

BIRMINGHAM CITY COMMISSION AGENDA

JANUARY 11, 2021

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

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

Announcements

- Happy New Year!
- The City's COVID-19 Hotline has concluded as COVID-19 cases continue to decline across the state. Keep an eye on www.bhamgov.org/virusprevention for the latest City, County, State and CDC news pertaining to COVID-19.
- The City Commission wishes welcome back City Manager Tom Markus.

Appointments:

- A. Public Arts Board
1. Barbara Heller
 2. Monica Neville

To appoint _____ to the Public Arts Board as a regular member to serve a three-year term to expire January 28, 2024.

To appoint _____ to the Public Arts Board as a regular member to serve a three-year term to expire January 28, 2024.

To appoint _____ to the Public Arts Board as an alternate member to serve the remainder of a three-year term to expire January 28, 2022.

- B. Board of Review
1. Jill Stress

To appoint _____ to the Board of Review as an alternate member to serve a three-year term to expire December 31, 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 21, 2020.
- B. Resolution approving the warrant list, including Automated Clearing House payments, dated January 6, 2021, in the amount of 6,472,146.25.
- C. Resolution to set a public hearing date for February 8, 2021 to consider the Final Site Plan and Design and Special Land Use Permit at 251 E. Merrill to allow for the operation of Tapper's Gold Exchange.
- D. Resolution to approve a purchase of two LIFEPAK 15 v4 defibrillators plus accessories from Stryker in the amount of \$37,554.50 from account #101-336.000-971.0100 and further to approve the appropriation and amendment to the 2020-2021 General Fund budget as follows:

General Fund**Revenues:**

Draw from Fund Balance	101-000.000-400.0000	<u>\$37,560</u>
Total Revenues		<u>\$37,560</u>

Expenditures:

Public Safety – Fire – Mach. & Equip.	101-336.000-971.0100	<u>\$37,560</u>
Total Expenditures		<u>\$37,560</u>

- E. Resolution to set a public hearing for the proposed lot combination of 469-479 S. Old Woodward for February 8th, 2021.
- F. Resolution authorizing the IT department to purchase the Support and Security Subscription License renewals for the Palo Alto Firewall from AmeriNet. The purchase price not to exceed \$18,957.60. Funds are available in the IT Computer Maintenance fund account #636-228.000-933.0600.
- G. Resolution to approve the amendment to the CARES Act Interlocal Agreement between Oakland County and the City of Birmingham.

VI. UNFINISHED BUSINESS

- A. Resolution to adopt the resolution in support of the grant application made to the Michigan State Historic Preservation Office for the reimbursement grant application for \$8,000 to conduct a reconnaissance level survey of the Little San Francisco neighborhood.

- B. Resolution to approve the removal of four on street parking meters on S. Old Woodward, north of Brown Street (in front of 298 S. Old Woodward) to allow for the operation of a shared valet service by the property owner (Daxton Hotel) consistent with the terms contained in Attachment "A" of the property owner's valet license application dated May 21, 2020.
- C. 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.

VII. NEW BUSINESS

- A. Resolution to award the Birmingham Ice Arena Architectural and Engineering Services project to Andrus Architecture in the amount not to exceed \$288,900.00. Funds are available in the Capital Projects Fund account #401-901.001-977.0000 for this project. Further, to authorize the Mayor and City Clerk to sign the agreement on behalf of the City upon receipt of the required insurances.
- B. Commission Discussion on items from prior meeting.
- C. 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

IX. COMMUNICATIONS

X. REPORTS

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

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 PUBLIC ARTS BOARD

At the regular meeting of Monday, January 11, 2021 the Birmingham City Commission intends to appoint two regular member to the Public Arts Board to serve a three-year term to expire January 28, 2024, and one alternate member to serve the remainder of a three-year term to expire on January 28, 2022.

In so far as possible, the members shall represent a major cultural institution, a registered architect of the State of Michigan, an artist, an art historian, and an art consultant. Members may also be members of the Historic District Commission, Design Review Board, the Parks and Recreation Board, or the Planning Board. At least four members of the Board shall be residents of the City of Birmingham.

The objectives of the Public Arts Board are to enrich the City's civic and cultural heritage; to promote a rich, diverse, and stimulating cultural environment in order to enrich the lives of the City's residents, business owners, employees, and all visitors; and to establish an environment where differing points of view are fostered, expected, and celebrated by providing the opportunity for such expression through the display of public art.

Interested citizens may apply for this position by submitting an application available from the city clerk's office. Applications must be submitted to the city clerk's office on or before noon on Wednesday, January 6, 2021. These applications will appear in the public agenda for the regular meeting at which time the commission will discuss recommendations, and may make nominations and vote on the appointments.

Applicant(s) Presented For City Commission Consideration:

Applicant Name	Criteria/Qualifications
Barbara Heller	Resident
Monica Neville	Resident

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 Public Arts Board as a regular member to serve a three-year term to expire January 28, 2024.

To appoint _____ to the Public Arts Board as a regular member to serve a three-year term to expire January 28, 2024.

To appoint _____ to the Public Arts Board as an alternate member to serve the remainder of a three-year term to expire January 28, 2022.



PUBLIC ARTS BOARD

City Code - Chapter 78, Article V

Terms - 3 years

7 regular members - At least 4 members shall be residents of the City of Birmingham. The remaining members may or may not be residents of Birmingham. In so far as possible, the members shall represent a major cultural institution, a registered architect of the State of Michigan, an artist, an art historian, and an art consultant. Members may also be members of the HDDRC, the Parks and Recreation Board, or the Planning Board.

2 alternate members - must meet one of the already established criteria for regular members

Objectives -

- to enrich the City's civic and cultural heritage;
- to promote a rich, diverse, and stimulating cultural environment in order to enrich the lives of the City's residents, business owners, employees, and all visitors;
- to establish an environment where differing points of view are fostered, expected, and celebrated by providing the opportunity for such expression through the display of public art.

Last Name	First Name	Home Business	Appointed	Term Expires
Home Address		E-Mail		
Bishai 1173 Latham St. Birmingham	Natalie 48009	(248) 640-0088 <i>nlbishai@yahoo.com</i>	2/12/2018 Resident Member	1/28/2023
Daitch 777 Purdy St Birmingham	Peggy 48809	(248) 765-6377 <i>peggydaitch@gmail.com</i>	11/23/2020 Alternate Member	1/28/2023
Eddleston 892 Purdy Birmingham	Jason 48009	(248) 703-3808 <i>jason28e@yahoo.com</i>	12/5/2016 Resident Member	1/28/2022
Heller 176 Linden Birmingham	Barbara 48009	(248) 540-1310 (313) 833-7834 <i>bheller@dia.org</i>	1/28/2002 Resident Member	1/28/2021

Last Name Home Address	First Name	Home Business E-Mail	Appointed	Term Expires
Neville 1516 E. Melton Birmingham	Monica 48009	(248) 321-1776 <i>monica.neville1@gmail.com</i>	2/27/2017 Resident Member	1/28/2021
Ritchie 1455 South Eton Birmingham	Anne 48009	(248) 635-1765 <i>anneritchie7@yahoo.com</i>	9/12/2016 Resident Member	1/28/2022
VACANT			Alternate Member	1/28/2022
VanGelder 3795 Loch Bend Commerce Twp.	Annie 48382	(248) 408-6132 <i>annievangelder@bbartcenter.org</i>	1/13/2020 Artist/Major Cultural Institution	1/28/2023
Wells 588 Cherry Ct. Birmingham	Linda 48009	(248) 647-1165 <i>lawells126@gmail.com</i>	2/11/2013 Resident Member	1/28/2022

CITY BOARD/COMMITTEE ATTENDANCE RECORD

Name of Board: Public Arts Board

Year: 2020

Members Required for Quorum: 4

MEMBER NAME	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	SPEC MTG	SPEC MTG	Total Mtgs. Att.	Total Absent	Percent Attended Available
REGULAR MEMBERS																	
Barbara Heller	P	P	NM	P	P	P	P	P	P	P	P	P			11	0	100%
Monica Neville	P	P	NM	P	P	P	P	P	P	P	P	P			9	0	100%
Annie Van Gelderen	NA	P	NM	P	P	P	P	P	P	P	P	P			9	0	100%
Anne Ritchie	P	P	NM	P	P	P	P	P	P	P	A	P			8	1	89%
Linda Wells	P	P	NM	P	A	A	P	P	P	P	P	P			7	2	78%
Jason Eddleston	P	P	NM	P	P	P	P	P	P	P	P	P			9	0	100%
Natalie Bishai	P	A	NM	P	P	P	A	P	A	A	A	P			6	5	55%
															0	0	#DIV/0!
															0	0	#DIV/0!
ALTERNATES															0	0	#DIV/0!
															0	0	#DIV/0!
															0	0	#DIV/0!
															0	0	#DIV/0!
Present or Available	6	6	0	7	6	6	6	7	6	5	6	7	0	0			

KEY:

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


 Department Head Signature

CITY BOARD/COMMITTEE ATTENDANCE RECORD

Name of Board: **Public Arts Board**

Year: **2019**

Members Required for Quorum: **4**

MEMBER NAME	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	SPEC MTG	SPEC MTG	Total Mtgs. Att.	Total Absent	Percent Attended Available
REGULAR MEMBERS																	
Barbara Heller	NM	P	P	CP	P	CP	P	P	A	P	P	CP			7	1	88%
Monica Neville	NM	P	P	CA	P	CA	P	P	P	P	P	CP			7	2	78%
Rabbi Boruch Cohen	NM	A	A	CP	P	CA	A	A	A	A	A	CA			1	8	11%
Anne Ritchie	NM	P	P	CA	P	CP	A	P	P	A	P	CA			5	4	56%
Linda Wells	NM	P	P	CP	P	CP	P	P	A	P	P	CA			6	2	75%
Jason Eddleston	NM	P	P	CA	A	CA	P	P	P	P	P	CA			6	4	60%
															0	0	#DIV/0!
															0	0	#DIV/0!
															0	0	#DIV/0!
ALTERNATES																	
Natalie Bishai	NM	P	A	CA	A	CA	P	A	P	A	A	CP			3	7	30%
Cole Wolhfiel (Student)	NM	P	P	A	A	A	A	A	A	A					2	7	22%
Amelia Berry (Student)	NM	A	A	A	A	A	A	A	A	A					0	9	0%
															0	0	#DIV/0!
Present or Available	0	7	6	3	5	3	5	5	4	4	5	3	0	0			

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 Department Head Signature

CITY BOARD/COMMITTEE ATTENDANCE RECORD

Name of Board: **Public Arts Board**

Year: **2018**

Members Required for Quorum: **4**

MEMBER NAME	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	SPEC MTG	SPEC MTG	Total Mtgs. Att.	Total Absent	Percent Attended Available
REGULAR MEMBERS																	
Barbara Heller	A	NM	P	P	P	P	P	P	NM	A	P	P			8	2	80%
Eva Suchara	A	NM	A	A	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	0	3	0%
Maggie Metler	A	NM	A	A	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	0	3	0%
Monica Neville	P	NM	P	P	P	P	P	P	NM	P	P	P			10	0	100%
Rabbi Boruch Cohen	P	NM	P	P	P	P	P	P	NM	P	P	P			10	0	100%
Anne Ritchie	A	NM	P	A	A	P	A	A	NM	P	P	A			4	6	40%
Mary Roberts	A	NM	A	A	A	A	A	A	NM	A	A	A			0	10	0%
Linda Wells	P	NM	P	P	P	P	P	P	NM	P	P	P			10	0	100%
Jason Eddleston	P	NM	A	A	A	A	P	P	NM	P	P	A			5	5	50%
ALTERNATES																	
Natalie Bishai	P	NM	P	A	P	A	A	A	NM	P		P			5	4	56%
Cole Wolhfiel (Student)	NA	NA	P	A	P	A	P	P	NM	P		A			5	3	63%
Amelia Berry (Student)	NA	NA	P	P	P	A	P	P	NM	P		P			7	1	88%
															0	0	#DIV/0!
Present or Available	5	0	8	5	7	5	7	7	0	8	6	6	0	0			

KEY:

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- CP** = Member available, but meeting canceled for lack of quorum
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- NA** = Member not appointed at that time
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- CM** = Meeting canceled for lack of business items



 Department Head Signature

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 Public Arts Board (PAB)

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

Name Barbara Heller

Phone 248-540-1310

Residential Address 176 Linden Road

Email * bheller@dia.org

Residential City, Zip Birmingham, 48009

Length of Residence 41 years

Business Address Detroit Institute of Arts
5200 Woodward Avenue

Occupation Art Conservator

Business City, Zip Detroit, 48202

Reason for Interest: Explain how your background and skills will enhance the board to which you have applied My term is expiring. I am an advocate for the arts and its long-term care and preservation. I would like to continue serving my city and participate in its artistic and aesthetic development as a walkable community in partnership with other boards, community groups, organizations, and the City Commission.

List your related employment experience Detroit Institute of Arts (see resumé attached)


List your related community activities PAB, Marshall M. Fredericks Sculpture Museum Advisory Board and Chair Collections Committee, Michigan Legacy Art Park Board, The Community House of Birmingham-Chair, Co-Chair and Jury Our Town and Student Art Town; Juror/Co-Juror Canvas Pontiac, Milford, Plymouth, Belleville and Oakland County Michigan Artist Competition etc.

List your related educational experience Olivet College, University of Michigan, Harvard University, Museum Leadership Institute - University of California at Berkeley (see attached)

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



4 December 2020

Date

Signature of Applicant

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

Updated 12/02/19

**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.*



OFFICE USE ONLY	
Meets Requirements?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Will Attend /	<input checked="" 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 Public Arts Board

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

Name Monica Neville

Phone 248-321-1776

Residential Address 1516 E Melton Rd

Email * monica.neville1@gmail.com

Residential City, Zip 48009

Length of Residence 5 years

Business Address _____

Occupation Sales & Marketing

Business City, Zip _____

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

My experience in traditional advertising, event and digital marketing and social media enable me to offer the PAB experience, insight and perspective into how public art can enhance the City.

List your related employment experience 30 years as an advertising and marketing executive in the US and overseas. I have won awards for creativity and ad campaigns that generated successful results.

List your related community activities I am currently a member of the PAB.

List your related educational experience I have a Fine Art degree from Miami 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 [Signature]

Date 12.06.2020

Return the completed and signed application form to: City of Birmingham, City Clerk's Office, 151 Martin, Birmingham, MI 48009 or by email to ccft@bhamgov.org or by fax to 248.530.1080. Updated 12/02/19

*By providing your email to the City, you agree to receive news & notifications from the City. If you do not wish to



NOTICE OF INTENTION TO APPOINT TO BOARD OF REVIEW

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

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

Interested citizens may submit an application available at the Clerk's office or online at www.bhamgov.org/boardopportunities. Applications must be submitted to the City Clerk's office on or before noon on Wednesday, December 4, 2019. These documents will appear in the public agenda for the regular meeting at which time the City Commission will interview applicants and may make nominations and vote on appointments.

Board members are paid \$110 per diem.

Applicant(s) Presented For City Commission Consideration:

Applicant Name	Criteria/Qualifications
	Applicants must be property owners and electors (registered voters) of the City of Birmingham.
Jill Stress	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 RESOLUTION:

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



BOARD OF REVIEW

City Charter – Chapter III, Section 14

Terms: Three Years

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

Appointed by the City Commission

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

Last Name	First Name	Home Business E-Mail	Appointed	Term Expires
Devereaux 1019 Rivenoak	Kathleen	(248) 840-5310 <i>kddevereaux@wowway.com</i>	2/22/2016	12/31/2022
Di Placido 726 Lakeside Dr.	Guy	(248) 644-1708	1/10/1994	12/31/2023
Feiste 1474 Maryland	Leland	(248) 644-3948 <i>lwfeiste@yahoo.com</i>	1/22/2001	12/31/2022
Katrib 1832 East Lincoln	Elicia	(248) 379-3577 <i>e.katrib@gmail.com</i>	2/22/2016	12/31/2021
Richey 1690 Stanley	Lester	(248) 644-7143 <i>lesrichey@yahoo.com</i>	2/9/2015	12/31/2023

Last Name Home Address	First Name	Home Business E-Mail	Appointed	Term Expires
Rose 1011 Clark	Cynthia	(248) 752-2667 <i>crose@cbwm.com</i>	3/2/2009	12/31/2021
Rosenberg 1590 E. Maple	Harvey	(313) 510-0190 <i>harvey48301@yahoo.com</i>	2/13/2017 alternate	12/31/2022
Stress 784 Westchester Way	Jill	(586) 246-6700 <i>jill.stress@yahoo.com</i>	2/13/2017 alternate	12/31/2020

CITY BOARD/COMMITTEE ATTENDANCE RECORD

Board/Committee: **Board of Review**

Year: **2020**

MEMBER NAME	2/11	3/3	3/9	3/10	3/12	3/13	7/21	12/15						Total Mtgs. Att.	Total Absent	Percent Attend
REGULAR MEMBERS																
DEVEREAUX, KATHLEEN	P	P	P	A	P	P	A	P						6	2	75%
DIPLACIDO, GUY	P	P	P	P	P	P	P	A						7	1	88%
FEISTE, LELAND	P	P	P	P	P	P	A	A						6	2	75%
KATRIB, ELICIA	P	P	P	P	P	P	A	A						6	2	75%
RICHEY, LESTER	P	P	P	A	P	P	A	A						5	3	63%
ROSE, CYNTHIA	P	P	P	A	P	P	P	A						6	2	75%
Reserved																
Reserved																
ALTERNATES																
ROSENBERG, HARVEY	P	P	P	A	P	P	P	A						6		
STRESS, JILL	P	P	P	A	P	A	A	P						5	3	63%
Reserved																
Reserved																
Members in attendance	8	8	8	3	8	7	3	2								

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



Department Head Signature

CITY BOARD/COMMITTEE ATTENDANCE RECORD

Board/Committee: **Board of Review**

Year: **2019**

MEMBER NAME	2/13	3/5	3/11	3/12	3/14	3/15	7/16	12/10					Total Mtgs. Att.	Total Absent	Percent Attend
REGULAR MEMBERS															
DEVEREAUX, KATHLEEN	P	P	P	P	P	P	NM						6	0	100%
DIPLACIDO, GUY	P	P	P	P	P	P	P						7	0	100%
FEISTE, LELAND	P	P	P	P	P	P	NM						6	0	100%
KATRIB, ELICIA	P	P	A	A	P	P	P						5	2	71%
RICHEY, LESTER	P	P	P	P	P	P	NM						6	0	100%
ROSE, CYNTHIA	P	P	P	P	P	P	NM						6	0	100%
Reserved															
Reserved															
ALTERNATES															
MONAHAN, JASON	NM	NM	NM	NM	NM	NM	NM	NM				*	0		
STRESS, JILL	P	P	P	P	NM	P							5	0	100%
Reserved															
Reserved															
Members in attendance	7	7	6	6	6	7	2	0							

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


Department Head Signature

*Unable to attend training. Unable to participate on Board for 2019

CITY BOARD/COMMITTEE ATTENDANCE RECORD

Board/Committee: **Board of Review**

Year: **2018**

MEMBER NAME	2/13	2/27	3/6	3/12	3/13	3/15	3/16	3/19	3/20	7/18	12/10		Total Mtgs. Att.	Total Absent	Percent Attend
REGULAR MEMBERS															
DEVEREAUX, KATHLEEN	P	NM	P	P	P	P	P	NM	P	NM			7	0	100%
DIPLACIDO, GUY	P	NM	P	P	P	A	NM	A	NM	NM			4	2	67%
FEISTE, LELAND	P	NM	P	P	P	P	NM	P	NM	P			7	0	100%
KATRIB, ELICIA	P	NM	A	P	P	P	NM	P	NM	NM			5	1	83%
RICHEY, LESTER	P	NM	P	P	P	P	P	NM	P	P			8	0	100%
ROSE, CYNTHIA	P	NM	P	P	P	P	P	NM	P	P			8	0	100%
Reserved															
Reserved															
ALTERNATES															
MONAHAN, JASON	NM	A	NM	NM	NM	NM	NM	NM	NM	NM		*	0	1	0%
STRESS, JILL	NM	P	P	P	P	P	NM	P	NM	NM			6	0	100%
Reserved															
Reserved															
Members in attendance	6	1	6	7	7	6	3	3	3	3					

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


Department Head Signature

*Family emergency unable to attend training. Unable to participate on Board for 2018.



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 www.bhamgov.org/boardopportunities.

(Please print clearly)

Board/Committee of Interest Board of Review

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

Name Jill Stress Phone 586-246-6700

Residential Address 784 Westchester Way Email * jill.stress@yahoo.com

Residential City, Zip Birmingham Length of Residence 5+ years

Business Address 38505 Woodward Ave., Suite 200 Occupation VP, Human Resources

Business City, Zip Bloomfield Hills, MI 48304

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

This will be my 3rd term serving on the Board of Review.

List your related employment experience I lead the HR function for a public company.

List your related community activities School related activities at Birmingham Covington School,
I am a member of Holy Name Catholic Church

List your related educational experience Bachelor degree from Michigan State and an MBA from Walsh College

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

Jill Stress 12/2/2020
Signature of Applicant Date

Return the completed and signed application form to: City of Birmingham, City Clerk's Office, 151 Martin, Birmingham, MI 48009 or by email to carft@bhamgov.org or by fax to 248.530.1080. Updated 12/02/19

**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.*

BIRMINGHAM CITY COMMISSION MINUTES

DECEMBER 21, 2020

7:30 P.M.

VIRTUAL MEETING

MEETING ID: 655 079 760

Video Link: <https://vimeo.com/event/3470/videos/488387498/>

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

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

II. ROLL CALL

Alexandra Bingham, City Clerk, called the roll.

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

Absent: None

Administration: City Manager Valentine, City Clerk Bingham, City Planner Brooks Cowan, Planning Director Ecker, Finance Director Gerber, City Attorney Kucharek, Consulting City Engineer Surhigh, DPS Director Wood

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

12-275-20 Appointment of Jim Cleary to the Cablecasting Board

The Commission interviewed Jim Cleary for the appointment.

MOTION: Nomination by Commissioner Host:

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

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

 Nays, None

12-276-20 Appointment of Mary-Claire Petcoff to the Advisory Parking Committee

The Commission interviewed Mary-Claire Petcoff for the appointment.

Ms. Petcoff confirmed for Commissioner Baller that she would recuse herself from any items that could represent a potential conflict-of-interest stemming from her employment with Williams, Williams, Rattner & Plunkett, P.C, a law firm which often represents clients' interests before City Boards.

City Attorney Currier stated that while "it is not a very common thing that we have done", a disclosure of the potential conflict and a recusal from voting on such an item by Ms. Petcoff would be sufficient to ward off any conflict-of-interest issues.

MOTION: Nomination by Commissioner Sherman:

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

Commissioner Host shared his regret over a recent appointment to the APC not because he doubted the person's credentials or capacity but because, in his estimation, the opportunity for potential conflicts-of-interest was more than he was comfortable with. He said he saw the same issue arising with Ms. Petcoff's nomination given her work with a law firm which appears so frequently before the City. He stated he had no doubt in Ms. Petcoff's abilities and said that any interaction he has had with attorneys from Williams, Williams, Rattner & Plunkett, P.C has been wonderful. He noted this to emphasize that it was only the potential for conflicts-of-interest with her place of employment that would be preventing him from supporting Ms. Petcoff's nomination.

ROLL CALL VOTE: Ayes, Commissioner Sherman
 Commissioner Nickita
 Commissioner Hoff
 Mayor Boutros

Commissioner Baller
Mayor Pro-Tem Longe

Nays, Commissioner Host

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.

12-277-20 Consent Agenda

The following items were pulled from the Consent Agenda:

Commissioner Hoff: Item E – Intergovernmental Water Service Agreement
Item J – WOW! Cable Franchise Renewal

Mayor Pro-Tem Longe: Item K – Public Artwork Call for Entry
Item D – Adams Fire Station Roof Replacement

MOTION: Motion by Commissioner Host, seconded by Commissioner Hoff:
To approve the Consent Agenda with the exception of Items D, E, J and K.

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

Nays, None

- 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.
- 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.

12-278-20 (Item E) Intergovernmental Water Service Agreement

Consulting City Engineer Surhigh explained the address in question was previously receiving water from a now-failing well on the property. All construction costs and attendant fees required to connect the home to Birmingham water will be paid by the homeowner, and all future water bills after the connection is made will be paid by the homeowner to the City of Birmingham.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Nickita:
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.

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

Nays, None

12-279-20 (Item J) WOW! Cable Franchise Renewal

Commissioner Hoff noted a conflict between the letter from WOW! and the letter from City Attorney Currier in regards to PEG fees. She asked for clarification.

City Attorney Currier stated WOW! will continue to pay 5% franchise fees and 2% PEG fees. He stated WOW! had used an old form letter, hence the incorrect fee amount, and confirmed WOW! would be aware that their actual fee obligations are as delineated in the City Attorney's letter. He said he had also reached out to WOW! to let them know of their error.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Host:
To approve the Michigan Uniform Video Local Franchise Agreement with WideOpen West effective December 21, 2020 and to authorize the Mayor and Clerk to sign on behalf of the City.

Commissioner Baller stated he wanted more information about the proposal, lamenting that he was being asked to vote on an item with both less background information and a shorter notice than he was

comfortable with. He said he did not feel sure he had enough information to know if WOW!'s proposal was what was best for the City, and asked if he could abstain from voting in light of his concerns.

City Attorney Currier stated that Commissioners can only abstain from voting if they have a conflict-of-interest. He stated the Cablecasting Board, the Village of Beverly Hills and the Village of Franklin were made aware of the contract. Birmingham was only made aware of WOW!'s intention to renew their contract on November 20, 2020.

Commissioner Sherman addressed some of Commissioner Baller's concerns. He explained that the City's contract with WOW! expired in August 2020 and had been month to month since then. He explained that cable franchise agreements are governed by the Michigan Public Service Commission and that municipalities only have the options to accept a cable provider's offered fee amounts for the franchise fee and the PEG fee or to require other fee amounts for those two charges.

City Attorney Currier clarified that if the Commission does not approve a uniform franchise agreement with fee amounts specified by the City that the fee amounts will default to WOW!'s proposed amounts, which are lower.

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

Nays, Commissioner Baller

12-280-20 (Item K) Public Artwork Call for Entry

Commissioner Hoff commended the Public Arts Board for the excellent package they submitted.

In order to ensure that the details of the call for entry were clear, City Planner Cowan gave a brief review of the item.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Host:
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.

Commissioner Baller stated he was not in favor of the proposal for location #3 in the call-for-entry. Citing the historic location, he said it would be his preference to try and visually fade the electrical box into the background as much as possible instead of highlighting it with art. He noted there are a number of other locations in Birmingham where public art would be more appropriate, and that he would be in favor of exploring those other options in lieu of location #3.

Mayor Pro Tem Longe largely concurred with Commissioner Baller, saying she was not aware of the

Commission having accepted all of the recommendations in the Terminating Vista Report, specifically noting her disagreement with the report's proposals for location #3. She expressed concern that it would be misleading to the artistic community to solicit art for location #3 when not all of the Commissioners expressed enthusiasm for that proposal.

Commissioner Nickita opined that it is unfortunate that the electrical box at W. Maple and Henrietta was placed at such a centrally-located terminating vista. He said seeking some kind of context-sensitive art or design for that location could help elevate that view from functional to aesthetic, and consequently said he would support the Public Arts Board considering options for location #3 towards that end.

Mayor Boutros expressed his concurrence with Commissioner Nickita's perspective.

Commissioner Hoff also reminded her colleagues that any public art piece would have to receive the Commission's support before installation, meaning there was little risk in at least allowing the Public Arts Board to explore what the possibilities could be for location #3.

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

Nays, None

12-281-20 (Item D) Adams Fire Station Roof Replacement

Mayor Pro Tem Longe said that while this particular project should move ahead because the bidder responded appropriately to the City's RFP, the City should include environmental sustainability as one of the factors considered along with cost when crafting RFPs for work in the future.

MOTION: Motion by Mayor Pro Tem Longe, seconded by Commissioner Hoff:
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.

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

Nays, None

VI. UNFINISHED BUSINESS

12-282-20

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

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.

The Mayor opened the public hearing at 8:20 p.m.

Jason Canvasser, representing the applicant, asked that the item be postponed to January 25, 2021 and that the City Manager schedule time to meet with the applicant regarding the proposed lot combination before then.

MOTION: Motion by Commissioner Host, seconded by Commissioner Sherman:
To postpone the Public Hearing for 34350 Woodward & 907-911 Haynes – Lot Combo to January 25, 2021.

Commissioners Sherman, Baller, Hoff, and Nickita all expressed doubts that a consensus between the City and the applicant would be reached in advance of a January 25, 2021 meeting. They agreed that the City could attempt to hold a meeting between the City Manager and the applicant in January 2021, noting it would only be a first step in the conversation. Among the reasons cited for the Commissioners' doubts that a consensus would be reached in January 2021 were the fact that the new City Manager will still be onboarding during that time, that the master plan remains in flux, that the applicant's proposal is inconsistent with the Triangle District Plan, and that the applicant's proposals have not been sufficiently reviewed or approved by other City boards.

The possibility of moving the public hearing to the first Commission meeting in February 2021 was discussed, but Mr. Canvasser stressed the applicant's desire to have it at the January 25, 2021 meeting since the applicant is trying to navigate a potential capital outlay in February 2021 that will hinge on the Commission's decision.

Commissioner Baller said he was comfortable with the public hearing being held on January 25, 2021 with the understanding that the matter could be continued to the following meeting if necessary.

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

Nays, Commissioner Sherman

12-283-20

The Pearl - Parking Assessment District Request

Gayle MacGregor, attorney for the applicant, requested that the matter be adjourned to January 11, 2021 to allow the applicant sufficient time to gather the information necessary for a presentation to the Commission.

Citing both new Commissioners and turnover in City staff, Commissioner Baller said it would be useful for the City Attorney to provide the Commission a review of the history and legal framework of the Parking Assessment District sometime in the near future.

After a bit more discussion among the Commissioners, it was agreed that the applicant should have their request considered at the January 11, 2021 meeting and not later since their ability to lease to certain business tenants hinges on the resolution of these parking matters.

MOTION: Motion by Commissioner Baller, seconded by Commissioner Host:
To set a public hearing for January 11, 2021 to consider the request to be included in the Parking Assessment District by The Pearl.

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

Nays, None

12-284-20 Greenwood Cemetery Grave Release

City Clerk Designee Bingham presented the item.

Cheri Arcome, Creative Collaborations, explained:

- The contractor does not keep track of how many graves are authorized for sale by the City Commission;
- She did not know any of her sales were unauthorized until a conversation with Museum Director Pielack and City Clerk Designee Bingham;
- She has temporarily halted all sales of graves per Museum Director Pielack's and City Clerk Designee Bingham's instruction until more sales are authorized by the City Commission;
- Ground penetrating radar (GPR) and a three-month field survey were performed at the Cemetery. Unless trees or monuments are removed from the cemetery, the map shows all remaining graves for sale;
- Her recommendation would be to allow for the sale of all remaining grave spaces in order to achieve a self-sustaining perpetual care fund for the Cemetery; and,
- It would be her suggestion to release ten graves from Sections B and C, instead of just from C, to be available for sale while the Commission waits on more information from the GCAB.

Some Commissioners expressed concern about past and present miscommunications regarding the Cemetery. They noted that such miscommunications were likely the result of frequent historic turnover in the City staff serving as liaisons to the GCAB, but said they would like to see Staff figure out how to make sure accurate, up-to-date information is conveyed to all relevant parties moving forward.

In response to a question from Commissioner Hoff, CM Valentine said the GCAB and the City Commission should determine whether the ultimate goal for the Cemetery is still to maintain a self-

sustaining perpetual care fund, and if so, whether to release all the graves at once to achieve that or to release them incrementally.

Commissioner Hoff said she would also like the GCAB to ascertain whether GPR was done throughout the entire Cemetery. If it was, she would like the GCAB to just confirm that the graves shown on the map are the only ones left.

Commissioner Baller noted that Linda Buchanan, chair of the GCAB, submitted a letter to the Commission as a private citizen regarding what she thinks should be done vis-a-vis the Cemetery. He said he would appreciate some insight regarding how the recommendations made in her letter interact with the goal of creating a financially self-sustaining cemetery.

There was consensus among the Commissioners that the oversold graves should be authorized, any grave sales currently in progress should be authorized, and that ten additional graves should also be made available so there is inventory while the Commission is waiting for clarification from the GCAB.

MOTION: Motion by Commissioner Host, seconded by Mayor Pro Tem Longe:

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 17; B, Row 11-A, Plots 19, 20, and 24; B, Row 13-A, Plot 1; and B, Row 15-C, Plot 6.

AND

To release 10 plots in Row 19-A for sale.

AND

To authorize the sale of one additional grave in Section B, Lot 12a, Space 17 or 18.

Public Comment

Laura Shreiner, asked the Commission to consider authorization of one additional grave in Section B to accommodate a particular family with a recent death who wanted to bury their loved one near family in that section.

Ms. Arcome said if the Commission authorized the sale of one grave in Section B, Lot 12-A, Space 17 or 18 that would accommodate the family Ms. Shreiner referenced.

Commissioner Host and Mayor Pro Tem Longe amended their motion to reflect the authorization of the additional requested grave.

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

Nays, None

VII. NEW BUSINESS

12-285-20

Unimproved Streets Committee Final Report

AHUSSC Chairman Scott Moore introduced the item. Mayor Boutros thanked AHUSSC Chairman Moore and all the members of the AHUSSC for their work on the committee.

CM Valentine, DPS Director Wood, Consulting City Engineer Surhigh, and Finance Director Gerber provided an overview of the report.

Commissioner Host asked if revenue bonding for individual streets was considered as a possible funding option.

FD Gerber explained the interest rates on revenue bonds tend to be higher and also require the City to put funds in escrow both of which would cause this option to be more prohibitive than the funding options proposed in the report.

Commissioner Sherman noted that each bond issue comes with a cost and that it would raise the cost of the project unnecessarily.

After discussion, there was consensus that it would be best to accept the report and to hold off on approving the recommendations until there has been more time to study the recommendations at the Commission level. A number of Commissioners also stated that they wanted incoming City Manager Markus to have the opportunity to review the report's recommendations before accepting them. It was determined that further discussion of the recommendations would occur at the City's long-range planning meeting scheduled for the end of January 2021.

Commissioner Baller said he also wanted members of the public to have more opportunity to weigh in at the Commission level, noting that there were very few members of the public in attendance at the present meeting.

A number of Commissioners expressed their thanks to the members of the AHUSSC for their dedicated work on this project.

MOTION: Motion by Commissioner Nickita, seconded by Commissioner Hoff:
To accept the Ad Hoc Unimproved Streets Study Committee's Final Report.

Mayor Pro Tem Longe asked for clarification as to whether the City could mandate that a street be improved if the residents of the street were overwhelmingly not in favor of the improvement.

City Attorney Currier said the City did have that ability but has never used it.

Public Comment

AHUSSC Chairman Moore said the AHUSSC members generally agreed that if a street declined improvements it should be moved to the end of improvement ranking list. He stated this was not an official AHUSSC recommendation, but just a general consensus among the members. He also spoke in favor of the Commission approving the report and moving forward with study of the recommendations at the long-range planning meeting.

Janelle Whipple-Boyce, AHUSSC member, suggested that the public was not present at the current meeting because the AHUSSC held open meetings during its 2.5 year tenure and that numerous residents asked questions and provided feedback over that extended period of time. She said she was present currently in the hopes of answering any questions the Commission might have, and to advocate for implementation of the report's recommendations. She stated the AHUSSC had been extraordinarily thorough in its research and recommendations.

Matthew Carmona, a resident of an unimproved street, thanked the AHUSSC for its work. He said he was concerned about the possibility that residents of a street could be required to pay for improvements they may not be in favor of, and that the wording in the report is too vague regarding whether that could occur. He thanked Mayor Pro Tem Longe for raising that potential issue, and Commissioner Baller for requesting more time to discuss the recommendations before adopting them. He said residents may be under the impression that this report just recommends a change in how street improvements are initiated, when in reality it is a change to the entire process. He thought that fact should be further publicized. He said knowing that residents would have more say about how their street is improved would be reassuring. For an example, he stated that his street could not be improved to the standard width without losing a number of trees on both sides of the street, which would be a terribly disappointing outcome for the residents.

Rob Lavoie, resident of Lakeview, said residents' preference between asphalt or concrete should be factored into the Engineering Department's recommendations since residents pay 85% of the improvement costs. Mr. Lavoie also thanked AHUSSC Chairman Moore for his work on the committee.

David Bloom thanked the AHUSSC for its work and Commissioner Baller for advocating for further review of the recommendations at the Commission level and by incoming City Manager Markus. He responded to Mr. Carmona's concern about trees, confirming that when Stanley was improved many trees were removed even though the City endeavored to maintain as many as possible. As far as financing the improvements, Mr. Bloom recommended the City consider bidding them out in seven to nine mile portions to contractors. He suggested that while it would result in more upfront costs, it could ultimately lower costs for residents since it would be more competitive. He said it would have the additional benefit of concluding the project in a much shorter time.

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

Nays, None

12-286-20 2021 Annual Review of Fee Schedule

City Clerk Designee Bingham reviewed the item.

MOTION: Motion by Commissioner Host, seconded by Commissioner Baller:
To amend the Schedule of Fees, Charges, Bonds and Insurance, in the following sections, as stated in this report: Engineering and Fire Department.

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

Nays, None

12-287-20 Expenditure for One-Time COVID-Related Employee Personal Leave Allocation

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Baller:
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 \$56,500 Total Revenues \$56,500 Expenditures: 101-299.000-709.0000 Wage Adjustment Expense \$56,500 Total Expenditures \$56,500

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

Nays, None

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.

MOTION: Motion by Commissioner Baller, seconded by Mayor Pro Tem Longe:
To request a report from City staff on the Parking Assessment District that includes the history, legal framework, funding and fees, and any other potentially pertinent information.

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

Nays, None

VIII. REMOVED FROM CONSENT AGENDA

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

For the AHJSS update, CM Valentine stated Beverly Hills and Franklin were the other two communities involved.

City Attorney Currier explained that the agreement would be reviewed by both Beverly Hills and Franklin and then either approved or returned to Birmingham with questions or edits in January 2021. The Commission would then review the approvals or edits and could then further edit or approve the agreement.

CM Valentine said in order to change the amounts contributed by each municipality the agreement would have to be amended. He explained that this agreement merely formalizes what already exists, and does not change anything in terms of how senior services are presently organized or administered among the three communities.

In reply to Commissioner Baller, CM Valentine stated that each municipality's contribution is based on number of residents and not on more specific demographic breakdowns.

INFORMATION ONLY

XI. ADJOURN

Mayor Boutros adjourned the meeting at 11:35 p.m.

City of Birmingham
Warrant List Dated 01/06/2021

Meeting of 01/11/2021

Check Number	Early Release	Vendor #	Vendor	Amount
<u>PAPER CHECK</u>				
276969	*	000855	48TH DISTRICT COURT	100.00
276970	*	000855	48TH DISTRICT COURT	100.00
276971	*	000855	48TH DISTRICT COURT	350,609.88
276972		MISC	A & B MODERN HOMES LLC	100.00
276973		004627	A & L SYSTEMS INC	750.65
276974	*	008649	ROBERT ABRAHAM JR.	425.00
276975	*	009224	ABRIAL HAUFF	3,063.81
276976		008872	ACE DOOR COMPANY	1,378.00
276978		008106	ACUSHNET COMPANY	779.00
276979		000394	AERO FILTER INC	165.00
276980	*	MISC	ALLIED 100 LLC	959.50
276981		MISC	ALS ASPHALT PAVING CO	200.00
276982		002638	AMERICAN ALLIANCE OF MUSEUMS	165.00
276983		MISC	AMSON CUSTOM HOMES LLC	2,500.00
276984	*	007510	GRANT ANKNEY	425.00
276985		001394	APCO INTERNATIONAL INC	96.00
276986	*	008977	JOBMATCH LLC DBA APPLICANTPRO	2,500.00
276987		MISC	ARIGAPUDI, SIDDHARTH	860.16
276988		000500	ARTECH PRINTING INC	62.00
276989		MISC	ASPHALT EXPRESS	100.00
276990		008988	ASTI ENVIRONMENTAL	3,705.00
276992	*	006759	AT&T	77.75
276993	*	006759	AT&T	173.82
276994	*	006759	AT&T	77.75
276995	*	006759	AT&T	332.24
276996	*	006759	AT&T	2,104.89
276998	*	006759	AT&T	321.63
276999	*	003703	AT&T MOBILITY	142.83
277000		MISC	B-DRY SYSTEM OF MICHIGAN INC	100.00
277001		MISC	BABI CONSTRUCTION INC	1,400.00
277002		MISC	BAKALIS, CHRISTINE	2,500.00
277004	*	008009	TREVOR BAKER	425.00
277005	*	009149	WILLIAM BALCONI	425.00
277006	*	003839	MATTHEW J. BARTALINO	158.99
277007	*	009042	RANDY BEARDEN	425.00
277008		002231	BILLINGS LAWN EQUIPMENT INC.	52.22
277009		MISC	BLOOMFIELD CONSTRUCTION CO	300.00
277010		MISC	BLOOMINGDALE CONSTRUCTION COMPANY I	2,000.00
277011		MISC	BLOOMINGDALE CUSTOM HOMES INC	2,500.00
277012		MISC	BLOOMINGDALE HOMES INC	2,150.00
277013		MISC	BLUMKE INSTALLATIONS	400.00
277014	*	MISC	BOGUE, NINA	829.96

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Check Number	Early Release	Vendor #	Vendor	Amount
277015	*	009041	STEVE BONORA	425.00
277016	*	009215	BOONES EXPRESS LLC	800.00
277017		003526	BOUND TREE MEDICAL, LLC	374.09
277017	*	003526	BOUND TREE MEDICAL, LLC	193.24
277018		MISC	BREN-MAR CONSTRUCTION CO	100.00
277019	*	MISC	BRENDAN MCGAUGHEY	120.00
277020	*	006953	JACQUELYN BRITO	127.08
277021		MISC	BRUTTELL ROOFING INC	300.00
277022		006520	BS&A SOFTWARE, INC	14,200.00
277023		MISC	BUILDING DETAIL INC	100.00
277024	*	006177	BULLSEYE TELECOM INC	128.92
277025		MISC	CAMAJ, MARTIN	400.00
277026	*	007732	CAPITAL TIRE, INC.	375.12
277027	*	008959	CASS COLLISION CLAWSON	947.80
277028	*	000598	CHRISTOPHER CATON	425.00
277030	*	000444	CDW GOVERNMENT INC	724.27
277031		MISC	CEDAR WORKS INC	200.00
277033		MISC	CHARLES J LEMAIRE	500.00
277034	*	007710	CINTAS CORP	370.11
277035		000605	CINTAS CORPORATION	350.99
277036	*	008006	CLEAR RATE COMMUNICATIONS, INC	1,345.21
277037		009187	CLEARVIEW CAPTIONING LLC	4,981.25
277038	*	001318	CLOVERDALE EQUIPMENT CO	1,610.00
277039		002191	COCHRANE SUPPLY AND ENG INC	370.88
277040		004188	COFFEE BREAK SERVICE, INC.	50.90
277041	*	009167	COL'S FAMILY RESTAURANT	113.85
277042	*	008955	COMCAST	740.95
277043	*	000627	CONSUMERS ENERGY	5,573.81
277044		002668	CONTRACTORS CLOTHING CO	5.79
277045		001367	CONTRACTORS CONNECTION INC	257.30
277045	*	001367	CONTRACTORS CONNECTION INC	400.80
277046		008512	COOL THREADS EMBROIDERY	107.98
277047	*	005108	CORELOGIC TAX SERVICE	3,484.97
277048		006115	CORRIGAN MOVING SYSTEMS	1,280.00
277049	*	007638	MARSHALL CRAWFORD	425.00
277050	*	009145	CREATIVE COLLABORATIONS	11,400.00
277051		MISC	CRYDERMAN & ASSOCIATES	100.00
277052	*	003923	CUMMINS BRIDGEWAY LLC	937.20
277053		004386	CYNERGY PRODUCTS	1,548.28
277054		MISC	DAYRINGER, KATHLEEN M	813.54
277055		008005	DE LAGE LANDEN FINANCIAL SVCS INC	188.61
277056	*	003204	MARK DELAUDER	425.00
277057		000177	DELWOOD SUPPLY	429.87

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277058	*	006999	CHRISTOPHER DEMAN	425.00
277059	*	005125	DEVIN DEROECK	60.00
277060		MISC	DETROIT BUILD INC	400.00
277061	*	009130	DOG WASTE DEPOT	366.30
277064	*	000179	DTE ENERGY	29.09
277065	*	000179	DTE ENERGY	81.85
277066	*	000180	DTE ENERGY	8,858.10
277067		007505	EAGLE LANDSCAPING & SUPPLY	308.00
277069		MISC	ESPECIALLY WINDOWS	500.00
277070		MISC	ESSCO DEVELOPMENT	100.00
277071		MISC	EUROCRAFT BUILDERS & REMODELER	300.00
277072	*	001223	FAST SIGNS	226.11
277073		MISC	FEDERAL PAVING INC	100.00
277074		000936	FEDEX	1,003.30
277076	*	007366	FIRST ADVANTAGE OCCUPATIONAL	42.84
277077		MISC	FIRST CHOICE BUILDING & MAINTENANCE	100.00
277078		MISC	FLS PROPERTIES #5, LLC	300.00
277079	*	007212	FOSTER BLUE WATER OIL	588.58
277080		MISC	FOUNDATION SYSTEMS OF MICHIGAN INC.	100.00
277081	*	007289	BRIAN FREELS	425.00
277082		006384	GEOGRAPHIC INFORMATION SERVICES, IN	963.76
277083		MISC	GEORGE, TREVOR	200.00
277084		MISC	GIACALONE BUILDING LLC	100.00
277085		MISC	GILLETTE BROTHERS POOL & SPA	200.00
277086	*	008648	HUNTER GILICK	425.00
277087	*	MISC	GLOBAL SYNERGY LLC	6,282.10
277088	*	009252	GOVTEMPS USA LLC	3,500.00
277089		007099	GRANICUS, INC.	2,088.11
277090	*	008105	JASON GRANROTH	425.00
277091		008682	GREAT LAKES GROENEVELD LLC	187.46
277092		MISC	GREAT LAKES LANDSCAPE DESIGN, INC	100.00
277095		000249	GUARDIAN ALARM	446.80
277096		001447	HALT FIRE INC	1,545.32
277097		008481	HART INTERCIVIC, INC	22.50
277098		MISC	HELLER & ASSOCIATES INC	738.96
277099	*	005820	HENKE MFG	229.84
277100		MISC	HILLAN HOMES, INC	676.30
277101	*	001956	HOME DEPOT CREDIT SERVICES	599.55
277103	*	003824	THOMAS I. HUGHES	425.00
277104	*	001307	JOSHUA HUSTED	306.96
277105	*	000948	HYDROCORP	4,920.00
277106		MISC	I SIGNS	200.00
277107		006640	IACP	190.00

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277108		000342	IBS OF SE MICHIGAN	379.85
277109		MISC	IDEAL BUILDERS AND REMODELING INC	2,600.00
277110	*	008874	JARED IMLAY	425.00
277112		MISC	INGRAM ROOFING INC	100.00
277113		MISC	INVESTMENTS ONE LLC	1,000.00
277114		MISC	ITALY AMERICAN CONSTRUCTION CO	200.00
277115		006695	J. P. COOKE COMPANY	21.70
277116		MISC	JEFFREY R BRYSON	10.00
277117		MISC	JOHN MCCARTER CONSTRUCTION LLC	1,155.00
277118	*	006803	JOHNSON CONTROLS	350.76
277119		MISC	JOSE CHAVARIN	100.00
277120		MISC	JOSEPH LAWRENCE DURNELL	100.00
277121	*	007244	CHRISTOPHER JUDKINS	425.00
277122	*	002555	MICHAEL JUREK	120.00
277123		MISC	KELLETT CONSTRUCTION COMPANY	100.00
277124		MISC	KMM SERVICES LLC	200.00
277125	*	007511	ADAM KNOWLES	425.00
277126	*	000362	KROGER COMPANY	36.67
277127		MISC	LAVOISNE	1,365.00
277128		MISC	LAVOISNE, PERISH A	1,000.00
277129	*	MISC	LERETA	1,460.96
277130	*	MISC	LERETA LLC	776.23
277131		MISC	LEVINE & SONS INC	6.77
277132		006817	LEXISNEXIS RISK DATA MANAGEMENT INC	100.00
277134		MISC	LIDDELL, ELOISE	766.93
277135		MISC	LJ PROPERTIES MI LLC	500.00
277136	*	008158	LOGICALIS INC	9,700.00
277137		MISC	LOSSIA-ACHO, RENEE M	500.00
277138		MISC	LUKE C TIMMIS	860.16
277139		MISC	LUXE HOMES DESIGN BUILD LLC	2,000.00
277140		004484	MACOMB COMMUNITY COLLEGE	1,400.00
277141		003934	MADISON GENERATOR SERVICE INC	219.00
277142		MISC	MANSOUR, WASEEM	1,000.00
277143		MISC	MARANGON BUILDERS LLC	200.00
277144		MISC	MARIANNE JONES LLC	500.00
277145		MISC	MARTIN CAMAJ	1,000.00
277146		MISC	MASSIMO D AGOSTINO	100.00
277147		000888	MCKENNA ASSOCIATES INC	18,926.26
277148		000972	MCKESSON MEDICAL-SURGICAL	474.51
277149	*	009043	IAN MCLAUGHLIN	472.42
277150		MISC	MERRILLWOOD COLLECTION	200.00
277151		MISC	METRO DETROIT SIGNS INC	200.00
277152		009200	MICHAEL MORRISON	1,400.00

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Check Number	Early Release	Vendor #	Vendor	Amount
277153		MISC	MICHAEL'S CARPENTRY & BLDG. CO	200.00
277154		004753	MICHIGAN ASSN OF PLANNING	132.00
277155	*	001660	MICHIGAN CAT	85.24
277156		003099	MICHIGAN POLICE EQUIP.	493.00
277157		001677	STATE OF MICHIGAN-ELEVATOR	310.00
277158	*	007659	MICHIGAN.COM #1008	89.23
277159		007214	MIDWEST ARBORIST SUPPLIES	135.70
277162	*	007306	MARK MISCHLE	425.00
277163		MISC	MISKO PLBG LLC	363.54
277164		MISC	MOSHER DOLAN	1,560.00
277165		004879	MOTOROLA SOLUTIONS	105,056.90
277166		MISC	MR ROOF HOLDING CO LLC	100.00
277167	*	002010	MULTISTATE TRANSMISSIONS	2,908.31
277168		MISC	MURRAY BUILT CONSTRUCTION	200.00
277169		001194	NELSON BROTHERS SEWER	500.00
277170		007915	NENA	142.00
277171	*	009096	RYAN NEUVILLE	425.00
277172		MISC	NICK WEISE	200.00
277173		MISC	NIGHTINGALE COMPANY	300.00
277174		008687	NORTH BREATHING AIR, LLC	520.00
277174	*	008687	NORTH BREATHING AIR, LLC	248.76
277175		MISC	OAKES ROOFING SIDING & WINDOWS INC	600.00
277176		001686	OAKLAND CO CLERKS ASSOC	30.00
277177		000477	OAKLAND COUNTY	1,206.00
277177	*	000477	OAKLAND COUNTY	453,570.83
277178	*	003461	OBSERVER & ECCENTRIC	532.14
277179	*	004370	OCCUPATIONAL HEALTH CENTERS	267.00
277181	*	000481	OFFICE DEPOT INC	1,866.78
277182	*	008785	KEVIN ONG	204.47
277183		MISC	ORCHARD DEVELOPMENT AND CONSTRUCTIO	2,000.00
277184	*	009204	OWEN BACHUSZ	425.00
277185	*	003963	DAVID PAPANDREA	425.00
277186	*	009151	PARAGON LABORATORIES INC	369.00
277187	*	009151	PARAGON LABORATORIES INC	123.00
277188	*	009151	PARAGON LABORATORIES INC	164.00
277189	*	009151	PARAGON LABORATORIES INC	369.00
277190	*	009151	PARAGON LABORATORIES INC	246.00
277191	*	009151	PARAGON LABORATORIES INC	82.00
277192		009151	PARAGON LABORATORIES INC	123.00
277193		MISC	PATRICK M FAUGHNAN	100.00
277194		MISC	PELLA WINDOWS & DOORS, INC.	500.00
277195		MISC	PETRUCCI HOMES	500.00
277196		MISC	PHILLIPS SIGN & LIGHTING INC	200.00

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277197		002518	PITNEY BOWES INC	195.00
277198		MISC	PRM CUSTOM BUILDERS LLC	3,000.00
277199	*	002852	QMI GROUP INC	248.00
277200		006729	QUENCH USA INC	123.60
277201	*	008342	RAIN MASTER CONTROL SYSTEMS	29.85
277202	*	008875	JESSICA RAK	425.00
277203		MISC	RENEWAL BY ANDERSEN	500.00
277204		MISC	RICHARD L WELLER	200.00
277205	*	MISC	RICHARD REFF	3,629.04
277206	*	009144	RICHARD TRUDO	2,600.00
277207		MISC	RICHARD WEINGARTNER	400.00
277208		MISC	RODRIGO BLANES	10,000.00
277209		MISC	RON COLEMAN	500.00
277210	*	MISC	RON DIX	95.00
277211		MISC	ROOF ONE LLC	100.00
277212		MISC	RUDNICK, MATTHEW E	100.00
277213		009232	THE SAFETY CO LLC DBA MTECH	220.85
277214		MISC	SALTER, MATTHEW	100.00
277215	*	007897	JEFFREY SCAIFE	425.00
277216	*	007898	JEFFREY SCHEMANSKY	425.00
277217	*	006590	SECURE DOOR, LLC	143.00
277218		MISC	SGGW LLC	85.00
277220		008815	SHI INTERNATIONAL CORP.	1,587.51
277221	*	009143	MICHAEL SHUKWIT	400.00
277222	*	008073	SITEONE LANDSCAPE SUPPLY, INC	240.24
277223	*	006591	MICHAEL SLACK	425.00
277224	*	007899	NICHOLAS SLANDA	425.00
277225	*	003466	ALAN SOAVE	425.00
277226	*	007245	NICK SOPER	425.00
277227		007907	SP+ CORPORATION	26,905.27
277228		001104	STATE OF MICHIGAN	1,149,200.09
277229	*	002809	STATE OF MICHIGAN	805.00
277230		MISC	STENBACK, MICHAEL	100.00
277231		009201	STEPHEN SHUKWIT	250.00
277232		000256	SUBURBAN BUICK GMC INC	468.60
277233		MISC	SUPERB CUSTOM HOMES	500.00
277234		006749	SUPERIOR SCAPE, INC	1,470.00
277234	*	006749	SUPERIOR SCAPE, INC	8,433.00
277235		MISC	T & K EXCAVATING LLC	627.08
277236		000286	TARGET SPECIALTY PRODUCTS	5,220.00
277238		MISC	THE IRONHEAD TRUST	300.00
277239	*	008944	THE PRINT STOP, INC.	524.50
277240		MISC	THOMAS SEBOLD & ASSOCIATES, IN	500.00

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277241		MISC	THOMS BROS.	200.00
277242		MISC	THREE C'S LANDSCAPING	100.00
277243	*	009044	JOEL TOMASZEWSKI	425.00
277244		MISC	TRADEMARK BUILDING COMPANY INC	200.00
277245		MISC	TRG BP LLC	20.00
277247		008941	UPTOWN MARKET OF BIRMINGHAM	14.78
277248	*	009177	VANDYKE HORN PUBLIC RELATIONS LLC	11,500.00
277249	*	000158	VERIZON WIRELESS	128.14
277250	*	000158	VERIZON WIRELESS	662.86
277251	*	000158	VERIZON WIRELESS	1,008.36
277252	*	000158	VERIZON WIRELESS	49.25
277255	*	000158	VERIZON WIRELESS	493.76
277256		000828	WALL STREET JOURNAL, THE	539.88
277257		MISC	WALLSIDE INC	500.00
277258		MISC	WARG, RICHARD D	100.00
277259		MISC	WECHSLER CONSTRUCTION LLC	300.00
277260	*	000299	WEINGARTZ SUPPLY	209.15
277261	*	MISC	WELLS FARGO BANK	857.22
277263	*	001536	JEFFREY WHIPPLE	82.04
277264		MISC	WHITE WOLF LANDSCAPING	300.00
277265		MISC	WHITELAW CUSTOM HOMES INC.	500.00
277266	*	009036	TIMOTHY WILCZEK	425.00
277267		MISC	WILLIAMS, TODD L	200.00
277268	*	005794	WINDSTREAM	879.04
277269	*	007900	RYAN WISEMAN	425.00
277270		004512	WOLVERINE POWER SYSTEMS	1,436.63
277272		MISC	WORLD WIDE CABINETS	400.00
277273		MISC	WRIGHT DESIGN & REMODELING	200.00
277274	*	008391	XEROX CORPORATION	9.00
277275		009185	ZOOM VIDEO COMMUNICATIONS INC	513.20
SUBTOTAL PAPER CHECK				\$2,359,409.78

ACH TRANSACTION

3236	*	008847	ABS- AUTOMATED BENEFIT SVCS, INC	43,272.85
3237	*	008840	BIRMINGHAM PUBLIC SCHOOLS-TAXES	2,502,411.47
3238	*	008843	OAKLAND COUNTY TREASURER- TAX PYMNT	1,020,426.82
3239	*	008847	ABS- AUTOMATED BENEFIT SVCS, INC	22,749.80
3240	*	002284	ABEL ELECTRONICS INC	2,965.00
3242	*	007345	BEVERLY HILLS ACE	107.92
3243		006683	BIRMINGHAM LAWN MAINTENANCE	30,673.00
3244	*	007624	BIRMINGHAM OIL CHANGE CENTER, LLC	107.93
3245	*	008044	CLUB PROPHET	540.00
3246		009195	CROWN CASTLE FIBER LLC	643.00
3247	*	004232	DEARBORN LITHOGRAPH INC	16,395.00

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3248		006077	DI PONIO CONTRACTING INC	70,927.33
3249		001077	DUNCAN PARKING TECH INC	28,665.00
3250	*	000207	EZELL SUPPLY CORPORATION	815.14
3251	*	007314	FLEIS AND VANDENBRINK ENG. INC	354.00
3252		000217	FOUR SEASON RADIATOR SERVICE INC	142.75
3253	*	000243	GRAINGER	589.20
3254		000331	HUBBELL ROTH & CLARK INC	42,723.73
3254	*	000331	HUBBELL ROTH & CLARK INC	824.80
3255	*	008851	INSIGHT INVESTMENT	5,717.35
3256		000261	J.H. HART URBAN FORESTRY	35,726.26
3257	*	002576	JAX KAR WASH	4,678.44
3258	*	003458	JOE'S AUTO PARTS, INC.	651.65
3259	*	006370	KLM SCAPE & SNOW LLC	45,865.00
3260	*	005550	LEE & ASSOCIATES CO., INC.	1,304.40
3261	*	001035	MUNICIPAL EMERGENCY SERVICES INC	65.50
3262	*	006359	NYE UNIFORM COMPANY	1,114.34
3263	*	002767	OSCAR W. LARSON CO.	247.50
3264	*	006027	PENCHURA, LLC	40.00
3265	*	001062	QUALITY COACH COLLISION	1,590.00
3266	*	003554	RKA PETROLEUM	9,659.12
3267	*	001181	ROSE PEST SOLUTIONS	71.00
3268	*	003785	SIGNS-N-DESIGNS INC	486.00
3269		000254	SOCRRA	68,287.00
3270		005787	SOUTHEASTERN EQUIPMENT CO. INC	1,917.44
3271	*	004355	SYMETRA LIFE INSURANCE COMPANY	33,871.42
3272		000273	TERMINAL SUPPLY CO.	44.34
3272	*	000273	TERMINAL SUPPLY CO.	44.70
3273	*	002037	TOTAL ARMORED CAR SERVICE, INC.	758.36
3275		000298	VESCO OIL CORPORATION	83.25
3276		000969	VIGILANTE SECURITY INC	4,548.00
3277		002974	VILLAGE OF BEVERLY HILLS	110,630.66
SUBTOTAL ACH TRANSACTION				\$4,112,736.47

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Check Number	Early Release	Vendor #	Vendor	Amount
GRAND TOTAL				\$6,472,146.25

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



Mark Gerber
Finance Director/ Treasurer

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



MEMORANDUM

Planning Division

DATE: January 4, 2021

TO: Thomas M. Markus, City Manager

FROM: Jana L. Ecker, Planning Director

SUBJECT: To set a Public Hearing for a Special Land Use Permit and Final Site Plan and Design Review at 251 E. Merrill Street - Tappers

INTRODUCTION:

The subject site is located at 251 E. Merrill, Suite 236, a storefront space located within the Merrillwood Building on the second floor. The property is zoned B4 (Business Residential) and D-4 in the Downtown Overlay District. The applicant is seeking approval of a Special Land Use Permit ("SLUP") and Final Site Plan and Design ("FSP") to permit the operation of Tapper's Gold Exchange, which is a jewelry store that includes the buying and selling of precious metals and jewelry. Tapper's currently has existing locations in West Bloomfield, Novi and Somerset in Troy.

BACKGROUND:

As Tapper's proposes to buy and sell precious metals and jewelry, the operation falls under the definition of a pawnshop in the Zoning Ordinance. Article 9, section 9.02 defines pawnshops and specifically states that "A pawnshop includes establishments that buy personal property, such as jewelry or artwork, made of gold or other valuable metals for refining". Article 9, section 9.02 further states that pawnshops are regulated uses, and thus require a valid Special Land Use Permit. Accordingly, the applicant is required to obtain a recommendation from the Planning Board on the Final Site Plan and Special Land Use Permit, and then obtain approval from the City Commission for the Final Site Plan and Special Land Use Permit to allow the operation of Tapper's Gold Exchange.

On December 9, 2020, the applicant appeared before the Planning Board for a review of the SLUP and FSP for Tapper's Gold Exchange. Upon review and discussion, the Planning Board voted unanimously to recommend approval to the City Commission of the SLUP and FSP.

LEGAL REVIEW:

The City Attorney has reviewed this request and has no concerns.

FISCAL IMPACT:

There are no fiscal impacts for this agenda item.

SUMMARY:

The Planning Division requests that the City Commission set a public hearing date for **February 8, 2021** to consider approval of the Final Site Plan and Design and Special Land Use Permit to allow the operation of Tapper's Gold Exchange at 251 E. Merrill.

ATTACHMENTS:

Please find attached the following documents for your review:

- Draft Special Land Use Permit Resolution
- Staff Report to the Planning Board
- Plans and photos of proposed changes
- Application and additional documents submitted by applicant
- DRAFT meeting minutes

SUGGESTED RESOLUTION:

To set a public hearing date for February 8, 2021 to consider the Final Site Plan and Design and Special Land Use Permit at 251 E. Merrill to allow for the operation of Tapper's Gold Exchange.

**TAPPERS GOLD EXCHANGE
251 E. MERRILL
SPECIAL LAND USE PERMIT
2021**

WHEREAS, TAPPER'S GOLD EXCHANGE filed an application pursuant to Article 7, section 7.34 of Chapter 126, Zoning, of the City Code to operate a gold exchange in the Downtown Birmingham Overlay District in accordance Article 3, Section 3.04(C)(10) of Chapter 126, Zoning, of the City Code;

WHEREAS, The land for which the Special Land Use Permit is sought is located on the north side of E. Merrill, west of S. Old Woodward;

WHEREAS, The land is zoned B-4, and is located in the D-4 zone within the Downtown Birmingham Overlay District, which permits the operation of pawnshops that buy and sell precious metals and jewelry with a Special Land Use Permit;

WHEREAS, Article 7, section 7.34 of Chapter 126, Zoning requires a Special Land Use Permit 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 applicant submitted an application for a Special Land Use Permit and Final Site Plan and Design for TAPPER'S GOLD EXCHANGE to operate at 251 E. Merrill;

WHEREAS, The Planning Board on December 9, 2020 reviewed the application for a Special Land Use Permit and Final Site Plan and Design Review and recommended approval to the City Commission to permit the operation of TAPPER'S GOLD EXCHANGE at 251 E. Merrill without conditions.

WHEREAS, The Birmingham City Commission has reviewed TAPPER'S GOLD EXCHANGE's Special Land Use Permit application and the standards for such review as set forth in Article 7, section 7.36 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 that TAPPER'S GOLD EXCHANGE's application for a Special Land Use Permit and Final Site Plan and Design at 251 E. Merrill is hereby approved;

BE IT FURTHER RESOLVED, That the City Commission determines that to assure continued compliance with Code standards and to protect public health, safety, and welfare, this Special Land Use Permit is granted subject to the following conditions:

1. TAPPER'S GOLD EXCHANGE shall abide by all provisions of the Birmingham City Code; and
2. The Special Land Use Permit Amendment may be canceled by the City Commission upon finding that the continued use is not in the public

interest.

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, TAPPER'S GOLD EXCHANGE 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 TAPPER'S GOLD EXCHANGE to comply with all the ordinances of the City may result in the Commission revoking this Special Land Use Permit.

MAY IT BE FURTHER RESOLVED that TAPPER'S GOLD EXCHANGE is recommended for the operation of jewelry exchange that buys and sells precious metals and jewelry, subject to final inspection.

I, Alexandria Bingham, Acting City Clerk of the City of Birmingham, Michigan, do hereby certify that the foregoing is a true and correct copy of the resolution adopted by the Birmingham City Commission at its regular meeting held on February 8, 2021.

Alexandria Bingham
City Clerk Designee



MEMORANDUM

Planning Division

DATE: December 2, 2020

TO: Planning Board

FROM: Jana L. Ecker, Planning Director

SUBJECT: 251 E. Merrill, Suite 236 – Tapper’s Gold Exchange (second floor within the Merrillwood Building)
Special Land Use Permit and Final Site Plan Review

Executive Summary

The subject site is located at 251 E. Merrill, Suite 236, a storefront space located within the Merrillwood Building on the second floor. The property is zoned B4 (Business Residential). The applicant is seeking approval of a Special Land Use Permit and Final Site Plan and Design to permit the operation of Tapper’s Gold Exchange, which is a jewelry store that includes the buying and selling of precious metals and jewelry. Tapper’s currently has existing locations in West Bloomfield, Novi and Somerset in Troy.

As Tapper’s proposes to buy and sell precious metals and jewelry, the operation falls under the definition of a pawnshop in the Zoning Ordinance. Article 9, section 9.02 defines pawnshops and specifically states that “A pawnshop includes establishments that buy personal property, such as jewelry or artwork, made of gold or other valuable metals for refining”. Article 9, section 9.02 further states that pawnshops are regulated uses, and thus require a valid Special Land Use Permit. Accordingly, the applicant is required to obtain a recommendation from the Planning Board on the Final Site Plan and Special Land Use Permit, and then obtain approval from the City Commission for the Final Site Plan and Special Land Use Permit to allow the operation of Tapper’s Gold Exchange.

1.0 Land Use and Zoning

- 1.1 Existing Land Use – There is an existing seven story building on the site with first floor retail space, and office use and residential units on the upper floors.
- 1.2 Existing Zoning – The property is currently zoned B4 (Business Residential). The existing use and surrounding uses appear to conform to the permitted uses of the Zoning Ordinance.
- 1.3 Summary of Land Use and Zoning - The following chart summarizes existing land use and zoning adjacent to and/or in the vicinity of the subject site.

	North	South	East	West
Existing Land Use	Retail & Commercial	Commercial	Single Family Residential	Booth Park
Existing Zoning District	B4, Business Residential	B4, Business Residential	B4, Business Residential	B4, Business Residential
Overlay Zoning District	D4	D4	D4	D4

2.0 Use, Setback and Height Requirements

The applicant is not proposing any changes to the footprint or massing of the existing building, nor to the exterior of the building on any facade. No external signage is proposed.

As noted above, Tapper's proposed operation falls under the definition of a pawnshop in the Zoning Ordinance and is thus a regulated use. Article 5, Section 5.21 provides the following standards for regulated uses in a B4 zone district:

Regulated uses are permitted if located more than 1,000 feet from any lot for which a certificate of occupancy has been issued for another regulated use. No more than 1 regulated use shall be permitted in a single building. The City Commission shall hear and deny, approve or approve with conditions all requests for permission to carry on a regulated use where a regulated use is permitted, in accordance with Article 7.

Please see attached map demonstrating that shows that 251 E. Merrill is not within 1000' of any other regulated use. The Palladium Theater was approved as a regulated use due to the presence of electronic video games in the lobby. However, Emagine took over the movie theater several years ago and removed all electronic video games and thus did not require nor obtain approval of a regulated use under the new ownership. Thus, Tapper's proposed regulated use is located 1000' or more from all nearby regulated uses, thus meeting the requirement of section 5.21 of the Zoning Ordinance.

The proposed jewelry store will be located entirely within the building on the second floor. Public access to the store will be through the building, there is no public access from the street level. The applicant has provided photos of the space, which are attached for your review. Tapper's Gold Exchange is proposing to have hours by appointment only Monday through Thursday, and to be open to walk in customers on Saturdays from 10:00am to

5:00pm. Tapper's currently has three locations in West Bloomfield, Novi and Troy. The applicant has provided information from their existing website to provide background on their business. Tapper's in Birmingham will be a small scale operation selling jewelry, watches and gemstones, and will also purchase and trade high end luxury jewelry, watches, gemstones and precious metals.

4.0 Screening and Landscaping

- 4.1 Mechanical Screening –The applicant is not proposing the addition of any new mechanical equipment, nor screening.
- 4.2 Dumpster Screening – The applicant is not proposing the addition of any new dumpsters.
- 4.3 Parking Lot Screening – The applicant is not required to provide any off street parking as the site is located within the Parking Assessment District.
- 4.4 Landscaping – There are currently 5 street trees existing along the frontage of 251 E. Merrill, all are proposed to remain.

5.0 Parking, Loading, Access, and Circulation

- 5.1 Parking – As stated above, the applicant is not required to provide any parking spaces for commercial or retail uses as the site is located in the Parking Assessment District.
- 5.2 Loading – No additional loading spaces are required nor proposed.
- 5.3 Vehicular Access & Circulation –Most patrons that will arrive at Tapper's Gold Exchange will park on the street or in a City parking garage to access the jewelry store.
- 5.4 Pedestrian Access & Circulation – There is a City sidewalk running along E. Merrill Street that provides access to building and lobby entrance. From the lobby, patrons of Tapper's will use the stairs or an elevator to move to the second floor common space from which patrons can access the proposed Tapper's Gold Exchange, as well as to a front door for the building as a whole. From the main building entry.
- 5.5 Streetscape – As stated above, there is an existing completed streetscape along E. Merrill, with the required street lighting, street trees and sidewalk. The sidewalk is broom finish concrete, and the furnishing zone between the sidewalk and the curb is currently exposed aggregate concrete as required. No changes are required, nor proposed.

6.0 Lighting

The applicant is not proposing any new exterior lighting or signage on the Merrillwood Building.

7.0 Departmental Reports

- 7.1 **Engineering Division** – The Engineering Department has no concerns.
- 7.2 **Department of Public Services** – The DPS has no concerns.
- 7.3 **Fire Department** – The Fire Department has no concerns, but notes that all Fire Protection Code standards must be met prior to opening.
- 7.4 **Police Department** - The Police Department has no concerns.
- 7.5 **Building Department** –The Building Department has no concerns, but notes that a tenant buildout permit will be required prior to opening.

8.0 Design Review

The applicant redesigned the main building entrance and was approved for this in 2019 (plans attached). No changes are proposed at this time to the exterior of the building. No exterior signage is proposed.

10.0 Approval Criteria for Final Site Plan

In accordance with Article 7, section 7.27 of the Zoning Ordinance, the proposed plans for development must meet the following conditions:

- (1) The location, size and height of the building, walls and fences shall be such that there is adequate landscaped open space so as to provide light, air and access to the persons occupying the structure.
 - (2) The location, size and height of the building, walls and fences shall be such that there will be no interference with adequate light, air and access to adjacent lands and buildings.
 - (3) The location, size and height of the building, walls and fences shall be such that they will not hinder the reasonable development of adjoining property not diminish the value thereof.
 - (4) The site plan, and its relation to streets, driveways and sidewalks, shall be such as to not interfere with or be hazardous to vehicular and pedestrian traffic.
 - (5) The proposed development will be compatible with other uses and buildings in the neighborhood and will not be contrary to the spirit and purpose of this chapter.
 - (6) The location, shape and size of required landscaped open space is such as to provide adequate open space for the benefit of the inhabitants of the building and the surrounding neighborhood.
-

11.0 Approval Criteria for Regulated Uses

Article 7, section 7.21 of the Zoning Ordinance specifies the procedures and approval criteria for Regulated Uses. Section 7.21 states:

- A. The City Commission shall approve a request for a regulated use if it determines that all of the following standards are met:
 - A. The use will be compatible with adjacent uses of land, considering the proximity of dwellings, religious institutions, schools, public structures, and other places of public gatherings.
 - B. The use will not adversely impact the capabilities of public services and facilities including sewers, water, schools, transportation, and the ability of the City to supply such services.
 - C. The use will not adversely impact any cultural or historic landmarks.
 - D. The use is in compliance with all other requirements of this Zoning Ordinance.
 - E. The use is in compliance with federal, state, and local laws and regulations.
- B. In addition, all of the Special Land Use Permit requirements contained in [Article 7](#) must be met for the City Commission to approve such a request for a regulated use.

Based on a review of the Tapper's Gold Exchange submittal, the Planning Division finds that the proposed jewelry store use that includes the buying and selling of precious metals and jewelry is compatible with the uses adjacent to and within the building at 251 E. Merrill and will not adversely impact the capacity of public services or facilities, particularly given the primarily appointment only service. The proposed use is in compliance with all other requirements of the Zoning Ordinance and the proposed use will not adversely impact any historic landmarks as it is fully enclosed within the building.

12.0 Approval Criteria for Special Land Use Permits

Article 7, section 7.34 of the Zoning Ordinance specifies the procedures and approval criteria for Special Land Use Permits. Use approval, site plan approval, and design review are the responsibilities of the City Commission. This section reads, in part:

Prior to its consideration of a special land use application (SLUP) for an initial permit or an amendment to a permit, the **City Commission shall refer the site plan and the design to the Planning Board for its review and recommendation. After receiving the recommendation, the City Commission shall review the site plan and design of the buildings and uses proposed** for the site described in the application of amendment.

The City Commission's approval of any special land use application or amendment pursuant to this section shall constitute approval of the site plan and design.

Additionally, Article 7, Section 7.36 states that the City Commission shall not approve of any requests for a special land use permit unless it determines that the following standards are met:

1. The use is consistent with and will promote the intent and purpose of this Zoning Ordinance.
2. The use will be compatible with adjacent uses of land, the natural environment, and the capabilities of public services and facilities affected by the land use.
3. The use is consistent with the public health, safety and welfare of the city.
4. The use is in compliance with all other requirements of this Zoning Ordinance.
5. The use will not be injurious to the surrounding neighborhood.
6. The use is in compliance with state and federal statutes.

Based on a review of the Tapper's Gold Exchange submittal, the Planning Division finds that the proposed jewelry store use that includes the buying and selling of precious metals and jewelry is consistent with the intent and purpose of the Zoning Ordinance, and is compatible with the uses adjacent to and within the building at 251 E. Merrill. The proposed use is in compliance with all other requirements of the Zoning Ordinance and the proposed use will not be injurious to the surrounding neighborhood, particularly given the primarily appointment only service.

12.0 Suggested Action

Based on a review of the site plans submitted, the Planning Division recommends that the Planning Board recommend approval of the Final Site Plan and SLUP to the City Commission to permit the operation of Tapper's Gold Exchange as a regulated use at 251 E. Merrill, Suite 236.

13.0 Sample Motion Language

The Planning Board recommends approval of the Final Site Plan to the City Commission to permit the operation of Tapper's Gold Exchange at 251 E. Merrill, Suite 236.

AND

The Planning Board recommends approval of the Special Land Use Permit to the City Commission to permit the operation of Tapper's Gold Exchange as a regulated use at 251 E. Merrill, Suite 236.

OR

Motion to recommend DENIAL of the Final Site Plan and SLUP to the City Commission for 251 E. Merrill, Suite 236, Tapper's Gold Exchange for the following reasons:

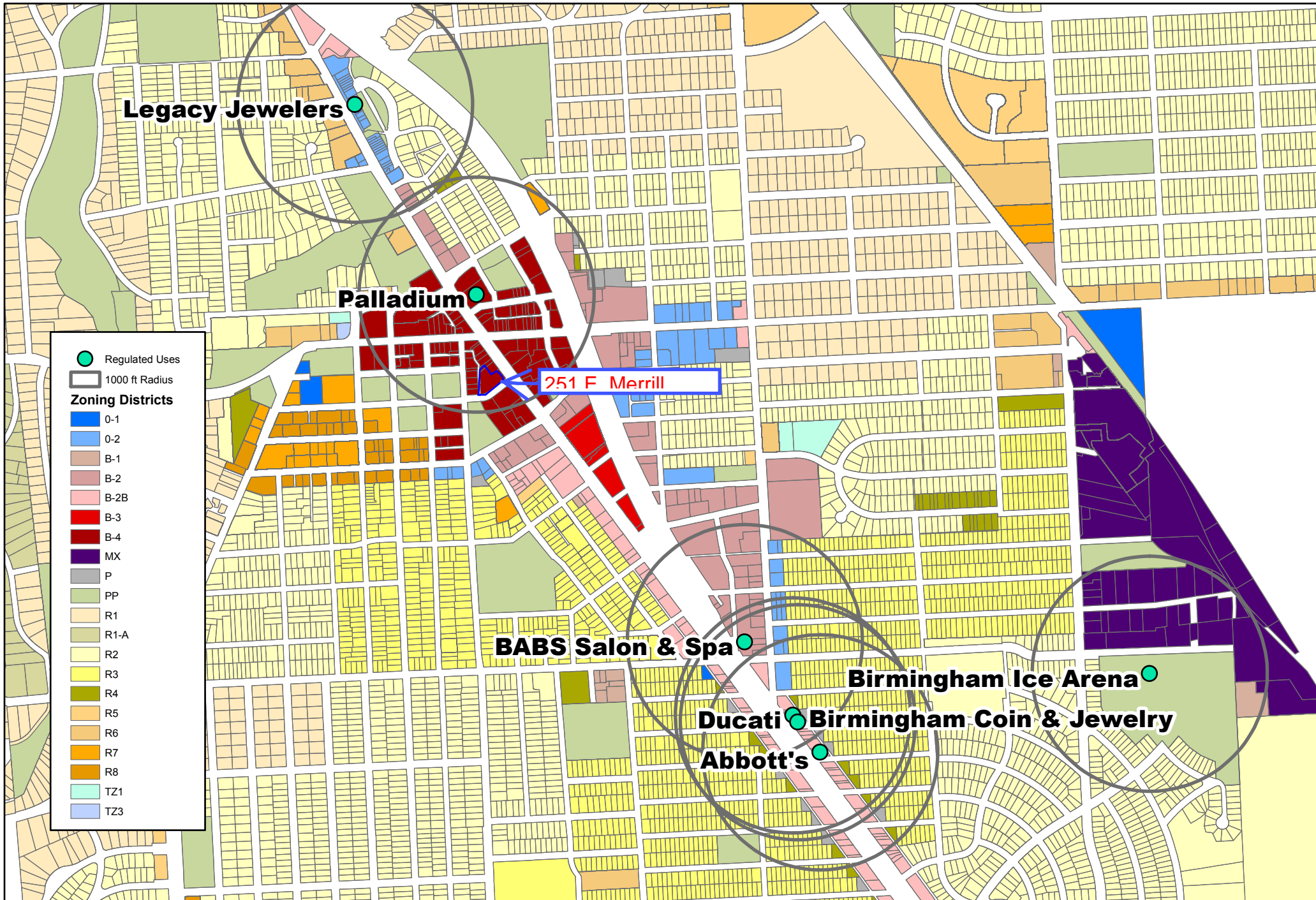
1. _____
 2. _____
-

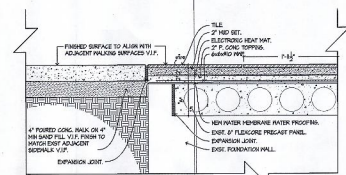
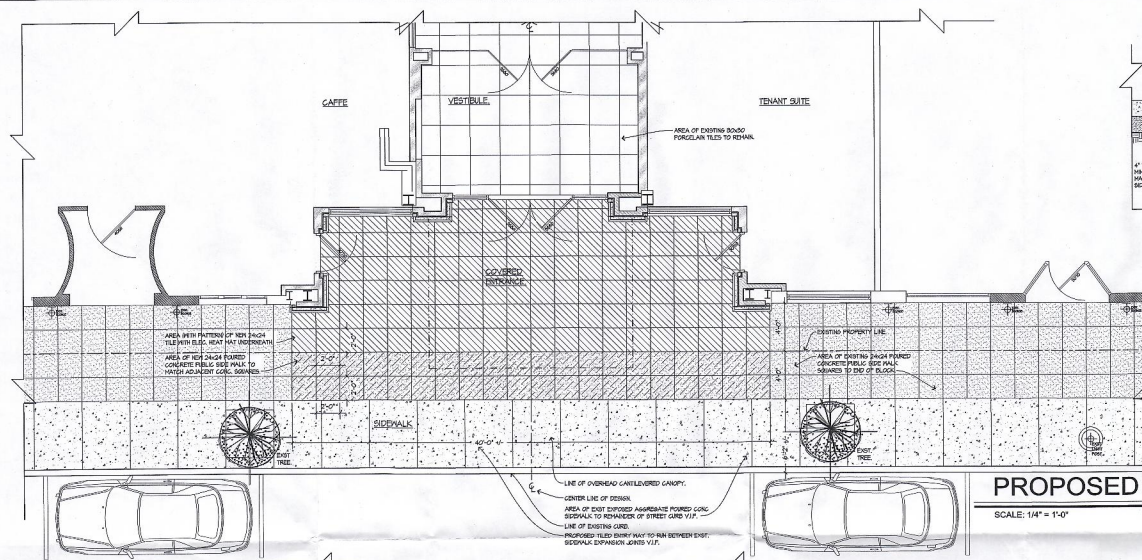
3. _____
4. _____

OR

Motion to recommend POSTPONEMENT of the Final Site Plan and SLUP to the City Commission
for 251 E. Merrill, Suite 236, Tapper’s Gold Exchange.

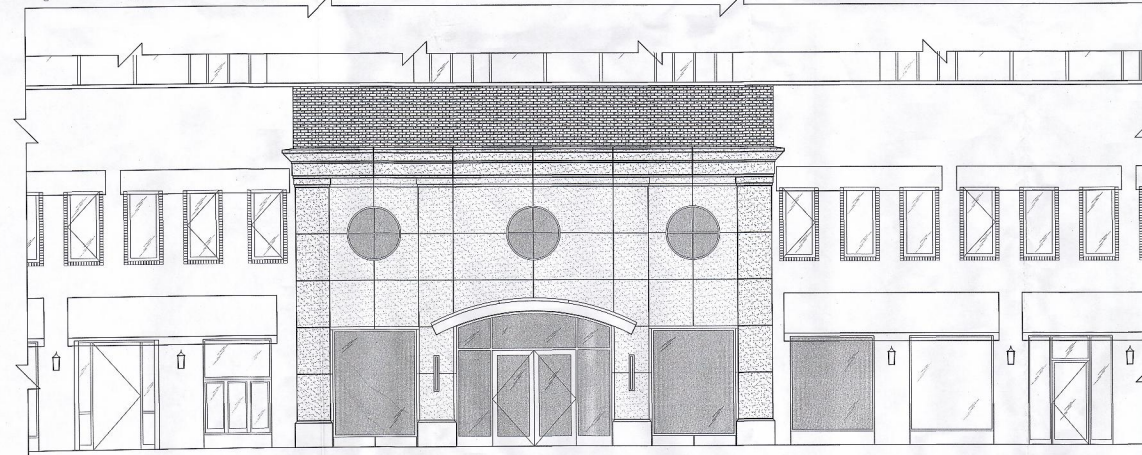
2020 Regulated Special Uses





DETAIL
SCALE: 1" = 1'-0"

PROPOSED PLAN
SCALE: 1/4" = 1'-0"



PROPOSED ELEVATION
SCALE: 1/4" = 1'-0"

RECEIVED
OCT 21 2018
CITY OF BIRMINGHAM
COMMUNITY DEVELOPMENT DEPARTMENT

APPROVED
10/22/18
PAUL A. HILL

HELLER & ASSOCIATES
DESIGN + BUILD

MERRILLWOOD BUILDING
251 E. MERRILL STREET BIRMINGHAM, MI 48009

COMMERCIAL ENTRY OVERVIEW

DESIGN BY:
S. HILL
D. PURMAN
DRAWN BY:
A. WICKSTEDT, EXIST

ISSUED / FOR
ARCHITECTURAL
BIDDING / PERMIT
DRAWING SET

PAGE NO. 8

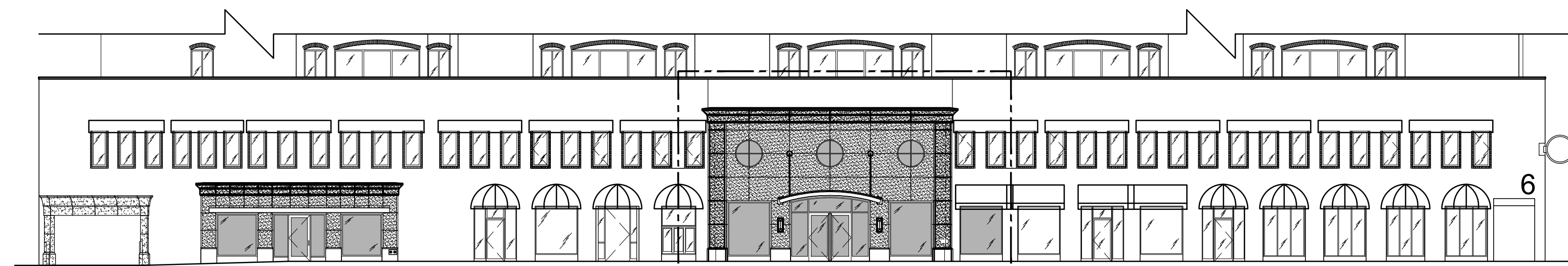
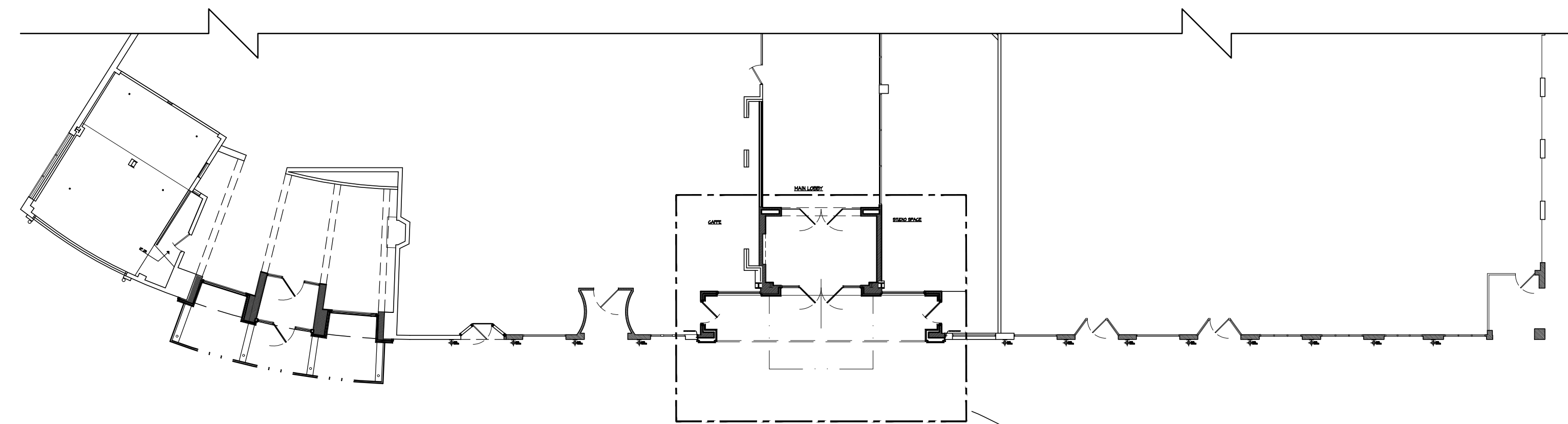
MATERIAL SCHEDULE.				
MATERIAL	FINISH	LOCATION	SPEC.	DESCRIPTION
LIMESTONE	SMOOTH FACE. COLOR: BUFF	COMMERCIAL, APARTMENT, & GARAGE ENTRANCE AREA(S).		STANDARD RAKED MORTAR JOINTS TO MATCH EXST. ARCH.
GLASS - CANOPY	GLASS = CLEAR.	COMMERCIAL LOBBY CANOPY.	SAFETY LAMINATED TEMPERED.	
STEEL	BLACK.	COMMERCIAL LOBBY CANOPY.	FINAL STL. COMPONENTS PER FABRICATORS SPECIFICATIONS.	EXPOSED STRUCTURAL MEMBERS, HARDWARE, AND FASTENERS.
WALL SCIENCE	MATTE BLACK.	COMMERCIAL LOBBY ENTRANCE.	MILLENNIUM FREESCALE FSB48T-3E-MFA-MB- 6TIL40K-O-D-V	MATTE PEARLESCENT HIGH IMPACT ACRYLIC LENS.
GLASS & ALUMINUM - DR/WINDOW	GLASS = CLEAR. FRAME = EXTRA DARK BRONZE.	COMMERCIAL, APARTMENT, & GARAGE ENTRANCE AREA(S).	14000 SERIES FLUSH GLAZE TUBELITE	1" INSULATED TEMPERED GLASS.
GRANITE STONE	SMOOTH = BLACK TO MATCH EXST. ARCH. V.I.F.	COMMERCIAL, APARTMENT, & GARAGE ENTRANCE AREA(S).		STONE TO MATCH CHARACTERISTICS OF EXST. STONE UNDER STORE FRONT INVOIS ALONG REST OFF FACADE.
E.I.F.S. (EXTERIOR INSULATION AND FINISH SYSTEM)	TEXTURE & COLOR (BUFF) TO MATCH LIMESTONE.	COMMERCIAL, APARTMENT, & GARAGE ENTRANCE AREA(S).		ENTABLATURE FOR APARTMENT & COMMERCIAL ENTRANCE. APARTMENT CANOPY GLG. & GARAGE ENTRANCE INTERIOR.
ALUMINUM - WALL CAP.	TEXTURE = SMOOTH. COLOR = EXTRA DARK BRONZE.	ENTIRE LENGTH OF MERRILLWOOD FACADE.		3RD FLR. PARAPET WALL CAP.
AWNING -	FABRIC. COLOR = BLACK.	ENTIRE LENGTH OF MERRILLWOOD FACADE.	BLACK POWDERCOATED GALV STL. FRAMED.	CANOPIES FOR 2ND FLR. WINDOWS.

KEY PLAN

SCALE: 1/16" = 1'-0"

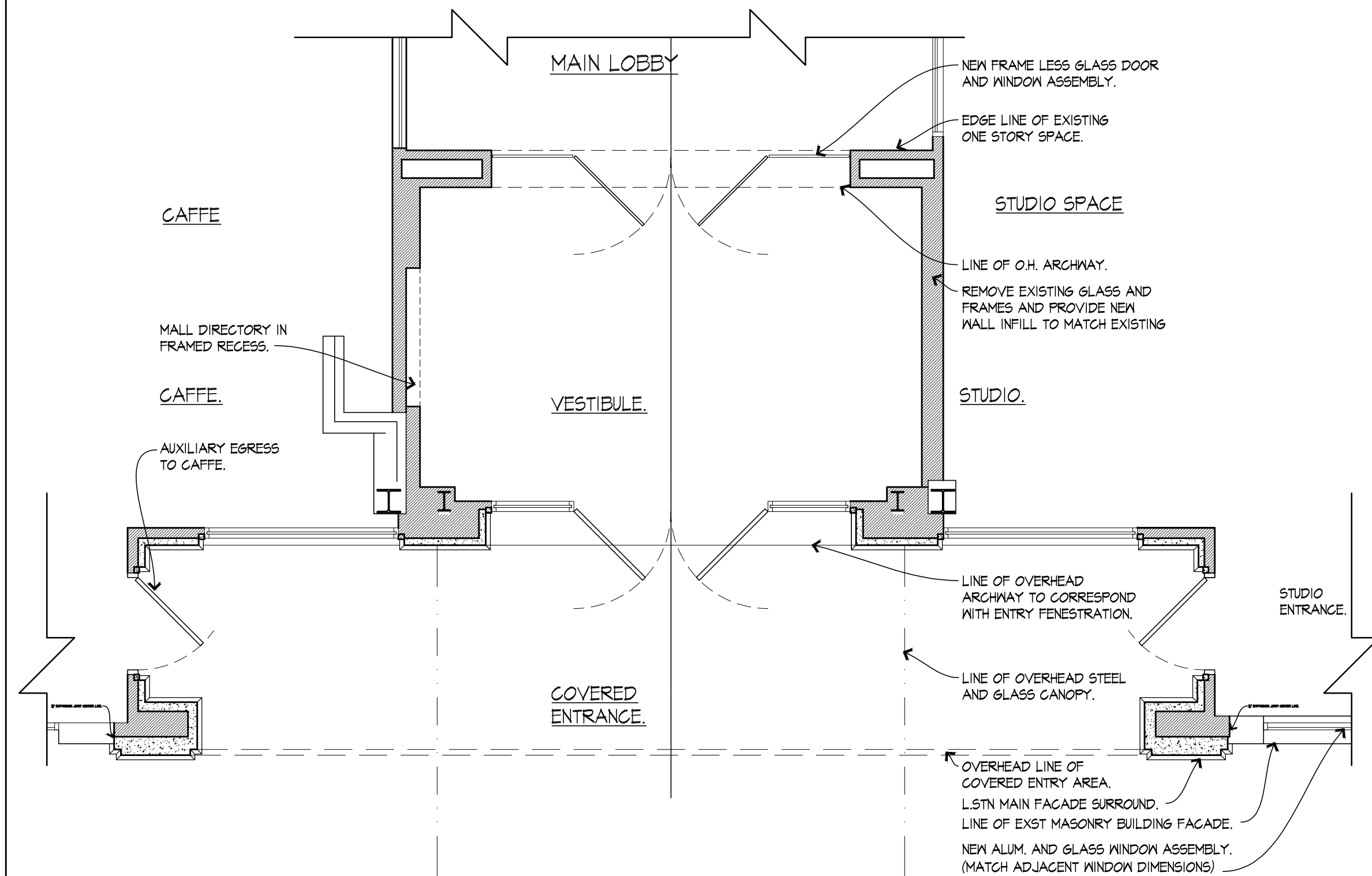
**KEY MERRILL
STREET ELEV**

SCALE: 1/16" = 1'-0"



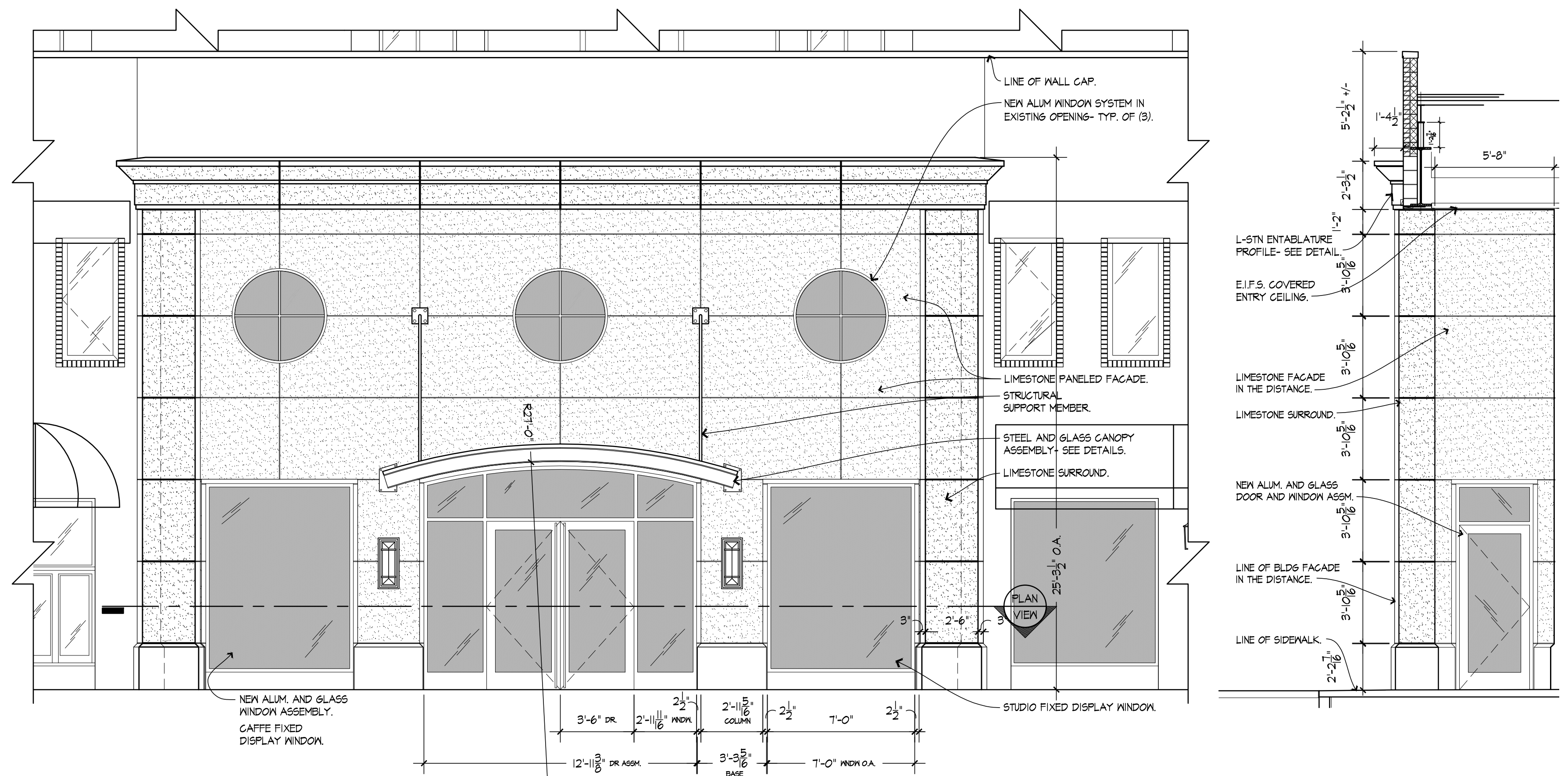
SEE DETAIL "C-2",
COMMERCIAL LOBBY.

SEE DETAIL "C-1",
COMMERCIAL LOBBY.



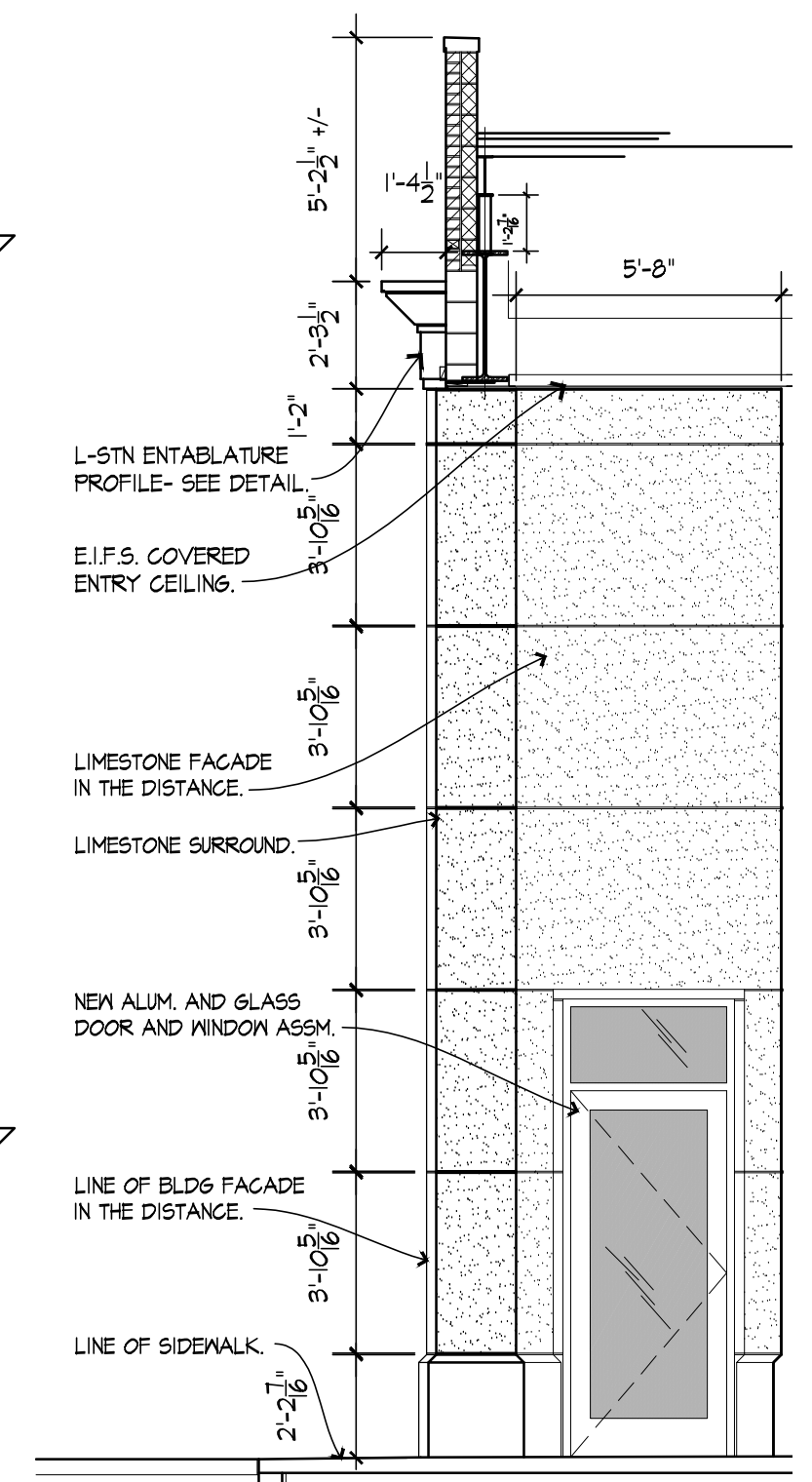
"C-2" PROPOSED PLAN DETAIL

SCALE: 1/4" = 1'-0"



"C-1" PROPOSED ELEVATION DETAIL

SCALE: 1/4" = 1'-0"



"C-3" PROPOSED ELEV.

SCALE: 1/4" = 1'-0"





251 East Merrill

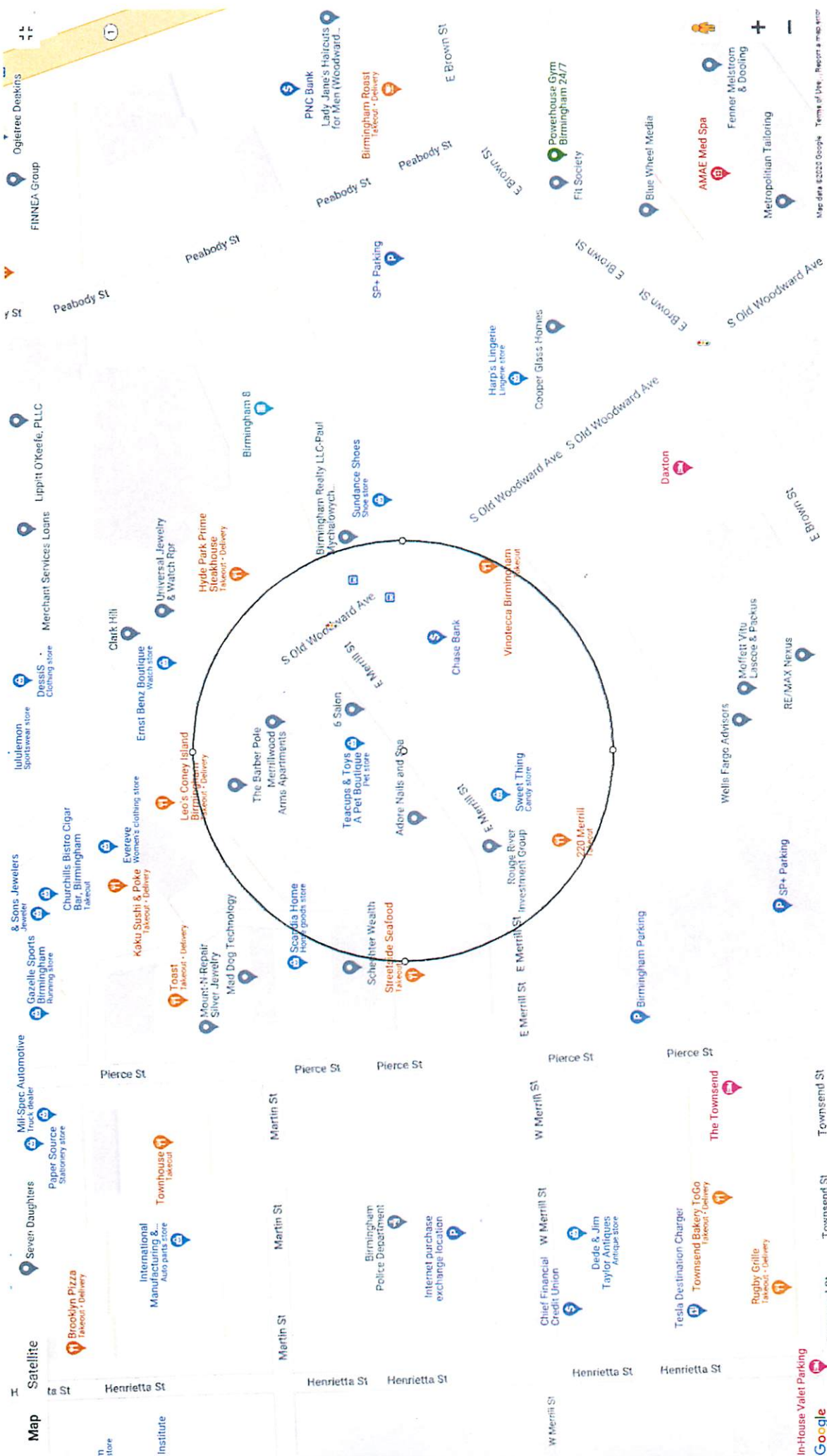
Vicinity Map



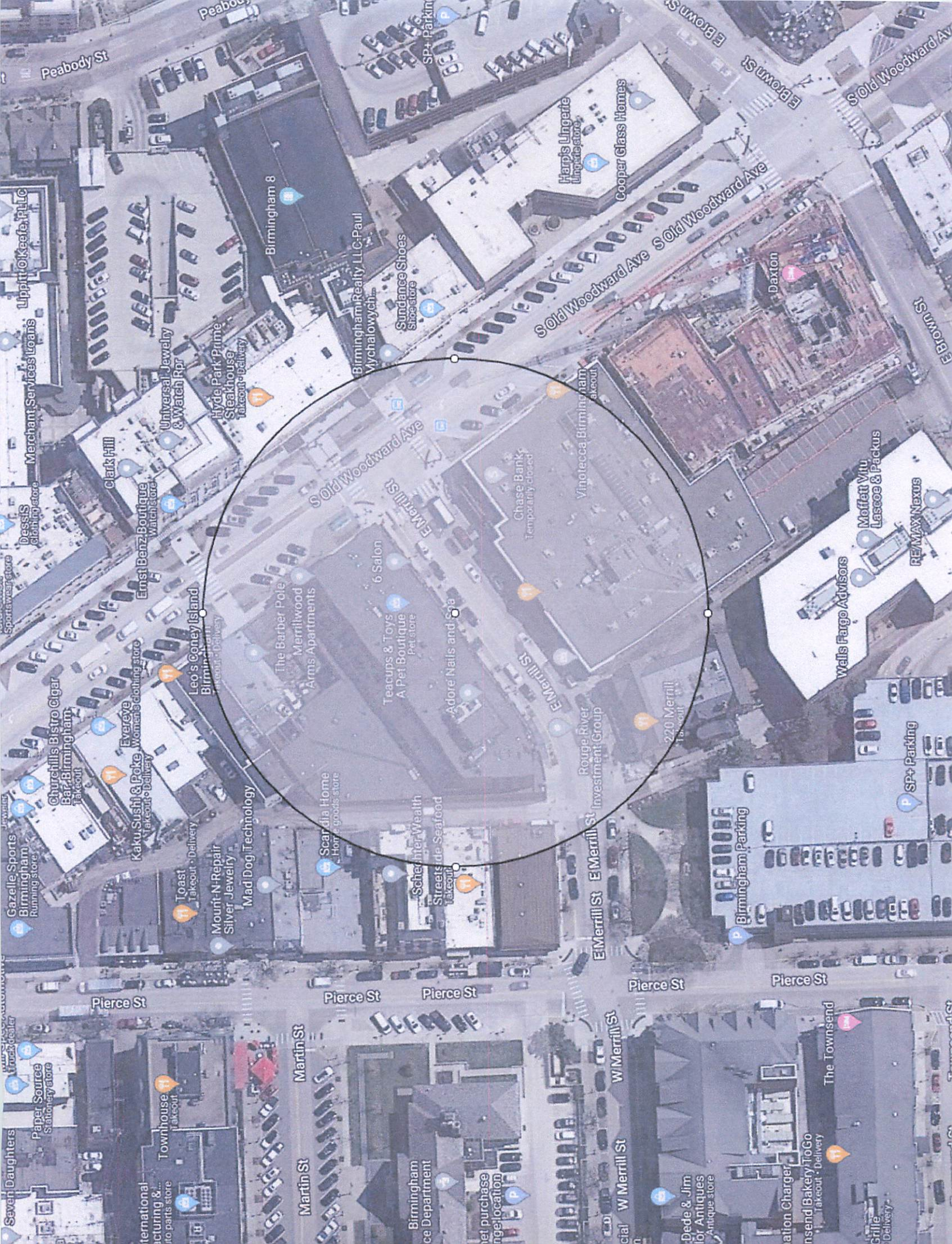
251 East Merrill

Vicinity Map





Map data ©2025 Google Terms of Use Report a map error





SCHECHTER

OFFICE SPACE
FOR LEASE
Please Call
248 646-7500

OFFICE SPACE
FOR LEASE
Please Call
248 646-7500

240

BIRMINGHAM
Beauty Bar
248-224-1519
The Appointment Only
Beauty Bar

BIRMINGHAM

Beauty Bar
Lash Lift & Tint
Body Waxing



Adore Nails & Spa

La Strada Dolce e Caffè

251 MERRILL

OPEN

EXIT ➤

**OFFICE SPACE
FOR LEASE**
Please Call
248 646-7500

MERRILLWOOD
BLDG.
OFFICE



Special Land Use Permit Application

Planning Division

Form will not be processed until it is completely filled out.

1. Applicant

Name: TAPPER'S GOLD EXCHANGE
Address: 6337 ORCHARD LAKE ROAD
W.B. MI 48222
Phone Number: 248-865-6336
Fax Number: 248-922-7717
Email address: MATAPPER@TAPPERS.COM

3. Applicant's Attorney/Contact Person

Name: JEFFREY ISHBIA
Address: 251 E. MERRILL ST. #212
BIRMINGHAM MI 48009
Phone Number: 248-647-8590
Fax Number: 248-647-8596
Email address: JAI@IGLAWFIRM.COM

2. Property Owner

METALLWOOD COLLECTION.
Name: JEFFREY ISHBIA
Address: 251 E. MERRILL ST. #212
BIRMINGHAM MI 48009
Phone Number: 248-647-8590
Fax Number: 248-647-8596
Email address: JAI@IGLAWFIRM.COM

4. Project Designer/Developer

Name: _____
Address: _____
Phone Number: _____
Fax Number: _____
Email address: _____

5. Required Attachments

I. Two (2) paper copies and one (1) digital copy of all project plans including:

- A detailed Existing Conditions Plan including the subject site in its entirety, including all property lines, buildings, structures, curb cuts, sidewalks, drives, ramps and all parking on site and on the street(s) adjacent to the site, and must show the same detail for all adjacent properties within 200 ft. of the subject site's property lines;
- A detailed and scaled Site Plan depicting accurately and in detail the proposed construction, alteration or repair;
- A certified Land Survey;
- Interior floor plans;

- A Landscape Plan;
- A Photometric Plan;
- Colored elevation drawings for each building elevation;

- Specification sheets for all proposed materials, light fixtures and mechanical equipment;
- Samples of all proposed materials;
- Photographs of existing conditions on the site including all structures, parking areas, landscaping and adjacent structures;
- Current aerial photographs of the site and surrounding properties;
- Warranty Deed, or Consent of Property Owner if applicant is not the owner;
- Any other data requested by the Planning Board, Planning Department, or other City Departments.

6. Project Information

Address/Location of the property: 251 E. MERRILL
BIRMINGHAM, MICH. 48009
Name of development: MERRILLWOOD BUILDING
Sidwell #: _____
Current Use: PREVIOUS RETAIL JEWELRY
Proposed Use: SALES/RETAIL, GOLD BUYING
Area of Site in Acres: _____
Current zoning: _____
Is the property located in the floodplain? _____
Name of Historic District Site is located in: _____
Date of Historic District Commission Approval: _____
Date of Application for Preliminary Site Plan: _____
Date of Preliminary Site Plan Approval: _____

Date of Application for Final Site Plan: _____
Date of Final Site Plan Approval: _____
Date of Application for Revised Final Site Plan: _____
Date of Revised Final Site Plan Approval: _____
Date of Design Review Board Approval: _____
Is there a current SLUP in effect for this site? _____
Date of Application for SLUP: _____
Date of SLUP Approval: _____
Date of Last SLUP Amendment: _____
Will proposed project require the division of platted lots? _____

Will proposed project require the combination of platted lots? _____

7. Details of the Proposed Development (attach separate sheet if necessary)

8. Buildings and Structures

Number of Buildings on Site: ONE
Height of Buildings & # of Stories: TWO STORIES

Use of Buildings: OFFICE / MEDICAL / RETAIL / SERVICES
Height of Rooftop Mechanical Equipment: _____

9. Floor Use and Area (in Square Feet)

Proposed Commercial Structures:

Total basement floor area: APPROX 1,100 sq. ft.
Number of square feet per upper floor: _____
Total floor area: _____
Floor area ratio (total floor area ÷ total land area): _____

Open space: _____
Percent of open space: _____

Office Space: APPROX. 200 sq. ft.
Retail Space: APPROX 400 sq. ft.
Industrial Space: NONE
Assembly Space: NONE
Seating Capacity: N/A
Maximum Occupancy Load: N/A

Proposed Residential Structures:

Total number of units: NONE
Number of one bedroom units: _____
Number of two bedroom units: _____
Number of three bedroom units: _____
Open space: _____
Percent of open space: _____

Rental units or condominiums? _____
Size of one bedroom units: _____
Size of two bedroom units: _____
Size of three bedroom units: _____
Seating Capacity: _____
Maximum Occupancy Load: _____

Proposed Additions:

Total basement floor area, if any, of addition: NONE
Number of floors to be added: _____
Square footage added per floor: _____
Total building floor area (including addition): _____
Floor area ratio (total floor area ÷ total land area): _____

Open Space: _____
Percent of open space: _____

Use of addition: _____
Height of addition: _____
Office space in addition: _____
Retail space in addition: _____
Industrial space in addition: _____
Assembly space in addition: _____
Maximum building occupancy load (including addition): _____

10. Required and Proposed Setbacks

Required front setback: NONE
Required rear setback: _____
Required total side setback: _____
Side setback: _____

Proposed front setback: _____
Proposed rear setback: _____
Proposed total side setback: _____
Second side setback: _____

11. Required and Proposed Parking

Required number of parking spaces: NONE
Typical angle of parking spaces: _____
Typical width of maneuvering lanes: _____
Location of parking on site: _____
Location of parking off site: _____
Number of light standards in parking area: _____
Screenwall material: _____

Proposed number of parking spaces: _____
Typical size of parking spaces: _____
Number of spaces <180 sq. ft.: _____
Number of handicap spaces: _____
Shared parking agreement? _____
Height of light standards in parking area: _____
Height of screenwall: _____

12. LandscapingLocation of landscape areas: N/A

Proposed landscape material:

13. StreetscapeSidewalk width: N/ANumber of benches:

Number of planters:

Number of existing street trees:

Number of proposed street trees:

Streetscape plan submitted?

Description of benches or planters:

Species of existing trees:

Species of proposed trees:

14. LoadingRequired number of loading spaces: N/ATypical angle of loading spaces:

Screenwall material:

Location of loading spaces on site:

Proposed number of loading spaces:

Typical size of loading spaces:

Height of screenwall:

Typical time loading spaces are used:

15. Exterior Waste ReceptaclesRequired number of waste receptacles: N/ALocation of waste receptacles:

Screenwall material:

Proposed number of waste receptacles:

Size of waste receptacles:

Height of screenwall:

16. Mechanical Equipment**Utilities and Transformers:**Number of ground mounted transformers: N/ASize of transformers (L•W•H):

Number of utility easements:

Screenwall material:

Location of all utilities & easements:

Height of screenwall:

Ground Mounted Mechanical Equipment:Number of ground mounted units: N/ASize of ground mounted units (L•W•H):

Screenwall material:

Location of all ground mounted units:

Height of screenwall:

Rooftop Mechanical Equipment:Number of rooftop units: N/AType of rooftop units:

Screenwall material:

Location of screenwall:

Location of all rooftop units:

Size of rooftop units (L•W•H):

Percentage of rooftop covered by mechanical units:

Height of screenwall:

Distance from rooftop units to all screenwalls:

17. Accessory BuildingsNumber of accessory buildings: N/ALocation of accessory buildings:

Size of accessory buildings:

Height of accessory buildings:

18. Building LightingNumber of light standards on building: N/AType of light standards on building:

Size of light fixtures (L•W•H): _____
Maximum wattage per fixture: _____
Light level at each property line: _____

Height from grade: _____
Proposed wattage per fixture: _____

19. Site Lighting

Number of light fixtures: _____
Size of light fixtures (L•W•H): _____
Maximum wattage per fixture: _____
Light level at each property line: _____

Type of light fixtures: _____
Height from grade: _____
Proposed wattage per fixture: _____
Holiday tree lighting receptacles: _____

20. Adjacent Properties

Number of properties within 200 ft.: ONE

Property #1

Number of buildings on site: ONE
Zoning district: _____
Use type: _____
Square footage of principal building: _____
Square footage of accessory buildings: _____
Number of parking spaces: _____

Property Description: _____

North, south, east or west of property? _____

Property #2

Number of buildings on site: NONE
Zoning district: _____
Use type: _____
Square footage of principal building: _____
Square footage of accessory buildings: _____
Number of parking spaces: _____

Property Description: _____

North, south, east or west of property? _____

Property #3

Number of buildings on site: NONE
Zoning district: _____
Use type: _____
Square footage of principal building: _____
Square footage of accessory buildings: _____
Number of parking spaces: _____

Property Description: _____

North, south, east or west of property? _____

Property #4

Number of buildings on site: NONE
Zoning district: _____
Use type: _____
Square footage of principal building: _____
Square footage of accessory buildings: _____
Number of parking spaces: _____

Property Description: _____

North, south, east or west of property? _____

Property #5

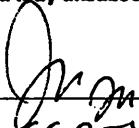
Number of buildings on site: NONE
Zoning district: _____
Use type: _____
Square footage of principal building: _____
Square footage of accessory buildings: _____
Number of parking spaces: _____

Property Description: _____

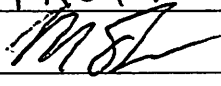
North, south, east or west of property? _____

The undersigned states the above information is true and correct, and understands that it is the responsibility of the applicant to advise the Planning Division and / or Building Division of any additional changes made to an approved site plan. The undersigned further states that they have reviewed the procedures and guidelines for Site Plan Review in Birmingham, and have complied with same. The undersigned will be in attendance at the Planning Board meeting when this application will be discussed.

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 Owner:  Date: 9-17-20

Print Name: JEFFREY A. ISHBIA

Signature of Applicant:  Date: 7/26/20

Print Name: MARK TAPPER

Signature of Architect: _____ Date: _____

Print Name: _____

Office Use Only

Application #: _____ Date Received: _____ Fee: _____

Date of Approval: _____ Date of Denial: _____ Accepted by: _____

165320

NET AMOUNT

	AMOUNT	AMOUNT	NET AMOUNT
	2,800.00	0.00	2,800.00
Total			2,800.00

Comerica Bank

9-9/720

165320

AMOUNT

\$2,800.00

970338-04-10

17

MP

Security Features Included Details on back.

THE BACK OF THIS DOCUMENT CONTAINS CHECK SECURITY WATERMARK AND COIN REACTIVELY

11:16:53.201: 1:07200000961: 1852473881



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OUR MISSION

Tapper's mission is to provide you with a luxury shopping experience with unparalleled customer service. As a multi-generation family-owned business, we bring a long term perspective to all of our relationships, driven by honesty, accountability, community involvement, and excellence. We are committed to delivering on this promise every day.

[Learn about our history »](#)

[Learn about our community »](#)

ABOUT TAPPER'S

There's joy in finding the perfect piece of jewelry. But... there's even more in finding the perfect jeweler. At Tapper's, our family has been Michigan's most trusted since 1977. With generations of experience, we travel around the world to curate the finest collection of designer jewelry and luxury timepieces. And as Michigan's largest direct diamond importer, we don't pay price premiums to middlemen. So, visit one of our three stores, and we'll guide you to what will make you look and feel your best.

You can also turn to our talented team for...

- ♦ Custom jewelry design
- ♦ Appraisals
- ♦ Gold and estate buying
- ♦ Restoration and repair of jewelry and fine timepieces



**BEST PLACE TO BUY
AN ENGAGEMENT RING
2018**

**BEST JEWELER
2018**



**BEST RINGS
2017**



**BEST JEWELRY STORE
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**BEST PLACE TO BUY
AN ENGAGEMENT OR
WEDDING RING
2017**

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Your Phone Number

Subject *

Please select

Your Comments / Questions *

SUBMIT



**ORCHARD MALL
WEST BLOOMFIELD, MICHIGAN**

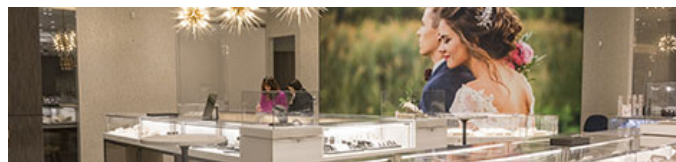


6337 Orchard Lake Road
West Bloomfield, MI 48322
Phone: 248-932-7700
Fax: 248-932-7717
1-800-337-GIFT

Monday, Tuesday, Wednesday,
Thursday, Friday, Saturday
10:30am-6pm
Sunday: 12pm-4pm

[View on map »](#)

**SOMERSET COLLECTION NORTH
TROY, MICHIGAN**



2800 West Big Beaver Road
Troy, MI 48084
Phone: 248-649-2000
1-800-337-GIFT

Monday, Tuesday, Wednesday,
Thursday, Friday, Saturday 11am-
7pm
Sunday 12pm-6pm

[View on map »](#)

**TWELVE OAKS MALL
NOVI, MICHIGAN**



27716 Novi Road
Novi, Michigan
48377
Phone: 248-465-1800
Fax: 248-465-1818
1-800-337-GIFT

Monday, Tuesday, Wednesday,
Thursday Friday, Saturday 11am-
7pm
Sunday 12pm-6pm

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CUSTOMER CARE

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Our mission is to provide a luxury shopping experience with unparalleled customer service to all of our guests, both in-store and online.

We are passionate about consistently providing you a memorable shopping experience. The benefits of shopping at Tapper's go well beyond our fabulous selection of diamonds, fine jewelry, and watches. Please select from the list below to learn more about the benefits of shopping with a full service jeweler.

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[GIFT WRAPPING AND ENCLOSURE CARDS](#)

[GIFT CARDS](#)

[INSURANCE REPLACEMENT SERVICES](#)

[LIFETIME DIAMOND LOSS PROTECTION PLAN](#)

[SHIPPING & RETURNS](#)

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TAPPER'S GOLD EXCHANGE FAQs

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WHAT DO YOU BUY?

We buy gold of 10K, 14K, 16K, 18K, 21K, 22K, & 24K purity, dental gold, natural-mined diamonds, estate jewelry (please bring an appraisal if you have one), sterling silver, platinum, class rings (made out of precious metals), sterling silver silverware sets, sterling silver platters, sterling silver pitchers, sterling silver serving pieces, precious metal coins, bullion, and certain timepieces based upon watch manufacturer and watch condition.

DO YOU BUY ALL GOLD-FILLED OR GOLD-PLATED ITEMS?

In general, no we do not purchase gold-filled nor gold-plated items. There are a few rare circumstances when a gold-filled or gold-plated item has significant historical significance and in those situations we will most likely be interested in purchasing those items.

DO YOU BUY SILVERWARE?

We love buying sterling silver silverware sets, sterling silver platters, sterling silver pitchers, sterling silver serving pieces, sterling silver candle sticks, and basically anything else that is sterling silver. You should know that many sterling silver housewares have some type of wax or resin filler to intentionally increase the weight of the item and when we purchase the items we are required to deduct the weight of these filler items. When purchasing sterling silver housewares we are only interested in the value of the sterling silver itself and not the utilitarian value of the item. Please note that we DO NOT BUY silverware that is either made out of stainless steel or silver-plate.

DO YOU BUY DIAMONDS?

Yes, we purchase natural-mined diamonds. We will evaluate your diamond during our consultation. If you have a certified diamond, please include your certification or appraisal. We are very interested in buying most diamonds, but please be aware that there are certain diamonds that either due to current market factors, or our current inventory position that would prevent us from making an offer to purchase. In addition, when bringing in a piece of jewelry with several small diamonds set in the piece, it is often in the clients best interest to just include the value of the diamonds in the piece of jewelry's overall weight, rather than face the labor expense of removing these diamonds and purchasing them as a separate lot.

DO YOU PRICE MATCH?

At Tapper's Gold Exchange, we are so confident that we pay top dollar for your gold and silver jewelry, that we have an industry leading 110% Price Match Guarantee. If you received a written offer on a gold purchase within the last 3 days that is higher than Tapper's Gold Exchange's current offer, Tapper's Gold Exchange will match that offer and pay you 10% more on the difference! Certain restrictions do apply, please speak with your gold and estate buyer for complete details.

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[Service After the Sale](#)

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HOW DO I GET PAID?

You will have 3 options for payment: direct deposit, Tapper's Gold Exchange corporate check, or PayPal.

HOW LONG WILL IT TAKE TO GET MY OFFER?

You will receive your offer within 24 hours of concierge pick-up.

WHO WILL PICK-UP MY JEWELRY?

Your jewelry will be picked up by a Tapper's Security Officer. All Tapper's Security Officers are retired active off-duty police officers for your safety and protection.

DO YOU PRACTICE SOCIAL DISTANCING?

Yes. We take every precaution to ensure both your safety and the safety of our Security Officers. We follow all CDC precautions and recommendations, as well as State of Michigan guidelines including sanitizing materials, wearing gloves, and contactless interaction.

AM I REQUIRED TO SELL MY GOLD ONCE IT HAS BEEN PICKED UP?

No. You will receive a free no obligation quote from Tapper's Gold Exchange. If you choose not to accept the offer, your gold will be returned to you within 3-5 business days.

ARE MY ITEMS SAFE?

Yes. Your items will be transported by a Tapper's Security Officer and are covered by our insurance once in our possession.

ARE MY ITEMS INSURED?

Yes. We insure your items while in our possession up to \$25,000; however, if you believe your items are worth more than \$25,000 we will be happy to extend an additional insurance policy to assure the value of your items are properly insured and protected. Please call us for details.

IS THERE A COST FOR THIS SERVICE?

No. Tapper's Gold Exchange Concierge Service is provided free of charge.

DO YOU HAVE ANY STORE FRONT LOCATIONS?

Yes. Tapper's Gold Exchange can be found in all 3 of Tapper's Jewelry Metro Detroit locations (Orchard Mall in West Bloomfield, Twelve Oaks Mall in Novi, & Somerset Collection in Troy). West Bloomfield is now open Tuesday-Saturday 10am-6pm for in-store gold buyback. We offer curbside only gold buyback at Somerset Collection.

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HOW LONG DOES IT TAKE TO GET PAID?

We offer express options so that you get paid fast. Depending on the payment method that you choose, payment time can vary.

PayPal – PayPal is generally the fastest payment method. In most cases, your payment will be available in 24 hours or less. We will need the email address associated with your PayPal account in order to send payment through PayPal.

Direct Deposit/ACH – In this method, payment will be transferred directly from our bank account to yours. To use this method, we will need your bank routing number and the account number of where you would like the money deposited, along with a voided check (the physical check or a photo of the check will work). If you select this payment method, you will generally receive funds in less than 3-5 days.

Check – In this option, you will receive a paper check in the mail from Tapper's Gold Exchange. Due to the process of cutting and mailing a check, this process should take less than 5-7 days to receive payment.

TRADE IN - TRADE UP

Time for more sparkle? Trade in your old diamond and get a full credit applied toward the purchase of a new one!

FINANCING WITH OUR TAPPER'S CREDIT CARD

Making your dreams come true is easy with the variety of financing options we offer.

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Learn more about the Tapper's Difference.

DIAMOND BUYING GUIDE

It's probably the most significant purchase you will make. Let us give you a hand.

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City Of Birmingham
Regular Meeting Of The Planning Board
Wednesday, December 9, 2020
Held Remotely Via Zoom And Telephone Access

2. 251 E. Merrill, Suite 236 – Tapper’s Gold Exchange (Merrillwood Building),
Final Site Plan and Design Review to permit a jewelry store including the buying and selling of precious metals in a second floor suite.

Chairman Clein recused himself from the item citing a potential conflict-of-interest.

Vice-Chairman Williams facilitated the item’s discussion.

PD Ecker presented for the City and John Henke spoke as attorney for the applicant.

Mark Tapper, owner and applicant, was also available.

In reply to Board inquiries, PD Ecker stated:

- No other applicants have expressed interest in opening a business that would be a regulated use within 1,000 feet of 251 E. Merrill.
- This location would be selling new jewelry in addition to buying and selling precious metals and jewelry.
- If this approval were granted, the approval would stay with the applicant and not with the location.

In reply to an inquiry from Mr. Share, Mr. Tapper stated that some small percentage of the business would be collateralized loans.

Mr. Henke explained lending is authorized by a pawn license, which Tapper’s will seek from the Birmingham Police Department in the event of a SLUP approval.

Motion by Mr. Share

Seconded by Mr. Jeffares to recommend approval of the Special Land Use Permit to the City Commission to permit the operation of Tapper’s Gold Exchange in compliance with Article 7, Section 7.36 and Article 7, Section 7.21 of Birmingham Code as a regulated use at 251 E. Merrill, Suite 236.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

Motion by Mr. Share

Seconded by Ms. Whipple-Boyce to recommend approval of the Final Site Plan to the City Commission to permit the operation of Tapper’s Gold Exchange at 251 E. Merrill, Suite 236.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

Mr. Tapper thanked the Board for their work on behalf of the City.

DRAFT

DATE: December 21, 2020

TO: Joseph A. Valentine, City Manager

FROM: Paul A. Wells, Fire Chief

SUBJECT: LIFEPAK 15 v4 defibrillators

INTRODUCTION:

The Birmingham Fire Department currently has two LIFEPAK 15 v2 (Version 2) defibrillators on frontline vehicles. These defibrillators will soon no longer be serviced or repaired by the manufacturer. The Fire Department recommends replacing both defibrillators before March 17, 2021 in order to receive a trade-in credit and discounts for purchasing two updated LIFEPAK 15 v4 (Version 4) defibrillators.

BACKGROUND:

The Birmingham Fire Department purchased the v2 LIFEPAK 15 defibrillators in 2013. The manufacturer typically gives their product an eight-year lifespan per FDA recommendations. As technology changes, newer LIFEPAK 15 defibrillator versions replace versions with outdated software, etc. The newer model is more durable in harsh environments and has a longer battery life. Currently the Fire Department has four LIFEPAK 15s in service. Two v2 defibrillators and two v4 defibrillators. Each of our four licensed advanced life support trucks must have a defibrillator on them. Stryker is a sole source vendor for LIFEPAK products.

LEGAL REVIEW:

This purchase does not require a legal review.

FISCAL IMPACT:

The purchase of this equipment was not budgeted in the fiscal year 2020-2021 budget, therefore, an amendment to the Fire Department budget is necessary. The cost for two LIFEPAK 15 v4 defibrillators is \$73,460.00. However, after discounts and trade-in credits totaling \$36,730.00, the final purchase price will be \$37,554.50. Additionally, the Fire Department will save \$3,000 on the service agreements on the older LIFEPAK 15 v2 since the new defibrillators come with a free one-year service agreement.

SUMMARY:

The Birmingham Fire Department is requesting to purchase two LIFEPAK 15 v4 defibrillators and trade-in two LIFEPAK 15 v2 defibrillators for a purchase price of \$37,554.50. This purchase must be approved by March 17, 2021 in order to take advantage of discounts, incentives, and trade-ins that total \$39,730.00 in savings.

ATTACHMENTS:

LIFEPAK 15 v4 with accessories quote.

SUGGESTED RESOLUTION:

To approve a purchase of two LIFEPAK 15 v4 defibrillators plus accessories from Stryker in the amount of \$37,554.50 from account #101-336.000-971.0100 and further to approve the appropriation and amendment to the 2020-2021 General Fund budget as follows:

General Fund:

Revenues

Draw from Fund Balance	101-000.000-400.0000	<u>\$37,560</u>
Total Revenues		<u>\$37,560</u>

Expenditures

Public Safety – Fire - Mach. & Equip.	101-336.000-971.0100	<u>\$37,560</u>
Total Expenditures		<u>\$37,560</u>



LP15 V2 Upgrade

Quote Number: 10300443

Remit to: **Stryker Medical**

P.O. Box 93308

Chicago, IL 60673-3308

Version: 1

Prepared For: BIRMINGHAM FIRE DEPT

Rep: Tim Hornak

Attn: PAUL WELLS

Email: tim.hornak@stryker.com

pwells@bhamgov.org

Phone Number: (231) 578-7801

(248) 318-1777

Quote Date: 12/17/2020

Expiration Date: 03/17/2021

Delivery Address

Name: BIRMINGHAM FIRE DEPT

Account #: 1155751

Address: 572 S ADAMS

BIRMINGHAM

Michigan 48009-6755

End User - Shipping - Billing

Name: BIRMINGHAM FIRE DEPT

Account #: 1155751

Address: 572 S ADAMS

BIRMINGHAM

Michigan 48009-6755

Bill To Account

Name: CITY OF BIRMINGHAM

Account #: 1155750

Address: PO BOX 3001

BIRMINGHAM

Michigan 48012

Equipment Products:

#	Product	Description	Qty	Sell Price	Total
1.0	99577-001957	LIFEPAK 15 V4 Monitor/Defib - Manual & AED, Trending, Noninvasive Pacing, SpO2, SpCO, NIBP, 12-Lead ECG, EtCO2, BT. Incl at N/C: 2 pr QC Electrodes (11996-000091) & 1 Test Load (21330-001365) per device, 1 Svc Manual CD (26500-003612) per order	2	\$36,730.00	\$73,460.00
2.0	41577-000288	Ship Kit -QUIK-COMBO Therapy Cable; 2 rolls100mm Paper; RC-4, Patient Cable, 4ft.; NIBP Hose, Coiled; NIBP Cuff, Reusable, adult; 12-Lead ECG Cable, 4-Wire Limb Leads, 5ft; 12-Lead ECG Cable, 6-Wire Precordial attachment	2	\$0.00	\$0.00
3.0	11577-000002	LIFEPAK 15 Basic carry case w/right & left pouches; shoulder strap (11577-000001) included at no additional charge when case ordered with a LIFEPAK 15 device	2	\$286.45	\$572.90
4.0	11220-000028	LIFEPAK 15 Carry case top pouch	2	\$51.85	\$103.70
5.0	11260-000039	LIFEPAK 15 Carry case back pouch	2	\$73.95	\$147.90
6.0	TR-15V1V2-LP15	TRADE-IN-STRYKER LP15V1/V2 TOWARDS PURCHASE OF LIFEPAK 15	2	-\$18,365.00	-\$36,730.00
Equipment Total:					\$37,554.50

Price Totals:

Grand Total: \$37,554.50

Comments:

END OF YEAR PROMO: ONE TIME OFFER
UPGRADE FROM V2 TO V4 MONITOR. END OF
SERVICE LIFE ON MONITORS IS 8 YEARS.



LP15 V2 Upgrade

Quote Number: 10300443

Version: 1

Prepared For: BIRMINGHAM FIRE DEPT

Attn: PAUL WELLS

pwells@bhamgov.org

(248) 318-1777

Quote Date: 12/17/2020

Expiration Date: 03/17/2021

Remit to:

Stryker Medical

P.O. Box 93308

Chicago, IL 60673-3308

Rep:

Tim Hornak

Email:

tim.hornak@stryker.com

Phone Number:

(231) 578-7801

Prices: In effect for 60 days.

Terms: Net 30 Days

Ask your Stryker Sales Rep about our flexible financing options.

AUTHORIZED CUSTOMER SIGNATURE

PENDING APPROVAL

Deal Consummation: This is a quote and not a commitment. This quote is subject to final credit, pricing, and documentation approval. Legal documentation must be signed before your equipment can be delivered. Documentation will be provided upon completion of our review process and your selection of a payment schedule.

Confidentiality Notice: Recipient will not disclose to any third party the terms of this quote or any other information, including any pricing or discounts, offered to be provided by Stryker to Recipient in connection with this quote, without Stryker's prior written approval, except as may be requested by law or by lawful order of any applicable government agency.

Terms: Net 30 days. FOB origin. A copy of Stryker Medical's standard terms and conditions can be obtained by calling Stryker Medical's Customer Service at 1-800-Stryker.

In the event of any conflict between Stryker Medical's Standard Terms and Conditions and any other terms and conditions, as may be included in any purchase order or purchase contract, Stryker's terms and conditions shall govern.

Cancellation and Return Policy: In the event of damaged or defective shipments, please notify Stryker within 30 days and we will remedy the situation. Cancellation of orders must be received 30 days prior to the agreed upon delivery date. If the order is cancelled within the 30 day window, a fee of 25% of the total purchase order price and return shipping charges will apply.

DATE: January 11th, 2021

TO: Thomas M. Markus, City Manager

FROM: Brooks Cowan, City Planner

APPROVED: Jana Ecker, Planning Director

SUBJECT: Set a Public Hearing for a Lot Combination of 469 and 479 South Old Woodward Avenue Parcel # 1936208011- T2N, R10E, SEC 36 ASSESSOR'S PLAT NO 13 N PART OF LOT 7 BEG AT NW COR OF LOT 7, TH ELY ALG N LOT LINE 234.96 FT TO E LOT LINE, TH SLY 21.15 FT, TH WLY 104.44 FT, TH SLY 8.4 FT, TH WLY 65.37 FT, TH SLY 14.96 FT, TH WLY 58.9 FT TO W LOT LINE, TH NLY 40.28 FT TO BEG and Parcel # 1936208012 - T2N, R10E, SEC 36 ASSESSOR'S PLAT NO 13 PART OF LOT 7 BEG AT SW LOT COR, TH NLY 40.28 FT, TH ELY 58.9 FT, TH NLY 14.96 FT, TH ELY 65.37 FT, TH NLY 8.4 FT, TH ELY 104.44 FT TO E LOT LINE, TH SLY 66.25 FT, TH WLY 211.66 FT TO BEG

INTRODUCTION:

The owner of 469 and 479 S. Old Woodward has applied to combine the two parcels into one in order to construct a 5-story mixed-use building. The applicant received Final Site Plan approval from the Planning Board for the proposed 5-story building on September 23rd, 2020, with one of the conditions of approval being that the applicant receive lot combination approval from the City Commission.

BACKGROUND:

The subject properties are located at the intersection of S. Old Woodward, Hazel Street and Woodward Avenue. The sites currently consist of one story commercial buildings on each property. The now vacant, former Mountain King restaurant is located at 469 S. Old Woodward while the now vacant, former Talmer Bank was located at 479 S. Old Woodward. The applicant is proposing to demolish the existing buildings, combine the two parcels, and construct a 5-story mixed used building with first floor retail and residential uses on floors 2-5.

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 subject site is surrounded by a mix of uses and building heights with major roads on the east and west side of the building. The property has an eight story mixed-use commercial-residential building to the north and a 13 story

mixed-use commercial-residential building across Hazel Street to the south. To the east is Woodward Avenue with auto sales agencies in the Triangle District on the other side of the street. To the west is S. Old Woodward with retail uses one to two stories in height on the opposite side of the street.

In regards to zoning, the proposed building was approved by the Planning Board on September 23rd, 2020. Conditions of approval from the Planning Board related to zoning were that the applicant remove 7 parking spaces within the first 20 feet of the façade along Hazel Street, as well as provide 2 required loading spaces, or obtain a variance from the Board of Zoning Appeals. **The hearing for these two variances is scheduled to be on January 12th, 2021.**

In regards to setback, the Downtown Overlay standards for the D4 Zone require that front building facades be located at the frontage line. The proposed building fronts three streets and is located on the frontage line with a zero foot setback facing S. Old Woodward, Hazel, and Woodward Avenue. **The proposed building satisfies this requirement.**

In regards to height, the Downtown Overlay standards for the D4 Zone permit a maximum of 5 stories 80 feet in height, with the 5th story only permitted as a residential use and being setback 10 feet from the 4th story. The applicant has proposed a 5-story building 80 feet in height, with the 5th floor setback 10 feet from the façade. **The proposed building satisfies this requirement.**

In regards to parking, 469-479 S. Old Woodward is not within the Parking Assessment District, therefore all parking must be provided on site. The site plan indicates a requirement of 75 off-street parking spaces due to the proposed retail and residential uses. The applicant has proposed 84 off-street parking spaces on site, which exceeds the parking requirement by 9 spaces. **The proposed building satisfies this requirement.**

In regards to use, the west side of the building facing S. Old Woodward is along the Downtown Overlay Retail Frontage Line which requires retail use within the first 20 feet of the building. Also, as previously mentioned for height allowance, a 5th story is only permitted with a residential use. The proposed building includes retail use within the first 20 feet along S. Old Woodward, and the 5th story is proposed to be a residential use. **The proposed building satisfies this requirement.**

In regards to applicable Master Plans, the Downtown 2016 Plan recommends mixed-use, multi-story buildings. The proposed building has a mix of retail and residential uses that fits in with the surrounding buildings and will contribute towards activating the downtown area. **The applicant's lot combination appears to align with the recommendations of the Downtown 2016 Plan.**

Accordingly, the lot combination proposal meets 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.*

Given the existing conditions and variety of buildings surrounding the subject properties, 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.

On June 24th, 2020, the Planning Board accepted the Community Impact Study for the proposed 5-story building at 469-479 S. Old Woodward. **Based on the Community Impact Study and 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 applicant has proposed a 5-story building between an 8-story building and a 13-

story building. **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 469 & 479 S. Old Woodward seeking public comment on the proposal.

SUMMARY:

The Planning Division recommends a public hearing be set for February 8th, 2021.

ATTACHMENTS:

- Letter to the City
- Application
- Proof of ownership
- Registered Land Surveys
- Relevant Planning Board minutes related to the proposed 5-story building.

SUGGESTED ACTION:

To set a public hearing for the proposed lot combination of 469-479 S. Old Woodward for February 8th, 2021.



Williams Williams Rattner & Plunkett, P.C.
Attorneys and Counselors

380 North Old Woodward Avenue
Suite 300

Birmingham, Michigan 48009

Tel: (248) 642-0333

Fax: (248) 642-0856

December 11, 2020

Gayle S. McGregor
gsm@wwrplaw.com

By Email & Hand Delivery

Jana Ecker
Brooks Cowan
City of Birmingham
Planning Department
151 Martin Street
Birmingham, MI 48009

Re: 469 and 479 S. Old Woodward (Mountain King/Drive-Thru Site)
Lot Combination Application

Dear Jana and Brooks:

Please let this letter suffice as the required statement with the reason that Birmingham Tower Partners, LLC ("Applicant"), owner of the former Mountain King/Drive-Thru Site, is seeking a lot combination of the two lots that make up 469 and 479 S. Old Woodward.

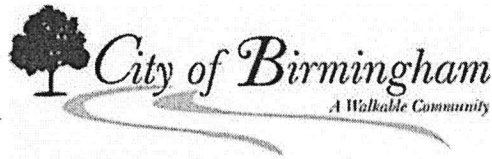
As you know, the Applicant has submitted site plans for the redevelopment of these two lots for a mixed-use retail and residential building within the D4 zoning district and final site plan approval has been granted by the Planning Board. The City's ordinance, Article V, sec. 102-80 et seq., requires the lot combination to occur prior to the issuance of building permits. It is for this reason that the Applicant has submitted a Combination of Platted Lots Application.

Please let us know if there is anything else the City needs to move forward with the Application.

Very truly yours,
WILLIAMS WILLIAMS RATTNER & PLUNKETT, P.C.


Gayle S. McGregor

cc: Birmingham Tower Partners, LLC



Combination of Platted Lots Application

Planning Division

Form will not be processed until it is completely filled out.

1. Applicant

Name: Birmingham Tower Partners, LLC
Address: 251 E. Merrill St., Ste. 205, Birmingham, MI 48009
Phone Number: (248) 892-2222
Fax Number:
Email address: dmarkus@yahoo.com

2. Property Owner

Name: Birmingham Tower Partners, LLC
Address: 251 E. Merrill St., Ste. 205, Birmingham, MI 48009
Phone Number: (248) 892-2222
Fax Number:
Email address: dmarkus@yahoo.com

3. Applicant's Attorney/Contact Person

Name: Richard D. Rattner/Williams, Williams, Rattner & Plunkett, P.C.
Address: 380 N. Old Woodward Ave., Ste. 300, Birmingham, MI 48009
Phone Number: (248) 891-3057 / (248) 642-0333
Fax Number: (248) 642-0856
Email address: rdrattner@wwrplaw.com

4. Project Designer/Developer

Name: PEA Group (for lot combination) / Chris Longe, AIA
Address: 2430 Rochester Ct., Ste. 100, Troy, MI 48063
Phone Number: (844) 813-2949
Fax Number:
Email address: jbutler@peagroup.com / cjlonge@longeaia.com

5. Project Information

Address/Location of Property: 469-479 S. Old Woodward
Sidwell #:
Parcel #: 19-36-208-011 and 19-36-208-012
Current Zoning: D-4

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;

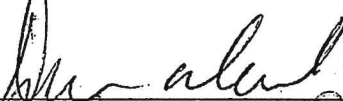
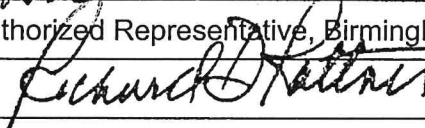
- II. One (1) digital copy of plans;
- III. Proof of ownership;
- IV. Written statement of reasons for request;
- V. A letter of authority or power of attorney in the event the application is made by a person other than the property owner;
- VI. Sketches of proposed development (*optional*);
- VII. Other 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)

The proposed development is a mixed-use with retail and residential.

(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: 12/11/2020
Print Name: Doraid Markus, Authorized Representative, Birmingham Tower Partners, LLC
Signature of Applicant:  Date: 12/11/2020
Print Name: Richard D. Rattner

Office Use Only

Application#: _____ Date Received: _____ Fee: _____
Date of Approval: _____ Date of Denial: _____ Reviewed By: _____



Notice Sign Rental Application Community Development

1. Applicant

Name: Birmingham Tower Partners, LLC
Address: 251 E. Merrill St., Ste. 205, Birmingham, MI 48009
Phone Number: (248) 892-2222
Fax Number: _____
Email address: dmarkus@yahoo.com

2. Property Owner

Name: Birmingham Tower Partners, LLC
Address: 251 E. Merrill St., Ste. 205, Birmingham, MI 48009
Phone Number: (248) 892-2222
Fax Number: _____
Email address: dmarkus@yahoo.com

3. Project Information

Address/Location of Property: 469-479 S. Old Woodward
Name of Development: _____
Area in Acres: 19-36-208-011 and 19-36-208-012

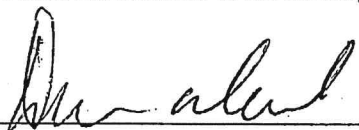
Name of Historic District, if any: _____
Current Use: _____
Current Zoning: _____

4. Date of Board/Commission Review

City Commission: _____
Planning Board: _____
Historic District Commission: _____
Design Review Board: _____

Board of Zoning Appeals: _____
Board of Building Trades Appeals: _____
Housing Board of Appeals: _____
Other: _____

The undersigned states the above information is true and correct, and understands that it is the responsibility of the applicant to post the Notice Sign(s) at least 15 days prior to the date on which the project will be reviewed by the appropriate board or commission, and to ensure that the Notice Sign(s) remains posted during the entire 15 day mandatory posting period. The undersigned further agrees to pay a rental fee and security deposit for the Notice Sign(s), and to remove all such signs on the day immediately following the date of the hearing at which the project was reviewed. The security deposit will be refunded when the Notice Sign(s) are returned undamaged to the Community Development Department. Failure to return the Notice Sign(s) and/or damage to the Notice Sign(s) will result in forfeiture of the security deposit.

Signature of Applicant:  Date: 12/11/20

Office Use Only

Application#: _____ Date Received: _____ Fee: _____
Date of Approval: _____ Date of Denial: _____ Reviewed By: _____

OAKLAND COUNTY TREASURERS 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,
tax liens or titles owed to any other entities.

JUL 21 2017

5.00

ANDREW E. MEISNER, County Treasurer
Sec. 135, Act 206, 1893 as amended

002886

142008
LIBER 50910 PAGE 828
\$26.00 DEED - COMBINED
\$4.00 REMONUMENTATION
\$23,650.00 TRANSFER TX COMBINED
07/28/2017 03:40:56 P.M. RECEIPT# 87418
PAID RECORDED - OAKLAND COUNTY
LISA BROWN, CLERK/REGISTER OF DEEDS

COVENANT DEED

Mountain King Properties, LLC, a Michigan limited liability company, whose address is 469 S. Old Woodward Ave., Birmingham, MI 48009 (the Grantor) Conveys to Birmingham Tower Partners, LLC, a Michigan limited liability company, whose address 251 E. Merrill St., Unit 205, Birmingham, MI 48009 (the Grantee) the premises in the City of Birmingham, County of Oakland, State of Michigan described as:

* Hsiu Tzu Tsung, Sole Member

SEE LEGAL DESCRIPTION IN EXHIBIT A ATTACHED

Commonly known as: 469 S. Old Woodward Ave
Parcel I.D. Number: #19-36-208-011

With all tenements, hereditaments, and appurtenances to it, subject, however, to all matters set forth for SEE REAL ESTATE TRANSFER VALUATION AFFIDAVIT FILED - with covenant to defend title to the property described herein against all persons and demands claiming by, through or under the grantor and no other persons and claims/demands whatsoever.

Seller makes no representations or warranties, of any kind or nature whatsoever, other than those set out above, whether expressed, implied, implied by law, or otherwise, concerning the condition of the title of the property prior to the date the seller acquired title.

Subject to the applicable zoning ordinances, those easements, building and use restrictions, covenants, conditions and other restrictions of record, and the lien of general real estate taxes for the year 2017 and subsequent years which are not yet due.

The Grantor grants to the Grantee the right to make any and all divisions under section 108 of the land division act, Act 288 of the Public Act of 1967.

This property may be located within the vicinity of farmland or 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: June 23, 2017

Mountain King Properties, LLC, a Michigan limited liability company

By: Hsiu Tzu Tsung
Hsiu Tzu Tsung, Sole Member

State of Michigan
County of Oakland

The foregoing instrument was acknowledged before me on this 22nd day of June, 2017, By Mountain King Properties, LLC, a Michigan limited liability company by Hsiu Tzu Tsung, Sole Member.

DONNA L. CURTIS
NOTARY PUBLIC, STATE OF MI
COUNTY OF MACOMB
MY COMMISSION EXPIRES Sep 12, 2020
ACTING IN COUNTY OF OAKLAND

Notary Public Donna L. Curtis
Macomb County, Acting in
My Commission Expires: Oakland

Instrument drafted without opinion by: Walter Quillico, ESQ 28470 W. 13 Mile Rd., Ste. 325 Farmington Hills, MI 48334	When recorded return to 9-12-20 Mountain King Properties, LLC, a Michigan limited liability company
--	---

TC 03-69882
Recording Fees: \$30.00

REVENUE TO BE AFT
AFTER RECORDING

Exhibit A
LEGAL DESCRIPTION RIDER

TC13-69882

Land situated in the City of Birmingham, County of Oakland, State of Michigan
Described as follows:

The Northerly part of Lot 7 of ASSESSOR'S PLAT NO. 13, according to the plat thereof recorded in Liber 51 of Plats, page 15, Oakland County Records, City of Birmingham, Oakland County, Michigan, described as beginning at the Northwesterly corner of said Lot 7 on the Easterly line of 100 foot Woodward Avenue; thence Easterly along Northerly line of said Lot, a distance of 234.96 feet to the Westerly line of 200 foot Hunter Blvd. of the Northeast corner of said Lot 7; thence Southerly along the Westerly line of said Hunter Blvd. or Easterly line of said Lot 7, a distance of 21.15 feet to extension of North face of wall of garage building located on Southerly part of said Lot 7; thence Westerly along said extension of North face of wall and along said North face of wall 104.44 feet to a corner of said garage building; thence Southerly at right angles along Westerly face of wall of said garage building 8.40 feet to a corner of said garage building; thence Westerly at right angles along North face of wall of said garage building 65.37 feet to a corner of said garage building; thence Southerly at right angles along West face of wall of said garage building 14.96 feet to a corner of said garage building; thence Westerly at right angles along North face of wall of said garage building and extension of same 58.90 feet to Westerly line of said Lot 7; thence Northerly along said Westerly line 40.28 feet to the point of beginning.

Commonly known as: 469 S. Old Woodward Ave
Birmingham, MI 48009

Parcel I.D. Number: 19-36-208-011

e-recorded

LIBER 50810 PAGE 679

0123549

OAKLAND COUNTY TREASURERS CERTIFICATE

I HEREBY CERTIFY that there are no TAX LIENS or TITLES held by the state or any individual against the within description and all TAXES on same are paid for five years previous to the date of this instrument as appears by the records in the office except as stated.
Reviewed By: PO

Jun 27, 2017

5.00 E-FILE

Sec. 135, Act 206, 1893 as amended
ANDREW E. MEISNER, County Treasurer

Not Examined

LIBER 50810 PAGE 679

\$21.00 DEED - COMBINED

\$4.00 REMONUMENTATION

\$5.00 AUTOMATION

\$38,700.00 TRANSFER TX COMBINED

06/27/2017 06:45:33 PM RECEIPT# 74689

PAID RECORDED - Oakland County, MI

Lisa Brown, Clerk/Register of Deeds

STATE OF
MICHIGAN

OAKLAND
06/27/2017
74689



REAL ESTATE
TRANSFER TAX

\$4,950.00 CO
\$33,750.00 ST
001114788



COVENANT DEED

KNOW ALL MEN BY THESE PRESENTS: E&G Partners, L.L.C., a Michigan limited liability company, ("Grantor"), whose address is 8625 Saint Vrain Way, Missoula, Montana 59808-9333 conveys to Birmingham Tower Partners, LLC ("Grantee") whose address is 251 E. Merrill St., Unit 205, Birmingham, Michigan 48009, the certain premises situated in the City of Birmingham, County of Oakland and State of Michigan more particularly described as follows:

South part of Lot 7 of ASSESSOR'S PLAT NO. 13, City of Birmingham, according to the plat thereof, as recorded in Liber 51 of Plats, Page 15, Oakland County Records, described as beginning at the SW corner of Lot 7; thence Northerly on the West line of said lot 40.28 ft.; thence Easterly 58.9 ft.; thence Northerly at a right angle 14.96 ft.; thence Easterly at a right angle 65.37 ft.; thence Northerly at a right angle 8.4 ft.; thence Easterly at a right angle 104.44 ft. to the East lot line of Lot 7; thence Southerly along the East line of said lot 66.25 ft.; thence Westerly along the South lot line 211.66 ft. to the point of beginning.

Commonly known as: 479 S. Old Woodward Ave., Birmingham, Michigan 48009
Tax Parcel Identification No. 08-19-36-208-012

for the sum of Four Million Five Hundred Thousand Dollars (\$4,500,000.00) subject to easements, building and use restrictions, covenants, conditions and other restrictions of record, applicable zoning ordinances, and the lien of general real estate taxes for the year 2017 and subsequent years which are not yet due.

Grantor covenants that Grantor has not previously done or committed or willingly suffered to be done or committed any act, matter or thing that would cause the premises or any part of them to be charged or encumbered in title, estate or otherwise.

Dated as of the 23rd day of June, 2017

E&G Partners, L.L.C., a Michigan limited liability company

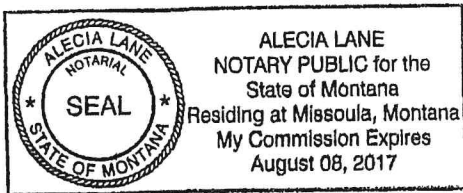
By:

Marsha R. Katz
Marsha R. Katz

Its: Manager

State of Montana)
)ss
 County of Missoula)

The foregoing instrument was acknowledged before me this 21st day of June, 2017 by Marsha R. Katz, the Manager of E&G Partners, L.L.C., a Michigan limited liability company, on behalf of said limited liability company.



Alecia Lane
 Notary Public, Missoula County, Montana
 Acting in Missoula County, Montana
 My commission expires: August 08, 2017

State Transfer Tax: \$33,750.00

County Transfer Tax: \$4,950.00

Recording Fees: \$ _____

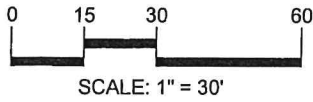
Prepared by:

James M. Dworman, Esq.
 Dean & Fulkerson, P.C.
 801 W. Big Beaver, Ste. 500
 Troy, Michigan 48084

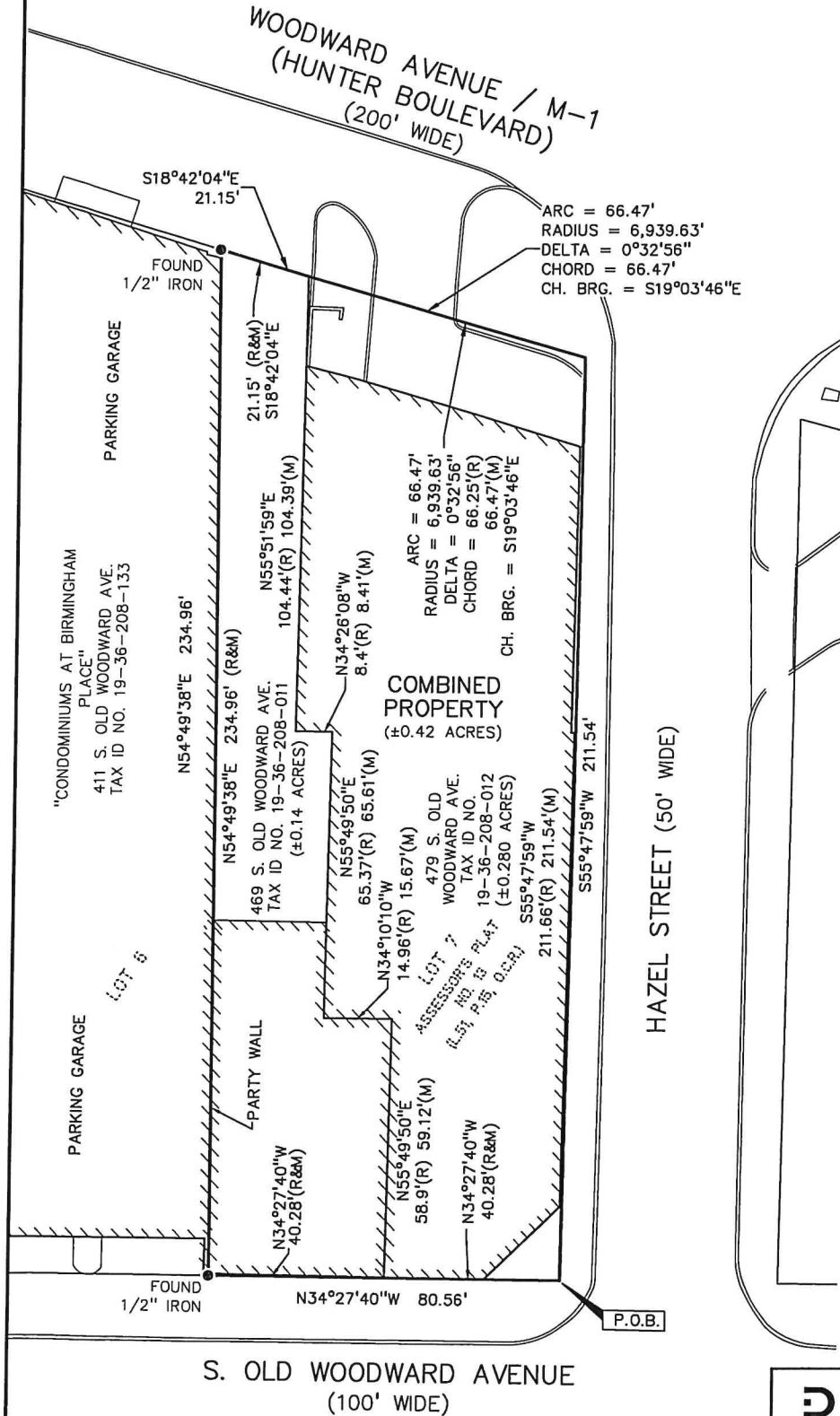
When recorded, return to: Grantee

251 E. Merrill St., Unit 205
 Birmingham, Michigan 48009

County Treasurer's Certificate	Send Subsequent Tax Bills To: Grantee 251 E. Merrill St., Unit 205 Birmingham, Michigan 48009
--------------------------------	--



LAND COMBINATION SURVEY



CLIENT:
MARKUS MANAGEMENT GROUP, LLC
251 E. MERRILL STREET, SUITE 205
BIRMINGHAM, MICHIGAN 48009

SCALE: 1" = 30'

JOB No: 2017-093

DATE: 11-16-20

DWG. No: 1 of 2

PEA
GROUP

t: 844.813.2949
www.peagroup.com

LAND COMBINATION SURVEY

PROPOSED COMBINED PROPERTY (AS SURVEYED BY PEA GROUP)

Land situated in the City of Birmingham, County of Oakland, and State of Michigan, described as:

Lot 7 of ASSESSOR'S PLAT NO. 13, City of Birmingham, according to the plat thereof, as recorded in Liber 51 of Plats, Page 15, Oakland County Records, described as:

BEGINNING at Southwest corner said Lot 7; thence N34°27'40"W 80.56 feet along the west line of said lot 7 and the east line of S. Old Woodward Ave. (100 feet wide) to a found iron pin; thence N54°49'38"E 234.96 feet to an iron pin on the west line of Woodward Ave. (Hunter Blvd.) M-1 (200 feet wide); thence along said west line S18°42'04"E 21.15 feet and 66.47 feet along a curve to the left, having a radius of 6,939.63 feet, a central angle of 00°32'56", and a chord that bears S19°03'46"E, 66.47 feet, to the north line of Hazel Street (50 feet wide); thence along said north line S55°47'59"W 211.54 feet to the POINT OF BEGINNING. Containing ±0.42 acres

PARCEL "A" LEGAL DESCRIPTION

(per Fidelity National Title Insurance Company, Commitment No. 17-110744, dated January 5, 2017)

Land situated in the City of Birmingham, County of Oakland, and State of Michigan, described as:

South part of Lot 7 of ASSESSOR'S PLAT NO. 13, City of Birmingham, according to the plat thereof, as recorded in Liber 51 of Plats, Page 15, Oakland County Records, described as beginning at Southwest corner Lot 7; thence Northerly on West line said Lot, 40.28 feet; thence Easterly 58.9 feet; thence Northerly at right angle 14.96 feet; thence Easterly at right angle 65.37 feet; thence Northerly at right angle 8.4 feet; thence Easterly at right angle 104.44 feet to East line said Lot; thence Southerly along East lot line, 66.25 feet to Southeast corner said Lot; thence Westerly along South lot line 211.66 feet to point of beginning.

PARCEL ID 19-36-208-011(per First American Title Insurance Company, Commitment No. TC13-69882, dated February 9, 2017)

Land situated in the City of Birmingham, County of Oakland, and State of Michigan, described as:

The Northerly part of Lot 7 of ASSESSOR'S PLAT NO. 13, according to the plat thereof recorded in Liber 51 of Plats, page 15, Oakland County Records, City of Birmingham, Oakland County, Michigan, described as beginning at the Northwestern corner of said Lot 7 on the Easterly line of 100 foot Woodward Avenue; thence Easterly along Northerly line of said Lot, a distance of 234.96 feet to the Westerly line of 200 foot Hunter Blvd. of the Northeast corner of said Lot 7; thence Southerly along the Westerly line of said Hunter Blvd. or Easterly line of said Lot 7, a distance of 21.15 feet to extension of North face of wall of garage building located on Southerly part of said Lot 7; thence Westerly along said extension of North face of wall and along said North face of wall 104.44 feet to a corner of said garage building; thence Southerly at right angles along Westerly face of wall of said garage building 8.40 feet to a corner of said garage building; thence Westerly at right angles along North face of wall of said garage building 65.37 feet to a corner of said garage building; thence Southerly at right angles along West face of wall of said garage building 14.96 feet to a corner of said garage building; thence Westerly at right angles along North face of wall of said garage building and extension of same 58.90 feet to Westerly line of said Lot 7; thence Northerly along said Westerly line 40.28 feet to the point of beginning.

SURVEYOR'S STATEMENT:

I, DANIEL L. COLE, a Licensed Land Surveyor in the State of Michigan, certify that I have surveyed the parcel(s) of land hereon described; that there are no encroachments except as shown; that the error of closure meets or exceeds the accepted standards of practice; and that I have complied with the survey requirements of Public Act 132 of 1970, as amended. The seller of this property is required to record this instrument at the time of sale.

Daniel L. Cole, PS 4001059791
Agent for PEA Group

Date

CLIENT:
MARKUS MANAGEMENT GROUP, LLC
251 E. MERRILL STREET, SUITE 205
BIRMINGHAM, MICHIGAN 48009

SCALE: N.T.S.

JOB No: 2017-093

DATE: 11-16-20

DWG. No: 2 of 2

PEA
GROUP

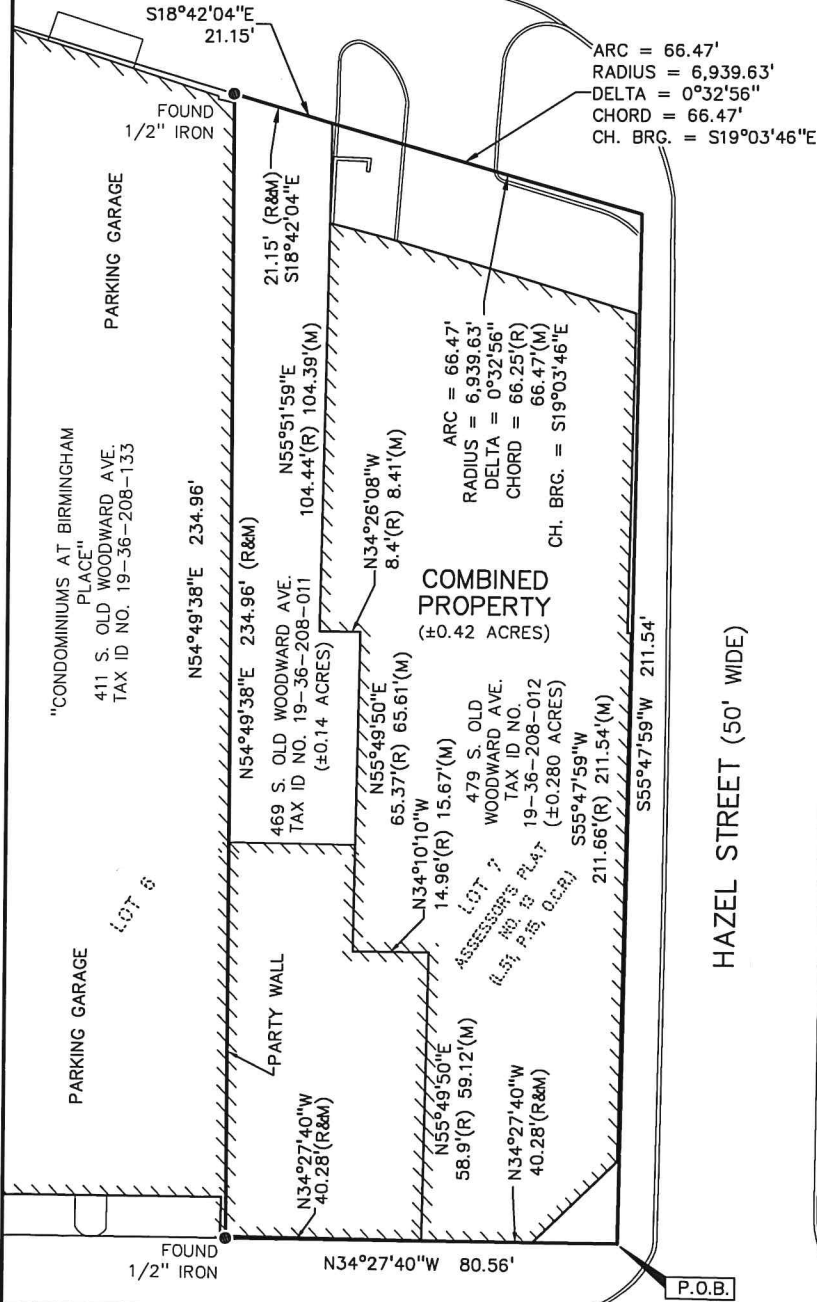
t: 844.813.2949
www.peagroup.com



LAND COMBINATION SURVEY



WOODWARD AVENUE / M-1
(HUNTER BOULEVARD)
(200' WIDE)



HAZEL STREET (50' WIDE)

S. OLD WOODWARD AVENUE
(100' WIDE)

CLIENT:
MARKUS MANAGEMENT GROUP, LLC
251 E. MERRILL STREET, SUITE 205
BIRMINGHAM, MICHIGAN 48009

SCALE: 1" = 30'

JOB No: 2017-093

DATE: 11-16-20

DWG. No: 1 of 2

PEA
GROUP

t: 844.813.2949
www.peagroup.com

LAND COMBINATION SURVEY

PROPOSED COMBINED PROPERTY (AS SURVEYED BY PEA GROUP)

Land situated in the City of Birmingham, County of Oakland, and State of Michigan, described as:

Lot 7 of ASSESSOR'S PLAT NO. 13, City of Birmingham, according to the plat thereof, as recorded in Liber 51 of Plats, Page 15, Oakland County Records, described as:

BEGINNING at Southwest corner said Lot 7; thence N34°27'40"W 80.56 feet along the west line of said lot 7 and the east line of S. Old Woodward Ave. (100 feet wide) to a found iron pin; thence N54°49'38"E 234.96 feet to an iron pin on the west line of Woodward Ave. (Hunter Blvd.) M-1 (200 feet wide); thence along said west line S18°42'04"E 21.15 feet and 66.47 feet along a curve to the left, having a radius of 6,939.63 feet, a central angle of 00°32'56", and a chord that bears S19°03'46"E, 66.47 feet, to the north line of Hazel Street (50 feet wide); thence along said north line S55°47'59"W 211.54 feet to the **POINT OF BEGINNING**. Containing ±0.42 acres

PARCEL "A" LEGAL DESCRIPTION

(per Fidelity National Title Insurance Company, Commitment No. 17-110744, dated January 5, 2017)

Land situated in the City of Birmingham, County of Oakland, and State of Michigan, described as:

South part of Lot 7 of ASSESSOR'S PLAT NO. 13, City of Birmingham, according to the plat thereof, as recorded in Liber 51 of Plats, Page 15, Oakland County Records, described as beginning at Southwest corner Lot 7; thence Northerly on West line said Lot, 40.28 feet; thence Easterly 58.9 feet; thence Northerly at right angle 14.96 feet; thence Easterly at right angle 65.37 feet; thence Northerly at right angle 8.4 feet; thence Easterly at right angle 104.44 feet to East line said Lot; thence Southerly along East lot line, 66.25 feet to Southeast corner said Lot; thence Westerly along South lot line 211.66 feet to point of beginning.

PARCEL ID 19-36-208-011(per First American Title Insurance Company, Commitment No. TC13-69882, dated February 9, 2017)

Land situated in the City of Birmingham, County of Oakland, and State of Michigan, described as:

The Northerly part of Lot 7 of ASSESSOR'S PLAT NO. 13, according to the plat thereof recorded in Liber 51 of Plats, page 15, Oakland County Records, City of Birmingham, Oakland County, Michigan, described as beginning at the Northwestern corner of said Lot 7 on the Easterly line of 100 foot Woodward Avenue; thence Easterly along Northerly line of said Lot, a distance of 234.96 feet to the Westerly line of 200 foot Hunter Blvd. of the Northeast corner of said Lot 7; thence Southerly along the Westerly line of said Hunter Blvd. or Easterly line of said Lot 7, a distance of 21.15 feet to extension of North face of wall of garage building located on Southerly part of said Lot 7; thence Westerly along said extension of North face of wall and along said North face of wall 104.44 feet to a corner of said garage building; thence Southerly at right angles along Westerly face of wall of said garage building 8.40 feet to a corner of said garage building; thence Westerly at right angles along North face of wall of said garage building 65.37 feet to a corner of said garage building; thence Southerly at right angles along West face of wall of said garage building 14.96 feet to a corner of said garage building; thence Westerly at right angles along North face of wall of said garage building and extension of same 58.90 feet to Westerly line of said Lot 7; thence Northerly along said Westerly line 40.28 feet to the point of beginning.

SURVEYOR'S STATEMENT:

I, DANIEL L. COLE, a Licensed Land Surveyor in the State of Michigan, certify that I have surveyed the parcel(s) of land hereon described; that there are no encroachments except as shown; that the error of closure meets or exceeds the accepted standards of practice; and that I have complied with the survey requirements of Public Act 132 of 1970, as amended. The seller of this property is required to record this instrument at the time of sale.

Daniel L. Cole, PS 4001059791
Agent for PEA Group

Date

CLIENT:
MARKUS MANAGEMENT GROUP, LLC
251 E. MERRILL STREET, SUITE 205
BIRMINGHAM, MICHIGAN 48009

SCALE: N.T.S.

JOB No: 2017-093

DATE: 11-16-20

DWG. No: 2 of 2

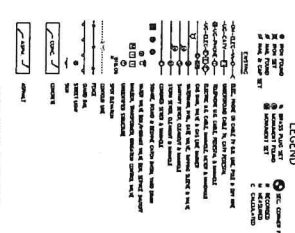
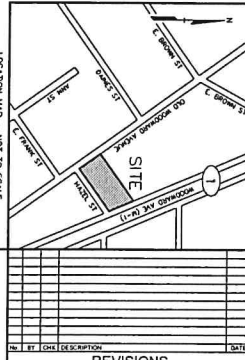
**PEA
GROUP**

t: 844.813.2949
www.peagroup.com

BU 4301
TOP OF NORTHEAST ANCHOR POST OF U-101 PILE BASE, NORTHEAST
CORNER OF HAZEL STREET AND OLD WOODWARD AVENUE
ELEV = 716.58

FLOODPLAIN NOTE:
BY CATHOLIC FLOTHING, SITE IS WITHIN FLOOD "A" AREA
DETERMINED TO BE OUTSIDE OF THE 0.2% ANNUAL CHANCE
FLOODPLAIN FOR FLOOD INSURANCE RATE MAP NUMBER
26125005337 (PAGE 537 OF 701), DATED SEPTEMBER 29, 2006.

POLICE VS. LEGAL INSURANCE COMPANY. For FBI memo, see FD-36082, dated February 9, 2017.

[illegible]

NOT FOR CONSTRUCTION

MARKUS MANAGEMENT GROUP, LLC
 251 EAST MERRILL STREET, SUITE #205
 BIRMINGHAM, MICHIGAN, 48009

**TOPOGRAPHIC SURVEY
 SOUTH OLD WOODWARD**
 CITY OF BIRMINGHAM, OAKLAND COUNTY, MICHIGAN, 48009

DES	PB	DN	PB	SUR	DLC	P.M.	JPB

PEA, Inc.
 2400 Riverchase Circle, Suite 100
 Birmingham, AL 35244
 Phone: 205.992.0000
 Fax: 205.992.0001
 www.pca-inc.com
 www.pca-inc.com

PEA

Know what's below
 811
 Call before you dig
 1-800-4-A-DIG
 1-800-472-3771 www.michigan.gov

3 FULL WORKING DAYS BEFORE YOU DIG CALL

CAUTION

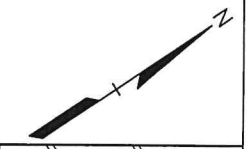
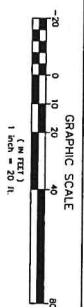
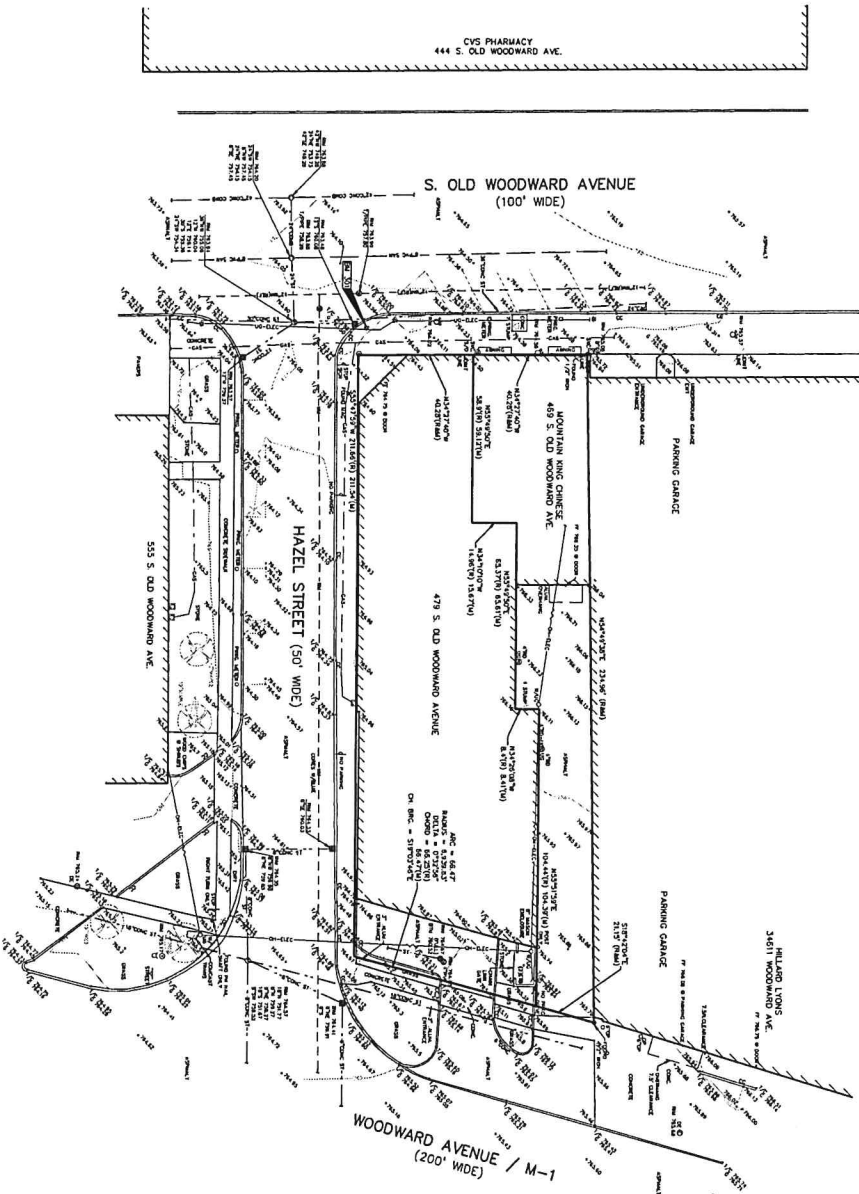
Read and understand the following information before you dig. Digging without proper permits and safety measures can result in injury, property damage, and fines. Digging in the vicinity of underground utilities is extremely dangerous. Digging in the vicinity of underground utilities is extremely dangerous. Digging in the vicinity of underground utilities is extremely dangerous.

NO.	BY	CHK	DESCRIPTION	DATE

REMARKS:
(See General Notes)
This is a preliminary plan for a proposed subdivision of land in the City of Birmingham, Alabama. The plan is subject to the approval of the City of Birmingham, Alabama, and the State of Alabama. The plan is not to be used for any other purpose without the written consent of the City of Birmingham, Alabama, and the State of Alabama.

PLANNING NOTE:
The proposed subdivision is located in the City of Birmingham, Alabama. The plan is subject to the approval of the City of Birmingham, Alabama, and the State of Alabama. The plan is not to be used for any other purpose without the written consent of the City of Birmingham, Alabama, and the State of Alabama.

LEGAL DESCRIPTION:
The proposed subdivision is located in the City of Birmingham, Alabama. The plan is subject to the approval of the City of Birmingham, Alabama, and the State of Alabama. The plan is not to be used for any other purpose without the written consent of the City of Birmingham, Alabama, and the State of Alabama.



NO.	DATE	DESCRIPTION
1	10/1/2017	Initial Survey
2	10/1/2017	Final Survey
3	10/1/2017	Revised Survey
4	10/1/2017	Final Survey

- LEGEND**
- 1. Proposed Subdivision
 - 2. Existing Subdivision
 - 3. Easement
 - 4. Right of Way
 - 5. Survey Point
 - 6. Boundary Line
 - 7. Easement Line
 - 8. Right of Way Line
 - 9. Survey Point
 - 10. Boundary Line
 - 11. Easement Line
 - 12. Right of Way Line
 - 13. Survey Point
 - 14. Boundary Line
 - 15. Easement Line
 - 16. Right of Way Line
 - 17. Survey Point
 - 18. Boundary Line
 - 19. Easement Line
 - 20. Right of Way Line

REFERENCE DRAWINGS

- 1. 251 East Merrill Street, Suite 200, Birmingham, Alabama, 45209
- 2. 251 East Merrill Street, Suite 200, Birmingham, Alabama, 45209
- 3. 251 East Merrill Street, Suite 200, Birmingham, Alabama, 45209
- 4. 251 East Merrill Street, Suite 200, Birmingham, Alabama, 45209
- 5. 251 East Merrill Street, Suite 200, Birmingham, Alabama, 45209
- 6. 251 East Merrill Street, Suite 200, Birmingham, Alabama, 45209
- 7. 251 East Merrill Street, Suite 200, Birmingham, Alabama, 45209
- 8. 251 East Merrill Street, Suite 200, Birmingham, Alabama, 45209
- 9. 251 East Merrill Street, Suite 200, Birmingham, Alabama, 45209
- 10. 251 East Merrill Street, Suite 200, Birmingham, Alabama, 45209

NOT FOR CONSTRUCTION

MARKUS MANAGEMENT GROUP, LLC
 251 EAST MERRILL STREET, SUITE 200
 BIRMINGHAM, ALABAMA, 45209
 DES. PD. ON. PB. SUR. OLC. P.M. PD.

PEA, Inc.
 2400 BIRMINGHAM AVENUE, SUITE 200
 BIRMINGHAM, ALABAMA, 35203
 1-202-462-1171 www.peainc.com

PEA
 811
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TOPOGRAPHIC SURVEY
 SOUTH OLD WOODWARD
 OLD WOODWARD AVENUE AT HAZEL STREET
 CITY OF BIRMINGHAM, DAKOTA COUNTY, MINNESOTA
 DES. PD. ON. PB. SUR. OLC. P.M. PD.

C-10
 SCALE: 1" = 20'
 DRAWING NUMBER

PEA GROUP

t: 844.813.2949
www.peagroup.com



SCALE: 1" = 200'



CAUTION:
THE LOCATIONS AND ELEVATIONS OF
EXISTING UNDERGROUND UTILITIES AS
SHOWN ON THIS DRAWING ARE APPROXIMATE
AND NOT TO BE USED FOR ANY OTHER
PURPOSES. NO GUARANTEE IS EITHER
EXPRESSED OR IMPLIED AS TO THE
ACCURACY OF THE INFORMATION.
THE CONTRACTOR SHALL BE EXCLUSIVELY
RESPONSIBLE FOR DETERMINING THE
EXACT UTILITY LOCATIONS AND ELEVATIONS
PRIOR TO THE START OF
CONSTRUCTION.

CLIENT
MARKUS
MANAGEMENT GROUP, LLC
251 E. MERRILL STREET, SUITE 205
BIRMINGHAM, ALABAMA 35203

PROJECT TITLE
S. OLD WOODWARD
S. OLD WOODWARD AND HAZEL ST
BIRMINGHAM, ALABAMA 35203

REVISIONS

ORIGINAL ISSUE DATE:
NOVEMBER 17, 2020

DRAWING TITLE

SHEET NAME

PEA JOB NO.	2017-093
P.M.	JFB
D.N.	GWC
DES.	XXX
DRAWING NUMBER:	

NOTE:

This plan identified properties within 500 feet of the subject property, with their respective Parcel Identifying Numbers. This is according to the "Oakland County Property Gateway." The ID numbers were obtained on November 17, 2020.



**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, JUNE 24, 2020**

Held Remotely Via Zoom And Telephone Access

Minutes of the regular meeting of the City of Birmingham Planning Board held on June 24, 2020. Chairman Scott Clein convened the meeting at 7:31 p.m.

A. Roll Call

Present: Chairman Scott Clein; Board Members Stuart Jeffares, Bert Koseck, Daniel Share, Janelle Whipple-Boyce, Bryan Williams; Alternate Board Members Jason Emerine, Nasseem Ramin; Student Representative Rachel Hester (joined at 7:37 p.m.)

Absent: Board Member Robin Boyle; Student Representative June Lee

Administration: Jana Ecker, Planning Director
Eric Brunk, IT Manager
Nicholas Dupuis, City Planner
Laura Eichenhorn, Transcriptionist

Master Planning Team: Robert Gibbs, Gibbs Planning Group
Matt Lambert, DPZ

06-72-20

B. Community Impact Study

1. **469 – 479 S. Old Woodward (Former Mountain King & Talmer Bank)**
– Request for Community Impact Study acceptance for a new 5 story mixed use building (Postponed from May 27, 2020).

City Planner Dupuis reviewed the item.

Chris Longe, architect, Steve Russo, traffic engineer, and Joel Rinkel, geotech consultant were present on behalf of the application.

Mr. Russo explained:

- The gate access for the garage would be internal to the building, located near the ramp that descends towards the subterranean levels. That would provide three stacking spaces for vehicles before they spill out onto Hazel. He said the card reader for the gate access takes about ten seconds to register and move a vehicle through the gate, and the applicant expects about 50 inbound vehicles every hour. Since that is less than one vehicle a minute, with three stacking spaces there should be no issue with vehicles queuing out onto Hazel.
- If the parking garage access is left where it was proposed in the plans, it would result in that access being blocked by eastbound traffic on Hazel for a total of only two

minutes every hour. The average queue for the stop sign at Woodward and Hazel is one vehicle, with a 95th percentile queue of two vehicles.

- Since Hazel is not a through street at Woodward and vehicles can only enter Woodward from Hazel via southbound right turn, vehicles making that turn would rarely be travelling in excess of 15 m.p.h. Therefore, vehicles would be travelling slow enough at that intersection that sight distance should not be an issue with the proposed garage access location.
- The applicant will work with MDOT to get any necessary permits for construction that occurs in the MDOT right-of-way.
- He would to work with the City's traffic consultant to allay any further concerns there may be from the location of the parking garage access.

Mr. Rinkel stated that about 18,000 cubic yards of soil would be removed from the excavation on the site, which is equivalent to about 25,000 cubic truck yards of material.

Motion by Mr. Williams

Seconded by Mr. Jeffares to accept the Community Impact Study as provided by the applicant for the proposed development at 469-479 S. Old Woodward – Project M1 – with the following Conditions:

- 1. The applicant must submit in writing the volume of excavated soils to be removed from the site;**
- 2. The applicant must provide details on any proposed stormwater retention methods proposed on site;**
- 3. The applicant must provide all details on proposed public safety measures to the Fire and Police Departments for review, including the fire suppression system plans, fire command center plans, and details on the proposed security system;**
- 4. The applicant must either provide the stormwater retention methods to be used onsite or must update the CIS to indicate that the applicant will not provide stormwater management devices; and,**
- 5. The applicant must provide the information requested by the City's traffic consultant.**

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Williams, Jeffares, Koseck, Share, Whipple-Boyce, Clein, Emerine

Nays: None

06-73-20

C. Preliminary Site Plan Review

**1. 469 – 479 S. Old Woodward (Former Mountain King & Talmer Bank)
– Request for Preliminary Site Plan Review for a new 5 story mixed
use building (Postponed from May 27, 2020).**

City Planner Dupuis reviewed the item. He said:

- An eleventh condition should be added to the recommended motion which would allow for the proposed projections into the right-of-way.
- If the building has a 20 foot setback, and the first floor use is changed to retail, then the applicant would have to provide approximately three to four parking spaces for the retail. The 111 parking spaces already included on-site would either come close to covering, or would cover, those extra three to four spaces for retail.
- The ordinance only specifies the number of parking spaces required for retail uses of various sizes. It does not specify where those retail parking spaces must be located.
- The size of the vestibule on the roof would have to be limited to the size of the elevator for queuing and egress.

Mr. Longe, architect, spoke on behalf of the application. He explained:

- He would be vehemently opposed to putting the building's ramp off of Woodward. He stated that the garages to the north of this property have their access off big Woodward, which he finds offensive. He said it is preferable for the garage entrance to be accessible off Hazel which is closer to the front door of the building and therefore more conventional.
- Pushing the ramp further to the west would complicate the traffic pattern into the ramp.
- The right-of-way space between the building and Woodward provides ample space for loading and unloading. Other buildings along Woodward use the space between the buildings and Woodward in the same way. In addition, there is a receiving area designated in the plans that would be used for loading and unloading.
- Other projects he has worked on have received variances for the 12 by 40 foot loading area requirement since it is generally smaller mail and package delivery trucks, and not larger industrial trucks, that will be delivering to the building.
- The wall system and the glazing would be used to mitigate the ambient noise coming from the exterior of the building into the interior.
- While the the residential parking arrangements are still under consideration, the applicant is preliminarily thinking that specific spaces will be assigned to the residents. There would also be a keyfob system in place.
- The applicant proposes to put eight parking spaces along Hazel rather than a retail store because Hazel is a low-traffic street and the applicant suspects the space would be too small for retail to thrive. It seemed that it would be more responsible to provide parking on Hazel for the other retail uses in the building located off of both big Woodward and Old Woodward. The applicant would be able to convert the space to

retail if necessary.

Mr. Emerine said he thought it would make much more sense to have the eight spaces of retail parking on Hazel than it would to try to fit retail into that space. He also said that he concurred with Mr. Longe that the garage access should be located exactly where it was put in the plans. He said that coming in off Woodward would be an odd experience for people arriving to the building, and that if the garage entrance were to be moved the ramp might not function as it needs to. He said that he would like the applicant team to work with the City's traffic consultant to make sure her concerns are answered, but said he thinks the design for the garage access is appropriate as-is.

Planning Director Ecker stated that while she has seen the parking assessment district (P.A.D.) extended to additional buildings, she has not seen it extended to buildings that are not directly adjacent to another included building. She also stated that the 20 foot setback issue and the vestibule size issue would both be BZA considerations and not Planning Board ones.

Mr. Williams noted that this is the only D4 parcel in the City that is not in the P.A.D.

City Planner Dupuis requested commentary from the Board regarding the aforementioned issues that might be considered by the BZA.

Mr. Jeffares said that the vestibule as designed in the plans would be much safer, in the case of something like inclement weather, than a vestibule that is only equal to the size of the elevator shaft.

Mr. Koseck agreed with Mr. Jeffares. He continued by saying he was supportive of the eight parking spaces along Hazel. He noted that the floorplan works well to activate the corners and that the parking on Hazel would support the other retail in the building. He said there was a case to be made that there is a practical difficulty with the three-sided building, and that the blank wall across the street from the proposed parking would also not be conducive to retail. He said he also agreed with Mr. Longe's explanation for why the spaces would be located along Hazel.

Mr. Share said he concurred with Mr. Koseck's comments regarding why parking along Hazel would be appropriate for this project. He added that a 20 feet of retail in that area would not make a significant difference towards activating the street.

Ms. Whipple-Boyce and Mr. Williams said they concurred with previous Board members' comments regarding the vestibule and the proposed parking on Hazel.

Mr. Williams said he would urge the members of the BZA to rule favorably for both variance requests.

Chairman Clein said he was supportive of the proposed parking on Hazel. He said that as far as the vestibule, he saw no difficulty necessitating it be larger than the ordinance allows. He stated that he would much rather the Board rework the ordinance if there is a problem with it rather than disregard the ordinance's requirements due to subjective preference.

Motion by ~~Mr. Williams~~ Ms. Whipple-Boyce

Seconded by Mr. Koseck to approve to APPROVE the Preliminary Site Plan for 469-479 S. Old Woodward – Project M1 – with the following conditions:

- 1. The applicant must submit revised plans showing the amount of bedrooms in each unit to ensure that the minimum area required per unit is met, or obtain a variance from the Board of Zoning Appeals;**
- 2. The applicant must submit a revised rooftop plan that shows no habitable space at Final Site Plan review, or obtain a variance from the Board of Zoning Appeals;**
- 3. The applicant must submit details on all proposed RTUs and details on the proposed screen wall material to ensure the RTUs are fully screened from public view at Final Site Plan review;**
- 4. The applicant must provide 2 street trees on the Woodward frontage, obtain a waiver from the Staff Arborist, or obtain a variance from the Board of Zoning Appeals;**
- 5. The applicant must (1) provide site plans showing the number of rooms for each residential unit to clarify the parking requirements for such, and (2) provide a minimum 20 ft. setback for the parking facility located on the first floor along the Hazel frontage or obtain a variance from the Board of Zoning Appeals;**
- 6. The applicant must submit revised plans showing 2 off-street loading spaces measuring 40 feet long, 12 feet wide and 14 feet high and in compliance with Section 4.25 of the Zoning Ordinance or obtain a variance from the Board of Zoning Appeals;**
- 7. The applicant must submit details on the types and placement of all proposed light fixtures, as well as a photometric plan showing illumination levels at all property lines at Final Site Plan;**
- 8. The applicant must submit material specifications, samples, and glazing calculations for the proposed building at Final Site Plan review;**
- 9. The applicant must submit an existing conditions plan;**
- 10. The applicant must comply with the requests of all City Departments;**
- 11. The Planning Board approves the two-foot balcony projections into the right-of-way above eight feet.**

Jim Arpin, member of the public, said that he would urge the Board to not accept plans that require ten or more conditions for the motion. He said it would be a more efficient use of the Board's time and City staff's time. Mr. Arpin also expressed concern regarding the safety, power and fire issues that could occur with the installation of subterranean lifts, and concern with how these plans will meet the ingress and egress requirements of the parking ordinances.

Mr. Arpin thanked the Board for their work reviewing City projects, and said he made his comments with the goal of making the process smoother for the Board's benefit in the future.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Whipple-Boyce, Koseck, Share, Williams, Clein, Emerine, Jeffares

Nays: None

CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, SEPTEMBER 23, 2020
Held Remotely Via Zoom And Telephone Access

Minutes of the regular meeting of the City of Birmingham Planning Board held on September 23, 2020. Chairman Scott Clein convened the meeting at 7:32 p.m.

A. Roll Call

Present: Chairman Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Daniel Share, Bryan Williams; Alternate Board Members Jason Emerine, Nasseem Ramin

Absent: Board Member Janelle Whipple-Boyce; Student Representatives Rachel Hester, June Lee

Administration: Jana Ecker, Planning Director
Jamil Alawadi, IT Staff
Nicholas Dupuis, City Planner
Laura Eichenhorn, Transcriptionist

09-120-20

F. Final Site Plan & Design Review

1. 469 – 479 S. Old Woodward, Project M1 (Former Mountain King and Talmer Bank) – Request for Final Site Plan & Design Review for new five story mixed use building.

Mr. Share was able to rejoin the meeting at the beginning of this item.

City Planner Dupuis presented the item.

Since there was a possibility the owner would pursue a variance from the Board of Zoning Appeals (BZA) for a reduced setback along Hazel, Mr. Williams said it would be important for the BZA to understand that 469-479 S. Old Woodward is the only parcel in the City zoned D4 and not included in the Parking Assessment District (PAD). He said this fact represents a hardship for the applicant.

Mr. Emerine noted that the building also has three frontages, which also represents a hardship.

Mr. Williams agreed with Mr. Emerine.

Mr. Jeffares said he agreed with Mr. Williams and Mr. Emerine as well. He added that if one stood on the property of 469-479 S. Old Woodward and looked across Hazel, all one would see is a concrete and stone wall. Positing that the Hazel frontage was unlikely to attract a retailer because of the view, Mr. Jeffares recommended that the BZA consider this an additional reason for granting a variance for a lesser setback along Hazel.

Duraid Markus, owner, Chris Longe, architect for the project, and Rick Rattner, attorney for the project, were present.

Mr. Longe said the project team was considering putting in storage on the second floor with residential units along the perimeter, a community room, and a workout center. He said this would be the best use of space since the north side of the building faces a wall.

A number of members of the Board stated they were not comfortable with an either/or approval for residential or commercial use on the second floor.

Mr. Markus stated the final site plan and design review should then proceed using the residential schematic for the second floor.

In reply to Mr. Markus, Chairman Clein confirmed that the project could change its second floor use from residential to office through an administrative approval in the future if need be. Chairman Clein explained that would be permissible since both uses are allowed in the D4 zone. He said that, if the use were to change, only ~~attendant~~ changes to the exterior or issues with ordinance compliance would require further Board review.

Mr. Longe said the loading area on the Woodward side of the building has a bay that is 18 feet wide and 40 feet deep. He said the area should be more than sufficient for the anticipated loading needs of the residences in the building. Mr. Longe acknowledged that the project would need a variance from the BZA for the loading area.

In reply to Chairman Clein, Mr. Longe agreed with Mr. Jeffares' assessment that the Hazel side of the building would be a poor location for retail frontage. The concrete wall across Hazel prevents the street from being activated, and Mr. Longe opined that no amount on retail within their building along Hazel would change that. He noted that since the building is not part of the PAD all parking must be provided for on-site. If they were required to add more retail, they would be required to provide even more parking which would be difficult for the project. Mr. Longe emphasized that the project team wants to provide parking that is easily accessible for the retail customers. He confirmed that the project would be able to screen the parking along Hazel if the City requires it.

In response to a Board inquiry about the canopies, Mr. Longe confirmed that the proposed canopies meet the ordinance. He stated the specifications for the canopies were provided to City Planner Dupuis the day prior to the present meeting.

Mr. Longe told Mr. Koseck that the project team did intend to pursue admittance to the PAD.

In reply to Mr. Williams, Mr. Longe stated the transformer would be screened with metal coated to match the color of the building. He said the project team was also amenable to providing the required benches and trash receptacles.

Mr. Boyle recommended that the developer consider moving the residents' gym from the second floor to the ground floor on Hazel. Since the underground deck has parking in excess of its

residential requirements, the parking on Hazel could potentially be removed for a more activating ground-floor use. He ventured that most customers looking to visit the building's retail would park on-street and that the extra spaces below ground could be counted towards the retail parking requirements. He concluded that if the project team pursued his recommended configuration then they would also be able to avoid seeking a variance for Hazel.

Mr. Markus said Mr. Boyle made an interesting point, and said it was one his team had considered. The drawback to Mr. Boyle's proposal was that enacting it would put retail patrons in the otherwise residential underground parking deck, which the developers wanted to avoid to maintain the residents' feeling of security.

Mr. Boyle said that while he understood Mr. Markus' concern, most people visiting retailers in Birmingham endeavor to park on the street even if accessible underground parking is available. Because of this, Mr. Boyle explained that the excess parking spaces underground could count towards the retail requirements even though retail customers would rarely use those spaces. He said he just wanted the developers to have more flexibility.

Mr. Markus stated the underground deck was ten cars overparked, and that if the Hazel Street parking was eliminated then the project would be four cars under-parked. He also said that the Hazel Street parking would be a draw to any retailer looking to occupy the other available retail space.

Mr. Boyle said he would not continue pressing his point, and that he just wanted to raise the possibility with the project team.

The Board concurred that they were comfortable with the proposed plans for the Hazel side and agreed that there would be no adverse land planning effects if the BZA were to grant a variance for a reduced setback on Hazel.

Mr. Share said it was important to note that the Board was comfortable with the proposed Hazel variance due to the unique location of the project and the unusual three sides with surrounding facilities.

Since the applicant submitted the requirements for conditions one, four and six of the motion to the Planning Department subsequent to the motion's writing, and since City Planner Dupuis had the opportunity to review those submissions, the Board agreed those items could be approved administratively instead of requiring Board review and approval at a later date.

Motion by Mr. Williams

Seconded by Mr. Boyle to approve the Final Site Plan and Design Review for 469-479

S. Old Woodward – Project M1 – subject to the following conditions:

- 1. The applicant's revised and submitted plans clarifying the projection of all terraces and the dimensions of the sidewalk to ensure the canopies meet the projection standards and shall be approved administratively by the Planning Division;**
- 2. The applicant must provide a 20 ft. minimum setback for the parking facility located on the first floor along the Hazel frontage, or obtain a variance**

from the Board of Zoning Appeals;

3. The applicant must submit revised plans showing 2 off-street loading spaces measuring 40 feet long, 12 feet wide and 14 feet high and in compliance with Section 4.25 of the Zoning Ordinance or obtain a variance from the Board of Zoning Appeals;

4. The applicant's submitted specifications on the types and placement of all proposed light fixtures shall be approved administratively by the Planning Division;

5. The applicant must submit revised elevations and glazing calculations that show 70% glazing on each first floor facade, a maximum of 35% glazing on the upper floors, as well as material specifications for all new glass, or obtain a variance from the Board of Zoning Appeals;

6. The applicant's Existing Conditions Plan and material specifications shall be approved administratively by the Planning Division;

7. That the second floor use be designated as residential, per the submitted plans, with the appropriate parking requirements; and,

8. The applicant must comply with the requests of all City departments.

Mr. Koseck expressed appreciation for the project and said it aligned well with the goals of the 2016 Plan. He said it would be an asset to its location. Mentioning the variance issues, Mr. Koseck said he hoped the BZA would recognize the unique circumstances associated with the project. He also said that if the project gains admittance to the PAD then the currently proposed first-floor parking could be changed into either more retail or more street-activating common spaces for the residents as per Mr. Boyle's prior suggestion. Mr. Koseck stated that everyone involved in bringing the project to fruition should be very proud, and said he looked forward to seeing the project built.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Williams, Clein, Jeffares, Emerine, Boyle, Koseck, Share

Nays: None

Chairman Clein thanked Mr. Markus, Mr. Longe, Mr. Rattner and the project team for all their work on the project. He thanked the residents of the neighboring buildings for their long-term efforts towards ensuring that this project would be one that would benefit the community.

Mr. Markus told Mr. Boyle he was considering Mr. Boyle's recommendation. He said that if he could maintain his required number of parking spaces he would be interested in replacing some of the spots on Hazel with a more street-activating use.

The project team thanked the Board and signed off.



MEMORANDUM

IT Department

DATE: 1/11/2021

TO: Tom Markus, City Manager

FROM: Eric Brunk, IT Manager

SUBJECT: Palo Alto Firewall Security Subscription Renewal

Introduction:

Our Palo Alto Firewall is up for renewal of the Support and Security Subscription licenses. This is our first line of defense for our network and helps to keep our computer systems virus free.

Background:

Support and Security Subscriptions for the Palo Alto firewall are a yearly renewal and allows for continuous updates to the Firewall to keep up with the latest infected websites, internet hacks, as well as virus and malware attack attempts.

Legal Review:

This is a standard subscription renewal purchase. No legal review needed.

Fiscal impact:

Palo Alto has worked with AmeriNet (their local licensed vendor) to put together a bundled price for the renewal of all of the Support and Subscription Licenses using GSA Multiple Award Schedule IT-70 Extendable contract # GS-35F-0511T which expires in June of 2022.

Money was budgeted for this renewal of Support and subscriptions in the IT Computer Maintenance Fund account.

Summary:

The IT department would like to purchase the Support and Security Subscription License renewals for the Palo Alto Firewall from AmeriNet.

SUGGESTED RESOLUTION:

Authorize the IT department to purchase the Support and Security Subscription License renewals for the Palo Alto Firewall from AmeriNet. The purchase price not to exceed \$18,957.60. Funds are available in the IT Computer Maintenance fund account # 636-228.000-933.0600



Birmingham City | Pal Alto Renewal 1 Year 2/2/21

To:	From:
Eric Brunk	Keith Shoultz
City of Birmingham	AmeriNet
151 Martin Street	1241 S. Maple Rd.
Birmingham, MI 48012	Ann Arbor, MI 48103
248.530.1885	Phone: 734-995-1233
ebrunk@bhamgov.org	kshoultz@amerinet.com

Summary

Total Amount:	\$18,957.60	Quote ID:	QUO-20615-N6S4
Shipping Method:		Date:	01/05/2021
Payment Terms:	Net 30		

Details

Product ID	Product	Serial #	Start Date	End Date	Quantity	Price	Sub Total
PAN-PA-3020-WF-HA2-R	WildFire subscription renewal for devices in HA pair, PA-3020	'001801042226	2/2/2021	2/2/2022	1.00	\$1,607.20	\$1,607.20
PAN-PA-3020-GP-HA2-R	GlobalProtect subscription renewal for devices in HA pair, PA-3020	'001801042226	2/2/2021	2/2/2022	1.00	\$1,607.20	\$1,607.20
PAN-SVC-PREM-3020-R	Premium support year 1 renewal, PA-3020	'001801042226	2/2/2021	2/2/2022	1.00	\$3,050.00	\$3,050.00
PAN-PA-3020-TP-HA2-R	Threat prevention subscription renewal for devices in HA pair, PA-3020	'001801042226	2/2/2021	2/2/2022	1.00	\$1,607.20	\$1,607.20
PAN-PA-3020-URL4-HA2-R	PANDB URL filtering subscription renewal for devices in HA pair, PA-3020	'001801042226	2/2/2021	2/2/2022	1.00	\$1,607.20	\$1,607.20
PAN-SVC-PREM-3020-R	Premium support year 1 renewal, PA-3020	'001801042254	2/2/2021	2/2/2022	1.00	\$3,050.00	\$3,050.00
PAN-PA-3020-URL4-HA2-R	PANDB URL filtering subscription renewal for devices in HA pair, PA-3020	'001801042254	2/2/2021	2/2/2022	1.00	\$1,607.20	\$1,607.20
PAN-PA-3020-WF-HA2-R	WildFire subscription renewal for devices in HA pair, PA-3020	'001801042254	2/2/2021	2/2/2022	1.00	\$1,607.20	\$1,607.20
PAN-PA-3020-GP-HA2-R	GlobalProtect subscription renewal for devices in HA pair, PA-3020	'001801042254	2/2/2021	2/2/2022	1.00	\$1,607.20	\$1,607.20
PAN-PA-3020-TP-HA2-R	Threat prevention subscription renewal for devices in HA pair, PA-3020	'001801042254	2/2/2021	2/2/2022	1.00	\$1,607.20	\$1,607.20
Total						\$18,957.60	

Thank you for the opportunity to quote these products. Applicable taxes are additional. Important: Please renew before the expiration dates. There may be additional fees or changes if there is a lapse in coverage. We look forward to helping you in the future.



MEMORANDUM

Finance Department

DATE: January 5, 2021

TO: Thomas M. Markus, City Manager

FROM: Mark Gerber, Finance Director

SUBJECT: Amendment to Cares Act Interlocal Agreement

INTRODUCTION:

The Cares Act Interlocal Agreement between Oakland County and the City has been amended by the County. The Commission is being asked to approve the Amendment to the Cares Act Interlocal Agreement between Oakland County and the City.

BACKGROUND:

The original agreement was approved by the City Commission on July 20, 2020. This amendment adds additional language concerning the funding, allowable expenditures under the grant, and changed the end date of the grant from January 31, 2021 to December 30, 2020.

This amendment was not received by the City until after the last meeting of the City Commission in December. The County required this document to be signed by December 23, 2020. As the changes to the agreement were minor, City Manager Joe Valentine signed the amendment to the agreement on behalf of the City.

LEGAL REVIEW:

Reviewed with no issues.

FISCAL IMPACT:

No fiscal impact.

SUMMARY:

It is recommended that the City Commission approve the amendment to the interlocal agreement between the County and the City.

ATTACHMENTS:

- Amendment to the CARES Act Interlocal Agreement between Oakland County and the City of Birmingham.

SUGGESTED RESOLUTION:

To approve the Amendment to the CARES Act Interlocal Agreement between Oakland County and the City of Birmingham.

AMENDMENT
TO THE INTERLOCAL AGREEMENT FOR CARES ACT DISTRIBUTION

THIS AMENDMENT ("Amendment") is between Oakland County ("County/Grantor"), and the Grantee Name identified below (the "Grantee/Public Body"). Grantee has been approved to receive CARES ACT Funds from Grantor under the Interlocal Agreement for CARES Act Distribution. The Parties agree and acknowledge that the purpose of this Amendment is to modify as provided herein and otherwise continue the present contractual relationship between the Parties as described in their current Agreement. All terms and conditions and defined words in the current Agreement apply to this Amendment in full force and effect and are only changed as described in this Amendment. This Amendment is effective as of the date it is signed by both Parties ("Effective Date").

GRANTEE/PUBLIC BODY: Birmingham

The following changes shall be incorporated into the Agreement:

GRANTEE UNIQUE ENTITY IDENTIFIER (DUNS Number): 74239450
FEDERAL AWARD IDENTIFICATION NUMBER(FAIN): SLT0202
CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA) NUMBER: 21.019
FEDERAL AWARD DATE: MARCH 27, 2020
SUBAWARD PERIOD OF PERFORMANCE START AND END DATE: MARCH 1, 2020
THROUGH DECEMBER 30, 2020

AWARD IS NOT FOR RESEARCH & DEVELOPMENT (R&D): Funds cannot be used for research and development related expenditures.

INDIRECT COST RATE FOR FEDERAL AWARD: Indirect Costs are not eligible for this Agreement.

CONTACT PERSON FOR GRANTOR/PASS THROUGH ENTITY: Hilarie Chambers

Funding for this Agreement was provided to Grantor by the U.S. Department of Treasury through the Coronavirus Relief Fund ("CRF") under section 601(a) of the Social Security Act, as added by section 5001 of the CARES Act. Grantee is a Subrecipient of CRF monies provided to it by Grantor and as such Grantee and Subrecipient are synonymous under this Agreement.

Grantee Certifications/ Use of Funds:

- a. Grant Funds may only be used to cover costs that (1) are necessary expenditures incurred due to the public health emergency with respect to COVID-19; (2) were not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act) for the State or local government; and (3) were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.
- b. Grantee may not use Grant Funds for expenses for which the Grantee has received any other federal funds or emergency COVID-19 supplemental funding, whether it be state, federal, or private in nature, for the same expense. No portion of Grant Funds may be used for the purpose of obtaining additional Federal funds under any other law of the United States, except if authorized by law. Grantee shall promptly notify Grantor if it receives insurance proceeds or other disaster assistance (public or private) that duplicates the funding received under this Agreement. Grantee shall not carry out any activities under this Agreement that results in a prohibited duplication of as defined by Section 312

of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5155) and in accordance with Section 1210 of the Disaster Recovery Reform Act of 2018 (division D of Public Law 115–254; 132 Stat. 3442), which amended Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5155). If the Grantee receives duplicate benefits from another source for projects related to this disaster, the Grantee must refund the benefits provided by the Grantor to the Grantor.

- c. Grant Funds may not be used to cover expenses that were reimbursed by insurance.
- d. Grantee must spend the Grant Funds by December 30, 2020.
- e. Any unused Grant Funds remaining after December 30, 2020 must be returned to Grantor by January 30, 2021.
- f. Grantee acknowledges that all representations and information provided have been relied on by the Grantor to provide funding under this agreement. Grantee shall promptly notify Grantor, in writing, of the occurrence of any event or any material change in circumstances which would make any Grantee representation or information untrue or incorrect or otherwise impair Grantee's ability to fulfill its obligations under this Agreement.

Access to Records and Audit:

Grantee shall maintain all records pertinent to the Agreement and Amendment, including backup copies, for a period of five (5) years. The records shall be kept in accordance with generally accepted accounting practices, utilize adequate internal controls and shall maintain necessary documentation for all costs incurred, including documentation and an inventory of all equipment purchased with Grant Funds. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States or the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

In addition to Grantor, the U.S. Department of Treasury, or their authorized representatives, shall be provided the right to audit all record pertaining to the expenditure and use of Grant Funds. All records with respect to any matters covered by this Agreement shall be made available to Grantor, the Federal awarding agency, and the Comptroller General of the United States or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by Grantee within 30 days after receipt by the Grantee. Failure of Grantee to comply with the audit requirements will constitute a violation of this Agreement.

Fund payments are considered to be considered "other federal financial assistance" under Title 2 C.F.R. 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards ("Uniform Guidance") and are subject to the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507 or program specific audit pursuant to 2 C.F.R. 200.501(a) when Grantee spends \$750,000 or more in federal awards during their fiscal year.

Fund payments are subject to 2 C.F.R. 200.303 regarding internal controls.

Fund payments are subject to 2 C.F.R. 200.330 through 200.332 regarding Grantee monitoring and management. Fund payments are subject to Subpart F regarding audit requirements. Failure of Grantee to comply with the audit requirements will constitute a violation of this Agreement. Grantee may be required to submit a copy of that audit to the Grantor in accordance with the Uniform Guidance.

Personally Identifiable Information

Grantee must comply with 2 C.F.R. 200.303(e) and take reasonable measures to safeguard

protected personally identifiable information, as defined in 2 C.F.R. 200.82, and other information Grantor designates as sensitive or the Grantee considers sensitive consistent with applicable Federal, state, local, laws regarding privacy and obligations of confidentiality.

Program Fraud & False or Fraudulent Statements or Related Acts

Grantee must comply with 31 U.S.C. Chapter 38, Administrative Remedies for False Claims and Statements. Grantee will not pass through Grant funds to an entity listed in the SAM Exclusions. SAM Exclusions is the list maintained by the General Services Administration that contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at www.sam.gov.

For the Grantee/Public Body:

Joseph A. Valentine

EXECUTED: _____
Joseph Valentine, City Manager

DATE: 12/23/2020

For the County of Oakland:

EXECUTED:



David Woodward, Chairperson
Oakland County Board of Commissioners

DATE: 12/23/2020



MEMORANDUM

Planning Division

DATE: December 21st, 2020

TO: Joseph A. Valentine, City Manager

FROM: Nicholas Dupuis, City Planner

APPROVED: Jana Ecker, Planning Director

SUBJECT: CLG Grant Application – Little San Francisco – Resident Engagement Plan and the Historical Designation Process

INTRODUCTION:

The Planning Division and Historic District Commission have completed FY2021 Certified Local Government (CLG) Grant applications for consideration by the State Historic Preservation Office (SHPO). The two applications prepared were (1) a proposal for a new, comprehensive set of historic design guidelines with an emphasis on new and emerging materials and (2) a proposal for a reconnaissance-level survey of the Little San Francisco Neighborhood. The Certified Local Government (CLG) program is a preservation partnership between local, state, and national governments focused on promoting historic preservation at the local level. The CLG Grant Program is one of the benefits enjoyed only by participating communities in good standing with the SHPO. The City of Birmingham has maintained good standing with the CLG Program since February 2010.

BACKGROUND:

The Planning Division submitted the CLG applications to the SHPO on October 1st, 2020. The Planning Division then brought the applications to the City Commission on October 12th, 2020 seeking support for the grant applications as submitted in the form of a resolution. The Commission approved the resolution for the Historic Design Guidelines, but postponed the Little San Francisco Survey resolution requesting a plan on how the residents of Little San Francisco will be engaged throughout the process. Furthermore, the Commission sought clarification on the historical designation process and where the Little San Francisco Survey project proposal exists on that timeline.

The engagement framework is proposed to be twofold. First, the Planning Division intends to welcome residents to provide comments at the Historic District Commission (HDC) on the Request for Proposal (RFP) that will be issued for the project *before* the survey is even started. This will help residents understand the survey process and allow them to become an integral part in the formulation of the goals and objectives put forth in the RFP. The RFP will likely be reviewed at the HDC twice, one first draft and a final draft intended to be sent to consultants. Special notices will be sent to the residents notifying them of the meeting during which the RFP will be reviewed. Secondly, as described in the "grant project work items" section of the CLG Grant Application, residents will also have ample opportunity to comment on the project while the work is being performed. A project kickoff meeting, first draft review meeting, and final draft review meeting

are all required by the SHPO and included as work items in the application. Special notices will also be sent to the residents for these meetings as well.

As for the historical designation and the establishment of historic districts there are two survey activities that must be undertaken to justify any potential designation. Survey refers to the process of identifying and gathering data on a community's historic resources. There are two main types of survey for above-ground resources: Reconnaissance level and Intensive level Survey. Survey can include field survey, the physical search for and recordation of historic properties; background research to establish historic context for the properties within the project area; and historical research on surveyed properties.

Reconnaissance level survey identifies properties of architectural significance and updates existing information in SHPO files. The reconnaissance survey documents properties using photographs, brief descriptions, condition, and location information. Limited research on the history of the buildings, sites, and features is undertaken. Reconnaissance level surveys look primarily at the architectural integrity of the properties or National Register criteria C. This type of survey is the first step in the preservation planning process and can be undertaken in a limited or broad geographic area. Reconnaissance-level surveys should be used as a means to determine where to focus intensive-level survey efforts. The grant application submitted requested funding for this preliminary reconnaissance level survey only.

An ***intensive level survey*** is done after a reconnaissance level survey is complete and seeks to identify and thoroughly document significant properties and districts through research and evaluation of the National Register of Historic Places criteria within the broader historic context. Intensive-level surveys are more complex, time-consuming, and represent a larger financial commitment for a community. These surveys also provide the most detailed information about an area's history and historic properties. Intensive-level survey begins with a reconnaissance survey or an update of an older survey. The survey then continues with research on potentially significant properties using primary sources, researching the community history, evaluating the properties for National Register significance, and identifying historic districts. Finally, many intensive level surveys provide recommendations for future preservation activities.

If the results of the surveys indicate significant properties exist in a contiguous or non-contiguous area, a local historic district may be considered. A local historic district is a historically significant area that is protected by a historic district ordinance. In a local historic district, proposed work to the exterior of resources in the district is reviewed by the HDC to determine if the work meets the Secretary of the Interior's Standards and Guidelines for Rehabilitation. Designating an area as a local historic district is one of the few ways a community can provide legal protection for its historic resources. Michigan's Local Historic Districts Act, Act 169 of 1970, provides the legal foundation for the creation of local historic districts. It was created to:

"provide for the establishment of historic districts; to provide for the acquisition of certain resources for historic preservation purposes; to provide for preservation of historic and non-historic resources within historic districts; to provide for the establishment of historic district commissions; to provide for the maintenance of publicly owned resources by local units; to provide for certain assessments under certain circumstances; to provide for procedures; and to provide for remedies and penalties."

Chapter 127, Sections 127-4 and 127-5 of the Birmingham Code of Ordinances outlines the legal process in Birmingham for establishing, modifying, or eliminating a local historic district, which begins only after a directive from the City Commission to the Historic District Study Committee, and the creation of a report including the ordinance language proposed to be adopted into Chapter 127. Ultimately, the City Commission will determine whether or not to adopt the ordinance to create a new historic district at a public meeting.

LEGAL REVIEW:

The City Attorney has reviewed the documentation and has no concerns at this time.

FISCAL IMPACT:

There is no fiscal impact to the City at this time. The completion of the reconnaissance level survey is dependent upon grant approval.

PUBLIC COMMUNICATIONS:

Up to this point, the public has had several opportunities to provide feedback on either the proposed Little San Francisco Survey or the CLG Grant application itself. The subject was discussed at four public meetings of the Historic District Commission and most recently at the City Commission on October 12, 2020. Following the Commission meeting, the Planning Division sent a formal letter to the residents of Little San Francisco with a brief summary of the project proposal and what it entails, and requested any input that they may have regarding the reconnaissance-level survey. The letter is attached for your review.

In response to the letter, the City has received numerous phone calls from residents with interest and general follow up questions in regards to the implications and outcome of the reconnaissance level survey. In general, residents of the neighborhood were supportive of this preliminary measure, but expressed concerns about the autonomy on their property and the current lack of incentives for full-fledged historical designation in the City and State.

SUMMARY:

At this time, the Planning Division is seeking the confirmation and support of the City Commission for the Little San Francisco Survey grant application as outlined in the attached resolution. As a reminder, the FY2021 CLG Grant funding is an expense reimbursement program. Should the grant application be approved by the SHPO in the spring of 2021, the City will be expected to incur the expenditures for the project prior to the work being completed. Upon completion, the City would then submit all eligible expenditures up to the approved grant amount for reimbursement after SHPO acceptance of the final project and documentation.

ATTACHMENTS:

- CLG Grant Application – Little San Francisco Survey
- Letter to Little San Francisco Residents
- City Commission minutes

SUGGESTED RESOLUTION:

To adopt the resolution in support of the grant application made to the Michigan State Historic Preservation Office for the reimbursement grant application for \$8,000 to conduct a reconnaissance level survey of the Little San Francisco neighborhood.

Resolution # _____
FY21 CERTIFIED LOCAL GOVERNMENT GRANT APPLICATION
LITTLE SAN FRANCISCO NEIGHBORHOOD SURVEY
2020

WHEREAS, The City of Birmingham has submitted an application to the Michigan State Historic Preservation Office (SHPO) in the amount of \$8,000 for a reconnaissance-level historical survey of the Little San Francisco Neighborhood;

WHEREAS, The Planning Division, under direction of the City Manager, is appointed as the Grant Project Manager who will oversee the CLG grant management and grant administration duties;

WHEREAS, The City of Birmingham will receive and pay vendor invoices related to the grant project;

WHEREAS, The City of Birmingham acknowledges that the Certified Local Government Program is an expense reimbursement program;

NOW, THEREFORE, BE IT RESOLVED, Should the CLG Grant Program application be accepted by the SHPO, the City acknowledges that the City is responsible for all project expenditures in the amount of \$8,000 for the project work with the knowledge that eligible expenditures up to the approved grant amount will be reimbursed to the City of Birmingham upon SHPO acceptance of final project work, SHPO acceptance of the final completion report, and SHPO audit and acceptance of financial documentation for eligible costs;

BE IT FURTHER RESOLVED, Joseph A. Valentine, City Manager, is authorized to sign the grant agreement and any grant agreement amendments.

I, Alexandria Bingham, City Clerk Designee of the City of Birmingham, Michigan, do hereby certify that the foregoing is a true and correct copy of the resolution adopted by the Birmingham City Commission at its regular meeting held on November 23, 2020.

Alexandria Bingham
City Clerk Designee

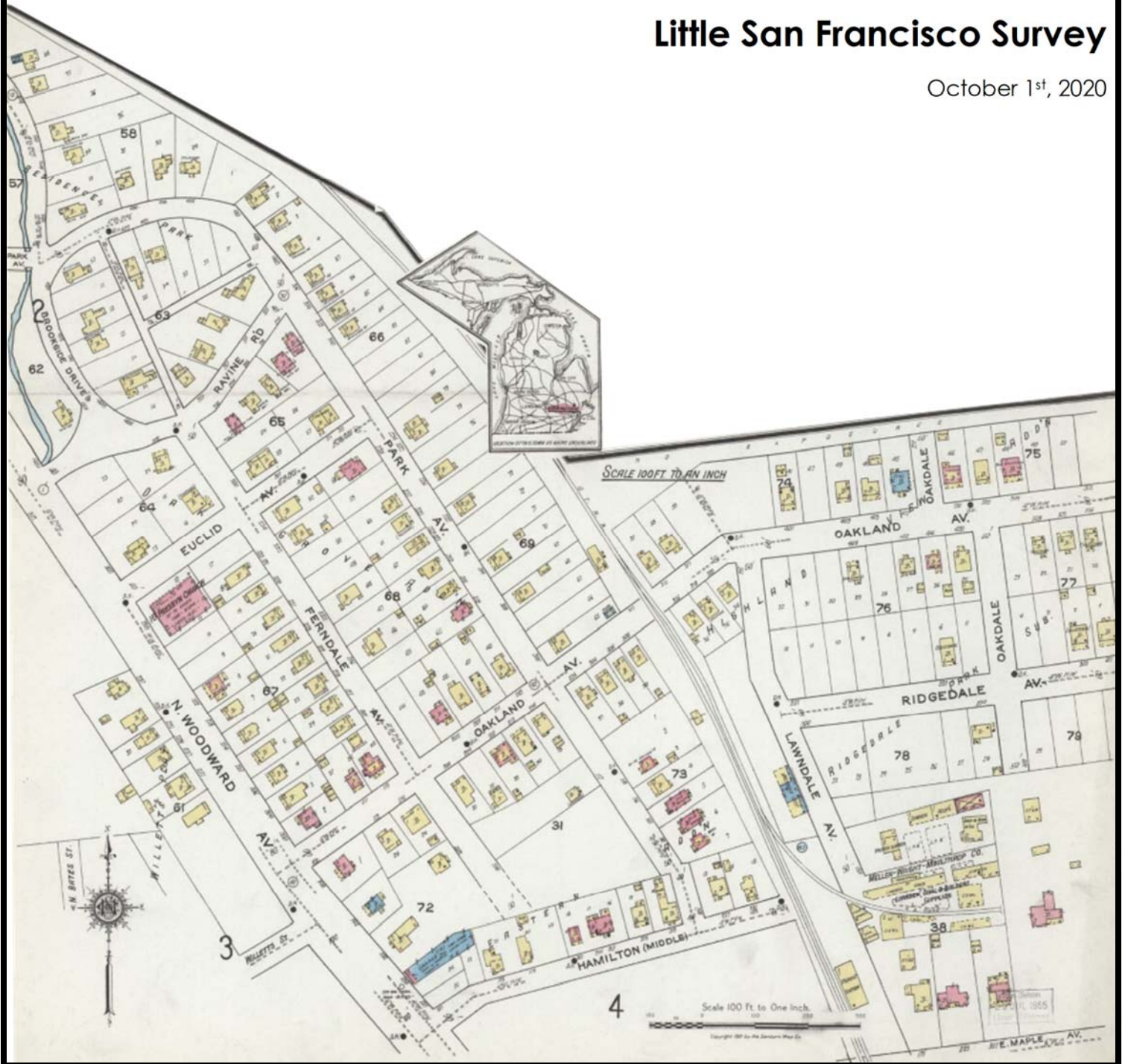
City of Birmingham

Certified Local Government Program

FY21 CLG Grant Application

Little San Francisco Survey

October 1st, 2020



October 1st, 2020

Joelle Letts

Grants Manager/Budget Specialist
Michigan State Historic Preservation Office
300 N. Washington Square
Lansing, MI 48913

RE: FY21 CLG Grant Application – Little San Francisco Survey

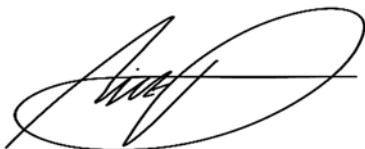
Ms. Letts,

It is with enthusiasm and humility that I submit to you a completed application for the FY2021 Certified Local Government grant program. As the first CLG grant application submitted since 2010, we are thrilled for the chance to take advantage of just one of the many opportunities that the Certified Local Government program affords us.

The project proposed in the following application will inspire decades of responsible, effective, and defensible historic preservation efforts that aim to preserve a unique character and disposition that is important to the City, its residents, and the environment.

If you should have any questions about any of the information presented within, please do not hesitate to contact me at any point. The City is ever willing to put in the extra effort to make the application the best that it can be.

Regards,



Nicholas Dupuis

City Planner
151 Martin St.
Birmingham, MI 48012
(248)-530-1856
ndupuis@bhamgov.org



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Michigan Certified Local Government Grant Application Planning, Documentation & Education



Grant Application Form Instructions:

1. Use the most current Grant Application Form version.
2. Electronically complete the entire Grant Application Form, electronically sign, and submit with the required Exhibits to LettsJ1@michigan.gov.
3. Follow the Exhibit Instructions in the CLG Grant Manual.

PROJECT INFORMATION

Grant Project Name: [Little San Francisco Survey](#)

Identify the project type covered by the grant application:

- ☒ Above-Ground Survey ☐ Archaeological Study ☐ Local Historic District Study ☐ National Register Nomination
☐ Preservation Planning [Specific type:]
☐ Public Education [Specific type:]

APPLICANT INFORMATION

Certified Local Government: [City of Birmingham, MI](#)

Grant Recipient Name: [City of Birmingham, MI](#)

This must be an active CLG in good standing with SHPO.

Federal ID Number: [38-6004664](#)

DUNS Number: [074239450](#)

The Federal Funding Accountability and Transparency Act, P.L. 109-282, as amended by section 6202(a) of P.L. 110-252, Subaward Reporting System requires the SHPO to utilize the DUNS Number to report first-tier subaward federal contracts and grants.

Certified Local Government Street Address: [151 Martin St.](#)

City, State: [Birmingham, MI](#)

Zip Code: [48012](#)

Project Coordinator Name: [Nicholas Dupuis, City Planner](#)

This individual must have complete knowledge of the day-to-day activities with the proposed grant-funded work.

Telephone Number: [248-530-1856](#)

Mobile Telephone Number: [N/A](#)

Email Address: ndupuis@bhamgov.org

Project Coordinator Street Address: [151 Martin St.](#)

City, State: [Birmingham, MI](#)

Zip Code: [48012](#)

CLG Sponsorship Applicant Information (if applicable)

Nonprofit or Other Public Entity: N/A	
Federal ID Number: N/A	
DUNS Number: N/A	
<i>The Federal Funding Accountability and Transparency Act, P.L. 109-282, as amended by section 6202(a) of P.L. 110-252, Subaward Reporting System requires the SHPO to utilize the DUNS Number to report first-tier subaward federal contracts and grants.</i>	
Nonprofit or Other Public Entity Contact Name: N/A	
Telephone Number: N/A	Mobile Telephone Number: N/A
Email Address: N/A	
Street Address: N/A	
City, State: N/A	Zip Code: N/A

CLG LEGISLATIVE INFORMATION

This information is used to contact your elected officials if a grant is awarded.

U.S. Senator Name: Debbie Stabenow	U.S. Senator Name: Gary Peters
U.S. Congressional District Number: 11	
Name of Congressman or Congresswoman: Haley Stevens	
State Senate District Number: 13	
Name of State Senator: Mallory McMorrow	
State House of Representative District Number: 40	
Name of State Representative: Mari Manoogian	

SCOPE OF WORK

On page 6, describe in detail the scope of work for your project. The narrative should:

- State the goals of the project;
- Identify the project need and provide an explanation of how the project activity addresses the need;
- Describe in detail the work activity(ies) and anticipated outcome(s); and
- Provide a list of the final products that will be provided to SHPO and indicate the medium. Example:

National Register Nomination for <i>Willenholly Building</i>	One or more flash drives, as necessary, including all items identified in SHPO's National Register Submission Checklist.
<i>Willenholly Building Survey Data</i>	2 sets of CDs/DVDs or flash drives containing survey data in MS Access, Excel or GIS shapefile.
<i>Willenholly Building Survey Report</i>	2 printed spiral bound original reports and 2 sets of CDs/DVDs or flash drives containing survey report in Word.
<i>Willenholly Preservation Plan</i>	2 printed spiral bound plans and 2 sets of CDs/DVDs or flash drives containing a PDF copy of the plan.

The scope of work demonstrates to reviewers how the project will proceed and that you have considered all elements of a successful project. The scope should complement the timeline and be sufficiently detailed so that the reviewers have a full understanding of the need of your project, activities to be completed, and the anticipated impact of the project. Additional guidance on describing the scope of work for particular project types is provided below:

Public Education Projects

- Describe the type of education project, program, or publication (e.g., heritage tourism program, K-12 lesson plan, pamphlet for property owners in local districts, workshops, etc.) to be produced or coordinated.
- Describe the purpose of your project, including the need it addresses.
- Describe the targeted audience(s) and how the project is appropriate for the targeted audience(s).
- Describe the methodology for developing the project, program, or publication and achieving your goals.
- Describe the anticipated content of your project, program, or publication.
- Describe the anticipated format for your project, program, or publication, including any physical or digital products that will be produced and how they will be distributed or made available to the public. Identify if it is intended for one time or continued use.
- Describe any examples of similar projects previously completed by the community and/or models from other communities to be used, if applicable.
- Describe the anticipated outcome and benefits of the project.

Archaeological Projects

- Projects involving excavation and planning studies should be discussed with the State Archaeologist prior to submission of an application.
- State the objectives of the project and the research, management and/or planning needs the project will address. Specify whether the project is an archaeological survey or a testing project.
- Describe the research design, including methods and techniques to be used. Sampling methodology, the use of shovel testing and test interval, the use of specialized equipment such as use of sonar equipment for underwater work, and similar topics should be discussed, as applicable. Mention any documentary research to be conducted (site file searches, historical records etc.). Describe any other sources of information such as oral history, informant interview, and collections study. Types of records to be compiled for the project (e.g., site forms, photographs, USGS maps) should be specified.
- Provide a map with the specific project area clearly outlined and estimate the number of acres to be field checked and number of sites anticipated to be found (example: 10,000 + 500 acres; 100 + 15 sites).
- Specify the repository for project collections and records. The repository must meet the *Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation*.

Above-ground Survey Projects

- Describe the type of survey (reconnaissance, intensive, or thematic) to be undertaken.
- Describe the need for the project and identify the goals of the survey.
- Describe the geographic area or theme to be surveyed and explain how they were chosen. Provide a brief summary of the overall appearance and history of the survey area, discussing such things as: population; development patterns; and urban, rural, or neighborhood characteristics.
- Include a map clearly showing the proposed survey boundaries (not applicable for thematic surveys) and a verbal description of the project's boundaries. If the project covers an entire city or county, include a written statement of this fact.
- Identify the number of resources to be surveyed and the estimated acreage covered by the survey.
- For thematic surveys, describe the significance of the property type and/or context to be studied. Include a list of resources anticipated to be surveyed as part of the project.
- Describe the survey methodology or research design. Projects must comply with the [Michigan Above Ground Survey Manual](#). Topics to address include, at a minimum, how fieldwork will be conducted, what sources will be utilized for research, and how assessments of the documented properties shall be conducted (use of the National Register selection criteria). Describe any known sources of information that may be useful in completing the survey and developing related historic context(s).
- Describe the anticipated products and contents of products, including how they will be distributed and/or how the resulting information will be shared with the public. Provide a list of the proposed themes that will be addressed in the historic context. A historic context is information about historic trends and properties organized by theme, time period and geographic area. Projects must use the themes listed in *National Register Bulletin 15: How to Apply National Register Criteria for Evaluation* but may tailor them further as appropriate.
- Describe how the survey results will be used for subsequent preservation activities and/or anticipated subsequent phases of the project.
- If available, include ballpark cost estimates from qualified professionals for completing the proposed project. When computing budget costs, include at least one public meeting and plan on preparing three sets of survey data; one will be kept at the local level and two will be submitted to the SHPO.

National Register of Historic Places Nominations

- Describe the proposed project, including the type of nomination and number and types of resources to be nominated. Identify whether the project is to produce a new nomination or amend existing documentation.
- Describe the need for the project and identify the goals of nominating the property. Describe the reasons for seeking nomination of the property to the National Register (e.g., public recognition or potential to spur economic investment). If the project is being undertaken as part of a larger community revitalization or economic development program, describe how the project will benefit those activities.
- Describe the resource(s) to be nominated, including a summary of current conditions and significance. Summarize previous determinations of eligibility, previous efforts to nominate and/or preserve the property, and any known changes since the determination of eligibility (or previous listing for amendments).
- If more than one nomination is to be prepared by the project, provide a tentative list of all the proposed nominations to be prepared, indicating for each, the type of nomination (individual property, district, or multiple property) and the approximate number of resources of each type (buildings, structures, objects, or sites) that each area contains.
- If the application is to prepare a Multiple Property Documentation Form (MPDF), identify the property types and/or themes to be addressed.
- Summarize known resources that may be useful in preparing the nomination and summarize additional documentation and research that may be necessary.
- Provide a list of the proposed areas of significance that will be addressed in the historic context. A historic context is information about historic trends and properties organized by theme, time period and geographic area. Projects must use the themes listed in *National Register Bulletin 15: How to Apply National Register Criteria for Evaluation*.
- Identify any documentation to be completed of the property (e.g., digital photographs, site plans, etc.), including if survey records are to be updated as part of the project.
- Provide a locational map and verbal description of the area to be nominated. For historic districts, describe the boundaries and explain how they were chosen.
- For individual resources: if the CLG is not the property owner, summarize property owner support or opposition for the nomination. Include a letter from the property owner supporting the nomination.
- For historic districts: summarize efforts to engage property owners and known support or opposition for the nomination.

Local Historic District Studies

- Describe the purpose of the project, the anticipated products and outcomes, and the proposed use of the products. Describe what the CLG hopes to accomplish through the process of establishing a local historic district.
- Describe the area to be studied, including a summary of the area's history, current conditions, and significance. Explain how the boundaries were chosen. Provide a map clearly outlining the boundaries of the area to be studied.
- Summarize any previous studies or previous efforts to designate the area and/or protect the property.
- Summarize the nature of survey records and report available to support the information to be presented in the Local Historic District Study. Identify additional work that will be necessary to sufficiently and appropriately make recommendations in consideration of the National Register Criteria and the requirements of Public Act 169 of 1970, as amended.
- Identify the steps to be completed during the project. Projects must comply with the requirements of Public Act 169 of 1970, as amended.
- Describe the project's relationship to broader community planning activities. If the project is being undertaken as part of a larger community revitalization or economic development program, describe how the CLG project will contribute to the goals of the community program revitalization or economic development program.
- Describe any public and/or local government support for the potential establishment of the local historic district, and identify any public outreach that the CLG has already initiated regarding a proposed study of the area (e.g., community meetings or discussions at historic district committee meetings).
- Provide a copy of the resolution from the local unit of government authorizing the creation of the historic district study committee.
- Provide a list of the names of the historic district study committee members and short description of their history or preservation affiliation. Resumes may be submitted.

Preservation Planning Projects

- Describe the type of planning activity (e.g., preservation plan, design guidelines, economic impact study, etc.) being pursued. Note: Applications for planning documents for specific properties (e.g., historic structure reports, feasibility studies, engineering studies, etc.) should use the grant manual for Rehabilitation and Rehabilitation Planning Projects available at www.michigan.gov/CLGgrants.
- Identify whether the project is to produce a new planning study or to update an existing study. If the project is to update an out-of-date or deficient planning document currently being used by the community, describe the issues to be addressed by the current project and include a copy of the current document being used.
- Describe the purpose of the project, including the need it addresses. Identify any local stresses, threats, or weaknesses in the local preservation program that will be addressed by the project.
- Describe the targeted audience(s) and how the project is appropriate for the targeted audience(s).
- Identify the boundaries of areas and/or the types of resources to be covered by the project, as applicable.
- Describe the methodology for achieving your project goals.
- Describe the project's relationship to previous and/or ongoing preservation planning activities.
- Describe how the project will relate to other community planning or development activities (e.g., community planning, zoning, economic revitalization, etc.).
- Describe how the project will contribute to the protection of significant historic resources in the community.
- Describe anticipated public outreach and engagement activities associated with development of the project.
- Describe the anticipated products and contents of products, including how they will be distributed or made available to the public.
- Describe the anticipated outcome and benefits of the project.

Project Objectives

All applications, regardless of project type, must also address the following questions:

- How will the project enhance the effectiveness of the CLG's activities and preservation programs? Describe the impact the project will have on the CLG's ability to identify, plan for, protect, and celebrate historic resources.
- What is the relationship of the project to the CLG's planning goals and priorities as identified in the CLG's annual reports and/or four-year evaluation?
- What is the urgency of the project? For example, does it address an immediate threat to certain properties? Does it address a weakness of current preservation activities in the community? Is it related to forthcoming community planning, economic development, or revitalization activities?
- Identify if the project meets one or more of Michigan's Historic Preservation Goals identified by the SHPO in Michigan's Historic Preservation Plan and/or one or more of SHPO's funding priorities for 2021.
- Describe the public or community benefit resulting from the project. Are there local partnerships between the CLG and other organizations that will be addressed? Which community stakeholders will potentially benefit from the activity?
- How will the public be informed about the purpose of this project and the value of historic preservation through the project?

SCOPE OF WORK

The Little San Francisco neighborhood, named for its hilly tree-lined streetscape, is Birmingham's smallest neighborhood covering just 20 acres. It is also one of the nearest neighborhoods to the burgeoning downtown commercial area. At present, the houses in the area are generally preserved from their 1910's and 1920's vintage, or have been rebuilt within the last 20 years. None of the homes in the Little San Francisco neighborhood have been historically designated (locally or nationally), nor did any of them participate in the City's Heritage Home program while it was active (recognizing homes that are 100+ years in age). Based on the City's current records, there are 38 homes in the neighborhood that are over 100 years old with 19 more aging into that category by 2024. This makes up a significant portion of the roughly 80 homes present in the neighborhood today. In seeking a *reconnaissance level survey* of the Little San Francisco neighborhood, the City will be able to accomplish a number of goals. First, the survey will be the first performed in the City since the Post WWII Eco City neighborhood was studied in the early 2010's. With the development pressures facing Birmingham's old or outdated homes, it is important to document Birmingham history and make progress towards preserving such. Second, the City's Historic District Study Committee, whose duties are to inventory, research, prepare reports and provide designation recommendations, will benefit greatly from working closely with a professional survey consultant to understand the processes and forms required for a reconnaissance level survey. This will allow the study committee to confidently perform surveys of their own in the future. Finally, the Little San Francisco neighborhood is the most well defined neighborhood within the City with well preserved homes, but its relationship to Downtown Birmingham and the associated land values create an environment that suits demolition over preservation. Performing a survey of this neighborhood will begin the process for a potential neighborhood historical designation and/or individual designations. The final product is intended to have a heavy online presence. The document will be available in an easily accessible and well-designed PDF format, and the results of the survey will be transformed by City Staff into an interactive online GIS map that residents can use to discover information on the potential historic resources in the neighborhood. The map will include photographs, dates, important characteristics, and architectural information.

Project Need and Goals

Because of the lack of preservation activity in the neighborhood, the City has little documented information regarding the neighborhoods housing stock and what historic structures remain. As one of the City's oldest neighborhoods, it is important to document the structures present and determine any historic designation eligibility before more homes are potentially lost to redevelopment. The City has also been in contact with several residents in the neighborhood that have expressed significant interest in understanding the history of their homes and neighborhood and preserving the character that makes Little San Francisco unique. The development pressures facing the neighborhood today mixed with strong neighborhood support for the survey project create a can't-miss opportunity to begin studying, documenting and preserving the neighborhood.

Survey Area and Current Conditions

The Little San Francisco Neighborhood is bound by N. Old Woodward to the west, Oakland Ave. to the south, and Woodward Ave. to the east. Within the neighborhood are Ferndale Ave., Euclid Ave., Park St. Ravine Rd. and Brookside Ave. The entire neighborhood, one of Birmingham's smallest, measures 20 acres and contains roughly 80 homes. The City's current GIS data shows 38 homes in the neighborhood that are over 100 years old, with 19 more passing 100 by 2024. The architecture of the older homes vary from craftsman style to single level ranches to colonial. The new homes constructed in the neighborhood vary in size and design. Some newer homes are built with an attention to detail and character that adds to the neighborhood, whereas other homes are out of context in terms of size, placement and style. With a majority of the neighborhood containing small lots (40 ft. & 50 ft. widths), many of the new homes do not align with the historic character of the neighborhood.

Methodology

The methodology for the reconnaissance level survey of the Little San Francisco Neighborhood is expected to be simple and contain several key components in the final draft of the survey report. The consultants and Historic District Study Committee will work with the SHPO and utilize the Michigan Above Ground Survey Manual to produce a report that provides a basis for local preservation planning and data to support a potential locally designated historic district. The following work items will be performed as a part of this survey project:

- Phase One: To begin the project, City Staff will draft an RFP that will be sent to the SHPO for review. Upon approval, the City will seek bids from firms with ample experience in surveys, as well as professional qualifications in architecture and historic architecture. Working with the SHPO, the consultants will be selected and a project kickoff meeting will be held with the Historic District Commission, Historic District Study Committee and consultants. Once the project goals and processes are confirmed, the initial public meeting will be held at the Historic District Commission, and an on-site component may be included.
- Phase Two: This middle phase will consist of all of the research and fieldwork, public engagement with residents in the neighborhood, preparation and review of the first draft, and the preparation of the final draft. The consultant

team will be expected to review the pertinent information on file within the City, including information and/or presentations available from the Birmingham Museum. During the research phase, City Staff will provide open access to files, maps or other information requested by the consultants. During the inventory and documentation step, the consultant will collect all baseline information for each property including location, architectural characteristics, and historical associations. All data collected will suffice to complete the Michigan Architectural Inventory Form. Based on the research performed prior to the fieldwork, the consultants will be expected to note and include more detail on properties that are at least 60 years old, whereas details on newly built homes (less than 20 years) may be basic. Photographs for each property are expected to be high resolution, with at least 3 facades (front, side, side as feasible) and close-up detail photographs of any signature architectural elements present on a building. For newer homes, the consultants will be expected to attempt to locate an image of the home lost in favor of such (via Google Earth). With the data and photographs obtained, the consultant will prepare a survey report meeting the content requirements outlined in the SHPO's Michigan Above-Ground Survey Manual. The report will provide a thorough review of Architecture, Community Planning and Development, and will evaluate the relative significance of surveyed resources. This will ultimately lead to recommendations as to the eligibility of each potential resource, and the potential risks facing the neighborhoods historic character and resources.

- Phase Three: During phase three, the final draft that was prepared will be subject to at least one full public review at the Historic District Commission and will be accompanied by a full presentation from the consultants that outlines the process and results of the survey project. This phase will also include an anticipated meeting at the City Commission level, which may be a combined meeting with the Historic District Commission. The finalized documents will then be sent to the SHPO for final review.

Final Products and Deliverables

Upon completion of the project, the City will (at minimum) provide the SHPO with:

- One (1) bound hard copy of the final survey report document;
- One (1) flash drive containing an electronic copy of the survey report, photographs, and any GIS shape files created; and
- Links to the City website where the document will be placed.

Future Preservation Activities and Goals

As noted above, this survey is intended to document the existing character and basic historical elements present in the neighborhood and help evaluate the Little San Francisco Neighborhood for potential local designation as a local historic district. If the data gathered produces results that support designation, the City will have taken the first step in preserving and protecting the neighborhood from development pressures that would significantly alter the historical character of a unique Birmingham neighborhood. Furthermore, with positive results, the City would begin to prepare for an intensive level survey and continue to educate the public on the importance of historic preservation. Outside of the neighborhood, this project will provide a valuable opportunity for the Historic District Study Committee with several new members and a significant amount of time since the committee performed a survey. With several other concentrations of older buildings in the City, this survey project will provide a good model to be used to meet the preservation goals of other neighborhoods in the City..

Cost Estimates

In preparing the budget for this project presented below, the City utilized the Michigan Historic Preservation Networks Historic Resource Guide to contact appropriate firms and discuss an estimated cost for the survey project. Based on the discussions and the smaller size of the survey neighborhood, the City believes that the budget is appropriate and sufficient to complete the scope of work in an effective and timely manner.

PROJECT OBJECTIVES

How will the project enhance the effectiveness of the CLG's activities and local preservation programs? Describe the impact the project will have on the CLG's ability to identify, plan for, protect, and celebrate important historic resources.

A reconnaissance level survey of the Little San Francisco neighborhood will provide a stepping-stone for the next decade of historical preservation efforts in the City. Taking the first step towards documenting and preserving a unique neighborhood will make it easier for the City to identify, protect and celebrate other areas moving forward. The project's dual-purpose goals to set up the Historic District Study Committee for future success in other areas of the City and to evaluate the possibility of the Little San Francisco neighborhood to become a historic district will advance the long term preservation goals of the City.

What is the relationship of the project to the CLG's planning goals and priorities as identified in the CLG's annual reports and/or four-year evaluation?

The annual report prepared by the City in 2019 listed Community Partnership Program applications as its first goal. One of the projects that was submitted was the survey of the Little San Francisco neighborhood, as the Historic District Commission felt as though its location and characteristics make it a priority for study and preservation.

What is the urgency of the project? For example, does it address an immediate threat to certain properties? Does it address a weakness of current preservation activities in the community? Is it related to forthcoming community planning, economic development, or revitalization activities?

As emphasized above, the historic properties in the Little San Francisco Neighborhood are consistently under the threat of demolition due to the proximity to Downtown Birmingham and the relative age of the houses. Several of the original homes in the neighborhood have been lost to new construction, and it is important to study the neighborhood and its historical characteristics to preserve this historic asset. Since the last survey performed in the City was in 2012, the last eight years have proven worrisome in general for potential historic resources in more than just the project neighborhood, and the City must begin to inject some energy back into its historical preservation goals. Including the Historic District Study Committee in this process will be integral to preservation in Birmingham in the near future in the Little San Francisco Neighborhood and other historic areas of the City.

Identify if the project meets one or more of Michigan's Historic Preservation Goals identified by the SHPO in Michigan's Historic Preservation Plan and/or one or more of SHPO's funding priorities for 2021.

Although a reconnaissance level survey project is not directly listed as a funding priority in the SHPO's funding priorities for 2021, there are elements of the project that apply. The goals of this particular survey will provide training activities for the Historic District Study Committee who will be working closely with the consultants throughout the survey. Additionally, this project will promote public awareness of preservation and enhance partnerships with the neighborhood group associated with the Little San Francisco neighborhood.

As for the Michigan Historic Preservation Plan (2014-2019), the first goal of the plan is to increase incentives and funding for historic preservation. As the plan mentions early on in the report, former incentives such as the historic preservation tax credit were only available to buildings within historic districts. The first step to becoming a historic district is the completion of a survey. Thus, included in the first goal of the plan is the creation of incentives to enable communities to undertake historic resource surveys. Furthermore, the current Draft MI Statewide Historic Preservation Plan (2020-2025) states that reinstating the historic preservation tax credit is "by far the top priority of preservationists in Michigan." The overall goal (Goal #2) to expand preservation funding opportunities and the tax credits are in many ways remain dependent on survey and the establishment of historic districts. Additionally, it is apparent that the proposed survey and the eventual GIS adaptation of the results may be a good addition to the statewide GIS-based historic resource database that will be completed in the near future.

Describe the public or community benefit resulting from the project. Are there local partnerships between the CLG and other organizations that will be addressed? Which community stakeholders will potentially benefit from the activity?

The community benefit of the survey project will help preserve a valuable neighborhood by establishing a framework that City Staff, the Historic District Commission and the Historic District Study Committee (HDSC) can use to determine the eligibility of properties to be designated a historic resource. This process will help retain the character and history of the neighborhood for its current residents, but also set up the HDSC for future studies that will spread across the city and help work against the pressures or redevelopment affecting the City its residents. As demolition in favor of new construction has worked itself into the spotlight here, now is a perfect time to show the residents of Birmingham what a survey can do and how it adds to overall historical preservation planning efforts.

How will the public be informed about the purpose of this project and the value of historic preservation through the project?

The City has already obtained the support of numerous residents in the neighborhood for the survey project. Public engagement with residents in the neighborhood will be plentiful and ongoing throughout the survey process. The public will be kept informed about the purpose and progress of this project through a dedicated page on the City's website. The page will outline all of the project goals, timeline, and review processes associated with the project, and will provide contact information for any additional questions. Additionally, the City will utilize social media and the monthly newsletters to keep the project visible. Finally, any review at the Historic District Commission level will be open to the public, and the

agendas are posted at City Hall, online, and residents are notified of new agendas through the City's Constant Contact service.

GRANT FUNDING REQUEST

CLG Grant Funding Request: **\$8,000**
Minimum of \$5,000

Total Project Amount: **\$8,000**

Source of Total Project Amount (City, Nonprofit, etc.): **City**

Total Project Amount Kind (Cash, In-Kind Services, etc.): **\$0**

PROJECT BUDGET

All grant funds are paid on an **EXPENSE REIMBURSEMENT** basis only. The grantee must have funds available for expenditure amounting to 100 percent of the project cost at the time of a grant application submittal. The grantee will be reimbursed for eligible expenses incurred (up to the grant amount) at the end of the grant process. Federal funds, excluding Federal Community Development Block Grant (CDBG) funds, are not allowable as CLG grant project funding.

The SHPO will review and may make changes to the budget line items as submitted in the application. The final budget approved by the SHPO will become an attachment to the grant agreement. Allowable costs are listed below:

Allowable Work Items

- Paid Staff Time and In-Kind Services: Compensation for project personnel during the project period including wages, salaries, and supplementary compensation and benefits are allowable costs, but additional materials must be submitted with the CLG grant application. Project personnel must demonstrate that they meet or exceed the professional requirements as stated in 36 CFR Part 61.
 - Fringe benefits for paid or in-kind employees in the form of employer's contributions to social security, life and health insurance plans, unemployment insurance coverage, worker's compensation plans, and pension plans are allowable, provided costs are distributed equitably to grant costs and other activities.
- Transportation, lodging, subsistence and related items for project personnel who are in travel status for project-related work is allowable. Costs are charged on an actual basis and must be consistent with the Standard State of Michigan rate. Documentation and invoices must be provided for each cost. First-class airfare is not allowable.
- The cost of supplies necessary to carry out the grant work is allowable. Purchases under \$500.01 made specifically for the grant work shall be charged at their actual prices after deducting all cash discounts, trade discounts, rebates and allowances received by the grant recipient. Supplies exceeding \$500.01 must be competitively bid and required documentation of the competitive bid process must be determined in consultation with the SHPO.
- The grant recipient may contract all or part of the project work. Free and open competition must be maintained. The SHPO must receive documentation of the procurement at each stage and must approve the contractor and contract.

Unallowable Work Items

- Acquisition
- Non-historic site features such as parking lots
- Certain environmental cleanup activities required under federal law
- Reconstruction of demolished buildings (Reconstruction of certain missing elements may be allowable if based upon historical documentation, such as photographs.)
- Expenses and costs of organized fundraising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions
- Fines, penalties, debts or losses arising from non-collectable accounts and other claims, and related collection costs
- Interest and other financial costs; interest on borrowing
- Volunteer labor of professionals, such as roofers, painters, electricians, plumbers, etc.
- Cost-plus subcontracts, unlimited time and materials sub-contracts, and contingency fees
- Entertainment, costs of amusements, social activities, and related incidental cost such as meals, beverages, lodgings, rentals, transportation, and gratuities
- Costs of meals for employees when they are not in travel status
- Historical markers are not an allowable cost
- Students in a federally funded work/study program cannot contribute in-kind services
- Archaeological Salvage
- Lobbying, costs associated with activities to influence legislation
- Political activities or any other, no grant funds may be made for the use of equipment or premises for political purposes, political activities sponsoring or conducting candidates' meeting(s), engaging in voter registration activity or voter transportation activity, or other partisan political activities

WORK ITEMS	CLG FUNDS	PROJECT TOTAL
Document Review & Project Kickoff	\$1,000	\$1,000
Public Meetings/Presentations	\$2,000	\$3,000
Research, Identification, Documentation and Photo Inventory	\$2,000	\$5,000
Document Preparation	\$2,000	\$7,000
Project Marketing, Social Media	\$500	\$7,500
Hard Copy Deliverables	\$500	\$8,000
TOTALS:		\$8,000
<i>The budget should be detailed and describe the work to be done and include all estimated costs. Applicants are strongly encouraged to include a vendor quotation for the work and services to be completed. Providing estimates with your application helps the reviewers understand the reasonableness of costs associated with the project.</i>		

GRANT ADMINISTRATION EXPERIENCE

Provide brief description of the experience your organization has in administering federal grant funds. Specifically identify federal grant funds administered in the last 5 years, including funding program, amounts, and dates of administered grants.

The City of Birmingham has a successful history of acquiring and administering federal grand funds:

- Community Development Block Grant – Annually - \$35,000
- Emergency Management Performance Grant – Annually - \$25,000
- Police Enforcement Grants
 - FY 2019-2020 - \$17,630
 - FY 2018-2019 - \$30,600
 - FY 2017-2018 - \$30,381
 - FY 2016-2017 - \$17,408
 - FY 2015-2016 - \$2,196
- Transportation Alternatives Program
 - FY 2021 - \$560,349
 - FY 2018 - \$119,707

WORK SCHEDULE

Instructions: On the following page provide a work schedule. Please consider that work cannot begin until the grant agreement is executed. Awarded grants will have until **September 30, 2022**, to complete the project work.

Grant agreements that include the hiring of a consultant or contractor should include dates for the following bidder solicitation activities:

- Execution of grant agreement
- Submit draft RFP, solicitation letter, and advertisement to SHPO for approval
- SHPO approval of RFP, solicitation letter and advertisement (allow 30 days)
- Solicit bids
- Bids due (allow 30 days)
- Submit bids, rationale for bidder selection
- Submit draft consultant contract to SHPO for approval (allow 30 days)
- SHPO comments and recommends changes for consultant contract
- Executed contract submitted to SHPO

Work schedules must also include the following:

- Quarterly progress reports (due dates are January 15, April 15, July 15, and September 15)
- Project kick-off meeting with CLG and consultant(s)
- Completion of major project milestones (e.g., start and completion of fieldwork; preparation of draft and final studies, reports, or other products; etc.)
- Anticipated public meetings and/or presentations
- SHPO review of 75% and 90% draft products (allow 30 days)
- SHPO review of final products (allow 30 days)
- Submission of completion report and reimbursement request to SHPO

DATE	Grant Agreement
May 2021	Grant agreement executed
DATE	Grant Project Work Items
March 2021	Prepare Draft RFP for Competitive Bid Process
May 2021	Submit Draft RFP, Solicitation Letter, and Advertisement to SHPO for Approval
June 2021	SHPO Approval of RFP, Solicitation Letter and Advertisement
June 2021	Solicit Bids
July 2021	Bids Due
July 2021	Submit Bids, Rationale for Bidder Selection
August 2021	Submit Draft Consultant Contract to SHPO for Approval
September 2021	SHPO Comments and Recommends Changes for Consultant Contract
September 2021	Executed Contract Submitted to SHPO
January 15, 2022	Quarterly Progress Report
February 2022	Project Kick-Off Meeting with CLG and Consultant(s)
March/April 2022	Start & Complete Fieldwork and Research
April 15, 2022	Quarterly Progress Report
April/May 2022	Prepare Draft Report
May 2022	Review Draft Report at HDC,
June 2022	SHPO review of 75% draft products
July 15, 2022	Quarterly Progress Report
July 2022	SHPO review of 90% draft products
August 2022	Prepare Final Report
August/September 2022	Review Final Report at HDC
DATE	Project Close-Out
September 30, 2022	Submit Completion Report and Reimbursement Request to SHPO
Provide an estimated project schedule based on a September 30, 2022 completion date. Note: this deadline is federally mandated. All project work must be completed, including billing and reporting, by this date. No extensions will be given.	

ASSURANCES: FOR NON-CONSTRUCTION PROJECTS

ASSURANCES – NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET, SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capabilities (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794) which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply, as applicable, with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-554, as amended, 7 U.S.C. §§2132 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) Which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1966 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL 	TITLE City Manager
APPLICANT ORGANIZATION City of Birmingham	DATE SUBMITTED October 1 st , 2020

Standard Form 424D (Rev. 7-97)

CERTIFICATE VERIFYING KEY PERSONS OF THE CONTRACTOR/SUBGRANTEE

The Certificate Verifying Key Persons of the Grant Recipient/Contractor identifies the key individuals that will be responsible for administering the CLG grant agreement. This form also ensures that Grantee and its employees, agents, and independent contractors acknowledge that 2007 PA 95, MCL 38.68c requires retirees of the State Employees Retirement System ("Pensioned Retirees") who become employed by the State either directly or indirectly through a contractual arrangement with another party on or after October 1, 2007 to forfeit their state pension for the duration of their reemployment.

The Certificate Verifying Key Persons of the Grant Recipient/Contractor must be completed, signed and dated by the authorized grant agreement signatory or another appropriate individual. This form acknowledges that only Key Persons shall perform the services under the CLG grant agreement.

Instructions

- Include the names of all employees, agents and independent contractors who will perform or render services pursuant to the grant agreement.
- The signatory for the grant agreement will be the sole Key Person for the CLG grant project.
- If the Grant Recipient wishes to add an agent, employee, or independent contractor as a Key Person during the term of the grant agreement, they shall complete and submit to SHPO a new Key Persons Form including the names of the additional individuals.

CERTIFICATE VERIFYING KEY PERSONS OF THE GRANTEE

The Grantee acknowledges that the following personnel are Key Persons of the Grantee:

(1) Name: Joseph A. Valentine
(Print or type Name above line)

Title with Grantee City Manager

Is the Key Person a retiree who receives a pension from the Michigan State Employees Retirement System? Yes _____ /No X

(2) Name: Pierre Boutros
(Print or type Name above line)

Title with Grantee Mayor


Is the Key Person a retiree who receives a pension from the Michigan State Employees Retirement System? Yes _____ /No X

(3) Name: Nicholas Dupuis
(Print or type Name above line)

Title with Grantee City Planner

Is the Key Person a retiree who receives a pension from the Michigan State Employees Retirement System? Yes _____ /No X

Print or Type Grantee Name Above Line

By:  October 1st, 2020
Signature Date

Name of Signatory for Grantee: Joseph A. Valentine
Print/Type Name of Signatory Above Line

Its: City Manager

Federal Identification Number: 38-6004664

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

The Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion must be signed and dated by the authorized signatory or another appropriate individual and returned to SHPO. Signature of this form provides for compliance with Federal certification requirements for new restrictions on Lobbying, Government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug-Free Workplace.

Instructions

- Part A - The authorized Grant Recipient must complete this section.
- Part B – The authorized Grant Recipient must complete this section.
- Part C - If the Grant Recipient is an organization, Part C must also be completed.
 - Part C contains two sections, both of which must be completed if Part C applies.
- Part D - If the Grant Recipient is an individual, Part D must also be completed.
- Part E - The Grant Recipient certifying official must complete the signature section.

This form cannot be altered, amended, changed, or modified in any way.

U.S. Department of the Interior
Certifications Regarding Debarment, Suspension and
Other Responsibility Matters, Drug-Free Workplace
Requirements and Lobbying

Persons signing this form should refer to the regulations referenced below for complete instructions:

Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions – **The prospective primary participant further agrees by submitting this proposal that it will include the clause titled, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.** See below for language to be used or use this form certification and sign. (See Appendix A of Subpart D of 43 CFR Part 12.)

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions - (See Appendix B of Subpart D of 43 CFR Part 12.)

Certification Regarding Drug-Free Workplace Requirements - Alternate I. (Grantees Other Than Individuals) and Alternate II. (Grantees Who are Individuals) - (See Appendix C of Subpart D of 43 CFR Part 12)

Signature on this form provides for compliance with certification requirements under 43 CFR Parts 12 and 18. The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of the Interior determines to award the covered transaction, grant, cooperative agreement or loan.

PART A: Certification Regarding Debarment, Suspension, and Other Responsibility Matters- Primary Covered Transactions

CHECK X IF THIS CERTIFICATION IS FOR A PRIMARY COVERED TRANSACTION AND IS APPLICABLE.

- (1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
 - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
 - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

PART B: Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion –Lower Tier Covered Transactions

CHECK X IF THIS CERTIFICATION IS FOR A LOWER TIER COVERED TRANSACTION AND IS APPLICABLE.

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

PART C: Certification Regarding Drug-Free Workplace Requirements

CHECK X IF THIS CERTIFICATION IS FOR AN APPLICANT WHO IS NOT AN INDIVIDUAL

Alternate I. (Grantees Other Than Individuals)

A. The grantee certifies that it will or continue to provide a drug-free workplace by:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (b) Establishing an ongoing drug-free awareness program to inform employees about--
- (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will -
- (e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
- (f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted --
- (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a) (b), (c), (d), (e) and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Check if there are workplaces on files that are not identified here.

PART D:

CHECK IF THIS CERTIFICATION IS FOR AN APPLICANT WHO IS AN INDIVIDUAL

Alternate II. (Grantees Who Are Individuals)

- (a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;
- (b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to the grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

DI-2011
June 1995
(This form replaces DI-1953, DI-1954,
DI-1955, DI-1956 and DI-1963)

PART E: Certification Regarding Lobbying
Certification for Contracts, Grants, Loans, and Cooperative Agreements

CHECK _____ IF CERTIFICATION IS FOR THE AWARD OF ANY OF THE FOLLOWING AND THE AMOUNT EXCEEDS \$100,000: A FEDERAL GRANT OR COOPERATIVE AGREEMENT, SUBCONTRACT, OR SUBGRANT UNDER THE GRANT OR COOPERATIVE AGREEMENT.

CHECK _____ IF CERTIFICATION FOR THE AWARD OF A FEDERAL LOAN EXCEEDING THE AMOUNT OF \$150,000, OR A SUBGRANT OR SUBCONTRACT EXCEEDING \$100,000, UNDER THE LOAN.

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

As the authorized certifying official, I hereby certify that the above specified certifications are true.



SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL

JOSEPH A. VALENTINE, CITY MANAGER

TYPED NAME AND TITLE

OCTOBER 1ST, 2020

DATE

DI-2011
June 1995
(This form replaces DI-1953, DI-1954,
DI-1955, DI-1956 and DI-1963)

W-9 REQUEST FOR TAXPAYER IDENTIFICATION NUMBER AND CERTIFICATION

Complete the W-9 Request for Taxpayer Identification Number and Certification form. This form is used for payment purposes following the completion of the project.

Instructions

- List the name and federal identification number of the organization that will receive CLG grant funds.

Request for Taxpayer Identification Number and Certification

► Go to www.irs.gov/FormW9 for instructions and the latest information.

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

Print or type.
See Specific Instructions on page 3.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank. City of Birmingham		
2 Business name/disregarded entity name, if different from above		
3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes. <input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ► Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner. <input checked="" type="checkbox"/> Other (see instructions) ► Municipality	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) 3 Exemption from FATCA reporting code (if any) C <small>(Applies to accounts maintained outside the U.S.)</small>	
5 Address (number, street, and apt. or suite no.) See instructions. 151 Martin Street	Requester's name and address (optional)	
6 City, state, and ZIP code Birmingham, MI 48009		
7 List account number(s) here (optional)		

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

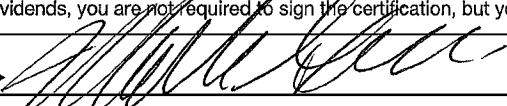
Social security number									
			-				-		
or									
Employer identification number									
3	8	-	6	0	0	4	6	6	4

Part II Certification

Under penalties of perjury, I certify that:

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

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

Sign Here	Signature of U.S. person ► 	Date ► 3/12/2020
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General Instructions

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

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
 - Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
 - Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
 - Form 1099-S (proceeds from real estate transactions)
 - Form 1099-K (merchant card and third party network transactions)
 - Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
 - Form 1099-C (canceled debt)
 - Form 1099-A (acquisition or abandonment of secured property)
- Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,
- The U.S. grantor or other owner of a grantor trust and not the trust, and
- The U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS a percentage of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 3 for details),
3. The IRS tells the requester that you furnished an incorrect TIN,
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate Instructions for the Requester of Form W-9.

Also see *Special rules for partnerships* on page 1.

Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account, for example, if the grantor of a grantor trust dies.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Name

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

Sole proprietor. Enter your individual name as shown on your income tax return on the "Name" line. You may enter your business, trade, or "doing business as (DBA)" name on the "Business name/disregarded entity name" line.

Partnership, C Corporation, or S Corporation. Enter the entity's name on the "Name" line and any business, trade, or "doing business as (DBA)" name on the "Business name/disregarded entity name" line.

Disregarded entity. Enter the owner's name on the "Name" line. The name of the entity entered on the "Name" line should never be a disregarded entity. The name on the "Name" line must be the name shown on the income tax return on which the income will be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a domestic owner, the domestic owner's name is required to be provided on the "Name" line. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on the "Business name/disregarded entity name" line. If the owner of the disregarded entity is a foreign person, you must complete an appropriate Form W-8.

Note. Check the appropriate box for the federal tax classification of the person whose name is entered on the "Name" line (Individual/sole proprietor, Partnership, C Corporation, S Corporation, Trust/estate).

Limited Liability Company (LLC). If the person identified on the "Name" line is an LLC, check the "Limited liability company" box only and enter the appropriate code for the tax classification in the space provided. If you are an LLC that is treated as a partnership for federal tax purposes, enter "P" for partnership. If you are an LLC that has filed a Form 8832 or a Form 2553 to be taxed as a corporation, enter "C" for C corporation or "S" for S corporation. If you are an LLC that is disregarded as an entity separate from its owner under Regulation section 301.7701-3 (except for employment and excise tax), do not check the LLC box unless the owner of the LLC (required to be identified on the "Name" line) is another LLC that is not disregarded for federal tax purposes. If the LLC is disregarded as an entity separate from its owner, enter the appropriate tax classification of the owner identified on the "Name" line.

Other entities. Enter your business name as shown on required federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name/disregarded entity name" line.

Exempt Payee

If you are exempt from backup withholding, enter your name as described above and check the appropriate box for your status, then check the "Exempt payee" box in the line following the "Business name/disregarded entity name," sign and date the form.

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

Note. If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

The following payees are exempt from backup withholding:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2),
 2. The United States or any of its agencies or instrumentalities,
 3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities,
 4. A foreign government or any of its political subdivisions, agencies, or instrumentalities, or
 5. An international organization or any of its agencies or instrumentalities.
- Other payees that may be exempt from backup withholding include:
6. A corporation,
 7. A foreign central bank of issue,
 8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States,
 9. A futures commission merchant registered with the Commodity Futures Trading Commission,
 10. A real estate investment trust,
 11. An entity registered at all times during the tax year under the Investment Company Act of 1940,
 12. A common trust fund operated by a bank under section 584(a),
 13. A financial institution,
 14. A middleman known in the investment community as a nominee or custodian, or
 15. A trust exempt from tax under section 664 or described in section 4947.

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 15.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 9
Broker transactions	Exempt payees 1 through 5 and 7 through 13. Also, C corporations.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 5
Payments over \$600 required to be reported and direct sales over \$5,000 ¹	Generally, exempt payees 1 through 7 ²

¹ See Form 1099-MISC, Miscellaneous Income, and its instructions.

² However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney, and payments for services paid by a federal executive agency.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited Liability Company (LLC)* on page 2), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

Note. See the chart on page 4 for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at www.ssa.gov. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at www.irs.gov/businesses and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting IRS.gov or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note. Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if item 1, below, and items 4 and 5 on page 4 indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on the "Name" line must sign. Exempt payees, see *Exempt Payee* on page 3.

Signature requirements. Complete the certification as indicated in items 1 through 3, below, and items 4 and 5 on page 4.

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983. You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account ¹
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor ²
4. a. The usual revocable savings trust (grantor is also trustee) b. So-called trust account that is not a legal or valid trust under state law	The grantor-trustee ³ The actual owner ¹
5. Sole proprietorship or disregarded entity owned by an individual	The owner ³
6. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulation section 1.671-4(b)(2)(i)(A))	The grantor ⁴
For this type of account:	Give name and EIN of:
7. Disregarded entity not owned by an individual	The owner
8. A valid trust, estate, or pension trust	Legal entity ⁴
9. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
10. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
11. Partnership or multi-member LLC	The partnership
12. A broker or registered nominee	The broker or nominee
13. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
14. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulation section 1.671-4(b)(2)(i)(B))	The trust

¹ List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

² Circle the minor's name and furnish the minor's SSN.

³ You must show your individual name and you may also enter your business or "DBA" name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

⁴ List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships* on page 1.

*Note. Grantor also must provide a Form W-9 to trustee of trust.

Note. If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Secure Your Tax Records from Identity Theft

Identity theft occurs when someone uses your personal information such as your name, social security number (SSN), or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Publication 4535, Identity Theft Prevention and Victim Assistance.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

Protect yourself from suspicious emails or phishing schemes.

Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to phishing@irs.gov. You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: spam@uce.gov or contact them at www.ftc.gov/idtheft or 1-877-IDTHEFT (1-877-438-4338).

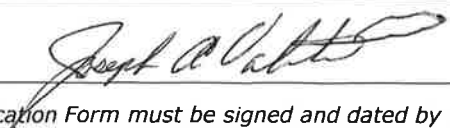
Visit IRS.gov to learn more about identity theft and how to reduce your risk.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.

CERTIFIED LOCAL GOVERNMENT AUTHORIZED SIGNATORY

Signature:



Date:

October 1st, 2020

The Grant Application Form must be signed and dated by the authorized contract signatory or another appropriate individual.

Printed Name and Title: Joseph A. Valentine, City Manager

CLG Sponsorship (if applicable)

Signature:

N/A

Date:

N/A

The Grant Application Form must be signed and dated by the authorized contract signatory or another appropriate individual.

Printed Name and Title: N/A

CHECKLIST

Attach the following Exhibits to complete the CLG grant application. Please refer to the CLG Grant Manual for instructions.

- ☒ Exhibit A: Financial Certification
- ☒ Exhibit B: 36 CFR 61 Professional Qualifications Standards
- ☒ Exhibit C: Resolution and/or Memorandum of Understanding
- ☒ Exhibit D: Grant Application Support Letters
- ☒ Exhibit E: Bylaws and Articles of Incorporation
- ☒ Exhibit F: Photographs and Other Supporting Documentation
- ☐ Exhibit G: Deed and Ownership Information (single resource National Register nominations only)

Applications Due: Completed applications must be received by SHPO no later than 5:00 p.m. on October 1, 2020.

Submit one electronic Certified Local Government Grant Application Form and Exhibits in Portable Document Format (PDF) to Joelle Letts, Grants Manager/Budget Specialist, at LettsJ1@michigan.gov

Failure to submit a timely application or failure to provide all information requested above may result in your application not being scored.

EXHIBIT A:

Financial Certification

- Comerica Bank Letter

Comerica Bank

P.O. Box 75000
Detroit, MI 48275-3354
(313) 222-6379/Office
(313) 222-3900/Fax
mikorsak@comerica.com

Mike Korsak, CTP
Vice President
Sr. Municipalities Representative

September 25, 2020

Mark Gerber, Finance Director
City of Birmingham
151 Martin
Birmingham, MI 48909

Dear Mark,

RE: Bank Accounts

Please provide this letter to certify that the City of Birmingham has the availability and sufficient funds for the grant up to \$23,000. The City has been an excellent customer of Comerica Bank, and has appropriately handled their accounts.

Please let us know if you have any questions.

Respectfully,



Michael Korsak, V.P.
Sr. Relationship Manager
(313) 222-6379

EXHIBIT B:

36 CFR 61 Professional Qualification Standards

October 1st, 2020

Joelle Letts

Grants Manager/Budget Specialist
Michigan State Historic Preservation Office
300 N. Washington Square
Lansing, MI 48913

RE: 36 CFR 61 Professional Qualification Standards

Ms. Letts,

Please accept this letter as an acknowledgment from the City of Birmingham that any professional consultants hired as a part of the grant project work will meet the appropriate 36 CFR 61 professional qualification standards for the Little San Francisco Survey project.

Throughout various planning efforts that the City of Birmingham has embarked upon, the City has consistently sought the most qualified and proficient consultants to produce plans, studies, services and designs that maintain a high standard. The proposed project will continue Birmingham's commitment to provide a top-quality product and better serve our community.

Thank you for your consideration. We very much look forward to working together towards reaching our mutual historic preservation goals.

Regards,



Nicholas Dupuis

City Planner
151 Martin St.
Birmingham, MI 48012
(248)-530-1856
ndupuis@bhamgov.org



EXHIBIT C:

Resolution

- Requirement Confirmation Letter
 - Draft Resolution Language

October 1st, 2020

Joelle Letts

Grants Manager/Budget Specialist
Michigan State Historic Preservation Office
300 N. Washington Square
Lansing, MI 48913

RE: FY 2021 CLG Grant Acceptance Resolution

Ms. Letts,

Due to the timing of the FY 2021 CLG Grant application deadline, a hearing to accept the required resolution authorizing acceptance of the grant under the conditions attached thereto is planned for October 12, 2020.

As advised by Alan Higgins, Certified Local Government Coordinator, a copy of the approved resolution will be furnished to the State Historic Preservation Office for review and approval as a part of this CLG Grant application for historic design guidelines. Please accept the attached draft resolution language for review in the meantime.

Regards,



Nicholas Dupuis

City Planner
151 Martin St.
Birmingham, MI 48012
(248)-530-1856
ndupuis@bhamgov.org



FY21 CERTIFIED LOCAL GOVERNMENT GRANT APPLICATION
LITTLE SAN FRANCISCO NEIGHBORHOOD SURVEY
2020

WHEREAS, The City of Birmingham has submitted an application to the Michigan State Historic Preservation Office (SHPO) in the amount of \$8,000 for a reconnaissance-level historical survey of the Little San Francisco Neighborhood;

WHEREAS, The Planning Division, under direction of the City Manager, are appointed as the Grant Project Managers who will oversee the CLG grant management and grant administration duties;

WHEREAS, The City of Birmingham will receive and pay vendor invoices related to the grant project;

WHEREAS, The City of Birmingham acknowledges that the Certified Local Government Program is an expense reimbursement program;

NOW, THEREFORE, BE IT RESOLVED, Should the CLG Grant Program application be accepted by the SHPO, the City acknowledges that the City is responsible for all project expenditures in the amount of \$8,000 for the project work with the knowledge that eligible expenditures up to the approved grant amount will be reimbursed to the City of Birmingham upon SHPO acceptance of final project work, SHPO acceptance of the final completion report, and SHPO audit and acceptance of financial documentation for eligible costs;

BE IT FURTHER RESOLVED, Joseph A. Valentine, City Manager, is authorized to sign the grant agreement and any grant agreement amendments.

I, Alexandria Bingham, Acting City Clerk of the City of Birmingham, Michigan, do hereby certify that the foregoing is a true and correct copy of the resolution adopted by the Birmingham City Commission at its regular meeting held on October 12, 2020.

Alexandria Bingham
Acting City Clerk

EXHIBIT D:

Grant Application Support Letters

- Historic District Commission
- Friends of the Birmingham Museum
 - Neighborhood Residents



October 1st, 2020

Joelle Letts

Grants Manager/Budget Specialist
Michigan State Historic Preservation Office
300 N. Washington Square
Lansing, MI 48913

RE: Historic District Commission Letter of Support

Ms. Letts,

On behalf of the City of Birmingham Historic District Commission, please accept this letter in support of the 2021 CLG Grant application for the survey of the Little San Francisco Neighborhood. As chairperson of the HDC for 9 years, I have an intimate understanding of the City's local historic districts, their quality, and the level of urgency associated with the heavy development pressures in Birmingham.

The Little San Francisco Neighborhood is a unique neighborhood which undoubtedly has an important story to tell. As the City is experiencing heavy losses of many pre WWII housing, it is imperative that we preserve neighborhoods like these to retain a physical and social character that cannot be replaced.

Please feel free to reach out to me with any additional questions, comments or concerns!

Regards,

A large, stylized handwritten signature in blue ink, which appears to read "John W. Henke".

John W. Henke

Chairperson, Historic District Commission
151 Martin St.
Birmingham, MI 48012
jwhenke@aol.com



September 29, 2020

Joelle Letts, Grants Manager/Budget Specialist
Michigan State Historic Preservation Office
300 N. Washington Square
Lansing, MI 48913
LettsJ1@michigan.gov

The Friends of the Birmingham Museum, a.k.a. the Birmingham Historical Society, has been committed to preserving and celebrating Birmingham's history and architectural heritage since we formed in the 1960s. We were instrumental in preserving and listing the John West Hunter House (built 1822) on the National Register as one of the first such sites in our community. We have also contributed research and volunteer efforts over the decades to work toward understanding and educating our citizens about the importance of Birmingham's neighborhoods and civic development from the early twentieth century and later. Much of the background and research for our local historic districts involved the efforts of our members and local historians.

The City of Birmingham has recently considered a study of one of our oldest historic neighborhoods for potential historical designation and/or preservation efforts. The 'Little San Francisco' area of Birmingham is the first developed housing area outside the original village limits. It has a wide array of architectural styles and its homes and streets have unique character.

In recent years, there has been pressure to expand the downtown business district into the neighborhood, and we believe this pressure will continue into the future. We wholeheartedly support the grant application by the City of Birmingham. The City has knowledgeable personnel that can effectively utilize grant funds to complete this study to determine next steps toward preserving the neighborhood.

Therefore, the Friends of the Birmingham Museum is writing to enthusiastically support the Certified Local Government grant application by the City of Birmingham to study and survey the Little San Francisco neighborhood. We look forward to the outcome of the study and the preservation of this wonderful historic area of our city.

Sincerely,

Leslie Mio, President
Friends of the Birmingham Museum (a.k.a., Birmingham Historical Society)

Neil Fichtenberg
430 Park St., Birmingham, MI 48009

SEPTEMBER 28, 2020

Nicholas Dupuis
151 Martin Street
PO Box 3001
Birmingham, MI 48012

Dear Mr. Dupuis,

I was recently informed by Genevieve Debbrecht, board member of the Historic District Commission (HDC), of the decision to apply for a grant from Michigan's Certified Local Government program, in order to complete a reconnaissance level survey of the neighborhood commonly referred to as the "Little San Francisco" in Birmingham. Being in close proximity to Birmingham's center, it is one of the oldest residential neighborhoods outside of the downtown. Although it has seen a lot of change over the past couple decades, roughly half of the original houses remain, many of which were likely built within the first years after the subdivision was platted over a century ago. As both a resident and homeowner in this neighborhood, I strongly support the decision to professionally survey it, in order to assist the city in determining the historical significance of the subdivision as a whole and/or the individual properties therein.

I have also reached out to other property owners in the neighborhood to inform them and received confirmation of support for this survey from the following homeowners:

Katy Gaines – 343 Ferndale Ave

Brad Host – 416 Park St

Mary Jaye – 288 Ravine Rd

Beverley McCotter – 287 Oakland Ave

Marianne Miller – 544 Brookside Ave

Kristen Tait – 692 Brookside Ave

Sincerely,

Neil Fichtenberg

EXHIBIT E:

Bylaws and Articles of Incorporation

- Article VII, Division II, Sec. 2-289 of Birmingham City Code

Sec. 2-289. - Approval of legal documents.

The mayor shall sign, the city clerk shall attest to, the city manager shall approve as to substance, and the city attorney shall approve as to form all contracts and agreements requiring the assent of the city, unless otherwise provided for by law, the Charter, ordinance or the provisions of this Code. Any contract or agreement by which the city incurs any financial obligation shall first be approved by the director of finance in accordance with chapter VII, section 3, of the Charter.

(Code 1963, § 1.135)

EXHIBIT F:

Photographs and Other Supporting Documentation

- 1921 Sanborn Map
 - General Area Map
- Formal Quotation – Preservation Forward and Beckett & Raeder, Inc.
 - Photographs – Little San Francisco Homes

INDEX

STREETS		SHEET		SHEET		SHEET	
Ann. A.	100-229	Hamilton. H.	100-164	Southfield Ave. S.	100-021	Fire Department.	100-021
Argus Ave. B.	100-229	Hanna. H.	100-229	Stanley. S.	100-021	First Baptist Church.	100-021
Baldwin Ave. C.	100-229	Harmon Ave. H.	100-229	Townsend. T.	100-021	Presbyterian Church.	100-021
Bates. N.	100-229	Haynes. H.	100-229	Wetzel. W.	100-021	Flexible Products Co. Patent Stone Mfg. Co.	100-021
Bowers. B.	100-229	High. H.	100-229	Willett. W.	100-021	G. T. R. R. Freight Station.	100-021
Brownell. B.	100-229	Lincoln. L.	100-229	Woodward Ave. S.	100-021	Hill School. H.	100-021
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Chester. N.	100-229	Rock Ave. R.	100-229			Lawson-Erb Lumber Co. Lumber & Coal.	100-021
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Dalton. D.	100-229	St. John. S.	100-229			McCollum, W. Lumber Dealer, Sheds, Etc.	100-021
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Frank. F.	100-229	St. Peter. S.	100-229			Mollen-Wright-Moulthrop Co. Lumber & Coal.	100-021
George. G.	100-229	St. Rose. S.	100-229			Mollen-Wright-Moulthrop Co. Lumber & Coal.	100-021
Gray Court. G.	100-229	St. Vincent. S.	100-229			Mollen-Wright-Moulthrop Co. Lumber & Coal.	100-021

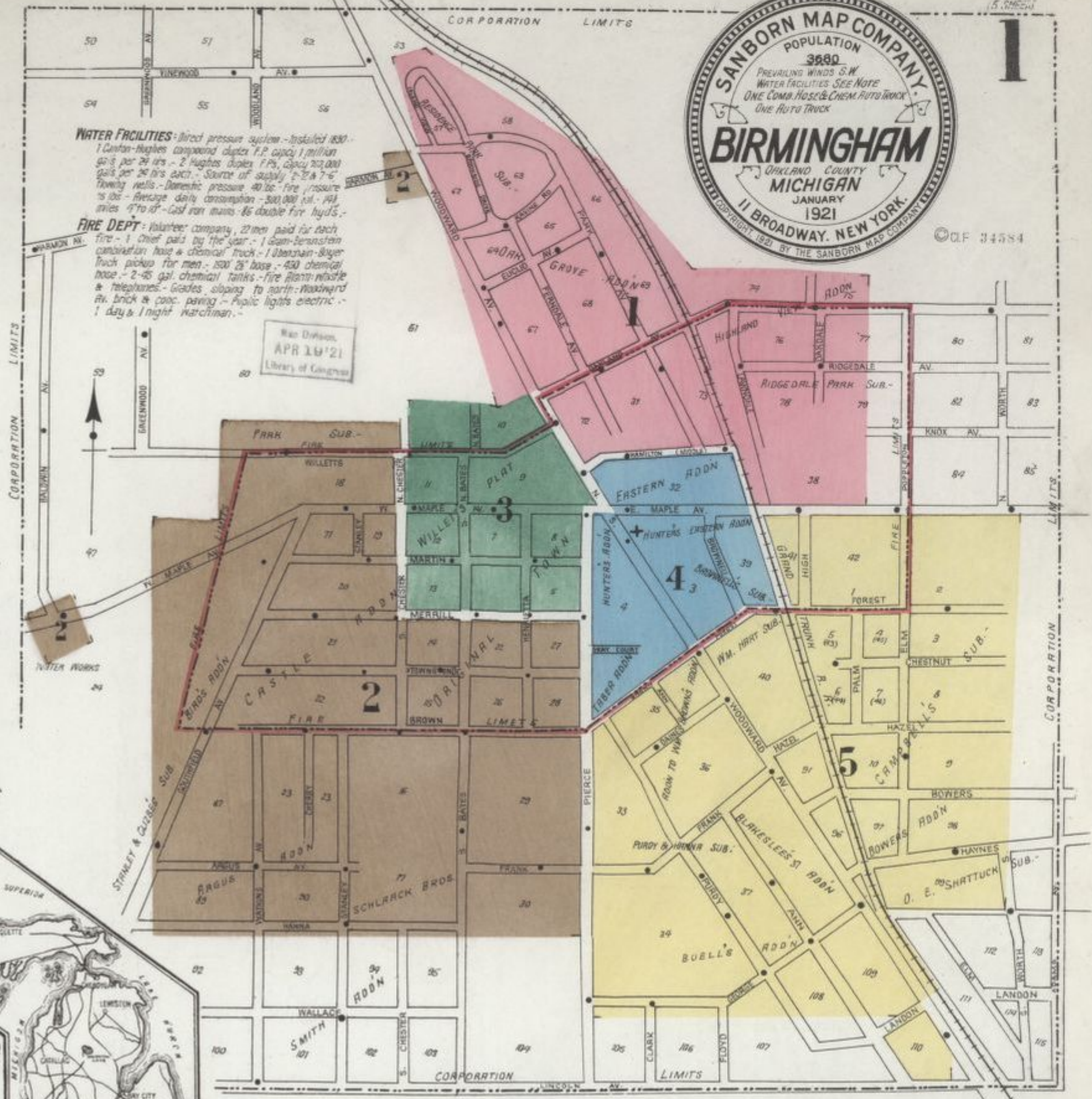
* Indicates only one side of Street shown.

SPECIALS

Baldwin High School.	100-229	Public Library.	100-021
Barren Public School.	100-229	St. James' Episcopal Church.	100-021
Bell, H. J. Greenhouse.	100-229	St. John's Episcopal Church.	100-021
Birmingham Creamery and Ice Mfg. Co.	100-229	St. Mary's Episcopal Church.	100-021
Christian Science Church.	100-229	St. Peter's Episcopal Church.	100-021
Detroit Edison Co. Elec. Transformer Station.	100-229	St. Vincent's Episcopal Church.	100-021
D. U. E. Car Barn and Repair Shop.	100-229	Standard Oil Co. Tanks, Etc.	100-021
Federal Petroleum Co.	100-229		
Water-Smith Truck Co. Auto Truck Mfg. Co.	100-229		



LOCATION OF THIS TOWN AS ABOVE UNDERLINED



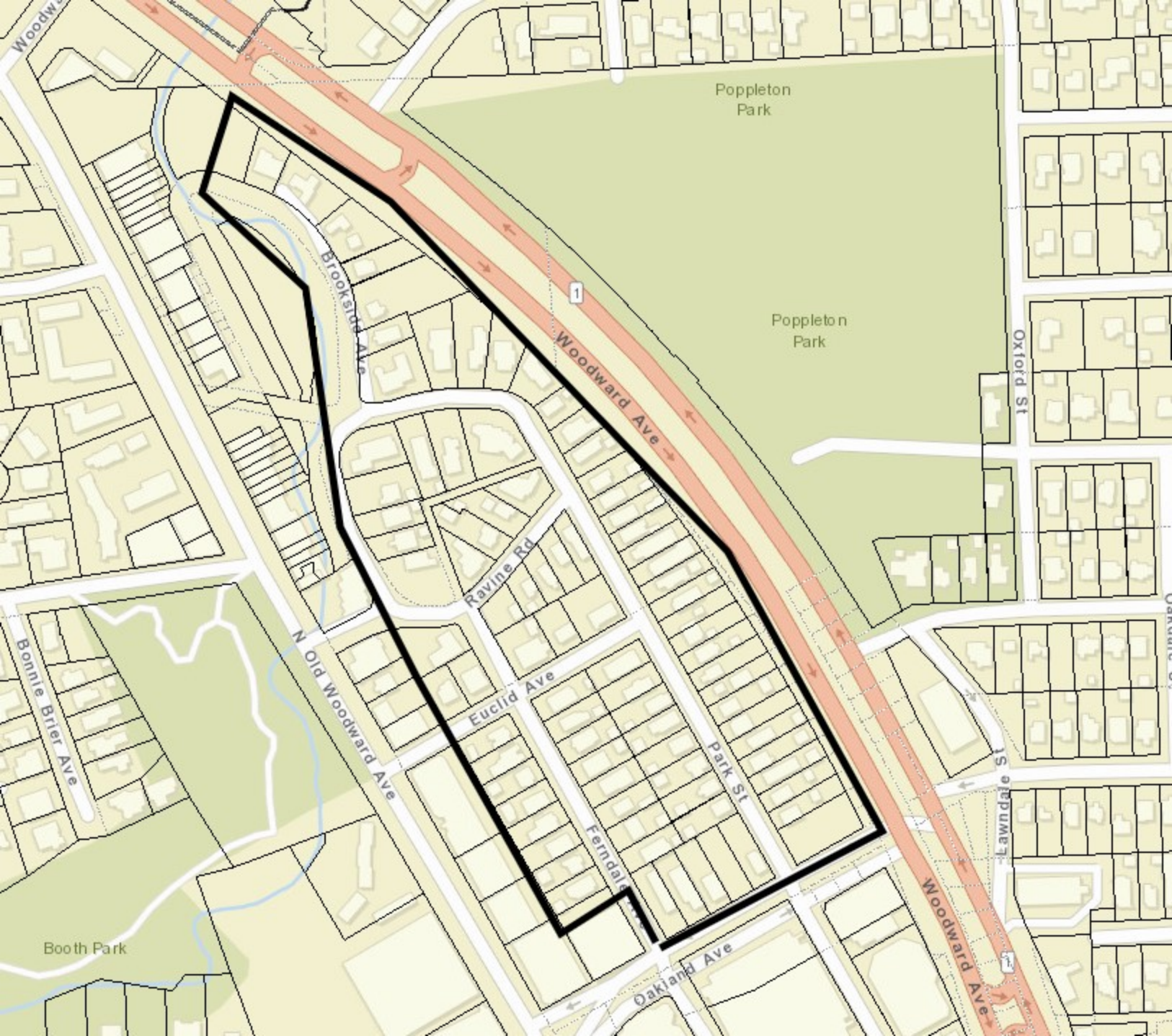
SCALE 100 FT. TO AN INCH

Scale 100 Ft. to One Inch.

Copyright 1921 by the Sanborn Map Co.

Division 11 1955

107 E. MAPLE ST. W. 2





To: Mr. Nick Dupuis, City of Birmingham, MI

From: Ms. Jessica C. Flores, Preservation Forward & Ms. Leah DuMouchel, Beckett & Raeder, Inc.

Date: September 30, 2020

Re: Proposal for Historic Preservation and Planning Consultation Services

Preservation Forward will partner with Beckett & Raeder, Inc. to provide historic preservation and planning consultation services to the City of Birmingham through our approach to align historic preservation and smart planning as a tool for economic development and to preserve the authenticity of place. Preservation Forward and Beckett & Raeder, Inc., will initiate a kick-off meeting with city officials, the Historic District Commission, interested community members, and any involved parties.

Preservation Forward and Beckett & Raeder, Inc., will focus on the following objectives:

A reconnaissance survey of the Little San Francisco neighborhood in the City of Birmingham

- *Survey, photograph, and document the requested residential area in accordance with the Michigan Above-Ground Survey Manual & the Michigan History Property Survey Forms while following the National Register of Historic Places Criteria for Evaluation of Historic Properties.
- *Identify historic resources and character-defining features of the historic resources
- *Assess the historic resource survey and document existing conditions

Deliverables: Survey, Information Booklet from survey findings, presentation to city officials, Historic District Commission, interested community members, and involved stakeholders.

Total Project Cost: \$8,000

Preservation Forward and Beckett & Raeder, Inc., look forward to the opportunity to work with the City of Birmingham on the promotion, protection, preservation, and planning of their historic resources. Please feel free to contact us if you have any questions or concerns. Thank you for your consideration.

Sincerely,

Jessica C. Flores

Ms. Jessica C. Flores, MSHP, LEED GA

Principal, Preservation Forward

Jessica@preservationforward.com

PO Box 4490

East Lansing, MI 48826

Office: 517.220.5144

www.preservationforward.com

Leah DuMouchel

Ms. Leah DuMouchel, AICP, CNU-A, NCI M&FC, FBCI

Principal, Beckett & Raeder, Inc.

ldumouchel@bria2.com

535 West William St Suite 101
Ann Arbor, MI 48103

Office: 734.663.2622

www.bria2.com













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November 5th, 2020

RE: Reconnaissance Level Survey of the Little San Francisco Neighborhood

Little San Francisco Resident,

The City of Birmingham is seeking your opinion! As you may have heard, the City has applied for a Certified Local Government Grant through the State Historic Preservation Office for a reconnaissance level historic survey of the Little San Francisco neighborhood.

To summarize, a reconnaissance level survey identifies properties of potential architectural significance. The reconnaissance survey documents properties using photographs, brief descriptions, condition, and location information. Limited research on the history of the buildings, sites, and features is undertaken during this level of survey. Reconnaissance level surveys look primarily at the architectural integrity of the properties or the National Register Criteria for Evaluation. This type of survey is the first step in the preservation planning process and is used as a tool to determine where to concentrate more intensive research.

In an effort to keep the residents of Little San Francisco informed and involved, the City would like to reach out well in advance to maintain a high level of transparency during the waiting period between application submittal and the potential grant award in May 2021. The Birmingham Historic District Commission believes a survey of the neighborhood will be a valuable tool in identifying pieces of Birmingham's rich history.

We encourage you to contact us to discuss the implications of the project, or to request links or copies of information such as the Michigan Above-Ground Survey Manual, the Certified Local Government Grant Application, the National Register Criteria for Evaluation, or any other historical preservation information.

We look forward to hearing from you!

Regards,

Nicholas Dupuis

City Planner

(248)-530-1856

ndupuis@bhamgov.org

BIRMINGHAM CITY COMMISSION
OCTOBER 19, 2020
MUNICIPAL BUILDING, 151 MARTIN
7:30 P.M.
VIRTUAL MEETING
MEETING ID: 655 079 760

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 Baller (location: Birmingham, MI)
Commissioner Hoff (location: Birmingham, MI)
Commissioner Host (location: Birmingham, MI)
Commissioner Nickita (location: Westfield, IN)
Commissioner Sherman (location: Birmingham, MI)

ABSENT: None

Administration: City Manager Valentine, Planning Director Ecker, City Clerk Designee
Bingham

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

ANNOUNCEMENTS:

- The Clerk's Office reminded voters to turn in an absentee ballot application to vote by mail for the November 3, 2020 General Election. Voters should return their absentee ballot to the Clerk's Office as soon as possible via drop box or mail. Return postage for absentee ballots has been covered by the City for this election. Specific voting information and a preview of the ballot can be found at mi.gov/vote. The online and mail voter registration deadline was October 19, 2020. After October 19, 2020 new voters must register in person at the Clerk's Office.
- Commissioner Sherman's Birthday

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.

10-190-20 CONSENT AGENDA

The following items were pulled from the Consent Agenda:

Commissioner Hoff: Item A – City Commission Meeting Minutes September 21, 2020

Item N – Resolution authorizing the City Manager to sign the agreement with ASTI for the Brownfield Redevelopment Authority.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Host:
To approve the Consent Agenda with the exception of Items A and N.

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

- B. Resolution approving the warrant list, including Automated Clearing House payments, dated September 23, 2020 in the amount of \$2,500,184.98.
- C. Resolution approving the warrant list, including Automated Clearing House payments, dated September 30, 2020 in the amount of \$1,179,039.25.
- D. Resolution approving the warrant list, including Automated Clearing House payments, dated October 7, 2020 in the amount of \$652,087.32.
- E. Resolution approving the warrant list, including Automated Clearing House payments, dated October 14, 2020 in the amount of \$1,838,762.55.
- F. Resolution approving the appointment of election inspectors, absentee voter counting board inspectors, receiving board inspectors and other election officials as recommended by the City Clerk for the November 3, 2020 State General Election pursuant to MCL 168.674(1) and to grant the City Clerk authority to make emergency appointments of qualified candidates should circumstances warrant to maintain adequate staffing in the various precincts, counting boards and receiving boards.
- G. Resolution approving \$19,760 in Municipal Credits and \$19,416 in Community Credits from fiscal year 2021 to Next in support of their specialized transportation program; to approve \$11,000 in Community Credits from fiscal year 2021 to purchase and install a bus shelter (location to be determined); and further to direct the Mayor to sign the Municipal Credit and Community Credit contract for fiscal year 2021 on behalf of the City.
- H. Resolution authorizing the City Manager to cast a vote, on the City's behalf, for the four candidates for the Michigan Municipal League Liability and Property Pool Board of Directors for three-year terms, beginning January 1, 2021.

- I. Resolution approving the purchase and planting of one-hundred (100) trees from KLM Landscape for the Fall 2020 Tree Purchase and Planting Project for a total project cost not to exceed \$45,865.00. Funds are available from the Local Streets Fund-Forestry Service Contract account #203-449.005- 819.0000, the Major Streets Fund-Forestry Service Contract account #202-449.005-819.0000, the Local Streets Fund-Operating Supplies account #203-449.005- 729.0000, the Major Streets Fund-Operating Supplies account #202-449.005-729.0000 and the Parks- Other Contractual Services account #101-751.000-811.0000 for these services. Further, to authorize the Mayor and City Clerk to sign the agreement on behalf of the City upon receipt of required insurances.
- J. Resolution setting a public hearing of November 9th, 2020 to consider the proposed lot combination of 34350 Woodward and 907-911 Haynes, parcel # 19-36-281-022 and parcel # 19-36-281-030.
- K. Resolution setting a public hearing date of November 9, 2020 to consider the Special Land Use Permit and Final Site Plan for 768 N. Old Woodward – The French Lady – to allow the operation of a food and drink establishment in the O2 Zoning District.
- L. Resolution setting a public hearing date of November 9, 2020 to consider the Revised Final Site Plan and Design and Special Land Use Permit Amendment to allow the expansion of the existing Luxe bistro into the vacant storefront to the south.
- M. Resolution approving a special event permit as requested by the Lutheran Church of the Redeemer to display the Christmas Nativity in Shain Park beginning November 24th-December 31st, 2020 contingent upon compliance with all permit and insurance requirements and payment of all fees and, further, pursuant to any minor modifications that may be deemed necessary by administrative staff at the time of the event.
- O. Resolution approving the purchase of (20) FN15 SRP G2 carbine tactical rifles from Kiesler Police Supply via MiDEAL state contract pricing in the amount of \$19,380.00; further to authorize this budgeted expenditure from account number 101-301.000-734.0000.

10-191-20 (ITEM A) CITY COMMISSION MEETING MINUTES OF SEPTEMBER 21, 2020

Commissioner Hoff sought and received clarification regarding the difference between the withdrawn motion and the passed motion regarding Ordinances on pages seven and eight of the minutes.

In the third paragraph from the bottom of page six, Commissioners Hoff and Baller said the words “additional staff specifically to handle the platform and that it” should be added after “hire” and before “would”.

MOTION: Motion by Commissioner Hoff, seconded by Mayor Pro Tem Longe:
To approve the City Commission meeting minutes of September 21, 2020 as amended.

Public Comment

None.

ROLL CALL VOTE: Ayes, Commissioner Host
Commissioner Nickita
Commissioner Baller

	Commissioner Hoff
	Mayor Boutros
	Mayor Pro-Tem Longe
Nays,	None
Abstain,	Commissioner Sherman

10-192-20 (ITEM N) RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN THE AGREEMENT WITH ASTI FOR THE BROWNFIELD REDEVELOPMENT AUTHORITY

Commissioner Hoff asked what AKT Peerless previously charged the City and asked what Brownfield Projects are in the works with the City.

CM Valentine stated that since 2005 the City had paid AKT Peerless approximately \$89,000 for their services in reviewing Brownfield Redevelopment projects. He explained that the City has two pending Brownfield Projects: The Pearl on Old Woodward and the Art Van Headquarters at Oak and Old Woodward.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Nickita: To authorize the City Manager to sign the agreement with ASTI for the Brownfield Redevelopment Authority.

Public Comment
None.

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

VI. UNFINISHED BUSINESS

None.

VII. NEW BUSINESS

10-193-20 Certified Local Government Grant Applications

Commissioner Host informed the Commission that his neighbor had inadvertently written the Commissioner's name on a petition supporting this item when in fact it was Commissioner Host's wife, Laura Host, who supported the petition. He mentioned this to clarify that he had no conflict of interest in regards to the matter.

City Planner Dupuis reviewed the item. He explained:

- That while a letter included in the agenda packet from the President of the Friends of the Birmingham Museum stated the City had personnel knowledgeable enough to complete the survey of little San Francisco, City Planner Dupuis thought this would be a good opportunity for

the Historic District Study Committee to receive professional training in historical survey practices through undertaking the survey.

- He was fairly sure that even if the grants were approved the City would be under no obligation to undertake the projects.
- He was not sure if there were any circumstances under which historical designation could be imposed on a property as an unintended result of undertaking these projects.

While a number of Commissioners acknowledged the value of historic preservation, a number of Commissioners also expressed concern regarding the possibility of historic designation being imposed on individual properties as a result of the proposed survey.

Commissioner Hoff noted the existence of other historic districts in the City where individual properties are not required to have historic designation.

Mayor Boutros recommended tabling the item until the Commission receives clarification as to whether historic designation could be imposed on individual properties as a result of these projects.

Commissioner Sherman asked for information regarding how the neighborhood residents would be informed of the survey.

Commissioner Baller said he saw no issue with the proposed design guidelines project.

Other Commissioners concurred with Commissioner Baller, and said they would prefer to table the vote on the reconnaissance survey until more information from the City was available.

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

To adopt a resolution in support of the grant application made to the Michigan State Historic Preservation Office for a reimbursement grant application for \$15,000 to develop updated historic design guidelines with an emphasis on new and emerging materials.

Public Comment

John Henke spoke as the Chairman of both the Historic District Committee and the Design Review Board. He stated that City Planner Dupuis had expended considerable effort to pursue these two grants on behalf of the City. He reminded the Commissioners that in the past the City has attempted to designate individual properties historic and that the practice has been abandoned. Mr. Henke stated the only goal is to better inform residents of the historic resources that exist. In reply to the Commissioners' concerns, Mr. Henke also confirmed there is no mandate from the grantor that would require any individual properties to be historically designated as an outcome of the survey. Given that, Mr. Henke recommended the Commission support both of the grant applications in the evening's vote on the item.

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

Commissioner Nickita said he would rather wait for more clarity on the survey because:

- The City's stance on the project should be clarified well in advance of potentially receiving the grant. Turning down an awarded grant could do damage to the City's credibility in future applications rounds.

- The residents of little San Francisco had not yet received sufficient information regarding the proposed project nor had they had sufficient opportunity to comment on the proposed project.
- Historic districts can restrict what homeowners are permitted to do to their homes even if their homes are not individually designated historic.

10-194-20 City Manager Recruitment Process

CM Valentine reviewed the item.

MOTION: Motion by Mayor Pro Tem Longe, seconded by Commissioner Host: To direct the administration to present a list of professional recruitment firms for the Commission to consider for administering a recruitment process and invite former Birmingham City Manager Thomas M. Markus for a discussion and interview to explore his interest in the City Manager position.¹

A number of the Commissioners expressed their regret that CM Valentine would be leaving the City, citing his integrity, thoroughness and consistency.

Commissioner Hoff spoke in favor of pursuing further conversation with Mr. Markus.

Commissioners Baller, Host and Sherman spoke in favor of the Mayor Pro Tem's motion. There was consensus that it would be appropriate to have information on the options available before proceeding with any particular hiring process and that this motion would allow for that.

CM Valentine said he could provide the Commission with the names of professional recruitment firms.

Mayor Boutros said he would handle scheduling a meeting between Mr. Markus and the Commission if this motion passed. He said he would also like further guidance from City staff regarding the options for the broader recruitment process.

Public Comment

David Bloom said that while he respected Mr. Markus, his view was that pursuing a conversation with Mr. Markus separate from the broader recruitment process would be moving backwards instead of forwards. He noted that Mr. Markus offered only a five year term, and stated that Birmingham generally prefers to retain their City Managers for longer than that. Mr. Bloom also said the 2016 Plan, which had been one of Mr. Markus' initiatives, ended up not being beneficial to the City since it generated the need for more parking which Mr. Bloom ventured would be built at taxpayer expense. Mr. Bloom noted that Birmingham is a desirable community and that it would not lack for qualified applicants.

Brad Coulter stated that the Birmingham City Manager position would likely be one of the most desirable job openings in the Midwest. Mr. Coulter agreed with Mr. Bloom that Birmingham would not lack for qualified candidates, and that Mr. Markus' offer should be considered as part of the broader recruitment process with Mr. Markus only receiving an offer for an interview if he was one of the final candidates selected.

¹ As amended at the October 26, 2020 Commission meeting.



MEMORANDUM

Police Department

DATE: January 6, 2021

TO: Thomas M. Markus, City Manager

FROM: Mark Clemence, Chief of Police

SUBJECT: **UPDATED – Removal of Four On-Street Parking Spaces to Accommodate a Shared Valet Service at 298 S. Old Woodward, the Daxton Hotel**

INTRODUCTION:

As part of the Daxton Hotel project at 298 S. Old Woodward (Woodward Brown Ventures, LLC), the applicant has requested valet services since the project's inception. Formal application for a valet license was submitted to the City on May 21, 2020 (documents attached).

BACKGROUND:

The Daxton Hotel has applied for a valet license to be operated in conjunction with their hotel operation. In their application, the Daxton Hotel requested six on-street parking meter spaces on S. Old Woodward (in front of the hotel) and the addition of the last two remain parking meter spaces on Old Woodward on an as needed basis in order to operate the valet service. The Advisory Parking Committee (APC) examined the request on two different meetings, July 12, 2017 and August 2, 2017. At the August 17, 2017 meeting, the APC approved a recommendation to the City Commission to allow the Daxton Hotel to operate a valet service in front of 298 S. Old Woodward by removing six on-street parking meters (minutes attached). This matter was previously before the City Commission on October 16, 2017 and on April 9, 2018 (minutes attached). At the April 9, 2018 meeting, the City Commission was concerned with the loss of six on-street metered parking spaces. The City Commission took no action on the request, but wanted the issue of the number on on-street parking meters examined further (for reduction) and an expectation that the entire request be looked at again to achieve a plan that is both mutually beneficial to the public and still meets the needs of the applicant.

Former Assistant City Manager Tiffany Gunter worked with legal counsel from the Daxton Hotel to work out some type of agreement between the City and the hotel for a shared services valet operation. The police department was requested to participate in the process. After the Ms. Gunter resigned her position, the police department and the Daxton Hotel agreed to a shared scope of valet services (see Attachment "A") in early November of 2020. Some key points of this agreement include the following:

1. The Daxton agrees to operate their valet service for use by the public (subject to hour restrictions).

2. Only four on-meters will be removed instead of the six requested. Four on-street parking meter spaces will remain for public use in front of the hotel.
3. The City will waive meter fees in the amount of \$22,464.00 per year for the area where the four (4) parking meters were to be installed on South Old Woodward directly in front of the hotel. This area will become a yellow curb zone for pick-up and drop-off of valet vehicles. All other valet parking license fees including application fee, renewal fee, valet parking structure fee and employee background checks still apply.
4. The price for public valet service charged by the Daxton Hotel will be consistent with the price charged by other private valet contractors hired by the City to operate City sponsored valet stands.

On December 7, 2020, the City Commission was presented with a proposal for a shared (public/private) valet operation between the City and the Daxton Hotel (minutes attached). At the meeting, the City Commission requested additional information from the applicant, the Daxton Hotel, including the following:

- 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 Hotel and being run by the Daxton Hotel;
- Information regarding whether it would be appropriate for the City to agree to pay a flat fee of \$150.00 to the Daxton Hotel on days where there are free parking promotions given that the City is being asked to waive \$22,464.00 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;
- Information on how the Daxton Hotel would prevent instances of higher-than-usual valet usage on the part of its guests from negatively affecting the public's use of the valet stand at the same time.

The City Commission approved the minutes from the December 7, 2020 City Commission meeting on December 21, 2020 (minutes pending). On December 30, 2020 Daxton Hotel attorney Richard D. Rattner sent me a letter providing additional information as requested by the City Commission (see attached letter and documentation).

LEGAL REVIEW:

The City Attorney reviewed the scope of shared valet services found in Attachment "A" of the applicant's application for a valet parking license and found no legal issue. The police department reviews all valet license applications.

FISCAL IMPACT

In this agreement, the City agrees to remove four parking meter spaces on S. Old Woodward in front of 298 S. Old Woodward. If all four meters were occupied during available hours, the

revenue lost from these meters would amount to \$22,464.00. Additionally, pursuant to a 2019 City Commission approved contract (minutes attached), the City agreed to pay In-House-Valet \$78,000.00 per year to operate two valet stands in the City. One valet stand on North Old Woodward and Hamilton and the second stand on South Old Woodward, just south of Merrill. This contract length was from March 1, 2019 to February 28, 2020 with a two-year option to continue the agreement at the discretion of the City (see attached contract). Former Assistant City Manager Gunter stopped valet service at both locations on March 8, 2020 upon the on-set of the COVID-19 pandemic. Former Assistant Manager Gunther reactivated valet service on July 6, 2020. There is no record of the City Commission authorizing the contract extension. The rate paid to In-House-Valet and the terms of the original contract were continued. Under the contract, the cost to the City for operating the valet stand at South Old Woodward, south of Merrill amounted to \$39,000.00 per year (\$750.00 per week). The proposed agreement would eliminate the need for the City to operate the public valet stand at South Old Woodward, south of Merrill.

SUMMARY:

The Daxton Hotel at 298 S. Old Woodward has applied to the City for a valet license. The police department reviews all valet license applications. The Daxton Hotel has agreed to operate a shared (public/private) valet stand on S. Old Woodward, north of Brown (in front of 298 S. Old Woodward) in a yellow curb zone in what would have been four metered parking spaces subject to the terms contained in the scope of the shared valet services found in Attachment "A."

SUGGESTED RESOLUTION:

To approve the removal of four on street parking meters on S. Old Woodward, north of Brown Street (in front of 298 S. Old Woodward) to allow for the operation of a shared valet service by the property owner (Daxton Hotel) consistent with the terms contained in Attachment "A" of the property owner's valet license application dated May 21, 2020.

ATTACHMENT "A"

SCOPE OF SHARED VALET SERVICES

- A. The Daxton Hotel will provide valet service from the hours of 7:00 am to 11:00 pm on Sunday through Wednesday, and from 7:00 am to 12:00 am, on Thursday, Friday and Saturday, on a seven (7) days a week basis to the CITY for public use.
- B. The City will waive the meter fees of \$22,464.00 per year. The area where the four (4) parking meters were to be installed on South Old Woodward directly in front of the hotel will become a yellow curb zone for pick-up and drop-off of valet vehicles. All other valet parking license fees including application fee, renewal fee, valet parking structure fee and employee background checks still apply.
- C. Two additional metered parking spaces adjacent to the yellow curb zone will be made available to the hotel on an "as needed" basis as requested by the Daxton Hotel, and otherwise to assist with large events with permission from a police department command staff member.
- D. The cost for valet services charged by the Daxton to the public (those persons who are not guests at the Hotel) would be \$5.00 for the first two hours and \$5.00 for each additional hour (or the price consistent with fee determined by the City in place with all private valet contractors hired by City to operate City sponsored valet stands in the City, whichever is greater).
- E. If the City offers free valet parking for a designated period time, such as the usual Friday after Thanksgiving to Christmas Eve, the City will pay a flat rate fee of \$1,000.00 per week to the Daxton Hotel for valet services (price determined by the Birmingham Shopping District and consistent with other valet services in the City offering free valet services for such designated time period).
- F. For any single day free valet service offer by the City to the public (those persons who are not guests at the Hotel), the City will pay a daily fee of a minimum of \$150.00 per day to the Daxton Hotel or such amount as is paid to other valet services for said valet fee, whichever is greater.



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May 20, 2020

By Email

Mark Clemence
Chief of Police
City of Birmingham
151 Martin Street
Birmingham, MI 48009

RE: The Daxton Hotel Application for Valet Parking License ("Application")

Dear Chief Clemence:

This letter is in follow up to our submission of the Application for Valet Parking License submitted to your office on March 2, 2020. We have submitted the Application, a check for the license fee in the amount of \$2,000, and a schematic of the valet area (76 feet at the curb on S. Old Woodward) and flow. In addition, the City has requested we submit a brief explanation of how the shared valet with the City will work.

We understand that the Daxton shared valet will work in a similar fashion to the way the City engages with its other valet vendors in the City. The cost for valet services charged to those using the City's valet service is \$5.00 for the first two hours and \$5.00 for each additional hour. During holidays, road construction and any other time when the City advertises free valet parking, The Daxton valet operator will be reimbursed by the City for the cost of those services on a per car basis at the standard rate in effect at the time.

Please let us know if there is anything else you need to process the Application and submit it to the City Commission for approval. It is important for you to be aware that the streetscape is scheduled for construction in July and it is now necessary to conclude this matter in the month of June so that construction of the sidewalks is not delayed.

Thank you for your attention to the Application.

Very truly yours,
WILLIAMS WILLIAMS RATTNER & PLUNKETT, PC

GAYLE S. MCGREGOR
Gayle S. McGregor

Cc: Tim Currier, City Attorney

298 S. OLD WOODWARD AVE.
VALET PARKING REQUEST

Mr. O'Meara advised that the owner of the above property, located at the northwest corner of Brown St., has submitted plans requesting a permit to construct a five-story hotel with two underground levels of private parking. The plans have received Preliminary Site Plan approval from the Planning Board. As a condition of such approval, the Planning Board asked the applicant to appear before the Advisory Parking Committee ("APC") to receive a recommendation relative to the removal of on-street parking, as proposed on their plan.

The applicant is requesting approval to remove five parking spaces to create a permanent valet service at the front door of the new building on S. Old Woodward Ave. The applicant plans to have valet service available for all visitors to the building, whether they are overnight guests, long term residents, patrons at the restaurant, meeting attendees, etc. Vehicles will be taken to the building's proposed Brown St. garage entrance when space permits, and they will be returned to the valet area using the S. Old Woodward garage exit. When space does not permit, the valet drivers will seek other options, such as the Pierce St. Parking Structure. There is precedent for removing parking spaces for valet. The Townsend Hotel pays a fee for the meters and uses eight parking spaces along Merrill St.

With the recent change in the metered parking rate to \$1.50 per hour, the City will now charge \$3,000/year per meter per space.

The applicant is requesting approval for the removal of five spaces, based on the existing parallel parking configuration. The City already committed to changing to angled parking with the reconstruction of Old Woodward Ave. in 2018 as an effort to create twelve on-street parking spaces, up from the existing nine. If the committee is inclined to approve this recommendation, they will need to discuss and consider what the appropriate loss of parking spaces truly is for this site. The Planning Board generally expressed praise for this design, and appears to be in support of the idea to operate a valet station within the public right-of-way. However, they would like the perspective of the APC, before this issue is finalized by the City Commission.

It was discussed that with the Old Woodward Ave. reconstruction the bus stop will be moved north of Merrill St. The existing bumpout will be enlarged to accommodate the bus stop.

Mr. Kalczynski was curious as to how the flow of traffic in front of the hotel would work with 20 or 25 valets and the timing of the lights. The letter from Richard D. Rattner, Attorney, states the valet will benefit the health, safety, and welfare of the community in general. Mr. Kalczynski was not sure how this would be a benefit to the safety of citizens. It was noted that the parking overflow goes to the Pierce St. Structure for both of the hotels.

Mr. O'Meara said when the garage fills the valets will have to figure out other alternatives.

Comments were heard from the public at 7:55 a.m.

Mr. David Berman with the ownership group, Lorient Capital, said they are only required to provide 22 on-site spaces for the residential component, as they are located in the Parking Assessment District. However, they have chosen to build an extra underground level of parking to provide an additional 34 spaces which are not required. That should make up for the seven or eight spaces they are taking out in front of the hotel. In terms of traffic management for the valet operations, they have consulted with the City's Traffic Engineer and have worked out a plan that he is comfortable with. With regard to overflow in the garage, they plan to use multiple structures, as they are centrally located within the City. In addition, they have submitted a plan to the City for when there are large events. They will work with the Police Dept. in order to coordinate how to best manage the additional traffic. Most of their events will occur in the evening or on week-ends so they are using spaces when others are not.

In response to the Chairman, Mr. Berman stated that 40 spaces in the private lot on their property will be going away. No on-site parking will be provided for employees of the hotel. Mr. Michael Kitchen, VP of Development and Acquisitions for Aperia Hotels, operator of the hotel, noted their employees will usually arrive by car pool or public transit. If the project was an office use, it would require a lot more parking.

Ms. Gail McGregor, Attorney with Williams, Williams, Rattner & Plunkett, P.C., 380 N. Old Woodward Ave., stated this will be a smooth operation. The garage will be utilized as part of the staging for the valet. Curbside valet will help to reduce congestion on S. Old Woodward at the intersection. Further, valet is a very safe way to accommodate arrivals and departures.

Mr. Kitchen walked the committee through how the traffic will work in terms of flow. There is an entrance on one side of the garage and departure from the other side. Short stays can be staged along the ramp and overspill will go into the City parking structures.

Ms. Champagne observed the valet overcomes any loss of parking spaces because vehicles are moved off the street and down below.

Ms. Kalczynski indicated he struggles with the fact there is a very high demand for spaces, and there are not enough spaces right now to fit that demand. Ms. McGregor commented they have submitted a major event plan to the City that outlines workable ways to prevent significant traffic problems on the street. Mr. Kitchen added if they have a large event they will notify the City and the Police Dept. They have a unique ambassador program where every one of the front house staff is cross-trained to park cars in case there is a huge influx of guests arriving at one time.

Mr. Berman noted they have developed a traffic and parking plan with the City and Police Dept. that has been approved and accepted by them. As they get closer to construction additional options will be explored for parking in lots that are not filled in evenings or on weekends.

Ms. Paskewicz observed the impact on parking is not only about spaces for valet; it is about other needs for this kind of facility such as making room for busses.

The chairman commented this has been an under-utilized piece of real estate in Birmingham and to him this seems to be a viable usage. In the future, parking shortages will be reduced with the onset of self-driving cars and increased use of Uber.

Mr. Berman reiterated they are creating more spaces for the City with this project, rather than removing them. However, the chairman pointed out they are also creating a lot more dense usage.

Mr. Kalczynski expressed his desire to see the traffic and parking management plan that was submitted to the City before the committee votes on this matter. He is looking for information about how the traffic flow will happen.

Ms. Champagne motioned to recommend the removal of eight on-street parking spaces at 298 S. Old Woodward Ave. to allow for the operation of a valet service by the adjacent property owner, in exchange for an annual payment of \$24,000 (at \$3,000 per meter) to be charged annually once the adjacent hotel is open for business. However, the motion died for lack of a second.

After lengthy discussion, the committee concluded they need more information with regard to the traffic flow. After studying the traffic and parking management plan they will do their best to move the applicant's request forward at the next meeting.

Motion carried, 6-0.

VOICE VOTE:

Yeas: Champagne, Vaitas, Honhart, Kalczynski, Krueger, Kuhne

Nays: None

Absent: Paskiewicz

298 S. OLD WOODWARD AVE.
VALET PARKING REQUEST

Mr. O'Meara advised that the owner of the above property, located at the northwest corner of Brown St., has submitted plans requesting a permit to construct a five-story hotel with two underground levels of private parking. The plans have received Community Impact Study ("CIS") and Preliminary Site Plan approval from the Planning Board. As a condition of such approval, the Planning Board asked the applicant to appear before the Advisory Parking Committee ("APC") to receive a recommendation relative to the removal of on-street parking, as proposed on their plan.

The applicant is requesting approval to remove all existing parking spaces to create a permanent valet service at the front door of the new building on S. Old Woodward Ave. The applicant plans to have valet service available for all visitors to the building, whether they are overnight guests, long term residents, patrons at the restaurant, meeting attendees, etc. Vehicles will be taken to the building's proposed Brown St. garage entrance when space permits, and they will be returned to the valet area using the S. Old Woodward garage exit. When space does not permit, the valet drivers will seek other options, such as the Pierce St. Parking Structure. There is precedent in town for removing parking spaces for valet. The Townsend Hotel pays a fee for the meters and uses seven parking spaces along Merrill St.

With the recent change in the metered parking rate to \$1.50 per hour, the City will now charge \$3,000/year per meter per space.

At the July 12, 2017 meeting of the Advisory Parking Committee ("APC"), the above topic was reviewed. The APC asked to have the opportunity to review the traffic impact analysis prepared for the project as a part of the Planning Board's review. That information is now provided.

It was mentioned that there is no space on Brown St. for delivery trucks to line up to unload, as there is only the one traffic lane. Mr. Kalczynski observed that traffic flow and parking are intertwined. The APC is being asked to remove eight

spaces at a time when the City is in a crisis mode with parking. When additional people are added, where do they go?

Addressing a question, Mr. O'Meara advised the bus stop will be moved north of Merrill St., and the space will be turned back to parking. The redesign will represent a net gain of two parking spaces.

Mr. John Gaber, Attorney with Williams Williams Rattner & Plunkett, PC, spoke to represent the property owner, Lorient Capital, LLC. Mr. Gaber wanted to ensure there is no conflict of interest with respect to Mr. Kalczynski being the manager of the Townsend Hotel. The Chairman indicated the nature of this board is that it is comprised of stakeholders. Mr. Kalczynski provides insight into situations that the committee would not have otherwise.

Mr. Kalczynski noted he does not have a conflict of interest. His role on the APC is only to approve or disapprove recommendations for parking. Therefore he will not recuse himself from the consideration of this matter.

Mr. Gaber went on to note that under the current parking nine spaces will be removed. After the street is reconstructed, the area is proposed for 12 spaces. However, accommodating three spaces for the driveway and one space for the sidewalk bumpout at the corner gets it down to eight. The project is a five-story luxury boutique hotel comprised of 126 guest rooms with 17 rental apartments on the fifth floor. There will be a banquet hall, meeting rooms, restaurants, and bars. One component of the building is the two floors of underground parking which provide 56 parking spaces. Only 22 of those spaces are required for the apartment units on the top floor. So the other 34 are available for the general use of the facility. Another feature of this project is enhancement of the streetscape which will help to facilitate some of the City's goals and objectives relative to pedestrian and bicycle traffic.

Their Traffic Management Plan has been reviewed by the City's Traffic Engineer and he has signed off, as has the Planning Board. That plan provides for valet at the front. From there the valets will circulate around the Brown St. side of the building and enter the parking garage there. If there is not room below to park the cars they will be stacked and the valets will relocate them off site. One feature of the Plan they think is important is there will be cross training of hotel employees in valet service. Then they can assist when needed.

With regard to the loading situation on Brown St., trucks will back up into a driveway, be off of the road, and be able to use that area for loading and unloading.

There was discussion by the APC members that \$3,000/year per space seems low. Mr. O'Meara explained that figure is based on 60% occupancy. Mr. Richard Astrein received confirmation that the City Commission is the final arbiter of the cost structure.

Motion by Ms. Champagne

Seconded by Ms. Krueger to recommend to the City Commission the removal of eight on-street parking spaces at 298 S. Old Woodward Ave. to allow for the operation of a valet service by the adjacent property owner, in exchange for an annual payment of \$24,000 (at \$3,000 per meter) to be charged annually once the adjacent hotel is open for business.

Ms. Champagne added she thinks one of the things that makes the Townsend Hotel really special and part of the ambiance of the City is the valet in front.

Mr. Gaber stated they think that a hotel is the highest and best use for this property. The City could be looking at a dense office building there. That would put more daytime peak demand on the system than the hotel will. Secondly, in addition to the 56 spaces underneath, there is stacking for 20 more cars. Also, if public spaces are not available they are obligated to work out an arrangement for other parking. Lastly, progress is being made because the City has recognized the parking problem and is expanding the N. Old Woodward Structure.

Motion carried, 5-1.

VOICE VOTE:

Yeas: Champagne, Krueger, Honhart, Kuhne, Vaitas

Nays: Kalczynski

Absent: Paskiewicz

Mr. Astrein brought up the point that the rate to pay into the Parking Assessment District is low, as is the rate being charged to the hotels for taking meters off the street. Someone coming into the Parking Assessment District now should be paying market rates to buy in to the structures.

AD HOC PARKING DEVELOPMENT COMMITTEE UPDATE

Mr. O'Meara reported there were four different development teams that submitted a response to the Request for Qualifications of how they thought the N. Old Woodward Ave. property could be redeveloped. All four were brought to the Ad Hoc Parking Development Committee. It was decided that all four are viable options and the teams will have another 90 days to submit their final proposal.

BIRMINGHAM CITY COMMISSION AGENDA

DECEMBER 7, 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 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 Luran 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:

A. Birmingham Triangle District Improvement Authority

1. Samuel Oh
2. G.A. "Kip" Cantrick

To appoint _____ who is a resident of the Development Area, or of an area within ½ mile of any part of the Development Area to serve the remainder of a term to expire December 15, 2023.

To appoint _____ who is a resident of the Development Area, or of an area within ½ mile of any part of the Development Area to serve the remainder of a term to expire December 15, 2021.

To appoint _____ who is a resident of the Development Area, or of an area within ½ mile of any part of the Development Area to serve the remainder of a term to expire December 15, 2023.

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 SOCRRRA 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

BIRMINGHAM CITY COMMISSION MINUTES
FEBRUARY 25, 2019
MUNICIPAL BUILDING, 151 MARTIN
7:30 P.M.

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Mayor Patty Bordman called the meeting to order at 7:30 PM.

II. ROLL CALL

ROLL CALL:	Present:	Mayor Bordman Mayor Pro Tem Boutros Commissioner DeWeese Commissioner Harris Commissioner Hoff Commissioner Nickita
	Absent:	Commissioner Sherman

Administration: City Manager Valentine, Assistant City Manager Gunter, City Attorney Currier, Police Chief Clemence, Planning Director Ecker, Finance Director Gerber, Building Official Johnson, Library Director Koschik, City Engineer O'Meara, City Clerk Mynsberge, Birmingham Shopping District Executive Director Tighe

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

02-041-19 ANNOUNCEMENTS

Mayor Bordman announced:

- Registration for Ice Skating Lessons at the Birmingham Ice Sports Arena will take place on Wednesday, February 27, from 5:00 until 7:00 pm and again on Saturday, March 2, from 10:00 am until 1:00 pm. For more information visit www.bhamgov.org and navigate to the Ice Arena page.
- Wendy Cariveau, Stroke Coordinator at Beaumont Hospital in Royal Oak, will share tips for stroke prevention on Tuesday, March 5 at 7:00 p.m. The event will take place in the lower level meeting room at the Baldwin Public Library.
- The Friends of the Baldwin Public Library are now collecting gently used handbags, purses, totes, and wallets for their Books, Bags, and Bagels sale on Sunday, March 24 from 1-4:00 p.m. All proceeds from the sale will support the Friends of the Baldwin Public Library in their ongoing efforts to support programs, services, and the annual summer reading program at the Baldwin Public Library.
- Celebration of Commissioner DeWeese's birthday.

IV. CONSENT AGENDA

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

02-044-19 APPROVAL OF CONSENT AGENDA

The following items were removed from the Consent Agenda:

- Commissioner Hoff Item K; On Street Valet Services Program Vendor Recommendation

MOTION: Motion by Mayor Pro Tem Boutros, seconded by Commissioner Harris:
To approve the Consent Agenda, with the exception of Item K.

ROLL CALL VOTE: Ayes: Mayor Bordman
 Mayor Pro Tem Boutros
 Commissioner DeWeese
 Commissioner Harris
 Commissioner Hoff
 Commissioner Nickita
 Nays: None

- A. Resolution approving the City Commission meeting minutes of February 11, 2019.
- B. Resolution approving the warrant list, including Automated Clearing House payments, dated February 13, 2019 in the amount of \$3,281,975.47.
- C. Resolution approving the warrant list, including Automated Clearing House payments, dated February 20, 2019 in the amount of \$572,646.86.
- D. Resolution approving a special event permit as requested by the Birmingham Shopping District to hold the 2019 Movie Nights on Fridays, June 14, July 12, and August 23, 2019, with rain dates scheduled on Saturdays, June 15, July 13, and August 24, 2019. Approval is contingent upon compliance with all permit and insurance requirements and payment of all fees and, further, pursuant to any minor modifications that may be deemed necessary by administrative staff at the time of the event.
- E. Resolution approving a request from the Birmingham Shopping District to hold the 2019 Day on the Town special event on Saturday, July 27, 2019 contingent upon compliance with all permit and insurance requirements and payment of all fees and, further, pursuant to any minor modifications that may be deemed necessary by administrative staff at the time of the event.
- F. Resolution approving a request from the Birmingham Shopping District to hold the 2019 Birmingham Cruise special event, with the expanded footprint, on Saturday, August 17, 2019 contingent upon compliance with all permit and insurance requirements and payment of all fees and, further, pursuant to any minor modifications that may be deemed necessary by administrative staff at the time of the event.
- G. Resolution approving a special event permit as requested by the Birmingham Shopping District to hold the 2019 Santa House beginning the week-end of November 30, 2019 through December 24, 2019 contingent upon compliance with all permit and insurance

requirements and payment of all fees and, further, pursuant to any minor modifications that may be deemed necessary by administrative staff at the time of the event.

- H. Resolution approving a special event permit as requested by the Birmingham Shopping District to hold the 2019 Winter Markt Friday, December 6 – Sunday, December 8, 2019 contingent upon compliance with all permit and insurance requirements and payment of all fees and, further, pursuant to any minor modifications that may be deemed necessary by administrative staff at the time of the event.
- I. Resolution approving Attachment 2 to the Uniform Video Service Local Franchise Agreement with Comcast, effective April 27, 2015 through April 26, 2025, accepting the name change of the entity holding the cable franchise from Comcast of Colorado/Florida/Michigan/New Mexico/Pennsylvania/Washington, LLC to Comcast of Florida/Michigan/New Mexico/Pennsylvania/Washington, LLC, effective January 2, 2019, and authorizing the Mayor and City Clerk to execute same on behalf of the City.
- J. Resolution approving the 2019 annual flower purchase from Croswell Greenhouse Inc. in the amount not to exceed \$17,812.85. Funds are available from the General Fund – Property Maintenance – Operating Supplies account #101-441.003-729.0000.
- L. Resolution that the City Commission shall meet on Monday, March 25, 2019 at 7:30 P.M., for the purpose of conducting a public hearing of necessity for the creation of a special assessment district to reconstruct the pavement, update street lighting, and add dumpster screens and wayfinding signs for the Pierce St. Alley, from Pierce St. to E. Merrill St.;

AND

If necessity is determined on March 25, setting a public hearing on April 8, 2019, at 7:30 P.M. to review the assessments and to confirm the roll.

- M. Resolution approving the Title VI Non-Discrimination Plan update incorporating the change of Title VI Coordinator designation to Benjamin I. Myers, Human Resources Manager. Further, authorizing the Mayor and City Manager to sign the appropriate sections of the plan.
- N. Resolution approving the agreement with Saber Window Cleaning DBA Transparent Window Cleaning in the amount not to exceed \$48,360.00 to perform window cleaning services to the City of Birmingham facilities and charge these services to the respective department accounts; and directing the Mayor and City Clerk to sign the agreement on behalf of the City.
- O. Resolution approving an agreement with Mechanical Design & Installation, LLC. in the amount not to exceed \$226,318.00 from the City Hall and Grounds Capital Improvement Account #401-265-001-977-0000 to perform the New Boilers and Controls Upgrade for City Hall; and directing the Mayor and City Clerk to sign the agreement on behalf of the City.

02-045-19 ON STREET VALET SERVICES PROGRAM VENDOR RECOMMENDATION (ITEM K)

Assistant City Manager Gunter clarified:

- 'Week 1' as referred to in the report fell in the middle of August 2018 when the Old Woodward construction concluded. Following that week was the demonstration period, concluding at the end of 2018.

- Valet services park cars in reserved areas in the City's parking garages.
- There have been a few complaints about perceived underutilization of the reserved valet spaces in the morning. Around 10:30 a.m. as the lunch and shopping crowd starts coming in the spaces are utilized by valet services. Once the process was explained to the concerned parties, they understood the need to reserve the spaces.
- Lunch time is peak use time.
- There are four on-street metered spaces reserved in front of the Rivage Day Spa for valet operations. There are three spaces on Hamilton.
- Beyond the reserved spaces for the operation of the valet stands, it is not a City-approved practice to park cars on the street in metered spaces. Whenever there is a concern about valet parking on the street, Assistant City Manager Gunter addresses it immediately.
- Assistant City Manager Gunter provided the Commission with corrected copies of the contract stating the term begins March 1, 2019 and concludes February 28, 2020, with options to renew one year at a time.
- The City will be more heavily advertising the available valet services if it becomes a permanent program.
- The money paid by individuals using the valet services goes to In-House Valet.

Steve Ferich of In-House Valet explained:

- If a car is very occasionally parked in the street by valet services, it is because a valet patron has indicated they were running a five-minute or less errand nearby, such as withdrawing money from a bank.
- In-House Valet provides private valet services at the Townsend Hotel, the Community House for special events, Cameron's, Forest Grill and 220 Merrill.
- He is mindful of the City's intent to be pedestrian friendly, and is confident in his ability to manage valet services in a way that is supportive of that goal.
- Valet services are provided 10 a.m. to 6 p.m. All-day service is merited because there is frequent use throughout the day.
- He is aware of upcoming construction and will be working with Assistant City Manager Gunter to accommodate those changes.
- The location of the two valet stands are working very well.
- There is no valet stand on Maple St. because Birmingham Police have determined it would not be a safe location.

Commissioner Hoff said she would like to see valet use numbers from after the holidays in order to get a sense of more routine use.

MOTION: Motion by Commissioner Hoff, seconded by Mayor Pro Tem Boutros:

To approve the agreement with In-House Valet, Inc. for City sponsored on street valet services in the amount of \$78,000 from account #585-538-001-811.0000, and further directing the Mayor to sign the agreement on behalf of the City.

VOTE: Yeas, 6
 Nays, 0

Commissioner Hoff said she would like to monitor the progress of the valet stands to make sure they are being used.

Assistant City Manager Gunter said she could add the weekly usage numbers to the parking utilization report moving forward.

City Manager Valentine noted:

- This is part of a larger strategy to make valet services an integral part of Birmingham, especially in light of the upcoming major construction projects in the City. The goal is to have people know there will be valet parking when they come to visit Birmingham.
- Valet services provide a convenience to people visiting and working in Birmingham. This allows a higher turnover of visitors to Birmingham.

Mayor Pro Tem Boutros said he has heard a lot of positive feedback regarding the provision of valet services. He also encouraged Mr. Ferich to stay in touch with the BSD for the purpose of publicizing valet services. Mr. Ferich confirmed that Assistant City Manager Gunter and BSD Director Tighe are frequently in touch with him and working to publicize the valet services.

Assistant City Manager Gunter confirmed for Commissioner Harris the renewal options are held by the City, not the contractor, and the same price would remain in effect for the second year should the City choose to renew the contract.

V. UNFINISHED BUSINESS

None.

VI. NEW BUSINESS

02-046-19 BALDWIN LIBRARY PHASE 2 REQUEST FOR PROPOSALS (RFP)

Library Director Koschik presented the request for authorization to issue the RFP.

Comments/Clarification

Library Director Koschik said:

- The \$2.4 million figure includes money for furniture, fixtures, equipment and landscaping. The RFP being issued, however, is for construction and landscaping. The Library will be issuing a separate RFP for furniture, fixtures, and equipment.
- Building Official Johnson will be the Construction Manager on the project.
- The ADA ramp will be available during construction and there will be something to protect the ramp during construction.
- The restrooms on the main floor will be out of commission for 6-8 weeks during this phase of construction. Patrons will still have access to bathrooms on the second floor or in the basement.
- Programming will be somewhat curtailed during this period, but the Community House has volunteered to provide the Library with space for programming. The Library intends to offer programs off-site.

MOTION: Motion by Commissioner DeWeese, seconded by Mayor Pro Tem Boutros: To authorize the issuance of the Request for Proposals included with the Library Director's February 19th memo for the renovation of the Youth Room section of the Baldwin Public Library.

VOTE: Yeas, 6
 Nays, 0



AGREEMENT

City Sponsored Valet Parking Services

This AGREEMENT, made this 25th day of February, 2019, by and between the City of Birmingham (hereinafter sometimes called "the City"), having its principal municipal office at 151 Martin Street, Birmingham, MI, and In-House Valet, Inc., having its principal office at 2802 Derby Road, Birmingham, MI 48009 (hereinafter called "Contractor"), provides as follows:

WITNESSETH:

WHEREAS, the City has heretofore advertised for bids for the procurement and performance of services required for Valet Parking in downtown Birmingham 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 Valet Parking Services.

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 for Valet Parking Services in downtown Birmingham. The Contractor's cost proposal dated January 21, 2019 shall be incorporated herein by reference and shall become a part of this Agreement, and shall be binding upon both parties hereto.
2. The Contractor's Proposal shall be incorporated herein by reference, shall become a part of this Agreement, and shall be binding on the parties hereto. In the event there is a conflict between the Proposal and this Agreement, this Agreement shall control.
3. The term of this Agreement shall commence on March 1, 2019 for a period of one year expiring February 28, 2020 with options to be exercised, at the sole discretion of the City, for an additional two years. If changes to the existing terms are sought, an amendment to the Agreement must be prepared and signed before any changes are effective.

4. Notwithstanding the foregoing term, either party may terminate this Agreement for any or no reason upon a thirty day (30) notice to the other party. If the City terminates the Agreement under this paragraph, Contractor will be compensated for any work already performed up to the date of termination. However, Contractor shall not perform any new work or incur new costs after the City's notice of termination unless specifically authorized by the City.
5. The City shall pay the Contractor for the performance of this Agreement in an amount not to exceed \$78,000 as set forth in the Contractor's January 21, 2019 cost proposal.
6. 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.
7. The Contractor shall employ personnel of good moral character and fitness in performing all services under this Agreement.
8. 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 of Birmingham ("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.
9. 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.

10. 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.
11. 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.
12. 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.
13. The Contractor agrees that neither it nor its sub-Contractors 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.
14. 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.
15. The Contractor shall maintain during the life of this Agreement the types of insurance coverage and minimum limits as set forth below:
 - A. Workers' Compensation Insurance: Contractor shall procure and maintain during the life of this Agreement, Workers' Compensation Insurance, including Employers Liability Coverage, in accordance with all applicable statutes of the State of Michigan.
 - B. Commercial General Liability Insurance: Contractor shall procure and maintain during the life of this Agreement, Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than **\$1,000,000** per occurrence combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent.
 - 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*: 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. 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. Thirty (30) days Notice of Cancellation shall apply to this policy.
- G. Cancellation Notice: Workers' Compensation Insurance, Commercial General Liability Insurance and Motor Vehicle Liability Insurance (and Professional Liability Insurance, if applicable), as described above, shall include an endorsement stating the following: "Thirty (30) days Advance Written Notice of Cancellation or Non-Renewal, shall be sent to: City of Birmingham, 151 Martin Street, Birmingham, MI 48009.
- H. Proof of Insurance Coverage: Contractor shall provide the City at the time the Agreement is returned for execution, Certificates of Insurance and/or policies, acceptable to the City, 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.

- I. 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 at least (10) days prior to the expiration date.
- J. Maintaining Insurance: Upon failure of the Contractor to obtain or maintain such insurance coverage for the term of the Agreement, the City may, at its option, purchase such coverage and subtract the cost of obtaining such coverage from the Agreement amount. In obtaining such coverage, the City 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 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 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.
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 address:
- City of Birmingham
Attn: Assistant City Manager
151 Martin Street
Birmingham, MI 48009
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 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.


IN WITNESS WHEREOF, the said parties have caused this Agreement to be executed as of the date and year above written.


WITNESS:

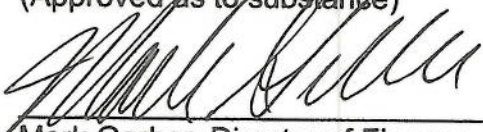
CONTRACTOR:

By: 


Title: President

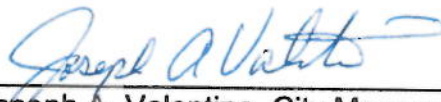

J. Cherylann Mysberg, City Clerk
Approved:



Tiffany J. Gunter, Asst. City Manager
(Approved as to substance)


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

CITY OF BIRMINGHAM

By: 
Patricia Bordman
Its: Mayor


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


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



In-House Valet
2802 Derby Road
Birmingham, MI 48009
Phone: 248-755-4082
Fax: 248-614-6169
E-mail: inhousevalet@att.net
Website: inhousevaletparking.net
Tax ID# 38-3473347

City of Birmingham
Tiffany Gunter
151 Martin Street
Birmingham, MI 48009
Phone- 248-530-1827
Email: tgunter@bhamgov.org

INTRODUCTION

In House Valet has been part of the downtown Birmingham business landscape since 1992. Its founder, Steve Ferich has built a reputation on quality service and reliability. The Parking Service Industry is fast paced, responsive, and we take pride in the services we provide. Every In House Valet Employee is expected to adhere to a high standard of ethics and must provide the highest service possible to all clients. Our resume is filled with projects that are parallel to this current valet service the City Of Birmingham elected In House Valet to provide the valet parking service for its local merchants. Previous to the last construction project, In House Valet offered Valet Parking service in front of Biannci's Salon located on North Old Woodward for the city. This particular program was a test program to help with the city's current need to help lighten the impact of the lack of parking in the Downtown area. After a year of providing these services, the program was very popular with all of the local Merchants and shoppers in the surrounding area. The current program moved that stand to the city's proposed 2nd stand on Hamilton next to the Greek Islands restaurant. With this current program we also have been providing services in front of Keller Williams- Rivage Spa- Vinnotecca . In House Valet has also provided the Birmingham Shopping District all of its Holiday and special event Valet Parking programs.

Proposal for March 2019- March 2020 City of Birmingham Valet Parking Services

1. In House Valet will provide valet parking services at 2 said locations in the City of Birmingham . Hours of operation will be Monday-Saturday, 10:00Am-6:00PM. The first two hours of valet service will cost \$5 and an additional \$5 per hour thereafter. Employees will insert time of arrival on ticket to track of number hours parked with city.
2. Valet Services Personnel: In House Valet will provide two (2) parking attendants for each valet parking location during the 10:00AM-6:00PM daily work shift. A designated supervisor will be located at each location. A Management supervisor will be available to oversee both locations from said times of 10am-6pm daily.
3. Reporting: In House Valet will track and report daily transactions for each location on a weekly basis to City of Birmingham.
4. Areas of Operation -Areas of operation will be as follows: Stand # 1 – East side of South Old Woodward Ave. and south of Brown Street. Stand # 2- North Side of Hamilton Row and west of Park street. Drop Off and Pick Up
5. DROP OFF AND PICK-UP

Procedures for Drop off and pick up of customer's vehicle's will be as follows:

Upon vehicle drop off, In House Valet will greet guests, mark tickets with arrival time, get customer name, phone number in case of needed contact, and inspect vehicle for any existing damage. All damage found will be pointed out to

customer and marked on vehicle ticket in the appropriate area. Staff member will then park the vehicle at designated parking area for that particular stand. Staff member will also provide customer with a phone number for the ability to text ahead for customer's vehicle. Staff will also not stage any vehicles in drop off and retrieval areas.

In House Valet Staff will park customers vehicles at said locations:

Stand # 1 vehicles will be parked in the Pierce City parking garage adjacent to this location. In House Valet will request to reserve 15-20 spaces in a secure area.

Stand # 2 vehicles will be parked in the Park street garage (10 reserved spaces) on the North side of garage and 6 metered spaces on Oakland Blvd next to garage. With metered spaces, In House Valet can create 2-3 more spaces for a total of 8-9 spaces.

Upon Pick up of customer's vehicle, staff will either retrieve claim number from guest either via text or from the guest handing ticket stub to staff member where then he or she will retrieve vehicle from designated parking area. At this time staff member will calculate time of stay for customer and charge accordingly.

The plan for accommodating late returning customers will be as follows: It will be protocol for In House Valet Staff to inform guest hours of operation and inform them the procedure to retrieve their vehicle. Staff will also attempt to text or call customer to inform them where they can retrieve their vehicle if late. Any guest who returns past hours of operation will be instructed to pick up their vehicle at the Townsend Hotel or Cameron's Steak HouseBoth properties are controlled by In House Valet. Signage will also have hours of operation posted. A "text ahead" business card will be giving to guest with number to text valet attendant that they will be needing vehicle at giving time.

6. Security

All vehicles parked by In House Valet will be securely locked at location and keys to be stored at the secure valet podium located at each valet location.

7. Valet Runners

In House Valet will be responsible for providing transportation for Valet staff, if necessary. Outline of operation as of now does not require any extra transportation for staff. If operation is amended, (by the City of Birmingham) pricing will be amended as needed for this service

8. Claim Tickets

In House Valet will provide a 3 part claim ticket for the Valet Parking program.

9. Vehicle and Key Accountability:

A daily accounting of all activity will be recorded and turned into the City of Birmingham on a weekly basis and keys will be kept in a secure valet podium

10. Claims

In House Valet will be responsible for any claims that arise from Valet Parking Program. A written report will be created from any incidents that arise from daily activity. In House Valet will not be responsible for any vehicle left over in designated areas where guest refuses or suggests we leave vehicle in any other area than the 2 said locations mentions in paragraph 5.

11. Customer Complaints

In House Valet will respond to all complaints and will copy the City of Birmingham on said complaints. In House Valet responds to all complaints on the same day as reported with a phone call to customer from a supervisor of In House Valet.

12. Driving Requirements

In House Valet Employees are trained to follow and obey all traffic laws, rules and regulations. All In House Valet are already licensed with the city of Birmingham.

13. Uniforms

In House Valet supplies all employees with uniforms for all seasons with In House Valet logo inserted on all gear

14. Storage of vehicles

Fortunately, In House Valet already operates out of several locations in the City of Birmingham, and will be utilizing its office space at the Townsend Hotel for all of its operations throughout the city. Location one (Hamilton Stand would require the first level north side of the Park street garage as well as the Oakland street parking that In House Valet is currently utilizing for construction program. For the South Old Woodward location , In House Valet requests that we keep the 15-20 spaces on the first level of the southwest side of the Pierce Structure.

15. Signage & Equipment

In House Valet will provide the following for each valet stand location:

- 100 key Valet Podium stand with Umbrella inserted
- 1 A-Frame sign with customized signage inserted with City of Birmingham LOGO / IN HOUSE VALET LOGO
- 4 valet parking cones
- 3-part tickets for inventory
- Text Ahead Business card

16. 3 client references from past projects:

City of Birmingham -- 248-530-1200

Phenicia Restaurant- 248-644-3122

Townsend Hotel -- 248-642-7900

17. Economics of proposal

In House Valet proposes to charge each vehicle parked \$ 5 per vehicle for the first two hours and an additional \$ 5 per hour thereafter.

City of Birmingham to supplement In House Valet \$ 750 for each location per week to be billed weekly to the City of Birmingham . Total of \$1,500 weekly / \$ 78,000 annually --



INTRODUCTION

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

The City is accepting sealed bid proposals from qualified professional firms and/or contractors for Valet Parking Services in downtown Birmingham. This work must be performed as specified, in accordance with the specifications outlined by the Scope of Work contained in this Request for Proposals (RFP).

During the evaluation process, the City reserves the right to request additional information or clarification from contractors, or to allow corrections of errors or omissions. At the discretion of the City, contractors submitting proposals may be requested to make oral presentations as part of the evaluation.

It is anticipated the selection of a Contractor will be completed by Monday, February 11, 2019. 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 date specified by the City.

REQUEST FOR PROPOSALS (RFP)

The purpose of this RFP is to request sealed bid proposals from contractors presenting their qualifications, capabilities and costs to provide valet parking services in downtown Birmingham.

INVITATION TO SUBMIT A PROPOSAL

Proposals shall be submitted no later than **Monday, January 21, 2019 at 4:00 PM** to:

HAND DELIVERED:

City of Birmingham
ATTN: Tiffany J. Gunter, Assistant City Manager
151 Martin Street
Birmingham, Michigan 48009

MAILED:

City of Birmingham
ATTN: Tiffany J. Gunter, Assistant City Manager
151 Martin Street
Birmingham, Michigan 48009

One (1) original and one (1) copy of the proposal shall be submitted. *Also, include a digital copy of the RFP on a thumb drive in the packet.* The proposal should be firmly sealed in an envelope, which shall be clearly marked on the outside, **"City Sponsored Valet Parking Services"**. Any proposal received after the due date cannot be accepted and will be rejected and returned, unopened, to the contractor. Contractor 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 via the Michigan Intergovernmental Trade Network (MITN) no later than January 14, 2019. Such request for clarification shall be answered via MITN, 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 to the most responsive and responsible bidder who can best accomplish the requirements of the Scope of Work in an effective and cost efficient manner.
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 Advisory Parking Committee Members, 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. Overall Costs
4. References

TIMELINE:

Submitted to MITN: Friday, January 4, 2019
Deadline for Submissions: Monday, January 21, 2019 at 4:00 PM

TERMS AND CONDITIONS:

1. The City reserves the right to reject any or all proposals received, waive informalities, or accept any proposal, in whole or in part, it deems best. The City reserves the right to award the contract to the next most qualified Contractor if the successful Contractor does not execute a contract within ten (10) days after the award of the proposal.
2. The City reserves the right to request clarification of information submitted and to request additional information of one or more Contractors.
3. The City reserves the right to terminate the contract at its discretion should it be determined that the services provided do not meet the specifications contained herein. The City may terminate this Agreement at any point in the process upon notice to Contractor sufficient to indicate the City's desire to do so. In the case of such a stoppage, the City agrees to pay Contractor for services rendered to the time of notice, subject to the contract maximum amount.
4. Any proposal may be withdrawn up until the date and time set above for the opening of the proposals. Any proposals not so withdrawn shall constitute an irrevocable offer, for a period of ninety (90) days, to provide the services set forth in the proposal.
5. The cost of preparing and submitting a proposal is the responsibility of the Contractor and shall not be chargeable in any manner to the City.
6. Payment will be made within thirty (30) days after invoice. Acceptance by the City is defined as authorization by the designated City representative to this project that all the criteria requested under the Scope of Work contained herein have been provided. Invoices are to be rendered each month following the date of execution of an Agreement with the City.

7. The Contractor will not exceed the timelines established for the completion of this project.
8. The successful bidder shall enter into and will execute the contract as set forth and attached as Attachment A.

CONTRACTOR'S RESPONSIBILITIES

Each bidder shall provide the following as part of their proposal:

1. Complete and sign all forms requested within this RFP.
 - a. Bidder's Agreement (Attachment B)
 - b. Cost Proposal (Attachment C)
 - c. Iran Sanctions Act Vendor Certification Form (Attachment D)
 - d. Agreement (– **only if selected by the City**).
2. Provide a description of completed projects (preferably projects working with municipalities similar to Birmingham) and other businesses 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 tasks set forth in the Scope of Work.
4. The Contractor will be responsible for any changes necessary for the plans to be approved by the City.
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 or similar services included in the Contractor's proposal.
8. Provide a project timeline addressing each section within the Scope of Work and a description of the overall project approach. Include a statement that the Contractor will be available according to the proposed timeline.

CITY'S RESPONSIBILITY

1. The City will provide a designated representative to work with the Contractor to coordinate both the City's and Contractor's efforts.
2. The City will be accessible to the Contractor during regular business hours 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 13 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, City 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

February 2019 – Valet Demonstration project will be concluded. Successful bidder will prepare for valet parking services to include hiring necessary personnel, obtaining valet signage, obtaining necessary valet stands, conducting coordination with necessary City personnel.

March 2019 – March 2020 – Conduct valet parking services.

March 2020– City has an annual option to renew for two additional years of services.

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

SCOPE OF WORK

The Contractor shall perform the following services in accordance with the requirements as defined and noted herein. In the scope of their work the contractor shall:

1. Operate valet parking services at two (2) locations in downtown Birmingham. Hours of operation will be Monday-Saturday, 10:00 AM – 6:00 PM. The first two (2) hours of parking is \$5 and will cost \$5/hour thereafter. Contractor is asked to provide in their proposal the cost to run two (2) stands.
2. Valet Services Personnel: The contractor must provide management, at least one supervisor on duty at all times, and the necessary number of valet drivers and cashiers to meet the needs of the Valet Services.
3. Reporting: Contractor must track and report daily transactions including number of cars parked at each location and amount of money collected.
4. Areas of Operation: (please provide quote for 2 stands)
 - a. Stand #1 -East side of South Old Woodward Ave. and South of Brown (just South of Peabody mansion)
 - b. Stand #2 -North side of Hamilton Row and West of Park St.
5. Drop Off and Pick Up:
 - a. Upon both drop off and pick up, the vehicle must be briefly inspected for exterior damage. Contractor should note any obvious damages before initially parking vehicle.
 - b. No staging of the vehicles is allowed in the drop off areas.
 - c. Offer "Text ahead" services: At all times the successful contractor should make every effort to minimize customer wait times.
 - d. As part of the proposal, include a summary of the drop off and pick up procedure, including any information or services available to the customer to facilitate them requesting their vehicle for pick up.
 - e. Contractor must provide the plan for accommodating late returning customers. Signs must be provided stating the hours of operation and valet attendants will inform each and every customer about the closing time for the day of operation. For customers who return after valet hours, valet attendants must ensure cars are secured in the designated parking area and have vehicle keys waiting in a designated, secure spot for "after-hours" pick-up.
6. Security: All parked cars must be locked and checked by supervisor.
7. Valet Runners: The contractor will be responsible for providing transportation for the Valets, if necessary.
8. Claim Tickets: Contractor must provide claim tickets for use in the Valet Services.

9. Vehicle and Key Accountability: All vehicles must be accounted for daily and all keys must be kept in a secured and locked area.
10. Claims: Contractor will be responsible for any customer claims that arise from the provision of the services.
11. Customer Complaints: Contractor is responsible for responding to customer complaints. Such responses must be in writing and provided to the City. All complaints received by the City will be properly passed along. As part of the proposal include how these complaints will be handled.
12. Personnel Driving Requirements: All personnel providing valet parking services must have a valid license. Further, contractor's employees must obey all traffic laws, rules and regulations.
13. Uniforms: Contractor will supply employees with uniforms with the company's insignia and name tags. Contractor should also provide inclement weather gear.
14. Storage and Office Space: Office and storage space is not available to the contractor. Contractor must conduct administrative work at contractor's location.
15. ***Optional**

Provide alternative operational solutions to traditional valet that may alleviate parking demand in the downtown.

Disclaimers:

The above scope of work is representative of work expected by the Contractor. However, both parties acknowledge that scope of work may expand as needed.

City of Birmingham
A Walkable Community
AGREEMENT
City Sponsored Valet Parking Services

This AGREEMENT, made this 7th day of February, 2019, by and between the City of Birmingham (hereinafter sometimes called "the City"), having its principal municipal office at 151 Martin Street, Birmingham, MI, and In-House Valet, Inc., having its principal office at 2802 Derby Road, Birmingham, MI 48009 (hereinafter called "Contractor"), provides as follows:

WITNESSETH:

WHEREAS, the City has heretofore advertised for bids for the procurement and performance of services required for Valet Parking in downtown Birmingham 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 Valet Parking Services.

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

It is mutually agreed by and between the parties that the documents consisting of the Request for Proposal to perform for Valet Parking Services in downtown Birmingham. The Contractor's cost proposal dated January 21, 2019 shall be incorporated herein by reference and shall become a part of this Agreement, and shall be binding upon both parties hereto.

2. The Contractor's Proposal shall be incorporated herein by reference, shall become a part of this Agreement, and shall be binding on the parties hereto. In the event there is a conflict between the Proposal and this Agreement, this Agreement shall control.

3. The term of this Agreement shall commence on March 1, 2019 for a period of one year expiring February 28, 2020 with options to be exercised, at the sole discretion of the City, for an additional two years. If changes to the existing terms are sought, an amendment to the Agreement must be prepared and signed before any changes are effective.

4. Notwithstanding the foregoing term, either party may terminate this Agreement for any or no reason upon a thirty day (30) notice to the other party. If the City terminates the Agreement under this paragraph, Contractor will be compensated for any work already performed up to the date of termination. However, Contractor shall not perform any new work or incur new costs after the City's notice of termination unless specifically authorized by the City.

5. The City shall pay the Contractor for the performance of this Agreement in an amount not to exceed \$78,000 as set forth in the Contractor's January 21, 2019 cost proposal.

6. 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.

7. The Contractor shall employ personnel of good moral character and fitness in performing all services under this Agreement.

8. 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 of Birmingham ("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.

9. 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.

10. 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.

11. 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.

12. 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.

13. The Contractor agrees that neither it nor its sub -Contractors 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.

14. 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.

15. The Contractor shall maintain during the life of this Agreement the types of insurance coverage and minimum limits as set forth below:

A. Workers' Compensation Insurance: Contractor shall procure and maintain during the life of this Agreement, Workers' Compensation Insurance, including Employers Liability Coverage, in accordance with all applicable statutes of the State of Michigan.

B. Commercial General Liability Insurance: Contractor shall procure and maintain during the life of this Agreement, Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than \$1,000,000 per occurrence combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent.

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: 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. 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. Thirty (30) days Notice of Cancellation shall apply to this policy.

G. Cancellation Notice: Workers' Compensation Insurance, Commercial General Liability Insurance and Motor Vehicle Liability Insurance (and Professional Liability Insurance, if applicable), as described above, shall include an endorsement stating the following: "Thirty (30) days Advance Written Notice of Cancellation or Non-Renewal, shall be sent to: City of Birmingham, 151 Martin Street, Birmingham, MI 48009.

H. Proof of Insurance Coverage: Contractor shall provide the City at the time the Agreement is returned for execution, Certificates of Insurance and/or policies, acceptable to the City, 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 at least (10) days prior to the expiration date.

J. Maintaining Insurance: Upon failure of the Contractor to obtain or maintain such insurance coverage for the term of the Agreement, the City may, at its option, purchase such coverage and subtract the cost of obtaining such coverage from the Agreement amount. In obtaining such coverage, the City 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 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 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.

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 address:

City of Birmingham
Attn: Assistant City Manager
151 Martin Street
Birmingham, MI 48009

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
Page 15

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 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.

IN WITNESS WHEREOF, the said parties have caused this Agreement to be executed as of the date and year above written.

WITNESS:

City Manager

n,pe) ,

(Approved as to financial obligation)

CONTRACTOR:

sy:

Title:

CITY OF BIRMINGHAM

By: 1016WI-PVAU'L.—

Patricia

Bordman

Its: Mayor

Jgfi6ph A. Valentine, City Manager

pproved as to substance)

Timothy Currier, ity Attorney

(Approved as to form)

17

In -House Valet
2802 Derby Road
Birmingham, MI 48009
va Phone: 248-755-4082
Fax: 248-614-6169
E-mail: inhousevalet@att.net
Website: inhousevaletparking.net
Tax ID# 38-3473347
City of Birmingham
Tiffany Gunter
151 Martin Street
Birmingham, MI 48009
Phone- 248-530-1827
Email: teunter(7a.bhamaov.or

INTRODUCTION

In House Valet has been part of the downtown Birmingham business landscape since 1992. It's founder, Steve Ferich has built a reputation on quality service and reliability. The Parking Service Industry is fast paced, responsive, and we take pride in the services we provide. Every In House Valet Employee is expected to adhere to a high standard of ethics and must provide the highest service possible to all clients. Our resume is filled with projects that are parallel to this current valet service the City Of Birmingham elected In House Valet to provide the valet parking service for its local merchants. Previous to the last construction project, In House Valet offered Valet Parking service in front of Biannci's Salon located on North Old Woodward for the city. This particular program was a test program to help with the city's current need to help lighten the impact of the lack of parking in the Downtown area. After a year of providing these services, the program was very popular with all of the local Merchants and shoppers in the surrounding area. The current program moved that stand to the city's proposed 2111 stand on Hamilton next to the Greek Islands restaurant. With this current program we also have been providing services in front of Keller Williams- Rivage Spa- Vinnotecca . In House Valet has also provided the Birmingham Shopping District all of it's Holiday and special event Valet Parking programs.

Proposal for March 2019- March 2020 City of Birmingham Valet Parking Services

1. In House Valet will provide valet parking services at 2 said locations in the City of Birmingham . Hours of operation will be Monday -Saturday, 10:00Am-6:00PM. The first two hours of valet service will cost \$5 and an additional \$5 per hour thereafter. Employees will insert time of arrival on ticket to track of number hours parked with city.
2. Valet Services Personnel: In House Valet will provide two (2) parking attendants for each valet parking location during the 10:00AM-6:00PM daily work shift. A designated supervisor will be located at each location. A

Management supervisor

will be available to oversee both locations from said times of loam -bpm daily.

Renortine: In House Valet will track and report daily transactions for each location on a weekly basis to City of

Birmingham.

4. Areas of Operation -Areas of operation will be as follows: Stand # 1 -- East side of South Old Woodward Ave. and south of Brown Street. Stand # 2- North Side of Hamilton Row and west of Park street. Drop Off and Pick Up

5. DROP OFF AND PICK-UP

Procedures for Drop off and pick up of customer's vehicle's will be as follows:

Upon vehicle drop off, In House Valet will greet guests, mark tickets with arrival time, get customer name, phone

number in case of needed contact, and inspect vehicle for any existing damage. All damage found will be pointed out to

customer and marked on vehicle ticket in the appropriate area. Staff member will then park the vehicle at designated parking area for that particular stand. Staff member will also provide customer with a phone number for the ability to text ahead for customer's vehicle. Staff will also not stage any vehicles in drop off and retrieval areas.

In House Valet Staff will park customer's vehicles at said locations:

Stand # 1 vehicles will be parked in the Pierce City parking garage adjacent to this location. In House Valet will

request to reserve 15-20 spaces in a secure area.

Stand # 2 vehicles will be parked in the Park street garage (10 reserved spaces) on the North side of garage and 6

metered spaces on Oakland Blvd next to garage. With metered spaces, In House Valet can create 2-3 more spaces for a

total of 8-9 spaces.

Upon Pick up of customer's vehicle, staff will either retrieve claim number from guest either via text or from the

guest handing ticket stub to staff member where then he or she will retrieve vehicle from designated parking area. At

this time staff member will calculate time of stay for customer and charge accordingly.

The plan for accommodating late returning customers will be as follows: It will be protocol for In House Valet Staff

to inform guest hours of operation and inform them the procedure to retrieve their vehicle .

Staff will also attempt to

text or call customer to inform them where they can retrieve their vehicle if late. Any guest who returns past hours of

operation will be instructed to pick up their vehicle at the Townsend Hotel or Cameron's Steak HouseBoth

properties are controlled by In House Valet. Signage will also have hours of operation posted.

A "text ahead" business

card will be giving to guest with number to text valet attendant that they will be needing vehicle at giving time.

6. Security

All vehicles parked by In House Valet will be securely locked at location and keys to be stored at the secure valet

podium located at each valet location.

7. Valet Runners

In House Valet will be responsible for providing transportation for Valet stag, if necessary.

Outline of operation as of

now does not require any extra transportation for staff. If operation is amended, (by the City of Birmingham) pricing will

be amended as needed for this service.

8. Claim Tickets

In House Valet will provide a 3 part claim ticket for the Valet Parking program .

9. Vehicle and Key Accountability:

A daily accounting of all activity will be recorded and turned into the City of Birmingham on a weekly basis and keys

will be kept in a secure valet podium

10. Claims

In House Valet will be responsible for any claims that arise from Valet Parking Program. A written report will be created from any incidents that arise from daily activity. In House Valet will not be responsible for any vehicle left over in designated areas where guest refuses or suggests we leave vehicle in any other area than the 2 said locations mentions in paragraph 5.

11. Customer Complaints

In House Valet will respond to all complaints and will copy the City of Birmingham on said complaints. In House Valet responds to all complaints on the same day as reported with a phone call to customer from a supervisor of In House Valet.

12. Driving Requirements

In House Valet Employees are trained to follow and obey all traffic laws, rules and regulations. All In House Valet are already licensed with the city of Birmingham.

13. Uniforms

In House Valet supplies all employees with uniforms for all seasons with In House Valet logo inserted on all gear

14. Storage of vehicles

Fortunately, In House Valet already operates out of several locations in the City of Birmingham, and will be utilizing its office space at the Townsend Hotel for all of its operations throughout the city. Location one (Hamilton Stand would require the first level north side of the Park street garage as well as the Oakland street parking that In House Valet is currently utilizing for construction program. For the South Old Woodward location , In House Valet requests that we keep the 15-20 spaces on the first level of the southwest side of the Pierce Structure.

15. Signage & Equipment

In House Valet will provide the following for each valet stand location:

- 100 key Valet Podium stand with Umbrella inserted
- 1 A -Frame sign with customized signage inserted with City of Birmingham LOGO / IN HOUSE VALET LOGO
- 4 valet parking cones
- 3 -part tickets for inventory
- Text Ahead Business card

16.3 client references from past projects:

City of Birmingham — 248-530-1200

Phenicia Restaurant- 248-644-3122

Townsend Hotel — 248-642-7900

17. Economics of proposal

In House Valet proposes to charge each vehicle parked \$ 5 per vehicle for the first two hours and an additional \$ 5 per hour thereafter.

City of Birmingham to supplement In House Valet \$ 750 for each location per week to be billed weekly to the City of

Birmingham. Total of \$1,500 weekly / \$ 78,000 annually —

#City of Birmingham
A Walkable Community
INTRODUCTION

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

The City is accepting sealed bid proposals from qualified professional firms and/or contractors for Valet Parking Services in downtown Birmingham. This work must be performed as specified, in accordance with the specifications outlined by the Scope of Work contained in this Request for Proposals (RFP).

During the evaluation process, the City reserves the right to request additional information or clarification from contractors, or to allow corrections of errors or omissions. At the discretion of the City, contractors submitting proposals may be requested to make oral presentations as part of the evaluation.

It is anticipated the selection of a Contractor will be completed by Monday, February 11, 2019. 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 date specified by the City.

REQUEST FOR PROPOSALS (RFP)

The purpose of this RFP is to request sealed bid proposals from contractors presenting their qualifications, capabilities and costs to provide valet parking services in downtown Birmingham.

INVITATION TO SUBMIT A PROPOSAL

Proposals shall be submitted no later than Monday, January 21, 2019 at 4:00 PM to:

HAND DELIVERED:

City of Birmingham
ATTN: Tiffany J. Gunter, Assistant City Manager
151 Martin Street
Birmingham, Michigan 48009

MAILED:

City of Birmingham
ATTN: Tiffany J. Gunter, Assistant City Manager
151 Martin Street
Birmingham, Michigan 48009

One (1) original and one (1) copy of the proposal shall be submitted. Also, include a digital copy of the RFP on a thumb drive in the packet. The proposal should be firmly sealed in an envelope, which shall be clearly marked on the outside, "City Sponsored Valet Parking Services". Any proposal received after the due date cannot be accepted and will be rejected and returned, unopened, to the contractor. Contractor 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 via the Michigan Intergovernmental Trade Network (MITN) no later than January 14 2019 . Such request for clarification shall be answered via MITN, 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 to the most responsive and responsible bidder who can best accomplish the requirements of the Scope of Work in an effective and cost efficient manner.
 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.
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EVALUATION PROCEDURE AND CRITERIA

The evaluation panel will consist of Advisory Parking Committee Members, 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. Overall Costs
4. References

TIMELINE:

Submitted to MITN: Friday, January 4, 2019

Deadline for Submissions: Monday, January 21, 2019 at 4:00 PM

TERMS AND CONDITIONS:

The City reserves the right to reject any or all proposals received, waive informalities, or accept any proposal, in whole or in part, it deems best. The City reserves the right to award the contract to the next most qualified Contractor if the successful Contractor does not execute a contract within ten (10) days after the award of the proposal.

2. The City reserves the right to request clarification of information submitted and to request additional information of one or more Contractors.

3. The City reserves the right to terminate the contract at its discretion should it be determined that the services provided do not meet the specifications contained herein. The City may terminate this Agreement at any point in the process upon notice to Contractor sufficient to indicate the City's desire to do so. In the case of such a stoppage, the City agrees to pay Contractor for services rendered to the time of notice, subject to the contract maximum amount.

4. Any proposal may be withdrawn up until the date and time set above for the opening of the proposals. Any proposals not so withdrawn shall constitute an irrevocable offer, for a period of ninety (90) days, to provide the services set forth in the proposal.

5. The cost of preparing and submitting a proposal is the responsibility of the Contractor and shall not be chargeable in any manner to the City.

6. Payment will be made within thirty (30) days after invoice. Acceptance by the City is defined as authorization by the designated City representative to this project that all the criteria requested under the Scope of Work contained herein have been provided. Invoices are to be rendered each month following the date of execution of an Agreement with the City.

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

8. The successful bidder shall enter into and will execute the contract as set forth and attached as Attachment A.

CONTRACTOR'S RESPONSIBILITIES

Each bidder shall provide the following as part of their proposal:

Complete and sign all forms requested within this RFP.

a. Bidder's Agreement (Attachment B)

b. Cost Proposal (Attachment C)

c. Iran Sanctions Act Vendor Certification Form (Attachment D)

d. Agreement (— only if selected by the City).

2. Provide a description of completed projects (preferably projects working with municipalities similar to Birmingham) and other businesses 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 tasks set forth in the Scope of Work.

4. The Contractor will be responsible for any changes necessary for the plans to be approved by the City.

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 or similar services included in the Contractor's proposal.

8. Provide a project timeline addressing each section within the Scope of Work and a description of the overall project approach. Include a statement that the Contractor will be available according to the proposed timeline.

CITY'S RESPONSIBILITY

1. The City will provide a designated representative to work with the Contractor to coordinate both the City's and Contractor's efforts.

2. The City will be accessible to the Contractor during regular business hours 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 13 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, City 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

February 2019 — Valet Demonstration project will be concluded. Successful bidder will prepare for valet parking services to include hiring necessary personnel, obtaining valet signage, obtaining necessary valet stands, conducting coordination with necessary City personnel.

March 2019 — March 2020 — Conduct valet parking services.

March 2020— City has an annual option to renew for two additional years of services.

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

SCOPE OF WORK

The Contractor shall perform the following services in accordance with the requirements as defined and noted herein. In the scope of their work the contractor shall:

1. Operate valet parking services at two (2) locations in downtown Birmingham. Hours of operation will be Monday -Saturday, 10:00 AM — 6:00 PM. The first two (2) hours of parking is \$5 and will cost \$5/hour thereafter. Contractor is asked to provide in their proposal the cost to run two (2) stands.
2. Valet Services Personnel: The contractor must provide management, at least one supervisor on duty at all times, and the necessary number of valet drivers and cashiers to meet the needs of the Valet Services.
3. Reporting: Contractor must track and report daily transactions including number of cars parked at each location and amount of money collected.
4. Areas of Operation: (please provide quote for 2 stands)
 - a. Stand #1 -East side of South Old Woodward Ave. and South of Brown Oust South of Peabody mansion)
 - b. Stand #2 -North side of Hamilton Row and West of Park St.
5. Drop Off and Pick Up:
 - a. Upon both drop off and pick up, the vehicle must be briefly inspected for exterior damage. Contractor should note any obvious damages before initially parking vehicle.
 - b. No staging of the vehicles is allowed in the drop off areas.
 - c. Offer "Text ahead" services: At all times the successful contractor should make every effort to minimize customer wait times.
 - d. As part of the proposal, include a summary of the drop off and pick up procedure, including any information or services available to the customer to facilitate them requesting their vehicle for pick up.
 - e. Contractor must provide the plan for accommodating late returning customers. Signs must be provided stating the hours of operation and valet attendants will inform each and every customer about the closing time for the day of operation. For customers who return after valet hours, valet attendants must ensure cars are secured in the designated parking area and have vehicle keys waiting in a designated, secure spot for "after-hours" pick-up.
6. Security: All parked cars must be locked and checked by supervisor.
7. Valet Runners: The contractor will be responsible for providing transportation for the Valets, if necessary.
8. Claim Tickets: Contractor must provide claim tickets for use in the Valet Services.

9. Vehicle and Key Accountability: All vehicles must be accounted for daily and all keys must be kept in a secured and locked area.

10. Claims: Contractor will be responsible for any customer claims that arise from the provision of the services.

11. Customer Complaints: Contractor is responsible for responding to customer complaints. Such responses must be in writing and provided to the City. All complaints received by the City will be properly passed along. As part of the proposal include how these complaints will be handled.

12. Personnel Driving Requirements: All personnel providing valet parking services must have a valid license. Further, contractor's employees must obey all traffic laws, rules and regulations.

13. Uniforms: Contractor will supply employees with uniforms with the company's insignia and name tags. Contractor should also provide inclement weather gear.

14. Storage and Office Space: Office and storage space is not available to the contractor. Contractor must conduct administrative work at contractor's location.

15. ***Optional**

Provide alternative operational solutions to traditional valet that may alleviate parking demand in the downtown.

Disclaimers:

The above scope of work is representative of work expected by the Contractor. However, both parties acknowledge that scope of work may expand as needed.

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Richard D. Rattner
rdr@wwrplaw.com

December 30, 2020

By e-mail and hand delivery

Mark Clemence
Chief of Police
151 Martin Street
Birmingham, MI 48009

RE: The Daxton Hotel Application for Valet Parking License ("Applicant");
Additional Information Regarding Removal of Parking Meters in Front of
298 S. Old Woodward

Dear Chief Clemence:

This letter provides additional information requested by the City Commission during its December 7, 2020 meeting regarding the Applicant's request for a license from the City for four angled parking spaces at 298 S. Old Woodward for The Daxton Hotel public/private valet operation.

Executive Summary

The Commissioners requested more information regarding:

1. Utilization of the valet stand at Vintoteca;
2. The economics of shifting the valet stand from Vinoteca/Rivage Day Spa, run by the City, to the Daxton and run by the hotel under a public/private agreement;
3. Appropriateness of paying the Daxton \$150 per day for free parking days when the City is waiving the annual meter revenue of \$22,464;
4. A diagram with traffic flow and striping; and
5. How the Daxton would handle higher than normal volume at the valet stand.

The following sections of this letter provide the additional information the Commissioners requested during the December 7, 2020 meeting. To summarize the pertinent benefits to the City of the Daxton proposed public/private valet, the below chart compares the current S. Old Woodward valet stand to the Daxton public/private valet stand.

Vinoteca Valet (current)	Daxton Public/Private Valet (proposed)	Notes:
4 meters out of service (\$22,464) Valet contractor does not pay for these spaces	4 meters out of service (\$22,464) Daxton does not pay for these spaces	4 spaces at Vinoteca will be put back into service and 4 will be removed from service at the Daxton
\$39,000 paid to vendor to operate valet stand	\$0.00 paid to Daxton to operate valet stand	City saves the \$39,000 fee currently paid to the valet operator
Vendor retains ticket fees set by the City	Daxton retains ticket fees set by the City	No change to City
Vendor is paid \$125/day (2019 rate) when parking is free to shoppers	Daxton is paid \$150/day (2020 rate) when parking is free to shoppers	No change to City
Vendor uses 15-20 spaces at Pierce garage to park cars	Daxton will use its underground garage first to park cars, then the public garages	The City should experience some decrease in occupancy in the Pierce garage resulting from the valet

Net effect to the City: City saves \$39,000* in the amount paid to the vendor to operate the S. Old Woodward valet stand.

*There are other variable costs described in this letter that may affect costs savings depending on usage, traffic flow and number of free parking days. However, the variable costs are treated approximately the same under the proposed scope of work for Daxton and the existing scope of work for the current vendor operating the S. Old Woodward stand.

1. Information on the regular utilization of the valet stand in front of Vinoteca

In order to address this request, Applicant has attached parking statistics presented to the Advisory Parking Committee by Assistant City Manager, Tiffany Gunter, for the Vinoteca valet stand (known as the S. Old Woodward valet stand) for the month of December 2019 (**Exhibit 1**).

December 2019 was a peak period for valet usage because it was prior to the COVID-19 pandemic, and the confluence of the impending holidays and less pleasant weather conditions made the use of valet services increasingly attractive.

In the first week of the month of December 2019, the S. Old Woodward valet parked 303 cars from Monday to Saturday (see attached Exhibit 1). 23 of those cars remained longer than the first two hours, resulting in a revenue of \$115 (valet fees charged for those parking over 2 hours). 110 hours of employee time were expended by the City's valet operator, In-House Valet, Inc ("In-House").

In the second week of December 2019, the S. Old Woodward valet parked 258 cars. Ten of those cars remained longer than the first two hours, resulting in \$50 in revenue. In-House expended 113 employee hours.

In the third week of December 2019, the S. Old Woodward valet parked 330 cars, 22 of those cars remained longer than the first two hours, resulting in \$110 in revenue. In-House expended 127 employee hours.

In the fourth week of December 2019 (Christmas) the S. Old Woodward valet parked 170 cars, 0 of those cars remained longer than the first two hours, resulting in \$0 in revenue. In-House expended 85 employee hours.

It should be noted that the revenue generated by the resident's usage of the City valet stands is retained by the valet operator, and as discussed below, the City paid In-House approximately \$250 per day (\$78,000 annually) for operating the City's two valet stands.

1. Clarity regarding the economics of shifting the valet stand from Vinoteca/Rivage Day Spa, run by the City, to the Daxton and run by the hotel under a public/private agreement

The true cost to the City of its current public valet stand on S. Old Woodward is at least \$61,464. Shifting the valet stand from Vinoteca/Rivage Day Spa to the Daxton Hotel would result in a minimum \$39,000 net savings to the City, even considering the proposed waiver of Applicant's license fee.

In January 2019, the City issued a Request for Proposals for two valet stands (S. Old Woodward and Hamilton). The lowest proposal was from In-House. See the In-House proposal at **Exhibit 2**. In-House proposed to charge drivers \$5 for first two hours of parking, followed by \$5 per each additional hour thereafter. It also proposed to charge the City a fee of \$750 per week, per stand, or \$78,000 (\$39,000 per stand) annually to supplement the income In-House would collect from the valet fees. It proposed to operate the valet stands Monday through Saturday from 10 am to 6 pm. The proposal was ultimately recommended by the Advisory

Parking Committee and the contract was awarded by the City Commission (see City Commission minutes of 2/25/2019 at **Exhibit 3**).

Under the private/public valet proposed by the Daxton, the City will save the \$39,000 annual fee charged by In-House to run the S. Old Woodward valet stand (except for free parking days, for which the City would pay the Daxton \$150 for each free day). In exchange, the City would waive the \$22,464 license fee the City would otherwise charge for the Daxton's use of four angled parking spots required to operate the valet stand. This is the same number of spaces put back into service by cessation of the valet stand at Vinoteca/Rivage Day Spa. Note that In-House Valet was not paying to use the four metered spaces to operate the S. Old Woodward valet.

By contrast, the Townsend Hotel ("Townsend") (the only other comparable valet system in the City of Birmingham), has a license agreement with the City for its 160 feet of curb on Merrill Street, but does not offer a public valet service for the City. (Please find attached the Townsend License Agreement at **Exhibit 4**). According to the invoice obtained via Freedom of Information Act ("FOIA") Request, the City charged the Townsend \$21,000 in 2019 for the *160 feet of* unmetered curb on Merrill Street (attached at **Exhibit 5** is the City's invoice from June 2019 for the Townsend's parking license). Our FOIA request did not reveal a charge by the City for the Townsend's valet curb space on Townsend Street, and while the City's meter bag log shows the Townsend's valet operator signing out meter bags for tour buses on Merrill Street, the Townsend uses an orange cone frequently to block a metered space as part of its Townsend Street valet operation. The Police Department meter bag logged shows that In-House checks out bags for the Townsend primarily for tour buses parked on Merrill. (See the meter bag log attached at **Exhibit 6**.)

Applicant, by contrast, is requesting only four angled parking spaces (less than 50 feet of curb space). This is substantially less space than afforded to the Townsend, despite Applicant's proposed private/public partnership with the City. Again, four angled spaces are the same number of spaces currently occupied by the City's S. Old Woodward valet for which the City is not receiving meter revenue.

There are also other non-financial benefits to the City's residents and its businesses as a result of the public/private valet with the Daxton. For example, the Daxton's valet will run from 7:00 am to 11:00 pm Sunday through Wednesday, and 7:00 am to 12:00 pm Thursday through Saturday, far more hours than the current S. Old Woodward valet stand. This will increase flexibility for parkers who wish to stay beyond the current 6:00 pm deadline and attract more restaurant goers and nighttime shoppers who might wish to use valet services.

Applicant has been subjected to stringent requirements by City government and has met each and every request. Applicant's proposal would relieve the City of the cost of operation of the S. Old Woodward valet stand and result in a net gain to the City of at least \$39,000 annually along with the added benefit of increased valet hours of operation.

2. 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

As is more fully described above, the City was paying \$750 a week for the S. Old Woodward valet location (maybe more now), which is \$125.00 per day, whether it is offering a free parking promotion or not. Any revenue generated on non-free parking days is retained by In-House. Under the private/public valet proposed by the Applicant, the City would no longer have this \$125 per day expense. This arrangement would result in a net positive for the City of at least \$39,000, even considering the proposed waiver of the \$22,464 license fee for four angled spaces because four metered spaces are presently out of service under the City's contract with In-House.

Furthermore, the proposed elimination of the S. Old Woodward valet stand in favor of the public/private valet would also return 15 to 20 reserved parking spots in the Pierce parking garage. Currently, In-House is occupying four metered spaces, as well as 15 to 20 reserved revenue-generating spaces in the Pierce parking garage, to operate its S. Old Woodward valet. The City does not charge In-House for the use of those metered or garage spaces and In-House retains the valet fees for cars parked there. By contrast, the Applicant also will be occupying four metered spaces at the curb (no change from the City's current valet operation) and will be parking cars first in its two-story underground garage and then, once full underground, in the available public garage spaces. The return of the metered and garage parking spaces currently used to operate the S. Old Woodward valet stand will result in offsetting revenues to the City of at least \$22,464 annually (the annual revenue of four City meters).

3. 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

Please see attached traffic flow drawing at **Exhibit 7**.

4. 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.

Applicant has previously submitted a plan for major events to the City (attached at **Exhibit 8**). In summary, Applicant plans to carefully anticipate and prepare for these higher-than-usual valet usage times in coordination with the Police Department, to accommodate both the surplus hotel-related cars and those of the general public. Relevant here, Applicant plans to make use of off-site parking and increased valet personnel to accommodate as many cars as necessary during these peak periods, as well as stacking cars in the hotel's two-story underground garage.

The Advisory Parking Committee has additionally recommended the Applicant have the ability to bag two meters when necessary at peak times and for events, in order to prevent traffic

Birmingham City Commission
Mark Clemence
December 30, 2020
Page 6

W|W|R|P

congestion on S. Old Woodward. These meter bags would be checked out from the Police Department in accordance with the City's regular procedures on an as-needed basis.

In conclusion, we hope the information in this letter and the attached exhibits assist the Commissioners by providing them with the additional information they need to approve the Application for a public/private shared valet at the Daxton.

Very truly yours,

WILLIAMS, WILLIAMS, RATTNER & PLUNKETT, P.C.

A handwritten signature in dark ink, appearing to read "Richard D. Rattner". The signature is fluid and cursive, with the first name "Richard" and last name "Rattner" being more prominent than the middle initial "D".

Richard D. Rattner

Encls.

cc: City Attorney, Tim Currier
Cmdr. Scott Grewe

EXHIBIT 1



MEMORANDUM

Office of the City Manager

DATE: January 8, 2020

TO: Advisory Parking Committee

FROM: Tiffany J. Gunter, Assistant City Manager

SUBJECT: Parking Strategies Report – Progress and Prioritization

In October 2018, the Downtown Parking Strategy Report was completed and accepted by the City Commission. Since that time, staff has been working on several fronts to move many of the recommendations forward. Much of the effort was put toward expanding parking capacity with the N. Old Woodward parking deck proposal. The proposal did not pass in August 2019. The APC conversations beginning in September and that have continued through November have been to discuss the future of parking in the downtown, prepare for the structural assessment and review of each of the parking decks, mobile app development, and to increase the sales of monthly permits to reduce frustration and negative perceptions of parking in the downtown.

As we enter into 2020, staff would like to move toward development of a prioritized list of recommendations to tackle at every meeting from now until December. Attached is the Parking Strategy Report for review and reference. For your convenience, the Immediate Action Steps table and Implementation Guide are provided on the following pages.

December 23-29

1

December 23-29		Lot 6									
Day of Week	Total Employee Hrs	# of Cars - Free 2 Hrs	# of Cars 3 Hrs	# of Cars 4 Hrs	# of Cars 5 Hrs	# of Cars 6 Hrs	# of Cars 7 Hrs	# of Cars 8 Hrs	\$ for over first 2 Hrs	Total # of cars	
									0	0	
									0	0	
									0	0	
Thursday	5	0							0	0	
Friday	5	2							0	2	
									0	0	
Totals	10	2	0	0	0	0	0	0	0	2	
Hamilton Location											
Day of Week	Total Employee Hrs	# of Cars - Free 2 Hrs	# of Cars 3 Hrs	# of Cars 4 Hrs	# of Cars 5 Hrs	# of Cars 6 Hrs	# of Cars 7 Hrs	# of Cars 8 Hrs	\$ for over first 2 Hrs	Total # of cars	
Monday	12	30							0	30	
Tuesday	10	12							0	12	
Wednesday									0	0	
Thursday	13	9							0	9	
Friday	13	14	1						5	15	
Saturday	8	6							0	6	
Totals	56	71	1	0	0	0	0	0	5	72	

[illegible]

S Old Woodward Location

	<u>\$ Old Woodward Location</u>								
Day of Week	Total Employee Hrs	# of Cars - Free 2 Hrs	# of Cars 3 Hrs	# of Cars 4 Hrs	# of Cars 5 Hrs	# of Cars 6 Hrs	# of Cars 7 Hrs	# of Cars 8 Hrs	Total # of Cars
Monday	25	55							55
Tuesday	10	12							12
Wednesday									
Thursday	16	21							0
Friday	18	42							21
Saturday	16	40							42
									0
Totals	85	170	0	0	0	0	0	0	170

Start of Week
December 16-22

Lot 6.										
Day of Week	Total Employee Hrs	# of Cars - Free 2 Hrs	# of Cars 3 Hrs	# of Cars 4 Hrs	# of Cars 5 Hrs	# of Cars 6 Hrs	# of Cars 7 Hrs	# of Cars 8 Hrs	\$ for over first 2 hrs	Total # of cars
									0	0
									0	0
									0	0
Thursday	10	24							0	24
Friday	5	9							0	9
									0	0
Totals	15	33	0	0	0	0	0	0	0	33

Day of Week	Total Employee Hrs	# of Cars - Free 2 Hrs	Hamilton Location								Total # of cars
			# of Cars 3 Hrs	# of Cars 4 Hrs	# of Cars 5 Hrs	# of Cars 6 Hrs	# of Cars 7 Hrs	# of Cars 8 Hrs	\$ for over first 2 hrs		
Monday	10.5	13							0	13	
Tuesday	14	27							0	27	
Wednesday	16	50	2						10	52	
Thursday	15	44	3						15	47	
Friday	14.5	48	4						20	52	
Saturday	12.5	20	2						10	22	
Totals	82.5	202	11	0	0	0	0	0	55	213	

[illegible]

Day of Week	Total Employee Hrs	\$ Old Woodward Location								Total # of cars
		# of Cars - Free 2 Hrs	# of Cars 3 Hrs	# of Cars 4 Hrs	# of Cars 5 Hrs	# of Cars 6 Hrs	# of Cars 7 Hrs	# of Cars 8 Hrs	\$ for over first 2 hrs	
Monday	23	46	2						10	46
Tuesday	23	49	3						15	51
Wednesday	23	63	12						60	75
Thursday	24	62	4						20	66
Friday	18	58	1						5	59
Saturday	16	30							0	31
Totals	127	308	22	0	0	0	0	0	110	338

Lot 6

[illegible]

Day of Week	5 Old Woodward Location									
	Total Employee Hrs	# of Cars - Free 2 Hrs	# of Cars 3 Hrs	# of Cars 4 Hrs	# of Cars 5 Hrs	# of Cars 6 Hrs	# of Cars 7 Hrs	# of Cars 8 Hrs	\$ for over first 2 hrs	Total # of Cars
Monday	18	38	2						10	40
Tuesday	18	45	3						15	48
Wednesday	21	56	2						10	58
Thursday	22	26							0	26
Friday	18	48	2						10	50
Saturday	16	35	1						5	36
Totals	113	248	10	0	0	0	0	0	50	258

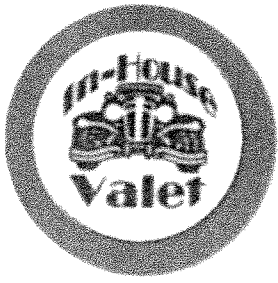
December 2-8		Lot 6									
Day of Week	Total Employee Hrs	# of Cars - Free 2 Hrs	# of Cars 3 Hrs	# of Cars 4 Hrs	# of Cars 5 Hrs	# of Cars 6 Hrs	# of Cars 7 Hrs	# of Cars 8 Hrs	\$ for over first 2 Hrs	Total # of cars	
									0	0	
									0	0	
									0	0	
Thursday	5	5							0	0	
Friday	5	7							0	5	
									0	7	
									0	0	
Totals	10	12	0	0	0	0	0	0	0	12	

		Hamilton Location									
Day of Week	Total Employee Hrs	# of Cars - Free 2 Hrs	# of Cars 3 Hrs	# of Cars 4 Hrs	# of Cars 5 Hrs	# of Cars 6 Hrs	# of Cars 7 Hrs	# of Cars 8 Hrs	\$ for over first 2 Hrs	Total # of cars	
Monday	11	11							0	11	
Tuesday	13.5	15	2						10	17	
Wednesday	11	19	1						5	20	
Thursday	11	26	1						5	27	
Friday	11	27	2						10	29	
Saturday	11	19							0	19	
Totals	68.5	117	6	0	0	0	0	0	30	123	

[illegible]

Day of Week	Total Employee Hrs	\$ Old Woodward Location									Total # of cars
		# of Cars - Free 2 Hrs	# of Cars 3 Hrs	# of Cars 4 Hrs	# of Cars 5 Hrs	# of Cars 6 Hrs	# of Cars 7 Hrs	# of Cars 8 Hrs	\$ for over first 2 hrs		
Monday	18	30	4							20	34
Tuesday	18	44	3							15	47
Wednesday	18	49	3							15	52
Thursday	18	48	4							20	52
Friday	22	70	6							30	76
Saturday	16	39	3							15	42
Totals	110	280	23	0	0	0	0	0	0	115	503

EXHIBIT 2



In-House Valet
2802 Derby Road
Birmingham, MI 48009
Phone: 248-755-4082
Fax: 248-614-6169
E-mail: inhousevalet@att.net
Website: inhousevaletparking.net
Tax ID# 38-3473347

City of Birmingham
Tiffany Gunter
151 Martin Street
Birmingham, MI 48009
Phone- 248-530-1827
Email: tgunter@bhamgov.org

INTRODUCTION

In House Valet has been part of the downtown Birmingham business landscape since 1992. Its founder, Steve Ferich has built a reputation on quality service and reliability. The Parking Service Industry is fast paced, responsive, and we take pride in the services we provide. Every In House Valet Employee is expected to adhere to a high standard of ethics and must provide the highest service possible to all clients. Our resume is filled with projects that are parallel to this current valet service the City Of Birmingham elected In House Valet to provide the valet parking service for its local merchants. Previous to the last construction project, In House Valet offered Valet Parking service in front of Biannci's Salon located on North Old Woodward for the city. This particular program was a test program to help with the city's current need to help lighten the impact of the lack of parking in the Downtown area. After a year of providing these services, the program was very popular with all of the local Merchants and shoppers in the surrounding area. The current program moved that stand to the city's proposed 2nd stand on Hamilton next to the Greek Islands restaurant. With this current program we also have been providing services in front of Keller Williams- Rivage Spa- Vinnotecca . In House Valet has also provided the Birmingham Shopping District all of it's Holiday and special event Valet Parking programs.

Proposal for March 2019- March 2020 City of Birmingham Valet Parking Services

1. In House Valet will provide valet parking services at 2 said locations in the City of Birmingham . Hours of operation will be Monday-Saturday, 10:00Am-6:00PM. The first two hours of valet service will cost \$5 and an additional \$5 per hour thereafter. Employees will insert time of arrival on ticket to track of number hours parked with city.
2. Valet Services Personnel: In House Valet will provide two (2) parking attendants for each valet parking location during the 10:00AM-6:00PM daily work shift. A designated supervisor will be located at each location. A Management supervisor will be available to oversee both locations from said times of 10am-6pm daily.
3. Reporting: In House Valet will track and report daily transactions for each location on a weekly basis to City of Birmingham.
4. Areas of Operation -Areas of operation will be as follows: Stand # 1 – East side of South Old Woodward Ave. and south of Brown Street. Stand # 2- North Side of Hamilton Row and west of Park street. Drop Off and Pick Up
5. DROP OFF AND PICK-UP

Procedures for Drop off and pick up of customer's vehicle's will be as follows:

Upon vehicle drop off, In House Valet will greet guests, mark tickets with arrival time, get customer name, phone number in case of needed contact, and inspect vehicle for any existing damage. All damage found will be pointed out to

customer and marked on vehicle ticket in the appropriate area. Staff member will then park the vehicle at designated parking area for that particular stand. Staff member will also provide customer with a phone number for the ability to text ahead for customer's vehicle. Staff will also not stage any vehicles in drop off and retrieval areas.

In House Valet Staff will park customer's vehicles at said locations:

Stand # 1 vehicles will be parked in the Pierce City parking garage adjacent to this location. In House Valet will request to reserve 15-20 spaces in a secure area.

Stand # 2 vehicles will be parked in the Park street garage (10 reserved spaces) on the North side of garage and 6 metered spaces on Oakland Blvd next to garage. With metered spaces, In House Valet can create 2-3 more spaces for a total of 8-9 spaces.

Upon Pick up of customer's vehicle, staff will either retrieve claim number from guest either via text or from the guest handing ticket stub to staff member where then he or she will retrieve vehicle from designated parking area. At this time staff member will calculate time of stay for customer and charge accordingly.

The plan for accommodating late returning customers will be as follows: It will be protocol for In House Valet Staff to inform guest hours of operation and inform them the procedure to retrieve their vehicle . Staff will also attempt to text or call customer to inform them where they can retrieve their vehicle if late. Any guest who returns past hours of operation will be instructed to pick up their vehicle at the Townsend Hotel or Cameron's Steak HouseBoth properties are controlled by In House Valet. Signage will also have hours of operation posted. A "text ahead" business card will be giving to guest with number to text valet attendant that they will be needing vehicle at giving time.

6. Security

All vehicles parked by In House Valet will be securely locked at location and keys to be stored at the secure valet podium located at each valet location.

7. Valet Runners

In House Valet will be responsible for providing transportation for Valet staff, if necessary. Outline of operation as of now does not require any extra transportation for staff. If operation is amended, (by the City of Birmingham) pricing will be amended as needed for this service

8. Claim Tickets

In House Valet will provide a 3 part claim ticket for the Valet Parking program .

9. Vehicle and Key Accountability:

A daily accounting of all activity will be recorded and turned into the City of Birmingham on a weekly basis and keys will be kept in a secure valet podium

10. Claims

In House Valet will be responsible for any claims that arise from Valet Parking Program. A written report will be created from any incidents that arise from daily activity. In House Valet will not be responsible for any vehicle left over in designated areas where guest refuses or suggests we leave vehicle in any other area than the 2 said locations mentions in paragraph 5.

11. Customer Complaints

In House Valet will respond to all complaints and will copy the City of Birmingham on said complaints. In House Valet responds to all complaints on the same day as reported with a phone call to customer from a supervisor of In House Valet.

12. Driving Requirements

In House Valet Employees are trained to follow and obey all traffic laws, rules and regulations. All In House Valet are already licensed with the city of Birmingham.

13. Uniforms

In House Valet supplies all employees with uniforms for all seasons with In House Valet logo inserted on all gear

14. Storage of vehicles

Fortunately, In House Valet already operates out of several locations in the City of Birmingham, and will be utilizing its office space at the Townsend Hotel for all of its operations throughout the city. Location one (Hamilton Stand would require the first level north side of the Park street garage as well as the Oakland street parking that In House Valet is currently utilizing for construction program. For the South Old Woodward location , In House Valet requests that we keep the 15-20 spaces on the first level of the southwest side of the Pierce Structure.

15. Signage & Equipment

In House Valet will provide the following for each valet stand location:

- 100 key Valet Podium stand with Umbrella inserted
- 1 A-Frame sign with customized signage inserted with City of Birmingham LOGO / IN HOUSE VALET LOGO
- 4 valet parking cones
- 3-part tickets for inventory
- Text Ahead Business card

16. 3 client references from past projects:

City of Birmingham – 248-530-1200

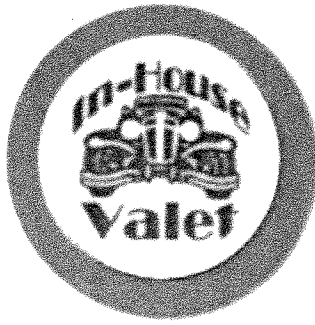
Phenicia Restaurant- 248-644-3122

Townsend Hotel – 248-642-7900

17. Economics of proposal

In House Valet proposes to charge each vehicle parked \$ 5 per vehicle for the first two hours and an additional \$ 5 per hour thereafter.

City of Birmingham to supplement In House Valet \$ 750 for each location per week to be billed weekly to the City of Birmingham . Total of \$1,500 weekly / \$ 78,000 annually –



In House Valet has been the exclusive valet parking service to some of the highest quality establishments in the area. Our service spectrum includes directional and valet parking for many other events. We managed the directional parking for both the Ryder Cup and PGA golf tournaments at Oakland Hills Country Club. We have also managed the annual Warrior Dash events held throughout the United States. Below is our client list:

Business References

- Townsend Hotel – Birmingham, MI – **since 2000 – 248-642-7900**
- Big Rock Chop House – Birmingham, MI- **since 1992 – 248-647-7774**
- The Reserve- Birmingham, MI- **since 2006**
- Cameron's Steak House -Birmingham, MI- **since 2015**
- Forest Grill –Birmingham, MI- **since 2008**
- The Community House- Birmingham, MI- **since 2009**
- Tallulah – Birmingham, MI- **since 2010**
- Notting Hill of West Bloomfield
- Detroit Pistons- Auburn Hills, MI **since 2014**
- Light house of Oakland County- Pontiac, MI
- Yatooma Foundation- Birmingham, MI
- Juvenile Diabetes Foundation-Southfield, MI

Contact information available upon request

Thank you again for this opportunity to propose our valet parking service to help with your parking needs.

Steve Ferich
In House Valet Inc.
2802 Derby
Birmingham, MI 48009
248-755-4082
Fax: 248-614-6169

Email: inhousevalet@att.net

Website: www.inhousevalet.net



ATTACHMENT A - AGREEMENT

Valet Parking Services during Old Woodward Reconstruction

This AGREEMENT, made this _____ day of _____, 2019, by and between the City of Birmingham (hereinafter sometimes called "the City"), having its principal municipal office at 151 Martin Street, Birmingham, MI, and _____, having its principal office at _____ (hereinafter called "Contractor"), provides as follows:

WITNESSETH:

WHEREAS, the City has heretofore advertised for bids for the procurement and performance of services required for Valet Parking in downtown Birmingham 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 Valet Parking Services.

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 for Valet Parking Services in downtown Birmingham. The Contractor's cost proposal dated _____, 2019 shall be incorporated herein by reference and shall become a part of this Agreement, and shall be binding upon both parties hereto.
2. The Contractor's Proposal shall be incorporated herein by reference, shall become a part of this Agreement, and shall be binding on the parties hereto. In the event there is a conflict between the Proposal and this Agreement, this Agreement shall control.
3. This Agreement shall be for duration of the reconstruction commencing on the date the City executes this Agreement. If changes to the existing terms are sought, an amendment to the Agreement must be prepared and signed before any changes are effective.

4. Notwithstanding the foregoing term, either party may terminate this Agreement for any or no reason upon a thirty day (30) notice to the other party. If the City terminates the Agreement under this paragraph, Contractor will be compensated for any work already performed up to the date of termination. However, Contractor shall not perform any new work or incur new costs after the City's notice of termination unless specifically authorized by the City.
5. The City shall pay the Contractor for the performance of this Agreement in an amount not to exceed _____, as set forth in the Contractor's _____, 2019 cost proposal.
6. 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.
7. The Contractor shall employ personnel of good moral character and fitness in performing all services under this Agreement.
8. 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 of Birmingham ("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.
9. 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.

10. 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.
11. 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.
12. 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.
13. The Contractor agrees that neither it nor its sub-Contractors 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.
14. 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.
15. The Contractor shall maintain during the life of this Agreement the types of insurance coverage and minimum limits as set forth below:
 - A. Workers' Compensation Insurance: Contractor shall procure and maintain during the life of this Agreement, Workers' Compensation Insurance, including Employers Liability Coverage, in accordance with all applicable statutes of the State of Michigan.
 - B. Commercial General Liability Insurance: Contractor shall procure and maintain during the life of this Agreement, Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than **\$1,000,000** per occurrence combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent.
 - 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*: 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. 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. Thirty (30) days Notice of Cancellation shall apply to this policy.
- G. Cancellation Notice: Workers' Compensation Insurance, Commercial General Liability Insurance and Motor Vehicle Liability Insurance (and Professional Liability Insurance, if applicable), as described above, shall include an endorsement stating the following: "Thirty (30) days Advance Written Notice of Cancellation or Non-Renewal, shall be sent to: City of Birmingham, 151 Martin Street, Birmingham, MI 48009.
- H. Proof of Insurance Coverage: Contractor shall provide the City at the time the Agreement is returned for execution, Certificates of Insurance and/or policies, acceptable to the City, 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.

- I. 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 at least (10) days prior to the expiration date.
 - J. Maintaining Insurance: Upon failure of the Contractor to obtain or maintain such insurance coverage for the term of the Agreement, the City may, at its option, purchase such coverage and subtract the cost of obtaining such coverage from the Agreement amount. In obtaining such coverage, the City 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 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 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.
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 address:
- City of Birmingham
Attn: Assistant City Manager
151 Martin Street
Birmingham, MI 48009
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 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.

IN WITNESS WHEREOF, the said parties have caused this Agreement to be executed as of the date and year above written.

WITNESS:

CONTRACTOR:

By: _____

Title: _____

CITY OF BIRMINGHAM

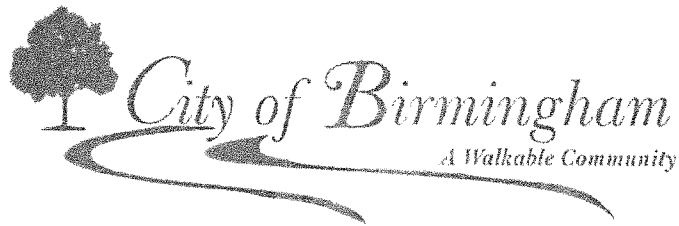
Approved:

Tiffany J. Gunter, Asst. City Manager
(Approved as to substance)

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

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

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



ATTACHMENT B - BIDDER'S AGREEMENT
City Sponsored Valet Parking Services

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.

Steve Ferich 1/21/19
PREPARED BY DATE
(Print Name)

President / Owner / Operator
TITLE

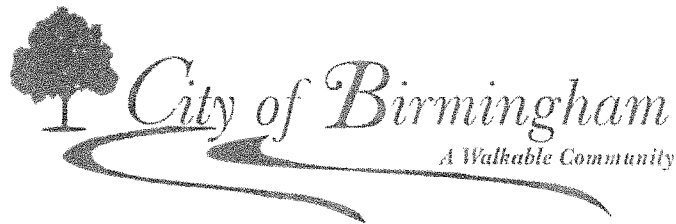
[Signature] inhouseVALET@ATT.net
AUTHORIZED SIGNATURE E-MAIL ADDRESS

IN-House-VALET inc.
COMPANY

2802 Derby Rd, Birmingham MI 48009
ADDRESS PHONE

(N.A.) 248-755-4082
NAME OF PARENT COMPANY PHONE

ADDRESS



ATTACHMENT C - COST PROPOSAL
City Sponsored Valet Parking Services

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:

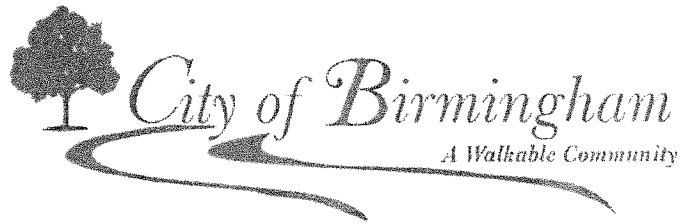
Attach technical specifications for all proposed materials as outlined in the Contractor's Responsibilities section of the RFP

COST PROPOSAL	
ITEM	BID AMOUNT
Materials & Equipment	\$ included
Labor	\$ included
Miscellaneous (Attach Detailed Description)	\$ included
TOTAL BID AMOUNT	\$ _____
ADDITIONAL/OPTIONAL BID ITEMS	
STAND # 1	\$ 750 weekly
STAND # 2	\$ 750 weekly
GRAND TOTAL AMOUNT	\$ 1,500 A week

UNIT COST BID ITEMS	
	\$ 78,000 per Year

Firm Name IN HOUSE VALET

Authorized signature [Signature] Date 1/21/19



ATTACHMENT D - IRAN SANCTIONS ACT VENDOR CERTIFICATION FORM
City Sponsored Valet Parking Services

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.

Steve Ferich 1/21/19
PREPARED BY DATE
(Print Name)
President / owner / operator
TITLE
[Signature] inhouseVALET@ATT.net
AUTHORIZED SIGNATURE E-MAIL ADDRESS
IN-House-VALET inc
COMPANY
2802 Derby Rd, Birmingham, MI 48009
ADDRESS PHONE
(NA) 248-755-4082
NAME OF PARENT COMPANY PHONE
ADDRESS
38-3473347
TAXPAYER I.D.#

74077

PLACE ON CAR

DATE 15015 74-077

OUT
IN
AMOUNT

CLAIM 15015 74-077

TOTAL 15015 FOR YOUR PAID IN

OVER

Black
Blue
Brown
Gold
Gray
Green
Red
Silver
Tan
White
Yellow

Alfa
Audi
BMW
Buick
Cadillac
Chevy
Chrysler
Citroen
Dodge
Ford
Foreign
Honda

Holden
Infiniti
Jaguar
Jeep
Lexus
Lincoln
Mazda
Mercury
Mini
Nissan
Oldsmobile
Porsche

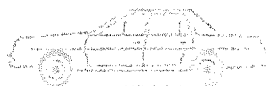
Peugeot
Plymouth
Pontiac
Porsche
Saab
Subaru
Suzuki
Toyota
Vauxhall
Volvo

☐ Convert. ☐ St. Wagon ☐ Comp. St. ☐ Truck

DAMAGE NOTED UPON ENTRANCE



REAR LEFT



LEFT SIDE



REAR RIGHT

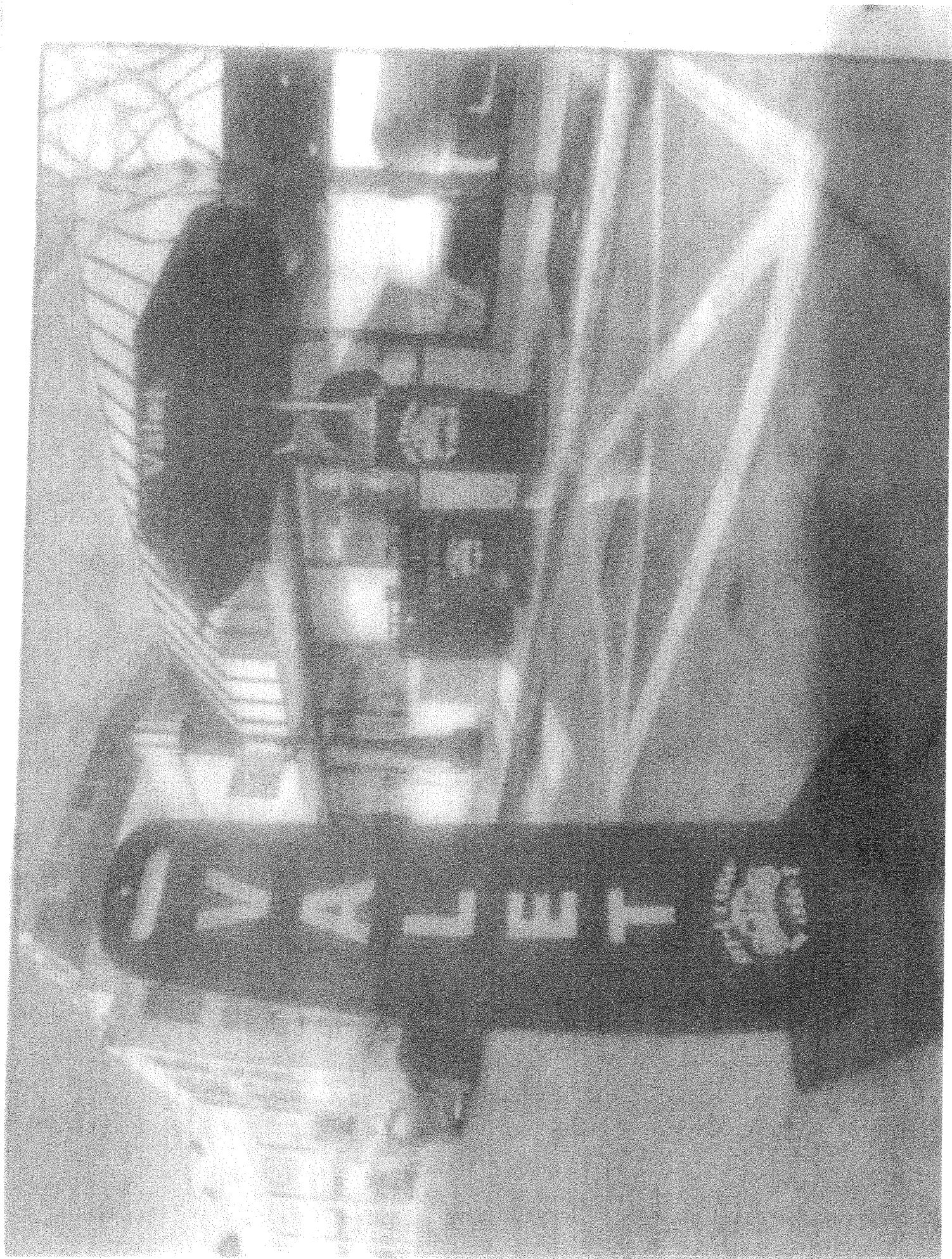


RIGHT SIDE

OUT IN

When you enter the car, please check the car for damage. If you find any damage, please note it on this form. If you do not find any damage, please check the "No Damage" box. This form is for your records only. It is not a warranty. The car is sold as is. The dealer is not responsible for any damage to the car. The car is sold as is. The dealer is not responsible for any damage to the car.

Check the car for damage. If you find any damage, please note it on this form. If you do not find any damage, please check the "No Damage" box. This form is for your records only. It is not a warranty. The car is sold as is. The dealer is not responsible for any damage to the car. The car is sold as is. The dealer is not responsible for any damage to the car.





TEXT AHEAD FOR YOUR VEHICLE

Valet Attendant _____

Valet Phone # _____

For your convenience In-House Valet is providing our guest with a phone number to text ahead for their vehicle.

please remember hours of operation are 10am - 6pm

EXHIBIT 3

BIRMINGHAM CITY COMMISSION MINUTES
FEBRUARY 25, 2019
MUNICIPAL BUILDING, 151 MARTIN
7:30 P.M.

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Mayor Patty Bordman called the meeting to order at 7:30 PM.

II. ROLL CALL

ROLL CALL:	Present:	Mayor Bordman Mayor Pro Tem Boutros Commissioner DeWeese Commissioner Harris Commissioner Hoff Commissioner Nickita
	Absent:	Commissioner Sherman

Administration: City Manager Valentine, Assistant City Manager Gunter, City Attorney Currier, Police Chief Clemence, Planning Director Ecker, Finance Director Gerber, Building Official Johnson, Library Director Koschik, City Engineer O'Meara, City Clerk Mynsberge, Birmingham Shopping District Executive Director Tighe

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

02-041-19 ANNOUNCEMENTS

Mayor Bordman announced:

- Registration for Ice Skating Lessons at the Birmingham Ice Sports Arena will take place on Wednesday, February 27, from 5:00 until 7:00 pm and again on Saturday, March 2, from 10:00 am until 1:00 pm. For more information visit www.bhamgov.org and navigate to the Ice Arena page.
- Wendy Cariveau, Stroke Coordinator at Beaumont Hospital in Royal Oak, will share tips for stroke prevention on Tuesday, March 5 at 7:00 p.m. The event will take place in the lower level meeting room at the Baldwin Public Library.
- The Friends of the Baldwin Public Library are now collecting gently used handbags, purses, totes, and wallets for their Books, Bags, and Bagels sale on Sunday, March 24 from 1-4:00 p.m. All proceeds from the sale will support the Friends of the Baldwin Public Library in their ongoing efforts to support programs, services, and the annual summer reading program at the Baldwin Public Library.
- Celebration of Commissioner DeWeese's birthday.

**02-042-19 RECOGNITION OF 2018 STUDENT REPRESENTATIVES TO CITY
BOARDS AND COMMITTEES**

Mayor Bordman recognized the following eleven student representatives for their service in 2018 on Birmingham boards and committees:

Planning Board	Madison Daminato Sam Fogel Ellie McElroy	Seaholm High School Seaholm High School Seaholm High School
Parks & Recreation Board	Jakob Sayer CeCe Cousins	Seaholm High School Seaholm High School
Museum Board	Joy Tenjeras	Groves High School
Public Arts Board	Cole Wolhfiel Amelia Berry	Seaholm High School Seaholm High School
Advisory Parking Committee	Ajney Yaple	International Academy
Historic District Commission and Design Review Board	Ava Wells Grace Donati	Seaholm High School Seaholm High School

**02-043-19 APPOINTMENT OF STUDENTS AS NON-VOTING MEMBER FOR
CALENDAR YEAR 2019**

MOTION: Motion by Commissioner DeWeese, seconded by Commissioner Boutros:
To thank the students who served on City boards and committees in 2018 and to appoint the following students as non-voting members for calendar year 2019:

Planning Board:	John Utlej Sophia Trimble	Seaholm High School Seaholm High School
Parks & Recreation Board:	John Butcher	Seaholm High School
Museum Board:	Meredith Weddell	Seaholm High School
Multi-Modal Transportation Board:	Bennett Pompei Chris Capone	Seaholm High School Seaholm High School
Historic District Commission and Design Review Board:	Klea Ahmet	Seaholm High School

VOTE: Yeas, 6
 Nays, 0

City Clerk Mynsberge administered the oath of office to the Student Board Representatives.

IV. CONSENT AGENDA

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

02-044-19 APPROVAL OF CONSENT AGENDA

The following items were removed from the Consent Agenda:

- Commissioner Hoff Item K; On Street Valet Services Program Vendor Recommendation

MOTION: Motion by Mayor Pro Tem Boutros, seconded by Commissioner Harris:
To approve the Consent Agenda, with the exception of Item K.

ROLL CALL VOTE: Ayes: Mayor Bordman
 Mayor Pro Tem Boutros
 Commissioner DeWeese
 Commissioner Harris
 Commissioner Hoff
 Commissioner Nickita
 Nays: None

- A. Resolution approving the City Commission meeting minutes of February 11, 2019.
- B. Resolution approving the warrant list, including Automated Clearing House payments, dated February 13, 2019 in the amount of \$3,281,975.47.
- C. Resolution approving the warrant list, including Automated Clearing House payments, dated February 20, 2019 in the amount of \$572,646.86.
- D. Resolution approving a special event permit as requested by the Birmingham Shopping District to hold the 2019 Movie Nights on Fridays, June 14, July 12, and August 23, 2019, with rain dates scheduled on Saturdays, June 15, July 13, and August 24, 2019. Approval is contingent upon compliance with all permit and insurance requirements and payment of all fees and, further, pursuant to any minor modifications that may be deemed necessary by administrative staff at the time of the event.
- E. Resolution approving a request from the Birmingham Shopping District to hold the 2019 Day on the Town special event on Saturday, July 27, 2019 contingent upon compliance with all permit and insurance requirements and payment of all fees and, further, pursuant to any minor modifications that may be deemed necessary by administrative staff at the time of the event.
- F. Resolution approving a request from the Birmingham Shopping District to hold the 2019 Birmingham Cruise special event, with the expanded footprint, on Saturday, August 17, 2019 contingent upon compliance with all permit and insurance requirements and payment of all fees and, further, pursuant to any minor modifications that may be deemed necessary by administrative staff at the time of the event.
- G. Resolution approving a special event permit as requested by the Birmingham Shopping District to hold the 2019 Santa House beginning the week-end of November 30, 2019 through December 24, 2019 contingent upon compliance with all permit and insurance

requirements and payment of all fees and, further, pursuant to any minor modifications that may be deemed necessary by administrative staff at the time of the event.

- H. Resolution approving a special event permit as requested by the Birmingham Shopping District to hold the 2019 Winter Markt Friday, December 6 – Sunday, December 8, 2019 contingent upon compliance with all permit and insurance requirements and payment of all fees and, further, pursuant to any minor modifications that may be deemed necessary by administrative staff at the time of the event.
- I. Resolution approving Attachment 2 to the Uniform Video Service Local Franchise Agreement with Comcast, effective April 27, 2015 through April 26, 2025, accepting the name change of the entity holding the cable franchise from Comcast of Colorado/Florida/Michigan/New Mexico/Pennsylvania/Washington, LLC to Comcast of Florida/Michigan/New Mexico/Pennsylvania/Washington, LLC, effective January 2, 2019, and authorizing the Mayor and City Clerk to execute same on behalf of the City.
- J. Resolution approving the 2019 annual flower purchase from Croswell Greenhouse Inc. in the amount not to exceed \$17,812.85. Funds are available from the General Fund – Property Maintenance – Operating Supplies account #101-441.003-729.0000.
- L. Resolution that the City Commission shall meet on Monday, March 25, 2019 at 7:30 P.M., for the purpose of conducting a public hearing of necessity for the creation of a special assessment district to reconstruct the pavement, update street lighting, and add dumpster screens and wayfinding signs for the Pierce St. Alley, from Pierce St. to E. Merrill St.;

AND

If necessity is determined on March 25, setting a public hearing on April 8, 2019, at 7:30 P.M. to review the assessments and to confirm the roll.

- M. Resolution approving the Title VI Non-Discrimination Plan update incorporating the change of Title VI Coordinator designation to Benjamin I. Myers, Human Resources Manager. Further, authorizing the Mayor and City Manager to sign the appropriate sections of the plan.
- N. Resolution approving the agreement with Saber Window Cleaning DBA Transparent Window Cleaning in the amount not to exceed \$48,360.00 to perform window cleaning services to the City of Birmingham facilities and charge these services to the respective department accounts; and directing the Mayor and City Clerk to sign the agreement on behalf of the City.
- O. Resolution approving an agreement with Mechanical Design & Installation, LLC. in the amount not to exceed \$226,318.00 from the City Hall and Grounds Capital Improvement Account #401-265-001-977-0000 to perform the New Boilers and Controls Upgrade for City Hall; and directing the Mayor and City Clerk to sign the agreement on behalf of the City.

**02-045-19 ON STREET VALET SERVICES PROGRAM VENDOR RECOMMENDATION
(ITEM K)**

Assistant City Manager Gunter clarified:

- 'Week 1' as referred to in the report fell in the middle of August 2018 when the Old Woodward construction concluded. Following that week was the demonstration period, concluding at the end of 2018.

- Valet services park cars in reserved areas in the City's parking garages.
- There have been a few complaints about perceived underutilization of the reserved valet spaces in the morning. Around 10:30 a.m. as the lunch and shopping crowd starts coming in the spaces are utilized by valet services. Once the process was explained to the concerned parties, they understood the need to reserve the spaces.
- Lunch time is peak use time.
- There are four on-street metered spaces reserved in front of the Rivage Day Spa for valet operations. There are three spaces on Hamilton.
- Beyond the reserved spaces for the operation of the valet stands, it is not a City-approved practice to park cars on the street in metered spaces. Whenever there is a concern about valet parking on the street, Assistant City Manager Gunter addresses it immediately.
- Assistant City Manager Gunter provided the Commission with corrected copies of the contract stating the term begins March 1, 2019 and concludes February 28, 2020, with options to renew one year at a time.
- The City will be more heavily advertising the available valet services if it becomes a permanent program.
- The money paid by individuals using the valet services goes to In-House Valet.

Steve Ferich of In-House Valet explained:

- If a car is very occasionally parked in the street by valet services, it is because a valet patron has indicated they were running a five-minute or less errand nearby, such as withdrawing money from a bank.
- In-House Valet provides private valet services at the Townsend Hotel, the Community House for special events, Cameron's, Forest Grill and 220 Merrill.
- He is mindful of the City's intent to be pedestrian friendly, and is confident in his ability to manage valet services in a way that is supportive of that goal.
- Valet services are provided 10 a.m. to 6 p.m. All-day service is merited because there is frequent use throughout the day.
- He is aware of upcoming construction and will be working with Assistant City Manager Gunter to accommodate those changes.
- The location of the two valet stands are working very well.
- There is no valet stand on Maple St. because Birmingham Police have determined it would not be a safe location.

Commissioner Hoff said she would like to see valet use numbers from after the holidays in order to get a sense of more routine use.

MOTION: Motion by Commissioner Hoff, seconded by Mayor Pro Tem Boutros:
To approve the agreement with In-House Valet, Inc. for City sponsored on street valet services in the amount of \$78,000 from account #585-538-001-811.0000, and further directing the Mayor to sign the agreement on behalf of the City.

VOTE: Yeas, 6
 Nays, 0

Commissioner Hoff said she would like to monitor the progress of the valet stands to make sure they are being used.

Assistant City Manager Gunter said she could add the weekly usage numbers to the parking utilization report moving forward.

City Manager Valentine noted:

- This is part of a larger strategy to make valet services an integral part of Birmingham, especially in light of the upcoming major construction projects in the City. The goal is to have people know there will be valet parking when they come to visit Birmingham.
- Valet services provide a convenience to people visiting and working in Birmingham. This allows a higher turnover of visitors to Birmingham.

Mayor Pro Tem Boutros said he has heard a lot of positive feedback regarding the provision of valet services. He also encouraged Mr. Ferich to stay in touch with the BSD for the purpose of publicizing valet services. Mr. Ferich confirmed that Assistant City Manager Gunter and BSD Director Tighe are frequently in touch with him and working to publicize the valet services.

Assistant City Manager Gunter confirmed for Commissioner Harris the renewal options are held by the City, not the contractor, and the same price would remain in effect for the second year should the City choose to renew the contract.

V. UNFINISHED BUSINESS

None.

VI. NEW BUSINESS

02-046-19 BALDWIN LIBRARY PHASE 2 REQUEST FOR PROPOSALS (RFP)

Library Director Koschik presented the request for authorization to issue the RFP.

Comments/Clarification

Library Director Koschik said:

- The \$2.4 million figure includes money for furniture, fixtures, equipment and landscaping. The RFP being issued, however, is for construction and landscaping. The Library will be issuing a separate RFP for furniture, fixtures, and equipment.
- Building Official Johnson will be the Construction Manager on the project.
- The ADA ramp will be available during construction and there will be something to protect the ramp during construction.
- The restrooms on the main floor will be out of commission for 6-8 weeks during this phase of construction. Patrons will still have access to bathrooms on the second floor or in the basement.
- Programming will be somewhat curtailed during this period, but the Community House has volunteered to provide the Library with space for programming. The Library intends to offer programs off-site.

MOTION: Motion by Commissioner DeWeese, seconded by Mayor Pro Tem Boutros:
To authorize the issuance of the Request for Proposals included with the Library Director's February 19th memo for the renovation of the Youth Room section of the Baldwin Public Library.

VOTE: Yeas, 6
 Nays, 0

EXHIBIT 4

LICENSE AGREEMENT

This License Agreement ("Agreement") entered into this 4th day of March, 1999 by and between the City of Birmingham, a Michigan Municipal Corporation, whose address is 151 Martin Street, Birmingham, Michigan 48012-3001 (hereinafter referred to as the "City"), and THC Investors Limited Partnership, whose address is 6421 Inkster Road, Suite 200, Bloomfield Hills, Michigan 48301 (hereinafter referred to as "THC").

WHEREAS, THC is the owner of the Townsend Hotel (hereinafter referred to as the "Hotel") located at 100 Townsend Street in the City of Birmingham; and,

WHEREAS, in connection with an expansion of the Hotel, THC desires to establish a valet parking zone on the south side of Merrill Street between Henrietta and Pierce Streets; and,

WHEREAS, in order to accommodate THC's desire to establish a valet parking zone for the Hotel, the City has agreed to remove several parking meters and parking spaces from Merrill Street and authorize the Hotel to utilize a portion of the public right-of-way pursuant to the terms of this License Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the City and THC hereby agree as follows:

1. **License.** The City hereby grants THC a revocable license to use a portion of the City's public right-of-way for the purpose of conducting a valet parking service at the Townsend Hotel.

2. **Location.** THC shall be entitled to use the following described area as designated in plans on file in the Community Development Department:

A portion of the public right-of-way located on the south side of Merrill Street between Henrietta and Pierce Streets in the City of Birmingham, from the curb on the south side of Merrill Street extending approximately seven feet north into Merrill Street and extending approximately 160 feet west from the corner of Merrill and Pierce Streets, and a portion of the public right-of-way located at the southwest corner of Merrill and Pierce Streets on which a bulb-out shall be established.

3. **Use.** The location described in paragraph 2 may be used to operate a licensed valet parking service in accordance with Chapter 26, Article VIII of the Birmingham City

and address of its lender(s), the City shall provide written notice to THC's lender(s) of the termination of this Agreement.

9. **Condition of Location.** THC shall maintain the property identified in Section 2 and Section 5 and shall keep it clean, free of trash and litter, and in good order and appearance. THC shall surrender the property at the termination of this Agreement in as good condition as when received, ordinary and reasonable wear and tear excepted. Upon the termination of this Agreement and upon written demand made by the City, THC shall restore the bulb-out to the condition in which it existed prior to the execution of this Agreement.

10. **Indemnification.** To the fullest extent permitted by law, THC agrees to defend, pay on behalf of, and hold harmless the City, its elected and appointed officials, all employees and volunteers working on behalf of the City, its boards, commissions and/or authorities, including employees and volunteers thereof, against any claims, demands, suits or loss, including all costs and reasonable attorneys fees connected therewith, for any damages which may be asserted or recovered against or from the City, its elected and appointed officials, all employees and volunteers working on behalf of the City, its boards, commissions and/or authorities, including employees and volunteers thereof, 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 with this Agreement. This paragraph shall not apply to damages resulting solely from the fault of the City.

11. **Insurance.** THC shall procure and maintain at all times for the life of the Agreement the following minimum insurance coverage subject to the following conditions:

a) **Worker's Compensation Insurance:** THC shall procure and maintain during the term of this Agreement Workers' Compensation Insurance including Employers Liability Coverage, in accordance with all applicable statutes of the State of Michigan.

b) **Commercial General Liability Insurance:** THC shall procure and maintain during the term of this Agreement, Commercial General Liability Insurance on an "occurrence basis," with limits of liability of not less than \$1,000,000 per occurrence, Combined Single Limit, Personal 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.

c) **Motor Vehicle Liability Insurance:** THC shall procure and maintain during the term of this Agreement Motor Vehicle Liability Insurance, including Michigan No-Fault Coverages, with limits of liability of not less than \$1,000,000 per occurrence, Combined Single Limit Bodily Injury and

h) **Expiration:** If any of the above coverages expire during the term of this Agreement, THC shall deliver renewal certificates and/or policies to the City of Birmingham at least ten (10) days prior to the expiration date.

i) **Failure to Maintain Insurance:** Upon failure of THC to obtain or maintain such insurance coverage for the term of the Agreement, the City may, at its option, purchase such coverage and charge the cost of obtaining such coverage to THC who shall reimburse the City for this cost. In obtaining such coverage, the City shall have no obligation to procure the most cost effective coverage but may contract with any insurer for such coverage.

12. **Modification.** This License Agreement may not be modified unless such modification is in writing signed by both parties.

13. **Notices.** Any notices required to be provided by this Agreement may be delivered personally or sent by first class mail, postage prepaid, to the following addresses:

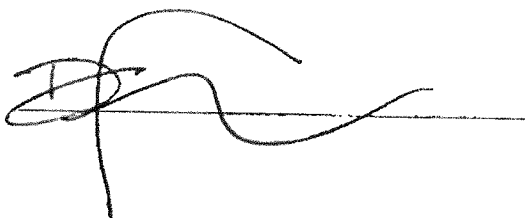
City: City of Birmingham
151 Martin Street
Birmingham, Michigan 48012-3001

THC: THC Investors Limited Partnership
6421 Inkster Road, Suite 200
Bloomfield Hills, Michigan 48301

14. **Compliance with Law.** THC shall comply with all local, state and federal laws and regulations in the performance of this Agreement.

IN WITNESS WHEREOF, the parties execute this License Agreement on the date and year first above written.

WITNESSES:



**THC INVESTORS LIMITED
PARTNERSHIP**, a Michigan Limited
Partnership

By: *GP Townsend, Inc., its General Partner*

By: 

Its: *Vice President*

EXHIBIT 5

INVOICE

CITY OF BIRMINGHAM

P.O. BOX 3001

151 MARTIN

BIRMINGHAM, MI 48012-3001

(248) 530-1890

*City of Birmingham**A Walkable Community*

TO: THC INVESTORS LP
ATTN: ISIS, ACCOUNTS RECEIVABLE
100 TOWNSEND
BIRMINGHAM, MI 48009

INVOICE NO.: 0000004951
DATE: 06/26/2019
SERVICE DATE: 06/01/2019
DUE DATE: 07/26/2019

CUSTOMER NO.: 00000272

TYPE: BL100

BUSINESS LICENSE PARKING

Quantity/Hours	Description	Unit Price	Amount
1.00	BUSINESS LICENSE PARKING	21,000.00	21,000.00

AFTER DUE DATE, 1% PER MONTH LATE FEE

Total Invoice:	21,000.00
Credits Applied:	0.00
Payments Applied:	21,000.00
Invoice Balance:	0.00

PLEASE DETACH AND SEND THIS COPY WITH REMITTANCE

REMIT AND MAKE CHECK PAYABLE TO:
CITY OF BIRMINGHAM
P.O. BOX 3001
151 MARTIN
BIRMINGHAM, MI 48012-3001

NAME: THC INVESTORS LP

TYPE: BL100

BUSINESS LICENSE PARKING

DUE DATE: 07/26/2019

Invoice Balance:

0.00

INVOICE NO.: 0000004951

TERMS: 30 DAYS



EXHIBIT 6

9

METER BAG SIGN OUT SHEET

Ask if blocking sidewalk or street. If so, notify them to obtain an obstruction permit.

Start Date	End Date	Requester's Name/ Company Name with phone number	Vehicle /What Will Be at Meters	Address/ Location of Vehicle (s)	# Of Bags	# Of Spaces	Date Rec'd	Rec'd By:	Date Deposit Forfeited
11/11	11/25	Krus Boring	Dumpster	Euclid	101	2	11/25	JS	
11/10	11/13	Esso Delco.	Dumps.	260 Merrill	1	1	11/30	Open	
11/10	11/16 th	Jay	van	Pierce	1	1	11/25	JS	
11/13	11/30	Steve	F250	Pierce/Merrill	1	1	12/1	JS	
11/23	11/25	Blue Star Demo	Dumpster	260 E Brown	1	1	12/1	Open	
12/1	12/14	Steve	F250	Pierce/Merrill	1	1			
11/30	12/1	Blue Star Demo	Dumpster	260 E Brown	1	1			
12/4	12/4	Taylor	Moving Trk	856 N. Collins	2	4	12/7	JS	
12/8	12/8	Mark - New Gen signs	left truck	310 E. Maple	1	1	12/8	Open	
12/8	12/19	Singe Pl/SLD	Cement Dump	Birmingham	10	10	12/8	JS	
12/11	12/11	Pearl	Moving Trk	856 N. Collins	2	4			

PUT A NEW ENTRY FOR EVERY TRANSACTION!

METER BAG SIGN OUT SHEET

Ask if blocking sidewalk or street. If so, notify them to obtain an obstruction permit.

Start Date	End Date	Requester's Name/ Company Name with phone number	Vehicle /What Will Be at Meters	Address/ Location of Vehicle (s)	# Of Bags	# Of Spaces	Date Rec'd	Rec'd By:	Date Deposit Forfeited
10/20		Todd	VAN	Pierce	1	1		10/20	
10/20		Jay	VAN	Pierce	1	1		10/20	
10/21	10/21	Margaret	Moving.	1320 Oldwines	3	3	10/23	Jay	
10/30		Single Ry	Const.	112 Peabody	5	5	10/24	Jay	
10/21	10/21	Todd	VAN	Pierce	1	1	10/23	Jay	
10/21	10/21	Jay	VAN	Pierce	1	1	10/23	Jay	
10/22	10/22	James Transport	left	Willets Bldg	6	6	10/23	Jay	
10/24	10/24	Margaret	Moving	132 N. Oldwines	2	2	10/24	Jay	
10/24	11/12	Steve	F250	Pierce / Merrell	1	1	11/12	Jay	
10/30	10/30	Mitch	Car	Old Wines (barn)	5	5	10/30	Jay	
10/31	10/31	Pearl	Moving truck	856 N. Oldwines	4	4	10/31	Jay	
11/3	11/3	Jay	VAN	Pierce	1	1	11/10	Jay	

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METER BAG SIGN OUT SHEET

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Start Date	End Date	Requester's Name/ Company Name with phone number	Vehicle /What Will Be at Meters	Address/ Location of Vehicle (s)	# Of Bags	# Of Spaces	Date Rec'd	Rec'd By:	Date Deposit Forfeited
10/6	10/8	Max-Brenma Const	Dumpsters	Pierce	2	2 - 6' x 7' 1-8' x 11'	1 per 10/12/2019 1 per 10/28/2019		
10/6	10/7	Doraid	Work-veans	Maethn	2	2	10/7/2019		
10/7	10/7	Scott / SPAN	Red Pully	Pierce / Maethn	1				
10/7	10/7	Taylor	Maring	856 N. Cedar	2	4	10/7	BE	
10/12	10/12	Single Puy	CARS	LEGS	5	5	10/12	Qen	
10/13	10/13	S - 3500 Markin	CAR - clay Garage	3500 Markin	3001	6		10/13 Qen	
10/15	10/28	Stale	Ford F250	Pierre / Maethn	1	1		10/28 Qen	
10/15		Jay	Van - white	Pierre	1	1		10/15 Qen	
10/16	10/16	Soft	Truck + Trailer Moving Trucks	1374 Wm	3	3			
10/16	10/16	Todd	Ford Van / Min	Maethn	1	1		10/16 Qen	
10/19		Todd	Ford Van	Maethn	1	1		10/19 Qen	
10/20	10/21	Bueths	Left equip	5558011111	5	5		10/22 Qen	

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PUT A NEW ENTRY FOR EVERY TRANSACTION!

METER BAG SIGN OUT SHEET

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Start Date	End Date	Requester's Name/ Company Name with phone number	Vehicle /What Will Be at Meters	Address/ Location of Vehicle (s)	# Of Bags	# Of Spaces	Date Rec'd	Rec'd By:	Date Deposit Forfeited
7/10	7/17	David / DTE	Ford Transit	around 4000	1	1			
7/13	?	Vinoterra 210 S. Adams	Deck Expansion		2	2			
7/14	7/21	Penault	Deer Truck	595 N. Oliver	4D	8	7/20	Jan	
7/23	7/24	Transp. Windows		Uj 11145	6S	6			
7/20	7/21	Shain Park Apts	Vehicles (Peglot repairs)	Bates 208L Townsend 108L 256S 259L	308L	8	7/23	BE	
7/21	7/23	Signature	Dumpster	7952 #12 Dunes	1	1	7/23	BE	
7/28	7/28	Benjamin Collins	Cherry Van (Blk)	Muehl (A7-7)	1	1	7/28		
7/28	7/31	Nick / Brooks + Stone	Sky 114 trucks	Old way +	208L	4			No Deposit
7/29	7/29	Benjamin Collins	Cherry Van Blk	Martin - AT + T	1	1	7/29	Jan	
8/12	8/25	Pat. Contract Group 1001-606-4550-6050	Leaves Van. DUMP	115 S. Adams	2S	2			
8/18	8/18	Robert 219330004	Van + trailer	Shawn Pitt Apts	1	2	8/19	Jan	
8/24	8/25	Built	Van + trailer Ford F150 + Van	1103 Old way	2	2	8/26	BE	

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Start Date	End Date	Requester's Name/ Company Name with phone number	Vehicle /What Will Be at Meters	Address/ Location of Vehicle (s)	# Of Bags	# Of Spaces	Date Rec'd	Rec'd By:	Date Deposit Forfeited
3/16	3/18	JOEY MUELLER COLUMBIA	obstruction	1000 1000 & 1000	2 DBL 1 SNG	5			
3/16	3/16	Butteli roofing	cast. lane	Neneatha townsend	1061 1591	3	3/16	Ques	
03/23	03/25	Hamilton Road	Dumpster	Hamilton Road	15	1	4/10		
03/23	03/25	Dki	Dumpster	Daniel	25	2	3/27	Jan	
5/27		lenormans	570 N oldham	570 N. oldham	334 154 47	7			
6/3	6/3	Brother Roofing	Crane	189 Townsends	158 110	3	7/10		
6/9	6/12	Danna (windows)	work veh.	355 Woodward	21	4			
6/15	6/18	Heller	work veh	Merrillwood	35	3	7/6	Ques	
6/18	6/19	Heller	work veh	Merrillwood	35	3	7/4	Ques	
6/29	8/2	unimpop roger Zlotoff	cars - tenant veh (red right)	Daniel	35	3			
6/22	6/29	Nick Pfitik	work veh	Neneatha / Brookline	1	1			
7/9	7/13	Perreault	dump truck.	565 N. oldham	461	8			

* 3/25 Trained to Earn from Foreman Const. - No Const Allowed under Exec Order, Will Not charge! Dumpster picked up. per City - PUT A NEW ENTRY FOR EVERY TRANSACTION!

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Start Date	End Date	Requester's Name/ Company Name with phone number	Vehicle /What Will Be at Meters	Address/ Location of Vehicle (s)	# Of Bags	# Of Spaces	Date Rec'd	Rec'd By:	Date Deposit Forfeited
2/17	2/18	workers for Tiffany	4-Trucks/ Van	Pierce Street	2-5 1-D	4	2/17	AS	
2/21	2/21	Sign Company	Work	154 Old Wood	1-5 1-D	3	3/3	AS	
03/12	03/18	CEI Michigan	Work space	100 Townsend	2-D 1-3	5	3/12	AS	
02/21	02/21	Painters	Van	555 Woodward	15	1	2-21	JK	
2/24	2/24	workers for Tiffany		Pierce structure	2-5	2	2/24	AS	
2/29	2/29	Library (Spencer)	W. car	bates	1	1	2/29	AS	
2/27	2/27	structure work Tiffany		Pierce	15	1	2/27	JK	
3/3	3/4	Heller	Machine/Truck	Merrill	25	2	3/6	AS	
3/6, 3/9		Heller	Machine/Truck	Merrill	25	2	3/10	Qas	
3/10	3/10	Shain Park Apt	Mining		25	2			
3/10	3/10	Brookside Manor	vacat	369 N old Woodward	2	4			
3/11	3/11	Galent Sign Corp	Work machines	1545 S. Old Woodward	2d	4	3/11	AS	

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Start Date	End Date	Requester's Name/ Company Name with phone number	Vehicle /What Will Be at Meters	Address/ Location of Vehicle (s)	# Of Bags	# Of Spaces	Date Rec'd	Rec'd By:	Date Deposit Forfeited
1/31	1/31	White Star Movers	Moving Trucks	Joseph A. Bannas	1 db1	2 spots	1/31	JAN	
2/5	2/7	Kernick	Deemaster	191 N. Chester	1 DBL	2	2/12	BJ	
2/5	2/5	Green Electrical Svc.	White Ford Van	(Greenbloom View) on Maple	1S	1	2/5	BO	
2/10	2/14	Weller	Machine/Truck	Merrie	2S	2	2/24	JAN	
2/10	2/11	Timberland Homes	Granite Workers	154 Maple	2S	2	2/17	BJ	
2/11	2/11	350 Martin	cars etc.	350 Martin	2D	4	2/11	BJ	
2/11/20	2/11/20	White Star Moving	Moving truck	Maple/ 4500 th banks	1D	2	2/13	BO	
2/12/20	2/14/20	Ronish	Dumpster	191 Chester	1D	2	2/21	BJ	
2/12	2/13	Murcell Plumbing	Van - Whit	411 S Oldman	1	1	2/13	JR	
2/12	2/12	Mechanical Bldg	Van	Walters / old mfg bldg	1	1	2/12	BO	
FEB 2020	APR 11	Fleming P&S Anthony	Trucks for delivery only		25 th 1db1	4			
2/17	2/17	Timberland Homes	Granite workers	154 maple	1/1	1	2/10		BJ

PUT A NEW ENTRY FOR EVERY TRANSACTION!

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METER BAG SIGN OUT SHEET

BEGIN DATE	END DATE	REQUESTER'S / COMPANY NAME PHONE NUMBER	VEHICLE MAKE/COLOR	LOCATION OF METER	# OF SPOTS	# OF BAGS	DATE RET'D	REC'D BY	FORFEIT DEPOSIT
1/28 1/28	1/28 1/28	Oscar W. Larsen APU by MH	Work Trucks	555 S. Oldham	2	1 dd	7/10		BD
1/27	1/27	Heeler (John 762-386)	Mechanics truck	Merrill	2	2 angle	2/10	BO	
1/27	1/28	Ouellette Carpentry	-	411 S. Ocean	2	2 Sin.	1/28 7/3		
1/28	1/30	Kornick			2	1 DBL			
1/28	1/28	Mechanical Bldg. Serv.	Service van	Wheats	1	1 angle	1/29	BO	
1/27	1/28	Crystal Eicos	Lift	55 W Maple	1	1 Sing	1/30	BO	
1/29	1/29	Handoff - Garoff	Van - White	180 Brand	1	1	1/29	JO	
1/29	1/30	Mechanical Bldg.	Service van	Wheats	1	1 Sing	2/12	JO	
1/30	1/30	Timberland		154 Maple	2	2 gl			
1/30	1/30	Crystal Glass Lift		Ward	1	1 S	1/30	BO	

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METER BAG SIGN OUT SHEET

BEGIN DATE	END DATE	REQUESTER'S / COMPANY NAME	PHONE NUMBER	VEHICLE MAKE/COLOR	LOCATION OF METER	# OF SPOTS	# OF BAGS	DATE RET'D	REC'D BY	FORFEIT DEPOSIT
1/16	1/22	John Heller		Machine / Truck	Merrill	2	2	1/24	JD	
1/16	1/23	JFK Investments		Trucks	280 Oldway	2	1	1/20		
1/17	1/17	Levenson		White Van	480 Victoria on Maple	1	1	1/17	BD	
1/21	1/24	1st Choice Bldg		Dumpster	Henrietta & Maple	2	2	1/24	JD	
1/21	1/21	Morenstein Solutions		Subaru	411 S. 2nd St	2	1	1-21	AK	
1/22	1/22	Palmer Moving		Trucks	Beech	2	2	1/23	BD	
1/22	1/22	Mechanical Bld.		Service Vans	Willetts old way	3	100	1/23	JD	
1/22	1/24	Brown		White Van	Library - around	1	1	1/22	JD	
1/22	1/22	Green Electric		White 350 van	Maple / Adelmont	1	1	1/22	JD	
1/23	1/24	Emellette Landscaping			411 S. 2nd St	2	2	1/27	BD	

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METER BAG SIGN OUT SHEET

BEGIN DATE	END DATE	REQUESTER'S / COMPANY NAME PHONE NUMBER	VEHICLE MAKE/COLOR	LOCATION OF METER	# OF SPOTS	# OF BAGS	<input checked="" type="checkbox"/> P RETD	DATE REC'D BY	FOREFEIT DEPOSIT
1/6 ^{ad}	1/8	Royal Roofing	Peracute traffic	188 N Old Wm	5	2461 1591		1/17 JAO	
1/3 + 1/6	Romish	Dumpster	chester by Maple		2	129L		1/9 JAO	
1/3	1/5	Shain Park realtors Everything Good	Trailer	242 martin	1	1 281		1/12	
1/6	1/6	Robert	Truck + trailer	Bates/ Tansend	2	261		1/6 BE	
1/6	1/8	Royal Roofing	Resort traffic	189 N Old Wm	3	396		1/17 JAO	Did not take add'l de
1/6	1/6	Timberland Homes		154 Maple	2	42		1/6 BE	
1/7	1/7	Robert	Truck/ trailer	Bates/ Turner	2	457		1/7 JAO	
1/8	1/15	John Pleer	Machine/ truck	Meruel	2	56L		1/6 BE	
1/6	1/17	Romish	Dumpster	191 N Chester	2	1			
1/6	1/16	Lendonskic	Van - white	Abbington Maple	1	1		1/6 AR	

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METER BAG SIGN OUT SHEET

BEGIN DATE	END DATE	REQUESTER'S / COMPANY NAME PHONE NUMBER	VEHICLE MAKE/COLOR	LOCATION OF METER	# OF SPOTS	# OF BAGS	DATE RETD	REC'D BY	FORFEIT DEPOSIT
12/13	12/13	Doug Green Electric	Wht Econo Van	Maple	1	1	12/13	RE	
12/17	12/18	Michael/Mechanical Bldg.	Transit Van	111 Willets	3	3	12/18	JW	
12/23	12/24	Michael/Mechanical Bldg	Transit VANS	111 Willets	3	3	12/24	no	
12/23	12/23	"Delicatey Specimen" ? Van Kantha Creative Man		Chester	1	1	12/26	RE	
12/26	12/26	Meller	Dumpster/Truck	Merril	2	2	12/16	RE	
12/30	1/2/30	mid/mechanical Bldg.	Transit Van	111 Willets	3	3	1/3	JW	
12/26	12/27	Romish	Dumpster	Chester by Maple	2	1	1/3	JW	
12/27	1/3/30	I ^{tec} (248) 990-2455	Dumpster	501 Brosside	2	1	1/3	Open	
12/28	12/28	Naug Counseling	Making Tks	630 N. Main	6	3	12/30	SS	
12/30	12/30	Paul (2) 770-0968			(3) DEL (3) DEL	6	12/30	104	
		Denore	A. Gomez - Funeral				12/30	104	

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METER BAG SIGN OUT SHEET

BEGIN DATE	END DATE	REQUESTER'S / COMPANY NAME	PHONE NUMBER	VEHICLE MAKE/COLOR	LOCATION OF METER	# OF SPOTS	# OF BAGS	DATE RET'D	REC'D BY	FORFEIT DEPOSIT
12/3	12/3	250 Martin		Residents' vehicles	250 Martin	6	3	12/3	BR	
12/4	12/4	430 N Old wooden		OK End all street	430 N Old	3	3			
12/5	12/5	Plant Shop		OK End. Last street	135 Prairie	2	2	12/6	BR	
12/5	12/5	Seibel			154 Maple	2	2		BR	
12/5	12/5	Keeler			Meewap	1	1	12/6	BR	
12/5	12/5	Hyde Park			201 Oldway	2	1	12/9	JOB	
12/6	12/6	True Cost Painting			Maple St (South)	1	1			
12/6	12/6	Townsend In			100 Town	5	3			
12/7	12/7	Star Trek			Event (winter mkt)	2	1			
12/12	12/12	The Crown Building			114 S. Oldway	4	2	12/12	BR	
12/12	12/12	Jeff/Bernie Remberg			360 Hammett	5	5	12/12	BR	
12/12	12/12	Paul P. O'Mara - No Charge			114 S. Oldway	6	6	12/12	BR	
12/12	12/12	Ellen Deen							BR	

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BEGIN DATE	END DATE	REQUESTER'S / COMPANY NAME	PHONE NUMBER	VEHICLE MAKE/COLOR	LOCATION OF METER	# OF SPOTS	# OF BAGS	DATE RET'D	REC'D BY	FORFEIT DEPOSIT
11/13	11/14	Steele Angel		UHAU	150 W. Maple	2	2	11/18	BB	
11/14	11/27	JFK Investments		work	2800. Redwood	2	1 DBL			
11/15	11/22	Heller		Truck	Merrill	1	1			
11/19	11/20	Bernal		computer	Chester	2	1 DBL	11/25	BB	
11/19		Gray - Northatt		WORK VAN	Merrill/Pierce	1	1			
11/20		SAC Development		Dumpster	148 Pierce	1	1	11/29	BB	
11/22	11/22	Steele Surg Perrette		moving vehicle	574 N. Oldway	5	2 DBL 1 Sgl	11/23	BB	
11/23	11/23	Ponnoia		delivery truck	Maple	2	2	11/26	BB	
11/26	11/26	Ronish		Dumpster	Chester	2	2			
11/27	11/27	Stuard		VAN-WHT	7975/18 Yorkhill	1	1	11/27	Jen	

20 Deposit

Replaced - the extreme wind 11/26

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METER BAG SIGN OUT SHEET

BEGIN DATE	END DATE	REQUESTER'S / COMPANY NAME	PHONE NUMBER	VEHICLE MAKE/COLOR	LOCATION OF METER	# OF SPOTS	# OF BAGS	DATE RET'D	REC'D BY	FORFEIT DEPOSIT
10/30	10/30	Neuer Dark	2535-8050	Truck	Reveille Maple	1	1	10/30	BB	
11/1	11/1	Timberland			154 Maple	1	1			
11/1	11/1	EXT 11/15-11/18								
11/1	11/1	Heller		Truck	Merrill	1	1			
11/3	11/3	Loganville Bros. OR Crane. Detroit (Mich.)			Merrill/Freese	9	444. 1 angle			
11/3	11/3	FW hose car		Truck	Piraz	2	1 bag			
11/5	11/5									
11/5	11/5	Shawn Park Hots		Trailer + Van	Bates Townsend	2	2	11/7	BB	
11/6	11/6	Final Coat Painting		White Van	Lot 9	1	1	11/8	JN	
11/6	11/6	Strutside		Truck	Pierce	2	2	11/8	BB	
11/7	11/7	International Cent. Work			Hampton Row	2	2			
11/12	11/12	Steel Angels	UHAUC							
11/12	11/12	(363) 842-9530			1500 Maple	2	2	11/12	BB	
		Wendy								

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BEGIN DATE	END DATE	REQUESTER'S / COMPANY NAME	PHONE NUMBER	VEHICLE MAKE/COLOR	LOCATION OF METER	# OF SPOTS	# OF BAGS	DATE RET'D	REC'D BY	FORFEIT DEPOSIT
10/24	10/24	dean's Heating & Cooling		Green	211 A. Bellwood 509 Elm Street	12	6 DBL	10/24	BO	
10/24	10/24	WGA-COLA		FLUKE	WILLITS	2	1 DBL	10/24	BO	
10/24	10/24	TPH ALUM		TOR BU	manell	2	1 DBL		✓	
10/28	10/28	BENSTEN HARRIS		CRANE	705 W Old	10	5 DBL	11/4	BO	
10/25	10/25	Shawn Park Facilities			2	1	1 Sing	10/26	SB	
10/25	10/29	REINE / NEER DASH	21535-8050	TRUCK	REINE / Maple	1	1	10/29	RT	
10/29	10/29	Impact Painting		Painting						
10/29	11/5	Joe's Tree Care	734-961-5200	White Van	148 Pierre	2	1 DBL	11/5	BO	
10/29	10/29	Corrigue Moving		TRUCK	135 N. Bellwood	2	2 Sing	11/5	BO	
10/29	11/3	JKF INVESTMENTS		WORK VEH.	288 W. Ower	2	2 Sing	11/3	BO	

10/30/11 - Kimbell

① May be used for 10/30
Provisional and final only

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METER BAG SIGN OUT SHEET

BEGIN DATE	END DATE	REQUESTER'S / COMPANY NAME	PHONE NUMBER	VEHICLE MAKE/COLOR	LOCATION OF METER	# OF SPOTS	# OF BAGS	DATE RET'D	REC'D BY	FORFEIT DEPOSIT
10/16	10/23	Reville/never dark	Bryan-2) 535-8050	Turn	Reville	1	1	10/23	BB	
10/17	10/17	Mayflower		moving truck	Willits	4	2 DB	10/21	BB	
10/18	10/19	Cargus moving	Ken	moving truck	Willits	2	2; 2; 2	10/21	T	
10/19	10/19	Conigan Moving	Ken	moving truck	135 North	2	2	10/21	JL	
10/18	10/21	Side car		Dumpster	117 Willits	2	Single 2	10/21	BB	11/4
10/21	10/21	Stace - 2) 374-9555				2	2		BB	11/4
10/21	10/21	Northcutt Carpentry		Work van	200 Brown	1	1		BB	11/4
10/21	10/21	Timberland			154 Maple	2	2			
10/23	10/25	Romish	2) 840-0022	Flat crates	Chester (No Dep)	2	1 DB			
10/23	10/25	Heller		Truck	Mound	3	3	11/1/2020		
10/24	10/25	Reville/never dark	Bryan-2) 535-8050	Truck	Reville	1	1	10/25	BB	

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10/8	10/11	Keller		Trucks	Merrie	2		10/18	JS	
10/9 - 10/14		Tom Heller		Trucks	Merrill	1	1			BE 11/4
10/4 - 10/18		DHI		Dumpster	Daniels	2	2	10/18	BE	11/4
10/14		Main Park Apt.		Wreck truck	Townsend 1300	4	4 SINGLE	11/5	JS	
10/14	10/14	Northat Carpentry			200 E. Brown	1	1 Single	10/15	JS	
10/14	10/14	Timberland			Maple	1	1 Single	10/21	JS	
10/15	10/15	Northat Carpentry		Work Van	200 Brown	1	1	10/21	JS	
10/15	10/15	Northat Sign		Wrt truck	Old Wm.	2	2 Sgs	10/15	JS	
10/15	10/15	Shawn Park Apt		Wrt Van	Townsend/Bates	2	2	10/16	JS	
10/17	10/18	Romisch		Dumpster	Chesler 1000	2	1	10/18	JS	

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BEGIN DATE	END DATE	REQUESTER'S / COMPANY NAME	VEHICLE MAKE/COLOR	LOCATION OF METER	# OF SPOTS	# OF BAGS	DATE RET'D	REC'D BY	FORFEIT DEPOSIT
9/30	9/30	Keller	Truck	Merrill	3	① 500s ② DBL	9/23	BC	
9/30	9/30	Christian Heller	Truck	Merrill	4	① 2-5 ② 1-D	10/11	BC	
9/30	9/30	Central Park Hsg.	Light	Reese	4	2- DBL	9/30	BC	
9/30	9/30	Shain Park Apts.	Moving truck	Merrill Bates/Townsend	2	500s 500s	9/30	BC	
10/4	10/4	Michael Antonio	Moving truck	Bates Townsend	1	500s	10/11	BC	
10/11	10/11	Monique Dawood	Moving truck	Bates/Townsend	2	500s	10/2	BC	
10/11	10/11	Keller	Truck	Merrill	2	① 500s ② 500s	10/8	BC	
10/11	10/11	Tom Heller	Truck	Merrill	1	500s	10/11	① DBL ② 500s	
10/4	10/4	Robert Campbell	Truck	Merrill	5	200s 150s	10/11	① DBL ② 500s	
10/4	10/4	Robert Campbell	Truck	Merrill	5	200s 150s	10/11	① DBL ② 500s	
10/4	10/4	Robert Campbell	Truck	Merrill	5	200s 150s	10/11	① DBL ② 500s	

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9/16	9/17	Federal Paving	2656-7990		325 S. Adams	2	2 Single	✓	9/20	BB	
9/16	9/19	Cherry (B) 250-0732				1	1 S.		9/20	BB	
9/17	9/18	Case Remodeling	Contract 2) 720-9368	come truck	163 W Maple	1	1 S.		9/20	BB	
9/17	9/17	Contract 2) 720-9368				2	2 Single		9/18	BB	
9/17	9/20	Main Park (Bto)		Truck/Trailer	Bates/Tenover	2	3 DBL		9/23	BB	9/25
9/17	9/19	Hellett Building		808	S. Old Woodward	1	1 DBL		9/23	BB	
9/18	9/19	IN Hair-care	turning	corn truck	Pine	2	1 DBL		9/23	BB	
9/18	9/18	Berry				2	2 S.		9/19	BB	
9/19	9/19	OR cont. A.				1	1 S.		9/19	BB	
9/19	9/19	Western Development	(drop-off power loader)		55 W Maple	1	1 S.		9/19	BB	
9/19	9/19	IN-House	ADAC	car (Ford)	325 S. Adams	4	2 S.		9/19	BB	
9/20	9/20	Woodward Dev		Power Washer	55 W Maple	1	1 S.		9/20	BB	

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9/5		Niagando		VEHICLES	Maretn AT+T	8	4 DBL	9/5	[Signature]	
9/6	9/9	Apco-Constructors #2) 408-7715		dumpster	640 N. Bellevue	1	1	9/13	SB	
9/6	9/10	Transparent		business cleaning	Willits	6	3 db	9/26	AD	
9/9	9/10	Town Center Rental		Dumpster	Hamilton + Ferndale	2	1	9/10	SB	
9/9	9/9	IW Horsecar Tour Bus			Merrill	6	3			
9/9	9/23	Foreman Const		Dumpster	400 Hamilton	1	1	9/20	SB	
9/9	9/9	Zeese		Truck	Merrill	2	1 db	9/10	SB	
9/11	9/11	Heller		Trucks	Merrill	2	1 DBL			
9/13	9/14	Hall & Hunter		Cars	Am St	11	3-5	9/18	SB	
9/13	9/13	Gillian-2) 593-0799		Trucks	Merrill	4	1 db	9/20	SB	
9/13	9/13	Heller		Trucks	Merrill	4	1 db	9/20	SB	

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8/14/84	8/14/84	Townsend En-Hous - JALIN	Classic CAR	Townsend	13	2				
8/21	8/22	Heller	TRUCK	Merrill	2	1		8/23		
8/22	8/23	Joni Baker	Electricians	411 S. Bellview	2	2		8/26		
8/26	9/27	Dki International Joe - (2) 885-9445	Dumpster	135 Pierre	1	13	✓	9/27		
8/23	9/23	Heller	TRUCK	Merrill	2	1		8/30		
8/26	9/19	Foreman Const. 2) 677-1017	Dumpster	400 Hamilton Rd	1	1	P	9/19		
8/21	8/23	Brian/Kerley Steel	Trucks	298 S. Bellview/Brown St. M.A.	3	3		8/27		
8/28	8/28	DH1	Dumpster	135 Pierre	1	1		8/29		
8/30	8/30	Heller	TRUCK	Merrill	2	2		9/19		
9/4	9/4	Varyates	Vehicles -	4707 Martin	16	8		9/4		

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8/6 8/8 8/9		Fueller / Central Park	Lift	Pierre	2	1	8/9	Jes	
August		Seaway	Painting Poles	thru out city	16	16			
8/5 8/9		Heller	truck	Merrell	2	1	8/9 8/9	Jes	
8/6 8/7		MUDCROSS	Dumpster	284 Maple	2	16	8/7	BJ	
8/6 8/7		Midvale	Boom Pick up	128 S. Oak	6	3			
8/8 8/8		Northern Sign	Work Vehicle	123 Maple	2	3	8/8	Jes	
8/7 8/7		Great Lake Roofing	Dumpster	284 Maple	2	16			
8/7 8/7		810 824 3085							
8/8 8/9		MUMMASS							
8/8		Templeton Builders	Lift	MATHIN	2	2	8/9	Jes	
8/13 8/16		7 Daughters.	cons. VEH.	163 Maple	1	1	8/16	Jes	
8/13		Marian - 310 485 9730							
8/13		Fueller - Central Park	Lifts	300 Maple	4	2	8/16	Jes	

8/30 045H DE
9/18

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7/12	7/12	OK'd. and. allowed James Construction	(traffic lane)	(Frederick Hwy)	4	4		7/12	JB	
7/12	7/12	Heller		Merrillwood	2	2		7/15	JB	
7/12 7/12	7/12 7/12	Lave State		111 Willets	4	261		7/19	JB	
7/12	7/12	Steeple	Personal Client cars	139 S. Adams	3	15		7/15	JB	
7/25	7/26	Heller	Crane	Merrillwood	2	100		7/26	JB	
7/26	7/26	Great Lakes Custom Builder / James	Vehicle	133 W Maple or Bruce	2	2				9/18
7/31	7/31	Kara	Piece —	open to Bruce Warner	1	1		3/1	JB	
7/31	7/31	Carroll / Stueben 586-436-0205	Cutting truck	114 W. Adams old City piece	4	2		8/1	JB	
8/1	8/1	FN Hazz CART	Toy Bus	Merrill	4	2035				
8/5	8/5	MUMFORS Michael - 3) 761-9440	Dumpster	284 Maple.	2	1				9/18

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7/15	7/15	St Unlimited Svc. (248) 895-5555	Trailer	294W. Brown	2	1 db		7/17 20		
7/12	7/12	Royal Oak Humm	Trailer	Taxi	2	2 db		7-19 7R		
7/15	7/15	Merriewood		250 Merriewood	2	DBL		7/12 20		
7/16	7/16	James! Coca Cola/Keyder	Trucks	Ferris	5	5		7/16 20		
7/17	7/17	Scott Marquette Fire	Truck	AT&T Martir	1	1		7/17 20		
7/18	7/18	Silvery	Bus	Martin & Bates	1	1				
7/18	7/18	Keeler	Clare	Merriewood	2	1 DBL				
7/19	7/19	Mr. Gray Shop	Customer reel.	268 W Maple	2	1 DBL		7/20 20		
7/19	7/19	Coca Cola-Perkins	Trucks	Ferris	3	3		7/19 20		
7/21	7/22	IN House	Trucks	Merriewood	4	2		7/22 20		

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7/11	7/13	Guest 250 Martin	personal veh.	250 Martin	4	2 DBL	7/15	AS	
7/11	7/11	Filbray Vanover Atter AT&T	? (Speaker) Ch. Pierce	Martin	1	1 SINGLE	7/2	JED	
7/11	7/11	Viagra		Martin	12	84P.	7/11	Distal	
7/2	7/2	Viagra		Martin	11	5 DBL + 1 SNGL	7/2	AS	
7/15	7/15	Smart 250 Martin	Trailer	250 Martin	2	1 DBL	7/15	AS	
7/8	7/8	hoyblack Libary	truck	250 Martin	1	1 SGL	7/11	AS	
7/9	7/9	Heller	2 PU	Libary	1	1 SGL	7/11	AS	
7/9	7/9	Fuller	left	Memo (Merry Bldg)	2	2 DBL	7/12	AS	
7/11	7/11	SAC Dev.	Dumpster	1000 S. Old Wm	2	1 DBL	7/15	AS	
7/11	7/11	SAC Dev.	Dumpster	148 Pierce	1	1 SGL	7/11	AS	

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6/14	7/1	2011Z DJ Herwin 734-837-5124 Engineering Dept	2011Z 2011Z	230 Merrill	1	1	7/6	R	
6/17	7/1	Engineering Dept	Sidewalk work thru downtown		6	2db1 2sgs	No deposit		
6/18	6/20	Merrillwood Bldg Neller	Trailer	Merrill	2	1db1 1sg	7/19	R	
6/18	6/18	Central Park	Lift	360 Maple	3	1db1 1sg	6/19	ss	
6/20	6/21	Make 2867-0686 Deeley Bros	Work	168 W. Maple	1	1	6/21	ss	
6/20	6/20	Guest Lake Custom	Work	123 W Maple	1	1	6/20	ss	
6/20	6/20	IN-Horn Grnsfca	CHART	430 n old warr	4	2			
6/22	6/22	Don-Vogant the Park	Trucks	lot 7	4	4	6/25	R	
6/22	6/22	Burton Malere	Van	268 old warr	5	2db1 1sg	6/24	ss	
7/1	7/2	CEI Michigan	Roof Townsend	Townsend/Hance	5	2db1 1sg	7/18	ss	

(Work was completed on 7/6/2019)

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6/7	6/7	Coriameo Energy	Ford Transit	Southaven/Jackson	1	1			
6/10	6/10	Great Lakes Electric	work	123 Maple (M.A. OK)	1	1	6/12	BA	
6/11	6/14	DKI	Hummer	260 E. Brown	2	2	6/14	Jen	
6/11	6/11	Vancouver	work	Martin (AT&T)	4	2 DBL.	6/11	Jen	
6/12	6/12	Transparent	left	W. Maple	5	5 SINGLE	6/14	Jen	
6/13	6/13	Vancouver	work	Martin (AT&T)	11	15 DBL	Ret 1 hr later - city wants to see plans		
6/13	6/13	Shanklin Custom	work	123 Maple	1	1	6/13	BA	
6/14	6/14	Sterling Image	lift w/ materials	Willits	14	6 DBL 250g	6/14	BA	
6/14	6/14	350 Martin	Miss Vehicles	350 Martin	4	2 DBL	6/14	BA	

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6/5	6/5	IA Auto		Truck	Acacia	4	2			
6/3	6/6	John Heller		Const.	211 Merrill	2	1	6/12	AB	
6/4	6/7	Muzanko Const		Cement work + Equip	Math	16	8	6/7	BE	
6/5	6/5	Mike - Consumers	734-716-8991	Ford Transit	Downtown	1	1	6/5	Jen	
6/6	6/8	IN Auto Towel		For Bs	Meritt	2	100			
6/6	6/6	Fuller Central Aut		Light	all over (Mg Theatre)	4	200	6/7	AB	
6/6	6/15	OK-Per CMD. ALBRECHT								
6/6	6/15	Fackertston	\$10.00 deposit	1 vehicle (only w/ tag)	254 W. Maple	1	1			9/18
6/6	6/15	Jetty		work tools	230 Maxwell	1	1			
6/6	6/7	Jennifer Condit		Moving Truck	297 W. Baer	2	2	6/7	AB	
6/7	6/7	Central Park		Light		1	1	6/7	AB	

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5/15	5/17	ABC Vintages	Dumpster	154 W Maple	2	2	5/17 TR	
5/18	5/35	ALL #123 390-8029 Father & Son Moving	TOYOTA TRUCK <u>Pickup</u>	254 W. Maple	2	2	5/30 5/38 <u>AS</u>	
5/22	5/24	John Deere	Comet	211 Merrill	2	1	5/28 AS	
5/28	5/28	Acme Supplies	lift	Piece	1	1	5/28 <u>AS</u>	
5/28	6/1	Brother & Son Moving	Personal	354 W. Maple Garage	2	2	6/3 <u>AS</u>	
5/28	6/3	John Deere	Comet	211 Merrill	2	1	6/3 <u>AS</u>	
5/29	6/1	Father & Son	Truck	254 W. Maple	1	1	6/3 <u>AS</u>	
5/30	5/31	Templeton	Personal Trucks	180 Piece	2	2	6/14 <u>AS</u>	
5/30	5/30	Transparent	Lift	Willits	7	7	6/3 <u>AS</u>	
6/1	6/3	Father & Son (gave 3 days credit)	Vehicle - tools inside	254 W. Maple	1	1	6/5 <u>AS</u>	

For the one day
he couldn't use 3 bags

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4/23	4/23	Zach Star Trax	Valet	430 old N. way	5	5	4/26	BB	
4/23	4/23	FW Hook	TOUR BUS	Merrill	8	4	5/6	BB	
4/23 5/6	4/23 5/6	Essential Nail Bar	Const.	Maple + Bates	1	1	5/6	BB	
5/2	5/3	John Heller	Dumpster	211 Merril	2	2	5/8	BB	
5/4	5/4	IMM House	Lined van	Townsend	14	7	4/6	BB	
5/7	5/8	Essential Nail Bar	Const.	Maple / Bates	1	1	5/9	BB	
5/8	5/13	John Heller	Const. van	211 Merrill	2	2	5/14	BB	
5/9	5/9	FW Hook		ac 2400 Merril	8	4			
5/13	5/13	Imagine Theater		Imagine	3	2	5/13	BB	
5/14	5/17	Heller John	Const.	211 Merrill	2	1	5/14	BB	

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3/30/19	3/30/19	Queen Anthony	(3) 918-8566	U-Haul	360 Martin	2	1 DBL			
3/29	4/1	TH Singleton Cons.	(2) 835-7896	Dumpster	284 Maple / on Bates	1	1 DBL		Gray Neaders	
4/1	4/1	Fuller Central Park		Lift	Pierce	2	1			
4/5	4/5	Stifel		Moving truck	139 South Old Lake	4	2	4/5	amp	
4/9	4/9	Radish Creative Group	Tina	VRD	throughcrafty	2	1 DBL	4/12	aco	
4/11	5/9	belfor		workvel	7168 N. Old way	2	2			9/18
4/15	4/26	Templeton Bldg.		(obstruction)	180 Pierce	2	2			
4/17	4/17	Greg Sporn Douglas + Co.		traffic shift	856 N. Old way (webag)	12	6	4/17	SB	
4/17		JBZ Management		Dumpster	280 W. Maple	1	1	4/12	jan	
4/18	4/18	Daughters		dumptruck	163 W. Maple	2	1			9/18

4/26

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09/25	02/25	KIM (313) 407-8550		MOVING TRUCK	255 Townsend	1	7	4/25	AK	
02/26	02/26	STAYE SERVICES		BOYER UBER TRAFFIC	327 N. Old Wm	12	6	3/26	AK	
03/03	03/03	HUGHES ENGINEERING		DELIVERY TRUCK	157	4	2			
10/03		MAKER CONST								
3/5	3/5	FOR HUB CAR		TRUCK	Marshall	4	2			
		Town								
3/12	12/31	Chesnut City Theater		Reverend		1	1			
		Dep.								
3/14	3/14	Reyes		Moving truck	100 S. Second	3	3			
3/15	3/15	Central Park Prop.		Lift	501 Wm	4	2	3/15	AK	
3/15	3/15	TERRY / 348-338-6946		car / truck	Pierce / Marshall	3	3			
		Meyer / Signature		emergency services						
3/19	3/19	Central Park		Lift	Maple / Chester	2	1	3/19	AK	
3/21	3/21	250 Martin			250 Martin	8	4	3/21	AK	

WAVE DEP-1

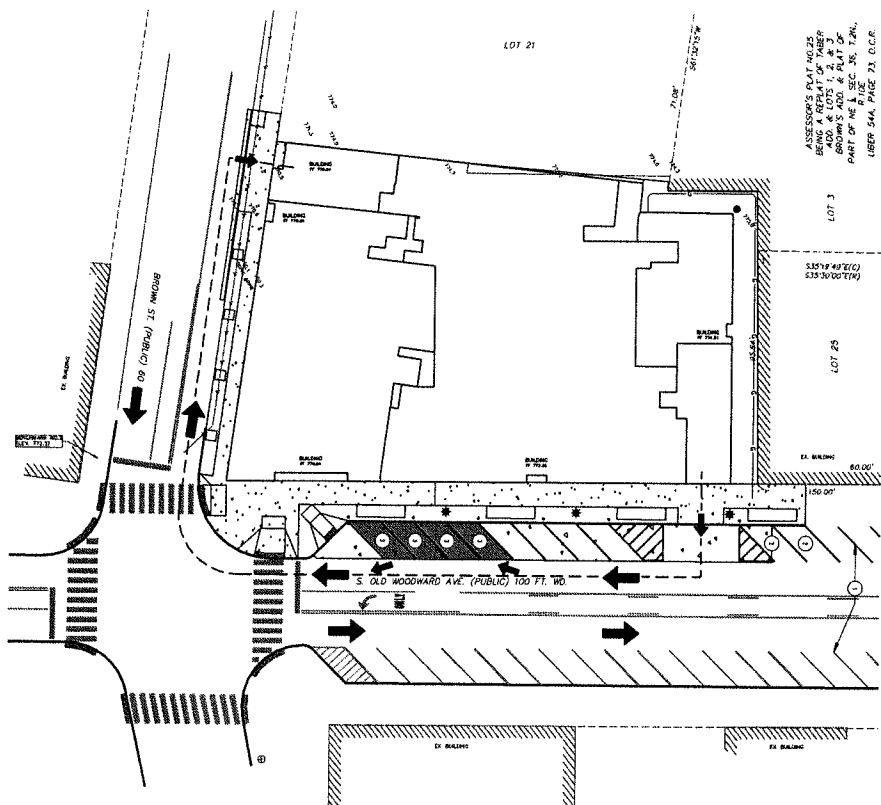
3/22 3/22 Tom Faaroda Moving Truck 161 A. Second 5 5 ang 3/22/82





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12/26	1/11/19	JASON / Pre Restriction 734 646 7058	truck dumpster or lift	350 N Old NW Athens bldg	1	1	IN Approval press	PKY found past due - 100	
12/28	12/28	Mary / Med Bag 586-718-4496	Moving truck	139 S. Oak NW	6	6	NO Deposit	1/7 JMS	
12/19	1/3/19	1/18/19 Joe-Phone	truck	310 E Maple	1	1		1/11	
1/7	1/8	LED Oper. Center Paul (813) 922 0799	Truck/Trailer old wu		4	3		1/10 Ba	
1/11	1/12	FN Home Unit Towner	Truck Trailer	Merrill	6	3			
1/29	1/29	Rob / Pleasure Raleston		2200 S. Maple (Key Raleston)	6	3		1/29 100	
2/1	2/12	IN House VACAT	Truck Buses	Merrill Division	8	4		2/19	
2/18	2/18	De Deconstructors	Work Van Pers. Truck	180 Pierce	2	2			
2/22	2/22	Library-Spencer			1	1		2/28 JMS	
2/24	2/24	OK Way End. Drive	Truck Atlas Vator	Democrat. House 380 Bates	2	1		2/28 JMS	

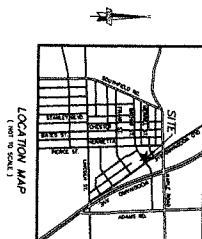
EXHIBIT 7



TRAFFIC FLOW	
DIRECTION	SYMBOL
NORTH - WEST	
SOUTH - EAST	
SOUTH - WEST	
NORTH - EAST	

PARKING PLAN KEY NOTES

1. ANALYZED PARKING PER SOUTH OLD WOODWARD PLAN
2. EXISTING VALET FOR PLAZA BUILDING
3. PROPOSED VALET FOR TULAZ BUILDING



BOOTH HANSEN

Architecture Interiors Planning
333 South Dear Pines Street
Chicago, Illinois 60661

giffels 建築
webster

Engineers
Surgeons
Planners
Landscape Architects
28 West Adams Road
Suite 1200
Detroit, MI 48226
P (313) 562-4442
F (313) 562-0066
www.globebuilder.com

Birmingham Hotel
298 S Old Woodward Ave.
Birmingham, MI 48009

PARKING PLAN

C999-2

PROJECT NUMBER 1623

ISSUED FOR
PARKING CMTE MTG

1	VALLEY PARKING REVENUES	12/20/2003
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NO. DISPOSITION DATE

EXHIBIT 8

**MAJOR EVENT TRAFFIC PLAN
298 S. OLD WOODWARD HOTEL**

<p>TRIGGER EVENT:</p> <p>Any event where the attendance in the banquet room plus the meeting rooms is expected to equal or exceed the (building code) capacity of the banquet room of 321 persons.</p>	<p>Description of Event:</p>
<p>Important Fact to Consider During a Major Event at the hotel:</p>	<p>The hotel will have two levels of underground parking which will be used during a Major Event. This parking provides the hotel and community with a great advantage as immediate queuing of cars will be under the hotel and <i>not</i> on S. Old Woodward, S. Old Woodward will not be congested and traffic should not be adversely impacted.</p>
<p>Description of Valet set-up and layout including points of ingress and egress.</p>	<p>Staging of Vehicles:</p> <ul style="list-style-type: none"> • 1st point of arrival is front of hotel. • 2nd a valet moves car underground by turning right onto Brown Street and entering the hotel underground parking garage at the Brown Street entrance and queues cars for valet movement from garage. • 3rd a valet moves cars to offsite parking structures from underground garage staging area by exiting garage with a right turn onto S. Old Woodward and disburses vehicles from that point.
<p>Notice will be given to stakeholders of any Major Event at the hotel.</p>	<p>Notice to Stakeholders:</p> <ul style="list-style-type: none"> • Meeting with Valet and all Hotel personnel. • Alert Birmingham Police Department <p>Transmittal List:</p> <ul style="list-style-type: none"> • City of Birmingham Police Department



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



Williams Williams Rattner & Plunkett, P.C.
Attorneys and Counselors

380 North Old Woodward Avenue
Suite 300

Birmingham, Michigan 48009

Tel: (248) 642-0333

Fax: (248) 642-0856

January 6, 2021

Richard D. Rattner
rd@wwrplaw.com

By Hand Delivery and Email

Thomas Markus, Manager
Members of the City Commission
City of Birmingham
151 Martin Street
Birmingham, MI 48009

Re: 856 N. Old Woodward (the "Pearl") Application for Parking Assessment District

Dear Mr. Markus and Commissioners:

We submit this letter on behalf of our client, FLS No. 5, LLC ("Applicant"), owner of the referenced property commonly known as the Pearl, located at the north end of Old Woodward just south of Oak Street. The Applicant submitted a request to be placed in the City of Birmingham Parking Assessment District. The City Commission, at its meeting on December 21, 2020, set the matter for a public hearing for January 11, 2021.

In addition to the materials previously submitted by the Applicant, we ask the Commission to be advised of the following information regarding the Pearl:

- The Pearl was developed on land that had been vacant since **1988**.
- Prior to 1988 until its demolition, the site was the location of the Carrie Lee Chinese Restaurant.
- The Pearl is a new mixed-use building with residential and retail uses (ground floor retail).
- The property immediately to the south of the Pearl, 798 N. Old Woodward, sits within the boundaries of the Parking Assessment District. See Parking Assessment District boundary map attached as **Exhibit 1**.
- The Pearl contains 23 onsite parking spaces for the three ground floor retail tenants.

- Of the 23 retail spaces, the City allocates 4 parking spaces to tenant Fruition, 14 spaces for Lash Lounge, and 5 spaces for Aurora Medi Spa.
- All the retail uses are permitted uses under the Zoning Ordinance.
- The Aurora Medi Spa requires 10 parking spaces for approval of its plan for its retail space, leaving the Pearl short 5 parking spaces.
- The impact on the City's parking system from the inclusion of the Pearl in the Parking Assessment District is minimal at 5 or fewer parking spaces at any given time.
- The boundaries of the Parking Assessment District do not incorporate the site on which the Pearl is built because of the decade's long vacancy of the site.
- When developed, as a condition to site plan approval, the Applicant paid for the extension of the metered parking drive adjacent to the Pearl and agreed to be responsible for the costs of maintenance of that area.
- In addition to the assessment for inclusion in the Parking Assessment District, the Applicant is responsible for the costs of maintenance of the driveway access for the metered parking adjacent to the Pearl.
- The other two tenants of the Pearl (Fruition and Lash Lounge) have not used all allocated parking spaces since opening of retail operations. See the enclosed letters at **Exhibit 2**.
- The closest public garage at N. Old Woodward contains 745 total spaces, including the adjacent surface lot. The N. Old Woodward garage averages 5%-30% vacancy at any given time during weekdays. See Parking Occupancy Figure 6 from the Downtown Parking Plan/Existing Conditions Report attached as **Exhibit 3**.
- The closest surface public parking lot is Lot 6 and it contains 140 spaces. During peak weekday times, this lot averages between 5% and 30% vacancy. See **Exhibit 3**.
- Per the Downtown Parking Plan, "on-street [parking] supplies maintain significant excess capacity" at less than 85% occupancy at weekday peaks. See p. 23 of Downtown Parking Plan attached as **Exhibit 4**.

- The metered parking across N. Old Woodward from the Pearl maintains between greater than 30% vacancy and 5% vacancy during weekdays. See **Exhibit 3**.
- As noted by the Planning Department, other properties initially outside of the boundaries of the Parking Assessment District have been approved to be included within the Parking Assessment District.
- Inclusion of the Pearl in the Parking Assessment District will increase the City's revenue designated for maintenance and operation of public parking infrastructure, including the garage and surface lots closest to the Pearl.

For these reasons, the Applicant requests the City Commission to approve the Applicant's request to be included within the Parking Assessment District.

Sincerely,

WILLIAMS, WILLIAMS, RATTNER & PLUNKETT, P.C.

Richard D. Rattner

EXHIBIT 1

2016 Parking Assessment District - Distance Factor








-  N. Old Woodward Structure 710ft Radius
-  N. Old Woodward Structure 1420ft Radius
-  N. Old Woodward Structure 2130ft Radius
-  Parking Assesment District Boundary
-  North Old Woodward Parking Structure

EXHIBIT 2



**BIRMINGHAM –
THE PEARL**

The Lash Lounge Birmingham- The Pearl
856 N. Old Woodward
Birmingham, MI 48009

Dear Birmingham City Office,

To introduce ourselves, we are a premier Eyelash and Eyebrow Salon. We are very excited to be in the Birmingham area! Our hours of operation are Monday-Friday 9am-7pm and Saturday-Sunday 9am-6pm. Our establishment operates by appointment only. Being that we are so new, we have opened and closed the salon later than our posted hours. On average we may have 2-3 guests in at a time. Considering we are new to the public we have not yet seen a trend of peak hours. Our staff members park across the street and never directly outside the building or in the garage. Our guests are fully aware parking is metered and not designated to The Lash Lounge specifically. As of now and the foreseeable future we only have 5 stylists accepting guests. Although, as mentioned above we do not have all staff working at one time to eliminate parking complications.

If you have any questions or concerns please feel free to contact myself (Kati Prater) directly at, (720) 418-9640.

www.thelashlounge.com
Birmingham, MI (248) 965-5665



Fruition Acai & Coffee Café
856 N. Old Woodward
Birmingham, MI 48009

Dear Birmingham City Office,

As a small, Michigan grown café, we are very excited to have opened our second location in the city of Birmingham this past month. Having nearly 3 years of experience at our first store in Grand Rapids, MI with very similar demographics and almost identical size, we have a good idea as to what to expect with this second location. We anticipate 2-3 customers throughout most times of the day, with a "lunch rush" peaking around 1-2pm (estimating an additional 1-2 customers). Our Grand Rapids customers are generally "regulars" largely because of our fast paced environment/quick take out options, and their ability to be in and out quickly. We pride ourselves on this as we have quickly learned that people are looking for fresh & healthy options, but fast. Our operating hours will be as follows:

Monday-Friday 9am-6pm
Saturdays 9am-5pm
Sundays-CLOSED (hopeful to reopen post-pandemic)

For comparison purposes; our Grand Rapids store includes 2 parking spaces for our use, the rest is street front/metered parking and it is up to our customers to find a place to park. It is very rare that we ever receive a complaint about finding a parking spot. About 80% of our business in the winter months is take out and customers average 2-3 minutes inside our store, from the time of placing an order to receiving it.

During peak summer months, I anticipate there be no more than 6-8 people in our Birmingham store at one time, we have limited seating space as is. This includes employees working during that time. If you have any other questions or concerns, feel free to call myself (Lindsey Sayles) anytime, (616) 375-2324.

www.thefruitionlife.com

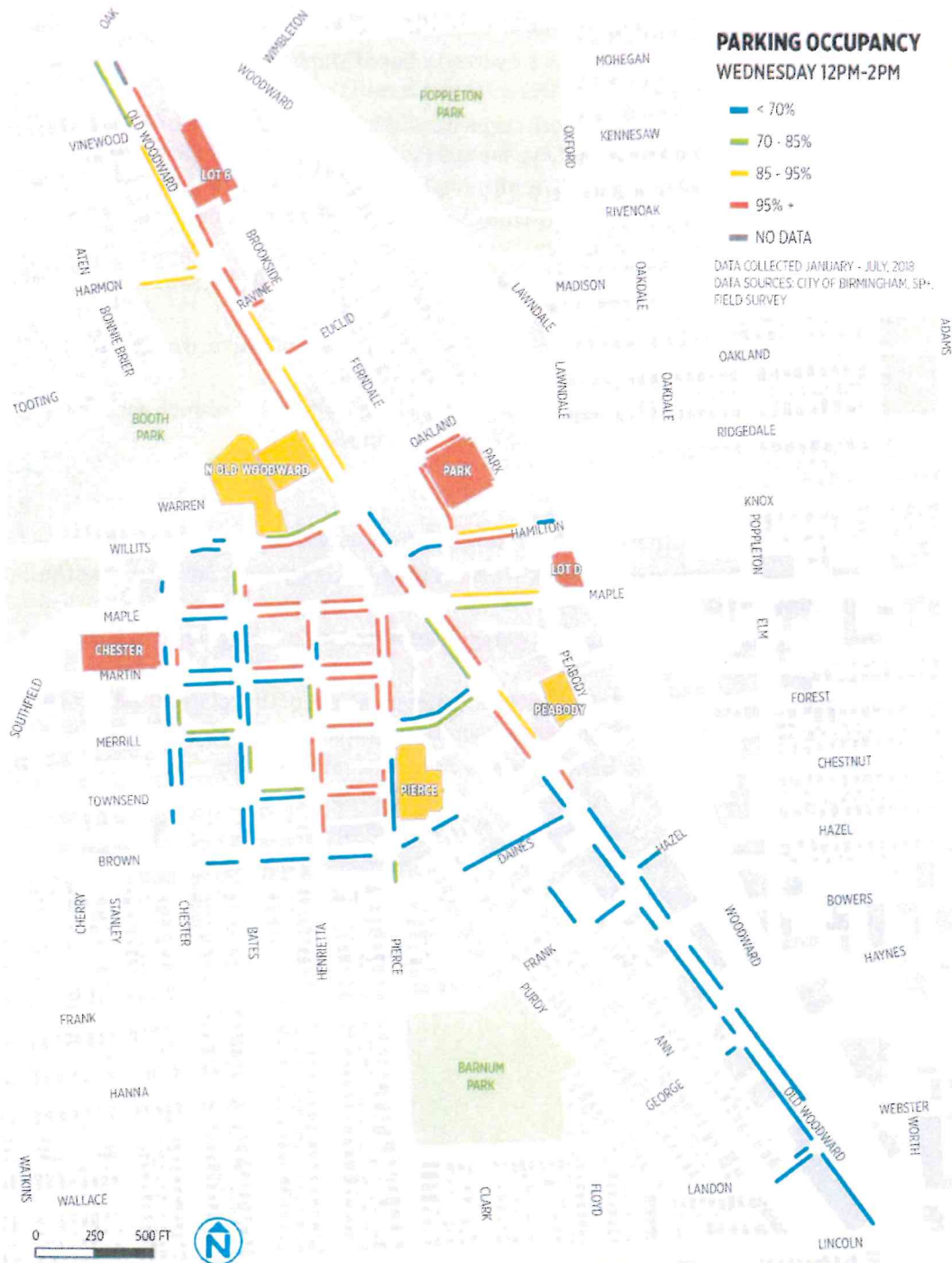
Grand Rapids, MI (616) 608-7181
Birmingham, MI (248) 792-7070

EXHIBIT 3

Downtown Parking Plan | Existing Conditions Report

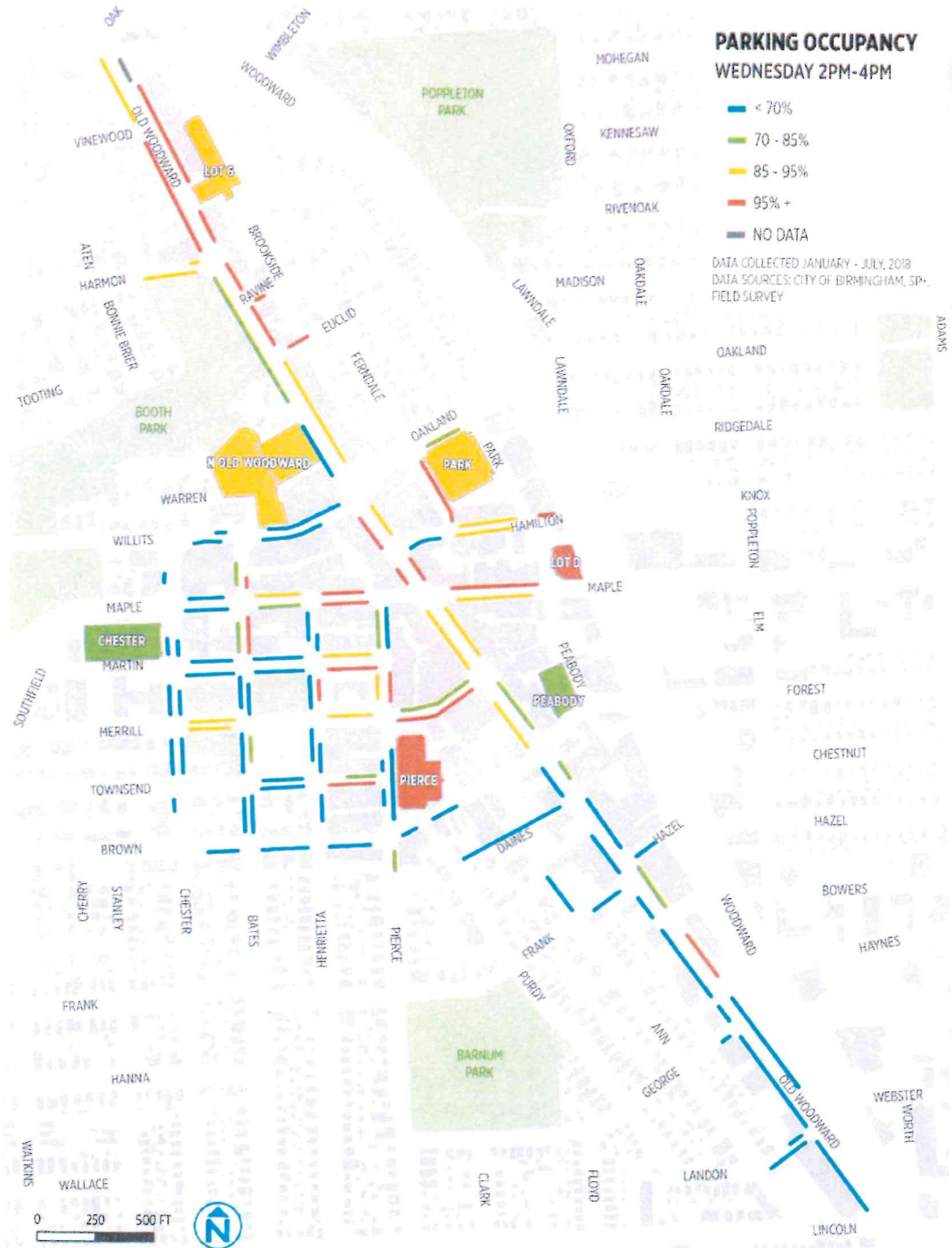
City of Birmingham, Michigan

Figure 6 Parking System Utilization – Wednesday, 12pm-2pm



Downtown Parking Plan | Existing Conditions Report
City of Birmingham, Michigan

Figure 7 **Parking System Utilization – Wednesday, 2pm-4pm**



Downtown Parking Plan | Existing Conditions Report

City of Birmingham, Michigan

Figure 9 Parking System Utilization – Wednesday, 6pm-8pm

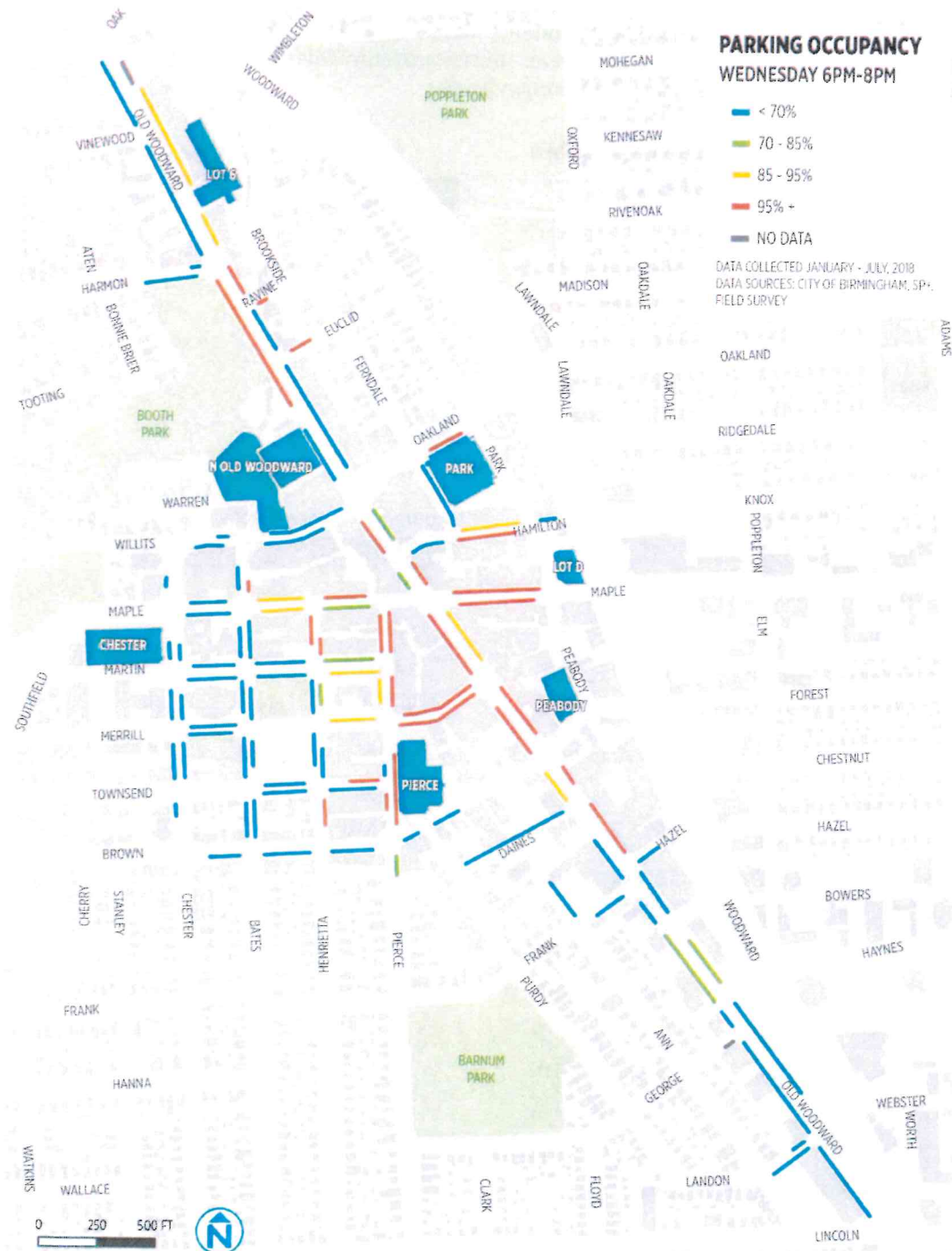


EXHIBIT 4

Expand Mobile Payment Options to the Parking Structures.

Payment options for short-term parkers in the City's garages are currently limited to a credit card or IN Card. Community feedback indicated a desire for more options, both to increase payment flexibility and to reduce delays at parking entrance and exit. ParkMobile payments at the City's smart meters account for approximately 25% of transactions, suggesting that this popular option could be readily adopted by off-street parkers as well.

In the near-term, the City should explore options for either expanding their current ParkMobile contract or soliciting other vendors to allow mobile payment in the garages. Providing parkers with the option to pay for parking using their phone will help mitigate congestion at the exit gates, much of which is the result of delays caused by parkers who are using credit or IN Cards. ParkMobile and other vendors also offer "digital wallets," which can allow employers to pre-load funds into individual accounts. These mobile options can also enable after-hours payment for visitor use of permit lots, which can offset evening and weekend capacity issues in key areas.

In addition to ParkMobile, there are several Bluetooth mobile solutions that can be adapted to existing SKI DATA PARCS infrastructure for minimal cost that will allow parkers to access the garage or "vend the gate" using a pre-established wallet or account, akin to having a virtual IN Card. Several PARCS vendors are offering Bluetooth solutions. In most cases, the City would need to update the garage technology. However, one company (inugo) has successfully implemented an adaptive solution utilizing existing infrastructure. They install Bluetooth technology (\$1,000 per gate set up; \$1.00 per space per month for the back office) that allows visitors and permit holders to use their cell phone to access the garage, in most cases, hands-free.

Take Advantage of Excess On-street Capacity

In aggregate, on-street supplies maintain significant excess capacity (<85% occupied) throughout weekday peaks and into the evenings. Much of this underutilized capacity is concentrated in areas around City garages that are, by contrast, at capacity much of the day. Current pricing cues – which apply a fee to the on-street spaces, but offer free 2-hour parking in nearby garages – are intensifying the supply constraints noted in some key downtown facilities, as well as one of the primary parking issues noted in this study – the lack of capacity to accommodate downtown employment growth via permits to City garages.

Figure 10 Peak Weekday Mid-day Parking Utilization





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.

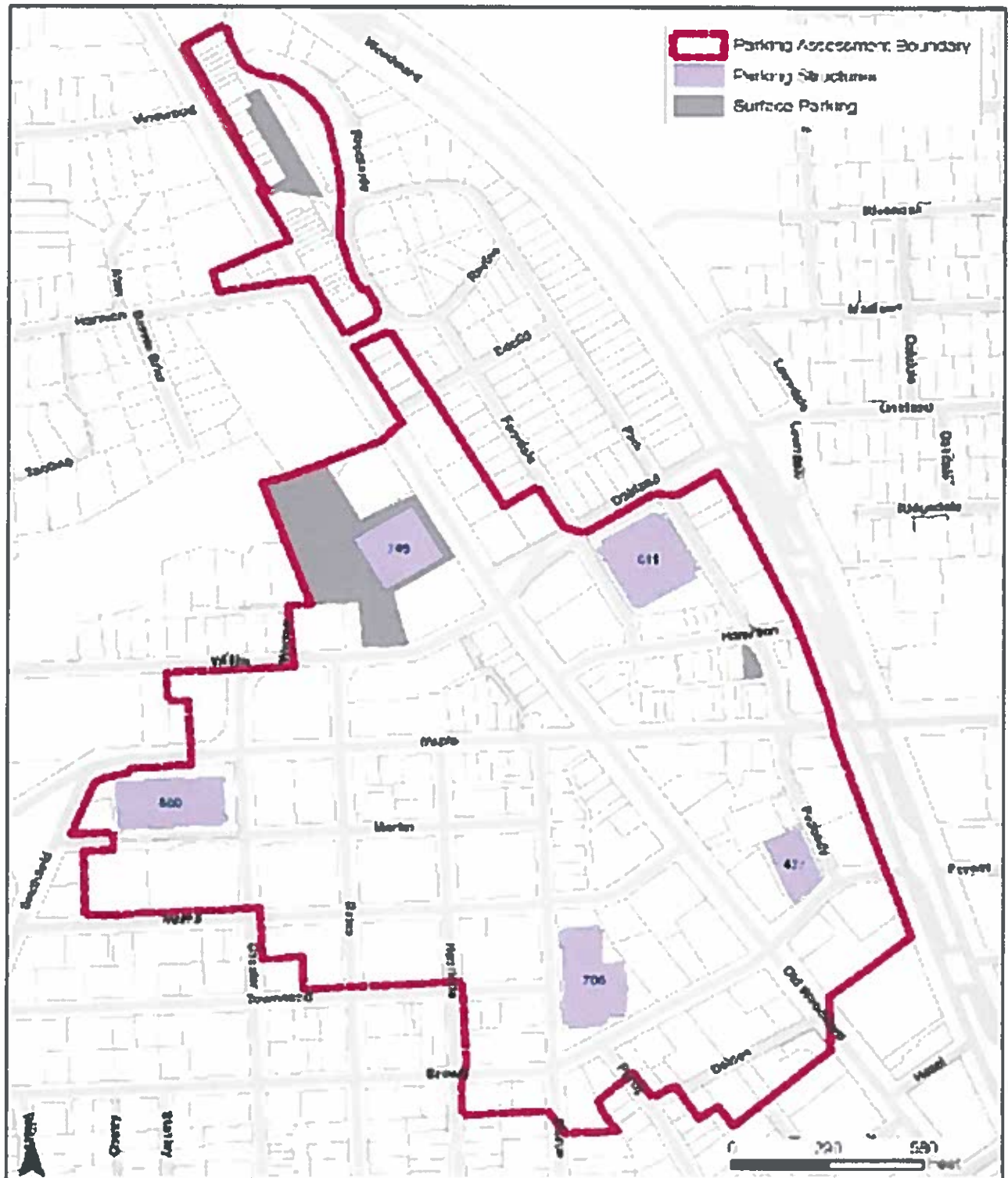
The total special assessment is allocated between the following categories: building frontage 25%, land square footage 25%, and existing business square footage 50%. Each of the factors above are multiplied by the individual building frontage, land square footage, and existing business square footage 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

Department of Public Services

DATE: January 5, 2021

TO: Thomas M. Markus, City Manager

FROM: Carrie A. Laird, Parks and Recreation Manager

APPROVED: Lauren A. Wood, Director of Public Services

SUBJECT: Birmingham Ice Sports Arena A/E Design Services Award

INTRODUCTION:

The Birmingham Ice Arena (BIA) is slated for necessary Ice Plant equipment replacement including a new in-floor piping system and sub-floor heating for this fiscal year in the Approved 2020-2021 Budget. In addition, with the approval of the Parks and Recreation Bond in November 2020, the building renovation improvements can be accomplished at the same time.

BACKGROUND:

The Birmingham Ice Arena is a 47-year-old facility enjoyed and beloved by the community over the years. Regionally, it serves Michigan Amateur Hockey Association (MAHA) District 4. It is home to Birmingham High School Hockey (Birmingham Unified), the Birmingham Hockey Association (BHA) and the Figure Skating Club of Birmingham (FSCB). Residents and non-residents alike share in the costs to utilize this facility. It is a "pay to play" model in which clubs and organizations pay an hourly rate to "rent" the ice. The BIA also offers skating lessons, and public open skate sessions contributing to the revenue. The majority of all revenue received at the ice arena is from ice-rental contracts with organizations such as BHA, BU, FSCB and other leagues. Second to Ice Rental revenue, is Learn to Skate revenue.

For the fiscal year 2019-2020, the resident/non-resident ratio is as follows: Learn to Skate Lessons: 52% Residents, 48% Non-Residents; Public Open Skate Lessons: 44% Residents, 56% Non-Residents; BHA: 44% Residents, 56% Non-Residents; FSCB: 78% Residents, 22% Non-Residents.

This well maintained facility is aging, having experienced an in-ground pipe leak in 2017 and other significant mechanical repairs needed in recent years as well. Thankfully, the 2017 leak was located in an accessible area, and repaired, however a new ice plant and piping system is necessary in order to keep the rink operational.

During the 2018 five (5) year Parks and Recreation Master Plan process, public input was gathered. As part of this process, a survey about the Ice Arena was put together and

received great response. We heard from rink users that the locker rooms are excessively small, as is the corridor leading to them. There is a need for larger locker rooms for players and hockey gear, including dedicated space for women. In addition to the survey, public meetings held conveyed the need for building improvements at the BIA.

In 2018, the City engaged Plante Moran Cresa (PMC) to perform a Facility and Operational Assessment of the Birmingham Ice Arena (BIA) with the intent to serve as a road map for future capital projects at the BIA. Recommendations for facility improvements by PMC over and above the critical need of a new Ice Plant system include: Shifting the main ice arena to the east to accommodate ADA requirements, a new Women's Locker Room, a new High School Team Locker Room, enlarging the existing locker rooms (4), and a new Studio Rink observation area/meeting room.

The City has further recently engaged the services of PMC to serve as the City's Owner Representative, to oversee all aspects of this project from design to construction.

The first step in making improvements to the Ice Arena is to secure Architect/Engineering Services to put together design plans and specifications for these improvements in order to bid out for construction. On December 2, 2020, the City issued a Request for Proposal for these services from qualified firms. This specialized project received nationwide attention from firms, including inquiries from locations such as California, New York, and Ohio.

Bids were received and publicly (virtually) opened on December 17, 2020. The results of the bid opening are as follows:

	Andrus Architecture	IMEG	MSA Sport
Lump Sum Base Bid Fee	\$269,400	\$420,000	\$330,000
Add Alternate DD Estimating Services*	\$10,000	\$5,950	\$6,500
Add Alternate FF&E Planning and Procurement*	\$7,500	\$2,400	\$9,500
Reimbursables*	\$2,000	\$13,933	\$18,000
Total (Not to Exceed)	\$288,900	\$412,233	\$364,000

*Pricing requested for these services/reimburseables, may or may not be needed.

City staff and PMC performed interviews and reference checks for all three (3) bidders. To be considered for this project, the Architectural/Engineering Firms had to meet the following minimum qualifications:

- The A/E team members have successfully completed a minimum of three (3) ice arena or ice arena renovation projects within ten (10) years.
- Firm has been in business for at least the last ten (10) consecutive years in the field for which the bid was solicited.
- Firm is licensed to perform the required design work in the State of Michigan.
- Be familiar with and have experience in the Municipal sector including having at least five (5) municipal clients in the last ten (10) years.

Andrus Architecture's submittal had the most impressive resume with regard to ice arena experience and the number of ice rink projects constructed in MI and nationally, 26 rinks in eight (8) States, highlighting the following:

- Compuware Sports Arena, Plymouth, MI
- USA Hockey Ice Arena, Plymouth, MI
- NHL Skate, Birch Run, MI
- Eddie Edgar Ice Center, Livonia, MI
- Georgetown Twp. Ice Center, Hudsonville, MI
- New York Islanders at Eisenhower Park, Long Island, NY
- Dix Hills Recreation Complex, Huntington, NY
- Amesbury Sports Center, Amesbury Massachusetts (2021).

Andrus Architecture, for Ice Rink Design, won the 2005 Associated Builders & Contractors, Inc. Award for Georgetown Ice Center, and the 2010 Long Island Municipal Project of the Year for Dix Hills Recreation Center.

City staff and PMC recommends the Birmingham Ice Arena A/E Services project be awarded to Andrus Architecture. Our Criteria Based Selection consisted of the following factors: Similar Project Experience, Team-Member Resumes and Qualifications, Plan & Approach, Fee, Team-Member Experience together, References, and the Interview. Further, the interview scoring was on Overall Presentation, Staff and Management Approach, Team Dynamic and Interaction, Clarity of Responses and Cost Saving Opportunities.

LEGAL REVIEW:

The City Attorney has completed a review of this contract agreement and approved with signature. The AIA Document B101 incorporates all of the City's standard agreement language into a comprehensive document between Owner and Architect.

FISCAL IMPACT:

Funds in the amount of \$2 million have been budgeted in the Approved 2020-2021 Budget in order to accomplish the critical need of new Ice Plant equipment. Parks and Recreation Bond funding in the amount of \$3.1 million will allow the building renovations to occur at this time, for a total project cost of \$5.1 million, including design services and consultant fees.

Funding for this project in the amount of \$288,900 is available in the Capital Projects Fund, account # 401-901.001-977.0000. As the Ice Arena project advances, funds will be allocated accordingly, either from the Capital Projects Fund or Parks and Recreation Bond dollars.

PUBLIC COMMUNICATIONS:

Public Input will be ongoing, gathered as part of the design process, at the Parks and Recreation Board and City Commission meetings in addition to ongoing feedback, and input from facility users.

ATTACHMENTS:

- Letter dated 12/29/20 from PMC- Recommendation for A/E Design Services
- PMC Presentation
- Preliminary Schedule
- Andrus Architecture Introduction Letter
- Bid Proposal Form
- AIA Document B101- Standard Form of Agreement between Owner and Architect
- Insurance Certificates
- Iran Disclosure Affidavit

SUMMARY:

The Department of Public Services and PMC recommend awarding the Architecture Engineering Services project to Andrus Architecture for a total not to exceed \$288,900.00. Andrus Architecture's team is comprised of staff with explicit ice arena experience and B32° Engineering with countless ice arenas on their resume as well. City staff and PMC are confident in Andrus Architecture's ability to perform the services as requested. Public input will be afforded for the Ice Arena design at various boards/commission meetings including Administrative Department reviews.

The Parks and Recreation Board, at their January 5, 2021 meeting, passed a resolution to recommend the Birmingham Ice Arena Architectural and Engineering Services project be awarded to Andrus Architecture and forward to the City Commission for approval.

SUGGESTED RESOLUTION:

To award the Birmingham Ice Arena Architectural and Engineering Services project to Andrus Architecture in the amount not to exceed \$288,900.00. Funds are available in the Capital Projects Fund account #401-901.001-977.0000 for this project. Further, to authorize the Mayor and City Clerk to sign the agreement on behalf of the City upon receipt of the required insurances.



December 29, 2020

Ms. Lauren Wood
City of Birmingham
Director of Public Services
851 South Eton Street
Birmingham, MI 48009

via e-mail: Lwood@bhamgov.org

RE: City of Birmingham Ice Sports Arena Renovation and Additions A/E Consultant Recommendation

Dear Ms. Wood:

This letter is to update you on Plante Moran Cresa's (PMC) progress in our assignment to assist and advise the City of Birmingham (CB) in the selection of a Design Consultant firm for the CB Sports Ice Arena Renovation/Additions Capital Improvement Project (Project). The CB's Parks & Recreation Department and Plante Moran Cresa (Project Team) solicited and received proposals from three (3) qualified Architecture/Engineering (A/E) consultant firms.

SELECTION PROCESS

This letter communicates the results of the independent Criteria Based Selection (CBS) process the Project Team were directed to conduct in accordance with our engagement, as well as the resulting recommendation for selecting a A/E consultant firm for the Project.

PMC formulated a Criteria Based Selection (CBS) process to evaluate the submissions of each of the A/E consultant firms. A CBS process uses pre-established and weighted criteria to objectively evaluate and score the proposals and provide recommendations for awarding contracts. PMC conducted an initial CBS process with the information obtained from the RFP responses received on December 17, 2020. Each of the three A/E firms were interviewed on December 22, 2020 and scored based on the CBS criteria.

RECOMMENDATION

The Project Team believes that each of the three A/E firms that responded to the RFP are qualified and capable of meeting the Project's requirements, however, the CBS process presents **Andrus Architecture** as the top firm based on their scoring of each of the RFP and interview CBS criteria. This recommendation is in large part due to Andrus's resume of experience of similar projects, team member resumes, knowledge of ice plant equipment, energy saving opportunities and lowest overall cost. Based on the results of the CBS process, the Project Team recommends awarding the Consultant contract for the CB Ice Sports Arena Renovation/Additions Capital Improvement Project to **Andrus Architecture** in the amount of **\$286,900.00** with the a not to exceed reimbursable expense of **\$2,000.00**. The cost of this work will be detailed in a contract pending final review and approval of terms by the CB legal counsel.



Should you have any questions regarding this recommendation or the CBS selection process described above, please do not hesitate to contact me at 248-766-0996 or robert.stempien@plantemoran.com.

Sincerely,

PLANTE MORAN CRESA

Robert Stempien, AIA
Sr. Vice President

Paul Theriault, PE, LEED AP
Partner



plante moran | cresa

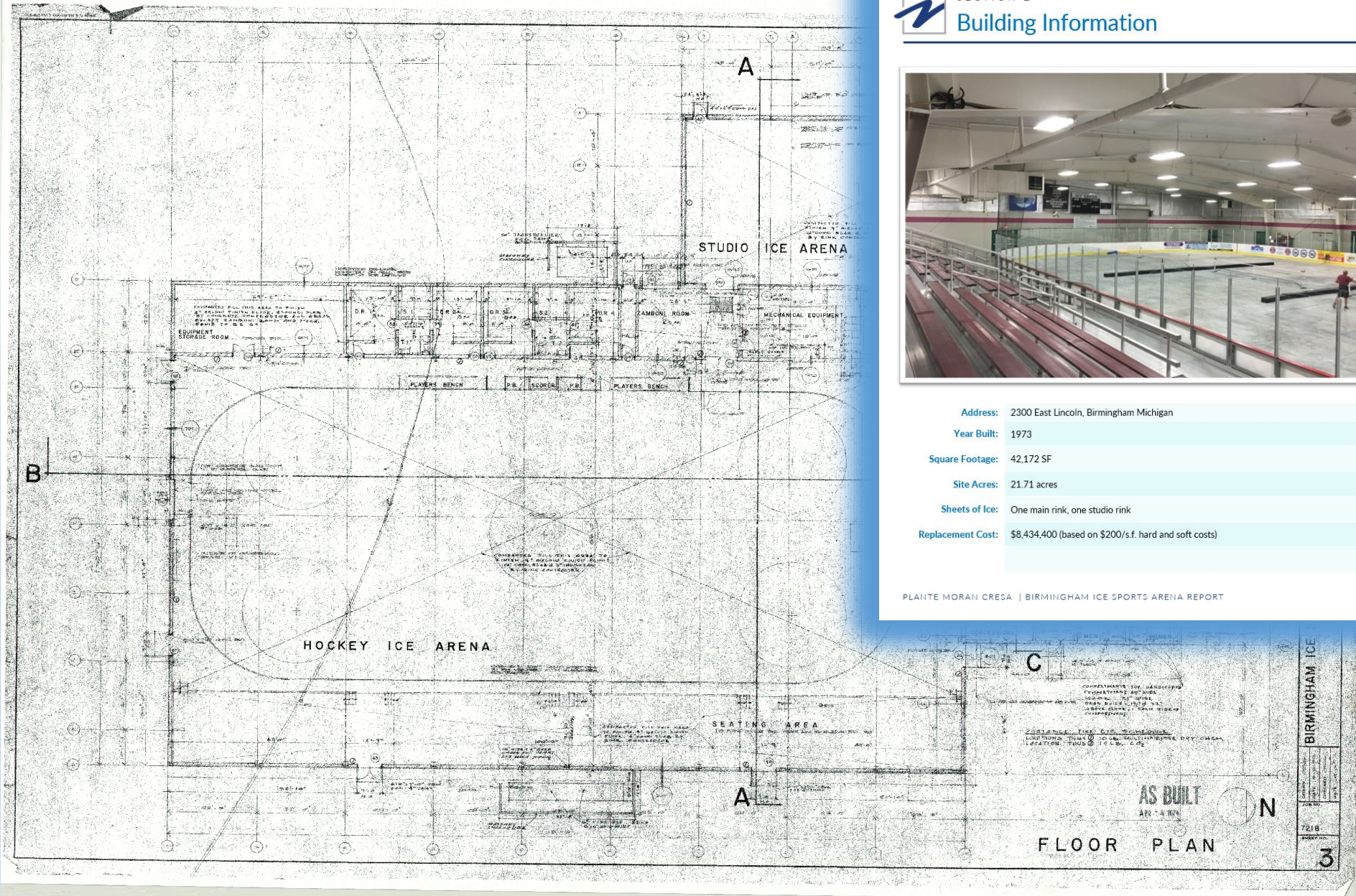
Birmingham Ice Sports Arena

City of Birmingham Parks & Recreation Update 1-5-21



Birmingham Ice Sports Arena

2018 Assessment Report



SECTION 2

Building Information



Address: 2300 East Lincoln, Birmingham Michigan

Year Built: 1973

Square Footage: 42,172 SF

Site Acres: 21.71 acres

Sheets of Ice: One main rink, one studio rink

Replacement Cost: \$8,434,400 (based on \$200/s.f. hard and soft costs)

PLANTE MORAN CRESA | BIRMINGHAM ICE SPORTS ARENA REPORT

11



Birmingham Sports Ice Arena – Mechanical Equipment

City of Birmingham Ice Sports Arena Mechanical Equipment 8/22/2018					
Equipment	Description/Type	Size	Location	Installed	Age (Yrs)
Compressor No. 1 (south)	Beltemp with Vilter VMC Level 1 compressor	100 HP, 90 tons	Mechanical Room	2006	12
Compressor No. 2 (north)	Beltemp with Vilter VMC Level 1 compressor	100 HP, 90 tons	Mechanical Room	2007	11
Suction Pump No. 1	Beldor Reliancep Industrial Motor	15 HP	Mechanical Room	2007	11
Suction pump No. 2	Marathan Motor	15 HP	Mechanical Room	2006	12
Suction pump No. 3	Marathan Motor	15 HP	Mechanical Room	2005	13
Pneumatic Controls	Ametek		Mechanical Room	1973	45
Main & Studio Arena VTL Cooling Tower	Baltimore Aircoil Company	456 USGPM	Mechanical Room Roof	1990	28
Sump tank for Cooling Tower	Baltimore Aircoil Company	457 gallons	Mechanical Room	2008	10
Main Rink AC Unit No. 1 (SE)	Carrier	10,500 CFM	Main Rink Ceiling Hung	1973	45
Main Rink AC Unit No. 2 (NE)	Carrier	10,500 CFM	Main Rink Ceiling Hung	1973	45
Main Rink AC Unit No. 3 (SW)	Carrier	10,500 CFM	Main Rink Ceiling Hung	1973	45
Main Rink AC Unit No. 4 (NW)	Carrier	10,500 CFM	Main Rink Ceiling Hung	1973	45
Main Rink Heating Unit No. 1	Renzor gas fired unit	300,000 BTU	Main Rink Ceiling Hung	2004	14
Main Rink Heating Unit No. 2	Renzor gas fired unit	300,000 BTU	Main Rink Ceiling Hung	2004	14
Main Rink Heating Unit No. 3	Renzor gas fired unit	300,000 BTU	Main Rink Ceiling Hung	2004	14
Main Rink AC Compressor Unit 1 (SE)	Carrier		East exterior wall	1973	45
Main Rink AC Compressor Unit 2 (NE)	Carrier		East exterior wall	1973	45
Main Rink AC Compressor Unit 3 (SW)	Carrier		Flat roof area (near zamboni/locker rooms)	1973	45
Main Rink AC Compressor Unit 4 (NW)	Carrier		Flat roof area (near zamboni/locker rooms)	1973	45
Zamboni Room Heating Unit	Modine gas fired unit	40,000 BTU	Zamboni Room	2012	6
Locker Room Hot Water Tank	Lochinvar gas fired unit	100 gallons	Mechanical Room	2004	14
Zamboni Room Hot Water Tank	Lochinvar gas fired unit	100 gallons	Mechanical Room	2012	6
Conference Room Hot Water Tank	Lochinvar gas fired unit	19 gallons	Skate Room	1999	19
Concessions/Restroom Hot Water Tank	Lochinvar gas fired unit	50 gallons	Mechanical Room	2008	10
Roof top HVAC unit No. 1	Locker rooms	10 ton	Flat roof area	2009	9
Roof top HVAC unit No. 3	Carrier RTU servicing main office, ref room, conf. rm, pro shop and skate office	10 ton	Flat roof area	2008	10
Roof top HVAC unit No. 2	Lobby/restrooms	10 ton	Flat roof area	2009	9
Studio Rink HVAC 1	Modine gas fired unit	200,000 BTU	Studio Rink Ceiling Hung	2013	5
Studio Rink HVAC 2	Modine gas fired unit	200,000 BTU	Studio Rink Ceiling Hung	2013	5
Transformer		750 KVV	West exterior wall	1973	45
Fire alarm and strobes/annun. panel	Honeywell - Gamewell panel		Entire building	2009	9



Birmingham Ice Sports Arena – Rink Repairs

January 2020

Cooling Tower Pump Repair

November 2019

**Compressor Shaft Repair
Due to Electrical Surge**

January 2017

**Main Rink In-Floor Cooling
Pipe Leak**





Birmingham Ice Sports Arena – Revenue vs. Expenses

2016-2017		2017-2018		2018-2019		2019-2020	
2016 Revenue - as of 6/30	\$603,274	2017 Revenue - as of 6/30	\$620,024	2018 Revenue - as of 6/30	\$633,864	2019 Revenue - as of 6/30	\$509,756
2016 Expenses - as of 6/30	\$634,115	2017 Expenses - as of 6/30	\$680,073	2018 Expenses - as of 6/30	\$636,841	2019 Expenses - as of 6/30	\$608,089
Difference:	-\$30,841	Difference:	-\$60,049	Difference:	-\$2,977	Difference:	-\$98,333

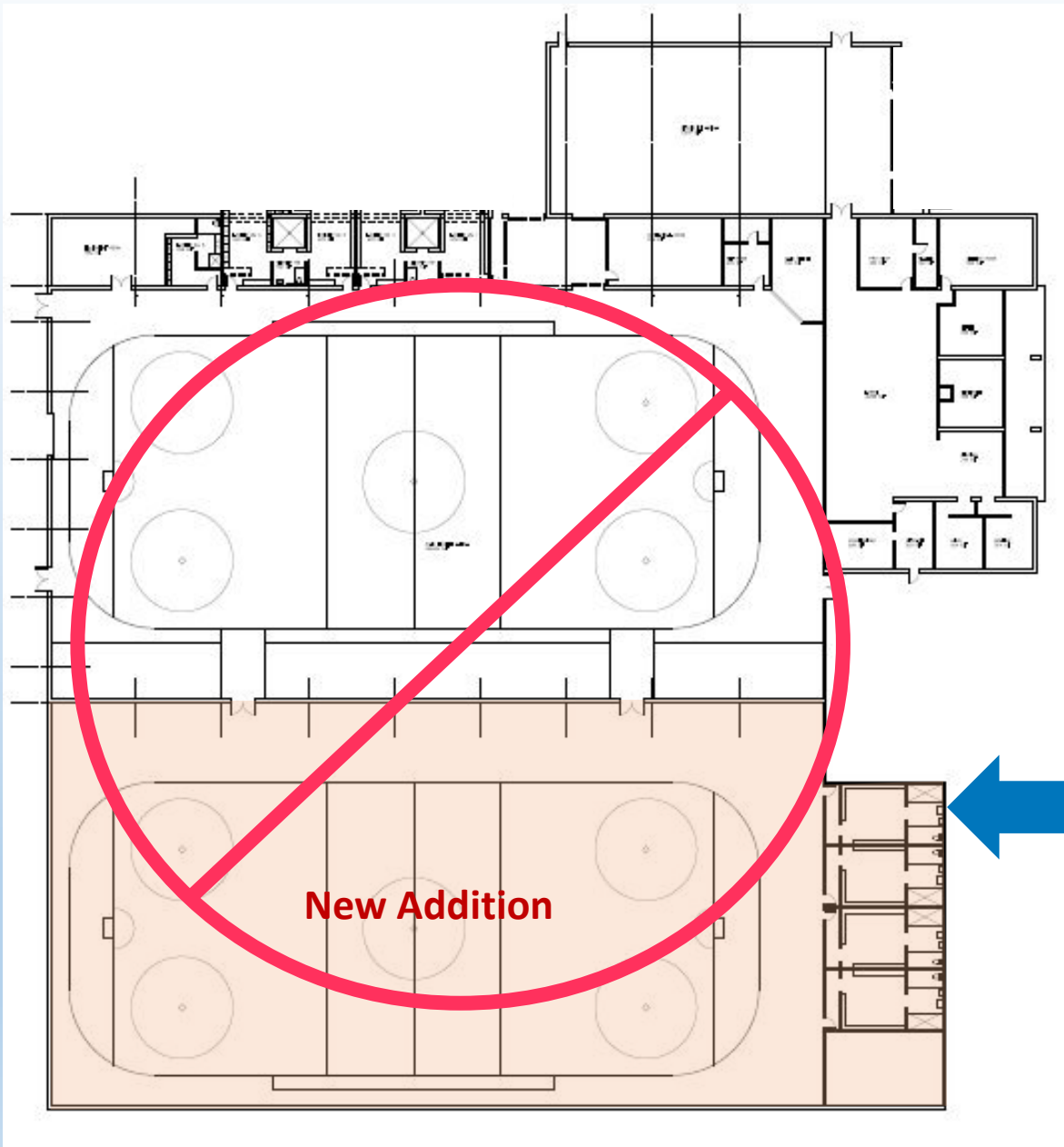
Electrical/Gas/Water	\$170,944	Electrical/Gas/Water	\$154,604	Electrical/Gas/Water	\$151,490	Electrical/Gas/Water	\$154,334
20% utility cost savings:	\$34,189	20% utility cost savings:	\$30,921	20% utility cost savings:	\$30,298	20% utility cost savings:	\$30,867

Other Revenue Generating Amenities
Summer Camps
Advertising
Team Locker room lease
Tournaments
Additional sales after 9pm
Additional sales before 3pm wk days
Extended season rentals

Average monthly revenue from rink rental only:	\$64,957
9-year average total revenue per month:	\$76,781
9-year average total expenses per month:	\$80,000
Difference:	-\$3,219



Birmingham Ice Sports Arena



Reasons not to pursue:

- Cost for new build
- Existing arena renovation costs still required
- Kenning Park site impacts: ball field & skate park
- Additional equipment costs
- Additional staff costs

30,000 s.f. Addition
Project Budget:

\$7,650,000 (includes
\$750K site development allocation)



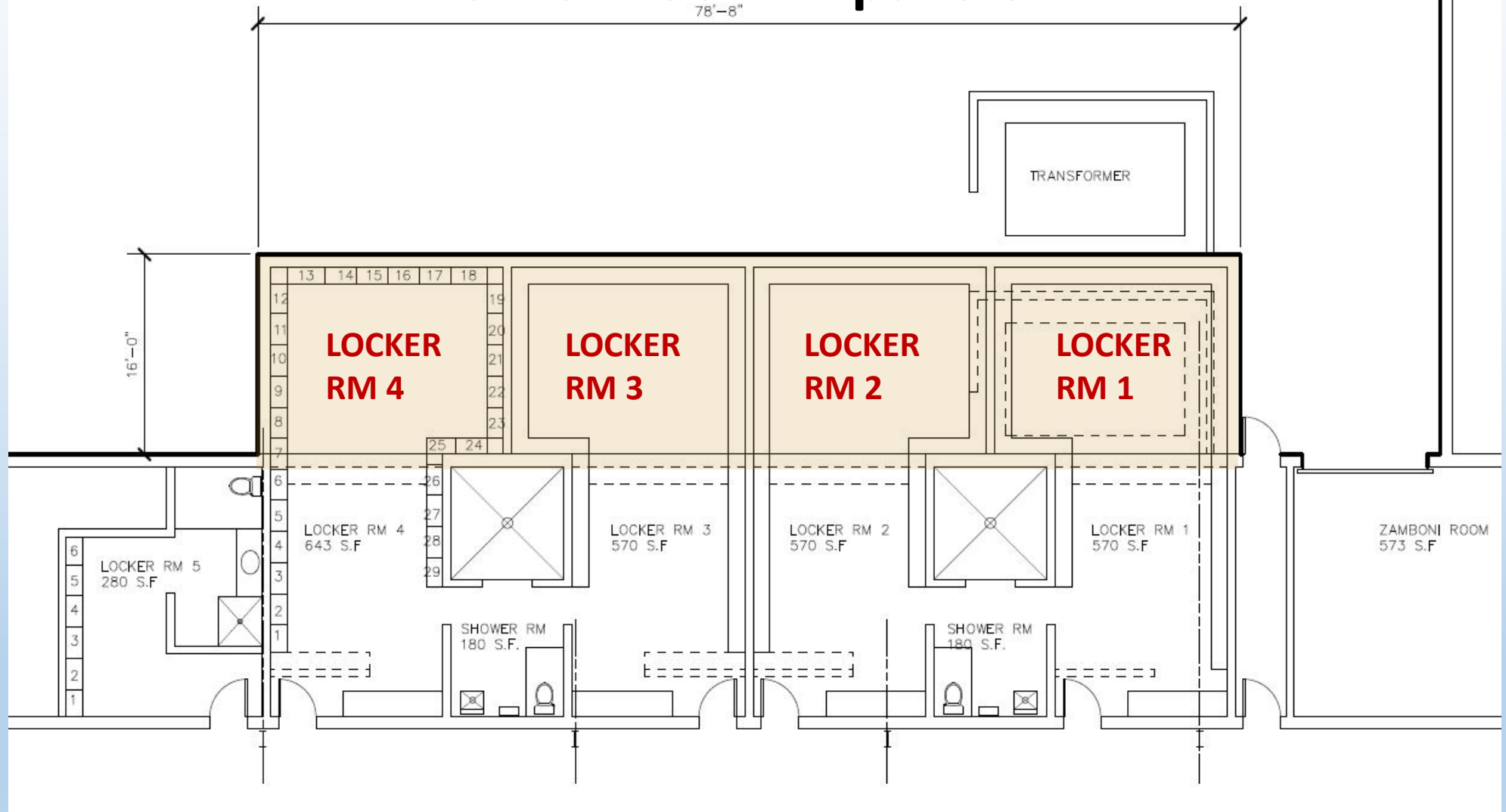
Recommendations & Considerations

- Replace Existing In-floor Cooling Piping
- Install a Sub-soil Heating System
- Replace Existing Ice Plant Equipment
- Replace Existing Arena Dehumidification System
- Relocate the Main Ice Arena to the East
- Provide Female Locker Room Facility
- Enlarge the Existing Main Ice Arena Locker Rooms
- Provide Team Locker Room
- Replace Lighting with LED Fixtures
- Provide a New Studio Rink Observation/Meeting Room
- Provide Revenue Generating Amenities



Birmingham Ice Sports Arena

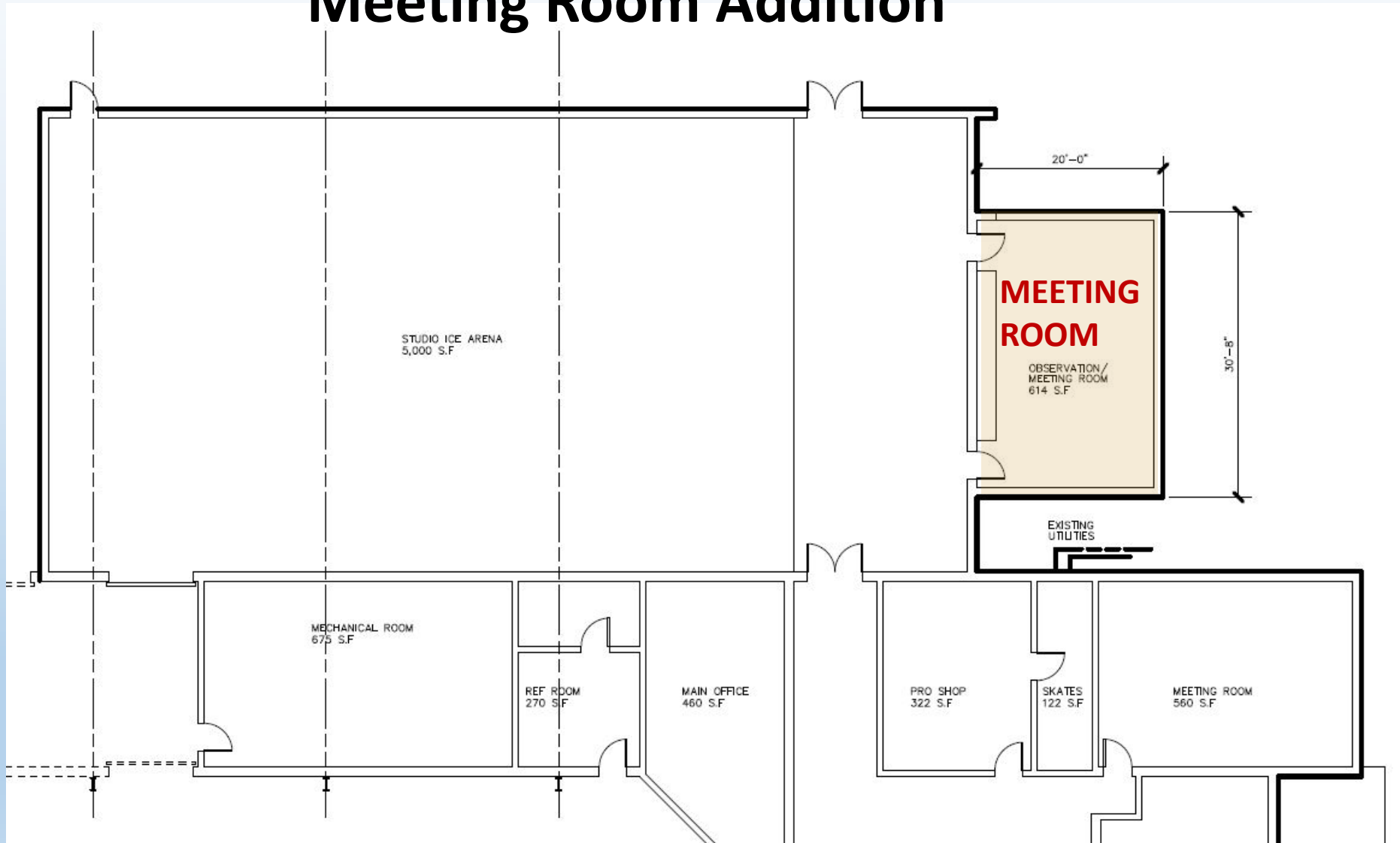
Locker Room Expansion





Birmingham Ice Sports Arena – Facility Needs

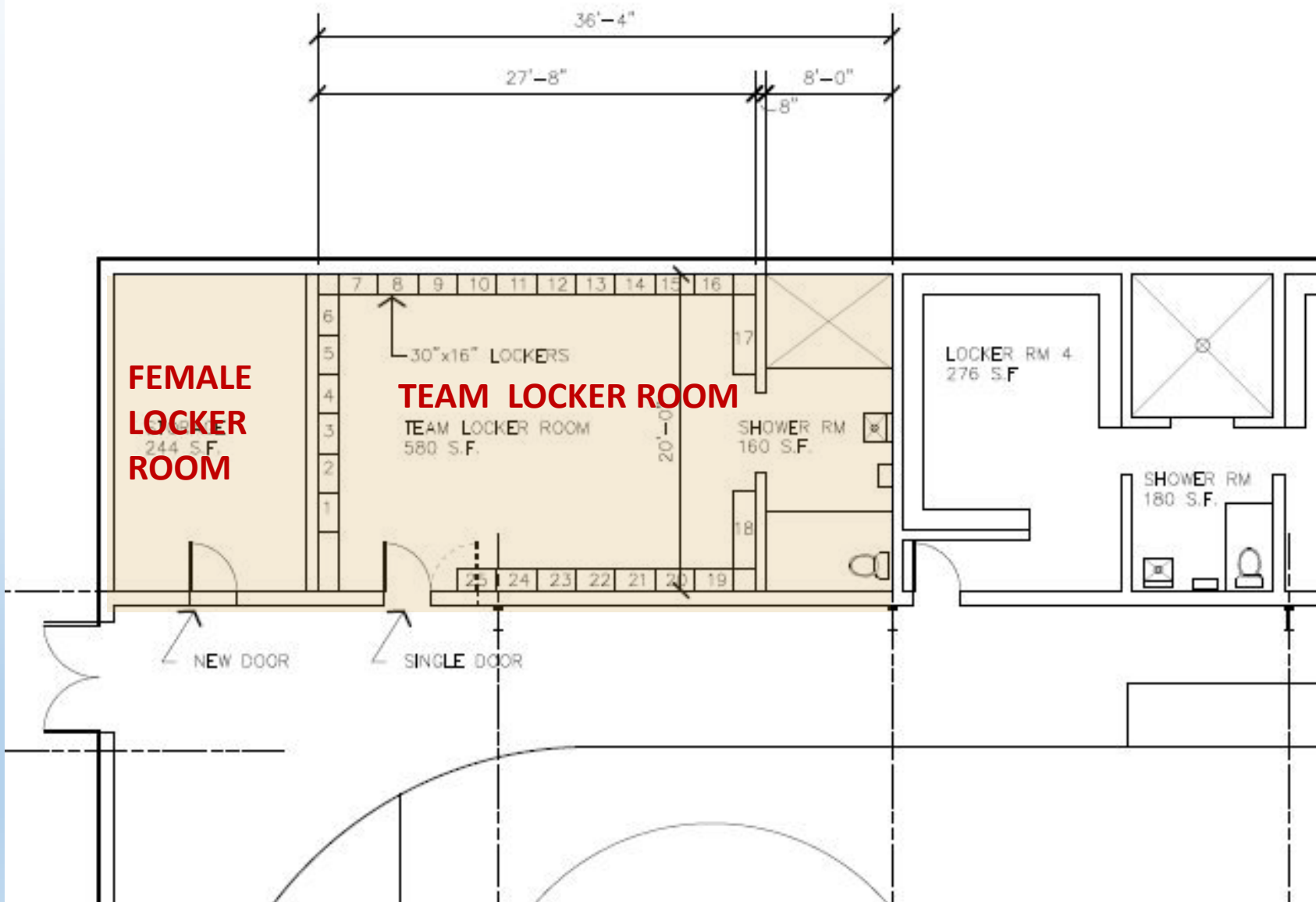
Meeting Room Addition





Birmingham Ice Sports Arena – Facility Needs

Female and Team Locker Rooms





Birmingham Ice Sports Arena – Team Lockers





Birmingham Ice Sports Arena – Key Factors

Reasons for Improving the CB Ice Sports Arena:

- Program needs not currently provided – locker rooms, meeting room
- Ozone depleting R-22 refrigerant is no longer manufactured
- Age of ice plant mechanical equipment
- Correct non complaint ADA issues
- Ability to extend ice rental season
- 70% CB community voter approval for Recreation Bond





Birmingham Ice Sports Arena – Community/Stakeholder Engagement

City of Birmingham, MI Parks & Recreation Master Plan Ice Arena Survey

156	n/a	9/28/2017 8:26 AM
157	Larger locker rooms, improved pro-shop, replace broken rink glass, off-ice training room	9/28/2017 8:02 AM
158	The locker rooms could use some upgrading	9/28/2017 6:20 AM
159	It is too cramped on the locker room side of the ice. The walkway to the locker rooms is far too narrow for dozens of kids carrying or wearing hockey gear to get to the locker rooms, and then the locker rooms are too small for a whole squad to dress.	9/27/2017 11:57 PM
160	locker rooms are vey small and need to be updated. the ice conditions seem to deteriorate very fast during an hour skate.	9/27/2017 7:22 PM
161	The locker rooms get so crowded at times that it is impossible to find a spot to change.	9/27/2017 7:05 PM
162	The metal floor at the base of the bleachers is very noisy (kids are constantly running back and forth on it) - different floor material? More space/privacy in locker rooms.	9/27/2017 5:27 PM
163	Larger locker rooms	9/27/2017 4:55 PM
164	Lockers rooms should be larger	9/27/2017 4:36 PM
165	While the rink is clean and well kept, I think the locker rooms are way too small. A real mirror in the bathroom seems like an easy upgrade. With the level of hockey and figure skating interest in the area, the city would be smart to look into adding a second full sheet of ice if they are doing any major improvements. Unlike outdoor parks, the rink could get revenue from the addition of another sheet of ice.	9/27/2017 4:24 PM
166	Ideally, we would have a full second sheet of ice, but at the least it should update the common areas and amenities now common at other suburban rinks.	9/27/2017 4:18 PM
167	Size of locker rooms, better ventilation in these rooms.	9/27/2017 4:15 PM
168	Walkway btwn rink and locker rooms	9/27/2017 4:11 PM
169	Screen for locker assignments and schedule of events (digital)	9/27/2017 4:09 PM
170	Larger locker rooms, pro shop	9/27/2017 4:02 PM
171	The space between the rink and the dressing room wall. Tight to pass thru.	9/27/2017 3:53 PM
172	Locker rooms...cleaned up and enlarged. There is not enough room to fit one hockey team.	9/27/2017 3:52 PM
173	Locker Rooms	9/27/2017 3:51 PM



Birmingham Ice Sports Arena – Community/Stakeholder Engagement

10-3-2017	Public open house to discuss future Birmingham Parks & Recreation needs (conducted by McKenna Associates)
10-2017	Public input - Ice arena survey issued
3-26-18	Adopted 2018 Parks and Recreation Master Plan, ice arena deficiencies – ice arena capital improvement plan page 87 based on stakeholder and public input
12-9-18	PMC preliminary cost break down email to the City of Birmingham:
12-11-18	PMC's 2018 City of Birmingham Ice Sports Arena Assessment Report issued Stakeholder input: City of Birmingham Parks & Recreation Staff Birmingham Unified Hockey Boosters Birmingham Hockey Association representation Birmingham Figure Skating Club
1-26-19	PMC Presentation to the Long-Range Planning Committee
3-21-19	Per the City Commissioner's input from the Long-Range Planning session, PMC provided a cost analysis for renovating vs building a new ice arena facility
11-12-19	Parks & Recreation Board Meeting– Lauren Wood stated need for \$5.1M ice arena improvements including refrigeration system replacement, locker room expansion, and other improvements
11-13-19	Next Door web site input
1-25-20	PMC Presentation to the Long-Range Planning Committee Power point presentation for the Parks & Recreation Bond Priorities: <ul style="list-style-type: none">• Ice Arena: \$5.1 Million• New refrigeration system needed• Locker room expansion/facilities upgrades
2-4-20	PMC Presentation to the Parks & Recreation Board at the Birmingham Ice Arena. Deficiencies were discussed with the board members and critical need items. Parks & Recreation members toured the facility
2-21-20	PMC issued a Long-Range Planning Committee Follow-up Letter outlining costs associates with renovations
3-27-20	PMC provided Potential Pre-Recreation Bond Ice Arena Projects and project cost summary
8-11-20	Parks & Recreation Board Meeting – community input and questions about bond program answered.



City of Birmingham web site



Birmingham Ice Sports Arena – Project Timeline

November 3, 2020 – CB voters approved Recreation Bond

November 4, 2020 – CB approved Plante Moran Cresa Amendment for Owner Representation Services

December 2, 2020 – Issued A/E RFP for Ice Arena Project

December 17, 2020 – Received A/E proposals

December 18, 2020 – Reviewed and graded A/E RFP utilizing a criteria-based-selection (CBS) process

December 22, 2020 – A/E Interviews – MSA, Andrus, IMEG

January 5, 2021 – CB Parks & Recreation update



Birmingham Ice Sports Arena – Schedule

Milestone Design and Construction Timeline Activities:

- Issue A/E Design Services RFP December 01, 2020
- A/E Design Services RFP Due Date December 17, 2020
- Anticipated A/E Interviews December 22, 2020
- A/E Contract Negotiations December 23, 2020 – January 04, 2021
- CB Parks & Recreation Meeting January 05, 2021
- CB Commission A/E Recommendation January 11, 2021
- A/E Kick-Off Meeting January 12, 2021
- Design Validation Phase January 12, 2021 – January 15, 2021
- Design Development Phase January 15, 2021 – February 9, 2021
- Owner Review of DD Documents February 9, 2021 – February 11, 2021
- Construction Document Phase February 11, 2021 – March 4, 2021
- Issue Documents for Bid March 10, 2021
- Receive Bids March 24, 2021 (2 weeks)
- Evaluate GC Bids, Interviews March 24, 2021 – March 30, 2021
- CB Commission GC Recommendation April 12, 2021
- GC Award April 13, 2021
- Mechanical Equipment Order April 13, 2021 – July 6, 2021 (12 weeks) *
- Construction and Administration Phase April 13, 2021 – November 8, 2021
- Owner Occupancy September 20, 2021

CITY OF BIRMINGHAM ICE SPORTS ARENA RENOVATION/ADDITION
REQUEST FOR PROPOSAL (RFP) – ARCHITECTURAL/ENGINEERING DESIGN SERVICES
ATTACHMENT B.2 – PRELIMINARY SCHEDULE
DECEMBER 2, 2020

Preliminary Schedule

The schedule descriptions below are intended to give a general overview of the program being considered by the Owner. Once engaged, the A/E firm will consult with the Owner, PMC, and the Owner's other Vendors to determine the phasing and delivery of the design and procurement. Once determined, a formal schedule will be drafted.

Milestone Design and Construction Timeline Activities:

- Issue A/E Design Services RFP December 2, 2020
- A/E Design Services RFP Due Date **December 17, 2020**
- Anticipated A/E Interviews (if required) Week of December 21, 2020
- A/E Contract Negotiations December 23, 2020 – January 4, 2021
- CB Parks & Recreation Meeting January 5, 2021
- CB Commission A/E Recommendation January 11, 2021
- A/E Kick-Off Meeting January 12, 2021
- Design Validation Phase January 12, 2021 – January 15, 2021
- Design Development Phase January 15, 2021 – February 9, 2021
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*A/E may assist the CB with issuing an early mechanical equipment bid package related to ice plant and dehumidification systems prior to General Contractor engagement.

B2-1

***A/E may assist the CB with issuing an early mechanical equipment bid package related to ice plant and dehumidification systems prior to General Contractor engagement.**



A/E Criteria Based Selection

- Similar Project Experience
- Team Member Resumes/Qualifications
- Plan & Approach
- Fee
- Team Member Experience Together
- References
- Interview
 - Staff and Management Approach
 - Team Dynamic/Interaction
 - Overall Presentation
 - Clarity of Responses
 - Cost Saving Opportunities

CITY OF BIRMINGHAM SPORTS ICE ARENA RENOVATION/ADDITIONS – A/E FIRM CRITERIA BASED SELECTION

The following is Plante Moran Cresa's recommendations relating to the A/E firm selection criteria and weighted factors for the City of Birmingham Sports Ice Arena Renovation/Additions Project. Information from each firm's proposal will be reviewed and scored according to the criteria definitions as listed below for reference. Firms must meet minimal qualifications established. Interviews will be conducted with the three (3) firms with the highest score for the project RFP response.

Once interviews are completed, the Quantitative Score (with a weighted factor of 60%) will be combined with the short listed firm's Reference Review score (with a weight factor of 10%) and the Interview Score (with a weight factor of 30%). The Design Consultant firm with the highest score will be recommended for award.

CITY OF BIRMINGHAM SPORTS ICE ARENA RENOVATION/ADDITIONS – A/E FIRM RFP RESPONSE EVALUATION CRITERIA

3 points max.

CB SPORTS ICE ARENA RENOVATION/ADDITIONS A/E FIRM EVALUATION CRITERIA	SCORE (POINTS)	WEIGHT FACTOR	WEIGHTED SCORE
1. SIMILAR PROJECT EXPERIENCE	25		0
2. TEAM MEMBER RESUMES/QUALIFICATIONS	20		0
3. QUALITY AND THOROUGHNESS OF THE RESPONSE	15		0
4. PLAN & APPROACH	15		0
5. FEE	15		0
6. TEAM MEMBERS EXPERIENCE TOGETHER	10		0
TOTAL		100.00	0.00

CITY OF BIRMINGHAM SPORTS ICE ARENA RENOVATION/ADDITIONS – SHORT LISTED A/E FIRM REFERENCE REVIEW

3 points max.

CB SPORTS ICE ARENA RENOVATION/ADDITIONS SHORT LISTED A/E FIRM REFERENCE REVIEW	SCORE (POINTS)	WEIGHT FACTOR	WEIGHTED SCORE
REFERENCES	100		0

CITY OF BIRMINGHAM SPORTS ICE ARENA RENOVATION/ADDITIONS – A/E FIRM INTERVIEW EVALUATION CRITERIA

3 points max.

CB SPORTS ICE ARENA RENOVATION/ADDITIONS SHORT LISTED A/E FIRM INTERVIEW REVIEW	SCORE (POINTS)	WEIGHT FACTOR	WEIGHTED SCORE
1. STAFF AND MANAGEMENT APPROACH	25		0
2. TEAM DYNAMIC/INTERACTION	25		0
3. OVERALL PRESENTATION	20		0
4. CLARITY OF RESPONSES	20		0
5. COST SAVING OPPORTUNITIES	10		0
TOTAL		100.00	0.00

RFP Score	0.00	60.00	0.00
Reference Score	0.00	10.00	0.00
Interview Score	0.00	30.00	0.00
Total Score	0.00	100.00	0.00

plante moran cresa
1991 11000 11000 11000



Birmingham Ice Sports Arena – A/E Recommendation

Andrus Architecture

- 26 Ice Arena Projects, 8 States
- Similar project experience
- Robert Andrus, AIA, NCARB, US Rink Assoc. Member – Main point of contact
- Lowest Fee
- Comprehensive Engineers (MEP) & B32 Engineering Group (Ice Plant)
- B32 Engineers – over 250 ice rink projects since 1997



December 29, 2020

Ms. Lauren Wood
City of Birmingham
Director of Public Services
851 South Eton Street
Birmingham, MI 48009

via e-mail: lwood@bhamgov.org

RE: City of Birmingham Ice Sports Arena Renovation and Additions A/E Consultant Recommendation

Dear Ms. Wood:

This letter is to update you on Plante Moran Cresa's (PMC) progress in our assignment to assist and advise the City of Birmingham (CB) in the selection of a Design Consultant firm for the CB Sports Ice Arena Renovation/Additions Capital Improvement Project (Project). The CD's Parks & Recreation Department and Plante Moran Cresa (Project Team) solicited and received proposals from three (3) qualified Architecture/Engineering (A/E) consultant firms.

SELECTION PROCESS

This letter communicates the results of the independent Criteria Based Selection (CBS) process the Project Team were directed to conduct in accordance with our engagement, as well as the resulting recommendation for selecting a A/E consultant firm for the Project.

PMC formulated a Criteria Based Selection (CBS) process to evaluate the submissions of each of the A/E consultant firms. A CBS process uses pre-established and weighted criteria to objectively evaluate and score the proposals and provide recommendations for awarding contracts. PMC conducted an initial CBS process with the information obtained from the RFP responses received on December 17, 2020. Each of the three A/E firms were interviewed on December 22, 2020 and scored based on the CBS criteria.

RECOMMENDATION

The Project Team believes that each of the three A/E firms that responded to the RFP are qualified and capable of meeting the Project's requirements, however, the CBS process presents **Andrus Architecture** as the top firm based on their scoring of each of the RFP and interview CBS criteria. This recommendation is in large part due to Andrus's resume of experience of similar projects, team member resumes, knowledge of ice plant equipment, energy saving opportunities and lowest overall cost. Based on the results of the CBS process, the Project Team recommends awarding the Consultant contract for the CB Ice Sports Arena Renovation/Additions Capital Improvement Project to **Andrus Architecture** in the amount of \$286,900.00 with the a not to exceed reimbursable expense of \$2,000.00. The cost of this work will be detailed in a contract pending final review and approval of terms by the CB legal counsel.

2740C Northvaster Highway, Southfield, MI 48034 Tel 248 223.3520 Fax 248 223.3150 www.pmcresa.com



plante moran | cresa

Plante Moran Cresa

27400 Northwestern Highway | Southfield, MI 48034

PMCRESA.COM

**CITY OF BIRMINGHAM ICE SPORTS ARENA RENOVATION/ADDITION
REQUEST FOR PROPOSAL (RFP) – ARCHITECTURAL/ENGINEERING DESIGN SERVICES
ATTACHMENT B.2 – PRELIMINARY SCHEDULE
DECEMBER 2, 2020**

Preliminary Schedule

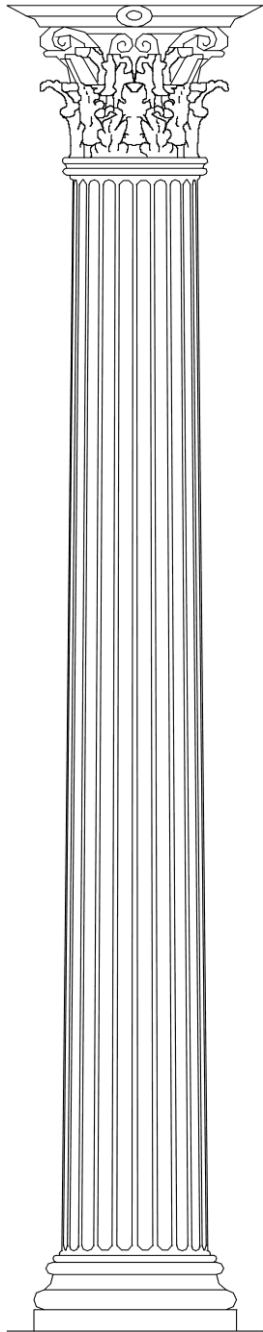
The schedule descriptions below are intended to give a general overview of the program being considered by the Owner. Once engaged, the A/E firm will consult with the Owner, PMC, and the Owner's other Vendors to determine the phasing and delivery of the design and procurement. Once determined, a formal schedule will be drafted.

Milestone Design and Construction Timeline Activities:

• Issue A/E Design Services RFP	December 2, 2020
• A/E Design Services RFP Due Date	December 17, 2020
• Anticipated A/E Interviews (if required)	Week of December 21, 2020
• A/E Contract Negotiations	December 23, 2020 – January 4, 2021
• CB Parks & Recreation Meeting	January 5, 2021
• CB Commission A/E Recommendation	January 11, 2021
• A/E Kick-Off Meeting	January 12, 2021
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***A/E may assist the CB with issuing an early mechanical equipment bid package related to ice plant and dehumidification systems prior to General Contractor engagement.**

Andrus Architecture



15 December 2020

Carrie Laird, Parks and Recreation Manager
City of Birmingham
851 S. Eton
Birmingham, MI 48009

Tel: 248.530.1800
Email: claird@bhamgov.org

Re: City of Birmingham Ice Sports Arena Renovations and Additions
Birmingham, MI
AA File: 20-094

Carrie,
Andrus Architecture is a service oriented architectural firm specializing in ice rinks, is licensed to practice in all 50 states plus the District of Columbia and possess the unique design and technical expertise necessary to deliver quality ice rink facilities that are aesthetically pleasing and functional as well as efficient to manage and maintain resulting from the following experience:

Current / Recent Ice Rink Projects

Atlantic Sports Center

Amesbury, Massachusetts

Boca Ice and Fine Arts Center

Boca Raton, Florida

Ice Rinks In Fundraising

Miami Sportscenter

Miami, Florida

Greenwood Sportsplex

Greenwood, Indiana

11629 Northland Drive
Suite 200
Rockford, MI 49341
616.863.8850
andrusarchitecture.com

Built Ice Rinks

New York Islanders Practice

Nassau County, New York

Avon Old Farm School Ice

Avon, Connecticut

The Pond Hockey Club

Austin, Texas

USA Hockey Arena

Plymouth, Michigan

Northwell Health Twin Rinks at Eisenhower Park

Nassau County, New York

Dix Hills Recreation Complex

Huntington, New York

Flint Firebirds Team Suite

Flint, Michigan

Saginaw Spirits Team Suite Addition

Saginaw, Michigan

Bowie Ice Center

Bowie, Maryland

The NHL Skate*

Birch Run, Michigan

USA Hockey at the Cube *

Ann Arbor, Michigan

Compuware Sports Arena*

Plymouth, Michigan

Georgetown Ice Center

Hudsonville, Michigan

Eddie Edgar Ice Center

Livonia, Michigan

Nelson Recreation Ice

Springfield, Illinois

Walker Ice & Fitness*

Walker, Michigan

Valley Ice Garden*

Bozeman, Montana

Wayne State University Ice Rink*

Detroit, Michigan

A2 Ice3 (The Ice Cube)*

Ann Arbor, Michigan

Big Bear Arena*

Sault Ste. Marie, Michigan

Patterson Ice Center*

Grand Rapids, Michigan

Twin Star Ice Center

Kalamazoo, Michigan

Tupper Lake Civic Center*

Tupper Lake, New York

East Kentwood High School*

East Kentwood, Michigan

** Personal Project Architect experience of Robert Andrus*

Preliminary Ice Rinks (Partial List- full list includes over 50 facilities)

Protech Hockey Ponds (Completed CD's)

Somerset, New Jersey

Metairie Ice and Gymnastics (Completed CD's)

New Orleans, Louisiana

Cayman Ice Palace

Grand Cayman Island

Detroit Catholic Central Ice

Novi, Michigan

Bridgewater Sports Arena

Bridgewater, New Jersey

Southampton Youth Ice

Southampton, New York

Legends at Sparks Marina Ice Center

Reno, Nevada

California State University- San Marcos

San Marcos, California

East Aurora (Buffalo) Ice Complex

East Aurora, New York

Southern Nevada Ice House

Las Vegas, Nevada

Ukraine Ice

Kiev Ukraine

Ice Rink Design Consultant

Broome Community College Arena

Binghamton, New York

Assen Sporthal*

Drenthe Providence, Netherlands

Bowie Sports Complex

Bowie, Maryland

** Personal Project Architect experience of Robert Andrus.*

Ice Rink Design Awards

2005 Associated Builders & Contractors, Inc. Award for Georgetown Ice Center- Owner submission

2010 Long Island Municipal Project of the Year for Dix Hills Recreation Center- Contractor submission

Recent References

Scott Monaghan	USA Hockey Natl. Devel. Program	734.453.6400	scottm@usahockey.org
Walter Imperatore	Renaissance Property (NY Islanders)	516.695.1631	walter.imperatore@rpali.com
Jim Cain	Firland Management	630.222.6643	JCain@icerinks.com
Tim Best	Cayman Ice Palace	519.777.7180	canadasbest@msn.com

Ice Rink Expert Testimony

Simon v. Windy City Sports

Chicago, IL (defense- stick in boards)

Granger v. Lake Charles Hockey

Lake Charles, LA (plaintiff- puck in stands)

Shankles vs. Sacramento Ice

Sacramento, CA (plaintiff- ice melted)

Wagner vs. Leo's Iceland

Baton Rouge, LA (defense- trip on threshold)

Blumhagen v. City of Ames

Ames, IA (plaintiff- puck in stands)

Costella v. RSCVA

Reno, NV (plaintiff-puck in stands)

Turczyn v. City of Glendale

Glendale, AZ (plaintiff- stick in fencing)

Kacsmarik v. Lakefront Lines Arena

Cleveland, OH (defense- step on spectator)

Northside Holdings v. Mauti

Toronto (plaintiff- a/e design)

Professional Work History

Before founding Andrus Architecture in 1999, Robert was the Project Architect of DTS Architects managing all ice rink projects and was a project manager at Concept Design Group, MHB (now Paradigm) Design Group and The University of Michigan Hospitals.

Education

Bachelor Degree of Science in Architecture, University of Michigan, 1987

Master's Degree of Architecture, University of Michigan, 1989

Architectural License Registrations

Robert Andrus is licensed to practice Architecture in all 50 states and the District of Columbia and has designed built facilities in over 30 states.

Affiliations/ Community Service

American Institute of Architects Member
National Council of Architectural Registration Board Certified
US Ice Rink Association Member
North Kent Service Center- Past President
Rotary Intl.- Past President, Youth Exchange Officer
Kendall College- Former Adjunct Professor
Former double hockey goalie father

Andrus Architecture will integrate the experience gained on these facilities with your specific program needs to help create the facility of your desires and budget. Robert Andrus, principal of Andrus Architecture, will be your single-source of responsibility and communication throughout the project.

Thank you for the opportunity to submit our credentials. Please contact us with any questions or if we can be of any assistance.



Robert E. Andrus, AIA, NCARB, US Ice Rink Association Member
Andrus Architecture, Inc.

**CITY OF BIRMINGHAM ICE SPORTS ARENA RENOVATION/ADDITIONS
REQUEST FOR PROPOSAL (RFP) – ARCHITECTURAL/ENGINEERING DESIGN SERVICES
ATTACHMENT D.1 – BID PROPOSAL FORM
DECEMBER 2, 2020**

Andrus Architecture _____ (Firm Name) Proposes to provide Professional Architecture and Engineering Services to City of Birmingham ("Owner") for the Ice Sports Arena Renovation/Additions Project ("Project") as follows:

City Of Birmingham - Ice Sports Arena Renovation/Additions Project

The Project will include new construction with a total construction "Cost of Work" budget of approximately \$4.2M. This amount is inclusive of all hard construction costs.

1. For Scope of Services as described and required in the Request for Proposal and AIA B101-2017 as modified:

Fee for Schematic Design Phase Services is a Lump Sum Fee of \$27,000/43,500

Fee for Design Development Phase Services is a Lump Sum Fee of \$36,000/46,200

Fee for Construction Documents Phase Services is a Lump Sum Fee of \$72,000/99,200

Fee for Construction Admin Phase Services is a Lump Sum Fee of \$45,000/80,500

Total Base Bid Lump Sum Fee \$180,000/269,400

All Proposals submitted may not be withdrawn and shall be irrevocable for a minimum period as defined in this RFP.

1. For Scope of Services as described and required in the Request for Proposal and AIA B101-2017 as amended:

Total Percentage Fee for Complete Design Services 4%/6% of Cost of the Work

2. Add Alternates:

a. Lump Sum Fee for Design Development Estimate Services \$10,000

b. Lump Sum Fee for FF&E Planning and Procurement Services \$7,500

3. Reimbursables

Provide a list of items for which you would require reimbursement and the percentage mark-up, if any, which you would add to reimbursable expenses. In addition, please provide a not-to-exceed allowance for reimbursable expenses on this project. Please refer to AIA B101-2017 as amended, Article 11 for clarifications on allowable reimbursable expenses.

Not-to-exceed Reimbursable Allowance \$2,000

**CITY OF BIRMINGHAM ICE SPORTS ARENA RENOVATION/ADDITIONS
REQUEST FOR PROPOSAL (RFP) – ARCHITECTURAL/ENGINEERING DESIGN SERVICES
ATTACHMENT D.1 – BID PROPOSAL FORM
DECEMBER 2, 2020**

4. Subconsultants

In the event additional consultants are required to complete this Project, please state your percentage mark-up, if any, for including the services of additional consultants under your primary contract.

0%

5. Standard of Care

As described in Article 12.3 of AIA B101-2017 as amended.

0%

6. If selected as Architect/Engineer, I agree to the contractual terms as provided in the RFP.

☒ Yes ☐ No (if "No", please note *specific* proposed alternate language on a separate page.)

I have read and I understand the responsibilities required of the Architect/Engineer under the terms of this Request for Proposal and the proposed Agreement. If selected, our company will be able to fulfill the requirements.

SIGNATURE

Dated this 14th day of December, 2020.

Company Name: Andrus Architecture

By: [Signature]
Signature

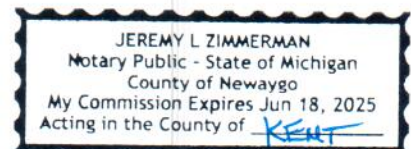
Position/Title: President

_____, being duly sworn, deposes and says that the information provided herein is complete so as not to be misleading.

Subscribed and sworn before me this 14th day of December, 2020.

Notary Public: [Signature]

My Commission Expires: 18 JUNE 2025





AIA[®] Document B101[™] – 2017

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the Twelfth day of January in the year Two Thousand Twenty One.
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

City of Birmingham
851 S. Eton
Birmingham, Michigan 48009

and the Architect:
(Name, legal status, address and other information)

Andrus Architecture, Inc.
11629 Northland Drive NE; Suite 200
Rockford, Michigan 49341
(616) 863-8850

for the following Project:
(Name, location and detailed description)

City of Birmingham - Ice Sports Arena Renovation/Additions
2300 East Lincoln
Birmingham, Michigan 48009

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Init.

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User Notes:

(1499687012)

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6	COST OF THE WORK
7	COPYRIGHTS AND LICENSES
8	CLAIMS AND DISPUTES
9	TERMINATION OR SUSPENSION
10	MISCELLANEOUS PROVISIONS
11	COMPENSATION
12	SPECIAL TERMS AND CONDITIONS
13	SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

As set forth in the Owner's Request for Proposal dated December 2, 2020 (the "RFP").

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

As set forth in the Owner's Request for Proposal dated December 2, 2020 (the "RFP").

§ 1.1.3 The Owner's Stated Limitation on the Cost of the Work (SLCW) is set forth below. The SLCW shall include the Cost of the Work, as defined in Article 6 of this Agreement, as well as all other elements of the Project for which the Architect has responsibility (furnishing, fixtures, equipment, etc.). Any services provided under this Agreement are subject to the SLCW as specified below. In the absence of an express provision to the contrary in this Agreement, the Architect shall perform the required services in a manner that will render a Cost of the Work for the Project that does not exceed the most current Owner-approved SLCW. Subject only to written amendment at the Owner's sole discretion, the SLCW shall be:

(Provide total and, if known, a line item breakdown.)

As set forth in the Owner's Request for Proposal dated December 2, 2020 (the "RFP").

§ 1.1.4 Subject to amendment by the Owner, the Project's design milestones and anticipated construction milestone dates shall be:

.1 Design Phase Milestone dates, if any:

Commence Schematic Design:	January, 2021
Complete Schematic Design:	January, 2021
Start Design Development:	January 15, 2021
Complete Design Development:	February 9, 2021
Start Construction Documents:	February 11, 2021
Complete Construction Documents:	March 4, 2021

In the event that Construction Documents are to be issued in multiple bid packages, the Architect shall coordinate its services with the Owner's General Contractor to satisfy the bid package publication dates. The Architect shall submit for the Owner's written approval a schedule, in accordance with the Design Phase Milestones, for the performance of the Architect's services and, following Owner's approval, shall only be adjusted by mutual agreement as the Project proceeds. The schedule shall include adequate allowances for the time required for the Owner's reviews, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by the schedule and accepted by the Owner shall not, except for reasonable cause, be exceeded by the Architect.

.2 Construction commencement date:

April 13, 2021

.3 Substantial Completion date or dates:

September 20, 2021

.4 Other milestone dates:

Early mechanical equipment bid document preparation, bidding and ordering – to be determined.

§ 1.1.5 Subject to amendment by the Owner, at the Owner's discretion, the Project's intended procurement and delivery method for the Project is:

(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)

As set forth in the Owner's Request for Proposal dated December 2, 2020 (the "RFP").

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:

(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

To be determined.

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Architect may complete and incorporate AIA Document E204™–2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E204–2017 is incorporated into this Agreement, the Owner and Architect shall incorporate the completed E204–2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 The Owner identifies the following representatives:

(List name, address, and other contact information.)

.1 Owner's Designated Representative

The Owner identifies the following individual as its Owner's Designated Representative. The Owner may change the designated representative upon written notice to the Architect; and the Owner may modify the scope of authority of the designated representative in like manner.

Carrie Laird, Parks and Recreation Manager
City of Birmingham
851 S. Eton
Birmingham, Michigan 48009

.2 Owner's Representative Consultant.

The Owner has engaged Plante & Moran Cresa, L.L.C. (PMC) as an Owner's Representative Consultant on the Project. The Architect shall keep the Owner and PMC informed in matters regarding the Project. Unless otherwise provided in this Agreement or specifically authorized by the Owner, the Owner's Representative Consultant is not authorized to commit the Owner in matters regarding changes in the Work, Construction Schedule, or grant approval on behalf of the Owner. The Owner and/or the Owner's Designated Representative have the sole right to make decisions in matters regarding the Project. The following individual, subject to change upon written notification to the Architect, shall be primary contact for the Owner's Representative Consultant:

Robert Stempien, AIA, Sr. Vice President
 Plante Moran Cresa
 3000 Town Center; Suite 100
 Southfield, MI 48075
 Direct Dial: 248.603.5252; Mobile: 248.766.0996
 robert.stempien@plantemoran.com

.3 Reviews.

Unless otherwise directed by the Owner in writing, the Architect shall provide the Owner's Designated Representative and Owner's Representative Consultant copies of all documents for the Owner's review or consideration.

§ 1.1.8 The persons or entities, in addition to the Owner's representatives, who are required to review the Architect's submittals to the Owner are as follows:

(List name, address, and other contact information.)

- .1 The Owner's Designated Representative set forth in Section 1.1.7.1
- .2 The Owner's Representative Consultant set forth in Section 1.1.7.2

§ 1.1.9 The Owner shall retain the following consultants and contractors:

(List name, legal status, address, and other contact information.)

- .1 Civil Engineer:
 Nowak & Fraus Engineers
 46777 Woodward Ave.
 Pontiac, MI 48342-5032
 248 332-7921

.2

(Paragraphs deleted)

Other, if any:

(List any other consultants and contractors retained by the Owner.)

None.

§ 1.1.10 The Architect identifies the following representative in accordance with Section 2.3:

(List name, address, and other contact information.)

Robert Andrus, Architect and Owner
 11629 Northland Drive NE; Suite 200
 Rockford, Michigan 49341

§ 1.1.11 As part of its Basic Services, the Architect shall retain the following consultants:

- .1 Civil Engineer:
 Not applicable.
- .2 Structural Engineer:
 Hoffman Consultants, LLC – Tim Hoffman, Engineer and Owner

4180 44th Street SE Suite G
Kentwood, Michigan 49512
616 827-1586

- .3 HVAC/Electrical/Plumbing Engineer:
Comprehensive Engineering, Ken Reigler & John Corrigan, Owners
4653 Plainfield Ave. NE
Grand Rapids MI 49525
616 365-9933

- .4 Other, if any:
(List any other consultants and contractors retained by the Architect.)
Ice Plant Engineer – Scott A. Ward, PE, President
B32 Engineering Group
2211 O'Neil Road
Hudson WI 54016
651 256-3090

(Paragraphs deleted)

§ 1.1.12 Other Initial Information on which the Agreement is based:

As set forth in the Owner's Request for Proposal dated December 2, 2020 (the "RFP").

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect may, when appropriate, agree in writing to adjust the terms of this Agreement accordingly. The Owner, in its sole discretion, may adjust the SLCW and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information. The Owner and the Architect shall cooperate with one another to fulfill their respective obligations under this Agreement. Both parties shall endeavor to maintain good working relationships among all members of the Project team.

§ 1.3 Without in anyway limiting or restricting the Owner's rights or use of the Instruments of Service, the parties shall agree upon protocols governing the transmission of Instruments of Service or any other information or documentation in digital form.

§ 1.3.1 NOT USED

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the highest professional skill and care provided by architects practicing nationally under the same or similar circumstances. The Architect shall perform its services expeditiously and in accordance with the Section 1.1.4. Nothing in this Agreement shall be construed to eliminate or diminish the Architect's responsibility for compliance of its design, its Construction Documents, and its services with applicable local, state, and federal statutes, and regulations.

- .1 The Architect represents that the Architect's services and Instruments of Service shall strictly comply with all applicable federal, state, and local laws, codes, regulations, and ordinances as they are in effect as of the time the construction and building permit is issued.
- .2 The Architect agrees and acknowledges that this duty is non-delegable and that the Architect, by signing drawings or preparing Construction Documents to submit for the bidding or for the purpose of obtaining building and other governmental permits, shall be deemed to certify that it has taken reasonable measures to ascertain what codes apply to the Project and has applied them accordingly.

§ 2.3 The Architect's representative identified in Section 1.1.10 is authorized to act, and fully bind the Architect and commit the Architect's resources, on behalf of the Architect with respect to the Project.

Init.

§ 2.3.1 The Architect’s key team members are:
(List of key staff members assigned to the Project and their respective roles)

Team Member Name	Assignment
Robert Andrus	Senior Architect
Tim Hoffman	Engineer, Structural Engineering
Ken Reigler & John Corrigan	MEP Engineers
Scott A. Ward, PE	Engineer, Ice Plant

Architect agrees to assign the above listed key team members to the Project. The services of the Architect are deemed to be personal in nature as to these key team members and that the continuity in the Project’s team is valuable to the Owner and that damages due to the disruption to the continuity of the Project team is extremely difficult if not impossible to ascertain. Architect shall promptly notify the Owner if services of any one of the listed team members become unavailable due to circumstances beyond the Architect’s control – e.g., extended illness or disability, death, or termination of employment, etc. Owner shall have the right to interview and select alternate team member(s) employed by the Architect to replace the unavailable team member. Architect shall agree to provide the services of the alternate team member(s) selected by Owner. Architect is not entitled to additional compensation for any such substitution(s) of the Project team members. In addition to any other remedy by the Owner, Owner may require Architect to surrender ten percent (10%) of Architect’s compensation or time authorized under this Agreement (Replacement Reduction) for each key team member replaced for reasons other than those due to circumstances beyond the Architect’s control. The Architect hereby waives the argument that the Replacement Reduction is equivalent to the assessment of a penalty. The Architect acknowledges that the Replacement Reduction described herein is a fair and reasonable estimate of the damages, which the Owner is expected to suffer in the event of such a disruption to the continuity of the Project Team. Owner may deduct the Replacement Reduction from any unpaid amount then or thereafter due to the Architect under the Agreement. Any Replacement Reduction not so deducted from any unpaid amounts due Architect shall be immediately due and payable to Owner upon demand.

§ 2.4 Except with the Owner’s prior knowledge and written consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect’s professional judgment with respect to this Project.

§ 2.5 Insurance. The Architect and, unless otherwise agreed to by the parties in writing, the Architect’s consultants and subconsultants shall maintain the following insurance at no additional cost to the Owner. Insurance carriers providing the required insurance policies shall be authorized by the State of Michigan, have an A.M. Best’s Rating of "A" or better, and be acceptable to the Owner. The Architect shall notify the Owner if, during the required coverage period, any of the required coverage either becomes unavailable or the Architect’s coverage deviates, or limits are eroded, from the requirements set forth under this Agreement. In addition to the Architect, the Architect’s consultants shall maintain insurance in accordance with the requirements of this Section 2.5.

§ 2.5.1 Commercial General Liability with policy limits of not less than One Million and No / 100 Dollars (\$ 1,000,000.00) for each occurrence and Two Million and No / 100 Dollars (\$ 2,000,000.00) in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million and No / 100 Dollars (\$ 1,000,000.00) per person and per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.5.4 Workers’ Compensation at statutory limits.

§ 2.5.5 Employers' Liability with policy limits not less than One Million and No / 100 Dollars (\$ 1,000,000.00) each accident, One Million and No / 100 Dollars (\$ 1,000,000.00) each employee, and One Million and No / 100 Dollars (\$ 1,000,000.00) policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than One Million and No / 100 Dollars (\$ 1,000,000.00) for each claim and Two Million and No / 100 Dollars (\$ 2,000,000.00) in the aggregate.

§ 2.5.7 Additional Insured Obligations. To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner and Plante & Moran Cresa, L.L.C. as additional insureds for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.5.7 a. The entire amount of Contractor's liability insurance policy coverage limits, identified in the policy and on the Certificate of Insurance, must, under the policy, be available to pay damages for which the insured Contractor becomes liable, or for which the insured assumes liability under the indemnity agreement herein contained, and such coverage amount shall not be subject to reduction or set off by virtue of investigation or defense costs incurred by Contractor's insurer.

§ 2.5.7 b. The entire amount of the Contractor's liability insurance policy coverage limits shall be payable by the Contractor's insurer, with no deductible to be paid by, or self-insured retention to be attributed to, the Contractor unless this requirement is waived by the Owner. Contractor's insurance policy shall be primary to any policies carried by the Owner. Contractor is not permitted to be self-insured for the policies required by Section 11.1. Contractor's Certificate of Insurance must set forth the nature and amount of any such deductible or self-insured retention.

§ 2.5.7 c. If Contractor's liability insurance coverage is subject to any exclusions, reduction of policy limits or limitations not common to the type of coverage being provided, such exclusions or limitations shall be noted on the Certificate of Insurance.

§ 2.5.7 d. In the event that any of the policies of insurance or insurance coverage identified on the Contractor's Certificate of Insurance are canceled or modified, or in the event that Contractor incurs liability losses, either due to activities under this Contract, or due to other activities not under this Contract but covered by the same insurance, and such losses exhaust the aggregate limits of Contractor's liability insurance, then in that event the Owner may in its discretion either suspend Contractor's operations or activities under this Contract or terminate this Contract, and withhold payment for work performed on the Contract.

§ 2.5.7 e. The maintenance in full current force and effect of such form and amount of insurance as Owner shall have accepted, shall be a condition precedent to the Contractor's exercise or enforcement of any rights under the Contract.

§ 2.5.7 f. If the Contractor fails to purchase and maintain, or require to be purchased and maintained, any insurance required under this Article 11, the Owner may, but shall not be obligated to, upon five (5) days' written notice to the Contractor, purchase such insurance on behalf of the Contractor and shall be entitled to be reimbursed by the Contractor upon demand. Upon purchase of such insurance, the Owner shall issue and the Contractor shall execute a Change Order reducing the Contract Sum or Guaranteed Maximum Price by the cost of the insurance. The Contractor shall furnish all necessary information to incept and maintain such Replacement Insurance.

§ 2.5.7 g. When any required insurance, due to the attainment of a normal expiration date or renewal date, shall expire, the Contractor shall supply the Owner with Certificates of Insurance and amendatory riders or endorsements that clearly evidence the continuation of all coverage in the same manner, limits of protection, and scope of coverage as was provided by the previous policy. In the event any renewal or replacement policy, for whatever reason obtained or required, is written by a carrier other than that with whom the coverage was previously placed, or the subsequent policy differs in any way from the previous policy, the Contractor shall also furnish the Owner with a certified copy of the renewal or replacement policy unless the Owner provides the Contractor with prior written consent to submit only a Certificate of

Insurance for any such policy. All renewal and replacement policies shall be in form and substance satisfactory to the Owner and written by carriers acceptable to the Owner.

§ 2.5.7 h. Insurance coverage required under the Agreement shall be written with insurance carriers authorized to do business in the state where the Project is located. All insurance coverage procured by the Contractor shall be provided by insurance companies having policy holder ratings not lower than "A" and financial ratings not lower than "XII" as reported in Best's Insurance Guide, latest edition in effect as of the date of the Contract, and subsequently in effect as of the date of renewal of any policies required by the Contract Documents. Except as set forth in Article 5.3, the minimum insurance requirements specified in this Agreement apply to each member of the Construction Team.

§ 2.5.7 i. The Contractor's liability and indemnification obligations to the Owner under the Agreement shall not be relieved or diminished by securing insurance coverage in accordance with the Owner's requirements or by the Owner's acceptance of certificates of insurance or policies. Any acceptance of insurance coverage by the Owner shall not be construed as accepting in any way deficiencies in the insurance.

§ 2.5.7 j. The Contractor shall provide documentation of comprehensive motor vehicle liability insurance, including Michigan No Fault coverage 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.

§ 2.5.7 k. Additional Insured: Commercial General Liability Insurance and Comprehensive Motor Vehicle Liability Insurance as described above shall include an endorsement stating the following shall be "Additional Insured" with the following verbiage: "It is understood and agreed that the following shall be named as Additional Insured: 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 insured, and not contributing with any other insurance or similar protections available to the additional insured, whether said other available coverage be primary, contributing or excess."

§ 2.5.7 l. Cancellation Notice: All insurance policies listed above shall include an endorsement stating the following: "Should any of the above described policies be canceled before the expiration date thereof, the issuing company will mail 30 days written notice to: Director of Finance, City of Birmingham, 151 Martin Street, P.O. Box 3001, Birmingham, Michigan, 48012."

§ 2.5.7 m. Proof of Insurance Coverage: The Contractor shall provide the Owner, at the time the contracts are returned to the Owner for execution, certificates and policies as listed below:

- (i) Two (2) copies of Certificate of Insurance for Workers Compensation Insurance;
- (ii) Two (2) copies of Certificate of Insurance for Commercial General Liability Insurance;
- (iii) Two (2) copies of Certificate of insurance for Motor Vehicle Liability Insurance;
- (iv) If so requested, certified copies of all policies mentioned above will be furnished.

§ 2.5.7 n. Expiration: If any of the above coverage expire during the term of this Agreement, the Contractor shall deliver renewal certificates and/or policies to the Owner at least thirty (30) days prior to the expiration date.

§ 2.5.7 o. Failure to Maintain Insurance: Upon failure of the Contractor to obtain or maintain such insurance coverage for the term of the Agreement, the Owner may at its option, purchase such coverage to and subtract the cost of obtaining such coverage to the Contractor. In obtaining such coverage, the Owner shall have no obligation to procure the most cost-effective coverage but may contract with any insurer for such coverage.

§ 2.5.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5. The Owner may require additional proof of coverage in the form of a true and accurate copy of the policies of insurance, themselves. The maintenance of the insurance in strict compliance with the requirement of this Section 2.5 shall be condition precedent to Owner's Obligation to make any payment under this Agreement. The insurance policies shall incorporate a provision requiring written notice to the Owner at least thirty days prior to any cancellation, nonrenewal, or material modification of a policy. In the event that any aggregate limit in this Section 2.5, for any reason whatsoever, becomes eroded below the required limits, the Architect shall provide the Owner written notice, and, at Owner's direction, shall take necessary action to restore the required limits at the Architect's expense.

§ 2.5.9 Except for Professional Liability Insurance which shall be maintained for a period not less than the applicable statute of limitation or statute of repose, the Architect shall maintain the insurance required under this Agreement for the duration of the Agreement. If any of Architect's insurance policies are "claims-made" policies, Architect shall purchase, at its own expense, "tail" coverage in the event of a termination or disruption of such policy.

§ 2.6 The Architect represents and warrants that it is financially solvent, able to pay its debts as they become due, and possesses sufficient working capital to complete the services and obligations under this Agreement and under the Contract Documents. Architect further represents, warrants, and acknowledges that: (a) it possesses a high level of experience and expertise in the design, business administration, design, and contract administration of projects of similar or like size, complexity, and nature of the Project; (b) the Owner is relying on the Architect's representation herein that it possesses sufficient skill, knowledge, experience, and ability to fully perform the Services and its obligations under this Agreement; (c) the Architect will, in addition to the key team members, assign to this Project similarly qualified professional architect(s) and other professionals as needed to deliver quality performance; and (d) the compensation under Section 11.1 is adequate for the timely and quality performance of the Architect's Basic Services.

§ 2.7 The Architect and Architect's consultants shall maintain all necessary licenses, permits or other authorizations necessary to act as licensed (or registered) design professionals for the Project until the Architect's and Architect's consultants' duties hereunder have been fully satisfied.

§ 2.8 Architect's Consultants. The Architect shall not engage or permit to be engaged any consultant to provide services under this Agreement, except as set forth in Section 1.1.11, without the Owner's prior written consent, which shall be given at the Owner's sole discretion. The Architect shall require provisions in any subcontract under this Agreement requiring the Architect's consultants and sub-consultants to be bound to the Architect by the terms of this Agreement and assume toward the Architect all the obligations and responsibilities which the Architect assumes towards the Owner. Subcontracting any part of the Architect's services, or the Owner's approval of any subcontract, shall not in any way relieve the Architect of any liability or responsibility for the complete and proper performance of the services and any other obligations under this Agreement. Unless expressly agreed to in writing by the Owner prior to the Architect entering into a subcontract, the cost of any subcontract shall be borne by the Architect and shall not be passed to the Owner as a Reimbursable Expense.

§2.9 NOT USED

§2.10 Material Change in Circumstances. The Architect shall notify the Owner in the event of a potential or actual: (a) material change in ownership of the Architect; (b) intent to dissolve; or (c) intent to otherwise cease active participation in the Project's local marketplace (collectively a "Material Change in Circumstances"). A Material Change in Circumstances shall include any other change that could reasonably give rise to concern on behalf of the Owner regarding the Architect's ability or willingness to fulfill any of its obligations under this Agreement. In the event of a Material Change in Circumstances, the Architect shall provide any reasonable assurance or guarantee requested by Owner. Owner shall have the right to terminate this Agreement for cause in the event of a Material Change in Circumstances.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect shall provide all professional services necessary for the complete design and construction documentation of the Project necessary for the Owner's intended use and shall include, without limitation, civil engineering, structural engineering, mechanical engineering, electrical engineering, site landscaping design, and interior design services to properly completely design the Project and prepare Construction Documents that fully indicate the requirements for the Work, whether or not those services are individually listed or referred to in this Agreement, with the only exceptions being: (a) the cost of those services that are provided by third parties that are expressly designated herein as being "the Owner's Responsibility" or "Owner-provided"; and (b) the cost of those engineering or consulting services that become necessary as a result of a written and material Owner-directed change in the Project scope affecting the Architect. Accordingly, the Owner and the Architect acknowledge and agree that there are functions, responsibilities, activities and tasks not specifically described in this Agreement that are reasonably incidental to, and are required for, the proper performance and provision of the Basic Services and Supplemental Services and are a necessary and inherent part of, or a necessary sub-part included within, the Basic Services and Supplemental Services. To the extent reasonably incidental to and consistent with the Basic Services and Supplemental Services such functions, responsibilities, activities, and tasks shall be deemed to be implied and included within the scope of the Basic Services and Supplemental Services to the same

extent and in the same manner as if specifically described in this Agreement, at no additional cost to the Owner. Mechanical engineering shall include, but is not limited to, plumbing, heating, ventilating, air-condition (cooling) and fire-protection system design and coordination. Electrical engineering shall also include information technology coordination and low voltage building system design services. Services expressly excluded from Basic Services or Supplemental are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner. The Architect shall coordinate the services provided by the Architect and the Architect's consultants, and meetings and communications between the Architect, its consultants, Owner, and Owner's consultants.

§ 3.1.2 The Architect shall coordinate its services with those activities provided by the Owner and the activities of the Owner's other consultants. The Architect shall coordinate and assist the Owner in obtaining the information and services described in Sections 5.4 and 5.5. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness of information furnished by the Owner and the Owner's consultants upon the Architect's careful review of such and information and when that information is expressly designated in writing by the Owner to be reliable. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, and consistent with the milestones set forth in Section 1.1.4, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for design services furnished by the Architect, completion of documentation provided by the Architect, public utilities application and installation schedules, governmental agency review and permitting schedules, commencement of construction, and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include reasonable allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants and vendors, and for approval of submissions by authorities having jurisdiction over the Project. Once accepted by the Owner in writing, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect. With the Owner's written approval, the Architect may adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 Only to the extent the Architect provides timely written notice to Owner outlining specific concerns or inconsistencies with the Contract Documents, the Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval.

§ 3.1.5 The Architect shall, at the appropriate times, contact the necessary governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall prepare the Contract Documents in accordance with all applicable design requirements imposed by those authorities and entities. Prior to commencing Schematic Design Services, the Architect shall obtain, and evaluate the accuracy of drawings or other information depicting the utilities servicing the Project site or which may be affected by the Project and shall advise the Owner on any apparent discrepancies or incomplete information and suggest additional testing or surveys which might be desirable to understand the existing conditions affecting the Project so as to assist in avoiding differing site condition claims arising during construction.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project. The Architect shall assist the Owner in connection with any other services as requested by the Owner and governmental authorities having jurisdiction and/or reasonably required for the Project.

§ 3.1.7 As requested by the Owner or necessitated by the Project, the Architect shall consider the value of alternative materials, building systems, and equipment, together with other considerations based on program, cost, and aesthetics in developing the design for the Project. The Architect shall also consider value engineering proposals by the General Contractor in the various phases of its design services.

§ 3.1.8 Upon request of the Owner, the Architect shall make presentations to explain the design of the Project to representatives of the Owner. When making such presentations, the Architect shall correlate the design to the Owner's

established SLCW and schedule. If the Architect's estimated Cost of the Work and schedule (or the General Contractor's estimated Cost of the Work and schedule, on which the Architect has collaborated) exceeds the Owner's established SLCW and schedule, the Architect shall also present remedies or alternative designs to bring the estimated Cost of the Work within the Owner's established SLCW and schedule without sacrificing the Owner's Program and intent of the Project as established in the Initial Information in Article 1.

§ 3.1.9 Subject to Section 5.16, the Architect shall submit design documents to the Owner at intervals appropriate to the design process for purposes of evaluation and approval by the Owner. The Architect shall be entitled to rely on written approvals received from the Owner in the further development of the design.

§ 3.1.10 Architect shall furnish to the Owner as part of its Basic Services a complete reproducible set of Record Drawings, and electronic files in AUTOCAD, or other file format acceptable to the Owner, prepared by the Architect, showing significant changes in the Project resulting from addenda, accepted or deleted alternates, field orders, construction change directives, bulletins, and/or from marked-up prints, drawings and/or other data generated by the General Contractor during the course of construction of the Project. These drawings need not include minor changes in the routing of conduit runs and plumbing lines, the exact order of wiring, receptacles or lighting fixtures.

§ 3.1.11 The Architect's Basic Services includes providing service to investigate existing conditions in facilities and, if necessary, to make measured drawings and phasing drawings thereof with respect to demolition, facility renovation and addition. Where phased construction is planned or required, Architect's phasing drawings shall include interfacing of building systems and components during phased construction to maintain operation of building systems, building access and security, and site traffic and parking requirements as may be necessary.

§ 3.1.12 The Architect's Basic Services include design and layout of fixed furniture, furnishing, equipment, and apparatus within new construction and renovated areas.

§ 3.1.13 The Architect's Basic Services include such services made necessary by the default of the General Contractor, or by major defects or deficiencies in the Work of the General Contractor, provided that such defects or deficiencies are caused in whole or in part by an act or omission of the Architect.

§ 3.1.14 NOT USED

§ 3.1.15 Programming. NOT USED

§ 3.2 Schematic Design Phase Services

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services and prepare designs and documents accordingly.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (a) any inconsistencies discovered in the information, and (b) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project. The Architect shall incorporate the Owner's feedback in the design and documents.

§ 3.2.4 Based on the Project requirements established by the Owner's direction, the Architect shall prepare and present, for the Owner's approval, multiple preliminary designs illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and shall include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider sustainable design alternatives, such as material choices, and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work. The Architect shall provide for the Owner's approval a written itemized estimate of the Cost of the Work based upon the Schematic Design package produced by the Architect, with costs projected to the scheduled date of completion of the Bidding and Negotiation Phase of Services. This estimate shall be based on the Project's current area, volume, or other similar conceptual estimating techniques. If that estimate does not conform to the initial Owner-provided SLCW the Architect shall provide a written statement to the Owner describing the specific reason for the deviation and propose alternate designs or changes will bring the design within the Cost of the Work within the current SLCW.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner and request the Owner's written approval.

§ 3.2.8 In addition to the requirements set forth above, Architect's Schematic Design documents shall also include the minimum requirements for Schematic Design drawings and specifications described in Exhibit A, Design Phase Deliverables.

§ 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's written approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

§ 3.3.2 The Architect shall provide an updated estimate of the Cost of the Work for the Owner's approval based upon the Design Development package produced by the Architect, with costs projected to the scheduled date of completion of the Bidding and Negotiation Phase of Services. If that estimate does not conform to the SLCW, as set forth in Section 1.1.3 of this Agreement and modified by the Owner, the Architect shall provide a written statement to the Owner describing the specific reason for the deviation and propose alternate designs or changes will bring the design within the Cost of the Work within the current SLCW.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any proposed adjustments to the estimate of the Cost of the Work, and request the Owner's written approval.

§ 3.3.4 In addition to the requirements set forth above, Architect's Design Development documents shall also include the minimum requirements for Design Development drawings and specifications described in Exhibit A, Design Phase Deliverables.

§ 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's written approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall consist of well coordinated Drawings and Specifications setting forth in all sufficient detail the materials, systems, and all other requirements necessary for the complete construction of the Work. In order to perform the Work, the General Contractor will provide supplemental information, including Shop Drawings, Product Data, Samples and other similar submittals, which the

Architect shall review in accordance with Section 3.6.4. The Owner and Architect acknowledge that such supplemental information shall not relieve the Architect of its obligation to fully design and describe the Work.

§ 3.4.2 The Architect shall prepare Construction Documents that strictly conform with the laws, codes, ordinances, regulations, and other requirements in effect at the time of permit issuance by applicable governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner and the Owner's Representative Consultant in the development and preparation of (a) bidding and procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (b) the form of agreement between the Owner and General Contractor; and (c) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a Project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms. The Architect shall not distribute any bidding or procurement information to any third party without the Owner's prior written approval.

§ 3.4.4 The Architect shall provide an updated itemized estimate of the Cost of the Work based upon the Construction Documents produced by the Architect, with costs projected to the scheduled date of completion of the Bidding and Negotiation Phase of Services. If that estimate does not conform to the SLCW, as set forth in Section 1.1.3 of this Agreement and modified by the Owner, the Architect shall provide a written statement to the Owner describing the specific reason for the deviation and propose alternate designs or changes will bring the design within the Cost of the Work within the then-current SLCW. If the Owner has engaged a General Contractor or estimator for pre-construction services on the project, the Architect shall cooperate, review, and assist such party in preparing any preconstruction estimates.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any proposed adjustments to the estimate of the Cost of the Work or SLCW, take any action required under Section 6.5, and request the Owner's approval.

§ 3.5 Procurement Phase Services

§ 3.5.1 General

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall cooperate and assist the Owner and its General Contractor in (a) obtaining either competitive bids or negotiated proposals; (b) confirming responsiveness of bids or proposals; (c) determining the successful bid or proposal, if any; and, (d) awarding and preparing contracts for construction.

§ 3.5.2 Competitive Bidding

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements, bidding information, bidding forms, and proposed contract forms, General and Supplementary Conditions, specifications, and drawings and any other necessary Contract Documents. The bidding and contract forms shall use the unabridged AIA Contract Documents, modified as necessary and as appropriate.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by:

- .1 facilitating the distribution of Bidding Documents to prospective bidders;
- .2 organizing and conducting a pre-bid conference for prospective bidders;
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda;
- .4 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner; and
- .5 participating in selection interviews and negotiations with prospective contractors, and major subcontractors, vendors and suppliers; and following up with preparing a summary report of the interviews and negotiation results.

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.2.4 Upon issuance of Construction Documents for bidding, the Architect shall provide, at no cost to the Owner, the General Contractor, or the bidders upon request, necessary usable AutoCAD drawings in order to facilitate dimension and quantity take-offs, overlay of fire suppression systems, communication, annunciation and security systems, and furniture layout, etc. Architect shall be able to protect the AutoCAD and BIM files so that information cannot be altered for purposes other than to facilitate the bidding process.

§ 3.5.3 Negotiated Proposals

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by:

- .1 facilitating the distribution of Proposal Documents for distribution to prospective contractors and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors;
- .3 preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and
- .4 if required and directed by the Owner, participating in negotiations with prospective contractors, major subcontractors, vendors and suppliers, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the General Contractor as set forth below and in AIA Document A201™–2007, General Conditions of the Contract for Construction, as modified and incorporated into this Agreement. Modifications made to the General Conditions, when adopted as part of the Contract for Construction, shall be enforceable under this Agreement to the extent that they are not inconsistent with this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the General Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the General Contractor or of any other persons or entities performing portions of the Work, except as provided in Section 3.6.2.

§ 3.6.1.3 Except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences upon the Owner's Notice of Commencement to the General Contractor and concludes on the date the Owner acknowledges and accepts the Architect's final Certificate for Payment.

§ 3.6.1.4 NOT USED

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall make visits to the site at intervals appropriate to the various stages of construction as Architect deems reasonably necessary in order to observe the progress and quality of General Contractor's Work. Observations must be conducted by a qualified design and/or construction person (trained eyes) to examine completed Work or Work in progress to determine its conformance to the Contract Documents. A document or report shall be produced by the Architect subsequent to such observation or observations that either confirms or confutes the witnessed construction's compliance with plans and specifications requirements. The Owner and Architect acknowledge that the Architect shall visit the site under the compensation for Basic Services not less than one (1) day per week during the execution of the Work. If otherwise agreed by the Owner in writing, and if more frequent site visits are deemed necessary by the Owner, the Architect shall provide as an Additional Service the services of a Resident Project Representative at the

site to assist the Architect and to provide more extensive or continuous observations of such work. Site visits and observations by the Architect and/or the Resident Project Representative are not intended to be exhaustive or to extend to every aspect of the work in progress, or to involve detailed inspections of the work beyond the responsibilities specifically assigned to the Architect in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling and similar methods of general observation of the Work based on the Architect's exercise of professional judgment. Based on information obtained during such visits and observations, Architect shall endeavor to determine in general if such work is proceeding in accordance with the Contract Documents to guard the Owner against defects and deficiencies in the Work. On the basis of the site visits, the Architect shall keep the Owner informed about the progress and quality of the portion of the Work completed, and report to the Owner: (a) known deviations from the Contract Documents and from the most recent construction schedule submitted by the General Contractor, and (b) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect shall make timely recommendation to the Owner regarding the rejection of the Work that does not conform to the Contract Documents. Unless directed otherwise by the Owner, if the Owner does not reject non-conforming Work, the Architect shall demand in writing that the General Contractor bring the non-conforming Work into compliance with the Contract Documents; and, if the General Contractor's efforts to do so are not begun and completed expeditiously, the Architect shall report that failure to the Owner in writing, stating: (a) the problem; (b) the reason for the actions taken by the Architect; (c) what, if any, response has been forthcoming from the General Contractor; and (d) what actions by the Owner and/or General Contractor are needed or expected. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the General Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and advise the Owner of its interpretation of matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or General Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness. Nothing in this Agreement, nor in the A201-2007, as amended, shall make a decision of the Architect binding upon the Owner in the absence of the Owner's express written approval.

§ 3.6.2.4 Interpretations of the Architect shall be consistent with the requirements indicated in, or reasonably inferable from, the Contract Documents and shall be made in writing or in the form of drawings.

§ 3.6.2.5 The Architect shall render initial decisions on Claims between the Owner and General Contractor as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to General Contractor

§ 3.6.3.1 The Architect shall review and certify the amounts due the General Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's site visits, observations, and evaluation of the Work as provided in Section 3.6.2 and on the data comprising the General Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the General Contractor is entitled to payment in the amount certified. The Architect's certification for payment shall constitute a representation that the Architect believes it has a sufficient basis for certification. The foregoing representations are subject to (a) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (b) results of subsequent tests and inspections, (c) correction of minor deviations from the Contract Documents prior to completion, and (d) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (a) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (b) reviewed construction means, methods, techniques, sequences or procedures, (c) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the General Contractor's right to payment, or (d) ascertained how or for what purpose the General Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain an organized record of the Applications and Certificates for Payment.

Init.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the General Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with reasonable promptness so as to cause no delay in the Work or in the activities of the Owner, General Contractor, or separate contractors or suppliers, while allowing sufficient time, in the Architect's professional judgment, to permit adequate review and approval. (See A201 for submittal processing flow chart and request for information processing flow chart)

§ 3.6.4.2 In accordance with the Architect approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the General Contractor's submittals (including Shop Drawings, Product Data, and Samples, etc.) as necessary to ascertain their conformance with the requirements for the Work as indicated in the Contract Documents. The Architect's review shall not be conducted for the purposes of confirming dimensions or quantities in those submittals except as to the extent that the General Contractor has requested the assistance of the Architect to determine certain dimensions because those indicated in the Construction Documents conflict with existing field conditions or because the dimensions in the Construction Documents contain erroneous, inconsistent, or incomplete information or dimensions for which clarifications are needed. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures.

§ 3.6.4.3 Only with Owner's prior written approval, the Architect may issue Contract Documents that require the General Contractor to provide certain professional design services or certifications. If the Contract Documents specifically require the General Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the General Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the purpose of checking for conformance with information given and the design and performance criteria expressed in the Contract Documents. Nothing in this Agreement shall be construed as an Owner's authorization to the Architect to delegate design responsibility without the prior express written authorization of the Owner, which may be withheld for any reason.

§ 3.6.4.4 The Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect shall acknowledge the receipt of each General Contractor generated Request for Information (RFI) within seven (7) days after receiving it. The Architect shall issue a written answer for each RFI simultaneously to the General Contractor and Owner (along with all necessary descriptive drawings, specifications, and/or other documents) with the promptness necessary to avoid unnecessary delay or cost to the Project, but in no case more than ten (10) days after the RFI is received by the Architect. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the RFI.

§ 3.6.4.5 The Architect shall maintain an organized record of submittals and copies of submittals supplied by the General Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 Subject to the approval of the Owner, the Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. All authorizations for minor changes in the Work shall be in writing, or confirmed by the Architect in writing within twenty four (24) hours of authorization of the Change. The Architect shall, immediately upon authorizing a minor change in the Work, provide written notice to the Owner thereof, describing the change, and confirming that the change will not affect the Contract Time or Contract Sum. The Architect shall prepare Change Orders and Construction Change Directives (along with all necessary descriptive drawings, specifications, or other documents to fully describe any changes to the Work) for the Owner's approval and execution in accordance with the Contract Documents. Changes Orders and Construction Change Directives shall be issued in on the AIA Document forms.

§ 3.6.5.2 The Architect shall review properly prepared, timely requests by the Owner or General Contractor for changes in the Work, including adjustments to the Contract Sum or Contract Time. A properly prepared request for a change in the

Work shall be accompanied by sufficient supporting data and information to permit the Architect to make a reasonable determination without extensive investigation or preparation of additional drawings or specifications. If the Architect determines that requested changes in the Work are not materially different from the requirements of the Contract Documents, the Architect may issue an order for a minor change in the Work or recommend to the Owner that the requested change be denied. (See A201 for change order processing flow chart).

§ 3.6.5.3 If the Architect determines that implementation of the requested changes would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, the Architect shall make a recommendation to the Owner, who may authorize further investigation of such change. Upon such authorization and based upon information furnished by the General Contractor, if any, the Architect shall estimate the additional cost and time that might result from such change, including any additional costs attributable to a Change in Services of the Architect. With the Owner's approval, the Architect shall incorporate those estimates into a Change Order or other appropriate documentation for the Owner's execution or negotiation with the General Contractor.

§ 3.6.5.4 The Architect shall maintain a complete and organized set of Change Orders and records relative to changes in the Work.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion, the date of final completion, and the resolution of Punchlist items and any other issues of non-conforming or incomplete work;
- .2 issue a Punchlist of summarizing the findings of the inspection;
- .3 when the necessary conditions of the Contract Documents are satisfied, issue Certificates of Substantial Completion on the form attached hereto as Exhibit B;
- .4 collect, organize, and forward to the Owner, for the Owner's review and records, written warranties and all other related documents required by the Contract Documents and received from the General Contractor; and,
- .5 when in compliance with all requirements of the Contract Documents, issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the General Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Architect believes the work is substantially complete, the Architect shall advise the Owner about the balance of the Contract Sum remaining to be paid the General Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the General Contractor: (a) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (b) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (c) any other documentation required of the General Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but are required for the Project. The Architect shall provide the listed Supplemental Services designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.1. Unless otherwise specifically addressed in this Agreement, if the Architect is not designated as responsible for a Supplemental Service, it is not being provided by the Architect under the Agreement.

Supplemental Services	Responsibility <i>(Architect, by Others or not provided)</i>
§ 4.1.1.1 Programming <i>(Row deleted)</i>	Owner
§ 4.1.1.2 Measured drawings	Owner
§ 4.1.1.3 Existing facilities surveys	Owner
§ 4.1.1.4 Site evaluation and planning	Architect
§ 4.1.1.5 Building Information Model management responsibilities	Not Provided
§ 4.1.1.6 Development of Building Information Models for post construction use	Not Provided
§ 4.1.1.7 Civil engineering	Owner
§ 4.1.1.8 Landscape design	Owner
§ 4.1.1.9 Architectural interior design	Architect
§ 4.1.1.10 Value analysis	Architect
§ 4.1.1.11 Detailed cost estimating beyond that required in Section 6.3	Not Provided
§ 4.1.1.12 On-site project representation	Architect
§ 4.1.1.13 Conformed documents for construction	Architect
§ 4.1.1.14 As-designed record drawings	Architect
§ 4.1.1.15 As-constructed record drawings	General Contractor
§ 4.1.1.16 Post-occupancy evaluation	Architect
§ 4.1.1.17 Facility support services	Owner
§ 4.1.1.18 Tenant-related services	Owner
§ 4.1.1.19 Architect's coordination of the Owner's consultants	Architect
§ 4.1.1.20 Telecommunications/data design <i>(Row deleted)</i>	Owner, with assistance and coordination by the Architect
§ 4.1.1.21 Security design <i>(Row deleted)</i>	Owner, with assistance and coordination by the Architect
§ 4.1.1.22 Commissioning <i>(Row deleted)</i>	Owner, with assistance and coordination by the Architect
§ 4.1.1.23 Sustainable Project Services pursuant to Section 4.1.3	Not Provided
§ 4.1.1.24 Fast-track design services	Not Provided
§ 4.1.1.25 Multiple bid packages	Not Provided
§ 4.1.1.26 Historic preservation	Not Provided
§ 4.1.1.27 Furniture, furnishings, and equipment design	Architect
§ 4.1.1.28 Other services provided by specialty Consultants	Not Provided
§ 4.1.1.29 Other Supplemental Services <i>(Row deleted)</i>	Not Provided

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1

(Paragraphs deleted)

NOT USED

Init.

(Paragraphs deleted)

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™–2017, Sustainable Projects Exhibit, as modified attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.1.

§ 4.2 Architect's Additional Services

The Owner may request Additional Services of the Architect. All Additional Service Requests will be requested by the Owner in writing. Should the Owner request any service that the Architect believes to be outside the scope of the Basic Services or Architect assigned Supplemental Services the Architect shall, prior to commencing performance of those services, inform the Owner, in writing, of the Architect's belief that the services requested are Additional Services, and shall provide the Owner the proposed cost, schedule, and scope implication of those Services. The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services authorized by Owner in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule. Additional Services are not deemed authorized until an executed amendment, in the form attached hereto as Exhibit D, is fully executed.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide Additional Services until the Architect receives a fully executed amendment to this Agreement authorizing the Additional Services. The following may constitute Additional Services:

- .1 Services necessitated by a material and substantial change in the initially agreed upon Project scope (including changes in the Project size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method) or previous instructions or approvals given by the Owner;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, after the publication of Construction Documents for permit is received (including changing or editing previously prepared Instruments of Service);
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are contrary to prior specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparation of design and documentation for an excessive amount of alternate bid or proposal requests proposed by the Owner;

(Paragraph deleted)

- .6 Except for the Architect's role as an Initial Decision Maker, preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto; or,

(Paragraph deleted)

- .7 Consultation concerning replacement of Work resulting from fire or other cause during construction.

§ 4.2.2

(Paragraphs deleted)

NOT USED

§ 4.2.3 The Architect shall provide Construction Phase Services that substantially and pervasively exceed the limits set forth below as Additional Services. As a condition precedent to compensation for such Construction Phase Additional Services, the Architect shall notify the Owner prior to the limits below being reached:

- .1 Three (3) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the General Contractor
- .2 Three (3) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .3 Three (3) inspections for any portion of the Work to determine final completion.

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than sixty (60) days after (a) the date of Substantial Completion of the Work or (b) the initial date of Substantial Completion identified in the agreement between the Owner and General

Contractor, whichever is earlier, shall be compensated as Additional Services, but only to the extent the Architect incurs additional cost in providing those Construction Phase Services and only to the extent the Owner actually recovers such additional costs from the General Contractor.

§ 4.2.5 If the services covered by this Agreement substantially extend past six (6) months of the Substantial Completion Date in Section 1.1.4.3, through no fault of, or in any way caused by, the Architect, the extension and compensation of the Architect's services beyond that time shall be subject to negotiation as an Additional Service.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information requested by the Architect in writing in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements. The failure by the Owner to furnish any information to the Architect shall not relieve the Architect of any liability hereunder, nor extend the time in which the Architect is to perform such duties unless the Architect provides timely notice to the Owner in writing that the lack of such information may, and to what extent, impede the progress of the Project. The Architect and Owner acknowledge that any information provided by Owner is subject to change and that the Basic Services and Supplemental Services, as well as the compensation provided herein, take such changes into account.

§ 5.2 The Architect shall perform its services so that the Project can be completed within the SLCW. The Owner may choose to update the SLCW as it deems necessary throughout the duration of the Project. If the Owner significantly increases or decreases the SLCW, the Owner shall notify the Architect. The Owner and Architect may thereafter agree to a corresponding change in the Project's scope and quality. The Owner may, but is under no obligation, to disclose to the Architect the Project's overall budget.

§ 5.3 NOT USED

§ 5.4 Subject to Section 3.1.2 and where necessary for the Architect's performance of its services, the Owner shall furnish surveys to describe physical characteristics, legal limitations, and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable: grades and lines of streets, alleys, pavements and adjoining property and structures, designated wetlands, adjacent drainage, rights-of-way, restrictions, easements, encroachments, deed restrictions, boundaries and contours of the site, locations, overall dimensions, and significant landscape features, and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 Subject to Section 3.1.2 and where necessary for the Architect's performance of its services, the Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 NOT USED

§ 5.7 NOT USED

§ 5.8 Upon the Architect's request, the Owner shall furnish copies of the relevant portions of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those that are the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are necessary for the Project's completion.

§ 5.9 The Owner shall furnish tests, inspections, and reports required by law or the Contract Documents. The Architect shall provide timely notice to Owner of any such required testing, inspection, or reporting services and shall review with the Owner, prior to publication of any Contract Documents for construction, any testing and such services required of the Owner under the Contract Documents.

§ 5.10 NOT USED

§ 5.11 The Owner shall endeavor to provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions, or inconsistencies in the Architect's Instruments of Service, however, nothing in this Agreement shall be construed so as to require Owner to observe, inspect, investigate, or in any other way determine the adequacy, accuracy, or sufficiency of the design, the Construction Documents, the Work, the Project, or any services of the Architect or Architect's consultants. The Owner and Architect acknowledge and agree that any failure by the Owner to provide notice of any such fault or defect shall not relieve the Architect of any of its responsibilities under this Agreement.

§ 5.12 The Owner shall endeavor to include the Architect in communications with the General Contractor that relate to or affect the Architect's services or professional responsibilities.

§ 5.13 The Architect shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Architect shall perform in a manner consistent with the obligations of the Architect as stated in this Agreement and in the General Conditions of the Contract for Construction, as amended. The Owner shall provide the Architect a copy of the executed agreement between the Owner and General Contractor, including the General Conditions of the Contract for Construction.

§ 5.14 The Owner shall provide the Architect reasonable access to the Project site prior to commencement of the Work and shall obligate the General Contractor to provide the Architect reasonable access to the Work wherever it is in preparation or progress. While visiting the Project site, the Architect and Architect's consultants acknowledge that the General Contractor is responsible for construction site safety by enforcing safety rules and regulations. Architect and Architect's consultant shall familiarize themselves, observe, and comply with such construction site safety rules. Prior to accessing and/or visiting the Project site, the General Contractor may require the Architect and Architect's consultants to attend a safety class or classes as required for construction site safety.

§ 5.15 The Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

§ 5.16 Notwithstanding anything to the contrary contained in this Agreement, Owner's review and/or approval of any documents or other matters required herein shall be for the purpose of providing the Architect with information as to Owner's objectives and goals with respect to the Project and not for the purpose of determining the accuracy and completeness of such documents or designs. In no way should any review and/or approval Owner alter the Architect's responsibilities under this Agreement.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect, for the locale in which the Project is located, and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies (Owner, General Contractor, or for changes in the Work), or other costs (such as review and permit fees, Owner Representation Consultant, Project Financial Consultant, Project Market Study Consultant, Project Investment Banker, etc.).

§ 6.2 Evaluations of the Owner's SLCW, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by, or in consultation with, the Architect, represent the Architect's best judgment as an experienced design professional in the applicable marketplace familiar with the construction industry. In the event the Architect does not have the necessary marketplace familiarity, the Architect, as part of its Basic Services, shall contract or consult with experts necessary to provide Owner the required best judgement of an experienced professional familiar in the market place. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment, the General Contractor's methods of determining bid prices, or competitive bidding, market, or negotiating conditions. Notwithstanding Architect's obligations under this Agreement including, but not limited to, Sections 1.1.3 and 6.5, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's SLCW for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents, to recommend reasonable adjustments in the program and scope of the Project, and to recommend design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's SLCW. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1, as a Supplemental Service. Such detailed estimates of the Cost of the Work shall be subject to the requirements of Article 6 of this Agreement.

§ 6.4 The estimate of the Cost of the Work shall be projected to the scheduled date for the Project's completion. If the Work has not commenced within ninety (90) days after the Architect submits the Construction Documents to the Owner (or if at any time the Architect observes any material changes in the construction market) the Architect shall advise the Owner as to any anticipated escalation or reduction in the Cost of the Work due to changes in construction market. Owner's SLCW for the Cost of the Work may, at the Owner's discretion, be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's SLCW, the Architect shall, without additional compensation from the Owner, make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's SLCW for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner at its sole discretion may:

- .1 give written approval of an increase in the SLCW;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Sections 6.6.1 or 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's SLCW for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the SLCW as adjusted under Section 6.6.1.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 Unless otherwise stated conspicuously in writing, the Architect warrants that in transmitting Instruments of Service, or any other information, the Architect is the originator of such information or has permission from the copyright owner to transmit such information for its use on the Project, or any subsequent projects. Architect will not rely on any drawings or designs for the Project that are the subject of any copyright or patent held by any person other than the Architect without written notice to Owner and express written approval of the copyright or patent holder.

§ 7.2 All rights, title, and interest, including, without limitation, manufacturing, development and exploitation rights in and to all plans, data, drawings, specifications, ideas, data, scripts, sketches, designs, concepts, reports, documentation, and/or other work product (whether tangible or intangible,) produced by the Architect or the Architect's consultants in connection with the Work or otherwise communicated by the Architect to Owner pursuant to this Agreement ("Instruments of Service") (excluding such portions as are part of and incorporated in the Architect's standard specifications and standard construction details, which portions of the Instruments of Service are not specific to this Project) are hereby assigned to the Owner and shall at all times be and remain vested in the Owner. For those documents which contain the Architect's or the Architect's consultants' standard specifications and standard construction details, the Owner shall have a limited use license which will be limited only to the particular Project covered by this Agreement and future expansions and modifications to this Project. As long as the Owner uses the documents containing the Architect's or the Architect's consultants' standard specifications and standard construction details solely for this Project, that use shall not be limited in any other manner. The Owner's obligation to pay the Architect for any services under this Agreement is expressly conditioned upon the Architect obtaining a valid written comprehensive assignment of all rights, title, and interest from its consultants in terms identical to those that obligate the Architect to the Owner as expressed in this section, which the Architect hereby assigns to the Owner. The Owner, in return, hereby grants the Architect and the

Architect's consultants a revocable, nonexclusive license for the limited purposes relating directly to the Architect's performance under this Agreement, for the Architect's archival records, and for the Architect's reproduction of drawings and photographs in the Architects marketing material in accordance with Section 7.3 of this Agreement. The nonexclusive license shall terminate automatically upon termination of this Agreement for cause. This nonexclusive license is granted to the Architect alone and shall not be assigned by the Architect to any other person or entity, except that the nonexclusive license may be sub-licensed to the Architect's consultants (with the same limitations). Subject to the foregoing, this nonexclusive license shall terminate automatically upon an Architect's assignment of this nonexclusive license to another or its attempt to do so.

§ 7.3 In the event the Owner uses the Instruments of Service without retaining the Architect's services, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and the Architect's consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's modification and use of the Instruments of Service without the Architect's services under this Section 7.3. The terms of this Section 7.3 shall not apply if the Owner rightfully terminates this Agreement for cause.

(Paragraph deleted)

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. No other Project-related data, expression, or documents may be reproduced by the Architect or its Consultants for any other purpose without the express written permission of the Owner.

(Paragraph deleted)

§ 7.5 Architect shall deliver master reproducible drawings and specifications in electronic format when the design is approximately fifty percent (50%) complete and at the start of construction or at other times as determined by formal request from the Owner. Architect shall deliver all originals of the Instruments of Service (whether completed or in process) in electronic format, to the Owner upon completion of the Work hereunder, or upon the termination of this Agreement. In the event this Agreement is terminated by the Owner for any reason, Architect shall deliver all originals of the Instruments of Service (whether completed or in process) in electronic format, upon such termination; provided however, that Owner shall pay Architect for any undisputed amounts in accordance with Article 9 of this Agreement.

§ 7.6 The Architect shall use a CADD system for the preparation of all Instruments of Service in a manner consistent with such usage by comparable Architecture firms with expertise in projects similar in nature and scope to the Project. To facilitate the execution of the Project, the Owner and other parties performing work and services in connection with the Project shall, as requested by the Owner, have access to electronic files or, at the Owner's option, CADD files on electronic media ("CADD Discs") that can be reproduced with standard CADD equipment. Unless otherwise provided in this Agreement, if CADD technology is used by the Architect in connection with this Project, Architect shall retain all rights, title and interest in the CADD applications programs, electronic tapes, and disks related to the CADD applications programs. If Owner wishes to obtain a copy of any electronic media containing portions of Architect's design database pertaining to this Project for any reason, then Architect shall prepare a duplicate disk and deliver the same to Owner at no additional cost. Uses by the Owner include but are not limited to backgrounds for General Contractor or subcontractor shop drawings, as-built drawings, Owner marketing and other Owner promotional materials. Throughout the progress of the Project, the Owner may request an "in progress" set of CADD Documents for all or any portion of the Project and the Architect shall deliver the same to the Owner within three (3) business days of such request.

§ 7.7 No license is granted by this Agreement or otherwise allowing Architect or the Architect's consultants to reproduce, distribute, modify, display, or otherwise use any Owner-related marks, logos, and graphics. The Architect hereby acknowledges that marks, logos, and graphics related to the Owner are valuable intellectual property, and that misuse or misappropriation of them will damage the Owner. Reproduction, display, distribution, modification, or any other use of Owner-related marks, logos, or graphics without the prior, express, and written permission of the Owner is prohibited. That permission may be refused or revoked for any reason, in the Owner's sole discretion.

§ 7.8 Except as otherwise stated in Sections 7.2 and 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES**§ 8.1 General**

§ 8.1.1 A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Agreement. The term "Claim" also includes other disputes and matters in question between the Owner and Architect arising out of or relating to the Agreement. The responsibility to substantiate Claims shall rest with the party making the Claim. The Owner and Architect shall commence all Claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and, except as provided herein, within the period specified by applicable law, but in any case not more than ten (10) years after the date of Substantial Completion of the Work. The Owner and Architect waive all Claims and causes of action not commenced in accordance with this Article 8.

§ 8.1.2 To the extent damages are covered by proceeds received by the claimant from property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 Pending final resolution of any Claims, the Architect shall proceed diligently with the performance of its obligations under this Agreement and the Owner shall continue to make payment in accordance with the Agreement on all items not in dispute or subject to a Claim.

§ 8.1.4 The Architect shall initiate by written notice, any Claims for an increase to the Architect's compensation, and obtain Owner's written approval, prior to providing any Additional Services or incurring any related costs related to Additional Services unless the Claim for Additional Services relates to an emergency imminently endangering life or property. In the case of Additional Services related to such an emergency, the Architect shall initiate a Claim by written notice to the Owner no later than twenty one (21) days after the event giving rise to such Claim.

§ 8.2 Negotiation and Mediation

§ 8.2.1 Within ten (10) business days of receipt of a notice of Claim, the parties to a Claim shall attempt in good faith to resolve it promptly by escalating the Claim to persons who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement (Negotiation). If the parties agree on the method of resolving such claim, such method shall be embodied in a written agreement signed by the Owner and the Architect. Any Claim, dispute or other matter in question not resolved by Negotiation shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution provided the Architect provide the Owner written notice not less than five (5) days prior to filing any lien.

§ 8.2.2 Within ten (10) business days of conclusion of the Negotiation process, the Owner and Architect shall commence to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement (Mediation). A request for Mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If a binding dispute resolution proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The Mediation shall be held in the place where the Owner is located, as indicated on page one of this Agreement, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through Negotiation or Mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:
(Check the appropriate box.)

☒ [X] Arbitration pursuant to Section 8.3 of this Agreement

☐ [] Litigation, subject to the venue requirements of Section 10.1

☐ [] Other: (Specify)

If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court subject to the venue requirements of Section 10.1.

§8.2.5 WAIVER OF JURY TRIAL

IN THE EVENT ANY CLAIM OR DISPUTE IS SUBJECT TO RESOLUTION BY A COURT, OWNER AND ARCHITECT ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THE CONTRACT DOCUMENTS, THE PERFORMANCE OF THE WORK, OR THE PROJECT.

§ 8.3 Arbitration

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 8.3.2 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.3 The award rendered by the arbitrator(s) shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.4 Consolidation or Joinder

§ 8.3.4.1 The Owner reserves the right in its discretion, to require consolidation or joinder of any arbitration arising out of, or relating to this Agreement with another arbitration involving a person or entity not a party to this Agreement, in the event the Owner believes such consolidation or joinder is necessary in order to resolve a dispute or avoid duplication of time, expense or effort. The Architect hereby waives, all objections to joinder of the Architect as a party to any Project-related mediation, arbitration, or litigation in which the Owner is joined or is otherwise positioned as a party or in which the Architect's conduct or its performance of professional services is any way relevant to the subject of a dispute. The Architect also agrees to prepare or modify all documents used or prepared by the Architect, including but not limited to, agreements between the Architect and its Consultants, agreements between the Owner and other parties (including, without limitation, the Contract for Construction), and any General and Supplemental Conditions for Construction for this Project, to reflect this waiver.

§ 8.3.4.2 With the exception of matters solely dealing with this Agreement, in the event the Owner is involved in a dispute which is not subject to arbitration involving a person or entity not a party to this Agreement, the arbitration provision of this article shall be deemed to be void and non-existent in the event Owner, in its discretion, determines the Architect should become a party to that dispute by joinder or otherwise.

(Paragraph deleted)

§ 8.3.5 The Owner and the Architect expressly agree that binding arbitration is selected as the method of dispute resolution, the parties do not intend to deprive any court of its jurisdiction to issue a pre-arbitral injunction, pre-arbitral attachment or other order in aid of arbitration proceedings, and the enforcement of any award.

§ 8.4 Alternative Dispute Resolution for Architect's Errors, Omissions, and Negligent Acts

§ 8.4.1 The Owner, at its sole discretion may, after Negotiation, subject unresolved Claims to the Alternative Dispute Resolution (ADR) for the Architect's errors, omissions, and acts set forth under this Section 8.4.

§ 8.4.2 Consistent with, and without invalidating, the Architect's standard of care set forth in Section 2.2, the Architect represents to the Owner that the Architect will produce documents that are complete, correct, and within the Project SLCW and schedule as set forth in the Initial Information. The Architect agrees that if, as a result of any errors, omissions, or negligent acts, for which the Architect has responsibility in whole or in part and/or legal liability (Errors and Omissions), the Owner incurs an accumulation of excess costs (regardless of whether or not such costs have been applied to this ADR) over two percent (2.0%) of the Cost of the Work (established based on either the current estimated Cost of the Work or latest Guaranteed Maximum Price) (the "Threshold Amount"), the Architect shall share the burden of excess costs over the Threshold Amount ("Owner's Excess Cost") in accordance with Section 8.4.3. The Architect shall have no liability under this ADR for any such accumulated excess costs, which are less than the Threshold Amount. The Threshold Amount is not to be used towards any deductible amount in a professional liability claim for which the Architect is otherwise liable, or for Architect attributed delays described in this Agreement.

§ 8.4.3 The Architect's responsibility for the Owner's Excess Cost shall be determined as follows:

- .1 The amount due shall not include any Owner elected improvement costs or betterment costs;
- .2 For Errors and Omissions related to the bidding documents that are discovered prior to ordering and installation of the affected or any related systems, the Architect shall pay for twenty five percent (25%) of any cost escalation or additional cost, as well as 100% of applicable delay expenses that are the proximate cause of the Architect's Errors and Omissions;
- .3 For Errors and Omissions related to the bidding documents that are discovered after ordering but prior to installation of the affected or any related systems, the Architect shall pay for fifty percent (50%) of any cost escalation or additional cost, as well as 100% of applicable delay expenses that are the proximate cause of the Architect's Errors and Omissions;
- .4 For Errors and Omissions related to the bidding documents that are discovered partial or complete installation of the affected or any related systems, the Architect shall pay for 100% of the any cost escalation or additional cost (including but not limited to all applicable tear down and replacement cost), as well as 100% of applicable delay expenses that are the proximate cause of the Architect's Errors and Omissions; and
- .5 The Architect's cumulative responsibility for the Owner's Excess Cost under subject to the ADR under this Agreement shall not exceed fifty percent (50%) of the Architect's total compensation authorized under this Agreement.

§ 8.4.4 The Owner shall be able to deduct the Architect's share of the Owner's Excess Costs from Owner's payments to the Architect or, if the remaining payment due the Architect are insufficient to cover such costs, the Architect shall immediately reimburse the Owner upon demand for its share or the Owner's Excess Costs. The Owner's right to such amounts under this ADR, shall be subject to Architect's right to bring any Claim under Mediation and subsequent binding dispute resolution under Sections 8.2.2 and 8.2.4, except that the Owner shall retain its right to payment for any Owner's Excess Costs from the Architect, as well as the right to retain any Owner's excess Costs from payments due the Architect, pending final resolution of the Claim.

§8.4.5 The rights under this Section 8.4 are cumulative and not exclusive or in abrogation of any other rights or remedies that may be available to the Owner whether they provided under this or any other agreement, law, equity, or otherwise.

§8.5 The provisions of this Article 8 shall survive the termination of this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement (except for non-payment due to a disputed invoice or Claim) within thirty (30) business days of the receipt of written notice of such nonpayment, such failure shall be considered substantial nonperformance and cause for the Architect to suspend performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give ten (10) business days' written notice to the Owner to cure before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Upon payment to the Architect of all undisputed sums due prior to suspension, the Architect shall immediately resume its services. If the Project is suspended for more than one hundred eighty (180) days, the Architect shall be reimbursed for any actual additional out-of-pocket costs incurred by the Architect (minus any profit) as a direct result of the suspension.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension.

§ 9.3 If the Owner suspends the Project for more than one hundred eighty (180) consecutive days for reasons other than the fault of the Architect, the Architect shall be reimbursed for any actual costs incurred by the Architect (minus any profit) as a direct result of the suspension. Should suspension exceed one hundred eighty (180) consecutive days, the Architect, subject to the Owner's approval of replacements, shall be entitled to substitute key team members that become unavailable due to the Project's suspension.

§ 9.4 NOT USED

§ 9.5 This Agreement may be terminated by the Owner, with or without cause, for Owner's convenience upon written notice to the Architect. Should the Owner terminate this Agreement for cause, but that cause be subsequently found to be insufficient to support termination, the termination shall be deemed one of convenience.

§ 9.6 In the event of a termination, the Architect shall be compensated for services performed prior to termination, including Reimbursable Expenses reasonably incurred prior to termination. If at the time of termination the Architect's compensation is based on a percentage of the Cost of the Work, the Architect shall be compensated for services performed prior to termination based on the lesser of the SLCW, current estimated Cost of the Work, Contract Sum of the Contract for construction, or current Guaranteed Maximum Price of the Cost of the Work, multiplied by the applicable percentage fee and the applicable percentage of services completed at the time of termination based on the schedule of values in Section 11.5.

§ 9.7 In

(Paragraphs deleted)

the event of a termination, Owner's sole responsibility shall be to pay the Architect in accordance with Section 9.6 for services performed and accepted prior to termination, without waiver of damages, if any, flowing from Architect's acts, errors, or omissions.

§ 9.8 NOT USED

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 Unless precluded by law of the state where the Project is located, this Agreement shall be governed by the laws of the State of Michigan, Oakland County Circuit Court without regard to any conflict of law principles. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3. In the event the parties resort to a court, the parties hereby (a) irrevocably consent and submit to the jurisdiction of any Federal, state, county or municipal court sitting in the State of Michigan, County of Oakland, in respect to any action or proceeding brought therein concerning any matters arising out of or in any way relating to this Agreement; (b) expressly waive any rights pursuant to the laws of any other jurisdiction by virtue of which exclusive jurisdiction of the courts of any other jurisdiction might be claimed; (c) irrevocably waive all objections as to venue and any and all rights it may have

to seek a change of venue with respect to any such action or proceeding; (d) agree that, unless precluded by law of the state where the Project is located, the laws of the State of Michigan shall govern without regard to any conflict of law principles; and (e) agree that any final judgment rendered in any such action or proceeding shall be conclusive and may be entered in any other jurisdiction by suit on the judgment or in any other manner provided by law and expressly consent to the affirmation of the validity of any such judgment by the courts of any other jurisdiction so as to permit execution thereon. The Architect shall incorporate the requirements of this choice of law and forum selection clause into all agreements with consultants, engineers, and other persons or entities (of any tier) providing Project-related services who, as Project participants, are in direct or indirect privity with the Architect.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2007, General Conditions of the Contract for Construction, as modified, unless a contrary definition is set forth herein or inferable herefrom.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. The Architect may not assign its interests or obligations under this Agreement without the express written consent of the Owner, which consent may be withheld by the Owner for any reason. The Owner reserves the right, upon notice to the Architect, to assign this Agreement to an institutional lender providing financing for the Project or to any other persons or entities who are ready and capable of performing the Obligations under the Agreement.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least seven (7) days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least seven (7) days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against the Owner.

§ 10.5.1 The Owner shall enjoy the same benefits and rights as to the Architect's consultants as the Architect enjoys with respect to its consultants. That Architect shall enter into written contracts with its consultants and engineers that impose upon its consultants the same duties and obligations to the Owner as the consultant has to the Architect. Should the Owner terminate this Agreement with the Architect, the Architect shall, upon Owner's written request, assign such consultant agreements as directed by the Owner. Such assignment shall not change the fact that the Owner has no obligation to pay the Architect's consultants any amounts whatsoever, except prospective fees expressly agreed to in writing by the Owner after Owner's acceptance of an assignment of the Architect's consultant agreements. The Architect shall provide the Owner copies of any agreement entered into by the Architect pursuant to this Agreement or the Project.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site. Should the Architect become aware of the presence of hazardous materials or toxic substances on the Project site, it shall immediately report that presence to the Owner in writing. The Architect shall not knowingly specify in the Project Construction Documents or approve the use of any asbestos containing building material (ACBM) or any known hazardous building materials to be used in the construction of the Project. Upon the issuance of the Final Certificate for Payment, Architect shall require each contractor to certify to the Owner and the Architect that no ACBM or any known hazardous building materials were used in the construction of the Project.

§ 10.7 Only upon the written consent by the Owner, which may be withheld for any reason, the Architect may include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect's materials shall not include the Owner's confidential or proprietary information. The Architect shall furnish to the Owner, without charge, copies of all such materials for Owner's use as well as the Owner's review and approval prior to any publication. This Section 10.7 shall survive the termination of this Agreement.

§ 10.8 CONFIDENTIALITY. By entering into this Agreement, the Architect agrees to the following Confidentiality Agreement:

.1 The Architect shall not knowingly or negligently communicate or disclose at any time to any person any

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information concerning the Work or the Project, except: (a) with prior written consent of the Owner, (b) information which has become part of the public domain prior to the date of the Agreement, (c) information which becomes part of the public domain by means other than an unauthorized act or omission of the Architect, or (d) as may be required to perform the Work or by any Applicable Law or to its professional advisors or lender (all of whom shall be required to maintain such information in confidence).

- .2 The Architect shall promptly upon the request of the Owner return and surrender to the Owner the original or legible copies of any materials, records, notices, memoranda, recordings, Drawings, Specifications and mock-ups and any other documents furnished by the Owner.
- .3 The Architect shall maintain, and shall cause all members of the design and consulting team, their directors, officers, employees, and agents, to maintain, during and after the term of the Agreement, the confidentiality of all trade secrets, know-how, confidential data or other proprietary information of the Owner when designated as such and shall not use such information for any purpose whatsoever except for uses permitted by above paragraph 10.8.1.
- .4 The Architect shall not identify, either expressly or by implication, the Owner, or its corporate affiliates, or use any of their trademarks, trade names, service marks, other proprietary marks, or reference the Services performed under the Agreement, in any advertising, press releases, publicity matters, or other promotional materials without the Owner's prior written permission.
- .5 The Architect shall not, without the express written consent of the Owner, discuss the Work or any part thereof with persons under circumstances in which such communications can reasonably be expected to be published in newspapers, magazines or trade journals or broadcast on radio or television. This restriction shall not apply to statements consistent with a crisis management plan development and agreed to by both parties with respect to the Work. This restriction also shall not apply to any fair response by the Architect to publicity released by the Owner that is detrimental to the reputation of the Architect. Any such contact shall be referred to the Owner for response. Further, without the Owner's consent, the Architect shall not participate in professional or trade seminars or publish or submit articles for publication, the subject of which is, in whole or in part, the Work. Any such proposed article or publication shall be submitted to the Owner for review and approval, which shall not be unreasonably withheld.
- .6 The Architect shall cause all members of the design and consulting team to specifically acknowledge that the provisions of this Confidentiality Agreement are binding upon them.
- .7 If the Architect becomes legally compelled to disclose any information concerning the Work, the Architect shall provide the Owner verbal and written notice prior to disclosure so that the Owner may have the opportunity to seek a protective order or other appropriate remedy. In the event that a compelled disclosure is made by the Architect, the Architect agrees to produce only that portion of information which the Architect is legally obligated to disclose.

(Paragraph deleted)

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

§ 10.10 WAIVER. Waiver by one party hereto of breach of any provision of this Agreement by the other shall not operate, nor be construed as, a continuing waiver.

§ 10.11 INDEPENDENT CONTRACTOR. This Agreement shall not render Architect or any of its personnel an employee, partner, agent, or joint venturer with Owner for any purpose. Architect is, and will remain, an independent contractor in its relationship to the Owner. The Owner shall not be responsible for withholding taxes with respect to the compensation of the Architect. The Architect shall have no claim against the Owner hereunder or otherwise for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services and Supplemental Services described under Articles 3 and 4, the Owner shall compensate the Architect as follows:

Init.

(Paragraphs deleted)

A stipulated sum equal to Two Hundred Eighty Eight Thousand Nine Hundred and 00/100 Dollars (\$288,900.00), which includes a Not-to-Exceed amount of Two Thousand and 00/100 Dollars for Reimbursable Expenses. The Contract Sum is broken down as follows:

Lump Sum Base Bid Fee	\$269,400.00
Alternate for Design Development Estimating	\$10,000.00
Alternate for FF&E Planning and Procurement	\$7,500.00
Reimbursable Expenses	\$2,000.00

§ 11.2

(Paragraphs deleted)

NOT USED

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

Depending on the nature of the request, and upon mutual agreement by the parties, compensation for Additional Services shall be on a stipulated sum or hourly basis as provided in Section 11.7

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus

(Paragraphs deleted)

zero percent (0%).

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Schematic Design Phase	Fifteen	percent (15	%)
Design Development Phase	Twenty	percent (20	%)
Construction Documents Phase	Forty	percent (40	%)
Procurement Phase	Two and One Half	percent (2.50	%)
Construction Phase	Twenty	percent (20	%)
Project Completion	Two and One-Half	percent (2.50	%)
Total Basic Compensation	One Hundred	percent (100	%)

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the lesser of the Cost of the Work or SLCW. Compensation for previously completed Phases of Services shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed by the Architect in accordance with this Agreement for those portions of the Project except to the extent the reduction in project Scope is related to the Architect's errors, omissions, negligent acts, or failure to design the Project in accordance with the SLCW. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed by the Architect in accordance with this Agreement whether or not the Construction Phase is commenced except to the extent the reduction in Project Scope is related to the Architect's errors, omissions, negligent acts, or failure to design the project in accordance with the SLCW.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

See Exhibit E – Unit and Hourly Rate Schedule

(Table deleted)

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses, when indicated under Sections 11.1 or 11.3 are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence costs not exceeding the limits provided in Exhibit F, Owner's Travel and Business Expense Policy;
- .2 Permitting and other fees required by authorities having jurisdiction over the Project;
- .3 Printing, reproductions, plots, and standard form documents except for Architect's internal use, Owner reviews, agency approvals, public utility companies use and permitting;
- .4 Postage, handling, and delivery;

(Paragraph deleted)

- .5 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner and not included in the Basic or Supplemental Services; and
- .6 All taxes levied on professional services and on reimbursable

(Paragraphs deleted)

expenses that are enacted subsequent to the execution of this Agreement.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus zero percent (0%) of the expenses incurred.

§11.8.3 The Architect shall not be entitled to any reimbursement for a single Reimbursable Expense in excess of One Thousand and No/100 Dollars (\$1,000.00) without the Owner's prior written authorization.

§ 11.9

(Paragraphs deleted)

NOT USED

§ 11.10 Payments to the Architect**§ 11.10.1 Initial Payments**

§ 11.10.1.1 An initial payment of Zero Dollars (\$ 0) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the first, and if necessary, subsequent invoices.

§ 11.10.1.2 NOT USED**§ 11.10.2 Progress Payments**

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid sixty (60) days after the date on which the Owner receives an adequately documented invoice shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

(Paragraph deleted)

Prime interest rate as published in the Wall Street Journal on first day of the month when owed payment becomes delinquent; however, shall not exceed six percent (6%) per annum.

§ 11.10.2.2 The Owner may withhold, without the Architect stopping or in any other way disrupting its services or the Project, any disputed sums or sums subject to a Claim under Article 8 of this Agreement. In addition to any sums withheld due to a dispute or Claims under Article 8, the Owner may, at its sole discretion, withhold up to ten percent (10%) from each payment for the Architect's compensation as retainage to be paid upon Final Completion and Acceptance of the Work or the termination of this Agreement.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

(Include other terms and conditions applicable to this Agreement.)

Init.

§ 12.1 To the fullest extent possible, the provisions of this Agreement, including the Exhibits, and General Conditions shall be deemed to supplement and complement each other. In the event there is any conflict between this Agreement and AIA Document A201-2007, as amended and set forth in Section 13.2, the terms of this Agreement shall prevail.

§ 12.2 The Architect shall provide immediate written notice to the Owner if the Architect becomes aware of any defect, or omission (or potential defect, or omission) in the design of the Project or in the Construction Documents, including but not limited to errors, omissions, or inconsistencies in the Architect's Instruments of Service.

§ 12.3 The Owner and Architect acknowledge and agree that each have participated fully in the negotiation and preparation of this Agreement and that this Agreement shall not be more strictly construed against either party.

§12.4 Indemnification

§ 12.4.1 The Architect shall indemnify, defend, and hold harmless the Owner for all damages, losses, or claims that arise as a result, in whole or in part, of the negligence, errors, omissions, or failure to perform by the Architect, its employees, its agents, or its consultants.

§ 12.4.2 The Architect shall indemnify, defend, and hold harmless the Owner for all damages, losses, or claims that arise as a result, in whole or in part, of the breach of this Agreement or any implied covenants deemed applied thereto, intentional acts, omissions, or other failures to perform by the Architect, its employees, its agents, or its consultants.

§ 12.4.3 The Architect agrees to indemnify, defend, and hold the Owner harmless for any claims or demands asserted by the General Contractor or others against the Owner that a contractor or others asserting the claims contend arise out of or result from the conduct, actions, or failure to act of the Architect. Architect further agrees to indemnify defend, and hold harmless the Owner for any damages, fees, expenses, and costs (including, but not limited to, legal fees, and other court, mediation, or arbitration costs) incurred by the Owner in defending against claims asserted by the General Contractor or others against the Owner that the General Contractor or others asserting the claims contend arise in whole or in part out of or result from the conduct, actions, or failure to act of the Architect.

§ 12.4.4 The indemnity provisions of the previous three sections in this Article 12 shall not be construed so that one provision cancels, limits, or abrogates the indemnities and protections afforded the Owner in the others, and duties of the Architect to indemnify, defend, and hold the Owner harmless in each of those sections shall be construed cumulatively.

§ 12.5 The Architect shall implement a management control system for the design and construction of the Project using to support such functions as planning, organizing, scheduling, budgeting, reporting construction progress and expenditures, accounting, documentation, identifying variances and problems, decision making, and decision implementation. The data provided by the management control system must be timely, must be responsive to the needs of management at all levels, and must be fully capable of providing a sound basis for management decisions. The Owner plans to utilize e-Builder, a construction program management data platform, on the Project to provide document control, RFI, Change Orders, Applications for Payment, lien waivers, project budget and invoices, project schedule, and project cost-to-complete, etc. Architect shall cooperate with the Owner to ensure full [electronic format] compatibility to properly upload the Architect's design documents and construction contract administration documents and data onto the Owner's platform.

§ 12.6 AUDIT RIGHTS

§ 12.6.1 Owner reserves the right to request supporting documentation for all amounts charged to Owner. Records will be subject to audit at any time during the term of this Agreement and for a period not to exceed seven (7) years after any amount is billed. Within thirty (30) days of receiving a request, Architect will furnish to Owner original invoices to support all charges and complete payroll records to support labor charges. Owner reserves the right to audit any other supporting evidence necessary to substantiate charges related to this Agreement, both direct and indirect costs, including overhead allocations as they may apply to costs associated with this Agreement. If requested by Owner, Architect will provide supporting records in a computer readable format as well as a hard copy.

§ 12.6.2 If an audit reveals overcharges, Architect will reimburse Owner upon demand for the amount of such overcharges plus interest thereon from the date paid by Owner through the date of reimbursement at a rate equal to two percent (2%) above the rate announced from time to time by The Wall Street Journal for such period as its "Prime Rate".

§ 12.6.3 The terms and provisions of this section 12.6 shall survive the expiration or termination of this Agreement.

§ 12.6.4 Architect shall preserve the Records for a period of seven (7) years after Final Payment, or for such longer period as may be required by law.

§ 12.6.5 Architect shall cause the provisions of this Article to be incorporated into the provisions of each Consultant Agreement. Each Consultant Agreement shall provide that Owner shall have the right, upon reasonable notice to Architect and Consultant, to audit all such Records and accounts required to be maintained by Consultant in accordance with this Agreement.

§ 12.7 Notices

All notices, requests, consents and approvals which are required or permitted by this Agreement shall be in writing and as follows:

If to Owner: Attention: Carrie Laird, Parks and Recreation Manager
City of Birmingham
851 S. Eton
Birmingham, Michigan 48009

With Copies to : Attention: Robert Stempien, Sr. Vice President
Plante & Moran Cresa, L.L.C
3000 Town Center; Suite 100
Southfield, MI 48075

If to Architect: Attention: Robert E. Andrus, AIA, NCARB
Andrus Architecture, Inc.
11629 Northland Drive NE; Suite 200
Rockford, Michigan 49341

§ 12.7.1 All such notices, requests, consents, and approvals shall be deemed to be given when delivered, if personally delivered, or upon receipt (as evidenced by the date set forth on the return receipt), if sent by certified mail or overnight delivery service.

§ 12.8 The Architect's duties and obligations imposed by the Agreement and Owner's rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 12.9 Protected Health Information. NOT USED

§ 12.10 Public Body The Owner, being a public body, shall render decisions within a reasonable time after being requested to do so by the Architect. The Architect, assisted by the Owner's Representative Consultant, shall prepare and submit all recommendations, for which approval is required by the Owner, as soon as reasonably possible unless another schedule is agreed to by the Owner in writing.

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

- .1 AIA Document B101™-2017, Standard Form Agreement Between Owner and Architect, as modified
- .2 AIA Document A201™-2007, General Conditions of the Contract for Construction, as modified
- .3 Exhibits:

Exhibit A – Design Phase Deliverables

(Paragraph deleted)

Exhibit B – AIA Document G704-2017 Certificate of Substantial Completion

Init.

Exhibit C – Not Used
 Exhibit D – Agreement Amendment Form
 Exhibit E – Architect’s Hourly Rates
 Exhibit F – Owner’s Travel and Business Expense Policy
 Exhibit G – Architect’s Certificates of Insurance
 Exhibit H – AIA Document G701-2017 Change Order
 Exhibit I – AIA Document G714-2007 Construction Change Directive

.4 Other documents:

(List other documents, if any, forming part of the Agreement.)

None.

§ 13.3 To facilitate execution of this Agreement, the parties may execute this Agreement in counterpart and exchange signatures by facsimile transmission or by electronic delivery of a PDF copy of the executed Agreement, which facsimile or PDF copy shall be deemed valid and binding.

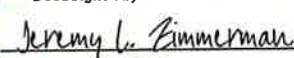
§ 13.4 This Agreement is entered into as of the day and year first written above but shall not be effective unless and until it is signed by the Owner and Contractor. To facilitate execution of this Agreement, the parties may execute this Agreement in counterpart and exchange signatures by facsimile transmission or by electronic delivery of a PDF copy of the executed Agreement, which facsimile or PDF copy shall be deemed valid and binding.

[signatures on following page]

IN WITNESS WHEREOF, the said parties have caused this Agreement to be executed as of the date and year above written.

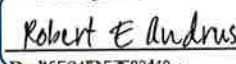
WITNESSES:

DocuSigned by:


 9E5F8F0BB485476
 Jeremy L. Zimmerman

ARCHITECT

DocuSigned by:

By: 
 18594FAE7F448
 Robert E. Andrus
 Its: President

CITY OF BIRMINGHAM

By: _____

Pierre Butros
 Its: Mayor

By: _____

Alexandria Bingham
 Its: City Clerk

CITY OF BIRMINGHAM

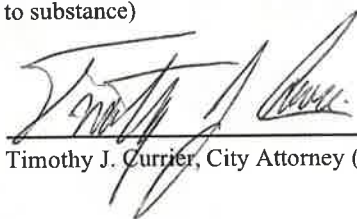
Approved:



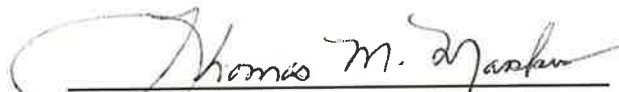
Lauren Wood, Director of Public Services (Approved as to substance)



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



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



Thomas M. Markus, City Manager (Approved as to substance)

Init.



AIA® Document A201® – 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

City of Birmingham - Ice Sports Arena Renovation/Additions
2300 East Lincoln
Birmingham, Michigan 48009

THE OWNER:

(Name, legal status and address)

City of Birmingham
851 S. Eton
Birmingham, Michigan 48009

THE ARCHITECT:

(Name, legal status and address)

Andrus Architecture, Inc.
11629 Northland Drive NE; Suite 200
Rockford, Michigan 49341
(616) 863-8850

THE GENERAL CONTRACTOR (also referred to as the "Contractor"):

(Name, legal status and address)

To be determined.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Init.

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ARTICLE 1 GENERAL PROVISIONS**§ 1.1 BASIC DEFINITIONS**

§ 1.1.1 THE CONTRACT DOCUMENTS. The "Contract Documents" are enumerated in the Agreement between the Owner and Contractor (hereinafter the "Agreement") and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A "Modification" is (i) a written amendment to the Contract signed by both parties, (ii) a Change Order, (iii) a Construction Change Directive or (iv) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, to the extent there is no conflict with the Contract Documents, or portions of Addenda relating to bidding requirements.

§ 1.1.2 THE CONTRACT. The Contract Documents form the Contract for Construction. The "Contract" represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (i) between the Contractor and the Architect or the Architect's Consultants, (ii) between the Owner and a Subcontractor or a Sub-subcontractor, (iii) between the Owner and the Architect or the Architect's Consultants or (iv) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 THE WORK. The term "Work" consists of all goods and services, such as labor, transportation, materials, tools, and equipment (i) to be incorporated into the Project (or the Contractor's portion of the Project if the Contractor is not responsible for the entire Project), (ii) required of the Contractor under the Contract Documents, or (iii) necessary or appropriate to fully construct, fixture, operate and maintain the Project (or the Contractor's portion of the Project if the Contractor is not responsible for the entire Project). The Work shall be performed in accordance with the Contract Documents. The Work may constitute the whole or a part of the Project. The term "Work" shall also include labor, materials, equipment and services provided or to be provided by subcontractors, sub-subcontractors, material suppliers or any other entity for whom the Contractor is responsible under or pursuant to the Contract Documents.

§ 1.1.4 THE PROJECT. The "Project" is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.4.1 THE PROJECT SITE. The "Project Site" or "Site" is the location where total construction of which the Work is performed under the Contract Documents, may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS. The "Drawings" are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS. The "Specifications" are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 INSTRUMENTS OF SERVICE AND PROJECT MANUAL. "Instruments of Service" are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials. The "Project Manual" is a volume assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract, and Specifications.

§ 1.1.8 INITIAL DECISION MAKER. Unless otherwise provided in writing, the "Initial Decision Maker" is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.1.9 APPLICABLE LAWS. "Applicable Laws" means all local, State of Michigan and federal, applicable codes, statutes, ordinances, laws (including the Americans with Disabilities Act ("ADA")), rules and regulations, and lawful orders of all public authorities having jurisdiction over the Owner, any member of the Construction Team, the Project, the Project Site, the Work, or the prosecution of the Work. This Agreement shall be governed, performed, interpreted and enforced in accordance with the laws of the State of Michigan.

§ 1.1.10 CONSTRUCTION SCHEDULE. The "Construction Schedule" is the Critical Path Method ("CPM") schedule for construction of the Work submitted as part of the Contractor's Contract Sum or Guaranteed Maximum Price Proposal, prepared by the Contractor and approved by the Owner in accordance with Section 3.10. The Construction Schedule can be modified only by Change Order. Following any such Modification, the term "Construction Schedule" shall mean the most recent Owner-approved version.

§ 1.1.11 MILESTONE DATES. The "Milestone Dates" are those dates included in the Master Design and Construction Schedule and Construction Schedule that are critical to ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents.

§ 1.1.12 CONSTRUCTION TEAM. The "Construction Team" includes the Contractor, Subcontractors, Sub-subcontractor at any tier, and Suppliers and (i) all other persons in privity of contract with any of them in connection with the Work (except the Owner), (ii) anyone else providing labor, materials, supplies, equipment, or services as part of or in connection with the Work (except those, if any, hired directly or indirectly by the Owner), and (iii) all of their officers, employees, agents, and independent contractors. The Contractors and the Owner agree that the Contractors are acting as an independent contractor with respect to the Contractors' role in providing services to the Owner pursuant to this Agreement, and as such, shall be liable for its own actions and neither the Contractors nor their employees shall be construed as employees of the Owner. 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 Owner nor the Contractors 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 Contractors shall not be considered entitled or eligible to participate in any benefits or privileges given or extended by the Owner, or be deemed an employee of the Owner for purposes of federal or state withholding taxes, FICA taxes, unemployment, workers' compensation or any other employer contributions on behalf of the Owner.

§ 1.1.12.1 PROJECT TEAM. The "Project Team" includes those listed in Section 1.1.12 above and the Owner, the Owner's Representative Consultant, and the Architect in their official and individual capacities, their consultants, administrators, employees, agents, contractors, successors, assignees, and all other persons in privity of contract with any of them in connection with the Work.

§ 1.1.13 CONSTRUCTION TIME. The "Construction Time" is the number of calendar days described in the Construction Schedule in which (or, alternatively, the date set forth in the Construction Schedule by which) Substantial Completion shall be achieved, subject to any extensions granted in executed Change Orders or otherwise specifically permitted by the Contract Documents. Any references to Contract time shall be interpreted to mean Construction Time.

§ 1.1.14 ADDITIONAL MEASURES. "Additional Measures" are corrective measures necessary to expedite the progress of construction, including (i) working additional shifts or overtime, (ii) supplying additional manpower, equipment, and facilities, (iii) expediting the delivery of materials, and (iv) other similar measures. Subject to the Contractor's rights under Section 7.5, the Owner shall have the right to order Contractor to take Additional Measures when it determines that the performance of the Work, as of a Milestone Date, has not progressed to or reached the level of completion required by the Contract Documents.

§ 1.1.15 MASTER DESIGN AND CONSTRUCTION SCHEDULE. The "Master Design and Construction Schedule" is the preliminary schedule for the Work to be developed by the Owner or Contractor during the bidding and negotiation process and which shall, at a minimum, provide for major elements such as preparation of the Design, phasing of construction, the time of commencement and completion required for each anticipated Bid Package.

§ 1.1.16 OWNER DELAY. An "Owner Delay" means an actual delay to Contractor's completion of the Work to the extent caused by one or more of the following: (i) Modifications (excluding minor changes in the Work and Architect

interpretations), (ii) the Owner's failure (or that of any other person for whom the Owner is responsible to the Contractor including, the Architect or a separate contractor hired by the Owner) to provide any data or information requested by the Contractor in writing that is reasonably necessary for Contractor to carry out its duties and is the Owner's obligation to provide (so long as the Owner and any other responsible person are given adequate time to respond); or (iii) unreasonable interference by the Owner or persons for whom it is responsible to the Contractor, including, the Architect or a separate contractor hired by the Owner, with the Contractor's performance of the Work, which is not cured within five (5) business days of written notice to the Owner.

§ 1.1.17 OWNER'S REPRESENTATIVE CONSULTANT (or PROGRAM MANAGER). "Owner's Representative Consultant" or "Program Manager" means a consultant engaged by the Owner to assist the Owner with the management and/or coordination of the Project as set forth in this Agreement. Unless otherwise provided in the Agreement, Contract Documents, or specifically authorized by the Owner, the Owner's Representative Consultant is not authorized to commit the Owner in matters regarding changes in the Work, Construction Schedule, or grant approvals on behalf of the Owner.

§ 1.1.18 PUNCHLIST. "Punchlist" means a list of uncompleted or unacceptable items of Work which do not interfere with the use or occupancy of any part of the Work for its intended purpose and which, unless delayed by a need to order materials that could not reasonably have been anticipated by the Contractor, collectively are capable of being completed within sixty (60) days.

§ 1.1.19 VALUE ENGINEERING. "Value Engineering" means the detailed analysis of systems, equipment, materials, services, facilities, and supplies required by the Contract Documents for the purpose of achieving the desired and essential functions of the Owner's program at the lowest cost consistent with required and necessary performance, reliability, quality and safety.

§ 1.1.20 HAZARDOUS MATERIALS. "Hazardous Materials" shall mean and include any toxic or hazardous materials or substances as defined or regulated by in any U.S. environmental law or any Applicable Laws.

§ 1.1.21 PERMITTED MATERIALS. "Permitted Materials" shall mean materials that are general supplies and equipment that have a hazardous or potentially hazardous nature and are or will be used for their intended purpose and which do not pose any significant threat of contamination to the Project Site or neighboring properties.

§ 1.1.22 The words "consent," "approved," "satisfactory," "proper," "as directed," any derivatives of them, or similar terms, mean written approval by the Owner, and may include approval of the Architect if the Owner so directs. Except where a different standard is specifically established, the Owner has the right to grant or withhold such approval in its sole discretion.

§ 1.1.23 The word "provide" and any derivatives thereof, and similar terms, mean to properly fabricate, complete, transport, deliver, install, erect, construct, test, and furnish all labor, materials, equipment, apparatus, appurtenances, and all items and expenses necessary to properly complete in place, ready for operation or use under the terms of the Contract Documents.

§ 1.1.24 The terms "known," "knowledge," "recognize," "believe," and "discover," and any derivatives thereof and similar terms, when used in reference to the Contractor, shall mean that which the Contractor knows or should reasonably know, recognizes or should reasonably recognize, and discovers or should reasonably discover in exercising the care, skill, and diligence required of the Contractor by the Agreement. The expression "reasonably inferable" and similar terms mean reasonably inferable by a Contractor familiar with the Work and exercising the care, skill and diligence required of the Contractor by the Agreement.

§ 1.1.25 The word "including" shall not be a word of limitation, but instead shall be construed as introducing one or more nonexclusive examples.

§ 1.1.26 Words or abbreviations that are not defined but have well-known technical, trade or construction industry meanings, shall have those meanings ascribed to them. The singular shall include the plural and vice versa. Pronouns are interchangeable. The word "person" includes human beings and recognized legal entities. Unless the context clearly requires otherwise, reference to a Section shall include all subsections beneath it bearing identical introductory numbers.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. Work called for on the Drawings and not mentioned in the Specifications, or vice versa, shall be performed as though fully set forth in both. Nothing in this Section 1.2, however, shall relieve the Contractor of any of its obligations under the Contract Documents. Other conflicts between or among the Contract Documents shall be resolved under the following rules of construction:

- .1 The specific shall govern over the general.
- .2 Specified dimensions shown on the Drawings shall govern, even though they may differ from dimensions scaled on the Drawings, if any;
- .3 Drawings of larger scale shall govern over those of smaller scale; any special Drawing details shall govern over standard detail;
- .4 Specifications shall govern over Drawings in matters of material or equipment specified; Drawings shall govern over Specifications in matters of construction or installation detail;
- .5 Documents of later date shall always govern; except that
- .6 The Agreement shall govern over all other documents, regardless of their dates.

§ 1.2.2 Work not particularly detailed, marked, or specified shall be the same as similar parts that are detailed, marked, or specified. On certain Contract Documents, only a portion of the detail may be fully shown and the remainder indicated in outline, in which case the general detail shall be understood as applying also to other like portions of the Work. For example, if case carving, ornament, facing, veneer, or similar treatment is indicated by starting of the detail, such detail must be continued throughout the course of parts in which it occurs, and to all similar parts in the Work wherever such general detail shall apply unless otherwise specifically provided in the Contract Documents.

§ 1.2.3 The organization of the Specifications into divisions, sections, and/or articles, and the arrangement of the Drawings, shall not dictate to the Contractor in any way how the Work is to be divided among Subcontractors, or establish the extent of Work to be performed by any trade. Similarly, the organization of the Contractor's duties into different phases or categories in the Agreement is for convenience only and shall not limit the generality of the Contractor's obligation to provide all of the Services whenever necessary.

§ 1.2.4 All references in the Contract Documents to standards (such as commercial standards, federal specifications, trade association standards or similar standards), whether for materials, processes, assemblies, workmanship, performance or any other purpose, shall mean, unless otherwise noted, the most recent available published version of such standard as of the date of that part of the Contract Documents bearing the reference. All standards referred to, except as modified in the Contract Documents, shall have the same force and effect as though printed therein. These standards will not be furnished to the Contractor, as the Contractor and all members of the Construction Team are required to be familiar with their requirements.

§ 1.2.5 Whenever a provision of the Contract Documents conflicts with agreements or regulations in force among members of trade associations, unions or councils, which regulate or distinguish the portions of the Work which shall or shall not be performed by a particular trade, the Contractor shall make necessary arrangements to reconcile the conflict without delay, damage, cost or recourse to the Owner. Delays in the Work resulting from the failure of the Contractor to use its best efforts to reconcile any such conflicts shall not result in an extension of the Construction Time and shall not result in the increase of the Contract Sum or Guaranteed Maximum Price.

§ 1.2.6 The Contractor acknowledges that there may be items of the Work, which the Contractor is responsible to provide under the Agreement that are not drawn or specified in the Design but are necessary for the proper execution and completion of the Work and are consistent with and reasonably inferable from the Drawings and Specifications. All such items shall be provided as part of the Work without delay in its progress and without any increase in the Contract Sum or Guaranteed Maximum Price.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (i) specifically defined, (ii) the titles of numbered articles or (iii) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Drawings, Specifications, and other documents and all data used in compiling, and the results of, any tests, surveys or inspections at the Project Site, as well as all photographs, drawings, specifications, schedules, data processing output, building information modeling (BIM), integrated project delivery (IPD) and/or computer-aided design/drafting (CAD) systems disks/tapes, computations, studies, audits, reports, models and other items of like kind, and all intellectual property, prepared or created for or in connection with the Project, regardless of whether they were prepared by the Owner, the Contractor, Architect or a third party, shall constitute the project documents, and shall belong to the Owner.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service, or any other documents prepared for or in connection with the Project, or any concepts or ideas developed in connection with the Project, for any purpose other than the Project without the specific written consent of the Owner. The Owner shall at all times have access to and control over the disposition of any Drawings, Specifications, and other documents pertaining to the Project.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

§ 1.7 CONFIDENTIALITY

§ 1.7.1 The Contractor shall not knowingly or negligently communicate or disclose at any time to any person any information concerning the Work or the Project, except: (i) with prior written consent of the Owner, (ii) information which has become part of the public domain prior to the date of the Agreement, (iii) information which becomes part of the public domain by means other than an unauthorized act or omission of the Contractor, (iv) as may be required to perform the Work or by any Applicable Law, or (v) to its professional advisors or lender (all of whom shall be required to maintain such information in confidence). 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 Owner. 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.

§ 1.7.2 The Contractor shall promptly upon the request of the Owner return and surrender to the Owner the original or legible copies of any materials, records, notices, memoranda, recordings, Drawings, Specifications and mock-ups and any other documents furnished by the Owner to the Contractor.

§ 1.7.3 The Contractor shall maintain, and shall cause all members of the Construction Team, and its and their directors, officers, employees, and agents, to maintain, during and after the term of the Agreement, the confidentiality of all trade secrets, know-how, confidential data or other proprietary information of the Owner when designated as such and shall not use such information for any purpose whatsoever except for uses permitted by Section 1.7.1.

§ 1.7.4 The Contractor shall not identify, either expressly or by implication, the Owner, or its corporate affiliates, or use any of their trademarks, trade names, service marks, other proprietary marks, or reference the Services performed under the Agreement, in any advertising, press releases, publicity matters, or other promotional materials without the Owner's prior written approval.

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§ 1.7.5 The Contractor shall not, without the express written consent of the Owner, discuss the Work or any part thereof with persons under circumstances in which such communications can reasonably be expected to be published in newspapers, magazines or trade journals or broadcast on radio or television. This restriction shall not apply to statements consistent with a crisis management plan development and agreed to by both parties with respect to the Work. This restriction also shall not apply to any fair response by the Contractor to publicity released by the Owner that is detrimental to the reputation of the Contractor. Any such contact shall be referred to the Owner for response. Further, without the Owner's consent, the Contractor shall not participate in professional or trade seminars or publish or submit articles for publication, the subject of which is, in whole or in part, the Work. Any such proposed article or publication shall be submitted to the Owner for review and approval, which shall not be unreasonably withheld.

§ 1.7.6 The Contractor shall cause all members of the Construction Team to specifically acknowledge that the provisions of this Section 1.7 are binding upon them.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen (15) days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.1.3 The Owner may at any time and from time to time designate a third-party, such as an architect or engineer or other professional consultant, to perform any of its duties under the Agreement. In the event of any such designation, the Owner shall provide written notice to the Contractor. The duties, responsibilities and limitations of authority of any third party designated by the Owner pursuant to Section 2.1.1, shall not be restricted, modified or extended without written consent of the Owner.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (i) the Owner fails to make payments to the Contractor as the Contract Documents require; (ii) a change in the Work materially changes the Contract Sum; or (iii) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. All permits and approvals not specifically identified in the Agreement or Contract Documents as the responsibility of the Owner shall be the responsibility of the Contractor.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. The Contractor shall promptly notify the Owner and the Architect of any errors, problems or inaccuracies, which the Contractor becomes aware of in the course of its use of such surveys.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and

relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, pursuant to Section 1.5.2, copies of Drawings and Project Manuals as follows:

- .1 one reproducible set or an electronic file copy, and a maximum of four (4) sets of Drawings and Project Manuals, including revisions thereto. If additional copies are desired by the Contractor, copies will be furnished upon Contractor's request for the actual cost of reproduction and handling.
- .2 all instruments, Change Orders, Field Directives, and other like correspondence pertaining to the Work will be provided to the Contractor in the form of one (1) signed copy by the Owner.
- .3 Change Proposal Documents, including Bulletins, revised drawings, etc. will be provided to the Contractor in the form of one reproducible set and four (4) printed sets.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents ("Disputed Work") as required by Section 12.2 or fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3. This right shall be in addition to and not in restriction or derogation of the Owner's rights under Article 14 thereof. The Owner's right to stop the Work shall not relieve the Contractor of any of the Contractor's responsibilities and obligations under or pursuant to the Contract Documents.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

§ 2.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten (10)-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior acknowledgement of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

§ 2.4.2 Upon notification to the Contractor, the Owner shall have the right to place and install equipment and machinery during the progress of the Work before the completion of the various parts of the Work. Such placing and installing of equipment and machinery shall not in any way evidence the completion of the Work or any portion thereof by the Contractor, nor signify the Owner's acceptance of the Work or any portion thereof. If the Owner places or installs such equipment and machinery with its own forces, the Owner shall be responsible for any damage to Work of the Contractor caused by the Owner's workers. If the Owner engages another contractor for such placement or installation, the Owner shall require said contractor to be responsible for such damages caused by its work, its workers, or its subcontractor. Upon discovery of any such damage, the Contractor shall have the right to request and file a Contractor's Request Change Order under Section 7.5.

§ 2.5 LIMITATION ON OWNER'S RESPONSIBILITY

§ 2.5.1 The Owner, Architect, and Owner's Representative Consultant will not, under any circumstances, have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility. Owner, Architect, and Owner's Representative Consultant will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Owner, Architect, and Owner's Representative Consultant will not have control over or charge of and will not be responsible for acts or omissions of any member of the Construction Team.

§ 2.5.2 The Contractor shall only be entitled to rely upon instructions and directions provided in writing by the Owner's authorized representative(s).

§ 2.5.3 The Owner may, in addition to delivering them to the Architect, from time to time review and approve or take

other appropriate action upon the Contractor's submittals, such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with the Owner's objectives and goals. Review of such submittals will not be conducted for the purpose of determining their accuracy and completeness of details, such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor. The Owner's review and approval of or taking other appropriate action on the Contractor's submittals shall not relieve the Contractor or the Architect of any of their obligations. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component. The Owner's receipt of any informational submittals, of any submittals relating to equipment or systems designed by the Contractor, or of any submittals relating to alternatives proposed by any member of the Construction Team shall not constitute approval of or action by the Owner on such submittals. All such submittals will be received by the Owner for record purposes only.

§ 2.5.4 The Owner may from time to time review or observe or take other appropriate action concerning the Work and any documents, and the selection of Subcontractors and Suppliers. The Owner's doing so shall be solely for the limited purpose of providing the Contractor with information as to how such items relate to the Owner's objectives and goals with respect to the Work and not for the purpose of determining their accuracy and completeness and shall in no way create any responsibility on the part of the Owner for or complicity by the Owner in errors, inconsistencies, or omissions, nor shall any such review, approval, other action or payment of the Contractor alter or in any way reduce the Contractor's obligations under the Agreement.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor is the primary (main) contractor who oversees and is responsible for all the Work performed on the Project, and to whom any and all subcontractors on the Project are responsible. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and discovering errors, omissions, or inconsistencies in the Contract Documents. Errors, ambiguities, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the Architect as a request for information in such form as the Architect may require. Contractor's failure to report to and requesting information clarifying such errors, ambiguities, inconsistencies or omissions from the Architect shall result in interpretation of and resolving such errors, ambiguities, inconsistencies or omissions in favor of the Owner. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with Applicable Laws, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

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§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor permits any construction activity to be performed that involves an error, inconsistency or omission in the Contract Documents or a physical condition at the Project Site it recognized or should, employing the degree of diligence required of that Contractor under the Contract Documents, have recognized without providing notice to the Owner and receiving authorization to proceed, the Contractor shall assume responsibility for such performance and bear all costs attributable to correction, without recovery, whether under the Contract Sum, Guaranteed Maximum Price or otherwise. If the Contractor performs the obligations of Section 3.2.2 and 3.2.3, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to Applicable Laws, unless the Contractor recognized such errors, inconsistency, omission or difference and knowingly failed to report such to the Architect.

§ 3.2.5 Except and only to the extent otherwise provided in Section 2.2.3 or Section 3.7.3, by signing the Agreement, the Contractor agrees: (i) to bear the risk of concealed or unknown conditions other than those defined in Section 3.7.4 as Materially Different Conditions, if any, which may be encountered in performing the Work; and (ii) that the established Contract Sum or Guaranteed Maximum Price accepted this responsibility with full knowledge of this risk. In agreeing to bear the risk of concealed or unknown conditions to the extent herein provided, the Contractor understands that, except and only to the extent provided otherwise in Section 2.2.3 or Section 3.7.4, concealed and/or unknown conditions shall not excuse the Contractor from its obligation to achieve full completion of the Work within the Construction Time, and shall not entitle the Contractor to an adjustment of the Contract Sum or Guaranteed Maximum Price. Except as provided in Section 2.2.3: (i) the Owner has not determined the accuracy or completeness of any information it may provide concerning physical conditions at the Project Site, and all such information is made available to the Contractor, and shall by the Contractor be made available to bidders without any representation or warranty by the Owner whatsoever as to its accuracy, completeness, or relevancy; (ii) the Contractor and the bidders shall independently evaluate such information for their use and shall be solely responsible for use or interpretation of such information; (iii) any such use or interpretation shall not be the basis of any claim whatsoever against the Owner.

§ 3.2.6 If the Contractor encounters concealed or unknown conditions that differ materially from those anticipated or expected, whether or not it is entitled to assert a Claim under Section 3.7.4, the Contractor shall promptly notify the Owner, as required in Section 3.7.4, in writing of such conditions so that the Owner can determine if such conditions require design details, which differ from those design details shown in the Design or some other remedial action. The Contractor shall be liable to the Owner for any extra costs incurred as the result of the Contractor's failure to give such required notice.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed in writing to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and Sub-subcontractors at any tier and their respective agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors or Sub-subcontractors at any tier. Reference in the Contract Documents to the Work, obligations, acts or omissions of

the Contractor shall be interpreted to apply to those of its Subcontractors, Sub-subcontractors at any tier, material suppliers and their respective agents and employees irrespective of whether such other entities are specifically identified in such reference.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 LABOR AND MATERIALS AND UTILITIES

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect, and in accordance with a Change Order or Construction Change Directive.

§ 3.4.2.1 By making requests for substitutions based on Subparagraph 3.4.2 above, the Contractor:

- .1 represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified.
- .2 represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified.
- .3 certifies that the cost data presented is complete and includes all related costs, including but not limited to the Architect's redesign costs; and waives all claims for additional costs related to the substitution which subsequently become apparent; and
- .4 will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be completed in all respects.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.4.3.1 The Contractor shall only employ labor on the Project or in connection with the Work capable of working harmoniously with all trades, crafts and any other contractors and individuals associated with the Project. The Contractor shall also minimize the likelihood of any strike, work stoppage or other labor disturbance.

§ 3.4.3.2 If the Work is to be performed by trade unions, the Contractor shall make all necessary arrangements to reconcile, without delay, damage or cost to the Owner and without recourse to the Architect or the Owner, any conflict between the Contract Documents and any agreements or regulations of any kind which regulate, control or distinguish what activities shall or shall not be included in the work of any particular trade.

§ 3.4.3.3 In addition, so as to ensure compliance with the federal Immigration Reform and Control Act of 1986 and regulations promulgated thereunder, Contractor shall establish and diligently implement, and require each of its Subcontractors and sub-Subcontractors at any tier and all other persons and entities providing labor or services related to the Work or the Project on behalf of Contractor to establish and diligently implement, a policy of hiring only individuals who are lawfully authorized to work in the United States; neither the policy nor its implementation shall discriminate because of citizenship status against U.S. citizens, U.S. nationals or permanent residents or temporary residents having proper work authorization. Contractor shall defend hold harmless and indemnify Owner and the other Indemnitees against any Loss, arising from or related to the failure of Contractor or any Subcontractor or sub-Subcontractor at any tier or any other person or entity providing labor or services related to the Work or the Project on behalf of Contractor to comply with the foregoing requirements. As used herein, the terms "Indemnitees" and "Loss" shall have the same meanings as set forth in Section 3.18 below.

§ 3.4.4 In all cases involving utilities, unless the Contract Documents specifically provide otherwise, it shall be the Contractor's responsibility to coordinate the Work with the owners of such utilities, for the protection of such utilities and for the safety associated with working with or in the vicinity of such utilities. The Contractor shall coordinate any work required by private and/or public utility companies to provide utilities to the Work and/or shall coordinate

relocation of utilities as required by the Work. Any reference to the Owner being responsible for the coordination of, the paying for, or the relocation of any utility or associated equipment, which it does not own or control, requires only reasonable efforts by the Owner to coordinate such activity.

- .1 Utilities or other services which are shown on surveys, or not shown but encountered or otherwise found, shall be protected by the Contractor from any damage from any Work and operations under the Contract Documents, unless or until they are abandoned. Except for utilities or other services that are not shown on surveys and were not previously encountered or otherwise found by Contractor or anyone working for or on behalf of the Contractor: (i) unless or until they are abandoned, or to be abandoned, the Contractor shall immediately repair, or cause the responsible party to repair, any damage from the Work or operations and restore the utilities and services to an equal or better condition than that which existed prior to the damage or disruption; (ii) the cost of repair of such utilities and services shall be borne solely by the Contractor or the responsible party without an extension of the Construction Time and without any increase in the Contract Sum or the Guaranteed maximum Price.
- .2 To the extent practical, the Contractor shall be entitled to tie into the Owner's existing water, power, natural gas and steam facilities without charge as to any usage in connection with the Work.
- .3 No one except the Owner is permitted to connect to or activate any utility services in any building or facility owned or occupied by the Owner. When such connection or activation services are required, the Owner shall be contacted, and unless otherwise specifically provided in the Contract Documents all such work shall be performed by Owner's personnel. In all cases, the Contractor shall give notice of the need for such services, to the Owner, in a timely manner (at least seventy two (72) hours in advance) in order to avoid delays to the Project's progress.

§ 3.4.5 The Contractor shall cause pre-purchased equipment and material to be delivered to the Project Site or temporarily stored to assure coordination with other trades. The Contractor shall be responsible to verify that such equipment is in accordance with the Specifications.

§ 3.4.6 To the extent practicable, materials and equipment will be delivered to the Project Site in original containers or wrappings. Used materials or equipment will not be permitted to be incorporated into the Work without the written approval of the Architect and the Owner or unless specifically permitted or required by the Contract Documents. The Architect and the Owner shall have the right to have any such improperly used materials or equipment removed from the Project Site or completed Work whenever detected. The Architect's or Owner's failure to detect such used materials or equipment shall not relieve the Contractor of its obligations under this Paragraph. Neither the Architect nor the Owner shall have any obligation to inspect for or improperly detect used materials or equipment.

§ 3.4.7 All members of the Construction Team shall cooperate with each other and with any separate contractors or persons employed by the Owner. Each of these parties shall correlate their Work and activities with the Work of others, and in the case of disagreements as to the proper procedure, sequence of Work, use of space, responsibility for damage, or other matters related to the Work, the parties involved shall abide by the Contractor's decision as to the procedure to be followed.

§ 3.4.8 Except in cases of unreasonable interference that constitutes an Owner Delay, the Contractor shall not be relieved of its obligation to cause the Work to be performed on time in accordance with the Contract Documents by the activities or duties of anyone involved in the administration of the contract, or by tests, inspections or approvals required or performed and coordinated by someone other than the Contractor.

§ 3.5 WARRANTY

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear, and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The warranty shall be in the form and substance as required by Section 5.3.2.11.

§ 3.5.2 The Contractor shall assign to the Owner at the time of Substantial Completion any and all manufacturer's

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warranties relating to materials and labor used in the Work. Contractor shall perform the Work in a manner that will preserve any and all manufacturer's warranties.

§ 3.5.3 If the Contractor uses any portion of the Work or the Owner's other property, such items will be restored to the condition they were in immediately prior to such use at or before the time of Substantial Completion, or as otherwise specified in the Contract Documents. The Contractor's warranty and agreement to correct Disputed Work includes the Contractor's obligations under this section.

§ 3.6 TAXES

The Contractor shall pay sales, consumer, commercial activities, local business use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution, completion, and occupancy of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded; including, without limitation, all connection charges, assessments and inspection fees imposed by any municipal agency or utility company. All such permit fees and charges are included in the Contractor's Contract Sum or Guaranteed Maximum Price.

§ 3.7.2 The Contractor shall comply with and give notices required by Applicable Laws applicable to the performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to Applicable Laws the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the site that are subsurface or otherwise concealed physical conditions that differ materially from both (i) those indicated in the Contract Documents, and (ii) those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents ("Materially Different Conditions"), the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed, irrespective of Section 15.1.2 or other provisions to the contrary contained in the Contract Documents, and in no event later than forty-eight (48) hours after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that Materially Different Conditions exist that cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, the Architect will recommend to the Owner an equitable adjustment in the Contract Sum or Construction Time, or both. If the Architect determines that the reported conditions at the site are not Materially Different Conditions or that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Construction Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.7.6 The Contractor shall notify the municipality, public utilities, agencies, Miss Dig and the Owner in a timely manner so as to allow reasonable response time before digging any tunnels or similar underground work, and shall protect all existing utilities, sidewalks, streets, and similar improvements while performing the Work.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (i) the difference between actual costs and the allowances under Section 3.8.2.1 and (ii) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project Site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall confirm in writing to the Owner through the Architect the name and qualifications of the proposed superintendent. The Architect may reply within fourteen (14) days to the Contractor in writing stating (i) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (ii) that the Architect requires additional time to review. Failure of the Architect to reply within the fourteen (14)-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, as part of its Contract Sum or Guaranteed Maximum Price, promptly after being awarded the Contract, shall prepare and submit to the Owner and the Architect a proposed Construction Schedule, to serve as a schedule for the performance of the Work. Except with the Owner's prior written approval, the Construction Schedule shall maintain the critical path and all milestones and deadlines established in the Master Design and Construction Schedule. The schedule shall not exceed time limits current under the Contract Documents, shall be reviewed and, if appropriate, revised monthly or at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (i) be coordinated with the Contractor's construction schedule, and (ii) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Construction Time based on the time required for review of submittals. The submittal schedule shall substantively follow the requirements depicted in figure 3.12.4.3.

§ 3.10.3 Construction Schedule shall be in a detailed critical path method format satisfactory to the Owner which shall also: (i) provide a graphic representation coordinating and sequencing all activities and events that will occur during performance of the Work; (ii) identify each phase of construction and occupancy; (iii) set forth Milestone Dates and manpower loading. The Construction Schedule shall allow for and depict the following:

- .1 local weather conditions;

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- .2 local jurisdictional or other work restrictions;
- .3 specific restrictions, constraints and Contract completion dates stipulated in the Contract Documents;
- .4 intermediate completion dates stipulated in the Contract Documents;
- .5 time for needed approvals by the Owner, Architect, or other agency or authority;
- .6 Owner, Architect, or other agency or authority inspections and/or tests where required by the Contract Documents;
- .7 the work of separate contractors or the Owner;
- .8 necessary resources to accomplish the Work within the Construction Time;
- .9 other information that may be provided by the Architect or the Owner; and
- .10 a legend for each report or chart which clearly identifies how to interpret each.

§ 3.10.4 Upon review and acceptance by the Owner, the Construction Schedule shall be deemed part of the Contract Documents and shall not be subject to change except in accordance with Section 8.3 and Article 7. If it is not accepted, the Construction Schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and Architect and shall be resubmitted for acceptance.

- .1 The Construction Schedule, subject to any Modification granted in accordance with the Agreement, shall constitute the Contractor's scheduling commitment to the Owner. It shall also serve as the basis for the Contractor's Contract Sum or Guaranteed Maximum Price.
- .2 The Contractor shall meet at least bi-weekly with the persons providing labor or materials under each trade package to review their progress and take appropriate action to maintain the Construction Schedule.
- .3 The accepted Construction Schedule shall be updated (i) monthly to compare actual progress with projected progress and (ii) at any other time if requested by the Owner. The updated Construction Schedule shall reflect the status of the Project's progress at the date of update and the Contractor's planned progress of remaining portions of the Work.
- .4 The Contractor shall develop recovery schedules when critical path or Milestone Dates are or may be at risk.
- .5 The Contractor is responsible for the completeness of the Construction Schedule. The Contractor shall confirm in writing, with each submission of the Construction Schedule, that the Contractor has reviewed the Construction Schedule with Subcontractors and Suppliers and has coordinated and allowed for the lead times associated with the delivery of materials or equipment required for the proper progress of the Work.
- .6 The sequence of activities in the Construction Schedule will reflect the Contractor's intended approach to the execution of and completion of the Work. The Construction Schedule shall be broken into work areas to provide for a clear identification of the planned progress of the Work. Unless it is impractical, the duration of each activity will not be greater than twenty (20) working days. All durations shown will be in working days.
- .7 The Owner's or the Architect's review of Construction Schedule shall not constitute or imply the acceptance of or relieve the Contractor of the responsibility for the means, methods, sequences, techniques or procedures used in the performance of the Work.
- .8 The Construction Schedule shall represent the Contractor's plan for organizing, directing, managing, controlling, staffing and executing the Work required by the Contract Documents. The Owner shall have the right to rely on such Construction Schedule to coordinate and otherwise plan the work of the Owner, Architect, or other separate contractors, and to evaluate progress for payment purposes or other purposes as described in the Contract Documents.
- .9 All float time in the Construction Schedule shall be shared by the Owner and Contractor or otherwise used for the benefit of the Project.
- .10 The updated Construction Schedule will identify the actual start and finish dates of all activities completed and the actual start date and remaining duration of all activities in progress.
- .11 At the completion of the Work and as a condition precedent to final payment to the Contractor, the Contractor shall submit two (2) copies of the final updated Construction Schedule to the Owner.

§ 3.10.5 The Contractor shall proceed strictly (not substantially) in accordance with the critical path set forth in the Construction Schedule. The Contractor shall monitor the progress of the Work for conformance with the requirements of the Construction Schedule and shall promptly advise the Owner of any delays or potential delays. If any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment of the Construction

Time or any Milestone Date or the Contract Sum or Guaranteed Maximum Price unless any such adjustment is agreed to by the Owner and authorized pursuant to a Change Order.

§ 3.10.6 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

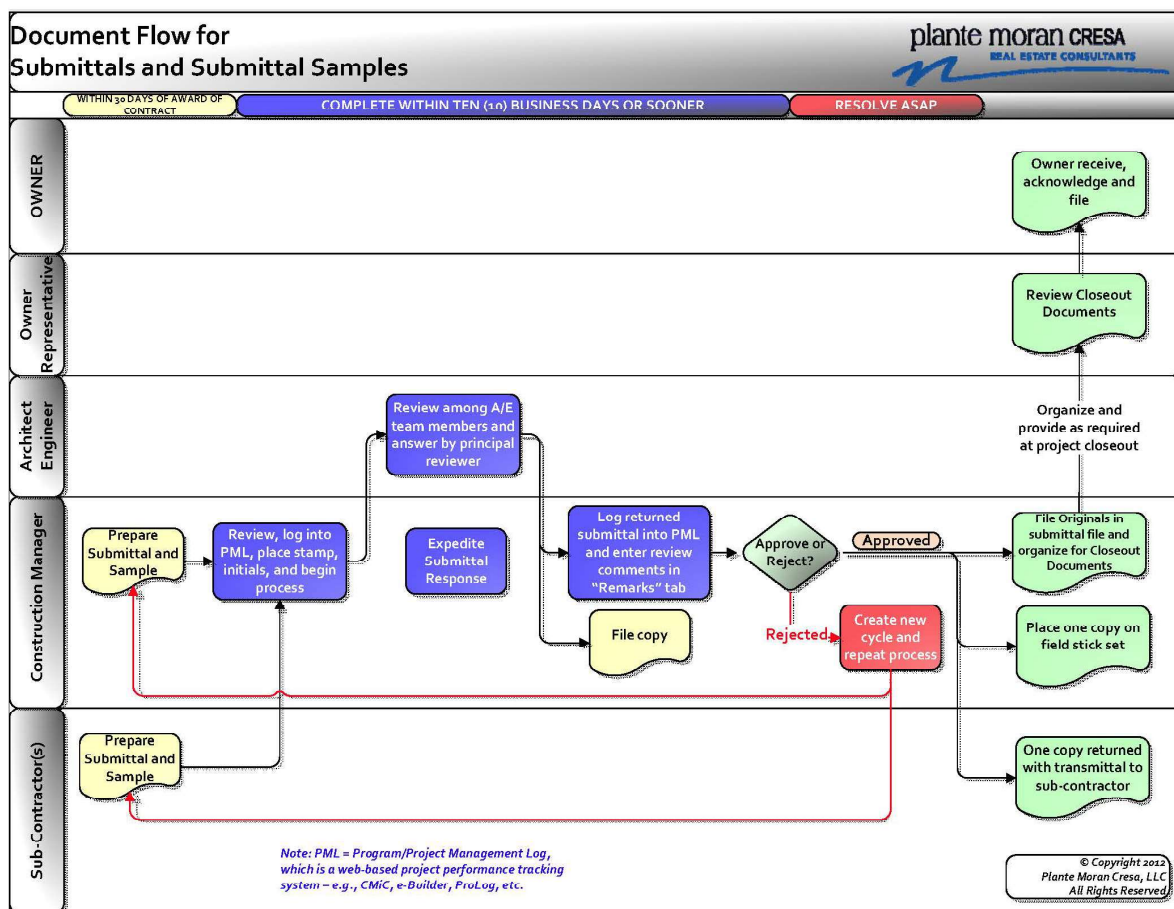
§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.4.1 As part of the document control system, the Contractor shall develop and keep current a submittal log, which is coordinated with the Construction Schedule.

§ 3.12.4.2 The Contractor shall monitor the time required for submission of submittals to the Architect, as well as the time required for their review and approval by the Architect. The Contractor shall take corrective action as appropriate to insure the timely submission and review of submittals.

§ 3.12.4.3 Unless required otherwise in the Construction Documents, the Architect and Contractor shall follow and shall cause their respective Consultants, Subcontractors and/or Suppliers to follow the submittal document control process and schedule described in the figure 3.12.4.3 below, *Document Flow for submittals and submittal Samples*.



§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action.

§ 3.12.5.1 The Contractor shall check thoroughly all such submittals, including those it prepares itself, as to measurements, sizes of members, materials and all other details, to assure that they conform to the intent of the Contract Documents.

§ 3.12.5.2 The Contractor shall promptly return to the Subcontractors and/or Suppliers, for correction, any of the submittals that are found inaccurate or otherwise erroneous.

§ 3.12.5.3 After the Contractor has checked and approved such submittals, the Contractor shall place thereon the date of its approval and the legible signature of the individual who reviewed them and shall then submit them to the Architect for review. The quantity required and the manner of submission will be as required by the outlined procedure shown on the attached flow chart. The Architect may refuse to check or review any submittals, which are not submitted in compliance with these requirements.

§ 3.12.5.4 Submittals describing manufactured equipment must be "project specific". Every submission copy must be clearly marked to fully define the intended model number, configuration and other applicable product information.

§ 3.12.5.5 Among other things, the Contractor shall be responsible for the constructability, content, completeness, and consistency of all submittals.

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§ 3.12.5.6 The Contractor shall notify the Owner when submittals are received. It shall deliver copies to the Owner upon request.

§ 3.12.5.7 The Contractor shall notify the Owner and the Architect in writing if any submittals appear to modify the requirements of the Contract Documents. This notice shall identify each and every change.

§ 3.12.5.8 The Contractor shall furnish to the Architect for review when requested, or when required by the Contract Documents, Samples of all materials and finishes to be used in the execution of the Work. Such Samples shall be of sufficient size to be representative and the required number of them shall be submitted before the Work utilizing the materials they exemplify is commenced and in ample time to permit examination thereof. In all cases, Samples shall be submitted at least three (3) weeks prior to when approval is needed to maintain the progress required by the Construction Schedule. All materials furnished and finishes applied to the Work shall be fully equal to the submitted Samples.

- .1 Samples shall be forwarded to the Architect with all shipping charges prepaid. Unless otherwise directed, Samples shall be submitted in triplicate, boxed or wrapped properly, each labeled with the name, type or brand of the materials, its place of origin, the names of its producer, Contractor, and the Project.
- .2 The approval of Samples is generally directed towards establishing quality, color and finish criteria, and does not modify the requirements of the Contract Documents as to dimensions or design.

§ 3.12.5.9 Each Shop Drawing which details by original line drawings the Work to be fabricated for the job shall be submitted in either electronic or in a printed form suitable for reproductions plus three (3) copies made therefrom. A clear space, 8 inch x 8 inch, shall be allowed on the Shop Drawings in the lower right hand corner for the placement of review and date stamps. After review, the Architect will obtain a copy from the documents as required for use and will return the reviewed and noted, or corrected, documents to the Contractor and a copy to the Owner. Drawings returned for resubmission or disapproved require the original Shop Drawing to be corrected and a new set of documents with the required edits made therefrom submitted. Such procedure shall be followed until review is final. The Contractor shall obtain and provide such number of approved documents from the final drawing, which carry the Architect's stamp of approval, as may be required for distribution. This shall include the forwarding of one set of approved documents each to the Architect and the Owner for record, and necessary quantity of documents for the Owner's use.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (i) reviewed and approved them, (ii) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (iii) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.6.1 The Architect will check and review the submittals with reasonable promptness and within any time limits agreed upon in writing and will return them as hereinafter described, indicating by notation, or by written instructions, or other directions, any corrections, which in the judgment of the Architect, may be necessary to meet the requirements of the Contract Documents. The Contractor shall then review such notations, instructions, or directions, and if the Contractor concurs therein, shall make or have made such corrections, and shall, when so noted on the submittals or requested by the Architect, resubmit corrected submittals to the Architect as soon as possible, for final check and review. Such final check and review by the Architect of submittals so corrected and resubmitted will be limited to the corrections only, and the Contractor, by such resubmission shall be held to have represented that such submittals contain no other alterations, additions, or deletions, unless the Contractor, in writing, directs the Architect's specific attention to same. Should the Contractor question or disagree with such notations, instructions, or directions, the Contractor shall direct the Architect's attention to same for further clarification before resubmitting them. Corrections or changes indicated on submittals shall not be construed as an order for a change in the Work or to perform extra work.

§ 3.12.6.2 The Architect's review of submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor. The Architect does not assume responsibility for errors, omissions or deviations from the Contract Documents contained in such submittals. Any such errors, omissions or deviations from the Contract Documents must be corrected by the Contractor, irrespective of the receipt and review of the submittals by the Architect, and even though the Work is done in

accordance with such submittals, unless such error, omission or deviation from the Contract Documents is specifically called to the Architect's attention by the Contractor in a separate written letter of communication, at the time of Submittal, and the Architect has given written approval of such error, omission, or deviation.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require Submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective Submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved Submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (i) the Architect has given written approval to the specific deviation as a minor change in the Work, or (ii) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of Applicable Law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by Applicable Laws, lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.13.2 Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Project Site. After equipment is no longer required for the Work, if feasible, it shall be promptly removed from the Project Site. Protection of construction materials and equipment stored at the Project Site from weather, theft, damage and all other casualty is solely the responsibility of the Contractor, who shall bear the risk of loss thereof except to the extent such loss is covered by insurance the Owner is required to maintain under the Agreement.

- .1 Prior to Substantial Completion, all temporary work, of every nature, shall be dismantled and removed from the Owner's premises.
- .2 If at any time it becomes necessary to move material or equipment, which has been temporarily located or stored on the site during construction, the Contractor shall, when directed, cause them to be moved to another location without charge to the Owner.

§ 3.13.3 There shall be no offsite storage of materials or equipment without the Owner's prior written approval in each instance. If the Owner consents to offsite storage, the Contractor shall also comply with the following specific

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requirements:

- .1 Title to such materials shall be vested in the Owner, after payment therefor to the Contractor, as evidenced by documentation satisfactory in form and substance to the Owner, including bills of sale, recorded financing statements, UCC filings and UCC searches. The Contractor shall procure insurance satisfactory to the Owner for materials stored off the Project Site in an amount not less than the total replacement value thereof.
- .2 Only assembled components may be stored off the Project Site.
- .3 Representatives of the Owner shall have the right to make inspections of the storage areas at any time.
- .4 Such materials shall be (i) protected from diversion, destruction, theft and damage to the satisfaction of the Owner, (ii) specifically marked for use in the Work, and (iii) segregated from other materials at the storage facility.

§ 3.13.4 No member of the Construction Team shall erect any sign on the Project Site without the Owner's prior consent.

§ 3.13.5 The Contractor shall ensure that the Work is at all times performed in a manner that affords the Owner, the Architect, and the Owner's separate contractors reasonable access, both vehicular and pedestrian, to the Project Site and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the Project Site shall be free from all debris, building materials and equipment. Without limiting any other provision of the Contract Documents, the Contractor shall use its best efforts to minimize any interference with the occupancy or beneficial use of (i) any areas and buildings adjacent to the Project Site or (ii) portions of the Project in which Work is not being carried out in the event of partial occupancy.

§ 3.13.6 The Contractor shall not, without the Owner's prior written approval, permit any workers to use any existing facilities at the Project Site, including, without limitation, lavatories, toilets, entrances, and eating and parking areas, other than those designated by the Owner. Without limiting any other provision of the Agreement, the Contractor shall enforce compliance with all rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project Site and the surrounding area. The Contractor shall immediately notify the Owner in writing if, during the performance of the Work, the Contractor reasonably determines compliance with any portion of such rules and regulations to be impractical, setting forth the problems of such compliance and suggesting alternative means through which the results intended by such portions of the rules and regulations can be achieved. The Owner may, in its discretion, adopt such suggestions, develop new alternatives or require compliance with the existing requirements of the rules and regulations. The Contractor shall also cause all members of the Construction Team to comply with all insurance requirements and collective bargaining agreements applicable to use and occupancy of the Project Site and the surrounding area. However, the Contractor shall not be responsible to regulate the workers' conduct outside of work hours except as may be permitted under Applicable Laws and collective bargaining agreements.

- .1 Should any room or part of an existing building or facility be temporarily used by any member of the Construction Team as a shop, storeroom, locker room, an office, or for any other purpose, such room or part shall, prior to completion and when so directed, be thoroughly cleaned and returned to its original condition. All damage to any such room or part of an existing building or facility arising therefrom shall be corrected, and the whole left in a condition acceptable to the Owner by the Contractor. No room or part of an existing structure shall be so used without the written consent of the Owner.

§ 3.13.7 Anything contained in the Contract Documents to the contrary notwithstanding, no one except the Owner shall be permitted to disrupt the operation of any building system or any other services without the Owner's prior written consent. Any request to perform such work shall be in writing, received by the Owner no less than five (5) days prior to the commencement of the requested disruption, and shall detail (i) the exact nature and duration of such interruption, (ii) the area affected, and (iii) any impact upon the Construction Schedule caused by such proposed temporary disruption. Except in the case of Additional Measures, all Work shall be performed during the hours and on the days set forth in the Specifications. The Contractor's failure to comply with the notice provisions of this section shall constitute a waiver by the Contractor of any right it may have to an adjustment of its compensation, or the Construction Time, on account of any postponement, rescheduling, or other delays ordered by the Owner in connection with any Work affecting a critical service for which appropriate notice was not furnished.

§ 3.13.8 The Contractor will consult with the Owner concerning any necessary operations at the Project Site, including staging area limits, office or storage trailer locations, dumpster operations, equipment and material deliveries, hoisting

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areas and any other construction impacts on the Owner's grounds.

- .1 All areas used by member of the Construction Team must be properly fenced. Unless the Contract Documents designate another specific type of temporary fencing to be used, the minimum temporary fencing requirement will be the use of chain-link fence having a minimum exposed height of eight (8) feet above grade. Temporary barricades shall also be provided as necessary for the safety of the general public.
- .2 The Contractor shall locate all underground utilities and lawn irrigation piping prior to driving fence posts.
- .3 Materials, equipment, trailers, vehicles and all other operations are not to be located under or within the drip line of trees. Construction, staging or storage operations in flower and shrub plantings and beds are to be avoided.
- .4 Driving of vehicles on lawn areas is strictly prohibited.
- .5 Any tree trimming or tree root disturbances shall be performed only after consultation, inspection and approval by the Owner.
- .6 All existing traffic control devices, such as bollards, chain and posts, building signs, or traffic signs, shall not be removed without specific approval from the Owner.
- .7 Unless stated otherwise in the Contract Documents, the Contractor will be responsible to restore, to the Owner's satisfaction, all disturbed areas caused by the Work.
- .8 All lawn, shrub and tree restoration work, including soil aeration, tree trimming and plant material replacements shall be performed by a qualified landscape contractor.
- .9 The Contractor shall also cause all streets, drives, sidewalks, walls, lights, signs, fences, poles and the like where disturbed or damaged by the Work to be repaired, and shall leave them in the same condition after completion of the Work as before operations started.
- .10 The Contractor shall provide and maintain pedestrian walkways and other means of access to and from any building or facility requiring such as a result of the execution of the Work. Such means of access shall be as required by the Contract Documents and/or the Owner's directions.
- .11 The Contractor shall, subject to the approval of the Owner, designate areas for eating, provide adequate receptacles, and maintain the area in a sanitary condition free of rodents and pests. Remnants of food shall not be allowed to spread beyond the trash receptacles in the designated eating areas. The trash receptacles for the designated eating areas shall be emptied at least once each work day.

§ 3.13.9 The Contractor shall provide and maintain temporary stairs, main ladders and runways for access to all areas for the use of all trades. The Contractor shall provide additional runways and ladders as may be required for the execution of the Contractor's Work. All such apparatus, equipment and construction shall meet all requirements for safety and all provisions of federal, state or local laws and ordinances applicable thereto. Permanent stairs shall be erected as soon as possible, and the Contractor shall provide same with protective treads, handrails and shaft protection.

§ 3.13.10 The Contractor shall provide suitable toilet facilities, at locations approved by the Owner, for the use of all its employees and those of the Construction Team and shall maintain same in proper sanitary condition acceptable to the Owner. All temporary toilet facilities shall be removed upon completion of the Work. The Contractor, its employees or other members of the Construction Team will not be permitted to use toilet facilities in the building under construction, or other buildings on or near the Project Site.

§ 3.13.11 The Contractor shall provide telephone service at the Project Site for use by the Contractor, Owner and Architect.

- .1 The cost of installation, rent, message unit charges, and removal shall be paid by the Contractor. All long distance calls shall be paid by the party making such calls.
- .2 The Contractor shall provide a public telephone, conveniently located, for the use of others.
- .3 Telephones addressed in this Article shall remain until the completion of the Work.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.14.3 Only tradespersons skilled and experienced in cutting, fitting and patching shall perform such Work. An appropriate member of the Construction Team shall do all cutting, fitting or patching on the Work that may be required to make its several parts come together properly and fit the Work to receive or be received by work of other contractors shown by, or reasonably implied by, the Contract Documents for the completed Project. An appropriate member of the Construction Team shall repair or otherwise make good all such cutting, fitting, or patching after the required Work has been completed as the Architect may direct.

§ 3.14.4 The Contractor shall not cut or otherwise alter any portion of any structure of which the Work is a part or to which the Work is attached without in each instance having first submitted to the Owner Shop Drawings accurately locating each such cut or alteration. The Architect's approval of such Shop Drawings must be obtained prior to making any such cut or alteration.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the Project Site, all staging areas, and surrounding area free from accumulation of waste materials or rubbish caused by the Work. At completion of the Work, the Contractor shall remove or cause to be removed from the Project Site, all staging and surrounding areas all waste materials, rubbish, scaffolding, the Contractor's tools, construction equipment, machinery, surplus materials and other materials used on the Project Site.

- .1 Construction debris and rubbish as generated by the Work shall be removed from the point of origin daily and not allowed to accumulate. It shall be deposited in a trash container provided on the site until hauled away. Scrap materials for reuse in temporary Work shall be segregated and properly stored, protected and covered as for new materials. The result of the above shall be the maintenance of a clean project, with a minimum of fire hazards. The Contractor shall establish and implement a clean-up routine.

§ 3.15.2 If the Contractor fails to keep the Project Site and all staging and surrounding areas clean as required by the Contract Documents and in accordance with the instructions of the Owner, the Owner may, following forty-eight (48) hours' notice, do so and the cost thereof shall be charged to the Contractor. Such charge may be deducted from the next payment owed the Contractor, or if the balance of any payments owed is insufficient to cover the amount owing, the Owner may send an invoice to the Contractor for payment, and the Contractor will pay the invoice upon demand.

§ 3.15.3 Unless the Contract Documents require a higher standard, the Contractor shall leave all Work installed or modified under the Agreement and all existing materials and surfaces affected by the Work and each area of the Project Site clean to the satisfaction of the Owner. This shall include at a minimum: complete dusting, sweeping, vacuuming, mopping, polishing, and other activities as necessary to remove all dust, dirt and other construction residues, and removal of all tools and equipment, construction debris, rubbish, and surplus materials.

§ 3.15.4 Immediately before turning any portion of the Project over to the Owner, the Contractor shall have all glass cleaned by professional window washers. Care shall be taken not to scratch any glass. Acid or other cleaning material which will injure or mar the surface or adjacent Work will not be allowed. Any damage resulting from glass cleaning shall be corrected by the Contractor, including the furnishing of new glass of same character and quality or the replacement of other Work damaged or disturbed.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or

manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 Irrespective of any other provisions of the Contract Documents to the contrary, to the fullest extent permitted by law the Contractor or any other person for whom the Contractor is liable, shall be responsible for any liability, pay on behalf of indemnify, defend and hold harmless the Owner, its elected and appointed officials, employees and volunteers and others working on behalf of the Owner, Architect, Architect's consultants, and agents and employees of any of them (collectively "Indemnitees") from and against claims, damages, demands, suits, fines, penalties, losses, costs and expenses, including but not limited to attorneys' fees (collectively "Losses"), arising out of or resulting from including all costs connected therewith and for any damages which may be asserted, claimed or recovered against or from the Owner, its elected and appointed officials, employees, volunteers, or others working on behalf of the Owner, the actual or alleged violation of Laws, reckless, intentional or negligent acts or omissions or the breach of any requirement of the Contract Documents of or by the Contractor, a Subcontractor, Sub-subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, including without limitation Losses attributable to bodily injury, sickness, disease and property damage (all the foregoing hereinafter being referred to as "Contractor's Wrongful Acts"), except to the extent such Loss is caused by the Indemnitee seeking indemnification or defense hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity and defense that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.1.1 In addition, to the fullest extent permitted by law, the Contractor shall indemnify, defend and hold the Owner, and its elected or appointed officials, employees or volunteers or others working on behalf of the Owner, Architect, and the agents and employees of any of the them, harmless from any claims, liabilities, damages, losses and expenses, including without limitation, actual attorney fees and expenses incurred in litigating, arbitrating or settling any claim, action or arbitration, arising from, or in any way relating to, any failure of the Contractor, or any claim that the Contractor failed, to perform punctually or properly any of its obligations created by the provisions of the Contract Documents.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.19 RECORD DOCUMENTS

§ 3.19.1 The Contractor shall maintain at the Project Site on a current basis for review by the Owner, the Architect, and all members of the Construction Team, the Record Documents, which include: a record copy of all logs, reports, Contract Documents, and Record Drawings in good order and marked to record all changes made during Construction, all approved Shop Drawings, Product Data, Samples, and other submittals, applicable handbooks, maintenance and operating manuals and instructions, and other related documents and revisions which arise out of the Contract Documents or the Work. As part of the Record Documents, the Contractor shall maintain records of principal building layout lines, elevations of the bottoms of footings, Project floor levels and key Site elevations certified by a qualified surveyor. The Contractor shall at all times make all records (excluding internal memoranda or reports, privileged communications and documents with incidental references to the Work, or documents which discuss multiple projects) available to the Owner and the Architect, and, at the completion of the Work, shall deliver all such Record Documents to the Owner neatly organized, bound, and indexed. The Contractor shall monitor preparation of as-built Drawings by Subcontractors on a monthly basis and shall take corrective action as appropriate when as-builts are not being properly updated. The Contractor shall be permitted to retain a copy of the Record Documents for its own use after the Work is completed and, in any event, the Owner shall continue to provide access to the Record Documents, for the Contractor to inspect and copy.

§ 3.19.2 The Record Drawings shall be prepared and updated during the prosecution of the Work. The prints for Record Drawing use will be a set of blackline prints provided by the Architect to the Contractor at the start of construction. The Contractor shall maintain said set in good condition and shall use colored pencils or other methods reasonably acceptable to the Owner to mark-up said set with "record information" in a legible manner to show: (i)

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deviations from the Drawings made during construction; (ii) details in the Work not previously shown; (iii) changes to existing conditions or existing conditions found to differ from those shown on any existing drawings; (iv) the actual installed position of equipment, piping, conduits, light switches, electric fixtures, circuiting, ducts, dampers, access panels, control valves, drains, openings, and stub-outs; and (v) such other information as the Owner may reasonably request.

§ 3.19.3 The Contractor shall keep note of all the deviations and discrepancies in the underground, concealed conditions and other items of construction and Work on field Drawings. At the completion of the Project the Contractor's notes on the record field Drawings shall be neatly transcribed onto a clean set of Drawings furnished by the Architect. The Contractor shall submit the final Record Drawings to the Architect for review.

§ 3.19.4 During construction, the Contractor shall maintain on the Project Site, a separate, clean set of Drawings for the sole purpose of recording changes and actual 'as installed' information. This set shall be accessible for inspection by the Owner and the Architect at all times. The Contractor shall bring this set of Drawings to the scheduled construction progress meetings. The Contractor shall record all information as the Work progresses, clearly and neatly, in color and maintain it on a current basis as directed by the Owner and submit these Drawings to the Owner within thirty (30) days after Substantial Completion. As a general guide, the type of information to be recorded includes, but is not limited to: (i) revisions made except minor or non-critical dimensional changes, (ii) omissions, including Work omitted by Change Order or accepted alternates, (iii) exact dimensioned locations of concealed lines, (iv) locations of all control devices, (v) any additions to Work, (vi) changes in significant details, (vii) and any other information of a similar nature.

§ 3.19.5 Upon substantial completion of the project, the Contractor shall submit to the Owner the Contractor's mechanical and electrical coordination Record Drawings prepared during construction by the Contractor. Examples of such drawings include sheet metal ductwork drawings, piping drawings, fire protection piping drawings, electrical raceway drawings, and the like. Submission shall be on reproducible photo diazo mylar, velum or sepia medium. When the Contractor produces drawings by computer aided drafting, the Contractor shall also submit their coordination drawings on electronic data files compatible with AutoCAD computer software. All such documents shall contain the Owner's Project Number for identification purposes.

§ 3.20 WARRANTIES AND MANUALS

§ 3.20 Unless the Contract Documents require otherwise, the Contractor shall bind and turn over to the Owner two (2) sets of manufacturers' warranties and operating and/or maintenance manuals, instructions or schedules for all equipment and special materials requiring such. Such binders will clearly categorize and index each piece of equipment and material included, and shall be clearly marked noting "project specific" equipment, model numbers, and other applicable information. Such manuals will be collected and organized by the Contractor and submitted to the Owner at one time, prior to the issuance of the certificate of Substantial Completion.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative: (i) during construction, (ii) until the final payment is due, and (iii) with the Owner's concurrence, from time to time during the period for correction of Work described in Section 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

§ 4.2.2 The Architect, as a representative of the Owner, will visit the site at intervals appropriate to the stage of construction or Contractor's operations, or as otherwise agreed with the Owner, (i) to become generally familiar with the progress and quality of the portion of the Work completed, (ii) to endeavor to guard the Owner against defects and deficiencies in the Work, and (iii) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (i) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (ii) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8. The Architect will receive, review, and ensure that all written warranties and related documents required by the Contract and assembled by the

Contractor are complete and correct before forwarding to the Owner, for the Owner's review and records pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

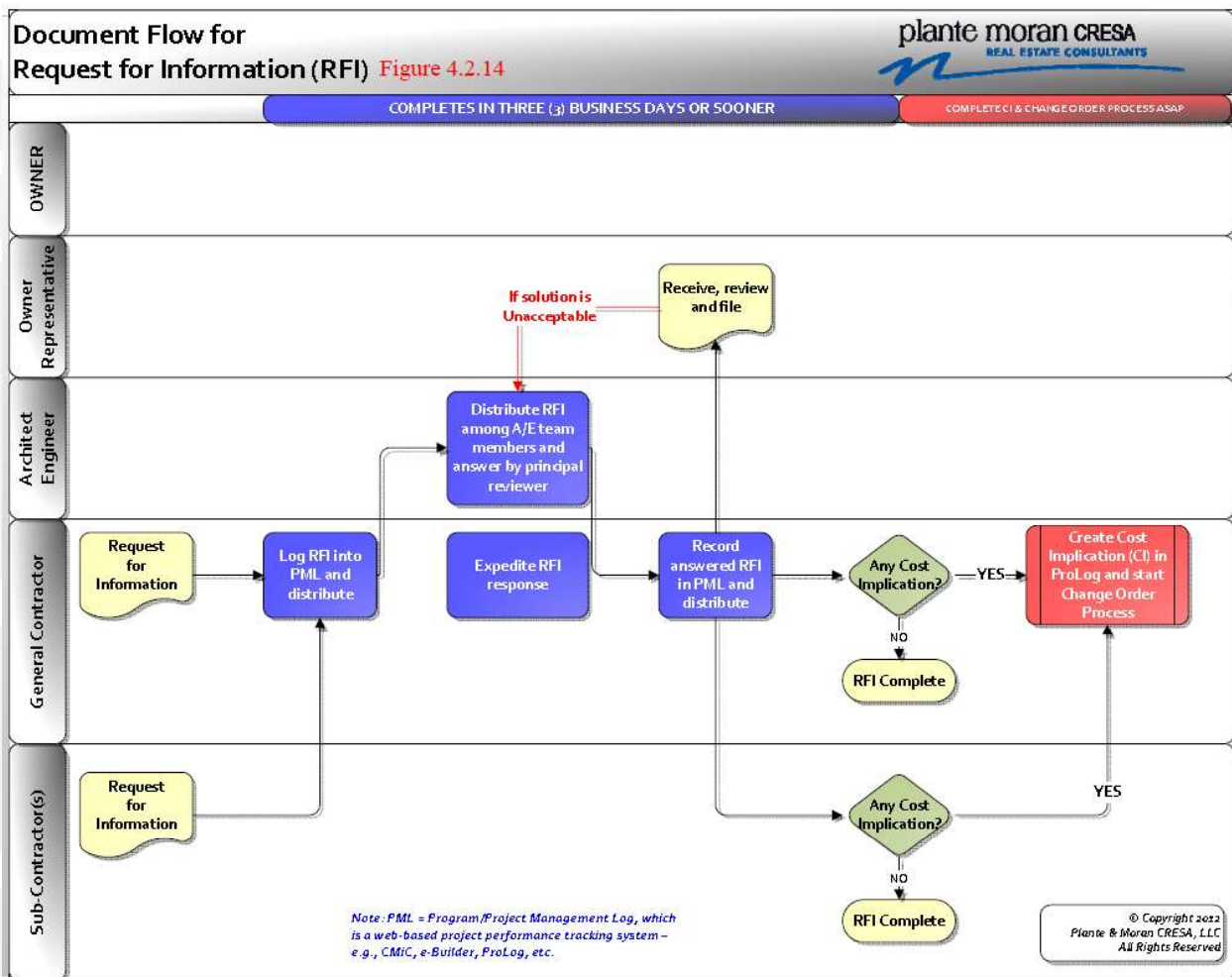
§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning the requirements of the Drawings and Specifications on written request of either the Owner or Contractor; provided however that the Contractor shall be responsible for reimbursing Owner, at Contractor's sole cost and expense, for Architect's fees for interpreting and deciding matters which the Architect determines to be clear and unambiguous. The Architect's response to such requests will be made in writing within any time limits established pursuant to Section 4.2.14. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until fifteen (15) days after written request is made for them.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Drawings and Specifications and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith. The Contractor shall promptly comply, and cause all members of the Construction Team and Subcontractors to comply with the Architect's written interpretations and decisions, subject to its rights under Section 7.2 if any interpretation or decision changes one or more of the Drawings and Specifications.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information or interpretation (RFI) about the Contract Documents or for approval of submittals in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information. Unless required otherwise in the Construction Documents, the Architect and Contractor shall follow and shall cause its Consultants, and all members of the Construction Team to follow the request for interpretation control process and schedule described in figure 4.2.14 below, *Document Flow for Request for Information (RFI)*.



ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within fourteen (14) days to the Contractor in writing stating (i) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (ii) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the fourteen (14)-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

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§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Construction Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Construction Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.1 Work performed for the Contractor by a Subcontractor shall be performed pursuant to a written Subcontract, which shall (in addition to the requirements of Sections 5.3 and 5.4) contain provisions that:

- .1 requires that such portion of the Work be performed in accordance with the requirements of the Contract Documents;
- .2 requires timely submission of Subcontractor's applications for payment and ancillary materials in order to enable the Contractor to apply for payment in accordance with the provisions of Article 9;
- .3 waives all rights the contracting parties may have against one another or that the Subcontractor may have against the Owner for damages caused by fire or other perils covered by the property insurance described in Article 11;
- .4 recognizes the rights of the Owner pursuant to the Contingent Assignment of Subcontracts contained in these General Conditions and require the Subcontractor (upon notice by the Owner that the Owner has terminated the Agreement with the Contractor pursuant to the terms of Article 14, and that the Owner has elected to retain the Subcontractor pursuant to the terms of its Subcontract with the Contractor) to complete the unperformed obligations under such Subcontract and, if requested by the Owner, to enter into an appropriate agreement evidencing the fact that the Subcontractor is bound to the Owner under its Subcontract in the manner in which it had been bound to the Contractor;
- .5 requires the Subcontractor performing labor at the Project Site to carry and maintain the insurance described in Article 11, unless otherwise approved by the Owner, and to deliver certificates of insurance to the Contractor prior to commencement of its portion of the Work;
- .6 includes the following sentence: "Owner is an intended third-party beneficiary of this Subcontract.";
- .7 requires dispute resolution in the manner provided in Article 15;
- .8 requires each Subcontractor to make all claims for changes or extensions of time to the Contractor strictly (not substantially) in the manner provided in the Agreement;
- .9 limits claims and damages in the manner provided in the Agreement; and
- .10 are in no way inconsistent with any provision of the Agreement.

Sub-subcontracts and Supply Contracts shall be subject to identical conditions, except: (i) suppliers that are not performing any Work on the Project Site are not subject to the insurance requirements described in Article 11; and (ii) Subcontractors and Sub-subcontractors may satisfy the insurance requirements described in Article 11 by being

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named as an additional insured under the Contractor's insurance policies or, in the case of a Sub-subcontractor, by being named as an additional insured under a Subcontractors insurance policies.

§ 5.3.1.2 Upon request, the Contractor shall deliver a copy of any Subcontract, sub-subcontract or Supply Contract to the Owner.

§ 5.3.2 COORDINATION OF SUBCONTRACTORS

§ 5.3.2.1 The Contractor shall provide supervisory, administrative, management, inspection and related services as required to properly coordinate, schedule and sequence the Work of the Subcontractors with each other (to avoid both duplication and omission of Work) and with the activities and responsibilities of the Contractor, the Owner and the Architect to complete the Work in accordance with the requirements of the Contract Documents with respect to cost, time and quality and to ensure that the other goals of the Work are otherwise met or exceeded.

§ 5.3.2.2 The Contractor shall schedule and conduct with the Subcontractors and sub-subcontractors construction progress and any other meetings deemed necessary to discuss such matters as procedures, progress, problems, safety, inspections, sequencing, and scheduling, and shall prepare and promptly distribute minutes. Construction progress meetings will be conducted by the Contractor weekly unless otherwise directed by the Owner and attended by all Subcontractors and sub-subcontractors whose Work has not been completed. Executive level progress meetings will be held on a monthly basis. All progress meeting minutes shall be provided to the Owner and Owner's Representative Consultant by the Contractor within five (5) days after the meeting and distributed to all attendees promptly after they have been approved by the Owner. The Owner will act promptly in providing its approval. The Contractor in consultation with the Owner and the Architect shall develop, implement and maintain a process of "partnering" involving both of them and all Subcontractors and sub-subcontractors so that (i) the goals and objectives of each are clearly understood and accepted by all, and (ii) potential problems, bad feelings, personal difficulties and the like are identified and resolved promptly.

- .1 The partnering objective shall be to identify and develop mutual goals, which may include, as examples, achieving Value Engineering savings, meeting the financial goals of each party, limiting cost growth, limiting review periods for contract submittals, avoiding and resolving disputes, facilitating early completion and minimizing lost time because of injuries. The partnering process shall emphasize open communication, collegiality and cooperation among all parties, as well as prompt and efficient dispute resolution at the lowest appropriate level of management. Claims and disputes not resolved in the partnering process shall be subject to the procedures specified in Article 15.

§ 5.3.2.3 Schedule of Subcontractors' Work. The Contractor shall require each Subcontractor to agree to be contractually bound to the requirements of the applicable Bid Package Construction Schedule and the Construction Schedule (or if the Construction Schedule has not been prepared, then the Master Design and Construction Schedule). The Contractor shall require each Subcontractor to agree to cooperate with the Contractor in developing a detailed CPM manpower-based schedule applicable to its portion of the Work within forty five (45) days after award of contract unless otherwise specified. The Contractor shall assist in the development of all Subcontractor schedules and shall prepare such schedules if any Subcontractor fails to do so. The Contractor shall require all Subcontractors to meet as often as necessary with the Contractor to complete their detailed CPM schedules. However, the Bid Package Construction Schedule and the Construction Schedule (or if the Construction Schedule has not been prepared, then the Master Design and Construction Schedule) will take precedence over any schedules prepared by Subcontractors with respect to time of completion for each bid package. If any such schedule indicates that additional time or effort will be required to maintain these schedules, the Contractor, Subcontractor shall agree to work additional time, including weekends if necessary, or to add manpower, all at no extra cost to the Owner. The contractor will require all their subcontractors to include the requirements in Sections 5.3.2.3 and 5.3.2.4 in their sub-subcontractor contracts.

- .1 The Contractor shall prepare and deliver to the Owner and each of the Construction Team that are part of a particular bid package a "short term/two week look ahead schedule," and it will take appropriate action to enforce compliance therewith.

§ 5.3.2.4 Subcontractors' Performance. The Contractor shall ensure satisfactory and timely (with reference to both Milestone and Substantial Completion Dates) performance from each of the Subcontractors. The Contractor shall take appropriate measures when any Subcontractor is not performing its obligations satisfactorily.

§ 5.3.2.5 Payments to Subcontractors. Upon award of the Subcontract, the Contractor shall have each Subcontractor prepare and submit a Schedule of Values allocating that portion of the Cost of the Work attributable to its Subcontract

to the various portions of the Work. Each Schedule of Values shall be prepared in a form and substance acceptable to the Contractor (which form shall previously have been approved by the Owner) and supported by such data as may be necessary to substantiate its accuracy. The Contractor shall develop and implement procedures for the review and processing of applications by Subcontractors for progress and final payments. Payment packages shall include, but shall not be limited to, each of the following documents: schedule of values, sworn statements, and appropriate forms of full or partial construction lien waivers or other similar waivers and releases of claims.

§ 5.3.2.6 Safety Programs. The Contractor shall provide a general review of safety programs developed by each of the Subcontractors, including verification that each Subcontractor has submitted its report of the recommended safety precautions and programs, as required by the Contract Documents. If the Contractor observes a safety violation, the Contractor shall require a Subcontractor to correct it. After written notification to the Subcontractor to correct the safety violation, if the Subcontractor does not correct the problem in a timely fashion, the Contractor shall cause the Work to be corrected by other means. The performance of such services by the Contractor shall not relieve the Subcontractors of their responsibilities for performance of the Work and for the safety of persons and property, and for compliance with all federal, state and local statutes, rules, regulations and orders applicable to the conduct of the Work. The Contractor shall conduct regular safety meetings with Subcontractors' superintendents to ensure the Subcontractors' compliance with federal, state or local statutes, rules, and regulations relating to the workers' safety or any other aspect of the Work.

§ 5.3.2.7 Work. The Contractor shall determine in general that the Work of each Subcontractor is being performed in accordance with the requirements of the Contract Documents, and shall guard the Owner against defects and deficiencies in the Work. As appropriate, the Contractor shall require special inspection or testing, or make recommendations to the Architect regarding special inspection or testing, of Work not in accordance with the provisions of the Contract Documents whether or not such Work has been then fabricated, installed or completed, and shall reject Work which does not conform to the requirements of the Contract Documents. The Contractor shall coordinate any inspections which may be required by any governmental agencies.

§ 5.3.2.8 Interpretation. The Contractor shall consult with the Architect and the Owner if any Subcontractor requests interpretations of the meaning and intent of any of the Contract Documents, and shall assist in the resolution of questions, which may arise.

§ 5.3.2.9 Insurance Certificates. The Contractor shall receive certificates of insurance from the Subcontractors, and shall review such certificates for compliance with the requirements of the Contract Documents, and shall forward the original certificates to the Owner's Designated Representative. No member of the Construction Team shall be permitted to commence any portion of the Work or have a presence at the Project Site without complying with all insurance requirements of the Contract Documents. The Contractor shall monitor the same to ensure the certificates of insurance remain current, and shall advise the Subcontractors of the impending expiration of their respective certificates, but the failure of Contractor to give such advice shall not, as between the Contractor and any of the Subcontractors, excuse the obligation of the Subcontractors to maintain current, unexpired certificates.

§ 5.3.2.10 Systems Readiness. The Contractor shall, in the company of the Architect and the Owner's maintenance personnel, observe the Subcontractors' evaluation of utilities, operational systems and equipment for readiness, and shall assist in their initial start-up and testing.

§ 5.3.2.11 Contractor and Subcontractors' Warranty Acknowledgment. The Contractor shall execute and deliver to the Owner, and shall cause anyone giving warranties that is contractually bound to the Contractor to execute and deliver to the Owner, the following Warranty Acknowledgment before a Certificate of Final Completion is issued:

Warranty Acknowledgment

Contractor warrants that all of its Work complies with the requirements of the Contract Documents. If, within two (2) years after the date of Substantial Completion of the Work or designated portion of the Work, any of Contractor's Work is found to be not in accordance with the requirements of the Contract Documents, Contractor shall correct the Work at its sole expense promptly after receipt of written notice from the Owner. This two (2) year period shall be extended (i) with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of Contractor's Work, and (ii) with respect to warranty Work for an additional two (2) year period following each correction. This obligation shall survive acceptance of the Work and termination of the Agreement.

This Warranty shall be in addition to the terms of any other warranty or longer period of obligation specified in the Contract Documents, any applicable special warranty required by the Contract Documents, or the terms of any general warranty and is not in lieu of any of them. This Warranty shall not be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced or to the time which any proceeding may be commenced.

§ 5.3.2.12 Products.

- .1 To the extent a product is specified in accordance with a Federal Specification, an ASTM Standard, an American National Standards Institute Specification, or other Association Standard, the Contractor shall require the Subcontractor to present an affidavit from the manufacturer when requested by the Owner or required in the Specifications, certifying that the product complies with the particular Standard or Specification. When requested by the Owner or specified, support test data shall be submitted to substantiate compliance.
- .2 Whenever a product is specified or shown by describing proprietary items, model numbers, catalog numbers, manufacturer, trade names, or similar reference, no substitutions may be made. However, the Contractor may suggest substitutes as part of its Value Engineering responsibilities

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each Subcontract Agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that:

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those Subcontract Agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a Subcontract Agreement, the Owner assumes the Contractor's rights and obligations under the Subcontract.

§ 5.4.2 If any assignment under this Section 5.4 becomes effective, the Owner shall be deemed to have agreed to defend and indemnify the Contractor against and hold it harmless from all claims, losses or expenses (including attorneys' fees) arising from or in connection with the assigned Subcontract as a result of any Work performed or obligation accrued after the assignment becomes effective, and the Contractor shall be deemed to have agreed to defend and indemnify the Owner against and hold it harmless from all claims, losses or expenses (including attorneys' fees) arising from or in connection with the assigned Subcontract as a result of any Work performed or obligation accrued before the assignment becomes effective, except for Owner's obligation to pay Contractor for the Work performed by the Subcontractor as set forth in the Contract Documents.

§ 5.4.2.1 Upon the Owner's reasonable request, the Contractor shall execute further documentation conditionally assigning each Subcontract to the Owner on the terms stated above (and the Contractor shall cause the Subcontractor to acknowledge said assignment). Copies of the executed Subcontracts shall be delivered to the Owner upon the Owner's request.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right, but shall have no obligation, to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. The Contractor shall promptly notify the Owner in writing upon becoming aware that such independent action will in any way compromise the Contractor's

ability to meet its responsibilities under the Contract Documents. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Contractor shall coordinate the activities of the Owner's own forces and of each separate contractor with the Work of members of the Construction Team, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the Construction Schedule deemed necessary after a joint review and mutual agreement. The resulting Construction Schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised. The Construction Time and Contract Sum or Guaranteed Maximum Price will be adjusted accordingly, if as agreed by Contractor and Owner.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.1.5 When the Contractor's Work is dependent upon the work of the Owner or the Owner's separate contractors, the Contractor shall notify the Owner of such condition in ample time to prevent any delays to the Project's progress.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities, or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work, or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.2.6 Subject to the provisions of, and rights to recover from, any property insurance that the Owner is responsible to maintain, the Contractor shall, at its expense, without recovery from the Owner, under the Contract Sum or Guaranteed Maximum Price, or use of any contingency or otherwise, promptly remedy damage caused by any member of the Construction Team to completed or partially completed construction or to property of the Owner or separate contractors.

§ 6.2.7 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may assume responsibility therefore, and the Owner and Architect will, in their reasonable discretion, allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

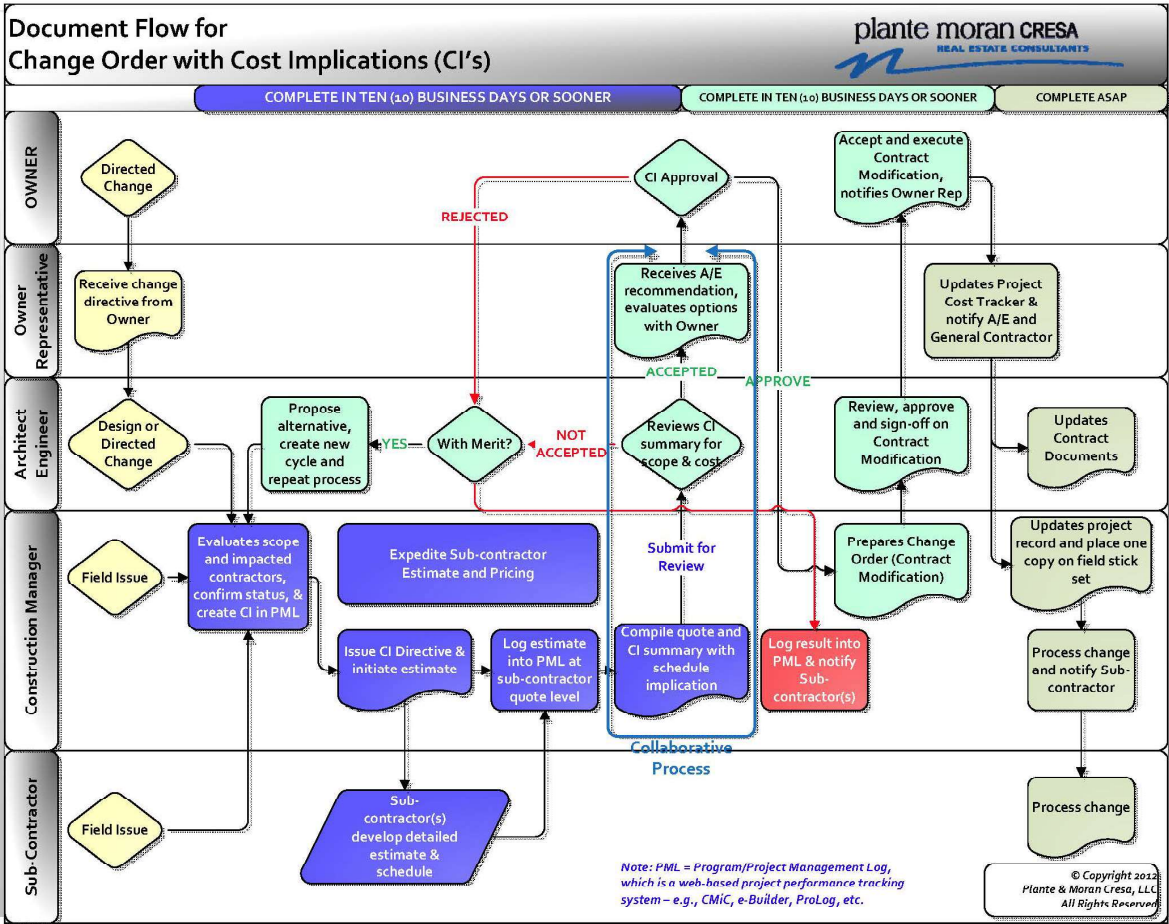
§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive, or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; and an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.1.4 Unless required otherwise in the Construction Documents, the Architect and Contractor shall follow and shall cause their respective Consultants, Subcontractors and/or Suppliers to follow the Change Order Process and schedule described in Figure 7.1.4 below, *Document Flow for Change Order with Cost Implications (CI's)*.



§ 7.1.5 To the extent provided in Section 11.4, changes in the Work may be made without notice to the Contractor's sureties, and absence of such notice shall not relieve such sureties of any of their obligations to the Owner. If notice of any extra Work or Change in the Work affecting the general scope of the Work or the provisions of the Contract Documents is required by the provisions of any bond, to be given to any surety issuing such bonds, the giving of any such notice shall be the Contractor's sole responsibility.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The Change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Construction Time.

§ 7.2.2 Written agreement by the Owner, Architect, and Contractor on any Change Order shall constitute a final settlement of and a waiver of and permanent bar to all claims by Architect or Contractor relating to the Change in the Work which is the subject to the Change Order, including all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum or Guaranteed Maximum Price and the Construction Time. The Contractor shall include the Work covered by such Change Orders in its Applications for Payment as if such Work were originally part of the Contract Documents.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Construction Time, or both. The Owner may, by Construction Change Directive, without invalidating the Contract, order Changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Construction Time being adjusted accordingly. Notwithstanding anything to the contrary herein, the Construction Time shall be adjusted only if the Contractor demonstrates to the Owner that the Changes in the Work required by the Construction Change Directive adversely affect the critical path of the Work.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the Change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Construction Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Construction Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of

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those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit, but not to exceed ten percent (10%) on changes in the Work performed by a Subcontractor and five percent (5%) for changes in the work performed by the Contractor. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Actual costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Actual costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Actual rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others; and
- .4 Actual costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect, in consultation with the Owner, will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, and that the Owner confirms, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Construction Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.3.11 In no event shall the Contractor be entitled to receive, and the Contractor hereby waives the right to receive any payment or any extension of time for additional or changed work, whether partially or fully completed or simply proposed, unless such additional work is authorized by a written Change Order or Construction Change Directive signed by the Owner, nor shall the Contractor be obligated to proceed with any such work. Only the Owner shall have the right to issue a written Change Order or Constructive Change Directive to the Contractor authorizing an addition, deletion or other revision in the scope of the Work and/or an adjustment in the Contract Sum or Guaranteed Maximum Price or the Construction Schedule.

§ 7.4 MINOR CHANGES IN THE WORK

The Owner, or the Architect after consulting with the Owner, may order minor changes in the Work not involving adjustment in the Contract Sum or Guaranteed Maximum Price or extension of the Construction Time. Such changes shall be effected by written order and shall be binding on the Contractor. The Contractor shall carry out such written orders promptly. Architect shall not, without written approval of Owner, order changes in the Work under this Section 7.4 that (i) are inconsistent with the intent of the Contract Documents; (ii) render the Drawings and Specifications not in material conformity with the Work; or (iii) materially affect the quality, utility or general aesthetics of the Work or any component, or result in the use of materials or equipment which are not equivalent to or better than the materials and equipment set forth in the Drawings and Specifications prior to such change.

§ 7.5 CONTRACTOR CHANGE ORDER REQUESTS

§ 7.5.1 In addition to the Contractor's remedies under Article 8 in the case of delays (which shall be governed solely by Article 8 and to which this Section 7.5 shall not apply), if the Contractor believes any act, error or omission of the Owner or persons for whom Owner is responsible, including but not limited to the Architect and Owner's separate contractors, constitutes a Change in the Work entitling it to additional compensation, it shall, within twenty one (21) days after the date the Contractor discovers or should have discovered, with the exercise of appropriate diligence, the

pertinent act, error or omission of the Owner (provided that the necessity of extra cost and/or time is already determinable, even if such extra cost and/or time has not yet been incurred), submit a Contractor Change Order Request stating the amount of the additional compensation to which it is entitled and justifying the request. The Contractor shall submit such additional information as may reasonably be required by the Owner to evaluate the Contractor Change Order Request. The Owner shall evaluate the request within ten (10) days and advise the Contractor within such ten (10) day period whether to grant, grant in part, or deny the Contractor Change Order Request. Any additional compensation granted shall be recorded in the form of a Change Order. If the Contractor disagrees with the Owner's decision, the Contractor shall pursue the remedies it has under Article 15. Failure of the Contractor to timely submit a Contractor Change Order Request strictly (not substantially) in accordance with the requirements of this Section 7.5 shall constitute a waiver of and shall forever bar any recovery arising out of the pertinent act, error or omission of the Owner, even if the Owner was not prejudiced thereby.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents and shall have the same meaning as defined in Section 1.1.13.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Construction Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the Site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall see to the diligent, expeditious performance of the Work, with adequate resources so that all the Work will be completed within the Construction Time. The Contractor shall require overtime, multiple shifts, and any other action necessary to complete the Work within the Construction Time, all without additional cost to the Owner except as otherwise specifically provided in Section 8.4 or in a Change Order or Construction Change Directive. The Contractor shall not, without the Owner's prior approval, reschedule or re-sequence the Work so that an action, approval, or activity of the Owner moves onto the critical path or otherwise becomes critical to the Construction Time so long as such action, approval, or activity would not in fact have been critical but for the rescheduling or re-sequencing.

§ 8.2.4 Should the Contractor fail, refuse, or neglect to supply sufficient workers or to cause the delivery of equipment and materials promptly to prevent delay, or fail in any material respect to commence and prosecute the Work diligently in accordance with the Contract Documents, or if the Work falls behind schedule, the Owner may require the Contractor to take Additional Measures and to have the members of the Construction Team do likewise, all at no additional cost to or compensation from the Owner. Such Additional Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Additional Measures is solely for the purpose of ensuring the Contractor's compliance with the Construction Schedule.

- .1** The Contractor shall not be entitled to an adjustment in its compensation in connection with Additional Measures required by the Owner under or pursuant to this Article 8 except as specifically provided in Section 8.4.2 or in a Change Order or Construction Change Directive.
- .2** The Owner may exercise the rights furnished it under or pursuant to this Article 8 as frequently as necessary to ensure that the Contractor's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.
- .3** Subject to reasonable prior notice and opportunity to cure, and except to the extent caused by Owner

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Delay, the Owner shall also have the right to offset against any amounts then or thereafter due to the Contractor, or to be reimbursed by the Contractor for, any costs incurred as a result of an increase in the Owner's own labor force or for overtime, Saturday, Sunday, and/or holiday work as a result of implementing Additional Measures for which the Contractor is responsible to pay.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 Except as otherwise provided in this Section 8.3, the Contractor shall be fully responsible for the timely completion of the Work in accordance with the Construction Schedule. The Contractor shall cause all members of the Construction Team to meet all Milestone Dates in the Construction Schedule. The Contractor agrees to use its best efforts to avoid the occurrence of any cause for delay, to avoid any extension of performance dates, and to mitigate the effect of any delay that does occur. The Construction Time will be extended only under the exact circumstances described in this Section 8.3 and then if and only if the Contractor complies strictly (not substantially) with the requirements of this Section 8.3.

§ 8.3.2 Notices in connection with delays shall be made by the Contractor to the Owner in accordance with this Section 8.3.2. The Contractor shall use its best efforts to provide verbal notice to the Owner within twenty-four (24) hours after the commencement of a delay. It must in any event do so as soon as possible and not later than three (3) days after commencement of the delay. Any verbal notice given shall be confirmed in writing within four (4) days. If the Contractor fails to deliver verbal notice within three (3) days after the commencement of a delay, it shall not be entitled to any relief pertaining to the period of time before it gave verbal notice. If the Contractor fails to confirm any verbal notice within four (4) days after the verbal notice was given, it shall not be entitled to any relief for the period of time beginning after the passage of such four (4) days and ending when the confirmation is actually received by the Owner. And, if the Contractor fails to provide verbal notice within ten (10) days after the commencement of a delay or to confirm any verbal notice within ten (10) days after the verbal notice was given, the Contractor shall be barred from seeking any relief whatsoever relating to the delay. Immediately following the commencement of any such cause for delay, representatives of the Contractor and Owner shall confer for the purpose of determining the probable length of the delay and a course of action which would end or eliminate the occurrence or event which is causing delay. The Contractor shall also within twenty one (21) days after the cessation of such delay notify the Owner of the date of such cessation and the total amount of delay, if any, in performance dates which the Contractor is entitled to claim by reason of any such occurrence. If the Contractor intends to request an extension of time for any delay, it shall accompany the notice of cessation of delay with a Change Order Request stating the specific extension or adjustment requested and justifying the reason for the request. The Contractor shall thereafter submit such additional information as may be required by the Owner to evaluate the Change Order Request. The Owner shall decide whether to grant, grant in part or deny the Change Order Request. Any extension of time or adjustment granted shall be memorialized in the form of a Change Order. Acceptance and execution of any such Change Order by the parties shall constitute an accord and satisfaction that forever bars any and all claims arising out of or in connection with the delay giving rise to the Change Order. If the Contractor disagrees with the Owner's decision, it may pursue the remedies available to it under Article 15. However, failure of the Contractor to timely assert any alleged delay or claim for extension strictly (not substantially) in accordance with the provisions of this Section 8.3.2 shall constitute a waiver of and shall forever bar that claim, even if the Owner was not prejudiced thereby.

§ 8.3.3 Except in the case of changes to the Work covered by Article 7, the Contractor shall not be entitled to an extension of time unless the event or circumstance giving rise to a delay constitutes a Force Majeure Event and the Contractor can demonstrate that the activity delayed will result in a Critical Delay.

- .1 A delay is a "Critical Delay" if and only to the extent it adversely affects the critical path of the Work as established in the Construction Schedule or subsequent Subcontractor schedules that fall within the Construction Schedule. Under this Subsection 8.3.3.1, when two (2) or more delays occur concurrently, and each such concurrent delay by itself without consideration of the other delay(s) would be critical, then all such concurrent delays shall be considered critical. For the purpose of determining whether and to what extent the Construction Time should be adjusted, such concurrent critical delays shall be treated as a single delay which commences at the start of the delay that begins first and terminates at the cessation of the delay that ends last.
- .2 Subject to the restrictions contained in Section 8.3.3.4 below, "Force Majeure Event" means only the following: (i) strikes, lockouts, or picketing (legal or illegal) of an area-wide, trade-wide, Owner-wide, or industry-wide nature (a strike, lockout or picket (legal or illegal) specific to the Project Site, or directed at the Contractor or a Subcontractor shall not be considered an area-wide, trade-wide or industry-wide strike, and is not a Force Majeure Event unless it occurs after the Contractor has used its

best efforts to avoid it); (ii) governmental action and condemnation; (iii) riot, civil commotion, insurrection, and war; (iii) fire or other casualty, accident, acts of God, or the public enemy; (iv) unusual adverse weather conditions not reasonably expected for the location of the Work and the time of the year in question documented by data substantiating such weather conditions; (v) unavailability of fuel, power, supplies or materials; (vi) the passage or unexpected interpretation or application after the Commencement Date of the Work of any statute, law, regulation, or moratorium of any governmental authority; or (vii) Owner Delay.

- .3 The Contractor acknowledges that in preparing the Construction Schedule and in agreeing to the times or dates of completion required by the Contract Documents it will make a reasonable allowance for such events that are not Force Majeure Events.
- .4 Adjustments in the Construction Time will be permitted for any Force Majeure Event, including an Owner Delay, only to the extent such delay (i) is not caused or contributed to, and could not have been anticipated, by the Contractor using the degree of diligence required by the Contract Documents, (ii) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay, and (iii) is of a duration of not less than one (1) day.

§ 8.3.4 The Owner's exercise of any of its rights under the Contract Documents or the Owner's good faith exercise of any of its remedies, including requirement of correction or re-execution of any Disputed Work, regardless of the extent, number or frequency of the Owner's good faith exercise of such rights or remedies, shall not under any circumstances be construed as unreasonable interference with the Contractor's performance of the Work or an event of default.

§ 8.3.5 The Contractor shall use its best efforts to mitigate the effects of any delay, whether or not it is caused by a Force Majeure Event.

§ 8.3.6 This Section 8.3 does not preclude the recovery of other damages by the Owner for delay under other provisions of the Contract.

§ 8.3.7 If the Contractor, but for a Force Majeure event or Owner Delay resulting in a Critical Delay, would have completed the Work prior to the expiration of the Construction Time, the Contractor shall not be entitled to recovery of damages arising out of any event or delay whatsoever which prevented such early completion of the Work, provided, however, that this provision shall not preclude recovery of delay damages by the Contractor pursuant to Section 8.4.2 below to the extent a delay causes it to complete the Work after the scheduled completion date.

§ 8.4 NO DAMAGE FOR DELAY

§ 8.4.1 Except only as provided in Section 8.4.2 below, an extension in the Construction Time or adjustment of the Construction Schedule, to the extent permitted under Section 8.3, and the Contractor's rights in connection with a suspension of the Work, as provided in the Agreement, shall be the sole and exclusive remedies (in lieu of all other remedies whatsoever) of the Contractor for any delay, interference, hindrance in the performance of the Work, loss of productivity, manpower inefficiencies, impact damages and similar claims and damages, whether or not contemplated by the parties. Except only as provided in Section 8.4.2, in no event shall the Contractor be entitled to any compensation or recovery of any damages in connection with any delay, including, without limitation, consequential damages, lost opportunity costs, impact damages or other similar remuneration. The Contractor hereby expressly waives and covenants and agrees not to assert any claims against the Owner for any damages, costs, losses or expenses of any nature whatsoever which any member of the Construction Team may incur as a result of any delays, interferences, suspensions, rescheduling, changes in sequences, congestion, disruptions, or the like arising from, out of or in connection with any act or omission of the Owner, its representatives or agents, it being understood and agreed that their sole and exclusive remedy in such event shall be an extension of the Construction Time, but only in accordance with the provisions of this Article 8.

§ 8.4.2 In the event of Owner Delay, the Contractor shall be entitled to an equitable adjustment in the Contract Sum or Guaranteed Maximum Price. This adjustment shall be based solely upon and limited to additional direct out-of-pocket expenses to the extent they are incurred directly as a result of the Owner Delay. Without limiting the generality of the foregoing, such out-of-pocket expenses shall be calculated on an "actual cost" basis, and shall exclude home office expense and other overhead, profit and the value of lost opportunities. However, the Contractor shall use its best efforts to avoid or reduce delay damages to any member of the Construction Team caused by Owner Delay.

ARTICLE 9 PAYMENTS AND COMPLETION**§ 9.1 CONTRACT SUM**

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The initial schedule of values shall be consistent with the Contract Sum prepared by the Contractor and include actual subcontractor bids. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.2.1 NOT USED**§ 9.3 APPLICATIONS FOR PAYMENT**

§ 9.3.1 At least ten (10) days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.1.3 The Contractor must provide copies of its insurance certificates, bonds, and the same for all of the Subcontractors and sub-subcontractors prior to submitting the first Application for Payment.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.3.3.1 Except with respect to liens resulting from Owner's failure to make properly due payments to Contractor, the Contractor hereby expressly undertakes to hold harmless, indemnify and defend the Indemnitees, at the Contractor's sole cost and expense, from, for and against any and all costs (including without limitation reasonable attorney fees), liabilities, actions, lawsuits, claims or proceedings brought against Indemnitees as a result of any lien or claim of lien filed against the Work, the site of any of the Work, the Project Site or any improvements thereon, payments due the Contractor or any portion of the property of any of the Indemnitees.

§ 9.3.3.2 In the event of any lien or claim of lien, Owner may withhold from payments otherwise due Contractor, such

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amounts as Owner deems suitable to protect it from the adverse effect of such lien or claim of lien. The Owner shall release any payments or portions thereof withheld due to a lien or claim of lien if the Contractor obtains security acceptable to the Owner or a lien bond which is (i) issued by a surety acceptable to the Owner, (ii) in form and substance satisfactory to the Owner, and (iii) in an amount not less than two hundred percent (200%) of such lien or lien claim. By posting such bond or other acceptable security, however, the Contractor shall not be relieved of any responsibilities or obligations under this Section 9.3, including, without limitation, the duty to defend, hold harmless and indemnify the Indemnitees. Except with respect to liens resulting from Owner's failure to make properly due payments to Contractor, the cost of any premiums incurred in connection with such bonds and security shall be the responsibility of the Contractor and shall not cause any adjustment to the Contract Sum.

§ 9.3.4 The Owner shall not be required to pay for unassembled materials, such as mill steel, extrusions for windows, and incomplete assemblies.

§ 9.3.5 The Contract Sum or Guaranteed Maximum Price includes all applicable taxes and shall not be changed as the result of the Contractor's failure to include any applicable tax, or as a result of any change in the Contractor's tax liabilities.

§ 9.3.6 Each Consolidated Application for Payment shall be accompanied by the following, all in form and substance reasonably satisfactory to the Owner:

- .1 a duly executed and acknowledged sworn statement in statutory form with all information provided, together with properly notarized sworn statements, current through the previous draw, from the Contractor and all of the Subcontractors; and
- .2 except as otherwise provided, duly executed unconditional releases in the form required by the Owner establishing payment or satisfaction of all obligations as reflected on the sworn statements referred to in Section 9.3.6.1, provided, however, that the Contractor may furnish with each Application for Payment applicable waivers of lien or releases and properly notarized sworn statements covering the immediately preceding Application for Payment, as opposed to the current Application for Payment, (i.e., 30 day lag), provided Final Payment shall not be forthcoming until final construction lien waivers or releases from all members of the Construction Team have been delivered.
- .3 In addition to the final construction lien waiver, the Owner may require the Contractor and Subcontractors to provide a signed and notarized affidavit that releases and discharges the Owner and Owner's agents from all liability to the Contractor and Subcontractor, which has arisen or which shall arise in connection with any work performed or materials delivered to the Project.
- .4 A written narrative summarizing the progress of the Project, including behind schedule Work that may adversely affect the critical path of the Work as established in the Construction Schedule or subsequent Subcontractor schedules that fall within the Construction Schedule. If such behind schedule Work would or could potentially affect the timely completion of the Work, the Contractor must also include a recovery plan describing in sufficient detail of overtime, multiple shifts and any other measures necessary to complete the Work within the Construction Time.
- .5 An updated Schedule of Value, which unless objected to by the Architect shall be used as a basis for reviewing the Contractor's Application for Payment.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven (7) days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (i) made exhaustive or continuous on-site inspections to

check the quality or quantity of the Work, (ii) reviewed construction means, methods, techniques, sequences or procedures, (iii) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (iv) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of:

- .1 Disputed Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Construction Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 failure to carry out the Work in accordance with the Contract Documents;
- .8 failure to have supplied operations and maintenance manuals, Record Documents, schedules, cost projections, and/or other information that may be required by other sections of the Contract Documents on a timely basis;
- .9 any other failure of the Contractor to perform its obligations under the Agreement; or
- .10 stop work notices.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven (7) days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven (7) days, the Owner shall have the right to contact

Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall not be withheld by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner.

§ 9.6.8 Owner shall retain out of each progress payment a "Retainage" as provided in Section 9.6.8 of the Agreement. Retainage will be paid upon Final Completion and acceptance of the Work in accordance with Section 9.10 of these General Conditions. Upon mutual agreement of the Owner, the Architect and the Contractor, payment in full may be made to Subcontractors whose Work is fully completed during early stages of the Project. The Contractor acknowledges and agrees that payments by the Owner shall only be made in respect of Applications for Payments, or portions thereof, reasonably approved by the Owner. If the Contractor disputes any good faith determination by the Owner with regard to any Certificate of Payment, or amount paid by the Owner in respect thereof, the Contractor shall nevertheless expeditiously continue to prosecute the Work while such dispute is being resolved in accordance with the provisions of Article 15.

§ 9.6.9 Whenever the Owner reasonably determines, after notice to the Contractor, that there is a basis for concern that payments properly owing to any Subcontractor, sub-subcontractor, supplier or laborer are not being made on a timely basis, the Owner may elect, but shall not be obligated, to make payments to the joint order of the Contractor and such Subcontractor, supplier or laborer with any such payments satisfying any payment obligation otherwise owing by the Owner to the Contractor. The Owner may also elect at any time to require that payments be made through a construction escrow, in which event the Contractor shall supply all customary forms and indemnities as may be required to satisfy the conditions to disbursement established by the applicable escrowee. All requirements relating to payments and retainages, and applicable submittals to be made by the Contractor, shall be subject to reasonable modification and approval of any lender of the Owner supplying funds to the Project.

§ 9.6.10 Whenever the Owner reasonably determines, after notice to the Contractor, that there is a basis for concern that payments properly owing to any Subcontractor, sub-subcontractor, supplier or laborer are not being made on a timely basis, and the Owner elects to make payments to the joint order of the Contractor and such Subcontractor, supplier or laborer with any such payments satisfying any payment obligation otherwise owing by the Owner to the Contractor, the Owner shall be able to back charge the Contractor twenty-five dollars (\$25.00) for each such issued joint checks to partially defray Owner's administrative time and expenses. If the Owner and Contractor agree to establish a construction escrow payment account, the Owner shall be able to back charge the Contractor for reasonable administrative time and expenses for establishing and administering such an escrow account. The Owner shall be able to deduct such back charges from payment(s) to the Contractor.

§ 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven (7) days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven (7) days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven (7) additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Construction Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. The Work shall not be considered suitable for Substantial Completion review until all systems included in the Work are properly and operationally constructed in accordance with the Contract Documents, all

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required governmental inspections and certifications have been made and posted, training of Owner's personnel in the operation of systems has been completed, and all final finishes within the Contract Documents are in place. The only remaining Work shall be minor in nature, so that the Owner could occupy the building on the date of Substantial Completion and completion of the Work by the Contractor would not materially interfere or hamper the Owner's (or those claiming by, through or under Owner) normal operations. At Substantial Completion, the Contractor attests that all remaining Work is solely of a Punchlist nature and will be completed within forty five (45) consecutive calendar days.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a Punchlist of items to be completed or corrected prior to final payment. Failure to include an item on such Punchlist does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. *(Also see Section 9.10.7)*

§ 9.8.3 Upon receipt of the Contractor's Punchlist, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's Punchlist, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect

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will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (i) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (ii) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner, (iii) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (iv) consent of surety, if any, to final payment and (v), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; and
- .4 any defect or condition which is latent or not reasonably discoverable at the time of final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

§ 9.10.6 The amount of the Final Payment shall be the Contract Sum or Guaranteed Maximum Price less the amount paid to date. If the aggregate of previous payments made by the Owner exceeds the amount due the Contractor, the Contractor shall immediately reimburse the difference to the Owner.

§ 9.10.7 Project Closeout. The requirements for Project Closeout begin at the start of a project. This section outlines the integration of the closeout process into the construction phase. Project closeout requirements generally comprise all of the following:

- Certificate of Substantial Completion by the Architect
- Certificate of occupancy, including proof of all final/closed inspection permits
- Operation & Maintenance Manuals
- As-Built (Record) Drawings
- Training of Owner's Personnel
- Attic Stock Materials
- Documents – Warranty, Asbestos free, Smoke & Flame Spread, etc.
- Punchlist Completion (signed by the Architect and the Owner)

Copies of Shop Drawings, Product Data and Samples

§ 9.10.7.1 Operations and Maintenance Manuals and Training

- .1 Upon reaching seventy five percent (75%) completion according to the Subcontractor's Application for Payment, The Contractor shall cause Subcontractors to submit to the Owner via the Contractor Operations and Maintenance Manuals and record copies of submittals.
- .2 The Contractor shall cause Subcontractors to schedule and conduct training for Owner personnel as specified. Training sessions shall include an agenda, video tape of the session, a sign-in sheet to document attendance, and documentation for the trainees. Each Subcontractor shall submit the video tape (labeled), attendance sign in sheet, and training documentation to the Contractor in the same quantities required for the Operations and Maintenance Manuals.
- .3 Owner shall withhold an amount stipulated in Section 9.2.1 until receiving the Operations and Maintenance Manuals and training of Owner's operating personnel.

§ 9.10.7.2 As-Built (Record) Drawings

- .1 The Contractor shall cause all Subcontractors to review As-Built Drawings with the Contractor on a weekly basis.
- .2 Owner shall withhold an amount stipulated in Section 9.2.1 until receiving the final As-Built Drawings.
- .3 Where the governmental and/or municipal agency/agencies having jurisdiction over the Project requires a certified (signed and sealed by a Registered Professional Engineer) set of civil and utilities As-Built Drawings of the Project, the Contractor shall deliver to the agency/agencies the necessary As-Built Drawings that is acceptable to the agency/agencies and provide one copy to the Owner.

§ 9.10.7.3 Attic Stock Materials

- .1 Upon reaching ninety percent (90%) completion according to the Subcontractor's application for payment, the Contractor shall cause the Subcontractors to turn over to the Owner via the Contractor all stock parts and attic stock materials.
- .2 Owner shall withhold an amount stipulated in Section 9.2.1 until receiving the required attic stock materials.

§ 9.10.7.4 Documents – Warranty, Asbestos Free, Smoke & Fire Spread, etc.

- .1 Upon reaching ninety percent (90%) completion, according to the Subcontractor's Application for Payment, the Contractor shall cause the Subcontractors to submit to the Owner via the Contractor all required documents.
- .2 Owner shall withhold an amount stipulated in Section 9.2.1 until receiving the required documents.

§ 9.10.7.5 Punchlist

- .1 One (1) week before Substantial Completion, Subcontractors shall submit to the Contractor a complete Punchlist and a list of incomplete items. The list shall include room number, description of work, and date for completion.
- .2 The Contractor shall review the Subcontractor's list and add items, if necessary. In the event that Contractor's list comprises 25% or more of the items then the Subcontractors list, then at the Contractor's sole discretion, a review fee of up to five hundred dollars (\$500) may be deducted from the Subcontractor's Contract Sum and paid to the Contractor. For example, if a Subcontractor's list has 20 items, and after reviewing the Contractor finds an additional 6 items (which exceeded 25% more items), the Contractor shall be entitled to receive a review fee.
- .3 Punchlists prepared by the Architect or Owner will be distributed to the Subcontractors. Subcontractors will be given the opportunity to complete the items within fourteen (14) days of receipt of lists. Upon completion, the Subcontractor shall conduct a walk-through with the Contractor, Architect, and Owner to confirm satisfactory completion.
- .4 Payment in an amount no less than four (4) times the estimated value of Punchlist items, as determined by the Contractor, and Architect will be withheld until the Punchlist is complete.
- .5 In the event the Punchlist is reported complete; but found not to be complete, at the Contractor's sole discretion, an amount of up to one thousand dollars (\$1,000) may be deducted from the Contract Sum owing to the Subcontractor and paid to the Contractor. If after fourteen (14) days, the

Punchlist is still not complete or incomplete items are discovered during a walkthrough, the Owner and/or Contractor may immediately complete the items. The Owner and/or Contractor shall deduct the costs to complete the Punchlist from the amount owing the Subcontractor, including reasonable fee for supervision, plus up to two thousand five hundred dollars (\$2,500) administrative costs to be paid to the Owner.

- .6 The final acceptance of all Punchlist and incomplete work items is subject to the approval of the Architect and Owner.
- .7 Owner shall withhold an amount no less than stipulated in Section 9.2.2 until the Subcontractor satisfactorily completes all the required Punchlist items.

§ 9.11 AUDITS BY THE OWNER

§ 9.11.1 The Contractor agrees that the Owner or any of its duly authorized representatives shall, until the expiration of the record retention period (as described in Section 9.11.2), have access to and the right to examine where pertinent to verifying the Cost of the Work or other items reimbursed to Contractor under the Agreement on the basis of costs, books, documents, records, contracts, correspondence, instructions, receipts, vouchers, purchase orders, memoranda, papers, and all other records of the Contractor related to the Agreement for any reason.

§ 9.11.2 The Contractor shall maintain in accordance with generally accepted accounting principles separate records and accounts of its Services and transactions on behalf of the Owner in connection with the Work and shall make such records and accounts available to the Owner for inspection and audit during normal business hours and upon reasonable prior notice. Records shall be kept in such form and detail as the Owner may reasonably request. Such records shall include time sheets, invoices from the Contractor and its Subcontractors memoranda and analyses in support of management decisions, and such other primary records as necessary to support and justify all business conducted in connection with the Work, but shall not include internal memoranda or reports, communications or discussions with incidental references to the Work or documents which discuss multiple projects. Such records will be kept by the Contractor for a period not less than seven (7) years.

§ 9.11.3 The Contractor shall include in all its Subcontracts under the Agreement a provision to the effect that the Subcontractors agree that the Owner or any of its duly authorized representatives shall, until expiration of three (3) years after Final Payment under the Subcontracts and Supply Agreements, have access to and the right to examine where directly pertinent to verifying the cost of change orders or other items reimbursed to such Subcontractor on the basis of cost, books, documents, papers, and records of such consultants, involving transactions related to the Work.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

§ 10.1.1 The Contractor shall continuously maintain adequate protection of all Work from damage and shall protect the Owner's property from injury or loss. The Contractor shall make good any such damage, injury or loss at no cost to the Owner, except to the extent directly caused by agents or employees of the Owner. The Contractor shall adequately protect the Work and adjacent property as required by law, the Contract Documents, or as otherwise required, to cause no damage to the Work and adjacent property during the execution of the Work. This requirement shall also apply to structures above and below ground as conditions of the site require. The Contractor shall also provide recommendations and information to the Owner regarding: (i) the assignment of responsibilities for safety precautions and programs by the Subcontractors and the Owner for the safety of members of the Construction Team, the Owner, and the general public; (ii) temporary facilities; and (ii) equipment, materials and services for common use of Subcontractors. The Contractor shall verify that the requirements and assignment of responsibilities are included in the proposed Contract Documents.

§ 10.1.2 The Contractor is solely responsible to the Owner for health and safety at the Project Site and, accordingly, shall be solely responsible for initiating, monitoring, maintaining and supervising all safety precautions and programs in connection with the performance of the Work. The foregoing does not relieve the Subcontractors of their responsibility to the Contractor for the safe performance of their Work in accordance with all Applicable Laws.

§ 10.1.3 The Contractor shall develop and implement a health and safety plan that complies with all Applicable Laws covering all activities on the Project Site except those activities performed solely by the Owner. The Contractor shall provide the Owner a copy of such health and safety plan prior to commencement of Work. The Owner shall have no duty to review the plan and shall assume no duty by doing so. The plan shall be included in all bidding documents, and the requirements of the plan shall be applicable to all members of the Construction Team.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by Applicable Laws and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Work, adequate safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. The Contractor shall also be responsible for all measures necessary to protect any property adjacent to the Project Site and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor.

- .1 The various parts of the structure and adjoining structures that cannot be maintained in their final positions with stability until other connecting or abutting parts or members are constructed and permanently secured shall be substantially braced and held in place. The Contractor shall protect the Project against all damage from the elements, overloading of the structure, and undermining or displacement due to conditions of the site or due to any other methods of construction.
- .2 The Work shall be executed in a manner which will cause as little inconvenience as possible to the Owner in the Owner's use of the property and existing facilities and structures. Where applicable the Contractor shall provide and maintain adequate, dust tight, protective coverings, enclosures and barricades about the Work and shall keep the same in repair throughout the entire Work. Enclosures of appropriate fire rated construction shall be installed by the Contractor where necessary to divide the Work area from the Owner's occupied areas.
- .3 During the prosecution of the Work, the Owner will use and occupy the buildings and site adjacent to and surrounding the Project Site. At all times during the construction period, safe and convenient access shall be maintained to and from these buildings and any other portions of the site occupied by the Owner and/or Subcontractors.

§ 10.2.4 When use or storage of explosives or other Hazardous Materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. When in the course of the Work use or storage of explosives or other Hazardous Materials or equipment or unusual construction methods are necessary, the Contractor shall give the Owner reasonable advance notice.

- .1 No explosives will be permitted on the Owner's premises unless written permission is given by the Owner not less than seventy two (72) hours in advance of the time of delivery of such explosives. All risks, regardless of the Owner's approval, associated with the storage, handling and use of explosives are solely borne by the Contractor, as are any costs associated with damages, injuries or losses arising out of the use of such explosives.
- .2 The use of disposal or flammable liquids or other combustible materials shall be handled in accordance with established rules and regulations.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss covered by the Owner's insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the structure or site to be loaded with a weight that will endanger the structural integrity of the structure or site or the safety of workmen or any other persons on or about the Work. When required law or for the safety of the Work, the Contractor shall shore up, brace, underpin, and protect foundations and other portion of existing structures that are in any way affected by the Work. Before commencement of any part of the Work, the Contractor shall serve any and all notices required to be given to adjoining land and/or property owners or other parties.

§ 10.2.8 The Contractor shall take all necessary precautions for the safety of employees and visitors on the site of the Project and shall comply with applicable provisions of federal, state, and municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed. The Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for the protection of workers and the public. The Contractor shall post danger signs warning against the hazards created by such features of construction such as protruding nails, hoists, holes, elevator hatchways, scaffolding, window openings, stairways, falling material and other such features.

§ 10.2.9 When all or a portion of the Work is suspended for any reason, the Contractor shall be responsible for securely fastening down all coverings and protecting the Work from injury by any cause.

§ 10.2.10 The Contractor shall promptly report in writing to the Owner all accidents arising out of or in connection with the Work which cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages occur, the accident shall be reported immediately by telephone or messenger to the Owner. The obligations in this Section are in addition to the Contractor's reporting obligations under Applicable Laws.

(Paragraphs deleted)

§ 10.2.11 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding ten (10) days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor shall not, nor shall it permit any member of the Construction Team to bring on, keep, store, use, release or dispose of any Hazardous or potentially Hazardous Material on, in or about the Project Site except Permitted Materials and as required by Section 10.3.8., subject to the requirements of Section 10.3.9. The Contractor also shall not permit the inclusion of asbestos, polychlorinated biphenyls or urea formaldehyde in any construction materials.

§ 10.3.2 The Contractor shall be responsible for the removal and cleanup of all Hazardous Materials and wastes brought to the Project Site or generated at the Project Site by any member of the Construction Team at its expense, without recovery from the Owner, under the Contract Sum or Guaranteed Maximum Price, any contingency or otherwise.

§ 10.3.3 The Contractor shall cause the presence, use, storage and/or disposal of Permitted Materials by any member of the Construction Team to be in strict (not substantial) compliance in every respect with all Applicable Laws and shall promptly notify the Owner if any amount of Permitted Materials or any other Hazardous Materials are released on the Project Site at any time in a quantity that would have to be reported or remediated under any Applicable Laws.

§ 10.3.4 The Contractor shall at its expense, without recovery from the Owner, under the Contract Sum or Guaranteed Maximum Price, any contingency or otherwise, fully and promptly remediate each and every release of Permitted Materials and any other Hazardous Materials in full compliance with all Applicable Laws, to the most stringent standards available under all Applicable Laws, and in cooperation with the Owner, except to the extent of

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contamination (i) that existed before Work began at the Project Site and neither the Contractor nor any other member of the Construction Team has exacerbated such pre-existing contamination after recognizing the presence and general location of such contamination, or (ii) was caused directly by the Owner, the Architect, a contractor of the Owner who is not a member of the Construction Team, or any third party. Notwithstanding anything to the contrary herein, the Contractor shall nonetheless be responsible to remediate the hazardous condition if and to the extent, after recognizing the presence and general location of such condition that was pre-existing at the Site, or after it should have recognized such presence and general location, it exacerbates such contamination. If the contamination existed before Work began at the Project Site and it was not exacerbated by the Contractor or any member of the Construction Team (after it recognized or should have recognized the presence and general location of such contamination) or the contamination was caused directly by the Owner, the Architect, a contractor of the Owner who is not a member of the Construction Team, or any third party, then all expenses associated with the remediation of the condition shall be borne by the Owner.

§ 10.3.5 The Contractor shall at its expense, without recovery from the Owner, under the Contract Sum or Guaranteed Maximum Price, any contingency or otherwise, be solely responsible to the Indemnitees for and shall defend, indemnify and hold them harmless from and against all claims, damages costs, fines, judgments and liabilities, including attorneys fees and costs, arising out of or in connection with the generation, release, transportation, storage, use, disposal or presence of permitted materials or Hazardous Materials at the Project Site by or due to any member of the Construction Team or for any noncompliance with Section 10.3 by any member of the Construction Team. The indemnity in this Section 10.3.5 does not include claims, fines, etc., to the extent they arise from (i) contamination that existed before Work began at the Project Site which was not exacerbated by the Contractor or any member of the Construction Team (after it recognized or should have recognized the presence and general location of such contamination) or (ii) contamination that was caused directly by the Owner, the Architect, a contractor of the Owner who is not a member of the Construction Team, or any third party.

(Paragraphs deleted)

§ 10.3.6 The Owner shall not be responsible for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances. The Contractor's responsibility under the foregoing indemnification shall include any and all governmentally mandated removal and/or clean-up of any such Permitted Materials or Hazardous Materials.

§ 10.3.7 If the Contractor shall receive any notice, whether oral or written, of any inquiry, test, investigation, enforcement proceeding, environmental audit or the like by or against the Contractor, any member of the Construction Team, or the Work with regard to any Hazardous Materials at or emanating from the Project Site, the Contractor shall immediately notify the Owner and Architect.

§ 10.3.8 If any member of the Construction Team encounters on the Project Site material, which it believes is a Hazardous Material in any form (other than Permitted Materials being used in an appropriate manner or asbestos, asbestos containing materials or polychlorinated biphenyl (PCBs) which have been rendered harmless), the Contractor shall (i) immediately stop Work in the area affected, (ii) report the condition to the Owner and Architect as expeditiously as possible, and (iii) clear all persons from the area of exposure. The Work in the affected area shall not be resumed until the Hazardous Material has been removed or rendered harmless as evidenced by written agreement of the Owner and the Contractor. The term "rendered harmless" shall be interpreted to mean that the levels are less than any applicable exposure standards set forth in OSHA regulations and all Applicable Laws. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the Project Site by any member of the Construction Team. Except for the Permitted Materials, no member of the Construction Team shall use any fill or other materials to be incorporated into the Work, which are Hazardous Material, toxic or comprised of any items that are Hazardous Material or toxic.

§ 10.3.9 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, and agents and employees or either of them from and against claims, damages, losses and expenses, including but not limited to attorney fees, arising out of or resulting from performance of the Work in an area affected by Hazardous Materials (excluding Permitted Materials and other Hazardous Materials brought to the site by the Contractor or persons for whom it is responsible and excluding all claims, damages, etc., arising out of or resulting from any exacerbation of pre-existing contamination after they recognized or should have recognized the presence or

general location of such pre-existing contamination), if (i) in fact, the material presents the risk of bodily injury or death and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, but only to the extent that such damage, loss or expense is not due to the negligence of the person seeking indemnity after the presence and general location of the contamination was known to or should have been known by such person, or (ii) the Contractor is held liable for the cost of remediation of a Hazardous Material.

§ 10.3.10 The Contractor shall not be required to cause performance without its consent of any Work relating to asbestos or PCB or other Hazardous Material, except as otherwise required under this Section 10.3. The Contractor agrees to excavate and stockpile on site soils with levels of contamination such that it can be safely and lawfully handled without special protective equipment if the Owner so requests. In such a circumstance, the Contractor shall comply with all Applicable Laws, shall be fully responsible for any non-compliance with all Applicable Laws, and shall indemnify, defend and hold harmless the Owner for any and all claims arising from the Contractor's failure to so comply with an Applicable Law.

§ 10.3.11 The Contractor shall take care to minimize the use of any Hazardous Materials to the extent consistent with the orderly conduct of the Work. To the maximum extent practical, the Contractor shall cause Permitted Materials which contain Hazardous Materials (and any explosive materials which are not Hazardous Materials) to be stored off the Project Site and off Owner's premises. Except for Permitted Materials, all Hazardous Materials used, stored or generated at the Project Site by the Construction Team shall be used, stored, transported and disposed of in strict (not substantial) conformity with Applicable Laws, codes, rules, regulations, guidelines and orders of governmental authorities having jurisdiction, and the Contractor shall maintain -- and provide promptly to Owner upon demand -- appropriate and complete documentation evidencing the Contractor's compliance with all such laws, codes, rules, regulations, guidelines and orders.

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

§ 10.5 SECURITY

§ 10.5.1 All members of the Construction Team shall cooperate with the Owner's security personnel and shall comply with all of the Owner's security requirements. Such requirements shall include, without limitation, if requested by the Owner, delivering to the Owner's security personnel, prior to the commencement of the Work on each day, a list of all personnel who will be permitted access to the Work. The foregoing, however, shall not relieve the Contractor of any obligation to provide a safe and secure workplace for all parties entering the Project Site.

- .1 The Contractor shall be responsible for providing Project Site security to the extent necessary to safeguard the building, tools, materials, and completed Work. The Contractor's written plan for Project Site security shall be submitted to the Owner for approval within twenty (20) days of the execution of the Agreement.
- .2 The entrances to the Project Site will remain open during normal working hours for the use of all members of the Construction Team. Prior to and after normal working hours, all entrances and exits will be closed and secured by the Contractor. The Contractor shall provide to the Owner copies of keys (2 each) for all doors and gates secured.

§ 10.5.2 The Owner reserves the right to bar access to any individual for reasonable security reasons. Furthermore, the Owner reserves the right to limit the location of entries to the Work which may be used by members of the Construction Team.

§ 10.6 DUST; SMOKE; FUME

§ 10.6.1 The Contractor shall cause each member of the Construction Team to conduct operations in such a manner, which will control blowing dust. The amount of dust resulting from the operations of each of the Construction Team shall be controlled to prevent the spread of dust to adjacent public and private properties, to avoid creation of a nuisance in the surrounding area, and to avoid violation of any Applicable Law. Temporary methods consisting of sprinkling or similar methods will be permitted to control dust. Use of water will not be permitted when it will result in, or create, hazardous or objectionable conditions such as ice, flooding and pollution. Dust control shall be performed as the Work proceeds and whenever a dust or nuisance or hazard occurs.

§ 10.6.2 Smoke pipes, exhausts and fumes from boilers, engines, or other devices, shall in all cases be extended above roofs of buildings, or a substitute arrangement made subject to approval of the Architect and the Owner.

§ 10.6.3 The Contractor shall enforce the Architect's or the Owner's instructions regarding signs, advertisements, fires and smoking. No smoking will be permitted, except in designated areas.

§ 10.7 FIRE PRECAUTIONS

§ 10.7.1 All members of the Construction Team shall take all necessary precautions to guard against and eliminate all possible fire hazards and to prevent fire damage to any construction Work, building materials, equipment, temporary field offices, storage sheds, and all other property, both public and private. The members of the Construction Team shall comply with all conditions and requirements set forth herein, and shall immediately correct any hazardous conditions resulting from their operations when brought to their attention.

- .1 Materials and/or equipment stored in cardboard cartons, wood crates, or other combustible containers, shall be stored in an orderly manner and shall be readily accessible.
- .2 Before starting Work, the Contractor shall consult with the Owner and Architect regarding established rules and regulations relative to fire protection requirements and procedures governing any welding and cutting operations. The Contractor shall strictly (not substantially) conform and shall cause all members of the Construction Team to strictly (not substantially) conform with such rules and regulations in carrying out the Work. No such operations shall be carried out without proper safeguards for fire safety.
- .3 No open fires will be permitted. No tar or other melting kettles will be allowed within fifty (50) feet of any building.
- .4 All tarpaulins used during the course of the Work shall be of flameproof type and shall be secured in place against damage or flapping from wind.
- .5 All oil soaked rags, papers and other similar combustible material shall be removed from any building at the close of each day's Work, or more often if necessary, and placed in metal containers with self-closing lids.
- .6 Gasoline, benzene or like combustible material shall not be poured into sewers, manholes, or traps, but shall be disposed of, together with all flammable or waste material subject to spontaneous combustion, in a manner to avoid hazard or damage to persons or property.
- .7 All heating devices in connection with temporary heating facilities shall be of the least hazardous type, shall have all proper safety provisions and shall be installed at such locations and in such manner as will minimize the hazard. Oil fired stoves, gas fired heaters and heating units shall be of types approved by Underwriters Laboratories and shall have proper safety combustion controls. Oil fired heaters shall have integral fuel tanks not to exceed fifteen (15) gallons capacity for each unit. No more than one (1) day's supply of fuel shall be permitted to each heater which are inside of any building or facility.
- .8 Temporary heating facilities shall be inspected regularly to assure that they are in a safe and proper operating condition at all times. The Contractor shall provide continuously during operation properly trained personnel for said inspections.
- .9 Temporary structures of combustible construction shall not be placed inside of any structure. Such temporary structures shall be detached at a sufficiently safe distance from any building. Totally non-combustible temporary structures may, if necessary and feasible, be located inside of the structure.
- .10 Heaters and/or stoves installed in field offices or storage structures shall have fire resistant material underneath and at all sides, partitions and walls. Pipe sleeves shall be used where stove pipes run through walls or roof.

§ 10.7.2 The Contractor shall provide necessary personnel and fire fighting equipment to effectively control fires resulting from welding, flame cutting, or other operations involving the use of flame, sparks, or sparking devices. During such operations, all highly combustible or flammable materials shall be removed from the immediate working area. If removal is impossible the same shall be protected with fire blankets or suitable non-combustible shields.

§ 10.7.3 Not more than one (1) day's supply of flammable liquids or gases, such as oil, gasoline, solvent, propane, or roofing materials, shall be brought into any building at any one time. All flammable liquids having a flash point of 110 degrees F, or below, which must be brought into any building, shall be confined to Underwriters Laboratories labeled safety cans. The bulk supply of any flammable liquid shall be stored at a sufficiently safe distance from any building and from yard storage of building materials. Spigots on drums containing flammable liquids are prohibited on the

Project Site. Drums are to be equipped with approved vented pumps.

§ 10.7.4 Only a reasonable working supply of flammable building materials shall be located inside of or on the roof of any building.

§ 10.8 FIRE PROTECTION

§ 10.8.1 The Contractor shall maintain free access to the building areas for firefighting equipment and shall at no time block off main roadways or fire aisles without providing adequate auxiliary roadways and means of entrance for firefighting equipment, including heavy fire department trucks, where applicable.

§ 10.8.2 The Contractor shall at all times cooperate with the Owner and keep the municipal fire department informed of the means of entrance and changes to roadways or fire aisles as needed to provide fire department access to or around to Project Site.

§ 10.8.3 The Contractor shall, during the entire construction period and until the completion of the Work, provide and maintain all material, equipment and services necessary for an adequate fire protection system, which shall meet the approval of the Owner and/or the Architect. The system shall, at a minimum, meet the requirements set forth in the Contract Documents and of Applicable Laws. These requirements shall be augmented and/or the installations relocated, as may be necessary to meet, at all times, the demands of adequate protection in all areas and shall not be reduced prior to the completion of the Work without the written approval of the Owner and/or the Architect.

§ 10.8.4 The Contractor shall maintain during construction an appropriate number of fire extinguishers to meet Factory Mutual (FM) requirements. Fire extinguishers shall be in good working order, conveniently located, clearly visible and readily accessible for proper protection of the Work.

§ 10.8.5 Fire extinguishers shall be an approved type, equivalent to 2-1/2 gallon water pressurized, suitable for the hazards to be encountered. In areas of flammable liquid, asphalt, or electrical hazards, fire extinguishers shall be equivalent to the carbon dioxide type or dry chemical type. During freezing weather, extinguishers shall be enclosed in heated cabinets or be of an antifreeze type.

§ 10.8.6 All other parties with temporary structures on the Project shall provide and maintain fire extinguishers in each of such structures.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by any member of the Construction Team or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, shall be written on an occurrence basis, and shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents. The insurance policy's definition of "occurrence" must also include coverage for improper construction or faulty workmanship if the resulting damage occurs without the insured's expectation or foresight.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner. Contractor shall ensure that no insurance certificate shall include language that "failure to provide such notice shall impose no obligation or liability of any kind upon the insurer, its agents or representatives." An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor immediately.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (i) the Owner, the Owner's Representative Consultant (Program Manager), the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (ii) the Owner and Owner's Representative Consultant (Program Manager) as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.1.5 The entire amount of Contractor's liability insurance policy coverage limits, identified in the policy and on the Certificate of Insurance, must, under the policy, be available to pay damages for which the insured Contractor becomes liable, or for which the insured assumes liability under the indemnity agreement herein contained, and such coverage amount shall not be subject to reduction or set off by virtue of investigation or defense costs incurred by Contractor's insurer.

§ 11.1.6 The entire amount of the Contractor's liability insurance policy coverage limits shall be payable by the Contractor's insurer, with no deductible to be paid by, or self-insured retention to be attributed to, the Contractor unless this requirement is waived by the Owner. Contractor's insurance policy shall be primary to any policies carried by the Owner. Contractor is not permitted to be self-insured for the policies required by Section 11.1. Contractor's Certificate of Insurance must set forth the nature and amount of any such deductible or self-insured retention.

§ 11.1.7 If Contractor's liability insurance coverage is subject to any exclusions, reduction of policy limits or limitations not common to the type of coverage being provided, such exclusions or limitations shall be noted on the Certificate of Insurance.

§ 11.1.8 In the event that any of the policies of insurance or insurance coverage identified on the Contractor's Certificate of Insurance are canceled or modified, or in the event that Contractor incurs liability losses, either due to activities under this Contract, or due to other activities not under this Contract but covered by the same insurance, and such losses exhaust the aggregate limits of Contractor's liability insurance, then in that event the Owner may in its discretion either suspend Contractor's operations or activities under this Contract or terminate this Contract, and withhold payment for work performed on the Contract.

§ 11.1.9 The maintenance in full current force and effect of such form and amount of insurance as Owner shall have accepted, shall be a condition precedent to the Contractor's exercise or enforcement of any rights under the Contract.

§ 11.1.10 If the Contractor fails to purchase and maintain, or require to be purchased and maintained, any insurance required under this Article 11, the Owner may, but shall not be obligated to, upon five (5) days' written notice to the Contractor, purchase such insurance on behalf of the Contractor and shall be entitled to be reimbursed by the

Contractor upon demand. Upon purchase of such insurance, the Owner shall issue and the Contractor shall execute a Change Order reducing the Contract Sum or Guaranteed Maximum Price by the cost of the insurance. The Contractor shall furnish all necessary information to inception and maintain such Replacement Insurance.

§ 11.1.11 When any required insurance, due to the attainment of a normal expiration date or renewal date, shall expire, the Contractor shall supply the Owner with Certificates of Insurance and amendatory riders or endorsements that clearly evidence the continuation of all coverage in the same manner, limits of protection, and scope of coverage as was provided by the previous policy. In the event any renewal or replacement policy, for whatever reason obtained or required, is written by a carrier other than that with whom the coverage was previously placed, or the subsequent policy differs in any way from the previous policy, the Contractor shall also furnish the Owner with a certified copy of the renewal or replacement policy unless the Owner provides the Contractor with prior written consent to submit only a Certificate of Insurance for any such policy. All renewal and replacement policies shall be in form and substance satisfactory to the Owner and written by carriers acceptable to the Owner.

§ 11.1.12 Insurance coverage required under the Agreement shall be written with insurance carriers authorized to do business in the state where the Project is located. All insurance coverage procured by the Contractor shall be provided by insurance companies having policy holder ratings not lower than "A" and financial ratings not lower than "XII" as reported in Best's Insurance Guide, latest edition in effect as of the date of the Contract, and subsequently in effect as of the date of renewal of any policies required by the Contract Documents. Except as set forth in Article 5.3, the minimum insurance requirements specified in this Agreement apply to each member of the Construction Team.

§11.1.13 The Contractor's liability and indemnification obligations to the Owner under the Agreement shall not be relieved or diminished by securing insurance coverage in accordance with the Owner's requirements or by the Owner's acceptance of certificates of insurance or policies. Any acceptance of insurance coverage by the Owner shall not be construed as accepting in any way deficiencies in the insurance.

§11.1.14 The Contractor shall provide documentation of comprehensive motor vehicle liability insurance, including Michigan No Fault coverage 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.

§11.1.15 Additional Insured: Commercial General Liability Insurance and Comprehensive Motor Vehicle Liability Insurance as described above shall include an endorsement stating the following shall be "Additional Insured" with the following verbiage: "It is understood and agreed that the following shall be named as Additional Insured: 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 insured, and not contributing with any other insurance or similar protections available to the additional insured, whether said other available coverage be primary, contributing or excess."

§11.1.16 Cancellation Notice: All insurance policies listed above shall include an endorsement stating the following: "Should any of the above described policies be canceled before the expiration date thereof, the issuing company will mail 30 days written notice to: Director of Finance, City of Birmingham, 151 Martin Street, P.O. Box 3001, Birmingham, Michigan, 48012."

§11.1.17 Proof of Insurance Coverage: The Contractor shall provide the Owner, at the time the contracts are returned to the Owner for execution, certificates and policies 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 Motor Vehicle Liability Insurance;
- (4) If so requested, certified copies of all policies mentioned above will be furnished.

§11.1.18 Expiration: If any of the above coverage expire during the term of this Agreement, the Contractor shall deliver renewal certificates and/or policies to the Owner at least thirty (30) days prior to the expiration date.

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§11.1.19 Failure to Maintain Insurance: Upon failure of the Contractor to obtain or maintain such insurance coverage for the term of the Agreement, the Owner may at its option, purchase such coverage to and subtract the cost of obtaining such coverage to the Contractor. In obtaining such coverage, the Owner shall have no obligation to procure the most cost-effective coverage but may contract with any insurer for such coverage.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount with deductibles as reasonably determined by Owner. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents. The Owner shall provide a copy of the builder's risk policy for review by the Contractor. If the Contractor believes additional coverage is necessary, the Contractor shall notify the Owner in writing within seven (7) days of receiving the policy. Providing that the Owner agrees, the Owner shall have an option to purchase or to reimburse the Contractor for acquiring the additional coverage. Owner is not obligated to reimburse the Contractor for acquiring additional coverage unless the Owner has agreed and authorized in writing for the Contractor to do so.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires deductibles, the Contractor shall be responsible to pay such deductibles resulting from any act, failure to act, error, omission, or breach of the Contract by the Construction Team.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site only with Owner's written approval.

§ 11.3.1.5 In the event of partial occupancy or use in accordance with Section 9.9 the Owner and the Contractor shall take reasonable steps to coordinate with and obtain consent of their respective insurance company or companies so that the Owner's partial occupancy or use will not cause cancellation, lapse or reduction of insurance.

§ 11.3.1.6 NOT USED

§ 11.3.1.7 Each member of the Construction Team shall be solely responsible for insuring against any loss or damage to all owned, borrowed or rented property, including but not limited to tools, materials, supplies, equipment, forms, scaffolding, towers, staging, bunkhouses and other temporary structures including their contents, which do not form a permanent part of the Project. The Owner shall in no event be liable for any loss or damage to any of the aforementioned items, or the Work connected with the Contractor or the Architect, or employees, agents or servants of same, which is not to be included in and remain a permanent part of the Project.

§ 11.3.1.8 The Owner's property insurance policy excludes losses based on, among other things, errors in design, faulty workmanship, faulty materials, wear and tear, gradual deterioration, mysterious disappearance and fraudulent or dishonest acts. The property insurance policy also excludes losses due to settling, cracking, shrinking, bulging or expansion of pavements, foundations, walls, floors, and ceilings. The Contractor is liable and indemnifies the Owner

from all losses.

§ 11.3.1.9 The Contractor shall report to the Owner each claim immediately after an occurrence of a loss. To the extent permissible under such property insurance policies, the Owner grants, and shall cause its insurer to grant, reciprocal waivers of subrogation in favor of the Contractor and all other members of the Construction Team.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner .

§ 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance unless the damages are caused in whole or in part by the Contractor or Contractor's negligence.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall provide the Contractor with a copy evidence of insurance coverages required by this Section 11.3. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least thirty (30) days' prior written notice has been given to the Contractor.

§ 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other for damages caused by fire or other causes of loss to the extent covered by property, general liability, workers compensation, employers liability and automobile insurance obtained pursuant to this Section 11.3 or other property, general liability, workers compensation, employers liability and automobile insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner and made payable to the Owner for the insureds Contractor, Subcontractors, suppliers and anyone contracting directly or indirectly with them to the extent of any pending Application for Payment and Work properly performed and unpaid, subject to requirements of any applicable mortgagee clause. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 (Intentionally Deleted)

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle with insurers.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

§ 11.4.1.1 Bonds shall be executed by a responsible surety licensed in the state where the Work is located with a Best's rating of no less than A, XII or better and shall remain in effect for a period not less than three (3) years following the later of (i) the date of Substantial Completion or (ii) the time required to resolve any items of incomplete Work and the payment of any disputed amounts.

§ 11.4.1.2 Bonds under this Section 11.5 must display the surety's bond number. A rider including substantially the following provisions shall be attached to each bond:

- .1** Surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change, or other Modification of the Contract Documents, the Subcontracts and the Subcontracts. Any addition, alteration, change, extension of time, or other Modification of the Contract Documents, the Subcontracts or the Subcontracts, or a forbearance on the part of either the Owner, the Contractor or one or more Subcontractors to one or more of the others, shall not release the Surety of its obligations and notice to the Surety of such matters is hereby waived.
- .2** Surety agrees that it is obligated under the bonds to any successor, grantee or assignee of the Owner or the Contractor.

§ 11.4.1.3 Each Subcontractor's surety shall also agree, in the form of a rider to each bond or via a separate agreement, that before it may seek exoneration, release, or any kind of relief from its obligations under the bond as a result of any default by the Owner or the Contractor in the performance of any obligations to the Subcontractor under the Subcontract, the surety shall cause written notice of such default (specifying said default in detail) to be given to the Owner and the Contractor, and both of them shall have thirty (30) days from time after receipt of such notice within which to cure such default or cause it to be cured, or such additional reasonable period of time as may be required if the nature of such default is such that it cannot be cured immediately. Such Notice of Default shall be sent by certified or registered U.S. Mail, return receipt requested, first class postage prepaid, to the Owner and the Contractor.

§ 11.4.1.4 Each Subcontractor's Performance Bond and the Labor and Material Payment Bond shall each be "dual obligee" type bonds naming both the Owner and the Contractor as obligees.

§ 11.4.1.5 Each Subcontractor shall cause the attorney-in-fact who executes the required bonds on behalf of its surety to affix thereto a certified and current copy of his or her power of attorney indicating the monetary limit of such power.

§ 11.4.1.6 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement or any Subcontract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

§ 11.4.1.7 The Contractor shall keep the sureties informed of the progress of the Work, and, without limiting the requirements of Section 11.5.1.2(1) above, where necessary, obtain the sureties' consent to, or waiver of: (i) notice of changes in the Work; (ii) request for reduction or release of retainage; (iii) request for Final Payment; and (iv) any other material required by the surety. The Owner shall be notified by the Contractor, in writing, of all communications with the surety requesting or pertaining to consents or waivers. The Owner may, in the Owner's sole discretion, inform sureties of the progress of the Work and obtain consents as necessary to protect the Owner's rights, interest, privileges and benefits pursuant to any bond issued in connection with the Work.

§ 11.4.1.8 The Contractor may, in its discretion, determine other members of the Construction Team who will be required to supply bonds. All such bonds shall be (i) purchased solely at the expense of the Contractor (or the persons supplying them), without reimbursement under the Contract Sum or Guaranteed Maximum Price or otherwise, and (ii) dual obligee bonds, naming the Owner as one of the obligees.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.5 PROJECT MANAGEMENT PROTECTIVE LIABILITY "WRAP-UP" INSURANCE**§ 11.5.1 11.5.3 NOT USED****§ 11.6 INSURANCE IN GENERAL**

§ 11.6.1 The Contractor required insurance coverage required under the Agreement shall be written with insurance carriers authorized to do business in the state where the Project is located. Insurance coverage shall be in a form and provided by an insurer acceptable to the Owner with an A.M. Best rating of A, XII or better and shall name the applicable member of the Construction Team as a "named insured", as opposed to an "additional insured".

§ 11.6.2 At the written request of the Owner to the Contractor, the Contractor shall provide to the Owner a copy of any insurance policy required herein within five (5) calendar days of such written request (or a binder if a policy is not yet available). If the Contractor fails to submit a copy of any insurance policy within five (5) calendar days of such written request or if the insurance is in form or insurer unacceptable to the Owner, Owner shall have the right, but not the obligation, to purchase insurance ("Replacement Insurance") in the name of the applicable member of the Construction Team. Upon purchase of Replacement Insurance the Owner shall issue and the Contractor shall execute a Change Order reducing the Contract Sum or Guaranteed Maximum Price by the cost of the Replacement Insurance. The Contractor shall furnish all necessary information to inception and maintain such Replacement Insurance.

§ 11.6.3 The Contractor's liability and indemnification obligations to the Owner under the Agreement shall not be relieved or diminished by securing insurance coverage in accordance with the Owner's requirements or by the Owner's acceptance of certificates of insurance or policies. Any acceptance of insurance coverage by the Owner shall not be construed as accepting in any way deficiencies in the insurance.

§ 11.6.4 Except as set forth in Section 5.3.1.1, the minimum insurance requirements specified in this Agreement apply to each member of the Construction Team.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**§ 12.1 UNCOVERING OF WORK**

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Construction Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

If, within the stipulated warranty period in Section 5.3.2.11, and after the date of (i) Substantial Completion and acceptance of the Work or any designated portion thereof or (ii) the completion of Work not finished at Substantial Completion, or within the terms of an applicable special warranty required by the Contract Documents (the "Correction Period"), any of the Work is found by the Owner to be unacceptable, defective, deficient, or non-conforming Work ("Disputed Work"), the Contractor shall, without interfering materially with the Owner's facilities, personnel or operations, promptly cause it to be corrected, unless the Owner has previously specifically accepted such defect in writing. The Contractor shall bear all costs of correcting Disputed Work, without increase in the Guaranteed Maximum Price, and without use of any contingency, including any additional testing and inspections made necessary thereby. These obligations shall apply regardless of whether such Work has been fabricated, installed, or completed and shall survive acceptance of the Work and termination of the Agreement.

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Owner and/or the Architect may reject Disputed Work. The Contractor shall promptly cause all Work rejected by the Owner and/or Architect, whenever observed prior to Final Completion, to be corrected without extension of the Construction Time or increase in the Contract Sum or Guaranteed Maximum Price and without use of any contingency. If any additional testing, inspections and compensation for the Architect's services and expenses are incurred because of corrective Work, the Contractor shall pay them promptly upon demand.

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§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within the stipulated warranty period in Section 5.3.2.11 and after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall, without interfering materially with the Owner's facilities, personnel and operations, correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Contractor shall bear all costs of correcting rejected Work, without increase in the Guaranteed Maximum Price, and without use of any contingency, including any additional testing and inspections made necessary thereby. The Owner shall give such notice promptly after discovery of the condition. During the period for correction of Disputed Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct Disputed Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4. These obligations shall apply regardless of whether such Work has been fabricated, installed, or completed and shall survive acceptance of the Work and termination of the Agreement.

§ 12.2.2.2 Upon completion of any Work under or pursuant to Section 12.2.2 the stipulated warranty period in Section 5.3.2.11 shall begin anew with respect to the Work requiring correction.

§ 12.2.2.3 Intentionally Deleted

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the period for correction of Disputed Work as described in Section 12.2.2, relates only to the specific obligation of the Contractor to correct the Disputed Work and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.2.6 Unless the Owner authorizes otherwise, Substantial Completion shall not commence the Correction Period for any equipment or systems that:

- .1 Are not fully operational (equipment or systems shall not be considered fully operational if they are intended to provide service to any portion of the building which the Owner has not accepted as substantially complete); or
- .2 Are not accepted by the Owner.

§ 12.3 ACCEPTANCE OF DISPUTED WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents or otherwise unacceptable, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum or Guaranteed Maximum Price will be reduced by an equitable amount which reflects the loss of value to the Owner caused by the Disputed Work. Such adjustment shall be effected whether or not final payment has been made, and if it occurs after Final Payment is made, the Contractor shall immediately pay the Owner whatever sum is owed.

§ 12.4 OWNER'S RIGHT TO CORRECT OR REMOVE DISPUTED WORK

§ 12.4.1 If the Contractor fails to cause Disputed Work to be corrected within a reasonable time after receipt of notice from the Owner, the Owner may correct it and the Contractor shall pay the Owner all costs of correction (including the value of the Owner's staff time) upon demand. Alternatively, in the event of such failure, the Owner may (without being deemed a bailee) remove it and store the salvable materials or equipment at the Contractor's expense. If the

Contractor does not pay costs of such removal and storage within ten (10) days after written notice, the Owner may upon ten (10) additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting from the sale proceeds all costs, expenses and damages that should have been borne by the Contractor (including the value of the Owner's staff time and reasonable attorneys' fees). If the proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum or Guaranteed Maximum Price shall be reduced by the deficiency, plus Interest. If payments then or thereafter due the Contractor are not sufficient to cover the amount owed, the Contractor shall pay the difference to the Owner upon demand.

§ 12.4.2 The Owner's right to store and sell such Disputed Work shall not give rise to a duty to do so. Instead, the Owner may upon ten (10) day's prior written notice simply dispose of such Disputed Work as it sees fit. All costs of disposal shall be borne by the Contractor, without recovery from the Owner, under the Contract Sum or Guaranteed Maximum Price, any contingency or otherwise.

§ 12.4.3 Periods of Limitation. Nothing contained in this Article 12 shall be construed to establish a period of limitation with respect to other obligations, which the Contractor might have under the Contract Documents or Applicable Law. Establishment of the Correction Period relates only to the specific obligation of the Contractor to correct the Work under this Article 12 and has no relationship to the time within which the obligation to comply with the Agreement may be sought to be enforced by the Owner, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to its obligations under the Agreement.

§12.5 DAMAGE

§ 12.5.1 If prior to the date of Final Completion any member of the Construction Team uses or damages any portion of the Work or other property, including, without limitation, mechanical, electrical, plumbing and other building systems, machinery, equipment or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the Owner, without recovery from the Owner, under the Contract Sum or Guaranteed Maximum Price, any contingency or otherwise.

§ 12.5.2 The Contractor shall bear the cost of correcting destroyed or damaged construction or other property, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

§ 12.5.3 Nothing in this Section 12.5 either limits the parties' rights to obtain recovery from any applicable property insurance or entitles the insurer to pursue a subrogation claim.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract 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 compliance with all local, state, and federal laws and regulations.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to Owner's parents, subsidiaries, successors, affiliates, a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents, or any third party. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.2.3 The Contractor shall not assign the whole or any part of the Agreement, or any monies due or to become due, without the express written consent of the Owner. If the Contractor, with the Owner's consent, assigns all or any part of the Agreement or any monies due or to become due, the instrument of assignment shall contain a clause satisfactory to the Owner and stating that it is agreed that the right of the assignee in and to any monies due or to become due to the

Contractor shall be subject to the prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in the Agreement.

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by Applicable Laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (i) tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded, and (ii) tests, inspections, or approvals where building codes or Applicable Laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection, or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense without increase in the Contract Sum or Guaranteed Maximum Price, and without use of any contingency.

§ 13.5.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the prime interest rate as published in the Wall Street Journal on the first day of the month when owed payment become delinquent; however, shall not exceed twelve percent (12%) per annum.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by Applicable Law, but in any case not more than ten (10) years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

§ 13.8 SUBMISSION TO PROCEEDINGS

If the Owner is a party to any litigation or arbitration with respect to the Project involving a common question of law or fact (whether as plaintiff, defendant or third party defendant), the Contractor consents to being joined in such action and to the jurisdiction of the court in which the action is instituted (if the Contractor is named as a defendant or impleaded as a third-party defendant) and to service of process by that court; and the Contractor waives any right to contest its joinder in such action on the grounds of improper jurisdiction or venue.

§ 13.9 NO PERSONAL LIABILITY

In carrying out any of the provisions of the Agreement, or in exercising any power or authority granted to them by or within the scope of the Agreement, there shall be no personal liability upon, and Architect, Contractor and Subcontractor waive any claim against, the members of the Owner's, its elected and appointed officials, employees, volunteers and any others working, or any representatives of the Owner, or Owner's Representative Consultant either personally or as public officials, it being understood that in all such matters they act solely as agents and representatives of the Owner.

§ 13.10 INTEGRATION

The Contract Documents shall, if possible, be construed to render each of their provisions valid and enforceable. However, if any part, term, or provision of the Contract Documents is held by the final judgment of any court of competent jurisdiction to be illegal, invalid, or unenforceable, the validity of the remaining portions or provisions shall not be impaired or affected, and the rights and obligations of the parties shall be construed as having been written to include terms that are the maximum protection enforceable under law, and shall be enforced as if the Contract Documents did not contain the particular part, term, or provision held to be illegal, invalid, or unenforceable.

§ 13.11 THIRD-PARTY BENEFICIARIES

§ 13.11.1 Nothing contained in the Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or the Contractor. There are no third-party beneficiaries to the Agreement. However, it is understood and agreed that the Owner is and shall be designated an intended third-party beneficiary of all contracts for design or engineering services, Subcontracts, sub-subcontracts, and other agreements between Contractor and third parties pertaining to the Work.

§ 13.12 NON-DISCRIMINATION EMPLOYMENT PROVISION

§ 13.12.1 During the performance of the Work, the Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their sex, race, creed, color, religion, age, height, weight, marital status, national origin, ancestry, sexual orientation, disability, or veteran status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause.

§ 13.12.2 The Contractor will, in all solicitations, or advertisements for employees, placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to sex, race, creed, color, religion, age, height, weight, marital status, national origin, ancestry, sexual orientation, disability, or veteran status.

§ 13.12.3 The Contractor will furnish all information and reports required by Applicable Laws, and by the rules, regulations and orders of any government agency or authority having jurisdiction. The Contractor shall permit access to the Contractor's books, records, and accounts by the administrative agency and the Secretary of Labor for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.

§ 13.12.4 In the event of the Contractor's noncompliance with the non-discrimination clauses of the Contract

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Documents, or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for future Owner contracts in accordance with procedures authorized in Applicable Laws, or by rule, regulation, or order of any government agency or authority having jurisdiction.

§ 13.12.5 The Contractor will include the provisions of Sections 13.11.1 through 13.11.4 of this Article in every Subcontract or purchase order unless exempted by rules, regulations, or other orders of the President's Committee on Equal Employment Opportunity issued pursuant to Applicable Laws, so that such provisions will be binding upon each Subcontractor. The Contractor will take such action with regards to any Subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation with a Subcontractor as a result of such direction by the administering agency, the Contractor may request the United States of America to enter into such litigation to protect the interests of the United States of America.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor shall have the right to and may terminate the Contract only upon the occurrence of one of the following reasons:

- .1 the Work is stopped for a period of one hundred twenty (120) consecutive days through no act or fault of the Contractor or any member of the Construction Team, due to an issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped, or an act of government, such as a declaration of national emergency

(Paragraphs deleted)

making material unavailable;

- .2 Upon no less than seven (7) days' written notice of intent to suspend or terminate, Contractor may suspend Work or terminate the Agreement for the Owner's nonpayment of Contract amounts due in accordance with this Agreement where (i) the Owner has failed to make payment within thirty (30) days after receiving written notice of such nonpayment from Contractor; (ii) the Owner has failed to timely object to the unpaid portion of a properly submitted payment request by the Contractor setting forth the reasons for its objection; and (iii) the Owner has also failed to pay the Contractor undisputed amounts properly submitted and approved for payment. Otherwise, in the event of a dispute as to payment or otherwise, the Contractor shall be obligated to continue its performance and shall have the right, but not the obligation, to immediately submit the dispute to arbitration pursuant to the Rules of the American Arbitration Association.
- .3 In the event Contractor believes Owner is in material breach of this Agreement for reasons other than nonpayment, the Contractor, if the material breach shall continue for thirty (30) days after written notice thereof shall have been given by the Contractor to Owner, may suspend work or terminate this Agreement where (i) the Owner has failed to remedy or take reasonable measures to remedy the breach after receiving written notice of such breach from the Contractor; (ii) the Owner has failed to timely object to the Contractor's allegations of material breach setting forth the reasons for its objections; and (iii) the breach is ongoing. Otherwise, in the event the breach is disputed, the Contractor shall be obligated to continue its performance and shall have the right, but not the obligation, to immediately submit the dispute to Arbitration pursuant to the Rules of the American Arbitration Association.
- .4 Repeated suspensions by the Owner, other than such suspensions as are agreed to by the Contractor, which constitute in the aggregate more than one hundred eighty (180) days.

§ 14.1.2 Upon the occurrence of one of the events listed in Section 14.1.1, the Contractor may, upon ten (10) days' additional written notice to the Owner, and provided that the condition giving rise to the Contractor's right to terminate is continuing, terminate the Agreement.

§ 14.1.3 Upon termination by the Contractor, the Owner will pay to the Contractor the sum determined by Section 14.4.3. Such payment will be the sole and exclusive remedy to which the Contractor is entitled in the event of termination of the Agreement by the Contractor pursuant to Section 14.1; and the Contractor will be entitled to no other compensation or damages whatsoever as a result of the termination of the Agreement and expressly waives any right to claim them.

§ 14.1.4 (Intentionally Deleted)

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§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Agreement may be terminated by Owner for cause without prejudice to any right or remedy available to Owner under the Contract Documents or at law or in equity after giving the Contractor and the surety, if any, seven (7) days' written notice provided that Contractor fails to take appropriate steps within such seven (7)-day period to cure or if the default is of a nature that it cannot be cured immediately, commence, within seven (7) days, a cure of the cause for termination and diligently pursue it to completion, provided however that additional time to cure shall not exceed an additional thirty (30) days. Reasons for termination for cause may include:

- .1 the Contractor institutes proceedings or consents to proceedings requesting relief or arrangement under the Federal Bankruptcy Act or any similar or applicable federal or state law ;
- .2 a petition under any federal or state bankruptcy or insolvency law is filed against the Contractor and such petition is not dismissed within sixty (60) days from the date of said filing;
- .3 the Contractor admits in writing its inability to pay its debts generally as they become due;
- .4 the Contractor makes a general assignment for the benefit of its creditors;
- .5 a receiver, liquidator, trustee, or assignee is appointed because of the Contractor's bankruptcy or insolvency;
- .6 a receiver is appointed for all or any substantial portion of the Contractor's properties;
- .7 the Contractor abandons the Work;
- .8 the Contractor fails to promptly and diligently perform the Services, or the Work is not prosecuted diligently in accordance with the requirements of the Contract Documents, or enough properly skilled workers or proper materials are not supplied for the Work;
- .9 the Contractor submits an Application for Payment, sworn statement, waiver of lien, affidavit or document of any nature whatsoever which is untrue in any material respect;
- .10 the Contractor fails to make prompt payment of amounts properly owing to Subcontractors, or otherwise breaches its obligations under any Subcontract or the Agreement;
- .11 a Lien is claimed against any part of the Work or the Project Site by a member of the Construction Team, other than by reason of Owner's failure to pay Contractor amounts to which it is entitled under the Agreement, and not promptly bonded or insured over by the Contractor;
- .12 the Contractor disregards or violates any Applicable Laws;
- .13 any representation made by the Contractor in the Agreement proves untrue, or the Contractor otherwise violates any provision of the Agreement;
- .14 the Contractor persistently fails to comply with the requirements of the Contract Documents; or
- .15 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When the Owner terminates the Contract for any of the reasons stated in 14.2.1, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven (7) days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the Project Site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for any of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until final completion of the Work and determination of the sums due pursuant to Section 14.2.5 below.

§ 14.2.4 If requested by the Owner following a termination for cause, the Contractor shall remove any part or all of its equipment, machinery, and supplies from the Project Site within seven (7) days from the date of such request, and in the event of the Contractor's failure to do so, Owner shall have the right to remove or store such equipment, machinery, and supplies at the Contractor's expense.

§ 14.2.5 If the unpaid balance of the Contract Sum or Guaranteed Maximum Price exceeds all costs to the Owner of completing the Work, including increased costs resulting from Contractor's default for the Owner's staff time, then the Contractor shall be paid for all Work performed by the Contractor to the date of termination, but in no case shall

the amount paid to the Contractor cause the Contract Sum or Guaranteed Maximum Price to be exceeded. If the costs to the Owner of completing the Work exceed such unpaid balance, the Contractor shall pay the difference, plus Interest, to the Owner within thirty (30) days after the Owner's demand. The costs to the Owner of completing the Work shall include (but only to the extent caused or exacerbated by the Contractor's default) the cost of any additional architectural, legal, managerial, and administrative services required, any costs incurred in retaining another Contractor or other Subcontractors, any additional interest or fees which Owner incurs or must pay by reason of a delay in completion of the Work, attorneys' fees and expenses, and any other damages, costs, and expenses Owner may incur by reason of completing the Work.

§ 14.2.6 If the Agreement is terminated by Owner, Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of Owner, for any equipment owned by the Contractor which Owner elects to retain and which is not otherwise included in the Contract Sum or Guaranteed Maximum Price. To the extent that Owner elects to take legal assignment of Subcontracts (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in Section 14.2.5, execute and deliver all such papers and take all such steps, including the legal assignment of such Subcontracts, as Owner may require for the purpose of fully vesting in Owner the rights and benefits of the Contractor under such Subcontracts.

§ 14.2.7 If the Owner erroneously or improperly terminates the Contractor for cause, then the Owner's action shall be deemed to be a termination for convenience, subject to the provisions of Section 14.4.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, for any reason, order the Contractor in writing to suspend, postpone, delay or interrupt the Work in whole or in part for such period of time as Owner may determine (a "Suspension"). In the event of any Suspension, the Owner shall have the right, in its discretion, upon written notice to the Contractor, to keep the Agreement in effect during the period of such Suspension; provided, however, that if the Suspension equals a period of seven (7) days, the Contractor shall be reimbursed for the actual out-of-pocket costs incurred by the Contractor or its Subcontractors directly as a result of such Suspension (such as reasonable demobilization and remobilization costs), and an appropriate extension of the Construction Time shall also be granted. If the Work is suspended for a period of more than ninety (90) days, the Contractor may terminate the Agreement in accordance with Section 14.1

§ 14.3.2 The Contract Sum and Construction Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. No adjustment shall be made to the extent that:

- .1 performance is, was or would have been so suspended, delayed, or interrupted by another cause for which the Contractor is responsible; or
- .2 an equitable adjustment for any particular cost item is made or denied under another provision of the Contract.

§ 14.3.3 In the case of a termination of the Agreement by the Contractor pursuant to Section 14.1, the Contractor's Fee through the date of termination shall be calculated as if the termination were by the Owner for convenience pursuant to Section 14.4.

§ 14.3.4 Except as specifically set forth above, no Suspension shall give rise to any cause of action or claim against the Owner for damages, loss of profits, expenses or other remuneration of any kind.

§ 14.3.5 Notwithstanding any other provisions of the Agreement, if such Suspension arose on account of the Contractor's failure to fulfill the Contractor's obligations under the Agreement or on account of any other fault of any member of the Construction Team, the Owner may withhold payment of so much of any monies which otherwise may be payable to the Contractor under the Contract Documents as will be sufficient to pay for the costs or damage that the Owner will suffer, and the Contractor shall not be entitled to any recovery on account of the Suspension. Such monies may be applied toward any damages or expenses sustained by the Owner as a result of such failure including, without limitation, any excess costs incurred by the Owner in completing the Work by the use or employment of other licensed professionals or otherwise. The Contractor shall remain liable to the Owner for all such damages and expenses in excess of any such monies being withheld by the Owner. The failure of the Owner to withhold monies from the Contractor shall not be construed as an acknowledgment by the Owner that no such damages or expenses exist and shall not prevent the Owner from thereafter making any claim against the Contractor therefor.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract in whole or in part for the Owner's convenience and without cause. Termination by the Owner under this Section shall be by a notice of termination delivered to the Contractor specifying the extent of termination and the effective date.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall immediately, in accordance with instructions from the Owner, proceed with performance of the following duties regardless of delay in determining or adjusting amounts due under this Section:

- .1 cease operations as directed by the Owner in the notice and deliver to the Owner the originals or legible copies of all Drawings, Specifications, reports and other data, records and materials in the Construction's Manager's custody and control pertaining to the portion of the Work for which the employment of the Contractor was terminated;
- .2 enter into no additional Subcontracts, except as necessary to complete continuing portions of the Contract;
- .3 terminate, on the most favorable terms possible, all Subcontracts to the extent they relate to the Work terminated;
- .4 complete the performance of Work not terminated; and
- .5 take actions that may be necessary or that the Owner may direct, for the protection and preservation of the terminated Work and of materials, plant, and equipment in transit or stored.

§ 14.4.3 Upon such termination, the Owner shall pay, and the Contractor, as its sole remedy, may recover payment for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination, for items theretofore properly and timely fabricated off the Project Site, delivered and stored in accordance with the Owner's instructions, and for any actual out-of-pocket costs it incurs in complying with Section 14.4.2, such as reasonable demobilization costs. The Contractor hereby waives all other claims whatsoever against Owner based on the termination.

§ 14.4.4 In any recovery by the Contractor, the Owner shall be credited for (i) payments previously made to the Contractor for the terminated portion of the Work, (ii) claims which the Owner has against the Contractor under the Agreement and (iii) the value of the materials, supplies, equipment or other items that are to be disposed of by the Contractor.

ARTICLE 15 CLAIMS AND DISPUTES**§ 15.1 CLAIMS****§ 15.1.1 DEFINITION**

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.1.1 Changes in Law. If changes in ordinances, laws, requirements or regulations, or changes (which could not reasonably have been anticipated prior to the execution of the Contract) in judicial or agency interpretations of such ordinances, laws, requirements or regulations occur after execution which require an alteration of the Work or otherwise may result in a price or time impact, Contractor shall so notify Owner, in writing, consistent with Section 15.1.4 and comply with the procedures set out therein. Changes in the following areas of law are deemed to be within the scope of the Work hereunder and shall not be the basis for any change in price or time: requirements affecting the use or handling by Contractor of toxic or Hazardous Materials, Occupational Safety and Health Act requirements relating to Contractor's prosecution or conduct of the Work during the Project, or laws or requirements relating to operation of the business of construction contracting, engineering, or equipment manufacturing, or taxes affecting any such business.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party with a copy sent to the Architect. Claims by either party must be initiated within twenty one (21) days after occurrence of the event giving rise to such Claim or within twenty one (21) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later except as provided in Sections 7.5.1, 8.3.2 and 8.4.2.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker. 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.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Construction Time, written notice shall be given pursuant to Section 8.3.2. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be made and governed by the provisions of Section 8.3.2 documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes:

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business, and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business, and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless thirty (30) days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten (10) days of the receipt of a Claim take one or more of the following actions: (i) request additional supporting data from the claimant or a response with supporting data from the other party, (ii) reject the Claim in whole or in part, (iii) approve the Claim, (iv) suggest a compromise, or (v) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten (10) days after receipt of such request, and shall (i) provide a response on the requested supporting data, (ii) advise the Initial Decision Maker when the response or supporting data will be furnished, or (iii) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (i) be in writing; (ii) state the reasons therefor; and (iii) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Construction Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within thirty (30) days from the date of an initial decision, demand in writing that the other party file for mediation within sixty (60) days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with Applicable Law to comply with the lien notice or filing deadlines.

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 ARBITRATION

Excepting claims waived as provided for in Sections 9.10.4 and 9.10.5, only those Claims that the Owner agrees in writing to arbitrate shall be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with the provisions of Article 15.3.

§ 15.4.1 If the Owner has selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered

to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with Applicable Law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under Applicable Law in any court having jurisdiction thereof.

§ 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 The Owner, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (i) the arbitration agreement governing the other arbitration permits consolidation, (ii) the arbitrations to be consolidated substantially involve common questions of law or fact, and (iii) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 The Owner, at its sole discretion, may elect that any and all arbitration arising out of or relating to this Contract shall include by consolidation, joinder or joint filing any additional person or entity not a part to the Contract between the Owner and Contractor to the extent necessary to the final resolution of the matter under Claim, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

ARTICLE 16. FAIR HIRING

§ 16.1 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 Owner of all claims or suits asserted against it by the Contractor's employees who work pursuant to this Agreement. The Contractor shall provide the Owner with periodic status reports concerning all such claims or suits, at intervals established by the Owner.


§ 16.2 If, after the effective date of this Agreement, any official of the Owner, 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 Owner 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 Owner 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.

[end of AIA Document A201-2007 General Conditions of the Contract for Construction]

Initials

EXHIBIT A, Architect's Design Phase [Minimum] Deliverables Document Requirements, to AIA B101-2017 Edition, consisting of 8 pages, referred to in and part of the Agreement between Owner and Architect dated January 12, 2021.

Owner: _____

Architect: _____


The goals of establishing the following design phase [minimum] deliverable document requirements are (1) to assist the Owner to eliminate, as much as possible, project design, budget and schedule uncertainties by increasing predictability; (2) to provide sufficient and accurate project design and engineering design documents to the Owner and General Contractor (Contractor) so that the General Contractor can rely upon such design and engineering documents to prepare and submit to the Owner reliable project construction budget/estimate at the completion of various design milestones – i.e., Schematic Design, Design Development, etc. The Owner fully anticipates that at the conclusion of the Schematic Design Phase, The General Contractor shall be able to prepare and present to the Owner and the project team a formal Project budget and/or estimate which shall be divided into CSI Divisions. Such budget and/or estimate will allow the Owner to rely upon it as a “maximum target price” for the Project. At the conclusion of the Design Development Phase, the General Contractor shall prepare and present to the Owner and the project team a “full take-off estimate” of sufficient substance and detail so the Owner will be able to rely upon as an initial Guaranteed Maximum Price (GMP) and to rely upon the initial GMP to secure financing for the Project or for each sub-component of the Project. Subsequent to acceptance of the initial GMP by the Owner, the General Contractor shall have the principal responsibility to assist the Owner and the members of the design team to ensure that the final GMP will not exceed the initial GMP. The General Contractor shall fully engage the Architect and other design team members, and the Architect and other design team members shall fully cooperate with the General Contractor, to ensure that in preparing the [final] Construction Document, the scope, quality and costs of the Project are aligned (not compromised) and within the initial GMP.

ITEM	SCHEMATIC PHASE	DESIGN DEVELOPMENT PHASE*	CONSTRUCTION DOCUMENT PHASE*
GENERAL DESCRIPTION	<ol style="list-style-type: none"> 1. Scope of work narrative 2. Comparison of capacities (see "Building Interior" for area comparison) to program 3. List of applicable building codes on drawing title sheet 4. List of anticipated building code variance requests 	<ol style="list-style-type: none"> 1. Description of construction phasing 2. Description of any proposed occupancy within construction area 3. Building code review (describe means of compliance for major code issues and building systems) 4. Description of water & vapor characteristics of roof & exterior walls 5. Design intent document (rough draft) 	<ol style="list-style-type: none"> 1. Documentation on drawings as required by building codes 2. If multiple bid packages, clear indication of scope of each release 3. Identification of construction phasing, including temporary requirements during each phase 4. Design intent document (completed design)
SPECIFICATION	<ol style="list-style-type: none"> 1. System & material narrative description 	<ol style="list-style-type: none"> 1. Outline specification w/same section numbering as final 	<ol style="list-style-type: none"> 1. Complete specification including draft front end documents 2. List of items which are sole-sourced or dual-sourced and justification for not specifying three acceptable products 3. For items listed in "Preferred Manufacturers List", a table of specified items that are NOT indicated in PML and the justification for specifying these items 4. For door hardware sets that require electricity, indicate the proposed sequence of operations for the hardware

ITEM	SCHEMATIC PHASE	DESIGN DEVELOPMENT PHASE*	CONSTRUCTION DOCUMENT PHASE*
<i>SITE</i>	<ol style="list-style-type: none"> 1. Site plan(s), to include the following: 2. Existing conditions 3. Demolition 4. Building outline(s) 5. Future expansion 6. Site entrance 7. Roads & driveways 8. Parking locations 9. Bus stop/shelter (if required) 10. Loading dock location 11. Waste/recycling collection locations 12. Walkway locations 13. Stairway locations 14. Emergency telephones 15. Utility requirements 16. Site utilities 17. Preliminary grading plan 18. Soil retention work, if needed 19. Storm water management plan 20. Preliminary site lighting layout 	<ol style="list-style-type: none"> 1. General dimensions & elevations 2. Permanent exterior signage 3. Parking/roadway plans & elevations 4. Vehicle & pedestrian traffic controls 5. Grading plan 6. Lighting plan 7. Concept details of site fixtures & equipment 8. Utility plans, elevations & details 9. Sanitary sewer flow calculations 10. Plan to address existing hazardous/contaminated materials, if applicable 11. Soil erosion and sedimentation control plan (for both construction and occupancy) 12. Calculation of site and disturbed areas 13. Dewatering plan 	<ol style="list-style-type: none"> 1. Extent of construction area 2. Area traffic plan, if existing roads/walks are impacted 3. Site development phasing 4. Construction site access 5. Staging area 6. Construction signage 7. Site details, including landscape 8. Pipe sizes 9. Connection details 10. Copy of local government review comments on utilities and modifications in right(s)-of-way 11. Photometrics of proposed site lighting 12. Protection requirements for construction, plantings that remain
<i>LANDSCAPING</i>	<ol style="list-style-type: none"> 1. Existing conditions 2. Landscaping concept 3. Existing irrigation 	<ol style="list-style-type: none"> 1. Planting plan 2. Irrigation plan 	<ol style="list-style-type: none"> 1. Existing tree protection 2. Soil preparation & planting specifications 3. Guying diagrams 4. Piping diagrams 5. Pipe sizes 6. Landscape and irrigation details and legends
<i>STRUCTURAL</i>	<ol style="list-style-type: none"> 1. Structural scheme 2. Written description 	<ol style="list-style-type: none"> 1. Foundation plan 2. Typical floor framing plan 3. Framing plan(s) at unique features 4. Main member sizing 5. Structural sections 	<ol style="list-style-type: none"> 1. Definition of control joints 2. Beam, column & slab schedules 3. Mechanical and electrical concrete house keeping pads 4. Foundation details 5. Structural details 6. Structural notes 7. Calculations

ITEM	SCHEMATIC PHASE	DESIGN DEVELOPMENT PHASE*	CONSTRUCTION DOCUMENT PHASE*
<i>BUILDING EXTERIOR ENVELOPE</i>	<ol style="list-style-type: none"> 1. Typical elevations 2. Fenestration layout 3. Material designations 4. Overall building cross-sections 5. Roof layout 6. Energy code requirements 	<ol style="list-style-type: none"> 1. All building elevations w/dimensional heights 2. Typical wall sections 3. Parapet & coping details 4. Roof & drainage plan 5. Exterior door details 6. Typical window details 7. Details of unique features 8. Expansion joint locations 9. Large scale building cross-sections 	<ol style="list-style-type: none"> 1. Roof-mounted equipment 2. Roof details 3. Exterior details 4. Flashing details 5. Control joint definition & details
<i>BUILDING INTERIOR</i>	<ol style="list-style-type: none"> 1. Typical floor plans (min 1/16" scale) w/ legends 2. Demolition 3. All room numbers 4. Area use identification & area in square ft. 5. Mechanical, electrical & other service closets & rooms 6. Circulation paths 7. Area tabulations compared to program requirements 8. Show flexibility for expansion & alterations 9. Preliminary layout of major spaces w/ fixed equipment 	<ol style="list-style-type: none"> 1. All floor plans (min 1/16" scale) 2. Enlarged plans at elevation changes (such as stairs) 3. Enlarged plans at toilet rooms 4. Reflected ceiling plans 5. Wall types, fire ratings, smoke control zones 6. Plan to address existing hazardous materials, if applicable 7. Fixed seating 8. Defined seating, serving, & kitchen facilities 9. Equipment & furniture layouts 10. Important interior elevations 11. Details of unique features 12. Details of fixed equipment 13. Preliminary finish schedule 14. Preliminary door schedule 15. Informational signage 	<ol style="list-style-type: none"> 1. Dimensioned floor plans 2. Enlarged plans 3. Partition details 4. Interior details 5. Interior elevations 6. Finish schedules 7. Door & hardware schedules 8. Room signage 9. Schedule of proposed movable equipment that is NOT indicated on documents (for reference) 10. Schedule of lab fixtures (turrets, etc.), if applicable
<i>ELEVATORS</i>	<ol style="list-style-type: none"> 1. Elevator location(s) 2. Equipment room location(s) 	<ol style="list-style-type: none"> 1. Elevator shaft section 2. Equipment description 	<ol style="list-style-type: none"> 1. Dimensioned plans 2. Sections & details of hydraulic cylinder, if applicable 3. Description of shaft sump pit(s) 4. Elevator car & equipment support details 5. Description of controls & fixtures 6. Door & frame details 7. Interior details including lighting

ITEM	SCHEMATIC PHASE	DESIGN DEVELOPMENT PHASE*	CONSTRUCTION DOCUMENT PHASE*
HVAC	<ol style="list-style-type: none"> 1. Identify all systems 2. One-line flow diagrams 3. Exterior equipment locations 4. Air intake & discharge locations 5. Mechanical legend 6. Special occupancy zones 7. Energy code requirements 	<ol style="list-style-type: none"> 1. Updated design criteria for each mechanical system (including room T&H specs, NC levels, etc) 2. One-line diagrams and other materials as required to describe the fundamental design concept for all mechanical systems 3. Indication of the amount of redundancy for all major pieces of mechanical equipment, e.g. "two pumps 100% capacity each" 4. Overall building air flow diagram indicating air handlers, exhaust fans, duct risers, and duct mains 5. Plans indicating shaft, chase, recess requirements 6. Duct layout for typical spaces 7. Equipment schedules (major equipment) 8. Equipment locations (with enlarged mechanical plan(s)) 9. Control diagrams (concept form) for all mechanical and plumbing systems 10. Description of major sequences of operation 11. Central automation operation 12. M/E smoke control scheme 13. Preliminary calculations 	<ol style="list-style-type: none"> 1. One line flow diagrams for all mechanical systems: chilled water, etc. 2. Floor plans with all components and required service access areas drawn to actual scale; and on the plans, indicate duct sizes and airflow quantities relative to each room, including CFM in and out of all doors. Indicate location of control panels. 3. Control valves and volume control boxes (note that each is to be identified by a unique number assigned by the engineer). Provide a schedule that indicates the control sequence that applies to each room (room #, room descriptor, control sequence #). 4. Detailed floor plans of mechanical rooms w/ all components and required service access areas drawn to actual scale 5. Cross-sections through mechanical rooms and areas where there are installation/coordination issues (tight space, zoning of utilities). Indicate required service access areas. 6. In common mechanical space, indication of space zoning by system 7. Connection to fire alarm & campus control systems 8. Equipment details, including structural support requirements 9. Penetration details 10. Installation details 11. Duct construction schedule (on the drawings), indicating materials and pressure class for each duct system

ITEM	SCHEMATIC PHASE	DESIGN DEVELOPMENT PHASE*	CONSTRUCTION DOCUMENT PHASE*
<i>HVAC (continue)</i>			12. Detailed controls drawings, including clear differentiation of trade responsibility for control, fire, and control power wiring 13. Detailed sequences of operation 14. Design calculations
<i>PLUMBING & PIPING</i>	1. Main water supply 2. Restroom location(s) 3. Plumbing legend	1. Updated design criteria for each plumbing system (including set points, water quality levels, etc.) 2. One-line diagrams, etc. that describe the fundamental design concept for all plumbing systems 3. Piping plans (domestic & process) with indication of required service access areas 4. Water header diagram 5. Central cooling water header diagram 6. Steam header diagram 7. Steam metering concept	1. Water riser diagram, including assumed fixture counts per floor connection 2. Waste and vent riser diagrams including assumed fixture counts per floor connection 3. Radiation riser diagram 4. Central cooling water riser diagram 5. Chilled water riser diagram 6. Riser diagrams of other plumbing systems, such as natural gas and pure water 7. Foundation drains 8. Pipe sizes 9. Typical plumbing details, including structural support requirements 10. Water heating piping detail 11. Coil piping detail 12. Convactor piping detail 13. Penetration details 14. Design calculations
<i>FIRE PROTECTION (MECHANICAL)</i>	1. Report documenting adequacy of utility 2. Connection to utility 3. Location of sprinkler valve 4. Sprinkler legend 5. Optional Fire Protection systems	1. Riser diagram 2. One-line layout 3. Fire pump sizing calculations	1. Fire protection service entrance details 2. Fire protection plans (including header and riser layout) with indication of any required service access areas 3. Pipe sizes 4. Typical sprinkler installation details, including structural support requirements 5. Penetration details 6. Design calculations

ITEM	SCHEMATIC PHASE	DESIGN DEVELOPMENT PHASE*	CONSTRUCTION DOCUMENT PHASE*
<i>LIGHTING</i>		<ol style="list-style-type: none"> 1. Typical lighting plans 2. Fixture/switching layout 3. Fixture types & schedule 4. General light fixture descriptions 5. Light level calculations 6. Energy code requirements 	<ol style="list-style-type: none"> 1. Lighting plans, including control devices, switching and circuiting 2. Control diagrams 3. Installation details, including structural support requirements 4. Design calculations 5. General notes on conduit and wire sizes for all lighting branch circuits.
<i>ELECTRIC POWER DISTRIBUTION</i>	<ol style="list-style-type: none"> 1. One-line diagrams 2. Electric vault locations 3. Exterior equipment locations 4. Electric closet(s) location(s) 5. Electric legend 	<ol style="list-style-type: none"> 1. Normal power riser diagram with circuit breaker & fuse sizes 2. Emergency power riser diagram with circuit breaker & fuse sizes 3. Grounding riser diagrams 4. List of equipment on emergency power 5. Emergency generator layout 6. Equipment layout/sizes, w/receptacles 7. Panel locations/ schedules 8. Load estimates 9. Plan for temporary power during construction 	<ol style="list-style-type: none"> 1. Load summary 2. Panel schedules 3. Details of power service to building 4. Power plans, including power cable trays, electrical loads, special and duplex receptacles, and circuiting. 5. Plans and details of emergency power generation system and controls 6. Connections to other building systems, including fire alarm & HVAC systems 7. Details of special terminal devices 8. Conduit and wire sizes for services, feeders, and special branch circuits 9. General notes on conduit and wire sizes for 20 amp single phase branch circuits 10. Grounding details 11. MCC details 12. Penetration details 13. Design calculations

ITEM	SCHEMATIC PHASE	DESIGN DEVELOPMENT PHASE*	CONSTRUCTION DOCUMENT PHASE*
<i>FIRE ALARM</i>	<ol style="list-style-type: none"> 1. Connection to Dept of Public Safety 2. Panel locations 	<ol style="list-style-type: none"> 1. Riser diagram 2. Fire alarm zones 3. Smoke zones 4. Device locations 	<ol style="list-style-type: none"> 1. Indication of connection to fire alarm, HVAC & central campus monitoring systems 2. Connection details
<i>COMMUNICATIONS (INCLUDING VOICE, DATA, VIDEO & A/V SYSTEMS)</i>	<ol style="list-style-type: none"> 1. Building & local distribution 2. Frame closet locations & size 3. Cable tray locations 	<ol style="list-style-type: none"> 1. Riser diagrams 2. Voice/data utility outlet locations 3. Conduit and cable tray plans 4. Material cut-sheets 5. Description of audio/visual systems 6. Audio/visual equipment locations (indicate hangers, cabinets & connection boxes) 7. IT and low voltage system descriptions, apparatus and equipment locations, and specifications. 	<ol style="list-style-type: none"> 1. Communications plans that indicate the location of all voice, data & video outlets 2. Details of telecommunications service to building 3. Backboard layout & connection diagrams 4. Cable schedule 5. Connection details 6. Structural support requirements 7. Audio/visual equipment list 8. Audio/visual system riser diagram(s) 9. IT system plans, network and cabling plans, network electronics, voice-video-data drops, etc.
<i>SECURITY SYSTEMS</i>		<ol style="list-style-type: none"> 1. General security / CCTV system description 2. General description of card access system 3. Security system riser diagrams 4. Security equipment locations 5. Card access equipment closet layout & elevations 	<ol style="list-style-type: none"> 1. Riser diagrams 2. Equipment closet layout & elevations 3. Concealed and exposed raceways 4. Installation details
<i>OTHER GRAPHICS</i>	<ol style="list-style-type: none"> 1. Rendering(s), models, or other graphics as necessary to clearly present concept 		

ITEM	SCHEMATIC PHASE	DESIGN DEVELOPMENT PHASE*	CONSTRUCTION DOCUMENT PHASE*
<i>COST</i>	1. Preliminary cost estimate (system-by-system acceptable – <i>Collaborate with General Contractor</i>)	1. Updated cost estimate by materials (<i>collaborate with General Contractor</i>)	1. Updated cost estimate (<i>Collaborate with General Contractor</i>)
<i>NOTES</i>	1. All movable furnishings & artwork are considered to be independent of the Architectural design project 2. Submittal of documentation for DD & CD phases is to be preceded by response to review comments on previous phase of design work. 3. No individual volume of drawings is to exceed 25 lbs in weight. No individual specification book volume is to exceed three inches thick.		

*** THE FOLLOWING ITEMS ARE REQUIRED IN ADDITION TO ITEMS IN PREVIOUS STAGES OF DESIGN (WHICH ARE TO BE FURTHER DEVELOPED DURING THE INDICATED PHASE.)**

EXHIBIT B consisting of the attached
page(s), referred to in and part of the
Agreement between Owner and Architect
dated January 12, 2021.

Initials

Owner: _____

Architect: _____


AIA Document G704-2017 Certificate of Substantial Completion Form

[See attached Certificate of Substantial Completion Form]

[Remainder of the page is blank]

DRAFT AIA® Document G704™ – 2017

Certificate of Substantial Completion

PROJECT: *(name and address)*

CONTRACT INFORMATION:

Contract For:
Date:

CERTIFICATE INFORMATION:

Certificate Number: 001
Date:

OWNER: *(name and address)*

ARCHITECT: *(name and address)*

CONTRACTOR: *(name and address)*

The Work identified below has been reviewed and found, to the Architect's best knowledge, information, and belief, to be substantially complete. Substantial Completion is the stage in the progress of the Work when the Work or designated portion is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion of the Project or portion designated below is the date established by this Certificate.

(Identify the Work, or portion thereof, that is substantially complete.)

ARCHITECT *(Firm Name)*

SIGNATURE

PRINTED NAME AND TITLE

DATE OF SUBSTANTIAL COMPLETION

WARRANTIES

The date of Substantial Completion of the Project or portion designated above is also the date of commencement of applicable warranties required by the Contract Documents, except as stated below:

(Identify warranties that do not commence on the date of Substantial Completion, if any, and indicate their date of commencement.)

WORK TO BE COMPLETED OR CORRECTED

A list of items to be completed or corrected is attached hereto, or transmitted as agreed upon by the parties, and identified as follows:

(Identify the list of Work to be completed or corrected.)

The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Unless otherwise agreed to in writing, the date of commencement of warranties for items on the attached list will be the date of issuance of the final Certificate of Payment or the date of final payment, whichever occurs first.

The Contractor will complete or correct the Work on the list of items attached hereto within () days from the above date of Substantial Completion.

Cost estimate of Work to be completed or corrected: \$

The responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work, insurance, and other items identified below shall be as follows:

(Note: Owner's and Contractor's legal and insurance counsel should review insurance requirements and coverage.)

The Owner and Contractor hereby accept the responsibilities assigned to them in this Certificate of Substantial Completion:

CONTRACTOR *(Firm Name)*

SIGNATURE

PRINTED NAME AND TITLE

DATE

OWNER *(Firm Name)*

SIGNATURE


PRINTED NAME AND TITLE

DATE

EXHIBIT D consisting of the attached
page(s), referred to in and part of the
Agreement between Owner and Architect
dated January 12, 2021.

Initials

Owner: _____

Architect: _____

Architect's Contract Amendment Form

[See attached Contract Amendment Form]

[Remainder of the page is blank]

Amendment No. 1
TO THE AGREEMENT BETWEEN OWNER AND ARCHITECT

This First Amendment to the Agreement between the Architect and Owner, is made this _____ day of _____, 2019 (the "Effective Date"). This First Amendment modifies, is attached to, and made part of that certain Agreement between the Owner and Architect for professional services related to the Project dated _____9 (the "Agreement").

Specific Project Data

PROJECT:

City of Birmingham - Sports Ice Arena Renovation/Additions
2300 East Lincoln
Birmingham, Michigan 48009

DESCRIPTION:

Architectural / Engineering Design Services for the City Of Birmingham Ice Sports Arena
Renovation/Additions

OWNER:

City of Birmingham
851 S. Eaton
Birmingham, Michigan 48009

ARCHITECT:

Andrus Architecture, Inc.
11629 Northland Drive NE; Suite 200
Rockford, Michigan 49341
(616) 863-8850

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree to modify the Agreement as follows:

1. **Change in Services of Architect:** The Owner and Architect hereby agree to amend the Architect’s services as follows:
2. **Owner's Responsibilities:** The Owner and Architect hereby agree to amend the Owner’s responsibilities as follows:
3. **Times for Rendering Services:** The Architect shall render the services set forth herein in accordance with the schedule set forth below:

Change in Service

Commencement Date

Completion Date

4. **Payments to Architect:**
- A. Owner shall compensate Architect for changes to the Architect’s services as follows: (use only fields necessary)

Change / Service	Compensation Method (Lump Sum, Hourly, etc.)	Compensation Amount
		\$
Total		\$

- B. In accordance with Section 4.A of this Amendment, the Architect’s total compensation under the Agreement is hereby modified as follows:

1. Architect’s Original total authorized compensation under the Agreement	\$
2. Value of previous amendment(s) to the Architect’s total authorized compensation under the Agreement	\$0.00 <input type="checkbox"/> Increase <input type="checkbox"/> Decrease
3. Total value of changes in total authorized compensation under the Agreement included in this First Amendment	\$0.00 <input type="checkbox"/> Increase <input type="checkbox"/> Decrease
Amended total authorized compensation under the Agreement	\$

5. **Consultants:** The Architect agrees to engage the following sub-consultants in accordance with the terms of the Agreement:

6. Other Modifications to Agreement:

7. Attachments: The following Attachments are hereby incorporated into this Amendment:

8. Documents Incorporated By Reference: The following other documents are hereby incorporated by reference into this Amendment.

9. Other Provisions:

The amount of compensation and time change designated are the maximum agreed to by both the Owner and the Architect for this change in service. In consideration of the foregoing adjustments in Contract Time and Contract Sum, the Architect hereby releases Owner from all claims, demands, or causes of action arising out of the transactions, events and occurrences giving rise to this First Amendment. This written First Amendment constitutes the entire agreement between Owner and Architect with respect to the changes in the Architect’s services and all other matters included herein.

Terms and Conditions: Execution of this First Amendment by Owner and Architect shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. The Agreement shall remain in full force and effect except as specifically modified herein. Architect is authorized to begin performance upon its receipt of a copy of this First Amendment signed by the Owner and Architect.

CITY OF BIRMINGHAM

ANDRUS ARCHITECTURE, INC.

OWNER *(Signature)*
Carrie Laird, Parks and Recreation Manager

(Printed name and title)

ARCHITECT *(Signature)*
Robert E. Andrus, Owner

(Printed name and title)

Date

Date

EXHIBIT E consisting of 1 page,
referred to in and part of the **Agreement**
between Owner and Architect dated
January 12, 2021.

Initials

Owner: _____

Architect: _____
DS
Red

Architect's Hourly Rate Schedule

By initialing this page, the Architect represents to the Owner that the Hourly Rate Schedule below accurately represents each position's invoiced rate, computed according to the Agreement, as modified for the Project.


<u>Position</u>	<u>Hourly Rate</u>
Principal	<u>\$250</u>
Project Manager	<u>\$230</u>
Registered Architect	<u>\$200</u>
Professional Engineer	<u>\$200</u>
Field Representative	<u>\$100</u>
Interior Designer	<u>\$85-120</u>
Draftsperson/Technician	<u>\$75-100</u>
Accounting	<u>\$80</u>
Clerical	<u>\$60-80</u>

The rates set forth above are good through the completion of the Project.

EXHIBIT F consisting of the attached page(s), referred to in and part of the **Agreement between Owner and Architect** dated January 12, 2021.

Initials

Owner: _____

Architect: _____


Owner's Travel and Business Expense Policy

[See attached Owner's Travel and Business Expense Policy]

[Remainder of this page is blank]

OWNER'S TRAVEL AND BUSINESS EXPENSES POLICY

Actual Costs: All travel and living expenses are billed for actual costs incurred, with the exception of the per diem meal allowance. Receipts are retained for all expenses.

Airfare: Airfare is the cost of round trip coach fare according to the following rules:

1. If travel originates and ends at the same location, client pays the total fare. If travel is between client sites, each client pays one-half of the fare between the two sites. For example, if a consultant flies from client A in Chicago to client B in New York, then clients A and B split the cost of the fare between Chicago and New York. Client A pays the fare from the consultant's home (or originating location), and client B pays the flight back to the consultant's home (or terminating location).
2. Reservations and ticketing are made as early as possible, using discounted, advance bookings, in order to obtain the lowest possible fare. Owner assumes the risk for penalties due to cancellations as a result of Owner's changes in consultants' schedules. Supplier assumes the risk for penalties arising from Supplier-requested schedule changes. Any deviations in the consultant's home or Owner destinations must be cost neutral to Owner and require prior approval by Owner.

Lodging and Meals

1. **Lodging:** Lodging is acquired near Owner's offices at a price agreeable to Owner and consistent with area rates. Suppliers use Owner's corporate rate at designated hotels whenever possible.
2. **Per Diem: Meals** - Meal expenses are calculated on a per diem basis, including all meals, tips, and incidental expenses. The per diem amount varies based on the city and county in accordance with IRS guidelines.

Transportation

1. **Car Rental:** Car rental is for a four-door compact. Suppliers attempt to share transportation if possible.
2. **Taxis/Trains:** Owner is billed for the cost of taxi, bus, shuttle, or train fare to Owner's offices. Suppliers attempt to use the most cost and time efficient means for commuting to Owner's site.
3. **Parking/Tolls:** Owner is billed for the cost of parking and tolls associated with transportation to Owner's site, as well as airport parking and mileage to and from the airport.
4. **Mileage:** Mileage is billed at the standard rate published by the IRS and in accordance with the following rules:
5. **Local** - The lesser of the round trip distance from the Supplier's office to the Owner site or the round trip distance from the Supplier's home to the Owner site.

Travel and Business Expenses

It is the policy of Owner that all travel and business expenses be properly authorized, reported and reimbursed. It is the responsibility of Supplier and/or Supplier worker to accurately report their travel expenses in accordance with the guidelines set forth below. It is the responsibility of the Owner manager authorized to approve travel expenses to review each expense report to ensure it is consistent with the guidelines below. Owner management staff may approve exceptions to the guidelines if sound business reasons warrant.

Authorization. All travel and business expenses are to be pre-approved the appropriate Owner manager.

Expense Report. Expense reports, in a format agreed by the parties, are required to be completed for expenses incurred for business activities. Receipts are required for all expenses equal to or greater than \$25. If not clearly evident, the business purpose for the travel and/or business expense should be documented. These written reports are required by IRS guidelines.

Air Travel. All reservations should be made as far in advance of the travel date as is reasonable and appropriate. The lowest possible rate, irrespective of carrier, is expected.

Class of Service. All Suppliers and/or Supplier workers are expected to travel coach class on Owner business. All Suppliers and/or Supplier workers travel by air are expected to plan their trips utilizing the lowest logical airfare, defined as follows:

1. Requires no more than one additional interim stop each way.
2. Does not increase travel time by more than one (1) hour each way.
3. Does not require a connecting flight unless that is all that is available.

Excess Baggage. Supplier personnel on Owner business are each permitted one piece of baggage wherein airline baggage charges are reimbursable. Personal baggage exceeding one bag is not reimbursable, although excess baggage charges for company materials are reimbursable.

Air Travel vs. Automobile Travel. Air travel should not be used for destinations that are two (2) hours or less driving time away from Supplier and/or Supplier workers' base office.

Travel Time. Supplier will be responsible for costs related to Supplier's travel time to its Owner business locations, if any.

Airport Connections. The least expensive alternative (i.e., airport bus, non-charter airport limousine service, rental car, cab) for travel to and from airports should be used.

Airport Parking. Use of long-term parking lots is reimbursable. Use of short-term parking lots is reimbursable up to the long-term rate Automobile Rental. Use of automobile rental is highly discouraged if there is a less expensive alternative available.

Automobile Class. A compact car should be reserved when there are one or two passengers. A mid-size car may be reserved when there are three or more passengers.

Incidental Expenses. Expense for tolls, parking and refueling are reimbursable. Traffic tickets or fines associated with traffic violations, including parking are the responsibility of Supplier.

Hotels. Supplier and/or Supplier workers are expected to use properties with which Owner has established a preferred rate program. The Owner manager can supply Supplier with the latest list of preferred hotels.

Room Service, In Room Bar/Snack Service. Room services and in room bar/snack service may be utilized and should be recorded on the expense report as reimbursable meal expense. It is expected that this expense would remain consistent with meal reimbursement guidelines.

Laundry/Valet Service, Movies, Sports, Health Club and Activity Fees. Laundry, valet, movies, sports, health club and activity fees are not a reimbursable expense.

Tipping. Tips are reimbursable and generally should be limited to: (i) baggage handling, \$1 per bag; (ii) maid service, \$1 per day; and restaurant, 15% to 20% of meal cost. Tips should be itemized on expense report.


Meals. Owner will reimburse for meals for actual amounts spent. It is expected that Supplier and/or Supplier workers will dine at reasonably priced establishments and stay within the following guidelines. Based on national data, average meal costs currently are \$10 for breakfast, \$15 for lunch and \$30 for dinner. Supplier and Supplier workers will be reimbursed for meals only in those situations when an overnight stay away of Supplier and/or Supplier's home is required by Owner.

Saturday Night Stay. Often there is a significant reduction in the cost of airfare if the itinerary includes a Saturday night stay. In such instances, Owner will cover the cost of the additional hotel expense up to the amount of the airfare savings.

EXHIBIT G consisting of attached page(s), referred to in and part of the **Agreement between Owner and Architect** dated January 12, 2021.

Initials

Owner: _____

Architect: _____


Architect's Certificate(s) of Insurance

[See attached Certificate(s) of Insurance]

[Remainder of this page is blank]

EXHIBIT H consisting of the attached
page(s), referred to in and part of the
Agreement between Owner and Architect
dated January 12, 2021.

Initials

Owner: _____

Architect: _____


AIA Document G701-2017 Change Order Form

[See attached Change Order Form]

[Remainder of the page is blank]

DRAFT AIA[®] Document G701[™] - 2017

Change Order

PROJECT: *(Name and address)*

CONTRACT INFORMATION:

Contract For:
Date:

CHANGE ORDER INFORMATION:

Change Order Number: 001
Date:

OWNER: *(Name and address)*

ARCHITECT: *(Name and address)*

CONTRACTOR: *(Name and address)*

THE CONTRACT IS CHANGED AS FOLLOWS:

(Insert a detailed description of the change and, if applicable, attach or reference specific exhibits. Also include agreed-upon adjustments attributable to executed Construction Change Directives.)

The original Contract Sum was
The net change by previously authorized Change Orders
The Contract Sum prior to this Change Order was
The Contract Sum will be unchanged by this Change Order in the amount of
The new Contract Sum including this Change Order will be

\$	0.00
\$	0.00
\$	0.00
\$	0.00
\$	20.00

The Contract Time will be unchanged by Zero (0) days.
The new date of Substantial Completion will be

NOTE: This Change Order does not include adjustments to the Contract Sum or Guaranteed Maximum Price, or the Contract Time, that have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.

ARCHITECT *(Firm name)*

CONTRACTOR *(Firm name)*

OWNER *(Firm name)*

SIGNATURE

SIGNATURE

SIGNATURE

PRINTED NAME AND TITLE

PRINTED NAME AND TITLE

PRINTED NAME AND TITLE

DATE

DATE

DATE

EXHIBIT I consisting of the attached
page(s), referred to in and part of the
Agreement between Owner and Architect
dated January 12, 2021.

Initials

Owner: _____

Architect: _____


AIA Document G714-2017 Construction Change Directive Form

[See attached Construction Change Directive Form]

[Remainder of the page is blank]

DRAFT AIA® Document G714™ – 2017

Construction Change Directive

PROJECT: (name and address)

CONTRACT INFORMATION:

Contract For:
Date:

CCD INFORMATION:

Directive Number: 001
Date:

OWNER: (name and address)

ARCHITECT: (name and address)

CONTRACTOR: (name and address)

The Contractor is hereby directed to make the following change(s) in this Contract:

(Insert a detailed description of the change and, if applicable, attach or reference specific exhibits.)

☐ provide proposed pricing and adjustment of Contract Time, if any, for the attached modified scope of the Work (the Contractor is not authorized to proceed with the modifications to the scope Work as set forth in this Construction Change Directive)

☐ provide proposed pricing and adjustment of Contract Time, if any, for the Owner's consideration and proceed with the modified scope set forth herein

☐ proceed with the modified scope herein in accordance with the proposed adjustment listed below

PROPOSED ADJUSTMENTS

1. The proposed basis of adjustment to the Contract Sum or Guaranteed Maximum Price is:

- ☐ Lump Sum decrease of \$0.00
- ☐ Unit Price of \$ per
- ☐ Cost, as defined below, plus the following fee:
(Insert a definition of, or method for determining, cost)
- ☐ As follows:

2. The Contract Time is proposed to remain unchanged. The proposed adjustment, if any, is (0 days).

NOTE: The Owner, Architect and Contractor should execute a Change Order to supersede this Construction Change Directive to the extent they agree upon adjustments to the Contract Sum, Contract Time, or Guaranteed Maximum price for the change(s) described herein.

When signed by the Owner and Architect and received by the Contractor, this document becomes effective IMMEDIATELY as a Construction Change Directive (CCD), and the Contractor shall proceed with the change(s) described above.

Contractor signature indicates agreement with the proposed adjustments in Contract Sum and Contract Time set forth in this CCD.

ARCHITECT (Firm name)

OWNER (Firm name)

CONTRACTOR (Firm name)

SIGNATURE

SIGNATURE

SIGNATURE

PRINTED NAME AND TITLE

PRINTED NAME AND TITLE

PRINTED NAME AND TITLE

DATE

DATE

DATE

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User Notes:

(3B9ADA4C)



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

01/05/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER



State Farm Insurance
Luke Bagnall Insurance Agency, Inc
1277 36th St SW
Wyoming, MI 49509

CONTACT NAME: Luke Bagnall
PHONE (A/C, No, Ext): 616-534-8608 FAX (A/C, No): 616-534-3149
E-MAIL ADDRESS: luke@lukebagnall.com

INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A:	State Farm Fire and Casualty Company	25143
INSURER B:		
INSURER C:		
INSURER D:		
INSURER E:		
INSURER F:		

INSURED

Andrus Architecture, Inc & Andrus Architectural Design, PLLC
11629 Northland Dr NE Ste 200
Rockford, MI 49341-7210

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVP	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
<input checked="" type="checkbox"/>	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:		92-J5-3770-7 F	01/01/2021	01/01/2022	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COM/OP AGG \$ \$
<input type="checkbox"/>	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY		0198280F1822K	12/18/2020	06/18/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ 1,000,000 \$
<input checked="" type="checkbox"/>	UMBRELLA LIAB EXCESS LIAB DED RETENTION \$	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE	92-LC-8862-4F	01/01/2021	01/01/2022	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ \$
<input checked="" type="checkbox"/>	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/> N/A	92-EG-806-2F	01/01/2021	01/01/2022	PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

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

Commercial General Liability Insurance and Comprehensive Motor Vehicle Liability Insurance Additional Insureds include 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.

CERTIFICATE HOLDER

City of Birmingham
851 S. Eton
Birmingham, MI 48009

CANCELLATION

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

AUTHORIZED REPRESENTATIVE



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

1/5/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Professional Underwriters, Inc. 39475 13 Mile Road, Suite 106 Novi, MI 48377	CONTACT NAME: Brett Coleman	
	PHONE (A/C, No, Ext): (248) 553-8300 107	FAX (A/C, No): (248) 553-8305
	E-MAIL ADDRESS: brcoleman@profunderwriters.com	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A : Travelers Casualty and Surety Company of America	31194
INSURED Andrus Architecture, Inc. 11629 Northland Dr. Ste. 200 Rockford, MI 49341	INSURER B :	
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE \$
	<input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence) \$
							MED EXP (Any one person) \$
							PERSONAL & ADV INJURY \$
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE \$
	<input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC						PRODUCTS - COMP/OP AGG \$
	OTHER:						\$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS						BODILY INJURY (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident) \$
							\$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR						EACH OCCURRENCE \$
	EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE						AGGREGATE \$
	DED <input type="checkbox"/> RETENTION \$						\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y / N						E.L. EACH ACCIDENT \$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$
A	PROF LIABILITY			105384066	12/22/2020	12/22/2021	PER CLAIM 2,000,000
A	PROF LIABILITY			105384066	12/22/2020	12/22/2021	AGGREGATE 2,000,000

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

CERTIFICATE HOLDER

CANCELLATION

City of Birmingham
851 S. Eton
Birmingham, MI 48009

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

AUTHORIZED REPRESENTATIVE

Brett Coleman

**CITY OF BIRMINGHAM ICE SPORTS ARENA RENOVATION/ADDITIONS
REQUEST FOR PROPOSAL (RFP) – ARCHITECTURAL/ENGINEERING DESIGN SERVICES
ATTACHMENT D.8 – IRAN DISCLOSURE AFFIDAVIT
DECEMBER 2, 2020**

**AFFIDAVIT OF COMPLIANCE – IRAN ECONOMIC SANCTIONS ACT
Michigan Public Act No. 517 of 2012**

The undersigned, the owner or authorized officer of the below named Firm (the "Firm"), pursuant to the compliance certification requirement provided in the City of Birmingham's (the "City") Request For Proposals for **ARCHITECTURAL/ ENGINEERING DESIGN SERVICES** (the "RFP"), hereby certifies, represents and warrants that the Firm (including its officers, directors and employees) is not an "Iran linked business" within the meaning of the Iran Economic Sanctions Act, Michigan Public Act No. 517 of 2012 (the "Act"), and that in the event Firm is awarded a contract as a result of the aforementioned RFP, the Firm will not become an "Iran linked business" at any time during the course of performing the Work or any services under the contract.

The Firm further acknowledges that any person who is found to have submitted a false certification is responsible for a civil penalty of not more than \$250,000.00 or 2 times the amount of the contract or proposed contract for which the false certification was made, whichever is greater, the cost of the City's investigation, and reasonable attorney fees, in addition to the fine. Moreover, any person who submitted a false certification shall be ineligible to bid on a request for proposal for three (3) years from the date it is determined that the person has submitted the false certification.

FIRM:

Andrus Architecture

Name of Firm

By: _____

Robert E. Andrus

Its: _____

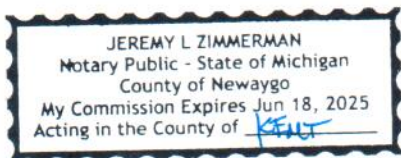
President

STATE OF Michigan)

)ss.

COUNTY OF Kent)

This instrument was acknowledged before me on the 14th day of December, 2020, by Jeremy
Lyal Zimmerman.



[Signature]
_____, Notary Public

Kent County, Michigan

My Commission Expires: JUNE 18, 2025

Acting in the County of: Kent