applications over a number of maintenance cycles. Pulverization grinds the existing stone chip surface and redeposits it in place. The material is then graded to achieve a slight grade from the road center, and then roll-compacted. See figure 1.

Pulverization often results in the road gaining 1-2" of width, as the excess crown material is spread across the surface during grading. Although the process results in a flatter, more consistent surface, it can present challenges as well. Changing the existing profile of a street may remedy some water ponding issues, but has the potential to also create new ones.

The resulting surface is an untreated gravel street.

Chip Application

After surface preparation, heated asphalt-based binder is sprayed onto the gravel surface, followed immediately by a layer of evenly-distributed stone chips. A dump truck loaded with stone chips provides a supply of material to the spreader and roller follows closely, embedding the stones into the surface. See figure 2.

Typically, Birmingham cape seal projects specify a second application of chips, known as 'double-chip.' The second layer provides an additional seal, and helps to better blend irregularities in the road surface. Because contractor equipment is already on site, a second application is possible at a reduced cost.

Post application, the road is swept periodically to remove loose chips, and traffic is allowed to help set stones into the surface over the course of 1-2 weeks. The resulting surface represents a traditional 'chip seal.'

Slurry Application

After 1-2 weeks, a slurry coat is applied to the chip sealed surfaces. Slurry is a mix of water, crushed stones, asphalt emulsion, binders, and water. It has the consistency of pancake batter, and is applied using specialized sprayers. The application of slurry to a chip seal surface is what differentiates a chip seal from a cape seal.

Slurry provides an additional moisture seal, a skid resistant surface, and significantly reduces dust. Upon application, the material is brown in color, gradually turning gray or black over the following weeks and months. To the untrained eye, the surface can resemble an asphalt overlay.

Slurry application requires partial street closures, as the product requires 4-5 hours to cure. To achieve minimal traffic impact, streets are treated in block segments, ½ of the roadway (lengthwise) at a time. Residents affected by the partial closures are notified through informational door hangers, and street signage. Typically, streets are reopened for traffic the same day.

ADA Ramps

Prior to the 2015 project, chip/cape seal projects were exempt from an Americans with Disabilities Act requirement that sidewalk crossing ramps be upgraded to new construction standards as part of street improvements. Subsequently, the Federal Government determined chip/cape seals to be a significant 'improvement' and clarified the requirement to include ramp improvements, where not already compliant, as part of any such project.

The construction of ramps is administered as part of the Engineering Department's annual sidewalk replacement program. These costs are included in each property's special assessment, adding approximately \$2-3 per foot to assessments.

Ramp are not necessarily constructed in conjunction with the cape seal work, and may be completed prior to or after the project, depending on the scheduling.

Cape Seal Benefits and Challenges

Short of a full improvement, cape seal maintenance remains the best option for unimproved streets. The alternative is to leave these streets as untreated gravel – a condition unlikely to be welcomed by residents. For the relatively low cost, cape seal provides the benefit of a cleaner road that has improved drivability over bare gravel roads. Its longevity is typically 7-10 years, but can vary depending on a number of factors including traffic and weather.

From an administrative perspective, cape seal presents a number of challenges. Among the greatest is managing residents' outcome expectations. Long-term residents who have been through several chip seal projects understand what to reasonably expect in terms of finished product. Newer residents, however, often describe the work in terms of 'rebuilding the road' which carries with it the expectation of precision work, and levels of improvement not typically possible (or expected) with cape seal maintenance.

The Committee recognizes an opportunity to revise the initiation process so that the City initiates projects based on a ranking system and eliminate the need for homeowners to initiate a project and gather a majority of signatures from their neighbors. The petition option will remain available for homeowners interested in pursuing a project prior to the City's initiation.

COMMITTEE RECOMMENDATION:

To recommend that all street improvements shall be charged to residents in the same percentages as the City currently uses. Streets that require a substantially increased cross-section or pavement width shall be reviewed by both the Engineering and Finance Departments of the City to determine the excess costs resulting from those changes, and that excess amount shall not be included in the sum used to determine the resident's payment for the special assessment.

**WHAT DO OUR NEIGHBORING COMMUNITIES DO WITH
THEIR UNIMPROVED ROADS?
PEER REVIEW/ANALYSIS**

PEER REVIEW OF NEIGHBORING COMMUNITITES

As the committee examined Birmingham’s street improvement policies and explored potential changes, they reviewed the policies of neighboring communities. The following summarizes policy differences between Farmington Hills, Rochester Hills, Royal Oak, Troy, and the Oakland County Road Commission.

The information was compiled primarily through conversation with relevant staff at these agencies. A standardized questionnaire was sent as well, with limited response. At the beginning of this process staff sought insights from the smaller southeast Oakland County communities that are most similar to Birmingham, such as Clawson, Berkley, Huntington Woods, and Pleasant Ridge. These communities have long had a fully-improved local road system that appears to date back to the 1950s, and current staff at these communities had few historical insights to share.

The policy examination revealed several key areas in which policies differ between communities. They include resident support thresholds for the instigation of a cost/viability study and final project approval, assessment cost sharing, and payment terms. It also considered current unimproved street mileage and maintenance practices. The following chart summarizes the information:

	Miles of Unimproved Roads	Use of Chip Seal For Maintenance?	Cost Study/Informational Meeting Threshold	Project Approval Threshold	Based on	Front Footage Assessment Cost Share % (City/Owner)	Payment Term (Years)
Farmington Hills	22	No	25%	51%	Parcels	20/80	10
Rochester Hills	20	No	60%	61%	Parcels	40/60	15
Royal Oak	3.6	No	n/a	50%	Footage	50/50	15
Troy	10	Yes	50%	50%	Footage	50/50	10
Birmingham	26	Yes	50%	50%	Footage	15/85	10

The following sections highlight noteworthy differences among several of the studied communities.

Farmington Hills

Among the cities examined, Farmington Hills is most similar to Birmingham in terms of unimproved street surface quantity. It maintains 22 miles of unimproved gravel roads through frequent grading and the application of dust control measures. Unlike Birmingham, Farmington Hills’ unimproved streets are not chip sealed. An important difference from Birmingham is that even after a road is paved, it is not rehabilitated unless another assessment district is created.

The process to upgrade to a fully-improved street is petition-driven, although it only requires 25% interest from affected property owners to trigger a city-performed preliminary cost and viability study. The lower threshold makes it easier for interested petitioners to obtain preliminary cost estimates, but risks spending staff time and resources on projects that have a greater potential for rejection. Reducing this threshold can also give the appearance of staff ‘taking sides’ by encouraging discussion when there is not a majority in favor of exploring an improvement.

Farmington Hills also has a ‘directed’ road improvement policy and procedure. The 2015 policy notes:

“...in instances where road conditions have become seriously degraded and become an issue of safety and overall community appearance, it may become necessary for City Council to initiate a road reconstruction project without a petition. The objective of this policy is to establish a process for DPS staff to evaluate and recommend a directed road reconstruction special assessment district to the City Manager and City Council.”

The policy considers regularly-updated road pavement condition assessments in determining eligibility and project prioritization. Note: the excerpt above uses the term reconstruction, implying that it only applies to the reconstruction of existing improved surfaces. Within the context of the full policy, however, it is clear that it also applies to unimproved streets. The full policy and other background information for each of the communities discussed here is included as **Appendix B**.

Rochester Hills

Rochester Hills publicizes an annual ‘call for projects’ during the months of September and October to gauge public interest in special assessment projects, including gravel street improvements. During the 60-day time frame, property owners desiring an improvement may submit an informal petition indicating at least 60% homeowner interest. Subsequent steps follow a defined schedule and process similar to Birmingham, including public meetings, circulation of official petitions, etc.

By limiting submissions to the defined time frame, the city can better plan for and schedule potential projects. Staff efforts on such initiatives can be more focused and the various tasks related to administering special assessment district related projects can be accomplished more efficiently.

Additionally, by publicizing the request regularly, the city is continually educating the public on their available options, which can have the effect of starting conversations among neighbors. One drawback is that if there is momentum and interest in pursuing an improvement outside of the designated time frame, it may wane if forced to wait a number of months before being able to proceed through the process. It could also potentially strain staff if multiple requests are received simultaneously.

Another noteworthy feature of Rochester Hills’ street improvement policy is that it provides homeowners an inflation-indexed assessment cap.

Royal Oak

Royal Oak maintains relatively few unimproved roads – only 3.6 miles out of an approximate 200 miles. Within the past few years, Royal Oak has taken a more aggressive stance to encourage residents to submit petitions, hoping to eventually remove the remaining unimproved roads from their system.

In order to encourage resident support for street improvements, Royal Oak has extended a considerable discount to residents during the term of a local road millage. Typically assessed the full cost for an improvement, the incentive offers a 50% discount for property fronting an improvement, and 75% discount for side lots. Staff indicated that the incentive has largely been successful, having upgraded 7 of unimproved streets since the 2015 millage.

Road Commission for Oakland County

Although not included in the table above, staff also spoke with the local roads manager for the Road Commission. In townships, maintenance of all public streets is the duty of the Road Commission. Unlike cities, the Road Commission has no legal authority to force a special assessment district. Roads that are paved are not invested in further, other than for patching holes and keeping them safe. Property owners must petition the Road Commission to get a rehabilitation project started, and owners must pay 100% of the assessment cost. Gravel roads must also be petitioned and paid for by assessment in order to be paved.

At times, roads get in such poor condition that the County has explored the idea of removing the old asphalt and making it a gravel road again. That too would involve a cost for which there is no source of funds. It also would be a setback for the road system, so to date, that has not yet occurred.

COMMITTEE RECOMMENDATION:

The City Engineering Department will prioritize projects based on an infrastructure ranking system outlined in this report. The City will begin initiating road conversion projects based on this ranking system and incorporate them into the five-year capital plan. Homeowners will retain their ability to petition the City to advance a project more quickly, where possible.

FIVE-YEAR CAPITAL IMPROVEMENT PLAN DEVELOPMENT

FIVE-YEAR CAPITAL IMPROVEMENT PLAN

How do road projects get planned and when?

As a part of the annual budget cycle, the Engineering Dept. updates its five-year capital improvement plan. This work is done in December of each year. Since this committee was considering a policy shift that would impact future budgets, staff expedited this process in 2019 to provide the committee with a better understanding of the ongoing fiscal responsibilities currently placed on the City's capital improvement budgets.

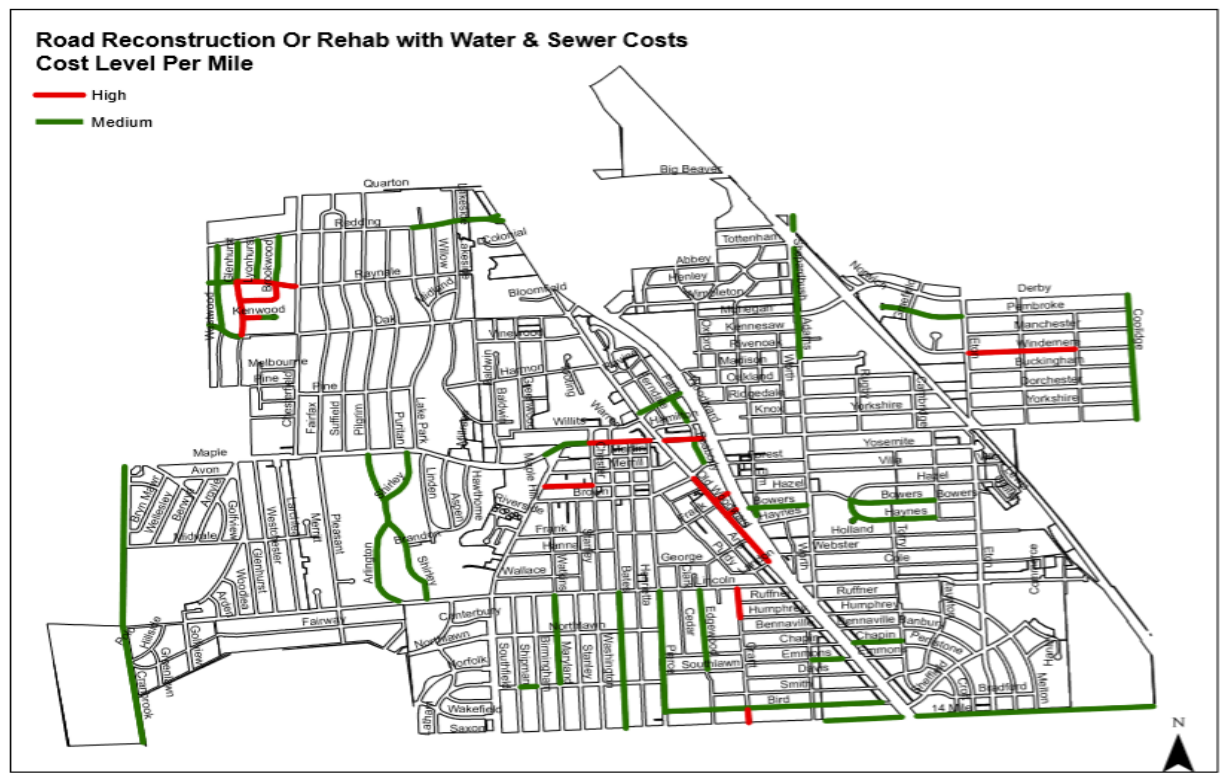
Since its inception, Birmingham has offered to maintain its improved streets at no cost to the adjacent property owners, provided an initial special assessment was paid by the property owner to cover the original cost of construction. As the street system ages, this policy results in the need to prioritize and invest in the street system each year in order to achieve an acceptable level of maintenance.

Capital improvement expenditures can be loosely categorized into two spending levels. For the purposes of this discussion, major projects are labeled as Road Reconstruction or Rehabilitation (with Water and Sewer Costs). Lower cost projects that tend to be geared toward maintenance are labeled as Maintenance Treatments. These two categories are explained in more detail below.

Road Reconstruction or Rehabilitation (with Water & Sewer Costs)

Birmingham has several improved streets with pavements that are nearing the end of their service lives. There are also several miles of sewers and water mains that are in need of repair and/or replacement. For the past several years, staff has been able to leverage spending more efficiently by prioritizing those streets that need work in all three areas. Many of the streets that were identified, as such, in the past have already been addressed. While the number of streets that need major work in all three categories is reducing, there are still many streets that need significant investment. As shown in Figure 5 on the following page, projects are broken into the subcategories of either a high or medium level cost per mile.

Figure 5: Medium or High Improvement Cost per Mile



1. High Cost per Mile

Due to efforts made in the past, the number of street miles that can be classified as needing a high level of cost per mile is relatively small. These are streets that typically have:

- Improved pavement that is at the end of its service life, needing full replacement.
- Water main that is in need of replacement, usually due to age and small diameter (compared to current standards).
- Sewers that are in poor or fair condition, and often in need of increased capacity.

Examples of projects placed in this category include:

Maple Rd. (Chester St. to Woodward Ave.) = \$10,000,000 per mile

Townsend St. (Southfield Rd. to Chester St.) = \$2,300,000 per mile

Both streets include complete removal of the existing pavement, and replacement with a new concrete street with curb and gutter. On a downtown street such as Maple Rd., extra costs include traffic management, traffic signal replacement, fiber optic system, and accelerated construction. Costs such as sidewalks, electrical system, landscaping, and street lighting come from sources other than the street fund.

The Maple Rd. example is not the norm. The one block project planned on Townsend St. is a more common project. The cost per mile includes complete pavement removal and replacement with new concrete and curb and gutter, replacement of drive approaches and adjacent lawn areas, and minor traffic management. Streets selected for complete replacement were generally constructed in the 1920's to 1940's.

2. Medium Cost per Mile

Street rehabilitation at a medium level of cost per mile can fall into several subcategories.

- a. *Major Street Resurfacing* – There are currently several major street segments planned for resurfacing. Minimal underground improvements are planned, but the asphalt surface is in need of replacement. Asphalt work will tend to be at least 2 inches of asphalt removal and replacement. Traffic management on these streets require additional effort. Several of the currently planned projects will be completed with funding from outside sources, such as federal, county, or adjoining jurisdiction. The cost per mile shown reflects the entire expenditure.
- b. *Local Street Rehabilitation* - Many pavements built in the 1950's and 1960's are in need of water main replacements, and in some cases, sewer work. The curb and gutter systems are in relatively good condition, but the driving surface is poor to marginal. Since utility work is needed, the pavement can be removed, while the curb and gutter system is saved. This then saves the cost of drive approach and lawn replacements, and simplifies construction. Since the curb and gutter system is not being replaced, a lower cost asphalt pavement is justified. With its shorter service life, the entire street will age at a more consistent level.
- c. *Unimproved Street Utility Improvements* – As noted before, utility improvements on unimproved streets have not been prioritized, given the difficult task of attempting to completely rebuild a gravel street that has no drainage system. Unimproved streets that have curbs do not have this issue. Water and sewer improvements can be completed with the curbs left intact, and a new cape seal surface can be installed at a lower cost. Two neighborhoods are identified with such work in the near future, including the northwest corner of the city, where water mains and storm sewer work is planned on streets such as Westwood Dr. and N. Glenhurst Dr., as well as water main replacement on Arlington Rd. and Shirley Dr.

Sample estimated costs per mile:

- | | | |
|------|---|-----------------------------------|
| 2.a. | Cranbrook Rd. (Maple Rd. to 14 Mile Rd.) = | \$1,600,000 per mile ¹ |
| 2.b. | Bowers St. (Hazel St. to Columbia Ave.) = | \$1,830,000 per mile |
| 2.c. | Arlington Rd. (Maple Rd. to Lincoln Ave.) = | \$ 140,000 per mile ² |

Maintenance Treatments

An asphalt maintenance contract is typically conducted once per year, in an effort to provide relatively low cost treatments to asphalt streets needing attention. As can be seen on the map, there are several streets recommended for work at this time. In the six-year forecast, the total cost estimate for this work is \$990,000. In order to achieve this work, it is recommended that it be broken into three contracts paid for over three fiscal years, which will be reflected in upcoming capital improvement plans.

Subcategories are defined below:

1. High Cost per Mile

Streets designated for a higher level of repairs will have the following work accomplished:

¹ In this example, the City will be responsible for \$290,000. Other agencies contributing to the cost include the Road Commission for Oakland Co., Bloomfield Twp., and Oakland Co. general government.

² The “cost per mile” shown below is low as the majority of the work will be charged to the Sewer and Water Funds. Pavement restoration cost includes restoring and grading gravel surface, applying cape seal, and installing handicap ramps.

Subcategory 1 (Resurfacing)

- a. Milling top two inches of asphalt.
- b. Miscellaneous full depth asphalt patches where needed.
- c. Crack sealing.
- d. New 2 inch top layer of asphalt.
- e. Asphalt rejuvenator waterproofing treatment.

Subcategory 2 (Ultra-Thin Asphalt Overlay)

- a. Milling outer edges at curbs.
- b. Miscellaneous full depth asphalt patches where needed.
- c. Crack sealing.
- d. New ¾ inch overlay of asphalt.
- e. Asphalt rejuvenator waterproofing treatment.

Examples of streets in these categories are:

Latham Rd. (Northlawn Dr. to Saxon Rd.) = \$200,000 per mile (resurfacing)

Oakland Ave. (Woodward Ave. to Worth St.) = \$175,000 per mile (thin overlay)

2. Medium Cost per Mile

Subcategory 1 (Asphalt)

Asphalt streets designated for a medium level of repairs will have the following work accomplished:

- a. Localized patching or joint repairs.
- b. Crack sealing.
- c. Asphalt rejuvenator waterproofing treatment.

Subcategory 2 (Concrete)

Concrete street repairs involve joint or slab replacement as needed.

Examples of streets in this category are:

Harmon St. (Lakeside Dr. to N. Old Woodward Ave.) = \$100,000 per mile

Woodlea Ct. (North End to W. Lincoln Ave.) = \$80,000 per mile

3. Low Cost per Mile

Streets designated for a lower level of repairs will have the following work accomplished:

- a. Crack sealing.
- b. Asphalt rejuvenator waterproofing treatment.

An example of streets in this category include:

W. Brown St. (Chester St. to Pierce St.) = \$52,000 per mile

Five Year Capital Plan: Summary of Costs

The work summarized in the sample streets detailed above represent over \$5,000,000 of work each year over the next five years just in Street Funds.

FUNDING OVERVIEW

Overview of Road Funding

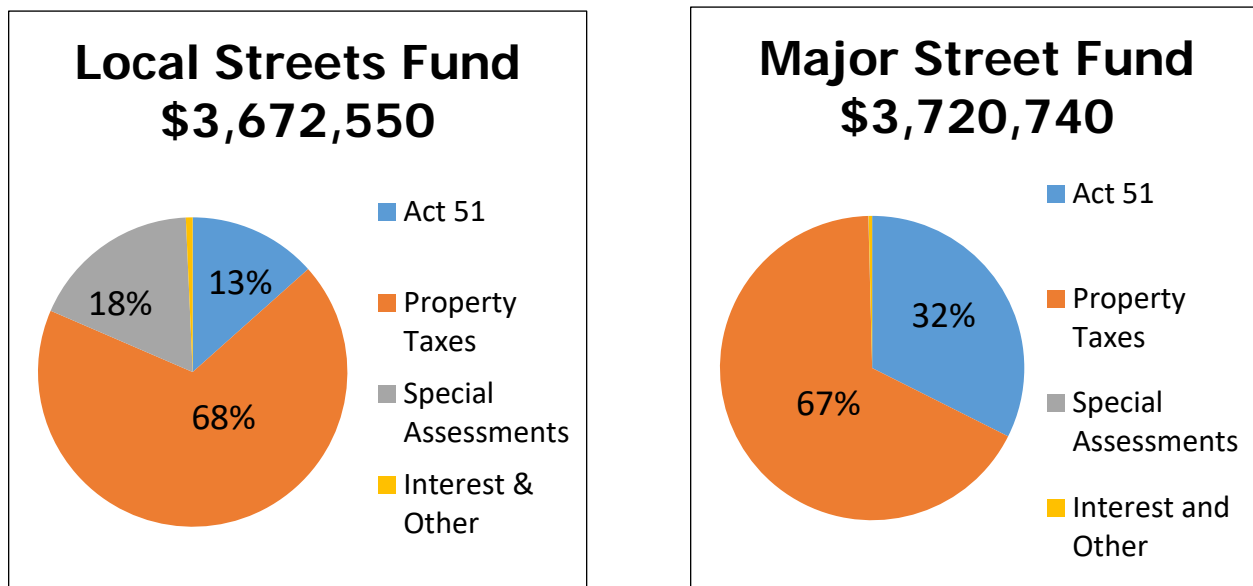
How does the City fund the projects identified in the Five-Year Capital plan?

There are generally four sources of funding for roads:

- Act 51 distributions from the Michigan Department of Transportation,
- Property taxes by way of transfers from the City's General Fund,
- Special assessments from property owners directly benefiting from a road improvement, and
- Road bonds.

Currently, the City receives from funding for roads from all of the sources except for road bonds.

For streets designated as major streets, almost all of the funding comes from property taxes and Act 51. This is because these streets are predominately improved streets. For streets designated as local streets, most of the funding comes from property taxes, with smaller contributions from Act 51 and special assessment revenue. The special assessment revenue is dependent on the number of roads either in the process of being improved or being cape sealed. Below is a comparison of the revenue budgets for fiscal year 2018-2019 for the major street fund and local street fund.



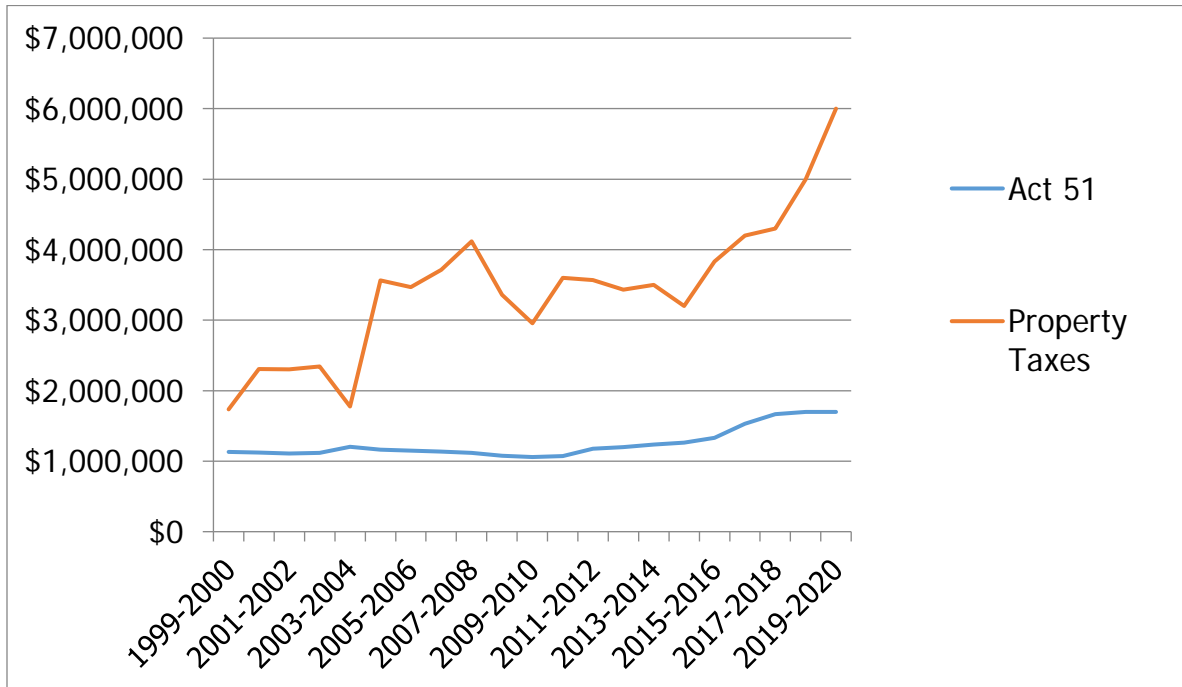
Act 51 Funding

Act 51 funding comes from the Michigan Department of Transportation. This funding is generated at the state level from receipts from fuel taxes, vehicle registrations, and contributions from the state's General Fund. 21.8% of the funds collected from these revenue sources are distributed to cities and villages. Of this amount, 75% is allocated to major streets and 25% is allocated to local streets. The amount distributed to each community is based 60% on population and 40% on the number of road miles.

Property Taxes

Act 51 funding is insufficient to fund street maintenance and improvements on a year-to-year basis. Therefore, funding from the City's general operating millage has to be used to supplement other funding. Historically, the City has used 15%-20% of the property taxes collected in the General Fund to provide road maintenance and improvements. Over the years, property taxes have become a greater contributor to road funding than from Act 51 funding as shown below:

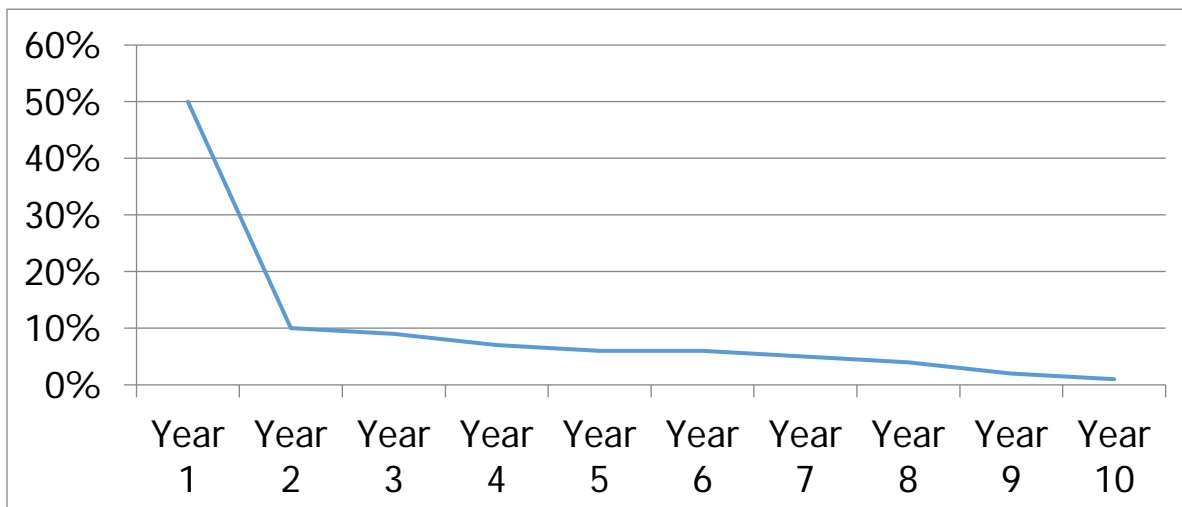
Act 51 and Property Tax Road Contributions 1999-2020



Special Assessments

Special assessments are used as a funding source to offset a portion of the cost of a road where it is being upgraded to an improved road or when the road is being cape sealed. For these projects, the City will pay for the improvement in advance and bill the property owners. The payback from the property owners differs depending on the type of road improvement being done. When a road is being improved, the special assessment is generally set for 10 years. When a road is being cape sealed, the special assessment is generally billed only once. City ordinance does not allow for special assessments greater than 10 years. Typically, the City collects approximately half of the total special assessment in the first year of a ten-year assessment period and then smaller amounts the following years as shown below:

Special Assessment Billing – 10 Year Period



Grants

Grants with the Michigan Department of Transportation (MDOT) are available but are generally restricted to roads that receive heavy use and therefore are not a likely source of revenue for unimproved streets. Examples of roads the City has received MDOT funding for include W. Maple Road and N. Old Woodward.

MDOT created the Transportation Alternatives Program (TAP) grants, which are used for activities that enhance the intermodal transportation system and provide safe alternative transportation options. The City has used these funds for traffic-calming and multi-modal enhancements. Again, it is unlikely that these funds would be available for unimproved streets because they wouldn't meet the eligibility requirements. Both of these grants require a local match and are awarded on a competitive basis, which means that the City's projects are compared to other projects from other municipalities and a governing board determines which projects will receive funding.

Additionally, there are Oakland County Tri-Party funds available. These funds may be used for road or traffic control system upgrades on county roads. The City is required to fund one third of the project with the other two thirds coming from Oakland County and the Oakland County Road Commission. A municipality may save up to 3 years of funding for a project. These funds are generally for small improvements and would not be enough to fund a complete street. Because of the restriction to county roads, this source of funding would not be applicable to the City's residential streets.

Bonding

The City could issue bonds for road improvements, although, looking through the City's records, it doesn't appear that this method has ever been used before. The debt service for the bonds would be paid from Act 51 funds, a special assessment, property taxes, or a combination of all three. It is unknown whether this funding source would be successful for unimproved streets as there may be some reluctance to use the City's debt capacity for this type of project or to bond for something specific to a neighborhood like a road unless the debt service was paid by special assessment only.

Road Expenditures

Road funding is used to pay for traffic controls & engineering; street and bridge maintenance; street tree maintenance; street cleaning; ice and snow control; and capital improvements. Currently, Act 51 funding is not sufficient to pay for the non-capital improvement expenditures.

Capital improvements are projected out for 5 years to assist in long-range financial planning. When a neighborhood determines that they want an improved road, that project has to be then added to the long-range planning process to determine which budget year the City can afford to do the project considering both funding for the road and funding for water and sewer improvements if those utilities need to be updated.

At the April 4, 2019 meeting of the committee, staff provided a refresher presentation that covered all of the subject matter regarding funding for road projects, pavement types, distinctions between improved and unimproved roads, and a paving and maintenance history in the City regarding projects such as these.

The purpose of the refresher was to prepare for further exploration regarding possible funding alternatives that would allow pursuit of a potentially more aggressive program for converting the remaining twenty-six miles of unimproved streets throughout the City to improved streets.

Property Taxes and Headlee Impacts

State law governs how much a city may tax for operating purposes. Under state law, the maximum Birmingham can levy is 20 mills (\$20/\$1,000 of taxable value). In 1978, the voters of Michigan approved Proposal E (the Headlee Constitutional Amendment). Under the Headlee Amendment, the City cannot collect operating millage on the increase in taxable value derived from existing property which exceeds the Headlee inflation factor. This is accomplished by reducing the maximum authorized tax rate by the proportion by which the percentage increase in to the total value of existing property in any year exceeds the rate of inflation during the prior year. As a result, the maximum millage that the City may levy has fallen from 20 mills back in 1978 to 11.4364 mills currently. For fiscal year 2020-2021, the City is actually levying 11.0433 mills, leaving .3931 mills or approximately \$1,000,000 in funding capacity. Having millage capacity is a sound financial practice because it allows for flexibility for emergencies or a downturn in the economy.

FINANCIAL MODEL DEVELOPMENT

To begin preparing inputs for the model, staff worked to update the five-year financial forecast and develop a draft budget for the City to cover the next three years. This prep work assisted in developing the most accurate framework for discussion that reflects the known financial obligations of the City. The challenge inherent in creating a sufficient financial tool for decision-making is that it has unavoidable limitations in the sense that there are a plethora of unknowns. The information from the model must be supplemented along with the history, experience, and knowledge of the Committee and staff to evaluate and consider the implications of any decision making holistically.

The baseline model was established with the known factors that exist today, staff then layered in the projected costs of the unimproved streets project into the model to determine the impact to the general fund and provide an idea with respect to the sensitivity of the general fund as it relates to this program. The outcomes presented were intended for discussion purposes only to help illustrate financial impacts for changes to the current funding approach used to support road conversions from unimproved to improved.

The following are the assumptions that support the model:

General Fund Projection Assumptions:

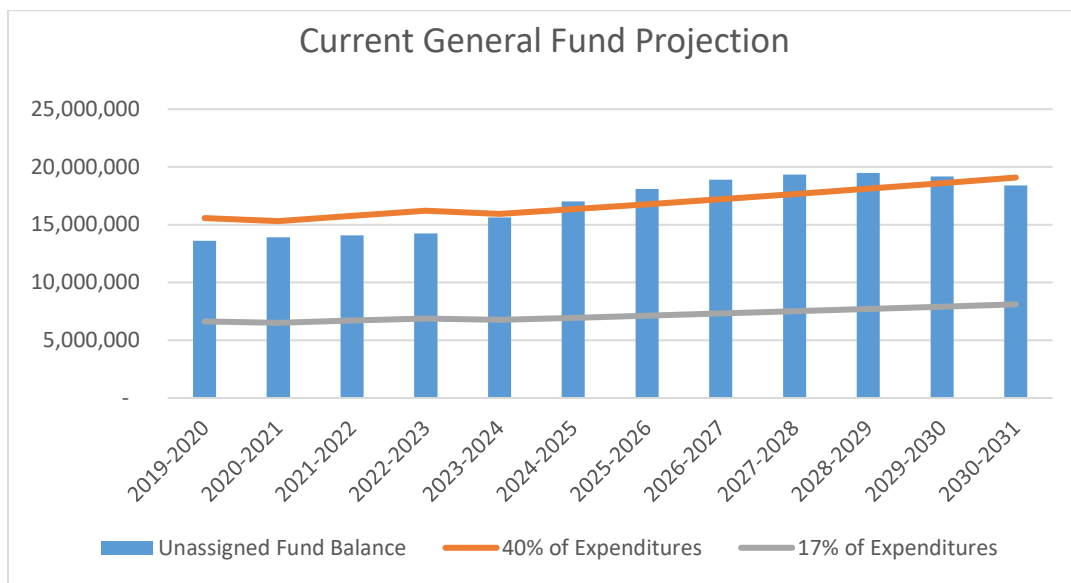
- FY 2020-2021, 2021-2022, 2022-2023 amounts were taken from the approved budget document
- 3% in 2023-2024 and 4% per year increase in taxable value starting in 2024-2025
- Headlee maximum millage rate rollback factor of .982 per year starting in 2023-2024
- Operating millage used for years 2021-2022 through 2029-2030 maintains a .3 mills gap between operating millage and Headlee maximum
- 3% per year increase in personnel costs
- 1.5%-2% per year for other costs
- 2.5% per year increase in transfers to Major and Local Street Funds

These assumptions regarding the general fund are consistent with the City's policies. The limitation of the model is that there are no major projects, currently envisioned, that are contemplated in the model. Therefore, all things would have to remain fairly equal for the model to behave as forecasted today.

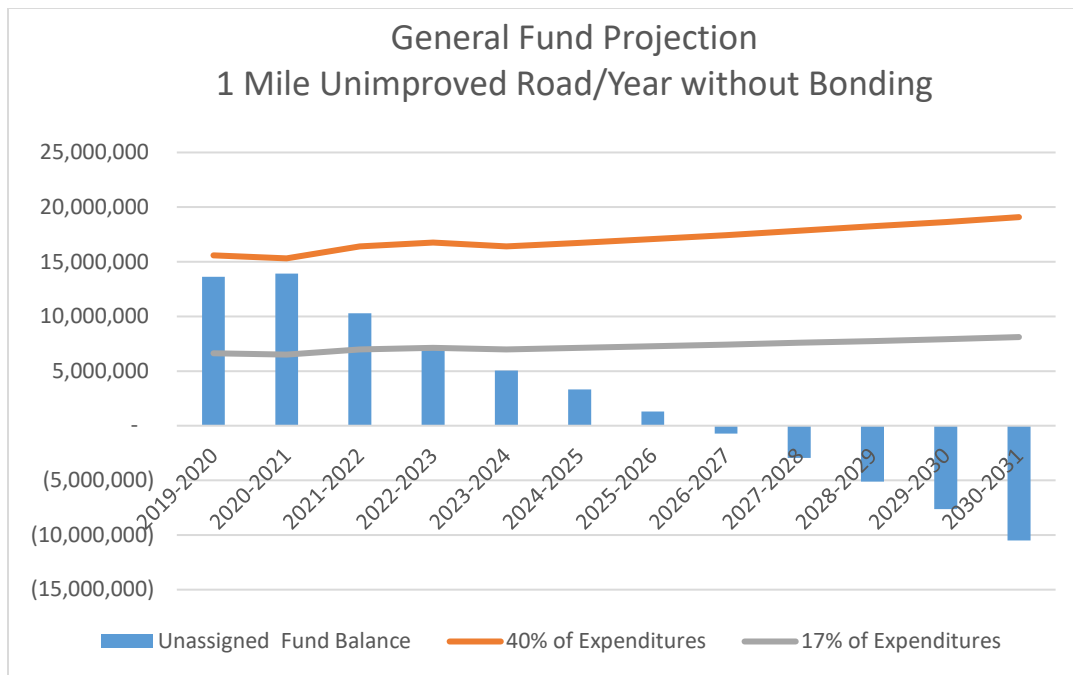
Infrastructure Assumptions:

- 1 mile of roads improved per year
- \$2.3 M cost for road reconstruction per year
- \$1.1 M cost for water main improvements per year
- \$1.15 M cost for sewer improvements per year
- Costs were adjusted 2.5% per year for inflation
- Roads are improved with concrete, curb, and gutter.

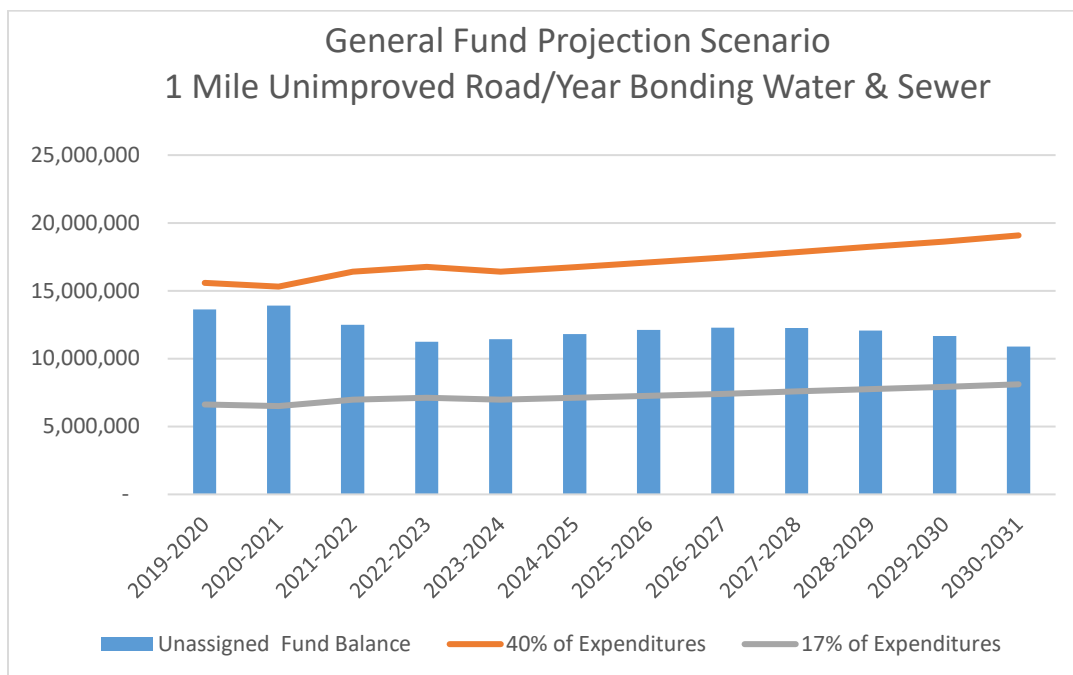
The model assumes the worst case scenario for all 26 miles of roadway. It is anticipated that the need for sewer and water main improvements will not be needed for all projects.



The baseline projections for the general fund are stable and meet the City's requirement with respect to fund balance policy. The policy states that the unassigned fund balance (funds not obligated for other projects or are restricted for other purposes) should remain in a range between 17% and 40% of the total.



The impact to the general fund based on the assumptions outlined above for the infrastructure improvements at \$4.5 million per year to improve one mile of roadway without bonding would have a significant negative impact to the general fund because the funding for the unimproved street improvements including water and sewer improvements would have to come from property tax revenue currently used for operations and other capital improvements.



The chart above demonstrates the effects on the General Fund balance if the funding for water and sewer improvements were bonded rather than paid from existing property tax revenues. The General Fund would still see a decrease in reserves initially as a result of the additional transfer to the Local Streets Fund, but as special assessments are paid off, they reduce the amount of transfers necessary in future years resulting in a stabilized General Fund balance for most of the projection period.

Since the City's current resources cannot fund the level of improvement outlined in the assumptions above, the City is left with two fundamental funding options: 1) pay-as-you-go; or 2) bond financing.

Funding Options:

Pay-as-you-go

- Road improvements are scheduled as part of the City's long-term capital improvement planning process and are initially financed from existing levels of transfers from the general fund to the local street fund. Property owners will be special assessed for the road and will reimburse the local street fund.
- Water and/or sewer improvements would be financed through current water/sewer rates. Optionally, enhanced water/sewer rates which would include additionally funding for improvements could be approved. A \$1 increase in either rate would generate approximately \$828,000 in additional revenues per year.
- A road millage is not available since the City is a 20-mill charter city. A Headlee override to the City's existing operating millage would be the only way to create additional property tax revenues. This would require a vote of the citizens to approve.

Other than the Headlee override, these options do not require a vote of the citizens (City Commission makes funding available through the budget process) and does not add to City's total debt. However, the pay-as-you-go option would result in a slower improvement process (subject to availability of funds).

Bond financing

- Special Assessment Bonds (roads): Debt paid from special assessments to effected property owners.
- Water and/or Sewer Improvement Bonds: Debt paid from either property taxes or water-sewer rates.
- Capital Improvement Bonds (combination of the two above): Debt paid from multiple sources, such as special assessments and water and sewer rates.

Bond financing options allow for more improvements more quickly. However, the bonding alternative adds to City's total debt, are more expensive (interest costs plus bonding costs), and typically require a vote by the citizens.

FUNDING CONSIDERATIONS

	ADVANTAGES	DISADVANTAGES
SPECIAL ASSESSMENTS	Cost is allocated to those who benefit specifically from the improvement. Does not need vote of the citizens.	Results in a high cost per property owner thereby making it difficult to getting road improved.
CITY MILLAGE	Operating Millage: Does not need vote of the citizens (unless Headlee override). Can be approved by the city commission.	Operating Millage: City is already near its millage cap which is shrinking every year due to Headlee. Does not give city room to fund other projects or needs that may arise. May effect bond rating as the rating agencies look at

		millage capacity as a factor of a city's financial health.
BUDGET AMENDMENTS	Road projects are projected five years in advance. This provides clarity in the city's long-term financial planning process and enables the city to manage its millage rates.	There are usually no extra funds available for new projects which are not in the five-year projection. In order to move forward, other road projects would need to be rescheduled or the new project would need to wait five years.
GRANTS	Usually only require a small local share (20-25%) resulting in significant savings to the city.	Grants are not likely to be available for local road improvements. Grants are competitive and are difficult to obtain.
TAX INCREMENT FINANCING	Leverages property value growth to fund improvements.	No TIF legislation exists that the city may employ to pay for local road improvements.

RANKING SYSTEM FACTORS

Similar to the improved street ranking system, it is recommended that each street segment be provided a score based on several factors. The segments with the highest total score would be the ones most likely to be considered for reconstruction primarily funded by a special assessment district. A list of factors and suggested scales follows.

CITY OF BIRMINGHAM UNIMPROVED STREETS RANKING SYSTEM

1. Water System Score

The City has a ranking of every street segment within the City for its water system. The total score of 100 is based on the following system:

- a. **Age (0-20)** – Water Mains are given a score based on their age, with 0 for a main up to 1 year old, up to 20 for a main that is 75 years or older (with 75 being considered the expected service life for the pipe).
- b. **Size (0-20)** – In the past, many local water mains were sized at 4" or 6" in diameter. By current standards, no water mains should be less than 8" dia. Water mains at 4" or less were given a score of 20. Water mains sized at 6" were given a score of 10.
- c. **Reinforcement (0-20)** – Birmingham's system has been modeled with a computer. The model finds areas where water pressures are lower than recommended, considering current measurements, as well as in areas where zoning would predict that larger, taller buildings will be built in certain areas in the future. Points are assigned based on double the change in size recommended in the model. For example, if the model calculates that a 12" main is needed where a 6" main is currently in service, that street segment would receive 12 points under this factor.

- d. **Frequency of Breaks (0-40)** – The City has good records for water main breaks going back 55 years. Each break is given a score of 4 points, with up to a maximum of 40 points that can be earned on a block. Breaks receive a high priority due to the disruption, cost, and damage that they cause.

2. Sewer System Score

The City has a ranking of every street segment within the City for its sewer system, for those sewers located on improved streets. Unimproved street segments were not included for the purposes of the ranking system previously set up since it was not generally considered advisable to conduct major excavations on unimproved streets if those streets were going to remain in their unimproved state. With funding from a state grant, the City is currently cleaning and inspecting all sewers within its system that are over 20 years old. The effort is valued at about \$1.6 million, and will not be completed until near the end of 2019. At that time, a current ranking system for all streets within the City can then be completed that may be used to help develop and finalize this ranking system.

The ranking system used for the previous ranking system had a score of 100, and is based on the following system:

- a. **Structural Condition (0-30)** – Sewer segments with fractured pipe, cracks, voids, etc. are scored higher.
- b. **Operation and Maintenance Condition (0-20)** – Sewer segments that are known to require frequent cleanings due to slow flows, roots, etc., are scored higher.
- c. **Capacity Deficiency (0-40)** – Sewer segments that calculate as being too small for their service area are scored higher.
- d. **Relief Sewer (0-10)** – On those streets where a sewer is recommended to help drain not only the immediate area, but other areas upstream, such segments are scored with an additional 10 points.

3. Pavement Deterioration Score

Pavement deterioration is a factor in the longevity of the cape sealed street surface, which in turn causes ongoing maintenance and safety issues. Unimproved streets in certain areas of the City drain better than others due to factors such as underlying soils, slope, and grade relative to other features such as sidewalks and drive approaches. It is recommended that a scale be developed to rank each street segment between 1 and 10. All streets should be surveyed after a significant (0.5 inch or more) rainfall that would create standing water conditions. Factors and weighting are suggested below:

- a. **Poor Drainage, Street (0-25)** – Drainage of the street surface, as well as the street edge, will be scored for each block. Standing water shortens the life of the cape sealed surface, as well as degrades the use of the road, adjacent parking areas, drive approaches, and adjacent yards.
- b. **Poor Drainage, Sidewalk (0-25)** – While not directly related to the long term durability of the cape sealed surface, poor drainage on the sidewalk creates problems for pedestrians and homeowners charged with maintenance of the sidewalk.
- c. **Existing Grade (0-25)** – Certain cape sealed streets have excessive centerline crowns, meaning that the slope from the center of the road to the edge or gutter pan is excessive. Such slopes can lead to safety issues, drainage issues, and difficulty entering and exiting driveways.
- d. **Existing Cape Sealed Surface (0-25)** – The surface of the existing street will vary typically as a function of how long it has been since it was last resealed. Other factors such as daily traffic counts, base conditions, and drainage can also cause the street to deteriorate.

4. Average Daily Traffic (ADT)

The Police Dept. is in the process of collecting average daily traffic (ADT) counts on all streets in Birmingham. ADT will factor into the ranking system as suggested below:

- a. **High Traffic Counts** - A small number of unimproved streets carry much more than just traffic created by the adjacent properties. Such streets would be considered local collector streets that benefit the entire neighborhood, and sometimes others as well. If a street has an Average Daily Traffic (ADT) count of over 1,000, an additional score of 100 points should be added to its score. The two streets that would most easily qualify for this scoring would be Chesterfield Ave. and the unimproved segments of Oak St. Both of these streets are direct routes to Quarton Elementary School, and carry larger amounts of vehicles than most unimproved streets. The City would be able to improve the level of service to the entire area if these streets were improved.
- b. **Medium Traffic Counts** – Most streets in the system will be labeled as being in the medium category. The most common street segment condition is one that connects to other streets at both ends, generally serves the immediate properties, and has a small to medium amount of other traffic that is passing through. On these streets, traffic volume is not a factor, therefore, no score is added on these segments.
- c. **Low Traffic Counts** – Most Birmingham neighborhoods were designed on a grid system, wherein each block connects to other streets at its end, providing motorists (and others) the option of taking more than one street to get to their destination. The grid system helps spread the load of traffic that is passing through. Dead end and cul-de-sac streets in Birmingham are rare, but where they do exist, they will have lower than average ADT counts. Since a project on a dead end street or cul-de-sac only benefits the properties located directly on it, they could be considered a lower priority. The scoring on a dead end segment should lower its ranking. A score of -50 is recommended for any dead end or cul-de-sac.

5. Curb and Gutter System

The status of the curb and gutter system is suggested to impact the ranking as follows:

- a. **6" High Concrete Curb & Gutter** - Many streets in Birmingham were constructed with a strong 6" high concrete curb and gutter system that provides good drainage and a stable edge. Such streets not only would score low on the deterioration scale, they also tend to operate much more closely to improved streets. Homeowners may not be aware for several years (until their street is cape sealed) that their street is considered unimproved. The City may be in a more difficult position attempting to force a special assessment to reconstruct a street that is working so well. A score of -100 is recommended for any street that has a high, generally stable 6" concrete curb and gutter system.
- b. **Low Mountable Curb & Gutter** - Conversely, streets with a low, mountable curb and gutter system may have relatively good drainage, but do not provide a stable edge, and are subject to being driven on or over for parking needs. An example of this condition exists in the large neighborhood west of S. Eton Rd., and north of 14 Mile Rd. These streets are unique in that they have a relatively low level of service, more closely aligned to other unimproved streets that have no curbs. A score of 0 is recommended for any of these streets, to denote that the mountable curb no longer brings much, if any, benefits to the street segment. If the curb is also in poor condition, it will receive points toward its total under the deterioration scale.
- c. **No Curb & Gutter** – The majority of unimproved streets have no curbs. A score of 0 is recommended on these segments.

6. Streets with Side Frontages

Streets that partially or entirely service side frontages tend to be a lower priority to the adjoining property owners. While having the street paved may still be a benefit to the general neighborhood that uses the street, it may be considered a lower priority to the adjoining property owners that would be assessed. This pattern has been seen in neighborhoods where the side streets still remain unpaved, or were the last to be paved. If one side of the street segment has single-family side frontages, a score of -15 is suggested. If both sides of the street have single-family side frontages, a score of -30 is suggested.

7. Non-contiguous Unimproved Streets

Certain street segments remain unimproved while all other streets in its immediate area are improved. Such segments leave an otherwise improved area unfinished. This can be a problem aesthetically. It can also drive up costs for maintenance. Unimproved streets tend to require higher maintenance for patching, cape sealing, etc. Maintaining an unimproved street that is discontinuous to others like it drives up maintenance costs. If one street segment is by itself with no other unimproved street segments, a score of 40 points is recommended. If two street segments are linked together but have no others like it in the immediate area, then each street segment would receive a score of 15 points.

COMMITTEE RECOMMENDATION:

The Committee recommends the pay as you go option to continue and that is consistent with existing practice. After much discussion, it was agreed that pursuing a city-wide funding mechanism would not receive the necessary support given that the benefits of road conversion would primarily benefit the homeowners on the road that receives the improvement. The City may pursue bonding or other measures to cover water and sewer elements. Additionally, it was agreed to adopt the ranking system model to support the City's initiation process.

POLICY CONSIDERATIONS

POLICY CONSIDERATIONS

After reviewing the history, mechanics, and funding associated with road conversion projects, the Committee began review of all the key issues associated with existing policies involving unimproved streets. As the policy discussion continued to evolve, road paving options, project initiation process, and funding were the three key issues that the committee agreed to place their emphasis. The following discussion and related tables provide a summary of these topics outlining general advantages and disadvantages to consider as the committee began to develop a strategy for developing a recommendation.

Review of Existing Plans

Multi-Modal Master Transportation Plan

In 2013, the City Commission approved the final draft of the Multi-Modal Transportation Plan. The plan was created by a consulting firm known as the Greenway Collaborative. The plan is posted on our website under the Planning Department's section known as "Master Planning Documents." The URL is: http://www.bhamgov.org/government/departments/planning/master_plan_and_guidelines/index.php.

The City has a Multi-Modal Transportation Board (MMTB) that meets regularly. One of the Board's ongoing tasks is to review all upcoming street projects as they relate to the Master Plan. While the plan gives general guidance, the Board reviews each street plan in detail to ensure that all relevant multi-modal improvements that should be included are implemented if possible.

The master plan distilled recommended projects down into four suggested phases. Most of the projects focus on major streets. Where an unimproved street is noted for a project location, they are typically part of a neighborhood connector bicycle route. These routes consist of signs and pavement markings denoting a suggested bike route through the City. The routes do not typically require any changes to a pavement as a part of their implementation. Parts of a neighborhood connector route have already been implemented on parts of unimproved streets as needed in order to make the route complete.

City Code & Charter

Provided as **Appendix C** is Chapter 94 of the Birmingham City Code. The code spells out the procedure for the creation of a Special Assessment District.

Also provided as **Appendix D** is Chapter 10 of the Birmingham City Charter, written at the time the City was formed. It gives the City Commission the right to create special assessment districts.

Petition Information Book

In the late 1990's, the special assessment procedure was modified to help put more facts in the hands of the property owners before a final decision is made. Now, whenever a valid petition is received with over 50% of the owners showing favor toward the project, an informational booklet is prepared and mailed to all owners within the suggested district. The owners are also invited to a neighborhood meeting where staff offers the chance to discuss the issue more. Once the meeting has been held, a few weeks is intentionally provided to give owners the opportunity to change their mind about the project, either for or against. If the petition remains above 50%, the City Commission is advised about the potential project.

All owners are then invited to a public hearing to consider if the project should move forward. If the petition has dropped below 50%, then the project is not moved forward to the Commission.

The most recent petition was distributed to the residents on an unimproved block of N. Glenhurst Dr. The neighborhood meeting was held. The petition started at 56% of the owners in favor. During the waiting period, four residents have asked to have their name removed, and one new resident asked to have their name added. The petition currently stands at 43%. The additional signatures required were not collected and this project did not move forward.

Special Assessment Roll

The last official roll that was prepared was for paving two blocks of Villa Ave., between Adams Rd. and Columbia Ave. The project was completed in 2016.

The petition for this project was received in August, 2015. An informational booklet was distributed, and a neighborhood meeting was held in September, 2015. The unit rate for the new pavement was set adjusted up to \$174.00 per foot based on the bids received in April, 2016. Construction started in June, and was completed in October, 2016.

The project went smoothly and efficiently, and the final cost of the paving assessment district was calculated at \$165.86, which allowed almost all homeowners to receive a bill reduced from what had been expected. A separate assessment roll was created for the replacement of sewer laterals in the right-of-way. The originally estimated price of \$55 was adjusted upward to \$77.07 per foot, based on the contractor's actual charge. Most homeowners received a bill higher than what was expected.

There was no water lateral replacement cost on this contract, as the City did not have the policy in place at that time that required the replacement of all undersized water services.

Life Cycle Cost Analysis

A comparison of costs being expended to maintain our concrete vs. asphalt permanent pavements is provided below. The costs and the suggested maintenance steps are meant to be averages. Some streets age faster than others, but as a general rule, more frequent and substantial projects need to be initiated

Figure 6: Life Cycle Cost Analysis (2018 Dollars)

YEARS AFTER CONSTRUCTION	ASPHALT	COST PER MILE
0	Original Construction	\$2,000,000
7	Crack Sealing & Rejuvenation	\$17,000
20	Thin Overlay or Resurfacing	\$320,000
40	Resurfacing	\$430,000
60	Resurfacing	\$430,000
80	End of Service Life	
TOTAL		\$3,197,000
COST PER YEAR PER MILE		\$40,000

YEARS AFTER CONSTRUCTION	CONCRETE	COST PER MILE
0	Original Construction	\$2,400,000
30	Joint Sealing	\$6,000
60	Major Patching or Resurfacing	\$430,000
80	Resurfacing	\$430,000
100	End of Service Life	
TOTAL		\$3,266,000
COST PER YEAR PER MILE		\$32,700

COST SAVINGS OF CONCRETE OVER 80 YEAR LIFE SPAN = \$584,000 PER MILE

on the asphalt streets in order to keep them in adequate condition. The overall cost difference, as shown, over the life of the pavement, is estimated at \$584,000 per mile over the 80 service life of an asphalt pavement.

ROAD PAVING OPTIONS

The existing local street system is currently comprised of the following pavement options. Information is provided relative to perceived advantages and disadvantages, and the policy and cost factors if such a street is built today:

PAVEMENT TYPE	PROJECT INITIATION	ADVANTAGES	DISADVANTAGES	Cost per foot for Special Assessment
Cape Seal (No Curbs)	Cape Seal streets are no longer accepted by City. New cape seal application is initiated by City staff.	Low construction cost. Rural appearance. Owners can add parking areas if desired.	Poor durability. Poor drainage. Rough riding surface. Regular maintenance cycles and assessments. Leaves must be bagged. Owners must be charged again for each assessment when cape sealed again.	\$11 - \$15 per foot.
Asphalt with Curbs	Not allowed by current City policy.	Lower construction cost. Drainage can be guaranteed. Leaf pickup provided. Owner not responsible for ongoing assessments.	Durability less than concrete. City general funds responsible for costs.	\$160 per foot.
Concrete with Curbs	Submittal of petition by +50% of owners.	Long term durability, low maintenance. Drainage can be guaranteed. Leaf pickup provided. Owner not responsible for ongoing assessments.	Higher initial construction cost.	\$195 per foot.

PROJECT INITIATION PROCESS CONSIDERATIONS

	ADVANTAGES	DISADVANTAGES
PETITION PROCESS: Owners representing over 50% submit request for paving assessment district.	City Commission can declare district with knowledge that over half of owners are in favor of project. City does not appear as though it is forcing costs on owners that are not supportive of action.	Residents wishing to improve street risk alienating themselves from other residents that do not support project. City rarely initiates projects, even when long term benefits of project outweigh overall costs.
COST ALLOCATION: All street paving costs, including design and inspection, are added together and charged to assessment district. City subsidizes by paying 15% of base cost.	Local street paving benefits immediate owners. General fund dollars from entire City are not directed to benefit a small number of owners.	Cost of assessment is greater than perceived benefit to many owners, reducing owner support.
SECONDARY ASSESSMENTS: Driveway approach(es) measured and charged separately.	Size and cost of driveway approaches can vary greatly. Cost is kept directly proportional to actual benefit.	None.
SECONDARY ASSESSMENTS: Water and sewer lateral replacements are charged by the foot to adjacent owners.	Needed pipe replacements can vary greatly. Cost is kept directly proportional to actual benefit.	Older homes are often owned by long time residents less inclined to support project. Water and sewer costs are more likely added to old homes, while newer homes are not billed.
CORNER LOT ASSESSMENTS: Long side of corner lot is billed at 33% of actual length; City pays for remaining balance.	Owners having side street paved are charged about the same amount as neighbors that are being billed on frontage.	Owners on corners have potential of having to pay two assessments concurrently.
PAYBACK PERIOD: City pays cost of project up front, and allows up to ten years to pay back, with interest at 1% above prime.	Assessment district cost appears more manageable if paid over 10 years.	City must advance pay cost of project, requiring Local Street Fund to carry costs long before revenues are received.

FUNDING CONSIDERATIONS

	ADVANTAGES	DISADVANTAGES
SPECIAL ASSESSMENTS	Cost is allocated to those who benefit specifically from the improvement. Does not need vote of the citizens.	Results in a high cost per property owner thereby making it difficult to getting road improved.
CITY MILLAGE	Road Millage: Cost of road improvement is spread over many individuals resulting in lower cost to property owners who receive the benefit of the improvement.	Road Millage: May be difficult to get road millage passed when some may not get benefit of improvements and/or others have previously

	Operating Millage: Does not need vote of the citizens (unless Headlee override). Can be approved by the city commission.	been special assessed for their road. Operating Millage: City is already near its millage cap which is shrinking every year due to Headlee. Does not give city room to fund other projects or needs that may arise. May effect bond rating as the rating agencies look at millage capacity as a factor of a city's financial health.
BUDGET AMENDMENTS	Road projects are projected five years in advance. This provides clarity in the city's long-term financial planning process and enables the city to manage its millage rates.	There are usually no extra funds available for new projects which are not in the five-year projection. In order to move forward, other road projects would need to be rescheduled or the new project would need to wait five years.
GRANTS	Usually only require a small local share (20-25%) resulting in significant savings to the city.	Grants are not likely to be available for local road improvements. Grants are competitive and are difficult to obtain.
TAX INCREMENT FINANCING	Leverages property value growth to fund improvements.	No TIF legislation exists that the city may employ to pay for local road improvements.

CODE, CHARTER, CURRENT POLICY COMPARISON

The following table compares all elements of the existing City Charter, City Code, and Current Policy as they relate to establishment of a Special Assessment District.

CITY CHARTER	CITY CODE	CURRENT POLICY
Commission has power to declare an SAD. Resolution shall state estimated cost, proportion that is to be charged to general fund, and specific properties involved.	Consistent with City Charter.	Consistent with City Charter.
Commission shall prescribe by ordinance complete	Chapter 94 of City Code was written to comply with Charter, with details.	Not applicable.

CITY CHARTER	CITY CODE	CURRENT POLICY
special assessment procedures.		
Once roll is confirmed, full amount of assessment is a lien on property until paid.	Consistent with City Charter.	Consistent with City Charter.
No action may be instituted to contest the SAD unless within 30 days after confirmation, written notice is provided to the Commission.	Consistent with City Charter.	Not an issue stated in policy.
If a part or all of an SAD is declared invalid or defective, the Commission has the right to correct the problem and start a new SAD.	Consistent with City Charter.	Not an issue stated in policy.
	Commission may request a petition.	Not an issue stated in policy.
	Commission may consider a petition, but is not bound by it. Petition is advisory only.	Consistent with City Code.
	Petitions shall be made on form distributed by Engineer.	Consistent with City Code.
	Petition shall be verified by circulator by signed affidavit.	Consistent with City Code.
	Petition shall be filed with Engineer.	Consistent with City Code.
	Engineer shall provide petition to Manager. Manager shall confirm validity of signatures.	Consistent with City Code.
	Engineer shall prepare a report to Commission to describe nature of project, cost estimate, size of district, and any other pertinent info.	Consistent with City Code.
	If condemnation of property is required as a part of project, the cost may be included in the SAD.	Consistent with City Code.
	Commission shall hold a public hearing. All owners in district shall be notified that they must submit objection at hearing if they wish to later protest to Michigan Tax Tribunal.	Consistent with City Code.

CITY CHARTER	CITY CODE	CURRENT POLICY
	Commission may determine whether to proceed or modify the district. If modified, a new hearing shall be scheduled.	Consistent with City Code.
	<p>If SAD is established, resolution shall include:</p> <ol style="list-style-type: none"> 1. Approving plans and cost estimate. 2. Determining percentage to be paid by general fund. 3. Establishing boundaries of district. 4. Determining method or formula to calculate the cost. 5. Directing preparation of the roll. 	Consistent with City Code.
	Commission may make modifications to district later, but must hold a new hearing if cost or scope has increased.	Consistent with City Code.
	No expenditures shall be made toward project other than preparing plans and cost estimate, prior to confirming the roll.	Consistent with City Code.
	Manager shall prepare assessment roll based on cost estimate of Engineer.	Consistent with City Code.
	Roll shall be filed with Clerk and Commission shall review it.	Consistent with City Code.
	Commission shall confirm assessment roll at a public hearing.	Consistent with City Code.
	Commission shall consider all objections, may correct roll, or direct for new roll to be prepared.	Consistent with City Code.
	If roll is approved, Commission shall direct Manager to spread the roll, and order roll to be on file at Clerk's office.	Consistent with City Code.
	Commission shall direct Treasurer to bill within 60 days,	Resolution has not been stating that billing shall be

CITY CHARTER	CITY CODE	CURRENT POLICY
	unless it is determined that collection shall be postponed until the construction of the improvement, wherein it shall be included in the resolution.	postponed until after construction. However, this has been standard practice.
	Commission shall direct Treasurer to give notice to all owners by mail that roll has been confirmed. Notice shall state if assessment will be due in installments or all at one time.	Notice by mail has not been issued in recent years, but will be followed in future.
	Once roll is confirmed, it is final unless adjusted to reflect actual cost of construction.	Consistent with City Code.
	SAD proceedings are uncontestable unless an appeal to the Michigan Tax Tribunal is instituted within 30 days after confirmation.	Consistent with City Code.
	Failure of City to mail notice, or failure of owner to not receive notice, shall not invalidate roll.	Consistent with City Code.
	Hearings of necessity and confirmation of roll may be combined if all public notice requirements are met.	Consistent with City Code. Note: An attempt to combine hearings has not been made to our knowledge.
	Assessments shall be payable in annual installments, with interest on remaining balance, and penalties shall apply for nonpayment.	Consistent with City Code.
	If property is subdivided after assessment has been levied, but not collected in full, Manager shall proportionally split remaining balance onto the split properties accordingly.	In accordance with State law, assessments shall be paid before the land is sold to new owner.
	Funds collected for SAD shall be held in special account and used to pay expenses of project. If surplus remains after payments, owners shall get reimbursed.	Consistent with City Code.

CITY CHARTER	CITY CODE	CURRENT POLICY
	Assessments shall be a lien against each property until fully paid.	Consistent with City Code.
	Treasurer shall certify on May 1 any delinquent assessments to the Commission, and it shall then be transferred with 15% penalty to City tax roll, collected in the same manner as taxes.	Consistent with City Code.
	If SAD surplus is in excess of expenses, but less than 5%, said excess shall be placed in the general fund.	Consistent with City Code.
	If SAD surplus is in excess of expenses greater than 5%, owners shall be issued a refund. Refunds may be applied to future installment payments, and shall not be made if there is any other evidence of debt outstanding by the assessment.	Consistent with City Code.
	If actual expenses of the SAD are more than 25% in excess of estimate, Commission shall hold a new hearing and confirm additional assessment, noticed in same manner as original assessment.	Consistent with City Code.
	If assessment is declared invalid, payments made shall be applied to reassessment, or refunds shall be made if overpayment exists.	Consistent with City Code.
	If assessment is declared invalid, lien shall remain if equitably charged or by regular billing if proceeding as described can be done so lawfully.	Consistent with City Code.
	If a SAD may apply to a district impacting only one property, said district shall be created by the Commission under the same terms as a regular SAD.	Consistent with City Code.
	Deferral of payments is allowed by reason of hardship, as	Consistent with City Code.

CITY CHARTER	CITY CODE	CURRENT POLICY
	<p>applied for by the Treasurer. Specific information is required in application. Criteria to allow approval of deferment is listed under specific terms.</p> <p>Deferment of payment can extend until death of owner or sale of property.</p>	<p>Note: No owners have officially applied for deferment in past ten years. If application is received, it will be processed in accordance with the Code.</p>
		<p>Petitions are generally advanced to the City Commission only after over 50% of owners are indicated in favor of SAD on a valid petition, and after receipt of informational booklet, and invitation to a neighborhood meeting. When determining majority, calculations are made both by owner and by front foot charged. City, school, or federal owned properties are not included in calculation.</p>
		<p>Standard offering for a new street is 26 ft. wide concrete with curbs. Variations are discouraged.</p>
		<p>Water and sewer system upgrades and assessments for service lateral replacements apply.</p>
		<p>Starting and ending points of project should be limited to appropriate points that are in best interest of City and neighborhood in general.</p>
		<p>Corner properties receive 67% discount for long side frontages.</p>

CURRENT SPECIAL ASSESSMENT DISTRICT POLICY

The following is the written policy based on staff practice in order for a City unimproved street to be nominated for reconstruction into an improved street, with the creation of a special assessment district.

1. Petition Initiation

- a. An interested property owner contacts the Engineering Dept. to inquire about the process. After being advised verbally about the process, if the owner wishes to proceed, a petition form is prepared specifically for the block(s) that were discussed for a potential project. The petition form is emailed to the owner. The owner is encouraged to call back and ask questions as they arise. Important elements to discuss at the beginning conversation include:
 1. Procedure.
 2. Estimated cost per foot charged to residents.
 3. Requirement that water and sewer laterals are also replaced, at additional cost.
 4. Limits of project as envisioned.
 5. If corner discounted properties are within proposed district, how they are charged.
- b. If petition is not resubmitted to the City, the project goes no further.
- c. If petition is resubmitted to the City, Engineering Dept. reviews signatures to verify validity. Owners' names as signed must match City ownership records. If they do not, the petition carrier is notified in order to determine unique circumstances such as recent ownership change, recent name change, etc. Valid signatures must be presented that demonstrate that the ownership signed is over 50% both in total number of affected owners, as well as by front footage.³

2. Information Distribution

- a. The petition carrier cannot be relied upon to contact 100% of the owners. Also, they cannot be relied upon to give the same consistent or correct information to each of the owners that they are in contact with. Therefore, the Engineering Dept. creates an informational booklet specific to the suggested project, and mails it to each owner within the district. The informational booklet shall contain the following information:
 1. Existing conditions analysis, both above ground and underground.
 2. Proposed improvements, including pavement, water, and sewer work.
 3. Project approval process, including public hearings.
 4. Construction process.
 5. Costs, and how interest will be charged if the owner takes advantage of the payback period. If unique circumstances exist, such as corner or condominium properties, those need to be explained so all understand.
 6. Benefits that will arise from newly completed street.
- b. At the same time, all owners are invited to a neighborhood meeting typically located at the Municipal Building on a weeknight evening. The meeting is strictly optional, and no decisions are made. The meeting is offered as an opportunity for neighbors to discuss the pros and cons of the project idea, and to help get all questions answered.
- c. If owners have changed their mind, they need to do so in writing. Owners wishing to have their name removed need to send a letter or an email confirming this. Owners wishing to add their name to the petition need to do likewise. Approximately two weeks are allowed to pass before any further movement is made on the matter. If there are still over 50% of the owners in favor of

³ See Section 4E for special cost and measurement allocations.

the project at that time, per the petition and any written correspondences received, staff will introduce the project proposal to the City Commission, and ask that a public hearing date be set.

3. Project Approval – Determining Necessity and Confirming the Roll

- a. Once a public hearing has been set, all owners are notified by postcard for both the Hearing of Necessity, and the Confirmation of the Roll (if needed). The date must be at least three weeks after the initial introduction to the City Commission, to allow time for an ad to be placed in the local newspaper.
- b. The City Engineer presents the details about the project at the Hearing of Necessity. After taking comments from the public, both written and in person, the City Commission decides whether to approve the project. Once the hearing has been held, the Commission is not bound in their decision based on what percentage of owners are currently in favor, either above or below 50%.
- c. If the Commission approves the project, a second public hearing is held, typically at the next meeting, to confirm the roll. During this time, owners may contact the Treasurer's office and verify what the estimated cost of the assessment will be for their individual property(ies). The City Treasurer presents the details at the Confirmation of the Roll. If approved, a lien is placed on each property at that time, requiring payoff of the assessment prior to the sale of the property. No invoices are mailed to property owners until after the project has been completed, and actual costs have been calculated. At that time, an invoice for each owner is mailed by the Treasurer, indicating that 1/10 of the total assessment is due at that time. Approximately one year later, a second invoice will be mailed, requesting another 1/10 of the total assessment, plus interest on the remaining balance. The interest rate is set at 1% above the prime rate as it exists at the time of the confirmation of the roll.
- d. The Engineering Dept. begins the task of designing the project, so that bids can be solicited at the appropriate time based on when the funding for the project will be available. Historically, special assessment districts are made a priority, such that if the petition process results in a successfully approved project no later than October of any given year, then the project can be designed, bid, and constructed to be completed by the end of the next construction season. The timing is subject to adjustment based on available funding in the budget, other pending projects already underway within the Engineering Dept., and any other important matters that may impact the appropriate timing of the project, as determined by the City.

4. Other Considerations –

- a. Type of Pavement: The standard pavement cross-section offered by the City of Birmingham is a 26 ft. wide concrete street with integral curb and gutter. Owners that wish to challenge this offering with variations are discouraged from doing so. The reasons for encouraging this particular cross-section are listed below. It can be difficult to get over 50% of the owners to agree on a project even when just one option is offered. If owners begin thinking that they can make several modifications, then it will become even more difficult to get a majority of owners to agree. Benefits to the standard cross-section include:
 1. A concrete pavement with curb and gutter provides a durable pavement that will last several decades with little maintenance. Since the City promises to maintain the street at no further cost to the adjacent owners into the future, it is important that the City's preferred cross-section is as cost efficient as possible. The curb and gutter also provides a stable, long lasting edge that helps collect water from adjacent yards, sidewalks, and driveways, and direct it to storm sewers.

2. Residents sometimes ask for design variations, such as improved drainage without curbs, curbs using colored concrete, curbs with differing shapes, etc. All such requests are discouraged unless the owners can demonstrate a unified desire for the variation, at which time they are reviewed on an individual basis. Certain variations, such as improved drainage without curbs, will clearly reduce the expected lifespan of the pavement. Such a variation should not be offered unless owners are willing to accept that the street would still be considered unimproved, and would be subject to future assessments for street maintenance into the future.
- b. Pavement Width
1. The 26 ft. wide standard width was recently affirmed by the City Commission by the approval of the City's Residential Street Width Policy. The 26 ft. width has been the City's standard for new improved pavements since 1997. The width allows for a parked car on both sides of the street, with just enough space left for one vehicle to pass through. The relatively narrow cross-section helps keep speeds down on residential streets, while leaving enough space for street trees between the sidewalk and the curb, on fifty foot or wider rights-of-way.
 2. Relatively few City streets measure less than 50 ft. wide. If they do, the City offers a 20 ft. wide pavement option, which requires parking to be banned on one side of the street.
- c. Length of Project (Logical Project Boundaries): Previous City Commissions have encouraged staff to provide petitions that have a logical beginning and ending point. A variety of considerations go into the logical starting and stopping point for a project.
1. If the entire street segment being paved is relatively short, such as less than 0.5 mile, the City should encourage completion of the entire length.
 2. The project ends should be at 4-way intersections if at all possible. Ending at a 3-way intersection is fine if the street being paved is the one ending at the intersection.
 3. Water and sewer system needs should be reviewed to ensure that completion of the project at the proposed limits does not result in much, if any, work beyond the proposed limits of the project.
 4. Grading, safety, and site distance issues that can be resolved depending on the limits of the project need to be considered.
 5. A project should not be arbitrarily ended at a location such as those noted above so as to meet the 50%+ threshold required on a petition.
 6. Petition limits should be extended if necessary in order to avoid leaving a small remnant block unimproved when every other street in the immediate area will now be improved.
 7. Other special circumstances not listed above should also be reviewed and considered before the limits of the project are finalized.
- d. Special Cost Allocations: Streets that have unique circumstances are considered as described below:
1. Corner Properties – If the longer of a corner property's two sides is the one being paved, the total length is divided by 3. The owner will be charged for 1/3 of the length, and the City will pay the remaining 2/3. This policy generally works so that corner properties are typically charged about the same as other properties on the block. If the short side is being paved, the owner is charged 100%. The discount only applies to single-family houses.

2. If a condominium frontage is being assessed, the number of owners in the entire condominium is divided by the total front footage for the condominium property, and all owners are charged an equal share. Distinctions for location of the owner's unit within the property, or the relative size of the units, is not considered. For purposes of determining if a majority exists, each owner has a "vote" on the ownership count, but only impacts the footage measurement proportionally to their frontage.
3. City-owned properties are not counted in the ownership count when determining whether a majority of owners are in favor of the project. If the project is approved, the City will pay 100% of its property frontage.
4. Public school and federally-owned properties are treated the same as City-owned properties. Their frontages are not included in the count, and if the district is approved, the City will have to pay for their frontage.
5. Non-taxable privately owned properties such as religious institutions are counted in the determination of whether a majority of owners are in favor. These properties are responsible for the cost of the special assessment, at 100% of their frontage.

COMMITTEE RECOMMENDATION:

The Committee received advice from the City Attorney and understand that the City Code and Charter provide sufficient capacity to adapt the policy document and allow for the City to initiate road improvement projects. There is no need to recommend amendments in this area.

TRADE OFF ANALYSIS: STUDY FINDINGS AND PRELIMINARY RECOMMENDATIONS

TRADE-OFF ANALYSIS: CONCRETE VS. ASPHALT

As staff began working internally to establish revised assumptions to adjust the financial model, it was suggested that a more in-depth peer review of our neighboring communities and their experiences with improving streets would provide better data to support any adjustments to the model. Staff recommended that engaging an outside engineering firm to provide a broader perspective regarding the range of possible road design alternatives would enhance the quality of future recommendations.

The decision of the committee regarding road design provides critically important input to support any further iterations of financial model output. Staff requested that the committee consider a recommendation to authorize an engineering firm to conduct the necessary research and information gathering and present a findings summary to the committee.

The work concluded with a findings summary conducted by the firm OHM that equipped the committee with the necessary background and understanding of the associated trade-offs with evaluating road design alternatives to assist in determining the best path forward, primarily with respect to funding options.

The Committee recognizes and discusses the importance of thorough evaluation of all elements of road design alternatives. The Committee seeks to understand the pros and cons of different road design options as they work to develop the most credible and feasible recommendation on how to proceed with the long term improvement program.

The complete findings summary is provided here as **Appendix E**. The report findings, also referred to as the OHM report, are summarized here. The practice of the City has been to engineer new roads with concrete. The OHM report supports this approach as a best practice. However, OHM understood that concrete is often the most expensive alternative to pursue initially and the savings are found in lower maintenance costs over the years.

The Committee asked OHM to explore if there were other paving options that could potentially provide other viable options to homeowners that the City might consider.

The recommended policy, ideally, would begin with the best practice of building the road with concrete material. With the exception of connector streets and streets that carry higher volumes of traffic (threshold to be defined with further input), additional paving alternatives, such as asphalt with concrete curbs, could be allowed for the residents to consider. Page 6 of the findings report illustrates several road paving options and their associated costs to build and maintain.

The following options are intended to support the committee if they desired to allow some flexibility in the paving options, which will likely reduce the costs and may increase interest in residents' comfort level in moving forward with the road improvement project. The following table, taken from the OHM report summarizes the design life, initial construction cost, and anticipated maintenance cost for several local road paving options:

Type	Design Life	Initial Cost ¹	Avg. Maint ²
6" Concrete w/curb	30-40 years	\$380/foot	\$2.25/ft/year
7" Concrete w/curb	30-40 years	\$400/foot	\$2.25/ft/year
* 7" Concrete w/curb & 8" drainage layer	40+ years	\$450/foot	\$1.75/ft/year
3" Asphalt on 8" aggregate w/concrete curb	15-20 years	\$325/foot	\$5.00/ft/year
* 4" Asphalt on 8" aggregate w/concrete curb	15-20 years	\$340/foot	\$4.50/ft/year

¹Initial construction cost including administration, sidewalk, driveways, utilities, etc.

²Anticipated total maintenance costs over the life divided by life to determine average.

Of the options listed in the table above, the OHM report indicated that typically 4" asphalt or 7" concrete pavement sections are utilized for local road paving throughout the region. They recommended that the asphalt section include at least 8" of aggregate base, concrete curb and gutter, and underdrains. The following are three potential alternatives that are consistent with committee discussions, to date.

- A) The City could consider the two options that are asterisked in the table above with concrete being the preferred option and an alternate lower cost asphalt option to improve the remaining unimproved streets throughout the City. The cost share would remain the same with the City paying 15% of the total.
- B) The second possible alternative would allow for the different pavement types, but to encourage, greater adoption of the concrete alternative, the City would increase the funding participation greater than 15% recognizing the costs for average maintenance would be lower over time. This alternative, depending on the funding mechanism recommended by the committee could impact the total length of roadway that may be completed within a certain timeframe.
- C) Finally, knowing that the City must fund all maintenance of the new street into the future, and knowing that financially a concrete street will prove to be less of a burden to the street fund over time, the City Engineer will make the determination on the appropriate pavement material for a road improvement project. .

COMMITTEE RECOMMENDATIONS:

The committee recommends that all unimproved streets being reconstructed be constructed in concrete, with the understanding that the final decision for material to be used for road improvements should be made by the Engineering Department.

PROPOSED UNIMPROVED STREETS POLICY

SPECIAL ASSESSMENT DISTRICT

Petition Initiation

The City will conduct a system wide infrastructure ranking of all unimproved streets within the City of Birmingham to prioritize the initiation of projects. The ranking will occur every XX years to ensure the viability and relevance of the ranking does not become stagnant.

The City Engineer will identify and initiate plans to begin the highest priority projects. Selected projects will presented in the five-year capital improvement plan for adoption through the annual budgeting process.

Homeowners that wish to advance their street paving project more quickly will have the option to start a petition with their neighbors that will be heard by the City. Advanced petitions will be incorporated into the capital improvement plan, where feasible.

ROAD DESIGN OPTIONS

The City Engineer will make all recommendations regarding appropriate pavement type for all paving projects, where an option other than concrete may be feasible.

Type of Pavement:

The City will continue to recommend the use of concrete material to convert unimproved roads as a preferred option due to its durability and low maintenance requirements. With the exception of connector streets and streets that carry higher volumes of traffic (threshold to be defined), additional paving alternatives, such as asphalt with concrete curbs, may be available.

Of the options listed in the table below, the report indicated that typically 4" asphalt or 7" concrete pavement sections are utilized for local road paving throughout the region. OHM recommended that the asphalt section include at least 8" of aggregate base, concrete curb and gutter, and underdrains.

The City must fund all maintenance of the new street into the future, and knowing that financially a concrete street will prove to be less of a burden to the street fund over time.

Type	Design Life	Initial Cost ¹	Avg. Maint ²
6" Concrete w/curb	30-40 years	\$380/foot	\$2.25/ft/year
7" Concrete w/curb	30-40 years	\$400/foot	\$2.25/ft/year
* 7" Concrete w/curb & 8" drainage layer	40+ years	\$450/foot	\$1.75/ft/year
3" Asphalt on 8" aggregate w/concrete curb	15-20 years	\$325/foot	\$5.00/ft/year
* 4" Asphalt on 8" aggregate w/concrete curb	15-20 years	\$340/foot	\$4.50/ft/year

¹Initial construction cost including administration, sidewalk, driveways, utilities, etc.

²Anticipated total maintenance costs over the life divided by life to determine average.

Preferred Standard Concrete Cross Section:

The standard pavement cross-section offered by the City of Birmingham is a 26 ft. wide concrete street with integral curb and gutter.

The City will continue to promote the benefits to the standard concrete cross-section, described as a concrete pavement with curb and gutter that provides a durable pavement that will last several decades with little maintenance. Since the City promises to maintain the street at no further cost to the adjacent owners into the future, it is important that the City's preferred cross-section is as cost efficient as possible.

The curb and gutter also provides a stable, long lasting edge that helps collect water from adjacent yards, sidewalks, and driveways, and direct it to storm sewers.

Pavement Width

The 26 ft. wide standard width was recently affirmed by the City Commission by the approval of the City's Residential Street Width Policy. The 26 ft. width has been the City's standard for new improved pavements since 1997. The width allows for a parked car on both sides of the street, with just enough space left for one vehicle to pass through. The relatively narrow cross-section helps keep speeds down on residential streets, while leaving enough space for street trees between the sidewalk and the curb, on fifty foot or wider rights-of-way. Relatively few City streets measure less than 20 ft. wide. If they do, the City offers a 20 ft. wide pavement option, which requires parking to be banned on one side of the street.

Logical Project Boundaries

Previous City Commissions have encouraged staff to provide petitions that have a logical beginning and ending point. A variety of considerations go into the logical starting and stopping point for a project. Given that the initiation process will define project boundaries based on ranking factors, the likelihood of having illogical boundaries is virtually eliminated. However, in circumstances where there is a question of appropriate boundaries, the following guidance should be followed:

If the entire street segment being paved is relatively short, such as less than 0.5 mile, the City should encourage completion of the entire length.

The project ends should be at 4-way intersections if at all possible. Ending at a 3-way intersection is fine if the street being paved is the one ending at the intersection.

Water and sewer system needs should be reviewed to ensure that completion of the project at the proposed limits does not result in much, if any, work beyond the proposed limits of the project.

Grading, safety, and site distance issues that can be resolved depending on the limits of the project need to be considered.

A project should not be arbitrarily ended at a location such as those noted above so as to meet the 50%+ threshold required on a petition.

Petition limits should be extended if necessary in order to avoid leaving a small remnant block unimproved when every other street in the immediate area will now be improved.

Other special circumstances not listed above should also be reviewed and considered before the limits of the project are finalized.

Project Funding

The source of funding used to support conversion of unimproved roads currently comes from a combination of special assessments and the general fund. Eighty-five percent (85%) is funded through special assessment, while fifteen percent (15%) is paid by the general fund.

Special assessments are used as a funding source to offset a portion of the cost of a road where it is being upgraded to an improved road or when the road is being cape sealed. For these projects, the City will pay for the improvement in advance and bill the property owners. The payback from the property owners differs depending on the type of road improvement being done. When a road is being improved, the special assessment is generally set for 10 years.

If the City Engineer agrees that an alternative pavement material may be used for an improvement project there will be an attempt to achieve cost neutrality for the improvement. To achieve this the following outline will be used as a

- Independent Cost Estimate: Engage an industry professional that does not actively bid projects to provide general estimates of the work and establish a baseline estimate to use as a measure for evaluating actual cost proposals based on a standard street cross section as outlined in Appendix F.
- Any extra costs resulting from modifications to the standard cross section specifications shall be assumed by the property owners on the respective street if they are not related to the need to adjust the standard cross section due to usage and traffic volume on the street.
- If the project is to proceed with the standard cross section in Appendix F, no extra costs would be assessed.

Special Cost Allocations

Streets that have unique circumstances are considered as described below:

Corner Properties – If the longer of a corner property's two sides is the one being paved, the total length is divided by 3. The owner will be charged for 1/3 of the length, and the City will pay the remaining 2/3. This policy generally works so that corner properties are typically charged about the same as other properties on the block. If the short side is being paved, the owner is charged 100%. The discount only applies to single-family houses.

If a condominium frontage is being assessed, the number of owners in the entire condominium is divided by the total front footage for the condominium property, and all owners are charged an equal share. Distinctions for location of the owner's unit within the property, or the relative size of the units, is not considered. For purposes of

determining if a majority exists, each owner has a “vote” on the ownership count, but only impacts the footage measurement proportionally to their frontage.

City-owned properties are not counted in the ownership count when determining whether a majority of owners are in favor of the project. If the project is approved, the City will pay 100% of its property frontage.

Public school and federally-owned properties are treated the same as City-owned properties. Their frontages are not included in the count, and if the district is approved, the City will have to pay for their frontage.

Non-taxable privately owned properties such as religious institutions are counted in the determination of whether a majority of owners are in favor. These properties are responsible for the cost of the special assessment, at 100% of their frontage.

APPENDIX A

SAMPLE PETITION BOOKLET



VILLA AVENUE PAVING

August 31, 2015

Dear Property Owner,

The City of Birmingham has received a petition signed by a significant number of the property owners on the above street requesting that the road be improved with a permanent pavement and curbs. Having the road paved under a special assessment is a significant decision, which can raise questions.

The attached report has been prepared to help answer questions about the project, and assist you in confirming your final position. In order to address any issues this report does not explain, or if you have any individual issues, we have scheduled an informational meeting for all property owners to attend. It is intended to be a forum to encourage all involved to learn details of the project, and to allow for City staff to answer any questions you may have before the petition process moves to the City Commission for consideration. Attendance is not mandatory, regardless of your position on this issue. However, we encourage you to attend. At your discretion, it may be constructive to share this information with tenants if appropriate.

The final decision to proceed with the project rests with the City Commission. It has typically been the Commission's preference to listen to what the wishes of the neighborhood are. Should your name remain on the petition, it will be considered as supporting the project. Should your name not be on the petition, it will be considered not in support of the project. If you have signed the petition, but you no longer support the project, you may remove your name by submitting a letter or email to the Engineering Department. If you wish to add your name in support, a letter or email may also be sent. Those that wish to make their position known and present their reasons, would best respond by letter, however, you are also invited to present your thoughts at the time of the public hearing. Should an official "public hearing of necessity" be scheduled, you will be sent notification at a later date.

The informational meeting will be held on **Thursday, September 10, at 6:30 P.M.**, in the second floor conference room #205 located above the Police Department at the Municipal Building, 151 Martin St. It is best to enter the side door off of Pierce St., and proceed upstairs.

If you have any questions relative to the meeting, or the project in general, please contact Austin Fletcher at 248-530-1839, anytime between 8 A.M. and 5 P.M. weekdays.

Sincerely,

Paul T. O'Meara, P.E.
City Engineer
pomeara@bhamgov.org

Austin W. Fletcher, P.E.
Assistant City Engineer
afletcher@bhamgov.org

PROPOSED PROJECT REPORT

VILLA AVENUE PAVING

Adams Rd. to Columbia Ave.



**City of Birmingham
Engineering Department**

August 31, 2015

PROPOSED PROJECT REPORT: VILLA AVENUE PAVING

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I. INTRODUCTION

Recently, the residents on Villa Avenue between Adams Road and Columbia Avenue signed and submitted a petition requesting that the City install a new paved surface on their street. The following report has been prepared to allow property owners in the affected area to understand the full impact of the idea.

With the submission of this petition, verified signatures representing fifty-eight percent (58%) of the properties on this street indicated that they would be in favor of a paving project. Anyone who signed the petition, who, for whatever reason, is no longer in favor of the project, will need to indicate so in writing to our office to have his or her name removed. Likewise, anyone that wishes to add his or her name in favor of the project will need to submit a note in writing to our office indicating this. Mailed letters or emails are accepted for this correspondence.

The following report has been prepared to allow property owners in the affected area to understand the full impact of the idea.

II. EXISTING CONDITIONS

HISTORY

Villa Avenue (between Adam Avenue and Columbia Avenue) was originally platted in 1914 as part of Birmingham Villas with a fifty (50) foot road right-of-way. The road was originally constructed as a gravel road, but had a chipseal surface placed on it beginning in approximately the 1940's.

In 1916, the nine and a half (9.5) foot public alley (behind the lots on the south side of Villa Avenue) was vacated and added to the road right-of-way, widening it to fifty-nine and a half (59.5) feet by order of the Circuit Court.

In 2014, a new water main was installed on this street. The old four (4) inch water main that originally served the homes on this street was abandoned, and a new eight (8) inch diameter water main was placed in service. At the time of the water main replacement, the lead services that were encountered were replaced with new pipe up to the stop box (right behind the sidewalk).

ROADWAY CONDITIONS

Villa Road was originally constructed as gravel, with little provision for drainage. In the late 1940's, a chip seal surface was added to provide stability and reduce dust. The existing road surface on Villa Road was repaired and resealed in 2014 to restore the road after the water main project. The existing road surface is approximately twenty (20) feet, but there are areas where it is wider to allow for on-street parking in front of some homes. The roadway is generally centered in the fifty-nine and a half (59.5) foot wide City Right of Way.

The existing sidewalks on Villa Road are generally five (5) feet wide. The sidewalk ramps at the intersections have been updated to current standards with more recent projects.

III. PROPOSED IMPROVEMENTS

ROAD IMPROVEMENTS

The City's standard road width in a residential area is twenty-six (26) feet, measured between the face of the curbs. A recent example of how this width appears can be found on St. Andrews Rd. (north off of Maple Rd. between N. Eton St. and Coolidge Hwy.).

Villa Road has a fifty-nine and a half (59.5) foot wide right-of-way. After the installation of the road as described above, there will be approximately ten (10) feet of grass between the sidewalk and the curb. Typically, tree roots grow in the direction of available water. In the case of street trees, the roots tend to grow towards the adjacent front yards, and away from the street. The impervious nature of the hard gravel road, and later the sealed paved surface, discourages the growth of roots in the area of the road. Nevertheless, we cannot guarantee what impact this project will have on each tree until the project is underway, as each tree is different.

The sidewalks will generally remain as they are today, with repairs installed where they are damaged to install the sewer leads.

Since all existing trees were installed relatively close to the City sidewalks, no trees are slated for removal as a result of this project. It should be noted that the City has constructed several new streets with similar situations, and typically very few trees are lost due to construction. However, since the risk of damage is present, homeowners need to be aware that some tree loss may occur, either during construction, or subsequent to it.

A cursory review of the existing sewers indicates the possible need for improvements. However, additional research and/or a study will be required in order to determine the extent and type of improvements, if any. This will be conducted by the City once the project is authorized and before the design begins to ensure all necessary pipe replacement and/or repairs are done to ensure that the pipe is stable for many years to come. It should be noted that if improvements are deemed required to the City sewer, it will not affect (increase) the cost of the special assessment.

SEWER LATERAL REPLACEMENT

Beginning in 2007, whenever the City is constructing a new pavement such as envisioned in this project, each home's sewer lateral must be considered relative to its remaining service life. Each homeowner is responsible for the maintenance of their sewer lateral from the home to the City sewer connection. The portion from the right-of-way line to the City sewer can be quite costly to repair if done on an emergency basis because it has collapsed. Experience has shown when older sewer laterals are replaced in conjunction with a street renewal project, the cost of the work is generally substantially reduced. Replacing older sewer laterals also significantly reduces the possibility of the new pavement having to be cut and patched afterward due to the continuing decline of sewer laterals. With that in mind, should the City Commission authorize the installation of a new pavement, all homes with sewer laterals older than fifty (50) years (the expected service life of an underground pipe from that era), will be included in a second special assessment district requiring removal and replacement of the sewer lateral in the right-of-way at homeowner expense.

WATER SERVICE REPLACEMENT

In addition, residents wishing to have their water service lateral upgraded from the property line to the City main will be given the opportunity to separately contract with the contractor for this work. Past experience has shown that the cost of this work is usually reduced significantly from the normal open market price. Water service lateral upgrades are appropriate for those homes that may be expanded or replaced in the future. Involvement in this upgrade is strictly voluntary on the part of each homeowner.

IV. PROJECT APPROVAL PROCESS

PUBLIC HEARING TO AUTHORIZE PROJECT

Installing a new permanent improved pavement on Villa Avenue will require that the City Commission authorize the creation of a special assessment district (SAD). The open informational meeting described on the cover letter of this booklet is meant to provide a forum to ensure that you fully understand what is being proposed prior to scheduling the Public Hearing. After the open informational meeting described on the cover letter is held, if it can be demonstrated that a majority (over 50%) are still in favor of the road paving plans, City staff will forward the petition to the City Commission, and recommend that a Public Hearing of Necessity of this project be scheduled. The Public Hearing date will likely be set approximately four (4) weeks later. City staff will invite all property owners by individual notice (and advertise in the local press) to a Public Hearing for the purpose of taking comments in regard to the proposed project.

The Public Hearing will provide a forum for those impacted by the project to discuss the matter with the City Commission prior to any decision on the project being made. Any interested party may provide comment either by appearing and speaking at the meeting, or filing a letter with the City Clerk, preferably one (1) week prior to the scheduled hearing date.

After the Public Hearing is closed, the City Commission will determine if the proposed project is necessary and advisable. If they vote in favor of the project, the City Assessor will be directed to prepare a special assessment roll identifying all properties to be assessed, and the estimated amounts to be assessed against each property (described below). A second Public Hearing will be scheduled to confirm the roll of assessments.

PUBLIC HEARING TO CONFIRM ASSESSMENTS

The City Commission will then schedule another Public Hearing for the confirmation of the roll. The City will again invite all property owners to this hearing. Property owners will be able to determine their particular assessment at the City Clerk's office for a period of ten (10) days prior to the hearing. The City Commission may confirm, correct, revise, or annul the special assessment roll.

A property owner or party-in-interest may file a written appeal of the special assessment with the Michigan Tax Tribunal within thirty (30) days of the confirmation if the property owner or party-in-interest, or their agent, appears and protests the assessment at the Public Hearing held for the purpose of confirming the roll. Appearance and protest may be made in person at the hearing, or may be made by filing a letter with the City Clerk prior to the hearing. If a protest is not made at the Public Hearing, an appeal may not be filed with the Michigan Tax Tribunal.

If the Commission confirms the roll, the Engineering Department will begin design of the project. After construction takes place, and final costs are available, the roll is subject to adjustment after the actual cost of construction is determined.

V. CONSTRUCTION

ANTICIPATED CONSTRUCTION SEQUENCE

Construction will likely take the following course:

1. The existing road surface will be removed or pulverized.
2. City sewer will be replaced and/or repaired (if determined necessary).
3. Sewer and water services will be replaced on an as-needed basis.
4. The existing storm drains will be abandoned, and new catch basins will be installed to accommodate the new road design. Short sections of storm sewer will be installed to drain these new basins.
5. The new grade of the road will be roughed out; generally about twelve (12) inches lower than the existing road, to ensure that all front yards drain properly to the street.
6. A gravel road base will be prepared.
7. New concrete pavement with integral curb will be installed. The new pavement will take at least seven (7) days to cure to gain strength before it can be re-opened to traffic.
8. New concrete driveway approaches will be installed. The drive approaches will match the width as needed for each existing driveway, and will be replaced complete from the sidewalk to the new curb.
9. The existing sidewalks will be repaired (where needed) to provide a consistent walking surface and new sidewalk ramps will be installed that meet current ADA regulations.
10. All yard areas within the right-of-way will be graded off, and topsoil will be placed. Front yards will generally be sodded. Seed and mulch will be used in small areas where sod is impractical, in areas where sod would not be watered, and adjacent large trees. Seed will also be installed upon written request.
11. The Contractor will return for a short period of time (normally two weeks) to ensure that the grass is growing sufficiently in all disturbed areas. Homeowners are encouraged to water and maintain new lawn areas after the Contractor's work has been completed.

The above phases may be interchanged somewhat based upon Contractor's preference, and weather conditions.

Access to each property's driveway will be maintained during the majority of the work. Access may be limited during the following operations:

1. City sewer or sewer service installation directly in front of the driveway approach.
2. Installation of new catch basins and connections to City sewers.
3. Installation of the concrete pavement.
4. Installation of the concrete drive approach (or sidewalk).

Of the above, only items 3 and 4 should involve overnight periods. Once the new concrete is placed, it is important that all traffic stay off a minimum of seven (7) days. Note that the time between the beginning of road base construction until the drive approach is ready to be driven on can be as much as three (3) weeks. Sewer work will impede access during the day, but traffic will be permitted to return at night.

All residents will be notified ahead of time if access is to be restricted, so that vehicles may be pulled out if needed.

It is anticipated that if this project is approved by the City Commission in the fall of 2015 that the construction on this project should be included in a larger contract during the 2016 construction season.

INSPECTION

During construction, a City Inspector will be assigned to the project. The City Inspector and the Contractor's Foreman will be on site every day that work is occurring, and will be available to discuss any concerns or problems that you have as a result of the project. The Engineering Department will also be available between 8:00 A.M. and 5:00 P.M. weekdays to respond to any concerns that cannot be resolved at the work site (248-530-1840).

SPECIAL TREATMENTS

Note that any special landscaping treatments in the right-of-way, such as underground sprinklers, brick pavers, wood ties, or shrubbery will be impacted by the project. These special items will be removed if they will be inappropriate relative to the new street. Items such as underground sprinklers will likely be damaged or destroyed. Any repairs or replacement to sprinkler systems or other special landscaping treatments (within the right-of-way) will need to be accomplished by the property owner, prior to project completion, at their own expense. Replacement of such items will be subject to the provisions of a Special Treatment License.

VI. COSTS & FINANCING

ASSESSABLE COSTS

Assessable costs include grading, street surfaces, driveway approaches, sidewalks, curb and gutter, drainage structures, and final restoration. The City of Birmingham pays for 15% of the cost of the project. The adjacent property owners share the remaining 85%. The estimated assessment for this project is approximately \$135.00 per front foot. The estimated cost includes engineering design, inspection, and project administration. Should bids come in significantly different than anticipated, City staff will review the costs and make an appropriate recommendation to the City Commission.

FINANCING INFORMATION

Once the assessment has been confirmed (at the estimated rate), and funding has been authorized, billings for the first installment shall be due and payable within sixty (60) days after billing. Normally this occurs near the starting date of the project. Bills not paid when due will be subject to additional interest and penalties. If you desire to pay the cost of the assessment over a ten-year period, you will pay interest at the rate fixed by the Commission at the time of the confirmation hearing. The interest rate selected reflects current market conditions, but will

not exceed 12%. You may pay off the assessment, including interest accrued to date; or you may pay the total amount at the first payment date and not accrue any interest. If you elect to pay in ten (10) installments, interest will then be charged to the second and subsequent bills, based upon the unpaid balance. Subsequent bills will arrive approximately every twelve (12) months thereafter, until the assessment is paid.

The following chart provides an example of the assessment period over ten (10) years using the rates specified above. An interest rate of 5% has been selected for this example, only.

For this example, a 50 foot lot width will be used, and a 130 square foot driveway approach. In addition, the sewer lateral replacement is estimated at \$55.00 per linear foot for 30 feet in the road right of way. The assessment for this parcel would be calculated as follows:

Paving Assessment:	50 LF @ \$ 135.00 / LF =	\$ 6,750.00
Drive Approach:	130 SF @ \$ 5.75 / SF =	\$ 750.00
Sewer Lateral Replacement:	30 LF @ \$ 55.00 / LF =	\$ 1,650.00
TOTAL:		\$ 9,150.00

Total Cost = \$ 9,150.00

No interest on first payment.

Assumed Interest Rate = 5%

Interest due on unpaid balance.

Loan payable over 10-year period.

Principal payments = \$ 9,150.00 divided by 10 = \$ 915.00

YEARS	PRINCIPAL	UNPAID BALANCE	INTEREST CHARGE	YEARLY PAYMENT
1st Year	\$ 915.00	\$ 8,235.00	\$ -	\$ 915.00
2nd Year	\$ 915.00	\$ 7,320.00	\$ 411.75	\$ 1,326.75
3rd Year	\$ 915.00	\$ 6,405.00	\$ 366.00	\$ 1,281.00
4th Year	\$ 915.00	\$ 5,490.00	\$ 320.25	\$ 1,235.25
5th Year	\$ 915.00	\$ 4,575.00	\$ 274.50	\$ 1,189.50
6th Year	\$ 915.00	\$ 3,660.00	\$ 228.75	\$ 1,143.75
7th Year	\$ 915.00	\$ 2,745.00	\$ 183.00	\$ 1,098.00
8th Year	\$ 915.00	\$ 1,830.00	\$ 137.25	\$ 1,052.25
9th Year	\$ 915.00	\$ 915.00	\$ 91.50	\$ 1,006.50
10th Year	\$ 915.00	\$ -	\$ 45.75	\$ 960.75
TOTALS	\$ 9,150.00		\$ 2,058.75	\$ 11,208.75

Average payment per year = \$ 1,120.88

Note that the billing cycle may begin before the project is completed. There will be no refunds on interest paid by any property owner if this occurs.

VII. POST-CONSTRUCTION

BENEFITS

If the project is constructed, once completed, there are several benefits to be derived. As with other curbed streets, street-side leaf pickup during the months of October and November will be provided. Leaves need to be deposited at the curb, and the Department of Public Services will make two (2) pick-ups on each street, per year, at no additional cost. Once the road is paved, the City will be fully responsible for its continued maintenance. This will include patching, crack sealing, and eventually, resurfacing or complete reconstruction.

VIII. DISCLAIMER

The information provided in this report was based upon facts at the time written to the best of the Engineering Department's knowledge. The City of Birmingham reserves the right to change the policies and procedures noted herein without notice based upon changing conditions that may be appropriate in the future. If you have knowledge that any of the information contained in this report is incorrect, please contact the City of Birmingham Engineering Department as soon as possible to notify them of any inaccuracies.

APPENDIX B

PEER REVIEW



MEMORANDUM

Department of Public Services

DATE: July 23, 2018

TO: Ad-hoc Unimproved Street Study Committee

FROM: Aaron J. Filipski, Public Services Manager
Paul T. O'Meara, City Engineer

SUBJECT: Neighboring Communities - Street Upgrade Policies

As this committee examines Birmingham's street improvement policies and explores potential changes, it may be useful to reference the policies of neighboring communities. The following report summarizes policy differences between Farmington Hills, Rochester Hills, Royal Oak, Troy, and the Oakland County Road Commission.

The information was compiled mostly through conversation with relevant staff at these agencies. A standardized questionnaire was sent as well, with limited response. At the beginning of this process we sought insights from the smaller southeast Oakland County communities that are most similar to Birmingham, such as Clawson, Berkley, Huntington Woods, and Pleasant Ridge. These communities have long had a fully-improved local road system that appears to date back to the 1950s, and current staff at these communities had few historical insights to share.

The policy examination revealed several key areas in which policies differ between communities. They include resident support thresholds for the instigation of a cost/viability study and final project approval, assessment cost sharing, and payment terms. It also considered current unimproved street mileage and maintenance practices. The following chart summarizes the information:

	Miles of Unimproved Roads	Use of Chip Seal For Maintenance	Cost Study/Informational Meeting Threshold	Project Approval Threshold	Based on	Front Footage Assessment Cost Share (City/Owner)	Payment Term (Years)
Farmington Hills	22	No	25	51	Parcels	20/80	10
Rochester Hills	20	No	60	61	Parcels	40/60	15
Royal Oak	3.6	No	n/a	50	Footage	50/50	15
Troy	10	Yes	50	50	Footage	50/50	10
Birmingham	26	Yes	50	50	Footage	15/85	10

The following sections highlight noteworthy differences among several of the studied communities.

Farmington Hills

Among the cities examined, Farmington Hills is most similar to Birmingham in terms of unimproved street surface quantity. It maintains 22 miles of unimproved gravel roads through frequent grading and the application of dust control measures. Unlike Birmingham, Farmington Hills' unimproved streets are not chip sealed. An important difference from Birmingham is that even after a road is paved, it is not rehabilitated unless another assessment district is created.

The process to upgrade to a fully-improved street is petition-driven, although it only requires 25% interest from affected property owners to trigger a city-performed preliminary cost and viability study. The lower threshold makes it easier for interested petitioners to obtain preliminary cost estimates, but risks spending staff time and resources on projects that have a greater potential for rejection. Reducing this threshold can also give the appearance of staff 'taking sides' by encouraging discussion when there is not a majority in favor of exploring an improvement.

Farmington Hills also has a 'directed' road improvement policy and procedure. The 2015 policy notes:

"...in instances where road conditions have become seriously degraded and become an issue of safety and overall community appearance, it may become necessary for City Council to initiate a road reconstruction project without a petition. The objective of this policy is to establish a process for DPS staff to evaluate and recommend a directed road reconstruction special assessment district to the City Manager and City Council."

The policy considers regularly-updated road pavement condition assessments in determining eligibility and project prioritization. Note: the excerpt above uses the term *reconstruction*, implying that it only applies to the reconstruction of existing improved surfaces. Within the context of the full policy, however, it is clear that it also applies to unimproved streets. The full policy and other background information is included in attachment A.

Rochester Hills

Rochester Hills publicizes an annual 'call for projects' during the months of September and October to gauge public interest in special assessment projects, including gravel street improvements. During the 60-day time frame, property owners desiring an improvement may submit an informal petition indicating at least 60% homeowner interest. Subsequent steps follow a defined schedule and process similar to Birmingham, including public meetings, circulation of official petitions, etc.

By limiting submissions to the defined time frame, the city can better plan for and schedule potential projects. Staff efforts on such initiatives can be more focused and the various tasks related to administering SAD projects can be accomplished more efficiently. Additionally, by publicizing the request regularly, the city is continually educating the public on their available options, which can have the effect of starting conversations among neighbors. One drawback is that if there is momentum and interest in pursuing an improvement outside of the designated time frame, it may wane if forced to wait a number of months before being able to proceed

through the process. It could also potentially strain staff if multiple request are received simultaneously.

Another noteworthy feature of Rochester Hills' street improvement policy is that it provides homeowners an inflation-indexed assessment cap. Details of the procedures and policies described here are included in attachment B.

Royal Oak

Royal Oak maintains relatively few unimproved roads – only 3.6 miles out of an approximate 200 miles. Within the past few years, Royal Oak has taken a more aggressive stance to encourage residents to submit petitions, hoping to eventually remove the remaining unimproved roads from their system.

In order to encourage resident support for street improvements, Royal Oak has extended a considerable discount to residents during the term of a local road millage. Typically assessed the full cost for an improvement, the incentive offers a 50% discount for property fronting an improvement, and 75% discount for side lots. Staff indicated that the incentive has largely been successful, having upgraded 7 of unimproved streets since the 2015 millage. Additional detail is provided in attachment C.

Road Commission for Oakland County

Although not included in the table above, staff also spoke with the local roads manager for the Road Commission. In townships, maintenance of all public streets is the duty of the Road Commission. Unlike cities, the Road Commission has no legal authority to force a special assessment district. Roads that are paved are not invested in further, other than for patching holes and keeping them safe. Property owners must petition the Road Commission to get a rehabilitation project started, and owners must pay 100% of the assessment cost. Gravel roads must also be petitioned and paid for by assessment in order to be paved.

At times, roads get in such poor condition that the County has explored the idea of removing the old asphalt and making it a gravel road again. That too would involve a cost for which there is no source of funds. It also would be a setback for the road system, so to date, that has not yet occurred.

Attachment A

Supplemental Information

City of Farmington Hills

Policy Number: 24.4 Pavement Management System Self-Assessment Practices Manual	Subject: Directed Special Assessments for Road Improvements
Revised: N/A Issued: 4/27/15	Page: 1 of 2
Intent: Establish a policy and procedure for submitting a directed road improvement special assessment district project to City Council.	
Applies to: All divisions of the Public Services Department (DPS) Employees.	

I. Objective

Current City Charter, Ordinances and Policies prescribe a special assessment district (SAD) process for improvements/reconstruction of neighborhood streets. In the past, SADs have been brought to City Council based on a neighborhood petitioning process. However, in instances where road conditions have become seriously degraded and become an issue of safety and overall community appearance, it may become necessary for City Council to initiate a road reconstruction project without a petition. The objective of this policy is to establish a process for DPS staff to evaluate and recommend a directed road reconstruction SAD to the City Manager and City Council

II. Procedures Relating to Directed Road Improvement SAD's for Local and Non-Residential

1. The DPS shall update the City's road pavement condition assessment on at least a bi-annual basis (every other year).
 2. Based on the pavement condition assessment, roads with an average PASER rating (or equivalent) of a 2.75 or less, within a district to be defined by the DPS Director, are considered to be beyond their useful lives, in very poor condition, a public health and safety deficiency, a detriment to the community at large, and in need of reconstruction. The boundary of the district shall be determined by considering recognized neighborhoods in terms of commonality in the age of the existing roads, economics of the improvement project, and the reasonableness of providing the improvement.
 3. The DPS shall develop cost estimates for the reconstruction of the local and non-residential roads in such defined districts, as well as the estimated cost for each property within the districts.
 4. The DPS will then review and prioritize these districts, placing them into a 5 year local road capital improvement plan (CIP).
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5. The City Manager shall direct staff to proceed with submitting the road improvement special assessment district projects to City Council based on the prioritization and projects listed in the local road CIP, such that Council can then consider proceeding with initiation of the project and special assessment in the manner provided under the City Charter and Code of Ordinances.
 6. Owners within these project areas will be notified, in writing, about their road conditions and provided with information on the City's special assessment process, public hearings, and how payments can be spread over several years as determined.
 7. Deferments, special considerations and/or financing may be available under State laws or the City Charter for those that meet income eligibility requirements.
 8. The plans and specifications prepared by the DPS for Directed Road Improvement SADs shall provide for the road to be constructed with the most cost effective and durable cross-section, as determined by the Director of DPS, to achieve a minimum 20 year design life.
 9. When a district reaches a PASER rating of 4 or less, the property owners in the district will be notified in writing by City staff. This policy does not preclude residents from utilizing the process of submitting petitions to City Council for an SAD for reconstruction of their roads other capital pavement preservation practice, as appropriate for the pavement condition and as approved by the Director of Public Services in their neighborhood.
 10. The determination of the units of benefit, no less than 1 and no more than 1.3, shall be calculated by the City Assessor utilizing the Assessment Formula Policy for Residential and Non-Residential Road Improvements, as adopted by City Council on April 27, 2015.
 11. Special assessment deferments shall be determined on a case by case basis, after application to the State of Michigan has been made. The City's Finance Director, according to the City of Farmington Hills Application for Special Assessment Deferment, would then make a recommendation to City Council for consideration.
 12. City Council shall determine, based on city staff recommendation, the length of repayment term for the special assessment.

**CITY OF FARMINGTON HILLS
ASSESSMENT FORMULA POLICY FOR
RESIDENTIAL AND NON-RESIDENTIAL ROAD
IMPROVEMENTS**

A determination is made as to the number of homesites in a given special assessment district. The average homesite size in the district is determined by dividing the total abutting roadway footage by the total number of homesites in the district. The units of benefit are derived for each homesite by utilizing the Declining Rate Formula. The rationale behind the Declining Rate Formula is that as the frontage of a homesite increases beyond a certain point, the amount of benefit received increases, but at a lesser rate.

The methodology we are using was developed by the Oakland County Road Commission and is used consistently on Road Commission assessment Projects for all local roads within the County. It has been upheld in the courts in the past as an equitable way of assessment. Each homesite will receive somewhere between 1.00 units and 1.30 units of benefit, with the majority receiving 1.00 unit of benefit.

There are three (3) special conditions for homesites which abut a roadway or roadways on more than one property line.

1. Condition – A homesite which abuts two local roadways, both of which are to be improved.

Procedure – The homesite is assessed by applying the total abutting footage to the improvement, to the Declining Rate Formula. **The maximum unit benefit to the property for both roadways is 1.30.**

2. A homesite which abuts two local roadways, one of which is to be improved and the other to remain in its existing condition.

Procedure – The homesite is assessed by applying the total footage abutting both roads to the Declining Rate Formula and then proportioning that unit of benefit to the two roadways. That portion of benefit received by the proposed road improvement is included in the assessment district, with the portion of benefit for the unpaved road assessed when the road is improved through a later assessment district. **The maximum unit benefit to the property for both roadways is 1.30.**

- 2a. A homesite which abuts two roadways (one local road and one major road), where the local road is to be improved and the major road remains in its existing condition.

Procedure – The homesite is assessed by applying the total footage abutting only the local road to the Declining Rate Formula. That portion of benefit received by the proposed road improvement is included in the assessment district. **The unit of benefit to the property for the local road will be between 1.00 and 1.30. The portion of benefit for the major road, if and when the major road is improved**

through a later assessment district shall be no greater than the difference of 1.30 and the unit of benefit applied to the local road, i.e., between 0.00 and 0.30. The maximum unit benefit to the property for both roadways is 1.30.

3. A homesite which abuts two local roadways, one of which has previously been improved and the other is proposed to be improved.

Procedure – The homesite is assessed by applying the Declining Rate Formula to the total footage abutting both roads. Subtract the unit of benefit paid previously from the unit of benefit received from the entire frontage. This will result in the unit of benefit for this assessment district. (Normally this benefit will be between 0.01 and 0.30 units). **The maximum unit benefit to the property for both roadways is 1.30.**

Note: Major and Local Roads are those City Roads certified by the Michigan Department of Transportation, respectively.

Attachment B

Supplemental Information

City of Rochester Hills

City of Rochester Hills

Special Assessment District Information for Paving Local Gravel Roads

April 17, 2017
(Final Approved Version)



CITY OF ROCHESTER HILLS

SPECIAL ASSESSMENT DISTRICT PAVING PROGRAM FOR LOCAL GRAVEL STREETS

INTRODUCTION

Some neighborhoods in the City of Rochester Hills were developed before the availability of municipal utilities and prior to the adoption of standards that are in place today for construction of new subdivisions. Consequently, these neighborhoods have gravel streets that residents find to be a nuisance and generally undesirable. Residents of these neighborhoods have long desired to have their streets paved. With the subsequent construction of municipal utilities in many of these neighborhoods, streets now contain the improvements needed to permit paving.

An SAD is a special financing district set up to fund the capital costs of a public improvement that provides special benefits to property owners in a subdivision or a defined neighborhood. The legal theory behind SAD's is that the owners' share of the cost assessed against their property will be offset by a reasonably proportionate increase in the value of the property resulting from the improvement.

By law, municipalities have authority to establish SAD's. The City's role is to establish the SAD, provide the financing for the improvement (sometimes through the sale of bonds), contract for design and construction of the improvement, collect the SAD payments from the benefiting property owners and pay off the debt (if used).

Since the greatest benefits of local street improvement accrue to the owners of property along those streets, the costs of these improvements are borne by the benefiting property owners in many municipalities. The City of Rochester Hills, like many other municipalities, has very limited resources for local street improvement and does not receive an adequate level of funding through general property taxes, existing voted millage or the gas and weight taxes to bear the sole cost of paving the local gravel streets. For this reason, the City has adopted the special assessment district (SAD) approach to finance paving of local gravel streets.

Rochester Hills has recognized a benefit in reduced operation and maintenance costs and health and quality of life benefits of a paved road versus an equivalent length of gravel road. Thus, to encourage and assist residents fronting gravel roads to pave their streets, a policy of cost sharing intent at 40% City, 60% Property Owner. A not-to-exceed cap of \$12,000.00 property owner charge indexed annually to inflation (including food and fuel) per each potentially buildable lot is proposed.

The \$12,000 per-buildable-lot cap applies to 2017 SAD projects and this cap is subject to revision based on being indexed to inflation utilizing the Bureau of Labor Statistics, Consumers Price Index – food and energy table for Detroit Metropolitan Area for each subsequent year.

If the property owner cap is met, a combined assessment per buildable lot will equal \$20,000.00 for the property owner and City share. If any SAD project with a buildable lot assessment in excess of \$20,000.00 per buildable lot average occurs, this condition will require that the Department of Public Services to seek economies of scale by bundling an SAD project with other similar proximate City project(s). Since the SAD projects involve asphalt pavement, the SAD project would likely be bundled with the annual local road asphalt repair program or possibly the asphalt pathway rehabilitation project.

This recommendation was endorsed for incorporation by a resolution by the Public Safety and Infrastructure Technical Review Committee at their March 2, 2017 meeting.

SPECIAL ASSESSMENT DISTRICT PROGRAM PROCESS

Call for Projects

The SAD process will start with an annual Call for Projects that will occur during the months of September and October. Residents that desire to request the process to start an SAD process for paving their gravel road will be expected to provide written documentation to the City with at least 60% of street residents showing support to request a public information meeting to learn more about the SAD program. This initial informal petition should be submitted to the Department of Public Services within the 2-month Call for Project timeframe. The intent of the SAD program is for a project request to include a complete roadway paving project. The expected limits would be bookended between a starting and terminus of either two paved cross-roads or from the beginning of a road segment to a terminus (cul-de-sac or dead end point) of the same road.

First Public Information Meeting

When the City receives one or more qualifying requests to initiate an SAD request, a public information meeting will be arranged. Residents will be notified by mail of the date, time and location of the meeting. Typically, these meetings are held on a Wednesday or Thursday at the Rochester Hills City Hall Auditorium and start at 6:00 p.m. City Engineering and Treasury Department staff will be in attendance to answer questions and provide an overview of the SAD policy. City elected officials or staff members from the City Fiscal and Clerks Department may also attend the meeting.

At the meeting, it will be explained that petitions to establish an SAD may be obtained from the City Clerk's office by property owners who wish to volunteer to circulate petitions. The Treasury Department will create the SAD petition template for the Clerk's office. The name, address and phone number of each volunteer will be taken at the meeting. These people will be notified by the City Clerk's office when the petitions are available. The petitions may then be picked up by the volunteers and circulated throughout the neighborhood to obtain signatures of property owners who support the establishment of an SAD.

Receipt of Signed Petitions by the City

Circulators of the petitions will have the months of November, December and January to obtain at least a 60% + 1 household support of property owner signatures on their respective local street. If this requirement is accomplished, they may turn in the signed petitions to the City Clerk's office. Upon receipt of the signed petitions by the City Clerk, the Assessing Department will be asked to verify that the persons signing the petitions are the property owners according to City land records. In the event that a street does not achieve the minimum petition support by January 31st or City Council does not accept the petitions, new signatures will be required for each subsequent year until the signatures are accepted by City Council.

A City Council agenda summary will be prepared for street petitions verified to have a minimum 60% + 1 household support at a regularly scheduled meeting in February. City Council will be asked to accept each local street petition request, or streets if making a combined submission, for a potential SAD project and pass a resolution of support. Property owners within the proposed SAD will receive notice of the meeting.

Petitions received by the City are advisory and do not compel the City Council to establish an SAD. The City Council will establish an SAD only when it is clear there is majority support for the project from the affected property owners. If it is clear there is not a significant level of support (60% + 1 household or greater) for the project, the City Council shall decline to accept the petitions and the process will stop.

Capital Improvement Plan Project Submission

The Department of Public Services shall prepare an individual Capital Improvement Plan (CIP) entree for each SAD Project request that City Council has accepted petition signatures of support by resolution. CIP project submissions will be prepared by the end of February so that they can be incorporated into the final version of adopted by Planning Commission in April. The CIP process evaluates all capital projects based on predefined ranking criteria. The ranked capital projects include budget estimates and a proposed fiscal year for implementation.

City Budget Incorporation of Qualifying SAD Project Candidates

The Department of Public Services and the City Council will annually review the proposed SAD projects that are included in the latest adopted Capital Improvement Plan for inclusion with the next budget approval. Like all capital projects, a SAD project may be moved to a different fiscal year to take advantage of collaborative purchases or availability of specific funding sources. City Council will determine the actual number of SAD project candidates, if any, that can be included in the next approved City Budget fiscal year.

Approval to Proceed with Preliminary Engineering Design Phase

Once a proposed SAD Project has been included in an adopted budget, the Department of Public Services will solicit a proposal from one or more of the quality based selection design consultants to perform the preliminary engineering services. The proposal will be submitted to City Council for approval at a meeting in January. It is also expected that the City Council will direct the Department of Public Services to commence with the preparation of the City Engineer's report for each SAD project being granted preliminary engineering approval. The Engineer's report will outline a preliminary engineering design for the project, a scope of work, a cost estimate for the project, an estimate of the number of properties within the proposed SAD, an estimate of the City's share of the cost and an estimate of the average pro rata share of the cost for property owners.

Second Public Information Meeting

The City will notify property owners and hold a second information meeting. The purpose of the second information meeting is to provide property owners with more detailed information about the project, including detailed design plans and current engineer's cost estimates. This meeting will allow property owners to obtain the most current and complete information in advance of the public hearing on necessity. Also, property owners will have an opportunity to ask general questions about the project or specific questions about their properties in an atmosphere that is less formal than the public hearing on necessity. The meeting will be conducted by City staff who have been involved with development of the project. The second public information meeting will be planned for the month of May.

Receipt of City Engineer's Report and Tentative Determination to Proceed

The City Engineer's Report will be completed subsequent to the second public information meeting for each SAD project candidate and submitted to City Council for a regularly scheduled meeting in June. At this same meeting, the City Council will be asked to pass a resolution to tentatively determine to proceed with an SAD project. The City Council may, by resolution, determine tentatively to proceed to establish an SAD for the project, setting forth the nature of the project and requiring the City Engineer's report to be filed with the City Clerk so it is available for review by the public. In the same resolution, the City Council will set forth the time and place for a public hearing on the advisability of proceeding to establish the SAD.

Public Hearing on Necessity

The public hearing will be held at least ten (10) days after notice has been published in the City's official newspaper and sent by first class mail to all property owners in the proposed SAD as shown on the City's current assessment roll. The public hearing will be held at a regular or special meeting of the City Council. At the public hearing, all persons interested shall have an opportunity to be heard by the City Council. Public Hearings on necessity will be planned for the month of July.

Determination to Continue S.A.D. Process

Following the public hearing, the City Council may determine whether to end the process or to proceed. If it determines to proceed, a decision on a final determination is deferred for twenty-eight (28) days to give property owners who may be opposed to the SAD an opportunity to circulate petitions of objection. If the City Council decides to end the SAD process for a project subsequent to the public hearing, a resolution will be passed at the same July Public Hearing on Necessity meeting.

Objections to Improvements

After the public hearing has been held by the City Council, if there is a desire by the property owners within the limits of the proposed SAD to terminate the project, written petitions objecting to the proposed improvements may be obtained from the City Clerk on the fourteenth (14th) day after the public hearing and circulated, signed and returned to the Clerk by noon on the twenty-eighth (28) day, or the next business day if the City offices are closed on the twenty-eighth (28th) day, immediately following the public hearing. The Treasury Department will create the Petitions of Objection and provide them to the City Clerk's office prior to the 14th day.

The improvement shall not be made if properly filed petitions objecting to the proposed improvement are signed by 50% + 1 household of the owners of:

- A. the total land area,
- B. front footage, or
- C. number of parcels or units to be assessed, as determined by the City Council in a resolution adopted following the public hearing,

Final Determination

If the City Council determines to proceed, it shall pass a resolution determining that the improvement is necessary, approving the plans, specifications and detailed cost estimates, prescribing what part of the costs are to be paid by the SAD, delineating the limits of the SAD, determining the method to be used to make the assessment, and directing the City Assessor to prepare the draft special assessment roll in accordance with the City Council's determination. This meeting will be planned for the month of August. At this same meeting, the City Council may need to decide whether the construction and construction engineering phases will be included in the next fiscal year budget prior to their typical adoption of the budget in late September.

Draft Special Assessment Roll

The City Assessor will make a draft special assessment roll of all lots and parcels of land within the designated district benefited by the proposed improvement and specially assess each lot or parcel of land. The roll will list each property in the SAD and its special assessment. The amount spread in each case shall be based upon the detailed estimate of the City Engineer as approved by the City Council.

When completed, the City Assessor shall file the draft special assessment roll with the City Clerk for presentation to the City Council for review and confirmation. Upon receipt of the roll, the City Council, by resolution, shall accept the roll and order it filed with the City Clerk for review by the public.

The City Council shall determine the time and place for a public hearing and hold the public hearing, in the same manner as previously outlined, to consider objections to the roll, corrections to the roll, or annulment of the roll. The submission of the draft special assessment roll to City Council will be targeted for September.

Public Hearing on the Draft Special Assessment Roll

The public hearing for the draft special assessment roll will be held by the City Council at an October meeting.

After the public hearing, if the City Council believes assessments are proper, it shall pass a resolution confirming the roll. The Council will also authorize the City Treasurer to bill and collect the SAD roll at the same meeting or a time closer to construction.

Proceed to Construct Improvement

Once the proposed SAD project receives the City Council approval for the assessment roll, the DPS shall work with the Fiscal Department Purchasing Division to advertise the project and receive bids. City Council will be asked to award the construction contract and the construction engineering (CE) contract at a meeting in January or February. Construction of the SAD gravel to pavement project would then be planned to commence in April or May and complete the improvements that same construction year.

GENERAL INFORMATION ABOUT SPECIAL ASSESSMENT DISTRICTS

Determination of Proration of Cost to Each Property

As previously indicated, the legal foundation of SAD's is that the cost assessed to each property will result in a reasonably proportionate increase in property value. There are a number of formulas used to distribute costs among properties in an SAD that have been developed over many years of experience. The cost assessed to an individual property based on these formulas is called a unit benefit.

For street improvement SAD's, the City uses the "Declining Rate Benefit Ratio" method to determine unit benefits. That method establishes the unit benefit by calculating the average width of each property where it is adjacent to the street. Properties having a width equal to or less than the average will be assessed on (1.00) unit benefit. Properties with widths greater than the average will be assigned a unit benefit greater than one (1.00) based upon the declining rate curve, and up to a maximum of one and three tenths (1.30) unit benefit costs. Note: it is possible that a single parcel of land under one ownership may be assigned multiple (i.e. 2, 3, 4, etc.) unit benefits. This usually involves larger parcels of land, which could be divided into two or more building sites. In these cases each potential building site is assessed a unit benefit.

Term of Special Assessment Installment Payments and Interest Rate

While a special assessment can be paid in full at the onset, most property owners choose to make installment payments. The term of special assessment installment payments will be based on a 15-year amortization schedule with the current SAD interest rate applied. Installment payments shall be paid annually and are due on April 1. City Council shall set the rate of interest on the unpaid balance.

Typically, the interest rate set by Council is one (1) percent over the average rate of the bonds if sold to finance the project or related to other measures such as Prime. The additional one (1) percent is added to provide sufficient cash flow for administration, and if issued, bond principal and interest payments.

Special Assessment is a Lien Until Paid

The special assessment shall become a lien upon the property until it is paid in full. The lien will be of the same character and effect as is created by the City Charter for City taxes. To protect the taxpayers of the City, the City will not subordinate the lien in the case of a sale of the property, refinancing, second mortgage, home equity loan, etc. In these cases, the special assessment will have to be paid in full to discharge the lien.

Adjustments and Corrections to Assessments

Over Assessment:

If a special assessment exceeds the actual cost of the improvement and incidental expenses by five (5) percent or less of the amount assessed, that excess may be placed in the General Fund of the City. If the assessment proves larger than is necessary by more than five (5) percent, the entire excess shall be refunded, or credited if a balance is still outstanding, on a pro rata basis to the owners of properties in the SAD provided, however, that no refunds of less than Five Dollars (\$5.00) will be made.

Attachment A
LOCAL ROAD POLICY AND FUNDING CRITERIA
FOR PAVING GRAVEL ROADS

- ◆ In general, roads shall consist of a 22-foot wide asphalt road, grass shoulders and an open ditch drainage system in accordance with the latest City of Rochester Hills engineering standards and specifications for paving.
- ◆ The cost to the property owner shall be capped at \$12,000 cost to the property owner for a 2017 SAD project per buildable lot (existing and/or potential) for paving to current minimum standards. As stated in the SAD Policy language, this capped amount will be subjected to annual adjustment for inflation for subsequent years. Additional betterment improvements or work deemed aesthetic in nature by the property owner will be assessed for 100% of the cost to the property owners and shall be applied in addition to the assessment cap.
- ◆ If recommended by the Department of Public Services and determined to be in the best interests of the residents and City, the City Council may require the installation of water, sanitary and/or storm sewer utilities prior to or in conjunction with the SAD paving project.
- ◆ The City Council encourages citizens' initiative pursuant to the Special Assessment District Ordinance, Chapter 90 of the Rochester Hill codified code of ordinances, to improve and upgrade their local roads.
- ◆ Special assessment projects that have plans already designed will be considered for first priority. If there are no existing plans for a project, special assessment projects generally will be taken in order of the filing date of valid and sufficient petitions.
- ◆ The service life will be designed to a 15-year performance standard
- ◆ Driveway approaches will match existing drive in material type (concrete or asphalt) and width, from edge of road to property line. Existing gravel driveway approaches will be constructed as asphalt.
- ◆ Mailbox posts will be replaced per the US Postal Service approved version
- ◆ Private property items such as fencing, lamps, irrigation systems, ornamental or monument mailboxes, landscaping, etc., is in right-of-way, then the City will give notice to homeowner to remove the private property. If not removed by the owner, then City will remove the private property and not replace it.

Under Assessment:

Additional pro rata assessments may be made when any special assessment roll is insufficient to pay for the improvement for which it is levied, provided that the aggregate of the additional pro rata assessments shall not exceed twenty-five (25) percent of the total assessment as originally confirmed unless a meeting of the City Council is held to review such additional assessment and interested citizens have had an opportunity to provide input.

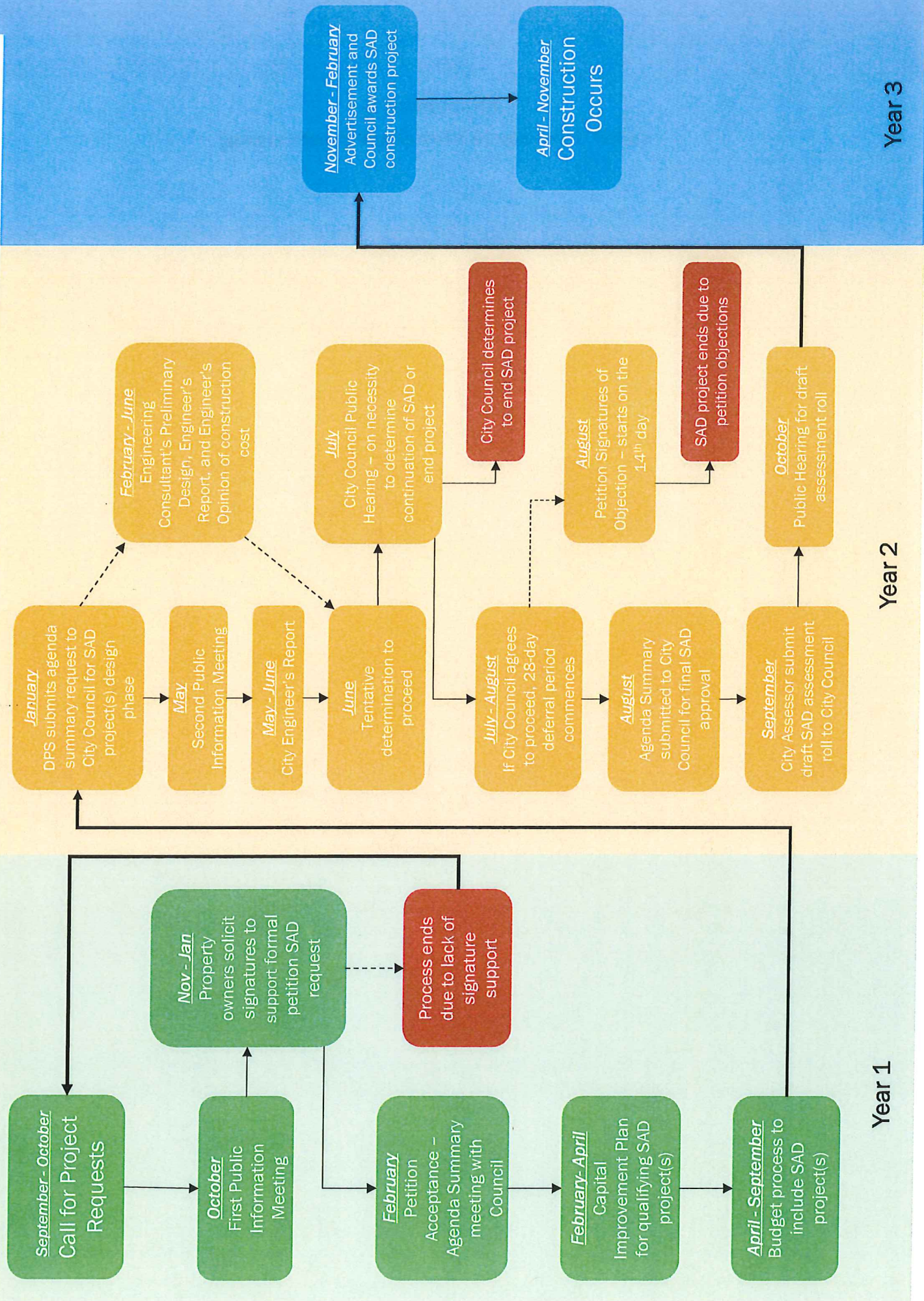
ADDITIONAL COMMENTS

The information contained in this overview is a summary of the process and provisions of Chapter 90 Special Assessments of the Code of Ordinances of the City of Rochester Hills. It is intended only as a reference and should not be construed as a complete description of all provisions and requirements of the ordinance. There are additional provisions and requirements outlined in the ordinance that may be applicable to certain property owners or situations. If there are specific concerns or questions concerning the special assessment process or requirements, they should be referred to the Director of the Department of Public Services at 248.656.4640.

This policy shall be reviewed in three years (year 2020) for applicability and economics.

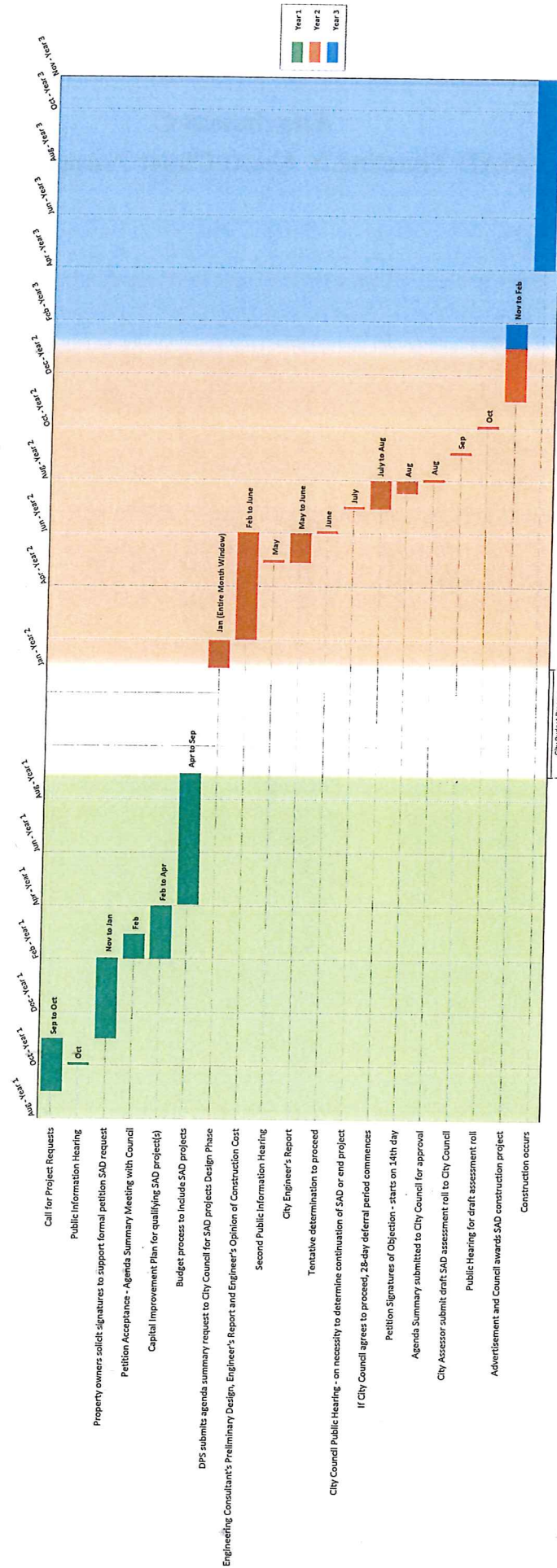
Attachment B
(SAD Timeline in Flowchart Presentation)

Proposed Schedule for Special Assessment District Gravel to Pavement Projects



Attachment C
(SAD Timeline in Gantt Chart Presentation)

Proposed Schedule for Special Assessment District (SAD) Gravel to Pavement Projects



Attachment D

SPECIAL ASSESSMENT CHECKLIST

PROJECT: _____ SEC. NO. _____

LOCATION: _____

PROCESS INITIATED:

- _____ Call for Projects Occurs – September thru October
- _____ City is provided with written documentation stating that at least 60% of street requests that a public information meeting is scheduled
- _____ Letter sent to property owners regarding meeting, including information on process, policies and project. [DPS] sends letter with copy to all departments involved in SAD process

FIRST PUBLIC INFORMATION MEETING:

- _____ Public information meeting held to review the SAD Policy and determine resident volunteers that will obtain petition signatures

PETITIONS:

- _____ Petition template created by Treasury and provided to Clerks Department
- _____ Clerks Department provides petition template to resident volunteers
- _____ Petitions returned to Clerk by circulators - November thru January
- _____ Petitions verified and report prepared by Assessing
- _____ Mailing to property owners advising when petitions will be on City Council agenda [Assessing prepares mailing labels and Clerk sends mailing]
- _____ Council resolution to accept petitions (RES A)

CAPITAL IMPROVEMENT PROJECT:

- _____ The DPS will prepare a CIP project entry for inclusion with the next version.

BUDGET INCORPORATION OF QUALIFYING PROJECTS:

- _____ City Council determines which SAD projects will be included for engineering design in the next fiscal year.

APPROVAL TO PROCEED WITH THE PRELIMINARY ENGINEERING PHASE:

_____ Recommendation is made on selection of PE consultant for project [DPS]
_____ City Council awards PE services contract to consultant
_____ City Council directs DPS to commence preparation of the City Engineer's Report

SECOND PUBLIC INFORMATION MEETING:

_____ Second public information meeting is held in May

COUNCIL RECEIVES THE CITY ENGINEER'S REPORT AND DETERMINES TO TENTATIVELY PROCEED:

_____ Council receives Engineer's report with detailed cost estimate and plans
Total project estimate: \$
Portion of project estimate to be assessed: \$
Number of parcels in the SAD:
Estimated base unit benefit: \$
_____ **Engineer's** report and plans filed with **Clerk**
_____ Council resolution to determine tentatively to proceed and to set public hearing on necessity (RES B) [**Clerk's Office** prepares and **Clerk** certifies with copy provided to all departments involved in SAD process]

PUBLIC HEARING ON NECESSITY:

_____ Public Hearing notice prepared [**Treasurer**]. Attach CDBG letter from Fiscal Team
_____ Public Hearing notice mailed to property owners [**Clerk**]
_____ Public Hearing notice published in official newspaper [**Clerk**]
_____ Public Hearing held by City Council in July
_____ Council resolution to continue process with further action deferred 28 days (RES C) [**Clerk's Office**]

PETITIONS OF OBJECTION:

_____ Letter sent to all property owners regarding Petitions of Objection [**Clerk**]
_____ Petitions prepared by Assessing and available to requestors from Clerk on the 14th day after public hearing
_____ Petitions returned by circulators to **Clerk** by noon on the 28th day after public hearing

AFTER 28-DAY DEFERRAL:

_____ Petitions of Objection received: YES ____ NO ____
_____ Verification Report prepared by Assessing
_____ Signed by 50% + 1 or more: YES ____ NO ____
_____ Returned to Council – accept Petitions of Objection (**RES D-P**) [**Clerk's Office**]
_____ Council resolution to proceed with improvement, to establish a SAD and to
authorize preparation of SAD roll (**RES D**); planned for an August Council meeting

_____ Council agrees to budget the construction and construction engineering phases for
the next fiscal year budget; planned for an August or September Council meeting

DRAFT SAD ROLL:

_____ Draft SAD Roll prepared by Director of Assessing
_____ Draft SAD Roll filed with City Clerk
_____ Draft SAD Roll submitted to City Council at a September meeting
_____ Council resolution to accept roll, to order roll filed with Clerk for public
examination, and to set a public hearing (**RES E**) [**Clerk's Office**]
_____ **RES E** is certified and filed with City Clerk

PUBLIC HEARING ON SAD ROLL:

_____ Public Hearing notice prepared [**Treasurer**]. Mail CDBG application from Fiscal
Team
_____ Public Hearing notice and CDBG information mailed to property owners [**Clerk**]
_____ Public Hearing notice published in official newspaper [**Clerk**]
_____ Public Hearing held by City Council; planned for an October meeting
_____ Council resolution to confirm SAD roll and to command that special assessments
be spread (**RES F**) [**Clerk's Office**]

CERTIFICATION OF SAD ROLL:

_____ Final roll prepared and certified by Director of **Assessing**
_____ Assessor proofs parcels and forwards apportionment to Treasury
_____ Treasury inputs changes, prints roll and sends to Assessing

BILL AND COLLECT:

_____ Council resolution to bill and collect, setting of interest rate and setting of date
interest begins (**RES G**) [**Clerk's Office**] prepares with **Treasurer** providing
recommendation on interest rate and date interest is to begin]
_____ Mail bill and collect notification and amortization schedules to property owners
[**Treasurer**]
_____ Mail notice of confirmation to property owners [**Treasurer**]
_____ Provide copy of amortization loan to Accounting [**Treasurer**]

PROCEED TO CONSTRUCT IMPROVEMENT:

_____ DPS and Fiscal coordinate to advertise and bid the SAD project
_____ City Council awards bid for construction
_____ City Council awards contract for CE services to consultant
_____ File liens with county **Treasurer**

CONSTRUCTION:

_____ Construction started
_____ Construction completed

FINAL ACCOUNTING FOR SAD:

_____ Report on final accounting and allocation of costs [DPS]
_____ Adjustments to assessments [Treasurer]

Attachment C

Supplemental Information

City of Royal Oak



SPECIAL ASSESSMENT STREET PAVING
INFORMATIONAL HANDOUT

GENERAL

Property owners may petition to have a street paved by special assessment. Petitions are available in the City Engineer's Office. The City Commission may order a street paved as an assessment project with or without a petition. However, when a petition is submitted, it has generally been the requirement that property owners representing 50% or more of the assessable frontage must sign the petition. Up to two public hearings are held by the City Commission and all property owners of record are notified. The first public hearing is the "Hearing of Necessity" to determine if a street is to be paved or repaved; the second hearing is the "Special Assessment Hearing" to set the special assessment rate for affected property. A public "Hearing of Necessity" can be waived if 100% of the assessed frontage is represented in the petition.

PROCEDURE

1. Secure a petition form from the City Engineer's Office.
2. Contact the City Engineer's Office for a rough cost estimate for the project before the petition is circulated.
3. Secure signatures on the petition from owners of the adjacent property. The name of the owner of record can be secured from the City Engineer's office if necessary.
4. Return the petition to the City Clerk's Office.
5. The City Engineer will calculate the percentage of assessable frontage signing in favor of the project. This will be reported to the City Commission. The City Commission will decide whether to adopt the "First Resolution" which would direct the preparation of detailed cost estimates and a special assessment roll showing estimated cost for each property.
6. As part of special assessment street paving, driveway approaches will be replaced in concrete.
7. The remaining steps of the assessment procedure are shown in Attachment A.

ASSESSMENT POLICY

The policy for determining the portion of the total project cost to be charged to adjacent property owners is shown in Attachment B.

The time allowed for special assessments to be repaid is 15 years. The standard interest rate of special assessments is 6% beginning with the second consecutive payment upon the unpaid assessed balance.

Note: The City may sell bonds to finance the cost of special assessment projects. The interest rate paid by the homeowner is 1% above the interest rate paid by the City on any bond issue. This rate is determined at the time the bonds are sold.



PROPOSED SPECIAL ASSESSMENT PROCEDURE

City Commission is presented with a recommendation or petition to consider a public improvement.

Resolution No. 1

Commission orders preliminary plans and estimate of cost prepared by City Engineer, and directs City Assessor to prepare a Special Assessment District. City Assessor refers topic back to City Commission when Special Assessment District is prepared - usually 2 to 3 weeks are required.

Resolution No. 2

Commission establishes a Special Assessment District, setting forth the estimated cost to the City and to the Assessment District, and setting a public hearing date on necessity.

City Clerk advises Commission on date - usually 3 to 4 weeks are required. Notice of said public hearing must be published in a newspaper and also sent to the individual property owners.

Resolution No. 3

Public Hearing is held on scheduled date and any objections are registered. If the proposed improvement is deemed a necessity, then the Commission declares that a necessity exists, directs the City Assessor to prepare a Special Assessment Roll, and sets a public hearing date for review of the assessments proposed to be levied.

City Clerk advises Commission on date - usually 2 to 3 weeks are required. Notice of this public hearing must also be published and the individual property owners notified.

Resolution No. 4

Public Hearing is held on scheduled date and any objections are registered. If it is still the desire of the Commission to proceed, then the improvement is "Advanced and Tabled" to await the receipt of bids. City Engineer refers topic back to Commission after receipt of bids - usually 2 to 4 weeks are required.

Resolution No. 5

Following the receipt of bids and awarding of a contract, the Commission confirms the Special Assessment Roll which sets forth the number of years over which the Special Assessments will be spread and the dates when these payments fall due.

ABOVE PROCEDURE ADOPTED BY THE CITY COMMISSION 7/23/79.

The Oakland Press (<http://www.theoaklandpress.com>)

Royal Oak offering big discounts to pave dirt roads in neighborhoods on 47 streets

Royal Oak has 47 unpaved streets

By Mike McConnell, mike.mcconnell@dailytribune.com, [@mmccconnello1](https://twitter.com/mmccconnello1) on Twitter

Wednesday, April 15, 2015

Though Royal Oak is mostly known to outsiders for its urban downtown stores, restaurants and clubs that make it an entertainment mecca, there is another side to the city where dozens of neighborhoods have unpaved dirt streets.

There are a total of 47 unpaved streets in the city, left that way by housing developers who made no provision to include paved streets when the homes were built years ago.

This week the City Commission voted to give homeowners on those streets an additional discount on the assessed cost of constructing concrete streets if a majority of residents in a neighborhood petition to create a special assessment district.

Royal Oak this month started a 10-year, \$50 million project to improve roads throughout the city. Some officials see the project, supported by a voter-approved millage, as a chance to help homeowners on unpaved side streets get paved roads.

For the next five years, neighborhoods that request a special assessment can get a 50-percent discount on the cost of a new street. Now, those who have corner houses with side lots can get a 75-percent discount on the cost of putting up to 150 feet of paved streets along their side lots.

Officials “wanted to provide an incentive for residents for whom it has been cost prohibitive” to pave streets, said City Commissioner Kyle DuBuc, adding that the road discount “is a real incentive.”

The city has no obligation to pave neighborhood streets and under the City Charter can force neighborhoods to pay a special assessment to construct a paved road. Many of the neighborhoods with unpaved roads were built during the 1930s, 40s and 50s. Developers that included streets passed the cost onto the new homeowners at the time.

The measure the City Commission passed Monday is similar to the road paving discounts offered to neighborhoods back in 1985, the last time Royal Oak did large-scale road improvements supported by a voter-approved millage.

The full rate for building a concrete street is \$270 per foot for a 27-foot-wide road, according to City Engineer Matt Callahan.

Royal Oak has a total of five miles of unpaved neighborhood streets. If every such neighborhood elected to create a special district for road improvements it could cost the city up to \$3.9 million to make the upgrades, with the homeowners paying \$2.1 million, Callahan said.

The number of neighborhoods requesting special assessments to pave the dirt roads on their streets has jumped more than 25 percent over the past year.

Some City Commissioners were concerned that allowing discounts on road paving was unfair to all those in the past who have had to pay the full price.

City Commissioner David Poulton was not in favor of carving out special exceptions with discounts and voted against the incentive program.

Others, such as City Commissioner Jeremy Mahrle, said the discount incentive program is way for Royal Oak to have as “many walk-able and bike-able streets as possible.”

“I really don’t see many downsides,” he said.

URL: <http://www.theoaklandpress.com/general-news/20150415/royal-oak-offering-big-discounts-to-pave-dirt-roads-in-neighborhoods-on-47-streets>

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Unimproved Streets

There are some streets in Royal Oak that are considered unimproved (i.e. gravel, chip seal, seal coat, etc.), as shown on the adjacent map. The initial paving of unimproved streets is performed by special assessment to the adjacent property owners per city commission policy adopted in 1958.

Property owners may petition to have a street paved by special assessment by sending a written request to the Engineering Division. The City Commission may order a street paved as an assessment project with or without a petition. However, when a petition is submitted, it has generally been the requirement that property owners representing 50% or more of the assessable frontage must sign the petition.

Unimproved Roads (Click to enlarge)



Local Road Millage

Unimproved streets are not scheduled for paving as part of the road millage, except by special assessment to the adjacent property owners. The City Commission has adopted a policy to pay for 50% of the full frontage rate of special assessment paving approved during the millage period. In addition, the city will also cover 75% of the full frontage rate for the first 150 feet of side-lot frontage on an unimproved street.

Procedure to Pave a Street by Special Assessment:

1. Send a letter or e-mail to the Engineering Division to request a petition. The petition will include a rough cost estimate for the project, including the estimated cost per property.
2. Secure signatures on the petition from owners of the adjacent property. Typically 50% or more of the assessable frontage must sign the petition in order for it to be approved by the City Commission.
3. Return the petition to the Engineering Division. Note that the final page of the petition must be signed by the circulator and notarized.

4. The petition will be presented to the City Commission, and the following steps must take place. The following items typically require three to four months before the project can be designed and bid:

- **Standard Resolution 1:** The percentage of assessable frontage signing in favor of the project will be reported to the City Commission. The City Commission will decide whether to adopt the "First Resolution" which orders preliminary plans and estimate of cost prepared by city engineer, and directs city assessor to prepare a special assessment district. City assessor refers topic back to City Commission when special assessment district is prepared.
- **Standard Resolution 2:** The City Commission establishes a Special Assessment District, setting forth the estimated cost to the city and to the assessment district, and sets a date for the Public Hearing of Necessity. A notice regarding the public hearing is sent to the affected property owners and published in a newspaper by the City Clerk.
- **Standard Resolutions 3 & 4 and Public Hearing of Necessity:** The Public Hearing of Necessity is held on the scheduled date and any objections are registered. If the proposed improvement is deemed a necessity, then the City Commission declares that a necessity exists, directs the city assessor to prepare a special assessment roll, and sets a date for the Public Hearing of Assessment to review the assessments proposed to be levied. A notice regarding the public hearing is sent to the affected property owners and published in a newspaper by the City Clerk.
- **Public Hearing of Assessment:** The hearing is held on the scheduled date and any objections are registered. If it is still the desire of the City Commission to proceed, then the improvement is "Advanced and Tabled" to await the receipt of bids.

5. The project will move forward for construction unless the lowest bid for the project is greater than 5% above the original estimate provided to residents. If the lowest bid is 5% over the estimated cost, another public hearing will be held.

6. **Standard Resolution 5:** After the construction is completed, the City Commission confirms the Special Assessment Roll which sets forth the number of years over which the Special Assessments will be spread and the dates when these payments are due. The time allowed for special assessments to be repaid is typically determined by the City Commission to be 15 years. The standard interest rate of special assessments is 6% beginning with the second consecutive payment upon the unpaid assessed balance.

At a regular meeting of the Commission of the City of Royal Oak, Michigan, held at the City Hall in said City, on the tenth day of February, 1958, at 7:30 o'clock p.m., Eastern Standard Time:

PRESENT: Commissioners Fries, Hayward, Horn, Maudlin,
and Osgood

Mayor Kelley

ABSENT: Commissioner Crosby

The following action was taken:

"RESOLVED, that all street improvements made to the roadways of streets by means of paving, graveling or otherwise, be assessed against the abutting parcels of land according to the front foot rule.

FURTHER RESOLVED, that the following policy is hereby established for computing assessments for street improvements against corner parcels of land abutting upon two streets:

1. Corner parcels zoned for single family use, either vacant or developed for single family use -- In all cases where such corner parcels have side frontage of not more than 150 feet, the assessment for side street improvements shall be for one-half the actual side street frontage. In all cases where such corner parcels have side frontage in excess of 150 feet, the excess of such side frontage over 150 feet shall be assessed in the usual manner, by the front foot rule.
2. All other corner parcels -- The assessments for side street improvements shall be for the full side frontage.
3. In the case of lots of irregular shape or size, the above rules shall apply after adjustment by the Somer's Rule. In the case of other unusual conditions, special adjustments consistent with justice and equity may be made.

FURTHER RESOLVED, that in all cases where extra width pavement is installed at street intersections in order to facilitate traffic movement, the assessment for any extra width at the intersection shall be absorbed by the City-at-large, and shall not be assessed against the abutting properties.

FURTHER RESOLVED, that in all cases where the City has an easement over private property for the purpose of installing a public sidewalk, the property on which said easement is located and any property between said easement and the curb shall be regarded as being public property in the computation of special assessments for street improvements.

ATTACHMENT B
B-1

FURTHER RESOLVED, that in all cases the cost of street paving up to a width of 31 feet shall be assessed against abutting properties; that in all cases where pavement of a width of more than 31 feet is installed in order to facilitate traffic movement, the cost of said pavement in excess of 31 feet in width shall be assumed by the City-at-large; provided, that in unusual cases where it appears that a special benefit will accrue to abutting properties as the result of the installation of pavement in excess of 31 feet in width, then the cost of such pavement in excess of 31 feet in width shall be assessed against such properties.

FURTHER RESOLVED, that in all cases where pavement of greater than ordinary thickness is installed, any extra cost occasioned by such extra thickness shall be assumed by the City-at-large; provided, that in unusual cases where it appears that a special benefit will accrue to abutting properties as a result of the installation of greater than ordinary thickness, then the cost of the extra thickness of pavement shall be assessed against such properties."

I hereby certify that the above is a true and correct copy of a Resolution adopted by the City Commission of the City of Royal Oak at a regular meeting held February 10, 1958.

GLADYS FOGO, CITY CLERK

ATTACHMENT B
B-2

APPENDIX C

**CITY CODE
CHAPTER 94**

Chapter 94 - SPECIAL ASSESSMENTS^[1]

Sec. 94-1. - Purpose.

This chapter is adopted to comply with Chapter X of the Charter for the city to provide by ordinance for a complete special assessment procedure concerning the initiation of projects, plans and specifications, estimates of cost, notice and conduct of hearings, making and confirming of assessment rolls, correction of errors, contested assessments, financing of improvements made by special assessment, collection of special assessments and interest thereon, deferral of payments due to hardship, and all other matters concerning special assessments.

(Ord. No. 1637, 3-24-97)

Sec. 94-2. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Applicant means an owner and the owner's spouse, if any, who files an application for deferral under this chapter.

Cost, when referring to the cost of any public improvement, shall mean the cost of surveys, plans, rights-of-way, spreading of rolls, notices, advertising, financing, construction, legal fees, administrative expense, condemnation and all other costs incidental to the making of such improvement, the special assessments therefor and the financing thereof.

Engineer means the director of the department of engineering and public services.

Homestead means a dwelling owned and occupied as a home by the owner thereof, including all contiguous unoccupied real property owned by the person.

Household means a housing unit consisting of related persons residing in a homestead who are age 18 or older and are not claimed as dependents on the owner's state or federal income tax returns.

Household income means all income received by all members of a household in a tax year, while members of the household. If any household member has become unemployed or has resigned from employment within the six-month period prior to the application date, the household income shall be computed at the rate of pay immediately prior to the termination or resignation from employment with the following exceptions:

- (1) The household member has permanently retired.
- (2) The household member has received a permanent medical leave due to total disability.

Improvement means a public improvement of such a nature as to specially benefit any real property, any part of the cost of which is to be assessed against one or more lots or parcels of land, in proportion to the benefit derived therefrom.

Income means the sum of federal adjusted gross income, as defined in 26 U.S.C. 1, et seq., of the Internal Revenue Code, as amended, plus all income specifically excluded or exempt from the computations of the federal adjusted gross income.

- (1) The term does not include the first \$300.00 of gifts in cash or kind from nongovernmental sources or the first \$300.00 received from awards, prizes, lottery, bingo, or other gambling winnings.
- (2) Income does not include surplus foods, relief in kind supplied by a governmental agency, payments or credits under this chapter, any governmental grant which has to be used by the claimant for

rehabilitation of the homestead, amounts deducted from monthly Social Security or Railroad Retirement Benefits for Medicare premiums, or contributions by an employer to life, accident, or health insurance plans.

- (3) Income does not include energy assistance grants and energy assistance tax credits.

Manager means the city manager or his designee.

Net worth means the total value of assets owned less total liabilities. For purposes of this chapter, net worth shall not include the value of the homestead and file value of any one automobile registered in the name of the owner of the homestead.

Owner means a person who holds solely or concurrently with others a fee interest in a parcel of real property, or who is purchasing a parcel of real property under a mortgage or land contract.

Street means a public street, avenue, highway, road, path, boulevard, right-of-way, or alley or other access used for travel by the public.

(Ord. No. 1637, 3-24-97; Ord. No. 1962, 4-21-08)

Sec. 94-3. - Commission authority.

The city commission shall have the power and authority to determine that the whole or any part of the cost of any public improvement shall be defrayed by special assessments upon the property especially benefitted, consistent with the procedures set forth in this chapter.

(Ord. No. 1637, 3-24-97)

Sec. 94-4. - Initiation of improvement.

Proceedings for the making of public improvements within the city may be commenced by resolution of the city commission, on its own initiative.

- (1) The commission, in order to ascertain whether or not a satisfactory number of property owners to be assessed desire any particular improvement to be made, may request and receive a petition therefor, or may receive a petition voluntarily presented.
- (2) The commission shall carefully consider any petition received, but petitions shall be advisory only and shall not be jurisdictional. Petitions shall in no event be mandatory upon the commission.

(Ord. No. 1637, 3-24-97)

Sec. 94-5. - Petitions.

- (a) All petitions shall be circulated and signed on blank forms furnished by the city engineer. Such petitions shall contain, in addition to the signature of the owner(s), a brief description of the property owned by the respective signers thereof.
- (b) Petitions shall be verified by the affidavit(s) of the petition circulator(s) attesting that signatures on the petition are genuine and that the persons signing are owners of the described properties.
- (c) Petitions shall be filed with the city engineer.
- (d) All petitions shall be referred by the city engineer to the manager. The manager shall check the petitions to

determine whether they conform to the foregoing requirements and shall report his or her findings to the city engineer.

(Ord. No. 1637, 3-24-97; Ord. No. 1962, 4-21-08)

Sec. 94-6. - City engineer's report.

- (a) Before the commission shall decide on making any public improvements, the city engineer shall prepare and submit a preliminary report to the city commission which shall include a general description of the nature and scope of the project, a recommended approach to the project including coordination of other city projects and finding sources, preliminary estimates of cost, an estimate of the life of the improvement, a description of the proposed assessment district(s), and such other pertinent information as may enable the commission to determine the cost, scope, extent and necessity of the proposed improvement and whether any portion of the cost should be paid by the city at large. A copy of the city engineer's report shall also be filed with the city clerk for public examination.
- (b) Whenever any property interest is acquired by condemnation or otherwise for the purpose of any public improvement, the cost thereof and of the proceedings required to acquire such property interest may be added to the cost of such public improvement.

(Ord. No. 1637, 3-24-97)

Sec. 94-7. - Notice of public hearing.

- (a) After the filing of the city engineer's report under section 94-6, above, a public hearing before the city commission on the advisability of proceeding to establish a special assessment district for the making of the public improvement shall be set, which hearing shall be held not less than ten days after notice thereof has been both published in a newspaper published or generally circulated in the city, and sent by first-class mail to all property owners in the proposed special assessment district as shown by the current property tax roll of the city. The notice shall include a statement that appearance and protest at the public hearing is required in order to appeal the special assessment to the Michigan Tax Tribunal, and that an owner or interested party, or his or her agent, may appear and protest in person or by letter, if received by the commission prior to the public hearing. The hearing required by this section may be held at any regular or special meeting of the commission.
- (b) At the public hearing on the proposed improvement, all persons interested shall be given an opportunity to be heard.

(Ord. No. 1637, 3-24-97)

Sec. 94-8. - Determination of necessity by commission.

- (a) Following the hearing, the commission may determine whether to continue to proceed, or to modify the scope of the public improvement, if necessary, in such a manner as it deems to be in the best interest of the city, provided that if the amount of work is increased or properties are added to the district, then another public hearing shall be held pursuant to notice as prescribed in section 94-7.
- (b) If the commission determines to continue to proceed with the improvement, the commission shall adopt a resolution:
 - (1) Determining the necessity of the improvement;
 - (2) Approving the detailed plans and estimates of cost prepared by the city engineer;

- (3) Prescribing what portion of the cost of such improvement shall be paid by special assessment upon the pro benefited, determining what benefits will be received by affected properties and what portion, if any, of the paid by the city;
 - (4) Delineating the boundaries of the special assessment district;
 - (5) Determining the method or formula to be used in making the assessment; and
 - (6) Directing the manager to prepare a special assessment roll and present the same to the commission for confirmation (unless the special assessment roll was previously prepared).
- (c) The commission may modify the resolution to proceed that was adopted pursuant to subsection (b) at any time, but if any modification will increase the cost or scope of the improvement or add properties to the assessment district, a further public hearing shall be held and notice given as prescribed in section 94-7.

(Ord. No. 1637, 3-24-97; Ord. No. 1962, 4-21-08)

Sec. 94-9. - Special assessment roll.

- (a) No construction contract or expenditure, except for the cost of preparing necessary plans, specifications and estimates of costs, for any public improvement to be financed in whole or part by special assessment shall be made before the confirmation of the special assessment roll for such improvement.
- (b) The manager shall make a special assessment roll of all lots and parcels of land within the designated district to be benefited by the proposed improvement and assess to each lot or parcel of land the amount benefited thereby. The amount spread in each case shall be based upon the cost estimate of the city engineer.
- (c) After the manager completes the assessment roll, it shall be filed with the clerk for public examination and presentation to the commission for review and confirmation by it.
- (d) The commission shall fix the time and place at which the commission will meet to review the special assessment roll and to give interested persons an opportunity to be heard; which meeting shall not be less than ten days after notice thereof has been both published in a newspaper published or generally circulated in the city and sent by first-class mail to all property owners in the proposed special assessment district as shown by the current property tax roll of the city. The meeting required by this section may be held at any regular or special meeting of the commission.
- (e) The commission shall meet at the time and place scheduled for review of the special assessment roll.
 - (1) At such, meeting, the commission shall consider all objections to the special assessment roll submitted in writing or orally at the meeting;
 - (2) The commission may correct the roll as to any special assessment or description of any lot or parcel of land or other errors appearing therein; or
 - (3) The commission may, by resolution, annul the assessment roll and direct that a new roll be prepared, following the same procedures applicable to the making of the original roll.
- (f) If, after hearing all objections and making a record of such changes as the commission deems justified, the commission determines that it is satisfied with said special assessment roll, and that assessments are in proportion to benefits received, it shall thereupon pass a resolution making such determination and confirming the roll. The resolution shall also:
 - (1) Direct the manager to spread the various sums and amounts appearing thereon on a special assessment roll;
 - (2) Order placement of the roll on file in the city clerk's office and direct the clerk to attach his or her warrant to a certified copy within ten days;

- (3) Command the city treasurer to bill and collect the special assessments or installments as provided in this chapter within 60 days of billing, unless a later date for billing and collecting is established by the commission in accordance with the following paragraph;
 - (4) If the commission determines construction of part or all of the improvement will not occur immediately after the confirmation of the roll, and if the commission also deems it unnecessary to collect the assessment forthwith, the resolution shall provide for the billing and collection of the assessment at the time of the construction of the improvement; and
 - (5) Direct the treasurer to give notice by first-class mail to each property owner on the special assessment roll that the roll has been confirmed, and further containing the information set forth in subsections (h) and 94-10(b).
- (g) Whenever a special assessment roll shall be confirmed by the commission, it shall be final and conclusive. Such roll shall have the date of confirmation endorsed thereon and shall from that date be final and conclusive for the purpose of the improvement to which it applies, subject only to adjustment to conform to the actual cost of the improvement, or as otherwise provided in section 94-13.
- (h) Such special assessments and all proceedings upon which such special assessments are based shall be incontestable, unless an appeal to the Michigan Tax Tribunal is instituted within 30 days after the date of confirmation of such special assessment roll.
- (i) Failure on the part of the city or any official or employee thereof to give or mail any notice required to be given or mailed by this chapter, or failure by any property owner to receive any such notice shall not invalidate any special assessment or special assessment roll.
- (j) Where deemed appropriate, the commission may authorize the public hearing on necessity of proceeding with the public improvement and on confirmation of the special assessment roll to be combined provided that all public notice requirements of this chapter are fulfilled.

(Ord. No. 1637, 3-24-97; Ord. No. 1833, 4-19-04; Ord. No. 1962, 4-21-08)

Sec. 94-10. - Payments.

- (a) All special assessments shall be payable in such number of approximately equal installments, not to exceed ten, as the commission may determine. The first installment of a special assessment shall be due and payable within 60 days of billing, or such later date as the commission may establish closer to the time of construction, and one installment shall be due and payable each year thereafter on the anniversary of such due date, with annual interest upon all unpaid installments to be fixed by the commission at a rate not to exceed 12 percent per annum, provided that no interest shall be charged upon any amount paid within 60 days of billing of the first installment. The whole assessment, both primary and deferred, against any lot or parcel of land may be paid to the city treasurer at any time in full with accrued interest and penalties thereon. If any special assessment or any installment of a special assessment is not paid when due, then such assessment or installment shall be deemed to be delinquent and there shall be, in addition to interest, a penalty added at the rate of one percent for each month or fraction thereof that the same remains unpaid before being reported to the commission for the purpose of being reassessed upon the city tax roll.
- (b) After the commission has directed the billing and collection of the assessment, the treasurer shall notify by first-class mail each property owner on the special assessment roll of the obligation to pay the amount assessed and:
- (1) When the special assessment is not payable in installments, the time within which it may be paid without interest, or penalty.

- (2) When the special assessment is payable in installments, the notice shall state the due date of the first installment date from which interest will be charged on future installments.
- (c) If any lots or lands are divided in compliance with city ordinance after a special assessment thereon has been confirmed and before the collection of all installments, the manager shall apportion the uncollected amounts upon the several parts of lots and lands so divided, and all assessments thereafter made upon such lots or lands shall be according to such apportionment.

(Ord. No. 1637, 3-24-97; Ord. No. 1962, 4-21-08)

Sec. 94-11. - Accounts.

Funds raised by special assessment to pay the cost of any public improvement shall be held in a special fund to pay such cost or to repay money borrowed therefor. Each special assessment account must be used only for the improvement project for which the assessment was levied. If there is a surplus, the surplus shall be refunded pro rata, without interest, as follows: Where the assessment has been paid in full, by a refund in cash to the owner of the premises at the time the refund was ordered, and where the assessment has not been paid in full, by credit on the assessment roll. No refund of \$20.00 or less shall be required.

(Ord. No. 1637, 3-24-97)

Sec. 94-12. - Lien until paid.

- (a) All special assessments, including installment payments, shall, from the date of the confirmation thereof, constitute a lien on the respective lots or parcels assessed, and until paid shall be charged against the respective owners of the lots or parcels assessed.
- (b) The city treasurer shall annually, on May 1, certify any delinquent special assessment, or any part thereof, together with all accrued interest and penalty, to the commission; and, it shall be transferred and reassessed, with an additional 15 percent penalty, on the next annual city tax roll. Such charges so assessed shall be collected in the same manner as general city taxes.

(Ord. No. 1637, 3-24-97; Ord. No. 1834, 4-19-04)

Sec. 94-13. - Adjustments and corrections.

- (a) Excessive assessments.
 - (1) The excess by which any special assessment proves larger than the actual cost of the improvement and expenses incidental thereto may be placed in the general fund of the city if such excess is five percent or less of the assessment.
 - (2) Should the assessment prove larger than necessary by more than five percent, the entire excess shall be refunded on a pro rata basis according to assessments to the owners of the property assessed as shown by the current assessment roll of the city, provided, however, no refunds shall be made of less than \$20.00.
 - a. Such refund shall be made by credit against future unpaid installments to the extent any installments are remaining, and the balance, if any, of such refund shall be in cash.
 - b. No refunds may be made which contravene the provisions of any outstanding evidence of indebtedness secured in whole or in part by such special assessment.
- (b) Additional pro rata assessments may be made when any special assessment roll proves insufficient to pay for the actual cost of the improvement for which it was levied and the expenses incident thereto, provided that

the additional pro rata assessment shall not exceed 25 percent of the total assessment originally confirmed unless a public hearing before the commission is first held to review and confirm such additional assessment, for which hearing notices shall be published and mailed as provided in the case of review of the original special assessment roll.

(c) Invalid assessments.

- (1) whenever any special assessment shall, in the opinion of the commission, be incorrect or invalid by reason of any irregularity or informality in the proceedings, or if any court or tribunal of competent jurisdiction shall adjudge the assessment to be illegal, the commission may, regardless of whether the improvement has been made or not, or whether any part of the assessment has been paid or not, cause a new assessment to be made for the same purpose for which the former assessment was made.
- (2) All proceedings on such reassessment and for the collection thereof shall be conducted in the same manner as provided for the original assessment.
- (3) Whenever any sum or part thereof levied upon any property under the assessment so set aside has been paid and not refunded, the payment so made shall be applied upon the reassessment or if the payments exceed the amount of the reassessment, refunds shall be made.
- (4) No judgment or decree nor any act of the commission vacating a special assessment shall destroy or impair the lien of the city upon the premises assessed for such amount of the assessment as may be equitably charged against the same or as by regular mode of proceeding might have been lawfully assessed thereupon.

(Ord. No. 1637, 3-24-97)

Sec. 94-14. - Assessment against single lot.

When any expense shall be incurred by the city upon or in respect to any separate or single lot or parcel of land which, by the provisions of this chapter, the city commission is authorized to charge and collect as a special assessment, and not being of that class of special assessments required to be made pro rata upon several lots or parcels of land in a special assessment district, an account of the labor, materials, or services for which such expense was incurred and the name and address of the owner or person chargeable therewith, if known, shall be reported to the commission in such manner as it may prescribe. The provisions of this chapter with reference to special assessments generally, and the proceedings necessary before making the improvements, shall not apply to assessments to cover the expense incurred in respect to that class of improvements contemplated in this section.

- (1) No improvement or expense shall be subject to special assessment under this section unless the owner of or party in interest in the property to be so assessed shall receive ten days' notice by mail of any meeting at which commission action on such an improvement, expense, or special assessment is to be considered, with such notice to be provided in accordance with the requirements and procedures set forth in this chapter.
- (2) The commission shall determine what amount or part of every expense is to be assessed and the person, if known, against whom such expense shall be charged, and the lot upon which the same shall be levied as a special assessment; and as often as the commission shall deem it expedient, it shall require all of the several amounts so reported and determined, and the several lots or parcels of land and person chargeable therewith, respectively, to be reported by the treasurer to the manager for assessment.
- (3) Upon receiving the commission's report, the manager shall make a special assessment roll, and levy as a special assessment upon each lot so reported to him and against the persons chargeable therewith, if known, the whole amount of all the charges so directed to be levied upon each lot or parcel of land

respectively, together with a penalty of ten percent, and when completed, the manager shall report the assessment to the commission and thereupon the same proceeding shall be had as provided in this chapter for special assessments in other cases, except the commission may require that the same be paid in one or any other number of installments not to exceed five; provided that the notice of the filing of the special assessment roll in such cases, and of the reviewing of the same, may be given by sending such notice by registered mail to the persons named in such roll at their last known address, instead of giving notice by publication. If such notice is given by publication, the commission may order the cost thereof to be added to the roll and distributed pro rata according to the amount of the special assessments therein. It shall not be necessary to make a separate roll for each lot or parcel of land against which such an assessment may be made, but assessments against several lots or parcels of land may be included in one roll.

(Ord. No. 1637, 3-24-97; Ord. No. 1962, 4-21-08)

Sec. 94-15. - Assessments for off-street parking.

When the proposed public improvement is a facility to provide public off-street parking, the commission may determine that any lot within the proposed assessment district which is developed to a floor area ratio of less than 1.0 will be additionally benefited if at some time in the future additional floor area is constructed on such property. In such instances, a resolution adopted pursuant to section 94-8 shall direct the manager to prepare the assessment roll by including therein a deferred assessment benefit, to be calculated as follows:

- (1) The manager shall compute the estimated benefit to the lot to be assessed using the actual square footage of land and building at the time of such assessment, to achieve the primary assessment figure.
- (2) The manager shall compute for each lot in the district the maximum additional square footage of building which could be added to the property under the current zoning ordinance without providing additional square footage of building which could be added to the property under the current zoning ordinance without providing additional on-site parking. If such property has, at the time of assessment, a floor area ratio of 1.0 or greater, no deferred off-street parking assessment shall be entered against such property. whether the lot or parcel is not being utilized at the time of assessment at the maximum floor area ratio of 1.0, the manager shall compute a deferred off-street parking assessment based on the additional allowable potential building area computed above and shall enter such amount on the roll as the deferred off-street parking assessment on such property.
- (3) Such deferred off-street parking assessments shall be canceled at the time of development if the building constructed or enlarged is residential in character. Primarily residential buildings shall be defined as any building with two or more stories in which the first floor or any portion thereof is occupied by a commercial or business use and all additional stories are utilized for residential purposes.

(Ord. No. 1637, 3-24-97; Ord. No. 1962, 4-21-08)

Sec. 94-16. - Deferred off-street parking assessments.

- (a) The manager shall enter the amount of any deferred off-street parking assessment upon the roll at the time of its preparation. Such assessment shall not be due as to any lot against which a deferred off-street parking assessment has been made until it shall be developed so as to increase the floor area existing at the time of the assessment by five percent or more or increase the floor area ratio to 1.0. Upon the issuance of a building permit authorizing such an increase in floor area, the city commission shall, by resolution, confirm the making

of the deferred off-street parking assessment and it shall be due and payable in full within 30 days. Failure to pay a deferred off-street parking assessment within the above-stated time period shall be grounds for issuance of a stop-work order on the subject property by the building official.

- (b) Deferred off-street parking assessments may be paid in full at the owner's option, at any time after the roll of primary assessments has been confirmed. A building owner may elect to finance a deferred off-street parking assessment with the primary assessment if such an election is made in writing and filed with the city treasurer within 14 months after confirmation of the primary assessment roll. Interest on a deferred off-street parking assessment shall not start to accrue until 60 days after such deferred off-street parking assessment was confirmed by the commission.

(Ord. No. 1637, 3-24-97; Ord. No. 1962, 4-21-08)

Sec. 94-17. - Time limitation.

No deferred off-street parking assessment shall be confirmed by the city commission unless such confirmation takes place within 20 years from the date on which the original roll was confirmed. As to any deferred off-street parking assessment not confirmed within such 20-year period, it shall no longer be considered a potential assessment against a lot. Any deferred off-street parking assessment which has been paid in advance shall not be refunded even though not confirmed within the 20-year period.

(Ord. No. 1637, 3-24-97)

Sec. 94-18. - Deferred payments of special assessments based on hardship.

- (a) The city may grant deferrals of special assessment payments of persons who, in the opinion of the city commission, by reason of hardship are unable to contribute toward the cost thereof, in accordance with the provisions of this section.
- (b) An owner may apply for deferment of any or all installment payments of special assessments due in a particular year on the owner's homestead. The application shall be made upon an affidavit form available from the city treasurer.
 - (1) The affidavit form shall contain the following:
 - a. The name, or names if owned jointly, and social security number of the applicant.
 - b. The homestead address and sidewall number.
 - c. The home and business telephone number of the applicant.
 - d. The length of ownership of the homestead by the applicant.
 - e. Total household income for the past calendar year. The applicant shall attach copies of the most recently filed federal and state income tax forms of all members of the household, including all schedules, to the application.
 - f. Current place of employment. If the applicant is unemployed, the date of termination or resignation from employment shall be stated.
 - g. A statement of the net worth of all household members as of the date of the application.
 - h. The number of dependents, as defined in 26 U.S.C. 1, et seq., of the Internal Revenue Code, as amended, residing with the applicant at the homestead.
 - i. If the applicant is over 65 years of age or totally and permanently disabled, the applicant shall attach a copy of the notice from the treasurer denying deferment of special assessment under MCL 211.765, as amended, to the application.

- j. The amount of the special assessment installment payment for which deferment is requested and the date such installment comes or was due.
 - k. A statement located immediately above the applicant's signature: "It is understood that if this deferment is authorized, the City will place a lien on your property."
 - l. The form shall be signed by the applicant and notarized. If the homestead is owned jointly by husband and wife, both shall sign and file the affidavit.
- (2) In addition to the above, copies of the following documents shall be attached to the application:
- a. Recorded deed and land contract or mortgage for the homestead property.
 - b. The cover page of the current homeowners or hazard insurance policy covering the homestead.
 - c. A death certificate or divorce decree, if such document affects the title to the homestead property.
 - d. Any other document that the city may require to process the application for deferment.
- (c) Application for deferment of an installment payment of a special assessment must be made no later than 30 days after the due date of a special assessment or installment for which deferment is requested.
- (d) To qualify for a deferment of an installment payment, the applicant must meet all of the following requirements:
- (1) Total household income attributed to the applicant in the past calendar year cannot exceed the level adopted by the state for its special assessment deferral program, plus an additional amount equal to the deduction allowed by state income tax law for each dependent residing with the applicant at the homestead;
 - (2) Total net worth of all members of the household cannot exceed \$10,000.00;
 - (3) The homestead must be the primary residence of the applicant;
 - (4) The homestead must have been owned and occupied by the applicant for at least three years;
 - (5) The applicant cannot be eligible for deferment of special assessment under MCL 211.761, et seq., as amended;
 - (6) The amount of the installment payments to be deferred on special assessments exceeds \$300.00 per year;
 - (7) Property taxes on the homestead property should not be more than two years delinquent.
- (e) Immediately upon receipt of the affidavit form, the treasurer shall stamp the application with the time and date of receipt. The treasurer shall promptly examine the application to determine if the applicant meets the requirements of this chapter.
- (1) The treasurer shall request the Manager to make an inspection of the property and property records and conduct an investigation and survey as the treasurer deems necessary. An applicant shall not be compelled to supply information not reasonably necessary to a proper determination of the eligibility of the owner and the homestead for the relief provided under this section.
 - (2) The treasurer shall promptly make a decision and shall notify the applicant of this decision not later than 30 days after the receipt of the application by the treasurer. The decision of the treasurer shall be final.
- (f) The payment of any installment payment on a special assessment due and payable on a homestead in a year in which the owner meets all the eligibility requirements of this section shall be deferred until the occurrence of the first of the following events:
- (1) The homestead or any part of the homestead is conveyed or transferred to another, provided however, that:
 - a. The original applicant for the deferral may convey or transfer an interest in the homestead to

another person jointly with the applicant provided that the original applicant continues to reside at the homestead, or

- b. An owner who owns the property jointly with another may convey or transfer that interest to the original applicant for the deferral provided that the original applicant to whom the property is conveyed continues to reside at the homestead;
 - (2) A land contract selling the homestead is entered into;
 - (3) The owner fails to maintain adequate homeowners and hazard insurance as required herein; or
 - (4) One year after the original applicant's death, subject to further order of the probate court; however, the death of a spouse shall not terminate the deferments of special assessments for a household owned by husband and wife as long as the spouse does not remarry.
- (g) Payment of deferred amounts.
- (1) Any special assessment deferred under this section may be paid at anytime.
 - (2) Upon the occurrence of any one of the events terminating a deferment of an installment payment under subsection 94-18(f), above, the deferred amount plus interest shall be paid in full.
 - (3) If the owner fails to make such payment when the deferment is terminated, the provisions of this chapter regarding the collection of special assessments shall again apply to the deferred payment as if no deferment had been granted and the city may enforce the lien upon the property in any manner permitted by law.
- (h) Interest shall accrue on deferred installment payments at the monthly rate provided for nondeferred installment payments within the special assessment district.
- (i) The treasurer shall send to the owner, by first-class mail, a yearly statement showing the amounts of deferred assessments on the homestead and the interest outstanding thereon.
- (j) Notice of lien.
- (1) Upon grant of a deferment or grant of the initial deferment if deferments are granted in subsequent years, the city shall record a notice of lien in its favor at the Oakland County Register of Deeds stating that there exists a lien upon such property for deferred special assessments. The lien created shall include the amount of interest provided hereunder.
 - (2) The owner shall sign all documents necessary for the filing of such lien as a condition to receiving a deferral.
 - (3) If subsequent deferments are granted, the treasurer shall ascertain whether the notice of the previously filed with the register of deeds is still in effect. If it is not, a new notice of lien shall be filed against the property with the register of deeds.
- (k) For the duration of the deferment, the owner shall maintain homeowners and hazard insurance on the homestead in an amount not less than the amount of the deferred assessment(s) and accrued interest plus the balance of any mortgage or other lien or encumbrance superior to the city's lien. On or before June 1st of each year for the duration of the deferment, the owner shall provide the treasurer with proof of such homeowners and hazard insurance in the form of a certificate of insurance, and such certificate of insurance shall show the city as an additional insured and shall further contain a clause requiring the insurance company to give the city 30 days advance notice of cancellation, termination or material change in the insurance coverage.
- (l) All deferments made under this section apply only to the installment payment for the year granted and for the specific special assessment district for which the deferment has been granted. An owner can apply for further deferments in any given year that installments are due if the eligibility requirements are met and this chapter

remains in effect.

(m) Nothing in this chapter shall give any person a vested right to receive a deferment or in the standards to be applied in granting such a deferment.

(1) The city commission may change, modify, or delete any of the terms and conditions of this section or repeal it in its entirety at any time without notice to any applicant or recipient of a deferment.

(2) However, once a deferment is granted, it cannot be revoked and payment be required prior to the time set forth in this section.

(n) Penalties.

(1) In addition to all other penalties imposed by this chapter, if any person shall make a false or misleading statement on an application for deferment under this section, such person shall be guilty of a misdemeanor and all amounts deferred shall be immediately due and payable.

(2) Failure to pay such deferrals within 30 days of receiving notice from the treasurer shall result in the foreclosure of the liens placed upon the subject property pursuant to this section.

(Ord. No. 1637, 3-24-97; Ord. No. 1962, 4-21-08)

APPENDIX D

**CITY CHARTER
CHAPTER 10**

CHAPTER X. - SPECIAL ASSESSMENTS

Section 1. - [Authority to impose; resolution.]

The commission shall have the power to determine that the whole or any part of the expense of any public improvement shall be defrayed by special assessments upon the property specially benefited or which may be specially benefited in the future and shall so declare by resolution. Such resolution shall state the estimated cost of the improvement, what proportion of the cost thereof shall be paid by special assessments, and what proportion, if any, shall be a general obligation of the city, the number of installments in which assessments may be paid, and shall designate the districts or land and premises upon which special assessments shall or may be levied. Such resolution may provide that specified development or improvement of property will benefit from a public improvement and establish assessments against such property to be collected if and after such improvement or development of property is undertaken.

(Amend. of 4-4-83)

State Law reference— Permissible that Charter provide for assessing costs of public improvements, MCL 117.4d, MSA 5.2077.

Section 2. - [Establishment of procedure.]

The commission shall prescribe by general ordinance complete special assessment procedure concerning plans and specifications, estimate of costs, the making of the assessment roll and correction of errors, the notice and conduct of hearings on the necessity of a public improvement and the confirmation of the special assessment roll, the collection of and interest to be borne by special assessments and any other matters concerning the making of improvements by the special assessment method.

(Amend. of 4-4-83)

Section 3. - [Imposition of lien.]

From the date of confirmation of any roll levying any special assessment, the full amount of the assessment and all interest thereon shall constitute a lien on the property subject thereto and that amount shall also be a debt of the person to whom assessed until paid and, in case of delinquency, may be collected as delinquent city property taxes.

(Amend. of 4-4-83)

Section 4. - [Collection.]

No action of any kind may be instituted for the purpose of contesting or enjoining the collection of any special assessment (a) unless, within 30 days after the confirmation of the special assessment roll, written notice is given to the commission indicating an intention to file such an action and stating the grounds on which it is claimed that the assessment is illegal and (b) unless that action shall be commenced within 60 days after the confirmation of the roll.

(Amend. of 4-4-83)

Section 5. - [Reassessment.]

Whenever the commission deems any special assessment invalid or defective, or whenever a court adjudges an assessment to be illegal in whole or in part, the commission may cause a new assessment to be levied for the same purpose, whether or not the improvement or any part thereof has been completed, or any part of the special assessment collected. In reassessment proceedings hereunder, it shall not be necessary for the commission to redetermine the necessity of the improvement or to hold a hearing thereon. If any portion of the original assessment is collected and not refunded, it shall be applied upon the reassessment, and the reassessment shall to that extent, be deemed satisfied. If more than the amount reassessed is collected, the balance shall be refunded to the person making such payment.

(Amend. of 4-4-83)

APPENDIX E

CONCRETE VS. ASPHALT ENGINEERING REPORT COMPLETED BY OHM

CITY OF BIRMINGHAM

UNIMPROVED STREETS STUDY COMMITTEE

PAVEMENT IMPROVEMENT OPTIONS





INTRODUCTION

The City of Birmingham has created an Unimproved Street Study Committee to examine unimproved roads throughout the City and provide a recommendation outlining a long-term plan for these roads. Unimproved roads make up approximately 26 miles of the roughly 90 miles of roads under Birmingham's jurisdiction. Many of these roads were originally constructed as gravel roads in the early part of the 20th century with little to no provisions for drainage. Starting in the late 1940's, the City began installing chip seals over these roads to address the ongoing issues associated with gravel roads. The City has continued to maintain the unimproved roads utilizing a cape-seal process, which is comprised of a slurry seal over a chip seal. This process creates a non-structural driving surface to improve the look and feel of the roadway for a relatively low cost. These roads require maintenance that is more frequent and there has been growing concern regarding their durability and maintenance cycles.

The City has engaged OHM Advisors to provide additional information to the Study Committee for their use in development of a long-term plan to address the unimproved roads within the community.

GENERAL STREET IMPROVEMENT CONSIDERATIONS

DRAINAGE

A critical component in the design of a new roadway is how to handle drainage. Storm water runoff must be managed both for pavement performance/longevity and safety of motorists using the roadway. Water intrusion and accumulation in the pavement structure as well as the underlying subgrade cause many issues with roadway performance. Water in the subgrade and aggregate layers beneath the pavement can weaken these materials by increasing pore pressure and reducing shear resistance, which weakens the overall pavement structure. Saturation of underlying soils can also cause expansion, especially when the trapped water freezes. This action during freeze-thaw cycles is a primary cause of roadway deterioration in Michigan. Moisture can also accelerate degradation of both asphalt and concrete pavement itself by fostering distresses such as chemical reactions and aggregate stripping.

There are two primary methods of reducing water effects on the pavement are through surface drainage and subsurface drainage. Surface drainage is addressed with pavement cross slope and longitudinal grade to flow surface runoff from the pavement to a storm sewer or drainage ditch. In most urban/developed areas, roads include curb and gutter to route storm runoff to a storm sewer system. Roadside ditches can also be an effective method to provide surface drainage, but they require significant maintenance in order to function properly. In order to preserve the mature trees that exist along the unimproved roads in Birmingham, roadside ditches may not be a feasible option. Subsurface drainage is concerned with removing water that infiltrates through or is contained in the underlying subgrade. This can be addressed with aggregate drainage layers and underdrains.



Most of the unimproved roads within Birmingham appear to have been originally constructed with little or no provisions for drainage. Storm sewer systems were not typically included on local gravel streets when many of the streets within the City were developed. It does not appear that ditches or other drainage methods were included with the original construction. Curb and gutter and storm sewers have been added to a number of the unimproved roads to provide a means for drainage. When these streets are improved, drainage will need to be addressed. Areas with existing storm sewer should be reviewed to ensure sufficient sizing, spacing, & capacity for drainage. All roads to be improved should include provisions for subsurface drainage as well.

SUBGRADE

Subgrade refers to the existing soil materials upon which the pavement structure is placed. Performance of the subgrade can have a significant impact on the overall performance of the roadway pavement. The subgrade must be able to support loads transferred from the pavement structure. This is especially important for asphalt roadways, where the aggregate base and subgrade are an integral part of the overall pavement support strength. Concrete pavement generally distributes loads over a larger area, resulting in lower pressure on the subgrade. The soil makeup of the subgrade is also an important consideration, as certain soils have large volume changes when exposed to excessive moisture or freezing conditions.

Since the unimproved roads within the City have existed for quite some time, there is not a major concern with strength and compaction of the existing subgrade. The gravel base has been in place and built upon over time, and there does not appear to be areas of subgrade failure. As the roads are improved, the subgrade should be evaluated and considered in the overall pavement design. Any areas of poor subgrade should be addressed with undercuts or reinforcement as required.



TRAFFIC AND LOADING

The amount of traffic, especially trucks and other heavy vehicles, is an important factor in the design of road pavements. The unimproved roads within the City are local streets that do not carry a significant volume of traffic. They primarily serve residential neighborhoods and are utilized by passenger cars with the occasional delivery/service truck or bus. Several of the unimproved roads serve as neighborhood collectors, which see slightly higher traffic volumes, but these are still low in terms of traffic loading impact to the pavement.

PAVEMENT MATERIAL CONSIDERATIONS

The decision on which pavement material to use is asked on every road reconstruction project. Neither material is necessarily better than the other, and each can be ideal for specific projects.

CONCRETE

In general, concrete roadways have a longer service life than asphalt. The typical design life of concrete pavement is 30 to 40 years, but their lifespan can stretch to 80 years or more if constructed and maintained properly. This durability is a primary reason this material is utilized on many roadway projects. Concrete is also considered a “rigid” pavement, which means it can carry heavy loads and also distribute those loads over a larger area. As a result, concrete pavements do not need underlying aggregate base layers for strength and load carrying capacity.





Initial construction costs for concrete roads are typically higher when compared to asphalt. The costs of concrete and asphalt materials fluctuate regularly, but local road construction with concrete is generally higher. Based on recent experience, initial construction costs for concrete local road pavements average \$165/foot (6-inch) to \$185/foot (7-inch). Though the initial construction costs are higher, the overall lifecycle cost of a concrete roadway may be less due to longevity of the pavement and required maintenance over its life.

In most cases, concrete pavement requires less frequent maintenance during its service life when compared to asphalt. However, when concrete repairs are required, they are usually more impactful to the roadway. Routine maintenance involves joint and crack sealing to prevent water intrusion beneath the pavement. Over time, a portion of the concrete will deteriorate and will require joint repairs and/or selective panel replacements. Overall, these maintenance activities are infrequent with the more significant work occurring in the later portions of the road's life span.

The initial construction duration for a concrete local road is typically longer than that of an asphalt local road. The required time for the concrete to cure before use also results in longer times residents don't have access to their properties during construction. If the concrete road is built with integral curb, it can reduce the construction duration by several weeks.

For local/residential roads similar to the unimproved roads being considered in Birmingham, the concrete pavement thickness is typically between 6 and 8 inches. The main variables used to determine an appropriate thickness are the strength of the subgrade and the anticipated truck traffic loading. These variables should be verified with each project to ensure an appropriate design, but many communities throughout the region have adopted "standard" sections for consistency. Based on the low anticipated truck volume and existing stable base for the unimproved streets, a standard concrete thickness of 6 or 7 inches could be utilized by the City.



ASPHALT

The typical design life of asphalt pavement is 15 to 20 years. With maintenance and rehabilitation treatments, this life can be extended to 30 years or more. Asphalt is considered a “flexible” pavement, which means it relies on underlying aggregate base layers for strength and load carrying capacity. The initial construction duration for an asphalt local road is typically shorter than that of a concrete local road. Asphalt can be placed quickly and then open for traffic use the same day.



Initial construction costs for asphalt roads are typically lower when compared to concrete. The costs of concrete and asphalt materials fluctuate regularly, but local road construction with concrete is generally higher. Based on recent experience, initial construction costs for asphalt local road pavements average \$125/foot (3-inch) to \$140/foot (4-inch). Though the initial construction costs are lower, the overall lifecycle cost of an asphalt roadway may be more due to a shorter service life and increased maintenance over its life.

Generally, asphalt pavement requires more frequent maintenance during its service life than concrete. As the asphalt ages, it becomes more brittle and cracks develop from the flexing strains. Also, areas of poor underlying soil can cause the pavement structure to fail prematurely under heavy loading. There are more maintenance options available for asphalt pavements than concrete, and many of them can be completed quickly with minimal impact to road users. Crack sealing is critical to prevent water intrusion and additional deterioration. Surface treatments such as slurry seals, can be utilized to extend the life of an asphalt road. Rehabilitation of the roadway via patching and/or overlays can also be effective to extend the service life.



For local/residential roads similar to the unimproved roads being considered in Birmingham, an asphalt pavement section is typically between 3 and 4 inches of asphalt on 8 to 10 inches of aggregate base. Similarly to concrete, the main variables used to determine an appropriate pavement section are the strength of the subgrade and the anticipated truck traffic loading. Based on the low anticipated truck volume and existing stable base for the unimproved streets, a standard section of 4 inches of asphalt on 8 inches of aggregate base could be utilized by the City. Asphalt roads should include curb and gutter to handle drainage. There are a number of curb options and configurations that could be used.

PAVEMENT OPTION COMPARISON

The following table summarizes the design life, initial construction cost, and anticipated maintenance cost for several local road paving options:

Type	Design Life	Initial Cost ¹	Avg. Maint ²
6" Concrete w/curb	30-40 years	\$380/foot	\$2.25/ft/year
7" Concrete w/curb	30-40 years	\$400/foot	\$2.25/ft/year
7" Concrete w/curb & 8" drainage layer	40+ years	\$450/foot	\$1.75/ft/year
3" Asphalt on 8" aggregate w/concrete curb	15-20 years	\$325/foot	\$5.00/ft/year
4" Asphalt on 8" aggregate w/concrete curb	15-20 years	\$340/foot	\$4.50/ft/year

¹Initial construction cost including administration, sidewalk, driveways, utilities, etc.

²Anticipated total maintenance costs over the life divided by life to determine average.

FUNDING STREET IMPROVEMENTS

There is a significant cost associated with constructing roads within any community. Many cities throughout the region constructed many of their local road networks through ambitious construction programs. Many of these programs were funded through bonds that were paid back through a local millage or creation of special assessment districts (SADs). If possible, road construction should be combined with other utility (water/sanitary) work in order to share costs for traffic control and other general condition items.

SAD'S

Communities differ greatly on the amount of the project costs that are charged to property owners through a SAD, with some charging 100% of the cost to others charging 50% of the cost. Our experience has been that most cities in the region that utilize SAD's for local street improvement charge 80% to 100% of the cost to the benefiting property owners. This is especially true for areas where the local streets only serve the neighborhood in which they are located. If the local road being improved is more of a collector, serves more than one neighborhood, or has a large amount of pass-through traffic, then the percentage of charge is typically reduced to between 50% and 75%. Some communities increase the amount of city share in the SAD to 40% to 50% in order to encourage utilization of the process for road improvements.



Nearly all of the SAD programs we have been involved with in the area are initiated through a property owner petition process. This is done to ensure that the property owners who will be included in the SAD are in support of it prior to the municipality expending resources on the project. As the petition process can be daunting to residents, most cities assist with preparing petition forms, project information, process guides, etc. or will even host and participate in a public informational meeting. Another technique used by some communities that seems to work well is an annual city-issued call for proposals/petitions for potential road improvements. A packet of information with all of the documents to initiate the petition are provided to respondents of the call.

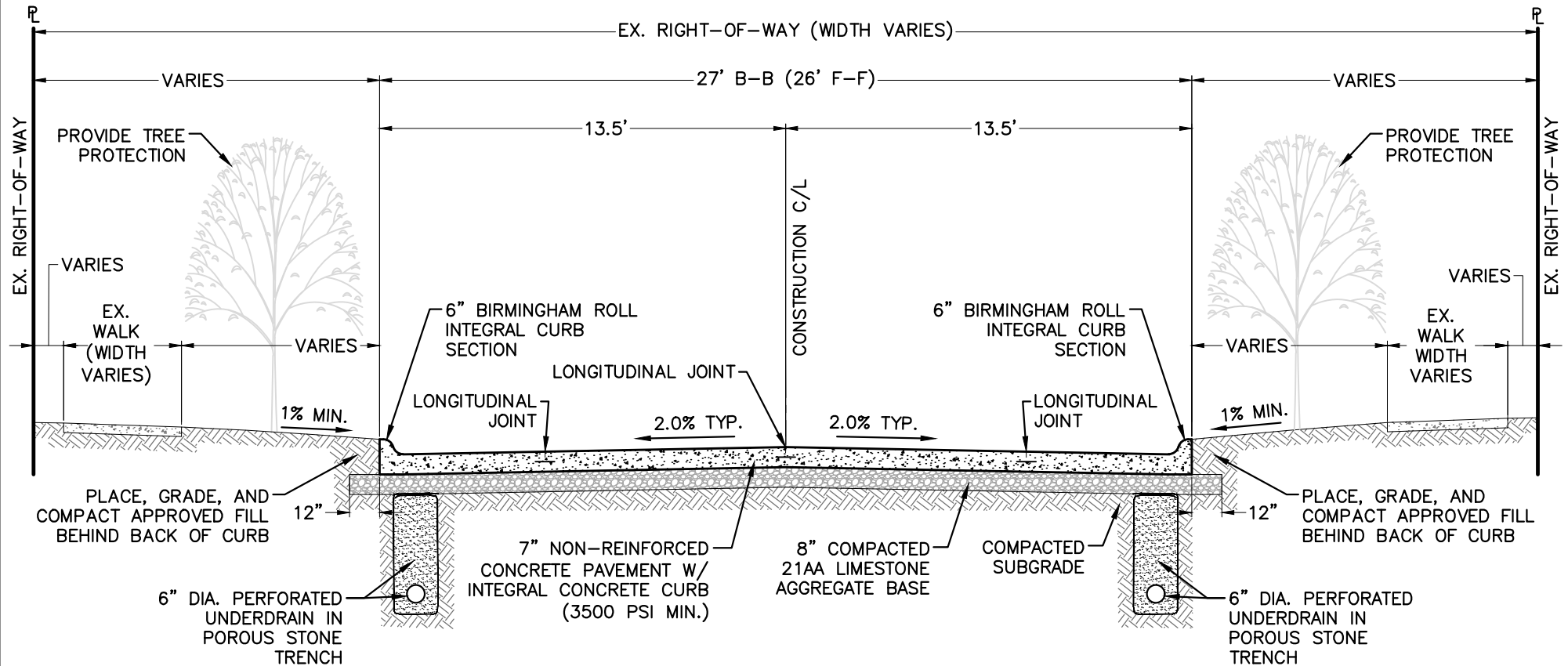
By law, municipalities have authority to establish SAD's. In some cases, SAD's are initiated by the City without a petition request from the property owners. We have seen this in instances where road conditions have become seriously degraded and become an issue of safety and overall community appearance. This is rare, since the property owners will typically desire their roads improved and initiate a petition prior to the roads deteriorating to that point. Cities that initiate the SAD process may experience more objections during the process than those that are initiated by the property owners, but that is not always the case. In addition, the cities that initiate the SAD process for road improvements usually charge 50% to 60% of the project cost to the property owners.

MILLAGE

Many communities fund their road programs through a city-wide millage. This can be an effective way of generating consistent revenue for a comprehensive asset management strategy for the road system. Cities typically utilize road millages to rehabilitate and reconstruct deteriorated streets as well as fund ongoing maintenance activities. Since the millage is across the entire city, the programs that are more successful have relatively consistent road conditions throughout the community. Construction of new roads or improvement of those that have not been done previously is typically not included in the millage program. Those improvement projects are still done using an SAD process, but a reduced portion of the cost may be charged to the property owners since they are also participating in the overall millage. Since less than 30% of the road network in Birmingham are unimproved roads, it may be challenging to employ a city-wide millage to fund their improvement.

APPENDIX F
STANDARD STREET CROSS SECTION
Cost Baseline

EXHIBIT



STANDARD CONCRETE ROAD CROSS-SECTION
FOR LOCAL STREET IMPROVEMENTS

SCALE: 1"=5'



NOWAK & FRAUS ENGINEERS
46777 WOODWARD AVE.
PONTIAC, MI 48342-5032
TEL. (248) 332-7931
FAX. (248) 332-8257



Engineering Department
151 Martin Street
Birmingham, MI 48012



Melissa Fairbairn <mfairbairn@bhamgov.org>

Fwd: Unimproved Road Committee feedback

Joe Valentine <jvalentine@bhamgov.org>
To: Melissa Fairbairn <mfairbairn@bhamgov.org>

Mon, Nov 9, 2020 at 2:26 PM

More public comments for the next AHUSSC agenda.

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

From: **Clinton Baller** <clinton@baller4bham.com>

Date: Mon, Nov 9, 2020 at 2:12 PM

Subject: Re: Unimproved Road Committee feedback

To: DAVID LURIE <dlurie2001@comcast.net>, Joe Valentine <jvalentine@bhamgov.org>, Scott Moore <sdm984@gmail.com>

Thanks, David. Good to see and talk to you too.
By copy, I will make sure your comments are given to the committee.

On Mon, Nov 9, 2020 at 2:01 PM DAVID LURIE <dlurie2001@comcast.net> wrote:

Dear Clint:

It was good seeing you enjoying the beautiful weather yesterday!

I wanted to echo the words of my neighbor and long time engineer Rob Lavoie (in italics below) about defining the criteria that the city engineer would use in making the determination of whether asphalt or concrete would be the best pavement design for a particular street. Without that criteria, the decision is quite arbitrary.

Further, for what it is worth, I have attached screen shots of the Unimproved Road Committee Agendas and Minutes as appearing on the website TODAY. Please notice that Minutes have not been posted since April 2019. I met with Joe Valentine last year and complained about this face-to-face. In addition, on at least two occasions, neither Rob nor I received notifications of meetings even though we were signed up on the email system.

On the positive side, I think the committee worked diligently to deal with some complex issues that face this city and other municipalities and with some minor changes the document and the direction they provide is very strong. As I told you yesterday, I think the City should take pictures of Lakeview to show other streets how nice the street will look when finished.

I have reviewed the referenced recommendations of the Committee and found the report quite informative.

My only comment/recommendation is to better identify the criteria the City Engineer must use in his determination of the type of pavement (asphalt or concrete) to be approved for a special assessment paving project. I would suggest : " In the case of residential local streets(per Act 51 designation), an asphalt pavement design be developed by the City Engineer that satisfactorily addresses traffic volumes and vehicular loading. In the case of residential or commercial major streets (per Act 51 designation) an asphalt or concrete pavement design be developed by the City Engineer that satisfactorily addresses traffic volumes and vehicular loadings."

This language will provide the City Engineer with the ability to appropriately design a local or major street special assessment project appropriately in asphalt or concrete based on resident input , traffic volumes and traffic live loads, which I believe is the intent of the Ad Hoc Committee.

Thanks and let me know of any questions. Could you please pass this comment/recommendation onto the Committee for me?

Thank you!

Rob Lavoie, PE

--

Joseph A. Valentine

City Manager

[City of Birmingham](#)

[151 Martin Street](#)

Birmingham, MI 48009

(248) 530-1809 Office Direct

(248) 530-1109 Fax

jvalentine@bhamgov.org

Twitter: @JoeValentine151

Important Note to Residents

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Melissa Fairbairn <mfairbairn@bhamgov.org>

Fwd: Lakeview Ave Paving and recommendations of the unimproved Street Ad Hoc Committee

1 message

Joe Valentine <jvalentine@bhamgov.org>
To: Melissa Fairbairn <mfairbairn@bhamgov.org>

Mon, Nov 9, 2020 at 9:01 AM

Melissa,

Please include in the committee's November 12th agenda as a response from the public on the draft plan.

Thank you,
Joe

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

From: **Clinton Baller** <clinton@baller4bham.com>

Date: Mon, Nov 9, 2020 at 8:09 AM

Subject: Re: Lakeview Ave Paving and recommendations of the unimproved Street Ad Hoc Committee

To: ROBERT LAVOIE <rdlavoie@aol.com>, Joe Valentine <jvalentine@bhamgov.org>, Scott Moore <sdm984@gmail.com>

Rob,

Will do. Joe, Scott: Please pass this feedback along to the committee.

Thanks to all.

Clinton

On Fri, Nov 6, 2020, 5:33 PM ROBERT LAVOIE <rdlavoie@aol.com> wrote:

Hi Clint,

I have reviewed the referenced recommendations of the Committee and found the report quite informative.

My only comment/recommendation is to better identify the criteria the City Engineer must use in his determination of the type of pavement (asphalt or concrete) to be approved for a special assessment paving project. I would suggest : “ In the case of residential local streets(per Act 51 designation), an asphalt pavement design be developed by the City Engineer that satisfactorily addresses traffic volumes and vehicular loading. In the case of residential or commercial major streets (per Act 51 designation) an asphalt or concrete pavement design be developed by the City Engineer that satisfactorily addresses traffic volumes and vehicular loadings.”

This language will provide the City Engineer with the ability to appropriately design a local or major street special assessment project appropriately in asphalt or concrete based on resident input , traffic volumes and traffic live loads, which I believe is the intent of the Ad Hoc Committee.

Thanks and let me know of any questions. Could you please pass this comment/recommendation onto the Committee for me?

Thank you!

Rob Lavoie, PE

On Jun 20, 2020, at 3:19 PM, ROBERT LAVOIE <rdlavoie@aol.com> wrote:

Normally you can tell visually if something is not right. However, it's standard protocol for the City employed inspector to have samples pulled of the asphalt and have them tested and compared to specifications at the lab. They don't get paid unless it meets specs!

I'll keep an eye on it and draw attention to the City of any “short cuts” or material differences observed.

The fact they are closely monitored by the City inspector, it is highly unusual for the contractor to try and switch materials.

Thanks and I'll be around during all the construction.

Rob Lavoie

On Jun 20, 2020, at 9:28 AM, Clinton Baller <clinton@baller4bham.com> wrote:

Excellent. So can one tell the difference between these superior grades and inferior grades with visual inspection? Do contractors ever quote one material and then use an inferior, less expensive material? Will you do us all a favor and verify that the materials being used are the ones that are quoted?

On Fri, Jun 19, 2020 at 6:39 PM ROBERT LAVOIE <rdlavoie@aol.com> wrote:

Hi Clinton,

Yes there are different grades of asphalt!

The specifications require a 4E Leveling Course and a 5E Surface Course. These are both "Superpave" mixtures which are recognized by MDOT and the industry to be the best structural asphalt pavement available. This is the most durable/costly asphalt pavement which has a high degree of crushed stone in the mix which serves to eliminate any rutting and premature stress deterioration. It's the Cadillac version-not a Buick!

Thanks for your support and let me know of any further questions.

Rob Lavoie

On Jun 19, 2020, at 6:20 PM, Clinton Baller <clinton@baller4bham.com> wrote:

Hey, Robert...

I will support asphalt, but I have a question. Aren't there different grades of asphalt, and what grade will we be using?

On Fri, Jun 19, 2020, 6:55 AM Robert Lavoie <rdlavoie@aol.com> wrote:
Dear Commissioner,

Good morning and **THANK YOU FOR YOUR SERVICE!!**

The residents of Lakeview understand that bids have been received by the City to improve the underground infrastructure and repave Lakeview Avenue. We also understand that alternative bids were received which provided for either an asphalt pavement with concrete curb and gutter or a concrete pavement including concrete curbs. Additionally, we were advised by City Engineering staff that these paving alternatives were both designed to accommodate residential traffic loading. We see that many major highways and expressways are both either constructed of asphalt or concrete.

One important factor in choosing a pavement for Lakeview Avenue (or any roadway for that matter) is the expected service life of the pavement. It is widely recognized in the civil engineering industry that concrete pavements are expected to have a longer service life than asphalt pavements. However, there are many other important factors as well that should be considered when selecting a pavement type.

The residents of Lakeview Avenue have overwhelmingly supported an asphalt pavement for our street. The reasons for this overwhelming

support are recognized in the civil engineering industry and are listed below, which include both safety related advantages as well as aesthetic advantages that asphalt has over concrete. For these reasons, we ask that you consider selecting the asphalt pavement with concrete curb and gutter alternative for Lakeview Avenue .

Advantages of Asphalt over Concrete

- 1) Less time is required for construction of asphalt pavement. Concrete requires at least 7 days to cure after each pour and does not fully cure for 31 days.
- 2) Cost of asphalt is 20 % less than concrete pavement. Furthermore, the cost to mill and resurface in future years is less than the cost to mill and resurface concrete.
- 3) Future street openings for utility repairs in asphalt streets can be repaired more timely, as cure time for asphalt pavement is not necessary.
- 4) Concrete pavement results in more road noise due to "thumping" across pavement joints.
- 5) Repairs to concrete joints are very expensive when they become necessary and give the pavement a patched appearance. Asphalt pavements do not have joints, are smooth and cure time is not required after any repair.
- 6) Drippings from automobile motors are very evident on white concrete pavements and much less evident on asphalt pavements.
- 7) Snow and ice melts much faster on asphalt surfaces. Concrete surfaces do not absorb as much heat as asphalt surfaces making asphalt surfaces safer in the winter because snow and ice melts more readily.
- 8) Asphalt pavements can be cost neutral with concrete pavements by requiring asphalt surfaces to be milled and resurfaced approximately every 20 years. The cost of milling and resurfacing approximately 20 years after initial asphalt paving can balance out the initial reduced cost of constructing an asphalt pavement compared to concrete pavement. Thereby providing asphalt and concrete pavements with equivalent 40 years' service life.
- 9) Concrete pavement cracking leads to expensive removal and replacement costs, particularly around manholes and valve boxes in road pavements. Asphalt due to its flexibility, is not as prone to cracking around such manholes and valve boxes.
- 10) Asphalt roads still include concrete curbs. Concrete curbs better distinguish the asphalt roadway limits and provide the durability required to accommodate snow plowing, leaf collection and roadway sweeping.
- 11) When concrete pavement ages and reaches the need to be reconstructed it is best totally removed rather than milled which results in expensive future costs after its life cycle is over. Concrete pavement is best to not be milled because any asphalt resurfacing will show reflective cracking at all pavement joints and result in premature deterioration of the new resurfacing.
- 12) Asphalt pavements are now designed to accommodate truck traffic thereby avoiding wheel line tracking and present a more residential appearance as

opposed to concrete which appears much more commercial.

13) Concrete pavement has repeatedly been suffering early deterioration due to ASR. A chemical reaction between the cement and sand silica. This reaction, is in many cases, unpredictable and results in early pavement joint failures and pavement spalling within a few years of completion of the paving. Asphalt pavements are not subject to ASR.

14) Pavement markings, such as cross walks and lane lines are much more discernible on asphalt pavements than concrete pavements. Thereby improving safety.

15) Asphalt pavements are typically recognized as aesthetically more appealing to a residential neighborhood than concrete pavements, which are more suited to a commercial and industrial setting.

.Again, thank you for your consideration.

Robert D Lavoie, P. E.
Licensed Civil Engineer
[555 Lakeview Ave](#)
Birmingham, Michigan 48009

--

Joseph A. Valentine

City Manager

[City of Birmingham](#)

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Birmingham, MI 48009

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jvalentine@bhamgov.org

Twitter: @JoeValentine151

Important Note to Residents

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Melissa Fairbairn <mfairbairn@bhamgov.org>

Fwd: Unimproved Streets

Joe Valentine <jvalentine@bhamgov.org>
To: Melissa Fairbairn <mfairbairn@bhamgov.org>

Tue, Nov 17, 2020 at 9:16 AM

Please add as communication to AHUSSC agenda. Thanks.

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

From: **Clinton Baller** <clinton@baller4bham.com>

Date: Tue, Nov 17, 2020 at 8:20 AM

Subject: Re: Unimproved Streets

To: ed rosett <fastedf150@gmail.com>, Scott Moore <sdm984@gmail.com>, Joe Valentine <jvalentine@bhamgov.org>

Thanks Ed. I will pass along your comment. I believe 10 years is the max, by law, and that's what we offer.

On Mon, Nov 16, 2020, 6:00 PM ed rosett <fastedf150@gmail.com> wrote:

Hope all is well with you and your family. If the city would amortize the payback over a longer period it would be an easier pill to swallow.

Appreciate all you do! Keep fighting for us. Thanks!

--

Joseph A. Valentine

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jvalentine@bhamgov.org

Twitter: @JoeValentine151

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Melissa Fairbairn <mfairbairn@bhamgov.org>

Fwd: Markus set to return as city manager

1 message

Joe Valentine <jvalentine@bhamgov.org>
To: Melissa Fairbairn <mfairbairn@bhamgov.org>

Sun, Nov 15, 2020 at 12:36 PM

Please add as a communication to the next AHUSSC agenda.

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

From: **Clinton Baller** <clinton@baller4bham.com>

Date: Sun, Nov 15, 2020 at 11:06 AM

Subject: Re: Markus set to return as city manager

To: Sue <sjelsholz@comcast.net>, Joe Valentine <jvalentine@bhamgov.org>, Scott Moore <sdm984@gmail.com>

Will do, Sue.

Joe, Scott...

On Sun, Nov 15, 2020, 10:33 AM Sue <sjelsholz@comcast.net> wrote:

Thank you for your email updates and energy and enthusiasm for your work on City Council.

Would you please forward my comments below to the appropriate people?

I live on an unimproved road, and frankly would prefer the status quo over cement roadways. While drainage is an issue, it's not unbearable. What drives me crazy, however, in the leaf issue. I have to buy bags and spend my time and energy (or pay someone) to do what other residents get for free. I find it hard to believe that there is no way to vacuum the leaves from a curb-less road.

Thank you!

Sue Elsholz
1086 Norfolk St

On Nov 12, 2020, at 2:54 PM, Clinton Baller <clinton@baller4bham.com> wrote:

[View this email in your browser](#)

Dear Neighbor,

Former City Manager Tom Markus is set to return to that post by the first of the year, replacing departing manager Joe Valentine. The City Commission met with Markus twice virtually, and has come to terms that include a salary of \$160,000 per year and a term of 30 months. Markus, who is in his late 60s, will return to a City Hall with numerous staff vacancies and other administrative challenges. He has agreed to help guide the commission in a national search for his successor during his term of service.

MAYORAL APPOINTMENT RAISES EYEBROWS

City Of Birmingham

AD HOC UNIMPROVED STREET STUDY COMMITTEE

Held Remotely Via Zoom And Telephone Access
October 22, 2020

Minutes of the Ad Hoc Unimproved Street Study Committee meeting held Thursday, October 22, 2020. Chairman Scott Moore called the meeting to order at 7:30 p.m.

1) Rollcall

Present: Chairman Scott Moore (location: Birmingham, Michigan)
Pierre Boutros (location: Birmingham, Michigan)
Jason Emerine (location: Birmingham, Michigan)
Michael Fenberg (location: Naples, Florida)
Katie Schafer (location: Birmingham, Michigan)
Stuart Sherman (location: Birmingham, Michigan)
Janelle Whipple-Boyce (location: Birmingham, Michigan)

Absent: None.

Administration: Joe Valentine, City Manager
Laura Eichenhorn, City Transcriptionist
Austin Fletcher, Assistant City Engineer
Mark Gerber, Finance Director
Lauren Wood, Director of Public Services

2) Approval Of September 17, 2020 Meeting Minutes

Motion by Mr. Sherman

Seconded by Ms. Whipple-Boyce to approve the Minutes of the Ad Hoc Unimproved Streets Study Committee of September 17, 2020 as submitted.

Motion carried, 7-0.

VOICE VOTE

Yeas: Sherman, Whipple-Boyce, Boutros, Fenberg, Moore, Schafer, Emerine

Nays: None

3) Presentation On Draft Committee Report And Recommendations

Chairman Moore introduced the evening's meeting. He emphasized that all members of the AHUSSC are citizens of Birmingham who worked diligently to create recommendations regarding the City's unimproved roads. Chairman Moore said that all residents would be welcome to submit comment on the draft committee report during the present meeting, at the November 12, 2020 AHUSSC meeting, or via email to the City Manager.

City Manager Valentine introduced the draft report.

DPS Director Wood reviewed the relevant history of streets in Birmingham and the local street categories.

Assistant City Engineer Fletcher reviewed the current petition process for improving streets and the available road surface types.

Finance Director Gerber reviewed the funding options for road improvements.

City Manager Valentine then outlined the draft report's recommended changes to the road improvement process.

Chairman Moore praised City staff for their work on the draft report and thanked everyone who was involved in the process thus far. Seeing no comments from the AHUSSC members, he invited public comment.

4) Public Comment

A member of the public said he thought the AHUSSC had done an impressive job on the draft report. He said he was very enthused at the prospect of all of Birmingham's roads being improved and said that having the petition process originate with the City would be much more effective than the current petition process.

Michelle Areeda thanked all involved for the presentation of the draft report. She asked if the AHUSSC had considered any options for offsetting resident costs for road improvements of more highly-trafficked connector roads. She cited her section of Oak as one example of a more heavily travelled road.

Chairman Moore said the AHUSSC discussed whether more highly-trafficked roads in Birmingham should have their improvements further subsidized in some way. He noted that so far the AHUSSC had decided not to take action on that option, but that the matter could always be discussed further. He stated that an individual street could also always bring the possibility up to the Commission during their particular road improvement process.

In response to a second question from Ms. Areeda, Chairman Moore stated that an updated ranking of streets to be improved would be developed after the draft report reaches its final iteration and is vetted and passed by the City Commission.

Danny Seidman applauded the AHUSSC's efforts and said he also thought having the City take over the petition process would be beneficial. Mr. Seidman echoed Ms. Areeda's inquiry about the City further subsidizing improvements to connector roads, and said he thought providing such subsidies would be an important option to consider. He said that subsidies for connector roads would increase the likelihood that residents would be in favor of road improvements.

Ad Hoc Unimproved Street Study Committee
Minutes of October 22, 2020

Chairman Moore advised Mr. Seidman that deciding which roads would qualify as connector roads, and what the appropriate subsidies would be, is a complicated process. He said that while he could not guarantee that such subsidies would be one of the AHUSSC's recommendations to the City Commission, the AHUSSC would discuss the matter further at their next meeting. He also reiterated his previous point that if a resident was interested in broaching the issue with the City they could always do so at the Commission level.

Michael Paolo asked if there was a way to levy a tax on new residential construction in the City in order to help improve the streets.

City Manager Valentine told Mr. Paolo that the City had explored that possibility and was advised that such a levy would not be legal. He explained that when a public road is used by various vehicles it is very difficult to determine what damage is due to new construction and what damage is due to school buses, garbage trucks, delivery vehicles and the like. As such, a homeowner or developer cannot be assessed additional amounts for damage that cannot be directly tied to the construction activities. City Manager Valentine specified that when code enforcement witnesses a developer or construction company cause physical damage to a road that the City can then charge the builder's bond to repair those damages.

Brian Duffy offered his thanks to everyone involved in putting together the draft report. He observed that of Birmingham, Farmington Hills, Rochester Hills, Royal Oak and Troy, Birmingham residents incur the highest percentage of costs for road improvements as per page 27 of the draft report. He asked whether the City had looked into ways of reducing the resident cost.

Finance Director Gerber explained that while other local cities may have a more equitable split between residents and the City for initial road improvements, he was unsure whether residents could be reassessed in those cities for routine road maintenance. Birmingham residents, in contrast, only have to pay to improve the road. The City then covers all subsequent maintenance costs. He said that special assessment debt could also be an option for residents, wherein the City would incur special assessment debt and collect from the residents of a street annually to pay back the debt service.

Mr. Duffy asked how residents of a street could opt-out of having their street improved if so desired.

Chairman Moore explained that once a street has been added to the infrastructure ranking system by the Engineering Department only the City Commission would be able to remove that street entirely from the improvement list. Residents of a street that wanted that would have to petition the Commission, and Chairman Moore warned that approval would be unlikely since it is the City's stance that all roads must eventually be improved for the safety and wellbeing of the community.

In reply to a member of the public, City Manager Valentine explained that the AHUSSC's study did not include drafting any recommendations regarding sidewalks.

Chairman Moore advised said resident that if they had opinions on the appropriateness of sidewalks in certain areas they should reach out to the City's Multi-Modal Transportation Board which studies and makes recommendations on such issues.

In reply to the same resident, Mr. Sherman confirmed that on corner properties, the City charges only 33% of the cost of improvement to the long side of the property (if that is the side being constructed), with the other 67% is charged to the Local Street Fund. In contrast, cape seal projects on unimproved streets charge the resident 85% of front-foot costs for all property fronting the cape seal or 25% of side-foot costs for all residential property siding the cape seal. Mr. Sherman explained that it was not part of the AHUSSC's charge to study the cost differential between improvement and cape seal projects, but recommended that the AHUSSC discuss the differential at its October 29, 2020 meeting.

Chairman Moore said the AHUSSC would not make a policy recommendation regarding the cost differential since it is beyond the AHUSSC's charge, but said that the AHUSSC could bring the cost differential to the City Commission's attention so the Commission could review it further if it so chooses.

5) Committee Comment

Chairman Moore thanked the public for their comments, and said he hoped more members of the public would send comments via email in advance of the AHUSSC's next meeting. He reiterated his thanks to staff, members of the AHUSSC, and all consultants involved in creating the draft report.

6) Next Meeting: Thursday, October 29, 2020 at 7:00 p.m.

8) Adjourn

No further business being evident, the Committee motioned to adjourn the meeting at 9:07 p.m.

City Manager Joe Valentine

City Of Birmingham

AD HOC UNIMPROVED STREET STUDY COMMITTEE

Held Remotely Via Zoom And Telephone Access
November 12, 2020

Minutes of the Ad Hoc Unimproved Street Study Committee meeting held Thursday, November 12, 2020. Chairman Scott Moore called the meeting to order at 7:31 p.m.

1) Rollcall

Present: Chairman Scott Moore (location: Birmingham, Michigan)
Pierre Boutros (location: Birmingham, Michigan)
Michael Fenberg (location: Birmingham, Michigan)
Katie Schafer (location: Birmingham, Michigan)
Stuart Sherman (location: Birmingham, Michigan)
Janelle Whipple-Boyce (location: Birmingham, Michigan)

Absent: Jason Emerine

Administration: Joe Valentine, City Manager
Eric Brunk, IT Manager
Laura Eichenhorn, City Transcriptionist
Mark Gerber, Finance Director
Lauren Wood, Director of Public Services

2) Approval Of October 29, 2020 Meeting Minutes

Motion by Mr. Sherman

Seconded by Ms. Whipple-Boyce to approve the Minutes of the Ad Hoc Unimproved Streets Study Committee of October 29, 2020 as submitted.

Motion carried, 6-0.

ROLL CALL VOTE

Yeas: Sherman, Whipple-Boyce, Boutros, Fenberg, Moore, Schafer

Nays: None

3) Second Review Of AHUSSC Draft Report

City Manager Valentine reviewed the majority of the draft report.

Finance Director Gerber reviewed the funding options for road improvements.

4) Communications On Draft

Included in agenda packet.

5) Public Comment

In reply to Susan Randall, CM Valentine confirmed the Engineering Department was reviewing the map of improved and unimproved roads to make sure all roads were correctly categorized. Ms. Randall had written in prior to the present meeting asking about the status of Latham between Northlawn and Saxon.

In reply to Coco Siewert, Chairman Moore confirmed that parts of Abbey Road fall under the jurisdiction of Birmingham and parts under Bloomfield Hills. He noted that the draft report does not discuss how the City addresses unimproved roads that cross jurisdictions. He said he believed the final draft should at least make mention of the issue.

Seeing no further public comment, Chairman Moore said the public was welcome to submit further comments or questions on the draft policy before the November 19, 2020 AHUSSC meeting.

6) Committee Comments

Ms. Whipple-Boyce said she was concerned about wording that appeared a few times in the draft report, including on page 69, that described the possibility of residents seeking non-standard modifications to their roads from the City Commission. She noted that in the past such requests have run afoul of the best practices recommended by other City boards, citing the street width policy developed by the Multi-Modal Transportation Board as one example. She said it had been her impression that the AHUSSC intended to minimize the opportunity for such non-standard requests in order to make it easier for the City Commission to adhere to best practices in its decisions. She asked her fellow Committee members whether her impression of the AHUSSC's intent was correct.

Chairman Moore said the question was a worthwhile one, and that the matter should be discussed further at the November 19, 2020 AHUSSC meeting.

In reply to Mr. Fenberg, CM Valentine confirmed that if the installation of a dedicated bike lane were recommended as part of a road improvement that extra cost would be absorbed by the City and not by the residents of the street.

7) Next Meeting: Thursday, November 19, 2020 at 7:00 p.m.

8) Adjourn

Chairman Moore thanked all participants.

Motion by Mr. Boutros

Seconded by Mr. Sherman to adjourn the meeting at 8:23 p.m.

Motion carried, 6-0.

Ad Hoc Unimproved Street Study Committee
Minutes of November 12, 2020

ROLL CALL VOTE

Yeas: Boutros, Sherman, Whipple-Boyce, Fenberg, Moore, Schafer

Nays: None

City Manager Joe Valentine

City Of Birmingham

AD HOC UNIMPROVED STREET STUDY COMMITTEE

Held Remotely Via Zoom And Telephone Access
November 19, 2020

Minutes of the Ad Hoc Unimproved Street Study Committee meeting held Thursday, November 19, 2020. Chairman Scott Moore called the meeting to order at 7:05 p.m.

1) Rollcall

Present: Chairman Scott Moore (location: Birmingham, Michigan)
Pierre Boutros (location: Birmingham, Michigan)
Jason Emerine (location: Birmingham, Michigan)
Michael Fenberg (location: Birmingham, Michigan)
Katie Schafer (location: Birmingham, Michigan)
Stuart Sherman (location: Birmingham, Michigan)
Janelle Whipple-Boyce (location: Birmingham, Michigan)

Absent: None.

Administration: Joe Valentine, City Manager
Eric Brunk, IT Manager
Laura Eichenhorn, City Transcriptionist
Mark Gerber, Finance Director
Lauren Wood, Director of Public Services

2) Approval Of November 12, 2020 Meeting Minutes

Motion by Mr. Boutros

Seconded by Mr. Fenberg to approve the Minutes of the Ad Hoc Unimproved Streets Study Committee of November 12, 2020 as submitted.

Motion carried, 6-0.

ROLL CALL VOTE

Yeas: Sherman, Whipple-Boyce, Boutros, Fenberg, Moore, Schafer

Nays: None

Abstain: Emerine

3) Review Of Input From November 12, 2020 Meeting

City Manager Valentine reviewed the discussion items as included in his November 17, 2020 memorandum which can be found in the evening's agenda packet.

There was consensus that the proposed language in item one of the memorandum should be added to the Committee's final report.

Motion by Mr. Fenberg

Seconded by Mr. Boutros to add the proposed language on property taxes and Headlee impacts from CM Valentine's November 17, 2020 memorandum into the final AHUSSC report.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Fenberg, Boutros, Emerine, Sherman, Whipple-Boyce, Moore, Schafer

Nays: None

Ms. Whipple-Boyce said the proposed language in item two of the memorandum resolved the concern she had regarding non-standard road requests.

Motion by Mr. Sherman

Seconded by Ms. Whipple-Boyce to add the proposed language from CM Valentine's November 17, 2020 memorandum to page 26 of the final AHUSSC report, and to make the recommended changes from CM Valentine's November 17, 2020 memorandum to page 69 of the final AHUSSC report.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Sherman, Whipple-Boyce, Fenberg, Boutros, Emerine, Moore, Schafer

Nays: None

There was consensus that the proposed language in item three of the memorandum should be added to the Committee's final report.

Motion by Mr. Sherman

Seconded by Mr. Fenberg to add the proposed language from CM Valentine's November 17, 2020 memorandum to page 17 of the final AHUSSC report.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Sherman, Fenberg, Whipple-Boyce, Boutros, Emerine, Moore, Schafer

Nays: None

4) Communications On Draft

Included in agenda packet, with the exception of one email from Robert Stark, resident of Chesterfield Ave, that was forwarded to the AHUSSC members prior to the evening's meeting.

Mr. Stark's email requested that the City not require residents to curb and gutter their roads during the improvement process unless 75% or more of a street's residents desire that particular improvement.

Chairman Moore noted that the AHUSSC's approach to curbs and gutters is addressed in the final report. He said that if the City Commission desired further elaboration on the topic he would be happy to provide a review of the relevant deliberations and policies dating from the mid-1990s forward.

Chairman Moore stated that two emails from residents were also forwarded to him by Commissioner Baller. One email was from a resident saying that if the City could amortize the road improvement costs over longer than 10 years the costs would likely be less burdensome to homeowners. The second email was from Sue Elsholz on Norfolk St. who said she prefers an unimproved road to a cement one. She said the main drawback of an unimproved road is that the residents have to pay for leaf cleanup when residents of improved roads do not. She expressed doubt that there was no way for the City to collect leaves from a curbless road.

It was discussed that a ten year amortization of the road improvements cost is the maximum by ordinance.

Chairman Moore noted that a payback term of more than ten years would slow down the City's ability to reinvest in infrastructure.

FD Gerber confirmed that most assessments to residents for improved roads are paid off within two or three years. He stated that residents also might look into private loans which could be used to pay off the City's assessment if they were looking for longer terms or lower payments.

Mr. Fenberg said that from personal experience the two most likely options for private loans that would cover the assessment costs would be a home equity loan or remortgage.

In reply to Chairman Moore, CM Valentine confirmed the City would not officially recommend potential avenues for private loans because the City cannot act as a financial advisor or be construed to be giving financial advice.

Chairman Moore stated the Birmingham Foundation also has resources to assist Birmingham residents with their payments if cost is a barrier.

In regards to leaf pickup on curbless roads, Chairman Moore stated Beverly Hills, MI had somewhat recently contracted a third party to attempt it and that it went so poorly that they were unable to finish.

DPS Director Wood confirmed that to be the case. She explained that curbs are necessary for safety reasons because without curbs stones and other debris can harm operators, passerby, or the equipment.

Chairman Moore thanked the residents for writing in.

5) Public Comment

None.

6) Committee Comments

Chairman Moore commended the members of the AHUSSC on their Committee work, their talents, and their civic-mindedness. He said that if he were not to sit on another City board or committee in the future he would be "going out like Sandy Koufax" having served with the members of the AHUSSC.

Chairman Moore stated that the Committee in its report endeavored to be responsible stewards of the residents' tax dollars.

Dr. Schafer agreed, adding that the Committee also endeavored to write policy that would further promote positive relationships between neighbors in the community.

7) Submission of the AHUSSC Report to the City Commission

Motion by Mr. Fenberg

Seconded by Mr. Boutros to approve the Ad Hoc Unimproved Streets Study Committee report and to recommend its approval to the City Commission.

Mr. Boutros thanked Chairman Moore for his leadership of, and investment in, the AHUSSC. He also extended thanks to the AHUSSC members, staff, and everyone else involved in making the report possible.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Fenberg, Boutros, Sherman, Whipple-Boyce, Emerine, Moore, Schafer

Nays: None

8) Adjourn

Motion by Mr. Boutros

Seconded by Ms. Whipple-Boyce to adjourn the meeting at 7:47 p.m.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Boutros, Whipple-Boyce, Sherman, Emerine, Fenberg, Moore, Schafer

Nays: None

Ad Hoc Unimproved Street Study Committee
Minutes of November 19, 2020

City Manager Joe Valentine



MEMORANDUM

City Clerk's Office

DATE: December 16, 2020

TO: Joseph A. Valentine, City Manager

FROM: Alexandria Bingham – City Clerk Designee

SUBJECT: 2021 Annual Review of Fee Schedule

INTRODUCTION:

The fee required to be paid and the amount of any bond required to be posted, or insurance required to be carried, to obtain any license to engage in the operation, conduct or carrying on of any trade, profession, business or privilege for which a license is required by the provisions of the Birmingham City Code is set by the City Commission through the Schedule of Fees, Charges, Bonds and Insurance.

Each year the fee schedule is reviewed by City departments to determine whether amendments are needed to cover the costs of service and processing.

BACKGROUND:

On the attached 2021 Proposed Fee Schedule, proposed changes are noted with the following codes:

CHANGE CODES AS LISTED ON FEE SCHEDULE

- | | |
|---|---|
| A | Fee has remained the same for many years |
| B | Proposed fee covers current costs |
| C | Pass through costs that reflects actual cost of service |
| D | Fee consistent with neighboring communities |
| E | New fee |
| F | Increase to cover normal inflationary increase |
| G | No longer provide this service |
| H | Other |

Proposed changes for 2021 include:

Engineering

- The proposed Engineering Fee changes are related to fees for the purchase of contract bid documents. Paper copies of plan sets and specification books are provided through a printing company vendor, and the proposed fees better reflect the actual costs to the City for these products. The fee for electronic copies of the contract documents that are provided on CD or flash drive, will better cover the actual costs of purchasing electronic storage media materials, and staff time to copy and distribute the documents.

Fire Department

- The Birmingham Fire Department recommends increasing the 2021 ALS II emergency and BLS emergency transport fees to the Blue Cross Blue Shield and Medicare 2021 acceptable payable

amounts. This fee increase was recommended by the City's third party medical billing company MHR. This fee increase helps to offset increased medical supply and personnel cost for 2021.

Public Records Policy

The Public Records Policy is also reviewed annually. No changes are proposed for 2021.

LEGAL REVIEW:

n/a

FISCAL IMPACT:

Adjustments to the fees are designed to cover the actual costs of providing services.

SUMMARY:

As a result of the annual review of City fees, the Engineering and Fire departments are recommending increased fees in line with actual costs and clean-up of language and layout of the fee schedule for 2021.

ATTACHMENTS:

1. 2021 Proposed Fee Schedule
2. Public Records Policy

SUGGESTED RESOLUTION:

To amend the Schedule of Fees, Charges, Bonds and Insurance, in the following sections, as stated in this report: Engineering and Fire Department.



FEES, CHARGES, BONDS, INSURANCE

The fee required to be paid and the amount of any bond required to be posted, or insurance required to be carried, to obtain any license to engage in the operation, conduct or carrying on of any trade, profession, business or privilege for which a license is required by the provisions of the Code of the City of Birmingham code shall be as hereinafter provided. These fees may be amended by resolution of the City Commission.

Adopted by Resolution #02-18-10 by the Birmingham City Commission at a regular meeting held February 8, 2010, effective February 14, 2010.

Nancy M. Weiss

City Clerk

<u>DATE AMENDED</u>	<u>RESOLUTION NUMBER</u>	<u>SECTION</u>
2/22/2010	02-30-10	Police - Parking Offenses and Fines
3/8/2010	03-44-10	Engineering - Schedule of Parking Fees
3/8/2010	03-48-10	Fire - EMS Transportation Fees
3/22/2010	03-37-10	Community Development - Vacant Property Registration Fee
5/10/2010	05-118-10	DPS - Water; Finance - Sewer Service Rates
6/14/2010	06-150-10	Engineering - Bidding Document Fee and Private Building
6/28/2010	06-172-10	DPS - Sewer Lateral Fee
2/14/2011	02-38-11	Clerk - Voter Information Fees, Valet Parking Fee
3/21/2011	03-72-11	DPS - Annual Dog Park Pass
4/11/2011	04-89-11	Clerk - Vendor and Peddler Fees
5/23/2011	05-141-11	DPS & Finance - Water/Sewer Rates
6/27/2011	06-172-11	DPS - Wedding Ceremony Fees
7/25/2011	07-190-11	DPS - Water and Sewer Connection Fees
		Clerk - Alcoholic Beverages for Consumption on the Premises Fee, Animal License Fee, Annual Licenses Criminal Background Check Fee, Frozen Confection Vendor Insurance Requirements Community Development - Lot Division Fee, Temporary Use Permit Fee, Zoning Ordinance Fees, Zoning Compliance Fees DPS - Water and Sewer Connection Fees, Wedding Rental (Parks) Fee Fire -
3/19/2012	03-74-12	EMS Transport Service Fee, Fire Code Operational Permits
6/11/2012	06-163-12	DPS - Water; Finance - Sewer Service Rates
9/10/2012	09-257-12	Museum - Allen House Event Request
12/17/2012	12-356-12	Clerk - Cemetery Fees
3/18/2013	03-100-13	DPS - Water and Sewer Connection Fees
5/20/2013	05-163-13	DPS & Finance - Water/Sewer Rates (effective 7/1/13)
7/8/2013	07-203-13	Clerk - Special Event Fees
7/22/2013	07-211-13	DPS - Water/Sewer Connection Fees
12/16/2013	12-356-13	DPS - Water Meter Opt Out Plan Fees
4/28/2014	04-98-14	Community Development - Lot Division Fees, Mechanical &
5/19/2014	05-118-14	DPS - Water; Finance - Sewer Service Rates (effective
7/28/2014	07-187-14	DPS - Grass & Noxious Weeds Civil Infraction
3/30/2015	03-63-15	Clerk - background check fees, DPS - Refuse Collection &
4/27/2015	04-86-15	Engineering - Monthly Parking Permit Rates (effective
5/18/2015	05-112-15	DPS - Water; Finance - Sewer Service Rates (effective
8/10/2015	08-174-15	Clerk - Cemetery Fees
9/10/2015	09-191-15	Police - Pedicabs & Quadricycle Fees
3/28/2016	03-99-16	Fire - BLS Transportation & Loaded Mile Fees, move
6/6/2016	06-183-16	Engineering - Daily Parking Rate at all parking structures
6/27/2016	06-203-16	DPS - Water; Finance - Sewer Service Rates (effective
8/8/2016	08-252-16	Community Development - Lot Division Fee for
12/5/2016	12-364-16	Engineering (DPS) Trench maintenance fee;
12/5/2016	12-364-16	Community Development -Text change; Vents and Exhaust
12/12/2016	12-376-16	Fire Department - Non-electronic reporting Administrative
2/27/2017	02-50-17	Engineering - Storm Water Utility Fees & Credits
5/22/2017	05-140-17	Engineering-\$.50 increase in all parking meter rates; Police-
6/26/2017	06-180-17	DPW & Finance - Water/Sewer Rate Changes for 2017-

12/11/2017	12-339-17	Clerk-Removal of Taxicabs due to State law. Community
2/26/2018	02-057-18	Community Development - Adding Construction Site
6/25/2018	06-188-18	Water/Sewer Rate Changes for 2018-2019. Effective July
		City Clerk-Addition, under Alcoholic Beverages
		Consumption on the Premises, of Administrative Applicant
9/17/2018	09-256-18	Review fee.
		Clerk: remove passport fee; increase application fee.
		Building: increase Site Evaluation fees.
		Community Development: Cross Connections relocated to
		Department of Public Services section; remove clause at
		end of section regarding reduced SLU permit fees.
		Engineering: remove Private Building Sewer Investigation
		Program; increase Trench Maintenance ROW fee; add
		Small Cell Monthly License fees.
		Fire Dept.: increase transport fees.
		Museum: Limited use fees specified for Allen House;
1/28/2019	01-026-19	limited use fees added for Parks/Grounds.
10/28/2019	10-259-19	Engineering;Waive fees for replacement of lead water
11/25/2019	11-280-19	Clerk; Increase fee for Full Burial in Greenwood Cemetery
12/16/2019	11-306-19	Engineering-Increase fees for: Right-of-Way Permits,Soil

STANDARD INSURANCE REQUIREMENTS

Where insurance is required to be carried to make application for a permit or license, the applicant shall

Workers' compensation insurance. Workers' compensation insurance, including employers' liability coverage, in accordance with all applicable statutes of the state.

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 broad form general liability extensions or equivalent.

Motor vehicle liability insurance. Motor vehicle liability insurance, including all applicable no-fault

Additional insured. Commercial general liability insurance and motor vehicle liability insurance as

Professional liability. Professional liability insurance with limits of not less than \$1,000,000 per claim if

Cancellation notice. Thirty days advance written notice of insurance cancellation, non-renewal and/or

Proof of insurance coverage. The city shall be provided with certificates of insurance evidencing the

Expiration. If any of the above coverages expire, renewal certificates and/or policies must be provided to

Acceptability of insurance company. All coverages shall be with insurance carriers licensed to do

FEE SCHEDULE

CITY CLERK'S OFFICE	EXISTING FEE
<u>Alcoholic beverages for consumption on the premises</u>	
Initial fee	\$ 1,500.00
Administrative Applicant Review	\$ 350.00
Annual renewal	\$ 350.00
Transfer fee	\$ 1,500.00
Annual criminal background check - per person (to be provided by applicant using the Michigan State Police ICHAT system)	
<u>Animals (18-1)</u>	
Stray animal fines: See Police	
Pet dog and cat licenses:	
license for one year or less	\$ 5.00
license for two years	\$ 10.00
license for three years	\$ 12.00
license obtained 30 days after expiration	\$ 20.00
Kennels:	
Annual fee	\$ 300.00
Plus for each dog in excess of ten	\$ 10.00
<u>Auctions (See Initial Merchants)</u>	
<u>Bicycle Rental Agencies (122-26) annual fee</u>	\$ 5.00
Insurance: Motor vehicle liability insurance conforming with Michigan Vehicle Code § 520: \$20,000 per person/\$40,000 per accident for bodily injury claims/\$10,000 for property damage per occurrence.	
<u>Charitable Solicitations (38-1)</u>	No charge
Annual criminal background check - per person (to be provided by applicant using the Michigan State Police ICHAT system)	
<u>Child Care Facilities (58-106)</u>	
Annual criminal background check - per person (to be provided by applicant using the Michigan State Police ICHAT system)	
Child Care Center annual fee	\$ 150.00
Initial investigation fee	\$ 100.00
Day care home, family annual fee	\$ 100.00
Initial investigation fee	\$ 100.00
Day care home, group annual fee	\$ 100.00
Initial investigation fee	\$ 100.00
<u>Christmas Tree Sales (26-88)</u>	
December 1 through December 25 - non-profit corporations and merchants assessed for personal property	No charge
All others	\$ 100.00
Deposit for clean up of lot (forfeited if not cleaned up by January 1st.)	\$ 300.00
<u>Dancing Schools (26-201)</u>	
Investigation and annual fee	\$ 50.00

FEE SCHEDULE

CITY CLERK'S OFFICE	EXISTING FEE
<u>Day Care (See Child Care Facilities)</u>	
<u>Electronic Video Game (14-106)</u>	
Each game, annual fee (subject to additional fees and requirements for regulated use)	\$ 50.00
<u>FOIA fees - See public records policy (attached)</u>	
<u>Fumigation (58-141)</u>	
Fumigation Contractor, annual fee	\$ 50.00
Fumigation permit, per event	\$ 25.00
Insurance (58-144): Standard insurance requirements plus environmental impairment/pollution liability coverage	
<u>Garage Public (54-26) - Annual Fee</u>	\$ 50.00
<u>Going out of Business (State Law)</u>	
Up to 30 days	\$ 50.00
Limit two renewals, each	\$ 50.00
<u>Greenwood Cemetery (126-26)</u>	
Grave space accommodating one full burial or three cremations	\$ 3,000.00
Additional Rights of Burial for cremated remains, each	\$ 750.00
Grave space accommodating two cremated remains	2,000.00
Grave space accommodating one cremated remains	1,000.00
Administrative fee for transfer of grave ownership	\$ 150.00
Interment and disinterment fees:	
Cremation	\$ 750.00
Full Burial	\$ 1,400.00
Foundation charges for markers & monuments:	
Foundation Installment - per linear foot	\$ 125.00
Marker or monument resets:	
Foundation installation charge as per above schedule, plus an hourly charge for removal of old foundation	
Weekend, holiday, and overtime interments. This fee in addition to the normal interment fee charged during regular working hours.	\$ 400.00
<u>Horse Drawn Carriages (122-71)</u>	
Company, annual fee	\$ 50.00
Carriage, each vehicle annual fee	\$ 50.00
Insurance: Standard insurance requirement, with coverage to include premises liability; personal injury liability; products liability; and horse or horses liability. (122-75)	
<u>Hotels/Motels annual fee</u>	\$ 75.00
1-50 Rooms	\$ 300.00
50+ Rooms	\$ 500.00
<u>Initial Merchants: (All types including transfers)</u>	\$ 100.00
<u>Kennels (See Animals)</u>	

FEE SCHEDULE

CITY CLERK'S OFFICE	EXISTING FEE
<u>Lumberyard annual fee</u>	\$ 50.00
<u>Marriage Ceremony Fee</u>	\$ 10.00
<u>Mechanical Amusement Device each device annual fee</u>	\$ 50.00
(Subject to additional fees and requirements for regulated use.)	
<u>Motor vehicle rentals (122-26)</u>	
Annual fee	\$ 50.00
Insurance: Motor vehicle liability insurance conforming with Michigan Vehicle Code § 520: \$20,000 per person/\$40,000 per accident for bodily injury claims/\$10,000 for property damage per occurrence.	
<u>Open Parking Stations annual licenses (26-428)</u>	
Lots accommodating 25 cars or less	\$ 100.00
Lots accommodating 26-50 cars	\$ 125.00
Lots accommodating 51-75 cars	\$ 150.00
Lots accommodating 76 cars or more	\$ 200.00
<u>Outdoor Amusements (14-161)</u>	
Annual fee	\$ 25.00
Surety bond or cash deposit	\$ 1,000.00
<u>Outdoor Dining license annual fee</u>	\$ 200.00
Additional flat fee for off-season	\$ 200.00
(subject to additional fees for use of city right of way)	
Insurance:	
<i>Workers' Compensation Insurance</i> , including Employer's Liability Insurance, in accordance with all acceptable statutes of the State of Michigan.	
<i>Commercial General Liability Insurance</i> on an occurrence basis with the limits of liability of not less than \$1,000,000 per occurrence and aggregate of \$2,000,000 for combined single limit personal injury and property damage, and shall include independent contractor's coverage and broad form general liability coverages.	
Liquor Liability Insurance (if liquor is to be served) on an occurrence basis with limits of liability of not less than \$1,000,000 per occurrence.	
<i>Additional Insured:</i> Commercial General Liability Insurance (and Liquor Liability, if applicable) shall name the City of Birmingham as additional insured for all activities connected with this Agreement and shall include an endorsement stating the following as: "Additional Insureds: The City of Birmingham, all elected and appointed officials, all employees and volunteers, all boards, commissions, and/or authorities and their board members, including employees and volunteers thereof. This coverage shall be primary to the additional insureds, and not contributing with any other insurance or similar protection available to	

FEE SCHEDULE

CITY CLERK'S OFFICE	EXISTING FEE
the additional insured, whether said other available coverage be primary, contributory or excess, The authorized representative of the insurance carrier acknowledges that it has read the insurance provisions of the agreement between the City of Birmingham and the insured." <i>Cancellation Notice</i> , Thirty (30) days advance written notice of cancellation, non-renewal, reduction of material change in coverage, will be provided to the City of Birmingham by the insurance carrier. <i>Proof of Insurance Coverage</i> . The city shall be provided with certificates of insurance evidencing the coverages outlined above. <i>Acceptability of insurance company</i> . All coverages shall be with insurance carriers licensed to do business in the state. All coverages shall be with carriers acceptable to the city.	
<u>Outdoor Dining Café Platform Meter Fees - Seasonal</u>	
\$1.00 Per Hour Meter Areas	\$ 2,280.00
\$1.50 Per Hour Meter Areas	\$ 3,420.00
Removal of parking meter housing and/or posts - minimum fee (cost)	\$ 88.29
Removal of parking meter housing and/or posts - 1 meter space (cost)	\$ 264.87
Removal of parking meter housing and/or posts - 2 meter spaces (cost)	\$ 441.45
<u>Outdoor Dining Café Platform Meter Fees - Pro-Rated</u>	
\$1.00 Per Hour Meter Areas (per space, per day)	\$ 12.00
\$1.50 Per Hour Meter Areas (per space, per day)	\$ 18.00
<u>Passports</u>	
Acceptance of passport application	\$ 35.00
<u>Pawnshops</u>	
Annual licensing fee	\$ 500.00
Annual criminal background check - per person (to be provided by applicant using the Michigan State Police ICHAT system)	
<u>Peddlers and Commercial Vendors (Chapter 26)</u>	
Annual criminal background check - per person (to be provided by applicant using the Michigan State Police ICHAT system)	
Special Event and School Vendor/Athletic Vendor in City Park	
Application Fee (per event/application)	\$ 50.00
Daily Fee (per day/location)	\$ 10.00
50% discount for Birmingham licensed merchants	
Frozen Confection Vendor	
Application Fee	\$ 80.00
Amendment to the Application	\$ 26.00
Annual License Fee	\$ 500.00
Insurance: Standard Insurance Requirements	
Peddling	
Application Fee (per event/application)	\$ 50.00
Amendment to the Application	\$ 16.00
Daily Fee Option (per day/location)	\$ 10.00

FEE SCHEDULE

CITY CLERK'S OFFICE	EXISTING FEE
Yearly Fee Option (calendar year)	\$ 1,825.00
<u>Poolroom, each billiard or pool table annual fee</u>	\$ 50.00
(subject to additional fees for regulated use)	
<u>Refuse Collector: (Chapter 90)</u>	
Annual fee first truck	\$ 150.00
Each additional truck	\$ 75.00
Insurance: Proof of workers compensation coverage, motor vehicle liability insurance and the VIN number of each vehicle must be provided to the city prior to obtaining a license.	
<u>Regulated Uses not otherwise listed Chapter 26:</u>	
Application fee	\$ 1,000.00
Annual licensing fee	\$ 200.00
<u>Rollerskating rinks annual fee (Chapter 14)</u>	\$ 50.00
<u>Special Events (98-140) non-refundable application fee</u>	
Annual Application fee	\$ 165.00
First Time Event Application fee	\$ 200.00
Additional permit fees as determined by administrative staff due two weeks prior to event with insurance documents.	
Insurance: Standard insurance requirements	
<u>Telecommunications</u>	
Application fee	\$ 500.00
Annual maintenance fee as determined by the Metro Authority pursuant to Act 48 of the Public Acts of 2002	
<u>Theatres annual fee 14.26</u>	\$ 50.00
<u>Valet Parking</u>	
Annual criminal background check - per person (to be provided by applicant using the Michigan State Police ICHAT system)	
Initial application fee	\$ 1,000.00
Annual license fee	\$ 500.00
One Day Valet Permit fee	\$ 50.00
Valet parking card deposit, per card	\$ 20.00
Fees per car:	
1-100 cars, pre-paying for six months in advance, per month	\$ 500.00
101-200 cars, pre-paying for six months in advance, per month	\$ 750.00
201 and above cars, pre-paying for six months in advance, per month	\$ 1,000.00
<u>Valet Parking Meter Bag Fees - (Monthly)</u>	\$ 216.00
Insurance: Workers' compensation insurance, including employers' liability coverage, in accordance with all applicable statutes of the state.	
Garage liability insurance with limits of liability of not less than \$1,000,000 per occurrence; or commercial general liability insurance endorsed to provide the equivalent of this coverage.	
Garage keepers legal liability insurance with limits of liability of not less	

FEE SCHEDULE

CITY CLERK'S OFFICE	EXISTING FEE
<p>than \$100,000.00 per occurrence; or commercial general liability insurance endorsed to provide the equivalent of this coverage.</p> <p>Additional insured. Garage liability and garage keepers legal liability insurance, as described above, shall name the city as additional insured for all activities connected with the valet parking service and shall include an endorsement stating the following as "additional insured": the city, all elected and appointed officials, all employees and volunteers, all boards, commissions, and/or authorities and their board members, including employees and volunteers thereof. This coverage shall be primary to the additional insureds, and not contributing with any other insurance or similar protection available to the additional insured, whether said other available coverage be primary, contributing or excess.</p> <p>Cancellation notice. Thirty (30) days advance written notice of insurance cancellation, nonrenewal, and/or reduction in material change in coverage must be provided to the city. Notice of cancellation material change or reduction must be attached to the certificate of insurance, or otherwise evidenced as in effect under the policy listed.</p> <p>Proof of insurance coverage. The following certificates and policies shall be provided to the city:</p> <ol style="list-style-type: none">1. Two copies of certificate of insurance for workers' compensation insurance.2. Two copies of certificate of insurance for garage liability insurance.3. Two copies of certificate of insurance for garage keepers legal liability insurance.4. If so requested, certified copies of all policies mentioned above will be furnished. <p>Expiration. If any of the above coverages expire, renewal certificates and/or policies must be provided to the city at least ten days prior to the expiration date.</p> <p>Acceptability of insurance company. All coverages shall be with insurance carriers licensed to do business in the state. All coverages shall be with carriers acceptable to the city.</p>	
<u>Voter Information</u>	
Daily Absentee Voter List	\$ 15.00
Voter Information List	\$ 5.00

FEE SCHEDULE

COMMUNITY DEVELOPMENT DEPT.		EXISTING FEE
<u>Administrative approval (Planning Department)</u>		\$ 100.00
<u>Brownfield Developments</u>		
Application fee non-refundable and non-reimbursable		\$ 1,500.00
Outside consultant fees reimbursement:		
Where a review of applications, plans, construction documents, Brownfield development documents or any other documents is performed by outside consultants engaged by the city, a review fee shall be charged at 1.05 times the actual cost. Payment shall be in advance of the review based on estimated cost.		
<u>Building Permits (Chapter 22)</u>		
(a) Building permit fees:		
The building permit fee is determined from the total construction value as shown in the most recent edition of the ICC Building Evaluation Data Square foot construction costs. For all use groups except one and two family residential, the minimum square foot construction cost is 100% of the value shown in construction costs table; for renovations the minimum square foot construction costs is 50% of the value shown in the table. For residential one and two family structures, the minimum square foot construction cost is \$125.		
(b) Total Construction Valuation:		
Permit fees are computed at \$85.00 for the first \$1,000 of construction valuation; \$10.00 for each additional \$1,000 (or fraction thereof) up to \$100,000 of construction valuation; and \$15.00 for each additional \$1,000 (or fraction thereof) over \$100,000 of construction valuation.		
(c) Refunds:		
Refunds of any permit fees are subject to a minimum of 25 percent for administrative services with no construction work commencing. After construction has started, fees will be refunded proportionately as determined by the building official. Any permit fee for construction that is 75 percent or more completed will not be refunded.		
(d) Plan examination fees:		
When a plan is required to be submitted, a plan review fee must be paid at the time of submitting plans and specifications for review. The review fee shall be \$85.00 for projects up to \$10,000 in construction value; all other plan examination fees shall be computed as shown below:		
Construction value up to \$10,000		\$ 85.00
Construction Value from \$10,001 to \$500,000		Construction value multiplied by 0.0020 \$150.00 minimum
Construction Value over \$500,000		\$1,000 plus construction value multiplied by 0.0010

FEE SCHEDULE

COMMUNITY DEVELOPMENT DEPT.

EXISTING FEE

The building plan review fee shall be multiplied by 1.25 when MEAP reviews are required.

An administrative fee equal to the permit fee may be charged in addition to the permit fee, when work is started and/or completed without first obtaining the permit. Plan review fees are not refundable.

(e) Construction Bonds

In addition to the required building permit fee, a cash bond must be posted at the time the permit is issued in accordance with the following schedule:

Construction value between \$0-\$10,000	\$	100.00
Construction value between \$10,001-\$50,000	\$	200.00
Construction value between \$50,001-\$100,000	\$	300.00
Construction value between \$100,001-\$500,000	\$	500.00
Construction value of \$500,001 and up	\$	1,000.00
<u>Swimming Pools</u>	\$	1,000.00
<u>Window Permits</u>	\$	500.00

Upon satisfactory completion of all final inspections required, and the issuance of a certificate of occupancy, if applicable, the construction bond will be returned upon request without interest.

(f) A reinspection fee may be required by the building official \$ 50.00

(g) Bonding requirements for a temporary certificate of occupancy:

When a temporary certificate of occupancy is issued prior to completion of the entire work covered by the permit, a cash bond shall be posted in an amount as determined by the building official up to \$10,000 for residential dwellings and \$100,000 for commercial buildings or spaces based on the cost of completing all remaining and outstanding work.

(h) Bonding requirements for maintenance and replacements costs of public right-of-way facilities:

A bond shall be posted prior to the issuance of a building permit for new construction in the amount of \$5,000 to assure that the public right-of-way is properly maintained at all times during construction. This includes the replacement of city sidewalk, curb and gutter, and the re-establishment of green space in the public right-of-way.

Board of Building Trades Appeals

Single family residential	\$	310.00
All other construction	\$	510.00

Construction Site Maintenance Violations (Sec. 50-29)

Municipal Civil Infraction Penalty	\$	100.00
First Offense	\$	250.00
Second Offense	\$	500.00
Subsequent Offenses	\$	500.00
Building Permit Holders		

FEE SCHEDULE

COMMUNITY DEVELOPMENT DEPT.		EXISTING FEE
Five or more violations at same site within one calendar month	\$	500.00
<u>Contractor Annual Registration Fees</u>		
Building Contractor	\$	25.00
Electrical Contractor	\$	25.00
Mechanical Contractor	\$	5.00
Plumbing Contractor	\$	15.00
<u>Demolition of Buildings</u>		
Less than 3,000 cubic feet	\$	125.00
3,000 to 50,000 cubic feet	\$	200.00
More than 50,000 cubic feet	\$	300.00
Performance cash bond:		
Minimum (as determined by the building official)	\$	100.00
Maximum (as determined by the building official)	\$	50,000.00
<u>Electrical Installation (Chapter 22)</u>		
Base fee	\$	50.00
Reinspection Fee	\$	50.00
120 volt or 277 volt first circuit	\$	15.00
120 volt or 277 volt each additional circuit	\$	8.00
Each 208V, 240V, 480V branch circuits	\$	20.00
First 25 lights, receptacles and switches	\$	20.00
Each additional set of 20	\$	15.00
First sign	\$	50.00
Feeders/Buss Ducts:		
First 100 feet	\$	25.00
Over 100 feet	\$	15.00
Commercial fire alarms:		
Fire alarm panel	\$	30.00
Each alarm device	\$	10.00
Residential smoke detectors up to 8 units, 120 volts	\$	20.00
Low voltage smoke alarm with panel	\$	50.00
Residential smoke alarm system less than 50 volts with panel	\$	50.00
Services or transformers:		
30 AMP to 200 AMP	\$	35.00
201 AMP to 400 AMP	\$	50.00
Over 401 AMP	\$	100.00
A/C Interrupt service	\$	20.00
Temporary service up to 200 AMP	\$	40.00
Sub panel: Sidewalk inspection req:		
Each additional sign	\$	20.00
Each residential A/C	\$	35.00
Furnace/unit heaters	\$	20.00
Pools/hot tubs/spas	\$	50.00

FEE SCHEDULE

COMMUNITY DEVELOPMENT DEPT.		EXISTING FEE
Appliances/disposal/dishwashers	\$	10.00
Commercial HVAC:		
5 ton or less ach	\$	50.00
Over 5 ton each	\$	75.00
Motors - Commercial only:		
1/4 HP up to 10 HP each	\$	25.00
Over 10 HP to 30 HP each	\$	40.00
Over 30 HP each	\$	60.00
New house construction minimum of four inspections requires		
An administrative fee equal to the permit fee may be charged in addition to the permit fee when work is started and/or completed without first obtaining the permit.		
<u>Equipment installation permit fee</u>	\$	10.00
<u>Final site inspection fee (Planning Dept.)</u>	\$	100.00
<u>Housing:</u>		
Housing Board of Appeals Fee:		
Residential dwelling unit	\$	310.00
Other - Commercial	\$	510.00
<u>Housing Inspections Owner Authorized:</u>		
One and two-family dwellings:		
Building structure fee per dwelling unit	\$	200.00
Electrical fee per dwelling unit	\$	100.00
Plumbing fee per dwelling unit	\$	100.00
Heating and refrigeration fee per dwelling unit	\$	100.00
<u>Landlord Licenses (See Rental Properties)</u>		
<u>Lot Division (Chapter 102):</u>		
Fee per parcel created from each platted or unplatted lot (lot splits)	\$	200.00
Boundary Adjustment for single family dwelling:		
Separation of platted lots (fee per each lot)	\$	200.00
Combination of platted lots (fee per each lot)	\$	200.00
<u>Massage Permits (26-251):</u>		
Investigation fee to operate massage facility (subject to additional fees for regulated use)	\$	250.00
Investigation fee to perform massage service	\$	25.00
Change of location (subject to additional fees for regulated use)	\$	100.00
<u>Mechanical Permits:</u>		
Base Fee	\$	50.00
Gas/oil furnace/boilers, etc:		
100,000 BTU or less	\$	60.00
Over 100,000	\$	70.00
Over 500,000	\$	80.00
Ductwork	\$	50.00
V.A.V. boxes (variable air volume) each	\$	30.00

FEE SCHEDULE

COMMUNITY DEVELOPMENT DEPT.		EXISTING FEE
Humidified or air cleaner	\$	30.00
Mfg, fireplace (gas or solid fuel), stoves (solid fuel) includes chimney	\$	30.00
Gas or oil space heaters	\$	30.00
Automatic flue damper	\$	25.00
as part of furnace	\$	10.00
Gas piping - first two openings	\$	30.00
additional openings each	\$	5.00
Air handling systems:		
Vents & Exhaust Fans:		
Under 1,500 c.f.m. each	\$	15.00
1,500 to 10,000 c.f.m. each	\$	35.00
Over 10,000 c.f.m. each	\$	55.00
Heat Pumps:		
To 50,000 BTU	\$	30.00
To 200,000 BTU	\$	40.00
To 500,000 BTU	\$	50.00
Over 500,000 BTU	\$	75.00
Fire Suppression Systems:		
Standpipe systems:		
2-1/2" thru 4"	\$	50.00
Over 4"	\$	70.00
Fire pumps & connections	\$	75.00
Fire sprinkler system:		
First head up to 20 heads	\$	50.00
Each additional head	\$	3.00
Hood and duct fire suppression systems:		
Each establishment system- minimum	\$	75.00
Each additional system at same establishment	\$	30.00
Refrigeration:		
Self contained refrigeration systems	\$	40.00
Remote refrigeration systems:		
Up to 10 HP	\$	50.00
10 HP up to 50 HP	\$	70.00
Over 50 HP	\$	95.00
Water heater	\$	30.00
Chimney liner	\$	20.00
Hydronic Floor Heat:		
Up to 2,000 square feet	\$	50.00
Over 2,000 square feet	\$	60.00
Geo Thermal:		
Up to 100,000 BTU	\$	75.00
Over 100,000 BTU	\$	90.00

FEE SCHEDULE

COMMUNITY DEVELOPMENT DEPT.		EXISTING FEE
Additional reinspection	\$	50.00
Reinspection fee	\$	50.00
An administrative fee equal to the permit fee may be charged in addition to the permit fee, when work is started and/or completed without first obtaining the permit.		
<u>Newsracks (90-160)</u>		
Review fee for each newsrack box	\$	50.00
Annual registration for each newsrack box	\$	50.00
<u>Plumbing Permits</u>		
Base Fee	\$	50.00
Automatic washer	\$	15.00
Backflow preventer	\$	25.00
Bathtub	\$	15.00
Catchbasin	\$	50.00
Dental Chair	\$	15.00
Dishwasher	\$	20.00
Drains to 6 inches	\$	25.00
Drains over 6 inches	\$	40.00
Drinking fountain	\$	15.00
Floor drain	\$	15.00
Garbage disposal	\$	15.00
Grease trap	\$	30.00
Hose bibbs	\$	15.00
Humidifier	\$	15.00
Inside drain (weep tile)	\$	15.00
Laundry tray	\$	15.00
Lavatory	\$	15.00
Lawn sprinkler - including Backflow Device	\$	50.00
Miscellaneous equipment	\$	15.00
Reinspection fee	\$	50.00
Roof sump	\$	15.00
Safe waste	\$	15.00
Sewers to 6 inches	\$	50.00
Sewers to 8 inches	\$	60.00
Sewers to 10 inches	\$	75.00
Sewers to 12 inches	\$	100.00
Sewers over 13 inches	\$	100.00
Shower trap	\$	15.00
Stacks, conductors	\$	15.00
Stand pipe	\$	15.00
Sump w. pump	\$	30.00
Urinal	\$	15.00

FEE SCHEDULE

COMMUNITY DEVELOPMENT DEPT.		EXISTING FEE
Water closet	\$	15.00
Water distribution:		
3/4 inch	\$	30.00
1 inch	\$	30.00
1 1/4 inch and 1 1/2 inch	\$	35.00
2 inches	\$	45.00
3 inches	\$	60.00
4 inches	\$	70.00
Over 4 inches	\$	75.00
Water heater	\$	30.00
Water service:		
1 inch	\$	65.00
1 1/2 inch	\$	65.00
2 inches	\$	65.00
Over 2 inches	\$	125.00
Additional inspection	\$	50.00
Reinspections	\$	50.00
An administrative fee equal to the permit fee may be charged in addition to the permit fee, when work is started and/or completed without first obtaining the permit.		
<u>Production filming fees 114-168:</u>		
Permit application fee (non-refundable):		
Motion picture, television, or video on private property only	\$	125.00
Motion picture, television, or video on public property	\$	225.00
Still photography only on private property	\$	50.00
Still photography only on public property	\$	100.00
Additional fee for expedited processing if less than normal processing time is required. (Late application processed at the discretion of the city manager or his/her designee)	\$	150.00
Daily public property use fee (from prep to clean-up time):		
Motion picture, television, or video, per day	\$	75.00
Public property location holding - per day	\$	75.00
On-street base camp - per day (if approved)	\$	25.00
Parking space rental - per day		current rate
Extended hours of permitted filming activity:		
Any film permitted activity beyond 7:00 a.m. to 7:00 p.m. or driving scenes on major, minor, or neighborhood roads requiring special barricades, noticing, and/or public safety personnel (hourly rates for staff time to be calculated and charged separately).	\$	75.00
Security deposit:		
A refundable security deposit may be required to cover any unanticipated city staff costs, clean-up costs, refund fees to user groups affected by the film permit activities, and/or other expenses not included/anticipated in the initial film permit fee calculation.	\$	500.00

FEE SCHEDULE

COMMUNITY DEVELOPMENT DEPT.

EXISTING FEE

Staff costs:

Monitoring fee for additional police, fire, ordinance enforcement, public works, recreation and parks, or other staff as determined by the city manager or his/her designee; fee will be estimated based on hours needed and scheduled. Staff time to be based on most current city overtime rate schedule and calculated and paid in advance of film permit activities.

Insurance: (Sec 14-172 (5) (6) (8) Standard insurance requirement plus limits of liability of not less than \$5,000,000 per occurrence in the event motor vehicles, aircraft, helicopters, explosives or pyrotechnics are used in the activity. Also, the permittee shall execute a hold-harmless agreement as provided by the city prior to the issuance of any permit.

Rental Properties

Fee for rented or leased premises:

First unit	\$	125.00
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For properties containing more than one unit:

Add, per additional unit or common/exterior area, to the one-unit fee	\$	40.00
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Additional re-inspection fee for rental properties requiring additional inspections, plus \$25.00 for each additional unit beyond the first unit.	\$	75.00
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The fee shall be increased by 50 percent for any application received more than 30 days after the required renewal date.

Signs (Chapter 86)

Construction	\$	50.00
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Temporary - non-residential zone districts - permit per 30 square feet or fraction 86-133	\$	50.00
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Temporary - churches in residential zone districts 86-70	\$	25.00
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Marquee and roof annual fee	\$	200.00
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Others:

Permit per square foot	\$	2.00
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Minimum	\$	100.00
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Inspection fee every three years	\$	50.00
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Removal fee 86-59 86-111	\$	50.00
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Sign impound fee, per sign	\$	25.00
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Sign inspection bonds per required inspection	\$	200.00
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Sign Erectors (Chapter 86)

Original license	\$	25.00
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Renewal - annual fee	\$	15.00
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Bond	\$	5,000.00
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Sign Removal: Failure to comply with notice to remove, daily fine to commence on 31st day after notice to remove is issued.

\$	25.00
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Site Evaluation

New house	\$	250.00
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Addition, accessory structure and impervious surfaces	\$	125.00
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FEE SCHEDULE

COMMUNITY DEVELOPMENT DEPT.

EXISTING FEE

Special Land Use Permits (See Zoning)

Subdivision plats (Chapter 102)

Tentative preliminary plat approval

Fee \$2,500.00

Plus per lot \$10.00

Final preliminary plat approval

Fee \$1,000.00

Temporary Structure (Tents, Canopies, etc)

Original permit \$ 100.00

Renewal \$ 25.00

Plan checking fee \$ 50.00

Temporary Use Permit \$ 100.00

Vacant Property Registration Fee

Residential \$ 100.00

Commercial \$ 100.00

Safety and maintenance inspection \$ 75.00

Administrative costs: Inspector per hour \$ 55.00

Support staff per hour \$ 45.00

Sanctions, remedies, penalties:

First offense \$ 150.00

Second offense and any other subsequent offense \$ 500.00

Zoning Ordinance Fees

Board of Appeals

Single family residential \$ 310.00

All others \$ 510.00

Community Impact Review \$ 2,050.00

Design review fee \$ 350.00

Historic district review

Single family residential district \$ -

All other zone districts \$ 350.00

Public notice signs for land development applications

Fee \$ 50.00

Deposit \$ 100.00

Site Plan Review

R-4 through R-8 zone districts fee \$ 850.00

Plus, per dwelling unit affected by minor construction or minor site plan changes, as determined by the planning director \$ 50.00

Or, plus, for each dwelling unit in the entire complex for all other site plan changes, as determined by the planning director \$ 50.00

Non-residential districts fee \$ 1,050.00

Plus per acre or fraction thereof \$ 50.00

Special Land Use Permits

FEE SCHEDULE

COMMUNITY DEVELOPMENT DEPT.		EXISTING FEE
*Special land use	\$	800.00
Plus, site plan review	\$	1,050.00
Plus, design review	\$	350.00
Plus, publish of legal notice	\$	450.00
Annual renewal fee	\$	200.00
Temporary Use Permit	\$	100.00
Zoning Compliance Letters	\$	50.00
Zoning Compliance Permit Fees		
Accessory Structures Under 200 Square Feet	\$	125.00
Fence Permit - <i>Single Family Zoned Districts</i>	\$	50.00
Impervious Surface (driveway, patio, etc.) <i>Single Family Zoned Districts</i>	\$	125.00
Zoning Ordinance Interpretation (Formal Report)		
One & two family zone districts		\$125.00
All other zone districts		\$175.00
<p>THE FEES FOR DESIGN REVIEW, SITE PLAN REVIEW, HISTORIC DISTRICT REVIEW AND SPECIAL LAND USE PERMITS SHALL BE DOUBLE THE LISTED AMOUNTS IN THE EVENT THE PROPOSED PROJECT IS COMMENCED PRIOR TO FILING OF AN APPLICATION FOR REVIEW BY THE CITY.</p> <p>* Special Land Use permit fees may be waived at the discretion of the City Manager where an amendment is sought by the applicant to change the name of the establishment, or remove parties from the permit when it involves a liquor license associated SLUP.</p>		

FEE SCHEDULE

DEPARTMENT OF PUBLIC SERVICES		EXISTING FEES
<u>Cross Connections Inspections/Re-Inspections (114-122)</u>		
Fee		\$ 50.00
city representative for the time spent on such inspections or re-inspections concerning		
Device test report review, per report		\$ 10.00
<u>Dog Park Annual Pass:</u>		
Resident		\$ 50.00
Non-Resident		\$ 200.00
<u>Golf Course Fees - Adjusted annually by resolution of City Commission with recommendation of Parks and Recreation Board</u>		
<u>Grass & Weed Violations (118-66 to 118-68)</u>		
Cutting charge for properties less than or equal to 50 feet wide		\$ 135.00
Cutting charge for properties greater than 50 feet wide		\$ 200.00
Municipal Civil Infraction Fine (in addition to cutting charge):		
First Offense		\$ 50.00
Second Offense		\$ 100.00
Third Offense		\$ 200.00
All violations after the third offense in a calendar year		\$ 200.00
<u>Hydrant Use</u>		
Deposit (if required as determined by Fire Chief)		\$ 100.00
Permit Fee		\$ 160.00
Water Charge		\$ 64.75
Includes 5000 gallons at standard charge. Water charge in excess of 5000 gallons will be charged at double rate \$25.90 per thousand gallons.		
This rate may be revised every year effective July 1st.		\$ 25.90
<u>Hydrant Repair</u>		
To be calculated by DPS, Will include labor, equipment, material		
<u>Ice Arena Fees - Annual evaluation at budget</u>		
<u>Leisure Activity Pass:</u>		
First year		\$ 15.00
Revalidate/Replace for subsequent seasons		\$ 10.00
<u>Recycle Bins</u>		current cost
<u>Refuse collection charges (Chapter 90) Fill-A-Dump</u>		\$ 300.00
<u>Snow Removal from Sidewalks (98-66 - 98-68) - minimum charge</u>		\$ 100.00
<u>Tree Preservation (Chapter 118)</u>		
Registration for tree service business		\$ 100.00
Sanctions, remedies, penalties:		
First offense, per tree		\$ 500.00
Second offense, per tree		\$ 1,000.00
<u>Water</u>		
Customer requested service, emergency, 2 hr. minimum plus equipment and materials if applicable		\$ 200.00
Meter department service fee, plus equipment and materials if applicable		\$ 80.00

FEE SCHEDULE

DEPARTMENT OF PUBLIC SERVICES		EXISTING FEES
Meter department service fee for no show appointment	\$	40.00
Final meter reading without 24 hour notice	\$	150.00
Stop box construction deposit (includes \$100 inspection \$400 refundable	\$	500.00
Curb box and lid repair (done by city)	\$	500.00
Opt Out Plan Meter Reading Fee	\$	12.02
Frozen water service line thaw - first visit		no charge
		material (\$200 minimum)
Frozen water service line thaw - second visit and beyond (\$200 minimum)		
<u>Water</u>		
Additional charge for water used:		
For each 1,000 gallons or part thereof	\$	4.87
Service of notice of intent to discontinue service for non-payment of charges (114-303)	\$	50.00
Meter department service fee	\$	80.00
Meter department service fee for no show appointment	\$	40.00
Final meter reading without 24 hour notice	\$	150.00
Stop box construction deposit (includes \$100 inspection \$400 refundable)	\$	500.00
Curb box and lid repair (done by city)	\$	500.00
<u>Water Rates</u>		
Meter Size		
5/8" Quarterly fixed charge	\$	5.00
5/8" Monthly fixed charge	\$	1.67
1" Quarterly fixed charge	\$	8.00
1" Monthly fixed charge	\$	2.67
1 1/2" Quarterly fixed charge	\$	12.00
1 1/2" Monthly fixed charge	\$	4.00
2" Quarterly fixed charge	\$	16.00
2" Monthly fixed charge	\$	5.33
3" Quarterly fixed charge	\$	24.00
3" Monthly fixed charge	\$	8.00
4" Quarterly fixed charge	\$	32.00
4" Monthly fixed charge	\$	10.67
6" Quarterly fixed charge	\$	48.00
6" Monthly fixed charge	\$	16.00
8" Quarterly fixed charge	\$	64.00
8" Monthly fixed charge	\$	21.33
Special charges to the city		
Annual charge for fire hydrants	\$	18.50
Annual charge for drinking fountains	\$	20.00
<u>Water & Sewer Connections (Chapter 114):</u>		

FEE SCHEDULE

DEPARTMENT OF PUBLIC SERVICES		EXISTING FEES
Water Service Only - Single Trench		
Easement 1":		
Service Install		\$ 1,790.00
Water Meter, MTU, Brass Meter Spuds, and Trip		\$ 657.00
Water for Construction		\$ 50.00
Total		\$ 2,497.00
Easement 1 1/2":		
Service Install		\$ 2,010.00
Water Meter, MTU, Brass Meter Flanges, and Trip		\$ 1,850.00
Water for Construction		\$ 70.00
Total		\$ 3,930.00
Easement 2":		
Service Install		\$ 2,210.00
Water Meter, MTU, Brass Meter Flanges, and Trip		\$ 2,060.00
Water for Construction		\$ 95.00
Total		\$ 4,365.00
All Paved Surfaces 1":		
Service Install		\$ 3,950.00
Water Meter, MTU, Brass Meter Spuds, and Trip		\$ 657.00
Water for Construction		\$ 50.00
Total		\$ 4,657.00
All Paved Surfaces 1 1/2":		
Service Install		\$ 4,270.00
Water Meter, MTU, Brass Meter Flanges, and Trip		\$ 1,850.00
Water for Construction		\$ 70.00
Total		\$ 6,190.00
All Paved Surfaces 2":		
Service Install		\$ 4,630.00
Water Meter, MTU, Brass Meter Flanges, and Trip		\$ 2,060.00
Water for Construction		\$ 95.00
Total		\$ 6,785.00
Water for construction rates on larger services:		
3"		\$ 120.00
4"		\$ 190.00
6"		\$ 330.00
8"		\$ 465.00
(Prices on water services over 2" in size will be determined by (DPS) on a time and material basis. A deposit will be made for the estimated cost as determined by DPS.)		
5/8" meter		\$ 120.00
1" meter		\$ 180.00
1 1/2" meter		\$ 1,320.00

FEE SCHEDULE

DEPARTMENT OF PUBLIC SERVICES		EXISTING FEES
2" meter		\$ 1,525.00
(Price to be obtained from meter department for any water meter larger than 2")		
Meter Transceiver Unit (MTU)		\$ 135.00
1" Brass Meter Spuds		\$ 22.00
1.5" Brass Meter Flanges		\$ 75.00
2" Brass Meter Flanges		\$ 80.00
Inspection fee when trenching not done by DPS per service		\$ 400.00
Water disconnection fee:		
Water service disconnection at property line if service will be reused (1" or larger copper water services only)		\$ 1,000.00
2" service or smaller		\$ 1,850.00
4" service or greater to be determined individually by the DPS		
Fees for trench maintenance		\$ 800.00
Refundable deposit		\$ 1,000.00
Wedding Rental (Parks)		\$ 100.00
Shain Park (weekdays/weekends)		
Resident		\$ 200.00
Non-Resident		\$ 400.00
Security Deposit		\$ 100.00
Birmingham Historical Museum Park (John West Hunter Park) (weekdays/weekends)		
Resident		\$ 200.00
Non-Resident		\$ 400.00
Security Deposit		\$ 100.00
All other City Parks (weekdays/weekends)		
Resident		\$ 70.00
Non-Resident		\$ 140.00
Security Deposit		\$ 50.00
Well Permit		\$ 100.00

FEE SCHEDULE

ENGINEERING		EXISTING FEE	PROPOSED FEE	CHANGE CODE	STAFF	Other
<u>Bidding Document Fee</u>						
Large Set - Paper Copy	\$ 50.00		75 C,D,F	JS		Recommend name change to "Large Set - Paper Copy (greater than 10 sheets)"
Small Set - Paper Copy	\$ 30.00		50 C,D,F	JS		Recommend name change to "Small Set - Paper Copy (1 to 10 sheets)"
CD Copy (any size) (Copy fee waived for Plan Room and Advertising Services)	\$ 15.00		20 B,F	JS		Recommend name change to "Electronic Copy CD/Flash Drive (any size set)"
<u>Cable Communications Permit (30-133 (j))</u>						
Cable Franchise Insurance: Standard Insurance requirements plus excess liability insurance (or umbrella policy) on an "occurrence basis", with limits of liability not less than \$5,000,000 per occurrence; and indemnification provisions (see Section 30-190)						
<u>Curb Closings (See Streets & Sidewalks)</u>						
<u>Driveways (See Streets & Sidewalks)</u>						
<u>Parking Meters</u>						
High Demand (Areas Inside Central Core of Business District)	\$ 1.50					
Lower Demand (Areas Outside Central Core of Business District)	\$ 1.00					
<u>Parking Structures</u>						
Less than 2 hours	free					
Less than 3 hours	\$ 2.00					
Less than 4 hours	\$ 4.00					
Less than 5 hours	\$ 6.00					
Less than 6 hours	\$ 8.00					
Over 6 hours	\$ 10.00					
Over 7 hours	\$ 10.00					
Over 8 hours	\$ 10.00					
Maximum Fee After 10:00PM	\$ 5.00					
Structure	\$ 50.00					
Permit Parking - All Others	\$ 70.00					
<u>Parking Structure Permit Parking Activation Fee</u>						
Deposit (any cards returned after six-months not eligible for refund)	\$ 20.00					
Activation fee per AVI card	\$ 30.00					
Returned checks	\$ 30.00					
<u>Permit Parking At Meters (3 Months)</u>						
Lot 6 - Regular	\$ 210.00					
Lot 6 - Restricted	\$ 150.00					
Ann St. North	\$ 180.00					
South Old Woodward	\$ 120.00					
Woodward	\$ 180.00					
Woodward	\$ 180.00					
<u>Right-of-Way Permits</u>						
Permit Fee	\$ 65.00					
Trench Maintenance	\$ 900.00					
Water Service Inspection Fee	\$ 400.00					
Sewer Service Inspection Fee	\$ 400.00					
Cash Bond (Refundable)	\$ 1,000.00					
<u>Sidewalks (See Streets & Sidewalks)</u>						
<u>Soil erosion and sediment control permit fees:</u>						
Less than 1 acre site	\$ 65.00					
1-2 acre site	\$ 125.00					
2-3 acre site	\$ 125.00					
The permit fee shall increase for every acre or portion thereof in excess of the above examples.						
Inspection desposits:						
Less than 1 acre site	\$ 1,560.00					
1-2 acre site	\$ 3,120.00					
2-3 acre site	\$ 4,680.00					
The inspection deposit shall increase \$1,560.00 per additional acre or portion thereof in excess of the above examples.						
<u>Soil Filling Permit (Chapter 50)</u>						
Application fee	\$ 600.00					
Permit fee, per cubic yard	\$ 0.20					
<u>Small Cell Monthly License</u>						
Tier 1 - Per Month Per Pole	\$75.00					
Tier 2 - Per Month Per Pole	\$150.00					
Performance Bond	\$10,000.00					

FEE SCHEDULE

ENGINEERING				EXISTING FEE	PROPOSED FEE	CHANGE CODE	STAFF	Other
Administrative Fee				\$500.00				
<u>Stormwater runoff (Chapter 114)</u>								
Permit per acre of affected area				\$ 125.00				
Minimum				\$ 65.00				
<u>Storm Water Utility Fee Related Charges</u>								
Storm Water Utility Fee Credit Application or Renewal				\$ 50.00				
Low Impact Development Determination				\$ 50.00				
Storm Water Utility Appeals Board Application				\$ 50.00				
<u>Storm Water Utility Fee - Credit Schedule</u>								
<u>CREDIT</u>	<u>APPLIES TO</u>	<u>ANNUAL VALUE</u>	<u>RENEWAL PERIOD</u>					
<u>Rain Barrels</u>	SFR/Non-SFR	\$15	2 years					
<u>Rain Garden/Bio-Swale</u>	SFR/Non-SFR	\$20 *	5 years					
<u>Infiltration Trench/Dry Well</u>	SFR/Non-SFR	\$25 *	5 years					
<u>Cistern</u>	SFR/Non-SFR	\$25 *	10 years					
<u>Pervious Pavement</u>	SFR/Non-SFR	\$10 (200-300 Sq. Ft.) \$20 (300-400 Sq. Ft.) \$30 (>400 Sq. Ft.)	10 years					
<u>Disconnect Footing Drain</u>	SFR/Non-SFR	\$40	10 years					
<u>LID Building Measures</u>	Non-SFR	ESWU reduction	N/A					
<u>LID Site Measures</u>	Non-SFR	ESWU reduction	N/A					
<u>Enhanced Retention</u>	Non-SFR	ESWU reduction	N/A					
Those credits marked with an asterisk (*) will be multiplied by the relative size of the parcel the improvement makes on the property, provided that the improvement truly captures at least 50% of the impervious area that is draining directly to the sewer system, according to the following schedule:								
	<u>SFR CLASS</u>	<u>CREDIT MULTIPLICATION FACTOR</u>						
	Classes A & B	1						
	Class C	1.6						
	Class D	2.4						
	Class E	3.2						
	Class F	4.6						
<u>Streets & Sidewalks:</u>								
There shall be a minimum charge of \$85.00 for all curb closing, curb, cuts, driveways and sidewalk permits.				\$ 85.00				
Curb closings (98-91):								
Permit per linear foot				\$ 4.00				
Minimum				\$ 30.00				
Curb cuts (98-91):								
Permit per linear foot				\$ 4.00				
Minimum				\$ 30.00				
Driveways (98-91):								
Permit				\$ 40.00				
Sidewalks (98-57):								
Permit, per square foot				\$ 0.50				
Minimum				\$ 20.00				
Excavations (98-26):								
Permit				\$ 65.00				
Plus deposit to be determined by city engineer to cover estimated cost of possible city expenses, minimum								
Moving buildings (98-3 - 98-28):								
Permit				\$ 50.00				
Plus deposit to be determined by city engineer to cover estimated cost of possible city expenses, minimum				\$ 1,000.00				
Insurance: Standard insurance requirements plus hold-harmless agreement								
Obstructions (98-26):								
Permit				\$ 65.00				
Plus deposit to be determined by city engineer to cover estimated cost of possible city expenses, minimum				\$ 1,000.00				

FEE SCHEDULE

FINANCE DEPARTMENT				EXISTING FEE
Sewer Service Rates (Chapter 114)				
For each 1,000 gallons or part thereof				\$ 7.56
Storm Water Utility Fee (Chapter 114)				
<u>Property Type</u>	<u>SFR Class</u>	<u>Average Runoff Potential</u>	<u>ESWU</u>	
Single-Family Residential, 0-125 acres or less	Class A	3,166	0.7	
Single-Family Residential, 0-126 acres - 0.250 acres	Class B	4,317	1	
Single-Family Residential, 0.251 acres - 0.500 acres	Class C	6,716	1.6	
Single-Family Residential, 0.501 acres - 0.750 acres	Class D	10,552	2.4	
Single-Family Residential, 0.751 acres-1,000 acres	Class E	13,094	3.2	
Single-Family Residential, 1,001 acres or larger	Class F	20,496	4.6	
<u>Non-Single Family ESWU.</u> The				
storm water utility fee for non-single family lots shall equal the number ESWU'S				
for a given lot, multiplied by the annual rate established by the City				
Commission per ESWU per year. The formula for determining the number of				
ESWU'S per non-single family lot shall be calculated from the amount of				
pervious and impervious lot area as follows:				
Number of ESWU'S = "0.15 (TA-1A + 0.90 (IA))"/4317 s.f./ESWU				
where TA=total area of each lot (reported in square feet);				
IA=impervious area of each lot (reported in square feet).				
Evergreen-Farmington Sewage Disposal District:				
For each Equivalent Storm Water Unit (ESWU)				
Quarterly fixed fee				\$48.75
Monthly fixed fee				\$16.25
Southeast Oakland County Sewage Disposal District:				
For each Equivalent Storm Water Unit (EWSU)				
Quarterly fixed fee				\$61.25
Monthly fixed fee				\$20.42
Industrial Surcharge (Chapter 114)				
An industrial surcharge shall be levied against industrial and commercial				
customers contributing sewage to the system with concentrations of				
pollutants exceeding the levels described as follows:				
Amounts of Industrial Surcharge - Total Charge per pound of excess pollutants				
Biochemical oxygen demand (BOD), over 275 mg/l				\$ 0.483
Total suspended solids (TSS), over 350 mg/l				\$ 0.490
Phosphorus (P), over 12 mg/l				\$ 7.228
Fats, oils, grease (FOG) over 100 mg/l				\$ 0.465
Industrial Waste Control IWC (Chapter 114)				
An industrial waste control charge shall be levied against all non-residential				
properties, in accordance with rates established by resolution.				
Meter Size - Quarterly Charge				
5/8"				\$ 10.65
3/4"				\$ 16.02
1"				\$ 26.67
1 1/2"				\$ 58.68
2"				\$ 85.32
3"				\$ 154.65
4"				\$ 213.30
6"				\$ 319.92
8"				\$ 533.22
10"				\$ 746.52
12"				\$ 853.14
14"				\$ 1,066.44
16"				\$ 1,279.74
18"				\$ 1,493.01
20"				\$ 1,706.31
24"				\$ 1,919.58
30"				\$ 2,132.88
36"				\$ 2,346.18
48"				\$ 2,559.45
Effective July 1, 2018				

FEE SCHEDULE

FIRE DEPARTMENT	EXISTING FEE	PROPOSED FEE	CHANGE CODE	Staff
<u>EMS Transport Service Fees (Chapter 54)</u>				
ALS Emergency Transport II	\$ 770.00	\$ 800.00	D,F	P. Wells
ALS Emergency Transport I	\$ 625.00			
ALS Non-Emergency Transport	\$ 625.00			
BLS Emergency Transport	\$ 475.00	\$ 485.00	D,F	P.Wells
BLS Non-Emergency Transport	\$ 475.00			
Loaded Mile (scene to hospital fee per mile)	\$ 14.00	\$ 15.00	D.F	P. Wells
<u>Fire Code Operational Permits</u>				
As listed in the International Fire Code	\$ 50.00			
<u>Hydrant Use & Hydrant Repair - See DPS</u>				
<u>Open Fires Permit (includes inspection)</u>	\$ 50.00			
<u>Pyrotechnics displays Permit</u>	\$ 50.00			
<u>Administrative Fee-Non-electronic reporting (inspections/testing/maintenance)</u>	\$ 50.00			

FEE SCHEDULE

MUSEUM		EXISTING FEE
<u>Limited Use Fee-Allen House</u>		
Cleaning Deposit, returnable		\$100.00
2 hrs. of approved private use - Allen House, first floor only, with event specific rider and agreement		\$550.00
Insurance: Standard Insurance Requirements and Hold Harmless Agreement		
<u>Limited Use Fee-Park/Grounds</u>		
Security Deposit, returnable		\$100.00
Up to 20 people-		\$250.00
Up to 20 people-		\$500.00
21-100 people-		\$400.00
21-100 people-non-		\$800.00
	fees will	
Over 100 people	apply	
Security Deposit,		\$250.00
Insurance: Standard Insurance Requirements and Hold Harmless Agreement		
<u>Research Requests</u>		
First hour		\$25.00
Each additional hour		\$15.00

FEE SCHEDULE

POLICE DEPARTMENT		EXISTING FEE
<u>*Alcohol:</u>		
Specially Designated Distributor	\$	500.00
Specially Designated Merchant	\$	500.00
<u>False Alarm fees (74-31):</u>		
First false alarm per calendar year	no charge	
All subsequent false alarms per calendar year	\$	50.00
<u>Fingerprints</u>		
Full set of fingerprints; said fee shall be in addition to any license or permit fee which requires fingerprints to be taken and/or submitted to the Michigan State Police or the Federal Bureau of Investigation	\$	10.00
<u>Meter Bags - Daily Fee</u>	\$	18.00
<u>Outdoor Dining Café Platform Meter Fees</u>		
(See City Clerk's Office Fee Schedule)		
<u>Parking Permits (110-136 - 110-150)</u>		
Residential parking permit per household (includes 2 resident and 3 visitor permits for a two-year period)	\$	8.00
<u>Parking Offenses & Fines (If paid before 10 days/If paid after 10 days)</u>		
Expired meter: first seven offenses in calendar		\$10/20
Expired meter: eight offenses or more in calendar year		\$30/40
Overtime in non-metered zone		\$10/20
Overtime in a time zone: less than 2 hours		\$15/25
Overtime in a time zone: 2 hours or longer		\$30/40
Stopping, standing or parking where prohibited		\$30/40
Parking over the meter line		\$10/20
Back into parking lot space		\$10/20
Keys in ignition or ignition unlocked		\$30/40
Other illegal parking		\$30/40
No parking here to corner		\$30/40
Handicap zone		\$100/125
Violation of snow emergency parking ordinance		\$50/75
Illegal parking in permit area		\$30/40
Illegal parking on private property		\$30/45

FEE SCHEDULE

POLICE DEPARTMENT		EXISTING FEE
<u>Pedi-cabs & Commercial Quadricycles</u>		
Annual Application Fee	\$	50.00
<p><i>Insurance: The owner of every pedicab or commercial quadricycle shall procure and file with the city clerk a liability insurance policy or similar proof of insurance issued by an insurance company authorized to do business in the state. The amount of such liability insurance for each pedicab or commercial quadricycle shall be as follows: An amount of not less than \$2,000,000 because of bodily injury to or death of any one person; in an amount of \$2,000,000 because of bodily injury of two or more persons in any one accident; in an amount of not less than \$2,000,000 in medical coverage for each passenger. Such policy of insurance may be in the form of a separate policy for each pedicab or commercial quadricycle, or may be in the fleet policy covering all pedicabs or commercial quadricycles operated by such owner; provided, however, that such a policy provide for the same amount of liability for each pedicab or commercial quadricycle operated. Provided further, such policy shall name the City of Birmingham as an additional insured, and no such policy as required above may be cancelled until the expiration of 30 days after notice of intent to cancel has been given in writing to the city clerk of the City by registered mail or personal delivery of such notice and a provision to that effect is made a part of such policy.</i></p>		
<u>Precious Metals Dealers 26-161</u>		
Annual License Fee	\$	500.00
Annual criminal background check - per person (to be provided by applicant using the Michigan State Police ICHAT system)		
<u>Preliminary breath test (PBT) each</u>	\$	10.00
<u>Stray Animal Fines:</u>		
Licensed pet properly immunized first offense	\$	25.00
Second offense within twelve month period	\$	50.00
<u>Vehicle Identification Number Inspection Fee</u>	\$	25.00
<u>Vehicle Impounding Fee</u>	\$	25.00
<u>Vehicle Inspection Fee</u>	\$	25.00
<p>*Fee for liquor license inspection may be waived at the discretion of the City Manager where an applicant seeks to change the liquor license by the removal of a licensee from the license and the licensed establishment is not in operation.</p>		

FEE SCHEDULE

TREASURER'S OFFICE		EXISTING FEE
<u>Returned Check fees (15.1 - 15.3)</u>	\$	25.00
<u>Treasurer's certificate</u>	\$	10.00

CITY OF BIRMINGHAM
PUBLIC RECORDS POLICY

1. The City of Birmingham shall make public records available to the general public in accordance with the Freedom of Information Act (FOIA) and Article VIII, Sections 2-311 through 2-316.
2. The city clerk shall be designated the FOIA coordinator. The clerk may designate others to fulfill FOIA requests, but shall keep copies of requests according to the Records Retention and Disposal Schedule.
3. The FOIA Coordinator shall make available a standard form for requests for public records. There is no requirement under FOIA for lists or reports to be created.
4. Copying of public records shall only be done by city employees or may be reproduced by an outside source as arranged by the FOIA coordinator or his or her designee.
5. Copies of public records shall be charged at \$0.10 each sheet of paper 8.5" x 11" and 8.5" x 14", using double-sided printing when available.
6. Maps and plans shall be distributed as follows:

11" x 17"	\$5.00
24" x 36"	\$10.00
26" x 36"	\$13.00
36" x 42"	\$15.00
7. The building department does not release copies of interior plans of houses or commercial buildings without written approval of the owner.
8. Copies of the annual budget shall be sold for \$93.00 plus mailing costs. Copies of the annual audit, CAFR, shall be sold for \$64.00 plus mailing costs. As duplicating costs vary for these documents from year to year based on volume, charges will be adjusted accordingly.
9. All agendas will be posted on the city's website. Background material will be made available for public review at the respective department counter where the document is prepared. Upon request, commission agendas will be provided free of charge to the Birmingham homeowners associations representing residents of the City.
10. Requests for computer generated lists or documents shall be made available in accordance with FOIA and the city code. Costs for such documents shall be determined according to the departmental costs to produce such records.

11. Records of fire investigations shall be available to the public after the investigation has been completed. Copies of fire incident reports shall be sold for \$5.00 for each copy plus current mailing costs.
12. Copies of standard records from the police department, including dispatch cards, incident reports and accident reports shall be sold for \$5.00. Police Department letters of clearance will be prepared for \$10.00.
13. Copies of standard police video (booking room, body cam, in-car, and security) shall be sold for \$75.00.
14. Copies of standard police audio (9-1-1, telephone, radio) shall be sold for \$50.00.

Adopted by City Commission July 28, 2008, Resolution #07-240-08

Amended: February 14, 2011, Resolution #02-38-11
March 19, 2012, Resolution #03-74-12
August 27, 2012, Resolution #08-249-12
March 18, 2013, Resolution #03-100-13
April 28, 2014, Resolution #04-98-14
March 30, 2015, Resolution #03-63-15
March 28, 2016, Resolution #03-99-16
December 5, 2016, Resolution #12-364-16
December 12, 2016, Resolution #12-383-16



MEMORANDUM

Human Resources Department

DATE: December 14, 2020

TO: Joseph A. Valentine, City Manager

FROM: Benjamin I. Myers, HR Manager *BIM*

SUBJECT: Expenditure for One-Time COVID-Related Employee Personal Leave Allocation

INTRODUCTION:

2020 has presented the City's workforce with extraordinary and unprecedented challenges in the face of a worldwide pandemic and its effects on staffing, morale, and the ability to maintain the City's high level of service. The City's employees have performed admirably in adapting to the new work environment and making the extra effort required to serve the community during these uncertain times.

As the year draws to a close, the City wishes to provide extra acknowledgment of our employees' efforts, especially as pandemic restrictions have prohibited traditional employee recognition events such as the Summer Employee Appreciation Picnic and Employee Holiday Luncheon.

BACKGROUND:

As a gesture of appreciation for the extraordinary work put in by the 153 full-time and 23 benefits-eligible part-time employees in 2020, the Human Resources Department recommends the award of eight (8) additional hours of personal leave for full-time employees and four (4) additional hours of personal leave for benefits-eligible part-time employees on a one-time, non-precedent setting basis effective January 1, 2021.

The additional personal leave time must be used in calendar year 2021, and will not carry-forward to 2022 or be paid out at the end of 2021, if unused. Usage would be subject to management approval in accordance with pertinent labor contract provisions and City policy.

LEGAL REVIEW:

Labor Counsel has reviewed and approved the Letters of Agreement which will be necessary to effectuate the award of the additional personal leave time for those employees who are members of one of the City's five bargaining units.

FISCAL IMPACT:

The estimated not-to-exceed cost of the additional hours of personal leave for the 176 affected employees is \$56,500, based on current hourly wage rates. A budget amendment will be required.

SUMMARY:

The Human Resources Department recommends the approval of an expenditure in a not-to-exceed amount of \$56,500 to award an additional eight (8) additional hours of personal leave for full-time employees and four (4) additional hours of personal leave for benefits-eligible part-time employees, in recognition of their outstanding efforts during the COVID pandemic.

SUGGESTED RESOLUTION:

To approve the expenditure of funds in a not-to-exceed amount of \$56,500 to award an additional eight (8) additional hours of personal leave for full-time employees and four (4) additional hours of personal leave for benefits-eligible part-time employees, effective January 1, 2021. Further, to approve the appropriation and amendment to the Fiscal Year 2020-21 General Fund Budget as follows:

General Fund

Revenues:

101-000.000-400.0000	Draw from Fund Balance	<u>\$56,500</u>
Total Revenues		\$56,500

Expenditures:

101-299.000-709.0000	Wage Adjustment Expense	<u>\$56,500</u>
Total Expenditures		\$56,500

DATE: December 15, 2020

TO: City Commission

FROM: Joseph A. Valentine, City Manager

SUBJECT: Ad Hoc Joint Senior Services Update

The Ad Hoc Joint Senior Services Committee was re-established to review the prior Joint Senior Service Report from June 2013 and provide additional recommendations after considering the follow:

- Evaluate current service demands and projected trends for senior demographics and future service demands.
- Analyze current funding sources and operational structure of the current contracted senior service model.
- Compare and contrast senior services funding and governance models in the participating communities to other area communities and best practices.
- Review and evaluate cost and budget implications of any proposed recommendations and include strategic funding alternatives.

The committee last met on July 31, 2020 following extensive analysis and site visits and formulated an Interlocal Agreement to restructure the governance model for senior services. The draft agreement was to be taken to the respective community member's governing bodies for review and approval by September 21, 2020 with Birmingham taking this agreement following presentation to all other municipal members of the committee.

Given some concerns from some communities with local elections occurring in November of 2020, this effort was paused until after the election to educate potential new council members on the effort. With some changes occurring in November of 2020, the following communities will now be presenting the Interlocal Agreement to their governing bodies in January of 2021. Following consideration and approval by the other member communities on this committee it will come for consideration by the Birmingham City Commission.

Attached is a copy of the implementation plan accepted by the committee and the draft Interlocal Agreement to be considered.

MEMORANDUM

DATE: July 23, 2020

TO: Ad Hoc Joint Senior Citizens' Committee

FROM: Timothy J. Currier, City Attorney

SUBJECT: Implementation of Interlocal Agreement for Joint Senior Services

Upon review of the applicable statutes, the enabling legislation for the adoption of the Interlocal Agreement for Joint Senior Services is the Urban Cooperation Act which is Act 7 of Public Acts 1967, as amended several times thereafter. No additional ordinance changes are necessary by the individual communities in order to process this Agreement.

As a practical matter, the Agreement has to be reviewed by each community's legal counsel for comment, review, suggestions, edits and deletions so that an agreeable agreement can be presented to all communities at the same time. The purpose of this is to avoid multiple changes after the communities have received the document for their review.

A simple majority vote by the legislative body of each community is all that is necessary to adopt the Interlocal Agreement. Once adopted by each community, it will require the signature of all parties and filing with the Office of the Great Seal for the State of Michigan. Collective legal counsel can work out these details.

INTERLOCAL AGREEMENT
JOINT SENIOR SERVICES

This Interlocal Agreement is entered into as of the ____ day of _____, 2020, by and between the Village of Beverly Hills, a Michigan municipal corporation located at 18500 W. Thirteen Mile Road; the Village of Bingham Farms, a Michigan municipal corporation located at 24255 Thirteen Mile Road, Suite 190; the City of Birmingham, a Michigan municipal corporation located at 151 Martin Street; and the Village of Franklin, a Michigan municipal corporation located at 32325 Franklin Road.

WHEREAS, this Interlocal Agreement is for the governmental units which are parties hereto to join together to establish a Commission for the purposes set forth herein pursuant to and under the authority of the Urban Cooperation Act, Act 7 of the Public Acts of 1967, amended; Act 39 of the Public Acts of 1976, as amended; Act 35 of the Public Acts of 1951, as amended and Act 150 of the Public Acts of 1923, as amended.

WHEREAS, the current facility located at 2121 Midvale, Birmingham, Michigan that is used as an Active Adult Activity Center is provided in-kind by the Birmingham Public Schools in partnership with the member communities as an element of continuing education. The current arrangement date January 2019 outlining this arrangement is appended as Exhibit A to this Agreement.

IT IS AGREED AS FOLLOWS:

ARTICLE I – PURPOSE

The purpose of this Interlocal Agreement is to establish an Active Adult Commission to provide activities and services for older persons, defined as those individuals fifty (50) years of age or older residing in the governmental units which are parties to this Agreement. The activities and services to be provided shall include, but are not limited to, transportation and actions directed toward the improvement of the social, legal, health, housing, educational, emotional, nutritional, recreational, and mobility status of older persons. This Commission may also include the joint ownership and operation of an Active Adult Activity Center.

The Active Adult Commission shall serve as a policy-making body and engage an Executive Director who shall be charged with managing the day-to-day operations of the organization and reporting directly to the Active Adult Commission.

ARTICLE II – ACTIVE ADULT ACTIVITY CENTER

Should the parties wish to secure a facility to own and/or operate an Active Adult Activity Center, each governmental body shall, by resolution, confirm their commitment to this effort and its respective funding. Upon approval of the required funding necessary to secure and/or construct an Active Adult Activity Center, the Commission may contract, own, operate

and manage a joint Active Adult Activity Center to provide activities and services for older persons in accordance with its Purpose. Upon approval by the governmental bodies, the Commission shall have the authority for the purpose of acquisition of a site and building or the acquisition of a site and construction of a building, as the parties hereto may agree to in the future. The contribution of funds for this purpose shall also serve as the allocation for distribution in the event of dissolution of the Commission.

ARTICLE III – ACTIVE ADULT COMMISSION

SECTION 1. CREATION OF AN ACTIVE ADULT COMMISSION.

Upon the signing of this Agreement by the parties hereto and the filing of it with the Oakland County Clerk and upon or after the effective date of this Agreement, the Active Adult Commission shall be created as a separate public corporation pursuant to the statutory authority cited herein, with the powers, functions and duties provided in this Agreement and by law.

SECTION 2. NAME.

The initial name of the governing body shall be the Active Adult Commission. The Commission may recommend a new name. Upon approval of a new name, the parties hereto shall enter into a written Amendment of this Agreement and file it with the Oakland County Clerk, which filing shall have the effect of changing the name.

SECTION 3. MEMBERSHIP OF COMMISSION.

- A. The Commission shall be composed of a total of Seven (7) members with representation from each respective governmental body. The allocation, as consistent with Section F below, shall be as follows:
 - 1.) Three (3) members-at-large from the City of Birmingham.
 - 2.) Two (2) members-at-large from the Village of Beverly Hills.
 - 3.) One (1) member-at-large from the Village of Bingham Farms.
 - 4.) One (1) member-at-large from the Village of Franklin.
- B. The Village Councils and City Commission shall, by Resolution, appoint its members, who shall serve at the pleasure of the respective Village Councils and City Commission and may be removed by Resolution of the respective Village Councils and City Commission at any time, with or without cause. The timing for the appointment of members should be determined by the Village Councils and City Commissions, but not later than sixty (60) days after the effective date of this Agreement.

- C. Commission members shall serve for a term of three (3) years, not exceeding two (2) terms. The terms shall commence as follows:
- 1.) Three (3) members-at-large from the City of Birmingham. Initial appointments shall be for one year, two year and three year terms respectively for establishing an interval of future appointments. Going forward all terms shall be three years.
 - 2.) Two (2) members-at-large from the Village of Beverly Hills. Initial appointments shall be for two year and three year terms respectively for establishing an interval of future appointments. Going forward all terms shall be three years.
 - 3.) One (1) member-at-large from the Village of Bingham Farms.
 - 4.) One (1) member-at-large from the Village of Franklin.
- D. Any vacancy on the Commission arising for any reason shall be filled by appointment within thirty (30) days of the vacancy, for the remainder of the unexpired term. In the event the Commission stands as an even number, the highest populated governmental body will receive an additional Commission member, to be appointed by that governmental body. This Commission member shall serve until its position is no longer necessary to establish an odd number on the Commission, not exceeding the term limit listed in this Section.
- E. Members of the Commission shall serve without compensation.
- F. The allocation of Commission members for each party hereto shall be determined according to the following population amounts: governmental bodies with populations over 20,000 shall receive three (3) commission members; governmental bodies with populations between 10,000 and 19,999 shall receive two (2) commission members; and governmental bodies with populations under 10,000 shall receive one (1) commission member.
- G. If potential new members wish to join as a party to this Interlocal Agreement following its execution, they shall submit a written request to the Commission at its Registered Office. The Commission shall then consider such request at a future meeting. The Commission shall consider the related demands on services and costs to the organization in relation to the revenues and benefits from such change. Upon conclusion of its review and analysis, the Commission shall advise each governmental unit of its recommendation. Should the Commission agree to recommend new membership under this Agreement, it shall provide such recommendation with related analysis to the governmental units to amend this Agreement by a majority vote of the existing governmental units. New membership shall begin either in January or July and would be prorated accordingly based on the time of the fiscal year.

SECTION 4. OFFICERS.

- A. The Commission shall elect at its first meeting of each year, from its membership, a Chairperson, Vice Chairperson and Secretary, who shall hold office for terms of one (1) year, and until a successor is appointed, or until a resignation or removal.
- B. Vacancies in any office shall be filled by the Commission within thirty (30) days of the vacancy, for the remainder of the unexpired term.
- C. The Chairperson shall preside at all meetings of the Commission and shall have all privileges and duties of a Commission member. The Vice Chairperson shall preside at all meetings of the Commission at which the Chairperson is absent. The Secretary shall keep or cause to be made, all non-financial records, reports and minutes required by this Agreement and applicable law and shall be charged with assuring compliance with the Open Meetings Act and the Michigan Freedom of Information Act.

SECTION 5. MEETINGS.

- A. The Commission shall meet at least four times a year and shall at its first meeting of each year establish a regular meeting schedule which shall be posted at the offices of the parties hereto in similar form and within similar times as required by law for governmental meeting schedules.
- B. Special meetings of the Commission may be called by the Chairperson, or in the absence of the Chairperson, by the Vice Chairperson.
- C. Each Commission member shall receive five (5) days written notice of all regular meetings and two (2) days written notice of all special meetings. All notices of all meetings shall be posted as required by the Michigan Open Meetings Act.
- D. All meetings of the Commission shall in every respect, conform with the requirements of the Open Meetings Act, Act 267 of 1976, as amended.

SECTION 6. QUORUM.

In order to conduct business, a quorum must be present which shall consist of a majority of the Commission.

SECTION 7. VOTING.

A majority of the Commission shall be necessary for the Commission to take any official action at a regular or special meeting.

SECTION 8. MINUTES.

Complete written minutes of all Commission meetings shall be kept in compliance with the applicable provisions of the Michigan Open Meetings Act, copies of which shall be sent to all Commission members and the municipal Clerk of each of the parties hereto as soon as reasonably possible following a Commission meeting.

SECTION 9. RULES.

Robert's Rules of Order, when not in conflict with this Agreement or any rules the Commission may adopt, shall govern all meetings.

SECTION 10. REGISTERED OFFICE.

The initial registered office of the Commission shall be the office of _____ . The Commission may designate another location as the registered office.

SECTION 11. PRIVILEGES AND IMMUNITY FROM LIABILITY.

All of the privileges and immunities from liability, and exemptions from law, ordinances and rules, which apply to the activity of officers, representatives, members, agents and employees of the parties hereto shall apply to the same degree and extent to the performance of such functions and duties of such officers, representatives, members, agents and employees of the Commission under this Agreement.

ARTICLE IV – POWERS

SECTION 1. GENERAL POWERS.

The Commission shall have the following powers, authority and obligations:

- A. Subject to the approval of the governing bodies of each of the parties hereto, the Commission may purchase, lease, construct, own, receive, exercise right of dominion over and hold in its own name, property, including land, buildings and appurtenances for the express purpose of providing adult services and operating an Active Adult Activity Center.
- B. Subject to the approval of the governing bodies of each of the parties hereto, the Commission may contract with any other governmental units, public agencies, or private persons or organizations, as appropriate, to carry out Commission functions or fulfill Commission obligations. Approval of the governing bodies of the parties hereto shall not be required for a contract with private persons or organizations when the contract involves less than \$_____ in expenditures, or is an employment contract or for a purchase authorized in the current approved fiscal year budget, as provided herein.

- C. Hire and employ a director and such other personnel as may be determined necessary, who shall serve at the pleasure of the Commission, subject to applicable law.
- D. Accept funds, grants, voluntary work, or other assistance, to carry out Commission functions and obligations, from any source, public or private, including, but not limited to, local government funding of specific projects, state and federal grants and private donations. Any application for grants or other public funding shall be communicated to the parties hereto prior to submittal.
- E. Operate and establish policy and rules governing the use of providing adult services and operating an Active Adult Activity Center not inconsistent with State or local law.
- F. Conduct in its own name a transportation program for older persons and disabled persons in the governmental units which are parties hereto.
- G. Conduct and carry out any program, activity or function which advances and directly relates to the purposes expressed in Article I.

SECTION 2. LIMITATIONS ON AUTHORITY.

The Commission shall have no power or authority to levy any type of tax within the governmental units which are parties hereto or to issue any type of bond in its name, or in any way indebt any of the parties hereto. The Commission shall not interfere with the day-to-day operations of providing services or operating an Active Adult Activity Center as this authority and responsibility will reside with the director.

SECTION 3. INSURANCE.

The Commission shall obtain policies of insurance, as part of its budget, for comprehensive liability and property damage, workers' compensation, the construction and operation of providing adult services and operating an Active Adult Activity Center, and other appropriate and necessary purposes. The Commission shall have the parties hereto named as "named insureds", on the comprehensive liability and property damage insurance policy.

ARTICLE V – FINANCE

SECTION 1. FISCAL YEAR.

The fiscal year of the Commission shall be from July 1st through June 30th each year.

SECTION 2. ANNUAL BUDGET.

Each year the Commission shall develop an annual budget in such detail as required by Act 2 of the Public Acts of 1968 of the State of Michigan as amended from time to time, which shall include all sums necessary to carry on the programs and services authorized herein for active adults, including transportation, education, activities and operation of an Active Adult Activity Center, etc.

Annually, by January 31st of each year, a budget request shall be submitted to the City Clerk of each of the parties for consideration of funding allocations in the coming fiscal year which shall outline the programs to be carried on for the ensuing year, together with the costs projected for those programs. Upon the approval of a budget, the Commission shall be bound to carry on only such programs and expend such funds as approved in the budget for the ensuing year by the parties hereto who are participating in this Agreement.

Should a separate funding source be used to fund the activities of the Commission, this section shall be amended accordingly.

SECTION 3. ADMINISTRATION.

The Commission may engage an Executive Director and related staff to manage the day-to-day operations to fulfill its purpose consistent with its annual approved budget. The Executive Director shall have the authority to manage the daily operations and shall report regularly to the Commission. The Executive Director and staff are not employees of the governmental units who are parties to this agreement.

ARTICLE VI – ON – GOING RESPONSIBILITIES & DISSOLUTION

SECTION 1. PARTICIPATION.

The parties hereto agree that they will participate in the activities and programs and provide funds on an on-going basis consistent with existing funding contributions currently made to Birmingham NEXT for these services for fiscal year 2020-2021 unless or until terminated in accordance with this Agreement. The parties may annually adjust these funding contributions during each subsequent fiscal year as approved by the municipal governing bodies. These funds are intended to supplement revenue income from the Commission's activities.

<u>Community</u>	<u>Population (2018 Est.)*</u>	<u>2019 SEV**</u>	<u>Percentage of SEV</u>	<u>Contribution Amount</u>	<u>Percentage of Contribution</u>
Birmingham	21,322	3,192,674,170	68%	\$107,944	67%
Beverly Hills	10,410	800,972,340	17%	\$38,375	24%
Bingham	1,152	205,360,240	5%	\$4,290	3%

Farms					
Franklin	3,255	443,872,130	10%	\$10,000	6%

*www.worldpopulationreview.com or U.S. Census, if available.

**2019 Oakland County Equalization Report

SECTION 2. DETERMINATION OF PARTICIPATION.

The parties hereto may terminate its membership only by giving six (6) months written notice to the Commission and the governing bodies of the parties hereto, no later than January 1 of any year in which such termination shall be effective. If notice of termination is given, that party shall remain liable for all obligations incurred by it pursuant to this Agreement, prior to the actual termination and according to the budget obligations approved for that fiscal year.

SECTION 3. ALTERNATE FUNDING

The parties hereto agree that the local municipalities have sole control of the choice of the funding source consistent with the proportions approved by the governing body in each governmental unit. These proportions may change from time to time (depending upon the percentage of the state equalized value and the number of participants) to finance transportation, programs, activities and services for active adults, and to operate equipment and maintain the Adult Activity Center to the extent of the maximum authorized millage rate pursuant to state law on each dollar of state equalized value for taxable property in the Villages and City.

The parties acknowledge the communities have the sole authority to fund the obligations created herein with whatever means they deem appropriate which includes, but is not limited to a senior millage, contributions from other revenue sources, bonding, or CBDG funds.

In the event that a governmental body has not approved a similar millage proposition, that governmental unit's on-going funding of the Commission's activities and programs shall be determined on a yearly basis equal to the proposed millage allocation. In the alternative, the Commission may set as a reasonable yearly membership fee for that governmental unit's residents which is equitable in regard to the benefits derived from the various programs by that governmental unit's residents. The governmental body participating in this membership option may continue to appoint a member or members to the Commission, as established by Article III, who shall have full voting rights.

SECTION 4. DISSOLUTION.

Upon three (3) of the parties hereto terminating participation in this Agreement, the termination shall cause a dissolution of the Commission. Any such assets shall be distributed to the Villages of Beverly Hills, Bingham Farms, Franklin and the City of Birmingham, according to a percentage determined by their initial contributions for the acquisition of land, property and/or

construction of a building as set forth in Article II. As to any assets which may not be so divided or distributed, the parties hereto shall cause an appraisal to be conducted and the assets sold at a value at or above the appraisal value. Upon the sale, the funds derived shall be distributed to the parties hereto according to their percentage interest as it established in Article VI.

SECTION 5. REPORTING.

The Commission shall submit an annual report to the respective communities detailing membership amounts, programming participation, activities and services accomplished and funded by the budget, and any other relevant reporting items requested.

ARTICLE VII – MISCELLANEOUS PROVISIONS

SECTION 1. AMENDMENTS.

This Agreement may be amended in whole or in any part by written agreement of all of the parties who are parties to the Agreement at the time of any Amendment.

SECTION 2. APPLICABLE LAWS.

The Commission shall fully comply in all activities with applicable local, state and federal laws, regulations, grant conditions and contract provisions.

SECTION 3. STATE APPROVAL.

As soon as reasonably practicable after the effective date of this Agreement, this Agreement shall be officially submitted to the office of the Governor for approval pursuant to the Urban Cooperation Act of 1967.

SECTION 4. EFFECTIVE DATE.

This Agreement shall be in full force and effect and the Commission shall be considered as established as an operating public corporation on the date this Agreement is signed by all parties and a copy is filed with the Oakland County Clerk.

SECTION 5. DURATION.

This Agreement shall remain in effect and continue on an indefinite basis and shall only be terminated according to the terms hereof.

SECTION 6. EFFECT OF AGREEMENT.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and the residents of each of the governmental units hereof.

VILLAGE OF BEVERLY HILLS

By: _____

VILLAGE OF BINGHAM FARMS

By: _____

CITY OF BIRMINGHAM

By: _____

VILLAGE OF FRANKLIN

By: _____



Clerk's Office
City of Birmingham, MI

DEC - 3 2020

November 20, 2020

RECEIVED

Ms. Cherilynn Mynsberge, Clerk
City of Birmingham
151 Martin St.
Birmingham, MI 48012-3001

Dear Ms. Mynsberge:

We are committed to keeping you and our customers informed about changes to Xfinity TV services. Accordingly, please note that the distributor of El Rey Network informed Comcast that effective December 31, 2020 the channel will cease operation.

Additionally, pursuant to P.A. 480 of 2006, Section 9 (4), Comcast Cable's local operating entity hereby reports that Comcast does not deny access to services to any group of potential residential subscribers because of the race or income of the residents in the local area. A similar report has been filed with the Michigan Public Service Commission.

We are notifying impacted customers of these changes through a bill message.

Please feel free to contact me at 734-359-2308 if you have any questions.

Sincerely,

Kyle V. Mazurek
Manager of External Affairs
Comcast, Heartland Region
41112 Concept Drive
Plymouth, MI 48170

INFORMATION ONLY