

BIRMINGHAM CITY COMMISSION
AGENDA APRIL 12, 2021
7:30 P.M.
VIRTUAL MEETING
ZOOM MEETING ID: 655 079 760

AMENDED

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

- Liz Trombley, Director of Constituent Services and District Outreach for Sen. Mallory McMorrow.
- Proclamation Condemning Any and All Violence or Discrimination Against a Person Based on Race, Color, Natural Origin, Religion, Gender, Age or Disability.
- **Proclamation Recognizing April 24 As Armenian Genocide Remembrance Day**

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 to approve the City Commission meeting minutes of March 22, 2021.
- B. Resolution to approve the warrant list, including Automated Clearing House payments, dated March 24, 2021, in the amount of \$530,224.21
- C. Resolution to approve the warrant list, including Automated Clearing House payments, dated March 31, 2021, in the amount of \$341,598.97
- D. Resolution to approve the warrant list, including Automated Clearing House payments, dated April 7, 2021, in the amount of \$845,806.53
- E. Resolution to approve a request from the Huntington Disease Society of America-MI Chapter to hold Yoga in the Park in Shain Park on June 26, 2021 contingent upon compliance with all permit and insurance requirements and payment of all fees and, further pursuant to any modifications or event cancellation that may be deemed necessary by administrative staff, leading up to or at the time of the event, due to public health and safety measures.

- F. Resolution to award the project for Birmingham Museum Phase I Heritage Zone Landscape Improvement Project to Worry Free Outdoor Services, Inc. in the amount of \$33,400.00, to be charged to the Allen House Other Contractual Services account, #101-804.002-811.0000 and further; to approve the appropriation and budget amendment to the fiscal year 2020-2021 General Fund and Capital Projects Fund budgets as follows:

General Fund

Revenues:

101-000.000-400.0000 Draw from Fund Balance	\$(15,000)
101-000.000-699.0401 Transfer in Capital Projects Fund	\$ 15,000
Total Revenue	<u>\$ -0-</u>

Capital Projects Fund

Revenues:

401-000.000-400.0000 Draw from Fund Balance	\$15,000
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Expenditures:

401-804.001-999.0101 transfer to General Fund	\$15,000
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- G. Resolution to approve the purchase of the Larvicide material from Clarke Mosquito Control in the amount not to exceed \$9,987.78. Further, to waive the normal bidding requirements based on the government regulated pricing for this type of material. Funds for this purchase will come from the Sewer Fund-Operating Supplies Account #590-536.002-729.0000.
- H. Resolution to approve the purchase of one (1) 2021 Ford F-150 Responder Crew Cab 4x4 from Gorno Ford through the State of Michigan MIDEAL extendable purchasing contract #071B7700181 in the amount not to exceed \$39,692.00. Funds for this purchase are available in the Auto Equipment Fund account #641-441.006.971.0100.
- I. Resolution to confirm the City Manager's credit card purchase authorization for the Blazer Brass .40 S&W training ammunition expenditure in the amount of \$4,544.57 from BULKAMMO.COM; further to charge this emergency expenditure to account number 101-301.000-734.0000.
- J. Resolution to set a public hearing date for May 10, 2021 to consider a Final Site Plan and Special Land Use Permit Amendment for 211 S. Old Woodward to allow the change in ownership of the Class C liquor license in use at Birmingham 8 Theater from Birmingham Theatro, LLC to CH Birmingham, LLC.

- K. To award the Grant Street Paving Project #1-21(P), to DiPonio Contracting, Inc. contingent upon execution of the agreement and meeting all insurance and bonding requirements. In the amount of \$1,139,199.00, to be charged to the following accounts:

		Bid Amount	
Sewer Fund, Pub. Imp.	590-536.001-981.0100	\$	405,675.00
Water Fund, Lead			
Water Service Repl.	591-537.005-811.0000	\$	3,000.00
Water Fund, Pub. Imp.	591-537.004-981.0100	\$	240,931.00
Major Streets Fund	202-449.001-981.0100	\$	489,593.00
TOTAL		\$	1,139,199.00

To approve the appropriation and amendment to the fiscal year 2020-2021 Sewer Fund budget as follows:

Sewer Fund

Revenues:		
590-000.000-400.0000	Draw from Net Position	<u>\$245,675</u>
Total Revenue		<u>\$245,675</u>
Expenses:		
590-536.001-981.0100	Public Improvement	<u>\$245,675</u>
Total Expenses		<u>\$245,675</u>

To approve the appropriation and amendment to the fiscal year 2020-2021 Water Fund budget as follows:

Water Fund

Revenues:		
591-000.000-400.0000	Draw from Net Position	<u>\$30,931</u>
Total Revenue		<u>\$30,931</u>
Expenses:		
591-537.004-981.0100	Public Improvement	<u>\$30,931</u>
Total Expenses		<u>\$30,931</u>

To approve the appropriation and amendment to the fiscal year 2020-2021 Major Street Fund budget as follows:

Major Streets Fund

Revenues:		
202-000.000-400.0000	Draw from Fund Balance	<u>\$60,768</u>
Total Revenue		<u>\$60,768</u>
Expenses:		
202-449.001-981.0100	Public Improvement	<u>\$60,768</u>
Total Expenses		<u>\$60,768</u>

Also, to authorize the Mayor to sign the contract on behalf of the City.

- L. Resolution to adopt a resolution for the City Commission to meet on Monday, May 10, 2021, at 7:30 P.M., for the purpose of conducting a Public Hearing of Necessity for the replacement of sewer and water services within the Grant Street Paving project area.

Be it further RESOLVED, that the City Commission meet on Monday, May 24, 2021 at 7:30 P.M. for the purpose of conducting a Public Hearing on Confirmation of the Roll for the replacement of sewer and water services in the Grant Street Paving project area.

VI. UNFINISHED BUSINESS

- A. Resolution To approve the use of 8 parking spaces in the right-of-way adjacent to the property located at 670 S. Old Woodward to help fulfill the parking requirements per Article 4, section 4.43 (G)(4) of the Zoning Ordinance.

- B. Public Hearing continued – Status Update - Lavery.

VII. NEW BUSINESS

- A. Resolution to confirm the City Manager's authorization for the emergency expenditure related to the replacement of the water main across the BBAC parking lot by Bidigare Contractors, for a cost not to exceed for \$54,500.00 to be charged to the Public Improvements account #591-537.004- 981.0100, pursuant to Sec. 2-286 of the City Code.
- B. Resolution To waive the competitive bidding requirement and to authorize an expenditure in the amount of \$6,982 to Kropf Mechanical, Inc., for replacement of the Hunter House HVAC unit; \$1,000 to be charged to the Hunter House Equipment Maintenance account, #101-804.001-933.0200; and to approve the budget amendment to reduce Allen House Other Contractual Services account, #101-804.002-811.0000 by \$5,982 and increase Hunter House Equipment Maintenance account #101-804.001-933.0200 by \$5,982.

General Fund

Expenditures:

101-804.001-933.0200	\$1,000
101-804.001-933.0200	5,982
101-804.002-811.0000	<u>(5,982)</u>
Total Expenditures	\$6,982

- C. Resolution to award the Birmingham Ice Arena Renovation and Addition project to General Contractor C.E. Gleeson Constructors, Inc. in the amount of \$4,891,200.00. Also, to approve the Owner Contingency amount of \$391,296.00 and the related soft costs for \$515,110.00. Funds are available in the Capital Projects Fund account #401-901.001- 977.0000 and the Parks System Construction Fund account #408-752.000-977.0000 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.
- D. Resolution to release 38 graves in section B, rows 17-C, 16-C, 15-C, and 14-A to be available for purchase in Greenwood Cemetery.
- E. Resolution to APPROVE the proposed lot split/rearrangement of 300 S. Old Woodward to allow for 3,104.39 sq.ft. on the western edge of 300 S. Old Woodward to be split from the existing parcel, and added to the parcel known as 294 E. Brown Street;

AND

To APPROVE the proposed lot split/rearrangement of 294 E. Brown Street to divide the existing parcel into two parcels, to allow for 1,962.79 sq.ft. on the eastern edge of the parcel to be split and added to the parcel at 394 S. Old Woodward;

AND

To APPROVE the proposed lot combination of 300 – 394 S. Old Woodward to create a larger rectangular parcel 20,201.08 sq.ft. in size on S. Old Woodward running south of E. Brown Street to Daines, subject to the following conditions:

1. All outstanding taxes and special assessments due on 300 S. Old Woodward must be paid in full; and
2. Both 300 S. Old Woodward and 394 S. Old Woodward are approved for rezoning to D-4 in the Downtown Overlay District, or the height of the proposed building to is reduced to 68' and a use variance is obtained from the Board of Zoning Appeals for the use of the fourth floor as a restaurant.

OR

To DENY the proposed lot split/rearrangement of 300 S. Old Woodward, based on the following conditions that adversely affect the interest of the public and of the abutting property owners: _____.

AND

To DENY the proposed lot split of 294 E. Brown Street, based on the following conditions that adversely affect the interest of the public and of the abutting property owners:_____.

AND

To deny the lot combination of 300 – 394 S. Old Woodward as proposed based on the following conditions that adversely affect the interest of the public and of the abutting property owners: _____.

- F. Resolution to refer this matter to the Parks and Recreation Board for their review, discussion and recommended actions about designating a portion of the Chesterfield Fire Station property as a City Park and provide formal park naming procedures. Further, to consider potential park site amenities and budget implications in order to undertake such endeavor.
- G. Resolution to direct _____ bistro application(s) to the Planning Board for full site plan and design and Special Land Use Permit review.

OR

To take no action on any bistro applications at this time.

- H. Commission discussion on items from prior meeting.
 - 1. Builder developer street damage. Issues, costs, remedial action and payment proposal.
- I. Commission Items for Future Discussion. A motion is required to bring up the item for future discussion at the next reasonable agenda, no discussion on the topic will happen tonight.

VIII. REMOVED FROM CONSENT AGENDA
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IX. COMMUNICATIONS

X. REPORTS

- A. Commissioner Reports
 - 1. Notice of Intention to appoint to the Board of Building Trade Appeals
 - 2. Notice of Intention to appoint to the Martha Baldwin Park Board
- B. Commissioner Comments
- C. Advisory Boards, Committees, Commissions' Reports and Agendas
 - 1. Ethics Board opinion 2021-01 - Kucharek
 - 2. Ethics Board opinion 2021-03 – Holland v. Sherman
- D. Legislation
- E. City Staff
 - 1. Indexing of Fees
 - 2. Prior Communications with Restoration Hardware

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).



City of Birmingham

Proclamation

Condemning Any and All Violence or Discrimination Against a Person Based on Race, Color, Natural Origin, Religion, Gender, Age or Disability

- WHEREAS,** Recent acts of violence or discrimination against Asian Americans, people of the Jewish faith, members of the LGBTQ community, women and other fellow Americans has further eroded our confidence as a nation that all people are equal as citizens of the United States; and
- WHEREAS,** As public servants, we, the Mayor, the City Commission and City Staff, have an even greater responsibility to prevent, respond and act against violence, discrimination, bias, hatred and racism because when the unacceptable becomes the norm in our society, the safety of all are threatened; and
- WHEREAS,** The City condemns all forms of violence or discrimination and supports and protects all residents and visitors no matter what their ethnicity, race, religion, sexual orientation, gender or disability; and
- WHEREAS,** The Mayor, City Commission and City Staff wholeheartedly condemn the actions and injustices that have again wrought division and crisis in our County, State and national communities and across our United States; and
- THEREFORE BE IT RESOLVED,** That I, Pierre Boutros, Mayor for the City of Birmingham, Michigan, proclaim that the City will maintain constantly vigilant with regard to its own policies and actions and do everything in its power to make certain that Birmingham is and will remain a welcoming City opposed to acts of violence or discrimination against a fellow human being based on Race, Color, Natural Origin, Religion, Gender, Age or Disability.

On Behalf of the City of Birmingham, this 12th day of April, 2021,

Pierre Boutros, Mayor

*151 Martin Street • P.O. Box 3001 • Birmingham, MI 48012-3001 (248)
530-1800 • Fax (248) 530-1080 • www.bhamgov.org*

PROCLAMATION

PROCLAMATION
City Council of the City of Birmingham

Recognizing April 24 As Armenian Genocide Remembrance Day

WHEREAS, the Birmingham community joins human rights advocates and historians from around the world to recognize and mourn the 1.5 million Armenians who perished in the Armenian Genocide as ordered by the government of the Ottoman Empire, which began on April 24, 1915 with the arrest, exile and murder of hundreds of Armenian intellectuals, political, religious, and business leaders, and

WHEREAS, during the 1915-1923 Genocide, Armenian survivors were forced to witness the slaughter of their relatives and the loss of their ancestral land and property in what is now known as the “First Genocide of the 20th Century,” and

WHEREAS, the State of Michigan declared in Act 558 of 2002 that “April 24 of each year shall be the Michigan day of remembrance of the Armenian genocide of 1915-1923 . . . in memory of the victims of the genocide and in honor of the survivors,” and

WHEREAS, the failure to learn from the past allows history to repeat itself as the world saw during the 2020 Nagorno-Karabagh war when the military forces of Azerbaijan and Turkey attacked the Armenian civilian population of Nagorno-Karabagh and its churches and civic buildings, resulting in casualties and loss of ancestral land and property, motivated by the same genocidal campaign that their ancestors suffered 106 years earlier, and

WHEREAS, the City of Birmingham City Council is proud to join the Armenian-American community in its commemoration of the 106th anniversary of the Armenian Genocide in an effort to educate others about the tragic loss of life, land, and human rights of the Armenian people and the crimes of genocide committed against them, as well as Greeks and Assyrians, due to religious and political beliefs,

NOW, THEREFORE, BE IT RESOLVED that I, Pierre Boutros, Mayor of the City of Birmingham, on behalf of the City Council, do hereby proclaim April 24, 2021 as Armenian Genocide Remembrance Day in memory of the victims of the Armenian Genocide and in honor of the survivors and their descendants, and urge all citizens of Birmingham to join in this solemn remembrance.

Mayor

PROCLAMATION

Birmingham City Commission

Minutes March 22, 2021

7:30 P.M.

Virtual Meeting

Meeting ID: 655 079 760

Vimeo Link: <https://vimeo.com/event/3470/videos/521225901/>

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: Boca Raton, FL)
Mayor Pro Tem Longe (location: Birmingham, MI)
Commissioner Baller (location: Denver, CO)
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 Markus, City Clerk Bingham, Police Chief Clemence, City Attorney Kucharek, Planning Director Ecker, Finance Director Gerber, Interim HR Director/Assistant City Manager Hock, Building Official Johnson, City Attorney Kucharek, DPS Director Wood

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

Appointments

Elyse Germack, applicant for the Parks and Recreation Board, was not in attendance.

Jessica Newman, applicant for the Parks and Recreation Board, was interviewed by the Commission. She was nominated by Commissioner Sherman. Since Ms. Carmona, Ms. Collins, and Mr. Rusche were nominated before Ms. Newman, and were voted into the three available positions on the Parks and Recreation Board, no vote was taken on Ms. Newman's candidacy.

03-064-21 Appointment of Heather Carmona to the Parks and Recreation Board

The Commission interviewed Heather Carmona for the appointment.

MOTION: Nomination by Commissioner Nickita:
To appoint Heather Carmona to the Parks and Recreation Board as a regular member to serve a three-year term to expire March 13, 2024.

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

Nays, None

03-065-21 Appointment of Susan Collins to the Parks and Recreation Board

The Commission interviewed Susan Collins for the appointment.

MOTION: Nomination by Mayor Pro Tem Longe:
To appoint Susan Collins to the Parks and Recreation Board as a regular member to serve a three-year term to expire March 13, 2024.

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

Nays, Commissioner Sherman

03-066-21 Appointment of John Rusche to the Parks and Recreation Board

The Commission interviewed John Rusche for the appointment.

MOTION: Nomination by Commissioner Host:
To appoint John Rusche to the Parks and Recreation Board as a regular member to serve a three-year term to expire March 13, 2024.

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

Nays, None

03-067-21 Appointment of Jacqueline Patt to the Museum Board

The Commission interviewed Jacqueline Patt for the appointment.

MOTION: Nomination by Commissioner Hoff:
To appoint Jacqueline Patt to the Museum Board as a regular member to serve a three-year term to expire July 5, 2023.

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

Nays, None

03-068-21 Appointment of Katie Schafer to the Multi-Modal Transportation Board

The Commission interviewed Katie Schafer for the appointment.

MOTION: Nomination by Commissioner Nickita:
To appoint Katie Schafer as a regular member to the Multi-Modal Transportation Board to serve a three-year term to expire March 24, 2024.

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

Nays, None

03-069-21 Appointment of Doug White to the Multi-Modal Transportation Board

The Commission interviewed Doug White for the appointment.

MOTION: Nomination by Mayor Pro Tem Longe:
To appoint Doug White as a regular member to the Multi-Modal Transportation Board to serve a three-year term to expire March 24, 2024.

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

Mayor Boutros
Commissioner Baller

Nays, None

03-070-21 Appointment of J. Bryan Williams to the Planning Board

The Commission interviewed J. Bryan Williams for the appointment.

MOTION: Nomination by Commissioner Host:
To appoint J. Bryan Williams to the Planning Board as a regular member to serve a three-year term to expire March 28, 2024.

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

Nays, None

03-071-21 Appointment of Stuart Jeffares to the Planning Board

The Commission interviewed Stuart Jeffares for the appointment.

MOTION: Nomination by Mayor Pro Tem Longe:
To appoint Stuart Jeffares to the Planning Board as a regular member to serve a three-year term to expire March 28, 2024.

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

Nays, None

03-072-21 Appointment of Daniel Share to the Planning Board

The Commission interviewed Daniel Share for the appointment.

MOTION: Nomination by Commissioner Nickita:
To appoint Daniel Share to the Planning Board as a regular member to serve a three-year term to expire March 28, 2024.

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

Nays, None

03-073-21 Appointment of R. David Eick to the Cablecasting Board

The Commission interviewed R. David Eick for the appointment.

MOTION: Nomination by Commissioner Host:
To appoint R. David Eick to the Cablecasting Board as a regular member to serve a three-year term expiring March 30, 2024.

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

Nays, None

03-074-21 Appointment of George Abraham to the Cablecasting Board

The Commission interviewed George Abraham for the appointment.

MOTION: Nomination by Mayor Pro Tem Longe:
To appoint George Abraham to the Cablecasting Board as a regular member to serve a three-year term expiring March 30, 2024.

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

Nays, None

Mayor Boutros thanked all the applicants and appointees.

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

In reply to Jonathon Hofley, Mayor Boutros said the Commission was aware of a letter sent by himself and former CM Valentine in the Summer of 2020 to RH.

In reply to David Bloom, Mayor Boutros said he could not recall whether the Commission was made aware of the aforementioned letter during a public meeting, and that he could not recall whether the Commission took official action to approve sending the letter.

Andrew Haig asked the City Attorney to, at some future date, provide a 'structured answer' explaining:

- How the City would have provided RH the terms and conditions offered in the aforementioned letter; and,
- Whether the Planning review process for RH would have been streamlined relative to the City's usual Planning review processes.

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.

03-075-21 Consent Agenda

The following items were pulled from the Consent Agenda:

Commissioner Host: Item E – Fertilizer Buggy Purchase
Commissioner Hoff: Item F – Common Ground Art Fair
Item H – DPS Equipment Upgrade

MOTION: Motion by Commissioner Host, seconded by Mayor Pro Tem Longe:
To approve Consent Agenda items A, B, C, D and G.

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

Nays, None

- A. Resolution to approve the City Commission Workshop meeting minutes of March 8, 2021.
- B. Resolution to approve the City Commission meeting minutes of March 8, 2021.
- C. Resolution to approve the warrant list, including Automated Clearing House payments, dated March 10, 2021, in the amount of \$2,211,995.98.

- D. Resolution to approve the warrant list, including Automated Clearing House payments, dated March 17, 2021, in the amount of \$1,110,203.20.
- G. Resolution to approve a request from Eisenhower Dance Detroit to hold their Youth Ensemble Performance on the stage at Shain Park on May 23, 2021, contingent upon compliance with all permit and insurance requirements and payment of all fees and, further pursuant to any modifications or event cancellation that may be deemed necessary by administrative staff, leading up to or at the time of the event, due to public health and safety measures.

03-076-21 (Item E) Fertilizer Buggy Purchase

DPS Director Wood explained that the purchase of this fertilizer buggy would expedite a number of DPS' internal operations. She said it would be used on smaller areas throughout the City, and that larger areas would still be serviced by external contractors.

MOTION: Motion by Commissioner Baller, seconded by Commissioner Hoff:
To approve the purchase of one (1) 2020 Ex Mark Spreader/Sprayer S-Series Kohler Stand On from Weingartz in the amount of \$7,999.00 from the Auto Equipment Fund, account #641-441.006.971.0100.

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

Nays, None

03-077-21 (Item F) Common Ground Art Fair

In reply to Commissioner Hoff, Karen Delhey of The Guild stated Art Birmingham in Spring 2021 would be held in Shain Park. Commissioner Hoff wanted to make sure that both the spring and fall art fairs would not be on Old Woodward since they can be disruptive for business owners.

Commissioner Hoff asked City Clerk Bingham to make sure that the couple getting married in Shain Park during the Common Ground Art Fair is aware that the Art Fair would be occurring on Old Woodward at the same time.

Mayor Boutros concurred with Commissioner Hoff.

CM Markus said he would sit down with Staff to create an approximate schedule of regularly occurring events in the City so that conflicts between personal reservations of City spaces and larger events do not arise again in the future.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Nickita:
To approve a request from Common Ground to hold the Art Fair on S. Old Woodward on September 18 & 19, 2021 contingent upon compliance with all permit and insurance requirements and payment of all fees

and, further pursuant to any modifications or event cancellation that may be deemed necessary by administrative staff, leading up to or at the time of the event, due to public health and safety measures.

Commissioner Baller expressed some perplexity that a very large wedding could possibly be scheduled in the City with no review process while other events are subjected to a lengthy review process.

Commissioner Sherman expressed confusion that Shain Park was scheduled for weddings when it was his recollection that Shain Park previously could not be reserved for private events.

Commissioner Baller asked the City Manager to include which City parks should permit private events and what the review process for such events should be when he sits down with Staff to review other aspects of this item.

CM Markus confirmed that was his intent.

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

Nays, None

03-078-21 (Item H) DPS Equipment Upgrade

Commissioner Hoff commended the IT Department on their work on this item, and also thanked the Cable Board for their grant to the City that would partially cover the costs of this item.

Mayor Boutros echoed Commissioner Hoff’s comments.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Host:
To authorize the IT department to enlist Advanced Lighting and Sound to upgrade the Audio Visual equipment and install additional cameras in the DPS conference room, total cost not to exceed \$12,782.00; to charge this project to account number 636-228.000-971.0100 Machinery and Equipment; and approve the appropriation and amendment to the fiscal year 2020-2021 Computer Equipment Fund budget as follows:

<u>Computer Equipment Fund</u>			
Revenues:			
636-000.000-401.0000	Draw from Fund Balance		<u>\$(6,000)</u>
636-000.000-588.0000	Cable Board Grant		<u>12,790</u>
Total Revenue			<u>\$ 6,790</u>
Expenditures:			
636-228.000-971.0100	Machinery and Equipment		<u>\$ 6,790</u>
Total Expenditures			<u>\$ 6,790</u>

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

Nays, None

VI. UNFINISHED BUSINESS

In reply to Commissioner Hoff, CM Markus confirmed that all the previously outstanding issues for which these public hearings had been scheduled were now resolved.

03-079-21 Public Hearing – Birmingham Sushi

The Mayor opened the public hearing at 8:33 p.m., and seeing no comment, closed it at 8:33 p.m.

MOTION: Motion by Commissioner Baller, seconded by Commissioner Host:
To renew the liquor license for Birmingham Sushi for the 2021 licensing period.

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

Nays, None

03-080-21 Public Hearing – Community House

The Mayor opened the public hearing at 8:33 p.m.

CM Markus noted for the record that, subsequent to the Commission's February 22, 2021 meeting, Staff determined that neither the Community House nor the Rugby Grille were actually at fault for non-payment of invoices. Consequently, neither establishment should have been included on the list for public hearings of liquor license renewals.

CM Markus explained how the mistake occurred. During part of 2020, the City deferred invoicing for special assessments. A Staff member erroneously marked sidewalk improvements outside the Community House and the Rugby Grille as special assessments. As a result of the deferred invoicing for special assessments, the invoices for those improvements were not sent out. Since accounts receivable did not have the improvements erroneously marked as special assessments, those amounts were designated in accounts receivable as owed and past due. This mismatch was discovered when CM Markus spoke to the Executive Director for the Community House, who said he never received the invoice.

CM Markus apologized on behalf of the City to both Community House and the Rugby Grille for creating the impression that either establishment had neglected to pay their outstanding balances with the City. He stated that both establishments paid the City as soon as they were made aware of the existence of the invoices.

The Mayor apologized on behalf of himself and the Commission for the mistake as well. He said he was glad both establishments are part of the Birmingham community.

The Mayor closed the public hearing at 8:37 p.m.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Nickita:
To renew the liquor license for the Community House for the 2021 licensing period.

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

Nays, None

03-081-21 Public Hearing – Hazel Ravines & Downtown

The Mayor opened the public hearing at 8:38 p.m., and seeing no comment, closed it at 8:38 p.m.

MOTION: Motion by Commissioner Nickita, seconded by Commissioner Hoff:
To renew the liquor license for Hazel Ravines & Downtown for the 2021 licensing period.

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

Nays, None

03-082-21 Public Hearing – Hyde Park Prime Steakhouse

The Mayor opened the public hearing at 8:39 p.m., and seeing no comment, closed it at 8:39 p.m.

MOTION: Motion by Commissioner Baller, seconded by Mayor Pro Tem Longe:
To renew the liquor license for Hyde Park Prime Steakhouse for the 2021 licensing period.

ROLL CALL VOTE: Ayes, Commissioner Baller
Mayor Pro Tem Longe

Commissioner Sherman
Commissioner Host
Commissioner Nickita
Commissioner Hoff
Mayor Boutros

Nays, None

03-083-21 Public Hearing – Mad Hatter Bistro

The Mayor opened the public hearing at 8:40 p.m., and seeing no comment, closed it at 8:40 p.m.

MOTION: Motion by Commissioner Baller, seconded by Commissioner Hoff:
To renew the liquor license for Mad Hatter Bistro for the 2021 licensing period.

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

Nays, None

03-084-21 Public Hearing – Pernoi

The Mayor opened the public hearing at 8:41 p.m., and seeing no comment, closed it at 8:41 p.m.

MOTION: Motion by Commissioner Baller, seconded by Commissioner Host:
To renew the liquor license for Pernoi for the 2021 licensing period.

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

Nays, None

03-085-21 Public Hearing – Social Kitchen & Bar

The Mayor opened the public hearing at 8:42 p.m., and seeing no comment, closed it at 8:42 p.m.

MOTION: Motion by Commissioner Nickita, seconded by Mayor Pro Tem Longe:
To renew the liquor license for Social Kitchen & Bar for the 2021 licensing period.

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

Nays, None

03-086-21 Public Hearing – Tallulah Wine Bar & Bistro

The Mayor opened the public hearing at 8:43 p.m., and seeing no comment, closed it at 8:43 p.m.

MOTION: Motion by Commissioner Baller, seconded by Commissioner Host:
To renew the liquor license for Tallulah Wine Bar & Bistro for the 2021 licensing period.

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

Nays, None

03-087-21 Public Hearing – Rojo Mexican Bistro & Sidecar

The Mayor opened the public hearing at 8:44 p.m. The Mayor closed the public hearing at 8:45 p.m.

It was confirmed for Commissioner Nickita that although Rojo is no longer in operation, the liquor license should be renewed since it is tied to the location, not to the occupying business.

MOTION: Motion by Commissioner Nickita, seconded by Mayor Pro Tem Longe:
To renew the liquor license for Rojo Mexican Bistro & Sidecar for the 2021 licensing period.

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

Nays, None

03-088-21 Public Hearing – Rugby Grille

The Mayor opened the public hearing at 8:45 p.m. The Mayor closed the public hearing at 8:46 p.m.

CM Markus requested that the following be noted: subsequent to the Commission's February 22, 2021 meeting, Staff determined that neither the Community House nor the Rugby Grille were actually at fault for non-payment of invoices. Consequently, neither establishment should have been included on the list for public hearings of liquor license renewals.

Further clarification regarding the billing error on the part of the City can be found in the present meeting minutes under Item 03-080-21, Public Hearing – Community House.

CM Markus apologized on behalf of the City to both Community House and the Rugby Grille for creating the impression that either establishment had neglected to pay their outstanding balances with the City.

MOTION: Motion by Commissioner Baller, seconded by Commissioner Hoff:
To renew the liquor license for Rugby Grille for the 2021 licensing period.

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

Nays, None

03-089-21 Public Hearing – Vinoteca

The Mayor opened the public hearing at 8:47 p.m., and seeing no comment, closed it at 8:47 p.m.

MOTION: Motion by Commissioner Nickita, seconded by Commissioner Sherman:
To renew the liquor license for Vinoteca for the 2021 licensing period.

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

Nays, None

03-090-21 Public Hearing – 34350 Woodward Avenue and 907-911 Haynes Street

The Mayor opened the public hearing at 8:51 p.m.

CM Markus noted that while Staff was working with the applicant to create some potentially mutually agreeable proposals, all proposals would have to be reviewed by, and gain the approval of, the appropriate City boards and commissions.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Host:
To postpone the proposed lot combination hearing to April 12, 2021 and to direct City staff to continue to work with the applicant on a mutually acceptable agreement for future review by the City Commission.

Commissioner Baller asked if that would be enough time.

CM Markus said he recommended April 12, 2021 out of respect for the applicant's desire to move to process along, while noting that the Commission could always postpone the public hearing again if appropriate.

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

Nays, None

The public hearing was not closed.

VII. NEW BUSINESS

03-091-21 Public Hearing – 555 S. Old Woodward – Birmingham Pub

The Mayor opened the public hearing at 8:57 p.m.

PD Ecker reviewed the item.

Joseph Shallal, attorney for the applicant, was present on behalf of the item.

PD Ecker stated City precedent allowed for an economic development license to be transferred from a business that earned it to a different business without requiring that the second business meet the EDL requirements.

PD Ecker and Mr. Shallal explained the seating plans proposed were the same as the seating plans for Triple Nickel.

Commissioner Baller said he was disappointed to see that no entertainment was planned. He said he hoped the new owners would work to activate the second floor.

Public Comment

Paul Reagan said there should be better traffic enforcement in this area once Birmingham Pub opens.

Commissioner Baller recommended the City consider installing a crosswalk on the south side of Bowers to increase pedestrian safety.

The Mayor closed the public hearing at 9:22 p.m.

MOTION: Motion by Commissioner Baller, seconded by Commissioner Host:
To approve the Revised Final Site Plan and Design and Special Land Use Permit Amendment at 555 S. Old Woodward to allow for the transfer of ownership, name change from Triple Nickel to Birmingham Pub, and site plan and design changes at 555 S. Old Woodward.

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

Nays, None

03-092-21 Liquor License – 555 S. Old Woodward – Birmingham Pub

Discussion occurred as part of the previous item.

MOTION: Motion by Commissioner Baller, seconded by Commissioner Hoff:
To authorize the Chief of Police to sign the MLCC Police Investigation Report (LC-1800) and to approve the liquor license request of The Birmingham Pub, LLC that requests a transfer of interest in a Class C License to be issued under MCL 436.1521 (A)(1)(B) & SDM License with Outdoor Service (1 Area) located at 555 S Old Woodward, Birmingham, Oakland County, MI 48009.

Furthermore, pursuant to authorize the City Clerk to complete the Local Approval Notice at the request of The Birmingham Pub, LLC approving the liquor license transfer request of The Birmingham Pub, LLC that requested a Class C License be transferred under MCL 436.1521 (A)(1)(B) & SDM License with Outdoor Service (1 Area) located at 555 S Old Woodward, Birmingham, Oakland County, MI 48009.

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

Nays, None

03-093-21 Master Plan First Draft Direction

PD Ecker reviewed the item.

The majority of the Commission felt the agenda packet did not provide enough background information to adequately discuss this item.

After discussion of the Commission's concerns, there was consensus that a special meeting to review this item, during which voting could occur, should be scheduled for April 19, 2021.

CM Markus advised the Commissioners to submit their questions and comments in writing to City Staff so that Staff and the master planning team could be prepared with answers for the April 19 meeting.

The Planning Board would also be notified of the meeting and asked to attend.

MOTION: Motion by Commissioner Host, seconded by Commissioner Baller:
To schedule a special Commission meeting, at which votes could occur, for 7 p.m. on April 19, 2021 to discuss the 2040 Master Plan First Draft.

Public Comment

Andrew Haig asked the Commission not to rush consideration of the master plan draft, and commended all involved on their work thus far.

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

Nays, None

03-094-21 Parks and Recreation Bond Authorization

FD Gerber reviewed the item.

Pat McGow, bond counsel from Miller Canfield, and Robert Bendzinski, financial advisor to the City, were present.

Mr. McGow confirmed that no tax increase would result from the authorization of these bonds since other bonds were recently retired. He stated that the interest rate is set on the day of the bond sale, and that by law the bonds are sold to the bidder offering the lowest interest rate.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Nickita:
To approve the bond authorizing resolution for the 2021 unlimited tax general obligation bonds as submitted by bond counsel.

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

Nays, None

03-095-21 Ice Arena Accounting Methodology

FD Gerber & CM Markus reviewed the item. CM Markus stated that neither he nor the City's finance staff recommended an enterprise fund for the Ice Arena.

Commissioner Hoff said she would move the suggested resolution since it could be altered in the future if the Commission was unsatisfied with the proposed financial reporting used.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Nickita:
To direct the City Manager to continue to record ice arena operations in the General Fund and provide a finance report on those operations to the City Commission by October 31st for the preceding fiscal year.

Commissioner Host said the proposed financial reporting method was worth a try. He recommended the Commission review it in two years, and suggested that the money saved by not doing an enterprise fund should be spent during the next annual audit to determine the difference between residential and commercial spending in Birmingham.

Mayor Pro Tem Longe said the proposed financial reporting method would increase transparency while not adding extra accounting costs or burdens on the Staff. She stated that similar reporting worked out well for the City's golf courses. She noted that the financial reporting for the golf courses occurs more than once a year, and recommended the City do the same for the Ice Arena.

Commissioner Baller thanked Staff for their work on this ongoing item. He recommended that some of the slides used to present this issue to the Commission be included in the Citizens Academy and new Commissioner training.

Commissioner Hoff noted that the data will not demonstrate the average revenue increases and cost decreases until at least a year after the Ice Arena's updates are concluded.

Public Comment

Mr. Reagan noted that the data would have to be analyzed for places where efficiency could be increased.

Susan Collins thanked the Commission, stated that the Parks and Recreation Board is already working on reviewing financial reporting from the Ice Arena, and reminded all present that the primary clients of the Ice Arena are children who have benefited from the Arena's existence during the pandemic.

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

Nays, None

03-096-21 Golf Cart Fleet Lease

Commissioner Baller recommended dispensing with the review of the item and moving the recommended resolution.

MOTION: Motion by Commissioner Baller, seconded by Mayor Pro Tem Longe:
To award the Golf Cart Lease Option #3 for the Birmingham Golf Courses to EZ-Go Textron in the amount not to exceed \$51,338.46 per year or \$256,692.30, over a five-year period. Funds are available in the Equipment Rental or Lease account #584-753.002-941.0000 and #597-753.002-941.0000 for this contract. Further, to authorize the Mayor and City Clerk to sign the agreement on behalf of the City upon receipt of the required insurance coverage.

Commissioner Hoff noted that on page three of the report that 58% profit should have read 78%, per her conversation with Golf Manager Brito. She noted that the expenditure proposed by this item would bring the profit down from 78% to about 70%. She said she was still in support of the proposal because it would benefit the courses' users.

Golf Manager Brito reported that in 2019 the golf courses received 625 memberships sign-ups while running the early sign-on bonus. In 2021, that number has increased to 725 memberships so far.

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

Nays, None

03-097-21 FY 2024 Derby Bridge Funding Support

Consulting City Engineer Surhigh presented the item.

MOTION: Motion by Commissioner Baller, seconded by Commissioner Host:
To adopt the Resolution of the City of Birmingham demonstrating support of the project and submittal of the application to MDOT for FY 2024 funding assistance under their Local Bridge Program, as presented.

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

Nays, None

03-098-21 Grave Price Increase

City Clerk Bingham reviewed the item. She stated that some items in the fee schedule would be

recommended for revision by the GCAB in the future.

Commissioner Hoff said she preferred to make the price increase effective 30 days after the motion is passed by the Commission. She noted that raising the price to \$4,000 per grave would make Greenwood Cemetery more expensive than other cemeteries in the area.

Commissioner Baller asked Staff to look at indexing the costs to inflation.

CM Markus said he, FD Gerber and the City Attorney would look at options for doing that with this and some other City fees and would return to the Commission with recommendations. He also said that Greenwood Cemetery is a beautiful resting ground and that he would not worry about the City charging more than other cemeteries in the area.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Host:
To increase the price of the plots in Greenwood Cemetery that accommodate one full burial or up to 3 cremains from \$3000 to \$4000 effective immediately upon passage by the Commission, and for the new rate to be applicable to all currently released graves and future grave releases.

Public Comment

Linda Buchanan, chair of the GCAB, said they recommended the price increase in order to increase the amount the Cemetery could contribute towards the perpetual care fund.

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

Nays, None

03-099-21 Emergency Declaration and Resolution

City Attorney Kucharek reviewed the item.

She noted that the extended text of the resolution which the Mayor would sign would be corrected to state that sections 42-31, 42-32, and 42-33 were ordinance sections and not charter sections.

Commissioner Baller asked if this motion would enhance the powers of anyone or abridge the powers of anyone. Commissioner Nickita expressed a similar inquiry.

City Attorney Kucharek said it would do neither.

Commissioner Host thanked Staff for their work on this item.

Mayor Boutros approved the following statement: "Therefore, as the Mayor and Chief Executive of the City of Birmingham, I am ordering the following: 1. A state of local emergency is declared throughout the City of Birmingham. 2. The ability to conduct in person meetings would cause potential harm, illness to human

life, and therefore, I extend the ability for the City of Birmingham to conduct all of its meetings virtually as long as all of the requirements of Senate Bill No. 1246 are followed, which is attached to this Declaration and made a part hereof. 3. The local state of emergency will be terminated when the emergency and the pandemic conditions no longer exist. Given under my hand with the authority set forth in me as Mayor and Chief Executive of the City of Birmingham on this 22 day of March 2021 by Pierre Boutros, Mayor and Chief Executive."

The City Attorney said the Commission's resolution would not go into effect until the Mayor signs the declaration.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Nickita:
To declare a state of emergency for the City of Birmingham and confirming the Mayor's Declaration of Emergency to continue the ability for virtual meetings during the pandemic as determined by the EMC and the CEO to be effective upon the execution of the declaration of emergency.

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

Nays, None

Commission Discussion on items from prior meetings.

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.

Commissioner Host moved to discuss the topics raised in the correspondence from Andrew Haig at the April 26, 2021 Commission meeting. The motion failed for lack of a second.

There was discussion that some of the issues raised in Mr. Haig's letter might be addressed during the Unimproved Streets workshop.

MOTION: Motion by Commissioner Baller, seconded by Commissioner Host:
To discuss the correspondence from Andrew Haig during 'Commission Discussion from Prior Meetings' at the next Commission meeting, regarding developers damaging streets and the remedial action that can be taken by the City.

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

Nays, None

VIII. REMOVED FROM CONSENT AGENDA

IX. COMMUNICATIONS

- A. Communication from Andrew Haig
- B. Communication from Cory "King" Holland Sr.

X. REPORTS

- A. Commissioner Reports
- B. Commissioner Comments

CM Markus told Commissioner Hoff there was no way yet to know when City meetings might return to being held in person.

Commissioner Host asked the Planning Board to include outdoor dining and the parking assessment district near the top of their 2021 Action List.

- C. Advisory Boards, Committees, Commissions' Reports and Agendas
- D. Legislation
- E. City Staff
 - 1. 2020 Annual Golf Staff Report
 - 2. Community Development Department Annual Report
 - 3. City Manager Report

CM Markus reviewed his report.

Commissioner Baller said he would like to figure out a way for the Commission to provide feedback on the Community Development Department Annual Report for the future. Regarding the upcoming workshop on the Unimproved Streets Report, he said he hoped Staff's presentation to the Commission would address questions and recommendations stemming from the report rather than reiterating the report's findings. He said he would be submitting his questions and comments regarding the report to Staff in advance and encouraged other Commissioners to do the same.

CM Markus concurred with Commissioner Baller's recommendation regarding submitting comments and questions in advance of the Unimproved Streets workshop.

It was noted that the discussion of Unimproved Streets would likely continue beyond that first workshop.

In reply to Commissioner Sherman, CM Markus confirmed the members of the AHUSSC were welcome to attend the workshop but that the majority of the focus should be on discussion between Commissioners.

Commissioner Nickita noted that Woodward in Ferndale and Pleasant Ridge is very different from Woodward between 14 and 16 Mile. He also said everyone interested in street improvements and traffic safety in Birmingham should read the report by the Birmingham Police Department that was included in the City Manager's report.

There was discussion of the fact that Birmingham could not likely ticket vehicles for excessive noise.

Commissioner Host noted that Bloomfield Hills ticketed vehicles for noise in 2020 and that all those tickets were thrown out.

CM Markus said zoning changes along Woodward might be one way to address noise issues.

INFORMATION ONLY

XI. ADJOURN

Mayor Boutros adjourned the meeting at 11:32 p.m.

City of Birmingham
Warrant List Dated 03/24/2021

Meeting of 04/12/2021

Check Number	Early Release	Vendor #	Vendor	Amount
<u>PAPER CHECK</u>				
278476	*	008649	ROBERT ABRAHAM JR.	100.00
278477		MISC	ACTION CONSTRUCTION	2,500.00
278480		000500	ARTECH PRINTING INC	2,841.00
278481	*	006759	AT&T	187.45
278482	*	006759	AT&T	91.89
278483	*	006759	AT&T	91.89
278484	*	006759	AT&T	340.03
278485	*	003703	AT&T MOBILITY	1,098.08
278486	*	006534	BADER AND SONS CO	473.89
278488	*	003839	MATTHEW J. BARTALINO	15.89
278489		000525	BIRMINGHAM PUBLIC SCHOOLS	22.35
278490	*	001086	JACK TODD- PETTY CASH	154.35
278491		003526	BOUND TREE MEDICAL, LLC	305.80
278492	*	006177	BULLSEYE TELECOM INC	129.54
278493		009078	CANON SOLUTIONS AMERICA INC	225.00
278494		000571	CAR TRUCKING INC	150.00
278496		000444	CDW GOVERNMENT INC	8,185.00
278496	*	000444	CDW GOVERNMENT INC	67.80
278497	*	008540	CERTIFIED LABORATORIES	921.19
278498		000605	CINTAS CORPORATION	28.20
278499	*	008006	CLEAR RATE COMMUNICATIONS, INC	1,346.46
278500		009187	CLEARVIEW CAPTIONING LLC	2,035.00
278501		009167	COL'S FAMILY RESTAURANT	266.45
278502	*	MISC	COMBAT SUPPORT PRODUCTS, INC.	68,161.00
278503	*	000627	CONSUMERS ENERGY	8,413.44
278504	*	006969	DAVEY RESOURCE GROUP	4,000.00
278505	*	000179	DTE ENERGY	126.07
278506	*	000180	DTE ENERGY	12,593.97
278507		004671	ELDER FORD	147.27
278509		MISC	FINISHED BASEMENTS PLUS LLC	200.00
278510		006384	GEOGRAPHIC INFORMATION SERVICES, IN	290.11
278511		005103	GORNO FORD, INC.	640.30
278513		001531	GUNNERS METER & PARTS INC	1,575.00
278514		007458	HERITAGE - CRYSTAL CLEAN, LLC	2,244.00
278515	*	001956	HOME DEPOT CREDIT SERVICES	26.89
278516	*	001874	HUNT SIGN COMPANY	1,117.50
278518		005291	KAESER & BLAIR INC	668.57
278519		MISC	KOPKE HOME ENHANCEMENT INC	100.00
278520		003620	LANGUAGE LINE SERVICES INC	35.00
278522		MISC	LMB PROPERTIES LLC	200.00
278523	*	009247	MHM CONSTRUCTION LLC	22,849.00
278524		MISC	MICHIGAN BASEMENTS	200.00

City of Birmingham
Warrant List Dated 03/24/2021

Meeting of 04/12/2021

Check Number	Early Release	Vendor #	Vendor	Amount
278525		008127	MIDWEST POWER SYSTEMS, INC	5,700.00
278527	*	007163	MOBILE HEALTH RESOURCES	1,910.73
278529	*	005431	NILFISK, INC.	688.40
278530		008687	NORTH BREATHING AIR, LLC	520.00
278531	*	000481	OFFICE DEPOT INC	1,771.21
278533		MISC	PALACE CONSTRUCTION INC	200.00
278534		003588	PATRIOT 2000 INC.	662.63
278536		MISC	PRIEST CONSTRUCTION	100.00
278537	*	004137	R & R FIRE TRUCK REPAIR INC	15,407.00
278538	*	006590	SECURE DOOR, LLC	143.00
278539		MISC	SEVANTHINATHAN, PRATHEEP	100.00
278540	*	007245	NICK SOPER	105.99
278542		007907	SP+ CORPORATION	65,693.43
278543		MISC	TAJINDER SMART	200.00
278544	*	000293	VAN DYKE GAS CO.	113.45
278545	*	000158	VERIZON WIRELESS	49.30
278546	*	000158	VERIZON WIRELESS	128.91
278547	*	000158	VERIZON WIRELESS	495.19
278548		MISC	WALLSIDE INC	500.00
278550	*	005794	WINDSTREAM	868.35
278551		007620	WJE-WISS, JANNEY, ELSTNER ASSOC.INC	93,454.90
SUBTOTAL PAPER CHECK				\$333,977.87
<u>ACH TRANSACTION</u>				
3550	*	008847	ABS- AUTOMATED BENEFIT SVCS, INC	93,577.89
3551	*	002284	ABEL ELECTRONICS INC	405.00
3554	*	000518	BELL EQUIPMENT COMPANY	45.92
3555	*	007345	BEVERLY HILLS ACE	15.98
3556		009195	CROWN CASTLE FIBER LLC	643.00
3557	*	000565	DORNBOS SIGN & SAFETY INC	709.80
3558		001077	DUNCAN PARKING TECH INC	5,365.65
3559	*	001230	FIRE SYSTEMS OF MICHIGAN LLC	130.00
3560	*	007314	FLEIS AND VANDENBRINK ENG. INC	1,979.00
3561	*	000243	GRAINGER	932.96
3562	*	001672	HAYES PRECISION INC	30.50
3564	*	003458	JOE'S AUTO PARTS, INC.	190.46
3565		000155	JOHNSON CONTROLS SECURITY SOLUTIONS	350.76
3567	*	002767	OSCAR W. LARSON CO.	247.50
3568	*	003554	RKA PETROLEUM	13,631.16
3569	*	000478	ROAD COMM FOR OAKLAND CO	5,615.96
3570		000254	SOCRRA	68,287.00
3571		000273	TERMINAL SUPPLY CO.	364.16
3572		002088	WM. CROOK FIRE PROTECTION CO.	3,723.64

City of Birmingham
Warrant List Dated 03/24/2021

Meeting of 04/12/2021

Check Number	Early Release	Vendor #	Vendor	Amount
SUBTOTAL ACH TRANSACTION				\$196,246.34
GRAND TOTAL				<u>\$530,224.21</u>

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



Mark Gerber
Finance Director/ Treasurer

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

City of Birmingham

Warrant List Dated 03/31/2021

Meeting of 04/12/2021

Check Number	Early Release	Vendor #	Vendor	Amount
<u>PAPER CHECK</u>				
278552	*	000855	48TH DISTRICT COURT	500.00
278553		MISC	A P CONSTRUCTION	100.00
278554		000951	ALL AMERICAN CASH REGISTER	190.00
278555	*	MISC	AMERICAN ATHLETIX	271.30
278556	*	009253	ANDRUS ARCHITECTURE INC	109,128.83
278557		000500	ARTECH PRINTING INC	299.00
278559	*	006759	AT&T	472.76
278560	*	006759	AT&T	2,531.58
278561	*	006759	AT&T	187.45
278564	*	003839	MATTHEW J. BARTALINO	165.79
278565		MISC	Believe Disposal Junk Removal	500.00
278566	*	MISC	BENJAMIN CASTLE	100.00
278567		002231	BILLINGS LAWN EQUIPMENT INC.	44.09
278568		000524	BIRMINGHAM LOCKSMITH	94.90
278569	*	001086	JACK TODD- PETTY CASH	906.20
278570		003526	BOUND TREE MEDICAL, LLC	331.14
278571	*	007365	BSN SPORTS LLC	665.00
278573		009078	CANON SOLUTIONS AMERICA INC	163.20
278574		008993	CAREN PRODUCTS, LLC	265.52
278575	*	MISC	CASEY HINES	50.00
278576		008959	CASS COLLISION CLAWSON	1,519.80
278577		009168	CHET'S CLEANING INC	910.56
278578	*	009122	CLAIRE CHUNG	465.00
278579		000605	CINTAS CORPORATION	216.24
278580		001318	CLOVERDALE EQUIPMENT CO	1,610.00
278581	*	008955	COMCAST	200.78
278582	*	007774	COMCAST BUSINESS	1,258.18
278583	*	000627	CONSUMERS ENERGY	77.38
278584		002668	CONTRACTORS CLOTHING CO	21.08
278585		008512	COOL THREADS EMBROIDERY	612.92
278586		003923	CUMMINS BRIDGEWAY LLC	1,022.18
278589	*	005125	DEVIN DEROECK	75.00
278591		008641	DINGES FIRE COMPANY	43.10
278592		009130	DOG WASTE DEPOT	366.30
278593	*	000179	DTE ENERGY	1,824.25
278594	*	000179	DTE ENERGY	50.87
278595	*	000179	DTE ENERGY	301.92
278596	*	000179	DTE ENERGY	5,670.16
278597	*	000179	DTE ENERGY	1,768.50
278598	*	000179	DTE ENERGY	5,664.04
278599	*	000179	DTE ENERGY	3,104.14
278600	*	000179	DTE ENERGY	14.95

City of Birmingham

Warrant List Dated 03/31/2021

Meeting of 04/12/2021

Check Number	Early Release	Vendor #	Vendor	Amount
278601	*	000179	DTE ENERGY	1,822.16
278602	*	000179	DTE ENERGY	37.23
278603	*	000179	DTE ENERGY	15.70
278604	*	000179	DTE ENERGY	26.72
278605	*	000179	DTE ENERGY	469.28
278606	*	000179	DTE ENERGY	114.00
278608	*	000179	DTE ENERGY	191.70
278609	*	000179	DTE ENERGY	20.08
278610	*	000179	DTE ENERGY	20.83
278612	*	000179	DTE ENERGY	78.04
278614		MISC	ESMAN, KELLY	100.00
278615		001495	ETNA SUPPLY	1,660.00
278616		000936	FEDEX	159.89
278618		007016	FRIENDS OF BIRMINGHAM MUSEUM	432.27
278619	*	004604	GORDON FOOD	1,225.60
278620		009275	GREAT LAKES COCA-COLA DISTRIBUTION	409.18
278623		000249	GUARDIAN ALARM	246.80
278624		MISC	HANSONS GROUP LLC	500.00
278625	*	001956	HOME DEPOT CREDIT SERVICES	2,471.78
278626		MISC	HUNTER ROBERTS HOMES	2,500.00
278627		000342	IBS OF SE MICHIGAN	201.90
278629		004479	INVERIS TRAINING SOLUTIONS INC	2,435.36
278630		MISC	JOE PIZIK ELECTRIC, INC.	240.25
278631	*	MISC	JOHN LAZAR	221.31
278632	*	008450	KNOWBE4, INC	4,050.00
278633	*	000362	KROGER COMPANY	29.00
278634		002438	LAIRD PLASTICS INC	310.33
278635	*	MISC	LEON YULKOWSKI	204.30
278636		MISC	M POWER INC	100.00
278637		003860	MICHIGAN CHANDELIER - SF	77.97
278638		MISC	MID-WEST WATERPROFFING	100.00
278640		008319	MKSK INC	2,523.75
278641		001173	MODERNISTIC CLEANING SVCS INC	1,071.00
278643		001194	NELSON BROTHERS SEWER	899.00
278644		008712	OAKLAND COUNTY HEALTH DIVISION	298.00
278645		008712	OAKLAND COUNTY HEALTH DIVISION	350.00
278646	*	000481	OFFICE DEPOT INC	496.34
278647	*	008901	PLANTE & MORAN CRESA, LLC	11,200.00
278648		MISC	POWER HOME SOLAR	300.00
278649		MISC	PRECISION ENHANCEMENTS INC	100.00
278650		MISC	PYTIK & COMPANY	200.00
278651		002852	QMI GROUP INC	47.25
278652		006729	QUENCH USA INC	240.00

City of Birmingham
Warrant List Dated 03/31/2021

Meeting of 04/12/2021

Check Number	Early Release	Vendor #	Vendor	Amount
278653	*	008342	RAIN MASTER CONTROL SYSTEMS	29.85
278654	*	005344	RESERVE ACCOUNT	8,000.00
278655		MISC	RLB BUILDERS	300.00
278656	*	MISC	RONALD HARBOUR	517.00
278657		MISC	ROOF ONE LLC	100.00
278658	*	008073	SITEONE LANDSCAPE SUPPLY, INC	1,365.92
278659		000260	SPARTAN DISTRIBUTORS INC	840.74
278660		001104	STATE OF MICHIGAN	34,144.49
278661		000256	SUBURBAN BUICK GMC INC	310.07
278662		MISC	THE DETROIT JEWISH NEWS	800.00
278663	*	009254	THOMAS M MARKUS	500.00
278664		005481	TRI-COUNTY INTL TRUCKS, INC.	1,868.50
278665		008728	TWO THE RESCUE LLC	1,100.00
278666		005806	ULINE	77.90
278667	*	000293	VAN DYKE GAS CO.	136.14
278668	*	000158	VERIZON WIRELESS	971.94
278669		MISC	WALLSIDE INC	1,000.00
278670		MISC	WILMOT, JEFFREY	100.00
278671		MISC	Z&G RENOVATIONS, LLC	200.00

SUBTOTAL PAPER CHECK	\$234,323.68
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ACH TRANSACTION

3573	*	008847	ABS- AUTOMATED BENEFIT SVCS, INC	33,009.30
3574	*	002284	ABEL ELECTRONICS INC	1,399.60
3576	*	007345	BEVERLY HILLS ACE	309.26
3577	*	003282	LISA MARIE BRADLEY	236.25
3578	*	007359	DETROIT CHEMICAL & PAPER SUPPLY	70.44
3579	*	000565	DORNBOS SIGN & SAFETY INC	240.44
3580		006528	DOWNTOWN PUBLICATIONS INC	1,069.00
3581		001230	FIRE SYSTEMS OF MICHIGAN LLC	364.25
3582		006181	FIRST CHOICE COFFEE SERV	188.67
3583		000217	FOUR SEASON RADIATOR SERVICE INC	333.45
3584	*	000243	GRAINGER	326.98
3585	*	001672	HAYES PRECISION INC	51.00
3586	*	008851	INSIGHT INVESTMENT	5,477.72
3587	*	007870	J.C. EHRLICH CO. INC.	50.00
3588		000261	J.H. HART URBAN FORESTRY	19,825.50
3589	*	002576	JAX KAR WASH	217.00
3590	*	003458	JOE'S AUTO PARTS, INC.	736.94
3591		006370	KLM SCAPE & SNOW LLC	5,100.00
3592	*	005876	KROPF MECHANICAL SERVICE COMPANY	243.00
3593		005550	LEE & ASSOCIATES CO., INC.	5,772.00
3593	*	005550	LEE & ASSOCIATES CO., INC.	140.00
3594		000666	NATIONAL LADDER & SCAFFOLD	1,970.94

City of Birmingham
Warrant List Dated 03/31/2021

Meeting of 04/12/2021

Check Number	Early Release	Vendor #	Vendor	Amount
3595	*	007856	NEXT	325.00
3596		001864	NOWAK & FRAUS ENGINEERS	26,610.50
3597	*	003554	RKA PETROLEUM	1,598.67
3598		000278	TROY AUTO GLASS CO INC	389.25
3599		008711	VOLVIK USA	1,220.13
SUBTOTAL ACH TRANSACTION				\$107,275.29
GRAND TOTAL				\$341,598.97

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



Mark Gerber
Finance Director/ Treasurer

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

City of Birmingham

Warrant List Dated 04/07/2021

Meeting of 04/12/2021

Check Number	Early Release	Vendor #	Vendor	Amount
<u>PAPER CHECK</u>				
278672		005123	2400 LINCOLN, LLC	144,601.63
278673	*	000855	48TH DISTRICT COURT	350,609.88
278674	*	008226	KATHERINE ABELA	972.00
278675		008872	ACE DOOR COMPANY	580.00
278676		008106	ACUSHNET COMPANY	1,055.23
278678		001000	ALLIED INC	409.52
278679	*	008304	AMERINET	18,957.60
278680	*	006759	AT&T	432.90
278681		008165	B5 INVESTMENTS, LLC	1,917.49
278683	*	003839	MATTHEW J. BARTALINO	77.38
278685		002231	BILLINGS LAWN EQUIPMENT INC.	140.71
278686		007365	BSN SPORTS LLC	30.00
278687		MISC	BUTCHER & BUTCHER CONSTRUCTION COMP	100.00
278688	*	009078	CANON SOLUTIONS AMERICA INC	685.90
278692		000444	CDW GOVERNMENT INC	5,830.37
278693		008306	CHARTER TOWNSHIP OF BLOOMFIELD	619.16
278694		007710	CINTAS CORP	299.67
278694	*	007710	CINTAS CORP	123.15
278695		000605	CINTAS CORPORATION	204.70
278697	*	001086	JACK TODD- PETTY CASH	950.00
278698		009187	CLEARVIEW CAPTIONING LLC	1,157.50
278699	*	008955	COMCAST	478.73
278701	*	000979	COMERICA BANK	5,370.57
278702	*	000627	CONSUMERS ENERGY	1,667.17
278703		MISC	CONYERS, STEVEN A	100.00
278704		008512	COOL THREADS EMBROIDERY	676.90
278706	*	009145	CREATIVE COLLABORATIONS	3,800.00
278707		MISC	DEALER AUTO PARTS	118.85
278709	*	000179	DTE ENERGY	46.12
278710	*	000179	DTE ENERGY	320.70
278711	*	000179	DTE ENERGY	50.87
278712	*	000179	DTE ENERGY	16.57
278713	*	000179	DTE ENERGY	80.03
278714	*	000179	DTE ENERGY	1,583.65
278715	*	000179	DTE ENERGY	111.10
278716	*	000179	DTE ENERGY	138.99
278717	*	000179	DTE ENERGY	2,322.23
278720		004671	ELDER FORD	68.81
278723	*	009100	ENZO WATER SERVICE	500.00
278725		000936	FEDEX	24.79
278726		MISC	FINISH WORKS CARPENTRY	500.00
278727	*	MISC	FIRST CENTENNIAL TITLE AGENCY	199.38

City of Birmingham
Warrant List Dated 04/07/2021

Meeting of 04/12/2021

Check Number	Early Release	Vendor #	Vendor	Amount
278729		001447	HALT FIRE INC	36.69
278731	*	001956	HOME DEPOT CREDIT SERVICES	1,312.81
278732		000948	HYDROCORP	1,315.00
278734		006695	J. P. COOKE COMPANY	150.60
278735	*	009278	JAMES D RICHARDS	264.00
278736	*	003823	JAY'S SEPTIC TANK SERVICE	78.00
278738		MISC	JOHN HENNIG CARPENTRY INC	200.00
278739	*	007423	K/E ELECTRIC SUPPLY	259.90
278740		008413	KARANA REAL ESTATE, LLC	44.60
278742		008831	KIESLER POLICE SUPPLY, INC	19,380.00
278743		MISC	LIVE WELL CUSTOM HOME LLC	2,000.00
278745		MISC	MARTINO ENTERPRISES INC	100.00
278747	*	009247	MHM CONSTRUCTION LLC	6,160.00
278748	*	009247	MHM CONSTRUCTION LLC	46,557.44
278749		MISC	MICHIGAN GRAPHICS & AWARDS, INC.	15.00
278751		000230	MIKE SAVOIE CHEVROLET INC	31.95
278752		004876	NATIONAL LEAGUE OF CITIES	1,953.00
278753	*	009276	NEWTONS SOLUTIONS LLC	675.00
278755	*	008712	OAKLAND COUNTY HEALTH DIVISION	298.00
278757	*	000481	OFFICE DEPOT INC	237.40
278758	*	008785	KEVIN ONG	408.94
278759		MISC	PRIEST CONSTRUCTION	100.00
278760		MISC	QUALITY SIGN	300.00
278761		006729	QUENCH USA INC	123.60
278762	*	004137	R & R FIRE TRUCK REPAIR INC	2,201.00
278763		MISC	RESTROOM DIRECT	1,049.00
278764	*	009144	RICHARD TRUDO	1,200.00
278765		000495	ROCHESTER LAWN EQUIPMENT CENTER INC	212.42
278766		MISC	RUMPLE, STEPHEN W	1,000.00
278768	*	007897	JEFFREY SCAIFE	89.14
278769		MISC	SCHONBERG, EDWARD	200.00
278771	*	007142	SHERWIN-WILLIAMS COMPANY	46.81
278772	*	009143	MICHAEL SHUKWIT	200.00
278773		002474	SIG SAUER, INC.	450.00
278774	*	008073	SITEONE LANDSCAPE SUPPLY, INC	413.33
278776		001005	STATE OF MICHIGAN	200.00
278777		001005	STATE OF MICHIGAN	200.00
278778		009201	STEPHEN SHUKWIT	250.00
278779		MISC	STERLING DEVELOPMENT CORP	1,400.00
278782		000275	TIRE WHOLESALERS CO INC	587.52
278784		MISC	ULTIMATE SIGNS INC	200.00
278785		009266	US SIGNAL COMPANY LLC	224.02
278787	*	000158	VERIZON WIRELESS	734.95

City of Birmingham
Warrant List Dated 04/07/2021

Meeting of 04/12/2021

Check Number	Early Release	Vendor #	Vendor	Amount
278788	*	000158	VERIZON WIRELESS	1,116.72
278790	*	000158	VERIZON WIRELESS	147.90
278791		MISC	WILLIAMS, JOHN BRYAN	200.00
278792	*	004512	WOLVERINE POWER SYSTEMS	15,000.00
278794	*	008902	ZORO TOOLS, INC.	153.06
SUBTOTAL PAPER CHECK				\$657,408.05
<u>ACH TRANSACTION</u>				
3600	*	008847	ABS- AUTOMATED BENEFIT SVCS, INC	62,501.29
3602	*	002284	ABEL ELECTRONICS INC	99.96
3603		002909	ACOM SOLUTIONS, INC.	250.00
3606	*	007345	BEVERLY HILLS ACE	77.85
3607	*	003282	LISA MARIE BRADLEY	135.00
3608		009181	DELTA TEMP SERVICES INC	198.00
3610	*	001077	DUNCAN PARKING TECH INC	2,342.08
3611		000261	J.H. HART URBAN FORESTRY	21,870.01
3611	*	000261	J.H. HART URBAN FORESTRY	1,960.80
3612	*	003458	JOE'S AUTO PARTS, INC.	449.49
3613	*	007827	HAILEY R KASPER	157.50
3614	*	007977	KAREN LINGENFELTER	108.00
3616	*	006359	NYE UNIFORM COMPANY	140.50
3617	*	005688	PEGASUS ENTERTAINMENT INC	80.50
3618		008269	PREMIER SAFETY	1,562.00
3619	*	001062	QUALITY COACH COLLISION	1,573.02
3620	*	003554	RKA PETROLEUM	11,908.33
3621		000254	SOCRRA	77,688.00
3622	*	001255	TEKNICOLORS INC	61.98
3623		000273	TERMINAL SUPPLY CO.	16.79
3624	*	002037	TOTAL ARMORED CAR SERVICE, INC.	758.36
3625		008711	VOLVIK USA	73.56
3626		002088	WM. CROOK FIRE PROTECTION CO.	4,385.46
SUBTOTAL ACH TRANSACTION				\$188,398.48

City of Birmingham
Warrant List Dated 04/07/2021

Meeting of 04/12/2021

Check Number	Early Release	Vendor #	Vendor	Amount
GRAND TOTAL				\$845,806.53

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

Clerk's Office

DATE: April 6, 2021

TO: Tom Markus, City Manager

FROM: Alexandria Bingham, City Clerk

SUBJECT: Huntington Disease-Yoga in the Park- Saturday, June 26, 2021

INTRODUCTION:

The Huntington Disease Society of America-MI Chapter submitted a Special Event application to hold the Yoga in the Park event in Shain Park on Saturday, June 26, 2021 from 10:00 AM-3:00 PM.

BACKGROUND:

The Police Department has reviewed the proposed event details prior to submission for street closures and the need for safety personnel and has approved the details. DPS, Planning, Building, Police, Fire, and Engineering have indicated their approval. SP+ Parking has been notified of the event for planning purposes.

The following events occur in June in Birmingham, and do not pose a conflict for this event:

Farmers Market	Sundays	Lot 6
Parkinson Foundation 5K	June 26	Seaholm HS & neighborhood
Movie in Booth Park	June 11	Booth Park

LEGAL REVIEW:

No review required.

FISCAL IMPACT:

No fiscal impact.

SUMMARY

The City Commission is being asked to approve the 2021 Yoga in the Park special event to be held June 26, 2021 from 10:00 AM-3:00 PM, with set-up to begin between 8:00 AM and 10:00 AM. Tear-down will begin at the conclusion of the event at approximately 3:00 PM to 4:30 PM.

ATTACHMENTS:

1. Special Event application
2. COVID-19 Plan
2. Notification letter with map of event area distributed to residents/businesses within 300 feet of the event area on January 15, 2020. Notification addresses are on file in the Clerk's Office
3. Hold Harmless Agreement signed by HDSA-MI Chapter, (Certificate of Insurance due on or before June 11, 2021)
4. Department Approval page with comments and estimated cost

SUGGESTED RESOLUTION:

To approve a request from the Huntington Disease Society of America-MI Chapter to hold Yoga in the Park in Shain Park on June 26, 2021 contingent upon compliance with all permit and insurance requirements and payment of all fees and, further pursuant to any modifications or event cancellation that may be deemed necessary by administrative staff, leading up to or at the time of the event, due to public health and safety measures.

**CITY OF BIRMINGHAM
APPLICATION FOR SPECIAL EVENT PERMIT
PARKS AND PUBLIC SPACES**

**IMPORTANT: EVENTS UTILIZING CITY SIDEWALKS AND/OR STREETS MUST MEET
WITH POLICE DEPARTMENT SPECIAL EVENT OFFICER TO REVIEW PROPOSED
EVENT DETAILS PRIOR TO SUBMITTING APPLICATION .**

Police Department acknowledgement: _____

I. EVENT DETAILS

- Incomplete applications will not be accepted.
- Changes in this information must be submitted to the City Clerk, in writing, at least three weeks prior to the event

FEES: **FIRST TIME EVENT:** **\$200.00**
 ANNUAL APPLICATION FEE: **\$165.00**

(Please print clearly or type)

Date of Application _____ March 1, 2021 _____

Name of Event _____ HDSA Michigan Chapter - Yoga in the Park _____

Detailed Description of Event (attach additional sheet if necessary) _____ Year 5 of event raising
_____ awareness of rare neurological disorder - Huntington's Disease, and funds for the Michigan
_____ Chapter of HDSA non-profit that supports Michigan families. We will offer three 1-hour long
_____ donation based yoga classes led by certified instructors. _____

Location _____ Shain Park - in front of South Band Shell _____

Date(s) of Event _____ Saturday, June 26 _____ Hours of Event _____ 10a - 3p _____

Date(s) of Set-up _____ Saturday, June 26 _____ Hours of Set-up _____ 8-10a _____

NOTE: No set-up to begin before 7:00 AM, per City ordinance.

Date(s) of Tear-down _____ Saturday, June 26 _____ Hours of Tear-down _____ 3-4p _____

Organization Sponsoring Event _____ Huntington's Disease Society of America - Michigan Chapter _____

Organization Address _____ 1221 Bowers St. PO Box 1091 Birmingham, MI 48009 _____

Organization Phone _____ (800) 909-0073 _____

Contact Person _____ Don Peasley _____

Contact Phone _____ 248.840.3378 _____

Contact Email _____ donaldpeasley5@gmail.com _____

II. EVENT INFORMATION

1. Organization Type Non-Profit
(city, non-profit, community group, etc.)

2. Additional Sponsors or Participants (Provide name, address, contact person, status, etc. for all additional organizations sponsoring your event.) Yoga Shelter, Henry Ford Health Systems
YogaMoves MS, TEVA Pharmaceuticals

3. Is the event a fundraiser? YES ☒ NO ☐

List beneficiary HDSA Michigan Chapter

List expected income \$20,000

Attach information about the beneficiary.

4. First time event in Birmingham? YES ☐ NO ☒

If no, describe _____

5. Total number of people expected to attend per day 150

6. The event will be held on the following City property: (Please list)

☐ Street(s) _____

☐ Sidewalk(s) _____

☒ Park(s) Shain Park - Band Shell area including grass area in front.

7. Will street closures be required? YES ☐ NO ☒

(Police Department acknowledgement prior to submission of application is required) (initial here) _____

8. What parking arrangements will be necessary to accommodate attendance? Participants will be encouraged to use lots and decks in area.

9. Will staff be provided to assist with safety, security and maintenance? YES ☒ NO ☐

If yes, please provide number of staff to be provided and any specialized training received.

Describe Henry Ford Health Systems will once again be on site with licensed paramedic
in case of any health issues.

10. Will the event require safety personnel (police, fire, paramedics)? YES ☐ NO ☒

(Police Department acknowledgement prior to submission of application is required.) (initial here) _____

Describe _____

11. Will alcoholic beverages be served? YES ☐ NO ☒

If yes, additional approval by the City Commission is required, as well as the Michigan Liquor Control Commission.

12. Will music be provided? YES ☐ NO ☐

_____ Live _____ Amplification _____ Recorded 2 X Loudspeakers

Time music will begin 9:30a

Time music will end 2:30p

Location of live band, DJ, loudspeakers, equipment must be shown on the layout map.

13. Will there be signage in the area of the event? YES ☒ NO ☐

Number of signs/banners 2 x Banners

Size of signs/banners 8' x 10'

Submit a photo/drawing of the sign(s). **A sign permit is required.**

14. Will food/beverages/merchandise be sold? YES ☐ NO ☒

- Peddler/vendor permits must be submitted to the Clerk's Office, **at least two weeks prior to the event.**
- You must obtain approval from the Oakland County Health Department for all food/beverage sales/donations. Contact ehclerk@oakgov.com or 248-535-9612 to obtain Health Department approval.
- There is a \$50.00 application fee for all vendors and peddlers, in addition to the \$10.00 daily fee, per location.

LIST OF VENDORS/PEDDLERS
(attach additional sheet if necessary)

VENDOR NAME	GOODS TO BE SOLD	WATER HOOK- UP REQUIRED?	ELECTRIC REQUIRED?

III. EVENT LAYOUT

- Include a map showing the park set up, street closures, and location of each item listed in this section.
- Include a map and written description of run/walk route and the start/finish area

1. Will the event require the use of any of the following municipal equipment?
(show location of each on map)

EQUIPMENT	QUANTITY	COST	NOTES
Picnic Tables		6 for \$200.00	A request for more than six tables will be evaluated based on availability.
Trash Receptacles	2	\$4.00 each	Trash box placement and removal of trash is the responsibility of the event. Additional cost could occur if DPS is to perform this work.
Dumpsters		\$250.00 per day	Includes emptying the dumpster one time per day. The City may determine the need for additional dumpsters based on event requirements.
Utilities (electric)	___ # of vendors requiring utilities	Varies	Charges according to final requirements of event.
Water/Fire Hydrant		Contact the Fire Department.	Applicant must supply their own means of disposal for all sanitary waste water. Waste water is NOT allowed to be poured into the street or on the grass.
Audio System		\$200.00 per day	Must meet with City representative.
Meter Bags / Traffic Cones / Barricades	# to be determined by the Police Department.		

2. Will the following be constructed or located in the area of the event? YES NO
(show location of each on map) NOTE: Stakes are not allowed.

TYPE	QUANTITY	SIZE
Tents/Canopies/Awnings (A permit is required for tents over 120 sq ft)	3	8' x 8'
Portable Toilets		
Rides		
Displays		
Vendors		
Temporary Structure (must attach a photo)		
Other (describe)		

SIGNATURE OF APPLICANT REQUIRED

EVENT NAME HDSA Yoga in the Park

EVENT DATE June 26, 2021

The Birmingham City Commission shall have sole and complete discretion in deciding whether to issue a permit. Nothing contained in the City Code shall be construed to require the City Commission to issue a permit to an applicant and no applicant shall have any interest or right to receive a permit merely because the applicant has received a permit in the past.

As the authorized agent of the sponsoring organization, I hereby agree that this organization shall abide by all conditions and restrictions specific to this special event as determined by the City administration and will comply with all local, state and federal rules, regulations and laws.



Signature

3.1.21

Date

**IV. SAMPLE LETTER TO NOTIFY ANY AFFECTED
PROPERTY/BUSINESS OWNERS**

- Organizer must notify all potentially affected residential property and business owners of the date and time this application will be considered by the City Commission. (*Sample letter attached to this application.*)
- Attach a copy of the proposed letter to this application. The letter will be reviewed and approved by the Clerk's Office. The letter must be distributed at least two weeks prior to the Commission meeting.
- A copy of the letter and the distribution list must be submitted to the Clerk's Office at least two weeks prior to the Commission meeting.
- If street closures are necessary, a map must be included with the letter to the affected property/business owners.



To: Chief Paul Wells, BFD
Fr: Don Peasley, HDSA Michigan Chapter
Re: June 26 Fundraiser – Covid Plan

Chief Wells,

Below please find the proposed plan for our June 26 HDSA fundraiser in Shain Park. Our approach is informed by the procedures currently in place at the Yoga Shelter, who is a lead sponsor of this event, and also by the March 2, 2021 State order governing gatherings.

To participate as a student in any of the classes we will require pre -registration and will limit classes to 50 students. Students will be required to fill out a Covid questionnaire while signing a participant release that we will have at our main table. At no time will there be more than 300 people gathered at our event.

Our registration and sponsor table set up will adhere to the 6-foot social distancing guidelines, and for those waiting to sign in for their pre-registered class, or make bids in our auction, we will use markers to keep them 6 feet apart.

Masks will be worn by all volunteers and participants at all times, and we will inform all registered participants that they cannot practice if they are not wearing a mask. We will also have Hand Sanitizer available in multiple locations.

On the grass where students will take classes, we will place markers that ensure yoga mats have 8 feet distance from other students.

Throughout the day, where I serve as emcee, I will be making announcements about mask requirements, social distancing, location of hand sanitizer, and overall respect for each other and our shared safety.

We understand that the Pandemic is a fluid situation and things may change over time. A 30 and another 15 day out check-in will be used to modify, or even cancel the event if conditions dictate.

Please let me know if this meets your and the City's needs to execute a safe and compliant event, or if there are other measures that need to be taken.

Don Peasley
President, HDSA Michigan Chapter



SPECIAL EVENT REQUEST NOTIFICATION LETTER

DATE: March 15, 2021

TO: City of Birmingham
Residential Property or Business Owner

P.O. Box 3001
Address

The Birmingham City Code requires that we receive approval from the Birmingham City Commission to hold the following special event. The code further requires that we notify any property owners or business owners that may be affected by the special event of the date and time that the City commission will consider our request so that an opportunity exists for comments prior to this approval.

EVENT INFORMATION

NAME OF EVENT: Huntington's Disease Society of America - Yoga in the Park

LOCATION: Shain Park

DATE(S) OF EVENT: June 26, 2021 **HOURS OF EVENT:** 10a-3:00p

BRIEF DESCRIPTION OF EVENT/ACTIVITY: We will be conducting 3 x 1-hour yoga classes on the lawn in front of the band shell. There will be light music and an instructor with a headset microphone.

DATE(S) OF SET-UP: June 26, 2021 **HOURS OF SET-UP:** 8-10a

DATE(S) OF TEAR-DOWN: June 26, 2021 **HOURS OF TEAR-DOWN:** 3:00-4P

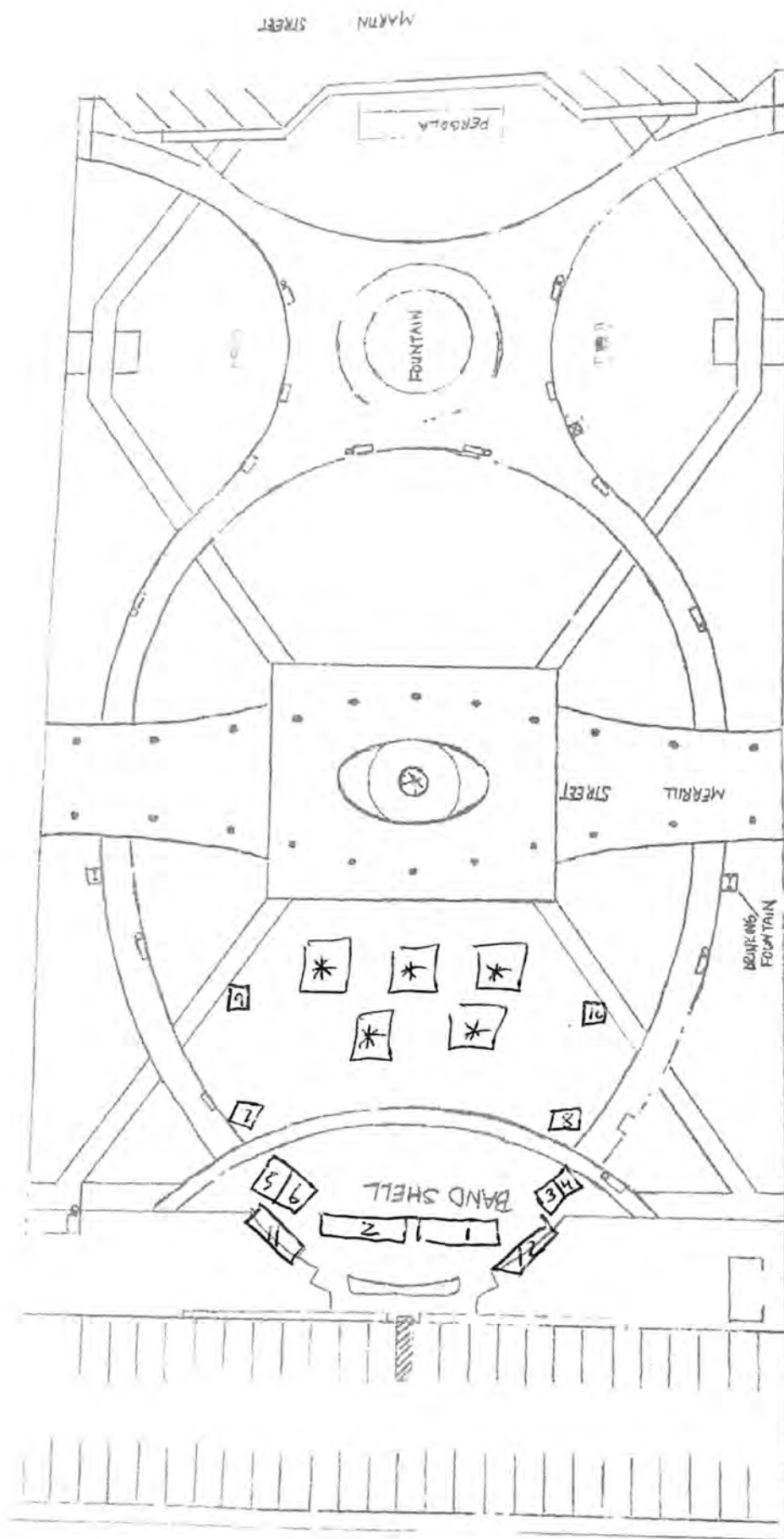
DATE OF CITY COMMISSION MEETING: **April 12, 2021**

The City commission meets in rm 205 of the Municipal Bldg at 151 Martin at 7:30PM. This will be a virtual meeting. A complete copy of the application to hold this special event is available for your review at the City Clerk's Office (248/530-1880). Log on to www.bhamgov.org/events for a complete list of special events.

EVENT ORGANIZER: HDSA - Michigan Chapter

ADDRESS: 1221 Bowers St. PO Box 1091, Birmingham, MI 48009 **PHONE:** 800.909.0073

Day Of Event Contact: Don Peasley : 248.840.3378



- 1- Registration
- 2- In Fo Table
- 3,4,5,6, - Sponsor Tables
- 7-8- Speakers
- * - Yoga students
- 9-10 - Trash
- 11-12 - Signs

HERBERT STREET

2019 poster
+
Sign

yogi
SHELTER

cutters tenders
COMPLETE GROUNDS MAINTENANCE

Stemford
HEALTH SYSTEM
NEUROSCIENCE INSTITUTE



yoga
in the park
6-22-19

Yoga Moves MS

Huntington's Disease
Society of America
Michigan CHAPTER

teva

cuttersstudios

Where Little Yogis Come To Life

V. INSURANCE INFORMATION

INSURANCE REQUIREMENTS

For most types of activities, the City requires a certificate of insurance and a signed hold-harmless agreement on the event sponsor's letterhead. Please submit a copy of your standard certificate of insurance with your completed application, which will be reviewed for compliance with the City's insurance requirements.

Following are the general insurance requirements for events held on City property (items A thru I). If alcoholic beverages are to be served, you will need to add the coverage described in item J. The required limits and conditions may vary depending upon the scope of the event and the organization of the event sponsor. You will be notified of additional insurance requirements, if applicable, upon completion of the review process.

- A. Workers' Compensation Insurance. Workers' compensation insurance, including employers' liability coverage, in accordance with all applicable statutes of the state.
- B. Commercial General Liability (CGL) Insurance. 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 broad form general liability extensions or equivalent.
- C. Motor Vehicle Liability Insurance. 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 insurance and motor vehicle liability insurance as described above shall include an endorsement stating the following shall be ***Additional Insureds: The City of Birmingham, including all elected and appointed officials, all employee and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof. This coverage shall be primary to any other coverage that may be available to the additional insured, whether any other available coverage by primary, contributing or excess.***

- E. Cancellation Notice. Thirty days advance written notice of insurance cancellation, non-renewal and/or reduction or material change in coverage shall be provided to the City. Notice of cancellation, material change or reduction shall be attached to the certificate of insurance, or otherwise evidenced as in effect under the policy listed.
- F. Proof of Insurance Coverage. The City shall be provided with certificates of insurance evidencing the coverages outlined above.
- G. Expiration. If any of the above coverages expire, renewal certificates and/or policies must be provided to the City at least ten days prior to the expiration date.
- H. Acceptability of Insurance Company. All coverages shall be with insurance carriers licensed to do business in the state. All coverages shall be with carriers acceptable to the City.
- I. Hold-Harmless Agreement. The hold-harmless agreement should be submitted on the applicant's letterhead or stationery and signed by an authorized representative of the organization. (See attached)

If alcoholic beverages are to be served, you will need to add the coverage described in item J, below:

- J. Liquor Liability Insurance: The event sponsor shall procure and maintain for this event liquor liability insurance with limits of liability of not less than \$1,000,000 per occurrence for each covered location. The liquor liability insurance as described above shall include an endorsement naming the City of Birmingham as additional insured.



Huntington's Disease
Society of America



Michigan CHAPTER

HOLD-HARMLESS AGREEMENT

"To the fullest extent permitted by law, **Don Peasley/HDSA Michigan Chapter** and any entity or person for whom the **(Don Peasley/HDSA Michigan Chapter)** 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 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 activity/event. Such responsibility shall not be construed as liability for damage caused by or resulting from the sole act or omission of the City of Birmingham, its elected or appointed officials, employees, volunteers or others working on behalf of the City of Birmingham."

Applicant's signature

3.1.21

Date

DEPARTMENT APPROVALS

EVENT NAME: YOGA IN THE PARK

LICENSE NUMBER #21-00012010

COMMISSION HEARING DATE: April 12, 2021

NOTE TO STAFF: Please submit approval by **April 5, 2021**

DATE OF EVENT: JUNE 26, 2021

DEPARTMENT	APPROVED	COMMENTS	PERMITS REQUIRED (Must be obtained directly from individual departments)	ESTIMATED COSTS (Must be paid two weeks prior to the event. License will not be issued if unpaid.)	ACTUAL COSTS (Event will be invoiced by the Clerk's office after the event)
PLANNING 101-000.000-634.0005 248.530.1855	BC	No Cost / No Comment		\$0	
BUILDING 101-000.000.634.0005 248.530.1850	MJM	The 8'x8' tents do not require a permit. Tents must be weighted down and not staked.		\$0	
FIRE 101-000.000-634.0004 248.530.1900	JDP	Fire extinguisher 2A:10BC (size) required on any stage, tent or cooking area. Maintain egress passages. Fire retardant certificates for tents. Anchor tents securely to ground.		\$0	
POLICE 101-000.000.634.0003 248.530.1870	SG	On duty personnel to provide extra patrol.		\$0	\$0
PUBLIC SERVICES 101-000.000-634.0002 248.530.1642	CL	The department will make arrangements with representative to deliver trash receptacles.		\$25	
ENGINEERING 101-000.000.634.0002 248.530.1839		Based on supplied information it doesn't appear as any ROW or Obstruction is required for the event.	None	\$0	\$0

SP+ PARKING	SG	No Parking Concerns.		\$0	\$0
INSURANCE 248.530.1807		Need to submit insurance certificate, Hold Harmless Agreement	None	\$0	\$0
CLERK 101-000.000-614.0000 248.530.1803	AH	Notification letters to be mailed by applicant no later than 3/29/2021. Notification addresses on file in the Clerk's Office. Evidence of required insurance must be on file with the Clerk's Office no later than 6/4/2021.	Applications for vendors license must be submitted no later than 6/4/2021	\$165 PAID 3/9/2021	
				TOTAL DEPOSIT REQUIRED \$25	ACTUAL COST

FOR CLERK'S OFFICE USE

Deposit paid _____

Actual Cost _____

Due/Refund_____



MEMORANDUM

Museum

DATE: April 12, 2021

TO: Tom Markus, City Manager

FROM: Leslie Pielack, Museum Director

SUBJECT: Contract Agreement-Birmingham Museum Phase I Heritage Zone Landscape Improvement Project

INTRODUCTION:

In its recent update of the Birmingham Museum Strategic Plan, accepted by the City Commission on September 14, 2020, the Museum Board identified landscape enhancements in the Heritage Zone as an important objective of the implementation of the landscape master plan. These include installation of primary signage and fencing modifications in the area around the Allen and Hunter Houses and the installation of three elm trees as part of the landscape restoration. The project will also raise awareness of the museum's planned landscape restoration and help with future fundraising efforts for additional improvements. The remainder of the Heritage Zone improvements consist of relocation of utilities, garden bed preparation, planting materials, and construction of a vine support, to be planned as additional funds become available.

BACKGROUND:

In 2018, the Museum Board worked with historic landscape architect Nagy Devlin Land Designs to develop a conceptual landscape master plan for the museum grounds. The resulting **2018 Birmingham Museum Landscape Master Plan** incorporates existing conditions and site history as well as public access needs. Of the four identified zones, the Heritage Zone is the most visible and most heavily used by the public. Nagy Devlin Land Designs developed the final detail design, approved by the Museum Board on March 14, 2019. On March 20, 2019, the Historic District Commission granted a Certificate of Appropriateness for the project.

At its November 6, 2020 meeting, the Museum Board identified the first phase of Heritage Zone improvements, to be undertaken in the spring of 2021. Planned enhancements will restore landscape elements from the original Allen House period with the removal of several non-historic tree species and re-installation of hybrid elms to restore the character of the front yard. Gates will be added to the existing picket fence, and additional fence detail will be added to differentiate the Hunter House area with a more historically accurate fencing baseboard. Lighted permanent signage will also be installed in the garden area between the Allen and Hunter Houses.

A Request For Proposals was issued for the Birmingham Museum-Phase I Heritage Zone Landscape Improvement Project and two qualified bids were received. City staff reviewed the bids and firms' qualifications, and bids were also reviewed by the Museum Board at its March 18, 2021 meeting. By unanimous vote of 6-0, the Museum Board voted to recommend that Worry Free Outdoor Services be awarded the contract. Worry Free Outdoor Services, Inc. met all requirements, was the lowest qualified bidder at \$ 33,400.00, and has successfully completed similar projects with positive references from other local municipalities. Worry Free also has an established history and relationship with the City of Birmingham through past projects with the Birmingham Shopping District and Department of Public Services. Subject to Commission approval of the contract, project completion is expected by July 1, 2021.

Phase I Heritage Zone Landscape Improvements	Worry Free Outdoor Services, Inc.	L.G.K. Building, Inc.
	\$ 33,400	\$ 38,500

LEGAL REVIEW:

City Attorney Mary Kucharek has provided a legal review of the contract agreement for the Birmingham Museum Phase I Heritage Zone Landscape Improvement Project with Worry Free Outdoor Services, Inc.

FISCAL IMPACT:

The Museum received \$15,000 in December 2018 for this project. Those funds were recorded in the Capital Projects Fund. In addition, the Museum budgeted \$6,000 in their General Fund budget for this project for a total of \$21,000 in available funds. The remaining \$12,400 is being proposed to come from funds that were budgeted for the window restoration project. That project is being postponed to the 2021-2022 fiscal year.

It is recommended that the entire project be charged to the General Fund and transfer the donation from the Capital Projects Fund to the General Fund. A budget amendment would be necessary to transfer these funds.

SUMMARY

A phased approach to the Birmingham Museum Landscape Master Plan will enable fundraising and community involvement for project components at the various stages and make graduated progress toward improved public access. The fencing, primary signage, and installation of elm trees in the Heritage Zone area will provide enhancements in the most visible and most utilized area of the museum grounds. The use of significant donated funds also demonstrates a commitment to public engagement in the restoration and improvement of the site. Worry Free Outdoor Services, Inc. has met the requirements and has presented the most qualified and lowest proposal to complete the project. It is therefore recommended that the contract award for the Birmingham Museum-Phase I Heritage Zone Landscape Improvement Project go to Worry Free Outdoor Services, Inc., for \$33,400.00 and that a budget amendment be approved to transfer the donation from the Capital Projects Fund.

ATTACHMENTS:

1. Contract Agreement with insurance documents
2. Request for Proposals with Addendum 1
3. Excerpt of minutes of the Museum Board meeting of March 14, 2019
4. Excerpt of minutes of the Historic District Commission meeting of March 20, 2019
5. Excerpt of minutes of the Museum Board meeting of November 5, 2020
6. Excerpt of draft minutes of the Museum Board meeting of March 18, 2021

SUGGESTED RESOLUTION:

To award the project for Birmingham Museum Phase I Heritage Zone Landscape Improvement Project to Worry Free Outdoor Services, Inc. in the amount of \$33,400.00, to be charged to the Allen House Other Contractual Services account, #101-804.002-811.0000 and further; to approve the appropriation and budget amendment to the fiscal year 2020-2021 General Fund and Capital Projects Fund budgets as follows:

General Fund

Revenues:

101-000.000-400.0000 Draw from Fund Balance	\$(15,000)
101-000.000-699.0401 Transfer in Capital Projects Fund	<u>15,000</u>
Total Revenue	<u>\$ -0-</u>

Capital Projects Fund

Revenues:

401-000.000-400.0000 Draw from Fund Balance	\$15,000
---	----------

Expenditures:

401-804.001-999.0101 Transfer to General Fund	\$15,000
---	----------

AGREEMENT

Birmingham Museum - Phase I Heritage Zone Landscape Improvement Project

This AGREEMENT, made this _____ day of _____, 2021, by and between CITY OF BIRMINGHAM, having its principal municipal office at 151 Martin Street, Birmingham, MI (hereinafter sometimes called "City"), and WORRY FREE OUTDOOR SERVICES, INC., having its principal office at 1460 Rochester Road, Troy, MI (hereinafter called "Contractor"), provides as follows:

WITNESSETH:

WHEREAS, the City of Birmingham, through its Building Facilities Department, is desirous of making Phase I landscape improvements to the Heritage Zone at the Birmingham Museum in the City of Birmingham.

WHEREAS, the City has heretofore advertised for bids for the procurement and performance of services required to make Phase I landscape improvements to the Heritage Zone at the Birmingham Museum, 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 make Phase I landscape improvements to the Heritage Zone located at the Birmingham Museum.

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 make Phase I landscape improvements to the Heritage Zone at the Birmingham Museum and the Contractor's cost proposal dated _____, 2021 shall be incorporated herein by reference (Exhibits A-E) and shall become a part of this Agreement, and shall be binding upon both parties hereto. If any of the documents are in conflict with one another, this Agreement shall take precedence, then the RFP.

2. The City shall pay the Contractor for the performance of this Agreement in an amount not to exceed \$36,225.00 as set forth in the Contractor's 2021 cost proposal (Exhibit C).

3. This Agreement shall commence upon execution by both parties, unless the City exercises its option to terminate the Agreement in accordance with the Request for Proposals.

4. The Contractor shall employ personnel of good moral character and fitness in performing all services under this Agreement.

5. The Contractor and the City agree that the Contractor is acting as an independent Contractor with respect to the Contractor's role in providing services to the City pursuant to this Agreement, and as such, shall be liable for its own actions and neither the Contractor nor its employees shall be construed as employees of the City. Nothing contained in this Agreement shall be construed to imply a joint venture or partnership and neither party, by virtue of this Agreement, shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party, except as specifically outlined herein. Neither the City nor the Contractor shall be considered or construed to be the agent of the other, nor shall either have the right to bind the other in any manner whatsoever, except as specifically provided in this Agreement, and this Agreement shall not be construed as a contract of agency. The Contractor shall not be entitled or eligible to participate in any benefits or privileges given or extended by the City, or be deemed an employee of the City for purposes of federal or state withholding taxes, FICA taxes, unemployment, workers' compensation or any other employer contributions on behalf of the City.

6. The Contractor acknowledges that in performing services pursuant to this Agreement, certain confidential and/or proprietary information (including, but not limited to, internal organization, methodology, personnel and financial information, etc.) may become involved. The Contractor recognizes that unauthorized exposure of such confidential or proprietary information could irreparably damage the City. Therefore, the Contractor agrees to use reasonable care to safeguard the confidential and proprietary information and to prevent the unauthorized use or disclosure thereof. The Contractor shall inform its employees of the confidential or proprietary nature of such information and shall limit access thereto to employees rendering services pursuant to this Agreement. The Contractor further agrees to use such confidential or proprietary information only for the purpose of performing services pursuant to this Agreement.

7. This Agreement shall be governed by and performed, interpreted and enforced in accordance with the laws of the State of Michigan. The Contractor agrees to perform all services provided for in this Agreement in accordance with and in full compliance with all local, state and federal laws and regulations.

8. If any provision of this Agreement is declared invalid, illegal or unenforceable, such provision shall be severed from this Agreement and all other provisions shall remain in full force and effect.

9. This Agreement shall be binding upon the successors and assigns of the parties hereto, but no such assignment shall be made by the Contractor without the prior written consent of the City. Any attempt at assignment without prior written consent shall be void and of no effect.

10. The Contractor agrees that neither it nor its subcontractors will discriminate against any employee or applicant for employment with respect to hire, tenure, terms,

conditions or privileges of employment, or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, height, weight or marital status. The Contractor shall inform the City of all claims or suits asserted against it by the Contractor's employees who work pursuant to this Agreement. The Contractor shall provide the City with periodic status reports concerning all such claims or suits, at intervals established by the City.

11. The Contractor shall not commence work under this Agreement until it has, at its sole expense, obtained the insurance required under this paragraph. All coverages shall be with insurance companies licensed and admitted to do business in the State of Michigan. All coverages shall be with carriers acceptable to the City of Birmingham.

12. The Contractor shall maintain during the life of this Agreement the applicable types of insurance coverage and minimum limits as set forth below:

A. Workers' Compensation Insurance:

For Non-Sole Proprietorships: Contractor shall procure and maintain during the life of this Agreement, Workers' Compensation Insurance, including Employers Liability Coverage, in accordance with all applicable statutes of the State of Michigan.

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

B. Commercial General Liability Insurance: Contractor shall procure and maintain during the life of this Agreement, Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than **\$1,000,000** per occurrence combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent; (E) Deletion of all Explosion, Collapse and Underground (XCU) Exclusions, if applicable.

C. Motor Vehicle Liability: Contractor shall procure and maintain during the life of this Agreement Motor Vehicle Liability Insurance, including all applicable no-fault coverages, with limits of liability of not less than \$1,000,000 per occurrence combined single limit Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.

D. Additional Insured: Commercial General Liability and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating the following **Additional Insureds: The City of Birmingham,**

including all elected and appointed officials, all employee and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof. This coverage shall be primary to any other coverage that may be available to the additional insured, whether any other available coverage by primary, contributing or excess.

- E. Professional Liability: If applicable, professional liability insurance with limits of not less than \$1,000,000 per claim if Contractor will provide service that are customarily subject to this type of coverage.
- F. Pollution Liability Insurance: Contractor shall procure and maintain during the life of this Agreement Pollution Liability Insurance, with limits of liability of not less than \$1,000,000, per occurrence preferred, but claims made accepted.
- G. Owners Contractors Protective Liability: The Contractor shall procure and maintain during the life of this contract, an Owners Contractors Protective Liability Policy with limits of liability not less than \$3,000,000 per occurrence, combined single limit, Personal Injury, Bodily Injury and Property Damage. The City of Birmingham shall be "Name Insured" on said coverage.
- H. Cancellation Notice: Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.
- I. Proof of Insurance Coverage: Contractor shall provide the City of Birmingham at the time the Agreement is returned for execution, Certificates of Insurance and/or policies, acceptable to the City of Birmingham, as listed below.
 - 1) Two (2) copies of Certificate of Insurance for Workers' Compensation Insurance, or a signed and notarized copy of the Sole Proprietor Form;
 - 2) Two (2) copies of Certificate of Insurance for Commercial General Liability Insurance;
 - 3) Two (2) copies of Certificate of Insurance for Vehicle Liability Insurance;
 - 4) Two (2) copies of Certificate of Insurance for Professional Liability Insurance, if applicable;
 - 5) If so requested, Certified Copies of all policies mentioned above will be furnished.
- J. Coverage Expiration: If any of the above coverages expire during the term of this Agreement, Contractor shall deliver renewal certificates and/or policies to the City of Birmingham at least (10) days prior to the expiration date.

- K. Maintaining Insurance: Upon failure of the Contractor to obtain or maintain such insurance coverage for the term of the Agreement, the City of Birmingham may, at its option, purchase such coverage and subtract the cost of obtaining such coverage from the Agreement amount. In obtaining such coverage, the City of Birmingham shall have no obligation to procure the most cost-effective coverage but may contract with any insurer for such coverage.

13. To the fullest extent permitted by law, the Contractor and any entity or person for whom the Contractor is legally liable, agrees to be responsible for any liability, defend, pay on behalf of, indemnify, and hold harmless the City of Birmingham, its elected and appointed officials, employees and volunteers and others working on behalf of the City of Birmingham against any and all claims, demands, suits, or loss, including all costs and reasonable attorney fees connected therewith, and for any damages which may be asserted, claimed or recovered against or from and the City of Birmingham, its elected and appointed officials, employees, volunteers or others working on behalf of the City of Birmingham, by reason of personal injury, including bodily injury and death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with this Agreement. Such responsibility shall not be construed as liability for damage caused by or resulting from the sole act or omission of its elected or appointed officials, employees, volunteers or others working on behalf of the City of Birmingham.

14. If, after the effective date of this Agreement, any official of the City, or spouse, child, parent or in-law of such official or employee shall become directly or indirectly interested in this Agreement or the affairs of the Contractor, the City shall have the right to terminate this Agreement without further liability to the Contractor if the disqualification has not been removed within thirty (30) days after the City has given the Contractor notice of the disqualifying interest. Ownership of less than one percent (1%) of the stock or other equity interest in a corporation or partnership shall not be a disqualifying interest. Employment shall be a disqualifying interest.

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

16. All notices required to be sent pursuant to this Agreement shall be mailed to the following addresses:

City of Birmingham
Attn: John Galik
151 Martin Street
Birmingham, MI 48009
248-530-1883

CONTRACTOR
Worry Free Outdoor Services, Inc.
Attn: Travis Beard, Vice President
1460 Rochester Road
Troy, MI / 248-585-2808

17. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled either by commencement of a suit in Oakland County Circuit Court, the 48th District Court or by arbitration. If both parties elect to have the dispute resolved by arbitration, it shall be settled pursuant to Chapter 50 of the Revised Judicature Act for the State of Michigan and administered by the American Arbitration Association with one arbitrator being used, or three arbitrators in the event any party's claim exceeds \$1,000,000. Each party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Such arbitration shall qualify as statutory arbitration pursuant to MCL§600.5001 et seq., and the Oakland County Circuit Court or any court having jurisdiction shall render judgment upon the award of the arbitrator made pursuant to this Agreement. The laws of the State of Michigan shall govern this Agreement, and the arbitration shall take place in Oakland County, Michigan. In the event that the parties elect not to have the matter in dispute arbitrated, any dispute between the parties may be resolved by the filing of a suit in the Oakland County Circuit Court or the 48th District Court.

18. FAIR PROCUREMENT OPPORTUNITY: Procurement for the City of Birmingham will be handled in a manner providing fair opportunity for all businesses. This will be accomplished without abrogation or sacrifice of quality and as determined to be in the best interest of the City of Birmingham.

IN WITNESS WHEREOF, the said parties have caused this Agreement to be executed as of the date and year above written.

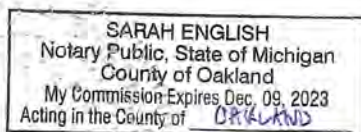
CONTRACTOR


WORRY FREE OUTDOOR SERVICES, INC.

By: 
Travis Beard, Vice President

STATE OF MICHIGAN)
)ss
COUNTY OF OAKLAND)

On this 6TH day of APRIL, 2021, before me personally appeared TRAVIS BEARD who acknowledged he is the Vice President of Worry Free Outdoor Services, Inc. and that with authority to do so he signed this Agreement.



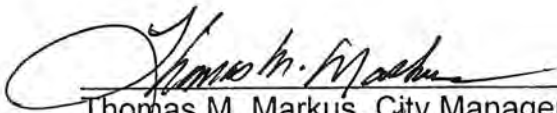

SARAH ENGLISH Notary Public
OAKLAND County, Michigan
Acting in OAKLAND County, Michigan
My commission expires: 12/09/2023

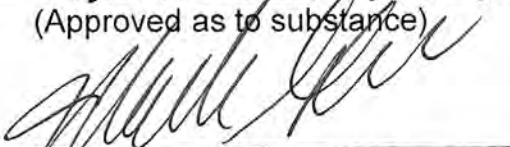
CITY OF BIRMINGHAM


By: _____
Pierre Boutros
Its: Mayor

By: _____
Alexandria Bingham
Its: City Clerk

Approved:


Thomas M. Markus, City Manager
(Approved as to substance)


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


Leslie Pielack, Museum Director
(Approved as to substance)

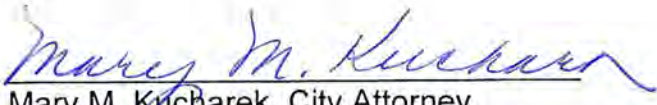

Mary M. Kucharek, City Attorney
(Approved as to form)

EXHIBIT A



REQUEST FOR PROPOSALS

Birmingham Museum-Phase I Heritage Zone Landscape Improvement Project

Sealed proposals endorsed **"Birmingham Museum - Phase I Heritage Zone Landscape Improvement Project"**, will be received at the Office of the City Clerk, 151 Martin Street, PO Box 3001, Birmingham, Michigan, 48012; until Friday, March 12, 2021 at 1:00 p.m. after which time bids will be publicly opened and read.

PLEASE NOTE: Due to Covid-19 the Municipal Building at 151 Martin is closed to the public with the exception of the Police Station vestibule on the East side (Pierce St.) of the building. Inside the vestibule, there is a drop box. **Proposal must be clearly labeled: Attention City Clerk – Birmingham Museum - Phase I Heritage Zone Landscape Improvement Project."**

Bidders will be required to attend a mandatory pre-bid meeting on Thursday, February 25, 2021 at 1:00 PM at the Birmingham Museum, located at 556 W. Maple, Birmingham, MI 48009. Bidders must register for the pre-bid meeting by 3:00 p.m. Wednesday February 24, 2021 by contacting Leslie Pielack at 248-530-1682.

The City of Birmingham, Michigan is accepting sealed bid proposals from qualified professional firms to furnish all materials, necessary equipment and perform all required work necessary for the Birmingham Museum-Phase I Heritage Zone Landscape Improvement Project. This work must be performed as specified in accordance with the specifications contained in the Request For Proposals (RFP).

The RFP, including the Specifications, may be obtained online from the Michigan Inter-governmental Trade Network at <http://www.mitn.info> or at the City of Birmingham, 151 Martin St., Birmingham, Michigan, by contacting Leslie Pielack at 248-530-1682 or lpielack@bhamgov.org.

The acceptance of any proposal made pursuant to this invitation shall not be binding upon the City until an agreement has been executed.

Submitted to MITN: February 11, 2021
Mandatory Pre-Bid Meeting: Thursday, February 25, 2021, 1:00 p.m.
At the Birmingham Museum
556 W. Maple, Birmingham, MI 48009

Deadline for Submissions: Friday, March 12, 2021 at 1:00 p.m.
Contact Person: Leslie Pielack
P.O. Box 3001, 151 Martin Street
Birmingham, MI 48012-3001
Phone: 248-530-1883
Email: lpielack@bhamgov.org



**REQUEST FOR PROPOSALS
For BIRMINGHAM MUSEUM-ALLEN HOUSE HISTORIC WINDOW RESTORATION
PROJECT**

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INTRODUCTION

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

The City of Birmingham, Michigan is accepting sealed bid proposals from qualified professional contractors to furnish all materials, necessary equipment and to perform all required work necessary for the Birmingham Museum-Phase I Heritage Zone Landscape Improvement Project located at the Birmingham Museum at 556 W. Maple, Birmingham, MI 48009. This work must be performed as specified and in accordance with the specifications outlined by the Scope of Work contained in this Request For Proposals (RFP).

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

It is anticipated the selection of a firm will be completed by April 28, 2021. An Agreement for services will be required with the selected Contractor. A copy of the Agreement is contained herein for reference. Contract services will commence upon execution of the service agreement by the City.

REQUEST FOR PROPOSALS (RFP)

The purpose of this RFP is to request sealed bid proposals from qualified parties presenting their qualifications, capabilities and costs in order to provide the work for the Birmingham Museum-Phase I Heritage Zone Landscape Improvement Project in accordance with the specifications outlined by the Scope of Work contained in this RFP.

The Birmingham Museum consists of two buildings located as follows: the Allen House, located at 556 W. Maple Rd. and the Hunter House, located at 550 W. Maple Rd. in the city of Birmingham, MI 48009. The project will be on the grounds.

MANDATORY PRE-BID MEETING

Prior to submitting a bid, interested firms are required to attend a pre-bid meeting to conduct an on-site visit of the location and access to the project location to make inquiries about the RFP. **Bidders will be required to attend a mandatory pre-bid meeting on Thursday, February 25, 2021 at 1:00 PM. at the Birmingham Museum, located at 556 W. Maple, Birmingham, MI 48009. Bidders must register for the pre-bid meeting by 3:00 p.m. Wednesday February 24, 2021 by contacting Leslie Pielack at 248-530-1682.**

INVITATION TO SUBMIT A PROPOSAL

Proposals shall be submitted no later than Friday, March 12, 2021 at 1:00 p.m. to:

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

One (1) original and one (1) copy of the proposal shall be submitted. The proposal should be firmly sealed in an envelope, which shall be clearly marked on the outside, endorsed **"Birmingham Museum - Phase I Heritage Zone Landscape Improvement Project."**

Any proposal received after the due date and time cannot be accepted and will be rejected and returned, unopened, to the proposer. Proposer may submit more than one proposal provided each proposal meets the functional requirements.

INSTRUCTIONS TO BIDDERS

1. Any and all forms requesting information from the bidder must be completed on the attached forms contained herein (see Contractor's Responsibilities). If more than one bid is submitted, a separate bid proposal form must be used for each.
2. Any request for clarification of this RFP shall be made in writing and delivered to: John Galik, 248-530-1883 (jgalik@bhamgov.org), 151 Martin, Birmingham, MI 48009. Such request for clarification shall be delivered, in writing, no later than 5 days prior to the deadline for submissions.
3. All proposals must be submitted following the RFP format as stated in this document and shall be subject to all requirements of this document including the instruction to respondents and general information sections. All proposals must be regular in every respect and no interlineations, excisions, or special conditions shall be made or included in the RFP format by the respondent.
4. The contract will be awarded by the City of Birmingham to the most responsive and qualified bidder with the lowest price and the contract will require the completion of the work pursuant to these documents.
5. Each respondent shall include in his or her proposal, in the format requested, the cost of performing the work. Municipalities are exempt from Michigan State Sales and Federal Excise taxes. Do not include such taxes in the proposal figure. The City will furnish the successful company with tax exemption information when requested.
6. Each respondent shall include in their proposal the following information: Firm name, address, city, state, zip code, telephone number, and fax number. The company shall also provide the name, address, telephone number and e-mail

address of an individual in their organization to whom notices and inquiries by the City should be directed as part of their proposal.

EVALUATION PROCEDURE AND CRITERIA

The evaluation panel will consist of City staff and any other person(s) designated by the City who will evaluate the proposals based on, but not limited to, the following criteria:

1. Ability to provide services as outlined.
2. Related experience with similar landscape improvement projects, Contractor background, and personnel qualifications.
3. Quality of materials proposed.
4. Overall Costs.
5. References.

TERMS AND CONDITIONS

1. The City reserves the right to reject any or all proposals received, waive informalities, or accept any proposal, in whole or in part, it deems best. The City reserves the right to award the contract to the next most qualified Contractor if the successful Contractor does not execute a contract within ten (10) days after the award of the proposal.
2. The City reserves the right to request clarification of information submitted and to request additional information of one or more Contractors.
3. The City reserves the right to terminate the contract at its discretion should it be determined that the services provided do not meet the specifications contained herein. The City may terminate this Agreement at any point in the process upon notice to Contractor sufficient to indicate the City's desire to do so. In the case of such a stoppage, the City agrees to pay Contractor for services rendered to the time of notice, subject to the contract maximum amount.
4. Any proposal may be withdrawn up until the date and time set above for the opening of the proposals. Any proposals not so withdrawn shall constitute an irrevocable offer, for a period of ninety (90) days, to provide the services set forth in the proposal.
5. The cost of preparing and submitting a proposal is the responsibility of the Contractor and shall not be chargeable in any manner to the City.
6. The successful bidder will be required to furnish a Performance Bond in an amount not less than 100% of the contract price in favor of the City of Birmingham, conditioned upon the faithful performance of the contract, and completion on or before the date specified.

7. Payment will be made within thirty (30) days after invoice. Acceptance by the City is defined as authorization by the designated City representative to this project that all the criteria requested under the Scope of Work contained herein have been provided. Invoices are to be rendered each month following the date of execution of an Agreement with the City.
8. The Contractor will not exceed the timelines established for the completion of this project.
9. The successful bidder shall enter into and will execute the contract as set forth and attached as Attachment A.

CONTRACTOR'S RESPONSIBILITIES

Each bidder shall provide the following as part of their proposal:

1. Complete and sign all forms requested for completion within this RFP.
 - a. Bidder's Agreement (Attachment B - p. 17)
 - b. Cost Proposal (Attachment C - p. 18)
 - c. Iran Sanctions Act Vendor Certification Form (Attachment D - p. 19)
 - d. Agreement (p. 11 – **only if selected by the City**).
2. Provide a description of completed projects that demonstrate the firm's ability to complete projects of similar scope, size, and purpose, and in a timely manner, and within budget.
3. Provide a written plan detailing the anticipated timeline for completion of the tasks set forth in the Scope of Work (p. 9).
4. The Contractor will be responsible for any changes necessary for the plans to be approved by the City of Birmingham.
5. Provide a description of the firm, including resumes and professional qualifications of the principals involved in administering the project.
6. Provide a list of sub-contractors and their qualifications, if applicable.
7. Provide three (3) client references from past projects, include current phone numbers. At least two (2) of the client references should be for projects utilizing the same materials included in the Contractor's proposal.
8. The Contractor will be responsible for the disposal of all material and any damages which occur as a result of any of employees or subcontractors of the Contractor during this project.

9. The contractor will be responsible for getting the building and parking permits at no cost to the contractor.
10. The successful bidder shall provide a Performance Bond in an amount not less than 100% of the contract price in favor of the City of Birmingham, conditioned upon the faithful performance of the contract, and completion on or before the date specified.
11. Provide a project timeline addressing each section within the Scope of Work and a description of the overall project approach. Include a statement that the Contractor will be available according to the proposed timeline.

CITY RESPONSIBILITY

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

SETTLEMENT OF DISPUTES

The successful bidder agrees to certain dispute resolution avenues/limitations. Please refer to paragraph 17 of the Agreement attached as Attachment A for the details and what is required of the successful bidder.

INSURANCE

The successful bidder is required to procure and maintain certain types of insurances. Please refer to paragraph 12 of the Agreement attached as **Attachment A** for the details and what is required of the successful bidder.

CONTINUATION OF COVERAGE

The Contractor also agrees to provide all insurance coverages as specified. Upon failure of the Contractor to obtain or maintain such insurance coverage for the term of the agreement, the City may, at its option, purchase such coverage and subtract the cost of obtaining such coverage from the contract amount. In obtaining such coverage, Birmingham shall have no obligation to procure the most cost effective coverage but may contract with any insurer for such coverage.

EXECUTION OF CONTRACT

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

INDEMNIFICATION

The successful bidder agrees to indemnify the City and various associated persons. Please refer to paragraph 13 of the Agreement attached as Attachment A for the details and what is required of the successful bidder.

CONFLICT OF INTEREST

The successful bidder is subject to certain conflict of interest requirements/restrictions. Please refer to paragraph 14 of the Agreement attached as Attachment A for the details and what is required of the successful bidder.

EXAMINATION OF PROPOSAL MATERIALS

The submission of a proposal shall be deemed a representation and warranty by the Contractor that it has investigated all aspects of the RFP, that it is aware of the applicable facts pertaining to the RFP process and its procedures and requirements, and that it has read and understands the RFP. Statistical information which may be contained in the RFP or any addendum thereto is for informational purposes only.

PROJECT TIMELINE

It is anticipated that this project will commence by May 1, 2021, and will be completed by mid-July, 2021.

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

SCOPE OF WORK

The historic 1926 Allen and 1822 Hunter Houses are in the Mill Pond Historic District in the City of Birmingham and part of the Birmingham Museum complex. The museum grounds also include a public plaza between the two houses and a structure housing the historic Hill School Bell. A landscape master plan has been developed for the entire site, which is a public park, to provide greater public access and to restore the historic character of the site. The plan divides the site into four zones, each with unique features and planned enhancements.

The Heritage Zone incorporates the two buildings and plaza along Maple Road, and is the most visible area of the landscape. The first phase landscape improvements for this zone consist of modifications to the wood fencing, addition of wood gates, installation of permanent signage, and installation of historically appropriate trees in the area along Maple Road.

The completion of the Birmingham Museum-Phase I Heritage Zone Improvement Project must be undertaken by a qualified contractor. A detailed design with specifications has been developed in strict accordance with the Secretary of the Interior Standards for the Treatment of Historic Properties (see Attachment E, "Heritage Zone Landscape Plan LP-1 and LP-2"). The Contractor shall perform the following services in accordance with the requirements as defined and noted herein for the **Birmingham Museum - Phase I Heritage Zone Landscape Improvement Project**:

1. The Contractor shall furnish all labor, materials, and equipment required to perform all required work necessary for the Birmingham Museum-Phase I Heritage Zone Landscape Improvement Project, located at 556 W. Maple Rd., Birmingham, MI 48009 in accordance with the requirements as defined and noted herein and by the architectural design and specifications, "Heritage Zone Landscape Plan LP-1 and LP-2." (Attachment E), to consist only of the following components:
 - a) Modifications to the wood fencing at the Hunter House, consisting of adding base board to the existing fence. Lumber components to be Grade A, pressure treated pine finished with white paint.
 - b) Addition of wood gates in the existing fencing at the Hunter House and at the Allen House. Lumber components to be Grade A, pressure treated pine finished with white paint.
 - c) Installation of permanent wood sign on base, including removal of concrete, all lighting, and preparation only of garden bed for planting for primary sign; and fabrication and installation of wood museum logo sign for fence. Lumber components to be Grade A pressure treated pine finished with white paint. Plywood sheets to be AB grade marine plywood finished with white paint and Birmingham Museum logo colors.
 - d) Removal of non-historic trees (9" crab apple, 17" Norway maple, 14" horse chestnut, 8" linden 5" callery pear, and 9" and 12" catalpas) and replacement

with three disease-resistant Pioneer elm trees as specified in the "Heritage Zone Landscape Plan LP-1 and LP-2" (Attachment E) along Maple Road.

2. As a public park, the site will be utilized by the general public during construction.
3. Project requirements are detailed in "Heritage Zone Landscape Plan LP-1 and LP-2." (Attachment E):
4. Alternative Pricing: The Contractor shall provide additional alternative pricing as follows and include as itemized alternatives in the bidder's Cost Proposal (Attachment C):
 - a. one or more sign foundation options that include the following:
 - Provide for economic or installation advantages
 - Protect the sign from heaving and settlement, and ensure the sign remains sturdy, level and plumb
 - b. Substitution of High Density Poly Ethylene (HDPE) for all wood lumber in fencing, gates, and sign components with the following specifications:
 - Lumber shall be manufactured with recycled HDPE, molded in one piece per specified size, will have UV additives to prevent deterioration, and made up of no less than ninety-five percent (95%) HDPE.
 - All HDPE wood lumber substitutions to be painted white
5. The Contractor shall be responsible for the disposal of all materials in a safe and legal manner. **All bidders will outline their procedures for dust and debris collection during working hours and all cleaning activities.**
6. The Contractor shall operate in a safe manner and will observe all MIOSHA guidelines. **The Contractor shall provide the City with a copy of its COVID-19 Plan required by MIOSHA.**
7. The Contractor shall provide any and all manuals and/or warranty information related to this project to the City upon completion of the project.
8. The Contractor shall comply will all City of Birmingham's regulations for maintaining construction sites.
9. This section and referenced documents shall constitute the Scope of Work for this project and as such all requirements must be met.

ATTACHMENT A - AGREEMENT

Birmingham Museum - Phase I Heritage Zone Landscape Improvement Project

This AGREEMENT, made this _____ day of _____, 2021, by and between CITY OF BIRMINGHAM, having its principal municipal office at 151 Martin Street, Birmingham, MI (hereinafter sometimes called "City"), and _____, Inc., having its principal office at _____ (hereinafter called "Contractor"), provides as follows:

WITNESSETH:

WHEREAS, the City of Birmingham, through the Birmingham Museum, is desirous of making Phase I landscape improvements to the Heritage Zone at the Birmingham Museum in the City of Birmingham.

WHEREAS, the City has heretofore advertised for bids for the procurement and performance of services required to make Phase I landscape improvements to the Heritage Zone at the Birmingham Museum, 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 make Phase I landscape improvements to the Heritage Zone located at the Birmingham Museum.

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 make Phase I landscape improvements to the Heritage Zone at the Birmingham Museum and the Contractor's cost proposal dated _____, 2021 shall be incorporated herein by reference (Attachment E) and shall become a part of this Agreement, and shall be binding upon both parties hereto. If any of the documents are in conflict with one another, this Agreement shall take precedence, then the RFP.
2. The City shall pay the Contractor for the performance of this Agreement in an amount not to exceed _____, as set forth in the Contractor's _____, 2021 cost proposal.
3. This Agreement shall commence upon execution by both parties, unless the City exercises its option to terminate the Agreement in accordance with the Request for Proposals.
4. The Contractor shall employ personnel of good moral character and fitness in performing all services under this Agreement.

5. The Contractor and the City agree that the Contractor is acting as an independent Contractor with respect to the Contractor's role in providing services to the City pursuant to this Agreement, and as such, shall be liable for its own actions and neither the Contractor nor its employees shall be construed as employees of the City. Nothing contained in this Agreement shall be construed to imply a joint venture or partnership and neither party, by virtue of this Agreement, shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party, except as specifically outlined herein. Neither the City nor the Contractor shall be considered or construed to be the agent of the other, nor shall either have the right to bind the other in any manner whatsoever, except as specifically provided in this Agreement, and this Agreement shall not be construed as a contract of agency. The Contractor shall not be entitled or eligible to participate in any benefits or privileges given or extended by the City, or be deemed an employee of the City for purposes of federal or state withholding taxes, FICA taxes, unemployment, workers' compensation or any other employer contributions on behalf of the City.

6. The Contractor acknowledges that in performing services pursuant to this Agreement, certain confidential and/or proprietary information (including, but not limited to, internal organization, methodology, personnel and financial information, etc.) may become involved. The Contractor recognizes that unauthorized exposure of such confidential or proprietary information could irreparably damage the City. Therefore, the Contractor agrees to use reasonable care to safeguard the confidential and proprietary information and to prevent the unauthorized use or disclosure thereof. The Contractor shall inform its employees of the confidential or proprietary nature of such information and shall limit access thereto to employees rendering services pursuant to this Agreement. The Contractor further agrees to use such confidential or proprietary information only for the purpose of performing services pursuant to this Agreement.

7. This Agreement shall be governed by and performed, interpreted and enforced in accordance with the laws of the State of Michigan. The Contractor agrees to perform all services provided for in this Agreement in accordance with and in full compliance with all local, state and federal laws and regulations.

8. If any provision of this Agreement is declared invalid, illegal or unenforceable, such provision shall be severed from this Agreement and all other provisions shall remain in full force and effect.

9. This Agreement shall be binding upon the successors and assigns of the parties hereto, but no such assignment shall be made by the Contractor without the prior written consent of the City. Any attempt at assignment without prior written consent shall be void and of no effect.

10. The Contractor agrees that neither it nor its subcontractors will discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment, or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, height, weight or marital status.

The Contractor shall inform the City of all claims or suits asserted against it by the Contractor's employees who work pursuant to this Agreement. The Contractor shall provide the City with periodic status reports concerning all such claims or suits, at intervals established by the City.

11. The Contractor shall not commence work under this Agreement until it has, at its sole expense, obtained the insurance required under this paragraph. All coverages shall be with insurance companies licensed and admitted to do business in the State of Michigan. All coverages shall be with carriers acceptable to the City of Birmingham.

12. The Contractor shall maintain during the life of this Agreement the applicable types of insurance coverage and minimum limits as set forth below:

A. Workers' Compensation Insurance:

For Non-Sole Proprietorships: Contractor shall procure and maintain during the life of this Agreement, Workers' Compensation Insurance, including Employers Liability Coverage, in accordance with all applicable statutes of the State of Michigan.

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

B. Commercial General Liability Insurance: Contractor shall procure and maintain during the life of this Agreement, Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than **\$1,000,000** per occurrence combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent; (E) Deletion of all Explosion, Collapse and Underground (XCU) Exclusions, if applicable.

C. Motor Vehicle Liability: Contractor shall procure and maintain during the life of this Agreement Motor Vehicle Liability Insurance, including all applicable no-fault coverages, with limits of liability of not less than \$1,000,000 per occurrence combined single limit Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.

D. Additional Insured: Commercial General Liability and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating the following **Additional Insureds: The City of Birmingham, including all elected and appointed officials, all employee and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof.** This coverage shall be primary to any other coverage that may be

available to the additional insured, whether any other available coverage by primary, contributing or excess.

- E. Professional Liability: If applicable, professional liability insurance with limits of not less than \$1,000,000 per claim if Contractor will provide service that are customarily subject to this type of coverage.
- F. Pollution Liability Insurance: Contractor shall procure and maintain during the life of this Agreement Pollution Liability Insurance, with limits of liability of not less than \$1,000,000, per occurrence preferred, but claims made accepted.
- G. Owners Contractors Protective Liability: The Contractor shall procure and maintain during the life of this contract, an Owners Contractors Protective Liability Policy with limits of liability not less than \$3,000,000 per occurrence, combined single limit, Personal Injury, Bodily Injury and Property Damage. The City of Birmingham shall be "Name Insured" on said coverage.
- H. Cancellation Notice: Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.
- I. Proof of Insurance Coverage: Contractor shall provide the City of Birmingham at the time the Agreement is returned for execution, Certificates of Insurance and/or policies, acceptable to the City of Birmingham, as listed below.
 - 1) Two (2) copies of Certificate of Insurance for Workers' Compensation Insurance, or a signed and notarized copy of the Sole Proprietor Form;
 - 2) Two (2) copies of Certificate of Insurance for Commercial General Liability Insurance;
 - 3) Two (2) copies of Certificate of Insurance for Vehicle Liability Insurance;
 - 4) Two (2) copies of Certificate of Insurance for Professional Liability Insurance, if applicable;
 - 5) If so requested, Certified Copies of all policies mentioned above will be furnished.
- J. Coverage Expiration: If any of the above coverages expire during the term of this Agreement, Contractor shall deliver renewal certificates and/or policies to the City of Birmingham at least (10) days prior to the expiration date.
- K. Maintaining Insurance: Upon failure of the Contractor to obtain or maintain such insurance coverage for the term of the Agreement, the City of Birmingham may, at its option, purchase such coverage and subtract the cost of obtaining such coverage from the Agreement amount. In obtaining such coverage, the City of Birmingham shall have no obligation to procure the most cost-effective coverage but may contract with any insurer for such coverage.

13. To the fullest extent permitted by law, the Contractor and any entity or person for whom the Contractor is legally liable, agrees to be responsible for any liability, defend, pay on behalf of, indemnify, and hold harmless the City of Birmingham, its elected and appointed officials, employees and volunteers and others working on behalf of the City of Birmingham against any and all claims, demands, suits, or loss, including all costs and reasonable attorney fees connected therewith, and for any damages which may be asserted, claimed or recovered against or from and the City of Birmingham, its elected and appointed officials, employees, volunteers or others working on behalf of the City of Birmingham, by reason of personal injury, including bodily injury and death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with this Agreement. Such responsibility shall not be construed as liability for damage caused by or resulting from the sole act or omission of its elected or appointed officials, employees, volunteers or others working on behalf of the City of Birmingham.

14. If, after the effective date of this Agreement, any official of the City, or spouse, child, parent or in-law of such official or employee shall become directly or indirectly interested in this Agreement or the affairs of the Contractor, the City shall have the right to terminate this Agreement without further liability to the Contractor if the disqualification has not been removed within thirty (30) days after the City has given the Contractor notice of the disqualifying interest. Ownership of less than one percent (1%) of the stock or other equity interest in a corporation or partnership shall not be a disqualifying interest. Employment shall be a disqualifying interest.

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

16. All notices required to be sent pursuant to this Agreement shall be mailed to the following addresses:

City of Birmingham
Attn: Leslie Pielack
151 Martin Street
Birmingham, MI
48009 248-530-1883

CONTRACTOR
(Insert Contractor Information)

17. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled either by commencement of a suit in Oakland County Circuit Court, the 48th District Court or by arbitration. If both parties elect to have the dispute resolved by arbitration, it shall be settled pursuant to Chapter 50 of the Revised Judicature Act for the State of Michigan and administered by the American Arbitration Association with one arbitrator being used, or three arbitrators in the event any party's claim exceeds \$1,000,000. Each party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Such arbitration shall qualify as statutory arbitration pursuant to MCL§600.5001 et. seq., and the Oakland County Circuit Court or

any court having jurisdiction shall render judgment upon the award of the arbitrator made pursuant to this Agreement. The laws of the State of Michigan shall govern this Agreement, and the arbitration shall take place in Oakland County, Michigan. In the event that the parties elect not to have the matter in dispute arbitrated, any dispute between the parties may be resolved by the filing of a suit in the Oakland County Circuit Court or the 48th District Court.

18. FAIR PROCUREMENT OPPORTUNITY: Procurement for the City of Birmingham will be handled in a manner providing fair opportunity for all businesses. This will be accomplished without abrogation or sacrifice of quality and as determined to be in the best interest of the City of Birmingham.

IN WITNESS WHEREOF, the said parties have caused this Agreement to be executed as of the date and year above written.

WITNESSES:

CONTRACTOR

By: _____

Its:

CITY OF BIRMINGHAM

By: _____

Pierre Boutros

Its: Mayor

By: _____

Alexandria Bingham

Its: City Clerk

Approved:

Leslie Pielack, Museum Director
(Approved as to substance)

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

Mary M. Kucharek, City Attorney
(Approved as to form)

Thomas M. Markus, City Manager
(Approved as to substance)

ATTACHMENT B - BIDDER'S AGREEMENT
For Birmingham Museum - Phase I Heritage Zone Landscape Improvement Project

In submitting this proposal, as herein described, the Contractor agrees that:

1. They have carefully examined the specifications, terms and Agreement of the Request for Proposal and all other provisions of this document and understand the meaning, intent, and requirement of it.
2. They will enter into a written contract and furnish the item or items in the time specified in conformance with the specifications and conditions contained therein for the price quoted by the proponent on this proposal.

PREPARED BY
(Print Name)

DATE

TITLE

DATE

AUTHORIZED SIGNATURE

E-MAIL ADDRESS

COMPANY

ADDRESS

PHONE

NAME OF PARENT COMPANY

PHONE

ADDRESS

ATTACHMENT C - COST PROPOSAL

For Birmingham Museum - Phase I Heritage Zone Landscape Improvement Project

In order for the bid to be considered valid, this form must be completed in its entirety. The cost for the Scope of Work as stated in the Request for Proposal documents shall be a lump sum, as follows:

Attach technical specifications for all proposed materials as outlined in the Contractor's Responsibilities section of the RFP (p. 6)

COST PROPOSAL	
ITEM	BID AMOUNT
Materials & Equipment	\$
Labor	\$
Miscellaneous (Attach Detailed Description)	\$
TOTAL BID AMOUNT	\$
ADDITIONAL BID ITEMS	
Provide alternative sign foundation, #1 (credit)	\$
Provide alternative sign foundation, #2 (credit)	\$
Alternative substitution of HDPE lumber for wood lumber	\$
GRANDTOTAL AMOUNT	\$

UNIT COST BID ITEMS	
	\$ per

Firm Name _____

Authorized signature _____

Date: _____

Printed Name: _____

**ATTACHMENT D - IRAN SANCTIONS ACT VENDOR CERTIFICATION
FORM**

**For Birmingham Museum - Phase I Heritage Zone Landscape Improvement
Project**

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

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

PREPARED BY
(Print Name)

DATE

TITLE

DATE

AUTHORIZED SIGNATURE

E-MAIL ADDRESS

COMPANY

ADDRESS

PHONE

NAME OF PARENT COMPANY

PHONE

ADDRESS

TAXPAYER I.D.#



W. MAPLE ROAD
BIRMINGHAM

PLANT LIST

KEY	QTY.	BOTANICAL NAME	COMMON NAME	SIZE
BNW 20	20	Buxus x microphylla 'Winter Gem'	Winter Gem Boxwood	24" ht., 3 gal. pot
CAH 7	7	Cornus alternifolia 'Flamingo'	Flamingo Dogwood	20" ht., 3 gal. pot
CLP 1	1	Clivia pinnatifida	Clivia	24" ht., 3 gal. pot
PT 12	12	Pachyranthus racemiflorus	Flamingo Dogwood	24" ht., 3 gal. pot
RAG 30	30	Rhus aromatica 'Gro-Low'	Gro-Low Fragrant Sumac	24" ht., 3 gal. pot
RS 11	11	Rosa sp. 'Doré'	Doré Rose	24" ht., 3 gal. pot
TCP 1	1	Taxus canadensis 'Pendula'	weeping Hemlock	18" ht., 2 gal. pot
TMC 30	30	Taxus x media 'conspicua'	Canadian Yew	24" ht., 3 gal. pot
UAP 3	3	Thuja occidentalis 'Suecica'	Blue Thuja	24" ht., 3 gal. pot
VI 1	1	Viburnum x juddii	Judd Viburnum	36" ht., 3 gal. pot



DATE: January 3, 2018
 DRAWN BY: J. Smith
 CHECKED BY: J. Smith
 APPROVED BY: J. Smith
 PROJECT LOCATION:
 Birmingham Museum
 151 North Street
 Post Office Box 3001
 Birmingham, Michigan
 48012-3001
 (248) 530-1808

LANDSCAPE PLAN FOR:
 CITY OF BIRMINGHAM
 151 North Street
 Post Office Box 3001
 Birmingham, Michigan
 48012-3001
 (248) 530-1808

PROJECT LOCATION:
 Birmingham Museum
 151 North Street
 Post Office Box 3001
 Birmingham, Michigan
 48012-3001
 (248) 530-1808

LANDSCAPE PLAN BY:
 Nancy DeWitt Land Design
 31726 West Chicago Ave.
 Livonia, Michigan 48150
 (734) 624-9208

Ms. Leslie Peacock, Director
 (248) 530-1928

LANDSCAPE PLAN FOR:
 CITY OF BIRMINGHAM
 151 North Street
 Post Office Box 3001
 Birmingham, Michigan
 48012-3001
 (248) 530-1808

DATE: January 3, 2018
 DRAWN BY: J. Smith
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 Post Office Box 3001
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 APPROVED BY: J. Smith
 PROJECT LOCATION:
 Birmingham Museum
 151 North Street
 Post Office Box 3001
 Birmingham, Michigan
 48012-3001
 (248) 530-1808



ATTN: ACQUISITION LIAISON
 (Phone) 1-800-944-4444
 (Fax) 1-800-944-4444
 (Email) 1-800-944-4444

LP-1:
 LANDSCAPE PLAN
 HERITAGE ZONE
 * Base data provided by Client
 from Aerial Photo.



MEMORANDUM

DATE: February 26, 2021

TO: All Registered Bidders

FROM: Leslie Pielack, Museum Director

SUBJECT: Birmingham Museum – Phase I Heritage Zone Landscape Improvement Project
Addendum 1

The City of Birmingham would like to thank you all for your participation in the Birmingham Museum – Phase I Heritage Zone Landscape Improvement Project Pre-Bid meeting. Below are items that have been determined to need clarification. These items shall be considered Addendum 1 to the original Request For Proposals as submitted by the City and as such shall hereafter alter the original Scope of Work. Please include these considerations in your proposal.

1. Fencing Improvements

- a. Added baseboard with quarter round molding at top to picket fence to be made of wood (pine or equivalent), applied on street side only.
- b. Added gates in fencing to be of wood (pine or equivalent).
- c. New wood components to be primed and painted to match existing white of current fence—entire fence NOT to be repainted.
- d. Provide alternate bid item for added baseboard to boundary fence between Hunter House and neighboring property to the east.
- e. Provide alternate in lieu of pea stone. Regrade the area beneath the fence to insure baseboard and pickets are not in direct contact with the soil.

2. Signage

- a. Provide alternate bid item of primary sign and logo signage to be made of HDPE (white field/background unpainted white HDPE).
- b. Please see logo graphic (attached).
- c. Sign design approval to be provided by city administrative review before final fabrication and installation.

3. Tree Removal

- a. Removal of specified trees to include complete stump removal
- b. Lawn areas disturbed by tree/stump removal to be reseeded.





EXHIBIT B

ATTACHMENT B - BIDDER'S AGREEMENT
For Birmingham Museum - Phase I Heritage Zone Landscape Improvement Project

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.

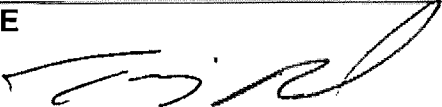
Travis Beard	3/11/2021
PREPARED BY (Print Name)	DATE
VP	3/11/2021
TITLE	DATE
	worryfreeoutdoors@gmail.com
AUTHORIZED SIGNATURE	E-MAIL ADDRESS
Worry Free Outdoor Services Inc.	
COMPANY	
1460 Rochester rd Troy, MI	248-585-2808
ADDRESS	PHONE
Worry free lawn care and snow removal	248-585-2808
NAME OF PARENT COMPANY	PHONE
po box 1221 Royal oak, MI 48068	
ADDRESS	

EXHIBIT C

ATTACHMENT C - COST PROPOSAL

For Birmingham Museum - Phase I Heritage Zone Landscape Improvement Project

In order for the bid to be considered valid, this form must be completed in its entirety. The cost for the Scope of Work as stated in the Request for Proposal documents shall be a lump sum, as follows:

Attach technical specifications for all proposed materials as outlined in the Contractor's Responsibilities section of the RFP (p. 6)

COST PROPOSAL	
ITEM	BID AMOUNT
Materials & Equipment	\$ 33,400.00
Labor	\$ Included with material and equipment
Miscellaneous (Attach Detailed Description)	\$ 2825.00
TOTAL BID AMOUNT	\$ 36,225.00
ADDITIONAL BID ITEMS	
Provide alternative sign foundation, #1 (credit)	\$ N/A
Provide alternative sign foundation, #2 (credit)	\$ N/A
Alternative substitution of HDPE lumber for wood lumber	\$ See sattached spec sheet
GRANDTOTAL AMOUNT	\$

UNIT COST BID ITEMS	
	N/A per

Firm Name Worry Free Outdoor services Inc

Authorized signature 

Date: 3/11/2021

Printed Name: Travis Beard

EXHIBIT D

**ATTACHMENT D - IRAN SANCTIONS ACT VENDOR CERTIFICATION
FORM**

**For Birmingham Museum - Phase I Heritage Zone Landscape Improvement
Project**

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.

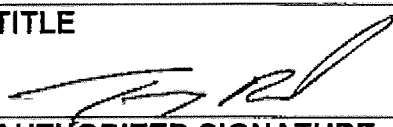
TRAVIS BEARD	3/11/2021
PREPARED BY (Print Name)	DATE
VP	3/11/2021
TITLE	DATE
	WORRYFREEOUTDOORS@GMAIL.COM
AUTHORIZED SIGNATURE	E-MAIL ADDRESS
WORRY FREE OUTDOOR SERVICE INC	
COMPANY	
1460 ROCHESTER RD TROY,MI	248-585-2808
ADDRESS	PHONE
WORRY FREE LAWN CARE AND SNOW REMOVAL INC	248-585-2808
NAME OF PARENT COMPANY	PHONE
PO BOX 1221 ROYAL OAK,MI 48068	
ADDRESS	
38-3440858	
TAXPAYER I.D.#	

EXHIBIT E



PLANT LIST

KEY QTY.	BOTANICAL NAME	COMMON NAME	SIZE
BW 20	Buxus x microphylla Winter Green	Winter Green Boxwood	24" H. x 3" gal. pot
CAH 7	Cornus alternifolia Flamingo	Flamingo Dogwood	24" H. x 3" gal. pot
CLP 1	Clivia pinnatifida	Clivia	24" H. x 3" gal. pot
PT 12	Platanus occidentalis	Boston Ivy	3" gal. B&B
RAG 30	Rhus aromatica 'Crispa'	Grey-Low Fragrant Sumac	24" H. x 3" gal. pot
RS 11	Rosa sp. 'White'	White Rose	18" H. x 2" gal. pot
TCP 1	Thuja occidentalis 'Pendula'	weeping Hemlock	4" H. B&B
TMC 20	Taxus x media 'Crataegus'	Quadrifid Yew	24" H. x 3" gal. pot
UAP 3	Ulmus americana 'Pendula'	White Elm	24" H. x 3" gal. pot
UAP 3	Ulmus americana 'Pendula'	White Elm	24" H. x 3" gal. pot
UAP 3	Ulmus americana 'Pendula'	White Elm	24" H. x 3" gal. pot

W. MAPLE ROAD
BITUMINOUS



LANDSCAPE PLAN FOR:
ONE & TWO STORY BUILDINGS
151 Maple Street
Post Office Box 3001
Birmingham, Michigan
48012-3001
(248) 530-1808

PROJECT LOCATION:
Birmingham Museum
John West House Park
500 West Maple Street
Birmingham, Michigan
48008
Ms. Leslie Peltick, Director
(248) 530-1928

LANDSCAPE PLAN BY:
Nagy Design Land Design
31726 West Chicago Ave.
Livonia, Michigan 48150
(734) 624-9208



LP-1:

**LANDSCAPE PLAN -
HERITAGE ZONE**

* Scale data provided by Client
from Aerial Photo.



ATTN: ACTIVIST E. (E. 1) Birmingham Museum
Project: Heritage Zone Landscape Improvement

LANDSCAPE PLAN INDEX:

* Sheet LP-1: LANDSCAPE PLAN INDEX
* Sheet LP-2: LANDSCAPE NOTES & DETAILS
date: January 2, 2015
revision: 1.0
drawn by: Nagy Design Land Design
checked by: Nagy Design Land Design
approved by: Nagy Design Land Design
scale: 1" = 10'





**CITY OF BIRMINGHAM
MUSEUM BOARD
MEETING MINUTES
Thursday, March 14, 2019
5:00 PM**

Members Present: Jay Cunningham, Russell Dixon, Lori Eaton, Tina Krizanac, Judith Keefer, Marty Logue, Caitlin Rosso

Members Absent: None

Student Members Present: Meredith Weddell

Administration: Museum Director Leslie Pielack

Guests: Brian Devlin, Nagy Devlin Land Design

Ms. Krizanac called the meeting to order at 5:01 PM.

**Approval of the Minutes
Minutes of February 7, 2019**

MOTION: by Cunningham seconded by Dixon:

To approve the minutes of February 7, 2019.

VOTE: Yeas, 7
Nays, 0

Unfinished Business

A. Brian Devlin of Nagy Devlin Land Designs shared further recommendations regarding plant choices and whether to utilize lattice for the Heritage Zone. Changes from previous design recommendations are:

- Move existing star magnolia from the front of the Allen House to the side and substitute Korean Spice viburnum (not white)
- Omit the weeping hemlock, as it is too formal, but keep 3 small globe arborvitae
- Determine whether to use vining plants on the front lattice near the staff door, as it seems to have been designed for plants (but no photos from the decades of the 1920s-1930s-1940s-1950s show vines there)

Museum Board members agreed by consensus on the plant changes and to leave the lattice unadorned. Mr. Devlin and members discussed options and placement for the primary sign for the museum. Museum Board members agreed by consensus on the following:

- Placement—the existing garden area in front of the bell to be extended in a curve closer to the sidewalk, and a 2-posted free-standing ground sign (one-sided) to be set toward the front of the bed.

- Design—Posts to mimic existing post design on picket fence. Sign to have gentle arch in the middle. Utilize proposed arched free-standing wood sign design option provided in the past by Mr. Devlin. Use baseboard instead of stone, similar to that proposed for Hunter House fence area to be used below main sign to anchor it visually, but to leave space below sign for ease of maintenance and possible low plantings. Sign to incorporate (new) 2017 Museum logo: graphic to be colored and composed of layered material in relief, lettering to be recessed
- Size—Sign to be approximately 4' tall by 8' wide (per ordinance), with the tallest point of the arch no higher than 4 ½ feet.
- Lighting--Up-lighting from ground as additional bid item at construction, pending availability of underground electrical service.
- Additional graphics—graphic of logo only to be reproduced and mounted on gate at Hunter House and on fence at driveway.

MOTION: by Dixon seconded by Keefer:

To recommend that the City of Birmingham accept the final design by Nagy Devlin Land Design, LLC, of the Heritage Zone component of the 2018 Landscape Master Plan for the Birmingham Museum, to be reviewed by the Historic District Commission and, if approved, to be presented to the Birmingham City Commission for final review and approval.

VOTE: Yeas, 7
Nays, 0

- B. Pending design approval by the Historic District Commission and City Commission, the matter of developing specific fund raising strategies can be explored in more detail at the April meeting. The HDC will review the Heritage Zone design at their March 20, 2019 meeting. A Museum Board position will be opening as of May 1, 2019, as Lori Eaton is moving out of the Birmingham area and will be unable to continue on the board. Members would like Museum Director Pielack to approach Bill Dow to determine if he is interested in applying for the open position, which could help with fund raising planning. Other members of the community are also encouraged to apply if interested.

Communication and Reports

Director Pielack highlighted portions of the Director Report, including noting that the CREEM documentary release may provide opportunities for a local release and fund-raiser perhaps later in the summer, if it is feasible to plan such an event. The CREEM banner outside the former offices was removed for construction and has been replaced now that the weather has improved.

Ms. Logue mentioned that the Friends' Heritage Newsletter included a flyer about upcoming opportunities to raise funds for the Heritage Zone landscape project.

The next Regular Meeting will be held on April 4, 2019 at 5:00 PM.

Ms. Krizanic adjourned the meeting at 6:19 PM

Motion by Ms. Lang

Seconded by Ms. Debbrecht to approve the requested six month site plan extension for 277 Pierce.

Motion carried, 4-0.

VOICE VOTE

Yeas: Lang, Debbrecht, Deyer, Henke

Nays: None

03-14-19

4) BIRMINGHAM MUSEUM HERITAGE LANDSCAPE ZONE MASTER PLAN

City Planner Dupuis reviewed the history of the item noting that the applicant is seeking a Certificate of Appropriateness. The Board then welcomed Brian Devlin from Nagy Devlin Land Design.

Mr. Devlin presented the Heritage Landscape Zone Master Plan for the front of the Birmingham Museum. He explained:

- The Heritage Zone is comprised of the front yards of the Allen and Hunter Houses and the front of the plaza.
- Part of the intention for the Master Plan is to use many of the same species of plants that were originally planted in front of both homes. More compact and modern cultivars will be used for the updates in order to conserve space, but they will give a sense of what the landscaping had been like.
- Some of the Catalpa and Norway Maple trees currently in the Heritage Zone will be removed, to be replaced with three American Elms which are resistant to Dutch Elm Disease.
- The dumpster location will be screened. The arborvitaes planted there are not doing well, so the Plan proposes a wood trellis with English Ivy vines planted at the base instead.
- The plaza will stay the same. The Heritage Garden is in place. It has also been suggested that Nagy Devlin Land Design provide a list and a map of plants which were available at the time the homes were built. People in Birmingham would also be welcome to contribute plants they have been growing, and the mapping of the original plants would provide a guideline for where the citizen-contributed plants should go.
- In front of the Allen House, the Children's Garden remains. Gates have been installed at the openings so that when children are there they can be kept secure.
- A new sign is proposed in front of the central portion of the plaza. Concrete will be removed for the installation of the sign, with the goal of getting the sign as close to the road as possible while still far enough from the road to avoid splashes from cars, salt, and plowed snow.
- The sign will be wood posts with a 12 inch wood base and concrete footing raising it off the ground. It will 38 square feet total, and about ten feet in length, which is the length required to fit all the lettering and the logo on the sign. Two pieces of plywood wood will be sanded together. The back piece of plywood will

be a different color, and the lettering for the sign will be cut out from the front piece of plywood so that the letters are both colored and recessed. The logo on the sign will be a relief. There are groundlights planned for the sign as well.

City Planner Dupuis noted the sign will require the review and approval of the Design Review Board, so the final length of the sign will be discussed and determined at that time.

Ms. Lang asked for confirmation that the sign would be able to withstand weather.

Mr. Nagy confirmed the sign should last for a fair amount of time.

Motion by Vice-Chairman Deyer

Seconded by Ms. Debbrecht to recommend the Commission issue a Certificate of Appropriateness for the Birmingham Museum work as proposed meets Secretary of Interior Standards for Rehabilitation Numbers Six and Nine.

Motion carried, 4-0.

VOICE VOTE

Yeas: Deyer, Debbrecht, Henke, Lang

Nays: None

03-16-19

5) MISCELLANEOUS BUSINESS AND COMMUNICATIONS

A. Staff Reports

1. Administrative Approvals
2. Demolitions

3. Museum Director Pielack told Vice-Chairman Deyer that she digitized the Echo City material about a week ago and sent it to City Planner Dupuis for the Committee's perusal. Museum Director Pielack then provided the Committee with an update on the National Certification on the Allen House:

- The National Register Nomination for the Allen House has been submitted. It is in Lansing, and has yet to be reviewed. Post-review, Birmingham may receive a request from Lansing for revisions or additional materials.
- It is most likely the submittal will be considered during the September 2019 review, though there is a chance it could be reviewed in May 2019. Museum Director Pielack said she would let the Committee know for sure when the review will be moving forward.
- There was enough material to submit the Allen House under Criterion A, for its association with transportation and community planning in the greater context of what was happening along the Woodward corridor, the suburbanization of the Detroit area, and how Birmingham and Henry Allen in particular was responding to that; Criterion B, for the individual contributions of Henry Allen who guided Birmingham's change into a City, wrote the City Charter, helped keep the City sound during the Great Depression, and other significant roles; and Criterion C, for being a unique example of the work of noted Detroit architect Rupert W. Koch who designed several significant revivalist homes and works of architecture



**CITY OF BIRMINGHAM
MUSEUM BOARD
VIRTUAL MEETING
November 5, 2020
5:00 PM**

Members Present: Russ Dixon, Pat Hughes, Judith Keefer, Tina Krizanic, Marty Logue, Caitlin Rosso

Members Absent: Dan Haugen

Administration: Museum Director Leslie Pielack

Guests: None

Ms. Krizanic called the meeting to order at 5:02 PM.

**Approval of the Minutes
Minutes of October 1, 2020**

MOTION: by Dixon, seconded by Keefer:

To approve the minutes of October 1, 2020.

VOTE: Yeas, 6
Nays, 0

Unfinished Business

- A. Members discussed the importance of implementing the 2021-2024 Strategic Plan objective of the final design for the Heritage Zone, which has been issued a Certificate of Appropriateness by the Historic District Commission. Maple Road construction has been completed and there are sufficient funds available to begin work on several priority components of the design, including installation of primary signage, modifications to the wood fencing at the Hunter House, installing gates, and planting three Pioneer elm trees. These elements would enhance the most visible areas of the landscape and demonstrate that progress on planned landscape improvements. The final design has been issued a Certificate of Appropriateness by the Historic District Commission, but has yet to be presented to the City Commission.

MOTION: by Dixon, seconded by Logue:

To begin implementation of the 2021-2024 Strategic Plan objective of the Landscape Master Plan through the installation of the primary sign, wood fencing and gates, and three Pioneer elms per the final design of the Heritage Zone as prepared by Nagy Devlin Land Designs, and to present the proposed work and final design to the City Commission.

VOTE: Yeas, 6
Nays, 0

New Business

B. The board reviewed the meeting schedule for calendar year 2021.

MOTION: by Dixon, seconded by Keefer:

To approve the 2021 meeting schedule for the Museum Board as presented.

VOTE: Yeas, 6
Nays, 0

C. The board discussed opportunities to assist the Friends with their membership campaign. Ms. Logue, who also serves on the Friends board, said the annual appeal generally goes out in late November or early December. No help is needed for mailing, but members suggested additional resources for recruiting possible new Friends members:

- Mailing and e-mailing the annual appeal to Taylor Project donors
- Mailing the annual appeal to members of the Historic District Commission, Historic District Study Committee, the Public Arts Board and the Greenwood Cemetery Advisory Board
- Particular streets or residents' houses could be targeted for membership and could also generate oral history content for the museum's archives

D. Due to a conflict with the normally scheduled Museum Board meeting of December 3, 2020, the Board considered an alternate meeting date of December 1, 2020.

MOTION: by Dixon, seconded by Keefer:

To reschedule the December 3, 2020 meeting of for the Museum Board to Tuesday, December 1, 2020 at 5:00 PM.

VOTE: Yeas, 6
Nays, 0

Communication and Reports

Director Pielack reviewed the Director Report with updates on the Taylor Monument Project. Mr. Hughes has contributed to the research by locating a document that may provide evidence of the sale, as a slave, of Eliza Taylor's mother. Other research has



**CITY OF BIRMINGHAM
MUSEUM BOARD
VIRTUAL MEETING
March 18, 2021
5:00 PM**

Members Present: Russ Dixon, Pat Hughes, Judith Keefer, Tina Krizanic, Marty Logue, Caitlin Rosso

Members Absent: None

Student Members: Carter Lutz, Aidan Schoener

Administration: Museum Director Leslie Pielack

Guests: Jacquie Patt

Ms. Krizanic called the meeting to order at 5:00 PM.

**Approval of the Minutes
Minutes of February 4, 2021**

MOTION: by Dixon, seconded by Keefer:

To approve the minutes of February 4, 2021.

VOTE: Yeas, 6
Nays, 0

Unfinished Business

None.

New Business

Student Representatives Carter Lutz and Aidan Schoener introduced themselves and were welcomed to the Museum Board. Jacquie Patt has applied for the open Museum Board position; she introduced herself and also was welcomed by board members. The Allen House window project will not be undertaken at this time and will be deferred to fiscal year 2021-2022. Museum Board members reviewed the bids received for the Phase I Heritage Zone Landscape Improvement Project.

MOTION: by Dixon, seconded by Logue:

To recommend that the Birmingham Museum-Phase I Heritage Landscape Improvement Project contract be awarded to Worry Free Outdoor Services, Inc. in the amount of \$33,400.

VOTE: Yeas, 6

Nays, 0

Members reviewed a proposed Collections Research, Duplication, and Use Policy.

MOTION: by Keefer, seconded by Krizanic:

To approve the Collections Research, Duplication, and Use Policy as proposed.

VOTE: Yeas, 6
Nays, 0

The continuance of virtual meetings for the City of Birmingham beyond March 31 is being considered. Board members will be informed before the planned meeting of the Museum Board on April 1 whether it will be a virtual meeting or will take place in person at the museum.

Communication and Reports

Director Pielack reviewed the Director Report and clarified that the museum is awaiting a cost proposal on the geotechnical engineering investigation.

There were no board comments.

There were no public comments.

The next Regular Meeting is scheduled for Thursday, April 1 at 5:00 PM, currently planned as a virtual meeting.

Ms. Krizanic adjourned the meeting at 5:54 PM.



MEMORANDUM

Department of Public Services

DATE: March 31, 2021

TO: Thomas M. Markus, City Manager

FROM: Lauren A. Wood, Director of Public Services

SUBJECT: Purchase Larvicide Material for Mosquito Control Program

INTRODUCTION:

The City currently procures its mosquito control material from Clarke Mosquito Control. The pricing on these products is government regulated by the Department of Agriculture. Clarke is the closest distributor in this area and provides these supplies to other local agencies. We have been pleased with their service and communication with staff about new trends in this area. We have determined no advantage will be gained by the City of Birmingham in bidding out this purchase. Therefore, no competitive bids were obtained for these supplies.

BACKGROUND

We have been treating the catch basins, approximately 2300, over the past seventeen seasons. This has provided us with a successful program, which we continue to re-evaluate treatment areas and product material. This purchase is for 12 cases of Natular XRT Tablets at \$832.31/case. This application will destroy the mosquito larva and prevent mosquito emergence.

LEGAL REVIEW:

There has been no legal review of this annual purchase over the years.

FISCAL IMPACT:

Funds are available in the 2020-2021 budget for this purchase and will come from the Sewer Fund-Operating Supplies Account #590-536.002-729.0000.

PUBLIC COMMUNICATIONS:

Promotion of this treatment program and material is made available on the City website.

SUMMARY:

The Department of Public Services (DPS) recommends the purchase of this material from Clarke Mosquito Control at a price not to exceed \$9,987.78. The money has been budgeted in account #590-536.002-729.0000 Sewer Fund-Operating Supplies for this purchase. Reimbursement from Oakland County for the program this year is \$2,648.39, which has been the same amount the past five years.

ATTACHMENTS:

The Clarke quote for this material purchase is attached to this report.

SUGGESTED RESOLUTION:

To approve the purchase of the Larvicide material from Clarke Mosquito Control in the amount not to exceed \$9,987.78. Further, to waive the normal bidding requirements based on the government regulated pricing for this type of material. Funds for this purchase will come from the Sewer Fund-Operating Supplies Account #590-536.002-729.0000.



QUOTATION

B City of Birmingham-DPS (004384)
I Tim Carpenter
L PO Box 3001
L
T Birmingham, MI 48012-3001
O 248-530-1800
248-644-5614

S City of Birmingham
H Tim Carpenter
I 851 S. Eton Street
P Public Services (#2552)
Birmingham, MI 48009-6870
T 248-644-1800
O 248-644-5614

Address ID: 000001

Quotation #	Quote Date	Salesperson	Written by	Valid to
0002025826	03/25/21	Chris Novak	Gabriela - Sales Associate	04/02/21

Delivery Method	Terms
United Parcel Post	Net 30 Days

Item #	Item Description	Qty Ordered	Unit Price	Extended Price
11850	NATULAR XRT TABLET	12 cs	899.8000/ cs	9,987.78

** Extended Price reflects a discount of: 809.82

US EPA Current Label

Order total	9,987.78
Total	9,987.78

832.31 case

* For your convenience we also accept Visa and MasterCard

Clarke will charge applicable sales taxes unless a valid exemption certificate is Emailed to: accountsreceivable@clarke.com or faxed to: 630-672-7439* A 15% restocking fee plus freight costs may be assessed to any returned items.
Items must be returned within 120 days of shipment and in an acceptable condition.*Helping make communities around the world more livable, safe and comfortable.*



MEMORANDUM

Department of Public Services

DATE: April 1, 2021

TO: Thomas M. Markus, City Manager

FROM: Lauren A. Wood, Director of Public Services

SUBJECT: Vehicle #566 Replacement

INTRODUCTION:

Due to mileage and condition, the Department of Public Services recommends replacement of police vehicle #566, a 2015 Dodge Charger patrol vehicle. The current mileage is 102,980 miles.

BACKGROUND:

Vehicle #566 is identified for replacement and listed in the Vehicle/Equipment Replacement Schedule, as published in the FY 2020-2021 budget. It qualifies for replacement as illustrated by the assessment below:

#566 – 2015 Dodge Charger

FACTOR	DESCRIPTION	POINTS
Age	1 point each year of age	6
Miles/Hours	1 point each 10,000 miles of usage	10.3
Type of Service	Type 5 – Police, fire, and rescue service vehicles	5
Reliability	Level 3 – In shop more than twice in one month time period, no major breakdowns.	3
M & R Costs	Level 4– Maintenance costs are 61-80% of replacement costs	4
Condition	Level 3 – Noticeable imperfections in body, minor damage, weak drive train	3
Total points 28+, poor, needs priority replacement		31.3

This vehicle qualifies under the replacement guidelines for “priority replacement”, its condition and maintenance costs warrant replacement at this time. Once ordered the lead time for the new vehicle is estimated at 14-16 weeks.

The Department of Public Services recommends replacing this vehicle with a 2021 Ford F-150 Police Responder Crew Cab through the State of Michigan MIDEAL extendable purchasing contract #071B7700181 awarded to Gorno Ford of Woodhaven, MI.

LEGAL REVIEW:

This purchase does not require legal review.

FISCAL IMPACT:

Funds for this purchase, totaling \$39,692.00, are available in the Auto Equipment Fund, account #641-441.006-971.0100.

PUBLIC COMMUNICATIONS

This does not apply to this purchase.

SUMMARY

Based on mileage and condition, the Department of Public Services recommends replacement of vehicle #566 with a 2021 Ford F-150 Police Responder Crew Cab 4x4 at a total cost of \$39,692.00. Gorno Ford is the exclusive dealer for this contract and was contacted for pricing. Upon delivery of the replacement vehicle, the old vehicle will be listed on the Michigan Governmental Trade Network (MITN) for public auction.

ATTACHMENTS:

No attachments are included with this report.

SUGGESTED RESOLUTION:

To approve the purchase of one (1) 2021 Ford F-150 Responder Crew Cab 4x4 from Gorno Ford through the State of Michigan MIDEAL extendable purchasing contract #071B7700181 in the amount not to exceed \$39,692.00. Funds for this purchase are available in the Auto Equipment Fund account #641-441.006.971.0100.



MEMORANDUM

Police Department

DATE: April 6, 2021

TO: Thomas M. Markus, City Manager

FROM: Michael Albrecht, Services Commander

APPROVED: Mark H. Clemence, Chief of Police

SUBJECT: Ammunition Purchase

INTRODUCTION:

The rising demand for ammunition and weapons at the national level has had an impact on the police department's ability to purchase ammunition from our usual local and online vendors. The ammunition shortage is predicted by many vendors, manufacturers and media sources to last into calendar year 2023. Factors contributing to the broad spike in ammunition purchases include manufacturing shortages associated with the coronavirus pandemic, a significant increase in firearms sales, national civil unrest and political concerns. As reported in recent media coverage, the ammunition shortage has also resulted in significant price increases.

BACKGROUND:

Ammunition is generally procured following the City's purchasing guidelines which require (3) comparative prices for purchases over the amount of \$2,500. Formal bids are required for purchases in excess of \$6,000 although ammunition purchases seldom exceed that amount.

The police department recently placed an order to enhance our supply of .40 caliber pistol training ammunition. The following ammunition order was placed on March 30 after the City Manager approved use of the city credit card. This order required immediate payment in order to secure delivery of this ammunition.

ITEM	VENDOR	QUANTITY	PRICE	DELIVERY EST.
BLAZER BRASS .40 S&W 180 GR. FMJ TRAINING AMMO	BULKAMMO.COM	5,000 ROUNDS	\$4,544.57	APRIL 3, 2021

LEGAL REVIEW:

No legal review was required for this purchase.

FISCAL IMPACT:

If required, an internal budget adjustment will be completed closer to the end of the current fiscal year if the ammunition shortage and related price increases have an adverse effect on the police department ammunition and weapons account.

SUMMARY:

Over thirty vendors were contacted to determine pricing and availability before this order was placed. Most telephone and internet inquiries received "NOT IN STOCK / NOT AVAILABLE" responses. BULKAMMO.COM was the only vendor located that had this ammunition in stock.

Although our existing inventory of ammunition meets our current needs, this order will augment our supply and provide protection against continued delays associated with the ammunition shortage crisis.

ATTACHMENT:

1. Credit Card Order Confirmation – 5,000 Rounds .40 S&W Training Ammunition

SUGGESTED RESOLUTION:

To confirm the City Manager's credit card purchase authorization for the Blazer Brass .40 S&W training ammunition expenditure in the amount of \$4,544.57 from BULKAMMO.COM; further to charge this emergency expenditure to account number 101-301.000-734.0000.

3/30/2021

City of Birmingham MI Mail - BulkAmmo.com: New Order # 426970003



Accounts Payable <accountspayable@bhamgov.org>

BulkAmmo.com: New Order # 426970003

1 message

Sales <customerservice@bulkammo.com>
To: THOMAS MARKUS <AP@bhamgov.org>

Tue, Mar 30, 2021 at 12:01 PM

BULKAMMO.COM

Call (800) 720-6035 or email us at customerservice@bulkammo.com today!



Hi THOMAS MARKUS,

Thank you for your order from BulkAmmo.com!

We're honored you gave us a shot and we will get you your rounds fast.

We're putting your order together right now and getting it ready to ship. You'll automatically receive an email with tracking information once your order is picked up by the carrier. Typically, these emails go out at 7 p.m. (Central Time) the day your order was placed. If you don't see the email, please check your spam folder as these emails are automatically sent.

Should you need it, your order number is: #426970003

Thanks again for trusting us with your ammo needs.

- Steve at BulkAmmo.com

Product

Qty

Price

3/30/2021

City of Birmingham MI Mail - BulkAmmo.com: New Order # 426970003

Product

Qty

Price



1000 Rounds of .40 S&W Ammo by Blazer Brass -
180gr FMJ

5

\$4,450.00

Subtotal

\$4,450.00

Shipping & Handling

\$94.57

Tax

\$272.67

Gift Certificate

\$0.00

Grand Total

\$4,817.24

Shipping Information

Billing information

THOMAS MARKUS
CITY OF BIRMINGHAM- POLICE DEPT
151 Martin St
Birmingham, Michigan, 48009
United States
T: 2485301820
F: (248) 530-1090

THOMAS MARKUS
CITY OF BIRMINGHAM- POLICE DEPT
151 Martin St
Birmingham, Michigan, 48009
United States
T: 2485301820
F: (248) 530-1090

Shipping Method:

FedEx - Ground

Payment Method:

Credit Card

Payment Type:

MASTERCARD ending with 9932 (01/2024)

BULKAMMO.COM



Attention Shooters: We're seeing a huge uptick in orders and customer service calls. Currently, most orders are shipping in about 3 days. Stay safe!

BULKAMMO



Bulk Ammo For Sale

ALL PRODUCTS



< Bulk .40 S&W Ammo

1000 Rounds of .40 S&W Ammo by Blazer Brass - 180gr FMJ



5 Ready to Ship

4.9★
49 Review(s)

\$890.00

Qty: -

1

+

Add To Cart



Ammo Overview

BULKAMMO



Bulk Ammo For Sale

PRODUCTS



Shopping Cart

1000 Rounds of .40 S&W Ammo by Blazer Brass - 180gr FMJ was added to your shopping cart. Prices and product availability may change until you finish checking out.

NOTICE: Shipping Delays

We are experiencing increased order processing times due to an increase in order volume. Our warehouse team is currently getting most packages out within 2-3 days.

Please note that all sales are final. Shipping delays will not be a basis for cancelling or refunding your order.

Thank you for your order and your patience!

– Steve

collapse

Proceed to Checkout

1000 Rounds of .40 S&W Ammo by Blazer Brass - 180gr FMJ

UNIT PRICE

QTY

SUBTOTAL

\$890.00

- +

\$4,450.00

Continue Shopping

Manufacturer - CCI (Blazer Brass product line)

Bullets - 180 grain full metal jacket (FMJ)

Casings - Boxer-primed brass

Quantity - 20 boxes, 50 rounds per box

Muzzle Velocity - 985 fps

Details

The 40 S&W has gained in popularity over the years, and is commonly thought of as a balance between the 9mm and 45 ACP. This is because the 40 S&W is faster than the 45 auto, and heavier than the 9mm.

This Blazer Brass ammunition in 40 S&W is loaded with a 180 grain full metal jacket bullet, which is perfect for range training, but should not be used for self defense. 180 grain bullets are a heavy but common weight for 40 S&W, and are a great bullet weight for full size handguns, and will result in moderate recoil in small pistols.

✓ Customer Reviews

✓ Product Question and Answer

Related Products

Check items to add to the cart or select all



50 Rounds of .40 S&W Ammo by
Federal - 165gr FMJ

\$48.00



50 Rounds of .40 S&W Ammo by
Federal - 155gr FMJ

\$48.00



50 Rounds of .40 S&W Ammo by
PMC - 165gr JHP

\$55.00

BULK AMMO NEWSLETTER

Estimate Shipping and Tax

Enter your destination to get a shipping estimate.

Zip/Postal Code

48009

Get a Quote**FedEx**☒ Ground**UPS**☐ Ground**\$94.57****\$108.00****Optional Upgrades:**☐ Package Protection
What is this?**\$155.75**☐ Overbox Your Case
What is this?**\$0.99**☐ Adult Signature Required
What is this?**\$13.50**Do you have a Gift Certificate Code? [Click here](#) to use it

Subtotal

\$4,450.00

Tax

~~**\$267.00**~~**Grand Total**~~**\$4,717.00**~~
\$4,544.50**Proceed to Checkout****Based on your selection, you may be interested in the following items:****20 Rounds of .223 Ammo by PMC - 55gr FMJBT**



MEMORANDUM

Planning Division

DATE: April 5, 2021

TO: Thomas M. Markus, City Manager

FROM: Jana L. Ecker, Planning Director

SUBJECT: To set a Public Hearing for a Final Site Plan & Special Land Use Permit Amendment at 211 S. Old Woodward – Birmingham 8 Theater

INTRODUCTION:

The subject site, Birmingham 8 Theater, is located at 211 S. Old Woodward, on the east side of S. Old Woodward at Merrill. The parcel is zoned B-4, Business-Residential and D-4 in the Downtown Overlay District. Birmingham 8 Theater is located within a

BACKGROUND:

On March 9, 2021, the owners of CH Birmingham, LLC, submitted an application for a Special Land Use Permit Amendment to request permission to transfer ownership of the Class C liquor license held at Birmingham 8 Theater by Birmingham Theatro, LLC to CH Birmingham, LLC. The applicant, CH Birmingham, LLC, is applying for a Special Land Use Permit (SLUP) Amendment to operate the theater using the existing Class C liquor license, CH Birmingham, LLC is solely owned by Paul A. Glantz.

Pursuant to Chapter 10, Alcoholic Liquors, and paragraph 4 of the executed contract between Birmingham Theatro, LLC and the City of Birmingham, Birmingham Theatro, LLC must obtain approval of the City Commission to transfer ownership of the liquor license in use at Birmingham 8 Theater to CH Birmingham, LLC.

In addition, Article 2, section 2.37, B4 (Business-Residential) District, of the Zoning Ordinance requires that any establishment with alcoholic beverage sales (on-premises consumption) shall obtain a 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 Amendment, and then obtain approval from the City Commission for the Final Site Plan and Special Land Use Permit Amendment.

No changes are proposed to the layout, design, or ownership of the theater. The request is to transfer ownership of the SLUP and liquor license to CH Birmingham, LLC who will be the new theater operator. CH Birmingham, LLC is currently the holder of a Class C liquor license at the Emagine Palladium Theater at 209 Hamilton Row, as well as other liquor licenses in Michigan and the Midwest.

LEGAL REVIEW:

As there are no changes to the layout or operation of the establishment, the City Attorney has agreed that this request for a transfer of the liquor license may proceed directly to the City Commission for review.

FISCAL IMPACT:

There is no fiscal impact for this agenda item.

SUMMARY:

The Planning Division requests that the City Commission set a public hearing date for the **May 10, 2021** meeting of the City Commission to consider approval of the Final Site Plan and Special Land Use Permit Amendment to allow the transfer of ownership of the liquor license in use at Birmingham 8 Theater from Birmingham Theatro, LLC to CH Birmingham, LLC to allow for a new operator. On May 10, 2021, the City Commission will also review the investigation report completed by the Birmingham Police Department.

ATTACHMENTS:

Please find attached the following documents for your review:

- DRAFT Special Land Use Permit Amendment Resolution
- Contract for Use of Theater License
- Application letter submitted by applicant
- Plans for Birmingham 8 Theater
- Police Investigation Report

SUGGESTED RESOLUTION:

To set a public hearing date for May 10, 2021 to consider a Final Site Plan and Special Land Use Permit Amendment for 211 S. Old Woodward to allow the change in ownership of the Class C liquor license in use at Birmingham 8 Theater from Birmingham Theatro, LLC to CH Birmingham, LLC.

**CH BIRMINGHAM, LLC
DBA BIRMINGHAM 8 THEATER
211 S. OLD WOODWARD
SPECIAL LAND USE PERMIT AMENDMENT
2021**

WHEREAS, Birmingham Theatro, LLC filed an application pursuant to Article 7, section 7.34 of Chapter 126, Zoning, of the City Code in 2017 to serve alcoholic liquors at an existing theater with the City;

WHEREAS, an application was filed in March 2021 for approval of the transfer of the Class C liquor license from Birmingham Theatro, LLC to CH Birmingham, LLC to allow CH Birmingham to operate the Birmingham 8 Theater;

WHEREAS, the land for which the Special Land Use Permit Amendment is sought is located on the east side of S. Old Woodward at Merrill Street;

WHEREAS, The land is zoned B4 (Business-Residential), which permits theaters serving alcoholic liquors with a Special Land Use Permit;

WHEREAS, Article 7, section 7.34 of Chapter 126, Zoning requires a Special Land Use Permit Amendment to be considered and acted upon by the Birmingham City Commission, after receiving recommendations on the site plan and design from the Planning Board for the proposed Special Land Use;

WHEREAS, CH Birmingham, LLC is not proposing any site plan changes, nor design changes to the existing Birmingham 8 Theater;

WHEREAS, The Birmingham City Commission has reviewed CH Birmingham, LLC's Special Land Use Permit Amendment 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 CH Birmingham, LLC's application for a Special Land Use Permit Amendment authorizing the transfer of ownership of the Class C liquor license to allow the service of alcoholic liquors at the existing theater at 211 S. Old Woodward in accordance with Chapter 10, Alcoholic Liquors, 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 Amendment is granted subject to the following conditions:

1. CH Birmingham, LLC shall abide by all provisions of the Birmingham City Code;
2. The Special Land Use Permit Amendment may be cancelled by the City Commission upon finding that the continued use is not in the public interest;
3. CH Birmingham, LLC shall enter into a contract with the City outlining the details of the service of alcoholic liquors at the existing theater;
4. CH Birmingham, LLC shall have a duty of continuing compliance with regards to off-street parking as required in the Zoning Ordinance;

5. CH Birmingham, LLC agrees to resolve any future parking issues that may arise, including but not limited to parking overflow and encroachment into residential areas or public parking facilities, to the satisfaction of the City or the Special Land Use Permit by be cancelled by the City Commission; and
6. CH Birmingham, LLC is required to have any modifications to the site plan, floor plan or operation of the theater approved through a Special Land Use Permit Amendment as required in the Zoning Ordinance.

BE IT FURTHER RESOLVED, That failure to comply with any of the above conditions shall result in termination of the Special Land Use Permit Amendment.

BE IT FURTHER RESOLVED, Except as herein specifically provided, CH Birmingham, LLC 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 CH Birmingham, LLC to comply with all the ordinances of the city may result in the Commission revoking this Special Land Use Permit Amendment.

I, Alexandria Bingham, 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 May 10, 2021.

Alexandria Bingham, Acting City Clerk

**CONTRACT FOR A PRINCIPAL SHOPPING DISTRICT LIQUOR LICENSE
(THEATER)**

This Contract is entered into this day of , 2021, by and between

CH BIRMINGHAM, LLC, a Limited Liability Company, whose address is 211 S. Old Woodward, Birmingham, Michigan (Licensee) and the **CITY OF BIRMINGHAM**, a Michigan Municipal Corporation, whose address is 151 Martin Street, Birmingham, Michigan 48012 (City).

R E C I T A L S:

WHEREAS, Licensee wishes to obtain a liquor license pursuant to MCLA 436.1521a(1)(b) for a theater; and,

WHEREAS, local legislative approval is required by the **CITY OF BIRMINGHAM** for the issuance of a liquor license pursuant to MCLA §436.152a(1)(b) of the Michigan Liquor Control Code of 1998; and,

WHEREAS, Licensee desires to enter into this Contract as an inducement to the **CITY OF BIRMINGHAM** to approve the request of the aforementioned issuance of the liquor license; and,

WHEREAS, the **CITY OF BIRMINGHAM** is relying upon this Contract in giving its approval to the issuance of the on-premises licenses as described herein.

NOW, THEREFORE, the parties agree as follows:

1. Licensee shall be permitted to obtain a liquor license for use solely at the Property. Any transfer of the aforementioned license from the Property to any other location in the CITY OF BIRMINGHAM shall require the approval of the Birmingham City Commission in accordance with Section 10-83. In addition, any expansion of the building location at the Property shall also require the approval of the Birmingham City Commission.
2. Licensee does hereby agree that it shall continue to operate a theater, as defined in Birmingham City Code Chapter 126, Zoning, Article 9, section 9.02, as granted in the Special Land Use Permit by the Birmingham City Commission.
3. Licensee further acknowledges that it must secure a special land use permit for a theater as required by the Birmingham City Code. It is further agreed that it shall comply with all provisions of the special land use permit, or any amendments thereto, as a condition of this contract. Licensee further acknowledges and agrees that it shall comply with all state, local, and orders of statute or ordinance and a violation of any state or local law may be cause for the Special Land Use Permit to be revoked by the City. Licensee further acknowledges and agrees that a violation of any provision of the special land use permit or the Michigan Liquor Control Code is a violation of the terms of the contract entitling the City to exercise any or all of the remedies provided herein.
4. Licensee acknowledges that no modifications to the site plan, floor plan, elevations or operation of the theater may be made unless approved by the City Commission through a Special Land Use Permit Amendment as required in the Zoning Ordinance. Modifications include, but are not limited to, name changes, ownership changes, remodeling, changes in the

number of interior or exterior seats, the use of eisenglass and other enclosure materials on any outdoor dining area, relocation or addition of bar, etc.

5. Licensee acknowledges that it shall have a duty of continuing compliance with regards to off-street parking as required in the Zoning Ordinance, and further agrees to resolve any future parking issues that may arise, including but not limited to parking overflow and encroachment into residential areas or public parking facilities, to the satisfaction of the City or the Special Land Use Permit may be cancelled by the City Commission.

6. License further acknowledges that outdoor dining is seasonally permitted from April 1st through November 15th only, with a valid Outdoor Dining Permit. The use of an enclosure system(s) does not allow the outdoor dining season to be extended.

7. Licensee further agrees that it shall not apply or seek from the Michigan Liquor Control Commission any permit endorsements to its liquor license whether available in the current Michigan Liquor Control Code or in future Michigan Liquor Control Codes, or amendments thereto, without the prior approval of the Birmingham City Commission.

8. Licensee further agrees that it shall not seek any change in its license status/class whether such changes are available now in the current Michigan Liquor Control Code or in future Michigan Liquor Control Codes, or amendments thereto, without prior approval of the Birmingham City Commission.

9. Licensee agrees that it shall adhere to all federal, state and local laws currently in effect or as subsequently amended or enacted, including but not limited to all state building codes, fire codes, and zoning regulations.

10. Licensee agrees that its failure to follow any of the provisions herein shall be grounds for the Michigan Liquor Control Commission to suspend, revoke or not renew its liquor license and/or for the Birmingham City Commission to revoke the special land use permit, either of which would prohibit Licensee from operating the theater. Licensee agrees that in addition to the City of Birmingham's right to seek suspension, revocation or non-renewal of its liquor license and/or revocation of the special land use permit, the City retains any and all rights to enforce this Contract that may be available to it in law or in equity. Licensee further agrees that it shall reimburse the City all of its costs and actual attorney fees incurred by the City in seeking the suspension, revocation or non-renewal of its liquor license and revocation of the special land use permit, as well as enforcing such other rights as may be available at law and/or in equity.

11. To the fullest extent permitted by law, Licensee and any entity or person for whom Licensee is legally liable, agrees to be responsible for any liability, defend, pay on behalf of, indemnify, and hold harmless the City, its elected and appointed officials, employees and volunteers and others working on behalf of the City against any and all claims, demands, suits, or loss, including all costs connected therewith, including all costs and actual attorney fees, and for any damages which may be asserted, claimed or recovered against or from the City, its elected and appointed officials, employees, volunteers or others working on behalf of the City, by reason of personal injury, including bodily injury, death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with Licensee's operation of a theater at the Property.

On this _____ day of _____, 2021, before me personally appeared
_____ who acknowledged is the
_____ of CH Birmingham, LLC and that with authority to do so he
signed this Agreement.

_____ Notary Public
_____ County, Michigan
Acting in _____ County, Michigan
My commission expires: _____

CITY OF BIRMINGHAM

By: _____

Its: _____

Date: _____



280 N. Old Woodward
Suite 12
Birmingham, MI 48009
O 248.385.3112
C 248.835.2068
F 888.450.1682

jphowe@jphowe.com
www.jphowe.com

March 9, 2021

VIA HAND DELIVERY

Ms. Jana Ecker
Planning Director
City of Birmingham
151 Martin St.
Birmingham, MI 48012

**Re: Special Land Use Application to Transfer Ownership of Special Land
Use Permit for Movie Theater with Class C Liquor License**
Applicant: CH Birmingham, LLC
Licensee: Birmingham Teatro, L.L.C. (BID No. 248616)
Address: 211 S. Old Woodward Ave., Birmingham, MI 48009

Dear Ms. Ecker,

This firm represents CH Birmingham, LLC, which has entered into a lease to operate the Birmingham 8 Theater located at 211 S. Old Woodward Ave. The lease calls for the current operator, Birmingham Teatro, L.L.C., to transfer ownership of the Class C liquor license held at the theater to our client. You will note that CH Birmingham, LLC is the holder of a Class C liquor license at the Emagine Palladium Theater located at 209 Hamilton Row. CH Birmingham, LLC is part of the Emagine Theaters family of companies, and is a very experienced movie theater operator, and liquor licensee in various states throughout Michigan and the Midwest.

We have applied to the Michigan Liquor Control Commission for its approval of this license transfer, and for a conditional liquor license. That application remains pending. We are simultaneously filing an application with the Birmingham Police Department to request the City Commission's approval of the transfer of ownership of the Class C liquor license held at the Birmingham 8 Theater from Birmingham Teatro, L.L.C. to CH Birmingham, LLC. Pursuant to Section 10-103 of the Birmingham City Code, we now hereby request the City of Birmingham's approval of the transfer of the Special Land Use Permit held at the Birmingham 8 Theater from Birmingham Teatro, L.L.C. to CH Birmingham, LLC.

In connection with this request, we have enclosed the following documents for your review:

1. Special Land Use Permit Application;

2. Lease Agreement for the Birmingham 8 Theater;
3. Existing Floor Plan of the Birmingham 8 Theater; and
4. Check payable to the City of Birmingham in the amount of \$200 to cover the City's application fee to transfer ownership of the SLUP.

CH Birmingham, LLC is not proposing any changes to the operation or floor plan of the theater at this time. We are simply requesting to transfer ownership of the SLUP as part of the transition to a new theater operator.

We trust that the enclosed documents will allow you to present this application to the Birmingham City Commission for consideration. We would appreciate you coordinating this application with the liquor license transfer application that we have simultaneously filed with the Birmingham Police Department, so that the City Commission may act on both requests at the same Commission meeting. Should you have any questions, or need anything further to process this application, please do not hesitate to contact me. Thank you for your attention to this matter.

Very truly yours,

JPHOWE, PLLC

J. Patrick Howe

Enclosures



Special Land Use Permit Application Planning Division

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

1. Applicant

Name: CH Birmingham, LLC
Address: 211 S. Old Woodward Ave.
Birmingham, MI 48009
Phone Number: (248) 385-3112
Fax Number: (888) 450-1682
Email address: jphowe@jphowe.com

3. Applicant's Attorney/Contact Person

Name: J. Patrick Howe, JPHOWE, PLLC
Address: 280 N. Old Woodward Ave.
Suite 12
Phone Number: (248) 385-3112
Fax Number: 888-450-1682
Email address: jphowe@jphowe.com

2. Property Owner

Name: Fuller Central Park Properties, LLC
Address: 112 Peabody St.
Birmingham, MI 48009
Phone Number: _____
Fax Number: _____
Email address: _____

4. Project Designer/Developer

Name: N/A
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:
 - i. 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;
 - ii. A detailed and scaled Site Plan depicting accurately and in detail the proposed construction, alteration or repair;
 - iii. A certified Land Survey;
 - iv. Interior floor plans;
 - v. A Landscape Plan;
 - vi. A Photometric Plan;
 - vii. Colored elevation drawings for each building elevation;
- II. Specification sheets for all proposed materials, light fixtures and mechanical equipment;
- III. Samples of all proposed materials;
- IV. Photographs of existing conditions on the site including all structures, parking areas, landscaping and adjacent structures;
- V. Current aerial photographs of the site and surrounding properties;
- VI. Warranty Deed, or Consent of Property Owner if applicant is not the owner;
- VII. Any other data requested by the Planning Board, Planning Department, or other City Departments.

6. Project Information

Address/Location of the property: 211 S. Old Woodward Ave
Birmingham, MI 48009
Name of development: Birmingham 8 Theater
Sidwell #: _____
Current Use: Movie Theater with Class C Liquor License
Proposed Use: No Changes to Current Use
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)

CH Birmingham, LLC has entered into a lease agreement to operate the Birmingham 8 Theater. CH Birmingham, LLC is the current operator of the Emagine Palladium Theater located at 209 Hamilton Row, Birmingham, MI 48009. Applicant is requesting to: (i) transfer the existing SLUP for the movie theater currently held by Birmingham Theatro, L.L.C. to CH Birmingham, LLC, and (ii) transfer the Class C liquor license, Sunday PM Sales Permit, and Entertainment Permit from Birmingham Theatro, L.L.C. to CH Birmingham, LLC. There are no changes being proposed by the Applicant to the floor plan, site plan or exterior of the building.

8. Buildings and Structures - NO CHANGES PROPOSED

Number of Buildings on Site: _____ Use of Buildings: _____
Height of Buildings & # of Stories: _____ Height of Rooftop Mechanical Equipment: _____

9. Floor Use and Area (in Square Feet) - NO CHANGES PROPOSED

Proposed Commercial Structures:

Total basement floor area: _____ Office Space: _____
Number of square feet per upper floor: _____ Retail Space: _____
Total floor area: _____ Industrial Space: _____
Floor area ratio (total floor area ÷ total land area): _____ Assembly Space: _____
Seating Capacity: _____
Open space: _____ Maximum Occupancy Load: _____
Percent of open space: _____

Proposed Residential Structures: - NOT APPLICABLE

Total number of units: _____ Rental units or condominiums? _____
Number of one bedroom units: _____ Size of one bedroom units: _____
Number of two bedroom units: _____ Size of two bedroom units: _____
Number of three bedroom units: _____ Size of three bedroom units: _____
Open space: _____ Seating Capacity: _____
Percent of open space: _____ Maximum Occupancy Load: _____

Proposed Additions: - NOT APPLICABLE

Total basement floor area, if any, of addition: _____ Use of addition: _____
Number of floors to be added: _____ Height of addition: _____
Square footage added per floor: _____ Office space in addition: _____
Total building floor area (including addition): _____ Retail space in addition: _____
Floor area ratio (total floor area ÷ total land area): _____ Industrial space in addition: _____
Assembly space in addition: _____
Open Space: _____ Maximum building occupancy load (including addition): _____
Percent of open space: _____

10. Required and Proposed Setbacks - NO CHANGES PROPOSED

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

11. Required and Proposed Parking - NO CHANGES PROPOSED

Required number of parking spaces: _____ Proposed number of parking spaces: _____
Typical angle of parking spaces: _____ Typical size of parking spaces: _____
Typical width of maneuvering lanes: _____ Number of spaces <180 sq. ft.: _____
Location of parking on site: _____ Number of handicap spaces: _____
Location of parking off site: _____ Shared parking agreement? _____
Number of light standards in parking area: _____ Height of light standards in parking area: _____
Screenwall material: _____ Height of screenwall: _____

12. Landscaping - NO CHANGES PROPOSED

Location of landscape areas: _____

Proposed landscape material: _____

13. Streetscape - NO CHANGES PROPOSED

Sidewalk width: _____
Number 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. Loading - NO CHANGES PROPOSED

Required number of loading spaces: _____
Typical 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 Receptacles - NO CHANGES PROPOSED

Required number of waste receptacles: _____
Location of waste receptacles: _____
Screenwall material: _____

Proposed number of waste receptacles: _____
Size of waste receptacles: _____
Height of screenwall: _____

16. Mechanical Equipment - NO CHANGES PROPOSED

Utilities and Transformers:

Number of ground mounted transformers: _____
Size 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: _____
Size 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: _____
Type 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 Buildings - NOT APPLICABLE

Number of accessory buildings: _____
Location of accessory buildings: _____

Size of accessory buildings: _____
Height of accessory buildings: _____

18. Building Lighting - NO CHANGES PROPOSED

Number of light standards on building: _____

Type 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 - NO CHANGES PROPOSED

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 - NOT APPLICABLE - EXISTING BUILDING

Number of properties within 200 ft.: _____

Property #1

Number of buildings on site: _____
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: _____
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: _____
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: _____
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: _____
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: E. Fuller Date: 3-8-21

Print Name: Edward A. Fuller, Managing Member

Signature of Applicant: Paul A. Glantz Date: 03/08/2021

Print Name: Paul A. Glantz, Chairman

Signature of Architect: _____ Date: _____

Print Name: N/A

Office Use Only		
Application #:	Date Received:	Fee:
Date of Approval:	Date of Denial:	Accepted by:



SPECIAL LAND USE PERMIT APPLICATION CHECKLIST – PLANNING DIVISION

Applicant: CH Birmingham, LLC Case #: _____ Date: _____
Address: 211 S. Old Woodward Ave. Project: Transfer SLUP & Class C Liquor License to CH Birmingham, LLC

All site plans and elevation drawings prepared for approval shall be prepared in accordance with the following specifications and other applicable requirements of the City of Birmingham. If more than one page is used, each page shall be numbered sequentially. All plans must be legible and of sufficient quality to provide for quality reproduction or recording. Plans must be no larger than 24" x 36", and must be folded and stapled together. The address of the site must be clearly noted on all plans and supporting documentation.

Site Plan for Special Land Use Permit

A full Site Plan detailing the proposed changes for which approval is requested shall be drawn at a scale no smaller than 1" = 100' (unless the drawing will not fit on one 24" X 36" sheet) and shall include:

- ☒ 1. Name and address of applicant and proof of ownership;
- ☒ 2. Name of Development (if applicable);
- ☒ 3. Address of site and legal description of the real estate;
- ☐ 4. Name and address of the land surveyor;
- ☐ 5. Legend and notes, including a graphic scale, north point, and date;
- ☐ 6. A separate location map;
- ☐ 7. A map showing the boundary lines of adjacent land and the existing zoning of the area proposed to be developed as well as the adjacent land;
- ☐ 8. Aerial photographs of the subject site and surrounding properties;
- ☐ 9. A detailed and scaled Site Plan depicting accurately and in detail the proposed construction, alteration or repair;
- ☐ 10. 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;
- ☐ 11. Interior floor plans;
- ☐ 12. A chart indicating the dates of any previous approvals by the Planning Board, Board of Zoning Appeals, Design Review Board, or the Historic District Commission ("HDC");

- ☐ 13. Existing and proposed layout of streets, open space and other basic elements of the plan;
- ☐ 14. Existing and proposed utilities and easements and their purpose;
- ☐ 15. Location of natural streams, regulated drains, 100-year flood plains, floodway, water courses, marshes, wooded areas, isolated preserve-able trees, wetlands, historic features, existing structures, dry wells, utility lines, fire hydrants and any other significant feature(s) that may influence the design of the development;
- ☐ 16. General description, location, and types of structures on site;
- ☐ 17. Location of sidewalks, curb cuts, and parking lots on subject site and all sites within 200 ft. of the property line;
- ☐ 18. Details of existing or proposed lighting, signage and other pertinent development features;
- ☐ 19. Elevation drawings showing proposed design;
- ☐ 20. Screening to be utilized in concealing any exposed mechanical or electrical equipment and all trash receptacle areas;
- ☐ 21. Location of all exterior lighting fixtures;
- ☐ 22. A Photometric Plan depicting proposed illuminance levels at all property lines;
- ☐ 23. A Landscape Plan showing all existing and proposed planting and screening materials, including the number, size, and type of plantings proposed and the method of irrigation; and
- ☐ 24. Any other information requested in writing by the Planning Division, the Planning Board, or the Building Official deemed important to the development.

Elevation Drawings

Complete elevation drawings detailing the proposed changes for which approval is requested shall be drawn at a scale no smaller than 1" = 100' (unless the drawing will not fit on one 24" X 36" sheet) and shall include:

- ☐ 25. Color elevation drawings showing the proposed design for each façade of the building;
- ☐ 26. List of all materials to be used for the building, marked on the elevation drawings;
- ☐ 27. Elevation drawings of all screenwalls to be utilized in concealing any exposed mechanical or electrical equipment, trash receptacle areas and parking areas;
- ☐ 28. Details of existing or proposed lighting, signage and other pertinent development features;
- ☐ 29. A list of any requested design changes;
- ☐ 30. Itemized list and specification sheets of all materials, light fixtures and mechanical equipment to be used, including exact size specifications, color, style, and the name of the manufacturer;
- ☐ 31. Location of all exterior lighting fixtures, exact size specifications, color, style and the name of the manufacturer of all fixtures, and a photometric analysis of all exterior lighting fixtures showing light levels to all property lines; and
- ☐ 32. Any other information requested in writing by the Planning Division, the Planning Board, or the Building Official deemed important to the development.



Notice Signs - Rental Application Community Development

1. Applicant

Name: _____

Address: _____

Phone Number: _____

Fax Number: _____

Email address: _____

Property Owner

Name: _____

Address: _____

Phone Number: _____

Fax Number: _____

Email address: _____

2. Project Information

Address/Location of Property: _____

Name of Development: _____

Area in Acres: _____

Name of Historic District site is in, if any: _____

Current Use: _____

Current Zoning: _____

3. Date of Board Review

Board of Building Trades Appeals: _____

City Commission: _____

Historic District Commission: _____

Planning Board: _____

Board of Zoning Appeals: _____

Design Review Board: _____

Housing Board of Appeals: _____

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: _____

Office Use Only

Application #: _____ Date Received: _____ Fee: _____

Date of Approval: _____ Date of Denial: _____ Reviewed by: _____

LEASE AGREEMENT

FULLER CENTRAL PARK PROPERTIES, L.L.C.
112 Peabody St.
Birmingham, Michigan 48009
(248) 642-0024

This Lease made this 27th day of January 2021, by and between FULLER CENTRAL PARK PROPERTIES, L.L.C., a Michigan Limited Liability Company, 112 Peabody St., Birmingham, Michigan 48009, the Lessor, hereinafter designated as the Landlord, and CH BIRMINGHAM LLC, a Michigan Limited Liability Company, with an address of 303 Gray Woods Lane, Lake Angelus, Michigan 48326, the Lessee, hereinafter designated as the Tenant. Landlord and Tenant may sometimes individually be called a "Party" and collectively be called "Parties".

WITNESSETH:

For and in consideration of the premises, the covenants herein, and other valuable consideration, the receipt and adequacy of which are hereby mutually acknowledged, the Parties hereto agree:

1. Premises. Landlord, in consideration of the rents to be paid and the covenants and agreements to be performed by the Tenant, does hereby lease unto the Tenant and Tenant hereby leases from Landlord the following described premises situated in the City of Birmingham, County of Oakland, State of Michigan:

the property commonly known as the Birmingham Theatre,
211 South Woodward Avenue,
Birmingham, Michigan 48009
containing approximately 32,600 square feet of space (the "Leased Premises"),
including all existing food service equipment and seating (collectively the "Equipment").

2. Term. The term of this Lease (the "Term") is ten (10) years from and after the 1st day of February 2021 (the "Commencement Date"), unless terminated earlier by Landlord as provided herein. Tenant may take possession of the Leased Premises on the Commencement Date.

3. Rent.

a. Percentage Rent.

- (i) Beginning on the Commencement Date and continuing through September 30, 2021, Tenant shall pay to the Landlord as rent an amount equal to 15% of the Tenant's Monthly Gross Sales (as defined below), with no cap and no minimum, for each month within the applicable rental period, as reflected in the Rent Schedule below. All payments required by this subsection shall be reconciled at the end of each applicable calendar quarter and paid to Landlord within 30 days of the end of such calendar quarter, with the first such payment being due by April 30, 2021.
- (ii) Beginning on the October 1, 2021 and continuing through the end of the Lease Term, Tenant shall pay to the Landlord, in addition to the "Base Rent" (as defined below), an amount equal to 10% of the Tenant's

Monthly Gross Sales (as defined below) which are in excess of \$150,000.00, for each month during the balance of the Lease Term, as reflected in the Rent Schedule below. All payments required by this subsection shall be reconciled each calendar quarter and paid to Landlord within 30 days of the end of such calendar quarter.

(iii) All amounts due as described in subsections (i) and (ii) above may hereinafter be referred to as the "Percentage Rent".

b. **Base Rent.** Beginning on October 1, 2021, Tenant shall, in addition to any Percentage Rent due, pay to the Landlord "Base Rent" for the Leased Premises at the initial rate of \$19,000.00 per month, with increases of 2% commencing on February 1, 2023 and continuing annually thereafter for the remaining Lease Term, payable in monthly installments in advance, upon the first day of each month as shown in the Rent Schedule below.

Rent Schedule

Rental Rate	Lease Months / Year	Rent
15% of Tenant's Monthly Gross Sales, with no cap and no minimum	2/1/2021 – 9/30/2021	Percentage Rent only
\$19,000.00 per month, plus 10% of Tenant's Monthly Gross Sales in excess of \$150,000.00	10/1/2021 – 1/31/2023	\$304,000.00, plus Percentage Rent
\$19,380.00 per month, plus 10% of Tenant's Monthly Gross Sales in excess of \$150,000.00	2/1/2023 – 1/31/2024	\$232,560.00, plus Percentage Rent
\$19,767.00 per month, plus 10% of Tenant's Monthly Gross Sales in excess of \$150,000.00	2/1/2024 – 1/31/2025	\$237,204.00, plus Percentage Rent
\$20,162.95 per month, plus 10% of Tenant's Monthly Gross Sales in excess of \$150,000.00	2/1/2025 – 1/31/2026	\$241,955.40, plus Percentage Rent
\$20,568.21 per month, plus 10% of Tenant's Monthly Gross Sales in excess of \$150,000.00	2/1/2026 – 1/31/2027	\$246,794.52, plus Percentage Rent
\$20,977.53 per month, plus 10% of Tenant's Monthly Gross Sales in excess of \$150,000.00	2/1/2027 – 1/31/2028	\$251,730.36, plus Percentage Rent

\$21,397.08 per month, plus 10% of Tenant's Monthly Gross Sales in excess of \$150,000.00	2/1/2028 – 1/31/2029	\$256,764.96, plus Percentage Rent
\$21,825.02 per month, plus 10% of Tenant's Monthly Gross Sales in excess of \$150,000.00	2/1/2029 – 1/31/2030	\$261,900.24, plus Percentage Rent
\$22,261.52 per month, plus 10% of Tenant's Monthly Gross Sales in excess of \$150,000.00	2/1/2030 – 1/31/2031	\$267,138.24, plus Percentage Rent

- c. **Additional Rent.** Tenant shall pay as "Additional Rent" any money and charges required to be paid by Tenant pursuant to the terms of this Lease, whether or not same may be designated as "Additional Rent" when referenced herein.

The term "Monthly Gross Sales", for purposes of calculating the Percentage Rent herein, shall mean the total of the Tenant's monthly sales prices of all tickets, concession items, goods, food and beverage (including alcohol), merchandise (including gift and merchandise certificates when redeemed), advertising and other monies generated from the Tenant's operation of the Leased Premises, whether for cash or credit and shall include internet sales, telephone sales and in-person sales.

All payments of Base Rent and Percentage Rent shall be made to Landlord without demand; and all payments of Additional Rent and all other payments to Landlord required hereunder shall be made as and when called for herein and if not herein specified, then upon not less than ten (10) Business Days' notice by Landlord to Tenant; all payments hereunder including Base Rent, Percentage Rent and Additional Rent shall be made without deduction or off-set of any kind whatsoever, including, but not limited to, any related to governmental restrictions, executive orders, rules, regulations or legislative enactments, in cash, by check drawn upon a U.S. banking institution payable to Landlord, or by electronic transfer, with collected funds on deposit, and shall be delivered to Landlord at its address set forth in this Lease, or to such other party and place (or account) as may be designated by notice in writing from Landlord to Tenant from time to time upon not less than 30 days' prior written notice. Base Rent, Percentage Rent and Additional Rent are sometimes herein collectively referred to as "Rent". Notwithstanding the foregoing, in the event of any governmental restrictions, executive orders, rules, regulations or legislative enactments that prohibit the operation of the Leased Premises or restrict the theater capacity within the Leased Premises to below 51%, Tenant shall pay Landlord as Rent an amount equal to 15% of the Tenant's Monthly Gross Sales with no cap and no minimum during the period of such governmental restrictions, executive orders, rules, regulations or legislative enactments.

No payment by Tenant or receipt and acceptance by Landlord of a lesser amount than the Base Rent, Percentage Rent, Additional Rent, or other payments to Landlord required hereunder, shall be deemed to be anything other than partial payment of the full amount then due and payable, nor shall any endorsement or statement on any check or any document accompanying any check, payment of rent or other payment, be deemed an

accord and satisfaction or modification of Tenant's liabilities; and Landlord may accept such partial payment without prejudice to Landlord's right to recover the balance due and payable or pursue any other remedy in this Lease provided and without regard to any such endorsement or document, which, between the Parties, shall be ineffective as a diminishment of Tenant's obligations.

Tenant shall, on a monthly basis, provide to Landlord a profit and loss statement reflecting all of Tenant's sales and operations within the Leased Premises. Annually Tenant shall provide to Landlord access to any and all financial records which would in any way enable Landlord to review, audit, monitor or confirm Tenant's Monthly Gross Sales. Landlord shall not disclose such financial data to any third party (except Landlord's accountants, attorneys or as otherwise required by law) without the prior written consent of Tenant.

4. Projector Lease. Landlord has an existing lease and maintenance contract with Sony Electronics, Inc. (collectively, the "Projection Lease"), for the projection and movie screening equipment currently servicing the Leased Premises (collectively, the "Projection Equipment"). The Projection Lease shall be forthwith assumed by Tenant and Tenant shall be solely responsible for any and all payments, costs or other fees due under the Projection Lease. Tenant shall also be entitled, to the extent allowed by Sony Electronics, Inc., to the benefit of the existing \$1.00 buy-out option offered to Landlord. However, upon termination of this Lease, Landlord shall have the right to purchase the Projection Equipment from Tenant for \$1.00.

5. Insurance Premiums. In addition to the Rent hereinbefore specified, the Tenant agrees to pay as Additional Rent all premiums for insurance against loss by fire that may be charged during the Term on the amount of insurance now carried by the Landlord on the Leased Premises and on the improvements situated on the Leased Premises, resulting from the business carried on in the Leased Premises by the Tenant or the character of its occupancy, whether or not the Landlord has consented to the same.

6. Late Payments. Tenant shall pay to Landlord a late charge equal to three (3%) percent of the amount of each installment of Base Rent, Percentage Rent, Additional Rent or any other sum owing from Tenant to Landlord under the terms hereof which is not received by Landlord within ten (10) days after its due date. In order to defray the legal, management, bookkeeping and other administrative costs resulting from Tenant's failure to timely make such payments, an additional late charge of two (2%) percent per month shall apply to any installment of Base Rent, Percentage Rent, Additional Rent or other payment owing from Tenant to Landlord under the terms hereof which is overdue thirty (30) days or longer. Tenant shall pay to Landlord interest at the rate of twelve (12%) percent per annum on any sums advanced until payment thereof is received by Landlord. To the extent any sums collected above are in excess of the amounts which Landlord may lawfully collect, the excess shall instead be applied to the immediately succeeding installment(s) of Base Rent or Percentage Rent due hereunder or shall be returned to Tenant, at Landlord's option.

7. Assignment. Tenant shall not, in whole or in part, assign or transfer this Lease or any rights hereunder or hypothecate or mortgage same or sublet or grant a license (other than movie tickets) within the Leased Premises, or any part thereof, without the prior written consent of Landlord in each instance, such consent not to be unreasonably withheld, delayed, or conditioned. Any such assignment, transfer, hypothecation, mortgage, license, or subletting shall not release Tenant hereunder, and any assignee or subtenant shall expressly assume all of the Tenant's covenants, warranties and obligations hereunder. In the event the Rent or any other charge to be paid by a subtenant, licensee or assignee of Tenant exceeds the sum of the Rent due under this Lease from Tenant to Landlord (as a whole or on a square foot basis for the space involved), Tenant shall pay to Landlord, as Additional Rent, an amount equal to fifty percent (50%) of such excess at the time or times the same is paid by such subtenant, licensee or assignee to Tenant after deducting the reasonable costs of entering into such arrangement such as broker's commissions or attorneys' fees. Any

attempted assignment, transfer, hypothecation, mortgage, license or subletting without Landlord's prior written consent shall give Landlord the right to terminate this Lease and re-enter and repossess the Leased Premises and Tenant shall be liable to Landlord for all damages in connection therewith, in addition to and cumulative of any other remedies of Landlord provided herein and by law. The transfer of more than fifty (50%) percent of the membership interests of Tenant shall, for the purposes of this paragraph, be an assignment of this Lease, but the transfer due to death or disability of a member shall not be considered an assignment. Notwithstanding the foregoing, in the event of a sale of all or substantially all of the assets or membership interests of Tenant's parent company to an entity with reasonably adequate financial wherewithal, this Lease may be assigned to the respective purchaser in connection with such transaction without the consent or approval of Landlord or payment of any consideration to Landlord.

8. Bankruptcy and Insolvency. If the estate created hereby shall be taken in execution, or by other process of law, or if the Tenant shall be declared bankrupt or insolvent, according to law, or any receiver be appointed for the business and property of the Tenant, or if any assignment shall be made of the Tenant's property for the benefit of creditors, then and in such event this lease may be canceled at the option of the Landlord.

9. Right to Mortgage. The Landlord reserves the right to subject and subordinate this Lease at all times to the lien of any mortgage or mortgages now or hereafter placed upon the Landlord's interest in the Leased Premises and/or on the land and buildings of which the Leased Premises are a part or upon any buildings hereafter placed upon the land of which the Leased Premises form a part. Any subordination of the Lease to the lien of the Landlord's mortgagee ("Lender") will be contingent upon the execution by the Lender of a Non-Disturbance Agreement reasonably acceptable to Tenant which will be binding upon Lender, its successors and assigns, and provide that the Lease and the Tenant's occupancy of the Leased Premises will not be disturbed for as long as the Tenant is not in material default under the Lease after applicable notice and or cure period. Tenant shall execute and deliver upon demand such further instrument or instruments subordinating this Lease to the lien of any such mortgage or mortgages as shall be desired by the Landlord and any mortgagees or proposed mortgagees.

10. Use and Occupancy. The Leased Premises during the Term may be used and occupied for the operation of eight (8) movie auditoriums for the showing of movies (specifically excluding adult or pornographic films) and for any lawful business appurtenant thereto, including but not limited to, the sale of food, drinks, snacks, confections, candy, and similar items; for the sale of personal property incidental or related to films; for the sale of alcoholic beverages (if an appropriate license is obtained by Tenant), for the display of advertising (Tenant's and third party interior space and the marquee only), for meetings; and for no other purpose or purposes without the written consent of the Landlord, which consent shall not be unreasonably withheld, delayed or conditioned and that the Tenant will remain sensitive to its choice of product for viewing by the general public and the local community and will not use the Leased Premises for any purpose in violation of any law, municipal ordinance or regulation. Upon any breach of this provision, Landlord shall provide Tenant with fifteen (15) days' notice and an opportunity to cure such breach before taking remedial action against Tenant, provided that if a breach occurs more than twice in any Lease year, Landlord shall not be required to afford Tenant an opportunity to cure such breach for the remainder of the applicable Lease year.

11. Liquor License. Following the Commencement Date, Landlord and Tenant shall use commercially reasonable efforts to transfer to Tenant all of Landlord's existing right, title, and interest in and to its Class C liquor license currently in use at the Leased Premises (the "Liquor License"). Tenant will be responsible for initiating and undertaking any and all of the transfer process with the Michigan Liquor Control Commission (the "MLCC"), using its own qualified legal counsel, including all applications, fees, charges, and costs, including any attorney fees, incurred for such transfer. Landlord will timely cooperate as necessary relative to such transfer and will timely sign any and all applications or other

documents reasonably required by the MLCC to effectuate such transfer. Landlord, however, makes no representations or warranties to Tenant that the MLCC will approve the contemplated transfer. If this Lease is terminated for any reason at any time, Landlord shall have the first right of refusal to repurchase the Liquor License for the purchase price of One Thousand and 00/100 Dollars (\$1,000.00), and Tenant will forthwith sign any and all applications or documents required by the MLCC to effectuate such retransfer. The provisions of this paragraph will survive the termination of this Lease. Upon Tenant's acquisition of the Liquor License, Tenant shall also pledge such Liquor License as security to ensure Tenant's performance of its obligations under this Lease and Landlord shall be entitled to record any necessary UCC Financing Statements or other documents to perfect its security interest in the Liquor License. If despite Tenant's commercially reasonable efforts, the Liquor License is not transferred to Tenant within nine (9) months after the Commencement Date, Tenant may terminate this Lease by written notice to Landlord.

12. Risk of Loss. All property in the Leased Premises shall be and remain the Tenant's sole risk, and the Landlord shall not be liable for any damage to, or loss of property or other damages arising from any act or negligence of any persons or entities, or from the bursting, leaking, or overflowing of water, sewer or sprinkler system pipes, or from heating or plumbing fixtures, or from electric wires or fixtures, or from any other cause whatsoever, nor shall the Landlord be liable for any injury to the person of the Tenant, its officers, agents, employees, representatives, invitees or other persons in, on or about the Leased Premises.

13. Casualty. If the Leased Premises are wholly or partially destroyed by fire or other casualty, Tenant shall give prompt notice thereof in writing to Landlord and shall fully cooperate with Landlord in filing all necessary proofs of claim with insurance companies. The proceeds of such insurance applicable to the Leased Premises shall be used by Landlord to rebuild, repair, or restore the Leased Premises to their condition at the time immediately preceding the loss or damage. If the Leased Premises are not restored within nine (9) months after the occurrence of such casualty, Tenant may terminate this Lease by notice to Landlord.

14. Eminent Domain. If any part of the Leased Premises shall be taken by any public authority under the power of eminent domain, then the Tenant may, at its option and upon thirty (30) days' notice to Landlord, elect to terminate this Lease. If Tenant does not elect to terminate this Lease, Landlord shall restore the remainder of the Leased Premises and Rent shall be reduced in proportion of the Leased Premises taken. All damages awarded for such taking shall belong to and be the property of the Landlord whether such damages shall be awarded as compensation for diminution in value to the leasehold or to the fee of the Leased Premises; provided, however, that the Landlord shall not be entitled to any portion of the condemnation award made for the improvements to the Leased Premises made by Tenant and for the Tenant's loss of business.

15. Certain Insurance. During the Term, Tenant shall procure, and keep in effect, fire and hazard insurance (including special covered causes of loss endorsements) for the full replacement cost of Tenant's trade fixtures, equipment, personal property, data, electronic media and leasehold improvements and cause Landlord to be named as an additional insured in connection therewith. Also during the Term, Tenant, at Tenant's expense, shall maintain in full force and effect general public liability and property damage insurance against claims for injury, wrongful death and property damage occurring upon, in or about the Leased Premises and the appurtenances thereto for the benefit of the Landlord, and which shall name Landlord as an additional insured, in the aggregate sum of not less than Five Million (\$5,000,000.00) Dollars.

16. Indemnification. Tenant agrees to and does hereby indemnify and hold Landlord harmless of, from and against all liability for damages to any person or property in, on or about

the Leased Premises which results from Tenant's acts or omissions, or the acts of Tenant's employees or invitees.

17. Policies of Insurance. All such insurance policies shall contain an agreement by the insurers that such policies shall not be canceled or amended without at least thirty (30) days prior written notice to Landlord and Tenant. Such insurance shall be obtained, and evidence thereof delivered to Landlord prior to any occupancy of the Leased Premises by Tenant or upon the Commencement Date of the Term, whichever shall first occur, and Tenant shall pay the renewal premium on such insurance and deliver evidence thereof to Landlord not less than thirty (30) days prior to the expiration of such insurance. Upon Tenant's failure to procure or maintain said insurance, Landlord may, at its option, obtain such insurance and the cost thereof, with interest thereon as provided in paragraphs 5 and 6 hereof, shall be paid in full by Tenant, as Additional Rent, due and payable on the same date as the next installment of Base Rent. The policy or policies obtained by Tenant pursuant to Tenant's obligations hereunder shall contain a clause or provision pursuant to which the insurance carrier or carriers waive all rights of subrogation against the Landlord or Tenant with respect to losses payable under such policies. Tenant shall deliver to the Landlord, upon execution of this Lease, copies of the insurance policies required to be obtained and maintained by Tenant pursuant to this paragraph and shall notify the Landlord promptly of any change of the terms of any such policies.

18. Repairs and Alterations. Except as provided in paragraph 26 and 27 hereof, the Tenant will, at its own expense, during the entire Term, keep the Leased Premises and every part thereof in as good repair and at the expiration of the Term yield and deliver up the Leased Premises in like condition as when Tenant first commences business, reasonable use and wear thereof, damage by fire or other casualty or taking by eminent domain excepted. The Tenant shall not make any alterations, additions or improvements to the Leased Premises without the Landlord's written consent, which consent shall not be unreasonably withheld, delayed, or conditioned and all alterations, additions or improvements made by either of the Parties hereto upon the Leased Premises, shall be the property of the Landlord and shall remain upon and be surrendered with the Leased Premises at the termination of this Lease.

If the Leased Premises consists of only a part of a structure or is adjacent to any property owned or controlled by the Landlord, the Landlord may enter the Leased Premises at reasonable times and install or repair pipes, wires and other appliances or make any repairs deemed by the Landlord necessary to the use and occupancy of other parts of the Landlord's property.

Additionally, it will be Tenant's obligation during Tenant's remodeling, or making of improvements, to secure from city, county, and state agencies, at its sole cost and expense, any and all permits necessary for Tenant's obtaining a Certificate of Occupancy for its opening of business.

19. Reservation. The Landlord reserves the right of free access at all times to the roof of the Leased Premises. Further, Tenant will not rent the roof or outer walls of the Leased Premises for advertising or other purposes. The Tenant shall not erect any structures for any aerial or use the roof for any purpose.

20. Care of Premises. The Tenant shall not perform any acts or carry on any practices which may injure the Leased Premises or be a nuisance or menace to the public or other tenants in the building or adjacent properties.

21. Compliance Laws. The Tenant shall at its own expense, under penalty of forfeiture and damages, promptly comply with all laws, orders, regulations, or ordinances of all

municipal, county, state and federal authorities affecting the Leased Premises and the cleanliness, safety, occupation and use of same.

22. Condition of Premises at Time of Lease. The Tenant acknowledges that it has examined the Leased Premises prior to the making of this Lease and knows and accepts the Leased Premises for all purposes under this Lease "AS-IS".

23. Re-renting. The Tenant hereby agrees that for a period commencing one hundred twenty (120) days prior to the expiration of the Term, the Landlord may show the Leased Premises to prospective tenants, and ninety (90) days prior to the expiration of the Term may display in and about the Leased Premises and in the windows thereof signs indicating the Leased Premises are available for rent.

24. Holding Over. In the event of the Tenant holding over after the expiration of the Term, thereafter the tenancy shall be from month to month in the absence of a written agreement to the contrary at a monthly rental rate in an amount equal to one hundred twenty-five (125%) percent of the rate called for during the last month of the Term.

25. Utilities. Tenant will pay all charges made against or in respect to the Leased Premises for all utilities including, but not limited to, gas, water, sewerage, heat, electricity, etc., during the Term, as the same shall become due. Additionally, Tenant will be responsible for replacement of its own electrical lighting elements.

26. Refuse Disposal. Tenant shall, at its sole cost and expense, utilize dumpsters or other disposal facilities provided by Landlord for the disposal of garbage and waste products at a charge to Tenant of Five Hundred and 00/100 Dollars (\$500.00) per month. Tenant shall not use Landlord provided dumpsters for any construction materials or debris or any hazardous materials.

27. Heating and Cooling System. At Tenant's own expense it shall maintain the air conditioning system and/or any other heating, cooling or ventilation system (collectively, the HVAC") presently on or hereinafter installed on or in, and/or otherwise servicing the Leased Premises, in good operating condition, and at the end of the Term to return same to Landlord in good operating condition.

28. Roof, Outer Wall, Door and Window Repairs. The Landlord shall be responsible only for the maintenance, replacement repair of the roof and all structural portions of the Leased Premises (not including any structural portions of any improvements made by Tenant to the Leased Premises) and the outer walls of the Leased Premises (collectively, the "Structural Repairs"). Landlord shall not be responsible for such Structural Repairs if the need for such Structural Repairs was/is caused by Tenant or Tenant's agents. The Tenant shall be solely responsible to maintain and keep in good order and repair the building façade, the marquee, doors, door frames, all window and door glass and plate glass (interior and exterior), window casings, window frames, windows and any of the appliances or appurtenances of said doors or window casings, window frames and windows, any improvements made by Tenant or its agents, and any attachment or attachments to the building or Leased Premises and all systems used in connection therewith. If Tenant fails to perform any repairs that it is required to make hereunder within 15 days after its receipt of written notice from Landlord, Landlord shall have the right but not the obligation to make such repairs and, provided such repairs were made in a good and workmanlike manner, Tenant shall promptly reimburse Landlord for Landlord's reasonable expenses in making such repairs. All repairs made by either Party shall comply with all legal requirements applicable to such repairs.

29. Advertising Display. Tenant acknowledges that the exterior and the marquee of the Leased Premises is/or may be designated as a "historical" site and that, other than proper

use, maintenance and repair, Tenant shall not alter or remove any portion of the marquee located upon the Leased Premises. All signs and advertising displayed in and about the Leased Premises shall be such only as advertise the business carried on upon the Leased Premises and such other announcements consistent with the prior practice of the use of the marquee. Other than the existing marquee, no awning, signage or other outside attachment shall be installed or used on the exterior of the Leased Premises unless approved in writing by the Landlord prior to such installation.

30. Access to Premises. The Landlord shall have the right to enter upon the Leased Premises at all reasonable hours on reasonable prior notice for the purpose of inspecting the same. If the Landlord deems any repairs necessary, it may demand that the Tenant make the same; and if the Tenant refuses or neglects forthwith to commence such repairs and complete the same with reasonable dispatch, the Landlord may make or cause to be made such repairs and shall not be responsible to the Tenant for any loss or damage that may accrue to its inventory or business by reason thereof. If the Landlord makes or causes to be made such repairs, the Tenant agrees that it will on not less than ten (10) Business Days' notice from Landlord accompanied by an itemized invoice of such costs, pay to the Landlord the cost thereof as Additional Rent.

31. Quiet Enjoyment. The Landlord covenants that the Tenant, on payment of all Rent and other sums called for herein and performing all the covenants set forth herein, shall and may peacefully and quietly have, hold and enjoy the Leased Premises for the Term.

32. Default. If Tenant should fail to pay Rent or any other amounts due under this Lease for more than thirty (30) days from the due date, the Landlord will have the option of demanding Tenant vacate the Leased Premises after providing Tenant with not less than 10 days' written notice of such non-payment and/or have the option pursuing all of its available legal remedies. It shall also be a default of this Lease for Tenant to cease doing business as a "going concern" and/or cease operating the Leased Premises during normal business hours for a period in excess of thirty (30) days, except to the extent that such cessation in business is temporary as a result of fire, accident or governmental restrictions.

33. Expenses and Damages-Re-entry. In the event that the Landlord shall, during the Term, obtain possession of said Leased Premises by re-entry, summary proceedings, or otherwise, the Tenant hereby agrees to pay the Landlord the expense incurred in obtaining possession of the Leased Premises, and also all expenses and commissions which may be paid in and about the letting of the same, and all other damages, including actual attorneys' fees and costs.

34. Remedies not Exclusive. Each and every of the rights, remedies and benefits provided by this Lease shall be cumulative and shall not be exclusive of any other of said rights, remedies, and benefits, or of any other rights, remedies, and benefits allowed by law, including, but not limited to, possession, equitable remedies and all of its money damages.

35. Waiver. One or more waivers of any covenant or condition by the Landlord or Tenant shall not be construed as a waiver of a further breach of the same covenant or condition.

36. Security. Tenant will be responsible for any and all security relating to the control of its patrons inside and directly outside of the Leased Premises.

37. Real Estate Taxes. Tenant will pay 100% of the real property taxes on the Leased Premises (Sidwell Number 08-19-36-206-007), said taxes currently due and payable yearly in two (2) installments, due February first and August first of each year, as billed by the city of Birmingham, Michigan. Real estate taxes will be prorated at the beginning and end of the Term based upon the period that the Term related to the period of such real estate taxes. Additionally, Tenant will timely pay all personal property taxes (assessed against any and all personal property, regardless of such personal property

being owned by Landlord or Tenant) and its pro rata share of any special assessments.

Landlord shall deliver to Tenant copies of the tax bills for real estate taxes accruing during the Term. If Tenant fails to pay to Landlord, within the later of ten Business Days after receipt of such tax bills or the due date of such taxes the amount of taxes due, Tenant is hereby in default under this Lease.

38. Non-liability of Landlord. In the event the Landlord hereunder or any successor owner of the Leased Premises shall sell or convey the Leased Premises, all liabilities and obligations on the part of the original Landlord or such successor owner under this Lease accruing thereafter shall terminate, and thereupon all such liabilities and obligations shall be binding upon the new owner. Tenant shall attorn to such new owner.

If Landlord shall fail to perform any covenant, term or condition of this Lease upon Landlord's part to be performed, and, such failure continues for more than 10 days after notice from Tenant, Tenant may perform such covenant, condition or term of this Lease and Landlord shall pay Tenant's reasonable expenses therefore within 10 Business Days after receipt of an itemized invoice from Tenant. If as a consequence of such default, Tenant shall recover a money judgment against Landlord, including interest at 12% per annum and reasonable attorneys' fees, such judgment shall be satisfied only against the right, title and interest of Landlord in the Leased Premises and out of rents or other income from the Leased Premises receivable by Landlord, or out of the consideration received by Landlord from the sale or other disposition of all or any part of Landlord's right, title and interest in the Leased Premises, and Landlord shall not be liable for any deficiency.

39. Estoppel Certificate. At any time and from time to time, but not less than ten (10) Business Days subsequent to request by a Party, the requested Party shall promptly execute, acknowledge and deliver to the requesting Party or its designee, a certificate indicating (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the date and nature of each modification), (b) the date, if any, to which Rent hereunder have been paid, (c) that no notice has been received by Tenant of any default which has not been cured, except as to defaults specified in said certificate, and (d) such other matters as may be reasonably requested. Any such certificate may be relied upon by any prospective purchaser, lender mortgagee or other specified person.

40. Notices. Whenever under this Lease a provision is made for notice of any kind it shall be deemed sufficient notice and service thereof if such notice to the Tenant is in writing addressed to the Tenant at its last known post office and deposited in the mail with postage prepaid, and if such notice to the Landlord is in writing addressed to the last known post office address of the Landlord and deposited in the mail with postage prepaid. Notice shall be deemed given when received.

41. Pronouns. It is agreed that in this Lease the word "it" shall be used as synonymous with the words "she," "he," and "they," and the word "its" synonymous with the words "her," "his," and "their."

42. Successors. The covenants, conditions, and agreements made and entered into by the Parties hereto and the benefits hereunder are binding on, and the benefits hereunder shall accrue to the Parties hereto and their respective heirs, successors, representatives and assigns.

43. Severability. The unenforceability or invalidity, if any, of any provision of this Lease shall not render any other provision or provisions unenforceable or invalid and the remainder of this Lease shall not be affected thereby and the balance of the terms and provisions of this Lease shall be valid and enforceable. If any provision of this Lease is partially unenforceable or invalid, the remaining portion thereof shall be enforced to the fullest extent

permitted by law.

44. Options to Renew. Provided that Tenant is not in default of this Lease at the time of the notice of exercise and at the time of the commencement of the hereinafter provided "Option Terms" beyond any applicable notice and/or cure period, Landlord grants to Tenant two (2) successive five (5)-year options (each an "Option" and collectively, the "Options") to extend the Term upon the same terms and conditions, except for Base Rent, which shall be increased two (2%) percent annually.

To exercise the Options, Tenant must tender written notice to Landlord exercising such Option not less than six (6) months prior to the expiration date of the existing Term. Failure of Tenant to timely tender written notice of its exercise of an Option shall terminate such Option, time being of the essence. Upon the timely exercise of an Option, the period of such Option shall be included within the Term.

45. Brokers. Landlord and Tenant represent and warrant to each other that they have not negotiated with any broker in connection with this Lease. Landlord and Tenant agree that should any claim be made against the other for a broker's commission, finder's fee or similar compensation by reason of the acts of such Party, the Party upon whose acts such claim is predicated shall indemnify and hold the other Party harmless from all losses, costs, damages, claims, liabilities and expenses in connection therewith (including, but not limited to, reasonable legal fees and the cost of enforcing this indemnity).

46. Recording. Tenant hereby covenants and agrees not to record this Lease or any memorandum or affidavit thereof or cause same or any memorandum or affidavit thereof to be recorded by any third persons without Landlord's written authority.

47. Headings. The paragraph headings provided herein are for the convenience of the Parties, but shall not be deemed to qualify, modify or amend the text of each paragraph of the Lease.

48. Entire Agreement. This Lease constitutes the entire agreement between the Parties and may not be modified in any manner except by a writing signed by both Parties.

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals the day and year first above written.

LANDLORD:

FULLER CENTRAL PARK PROPERTIES, L.L.C.


By: Edward A. Fuller
Its: Managing Member

TENANT:

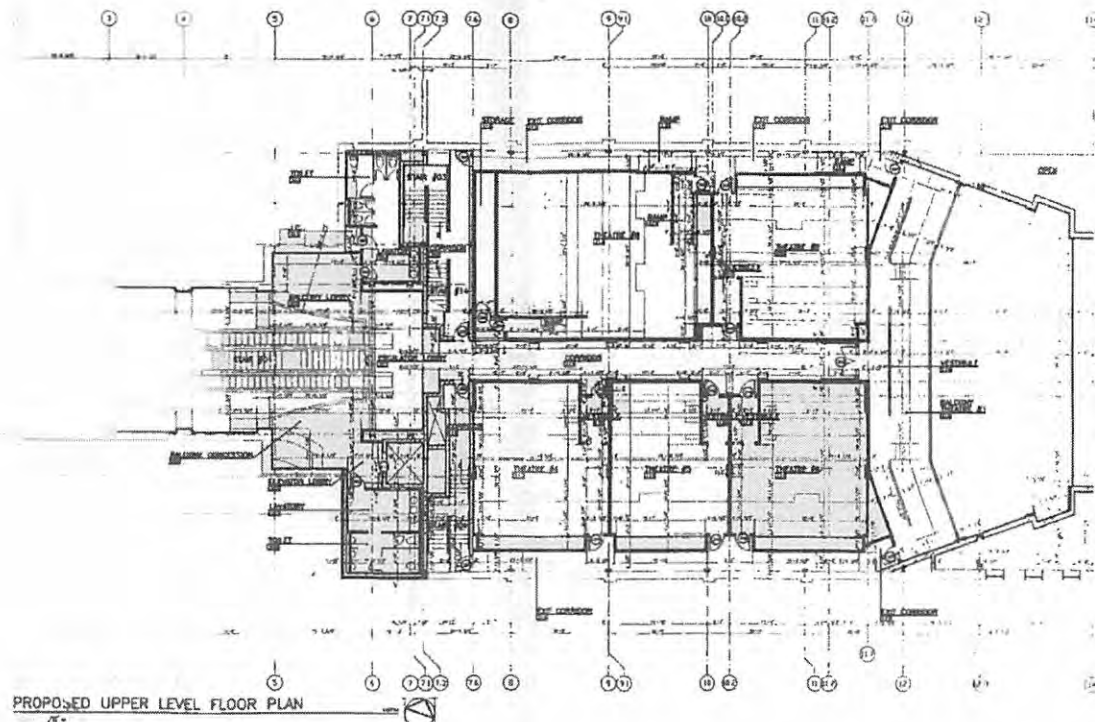
CH BIRMINGHAM LLC,
a Michigan limited liability company
By: 303 Management, Inc.,
a Michigan corporation, Manager

By: 
Paul A. Glantz, President



Project Number:
20-6-1
Sheet Title:
PROPOSED
LOBBY LEVEL FLOOR PLAN

Sheet Number:
A1.03



PROPOSED UPPER LEVEL FLOOR PLAN

KEY

STAGE	STAGE AREA
LOBBY	LOBBY AREA
CORRIDOR	CORRIDOR AREA
RESTROOM	RESTROOM AREA
STAIR	STAIR AREA
MECHANICAL	MECHANICAL AREA
STAGE	STAGE AREA
LOBBY	LOBBY AREA
CORRIDOR	CORRIDOR AREA
RESTROOM	RESTROOM AREA
STAIR	STAIR AREA
MECHANICAL	MECHANICAL AREA

PROJECT ARCHITECT
VICTOR GORDON & ASSOCIATES
ARCHITECTS, P.C.
325 South Woodward Ave.
Birmingham, AL 35209
810.254.5700
Fax 810.254.5515

ARCHITECT ARCHITECT
CONSTRUCTION SERVICES
PETER BAKER SYSTEMS, INC.
677 South Adams Rd.
Suite 202
Birmingham, AL 35209
810.540.1711
Fax 810.540.1856

STRUCTURAL ENGINEER
L. & N. INC.
29540 Northwestern Hwy.
Suite 100
Southfield, MI 48034
810.335.7750
Fax 810.336.1210

MECHANICAL/ELECTRICAL ENGINEER
JOHN PATRICK HENNING, INC.
325 South Adams Rd.
Birmingham, AL 35209
810.241.3465
Fax 810.241.1590

CONSTRUCTION SERVICES
INTERSTATE CONSTRUCTION
CORPORATION, INC.
355 South Woodward Ave.
Suite 200
Birmingham, AL 35209
810.542.9800
Fax 810.542.9870

MECHANICAL ENGINEER
UPPER LEVEL
211 South Woodward Ave.
Birmingham, AL 35209

Client: Board For
UPPER LEVEL
UPPER LEVEL

Project Number:
Sheet Title:
PROPOSED
UPPER LEVEL
FLOOR PLAN
Sheet Number:
A1.05



MEMORANDUM

Police Department

DATE: March 10th, 2021

TO: Tom Markus, City Manager
Jana Ecker, Planning Director

FROM: Chris Busen, Investigative Commander

SUBJECT: Request to transfer ownership of the Class C Liquor License from Birmingham Teatro, LLC (Business Id. No. 248616) to CH Birmingham, LLC located at 211 S Old Woodward, Birmingham, Oakland County, Michigan; with Sunday Sales (PM) permit, and Entertainment permit.

INTRODUCTION:

The police department has received a request from the Law Offices of J.Patrick Howe regarding approval to transfer ownership of the Class C license from Teatro, LLC located at 211 S Old Woodward, Birmingham, Oakland County, MI 48009 to CH Birmingham, which will continue doing business as Birmingham 8 Theater. CH Birmingham, LLC also requests the following permits: Sunday Sales PM Permit, and Entertainment Permit. CH Birmingham, LLC has paid the initial fee of \$1500 for a business that serves alcoholic beverages for consumption on the premises per section 7.33 of the Birmingham City Code.

BACKGROUND:

CH Birmingham, LLC has entered into a lease to operate the Birmingham 8 Theater located at 211 S Old Woodard. The lease calls for the current operator, Birmingham Teatro, LLC to transfer ownership of the Class C liquor license held at the theater to CH Birmingham, LLC. CH Birmingham, LLC is not proposing any changes to the operation or floor plan of the theater at this time. They are only requesting to transfer ownership of the Class C liquor license. The Class C liquor license is being transferred for \$1.00. CH Birmingham, LLC is simultaneously filing a separate request to transfer the Special Land Use Permit for the theater with the Birmingham Planning Department. A Liquor License Application has also been filed with the Michigan Liquor Control Commission. Funds used for operating the Birmingham 8 Theater will come from Emagine Theater ongoing operations funds. CH Birmingham, LLC provided a financial letter stating they have funds available to support their operation moving forward. The tentative hours of operation are 11am-1:00am depending on season and demand. CH Birmingham, LLC will initially pay a percentage rate for their lease and then eventually pay a monthly amount an addition to the percentage amount for their lease.

LEGAL REVIEW:

Non-applicable

FISCAL IMPACT:

Non-applicable

SUMMARY:

Birmingham 8 Theater will be solely owned by Paul A Glantz, who is the Chairman of Emagine Theaters.

<u>Member</u>	<u>Percentage of Interest</u>
Paul A Glantz	100%

A background check was conducted on Paul A Glantz. Glantz was checked using the Law Enforcement Information Network (LEIN) and the Court's Law Enforcement Management Information System (CLEMIS). Glantz has no criminal convictions or police contacts.

Glantz has Michigan Liquor Control Commission ("MLCC") violations at the following locations he has an interest in:

<u>Licensee Name</u>	<u>MLCC Violation</u>
Emagine Novi	(7) NSF Violations
Emagine Canton	(1) NSF Violation (1) Sale to Minor
Emagine Royal Oak	(1) Sale to Minor
Emagine Rochester Hills	(1) Sale to Minor
Emagine Macomb	(1) NSF Violation (1) Fail to provide server training
Emagine Palladium	(1) Fail to provide server training
Emagine Hartland	(1) NSF Violation (1) Fail to provide server training
Emagine Birch Run	(1) NSF Violation

ATTACHMENTS:
Non-Applicable

SUGGESTED RESOLUTION:

To authorize the Chief of Police to sign the MLCC Police Investigation Report (LC-1800) and to approve the liquor license request of CH Birmingham, LLC that requests a transfer of interest in a Class C License to be issued under MCL 436.1521(A)(1)(B) located at 211 S Old Woodward, Birmingham, Oakland County, MI 48009.

Furthermore, pursuant to Birmingham City Ordinance, to authorize the City Clerk to complete the Local Approval Notice at the request of CH Birmingham, LLC approving the liquor license transfer request of CH Birmingham, LLC that requested a Class C License be transferred under MCL 436.1521 (A)(1)(B) located at 211 S Old Woodard, Birmingham, Oakland County, MI 48009.

DATE: April 8, 2021

TO: Tom Markus, City Manager

FROM: Scott Zielinski, Assistant City Engineer,
Jim Surhigh, Consulting City Engineer

SUBJECT: Grant Street Paving Project
Contract #1-21 (P) Contract Award

INTRODUCTION:

Bids for the Grant Street Paving Project #1-21(P) were opened on March 31, 2021. The City received five (5) bids. The lowest complete and qualified bid was submitted by DiPonio Contracting, Inc.

BACKGROUND:

The Grant Street Paving Project is a 3 block project in two sections of Grant St., from E. Lincoln Street to Humphrey Ave, and from Bird Ave to W 14 Mile Road. The project includes work designed to improve water and sewer infrastructure while replacing a severely deteriorated pavement. The Grant Street Paving project was presented to the Multi-Modal Transportation Board (MMTB) for review and recommendations for improvement. As part of the pavement replacement, the City will placing new curb and gutters along with replacing drive approaches, and improving sidewalk ramps as needed. No additional recommendations were given by MMTB for the project.

The Engineering Department opened bids on March 31st, 2021. Five (5) bids were received, as listed on the attached summary. The low bidder was DiPonio Contracting, Inc., with their bid of \$1,139,199.00. Diponio's bid was 5.0% less than the Engineer's Estimate of \$1,199,619.50. The letter from our engineering consultant, Nowak & Fraus Engineers, is attached for reference.

DiPonio Contracting, Inc. has completed several projects for the City in the past, most recently the Lakeview Ave Paving project in 2020. Based on the performance of previous projects, we are confident that they are fully qualified to perform the type of work included in the Grant Street Paving Project.

As is required for all of the City's construction projects, DiPonio Contracting, Inc. has submitted a 5% bid security with their bid which will be forfeited if they do not provide the signed contracts, bonds and insurance required by the contract following the award by the City Commission.

In accordance with recently modified rules from the Michigan Dept. of Environmental, Great Lakes, and Energy (EGLE) requiring the complete removal of lead water services

from the water main to the water meter, this project includes work that addresses these requirements. One (1) home within the project area is known to have a lead water service. The City is currently working on obtaining the homeowner's consent for the City and its Contractor to enter the home to replace the lead water service to the water meter. Per the EGLE, the City is not allowed to charge the homeowner for this work. Based on contract prices received, the cost of this work from the water main to the water meter is estimated at \$3,000.

LEGAL REVIEW:

The City's standard contract language was used for this bidding document. No legal review is required at this time.

FISCAL IMPACT:

This project was budgeted for in the 2020/2021 budget and the cost of the project will be charged to the following accounts:

		Budget	Bid Amount
Sewer Fund, Pub. Imp.	590-536.001-981.0100	\$ 160,000.00	\$ 405,675.00
Water Fund, Lead Water Service Repl.	591-537.005-811.0000	\$ 3,000.00	\$ 3,000.00
Water Fund, Pub. Imp.	591-537.004-981.0100	\$ 210,000.00	\$ 240,931.00
Major Streets Fund	202-449.001-981.0100	\$ 428,825.00	\$ 489,593.00
TOTAL		\$ 801,825.00	\$ 1,139,199.00

Amendments to the 2020/2021 fiscal year budgets for both the Water and Sewer Funds will be required to complete this work. Adequate reserves are available in the Sewer Fund, Water Fund and Major Streets Fund to accommodate this request. The discrepancy between the budget and bid amounts for the proposed sewer work is mainly due to inadvertently not including needed relief sewer costs on the Grant Street project that were determined to be needed during design of a previously constructed sewers on Bennaville in 2018. The proposed sewer across St. James Park diverts flow to the new sewers to be installed on Grant, thereby completing the relief of the sewers on Bennaville.

PUBLIC COMMUNICATIONS:

Communication with the residents in the project area will include the project announcement, project start date and regular updates. Residents will be encouraged to sign up for the City's Constant Contact to receive additional information during the project.

SUMMARY:

It is recommended that the Grant Street Paving Project #1-21(P), be awarded to DiPonio Contracting, Inc.

ATTACHMENTS:

- Project Area Map – (one page)
- Bid Summary – (one page)
- Plans – (18 sheets)
- Nowak and Fraus Engineers Recommendation – (one page)

SUGGESTED RESOLUTION:

To award the Grant Street Paving Project #1-21(P), to DiPonio Contracting, Inc. contingent upon execution of the agreement and meeting all insurance and bonding requirements. In the amount of \$1,139,199.00, to be charged to the following accounts:

			Bid Amount
Sewer Fund, Pub. Imp.	590-536.001-981.0100	\$	405,675.00
Water Fund, Lead Water Service Repl.	591-537.005-811.0000	\$	3,000.00
Water Fund, Pub. Imp.	591-537.004-981.0100	\$	240,931.00
Major Streets Fund	202-449.001-981.0100	\$	489,593.00
TOTAL			\$ 1,139,199.00

To approve the appropriation and amendment to the fiscal year 2020-2021 Sewer Fund budget as follows:

Sewer Fund

Revenues:

590-000.000-400.0000	Draw from Net Position	<u>\$245,675</u>
Total Revenue		<u>\$245,675</u>

Expenses:

590-536.001-981.0100	Public Improvement	<u>\$245,675</u>
Total Expenses		<u>\$245,675</u>

To approve the appropriation and amendment to the fiscal year 2020-2021 Water Fund budget as follows:

Water Fund

Revenues:		
591-000.000-400.0000	Draw from Net Position	<u>\$30,931</u>
Total Revenue		<u>\$30,931</u>
Expenses:		
591-537.004-981.0100	Public Improvement	<u>\$30,931</u>
Total Expenses		<u>\$30,931</u>

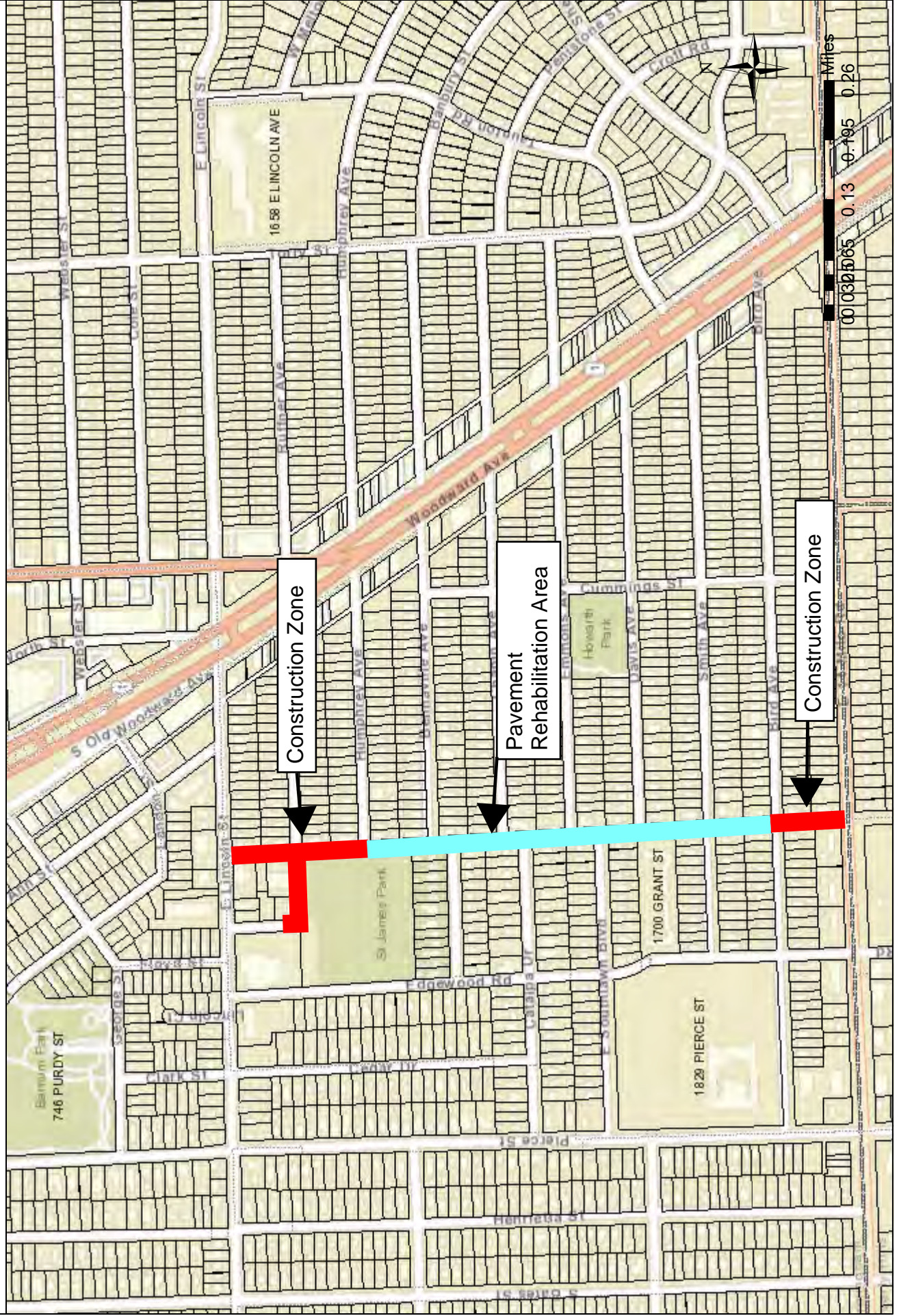
To approve the appropriation and amendment to the fiscal year 2020-2021 Major Street Fund budget as follows:

Major Streets Fund

Revenues:		
202-000.000-400.0000	Draw from Fund Balance	<u>\$60,768</u>
Total Revenue		<u>\$60,768</u>
Expenses:		
202-449.001-981.0100	Public Improvement	<u>\$60,768</u>
Total Expenses		<u>\$60,768</u>

Also, to authorize the Mayor to sign the contract on behalf of the City.

GRANT ST PAVING PROJECT #1-21(P)



CITY OF BIRMINGHAM

2021 GRANT STREET PAVING PROJECT

CONTRACT # 1-21 (P)

BID SUMMARY

March 31, 2020 - 2:00 PM

CITY OF BIRMINGHAM

2021 GRANT STREET PAVING PROJECT

CONTRACT # 1-21 (P)

BID SUMMARY

March 31, 2020 - 2:00 PM

CITY OF BIRMINGHAM

2021 GRANT STREET PAVING PROJECT

CONTRACT # 1-21 (P)

BID SUMMARY

March 31, 2020 - 2:00 PM

[illegible]



CIVIL ENGINEERS

LAND SURVEYORS

LAND PLANNERS

April 7, 2021

City of Birmingham
151 Martin Street
Birmingham, MI 48012

Attn: Mr. James Surhigh, P.E.
Consulting City Engineer

Re: Recommendation for Bid Award
Grant Street Paving Project – Contract #1-21P
NFE Job #L485

Dear Mr. Surhigh,

Bids for the subject project were received, opened, and read on Wednesday March 31, 2021, at 2:00 p.m. at City Hall. A total of five (5) bids were received and read. The bids have been tabulated, checked, and are in order. The low bidder for the project is DiPonio Contracting, Inc. of Shelby Township, Michigan, with a total bid amount of \$1,139,199.00. We note that the bid amount is less than the Engineer's Opinion of Probable Cost, which was \$1,199,619.50.

Our office has experience working with DiPonio Contracting on previous successful projects in Birmingham and other surrounding communities. DiPonio Contracting most recently completed the 2020 Lakeview Avenue Paving Project in Birmingham (Contract #2-20P). We have also reviewed the references included with the bid and find them to be reputable and acceptable. Based on previous experience we are confident in DiPonio Contracting's ability to perform the scope of work for this project.

In our capacity as Design and Consulting Engineers for the City of Birmingham, we recommend that Contract #1-21P for the Grant Street Paving Project be awarded to DiPonio Contracting, Inc. in the amount of **\$1,139,199.00**.

Please do not hesitate to contact our office if you have any questions or comments.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Paul Tulikangas', written over a light blue circular stamp.

Paul Tulikangas, P.E.
Associate / Engineering Manager

A handwritten signature in blue ink, appearing to read 'Brett Buchholz', written over a light blue circular stamp.

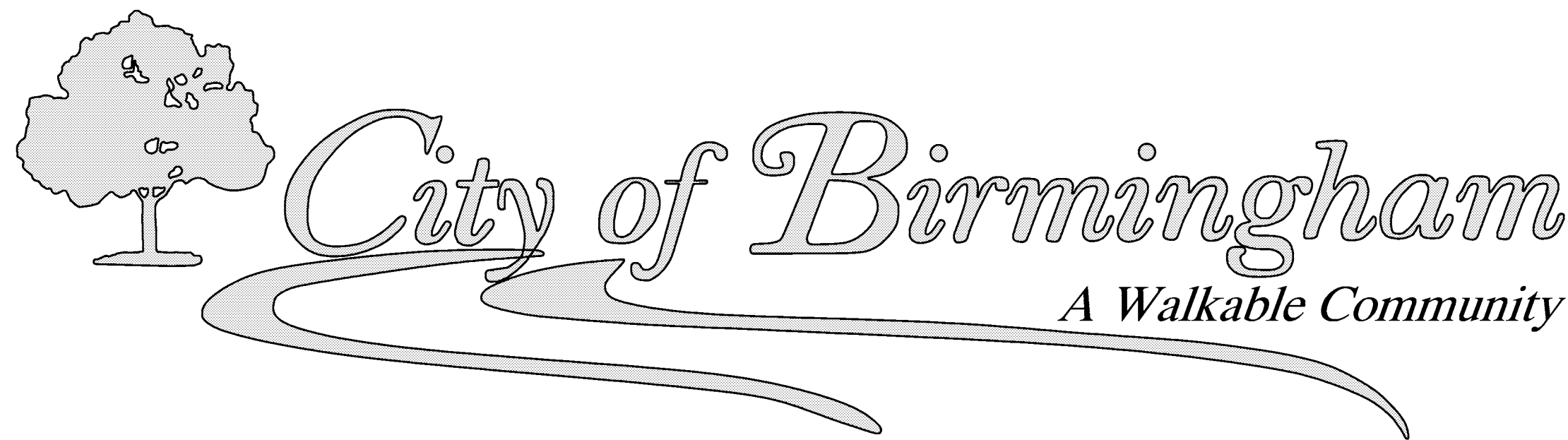
Brett Buchholz, P.E.,
Principal

NOWAK & FRAUS ENGINEERS

46777 WOODWARD AVENUE
PONTIAC, MI 48342-5032

WWW.NOWAKFRAUS.COM

VOICE: 248.332.7931
FAX: 248.332.8257



ENGINEERING DEPARTMENT GRANT STREET PAVING PROJECT CONTRACT #1-21(P)

SHEET INDEX

- COVER SHEET
C1 PAVING & UTILITY PLAN STA. P.O.B. TO 4+50
C2 PAVING & UTILITY PLAN STA. 20+00 TO 23+50
C3 PAVING & UTILITY PLAN STA. 23+50 TO P.O.E.
C4 ST. JAMES PARK- COMBINED SEWER PLAN & PROFILE
C5 STORM SEWER PROFILES
C6 GRADING PLAN STA. P.O.B. TO 4+50
C7 GRADING PLAN STA. 20+00 TO 23+50
C8 GRADING PLAN STA. 23+50 TO P.O.E.
C9 INTERSECTION GRADING DETAILS - GRANT STREET
C10 PAVEMENT JOINTING, MARKING, AND SIGNAGE PLAN - GRANT STREET
C11 EXISTING & PROPOSED CROSS-SECTIONS
C12 ADVANCED WARNING SIGNAGE DIAGRAM - GRANT STREET
C13 MDOT TRAFFIC TYPICALS
C14 NOTES & DETAILS

Q1 QUANTITIES

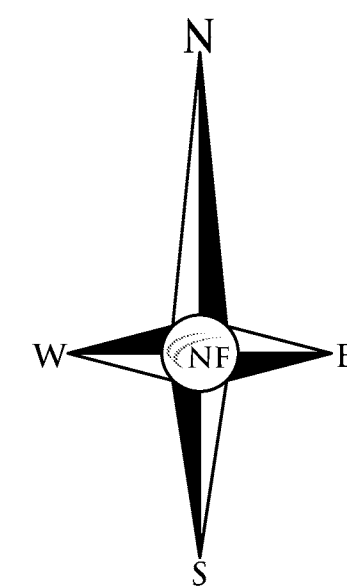
CITY OF BIRMINGHAM - SEWER STANDARD DETAILS
CITY OF BIRMINGHAM - WATER MAIN STANDARD DETAILS

WATER / SEWER SERVICE NOTE

ALL WATER AND SEWER SERVICE LATERAL INFORMATION IS SHOWN PER RECORD, WITHIN THE PUBLIC RIGHT OF WAY. THE CONTRACTOR SHALL COORDINATE WITH CITY FOR ALL PRIVATE-SIDE WATER AND SEWER LATERAL INFORMATION, AS REQUIRED, TO CONSTRUCT THE PROJECT (INC.).

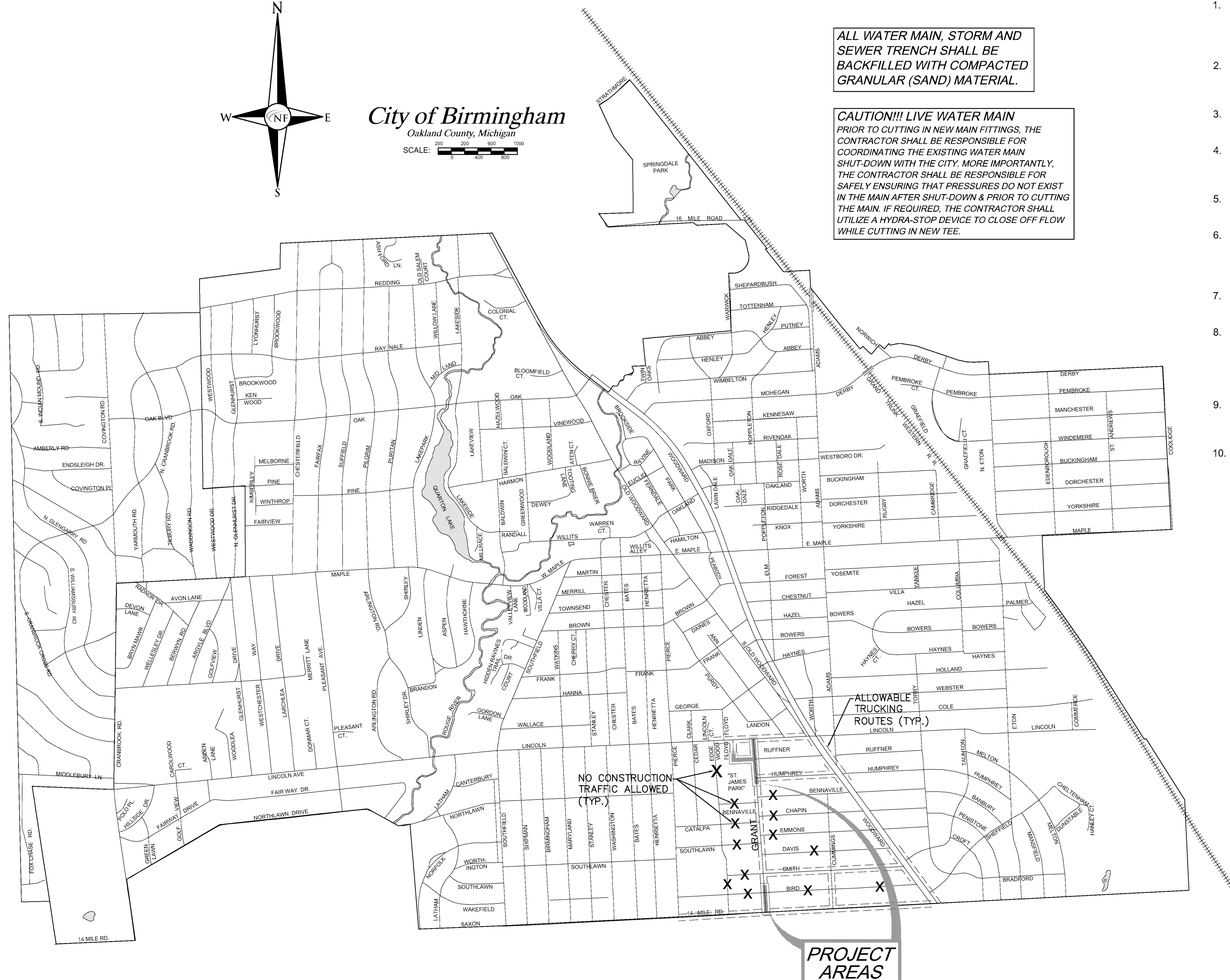
UTILITY NOTE

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City of Birmingham
Oakland County, Michigan

SCALE: 1" = 400'



CONSTRUCTION NOTES

These notes shall apply for all work within this contract:

- The contractor shall notify MISS DIG 1-800-482-7171 at least 3 working days excluding Saturday, Sunday, and Holidays before making any excavations and notify the City of Birmingham Engineering Department a minimum of 24 hours prior to the start of construction (248-530-1850).
- See the City of Birmingham drawings "Sewer Standard Details" and "Water Main Standard Details" for details of manholes, catch basins, inlets, and related sewer and water main work.
- All excavation under or within three feet of pavement, public or private, shall be backfilled and compacted with sand.
- The joints at the edges of all excavations in the pavement shall be sawcut, or pavement will be removed to existing joints, as directed by the Engineer. There is no separate pay item for saw cutting pavements.
- The contractor shall be responsible for damage to existing utilities, pavement, trees, landscaping, gravel, etc., whether located on public or private property.
- Catch basin and inlet castings scheduled for replacement, or new construction shall be EJIW 5000Z4 DI / 5000M4 DI Hinged Assembly unless specified otherwise. Manhole castings shall be EJIW 1040-A cover as noted on the detail sheets and plans, unless otherwise specified.
- Storm, sewer and water main trench shall be backfilled with MDOT Class II sand and properly compacted to 95% of modified proctor density.
- A permit from the Michigan Department of Environment, Great Lakes & Energy (EGLE) is required for all new water main installations. Also, no work shall be allowed on the combined sewer system until appropriate permits have been received by the Michigan Department of Environment, Great Lakes & Energy (EGLE).
- The contractor shall coordinate and cooperate with all other utility companies working in the same area, project related or not, during the same allotted construction period.
- All proposed Public Water Main for this project shall be Pressure Class 54 Ductile Iron Pipe (D.I.P.) with Zinc coating in conformance with City of Birmingham specifications, unless otherwise noted.

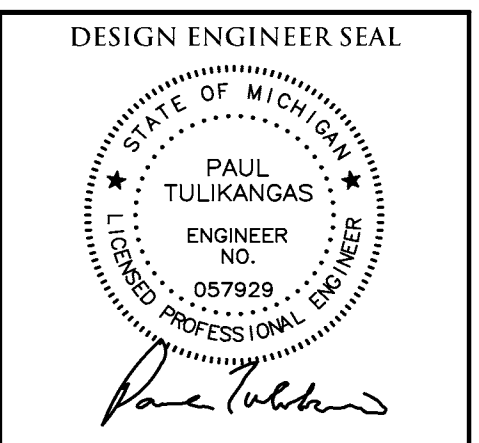
GRANT STREET PAVING PROJECT
CONTRACT #1-21(P)



Know what's below
Call before you dig.

BENCHMARK NOTE

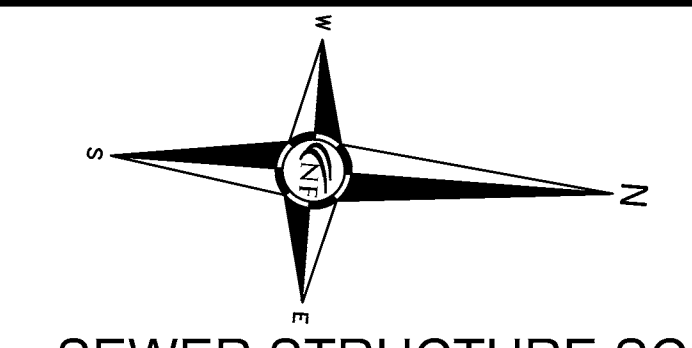
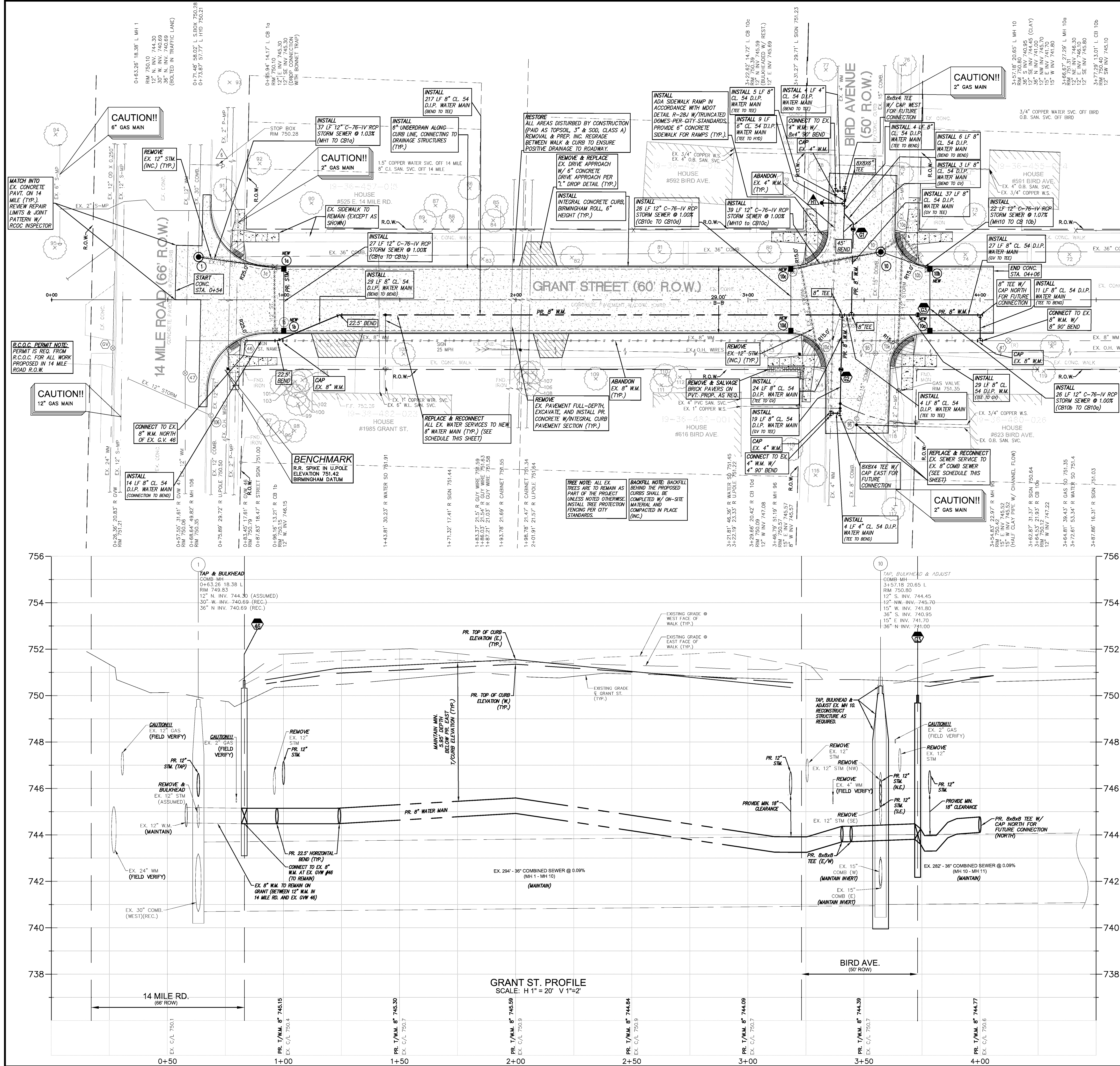
BENCHMARKS SET AND SHOWN PER SHEET WERE ESTABLISHED OFF OF THE CITY OF BIRMINGHAM BENCHMARK DATUM.



APPROVED

DATE

MARCH 15, 2021 BIDS



SEWER STRUCTURE SCHEDULE

- BULKHEAD & TAP**
0+35.28' 18.38' L
COMB. MH 1
RIM 749.83
12\"/>
- REMOVE & REPLACE**
0+77.29' 13.01' L
CB 10b
RIM 750.40
W/ 4\"/>
- REMOVE & REPLACE**
0+95.94' 14.17' L
CB 10b
RIM 750.10
W/ 4\"/>
- REMOVE & REPLACE**
0+96.16' 13.21' R
CB 10b
RIM 750.15
W/ 2\"/>
- ADJUST, BULKHEAD & TAP**
3+57.18' 20.65' L
COMB. MH 10
RIM 750.80
PR. STA. 03+57.17' 20.65' L
PR. RIM 750.41
12\"/>
- ADJUST**
3+54.83' 22.97' L
COMB. MH 9b
RIM 750.42
PR. STA. 03+54.83' 22.97' L
PR. RIM 750.18
12\"/>
- ADJUST & MAINTAIN**
0+83.45' 17.61' R
GVW 445
RIM 750.21
PR. RIM 750.79
PR. RIM 750.65
03+40.04' 30.40' R
8\"/>
- INSTALL**
03+40.04' 30.40' R
8\"/>
- INSTALL**
STA 3+31.74, 41.73' L
HYDRANT & ASSEMBLY
FG 751.27
PR. T/P 745.77

WATER MAIN SCHEDULE

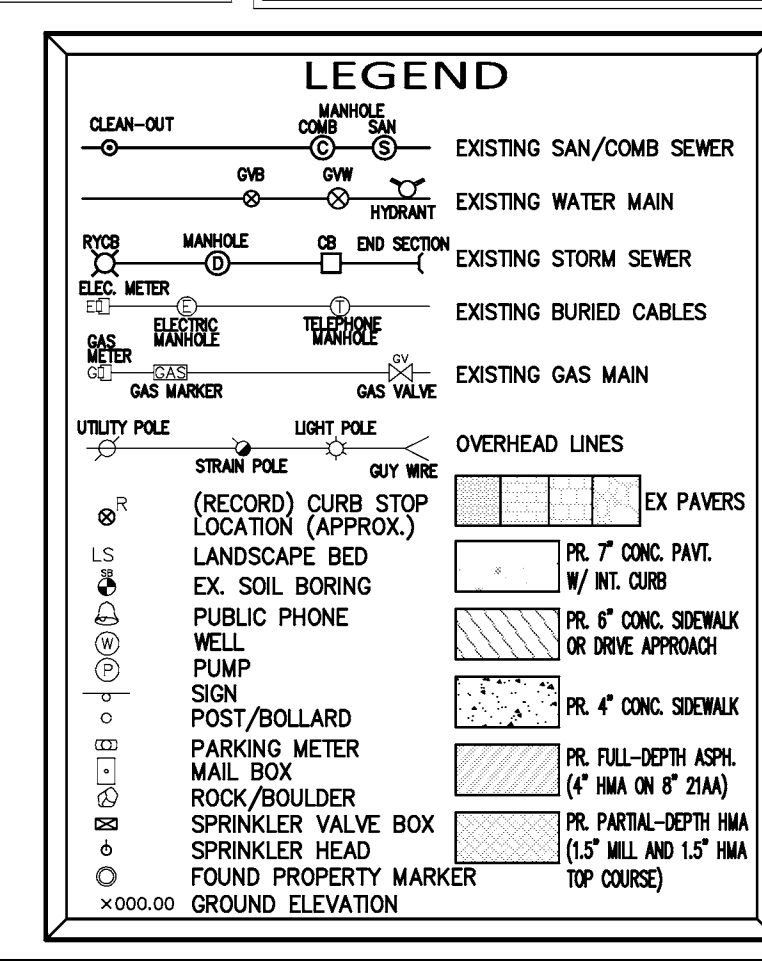
- MAINTAIN**
0+73.87' 57.77' L
HYD 6
RIM 750.21
- MAINTAIN**
0+57.55' 31.61' R
GVW 47
RIM 750.06
T/P 745.26
- INSTALL**
03+45.31' 30.40' L
8\"/>
- INSTALL**
03+73.17' 6.50' R
8\"/>
- ADJUST & MAINTAIN**
0+83.45' 17.61' R
GVW 445
RIM 750.21
PR. RIM 750.79
PR. RIM 750.65
03+40.04' 30.40' R
8\"/>
- INSTALL**
03+40.04' 30.40' R
8\"/>
- INSTALL**
STA 3+31.74, 41.73' L
HYDRANT & ASSEMBLY
FG 751.27
PR. T/P 745.77

WATER SERVICE SCHEDULE -- LENGTH OF WATER SERVICE NEEDED			
ADDRESS OR DESCRIPTION	EXISTING SERVICE	LENGTH NEEDED (FT)	NEW CURB BOX?
525 E. 14 MILE ROAD	COPPER SVC	N/A--OFF 14 MILE	N/A--OFF 14 MILE
551 BIRD AVE	3/4" COPPER SVC	N/A--OFF BIRD AVE	N/A--OFF BIRD AVE
592 BIRD AVE	3/4" COPPER SVC	N/A--OFF BIRD AVE	N/A--OFF BIRD AVE
616 BIRD AVE	1" COPPER SVC	4 (1.0')	NO
623 BIRD AVE	3/4" COPPER SVC	37 (1.0')	NO
1985 GARFIELD STREET	1" COPPER SVC	11 (1.0')	NO

SEWER SERVICE SCHEDULE - LENGTH OF 6" PVC PIPE NEEDED			
ADDRESS OR DESCRIPTION	EXISTING SERVICE	LENGTH NEEDED (FT)	WAP CONNECTION @ MAN
525 S. 14 MILE ROAD	0.0' PVC	N/A-OFF 14 MILE	N/A-OFF 14 MILE
591 BRD AVE	UNKNOWN	N/A-OFF BRD AVE	N/A-OFF BRD AVE
592 BRD AVE	UNKNOWN	N/A-OFF BRD AVE	N/A-OFF BRD AVE
616 BRD AVE	4.0' PVC		
623 BRD AVE	0.0'	25 (6")	YES
1885 GRANT STREET	6.0' W.P. (1984)		NO

WATER / SEWER SERVICE NOTE
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UTILITY NOTE
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NOWAK & FRAUS ENGINEERS
46777 WOODWARD AVE.
PONTIAC, MI 48342-5032
TEL. (248) 332-7931
FAX. (248) 332-8257
WWW.NOWAKFRAUS.COM

PROJECT
Grant Street Paving Project
Contract # 1 - 21 (P)

CLIENT
City of Birmingham
Engineering Department
151 Martin Street
Birmingham, MI 48012

PROJECT LOCATION
Part of the Southeast 1/4 of
Section 36, Town 2 North,
Range 10 East, City of
Birmingham, Oakland
County, Michigan

SHEET
Paving & Utility Plan
Sta. P.O.B. to 4+50



DATE ISSUED/REVISED
04-08-20 ISSUED SURVEY
01-08-21 UPDATED SURVEY
02-27-21 CITY REVIEW
03-15-21 BID5

DRAWN BY:
G. Viju
DESIGNED BY:
P. Tulikangas
APPROVED BY:
B. Buchholz
DATE:
March 3, 2020

SCALE: 1" = 20' / 1" = 2'
NFE JOB NO. SHEET NO.
L485 C1



CIVIL ENGINEERS
LAND SURVEYORS
LAND PLANNERS

NOWAK & FRAUS ENGINEERS
46777 WOODWARD AVE.
PONTIAC, MI 48342-5032
TEL (248) 332-7931
FAX (248) 332-8257
WWW.NOWAKFRAUS.COM

SEAL

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Grant Street Paving Project
Contract # 1 - 21 (P)

CLIENT
City of Birmingham
Engineering Department
151 Martin Street
Birmingham, MI 48012

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Part of the Southeast 1/4 of
Section 36, Town 2 North,
Range 10 East, City of
Birmingham, Oakland
County, Michigan

SHEET
Paving & Utility Plan
Sta. 20+00 to 23+50

DATE ISSUED/REVISED
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02-27-21 CITY REVIEW
03-15-21 BID5

DRAWN BY:
G. Viju
DESIGNED BY:
P. Tulikangas
APPROVED BY:
B. Buchholz
DATE:
March 3, 2020
SCALE: 1" = 20' / 1" = 2'
NFE JOB NO. SHEET NO.
L485 C2

SEWER STRUCTURE SCHEDULE

36	REMOVE & REPLACE 20+88.43' 13.88' L MH 36 RIM 753.11 W/ 5' DIA. COMB. MANHOLE PR. STA 20+88.43' 13.88 L PR. RIM 753.11 12" N INV. 744.87 (REMOVE) 12" SW INV. 747.31 (REMOVE) 12" NE INV. 748.55 (ASSUMED) (REMOVE) 15" E INV. 745.51 (RECONNECT) 27" S INV. 744.41 (RECONNECT) PR. 24" N INV. 744.71 PR. 12" SE INV. 748.45 PR. 12" NE INV. 748.35	36C	REMOVE & REPLACE 20+04.86' 19.85' R CB 36C RIM 752.97 W/ 4' DIA. CATCH BASIN W/ 2' SUMP PR. STA 21+15.91' 15.21' R PR. RIM 753.15 10" SW INV. 748.92 (BULKHEAD) (REMOVE) PR. 12" SW INV. 748.75 (TRAP) PR. 12" W INV. 748.75
36D	REMOVE & REPLACE 20+63.58' 14.98' L CB 36A RIM 753.12 W/ 2' DIA. INLET PR. STA 20+57.41' 15.21 L PR. RIM 953.18 12" E INV. 748.62 (REMOVE) 12" N INV. 748.71 (REMOVE) (TRAP) PR. 12" E INV. 749.18	36A	INSTALL 22+00.00' 13.30' L PR. 5' DIA. COMB. MANHOLE RIM 753.54 PR. 18" W INV. 745.66 PR. 24" W INV. 745.26 PR. 24" S INV. 745.16
36D	REMOVE & REPLACE 20+62.70' 18.33' R CB 36D RIM 752.88 W/ 4' DIA. CATCH BASIN W/ 2' SUMP PR. STA 20+57.41' 15.21' R PR. RIM 953.08 12" W INV. 749.48 (PVC) (REMOVE) PR. 12" NW INV. 748.88 (TRAP) PR. 12" W INV. 748.88		

WATER MAIN SCHEDULE

5	MAINTAIN 20+80.93' 29.47' R SB 5 RIM 753.37	MAINTAIN 20+69.82' 74.00' R HYD 25 FG 754.21
36A	INSTALL 20+50.00' 6.5' R 8" GATE VALVE IN BOX RIM 753.39 T/P 747.25	

WATER SERVICE SCHEDULE - LENGTH OF WATER SERVICE NEEDED			
ADDRESS OR DESCRIPTION	EXISTING SERVICE	LENGTH NEEDED (FT)	NEW CURB BOX
808 HUMPHREY AVE.	3/4" COPPER SVC	N/A-OFF HUMPHREY AVE	N/A-OFF HUMPHREY AVE
611 HUMPHREY AVE.	3/4" COPPER SVC	N/A-OFF HUMPHREY AVE	N/A-OFF HUMPHREY AVE
624 RUFFNER AVE.	1.0" COPPER SVC	N/A-OFF RUFFNER AVE	N/A-OFF RUFFNER AVE
PARK WTR TUN.	FIELD VERIFY	T.B.D.	NO

SEWER SERVICE SCHEDULE - LENGTH OF 6" PVC PIPE NEEDED			
ADDRESS OR DESCRIPTION	EXISTING SERVICE	LENGTH NEEDED (FT)	CONNECTION @ MAN
808 HUMPHREY AVE.	4" PVC	N/A-OFF HUMPHREY AVE	N/A-OFF HUMPHREY AVE
611 HUMPHREY AVE.	4" PVC	N/A-OFF HUMPHREY AVE	N/A-OFF HUMPHREY AVE
624 RUFFNER AVE.	4" PVC	N/A-OFF RUFFNER AVE	N/A-OFF RUFFNER AVE

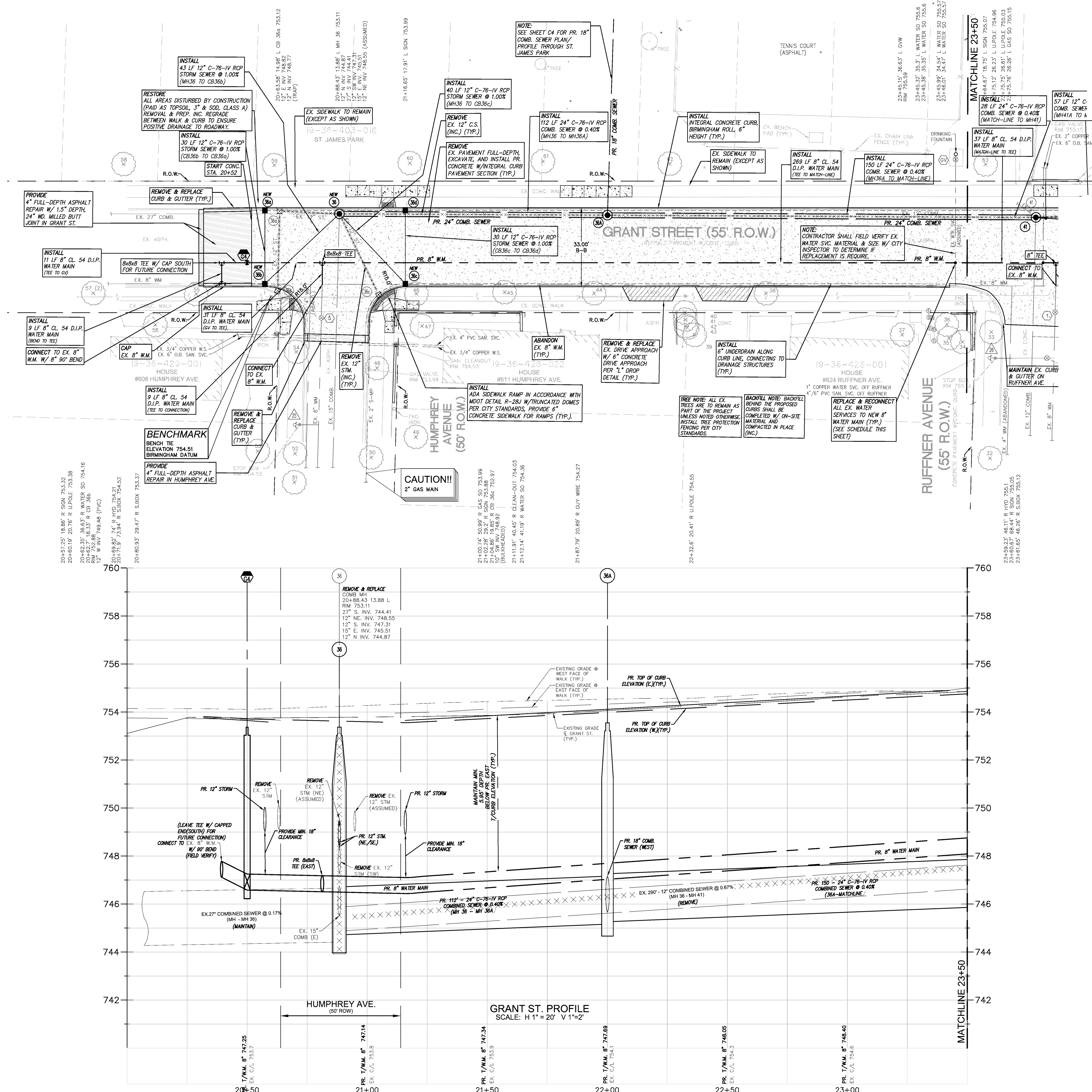
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LEGEND	
CLEAN-OUT	EXISTING SAN/COMB SEWER
MANHOLE	EXISTING WATER MAIN
HYDRANT	EXISTING STORM SEWER
EXISTING BURIED CABLES	
EXISTING GAS MAIN	
OVERHEAD LINES	
EX PAVERS	
PR. 7" CONC. PAVT.	
W/ INT. CURB	
PR. 6" CONC. SIDEWALK	
OR DRIVE APPROACH	
PR. 4" CONC. SIDEWALK	
PR. FULL-DEPTH ASPH.	
(4" MIN ON 8" ZIMA)	
PR. PARTIAL-DEPTH HMA	
(1.5" MIN ON 1.5" HMA TOP COURSE)	
FOUND PROPERTY MARKER	
GROUND ELEVATION	



SEAL

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Grant Street Paving Project
Contract # 1 - 21 (P)

CLIENT

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Paving & Utility Plan
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Call before you dig.

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04-08-20 ISSUED SURVEY
01-08-21 UPDATED SURVEY
02-27-21 CITY REVIEW
03-15-21 BID5

DRAWN BY:
C. Ellison
DESIGNED BY:
P. Tulikangas

APPROVED BY:
B. Buchholz
DATE:
March 3, 2020

SCALE: 1" = 20' / 1" = 2'
20 10 0 10 20 30
NFE JOB NO. SHEET NO.
L485 C3

SEWER STRUCTURE SCHEDULE

- 41 REMOVE & REPLACE**
23+76.12' 12.37' L
COMB. MH 41
RIM 754.51
W/ 5" DIA. COMB. MANHOLE
PR. STA 23+76.66' 12.37' L
PR. RIM 755.12
8" SW INV. 746.81 (RECONNECT)
12" S. INV. 746.81 (RECONNECT)
12" N. INV. 746.81 (RECONNECT)
10" NW INV. 750.31 (RECONNECT)
12" E. INV. 746.81 (RECONNECT)
PR. 12" N. INV. 746.37
PR. 24" S. INV. 745.97
- 44 REMOVE & REPLACE**
24+39.81' 11.94' L
COMB. MH 44
RIM 754.78
W/ 4" DIA. COMB. MANHOLE
PR. STA 24+39.80' 7.94' L
PR. RIM 755.12
12" S. INV. 747.38 (REMOVE)
12" S. INV. 746.81 (REMOVE)
12" N. INV. 746.81 (REMOVE)
10" NW INV. 750.31 (REMOVE)
12" E. INV. 746.81 (RECONNECT)
PR. 12" N. INV. 746.37
PR. 24" S. INV. 745.97
- 41A REMOVE & REPLACE**
24+34.95' 8.21' L
RIM 754.30
PR. 12" N. INV. 746.75
PR. 12" S. INV. 746.65
PR. 12" E. INV. 750.00
PR. 12" W. INV. 750.00
- 41b REMOVE & REPLACE**
24+38.46' 14.99' L
COMB. MH 41b
RIM 754.20
W/ 4" DIA. CATCH BASIN W/ 2" SUMP
PR. STA 24+35.00' 15.21' L
PR. RIM 754.11
10" E. INV. 751.20 (REMOVE)
10" S. INV. 751.20 (REMOVE)
PR. 12" E. INV. 750.11 (TRAP)
- 44a REMOVE & REPLACE**
26+00.00' 15.08' L
PR. 4" DIA. CATCH BASIN W/ 2" SUMP
PR. STA 26+00.00' 15.08' L
PR. RIM 754.85
10" E. INV. 751.20 (REMOVE)
10" S. INV. 751.20 (REMOVE)
PR. 12" E. INV. 750.69 (TRAP)
- 44b REMOVE & REPLACE**
26+00.00' 15.08' R
PR. 2" DIA. INLET
RIM 754.85
PR. 12" W. INV. 750.85
- 48 MAINTAIN**
26+59.09' 41.23' R
COMB. MH 48
RIM 755.44
(FULL OF CONCRETE)
- 79 MAINTAIN**
26+71.18' 9.21' R
COMB. MH 79
RIM 755.51
10" SW INV. 749.51
10" N. INV. 750.31
12" W. INV. 746.71
12" E. INV. 746.71
- 79a MAINTAIN**
27+01.95' 5.36' R
COMB. MH 79a
RIM 755.12
10" SE INV. 751.17
10" NE INV. 751.07

WATER MAIN SCHEDULE

- 79 MAINTAIN**
20+69.82' 74.00' R
HYD 25
FG 754.21
- 99 MAINTAIN**
26+56.11' 15.74' R
SB 99
RIM 755.42
- 100 MAINTAIN**
26+54.66' 27.23' R
GWM 100
RIM 755.62
12" T/PPE
E-W 750.82
- ADJUST**
23+96.62' 27.16' R
GWM 1
RIM 754.79
PR. RIM 754.64
- 79a MAINTAIN**
26+56.11' 16.68' R
GWM 99
RIM 755.30
8" T/PPE
U-S 750.50
- 28 MAINTAIN**
23+59.23' 46.11' R
HYD 28
FG 755.10
- 165 INSTALL**
26+41.31' 6.51' R
8" GATE VALVE IN BOX
RIM 755.20
T/P 749.70

ADDRESS OR DESCRIPTION	EXISTING SERVICE	LENGTH NEEDED (FT) (APPROX.)	CONNECTION @ MAIN
576 E. LINCOLN AVE.	UNKNOWN	FIELD DETERMINE	FIELD DETERMINE
600 E. LINCOLN AVE.	6" W.L.	N/A-OFF LINCOLN AVE.	N/A-OFF LINCOLN AVE.
611 RUFFNER AVE.	4" P/PPE	N/A-OFF RUFFNER AVE.	N/A-OFF RUFFNER AVE.
1148 GRANT STREET	6.0" O.B. (SAN)	20.0'	TAP
1148 GRANT STREET	6.0" W.L. (STM)	20.0'	TAP
1160 GRANT STREET	6.0" W.L.	19.0'	DP

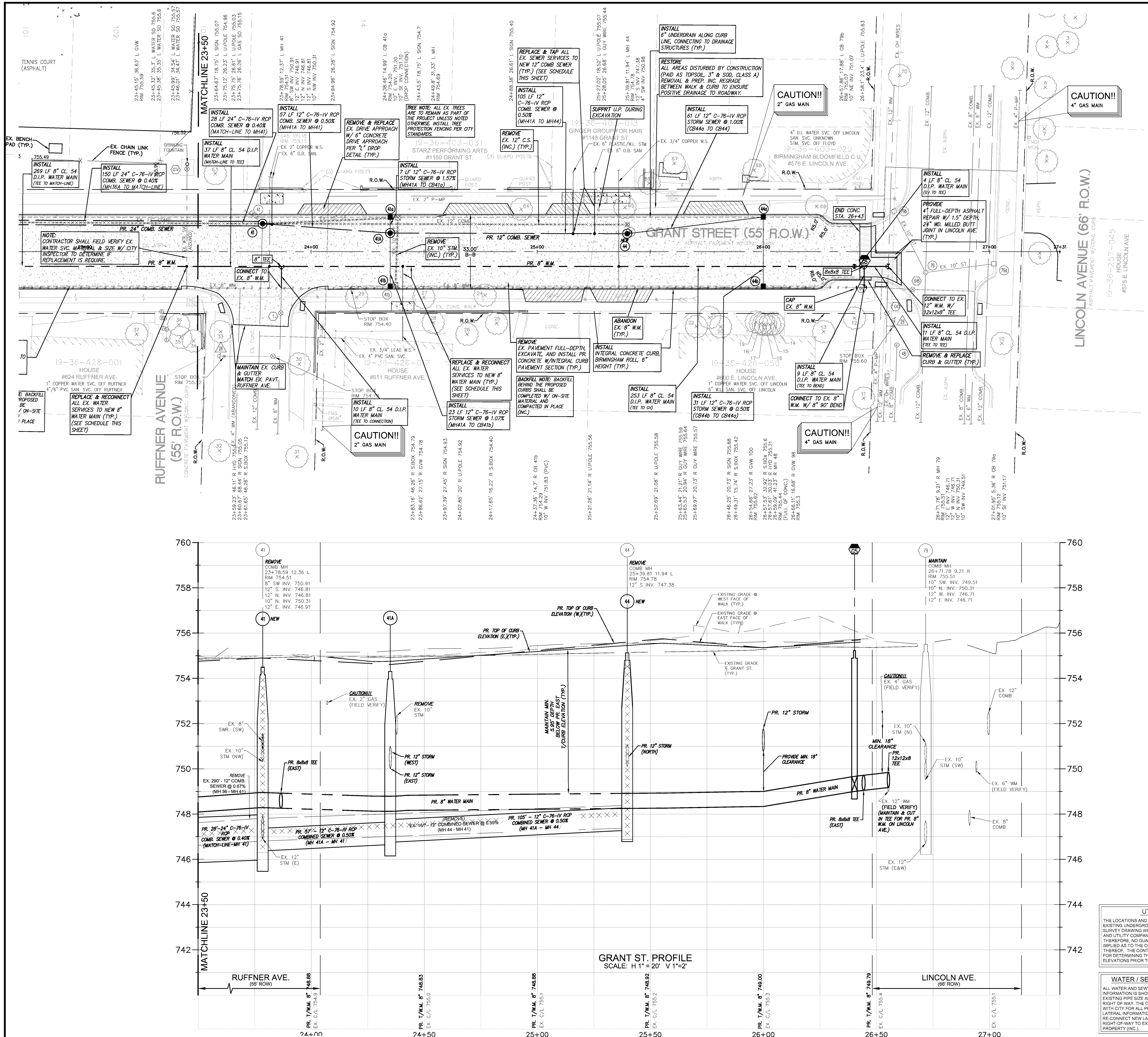
ADDRESS OR DESCRIPTION	EXISTING SERVICE	LENGTH NEEDED (FT) (APPROX.)	CONNECTION @ MAIN
576 E. LINCOLN AVE.	4" P/PPE	N/A-OFF LINCOLN AVE.	N/A-OFF LINCOLN AVE.
600 E. LINCOLN AVE.	1.0" COPPER SVC	N/A-OFF LINCOLN AVE.	N/A-OFF LINCOLN AVE.
611 RUFFNER AVE.	3/4" LEAD SVC	N/A-OFF RUFFNER AVE.	N/A-OFF RUFFNER AVE.
1148 GRANT STREET	3/4" COPPER SVC	34.0' (1.0')	YES
1160 GRANT STREET	2" COPPER SVC	0	NO

HEAD SERVICE REPLACEMENT NOTES:
ADDRESSES INDICATED REQUIRE FULL WATER SERVICE REPLACEMENT (BETWEEN WATER MAIN AND HOUSE METER). REPLACEMENT OF THE PORTION OF WATER SERVICE LINE LOCATED ON PRIVATE PROPERTY (BETWEEN R.O.W. AND METER) AND CONNECTION TO THE METER SHALL BE PAID USING THE FOLLOWING PAY ITEMS FOR EACH ADDRESS: NEW WATER SERVICE, 1" PEX, PRIVATE PROPERTY (BORED), AND NEW WATER SERVICE, 1.0" CONNECTION AT METER, RESPECTIVELY. BELOW IS A SUMMARY OF THE PRIVATE PROPERTY WATER SERVICE REPLACEMENT QUANTITIES (THIS SHEET):
• 611 RUFFNER: APPROX. 12 LF. NEW WATER SERVICE, 1" PEX, PRIVATE PROPERTY (BORED).

LEGEND	
	CLEAN-OUT
	MANHOLE
	EXISTING SAN/COMB SEWER
	EXISTING WATER MAIN
	EXISTING STORM SEWER
	EXISTING BURIED CABLES
	EXISTING GAS MAIN
	OVERHEAD LINES
	EX PAVERS
	7" PEX CONC. PAV. W/ INT. CURB
	8" PEX CONC. SIDEWALK OR DRIVE APPROACH
	4" PEX CONC. SIDEWALK
	PR. FULL-DEPTH ASPHL. (1.5" MIN. ON 8" DIA.)
	PR. PARTIAL-DEPTH HMA (1.5" MIN. ON 8" DIA.)
	PR. PARTIAL-DEPTH HMA (1.5" MIN. ON 8" DIA.)
	GROUND ELEVATION

UTILITY NOTE
THE LOCATIONS AND ELEVATIONS OF SOME OF THE EXISTING UNDERGROUND UTILITIES AS SHOWN ON THE SURVEY DRAWING WERE OBTAINED FROM MUNICIPAL AND UTILITY COMPANY RECORDS AND MAPS. THEREFORE, NO GUARANTEE IS EITHER EXPRESSED OR IMPLIED AS TO THE COMPLETENESS OR ACCURACY THEREOF. THE CONTRACTOR SHALL BE RESPONSIBLE FOR DETERMINING THE EXACT UTILITY LOCATIONS AND ELEVATIONS PRIOR TO THE START OF CONSTRUCTION.

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CIVIL ENGINEERS
LAND SURVEYORS
LAND PLANNERS

NOWAK & FRAUS ENGINEERS
46777 WOODWARD AVE.
PONTIAC, MI 48342-5032
TEL. (248) 332-7931
FAX. (248) 332-8257
WWW.NOWAKFRAUS.COM

SEAL

PROJECT
Grant Street Paving Project
Contract # 1 - 21 (P)

CLIENT

Engineering Department
151 Martin Street
Birmingham, MI 48012

PROJECT LOCATION
Part of the Southeast $\frac{1}{4}$ of
Section 36, Town 2 North,
Range 10 East, City of
Birmingham, Oakland
County, Michigan

SHEET
St. James Park- Combined
Sewer Plan & Profile



Know what's below
Call before you dig.

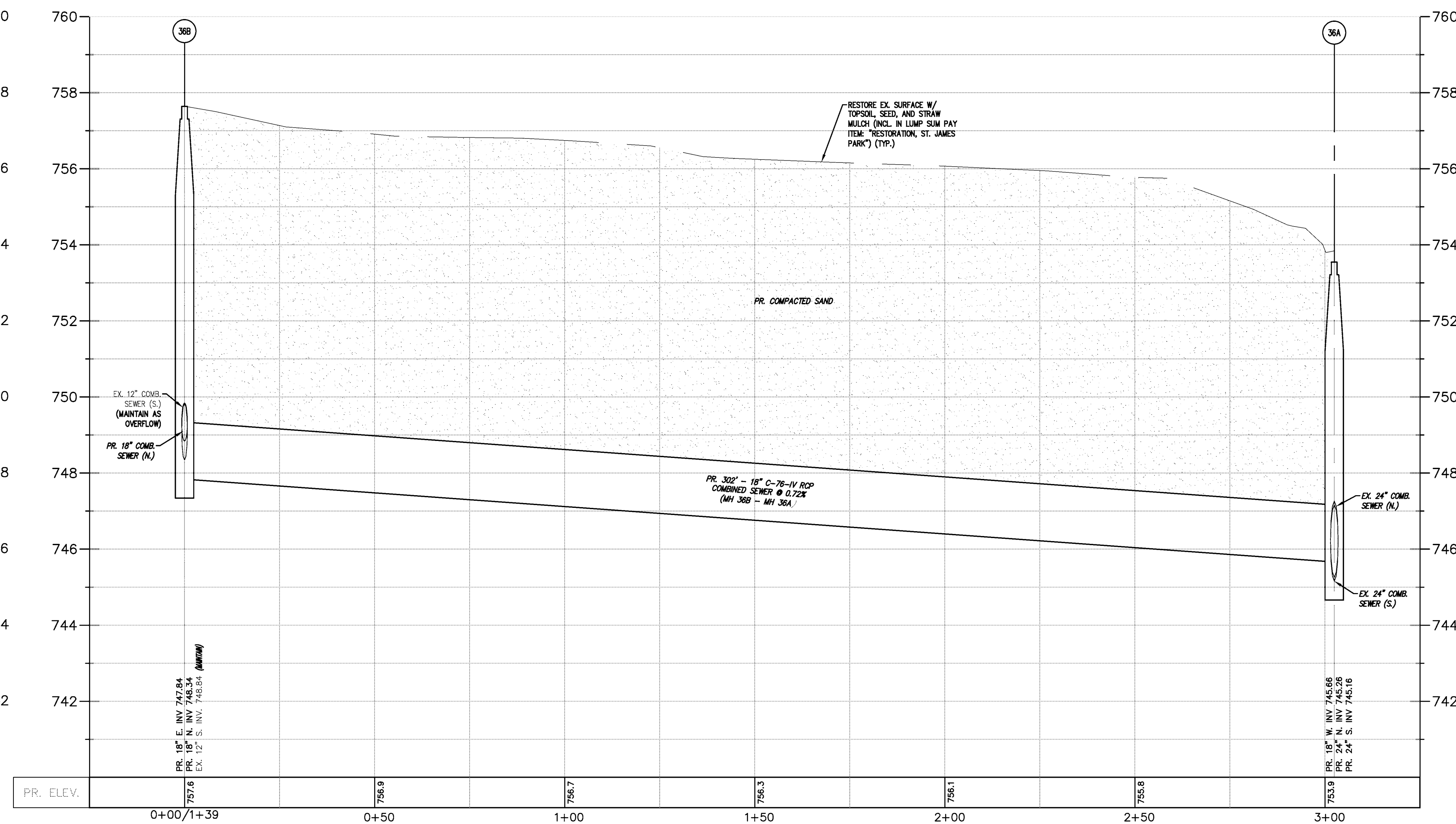
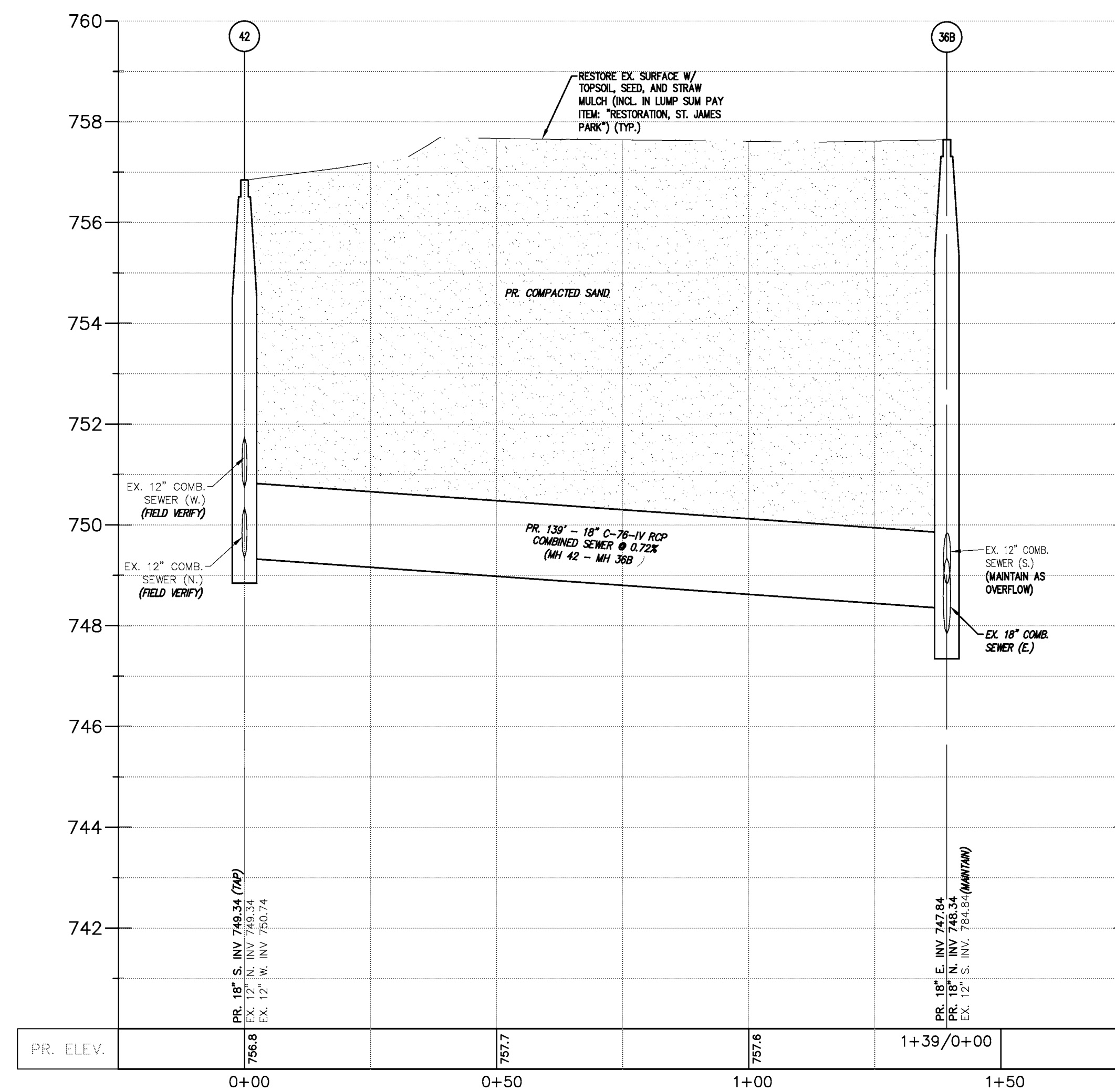
DATE ISSUED/REVISED
04-08-20 ISSUED SURVEY
01-08-21 UPDATED SURVEY
02-27-21 CITY REVIEW
03-15-21 BIDS

DRAWN BY:
G. Viju
DESIGNED BY:
P. Tulikangas
APPROVED BY:
B. Buchholz
DATE:
March 3, 2020

SCALE: 1" = 20' / 1" = 2'

20 10 0 10 20 30

NFE JOB NO. SHEET NO.
L485 C4



SEAL

PROJECT
Grant Street Paving Project
Contract # 1 - 21 (P)

CLIENT

Engineering Department
151 Martin Street
Birmingham, MI 48012

PROJECT LOCATION
Part of the Southeast $\frac{1}{4}$ of
Section 36, Town 2 North,
Range 10 East, City of
Birmingham, Oakland
County, Michigan

SHEET
Storm Sewer Profiles



Know what's below
Call before you dig.

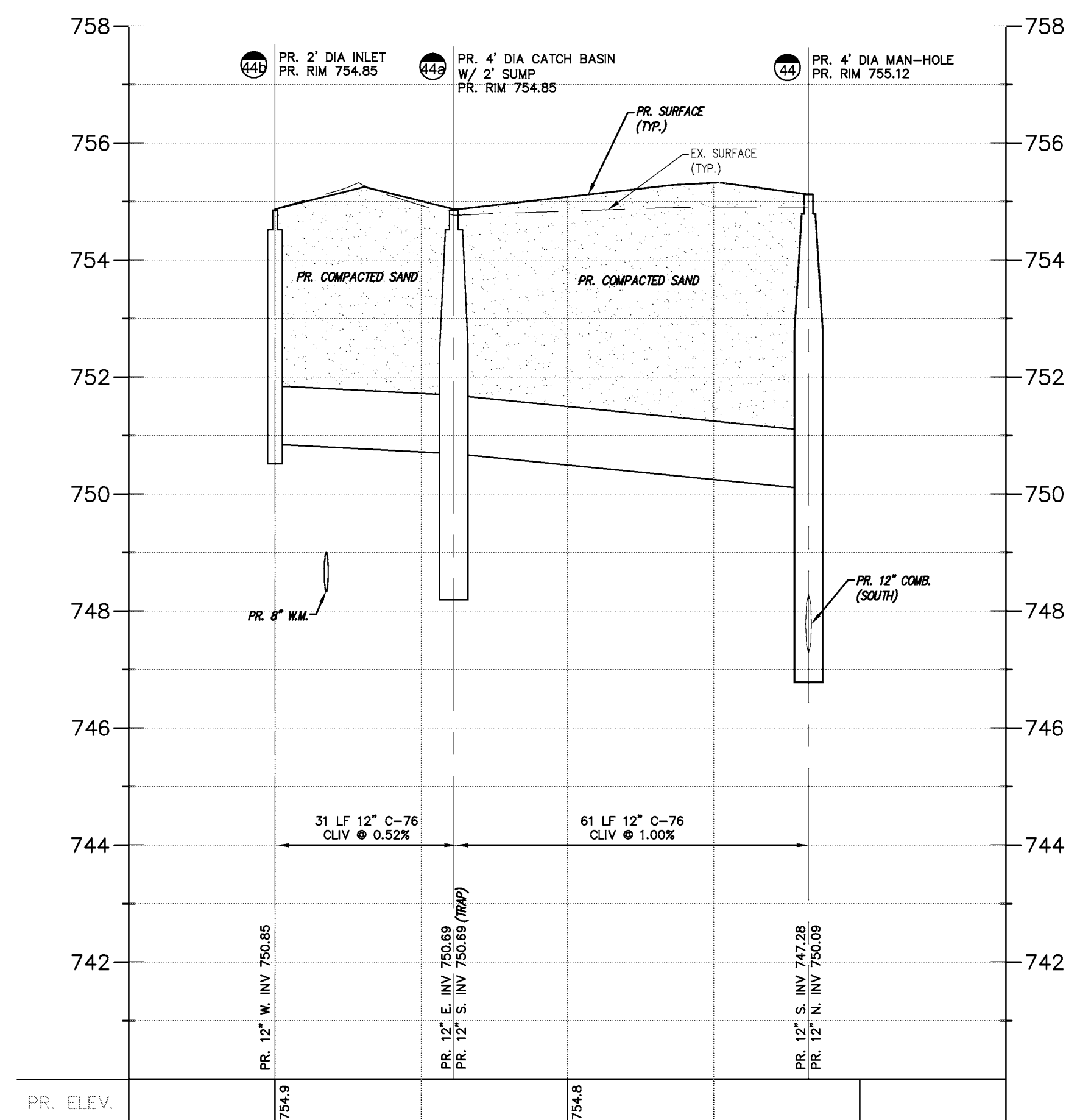
DATE ISSUED/REVISED
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DRAWN BY:
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P. Tulikangas

APPROVED BY:
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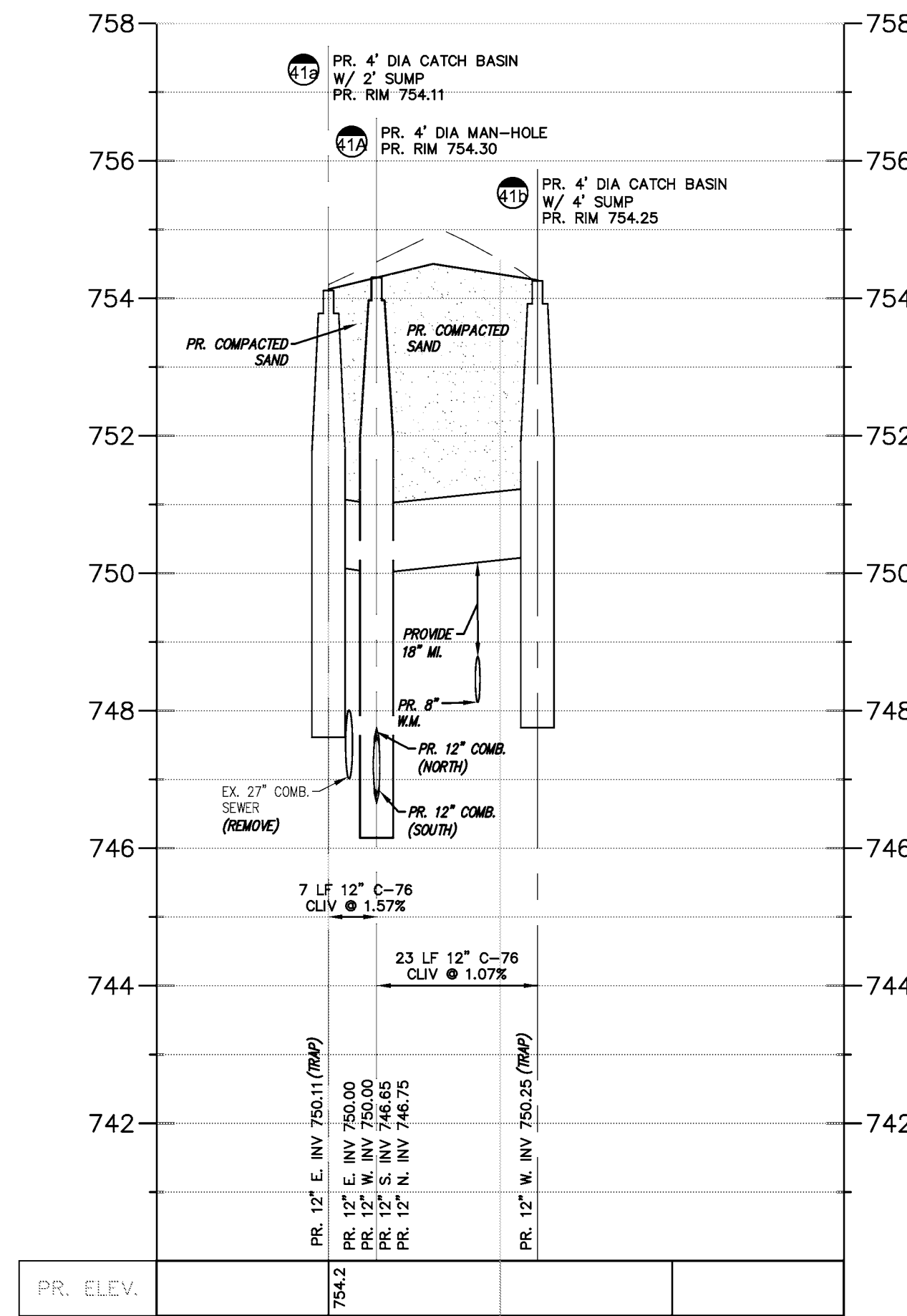
DATE:
March 3, 2020

SCALE: 1" = 20' / 1" = 2'
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NFE JOB NO. SHEET NO.
L485 C5



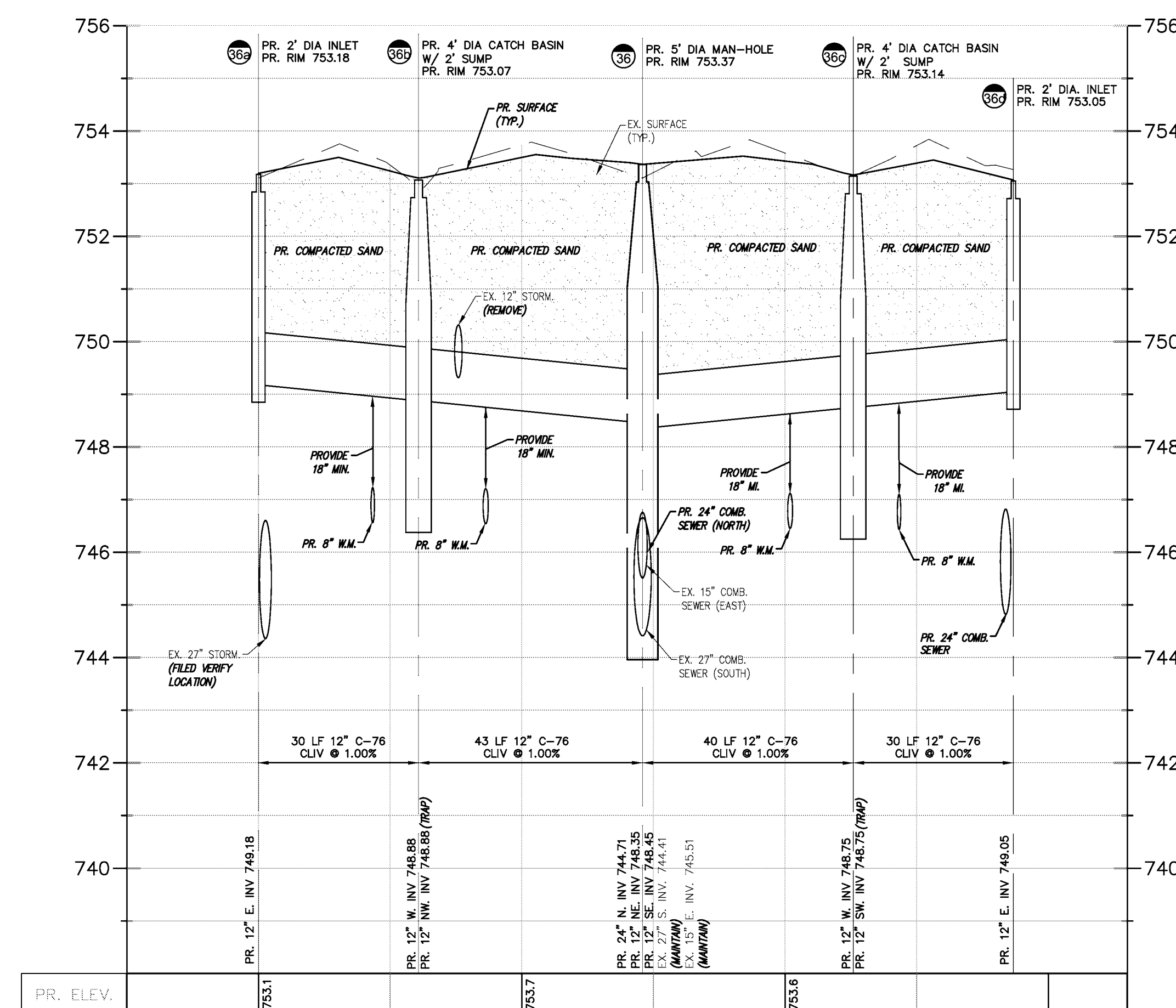
STORM SEWER (CB 44b - MH 44)

SCALE: 1"=20' (H), 1"=2' (V)



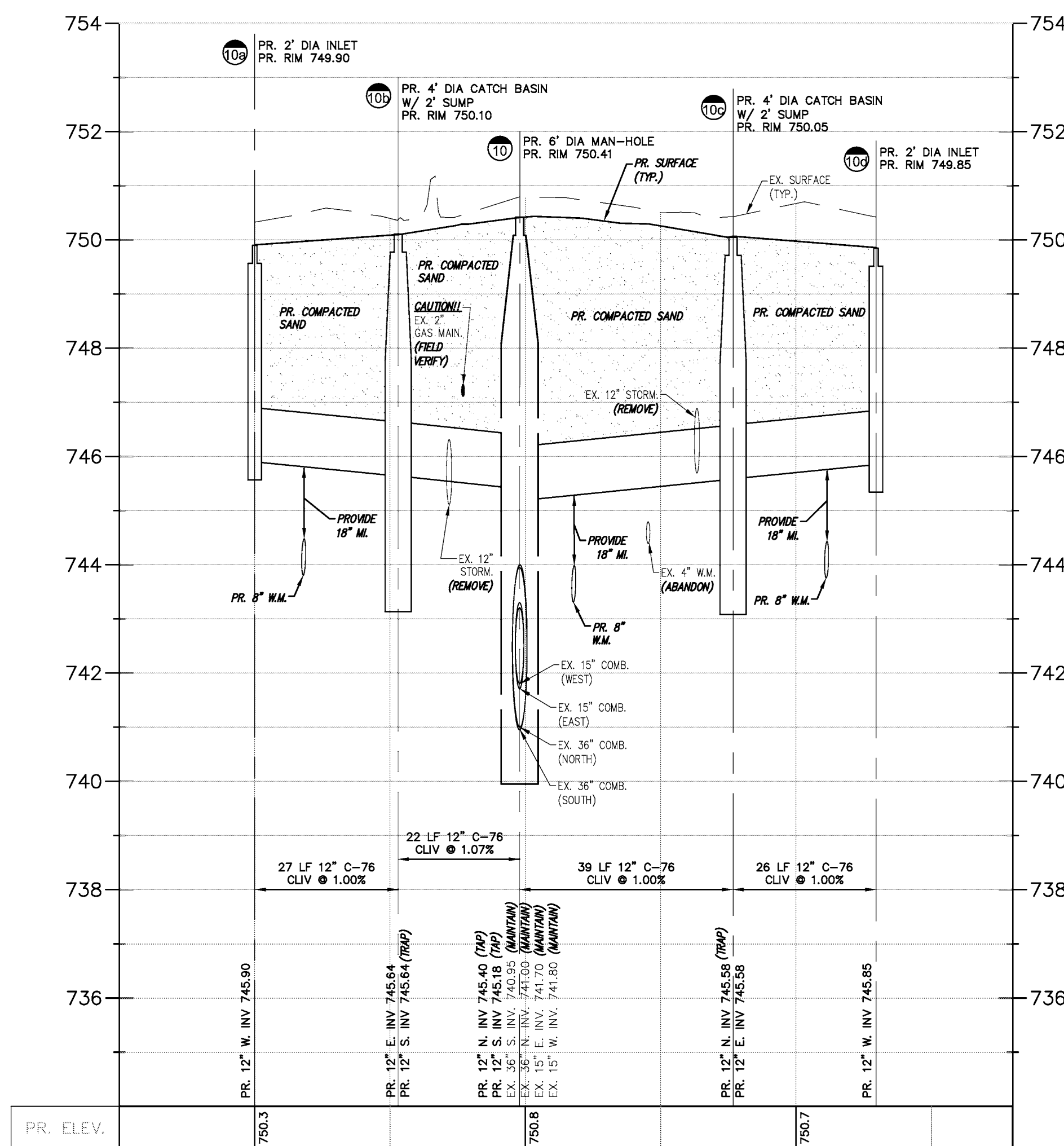
STORM SEWER (CB 41a-MH 41A-CB41b)

SCALE: 1"=20' (H), 1"=2' (V)



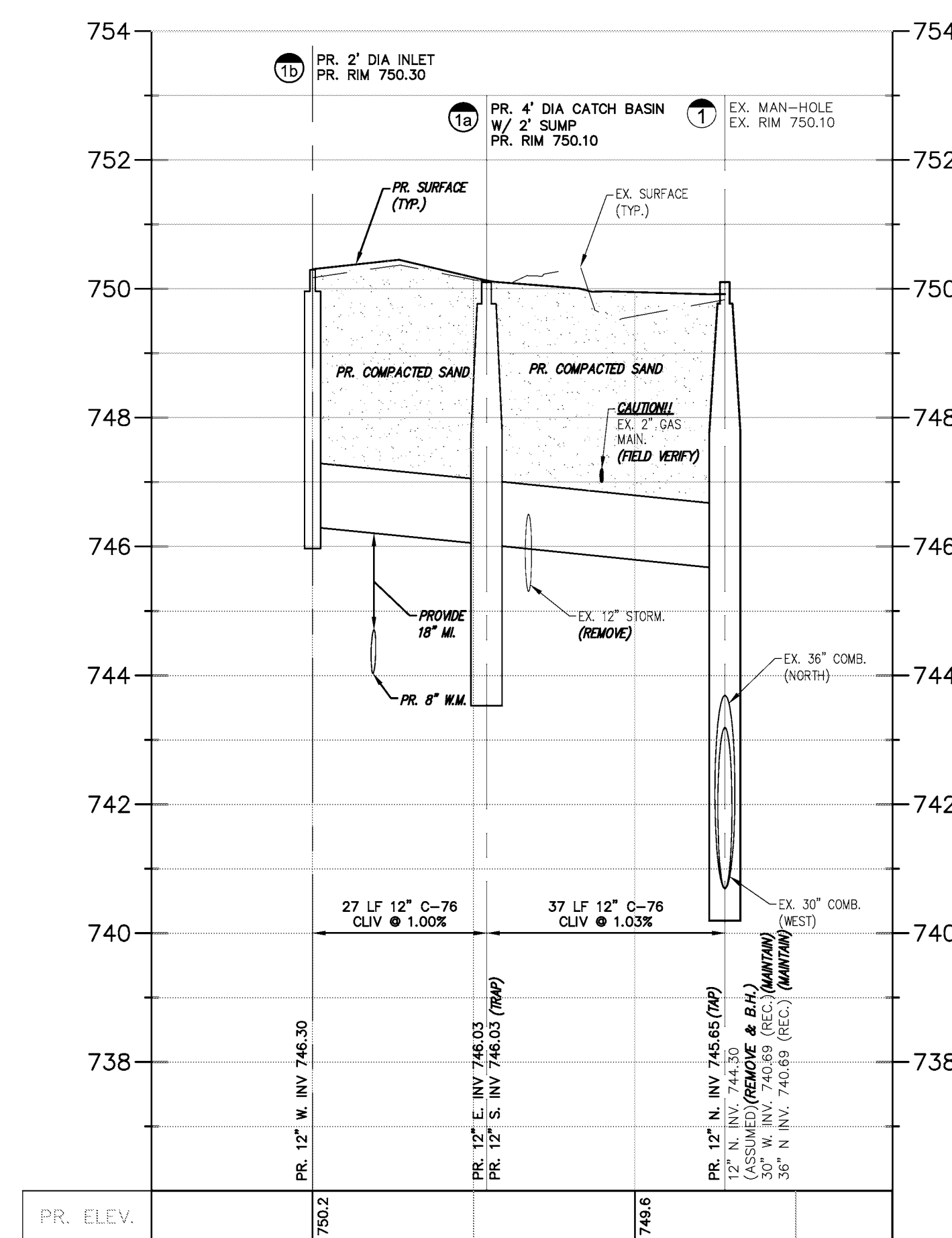
STORM SEWER (CB 36a - MH 36 - 36d)

SCALE: 1"=20' (H), 1"=2' (V)



STORM SEWER (CB 10a - MH 10 - CB 10)

SCALE: 1"=20' (H), 1"=2' (V)



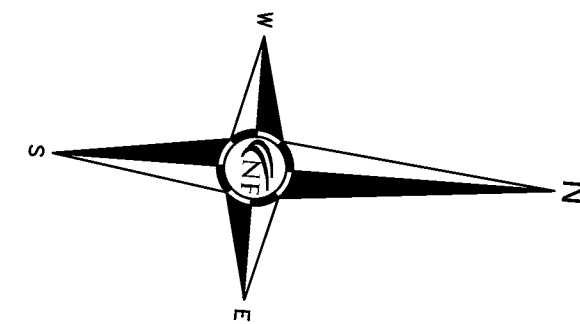
STORM SEWER (CB 1b - MH 1)

SCALE: 1"=20' (H), 1"=2' (V)



NOWAK & FRAUS ENGINEER
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SEAL



DRIVEWAY SCHEDULE					
ADDRESS	WIDTH @ WALK	WIDTH @ CURB	LENGTH OF APRON	AREA (SY.)	CURB DRAIN
592	10.2	16.2	10.5	15.4	1.5"
616	9.4	15.4	10.4	14.4	1.5"
1985	16.0	22.0	10.3	21.8	1.5"

<u>Tree #</u>	<u>Botanical Name</u>	<u>Common Name</u>	<u>Dia.</u>	<u>Type</u>	<u>Other Dia.</u>	<u>Condition</u>	<u>Comments</u>	<u>Other Dia.</u>
72	Cornus lacinata	Shadbush Hickory	1	Fair		Pruning		12
73	Cornus florida	Flowering Dogwood	2	Fair		Good		3
74	Liquidambar styraciflua	American Sweetgum	4	Good		Good		5
75	Gleditsia triacanthos	Thornless Honey-Locust	13	Good		Good		25
76	Gleditsia triacanthos	Thornless Honey-Locust	20	Good		Good		25
77	Gleditsia triacanthos	Thornless Honey-Locust	18	Good		Good		27
78	Gleditsia triacanthos	Thornless Honey-Locust	11	Fair		Hert Lead, Competition		27
79	Acer saccharinum	Silver Maple	24	Multiple Stems	23, 16	Fair	Comping Leads, Minor Leans	22
80	Fagus grandifolia	American Beech	3	2, 2	Fair	Canker, Pruning		5
81	Acer saccharum	Silver Maple	17	Fair		Comping Leads, Poor Seaming		20
82	Acer saccharum	Silver Maple	16	Fair		Comping Leads, Poor Seaming		21
83	Acer saccharum	Silver Maple	17	Poor		Rotting Out Base, Large Canker, Pruning		13
84	Acer saccharum	Silver Maple	10	Poor		Competition		9
85	Thuja occidentalis	Eastern White Cedar	10	Multiple Stems	7, 5	Fair	Comping, Comping Leads, Minor Lean	8
86	Acer saccharum	Silver Maple	24	Poor		Heavy Lean, Missing Interiors, Canker At Base		55
87	Pinus strobus	Eastern White Pine	11	Fair		Competition		15
88	Pinus strobus	Eastern White Pine	7	Fair		Competition, Best Lead		15
89	Pinus strobus	Eastern White Pine	9	Fair		Competition		14
90	Arbutus sp.	Servetree	3, 3	Multiple Stems	1, 1, 1, 1	Fair	Comping Leads	11
91	Acer platanoides	Norway Maple	15	Poor		Missing Lead, in ROW, Near Road, Pruning, Damage To Trunk		27
92	Carya ovata	Shagbark Hickory	13	Twain	12	Poor	Missing Lead, in ROW	20
93	Acer platanoides	Norway Maple	17	Poor		Rotting Out At Base, Large Canker, Missing Lead, in ROW, Near Road		28
94	Platanus x acerifolia	London Plane	21	Fair		Canopy Die-Back, Minor Lean, Pruning		30
95	Platanus x acerifolia	London Plane	26	Fair		Pruning, Minor Lean		30
96	Ostrya virginiana	American Hophornbeam	8	Poor		Dead Lead, Competition, Climbing Vines, Major Canker Die-Back		10
97	Quercus laevis	Swamp White Oak	18	Fair		Heavy Pruning, Best Lead, Dead At One-Third		27
98	Carya ovata	Shagbark Hickory	13	Twain	12	Poor	Competition, Best Lead, Crotch On Trunk	30
99	Ulmus americana	American Elm	19	Fair		Competition, Best Lead		3
100	Acer saccharum	Silver Maple	8	Fair		Competition, Best Lead, Canopy Die-Back		12
101	Ulmus americana	American Elm	15	Poor		Nearly Dead, Major Crotch Die-Back, in ROW, Dead At Rooting Leads		22
102	Ulmus americana	American Elm	10	Poor		Winding Lead, Competition, Minor Lean		15
103	Carya ovata	Shagbark Hickory	13	Fair		Competition, Minor Lean		15
104	Quercus alba	White Oak	29	Good		Competition		27
105	Quercus alba	White Oak	22	Good		Contorted Crown, Near ROW		27
106	Thuja occidentalis	Eastern White Cedar	3	Multiple Stems	2, 2, 1	Fair	Competition	3
107	Thuja occidentalis	Eastern White Cedar	3	Multiple Stems	3, 2, 1	Fair	Competition	3
108	Thuja occidentalis	Eastern White Cedar	4	Multiple Stems	2, 1	Fair	Competition	3
109	Acer rubrum	Red Maple	7	Good		Competition		11
110	Thuja occidentalis	Eastern White Cedar	4	Twain	3	Good	Competition	4
111	Thuja occidentalis	Eastern White Cedar	3	Multiple Stems	5, 3	Fair	Competition	4
113	Cornus florida	Flowering Dogwood	3	Twain	2	Good		5
114	Cornus florida	Flowering Dogwood	3	Good		Good		6
115	Acer saccharum	Silver Maple	26	Fair		Comping Leads, Best Lead, Poor Seaming		25
116	Acer saccharum	Silver Maple	34	Fair		Near ROW, Large Canker		30
117	Acer saccharum	Silver Maple	34	Fair		Comping Leads, Poor Seaming, Competition		33
118	Gleditsia triacanthos	Thornless Honey-Locust	21	Fair		Minor Lean, Competition		25
119	Gleditsia triacanthos	Thornless Honey-Locust	21	Fair		Pruning, Comping Leads, Competition		25
120	Gleditsia triacanthos	Thornless Honey-Locust	21	Good		Comping Leads, Competition		25
121	Gleditsia triacanthos	Thornless Honey-Locust	14	Multiple Stems	7, 6	Good	Minor Leans, Comping Leads, Competition	20
122	Acer saccharum	Silver Maple	16	Good		Good		5

CLIENT

 *City of Birmingham*
A Walkable Community

Engineering Department
151 Martin Street
Birmingham, MI 48012

PROJECT LOCATION

Part of the Southeast $\frac{1}{4}$ of
Section 36, Town 2 North,
Range 10 East, City of
Birmingham, Oakland
County, Michigan

SHEET
Grading Plan
Sta. P.O.B. to 4+50



**Know what's below
Call before you dig.**

DATE	ISSUED/REVISED
04-08-20	ISSUED SURVEY
01-08-21	UPDATED SURVEY
02-27-21	CITY REVIEW
03-15-21	BIDS


DRAWN BY:
G. Viju

DESIGNED BY:
P. Tulikangas

APPROVED BY:
B. Buchholz

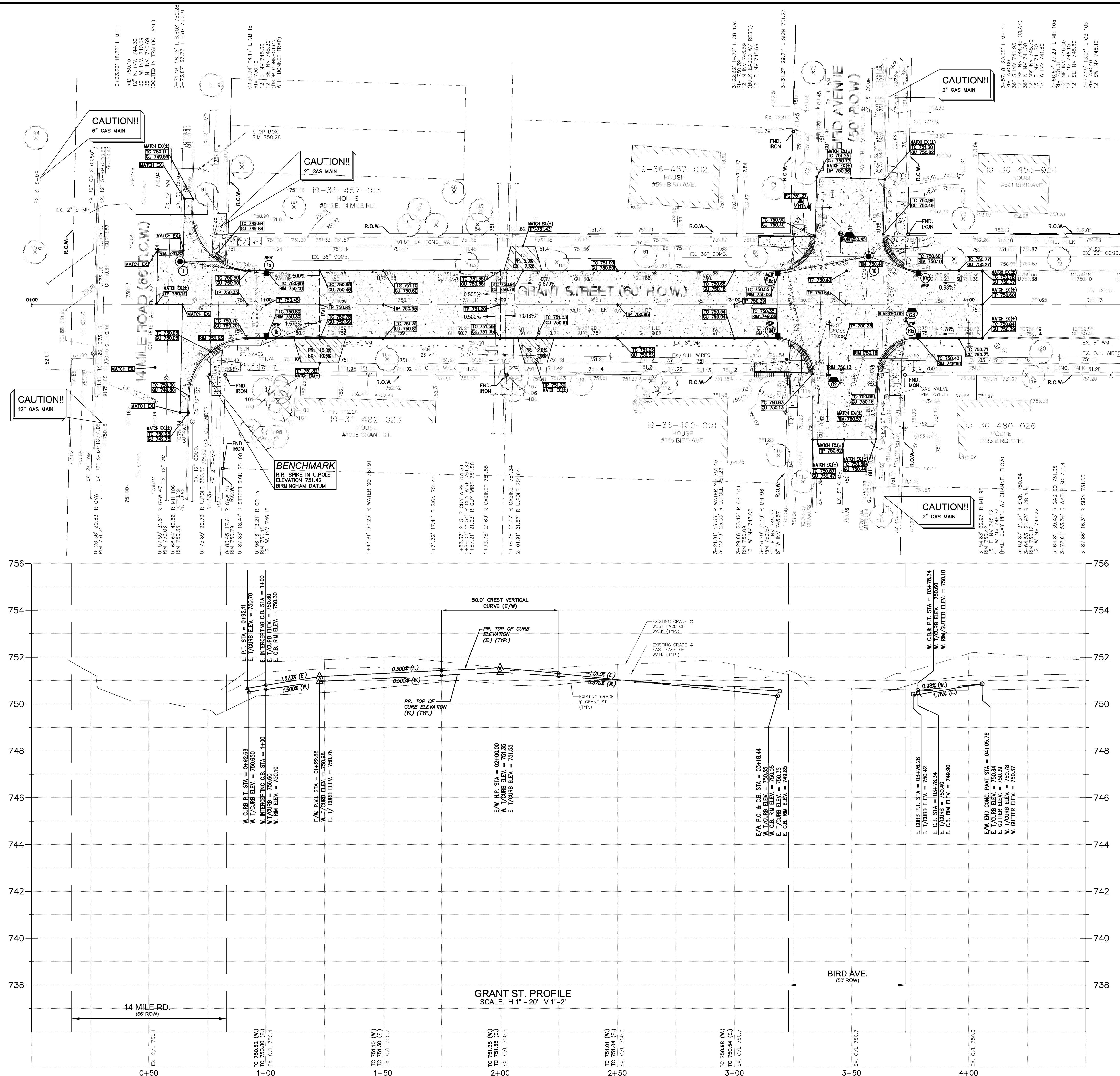
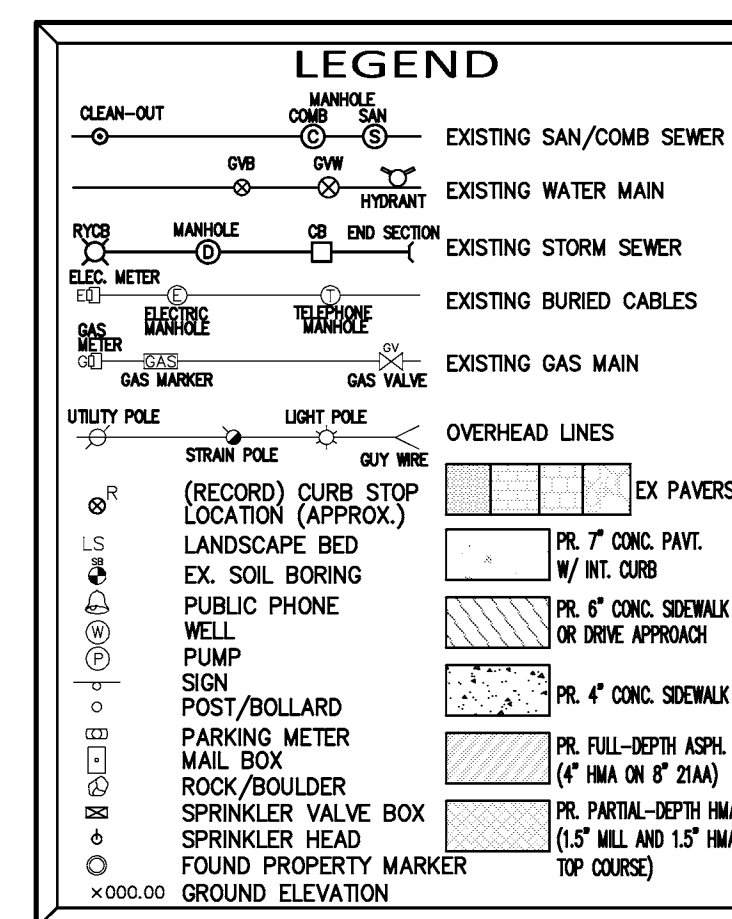
DATE:
March 3, 2020

SCALE: $1" = 20' / 1" = 2'$




NFE JOB NO. SHEET NO.

L485 C6



SEAL

PROJECT
Grant Street Paving Project
Contract # 1 - 21 (P)

CLIENT

Engineering Department
151 Martin Street
Birmingham, MI 48012

PROJECT LOCATION
Part of the Southeast $\frac{1}{4}$ of
Section 36, Town 2 North,
Range 10 East, City of
Birmingham, Oakland
County, Michigan

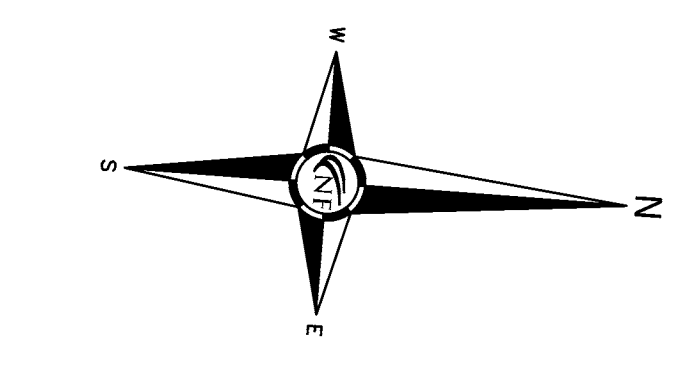
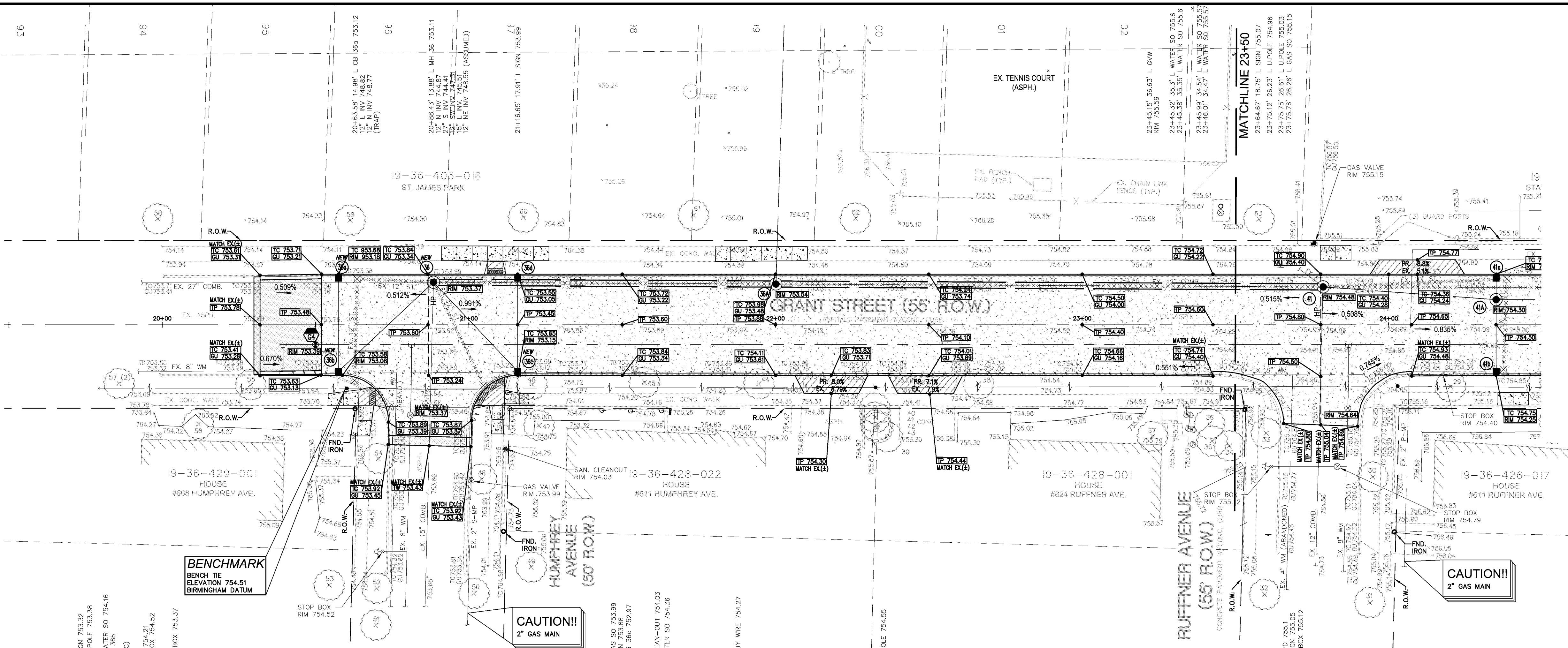
SHEET
Grading Plan
Sta. 20+00 to 23+50



Know what's below
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DATE ISSUED/REVISED
04-08-20 ISSUED SURVEY
01-08-21 UPDATED SURVEY
02-27-21 CITY REVIEW
03-15-21 BID5

DRAWN BY:
C. Ellison
DESIGNED BY:
P. Tulikangas
APPROVED BY:
B. Buchholz
DATE:
March 3, 2020
SCALE: 1" = 20' / 1" = 2'
NFE JOB NO. SHEET NO.
L485 C7



DRIVEWAY SCHEDULE					
ADDRESS	WIDTH & WALK	WIDTH & CURB	LENGTH OF APRON	AREA (SQ)	CURB DROP
611	18.2	24.2	5.9	14.0	1.5
624	17.8	23.8	5.9	13.8	1.5

Ex. Tree Information

Tree #	Botanical Name	Common Name	Dis.	Type	Other Dis.	Condition	Comments	Tree Line In Feet
34	Pinus strobus	Eastern White Pine	9			Fair	Competition	18
35	Pinus strobus	Eastern White Pine	17			Good		15
37	Pinus strobus	Eastern White Pine	9			Good	Competition, Near R/W	3
38	Acer rubrum	Red Maple	8			Fair	Near Road, In R/W, Minor Lean	12
39	Fagus grandifolia	American Beech	9			Fair	Canopy Die-Back, In R/W, Pruning	13
40	Thuja occidentalis	Eastern White Cedar	2	Multiple Stemmed	1, 1	Fair	Competition	2
41	Thuja occidentalis	Eastern White Cedar	1	Multiple Stemmed	1, 1	Poor	Competition, Canopy Die-Back	1
42	Thuja occidentalis	Eastern White Cedar	2	Multiple Stemmed	1, 2	Poor	Competition, Canopy Die-Back	1
43	Thuja occidentalis	Eastern White Cedar	2	Multiple Stemmed	1, 1	Fair	Competition	2
44	Acer rubrum	Red Maple	4			Poor	Numerous Rotting Cankers, Insect Activity, Deter	7
45	Acer rubrum	Red Maple	10			Good	Lead, In R/W	11
46	Acer rubrum	Red Maple	9			Good	In R/W	11
47	Prunus x 'Stolonifera'	Weeping Cherry	2			Fair	Girdling By Plant Log	2
48	Tilia cordata	Littledleaf Linden	4			Fair	Moderate Lean, Near Road, Pruning, Damaged	7
49	Curat ovata	Shagbark Hickory	29			Good	By Traffic	30
50	Tilia cordata	Littledleaf Linden	5			Fair	Moderate Lean, Near Road, Pruning, Damaged	7
51	Platanus x acerifolia	London Plane	17			Fair	Minor Lean, Bent Lead	22
52	Prunus sp.	Ornamental Plum	2			Poor	Major Canopy Die-Back, Pruning	3
53	Platanus sp.	Ornamental Plum	20			Good	Pruning	4
54	Platanus x acerifolia	London Plane	20			Good		25
55	Acer rubrum	Red Maple	6			Fair	Near Road, Competing Leads, In R/W	8
56	Pyrus ussuriensis	Calvery Pear	3			Good		5
57	Liquidambar styraciflua	Sweetgum	2			Fair	Pruning, Canopy Die-Back	2
58	Gleditsia tricanthos	Thorned Honey Locust	24			Good		30
59	Acer glabrum	Norway Maple	14			Good		19
60	Acer saccharum	Sugar Maple	13			Good		18
61	Acer glabrum	Norway Maple	10			Poor	Heavy Lean, Pruning, A-Typical Growth	16
62	Aesculus glabra	Ohio Buckeye	17			Fair	Pattern, Rotting Canker At Base	20

WATER / SEWER SERVICE NOTE
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LEGEND	
	CLEAN-OUT
	MANHOLE
	EXISTING SAN/COMB SEWER
	EXISTING WATER MAIN
	EXISTING STORM SEWER
	EXISTING BURIED CABLES
	EXISTING GAS MAIN
	OVERHEAD LINES
	EX PAVERS
	PR 7" CONC. PAVT. W/ INT. CURB
	PR 6" CONC. SIDEWALK OR DRIVE APPROACH
	PR 4" CONC. SIDEWALK
	PR FULL-DEPTH ASPHALT (4" HMA ON 8" ZIMA)
	PR PARTIAL-DEPTH HMA (1.5" HMA AND 1.5" HMA TOP COURSE)
	GROUND ELEVATION





ENGINEERS

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SEAL

PROJECT

Grant Street Paving Project
Contract # 1 - 21 (P)

CLIENT

City of Birmingham
Engineering Department
151 Martin Street
Birmingham, MI 48012

PROJECT LOCATION

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Section 36, Town 2 North,
Range 10 East, City of
Birmingham, Oakland
County, Michigan

SHEET

Grading Plan
Sta. 23+50 to P.O.E.



Know what's below
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DATE ISSUED/REVISED

04-08-20 ISSUED SURVEY

01-08-21 UPDATED SURVEY

02-27-21 CITY REVIEW

03-15-21 BID5

DRAWN BY:
C. Ellison

DESIGNED BY:
P. Tulikangas

APPROVED BY:
B. Buchholz

DATE:
March 3, 2020

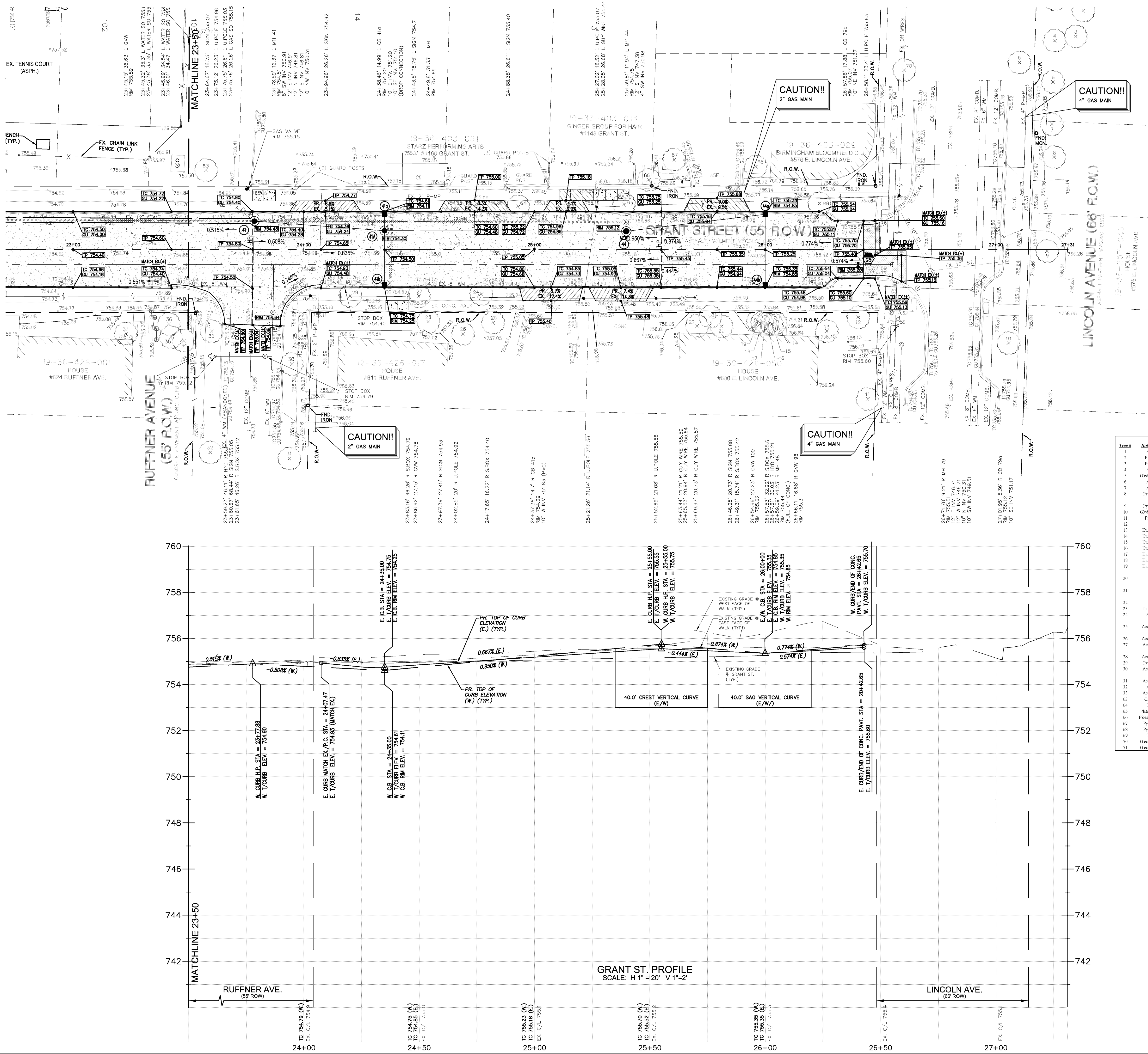
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NFE JOB NO.

L485

SHEET NO.

C8

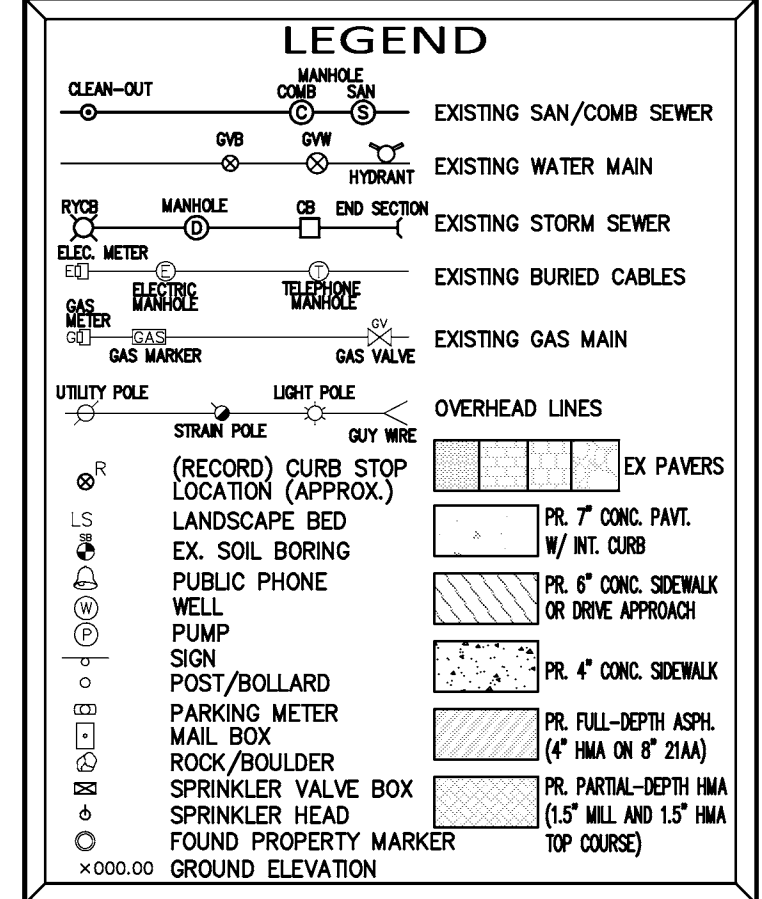


DRIVEWAY SCHEDULE					
ADDRESS	WIDTH @ WALK	WIDTH @ CURB	LENGTH OF APRON	AREA (SQ)	CURB DROP
576	22.9	28.9	5.8	16.7	1.5
600	21.8	27.8	5.8	16.0	1.5
611	24.4	27.4	5.7	16.3	1.5
1148	13.9	19.9	4.8	9.1	1.5
1160	25.4	31.4	4.8	15.3	1.5
1160	24.8	30.8	4.7	14.4	1.5

Ex. Tree Information									
Tree #	Botanical Name	Common Name	Dia.	Type	Other Dia.	Condition	Comments	Dist. to Eas.	Dist. to Eas.
1	Acer rubrum	Red Maple	3	Good				6	
2	Picea pungens	Colorado Blue Spruce	3	Good				3	
3	Picea pungens	Colorado Blue Spruce	3	Good				3	
4	Acer rubrum	Red Maple	3	Good				3	
5	Gleditsia triacanthos	Thornless Honey Locust	25	Good				30	
6	Acer rubrum	Red Maple	3	Good				5	
7	Acer rubrum	Red Maple	8	Fair			Contorted Crown, Competition	15	
8	Pinus edulis	Quaking Aspen	6	Multiple Stems	4, 4, 3, 3	Fair	Heavy Lean, Competing Leads, Canker Involving Branches, Poor Seaming, Rotting Canker, Xylem Lean	16	
9	Pinus strobus	White Pine	4	Multiple Stems	4, 4, 4	Fair	Heavy Lean, Competing Leads, Canker Involving Branches, Poor Seaming, Rotting Canker, Xylem Lean	12	
10	Gleditsia triacanthos	Thornless Honey Locust	19	Fair			Minor Lean, Pruning	9	
11	Picea pungens	Colorado Blue Spruce	11	Fair			Competition	30	
12	Pinus nigra	Austrian Pine	17	Fair			Minor Lean, Pruning	20	
13	Tilia cordata	Eastern White Cedar	1	Multiple Stems	1, 1	Good		2	
14	Tilia cordata	Eastern White Cedar	2	Multiple Stems	2, 1	Fair	Competition	2	
15	Tilia cordata	Eastern White Cedar	1	Multiple Stems	1, 1	Fair	Competition	2	
16	Tilia cordata	Eastern White Cedar	1	Multiple Stems	1, 1	Fair	Competition	2	
17	Tilia cordata	Eastern White Cedar	1	Multiple Stems	1, 1	Fair	Competition	2	
18	Tilia cordata	Eastern White Cedar	1	Multiple Stems	1, 1	Fair	Competition	2	
19	Tilia cordata	Eastern White Cedar	2	Multiple Stems	1, 1	Fair	Competition	3	
20	Pinus nigra	Austrian Pine	11	Poor			Best Lead, A-Typical Growth Pattern, Climbing Vines, Competition	23	
21	Pinus nigra	Austrian Pine	11	Poor			Winding Lead, Competition, A-Typical Growth Pattern	15	
22	Pinus nigra	Austrian Pine	11	Poor			Winding Lead, Competition, A-Typical Growth Pattern, Heavy Lean	20	
23	Tilia cordata	Eastern White Cedar	2	Fair			Growing Near Building	3	
24	Acer rubrum	Red Maple	3	Fair			Near Road, Damaged By Traffic	5	
25	Acer rubrum	Red Maple	26	Fair			Competing Leads, Moderate Lean, Growing In ROW, Old Hoisting Canker	40	
26	Acer rubrum	Red Maple	14	Twin	14	Fair	Competing Leads, Winding Leads, Minor Lean	30	
27	Acer rubrum	Red Maple	3	Fair			Near Road, Damaged By Traffic, In ROW Multiple Prunings, Dying Lead, Missing Lead, In ROW	4	
28	Acer rubrum	Red Maple	16	Poor			ROW, Poor Seaming	30	
29	Pinus strobus	White Pine	3	Fair			Near Road, Damaged By Traffic, In ROW	5	
30	Acer platanoides	Norway Maple	15	Fair			Competing Leads, Pruning	20	
31	Acer platanoides	Norway Maple	15	Poor			Rotting Canker At Base, A-Typical Growth Pattern, Minor Lean	22	
32	Acer rubrum	Red Maple	10	Good				14	
33	Acer platanoides	Norway Maple	13	Fair			Minor Lean, Competition, Pruning	18	
63	Catalpa bignonioides	Flamingo	9	Good				12	
64	Tilia cordata	Eastern White Cedar	2	Fair			Near Road, Damaged By Traffic, In ROW	2	
65	Platanus x acerifolia	London Plane	3	Fair			Minor Lean, Pruning	3	
66	Picea canadensis	White Spruce	5	Good				3	
67	Pinus strobus	White Pine	10	Good			Crow Proximity to Building	11	
69	Tilia cordata	Eastern White Cedar	9	Good			In ROW	10	
70	Gleditsia triacanthos	Thornless Honey Locust	19	Good			Pruning, In ROW	30	
71	Gleditsia triacanthos	Thornless Honey Locust	14	Fair			Best Lead, In ROW	25	

WATER / SEWER SERVICE NOTE
ALL WATER AND SEWER SERVICE LATERAL INFORMATION IS SHOWN PER RECORD, TO REFLECT EXISTING FIRE SIZE AND MATERIAL. WITHIN THE PUBLIC RIGHT OF WAY, THE CONTRACTOR SHALL COORDINATE WITH CITY FOR ALL PRIVATE-SIDE WATER AND SEWER LATERAL INFORMATION, AS REQUIRED, AND SHALL RE-CONNECT NEW LATERALS WITHIN THE RIGHT-OF-WAY TO EXISTING LATERALS ON PRIVATE PROPERTY (INC.).

UTILITY NOTE
THE LOCATIONS AND ELEVATIONS OF SOME OF THE EXISTING UNDERGROUND UTILITIES AS SHOWN ON THE SURVEY DRAWING WERE OBTAINED FROM MUNICIPAL AND UTILITY COMPANY RECORDS AND MAPS. THEREFORE, NO GUARANTEE IS EITHER EXPRESSED OR IMPLIED AS TO THE COMPLETENESS OR ACCURACY THEREOF. THE CONTRACTOR SHALL BE RESPONSIBLE FOR DETERMINING THE EXACT UTILITY LOCATIONS AND ELEVATIONS PRIOR TO THE START OF CONSTRUCTION.



SEAL

PROJECT
Grant Street Paving Project
Contract # 1 - 21 (P)

CLIENT

Engineering Department
151 Martin Street
Birmingham, MI 48012

PROJECT LOCATION
Part of the Southeast $\frac{1}{4}$ of
Section 36, Town 2 North,
Range 10 East, City of
Birmingham, Oakland
County, Michigan

SHEET
Intersection Grading
Details - Grant Street



Know what's below
Call before you dig.

DATE ISSUED/REVISED
04-08-20 ISSUED SURVEY
01-08-21 UPDATED SURVEY
02-27-21 CITY REVIEW
03-15-21 BID5

DRAWN BY:
C. Ellison
DESIGNED BY:
P. Tulikangas

APPROVED BY:
B. Buchholz
DATE:
March 3, 2020

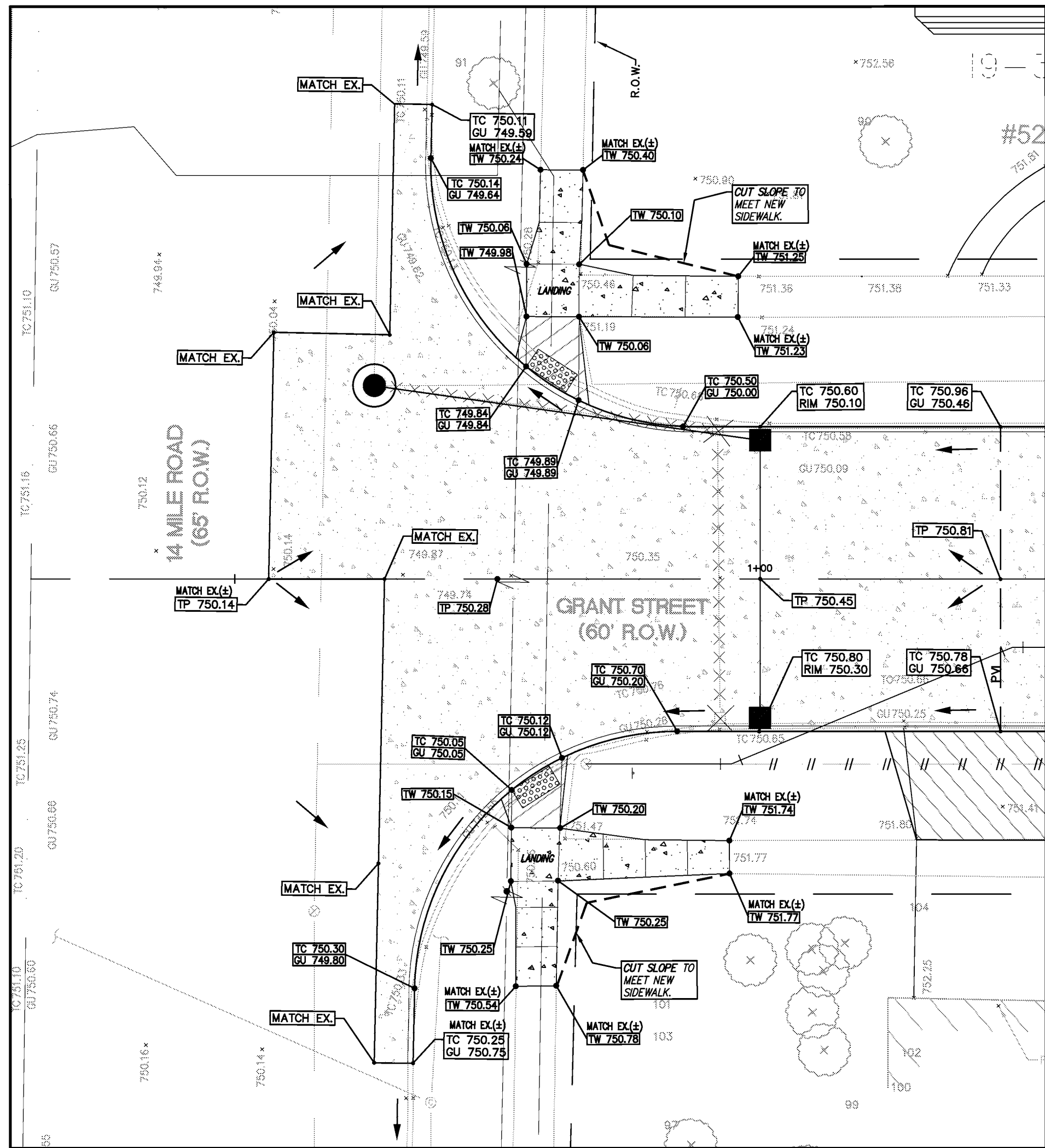
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NFE JOB NO.

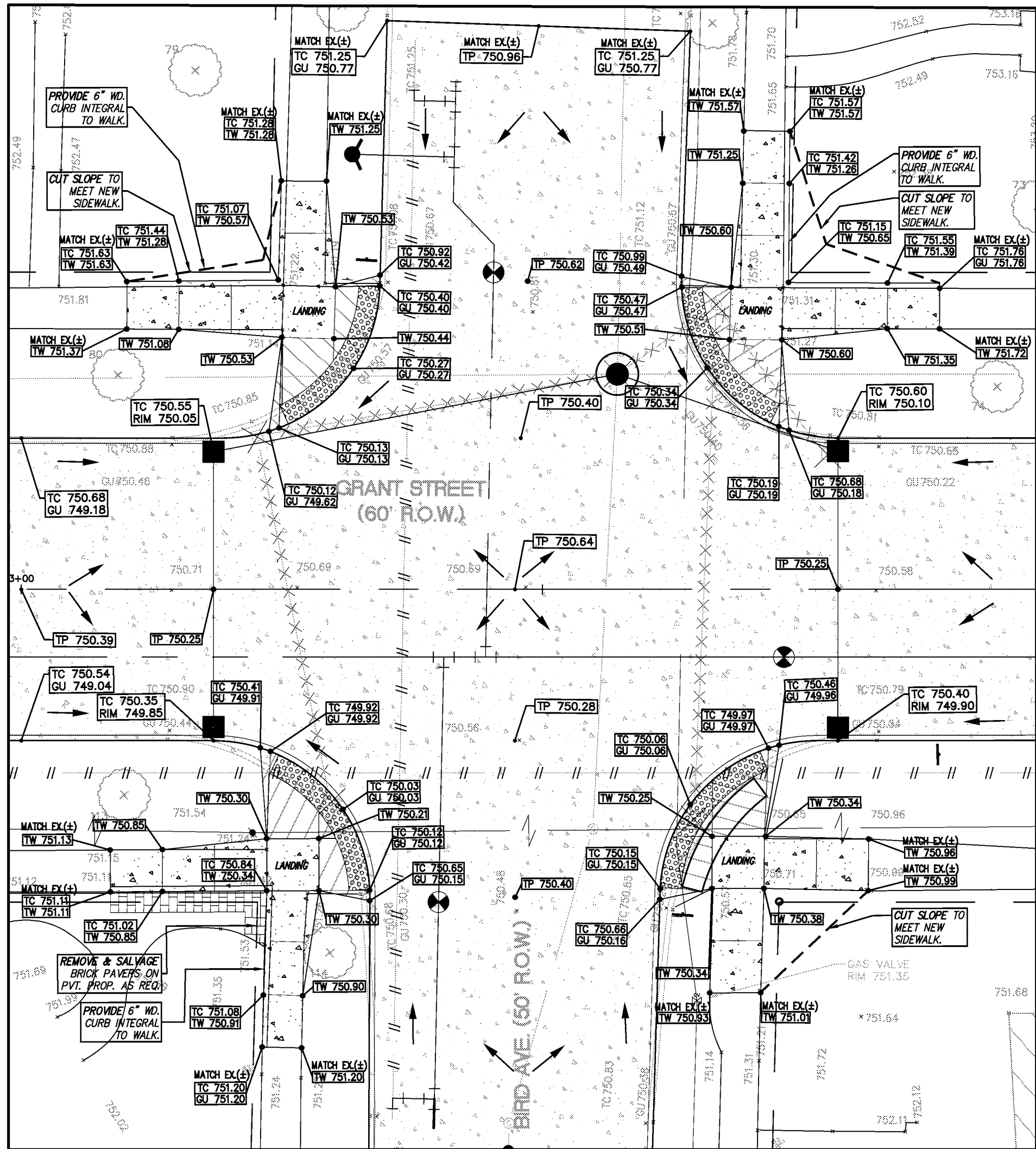
SHEET NO.

L485

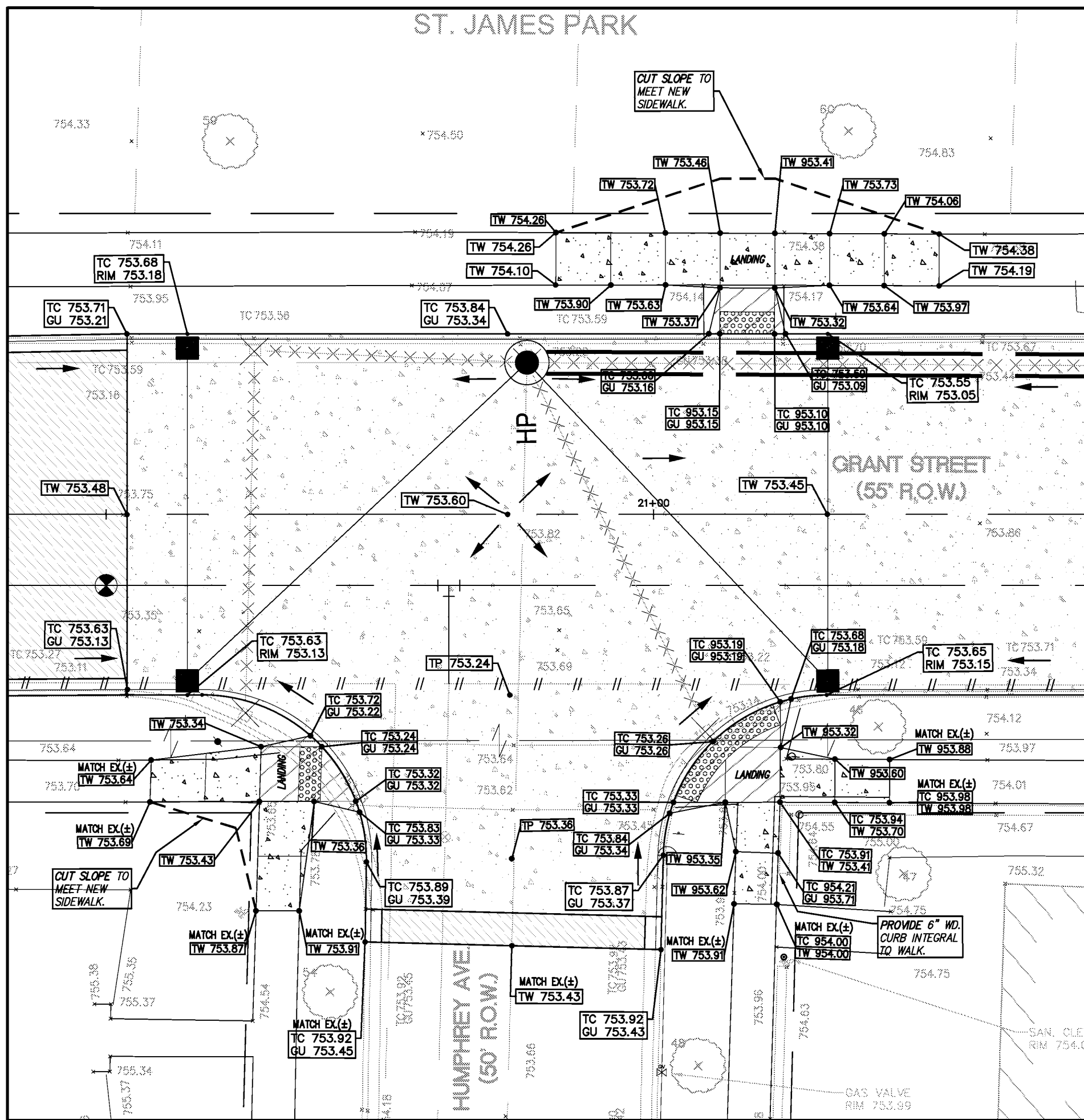
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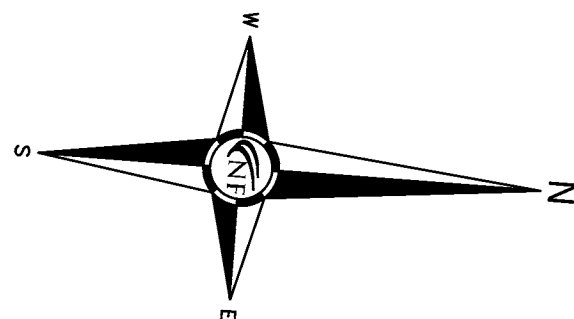
GRANT STREET & 14 MILE ROAD
INTERSECTION GRADING DETAIL
SCALE: 1" = 10'



GRANT STREET & BIRD AVE.
INTERSECTION GRADING DETAIL
SCALE: 1" = 10'



GRANT STREET & HUMPHREY AVE..
INTERSECTION GRADING DETAIL
SCALE: 1" = 10'

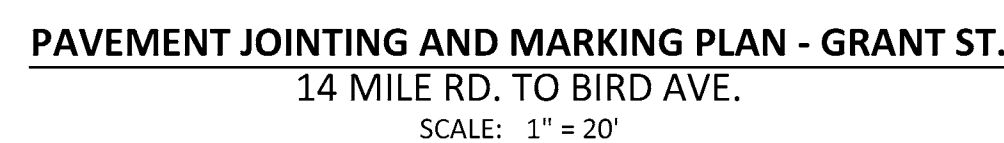


UTILITY NOTE

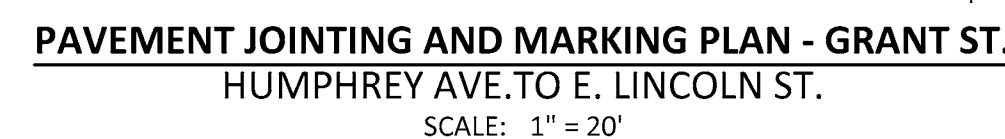
THE LOCATIONS AND ELEVATIONS OF SOME OF THE EXISTING UNDERGROUND UTILITIES AS SHOWN ON THE SURVEY DRAWING WERE OBTAINED FROM MUNICIPAL AND UTILITY COMPANY RECORDS AND MAPS. THEREFORE, NO GUARANTEE IS EITHER EXPRESSED OR IMPLIED AS TO THE COMPLETENESS OR ACCURACY THEREOF. THE CONTRACTOR SHALL BE RESPONSIBLE FOR DETERMINING THE EXACT UTILITY LOCATIONS AND ELEVATIONS PRIOR TO THE START OF CONSTRUCTION.

LEGEND

CLEAN-OUT	COMB. SAN	EXISTING SAN/COMB. SEWER
MANHOLE	HYDRANT	EXISTING WATER MAIN
BLDG. METER	END SECTION	EXISTING STORM SEWER
EXISTING BURIED CABLES	EXISTING GAS MAIN	
UTILITY POLE	STRAY WIRE	OVERHEAD LINES
(RECORD) CURB STOP LOCATION (APPROX.)	LANDSCAPE BED	EX. PAVES
EX. SOIL BORING	PUBLIC PHONE WELL	PR. 7" CONC. PAV. W/ INT. CURB
PUMP	POST/BOLLARD	PR. 6" CONC. SIDEWALK OR DRIVE APPROACH
MAIL BOX	PARKING METER	PR. 4" CONC. SIDEWALK
ROCK/BOULDER	SPRINKLER VALVE BOX	PR. FULL-DEPTH ASPH. (4" HMA ON 8" 21A)
SPRINKLER HEAD	FOUND PROPERTY MARKER	PR. PARTIAL-DEPTH HMA (1.5" MILL AND 1.5" TOP COURSE)
GROUND ELEVATION		



6 CONTRACTION JOINT





CIVIL ENGINEERS
LAND SURVEYORS
LAND PLANNERS

NOWAK & FRAUS ENGINEERS
46777 WOODWARD AVE.
PONTIAC, MI 48342-5032
TEL. (248) 332-7931
FAX. (248) 332-8257

PROJECT
Grant Street Paving Project
Contract # 1-21 (P)

CLIENT

Engineering Department
151 Martin Street
Birmingham, MI 48012

PROJECT LOCATION
Part of the Southeast $\frac{1}{4}$ of
Section 36, Town 2 North,
Range 10 East, City of
Birmingham, Oakland
County, Michigan

SHEET
Existing & Proposed Road
Cross-Sections

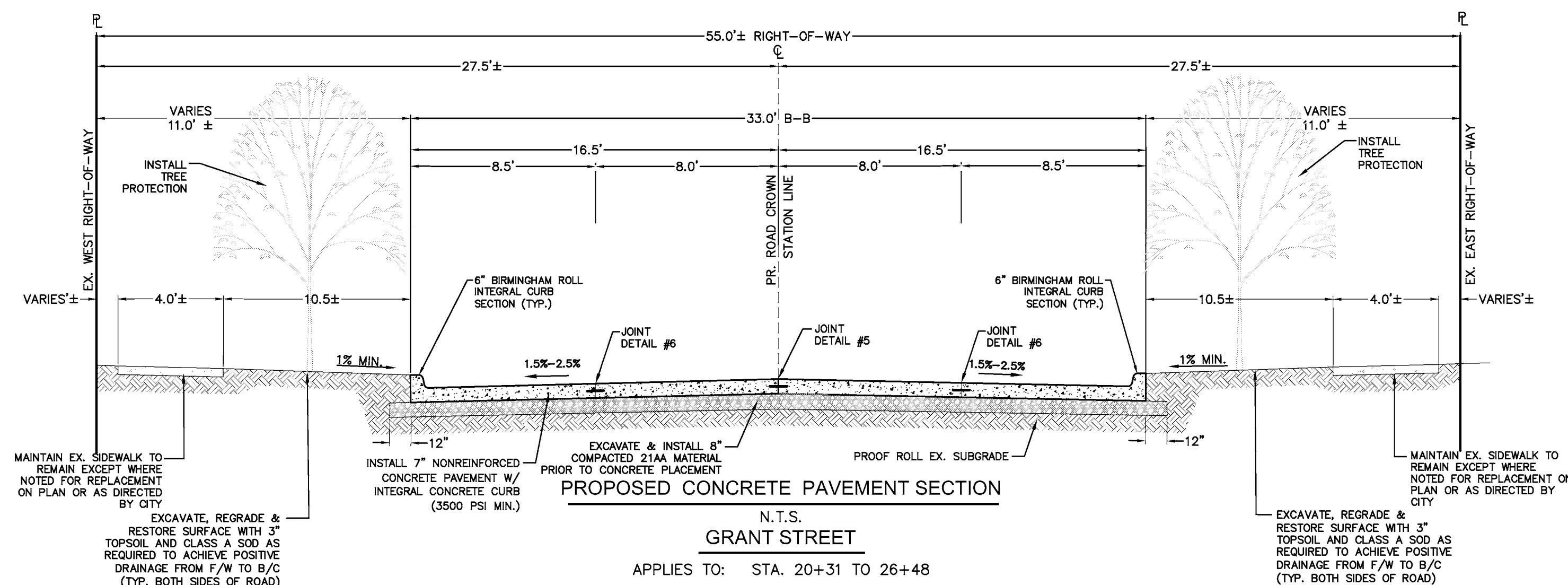
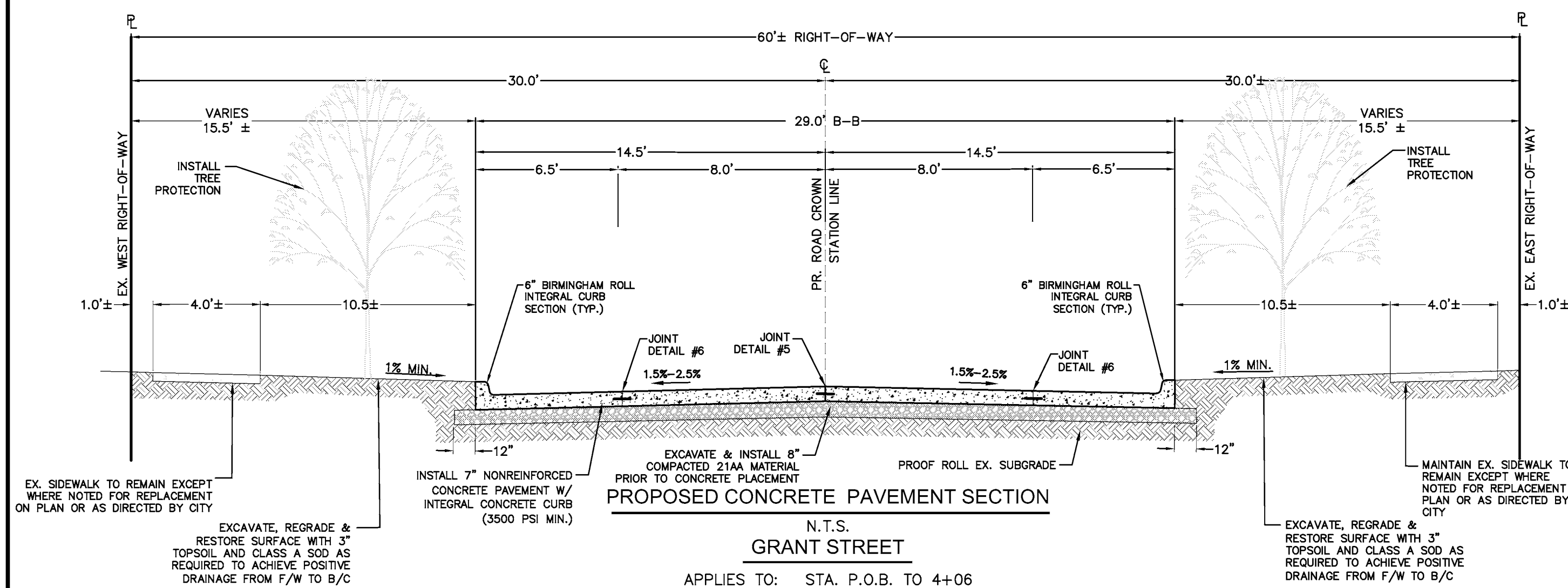
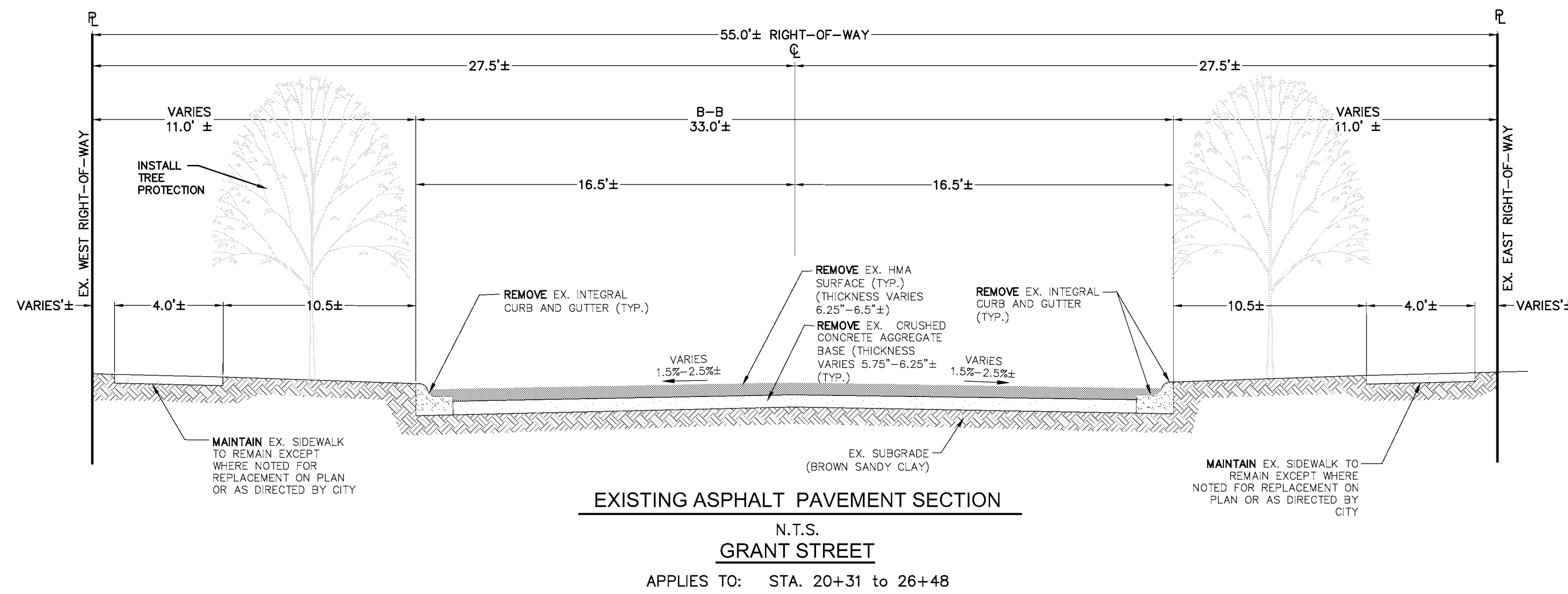
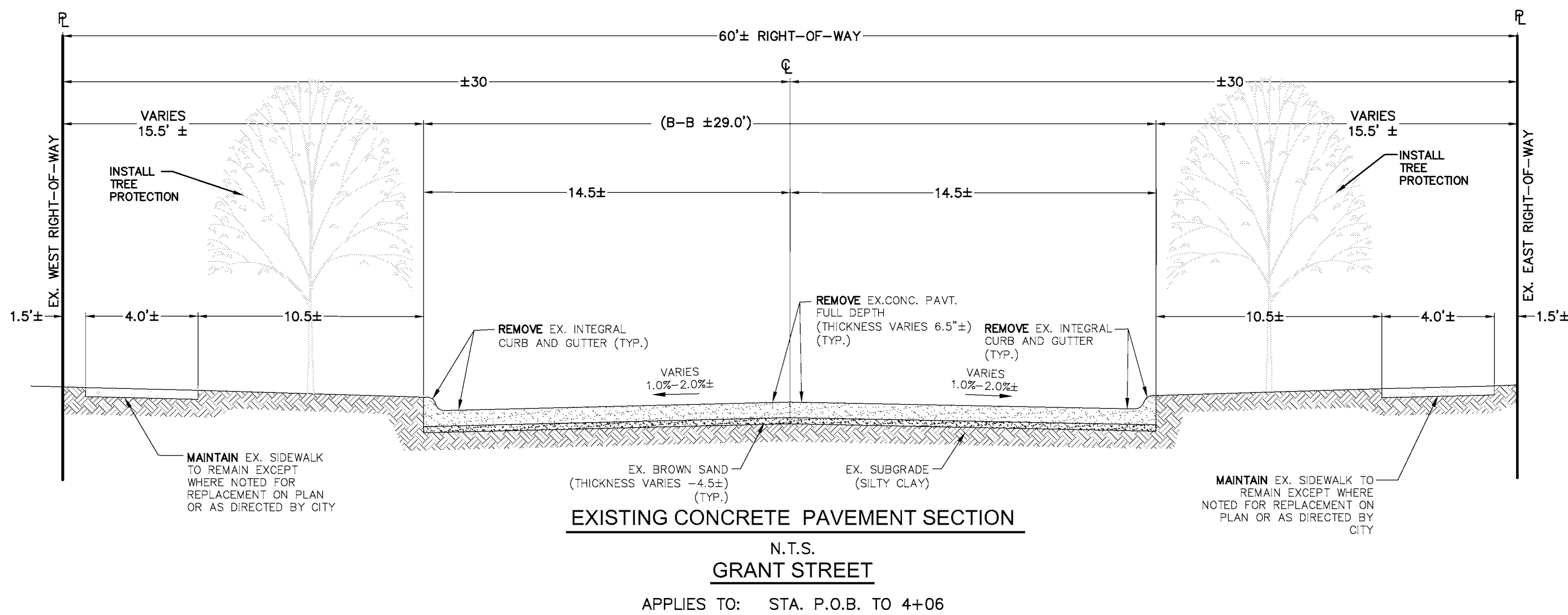


Know what's below
Call before you dig.

DATE ISSUED/REVISED
02-27-21 CITY REVIEW
03-15-21 BIDS

DRAWN BY:
G. Viju
DESIGNED BY:
P. Tulikangas
APPROVED BY:
B. Buchholz
DATE:
March 3, 2020
SCALE: N.T.S.

NFE JOB NO. SHEET NO.
L485 C11





CIVIL ENGINEERS
LAND SURVEYORS
LAND PLANNERS

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PROJECT
Grant Street Paving Project
Contract # 1-21 (P)

CLIENT

Engineering Department
151 Martin Street
Birmingham, MI 48012

PROJECT LOCATION
Part of the Southeast $\frac{1}{4}$ of
Section 36, Town 2 North,
Range 10 East, City of
Birmingham, Oakland
County, Michigan

SHEET
Advanced Warning Signage
Diagram - Grant Street

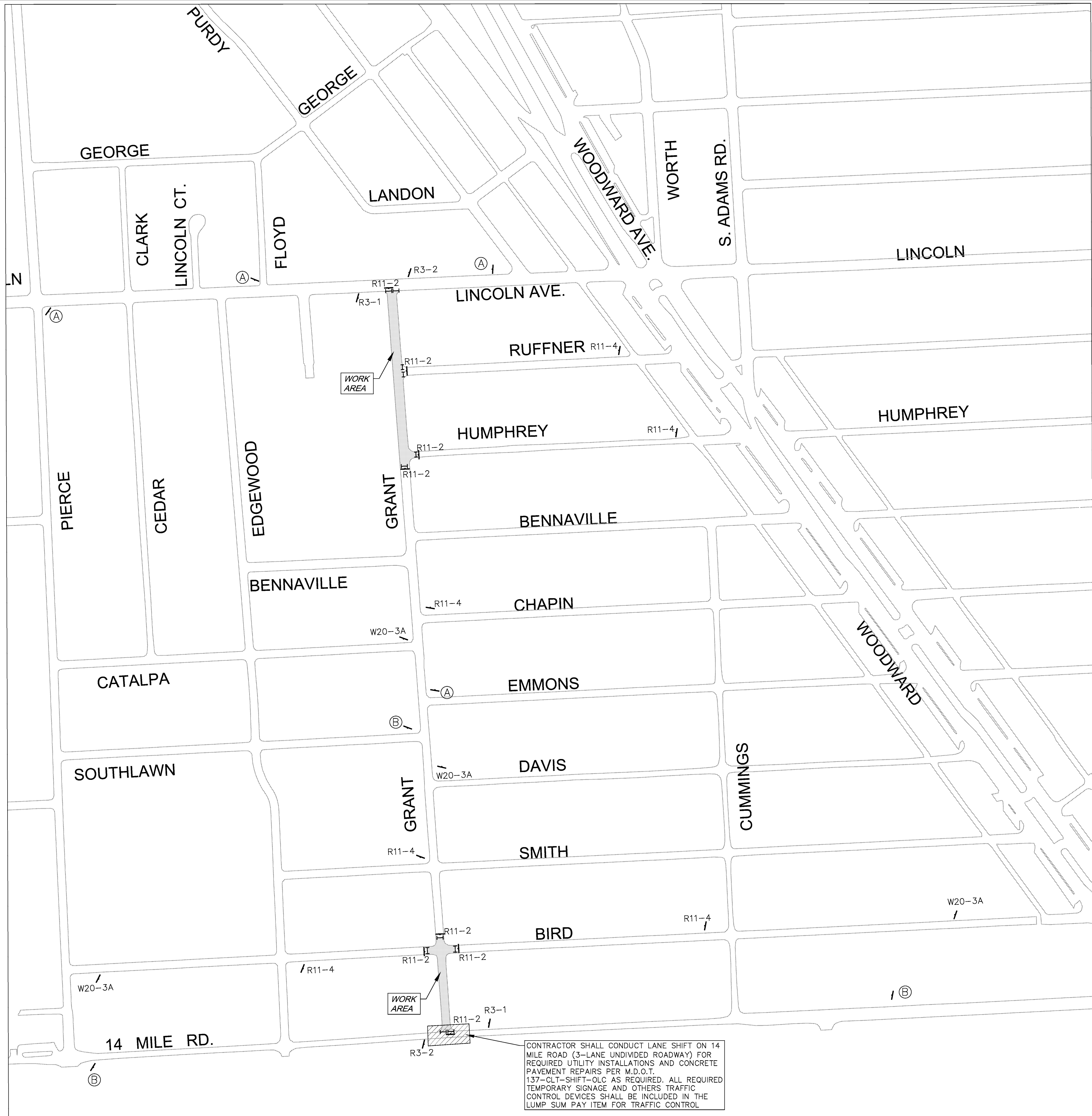


Know what's below
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DATE ISSUED/REVISED
02-27-21 CITY REVIEW
03-15-21 BIDS

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DATE:
March 3, 2020
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

NFE JOB NO. SHEET NO.
L485 C12



ADVANCED WARNING SIGNAGE PLAN – GRANT STREET

GRANT ST. CLOSED
LINCOLN TO HUMPHREY
SEEK ALT ROUTE
18"x42" ADVANCE WARNING SIGN "A"
BLACK LEGEND ON ORANGE BACKGROUND

GRANT ST. CLOSED
14 MILE RD. TO BIRD AVE.
SEEK ALT ROUTE
18"x42" ADVANCE WARNING SIGN "B"
BLACK LEGEND ON ORANGE BACKGROUND

SYMBOL KEY	
	TYPE III BARRICADES
	ADVANCED WARNING SIGN

SPECIAL ADVANCED WARNING SIGN QUANTITIES			
DESIGNATION	DESCRIPTION	SIZE	QUANTITY
SIGN "A"	GRANT ST. CLOSED LINCOLN TO HUMPHREY AVE. SEEK ALT ROUTE	18"x42"	4
SIGN "B"	GRANT ST. CLOSED 14 MILE RD. TO BIRD AVE. SEEK ALT ROUTE	18"x42"	3

OTHER ADVANCED WARNING SIGN QUANTITIES AS SHOWN			
DESIGNATION	DESCRIPTION	SIZE	QUANTITY
R3-1	NO RIGHT TURN	24"x24"	2
R3-2	NO LEFT TURN	24"x24"	2
R11-2	ROAD CLOSED	60"x30"	8
R11-4	ROAD CLOSED TO THRU TRAFFIC	60"x30"	6
W20-3A	ROAD CLOSED AHEAD	36"x36"	4

- NOTES
- PLACE TRAFFIC CONTROL DEVICES AS SPECIFIED, OR AS OTHERWISE DIRECTED BY THE CITY OF BIRMINGHAM, INCLUDING ADVANCE WARNING SIGNS AND BARRICADES NOT SPECIFIED ON THIS DIAGRAM. CONTRACTOR/INSPECTOR MUST ACCOMPANY SIGN SUBCONTRACTOR DURING PLACEMENT OF SIGNS THROUGHOUT VARIOUS TRAFFIC CONTROL CHANGES.
 - ALL SIGNS AND BARRICADES SHALL BE IN ACCORDANCE WITH CURRENT M.M.U.T.C.D. AND M.D.O.T. SPECIFICATIONS AND TRAFFIC TYPICALS, INCLUDING PLACEMENT OF ADDITIONAL REQUIRED SIGNS/BARRICADES NOT DEPICTED ON THESE PLANS TO CONTROL TRAFFIC, LANE SHIFTS, ETC.
 - ADVANCE WARNING SIGNS AND BARRICADES SHALL REMAIN IN PLACE UNTIL THE NEW ROAD (OR A PORTION THEREOF) IS READY TO BE OPENED FOR TRAFFIC AS DETERMINED BY THE CITY.
 - MAINTAIN SIDEWALKS AND INSTALL & MAINTAIN FENCING & SIGNAGE AS NEEDED TO ENSURE PEDESTRIAN SAFETY.
 - ERECT, REMOVE, AND/OR MAINTAIN ALL ADVANCE WARNING/DETOUR SIGNAGE AS DIRECTED BY THE CITY.
 - TYPE III BARRICADES (LIGHTED) SHALL BE PLACED FOR ALL LANE CLOSURES, AND SHALL INCLUDE A R11-2 OR R11-4 SIGN ON EACH TYPE III BARRICADE WHERE NOTED.
 - TEMPORARY ADVANCED WARNING SIGNAGE SHOWN AND OTHERS TRAFFIC CONTROL DEVICES SHALL BE INCLUDED IN THE LUMP SUM PAY ITEM FOR TRAFFIC CONTROL.



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PROJECT
Grant Street Paving Project
Contract # 1-21 (P)

CLIENT



Engineering Department
151 Martin Street
Birmingham, MI 48012

PROJECT LOCATION

Part of the Southeast $\frac{1}{4}$ of
Section 36, Town 2 North,
Range 10 East, City of
Birmingham, Oakland
County, Michigan

SHEET

MDOT Traffic Typicals



Know what's below
Call before you dig.

DATE ISSUED/REVISED
02-27-21 CITY REVIEW
03-15-21 BIDS

DRAWN BY:
G. Viju

DESIGNED BY:
P. Tulikangas

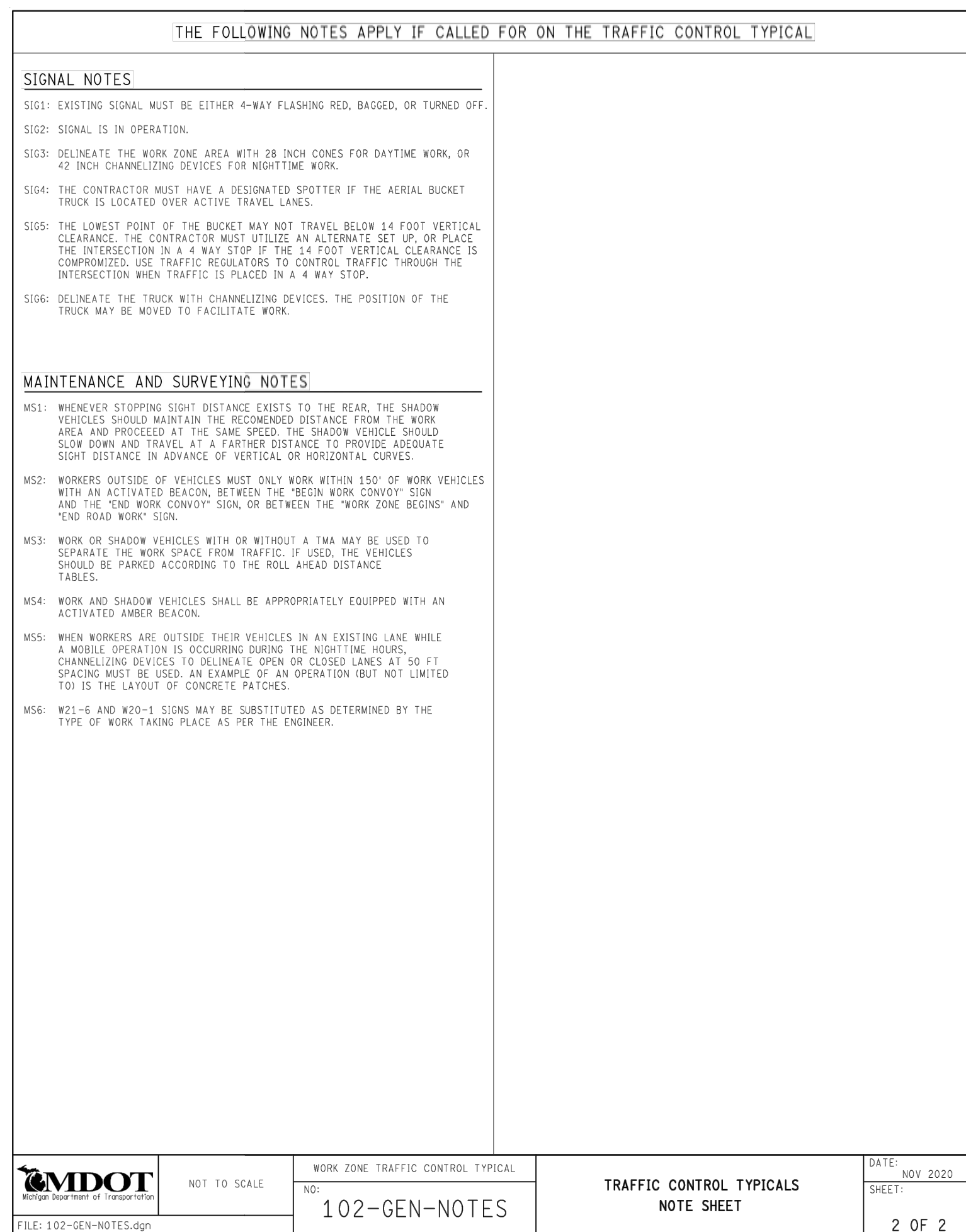
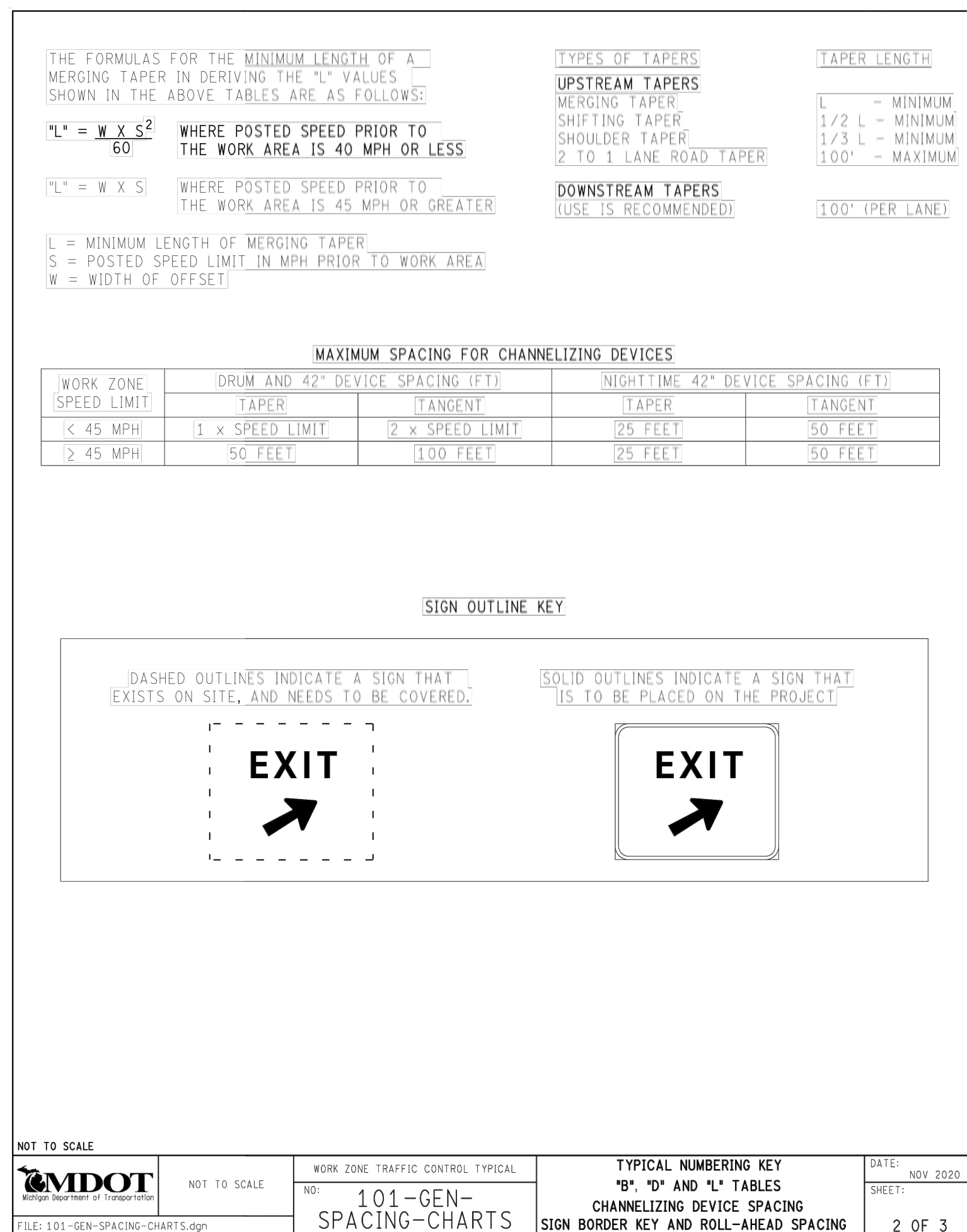
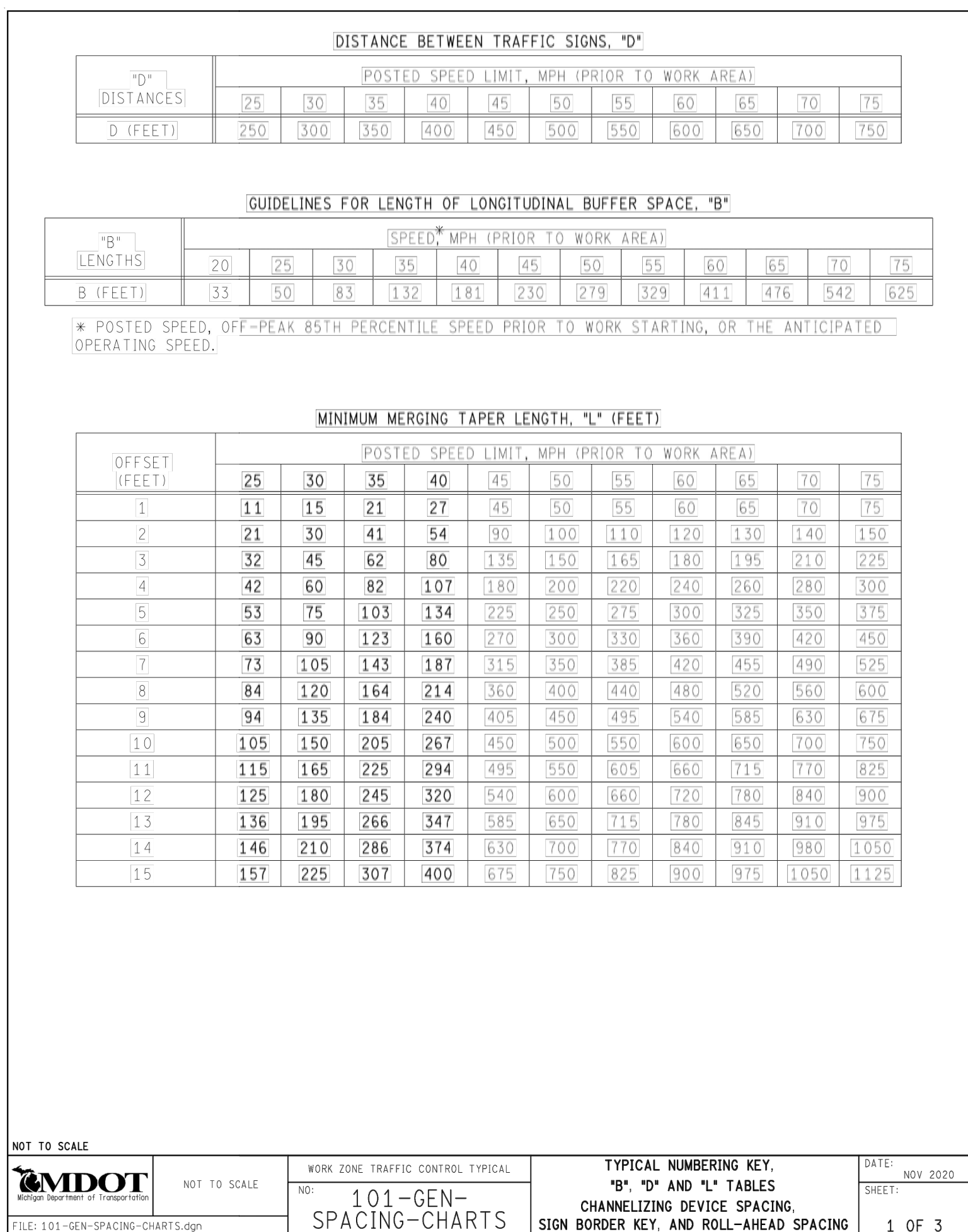
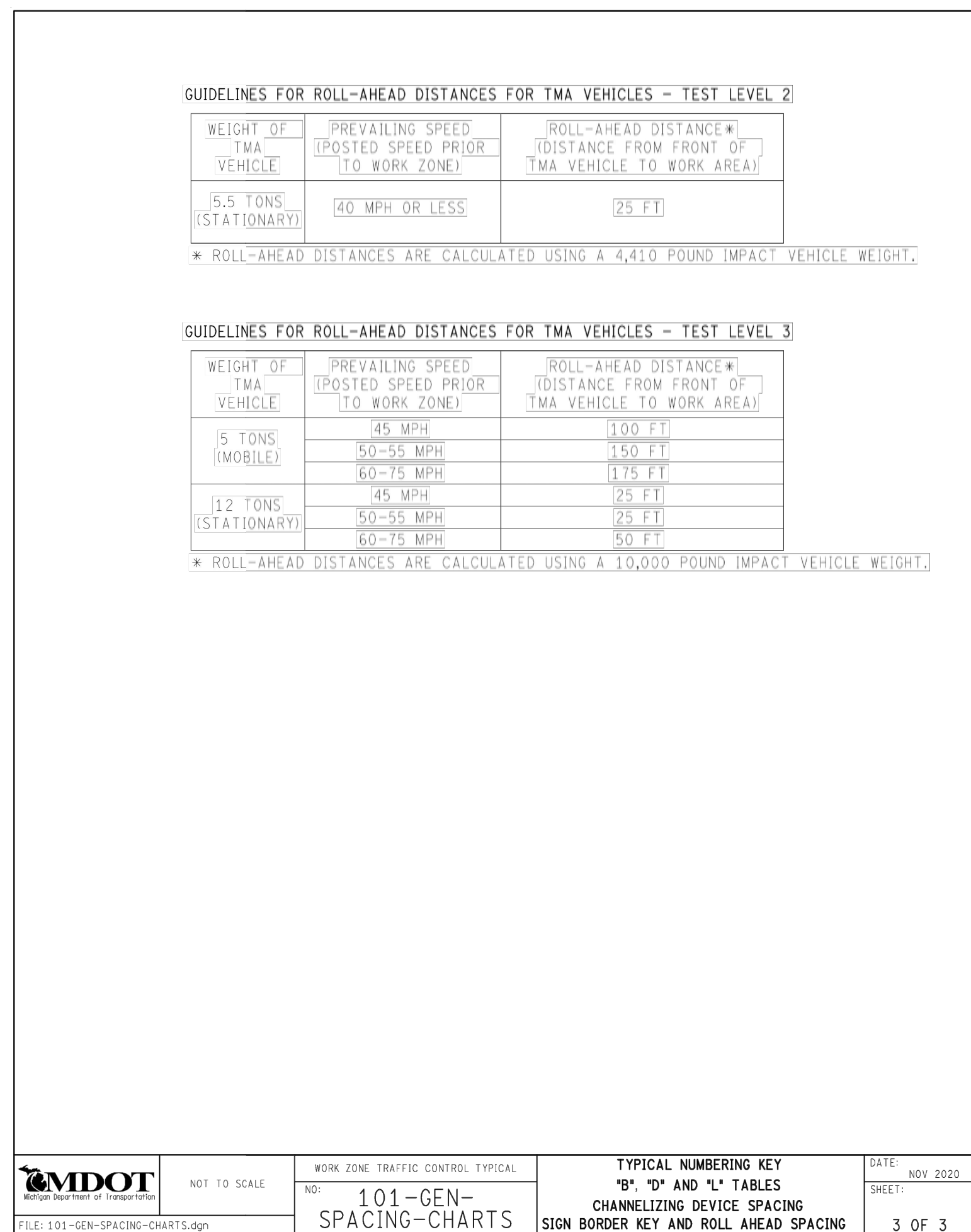
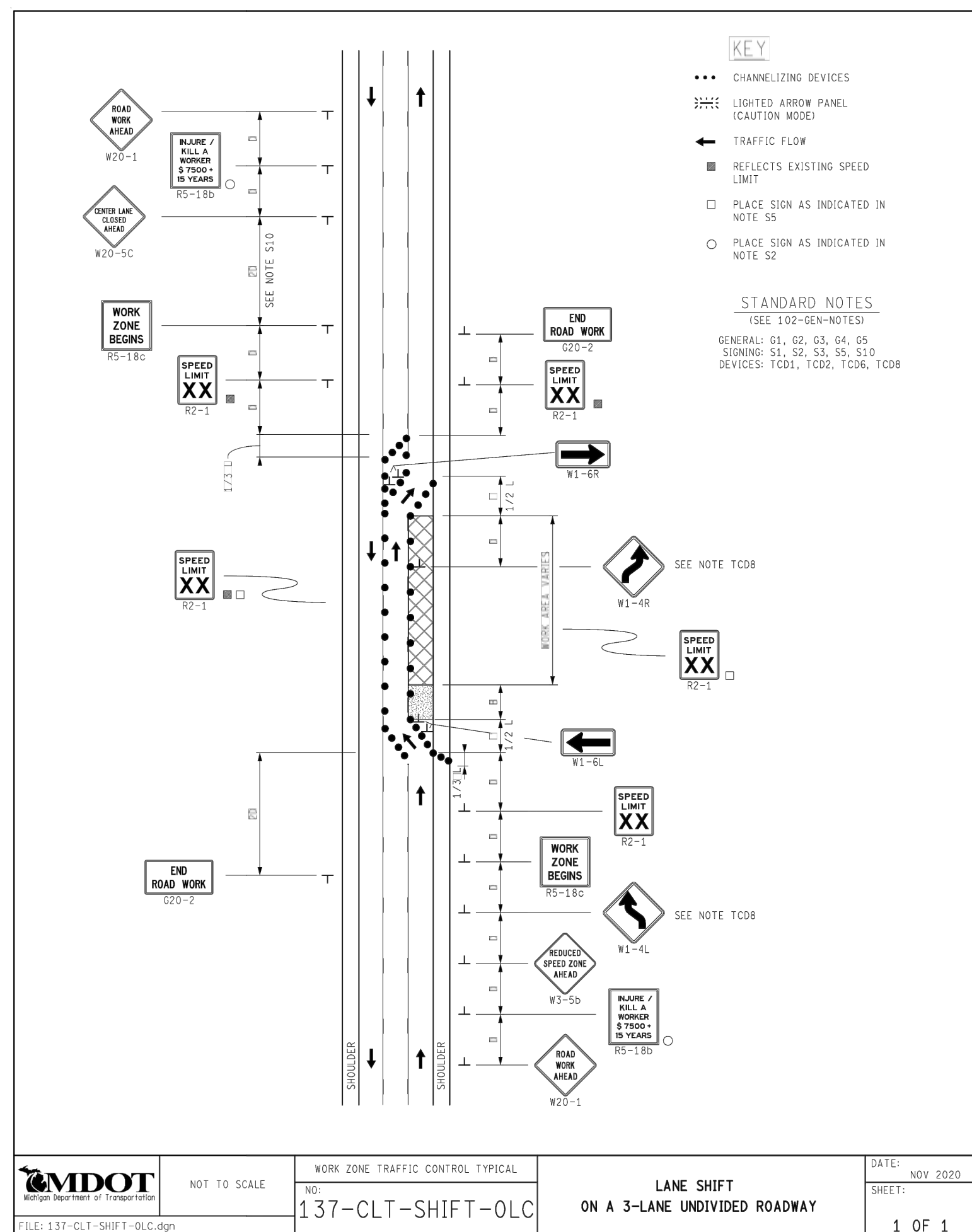
APPROVED BY:
B. Buchholz

DATE:
March 3, 2020

SCALE: N.T.S.

NFE JOB NO.
L485

SHEET NO.
C13



GENERAL NOTES

- BRICK PAVERS SHALL BE REMOVED BY MEANS WHICH CAUSE NO DAMAGE TO THE BRICKS. BRICKS SHALL BE DELIVERED TO CITY OF BIRMINGHAM DEPARTMENT OF SERVICES AS DIRECTED BY THE ENGINEER.
- ALL PAVEMENT TO BE REMOVED SHALL BE SAWCUT FULL DEPTH.
- ANY GRAVEL REPLACEMENT NECESSARY FOR REGRADING DRIVEWAYS SHALL BE CONSIDERED INCLUDED IN THE COST OF CONCRETE DRIVE APPROACH.
- ALL TREES NOT INDICATED FOR REMOVAL SHALL BE PROTECTED DURING CONSTRUCTION. WHERE NECESSARY, TREE ROOTS SHALL BE CUT CLEANLY, AT NO TIME WILL RIPPING OR TEARING OF TREE ROOTS BE ACCEPTABLE.
- ALL DRIVEWAYS (BEHIND THE SIDEWALK) SHALL BE REPAIRED WITH A CROSS SECTION WHICH MATCHES THE EXISTING IN THICKNESS, OR A MINIMUM 4.0" BITUMINOUS MIXTURE No. 13A. IF THE EXISTING DRIVEWAY IS GREATER THAN 4.0" IN DEPTH, THE THICKNESS OF THE BITUMINOUS MIXTURE No. 13A SHALL BE ADJUSTED TO MAKE UP THE DIFFERENCE.
- UNLESS OTHERWISE SHOWN, PROPOSED GRADES IN PROFILE ARE TOP OF CURB GRADES.
- ROCKS, OR OTHER MISC. DEBRIS WHICH ARE REMOVED SHALL BECOME THE PROPERTY OF THE CONTRACTOR AND SHALL BE REMOVED FROM THE SITE, UNLESS DIRECTED OTHERWISE FROM THE CITY.
- THE PAY ITEM "ADJUST STRUCTURE COVER" APPLIES ONLY TO PRE-EXISTING STRUCTURES TO BE ADJUSTED TO PROPOSED GRADES AS PART OF CONSTRUCTION.
- IF THE CONTRACTOR HAS MULTIPLE CREWS WORKING THAT REQUIRES MULTIPLE CITY INSPECTORS ON A GIVEN WORK DAY, THE PAY ITEM "INSPECTOR CREW DAYS" SHALL BE MULTIPLIED BY THE CORRESPONDING NUMBER OF INSPECTORS REQUIRED DURING SAID WORK DAY.

PAVING NOTES

- PAVEMENT SHALL BE OF THE TYPE, THICKNESS AND CROSS SECTION AS INDICATED ON THE PLANS AND AS FOLLOWS:

CONCRETE ROAD:	BASE COURSE - 21AA CRUSHED LIMESTONE AGGREGATE (8" THICK) MIX - PORTLAND CEMENT TYPE IA (AIR-EXTRACTED), TO COMPLY WITH MDOT P1M REQUIREMENTS.
CONCRETE FLATWORK:	PORTLAND CEMENT TYPE IA (AIR-EXTRACTED), WITH A MINIMUM CEMENT CONTENT OF SIX SACKS PER CUBIC YARD, MINIMUM 28 DAY COMPRESSIVE STRENGTH OF 3,500 PSI AND A SLUMP OF 1.5 TO 3 INCHES. COMPLY WITH MDOT P1 REQUIREMENTS.
ALL CONCRETE PAVEMENT AND FLATWORK MIXES USED ON THIS PROJECT SHALL COMPLY WITH A MINIMUM GROUND GRANULATED BLAST-FURNACE SLAG (GGFS) SUBSTITUTION OF TWENTY-FIVE (25) PERCENT SUBJECT TO SEASONAL LIMITATIONS PER THE MICHIGAN DEPARTMENT OF TRANSPORTATION (MDOT) STANDARD SPECIFICATIONS FOR CONSTRUCTION, 2012 EDITION.	
ASPHALT:	BASE COURSE - 21AA CRUSHED LIMESTONE AGGREGATE (8" THICK)
LEVELING COURSES:	
ASPHALT ROAD -	MDOT HMA MIXTURE NO. 4E1 (MAX. APPLICATION RATE 275 POUNDS PER SQUARE YARD)
REPAIR AREAS -	MDOT HMA MIXTURE NO. 13A (MAX. APPLICATION RATE 220 POUNDS PER SQUARE YARD)
SURFACE COURSES:	
ASPHALT ROAD -	MDOT HMA MIXTURE NO. 5E1 (MAX. APPLICATION RATE 165 POUNDS PER SQUARE YARD)
REPAIR AREAS -	MDOT HMA MIXTURE NO. 13A (MAX. APPLICATION RATE 165 POUNDS PER SQUARE YARD)
BOND COAT -	MDOT SS-1H EMULSION AT 0.10 GALLON PER SQUARE YARD

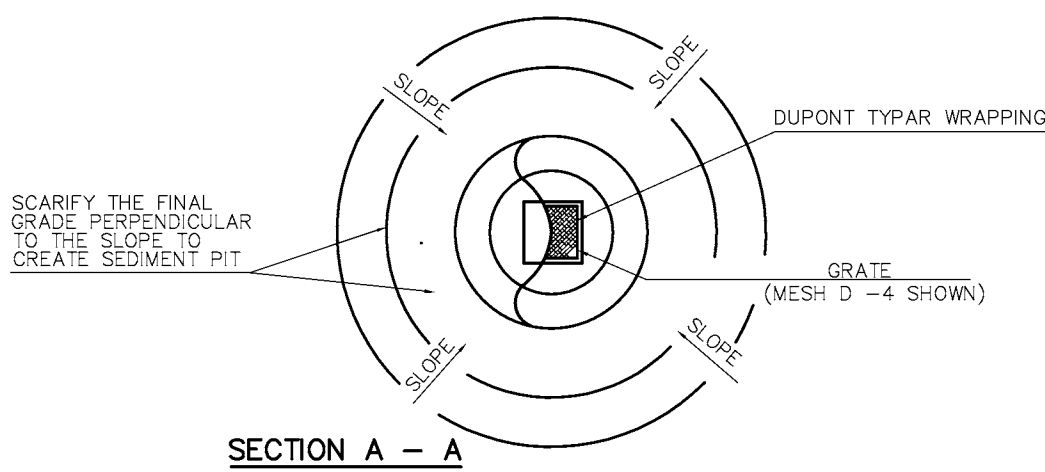
- PAVEMENT BASE SHALL BE COMPACTED TO 95% OF THE MAXIMUM DENSITY (MODIFIED PROCTOR) PRIOR TO PLACEMENT OF PROPOSED PAVEMENT. EXISTING SUB-BASE SHALL BE PROOF-ROLLED IN THE PRESENCE OF THE ENGINEER TO DETERMINE STABILITY.
- ALL CONCRETE PAVEMENT, DRIVEWAYS, CURB & GUTTER, ETC., SHALL BE SPRAY CURED WITH WHITE MEMBRANE CURING COMPOUND IMMEDIATELY FOLLOWING FINISHING OPERATION.
- ALL CONCRETE PAVEMENT JOINTS SHALL BE FILLED WITH HOT POURED RUBBERIZED ASPHALT JOINT SEALING COMPOUND IMMEDIATELY AFTER SAWCUT OPERATION. FEDERAL SPECIFICATION SS-S164.
- ALL WORKMANSHIP AND MATERIALS SHALL BE IN ACCORDANCE WITH THE CURRENT STANDARDS AND SPECIFICATIONS OF THE MUNICIPALITY AND THE MICHIGAN DEPARTMENT OF TRANSPORTATION STANDARD SPECIFICATIONS FOR CONSTRUCTION, 2003 EDITION.
- ALL TOP OF CURB ELEVATIONS, AS SHOWN ON THE PLANS, ARE CALCULATED FOR A 6" CONCRETE CURB UNLESS OTHERWISE NOTED.
- ALL SIDEWALK RAMPS, CONFORMING TO PUBLIC ACT NO. 8, 1993, SHALL BE INSTALLED AS INDICATED ON THE PLANS.
- CONSTRUCTION OF A NEW OR RECONSTRUCTED DRIVE APPROACH CONNECTING TO AN EXISTING STATE OR COUNTY ROADWAY SHALL BE ALLOWED ONLY AFTER AN APPROVED PERMIT HAS BEEN SECURED FROM THE AGENCY HAVING JURISDICTION OVER SAID ROADWAY.
- FOR ANY WORK WITHIN THE PUBLIC RIGHT-OF-WAY, THE CONTRACTOR SHALL PAY FOR AND SECURE ALL NECESSARY PERMITS AND LIKEWISE ARRANGE FOR ALL INSPECTION.
- EXISTING TOPSOIL, VEGETATION AND ORGANIC MATERIALS SHALL BE STRIPPED AND REMOVED FROM PROPOSED PAVEMENT AREA PRIOR TO PLACEMENT OF BASE MATERIALS (INCLUDED IN PAVING WORK).
- EXPANSION JOINTS SHOULD BE INSTALLED AT THE END OF ALL INTERSECTION RADII.
- SIDEWALK RAMPS, CONFORMING TO PUBLIC ACT NO. 8, 1973, SHALL BE INSTALLED AS SHOWN AT ALL STREET INTERSECTIONS AND AT ALL BARRIER FREE PARKING AREAS AS INDICATED ON THE PLANS.
- ALL PAVEMENT AREAS SHALL BE PROOF-ROLLED UNDER THE SUPERVISION OF A GEOTECHNICAL ENGINEER PRIOR TO THE PLACEMENT OF BASE MATERIALS AND PAVING MATERIALS.
- FILL AREAS SHALL BE MACHINE COMPACTED IN UNIFORM LIFTS NOT EXCEEDING 9 INCHES THICK TO 95% OF THE MAXIMUM DENSITY (MODIFIED PROCTOR) PRIOR TO PLACEMENT OF PROPOSED PAVEMENT.
- R.A.P. NOT ALLOWED IN SURFACE / TOP COURSE OF ASPHALT.

WATER MAIN NOTES

- ALL WATER MAINS 4" AND LARGER SHALL BE DUCTILE IRON PIPE THICKNESS CLASS 54, WITH PUSH ON TYPE JOINTS AND ZINC COATING PER CITY REQUIREMENTS.
- NEW WATER MAINS SHALL BE INSTALLED WITH A MINIMUM 5 FEET OF COVER. EXCEPTIONS WILL BE ALLOWED WHEN NECESSARY TO CONNECT TO EXISTING MAIN OR WHEN AUTHORIZED BY THE ENGINEER.
- KNOWN WATER SERVICES BASED ON FIELD INFORMATION OR CITY RECORDS ARE SHOWN ON THE PLANS AS FOLLOWS: "C" = COPPER, "L" = LEAD AND "W.S." = WATER SERVICE TYPE UNKNOWN. THE CONTRACTOR SHALL BE RESPONSIBLE FOR CONNECTING ALL EXISTING SERVICES TO THE NEW MAIN AFTER IT HAS BEEN APPROVED FOR USE.
- COAT ALL BOLTS ON MECHANICAL FITTINGS WITH TAR.
- HYDRANT CONNECTION TO CONSIST OF 6" DUCTILE IRON PIPE, 6" GATE VALVE AND BOX, AND HYDRANT. HYDRANT SHALL BE ELUM MODEL 5BR WITH 6" MECHANICAL JOINT INLET, TWO PUMPER INLETS, ALL OPENING LEFT, 5'-6" TRENCH, PLUGGED DRAIN AND BLOCK BOLTS.
- INSTALL GATE VALVE AS CLOSE TO HYDRANT AS PRACTICABLE.
- GATE VALVES 4" AND LARGER MAY BE MUELLER BRAND SPECIFIED, OR APPROVED EQUIVALENT. ALL MATERIALS RELATIVE TO WATER SERVICE CONNECTIONS SHALL BE MUELLER BRAND.
- IN ABANDONING MAINS, THE FOLLOWING SHALL BE DONE: PLUG ALL OPEN PIPE ENDS WITH MASONRY, DISCONNECT MAINS WHICH ARE TO BE ABANDONED FROM FITTINGS AT LIVE MAINS AND PLUG AND BLOCK THOSE FITTINGS. FILL MAIN TO BE ABANDONED WITH GROUT OR HYDRAULIC CEMENT.
- WORK INDICATED BY (A) SHALL BE PERFORMED AFTER THE NEW MAINS ARE PLACED IN SERVICE.
- THE LOCATIONS AND TYPES OF SERVICE LEADS IS BASED ON THE BEST AVAILABLE INFORMATION. THE EXACT LOCATION OF SERVICE LEADS SHALL BE FIELD VERIFIED BY THE CONTRACTOR.
- WHERE APPLICABLE, THE APPROPRIATE SECTIONS OF EXISTING WATERMAIN SHALL BE SHUTDOWN AND DEPRESSURIZED PRIOR TO A) CUTTING AND REMOVING, B) CUTTING AND INSTALLING PROPOSED TEE CONNECTIONS, C) PERFORMING ANY AND ALL OTHER WORK AROUND/ADJACENT TO HYDRANTS AND ALL OTHER CONNECTIONS, WHILE MEETING AND/OR EXCEEDING APPLICABLE INDUSTRY SAFETY PRECAUTIONS AND MICHIGAN STANDARDS.

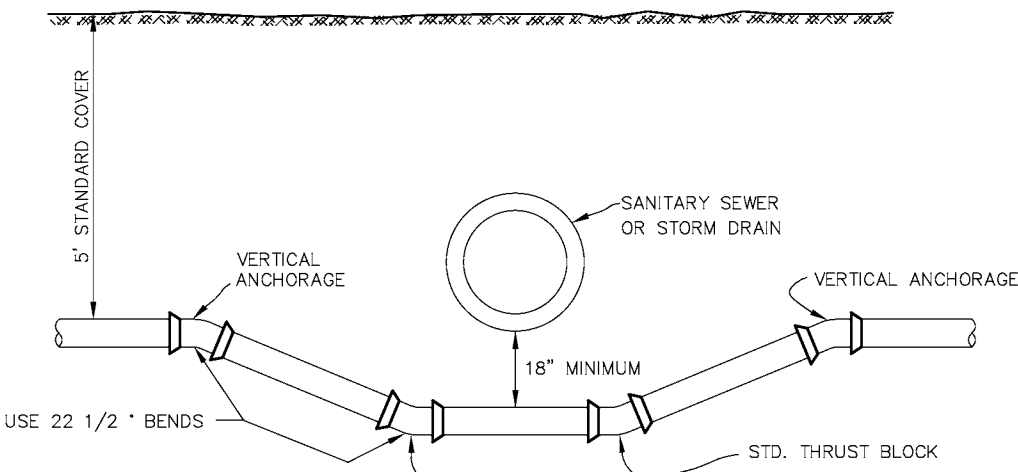
STORM SEWER NOTES (where applicable)

- ALL WORKMANSHIP AND MATERIALS SHALL BE IN ACCORDANCE WITH THE CURRENT STANDARDS AND SPECIFICATIONS OF THE MUNICIPALITY, THE MUNICIPALITY STANDARD NOTES, DETAILS AND SPECIFICATIONS SHALL BE INCORPORATED AS PART OF THESE PLANS.
- ALL STORM SEWER TRENCHES UNDER OR WITHIN THREE (3) FEET OF EXISTING OR PROPOSED PAVEMENT SHALL BE BACK FILLED WITH MDOT CLASS II MATERIAL (SAND) AND BE MACHINE COMPACTED TO A MINIMUM OF 76 OF THE MATERIAL'S MAXIMUM DENSITY. PAVEMENT SHALL INCLUDE PARKING LOTS, DRIVE APPROACHES, 96 CURB & GUTTER AND ADJACENT WALKS.
- ALL STORM SEWER PIPE SHALL BE INSTALLED ON CLASS "B" BEDDING OR BETTER UNLESS OTHERWISE INCLUDED ON THE PLANS.
- STORM SEWER SHALL BE OF THE TYPE, SIZE & CLASS DESIGNATION INDICATED ON THE PLANS AND LIKEWISE BE INSTALLED AT THE PROPOSED LINE & GRADE INDICATED.
- ALL STORM SEWER PIPE SHALL BE REINFORCED CONCRETE PIPE CONFORMING TO ASTM SPECIFICATION C-76 CL IV.
- ALL MAN HOLE, CATCH BASIN, INLET, REAR YARD DRAINAGE STRUCTURES AND COVERS SHALL BE AS INDICATED ON THE PLANS AND CONSTRUCTED IN ACCORDANCE WITH MUNICIPALITY STANDARDS.
- INSTALL TRAPS ON THE FIRST CATCH BASIN (TYPICALLY A 4' DIAMETER STRUCTURE WITH 2' SUMP) THAT IS UPSTREAM OF ITS CONNECTION TO A MAINLINE STORM OR SEWER MANHOLE, TO CAPTURE FLOATABLES AND TO MINIMIZE ESCAPE OF ODOR.
- THE CONTRACTOR SHALL NOTIFY MISS DIG (1-800-482-7171) A MINIMUM OF THREE (3) WORKING DAYS PRIOR TO THE START OF CONSTRUCTION.
- EXACT GRADES AND INVERTS OF PROPOSED STORM SEWER ARE TO BE CHECKED WITH THE FIELD ENGINEER PRIOR AND DURING INSTALLATION. THE CONTRACTOR SHALL IMMEDIATELY NOTIFY THE DESIGN ENGINEER OF ANY PLAN INCONSISTENCY AND/OR UTILITY CONFLICT.
- ALL STORM SEWER PIPE JOINTS SHALL BE "PREMIUM JOINT" MODIFIED GROOVED TONGUE (M.G.T.) WITH SYNTHETIC RUBBER GASKETS CONFORMING TO ASTM SPECIFICATION C-443 & C-361, UNLESS OTHERWISE INDICATED ON THE PLANS.
- FACILITY MANUFACTURED PRECAST TEE SECTIONS SHALL BE FOR ROOF DRAINS AND/OR SUMP PUMP LEADS AND LATERALS WHERE INDICATED ON THE PLANS. BLIND TOP CONNECTIONS INTO STORM SEWER WILL NOT BE PERMITTED BY BREAKING PIPE WALL.
- THE CONTRACTOR SHALL PAY FOR AND SECURE ALL NECESSARY PERMITS AND LIKEWISE ARRANGE FOR ALL SITE INSPECTIONS.



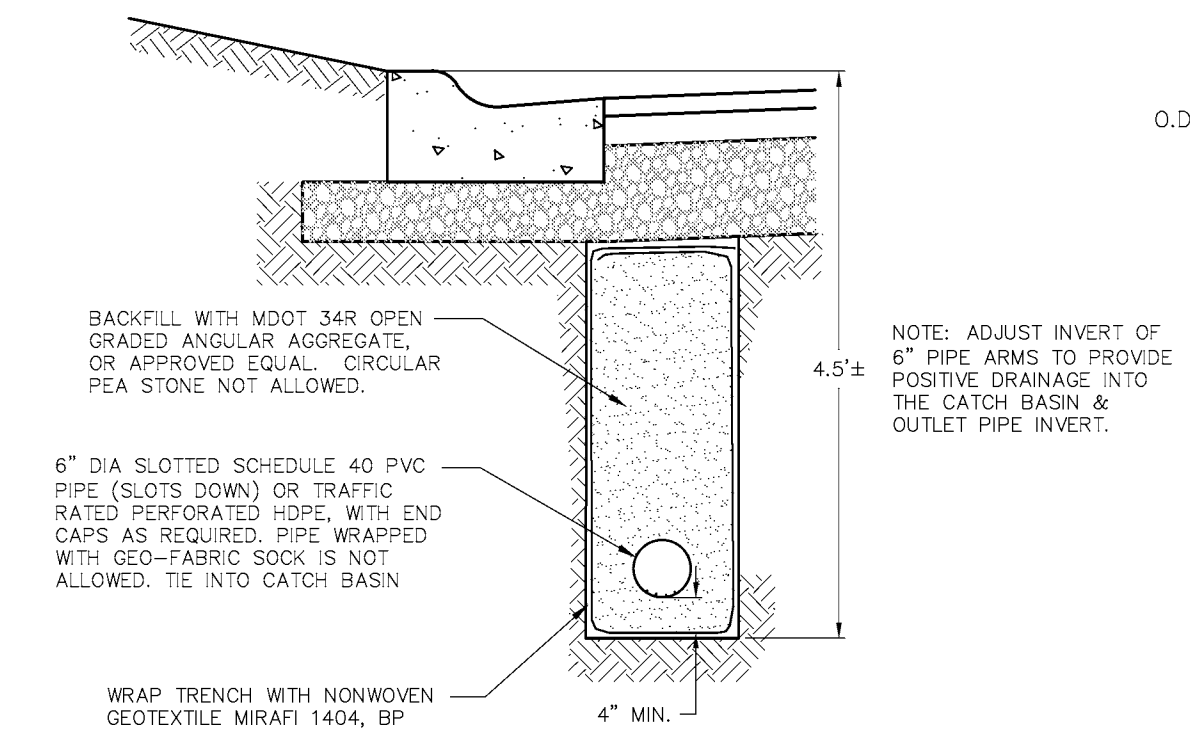
LOW POINT INLET FILTER & SEDIMENT PIT DETAIL

N.T.S.



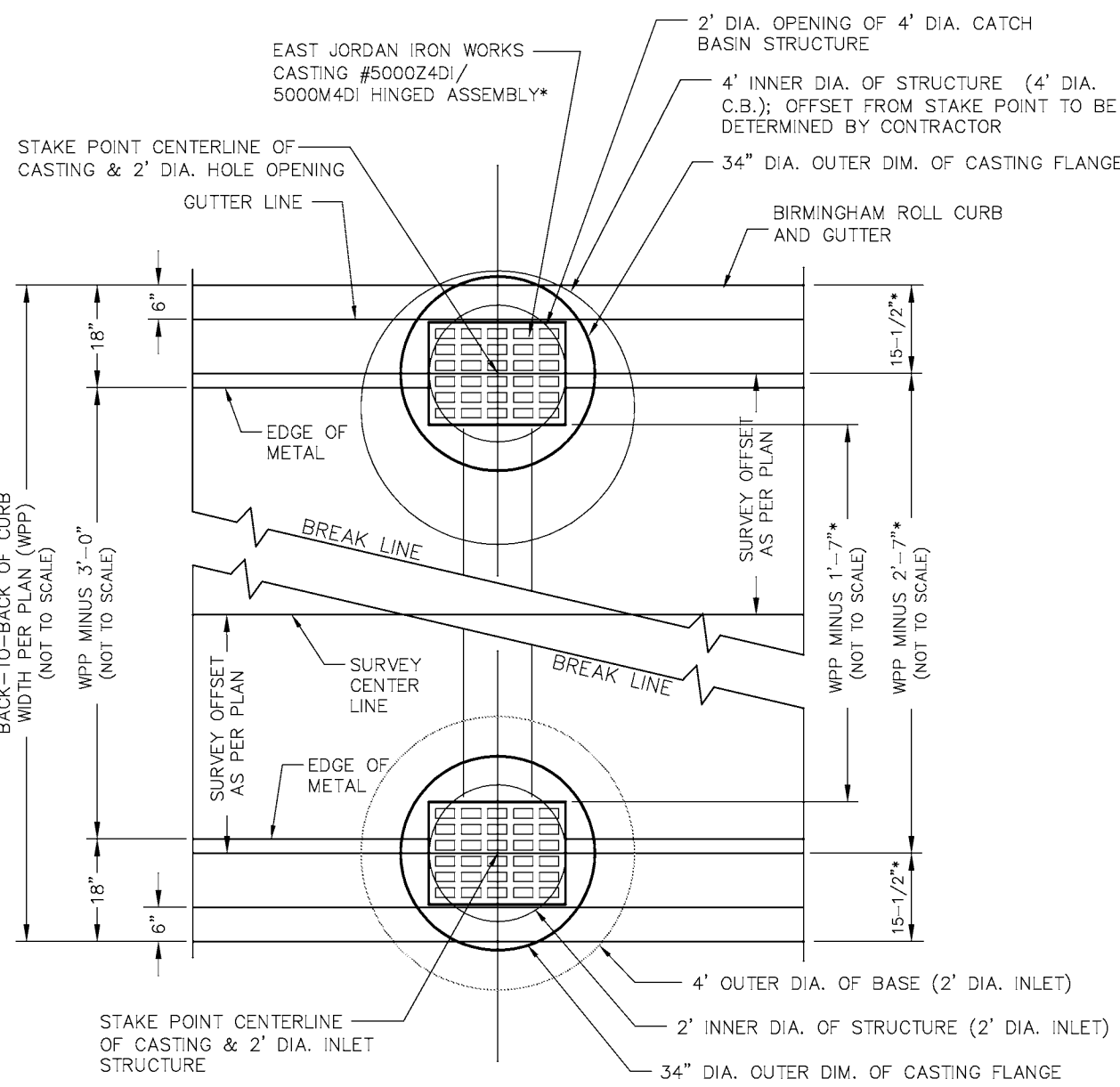
STANDARD SEWER OR STORM CROSSING

N.T.S.



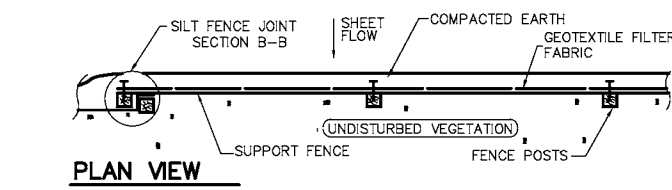
6" PERFORATED PIPE UNDERDRAIN DETAIL

N.T.S.



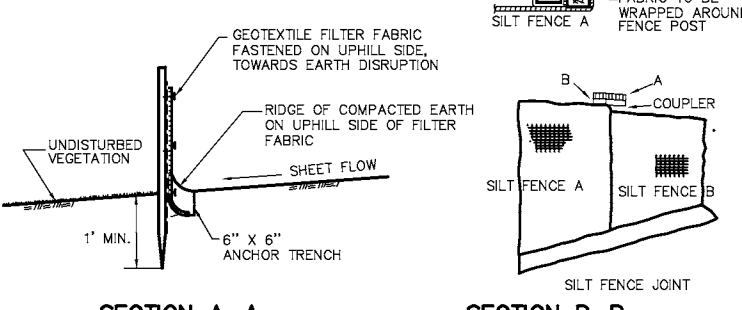
CURB, CATCH BASIN & INLET ALIGNMENT DETAIL PLAN VIEW

SCALE: 1" = 2'



SILT FENCE DETAIL

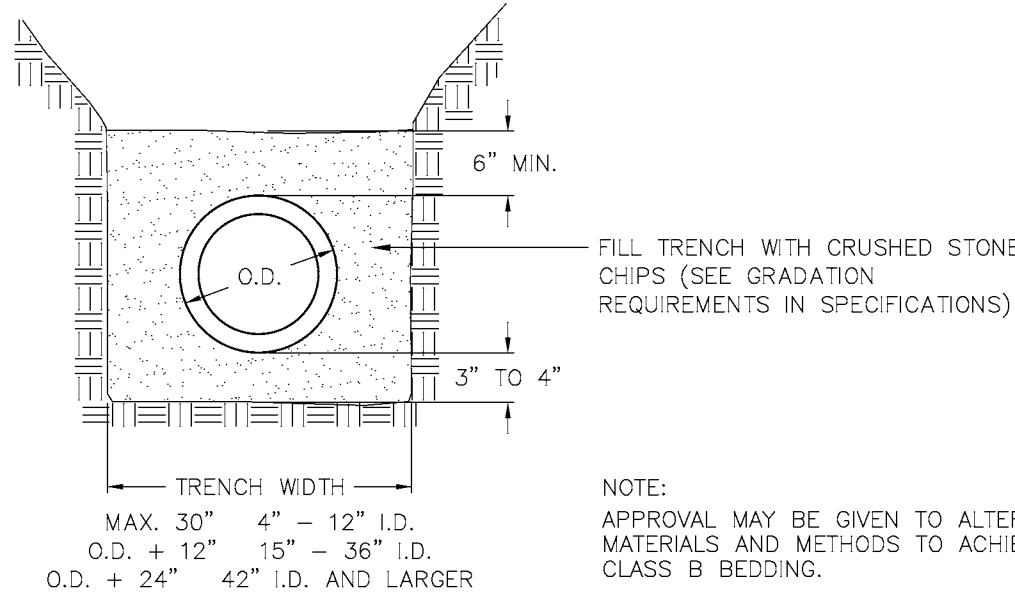
N.T.S.



SECTION A-A

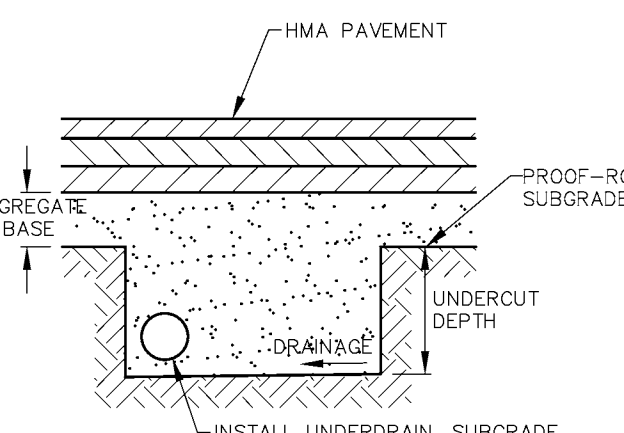
SECTION B-B

N.T.S.



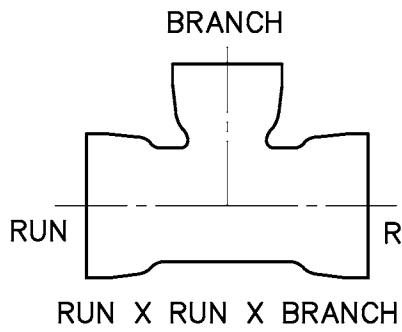
STANDARD PIPE BEDDING

N.T.S.



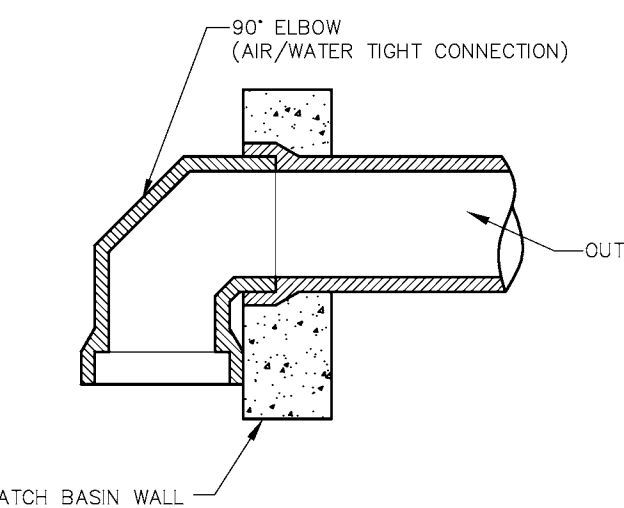
UNDERCUT DETAIL

N.T.S.



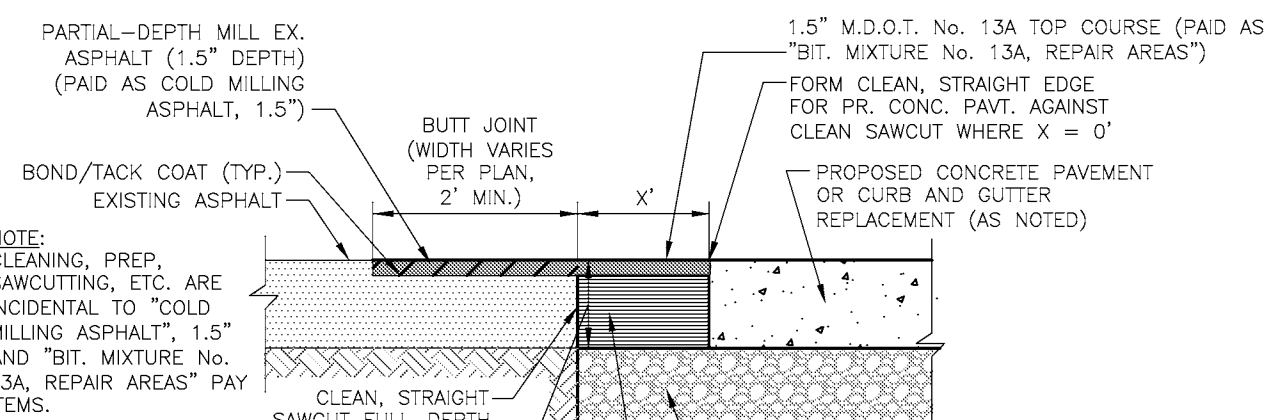
WATER MAIN TEE FITTING SIZE DESIGNATION SCHEMATIC

N.T.S.



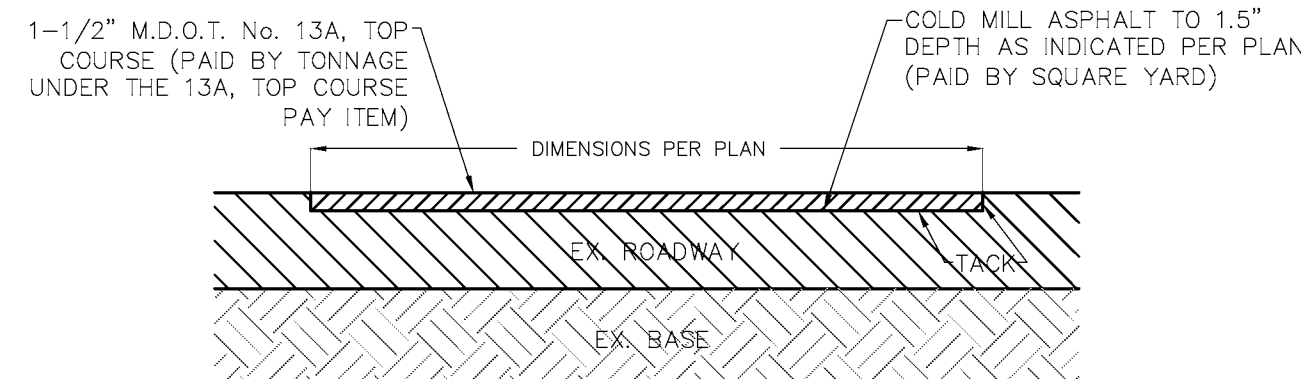
SEWER TRAP

N.T.S.



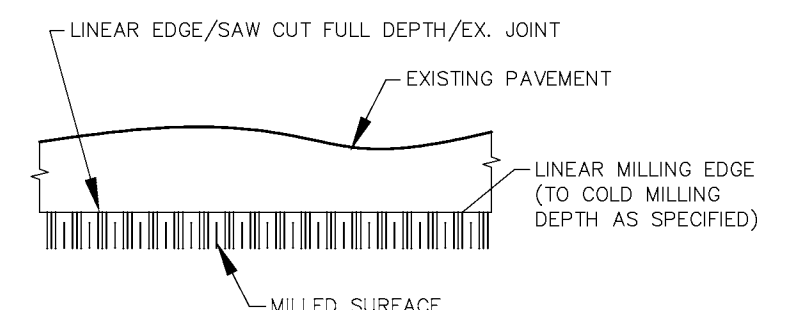
ASPHALT REPAIR DETAIL

N.T.S.



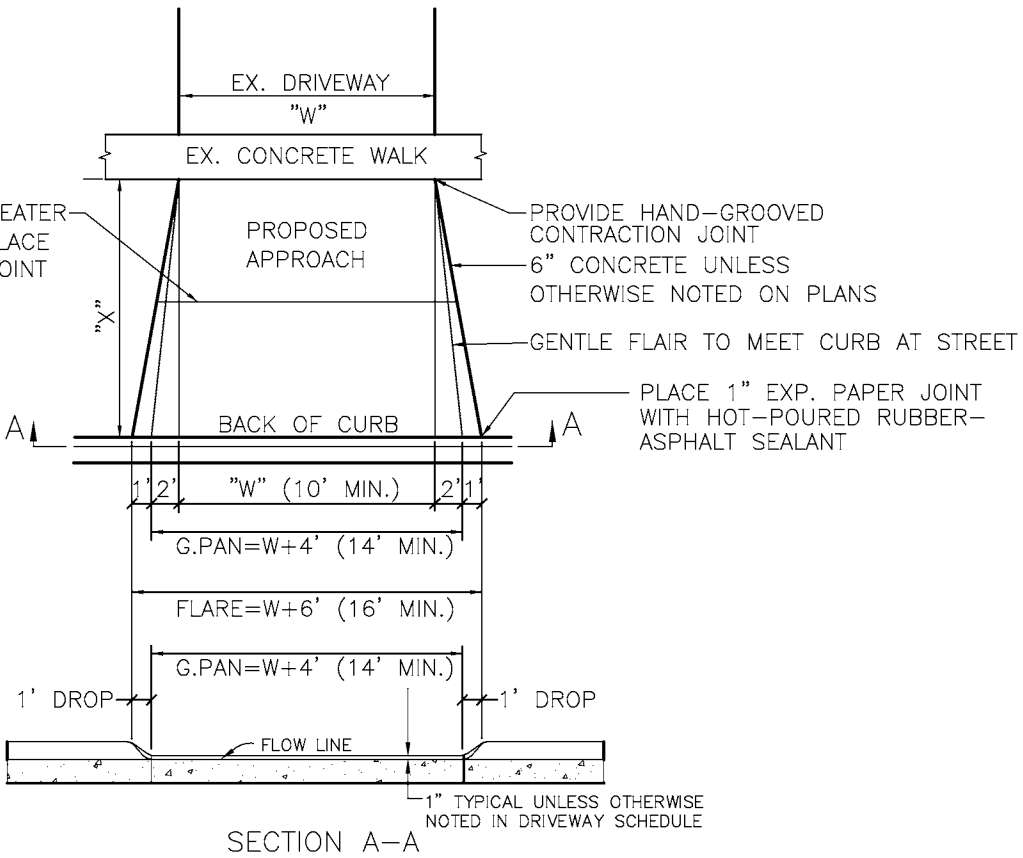
COLD MILL ASPHALT DETAIL

N.T.S.



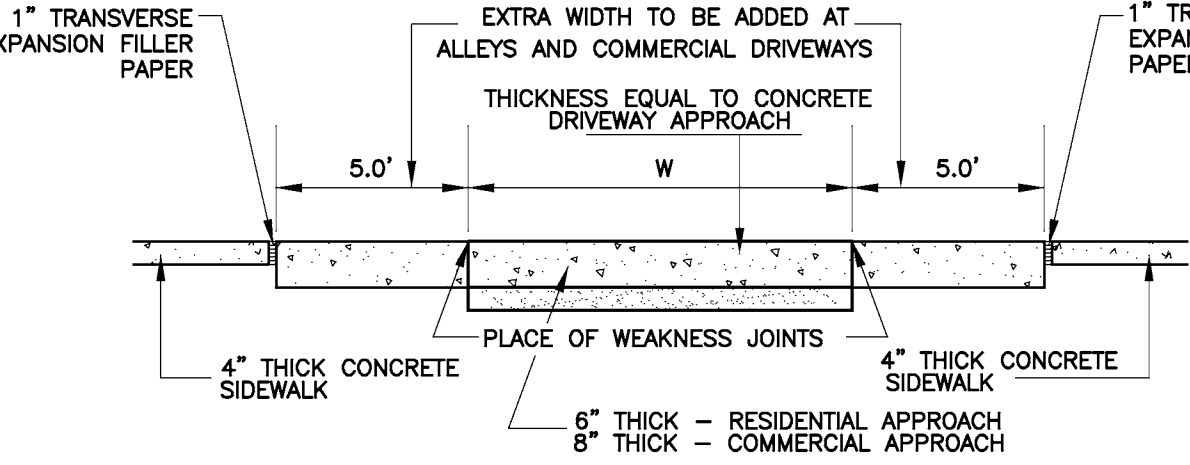
LINEAR MILLING/SAWCUT EDGE DETAIL

N.T.S.



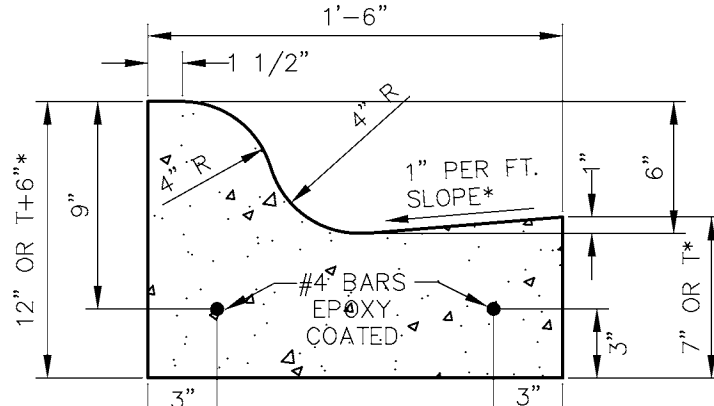
CONCRETE DRIVE APPROACH - DETAIL 'L'

N.T.S.



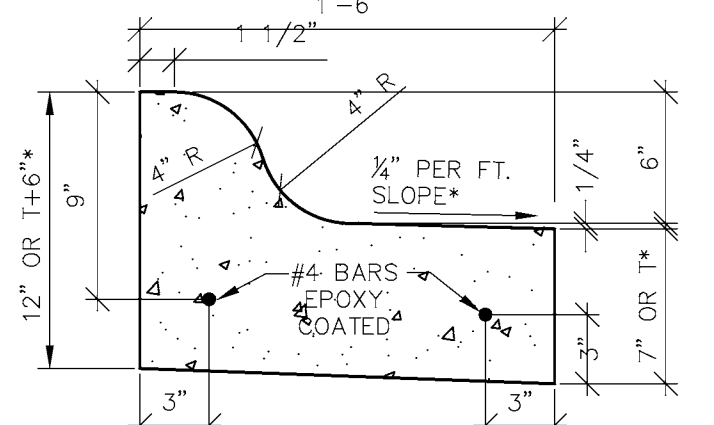
THICKENED CONCRETE SIDEWALK (PLAIN)

N.T.S.



BIRMINGHAM 6" ROLL CURB CONCRETE CURB & STANDARD GUTTER DETAIL

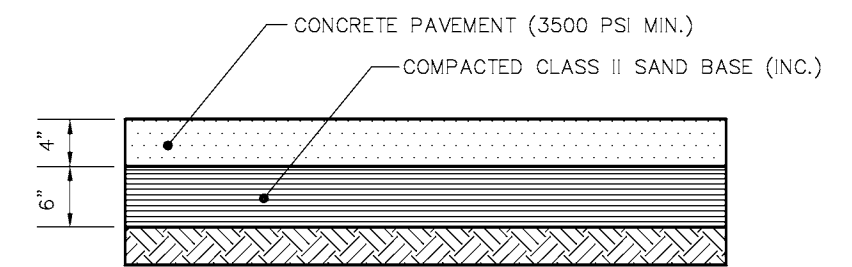
N.T.S.



BIRMINGHAM 6" ROLL CURB CONCRETE CURB & REVERSE GUTTER DETAIL

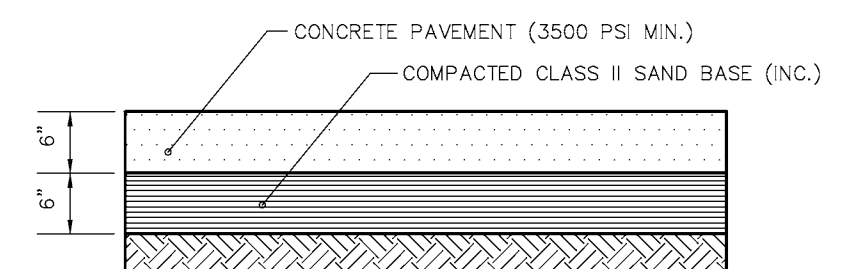
N.T.S.

*NOTE: "T" IS EQUAL TO THE THICKNESS & SLOPE IS EQUAL TO THE CROSS-SLOPE OF THE CONCRETE PAVEMENT WHEN CURB & GUTTER IS POURED INTEGRAL TO THE PAVEMENT.



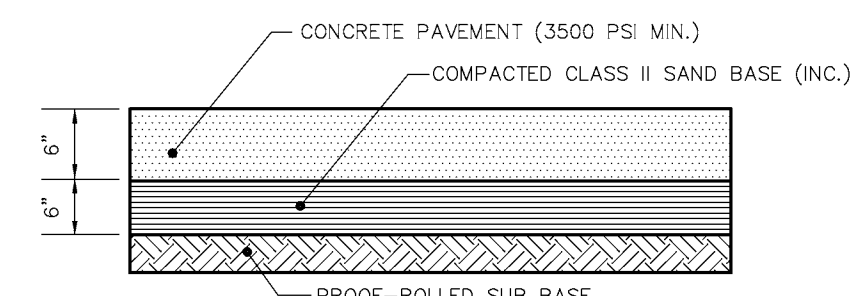
4" CONCRETE SIDEWALK SECTION

N.T.S.



6" CONCRETE SIDEWALK SECTION

N.T.S.



TYPICAL CONCRETE SECTION FOR RESIDENTIAL APPROACH

N.T.S.

PROJECT

Grant Street Paving Project
Contract # 1-21 (P)

CLIENT


Engineering Department
151 Martin Street
Birmingham, MI 48012

PROJECT LOCATION

Part of the Southeast $\frac{1}{4}$ of
Section 36, Town 2 North,
Range 10 East, City of
Birmingham, Oakland
County, Michigan

SHEET

Quantities



DATE ISSUED/REVISED

02-27-21 CITY REVIEW

03-15-21 BIDS

DRAWN BY:

G. Viju

DESIGNED BY:

P. Tulikangas

APPROVED BY:

B. Buchholz

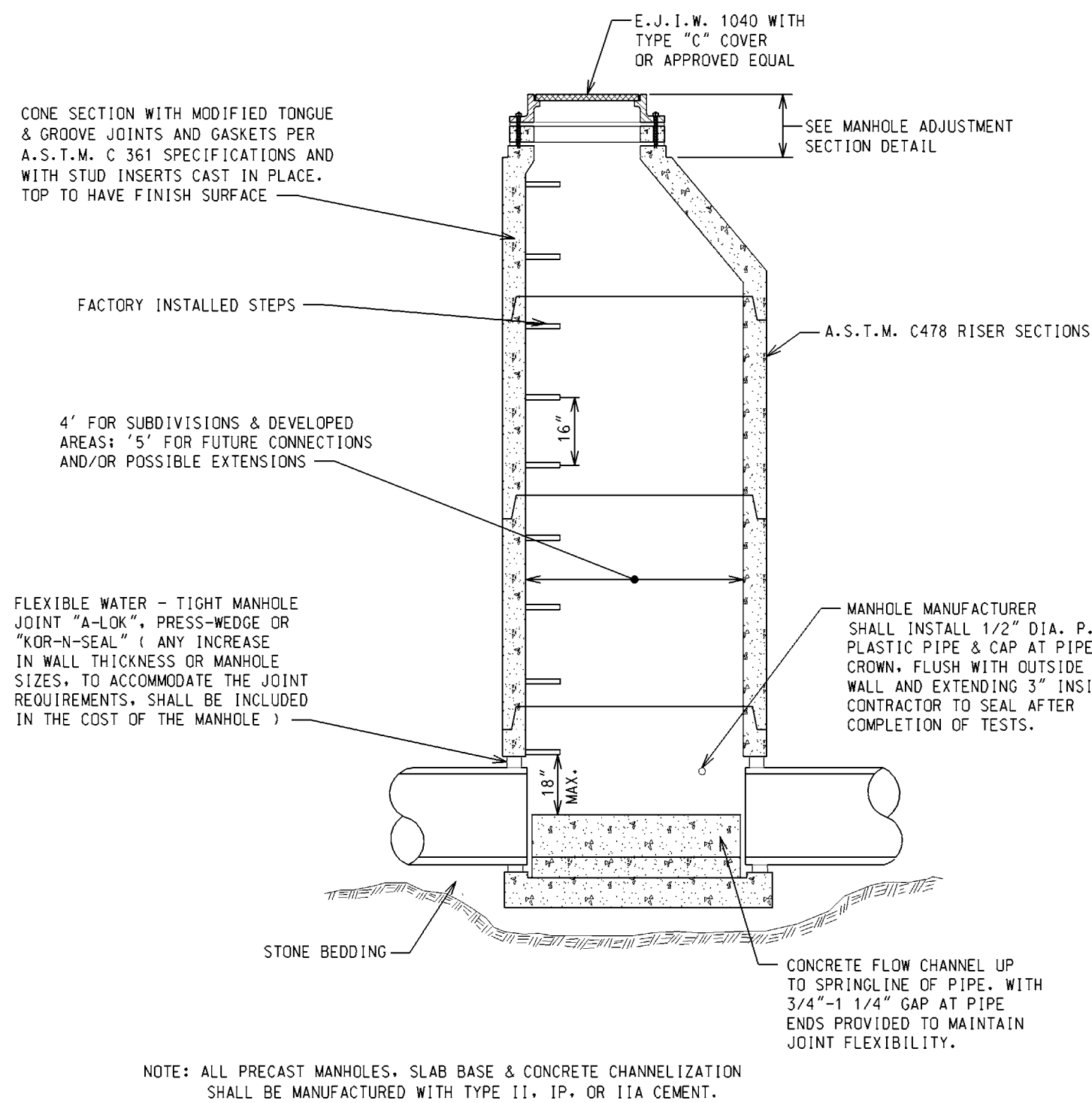
DATE:

March 3, 2020

SCALE:

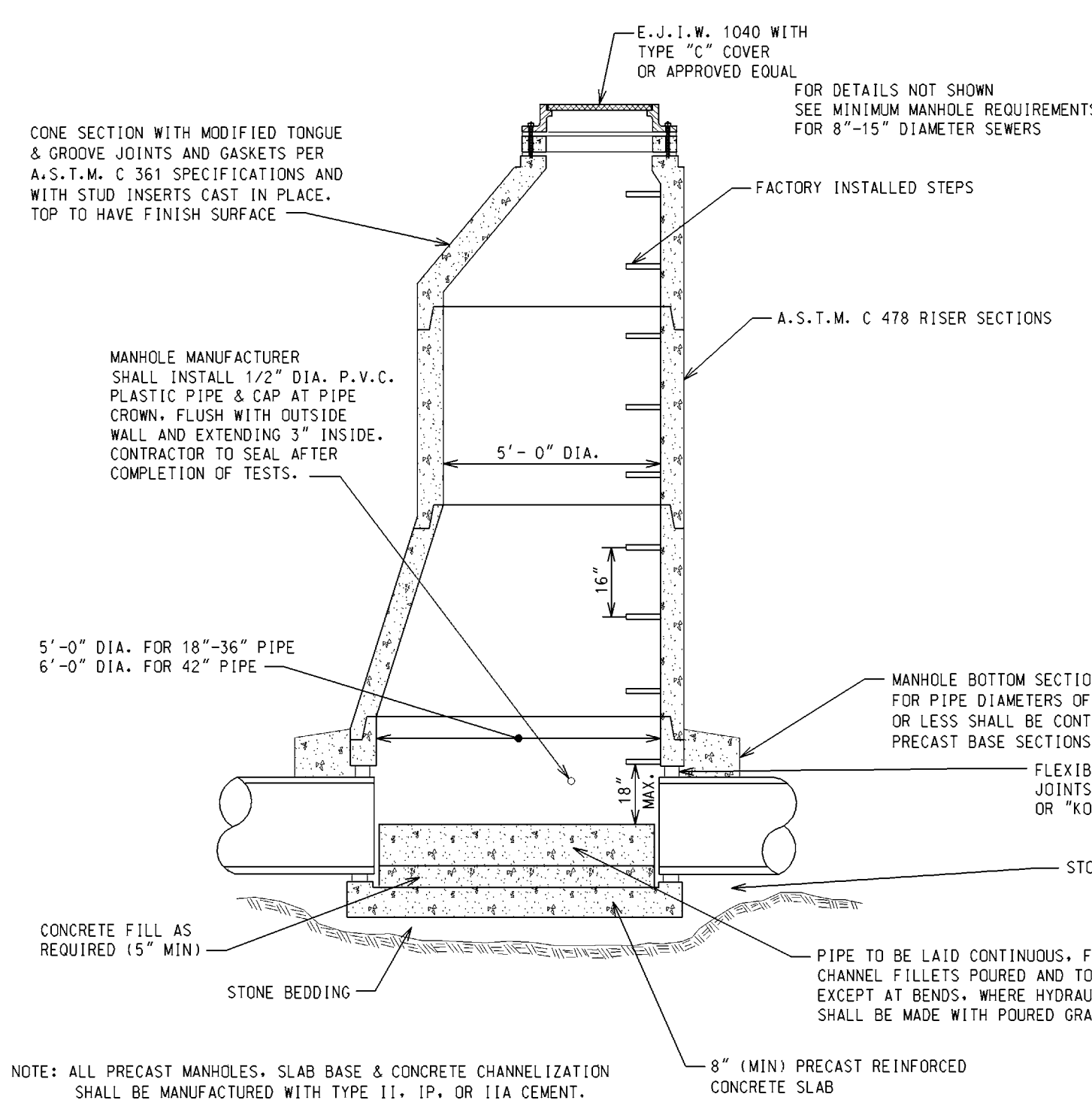
N.T.S.

NO.	ITEM DESCRIPTION	PAY UNIT	SHEET C1	SHEET C2	SHEET C3	SHEET C4 ST. JAMES PARK	TOTAL QUANTITY
SEWER PAY ITEMS							
1	24" Combined Sewer, C76, CL-IV, Trench A	LF	-	262	28	-	290
2	18" Combined Sewer, C76, CL-IV, Trench A	LF	-	-	-	441	441
3	12" Combined Sewer, C76, CL-IV, Trench A	LF	-	-	162	-	162
4	12" Storm Sewer, C76, CL-IV, Trench A	LF	177	143	122	-	442
5	Sewer Service, 6" PVC SDR 23.5	LF	25	-	55	-	80
6	Construct 5' Diameter Manhole over Ex. Comb. Sewer	EA	-	1	1	-	2
7	New 5'-0" Diameter Manhole	EA	-	1	1	-	2
8	Construct 4' Diameter Manhole over Ex. Comb. Sewer	EA	-	-	-	1	1
9	New 4'-0" Diameter Manhole	EA	-	-	2	-	2
10	New 4'-0" Diameter Catch Basin	EA	3	2	3	-	8
11	New 2'-0" Diameter Inlet	EA	3	2	1	-	6
12	6" Perforated Pipe Underdrain (No sock)	LF	703	580	519	-	1,802
13	Sewer Tap, 18"	EA	-	-	-	1	1
14	Sewer Tap, 12"	EA	3	-	-	-	3
15	Sewer Service Tap, 6"	EA	-	-	3	-	3
16	Sewer Service Connection, 6"	EA	1	-	-	-	1
17	Reconstruct Manhole (if and where needed)	VF	-	-	-	-	30
18	Remove & Replace Structure Cover (as directed by City)	LB	-	-	-	-	1,800
19	Remove Ex. Manhole	EA	1	1	2	-	4
20	Remove Ex. Drainage Structure	EA	6	3	2	-	11
21	Bulkhead, 12"	EA	3	0	0	-	3
22	Bulkhead, 6" & Under	EA	-	-	-	-	5
SUBTOTAL SEWER PAY ITEMS							
WATER MAIN PAY ITEMS							
23	8" D.I. CL 54 Water Main w/ Polywrap & Zinc Coating, Trench A	LF	429	329	324	-	1,082
24	6" D.I. CL 54 Water Main w/ Polywrap & Zinc Coating, Trench A	LF	9	-	-	-	9
25	4" D.I. CL 54 Water Main w/ Polywrap & Zinc Coating, Trench A	LF	8	-	-	-	8
26	Fire Hydrant Assembly, Complete	EA	1	-	-	-	1
27	8" Gate Valve & Box	EA	3	1	1	-	5
28	8" Water Main Connection to Ex. 12" Water Main	EA	-	-	1	-	1
29	8" Water Main Connection to Ex. 8" Water Main	EA	2	2	2	-	6
30	4" Water Main Connection to Ex. 4" Water Main	EA	2	-	-	-	2
31	New Water Service, 1" PEX, Private Property (Bored)	LF	-	-	12	-	12
32	New Water Service, 1", Trench A, Copper	LF	52	45	55	-	152
33	Water Service Connection, 2"	EA	-	-	1	-	1
34	Water Service Connection, 1"	EA	3	1	2	-	6
35	New Water Service, 1.0" Connection at Meter, 611 Ruffner	EA	-	-	1	-	1
36	Install Curb Stop & Box (Materials Provided by City), 1"	EA	-	-	2	-	2
37	Hydra-Stop, 12"	EA	-	-	-	-	2
38	Hydra-Stop, 8"	EA	-	-	-	-	2
39	Hydra-Stop, 4"	EA	-	-	-	-	2
40	Abandon Water Mains, Entire Project	LS	-	-	-	-	1
SUBTOTAL WATER MAIN PAY ITEMS							
PAVING PAY ITEMS							
41	Earth Excavation	CY	500	400	300	-	1,200
42	Subgrade Undercutting	CY	75	60	45	-	180
43	Salvaging Brick Pavers	SF	36	-	-	-	36
44	Removing Asphalt Drive Approach	SY	-	13	-	-	13
45	Removing Concrete Drive Approach	SY	52	14	89	-	155
46	Removing Concrete Sidewalk & Ramp (sawcutting included)	SY	110	50	30	-	190
47	Removing Pavement Full Depth (Curb & Gutter included)	SY	1,450	1,199	1,113	-	3,762
48	Cold Milling Asphalt, 1.5"	SY	-	7	8	-	15
49	Bituminous Mixture No. 13A, Repair Areas	TON	-	15	6	-	21
50	Aggregate Base, MDOT 21AA Limestone, 8"	SY	1,555	1,221	1,168	-	3,944
51	Concrete Pavement, Non-reinforced, 7", incl. integral 6" Curb	SY	1,480	1,223	1,112	-	3,815
52	Concrete Drive Approach, 6"	SY	52	28	88	-	168
53	Concrete Sidewalk, 6" (Includes Ramps)	SF	380	130	80	-	590
54	Concrete Sidewalk, 4"	SF	800	340	190	-	1,330
55	Handicap Ramp Truncated Domes	SF	145	45	-	-	190
56	Remove & Replace Concrete Curb & Gutter	LF	-	46	10	-	56
57	Adjust Structure Cover	EA	4	1	1	-	6
58	Maintenance Aggregate for Entire Project	LS	-	-	-	-	1
SUBTOTAL PAVING PAY ITEMS							
GENERAL PAY ITEMS							
59	Mobilization	LS	-	-	-	-	1
60	Pavement Marking, Waterborne, 24 inch Crosshatching, White	LF	228	90	42	-	360
61	Restoration - St. James Park	LS	-	-	-	-	1
62	Water and Sewer Allowance	LS	-	-	-	-	1
63	Salvage Existing Signs	LS	-	-	-	-	1
64	Sign Post, U-Channel	LF	-	-	-	-	24
65	Tree Protection, 3" Dia. Or Greater	EA	6	5	6	-	17
66	Mulch, 3"	SY	20	15	20	-	55
67	Topsoil, 3"	SY	450	350	350	-	1,150
68	Sod, Class A	SY	450	350	350	-	1,150
69	Inlet Filter	EA	2	4	4	-	10
70	Inlet Sediment Pit	EA	2	4	4	-	10
71	Traffic Maintenance & Control	LS	-	-	-	-	1



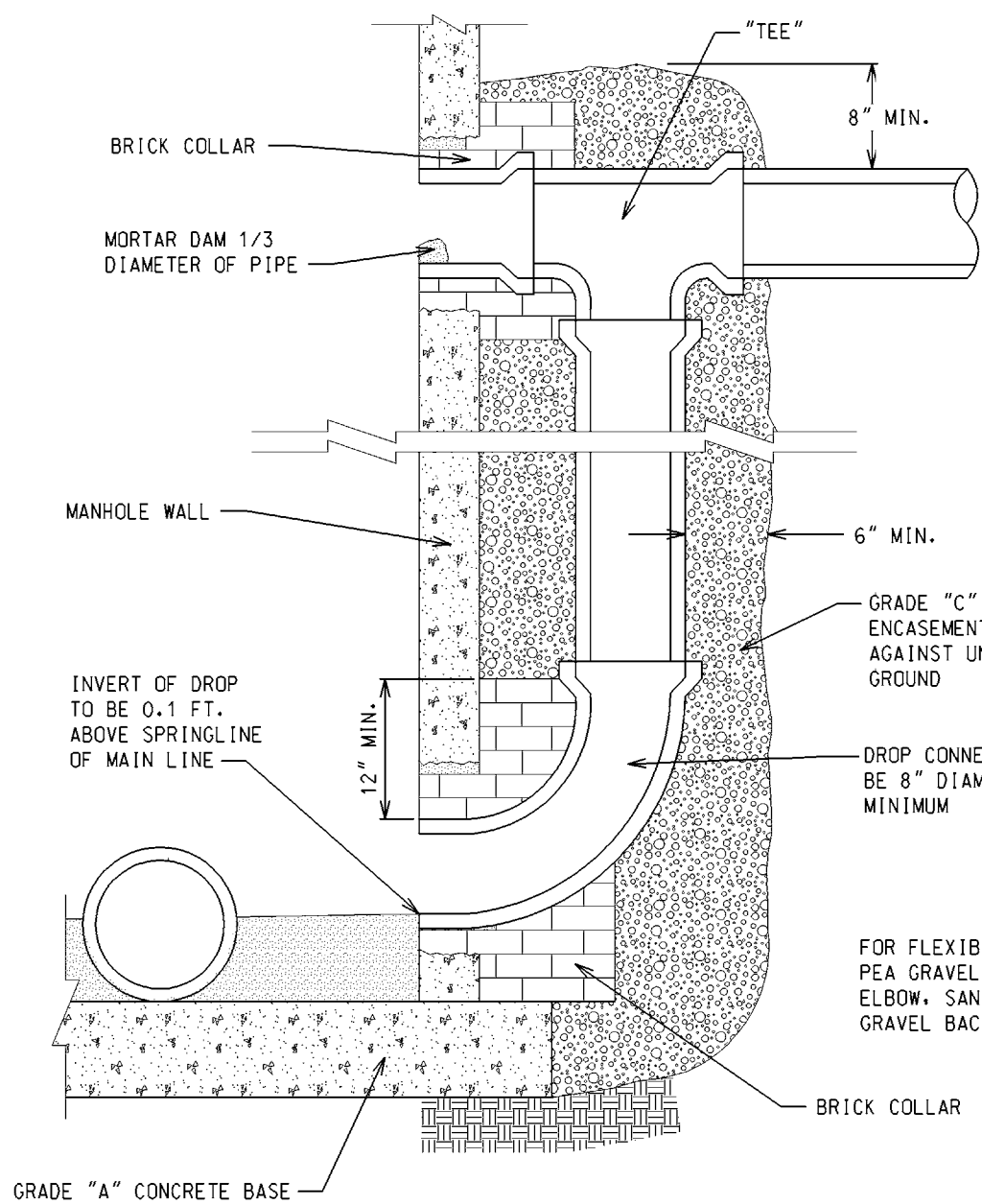
SEWER MANHOLE

(8" THRU 15" DIA. SEWERS)

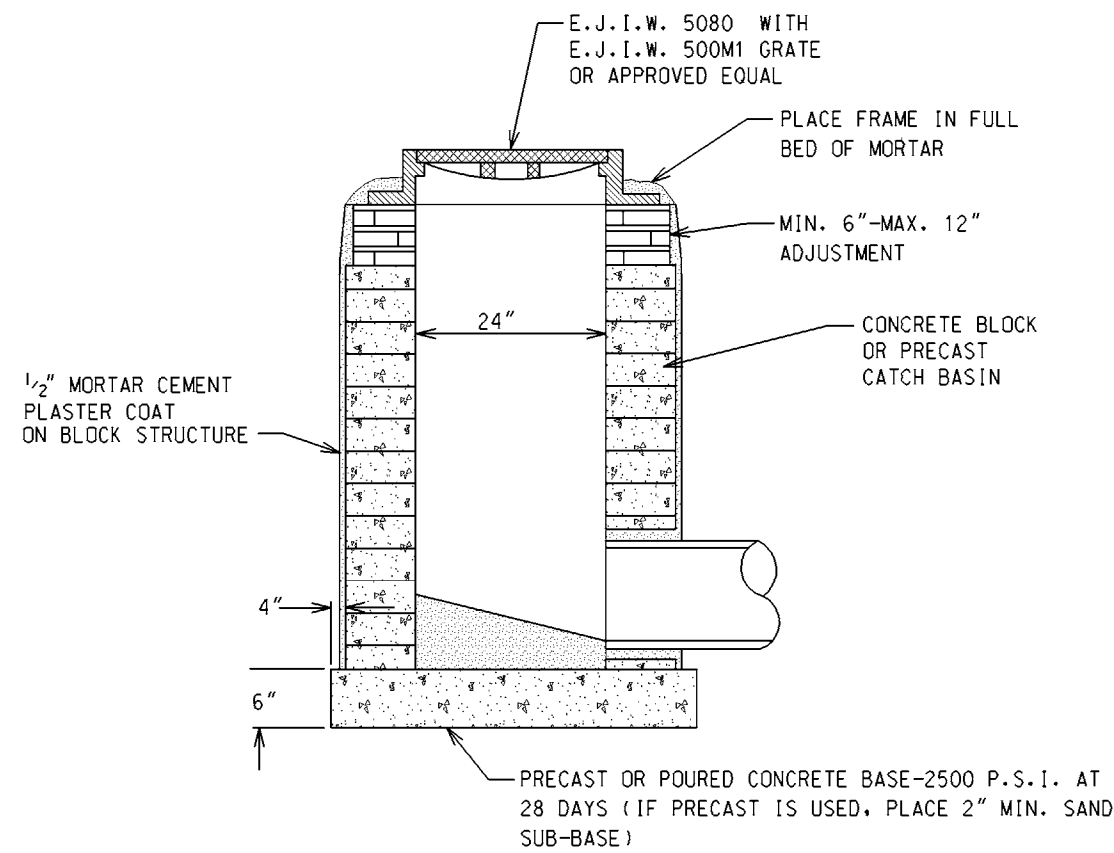


SEWER MANHOLE

(18" THRU 42" DIA. SEWERS)

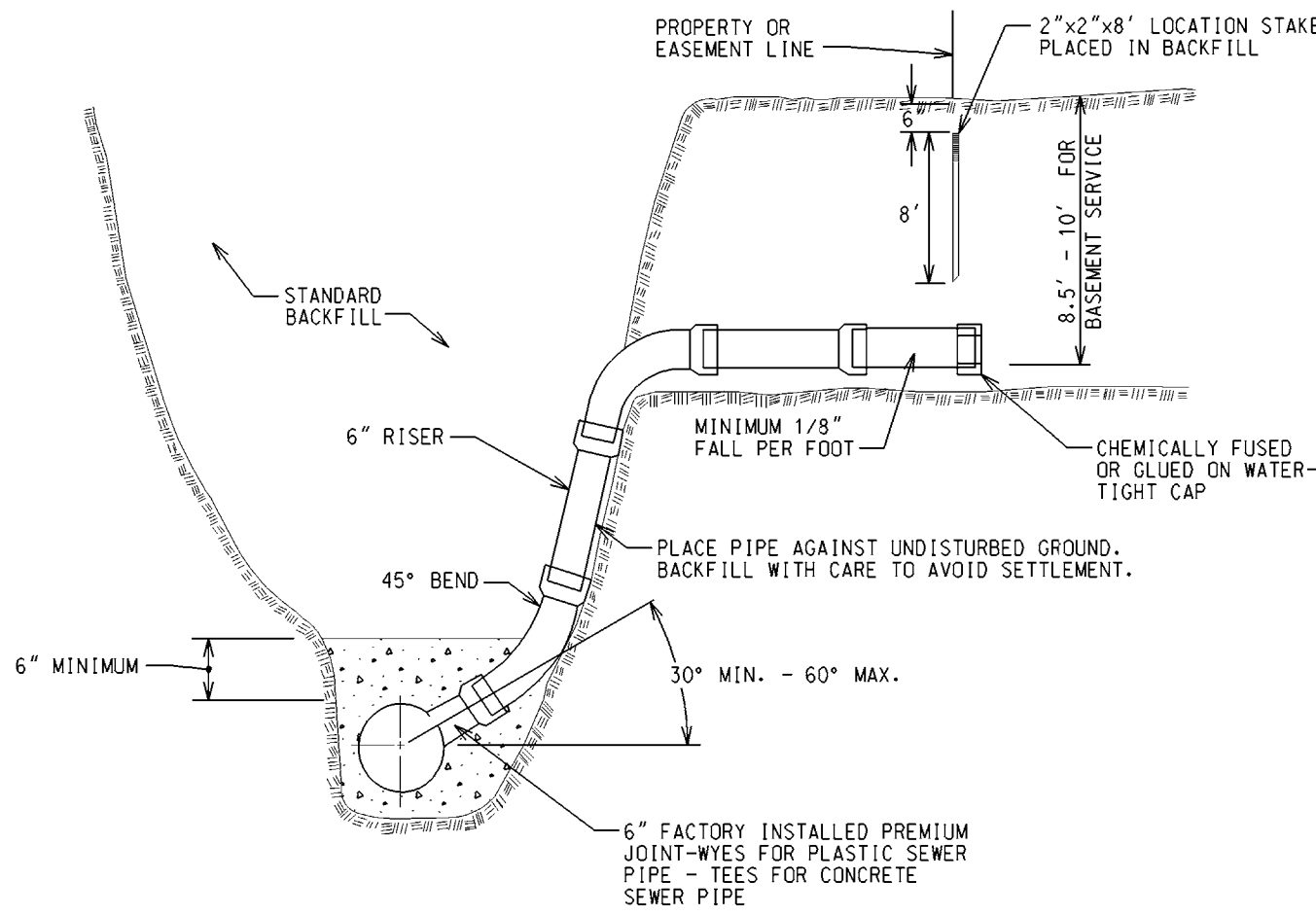


EXTERNAL DROP CONNECTION



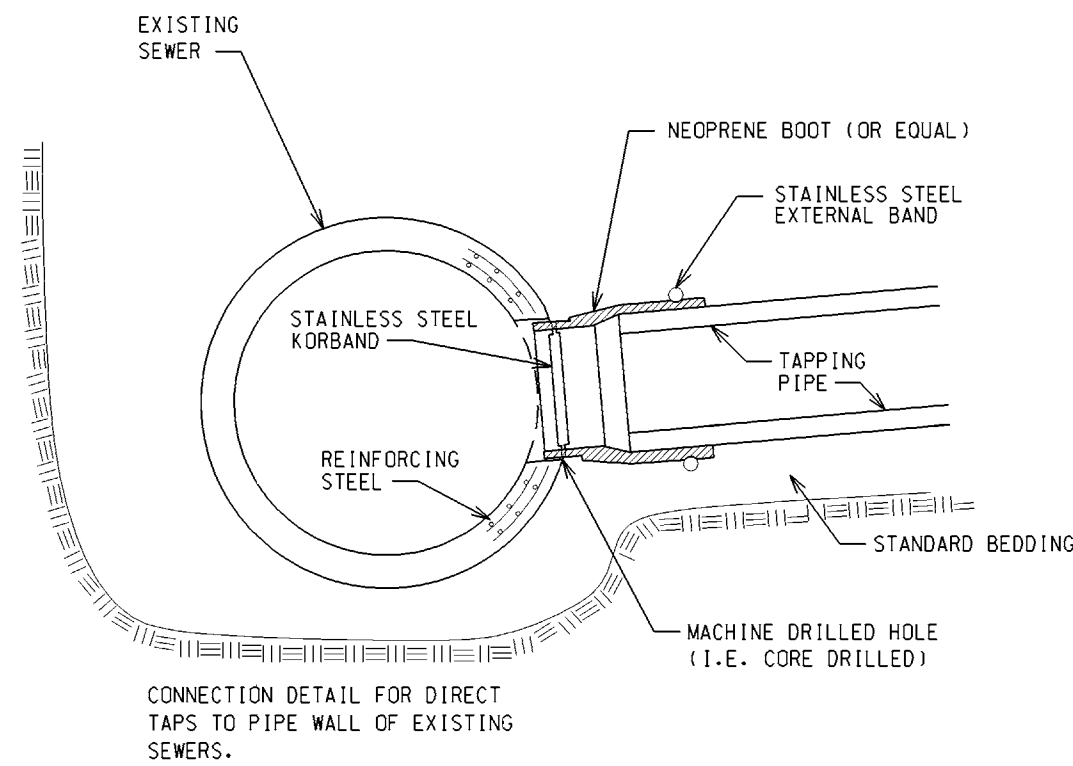
2 FT. DIAMETER INLET

NOTE: FOR CATCH BASINS OR INLETS WITHIN YARD AREAS USE E.J.I.W. 1040 WITH TYPE "N" COVER OR APPROVED EQUAL



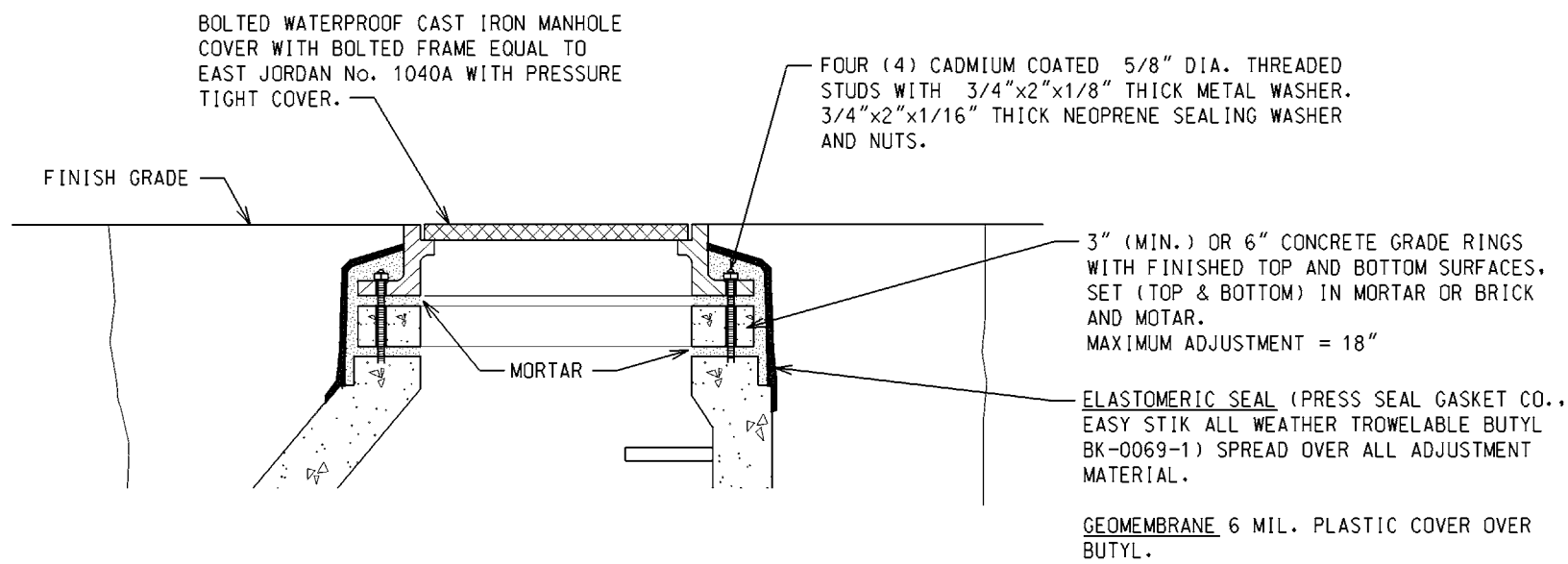
BUILDING LEAD DETAIL

0" - 15" COVER

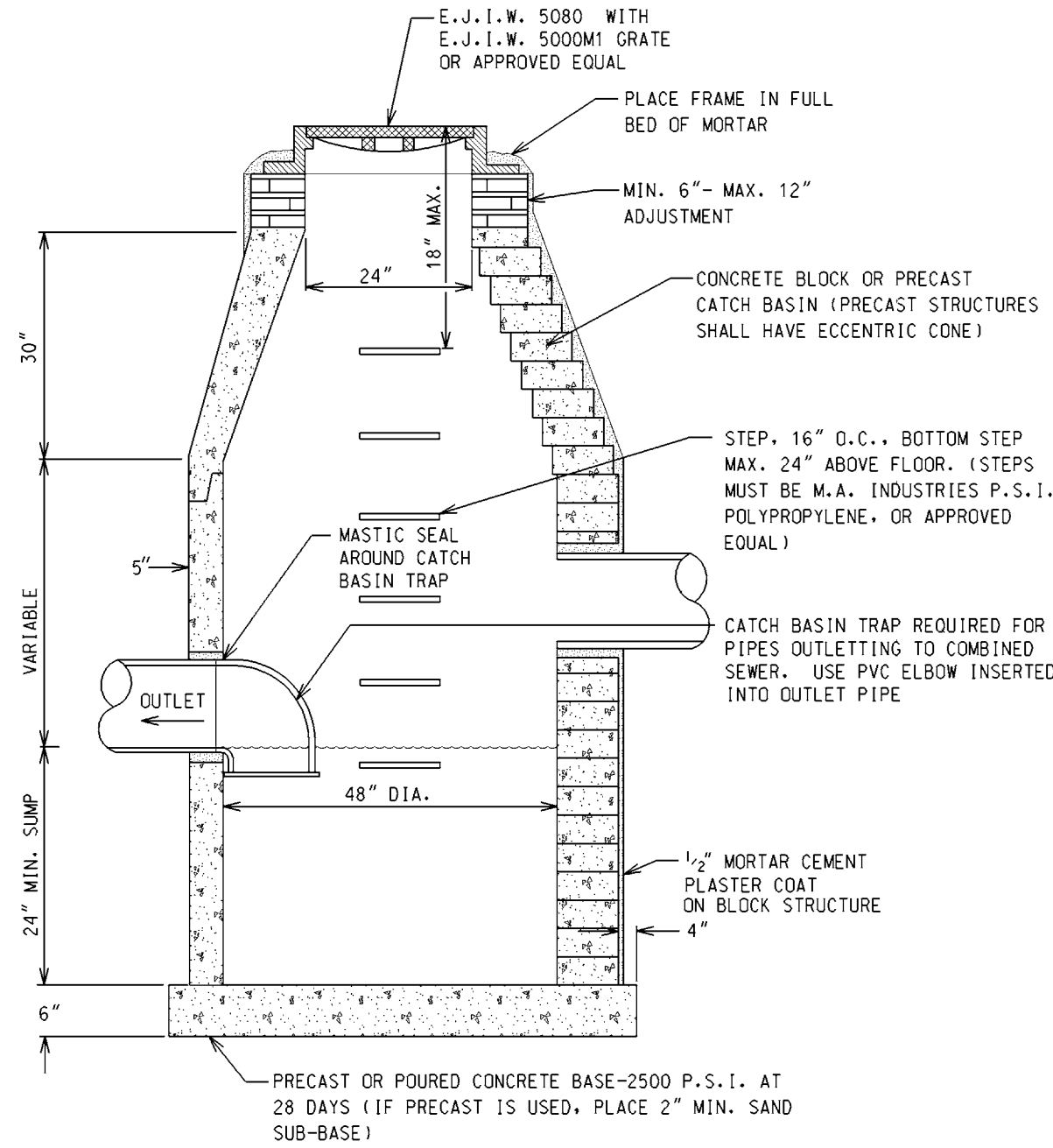


KOR-N-TEE TAP FOR CONCRETE

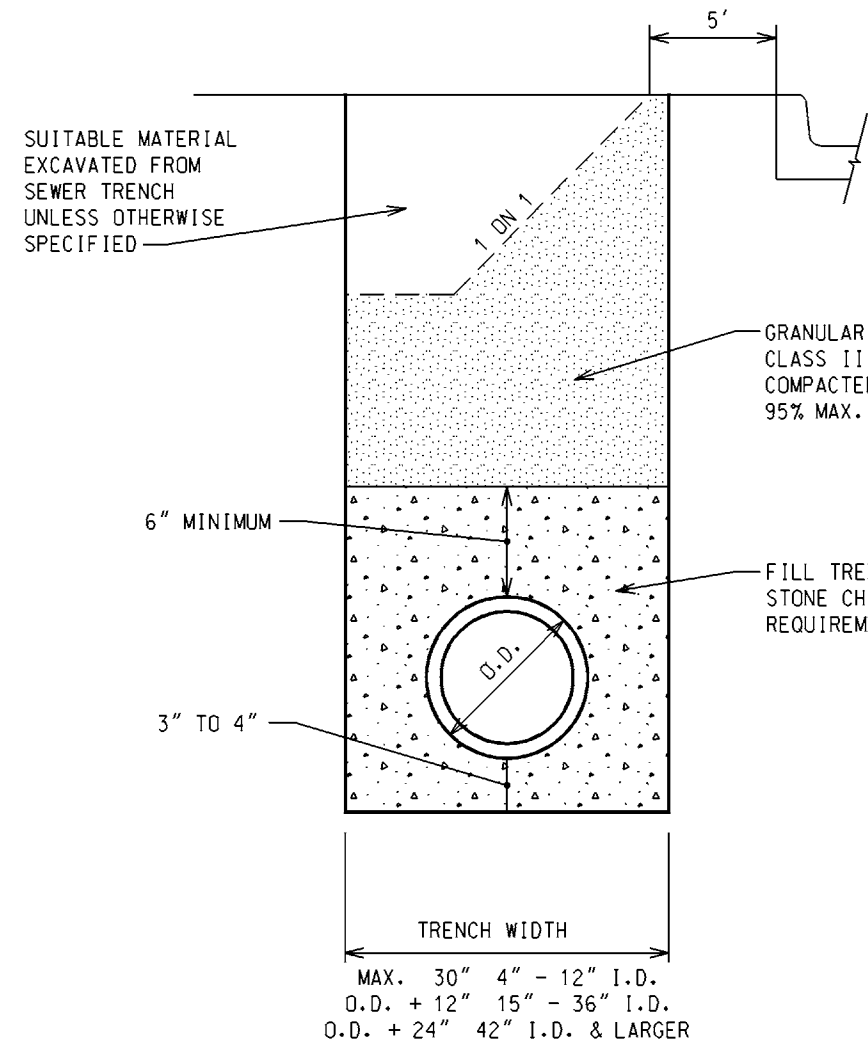
NO SCALE



SANITARY MANHOLE ADJUSTMENT SECTION DETAIL



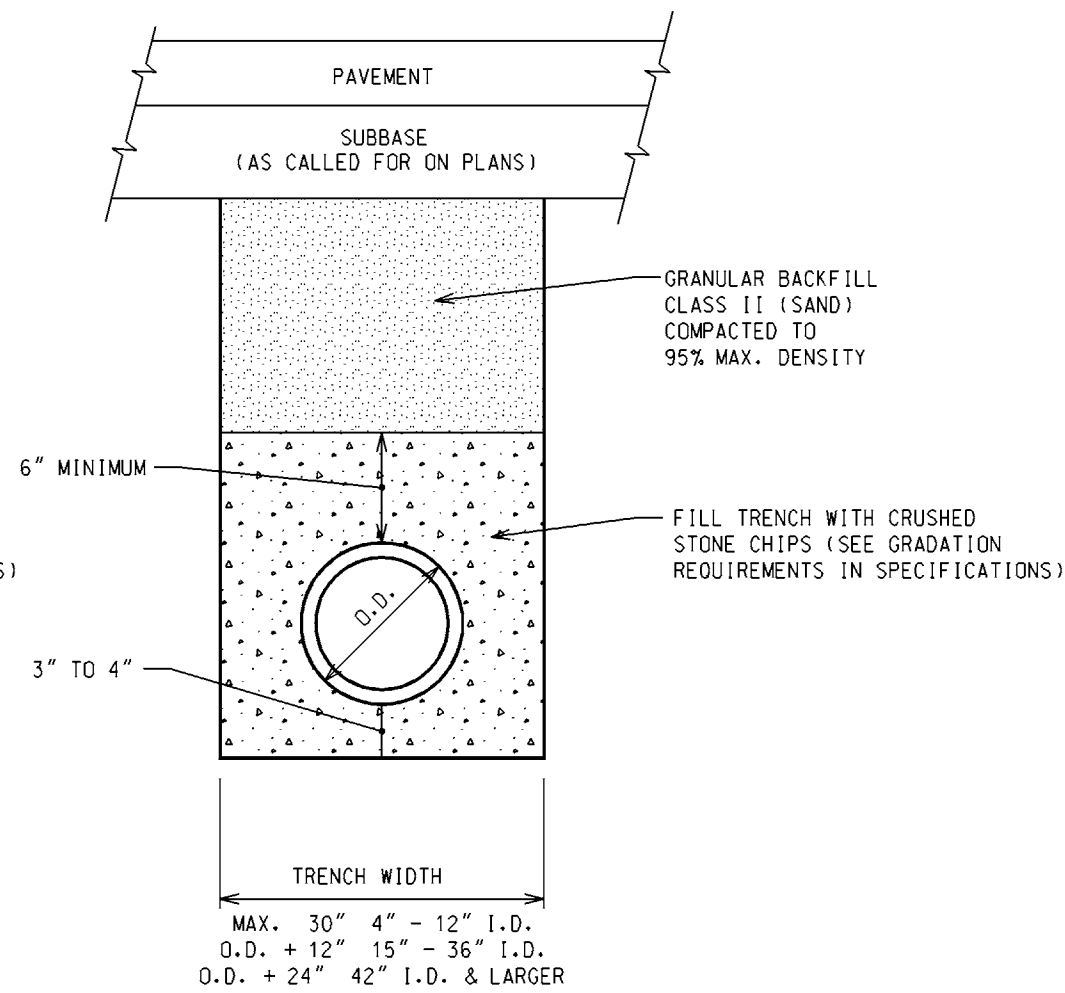
4 FT. DIAMETER CATCH BASIN



TRENCH DETAIL "A"

SEWER UNDER ROAD BED OR WITHIN THE INFLUENCE OF ROAD BED

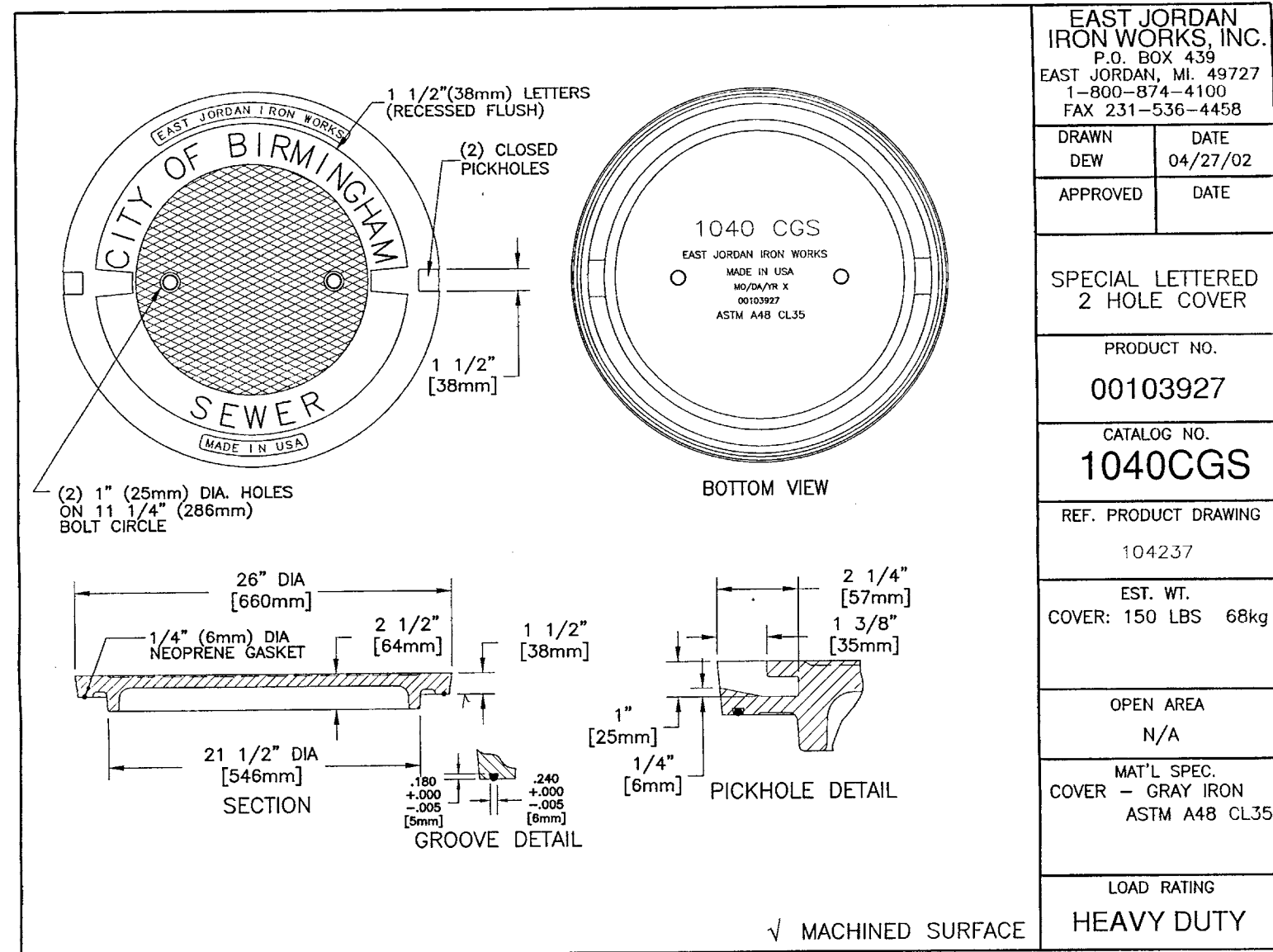
NOT TO SCALE



TRENCH DETAIL "B"

SEWER NOT UNDER ROAD BED

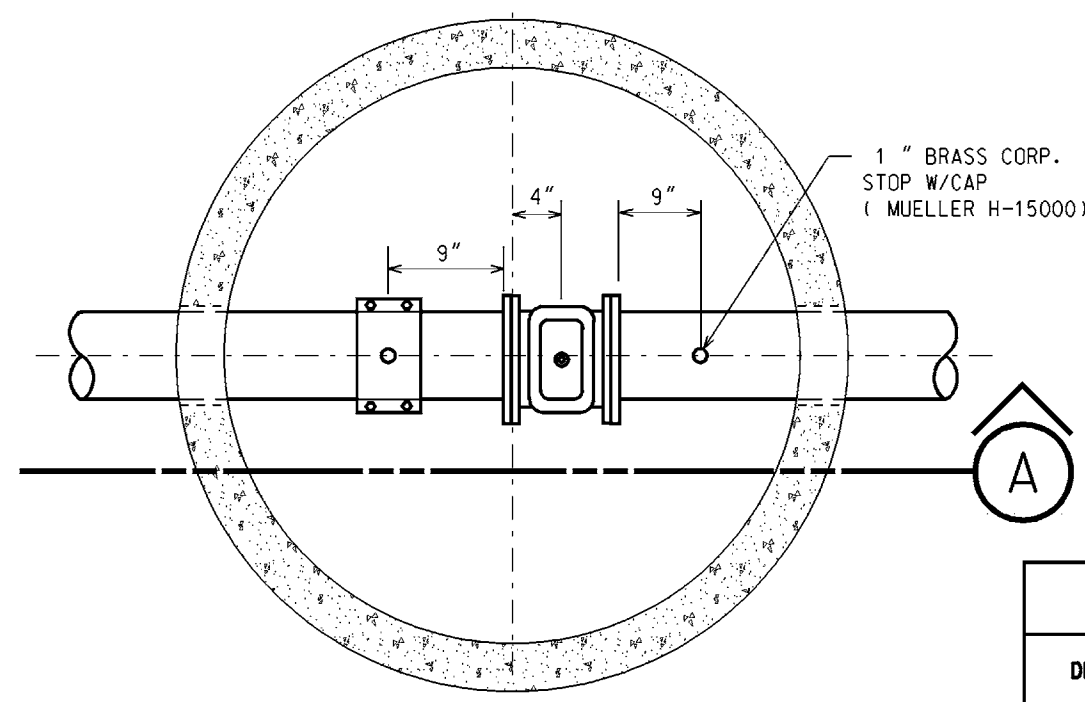
NOT TO SCALE



151 MARTIN STREET BIRMINGHAM, MICHIGAN 48102

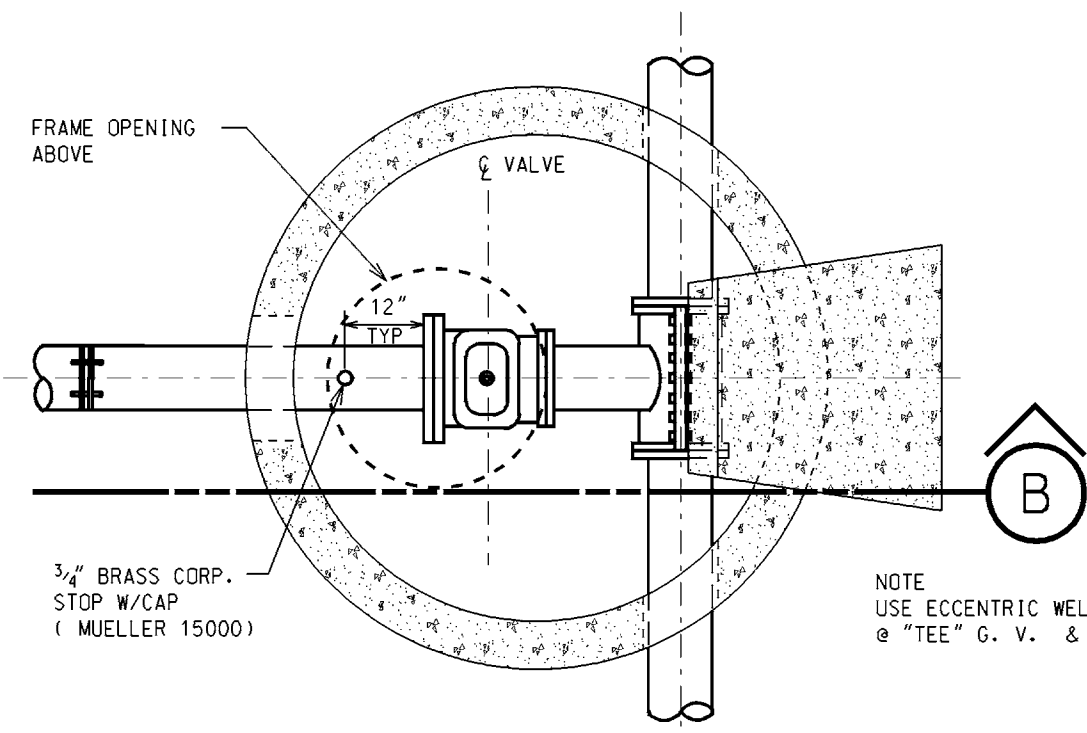
SEWER STANDARD DETAILS

DATE:	ADDITION AND/OR REVISION	DRAWN	PROJECT NO.	SHEET NO.
		DESIGNED	DATE	
		APPROVED	SCALE	
			JANUARY 2007	



GATE WELL PLAN

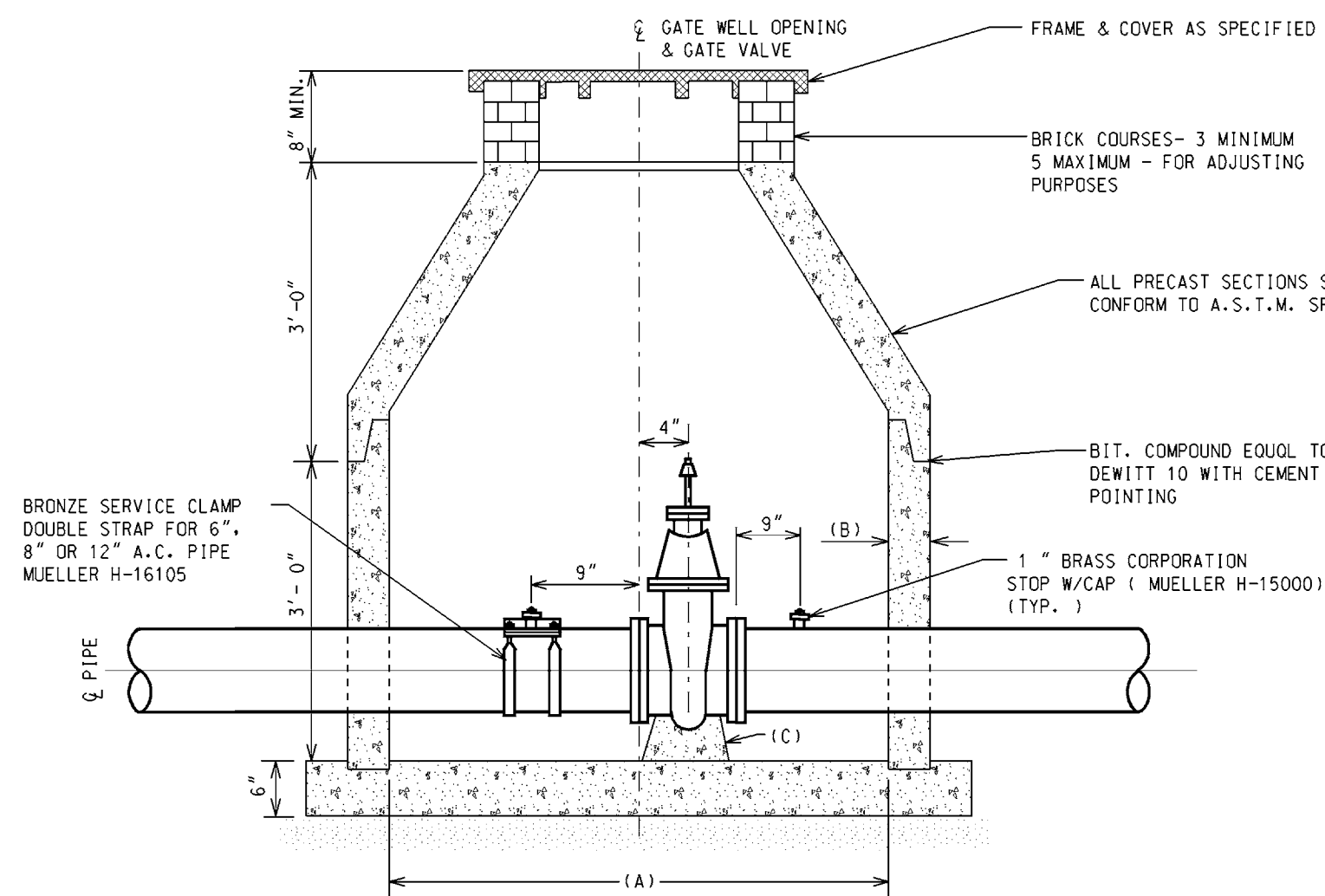
NO SCALE



TAPPING SLEEVE, VALVE & WELL PLAN

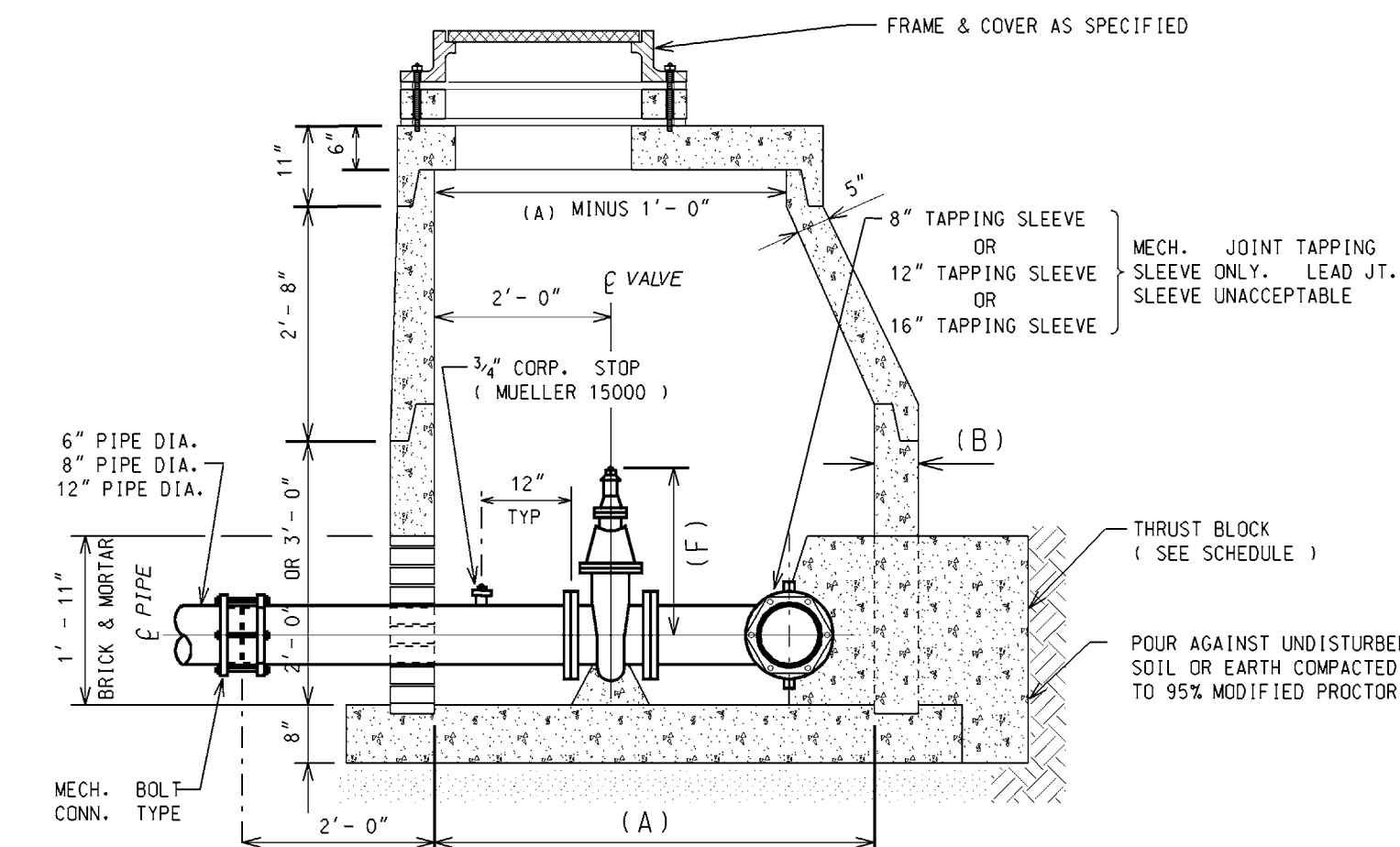
NO SCALE

GATE WELL SCHEDULE		
DESCRIPTION	DIM.	PIPE DIA. INCHES
INSIDE DIA.	A	6" 60" 72" 72"
WALL THICK.	B	5" 7" 7"
VALVE BLOCK THICK.	C	4" 4" 4"



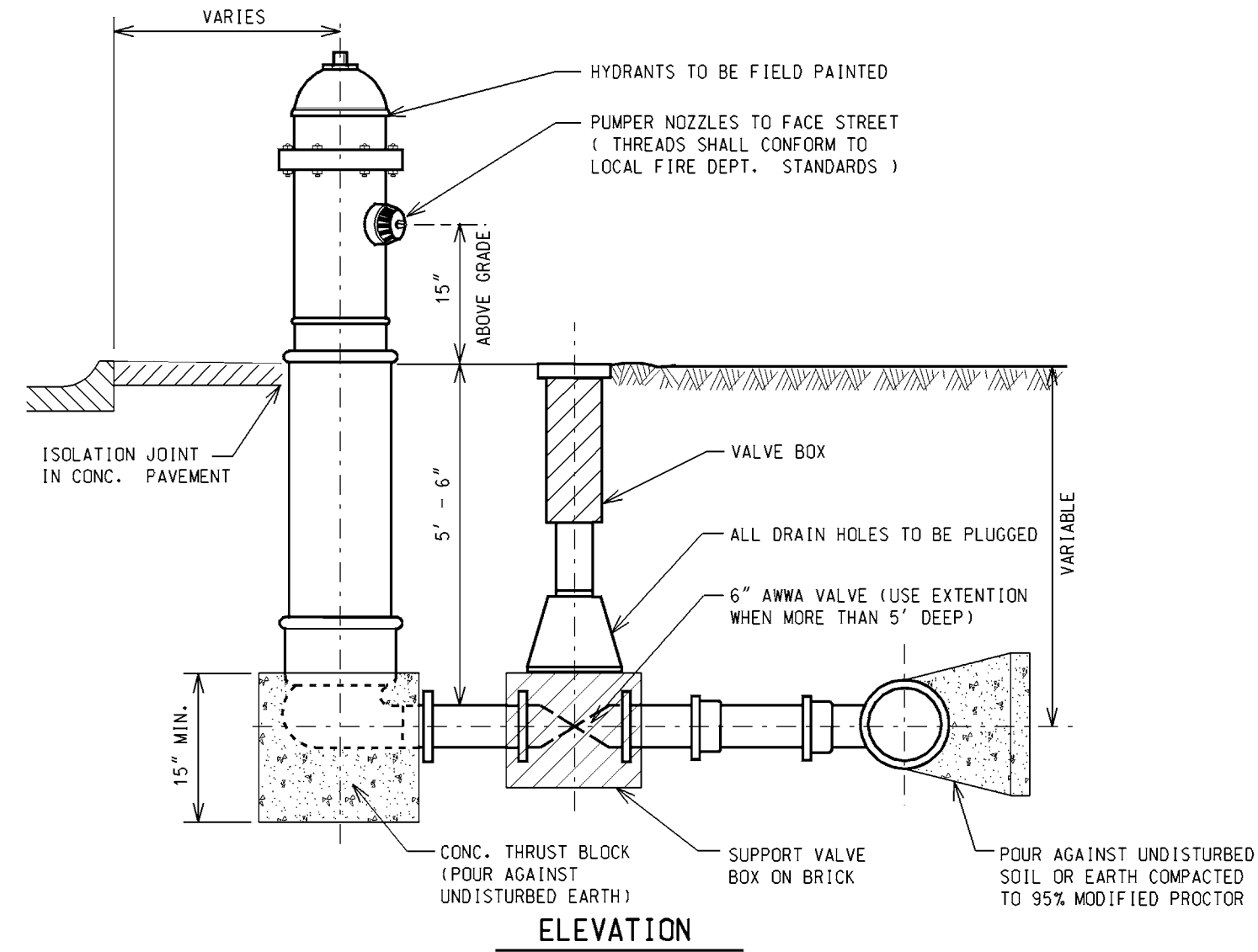
SECTION "A" GATE WELL

NO SCALE
W-1 & W-3

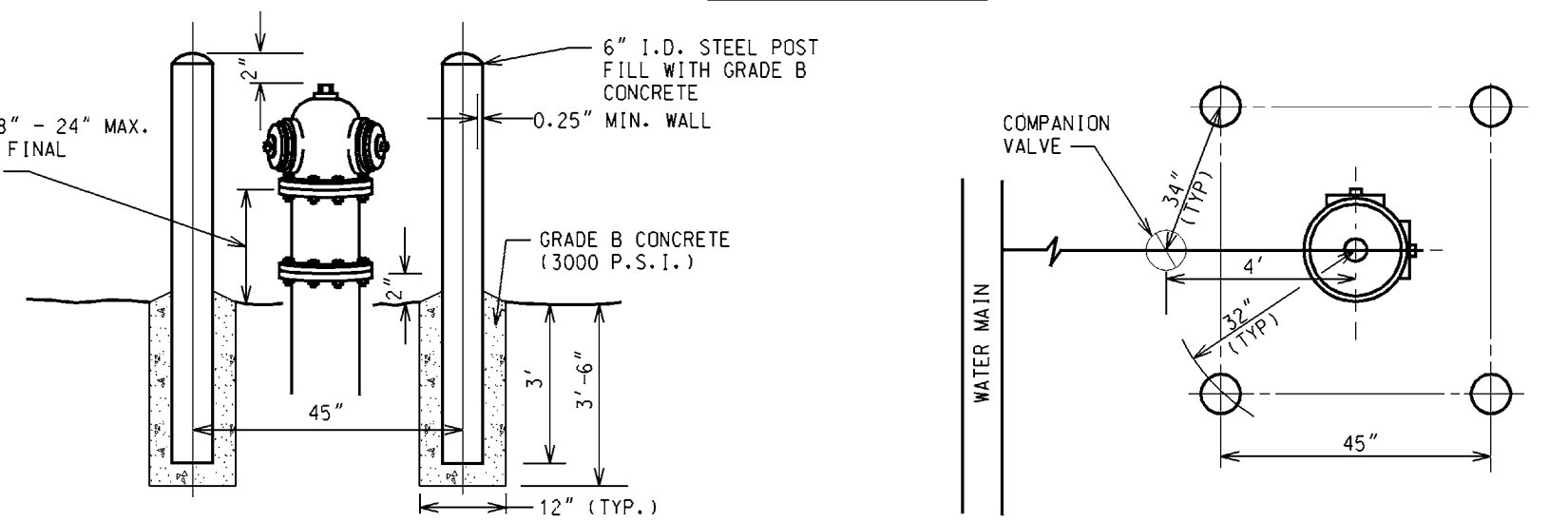


SECTION "B" TAPPING SLEEVE, VALVE & WELL

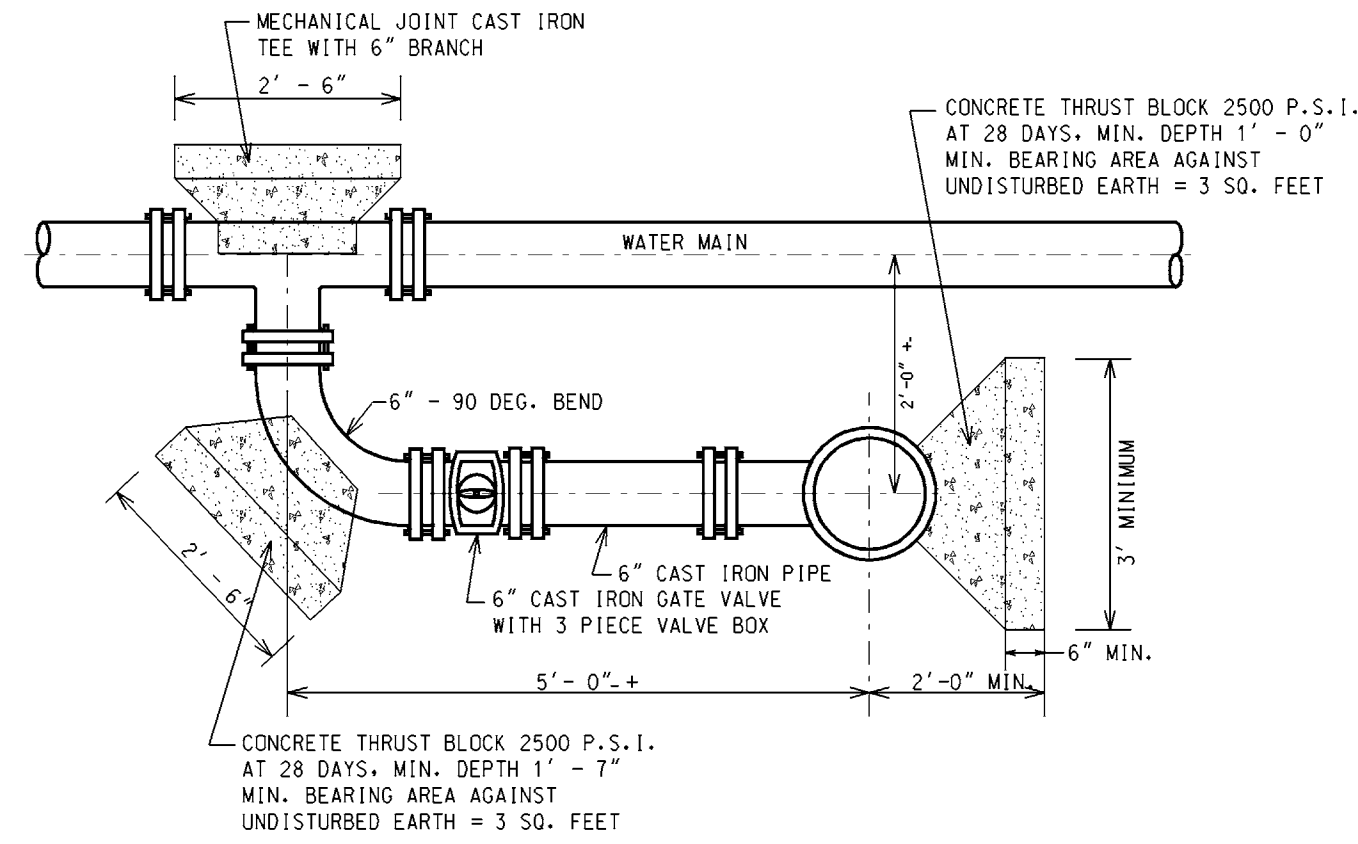
NO SCALE
W-4



ELEVATION



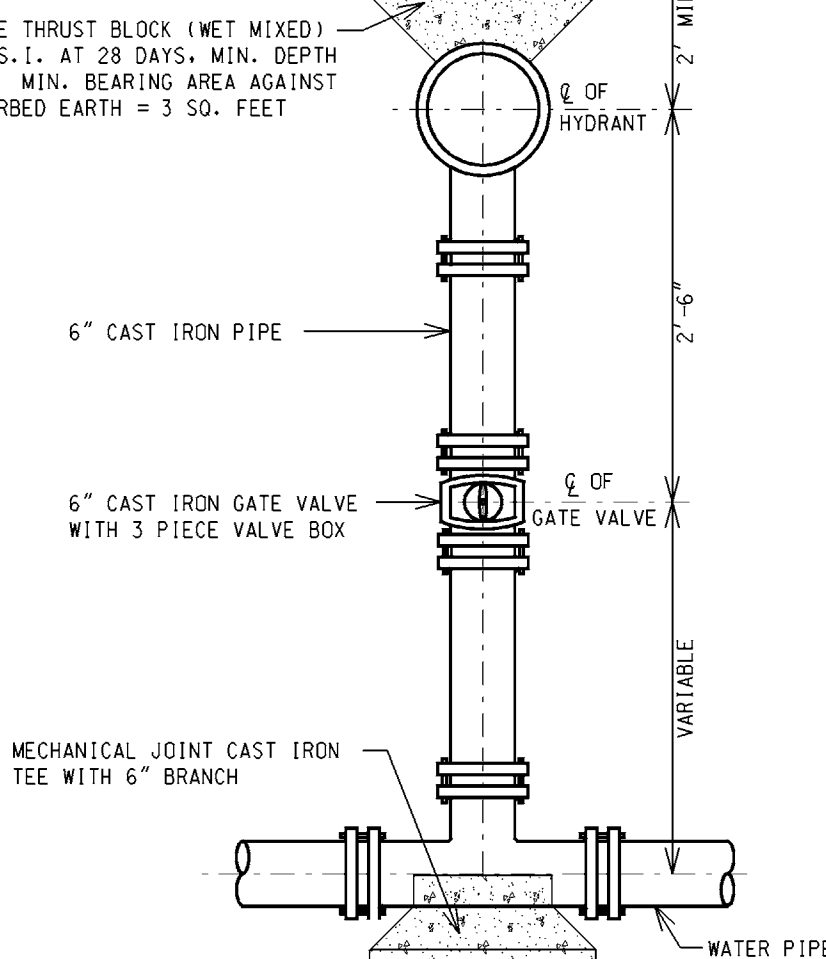
FIRE HYDRANT GUARD POSTS DETAIL



"L" HYDRANT CONNECTION

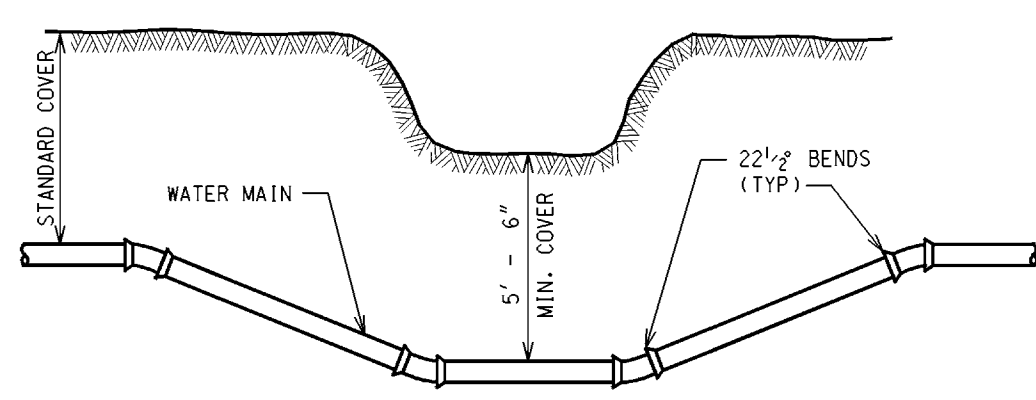
NO SCALE
W-9

NOTE: FOR CONSTRUCTION OF NEW FIRE HYDRANT TO EXISTING "LIVE" WATERMAIN, USE 6" TAPPING SLEEVE VALVE & BOX TO MAKE CONNECTION, AND DELETE "6" CAST IRON GATE VALVE WITH 3 PIECE VALVE AS SHOWN ON DETAIL.



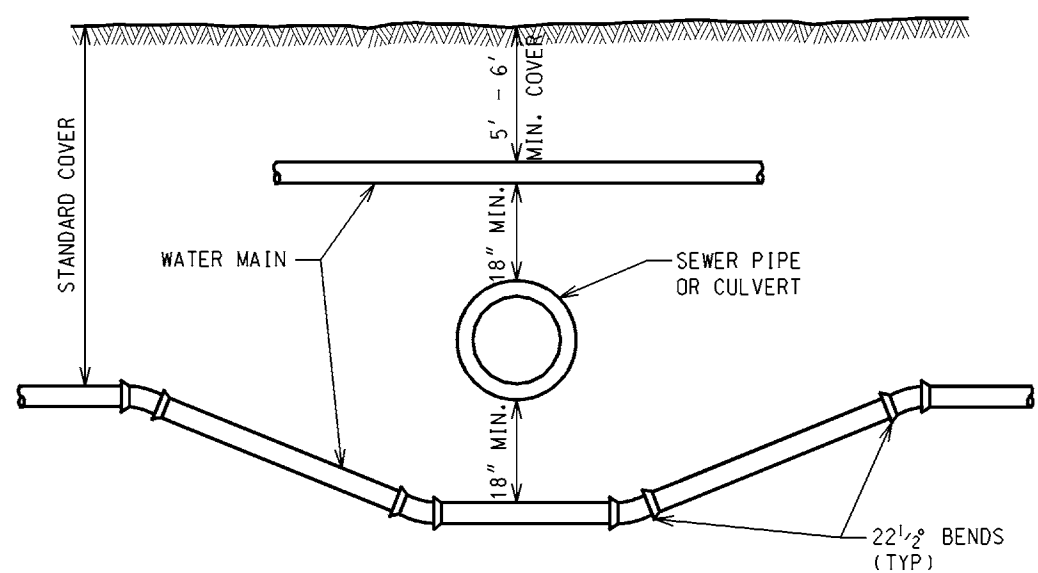
STRAIGHT HYDRANT CONNECTION

NO SCALE
W-10



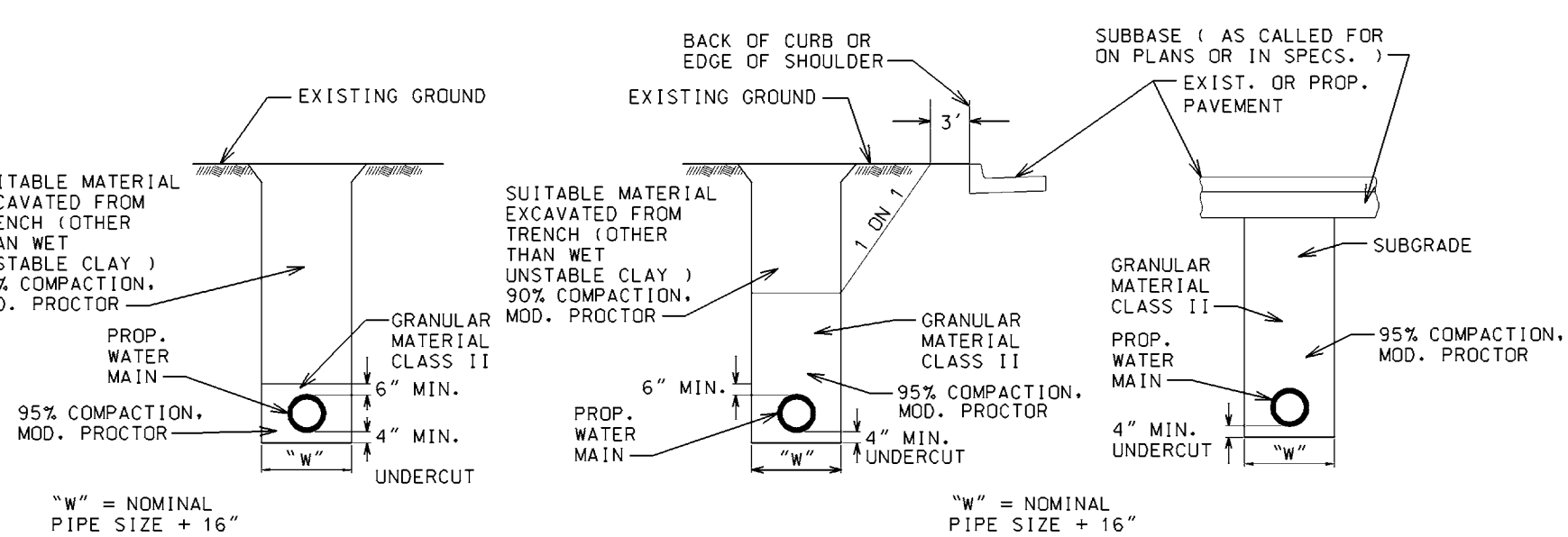
DITCH AND STREAM CROSSING

NO SCALE



SEWER OR CULVERT CROSSING

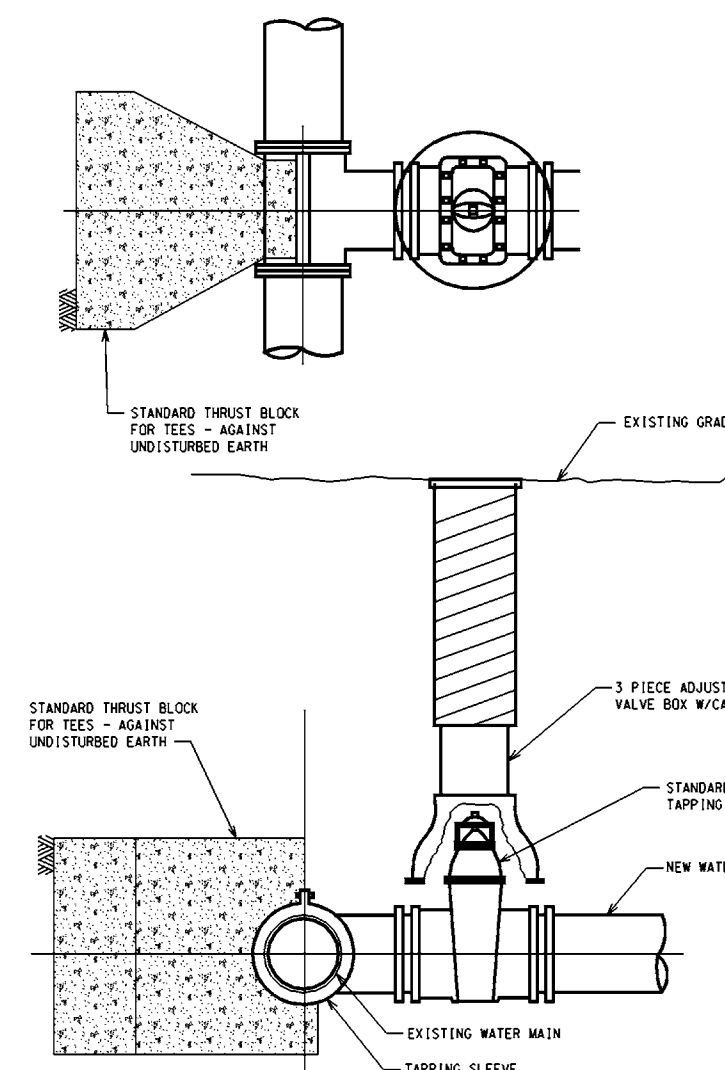
NO SCALE



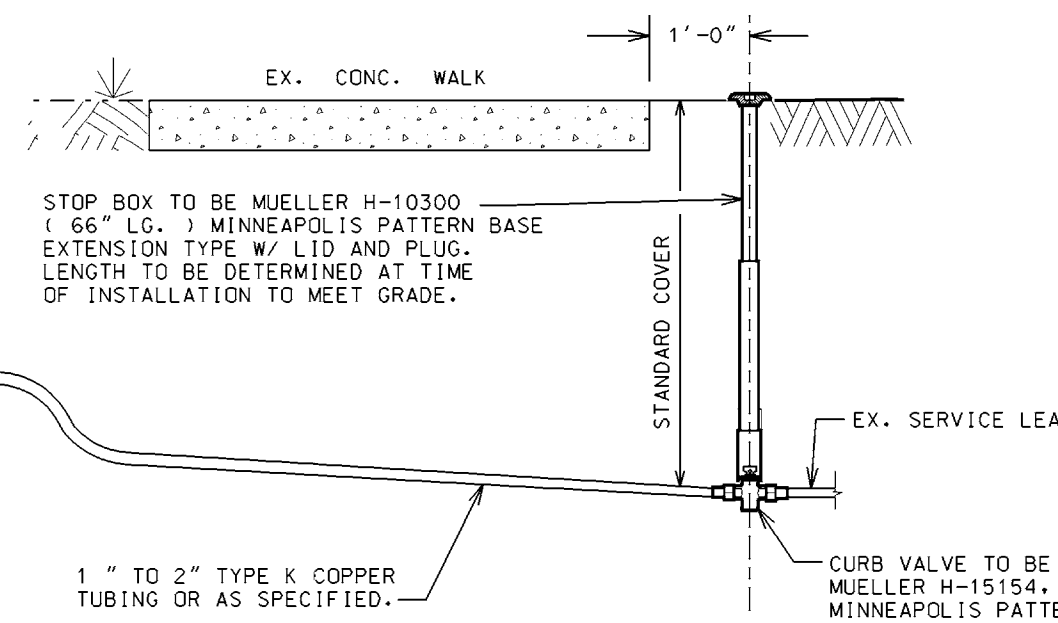
PROP. WATER MAINS NOT UNDER PAVED SURFACE

PROP. WATER MAINS UNDER PAVED SURFACE OR WITHIN INFLUENCE OF PAVED SURFACE

BEDDING DETAILS

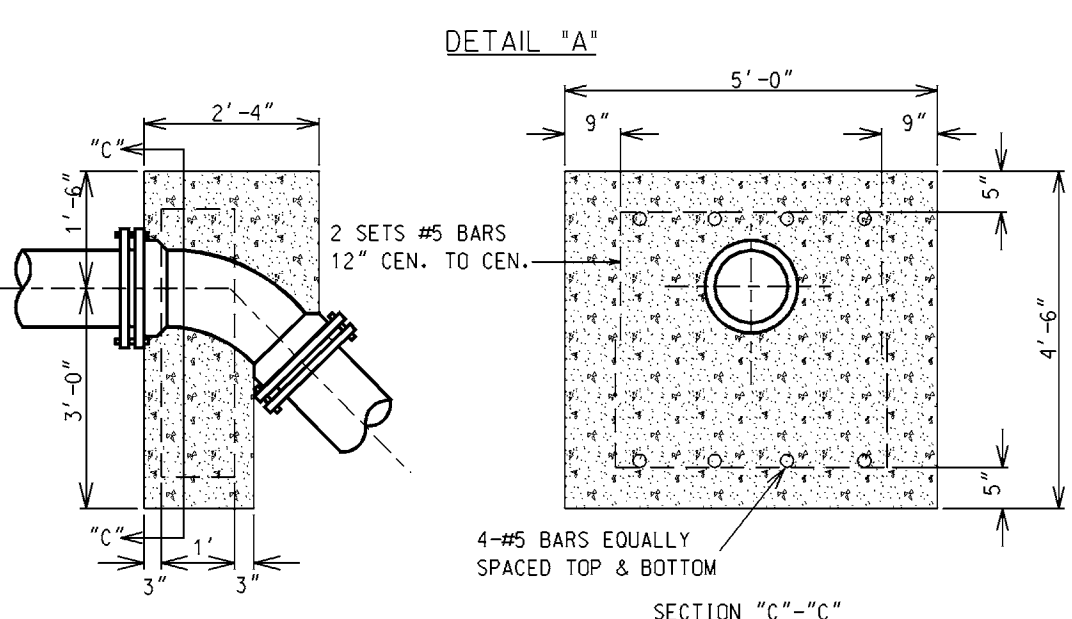


TAPPING SLEEVE & VALVE W/VALVE BOX

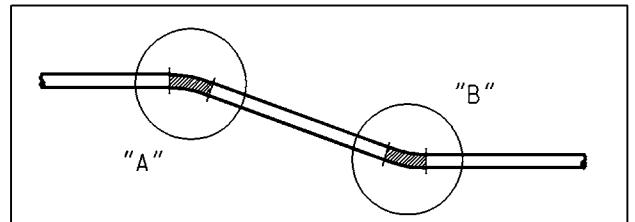


WATER SERVICE CONNECTION (TYP)

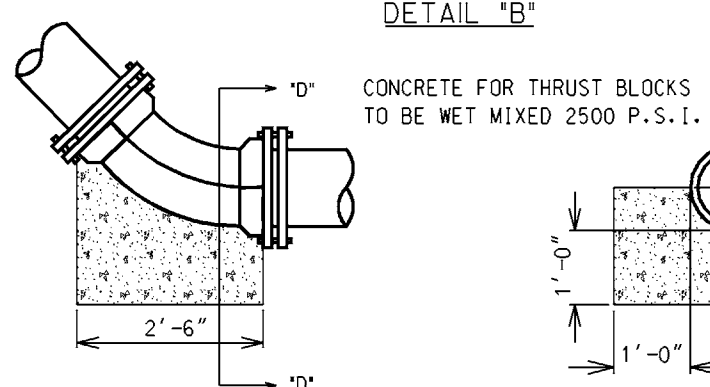
NO SCALE



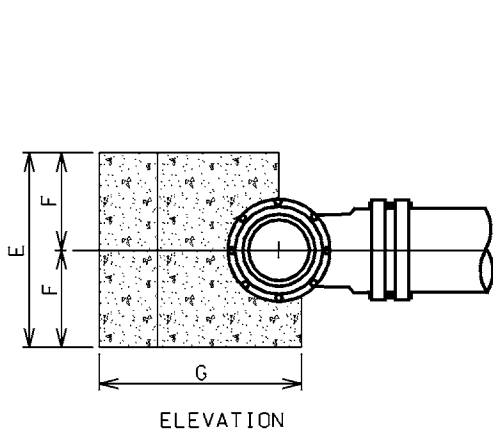
DETAIL "A"



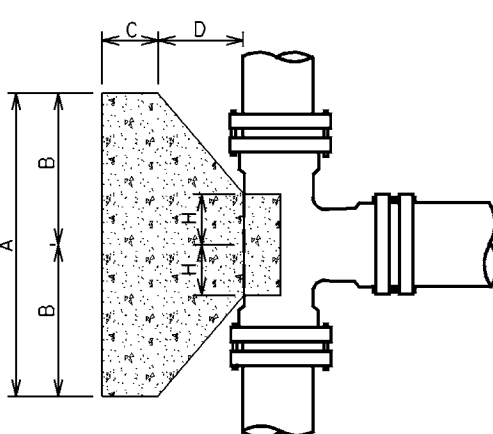
SECTION "C"-"C"



VERTICAL BEND THRUST BLOCKS FOR 8"-12" MAINS



ELEVATION



PLAN

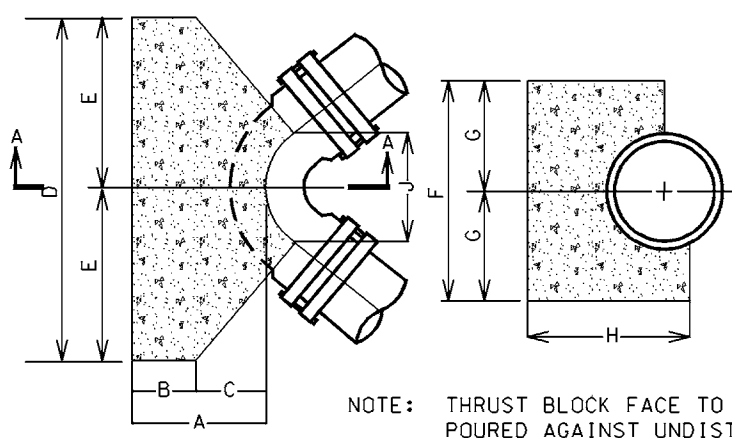
THRUST BLOCK FACE SHALL BE POURED AGAINST UNDISTURBED EARTH.

CONCRETE FOR THRUST BLOCKS TO BE WET MIXED 2500 P.S.I.

SCHEDULE OF THRUST BLOCK DIMENSIONS		
CODE	TEE SIZE	
	8"x8"	12"x12"
A	8"x8"	12"x12"
B	12"x8"	16"x12"
C	16"x8"	24"x12"
D	24"x8"	24"x12"
E	2'-0"	3'-0"
F	1'-0"	1'-6"
G	2'-2"	2'-10"
H	2'-10"	3'-8"
I	3'-3"	3'-7"
J	4'-2"	4'-2"
K	0'-6"	0'-10"
L	0'-6"	0'-10"
M	0'-6"	0'-10"
N	0'-6"	0'-10"

CONCRETE THRUST BLOCK FOR TEES

N. T. S.

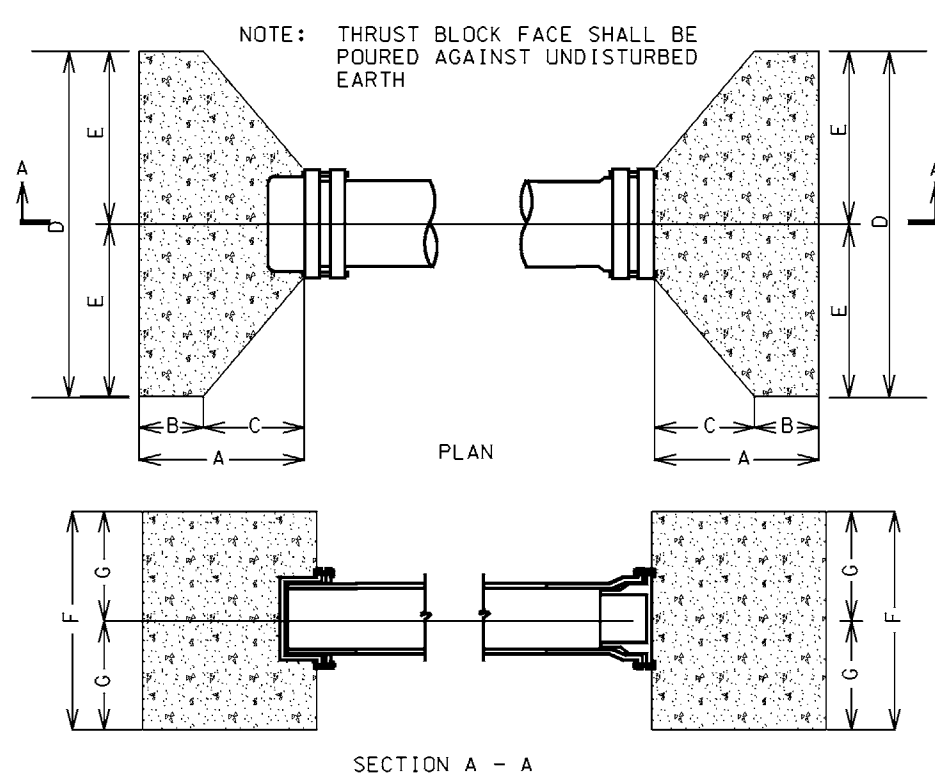


CONCRETE THRUST BLOCK FOR BENDS

SIZE	ANGLE	A MIN.	B MIN.	C	D	E	F	G	H MIN.	J
6"	45°	1'-6"	0'-9"	0'-9"	1'-6"	0'-9"	1'-6"	0'-9"	1'-8"	0'-10"
6"	90°	1'-6"	0'-9"	0'-9"	2'-0"	1'-0"	1'-0"	1'-0"	1'-8"	0'-10"
8"	45°	1'-9"	0'-9"	1'-0"	2'-4"	1'-2"	2'-0"	1'-0"	1'-11"	1'-4"
8"	90°	1'-9"	0'-9"	1'-0"	3'-4"	1'-8"	2'-6"	1'-3"	1'-11"	1'-2"
12"	22-1/2°	1'-9"	0'-9"	1'-0"	2'-6"	1'-3"	2'-0"	1'-0"	2'-0"	1'-4"
12"	45°	2'-1"	0'-9"	1'-4"	3'-6"	1'-9"	2'-6"	1'-3"	2'-4"	1'-4"
12"	90°	2'-1"	0'-9"	1'-4"	5'-6"	2'-9"	3'-0"	1'-6"	2'-4"	1'-8"
16"	22-1/2°	2'-8"	1'-0"	1'-8"	3'-4"	1'-8"	2'-6"	1'-3"	3'-0"	1'-2"
16"	45°	2'-8"	1'-0"	1'-8"	5'-4"	2'-8"	3'-0"	1'-6"	3'-0"	1'-6"
16"	90°	2'-8"	1'-0"	1'-8"	6'-0"	3'-0"	5'-0"	2'-6"	3'-0"	1'-8"
24"	90°	4'-7"	1'-0"	3'-7"	10'-0"	5'-0"	7'-0"	3'-6"	5'-4"	2'-4"

CONCRETE THRUST BLOCK FOR BENDS

N. T. S.



CONC. THRUST BLOCKS FOR PLUGS & CAPS

SIZE	A MIN.	B MIN.	C	D	E	F	G
6"	1'-11"	0'-9"	1'-2"	3'-0"	1'-6"	2'-0"	1'-0"
12"	2'-1"	0'-9"	1'-4"	4'-0"	2'-0"	3'-0"	1'-6"
16"	2'-8"	1'-0"	1'-8"	5'-0"	2'-6"	4'-0"	2'-0"



151 MARTIN STREET BIRMINGHAM, MICHIGAN 48102

WATER MAIN STANDARD DETAILS

DATE:	ADDITION AND/OR REVISION	DRAWN	PROJECT NO.	SHEET NO.
		DESIGNED	DATE	WM-1
		APPROVED	SCALE	



MEMORANDUM

Engineering Dept.

DATE: April 8, 2021

TO: Tom Markus, City Manager

FROM: Scott Zielinski, Assistant City Engineer
Jim Surhigh, Consultant City Engineer

SUBJECT: Grant Street Paving Project
Sewer & Water Lateral Special Assessment District

In accordance with current policy, the Engineering Dept. plans to replace all older sewer laterals underneath the new proposed pavement on the above project, which includes Grant Street between both Lincoln St. to Humphrey Ave, and Bird Ave to W 14 Mile Rd. In addition, per currently authorized policy, all water services less than 1 inch diameter shall be replaced with a 1 inch diameter service. Additionally in accordance with recently modified rules from the Michigan Dept. of Environmental, Great Lakes, and Energy (EGLE) requiring the complete removal of lead water services from the water main to the water meter. Per the EGLE, the City is not allowed to charge a homeowner for this work if replacing an existing lead service.

As recommended under separate cover, it is anticipated that this construction contract will be awarded to DiPonio Contracting, Inc. with their low bid of \$1,139,199.00. As outlined on the attached spreadsheet, existing pipelines to be replaced are 6 inch sewer services, and water services are $\frac{3}{4}$ inch in size. City records show one property in the project area to have a lead water service, which will be replaced at no charge to the property owner. For the unit rate to be charged for the sewer and water services, we recommend applying the low bidder's unit prices for this work, as described below:

6 inch sewer = \$100 per foot + \$350 connection

1 inch water = \$50 per foot + \$400 connection

Following this practice is consistent with what has been done with previous projects of this nature over the past number of years.

Total estimated costs for these service replacements are as outlined on the attached spreadsheet. The average estimated cost for a 6 inch sewer service replacement is \$2,350, while the average estimated cost for a 1 inch water service replacement is \$2,175.

It is recommended that a Public Hearing of Necessity for the replacement of sewer and water services be scheduled at the Monday, May 10, 2021 City Commission meeting. It is further recommended that the Public Hearing on Confirmation of the Roll be held on Monday, May 24, 2021 at the prices charged by the lowest bidder, as outlined in the attached spreadsheet.

SUGGESTED ACTION:

To adopt a resolution for the City Commission to meet on Monday, May 10, 2021, at 7:30 P.M., for the purpose of conducting a Public Hearing of Necessity for the replacement of sewer and water services within the Grant Street Paving project area.

Be it further RESOLVED, that the City Commission meet on Monday, May 24, 2021 at 7:30 P.M. for the purpose of conducting a Public Hearing on Confirmation of the Roll for the replacement of sewer and water services in the Grant Street Paving project area.

2021 GRANT STREET PAVING PROJECT

Sewer & Water Service Special Assessment District

SIDWELL NO.	PARCEL ADDRESS	SEWER SERVICE LENGTH (R.O.W. ONLY)	SEWER SERVICE COST PER FOOT (PER BIDS)	SEWER SERVICE COST PER CONNECTION (PER BIDS)	WATER SERVICE LENGTH (R.O.W. ONLY)	WATER SERVICE COST PER FOOT (PER BIDS)	WATER SERVICE COST PER CONNECTION (PER BIDS)	TOTAL COST
Grant Street								
WEST SIDE								
19-36-403-031	1160 Grant St.	15	\$ 100.00	\$ 350.00	0	\$ -		\$ 1,850.00
19-36-403-013	1148 Grant St.	20	\$ 100.00	\$ 350.00	34	\$ 50.00	\$ -	\$ 4,050.00
EAST SIDE								
19-36-480-026	623 Bird Ave.	25	\$ 100.00	\$ 350.00	37	\$ 50.00	\$ -	\$ 4,700.00
TOTAL								\$ 10,600.00



MEMORANDUM

Planning Division

DATE: April 8th, 2021

TO: Thomas Markus, City Manager

FROM: Nicholas Dupuis, City Planner

APPROVED: Jana Ecker, Planning Director

SUBJECT: 670 S. Old Woodward – Right-of-Way Parking Request

INTRODUCTION:

The subject site, formerly Detroit Trading Co., is a single-story commercial building located at the southern end of Downtown Birmingham. The current site has an off-street parking facility with 24 parking spaces available for use by the building. The subject building is not within the Parking Assessment District and therefore must provide the parking required for any use on-site. The applicant is currently seeking permission from the City Commission to include 8 metered parking spaces in front of the building in the City's right-of-way along S. Old Woodward to assist them in meeting the parking requirements for a new tenant, Vibe Salon Suites, pursuant to Article 4, Section 4.45 (G)(4) of the Zoning Ordinance:

4.45 PK-01 General Parking Standards

- G. Methods of Providing Parking Facilities: The required off-street parking facilities for buildings used for other than residential purposes may be provided by any one of the following methods:
4. By providing the required off-street parking on the same lot as the building being served, or where practical, and with the permission of the City Commission, the area in the public right-of-way abutting the property in question may be included as a portion of the required parking area if such area is improved in accordance with plans which have been approved by the engineering department.

BACKGROUND:

The applicant submitted a Building Permit application for a new tenant proposed in the currently vacant commercial space. The tenant, Vibe Salon Suites, is considered a salon use that requires 2 off-street parking spaces per service chair, booth or bed; or 1 off-street parking space per 300 sq. ft. of floor area, whichever is greater.

The original buildout proposed showed 28 separate “salon suites” containing 32 total chairs/service stations. Based on the requirements, Vibe Salon Suites would have been required to provide 64 off-street parking spaces based on the 32 chairs/service stations proposed. The Building Permit application was denied by the Planning Division citing the 42 space parking deficiency present on the site.

The applicant brought the first iteration of this right-of-way (ROW) parking request to the City Commission on March 8th, 2021 with a request to be permitted to utilize the 8 ROW parking spaces adjacent to their building to come closer to meeting their required off-street parking. The City Commission postponed consideration of the request until the applicant pursued shared parking agreements from neighboring properties, as well as shoring up their plans for the interior so that the City Commission may understand exactly what is proposed and how much parking is required.

The applicant has submitted a new request based on the comments of the City Commission on March 8th, which includes a revised floor plan, a draft lease agreement with the 555 Building for 15 parking spaces, and some data from Vibe’s Plymouth location. The revised floor plans show a reduction of 5 proposed salon suites from 28 to 23, which subsequently reduced the amount of salon chairs proposed from 32 to 23. In total, this has reduced the required off-street parking on site from 64 to 46; a reduction of 18 spaces required. The applicant intends to provide the parking spaces through the following means:

Proposed Off-Street Parking	Number of Spaces
On-site parking facility	24
ROW Parking (if approved by Commission)	8
Variance	14
Total:	46

The applicant has submitted a letter stating an understanding of the requirements of the Zoning Ordinance in regards to the shared parking with the 555 Building. Although they will be leasing 15 spaces from the 555 Building, the shared parking agreement cannot be approved by the Planning Board (through Article 4, Section 4.45 (G)) due to the requirement that any additional off-street parking must be provided within 100 ft. of the building being served. Thus, the applicant would still be required to obtain a variance for the parking deficiencies. The applicant believes that providing the shared parking agreement, as well as the data from the Plymouth location will create a better environment at the Board of Zoning Appeals when it comes time to request the variance.

At this time, the applicant is re-requesting the 8 right-of-way parking spaces to be counted towards the required off-street parking as one method to make the Vibe Salon Suite concept work in the space within the confines of the Zoning Ordinance. As noted above, the granting of the 8

ROW parking spaces towards Vibe's required off-street parking total will work in conjunction with the 24-space on-site facility and the 14-space variance request.

Additionally, as required by the Ordinance, the Engineering Division inspected the area in the public right-of-way abutting the property in question to determine if any improvements would be required as a part of this consideration. In summation, the Engineering Division did not observe any improvements that would be required of the applicant to utilize the parking area.

LEGAL REVIEW:

The City Attorney has reviewed the documentation and has no concerns.

FISCAL IMPACT:

The proposed request has no fiscal impact on the City.

PUBLIC INPUT:

There has been no public input submitted in regards to the proposal.

SUMMARY:

In accordance with Article 4, section 4.43(G)(4) of the Zoning Ordinance, the applicant requests that the City Commission include 8 right-of-way parking spaces adjacent to their property in their required parking calculation. The inclusion of these spaces will enable the applicant to move closer to meeting the off-street parking requirements for the proposed salon.

ATTACHMENTS:

- Letter from Dennis G. Cowan – Plunkett-Cooney
- 670 S. Old Woodward - Site Plans
- Draft shared parking agreement with 555 Building
- Vibe Salon Plymouth data
- City Commission Minutes

SUGGESTED RESOLUTION:

To approve the use of 8 parking spaces in the right-of-way adjacent to the property located at 670 S. Old Woodward to help fulfill the parking requirements per Article 4, section 4.43 (G)(4) of the Zoning Ordinance.



April 6, 2021

Mayor Pierre Boutros
and City Commission
City of Birmingham
151 Martin St.
Birmingham, MI 48009

Re: 670 S. Old Woodward
Request Pursuant to Zoning Ordinance 4.45 PK-01(G)(1)

Dear Mayor Boutros and City Commissioners:

Please be advised that the undersigned and our Firm represent Vibe of Birmingham, LLC ("VIBE"), who will be operating VIBE Salon Suites at the above-referenced address. VIBE came before you on March 8th concerning a request to allow eight (8) on-street parking spaces in front of its building at 670 S. Old Woodward to be included in its parking count. VIBE Salon's request was made pursuant to your City Ordinance.

VIBE has prepared revised Site and Floor Plans, which are attached for your review and consideration. The original Site Plan submitted to the City showed 32 service chairs creating a requirement of 64 parking spaces. **VIBE has voluntarily reduced the number of services chairs to 23, representing a 28% reduction in the parking requirement.**

In addition, VIBE has secured a Lease Agreement (attached for your review) for an additional 15 parking spaces at the 555 Building across the street. VIBE attempted to secure more parking spaces but was not successful as the landlord was unwilling to provide additional spaces at this time. The Lease Agreement has been fully negotiated and will be signed by the parties upon the City Commission's approval of VIBE's request.

The 15 leased spaces at the 555 Building will be solely reserved for stylists and not utilized by customers. These 15 leased parking spaces are a very short walk from the VIBE Salon. Stylists in a downtown setting are used to parking away from a salon's parking lot in order to preserve the on-site spaces for customers. In addition, the covered parking at the 555 Building provides a secured parking area for the stylists, which is also not subject to the weather elements, snow and rain.

VIBE will be providing 39 of the required 46 parking spaces via on-site parking (24) and leased spaces (15). VIBE is still in need of the eight (8) parking spaces to be included in its parking count to complete its parking plan. As a practical matter, VIBE believes its parking plan will perform very well and will not be a burden on any existing and nearby businesses.

ATTORNEYS & COUNSELORS AT LAW

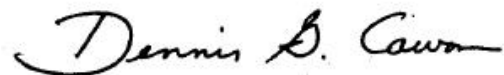
Mayor Pierre Boutros
and City Commission
City of Birmingham
April 6, 2021
Page 2

VIBE Salon has a unique "key card system," which tracks stylists from coming into and out of its building. We have attached a summary and backup data for the months November 2020 through March 2021 from Vibe Salon's Plymouth location (which has 28 chairs). The average stylist occupancy during working hours ranges from 22.5% to 35.7% in any given month. That translates to occupancy of 6.3 to 10.0 chairs. The highest occupancy on any given day is 13 chairs. Consequently, based on the data, the 24 parking spaces on-site in Birmingham provide ample parking for customers, which are at a maximum of 13 on any given day. The 555 Building provides ample parking for the stylists.

VIBE believes that with its voluntary reduction in the number of service chairs, acquiring leased parking, and the occupancy data, collectively strongly support your approval of its request. We thank you for your thoughtful consideration of all of the information provided and the efforts VIBE has made to provide a reasonable parking plan for its customers and stylists.

As always, if you have any questions, please feel to contact us at your earliest convenience.

Sincerely,

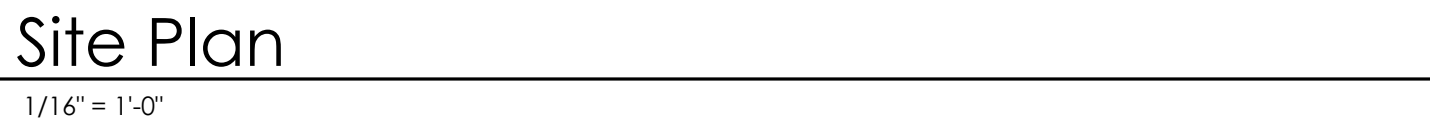


Dennis G. Cowan
Direct Dial: (248) 901-4029
Email: dcowan@plunkettcooney.com

DGC/cmw
Attachments

cc: Thomas Markus
Jana Ecker
Nicholas Dupuis
Frank Jarbou
Jeff Klatt

Open.28439.10892.26160370-1



North



Location Map

Scale: Not to Scale

Parcel Identification Number: 1936253035
Zoned: B2B, General Business
Lot Area: 17,424 SQ. FT.
Maximum Lot Coverage Allowed: N/A

Lot Coverage (Footprints)
Existing to Remain.

Height
Maximum Building Height: 30.00' / 2 Stories
- **Existing Roof Height at Top of Parapet: 26.66' +/-**

1. Front Yard Required: 0.00'
- **Existing Front Yard Setback to Remain**
2. East Side Yard Required: 0.00'
- **Existing Side Yard to Remain**
3. West Side Yard Required: 0.00'
- **Existing West Side Yard to Remain**
4. Rear Yard Required: 20.00'
- **Existing Rear Yard to Remain**

Required Spaces
(2) Spaces per service chair, booth or bed; or (1) space per 200SF of floor area, whichever is greater
(23) Proposed service chairs x 2 = **46 Parking Spaces Required**

Provided Spaces
Off Street Parking: (24) spaces
On Street Parking - adjacent to building: (8) spaces
Leased Parking (arrangement with 555 S. Old Woodward): (15) spaces
(47) **Parking Spaces Provided**

Sec. 22-340. - On-site parking.

(2) A parking space shall meet the following criteria in order to satisfy the requirements of this section:

- a. Have a minimum length of 20 feet;
- b. Have a minimum width of either the width of the existing driveway or nine feet, whichever is less;

PARKING LEASE

BY AND BETWEEN

**The New 555 COMMERCIAL LLC,
Limited Liability Company
AS LANDLORD
AND
VIBE OF BIRMINGHAM, LLC
AS TENANT**

FOR

**555 SOUTH OLD WOODWARD
BIRMINGHAM, MICHIGAN 48009**

**DATED
March _____, 2021**

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PARKING LEASE AGREEMENT
555 South Old Woodward Avenue, Birmingham, Michigan

THIS PARKING LEASE AGREEMENT (this “**Agreement**”) is made this ____th day of March 2021, between The 555 Commercial LLC, a Limited Liability Company (“**Landlord**”), having its principal office 555 South Old Woodward Ave. Birmingham, MI. 48009 and Vibe of Birmingham LLC, (“**Tenant**”), whose address is 812 S. Main Street, Suite 200, Royal Oak, MI 48067. In consideration of the mutual covenants and conditions set forth herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant, intending to be legally bound, agree as follows:

1. **LEASE:** Landlord hereby agrees to Lease and make available to Tenant and Tenant’s sub-tenants a certain area of property as outlined in Paragraph 2 below, owned by Landlord containing **Fifteen (15)** parking spaces (each, a “**Parking Space**” and collectively, the “**Parking Spaces**”) within the Property, subject to and upon the terms and conditions set forth in this Agreement (collectively, the “**Parking Purpose**”).

2. **PREMISES:** A certain parking deck within The 555 Building (the “**Parking Structure**”) situated on land located in the City of Birmingham, Michigan 48009

- a) Notwithstanding anything contained herein to the contrary, Landlord shall have the right to designate and reserve other parking spaces in the Parking Structure for the exclusive use of Tenant’s subtenants, and their respective invitees, and customers.
- b) Tenant agrees to park only on the North End of the P3 Ramp (Parking Deck Ramp 3), up to the P4 (Parking Deck 4) Deck.

3. **Term.** The term of this Agreement shall be for a period of Three Years commencing on ____ day of ____, 2021 (the “**Commencement Date**”) and remain in effect through ____ day of ____, 2024 (the “**Expiration Date**”), unless earlier terminated in accordance with this Agreement. The Commencement Date through the Expiration Date is the “**Term**”. Notwithstanding the foregoing, Landlord has the right to terminate this Agreement by ninety days’ written notice to the Tenant, and this Agreement will terminate on the ninetieth day (the “**Surrender Date**”) after the confirmed delivery of such notice of termination. Tenant shall surrender the Property to Landlord on or prior to the Surrender Date, provided that Tenant shall remain obligated for all of its obligations under this Agreement through the Surrender Date.

4. **INGRESS AND EGRESS:** Ingress and egress to and from the Property will be by a card lock or car sticker system, or any other system Landlord may decide upon and will continue as long as the Agreement is in effect and Tenant’s rental payments are current. Landlord shall issue an appropriate enter card to Tenant for each parking space covered by this Agreement, without charge therefor, provided that there will be a TWENTY-FIVE (\$25.00) charge for each replacement card. At the expiration of this Agreement, Tenant shall return to Landlord the entry card.

5. **RENT:**

- (a) Tenant shall pay to Landlord as gross rent for the Property during the term of this Lease minimum net rental as follows, which shall be paid on or before the first of each month:

<u>Period</u>			
05/01/2021 – 04/30/2022			
05/01/2022 – 04/30/2023			
05/01/2023 – 04/30/2024			

6. **LATE PAYMENTS.** Any rent or other sums payable by Tenant to Landlord under this Lease not paid within five (5) days after the same is due will be subject to a late charge equal to five (5%) percent of the amount due, which late charge shall be due and payable as additional rent on demand. If such late charge is not paid within five (5) business days after Notice to Tenant, such late payment will bear interest at a per annum rate equal to ten (10%) percent until such past due payment, late charges and interest are actually paid by Tenant. Any default in the payment of rent or other sums will not be considered cured unless and until any late charge and interest due hereunder are paid by Tenant to Landlord. If Tenant defaults in paying such late charge or interest, Landlord will have the same remedies as on default in the payment of rent. The obligation hereunder to pay such late charge and interest will exist in addition to, and not in the place of, the other default provisions of this Lease.

7. **USE AND OCCUPANCY:** During the term of this Lease, the Property shall be used for vehicle **Parking** and for no other purpose whatsoever. Tenant shall promptly comply with all laws, ordinances, and lawful orders and regulations affecting the Property and the cleanliness, safety, occupancy and use of the same, and Tenant shall not use or permit the use of any portion of the Property for any unlawful purpose. Tenant shall not perform any act or carry on any practice which may injure the Property or the Building, or be a nuisance, disturbance or menace to the other tenants of the Building. Upon breach of this agreement, the Landlord shall have the right to Default Tenant pursuant to the terms set forth herein.

8. **RULES AND REGULATIONS FOR PARKING STRUCTURE:**

(a) Tenant is entitled to use the Parking Spaces during the posted hours of operation for the Property. Tenant shall use the Parking Spaces solely for the parking of automobiles that are owned or operated by Tenant.

(b) Vehicles shall be parked within the striped Parking Spaces and remain locked while parked. Vehicles must not be parked by Tenant in such a way as to block traffic lanes. The parking of unlicensed or uninsured vehicles, the storage of vehicles or any other personal property or equipment, and the repair and maintenance of vehicles in the Property is prohibited. Further, the parking of vehicles that (in the opinion of Landlord) pose any kind of hazard or have hazardous

contents is prohibited. The parking of vehicles for the principal purpose of promotional activities or advertising (in the opinion of Landlord) is also prohibited.

(c) Neither Tenant nor its employees shall commit or allow any waste or damage to be committed on any portion of the Property, create any nuisance, or unreasonably interfere with, annoy or disturb any other tenant, licensee, parker or Landlord in its operation of the Property.

(d) Tenant and its employees shall comply with all applicable governmental laws and regulations. In addition, the use of the Parking Spaces by Tenant and its employees is subject to such rules and regulations as are promulgated from time to time by Landlord and communicated to Tenant (collectively, the “**Rules and Regulations**”).

9. **HOLDING OVER:** If Tenant holds possession of the Premises beyond the expiration of the Term, such continued possession by Tenant shall not have the effect of extending or renewing the Term for any period of time and Tenant shall be presumed to occupy the Premises against the will of Landlord who shall thereupon be entitled to all remedies provided for the expulsion of Tenant, including all claims for loss and damage. If Tenant holds over, the Lease Fee shall be one hundred fifty percent of Tenant's Lease Fee during the last month of the Term. In addition, Landlord has the right, at Tenant's expense, to cause any automobiles parked in the Parking Spaces to be towed if the automobiles are not removed upon the expiration of the Term or earlier termination of this Agreement. Landlord may give to Tenant at any time during such continued possession by Tenant written notice that Tenant may continue to occupy the Premises under a tenancy from month to month at the holdover amount set forth above.

10. **SAFETY/ CUSTODY/ BAILMENT:** Landlord shall not be considered an insurer or guarantor of the safety and security of Tenant or of any vehicle parked on the Property. This Agreement constitutes a right to park on the Property only and no bailment is created. Tenant acknowledges that all employees must self-park vehicles (except to the extent Landlord otherwise designates) and abide by all provisions of Landlord's Rules and Regulations. Landlord does not guard or assume care custody or control of any vehicle or its contents and is not responsible to Tenant or its employees for fire, theft, damage or loss, including any damage caused by any other vehicle parked on the Property.

11. **CERTAIN ADDITIONAL RIGHTS RESERVED BY LANDLORD:**

(a) Landlord shall have the following rights: with or without closing the Property and/or preventing unreasonable access to the Property, to decorate and to make inspections, repairs, alterations, additions, changes, or improvements, whether structural or otherwise, in and about the Property, or any part thereof; to enter upon the Property and, during the continuance of any such work, to close points of ingress and egress, street entrances, public space, and drives in the Property; and to enter the Property to show the parking spaces located on the Property and the Property itself to prospective purchasers, tenants, lenders, or other interested parties. If the Property is closed to Tenant or its subtenants for any reason, Tenant shall be entitled to a rent abatement for each day and space that the Tenant is prevented from parking in the Parking Structure.

(b) Landlord, at no cost to Tenant, reserves the right to relocate the parking space to another area within the Property with proper notice to Tenant.

12. **CASUALTY:**

(a) If the Property is damaged by fire or other casualty (each, a "**Casualty**"), Landlord shall deliver to Tenant a good faith estimate (the "**Damage Notice**") of the time needed to repair the damage caused by such Casualty. If a Casualty damages a material portion of the Property and (i) Landlord estimates that the damage to the Property cannot be repaired within sixty days after commencement of repairs, (ii) the damage to the Property exceeds twenty-five percent of the replacement cost thereof (excluding foundations and footings), as estimated by Landlord, (iii) regardless of the extent of damage to the Property, Landlord makes a good faith determination that restoring the Property, as applicable, would be uneconomical, or (iv) Landlord is required to pay a portion of the insurance proceeds arising out of the Casualty to Landlord's mortgagee, then either Landlord or Tenant may terminate this Agreement by giving written notice of its election to terminate within sixty days after the Damage Notice has been delivered to Tenant and Landlord will make commercially reasonable efforts to secure suitable replacement parking for Tenant at comparable costs. Tenant shall not be required to pay any gross rent during the period the casualty exists.

(b) If the Property is damaged by a Casualty, the Lease Fee shall be abated based on the number of Parking Spaces rendered unusable from the date of damage until the completion of Landlord's repairs.

13. **EMINENT DOMAIN:** If any part of the Property, as applicable, shall be taken or condemned for public use, this Agreement shall terminate as of the date the condemnor acquires possession. Further, if, as a result of such condemnation, more than one-third of the Parking Spaces then being used under this Agreement have been taken, or any material part of the Property has been taken, Tenant or Landlord may, at its respective sole option, terminate this Agreement.

14. **INDEMNIFICATION:** Except to the extent caused by Landlord's gross negligence or willful misconduct, Tenant shall indemnify, defend and hold Landlord harmless from all damage to any property or injury to or death of any person arising from the use of the Property by Tenant or its agents, representatives or employees. The foregoing indemnity obligation of Tenant shall include reasonable attorneys' fees, investigation costs and all other reasonable costs and expenses incurred by Landlord from the first notice that any claim or demand is to be made or may be made. The provisions of this Section 11 shall survive the expiration or sooner termination of this Agreement with respect to any damage, injury or death occurring prior to such expiration or sooner termination.

15. **DEFAULT:**

The occurrence of any one or more of the following events (each such occurrence shall be deemed an "**Event of Default**") shall constitute a material breach of this Agreement by Landlord and/or Tenant:

As to Tenant, (i) if Tenant shall fail to pay any sums when and as the same become due and payable and such failure continues for more than five days after Notice to Tenant of such default; or (ii) if Tenant shall fail to perform or observe any other term hereof or of the Rules and Regulations of Landlord to be performed or observed by Tenant, such failure shall continue for more than ten days after written notice thereof from Landlord, and Tenant shall not within such ten day period commence with due diligence and dispatch the curing of such default, or, having so commenced, shall thereafter fail or neglect to prosecute or complete with due diligence and dispatch the curing of such default; (iii) if Tenant shall make a general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due or shall file a petition in bankruptcy, or shall be adjudicated as insolvent or shall file a petition in any proceeding seeking any reorganization, arrangements, composition, readjustment, liquidation, dissolution or similar relief under any present or future law, or shall file an answer admitting or fail timely to contest or acquiesce in the appointment of any trustee, receiver or liquidator of Tenant or any material part of its properties; (iv) if, within sixty days after the commencement of any proceeding against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future law, such proceeding shall not have been dismissed, or if, within sixty days after the appointment without the consent or acquiescence of Tenant, of any trustee, receiver or liquidator of Tenant or of any material part of its properties, such appointment shall not have been vacated; or (v) if this Agreement or any estate of Tenant hereunder shall be levied upon under any attachment or execution and such attachment or execution is not vacated within ten days.

(b) If, as a matter of law, Landlord has no right on the bankruptcy of Tenant to terminate this Agreement, then, if Tenant, as debtor, or its trustee wishes to assume or assign this Agreement, in addition to curing or adequately assuring the cure of all defaults existing under this Agreement on Tenant's part on the date of filing of the proceeding (such assurances being defined below), Tenant, as debtor, or the trustee or assignee must also furnish adequate assurances of future performance under this Agreement (as defined below). Adequate assurance of curing defaults means the posting with Landlord of a sum in cash sufficient to defray the cost of such a cure. Adequate assurance of future performance under this Agreement means posting a deposit equal to three months' of the Lease Fee, including all other charges payable by Tenant hereunder, and, in the case of an assignee, assuring Landlord that the assignee is financially capable of assuming this Agreement, and that its use of the Premises will not be detrimental to the other tenants or licensees in the Property or Landlord. In a reorganization under Chapter 11 of the Bankruptcy Code, the debtor or trustee must assume this Agreement or assign it within sixty days from the filing of the proceeding, or he shall be deemed to have rejected and terminated this Agreement.

(b) Landlord fails, after proper Notice of same, to correct or cure any issues which would prevent Tenant or its subtenants on an ongoing basis to utilize the Parking Structure as and when needed by said Tenant or subtenant.

16. **REMEDIES:** If an Event of Default shall exist, then Landlord or Tenant shall have the following remedies:

(a) Either party, may at any time after the occurrence of an Event of Default, give to the other thirty (30) days' notice of termination of this Agreement, and in the event such notice is given,

the Default is not cured within the thirty (30) days, this Agreement shall terminate but either party shall remain liable for damages as provided herein.

(b) The remedies provided for in this Agreement are in addition to any other remedies available to Landlord and Tenant at law or in equity by statute or otherwise.

17. **ASSIGNMENT AND SUBLETTING:** Tenant shall not assign this Agreement or sublicense any portion of the Property to anyone not affiliated with Tenant (i.e., its subtenants) without the prior written consent of Landlord, which consent may be withheld in Landlord's sole discretion.

18. **LANDLORDS TRANSFER:** Landlord may transfer any portion of the Property and any of its rights under this Agreement without the consent of Tenant. If Landlord assigns its rights under this Agreement, then Landlord shall thereby be released from any further obligations hereunder arising after the date of transfer, provided that the assignee assumes Landlord's obligations hereunder in writing.

19. **ESTOPPEL CERTIFICATES:** From time to time, Tenant shall furnish to any party designated by Landlord, within ten days of Landlord's request, a certificate signed by Tenant confirming and containing such factual certifications and representations as to this Agreement as Landlord may request, including the following facts: (a) this Agreement is in full force and effect, (b) the terms and provisions of this Agreement have not been changed, (c) not more than one monthly installment of the gross rent has been paid in advance, (d) there are no claims against Landlord nor any defenses or rights of offset against collection of the gross rent other charges, (e) Landlord is not in default under this Agreement, and (f) any additional information as may be reasonably requested by Landlord.

20. **NOTICES:** Any notice given by Landlord or Tenant under this Agreement shall be in writing and shall be deemed to have been duly given when (a) personally delivered; or (b) three days after being deposited in the United States mail, certified or registered, return receipt requested, postage prepaid; or (c) one business day after being deposited with a nationally recognized overnight courier service, sent for and guaranteeing next business day delivery and in all instances to the addresses set forth below, or to such other address as a party hereunder may from time to time designate in a notice to the other party:

Tenant's Address for Notices:

Vibe of Plymouth LLC
812 S. Main Street, Suite 200
Royal Oak, MI 48067
Attn: Frank Jarbou

Landlord's Address for Notices:

The New 555 Commercial LLC
555 S. Old Woodward Ave., Suite 705
Birmingham, Michigan 48009

21. **FORCE MAJEURE:** Other than for Tenant's obligations under this Agreement that can be performed by the payment of money (e.g., payment of the Lease Fee and maintenance of insurance), whenever a period of time is herein prescribed for action to be taken by either party hereto, such party shall not be liable or responsible for, and there shall be excluded from the computation of any such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, terrorist acts or activities, governmental laws, regulations, or restrictions, or any other causes of any kind whatsoever which are beyond the reasonable control of such party.

22. **BROKERAGE:** Neither Landlord nor Tenant has dealt with any broker or agent in connection with the negotiation or execution of this Agreement. Landlord and Tenant shall each indemnify, defend and hold the other harmless from and against all costs, expenses, reasonable attorneys' fees, liens and other liability for commissions or other compensation claimed by any broker or agent claiming the same by, through or under the indemnifying party in connection with this Agreement.

23. **SERVERABILITY:** If any clause or provision of this Agreement is illegal, invalid, or unenforceable under present or future laws, then the remainder of this Agreement shall not be affected thereby and in lieu of such clause or provision, there shall be added as a part of this Agreement a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.

24. **AMENDMENTS:** This Agreement may not be amended, except by an instrument in writing signed by Landlord and Tenant. The terms and conditions contained in this Agreement shall inure to the benefit of and be binding upon the parties hereto, and upon their respective successors in interest and legal representatives, except as otherwise herein expressly provided. This Agreement is for the sole benefit of Landlord and Tenant, and, other than Landlord's current or future mortgagee, if any, no third party shall be deemed a third party beneficiary hereof.

25. **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between Landlord and Tenant regarding the subject matter hereof and supersedes all oral statements and prior writings relating thereto. Except for those set forth in this Agreement, no representations, warranties, or agreements have been made by Landlord or Tenant to the other with respect to this Agreement or the obligations of Landlord or Tenant in connection therewith. The normal rule of construction that any ambiguities be resolved against the drafting party shall not apply to the interpretation of this Agreement or any exhibits or amendments hereto. The captions and headings used throughout this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement.

26. **WAIVER:** One or more waivers of any covenant or condition by a party shall not be construed as a waiver of a further breach of the same covenant or condition. No provision of this Agreement shall be deemed to have been waived by Landlord unless such waiver is in writing signed

by Landlord, and no custom or practice which may evolve between the parties in the administration of the terms hereof shall waive or diminish the right of Landlord to insist upon the performance by Tenant in strict accordance with the terms hereof.

27. **NO REPRESENTATIONS OR WARRANTIES:** Landlord makes no representations or warranties of any kind with respect to the Property. The Property is hereby provided to Tenant in its "as-is" "where is" "with all faults" condition.

28. **WAIVER OF JURY TRIAL:** TO THE MAXIMUM EXTENT PERMITTED BY LAW, LANDLORD AND TENANT EACH WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY LITIGATION OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE ARISING OUT OF OR WITH RESPECT TO THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith OR THE TRANSACTIONS RELATED HERETO.

29. **MISCELLANEOUS:** This Agreement will not be recorded by Tenant. Nothing contained in this Agreement is intended to be a gift or dedication of any portion of the Property to the general public or for any public use or purpose whatsoever. This Agreement is for the exclusive benefit of Tenant and Landlord as defined herein, and nothing in this Agreement, express or implied, confers upon any person, other than Tenant and Landlord, any rights or remedies under or by reason of this Agreement.

30. **APPLICABLE LAW:** This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan.

[Signature Page Follows]

**[SIGNATURE PAGE TO PARKING AGREEMENT BETWEEN
THE 555 BUILDING CONDOMINIUM ASSOCIATION AND VIBE OF BIRMINGHAM LLC]**

The undersigned have executed this Agreement as of the date first above written.

LANDLORD:

The New555 Commercial LLC

By: 555 Residential LLC

By : Tartan Enterprises, LLC its General Partner

By: _____

John J. Reinhart

Its: Authorized Member

TENANT:

Vibe of Birmingham, LLC

By: _____

Name: Frank Jarbou _____

Its: Authorized Member _____

PLYMOUTH VIBE SALON
Occupancy Summary
November 2020 to March 2021

	<u>Daily Ave. Suites Accessed</u>	<u>Daily Pct. of Suites Accessed</u>	<u>Highest Daily Suite Access</u>
November 2020	9.5	33.9%	13
December 2020	10.0	35.7%	13
January 2021	9.6	34.3%	13
February 2021	6.6	23.7%	9
March 2021	6.3	22.5%	9

Day	Date	# of Suites Accessed	% of Suites in Building (28)
Sun	11/1/2020	4	14.3%
Mon	11/2/2020	12	42.9%
Tue	11/3/2020	11	39.3%
Wed	11/4/2020	11	39.3%
Thu	11/5/2020	11	39.3%
Fri	11/6/2020	9	32.1%
Sat	11/7/2020	10	35.7%
Sun	11/8/2020	5	17.9%
Mon	11/9/2020	11	39.3%
Tue	11/10/2020	11	39.3%
Wed	11/11/2020	12	42.9%
Thu	11/12/2020	13	46.4%
Fri	11/13/2020	13	46.4%
Sat	11/14/2020	13	46.4%
Sun	11/15/2020	8	28.6%
Mon	11/16/2020	6	21.4%
Tue	11/17/2020	11	39.3%
Wed	11/18/2020	13	46.4%
Thu	11/19/2020	11	39.3%
Fri	11/20/2020	13	46.4%
Sat	11/21/2020	9	32.1%
Sun	11/22/2020	5	17.9%
Mon	11/23/2020	11	39.3%
Tue	11/24/2020	12	42.9%
Wed	11/25/2020	11	39.3%
Thu	11/26/2020	2	7.1%
Fri	11/27/2020	3	10.7%
Sat	11/28/2020	5	17.9%
Sun	11/29/2020	7	25.0%
Mon	11/30/2020	12	42.9%

AVG # of Suites Accessed per Day	9.5
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Day	Date	# of Suites Accessed	% of Suites in Building (28)
Tue	12/1/2021	12	42.9%
Wed	12/2/2021	13	46.4%
Thu	12/3/2021	13	46.4%
Fri	12/4/2021	10	35.7%
Sat	12/5/2021	11	39.3%
Sun	12/6/2021	5	17.9%
Mon	12/7/2021	8	28.6%
Tue	12/8/2021	13	46.4%
Wed	12/9/2021	12	42.9%
Thu	12/10/2021	13	46.4%
Fri	12/11/2021	7	25.0%
Sat	12/12/2021	12	42.9%
Sun	12/13/2021	5	17.9%
Mon	12/14/2021	12	42.9%
Tue	12/15/2021	13	46.4%
Wed	12/16/2021	12	42.9%
Thu	12/17/2021	13	46.4%
Fri	12/18/2021	11	39.3%
Sat	12/19/2021	13	46.4%
Sun	12/20/2021	8	28.6%
Mon	12/21/2021	11	39.3%
Tue	12/22/2021	13	46.4%
Wed	12/23/2021	13	46.4%
Thu	12/24/2021	7	25.0%
Fri	12/25/2021	2	7.1%
Sat	12/26/2021	2	7.1%
Sun	12/27/2021	3	10.7%
Mon	12/28/2021	10	35.7%
Tue	12/29/2021	12	42.9%
Wed	12/30/2021	12	42.9%
Thu	12/31/2021	9	32.1%

AVG # of Suites Accessed per Day	10.03333
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Day	Date	# of Suites Accessed	% of Suites in Building (28)
Fri	1/1/2021	2	7.1%
Sat	1/2/2021	7	25.0%
Sun	1/3/2021	4	14.3%
Mon	1/4/2021	9	32.1%
Tue	1/5/2021	11	39.3%
Wed	1/6/2021	12	42.9%
Thu	1/7/2021	13	46.4%
Fri	1/8/2021	10	35.7%
Sat	1/9/2021	13	46.4%
Sun	1/10/2021	2	7.1%
Mon	1/11/2021	5	17.9%
Tue	1/12/2021	12	42.9%
Wed	1/13/2021	11	39.3%
Thu	1/14/2021	12	42.9%
Fri	1/15/2021	12	42.9%
Sat	1/16/2021	12	42.9%
Sun	1/17/2021	4	14.3%
Mon	1/18/2021	10	35.7%
Tue	1/19/2021	12	42.9%
Wed	1/20/2021	11	39.3%
Thu	1/21/2021	10	35.7%
Fri	1/22/2021	13	46.4%
Sat	1/23/2021	11	39.3%
Sun	1/24/2021	7	25.0%
Mon	1/25/2021	9	32.1%
Tue	1/26/2021	10	35.7%
Wed	1/27/2021	13	46.4%
Thu	1/28/2021	12	42.9%

AVG # of Suites Accessed per Day	9.607143
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Day	Date	# of Suites Accessed	% of Suites in Building (28)
Mon	2/1/2021	5	0.178571
Tue	2/2/2021	9	0.321429
Wed	2/3/2021	7	0.25
Thu	2/4/2021	7	0.25
Fri	2/5/2021	8	0.285714
Sat	2/6/2021	9	0.321429
Sun	2/7/2021	3	0.107143
Mon	2/8/2021	4	0.142857
Tue	2/9/2021	9	0.321429
Wed	2/10/2021	8	0.285714
Thu	2/11/2021	7	0.25
Fri	2/12/2021	8	0.285714
Sat	2/13/2021	9	0.321429
Sun	2/14/2021	3	0.107143
Mon	2/15/2021	3	0.107143
Tue	2/16/2021	9	0.321429
Wed	2/17/2021	7	0.25
Thu	2/18/2021	8	0.285714
Fri	2/19/2021	9	0.321429
Sat	2/20/2021	8	0.285714
Sun	2/21/2021	3	0.107143
Mon	2/22/2021	4	0.142857
Tue	2/23/2021	7	0.25
Wed	2/24/2021	6	0.214286
Thu	2/25/2021	8	0.285714
Fri	2/26/2021	9	0.321429
Sat	2/27/2021	7	0.25
Sun	2/28/2021	2	0.071429

Avg % of Suites Accessed 0.237245

Day	Date	# of Suites Accessed	% of Suites in Building (28)
Mon	3/1/2021	3	0.107143
Tue	3/2/2021	8	0.285714
Wed	3/3/2021	7	0.25
Thu	3/4/2021	6	0.214286
Fri	3/5/2021	9	0.321429
Sat	3/6/2021	8	0.285714
Sun	3/7/2021	3	0.107143
Mon	3/8/2021	4	0.142857
Tue	3/9/2021	9	0.321429
Wed	3/10/2021	6	0.214286
Thu	3/11/2021	8	0.285714
Fri	3/12/2021	8	0.285714
Sat	3/13/2021	9	0.321429
Sun	3/14/2021	4	0.142857
Mon	3/15/2021	3	0.107143
Tue	3/16/2021	8	0.285714
Wed	3/17/2021	4	0.142857
Thu	3/18/2021	6	0.214286
Fri	3/19/2021	8	0.285714
Sat	3/20/2021	8	0.285714
Sun	3/21/2021	4	0.142857
Mon	3/22/2021	4	0.142857
Tue	3/23/2021	9	0.321429
Wed	3/24/2021	7	0.25
Thu	3/25/2021	8	0.285714
Fri	3/26/2021	8	0.285714
Sat	3/27/2021	9	0.321429
Sun	3/28/2021	3	0.107143
Mon	3/29/2021	2	0.071429
Tue	3/30/2021	7	0.25
Wed	3/31/2021	6	0.214286

Avg % of suites accessed 0.225806

Birmingham City Commission Minutes

March 8, 2021

7:30 P.M.

Virtual Meeting

Meeting ID: 655 079 760

Vimeo Link: <https://vimeo.com/event/3470/videos/515580935/>

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 Markus, City Clerk Bingham, Police Chief Clemence, City Attorney Kucharek, Planning Director Ecker, Finance Director Gerber, Interim HR Director/Assistant City Manager Hock, Building Official Johnson, City Attorney Kucharek, Deputy Treasurer Todd

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

Announcements

- Happy Birthday Commissioner Baller

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

Brief updates were provided by County Commissioner Chuck Moss.

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.

03-052-21 Consent Agenda

The following items were pulled from the Consent Agenda:

- Commissioner Hoff: Item A – City Commission Meeting Minutes Of February 22, 2021
 Item E – Updated Park Rules and Regulations
 Item H – Cost Participation Agreement with the Board of Road
 Commissioners of the County of Oakland
 Item I – Use of Personal Identification Numbers for Filing Personal and
 Property Taxes Electronically
- Commissioner Sherman:
 Item G – On-Street Parking at 670 S. Old Woodward

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Host:
To approve Consent Agenda items B, C, D and F.

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

Nays, None

- B. Resolution approving the warrant list, including Automated Clearing House payments, dated February 24, 2021, in the amount of \$4,908,727.09.
- C. Resolution approving the warrant list, including Automated Clearing House payments, dated March 3, 2021, in the amount of \$1,205,931.69.
- D. Resolution to approve the purchase and planting of eighty-three (83) trees from KLM Landscape for the Spring 2021 Tree Purchase and Planting Program for a total project cost not to exceed \$34,970.00. 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 the required insurance coverage.
- F. Resolution to approve the Program Year 2021 High Intensity Drug Trafficking Area (HIDTA) Sub recipient agreement between the County of Oakland and the City of Birmingham. Further, to authorize the Mayor and the City Manager to sign the agreement on behalf of the City.

03-053-21 (Item A) City Commission Meeting Minutes Of February 22, 2021

Commissioner Hoff noted the Commission did not vote to schedule a public hearing for Birmingham Sushi.

City Attorney Kucharek advised the Commission that at the March 22, 2021 meeting, if the restaurant has not cured the defect and a public hearing has to be set, the Commission should make a motion to set the public hearing for the same evening and to ask the owner to waive any complaint of defect of process. City Attorney Kucharek said it was very likely that the owner will have resolved the issue before then and that the public hearing would not have to be held.

PD Ecker confirmed she was working with counsel for Birmingham Sushi and that they had every intent to resolve their issues with the City before the March 22, 2021 meeting.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Sherman:
To approve the City Commission meeting minutes of February 22, 2021.

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

Nays, None

03-054-21 (Item E) Updated Park Rules and Regulations

Commissioner Baller said closing the parks at 10 p.m. would prohibit someone from taking the Quarton Lake Trail, for instance, when walking after 10 p.m. He ventured that might be overly stringent. He raised a similar concern regarding the prohibition of alcohol in the parks, noting that sometimes people partake in a glass of wine during concerts in Shain Park or in similar circumstances. He said that perhaps a full prohibition was overbroad.

CM Markus opined that it is generally more appropriate for the City's family-friendly parks to be alcohol-free.

CM Markus and City Attorney Kucharek noted that relying solely on public drunkenness laws for alcohol enforcement in the parks sets a very high bar for police intervention. City Attorney Kucharek explained a person's behavior would have to endanger themselves, another person, property or cause a public disturbance for police to intervene. She said it would likely be better if that kind of behavior was curtailed well before it reached that level.

Chief Clemence concurred with CM Markus and City Attorney Kucharek. He said that having a rule prohibiting alcohol in the parks allows Birmingham Police Officers discretion in enforcing the rule when called for.

DPS Director Wood confirmed for Commissioner Hoff that anyone fishing in a City lake would have to procure a fishing license from the State.

MOTION: Motion by Commissioner Hoff, seconded by Mayor Pro Tem Longe:
To adopt the updated Park Rules and Regulations as submitted with recommended changes.

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

Nays, None

03-055-21 (Item G) On-Street Parking at 670 S. Old Woodward

Two Commissioners stated an item about parking allocations would ordinarily be an agenda item for the Commission and not a consent agenda item.

Dennis Cowan, attorney, and Frank Jarbou, owner, were present on behalf of the item.

Mr. Cowan stated that the proposed salon has a tracking system that shows that the building only ever reaches about a third of its occupancy at any given time. He said that Mr. Jarbou is working to revise the number of salon chairs being proposed down.

Commissioner Nickita noted the Commission could not make parking decisions based on likely occupancy. He said they had to make decisions based on maximum potential occupancy, and that not doing so could set a precedent.

The majority of Commissioners expressed concerns about the parking intensity required for a salon in that area. It was observed that there were a lot of other parking-intensive uses in the same area already. They were largely uncomfortable with counting the eight spots towards the overall parking requirements for the building before a shared parking agreement had been pursued.

CP Dupuis explained that even if Mr. Jarbou were able to finalize a shared parking agreement with a nearby building it would be unlikely to 'count' towards their parking requirements. The ordinance says that if a building enters into a shared parking agreement, the building with which the parking is shared has to be within 100 feet of the first building. CP Dupuis noted the closest building with which 670 S. Old Woodward could share parking is approximately 200 feet away.

Commissioner Baller noted that the Commission had been putting effort into supporting businesses during Covid-19, and said that since Staff recommended allowing the eight spaces to count towards the parking requirement he would support that recommendation.

MOTION: Motion by Commissioner Baller, with no second.

To approve the use of 8 parking spaces in the right-of-way adjacent to the property located at 670 S. Old Woodward to help fulfill the parking requirements per Article 4, section 4.43 (G) (4) of the Zoning Ordinance.

Motion failed for lack of a second.

Commissioner Sherman recommended that the discussion be postponed. He recommended the applicant attempt to obtain a shared parking arrangement before requesting the counting of the eight adjacent spots.

Commissioner Hoff recommended that the applicant finish determining the reduced number of salon chairs they intend to have in order to reduce the number of required parking spaces. She recommended they also pursue a variance from the Board of Zoning Appeals.

Mr. Cowan said the applicant will pursue a shared parking arrangement. He said they may still request the eight spaces from the Commission after that, and then would pursue a variance with the BZA.

03-056-21 (Item H) Cost Participation Agreement with the Board of Road Commissioners of the County of Oakland

In reply to Commissioner Hoff, Consulting City Engineer Surhigh said the water and sewer systems along this stretch of Cranbrook were not in need of repair. He stated that the traffic signal at Maple and Cranbrook would not be replaced.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Host:
To approve the Cost Participation Agreement with the Board of Road Commissioners of The County of Oakland, agreeing to pay the City's share of construction costs related to the road resurfacing and traffic signal improvements on Cranbrook Road between 14 Mile Road and Maple Road. The total amount of the City's share of the cost is \$166,799: with \$7,965 for traffic signal work to be charged to 202-303.001-971.0100, Major Street Fund Traffic Controls; and, \$158,834 for roadwork to be charged to the Major Streets Fund Public Construction, 202-449.001-981.0100. Also, to direct the Mayor to sign the agreement on behalf of the City.

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

Nays, None

03-057-21 (Item I) Use of Personal Identification Numbers for Filing Personal and Property Taxes Electronically

Commissioner Hoff noted the dates included in this item needed to be changed from March 15, 2021 to March 8, 2021.

City Clerk Bingham confirmed she would amend the dates.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Nickita:
To authorize the use of personal identification numbers acquired from the Michigan Department of Treasury as electronic signatures for the purpose of filing personal and property taxes that are filed electronically.

ROLL CALL VOTE: Ayes, Commissioner Sherman
Commissioner Host
Commissioner Nickita

Commissioner Hoff
Mayor Boutros
Mayor Pro Tem Longe
Commissioner Baller

Nays, None

VI. UNFINISHED BUSINESS

None.

VII. NEW BUSINESS

03-058-21 Public Hearing – 219 Elm St. – All Seasons 2

The Mayor opened the public hearing at 8:31 p.m.

In reply to a question from Commissioner Baller, CM Markus confirmed that any monies paid by the owners of All Seasons 2 for additional parking would be put aside.

Mark Highlen, applicant, John Thompson, engineer, and Xander Bogaerts, architect, were present on behalf of the application.

In reply to a question from Mayor Pro Tem Longe, Mr. Highlen stated that the project's aim for LEED certification is to score well above the required 40 points in order to ensure certification is achieved. He said that they were aiming for the base level certification. He also confirmed that they would retrofit the building to achieve LEED certification if the project is not granted it after the first review.

In reply to CM Markus, PD Ecker confirmed that if the building were initially denied LEED certification, the applicant would be denied occupancy of the building until the LEED certification was granted.

The Mayor closed the public hearing at 9:07 p.m.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Baller:
To approve the Special Land Use Permit, Final Site Plan and Design Review application to allow the construction and operation of the All Seasons 2 independent senior living facility at 219 Elm St.

Commissioner Nickita said the approval of this project demonstrates the City's commitment to creating spaces where Birmingham residents can continue to age gracefully in the City.

Commissioner Nickita said he felt the information provided as part of the agenda item was somewhat insufficient in terms of representing the proposed building in context and demonstrating its potential impact on the surrounding area. He said that, in the future, all site plans, renderings, and other visual representations submitted to the Planning Department as part of an item should be included in the Commission's agenda packet for consideration of said item.

Public Comment

Paul Reagan noted that the support of the adjacent neighborhood association was cited in regards to the project. He asked where that support was documented.

PD Ecker noted that Doug Feehan, the president of the adjacent neighborhood association, had met with the applicant and expressed his approval of the updated designs.

CP Dupuis stated that Mr. Feehan spoke at the Planning Board review of this proposal and that his comments were documented in minutes and included as part of this item.

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

Nays, None

03-059-21 First Draft Master Plan Review and Adoption Process

CM Markus introduced the item.

Commissioner Host said it had been his preference since October 2020 to have the Commission and Planning Board meet and discuss the master plan before the writing of the second draft is commenced.

PD Ecker provided an outline of how the rest of the feedback and revision process for the master plan would work. She noted that all the proposed revisions to the first draft of the master plan would be reviewed by the Planning Board and then submitted to the Commission for their comment and review before the writing of the second draft begins. She said the Planning Board and the Commission would then have a joint meeting in Summer 2021 where they would also discuss the master plan.

MOTION: Motion by Commissioner Nickita, seconded by Commissioner Sherman:
To adopt Resolution #03-59-21 to affirm and approve the master plan review and adoption process from the first draft of the 2040 Plan to the final public hearing to consider adoption of the final draft of the Birmingham 2040 Plan.

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

Nays, None

03-060-21 Poverty Exemption and Updated Hardship Application

Deputy Treasurer Todd reviewed the item.

City Attorney Kucharek confirmed the process had been updated to reflect changes in state law.

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

To adopt a policy relative to the review and granting of poverty exemption by the City and the updated Hardship Application.

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

Nays, None

03-061-21 Emergency Repair Invoice Authorization for the Chester Street Parking Structure

The Commission had no comment on the item.

MOTION: Motion by Commissioner Sherman, seconded by Mayor Pro Tem Longe:
To approve the October 21, 2020 invoice in the amount of \$9,360 and approval of the City Manager authorized emergency repair of the Chester Street Parking structure elevator agreements in the amount of \$11,611.

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

Nays, None

03-062-21 Continuation of COVID-19 Business Relief

Interim HR Director/Assistant City Manager Hock reviewed the item.

Commissioner Host said he would be fine with the proposed motion as long as the gate remained down at the structures so the City could collect more data on the parking structures' use.

Commissioner Sherman said that while he valued the need for data, the revenue report included as part of this item in the agenda packet sufficiently demonstrated the current dearth of use of the City's parking system.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Nickita:
To continue the Revised Temporary Signage Regulations due to COVID-19, to continue the Revised Temporary COVID-19 Off-Season Outdoor Dining Standards, and to waive parking fees charged for monthly permit parking holders and all other fees in all parking structures until June 30, 2021. All parking

fees including but not limited to monthly permit parking fees and gate fees shall resume effective July 1, 2021.

PD Ecker confirmed for Mayor Pro Tem Longe that the regular outdoor dining standards would resume on July 1, 2021. PD Ecker confirmed for Commissioner Nickita that the Planning Board would be adding year-round outdoor seating options to their action list.

Commissioner Baller noted that the discussion after the motion was made should pertain specifically to the motion. Regarding the motion, he said he was comfortable with the first two parts but not comfortable with the third. He said it would lead to the City foregoing too much money in parking fees especially when the state might be much more open by July 1, 2021. He also said that allowing the third part of the motion did not sufficiently address the ongoing issue of the lengthy permit parking waiting list.

Public Comment

John Henke spoke as an attorney for a number of Birmingham restaurants. He said that ending the Covid-19 business relief provisions on June 30, 2021 was shortsighted and contrary to what other local municipalities were doing. He recommended that the provisions be extended at least through Fall 2021, if not through the beginning of 2022.

Interim HR Director/Assistant City Manager Hock advised the Commission that they could elect to further extend these provisions at any point if they so choose.

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

 Nays, Commissioner Baller
 Commissioner Host

Commission Discussion on items from prior meetings.

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

A. Temporary COVID-19 Outdoor Dining Resolution

Mayor Boutros acknowledged the City's receipt of the February 25, 2021 letter from Edward A. Fuller that was included in the evening's agenda packet.

Commissioner Host said he has been very disappointed to see certain Birmingham restaurants extend their outdoor seating to be in front of adjacent businesses without speaking to the other businesses' owners.

Commissioner Hoff asked if there was a way for the Commission to encourage restaurants to come to agreements regarding outdoor seating in front of their neighbors' businesses.

CM Markus said it would be most appropriate for restaurants to communicate with their neighbors about outdoor seating arrangements in the spirit of neighborliness. He acknowledged that the City's current provision as written does allow restaurants to create outdoor seating in the parking spots in front of adjacent businesses without any need for consent from the adjacent business owner. He said he would not have necessarily advised such a broad allowance had he been part of authoring the resolution.

- B. Communication from Cory "King" Holland
 - a) Communication by Stuart Sherman

City Manager Markus provided a brief overview of the correspondence received. He noted that two emails had been sent to the City by Mr. Holland for inclusion in the meeting's communications. Mr. Holland, citing his aphasia, requested a disability accommodation that included having both of his emails read into the record.

City Attorney Kucharek, having determined that Mr. Holland's request constituted a reasonable accommodation, read Mr. Holland's emails into the record.

03-063-21 Motion to Extend Meeting by 15 Minutes

Noting that the current meeting had overrun the agreed upon 10 p.m. time limit, Commissioner Baller recommended that the Commission authorize a 15 minute extension of the meeting.

MOTION: Motion by Commissioner Baller, seconded by Mayor Pro Tem Longe:
To authorize the present Commission meeting to continue until 10:15 p.m.

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

Nays, None

After the motion to extend the meeting, Commissioner Sherman offered a brief statement regarding Mr. Holland's emails.

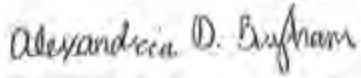
X. REPORTS

- A. Commissioner Reports - Notice to Appoint (1) Architectural Review Comm., (2) Housing Board of Appeals, (3) Brownfield Redevelopment Authority
- B. Commissioner Comments
- C. Advisory Boards, Committees, Commissions' Reports and Agendas
- D. Legislation
- E. City Staff
 - 1. 2nd Quarter Financial Report
 - 2. 2nd Quarter Investment Report
 - 3. 2020 Police Department Annual Report

INFORMATION ONLY

XI. ADJOURN

Mayor Boutros adjourned the meeting at 10:13 p.m.

A handwritten signature in cursive script that reads "Alexandria D. Bingham".

Alexandria Bingham, City Clerk
/le



MEMORANDUM

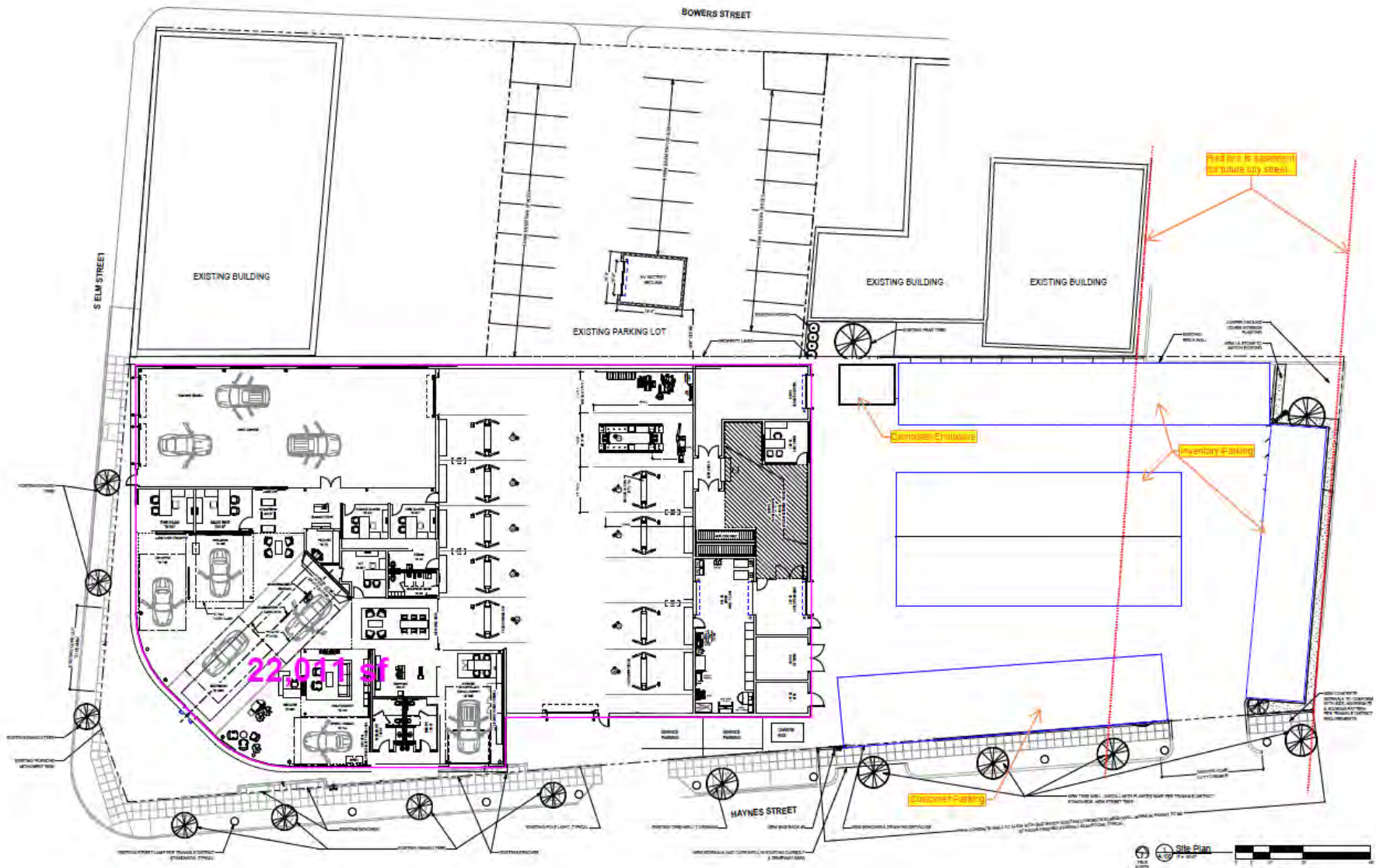
DATE: April 7th, 2021

TO: Thomas Markus, City Manager

FROM: Brooks Cowan, City Planner
Jana L. Ecker, Planning Director

SUBJECT: Status Update: 34350 Woodward and 907 – 911 Haynes Street
Lot Combination Application

City staff has continued to work with the applicant regarding the proposed lot combination application and the Triangle District Plan's Worth Street extension recommendation. Staff has met with the applicant to discuss terms of a proposed agreement for the Worth Street extension, what the lot combination and SLUP review process may look like, and to provide feedback on an updated conceptual site plan submitted by the applicant. The Planning Division completed an informal review of the conceptual site plan submitted by the applicant which proposes a 22,011 square foot auto sales and showroom. The review summarized the number of variances the conceptual plan would require and noted the requirement for a Community Impact Study. The informal review was provided to the applicant and is attached along with the conceptual site plan for review by the City Commission. Please find the attached draft agreement submitted by the applicant as well.



PRAXIS3

Fred Lavery

Fred Lavery Porsche
Birmingham, MI

Site Plan

Project No. 20114

A.100



MEMORANDUM

DATE: March 30, 2021

TO: Tom Markus, City Manager
Mary Kucharek, City Attorney

FROM: Brooks Cowan, City Planner
Jana L. Ecker, Planning Director

SUBJECT: 34350 Woodward and 907 – 911 Haynes Street
Conceptual Planning Review of Development Proposal

City Planning staff has completed a conceptual review of the attached development proposal for 34350 Woodward and 907 – 911 Haynes as discussed at our meeting with the property owner and his attorney. The development proposal includes a 22,011 square foot one story building to be used for auto sales/showroom and automotive service and repair. Planning staff was asked to identify the potential variances that may be required from the Board of Zoning Appeals for this proposal. Based on the conceptual drawing, the following variances required from the provisions of the Zoning Ordinance are as follows:

1. Building height is less than 3 stories (Section 3.08(C&D))
2. Building exceeds maximum 5ft setback from lot line (Section 3.08(C&D))
3. Building is not within 5ft of lot line for 75% of street frontage (Section 3.08(C&D))
4. Surface parking frontage exceeds 60 feet of total street frontage (Section 3.08(G)(1)(a))
5. Corner Building must be located at corner of lot (Section 3.08(G)(1)(b))
6. Parking must be setback 20 feet of building frontage (Section 3.08(G)(4))
7. Driveway shall be located to provide safe separation from street intersection and aligned with opposite side of street (Section 3.08(G)(8))
8. Building requires a pedestrian entrance every 50 feet (Section 3.09(A)(3))
9. Garage door may not be permitted on a front façade (Section 3.09(A)(4))
10. Entranceway must be inset 3ft (Section 3.09(B)(2))
11. Corner buildings must possess architectural design that details the prominent location (garage doors do not qualify) (Section 3.09(F))
12. Required customer and employee parking is 1/300 SF for sales floor area + 1 space per service stall (Section 4.46(Table A: Parking Requirements))

It should also be noted that as the proposed new building is greater than 20,000 SF, the applicant will be required to have a Community Impact Study approved by the Planning Board in conjunction with the Preliminary Site Plan review process. Final Site Plan and Design and SLUP approval will also be required from the Planning Board and the City Commission.

LMDP PROPERTY DEVELOPMENT AGREEMENT

THIS LMDP PROPERTY DEVELOPMENT AGREEMENT (this "Agreement"), dated as of this ____ day of _____, 2021 (the "Effective Date"), is made by and between **Lavery Michigan Dealership Properties No. 1, LLC, a Michigan limited liability company** ("LMDP"), whose address is 440 Lake Park Drive, Birmingham, Michigan 48009, and the **City of Birmingham, a Michigan municipal corporation** (the "City"), whose address is 151 Martin Street, P.O. Box 3001, Birmingham, Michigan 48012-3001.

RECITALS

A. LMDP owns certain real property situated in the City of Birmingham, Oakland County, Michigan, being more particularly described on attached **Exhibit A** and identified as the "Woodward Parcel" and the "Haynes Parcel."

B. The Woodward Parcel is situated to the west of and adjacent to the Haynes Parcel, is bounded by South Elm Street on the west and by Haynes Street on the south, and is zoned B2 with MU-7 Triangle District Overlay. The Haynes Parcel is bounded by the Woodward Parcel on the west and by Haynes Street on the south, and is zoned B2 with MU-5 Triangle District Overlay.

C. Automotive show rooms and sales agencies are permitted uses under the current zoning of both the Woodward Parcel and the Haynes Parcel pursuant to a Special Land Use Permit.

D. In 2010, LMDP received a Special Land Use Permit ("2010 SLUP") to operate a Porsche automotive dealership on the Woodward Parcel.

E. The City approved an amendment to the 2010 SLUP to allow for the temporary use of the Haynes Parcel as an office for the Lavery Audi sales and management team during the completion of renovations at the Lavery Audi automotive dealership located at 34602 Woodward

Avenue, Birmingham, Michigan 48009 (the "Temporary SLUP Amendment," and together with the 2010 SLUP, the "SLUP").

F. LMDP desires to amend the site plan of the Woodward Parcel in combination with the Haynes Parcel to demolish the currently-existing building on the Haynes Parcel and to accommodate changes in Porsche's dealership requirements that will impact both the Woodward Parcel and the Haynes Parcel (the "Amended Site Plan").

G. The City desires to obtain part of the Haynes Parcel in order to extend Worth St. in accordance with its Master Plan.

H. In advance of formal submittal to the City for approval of the Amended Site Plan, LMDP has applied to the City to combine the Woodward Parcel and the Haynes Parcel (the "Parcel Combination").

I. In the event that the Parcel Combination is approved, LMDP intends to proceed with formal submittal to the City for approval of the Amended Site Plan for related approval of a further amendment to the SLUP to incorporate the Haynes Parcel.

J. LMDP and the City mutually agree that the approval of the Parcel Combination, the Amended Site Plan (including any necessary variances) and the further amendment to the SLUP are necessary in order to implement LMDP's proposed plans, and while the City cannot commit to such approvals outside of the formal procedures prescribed therefor, LMDP and the City desire to enter into this Agreement for the purpose of evidencing certain agreements and understandings between the parties should formal approval of the Parcel Combination, the Amended Site Plan and the further amendment to the SLUP be issued by the City.

NOW, THEREFORE, for One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, LMDP and the City hereby agree as follows:

**ARTICLE I
INCORPORATION OF RECITALS; CONTINGENT AGREEMENT**

1. **Incorporation of Recitals.** The Recitals to this Agreement are fully incorporated in this Agreement by this reference thereto with the same force and effect as though restated in this Agreement.

2. **Contingent Agreement.** This Agreement, and the obligations of LMDP and the City hereunder, are fully contingent upon the following sequential events: (i) approval by the City Commission of the Parcel Combination; (ii) review and approval by the Planning Board of the preliminary Amended Site Plan; (iii) review and acceptance by the Planning Board of LMDP's community impact study; (iv) resolution of the potential variances identified by Planning Director Janna Ecker and City Planner Brooks Cowan in their March 30, 2021 memorandum to City Manager, Tom Markus or as otherwise may be required; (v) final approval by the City Commission of the Amended Site Plan and the further amendment to the SLUP; and (vi) issuance of a building permit and to the extent required a certificate of occupancy by the City (collectively, the "Contingencies") This Agreement shall automatically terminate and shall be of no further force or effect if the Contingencies have not been satisfied within six (6) months after the Effective Date. The City agrees to be supportive of and cooperative with LMDP in causing the Contingencies to be timely satisfied in a mutually-agreeable manner in accordance with all applicable laws and ordinances and with the intent to comply as reasonably as practicable with the visions of the Master Plan for the Triangle District.

ARTICLE II
CONVEYANCE OF PROPERTY FROM LMDP TO THE CITY

1. **Conveyance from LMDP.** Once the Contingencies have been satisfied, LMDP shall convey by covenant deed to the City that certain parcel of real property, which shall be more particularly described by surveyed legal description at or prior to the time of conveyance, but which shall generally consist of the easterly sixty (60) feet of the Haynes Parcel (the "LMDP Conveyance Parcel"), for the future use by the City in implementing the Triangle Plan relative to the northerly extension of South Worth Street from Haynes Street to Bowers Street (the "South Worth Street Extension"). LMDP and the City shall cooperate with each other as necessary to effect any parcel division that may be required to allow for the conveyance of the LMDP Conveyance Parcel to the City as a separate and distinct parcel.

2. **Reservation of LMDP Easement.** The covenant deed from LMDP to the City shall contain language reserving an exclusive, limited easement (the "LMDP Easement") in favor of LMDP and its successors and assigns, including successors-in-title to all or any portion of the combined Woodward Parcel and Haynes Parcel, over the surface of the LMDP Conveyance Parcel for purposes of providing parking for the combined Woodward Parcel and Haynes Parcel until such time that the South Worth Street Extension occurs. In the alternative to a reservation in the covenant deed, LMDP and the City may enter into a separately-recorded easement agreement to establish the LMDP Easement.

3. **Term of LMDP Easement.** The LMDP Easement shall run with the land and shall benefit LMDP and its successors and assigns until such time as the City determines, in its sole discretion, that the LMDP Conveyance Parcel is needed for future use by the City in connection with the South Worth Street Extension. The City shall give nine (9) months notice of the termination of the LMDP Easement, which notice shall be recorded with the Oakland County

Register of Deeds, and the LMDP Easement shall automatically terminate and shall be of no further force or effect on the date that is nine (9) months from the date of such recording.

4. **Taxes, Maintenance and Repair of LMDP Conveyance Parcel.** LMDP shall be responsible for any and all taxes, maintenance and repair of the surface of any improvements now or hereafter existing within the LMDP Conveyance Parcel until such time as the LMDP Easement is terminated by the City. Until such time as the LMDP Easement is terminated by the City, the City shall have no obligation to maintain and repair the surface of any improvements now or hereafter existing within the LMDP Conveyance Parcel or to contribute to the cost thereof, and such improvements shall be maintained by LMDP as required by all federal, state, local laws and policies of the City.

5. **Insurance and Indemnification.** Until such time as the LMDP Easement is terminated by the City, LMDP shall, at its sole expense, obtain insurance as required herein. 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.

A. **Commercial General Liability Insurance:** Until such time as the LMDP Easement is terminated by the City, LMDP shall procure and maintain 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; and (E) Deletion of all Explosion, Collapse and Underground (XCU) Exclusions, if applicable.

B. **Additional Insured:** The Commercial General Liability Insurance, as described above, shall include an endorsement stating the following shall be *Additional Insureds*: The City of Birmingham, including all elected and appointed officials, all employee and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof. This coverage shall be primary to any other coverage that may be available to the additional insured, without regard to any other available coverage by primary, contributing or excess.

- C. Cancellation Notice: The Commercial General Liability Insurance, as described above, shall include an endorsement stating the following: "Thirty (30) days' Advance Written Notice of Cancellation or Non-Renewal shall be sent to: Finance Director, City of Birmingham, 151 Martin Street, P.O. Box 3001, Birmingham, Michigan 48012-3001."
- D. Proof of Insurance Coverage: LMDP shall provide the City, at the time this Agreement is returned for execution, Certificates of Insurance and/or policies, acceptable to the City, as listed below.
- 1) Two (2) copies of a Certificate of Insurance for Commercial General Liability Insurance;
 - 2) If so requested, Certified Copies of all policies mentioned above will be furnished.
- E. Coverage Expiration: If any of the above coverages expire prior to such time as the LMDP Easement is terminated by the City, LMDP shall deliver renewal certificates and/or policies to the City at least (10) days prior to the expiration date.
- F. Maintaining Insurance: Upon failure of LMDP to obtain or maintain such insurance coverage until such time as the LMDP Easement is terminated by the City, the City may, at its option, purchase such coverage and invoice LMDP for the cost of obtaining such coverage. 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.

Further, indemnification shall be provided as follows:

To the fullest extent permitted by law, LMDP agrees to be responsible for any liability, defend, pay on behalf of, indemnify, and hold harmless the City, its elected and appointed officials, employees and volunteers and others working on behalf of the City, against any and all claims, demands, suits, or loss, including all costs and reasonable attorney fees connected therewith, and for any damages which may be asserted, claimed or recovered against or from the City, its elected and appointed officials, employees, volunteers or others working on behalf of the City, 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.

6. **Responsibilities of the City.** At such time as the LMDP Easement is terminated, the City shall provide assurances to LMDP or its successors in interest that:

a) **Nonconformance.** In the event that City uses the LMDP Conveyance Parcel in connection with development of the South Worth Street Extension and as a result of the City's use of said easement, creates a nonconformance of the combined Woodward Parcel and Haynes Parcel (and not created by LMDP), then the City shall not claim noncompliance by LMDP to the then-existing City codes or ordinances, including, but not limited to, the City's Zoning Ordinance.

b) **Restore Property.** The City, in performing any work with respect to the use of the LMDP Conveyance Parcel by the City in connection with the South Worth Street Extension, agrees that it shall be responsible to restore the combined Woodward Parcel and Haynes Parcel in like manner to the then-existing conditions, with the exception of restoring the lost striped surface parking spaces in the parking lot.

c) **Parking Loss.** The City understands and agrees that implementing the South Worth Street Extension will result in the loss of parking to LMDP. Any diminishment of the total number of parking spots from that total number shall be made up by the City. This parking loss is currently estimated at 24 parking spaces. The City shall make up for any loss of parking through such agreeable means as: on street permit parking, or providing permit parking in any available deck which may hereafter be constructed. The total current parking on the Woodward Parcel and the Haynes Parcel is 64 parking spaces. Any loss of

parking made up for by the City pursuant to this provision must be located within the southern portion of the Triangle District.

ARTICLE III MISCELLANEOUS

1. **Arbitration.** 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 take place in Oakland County, Michigan, and 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. 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.

2. **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of LMDP and the City and their respective successors and assigns.

3. **Notices.** Any notice required or permitted to be given under this Agreement shall be in writing and shall be sent by registered or certified U.S. Mail or by Federal Express or other nationally recognized overnight delivery service to the party entitled to receive the same at the address as stated hereafter or such alternative address as may be furnished by either party to the other in the future. Copies of such notices shall be addressed as follows:

If to the City:

City of Birmingham
151 Martin Street, P.O. Box 3001
Birmingham, Michigan 48012-3001
Attention: Tom Markus, City Manager

AND

Beier Howlett, P.C.
3001 West Big Beaver Road, Suite 200
Troy, Michigan 48084
Attention: Mary Kucharek

If to LMDP:

Lavery Michigan Dealership Properties No. 1, LLC
440 Lake Park Drive
Birmingham, Michigan 48009
Attention: Frederick A. Lavery, Jr.

AND

Clark Hill PLC
500 Woodward Avenue, Suite 3500
Detroit, Michigan 48226
Attention: Stuart M. Schwartz

4. **Governing Law.** This Agreement shall be governed by and construed exclusively in accordance with the laws of the State of Michigan.

*[Remainder of page intentionally left blank
signatures on following pages.]*

SIGNATURE PAGE TO AGREEMENT
BY AND BETWEEN LAVERY MICHIGAN DEALERSHIP
PROPERTIES NO. 1, LLC AND THE CITY OF BIRMINGHAM

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective
Date.

**LAVERY MICHIGAN DEALERSHIP
PROPERTIES NO. 1, LLC**, a Michigan limited
liability company

By: _____
Frederick A. Lavery, Jr., Member

DRAFT

SIGNATURE PAGE TO AGREEMENT
BY AND BETWEEN LAVERY MICHIGAN DEALERSHIP
PROPERTIES NO. 1, LLC AND THE CITY OF BIRMINGHAM

CITY OF BIRMINGHAM, a Michigan
municipal corporation

By: _____
Pierre Boutros, Mayor

By: _____
Alexandria Bingham, Clerk

DRAFT

Exhibit A to Agreement

Legal Description

Land situated in the City of Birmingham, Oakland County, Michigan, more particularly described as:

Woodward Parcel

Lot 3 of "Bowers Addition", according to the plat thereof recorded in Liber 8 of Plats, Page 26, Oakland County Records, except that part taken for highway; also together with:

All of Lots 4 and 5 of "Bowers Addition", according to the plat thereof recorded in Liber 8 of Plats, Page 26, Oakland County Records; also together with:

Lot 6 of "Bowers Addition", according to the plat thereof recorded in Liber 8 of Plats, Page 26, Oakland County Records, except the Easterly part, beginning at the Northeast Lot corner; thence West 1.35 feet along the Lot line; thence Southerly 65.50 feet parallel to the East Lot line; thence South 52.89 feet to the Southeast Lot corner; thence Northerly along said Lot line to the beginning.

Commonly known as 835 and 845 Haynes Street
Tax Parcel No. 19-36-281-022

Haynes Parcel

Town 2 North, Range 10 East, Section 36, BOWERS ADDITION SUBDIVISION, as recorded in Liber 8, Page 26 of Plats, Oakland County Records. Easterly part of Lot 6 beginning at Northeast lot corner, thence Westerly 1.35 feet along North lot line, thence South 01 degrees 00 minutes 00 seconds West 65.50 feet parallel to East lot line, thence Southeasterly 52.89 feet to Southeast lot corner, thence Northerly 118.42 feet along East lot line to beginning, also all of Lots 7, 8 and 9, also Westerly part of Lot 10 measures 10.14 feet along North lot line and 10.58 feet along South lot line.

Commonly known as 907 and 911 Haynes Street
Tax Parcel No. 19-36-281-030



MEMORANDUM

Planning Department

DATE: March 22nd, 2021

TO: Tom Markus, City Manager

FROM: Brooks Cowan, City Planner

APPROVED: Jana Ecker, Planning Director

SUBJECT: Lot Combination of 34350 Woodward Avenue and 907-911 Haynes Street, Parcel # 19-36-281-022 - T2N, R10E, SEC 36 BOWERS ADD LOT 3 EXC THAT PART TAKEN FOR HWY, ALL OF LOTS 4 & 5, ALSO LOT 6 EXC ELY PART BEG AT NE LOT COR, TH W 1.35 FT ALG N LOT LINE, TH SLY 65.50 FT PARA TO E LOT LINE, TH SELY 52.89 FT TO SE LOT COR, TH NLY ALG LOT LINE TO BEG and Parcel # 19-36-281-030 – T2N, R10E, SEC 36 BOWERS ADD ELY PART OF LOT 6 BEG AT NE LOT COR, TH WLY 1.35 FT ALG N LOT LINE, TH S 01-00-00 W 65.50 FT PARA TO E LOT LINE, TH SELY 52.89 FT TO SE LOT COR, TH NLY 118.42 FT ALG E LOT LINE TO BEG, ALSO ALL OF LOTS 7, 8 & 9, ALSO WLY PART OF LOT 10 MEAS 10.14 FT ALG N LOT LINE & 10.58 FT ALG S LOT LINE

INTRODUCTION:

The owner of 34350 Woodward Avenue and 907-911 Haynes Street is seeking approval for a lot combination of two parcels into one in order to accommodate additional parking for the Fred Lavery Porsche Dealership. Auto sales agencies and auto show rooms within the Triangle District's MU-5 and MU-7 Zone require a Special Land Use Permit (SLUP) which the applicant obtained on November 8th, 2010 for the 34350 Woodward parcel only.

BACKGROUND:

On January 22nd, 2021, the applicant appeared before City Commission for lot combination review. Expanding the use of an auto sales agencies in the Triangle Overlay requires SLUP approval and requires the property to be brought into conformity with the Triangle Overlay zoning standards. At the time, the applicant had yet to obtain SLUP approval for the expansion, the proposed site plan for the lot combination did not conform with the Triangle Overlay zoning standards, and the applicant had yet to obtain the necessary variances to address the non-conformities created by the proposed site plan for the lot combination.

The Planning Division suggested postponement of the proposed lot combination due to the non-conformities created by the lot combination and the required variances which had yet to be sorted out by the Planning Board, City Commission, and Board of Zoning Appeals. Postponement was also suggested because the applicant had indicated an interest in reaching an agreement with the City to meet the Worth Street extension recommendations of the Triangle District Plan, though

the suggested terms of the agreement by the applicant had yet to be finalized and staff had raised a number of issues with proposals in the applicant's suggested agreement.

The City Commission postponed a decision for the applicant's lot combination after review and discussion of the lot combination requirements, the recommendations in the Triangle District Plan, and the suggested agreement from the applicant for the Worth Street extension. City staff was then directed to work with the applicant and attempt to reach an agreement that is amenable for both parties involved.

Since then, City staff has had a number of discussions with the applicant regarding the lot combination, however both sides have yet to reach amenable terms with which staff would be comfortable moving forward.

LEGAL REVIEW:

The City Attorney is in the process of working with the applicant and reviewing terms of agreement for the proposed Worth Street extension.

FISCAL IMPACT:

The lot combination may have a fiscal impact if the City chooses to pursue the Worth Street extension as recommended in the Triangle District Plan.

PUBLIC COMMUNICATIONS:

Prior to the application being considered by the City Commission, the City Clerk's office will send out notices to all property owners and tenants within 300 feet of both 34350 Woodward Avenue and 907-911 Haynes Street seeking public comment on the proposal.

SUMMARY:

The Planning Division finds that the proposed lot combination is not consistent with the Zoning Ordinance, nor the applicable Master Plan for the Triangle District due to the expansion of a surface parking lot. The applicant has indicated an interest in reaching an agreement with the City for the Worth Street extension, however City staff have yet to reach amicable terms with the applicant. Lot combination approval is not recommended at this time.

City staff also recommends that the City Commission consider discussing their interest in pursuing the Worth Street extension recommendations from the Triangle District. If the City Commission finds that the recommendations of the Worth Street extension should be pursued, it is recommended that some direction be provided to the applicant and the Planning Board for consideration if the applicant chooses to pursue their Special Land Use Permit.

ATTACHMENTS:

- January 22nd, 2021 Memo with Lot Combination Summary
- Proposed Site Plan (Initial)
- Proposed Lot Combination Agreement from applicant
- Letter to Planning Department and Commission from applicant dated 12.17.2020
- Application
- Letter to the City dated 08.27.2020
- Proof of ownership
- Registered Land Surveys

- Relevant Planning Board and City Commission minutes for prior SLUP hearings from 2010, 2016, and 2020 related to 34350 Woodward (Formerly 835 Haynes Street)

SUGGESTED ACTION:

To postpone the proposed lot combination hearing and direct City staff to continue to work with the applicant on a mutually acceptable agreement for future review by the City Commission.

DATE: January 25th, 2021

TO: Thomas Markus, City Manager

FROM: Brooks Cowan, City Planner

APPROVED: Jana Ecker, Planning Director

SUBJECT: **Revised Report and Draft Agreement - Lot Combination of 34350 Woodward Avenue and 907-911 Haynes Street, Parcel # 19-36-281-022 - T2N, R10E, SEC 36 BOWERS ADD LOT 3 EXC THAT PART TAKEN FOR HWY, ALL OF LOTS 4 & 5, ALSO LOT 6 EXC ELY PART BEG AT NE LOT COR, TH W 1.35 FT ALG N LOT LINE, TH SLY 65.50 FT PARA TO E LOT LINE, TH SELY 52.89 FT TO SE LOT COR, TH NLY ALG LOT LINE TO BEG and Parcel # 19-36-281-030 – T2N, R10E, SEC 36 BOWERS ADD ELY PART OF LOT 6 BEG AT NE LOT COR, TH WLY 1.35 FT ALG N LOT LINE, TH S 01-00-00 W 65.50 FT PARA TO E LOT LINE, TH SELY 52.89 FT TO SE LOT COR, TH NLY 118.42 FT ALG E LOT LINE TO BEG, ALSO ALL OF LOTS 7, 8 & 9, ALSO WLY PART OF LOT 10 MEAS 10.14 FT ALG N LOT LINE & 10.58 FT ALG S LOT LINE**

INTRODUCTION:

The owner of 34350 Woodward Avenue and 907-911 Haynes Street is seeking approval for a lot combination of two parcels into one in order to accommodate additional parking for the Fred Lavery Porsche Dealership. Auto sales agencies and auto show rooms within the MU-5 and MU-7 Zone require a Special Land Use Permit (SLUP), which the applicant obtained November 8th, 2010 for the 34350 Woodward parcel only.

On December 21st, 2020, the applicant requested that the item be postponed in order to allow the City Commission more time to review information submitted by the applicant, and to allow time for the applicant to meet with the City Manager to work towards reaching an agreement with the City. After meeting with the City to discuss issues with the lot combination and the intent of the Triangle District Plan, the applicant has proposed an agreement with the City which is attached for your review.

The proposed agreement involves a number of conditions, the most relevant being that the applicant has proposed to convey 60 feet of the easternmost portion of the 907-911 Haynes property to the City in exchange for the City granting approval of the lot combination AND conveying the portion of Elm Street on the west side of the Porsche dealership to the applicant, with the City being required to pay for all pavement removal and relocation of utilities within this portion of Elm Street. A draft of the proposed agreement proffered by the applicant was forward to the City Attorney, as well as the Engineering and Planning Departments for review and consideration. **City staff have reviewed the proposed agreement and have identified a**

number of issues that require further discussion and direction from the City Commission. A full report of these issues is included below following the summary of the lot combination requirements.

BACKGROUND:

The subject properties are located on the northeast corner of the intersection at Haynes Street, Elm Street, and Woodward Avenue. The Fred Lavery Porsche Dealership is located at 34350 Woodward while a two story commercial building is located at 907-911 Haynes Street. The applicant is proposing to combine the two parcels, demolish the current building at 907-911 Haynes, and expand the surface parking lot to accommodate more parking and display space for the Fred Lavery Porsche dealership. Auto sales agencies and auto show rooms within the MU-5 and MU-7 Zone require a Special Land Use Permit (SLUP), which the applicant obtained November 8th, 2010 for the 34350 Woodward parcel only. **The applicant has yet to obtain SLUP approval for the proposed expansion of the auto sales agency.**

In 2016, the applicant received a temporary SLUP amendment to use the 907-911 Haynes property as an office for the Porsche sales and management team for one year while renovations were made to the Porsche dealership at 34350 Woodward. Conditions of approval were that the applicant could not have cars for sale parked on 907-911 Haynes Street and that the applicant provide proof of adequate parking lot landscaping. On January 22nd, 2020, the applicant appeared before the Planning Board for a SLUP amendment which included the proposed lot combination for expanding the parking lot for auto sales, but no motion was finalized due to the applicant withdrawing their application during the meeting.

At this time, the applicant has submitted an application for a lot combination and has requested to appear before the City Commission for a decision on the proposed lot combination prior to appearing before the Planning Board for a review and recommendation on the site plan and SLUP. **As noted above, the applicant has now proposed an agreement with the City in an attempt to meet the recommendations of the Triangle District Plan and obtain lot combination approval.**

The Combination of Land Parcels Ordinance (Chapter 102, Section 102-83) requires that the following standards be met for approval of a lot combination.

- (1) The Combination will result in lots or parcels of land consistent with the character of the area where the property is located, Chapter 126 of this Code for the zone district in which the property is located, and all applicable master land use plans.*

In regards to character of the area, the property is located within the City's Triangle District. The area is surrounded by a variety of uses and buildings ranging from one story to five stories in height which are mostly surrounded by surface parking.

In regards to zoning, 34350 Woodward is zoned MU-7 in the Triangle Overlay District while 907-911 Haynes Street is zoned MU-5. Both parcels are zoned B-2 in the underlying Zoning District. As previously mentioned, auto sales and auto showrooms are permitted with approval of a Special Land Use Permit in the MU-5 and MU-7 Zones. The subject property's SLUP application in 2010 was for one parcel only at 34350 Woodward and expanding the auto sales and auto showroom use requires a SLUP amendment. **The applicant appeared before the Planning Board on January 22nd, 2020 for a SLUP amendment to expand the auto showroom use, but withdrew their**

application during the meeting. Therefore, the applicant has yet to obtain SLUP approval to expand the use of the auto show room and auto sales.

Article 3, Section 3.06(A)(3) of the Zoning Ordinance states that *"Any expansion to an existing use or building that requires site plan approval from the Planning Board shall be subject to the requirements of the Triangle Overlay District and shall be brought into compliance with the requirements of the Triangle Overlay District."* **No changes to the building footprint for the Fred Lavery Porsche Dealership have been proposed. Therefore, it does not appear that the proposed site plan complies with the requirements of Triangle Overlay District.**

In regards to front yard and building frontage requirements for the Triangle Overlay District, the MU-5 and MU-7 Zones require that the building façade be built within 5 feet of the frontage line for a minimum of 75% of the street frontage length. The proposed lot combination does not indicate a building with a front setback within 5 feet for 75% of the street frontage along Elm and Haynes. **Therefore the proposed site that would be created by the lot combination does not satisfy the front yard and building frontage standards and thus is not compliant with the Triangle Overlay District requirements.**

In regards to building height requirements for the Triangle Overlay District, the MU-5 and MU-7 Zones require a minimum of three stories for building height. **The proposed lot combination indicates a one story building with surface parking only, and therefore does not satisfy the minimum building height standards and thus is not in compliance with the Triangle Overlay District requirements.**

In regards to the placement of the building and parking, Article 3.06(G)(1)(b) requires that corner lots have the building located at the corner of the lot adjacent to the intersection, and that no more than 60 feet of the frontage be occupied by parking. The proposed lot combination does not indicate a building at the corner of the lot adjacent to the intersection, nor does the proposed lot combination indicate 60 feet or less of parking along the frontage line. **Therefore, the proposed site that would be created by the lot combination does not satisfy the parking and building requirements of the Triangle Overlay District.**

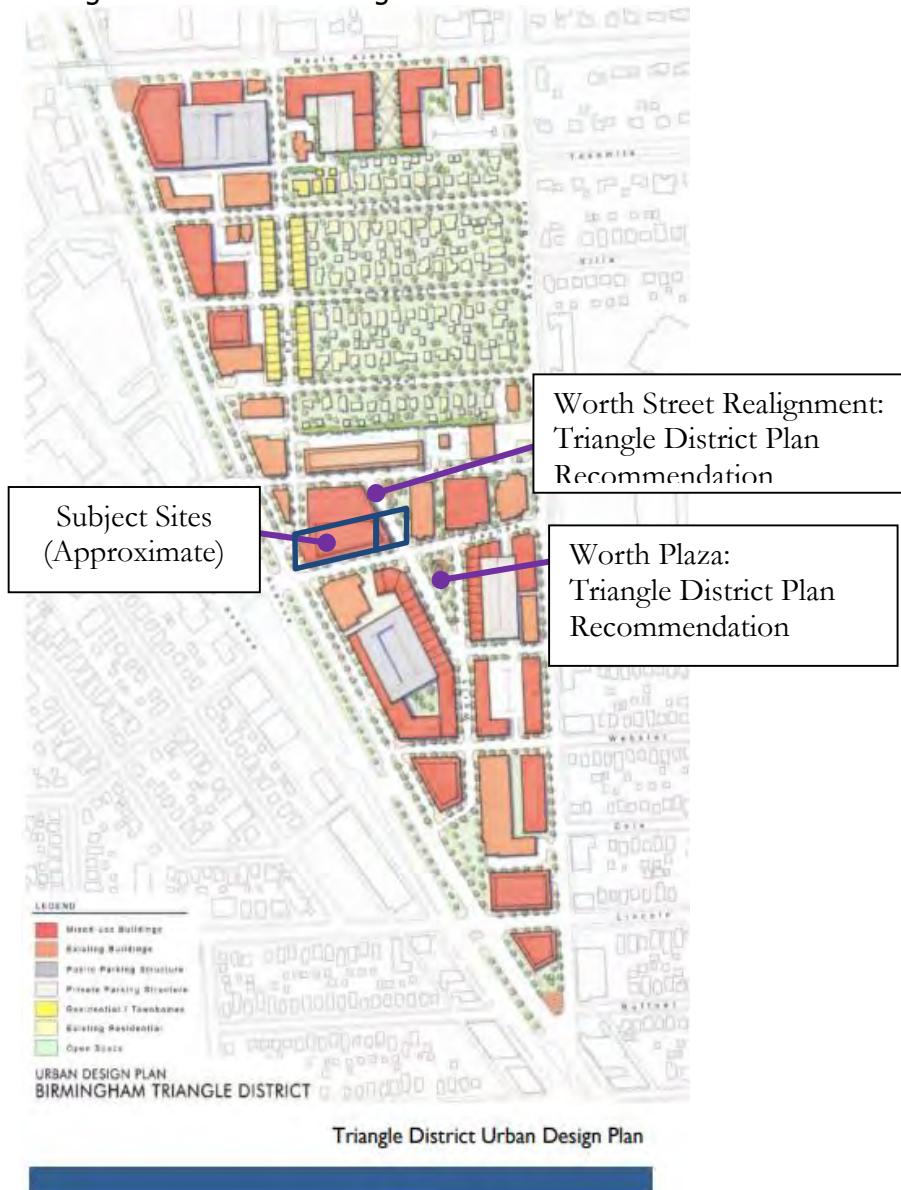
In regards to applicable Master Plans, the Triangle District Plan recommends infill development and redevelopment while advocating for an increase in building density to replace the large surface parking areas that currently exist. **The applicant's lot combination is proposed for the purpose of expanding surface parking which does not align with the recommendations of the Triangle District Plan.**

It is also of note that the Triangle District Plan recommends that Worth Street be realigned to connect Bowers Street to the proposed Worth Plaza to improve connectivity within the Triangle District as pictured below in Figure 1, which the proposed site plan does not accommodate. The Triangle District Plan recommends the realignment of Worth Street through the rear of the Walgreens parking lot as well as through the subject properties located between Haynes and Bowers included in the proposed lot combination.

In 2012, the City approved a donation of land from Walgreens to the City along Worth Street as a condition of their SLUP approval in order to work towards the recommendations to create Worth Plaza and realign Worth Street as recommended in the Triangle District Plan. The

proposed lot combination and request for site plan changes and an expansion of the SLUP at 34350 Woodward to include 907-911 Haynes provides an opportunity for the City to reach a similar agreement with the current applicant during the SLUP and lot combination process to continue the Worth Street realignment and extension north of the triangular City-owned property donated by Walgreens as a condition of their prior SLUP approval.

Figure 1: Triangle District Urban Design Plan



In regards to the Draft Master Plan which is currently under review, the plan makes no mention of extending Worth Street from Haynes to Bowers, however the renderings related to the proposed Haynes Square in the Draft Master Plan and connection to Worth Plaza suggest an infill of commercial space instead of a road extension at the applicant's site.

Accordingly, the lot combination proposal does not meet the requirements of #1.

(2) *All residential lots formed as a result of a combination shall be a maximum width of no*

more than twice the average lot width of all lots in the same zone district within 300 feet on the same street.

The proposed combination is commercial, not residential, therefore this requirement is not applicable.

- (3) *All residential lots formed as a result of a combination shall be a maximum area of no more than twice the average lot area of all lots in the same zone district within 300 feet on the same street.*

The proposed combination is commercial, not residential, therefore this requirement is not applicable.

- (4) *The combination will result in building envelopes on the combined parcels that will allow for the placement of buildings and structures in a manner consistent with the existing rhythm and pattern of development within 500 feet in all directions in the same zone district.*

The Triangle District has a variety of buildings types ranging in height and size, many of which are surrounded by large surface parking lots. **Given the existing conditions of the lower Triangle District, the proposed lot combination and building envelope appear to meet this requirement.**

- (5) *Any due or unpaid taxes or special assessments upon the property have been paid in full.*

There are no outstanding taxes due on this property. **The proposal meets this requirement.**

- (6) *The combination will not adversely affect the interest of the public or the abutting property owners. In making this determination, the City Commission shall consider, but not be limited to the following:*

a.) The location of proposed buildings or structures, the location and nature of vehicular ingress or egress so that the use or appropriate development of adjacent land or buildings will not be hindered, nor the value thereof impaired.

Based upon the initial lot combination application submitted, the proposed site plan does not appear to have a significant impact on vehicular ingress and egress, the development of adjacent buildings, or hinder the value of adjacent properties.

However, the agreement now proffered by the applicant appears to have a significant impact on vehicular ingress and egress if approved, as it proposes vacating the southern portion of Elm Street for private commercial development. The portion of Elm Street that the applicant suggests the City transfer to private ownership is the existing roadway that allows northbound traffic on Woodward to continue north on Elm Street, and allows southbound traffic on Elm Street to turn onto northbound Woodward Avenue. The proposed agreement also proposes that the applicant convey a portion of the 907 – 911 Haynes parcel to the City to provide an opportunity for the City to extend Worth Street to Bowers Street in the future, which may have a significant impact on the ingress and egress to the property and have a significant

impact on the use, development and value of adjacent properties. **Given the beginning stage of the applicant's proposal and the lack of adequate review for the SLUP by appropriate reviewing bodies, including the Engineering Department, the Planning Board, and the City Commission, it is yet to be determined whether the proposed agreement satisfies 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 initial lot combination application submitted does not appear to impact the supply of light and air to adjacent properties or the ability of the City to provide essential services. However, the lot combination agreement proposed by the applicant appears to have a significant impact on drainage structures, municipal sanitary sewer and water, and refuse disposal. The Engineering Department has indicated that there are a number of utilities located below the proposed conveyance parcel on the southern portion of Elm Street which the applicant wishes to obtain ownership of in their proposed lot combination agreement. Article III, Section 2 of the proposed agreement requires that the City give the applicant the area on South Elm Street west of the Porsche dealership, and that the City be solely responsible for costs related to removing all pavement from the road and relocating all utilities above and below the subject area. The Engineering Department has indicated this would be very expensive for the City to do so. **Therefore, the proposed agreement does not appear to satisfy this requirement.**

Based on the discussion at the City Commission meeting on December 21, 2020, the applicant has proposed to convey the easternmost 60 feet of the 907-911 Haynes Street property to the City in order to obtain approval for the lot combination and satisfy recommendations of the Triangle District Plan for the Worth Street extension. Conditions of this agreement include but are not limited to the the City approving the proposed lot combination, the City conveying the area of South Elm Street adjacent to the Porsche dealership to the applicant, and the City paying for removal of concrete and relocation of utilities above and below the subject area of South Elm Street. The applicant would gain additional commercial space in the MU-7 Zone if the South Elm Street conveyance parcel is approved. City staff have identified several issues with the numerous conditions of the agreement proposed by the applicant at this time.

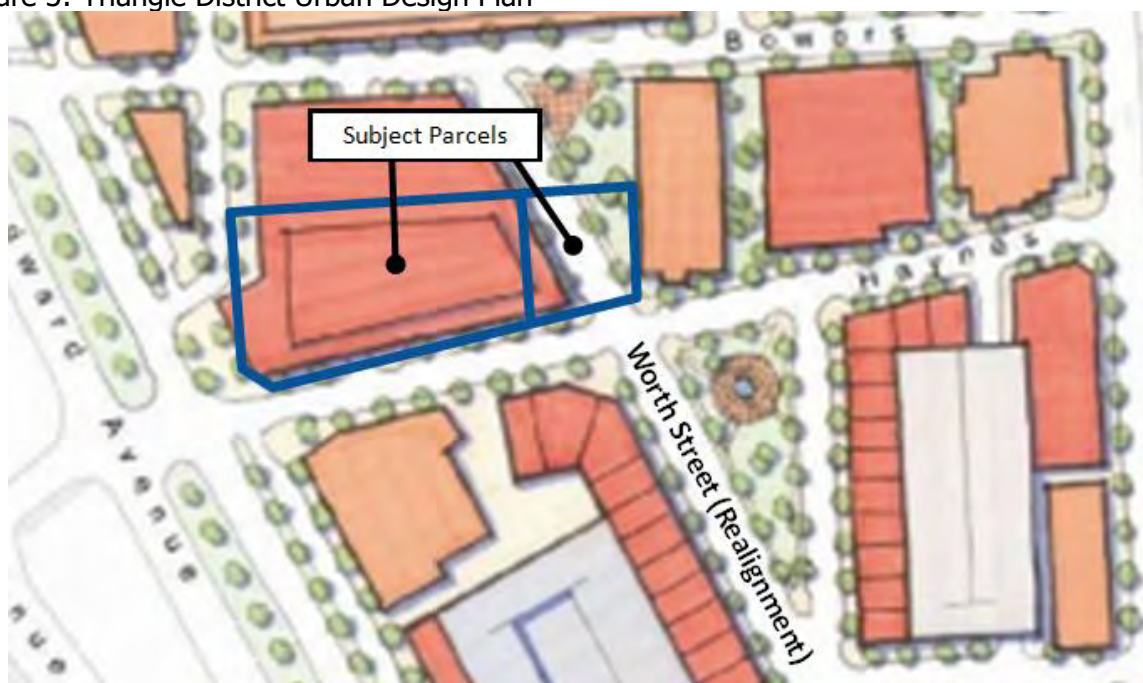
By conveying the easternmost 60 feet of the 907-911 Haynes Street property, the applicant offers the possibility of Worth Street being re-routed through the current Walgreens parking lot and through the subject property on the north of Haynes Street. The Triangle District Plan recommends that Worth Street shift to the west in order to create more room for the triangular shaped Worth Plaza. Approval of this agreement would not complete the Worth Street extension though, as an agreement would still have to be reached with the owner(s) north of the subject

property facing Bowers Street. Related parcels for the proposed lot combination are outlined in the illustration below. An image of the Triangle District Plan land use recommendations has also been included below for reference of the Worth Street extension recommendation.

Figure 2: Subject parcels highlighted below are areas involved in the proposed lot combination agreement and future Worth Street extension to Bowers Street



Figure 3: Triangle District Urban Design Plan



With regards to the proposed agreement offered by the applicant, City staff have raised a number of issues with the conditions of approval included in the agreement. Such issues include, but are not limited to, the following:

- The agreement proposes a lot combination approval before the subject properties obtain the necessary SLUP approval from the City Commission and the necessary variances from the Board of Zoning Appeals to accommodate additional surface parking for an auto show room use (Agreement Recitals H & I).
 - City staff recommends the applicant obtain a recommendation from the Planning Board on the site plan changes and SLUP and the necessary variances from the Board of Zoning Appeals prior to the City Commission making a decision on the requested lot combination.
- The agreement proposes that the applicant will pursue SLUP approval and necessary variances if the lot combination is approved, but that the proposed agreement will automatically terminate if the SLUP approval and necessary variances have not been granted within 6 months of the agreement approval, leaving the lot combination approval in place.
 - The proposed changes for South Elm Street and the impact of the proposal for the Worth Street extension will involve extensive research from the Engineering Department and traffic consultants, and may require a number of public meetings for review and public input before a final recommendation and approval may be granted. City staff does not recommend a decision on the requested lot combination until all of the relevant details can be resolved and noted on detailed and specific plans to be attached as an exhibit to the agreement, to be considered as a condition of the lot combination approval.
- The City has yet to determine if the proposed conveyance of the easternmost 60 feet of the 907-911 Haynes property provides adequate width for a road extension (Agreement Article II, Section 1).
 - Additional research and design work must be completed by both the Engineering Department and the City's traffic engineering consultants to determine if the 60' proposed will align with the piece of property to the south donated to the City by Walgreens, and whether it will be of a sufficient size. City staff does not recommend approval of the proposed agreement or lot split until this work has been completed and can be reviewed by City staff and the City Commission.
- The agreement proposes that the described portion of the South Elm Street area is to be conveyed by the City to the applicant, with the City to cover all costs and expenses related to the removal of the conveyance parcel pavement, the removal and/or relocation of all underground and overhead utilities, and restoration of any disturbed areas during such work (Article III, Section 2).
 - The Engineering Department has noted that there are large sewers and a number of utilities on the Elm Street parcel that would have to be re-routed if agreed upon and that relocating these utilities would be quite costly for the City. Additional research and design work must be

completed to determine the cost to the City. City staff does not recommend approval of the proposed agreement or lot split until this work has been completed and can be reviewed by City staff and the City Commission.

- The agreement proposes that if any non-conformities are created by the vacation of South Elm Street or the City's use of the conveyance parcel proposed on 907-911 Haynes Street, any such non-conformities for the use or development of the use shall be waived by the City (Article 3, Section 6(a)).
 - City staff does not recommend waivers of any non-conformities so created, but rather recommends review and approval of any non-conformities by the Board of Zoning Appeals as required by the City Code.
- The agreement proposes that any loss of parking spots on the applicant's property created by the Worth Street extension shall be made up by the City through such agreeable means as on-street permit parking or providing permit parking in any available deck which may hereafter be constructed (Article 3, Section 6(c)).
 - The City has not committed to the construction of any new public parking structures in the Triangle District at this time, nor should the City support the expansion of surface parking in the Triangle District which is specifically discouraged by the Triangle District Plan.

LEGAL REVIEW:

The City Attorney has reviewed the lot combination application, as well as the proposed agreement for an exchange of conveyance parcels and raised a number of issues. The lot combination agreement proposed by the applicant does not appear to benefit the long term goals of the City.

FISCAL IMPACT:

The proposed agreement from the applicant for the lot combination indicates that the City would be responsible to cover all costs and expenses related to the removal of pavement, as well as relocation of all underground and overhead utilities within the South Elm Street area proposed to be conveyed by the City to the applicant. Removing pavement and relocating all underground and overhead utilities for the subject area on South Elm Street would be very costly to the City.

PUBLIC COMMUNICATIONS:

Prior to the lot combination application being considered by the City Commission, the City Clerk's office sent out notices to all property owners and tenants within 300 feet of both 34350 Woodward Avenue and 907-911 Haynes Street seeking public comment on the proposal.

SUMMARY:

The Planning Division finds that the proposed lot combination for the purposed of demolishing a building to expand the surface parking area for Porsche is not consistent with the Zoning Ordinance, nor the applicable Master Plan for the Triangle District. The applicant has proposed an agreement with the City for a lot combination approval which attempts to satisfy the Worth Street extension recommendation of the Triangle District Plan, however City staff have raised a number of issues with the terms and conditions in the proposed agreement. Accordingly, direction from the City Commission is sought on each of the issues raised to continue the negotiation

process. In addition, direction from the City Commission is sought on the order of proceedings given the complicated and interwoven nature of the site plan changes, the SLUP amendment, lot combination and variances required. The City Commission may wish to postpone the lot combination hearing until the applicant goes through the SLUP Amendment process with the Planning Board and City Commission. Doing so would include more in depth review of the Zoning Ordinance and Triangle District Plan, allow all variances required from the Board of Zoning Appeals to be identified, and permit more public input related to the site plan changes and proposed exchange of property.

ATTACHMENTS:

- Proposed Site Plan
- Proposed Lot Combination Agreement from applicant
- Letter to Planning Department and Commission from applicant dated 12.17.2020
- Staff Report to Planning Board for SLUP Amendment
- Application for Lot Combination and Letter to the City dated 08.27.2020
- Proof of ownership
- Registered Land Surveys
- Relevant Planning Board and City Commission minutes for prior SLUP hearings from 2010, 2016, and 2020 related to 34350 Woodward (Formerly 835 Haynes Street)

SUGGESTED ACTION:

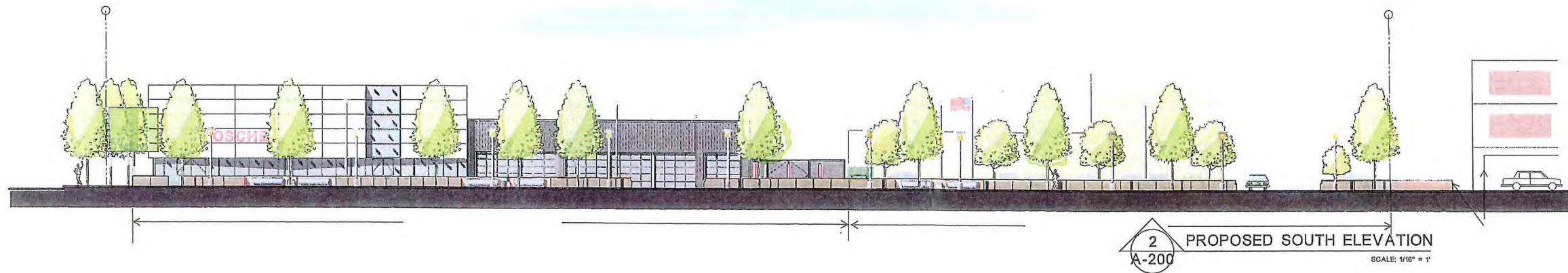
To deny the proposed lot combination of 34350 Woodward and 907-911 Haynes, parcel # 19-36-281-022 and parcel #19-36-281-030, as the resulting parcel would not be consistent with the requirements for the MU-5 and MU-7 Zones, nor consistent with the recommendations in the Triangle District Plan.

OR

To postpone the proposed lot combination hearing and direct City staff and the City Attorney to continue negotiations with the applicant based on the issues noted and to return with detailed plans on any property to be conveyed, including details and estimated costs to remove or reroute any utilities, specific dimensions of the parcel proposed as a result of the lot combination, and any other details needed to evaluate the terms and conditions offered by the applicant;

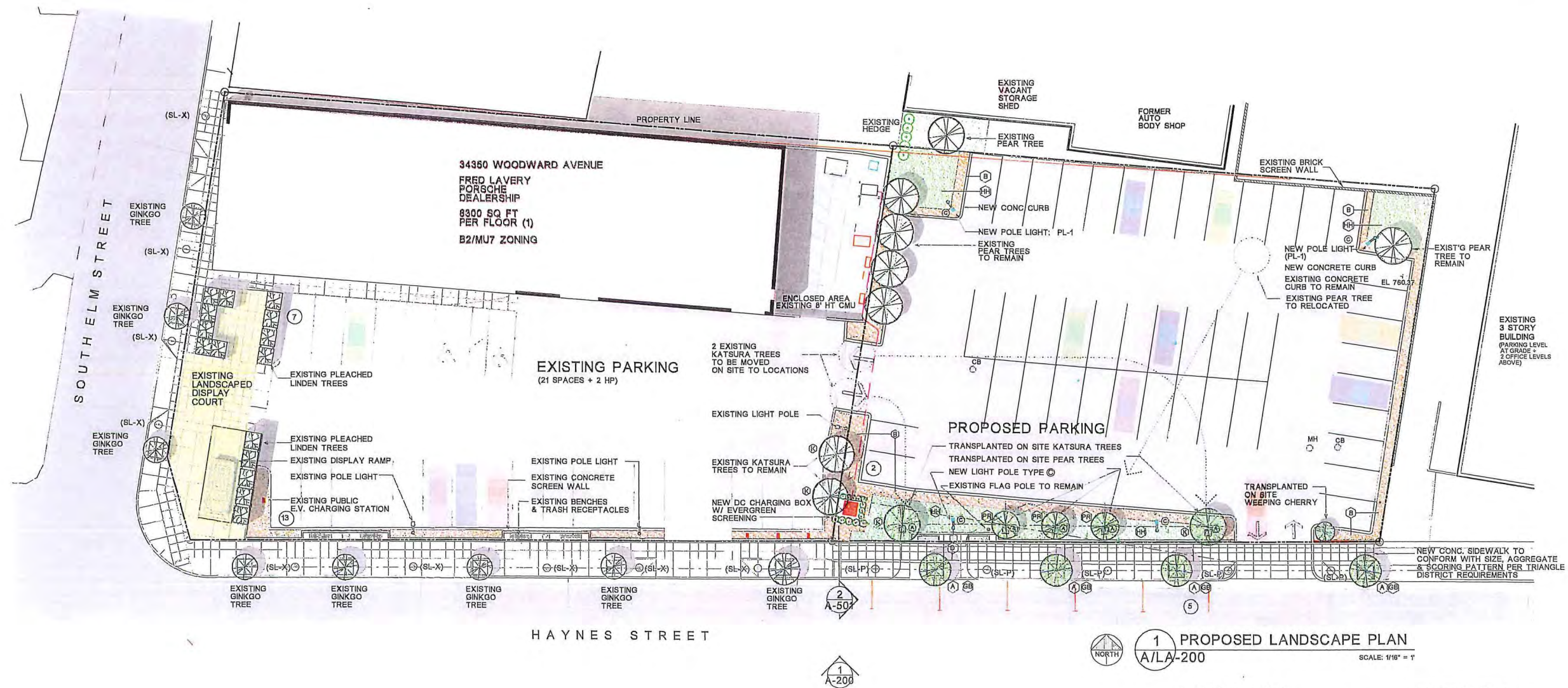
AND / OR

To postpone the proposed lot combination hearing and direct the applicant to first go through the site plan and SLUP amendment process at the Planning Board to obtain a recommendation from the board on expanding surface parking and the use of an auto sales agency within the MU-7 and MU-5 zones and findings as to whether the requirements of the Zoning Ordinance and the Triangle District Plan have been met.



Luckenbach
Ziegelman
Gardner
Architects
PLLC

555 South Old Woodward Suite 27L
Birmingham, Michigan 48009
248.644.0600



project:
Fred Lavery
PORSCHE
Special Land Use
Permit Review
835 Haynes Street
Birmingham, Michigan

sheet title:
PROPOSED

date issued:

LANDSCAPE KEY

- (A) NEW TREE WELL LOCATION
INSTALL WITH PLANTER BASE PER
TRIANGLE DISTRICT STANDARDS
Ginkgo biloba "Autumn Gold"
- (B) EXISTING STONE (1" DIA) VOLCANIC STONE
(Washed Decorative Stone: Midnight Granite)
- (D) NEW BENCHES & TRASH RECEPTACLE
- (K) KATURA TREE (Existing - Transplanted on Site)
(Cercidiphyllum japonicum)
- (P) FLOWERING PEAR TREE
(Existing - Transplanted on Site - Pyrus sp)

LIGHTING KEY

- (A) Auraltight 12V LED Micro well Uplight
- (B) Lumenation Street Light Model PT90 - 42W
TO MATCH EXISTING
(CONFORM TO TRIANGLE
DISTRICT STANDARDS)
- (C) PARKING LIGHT POLE
Cooper Lighting - Lumark
Model MPTR (match existing)

project number:
LZG 2019.0025

sheet number:

A-200

Luckenbach Ziegelman Gardner Architects PLLC

555 South Old Woodward Suite 27L
Birmingham, Michigan 48009
248.644.0600

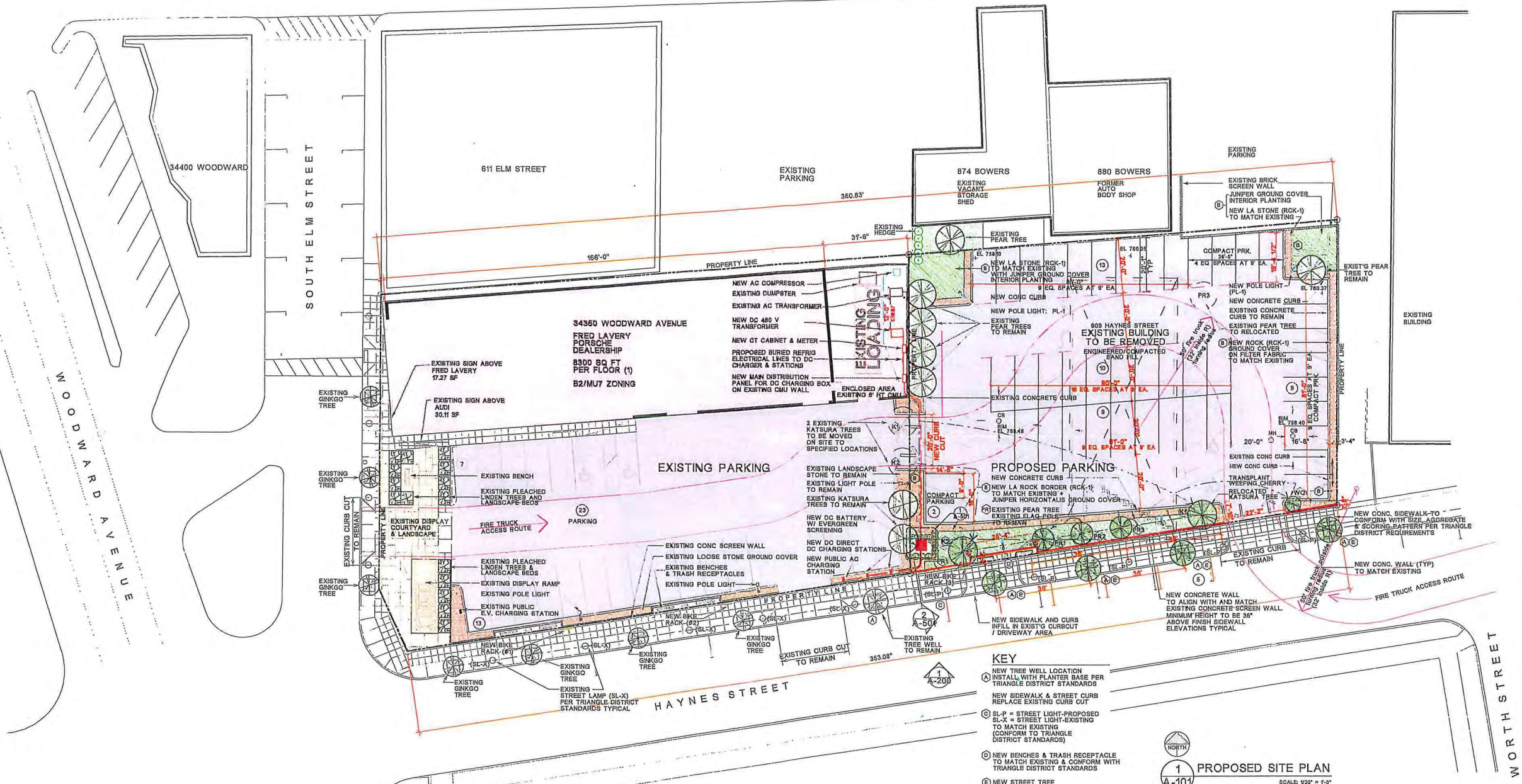
project:
**Fred Lavery
PORSCHE**
Special Land Use
Permit Review
835 Haynes Street
Birmingham, Michigan

client use:
**PROPOSED SITE PLAN
FOR SPECIAL LAND
USE PLANNING
AMENDMENT**

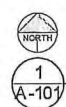
date issued:
09.23.2019 OWNER REVIEW
09.29.2019 OWNER REVIEW
10.14.2019 OWNER REVIEW
10.16.2019 OWNER REVIEW

project number:
LZG 2019.0025

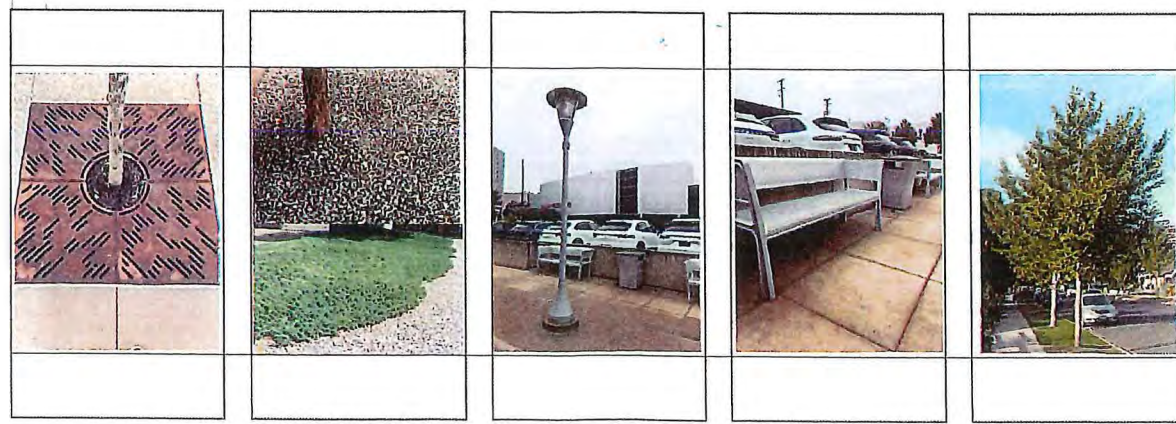
sheet number:
A-101



- KEY**
- ① NEW TREE WELL LOCATION
INSTALL WITH PLANTER BASE PER
TRIANGLE DISTRICT STANDARDS
 - ② NEW SIDEWALK & STREET CURB
REPLACE EXISTING CURB CUT
 - ③ SL-P = STREET LIGHT-PROPOSED
SL-X = STREET LIGHT-EXISTING
TO MATCH EXISTING
(CONFORM TO TRIANGLE
DISTRICT STANDARDS)
 - ④ NEW BENCHES & TRASH RECEPTACLE
TO MATCH EXISTING & CONFORM WITH
TRIANGLE DISTRICT STANDARDS
 - ⑤ NEW STREET TREE



1 PROPOSED SITE PLAN
SCALE: 1/2" = 1'-0"



① TREE WELL GRATE ② LA STONES & JUNIPER GROUND COVER ③ STREET LIGHT ④ PARK BENCH ⑤ STREET TREE (Ginkgo biloba) PROPOSED

SITE DATA	
TOTAL SITE AREA	43,848 TOTAL SQ FT
EXISTING IMPAVEMENT	6,730 SF
NEW IMPAVEMENT	2,877 SF
EXISTING PAVEMENT	18,111 (20)
NEW PAVEMENT	18,111 (20)
1 SPACE FOR EACH SERVICE BAY	3
TOTAL PARKING REQUIRED	23 SPACES
PROPOSED PARKING	45 SPACES
4500 WOODWARD ST SPACES	21 SP
809 HAYNES	45 SPACES
EXISTING PAVEMENT (IN LANDSCAPE COMPACT)	64 SPACES
TOTAL SPACES PROVIDED	64 SPACES
BIYOCLE RACKS REQUIRED / PROVIDED	1 PER EVERY 5 REQUIRED AUTO SPACES
OR 1 FOR EVERY 1000 SF BUILDING AREA	(SEE CALCULATOR)
8097 SF / 1000 SF = 276 = 3	
LANDSCAPE DATA: REQUIREMENTS & PROVISIONS	
PARK LOT AREA	34,200 SF
LANDSCAPE MINIMUM AREA REQUIRED	6% = 1640 SF
LANDSCAPE AREA PROVIDED	2875 SF
CANOPY TREES REQUIRED	1 PER 500 SF OF ROAD LA AREA
1640 SF / 500 SF = 3.28 = 3 TREES	
CANOPY TREES PROVIDED	3
CANOPY TREES RETAINED OR TRANSPLANTED ON SITE	34" DBH MINIMUM
EQUIVALENT TO 10 NEW SCANDINAVIAN TREES	30 NEW TREES FOR LA STD 430 LA-21 #10
EXISTING TO BE REMOVED	0
NEW PARKING LOT POLE LIGHT	0
EXISTING PARKING LOT POLE LIGHT	0
NEW STREET LIGHT	0 (SL-P)
EXISTING STREET LIGHT	0 (SL-X)



LEGEND

AGREEMENT

THIS AGREEMENT (this "Agreement"), dated as of this ____ day of _____, 2021 (the "Effective Date"), is made by and between **Lavery Michigan Dealership Properties No. 1, LLC, a Michigan limited liability company** ("LMDP"), whose address is 440 Lake Park Drive, Birmingham, Michigan 48009, and the **City of Birmingham, a Michigan municipal corporation** (the "City"), whose address is 151 Martin Street, P.O. Box 3001, Birmingham, Michigan 48012-3001.

RECITALS

A. LMDP owns certain real property situated in the City of Birmingham, Oakland County, Michigan, being more particularly described on attached **Exhibit A** and identified as the "Woodward Parcel" and the "Haynes Parcel."

B. The Woodward Parcel is situated to the west of and adjacent to the Haynes Parcel, is bounded by South Elm Street on the west and by Haynes Street on the south, and is zoned B2 with MU-7 Triangle District Overlay. The Haynes Parcel is bounded by the Woodward Parcel on the west and by Haynes Street on the south, and is zoned B2 with MU-5 Triangle District Overlay.

C. Automotive show rooms and sales agencies are permitted uses under the current zoning of both the Woodward Parcel and the Haynes Parcel pursuant to a Special Land Use Permit.

D. In 2010, LMDP received a Special Land Use Permit ("2010 SLUP") to operate a Porsche automotive dealership on the Woodward Parcel.

E. The City approved an amendment to the 2010 SLUP to allow for the temporary use of the Haynes Parcel as an office for the Lavery Audi sales and management team during the

completion of renovations at the Lavery Audi automotive dealership located at 34602 Woodward Avenue, Birmingham, Michigan 48009 (the "Temporary SLUP Amendment," and together with the 2010 SLUP, the "SLUP").

F. LMDP desires to amend the site plan of the Woodward Parcel in combination with the Haynes Parcel to demolish the currently-existing building on the Haynes Parcel and to accommodate changes in Porche's dealership requirements that will impact both the Woodward Parcel and the Haynes Parcel (the "Amended Site Plan").

G. In advance of formal submittal to the City for approval of the Amended Site Plan, LMDP has applied to the City to combine the Woodward Parcel and the Haynes Parcel (the "Parcel Combination").

H. In the event that the Parcel Combination is approved, LMDP intends to proceed with formal submittal to the City for approval of the Amended Site Plan for related approval of a further amendment to the SLUP to incorporate the Haynes Parcel.

I. LMDP and the City mutually agree that the approval of the Parcel Combination, the Amended Site Plan (including any necessary variances) and the further amendment to the SLUP are in the best interest of both parties and, while the City cannot commit to such approvals outside of the formal procedures prescribed therefor, LMDP and the City desire to enter into this Agreement for the purpose of evidencing certain agreements and understandings between the parties should formal approval of the Parcel Combination, the Amended Site Plan and the further amendment to the SLUP be issued by the City.

NOW, THEREFORE, for One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, LMDP and the City hereby agree as follows:

ARTICLE I
INCORPORATION OF RECITALS; CONTINGENT AGREEMENT

1. **Incorporation of Recitals.** The Recitals to this Agreement are fully incorporated in this Agreement by this reference thereto with the same force and effect as though restated in this Agreement.

2. **Contingent Agreement.** This Agreement, and the obligations of LMDP and the City hereunder, are fully contingent upon formal approval by the City of the Parcel Combination, the Amended Site Plan (including any necessary variances) and the further amendment to the SLUP (collectively, the "Contingencies"). This Agreement shall automatically terminate and shall be of no further force or effect if the Contingencies have not been satisfied within six (6) months after the Effective Date. The City agrees to reasonably cooperate with LMDP in causing the Contingencies to be timely satisfied in a mutually-agreeable manner.

ARTICLE II
CONVEYANCE OF PROPERTY FROM LMDP TO THE CITY

1. **Conveyance from LMDP.** Within a reasonable period of time after the satisfaction of all of the Contingencies, LMDP shall convey by quit claim deed to the City a certain parcel of real property, which shall be more particularly described by surveyed legal description at or prior to the time of conveyance, but which shall generally consist of the easterly sixty (60) feet of the Haynes Parcel (the "LMDP Conveyance Parcel"), for the future use by the City in connection with the northerly extension of South Worth Street from Haynes Street to Bowers Street (the "South Worth Street Extension"). LMDP and the City shall cooperate with each other as necessary to effect any parcel division that may be required to allow for the conveyance of the LMDP Conveyance Parcel to the City as a separate and distinct parcel.

2. **Reservation of LMDP Easement.** The quit claim deed from LMDP to the City shall contain language reserving an exclusive, limited easement (the "LMDP Easement") in favor of LMDP and its successors and assigns, including successors-in-title to all or any portion of the combined Woodward Parcel and Haynes Parcel, over the surface of the LMDP Conveyance Parcel for purposes of providing parking for the combined Woodward Parcel and Haynes Parcel until such time that the South Worth Street Extension occurs. In the alternative to a reservation in the quit claim deed, LMDP and the City may enter into a separately-recorded easement agreement to establish the LMDP Easement.

3. **Term of LMDP Easement.** The LMDP Easement shall run with the land and shall benefit LMDP and its successors and assigns until such time as the City determines, in its sole discretion, that the LMDP Conveyance Parcel is needed for future use by the City in connection with the South Worth Street Extension. The City shall give a one (1) year notice of the termination of the LMDP Easement, which notice shall be recorded with the Oakland County Register of Deeds, and the LMDP Easement shall automatically terminate and shall be of no further force or effect on the date that is one (1) year from the date of such recording. Notwithstanding the foregoing or anything to the contrary contained in this Agreement, the City agrees that it shall not terminate the LMDP Easement until such time that the City has terminated the City Easement pursuant to Article III, Section 3, below.

4. **Taxes, Maintenance and Repair of LMDP Conveyance Parcel.** LMDP shall be responsible for any and all taxes, maintenance and repair of the surface of any improvements now or hereafter existing within the LMDP Conveyance Parcel until such time as the LMDP Easement is terminated by the City. Until such time as the LMDP Easement is terminated by the City, the City shall have no obligation to maintain and repair the surface of any improvements

now or hereafter existing within the LMDP Conveyance Parcel or to contribute to the cost thereof, and such improvements shall be maintained by LMDP as required by all federal, state, local laws and policies of the City.

5. **Insurance and Indemnification.** Until such time as the LMDP Easement is terminated by the City, LMDP shall, at its sole expense, obtain insurance as required herein. 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.

- A. **Commercial General Liability Insurance:** Until such time as the LMDP Easement is terminated by the City, LMDP shall procure and maintain 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; and (E) Deletion of all Explosion, Collapse and Underground (XCU) Exclusions, if applicable.
- B. **Additional Insured:** The Commercial General Liability Insurance, as described above, shall include an endorsement stating the following shall be *Additional Insureds*: The City of Birmingham, including all elected and appointed officials, all employee and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof. This coverage shall be primary to any other coverage that may be available to the additional insured, without regard to any other available coverage by primary, contributing or excess.
- C. **Cancellation Notice:** The Commercial General Liability Insurance, as described above, shall include an endorsement stating the following: "Thirty (30) days' Advance Written Notice of Cancellation or Non-Renewal shall be sent to: Finance Director, City of Birmingham, 151 Martin Street, P.O. Box 3001, Birmingham, Michigan 48012-3001."
- D. **Proof of Insurance Coverage:** LMDP shall provide the City, at the time this Agreement is returned for execution, Certificates of Insurance and/or policies, acceptable to the City, as listed below.
 - 1) Two (2) copies of a Certificate of Insurance for Commercial General Liability Insurance;
 - 2) If so requested, Certified Copies of all policies mentioned above will be furnished.

- E. Coverage Expiration: If any of the above coverages expire prior to such time as the LMDP Easement is terminated by the City, LMDP shall deliver renewal certificates and/or policies to the City at least (10) days prior to the expiration date.
- F. Maintaining Insurance: Upon failure of LMDP to obtain or maintain such insurance coverage until such time as the LMDP Easement is terminated by the City, the City may, at its option, purchase such coverage and invoice LMDP for the cost of obtaining such coverage. 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.

Further, indemnification shall be provided as follows:

To the fullest extent permitted by law, LMDP agrees to be responsible for any liability, defend, pay on behalf of, indemnify, and hold harmless the City, its elected and appointed officials, employees and volunteers and others working on behalf of the City, 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, its elected and appointed officials, employees, volunteers or others working on behalf of the City, 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.

ARTICLE III CONVEYANCE OF PROPERTY FROM THE CITY TO LMDP

1. **Conveyance by City.** Within a reasonable period of time after the satisfaction of all of the Contingencies, the City shall convey by quit claim deed to LMDP a certain parcel of real property, which shall be more particularly described by surveyed legal description at or prior to the time of conveyance, but which shall generally consist of the area formed by extending the

northerly and southerly property lines of the Woodward Parcel west to the easterly right-of-way line of Woodward Avenue (the "City Conveyance Parcel"), for the future use by LMDP in connection with the development or redevelopment of the combined Woodward Parcel and Haynes Parcel. The City Conveyance Parcel shall be bounded on the west by the easterly right-of-way line of Woodward Avenue, to the north by the westerly extension of the northerly property line of the Woodward Parcel, to the east by the westerly property line of the Woodward Parcel and to the south by the westerly extension of the southerly property line of the Woodward Parcel. LMDP and the City shall cooperate with each other as necessary to effect any parcel division that may be required to allow for the conveyance of the City Conveyance Parcel to LMDP as a separate and distinct parcel and, if desired by LMDP, any parcel combination that may be required to combine the City Conveyance Parcel with the combined Woodward Parcel and Haynes Parcel.

2. **Reservation of City Easement.** The quit claim deed from the City to LMDP shall contain language reserving a non-exclusive, limited easement (the "City Easement") in favor of the public and the City, over the surface of the City Conveyance Parcel for purposes of providing for the continued use by the public and continued maintenance, repair and replacement by the City of the portion of South Elm Street and related improvements situated on the City Conveyance Parcel until such time that the City vacates such portion of South Elm Street, which vacation must also include, at the City's sole cost and expense, the removal from the City Conveyance Parcel of all pavement and the removal and relocation from the City Conveyance Parcel of all underground and overhead utilities, if any, and the restoration of the City Conveyance Parcel after such removal by finish-grading and seeding and/or sodding all disturbed

areas. In the alternative to a reservation in the quit claim deed, LMDP and the City may enter into a separately-recorded easement agreement to establish the City Easement.

3. **Term of City Easement.** The City Easement shall run with the land and shall benefit the public and the City until such time as the City determines, in its sole discretion, to vacate the portion of South Elm Street and related improvements situated on the City Conveyance Parcel. Upon the vacation of such portion, and the removal and relocation of all pavement and utilities and the restoration of the City Conveyance Parcel as set forth in Article III, Section 2, above, the City shall cause an appropriate vacating resolution to be recorded with the Oakland County Register of Deeds, whereupon the City Easement shall automatically terminate and shall be of no further force or effect. The City agrees that no easements will be reserved within the City Conveyance Parcel by the City in connection with the vacation.

4. **Maintenance and Repair of City Conveyance Parcel.** The City shall be responsible for any and all maintenance and repair of the surface of any improvements now or hereafter existing within the City Conveyance Parcel until such time as the City Easement is terminated. Until such time as the City Easement is terminated, LMDP shall have no obligation to maintain and repair the surface of any improvements now or hereafter existing within the City Conveyance Parcel or to contribute to the cost thereof, and such improvements shall be maintained by the City as required by all federal, state, local laws and policies of the City.

5. **Insurance.** Until such time as the City Easement is terminated by the City, the City shall, at its sole expense, obtain insurance as required herein. 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 LMDP.

- A. Commercial General Liability Insurance: Until such time as the City Easement is terminated by the City, the City shall procure and maintain 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) Broad Form General Liability Extensions or equivalent; and (B) Deletion of all Explosion, Collapse and Underground (XCU) Exclusions, if applicable.
 - B. Additional Insured: The Commercial General Liability Insurance, as described above, shall include an endorsement stating LMDP shall be *Additional Insured*. This coverage shall be primary to any other coverage that may be available to the additional insured, without regard to any other available coverage by primary, contributing or excess.
 - C. Cancellation Notice: The Commercial General Liability Insurance, as described above, shall include an endorsement stating the following: "Thirty (30) days' Advance Written Notice of Cancellation or Non-Renewal shall be sent to: Lavery Michigan Dealership Properties No. 1, LLC, 440 Lake Park Drive, Birmingham, Michigan 48009."
 - D. Proof of Insurance Coverage: The City shall provide LMDP, at the time this Agreement is returned for execution, Certificates of Insurance and/or policies, acceptable to LMDP, as listed below.
 - 3) Two (2) copies of a Certificate of Insurance for Commercial General Liability Insurance;
 - 4) If so requested, Certified Copies of all policies mentioned above will be furnished.
 - E. Coverage Expiration: If any of the above coverages expire prior to such time as the City Easement is terminated by the City, the City shall deliver renewal certificates and/or policies to LMDP at least (10) days prior to the expiration date.
 - F. Maintaining Insurance: Upon failure of the City to obtain or maintain such insurance coverage until such time as the City Easement is terminated by the City, LMDP may, at its option, purchase such coverage and invoice the City for the cost of obtaining such coverage. In obtaining such coverage, LMDP shall have no obligation to procure the most cost-effective coverage but may contract with any insurer for such coverage.
6. **Responsibilities of the City**. At such time, as applicable, as the LMDP Easement and the City Easement are terminated, the City shall provide assurances to LMDP or its successors in interest that:

a) Nonconformance. In the event that the vacation of South Elm Street or the use of the LMDP Conveyance Parcel by the City in connection with the South Worth Street Extension creates any nonconformance of the combined Woodward Parcel and Haynes Parcel, or the current use or development thereof, with the then-existing City codes or ordinances, including, but not limited to, the City's Zoning Ordinance, any such noncompliance shall be and is hereby waived.

b) Restore Property. The City, in performing any work with respect to the vacation of South Elm Street or the use of the LMDP Conveyance Parcel by the City in connection with the South Worth Street Extension, agrees that it shall be responsible to restore the combined Woodward Parcel and Haynes Parcel in like manner to the then-existing conditions, with the exception of restoring the lost striped surface parking spaces in the parking lot.

c) Parking Loss. The City understands and agrees that implementing the South Worth Street Extension will result in the loss of parking to LMDP. Any diminishment of the total number of parking spots from that total number shall be made up by the City. This parking loss is currently estimated at _____ parking spaces. The City shall make up for any loss of parking through such agreeable means as: on street permit parking, or providing permit parking in any available deck which may hereafter be constructed. The total current parking on the Woodward Parcel and the Haynes Parcel is _____ parking spaces. Any loss of parking made up for by the City pursuant to this provision must be located within the southern portion of the Triangle District.

ARTICLE IV MISCELLANEOUS

1. **Arbitration.** 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 take place in Oakland County, Michigan, and 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. 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.

2. **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of LMDP and the City and their respective successors and assigns; provided, however, the rights of the City hereunder are assignable by the City only if the City has received prior written consent from LMDP, which consent may be withheld at LMDP's sole discretion, in which case the City's rights shall not be assignable.

3. **Notices.** Any notice required or permitted to be given under this Agreement shall be in writing and shall be sent by registered or certified U.S. Mail or by Federal Express or other nationally recognized overnight delivery service to the party entitled to receive the same at the

address as stated hereafter or such alternative address as may be furnished by either party to the other in the future. Copies of such notices shall be addressed as follows:

If to the City:

City of Birmingham
151 Martin Street, P.O. Box 3001
Birmingham, Michigan 48012-3001
Attention: Joseph A. Valentine, City Manager

AND

Beier Howlett, P.C.
3001 West Big Beaver Road, Suite 200
Troy, Michigan 48084
Attention: Timothy J. Currier

If to LMDP:

Lavery Michigan Dealership Properties No. 1, LLC
440 Lake Park Drive
Birmingham, Michigan 48009
Attention: Frederick A. Lavery, Jr.

AND

Clark Hill PLC
500 Woodward Avenue, Suite 3500
Detroit, Michigan 48226
Attention: Stuart M. Schwartz

4. **Governing Law.** This Agreement shall be governed by and construed exclusively in accordance with the laws of the State of Michigan.

*[Remainder of page intentionally left blank
signatures on following pages.]*

SIGNATURE PAGE TO AGREEMENT
BY AND BETWEEN LAVERY MICHIGAN DEALERSHIP
PROPERTIES NO. 1, LLC AND THE CITY OF BIRMINGHAM

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective
Date.

**LAVERY MICHIGAN DEALERSHIP
PROPERTIES NO. 1, LLC**, a Michigan
limited liability company

By: _____
Frederick A. Lavery, Jr., Member

SIGNATURE PAGE TO AGREEMENT
BY AND BETWEEN LAVERY MICHIGAN DEALERSHIP
PROPERTIES NO. 1, LLC AND THE CITY OF BIRMINGHAM

CITY OF BIRMINGHAM, a Michigan
municipal corporation

By: _____
Pierre Boutros, Mayor

By: _____
Alexandria Bingham, Clerk

Exhibit A to Agreement

Legal Description

Land situated in the City of Birmingham, Oakland County, Michigan, more particularly described as:

Woodward Parcel

Lot 3 of "Bowers Addition", according to the plat thereof recorded in Liber 8 of Plats, Page 26, Oakland County Records, except that part taken for highway; also together with:

All of Lots 4 and 5 of "Bowers Addition", according to the plat thereof recorded in Liber 8 of Plats, Page 26, Oakland County Records; also together with:

Lot 6 of "Bowers Addition", according to the plat thereof recorded in Liber 8 of Plats, Page 26, Oakland County Records, except the Easterly part, beginning at the Northeast Lot corner; thence West 1.35 feet along the Lot line; thence Southerly 65.50 feet parallel to the East Lot line; thence South 52.89 feet to the Southeast Lot corner; thence Northerly along said Lot line to the beginning.

Commonly known as 835 and 845 Haynes Street

Tax Parcel No. 19-36-281-022

Haynes Parcel

Town 2 North, Range 10 East, Section 36, BOWERS ADDITION SUBDIVISION, as recorded in Liber 8, Page 26 of Plats, Oakland County Records. Easterly part of Lot 6 beginning at Northeast lot corner, thence Westerly 1.35 feet along North lot line, thence South 01 degrees 00 minutes 00 seconds West 65.50 feet parallel to East lot line, thence Southeasterly 52.89 feet to Southeast lot corner, thence Northerly 118.42 feet along East lot line to beginning, also all of Lots 7, 8 and 9, also Westerly part of Lot 10 measures 10.14 feet along North lot line and 10.58 feet along South lot line.

Commonly known as 907 and 911 Haynes Street

Tax Parcel No. 19-36-281-030

CLARK HILL

Stuart M. Schwartz
T (313) 965-8335
F (313) 309-6935
Email:SSchwartz@ClarkHill.com

Clark Hill PLC
500 Woodward Ave., Suite 3500
Detroit, MI 48226
T (313) 965-8300
F (313) 309-6935

clarkhill.com

December 17, 2020

VIA FEDERAL EXPRESS AND EMAIL

City of Birmingham
Planning Department
Attn: Ms. Jana Ecker
151 Martin St.
Birmingham, MI 48009
jecker@bhamgov.org

Re: **34350 Woodward Ave. (the “Woodward Property”) and 907-911 Haynes, Birmingham, MI 48009 (the “Haynes Property”)**

Dear Ms. Ecker:

Please let this letter serve as a supplement to Lavery Michigan Dealership Properties No. 1, LLC’s (“LMDP”) application to combine the Woodward Property and the Haynes Property. We ask that you add to the City Commission packet prior to Monday’s public hearing.

By way of background, LMDP appeared before the Planning Board on January 22, 2020 in regard to a Special Land Use Permit amendment (“SLUP”) and site plan amendment for the Woodward Property and the Haynes Property. At that time, City Planner Brooks Cowan noted that:

Although the construction of a surface parking [sic] does not appear to meet the intent of the Triangle District Plan, permitting this parking lot construction with the condition that the applicant reach an agreement with the City regarding the Worth Street realignment and extension could serve as an important step towards implementing the goals of the Triangle District Plan.

A copy of that memo is attached as **Exhibit 1**. Ultimately, Mr. Cowan recommended **approval** of LMDP’s application:

Based on a review of the site plan submitted, as well as the goals and intent of the Triangle District Plan, *the Planning Division recommends that the Planning Board RECOMMEND APPROVAL of the applicant’s request for Final Site Plan and a SLUP amendment to allow the demolition of the building at 907-911 Haynes Street* and for the property to be converted into a surface parking lot for

car sales, with the condition that the applicant reach an agreement with the City of Birmingham to comply with the goals of the Triangle District Plan, including but not limited to the accommodation of the Worth Street realignment.

Id. (emphasis added).

At the hearing on January 22, 2020, it became quickly evident that Planning Director Jana Ecker had a different view of LMDP's application. Ultimately, based on the direction in which Director Ecker was steering the conversation, LMDP decided to withdraw its application.

Thereafter, LMDP reached out to Director Ecker to discuss options relative to the Woodward Property and Haynes Property, including, without limitation, to discuss the plan for the Worth Street realignment project. Despite LMDP's best efforts, those discussions did not gain any traction and LMDP was left with no other option but to seek a lot combination, and limited its application accordingly at this time.

In response to LMDP's request for a lot combination, it appears the Planning Department is prepared to (pre) dispose of the application with a recommended denial of the same concept it previously recommended be approved. However, recently, Porsche rejected LMDP's draft plan and requested a number of revisions. Many of those revisions are not feasible at the Woodward Property and LMDP has not determined whether it will seek a modified SLUP amendment or take other action. Therefore, the factual basis for the Planning Department's memo is entirely misplaced.

Moreover, the Planning Departments proposed denial of LMDP's application is wholly inappropriate. Section 82-56 of the City of Birmingham's Code of Ordinances provides that the "planning director shall make the necessary studies and surveys of matters relating to city growth and development, advise the city manager as to the implementation of the city plan, furnish technical advice and assistance in planning and zoning matters and furnish such information and data to the city planning board, the design review board, and the historic district commission as they may require in the performance of their duties and functions." Accordingly, in recommending a denial, Director Ecker has exceeded the authority granted to her. Instead, the Planning Director should be proposing information and data to the City Commission so that it can make an informed decision. By simply recommending denial, Director Ecker has severely prejudiced LMDP's ability to have the City Commission fairly consider its request.

In addition to unduly prejudicing LMDP by recommending denial (instead of furnishing advice and information for the City Commission to make its decision), the Planning Department also has provided inaccurate information to the City Commission upon which its decision will be based regarding LMDP's future plans for the Woodward Property and the Hayne Property. **To be clear, LMDP is only seeking a lot combination at this time.** It has not reapplied for a SLUP amendment and therefore, the Planning Department's assumptions, based on LMDP's past application, is entirely misplaced. LMDP continues to evaluate options, which include, among

other things, closing the Porsche and Audi dealerships, seeking a revised SLUP amendment, and redevelopment of the combined lots. However, under all scenarios, a lot combination will be necessary and highly beneficial to the City.

LMDP also meets the standards set forth in Section 102-83 of the Ordinance relating to the combination of land parcels. With the exception of section (1), the Planning Department recognized that LMDP satisfies this standard as well. For the reasons that follow, LMDP believes that the City Commission can only conclude that a lot combination meets the standards set forth in the Ordinance:

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 regard to the character of the area, the property is located within the City's Triangle District. The area is surrounded by a variety of uses and buildings ranging from one story to five stories in height which are mostly surrounded by surface parking. The lot combination will result in a combined parcel of land that is consistent with the character of the area and will indeed, enhance the character by the removal of an outdated building, that is not code compliant, on the Haynes Property.

In regard to zoning, the Woodward Property is zoned MU-7 in the Triangle Overlay District while the Haynes Property is zoned MU-5. Both parcels are zoned B-2 in the underlying Zoning District. Auto sales and auto showrooms are permitted with approval of a Special Land Use Permit in the MU-5 and MU-7 Zones, which LMDP obtained for the Woodward Property in 2010. The lot combination will not alter any aspect of zoning compliance for these properties. Rather, by allowing a lot combination, greater possibilities exist to develop these properties in compliance with the Zoning Ordinance.

The lot combination also complies with the Master Plan, and more importantly, the draft new Master Plan for the Triangle District. On November 11, 2020, the Planning Board held a study session regarding the first draft of the Master Plan, and specifically discussed the Triangle District, and "Haynes Square," which includes the Woodward Property and the Haynes Property. In the words of the City's consultant, Matt Lambert, "the whole area is a mess." He also noted numerous instances of dangerous road conditions for pedestrians, cyclists, and drivers, including, the sharp turn off of Woodward Avenue that fronts the Woodward Property. Mr. Lambert further noted that the failure to build a parking structure in the area has held back development. Mr. Lambert stated that the current Master Plan is not working for the area, and that the City will need to relax its development standards, with the greatest relief being afforded to the Rail

District, and other relief being afforded to surrounding areas, including Haynes Square.

As it relates to mixed use development, Mr. Lambert raised a number of questions regarding retail and questioned what businesses would survive the COVID-19 pandemic. He stated that it was important to talk about housing since the United States is massively “over retail.” Based on these comments, strict compliance with the current Master Plan is infeasible and does not make sense.

Many of the Planning Board members had similar concerns. Mr. Boyle, for example, questioned the mechanisms for implementing the new Master Plan and noted that the City has failed in the past with trying to achieve compliance; specifically mentioning the lack of any parking deck solution in the Triangle District.

Despite all of these concerns, any future compliance with the Master Plan will be predicated on a combination of these lots. **As such, a lot combination clearly will result in a parcel of land consistent with the Master Plan’s land use requirements.**

(1) 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.

(2) 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.

(3) The combination will result in building envelopes on the combined parcels that will allow for the placement of buildings and structures in a manner consistent with the existing rhythm and pattern of development within 500 feet in all directions in the same zone district.

The Triangle District has a variety of buildings types ranging in height and size, many of which are surrounded by large surface parking lots and therefore, **the lot combination meets this requirement.**

(4) *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.**

(5) *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.*

A lot combination will ultimately help to improve vehicular ingress and egress should the City vacate the land in front of the Woodward Property to LMDP. It should otherwise have no impact on adjacent land and buildings. **As such, the lot combination and building envelope meet this requirement and will not have any impact on vehicular ingress or egress. It will also not hinder or impair adjacent land or buildings.**

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 flood plain or wetlands, nor adjacent to a floodplain or wetlands.

c.) *The location, size, density and site layout of any proposed structures or buildings as they may impact an adequate supply of light and air to adjacent properties and the capacity of essential public facilities such as police and fire protection, drainage structures, municipal sanitary sewer and water, and refuse disposal.*

The proposed lot combination has no impact on the supply of light and air to adjacent properties or the ability of the City to provide essential services.

In addition to meeting the requirements of the Ordinance's standard for a lot combination, a lot combination also makes sense for the City. The Worth Street realignment, parking issues, and the possible vacating of the area between the Porsche dealership and Woodward Avenue are all

City of Birmingham
Planning Department
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Page 6

issues that should be resolved in the next ten years (if not sooner). Combining the lots opens numerous opportunities for these properties, while a failure to do so can only result in higher hurdles to change any aspect of these properties. Putting in place short term solutions, while these issues are resolved, will ultimately benefit LMDP and the City.

Sincerely,

CLARK HILL PLC

/s/Stuart M. Schwartz

Stuart M. Schwartz

SMS:dem
Enclosure

cc: Mr. Brooks Cowan, City Planner (via email to bcowan@bhamgov.org)

EXHIBIT 1



MEMORANDUM

Planning Department

DATE: January 22, 2020

TO: Planning Board

FROM: Brooks Cowan, City Planner

SUBJECT: 34350 Woodward & 907-911 Haynes Street Fred Lavery Special Land Use Permit amendment (SLUP) for lot combination and site plan amendment

Executive Summary

The subject properties are located at 34350 Woodward and 907-911 Haynes Street. Both parcels are zoned B-2, General Business. 34350 Woodward is zoned MU-7 in the Triangle Overlay District while 907-911 Haynes Street is zoned MU-5. Auto sales agencies require a Special Land Use Permit to operate in the B2 District, which can be obtained as long as they meet their obligations required by the City. The applicant, Fred Lavery Company, received a Special Land Use Permit in 2010 to operate a Porsche car dealership within the B2 Zone and MU-7 Triangle District Overlay at 34350 Woodward.

In 2016, the applicant received a temporary SLUP amendment to use the Haynes property as an office for the Porsche sales and management team for one year while renovations were made to the Porsche dealership at 34350 Woodward. Conditions of approval were that the applicant could not have cars for sale parked on 907-911 Haynes Street and that the applicant provide proof of adequate parking lot landscaping. It appears as though the applicant has continued to store cars at the 907-911 Haynes location.

The applicant is proposing to demolish the two story building on Haynes Street and construct a surface parking lot to accommodate a larger fleet of cars for sale. The Birmingham Zoning Ordinance requires that the applicant obtain a Special Land Use Permit Amendment and approval from the City Commission to expand the auto sales agency use. Accordingly, the applicant will be required to obtain a recommendation from the Planning Board on the Final Site Plan and Special Land Use Permit amendment, and then obtain approval from the City Commission for the Final Site Plan and Special Land Use Permit amendment. **A lot combination will also be required to be approved by the City Commission.**

1.0 Land Use and Zoning

- 1.1 Existing Land Use – 34350 Woodward is a single story building used as a Porsche Dealership. 907-911 Haynes contains a two-story building where the first floor is unoccupied and the second floor is used as a spa.

1.2 Existing Zoning – Both properties are zoned B-2, Business-Residential. 34350 Woodward is zoned MU-7 in the Triangle Overlay District while 907-911 Haynes is zoned MU-5. The existing use and surrounding uses appear to conform to the permitted uses of each Zoning District.

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	Office	Retail/ Commercial (Walgreens)	Commercial (Goodwin & Scieszka Law)	Woodward Ave & Elm St Intersection
Existing Zoning District	B-2, General Business	B-2, General Business	B-2, General Business	B-2, General Business
Triangle Overlay Zoning District	MU-3	MU-7/MU-5	MU-5	MU-3

1.4 Proposed Use – The proposed use that would remain at 34350 Woodward is permitted within the MU-7 zoning district with a Special Land Use Permit. At this time, the applicant is requesting approval of a SLUP Amendment for 34350 Woodward to expand the use of the auto sales agency by expanding the parking lot to be used for storage and display of vehicles for sale to include the site at 907-911 Haynes Street.

2.0 Screening and Landscaping

2.1 Screening –All parking facilities must be screened in accordance with Article 4, section 4.53 of the Zoning Ordinance. A minimum 32" masonry screen wall is required. The applicant is proposing a new concrete wall to align with and match the existing concrete screen wall with a maximum height of 36" along Haynes Street. The existing brick screen wall in the northeast corner of the property is proposed to remain.

The length of the new proposed screenwall is not provided, although it appears to be longer than 50 feet. Article 4, Section 4.54(B)(5) requires a break in the screenwall every 50-100 feet. **The applicant must submit plans indicating a break in the screenwall to reduce the length of the gray concrete screening.**

The site plan also indicates a new DC battery charging box in the front of the property along Haynes Street that will be screened by Juniper Evergreens ranging from four to six feet in height.

- 2.2 Landscaping— There are no proposed landscape changes to the site at 34350 Woodward. This portion of the site plan has a landscaped display court with Pleached Linden trees along Elm Street. Changes to landscaping for 907-911 Haynes are proposed which includes a new landscaping bed along Haynes with new trees.

The size of the parking area exceeds 7,500 sq. ft. (approximately 29,000 sq ft after demolition), therefore the applicant must provide landscaping that equals 5% of the parking lot size. ($29,000 * 0.05 = 1,450$ square feet of required landscaping). The applicant has proposed 2,575 square feet of landscape coverage, thus satisfying the coverage requirement.

Article 04 section 4.20 LA-01 states that the interior planting areas shall be located in a manner that breaks the expanse of paving throughout the parking lot interior. Each interior planting area shall be at least 150 square feet in size, and not less than 8 feet in any single dimension. **The proposed landscaping is only located on the edges of the property, and does not break up the expanse of the parking lot interior. The applicant must place landscaping plantings no smaller than 150 square feet, and not less than 8 feet in any single dimension throughout the parking lot in a manner that breaks the expanse of paving throughout the parking lot interior, or obtain a variance from the Board of Zoning Appeals.**

Article 04 section 4.20 LA-01 also states there shall be at least one canopy tree for each 150 square feet or fraction thereof of interior planting area required. The applicant is required to provide 10 canopy trees ($1,450 / 150 = 10$) within the parking lot area, or obtain a variance from the Board of Zoning Appeals. The applicant has proposed 13 trees which satisfies the requirement. Seven of these trees are existing along the sides of the property which include two Katsura trees and five Pear trees. Five new trees are proposed along the front of the property which include two Pear trees and three Katsura trees while a Weeping Cherry tree will be transplanted on site.

3.0 Parking, Loading, Access, and Circulation

- 3.1 Parking – The Porsche showroom area is 5,730 square feet while the service area has three service bays. The applicant is required to provide one parking space for each 300 sq. ft. of floor area of sales room plus one space for each auto service stall, not to be used for new or used car storage. Accordingly, the applicant is required to provide a total of 22 spaces on site. The applicant has proposed a total of 66 parking spaces, with 23 parking spaces on the current 34350 Woodward site and a proposed 43 parking spaces on 907-911 Haynes. **The Zoning Ordinance requires that the 22 parking spaces required be available for employees**

and customers of the business for 34350 Woodward, and cannot be used as car storage for dealership inventory.

The applicant has also provided 3 bike racks which satisfies the Zoning Ordinance requirements of 1 for every 3000 square feet of building area.

- 3.2 Loading – The applicant has indicated there is an existing loading area on the east side of the Porsche dealership which is enclosed by an 8' fence that screens the area from the right-of-way, therefore satisfying the Zoning Ordinance requirement of one loading space for a commercial use between 5,001-20,000 square feet.

- 3.3 Vehicular Access & Circulation - Vehicular access to the Porsche dealership on 34350 Woodward has two curb cuts for ingress and egress, one on Elm Street and one on Haynes Street. The applicant has indicated one curb cut for ingress and egress at the proposed parking lot expansion on 907-911 Haynes. The site plan also indicates a two-way access drive connecting the current dealership to the proposed parking lot.

An existing curb cut on 907-911 Haynes Street will be replaced with new sidewalk and street curb installed.

- 3.4 Pedestrian Access & Circulation –Pedestrian access is via sidewalks along Haynes and Elm. A pedestrian sidewalk connects the dealership entrance to the City sidewalk on Elm Street. The site plan does not indicate a pedestrian walkway from either curb cut along Haynes Street. **The applicant must submit plans indicating a pedestrian path through the parking lot at 907-911 Haynes Street where the screen wall opening is placed.**

- 3.5 Streetscape – This site is located within the Triangle District, which states that the sidewalk environment should accommodate ample space for pedestrians, street furniture and prominent storefronts. The Plan also states that there should be ample space for sidewalk cafés, street trees, pedestrian scale lights, benches and other elements in order to create a comfortable pedestrian experience

The applicant is not proposing any changes to the existing streetscape surrounding the current Porsche dealership. The site plan indicates four new tree well locations in front of 907-911 Haynes with Ginko Biloba trees planted and tree grates per Triangle District Standards. The proposed Haynes Street frontage will be 353 feet which will require 9 total street trees, therefore the applicant has satisfied this requirement.

The site plan also indicates two new benches and a trash receptacle in front of 907-911 Haynes Street that appear to be the same type and make as the existing benches and trash receptacles in front of the dealership at 34350 Woodward. Three new bike racks along the sidewalk are also proposed.

Five new Lumenton Street Light Models PT90 pedestrian scale street lights are proposed in front of 907-911 Haynes Street to match existing street lights and conform to the Triangle District Standards.

4.0 Lighting

The applicant is not proposing any lighting changes to the current dealership at 34350 Woodward Haynes. The site plan for 907-911 Haynes indicates four new light poles to illuminate the proposed parking lot. The Proposed lights are Tru-Tribute pulse start metal halide 100-400 watt full-cutoff luminaires. Light pole plans indicate a height of 16 feet which satisfies the ordinance.

The photometric plan for the proposed parking lot indicates a foot-candle ratio of 13.63 within the circulation area which satisfies the requirements of 20 or less in Article 4, Section 4.21(F)(3).

5.0 Departmental Reports

- 6.1 Engineering Division – Engineering Division has not yet provided comments, but will do so prior to the meeting on January 22, 2020.
- 6.2 Department of Public Services – No concerns were reported.
- 6.3 Fire Department – Fire Department has not yet provided comments, but will do so prior to the meeting on January 22, 2020.
- 6.4 Police Department - No concerns were reported from the Police Dept.
- 6.5 Building Division – The additional parking spaces will require another accessible parking space be provided in addition to the two existing. One of the three will need to be van accessible.

6.0 Design Review

The applicant has proposed to remove the two-story building at 907-911 Haynes Street to make way for a 43 space surface parking lot. The parking lot will be surrounded by a concrete screenwall and additional landscaping. The parking lot will be accommodated with new AC & DC charging stations for vehicles.

No changes to the existing Porsche Dealership building at 34350 Woodward are proposed at this time. The site plan does indicate a new access drive connecting 34350 Woodward to 907-911 Haynes. See Figure 1 for an aerial of this area.

7.0 Signage Review

No changes or additions to the signage have been proposed. The applicant currently has signs advertising "Fred Lavery", "PORSCHE", a Porsche logo wall sign, and a Porsche logo ground sign.

8.0 Birmingham Triangle District

The opening paragraph for the Triangle District Plan states, *"The Triangle District is a stage for bold and distinctive architecture that creates a unique identity for the neighborhood and City. Building masses are the primary features, replacing the bleak parking lots that currently dominate the landscape"* (pg. 1).

In regards to the Development Plan Summary, *"Infill development and redevelopment is recommended to create a distinct character for the Triangle District while complementing the Downtown and surrounding neighborhoods,"* (pg. 4).

The Triangle District Plan advocates for an increase in building density to replace the large surface parking areas that currently exist. Demolishing a two-story building to make way for a larger surface parking lot appears to be counterproductive to what the Triangle District Plan recommends.

In regards to the recommended Worth Street Plaza and Worth Street realignment, the subject site faces the suggested urban plaza which is recommended to be *"... an island of activity bounded by tree-lined sidewalks and brick lined local streets, and enclosed by five to seven story buildings, (pg. 10).* **Constructing a 43-space surface parking lot to serve an expanding car dealership does not appear to meet the intent of the Triangle District Plan's vision for the spaces surrounding Worth Plaza.**

In regards to rerouting Worth Street, the *Circulation* section of the Triangle District Plan states:

*Currently Worth Street ends at Haynes Street. This prevents circulation between the Triangle District's northern and southern halves. Worth should be realigned parallel to Woodward Avenue and extended to Bowers. This will improve north/south interior connectivity with the Triangle District and better link the north and south halves of the District, which will help support redevelopment of the area. This road reconfiguration will also allow the creation of Worth Plaza in the heart of the Triangle District. The alignment of Worth Street will be through the rear of the Borders (Now Walgreens) parking lot and buildings currently located between Bowers and Haynes. **Therefore Worth Street realignment will need to be done in conjunction with the development of a parking structure and redevelopment of the properties on the north side of Haynes. The specific alignment shown on this plan is conceptual and could be varied, provided the ultimate alignment created Worth Plaza (pg. 19).***

Phase I of the Triangle District Plan states that Worth Plaza is the centerpiece of the plan and also mentions the necessity of acquiring additional roadway right-of-way stating:

There are two key improvements that will be necessary precursors to the successful implementation of Phase I. They are the realignment of Worth Street to create the Worth Plaza open space and a substantial public or public-private parking deck. The reconfiguration Worth Street requires public acquisition of additional roadway right-of-way and includes the extension of Worth Street to Bowers (pg. 26).

See Figure 2 for Triangle District Urban Design Plan.

On February 3rd, 2012, a similar situation regarding Worth Street realignment on the rear property line of Walgreens was brought to City Commission. A condition of approval for the Walgreens SLUP was that Walgreens grant a portion of property to the City for future rerouting of Worth Street. An agreement was reached between the City and the property owner, hence the triangular piece of property on the east side of Walgreens which is now owned by the City of Birmingham. See Figures 1 & 3.

The Triangle District Plan recommends acquiring additional land for the Worth Street realignment during redevelopment of the properties on the north side of Haynes which would include this subject's application. 907-911 Haynes plays a crucial role in the realignment of Worth Street and connecting Worth Street to Bowers Street as the subject site is located in the Triangle District Urban Design Plan's Worth Street right-of-way extension.

Although the construction of a surface parking does not appear to meet the intent of the Triangle District Plan, permitting this parking lot construction with the condition that the applicant reach an agreement with the City regarding the Worth Street realignment and extension could serve as an important step towards implementing the goals of the Triangle District Plan.

Figure 1: Parcel Map and Aerial Image of Subject Properties:



Figure 2: Triangle District Urban Design Plan

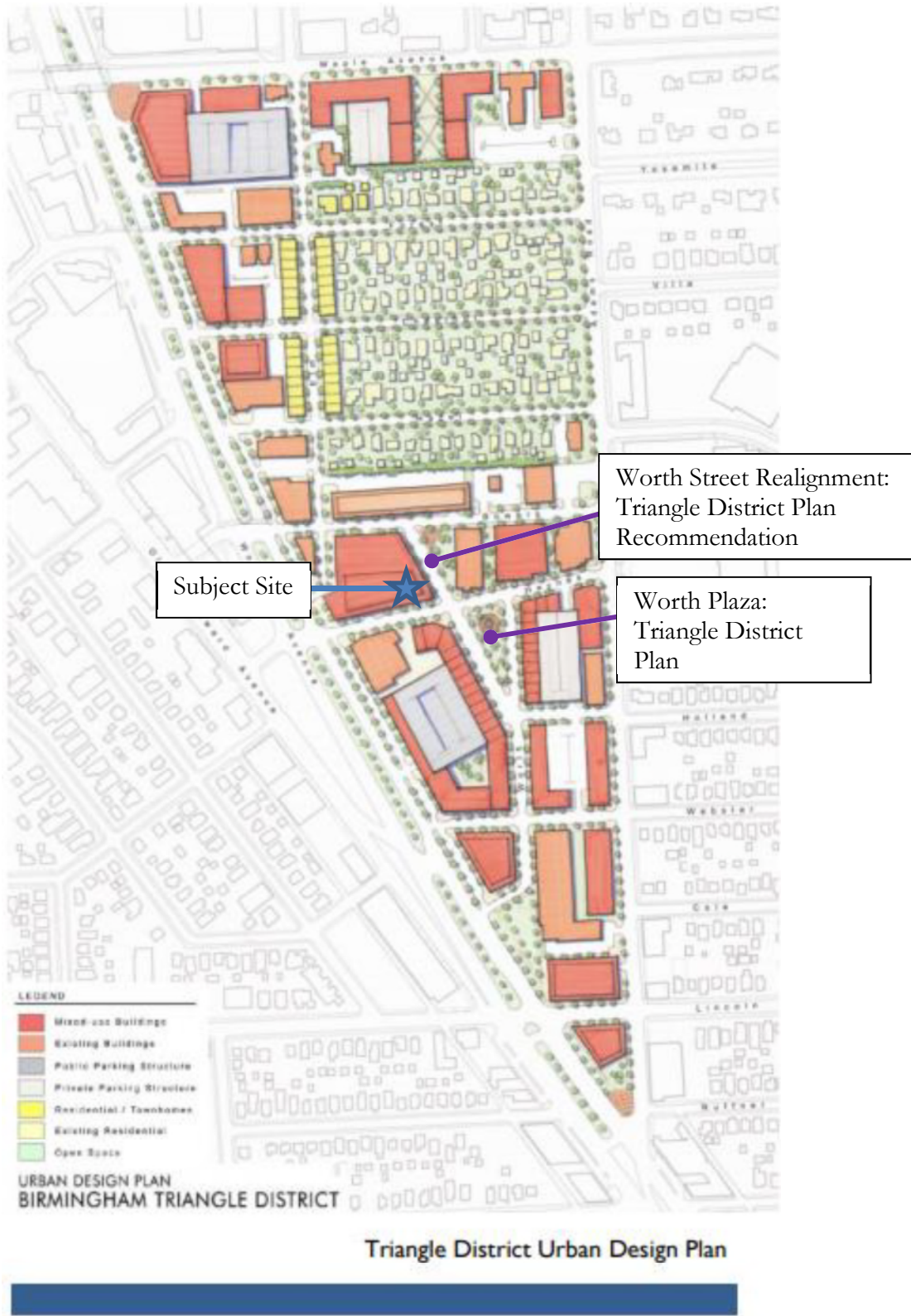


Figure 3: Current Parcel Outlines Overlaid on Triangle Design Plan



9.0 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.

10.0 Approval Criteria for Special Land Use Permits

Article 07, 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.

11.0 Suggested Action

Based on a review of the site plan submitted, as well as the goals and intent of the Triangle District Plan, the Planning Division recommends that the Planning Board RECOMMEND APPROVAL of the applicant's request for Final Site Plan and a SLUP amendment to allow the demolition of the building at 907-911 Haynes Street and for the property to be converted into a surface parking lot for car sales, with the condition that the applicant reach an agreement with the City of Birmingham to comply with the goals of the Triangle District Plan, including but not limited to the accommodation of the Worth Street realignment.

12.0 Sample Motion Language

Based on a review of the site plan submitted, as well as the goals and intent of the Triangle District Plan, the Planning Board RECOMMENDS APPROVAL of the applicant's request for Final Site Plan approval to allow the demolition of the 907-911 Haynes Street building and for the property to be converted into a surface parking lot for car sales with the following conditions;

1. The applicant reach an agreement with the City of Birmingham to comply with the goals of the Triangle District Plan, including but not limited to the accommodation of the Worth Street realignment;
2. The applicant obtain lot combination approval from City Commission; and
3. The applicant break up the expanse of the parking lot with various landscaping islands.
4. The applicant provide a break in the new screenwall;
5. The applicant provide a pedestrian pathway through the lot currently at 907-911 Haynes where the new screenwall opening is placed; and
6. The applicant ensures that 22 of the parking spaces are used for employee and customer parking only and not used for the storage of new or used vehicles for sale, lease or repair.

AND

Based on a review of the site plan submitted, as well as the goals and intent of the Triangle District Plan, the Planning Board RECOMMENDS APPROVAL of the applicant's request for a Special Land Use Permit amendment to allow the demolition of the 907-911 Haynes Street building and for the property to be converted into a surface parking lot for car sales with the following conditions;

1. The applicant reach an agreement with the City of Birmingham to comply with the goals of the Triangle District Plan, including but not limited to the accommodation of the Worth Street realignment;
2. The applicant obtain lot combination approval from City Commission; and
3. The applicant break up the expanse of the parking lot with various landscaping islands.
4. The applicant provide a break in the new screenwall;

5. The applicant provide a pedestrian pathway through the lot currently at 907-911 Haynes where the new screenwall opening is placed; and
6. The applicant ensures that 22 of the parking spaces are used for employee and customer parking only and not used for the storage of new or used vehicles for sale, lease or repair.

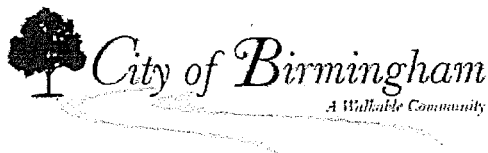
OR

Based on a review of the site plan submitted, the Planning Board RECOMMENDS DENIAL of the applicant's request for Final Site Plan and a SLUP Amendment to allow the demolition of the 907-911 Haynes Street building and for the property to be converted into a surface parking lot for car sales for the following reasons:

1. _____
2. _____
3. _____
4. _____
5. _____

OR

Motion to POSTPONE the Final Site Plan and SLUP Amendment to the City Commission for Lavery Porsche at 34350 Woodward & 907-911 Haynes, with the following conditions:



Combination of Platted Lots Application

Planning Division

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

1. Applicant

Name: Lavery Michigan Dealership No. 1, LLC
Address: _____
440 Lake Park, Birmingham, MI 48009
Phone Number: _____
Fax Number: _____
Email address: _____

2. Property Owner

Name: Lavery Michigan Dealership No. 1, LLC
Address: 440 Lake Park, Birmingham, MI 48009
Phone Number: _____
Fax Number: _____
Email address: _____

3. Applicant's Attorney/Contact Person

Name: Stuart Schwartz
Address: _____
500 Woodward Ave., Suite 3500, Detroit, MI 48226
Phone Number: 313-965-8335
Fax Number: 313-309-6935
Email address: SSchwartz@clarkhill.com

4. Project Designer/Developer

Name: PEA, Inc.
Address: _____
2430 Rochester Ct., Ste. 100, Troy, MI 48083
Phone Number: 248-689-9090
Fax Number: 248-689-1044
Email address: tshelly@peainc.com

5. Project Information

Address/Location of Property: 34350 Woodward Ave./907-911 Haynes
Sidwell #: 19-36-281-030 and 19-36-281-022
Parcel #: _____
Current Zoning: MU5/MU7 Triangle Overlay B-2

Legal Description: See attached survey

6. Required Attachments

- I. Two (2) copies of a *registered* land survey showing:
 - i. All existing and proposed platted lot lines;
 - ii. Legal descriptions of proposed lots;
 - iii. Locations of existing/surrounding structures for at least 500 ft. in all directions;
 - iv. Footprints of proposed development including proposed building envelope with front, side and rear setbacks clearly marked;

- II. One (1) digital copy of plans;
- III. Proof of ownership;
- IV. Written statement of reasons for request;
- V. A letter of authority or power of attorney in the event the application is made by a person other than the property owner;
- VI. Sketches of proposed development (*optional*);
- VII. Other data having a direct bearing on the request.
- VIII. Any other data requested by the Planning Board, Planning Department, or other City Departments.

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

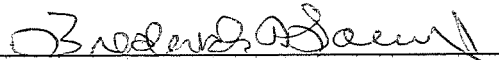
See attached summary.

(I), (We), the undersigned, do hereby request to combine lots of record in the City of Birmingham, Oakland County, Michigan.
(I), (We), do hereby swear that all of the statements, signatures, and descriptions appearing on and with this request are in all respects true and accurate to the best of (my), (our), knowledge.

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

Signature of Property Owner:  Date: 8/11/20

Print Name: Fred Lavery member

Signature of Applicant:  Date: 8/11/20

Print Name: Fred Lavery member

Office Use Only

Application#: _____ Date Received: _____ Fee: _____

Date of Approval: _____ Date of Denial: _____ Reviewed By: _____

Combination of Platted Lots

Overview of the Process:

Step 1 – Make an appointment with a city planner: A conceptual survey plan must be presented to a city planner prior to acceptance of an application for Combination of Platted Lots. This meeting is intended for information sharing and general guidance.

Step 2 – Combination of Platted Lots Application filed: An application is deemed complete upon submission and acceptance of the completed application form and all required documentation. Once an application is deemed complete, a petitioner will be scheduled for a public hearing before the Birmingham City Commission, which will be at least 15 days after submission of the application.

Step 3 – Departmental Review: Submitted survey plans are sent to appropriate departments for review. Comments are returned to the Planning Division prior to final review by Planning Division personnel.

Step 4 – Notices of Public Hearing: Notices are sent by the City Clerk to all property owners within 300' of the subject property at least 15 days prior to the City Commission Public Hearing meeting at which the application will be considered.

Step 5 – Review Report: The Planning Division reviews the application and prepares a report to the City Commission for consideration at the public hearing.

Step 6 – Public Hearing at the City Commission: Birmingham City Commission meets to consider the application for Combination of Platted Lots. Petitioner appears before City Commission to answer any questions.

Step 7 – Decision: The City Commission approves, denies, or postpones the Combination of Platted Lots application.

Combination of Platted Lots Application Requirements:

1. A complete Combination of Platted Lots application is to be submitted to the Community Development Department.
2. The application must be completed in its entirety and signed by the owners or applicants.
3. The application must be accompanied by the following supporting documentation:
 - a. Proof of ownership
 - b. Written statement of reasons for request
 - c. A letter of authority or power of attorney in the event the application is made by a person other than the property owner
 - d. Two (2) copies of a **registered** land survey showing:
 - i. All existing and proposed platted lot lines
 - ii. Legal descriptions of proposed lots
 - iii. Locations of existing/surrounding structures and setbacks for at least 500 feet in all directions
 - iv. Footprints of proposed development including proposed building envelope with front, side and rear setbacks clearly marked.
 - v. One set of survey plans mounted on display boards
 - vi. Any other data having a direct bearing on the request
4. All taxes and special assessments must be paid at the time of application.
5. All water bills must be paid at the time of application.
6. All building permits must be obtained at the time of application.
7. Signatures from the City of Birmingham Treasurer, Water Department, and Building Department are required.
8. Signatures of the property owner and applicant are required.
9. Fee: \$200.00 per parcel affected in the request, minimum fee: \$400.00

M7623124-10-19

CLARK HILL

Stuart M. Schwartz
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F (313) 309-6935
Email:SSchwartz@ClarkHill.com

Clark Hill PLC
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Detroit, MI 48226
T (313) 965-8300
F (313) 309-6935

clarkhill.com

August 27, 2020

VIA US MAIL AND E-MAIL

City of Birmingham
Planning Department
Attn: Ms. Jana Ecker
151 Martin St.
Birmingham, MI 48009
jecker@bhamgov.org

RE: 34350 Woodward Ave. (the “Woodward Property”) and 907-911 Haynes, Birmingham, MI 48009 (the “Haynes Property”)

Dear Ms. Ecker:

Clark Hill PLC is legal counsel to Lavery Michigan Dealership Properties No. 1, LLC (“LMDP”), the owner of the Woodward Property and the Haynes Property (collectively, “Lavery Properties”). Enclosed herewith, please find the following documents relative to LMDP’s application to combine the Woodward Property and Haynes Property into one lot:

1. Combination of Platted Lots Application;
2. Two (2) copies of the registered land survey;
3. Proof of ownership;
4. Sketches of the proposed development; and
5. One digital copy of plans.

In addition, this letter shall serve as LMDP’s details of the proposed development.

In 2010, LMDP received a Special Land Use Permit (“2010 SLUP”) for the Woodward Property to operate a Porsche car dealership within the B2 Zone and MU-7 Triangle District Overlay. Auto show rooms and sales agencies are permitted uses in the MU-5 and MU-7 zones of the Triangle Overlay District pursuant to a Special Land Use Permit. It is our understanding that in 2016, the Planning Board and City Commission approved an amendment to the 2010 SLUP to allow for the temporary use of the Haynes Property as an office for the Audi sales and management team, while renovations were being completed at the Lavery Audi dealership located at 34602 Woodward Ave., Birmingham, MI (the “Temporary SLUP Amendment”). Under the Temporary SLUP Amendment, LMDP could use the Haynes Property as offices for the Audi car dealership while Spa Mariana remained on the second floor. LMDP now proposes

to modify the site plan of the Woodward Property in combination with the Haynes Property pursuant to the enclosed site plan in order to accommodate changes in Porsche's dealership requirements. To be clear, at this time, LMDP is not requesting a change to the 2010 SLUP or the Temporary SLUP Amendment. Rather, LMDP is only requesting that the Lavery Properties be combined into one lot. LMDP is also not making any modifications to the Porsche dealership or the existing use associated with the Porsche dealership. Upon approval of that combination, LMDP will then seek an amendment to the 2010 SLUP as described below.

By way of background, newly enacted United States and European Union regulations require that Porsche have an all-electric (full electric and hybrid electric) fleet of vehicles by 2025. This new fleet of vehicles requires dealerships to install a new electric vehicle infrastructure. Four parking spaces at the Woodward Property will be converted for electric vehicle charging stations and will no longer be available for customer and inventory parking. Those spaces will be available to the public's use. In order to accommodate customer and inventory parking, spaces will need to be relocated to the Haynes Property. In furtherance of this plan, LMDP will be adding extensive landscaping and a screening wall along Haynes Street as more particularly depicted on the accompanying site plans and drawings.

It is no secret that parking remains a major concern throughout the City of Birmingham. As set forth in the 2007 Triangle District Urban Design Plan, "[p]arking needs to be provided more efficiently than the current configuration of disjointed surface parking lots. Redevelopment should incorporate multi-level parking structures and maximize the use of on-street parking. More efficient use of shared parking facilities will allow for redevelopment that is more pedestrian oriented and less dominated by parking lots." "A more efficient means of accommodating parking is needed in the Triangle District. In the short term, a shared parking program may reduce parking demand. As the Triangle District redevelops, this plan recommends a managed parking system with a combination of parking on-street, in structures and in limited surface lots to ensure that convenient parking is provided to the uses with the greatest demand and that there is efficient use of land. ***Construction of a parking structure is an imperative element of the plan and should be implemented during the first phase.***" (emphasis added). Unfortunately, to date, the City has not constructed a parking structure. After more than a decade since this plan was created, there is no managed parking system for the Triangle System, no parking garage, and no public plans to implement a managed parking system.

LMPD's proposal is meant as a short-term measure until the City can implement the vision set forth in the Triangle District Urban Design Plan, build a parking garage and implement a managed parking system. The use of the combined lots is an appropriate place-holder that will cause the demolition of a dilapidated building and the beautification of the Haynes Property. It is not possible and would not be prudent to redevelop these lots without adequate parking capacity. By approving this lot combination, the land will remain available for future development in accordance with the Triangle District Plan.

August 27, 2020
Page 3

Please schedule this request for the earliest available hearing. If you need any additional information or if you would like to discuss, do not hesitate to contact me.

Sincerely,

CLARK HILL PLC

/s/Stuart M. Schwartz

Stuart M. Schwartz

SMS:at
Enclosure

cc: Mr. Brooks Cowan, City Planner (via email to bcowan@bhamgov.org)

OAKLAND COUNTY TREASURER'S CERTIFICATE
This is to certify that there are no delinquent property
taxes as of this date owed to our office on this property.
No representation is made as to the status of any taxes,
tax liens or liens owed to any other entities.

MAY 15 2015

1.00

ANDREW E. MEISNER, County Treasurer
Sec 135, Act 206, 1993 as amended

LIBER 48188 PAGE 142
\$22.00 DEED - COMBINED
\$4.00 REMONUMENTATION
\$17,200.00 TRANSFER TX COMBINED
05/18/2015 03:32:24 PM RECEIPT# 56415
PAID RECORDED - Oakland County, MI
Lisa Brown, Clerk/Register of Deeds

STATE OF
MICHIGANREAL ESTATE
TRANSFER TAX

OAKLAND
05/18/2015
56415

\$2,200.00 CO
\$15,000.00 ST
001002777

★
★
★
★
★
★

WARRANTY DEED

THEODORE N. MITCHELL AND KATHY MITCHELL, husband and wife,
GREGORY MITCHELL AND ATHINA MITCHELL, husband and wife, AND MARK
MITCHELL AND MARTHA MITCHELL, husband and wife (collectively, "Grantor"),
whose address is 339 N. Center Street, Northville, Michigan 48167 ("Grantor"),
conveys and warrants to Lavery Michigan Dealership Properties *Michigan limited
liability company ("Grantee"), whose address is 33583 Woodward Ave. Birmingham *the
premises situated in the City of Birmingham, Oakland County, Michigan, more
specifically described as: **HI 48009

*No. 1, LLC, a Michigan limited liability company

See Exhibit A hereto

for the sum set forth on the Real Estate Transfer Tax Valuation Affidavit filed herewith,
subject only to the exceptions set forth on Exhibit B hereto.

If the land being conveyed is unplatted, the following is deemed to be included:

Grantor grants to Grantee the right to make all division(s) under
Section 108 of the Land Division Act, Act No. 288 of the Public Acts of
1967, as amended.

This property may be located within the vicinity of farmland or a
farm operation. Generally accepted agricultural and management
practices which may generate noise, dust, odors, and other associated
conditions may be used and are protected by the Michigan Right to Farm
Act.

Dated: April 30, 2015

OK-LB

SP
A
Cert

[SIGNATURES BEGIN ON NEXT PAGE]

Warranty Deed

1508076

26

RECEIVED
OAKLAND COUNTY
REGISTER OF DEEDS
2015 MAY 13 AM 10:59

GRANTOR:

Theodore N. Mitchell

Theodore N. Mitchell

Kathy Mitchell

Kathy Mitchell, his wife

Gregory Mitchell

Gregory Mitchell

Athina Mitchell

Athina Mitchell, his wife

Mark Mitchell

Mark Mitchell

Martha Mitchell

Martha Mitchell, his wife

STATE OF MICHIGAN

COUNTY OF OAKLAND

ss.

The foregoing instrument was acknowledged before me in OAKLAND County, Michigan, this 16 day of June, 2010, by Theodore N. Mitchell and Kathy Mitchell, his wife.

Sandra J. Melki

Print name: Sandra J. Melki

Notary Public

State of Michigan, County of _____

My commission expires _____

Acting in the County of _____

Sandra J Melki
Notary Public of Michigan
Oakland County
Expires 05/13/2013
Acting in the County of <u>OAKLAND</u>

Warranty Deed

STATE OF MICHIGAN)
COUNTY OF Oakland) ss.

The foregoing instrument was acknowledged before me in Oakland County, Michigan, this 6th day of June, 2010, by Gregory Mitchell and Athina Mitchell, his wife.

Sandra J. Meeki
Print name: Sandra J. Meeki
Notary Public

State of Michigan, County of _____
My commission expires _____
Acting in the County of _____

Sandra J Meeki Notary Public of Michigan Oakland County Expires 05/13/2013 Acting in the County of <u>OAKland</u>

STATE OF MICHIGAN)
COUNTY OF Oakland) ss.

The foregoing instrument was acknowledged before me in OAKland County, Michigan, this 10th day of June, 2010, by Mark Mitchell and Martha Mitchell, his wife.

Sandra J. Meeki
Print name: Sandra J. Meeki
Notary Public

State of Michigan, County of _____
My commission expires _____
Acting in the County of _____

Sandra J Meeki Notary Public of Michigan Oakland County Expires 05/13/2013 Acting in the County of <u>OAKland</u>

Drafted by and when recorded return to:
Howard N. Luckoff, Esq.
Honigman Miller Schwartz and Cohn LLP
2290 First National Building
660 Woodward Avenue
Detroit, MI 48226

Send subsequent tax bills to: Grantee

Recording Fee: \$ _____

Transfer Tax: See Real Estate Transfer Tax Valuation Affidavit

Warranty Deed

EXHIBIT A

LEGAL DESCRIPTION

Land situated in the City of Birmingham, Oakland County, Michigan, more particularly described as:

Lot 3 of "Bowers Addition", according to the plat thereof recorded in Liber 8 of Plats, Page 26, Oakland County Records, except that part taken for highway; also together with:

All of Lots 4 and 5 of "Bowers Addition", according to the plat thereof recorded in Liber 8 of Plats, Page 26, Oakland County Records; also together with

Lot 6 of "Bowers Addition", according to the plat thereof recorded in Liber 8 of Plats, Page 26, Oakland County Records, except the Easterly part, beginning at the Northeast Lot corner; thence West 1.35 feet along the Lot line; thence Southerly 65.50 feet parallel to the East Lot line; thence South 52.89 feet to the Southeast Lot corner; thence Northerly along said Lot line to the beginning.

Sidwell #: 19-36-281-022
Commonly Known As: 835 and 845 Haynes Street

EXHIBIT B

EXCEPTIONS

1. Taxes and assessments for the year 2010 and thereafter which constitute a lien on the Property but are not yet due and payable.
2. Highway Easement recorded in Liber 53, Page 355 of Miscellaneous Records, Oakland County Records, Michigan.

OAKLAND.1841170.1

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

JUN 06 2014

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

1.00

00-1862

LIBER 47102 PAGE 586
\$19.00 DEED - COMBINED
\$4.00 REMONUMENTATION

06/06/2014 03:17:34 PM RECEIPT# 53438
PAID RECORDED - Oakland County, MI
Lisa Brown, Clerk/Register of Deeds

COVENANT DEED

Agim Bardha and Sheriban Bardha, husband and wife (collectively, "Grantor"), whose address is 550 Bates, Birmingham, Michigan 48009, hereby sells, conveys, grants and bargains to Lavery Michigan Dealership Properties No. 1, LLC, a Michigan limited liability company ("Grantee"), whose address is 440 Lake Park Drive, Birmingham, Michigan 48009, the premises situated in the City of Birmingham, Oakland County, Michigan, more specifically described as:

See Exhibit A hereto

for the sum set forth on the Real Estate Transfer Tax Valuation Affidavit filed herewith.

Grantor, for itself, its successors and assigns, covenants, grants, bargains, and agrees to and with Grantee, its successors and assigns, that, subject to the exceptions set forth on Exhibit B hereto, Grantor has not done, committed or knowingly suffered to be done or committed any act, matter, or thing whatsoever, whereby the premises hereby granted, or any part thereof, is, or shall or may be, charged or encumbered in title, estate or otherwise.

If the land being conveyed is unplatted, the following is deemed to be included:

Grantor grants to Grantee the right to make all division(s) under Section 108 of the Land Division Act, Act No. 288 of the Public Acts of 1967, as amended.

This property may be located within the vicinity of farmland or a farm operation. Generally accepted agricultural and management practices which may generate noise, dust, odors, and other associated conditions may be used and are protected by the Michigan Right to Farm Act.

[SIGNATURES ON NEXT PAGE]

OK = LG

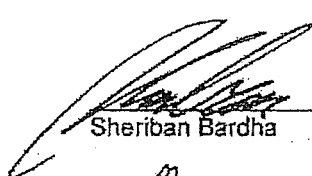
RECEIVED
OAKLAND COUNTY
REGISTER OF DEEDS
2014 JUN -6 PM 3:17

REVENUE TO BE AFFIXED
AFTER RECORDING


Covenant Deed
Page 1 of 2

**SIGNATURE PAGE TO COVENANT DEED FROM
SHERIBAN AND AGIM BARDHA TO LAVERY MICHIGAN DEALERSHIP
PROPERTIES NO. 1, LLC**

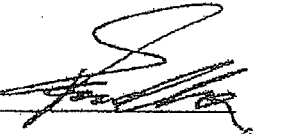
GRANTOR:



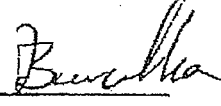
Sheriban Bardha



Agim Bardha



Agim Bardha

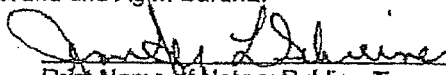


Agim Bardha

Dated as of June 2, 2014

STATE OF MICHIGAN)
) SS.
COUNTY OF OAKLAND)

This instrument was acknowledged before me in Oakland County, Michigan, on the 2nd of June, 2014, by Sheriban Bardha and Agim Bardha.



Print Name of Notary Public: Jennifer L. Schreiner
Notary Public, State of Michigan, County of Oakland
My commission expires: 4/14/20
Acting in the County of Oakland

~~Drafted by and when recorded return to:~~

Sarah Baumgartner, Esq.
Honigman Miller Schwartz and Cohn LLP
660 Woodward Avenue
2290 First National Building
Detroit, MI 48226-3506

When Recorded Return to:

Title Source, Inc. -
Commercial Team
662 Woodward Avenue
Detroit, MI 48226
TSI#: 58767941

Send subsequent tax bills to: Grantee

Recording Fee: \$ _____

Transfer Tax: See Real Estate Transfer Tax Valuation Affidavit

Covenant Deed
Page 2 of 2

EXHIBIT A - LEGAL DESCRIPTION

Tax ID Number(s): 19-36-281-030

Land Situated in the City of Birmingham in the County of Oakland in the State of MI

Town 2 North, Range 10 East, Section 36, BOWERS ADDITION SUBDIVISION, as recorded in Liber 8, Page 26 of Plats, Oakland County Records. Easterly part of Lot 6 beginning at Northeast lot corner, thence Westerly 1.35 feet along North lot line, thence South 01 degrees 00 minutes 00 seconds West 65.50 feet parallel to East lot line, thence Southeasterly 52.89 feet to Southeast lot corner, thence Northerly 118.42 feet along East lot line to beginning, also all of Lots 7, 8 and 9, also Westerly part of Lot 10 measures 10.14 feet along North lot line and 10.58 feet along South lot line.

Client Reference: 907 & 911 Haynes St., Birmingham, MI 48009

EXHIBIT B

EXCEPTIONS

1. Lease dated June 3, 2010 between Sheriban and Agim Bardha and Spa Mariana, LLC, successor in interest to Corpo Chair Massage, LLC.

CERTIFICATE OF SURVEY
ORIGINAL PARCEL CONFIGURATION

LEGAL DESCRIPTION
(Per Survey Oakland)

19-36-281-030
T2N, R10E, SEC 36 BOWERS ADD ELY PART OF LOT 6 BEG AT NE LOT COR, TH
WLY 1.35 FT ALG N LOT LINE, TH S 01-00-00 W 65.50 FT PARA TO E LOT LINE,
TH SELY 52.89 FT TO SE LOT COR, TH NLY 118.42 FT ALG E LOT LINE TO BEG,
ALSO ALL OF LOTS 7, 8 & 9, ALSO WLY PART OF LOT 10 MEAS 10.14 FT ALG N
LOT LINE & 10.58 FT ALG S LOT LINE

LEGAL DESCRIPTION
(Per Survey Oakland)

19-36-281-022
T2N, R10E, SEC 36 BOWERS ADD LOT 3 EXC THAT PART TAKEN FOR HWY, ALL OF
LOTS 4 & 5, ALSO LOT 6 EXC ELY PART BEG AT NE LOT COR, TH W 1.35 FT ALG
N LOT LINE, TH SLY 65.50 FT PARA TO E LOT LINE, TH SELY 52.89 FT TO SE LOT
COR, TH NLY ALG LOT LINE TO BEG



PEA, Inc.

2430 Rochester Ct, Ste 100
Troy, MI 48083-1872
t: 248.689.9090
f: 248.689.1044
www.peainc.com

CLIENT:
Lavery Michigan Dealership Properties No. 1, LLC
909 HAYNES STREET
BIRMINGHAM, MICHIGAN 48009

SCALE: —

JOB No: 2019-344

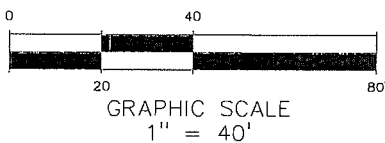
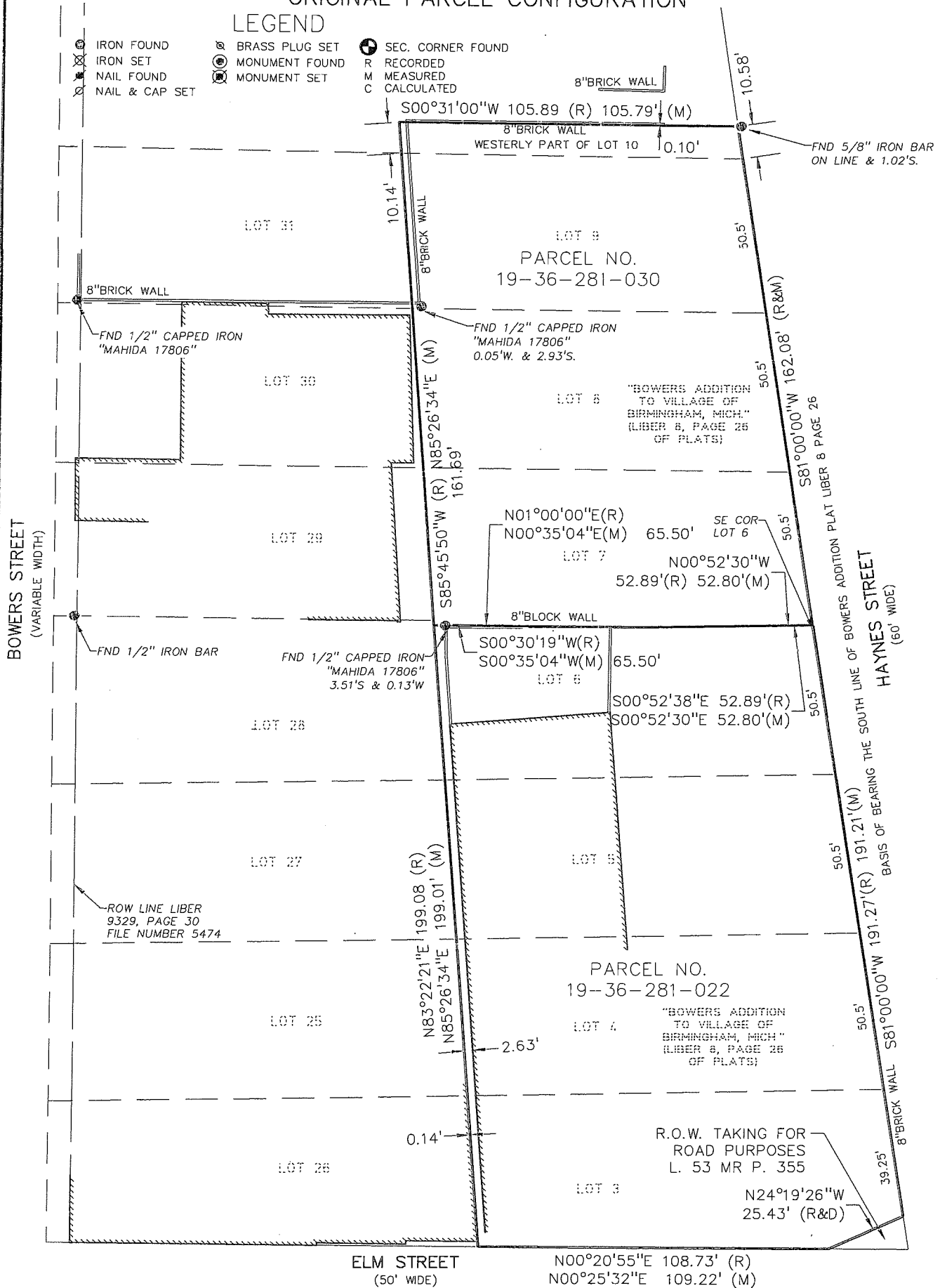
DATE: 9/18/19

DWG. No: 1 of 4

CERTIFICATE OF SURVEY ORIGINAL PARCEL CONFIGURATION

LEGEND

- | | | |
|--|--|---|
| <ul style="list-style-type: none"> ⊗ IRON FOUND ⊗ IRON SET ⊗ NAIL FOUND ⊗ NAIL & CAP SET | <ul style="list-style-type: none"> ⊗ BRASS PLUG SET ⊗ MONUMENT FOUND ⊗ MONUMENT SET | <ul style="list-style-type: none"> ⊗ SEC. CORNER FOUND R RECORDED M MEASURED C CALCULATED |
|--|--|---|



CLIENT:
Lavery Michigan Dealership Properties No. 1, LLC
909 HAYNES STREET
BIRMINGHAM, MICHIGAN 48009

SCALE: 1" = 40'

JOB No: 2019-344

DATE: 9/18/19

DWG. No: 2 of 4

PEA, Inc.

2430 Rochester Ct, Ste 100
Troy, MI 48063-1872
t: 248.689.9090
f: 248.689.1044
www.peainc.com

CERTIFICATE OF SURVEY
PROPOSED PARCEL CONSOLIDATION

LEGAL DESCRIPTION
(Per PEA Inc.)

Combined Parcel

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

A parcel of land lying in "Bowers Addition" being a part of Section 36, Town 2 North, Range 10 East, including all of lots 3, 4, 5, 6, 7, 8, 9, and the westerly 10.14 feet along the northerly line of Lot 10 and the westerly 10.58 feet along the southerly line of Lot 10, excluding a portion taken for Right-of-Way purposes, as described in Liber 53 Miscellanies Records, Page 355,, more particularly described as;

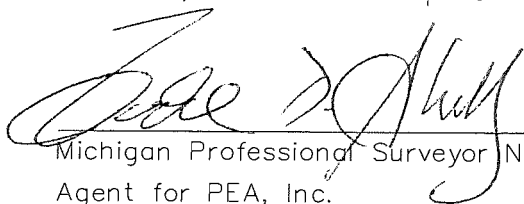
Commencing at the southwest corner of Lot 3, thence N81°00'00"E, 10.79 feet along the south line of said Lot 3 to the Point of Beginning;
thence N24°19'26"W, 25.43 feet;
thence N00°25'32"E, 109.22 feet along the West Line of said Lot 3 and the East Line of Elm Street;
thence N85°26'34"E, 360.70 feet along the North Line of Lots 3-10 of said Bower's Addition;
thence S00°31'00"W, 105.79 feet;
thence S81°00'00"W, 353.29 feet along the South Line of said Lots 3-10 and the North Line of Haynes Street to the Point of Beginning.
Containing 0.99 Acres more or less.

Basis of bearing the south line of Bowers Addition Plat Liber 8 Page 26

CERTIFICATION

I, Todd D. Shelly, being a Licensed Professional Surveyor, hereby certify, that I have surveyed and mapped the parcel(s) heron described and that the relative positional precision of each corner is within the limits accepted by the practice of professional surveying and that all the requirements of P.A. 132 of 1970, as amended, have been complied with.

DATE


Michigan Professional Surveyor No. 41111
Agent for PEA, Inc.

9-19-19



PEA, Inc.

2430 Rochester Ct, Ste 100
Troy, MI 48063-1872
t: 248.689.9090
f: 248.689.1044
www.peainc.com

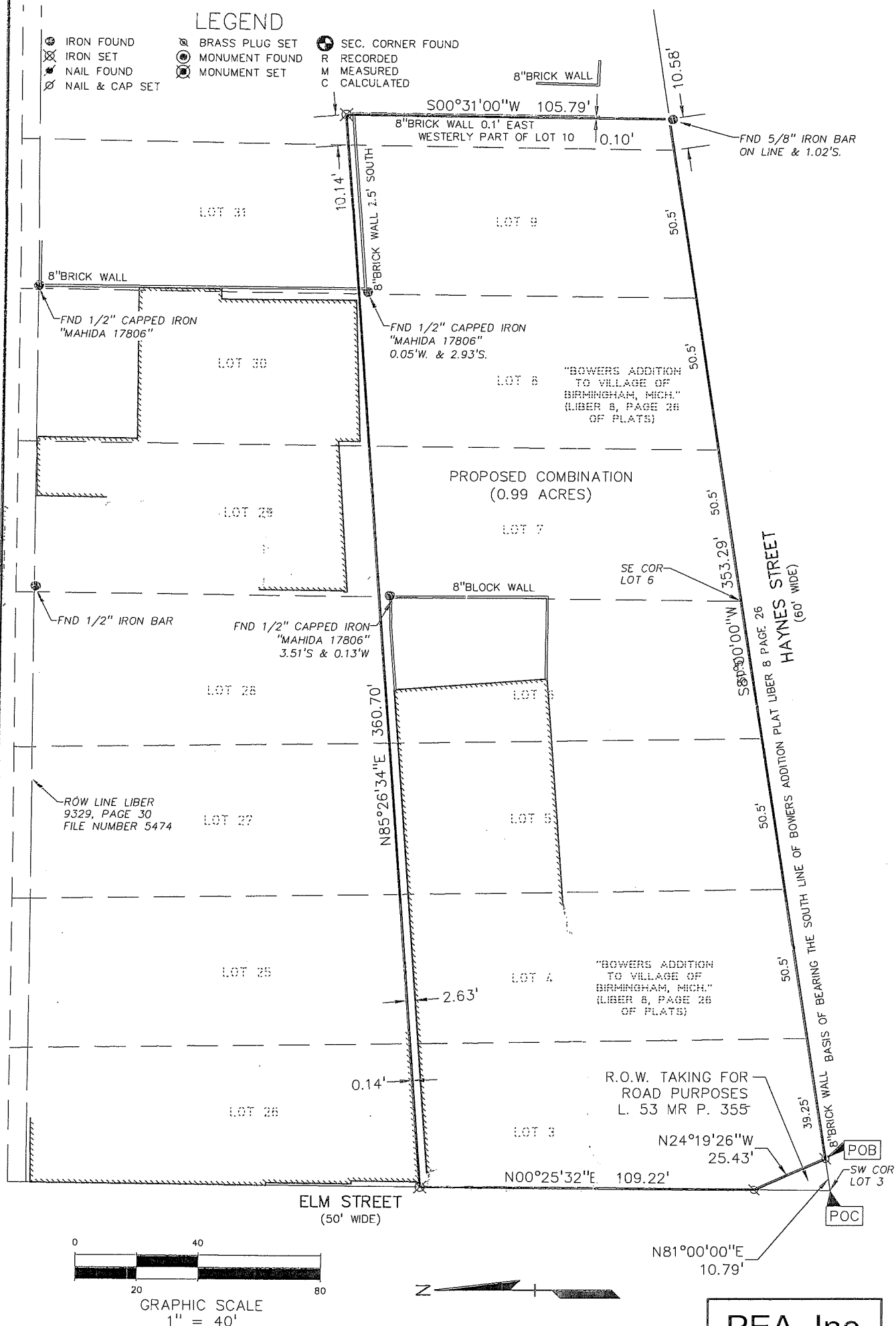
CLIENT: Lavery Michigan Dealership Properties No. 1, 909 HAYNES STREET BIRMINGHAM, MICHIGAN 48009	SCALE: LC —	JOB No: 2019-344
	DATE: 9/18/19	DWG. No: 3 of 4

LEGEND

- ☒ IRON FOUND
☒ IRON SET
☒ NAIL FOUND
☒ NAIL & CAP SET

- ☐ BRASS PLUG SET
☒ MONUMENT FOUND
☒ MONUMENT SET

- SEC. CORNER FOUND
R RECORDED
M MEASURED
C CALCULATED



PEA, Inc.

2430 Rochester Ct, Ste 100
Troy, MI 48063-1872
t: 248.689.9090
f: 248.689.1044
www.peainc.com

CLIENT:

Lavery Michigan Dealership Properties No. 1, LLC
909 HAYNES STREET
BIRMINGHAM, MICHIGAN 48009

SCALE: 1" = 40'

JOB No: 2019-344

DATE: 9/18/19

DWG. No: 4 of 4

S:\PROJECTS\2019\2019-344 LAVERY-BARDHA PARCEL CONSOLIDATION\SURVEY-DEPT\19344BND\DWG\19-344 Parcel consolidation.dwg; RAT

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

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, SEPTEMBER 22, 2010**

Commission Chamber, City Hall
151 Martin Street, Birmingham, Michigan

Minutes of the regular meeting of the City of Birmingham Planning Board held September 22, 2010. Chairman Robin Boyle convened the meeting at 7:30 p.m.

Present: Chairman Robin Boyle; Board Members Scott Clein, Bert Koseck, Gillian Lazar (arrived at 7:53 p.m.), Janelle Whipple-Boyce, Bryan Williams; Student Representative Aaron Walden

Absent: Board Member Carroll DeWeese

Administration: Matthew Baka, Planning Intern
Jana Ecker, Planning Director
Carole Salutes, Recording Secretary

09-170-10

SPECIAL LAND USE PERMIT ("SLUP") REVIEW

835 Haynes St., Porsche Showroom and Sales

Request approval of a SLUP to allow an automobile sales agency in an existing building

FINAL SITE PLAN REVIEW

835 Haynes St., Porsche Showroom and Sales

Request approval of a SLUP to allow an automobile sales agency in an existing building

Mr. Baka explained the subject site is located on the east side of Woodward Ave., on the northeast corner of Haynes and Elm. The parcel is zoned B-2 Business-Residential and MU-7 in the Triangle Overlay District. The applicant, Fred Lavery Company, is seeking approval of an auto sales agency and showroom. The Birmingham Zoning Ordinance requires that the applicant obtain a SLUP and approval from the City Commission to operate an auto sales agency and showroom in the MU-7 District.

Accordingly, the applicant will be required to obtain a recommendation from the Planning Board on the Final Site Plan and SLUP, and then obtain approval from the City Commission for the Final Site Plan and SLUP.

Mr. Baka explained that the applicant is planning minimal changes to the actual site. They are basically looking at some improvements to the screening, lighting and also landscaping. The parking lot is over 7,500 sq. ft., which would kick in the 5 percent landscaping rule. However, because this area is identified as one of the gateways to the Triangle District, the Planning Division thought it would be more beneficial to pedestrians to locate the landscaping at the west end of the site on the outside of the screenwall.

The materials board was passed around for viewing.

The applicant proposes to install two name letter signs and one two-sided ground sign. The total linear building frontage is 165 ft. This permits 165 sq. ft. of sign area per the requirement of Article 1.0, section 104 (B) of the Birmingham Sign Ordinance, Combined Sign Area. The total area of all signs will be 128.59 sq. ft. which meets this requirement.

The proposed Porsche and Fred Lavery sign letters will be constructed of silver finished fabricated aluminum. The proposed Porsche ground sign will be a fabricated aluminum cabinet with an internal aluminum frame.

The Porsche name letter sign will be internally lit with 15mm red neon lamps. The Fred Lavery name letter sign will be halo backlit with 15mm white neon tubes. The Porsche ground sign is proposed to be internally backlit with fluorescent tubes.

Mr. Robert Ziegelman, Luckenbach Ziegelman Architects, PLLC, was present with Messrs. Lavery and Lavery; Mr. Pat Taylor from his office; along with Mr. Mark Daringowski, representing Porsche Cars North America. Mr. Ziegelman indicated they are not touching the footprint of the building. Mr. Koseck observed that floor plans would help to understand why the entry points are where they are.

Ms. Lazar arrived at this time.

Ms. Whipple-Boyce received clarification that the applicant is proposing roughly 700 sq. ft. of landscaping in the parking lot. 600 sq. ft. is required. Moving the screenwall to the inside of the landscaping would take the requirement down significantly.

Chairman Boyle suggested a Porsche display in the parking lot would be astonishingly attractive.

Mr. Fred Lavery, the owner and operator of the Porsche dealership, said they did not consider a car display because it wouldn't be seen as a result of the screenwall requirement.

Mr. Williams was not in favor of the display because it is not easy to negotiate out onto Woodward Ave. from Haynes and the display might be a distraction.

Mr. Koseck noted the existing aisles in the parking lot are 24 ft. wide and they exceed the required width by 4 ft. He thought the width could be reduced and that would allow additional room for landscaping. Further, he expected the main entrance to the building would be at the southwest corner so a pedestrian would not be forced to walk through the parking lot to enter. Mr. Lavery explained there are two pedestrian entrances. The second pedestrian entrance is also used for vehicles. He noted they adhere to the Porsche standards which they have no control over. The entire inside of the showroom is oriented towards the main entrance. Mr. Koseck then pointed out that the upper left hand section shows a thin wall that extends up, as opposed to wrapping around. The elevation that faces to the north is even thinner yet and they both look as though they were glued onto the building.

Ms. Lazar thought perhaps Porsche could offer the applicant some latitude given the fact that they are rehabbing the building.

Mr. Lavery went on to state that parking is an important part of their operation. His experience has been that the parking standards are minimal for a car dealership. They have always utilized other parking spaces in addition to those that have been required on-site.

Mr. Daringowski explained the Porsche concept of a jewel box with all of the Porsches illuminated inside that box. Their flexibility for change is minimal, but they will work with the comments that have been made tonight.

The chairman took the discussion to members of the public at 8:25 p.m.

Mr. James Ellsman, owner of the building immediately to the north, expressed his concern that this building offers no consistency with the concept of the Triangle District. At the entrance point to the Triangle District only a one-story renovated building is being considered. He asked about the longevity of the project.

Mr. Ted Mitchell, the owner of the building, verified that the term of the lease is five years.

Mr. Williams noted this is an area of at times very high traffic congestion and people driving too fast. So he is not troubled by moving access to the building away from Elm, far away from the intersection, He doesn't think that many people will actually walk to the Porsche car dealership.

Mr. Clein was not in favor of giving up on the pedestrian. Rather, implementing the streetscape improvement standards in conjunction with moving the screenwalls should be considered.

Ms. Whipple-Boyce thought that Mr. Koseck's proposal makes a lot of sense; but that said, the main entrance is further east where the interior of the building is oriented. She thinks Mr. Lavery made it clear that rather than turning the three extra parking spots that

aren't required into landscaping, he needs the parking. However, she agrees that the screenwall should be moved to the interior of the parking lot so that the pedestrian side gets all of the greenery. Landscaping might look better than benches along the sidewalk.

Chairman Boyle said he is glad to see that the applicant is coming in to improve this property. A little trees and grass doesn't really help the attractiveness of this particular piece of property. Benches are to be encouraged. This dealership should be vibrant, colorful, lit at night, and have a red, shiny Porsche on display.

Mr. Williams thought the reality is that a five-story building is not going to be built on that site right now. This proposal is a significant improvement over what exists.

Motion by Mr. Williams

Seconded by Mr. Clein that the Planning Board recommends approval of the applicant's request for Final Site Plan and a SLUP to permit an auto sales agency and showroom at 834 Haynes with the following conditions:

- 1) The applicant adds a canopy tree to each of the two landscaped areas;**
- 2) The applicant moves the west facing screenwalls to expose the landscaped areas to the street; and**
- 3) The applicant install tree grates around street trees and implement sidewalk standards along Haynes and Elm.**

Mr. Koseck reiterated that the extended fascia doesn't return on itself and he thinks it will look weird from two vantage points. Mr. Lavery indicated they will certainly suggest that to Porsche. He thinks the return on Elm St. is more critical than the return on Haynes because the building to the east screens that side of the façade. Mr. Daringowski is sitting in the audience and will ultimately be involved in that decision. Mr. Williams was not inclined to make the return on the parapets a condition of his motion.

Mr. Koseck said he will not approve the motion because there are subtle things that can be done that would make huge improvements to the plan.

Ms. Whipple-Boyce expressed her feeling that it is important for the parapets to become part of the motion because as proposed they are unlikely to be attractive to the community. She cannot support the motion without that addition.

The chairman opened discussion to the audience at 9 p.m.

Ms. Dorothy Conrad, 2252 Yorkshire, said that as a resident of the City of Birmingham she hopes that the motion will include the suggestions that have been discussed in great detail tonight. Shame on the board if it doesn't.

Motion failed, 3-3.

VOICE VOTE

Yeas: Williams, Clein, Boyle

Nays: Koseck, Lazar, Whipple-Boyce

Absent: DeWeese

Motion by Ms. Whipple-Boyce

Seconded by Ms. Lazar based on review of the site plan submitted the Planning Board recommends approval of the applicant's request for Final Site Plan and SLUP to permit an auto sales agency at 835 Haynes with the following conditions:

- 1) The applicant adds a canopy tree to each of the two landscaped areas;**
- 2) The applicant moves the west facing screenwalls to expose the landscaped areas to the street;**
- 3) Install tree grates around street trees and implement sidewalk standards along Haynes and Elm; and**
- 4) Create returns on the parapet wall on both Haynes and Elm to disguise the bracing.**

Mr. Williams indicated he would vote in favor of the motion because he thinks the project needs to move forward. Mr. Koseck did not see the urgency. He was uncomfortable because the board has not been provided with readings or a floor plan.

There were no final comments from members of the public at 9:05 p.m.

Mr. Ziegelman said they would be more than happy to discuss improvements with staff.

Motion carried, 5-1.

VOICE VOTE

Yeas: Whipple-Boyce, Lazar, Boyle, Clein, Williams

Nays: Koseck

Absent: DeWeese

BIRMINGHAM CITY COMMISSION MINUTES

NOVEMBER 8, 2010

MUNICIPAL BUILDING, 151 MARTIN

7:30 P.M.

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Rackeline J. Hoff, Mayor called the meeting to order at 7:30 PM.

II. ROLL CALL

ROLL CALL:	Present,	Mayor Hoff Commissioner Dilgard Commissioner McDaniel Commissioner Moore Commissioner Nickita Mayor Pro Tem Rinschler Commissioner Sherman
	Absent,	None

Administration: Manager Markus, Attorney Currier, Clerk Broski, Assistant Manager Valentine, Planning Director Ecker, Planner Baka, City Engineer O'Meara, Assistant City Engineer Cousino, Finance Director Ostin, Building Official Johnson, Fire Chief Metz, Fire Marshall Monti, PSD Director Heiney, Assistant to the Manager Wuerth

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

11-269-10 ORGANIZATION OF THE CITY COMMISSION

MOTION: Motion by Rinschler:

To nominate Rackeline Hoff as Temporary Chair of City Commission for purposes of conducting the Mayor and Mayor Pro Tem election.

VOTE: Yeas, 7
Absent, None

MOTION: Motion by McDaniel:

To nominate Commissioner Rinschler as Mayor.

VOTE: Yeas, 7
Absent, None

MOTION: Motion by Moore:

To nominate Commissioner Nickita as Mayor Pro Tem.

VOTE: Yeas, 7
Absent, None

- 7) The applicant submit revised plans with all of these changes to the Planning Dept. prior to going to the City Commission so the Commission would see the revisions when they consider this issue; and
- 8) All work must be completed in concurrence with the installation of the TV screens, to be completed by June 1, 2011.

WHEREAS, The applicant has agreed to comply with all conditions for approval as recommended by the Planning Board on September 22, 2010;

WHEREAS, The Birmingham City Commission has reviewed the Speedway SuperAmerica LLC Special Land Use Permit Amendment application as well as the standards for such review as set forth in Article 7, section 7.34 of Chapter 126, Zoning of the City Code,

NOW, THEREFORE, BE IT RESOLVED, The Birmingham City Commission finds the standards imposed under the City Code have been met, subject to the conditions below and the Speedway SuperAmerica LLC application for a Special Land Use Permit Amendment is hereby approved, subject to the attached site plan, and subject to the following conditions:

- 1) Repair the cap on the dumpster enclosure walls and repair the dumpster gate;
- 2) Repair the existing screenwalls on the site;
- 3) Improvement of the existing landscape areas on Woodward Ave. to include the installation of several large canopy trees in each bed along with smaller shrubs and perennials;
- 4) Repair damaged portions of the existing sidewalk and approach off of Chestnut;
- 5) Installation of a shield on the wall pack fixture located on the rear of the building and repair of the existing parking lot light fixtures;
- 6) Repair all items on the list that Speedway provided and previously had agreed to repair;
- 7) The applicant submit revised plans with all of these changes to the Planning Dept. prior to going to the City Commission so the Commission would see the revisions when they consider this issue; and
- 8) All work must be completed in concurrence with the installation of the TV screens, to be completed by June 1, 2011.

BE IT FURTHER RESOLVED, That failure to comply with any of the above conditions shall result in termination of the Special Land Use Permit.

BE IT FURTHER RESOLVED, Except as herein specifically provided, the Speedway SuperAmerica LLC Company and its heirs, successors and assigns shall be bound by all ordinances of the City of Birmingham in effect at the time of the issuance of this permit, and as they may be subsequently amended. Failure of Speedway SuperAmerica LLC Company to comply with all the ordinances of the City, may result in the Commission revoking this Special Land Use Permit.

VOTE: Yeas, 7
 Nays, None
 Absent, None

11-274-10 PUBLIC HEARING TO CONSIDER SPECIAL LAND USE PERMIT 835 HAYNES

Mayor Rinschler opened the Public Hearing to consider approval of a Special Land Use Permit application for 835 Haynes to allow the operation of an auto sales agency and showroom 8:34 PM.

In response to a question from Mayor Pro Tem Nickita, Bob Ziegelman, Luckenbach, Ziegelman Architects, explained there are two entry locations - one from the sidewalk and one from the parking lot. He explained that there are two four-foot doors.

Mayor Pro Tem Nickita explained that this is a gateway site. He stated that the planning division recommended the planning board consider additional enhancements to the corner of

the site at Haynes and Elm. He stated that in the submitted rendering the enhancements are minimally addressed.

Mr. Baka explained there was discussion about enhancing the corner. He stated that it is appropriate to fully implement the streetscape standards.

Mr. Ziegelman confirmed that the owner is willing to comply with the streetscape standards.

Brad Lavery, owner, confirmed for Mayor Rinschler that new and used cars will be parked in the parking lot.

James Ellsman, owner of 635 Elm Street, commented that this is an underperforming site.

Mayor Rinschler closed the public hearing at 9:08 PM.

Discussion ensued regarding the streetscape. Mr. Lavery agreed to do the additional streetscape improvements which are a considerable expense.

MOTION: Motion by Nickita, seconded by Hoff:

To approve the request for a Special Land Use Permit at 835 Haynes to allow the operation of an auto sales agency and showroom for Porsche with the following conditions:

- The applicant implements the complete streetscape standards, including exposed aggregate and pedestrian scale lighting.
- In addition to consider the redevelopment of the corner at Haynes and Elm by incorporating enhancements in the adjacent parking space and additionally the entrance at the northwest corner of the parking lot, including the incorporation of parking lot there as well for administrative approval.

WHEREAS, Lavery Porsche has applied for a Special Land Use Permit to operate a Porsche automobile sales agency 835 Haynes,

WHEREAS, The land for which the Special Land Use Permit Amendment is sought is located on the northeast corner of Elm and Haynes,

WHEREAS, The land is zoned B-2 General Business, which permits automobile sales agencies with a Special Land Use Permit,

WHEREAS, Article 7, section 7.34 of Chapter 126, Zoning, requires a Special Land Use Permit Amendment to be considered and acted upon by the Birmingham City Commission, after receiving recommendations on the site plan and design from the Planning Board for the proposed Special Land Use;

WHEREAS, The Planning Board reviewed the proposed Special Land Use Permit request on September 22, 2010 at which time the Planning Board voted to recommend approval of the Final Site Plan and SLUP to the City Commission with the following conditions:

- 1) The applicant adds a canopy tree to each of the two landscaped areas;
- 2) The applicant moves the west facing screenwalls to expose the landscaped areas to the street;
- 3) Install tree grates around street trees and implement sidewalk standards along Haynes and Elm; and
- 4) Create returns on the parapet wall on both Haynes and Elm to disguise the bracing.

WHEREAS, The applicant has agreed to comply with all conditions for approval as recommended by the Planning Board on September 22, 2010;

WHEREAS, The Birmingham City Commission has reviewed the Lavery Porsche Special Land Use Permit Amendment application as well as the standards for such review as set forth in Article 7, section 7.34 of Chapter 126, Zoning of the City Code,

NOW, THEREFORE, BE IT RESOLVED, The Birmingham City Commission finds the standards imposed under the City Code have been met, subject to the conditions below and the Lavery Porsche application for a Special Land Use Permit is hereby approved, subject to the attached site plan, and subject to the following conditions:

- 1) The applicant adds a canopy tree to each of the two landscaped areas;
- 2) The applicant moves the west facing screenwalls to expose the landscaped areas to the street;
- 3) Install tree grates around street trees and implement sidewalk standards along Haynes and Elm; and
- 4) Create returns on the parapet wall on both Haynes and Elm to disguise the bracing.

BE IT FURTHER RESOLVED, That failure to comply with any of the above conditions shall result in termination of the Special Land Use Permit.

BE IT FURTHER RESOLVED, Except as herein specifically provided, Lavery Porsche and its heirs, successors and assigns shall be bound by all ordinances of the City of Birmingham in effect at the time of the issuance of this permit, and as they may be subsequently amended. Failure of Lavery Porsche to comply with all the ordinances of the City may result in the Commission revoking this Special Land Use Permit.

VOTE: Yeas, 7
 Nays, None
 Absent, None

**11-275-10 REQUEST FOR WAIVER
 LOT 229, FOREST HILLS SUBDIVISION**

Mr. Johnson explained that the property owners of Lot 229 in the Forest Hills Subdivision are seeking a waiver from the provisions of Chapter 102 of the city code to allow a home to be built on a substandard sized lot that has been reduced from its original size.

The Commission received a communication from Daniel Share, Barris, Sott, Denn & Driker, PLLC.

Rick Rattner, representing the petitioner, spoke in favor of the request for waiver to build on the lot.

Daniel Share, representing the adjacent property owner, spoke in opposition to the request for waiver.

Commissioner Sherman questioned whether the attorneys and their clients have spoke with each other to resolve this matter. Mr. Share confirmed that there had been discussion. Mr. Share commented that his clients would be fine with having another discussion. Mr. Rattner commented that further discussion would not be helpful as his client wants to build on the lot.

Commissioner McDaniel moved to waive the requirements of Section 102-51 (1) of the Birmingham City Code for Lot 229 of the Forest Hills Subdivision (19-25-257-001), to allow the construction of a home on said lot in compliance with all zoning regulations of Chapter 126 of the City Code except minimum lot area and minimum lot width. With no second, Commissioner McDaniel withdrew his motion.

The following spoke in opposition to the request:
Dan Roovers, 205 Wimbleton

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, APRIL 27, 2016
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on April 27, 2016. Chairman Scott Clein convened the meeting at 7:30 p.m.

Present: Chairman Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Gillian Lazar, Lisa Prasad, Janelle Whipple-Boyce; Student Representative Colin Cusimano

Absent: Board Member Bryan Williams; Alternate Board Member Daniel Share

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

04-73-16

UNFINISHED BUSINESS

Special Land Use Permit ("SLUP") Review

Final Site Plan Review

835-909 Haynes

Fred Lavery Porsche/Audi

Request for a SLUP Amendment to allow the temporary expansion of the existing SLUP at 835 Haynes to include 909 Haynes to allow an Audi sales facility for a maximum of one year. (postponed from March 23, 2016)

Mr. Baka noted the subject site is located on the north side of the street between Woodward Ave. and Elm St. The parcel is zoned B-2 General Business and MU-5 in the Triangle Overlay District. The applicant, Fred Lavery Co., owns the adjacent property to the west, 835 Haynes St., which received a SLUP in 2010 to operate a Porsche car dealership within the B-2 Zone and MU-7 in the Triangle District Overlay.

The applicant is conducting renovations to the existing Audi dealership at 34602 Woodward Ave., and wishes to amend its existing SLUP at 835 Haynes St. to temporarily include 909 Haynes St. while the building on Woodward Ave. is being renovated. The applicant is requesting temporary use of the first floor of 909 Haynes St. for office space and business operations for their Audi car dealership for no more

than 12 months. Along with the dealership, there is an existing beauty spa on the second floor of 909 Haynes St., Spa Mariana.

The Birmingham Zoning Ordinance requires that the applicant obtain a SLUP Amendment and approval from the City Commission to expand the auto sales agency and showroom to temporarily include the property at 909 Haynes St.. Accordingly, the applicant will be required to receive a recommendation from the Planning Board on the Final Site Plan and SLUP Amendment, and then obtain approval from the City Commission for the Final Site Plan and SLUP Amendment.

On March 23, 2016 the Planning Board reviewed the proposal to temporarily expand the SLUP to include 909 Haynes for one year. However, at that time the architect indicated that the property owner would like the expansion to be permanent. The Planning Board and Planning Staff indicated that a permanent expansion would not be considered without the level of details normally provided for a SLUP Amendment. The applicant was postponed until the April 27, 2016 meeting to allow them time to consider how they wished to proceed. The applicant has now indicated that they intend to proceed with the temporary proposal and apply at a later date for a permanent expansion of the SLUP.

The applicant is now proposing to install the five (5) required canopy trees and create three (3) new landscaped areas in the interior of the parking lot. The applicant must provide the dimensions of the landscaped areas to determine if they meet the size requirements mandated by the Zoning Ordinance.

The applicant is not proposing any changes to the existing streetscape. The current streetscape in front of the subject building does not match the Triangle District standard as installed on the Porsche site.

The design for the building on Woodward Ave. has been approved by the Design Review Board and the applicant is getting ready to start the renovations.

Design Review

No changes to the facade are proposed.

Signage Review

The 909 Haynes St. building has 40 ft. of street frontage; therefore a total of 40 sq. ft. of signage is allowed, per the City of Birmingham's Sign Ordinance. The applicant has revised their signage proposal to bring the amount of signage down to 40 sq. ft. so that it complies with the regulations of the Sign Ordinance.

Ms. Ecker explained that because there were violations going on with the storage of vehicles, Code Enforcement went out, but enforcement activities have been put on hold until it is determined if the temporary SLUP is feasible.

Mr. Fred Lavery noted they will not display cars in the building; it will only contain offices for the sales staff and sales manager. They will probably park their demonstrators in the spaces that are not required to meet the parking requirement for the building. The Audi building on Woodward Ave. is being renovated to Audi's current corporate image.

Chairman Clein called for public comments at 8:32 p.m.

Mr. James Ellsman business owner at 635 Elm, asked if the approval of an amended SLUP is a guarantee that the Triangle District restrictions against car dealerships is waived. Ms. Ecker clarified the Triangle District doesn't prohibit the use for car sales agencies, but it only allows it with the strict control and regulation of a SLUP because of the potential impact on the neighborhood. In this case the car dealership is only requesting approval for a period of one year.

Mr. Koseck commented that this is not his vision for the Triangle District. By granting this request it takes the property out of contention for other developments over the next 12 months. After the temporary SLUP amendment has expired he will not support this because the property has a higher and better use. Mr. Lavery responded that a seven story building cannot be constructed on this property without public parking. Only when public parking becomes available will there be a higher and better use for this property. Therefore, the proposed use bridges the gap so he doesn't have a \$7 or \$8 million investment that produces no visible revenue stream until public parking gets approved and constructed.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Boyle that based on a review of the site plans submitted, the Planning Board recommends approval of the applicant's request for Final Site Plan and a SLUP Amendment to the City Commission to allow the temporary expansion of the auto sales agency and showroom for up to one (1) year at 835 Haynes to include 909 Haynes with the following condition:

- **Applicant provides the dimensions of the parking lot landscaping islands to verify that they comply with the requirements of the Zoning Ordinance.**

There were no comments on the motion from members of the audience at 8:40 p.m.

Motion carried, 7-0.

ROLLCALL VOTE

Yeas: Whipple-Boyce, Boyle, Clein, Jeffares, Koseck, Lazar, Prasad

Nays: None

Absent: Williams

BIRMINGHAM CITY COMMISSION MINUTES
JUNE 27, 2016
MUNICIPAL BUILDING, 151 MARTIN
7:30 P.M.

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Rackeline J. Hoff, Mayor, called the meeting to order at 7:33 PM.

II. ROLL CALL

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

Administration: City Manager Valentine, City Attorney Currier, Clerk Pierce, City Planner Ecker, City Engineer O'Meara, Finance Director Gerber, Deputy Treasurer Klobucar, DPS Director Wood, Police Chief Clemence

06-200-16

**PUBLIC HEARING TO CONSIDER
TEMPORARY SPECIAL LAND USE PERMIT
835 & 909 HAYNES, LAVERY PORSCHE**

Mayor Hoff opened the Public Hearing at 10:37 PM to consider the Revised Final Site Plan and Temporary Special Land Use Permit Amendment – 835 & 909 Haynes, Lavery Porsche.

City Planner Ecker explained that renovations are being done to the Audi building. The applicant would like to use 909 Haynes temporarily for the sales office. She noted that the request is to use the building for a period of twelve months. She noted that the Planning Board had a few comments regarding landscape and screening in the parking area. She noted that twenty-four parking spaces are required by ordinance and there are thirty-six dedicated parking spaces for this site. She pointed out that vehicles for sale or lease are not allowed to be stored within the twenty-four spaces required for the building.

Fred Lavery, applicant, explained that the sales staff and managers will have to be relocated due to the renovation to the Audi building. He noted that the twenty-four parking spaces are for the occupants of the building. The difference between the twenty-four required spaces and thirty-six spaces will be used for the storage of cars.

A resident at 635 Elm Street expressed his support of the request, but only for one year.

The Mayor closed the Public Hearing at 10:54 PM.

MOTION: Motion by Nickita, seconded by Bordman:

To approve the Revised Final Site Plan and Temporary Special Land Use Permit Amendment of one year for 835 & 909 Haynes – Lavery Porsche with the condition that applicant provides the dimensions of the parking lot landscaping islands to verify that they comply with the requirements of the Zoning Ordinance.

WHEREAS, Lavery Porsche has applied for a Temporary Special Land Use Permit Amendment of one year to operate an Audi automobile sales agency on the first floor of the building located at 909 Haynes,

WHEREAS, The land for which the Temporary Special Land Use Permit Amendment is sought is located on the north side Haynes east of Elm,

WHEREAS, The land is zoned MU-5, Mixed Use 5, which permits automobile sales agencies with a Special Land Use Permit,

WHEREAS, Article 7, section 7.34 of Chapter 126, Zoning, requires a Special Land Use Permit Amendment to be considered and acted upon by the Birmingham City Commission, after receiving recommendations on the site plan and design from the Planning Board for the proposed Special Land Use;

WHEREAS, The Planning Board reviewed the proposed Temporary Special Land Use Permit Amendment request on April 27, 2016 at which time the Planning Board voted to recommend approval of the Final Site Plan and SLUP to the City Commission with the following condition:

1) Applicant provides the dimensions of the parking lot landscaping islands to verify that they comply with the requirements of the Zoning Ordinance.

WHEREAS, The applicant has agreed to comply with all conditions for approval as recommended by the Planning Board on April 27, 2016;

WHEREAS, The Birmingham City Commission has reviewed the Lavery Porsche Temporary Special Land Use Permit Amendment application as well as the standards for such review as set forth in Article 7, section 7.34 of Chapter 126, Zoning of the City Code,

NOW, THEREFORE, BE IT RESOLVED, The Birmingham City Commission finds the standards imposed under the City Code have been met, subject to the conditions below and the Lavery Porsche application for a Temporary Special Land Use Permit amendment is hereby approved for one year from the date of approval, subject to the attached site plan, and subject to the following conditions:

1) Applicant provides the dimensions of the parking lot landscaping islands to verify that they comply with the requirements of the Zoning Ordinance.

BE IT FURTHER RESOLVED, That failure to comply with any of the above conditions shall result in termination of the Special Land Use Permit.

BE IT FURTHER RESOLVED, Except as herein specifically provided, Lavery Porsche and its heirs, successors and assigns shall be bound by all ordinances of the City of Birmingham in effect at the time of the issuance of this permit, and as they may be subsequently amended. Failure of Lavery Porsche to comply with all the ordinances of the City may result in the Commission revoking this Special Land Use Permit.

VOTE: Yeas, 7
Nays, None
Absent, None

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, JANUARY 22, 2020**

City Commission Room
151 Martin Street, Birmingham, Michigan

Minutes of the regular meeting of the City of Birmingham Planning Board held on January 22, 2020. Chairman Scott Clein convened the meeting at 7:30 p.m.

A. ROLL CALL

Present: Chairman Scott Clein; Board Members Bert Koseck, Daniel Share, Janelle Whipple-Boyce, Bryan Williams; Alternate Board Members Jason Emerine, Nasseem Ramin

Absent: Board Member Robin Boyle, Stuart Jeffares

Administration: Jana Ecker, Planning Director
Brooks Cowan, City Planner
Nicholas Dupuis, City Planner
Laura Eichenhorn, Transcriptionist

01-13-20

F. Special Land Use Permit Reviews

1. 34350 Woodward (previously 835 Haynes, Fred Lavery Porsche) & 907 - 911 Haynes (former Barda Salon Building) - Amendment of Special Land Use Permit at 34350 Woodward to include the property at 907-911 Haynes to allow demolition of the existing Barda Salon Building and construction of a surface parking lot on 907 – 911 Haynes to provide additional parking for the Porsche dealership at 34350 Woodward

City Planner Cowan, Fred Lavery, owner, John Gardner, architect, and Rick Rattner, attorney, reviewed the item for the Board.

Chairman Clein asked Mr. Rattner:

- How the Board could support approval of this proposal when it does not seem to support the purpose of the Triangle District as required by ordinance; and,
- Whether the Board's approval of the proposal would amount to the expansion of a legal non-conforming use, which the Board is not permitted to do.

Mr. Rattner said the proposal supports the Triangle District plans because the surface lot would function as a placeholder for the eventual Worth Street realignment. He said it would not be expanding a legal non-conformity because the lot combination would be allowed under a SLUP as an auxiliary use.

Mr. Share noted that the combined lot could require a variance since the parking lot frontage would be greater than ordinance allows.

After Board discussion, Planning Director Ecker received confirmation from the Board that they were requesting clarification from the Building Official and City Attorney regarding whether the Board has authority to consider granting the requests put forth by the applicant, what impediments exist to granting the requests, and what the remedies to the impediments could be. She said the remedies could include a variance if the City chose to allow more than 25% of the frontage to be parking, an expansion of an existing non-conformity because the lots will be combined, or some other factor in a lot combination that could affect the result.

Motion by Mr. Share

Seconded by Mr. Koseck to postpone consideration of the SLUP amendment for 34350 pending a response from the City Attorney and/or Building Official regarding whether the Board has authority to consider granting these requests, what impediments exist to granting the requests, and what the remedies to the impediments could be.

Mr. Rattner said it would be useful to know what effect an agreement with the City would have vis-a-vis resolving these problems. Mr. Rattner then stated that Mr. Lavery requested to withdraw his application for the SLUP amendment.

The Board allowed Mr. Lavery to withdraw his request and accordingly took no action on the motion.

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

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

DATE: March 19, 2021

TO: Thomas M. Markus, City Manager

FROM: James J. Surhigh, Consulting City Engineer

SUBJECT: Emergency Repair – Water Main across BBAC Parking Lot

INTRODUCTION:

A part of the public water main system crosses the parking lot at the Birmingham Bloomfield Arts Center (BBAC), located on City property adjacent to Lincoln Hills Golf Course. Several water main breaks have occurred on this water main segment starting in June 2020, which supplies water to the BBAC building for domestic use and fire protection. Department of Public Services (DPS) made repairs on 6/11/2020 and 1/11/2021, but after the water main was put back in service after each repair, leaking at the surface was observed again. The Engineering Department believes that this segment of cast-iron water main that was constructed in the late 1930's has reached the end of its useful life, and continuation of isolated repairs will likely not address the issue. The Engineering Department does not have confidence that this water main segment can adequately serve the community, and are recommending that it be replaced with a new main. The Engineering Department invited three contractors who have recently worked on City water main projects to provide a quote to replace the segment of water main across the parking lot. On March 18, 2021, the Engineering Department requested emergency authorization to authorize the Bidigare Contractors to proceed with the repairs for this critical piece of infrastructure.

BACKGROUND:

The water main in this area was initially constructed in the late 1930's, where it was extended south to provide fire protection and water supply to a City wastewater treatment facility that was built on the site, and later to the Lincoln Hills clubhouse building. In 1969, the old water main along Cranbrook was abandoned and replaced with a water main that was routed around the west side of the BBAC building. However, the old 6" water main that crossed the parking lot was reconnected to and not abandoned.

The time that has elapsed from report of the first water main break in June 2020 until now, when the emergency repair is being authorized may appear prolonged, but an explanation of events and the timeline are documented herein. After the first break was reported in June, repairs by DPS were promptly made. After a short period of time, BBAC reported that water was observed to be seeping from the ground and pavement cracks in the parking lot, but not at the recently completed repair location. DPS didn't believe it was a water main break since the volume of seepage was slow and initial water tests didn't show evidence of chlorine present, which is typical if there is a water main break.

BBAC engaged G2 Consulting Group to review the situation and advise. In their email response from 9/24/2020, two possible sources of the observed seepage were explained, one being a water main leak, and the other being naturally occurring artesian springs that are known to exist along the Rouge River (for example, these type of springs feed the pond behind the Birmingham Museum off Willits). They recommended that further investigation would be necessary.

On 9/25/2020, the City engaged Hubbell, Roth & Clark, Inc. (HRC) to review the situation, conduct investigations as needed to define the source of the seepage, and make recommendations for improvements to address the issue. On 10/9/2020, HRC and G2 Consulting Group devised a sampling program to enable analysis that would conclude if the source of the seepage was from the water main or natural sources. Due to rainy weather conditions at the time, representative water samples could not be obtained for analysis until 10/21/2020, which were then delivered to a water testing laboratory. G2 provided a report of the results on 11/10/2020, which concluded that the source of the water was likely from the water main. Chlorine was not found to be present in the samples obtained from the water seeping in the parking lot, but other indicators were more like potable water than natural groundwater, leading G2 to believe that the leak was some distance from where it was surfacing in the parking lot, and traveling through the soils which was altering the water chemistry.

In order to avoid making multiple excavations in the parking lot to search for the source of the leak, it was decided that an effort be made to try to locate the leak using non-destructive means before conducting more excavations. HRC made arrangements with Alfred Benesch & Company, who specializes in providing acoustic leak detection services, to try to identify the location of the leak. On 12/14/2020, a Benesch specialist conducted the leak detection survey, and identified the location of a leak. The location was marked in the field, and DPS was contacted to schedule the repair.

DPS completed the repair work on 1/11/2021, after some unexpected delay due to DPS staffing limitations and responding to other needed efforts, such as more pronounced water main breaks and snow removal. The day after the repair was completed, BBAC reported that water was still seeping from the parking lot. It is not unusual for the older cast iron mains to have multiple breaks once one occurs and a repair is completed. The forces put on the main by closing off flow to complete a repair and then re-pressurizing afterward can expose hairline cracks that may already be present but previously stable when under constant pressure. After some deliberation between the Engineering Department and DPS, it was decided that this segment of the water main could no longer be relied upon to adequately serve the community, and that plans would be prepared to replace the water main across the parking lot.

HRC prepared an overall plan of the proposed work, and a request for quote was issued to three contractors with recent experience working on the City's water system on 2/17/2021. The three quotes were received on 2/24/2020, and a tabulation of the results is attached for reference. Bidigare Contractors, Inc. provided the most economical quote for both the Base Bid work at \$49,479.00, and for the Alternate work at \$75,568.00.

The Base Bid is for work directly associated with replacing the water main across the BBAC parking lot, and fully addresses the issue at hand. The Alternate work would be for an additional water main installation across the front of the BBAC building to provide a redundant loop in the water system that would allow an alternate route to maintain water supply to the building in the event a future water main break occurred on the existing water main segment located west of the building.

At this time, under the emergency repair conditions, the Engineering Department recommends proceeding with the Base Bid work only. The redundant loop and other water main improvements can be considered with a future project when other water system improvements are planned along Cranbrook Road. There is currently not a date planned for this future work along Cranbrook. Permanent pavement repairs in the parking lot related to the water main replacement will be addressed in conjunction with a separate, future asphalt paving contract being prepared by the Engineering Department for later in the summer of this year.

LEGAL REVIEW:

No legal review is required for this item.

FISCAL IMPACT:

The quote from Bidigare Contractors was the most economical of the three received, in the amount of \$49,479.00 for the Base Bid only. Due to the uncertain nature of underground construction work, the Engineering Department recommends a contingency amount be included in the authorized amount in the event unanticipated additional costs are incurred during construction. Approximately 10% of the bid price is an appropriate amount to reserve for construction contingencies. Funds are available in the Water Fund account #591-537.004-981.0100.

PUBLIC COMMUNICATIONS:

The City has been in contact with Annie VanGelderens, President and CEO of the Birmingham Bloomfield Art Center, throughout this effort. Ms. VanGelderens will be contacted to coordinate the water main replacement work and pavement restoration to minimize disruption to the BBAC operations.

SUMMARY:

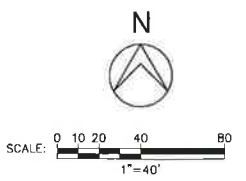
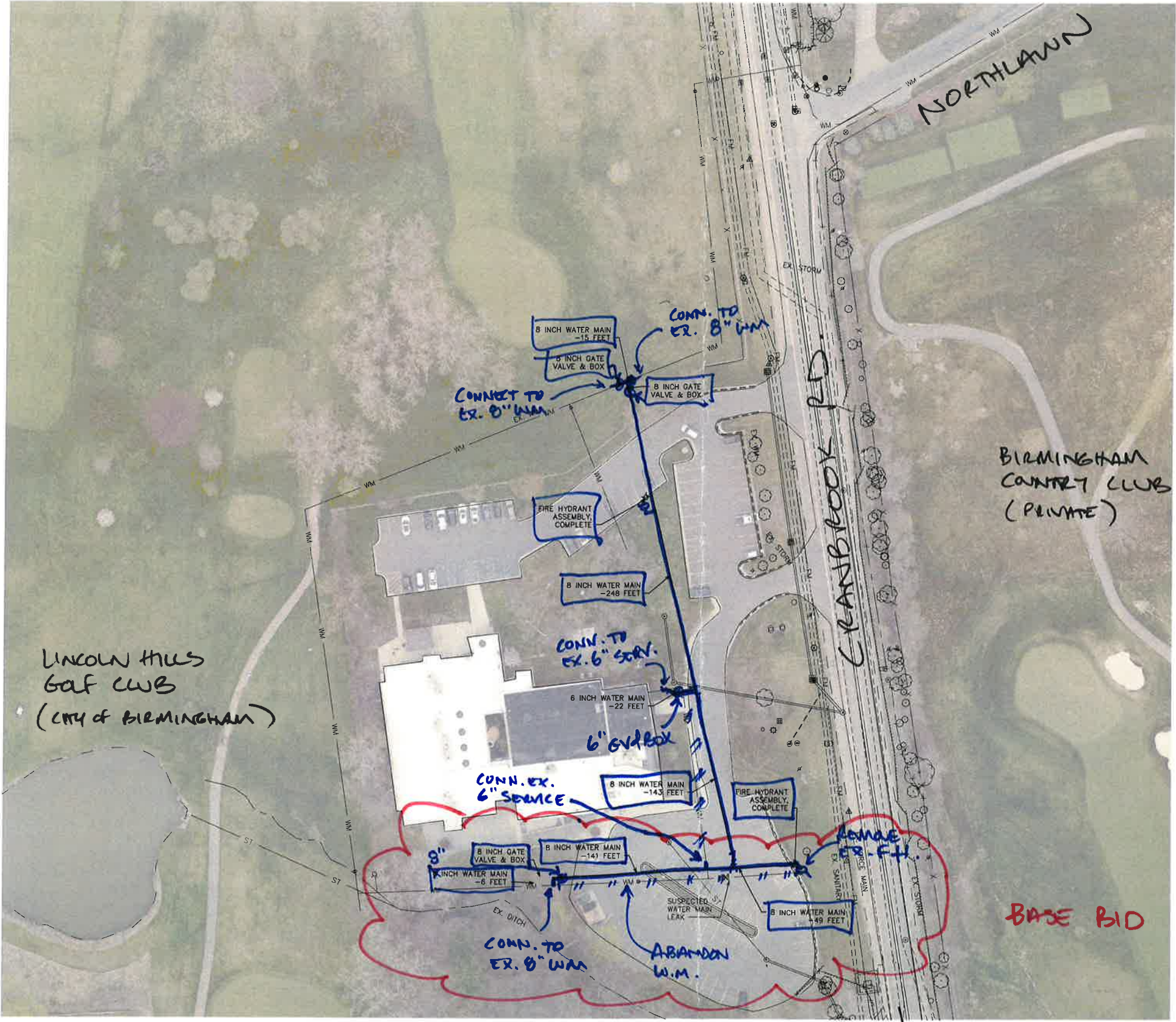
The Engineering Department requests City Commission confirmation of the City Manager's authorization to proceed with emergency water main replacement across the BBAC parking lot. The Engineering Department recommends that only the work associated with the Base Bid be authorized at this time, which consists of replacing the deteriorating water main across the BBAC parking lot. The recommended amount to be authorized includes a 10% contingency for unanticipated additional expenses that could occur during construction of the water main.

ATTACHMENTS:

- Sketch of Plan for Proposed Water Main Replacement across the BBAC Parking Lot
- Bid Tabulation for Request for Quotes received

SUGGESTED RESOLUTION:

To confirm the City Manager's authorization for the emergency expenditure related to the replacement of the water main across the BBAC parking lot by Bidigare Contractors, for a cost not to exceed for \$54,500.00 to be charged to the Public Improvements account #591-537.004-981.0100, pursuant to Sec. 2-286 of the City Code.



HRC
HUBBELL, ROTH & CLARK, INC.
CONSULTING ENGINEERS SINCE 1915
555 HULEY DRIVE
BLOOMFIELD HILLS, MICH. P.O. BOX 824
48303-0824

PHONE: (248) 454-8300
FAX (1st Floor): (248) 454-8312
FAX (2nd Floor): (248) 454-8358
WEB SITE: <http://www.hrceng.com>



DATE	ADDITIONS AND/OR REVISIONS
DESIGNED	
DRAWN	
CHECKED	
APPROVED	



CITY OF BIRMINGHAM
BBAC PARKING LOT REPAIR

OVERALL PLAN	
HRC JOB NO. 20200771	SCALE 1" = 40'
DATE February 2021	SHEET NO. 1 OF 1

BID TABULATION
BBAC PARKING LOT REPAIR
CITY OF BIRMINGHAM, OAKLAND COUNTY

Bids Due: 2/17/2021
HRC Job #20200771

Bidigare Contractors
939 S Mill St
Plymouth, MI | 48170

D'Angelo Brothers
30750 Eight Mile Rd
Farmington Hills, MI | 48336

DiPonio Contracting
51173 Simone Industrial Dr
Shelby Charter Twp, MI | 48316

Item	Quantity	Unit	Unit Price	Total Cost	Unit Price	Total Cost	Unit Price	Total Cost
BASE BID								
1 Water Main, 8 inch diameter	196	FT	\$124.00	\$24,304.00	\$145.00	\$28,420.00	\$175.00	\$34,300.00
2 Gate Valve & Box, 8 inch	1	EA	\$3,250.00	\$3,250.00	\$6,000.00	\$6,000.00	\$6,500.00	\$6,500.00
3 Water Main Connection, New 8 inch to Ex 8 inch	1	EA	\$3,700.00	\$3,700.00	\$6,000.00	\$6,000.00	\$8,000.00	\$8,000.00
4 Fire Hydrant Assembly, Complete	1	EA	\$7,000.00	\$7,000.00	\$5,800.00	\$5,800.00	\$8,500.00	\$8,500.00
5 Abandon Ex. Water Main	190	FT	\$7.50	\$1,425.00	\$15.00	\$2,850.00	\$25.00	\$4,750.00
6 Water Service Connection, 6 inch	1	EA	\$4,900.00	\$4,900.00	\$6,000.00	\$6,000.00	\$7,500.00	\$7,500.00
7 Water Service Connection, New 6 inch to Ex 6 inch	1	EA	\$4,900.00	\$4,900.00	\$6,000.00	\$6,000.00	\$7,500.00	\$7,500.00
SUBTOTAL FOR BASE BID				\$49,479.00		\$61,070.00		\$77,050.00
ALTERNATE - REDUNDANT LOOP								
A1 Water Main, 8 inch diameter	406	FT	\$124.00	\$50,344.00	\$129.00	\$52,374.00	\$175.00	\$71,050.00
A2 Water Main, 6 inch diameter	22	FT	\$117.00	\$2,574.00	\$100.00	\$2,200.00	\$185.00	\$4,070.00
A3 Gate Valve & Box, 8 inch	2	EA	\$3,250.00	\$6,500.00	\$4,000.00	\$8,000.00	\$6,500.00	\$13,000.00
A4 Gate Valve & Box, 6 inch	1	EA	\$3,150.00	\$3,150.00	\$3,500.00	\$3,500.00	\$6,000.00	\$6,000.00
A5 Water Main Connection, New 8 inch to Ex 8 inch	2	EA	\$3,000.00	\$6,000.00	\$6,000.00	\$12,000.00	\$8,000.00	\$16,000.00
A6 Fire Hydrant Assembly, Complete	1	EA	\$7,000.00	\$7,000.00	\$5,900.00	\$5,900.00	\$8,500.00	\$8,500.00
SUBTOTAL FOR ALTERNATE BID				\$75,568.00		\$83,974.00		\$118,620.00
TOTAL AMOUNT				<u>\$ 125,047.00</u>		<u>\$ 145,044.00</u>		<u>\$ 195,670.00</u>
					less 5% if awarded both	\$ 137,791.80		



MEMORANDUM

Museum

DATE: April 12, 2021

TO: Tom Markus, City Manager

FROM: Leslie Pielack, Museum Director
John Galik, Maintenance Supervisor

SUBJECT: Hunter House HVAC Replacement; Waiver of Competitive Bidding

INTRODUCTION:

The HVAC unit in the Hunter House recently failed unexpectedly and is inoperable. Repairs to the existing unit are not recommended by the City's HVAC service provider. A replacement unit to fit the existing HVAC system configuration is available and can be installed promptly, but the total cost for the proposed work is \$6,982.00. As this exceeds the competitive bidding threshold of \$6,000, this would require that the City seek competitive bids under normal circumstances. However, the urgent nature of the problem and the length of time necessary to complete the bidding process would mean the Hunter House would be without heat, cooling, and appropriate humidity control for a significant period of time, potentially placing the building and the artifact collection at risk. A waiver of the competitive bidding process is being requested to ensure that a new HVAC unit can be installed as soon as possible.

BACKGROUND:

The 1822 Hunter House at the Birmingham Museum is the oldest dwelling in Oakland County and in much of the State of Michigan, dating to the Michigan territorial period. It represents an unusual surviving technology of the period in its original construction components. The building was moved to its current location in 1969 and placed on a block basement that houses the mechanical systems for the building. The heating and cooling system is essential to keep the Hunter House's temperature and humidity levels steady, which is important for preservation of the building and its artifacts.

The current Carrier brand HVAC unit was installed in 2009, and has received regular maintenance provided by Kropf Mechanical, Inc., which has been the City's HVAC service provider for many years. However, on March 19, 2021, City maintenance staff was contacted because the Hunter House furnace was not providing heat. The Kropf technician assessed the unit and found that the heat exchanger had failed and the system was not operational. In contacting the manufacturer, Kropf learned that the Carrier Company no longer supports this unit and could not provide replacement parts. After further review, Kropf recommended replacement of the unit. On March 24, 2021, Kropf provided a proposal to install a replacement HVAC unit in the amount of \$6,982.00, or \$982 over the competitive bidding threshold. Chapter 2 of the City of Birmingham's Code of Ordinances

provides for the Commission to dispense with the bidding requirements under Section 2- 280 (c). Waiving the competitive bidding requirement for this project would permit a new HVAC unit to be installed and return the Hunter House to normal environmental conditions as soon as possible.

LEGAL REVIEW:

The City Commission, by an affirmative vote of five-sevenths of its members, may dispense with the requirement for competitive bidding when the estimated cost of the contract does not exceed \$12,000.00.

FISCAL IMPACT:

\$1,000.00 is available in the Hunter House budget. The remaining \$5,982.00 is being proposed to come from funds that were budgeted for the Allen House window restoration project. That project is being postponed to the 2021-2022 fiscal year.

SUMMARY

Due to unexpected failure of its HVAC unit, the Hunter House is in need of a replacement unit as soon as possible. Kropf Mechanical Service Co. has provided a proposal to replace the unit in the amount of \$6982. The time needed to undertake the competitive bidding process will potentially place the historic building and its contents at risk due to the lack of consistent temperature and moisture levels. Therefore, a request is being made to waive the competitive bidding process to ensure that the Hunter House temperature and humidity levels are stabilized as soon as possible.

ATTACHMENTS:

1. Contract Agreement
2. Kropf Mechanical Service Company technician service call report #128895 dated March 19, 2021
3. Kropf Mechanical Service Company service proposal dated March 24, 2021
4. Excerpt, City of Birmingham Municipal Code, Chapter 2-Administration/Article VII-Finance/Division 2.-Purchases, Contracts and Sales/Sec. 2-280.-Competitive bidding requirements

SUGGESTED RESOLUTION:

To waive the competitive bidding requirement and to authorize an expenditure in the amount of \$6,982 to Kropf Mechanical, Inc., for replacement of the Hunter House HVAC unit; \$1,000 to be charged to the Hunter House Equipment Maintenance account, #101-804.001-933.0200; and to approve the budget amendment to reduce Allen House Other Contractual Services account, #101-804.002-811.0000 by \$5,982 and increase Hunter House Equipment Maintenance account #101-804.001-933.0200 by \$5,982.

General Fund

Expenditures:

101-804.001-933.0200	\$1,000
101-804.001-933.0200	5,982
101-804.002-811.0000	<u>(5,982)</u>

Total Expenditures	\$6,982
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**AGREEMENT BETWEEN THE CITY OF BIRMINGHAM
AND KROPF MECHANICAL FOR FURNACE REPLACEMENT AT HUNTER HOUSE**

THIS AGREEMENT made this ____ day of _____, 2021, by and between the CITY OF BIRMINGHAM whose address is 151 Martin Street, Birmingham, Michigan (hereinafter referred to as the "City") and KROPF MECHANICAL SERVICE COMPANY, whose address is 33792 Capitol, Livonia, MI, (hereinafter referred to as the "Contractor"), to-wit:

1. Contractor shall provide professional furnace replacement at Hunter House under this Agreement as set forth in the attached Proposal (Attachment A) dated March 24, 2021, which is incorporated into this Agreement, and which includes the stated Warranty. If there are conflicts between this Agreement and the Proposal, the terms of this Agreement shall control. Such services pertain to the removal and disposal of the existing furnace and the installation of a new 96% efficiency furnace, metal adapters and connection to existing Gas line and electrical.

2. Payment for professional services rendered under this Agreement shall be in an amount not to exceed Six Thousand Nine Hundred Eight-two and 00/100 Dollars (\$6,982.00). It is noted that said amount includes labor, material and permit fees. Travel expenses and all other costs are included in this fee. The City promises and agrees to pay said Contractor for all labor supplied and work performed under this Agreement. Written notices regarding this Agreement shall be addressed to the following:

City: City of Birmingham
P.O. Box 3001
Birmingham, Michigan 48012
Attn: Building Facilities Manager
and City Clerk (one written copy to each)

Contractor: KROPF Mechanical
33792 Capitol
Livonia, MI 48150

4. The City shall have the right to terminate this Agreement on ten (10) days written notice. In the event of termination, the Contractor shall receive compensation for services to the date OF termination.

5. The Contractor and the City agree that the Contractor is acting as an independent contractor with respect to the Contractor's role in providing services to the City pursuant to this Agreement, and as such, shall be liable for its own actions and neither the Contractor nor its employees shall be construed as employees of the City. Nothing contained in this Agreement shall be construed to imply a joint venture or partnership and neither party, by virtue of this Agreement, shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party, except as specifically outlined herein. Neither the City nor the Contractor shall be considered or construed to be the agent of the other, nor shall either have the right to bind the other in any manner whatsoever, except as specifically provided in this Agreement, and this Agreement shall not be construed as a contract of agency. The Contractor shall not be considered entitled or eligible to participate in any benefits or privileges given or extended by the City, or be deemed an employee of the City for purposes of federal or state withholding taxes, FICA taxes, unemployment, workers' compensation or any other employer contributions on behalf of the City.

6. The Contractor acknowledges that in performing services pursuant to this Agreement, certain confidential and/or proprietary information (including, but not limited to, internal organization, methodology, personnel and financial information, etc.) may become involved. The Contractor recognizes that unauthorized exposure of such confidential or proprietary information could irreparably damage the City. Therefore, the Contractor agrees to use reasonable care to safeguard the confidential and proprietary information and to prevent the unauthorized use or disclosure thereof. The Contractor shall inform its employees of the confidential or proprietary nature of such information and shall limit access thereto to

employees rendering services pursuant to this Agreement. The Contractor further agrees to use such confidential or proprietary information only for the purpose of performing services pursuant to this Agreement.

7. This Agreement shall be governed by and performed, interpreted and enforced in accordance with the laws of the State of Michigan. The Contractor agrees to perform all services provided for in this Agreement in accordance with and in full compliance with all local, state and federal laws and regulations.

8. If any provision of this Agreement is declared invalid, illegal or unenforceable, such provision shall be severed from this Agreement and all other provisions shall remain in full force and effect.

9. This Agreement shall be binding upon the successors and assigns of the parties hereto, but no such assignment shall be made by the Contractor without the prior written consent of the City. Any attempt at assignment without prior written consent shall be void and of no effect.

10. The Contractor agrees that neither it nor its subcontractors will discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment, or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, height, weight or marital status. The Contractor shall inform the City of all claims or suits asserted against it by the Contractor's employees who work pursuant to this Agreement. The Contractor shall provide the City with periodic status reports concerning all such claims or suits, at intervals established by the City.

11. To the fullest extent permitted by law, the Contractor and any entity or person for whom the Contractor is legally liable, agrees to be responsible for any liability, defend, pay on behalf of, indemnify, and hold harmless the City of Birmingham, its elected and appointed officials, employees and volunteers and others working on their behalf against any and all

claims, demands, suits, or loss, including all costs and reasonable attorney fees connected therewith, and for any damages which may be asserted, claimed or recovered against or from the City, its elected and appointed officials, employees, volunteers or others working on their behalf, by reason of personal injury, including bodily injury and death and/or property damage, including loss of use thereof, which 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.

12. The Contractor shall not commence work under this Agreement until it has, at its sole expense, obtained the insurance required by this paragraph. All certificates of insurance shall be with insurance carriers licensed and admitted to do business in the State of Michigan. All coverages shall be with insurance carriers acceptable to the City of Birmingham. The Contractor shall maintain during the life of this Agreement the types of insurance coverage and minimum limits as set forth below:

- A. Workers' Compensation Insurance: Contractor shall procure and maintain during the life of this Agreement, Workers' Compensation Insurance, including Employers Liability Coverage, in accordance with all applicable statutes of the State of Michigan.
- B. Commercial General Liability Insurance: Contractor shall procure and maintain during the life of this Agreement, Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than \$1,000,000 per occurrence combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent; (E) Deletion of all Explosion, Collapse and Underground (XCU) Exclusions, if applicable.
- C. Motor Vehicle Liability Insurance: 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: The Commercial General Liability and Motor Vehicle Liability, as described above, shall include an endorsement stating the following shall be Additional Insureds: The City of Birmingham including all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and board members including employees and volunteers thereof. This coverage shall be primary and any other insurance maintained by the additional insureds shall be considered to be excess and non-contributing with this insurance required from Contractor under this Section.
- E. Professional Liability Insurance: If Professional Liability Insurance is available, Professional Liability Insurance with limits of not less than \$2,000,000 per claim if Contractor will provide service that are customarily subject to this type of coverage.
- F. Cancellation Notice: Workers' Compensation Insurance, Commercial General Liability Insurance, Professional Liability Insurance and Motor Vehicle Liability Insurance as described above, shall include an endorsement stating the following: "Thirty (30) days Advance Written Notice of Cancellation or Non-Renewal shall be sent to: Director of Finance, City of Birmingham, P.O. Box 3001, 151 Martin Street, Birmingham, Michigan 48012.
- G. 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;
- H. Coverage Expiration: If any of the above coverages expire during the term of this Agreement, Contractor shall deliver renewal certificates and/or policies to the City at least (10) days prior to the expiration date.

13. 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.

14. 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.

15. 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.

16. The City shall be the owner of all drawings, reports, specifications and other documents prepared by the Contractor. Any modifications made to these documents by the City shall be clearly marked as such on the modified document. Any modifications made by the

City without the prior written consent of the Contractor shall be at the City's sole risk and responsibility.

FAIR PROCUREMENT OPPORTUNITY: Procurement for the City of Birmingham will be handled in a manner providing fair opportunity for all businesses. This will be accomplished without abrogation or sacrifice of quality and as determined to be in the best interest of the City of Birmingham.

IN WITNESS WHEREOF, the said parties have caused this Agreement to be executed as of the date and year above written.

KROPF MECHANICAL SERVICE COMPANY

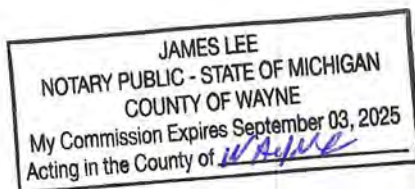
By: David A. Williams
Its: President

STATE OF MICHIGAN)
) ss:
COUNTY OF OAKLAND)

On this 6TH day of APRIL, 2021, before me personally appeared _____, who acknowledged that with authority on behalf of KROPF MECHANICAL SERVICE COMPANY to do so he/she signed this Agreement.

[Signature]
Notary Public
WAYNE County, Michigan
Acting in WAYNE County, Michigan

My commission expires: 9-3-2025

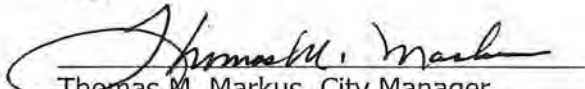


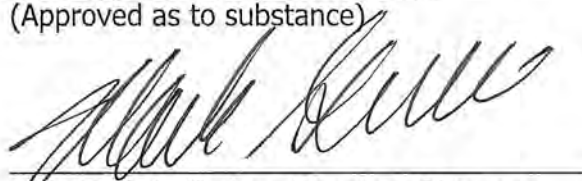
CITY OF BIRMINGHAM

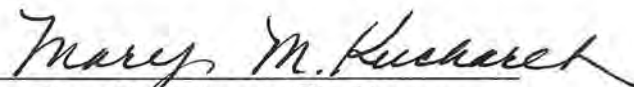
By: _____
Pierre Boutros Mayor

By: _____
Alexandria D. Bingham, City Clerk

Approved:


Thomas M. Markus, City Manager
(Approved as to substance)


Mark A. Gerber, Director of Finance
(Approved as to Financial Obligation)


Mary M. Kucharek, City Attorney
(Approved as to form)

ATTACHMENT A



March 24, 2021

City of Birmingham
151 Martin Street
PO Box 3001
Birmingham, Mi. 48012

Attn: Mr. John Galik

Subject: Furnace replacement – Hunter house.

Dear Mr. Galik,

We are pleased to submit our proposal for the above subject job.

Our scope of work includes the following:

A) Remove and dispose of the existing furnace.

B) Furnish and install.

1) New 96% efficiency furnace of equal capacity.

2) Required sheet metal adapters.

3) Connect to existing gas line and electrical.

C) Warranty

1) One (1) year limited labor warranty by Kropf Service Company.

2) Five (5) year limited parts warranty by manufacturer.

3) Twenty (20) year limited heat exchanger warranty. Labor and freight are not included.

D) All work, including warranty, is to be performed during normal working hours of 8:00 AM to 4:30 PM, Monday thru Friday, except holidays.

Replacement of the cooling system is not included in this proposal.

Cost to furnish and install replacement furnace as described..

\$6,982.00

Sincerely,

James Lee





**33792 Capitol
Livonia, MI 48150
(734) 427-6700
FAX: (734) 427-6726**

WORK NO.
128895

☐ COD ☐ HEATING ☐ WARRANTY

☐ AIR CONDITIONING ☐ T & M OPEN ORDER ☐ CONST. JOB # _____

☐ REFRIGERATION ☐ S & A SER. CONT. # _____

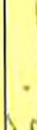
☐ BOILER ☐ INVOICE NO. _____

CUSTOMER (BUYER) NAME City of Birmingham		DATE 3/19/21
WORK PERFORMED AT ADDRESS 417 E. 11th St		CUST. ORDER NO.
CITY & STATE		PHONE

MAKE	MODEL NO.	SERIAL NO.	UNIT NO.	TECH
CHILREN	384 VC 120 - F-10120	4909403326		
INSTRUCTIONS				
No 4247				

WORK PERFORMED
CHECKED AND FOUND UNIT OFF ON ROLL OUT SWITCH
TILTED, RESET AND WATCHED OPERATION, CHECKED FLOW PIPING,
REMOVED BLOWER AND FOUND HEAT EXCHANGER BAD, WILL GIVE
PRIC OF REPLACEMENT

[illegible]

<p>LIMITED WARRANTY: A 30 day warranty exists from first date of service for only those individual items of the system that have been serviced or repaired by this company. Material or parts warranties are subject to the mfg. or mfgs. agencies' established warranty policies. Improper maintenance, acts of God, misuse and abuse of the equipment will void all claims. No other warranties exist other than stated above. This contractor has sole determination of any or all warranty claims.</p> <p>NET 30 DAYS, 1 1/2 % PER MONTH ON UNPAID BALANCE.</p> <p>CUSTOMER OR AGENT: I hereby certify the above work has been completed and I am aware of the terms stated.</p> <p>DATE: <u>3-19-21</u> </p>		<p>WORK COMPLETED <input type="checkbox"/></p> <p>WORK INCOMPLETE <input type="checkbox"/></p>	
TOTAL LABOR			
TOTAL PARTS			
SUB CONTRACT			
EQUIP. RENTAL			
DEL. OR PARKING			
MISC.			
		TAX	
TOTAL AMOUNT			

[illegible]

CUSTOMER COPY

Excerpt, Birmingham, Michigan-Code of Ordinances/Chapter 2-Administration/Article VII.- Finance/Division 2.-Purchases, Contracts, and Sales/Sec. 2-280.-Competitive bidding requirements;

https://library.municode.com/mi/birmingham/codes/code_of_ordinances?nodeId=PTIICICO_C_H2AD_ARTVIIEL_DIV2PUCOSA_S2-280COBIRE

Sec. 2-280. - Competitive bidding requirements.

- (a) Except as provided in subsection (c) of this section, all supplies and contractual services, when the estimated cost thereof shall equal or exceed \$6,000.00, shall be purchased by formal written contract from the lowest responsible and responsive bidder after due notice inviting competitive sealed bids. All such contracts shall be awarded by the city commission.
- (1) The purchasing agent or department head shall provide for the procurement of competitive sealed bids as follows:
- a. Prepare the invitation for bids describing the requirements of the using agency.
 - b. Publicize the invitation for bids by public advertisement, such as through Bidnet or suitable trade publications, no less than five days preceding the last day set for the receipt of competitive sealed bids. The public advertisement required by this section shall include a general description of the supplies or contractual services to be purchased or sold and in addition, shall state where bid forms and specifications may be obtained, the date, time and place for the filing and opening of bids, whether bid, performance and payment bonds are required and if required, the amounts thereof and anything else deemed necessary.
 - c. Bids submitted in response to the invitation for bids shall be submitted sealed and in addition, shall be identified as bids on the outside of the envelopes and accompanied by any bid security required.
 - d. Bids shall be opened publicly at the time, place and date designated in the invitation for bids. Each bid, together with the name of the bidder shall be recorded and a tabulation of all bids received shall be available for public inspection in the requesting department.
 - e. An invitation for bids may be cancelled or any or all bids or proposals may be rejected in whole or in part as specified in the invitation for bids when it is determined by the city commission to be in the best interests of the city.
 - f. The purchasing agent or department head shall not knowingly accept the bid of a person who is in default in the payment of any taxes, licenses, fees, permits or any other monies due the city or who shall in any other respects be disqualified according to any federal or state law or ordinance provision. A contract with a person who is discovered to have been in default or disqualified at the time of the awarding of the contract shall be voidable.

g. The purchasing agent or department head shall determine and recommend in writing to the city commission the name of the lowest responsible and responsive bidder. In reaching a determination as to who the lowest responsible bidder is, the following shall be considered:

1. The ability, capacity and skill of the bidder to provide the service or supplies required;
2. Whether the bidder can provide the service or supplies promptly or within the time specified without delay or interference;
3. The character, integrity, reputation, judgment, experience and efficiency of the bidder in business;
4. The quality of performance and time of completion by the bidder of previous contracts or services;
5. The previous and existing compliance by the bidder with laws and ordinances relating to contract performance;
6. The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;
7. The quality, availability and adaptability of the supplies or contractual services to the particular use required;
8. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract; and
9. The number and scope of any additional, limiting or qualifying conditions attached to the bid by the bidder.

(b) The city shall not be obligated to purchase from the lowest bidder.

(c) The city commission, by an affirmative vote of five-sevenths of its members, may dispense with the requirement for competitive bidding when the estimated cost of the contract does not exceed \$12,000.00.

(d) A contract may be awarded by the city commission for the purchase of supplies and/or contractual services without submitting the purchase through the competitive bidding process as set forth herein when there is only a sole-source for the purchase and the requesting department head has provided reasonable justification to the city manager in writing that circumstances exist that preclude obtaining competition.

(e) No contract or purchase shall be artificially divided to avoid the requirements of this section.

(Ord. No. 1525, § 1.195, 6-22-92; Ord. No. 1784, § 1, 7-15-02)



MEMORANDUM

Department of Public Services

DATE: April 5, 2021

TO: Thomas M. Markus, City Manager

FROM: Lauren A. Wood, Director of Public Services

SUBJECT: Birmingham Ice Sports Arena General Contractor Award

INTRODUCTION:

The Birmingham Ice Arena (BIA) is scheduled 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 for \$2,000,000.00. In addition, with the approval of the Parks and Recreation Bond in November 2020, the building renovations and addition improvements can be accomplished with the Parks and Recreation Bond dollars.

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.

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 include: shifting the main ice arena to the east to accommodate ADA requirements, the addition of a unisex and referee locker rooms, a new High School Team Locker Room, enlarging the existing locker rooms (4), and a new Studio Rink observation area/meeting room. The 2018 total estimated project cost was \$5,100,000.00.

In order to prepare plans and specifications for the construction of the renovation and addition for the Birmingham Ice Arena, Architect/Engineering Design documents were prepared. We presented the design plans to various groups for review, input and/or approval, which included City Boards/Committees/City Commission with the corresponding dates. Those were the Parks and Recreation Board on March 2, 2021, the

Architectural Review Committee on March 4, 2021, all Birmingham City Departments beginning on March 5, 2021, and the City Commission Workshop on March 8, 2021. The request for proposal (RFP) was placed on MITN on March 10, 2021. The RFP included thirteen (13) alternates for pricing purposes to allow greater flexibility and to keep as close to the budget as possible. Bids were received and publicly (virtually) opened on March 31, 2021. The results of the bid opening for the General Contractor is attached as a summary, along with listing the breakdown of the alternates.

We have accepted six alternates for a total reduction of \$405,800. The biggest alternate to eliminate is the Studio Rink in-floor piping and associated work. The cost reduction is \$380,000 and the extra cost does not warrant completion at this time. We will defer this work to a later time. What this means is the new mechanical system will be in place serving the Studio Rink, but the in-floor piping will not be replaced. The ice will need to be removed, as done currently, for approximately four months during the summer. This portion of the Ice Arena operation does not generate the revenue currently, to justify this added expense. Other revenue sources such as creating a multi-purpose space can be deployed in this section of the rink. It will provide many options as a rentable space in conjunction with the new party room or it will serve as a separate rental area.

City staff and PMC conducted an interview with the lowest bidder, C.E. Gleeson Constructors, Inc. The base bid total from C.E. Gleeson is \$5,297,000.00. After the recommended adds and deducts are tallied the total construction cost is \$4,891,200.00. Plante Moran Cresa provides a project recommendation letter, a bid summary and a budget summary following this report.

The City Administration and PMC recommend the Birmingham Ice Arena General Contractor Services be awarded to C.E. Gleeson Constructors, Inc. Our selection criteria consisted of the following factors: Similar Project Experience, Team-Member Resumes and Qualifications, Fee, References, and the Interview.

LEGAL REVIEW:

The City Attorney has completed a review of this contract agreement and approved with signature. The AIA Document A101 and A201 incorporate all of the City's standard agreement language into a comprehensive document between Owner and the General Contractor.

FISCAL IMPACT:

Funds for \$2 million dollars have been budgeted in the Approved 2020-2021 Budget for a portion of this project. The remaining project amount will be from the Parks and Recreation Bond. The construction total cost is \$4,891,200.00. The owner contingency amount of 8% is \$391,296.00. In addition to the above, the soft costs which include the Owner's Representative (Plante Moran Cresa), the Architect services (Andrus Architecture), Civil Engineering and Environmental Costs are estimated to be \$515,110.00.

Funding this project for \$2,000,000.00 is available in the Capital Projects Fund account # 401-901.001-977.0000. Funds for \$3,797,606.00 are available from the Parks System Construction Fund account #408-752.000-977.0000.

PUBLIC COMMUNICATIONS:

All mediums of communication will be available to the City of Birmingham during the Ice Arena construction project. The construction schedule will be updated on the City website during this project.

ATTACHMENTS:

- PMC Recommendation for General Contractor Services Letter dated April 7, 2021
- General Contractor Bid Summary
- Budget Summary 4-12-21
- PMC Presentation
- Preliminary Schedule
- C.E. Gleeson RFP March 31, 2021 - Bid Proposal Form - Iran Disclosure Affidavit
- AIA Document A101 and A201 - Standard Form of Agreement between Owner and Contractor
- Insurance Certificate

SUMMARY:

The Department of Public Services and PMC recommend awarding the General Contractor Services for the Ice Arena Renovation and Addition project to C.E. Gleeson for a total of \$4,891,200.00. The cost of the improvements to the Birmingham Ice Arena will be approximately \$5,797,606.00. We deducted the piping for the Studio Rink for \$380,000. The overall project cost has an anticipated shortfall of about \$700,000. The Parks and Recreation Bond proceeds will be used for this project. We will know the overall impact to the bond funds later in the summer. In addition, the allocated contingency for this project is not likely to be exhausted.

The Architectural Review Committee (ARC) at their March 4, 2021 meeting reviewed the renovation plans as presented to them by Plante Moran Cresa and Andrus Architecture. Much of the input and inquiries focused on ADA compliance and interior enhancements to make the Arena lobby space more attractive and inviting to the visitors.

The Parks and Recreation Board, at their April 6, 2021, passed a resolution to recommend the Birmingham Ice Arena General Contractor Award to C.E. Gleeson and forward to the City Commission for approval. They expressed concern about excluding the Studio Rink from the overall project. However, they understood the significant increase the Studio Rink gives to the total project cost. It was noted during this meeting, the Studio Rink could be updated later without impact to the new mechanical system. The Parks and Recreation Board emphasized the importance of this component and does not want it to be forgotten as part of future budget requests.

SUGGESTED RESOLUTION:

To award the Birmingham Ice Arena Renovation and Addition project to General Contractor C.E. Gleeson Constructors, Inc. in the amount of \$4,891,200.00. Also, to approve the Owner Contingency amount of \$391,296.00 and the related soft costs for \$515,110.00. Funds are available in the Capital Projects Fund account #401-901.001-977.0000 and the Parks System Construction Fund account #408-752.000-977.0000 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.



April 7, 2021

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 General Contractor 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 General Contractor for the CB Sports Ice Arena Renovation/Additions Capital Improvement Project (Project). The CB's Public Services Department, Andrus Architects and Plante Moran Cresa (Project Team) solicited and received proposals from four (4) General Contracting firms.

SELECTION PROCESS

This letter communicates the results of the process the Project Team was directed to conduct in accordance with our engagement. On March 10, 2021, RFP documents were formally issued and made available by posting on the MITN web site as well as PMC's e-Builder web link. A mandatory Pre-Proposal meeting was held on March 16th. Ten (10) General Contracting firms attended the Pre-Proposal meeting and four (4) companies submitted their response to the RFP and bid on March 31st by the required bid deadline.

Based on the bid results, the Project Team conducted an interview with C.E. Gleeson Constructors, Inc. (C.E. Gleeson) on April 1, 2021. Post interview discussions amongst the Project Team were facilitated by PMC and post-interview follow up questions/clarifications with C.E. Gleeson were conducted.

RECOMMENDATION

The Project Team recommends the engagement of **C.E. Gleeson Constructors, Inc.** for this engagement based on the following:

1. Lowest overall bid including Project Team's recommended alternates 1,5,7,9,12,13 plus a voluntary alternate.
2. James Hayes will be C.E. Gleeson's Project Manager. James received positive feedback from our reference check.
3. C.E. Gleeson's consultant engagement of Charles Gilardone for the rink installation oversight. Charles has experience with installing 48 ice rinks, mostly with Serv-Ice.
4. Merlo Construction, Concrete flat work installer. Merlo Construction has installed 21 ice arena projects since 2001, mostly with Serv-Ice.



5. Serv-Ice will provide and install under slab piping and mechanical equipment including start up and commissioning.
6. C.E. Gleeson's HQ is located 3.7 miles from the arena, they have been in business for 97 years, a bonding capacity of \$120M, they are familiar with the CB Ice Arena Building, Kenning Park Site, and the City of Birmingham.

The Project Team recommends awarding the General Contractor contract for the CB Ice Sports Arena Renovation/Additions Capital Improvement Project to C.E. Gleeson in the amount of **\$4,891,200**. This amount includes alternates outlined in the attached bid summary. The cost of this work will be detailed in the AIA A101-2017 contract pending final review and approval of terms by the CB legal counsel.

In addition to this award for construction services, the Project Team recommends an 8% owner controlled contingency in the amount of **\$391,296**.

Should you have any questions regarding this recommendation, please do not hesitate to contact me at 248-766-0996 or robert.stempien@plantemoran.com.

Sincerely,

PLANTE MORAN CRESA

A handwritten signature in black ink, appearing to read "Robert Stempien".

Robert Stempien, AIA
Sr. Vice President

Attachments:

Birmingham Ice Sports Arena Hard and Soft Cost Summary 4-12-21
General Contractor Bid Summary 3-31-21
C.E. Gleeson RFP response

City of Birmingham - Ice Sports Arena Renovation/Additions - General Contractor Bid Summary

3/31/2021

			replace lobby benches	replace dasher board system	epoxy paint mech. room floor	replace bleachers with blue caps	eliminate lobby lockers and bench	eliminate wood slat ceiling, install 2x2 ceiling	eliminate team locker room locker installation	install new shower floor tile - lockers 1-4	eliminate studio rink renovation	drywall on metal stud instead of block in locker room	eliminate waste recovery system	eliminate lobby ticket booth renovation	renovation of existing concession stand counter adding display case				
			ADD	ADD	ADD	ADD	DEDUCT	DEDUCT	DEDUCT	ADD	DEDUCT	DEDUCT	DEDUCT	DEDUCT	ADD				
No.	General Contractor	Cost Proposal Base Bid Total	Alt 1	Alt 2	Alt 3	Alt 4	Alt 5	Alt 6	Alt 7	Alt 8	Alt 9	Alt 10	Alt 11	Alt 12	Alt 13	VOLUNTARY DEDUCTS	Total deducts (alt 5,7,9,12) + Voluntary Deducts	Total Adds (alt. 1, 13)	Total
1	CE Gleeson	\$5,297,000.00	\$700.00	\$80,000.00	\$18,000.00	\$32,000.00	\$16,000.00	\$57,000.00	\$7,000.00	\$17,500.00	\$380,000.00	\$2,000.00	\$17,000.00	\$12,500.00	\$13,000.00	\$4,000.00	\$419,500.00	\$13,700.00	\$4,891,200.00
2	Cross Construction	\$5,439,777.00	\$6,400.00	\$90,000.00	\$1,500.00	\$36,000.00	\$10,000.00	\$47,700.00	\$1,800.00	\$13,700.00	\$335,000.00	\$5,000.00	\$15,000.00	\$2,000.00	\$10,000.00	\$52,000.00	\$400,800.00	\$16,400.00	\$5,055,377.00
3	AM Higley	\$5,674,301.00	\$3,650.00	\$104,500.00	\$7,100.00	\$31,350.00	\$7,200.00	\$16,500.00	\$6,000.00	\$4,750.00	\$408,000.00	\$0.00	\$22,500.00	\$4,350.00	\$15,000.00	\$0.00	\$425,550.00	\$18,650.00	\$5,267,401.00
4	The Dailey Company	\$5,723,000.00	-\$3,800.00	\$78,000.00	\$6,200.00	\$31,000.00	\$16,000.00	\$48,000.00	\$4,500.00	\$17,800.00	\$400,000.00	\$0.00	\$18,000.00	\$7,500.00	\$15,000.00	\$0.00	\$428,000.00	\$11,200.00	\$5,306,200.00

BUDGET SUMMARY 4-12-21
PROJECT: CITY OF BIRMINGHAM ICE SPORTS ARENA RENOVATION/ADDITIONS

Hard Construction			
Ice Sports Arena	2018 Budget	Actual	Variance
Hard Construction	\$ 3,880,087	\$ 5,297,000	
Recommended Alternates:			
Alt. 1 add replacement of lobby benches		\$ 700	
Alt. 5 eliminate lobby lockers		\$ (16,000)	
Alt. 7 eliminate team locker room locker install		\$ (7,000)	
Alt. 9 eliminate studio ice rink in-floor piping and assoc. work		\$ (380,000)	
Alt. 12 eliminate lobby ticket booth renovation		\$ (12,500)	
Alt. 13 add renovation of concession counter		\$ 13,000	
Recommended Voluntary Alternates:			
Concession grille - manufacture change		\$ (4,000)	
Totals	\$ 3,880,087	\$ 4,891,200	\$ (1,011,113)

Owner Contingency			
Ice Sports Arena	2018 Budget	Actual	Variance
Contingency	\$380,208	\$ 391,296	
Totals	\$ 380,208	\$ 391,296	\$ (11,088)

Soft Costs			
Ice Sports Arena	2018 Budget	Actual	Variance
Soft Costs (as of 4-12-21)	\$817,888	\$ 515,110	\$ 302,778
Totals	\$ 817,888	\$ 515,110	\$ 302,778

Total Project Hard Construction + Owner Contingency + Soft Costs			
Ice Sports Arena	2018 Budget	Actual	Variance
Totals:	\$ 5,078,183	\$ 5,797,606	\$ (719,423)



plante moran | cresa

Birmingham Ice Sports Arena

City of Birmingham Parks & Recreation Update 4-6-21



Birmingham Ice Sports Arena

Project Timeline:

March 8th	Received Abatement Report
March 10th	Building Department Plan Approval
March 16th	GC Pre-bid meeting
March 31st	Received (4) GC Bid Proposals
April 1st	Post Bid Interview
April 6th	Parks & Recreation - Update
April 12th	Commissioner GC Recommendation
April 13th	GC Engagement
April 24th	Last Day of Ice Rental – Main Rink
April 26th	Ice Removal
April 29th	Construction Start
Sept. 20th	Owner Occupancy



Abatement Report 3-8-21

Skate room flooring

Drywall mud

Fire doors and frames

Wall caulk

CITY OF BIRMINGHAM

ASBESTOS INSPECTION REPORT FOR
BIRMINGHAM ICE ARENA

MARCH 2021





Building Department Plan Approval 3-10-21

“The plans for the renovation of the ice arena have been reviewed and approved by all disciplines in the Building Department. As I mentioned during the staff meeting, we were impressed with the level of detail and completeness of the construction documents.”





GC Pre-Bid Meeting 3-16-21

Birmingham Ice Sports Arena Potential Bidders								
	FIRM	CONTACT	E-MAIL	PHONE	SENT RFP DIRECTLY	DOWNLOAD PLANS	ATTENDED WALK	BIDDING
1	CE Gleeson	Charles Gleeson	Gleeson@gleesonconstructors.com	586.556.7000	YES	YES	YES	YES
		Jeff Eliopoulos	eliopoulos@gleesonconstructors.com	248-866-7699		YES	YES	YES
2	Spence	Brian Keeler	brian@spencebrothers.com	989.233.9106	YES	YES	YES	NO
3	Rewold	Craig Wolanin	CWolanin@frankrewold.com	248.601.1215	YES	YES	YES	NO
4	Barton Malow	Sean Holister	sean.hollister@bartonmalow.com		YES	YES	NO	NO
5	Rockford	Dan Buskirk	dbuskirk@rockfordconstruction.com	616-309-3143	YES	YES	NO	NO
		Jeff Robinson	jrobinson@rockfordconstruction.com	313-319-8330		YES	YES	YES
6	Dailey Company	Scott Wheeler	swheeler@daileyco.com	248-364-2600	YES	YES	YES	YES
7	The Christman Co.	Mary Lefevre	mary.lefevre@christmanco.com	313-407-7082	YES	YES	NO	NO
8	Braun	Evan Braun	ebraun@brauncg.com	586-703-1032	YES	YES	NO	NO
9	Summit Company	Tony Dattilio	tdattilio@summitcompany.net	734.845.6506	YES	YES	NO	NO
10	DeMaria	Karen Kelly	KarenKelly@demariabuild.com		YES	YES	NO	NO
		Andrew Craccliolo		248-880-5436		YES	YES	NO
11	Granger	Glenn Granger			YES	YES	NO	NO
12	Brix Corportation					YES	NO	NO
13	Cross Construction Group	Evan Jaworowski	evan@stark-enterprsecll.com	734-589-7576		YES	YES	YES
14	LaSalle General Contractor	Kelly Bowers	kbowers@lasalleinc.com	248-561-1056		YES	YES	NO
15	MIG Construction					YES	NO	NO
16	AM Higley	Jeff Spears	jeffery.spears@amhigley.com	248-571-9154		YES	YES	YES
		Ryan Doyle	rdoyle@amhiggle.com	313-402-7349		YES	YES	YES
17	FH Martin	Kevin Pruzinsley	kpruzinskey@fhmartin.com	586-558-2100		YES	YES	NO



Birmingham Ice Sports Arena

GC Bids Received 3-31-21:





Birmingham Ice Sports Arena

GC Bid Results 3-31-21:


City of Birmingham - Ice Sports Arena Renovation/Additions - General Contractor Bid Summary															
3/31/2021															
			replace lobby benches	replace dasher board system	epoxy paint mech. room floor	replace bleachers with blue caps	eliminate lobby lockers and bench	eliminate wood slat ceiling, install 2x2 ceiling	eliminate team locker room locker installation	install new shower floor tile - lockers 1-4	eliminate studio rink renovation	drywall on metal stud instead of block in locker room	eliminate waste recovery system	eliminate lobby ticket booth renovation	renovation of existing concession stand counter - adding display case
			ADD	ADD	ADD	ADD	DEDUCT	DEDUCT	DEDUCT	ADD	DEDUCT	DEDUCT	DEDUCT	DEDUCT	ADD
No.	General Contractor	Cost Proposal Base Bid Total	Alt 1	Alt 2	Alt 3	Alt 4	Alt 5	Alt 6	Alt 7	Alt 8	Alt 9	Alt 10	Alt 11	Alt 12	Alt 13
1	CE Gleeson	\$5,297,000	\$700	\$80,000	\$18,000	\$32,000	\$16,000	\$57,000	\$7,000	\$17,500	\$380,000	\$2,000	\$17,000	\$12,500	\$13,000
2	Cross Construction	\$5,439,777	\$6,400	\$90,000	\$1,500	\$36,000	\$10,000	\$47,700	\$1,800	\$13,700	\$335,000	\$5,000	\$15,000	\$2,000	\$10,000
3	AM Higley	\$5,674,301	\$3,650	\$104,500	\$7,100	\$31,350	\$7,200	\$16,500	\$6,000	\$4,750	\$408,000	\$0	\$22,500	\$4,350	\$15,000
4	The Dailey Company	\$5,723,000	-\$3,800	\$78,000	\$6,200	\$31,000	\$16,000	\$48,000	\$4,500	\$17,800	\$400,000	\$0	\$18,000	\$7,500	\$15,000

No.	General Contractor	VOLUNTARY DEDUCTS	Total deducts (alt 5,7,9,12) + Voluntary Deducts	Total Adds (alt. 1, 13)	Total
1	CE Gleeson	\$4,000	\$419,500	\$13,700	\$4,891,200
2	Cross Construction	\$52,000	\$400,800	\$16,400	\$5,055,377
3	AM Higley	\$0	\$425,550	\$18,650	\$5,267,401
4	The Dailey Company	\$0	\$428,000	\$11,200	\$5,306,200



Post Bid Meeting 4-1-21




plante moran CRESA
REAL ESTATE CONSULTANTS

CITY OF BIRMINGHAM – GENERAL CONTRACTOR POST BID CLARIFICATIONS/QUESTIONS

DATE: April 1, 2021
TO: City of Birmingham
FROM: Robert Sterpien, AIA – Plante Moran CRESA (PMC)
PROGRAM: City of Birmingham Ice Sports Arena Renovation and Addition Project

Items:

1. What is your company background and structure?

C.E. Gleeson Constructors, Inc. is a third generation General Contractor/Construction manager established in 1924. We are based in Troy, Michigan. We are 3.7 miles away from the City of Birmingham Ice Arena. Our company is staffed with 38 employees, 11 President/CeO, 1 VP of Construction Operations, 5 Senior Project Managers, 4 Project Engineers, 1 VP of Estimating, 2 Senior Estimators, 2 CFO of Accounting, 2 Accounts payable accounts, 4 administrative personnel, 14 Project Superintendents, 4 Assistant Superintendents. Website: www.celegonconstructors.com
2. Who is your Project Manager and their construction experience?

James Hayes- Resume attached
3. Who is your Project Superintendent and their construction experience?

Bob Thompson or Scott Mena- Resumes attached
4. Who is your Project Engineer and their construction experience?

Kimberly Jacob- Resume attached
5. What is your existing workload? Do you have bonding capacity given your current workload?

The award of the contract for Birmingham Ice Arena meets our workload perfectly. We have \$111 Million Dollars in backlog. Our current bonding capacity is \$120 Million Dollars, we currently have \$12 Million Dollars of bonded work.
6. Who assembled the bid?

Jeff Ellipoulos- Senior Project Manager/Estimator and Charles Gleeson II- President/CeO
7. Did you receive good site coverage?

We received average coverage.
8. How many bidders per bid category?

3-4 Bidders
9. Will you be potentially working with new subs?

Yes, we still have other bids coming in from other subcontractors.
10. Is the performance bond part of your bid?



GC Selection Recommendation

1. Lowest overall bid including Project Team's recommended alternates 1,5,7,9,12,13 plus a voluntary alternate.
2. James Hayes will be C.E. Gleeson's Project Manager. James received positive feedback from our reference check.
3. C.E. Gleeson's consultant engagement of Charles Gilardone for the rink installation oversight. Charles has experience with installing 48 ice rinks, mostly with Serv-Ice.
4. Merlo Construction, Concrete flat work installer. Merlo Construction has installed 21 ice arena projects since 2001, mostly with Serv-Ice.
5. Serv-Ice will provide and install under slab piping and mechanical equipment including start up and commissioning.
6. C.E. Gleeson's HQ is located 3.7 miles from the arena, they have been in business for 97 years, a bonding capacity of \$120M, they are familiar with the CB Ice Arena Building, Kenning Park Site, and the City of Birmingham.



Recommended Alternates:

<i>Alternate No. 1</i>	<i>Add Lobby Benches</i>
<i>Alternate No. 5</i>	<i>Eliminate Lobby Lockers</i>
<i>Alternate No. 7</i>	<i>Eliminate Team Locker Installation</i>
<i>Alternate No. 9</i>	<i>Eliminate Studio Rink Renovation</i>
<i>Alternate No. 12</i>	<i>Eliminate Lobby Ticket Booth Renov.</i>
<i>Alternate No. 13</i>	<i>Add Concession Stand Renovation</i>
<i>Vol. Alternate</i>	<i>Concession Rolling Grille (Manuf. Change)</i>

Total Deducts: (\$419,500)

Total Adds: \$13,500



Birmingham Ice Sports Arena

Alternate No. 9 Eliminate Studio Rink Renovation



Total Deduct: (\$380,000)



Recommended Totals:



GC Bid w/ Alternates: \$4,891,200

Owner Contingency (8%): \$391,296

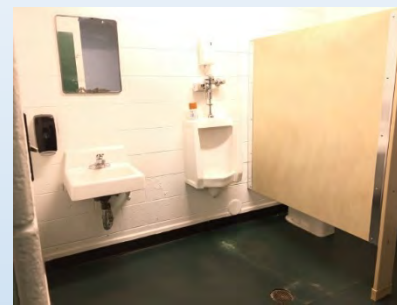
\$5,282,496



Project Budget Impacts

ADA Requirements

- Concessions stand counter height modifications
- Player bench and score keeper bench modifications
- Column barriers
- Locker room toilet room modifications
- Widen masonry wall door openings
- Drinking fountains and barriers



Added (2) storage rooms

New referee room

New electrical switch gear

New transformer

New waste heat recovery system

Main rink window replacement

Exterior door infill

New trophy case

Spectator heating system

Market Impacts

- Steel price increase
- Sheet metal price increase
- PVC price increase
- Doors/hardware – lead times
- PVC benches/shelves – lead times



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
• 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

***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.**



City of Birmingham
Ice Sports Arena Renovation/Additions

Request for Proposal - General Contracting Services

March 31, 2021



COVER LETTER

March 31, 2021

City of Birmingham
Carrie Laird, Parks and Recreation Manager
851 S. Eton
Birmingham, MI 48009

Subject: Ice Sports Arena Renovation/Additions
Request for Proposal (RFP)
General Contracting Services

Dear Ms. Laird,

C.E. Gleeson Constructors Inc. is very appreciative for allowing our Gleeson Team the opportunity to submit a proposal for General Contracting Services for the “Ice Sports Arena Renovation/Additions” project.

Every day for the past ninety-seven (97) years, Gleeson Constructors has started the day by lacing up our work boots, rolling up our sleeves and constructing buildings. Construction is in our blood lines. Three generations of Gleeson teams have successfully managed an incredible portfolio of construction projects throughout the United States.

Our familiarity with the City of Birmingham’s Ice Sports Arena extends back to 1969 when competitive hockey leagues were played on a seasonal outdoor hockey rink. Coincidentally, Charles Gleeson II worked at the ice rink as a part time employee fulfilling numerous activities in the proshop sharpening skates and shoveling the ice shavings from the Zamboni.

Gleeson Constructors’ commitment to the City of Birmingham’s “Ice Sports Arena Renovation/Additions” project is a promise to provide our comprehensive knowledge within our project team staff to construct at exemplary levels of quality.

Gleeson is presenting our statement of qualifications within the “RFP” and offer the following benefits to the City of Birmingham’s :

- Principal in charge commitments from Charles Gleeson II and Bradley Baker. Both will be fully committed to the “Ice Sports Arena Renovation/Additions” project and available 24/7 to this project team, owners and architects/engineers. Mr. Gleeson and Mr. Baker will be involved in preconstruction planning, subcontractor negotiations, attending meetings and making site visits during construction.
- Firm commitment to Project Team member staffing from preconstruction planning to on-site supervision and management from shovel to key.

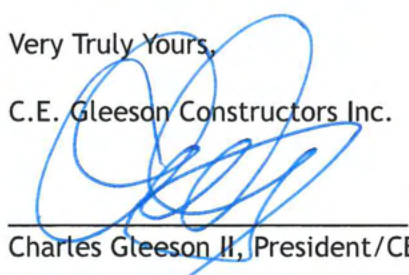


COVER LETTER

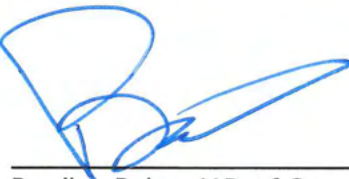
- Strong financial capacity enriched with a 100% Labor, Performance and Payment Bond issued by Travelers Casualty and Surety Company of America, and General Liability Insurance through Amerisure.
- Corporate commitment and knowledge of quality assurance, safety procedures and cost control.
- Corporate and field operation, technical support utilizing our best software applications:
 - Timberline Gold
 - Plan Suite Estimator
 - Digitizing Software
 - Subcontractor performance and financial pre-qualifications
 - Bid Connect
 - Plan Grid software utilized on tablets company-wide in the construction field

Very Truly Yours,

C.E. Gleeson Constructors Inc.



Charles Gleeson II, President/CEO



Bradley Baker, V.P. of Operations



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SECTION 7 - ADDITIONAL INFORMATION

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SECTION 1 PROJECT APPROACH NARRATIVE

Project Approach

Each project Gleeson Constructors has successfully completed has had its unique challenges and rewards. It is these experiences coupled with the means and methods we draw upon to demonstrate our specific knowledge of this project, and intricately apply our best construction services and construction project team to ensure successful renovations and additions to the City of Birmingham Ice Sports Arena.

Philosophy

Great consideration will be taken with procurement of all subcontractors trades, more specifically pre-qualification of the unique specialty trade subcontractors. This procurement process began with engaging an “Ice Rink Installation” expert consultant, Charles Gilardone, who brings with him the experience of forty-eight (48) successful ice rink installation projects. Mr. Gilardone has vast experience with national ice rink contractors, including Serv-Ice, Cimco-Lewis and numerous others. Our philosophy is to continually surround ourselves with the best possible talent and proven track records of the past performances. Our project team is amongst the best.

Unique Expertise

The unique expertise is extremely essential to achieve the goals of the Owner. The best qualified General Contractor team may not be the lowest price submitted on bid day. We are very aware of the overall project budget and are diligently strategizing costs and voluntary alternates.

The best team has already discussed in detail with their project staff, the most crucial intricate means and methods of a successful ice rink installation.

Ice Rink Installation

Ice Rink Refrigeration and Concrete pour

- Staggering the insulation boards
- Staggering of concrete reinforcement mesh
- Fusing of poly tubing welds
- Over 11.17 miles of poly pipe
- Pre Ordered “Guaranteed Concrete Supplier” delivery schedule of 260 cubic yards of concrete
- Two (2) concrete pump trucks
- Manpower of onsite concrete placement finishers, welders, reinforcing steel workers, plumbers, electricians



SECTION 1 PROJECT APPROACH NARRATIVE

Building Renovations and Additions

- Coordination of structural shoring
- Removal and re-configuration of bleacher seating
- Removal/storage of dasher boards
- Contingency plan for dasher boards if there is structural/aesthetic deficiencies upon removal
- Long lead procurement activities
- Dehumidification unit
- HVAC/Mechanical units
- Detroit Edison - Distribution Panel 12-16 weeks lead time
- Temporary generator
- Shop drawings expedited “quick approval” for structural steel
-

Current Commitment Workload/Staffing

C.E. Gleeson Constructors maintains a \$110,000,000 aggregate bonding capacity through Travelers Insurance Company of America. We currently have \$11,000,000 in bonded contract backlog and \$111,000,000 in private projects. Our project team staff is committed to the City of Birmingham Ice Sports Arena Project.

Scheduling

See Section 5

Site Logistics/Safety Considerations

Our preliminary site logistics and safety considerations have been implemented into a life/safety plan that will encompass a security fence around the perimeter of the ice rink building which will eliminate the curious onlookers.

Gleeson Constructors considers jobsite safety a number one priority. Our EMR rating is .89. Our priorities in regard to jobsite safety include visionary protection of workers performing construction activities as well as public safety.

While the Ice Sports Arena will be suspending all public activities, the surrounding areas present a concern:

Kenning Park is enveloped with three (3) baseball diamonds, one (1) softball diamond, four (4) tennis courts and a very active skateboard park.



SECTION 1 PROJECT APPROACH NARRATIVE

Project Management Software and Technology

WHY GLEESON CONSTRUCTORS?

- IN-DEPTH EXPERIENCE
- FINANCIAL STRENGTH
- EARLY OR ON-TIME COMPLETION AND UNDER BUDGET
- TEAM APPROACH CITY OF BIRMINGHAM *PLANTE MORAN CRESA/ANDRUS ARCHITECTS AND GLEESON CONSTRUCTORS*
- DIRECT INVOLVEMENT OF PRINCIPALS WHO MANAGE PROJECTS
- OPEN BOOK COST ACCOUNTING (COST-PLUS CONTRACTS)
- QUALITY CONTROL
- OUTSTANDING SAFETY RECORD
- STRONG RELATIONSHIPS WITH BEST AVAILABLE LOCAL SUBCONTRACTORS AND EXPERIENCED SUBCONTRACTORS
- THOROUGH COMMUNICATIONS
- COMMITMENT TO SERVE YOUR BEST INTERESTS
- OUR DESIRE TO SERVE YOUR FUTURE CONSTRUCTION NEEDS ENSURES COMPLETE DEDICATION
- ABILITY TO FAST TRACK SEVERAL ONGOING CONSTRUCTION ACTIVITIES WITHOUT DISRUPTION OF BUSINESS ACTIVITY
- SPEED - QUALITY - SAFETY
- STRONG FINANCIAL CAPACITY ENRICHED WITH A 100% LABOR, PERFORMANCE AND PAYMENT BOND ISSUED BY TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, AND GENERAL LIABILITY INSURANCE THROUGH AMERISURE.
- CORPORATE COMMITMENT AND KNOWLEDGE OF QUALITY ASSURANCE, SAFETY PROCEDURES AND COST CONTROL.
- CORPORATE AND FIELD OPERATION, TECHNICAL SUPPORT UTILIZING OUR BEST SOFTWARE APPLICATIONS:
 - TIMBERLINE GOLD
 - PLAN SUITE ESTIMATOR
 - DIGITIZING SOFTWARE
 - SUBCONTRACTOR PERFORMANCE AND FINANCIAL PRE-QUALIFICATIONS
 - BID CONNECT
 - PLAN GRID SOFTWARE UTILIZED ON TABLETS COMPANY-WIDE IN THE CONSTRUCTION FIELD



SECTION 1 PROJECT APPROACH NARRATIVE

FINANCIAL CONTROLS

I. Pre-Construction Phase

- Design Review
- Value Engineering Analysis
- Cash Flow Schedule
- Preliminary Schedule of Values
- Establish Contingency Alternates

II. Purchasing Phase

- Subcontractor/Supplier Screening
- Work Scope Checklist
- Finalize Schedule of Values

III. Bid Activity Management Phase

- Separation of bid categories
- Utilization of the best area contractors
- Voluntary Alternate Checklist
- Pre-qualify subcontractors

IV. Construction Phase

- A. Award Subcontracts
- B. Change Administration
- C. Job Cost Monitoring
 - Timberline Gold for Construction
 - Purchasing Controls
 - Payroll Reporting
 - Subcontractor Payment Analysis

V. Post-Construction Phase

- Warranty Enforcement
- Guarantee Enforcement



SECTION 1 PROJECT APPROACH NARRATIVE

SCHEDULE CONTROLS

I. Pre-Construction Phase

- Preliminary CPM Construction Schedule (Microsoft Project)
- Project Milestones Identified
- Constructability Analysis

II. Purchasing Phase

- Subcontractor/Supplier Commitment to Specific Milestone Dates
- Coordination Concerns Addressed

III. Construction Phase

- Final Computer-Generated CPM Schedule
- Biweekly Progress Schedules
- Weekly Field Schedules
- Weekly Coordination Meetings
- Product Tracking/Expediting
- Subcontractor Production Enforcement

QUALITY CONTROLS

I. Pre-Construction Phase

- Product Specification Review
- Product/Systems Performance Analyzed

II. Purchasing Phase

- Finalize Product Selection

III. Construction Phase

- Pre-submittal Review of Product Data
- Shop Drawing Review
- Quality Control Testing in Field
- Mock-Up Construction Review - if required
- Employee Performance Review
- Continuous Quality Management Applications
- Pre-completion Punch List

IV. Post-Construction Phase

- Performance Certification
- Punch List Completion



SECTION 1 PROJECT APPROACH NARRATIVE

Value Engineering

To be effective, Value Engineering must be started early in the design development process and continue through the bid analysis phase, on into the purchasing and construction phases of this project.

Optimum results occur when all parties of the Project Team work together to insure all aspects of project cost are evaluated on the basis of true value by the Owner.

Effective Value Engineering is a continuous process at Gleeson Constructors, Inc. All departments assess every decision on the basis of the delivering desired performance at the best possible cost.

Gleeson Constructors, Inc. is capable of analyzing the following project aspects with respect to optimizing costs:

- Site Selection
- Utility Service/Analysis
- Topographical Layout
- Traffic/Pavement Concerns
- Storm/Sanitary Sewer Design
- Site/Exterior Building Lighting
- Landscape Work
- Foundation Design
- Structural Frame Analysis
- Structural Floor Systems
- Exterior Building Skin Systems
- Roof Membrane/Moisture Protection
- Entry/Exit Systems
- Interior Finishes
- Elevator/Hoistway Design
- Special Equipment Analysis
- Fire Protection Compliance
- Heating, Ventilation, and Air Conditioning Systems
- Domestic Water, Building Sewer, and Plumbing Fixtures
- Power Grid Design
- Lighting/Lighting Controls
- Communications/Data Deliver Systems
- Waste Disposal Analysis
- Security Systems



SECTION 1 PROJECT APPROACH NARRATIVE

ACCOUNTING

Gleeson Constructors, Inc. will process all cost records and scheduling through the Project Manager, utilizing Timberline Gold Accounting, Microsoft Project Scheduling and other Microsoft software. Changes in work, monthly invoices, cost monitoring, payment disbursement, record handling (i.e., waivers and sworn statements, submittals, clarifications), testing coordination, and permits/inspections will be handled by the Project Manager.

All subcontractors will be required to fully adhere to Owner and C.E. Gleeson insurance requirements. No contractors will be allowed to work on-site without current insurance certificates.

Certified documents used for payment, changes in the work, etc., will be presented on A.I.A. forms as listed below. Waivers and sworn statements will be required before the disbursement of any payment.

Mandatory accounting check request policy:

- Waivers: Conditional / Unconditional / Partial Unconditional / Full Unconditional
- Sworn Statement
- Communication with subcontractor suppliers before payment is received and balances
- Joint Check if necessary
- A.I.A. Document G701- Change Order
- A.I.A. Document G702- Application and Certificate of Payment
- A.I.A. Document G706- Contractor's Affidavit of Payments and Debts and Claims
- A.I.A. Document G706A- Contractor's Affidavit of Release of Liens
- A.I.A. Document G707- Consent of Surety Company to Final Payment



SECTION 1 PROJECT APPROACH NARRATIVE

FIELD GENERAL CONDITIONS

Trailers
Electricity, Heat, Air Conditioning to Trailers
Telephones
Furniture
Copy Machine
Fax Machine
Computer, Printer, Software
Office Supplies
Postage
Site Transportation
Temporary Toilets
Project Manager
Project Superintendent
Assistant Superintendent
Project Engineer
Project Administrator
Printing
Temporary Fencing
Staging Area



SECTION 2A REQUEST FOR QUALIFICATION

SECTION F, PAGE 6 OF RFP - MINIMUM QUALIFICATIONS

A. General Contractor has been in business for at least the last ten (10) consecutive years

C.E. Gleeson Constructors has been in business for 97 years

B. Be licensed to perform the required work in the State of Michigan

C.E. Gleeson Constructors is properly licensed, bonded and insured in the State of Michigan

C. Be familiar with and have experience in the Municipal/Public sector or ice arena projects including having at least three (3) clients in the last ten (10) years.

See Section 2B

D. Have completed renovation projects of at least \$4,000,000 for at least three (3) Municipal/Public clients or ice arena projects within the last ten (10) years.

See Section 2B

E. The ice refrigeration contractor must have successfully completed five (5) ice rink projects of similar scope in the past five (5) years. Please refer to attachment A6 for further details on ice rink experience requirements.

F. Have a current EMR less than .89 or less

C.E. Gleeson Constructors current EMR is .89



SECTION 2B SPECIFIC FIRM EXPERIENCE

PROJECT NO. 1 - LA FITNESS HEALTH CLUBS (110 LOCATIONS NATIONWIDE)

DESCRIPTION: For the past 11 years Fitness International, Studio 222 Architects and Gleeson Constructors have built over 110 successful projects all over the United States. LA Fitness' Signature Clubs features a snack shop, retail sales area, basketball court, three lane lap pool, a whirlpool spa, aerobics room, cycling room, executive locker rooms with digital lockers, showers, steam room, and sauna as well as a separate group exercise studio. LA Fitness Remodels require a partial shut down of the club while renovations are taking place. These remodels include new finishes, lighting fixtures, floor layout, locker rooms, showers, etc. We have built ground-up, renovations and additions on the clubs. When working on a renovation/addition to an occupied space, coordination is key. Gleeson takes great pride in our communication and quality control to make sure our client has minimal disruption during construction. We understand the need to keep operations running smoothly.

LOCATION: NATIONWIDE (20 CLUBS IN MICHIGAN)

DATE COMPLETED: 2010 - PRESENT

CONSTRUCTION COST: \$450,000,000

REFERENCE:

Fitness International - Gary Collins, VP of Development

847-912-7796

garyc@fitnessintl.com

100 Illinois Street, Suite 200

St. Charles, IL 60174

GLEESON CONSTRUCTORS ROLE: GENERAL CONTRACTOR/CONSTRUCTION MANAGER

PROJECT NO. 2 - STERLING HEIGHTS COMMUNITY CENTER

DESCRIPTION: 98,045 sf Two-Story Community Center. The construction is structural steel in combination with bearing & non-bearing masonry and cold formed metal framing. The brick exterior is designed for a dramatic look with areas of varied glazed brick colors along with designer exterior metal panel systems. The buttress design at the NW area of the exterior completes the stunning appearance for the exterior at the entry side of the structure. Also included in the project are Office space, Kitchen, Community Room, Teen & Tot Rooms, Seminar Room, Fitness & Dance studios. The spacious double gymnasium includes a running track around the perimeter second floor of the space. The interior includes many "high-end" finishes including burnished block, polished concrete floors, designer ceramic tile, glass mosaic tile, recycled glass & solid surface counters & digitally printed wall covering. The ceilings include acoustical access clouds, linear wood, geometric soffits & twin skylights at the Second Floor Waiting area. The glazing includes round framed window portholes with graphics, curtainwalls, mirror walls & display cases. The exterior includes an attractive storefront style radiused entry with a floor to roof deck vestibule & open stairway.

LOCATION: STERLING HEIGHTS, MICHIGAN

DATE COMPLETED: 2020

CONSTRUCTION COST: \$23,000,000

REFERENCE:

City of Sterling Heights - Kyle Langlois, Director of Parks & Recreation

586.446.2705

40555 Utica Rd., Sterling Heights, MI 48313

GLEESON CONSTRUCTORS ROLE: GENERAL CONTRACTOR



SECTION 2B SPECIFIC FIRM EXPERIENCE

PROJECT NO. 3 - MACOMB COUNTY MEDICAL EXAMINER'S OFFICE

DESCRIPTION: 9,000 sf addition and 9,000 sf renovation to the existing occupied and functioning facility. Work included new site utilities, landscaping, expansion of the body cooler, renovation to existing staffing offices, fences and electrified gates, security upgrades, new generator, new fiber optic service to building, custom stainless steel casework, all interior finishes. All of this work was completed while maintaining a functioning autopsy department to meet the county needs.

LOCATION: MT. CLEMENS, MICHIGAN

DATE COMPLETED: 2021

CONSTRUCTION COST: \$3,600,000

REFERENCE:

Plante Moran Cresa - Andy Fountain, Vice President

248.343.2714

andy.fountain@plantemoran.com

27400 Northwestern Highway

Southfield, Michigan 48034

GLEESON CONSTRUCTORS ROLE: GENERAL CONTRACTOR

PROJECT NO. 4 - ARTHUR LESLOW COMMUNITY CENTER

DESCRIPTION: 15,000 SF addition to The City of Monroe, MI Community Center. Work included selective demolition, flooring, painting, millwork, Kitchen Equipment, HVAC, plumbing, electrical and low voltage systems.

LOCATION: MONROE, MICHIGAN

DATE COMPLETED: 2021

CONSTRUCTION COST: \$700,000

REFERENCE:

City of Monroe - Patrick Lewis, Director of Engineering & Public Services

734.384.9124

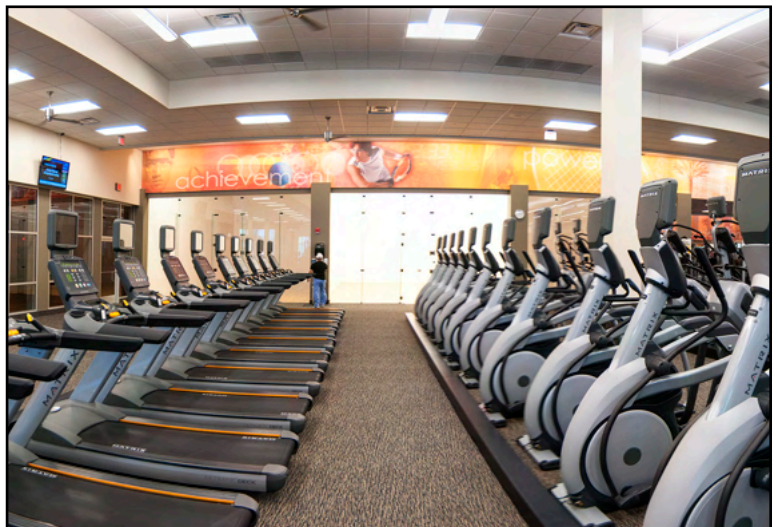
patrick.lewis@monroemi.gov

120 East First Street, Monroe, Michigan 48161

GLEESON CONSTRUCTORS ROLE: GENERAL CONTRACTOR



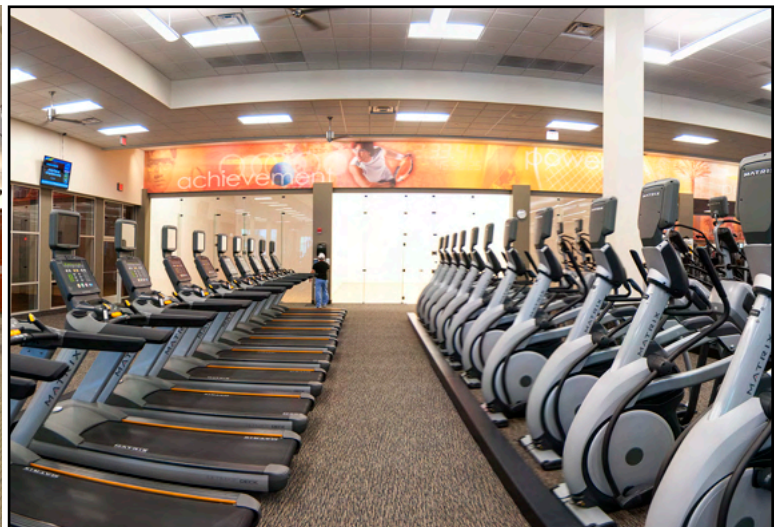
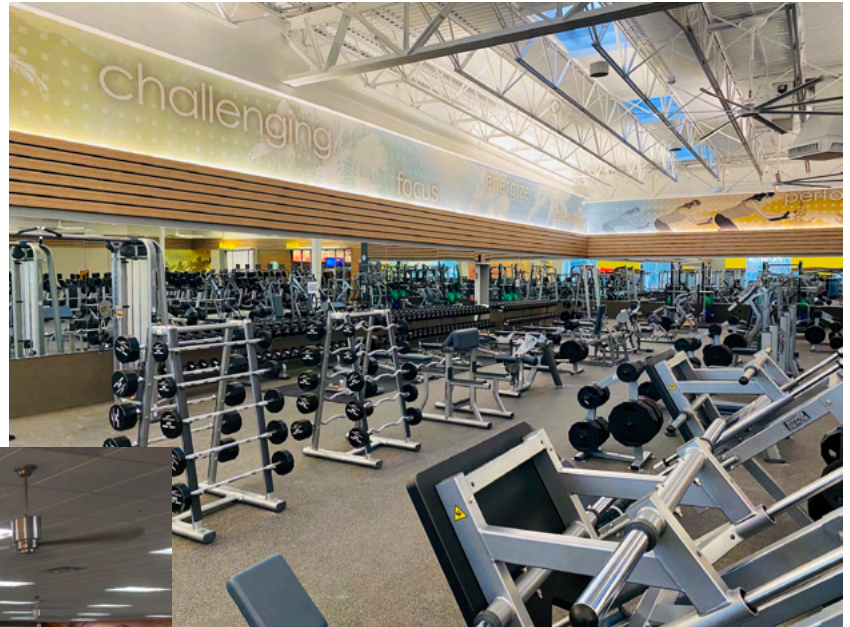
GLEESON CONSTRUCTORS HAS BUILT MORE THAN
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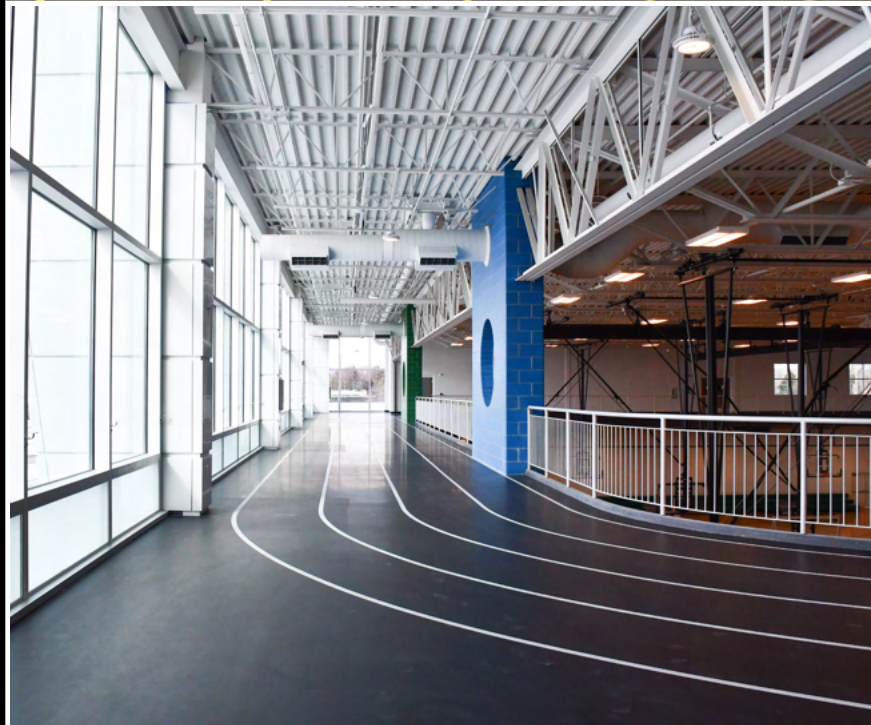
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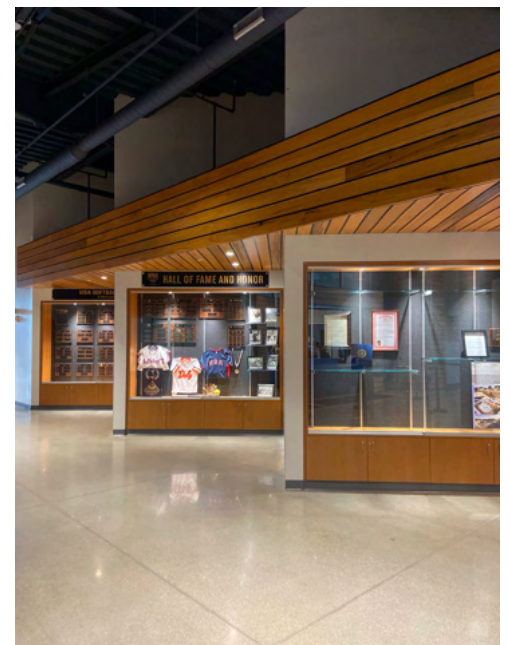
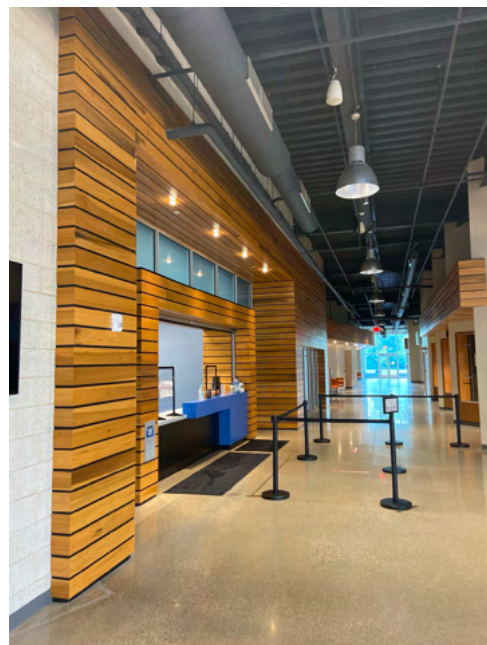
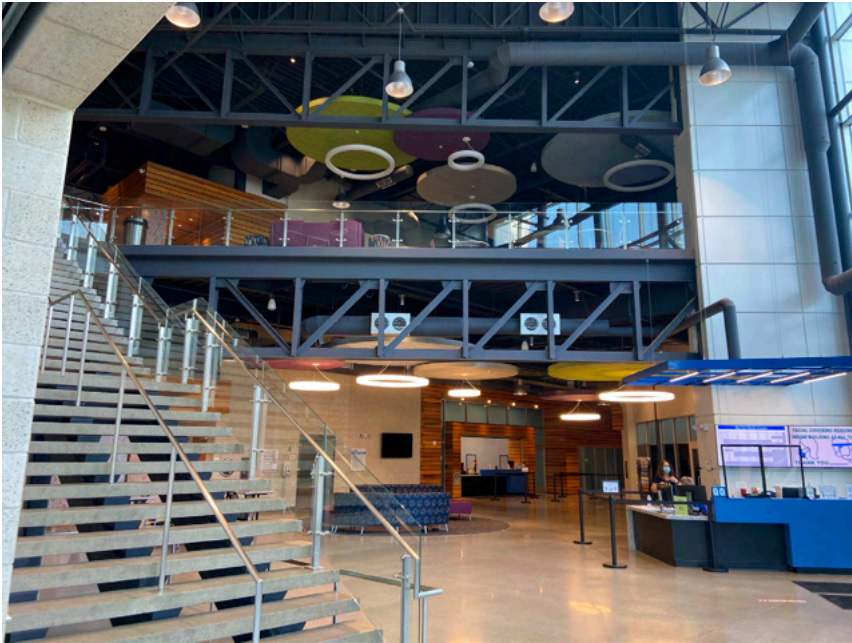
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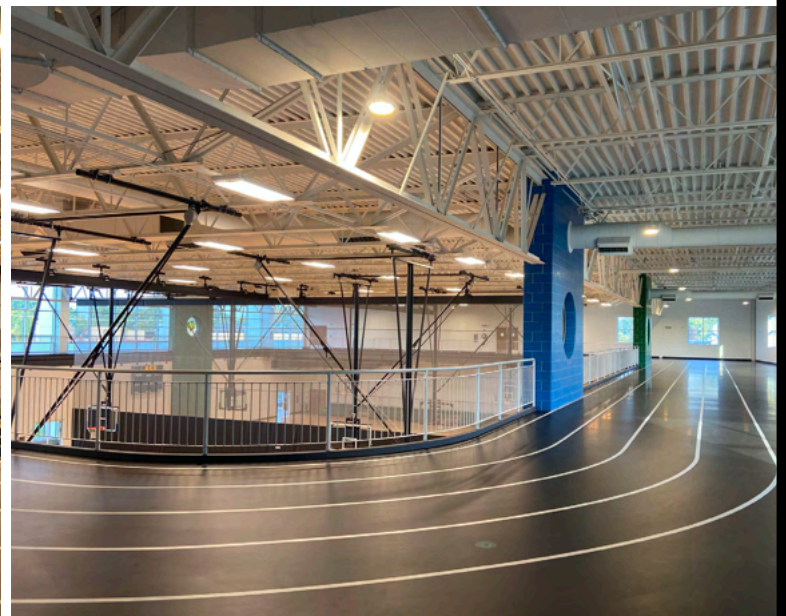
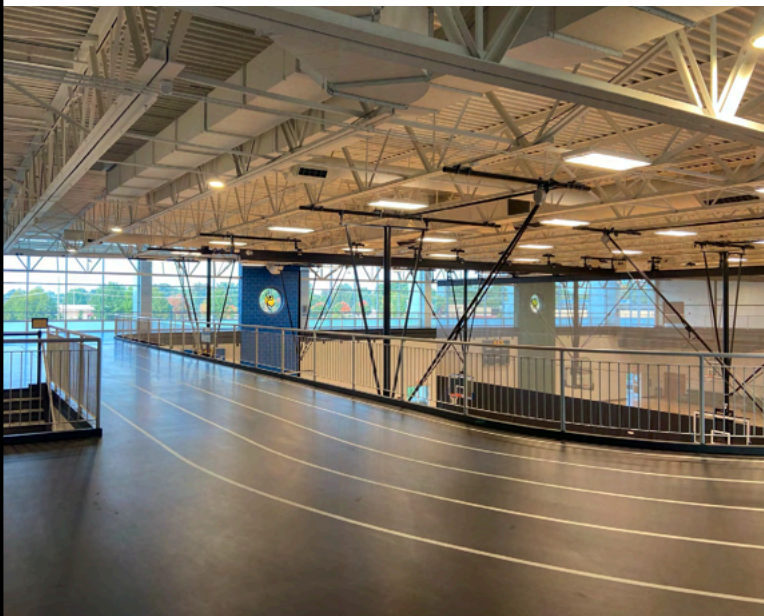
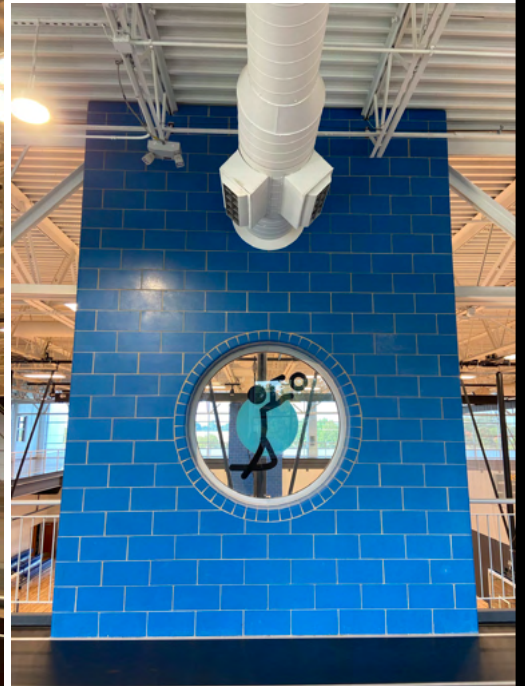


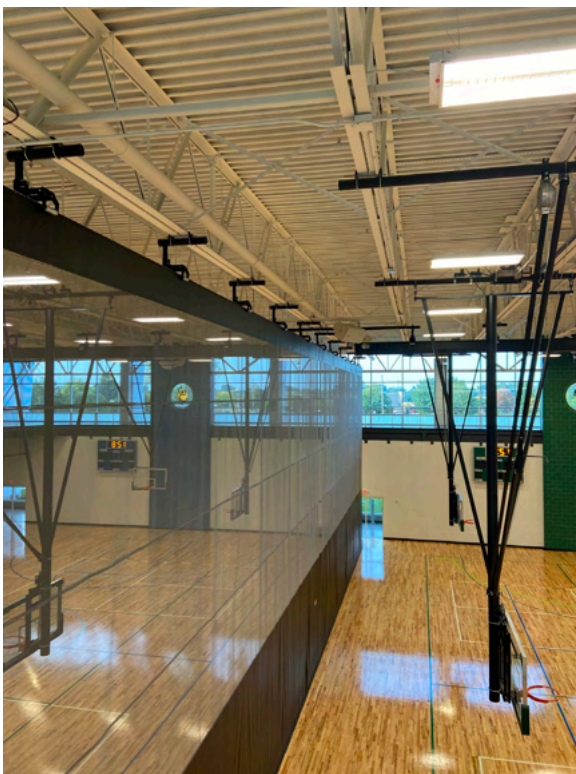


98,000 SF COMMUNITY CENTER; FIRST FLOOR WILL HOUSE TWO GYMS FOR BASKETBALL, VOLLEYBALL AND/OR PICKLE BALL, A TEEN ROOM, A TOT ROOM, AN OUTDOOR PLAY AREA, ADMINISTRATIVE OFFICES AND A COMMUNITY ROOM LARGE ENOUGH TO HOLD 400 PEOPLE. THE SECOND FLOOR WILL HAVE A WALKING TRACK OVER THE GYM AREA, A SEMINAR ROOM, FIVE ROOMS FOR FITNESS AND DANCE CLASSES AND A WAITING AREA FOR PARENTS.











**Arthur Lesow Community Center
120 East chester Street
monroe, mi 48161**

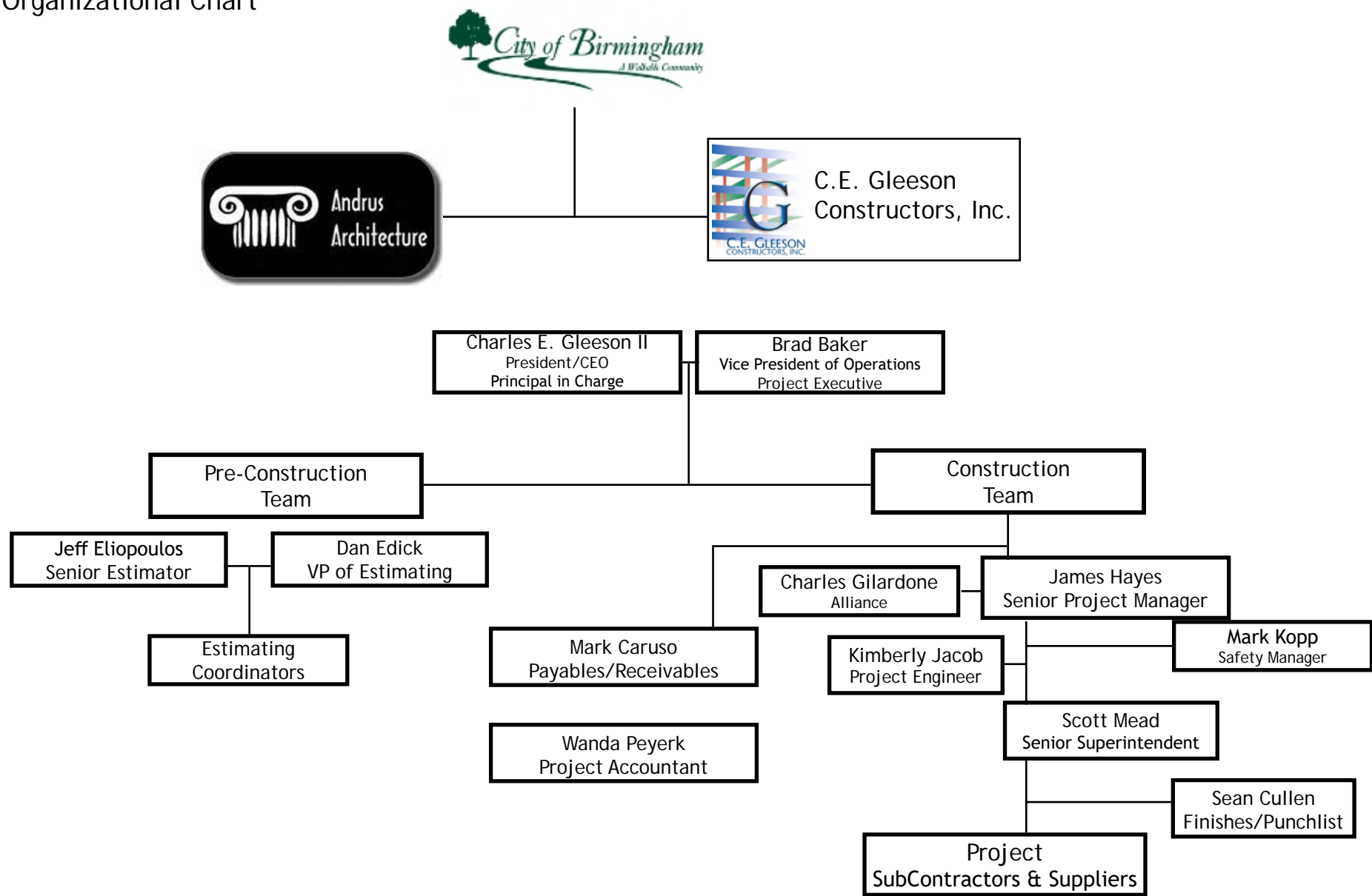




**Medical examiners office
additions and renovations
43585 elizabeth st .
mt. clemens, mi 48043**



Section No. 3
Organizational Chart





Charles E. Gleeson II President / CEO



Barnes & Noble at
The Village of Rochester Hills



LA Fitness: Royal Oak, MI



Whole Foods Market, Birmingham, MI



Oakland Park: Highland Park, MI

Responsibilities:

Director of Company, Operations, Marketing, and Business Development; Directly responsible for field operations; Maintains historical project statistics; Account Executive; Contract negotiations; Total quality management facilitator; Project estimating and budget establishment; Coordination of pre-construction services.

Project Experience:

School Projects

- Brother Rice High School
- Asheville High School
- Little Sister's of the Poor
- Macomb Comm College Nursing Lab
- Walbridge Elementary
- St. Regis Academy
- Sandhills Community College
- Mercy High School

Municipal Projects

- Sterling Heights Community Center
- Arthur Leslow Community Center
- Charlotte Douglas Airport, US Air Hangers
- Charlotte Douglas Airport, US Customs Security Renovations
- Pack Memorial Library
- Macomb County Medical Examiner

Industrial Projects

Constructed over 10 million square feet of industrial projects

- Android 300,000 SF
- Magna Seating 200,000 SF
- BorgWarner Global Headquarters
- ForTech Products, Inc.
- American Airlines
- Delphi Automotive Systems
- General Motors Corporation
- Ford Motor Company
- Shedd Bartrush Foods
- Mavis Bottling Plant
- Computer Centers
- Florida Detroit Diesel MTU
- Saturn Corporation
- Eutectic Engineering
- Robert Bosch Corporation
- Hyundai America Technical Center
- Northwest Airlines
- MESABA Aviation
- Detroit Diesel
- AGA Gas, Inc.
- BASF Corporation
- Emhart Systems
- City of Pontiac - Transportation
- AKZO-Nobel Coatings
- DongAh America

Retail & Commercial Projects

Constructed over 30 million square feet of retail, shopping centers, and commercial buildings throughout the midwest

- Whole Foods Market (2 stores)
- Fresh Thyme Farmers Market
- Walgreen Co. (95 stores)
- Fresh Thyme Farmers Market
- Hobby Lobby
- LA Fitness International (90 clubs)
- WalMart
- Winn-Dixie
- Food Lion
- Winn-Dixie



Charles E. Gleeson II

President / CEO



Parks Title Office: Royal Oak, MI



Walgreens: Rochester Hills, MI



Douglas J. Aveda Institute: Royal Oak, MI



Borg Warner: Auburn Hills, MI

- CVS
- Burlington Coat Factory
- K-Mart Corporation
- Lowe's Home Improvement
- HQ Home Quarters Warehouses
- Saks Off Fifth
- Advance Auto Parts
- Sam's Club Warehouses
- Meijer, Inc.
- Dayton-Hudson Corporation

Hotel, Healthcare and High-end Multi-Family projects:

- Midtown Pointe, 19 Bldg, 186 unit HUD Apartments, Royal Oak, MI
- 485 unit Apartment Bldg, Charlotte, NC
- 15 story condominiums, Boynton Beach, FL
- 340 Unit Condominium, St. Petersburg, FL
- Embassy Suites, Charlotte, NC
- Embassy Suites, Charleston, SC
- 625 unit, 5 story multi-family, Boynton Beach, FL
- CIENA Healthcare
- Henry Ford Village
- Amerisuites
- Extended Stay America

Professional Affiliations:

- Member of United States Green Building Council
- Birmingham Country Club Facility Committee Manager
- A.G.C. Equal Employment Opportunity Committee Member
- Society for Marketing Professional Services Member
- ICSC - International Council of Shopping Centers Member
- Michigan Association of School Administrators- Associate Member
- Michigan Association of School Boards- Associate Member
- Michigan School Business Officials- Associate Member

Professional Qualifications:

- Quality Improvement Program Facilitator
- ICSC Center Build Shopping Center- Lecturer of Big Box Construction
- Crain's Detroit Business "Forty under Forty", 2001

Education & Licenses:

- B.S. Degree in Business Administration, Ferris State University
- A.A.S. Construction Engineering Technology Degree, Ferris State University

Other Interests:

- Children's Variety Charity, Auction Committee Member
- Birmingham Little League Baseball Manager and Coach
- Sponsor - The Rainbow Connection Dream Makers Ball
- Sponsor - Birmingham Little League Baseball
- Sponsor - Royal Oak Hockey Association
- Sponsor - Grace Centers of Hope Homeless Center
- Sponsor - Ryder Cup & PGA Grace Centers Charity
- Chairman Sponsor - Childrens Leukemia Research - University of Michigan, Mott Childrens Hospital



Brad Baker V.P. Construction Operations Project Manager



Responsibilities:

Responsible for company field operations, performs project management on assigned projects, Project quality control, and cost control, Expedites shop drawings, Receives, distributes, quotes bulletins, Scheduling of projects, Conducts progress meetings, Prepares monthly invoices, Processes payments to subcontractors, Prepares project close-out documents

Project Experience:



Brother Rice High School Classroom Renovations
Sterling Heights Community Center
Arthur Leslow Community Center Renovations
Criminal Justice Resource Center
Quick Jobs Development Center
Hoke Early College Building
Macomb County Medical Examiners Office
Additions and Renovations
St. Regis Parish Renovation
Pack Memorial Library
LA Fitness International
The Fresh Market
Whole Foods Market
Whole Foods Market
Equinox Health Club
Bob's Discount Furniture
Verizon Wireless & Panera Bread Build-outs
The Fresh Thyme Market

Bloomfield, MI
Sterling Heights, MI
Monroe, MI
Durham, NC
Walterboro, SC
Pinehurst, NC

Mt. Clemens, MI
Bloomfield, MI
Asheville, NC
29 locations
Raleigh, NC
Birmingham MI
East Lansing, MI
Bloomfield Hills, MI
Novi, MI
Salem, NH
Toledo, OH



Education & Licenses:

Bachelor of Science - Construction Management May 2001
Michigan State University, East Lansing, Michigan



Highlights of Professional Development:

Excellence Award - Whole Foods Market, East Lansing, MI and Birmingham, MI
Recommended by Michigan State University Construction Management
Program Director for position as Assistant Superintendent for MSU Construction
Maintenance Department

Certifications:

O.S.H.A. Safety Certification
U.S. Department of Labor, Occupational Safety and Health Administration,
Michigan State University (2000)





Charles Gilardone Alliance Ice Arena Consultant



Responsibilities:

On site supervision of buildings and personnel, site layout, scheduling, subcontractor supervision, quality control, review of submittals, coordination of project with architect, materials purchasing, contract negotiations.

Project Experience: 34 Concrete & 14 Sand 48 Total

Year	Rink Name	Sand/Concrete	Refrigeration Co.
1994	Detroit City Ice	1 Concrete NHL	Rothmar
1994	Detroit Skating Club	1 Concrete Olympic	Serv-Ice
1995	Founders Park Farm Hills	2 Concrete NHL	Serv-Ice
1995	Lindel Ice Royal Oak	1 Concrete NHL	Serv-Ice
1995	Ann Arbor Ice Cube	1 Concrete NHL	Cimco - Lewis
1995	Ann Arbor Ice Cube	2 Sand NHL & Olympic	Cimco - Lewis
1996	Compuware	2 Concrete NHL & Olympic	Cimco - Lewis
1996	Detroit Skating Club	1 Sand Olympic	Serv-Ice
1996	Lansing Ice Arena	1 Sand NHL	Serv-Ice
1996	Flint Ice Arena	1 Sand NHL	Serv-Ice
1997	Troy Sports Complex	2 Sand NHL	Rothmar
1997	Troy Sports Complex	1 Concrete NHL	Rothmar
1997	Garden City Ice Arena	1 Sand NHL	Rink Systems
1997	St. Clair Shores	1 Concrete NHL	Serv-Ice
1998	Melvindale Ice Arena	1 Concrete NHL	Serv-Ice
1998	Adray Dearborn	1 Concrete NHL	Serv-Ice
1998	Suburban Ice Arena	1 Sand NHL	Serv-Ice
1998	Suburban Ice Arena	1 Concrete NHL	Serv-Ice
1998	Monroe Ice Arena	1 Concrete NHL	Cimco - Lewis
1998	Monroe Ice Arena	1 Sand NHL	Cimco - Lewis
1998	Novi Ice Arena	2 Sand NHL	Serv-Ice
1998	St. Clair Shores	1 Concrete NHL	Serv-Ice
1999	Detroit Skating Club	1 Concrete NHL	Serv-Ice
1999	Rochester Onyx	3 Concrete NHL	Serv-Ice
1999	State Fair Coliseum	1 Concrete NHL	Serv-Ice
1999	Ford Woods Park	1 Concrete Inline exterior	Serv-Ice
1999	McCann Arena Grosse Pt	1 Concrete NHL	Serv-Ice
1999	Monahan Ice Pavilion	1 Concrete Custom Size	Serv-Ice
1999	Grosse Pointe Ice Arena	1 Concrete NHL	Serv-Ice
2000	Avalanche Arena - Lapeer	2 Concrete NHL	Serv-Ice
2001	Eddie Edgar - Livonia	2 Concrete NHL	Serv-Ice
2001	Lincoln Park Community	1 Concrete NHL	Serv-Ice
2001	Arctic Arena - Canton	2 Sand NHL	Serv-Ice
2002	Adray Dearborn	1 Concrete NHL	Serv-Ice
2003	St Mary's Orchard Lake	1 Concrete NHL	Serv-Ice
2004	Trenton Ice Arena	1 Concrete NHL	Serv-Ice
2005	Suburban Macomb Rinks	2 Concrete NHL	Serv-Ice



James Hayes Senior Project Manager



Ghafari Associates: Dearborn, MI



Wayne State University: Detroit, MI



Western Waterproofing: Livonia, MI



Great Lakes National Cemetery
Holly, MI

Responsibilities:

Performs project management on assigned projects, project quality control, and cost control, expedites shop drawings, receives, distributes, quotes bulletins, scheduling of projects, conducts progress meetings, prepares monthly invoices, processes payments to subcontractors, prepares project close-out documents.

Project Experience:

Macomb County Medical Examiner's Office Addition/ Renovation	Mt. Clemens, MI
Birmingham Groves High School Renovation	Birmingham, MI
Birmingham Seaholm High School Addition & Reno	Birmingham, MI
Bartlett Elementary Renovation	South Lyon, MI
Salem Elementary Renovation	South Lyon, MI
South Lyon High School Renovation	South Lyon, MI
Carr Elementary Renovation	Lincoln Park, MI
Annapolis High School Renovation	Dearborn Hts., MI
Wayne State University Rackham Library Reno	Detroit, MI
LA Fitness Health Club	Westmont, IL
LA Fitness Health Club	Niles, IL
LA Fitness Health Club	Chicago, IL
Comerica Bank	Grand Rapids, MI
LA Fitness Health Club	Southfield, MI
LA Fitness Health Club	Carol Stream, IL
John Dingell VA Medical Center (\$22,000,000)	Detroit, MI
Fitness Center Renovation (\$3,000,000)	
Emergency Room Addition (\$14,000,000)	
7th Floor Renovation (\$4,250,000)	
Melvin T. Walls Manor Senior Living Facility (\$5,250,000)	Ypsilanti, MI
Great Lakes National Cemetery	
8,000 Niche Columbarium Expansion (\$5,800,000)	Holly, MI
Ghafari Associates Building One Reno (\$1,800,000)	Dearborn, MI
Western Waterproofing New Office & Warehouse (\$2,750,000)	Livonia, MI
Lyon Industrial Research Center - 4 New Office Buildings (\$4,200,000)	New Hudson, MI
Walter Reuther Psychiatric Hospital Reno (\$1,220,000)	Westland, MI
Hawthorn Center Renovations & New Maintenance Facility (\$2,900,000)	Northville, MI

Education & Licenses:

Michigan State University
Bachelor of Science in Construction Management
OSHA 10 Certified



Scott Mead Senior Superintendent



LA Fitness: Chicago, IL - Kedzie



The Beach Hotel: Traverse City, MI



Resthaven Care Center: Holland, MI

Responsibilities:

On site supervision of buildings and personnel, site layout, scheduling, sub-contractor supervision, quality control, review of submittals, coordination of project with architect, materials purchasing, contract negotiations.

Project Experience:

Winchell Elementary Expansion	Kalamazoo, MI
Grand Haven Christian Elementary School	Grand Haven, MI
West Michigan Christian School Gym	Muskegon, MI
The Beach Hotel	Traverse City, MI
PNC Bank	Traverse City, MI
Regency at Chene	Detroit, MI
LA Fitness Health Clubs: Westmont, IL, Howell, NJ, Ownings Mills, MD,	
Chicago (Kedzie), IL, Chicago (Pershing), IL, Chicago (MLK), IL	
Resthaven Homes, Inc.	Grand Rapids, MI
Resthaven Care Center Addition	Holland, MI
Mid-Michigan Regional Medical Center	Midland, MI
Bethlehem Lutheran Church	Grand Rapids, MI
Gerald R. Ford Intl Airport Expansion	Grand Rapids, MI
Hope Church Structural Renovation	Holland, MI
Trinity Lutheran Expansion	St Joseph, MI
Advantage Health Corporate Office Renovation	Grand Rapids, MI
Chowe-Chizak	Grand Rapids, MI
Midland Painting Offices	Midland, MI
West Michigan Comm. Bank Remodel	Hudsonville, MI
Red Lobster Remodel	Harrisburg, PA
Goodwill Industries	Comstock Park, MI
Goodwill Industries	Lowell, MI
Meijer, Inc.	Charlotte, MI
Meijer, Inc.	Goshen, IN
Giant Stores	Petosky, MI
OMT-Veyhl Manufacturing/Office Expansion	Holland, MI
Meijer Distribution Center Expansion/Renovation	Lansing, MI
Coca-Cola, Inc. Dasani Bottling Renovation	Detroit, MI
AgrEvo Chemical Plant	Muskegon, MI
Graceland Fruit Food Processing Plant	Frankfort, MI
Morton Salt Power Plant	Manistee, MI
Martin-Marietta Clarifier Tank	Manistee, MI



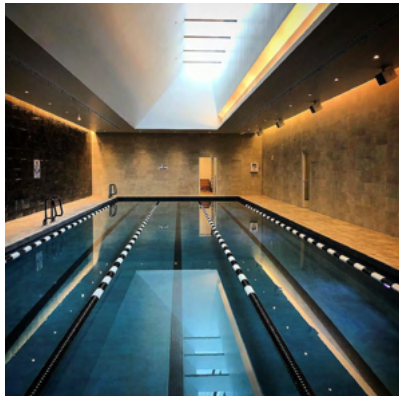
Kimberly Jacob Project Engineer



Responsibilities:

Project Engineer to assist with all project responsibilities, submittal reviews, requests for information, expedite material deliveries and assist Project Manager and Superintendent.

Recent Project Experience:



Brother Rice Catholic School Renovation	Bloomfield Hills, MI
John W. Hodges Public Safety Center	Hope Mills, NC
Macomb County Medical Examiner	Mt. Clemens, MI
Sterling Heights Community Center	Sterling Heights, MI
LA Fitness Health Club	Toms River, NJ
LA Fitness Health Club	Livonia, MI
LA Fitness Health Club	Lodi, NJ
LA Fitness Health Club	Brick, NJ
LA Fitness Health Club	Cheektowaga, NY
Equinox Health Club & Spa	Bloomfield, MI
Midtown Pointe Apartment Community	Royal Oak, MI
Regency at Chene - Eastwood Convalescent Center	Detroit, MI
Regency at St. Clair Shores	St. Clair Shores, MI
Rockingham Shaw Plaza:	Salem, NH
Verizon	
Panera	
Christmas Tree Shoppe	
Bob's Discount Furniture	
Core Life	Latham, NY



Education & Licenses:

Lawrence Technical University - Bachelor of Science in Architecture
Oakland Community College - Certificate in Construction Management





Mark Kopp Superintendent/Safety Coordinator



Responsibilities:

Assist Project Managers with all project responsibilities, submittal reviews, requests for information, expedite material deliveries, assist estimators with projects out for bid. Mark will also manage safety enforcement for project site, via: tool box talks, equipment \ inspection, daily walking of the job site, lunch & learn sessions and PPE compliance & inspection.

Recent Project Experience:

Brother Rice High School - Classroom Reno
 Walbridge Elementary School
 L.A. Fitness Health Club, *40 Locations*
 Criminal Justice Resource Center
 Colleton County Quick Jobs Center
 Pack Memorial Library
 Asheville High School
 Neurocore Brain Performance Center
 Gander Outdoors
 Gander Outdoors
 Gander Outdoors
 Gander Outdoors
 Gander Outdoors
 MedExpress Urgent Care
 MedExpress Urgent Care
 Whole Foods Market
 Whole Foods Market
 Pieology Pizzeria
 Regency at St. Clair Shores
 Crown Enterprises
 Med Express
 Valentina Plaza
 O'Reilly Auto Parts
 The Fresh Market
 The Fresh Market
 Walgreens Retail Drug Store
 Key Bank
 Gate Petroleum Northern Division Office
 Maple Village Shopping Center
 Maple/Crooks Shopping Center
 Arbor E&T - build-out
 Walgreens Retail Drug Stores (*12 stores*)

Bloomfield Twp., MI
 Toledo, OH

 Durham, NC
 Walterboro, SC
 Asheville, NC
 Asheville, NC
 West Bloomfield, MI
 Fredricksburg, VA
 Williamsport, PA
 Flint, MI
 Roanoke, VA
 Utica, MI
 New Baltimore, MI
 Mt. Clemens, MI
 Birmingham, MI
 East Lansing, MI
 Warren, MI
 St. Clair Shores, MI
 Arlington, TX
 New Baltimore, MI
 Pontiac, MI
 Clinton Township, MI
 Virginia Beach, VA
 Vienna, VA
 Manassas, VA
 Amherst, NY
 Harrisburg, NC
 Ann Arbor, MI
 Troy, MI
 Gary, IN

CITY OF BIRMINGHAM
ICE SPORTS ARENA RENOVATIONS / ADDITIONS
REQUEST FOR PROPOSAL (RFP) – GENERAL CONTRACTING SERVICES
BID PROPOSAL FORM
MARCH 10, 2021

plante moran CRESA
REAL ESTATE CONSULTANTS

Name of General Contractor: C.E. Gleeson Constructors, Inc.

General Contractor's Address

984 Livernois Road

Troy, MI 48083

GC's Main Contact for Proposal

Charles E. Gleeson II

Phone Number

586.556.7000

Email

gleeson@gleesonconstructors.com

All Proposals submitted may not be withdrawn and shall be irrevocable for a minimum period as defined in this RFP.

A. Cost Proposal

Proposes to provide General Contracting Services for the construction project as follows:

1. For Construction Services, at a Lump Sum Fee Basis:

a. Trade Contractor Work:

\$_____

b. General Conditions (including personnel costs):

\$_____

c. General Contractor's Overhead & Profit (Fee) is:

\$_____

Subtotal:

\$_____

PLM Bonds:

\$_____

Grand Total:

\$_____

\$ 4,841,000
189,000
220,000
5,250,000
47,000
5,297,000

B. Addenda

This proposal includes information for the following addenda:

Addenda No. One

Dated March 17, 2021

Addenda No. Two

Dated March 22, 2021

Addenda No. Three

Dated March 24, 2021

Addenda No. _____

Dated _____

CITY OF BIRMINGHAM
ICE SPORTS ARENA RENOVATIONS / ADDITIONS
REQUEST FOR PROPOSAL (RFP) – GENERAL CONTRACTING SERVICES
BID PROPOSAL FORM
MARCH 10, 2021

C. Required Alternate(s):

The following alternates include all labor, materials and fees required for a completed condition in accordance with the true intent and meaning of the contract documents, whether or not each and every item required by reason thereof is particularly specified or shown on the drawings.

Alternate No. 1: Removal and replacement of the lobby benches	(ADD) \$ 700.00
Alternate No. 2: Replace existing dasher boards with new system	(ADD) \$ 80,000.00
Alternate No. 3: Epoxy paint ice refrigeration room floor	(ADD) \$ 18,000.00
Alternate No. 4: Replace bleacher seating plastic caps with new blue caps	(ADD) \$ 32,000.00
Alternate No. 5: Eliminate coin operated lockers and bench	(DEDUCT) \$ 16,000.00
Alternate No. 6: Eliminate wood slat ceiling and lights in lobby; replace with 2'x2' acoustical tile and 2'x2' LED lights	(DEDUCT) \$ 57,000.00
Alternate No. 7: Eliminate installation of (22) owner supplied team lockers	(DEDUCT) \$ 7,000.00
Alternate No. 8: Install new floor tile in existing (4) locker room showers	(ADD) \$ 17,500.00
Alternate No. 9: Eliminate demolition and replacement of the existing STUDIO RINK concrete slab, refrigeration and sub soil heating system, dasher boards, rooftop dehumidification system and associated ductwork and structural support	(DEDUCT) \$ 380,000.00
Alternate No. 10: Drywall on metal stud wall in lieu of concrete block	(DEDUCT) \$ 2,000.00
Alternate No. 11: Eliminate advanced waste recovery system per refrigeration drawings	(DEDUCT) \$ 17,000.00
Alternate No. 12: Removal of work associated with existing lobby ticket booth	(DEDUCT) \$ 12,500.00
Alternate No. 13: Renovation of the existing concessions counter and display case, including overhead door	(ADD) \$ 13,000.00

D. Voluntary Alternate(s):

General Contractors, at their discretion, may include voluntary alternates in an effort to provide a lower cost to the Owner. Voluntary alternates must provide equal or greater value to the Owner and include all costs associated with the change being proposed in order to provide a complete condition.

Voluntary Alternate No. 1:	(ADD/DEDUCT) \$ 4,000 Use Wawa Dasher Switch
Voluntary Alternate No. 2:	(ADD/DEDUCT) \$
Voluntary Alternate No. 3:	(ADD/DEDUCT) \$

Voluntary alternates will only be considered from the General Contractor that has been approved and awarded the Work.

E. Changes in the Work

CITY OF BIRMINGHAM
ICE SPORTS ARENA RENOVATIONS / ADDITIONS
REQUEST FOR PROPOSAL (RFP) – GENERAL CONTRACTING SERVICES
BID PROPOSAL FORM
MARCH 10, 2021

For authorized changes in the work, involving additions to or omissions from the work the undersigned agrees to perform or omit, or to cause to be performed or omitted by his subcontractors, such authorized work at no more than the net cost to him/her, plus the following percentages to be added to the cost or credit to the owner, which percentages shall include all the contractor's cost for onsite superintendence, supervision, overhead and profit.

	Additions	Omissions
A. Subcontractor work	<u>8.5</u> percent	<u>0</u> percent
B. Self-performed work	<u>9.5</u> percent	<u>0</u> percent

F. Contractual Terms

If selected as General Contractor, I agree to the contractual terms as provided in the RFP as noted below:

- ☐ AIA A101 -2017, as modified
- ☐ AIA A201 - 2017 General Conditions, as modified
- ☐ Exceptions to amended AIA A101 and A201 -2017*

*Attach SPECIFIC proposed alternate contract language in Section 5

I have read and I understand the responsibilities required of the General Contractor under the *Agreement between the Owner and General Contractor and General Conditions of the Contract for Construction*, which are provided with the RFP. If selected, our company will be able to fulfill the requirements.

SIGNATURE

Dated this 31 day of March, 2021.

Company Name: C.E. Gleeson Constructors, Inc.

By: _____

Signature


Position/Title: President/CEO

Sam Williams 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 31 day of March, 2021.

CITY OF BIRMINGHAM
ICE SPORTS ARENA RENOVATIONS / ADDITIONS
REQUEST FOR PROPOSAL (RFP) – GENERAL CONTRACTING SERVICES
BID PROPOSAL FORM
MARCH 10, 2021

Notary Public:



My Commission Expires:

5/26/2023



PROPOSAL CHECKLIST

- ☒ Detailed Proposal Form (This Document)
- ☒ Familial Disclosure Statement
- ☒ Iran Disclosure Statement
- ☒ Non-Collusive Affidavit
- ☒ Equal Opportunity Form
- ☒ Criminal Background Disclosure Affidavit
- ☒ Bid Security
- ☒ Clarifications/Exceptions
- ☒ Additional Information
- ☒ Acknowledgement of Addenda to RFP

CITY OF BIRMINGHAM
ICE SPORTS ARENA RENOVATION/ADDITIONS
REQUEST FOR PROPOSAL (RFP) – GENERAL CONTRACTING SERVICES
ATTACHMENT C.2 – FAMILIAL DISCLOSURE AFFIDAVIT
MARCH 10, 2021

Familial Disclosure Affidavit

The undersigned, the owner or authorized officer of C.E. Gleeson Constructors, Inc. (the "Firm"), pursuant to the familial disclosure requirement provided in the City of Birmingham (the "City") Request For Proposals for **GENERAL CONTRACTING SERVICES**, hereby represents and warrants that, except as provided below, no familial relationships exist between the City or any employee of the Firm.

List any Familial Relationships:

FIRM:

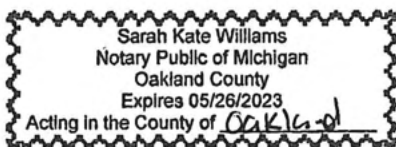
C.E. Gleeson Constructors, Inc
Name of Firm

By: Charles E. Gleeson II

Its: President/CEO

STATE OF Michigan)
)ss.
COUNTY OF Oakland)

This instrument was acknowledged before me on the 31 day of March, 2021, by Charles E. Gleeson II.



[Signature]

Sarah Williams, Notary Public

Oakland County, Michigan

My Commission Expires: May 26, 2023

Acting in the County of: Oakland

CITY OF BIRMINGHAM
ICE SPORTS ARENA RENOVATION/ADDITIONS
REQUEST FOR PROPOSAL (RFP) – GENERAL CONTRACTING SERVICES
ATTACHMENT C.3 – IRAN DISCLOSURE AFFIDAVIT
MARCH 10, 2021

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 **GENERAL CONTRACTING 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:

C.E. Gleeson Constructors, Inc

Name of Firm

By: Charles E. Gleeson II

Its: President/CEO

STATE OF Michigan)
)ss.
COUNTY OF Oakland)

This instrument was acknowledged before me on the 31 day of March, 2021, by Charles E. Gleeson II.

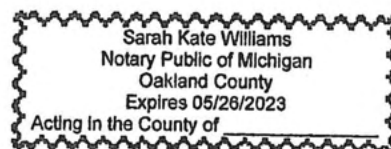


Sarah Williams, Notary Public

Oakland County, Michigan

My Commission Expires: 5/20/23

Acting in the County of: Oakland



NON-COLLUSIVE AFFIDAVIT

CITY OF BIRMINGHAM
ICE SPORTS ARENA RENOVATION/ADDITIONS
REQUEST FOR PROPOSAL (RFP) – GENERAL CONTRACTING SERVICES
ATTACHMENT C.5 – EQUAL OPPORTUNITY FORM
MARCH 10, 2021

City of Birmingham:

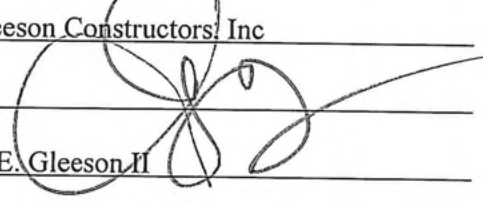
It is the publicly stated policy of C.E. Gleeson Constructors, Inc (the "Firm") not to discriminate against any employee, applicant for employment, contractor, or material supplier, because of race, religion, national origin, ancestry or sex. With regard to employment, such non-discrimination includes, but not limited to, our (my) policies of recruitment, recruitment advertising, selection for apprenticeships or other training, rates of pay, promotion, transfer, lay-off or termination.

In all advertising for employment, subcontractors, or suppliers we (I) shall state all applicants or respondents will receive consideration without regard to race, religion, color, national origin, ancestry or sex.

We (I) understand that any contract for the City of Birmingham shall be in consideration of our maintaining the above mentioned non-discrimination policy.

We (I) understand that we (I) may be required to submit further information covering the race, color and work classification for our employees and those of subcontractors to be employed on this Project.

NAME OF BIDDER(FIRM): C.E. Gleeson Constructors, Inc

SIGNATURE: 

NAME: Charles E. Gleeson II

TITLE: President/CEO

DATE: March 31, 2021

CITY OF BIRMINGHAM
ICE SPORTS ARENA RENOVATION/ADDITIONS
REQUEST FOR PROPOSAL (RFP) – GENERAL CONTRACTING SERVICES
ATTACHMENT C.6 – CRIMINAL BACKGROUND CHECKS AFFIDAVIT FORM
MARCH 10, 2021

AFFIDAVIT OF COMPLIANCE – CRIMINAL BACKGROUND CHECKS
Michigan Public Act No. 517 of 2012

The undersigned, the owner or authorized officer of the below-named Firm (the "Firm"), pursuant to the criminal background compliance certification requirements of the City of Birmingham (the "City") hereby represents and warrants that the Firm has performed and/or will perform sufficient criminal background checks, including at a minimum, an Internet Criminal History Tool ("ICHAT") check, for all of its owners, employees, agents, representatives, contractors and/or other personnel who will be on any City's premises to carry out the services contemplated by the Contract Documents. The Firm further hereby certifies that no owner, employee, agent, representative, contractor and/or other personnel of the Firm will be on any City's premises if they are a registered criminal sexual offender under the Sex Offenders Registration Act, Public Act 295 of 1994, or have been convicted of "Listed Offense" as defined under Section 722 of the Sex Offenders Registration Act, MCL 28.722.

The Firm further acknowledges that if it is found to have submitted a false certification or otherwise fails to comply with the requirements of this certification, the City may immediately terminate the Contract.

FIRM:

C.E. Gleeson Constructors, Inc.

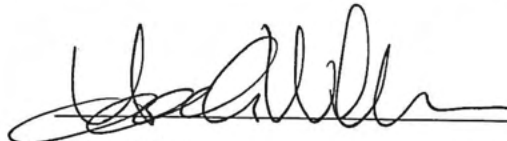
Name of FIRM

By: Charles E. Gleeson II

Its: President/CEO

STATE OF Michigan)
)ss.
COUNTY OF Oakland)

This instrument was acknowledged before me on the 31 day of March, 2021, by Charles E. Gleeson II

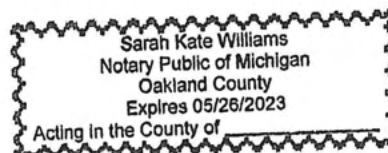


Sarah Williams, Notary Public

Oakland County, Michigan

My Commission Expires: 5/26/2023

Acting in the County of: Oakland



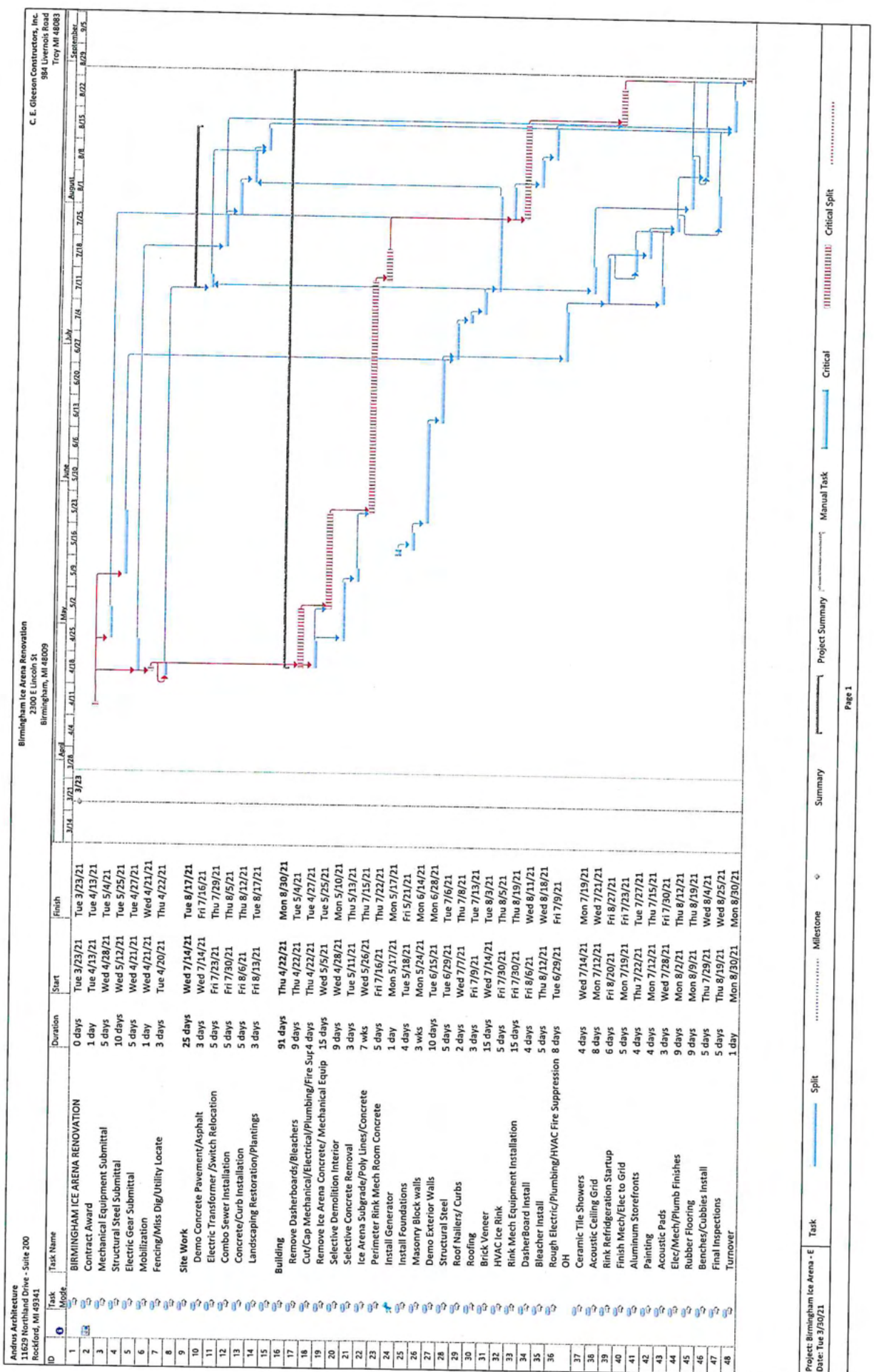


SECTION 5 PROJECT IMPLEMENTATION SCHEDULE AND LOGISTICS PLAN

The project schedule will be under the oversight of the Project Manager and will either be created and updated by the Project Manager or delegated to a project scheduler.

Our Construction schedule process includes:

- Updating the construction schedule on a weekly basis
- Incorporating critical submittals and material / equipment lead times to ensure there are no delays in work flow
- Tracking materials and resources with material status reports workbooks to ensure critical dates are met
- Providing detailed 3-week look ahead schedules with subcontractor input
- Reviewing schedule weekly with subcontractors and project team members so that all stakeholders have the most current schedule information





SECTION 6 CLARIFICATIONS/EXCEPTIONS

Serv-Ice Refrigeration



Serv-Ice Refrigeration
Attn: Courtney Aston

February 5, 2021

RE: Ice Arena Rink Floor Placement Pre-Qualification

Dear Courtney:

Please let this letter serve as our pre-qualification request for the Bowling Green State University concrete placement project. Over the past twenty years, we have placed and finished concrete rink playing surfaces for twenty-one separate ice rink floors at eighteen separate facilities. Please see the list below for the specific projects:

Flo Fabrizio Ice Center (JMC Ice Arena)	Erie, PA	2019	Serv-Ice Refrigeration
Crown Coliseum Ice Arena	Fayetteville, NC	2019	CIMCO
Garden City Civic Ice Arena	Garden City, MI	2018	CIMCO
Osgood Residence	Plymouth, MI	2017	Serv-Ice Refrigeration
South Park Ice Skating Rink (Two Playing Surfaces)	Bethel Park, PA	2017	CIMCO
Kensington Valley Ice House	Brighton, MI	2015	Serv-Ice Refrigeration
Michigan State University - Munn Arena	East Lansing, MI	2014	Serv-Ice Refrigeration
Eagle's Ice Center	Grand Rapids, MI	2012	Serv-Ice Refrigeration
John Lindell Ice Arena	Royal Oak, MI	2009	Serv-Ice Refrigeration
MetroParks Ice Rink	Dayton, OH	2009	Serv-Ice Refrigeration
Ferris State University Ice Arena (Two Playing Surfaces)	Big Rapids, MI	2008	Serv-Ice Refrigeration
Greater Midland Curling Center	Midland, MI	2008	Serv-Ice Refrigeration
Ferrentino Residence Ice Rink	Plymouth, MI	2008	Serv-Ice Refrigeration
Hartland Ice House (Two Playing Surfaces)	Hartland, MI	2007	Serv-Ice Refrigeration
Murray Residence Ice Rink	Bingham Farms, MI	2007	Serv-Ice Refrigeration
Benjamin F. Yack Arena	Wyandotte, MI	2006	Serv-Ice Refrigeration
Clark Park Ice Rink	Detroit, MI	2005	Serv-Ice Refrigeration
City of Flat Rock Ice Rink	Flat Rock, MI	2001	Serv-Ice Refrigeration

We appreciate the opportunity to be involved with this project and our experience would make us a valuable asset to the construction team. Please let us know if you have any questions or need anything further.

Sincerely,

Brian Misaras
Director of Operations



SERV-ICE REFRIGERATION, INC.

143 Cady Center #207, Northville, MI 48167
Ph: 313-600-8655 E-mail: rblshopa@rie.com

REFERENCES AND MAJOR PROJECTS

PROJECT	PROJECT ADDRESS	COMPLETION	CONTRACT VALUE	SCOPE	Subcontract Type	CONTACT
EAST SIDE HOCKEY ARENA Owner: East Side Hockey Foundation	4831 Canyon Street Detroit, MI 48236	2020	\$400,000.00	Stick build ammonia refrigeration system.	Design Build	Dave Kormas Ph: 313-587-9843
MICHIGAN STATE UNIVERSITY- MUNN ICE ARENA Owner: Michigan State University	1 Chestnut Rd. East Lansing, MI 48824	2014	\$1,500,000.00	Replacement of Concrete Floor, stick built ammonia refrigeration system. Control programming. Compression expansion joint.	Design Assist	Tom Campbell Ph: 517-281-9799
FERRIS STATE UNIVERSITY - EWIGELBEN ARENA Owner: Ferris State University	901 S. State Street, Big Rapids, MI 49307	2008	\$600,000.00	NHL and studio floor replacement and new indoor sump tank. Package. Compression expansion joint.	Design and Build	Mike Hughes or Roger Bula Ph: 231-591-2920
WAKE COMPETITION CENTER - Carolina Hurricanes Practice Rink Owner: Jeff Ammons	111 Competition Drive, Morrisville, NC 27560	2019	\$1,500,000.00	New rink floor and package refrigeration system. Control programming.	Design and Build	Jeff Ammons Ph: 919-427-2322
KENOSHA ICE ARENA Owner: Kenosha Hockey Association	7727 60th Avenue, Kenosha, WI 53142	2018	\$780,000.00	New rink floor and stick built ammonia refrigeration system. Control programming.	Design and Build	Steve Eisenhauer Ph: 262-515-3406
CITY OF MARINETTE SPORTS AND EVENT CENTER Owner: City of Marinette	2501 Pierce Avenue Marinette, WI 54143	2017	\$900,000.00	New build package ammonia/glycol refrigeration system and fusion welded refrigerated floor. Control programming. Compression expansion joint.	Plan and Spec	Judd Klade Ph: 262-758-8655
JMC ICE ARENA Owner: Erie Zoological Society	JMC Ice Arena 423 W 38th Street, Erie, PA 16508	2019	\$1,200,000.00	New rink floor and package refrigeration system. Control programming. Compression expansion joint.	Plan and Spec	John Rhea Ph: 814-434-2641
BIG SKY ICE ARENA Owner: Big Sky Hockey Association	PO Box 160406 Big Sky, MT 59716-0406	2018	\$300,000.00	Outdoor package refrigeration system and floor.	Design and Build	Gary Herman Ph: 216-408-4085
HOUGHTON COUNTY ARENA Owner: Houghton County	1500 Birch St, Hancock, MI 49930	2018	\$300,000.00	New stick built ammonia refrigeration system. Controls	Design and Build	Russ Kyllonen Ph: 906-369-4291
LAKESHORE ICE ARENA Owner: Private	4470 Airline Road Muskegon, MI 49444	2018	\$475,000.00	Conversion to chiller and rink floor. Stick built.	Design and Build	Bill Carlton Ph: 231-578-1833
KELLER FARMS ICE RINK Owner: Jeff Keller	W 775 Spring Prairie Road Burlington, WI 53105	2017	\$173,582.00	New build package R404A/glycol refrigeration system and fusion welded refrigerated floor. Compression expansion joint.	Design and Build	Jeff Keller, owner Ph: 847-224-1426
OSGOOD ICE RINK Owner: Private	Private	2017	\$190,000.00	New build package R404A/glycol refrigeration system and fusion welded refrigerated floor. Expansion Joint	Design and Build	Chris Osgood
BAD AXE ICE ARENA Owner: Huron County	170 W. Soper Road Bad Axe, MI 48413	2016	\$200,000.00	New package refrigeration system.	Design and Build	Bill Ph: 989-550-0692
HIRSCH MEMORIAL COLISEUM Owner: State Fair of Louisiana	3701 Hudson Avenue, Shreveport, LA 71109	2015	\$450,000.00	New package refrigeration system and floor. Compression expansion joint.	Design and Build	Zach Hammons Ph: 903-440-6283
GRIFFIN ICE ARENA Owner: John Kane	3450 M 119, Harbor Springs, MI 49740	2012	\$218,850.00	100 ton field erected ammonia refrigeration system.	Design and Build	John Kane Ph: 231-881-1194
CITY OF WESTLAND-MIKE MODANO ICE ARENA Owner: City of Westland	6210 North Wildwood St. Westland, MI 48185	2010	\$450,000.00	Stick built Ammonia/Glycol refrigeration system. Control programming.	Design and Build	William McCusker Ph: 248-421-6675



SERV-ICE REFRIGERATION, INC.
 143 Cadiz Centre #207, Northville, MI 48167
 Ph: 313-600-8655 E-mail: rblslop8@me.com

REFERENCES AND MAJOR PROJECTS

PROJECT	PROJECT ADDRESS	COMPLETION	CONTRACT VALUE	SCOPE	Subcontract Type	CONTACT
DAYTON, OHIO- RIVERSCAPE METROPARK PHASE III Owner: Five Rivers Metroparks	1375 Siebenthaler Ave. Dayton, OH 45414	2010	\$600,000.00	Design/build ice rink stick built ammonia refrigeration system and concrete floor design. Compression expansion joint.	Design and Build	Chris Joeselyn Ph: 937-269-8020
CITY OF ROYAL OAK - LINDELL ARENA Owner: City of Royal Oak	1403 Lexington Avenue Royal Oak, MI 48073	2009	\$465,000.00	Replacement of concrete rink floor, installed new subsoil heating and evaporative condenser pump. Package ammonia refrigeration system. Compression expansion joint.	Design and Build	Jeff Mitchell Ph: 248-719-1117
GREATER MIDLAND COMMUNITY CENTER - CURLING RINK Owner: Greater Midland Community Centers, Inc.	2001 George St. Midland, MI 48640	2008	\$175,000.00	Replacement of concrete rink floor and new pump. Stick built ammonia refrigeration system. Compression expansion joint.	Design and Build	Tad Bultema- Architect Ph: 616-451-4707
CITY OF GROSSE POINTE FARMS - PIER PARK ARENA Owner: City of Grosse Pointe Farms	350 Lakeshore Rd. Grosse Pointe Farms, MI 48236	2008	\$360,000.00	Package ice rink refrigeration and concrete floor design /build install complete. Expansion joint	Design and Build	Elizabeth Musyk- Architect PH: (248)-244-9710
CITY OF WYANDOTTE -YACK ARENA Owner: City of Wyandotte	246 Sycamore St. Wyandotte, MI 48192	2006	\$550,000.00	Replacement of concrete rink floor, stick built ammonia refrigeration system and air conditioning. Compression expansion joint.	Design and Build	Brad Schmidt PH: (734)-365-2851
CITY OF FINDLAY OHIO - HANCOCK RECREATION CENTER Owner: City of Findlay, Ohio	3434 North Main St. Findlay, OH 45840	2006	\$190,000.00	Ice Rink Enhancement new chillers, stick built ammonia compressors and pumps.	Design and Build	Mike Gallaheer PH: (419) 722-9139
CITY OF TRENTON - KENNEDY ICE ARENA Owner: City of Trenton	3101 West Road Trenton, MI 48183	2005	\$200,000.00	Package ammonia refrigeration system and floor for ice rink. Compression expansion joint.	Design and Build	Tim Beaker 734- 676-7172
CLARK PARK ARENA Owner: City of Detroit	1130 Clark Avenue Detroit, MI 48209	2005	\$513,000.00	Stick built refrigeration system and floor for ice rink. Compression expansion joint.	Design and Build	Deb Sumner PH: (313) 522-6120
SUBURBAN MACOMB ARENA Owner: Suburban Ice Management	54755 Broughton Road Macomb, MI 48042	2005	\$660,000.00	Design/build of ice rink stick built ammonia refrigeration system and floor for ice rink. Compression expansion joint.	Design and Build	Frank Rewold & Son PH: (248) 601-1220
CITY OF MIDLAND CIVIC ARENA Owner: City of Midland	405 Fast Ice Drive Midland, MI 48640	2005	\$924,447.00	Design/build of ice rink stick built ammonia refrigeration system and 3 floors for ice rink. Compression expansion joint.	Design and Build	Ken Benson PH: (989) 513-0813
TAM-O-SHANTER ARENA Owner: City of Sylvania	7060 W Sylvania Ave, Sylvania, OH 43560	1993	\$700,000.00	Ammonia system and 2 rink floors. Compression expansion joint.	Performance Spec	Tom Cline Ph: (419) 349-3883
CITY OF FARMINGTON HILLS ICE ARENA Owner: City of Farmington Hills	35500 Eight Mile Rd, Farmington Hills, MI 48335	1995	\$700,000.00	Ammonia system and 2 rink floors. Compression expansion joint.	Performance Spec	Dan Monacelli Ph: (248) 478-8800
FLINT ICELAND ARENA Owner: Dr. Shakeri	1160 Elms Rd, Flint, MI 48532	1995/1996	\$600,000.00	Ammonia system and 2 rink floors. Compression expansion joint.	Design and Build	Jason Lyons 810-240-6210
CITY OF DEARBORN (ADRAY) DISC ARENA Owner: City of Dearborn	14900 Ford Rd, Dearborn, MI 48126	1999	\$700,000.00	Ammonia system and rink floor. Compression expansion joint.	Performance Spec	Kirk Young Ph: (313) 943-4098



SERV-ICE REFRIGERATION, INC.
 143 Cady Canine #207 Northville, MI 48167
 Ph: 313-600-8655 E-mail: rbishop3@ira.com

REFERENCES AND MAJOR PROJECTS

PROJECT	PROJECT ADDRESS	COMPLETION	CONTRACT VALUE	SCOPE	Subcontract Type	CONTACT
CITY OF DEARBORN (ADRAY) DISC ARENA Owner: City of Dearborn	14900 Ford Rd, Dearborn, MI 48126	1997	\$400,000.00	Concrete rink floor and compression expansion joint.	Design Build	Kirk Young Ph: (313) 943-4098
CITY OF ROYAL OAK - LINDELL ARENA Owner: City of Royal Oak	1403 Lexington Avenue Royal Oak, MI 48073	2005	\$500,000.00	Ammonia system and concrete rink floor. Compression expansion joint.	Performance Spec	Jeff Mitchell Ph: (517)-336-4272
CITY OF ST. CLAIR SHORES ICE ARENA Owner: City of St. Clair Shores	20000 Stephens, St Clair Shores, MI 48080	1996/1997	\$500,000.00	Refrigeration conversion and 2 rink floors. Compression expansion joint.	Performance Spec	Gina Rheume Email: gina@scmi.net
CITY OF MELVINDALE COMMUNITY ARENA Owner: City of Melvindale	4300 S Dearborn St, Melvindale, MI 48122	1997	\$700,000.00	Ammonia system and rink floor. Compression expansion joint.	Design Build	
MICHAEL FERRANTINO Owner: Private	Private	2008	\$250,000.00	Outdoor air cooled chiller and rink floor. Compression expansion joint.	Design Build	Michael Ferrantino

Serv-Ice Refrigeration, Inc.

Robert Bishop

Robert Bishop

President & Owner

313-600-8655



SECTION 6 CLARIFICATIONS/EXCEPTIONS

American Arena



2021 Ammonia Systems Reference List

Rolling Meadows Park District - Rolling Meadows, IL

Project Scope: One Ammonia chiller and one ice rink floor

Owner's Rep: Brian McKenna – 847-344-4761

Completed: 2016

System Designer and Installer: Richard Doak

University of Michigan - Ann Arbor, MI

Project Scope: Install in Ammonia chiller plant and one ice rink floor

Owner's Rep: Kevin Boshey – 734-417-1764

Completed: 2015

System Designer and Installer: Richard Doak

Western Michigan University - Kalamazoo, MI

Project Scope: One Ammonia chiller and one ice rink floor

Owner's Rep: Paul Schneider – 269-387-3050

Completed: 2016

System Designer and Installer: Richard Doak

UPMC Pittsburgh Penguins - Cranberry, PA

Project Scope: One Ammonia chiller and two ice rink floors

Owner's Rep: Chris Banks – 570-239-1217

Completed: 2016

System Designer and Installer: Richard Doak

Station Sports Complex - Mandan, ND

Project Scope: One Ammonia chiller and two ice rink floors

Owner's Rep: Dave Frueh – 701-220-11472

Completed: 2016

System Designer and Installer: Richard Doak

St. James Group Sports & Wellness Center (Twin Rinks) – Springfield, VA

Project Scope: Install 2 new concrete ice rink floors and one 200-ton Ammonia chiller.

Owner's Rep: Kevin Nearpass - (703) 929-2052 - LF Jennings Construction

Completion: 7-16-18

Contract Amount: \$1,761,000



Runestone Community Center – Alexandria, MN

Project Scope: Demo and install new rink floor and install a built-in-place Ammonia chiller

Owner's Rep: Seth DeGeest - (612) 751-6530

Completed: 8-15-16

Contract Amount: \$835,620

Polar Ice Arena – North St. Paul, Minnesota

Project Scope: Demo and install new rink floor and install a built-in-place Ammonia chiller.

Remove existing lighting and replace with energy efficient LED lighting.

Owner's Rep: Kevin Holm - (218) 310-5641 - Architect

Completed: 10-1-17

Contract Amount: \$1,562,056

Mike McDevitt
CEO



Ammonia Ice Chillers with Richard Doak Designed Controls

Western Michigan University - Kalamazoo, MI

Project Scope: One Ammonia chiller and one ice rink floor

Owner's Rep: Paul Schneider – 269-387-3050

Completed: 2016

System Designer and Installer: Richard Doak

University of Michigan - Ann Arbor, MI

Project Scope: Install in Ammonia chiller plant and one ice rink floor

Owner's Rep: Kevin Boshey – 734-417-1764

Completed: 2015

System Designer and Installer: Richard Doak

UPMC Pittsburgh Penguins - Cranberry, PA

Project Scope: One Ammonia chiller and two ice rink floors

Owner's Rep: Chris Banks – 570-239-1217

Completed: 2016

System Designer and Installer: Richard Doak

Starion Sports Complex - Mandan, ND

Project Scope: One Ammonia chiller and two ice rink floors

Owner's Rep: Dave Frueh – 701-220-11472

Completed: 2016

System Designer and Installer: Richard Doak

Robert Crown Community Center - Evanston, IL

Project Scope: One Ammonia chiller and one ice rink floor

Owner's Rep: Tom Lyne – 773-848-5491

Completed: 2019

System Designer and Installer: Richard Doak

Rolling Meadows Park District - Rolling Meadows, IL

Project Scope: One Ammonia chiller and one ice rink floor

Owner's Rep: Brian McKenna – 847-344-4761

Completed: 2016

System Designer and Installer: Richard Doak

Mike McDevitt
CEO



2021 Expansion Joints List

Taos Ski Valley - Taos, NM

Project Scope: Install a feature rink with a colored stamped concrete slab, specialty designer dashers, new R-507 chiller, Olympia mini resurfacer with rubber flooring and turf coverage in the summer.

Owner's Rep: Lance Curran - (443) 995-4002

Completed: 10-23-20

Contract Price: \$1,237,000

Triphahn Ice Rink - Hoffman Estates, IL

Project Scope: Remove existing ice rink floor, remove 12' of subfloor frost, install a new subfloor and cold floor ice rink system. This is the second rink in 2 years we have

Owner's Rep: Dustin Hugen - (847)-285-5465 - Director of Parks

Completed: 7-20-20

Contract Price: \$1,300,000

Oglebay Ice Rink - Wheeling, WV

Project Scope: Remove existing ice rink floor, install a new subfloor and cold floor ice rink system and new set of dashers.

Owner's Rep: Curtis Byrum - (304) 281-0336 - Director of Capital Projects

Completed: 9-21-20

Contract Price: \$1,069,000

Bill Gray's Ice Plex - Rochester, NY

Project Scope: Remove existing sand base ice rink floor, remove 12' of subfloor frost, install a new subfloor and cold sand floor ice rink system.

Owner's Rep: Chris Woodworth - (585) 424-4625 - General Manager

Completed: 9-1-19

Contract Price: \$668,000

Knoxville Civic Auditorium and Coliseum - Knoxville, TN

Project Scope: Remove and replace the existing concrete cold floor and subfloor piping with a new sub floor heating system and 6 ¾" concrete cold floor.

Owner's Rep: Jeff Arlington - (865) 243-3107 - Senior Vice President of Christman Company

Estimated Completion: 10-1-18

Contract Amount: \$1,333,733



Hobbs Ice Arena - Eau Claire, WI

Project Scope: Remove and replace the existing concrete cold floor and subfloor piping with a new sub floor heating system and 5" concrete cold floor.

Owner's Rep: Jason Raverty - (651) 436- 2075 - Stevens Engineering

Estimated Completion: 10-1-18

Contract Amount: \$429,000

Triphahn Ice Rink - Hoffman Estates, IL

Project Scope: Remove existing ice rink floor, remove 12' of subfloor frost, install a new subfloor and cold floor ice rink system.

Owner's Rep: Dustin Hugen - (847)-285-5465 - Director of Parks

Estimated Completion: 8-1-19

Contract Price: \$1,073,000

Mercyhurst University Ice Rink – Erie, PA

Project Scope: Remove/Demo existing chiller, dehumidification and ice rink floor systems and install new 125-ton 507 chiller, 8,000cfm dehumidification system and a new ice rink floor that allows for the dasher boards to be installed completely on the cold floor slab.

Owner's Rep: Tom Fabrizio - (814) 824-2113 - Facilities Manager

Estimated Completion: 8-1-19

Contract Price: \$1,300,000

Fox Cities Champion Center – Appleton, WI

Project Scope: Install 2 new ice sheets and 2 Trane chillers

Owner's Rep: Steve Koltz - (920) 360-5811 - Lead Architects

Estimated Completion: 7-1-19

Contract Price: \$1,855,826

McFetridge Ice Arena – Chicago, IL

Project Scope: Install a second ice sheet to the arena

Owner's Rep: Mark DeMarsh - (847) 417-8843

Estimated Completion: 11-1-18

Contract Amount: \$402,839

St. James Group Sports & Wellness Center (Twin Rinks) – Springfield, VA

Project Scope: Install 2 new concrete ice rinks and one 200-ton chiller.

Owner's Rep: Kevin Nearpass - (703) 929-2052 - LF Jennings Construction

Completion: 7-16-18

Contract Amount: \$1,761,000



David Street Station Ice Ribbon – Casper, WY

Project Scope: MN Ice was brought in to value engineer the project to bring costs in line with budgets. MN Ice then installed a ice ribbon with stamped concrete and summer water features. The city will have MN Ice install a temporary chiller each year.

Owner's Rep: Wes Hayden - (307) 235-5690 - Casper Building Systems

Completion: 5-1-18

Contract Amount: \$448,650

Polar Ice Arena – North St. Paul, Minnesota

Project Scope: Demo and install new rink floor and install a built-in-place Ammonia chiller. Remove existing lighting and replace with energy efficient LED lighting.

Owner's Rep: Kevin Holm - (218) 310-5641 - Architect

Completed: 10-1-17

Contract Amount: \$1,562,056

Mount Lebanon Ice Center (Twin Rinks) – Mount Lebanon, PA

Project Scope: Demo existing floor and remove 8+ feet of permafrost, install new concrete floors in both rinks.

Owner's Rep: David Donnellan - (412) 343-4519

Completed: 8-1-17

Contract Amount: \$1,7724,465.75

City of Cambridge Ice Rinks (Twin Sheet)– Cambridge, MN

Project Scope – Install 2 outdoor concrete ice rinks and one 200-ton Zero Zone Freon chiller

Owner's Rep: Lucas Milz - (612) 221-9878

Completed: 12-12-16

Contract Amount: \$1,006,472

Mankato Curling Club – Mankato, MN

Project Scope: Install a concrete floor over an existing floor and install a new 50-ton Zero Zone chiller package

Owner's Rep: Kim Rheume - (507) 243-3441

Completed: 12-12-16

Contract Amount: \$484,020



Cambria County War Memorial Arena – Johnstown, PA

Project Scope: Install subfloor heat, concrete cold floor, and remove, repair and reinstall the existing dasher boards

Owner's Rep: Chris Polacek - (814) 536-1651

Completed: 10-10-16

Contract Amount: \$835,620

Scheels Arena – Fargo, ND

Project Scope: Install a new ice rink floor and upgrade the existing chiller package.

Owner's Rep: Mike Kunyz – (701) 740-5160

Completed: 12-15-16

Contract Amount: \$650,000

Wings Event Center – Kalamazoo, MI

Project Scope: Demo the existing ice rink chiller and floor and install a new concrete floor and 250-ton chiller package including reclaim heat and snow melt pit

Owner's Rep: Ryan Westra - (269) 352-0611

Completed: 10-15-15

Contract Amount: \$1,247,804

Korpi Ice Rink – Bayonne, NJ

Project Scope: Demo the existing ice rink chiller and floor and install a new concrete floor and 120-ton chiller package including reclaim heat and snow melt pit

Owner's Rep: Darren Mezzei - (732) 727-8000 - CME Engineers

Completed: 11-15-15

Contract Amount: \$921,643

Buchmuller Ice Rink – Secaucus, NJ

Project Scope: Demo existing outdoor ice rink and chiller and install new ice rink floor and 120-ton chiller.

Owner's Rep: David Drumeler - (201) 330-2008 - Secaucus Town Administrator

Completed: 1-15-15

Contract Amount: \$681,494

ICON Sports Center – Grand Forks, ND

Project Scope: Minnesota Ice installed 2 new ice rink floors and one 250-ton refrigeration package.

Owner's Rep: Wes Colborn - (763) 442-7080

Completed: 1-15-14

Contract Amount: \$1,178,905



Veterans Memorial Community Center – Inver Grove Heights, MN

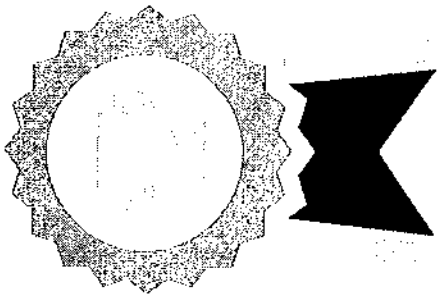
Project Scope: Remove and replace the existing concrete cold floor and subfloor piping with a new sub floor heating system and 5” concrete cold floor.

Owner's Rep: Eric Carlson - (651) 450-2587 - Park and Rec Director

Completed: 10-1-18

Contract Amount: \$539,852

Mike McDevitt
CEO



Certificate

HDPE FUSION TRAINING

*8 Hour Course – Butt and Electro Fusion Processes on McElroy Equipment
Trained on 1-4 and 4-12 Machines
awarded to*

Dane McDevitt

In recognition of completion.

Keith Wind

Keith Wind – Certified Fusion Tech

Date

10-20-20

List of Credentials – Ice Rink

Those completed more than five years are not listed below

- **Oglebay Ice Rink – Wheeling, WV**
 - Project Scope: Install a new ice rink floor for MN Ice
 - Engineer: B32 – Scott Ward – 651-436-2075
 - Completed: 7-28-20
- **Knoxville Civic Auditorium**
 - Project Scope: Install a new ice rink floor for MN Ice
 - Christman Construction – Jeff Arlington – 517-204-0324
 - Completed: 10-1-19
- **Hobbs Arena – Eau Claire, WI**
 - Project Scope: Install a new ice rink floor for MN Ice
 - Engineer: B32 – Scott Ward – 651-436-2075
 - Completed: 10-1-19
- **Mercyhurst University – Erie, PA**
 - Project Scope: Install a new ice rink floor for MN Ice
 - Owner's Rep: Kate Gullickson – 715-346-1578
 - Completed: 6-1-19
- **Willett Ice Arena – Stevens Point, WI**
 - Project Scope: Install a new ice rink floor for MN Ice
 - Engineer: B32 – Scott Ward – 651-436-2075
 - Completed: 10-1-19
- **Fox Cities Champion Center – Appleton, WI**
 - Project Scope: Install two (2) a new ice rink floors for MN Ice
 - Owner's Rep: Mike Pernaski – Miron Construction – 920-969-7612
 - Completed: 10-1-19
- **St. James Sports & Wellness Complex (Twin Sheet) – Springfield VA**
 - Project Scope: Install two (2) new ice rink floor for MN Ice
 - Owner's Rep: LF Jennings – Jack Fanning – 571-641-0601
 - Floor #1: Poured: 4-18-18
 - Floor #2: Poured: 4-19-18
- **Windom Ice Arena Windom, MN**
 - Project Scope: Install a new ice rink floor for MN Ice
 - Owner's Rep: Stevens Engineering
 - Floor pour June 2018

- **Veterans Memorial Community Center West Rink Inver Grove Heights, MN**
- Project Scope: Install a new ice rink floor for MN Ice
- Owner's Rep: Stevens Engineering
- Floor pour August 2018

Sincerely,

Credem Johnson

President

Double J Concrete & Masonry Inc.

Office: 320-354-4945

Cell: 320-212-3113

credemj@gmail.com





SECTION 6 CLARIFICATIONS/EXCEPTIONS

CIMCO Refrigeration

CIMCO Refrigeration

Industry Profile

Recreation



About CIMCO



CIMCO Refrigeration is North America's largest supplier of thermal solutions, providing full-service capabilities including **design, engineering, installation and after-market service**. CIMCO operates through 29 locations across Canada and the United States.



Founded
1913



Employees
1000+



Projects
15000+



Customers
8000+



Service Contracts
1500+



Renewal Rate
98%



Locations
29



Completed **50%** of the world's ice rinks
Installed ice rinks in **45** countries

Toromont Industries Ltd. operates through two business segments: The Equipment Group and CIMCO. The Equipment Group includes one of the larger Caterpillar dealerships by revenue and geographic territory. In addition, the Group includes industry leading rental operations, a complementary material handling business and an agricultural equipment business. CIMCO is a market leader in the design, engineering, fabrication and installation of industrial and recreational refrigeration systems. Both segments offer comprehensive product support capabilities.



With a legacy of over 100 years and a strong service capability, CIMCO is in a unique position to deliver innovative and efficient solutions to clients, resulting in higher returns and top quality outcomes

ur Focus o Sustai ability

With mounting worldwide concerns over global warming and the effect it will have on our way of life, we at CIMCO pledge to make a difference with three strong objectives:

- **Challenge the traditional ways the refrigeration industry operates by focusing on innovations and technology that can change our future**
- **Offer informed leadership and guidance on the tools and choices that can help fight climate change;**
- **Aid our customers on their pathway to net zero in the most efficient way possible**

Understanding the significant impact the refrigeration industry has on the environment, we have ensured that our sustainability objectives align with those outlined by the United Nations in the UN Sustainable Goals; specifically goal no. 7 - **Affordable and clean energy**, and goal no. 13 - **Climate change**

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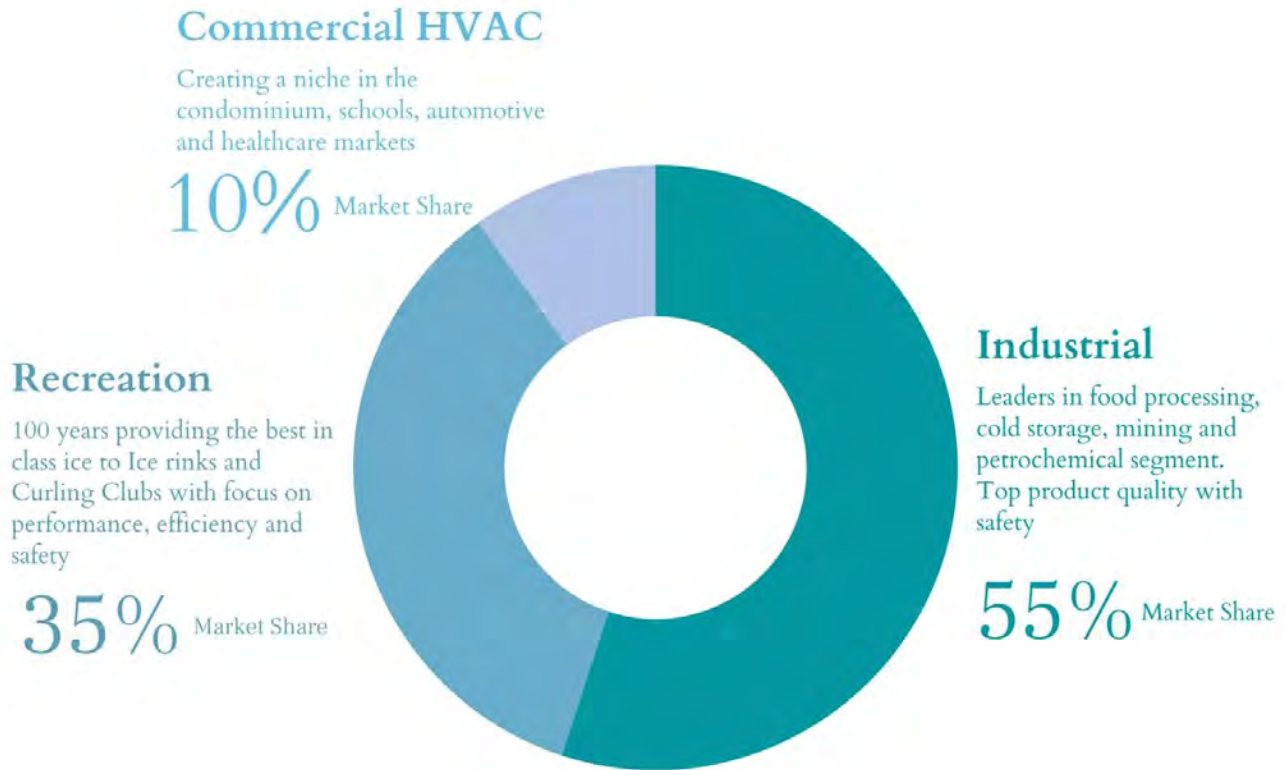
As the North American refrigeration market moves from synthetic to ammonia systems, it's crucial to understand how secondary refrigerants will play an important role

Dave Malinauskas
President, CIMCO Refrigeration

”



Markets we serve



The CIMCO Vision 

**Become the first choice for
systems and services in
thermally controlled
environments**

Recreational Refrigeration Services



From ultra-economical ice systems to environmentally-friendly alternatives to fully-integrated thermal solutions, CIMCO offers a wide range of Recreational Ice Solutions designed to meet and exceed the requirements of any arena facility.

CIMCO's offerings to the Recreation Industry



- Refrigeration engineering expertise
- On-site Installation and supervision
- Start up & Commissioning services
- Unmatched project management capabilities

- Distinct cooling layout and floor design
- High performance, energy & cost efficient equipment
- High safety standards
- Convenient, advanced control technologies
- Best in class after sales service



Our Competitive Advantage









Our Account Management team is passionate about ice sports. CIMCO invests in training and maintaining our account teams knowledge with the latest technology. The account team is able to comfortably make time for each of their clients. We act as your partners. While we offer the best industry solutions we also consult and ensure you are implementing the most efficient plans - those that align with your objectives. CIMCO has 8 account managers to every 1 that competitors offer.

OUR ACCOUNT MANAGERS PARTNER WITH YOU



CIMCO Recreational Product Line

CIMCO solutions are the global standard for recreational ice refrigeration. We've brought success to over 1/2 of the world's ice rinks - including 80% of the arenas with over 6000 seats - and we look forward to helping you create your own ideal ice.

								
	ECO CHILL	ECO ₂ CHILL	Smart Charge	Powerplay	Bonspiel	Breakaway	Heritage	Blue Line
Low Charge	✓	✓	✓	✓	✓			
Smart Connected	✓	✓	✓	✓	✓			
Heat-reclaim Ready	✓	✓	✓*					
Heavy Duty	✓	✓	✓	✓	✓		✓	
Low-Maintenance Compressor	✓	✓	✓	✓	✓	✓		✓
Thermally Connected	✓	✓						
Engine Room not required						✓		✓
Refrigerant	NH ₃	CO ₂	NH ₃	Opteon	Opteon	CO ₂	NH ₃	Opteon
Global Warming Potential	0	1	0	630	630	1	0	630

*reclaims high-grade heat only

Critical Success Factors



S S

CIMCO has more human and financial resources than any other refrigeration contractor in North America.

Benefit to our customers:

- Large/multiple projects
- National Agreements
- Response time
- Engineering capabilities
- Financial backing
- Requirements

A P S

In-depth team of technical experts in all aspects of industrial refrigeration. Proven record of accomplishment with highly complex and customized projects.

Benefit to our customers:

- Troubleshooting
- Design
- Business expansions
- Maintenance plans
- Asset planning
- Energy reduction
- Sourcing parts



A

Customized high quality installations that ensure plant reliability

Benefit to our customers:

- Plant reliability is crucial to
- Operation
- Long term investments
- Business and safety risk

P

CIMCO is the largest vendor to many OEMs and other value chain suppliers.

Benefit to our customers:

- Lower costs
- Use buying power to improve service, delivery, and preferential access





AP

P S

CIMCO has the largest service footprint in North America.

Benefit to our customers:

- National purchasing
- Streamline vendors/consistency
- Emergency response
- Reduce costs
- Required understanding of local codes and regulations

Our Capabilities

ENGINEERING

Unparalleled Expertise



CIMCO has developed a regional approach to its engineering while maintaining a strong central engineering group that provides the resources required for major national and international projects. Central engineering develops company standards for equipment and design, and has developed sophisticated electronic control systems for monitoring, control, and energy management. Moreover, as a Certificate of Authorization holder, CIMCO is able to provide consulting services. Leading with the industry's best technical sales, manufacturing and ice surface engineers, CIMCO designs systems from initial concept through supervision, to project commissioning, to ensure the success of a project. All of this, an in-house capability.

Key Facts

- o in-house refrigeration engineers

Prefabrication capability with 3D CAD technology

All drawings utilize:

- AutoCAD
- AutoCAD Electrical
- Solidworks
- Revit

Ice Engineering Expertise

Refrigeration Expertise

- Ammonia
- CO₂
- H₂O/H₂C Blends

Ice Engineering Expertise

- Secondary fluids
- Heat Reclaim
- CO₂ Transcritical
- CO₂ Brine

Low Charge Ammonia

- Free Glycol Heating
- Fully Integrated
- Mechanical/Refrigeration

AUTOMATION

Leading Innovation



The CIMCO Automation Group CAG is at the forefront of automation technologies providing automatic microprocessor control solutions for refrigeration plants. CAG engineers will evaluate your specific requirements and recommend the foremost control solution for your refrigeration application to maximize your return on investment. CAG has been focusing on developing and implementing the next generation of control systems that will provide our customers with more intelligent control and built in safety, efficiency, and maintenance analysis.

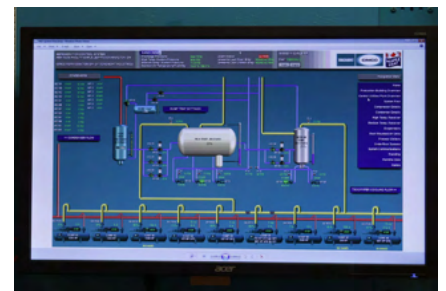
CAG ensures consistent up time and performance for our customers, simultaneously minimizing operational costs and workload. Systems include:

- Refrigeration: compressors, chillers, condensers, and vessels

- Mechanical: air handling units AHUs , variable frequency drives V Ds , and modular machine rooms

- Supervisory applications: Supervisory control and data acquisition SCADA / remote monitoring

On projects, the Automation team is responsible for providing the control solutions for project installations from point of design through to commissioning. This requires close coordination with Sales, Engineering, Construction, and Service departments so that the solution is fully integrated. After the project is installed and operational, they continue to provide service support to Service Department staff and our clients.



MANUFACTURING

In-house Excellence



CIMCO's manufacturing group works on the sole principle of providing products to our customers that are of high quality, competitively priced, and delivered on time as promised. The team has the experience and capability to implement the technologies required to meet all of your packaged system, heat exchanger, pressure vessel, and control automation requirements.

Manufacturing Expertise

In-house fabrication of custom industrial equipment

- ASME Code pressure vessels and heat exchangers
- Electrical control panels
- Skid mounted packaged piping assemblies
- Prefabricated piping spools for field installation

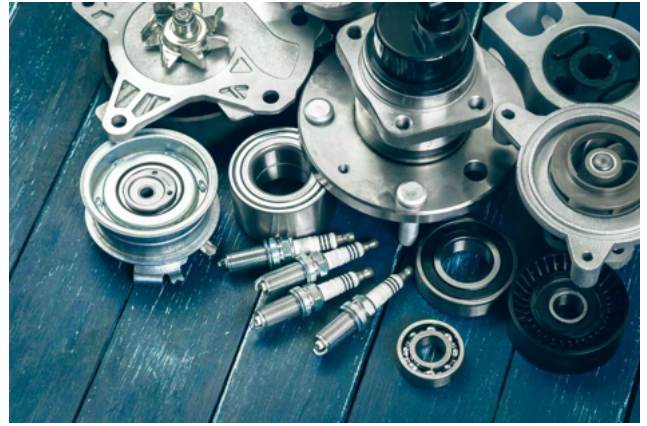
Support functions

- Process Improvement
- Production Planning
- Shop Supervision
- Traffic Control



Parts Sourcing

Power of Buying



Partnering with OEM suppliers and a strong footprint across North America, CIMCO promises superior quality, competitive prices and / delivery to any part of the continent. CIMCO is the largest vendor to the key suppliers in the refrigeration industry and enjoys passing our buying power and enhanced vendor support to our customers.

we freely extend the benefits of our relationships to our clients through

- Volume based discounts
- Special deliveries
- Technical support and training

- Warranty or performance issues
- Access to similar installations
- Special access to new or emerging equipment

CIMCO handles all the major O.E.M. manufacturers. Our O.E.M. relationships ensure that we have the latest information and technical expertise available. In addition, we also offer only top-of-the-line brand name components and accessories.



Safety

Every Employee Returns Home Safe Every Night



At CIMCO, safety is our top priority. We have an implemented pre-start safety review prior to starting any job, provide full safety committee, daily safety information bulletins sent to all employees, tail gate talks and regular safety review meetings. We also regularly preform snap inspection of our vehicles and job sites. This helps insure our technicians are working safely at all times. Our employees are provided with safety glasses, fall arrest equipment, ear protection, feet protection, high voltage electrical gloves, gloves, lockout tags and locks. We know how important it is to our employees and our customers that we provide our employees with proper safety training and equipment, as well as meeting the requirements to ensure the safety of everyone involved.

Safety Compliance Initiatives

- Certified and audited Drug-free Workplace
- Minimum OSHA 10 for all technicians
- N EPA 608/609/Electrical Safe Work Practices for all technicians
- Hazard Communication Training over entire staff
- ISNetworld , PICS and Browz Certified

USA Safety Metrics 2020

.66 EMR RATING



Our employees are trained in :

- fall arrest
- Lockout training
- first Aid
- Safe handling of refrigerants
- WHIMS
- Lift training
- Confined spaces
- Violence in the Workplace

THE CIMCO EDGE



CIMCO is in a unique selling position and cuts through competitors with its stronghold on the aforementioned factors

- **Service and Maintenance**
- **Customer Support Agreements**
- **Large footprint in North America**
- **National Parts Center**
- **In-house Refrigeration Project Expertise**



SERVICE AND MAINTENANCE

Trusted Locally, Nationwide

Refrigeration contracting design
Turnkey contracting
Scheduled inspection Maintenance
Process/refrigeration evaluation,
recommendations, equipment selection
Plant commissioning and start-up

Complete Plant operations
Screw overhaul and rebuild center
Monthly Safety Inspections and Reports
/ / 3 5 Emergency Service
hour remote refrigeration monitoring CAG

CUSTOMER SUPPORT AGREEMENTS

A strong product support business is the cornerstone of the CIMCO. Customer Service Agreements are built on the principle of providing regular and required professional engineering, financial control and peace of mind to our customers.

Inspection SA

ocused inspection to ensure components are operating at peak performance. Inspection are done at regular intervals with the appropriate recommendations.



Plan SA

CIMCO will develop a plan to consider OEM recommendations, on-going code requirements, routine analysis, energy reduction, and life cycle analysis.

All inclusive SA

CIMCO takes responsibility to develop, repair, and maintain the equipment to meet your goals of production, staffing, budget, safety and reliability.

Training

Customized training programs
Safety, Emergency Response, OSHA,
Maintenance, etc.

Refrigeration System operation

Includes providing chief operators, shift operators and maintenance personnel for reon, CO , and Ammonia plants.

NATIONAL PARTS CENTER

In-House Excellence



CIMCO houses an inventory of 3+ Million of parts and over 5 dedicated purchasing staff to support our customer base. Our purchasing staff support our sales and field staff by sourcing required parts through known networks globally. This service allows our service crews to be more efficient on the job site so you are not paying mechanic wages while they are attempting to source a part for you.

With the National Parts Center, we have a dedicated packing area where parts are set out through our network of carriers to get the part you need where you need it.

- Strong buying power
- Competitive pricing
- Superior quality

- Supplier reliability & support
- Standardized products
- On-time, expedited delivery

IN-HOUSE PROJECT EXPERTISE

From conception to decommissioning, CIMCO has the in-house expertise and resources to handle all refrigeration project requirements including:

- Pre-planning
- Complete design and engineering
- Manufacturing
- Pre-fabrication facility
- Project Management

- Equipment ordering, consolidating and staging
- Installation and start-up
- Post-construction service
- Dedicated technology



OUR PRESENCE

Largest Footprint in North America

At CIMCO, we understand that good service means being responsive. That requires local service technicians who can be on-site quickly and in position to fix the problem immediately. That is why we have established branch and service locations all across North America. Spread across **locations**, each location carries a complete inventory of parts and accessories along with the specialized tools and equipment required to service your refrigeration equipment.



OUR PROJECTS

Yellowknife Community Arena, North Western Territories, Canada



About the Facility: The Yellowknife Council is on a mission to provide municipal infrastructure, programs, and services that are environmentally, socially, and fiscally responsible. The community arena includes one ice surface 5 by 5 feet and five change rooms.



About the Project: CIMCO supplied turnkey system, foundation, building, electrical and a heat reclaim ammonia plant. An independent plant room was constructed outside the arena envelope that housed the patented ECO Chill system. Three PHE evaporators were installed in the arena, curling rink and lake. System heats were designed and installed into the arena, curling rink and swimming pool to remove the energy from the lake and heat the pool during the summer season.

Construction year: April 2000

Services: Installation, Engineering, Construction

Key features of the project: Heat Reclaim, Natural Refrigerant

Fort Nelson Recreation Center, British Columbia, Canada



About the Facility: The Northern Rockies Regional Municipality has a vision to maintain balance across the economic, social and environmental well being of the community and meeting the targets established within the Municipality's sustainability strategies. The center comprises three ice arenas, a curling rink, rock climbing wall, squash court, walking track and fitness and meeting rooms.



About the Project: CIMCO re-designed a 100 ton low side float ammonia system with a 100 lb. ammonia charge to a 100 lb. ammonia charge while maintaining 100 tons of capacity. Old equipment was replaced with PHE Condenser and Adiabatic fluid cooler, Glycol/ Brine exchangers, PHE evaporator, upgraded control system and reduced operation ammonia charge from 100 lbs./ton to 100 lbs./ton.

Construction year: April 2000

Services: Installation, Engineering, Construction

Key features of the project: Low charge ammonia, Heat reclaim

OUR PROJECTS

St. Paul CAP Arena, Alberta, Canada



About the Facility: St. Paul CAP Arena is used by hockey and figure skating groups. With a goal to create an active community that prides itself on its frequently utilized parks, recreational amenities, and walking trails, the town of St. Paul is focused on maintaining the quality of life of residents by providing and maintaining a range of recreational facilities, parks and natural areas.

About the Project: CIMCO provided a full turnkey, code-compliant new building with a built-up refrigeration system. The spacious room allows for a safer work environment by reducing tight spaces and obstacles while performing daily maintenance checks or servicing. The new system included a screw compressor rated at 50TR, plate frame chiller, cold floor pumps and glycol circulating pumps and a adiabatic fluid cooler. The installation used the CIMCO SMART HUB DDC Computer system complete with infrared camera for ice surface control.

Construction year: October 2010

Services: Installation, Engineering, Construction, Automation

Assets: Smart Hub controller, Natural Refrigerant

OUR PROJECTS

The Barbara Ann Scott Ice Trail, Ontario, Canada



About the Facility: The Barbara Ann Scott Ice Trail is the first of its kind in the world – the first transcritical carbon dioxide system for an outdoor ice trail. TransformTO, approved by the City Council in 2016, lays out long-term, low-carbon goals and strategies for the city to reduce local GHG emissions.



About the Project: CIMCO supplied and installed a CO₂ direct refrigeration system. The system's capacity is 50TR, enough to maintain the ice surface in all conditions, yet the piping and the CO₂ pumps are much smaller and more efficient than standard rink systems. The pipes in this system are 2 inches in diameter, while standard rinks are 6 or 8 inches across. A CO₂ detection system sends out an alert if it senses high levels of CO₂, and then automatically turns on an exhaust fan.

Installation year: December 2016

Services: Installation, Engineering, Automation

Key features of the project: Heat Reclaim, Natural Refrigerant

OUR PROJECTS

The City of Markham, Ontario, Canada



Facilities under Project:

Angus Glen Community Centre Centennial Community Centre Crosby Community Centre Milliken Mills Community Centre Thornhill Community Centre Clatworthy Arena Mount Joy Arena. The city of Markham has ten multi-purpose ice pads. Of these, CIMCO was contracted to supply and install the Smart Hub controller in seven arenas.



About the Project: CIMCO supplied and installed the CIMCO Smart Hub Controller with floating Head Pressure Control at the above mentioned seven arenas. The Smart Hub controller is an intuitive intelligent technology that enabled these arenas to operate in a efficient, safe and reliable manner by analyzing operating data to optimize system efficiency, predict equipment maintenance, and improve refrigeration plant safety.

Construction year: January 2020

Services: Installation, Automation

Key Project features: Smart Connected Products

CAA Centre, Ontario



About the facility: The CAA Centre is an all-season sports and entertainment complex in the GTA. The Centre features NHL size rinks, including a spectator bowl with a seating capacity of 5,000 and a full service 50 seat restaurant that overlooks the three community rinks.



About the Project: CIMCO supplied and installed two plate frame chillers with one surge drum. The project consisted of removing the shell tube chillers complete with associated ammonia brine and ammonia piping and was replaced by expansion tanks and new butterfly isolation valves around each pump at the local facility. The entire ammonia charge was safely removed into a recovery/transport vehicle.

Construction year: April 2020

Services: Installation, Engineering

Key features of the project: Chiller replacement, Natural refrigerant

OUR PROJECTS

Colosseum of Trois-Rivières, Québec, Canada



About the Facility: The colosseum boasts an ice rink with seating for 3,000 and another with seating for 50+ to host recreational activities, corporate suites, universally accessible suites, and VIP lounges, ability to configure the arena for shows, the very latest in scenographical equipment, office space for sports organizations, versatile rooms for various activities. The arena also focuses on eco-responsibility and making the building as energy efficient as possible.

About the Project: CIMCO completed the pad arena complex by supplying and installing the NH3 EcoChill patented package with 5 TR capacity. A heat recovery plan is put in place to contribute to 30% energy saving of the arena. The ECO CHILL system incorporates state of the art industrial refrigeration equipment to provide maximum efficiency and a long life cycle for the facility.

Construction year: January 2000

Services: Installation, Engineering, Automation

Key features of the project: ECO Chill, Energy Efficiency, Heat Recovery, Natural Refrigerant

Université Laval - PEPS Pavillon de l'éducation



About the facility: PEPS has two skating rinks open to the university community and the general public. The rinks are used for hockey practice and figure skating.

About the Project: CIMCO dismantled the existing R-22 system owing to the phase out and installed a new R-503A system with four screw compressors

Construction year: February 2000

Services: Installation, Engineering, Construction

Assets: R-503A replacement, 5 TR

OUR PROJECTS

Miramichi Civic Center, New Brunswick, Canada



About the Facility: The City of Miramichi is on a mission to provide access to efficient, enjoyable and safe recreational and leisure opportunities. The Civic Arena provides a 60 x 25 ice surface, food concession and bar facilities. Operated as a winter hockey/skating facility, the Civic Centre also supports year-round community special events.



About the Project: CIMCO undertook the 2010 Capital Upgrades at the Miramichi Civic Center which included the removal and disposal of the existing ATC condenser and replacement with the new LSC 35 E Condenser, isolation and disposal of the current heat recovery tanks, Thermastor, supply and installation of new Thermastor tanks, re-gasket for the plate and frame chiller and a new condenser water tank.

Construction year: March 2010

Services: Installation, Engineering, Automation

Key features of the project: Capital Upgrade, Energy Efficiency, Heat Recovery

St Mary's Recplex, Nova Scotia



About the facility: The St. Mary's Recplex is a modern, multi-use recreation facility. It houses an ice rink in the winter months, a concrete surface floor in the summer and a year-round walking track.



About the Project: CIMCO replaced the existing brine chiller with a new plate frame chiller. The project also included adding a new charge of Ammonia, testing, commissioning and starting up the arena ice plant.

Construction year: November 2010

Services: Installation, Engineering, Construction

Tasks: Chiller replacement, Natural Refrigerant

OUR PROJECTS

The McKendree MetroRecPlex , Illinois, USA



About the Facility: The McKendree MetroRecPlex is home to two NHL-sized hockey rinks with sizable viewing areas and with the capacity to seat at least 1000 spectators. One of the rinks serves multiple purposes including concerts and special events through the year.

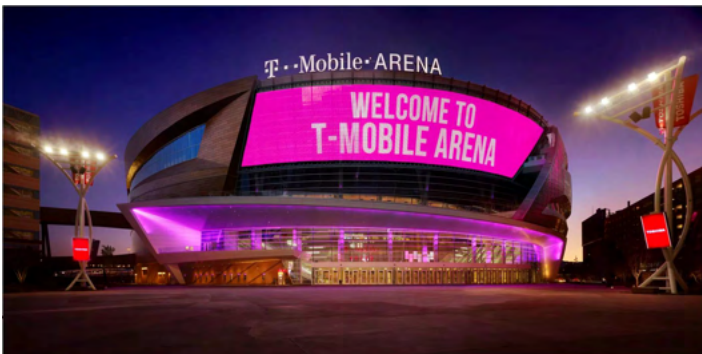


About the Project: CIMCO undertook the supply, construction and installation of the Thermal Energy Plant with the patented ECO CHILL technology for the twin ice sheets. A heat reclaim plan was installed with the Eco Dry Dehumidification with AC/Heating coils for the twin pools and gym. The ECO Dry Dehumidification uses waste heat water for heating, cooling, dehumidification and code air makeup. The CIMCO BMS system was installed to utilize priority waste heat delivery of energy for building requirements.

Services: Installation, Engineering, Automation

Key features of the project: Energy Efficiency, Heat Recovery, ECO CHILL

T Mobile Arena, MGM Grand, Las Vegas



About the facility: The T-Mobile Arena is a multi-purpose venue available to host the NBA and NHL teams, concerts and other major events. With a rink surface of 1000 sq. ft. and all year operations, the venue hosts 100-150 events annually. The venue is designed for the US Green building Council LEED Gold Certification.



About the Project: CIMCO installed the NH₃/Glycol System using Reciprocating Compressors, Steel Pipe floor, Smart Hub Controller providing the arena with the best in class ice surface. The Smart Hub controller provides more control over improved ice quality, easier maintenance and safety and improved efficiency and cost saving.

Services: Installation, Engineering, Construction

as: Chiller replacement, Natural Refrigerant

OUR PROJECTS

City National Arena, Las Vegas, USA



About the Facility: City National Arena features two NHL-sized ice sheets for team and public use. The facility provides the Vegas Golden Knights front office with a home base and the region's adult, youth hockey and figure skating with a regional hub. With a seating capacity of 300+ and two ice pads, the venue operates throughout the year.

About the Project: CIMCO installed the Thermal Energy plant with its patented Eco Chill technology for the NHL Practice Rink and Community Rink. Heat reclaim was attained through the Eco Dry Dehumidification with AC/Heating Coils for the 35,000 sqft NHL office complex which provides heating and cooling needs of the building. The CIMCO BMS integrated system installed provides priority waste heat delivery through the building.

Services: Installation, Engineering, Automation

Key features of the project: Energy Efficiency, Heat Recovery, ECO CHILL



HELPING YOU KEEP YOUR COOL FOR OVER 100 YEARS

Recognizing that newly available refrigeration equipment could provide households with a better alternative to natural ice, Tom Shipley founded The Canadian Ice Machine Company in 1913 and began servicing the refrigeration needs of Canadians.

Since then, the technology has improved, the name has been shortened, but our core principles remain the same: reliable, cost-effective solutions and unbeatable customer service. It's these principles that have driven our success and made us the first choice of world-class organizations across Canada and the United States, including the NHL.

Today, we continue to develop industry-leading technology and deliver outstanding service to provide the most efficient and reliable heating and cooling systems available.



C C Refrigeration

Ice Rink Sub Contractor - Rooftop Mobility Confirmation

Prepared By :

Brad Wilkins

CIMCO Refrigeration Inc

Prepared for:

General Contractors ,



arc 25 2 21

CIMCO is pleased to provide evidence of our ability to construct the project and support the Owner's system,

Toromont Industries Ltd operates through two business segments: the Equipment Group and CIMCO. The Equipment Group includes one of the larger Caterpillar dealerships by revenue and geographic territory. In addition, the group includes industry leading rental operations, a complementary material handling business and an agricultural equipment business. CIMCO is a market leader in the design, engineering, fabrication and installation of industrial and recreational refrigeration systems. Both segments offer comprehensive product support capabilities.



about CIMCO

CIMCO Refrigeration is North America's largest supplier of thermal solutions, providing full service capabilities including design, engineering, installation and after market service. CIMCO operates through 100 locations across Canada and the United States.

W C C

CIMCO Refrigeration, Inc. has been in operation since 1964 and is part of Toromont Industries Refrigeration Group. Toromont Industries Ltd is a public company with approximately 10,000 employees across North America. As part of the Toromont family, you are assured of the financial stability of CIMCO and our long term presence in the refrigeration market.

Key factors why a partnership with CIMCO is beneficial to you:

- Over 50 years worth of engineering knowledge

- Continually abreast of the ever changing technology in the industry

- Extensive training program for service technicians, resulting in faster system maintenance and repairs and lower overall costs

- Large number of technicians ensure that every service requirement is met 24 hours a day, seven days a week

- Large inventory of parts and compressors means that CIMCO does not rely on any outside suppliers for emergency repairs

From Concept to Completion - Project Expertise

From conception to decommissioning CIMCO has the in-house expertise and resources to handle all refrigeration project requirements including

- Site planning
- Complete design and engineering
- Manufacturing
- Refrigeration facility
- Project Management
- Equipment ordering, consolidating and staging
- Installation and start-up
- Post construction service
- Dedicated technology



Executive Summary

North America's largest refrigeration contractor

Over 1,000 employees

Over 10,000 completed refrigeration projects

100+ active customers

Locations throughout North America

Completed 10% of the world's ice rinks and 50% of professional rinks in North America

Successfully installed ice rinks in over 20 countries

Sustainable designs which included

• Natural refrigerants

• Heat recovery

• High efficiency 1 hp/tonne

That is Smart Rink Connect

The Smart Rink Connect council is a group of like-minded industry leaders with the mission to develop interconnected products on a common platform

Each Smart Rink Connect product has customised sensors, monitoring capabilities and native intelligence to improve the safety, reliability and efficiency of your ice rink



CIMCO Refrigeration con rms that the elow project information is accurate to illustrate our ability to perform the project upgrade re uest

n order to be ali ed t e eneral Contractor UST incl de in t eir bid ro osal t e name o ice rink s b contractor and t e list o ast ro ects com leted to con rm t e a e e erience to er orm t e work o tlined in t e s eci cation. .

ll of the projects listed elow includes the following scopes of work

Contractor installing and constructing the primary and secondary refrigeration systems must have successfully installed and constructed ammonia refrigeration systems for **e 5** ice rink construction projects that are similar to this project and completed within the past **e 5 ears**

Contractor placing and nishing the concrete must have successfully completed the placement and nishing of concrete on **e 5** concrete ice rink oor construction projects within the past **e 5 ears**

Control su contractor must have successfully completed the programming and installation of **two 2** ice rink construction projects that are similar to this project that were completed within the past **e 5 ears**.

Construct the project the ice rink oor expansion joint su contractor must have successfully completed **twent 2** construction projects that use the same type of joint

Arena	Scope of Work	Location	Cost	Completion Date	Owner	Phone
Mc endree Metro Rec Complex	ammonia ackage x Rink loors x xp oints x IRC Controller	O allon, I	, ,	May	ean Oel e	
Bowling reen niversity	ammonia ackage x Rink loor x xp oint x IRC Controller	Bowling reen, O	, ,	ept	amie nne Baringer	
ittle Ceaser etroit Red ings	ammonia ackage x Rink loor x xp oint x IRC Controller	etroit, MI	, ,	uly	im udge	

Arena	Scope of Work	Location	Cost	Completion Date	Owner	Phone
City ational rena as egas olden nights ractice Rink	mmonia ackage x Rink loors x xp oints x IRC Controller	as egas,	, ,	May	eremy Brant	
Mo ile as egas olden nights Rink	mmonia ackage x Rink loors x xp oints x IRC Controller	as egas,	, ,	ept	Michael ecavalier	
Cypress Creek rena	mmonia ackage x Rink loor x xp oint x IRC Controller	Chapel ill, C	, ,	ept	Iggy arajos	
Chiller orthington	mmonia ackage x IRC Controller	orthington, O	,	une	Ro chrinner	
Chiller orth	mmonia ackage x IRC Controller	ewis Center, O	,	ug	Ro chrinner	
Chiller u lin	mmonia ackage x IRC Controller	u lin, O	, ,	uly	Ro chrinner	
Brett Memorial rena	CO ackage x Rink loor x xp oint x IRC Controller	almer,	, ,	ept	Chris turgis	
Bowling reen niversity	x Rink loor x xp oint	Bowling reen, O	, ,	ept	amie nne Baringer	
Richard Codey rena	x RM ackage x Rink loor x xp oint x IRC Controller	est Orange,	, ,	e	tephen Ruggiero	

Arena	Scope of Work	Location	Cost	Completion Date	Owner	Phone
ickies Multi urpose rena	mmonia ackage x Rink loor x xp oint x IRC Controller	orth orth,	, ,	ept	ee arris	
he dge Ice rena	x mmonia Chiller x Rink loors x xp oints	Bensenville, I	, ,	ug	e ones	
ey Bank Center	mmonia ackage x IRC Controller	Bu alo,	,	une	Bruce ohnson	
chaum erg Ice rena	CO ackage x irect Rink loor x xp oint x IRC Controller	Bismark,	, ,	uly	ave edevie	
Mt respect Ice Rink	mmonia ackage x Rink loors x xp oints x IRC Controller	Mount respect, I	, ,	March	avid chramm	
Bud ing rena	x R M ackage x Rink loor x Curling heet x xp oint x IRC Controller	inona, MI	, ,	ept	Bo Montrose	
Minot Maysa Ice rena	mmonia ackage x Rink loors x xp oints x IRC Controller	Minot,	, ,	une	Bo illen	

Superior Fusion Welding Process

C C Refrigeration Inc

Superior: Jack Crawford

Training Certificate SC ro al

5. Submit the name of at least **one** **1** **person employed by the company** that will supervise the fusion welding process along with their certifications, training and qualifications for performing the fusion welding process for high density polyethylene pipe

Fusion Training Certificate

Presented by ISCO Industries, Inc.

For successful completion of training for the safe handling and operation of MMI McElroy fusion equipment and fusion procedures for:

- ☒ Butt fusion training following ASTM F 2620
 - ☒ Manual (Small Diameter) MMI McElroy # 1LC thru # 26
 - ☒ Mid-range MMI McElroy # 28 thru T-500
 - ☐ Large diameter MMI McElroy # 824 thru 2065
 - ☐ with DataLogger
- ☒ Sidewall fusion training following ASTM F 2620
 - ☒ MMI McElroy Sidewinder
 - ☐ MMI McElroy 28 combo unit
- ☒ Socket fusion training following ASTM F 2620
- ☒ Small diameter Electrofusion following ASTM F 1290-98 (2011)


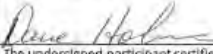
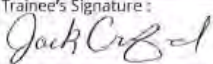
Fusion Trainer
Dave Holman

Awarded to
Jack Crawford
Cimco Refrigeration

Quality Assurance Trainer
Alan McElyea

Issued Certificate No. 20190242 on January 31, 2019
Expires January 31, 2021

ISCO

		Heat Fusion Evaluation Sheet		TD 21 Revision -4 Date: 2/16/2017 Page 1 of 1																																					
Employer's Name, Contact, & Contact #:			Employer's Main Office Address: (Where certs are mailed)																																						
Cimco Date of Training: 1-31-19			2502 Commercial Park Dr Mobile, AL 36606 Location of Training: Louisville, KY																																						
Product Fused in Training:			Equipment Used:																																						
2" DR11 4" DR17 4" DR11			1-4, 2-8, sidewinder socket Kit EF Processor																																						
<p>Purpose: As part of the heat fusion training, a minimum level of fusion operator proficiency must be determined. The goal is following completion of such training, the trainee/participant will have achieved a minimum level of understanding and skill in order to competently perform a heat fusion. The trainer will indicate below the heat fusion principles demonstrated to the trainee/participant.</p>																																									
<table border="1"> <thead> <tr> <th colspan="4">Training/Review Questions</th> <th>Yes</th> <th>No</th> </tr> </thead> <tbody> <tr> <td colspan="4">Was the ISCO HDPE Fusion Manual provided and reviewed?</td> <td><input checked="" type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td colspan="4">Were PPI TR-33 & ASTM F 2620 reviewed to cover the principles of the fusion process?</td> <td><input checked="" type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td colspan="4">Was PPI TR-41 reviewed to cover generic saddle fusion joining procedure?</td> <td>N/A <input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td colspan="4">Does the trainer acknowledge successful completion of a bend back test for pipe with a wall thickness of $\leq 1"$ or a guided side bend test for pipe with $> 1"$ wall thickness?</td> <td><input checked="" type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> <tr> <td colspan="4">In lieu of a bend back test or side bend test, a data logger report can be submitted with this training document demonstrating the trainee's knowledge of the essential variables of the fusion procedure specification. Is the data logger report included?</td> <td><input type="checkbox"/></td> <td><input checked="" type="checkbox"/></td> </tr> </tbody> </table>						Training/Review Questions				Yes	No	Was the ISCO HDPE Fusion Manual provided and reviewed?				<input checked="" type="checkbox"/>	<input type="checkbox"/>	Were PPI TR-33 & ASTM F 2620 reviewed to cover the principles of the fusion process?				<input checked="" type="checkbox"/>	<input type="checkbox"/>	Was PPI TR-41 reviewed to cover generic saddle fusion joining procedure?				N/A <input type="checkbox"/>	<input type="checkbox"/>	Does the trainer acknowledge successful completion of a bend back test for pipe with a wall thickness of $\leq 1"$ or a guided side bend test for pipe with $> 1"$ wall thickness?				<input checked="" type="checkbox"/>	<input type="checkbox"/>	In lieu of a bend back test or side bend test, a data logger report can be submitted with this training document demonstrating the trainee's knowledge of the essential variables of the fusion procedure specification. Is the data logger report included?				<input type="checkbox"/>	<input checked="" type="checkbox"/>
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Training Exams Completed:		TD 22 <input type="checkbox"/> Score	TD 23 <input checked="" type="checkbox"/> Score	TD 24 <input checked="" type="checkbox"/> Score	TD 25 <input checked="" type="checkbox"/> Score																																				
Minimum passing score $\geq 80\%$		TD 25 <input checked="" type="checkbox"/> Score	TD 26 <input checked="" type="checkbox"/> Score	TD 27 <input checked="" type="checkbox"/> Score	TD 28 <input checked="" type="checkbox"/> Score																																				
Trainers Signature:		Print Name:		Date:																																					
		Dave Holman		1-31-19																																					
<p>The undersigned participant certifies that he/she has been demonstrated the above fusion practices and has achieved a minimum level of understanding and skill in order to competently perform a heat fusion. By signing this form below, the participant understands his/her fusion capabilities and limitations and understands that he/she should not attempt to perform any heat fusion that exceeds such capabilities and limitations without further understanding and/or additional training. Also, the undersigned participant understands and agrees that his/her ISCO Fusion Training Certification for heat fusion shall expire two (2) years from the date hereof. Further, the undersigned participant agrees for himself/herself and for his/her employer to generally and specifically release and forever discharge ISCO Industries, Inc. ("ISCO") from any and all claims, causes of action, demands, obligations, liabilities, injuries, losses, damages, penalties, costs, fees and expenses, of whatever nature, that may in any way arise from or relate to the training services provided to the undersigned (for the benefit of both the undersigned and his employer) by ISCO.</p>																																									
Trainee's Signature:		Print Name:		Date:																																					
		Jack Crawford		1-31-19																																					
<p>** This form has to be completely filled out and faxed to 502-238-8125 within 10 days of the training date in order for the Fusion Certificate(s) to be mailed. Fusion Certificates will be mailed within two weeks of receipt of the form.</p>																																									

20190242

CIMCO Refrigeration Inc would like to thank you for the opportunity to provide a competitive proposal for this exciting project and look forward to your valued response and potentially working on your team!

Best Regards,



Brad Wilkins
Team Lead - US Recreation
Cell: 519-852-8777
Email: bwilkins@toromont.com



AIA Document A310™ – 2010

Bid Bond

CONTRACTOR:

(Name, legal status and address)

C. E. Gleeson Constructors, Inc.

984 Livernois

Troy, MI 48083

OWNER:

(Name, legal status and address)

City of Birmingham

851 South Eton

Birmingham, MI 48009

BOND AMOUNT: Five Percent (5%) of Amount Bid

SURETY:

(Name, legal status and principal place of business)

Travelers Casualty and Surety Company of America

One Tower Square

Hartford, CT 06183

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

PROJECT:

(Name, location or address, and Project number, if any)

Birmingham Ice Arena Renovation - General Contracting - Prime Contract - Renovation and Expansion of Existing Building

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Signed and sealed this **31st** day of **March, 2021**

(Witness)

(Witness)

C. E. Gleeson Constructors, Inc.

(Principal)

(Seal)

(Title) **President/CEO**

Travelers Casualty and Surety Company of America

(Surety)

(Seal)

(Title)

Susan L Small, Attorney-in-Fact

Init.

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**Travelers Casualty and Surety Company of America
Travelers Casualty and Surety Company
St. Paul Fire and Marine Insurance Company**

POWER OF ATTORNEY


KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **Susan L. Small** of **TROY** **Michigan**, their true and lawful Attorney-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.
IN WITNESS WHEREOF, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this 3rd day of February, 2017.



State of Connecticut

City of Hartford ss.

By:

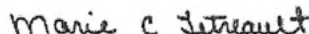

Robert L. Raney, Senior Vice President

On this the 3rd day of February, 2017, before me personally appeared Robert L. Raney, who acknowledged himself to be the Senior Vice President of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.

My Commission expires the 30th day of June, 2021




Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

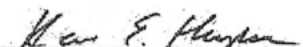
FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kevin E. Hughes, the undersigned, Assistant Secretary of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this **31st** day of **March**, 2021




Kevin E. Hughes, Assistant Secretary

**To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.
Please refer to the above-named Attorney-in-Fact and the details of the bond to which the power is attached.**

AIA® Document A101® – 2017

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the Thirteenth day of April in the year Two Thousand Twenty One.
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

City of Birmingham
851 S. Eton
Birmingham, Michigan 48009

and the Contractor:
(Name, legal status, address and other information)

C.E. Gleeson Constructors, Inc.
984 Livernois Road
Troy, MI 48083
Phone: (248) 647-5500

for the following Project:
(Name, location and detailed description)

City of Birmingham - Ice Sports Arena Renovation/Additions
2300 East Lincoln
Birmingham, Michigan 48009

The Architect:
(Name, legal status, address and other information)

Andrus Architecture, Inc.
11629 Northland Drive NE; Suite 200
Rockford, Michigan 49341
(616) 863-8850

The Owner and Contractor 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.

The parties should complete A101®–2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

TABLE OF ARTICLES

1	THE CONTRACT DOCUMENTS
2	THE WORK OF THIS CONTRACT
3	DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
4	CONTRACT SUM
5	PAYMENTS
6	DISPUTE RESOLUTION
7	TERMINATION OR SUSPENSION
8	MISCELLANEOUS PROVISIONS
9	ENUMERATION OF CONTRACT DOCUMENTS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall faithfully, competently, and fully execute the Work described in the Contract Documents or reasonably inferable as necessary, or incidental, to produce the results intended by the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others. Except as expressly provided for in the Contract Documents to the contrary, the Contractor, at its sole cost, risk, and expense shall construct, install, equip, provide, purchase, pay for, and furnish all of the Work in accordance with the Contract Documents and governmental codes and regulations as they apply to the performance of the Work.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

- ☒ [X] The date of this Agreement.
- ☐ [] A date set forth in a notice to proceed issued by the Owner.
- ☐ [] Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

If a date of commencement of the Work is not selected, then the date of commencement shall be the date set forth in a notice to proceed issued by the Owner.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

§ 3.3 Substantial Completion

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User Notes:

(944319310)

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

(Check one of the following boxes and complete the necessary information.)

☐ Not later than () calendar days from the date of commencement of the Work.

☐ By the following date:

☒ As outlined in Exhibit E – Preliminary Project Milestone Schedule:

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work

Substantial Completion Date

As set forth in Exhibit E – Preliminary Project Milestone Schedule

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Four Million Eight Hundred Ninety One Thousand Two Hundred and 00/100 Dollars (\$ 4,891,200.00), including all Reimbursable Expenses, subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price
Alternate 1 - Replace Lobby Benches:	Add \$700
Alternate 5 – Eliminate Lobby Benches and Lockers:	Deduct \$16,000
Alternate 7 – Eliminate Team Locker Room Locker Installation:	Deduct \$7,000
Alternate 9 – Eliminate Studio Rink Renovation:	Deduct \$380,000
Alternate 12 – Eliminate Ticket Booth Renovation:	Deduct \$12,500
Alternate 13 – Eliminate Lobby Ticket Booth Renovation:	Add \$13,000
Voluntary Alternate:	Deduct \$4,000

§ 4.2.2 The Contract Sum does not include the following alternates, which are described in the Contract Documents and may be accepted by the Owner in writing provided that the Contractor furnish the Owner with no less than fourteen (14) days' prior written notice of the date upon which any of the alternates set forth below in this Section 4.2.2 must be accepted by the Owner in order for the Contractor to perform the Work covered by such alternates for the price set forth below in this Section 4.2.2 and without any adjustment to a Milestone Date or in the Contract Time. (Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price
Alternate No. 2: Replace existing dasher boards with new system	Add \$80,000.00
Alternate No. 3: Epoxy paint ice refrigeration room floor	Add \$18,000.00
Alternate No. 4: Replace bleacher seating plastic caps with new blue caps	Add \$32,000.00
Alternate No. 6: Eliminate wood slat ceiling and lights in lobby; replace with 2'x2' acoustical tile and 2'x2' LED lights	Deduct \$57,000.00
Alternate No. 8: Install new floor tile in existing (4) locker room showers	Add \$17,500.00
Alternate No. 10: Drywall on metal stud wall in lieu of concrete block	Deduct \$2,000
Alternate No. 11: Eliminate advanced waste recovery system per	Deduct \$17,000

refrigeration drawings

§ 4.3 Allowances, if any, included in the Contract Sum:
(Identify each allowance.)

Item	Price
Brick Allowance	\$550/M

§ 4.4
(Paragraphs deleted)

NOT USED

(Table deleted)

§ 4.5 Liquidated Damages

(Paragraph deleted)

§ 4.5.1 - § 4.5.4 NOT USED

§ 4.6

(Paragraphs deleted)

For any adjustments to the Contract Sum that are based on pricing other than a unit price method, the Contractor agrees to charge and accept a mark-up of not more than nine and one half percent (9.5%) on the Cost of the Work for the Work covered by the Change Order as the sole mark-up for the Contractor's overhead and profit. Mark-up for all subcontractor overhead and profit for Change Orders shall not exceed eight and one half percent (8.5%) of their direct cost.

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment, including all supporting documentation, submitted to the Owner and the Architect by the Contractor and Certificates for Payment properly issued by the Architect and not objected to by the Owner, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the 15th day of the month.

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the last day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the last day of the following month. Unless otherwise required by law, if an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than forty-five (45) days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 5.1.3.1 NOT USED

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 In accordance with the General Conditions of the Contract for Construction, as set forth in Section 9.1 of the AIA Document A201-2007 (the "A201"), and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

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User Notes:

(944319310)

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in the A201;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in the A201; and
- .5 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.7 Retainage

§ 5.1.7.1

(Paragraphs deleted)

Unless otherwise provided by law, for each progress payment, the Owner may withhold a retainage of ten percent (10%), from the payment otherwise due. In the event the Owner is not permitted by law to withhold the specified retainage as set forth in this Section 5.1.7, then the Owner shall be entitled to withhold a retainage to the greatest extent permitted by law.

§ 5.1.7.1.1

(Paragraphs deleted)

Any reduction or release of retainage, or payment thereof shall not constitute a waiver of (i) any of the Owner's rights to retain in connection with other payments to the Contractor or (ii) any other right or remedy that the Owner has under the Contract Documents, at law or in equity.

§ 5.1.7.2

(Paragraphs deleted)

Except as otherwise provided by law, the Owner shall have the option, but not the obligation, to reduce the retainage requirements of this Agreement or release any portion of retainage prior to the date specified in the Contract Documents.

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon final completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7.

(Paragraphs deleted)

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor additional amounts due, if any, under the Contract.

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.1.10 By submitting the first Application for Payment, the Contractor warrants and represents that its sureties and insurance companies meet the requirements as stated in the A201. The Contractor's first Application for Payment is considered incomplete unless in addition to the requirements described in this Sections 5.1 and the A201, all of the following completed items are also included with the Application of Payment:

- .1 Performance and Payment Bonds, if required;
- .2 Certificate of Insurance, as required (Furnish a copy of the entire insurance policy showing coverage limits, all inclusions, exclusions, etc. if the Certificate of Insurance contains the following or similar disclaimer "THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND

- OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW”;
- .3 CPM Schedule for the Project; and
 - .4 a completed Schedule of Values for the Project for the Owner’s review and acceptance.

§5.1.11 In addition to the requirements described in this Section 5.1 and the A201, all Applications for Payment shall also include:

- .1 a Schedule of Values updated with all approved Change Order amounts added and deducted, if applicable, and
- .2 an updated Construction Schedule (as defined in A201) that shows actual progress of the Work through the period covered by the current Application for Payment, and clearly identifying any portion of the Work that is behind schedule. If any portion of Work (or trade work) that is behind schedule, the Contractor shall also include with the Application for Payment a schedule recovery plan that includes Extraordinary Measures (as defined in the A201) to bring the Work back on schedule in the next thirty (30) days.

§5.1.12 The Owner shall have the right to withhold sufficient amount from the Application for Payment for unacceptable, defective, deficient, or non-conforming Work ("Disputed Work") after notifying the Contractor. The Contractor shall promptly remedy the Disputed Work. Owner shall promptly render payment for such Disputed Work after the Contractor has cured and the Owner has accepted the remedied Disputed Work.

§ 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor’s responsibility to correct Work as provided in the A201, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner’s final payment to the Contractor shall be made in accordance with Section 5.1.3.

§ 5.2.3 Amounts withheld from the final payment to cover any incomplete work are not considered retainage and shall not be paid to the Contractor until the work is actually completed and accepted by the Owner. Such withholdings shall not be less than 150% of the estimated cost to the complete the Work.

§ 5.2.4 The Owner shall have the right to deduct from the Final Payment due the Contractor all costs, including additional fees paid to Owner’s consultants, which the Owner incurred as result of and attributed to Contractor’s failure to fully complete and/or closeout the Project within sixty (60) days following Substantial Completion.

§ 5.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below:

(Paragraph deleted)

Unless otherwise required by law, Zero percent (0%).

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to the A201, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.

(Paragraphs deleted)

§ 6.2 Binding Dispute Resolution

(Paragraphs deleted)

§ 6.2.1 Pre-Mediation. Owner and Contractor agree that they shall first submit any and all unsettled claims, counterclaims, disputes and other matters in question between them arising out of or relating to the Agreement or the breach thereof ("disputes"), to resolution by the Senior Officers of the Owner and Contractor prior to either of them initiating against the other a demand for mediation, arbitration or litigation as mutually agreed to by Owner and Contractor, unless delay in initiating mediation or arbitration would irrevocably prejudice one of the parties. (The term "Senior Officer" shall mean with respect to the Owner and Contractor, the respective party’s chief executive officer, president, managing partner, partner, chief financial officer, or chief operating officer.) Requirements that a demand for mediation and/or arbitration

must be filed within a reasonable time shall be suspended with respect to a dispute timely submitted to resolution by Senior Officers within that same applicable time limit and shall remain suspended until ten (10) days after the termination of Senior Officer dispute resolution.

§ 6.2.1.1 For any Claim subject to, but not resolved by, mediation pursuant to the A201, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

- ☒ [X] Arbitration pursuant to the A201
- ☐ [] Litigation in a court in accordance with Sections 5.2 and 5.2.5
- ☐ [] Other *(Specify)*

If the Owner and Contractor 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, Claims will be resolved by litigation in a court of competent jurisdiction.

§ 6.2.2 Waiver of Jury Trial. OWNER AND CONTRACTOR 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 AGREEMENT, THE CONTRACT DOCUMENTS, THE PERFORMANCE OF THE WORK, OR THE PROJECT.

§ 6.2.3 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.

§ 6.2.4 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 Contractor should become a party to that dispute by joinder or otherwise.

§ 6.2.5 In the event the parties resort to a court, and to the extent permitted by law, the parties hereby:

- .1 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;
- .2 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;
- .3 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; and
- .4 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.

§6.2.6 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 without regard to any conflict of law principles.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in the A201.

(Paragraphs deleted)

Init.

§ 7.2 The Work may be suspended by the Owner as provided in the A201.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of the A201 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's Designated Representative.

The Owner identifies the following individual as its Owner's Designated Representative. The Owner may change its Designated Representative upon written notice to the Architect; and the Owner may modify the scope of authority of its Designated Representative in like manner. The Owner and/or the Owner's Designated Representative have the sole right to make decisions in matters regarding the Project. The Owner's Designated Representative for this Project is:

(Name, address, email address, and other information)

Carrie Laird, Parks and Recreation Manager

City of Birmingham

851 S. Eton

Birmingham, Michigan 48009

§ 8.2.1 The Owner's Representative Consultant. The Owner has engaged Plante & Moran Cresa, L.L.C. ("PMC") as an Owner's Representative Consultant and on the Project. The Contractor shall keep the Owner and PMC informed in matters regarding the Project. Unless otherwise provided in this Agreement specifically authorized by the Owner, PMC is not authorized to commit the Owner in matters regarding the Work, regarding changes in the Work, Construction Schedule, or grant approval on behalf of the Owner. The Owner's Representative Consultant for this Project is:

(Name, address, email address, and other information)

Robert Stempien, Sr. Vice President

Plante & Moran Cresa, L.L.C

3000 Town Center; Suite 100

Southfield, MI 48075

Robert.stempien@plantemoran.com; (248) 603-5252

§ 8.3 The Contractor's representative:

(Name, address, email address, and other information)

Charles E Gleeson II

C.E. Gleeson Constructors, Inc.

Troy, Michigan 48083

gleeson@gleesonconstructors.com; (586) 556-7000

§ 8.4 Neither the Owner's Representative Consultant nor the Contractor's representative shall be changed without ten (10) days' prior notice to the other party.

§ 8.5 Insurance and Bonds

§ 8.5.1 The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of the A201, as amended for the Project and in the limits set forth below:

Type of insurance	Limit of liability (\$0.00)
Workers' Compensation	Statutory
Employer's Liability:	
Bodily Injury by Accident:	\$1,000,000.
Bodily Injury by Disease, Policy Limit	\$1,000,000.
Bodily Injury by Disease, Each Employee	\$1,000,000.
General Liability:	
Each Occurrence (Bodily Injury and Property Damage)	\$1,000,000.
Personal & Advertising Injury	\$1,000,000.
Medical Payments Coverage	\$5,000.
Fire Damage Liability	\$100,000.

General Aggregate	\$2,000,000.
Products & Completed Operations Aggregate	\$2,000,000.
Excess Umbrella Liability:	
Each Occurrence	\$2,000,000.
General Aggregate	\$2,000,000.
Automobile Liability:	
a. Bodily Injury: Each Person	\$1,000,000.
Each Accident	\$1,000,000.
b. Property Damage: Each Accident	\$1,000,000.
or	
c. Combined Single Limit – Each Accident	\$2,000,000.
(Bodily Injury and Property Damage)	
Pollution Liability	
Each Pollution Event	\$1,000,000.
Policy Aggregate	\$2,000,000.

(Paragraph deleted)

§ 8.5.2 Insurance coverage and surety bond required under the Agreement shall be written with insurance and surety carriers authorized to do business in the state of Michigan. Insurance coverage and surety bonds 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 Owner and their respective directors, officers and employees, the Architect, Owner's Representative Consultant, Owner's consultants, and all applicable Construction Team members as an "additional insured". Unless the Owner agrees to an exception in writing due to a lack of commercially available compliant policies, the Contractor shall provide insurance which includes the following terms and conditions:

.1 General Liability

- Owner, its consultants and their respective directors, officers and employees shall be additional insureds for operations per ISO CG 20 10 10 01, or its equivalent.
- Owner, its consultants and their respective directors, officers and employees shall be additional insureds for completed operations per ISO CG 20 37 10 01, or its equivalent.
- Contractor shall have its insurer amend the policy to provide that Contractor's general liability shall be primary and without contribution from each additional insured's insurance policies.
- Contractor and its insurers shall provide a Waiver of Subrogation as to each additional insured.
- Completed operations insurance and additional insured status shall be maintained for a period of no less than three (3) years after final completion of the work under this Agreement.

.2 Umbrella / Excess Liability

- Owner, its consultants and their respective directors, officers and employees shall be additional insureds for operations.
- Owner, its consultants and their respective directors, officers and employees shall be additional insureds for completed operations.
- Contractor and its insurers shall provide a Waiver of Subrogation as to each additional insured.
- Completed operations insurance and additional insured status shall be maintained for a period of no less than three (3) years after final completion of the work under this Agreement.

.3 Automobile Liability

- Insurance shall apply to all owned, non-owned, hired and borrowed vehicles.
- Owner, its consultants and their respective directors, officers and employees shall be additional insureds.
- Contractor and its insurers shall provide a Waiver of Subrogation as to each additional insured.

.4 Pollution Liability

- Contractor shall notify Owner of any material impairment of limits available under the policy.

.5 Additional Requirements. Contractor shall require all contractors, subcontractors and/or their agents to maintain the insurance requirements set forth between Owner and Contractor

- Pollution liability is not required unless Contractor, Subcontractor or engineer/consultant provides services related to environmental, including, but not limited to, asbestos, lead, or mold remediation.

§ 8.5.3 The Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds may be obtained through the Contractor's usual source, and the cost thereof shall be included in the Cost of the Work. The amount of each bond shall be equal to one hundred percent (100%) of the Contract Sum. The Contractor shall deliver the required bonds to the Owner upon execution of the Agreement and updates and amendments to the bonds as required by the Owner during the Project's Construction. The Contractor shall only subcontract with Subcontractors that are trustworthy, financially able, and have a track record in successfully completing trade works of similar size and complexity.

§ 8.5.4 Contractor shall require all contractors, subcontractors and/or their agents to name the Owner and their respective directors, officers and employees, the Architect, Owner's Representative Consultant, Owner's consultants, and all applicable Construction Team members as an "additional insured" as forth in insurance requirements between Owner and Contractor.

§ 8.6

(Paragraphs deleted)

NOT USED

§ 8.7 Other Provisions.

§ 8.7.1 In the event of any conflict, inconsistency, or ambiguity between this Agreement and the A201, as amended for this Project, the terms that requires a higher standard of performance by the Contractor shall prevail.

§ 8.7.2 The Contractor shall inspect the Work as it is being performed until final completion and acceptance of the Project by the Owner to assure that the Work performed and the materials furnished are in accordance with the Contract Documents and that Work on the Project is progressing on schedule. In the event that the quality control testing should indicate that the Work, as installed, does not meet the requirements of this Project, the Architect shall determine the extent of the Work that does not meet the requirements and the Contractor shall take appropriate corrective action, and advise the Owner of the corrective action.

§ 8.7.3 The Contractor shall provide daily full-time, on-site field supervision during the entire Construction Phase. The Contractor agrees to assign the following listed Project Team members, as listed in their respective capacities to the Project:

Staff Name	Assignment	Contact Information – Mobile Phone & e-Mail
Brad Baker,	Operations Project Manager	(248) 647-5500; baker@gleesonconsturctors.com
James Hayes,	Senior Project Manager	(248) 918-5874; hayes@gleesonconstructors.com
Scott Mead,	Project Superintendent	(248) 647-5500; mead@gleesonconstructors.com
Kimberly Jacob,	Project Engineer	(248) 647-5500; jacob@gleesonconstructors.com

The services of the Contractor 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. The Contractor shall promptly notify the Owner if the services of any one of the listed Project Team members become unavailable due to circumstances beyond the Contractor's control – e.g., extended illness or disability, death, or termination of employment, etc. The Owner shall have the right to interview and select alternate Project Team member(s) employed by the Contractor to replace the unavailable Project Team member. The Contractor shall agree to provide the services of the alternate Project Team member(s) selected by Owner without additional compensation or time for any such substitution(s) of the Project Team members.

§ 8.7.4 As part of Basic Services, the Contractor shall conduct a post-occupancy audit eleven (11) months following the Date of Substantial Completion and thereafter provide call-back services for a period of twenty three (23) months.

§ 8.7.5 NOT USED

§ 8.7.6 Notwithstanding anything regarding Hazardous Materials provided in the A201, the Contractor acknowledges and fully understands that the scope of this Work includes the proper removal and proper disposal of all Hazardous Materials, including but not limited to any construction debris containing asbestos, PCBs, etc., as required by Applicable Laws.

§ 8.7.7 Assignment.

The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in the A201, neither party shall assign the Contract in whole or in part 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.

§8.7.8 Public Projects

§ 8.7.8.1 NOT USED

§ 8.7.8.2 The Owner, being a public body, shall render required decisions within a reasonable time after being requested to do so by the Contractor. The Contractor, assisted by the Architect, shall prepare and submit all recommendations for which approval is required by Owner as soon as reasonably possible unless another schedule is agreed to by the Owner, in writing. The Contractor shall not cause unreasonable delays in the orderly progress of Work.

§ 8.7.8.3 Government Immunity. Notwithstanding any provisions within the Contract Documents, no provisions shall be deemed a waiver of any immunity granted the Owner, being a governmental unit.

§ 8.7.9 NOT USED

§8.7.10 The Contractor shall notify the Owner in the event of a potential or actual: (a) material change in ownership of the Contractor; (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 Contractor's ability or willingness to fulfill any of its obligations under this Agreement. In the event of a Material Change in Circumstances, the Contractor 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.

§8.7.11 The Contractor represents and warrants the following to the Owner (in addition to any other representations and warranties contained in the Contract Documents), as inducement to the Owner to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement and the final completion of the Work:

- .1 that it, and its subcontractors, are financially solvent, able to pay all debts as they mature, and possess sufficient working capital to complete the Work and perform all obligations hereunder;
- .2 that it is able to furnish the plant, tools, materials, supplies, equipment, and labor required to complete the Work and perform its obligations hereunder;
- .3 that it is authorized to do business in the State of Michigan and properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it and over the Work and the Project;
- .4 that its execution of this Agreement and its performance thereof is within its duly authorized powers;
- .5 that its duly authorized representative has visited the site of the Project, become familiar with the local and special conditions under which the Work is to be performed, and correlated its observations with the requirements of the Contract Documents; and
- .6 that it possess a high level of experience and expertise in the business administration, construction, construction management, and superintendence of projects of the size, complexity, and nature of this Project, and that it will perform the Work with the care, skill, and diligence of such a contractor.

§ 8.7.12 Protected Health Information – NOT USED

§ 8.7.13 The Owner and Contractor 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.

§ 8.7.14 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.

§ 8.8 INDEPENDENT CONTRACTOR. This Agreement shall not render Contractor or any of its personnel an employee, partner, agent, or joint venturer with Owner for any purpose. Contractor 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 Contractor. The Contractor 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 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement represents the entire and integrated agreement between the Owner and the Contractor 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 Contractor. This Agreement is comprised of the following documents identified below:

- .1 AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor, as modified for the Project;
- .2 AIA Document A201™–2007, General Conditions of the Contract for Construction, as modified for the Project;
- .3 All Drawings, issued for construction including (but not necessarily limited to) the attached Drawings Index attached hereto as Exhibit G, complete Drawings Set as issued by the Andrus Architecture dated March 10, 2021 is attached hereto in full by reference.

(Paragraph deleted)

- .4 All Specifications including (but not necessarily limited to) the attached Table of Contents attached hereto as Exhibit G, complete Project Manual as issued by the Andrus Architecture dated March 10, 2021 consisting of 778 pages is attached hereto in full by reference.
- .5 Addenda, if any:

Number	Date
Addendum No. 1	March 17, 2021
Addendum No. 2	March 22, 2021
Addendum No. 3	March 24, 2021

(Paragraphs deleted)

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

- .6 Other Exhibits:
(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

☐ AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)

☐ The Sustainability Plan:

Title	Date	Pages	
<input type="checkbox"/> Supplementary and other Conditions of the Contract:			
Document	Title	Date	Pages

- .7 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents.)
Exhibit A – Schedule of Values

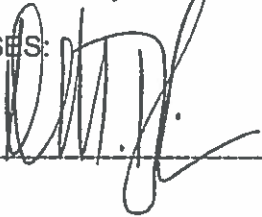
Exhibit B – Not Used
Exhibit C – Not Used
Exhibit D – List of Subcontractors and Suppliers
Exhibit E – Project Preliminary Major Milestone Schedule
Exhibit F – Contractor’s Certificate of Insurance and Bonds
Exhibit G – Specifications and Drawings

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:



CONTRACTOR

By: _____

Its: _____


Charles E. Gleson II
President / CEO

CITY OF BIRMINGHAM

By: _____

Pierre Boutros

Its: Mayor

By: _____

Alexandria D. Bingham

Its: City Clerk

Approved:



Lauren A. Wood, Director of Public Services

(Approved as to substance)



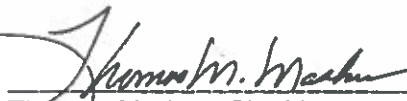
Mark Gerber, Director of Finance

(Approved as to financial obligation)



Mary Kucharek, City Attorney

(Approved as to form)



Thomas Markus, City Manager

(Approved as to substance)



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)

C.E. Gleeson Constructors, Inc.
984 Livernois Road
Troy, MI 48083
Phone: (248) 647-5500

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.

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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.

§ 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, if any 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.

§ 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

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 NOT USED

§ 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;
- .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.

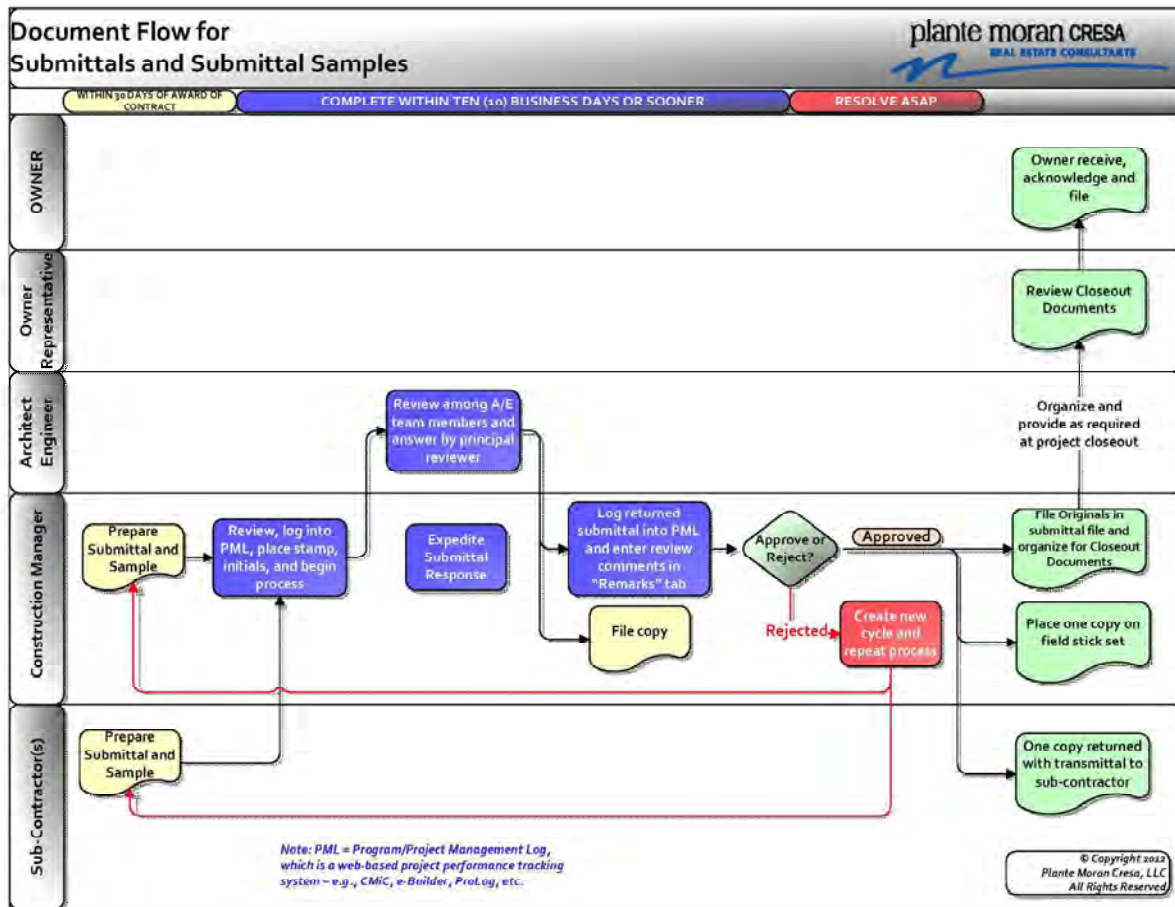
§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 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.

Init.

§ 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

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

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)

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.

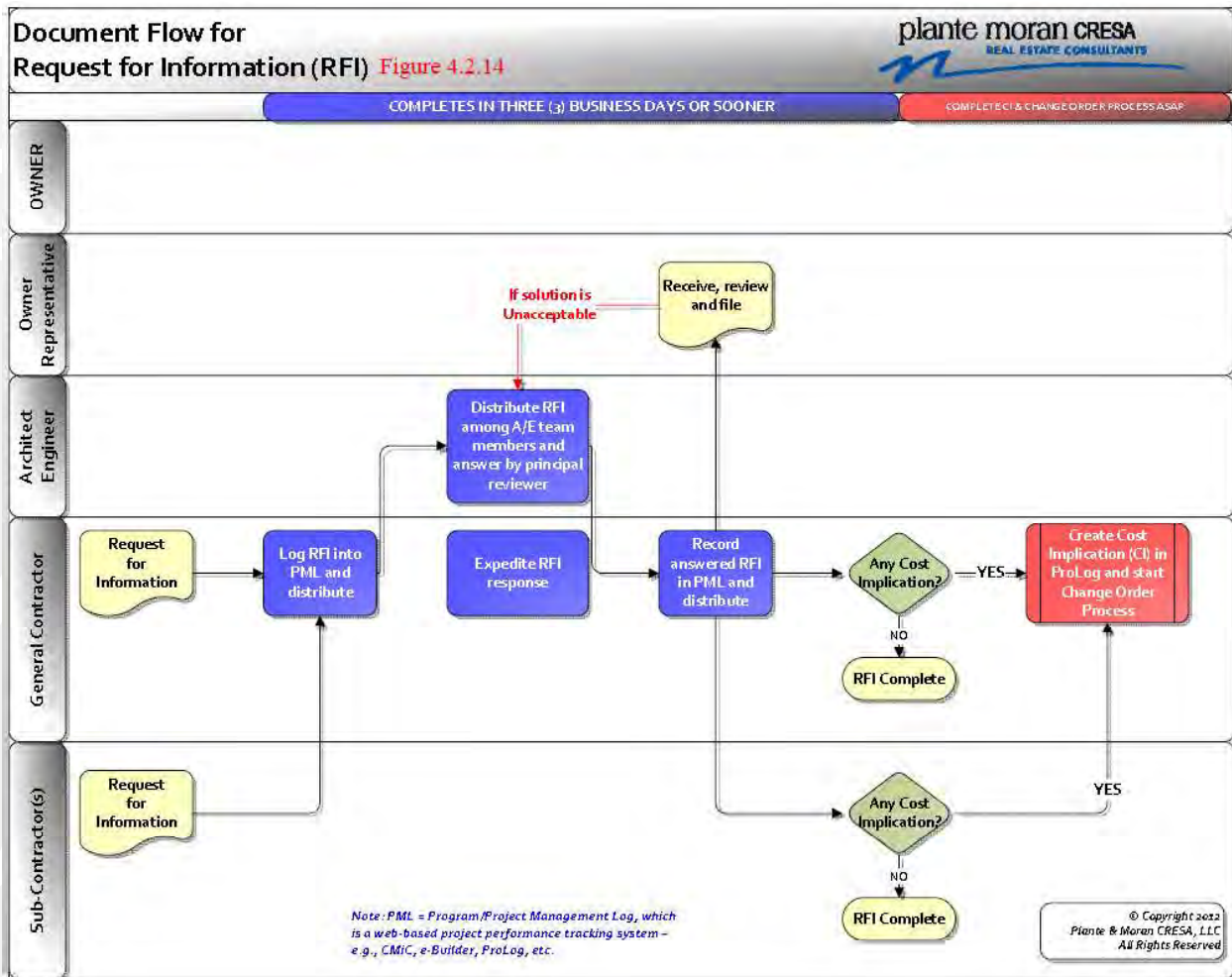
§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit 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

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

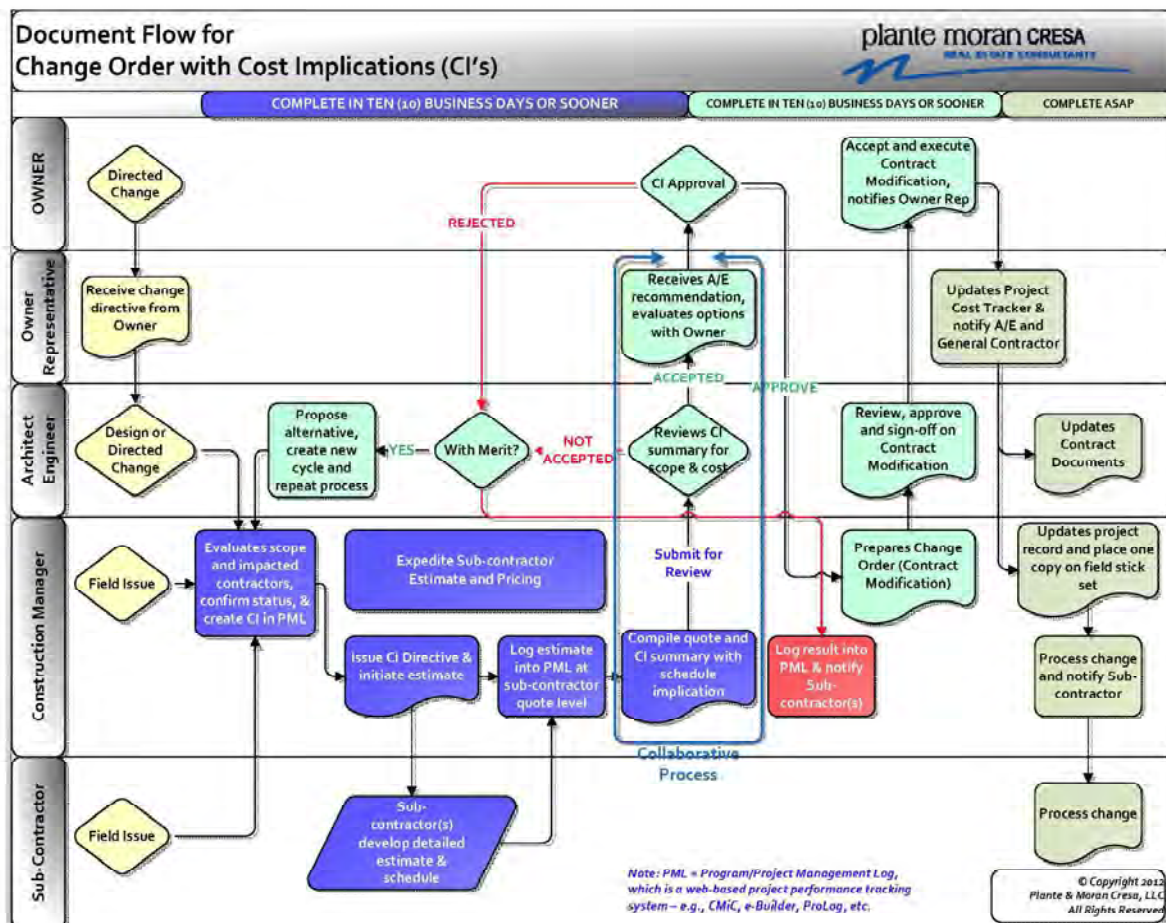
§ 7.1 GENERAL

§ 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

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

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

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

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

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)

§ 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

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.

§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.

§ 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

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)

§ 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]

This is **EXHIBIT E** consisting of the attached page(s), referred to in and part of the Agreement between Owner and Contractor dated April 13, 2021.

Initials

Owner: _____

Contractor: _____

Preliminary Project Milestone Schedule

[See Attached Project Schedule]

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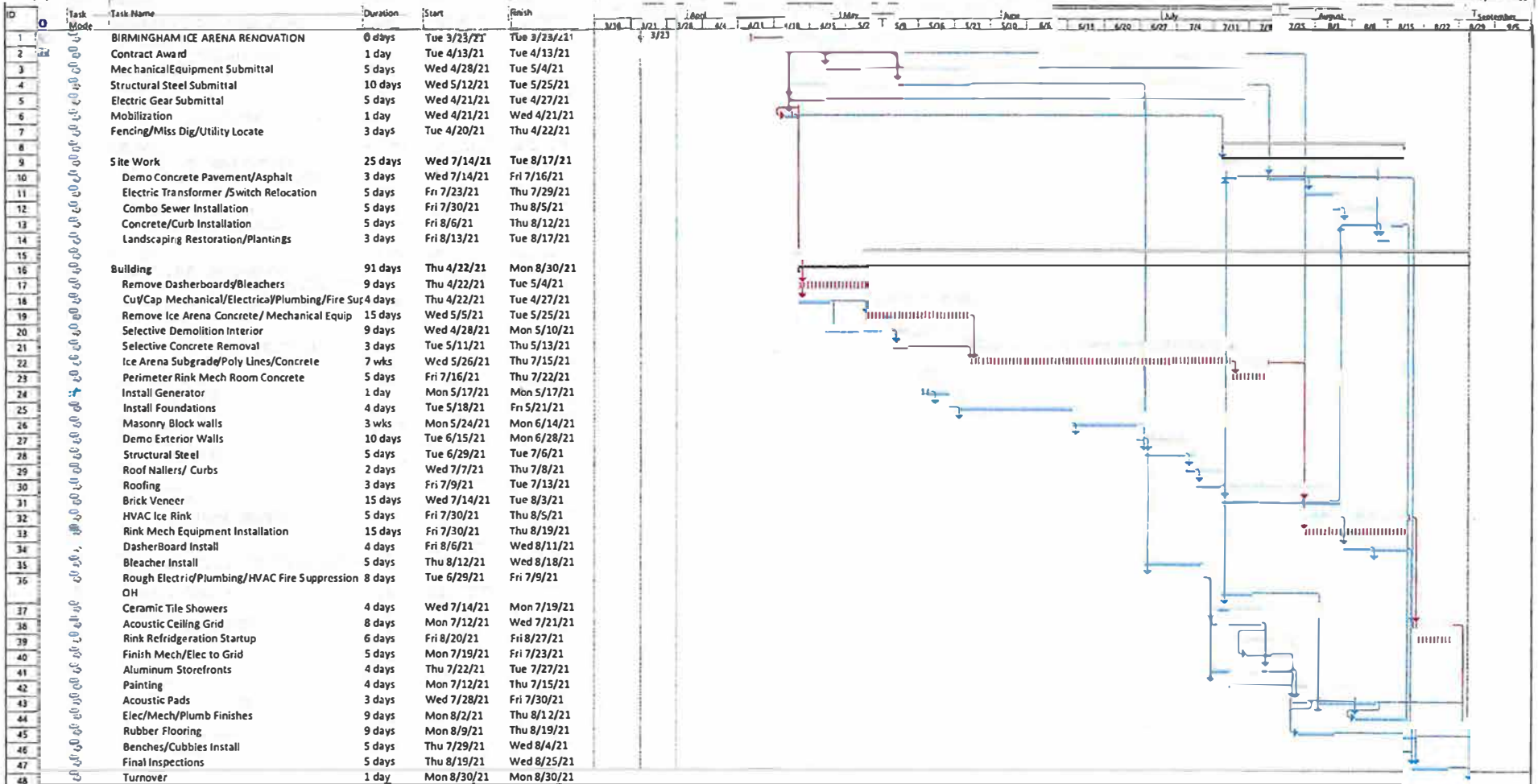


EXHIBIT F consisting of the attached
page(s), referred to in and part of the
Agreement between Owner and
Contractor dated April 13, 2021.

Initials

Owner: _____

Contractor: _____

Insurance Certificate(s) and Bonds

[See Attached Insurance Certificate(s) and
Performance and Payment Bonds]

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
04/05/2021

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 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 VTC Insurance Group 1175 West Long Lake Road Suite 200 Troy, MI 48098 INSURED C.E. Gleeson Constructors Inc. 984 Livernois Rd. Troy, MI 48083	CONTACT NAME: Debra Mirch PHONE (A/C, No, Ext): 248-828-3377 FAX (A/C, No): 248-828-3741 E-MAIL ADDRESS: dmirch@vtcins.com <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: center;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: center;">NAIC #</th> </tr> <tr> <td>INSURER A: AMERISURE INS CO</td> <td>19488</td> </tr> <tr> <td>INSURER B: AMERISURE MUT INS CO</td> <td>23396</td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: AMERISURE INS CO	19488	INSURER B: AMERISURE MUT INS CO	23396	INSURER C:		INSURER D:		INSURER E:		INSURER F:	
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INSURER C:															
INSURER D:															
INSURER E:															
INSURER F:															

COVERAGES

CERTIFICATE NUMBER: 61900300

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	X	X	CPP2089484	09/17/20	09/17/21	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	X	X	CA2089483	09/17/20	09/17/21	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 0			CU2089490 (5M)	09/17/20	09/17/21	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
A	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 checked="" type="checkbox"/> N	N/A	WC2089491	09/17/20	09/17/21	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Leased/Rented From Others			CPP2089484	09/17/20	09/17/21	Limit (\$500 Ded) 250,000

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

Where required by written contract, the following is addt'l insured for General Liability (GL) as respects ongoing & completed operations on a primary & non-contributory basis and addt'l ins with respects to Automobile liability. GL, Auto & Workers Comp policies include waiver of subrogation on behalf of the following as required by written contract and where allowed by law. Contractual liability is provided subject to the terms, conditions and exclusions of the policy. Insurer will endeavor to mail 30 days written notice of cancellation to the certificate holder. Additional Insured: Owner and their respective directors, officers and employees, the Architect, Owner's Representative Consultant, and all applicable Construction Team members. Umbrella follows form in favor of additional insured.

CERTIFICATE HOLDER

CANCELLATION

Project 21-125 City of Birmingham 851 S. Eton Birmingham, MI 48009 USA	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
--	---

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ACORD 25 (2014/01)

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dmirch
61900300

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**CONTRACTOR'S BLANKET ADDITIONAL INSURED ENDORSEMENT –
FORM A**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Policy Number CPP2089484	Agency Number 0125253	Policy Effective Date 9/17/2020
Policy Expiration Date 9/17/2021	Date 9/15/2020	Account Number 20046202
Named Insured C. E. GLEESON CONSTRUCTORS, INC	Agency V T C INSURANCE GROUP	Issuing Company Amerisure Insurance Company

1. **a. SECTION II - WHO IS AN INSURED** is amended to add as an additional insured any person or organization:
 - (1) Whom you are required to add as an additional insured on this policy under a written contract or written agreement relating to your business; or
 - (2) Who is named as an additional insured under this policy on a certificate of insurance.
- b.** The written contract, written agreement, or certificate of insurance must:
 - (1) Require additional insured status for a time period during the term of this policy; and
 - (2) Be executed prior to the "bodily injury", "property damage", or "personal and advertising injury" leading to a claim under this policy.
- c.** If, however:
 - (1) "Your work" began under a letter of intent or work order; and
 - (2) The letter of intent or work order led to a written contract or written agreement within 30 days of beginning such work; and
 - (3) Your customer's customary contracts require persons or organizations to be named as additional insureds;

we will provide additional insured status as specified in this endorsement.
2. The insurance provided under this endorsement is limited as follows:
 - a.** That person or organization is an additional insured only with respect to liability caused, in whole or in part, by:
 - (1) Premises you:
 - (a) Own;
 - (b) Rent;
 - (c) Lease; or
 - (d) Occupy;
 - (2) Ongoing operations performed by you or on your behalf. Ongoing operations does not apply to "bodily injury" or "property damage" occurring after:

- (a) All work to be performed by you or on your behalf for the additional insured(s) at the site of the covered operations is complete, including related materials, parts or equipment (other than service, maintenance or repairs); or
 - (b) That portion of "your work" out of which the injury or damage arises is put to its intended use by any person or organization other than another contractor working for a principal as a part of the same project.
- (3) Completed operations coverage, but only if:
- (a) The written contract, written agreement, or certificate of insurance requires completed operations coverage or "your work" coverage; and
 - (b) This coverage part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

However, the insurance afforded to such additional insured only applies to the extent permitted by law.

b. If the written contract, written agreement, or certificate of insurance:

- (1) Requires "arising out of" language; or
- (2) Requires you to provide additional insured coverage to that person or organization by the use of either or both of the following:
 - (a) Additional Insured – Owners, Lessees or Contractors – Scheduled Person Or Organization endorsement CG 20 10 10 01; or
 - (b) Additional Insured – Owners, Lessees or Contractors – Completed Operations endorsement CG 20 37 10 01;

then the phrase "caused, in whole or in part, by" in paragraph 2.a. above is replaced by "arising out of".

c. If the written contract, written agreement, or certificate of insurance requires you to provide additional insured coverage to that person or organization by the use of:

- (1) Additional Insured – Owners, Lessees or Contractors – Scheduled Person Or Organization endorsement CG 20 10 07 04 or CG 20 10 04 13; or
- (2) Additional Insured – Owners, Lessees or Contractors – Completed Operations endorsement CG 20 37 07 04 or CG 20 37 04 13; or
- (3) Both those endorsements with either of those edition dates; or
- (4) Either or both of the following:
 - (a) Additional Insured – Owners, Lessees or Contractors – Scheduled Person Or Organization endorsement CG 20 10 without an edition date specified; or
 - (b) Additional Insured – Owners, Lessees or Contractors – Completed Operations endorsement CG 20 37 without an edition date specified;

then paragraph 2.a. above applies.

- d. Premises, as respects paragraph 2.a.(1) above, include common or public areas about such premises if so required in the written contract or written agreement.**
- e. Additional insured status provided under paragraphs 2.a.(1)(b) or 2.a.(1)(c) above does not extend beyond the end of a premises lease or rental agreement.**
- f. The limits of insurance that apply to the additional insured are the least of those specified in the:**
 - (1) Written contract;
 - (2) Written agreement;
 - (3) Certificate of insurance; or
 - (4) Declarations of this policy.

The limits of insurance are inclusive of and not in addition to the limits of insurance shown in the Declarations.

- g. The insurance provided to the additional insured does not apply to "bodily injury", "property damage", or "personal and advertising injury" arising out of an architect's, engineer's, or surveyor's rendering of, or failure to render, any professional services, including but not limited to:
- (1) The preparing, approving, or failing to prepare or approve:
 - (a) Maps;
 - (b) Drawings;
 - (c) Opinions;
 - (d) Reports;
 - (e) Surveys;
 - (f) Change orders;
 - (g) Design specifications; and
 - (2) Supervisory, inspection, or engineering services.
- h. **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**, paragraph 4. **Other Insurance** is deleted and replaced with the following:
- 4. Other Insurance.**
- Coverage provided by this endorsement is excess over any other valid and collectible insurance available to the additional insured whether:
- a. Primary;
 - b. Excess;
 - c. Contingent; or
 - d. On any other basis;
- but if the written contract, written agreement, or certificate of insurance requires primary and non-contributory coverage, this insurance will be primary and non-contributory relative to other insurance available to the additional insured which covers that person or organization as a Named Insured, and we will not share with that other insurance.
- i. If the written contract, written agreement, or certificate of insurance as outlined above requires additional insured status by use of CG 20 10 11 85, then the coverage provided under this CG 70 48 endorsement does not apply except for paragraph 2.h. **Other Insurance**. Additional insured status is limited to that provided by CG 20 10 11 85 shown below and paragraph 2.h. **Other Insurance** shown above.

**ADDITIONAL INSURED - OWNERS, LESSEES OR
CONTRACTORS (FORM B)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

SCHEDULE

Name of Person or Organization: Blanket Where Required by Written Contract, Agreement, or Certificate of Insurance that the terms of CG 20 10 11 85 apply

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you.

CG 20 10 11 85

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- j. The insurance provided by this endorsement does not apply to any premises or work for which the person or organization is specifically listed as an additional insured on another endorsement attached to this policy.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADVANTAGE COMMERCIAL AUTOMOBILE BROAD FORM ENDORSEMENT

This endorsement modifies insurance provided under the

BUSINESS AUTO COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

The premium for this endorsement is \$ INCLUDED

1. EXTENDED CANCELLATION CONDITION

COMMON POLICY CONDITIONS - CANCELLATION, Paragraph A.2. is replaced by the following:

2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
 - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
 - b. 60 days before the effective date of cancellation if we cancel for any other reason.

2. BROAD FORM INSURED

SECTION II - LIABILITY COVERAGE A.1. WHO IS AN INSURED is amended by the addition of the following:

- d. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or a majority interest, will qualify as a Named Insured. However,
 - (1) Coverage under this provision is afforded only until the end of the policy period;
 - (2) Coverage does not apply to "accidents" or "loss" that occurred before you acquired or formed the organization; and
 - (3) Coverage does not apply to an organization that is an "insured" under any other policy or would be an "insured" but for its termination or the exhausting of its limit of insurance.
- e. Any "employee" of yours using:
 - (1) A covered "auto" you do not own, hire or borrow, or a covered "auto" not owned by the "employee" or a member of his or her household, while performing duties related to the conduct of your business or your personal affairs; or
 - (2) An "auto" hired or rented under a contract or agreement in that "employee's" name, with your permission, while performing duties related to the conduct of your business. However, your "employee" does not qualify as an insured under this paragraph (2) while using a covered "auto" rented from you or from any member of the "employee's" household.
- f. Your members, if you are a limited liability company, while using a covered "auto" you do not own, hire, or borrow, while performing duties related to the conduct of your business or your personal affairs.
- g. Any person or organization with whom you agree in a written contract, written agreement or permit, to provide insurance such as is afforded under this policy, but only with respect to your covered "autos".

This provision does not apply:

 - (1) Unless the written contract or agreement is executed or the permit is issued prior to the "bodily injury" or "property damage";

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- (2) To any person or organization included as an insured by an endorsement or in the Declarations; or
- (3) To any lessor of "autos" unless:
 - (a) The lease agreement requires you to provide direct primary insurance for the lessor;
 - (b) The "auto" is leased without a driver; and
 - (c) The lease had not expired.

Leased "autos" covered under this provision will be considered covered "autos" you own and not covered "autos" you hire.

- h. Any legally incorporated organization or subsidiary in which you own more than 50% of the voting stock on the effective date of this endorsement.

This provision does not apply to "bodily injury" or "property damage" for which an "insured" is also an insured under any other automobile policy or would be an insured under such a policy, but for its termination or the exhaustion of its limits of insurance, unless such policy was written to apply specifically in excess of this policy.

3. **COVERAGE EXTENSIONS - SUPPLEMENTARY PAYMENTS**

Under **SECTION II - LIABILITY COVERAGE, A.2.a. Supplementary Payments**, paragraphs (2) and (4) are deleted and replaced with the following:

- (2) Up to \$2500 for the cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

4. **AMENDED FELLOW EMPLOYEE EXCLUSION**

SECTION II - LIABILITY COVERAGE, B. EXCLUSIONS, paragraph 5. **Fellow Employee** is deleted and replaced by the following:

5. **Fellow Employee**

"Bodily injury" to:

- a. Any fellow "employee" of the "insured" arising out of and in the course of the fellow "employee's" employment or while performing duties related to the conduct of your business. However, this exclusion does not apply to your "employees" that are officers, managers, supervisors or above. Coverage is excess over any other collectible insurance.
- b. The spouse, child, parent, brother or sister of that fellow "employee" as a consequence of paragraph a. above.

5. **HIRED AUTO PHYSICAL DAMAGE COVERAGE AND LOSS OF USE EXPENSE**

- A. Under **SECTION III - PHYSICAL DAMAGE COVERAGE, A. COVERAGE**, the following is added:

If any of your owned covered "autos" are covered for Physical Damage, we will provide Physical Damage coverage to "autos" that you or your "employees" hire or borrow, under your name or the "employee's" name, for the purpose of doing your work. We will provide coverage equal to the broadest physical damage coverage applicable to any covered "auto" shown in the Declarations, Item Three, Schedule of Covered Autos You Own, or on any endorsements amending this schedule.

- B. Under **SECTION III - PHYSICAL DAMAGE COVERAGE, A.4. COVERAGE EXTENSIONS**, paragraph b. **Loss of Use Expenses** is deleted and replaced with the following:

b. **Loss Of Use Expenses**

For Hired Auto Physical Damage, we will pay expenses for which an "insured" becomes legally responsible to pay for loss of use of a vehicle rented or hired without a driver, under a written rental contract or agreement. We will pay for loss of use expenses if caused by:

- (1) Other than collision, only if the Declarations indicate that Comprehensive Coverage is provided for any covered "auto";
- (2) Specified Causes of Loss, only if the Declarations indicate that Specified Causes Of Loss Coverage is provided for any covered "auto"; or
- (3) Collision, only if the Declarations indicate that Collision Coverage is provided for any covered "auto".

However, the most we will pay for any expenses for loss of use is \$30 per day, to a maximum of \$2,000.

C. Under **SECTION IV – BUSINESS AUTO CONDITIONS**, paragraph **5.b. Other Insurance** is deleted and replaced by the following:

b. For **Hired Auto Physical Damage Coverage**, the following are deemed to be covered "autos" you own:

- 1. Any covered "auto" you lease, hire, rent or borrow; and
- 2. Any covered "auto" hired or rented by your "employee" under a contract in that individual "employee's" name, with your permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto", nor is any "auto" you hire from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company), or members of their households.

6. **LOAN OR LEASE GAP COVERAGE**

Under **SECTION III - PHYSICAL DAMAGE COVERAGE, A. COVERAGE**, the following is added:

If a covered "auto" is owned or leased and if we provide Physical Damage Coverage on it, we will pay, in the event of a covered total "loss", any unpaid amount due on the lease or loan for a covered "auto", less:

(a) The amount paid under the Physical Damage Coverage Section of the policy; and

(b) Any:

- (1) Overdue lease or loan payments including penalties, interest or other charges resulting from overdue payments at the time of the "loss";
- (2) Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;
- (3) Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease;
- (4) Security deposits not refunded by a lessor; and
- (5) Carry-over balances from previous loans or leases.

7. **RENTAL REIMBURSEMENT**

SECTION III - PHYSICAL DAMAGE COVERAGE, A. COVERAGE, paragraph **4. Coverage Extensions** is deleted and replaced by the following:

4. Coverage Extensions

- (a) We will pay up to \$75 per day to a maximum of \$2000 for transportation expense incurred by you because of covered "loss". We will pay only for those covered "autos" for which you carry Collision Coverage or either Comprehensive Coverage or Specified Causes of Loss Coverage. We will pay for transportation expenses incurred during the period beginning 24 hours after the covered "loss" and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss". This coverage is in addition to the otherwise applicable coverage you have on a covered "auto". No deductibles apply to this coverage.
- (b) This coverage does not apply while there is a spare or reserve "auto" available to you for your operation.

8. AIRBAG COVERAGE

SECTION III - PHYSICAL DAMAGE, B. EXCLUSIONS, Paragraph 3. is deleted and replaced by the following:

We will not pay for "loss" caused by or resulting from any of the following unless caused by other "loss" that is covered by this insurance:

- a. Wear and tear, freezing, mechanical or electrical breakdown. However, this exclusion does not include the discharge of an airbag.
- b. Blowouts, punctures or other road damage to tires.

9. GLASS REPAIR - WAIVER OF DEDUCTIBLE

SECTION III - PHYSICAL DAMAGE COVERAGE, D. DEDUCTIBLE is amended to add the following:

No deductible applies to glass damage if the glass is repaired rather than replaced.

10. COLLISION COVERAGE – WAIVER OF DEDUCTIBLE

SECTION III - PHYSICAL DAMAGE COVERAGE, D. DEDUCTIBLE is amended to add the following:

When there is a "loss" to your covered "auto" insured for Collision Coverage, no deductible will apply if the "loss" was caused by a collision with another "auto" insured by us.

11. KNOWLEDGE OF ACCIDENT

SECTION IV - BUSINESS AUTO CONDITIONS, A. LOSS CONDITIONS, 2. DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS, paragraph a. is deleted and replaced by the following:

- a. You must see to it that we are notified as soon as practicable of an "accident", claim, "suit" or "loss". Knowledge of an "accident", claim, "suit" or "loss" by your "employees" shall not, in itself, constitute knowledge to you unless one of your partners, executive officers, directors, managers, or members (if you are a limited liability company) has knowledge of the "accident", claim, "suit" or "loss". Notice should include:
 - (1) How, when and where the "accident" or "loss" occurred;
 - (2) The "insured's" name and address; and
 - (3) To the extent possible, the names and addresses of any injured persons and witnesses.

12. TRANSFER OF RIGHTS (BLANKET WAIVER OF SUBROGATION)

SECTION IV - BUSINESS AUTO CONDITIONS A.5. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US is deleted and replaced by the following:

If any person or organization to or for whom we make payment under this Coverage Form has rights to recover damages from another, those rights are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after "accident" or "loss" to impair them. However, if the insured has waived rights to recover through a written contract, or if your work was commenced under a letter of intent or work order, subject to a subsequent reduction in writing with customers whose customary contracts require a waiver, we waive any right of recovery we may have under this Coverage Form.

13. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

SECTION IV - BUSINESS AUTO CONDITIONS, B. GENERAL CONDITIONS, 2. CONCEALMENT, MISREPRESENTATION OR FRAUD is amended by the addition of the following:

We will not deny coverage under this Coverage Form if you unintentionally fail to disclose all hazards existing as of the inception date of this policy. You must report to us any knowledge of an error or omission in your representations as soon as practicable after its discovery. This provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

14. BLANKET COVERAGE FOR CERTAIN OPERATIONS IN CONNECTION WITH RAILROADS

When required by written contract or written agreement, the definition of "insured contract" is amended as follows:

- The exception contained in paragraph **H.3.** relating to construction or demolition operations on or within 50 feet of a railroad; and
- Paragraph **H.a.**

are deleted with respect to the use of a covered "auto" in operations for, or affecting, a railroad.

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

"Any person or organization required by written contract or certificate of insurance."

"This endorsement is not applicable in California, Kentucky, New Hampshire, New Jersey, Texas and Utah."

"This endorsement does not apply to policies in Missouri where the employer is in the construction group of code classifications. According to Section 287.150(6) of the Missouri Statutes, a contractual provision purporting to waive subrogation rights is against public policy and void where one party to the contract is an employer in the construction group of code classifications."

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective 9/17/2020 Policy No. WC2089491 Endorsement No.
Insured C.E. Gleeson Constructors, Inc. Premium \$

Insurance Company

Countersigned by Amerisure Insurance Company

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NOTICE OF CANCELLATION, NONRENEWAL OR MATERIAL CHANGE – THIRD PARTY

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
BUSINESS AUTO PHYSICAL DAMAGE COVERAGE FORM
COMMERCIAL GENERAL LIABILITY COVERAGE FORM
COMMERCIAL UMBRELLA LIABILITY COVERAGE FORM
GARAGE COVERAGE FORM
MOTOR CARRIER COVERAGE FORM
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE FORM
TRUCKERS COVERAGE FORM

Subject to the cancellation provisions of the Coverage Form to which this endorsement is attached, we will not:

1. Cancel;
2. Nonrenew; or,
3. Materially change (reduce or restrict)

this Coverage Form, except for nonpayment of premium, until we provide at least 30 days written notice of such cancellation, nonrenewal or material change. Written notice will be to the person or organization named in the Schedule. Such notice will be by certified mail with return receipt requested.

This notification of cancellation, nonrenewal or material change to the person or organization named in the Schedule is intended as a courtesy only. Our failure to provide such notification will not:

1. Extend any Coverage Form cancellation date;
2. Negate the cancellation as to any insured or any certificate holder;
3. Provide any additional insurance that would not have been provided in the absence of this endorsement; or
4. Impose liability of any kind upon us.

This endorsement does not entitle the person or organization named in the Schedule to any benefits, rights or protection under this Coverage Form.

SCHEDULE

Name Of Person Or Organization

Mailing Address

Any person or organization holding a certificate of insurance issued for you, provided the certificate:

The address shown for that person or organization in that certificate of insurance

1. Refers to this policy;
2. States that notice of:
 - a. Cancellation;
 - b. Nonrenewal; or
 - c. Material change reducing or restricting coverage;will be provided to that person or organization;
3. Is in effect at the time of the:
 - a. Cancellation;
 - b. Nonrenewal; or
 - c. Material change reducing or restricting coverage; and
4. Is on file at your agent or broker's office for this policy



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
04/05/2021

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 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 VTC Insurance Group 1175 West Long Lake Road Suite 200 Troy, MI 48098	1-248-828-3377	CONTACT NAME: Debra Mirch PHONE (A/C, No. Ext): 248-828-3377 E-MAIL ADDRESS: dmirch@vtcins.com	FAX (A/C, No): 248-828-3741
INSURED C.E. Gleeson Constructors Inc. 984 Livernois Rd. Troy, MI 48083		INSURER(S) AFFORDING COVERAGE INSURER A: NAUTILUS INS CO INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	NAIC # 17370

COVERAGES

CERTIFICATE NUMBER: 61900671

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 <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 <input type="checkbox"/> OTHER:						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	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				PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Prof/Poll Liab Claims-Made Policy			CPP2027164-12	09/17/20	09/17/21	Aggregate Limit 1,000,000

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

Project City of Birmingham ? Ice Sports Arena Reno/Addition. Project number: 21-125

CERTIFICATE HOLDER

Project 21-125

City of Birmingham

851 S. Eton

Birmingham, MI 48009

USA

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

Alan P. Chandler

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ACORD 25 (2014/01)

dmirch

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DATE: April 7, 2021

TO: Thomas M. Markus

FROM: Alexandria Bingham, City Clerk

SUBJECT: Recommendation to Release Graves

INTRODUCTION:

- Grave sales in Greenwood Cemetery have been on going and conducted through the city's cemetery services provider Cheri Arcome of Creative Collaborations.
- On December 21, 2020 the City Commission released 10 graves in section C, row 19-A.
 - Since then graves 1, 2, 13, 14 & 16 in row 19A were found to be obstructed by trees and not able to be used at this time.
- On January 25, 2021 the City Commission released 14 graves in section C, row 18-A.
 - Since then it has been determined that graves 1 & 2 are obstructed due to a tree and not usable at this time.
- Cheri Arcome of Creative Collaborations currently has 15 pending sales across section C, row 18-A & 19-A.
- 5 graves are left in the available inventory not leaving many options for a person or family in search of a final resting space at the Historic Greenwood Cemetery.
- If all pending sales are completed and no other graves are found to be obstructed Greenwood Cemetery would have 167 known graves remaining in inventory. Over time if all of those spaces were to be sold at the current grave price of \$4,000 per space, \$668,000 of revenue could potentially generated for the perpetual care fund.
- The current balance of the perpetual care fund is \$927,732.04.
- Due to the depletion of available grave space it is time to consider another grave release.

BACKGROUND:

- In 2015 240 of the 530 potential grave plots were released.
- By December 31, 2018 199 of the 240 spaces had been sold.
- In July of 2019 no action was taken to release more graves and the City Commission charged the Greenwood Cemetery Advisory Board with the duty of evaluating the current market price for cemetery plots.
- August 16, 2019 GCAB determined that \$3,000 was an appropriate price for graves at Greenwood Cemetery.
- December 7, 2020 the City Commission reviewed GCAB's recommendation to release 50 graves. The City Commission requested more detailed reporting on available graves in sections B & C.
- December 21, 2020 Museum Director Leslie Pielack and City Clerk Alexandria Bingham provided a detailed map and explanation of availability and activity in Greenwood Cemetery. 11 graves that were sold or pending beyond the 2015 grave release were approved as well as 10 graves in Section C, Row 19-A.

- On January 25, 2021 the City Commission released 14 graves in section C, row 18-A. The Commission also requested that GCAB review grave prices again.
- The City Commission approved the grave price increase from \$3000 to \$4000 effective immediately per recommendation of the Greenwood Cemetery Advisory Board on March 22, 2021.
- In GCAB meetings over the past few months members expressed an interest in evaluating the trees in the cemetery and making sure a plan is in place to maintain the aesthetics and foliage across the Cemetery, specifically in sections B and C where current grave sales activity is happening. Attached is a memo from DPS Parks and Recreation Manager Carrie Laird in regards to the trees that are maintained in Greenwood Cemetery.
- After much discussion the GCAB decided to revise the City Clerk's recommendation to release the 7 rows in section B closest to C and only recommend the release 4 rows to allow continued grave sales while giving time for the GCAB to evaluate future tree planting and landscaping in the cemetery.
- At the April 5, 2021 GCAB meeting board member Suter made the motion to release rows 17-C, 16-C, 15-C and 14-A in section B, with a second by board member Peterson. This would make a total of 38 additional graves available for sale. The motion passed with 6 yeas, 0 nays, and 1 member absent (Vercellone)

LEGAL REVIEW:

- None.

FISCAL IMPACT:

For each plot sold in Greenwood Cemetery, \$4,000 is deposited in the Greenwood Cemetery Perpetual Care Fund (Fund). The purpose of the Fund is to account for the investment earnings on the sale of City-owned plots, and donations, which will be used for the perpetual care and maintenance of the cemetery. Estimated basic annual maintenance costs (lawn, forestry, snow removal, etc.) for Greenwood Cemetery are \$60,000.

The current allocation of the portfolio is intended to generate income and growth. With the current balance of \$927,732.04 an additional 268 graves would need to be sold to reach the portfolio target size of \$2 million, keep in mind that only 168 graves in sections B and C are left. The city should continue to sell graves to approach their financial goals for the Greenwood Cemetery as the Perpetual Care Fund continues to grow through interest and contributions of grave sales.

PUBLIC COMMUNICATIONS:

- Meetings have been properly noticed and packets have been made available on the city's website. The public is always welcome to participate but we regularly see little to no participation from the public in GCAB meetings.
- Cemetery updates are also published as part of the monthly City Manager's Report.

SUMMARY:

Due to the continued interest in ongoing grave sales, and depletion of available grave plots since the December 2020 and January 2021 releases, a release of additional grave plots is recommended. Adjustments have been made to data regarding recent sales and available grave plots remaining, which are located only in Sections B and C.

The new GIS **draft** map as provided by City Planner Brooks Cowan along with the Tree Keeper data overlay as provided by Parks and Recreation Manager Carrie Laird illustrates that the cemetery has an impressive amount of tree coverage. However, as we continue to work with the

space available in section B we may have to continue to adjust our count of available grave space for sale as we discover trees obstructing the space. It is also possible that the GCAB will recommend reserving space for future tree planting in a long range plan with the advice of DPS and the city's arborist, however having space to accommodate Birmingham residents and persons interested in a final resting place in Greenwood cemetery is a priority.

Based on the tree coverage in the western rows of section B, the need to release a sufficient number of graves to offer options to purchasers and the need of time between grave releases to allow the GCAB to address other Cemetery goals and business the City Clerk is recommending the release of the 7 western most rows of section B that amounts to 54 graves as long as none are obstructed by other monuments or trees. 108 potential grave sites would not be released yet but available for the consideration of future releases.

ATTACHMENTS:

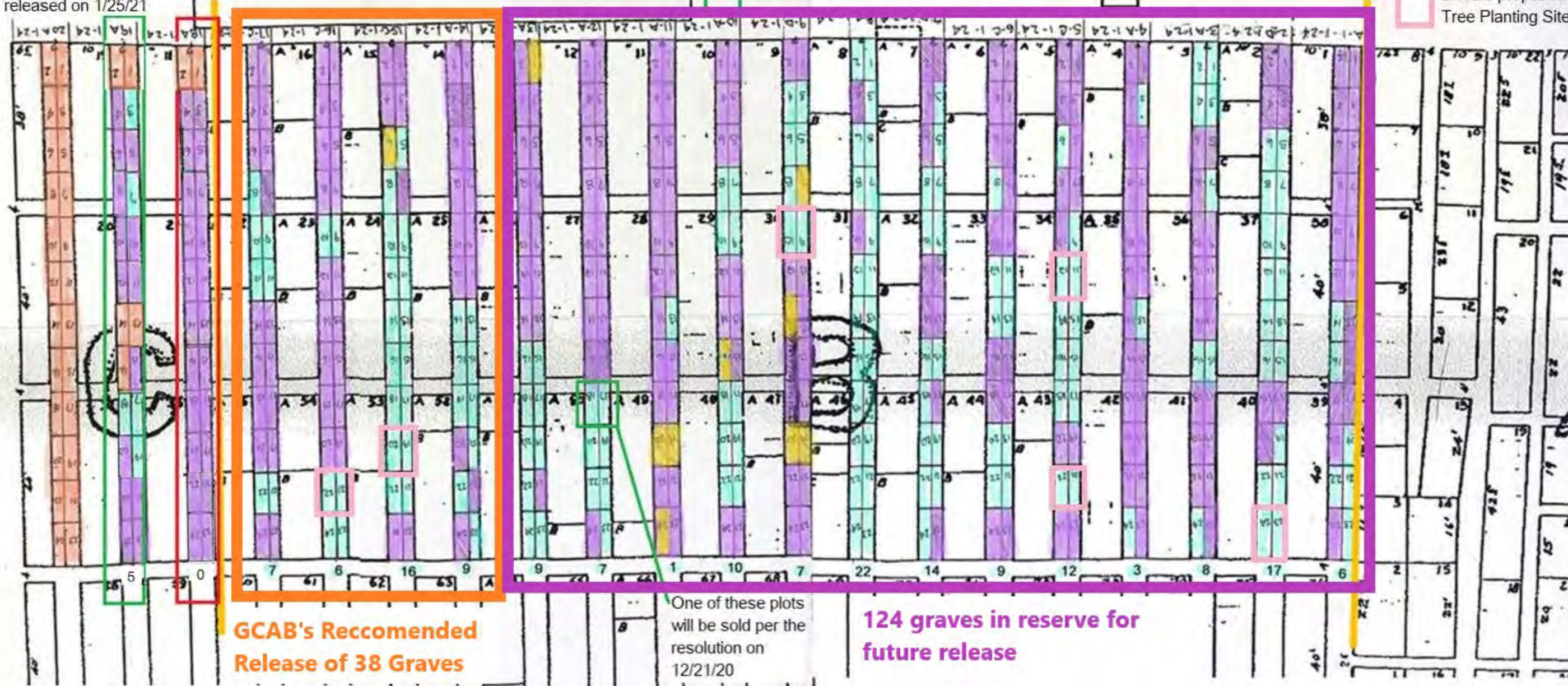
- Color coded map that illustrates graves available and sold
- GIS map that illustrates tree coverage
- April 5, 2021 DRAFT GCAB Minutes
- Memo from Parks and Recreation Manager Carrie Laird about Cemetery Trees
- GCAB Grave Release Packet from April 5, 2021
- January 2021 Grave Release
- March 2021 Grave Price Increase

SUGGESTED RESOLUTION:

- For the Commission to release 38 graves in section B, rows 17-C, 16-C, 15-C, and 14-A to be available for purchase in Greenwood Cemetery.

■ Plots Not Usable
 ■ SOLD IN ORIG AUTH 241.
 ■ SOLD OVER AUTH LIMIT (10)
 ■ AVAILABLE(187)
 Large Rectangles = Historic Lots

Available graves released on 1/25/21
 Available graves released on 12/21/20
 Linda's proposed Tree Planting Site



GCAB's Reccomended Release of 38 Graves

One of these plots will be sold per the resolution on 12/21/20

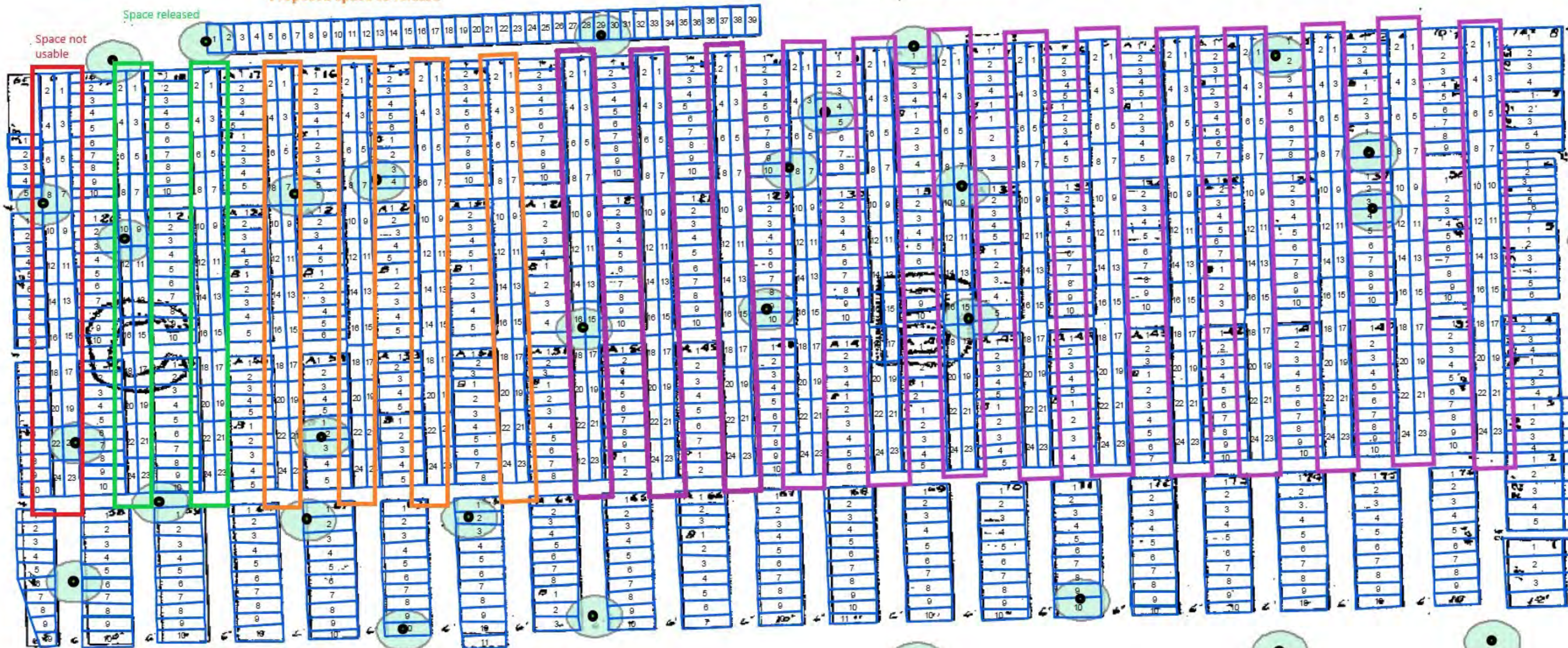
124 graves in reserve for future release

Space for future release

Proposed space to release

Space released

Space not
usable



Greenwood Cemetery Advisory Board
Meeting Minutes
Monday, April 5, 2021, 10 A.M.
Virtual Meeting ID: 989 8385 6041

I. CALL TO ORDER

Linda Buchanan, Chair, called the meeting to order at 10:00 A.M.

II. ROLL CALL

Present: Chair Linda Buchanan (location: Birmingham, MI)
Pam DeWeese (location: Birmingham, MI)
Linda Peterson (location: Birmingham, MI)
Laura Schreiner (location: Bloomfield Township, MI)
George Stern (location: Birmingham, MI)
Margaret Suter (location: Birmingham, MI)

Absent: Joseph Vercellone

Administration: City Clerk Alex Bingham; Museum Director Leslie Pielack

Guests: None

III. APPROVAL OF THE MINUTES

A. Review of the Minutes of March 5, 2021

On page three, Chair Buchanan asked that "Chair Buchanan said the discussion at the May meeting should find a way to clarify that the City no longer offers payment plans." be changed to "Chair Buchanan said the discussion at the May meeting should find a way to clarify whether the City still has and wishes to continue with a payment plan."

Ms. Schreiner asked that the spelling of her name be corrected in the body of the minutes.

MOTION: by DeWeese, seconded by Suter:

To approve the minutes of March 5, 2021 as amended.

VOTE: Yeas, 6
Nays, 0

IV. UNFINISHED BUSINESS

None.

V. NEW BUSINESS

A. Review of Goals as outlined in Yearly Report

Clerk Bingham reviewed the item.

Board members agreed to individually submit their GCAB goal recommendations for the upcoming year to Clerk Bingham in advance of the May meeting.

Clerk Bingham said she would compile the recommendations and have them ready for presentation at the meeting.

B. Review of Grave Sales & Next Grave Release Recommendation

Clerk Bingham reviewed the item.

Chair Buchanan said fewer than 54 graves should be released since the question of tree locations had not yet been determined. She stated that 38 graves would be more appropriate. She also noted that Ms. Arcome still had an additional five graves available from the last release, bringing the total of available graves to 43 if Chair Buchanan's modified resolution passes.

The Board requested that Chair Buchanan attend the meeting on April 15, 2021 with Clerk Bingham, DPS, the City arborist, and Museum Director Pielack for a preliminary discussion on likely tree locations.

Clerk Bingham clarified that the April 15 date for that meeting was still tentative, but that she would check with DPS to solidify the timing and see if it would be possible for Chair Buchanan to attend.

If the meeting occurs on April 15, Clerk Bingham said she and Chair Buchanan would write a memorandum to inform the Board about the meeting that they could review in advance of their May meeting. Clerk Bingham reminded the Board what kinds of communication about the memorandum would run afoul of the Open Meetings Act.

A number of Board members expressed frustration that the grave map provided to them by Ms. Arcome was and remains inaccurate in terms of grave availability. It was noted that some graves marked available are actually obstructed by trees. Clerk Bingham clarified that the map was initiated by Museum Director Pielack and updated by Clerk Bingham.

Ms. Suter noted that this issue comes up every time a grave release is discussed, and that trying to rely on inaccurate information adds unnecessary work to the Board's workload. She asked that Ms. Arcome be directed to generate accurate information regarding which graves remain unavailable for use due to trees or other issues, so that the Board can trust the information they are working with moving forward.

The Board agreed to discuss limiting how long a grave sale can be pending as part of their upcoming Rules and Regulations review.

MOTION: by Suter, seconded by Peterson:

To recommend that the Commission release 38 graves in Greenwood Cemetery, Section B, Rows 17-C, 16-C, 15-C, and 14-A.

VOTE: Yeas, 6
Nays, 0

Mr. Stern asked whether the Clerk's office was integrating his report regarding which graves might still be available for sale.

Clerk Bingham said she was not aware of his report.

Mr. Stern said he would provide the Clerk's Office with another copy.

C. Review of Fee Schedule

Clerk Bingham reviewed the item.

The Board asked Clerk Bingham to report back regarding how much Greenwood's subcontractors charge for the services listed in the fee schedule.

Mr. Stern said it might be worthwhile for the City to claim some of the difference between the subcontractor's charge and the listed fee for the Cemetery's perpetual care fund where appropriate. He also said it might be worthwhile to direct Ms. Arcome to go out for bids on the services listed in the fee schedule.

Clerk Bingham noted that these are contractual issues with Ms. Arcome, and that per the City Attorney no significant changes to her contract can be made until the next RFP cycle, which is the 2022-2023 fiscal year. She said that if the Board had concerns about issues like this they could prepare them for inclusion in the next RFP.

Chair Buchanan stated that former Board member Kevin Desmond stated that \$1,400 for an interment or disinterment was a standard rate, and that the Board adopted that amount based on Mr. Desmond's recommendation.

MOTION: by DeWeese, seconded by Suter:

To recommend that the City Commission approve the suggested revisions to the Greenwood Cemetery Fee Schedule effective immediately.

VOTE: Yeas, 6
Nays, 0

D. Cemetery Services Contract

Clerk Bingham reviewed the item.

For the GCAB to recommend the renewal of the cemetery services contract with Creative Collaborations for the 2021-2022 fiscal year.

Clerk Bingham reiterated the guidance from the City Attorney that no significant changes could be made to the Cemetery Services contract until the next RFP cycle which would come for the 2022/23 FY. She also reiterated that in the interim the Board could prepare the changes they would like to recommend the Commission consider regarding the contract renewal. She said that coming up with recommended changes could be one of the Board's goals if they saw fit.

There was Board comment that they had not seen, reviewed, or endorsed the letter from Ms. Arcome to former Asst. City Manager Gunter that was included as an addendum to the contract. A number of Board members confirmed that there were changes they would recommend for the contract in general if given the opportunity.

Mr. Stern and Ms. Suter said they wanted it made clear to the Commission that the Board's likely affirmative vote on this item was a "rubber stamp", per Mr. Stern. They explained the Board would likely vote affirmatively because the City needed to maintain continuity of service for the Cemetery, even though some Board members had reservations regarding the contract.

Clerk Bingham said she would indicate that in her memorandum presenting the item to the Commission. She stated that the Commission must have been aware of the letter from Ms. Arcome to former Asst. City Manager Gunter because it was included in previous Commission agenda packets.

MOTION: by DeWeese, seconded by Buchanan:

To recommend the renewal of the cemetery services contract with Creative Collaborations for the 2021-2022 fiscal year.

Mr. Stern then recommended that the Board consider a six-month contract renewal instead of a year.

Ms. DeWeese said it would be unfair to Ms. Arcome to only grant a six-month renewal.

Ms. Schreiner said that the current contract renewal cycle had previously been decided on based on when services were needed, the Board's schedule, and the Clerk's Office's schedule.

Clerk Bingham said that a six-month renewal would likely be too much for the Clerk's Office to handle along with the November election.

VOTE: Yeas, 5
Nays, 1 (Stern)

E. Discussion on what to prepare for the May GCAB meeting

Clerk Bingham reviewed the item.

The Board agreed to review the Language, Definitions and Lot Sale Policy aspects of the Greenwood Cemetery's Rules and Regulations at their May 2021 meeting.

VI. REPORTS

- A. Updates from Museum Director Leslie Pielack
- B. Financial Reports
- C. Cemetery Sales & Activity
- D. Clerk's Office Update
- E. City Manager's Report (February)

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

There were no public comments.

VIII. BOARD COMMENTS

Ms. Suter said the GCAB meetings should be kept to their scheduled first Friday of the month whenever possible. She said that rescheduling the meeting placed a burden on her and likely other Board members, as they are all busy. She asked that the Clerk's Office not do it again unless totally necessary.

Chair Buchanan complimented DPS on the work being done in the Cemetery. She said a wrought iron gate might be considered to replace the pole and chain in Section F that she has previously addressed as being an eyesore.

IX. ADJOURN

Chair Buchanan adjourned the meeting at 11:44 AM.

Next Meeting: May 7, 2021



MEMORANDUM

Department of Public Services

DATE: March 30, 2021

TO: Alexandria Bingham, City Clerk
Leslie Pielack, Museum Director

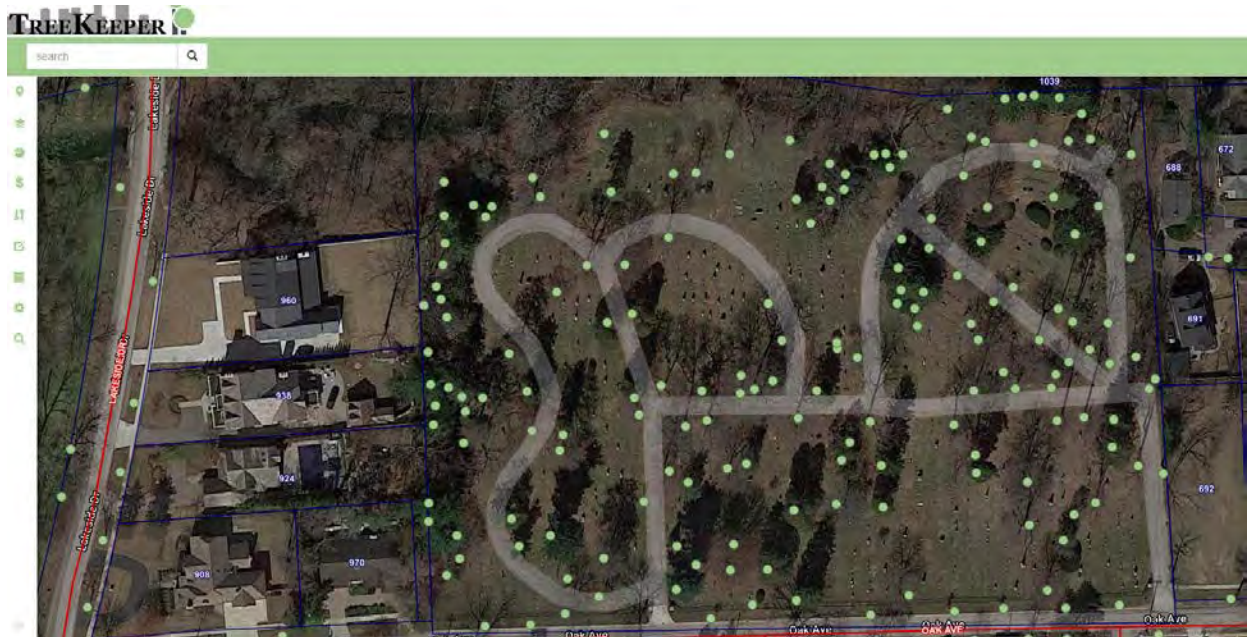
FROM: Carrie Laird, Parks and Recreation Manager

CC: Lauren Wood, Director of Public Services

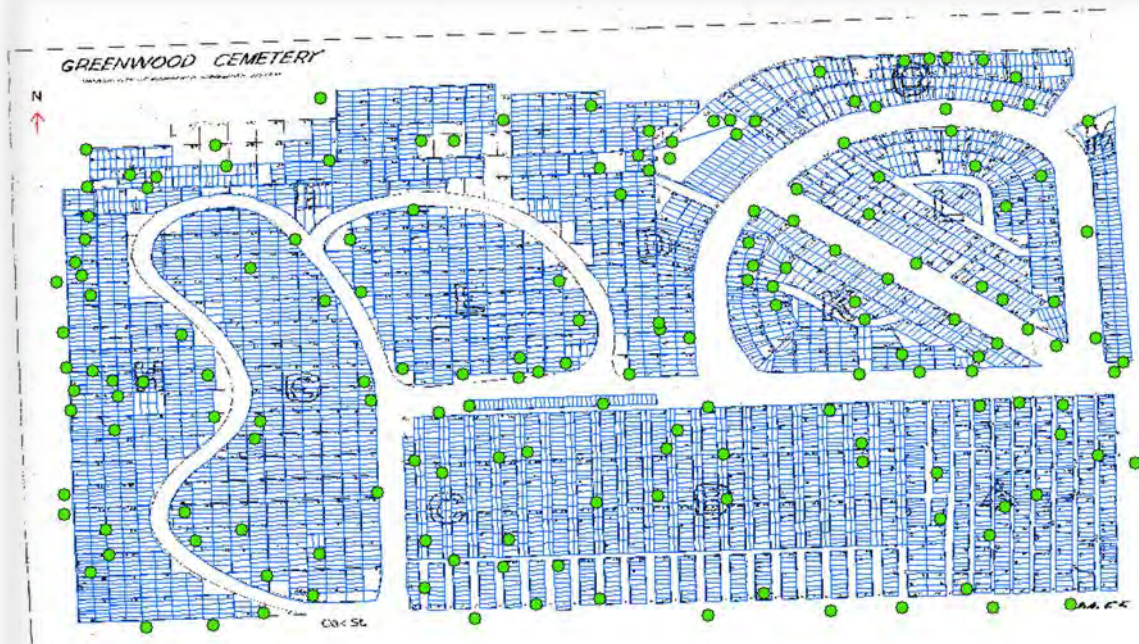
SUBJECT: Greenwood Cemetery Tree Inventory

In 2017, the Department of Public Services hired a certified arborist from Davey Resource Group to perform a tree inventory of Greenwood Cemetery. The Greenwood Cemetery inventory was added to and is part of a larger City wide system, called TreeKeeper. Birmingham's TreeKeeper program (implemented in 2012) contains all Birmingham city-owned trees in city right of way areas. The Department of Public Services has been working to add trees in parks and City owned properties to this system.

TreeKeeper inventory is reviewed regularly and updated as needed. The data is collected through a mobile unit, and is able to integrate with a GIS mapping system.



A snippet right out of our TreeKeeper system



Above- TreeKeeper inventory integrated as a layer for the Greenwood GIS mapping system. Brooks Cowan, Assistant Planner is able to integrate the GIS coordinates of all trees collected through TreeKeeper with the Greenwood Cemetery GIS map.

Removals vs. Plantings since 2017:

In 2017, 6 Oak trees were planted along the Oak street right of way, between the decorative fence and the street. In 2019, 3 Maples were planted near or around the Section A area.

Since 2017, there have been 4 Removals. 2 dead or dying, 1 because of storm damage, and 1 due to the proximity of a burial.

I look forward to our continued collaboration to enhance and care for Greenwood Cemetery.

DATE: April 1, 2021

TO: Greenwood Cemetery Advisory Board

FROM: Alexandria Bingham, City Clerk

SUBJECT: Review of Available Space & Recommendation to Release Graves

INTRODUCTION:

- Grave sales in Greenwood Cemetery have been on going and conducted through the city's cemetery services provider Cheri Arcome of Creative Collaborations.
- On December 21, 2020 the City Commission released 10 graves in section C, row 19-A.
 - Since then graves 1, 2, 13, 14 & 16 in row 19A were found to be obstructed by trees and not able to be used at this time.
- On January 25, 2021 the City Commission released 14 graves in section C, row 18-A.
 - Since then it has been determined that graves 1 & 2 are obstructed due to a tree and not usable at this time.
- Cheri Arcome of Creative Collaborations currently has 15 pending sales across section C, row 18-A & 19-A.
- 5 graves are left in the available inventory not leaving many options for a person or family in search of a final resting space at the Historic Greenwood Cemetery.
- If all pending sales are completed and no other graves are found to be obstructed Greenwood Cemetery would have 168 known graves remaining in inventory. Over time if all of those spaces were to be sold at the current grave price of \$4,000 per space, \$672,000 of revenue could potentially generated for the perpetual care fund.
- The current balance of the perpetual care fund is \$927,732.04.
- Due to the depletion of available grave space it is time to consider another grave release.

BACKGROUND:

- In 2015 240 of the 530 potential grave plots were released.
- By December 31, 2018 199 of the 240 spaces had been sold.
- In July of 2019 no action was taken to release more graves and the City Commission charged the Greenwood Cemetery Advisory Board with the duty of evaluating the current market price for cemetery plots.
- August 16, 2019 GCAB determined that \$3,000 was an appropriate price for graves at Greenwood Cemetery.
- December 7, 2020 the City Commission reviewed GCAB's recommendation to release 50 graves. The City Commission requested more detailed reporting on available graves in sections B & C.
- December 21, 2020 Museum Director Leslie Pielack and City Clerk Alexandria Bingham provided a detailed map and explanation of availability and activity in Greenwood Cemetery. 11 graves that were sold or pending beyond the 2015 grave release were approved as well as 10 graves in Section C, Row 19-A.

- On January 25, 2021 the City Commission released 14 graves in section C, row 18-A. The Commission also requested that GCAB review grave prices again.
- The City Commission approved the grave price increase from \$3000 to \$4000 effective immediately per recommendation of the Greenwood Cemetery Advisory Board on March 22, 2021.
- In GCAB meetings over the past few months members expressed an interest in evaluating the trees in the cemetery and making sure a plan is in place to maintain the aesthetics and foliage across the Cemetery, specifically in sections B and C where current grave sales activity is happening. Attached is a memo from DPS Parks and Recreation Manager Carrie Laird in regards to the trees that are maintained in Greenwood Cemetery.

LEGAL REVIEW:

- None.

FISCAL IMPACT:

For each plot sold in Greenwood Cemetery, \$4,000 is deposited in the Greenwood Cemetery Perpetual Care Fund (Fund). The purpose of the Fund is to account for the investment earnings on the sale of City-owned plots, and donations, which will be used for the perpetual care and maintenance of the cemetery. Estimated basic annual maintenance costs (lawn, forestry, snow removal, etc.) for Greenwood Cemetery are \$60,000.

The current allocation of the portfolio is intended to generate income and growth. With the current balance of \$927,732.04 an additional 268 graves would need to be sold to reach the portfolio target size of \$2 million, keep in mind that only 168 graves in sections B and C are left. The city should continue to sell graves to approach their financial goals for the Greenwood Cemetery as the Perpetual Care Fund continues to grow through interest and contributions of grave sales.

PUBLIC COMMUNICATIONS:

- Meetings have been properly noticed and packets have been made available on the city's website. The public is always welcome to participate but we regularly see little to no participation from the public in GCAB meetings.
- Cemetery updates are also published as part of the monthly City Manager's Report.

SUMMARY:

Due to the continued interest in ongoing grave sales, and depletion of available grave plots since the December 2020 and January 2021 releases, a release of additional grave plots is recommended. Adjustments have been made to data regarding recent sales and available grave plots remaining, which are located only in Sections B and C.

The new GIS **draft** map as provided by City Planner Brooks Cowan along with the Tree Keeper data overlay as provided by Parks and Recreation Manager Carrie Laird illustrates that the cemetery has an impressive amount of tree coverage. However, as we continue to work with the space available in section B we may have to continue to adjust our count of available grave space for sale as we discover trees obstructing the space. It is also possible that the GCAB will recommend reserving space for future tree planting in a long range plan with the advice of DPS and the city's arborist, however having space to accommodate Birmingham residents and persons interested in a final resting place in Greenwood cemetery is a priority.

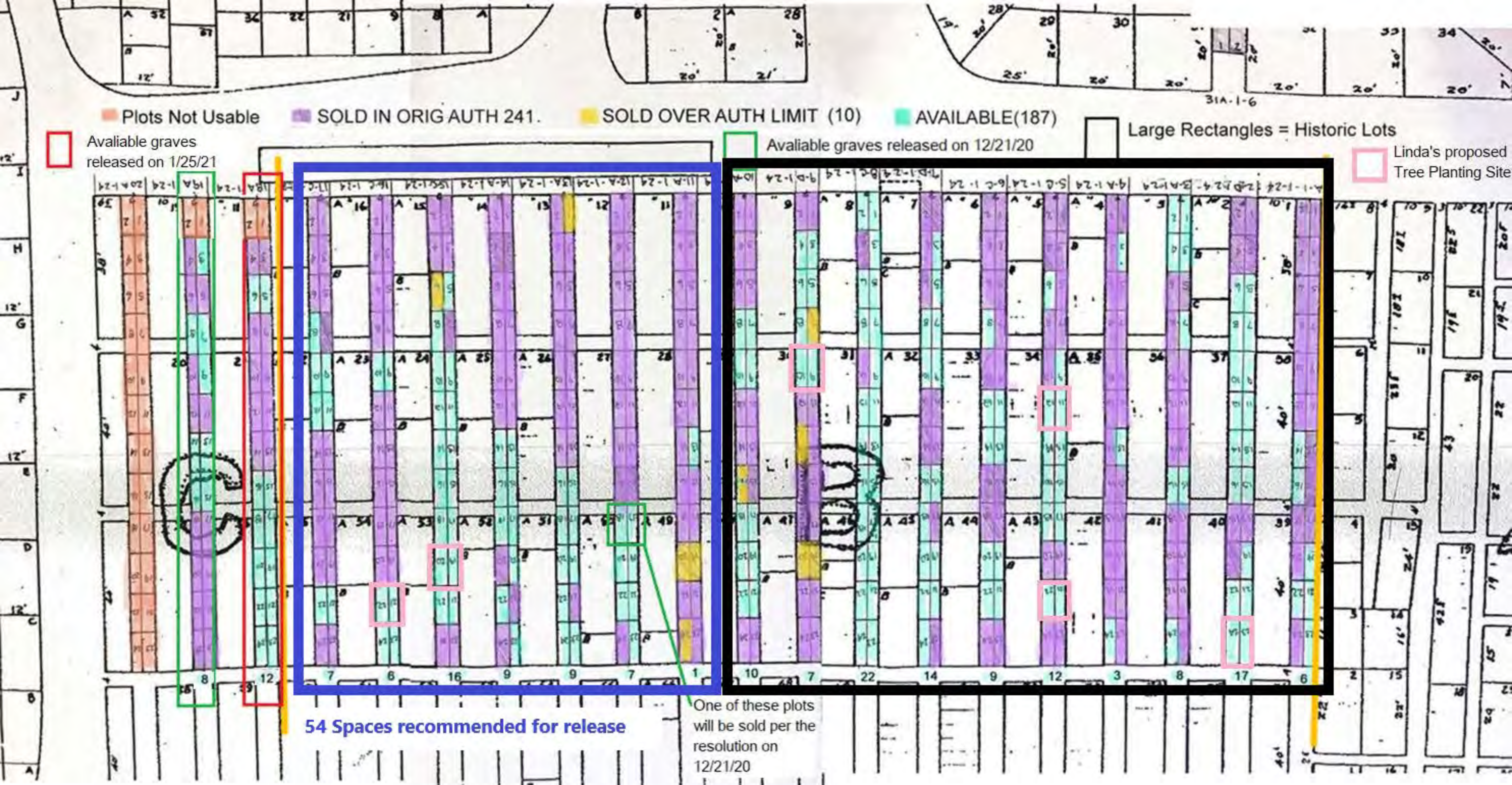
Based on the tree coverage in the western rows of section B, the need to release a sufficient number of graves to offer options to purchasers and the need of time between grave releases to allow the GCAB to address other Cemetery goals and business the City Clerk is recommending the release of the 7 western most rows of section B that amounts to 54 graves as long as none are obstructed by other monuments or trees. 108 potential grave sites would not be released yet but available for the consideration of future releases.

ATTACHMENTS:

- Color coded map that illustrates graves available and sold
- GIS map that illustrates tree coverage
- Memo from Parks and Recreation Manager Carrie Laird about Cemetery Trees
- January 2021 Grave Release
- March 2021 Grave Price Increase

SUGGESTED RESOLUTION:

- For the GCAB to recommend that the Commission release 54 graves in Greenwood Cemetery, section B, rows 17-C, 16-C, 15-C, 14-C, 13-C, 12-C and 11-C.



Plots Not Usable

SOLD IN ORIG AUTH 241.

SOLD OVER AUTH LIMIT (10)

AVAILABLE(187)

Large Rectangles = Historic Lots

Available graves
released on 1/25/21

Available graves released on 12/21/20

Linda's proposed
Tree Planting Site

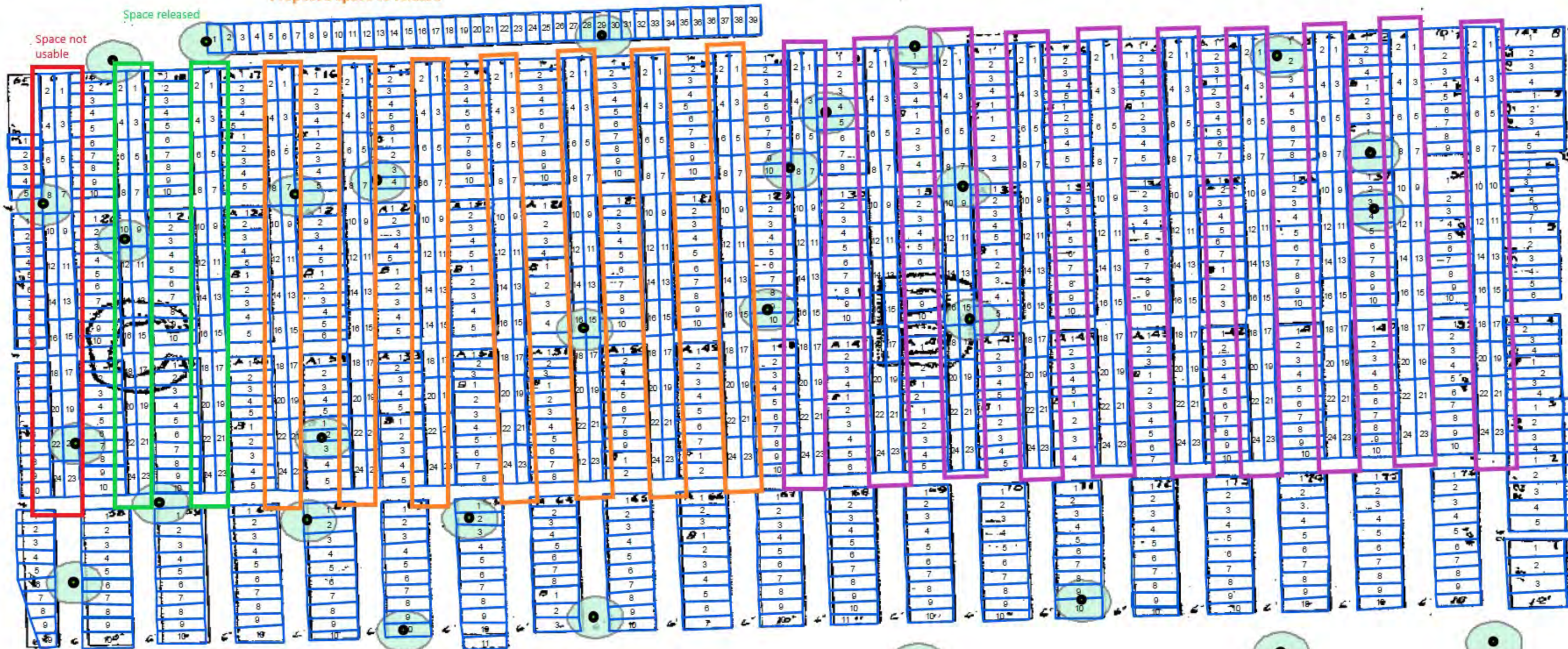
54 Spaces recommended for release

One of these plots
will be sold per the
resolution on
12/21/20

Proposed space to release

Space released

Space not
usable





MEMORANDUM

Department of Public Services

DATE: March 30, 2021

TO: Alexandria Bingham, City Clerk
Leslie Pielack, Museum Director

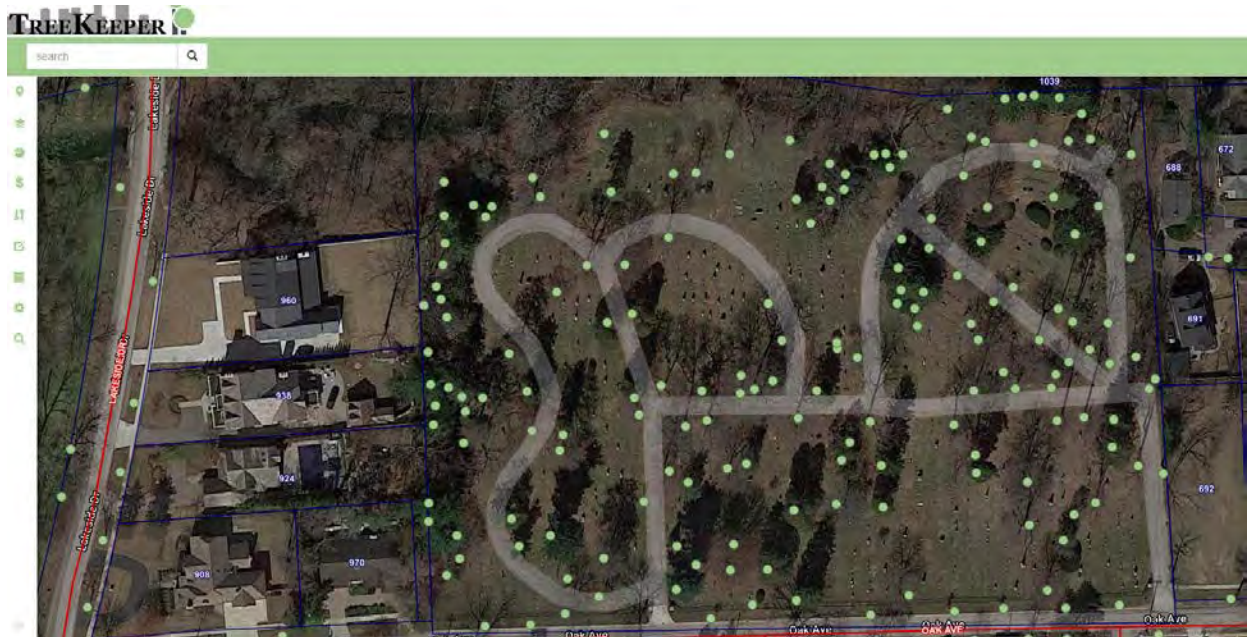
FROM: Carrie Laird, Parks and Recreation Manager

CC: Lauren Wood, Director of Public Services

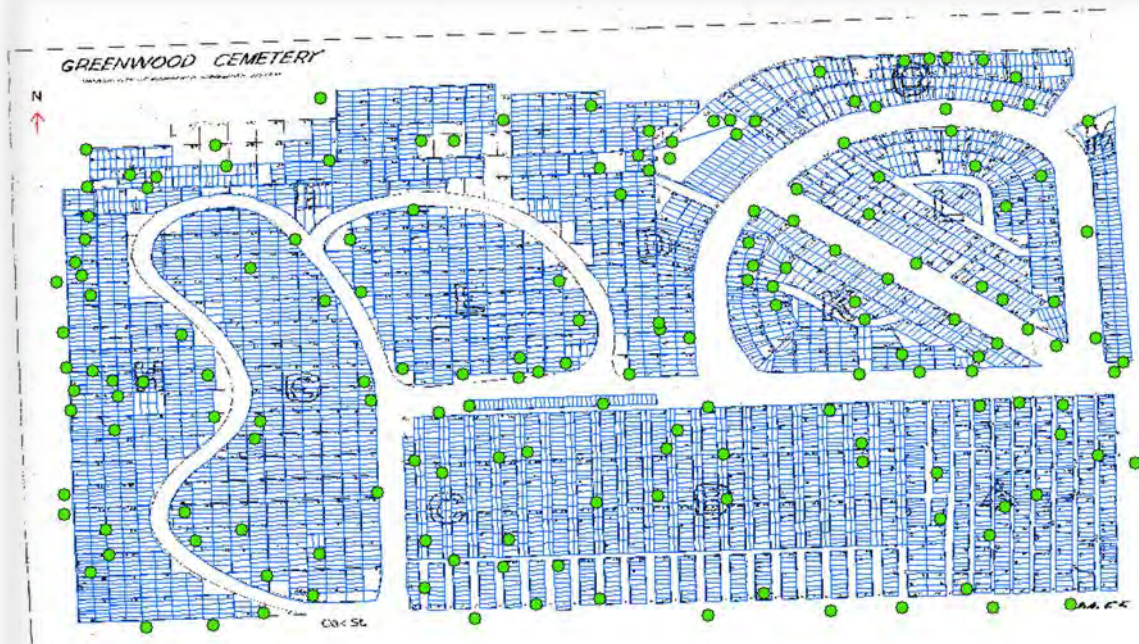
SUBJECT: Greenwood Cemetery Tree Inventory

In 2017, the Department of Public Services hired a certified arborist from Davey Resource Group to perform a tree inventory of Greenwood Cemetery. The Greenwood Cemetery inventory was added to and is part of a larger City wide system, called TreeKeeper. Birmingham's TreeKeeper program (implemented in 2012) contains all Birmingham city-owned trees in city right of way areas. The Department of Public Services has been working to add trees in parks and City owned properties to this system.

TreeKeeper inventory is reviewed regularly and updated as needed. The data is collected through a mobile unit, and is able to integrate with a GIS mapping system.



A snippet right out of our TreeKeeper system



Above- TreeKeeper inventory integrated as a layer for the Greenwood GIS mapping system. Brooks Cowan, Assistant Planner is able to integrate the GIS coordinates of all trees collected through TreeKeeper with the Greenwood Cemetery GIS map.

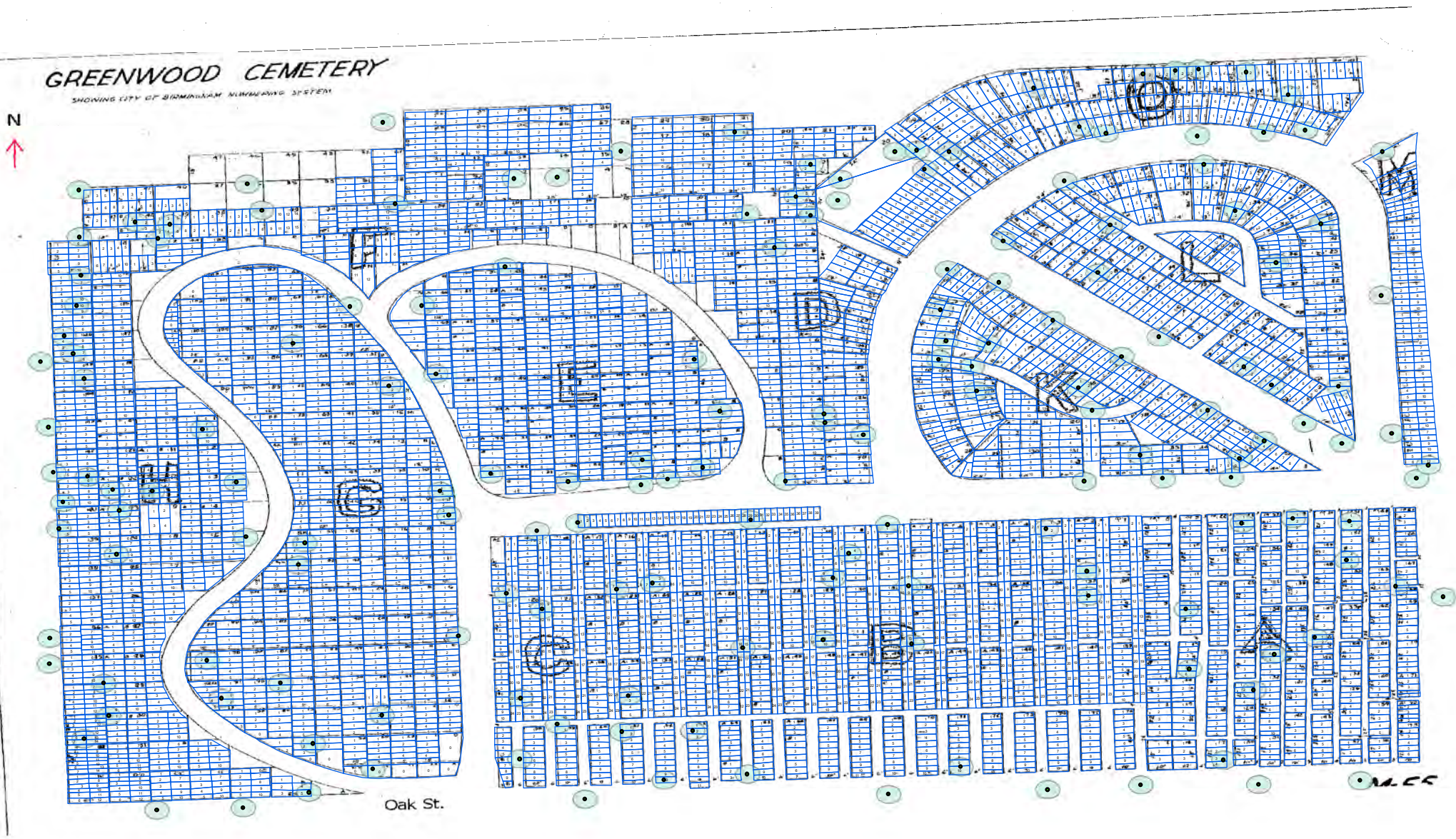
Removals vs. Plantings since 2017:

In 2017, 6 Oak trees were planted along the Oak street right of way, between the decorative fence and the street. In 2019, 3 Maples were planted near or around the Section A area.

Since 2017, there have been 4 Removals. 2 dead or dying, 1 because of storm damage, and 1 due to the proximity of a burial.

I look forward to our continued collaboration to enhance and care for Greenwood Cemetery.

DRAFT



This map is a work in progress. Trees may be displaced 1-2 meters from their actual site due to GPS pins set with coordinates in the Tree Keeper database laid over this GIS map.



MEMORANDUM

Clerk's Office

DATE: January 20, 2021
TO: Tom Markus City Manager
FROM: Alexandria Bingham, City Clerk
SUBJECT: Consideration to Release Graves

INTRODUCTION:

On December 21, 2020 the City Commission authorized release of the following:

- 10 grave plots that were sold over the previous authorization limits
- a plot that was a pending sale for a family in need in Section B, lot 21-A
- 10 plots in Section C, row 19-A to be available for future inquiries

Although there are presently 10 plots available, there is a possibility that this limited inventory could be depleted in the coming months. To ensure that there are enough plots available to meet potential demand, the Greenwood Cemetery Advisory Board considered and approved a recommendation that the City Commission release 10 more graves in Section C at their January 8, 2021 meeting, with a vote of 5 ayes and 2 nays. The two nay votes came from board members who were concerned about the price of graves and how Greenwood is progressing towards reaching its financial goals.

BACKGROUND:

- 2015: 240 of the 530 potential grave plots were released.
- December 31, 2018: 199 of the 240 spaces had been sold.
- July of 2019: no action was taken to release more graves and the City Commission charged the Greenwood Cemetery Advisory Board with the duty of evaluating the current market price for cemetery plots
- August 16, 2019: the GCAB determined that \$3,000 was an appropriate price for graves at Greenwood Cemetery.

- December 7, 2020: the City Commission reviewed GCAB's recommendation to release 50 graves. The City Commission released 1 grave that had been sold in excess of the original 240 released and requested more detailed reporting on available graves in sections B & C.
- December 21, 2020: Museum Director Leslie Pielack and City Clerk Alexandria Bingham provided a detailed map and updated information relating to grave plot availability and activity in Greenwood Cemetery. The City Commission was concerned that graves to be released should be as far away from Section A as possible.
 - 11 graves that were sold or pending beyond the 2015 approved grave release were approved.
 - 10 additional graves in Section C, Row 19-A (furthest proximity from Section A, oldest area of cemetery) were made available for new sale inquiries.
- January 19, 2021: Cemetery Management Coordinator Cheri Arcome of Creative Collaborations, LLC confirmed that none of the 10 released graves in Section C, Row 19-A have sold yet but she is speaking with five families this week which could result in sales.

In light of the high level of interest in grave purchases at present, the currently available 10 grave plots may be depleted soon, leaving no options for persons and families in search of a final resting place at Greenwood Cemetery.

LEGAL REVIEW:

None.

FISCAL IMPACT:

For each plot sold in Greenwood Cemetery, \$3,000 is deposited in the Greenwood Cemetery Perpetual Care Fund (Fund). The purpose of the Fund is to account for the investment earnings on the sale of City-owned plots, and donations, which will be used for the perpetual care and maintenance of the cemetery. Estimated basic annual maintenance costs (lawn, forestry, snow removal, etc.) for Greenwood Cemetery are \$60,000.

Under the current allocation of the portfolio, which is intended to generate income and growth, an additional 385 graves would need to be sold at this price to reach the portfolio target size of \$2 million in order to generate sufficient income to pay for basic annual maintenance. Currently there are 187 identified as available for sale.

The portfolio's ending fund balance on November 30, 2020, was \$929,235, December data will be available for the February GCAB meeting due to the statement cycles of Fidelity and Vanguard.

Continued grave sales are necessary to help the city approach its financial goals for Greenwood Cemetery, although other means of building the fund balance could be explored. The GCAB will be investigating the issue of pricing, feasibility of using Ground Penetrating Radar to identify additional grave sites, and the long-term management of the cemetery in its upcoming meetings to provide additional recommendations to the City Commission.

SUMMARY

Due to the depletion of available grave plots over the past five years and continued interest in ongoing grave sales, a release of additional grave plots is recommended. Adjustments have been made to data regarding recent sales and available grave plots remaining, which are located only in Sections B and C. Releasing additional graves in the west end of Section C will make more sites available, while limiting new sales to the area of furthest proximity to historic Section A.

ATTACHMENTS:

1. GCAB Draft Minutes, January 8, 2021.
2. Maps, Greenwood Cemetery and Graves Sold/Available

SUGGESTED RESOLUTION:

To recommend that the City Commission authorize the release of 14 plots available in Section C, Row 18-A for sale in Greenwood Cemetery. Furthermore the City Commission directs the Greenwood Cemetery Advisory Board to evaluate the grave site pricing and return with recommended changes prior to any further release.

**GREENWOOD CEMETERY ADVISORY BOARD
MEETING MINUTES
Friday, January 8, 2021, 10 A.M.
VIRTUAL MEETING**

I. CALL TO ORDER

Linda Buchanan, Chair, called the meeting to order at 10:01 A.M.

II. ROLL CALL

Present: Chair Linda Buchanan (location: Birmingham, MI)
Pam DeWeese (location: Birmingham, MI)
Linda Peterson (location: Birmingham, MI)
Margaret Suter (location: Birmingham, MI)
George Stern (location: Birmingham, MI)
Joseph Vercellone (location: Rochester, MI)
Laura Schreiner (location: Birmingham, MI)

Administration: City Clerk Alex Bingham; Museum Director Leslie Pielack

Guests: None

III. APPROVAL OF THE MINUTES

A. Approval of meeting minutes of November 6, 2020

MOTION: by Suter, seconded by Peterson:

To approve the minutes of November 6, 2020.

VOTE: Yeas, 7
Nays, 0
Recused, 0

IV. UNFINISHED BUSINESS

A. Clarification on Ground Penetrating Radar

- Members expressed desire to elaborate on the GPR memo before presenting it to the City Commission
- City Clerk will bring the report back to Greenwood Cemetery Advisory board for further review.

B. Recommendation to the City Commission for Grave Release

-
- Members expressed concern about reaching the cemeteries financial goals if more graves are released with the current price of \$3,000 per grave.
 - Members also noted the importance of making sure options were available to persons interested in purchasing a grave.
 - It was noted that there would need to be space reserved in the cemetery for future tree planting and landscaping needs.

MOTION: by Stern, seconded by DeWeese:

To recommend that the City Commission authorize the 14 plots available in Section C, Row 18-A for sale.

VOTE: Yeas, 5
Nays, 2 (Suter & Peterson)
Recused, 0

V. NEW BUSINESS

None.

VI. REPORTS

- A.** Members reviewed financial information provided by City Clerk.
The portfolio's ending fund balance on November 30, 2020, was \$929,235, December data will be available for the February GCAB meeting due to the statement cycles of Fidelity and Vanguard.
- B.** Members reviewed sales activity and burial activity provided by the Clerk and provided feedback on statistics that were important to track.

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

There were no public comments.

VIII. BOARD COMMENTS

Linda Peterson expressed the need to reevaluate the sale price of graves to meet financial goals.

Pam DeWeese expressed the need to examine the current rules and regulations and how that information is distributed to cemetery visitors.

Linda Buchanan expressed the need to plan and reserve space for future tree planting in the cemetery.

IX. ADJOURN

Ms. Buchanan noted that the next meeting will be February 5, 2021, at 10:00 AM virtually, and adjourned the meeting at 11:45 AM.

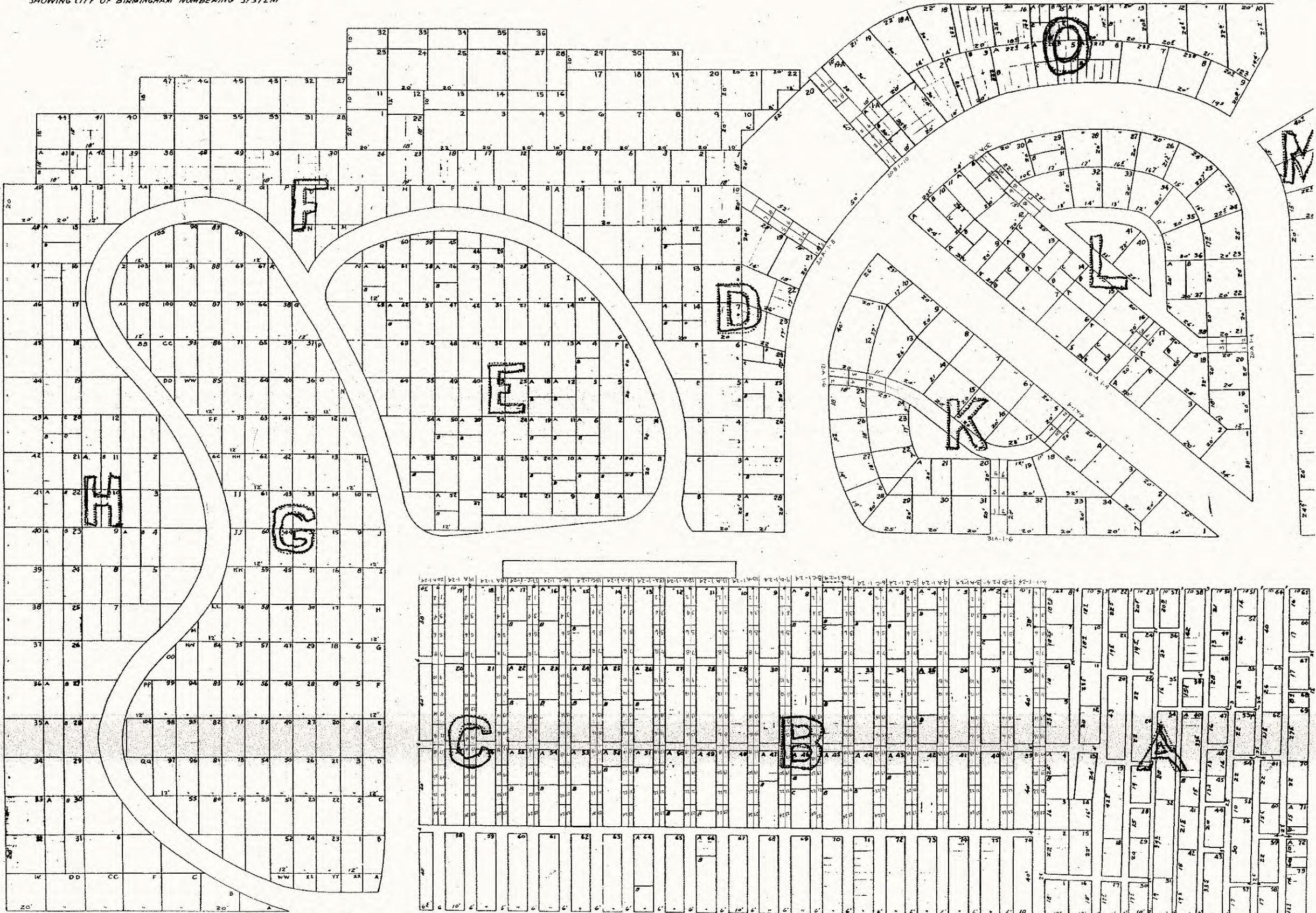
Next Meeting: February 5, 2020, 10:00 AM (virtual).

DRAFT

GREENWOOD CEMETERY OVERVIEW

GREENWOOD CEMETERY

SHOWING CITY OF BIRMINGHAM NUMBERING SYSTEM

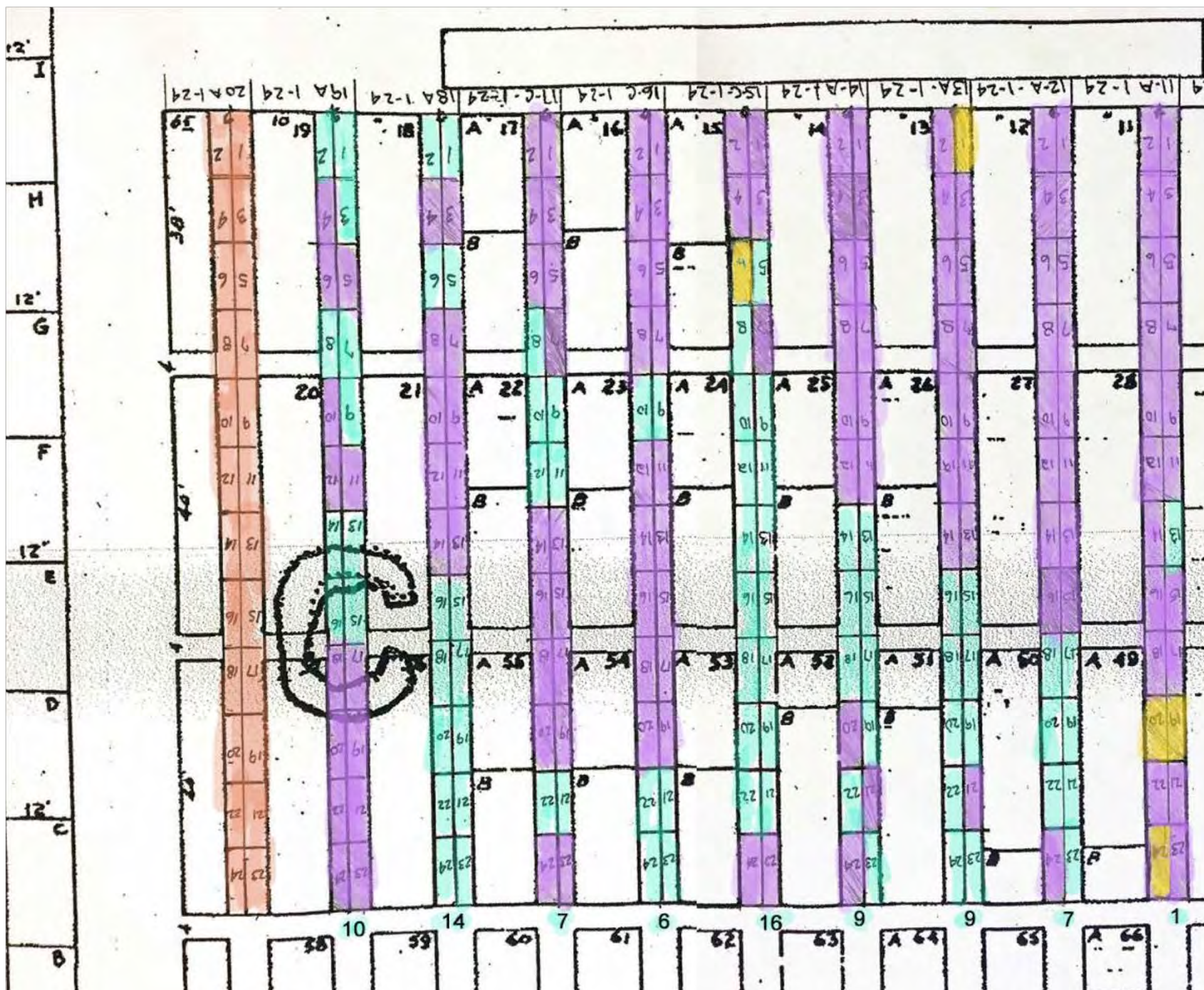


Oak St.

GREENWOOD CEMETERY GRAVES STATUS – Lots B and C

As of **December 15, 2020**, 187 grave plots are available in both B and C. No grave plots are available for sale to the public in any other section of the cemetery.





Detail, Section C
and Section B West

Number of available
graves shown at bottom
of rows

Nays, None

- B. Resolution approving the warrant list, including Automated Clearing House payments, dated January 13, 2021, in the amount of \$6,902,069.88.
- C. Resolution approving the warrant list, including Automated Clearing House payments, dated January 20, 2021, in the amount of \$1,403,493.75.
- D. Resolution to set February 22, 2021 as the public hearing date for the Program Year 2021 Community Development Block Grant Program.

01-011-21 (Item A) City Commission Minutes of January 11, 2021

Commissioner Hoff noted a sentence was erroneously duplicated in the minutes. The sentence read "Commissioner Hoff complemented CP Dupuis' letter to residents." She said the sentence should remain on page five and should be struck from page ten.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Sherman:
To approve the City Commission meeting minutes of January 11, 2021.

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

Nays, None

VI. UNFINISHED BUSINESS

01-012-21 Greenwood Cemetery Grave Release

City Clerk Bingham reviewed the item.

Commissioner Hoff spoke in favor of determining whether originally plotted but unused graves in sections D-M might be available for reclamation. She expressed concerns that the continued addition of graves to sections B and C was having a congestive effect on the historic nature of the sections and landscaping and beautification efforts.

Commissioner Host concurred with Commissioner Hoff's that the City should determine what graves might still be available in sections D-M and then proceed accordingly.

MOTION: Motion by Commissioner Host, seconded by Mayor Pro Tem Longe:
To authorize the release of 14 plots available in Section C, Row 18-A for sale in Greenwood Cemetery. Furthermore the City Commission directs the Greenwood Cemetery Advisory Board to evaluate the grave site pricing and return with recommended changes prior to any further release.

Public Comment

In reply to Andrew Haig, City Clerk Bingham confirmed that Greenwood Cemetery can accommodate up to three cremated remains in one grave plot and smaller numbers of cremated remains in smaller or more irregularly-shaped grave plots.

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

Nays, None

01-013-21 Parking at The Pearl

City Planner Cowan summarized the item.

DATE: March 16, 2021

TO: Thomas M. Markus, City Manager

FROM: Alexandria Bingham, City Clerk

SUBJECT: Grave Pricing for Greenwood Cemetery

INTRODUCTION:

- At the January 25, 2021 City Commission Meeting a resolution was passed by a 7-0 vote for the suggested grave site release of the 14 graves in Section C, row 18-A. Within that resolution the City Commission also charged the GCAB with the duty of evaluating the current grave prices and providing the Commission with a recommendation before the next release of graves.
- The Greenwood Cemetery Advisory Board has been highly motivated to evaluate and bring this issue to the City Commission. Increasing grave prices would assist GCAB with their financial goals for the Perpetual Care Fund, which would allow for the Historic Greenwood Cemetery to make progress towards being able to cover the cost of standard maintenance and operations with less of an impact on the tax payers of the community.
- GCAB spent significant time thinking about and discussing the matter at the meetings held on February 5, 2021 and March 5, 2021.

BACKGROUND:

- In July 2019 the Greenwood Cemetery Advisory Board evaluated grave prices and recommended keeping the price per plot at the current rate of \$3,000. At that price point even if all remaining available graves are sold at the rate of \$3000 per space, the Greenwood Cemetery's Perpetual Care Fund would not reach its financial goal.
- The GCAB took into consideration three different rates for the available plots and considered the pros and cons of each rate. The rates were: \$3000/space, \$4000/space & \$5,000/space, based on the sale of 175 plots.
- At the February 5, 2021 meeting it was evident that the GCAB had many ideas about grave pricing that needed to be organized. City Clerk Bingham then created homework sheets for the board members to complete prior to the March meeting. This assignment allowed for the creation of a combined summary on GCABs thoughts and recommendations on grave pricing.
- At the March 5, 2021 meeting the GCAB examined the cumulative responses of their homework and were able to solidify their recommendation for the commission.
- After weighing the pros and cons GCAB decided to support increasing the grave prices to \$4,000.
- Further GCAB considered when the increase should be effective. The consensus was for the increase to be effective immediately. Board Member Schreiner offered the idea of making a later effective date for the grave price, but the rest of the board supported the increase effective immediately for the contributions to the Perpetual Care Fund.

- The idea of a later effective date for grave price increase, such as April 1, 2021, was also supported in a later discussion with the City Clerk by Cheri Arcome of Creative Collaborations, the Cemetery Management Contractor.

LEGAL REVIEW:

- None

FISCAL IMPACT:

- The Greenwood Cemetery Advisory Board is interested in the goal of achieving a perpetual care fund balance of \$2,000,000 so that the cemetery can be more self-sufficient when it comes to providing the funds for basic maintenance and care of the grounds. However the demand, and quality of product must also be taken into consideration as well as the price of plots at nearby/comparable cemeteries. Even with the most aggressive increase the Perpetual Care Fund may not reach its goal of \$2M.

*Based on the sale of 175 plots.

Unit Price	Contributions	Current Balance	Projected Balance	Goal	Difference
\$3,000.00	\$525,000.00	\$922,431.25	\$1,447,431.25	\$2,000,000.00	(\$552,568.75)
\$4,000.00	\$700,000.00	\$922,431.25	\$1,622,431.25	\$2,000,000.00	(\$377,568.75)
\$5,000.00	\$875,000.00	\$922,431.25	\$1,797,431.25	\$2,000,000.00	(\$202,568.75)

PUBLIC COMMUNICATIONS:

- GCAB virtual meeting notices & agendas have been posted regularly on the City's website. There haven't been any members of the public attending or making public comment at the GCAB meetings.
- Cheri Arcome of Creative Collaborations did communicate that a few more people have been reaching out to her lately with concerns and to inquire about available grave spaces before the increase takes effect. Arcome also stated that another grave release will be needed in the very near future. The limited availability of graves has been a deterrent to some recent sales inquiries.

SUMMARY

- The GCAB has the greatest support towards the increase of Greenwood Cemetery grave prices to \$4000, but would like the Commission's thoughts on maintaining the price of \$3000 or a more aggressive increase to \$5000. The GCAB also wishes to gain insight on how important the perpetual care fund balance goal of \$2M is to the Commission to help GCAB align their priorities.

ATTACHMENTS:

- GCAB DRAFT Minutes from March 5, 2021.
- March 5, 2021 GCAB Grave Price Agenda Packet Documents
- Excerpt from the 2021 Fee Schedule, City Clerk's Office, Greenwood Cemetery

SUGGESTED RESOLUTION:

- To increase the price of the plots in Greenwood Cemetery that accommodate one full burial or up to 3 cremains from \$3000 to \$4000 effective immediately upon passage by the Commission, and for the new rate to be applicable to all currently released graves and future grave releases.

**Greenwood Cemetery Advisory Board
Meeting Minutes
Friday, March 5, 2021, 10 A.M.
Virtual Meeting**

I. CALL TO ORDER

Linda Buchanan, Chair, called the meeting to order at 10:00 A.M.

II. ROLL CALL

Present: Chair Linda Buchanan (location: Birmingham, MI)
Pam DeWeese (location: Birmingham, MI)
Linda Peterson (joined 10:05 a.m.)(location: Birmingham, MI)
Laura Schreiner (location: Birmingham, MI)
George Stern (location: Birmingham, MI)
Margaret Suter (location: Birmingham, MI)

Absent: Joseph Vercellone

Administration: City Clerk Alexandria Bingham; Museum Director Leslie Pielack

Guests: None

III. APPROVAL OF THE MINUTES

A. Review of the Minutes of February 5, 2021

MOTION: by DeWeese, seconded by Suter:

To approve the minutes of February 5, 2021.

VOTE: Yeas, 7
Nays, 0

IV. UNFINISHED BUSINESS

A. Grave Pricing Evaluation and Recommendation

City Clerk Bingham reviewed the item.

The GCAB concurred that City Clerk Bingham should submit the spreadsheet containing the GCAB's comments and considerations to the City Commission as part of the grave pricing evaluation and recommendation agenda item.

MOTION: by Shriner, seconded by Stern:

To recommend the Commission authorize changing the grave prices in Greenwood Cemetery to \$4,000 based on the supporting documentation which shall be included in the GCAB's report to the Commission, and to present all pricing options to the Commission.

VOTE: Yeas, 6
Nays, 0

Some Board conversation ensued about when they would recommend the resolution go into effect.

Chair Buchanan said increasing the price immediately upon approval by the Commission would allow the City to increase its contribution to the perpetual care fund.

Ms. Shriner said she would recommend making the price increase effective 30 days after approval by the Commission in case there are sales being negotiated at the current price.

The majority of the GCAB concurred with Chair Buchanan.

MOTION: by Suter, seconded by Peterson:

To include the condition that the price increase would be effective immediately upon passage by the Commission and applicable to all currently released graves and future grave releases.

VOTE: Yeas, 5
Nays, 1 (Shriner)

B. Review of Greenwood Cemetery Rules & Regulations

V. NEW BUSINESS

None.

VI. REPORTS

- A. Financial Reports
- B. Cemetery Sales & Activity
- C. Clerk's Office Update
- D. City Managers Report (January)

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

There were no public comments.

VIII. BOARD COMMENTS

IX. ADJOURN

Ms. Buchanan adjourned the meeting at 11:42 AM.

Next meeting: April 9, 2021

DATE: February 26, 2021

TO: Greenwood Cemetery Advisory Board

FROM: Alexandria Bingham, City Clerk

SUBJECT: Grave Price Evaluation and Recommendation Memo

INTRODUCTION:

- At the January 25, 2021 City Commission Meeting a resolution was passed by a 7-0 vote for the suggested grave site release of the 14 graves in Section C, row 18-A. Within that resolution the City Commission also charged the GCAB with the duty of evaluating the current grave prices and providing the Commission with a recommendation before the next release of graves.
- GCAB is highly motivated to evaluate and bring this issue to the City Commission due to the financial goals for the Perpetual Care Fund which would allow for the Historic Greenwood Cemetery to make progress towards being able cover the cost of standard maintenance and operations with less of an impact on the tax payers of the community.

BACKGROUND:

- In July 2019 the Greenwood Cemetery Advisory Board evaluated grave prices and recommended to keep the price per plot at the current rate of \$3,000. If all remaining available graves are sold at the rate of \$3000 pre space the Greenwood Cemetery's Perpetual Care Fund would not reach its financial goal.

LEGAL REVIEW

- Not yet obtained.
- The Greenwood Cemetery Operational Procedures and Regulations will be adjusted in accordance with any decision made by the Commission.

FISCAL IMPACT

- The Greenwood Cemetery Advisory Board is interested in the goal of achieving a perpetual care fund balance of \$2,000,000 so that the cemetery can be more self-sufficient when it comes to providing the funds for basic maintenance and care of the grounds. However the demand, and quality of product must also be taken into consideration as well as the price of plots at nearby/comparable cemeteries.

*Based on the sale of 175 plots.

Unit Price	Contributions	Current Balance	Projected Balance	Goal	Difference
\$3,000.00	\$525,000.00	\$922,431.25	\$1,447,431.25	\$2,000,000.00	\$552,568.75
\$4,000.00	\$700,000.00	\$922,431.25	\$1,622,431.25	\$2,000,000.00	\$377,568.75
\$5,000.00	\$875,000.00	\$922,431.25	\$1,797,431.25	\$2,000,000.00	\$202,568.75

PROCESS

- The City Clerk's office will provide information to GCAB to consider.
- GCAB will weigh the pros and cons of the proposed increases, how a change may affect the market and make a decision in the best interest of the Cemetery, City & its constituents.
- GCAB will finalize their recommendation for the City Commission to review.

ATTACHMENTS:

- GCAB Members cumulative responses on homework assigned from the February meeting.
- Current Grave Purchase Comparison
- August 2019 Grave Price Report
- August 16, 2019 GCAB Minutes
- CRAINS October 2020 article on Cremation becoming the "norm"

SUGGESTED RESOLUTION:

To direct the City Clerk to finalize a report with the recommendations of the Greenwood Cemetery Advisory Board on grave pricing to the Commission for a final decision on current grave prices for the Historic Greenwood Cemetery.

DRAFT RESOLUTION TO THE COMMISSION:

To recommend that the City Commission:

- A. Resolution to retain the current grave prices at \$3,000 per grave
- OR
- B. Resolution to increase the purchase price to \$4,000 per grave
- OR
- C. Resolution to increase the purchase price to \$5,000 per grave

Cemetery Grave Pricing Evaluation – GCAB Homework - Complete Collaboration of GCAB Members
REMEMBER NOT TO SHARE YOUR THOUGHTS WITH ANYONE UNTIL THE NEXT PUBLIC GCAB MEETING

*Return your thoughts to **Alex only** at your earliest convenience

*Data calculated by the sale of 175 plots

Option	Price per unit	Contributions to Perpetual Care Fund	Projected Balance of Perp Care Fund (without calculating interest)	Difference from the 2M goal
A	\$3000	\$525,000	\$1,447,431	\$552,569
B	\$4000	\$700,000	\$1,622,431	\$377,569
C	\$5000	\$875,000	\$1,797,431	\$202,568
Option A		Option B		Option C
Potential Positive Impacts <ul style="list-style-type: none">Competitive with area plotsLower cost will help drive quantity of salesGivenStatus QuoNo changeIt is in keeping with local cemetery pricing, particularly with the restrictions (both the marker restrictions and the resale restrictions) are considered.Price can still be adjusted upward.Highly AffordableA would keep graves most accessible to more people		Potential Positive Impacts <ul style="list-style-type: none">Slightly higher than comparable plots in the area, but not unreasonableHigher cost reflects exclusivity of cemeteryHelps better build our Perpetual Care FundHigher % of funds toward self-sustainability = higher % of interest =greater % of expenses the cemetery can payNot big difference produce high fundsThis gets the contributions into the Perpetual Care Fund closer to the mark, but still somewhat in alignment with local pricing.Price can still be adjusted upward.Very affordableFewer years needed to reach self-sustainability for the cemeteryLess need to push sales to reach goalsAllows for potential plot availability for future residentsB strikes a balance between raising additional funds and making the graves accessible. It keeps us more in line with other cemeteries.The amount may be increased in the future.		Potential Positive Impacts <ul style="list-style-type: none">Greatest impact of raising perpetual care fundsHigher % of funds toward self-sustainability=higher% In interest earned yields greater % of expenses the cemetery can payCloser to fundsGets more from each sale into the Perpetual Care Fund.We wouldn't have to reconsider the price for a longer time.Slightly expensive compared to other cemeteries in the area, but far less than the prices that were paid during the years of private sales of plotsReach our sustainability goal very quicklyLess need to push sales to reach goalsFewer sales can cut overhead expenses for sales personAllows for potential plot availability for future residentsC brings us closest to our two million dollar goal.It would be the fee for the foreseeable future since it is already somewhat out of line with other cemeteries.
Potential Negative Impacts <ul style="list-style-type: none">Limits our ability to increase Perpetual Care FundsMay sell more plots for ultimately least net profitDiminishes the exclusivity of cemetery; given the history, charm and importance to the city, shouldn't it be harder to acquire a plot?Less money in endowment fund =less interest=less % cemetery can contribute to expensesLess money in endowment fund = less interest=less % the cemetery can contribute to expensesNo gain in fundsDepending on market conditions and demands, we may have to review both the price and release of grave sites more frequently.We may need to look to other options to fund the Perpetual Care Fund or never have the Greenwood Cemetery become fully self sufficient (even with the 2mil funding, we don't have a guarantee that the fund will always be self sufficient/there not be partial reliance on General funds to support the CemeteryMany years to reach goal incurring long term salary expenses for sales person orMust sell all remaining plots quickly to reach the goal for self-sustainability in a timely fashion leaving nothing left for future BirminghamitesQuick sales mentality could incur expenses such as fees for advertising outside of the local areaA would not increase the accumulation of funds necessary to reach the \$2 million goal.		Potential Negative Impacts <ul style="list-style-type: none">Still short of allowing us to generate maximum Perpetual Care FundsIncreased price may deter some from buying plots in GreenwoodRise in price of \$1000 but if potential customers can pay \$3000 a \$1000 increase is not unreasonable\$1000 differenceDepending on market conditions and demands, we may have to review both the price and release of grave sites more frequently.Several years to reach goalsB, obviously, will not raise as much money as C but more than A.		Potential Negative Impacts <ul style="list-style-type: none">Price would be highest in the areaFar fewer sales will likely occur at the price pointRise in price of \$2000Too highSales may slow downFor the services offered, this may be a bad PR move for Birmingham.If sales really slow down, it is harder/bad PR to lower the price in the near future.Fewer salesC is at the high end of the local market. The price makes the graves less accessible and could reduce demand when we are dependent on sales to reach our fund goal.

Which option are you in favor of and why?

Greatest support to \$3000

A-\$3000 as it is more in keeping with the current local market for the product offered. This could be used as a favorable PR move if we choose to try to have an article written about the cemetery and include the pricing; a significant price increase would more likely than not be seen as bad PR and would probably get press even if we didn't want it. Again, this does not restrict a price change in the future. Also, we can look at other ways to add to the Perpetual Care Fund. Remember, the 2million is a goal – there is no surety that even if that mark is reached the income from the Fund will result in the cemetery always being self-sufficient.

With regard to price, I am comfortable at the current level, but I could move up to \$4,000 if that was the general consensus.

Greatest Support to \$4000

Given the location of the cemetery, the historical importance to the city, the charm of the surroundings, and competitive analysis of similar cemeteries in the area, Greenwood should increase plot costs to \$4,000. The amount underscores the exclusivity of the cemetery without drastically deterring sales and will allow us to get closer to the Perpetual Care Funds desired.

\$4000-B Raise in price of \$1000 but not an unreasonable price hike. Commission has already raised full burial fees from \$1200-\$1400. Rising prices (inflation) is a day to day reality. Also many families at Greenwood have spent \$4000-\$5000 on monuments alone, not including the previously purchased grave site.

\$4000-B Fair

Having said all of that, Option "B" sale price \$4,000 will probably continue to encourage sales and get us to the \$2M goal. That is the price I'm in favor of and anticipate that the finance department will invest appropriately so we can quickly meet the goal they've set.

Greatest Support for \$5000

I propose that the \$5,000 sale price is what Birmingham needs to charge given the recent "accurate" number of plots available and the perpetual fund goal that was given the cemetery Board by the Finance Dept. Also, \$5,000 was the minimum sale price offered by the private sale sellers.

Local Cemetery Comparisons:

Cemetery Name	Price Per Grave	Clusters of 2-4 graves next to each other	Cremation or Casket	Monument
Oakview- Royal Oak	\$2,995 - \$3,495	Yes they have clusters of 2-4	Maximum of 1 casket and 2 cremations	Need 2 graves for a monument. Flat monument is no extra charge but upright monument is an additional \$500 per grave due to easement
St Hugo of the Hills Columbarium <i>Bloomfield Hills</i>	\$4,000 - 1 urn \$5,000 - 2 urn "companion" niche	n/a - no gravesites, ground burials or caskets. Multiple adjacent niches available	Cremations only	None. Cremains are housed in a series of niches built into stone walls along connected pathways. Each niche is 11"x11"x17" deep and can hold 1 or 2 urns. Name and years of birth and death in bronze letters on niche front.
Holy Sepulchre	\$1,995 - \$5,000 depending on the section	Yes the have clusters of 2, 4 & 6	Maximum of 1 casket and 5 cremations in one grave	Monuments can be upright or flat. Have to have a minimum of 2 graves for monument
Roseland Park Cemetery <i>Berkley</i>	\$2,295 - \$3.795	Yes - anything from 2-6	Maximum1 casket + 1 cremation per gravesite	Flat or upright monuments depending on the section. Upright monument requires at least two gravesites.

Information collected 1/29/2021



MEMORANDUM

City Clerk's Office

DATE: August 9, 2019
TO: Greenwood Cemetery Advisory Board
FROM: J. Cherilynn Mynsberge, City Clerk
SUBJECT: Recommendation to City Commission on Cemetery Plot Pricing

On July 8, 2019, the City Commission considered the GCAB's recommendation to release 60 additional cemetery plots for sale. The Commission took no action on the recommendation. Following discussion the Commission asked that the GCAB study the market price of cemetery plots and make a recommendation on what the price of Greenwood Cemetery plots should be.

Additionally, the Commission asked that the GCAB evaluate and make a recommendation on whether or not additional plots in Sections B & C should be sold.

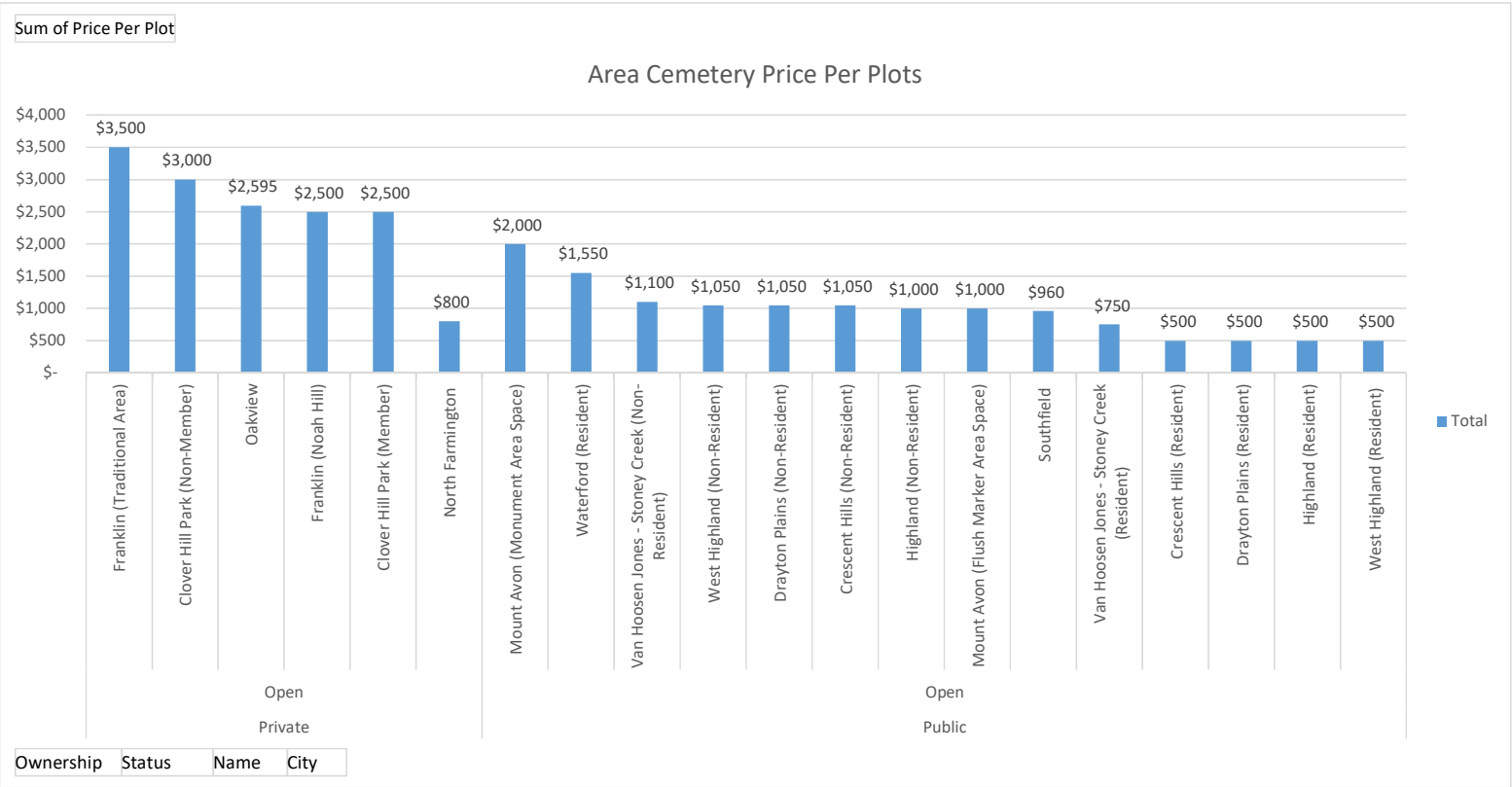
On the issue of market price, the Assistant to the City Manager, James Gallagher conducted a survey of cemeteries in Oakland County and presented his findings in the attached data worksheet and graph. This data should assist you in evaluating the current market price for cemetery plots.

Also attached is an excerpt from the minutes of the July 8, 2019 City Commission meeting detailing the Commission's discussion.

Name	Address	City	Ownership	Telephone #	Contact Person	Dimensions (acreage)	Historic Designation(s)	How Many Plots Total	How Many Spots Left	Sold	Price Variable	Price Per Plot	How Many Cremitaory Remains 1 Plot	Mngt Services	Sales Staff	Status
White Chapel Memorial Park	621 W. Long Lake Rd	Troy	Private	248-362-7693	Steve (Supt.) - left v/m	200 acres						N/A				Didn't Respond
					Ashley (Sales Mngr.)								4 human remains in 1 plot (Requires 2,3,4 rights of internments to be purchased) allow benches above ground to add 4 people in bench			
Oakview	1032 N. Main	Royal Oak	Private	248-541-0139		94 acres	No	59,000 people currently burried	10 acres	Not Public Info	Range	\$ 2,595		Internally	Internally	Open
Acacia Park	31300 Southfield Rd	Beverly Hills	Private	248-646-4228	Sales Mngr. out had a heart attack, spoke with Betty							N/A				Didn't Respond
Roseland Park	29001 N. Woodward	Berkley	Private	248-541-1154	(Ikera?) Contact out of office until Aug. 1	135	Yes					N/A				Didn't Respond
Franklin (Noah Hill)		Franklin	Private	248-200-9493	Steve Bancroft (Cemetary Dir.) cell: 313-570-1811	7	Yes	6,000	about 800	N/A	Noah Hill	\$ 2,500	3 remains per plot	Yes - Huron Cemetary Maitenance (sexton) all burials done by them	Steve (not looking for more work)	Open
Franklin (Traditional Area)		Franklin	Private	248-200-9494	Steve Bancroft (Cemetary Dir.) cell: 313-570-1812					N/A	Traditional Section	\$ 3,500				Open
Clover Hill Park (Member)	2425 E. Fourteen Mile	Birmingham	Private	248-723-8884	Vickie Straitz	60-65	No	26,000	6,500	5,000	Member	\$ 2,500	1 invid. Remains only in designated creamtion area	internment charge \$4,000 (lowering, tent, flowers in perpetuity, etc)	executive sales director handles all sales	Open
Clover Hill Park (Non- Member)	2426 E. Fourteen Mile	Birmingham	Private								Non-Member	\$ 3,000				Open
Royal Oak Cemetary		Royal Oak	Public	248-246-3300	Deann Morris (DPS/Recreation Clerk)	N/A	No	N/A	N/A			N/A	No Policy	In House	In House	Didn't Respond
Ottawa Park	6180 Dixie Hwy	Pontiac	Public	248-623-7705	Melissa	60-80	No					N/A				Didn't Respond
Oak Hill	216 University Dr	Pontiac	Public	248-623-7705	Melissa	~ 200	Yes					N/A				Didn't Respond
Southfield	Civic Center Dr. between Lasher/ Berg	Southfield	Public	248-796-4630	John Thompson/ Kevin Frantz	10	Yes	1,000	300	N/A		\$ 960	No Policy	In House	In House	Open
Highland (Resident)		Highland Twp	Public	248-887-6700	Mike Willenburg	13.35	No	6600	337	1,937	Resident	\$ 500	up to 4 for cremationed remains per plot or 1 burrial and 3 remains on top	Mike Willenburg	Mike Willenburg	Open
Highland (Non- Resident)		Highland Twp	Public								Non-Resident	\$ 1,000				Open

West Highland (Resident)		Highland Twp	Public	248-887-6700	Mike Willenburg (Sexton) Tammy (Clerk)	3.75	Yes	2750 (1234)	297	1,219	Resident	\$ 500	up to 4 for cremated remains per plot or 1 burrial and 3 remains on top	Mike Willenburg	Mike Willenburg	Open
West Highland (Non-Resident)		Highland Twp	Public								Non-Resident	\$ 1,050				Open
Crescent Hills (Resident)		Waterford Twp	Public	248-618-7437	Mary	10.67	No	2,964	1,364	1,600	Resident	\$ 500	1 traditional burial with 1 additional "cremains"	Internal Staff	Internal Staff	Open
Crescent Hills (Non-Resident)		Waterford Twp	Public								Non-Resident	\$ 1,050				Open
Waterford (Resident)		Waterford Twp	Public	248-618-7437	Mary	2.37	In Process	945	26	919	Resident	\$ 500	1 traditional burial with 1 additional "cremains"	Internal Staff	Internal Staff	Open
Waterford (Resident)		Waterford Twp	Public								Non-Resident	\$ 1,050				Open
Drayton Plains (Resident)		Waterford Twp	Public	248-618-7437	Mary	4.98	In Process	1,921	673	1,248	Resident	\$ 500	1 traditional burial with 1 additional "cremains"	Internal Staff	Internal Staff	Open
Drayton Plains (Non-Resident)		Waterford Twp	Public								Non-Resident	\$ 1,050				Open
Van Hoosen Jones - Stoney Creek (Resident)	Tienken & Sheldon	Rochester Hills	Public	248-652-4713	Calvin Leach (Sexton) Laura Douglas (Records Clerk)	16.8	No	12,237	7,618	4,619	Resident	\$ 750	Traditional burial section: 4 cremains per space Traditional burial section w/ traditional burial: 2 cremains on top	Calvin Leach (internal staff)	Calvin Leach	Open
Van Hoosen Jones - Stoney Creek (Non-Resident)	Tienken & Sheldon	Rochester Hills	Public								Non-Resident	\$ 1,100				Open
Oakwood (Resident)		Farmington	Public	248-474-5500	Jen/ Chuck Shute (Dps)	6.7	No	850	No Plots Left only crypts	7 crypts	Resident	\$ 5,000	N/A	DPW	Clerks	Closed
Oakwood (Non-Resident)		Farmington	Public						No Plots Left only crypts		Non-Resident	\$ 9,000				Closed
Novi	25755 Novi Rd	Novi	Public	248-735-5611	Jeff Muck	2.4	No	948	No Plots Left	0		\$ -	N/A	N/A	N/A	Closed
Knapp	43005 Nine Mile Rd	Novi	Public	248-735-5611	Jeff Muck	0.5	No	87	No Plots Left	0		\$ -	N/A	N/A	N/A	Closed
North Farmington		Farmington	Private	248-887-6700	Mike Willenburg							\$ 800	1 grave plus 2 cremains or 3 cremains	Mike Willenburg	Mike Willenburg	Open
Mount Avon (Flush Marker Area Space)		Rochester	Public	248-651-90610	Jessica Wawrzynski		Yes				Flush Marker Area Space	\$ 1,000				Open
Mount Avon (Monument Area Space)		Rochester	Public								Monument Area Space	\$ 2,000				Open

Row Labels	Sum of Price Per Plot	
Private		
Open		
Franklin (Traditional Area)	\$	3,500
Clover Hill Park (Non-Member)	\$	3,000
Oakview	\$	2,595
Franklin (Noah Hill)	\$	2,500
Clover Hill Park (Member)	\$	2,500
North Farmington	\$	800
Public		
Open		
Mount Avon (Monument Area Space)	\$	2,000
Waterford (Resident)	\$	1,550
Van Hoosen Jones - Stoney Creek (Non-Resident)	\$	1,100
West Highland (Non-Resident)	\$	1,050
Drayton Plains (Non-Resident)	\$	1,050
Crescent Hills (Non-Resident)	\$	1,050
Highland (Non-Resident)	\$	1,000
Mount Avon (Flush Marker Area Space)	\$	1,000
Southfield	\$	960
Van Hoosen Jones - Stoney Creek (Resident)	\$	750
Crescent Hills (Resident)	\$	500
Drayton Plains (Resident)	\$	500
Highland (Resident)	\$	500
West Highland (Resident)	\$	500
Grand Total	\$	28,405



**GREENWOOD CEMETERY ADVISORY BOARD
MEETING MINUTES
FRIDAY, AUGUST 16, 2019 AT 8:30 AM
MUNICIPAL BUILDING, ROOM 205, 151 MARTIN**

I. CALL TO ORDER

Chairperson Gehringer called the meeting to order at 8:30 a.m.

II. ROLL CALL

Present: Linda Buchanan, Vice Chairwoman
Darlene Gehringer, Chairwoman
Linda Peterson
Laura Schreiner
Margaret Suter

Absent: Kevin Desmond
George Stern

Administration: Administrative Transcriptionist, Verna Chapman and James Gallagher, Asst.
to the City Manager

III. APPROVAL OF MINUTES

A. Approval of meeting minutes of June 7, 2019

MOTION: Motion by Margaret Suter, seconded by Linda Buchanan:

To approve the minutes of June 7, 2019 as corrected:

- Page 3, Ms. Schreiner's comment was amended.
- Page 3, Amended to include Ms. Genringer's comment.
- Page 5, Amended to replace the word mom with mother.
- Page 7, Corrected by removing end parenthesis.
- Page 7, Corrected by removing a duplicate "nay".
- Page 8, Amended to replace Advisor Schreiner with Mrs. Schreiner.

VOTE: Ayes, 5
Nays, 0
Absent, 2

IV. NEW BUSINESS

A. Election of Chairperson

Chairperson Gehringer opened the floor to nominations for Chairperson.

Nominated by Margaret Suter, seconded by Laura Schreiner

To elect Darlene Gehringer chairperson of Greenwood Cemetery Advisory Board for one one-year term.

VOTE: Ayes, 5
Nays, 0
Absent, 2

B. Election of Vice Chairperson

Chairperson Gehringer opened the floor to nominations for Vice Chairperson.

Nominated by Margaret Suter, and seconded by Linda Peterson

To elect Linda Buchanan as Vice Chairman of the Greenwood Cemetery Advisory Board for one one-year term.

VOTE:	Ayes,	5
	Nays,	0
	Absent,	2

Ms. Peterson asked if there is a rule that governs attendance of board members; if so, how is it applied.

Ms. Gehringer referred the question to City Clerk Mynsberge (in absentia) who tracks the attendance of board members.

C. Approval of Request for Proposals (RFP) for Ground Penetrating Radar of Greenwood Cemetery.

Assistant to the City Manager Gallagher presented this item.

Chairperson Gehringer asked if the liability insurance of \$1,000,000.00, professional liability, and pollution liability of \$1,000,000.00, and owners/contractors protective liability of \$3,000,000.00 per occurrence was excessive.

Margaret Suter expressed that it is probably standard language to meet the City's requirements and advised the board to accept the limits outlined in the RFP. She went on to say that the board should only want to consider good solid companies that are not affected by the RFP requirements.

Laura Schreiner agreed with Ms. Suter and asked for a response from the City.

Assistant City Manager Gallagher stated that the language used was boilerplate language approved by the City's legal department to be used with any request for proposal. He further stated that pollution control and professional liability insurance limits could change depending on the type of service that would be provided. Mr. Gallagher agreed to verify the proposed limits.

Chairperson Gehringer referred to the City Clerk to review the limits and determine if adjustments should be made. She expressed that she does not want the bid to fail because insurance limits were a factor.

Linda Buchanan asked how long would the RFP stay out for bid.

Margaret Suter noted that there were no dates on any of the documents presented in the proposed request for approval.

Chairman Gehringer suggested that a 30-day period be used for bid submittals.

Laura Schreiner asked what the board did the last time it had an RFP out for bid. She also reminded everyone that time must be allowed for the selection to go through this board, the

planning board, and the city commission. She also suggested a “no later than” date be set to allow for the project award and commencement by the spring thaw of 2020.

Linda Buchanan and Chairperson Gehringer thought that previous request for proposals had been out for bid for 30 days. However, Ms. Buchanan felt that the date for contract execution should be expressed as “TBD”, because of the variables involved.

The board agreed with the chairperson by consensus that:

- Contract execution would be 14 days after contractor selection.
- Project commencement would be scheduled for April 2020.
- Project completion would be set for May 2020.

MOTION: Motion by Ms. Suter, seconded by Ms. Peterson
To recommend approval of the Request for Proposal for the Ground Penetrating Radar of Greenwood Cemetery as revised.

VOTE: Ayes, 5
Nays, 0
Absent, 2

D. Evaluation and Recommendation to City Commission:

1. Market Pricing for Cemetery Plots

Assistant to the City Manager Gallagher presented this item.

- a. Laura Schreiner asked if there was feedback from Ms. Arcome as to whether or not potential purchasers chose not to buy at Greenwood when price was a factor.
- b. There was no data available to support any input from Ms. Arcome.
- c. Based on the data presented comparing regional cemetery pricing, the board concluded that the current pricing at Greenwood was fair and reasonable.

MOTION: Motion by Ms. Schreiner, seconded by Vice Chairperson Buchanan
To recommend, based on the data presented, that the City Commission keep pricing for cemetery plots at \$3,000.00 per plot.

VOTE: Ayes, 5
Nays, 0
Absent, 2

2. Future of Sales in Sections B and C

Linda Buchanan gave a brief overview of what occurred at the City Commission meeting of July 08, 2019. Margaret Suter, Laura Schreiner, and George Stern also attended.

- Prior to this meeting, the GCAB recommended selling 60 plots in Sections B and C, stopping at 300, conducting a reanalysis of sales at 270.
- There was hesitation from the Commission with respect to selling in Section B.
- Ms. Buchanan was in favor of revisiting the analysis and maybe only releasing plots in Section C. She also felt that the situation could be re-evaluated at any time and more plots could be released for sale at a later date.
- The GCAB recommended that the City Commission be prudent in making sure there are plots available for future purchases.

- Ms. Shreiner reminded the board that this decision had to go through the GCAB cycle and the City Commission.
- Ms. Suter expressed that if the cemetery fills up, Section B may be revisited. The focus should be on Section C and the other remaining sections.
- Commissioner Hoff commented there were 57 plots in other sections of the cemetery that should be sold before selling in Section B and C. No one could affirm that number.
- Section A was designated pure historical and there are no plots available for sale.
- There are many Birmingham pioneers in Section B, suggesting it is historical as well.
- Approximately, 206 plots have been sold in Section B.
- It was noted that overall sales have slowed down to a normal pace at this time.

MOTION: Motion by Vice Chairman Buchanan, seconded by Ms. Peterson
To recommend for the City Commission approval that sales in Section B be suspended and 30 plots in Section C be released for sale.

VOTE: Ayes, 5
Nays, 0
Absent, 2

V. UNFINISHED BUSINESS

Items under Unfinished Business will be presented as a status update to the Board and may not require action at this time.

A. Finalization of Master Plan/Historical Collaboration Priority List

Chairperson Gehringer presented a list of Master Plan/Collaborative Preservation Projects from the City Commission and the Greenwood Cemetery Advisory Board prioritized the list as follows:

1. Ground Penetrating Radar Services (in process)
2. Potter Field (in progress)
3. Digitizing and Mapping Cemetery Records (in process)
4. Match Cemetery Records with Headstones
5. Historic Headstone Inventory
6. Update Greenwood
7. Alternate Sources of Revenue
8. Review Contract with Elmwood
9. Long-term financial status
10. Maintenance and Landscaping

MOTION: Motion by Ms. Suter, seconded by Ms. Peterson:
To recommend the removal of Columbaria from the Finalization of Master Plan/Historical Collaboration Priority List.

VOTE: Ayes, 5
Nays, 0
Absent, 2

MOTION: Motion by Vice Chair Buchanan, seconded Ms. Peterson
To recommend the Finalized Master Plan/Historical Collaboration Priority List as revised.

VOTE: Ayes, 5
 Nays, 0
 Absent, 2

VI. FINANCIAL REPORT

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

VIII. BOARD COMMENTS

- Ms. Buchanan noted that at the July 8, 2019 City Commission meeting, the commission had information that the Greenwood Cemetery Advisory Board did not have.
- Ms. Suter would like to see the GCAB copied on all information that the City Commission receives regarding the Cemetery.

IX. ADJOURN

The meeting adjourned at 10:46 a.m.

NEXT MEETING: OCTOBER 4, 2019

Cheryl Arft, Acting City Clerk/vc

Greenwood Cemetery Advisory Board:

The powers and duties of the Greenwood Cemetery Advisory Board is to provide the following recommendations to the City Commission:

1. Modifications: *As to modifications of the rules and regulations governing Greenwood Cemetery.*
2. Capital Improvements: *As to what capital improvements should be made to the cemetery.*
3. Future Demands: *As to how to respond to future demands for cemetery services.*

Section 34-30 (g) of the Birmingham City Code

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October 18, 2020 12:06 AM

Cemeteries plot their future as cremation becomes the norm

KIRK PINHO . □

Mt. Elliott Cemeteries

Mt. Olivet Cemetery is Detroit's largest, built in 1888 on over 300 acres.

If you die in the next 20 years, the chances are good that you're going to be cremated.

Data from the National Funeral Home Association says that by 2040 in Michigan, 83.6 percent of the people who die will be cremated, compared to 47.3 percent in 2010. And according to the NFHA, the median cost for a cremation funeral with an urn is \$6,645, compared to \$9,135 for a funeral with a burial, including the cost of the casket and the burial vault.

That's causing cemeteries and funeral homes to search for new revenue streams.

"It does affect cash flow," said Bert Edquist of Mission Hills Memorial Gardens in Niles in southwest Michigan. "But also it gives you the opportunity to make more burials because you're using smaller spaces for the cremation burials. Your land is producing more income, but you're not getting that income as quickly as you did before. Basically it's going to make the cemeteries last longer."

Much of the equation comes down to simple real estate. According to Lawrence Sloane, who is director of Elmwood Cemetery in Detroit and runs Albany, N.Y.-based L. F. Sloane Consulting Group Inc., the average plot for an urn burial is 4 to 6 square feet, whereas a plot for a casket is 24 to 40 square feet. And in general, the smaller the plot, the lower the cost.

Kirk Pinho/Crain's Detroit Business

Elmwood Cemetery is the oldest continuously operating, nondenominational cemetery in Detroit.

In addition, an accepted industry standard is that only about 25 percent of cremated remains end up in cemeteries at all, with the rest kept on mantles or scattered at favorite and sentimental spots as just some examples, Sloane said.

Translation: Even less revenue for cemeteries.

"Cemeteries have to work to present themselves as relevant places to remember your loved ones," Sloane said of the impending cremation surge, which has been caused by a host of factors.

Among them: environmental concerns with things like embalming and other factors; more geographically diverse families; greater religious acceptance of the practice, as well as a general shift away from organized religion overall; and economics.

"Can that (cremation trend) change? Sure," said Leonard Turowski, a fourth-generation funeral home owner with operations in Livonia and Canton Township. "Forever and ever, it was always strictly burials and then all of a sudden cremation came in and maybe it can change going forward. It is especially challenging for cemetery owners."

Kirk Pinho/Crain's Detroit Business

Mt. Elliott Cemetery in Detroit was consecrated in 1841 — just four years after Michigan became the 26th state.

To make up the revenue lost from the more expensive casket burials and selling larger plots of land for them, cemeteries have had to get creative, said Michael Chilcote, general manager and COO of the nonprofit Mt. Elliott Cemeteries, which oversees the Mt. Elliott and Mt. Olivet cemeteries in Detroit as well as Resurrection Cemetery in Clinton Township, All Saints Cemetery and The Preserve at All Saints in Waterford Township and Guardian Angel Cemetery in Rochester.

That includes things like cremation gardens, cremation niches, small buildings for up to 20 sets of cremated remains, cremation benches and other such memorials. All those help make up for lost burial plot revenue.

"There are a lot of different ways you can accommodate a cremation space," Chilcote said. "Really the cremation trend has opened up a lot of innovation — the only thing is getting information to the public about what their options are."

Mt. Olivet cremation garden

Mt. Elliott Cemeteries

Not only is that revenue helpful in the short term, but it also provides a lasting benefit.

David Harns, interim communications director for the Michigan Department of Licensing and Regulatory Affairs, said there are just over 200 cemeteries — 105 greater than 10 acres and 96 under 10 acres — that are required to have so-called perpetual care funds, which are trusts that ensure the upkeep of the cemetery property after the last burial plots are sold.

Under Public Act 251 of 1968, 15 percent of burial, entombment and columbarium rights sold are deposited into the cemetery's perpetual care fund; only interest and dividends from those funds can

be used and they are set up for the long-term care of the property.

But Sloane says the funds overall are not well-funded enough.

"That was not adequate and there are very few cemeteries in Michigan that are properly funded," he said. "Seven hundred have already been given back to municipalities. Very few were actually built by cities; they just went bankrupt and the cities took them over."

Larry Michael, vice president of Midwest operations for Houston-based Park Lawn Corp., which owns and manages 28 cemeteries in Michigan, said the cremation increase has been felt in those funds.

"States have these because at some point, when there is no more revenue coming in because there is nothing left to sell, there is this fund," Michael said. "With cremation rates growing, that has impacted it. But every interment right has a percentage, a cremation has a percentage that goes into a perpetual care fund. So some cemeteries, the funds may have actually increased, depending on the product they've been selling."

According to the [Michigan Department of Community Health](#), pre-COVID-19, the state averaged 8,201 deaths per month between January 2019 and February 2020, although that figure during the pandemic has increased to an average of 8,924 per month, with a high of 13,049 deaths in April and 5,399 reported in September.

And Chilcote said it's unlikely that new, sprawling cemeteries — akin to the 300-acre Resurrection Cemetery in Clinton Township — will be developed regularly in the future given the cremation trend. Some of the newer ones are Glen Eden East, developed in 2004 along 26 Mile Road in Macomb Township; the federal Great Lakes National Cemetery in Holly, established in 2005; and Guardian Angel Cemetery in Rochester, developed in 2003 by Mt. Elliott Cemetery Association.

"Those days of 300-acre cemeteries are done," he said.

Inline Play

Source URL: <https://www.crainsdetroit.com/real-estate/cemeteries-plot-their-future-cremation-becomes-norm>

FEE SCHEDULE

CITY CLERK'S OFFICE	EXISTING FEE
<u>Day Care (See Child Care Facilities)</u>	
<u>Electronic Video Game (14-106)</u>	
Each game, annual fee (subject to additional fees and requirements for regulated use)	\$ 50.00
<u>FOIA fees - See public records policy (attached)</u>	
<u>Fumigation (58-141)</u>	
Fumigation Contractor, annual fee	\$ 50.00
Fumigation permit, per event	\$ 25.00
Insurance (58-144): Standard insurance requirements plus environmental impairment/pollution liability coverage	
<u>Garage Public (54-26) - Annual Fee</u>	\$ 50.00
<u>Going out of Business (State Law)</u>	
Up to 30 days	\$ 50.00
Limit two renewals, each	\$ 50.00
<u>Greenwood Cemetery (126-26)</u>	
Grave space accommodating one full burial or three cremations	\$ 3,000.00
Additional Rights of Burial for cremated remains, each	\$ 750.00
Grave space accommodating two cremated remains	2,000.00
Grave space accommodating one cremated remains	1,000.00
Administrative fee for transfer of grave ownership	\$ 150.00
Interment and disinterment fees:	
Cremation	\$ 750.00
Full Burial	\$ 1,400.00
Foundation charges for markers & monuments:	
Foundation Installment - per linear foot	\$ 125.00
Marker or monument resets:	
Foundation installation charge as per above schedule, plus an hourly charge for removal of old foundation	
Weekend, holiday, and overtime interments. This fee in addition to the normal interment fee charged during regular working hours.	\$ 400.00
<u>Horse Drawn Carriages (122-71)</u>	
Company, annual fee	\$ 50.00
Carriage, each vehicle annual fee	\$ 50.00
Insurance: Standard insurance requirement, with coverage to include premises liability; personal injury liability; products liability; and horse or horses liability. (122-75)	
<u>Hotels/Motels annual fee</u>	\$ 75.00
1-50 Rooms	\$ 300.00
50+ Rooms	\$ 500.00
<u>Initial Merchants: (All types including transfers)</u>	\$ 100.00
<u>Kennels (See Animals)</u>	

Nays, None

- B. Resolution approving the warrant list, including Automated Clearing House payments, dated January 13, 2021, in the amount of \$6,902,069.88.
- C. Resolution approving the warrant list, including Automated Clearing House payments, dated January 20, 2021, in the amount of \$1,403,493.75.
- D. Resolution to set February 22, 2021 as the public hearing date for the Program Year 2021 Community Development Block Grant Program.

01-011-21 (Item A) City Commission Minutes of January 11, 2021

Commissioner Hoff noted a sentence was erroneously duplicated in the minutes. The sentence read "Commissioner Hoff complemented CP Dupuis' letter to residents." She said the sentence should remain on page five and should be struck from page ten.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Sherman:
To approve the City Commission meeting minutes of January 11, 2021.

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

Nays, None

VI. UNFINISHED BUSINESS

01-012-21 Greenwood Cemetery Grave Release

City Clerk Bingham reviewed the item.

Commissioner Hoff spoke in favor of determining whether originally plotted but unused graves in sections D-M might be available for reclamation. She expressed concerns that the continued addition of graves to sections B and C was having a congestive effect on the historic nature of the sections and landscaping and beautification efforts.

Commissioner Host concurred with Commissioner Hoff's that the City should determine what graves might still be available in sections D-M and then proceed accordingly.

MOTION: Motion by Commissioner Host, seconded by Mayor Pro Tem Longe:
To authorize the release of 14 plots available in Section C, Row 18-A for sale in Greenwood Cemetery. Furthermore the City Commission directs the Greenwood Cemetery Advisory Board to evaluate the grave site pricing and return with recommended changes prior to any further release.

Public Comment

In reply to Andrew Haig, City Clerk Bingham confirmed that Greenwood Cemetery can accommodate up to three cremated remains in one grave plot and smaller numbers of cremated remains in smaller or more irregularly-shaped grave plots.

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

Nays, None

01-013-21 Parking at The Pearl

City Planner Cowan summarized the item.

DATE: March 16, 2021

TO: Thomas M. Markus, City Manager

FROM: Alexandria Bingham, City Clerk

SUBJECT: Grave Pricing for Greenwood Cemetery

INTRODUCTION:

- At the January 25, 2021 City Commission Meeting a resolution was passed by a 7-0 vote for the suggested grave site release of the 14 graves in Section C, row 18-A. Within that resolution the City Commission also charged the GCAB with the duty of evaluating the current grave prices and providing the Commission with a recommendation before the next release of graves.
- The Greenwood Cemetery Advisory Board has been highly motivated to evaluate and bring this issue to the City Commission. Increasing grave prices would assist GCAB with their financial goals for the Perpetual Care Fund, which would allow for the Historic Greenwood Cemetery to make progress towards being able to cover the cost of standard maintenance and operations with less of an impact on the tax payers of the community.
- GCAB spent significant time thinking about and discussing the matter at the meetings held on February 5, 2021 and March 5, 2021.

BACKGROUND:

- In July 2019 the Greenwood Cemetery Advisory Board evaluated grave prices and recommended keeping the price per plot at the current rate of \$3,000. At that price point even if all remaining available graves are sold at the rate of \$3000 per space, the Greenwood Cemetery's Perpetual Care Fund would not reach its financial goal.
- The GCAB took into consideration three different rates for the available plots and considered the pros and cons of each rate. The rates were: \$3000/space, \$4000/space & \$5,000/space, based on the sale of 175 plots.
- At the February 5, 2021 meeting it was evident that the GCAB had many ideas about grave pricing that needed to be organized. City Clerk Bingham then created homework sheets for the board members to complete prior to the March meeting. This assignment allowed for the creation of a combined summary on GCABs thoughts and recommendations on grave pricing.
- At the March 5, 2021 meeting the GCAB examined the cumulative responses of their homework and were able to solidify their recommendation for the commission.
- After weighing the pros and cons GCAB decided to support increasing the grave prices to \$4,000.
- Further GCAB considered when the increase should be effective. The consensus was for the increase to be effective immediately. Board Member Schreiner offered the idea of making a later effective date for the grave price, but the rest of the board supported the increase effective immediately for the contributions to the Perpetual Care Fund.

- The idea of a later effective date for grave price increase, such as April 1, 2021, was also supported in a later discussion with the City Clerk by Cheri Arcome of Creative Collaborations, the Cemetery Management Contractor.

LEGAL REVIEW:

- None

FISCAL IMPACT:

- The Greenwood Cemetery Advisory Board is interested in the goal of achieving a perpetual care fund balance of \$2,000,000 so that the cemetery can be more self-sufficient when it comes to providing the funds for basic maintenance and care of the grounds. However the demand, and quality of product must also be taken into consideration as well as the price of plots at nearby/comparable cemeteries. Even with the most aggressive increase the Perpetual Care Fund may not reach its goal of \$2M.

*Based on the sale of 175 plots.

Unit Price	Contributions	Current Balance	Projected Balance	Goal	Difference
\$3,000.00	\$525,000.00	\$922,431.25	\$1,447,431.25	\$2,000,000.00	(\$552,568.75)
\$4,000.00	\$700,000.00	\$922,431.25	\$1,622,431.25	\$2,000,000.00	(\$377,568.75)
\$5,000.00	\$875,000.00	\$922,431.25	\$1,797,431.25	\$2,000,000.00	(\$202,568.75)

PUBLIC COMMUNICATIONS:

- GCAB virtual meeting notices & agendas have been posted regularly on the City's website. There haven't been any members of the public attending or making public comment at the GCAB meetings.
- Cheri Arcome of Creative Collaborations did communicate that a few more people have been reaching out to her lately with concerns and to inquire about available grave spaces before the increase takes effect. Arcome also stated that another grave release will be needed in the very near future. The limited availability of graves has been a deterrent to some recent sales inquiries.

SUMMARY

- The GCAB has the greatest support towards the increase of Greenwood Cemetery grave prices to \$4000, but would like the Commission's thoughts on maintaining the price of \$3000 or a more aggressive increase to \$5000. The GCAB also wishes to gain insight on how important the perpetual care fund balance goal of \$2M is to the Commission to help GCAB align their priorities.

ATTACHMENTS:

- GCAB DRAFT Minutes from March 5, 2021.
- March 5, 2021 GCAB Grave Price Agenda Packet Documents
- Excerpt from the 2021 Fee Schedule, City Clerk's Office, Greenwood Cemetery

SUGGESTED RESOLUTION:

- To increase the price of the plots in Greenwood Cemetery that accommodate one full burial or up to 3 cremains from \$3000 to \$4000 effective immediately upon passage by the Commission, and for the new rate to be applicable to all currently released graves and future grave releases.

**Greenwood Cemetery Advisory Board
Meeting Minutes
Friday, March 5, 2021, 10 A.M.
Virtual Meeting**

I. CALL TO ORDER

Linda Buchanan, Chair, called the meeting to order at 10:00 A.M.

II. ROLL CALL

Present: Chair Linda Buchanan (location: Birmingham, MI)
Pam DeWeese (location: Birmingham, MI)
Linda Peterson (joined 10:05 a.m.)(location: Birmingham, MI)
Laura Schreiner (location: Birmingham, MI)
George Stern (location: Birmingham, MI)
Margaret Suter (location: Birmingham, MI)

Absent: Joseph Vercellone

Administration: City Clerk Alexandria Bingham; Museum Director Leslie Pielack

Guests: None

III. APPROVAL OF THE MINUTES

A. Review of the Minutes of February 5, 2021

MOTION: by DeWeese, seconded by Suter:

To approve the minutes of February 5, 2021.

VOTE: Yeas, 7
Nays, 0

IV. UNFINISHED BUSINESS

A. Grave Pricing Evaluation and Recommendation

City Clerk Bingham reviewed the item.

The GCAB concurred that City Clerk Bingham should submit the spreadsheet containing the GCAB's comments and considerations to the City Commission as part of the grave pricing evaluation and recommendation agenda item.

MOTION: by Shriner, seconded by Stern:

To recommend the Commission authorize changing the grave prices in Greenwood Cemetery to \$4,000 based on the supporting documentation which shall be included in the GCAB's report to the Commission, and to present all pricing options to the Commission.

VOTE: Yeas, 6
Nays, 0

Some Board conversation ensued about when they would recommend the resolution go into effect.

Chair Buchanan said increasing the price immediately upon approval by the Commission would allow the City to increase its contribution to the perpetual care fund.

Ms. Shriner said she would recommend making the price increase effective 30 days after approval by the Commission in case there are sales being negotiated at the current price.

The majority of the GCAB concurred with Chair Buchanan.

MOTION: by Suter, seconded by Peterson:

To include the condition that the price increase would be effective immediately upon passage by the Commission and applicable to all currently released graves and future grave releases.

VOTE: Yeas, 5
Nays, 1 (Shriner)

B. Review of Greenwood Cemetery Rules & Regulations

V. NEW BUSINESS

None.

VI. REPORTS

- A. Financial Reports
- B. Cemetery Sales & Activity
- C. Clerk's Office Update
- D. City Managers Report (January)

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

There were no public comments.

VIII. BOARD COMMENTS

IX. ADJOURN

Ms. Buchanan adjourned the meeting at 11:42 AM.

Next meeting: April 9, 2021

DATE: February 26, 2021

TO: Greenwood Cemetery Advisory Board

FROM: Alexandria Bingham, City Clerk

SUBJECT: Grave Price Evaluation and Recommendation Memo

INTRODUCTION:

- At the January 25, 2021 City Commission Meeting a resolution was passed by a 7-0 vote for the suggested grave site release of the 14 graves in Section C, row 18-A. Within that resolution the City Commission also charged the GCAB with the duty of evaluating the current grave prices and providing the Commission with a recommendation before the next release of graves.
- GCAB is highly motivated to evaluate and bring this issue to the City Commission due to the financial goals for the Perpetual Care Fund which would allow for the Historic Greenwood Cemetery to make progress towards being able cover the cost of standard maintenance and operations with less of an impact on the tax payers of the community.

BACKGROUND:

- In July 2019 the Greenwood Cemetery Advisory Board evaluated grave prices and recommended to keep the price per plot at the current rate of \$3,000. If all remaining available graves are sold at the rate of \$3000 pre space the Greenwood Cemetery's Perpetual Care Fund would not reach its financial goal.

LEGAL REVIEW

- Not yet obtained.
- The Greenwood Cemetery Operational Procedures and Regulations will be adjusted in accordance with any decision made by the Commission.

FISCAL IMPACT

- The Greenwood Cemetery Advisory Board is interested in the goal of achieving a perpetual care fund balance of \$2,000,000 so that the cemetery can be more self-sufficient when it comes to providing the funds for basic maintenance and care of the grounds. However the demand, and quality of product must also be taken into consideration as well as the price of plots at nearby/comparable cemeteries.

*Based on the sale of 175 plots.

Unit Price	Contributions	Current Balance	Projected Balance	Goal	Difference
\$3,000.00	\$525,000.00	\$922,431.25	\$1,447,431.25	\$2,000,000.00	\$552,568.75
\$4,000.00	\$700,000.00	\$922,431.25	\$1,622,431.25	\$2,000,000.00	\$377,568.75
\$5,000.00	\$875,000.00	\$922,431.25	\$1,797,431.25	\$2,000,000.00	\$202,568.75

PROCESS

- The City Clerk's office will provide information to GCAB to consider.
- GCAB will weigh the pros and cons of the proposed increases, how a change may affect the market and make a decision in the best interest of the Cemetery, City & its constituents.
- GCAB will finalize their recommendation for the City Commission to review.

ATTACHMENTS:

- GCAB Members cumulative responses on homework assigned from the February meeting.
- Current Grave Purchase Comparison
- August 2019 Grave Price Report
- August 16, 2019 GCAB Minutes
- CRAINS October 2020 article on Cremation becoming the "norm"

SUGGESTED RESOLUTION:

To direct the City Clerk to finalize a report with the recommendations of the Greenwood Cemetery Advisory Board on grave pricing to the Commission for a final decision on current grave prices for the Historic Greenwood Cemetery.

DRAFT RESOLUTION TO THE COMMISSION:

To recommend that the City Commission:

- A. Resolution to retain the current grave prices at \$3,000 per grave
- OR
- B. Resolution to increase the purchase price to \$4,000 per grave
- OR
- C. Resolution to increase the purchase price to \$5,000 per grave

Cemetery Grave Pricing Evaluation – GCAB Homework - Complete Collaboration of GCAB Members

REMEMBER NOT TO SHARE YOUR THOUGHTS WITH ANYONE UNTIL THE NEXT PUBLIC GCAB MEETING

*Return your thoughts to Alex only at your earliest convenience

*Data calculated by the sale of 175 plots

Option	Price per unit	Contributions to Perpetual Care Fund	Projected Balance of Perp Care Fund (without calculating interest)	Difference from the 2M goal
A	\$3000	\$525,000	\$1,447,431	\$552,569
B	\$4000	\$700,000	\$1,622,431	\$377,569
C	\$5000	\$875,000	\$1,797,431	\$202,568
Option A		Option B		Option C
Potential Positive Impacts <ul style="list-style-type: none">Competitive with area plotsLower cost will help drive quantity of salesGivenStatus QuoNo changeIt is in keeping with local cemetery pricing, particularly with the restrictions (both the marker restrictions and the resale restrictions) are considered.Price can still be adjusted upward.Highly AffordableA would keep graves most accessible to more people		Potential Positive Impacts <ul style="list-style-type: none">Slightly higher than comparable plots in the area, but not unreasonableHigher cost reflects exclusivity of cemeteryHelps better build our Perpetual Care FundHigher % of funds toward self-sustainability = higher % of interest =greater % of expenses the cemetery can payNot big difference produce high fundsThis gets the contributions into the Perpetual Care Fund closer to the mark, but still somewhat in alignment with local pricing.Price can still be adjusted upward.Very affordableFewer years needed to reach self-sustainability for the cemeteryLess need to push sales to reach goalsAllows for potential plot availability for future residentsB strikes a balance between raising additional funds and making the graves accessible. It keeps us more in line with other cemeteries.The amount may be increased in the future.		Potential Positive Impacts <ul style="list-style-type: none">Greatest impact of raising perpetual care fundsHigher % of funds toward self-sustainability=higher% In interest earned yields greater % of expenses the cemetery can payCloser to fundsGets more from each sale into the Perpetual Care Fund.We wouldn't have to reconsider the price for a longer time.Slightly expensive compared to other cemeteries in the area, but far less than the prices that were paid during the years of private sales of plotsReach our sustainability goal very quicklyLess need to push sales to reach goalsFewer sales can cut overhead expenses for sales personAllows for potential plot availability for future residentsC brings us closest to our two million dollar goal.It would be the fee for the foreseeable future since it is already somewhat out of line with other cemeteries.
Potential Negative Impacts <ul style="list-style-type: none">Limits our ability to increase Perpetual Care FundsMay sell more plots for ultimately least net profitDiminishes the exclusivity of cemetery; given the history, charm and importance to the city, shouldn't it be harder to acquire a plot?Less money in endowment fund =less interest=less % cemetery can contribute to expensesLess money in endowment fund = less interest=less % the cemetery can contribute to expensesNo gain in fundsDepending on market conditions and demands, we may have to review both the price and release of grave sites more frequently.We may need to look to other options to fund the Perpetual Care Fund or never have the Greenwood Cemetery become fully self sufficient (even with the 2mil funding, we don't have a guarantee that the fund will always be self sufficient/there not be partial reliance on General funds to support the CemeteryMany years to reach goal incurring long term salary expenses for sales person orMust sell all remaining plots quickly to reach the goal for self-sustainability in a timely fashion leaving nothing left for future BirminghamitesQuick sales mentality could incur expenses such as fees for advertising outside of the local areaA would not increase the accumulation of funds necessary to reach the \$2 million goal.		Potential Negative Impacts <ul style="list-style-type: none">Still short of allowing us to generate maximum Perpetual Care FundsIncreased price may deter some from buying plots in GreenwoodRise in price of \$1000 but if potential customers can pay \$3000 a \$1000 increase is not unreasonable\$1000 differenceDepending on market conditions and demands, we may have to review both the price and release of grave sites more frequently.Several years to reach goalsB, obviously, will not raise as much money as C but more than A.		Potential Negative Impacts <ul style="list-style-type: none">Price would be highest in the areaFar fewer sales will likely occur at the price pointRise in price of \$2000Too highSales may slow downFor the services offered, this may be a bad PR move for Birmingham.If sales really slow down, it is harder/bad PR to lower the price in the near future.Fewer salesC is at the high end of the local market. The price makes the graves less accessible and could reduce demand when we are dependent on sales to reach our fund goal.

Which option are you in favor of and why?

Greatest support to \$3000

A-\$3000 as it is more in keeping with the current local market for the product offered. This could be used as a favorable PR move if we choose to try to have an article written about the cemetery and include the pricing; a significant price increase would more likely than not be seen as bad PR and would probably get press even if we didn't want it. Again, this does not restrict a price change in the future. Also, we can look at other ways to add to the Perpetual Care Fund. Remember, the 2million is a goal – there is no surety that even if that mark is reached the income from the Fund will result in the cemetery always being self-sufficient.

With regard to price, I am comfortable at the current level, but I could move up to \$4,000 if that was the general consensus.

Greatest Support to \$4000

Given the location of the cemetery, the historical importance to the city, the charm of the surroundings, and competitive analysis of similar cemeteries in the area, Greenwood should increase plot costs to \$4,000. The amount underscores the exclusivity of the cemetery without drastically deterring sales and will allow us to get closer to the Perpetual Care Funds desired.

\$4000-B Raise in price of \$1000 but not an unreasonable price hike. Commission has already raised full burial fees from \$1200-\$1400. Rising prices (inflation) is a day to day reality. Also many families at Greenwood have spent \$4000-\$5000 on monuments alone, not including the previously purchased grave site.

\$4000-B Fair

Having said all of that, Option "B" sale price \$4,000 will probably continue to encourage sales and get us to the \$2M goal. That is the price I'm in favor of and anticipate that the finance department will invest appropriately so we can quickly meet the goal they've set.

Greatest Support for \$5000

I propose that the \$5,000 sale price is what Birmingham needs to charge given the recent "accurate" number of plots available and the perpetual fund goal that was given the cemetery Board by the Finance Dept. Also, \$5,000 was the minimum sale price offered by the private sale sellers.

Local Cemetery Comparisons:

Cemetery Name	Price Per Grave	Clusters of 2-4 graves next to each other	Cremation or Casket	Monument
Oakview- Royal Oak	\$2,995 - \$3,495	Yes they have clusters of 2-4	Maximum of 1 casket and 2 cremations	Need 2 graves for a monument. Flat monument is no extra charge but upright monument is an additional \$500 per grave due to easement
St Hugo of the Hills Columbarium <i>Bloomfield Hills</i>	\$4,000 - 1 urn \$5,000 - 2 urn "companion" niche	n/a - no gravesites, ground burials or caskets. Multiple adjacent niches available	Cremations only	None. Cremains are housed in a series of niches built into stone walls along connected pathways. Each niche is 11"x11"x17" deep and can hold 1 or 2 urns. Name and years of birth and death in bronze letters on niche front.
Holy Sepulchre	\$1,995 - \$5,000 depending on the section	Yes the have clusters of 2, 4 & 6	Maximum of 1 casket and 5 cremations in one grave	Monuments can be upright or flat. Have to have a minimum of 2 graves for monument
Roseland Park Cemetery <i>Berkley</i>	\$2,295 - \$3.795	Yes - anything from 2-6	Maximum1 casket + 1 cremation per gravesite	Flat or upright monuments depending on the section. Upright monument requires at least two gravesites.

Information collected 1/29/2021



MEMORANDUM

City Clerk's Office

DATE: August 9, 2019
TO: Greenwood Cemetery Advisory Board
FROM: J. Cherilynn Mynsberge, City Clerk
SUBJECT: Recommendation to City Commission on Cemetery Plot Pricing

On July 8, 2019, the City Commission considered the GCAB's recommendation to release 60 additional cemetery plots for sale. The Commission took no action on the recommendation. Following discussion the Commission asked that the GCAB study the market price of cemetery plots and make a recommendation on what the price of Greenwood Cemetery plots should be.

Additionally, the Commission asked that the GCAB evaluate and make a recommendation on whether or not additional plots in Sections B & C should be sold.

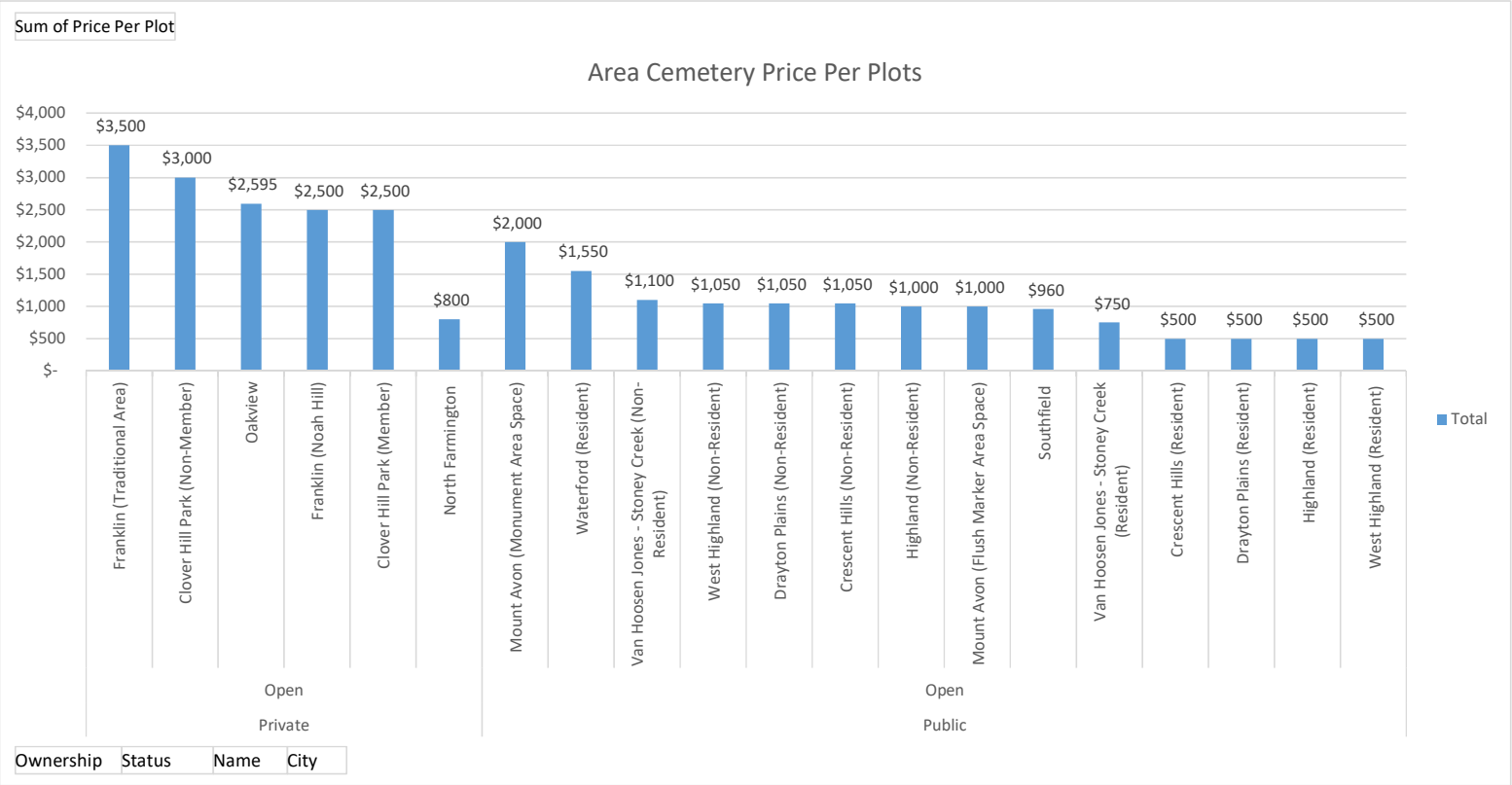
On the issue of market price, the Assistant to the City Manager, James Gallagher conducted a survey of cemeteries in Oakland County and presented his findings in the attached data worksheet and graph. This data should assist you in evaluating the current market price for cemetery plots.

Also attached is an excerpt from the minutes of the July 8, 2019 City Commission meeting detailing the Commission's discussion.

Name	Address	City	Ownership	Telephone #	Contact Person	Dimensions (acreage)	Historic Designation(s)	How Many Plots Total	How Many Spots Left	Sold	Price Variable	Price Per Plot	How Many Cremitaory Remains 1 Plot	Mngt Services	Sales Staff	Status
White Chapel Memorial Park	621 W. Long Lake Rd	Troy	Private	248-362-7693	Steve (Supt.) - left v/m	200 acres						N/A				Didn't Respond
					Ashley (Sales Mngr.)								4 human remains in 1 plot (Requires 2,3,4 rights of internments to be purchased) allow benches above ground to add 4 people in bench			
Oakview	1032 N. Main	Royal Oak	Private	248-541-0139		94 acres	No	59,000 people currently burried	10 acres	Not Public Info	Range	\$ 2,595		Internally	Internally	Open
Acacia Park	31300 Southfield Rd	Beverly Hills	Private	248-646-4228	Sales Mngr. out had a heart attack, spoke with Betty							N/A				Didn't Respond
Roseland Park	29001 N. Woodward	Berkley	Private	248-541-1154	(Ikera?) Contact out of office until Aug. 1	135	Yes					N/A				Didn't Respond
Franklin (Noah Hill)		Franklin	Private	248-200-9493	Steve Bancroft (Cemetary Dir.) cell: 313-570-1811	7	Yes	6,000	about 800	N/A	Noah Hill	\$ 2,500	3 remains per plot	Yes - Huron Cemetary Maitenance (sexton) all burials done by them	Steve (not looking for more work)	Open
Franklin (Traditional Area)		Franklin	Private	248-200-9494	Steve Bancroft (Cemetary Dir.) cell: 313-570-1812					N/A	Traditional Section	\$ 3,500				Open
Clover Hill Park (Member)	2425 E. Fourteen Mile	Birmingham	Private	248-723-8884	Vickie Straitz	60-65	No	26,000	6,500	5,000	Member	\$ 2,500	1 invid. Remains only in designated creamtion area	internment charge \$4,000 (lowering, tent, flowers in perpetuity, etc)	executive sales director handles all sales	Open
Clover Hill Park (Non- Member)	2426 E. Fourteen Mile	Birmingham	Private								Non-Member	\$ 3,000				Open
Royal Oak Cemetary		Royal Oak	Public	248-246-3300	Deann Morris (DPS/Recreation Clerk)	N/A	No	N/A	N/A			N/A	No Policy	In House	In House	Didn't Respond
Ottawa Park	6180 Dixie Hwy	Pontiac	Public	248-623-7705	Melissa	60-80	No					N/A				Didn't Respond
Oak Hill	216 University Dr	Pontiac	Public	248-623-7705	Melissa	~ 200	Yes					N/A				Didn't Respond
Southfield	Civic Center Dr. between Lasher/ Berg	Southfield	Public	248-796-4630	John Thompson/ Kevin Frantz	10	Yes	1,000	300	N/A		\$ 960	No Policy	In House	In House	Open
Highland (Resident)		Highland Twp	Public	248-887-6700	Mike Willenburg	13.35	No	6600	337	1,937	Resident	\$ 500	up to 4 for cremationed remains per plot or 1 burrial and 3 remains on top	Mike Willenburg	Mike Willenburg	Open
Highland (Non- Resident)		Highland Twp	Public								Non-Resident	\$ 1,000				Open

West Highland (Resident)		Highland Twp	Public	248-887-6700	Mike Willenburg (Sexton) Tammy (Clerk)	3.75	Yes	2750 (1234)	297	1,219	Resident	\$ 500	up to 4 for cremationed remains per plot or 1 burrial and 3 remains on top	Mike Willenburg	Mike Willenburg	Open
West Highland (Non-Resident)		Highland Twp	Public								Non-Resident	\$ 1,050				Open
Crescent Hills (Resident)		Waterford Twp	Public	248-618-7437	Mary	10.67	No	2,964	1,364	1,600	Resident	\$ 500	1 traditional burial with 1 additional "cremains"	Internal Staff	Internal Staff	Open
Crescent Hills (Non-Resident)		Waterford Twp	Public								Non-Resident	\$ 1,050				Open
Waterford (Resident)		Waterford Twp	Public	248-618-7437	Mary	2.37	In Process	945	26	919	Resident	\$ 500	1 traditional burial with 1 additional "cremains"	Internal Staff	Internal Staff	Open
Waterford (Resident)		Waterford Twp	Public								Non-Resident	\$ 1,050				Open
Drayton Plains (Resident)		Waterford Twp	Public	248-618-7437	Mary	4.98	In Process	1,921	673	1,248	Resident	\$ 500	1 traditional burial with 1 additional "cremains"	Internal Staff	Internal Staff	Open
Drayton Plains (Non-Resident)		Waterford Twp	Public								Non-Resident	\$ 1,050				Open
Van Hoosen Jones - Stoney Creek (Resident)	Tienken & Sheldon	Rochester Hills	Public	248-652-4713	Calvin Leach (Sexton) Laura Douglas (Records Clerk)	16.8	No	12,237	7,618	4,619	Resident	\$ 750	Traditional burial section: 4 cremains per space Traditional burial section w/ traditional burial: 2 cremains on top	Calvin Leach (internal staff)	Calvin Leach	Open
Van Hoosen Jones - Stoney Creek (Non-Resident)	Tienken & Sheldon	Rochester Hills	Public								Non-Resident	\$ 1,100				Open
Oakwood (Resident)		Farmington	Public	248-474-5500	Jen/ Chuck Shute (Dps)	6.7	No	850	No Plots Left only crypts	7 crypts	Resident	\$ 5,000	N/A	DPW	Clerks	Closed
Oakwood (Non-Resident)		Farmington	Public						No Plots Left only crypts		Non-Resident	\$ 9,000				Closed
Novi	25755 Novi Rd	Novi	Public	248-735-5611	Jeff Muck	2.4	No	948	No Plots Left	0		\$ -	N/A	N/A	N/A	Closed
Knapp	43005 Nine Mile Rd	Novi	Public	248-735-5611	Jeff Muck	0.5	No	87	No Plots Left	0		\$ -	N/A	N/A	N/A	Closed
North Farmington		Farmington	Private	248-887-6700	Mike Willenburg							\$ 800	1 grave plus 2 cremains or 3 cremains	Mike Willenburg	Mike Willenburg	Open
Mount Avon (Flush Marker Area Space)		Rochester	Public	248-651-90610	Jessica Wawrzynski		Yes				Flush Marker Area Space	\$ 1,000				Open
Mount Avon (Monument Area Space)		Rochester	Public								Monument Area Space	\$ 2,000				Open

Row Labels	Sum of Price Per Plot	
Private		
Open		
Franklin (Traditional Area)	\$	3,500
Clover Hill Park (Non-Member)	\$	3,000
Oakview	\$	2,595
Franklin (Noah Hill)	\$	2,500
Clover Hill Park (Member)	\$	2,500
North Farmington	\$	800
Public		
Open		
Mount Avon (Monument Area Space)	\$	2,000
Waterford (Resident)	\$	1,550
Van Hoosen Jones - Stoney Creek (Non-Resident)	\$	1,100
West Highland (Non-Resident)	\$	1,050
Drayton Plains (Non-Resident)	\$	1,050
Crescent Hills (Non-Resident)	\$	1,050
Highland (Non-Resident)	\$	1,000
Mount Avon (Flush Marker Area Space)	\$	1,000
Southfield	\$	960
Van Hoosen Jones - Stoney Creek (Resident)	\$	750
Crescent Hills (Resident)	\$	500
Drayton Plains (Resident)	\$	500
Highland (Resident)	\$	500
West Highland (Resident)	\$	500
Grand Total	\$	28,405



**GREENWOOD CEMETERY ADVISORY BOARD
MEETING MINUTES
FRIDAY, AUGUST 16, 2019 AT 8:30 AM
MUNICIPAL BUILDING, ROOM 205, 151 MARTIN**

I. CALL TO ORDER

Chairperson Gehringer called the meeting to order at 8:30 a.m.

II. ROLL CALL

Present: Linda Buchanan, Vice Chairwoman
Darlene Gehringer, Chairwoman
Linda Peterson
Laura Schreiner
Margaret Suter

Absent: Kevin Desmond
George Stern

Administration: Administrative Transcriptionist, Verna Chapman and James Gallagher, Asst.
to the City Manager

III. APPROVAL OF MINUTES

A. Approval of meeting minutes of June 7, 2019

MOTION: Motion by Margaret Suter, seconded by Linda Buchanan:

To approve the minutes of June 7, 2019 as corrected:

- Page 3, Ms. Schreiner's comment was amended.
- Page 3, Amended to include Ms. Genringer's comment.
- Page 5, Amended to replace the word mom with mother.
- Page 7, Corrected by removing end parenthesis.
- Page 7, Corrected by removing a duplicate "nay".
- Page 8, Amended to replace Advisor Schreiner with Mrs. Schreiner.

VOTE: Ayes, 5
Nays, 0
Absent, 2

IV. NEW BUSINESS

A. Election of Chairperson

Chairperson Gehringer opened the floor to nominations for Chairperson.

Nominated by Margaret Suter, seconded by Laura Schreiner

To elect Darlene Gehringer chairperson of Greenwood Cemetery Advisory Board for one one-year term.

VOTE: Ayes, 5
Nays, 0
Absent, 2

B. Election of Vice Chairperson

Chairperson Gehringer opened the floor to nominations for Vice Chairperson.

Nominated by Margaret Suter, and seconded by Linda Peterson

To elect Linda Buchanan as Vice Chairman of the Greenwood Cemetery Advisory Board for one one-year term.

VOTE:	Ayes,	5
	Nays,	0
	Absent,	2

Ms. Peterson asked if there is a rule that governs attendance of board members; if so, how is it applied.

Ms. Gehringer referred the question to City Clerk Mynsberge (in absentia) who tracks the attendance of board members.

C. Approval of Request for Proposals (RFP) for Ground Penetrating Radar of Greenwood Cemetery.

Assistant to the City Manager Gallagher presented this item.

Chairperson Gehringer asked if the liability insurance of \$1,000,000.00, professional liability, and pollution liability of \$1,000,000.00, and owners/contractors protective liability of \$3,000,000.00 per occurrence was excessive.

Margaret Suter expressed that it is probably standard language to meet the City's requirements and advised the board to accept the limits outlined in the RFP. She went on to say that the board should only want to consider good solid companies that are not affected by the RFP requirements.

Laura Schreiner agreed with Ms. Suter and asked for a response from the City.

Assistant City Manager Gallagher stated that the language used was boilerplate language approved by the City's legal department to be used with any request for proposal. He further stated that pollution control and professional liability insurance limits could change depending on the type of service that would be provided. Mr. Gallagher agreed to verify the proposed limits.

Chairperson Gehringer referred to the City Clerk to review the limits and determine if adjustments should be made. She expressed that she does not want the bid to fail because insurance limits were a factor.

Linda Buchanan asked how long would the RFP stay out for bid.

Margaret Suter noted that there were no dates on any of the documents presented in the proposed request for approval.

Chairman Gehringer suggested that a 30-day period be used for bid submittals.

Laura Schreiner asked what the board did the last time it had an RFP out for bid. She also reminded everyone that time must be allowed for the selection to go through this board, the

planning board, and the city commission. She also suggested a “no later than” date be set to allow for the project award and commencement by the spring thaw of 2020.

Linda Buchanan and Chairperson Gehringer thought that previous request for proposals had been out for bid for 30 days. However, Ms. Buchanan felt that the date for contract execution should be expressed as “TBD”, because of the variables involved.

The board agreed with the chairperson by consensus that:

- Contract execution would be 14 days after contractor selection.
- Project commencement would be scheduled for April 2020.
- Project completion would be set for May 2020.

MOTION: Motion by Ms. Suter, seconded by Ms. Peterson
To recommend approval of the Request for Proposal for the Ground Penetrating Radar of Greenwood Cemetery as revised.

VOTE: Ayes, 5
Nays, 0
Absent, 2

D. Evaluation and Recommendation to City Commission:

1. Market Pricing for Cemetery Plots

Assistant to the City Manager Gallagher presented this item.

- a. Laura Schreiner asked if there was feedback from Ms. Arcome as to whether or not potential purchasers chose not to buy at Greenwood when price was a factor.
- b. There was no data available to support any input from Ms. Arcome.
- c. Based on the data presented comparing regional cemetery pricing, the board concluded that the current pricing at Greenwood was fair and reasonable.

MOTION: Motion by Ms. Schreiner, seconded by Vice Chairperson Buchanan
To recommend, based on the data presented, that the City Commission keep pricing for cemetery plots at \$3,000.00 per plot.

VOTE: Ayes, 5
Nays, 0
Absent, 2

2. Future of Sales in Sections B and C

Linda Buchanan gave a brief overview of what occurred at the City Commission meeting of July 08, 2019. Margaret Suter, Laura Schreiner, and George Stern also attended.

- Prior to this meeting, the GCAB recommended selling 60 plots in Sections B and C, stopping at 300, conducting a reanalysis of sales at 270.
- There was hesitation from the Commission with respect to selling in Section B.
- Ms. Buchanan was in favor of revisiting the analysis and maybe only releasing plots in Section C. She also felt that the situation could be re-evaluated at any time and more plots could be released for sale at a later date.
- The GCAB recommended that the City Commission be prudent in making sure there are plots available for future purchases.

- Ms. Shreiner reminded the board that this decision had to go through the GCAB cycle and the City Commission.
- Ms. Suter expressed that if the cemetery fills up, Section B may be revisited. The focus should be on Section C and the other remaining sections.
- Commissioner Hoff commented there were 57 plots in other sections of the cemetery that should be sold before selling in Section B and C. No one could affirm that number.
- Section A was designated pure historical and there are no plots available for sale.
- There are many Birmingham pioneers in Section B, suggesting it is historical as well.
- Approximately, 206 plots have been sold in Section B.
- It was noted that overall sales have slowed down to a normal pace at this time.

MOTION: Motion by Vice Chairman Buchanan, seconded by Ms. Peterson
To recommend for the City Commission approval that sales in Section B be suspended and 30 plots in Section C be released for sale.

VOTE: Ayes, 5
Nays, 0
Absent, 2

V. UNFINISHED BUSINESS

Items under Unfinished Business will be presented as a status update to the Board and may not require action at this time.

A. Finalization of Master Plan/Historical Collaboration Priority List

Chairperson Gehringer presented a list of Master Plan/Collaborative Preservation Projects from the City Commission and the Greenwood Cemetery Advisory Board prioritized the list as follows:

1. Ground Penetrating Radar Services (in process)
2. Potter Field (in progress)
3. Digitizing and Mapping Cemetery Records (in process)
4. Match Cemetery Records with Headstones
5. Historic Headstone Inventory
6. Update Greenwood
7. Alternate Sources of Revenue
8. Review Contract with Elmwood
9. Long-term financial status
10. Maintenance and Landscaping

MOTION: Motion by Ms. Suter, seconded by Ms. Peterson:
To recommend the removal of Columbaria from the Finalization of Master Plan/Historical Collaboration Priority List.

VOTE: Ayes, 5
Nays, 0
Absent, 2

MOTION: Motion by Vice Chair Buchanan, seconded Ms. Peterson
To recommend the Finalized Master Plan/Historical Collaboration Priority List as revised.

VOTE: Ayes, 5
 Nays, 0
 Absent, 2

VI. FINANCIAL REPORT

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

VIII. BOARD COMMENTS

- Ms. Buchanan noted that at the July 8, 2019 City Commission meeting, the commission had information that the Greenwood Cemetery Advisory Board did not have.
- Ms. Suter would like to see the GCAB copied on all information that the City Commission receives regarding the Cemetery.

IX. ADJOURN

The meeting adjourned at 10:46 a.m.

NEXT MEETING: OCTOBER 4, 2019

Cheryl Arft, Acting City Clerk/vc

Greenwood Cemetery Advisory Board:

The powers and duties of the Greenwood Cemetery Advisory Board is to provide the following recommendations to the City Commission:

1. Modifications: *As to modifications of the rules and regulations governing Greenwood Cemetery.*
2. Capital Improvements: *As to what capital improvements should be made to the cemetery.*
3. Future Demands: *As to how to respond to future demands for cemetery services.*

Section 34-30 (g) of the Birmingham City Code

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October 18, 2020 12:06 AM

Cemeteries plot their future as cremation becomes the norm

KIRK PINHO . □

Mt. Elliott Cemeteries

Mt. Olivet Cemetery is Detroit's largest, built in 1888 on over 300 acres.

If you die in the next 20 years, the chances are good that you're going to be cremated.

Data from the National Funeral Home Association says that by 2040 in Michigan, 83.6 percent of the people who die will be cremated, compared to 47.3 percent in 2010. And according to the NFHA, the median cost for a cremation funeral with an urn is \$6,645, compared to \$9,135 for a funeral with a burial, including the cost of the casket and the burial vault.

That's causing cemeteries and funeral homes to search for new revenue streams.

"It does affect cash flow," said Bert Edquist of Mission Hills Memorial Gardens in Niles in southwest Michigan. "But also it gives you the opportunity to make more burials because you're using smaller spaces for the cremation burials. Your land is producing more income, but you're not getting that income as quickly as you did before. Basically it's going to make the cemeteries last longer."

Much of the equation comes down to simple real estate. According to Lawrence Sloane, who is director of Elmwood Cemetery in Detroit and runs Albany, N.Y.-based L. F. Sloane Consulting Group Inc., the average plot for an urn burial is 4 to 6 square feet, whereas a plot for a casket is 24 to 40 square feet. And in general, the smaller the plot, the lower the cost.

Kirk Pinho/Crain's Detroit Business

Elmwood Cemetery is the oldest continuously operating, nondenominational cemetery in Detroit.

In addition, an accepted industry standard is that only about 25 percent of cremated remains end up in cemeteries at all, with the rest kept on mantles or scattered at favorite and sentimental spots as just some examples, Sloane said.

Translation: Even less revenue for cemeteries.

"Cemeteries have to work to present themselves as relevant places to remember your loved ones," Sloane said of the impending cremation surge, which has been caused by a host of factors.

Among them: environmental concerns with things like embalming and other factors; more geographically diverse families; greater religious acceptance of the practice, as well as a general shift away from organized religion overall; and economics.

"Can that (cremation trend) change? Sure," said Leonard Turowski, a fourth-generation funeral home owner with operations in Livonia and Canton Township. "Forever and ever, it was always strictly burials and then all of a sudden cremation came in and maybe it can change going forward. It is especially challenging for cemetery owners."

Kirk Pinho/Crain's Detroit Business

Mt. Elliott Cemetery in Detroit was consecrated in 1841 — just four years after Michigan became the 26th state.

To make up the revenue lost from the more expensive casket burials and selling larger plots of land for them, cemeteries have had to get creative, said Michael Chilcote, general manager and COO of the nonprofit Mt. Elliott Cemeteries, which oversees the Mt. Elliott and Mt. Olivet cemeteries in Detroit as well as Resurrection Cemetery in Clinton Township, All Saints Cemetery and The Preserve at All Saints in Waterford Township and Guardian Angel Cemetery in Rochester.

That includes things like cremation gardens, cremation niches, small buildings for up to 20 sets of cremated remains, cremation benches and other such memorials. All those help make up for lost burial plot revenue.

"There are a lot of different ways you can accommodate a cremation space," Chilcote said. "Really the cremation trend has opened up a lot of innovation — the only thing is getting information to the public about what their options are."

Mt. Elliott Cemeteries

Mt. Olivet cremation garden

Not only is that revenue helpful in the short term, but it also provides a lasting benefit.

David Harns, interim communications director for the Michigan Department of Licensing and Regulatory Affairs, said there are just over 200 cemeteries — 105 greater than 10 acres and 96 under 10 acres — that are required to have so-called perpetual care funds, which are trusts that ensure the upkeep of the cemetery property after the last burial plots are sold.

Under Public Act 251 of 1968, 15 percent of burial, entombment and columbarium rights sold are deposited into the cemetery's perpetual care fund; only interest and dividends from those funds can

be used and they are set up for the long-term care of the property.

But Sloane says the funds overall are not well-funded enough.

"That was not adequate and there are very few cemeteries in Michigan that are properly funded," he said. "Seven hundred have already been given back to municipalities. Very few were actually built by cities; they just went bankrupt and the cities took them over."

Larry Michael, vice president of Midwest operations for Houston-based Park Lawn Corp., which owns and manages 28 cemeteries in Michigan, said the cremation increase has been felt in those funds.

"States have these because at some point, when there is no more revenue coming in because there is nothing left to sell, there is this fund," Michael said. "With cremation rates growing, that has impacted it. But every interment right has a percentage, a cremation has a percentage that goes into a perpetual care fund. So some cemeteries, the funds may have actually increased, depending on the product they've been selling."

According to the [Michigan Department of Community Health](#), pre-COVID-19, the state averaged 8,201 deaths per month between January 2019 and February 2020, although that figure during the pandemic has increased to an average of 8,924 per month, with a high of 13,049 deaths in April and 5,399 reported in September.

And Chilcote said it's unlikely that new, sprawling cemeteries — akin to the 300-acre Resurrection Cemetery in Clinton Township — will be developed regularly in the future given the cremation trend. Some of the newer ones are Glen Eden East, developed in 2004 along 26 Mile Road in Macomb Township; the federal Great Lakes National Cemetery in Holly, established in 2005; and Guardian Angel Cemetery in Rochester, developed in 2003 by Mt. Elliott Cemetery Association.

"Those days of 300-acre cemeteries are done," he said.

Inline Play

Source URL: <https://www.crainsdetroit.com/real-estate/cemeteries-plot-their-future-cremation-becomes-norm>

FEE SCHEDULE

CITY CLERK'S OFFICE	EXISTING FEE
<u>Day Care (See Child Care Facilities)</u>	
<u>Electronic Video Game (14-106)</u>	
Each game, annual fee (subject to additional fees and requirements for regulated use)	\$ 50.00
<u>FOIA fees - See public records policy (attached)</u>	
<u>Fumigation (58-141)</u>	
Fumigation Contractor, annual fee	\$ 50.00
Fumigation permit, per event	\$ 25.00
Insurance (58-144): Standard insurance requirements plus environmental impairment/pollution liability coverage	
<u>Garage Public (54-26) - Annual Fee</u>	\$ 50.00
<u>Going out of Business (State Law)</u>	
Up to 30 days	\$ 50.00
Limit two renewals, each	\$ 50.00
<u>Greenwood Cemetery (126-26)</u>	
Grave space accommodating one full burial or three cremations	\$ 3,000.00
Additional Rights of Burial for cremated remains, each	\$ 750.00
Grave space accommodating two cremated remains	2,000.00
Grave space accommodating one cremated remains	1,000.00
Administrative fee for transfer of grave ownership	\$ 150.00
Interment and disinterment fees:	
Cremation	\$ 750.00
Full Burial	\$ 1,400.00
Foundation charges for markers & monuments:	
Foundation Installment - per linear foot	\$ 125.00
Marker or monument resets:	
Foundation installation charge as per above schedule, plus an hourly charge for removal of old foundation	
Weekend, holiday, and overtime interments. This fee in addition to the normal interment fee charged during regular working hours.	\$ 400.00
<u>Horse Drawn Carriages (122-71)</u>	
Company, annual fee	\$ 50.00
Carriage, each vehicle annual fee	\$ 50.00
Insurance: Standard insurance requirement, with coverage to include premises liability; personal injury liability; products liability; and horse or horses liability. (122-75)	
<u>Hotels/Motels annual fee</u>	\$ 75.00
1-50 Rooms	\$ 300.00
50+ Rooms	\$ 500.00
<u>Initial Merchants: (All types including transfers)</u>	\$ 100.00
<u>Kennels (See Animals)</u>	



MEMORANDUM

Planning Division

DATE: April 6, 2021

TO: Thomas M. Markus, City Manager

FROM: Jana L. Ecker, Planning Director

SUBJECT: Set Public Hearings for a lot split of 300 S. Old Woodward (Parcel# 1936204006), lot split of 294 E. Brown (Parcel #1936204021) and the lot combination of the amended parcels at 300 and 394 S. Old Woodward

INTRODUCTION:

The owner of the property known as 300 S. Old Woodward is seeking a lot split/rearrangement to allow for 3,104.39 sq.ft. on the western edge of 300 S. Old Woodward to be split from the existing parcel, and added to the parcel known as 294 E. Brown Street. In addition, the owner of 294 E. Brown Street is seeking a lot split/rearrangement to divide the existing parcel into two parcels, to allow for 1,962.79 sq.ft. on the southeastern edge of the parcel to be split and added to the parcel at 394 S. Old Woodward. Both lot splits/rearrangements, if approved, will allow for a swap of land between property owners that will create a rectangular lot at 294 E. Brown, as well as new parcels at 300 and 394 S. Old Woodward. The owner of the amended parcels at 300 and 394 S. Old Woodward is then seeking a lot combination to create a larger rectangular parcel on S. Old Woodward running south of E. Brown Street to Daines Street to allow the development of a four story mixed use building on the site. Please see attached map and survey.

BACKGROUND:

LOT SPLIT 300 S. OLD WOODWARD

The owner of the property at 300 S. Old Woodward is seeking a lot split/rearrangement to allow for a "swap parcel" 3,104.39 sq.ft. in size on the western portion of the property (as shown in Exhibit A of the lot split application) to be split from the original 13,204.93 sq.ft. parent parcel, and added to the existing parcel known as 294 E. Brown Street. The remainder of the property at 300 S. Old Woodward that would result is shown as Parcel B in Exhibit A of the lot split application, and would be 10,100.54 sq.ft. in size. The "swap parcel" would then be added to the existing parcel at 294 E. Brown Street, shown as Parcel A in Exhibit A of the lot split application.

The Subdivision Regulation Ordinance (Chapter 102, Section 102-53) requires that the following standards be met for approval of a lot division.

- (1) *All lots formed or changed shall conform to minimum Zoning Ordinance Standards.*

Attached are copies of surveys provided by the applicant depicting existing and proposed conditions. The proposed rearrangement has been reviewed by the Community Development Department. Both parcels that result from the lot split at 300 S. Old Woodward would conform to minimum Zoning Ordinance standards as set out in Article 02, Section 2.30 of the Zoning Ordinance, for the B-2 Zoning District. The proposed split would reduce the size of 300 S. Old Woodward from 13,204.93 sq. ft. to 10,100.54 sq. ft. in size, and the "swap parcel" would be added to the existing 32,710.28 sq.ft. parcel.

Both resulting parcels at 300 S. Old Woodward (Parcel B) and 294 E. Brown Street (Parcel A) would be in excess of the required 1,000 sq. ft. minimum lot size required for specified commercial uses in the B-2 zone district. No non-conformities would be created on either of the resulting parcels as a result of the proposed split. There are no lot coverage or minimum open space requirements in the B-2 zone district, nor side setback requirements. Front setbacks on both parcels would not be affected by the lot split. As the building on 300 S. Old Woodward is proposed for demolition, any new building proposed would be required to meet the 10' rear setback requirement, and the front setback requirement to place the front building façade of a new building on Old Woodward at the frontage line.

- (2) *All residential lots formed or changed by the division shall have a lot width not less than the average lot width of all lots on the same street within 300 feet of the lots formed or changed and within the same district.*

The lots formed or changed by the division are commercial, not residential, therefore this requirement is not applicable.

- (3) *The division will not adversely affect the interest of the public and of the abutting property owners. In making this determination, the City Commission shall consider, but not be limited to the following:*
- a. *The location of proposed buildings or structures, the location and nature of vehicular ingress or egress so that the use of appropriate development of adjacent land or buildings will not be hindered, nor the value thereof impaired.*
 - b. *The effect of the proposed division upon any flood plain areas, wetlands or other natural features and the ability of the applicant to develop buildable sites on each resultant parcel without unreasonable disturbance of such natural features.*
 - c. *The location, size, density and site layout of any proposed structures or buildings as they may impact an adequate supply of light and air to adjacent properties and the capacity of essential public facilities such as police and fire protection, drainage structures, municipal sanitary sewer and water, and refuse disposal.*

While not included with the lot split or lot combination applications, the owner of the resulting lot at 300 – 394 S. Old Woodward (should the requested lot splits and lot combination be approved), is proposing construction of a new 4 story building. An application for Preliminary Site Plan review has been submitted to the Planning Division, and a review of the plans is in

progress with the Planning Board. **The placement of the proposed new building and the proposed ingress and egress off of Daines Street for a small underground parking level will not hinder the development of adjacent properties, nor diminish their values. Should the proposed new building be approved, two vehicular ingress or egress access points will be removed, and the estimated value of the new building would likely increase the property values of adjacent property.**

The subject property is not located within the floodplain or soil erosion limit of a recognized stream, river, lake or other water body. The site does not appear to exhibit evidence of regulated wetlands or endangered species of flora and fauna. **The proposed lot rearrangement and property transfer will not affect any natural features on the site.**

The proposed lot split will not negatively affect the supply of light and air to adjacent properties. It will not negatively affect the capacity of essential public facilities. City departments have no objections to the proposed lot split.

Thus, as the proposed lot split/rearrangement at 300 S. Old Woodward meets all of the standards for approval as outlined in Chapter 102, Subdivisions, section 53, the City Commission may approve the proposed lot split/rearrangement.

LOT SPLIT 294 E. BROWN STREET

The owner of the property at 294 E. Brown Street is also seeking a lot split/rearrangement to allow for a "swap parcel" 1,962.79 sq.ft. in size (as shown in Exhibit A of the lot split application) to be split from the 35,814.67 sq.ft. parent parcel (which was expanded by 3,104.39 sq.ft. should the lot split discussed above be approved), and added to the existing parcel known as 394 S. Old Woodward. The remainder of the property at 294 E. Brown Street that would result is shown as Parcel A in Exhibit A of the lot split application, and would be 33,851.88 sq.ft. in size. The "swap parcel" would then be added to the existing parcel at 394 S. Old Woodward, shown as Parcel B in Exhibit A of the lot split application.

The Subdivision Regulation Ordinance (Chapter 102, Section 102-53) requires that the following standards be met for approval of a lot division.

(1) All lots formed or changed shall conform to minimum Zoning Ordinance Standards.

Attached are copies of surveys provided by the applicant depicting existing and proposed conditions. The proposed rearrangement has been reviewed by the Community Development Department. Both parcels that result from the lot split at 294 E. Brown Street would conform to minimum Zoning Ordinance standards as set out in Article 02, Section 2.30 of the Zoning Ordinance, for the B-2 Zoning District. The proposed split would reduce the size of 294 E. Brown from 35,814.67 sq. ft. (after lot split of 300 S. Old Woodward above) to 33,851.88 sq. ft. in size, and the "swap parcel" would be added to the existing 8,137.75 sq.ft. parcel at 394 S. Old Woodward, to create a 10,100.54 sq.ft. parcel shown as Parcel B in Exhibit A of the lot split application.

Both resulting parcels at 294 E. Brown Street (Parcel A) and 394 S. Old Woodward (Parcel B) would be in excess of the required 1,000 sq. ft. minimum lot size required for specified commercial uses in the B-2 zone district. No non-conformities would be created on either of the resulting parcels as a result of the proposed split. There are no lot coverage or minimum open space requirements in the B-2 zone district, nor side setback requirements. Front setbacks on both parcels would not be affected by the lot split. As the building on 394 S. Old Woodward is proposed for demolition, any new building proposed would be required to meet the 10' rear setback requirement, and the front setback requirement to place the front building façade of a new building on Old Woodward at the frontage line.

(2) All residential lots formed or changed by the division shall have a lot width not less than the average lot width of all lots on the same street within 300 feet of the lots formed or changed and within the same district.

The lots formed or changed by the division are commercial, not residential, therefore this requirement is not applicable.

(3) The division will not adversely affect the interest of the public and of the abutting property owners. In making this determination, the City Commission shall consider, but not be limited to the following:

- a. The location of proposed buildings or structures, the location and nature of vehicular ingress or egress so that the use of appropriate development of adjacent land or buildings will not be hindered, nor the value thereof impaired.*
- b. The effect of the proposed division upon any flood plain areas, wetlands or other natural features and the ability of the applicant to develop buildable sites on each resultant parcel without unreasonable disturbance of such natural features.*
- c. The location, size, density and site layout of any proposed structures or buildings as they may impact an adequate supply of light and air to adjacent properties and the capacity of essential public facilities such as police and fire protection, drainage structures, municipal sanitary sewer and water, and refuse disposal.*

While not included with the lot split or lot combination applications, the owner of the resulting lot at 300 – 394 S. Old Woodward (should the requested lot splits and lot combination be approved), is proposing construction of a new 4 story building. An application for Preliminary Site Plan review has been submitted to the Planning Division, and a review of the plans is in progress with the Planning Board. **The placement of the proposed new building and the proposed ingress and egress off of Daines Street for a small underground parking level will not hinder the development of adjacent properties, nor diminish their values. Should the proposed new building be approved, two vehicular ingress or egress access points will be removed, and the estimated value of the new building is not likely to impair the values of adjacent property.**

The subject property is not located within the floodplain or soil erosion limit of a recognized stream, river, lake or other water body. The site does not appear to exhibit evidence of

regulated wetlands or endangered species of flora and fauna. **The proposed lot rearrangement and property transfer will not affect any natural features on the site.**

The proposed lot split will not negatively affect the supply of light and air to adjacent properties. It will not negatively affect the capacity of essential public facilities. City departments have no objections to the proposed lot split.

Thus, as the proposed lot split/rearrangement at 294 E. Brown Street meets all of the standards for approval as outlined in Chapter 102, Subdivisions, section 53, the City Commission may approve the proposed lot split/rearrangement.

LOT COMBINATION 300 – 394 S. OLD WOODWARD

Should both lot splits/rearrangements discussed above be approved, the owner of the amended parcels at 300 and 394 S. Old Woodward seeks a lot combination to create a larger rectangular parcel 20,201.08 sq.ft. in size on S. Old Woodward running south of E. Brown Street down to Daines to allow the development of a proposed four story mixed use building on the site.

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.*

With regard to character of the area, the subject site is located on a major road, and surrounded by a mix of uses and building heights ranging from one to eight stories in height. The new five story Daxton Hotel is located immediately north of Brown, and a new three story mixed use building is located immediately south of Daines Street. The proposed parcel size is consistent with the character of the area and parcel sizes in the general area.

With regard to zoning, the existing buildings at 300 – 394 S. Old Woodward are proposed for demolition, and a new four story mixed use building is proposed on the parcels if the lot combination is approved. Both parcels are zoned B-2 General Business and D-3 (three or four stories) in the Downtown Birmingham Overlay District. Detailed plans on the proposed building have been submitted to the Planning Division and are in the process of being reviewed by the Planning Board. Both the Preliminary Site Plan and Community Impact Study were reviewed by the Planning Board on March 24, 2021, and were continued to the meeting on April 28, 2021. The proposed development will be required to meet the requirements of the Downtown Overlay District. The applicant has applied for rezoning of the property at 300 – 394 S. Old Woodward from D-3 (three or four stories) to D-4 (four or five stories) in the Downtown Overlay to allow the proposed fourth floor to be used as a restaurant. This rezoning request is scheduled to be considered by the Planning Board on April 28, 2021.

With regard to setback, the Downtown Overlay standards for both the D-3 and D-4 zones require that front building facades be located at the frontage line. The proposed building is located at the frontage line with a 0 – 3' setback facing S. Old Woodward. **The proposed building satisfies this requirement.**

With regard to height, the Downtown Overlay standards for the D-3 Zone permit a maximum of 4 stories and 68' in height, with the 4th story only permitted as a residential use and being setback 10 feet from the 3rd story. The applicant has proposed a 4-story building 69' in height, with the 4th floor setback 10 feet from the façade of the 3rd floor. **Should the applicant's rezoning request to D-4 be approved, all height requirements will be met as 5 stories and 80' maximum height is permitted in a D-4 zone. Should the D-3 zoning remain, the applicant has advised that they will lower the height of the proposed building by 1' to comply with the maximum height of the D-3 zone.**

With regard to parking requirements, 300 – 394 S. Old Woodward are both located within the Parking Assessment District, thus no parking for commercial uses is required to be provided on site. However, the applicant is proposing one level of underground parking, although it is not required for the proposed commercial uses. **The proposed building satisfies the parking requirements.**

With regard to use, the east 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. **The proposed building includes retail use within the first 20 feet along S. Old Woodward.** Also, as previously mentioned in the height section above, a 4th story is only permitted in a D-3 zone if used for residential. **As noted above, the applicant has applied for rezoning to D-4, which would permit the use of the 4th floor as a restaurant. Should the D-3 zoning remain, the applicant has advised that they intend to seek a use variance to allow the use of the 4th story for non-residential purposes.**

With regard to applicable master plans, the Downtown 2016 Plan recommends mixed use, multi-story buildings. The proposed building has a mix of retail, design service and restaurant uses that will fit in with the surrounding uses and will assist in activating this area of downtown. **The applicant's lot combination request and proposed building align with the recommendations of the Downtown 2016 Plan.**

- (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 lot formed as a result of 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 lot formed as a result of the proposed combination is commercial, not residential, therefore this requirement is not applicable.

- (4) *The combination will result in building envelopes on the combined parcels that will allow for the placement of buildings and structures in a manner consistent with the existing rhythm and pattern of development within 500 feet in all directions in the same zone district.*

The only development within 500' in all directions in the B2 zoning district includes the Coldwell Banker Weir Manual building to the west, and the Peabody mansion and Powerhouse Gym buildings to the east. The only development within 500' in all directions in the D-3 Downtown Birmingham Overlay District includes the Coldwell Banker Weir Manual building to the west, the Peabody mansion and the western portion of the Powerhouse Gym buildings to the east. **The proposed parcel size and building envelope for 300 – 394 S. Old Woodward are consistent with the varied lot sizes and variety of buildings within 500' in the B2 zoning district.**

- (5) *Any due or unpaid taxes or special assessments upon the property have been paid in full.*

There are no outstanding taxes due on the property at 394 S. Old Woodward. **However, for 300 S. Old Woodward there is a winter tax balance of \$122.63, and a special assessment with a total payoff of \$26,800.28, with \$4,219.74 due 4/30/21. All outstanding taxes and assessments must be paid in full.**

- (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.

While not included with the lot split or lot combination applications, the owner of the resulting lot at 300 – 394 S. Old Woodward (should the requested lot splits and lot combination be approved), is proposing construction of a new 4 story building. An application for Preliminary Site Plan review has been submitted to the Planning Division, and a review of the plans is in progress with the Planning Board. **The placement of the proposed new building and the proposed ingress and egress off of Daines Street for a small underground parking level will not hinder the development of adjacent properties, nor diminish their values. Should the proposed new building be approved, two vehicular ingress or egress access points will be removed, and the estimated value of the new building would likely increase the property values of adjacent property.**

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 subject property is not located within the floodplain or soil erosion limit of a recognized stream, river, lake or other water body. The site does not appear to exhibit evidence of regulated wetlands or endangered species of flora and fauna. **The proposed lot combination will not affect any natural features on the site.**

c.) The location, size, density and site layout of any proposed structures or buildings as they may impact an adequate supply of light and air to adjacent properties and the capacity of essential public facilities such as police and fire protection, drainage structures, municipal sanitary sewer and water, and refuse disposal.

The proposed lot combination and the location, size and density of the proposed new building will not negatively affect the supply of light and air to adjacent properties, as the site is bounded by roads on three sides, and a parking lot on the remaining side. The proposed combination or new building will not negatively affect the capacity of essential public facilities nor the ability of the City to provide essential services. Sufficient water and sewer capacity exists to service the site.

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 300 and 394 S. Old Woodward seeking public comment on the proposal.

SUMMARY:

As the proposed lot split/rearrangements at 294 E. Brown Street and 300 S. Old Woodward meet all of the standards for approval as outlined in Chapter 102, Subdivisions, section 53, the City Commission may approve the proposed lot split/rearrangements. Should the applicant's request for rezoning of 300 – 394 S. Old Woodward from D-3 to D-4 be approved, the lot combination request and the proposed building envelope will meet all of the requirements for approval as outlined in Chapter 102, Subdivisions, section 83, as noted above and the City Commission may approve the proposed lot combination.

The Planning Division recommends that the City Commission approve the applications for the lot splits/rearrangements and the proposed lot combination of the amended parcels at 300 – 394 S. Old Woodward.

ATTACHMENTS:

- Lot split/rearrangement application for 300 S. Old Woodward;
- Lot split/rearrangement application for 294 E. Brown Street;
- Lot Combination application for 300 – 394 S. Old Woodward

- Plans for proposed development at 300 -394 S. Old Woodward as submitted to the Planning Board for the meeting of March 24, 2021.

SUGGESTED ACTION:

To APPROVE the proposed lot split/rearrangement of 300 S. Old Woodward to allow for 3,104.39 sq.ft. on the western edge of 300 S. Old Woodward to be split from the existing parcel, and added to the parcel known as 294 E. Brown Street;

AND

To APPROVE the proposed lot split/rearrangement of 294 E. Brown Street to divide the existing parcel into two parcels, to allow for 1,962.79 sq.ft. on the eastern edge of the parcel to be split and added to the parcel at 394 S. Old Woodward;

AND

To APPROVE the proposed lot combination of 300 – 394 S. Old Woodward to create a larger rectangular parcel 20,201.08 sq.ft. in size on S. Old Woodward running south of E. Brown Street to Daines, subject to the following conditions:

1. All outstanding taxes and special assessments due on 300 S. Old Woodward must be paid in full; and
2. Both 300 S. Old Woodward and 394 S. Old Woodward are approved for rezoning to D-4 in the Downtown Overlay District, or the height of the proposed building to is reduced to 68' and a use variance is obtained from the Board of Zoning Appeals for the use of the fourth floor as a restaurant.

OR

To DENY the proposed lot split/rearrangement of 300 S. Old Woodward, based on the following conditions that adversely affect the interest of the public and of the abutting property owners:

AND

To DENY the proposed lot split of 294 E. Brown Street, based on the following conditions that adversely affect the interest of the public and of the abutting property owners:

AND

To deny the lot combination of 300 – 394 S. Old Woodward as proposed based on the following conditions that adversely affect the interest of the public and of the abutting property owners:

Division of Platted Lots Application #1



Division of Platted Lots Application #1

Planning Division

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

1. Applicant

Name: RH, Inc.
Address: 15 Koch Road
Corte Madera, CA 94925
Phone Number: (415) 936-9642
Fax Number: N/A
Email address: ds@rh.com

2. Property Owner

Name: See attached Consent Form for each of the 2 property owners
Address: See Consent Form
Phone Number: See Consent Form
Fax Number: N/A
Email address: See Consent Form

3. Applicant's Attorney/Contact Person

Name: Richard D. Rattner
Address: 380 N. Old Woodward Ave., Ste. 300
Birmingham, MI 48009
Phone Number: (248) 642-0333
Fax Number: (248) 642-0856
Email address: rdr@wwrplaw.com

4. Project Designer/Developer

Name: Victor Saroki, FAIA
Address: 430 N. Old Woodward Ave., Fl. 3
Birmingham, MI 48009
Phone Number: (248) 258-5707
Fax Number: N/A
Email address: vsaroki@sarokiarchitecture.com

5. Project Information

Address/Location of Property: 294 E. Brown Street and 300
S. Old Woodward Ave.
Sidwell #: 19-36-204-021 and 19-36-204-006
Parcel #: 19-36-204-021 and 19-36-204-006
Current Zoning: B2/D3

Legal Description: See attached survey

6. Required Attachments

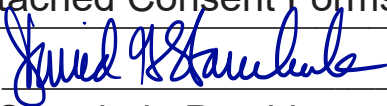
- I. Two (2) copies of a *registered* land survey showing:
 - i. All existing and proposed platted lot lines;
 - ii. Legal descriptions of proposed lots;
 - iii. Footprints of proposed development(s) including proposed building envelope(s) with front, side and rear setbacks clearly marked;
- II. One (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)

Commanding four levels and over 49,810 interior and exterior square feet, this innovative retail concept features artistic installations of home furnishings in a gallery setting, showcasing RH Interiors, RH Modern, and RH Outdoors. RH's seamlessly integrated culinary offering, the RH rooftop restaurant highlights an ingredient-driven menu. RH Birmingham will also include an interactive design atelier offering professional design services in a studio environment and a rooftop park. A SLUP is required for alcoholic beverage service for on-site consumption in the B2 Zone.

(I), (We), the undersigned, do hereby request to divide 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: _____
Print Name: See attached Consent Forms
Signature of Applicant:  _____ Date: 2.24.21
Print Name: Dave Stanchak, President

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



CONSENT OF PROPERTY OWNER

Frank T. Konjarevich or Lois H. Konjarevich, as Trustees for the Frank T. Konjarevich Rev. Liv. Trust dated 5/22/95
I, _____, OF THE STATE OF Michigan AND
(Name of Property Owner)
COUNTY OF Oakland STATE THE FOLLOWING:

1. That I am the owner of real estate located at 394 S. Old Woodward;
(Address of Affected Property)
2. That I have read and examined the Application for **DIVISION OF PLATTED LOTS** made to the City of
Birmingham by: RH, Inc.;
(Name of Applicant)
3. That I have no objections to, and consent to the request(s) described in the Application made to the City of
Birmingham.

Frank T. Konjarevich or Lois H. Konjarevich, as Trustees for the Frank T. Konjarevich Rev. Liv. Trust dated 5/22/95
Name of Owner (Printed): _____

Signature of Owner: Frank Konjarevich Date: 2/24/21



Notice Signs - Rental Application Community Development

1. Applicant

Name: RHF&B Michigan, LLC

Address: 15 Koch Road
Corte Madera, CA 94925

Phone Number: (415) 936-9642

Fax Number: N/A

Email address: ds@rh.com

Property Owner

Name: See attached Consent Form for each of the 3 property owners

Address: See Consent Form

Phone Number: See Consent Form

Fax Number: N/A

Email address: See Consent Form

2. Project Information

Address/Location of Property: 300-394 S. Old Woodward Ave.

Name of Development: RH Birmingham

Area in Acres: .46 acres

Name of Historic District site is in, if any: Not in any historic district

Current Use: Retail and Office

Current Zoning: D-3

3. Date of Board Review

Board of Building Trades Appeals: N/A

City Commission: TBD

Historic District Commission: N/A

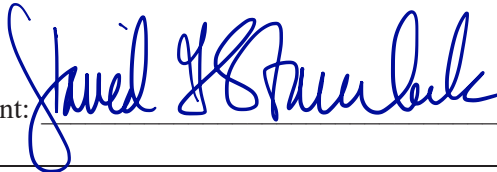
Planning Board: 03/24/21

Board of Zoning Appeals: 300-394 S. Old Woodward Ave.

Design Review Board: N/A

Housing Board of Appeals: N/A

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: 2.24.21

Office Use Only

Application #: _____ Date Received: _____ Fee: _____

Date of Approval: _____ Date of Denial: _____ Reviewed by: _____

Exhibit A - Land Division No. 1

PARENT PARCEL

LEGAL DESCRIPTION - PARCELS I & II (PER TITLE COMMITMENT)

LAND IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MI, DESCRIBED AS FOLLOWS:

PARCEL I:
THE EAST 1/2 OF LOT(S) 11 OF BROWN’S ADDITION TO THE CITY OF BIRMINGHAM AND THE EAST 1/2 OF LOT 16 OF BROWN’S ADDITION NO. 1, IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MICHIGAN ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS, INCLUDING THE VACATED WEST 20 FEET OF ANN STREET ADJOINING LOT 11 AND THE VACATED WEST 19 FEET OF ANN STREET ADJOINING LOT 16.

PARCEL II:
THE WEST 1/2 OF LOT(S) 12 OF BROWN’S ADDITION TO THE VILLAGE (NOW CITY) OF BIRMINGHAM, OF PART OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 36, TOWN 2 NORTH, RANGE 10 EAST, TOWNSHIP OF BLOOMFIELD (NOW CITY OF BIRMINGHAM), OAKLAND COUNTY, MICHIGAN ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS, ALSO LOT 15, ADDITION TO WILLIAM BROWN’S ADDITION NO. 1, BEING A PART OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 36, TOWN 2 NORTH, RANGE 10 EAST ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS, INCLUDING VACATED 20 FEET OF ANN STREET, ADJOINING THE WESTERLY SIDE OF LOT 12 AND VACATED 21 FEET OF ANN STREET ADJOINING THE WESTERLY SIDE OF LOT 15.

ADDRESS: 294 E. BROWN STREET, BIRMINGHAM, MI 48009

TAX ID NUMBER: 19-36-204-021

LEGAL DESCRIPTION - PARCEL 2 (PER TITLE COMMITMENT)

LAND IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MI, DESCRIBED AS FOLLOWS:

THE EASTERLY 50 FEET OF LOT 12, AND THE WESTERLY PART OF LOT 13, MEASURING 82.45 FEET ON THE NORTH LOT LINE AND 82.48 FEET ON THE SOUTH LOT LINE OF BROWN’S ADDITION SUBDIVISION ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS.

ADDRESS: 300 S. OLD WOODWARD AVENUE, BIRMINGHAM, MI 48009

TAX ID NUMBER: 19-36-204-006

Exhibit A

PARENT PARCEL



EXCEPTED PART TAKEN
FOR WOODWARD WIDENING

E. BROWN ST. (60' R.O.W.)

NE. CORNER LOT 13

S62°00'00"W 17.47'

N62°00'00"E 133.78'

N62°00'00"E 140.00'

WEST
1/2
OF
LOT 11

EAST 1/2
OF LOT 11

VACATED ANN STREET

LOT 12
BROWN'S
ADDITION
(LIBER 3,
PAGE 8)

PART OF
LOT 12

300
S. OLD WOODWARD AVE.

PARCEL 2

19-36-204-006

PART OF LOT 13

S62°00'00"W
271.54'

S35°35'52"E 100.00'

S. OLD WOODWARD AVE. (100' R.O.W.)

N36°14'00"W
200.31'

294
E. BROWN ST.

PARCEL I
19-36-204-021

WEST
1/2
OF
LOT 16

EAST 1/2
OF LOT 16

VACATED ANN STREET

294 E. BROWN ST.

PARCEL II

19-36-204-021

LOT 15

ADDITION TO WILLIAM
BROWN'S ADDITION NO. 1
(LIBER 3, PAGE 8)

N62°00'00"E
50.00'

S36°14'00"E 100.15'

394
S. OLD WOODWARD AVE.

19-36-204-014

PART OF LOT 14

S62°00'00"W 190.00'

DAINES ST. (40' R.O.W.)

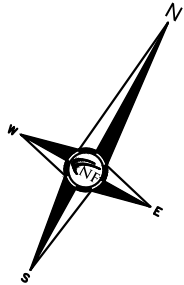
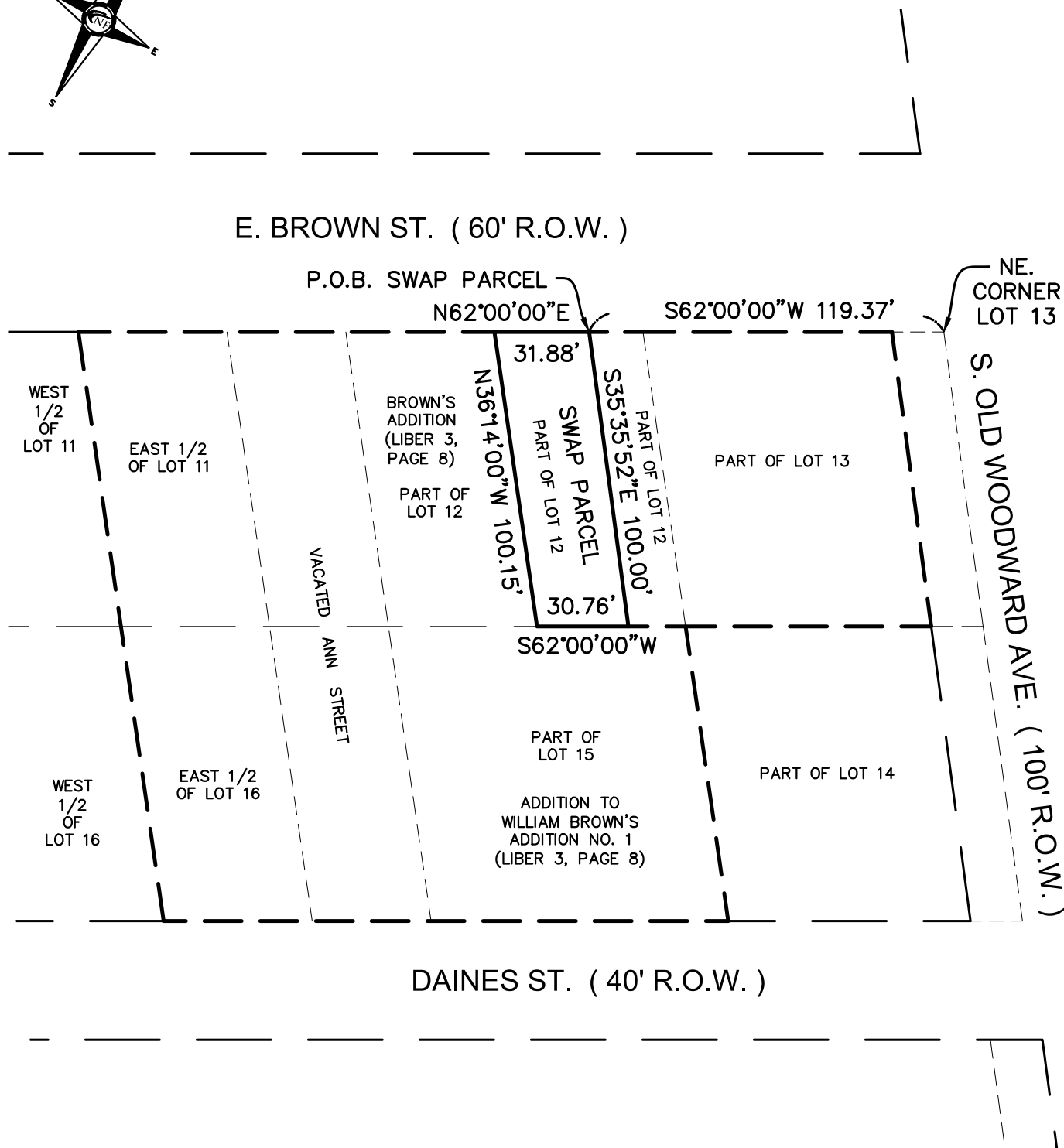


Exhibit A

SWAP PARCEL



LEGAL DESCRIPTION - SWAP PARCEL

LAND SITUATED IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MI,
DESCRIBED AS FOLLOWS:

PART OF LOT 12 OF BROWN'S ADDITION SUBDIVISION ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS; BEING DESCRIBED AS: BEGINNING AT A POINT DISTANT S.62°00'00"W. 119.37 FEET FROM THE NORTHEAST CORNER OF LOT 13 OF SAID BROWN'S ADDITION SUBDIVISION; THENCE S.35°35'52"E. 100.00 FEET; THENCE S.62°00'00"W. 30.76 FEET; THENCE N.36°14'00"W. 100.15 FEET; THENCE N.62°00'00"E. 31.88 FEET TO THE POINT OF BEGINNING.

CONTAINING: 3,104.39 SQUARE FEET OR 0.07 ACRES OF LAND

PART OF TAX ID NUMBER: 19-36-204-006

NOWAK & FRAUS ENGINEERS
46777 WOODWARD AVE.
PONTIAC, MI 48342-5032
TEL. (248) 332-7931
WWW.NFE-ENGR.COM

REVISED
02-24-2021

SCALE	DATE	DRAWN	JOB NO.	SHEET
1" = 50'	1-28-2021	M.C.	M106	3 of 5

Exhibit A

RESULTING PARCEL

LEGAL DESCRIPTION - PARCEL A

LAND SITUATED IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MI,
DESCRIBED AS FOLLOWS:

THE EAST 1/2 OF LOT 11, PART OF LOT 12 AND ALL OF VACATED ANN STREET ADJACENT THEREOF OF BROWN'S ADDITION SUBDIVISION ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS AND THE EAST 1/2 OF LOT 16, LOT 15 AND ALL OF VACATED ANN STREET ADJACENT THEREOF OF ADDITION TO WILLIAM BROWN'S ADDITION NO. 1 ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS, ALL BEING DESCRIBED AS: BEGINNING AT A POINT DISTANT S.62°00'00"W. 119.37 FEET FROM THE NORTHEAST CORNER OF SAID LOT 13 OF BROWN'S ADDITION SUBDIVISION; THENCE S.35°35'52"E. 100.00 FEET; THENCE N.62°00'00"E. 19.24 FEET; THENCE S.36°14'00"E. 100.15 FEET; THENCE S.62°00'00"W. 190.00 FEET; THENCE N.36°14'00"W. 200.31 FEET; THENCE N.62°00'00"E. 171.88 FEET TO THE POINT OF BEGINNING.

CONTAINING: 35,814.67 SQUARE FEET OR 0.82 ACRES OF LAND

ADDRESS: 294 E. BROWN STREET, BIRMINGHAM, MI 48009

PART OF TAX ID NUMBER: 19-36-204-021

LEGAL DESCRIPTION - PARCEL B

LAND IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MI, DESCRIBED AS FOLLOWS:

PART OF LOTS 12 AND 13, EXCEPT THAT PART TAKEN FOR WIDENING WOODWARD AVENUE OF BROWN'S ADDITION SUBDIVISION ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS; BEING MORE PARTICULARLY DESCRIBED AS: BEGINNING AT A POINT DISTANT S.62°00'00"W. 17.47 FEET FROM THE NORTHEAST CORNER OF SAID LOT 13 OF BROWN'S ADDITION SUBDIVISION; THENCE S.35°35'52"E. 100.00 FEET; THENCE S.62°00'00"W. 101.90 FEET; THENCE N.35°35'52"W. 100.00 FEET; THENCE N.62°00'00"E. 101.90 FEET TO THE POINT OF BEGINNING.

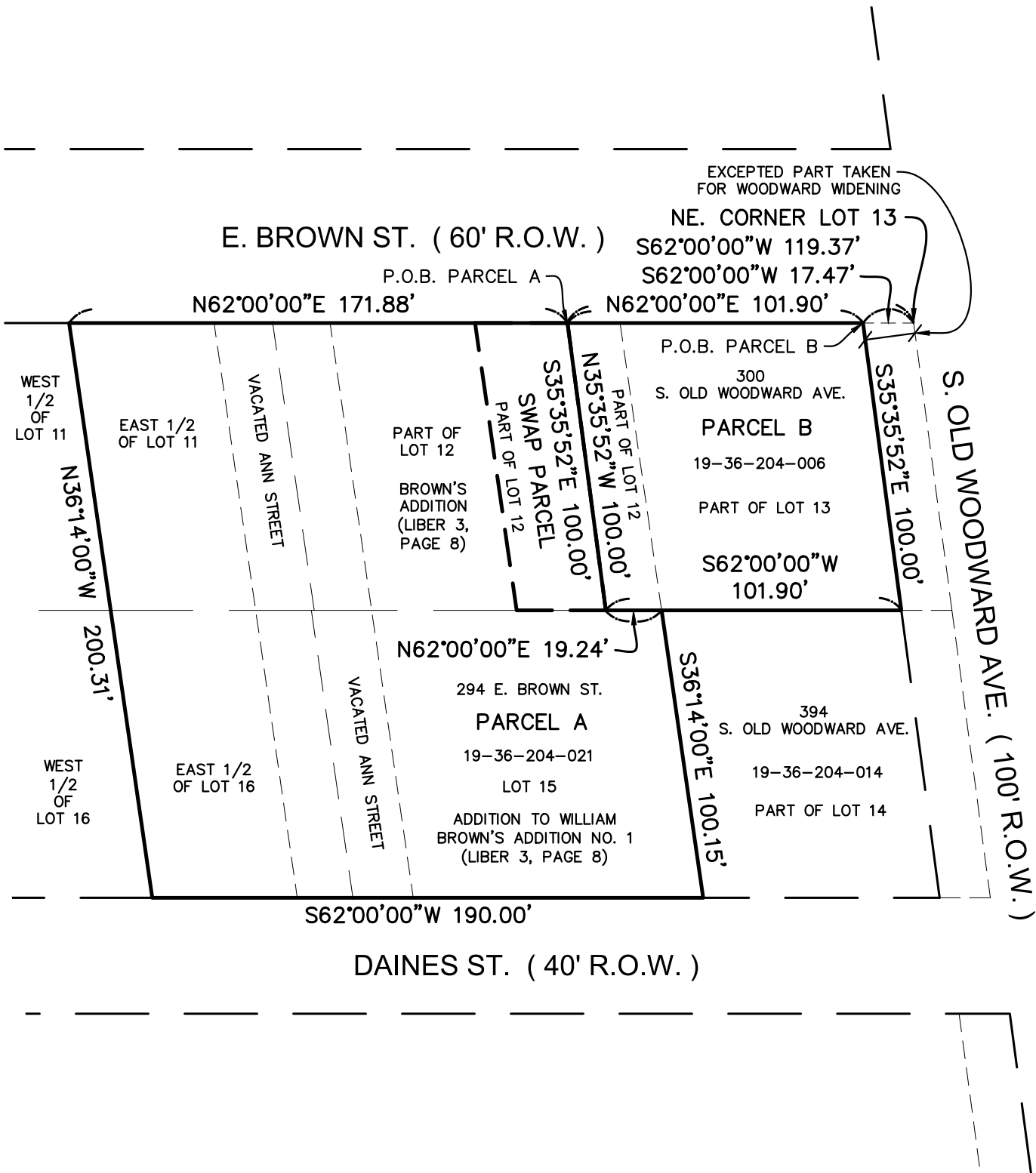
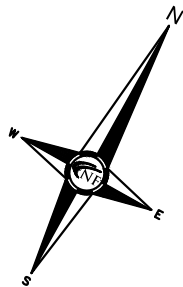
CONTAINING: 10,100.54 SQUARE FEET OR 0.23 ACRES OF LAND

ADDRESS: 300 S. OLD WOODWARD AVENUE, BIRMINGHAM, MI 48009

PART OF TAX ID NUMBER: 19-36-204-006

Exhibit A

RESULTING PARCEL



Division of Platted Lots Application #2



Division of Platted Lots Application #2 Planning Division

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

1. Applicant

Name: RH, Inc.
Address: 15 Koch Road
Corte Madera, CA 94925
Phone Number: (415) 936-9642
Fax Number: N/A
Email address: ds@rh.com

2. Property Owner

Name: See attached Consent Form for each of the 2 property owners
Address: See Consent Form
Phone Number: See Consent Form
Fax Number: N/A
Email address: See Consent Form

3. Applicant's Attorney/Contact Person

Name: Richard D. Rattner
Address: 380 N. Old Woodward Ave., Ste. 300
Birmingham, MI 48009
Phone Number: (248) 642-0333
Fax Number: (248) 642-0856
Email address: rdr@wwrplaw.com

4. Project Designer/Developer

Name: Victor Saroki, FAIA
Address: 430 N. Old Woodward Ave., Fl. 3
Birmingham, MI 48009
Phone Number: (248) 258-5707
Fax Number: N/A
Email address: vsaroki@sarokiarchitecture.com

5. Project Information

Address/Location of Property: 294 E. Brown Street and 394
S. Old Woodward Ave.
Sidwell #: 19-36-204-021 and 19-36-204-014
Parcel #: 19-36-204-021 and 19-36-204-014
Current Zoning: B2/D3

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. Footprints of proposed development(s) including proposed building envelope(s) 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)

Commanding four levels and over 49,810 interior and exterior square feet, this innovative retail concept features artistic installations of home furnishings in a gallery setting, showcasing RH Interiors, RH Modern, and RH Outdoors. RH's seamlessly integrated culinary offering, the RH rooftop restaurant highlights an ingredient-driven menu. RH Birmingham will also include an interactive design atelier offering professional design services in a studio environment and a rooftop park. A SLUP is required for alcoholic beverage service for on-site consumption in the B2 Zone.

(I), (We), the undersigned, do hereby request to divide 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: _____

Print Name: See attached consent forms

Signature of Applicant:  Date: 2.24.21

Print Name: Dave Stanchak, President

Office Use Only

Application#: _____ Date Received: _____ Fee: _____

Date of Approval: _____ Date of Denial: _____ Reviewed By: _____



CONSENT OF PROPERTY OWNER

Frank T. Konjarevich or Lois H. Konjarevich, as Trustees for the Frank T. Konjarevich Rev. Liv. Trust dated 5/22/95
I, _____, OF THE STATE OF Michigan AND
(Name of Property Owner)
COUNTY OF Oakland STATE THE FOLLOWING:

1. That I am the owner of real estate located at 394 S. Old Woodward;
(Address of Affected Property)
2. That I have read and examined the Application for **DIVISION OF PLATTED LOTS** made to the City of
Birmingham by: RH, Inc.;
(Name of Applicant)
3. That I have no objections to, and consent to the request(s) described in the Application made to the City of
Birmingham.

Frank T. Konjarevich or Lois H. Konjarevich, as Trustees for the Frank T. Konjarevich Rev. Liv. Trust dated 5/22/95
Name of Owner (Printed): _____

Signature of Owner: Frank Konjarevich Date: 2/24/21



Notice Signs - Rental Application Community Development

1. Applicant

Name: RHF&B Michigan, LLC

Address: 15 Koch Road
Corte Madera, CA 94925

Phone Number: (415) 936-9642

Fax Number: N/A

Email address: ds@rh.com

Property Owner

Name: See attached Consent Form for each of the 3 property owners

Address: See Consent Form

Phone Number: See Consent Form

Fax Number: N/A

Email address: See Consent Form

2. Project Information

Address/Location of Property: 300-394 S. Old Woodward Ave.

Name of Development: RH Birmingham

Area in Acres: .46 acres

Name of Historic District site is in, if any: Not in any historic district

Current Use: Retail and Office

Current Zoning: D-3

3. Date of Board Review

Board of Building Trades Appeals: N/A

City Commission: TBD

Historic District Commission: N/A

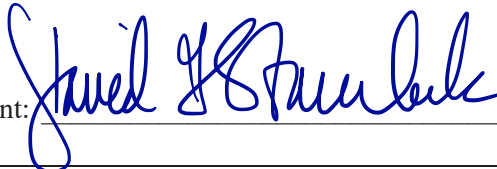
Planning Board: 03/24/21

Board of Zoning Appeals: 300-394 S. Old Woodward Ave.

Design Review Board: N/A

Housing Board of Appeals: N/A

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: 2.24.21

Office Use Only

Application #: _____ Date Received: _____ Fee: _____

Date of Approval: _____ Date of Denial: _____ Reviewed by: _____

Exhibit A - Land Division No. 2

PARENT PARCEL

LEGAL DESCRIPTION - PARCEL 1

LAND SITUATED IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MI,
DESCRIBED AS FOLLOWS:

THE EAST 1/2 OF LOT 11, PART OF LOT 12 AND ALL OF VACATED ANN STREET ADJACENT THEREOF OF BROWN’S ADDITION SUBDIVISION ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS AND THE EAST 1/2 OF LOT 16, LOT 15 AND ALL OF VACATED ANN STREET ADJACENT THEREOF OF ADDITION TO WILLIAM BROWN’S ADDITION NO. 1 ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS, ALL BEING DESCRIBED AS: BEGINNING AT A POINT DISTANT S.62°00’00”W. 119.37 FEET FROM THE NORTHEAST CORNER OF SAID LOT 13 OF BROWN’S ADDITION SUBDIVISION; THENCE S.35°35’52”E. 100.00 FEET; THENCE N.62°00’00”E. 19.24 FEET; THENCE S.36°14’00”E. 100.15 FEET; THENCE S.62°00’00”W. 190.00 FEET; THENCE N.36°14’00”W. 200.31 FEET; THENCE N.62°00’00”E. 171.88 FEET TO THE POINT OF BEGINNING.

ADDRESS: 294 E. BROWN STREET, BIRMINGHAM, MI 48009

PART OF TAX ID NUMBER: 19–36–204–021

LEGAL DESCRIPTION - PARCEL 3 (PER TITLE COMMITMENT)

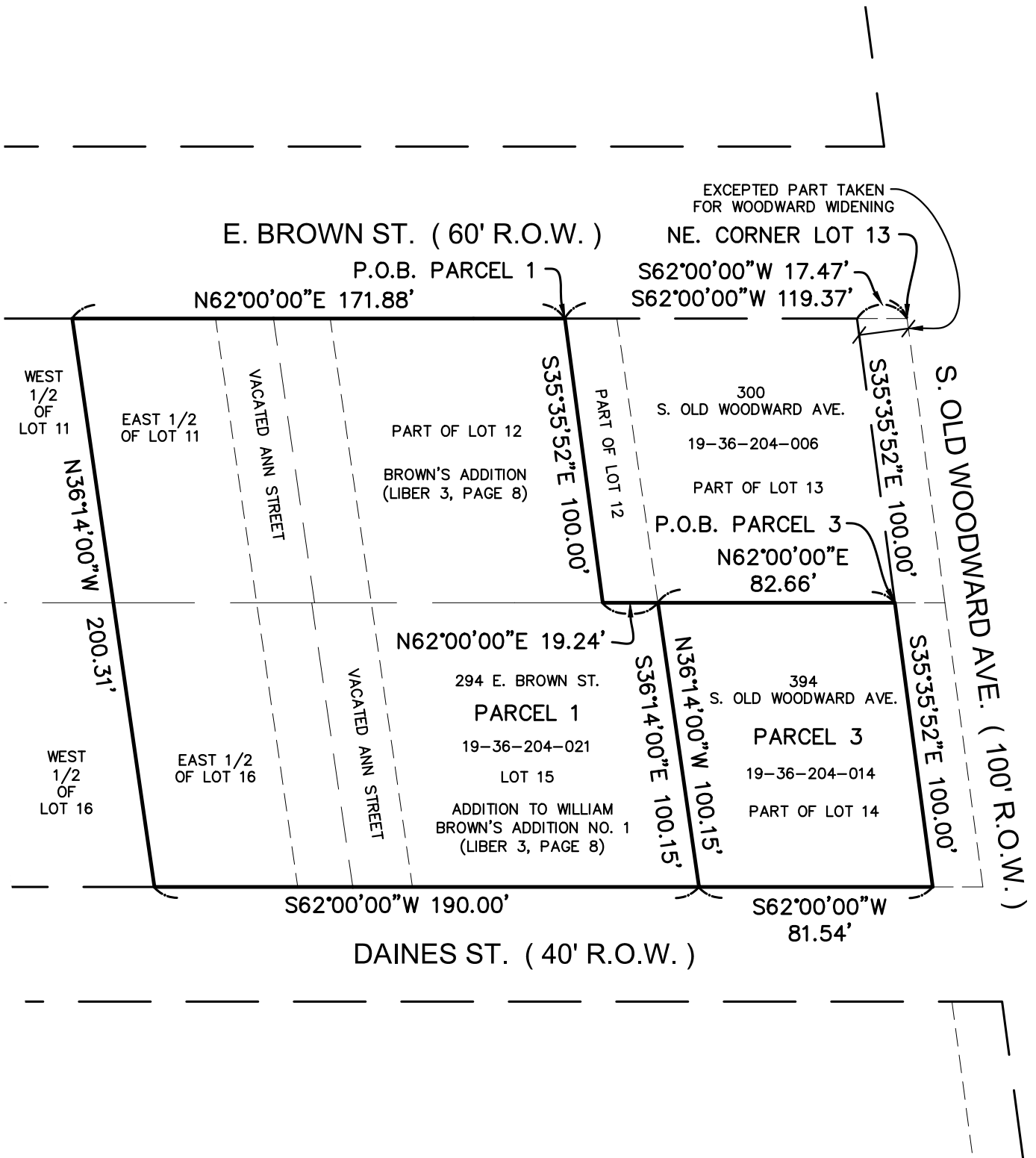
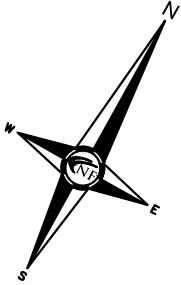
LAND IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MI, DESCRIBED AS FOLLOWS:

LOT(S) 14, EXCEPT THAT PART TAKEN FOR WIDENING WOODWARD AVENUE OF ADDITION TO WILLIAM BROWN’S ADDITION NO. 1 ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS.

ADDRESS: 394 S. OLD WOODWARD AVENUE, BIRMINGHAM, MI 48009

TAX ID NUMBER: 19–36–204–014

Exhibit A
PARENT PARCEL



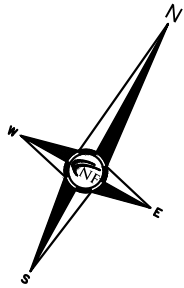
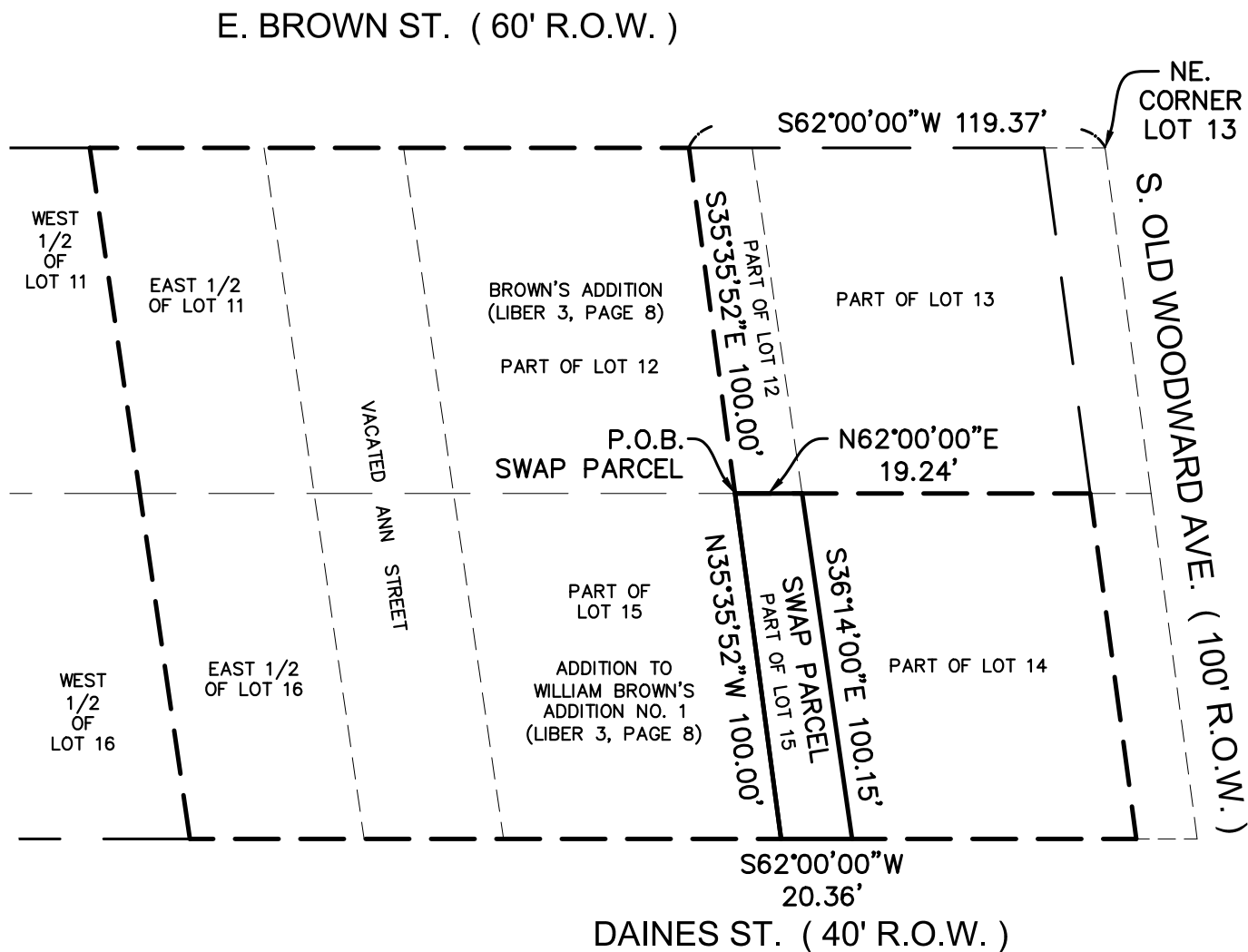


Exhibit A

SWAP PARCEL



LEGAL DESCRIPTION - SWAP PARCEL

LAND SITUATED IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MI,
DESCRIBED AS FOLLOWS:

PART OF LOT 15 OF ADDITION TO WILLIAM BROWN'S ADDITION NO. 1
ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE
8 OF OAKLAND COUNTY RECORDS, BEING DESCRIBED AS: BEGINNING AT A
POINT DISTANT S.62°00'00\"W. 119.37 FEET AND S.35°35'52\"E. 100.00 FEET
FROM THE NORTHEAST CORNER OF LOT 13 OF BROWN'S ADDITION
SUBDIVISION AS RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND
COUNTY RECORDS; THENCE N.62°00'00\"E. 19.24 FEET; THENCE S.35°14'00\"E.
100.15 FEET; THENCE S.62°00'00\"W. 20.36 FEET; THENCE N.35°35'52\"W.
100.00 FEET TO THE POINT OF BEGINNING.

CONTAINING: 1,962.79 SQUARE FEET OR 0.04 ACRES OF LAND

PART OF TAX ID NUMBER: 19-36-204-021

REVISED
02-24-2021

NOWAK & FRAUS ENGINEERS
46777 WOODWARD AVE.
PONTIAC, MI 48342-5032
TEL. (248) 332-7931
WWW.NFE-ENGR.COM

SCALE	DATE	DRAWN	JOB NO.	SHEET
1" = 50'	1-28-2021	M.C.	M106	3 of 5

Exhibit A

RESULTING PARCEL

LEGAL DESCRIPTION - PARCEL A

LAND SITUATED IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MI,
DESCRIBED AS FOLLOWS:

THE EAST 1/2 OF LOT 11, PART OF LOT 12 AND ALL OF VACATED ANN STREET ADJACENT THEREOF OF BROWN'S ADDITION SUBDIVISION ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS AND THE EAST 1/2 OF LOT 16, PART OF LOT 15 AND ALL OF VACATED ANN STREET ADJACENT THEREOF OF ADDITION TO WILLIAM BROWN'S ADDITION NO. 1 ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS, ALL BEING DESCRIBED AS: BEGINNING AT A POINT DISTANT S.62°00'00"W. 119.37 FEET FROM THE NORTHEAST CORNER OF SAID LOT 13 OF BROWN'S ADDITION SUBDIVISION; THENCE S.35°35'52"E. 200.00 FEET; THENCE S.62°00'00"W. 169.64 FEET; THENCE N.36°14'00"W. 200.31 FEET; THENCE N.62°00'00"E. 171.88 FEET TO THE POINT OF BEGINNING.

CONTAINING: 33,851.88 SQUARE FEET OR 0.78 ACRES OF LAND

ADDRESS: 294 E. BROWN STREET, BIRMINGHAM, MI 48009

PART OF TAX ID NUMBER: 19-36-204-021

LEGAL DESCRIPTION - PARCEL B

LAND SITUATED IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MI,
DESCRIBED AS FOLLOWS:

PART OF LOTS 14 AND 15, EXCEPT THAT PART TAKEN FOR WIDENING WOODWARD AVENUE OF ADDITION TO WILLIAM BROWN'S ADDITION NO. 1 ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS; ALL BEING DESCRIBED AS: BEGINNING AT A POINT DISTANT S.62°00'00"W. 17.47 FEET AND S.35°35'52"E. 100.00 FEET FROM THE NORTHEAST CORNER OF LOT 13 OF BROWN'S ADDITION SUBDIVISION ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS; THENCE S.35°35'52"E. 100.00 FEET; THENCE S.62°00'00"W. 101.90 FEET; THENCE N.35°35'52"W. 100.00 FEET; THENCE N.62°00'00"E. 101.90 FEET TO THE POINT OF BEGINNING.

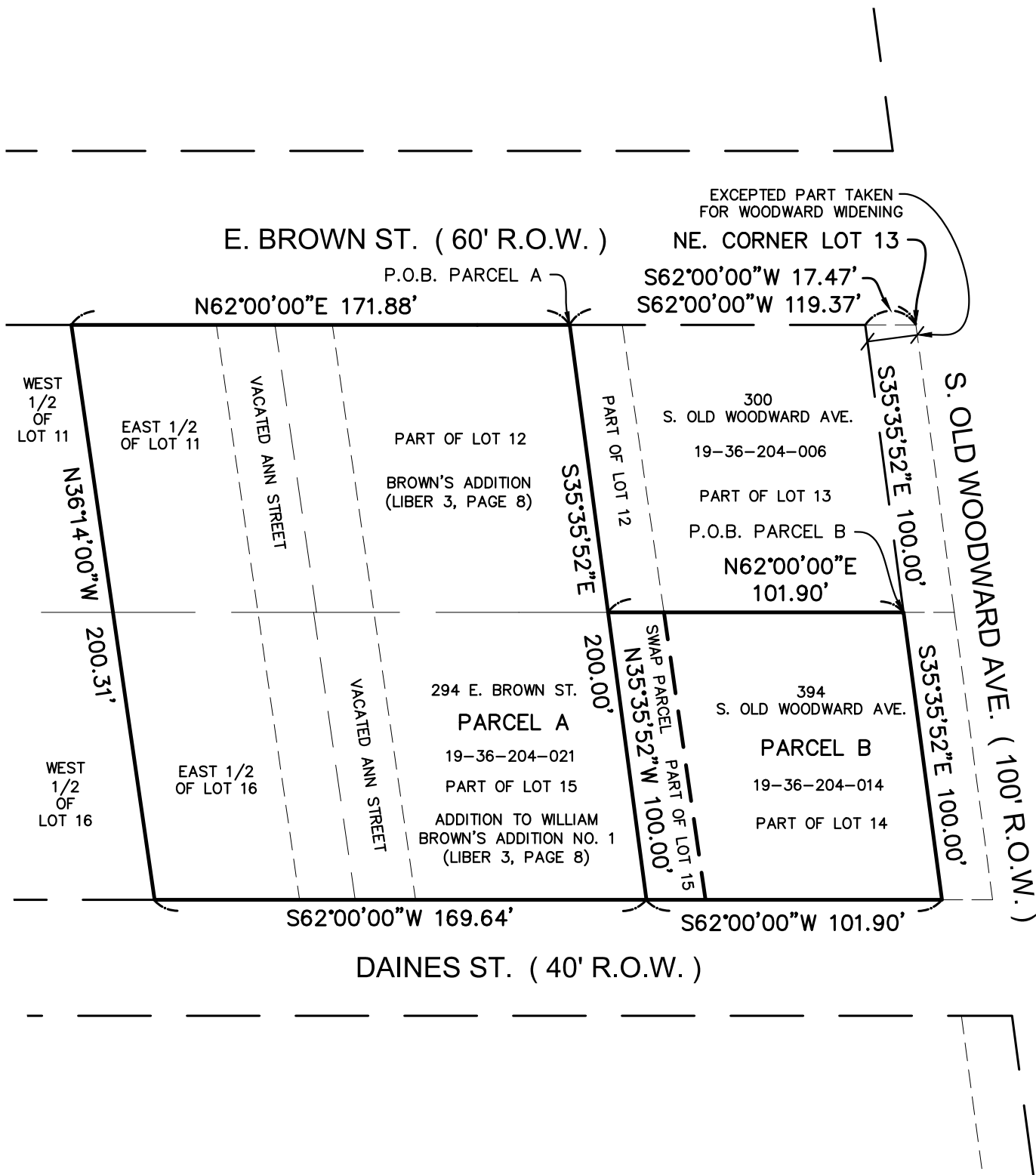
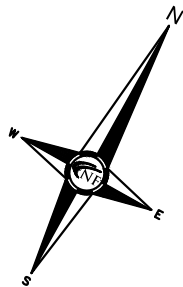
CONTAINING: 10,100.54 SQUARE FEET OR 0.23 ACRES OF LAND

ADDRESS: 394 S. OLD WOODWARD AVENUE, BIRMINGHAM, MI 48009

PART OF TAX ID NUMBER: 19-36-204-014

Exhibit A

RESULTING PARCEL





Combination of Platted Lots Application

Planning Division

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

1. Applicant

Name: RH, Inc.
Address: 15 Koch Road
Corte Madera, CA 94925
Phone Number: (415) 936-9642
Fax Number: N/A
Email address: ds@rh.com

2. Property Owner

Name: See attached Consent Form for each of the 3 property owners
Address: See Consent Form
Phone Number: See Consent Form
Fax Number: N/A
Email address: See Consent Form

3. Applicant's Attorney/Contact Person

Name: Richard D. Rattner
Address: 380 N. Old Woodward Ave., Ste. 300
Birmingham, MI 48009
Phone Number: (248) 642-0333
Fax Number: (248) 642-0856
Email address: rdr@wwrplaw.com

4. Project Designer/Developer

Name: Victor Saroki, FAIA
Address: 430 N. Old Woodward Ave., Fl. 3
Birmingham, MI 48009
Phone Number: (248) 258-5707
Fax Number: N/A
Email address: vsaroki@sarokiarchitecture.com

5. Project Information

Address/Location of Property: 300 & 394 S. Old Woodward Ave. /
294 E. Brown Street
Sidwell #: 19-36-204-021, 19-36-204-006 & 19-36-204-014
Parcel #: 19-36-204-021, 19-36-204-006 & 19-36-204-014
Current Zoning: B2/D3

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)

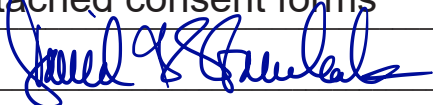
Commanding four levels and over 49,810 interior and exterior square feet, this innovative retail concept features artistic installations of home furnishings in a gallery setting, showcasing RH Interiors, RH Modern, and RH Outdoors. RH's seamlessly integrated culinary offering, the RH rooftop restaurant highlights an ingredient-driven menu. RH Birmingham will also include an interactive design atelier offering professional design services in a studio environment and a rooftop park. A SLUP is required for alcoholic beverage service for on-site consumption in the B2 Zone.

(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: _____

Print Name: See attached consent forms

Signature of Applicant:  _____ Date: 2.24.21

Print Name: Dave Stanchak, President

Office Use Only

Application#: _____ Date Received: _____ Fee: _____

Date of Approval: _____ Date of Denial: _____ Reviewed By: _____



CONSENT OF PROPERTY OWNER

Frank T. Konjarevich or Lois H. Konjarevich, as Trustees for the Frank T. Konjarevich Rev. Liv. Trust dated 5/22/95
I, _____, OF THE STATE OF Michigan AND
(Name of Property Owner)
COUNTY OF Oakland STATE THE FOLLOWING:

1. That I am the owner of real estate located at 394 S. Od Woodward;
(Address of Affected Property)
2. That I have read and examined the Application for **COMBINATION OF PLATTED LOTS** made to the City of
Birmingham by: RH, Inc.;
(Name of Applicant)
3. That I have no objections to, and consent to the request(s) described in the Application made to the City of
Birmingham.

Frank T. Konjarevich or Lois H. Konjarevich, as Trustees for the Frank T. Konjarevich Rev. Liv. Trust dated 5/22/95
Name of Owner (Printed): _____

Signature of Owner: Frank Konjarevich Date: 2/24/21



Notice Signs - Rental Application Community Development

1. Applicant

Name: RHF&B Michigan, LLC

Address: 15 Koch Road
Corte Madera, CA 94925

Phone Number: (415) 936-9642

Fax Number: N/A

Email address: ds@rh.com

Property Owner

Name: See attached Consent Form for each of the 3 property owners

Address: See Consent Form

Phone Number: See Consent Form

Fax Number: N/A

Email address: See Consent Form

2. Project Information

Address/Location of Property: 300-394 S. Old Woodward Ave.

Name of Development: RH Birmingham

Area in Acres: .46 acres

Name of Historic District site is in, if any: Not in any historic district

Current Use: Retail and Office

Current Zoning: D-3

3. Date of Board Review

Board of Building Trades Appeals: N/A

City Commission: TBD

Historic District Commission: N/A

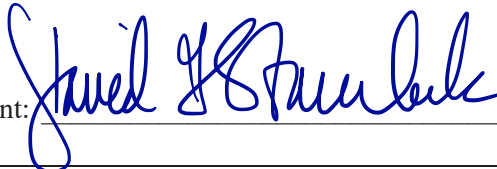
Planning Board: 03/24/21

Board of Zoning Appeals: 300-394 S. Old Woodward Ave.

Design Review Board: N/A

Housing Board of Appeals: N/A

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: 2.24.21

Office Use Only

Application #: _____ Date Received: _____ Fee: _____

Date of Approval: _____ Date of Denial: _____ Reviewed by: _____

Exhibit A

LAND COMBINATION

LEGAL DESCRIPTION - PARCEL 2

LAND IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MI, DESCRIBED AS FOLLOWS:

PART OF LOTS 12 AND 13, EXCEPT THAT PART TAKEN FOR WIDENING WOODWARD AVENUE OF BROWN'S ADDITION SUBDIVISION ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS; BEING MORE PARTICULARLY DESCRIBED AS: BEGINNING AT A POINT DISTANT S.62°00'00"W. 17.47 FEET FROM THE NORTHEAST CORNER OF SAID LOT 13 OF BROWN'S ADDITION SUBDIVISION; THENCE S.35°35'52"E. 100.00 FEET; THENCE S.62°00'00"W. 101.90 FEET; THENCE N.35°35'52"W. 100.00 FEET; THENCE N.62°00'00"E. 101.90 FEET TO THE POINT OF BEGINNING.

CONTAINING: 10,100.54 SQUARE FEET OR 0.23 ACRES OF LAND

ADDRESS: 300 S. OLD WOODWARD AVENUE, BIRMINGHAM, MI 48009

PART OF TAX ID NUMBER: 19-36-204-006

LEGAL DESCRIPTION - PARCEL 3

LAND SITUATED IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MI, DESCRIBED AS FOLLOWS:

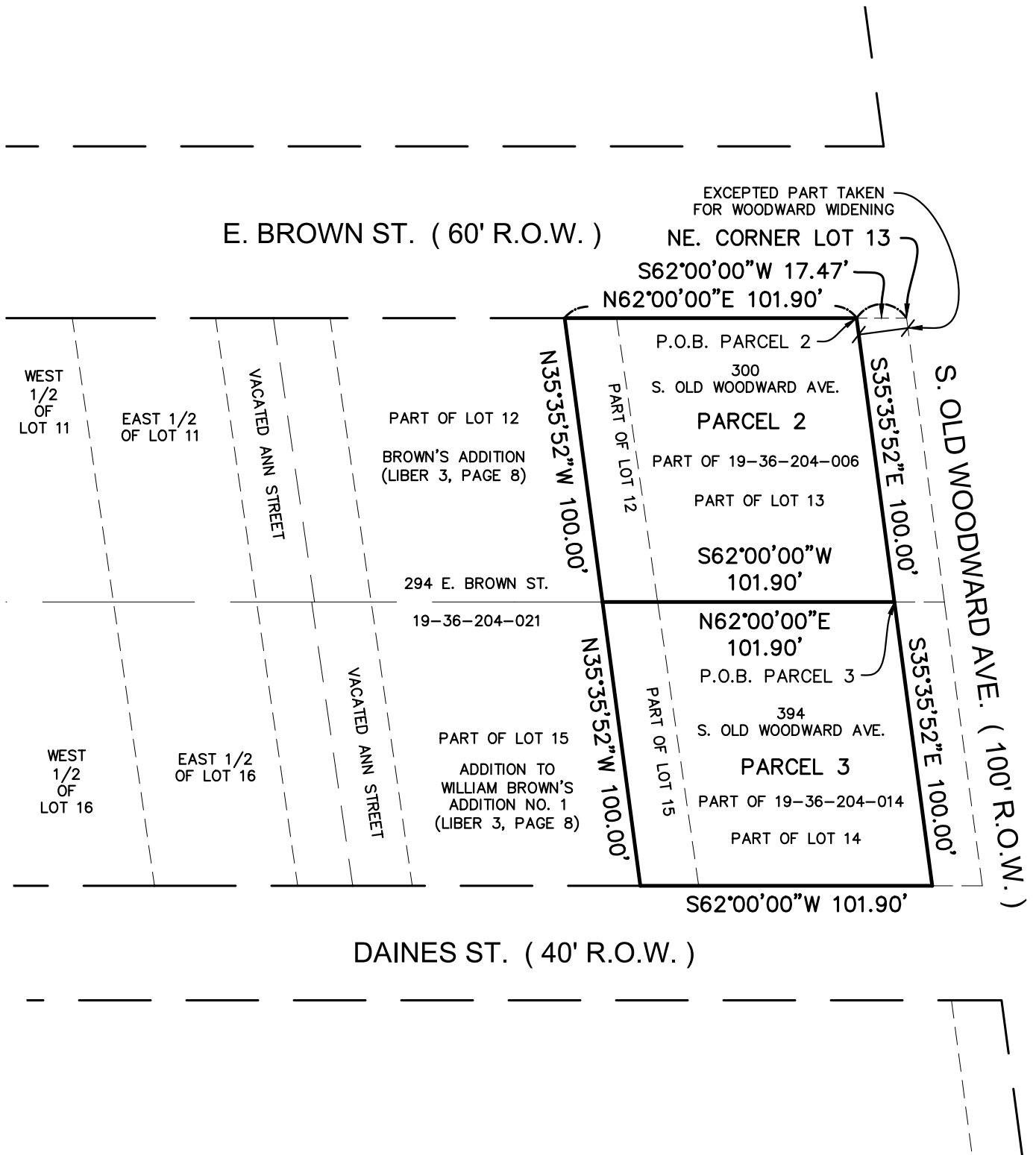
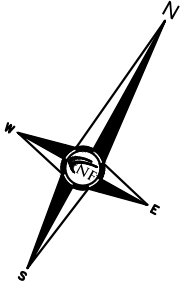
PART OF LOTS 14 AND 15, EXCEPT THAT PART TAKEN FOR WIDENING WOODWARD AVENUE OF ADDITION TO WILLIAM BROWN'S ADDITION NO. 1 ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS; ALL BEING DESCRIBED AS: BEGINNING AT A POINT DISTANT S.62°00'00"W. 17.47 FEET AND S.35°35'52"E. 100.00 FEET FROM THE NORTHEAST CORNER OF LOT 13 OF BROWN'S ADDITION SUBDIVISION ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS; THENCE S.35°35'52"E. 100.00 FEET; THENCE S.62°00'00"W. 101.90 FEET; THENCE N.35°35'52"W. 100.00 FEET; THENCE N.62°00'00"E. 101.90 FEET TO THE POINT OF BEGINNING.

CONTAINING: 10,100.54 SQUARE FEET OR 0.23 ACRES OF LAND

ADDRESS: 394 S. OLD WOODWARD AVENUE, BIRMINGHAM, MI 48009

PART OF TAX ID NUMBER: 19-36-204-014

LAND COMBINATION



SCALE	DATE	DRAWN	JOB NO.	SHEET
1" = 50'	1-28-2021	M.C.	M106	2 of 3

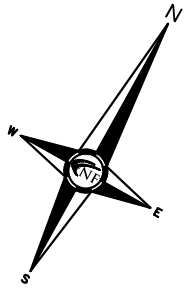
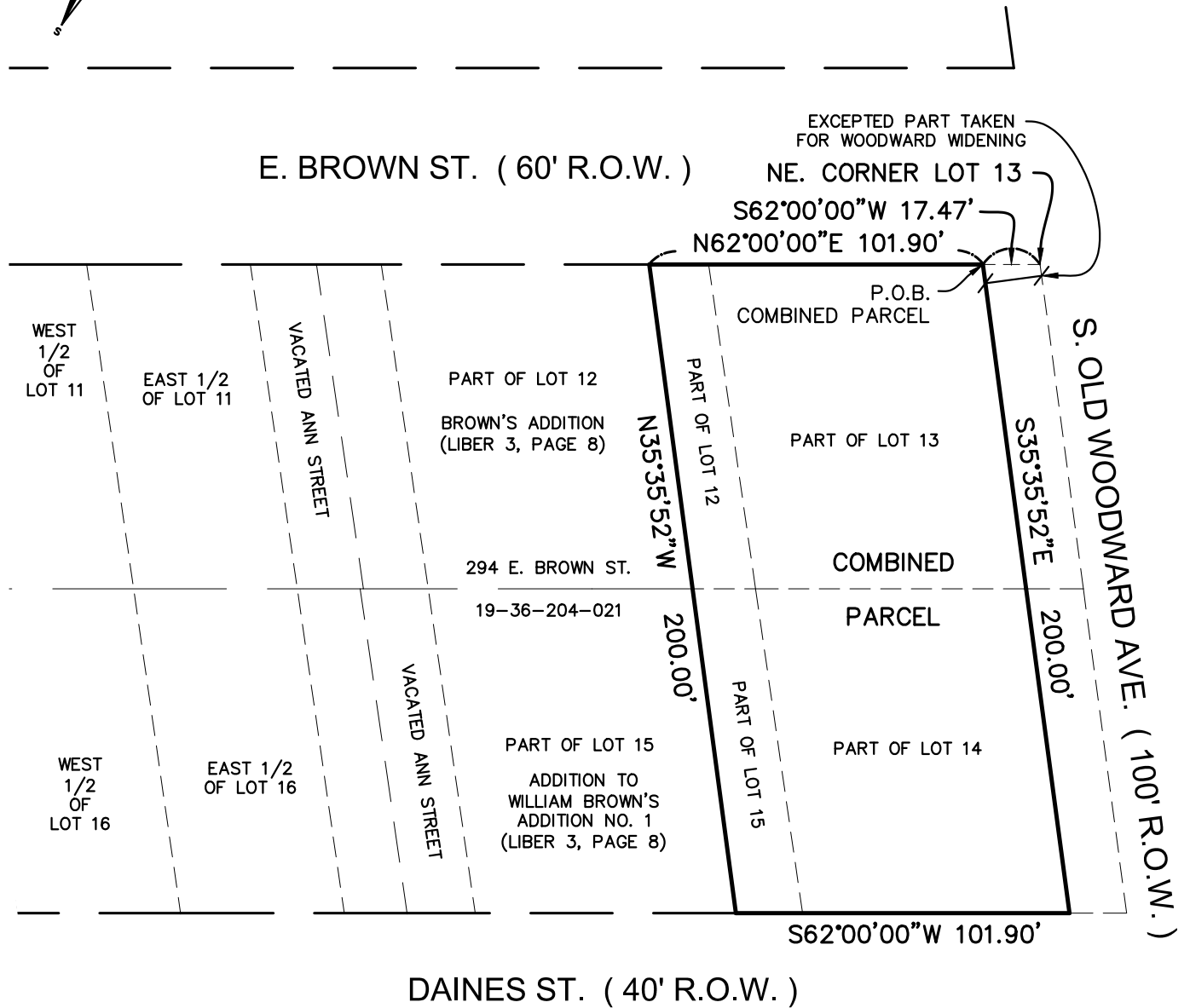


Exhibit A

LAND COMBINATION



LEGAL DESCRIPTION - COMBINED PARCEL

LAND SITUATED IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MI,
DESCRIBED AS FOLLOWS:

PART OF LOTS 12 AND 13, EXCEPT THAT PART TAKEN FOR WIDENING WOODWARD AVENUE OF BROWN'S ADDITION SUBDIVISION ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS AND PART OF LOTS 14 AND 15, EXCEPT THAT PART TAKEN FOR WIDENING WOODWARD AVENUE OF ADDITION TO WILLIAM BROWN'S ADDITION NO. 1 ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS; ALL BEING DESCRIBED AS: BEGINNING AT A POINT DISTANT S.62°00'00"W. 17.47 FEET FROM THE NORTHEAST CORNER OF SAID LOT 13 OF BROWN'S ADDITION SUBDIVISION; THENCE S.35°35'52"E. 200.00 FEET; THENCE S.62°00'00"W. 101.90 FEET; THENCE N.35°35'52"W. 200.00 FEET; THENCE N.62°00'00"E. 101.90 FEET TO THE POINT OF BEGINNING.

CONTAINING: 20,201.08 SQUARE FEET OR 0.46 ACRES OF LAND

NOWAK & FRAUS ENGINEERS
46777 WOODWARD AVE.
PONTIAC, MI 48342-5032
TEL. (248) 332-7931
WWW.NFE-ENGR.COM

REVISED
02-24-2021

SCALE	DATE	DRAWN	JOB NO.	SHEET
1" = 50'	1-28-2021	M.C.	M106	3 of 3



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

www.wwrplaw.com

April 7, 2021

Richard D. Rattner

rdn@wwrplaw.com

By Email & Hand Delivery

City Commission
City of Birmingham
151 S. Martin Street
Birmingham, MI 48009
Attn: Jana Ecker

Re: Division of Platted Lots Application # 1 for Parcel Nos. 19-36-204-021 and 19-36-204-006; Division of Platted Lots Application #2 for Parcel Nos. 19-36-204-021 and 19-36-204-014; and Combination of Platted Lots Application for Parcel Nos. 19-36-204-021, 19-36-204-006 and 19-36-204-014, part of property known as 300 & 394 S. Old Woodward and 294 E. Brown Street, Birmingham, MI (“Applications”)

Dear Ms. Ecker and Members of the City Commission:

We submit this letter in support of the Applications for two lot divisions and one combination regarding portions of the property commonly known as 300 & 394 S. Old Woodward and 294 E. Brown Street, Birmingham (the “Subject Property”).

These Applications were submitted as part of a package of applications filed with the Planning Department on behalf of RH, Inc. and its proposed development project at the Subject Property. The purpose of the lot divisions and combination is to create a single rectangular parcel with a straight western boundary upon which a new RH Gallery building would be constructed. The two lot divisions and one lot combination amount to a swap of property at the west property line in order to even the boundary line of the Subject Property.

Ordinance Sec. 102-53 – Lot Division Standards of Approval

(1) All lots formed or changed by the division shall conform to the minimum requirements of Chapter 126 of this Code for the zone district in which the property is located.

The single parcel to be formed upon the requested divisions and combination will be a parcel that is 200 feet in length and between 101.9 feet and 119.37 feet deep. It will encompass the area now occupied by a one-story office building and surface parking lot, as well as two single-story retail fronts. The lot divisions and combination will allow the new construction of a

proposed 4-story retail gallery and restaurant, creating a unified street wall on this block of S. Old Woodward south of Brown Street. The Subject Property is in the B2/D3 zone district which allows four stories provided the fourth floor is residential. The Applicant has requested rezoning of the Subject Property to B2/D4 to allow for a fourth-floor restaurant, subject to a Special Use Permit. Regardless, the resulting parcel will conform to all site standards for the underlying zone district of B2.

(2) All residential lots formed or changed by the division shall have a lot width, as defined in Chapter 126, of not less than the average lot width of all lots on the same street within 300 feet of the lots formed or changed and within the same zone district.

The formed lot will be a mixed-use retail/restaurant building and will not include a residential use. Hence, this requirement does not apply.

(3) The division will not adversely affect the interest of the public and of the abutting property owners. In making this determination, the city commission shall consider, but not be limited to the following:

The lot divisions to even the west boundary line of the Subject Property in no way adversely affects the interests of the public nor abutting property owners. The property owner of the abutting lots to the west has consented to the swap of a portion of its property as proposed by the Applicant. The Subject Property does not abut any residential neighborhoods.

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.

The property located at 294 E. Brown is the adjacent property affected by the land divisions and combination. The owner of 294 E. Brown agrees with the lot divisions and combination. The ingress and egress to 294 E. Brown will not materially change because of the divisions and combination, nor will the current use of that adjacent property as an office building and surface parking lot. Future development of 294 E. Brown is not hindered by the Applicant's requests. It is notable that new development to the north and south is already completed with the Daxton Hotel across Brown Street and the Forefront Building across Daines Street.

b. The effect of the proposed division upon any floodplain areas, wetlands and other natural features and the ability of the applicant to develop buildable sites on each resulting parcel without unreasonable disturbance of such natural features.

The divisions requested affect surface parking areas and existing retail buildings and do not affect existing natural features, floodplains or wetlands. The Applicant intends to create new natural features with extensive landscaping around the building and on the rooftop, plus a new landscaped via adjacent to the proposed gallery building.

c. The location, size, density and site layout of any proposed structures or buildings as they may impact an adequate supply of light and air to adjacent properties and the

capacity of essential public facilities such as police and fire protection, drainage structures, municipal sanitary sewer and water, and refuse disposal.

The proposed new development of an RH Gallery with a restaurant will comply with the requirements of the underlying zoning district and the applicable overlay district. The use will be a mix of retail and restaurant and will be less of a burden on public facilities, police and fire than the more intense uses of multifamily residential and office. Light and air supply to adjacent properties will be unaffected as the new building is proposed to be four stories as permitted in the Downtown Overlay and will have similar massing to the buildings immediately to the north and south.

Ordinance Sec. 102-83 – Lot Combination Standards for approval

(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.

The character of the resulting parcel and proposed development of an RH Gallery with restaurant is consistent with existing development in the area. As mentioned, the Daxton Hotel is immediately to the north of Brown Street and the Forefront mixed-use building sits to the south. The 2016 Plan provides the following policy guideline for development in Downtown Birmingham: to “[s]trengthen the spatial and architectural character of the downtown area and ensure buildings are compatible, in mass and scale, with their immediate surroundings and the downtown’s traditional two and four-story buildings (2016 Plan, p. 181). This is precisely the Applicant’s goal for the proposed four-story building on this block of S. Old Woodward consisting of the Subject Property. The proposed development will alleviate the current disjointed single-story buildings and surface parking fronting on S. Old Woodward that create a retail dead zone. Further, this block lacks an appealing street wall created by buildings with more massing such as those north of Brown Street.

The Birmingham 2016 Plan also recommends that the Central Business District shopping area be enlarged “by merging it with South Woodward . . .” and connecting “all areas to each other by reducing apparent physical barriers, by connecting discontinuous retail frontages, and in some cases, by installing the recommended streetscape . . .” (2016 Plan, p. 26). The proposed divisions and lot combination create a single rectangular parcel for the development of an RH Gallery with a restaurant that will accomplish the recommendations of the 2016 Plan by extending the Central Business District into the South Old Woodward area. It also will create a continuous streetscape down this entire block of S. Old Woodward, ridding it of the break caused by surface parking.

(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.

This standard of approval is not applicable to the Subject Property.

(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.

This standard of approval is not applicable to the Subject Property.

(4) The combination will result in building envelopes on the combined parcels that will allow for the placement of buildings and structures in a manner consistent with the existing rhythm and pattern of development within 500 feet in all directions in the same zone district.

The Applicant desires to develop the Subject Property in a manner already addressed that will allow for a new four-story building to be constructed to house an RH Gallery and restaurant. This is consistent with development within 500 feet of the Subject Property.

(5) Any due or unpaid taxes or special assessments upon the property have been paid in full.

There are no unpaid taxes or special assessments related to the Subject Property.

(6) The combination will not adversely affect the interest of the public or the abutting property owners.

The proposed lot combination merely evens the west boundary line of the Subject Property making it feasible for development into a four-story mixed-use retail/restaurant property. The new development will benefit the public with a significant investment in the City of Birmingham in excess of \$20 million dollars. The abutting property owner consents to the lot combination and the lot divisions.

Conclusion

The Applications to divide the lots and then combine two lots to create one unified, straight-edged parcel from the Subject Property satisfies the spirit and intent of Ordinance Section 102-53 (1) – (3) and Section 102-83(1) – (6). We respectfully request the lot divisions and combination be recommended for approval to the City Commission.

Very truly yours,

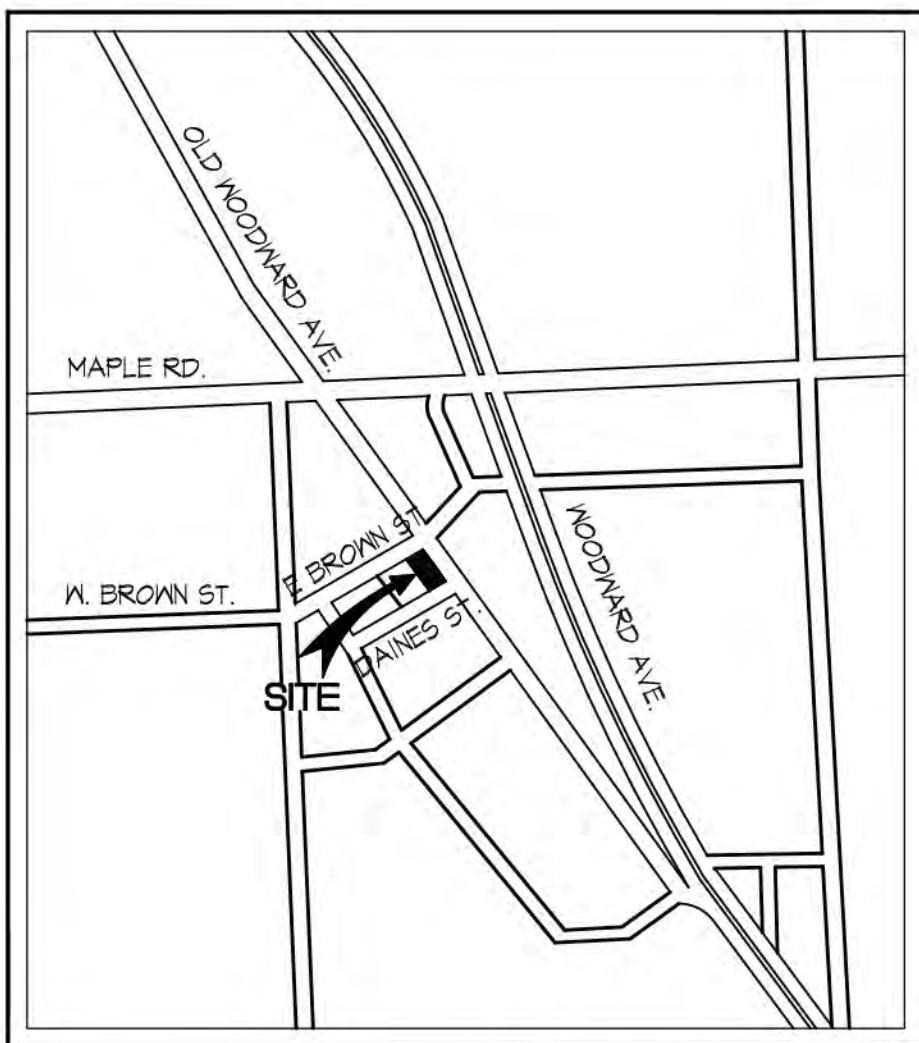
WILLIAMS WILLIAMS RATTNER & PLUNKETT, PC

Richard D. Rattner

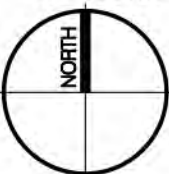
Richard D. Rattner

ZONED B4

BROWN STREET



site location map:
Not To Scale



LEGAL DESCRIPTION - SWAP PARCEL 1
LAND SITUATED IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MI, DESCRIBED AS FOLLOWS:
PART OF LOT 12 OF BROWN'S ADDITION SUBDIVISION ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS; BEING DESCRIBED AS: BEGINNING AT A POINT DISTANT 5.62'00"00"W, 119.37 FEET FROM THE NORTHEAST CORNER OF LOT 13 OF SAID BROWN'S ADDITION SUBDIVISION; THENCE S.35°35'52"E, 100.00 FEET; THENCE S.62°00'00"W, 30.76 FEET; THENCE N.36°14'00"W, 100.15 FEET; THENCE N.62°00'00"E, 31.88 FEET TO THE POINT OF BEGINNING. CONTAINING: 3,104 SQUARE FEET OR 0.07 ACRES OF LAND

LEGAL DESCRIPTION - SWAP PARCEL 2
LAND SITUATED IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MI, DESCRIBED AS FOLLOWS:
PART OF LOT 15 OF ADDITION TO WILLIAM BROWN'S ADDITION NO. 1 ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS; BEING DESCRIBED AS: BEGINNING AT A POINT DISTANT 5.62'00"00"W, 119.37 FEET AND S.35°35'52"E, 100.00 FEET FROM THE NORTHEAST CORNER OF LOT 13 OF BROWN'S ADDITION SUBDIVISION AS RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS; THENCE N.62°00'00"E, 19.24 FEET; THENCE S.35°14'00"E, 100.15 FEET; THENCE S.62°00'00"W, 20.36 FEET; THENCE N.35°35'52"W, 100.00 FEET TO THE POINT OF BEGINNING. CONTAINING: 1,963 SQUARE FEET OR 0.04 ACRES OF LAND

ZONED B3 (Across Old Woodward)

OLD WOODWARD AVENUE

ZONED B2
Parcel II

DAINES STREET

ZONED B-2B

BUILDING SQUARE FOOTAGE TOTALS
FIRST LEVEL: 13,400 SF
SECOND LEVEL: 14,344 SF
THIRD LEVEL: 14,344 SF
FOURTH LEVEL: 7,722 SF
TOTAL: 49,810 SF

LOWER PARKING LEVEL: 15,073 SF (24 PARKING SPACES)

SAROKI
ARCHITECTURE

430 N. OLD WOODWARD
BIRMINGHAM, MI 48009

P. 248.258.5707
F. 248.258.5515

SarokiArchitecture.com

Project:
RH / Mixed-Use
300 S Old Woodward
Birmingham, MI 48009

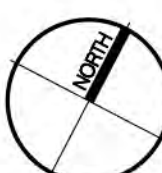
Date: Issued For:

03-17-2021 Preliminary Site Plan App.

Sheet No.:

SP01

Architectural Site Plan



Architectural Site Plan

SCALE: 3/32" = 1'-0"

A
B
C
D
E
F
G
H

BROWN STREET

OLD WOODWARD AVENUE

DAINES STREET

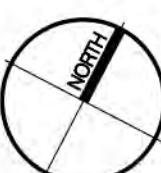
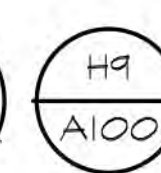
SAROKI
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430 N. OLD WOODWARD
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F. 248.258.5515
SarokiArchitecture.com

Project:
RH / Mixed-Use
300 S Old Woodward
Birmingham, MI 48009

Date: Issued For:
03-16-2021 Preliminary Site Plan App.

Sheet No.:

A100
Lower Parking Level Floor Plan

  **Parking Level Floor Plan**
SCALE: 3/32" = 1'-0"

1 2 3 4 5 6 7 8 9 10

A
B
C
D
E
F
G
H

1 2 3 4 5 6 7 8 9 10



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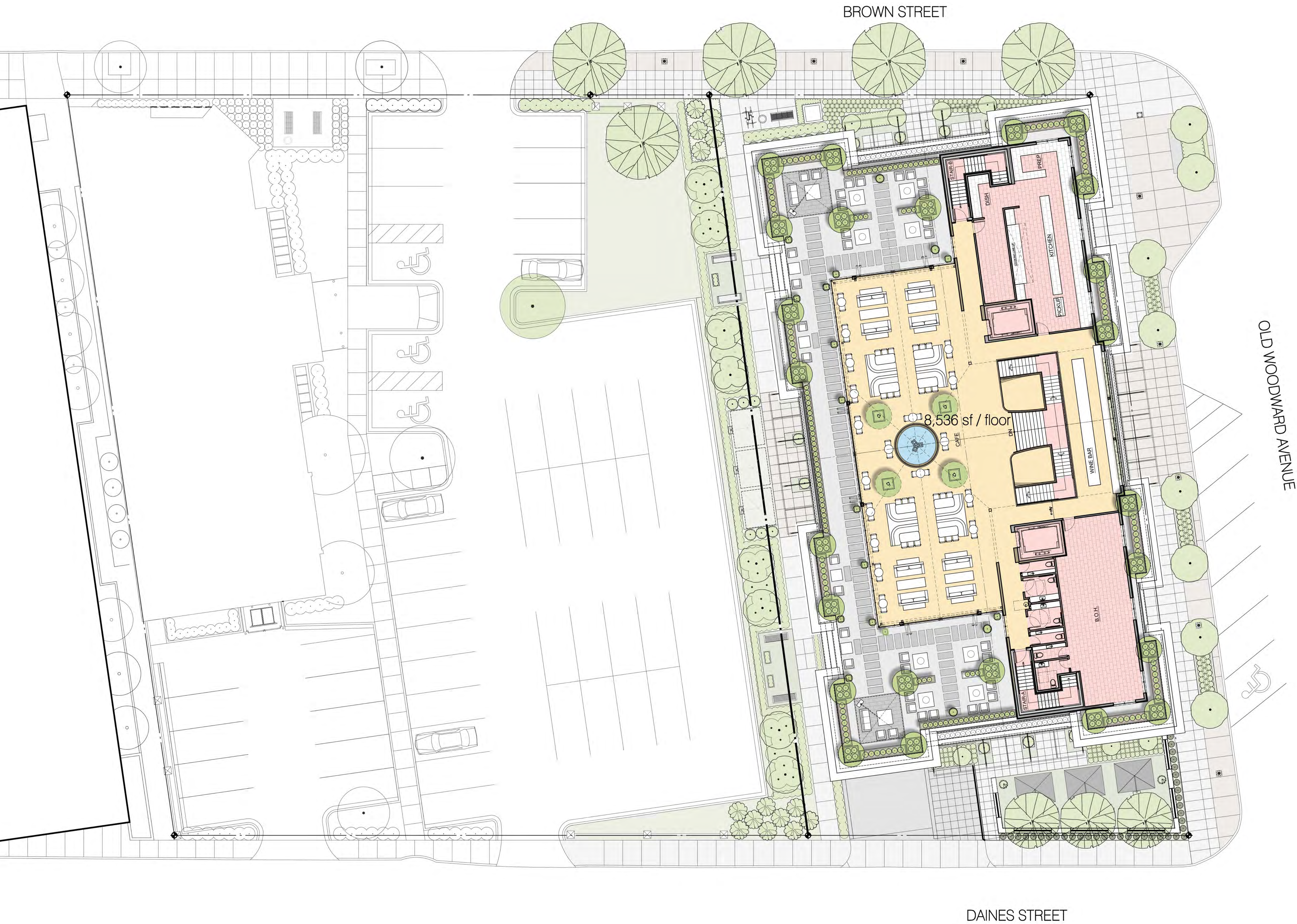
Project:
RH / Mixed-Use
300 S Old Woodward
Birmingham, MI 48009

Date: Issued For:
09-17-2021 Preliminary Site Plan App.

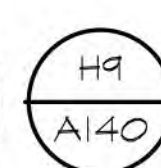
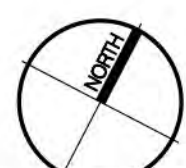
Sheet No.:
A120
Second Level Floor Plan

Second Level Floor Plan
SCALE: 3/32" = 1'-0"

A
B
C
D
E
F
G
H



1 2 3 4 5 6 7 8 9 10



Fourth Level Floor Plan

SCALE: 3/32" = 1'-0"

SAROKI
ARCHITECTURE
430 N. OLD WOODWARD
BIRMINGHAM, MI 48009
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SarokiArchitecture.com

Project:
RH / Mixed-Use
300 S Old Woodward
Birmingham, MI 48009

Date: Issued For:
03-17-2021 Preliminary Site Plan App.

Sheet No.:
A140
Fourth Level Floor Plan

A

B

C

D

E

F

G

H



SAROKI
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430 N. OLD WOODWARD
BIRMINGHAM, MI 48009
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SarokiArchitecture.com

Project:
RH / Mixed-Use
300 S Old Woodward
Birmingham, MI 48009

Date: 03-17-2021 **Issued For:** Preliminary Site Plan App.

Sheet No.:
A210
EXTERIOR ELEVATION

H9
A210
East Exterior Elevation
SCALE: 1/8" = 1'-0"

1 2 3 4 5 6 7 8 9 10

A

B

C

D

E

F

G

H



SAROKI
ARCHITECTURE
430 N. OLD WOODWARD
BIRMINGHAM, MI 48009
P. 248.258.5707
F. 248.258.5515
SarokiArchitecture.com

Project:
RH / Mixed-Use
300 S Old Woodward
Birmingham, MI 48009

Date: Issued For:
03-17-2021 Preliminary Site Plan App.

Sheet No.:
A212
EXTERIOR ELEVATION

H9
A212
West Exterior Elevation
SCALE: 1/8" = 1'-0"

1 2 3 4 5 6 7 8 9 10

A

B

C

D

E

F

G

H

1

2

3

4

5

6

7

8

9

10



SAROKI
ARCHITECTURE
430 N. OLD WOODWARD
BIRMINGHAM, MI 48009
P. 248.258.5707
F. 248.258.5515
SarokiArchitecture.com

Project:
RH / Mixed-Use
300 S Old Woodward
Birmingham, MI 48009

Date: 03-17-2021 **Issued For:** Preliminary Site Plan App.

Sheet No.:
A214
EXTERIOR ELEVATION

H9 North Exterior Elevation
A214 SCALE: 1/8" = 1'-0"

A

B

C

D

E

F

G

H

1

2

3

4

5

6

7

8

9

10



SAROKI
ARCHITECTURE
430 N. OLD WOODWARD
BIRMINGHAM, MI 48009
P. 248.258.5707
F. 248.258.5515
SarokiArchitecture.com

Project:
RH / Mixed-Use
300 S Old Woodward
Birmingham, MI 48009

Date: 03-17-2021 **Issued For:** Preliminary Site Plan App.

Sheet No.:
A216
EXTERIOR ELEVATION

H9
A216
South Exterior Elevation
SCALE: 1/8" = 1'-0"

B

C

D

E

F

G

H



SAROKI
ARCHITECTURE

430 N. OLD WOODWARD
BIRMINGHAM, MI 48009

P. 248.258.5707
F. 248.258.5515

SarokiArchitecture.com

Project:
RH / Mixed-Use
300 S Old Woodward
Birmingham, MI 48009

Date: **Issued For:**
03-17-2021 Preliminary Site Plan App.

Sheet No.:

A218

EXTERIOR ELEVATION

1	2	3	4	5	6	7	8	9	10
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A

B

C

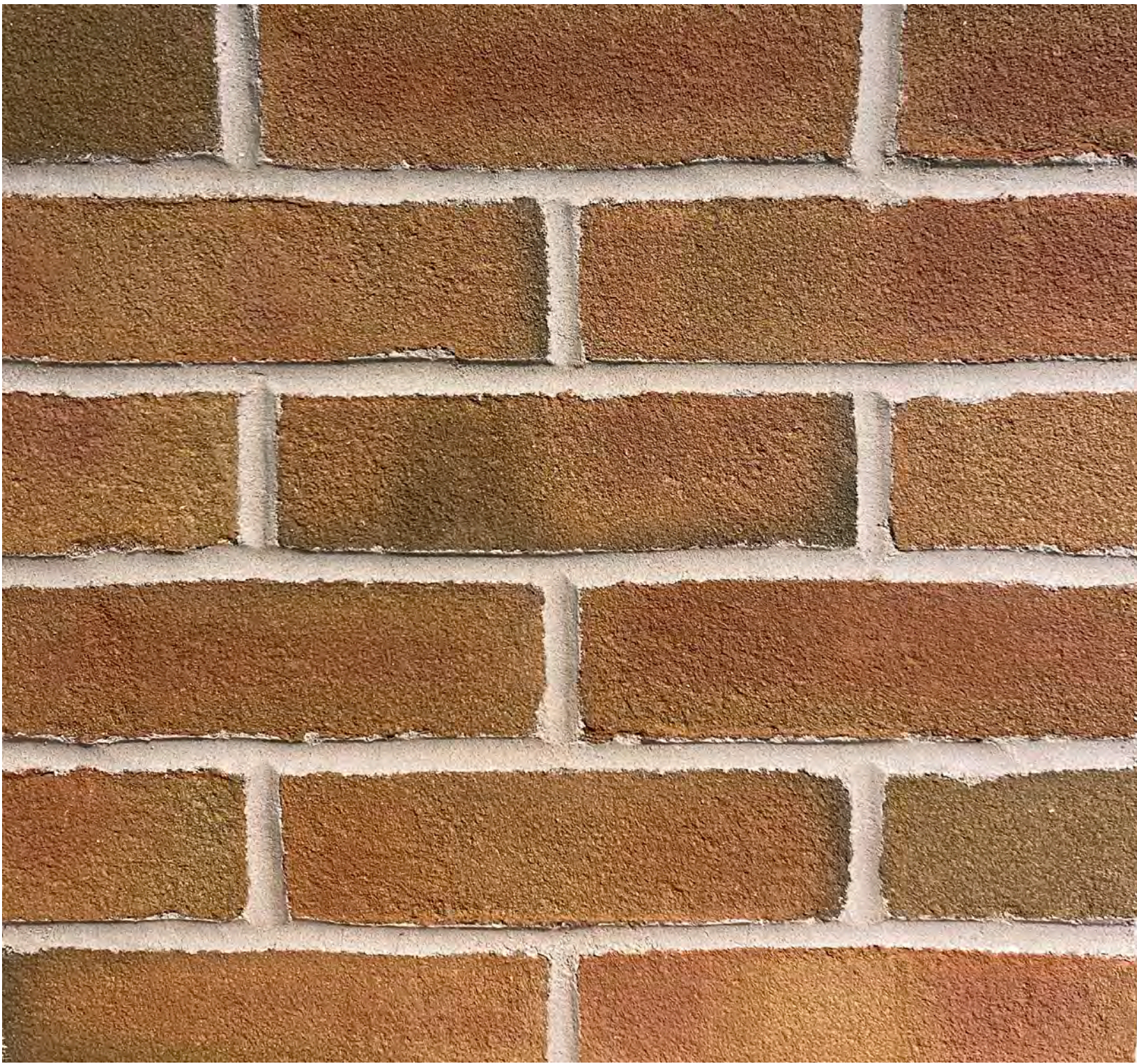
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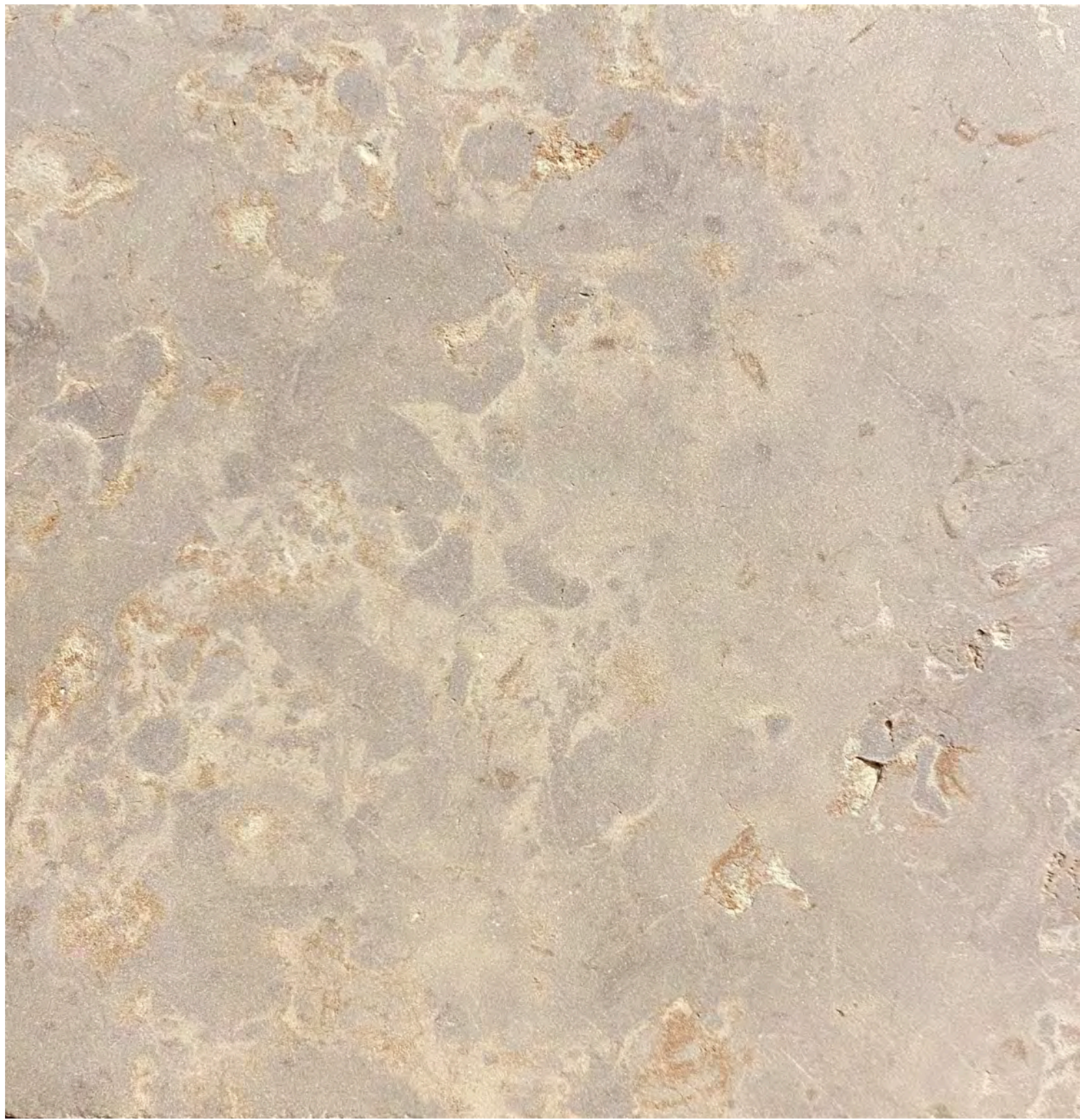
F

G

H



Architectural Brick
Norman Brick Type (3" x 12")



Mankato Limestone



Hope's Steel Windows & Doors



Exterior Light Fixtures & Steel Canopies



Steel and Glass Rooftop Restaurant

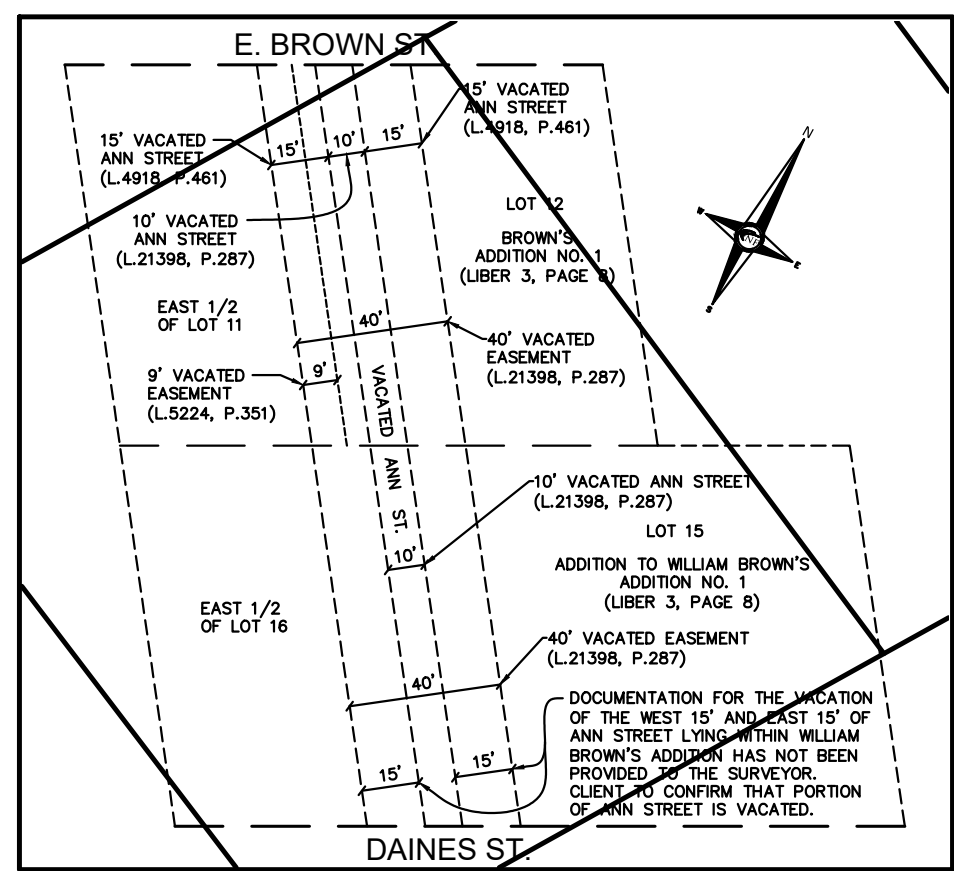
SAROKI
ARCHITECTURE
430 N. OLD WOODWARD
BIRMINGHAM, MI 48009
P. 248.258.5707
F. 248.258.5515
SarokiArchitecture.com

Project:
RH / Mixed-Use
300 S Old Woodward
Birmingham, MI 48009

Date: 02-22-2021 Issued For: CONCEPT REVIEW

Sheet No.:
A900
Exterior Materials





ANN STREET SKETCH

1" = 50'

FLOOD HAZARD NOTE

THE PROPERTY DESCRIBED ON THIS SURVEY DOES NOT LIE WITHIN A SPECIAL FLOOD HAZARD AREA AS DEFINED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY. THE PROPERTY LIES WITHIN ZONE X OF THE FLOOD INSURANCE RATE MAP IDENTIFIED AS MAP NO. 28125C0537P BEARING AN EFFECTIVE DATE OF 09-29-2006.

MISS DIG / UTILITY DISCLAIMER NOTE

A MISS DIG TICKET NUMBER A033240501, PURSUANT TO MICHIGAN PUBLIC ACT 174 WAS ENTERED FOR THE SURVEYED PROPERTY. DUE TO THE EXTENDED REPORTING PERIOD FOR UNDERGROUND FACILITY OWNERS TO PROVIDE THEIR RECORDS, THE SURVEY MAY NOT REFLECT ALL THE UTILITIES AT THE TIME THE SURVEY WAS ISSUED ON DECEMBER 29, 2020. THE SURVEY ONLY REFLECTS THOSE UTILITIES WHICH COULD BE OBSERVED BY THE SURVEYOR IN THE FIELD OR AS DEPICTED BY THE UTILITY COMPANY RECORDS FURNISH PRIOR TO THE DATE THIS SURVEY WAS ISSUED. THE CLIENT AND/OR THEIR AUTHORIZED AGENT SHALL VERIFY WITH THE UTILITY OWNERS AND/OR THEIR AUTHORIZED AGENTS, THE COMPLETENESS AND EXACTNESS OF THE UTILITIES LOCATION.

TOPOGRAPHIC SURVEY NOTES

ALL ELEVATIONS ARE EXISTING ELEVATIONS, UNLESS OTHERWISE NOTED.

UTILITY LOCATIONS WERE OBTAINED FROM MUNICIPAL OFFICIALS AND RECORDS OF UTILITY COMPANIES, AND NO GUARANTEE CAN BE MADE TO THE COMPLETENESS, OR EXACTNESS OF LOCATION.

ALTA SURVEY NOTES

THERE IS NO VISIBLE EVIDENCE OF CURRENT EARTH MOVING WORK, BUILDING CONSTRUCTION OR BUILDING ADDITIONS.

THERE IS NO PROPOSED CHANGES IN STREET RIGHT OF WAY LINES AND THERE IS NO EVIDENCE OF RECENT STREET OR SIDEWALK CONSTRUCTION OR REPAIR.

THERE IS NO VISIBLE EVIDENCE OF SITE USE AS A SOLID WASTE DUMP, SUMP OR SANITARY LANDFILL.

THERE IS NO VISIBLE EVIDENCE OF ANY WETLAND AREAS.

LOCATION OF UTILITIES EXISTING ON OR SERVING THE PROPERTY AS DETERMINED BY OBSERVED EVIDENCE OR BY PLANS REQUESTED BY THE SURVEYOR AND OBTAINED FROM UTILITY COMPANIES.

THE SUBJECT PROPERTY HAS ACCESS TO S. OLD WOODWARD AVENUE, E. BROWN STREET AND DAINES STREET, ALL BEING A PUBLICLY DEDICATED ROAD.

BASIS OF BEARING NOTE

ALL BEARINGS ARE IN RELATION TO THE PREVIOUSLY ESTABLISHED SOUTH RIGHT-OF-WAY LINE OF STREET (60' WIDE) (NOW KNOWN AS BROWN STREET) OF BROWN'S ADDITION AS RECORDED IN LIBER 3 OF PLATS, PAGE 8, OAKLAND COUNTY RECORDS. (N.62.2.)

DATUM NOTE

ALL ELEVATIONS SHOWN HEREON ARE ON THE CITY OF BIRMINGHAM'S VERTICAL DATUM, REFERENCED HEREON, IS ONE (1.00) FOOT HIGHER THAN THE NORTH AMERICAN VERTICAL DATUM OF 1988 (N.A.V.D. 88).

SURVEY DATA

SITE AREA:
PARCEL I: 13,818.22 SQUARE FEET OR 0.317 ACRES
PARCEL II: 18,892.08 SQUARE FEET OR 0.433 ACRES
PARCEL 2: 13,204.93 SQUARE FEET OR 0.303 ACRES
PARCEL 3: 8,157.75 SQUARE FEET OR 0.187 ACRES
TOTAL: 54,052.96 SQUARE FEET OR 1.24 ACRES

ZONED:
B2, GENERAL BUSINESS DISTRICT

PARKING SPACES:

PARCEL I: 9 REGULAR SPACES
PARCEL II: 46 REGULAR SPACES AND 3 BARRIER-FREE SPACES
PARCEL 2: 20 REGULAR SPACES AND 1 BARRIER-FREE SPACE
PARCEL 3: NO ON-SITE PARKING SPACES

A SURVEYOR CANNOT MAKE A CERTIFICATION ON THE BASIS OF AN INTERPRETATION OR OPINION OF ANOTHER PARTY. A ZONING ENDORSEMENT LETTER SHOULD BE OBTAINED FROM THE CITY OF BIRMINGHAM TO INSURE CONFORMITY AS WELL AS MAKE A FINAL DETERMINATION OF THE REQUIRED BUILDING SETBACK REQUIREMENTS.

DTE DISCLAIMER NOTE

PLEASE NOTE THAT DTE HAS NEW REGULATIONS THAT MAY IMPACT DEVELOPMENT OUTSIDE THEIR EASEMENT OR THE PUBLIC RIGHT OF WAY. CLIENT SHALL CONTACT DTE TO DETERMINE THE "NEW STRUCTURES AND POWER LINE" REQUIREMENTS AS THEY MAY APPLY TO ANY FUTURE BUILDING OR RENOVATION OF A STRUCTURE. DTE ENERGY CAN BE CONTACTED AT 800-477-4747

LEGAL DESCRIPTION - PARCEL 2 (PER TITLE COMMITMENT)

LAND IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MI, DESCRIBED AS FOLLOWS:

THE EASTERLY 50 FEET OF LOT 12, AND THE WESTERLY PART OF LOT 13, MEASURING 82.45 FEET ON THE NORTH LOT LINE AND 82.48 FEET ON THE SOUTH LOT LINE OF BROWN'S ADDITION SUBDIVISION ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS.

ADDRESS: 300 S. OLD WOODWARD AVENUE, BIRMINGHAM, MI 48009

TAX ID NUMBER: 19-36-204-006

TITLE REPORT NOTES - PARCEL 2

REFERENCE FIRST AMERICAN TITLE INSURANCE COMPANY FILE NUMBER: 910055, COMMITMENT DATE: DECEMBER 21, 2020, REVISION B.

SCHEDULE B, PART II, EXCEPTIONS:

- EXCEPTIONS: 1, 4, 5, 6, 7, 8, 10, 11, 14 AND 15 REFER TO THE OWNERSHIP OF THE PROPERTY AND/OR ARE NOT PLOTTABLE.
- ANY FACTS, RIGHTS, INTERESTS OR CLAIMS NOT SHOWN BY THE PUBLIC RECORDS BUT THAT COULD BE ASCERTAINED BY MAKING INQUIRY OF PERSONS IN POSSESSION THEREOF OF THE LAND.
- EASEMENTS, ENCUMBRANCES, OR CLAIMS THEREOF, NOT SHOWN BY THE PUBLIC RECORDS.
- TERMS AND CONDITIONS CONTAINED IN RESOLUTION AS DISCLOSED BY INSTRUMENT RECORDED IN LIBER 8715, PAGE 137. (NO EASEMENTS OR RESTRICTIONS WITHIN SAID DOCUMENT, NOT PLOTTED)
- INTEREST, IF ANY, OF THE UNITED STATES, STATE OF MICHIGAN, OR ANY POLITICAL SUBDIVISION THEREOF, IN THE OIL, GAS AND MINERALS IN AND UNDER AND THAT MAY BE PRODUCED FROM THE CAPTIONED LAND.
- RIGHTS OF TENANTS, IF ANY, UNDER ANY UNRECORDED LEASES.

LEGAL DESCRIPTION - PARCEL 3 (PER TITLE COMMITMENT)

LAND IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MI, DESCRIBED AS FOLLOWS:

LOT(S) 14, EXCEPT THAT PART TAKEN FOR WIDENING WOODWARD AVENUE OF ADDITION TO WILLIAM BROWN'S ADDITION NO. 1 ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS.

ADDRESS: 394 S. OLD WOODWARD AVENUE, BIRMINGHAM, MI 48009

TAX ID NUMBER: 19-36-204-014

TITLE REPORT NOTES - PARCEL 3

REFERENCE FIRST AMERICAN TITLE INSURANCE COMPANY FILE NUMBER: 910145, COMMITMENT DATE: DECEMBER 21, 2020, REVISION: A.

SCHEDULE B, PART II, EXCEPTIONS:

- EXCEPTIONS: 1, 4, 5, 6, 7, 8, 10, 13 AND 14 REFER TO THE OWNERSHIP OF THE PROPERTY AND/OR ARE NOT PLOTTABLE.
- ANY FACTS, RIGHTS, INTERESTS OR CLAIMS NOT SHOWN BY THE PUBLIC RECORDS BUT THAT COULD BE ASCERTAINED BY MAKING INQUIRY OF PERSONS IN POSSESSION THEREOF OF THE LAND.
- EASEMENTS, ENCUMBRANCES, OR CLAIMS THEREOF, NOT SHOWN BY THE PUBLIC RECORDS.
- TERMS AND CONDITIONS CONTAINED IN RESOLUTION AS DISCLOSED BY INSTRUMENT RECORDED IN LIBER 8715, PAGE 137. (NO EASEMENTS OR RESTRICTIONS WITHIN SAID DOCUMENT, NOT PLOTTED)
- INTEREST, IF ANY, OF THE UNITED STATES, STATE OF MICHIGAN, OR ANY POLITICAL SUBDIVISION THEREOF, IN THE OIL, GAS AND MINERALS IN AND UNDER AND THAT MAY BE PRODUCED FROM THE CAPTIONED LAND.
- RIGHTS OF TENANTS, IF ANY, UNDER ANY UNRECORDED LEASES.

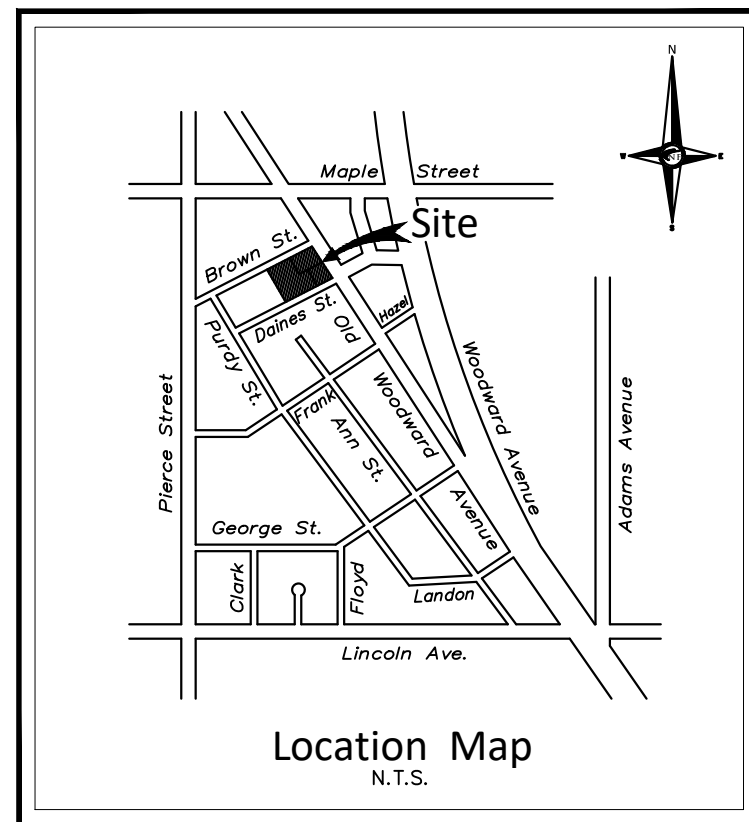
CERTIFICATE OF SURVEY

CERTIFIED TO:

-PURCHASER'S ASSIGNEE
-TROTTER PROPERTIES 294, LLC, A MICHIGAN LIMITED LIABILITY COMPANY, AS TO PARCEL 1
-BRB EQUITIES, L.L.C., AS TO PARCEL 2
-FRANK T. KONJAREVICH OR LOIS H. KONJAREVICH (OR SUCCESSOR TRUSTEES) AS THE TRUSTEE FOR THE FRANK T. KONJAREVICH REVOCABLE LIVING TRUST DATED MAY 22, 1995, AS TO PARCEL 3
-FIRST AMERICAN TITLE INSURANCE COMPANY AND EACH OF THEIR RESPECTIVE SUCCESSORS AND/OR ASSIGNS AS THEIR INTERESTS MAY APPEAR

THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE 2016 MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/NSPS LAND TITLE SURVEYS, JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS, AND INCLUDE ITEMS 1, 2, 3, 4, 6(a), 7(c), 7(b)(1), 7(c), 8, 9, 11, 12, 14, 16, 17, 18 AND 20 OF TABLE A THEREOF. THE FIELD WORK WAS COMPLETED ON DECEMBER 16, 2020.

Kevin Navaroli
KEVIN NAVAROLI, P.S. NO. 4001053503 DATE 1-24-2021



Location Map
N.T.S.

LEGAL DESCRIPTION - PARCELS I & II (PER TITLE COMMITMENT)

LAND IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MI, DESCRIBED AS FOLLOWS:

PARCEL I:
THE EAST 1/2 OF LOT(S) 11 OF BROWN'S ADDITION TO THE CITY OF BIRMINGHAM AND THE EAST 1/2 OF LOT 16 OF BROWN'S ADDITION NO. 1, IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MICHIGAN ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS, INCLUDING THE VACATED WEST 20 FEET OF ANN STREET ADJOINING LOT 11 AND THE VACATED WEST 19 FEET OF ANN STREET ADJOINING LOT 16.

PARCEL II:
THE WEST 1/2 OF LOT(S) 12 OF BROWN'S ADDITION TO THE VILLAGE (NOW CITY) OF BIRMINGHAM, OF PART OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 36, TOWN 2 NORTH, RANGE 10 EAST, TOWNSHIP OF BLOOMFIELD (NOW CITY OF BIRMINGHAM), OAKLAND COUNTY, MICHIGAN ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS, ALSO LOT 15, ADDITION TO WILLIAM BROWN'S ADDITION NO. 1, BEING A PART OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 36, TOWN 2 NORTH, RANGE 10 EAST ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS, INCLUDING VACATED 20 FEET OF ANN STREET, ADJOINING THE WESTERLY SIDE OF LOT 12 AND VACATED 21 FEET OF ANN STREET ADJOINING THE WESTERLY SIDE OF LOT 15.

ADDRESS: 294 E. BROWN STREET, BIRMINGHAM, MI 48009

TAX ID NUMBER: 19-36-204-021

TITLE REPORT NOTES - PARCELS I & II

REFERENCE FIRST AMERICAN TITLE INSURANCE COMPANY FILE NUMBER: 915853, COMMITMENT DATE: DECEMBER 8, 2020.

SCHEDULE B, PART II, EXCEPTIONS:

- EXCEPTIONS: 1, 4, 5, 6, 7, 8 AND 16 REFER TO THE OWNERSHIP OF THE PROPERTY AND/OR ARE NOT PLOTTABLE.
- ANY FACTS, RIGHTS, INTERESTS OR CLAIMS NOT SHOWN BY THE PUBLIC RECORDS BUT THAT COULD BE ASCERTAINED BY MAKING INQUIRY OF PERSONS IN POSSESSION THEREOF OF THE LAND.
- EASEMENTS, ENCUMBRANCES, OR CLAIMS THEREOF, NOT SHOWN BY THE PUBLIC RECORDS.
- TERMS AND CONDITIONS CONTAINED IN RESOLUTION AS DISCLOSED BY INSTRUMENT RECORDED IN LIBER 8715, PAGE 137. (NO EASEMENTS OR RESTRICTIONS WITHIN SAID DOCUMENT, NOT PLOTTED)
- INTEREST, IF ANY, OF THE UNITED STATES, STATE OF MICHIGAN, OR ANY POLITICAL SUBDIVISION THEREOF, IN THE OIL, GAS AND MINERALS IN AND UNDER AND THAT MAY BE PRODUCED FROM THE CAPTIONED LAND.
- RIGHTS OF TENANTS, IF ANY, UNDER ANY UNRECORDED LEASES.

NOTE: DOCUMENT FOR THE VACATION OF THE WEST 15 FEET AND EAST 15 FEET OF ANN STREET LYING WITHIN WILLIAMS BROWN'S ADDITION HAS NOT BEEN PROVIDED TO THE SURVEYOR. CLIENT TO CONFIRM THAT PORTION OF ANN STREET IS VACATED.

LEGEND

MANHOLE(MH)	EXISTING SANITARY SEWER
CO	EXISTING SANITARY CLEAN OUT
HYDRANT(HYD)	EXISTING WATER MAIN
GATE VALVE(GVW)	EXISTING WATER MAIN
MANHOLE(MH)	CATCH BASIN(CB)
CB	EXISTING STORM SEWER
CB	EX. BEEHIVE CATCH BASIN
UTILITY POLE	EX. UNDERGROUND (UG) CABLE
GUY WIRE	OVERHEAD (OH) LINES
LP	LIGHT POLE
↑	SIGN
ASPH.	EXISTING GAS MAIN
CONC.	ASPHALT
FD. / FND.	FOUND
RET. WALL	RETAINING WALL
R.O.W.	RIGHT-OF-WAY
SPK	SET PK NAIL
(TYP)	TYPICAL
(R)	RECORDED
(M)	MEASURED
C/L	CENTERLINE
P/L	PROPERTY LINE
GAS METER	GAS METER
EM	ELECTRIC METER
PM	PARKING METER
AC	AIR CONDITIONING UNIT
LS	LANDSCAPE



NOWAK & FRAUS ENGINEERS

CIVIL ENGINEERS
LAND SURVEYORS
LAND PLANNERS

NOWAK & FRAUS ENGINEERS
4677 WOODWARD AVE.
PONTIAC, MI 48342-5032
TEL (248) 332-7931
FAX (248) 332-8257
WWW.NOWAKFRAUS.COM

SEAL

PROJECT

294 E. Brown St. and
300 & 394
S. Old Woodward Ave.
Birmingham, MI 48009

CLIENT

Saroki Architecture
430 N. Old Woodward Ave.
Birmingham, MI 48009

Contact: Victor Saroki
Phone: 248.258.5707

PROJECT LOCATION

Part of the NE 1/4
of Section 36,
T.2N., R.10E.,
City of Birmingham,
Oakland County, Michigan

SHEET

ALTA/NSPS Land Title /
Topographic Survey



DATE ISSUED/REVISED
00-00-00

DRAWN BY:

M. Carnaghi

DESIGNED BY:

APPROVED BY:

K. Navaroli

DATE:

February 24, 2021

SCALE: 1" = 20'

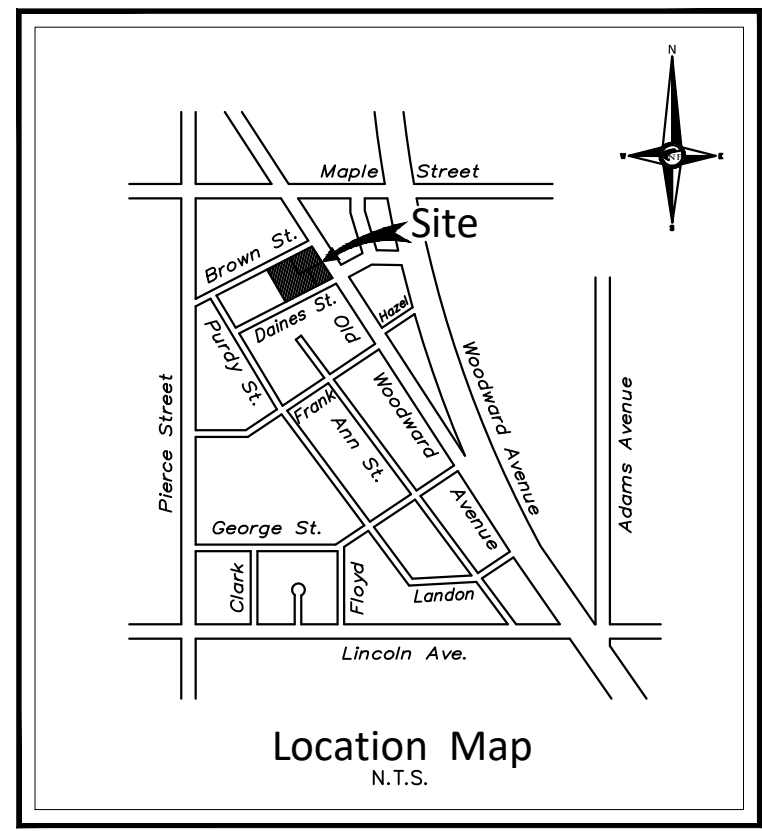
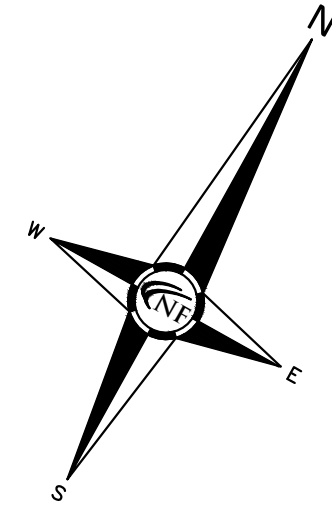
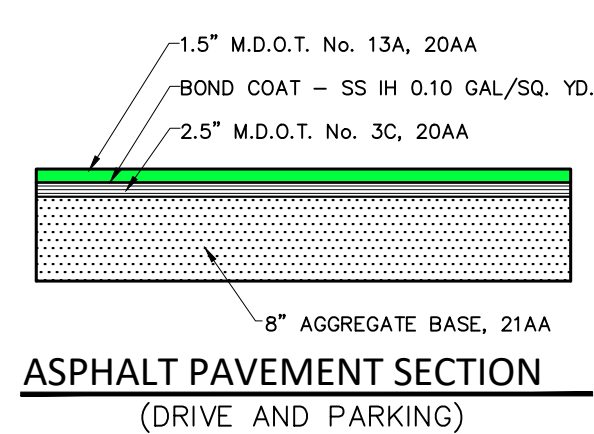
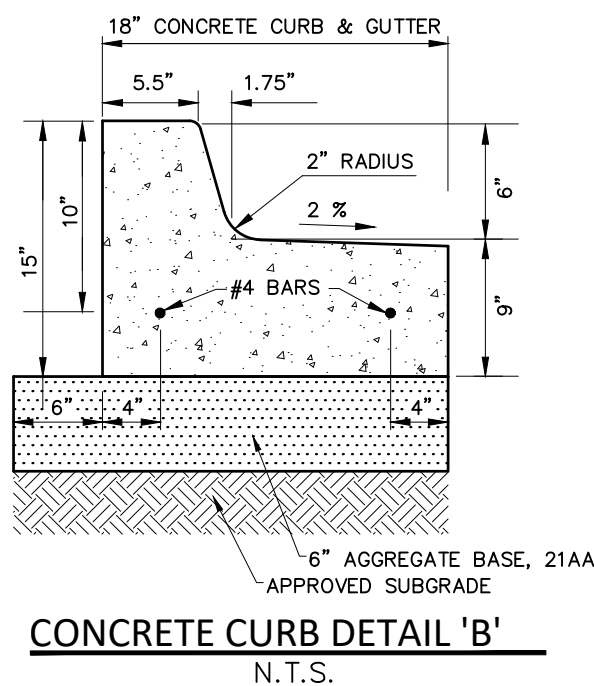
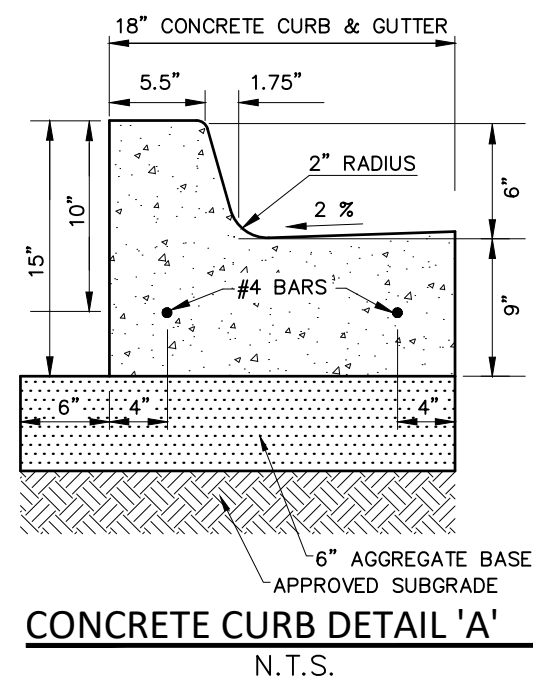
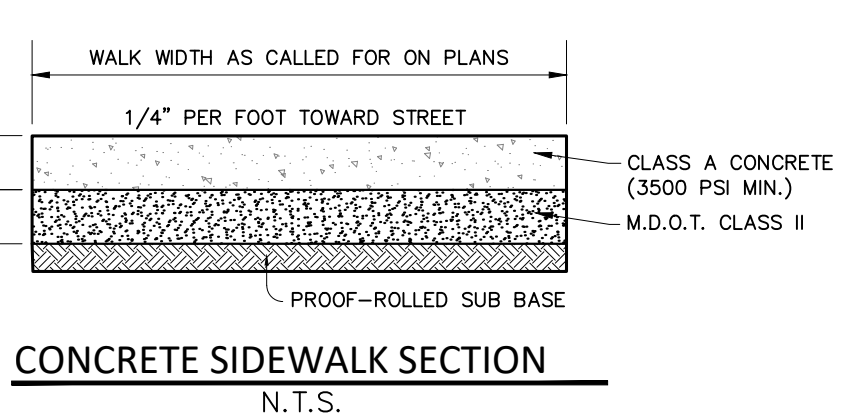
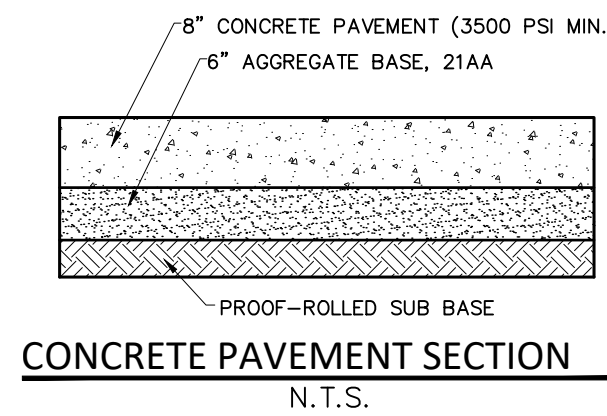
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NFE JOB NO.

M106

SHEET NO.

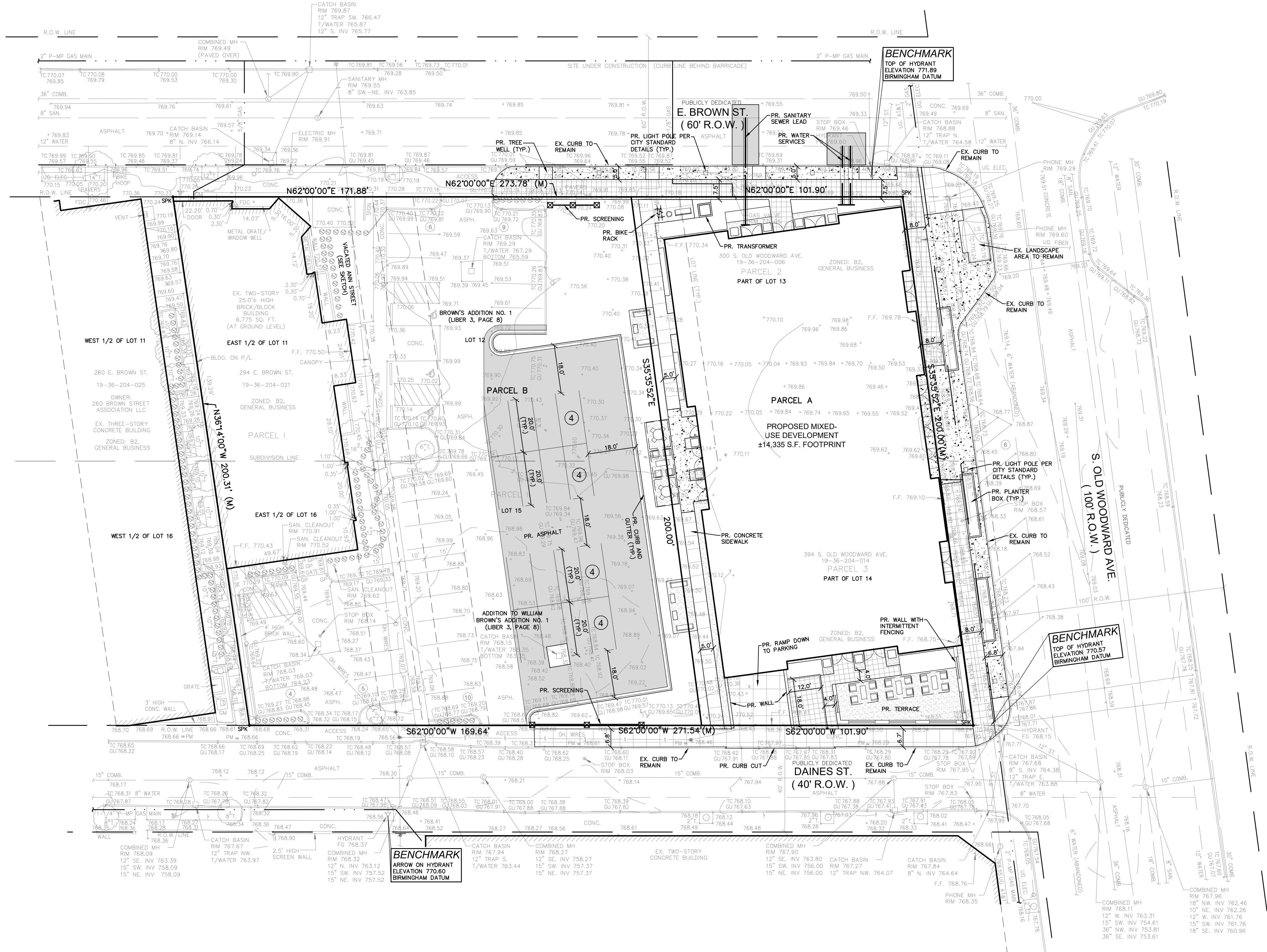
SP-1



NOWAK & FRAUS ENGINEERS

**CIVIL ENGINEERS
LAND SURVEYORS
LAND PLANNERS**

NOWAK & FRAUS ENGINEERS
46777 WOODWARD AVE.
PONTIAC, MI 48342-5032
TEL. (248) 332-7931
FAX. (248) 332-8257
WWW.NOWAKFRAUS.COM



GENERAL PAVING NOTES

PAVEMENT SHALL BE OF THE TYPE, THICKNESS AND CROSS SECTION AS INDICATED ON THE PLANS AND AS FOLLOWS:

- CONCRETE:** PORTLAND CEMENT TYPE IA (AIR-ENTRAINED) WITH A MINIMUM CEMENT CONTENT OF SIX SACKS PER CUBIC YARD, MINIMUM 28 DAY COMPRESSIVE STRENGTH OF 3,500 PSI AND A SLUMP OF 1 1/2 TO 3 INCHES.
- ASPHALT:** BASE COURSE - MDOT BITUMINOUS MIXTURE NO. 110UL, 20AA; SURFACE COURSE - MDOT BITUMINOUS MIXTURE NO. 110OT, 20AA; ASPHALT CEMENT PENETRATION GRADE 85-100, BOND COAT - MDOT SS-IH EMULSION AT 0.10 GALLON PER SQUARE YARD, MAXIMUM 2 INCH LIFT.

PAVEMENT BASE SHALL BE COMPACTED TO 95% OF THE MAXIMUM DENSITY (MODIFIED PROCTOR) PRIOR TO PLACEMENT OF PROPOSED PAVEMENT. EXISTING SUB-BASE SHALL BE PROOF-ROLLED IN THE PRESENCE OF THE ENGINEER TO DETERMINE STABILITY.

ALL CONCRETE PAVEMENT, DRIVEWAYS, CURB & GUTTER, ETC., SHALL BE SPRAY CURED WITH WHITE MEMBRANE CURING COMPOUND IMMEDIATELY FOLLOWING FINISHING OPERATION.

ALL CONCRETE PAVEMENT JOINTS SHALL BE FILLED WITH HOT POURED RUBBERIZED ASPHALT JOINT SEALING COMPOUND IMMEDIATELY AFTER SAWCUT OPERATION. FEDERAL SPECIFICATION SS-5184.

ALL WORKMANSHIP AND MATERIALS SHALL BE IN ACCORDANCE WITH THE CURRENT STANDARDS AND SPECIFICATIONS OF THE MUNICIPALITY AND THE MICHIGAN DEPARTMENT OF TRANSPORTATION STANDARD SPECIFICATIONS FOR CONSTRUCTION, CURRENT EDITION.

ALL TOP OF CURB ELEVATIONS, AS SHOWN ON THE PLANS, ARE CALCULATED FOR A 6" CONCRETE CURB UNLESS OTHERWISE NOTED.

ALL SIDEWALK RAMPS, CONFORMING TO PUBLIC ACT NO. 8, 1993, SHALL BE INSTALLED AS INDICATED ON THE PLANS.

CONSTRUCTION OF A NEW OR RECONSTRUCTED DRIVE APPROACH CONNECTING TO AN EXISTING STATE OR COUNTY ROADWAY SHALL BE ALLOWED ONLY AFTER AN APPROVED PERMIT HAS BEEN SECURED FROM THE AGENCY HAVING JURISDICTION OVER SAID ROADWAY.

FOR ANY WORK WITHIN THE PUBLIC RIGHT-OF-WAY, THE CONTRACTOR SHALL PAY FOR AND SECURE ALL NECESSARY PERMITS AND LIKewise ARRANGE FOR ALL INSPECTION.

EXISTING TOPSOIL, VEGETATION AND ORGANIC MATERIALS SHALL BE STRIPPED AND REMOVED FROM PROPOSED PAVEMENT AREA PRIOR TO PLACEMENT OF BASE MATERIALS.

EXPANSION JOINTS SHOULD BE INSTALLED AT THE END OF ALL INTERSECTION RADI.

SIDEWALK RAMPS, CONFORMING TO PUBLIC ACT NO. 8, 1973, SHALL BE INSTALLED AS SHOWN AT ALL STREET INTERSECTIONS AND AT ALL BARRIER FREE PARKING AREAS AS INDICATED ON THE PLANS.

ALL PAVEMENT AREAS SHALL BE PROOF-ROLLED UNDER THE SUPERVISION OF A GEOTECHNICAL ENGINEER PRIOR TO THE PLACEMENT OF BASE MATERIALS AND PAVING MATERIALS.

FILL AREAS SHALL BE MACHINE COMPACTED IN UNIFORM LIFTS NOT EXCEEDING 9 INCHES THICK TO 98% OF THE MAXIMUM DENSITY (MODIFIED PROCTOR) PRIOR TO PLACEMENT OF PROPOSED PAVEMENT.

COVID-19 PANDEMIC CONDITION

DUE TO THE UNPRECEDENTED COVID-19 PANDEMIC CONDITION AND RESTRICTIONS THE STANDARD DATA WHICH IS OBTAINED FROM MISS DIG / CALL 811 HAS BEEN RESTRICTED TO CRITICAL INFRASTRUCTURE ONLY. NFE WILL MAKE EVERY EFFORT TO OBTAIN CURRENT REFERENCE DATA FROM THE GOVERNING AGENCIES. HOWEVER, THIS DATA MAY BE PARTIAL OR INCOMPLETE. NFE WILL ISSUE THIS SURVEY WITH THE BEST AVAILABLE INFORMATION FROM OUR FIELD SURVEY AND OTHER AVAILABLE REFERENCE DATA. NFE WILL NOT BE RESPONSIBLE FOR INCOMPLETE OR PARTIAL DATA PROVIDED BY THIRD PARTY FACILITY OWNERS. NFE IS NOT RESPONSIBLE FOR BURIED UTILITIES FOR WHICH PLANS WERE NOT FURNISHED OR CANNOT BE OBSERVED IN THE FIELD.

ALL CONSTRUCTION DOCUMENTS WILL BE UPDATED WHEN THE UTILITY INFORMATION IS PROVIDED BY THE FACILITY OWNER UP UNTIL THE TIME OF SUBMITTAL. ONCE THE PLANS HAVE BEEN SUBMITTED AND APPROVED IT IS THE CONTRACTORS RESPONSIBILITY TO OBTAIN A MISS DIG TICKET PRIOR TO COMMENCING ANY CONSTRUCTION REQUIRING EXCAVATION. CONTRACTOR SHALL IMMEDIATELY NOTIFY NFE OF ANY UTILITIES FLAGGED BY MISS DIG THAT WERE NOT SHOWN ON THE PLANS OR UTILITIES UNCOVERED DURING THEIR WORK.

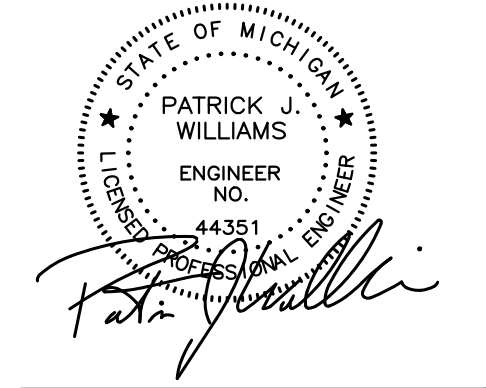
PAVING LEGEND

- PROPOSED CONCRETE PAVEMENT
- PROPOSED ASPHALT PAVEMENT

LEGEND

- MANHOLE
- HYDRANT
- MANHOLE CATCH BASIN
- UTILITY POLE
- GUY WIRE
- C.O.
- HYDRANT
- INLET
- EXISTING SANITARY SEWER
- SAN. CLEAN OUT
- EXISTING WATER MAIN
- EXISTING STORM SEWER
- EX. R. Y. CATCH BASIN
- EXISTING BURIED CABLES
- OVERHEAD LINES
- LIGHT POLE
- SIGN
- EXISTING GAS MAIN
- PR. SANITARY SEWER
- PR. WATER MAIN
- PR. STORM SEWER
- PR. R. Y. CATCH BASIN
- PROPOSED LIGHT POLE

SEAL



PROJECT

294 E. Brown St. and
300 & 394
S. Old Woodward Ave.
Birmingham, MI 48009

CLIENT

Saroki Architecture
430 N. Old Woodward Ave.
Birmingham, MI 48009

Contact: Victor Saroki
Phone: 248.258.5707

PROJECT LOCATION

Part of the NE 1/4
of Section 36
T.2N., R.10E.,
City of Birmingham,
Oakland County, Michigan

SHEET

Dimensional Site Plan



DATE ISSUED/REVISED

00-00-00

DRAWN BY:

A. Eizember

DESIGNED BY:

A. Eizember

APPROVED BY:

P. Williams

DATE:

February 24, 2021

SCALE: 1" = 20'

20 10 0 10 20 30

NFE JOB NO.

M106

SHEET NO.

SP-2

Drive-over LED in-grade floodlights

Enclosures: Outer housing of high tensile strength stainless steel; inner housing is factory sealed and fabricated of heavy gauge stainless steel. Reflector made of pure anodized aluminum.

Trim Ring: Heavy gauge, machined stainless steel secured to inner housing by five (5) stainless steel hex head fasteners. Trim is sealed in place using mastic, one piece high temperature silicone gasket. Glass is clear tempered, 1/2" thick, machined flush to trim ring.

Electrical: 13.9W LED luminaires, 17 total system watts, -20° C start temperature, integral 120V through 277V electronic LED driver, 0-10V, TRIAC, and ELV dimmable. The LED module and driver are mounted on a removable inner assembly for easy replacement. Standard LED color temperature is 4000K with an 85 CRI. Available in 3000K (85 CRI), add suffix K3 to order.

Note: Due to the dynamic nature of LED technology, LED luminaire data on this sheet is subject to change at the discretion of BEGA-US. For the most current technical data, please refer to www.bega-us.com.

Finish: Machined #4 brushed stainless steel. Custom colors not available.

CSA: Certified to U.S. and Canadian standards for wet locations. Protection class IP68.

Temperature caution: The column "T" in this chart indicates the temperature in degrees Celsius which is reached on the center of the glass surface during operation. Surface temperatures are for exterior applications. For interior applications add 10° C to temperatures shown.

Note: A foundation and proper drainage must be supplied by the customer. These luminaires are designed to bear pressure loads up to 4,400 lbs. from vehicles with pneumatic tires. The luminaires must not be used for traffic lanes where they are subject to horizontal pressure from vehicles braking, accelerating and changing direction.

Weight: 9.5 lbs.

Luminaire Lumens: 970



1000 BEGA Way, Carpinteria, CA 93013 (805) 684-0333 FAX (805) 366-9474 www.bega-us.com
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Mounting Height Note

MOUNTING HEIGHT IS MEASURED FROM GRADE TO FACE OF FIXTURE. POLE HEIGHT SHOULD BE CALCULATED AS THE MOUNTING HEIGHT LESS BASE HEIGHT.

General Note

1. SEE SCHEDULE FOR LUMINAIRE MOUNTING HEIGHT.
2. CALCULATIONS ARE SHOWN IN FOOTCANDLES AT: 0' - 0"

THE ENGINEER AND/OR ARCHITECT MUST DETERMINE APPLICABILITY OF THE LAYOUT TO EXISTING / FUTURE FIELD CONDITIONS. THIS LIGHTING LAYOUT REPRESENTS ILLUMINATION LEVELS CALCULATED FROM LABORATORY DATA TAKEN UNDER CONTROLLED CONDITIONS IN ACCORDANCE WITH ILLUMINATING ENGINEERING SOCIETY APPROVED METHODS. ACTUAL PERFORMANCE OF ANY MANUFACTURER'S LUMINAIRE MAY VARY DUE TO VARIATION IN ELECTRICAL VOLTAGE, TOLERANCE IN LAMPS, AND OTHER VARIABLE FIELD CONDITIONS. MOUNTING HEIGHTS INDICATED ARE FROM GRADE AND/OR FLOOR UP.

THESE LIGHTING CALCULATIONS ARE NOT A SUBSTITUTE FOR INDEPENDENT ENGINEERING ANALYSIS OF LIGHTING SYSTEM SUITABILITY AND SAFETY. THE ENGINEER AND/OR ARCHITECT IS RESPONSIBLE TO REVIEW FOR MICHIGAN ENERGY CODE AND LIGHTING QUALITY COMPLIANCE.

UNLESS EXEMPT, PROJECT MUST COMPLY WITH LIGHTING CONTROLS REQUIRMENTS DEFINED IN ASHRAE 90.1 2013. FOR SPECIFIC INFORMATION CONTACT GBA CONTROLS GROUP AT ASG@GASSERBUSH.COM OR 734-266-6705.

Ordering Note

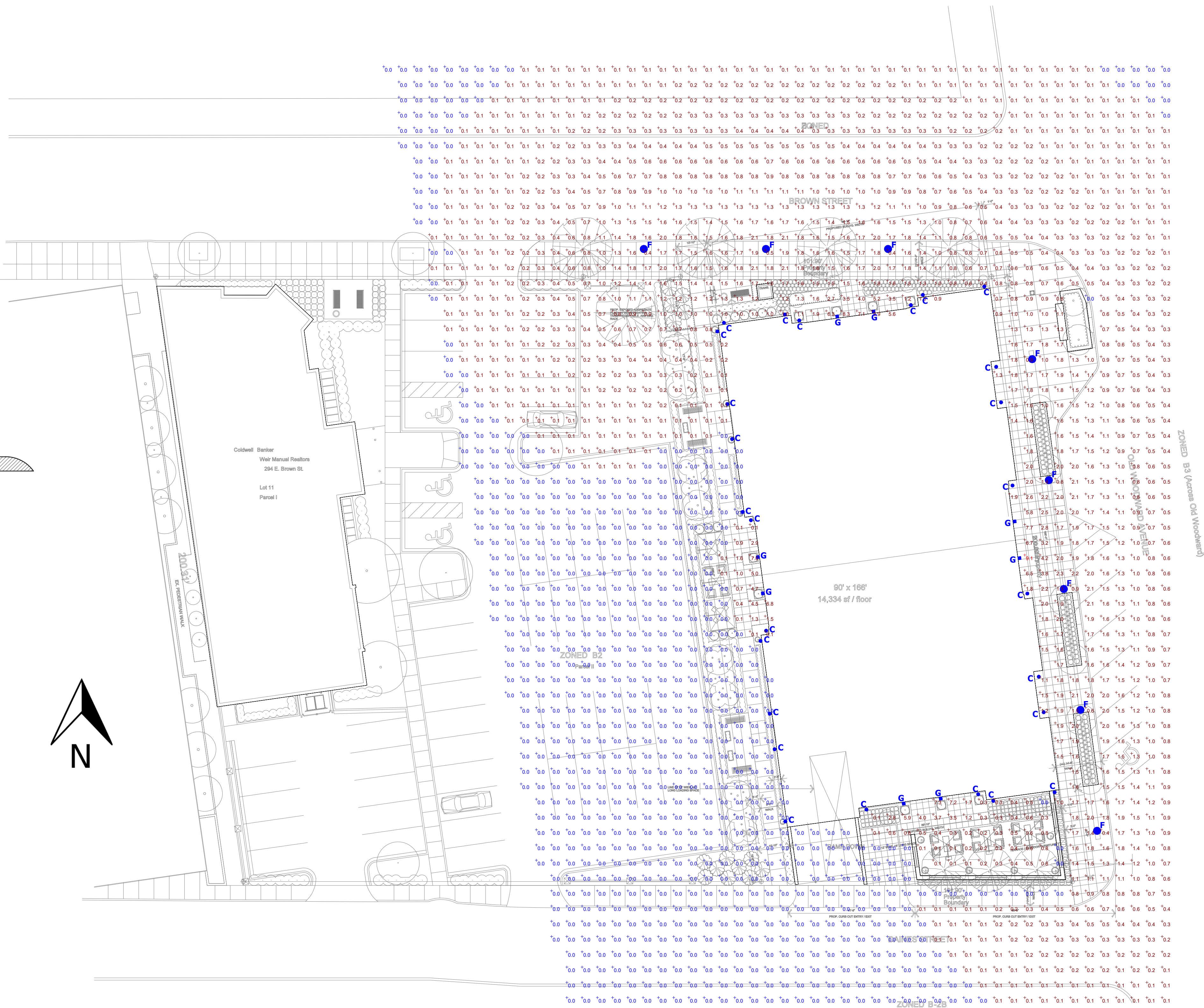
FOR INQUIRIES CONTACT GASSER BUSH AT QUOTES@GASSERBUSH.COM OR 734-266-6705.

Drawing Note




THIS DRAWING WAS GENERATED FROM AN ELECTRONIC IMAGE FOR ESTIMATION PURPOSE ONLY. LAYOUT TO BE VERIFIED IN FIELD BY OTHERS.

Alternates Note

THE USE OF FIXTURE ALTERNATES MUST BE RESUBMITTED TO THE CITY FOR APPROVAL.



Plan View
Scale - 1" = 20ft

Schedule											
Symbol	Label	QTY	Manufacturer	Catalog Number	Description	Lamp	Number Lamps	Lumens per Lamp	LLF	Wattage	Mounting Height
	C	26	BEGA	77007+K4	LED IN-GRADE FLOODLIGHT	LED	1	967	0.9	17	0'-0"
	F	8	UNKNOWN	SUPPLIED AND VERIFIED BY OTHERS	SUPPLIED AND VERIFIED BY OTHERS	SUPPLIED AND VERIFIED BY OTHERS	1	UNKNOWN	0.75	UNKNOWN	12'-0"
	G	8	LANTERN SUPPLIED BY RH	LANTERN SUPPLIED BY RH	LANTERN SUPPLIED BY RH	LANTERN SUPPLIED BY RH	1	UNKNOWN	0.9	UNKNOWN	9'-0"

Statistics							
Description	Symbol	Avg	Max	Min	Max/Min	Avg/Min	Avg/Max
OVERALL	+	0.5 fc	9.1 fc	0.0 fc	N/A	N/A	0.1:1













MEMORANDUM

Department of Public Services

DATE: March 30, 2021

TO: Thomas M. Markus, City Manager

FROM: Lauren A. Wood, Director of Public Services

SUBJECT: Chesterfield Fire Station - Park Designation

INTRODUCTION:

There is interest and ongoing conversation from community members about designating an existing public property (known as the Chesterfield Fire Station) as a City park. In addition, to consider naming the park in honor of a local resident. Last year, a proposal and petition for a new park and playground located at Fire Station #2 was presented to the Parks and Recreation Board at their August 11, 2020 meeting. The Parks and Recreation Board took no action. However, the Administration informed the presenter, Kate Bongiorno that further consideration and communication can occur about this idea after the Parks and Recreation Bond proposal in November 2020.

Some park elements proposed at the corner of this parcel are an all-inclusive playground structure, benches, picnic tables and a gazebo, among other suggestions. There is not a concept plan, to date, for the proposed suggested site amenities. Of course, this would be a good starting point, in order to provide estimated construction costs.

BACKGROUND:

As part of the City property inventory, the Chesterfield Fire Station is a named property for use as a fire station. The location is on Maple Road between Chesterfield and Fairfax. The total area is 1.36 acres. The portion of this property to be labeled as a City Park is on the east side of the new fire station and comprises approximately .60 acres.

This property is zoned Public Property (PP), which is similar to all other public property including those sites classified as parks. There is no Park designation under the Zoning Code. For size comparison purposes, Adams Fire Station is 1.05 acres.

In July 2020, the City Commission identified park and recreation projects to be part of the local ballot proposal for \$11,250,000. The proposal to create a park at Fire Station #2 was presented after projects were included with the Parks and Recreation Bond proposal.

Since the passing of the Parks and Recreation Bond proposal, we are moving forward on several initiatives as part the recommended project priority list. The overall Parks and Recreation Master Plan identified several capital improvements projects at numerous City parks, new playgrounds and improvements to the Rouge River trail system. This proposal is not part of the overall parks and recreation initiatives.

As part of the due diligence in reviewing and making a recommendation back to the City Commission on this issue, the Administration will examine historical records and background information on other similar naming protocols of City parks, facilities and the like. There are examples from the past for which we can draw from as part of this review.

A donation is not being proposed as part of this request, but there is certainly a potential opportunity for donations to be part of any future park development. I have included a copy of the Parks and Recreation Donor Policy adopted in October 26, 2015 by the City Commission.

LEGAL REVIEW:

There is no legal review at this time.

FISCAL IMPACT:

New park and playground located at Fire Station #2 was not part of the Parks and Recreation Bond allocation, since it came up afterwards. Therefore, at this time, this park development is not included in the bond dollar distribution. There has been no funds budgeted in the current fiscal year budget for any park improvements at this site.

PUBLIC COMMUNICATIONS:

Public input will be ongoing, to be gathered at the Parks and Recreation Board and City Commission meetings. Opportunities to include social media tools for additional feedback about this issue. Communications will be underway between City Administration and various City Departments.

SUMMARY:

Several issues need to be addressed as part of the review by the Parks and Recreation Board. These may include some of the following items. 1. Examine zoning issues and park designation steps. 2. Does this limit or restrict Fire Station uses and future expansion? 3. Review potential site amenities and probable costs, based on size and space restrictions. 4. How do we initiate naming opportunities, review past examples of City Commission actions. 5. How do we go about finding fundraising opportunities? 6. Examine potential financial impact and funding sources.

ATTACHMENTS:

- August 11, 2020 Parks and Recreation Board Agenda Item #2 and meeting minutes
- City of Birmingham Parks and Recreation Donor Policy

SUGGESTED RESOLUTION:

To refer this matter to the Parks and Recreation Board for their review, discussion and recommended actions about designating a portion of the Chesterfield Fire Station property as a City Park and provide formal park naming procedures. Further, to consider potential park site amenities and budget implications in order to undertake such endeavor.



Connie Folk <cfolk@bhamgov.org>

Fwd: Proposal for the Birmingham City Commission

1 message

Lauren Wood <Lwood@bhamgov.org>

Tue, Jul 14, 2020 at 2:28 PM

To: "Laird, Carrie" <Claird@bhamgov.org>, "Folk, Connie" <cfolk@bhamgov.org>

fyi

See the attached

Lauren Wood

Director of Public Services

City of Birmingham

Department of Public Services

851 S. Eton, Birmingham, MI 48009

Direct Dial: 248.530.1702

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

From: **Joe Valentine** <Jvalentine@bhamgov.org>

Date: Mon, Jul 13, 2020 at 9:34 AM

Subject: Fwd: Proposal for the Birmingham City Commission

To: Brad Host <bhost@bhamgov.org>, Clinton Baller <cballer@bhamgov.org>, Mark Nickita <mnickita@bhamgov.org>, Pierre Boutros <pboutros@bhamgov.org>, Racky Hoff <rhoff@bhamgov.org>, Stuart Sherman <sshernan@bhamgov.org>, Therese Longe <tlonge@bhamgov.org>, Tim Currier <tcurrier@bhlaw.us.com>

Cc: Alex Bingham <abingham@bhamgov.org>, Lauren Wood <Lwood@bhamgov.org>

FYI - Please note the attached letter and petition received today from a resident in the Quarton Lake neighborhood to make the public property next to Fire Station #2 off Maple into a park and playground. Such requests would be routed to the appropriate board for a review and recommendation, which in this case is the Parks and Recreation Board.

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

From: **Joe Valentine** <Jvalentine@bhamgov.org>

Date: Mon, Jul 13, 2020 at 9:28 AM

Subject: Fwd: Proposal for the Birmingham City Commission

To: <katebongiorno@gmail.com>

Cc: Therese Longe <tlonge@bhamgov.org>

Ms. Bongiorno,

Thank you for sharing your petition for the creation of a new park and playground in the Quarton Lake Neighborhood next to fire station #2. As we consider opportunities for improving our parks we will include your petition for consideration as well. This evening the City Commission will be presented with an opportunity for a Parks and Recreation Bond and I will share your petition with them. Per normal protocol, your petition may be directed to the Parks and Recreation Board for review and development of a formal recommendation back to the City Commission to act upon. We can keep you advised as to when the Parks and Recreation Board may consider your petition so you can elaborate on the interest and ideas from your neighborhood.

Best regards,
Joe Valentine

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

From: **Kate Bongiorno** <katebongiorno@gmail.com>

Date: Fri, Jul 10, 2020 at 5:54 PM

Agenda Item #2

Subject: Fwd: Proposal for the Birmingham City Commission
To: <jvalentine@bhamgov.org>, <tlonge@bhamgov.org>

Dear City Manager Valentine,

Please find attached a letter and supporting petition proposing the creation of a new Birmingham City park and playground in the Quarton Lakes Estates neighborhood.

I have previously discussed this idea with City Commissioner Longe and have copied her on this email.

Incidentally, I would be glad to mail or deliver the actual signed petitions with citizens' signatures if it is preferred, but since City Hall is closed due COVID-19, an email and copy of the petition seemed the most efficient means of communication at this time.

Thank you for considering this community project.

Best regards,
Kate Bongiorno

--

Joseph A. Valentine
City Manager
[City of Birmingham](#)
[151 Martin Street](#)
Birmingham, MI 48009
(248) 530-1809 Office Direct
(248) 530-1109 Fax
jvalentine@bhamgov.org
Twitter: @JoeValentine151

To get the latest information regarding the City of Birmingham, please sign up for our communication tools by clicking here www.bit.ly/bhamnews.

--

Joseph A. Valentine
City Manager
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[151 Martin Street](#)
Birmingham, MI 48009
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To get the latest information regarding the City of Birmingham, please sign up for our communication tools by clicking here www.bit.ly/bhamnews.

2 attachments

QLE Playground Petition .jpg
2196K



 **Quarton Lakes Estates Playground Proposal 07.10.20.pdf**
95K

Kate Bongiorno
684 Puritan Avenue
Birmingham, MI 48009

July 10, 2020

Birmingham City Commission
151 Martin Street
Birmingham, MI 48009

Dear Birmingham City Manager Valentine, City Clerk Allen, and Esteemed Commission Members,

I would like to request and encourage your consideration of the creation of a 15th Birmingham City Playground in Quarton Lakes Estates.

This idea was hatched about a year ago when my friend (and fellow Birmingham resident) and I took our kids to visit all 14 Birmingham playgrounds in one day. It took us six hours and we enjoyed the variety of landscapes and playscapes and the opportunity to explore Birmingham. On our drive home, my kids and I wondered why our neighborhood was missing a neighborhood playground?

I subsequently shared my thoughts with other friends in the neighborhood and one, who I must take a moment to spotlight as one of Birmingham's most loyal citizens, Patricia Andrews, suggested that the greenspace adjacent to the beautiful new Fire Station #2 might be a good location to build a playground in the neighborhood.

I could not agree with her more!

The space next to Fire Station #2 has ample space to create a safe, pleasant, inviting space for recreation and relaxation. It has easy pedestrian and bike access from Fairfax, Chesterfield, and Maple Roads. In addition, it boasts street parking, complimentary nearby local businesses to visit for a snack while playing, a tony new fire station that is well-known by children in the neighborhood, and nice, established features of shade, safe distance from the roads, and access to the Fire Department in case of emergency.

This proposed playground space will offer a wonderful place for community connections!

The churches along Maple Road house many preschools and the playground will offer a welcome option for parents with younger siblings who have a couple of hours to play in between drop-offs and pick-ups at Quarton, West Maple, Hand-in-Hand and First Kids Preschools. For residents who are retired, a beautiful outdoor space with tables and benches will be a terrific location to meet up for coffee and conversation or gather for a game of chess, cards, or dominos with friends and neighbors... and fresh air.

Quarton Lakes Estates is a neighborhood with a population mix of families and retirees. A playground and park will create an ideal space for neighbors who otherwise miss one another due to different schedules and lifestyles to meet and socialize in a casual, outdoor setting. It offers intersections for neighbors to meet and get to know one another, which is vital for creating strong, connected neighborhoods and communities. As I shared this idea with my friends and neighbors, it was equally embraced by the young and the young at heart, individuals with children and those who enjoy being around children.

The creation of Birmingham's 15th playground has tremendous merit at face value, but there is *so much more* potential that comes part and parcel with its construction.

The park could be a great venue for residents to rent for birthday parties, scouts or sports team picnics, or school parties. While offering a safe option for social events, it could also generate a nominal source of revenue to support maintenance costs. Similarly, a structure such as fence or pathway could be constructed through donations and offer a place for residents to donate to their local neighborhood gathering space and "leave their mark" with an inscribed fence plank or brick or stone.

The park could also be a great place for the City to offer exciting, low-cost, high-impact events such as book readings, concerts, or holiday gatherings to promote community... and even spotlight rising poets, musicians, artists, or tastemakers living right next door who might happily share their talents with their neighbors on a sunny afternoon at the park?!

I propose that the space is simple but can impactfully multi-task: picnic tables and benches, garbage and recycling cans, a water fountain, a sandbox or Gaga Pit, a mix of toddler and youth, ADA inclusive swings, a slide, and basic climbing structure. The space could also potentially accommodate a basketball hoop and park exercise equipment that would be equally enjoyed by teenage and adult parkgoers *and* our loyal firefighters during downtime at the Station.

In addition, I suggest adding features that invite community collaboration: small gardens that could be adopted by residents, student groups, or schools; Book Walks that could be guided by friends at the ever-improving Baldwin Library; fairy gardens or nooks broadcasting positive, inclusive messages; a Little Library; a kiosk or message board where the City or residents could post useful, neighborly information (i.e. items for sale, new social groups, events, missing pet notices, etc.); and a hallmark feature to make the playground really unique such as a community-member created Art installation, a fence with love locks, a gazebo, a pine tree where ornaments could be displayed for seasonal holidays, or a take something/leave something surprise box.

The sky's the limit with opportunities to turn the beautiful space flanking Birmingham's impressive new fire station into a place with even more to offer its residents in Quarton Lakes Estates.... and the Birmingham community at large!

Upon presenting the idea around my neighborhood this Spring, I was greeted with great enthusiasm by neighbors on many different streets within Quarton Lakes Estates and across all demographics. I have attached a list of residents who similarly support the proposal of a playground in our neighborhood.

Moreover, in these uncertain times, I believe a safe, new, exciting open space, out of doors might be just what Birmingham needs to inspire hope and offer new opportunities for safe social engagement.

On behalf of my neighbors and myself, thank you for your consideration of this community improvement as well as your ongoing dedication to Birmingham, City Manager Valentine, City Clerk Allen, and Councilmembers Longe, Host, Hoff, Baller, Boutros, Nickita, and Sherman.

Sincerely,

Kate Bongiorno

Petition to Create a Quarton Lakes Estates Neighborhood
Playground Adjacent to Fire Station #2

Name	Address	Signature
Kristin Plumb	1841 Melbourne St.	Il-ne
Laura Northerner	1869 Melbourne St	Laura Northerner
Hannah Kessler	595 Kimberly St.	Hannah Kessler
Katie Holder	1832 Melbourne St	Katie Holder
June Strickland	1832 Melbourne St	June Strickland
MARIANNE WINTERS	1825 MELBOURNE	Marianne Winters
Jennifer Swanson	1777 MELBOURNE ST	Jennifer Swanson
Rob Dale	1755 Melbourne St.	Rob Dale
Erin Mortenson	975 Fairfax St	Erin Mortenson
Jen Genberg	287 Suffield Ave	Jen Genberg

Petition to Create a Quarton Lakes Estates Neighborhood
Playground Adjacent to Fire Station #2

Name	Address	Signature
Kate Bongiorno	684 Puritan Avenue	Kate Bongiorno
JAMES BONGIORNO	684 PURITAN AVE	J Bongiorno
^{Patricia Andrews} Patricia Andrews	235 Chesterfield	Patricia Andrews
Keri Robson	993 Suffield Ave	Keri Robson
Keri Robson	993 Suffield Ave	Keri Robson
MIKE BARD	916 SUFFIELD AVE	Mike Bard
Sarah Eversman	916 Suffield Ave	Sarah Eversman
NELISSA MARK	635 PURITAN AVE	Nelissa Mark
Thomas Mark	635 Puritan Ave	Thomas Mark
CYNTHIA LERON	672 Puritan Ave	Cynthia Leron
Amanda Schairer	1444 Chesterfield Ave	Amanda Schairer

SUSAN CONWAY	998 Brookwood Bham	Susan Conway
William Conway	11 11 11	William Conway
TRICIA PRAY	607 Pilgrim Birmingham	Tricia Pray
Darleen Mahler	1280 Redding Rd Birmingham	Darleen Mahler
HUGH MAHLER	1280 Redding Rd Birmingham	Hugh Mahler
ANTHONY FOREST	1098 FAIRFAX ST. BIRMINGHAM	Anthony Forest
Mariani Rahman	1757 Winthrop Ln, Birmingham	Mariani Rahman
LISA HOFFMAN	1862 Winthrop Lane	Lisa Hoffman
Jennifer Goertz	316 Puritan,	Jennifer Goertz
Lynn Host	639 Puritan	Lynn Host
BRAE HOST	639 Puritan	Brae Host
PASCALE BAUER	1791 PINE STREET	Pascale Bauer
William Beachum	701 Puritan	William Beachum

AGENDA ITEM #2: Letter dated July 10, 2020-Requesting a New Park & Playground-Quarton Lakes Estates

Lauren introduced Kate Bongiorno who presented a proposal for a playground in the Quarton Lake Neighborhood next to fire station #2, located on Maple Rd. and Chesterfield Rd. Kate stated it would be a park with a playground that would provide opportunities to the community for recreation activities.

Katie iterated the next steps would include community conversations. The area would include an all-inclusive playground structure, benches, picnic tables and a gazebo.

Lauren stated that the property is about a .5 acre and a continuous part of fire station #2 and is not identified on any of the City of Birmingham maps in our Parks and Recreation Master Plan. Lauren stated that the timing is good for this type of project.

No Action was taken by the Parks and Recreation Board

COMMUNICATION/DISCUSSION ITEM #1: Parks Bond Opportunity- City Commission Meeting Agenda Item July 20, 2020:

Lauren presented the supporting background information in terms of the park bond opportunity, Language which is strictly a supplement to Annmarie's presentation.

No Action was taken by the Parks and Recreation Board

COMMUNICATION/DISCUSSION ITEM #2: Parks and Recreation Bond –email received from John Rusche

John stated he was motivated on sending the email after watching the deliberations from City Commission and the comments on how does the City Commission even knows that the Parks and Recreation Board is behind the Parks and Recreation bond.

No Action was taken by the Parks and Recreation Board

COMMUNICATION/DISCUSSION ITEM #3a Kenning Skate Park, Emails received from Dr. Anna Groebe and Jackie Ruppert

Lauren provided an exchange of communication on different uses of Kenning Skate Park. Lauren stated that staff is looking at other skate parks and once information is available they will be contacted so information maybe share with them once the item returns back to the Parks and Recreation Board. Lauren also stated that the parks rules and regulations will also be forthcoming.

No Action was taken by the Parks and Recreation Board

COMMUNICATION/DISCUSSION ITEM #3b Letter regarding Kenning Skate Park-received from Henry Franco

Lauren provided a letter that was received from Henry Franco regarding using scooters in the Lincoln Skate Park.

No Action was taken by the Parks and Recreation Board

City of Birmingham Parks and Recreation Donor Policy

Thank you for considering Parks and Recreation in the City of Birmingham for your donation. We welcome donations from individuals, foundations, non-profit organizations and corporations and look forward to working with you.

While donations for our parks will enrich the community, the City of Birmingham recognizes that its open spaces, trails and recreation areas are precious resources. Accordingly, the City of Birmingham desires to protect and preserve the open, tranquil atmosphere of our parks, to protect the natural quality of our trails and to enhance the development of our recreational assets. Therefore, donations for park improvements and recreation programming will be considered with the support of those goals in mind.

I. DONATION CATEGORIES

The City of Birmingham welcomes donations in several categories including:

- a) Park landscaping elements include trees, shrubs and other flora. Donations of all landscaping elements, however, must be approved species and there may be site specific limitations. Please see the City of Birmingham Park Donor Program for further information.
- b) Park amenities for the purchase, replacement or refurbishment and maintenance of park benches, picnic tables, drinking fountains, bicycle racks, playground components and the like. Although suggestions from donors will be considered for the placement of a donated park amenity, final decisions as to location will be determined by the City of Birmingham. Please see the City of Birmingham Park Gift Donor Program for further information.
- c) Park features include arbors, pavilions, plazas, gardens, and the like. Such features must enhance the park, enrich the experience of park users and be consistent with park planning processes. Accordingly, such proposed donations will only be considered on a case-by-case basis. Donors may contact the City of Birmingham or the Director of Public Services to discuss proposed park features.
- d) Monetary donations, such as cash or negotiable securities, may be used toward the development and general upkeep of park elements, amenities and features. Donors may identify a specific use for the City's consideration, or funds may be used to best meet the needs of the City of Birmingham Parks and Recreation projects.

II. DONATION GUIDELINES

In order to have a consistent donor program, the following guidelines endeavor to address both the needs and resource capabilities of the City of Birmingham and the desire of donors to support Birmingham's Parks. Donors should contact the Director of Public Services to discuss donation ideas.

- a) The City wants to ensure the best appearance and aesthetic quality of its parks. Thus, donations should satisfy a true need of an approved park scheme.

II. **DONATION GUIDELINES** *(continued)*

- b) All donations will be reviewed for appropriateness and compatibility with the City of Birmingham Parks and Recreation Master Plans. The City reserves the right to decline any donation if, upon review, the donation is (1) limited by special restrictions, conditions or covenants which pose unreasonable budgetary or maintenance obligations on the City, or (2) not in the best interest of the City.
- c) Donors may be asked to appear before the Birmingham Parks and Recreation Board and/or the City Commission, to present their donation proposal. Public comment and feedback may be considered during the review process.
- d) The City understands that donors may have preferences regarding the choice of design professionals, vendors and contractors, and preferences regarding the location, size, scale, color and materials of donated elements, amenities and features. The City, however, must adhere to the open bid process requirements, if applicable, and to other City policies and goals. Accordingly, final decisions on all details of the proposed donation shall be at the sole discretion of the City of Birmingham.
- e) While the City recognizes the generally good intentions behind any donation, the City, at its sole discretion, reserves the right to decline any gift or donation.
- f) Upon acceptance by the City, any donated element, amenity or feature, becomes City of Birmingham property. The City has an interest in ensuring that all park elements, amenities and features remain in good repair and will provide, at its sole discretion, reasonable maintenance of donated items. The City, however, is under no continuing obligation to repair, replace or maintain perpetual care for any donated item.
- g) The City will make a reasonable effort to notify a donor of any damage, theft or other loss to a donated item and may, at its sole discretion, repair or replace such a donated item to the extent it deems practical, or as described in the original gift agreement, if any.
- h) Because donations to the City of Birmingham may be tax deductible, donors are encouraged to consult with their tax advisor.

III. **DONOR RECOGNITION**

- a) Recognition shall be provided for all gifts given to the City of Birmingham for park improvements, subject to such general policy changes and amendments as may be implemented by the City Commission.
- b) "Naming rights" on any park feature or element are subject to the approval of the City Commission.
- c) All donations will be acknowledged by a letter of appreciation from the City of Birmingham.



MEMORANDUM

Planning Division

DATE: April 6, 2021

TO: Thomas Markus, City Manager

FROM: Jana L. Ecker, Planning Director

SUBJECT: 2021 Initial Screening for Bistro Applicants - Spring

INTRODUCTION:

The City Commission previously established a bistro application review process that altered the process from the previous "first come, first served" policy.

BACKGROUND:

Under the revised process, the City Commission accepts bistro applications for the coming year on October 1st each year. All bistro applications submitted for initial review must contain only the following information in 5 pages or less:

- A brief description of the bistro concept proposed, including type of food to be served, price point, ambience of bistro, unique characteristics of the operation, if any, and an explanation of how this concept will enhance the current mix of commercial uses in Birmingham;
- Proposed location, hours of operation and date of opening;
- Name of owner/operator and outline of previous restaurant experience; and
- Evidence of financial ability to construct and operate the proposed bistro.

At a single City Commission meeting in October of each year, the City Commission considers all of the initial screening applications for bistros, and selects which applications, if any, to move forward to the Planning Board for a full Special Land Use Permit review. All applications forwarded to the Planning Board are required to provide additional information for review of the bistro as a SLUP including site plans, floor plans, sample menus, interior design details, evidence of financial capability, as well as any other information requested by the Planning Board.

The Planning Board will then conduct a site plan and SLUP review, and all bistro applications will be evaluated by the Planning Board based on the criteria set forth in the Zoning Ordinance and Chapter 10, Alcoholic Liquors, Division 4, Selection Criteria, of the City Code, and forwarded back to the City Commission with a recommendation from the Planning Board.

Finally, the City Commission will conduct public hearings to review the selected bistro applications and determine which, if any, bistros to approve for 2021, up to a maximum of two approvals for new establishments, and up to a maximum of two approvals for existing establishments that have been in operation for more than 5 years in the City.

In October 2020, the City Commission reviewed all bistro applications submitted, and forwarded the following initial screening applications to the Planning Board for a full review:

- Bloom Birmingham, 239 N. Old Woodward
- Sushi Japan, 176 S. Old Woodward
- Vinewood Kitchen & Cocktails, 724 N. Old Woodward
- Whistle Stop Diner, 501 S. Eton (existing establishment in operation more than 5 years in the City)

All three of the proposed new bistro establishments have submitted site plan, design and SLUP review applications to the Planning Board. None of these reviews have been completed at this time, and thus the applications have not been sent back to the City Commission. Whistle Stop Diner has not submitted a site plan, design and SLUP review application at this time. In previous years, this full submittal was due within 90 days of the City Commission meeting in October. However, the City Commission may wish to allow flexibility given the ongoing COVID pandemic.

The revised process for bistro application review also provided that in the event that two bistro approvals are not granted as a result of the fall review period, the City will accept additional bistro applications for the current calendar year on or before April 1st.

In accordance with the process outlined above, the following applicants submitted a summary for the initial review process prior to the April 1, 2021 deadline established by the City Commission:

- Commonwealth Café (existing establishment in operation more than 5 years in the City)
- Maple & One (proposed by owners of The Mad Hatter in adjacent storefront to former Mad Hatter space)
- The French Lady (new restaurant opened this past year, not licensed for the service of alcohol)

Each of the proposed bistros are located in the Downtown Birmingham Overlay District.

As three new bistro applications are currently in the planning review process, the City Commission may not wish to consider any new bistro applications at this time, pending decisions on the three applications. The City Commission may wish to consider the bistro application for Commonwealth Café as no other application has been submitted for full review to the Planning Board for existing establishments in operation for more than 5 years.

Should the City Commission wish to consider any of the three applications received as of April 1st, 2021, each applicant will be given a time limit to verbally present their concepts to the City Commission, without the use of PowerPoint presentations, display boards or other visual aids. A suggested time frame would be a five minute presentation of the concept by the applicant, with a five minute period for questions from the City Commission. The City Commission will then discuss the application, and consider directing the application to the Planning Board for full site plan and design review and Special Land Use Permit review.

LEGAL REVIEW:

The City Attorney has reviewed the submissions and has no concerns.

FISCAL IMPACT:

Not applicable.

SUMMARY:

In accordance with the City's initial screening process for bistros, the City Commission should review the attached submissions and consider whether to allow the applicant(s) to conduct brief presentation(s) and respond to any questions.

ATTACHMENTS:

- Commonwealth Café
- Maple & One
- The French Lady

SUGGESTED ACTION:

To direct _____ bistro application(s) to the Planning Board for full site plan and design and Special Land Use Permit review.

OR

To take no action on any bistro applications at this time.



LAW OFFICES

ADKISON, NEED, ALLEN, & RENTROP

PROFESSIONAL LIMITED LIABILITY COMPANY

KELLY A. ALLEN
JESSICA A. HALLMARK
GREGORY K. NEED
G. HANS RENTROP

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Bloomfield Hills, Michigan 48304
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Facsimile (248) 540-7401
www.ANAfirm.com

OF COUNSEL:

PHILLIP G. ADKISON
KEVIN M. CHUDLER
KATHERINE A. TOMASIK

March 26, 2021

Via Electronic Mail

Jana Ecker, Planning Director
City of Birmingham
151 Martin Street
P.O. Box 3001
Birmingham, MI 48012

**Re: Commonwealth Bistro Application
300 Hamilton Row**

Dear Ms. Ecker:

Our firm represents Commonwealth. Attached is the Bistro Application for the April 1, 2021 deadline.

As you know, this is an existing restaurant since 2010.

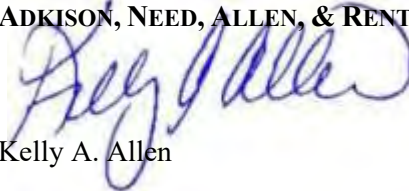
Please confirm your receipt of this application and let us know when this will be placed on the City Commission's Agenda.

Please call me if you have any questions.

Thank you!

Very truly yours,

ADKISON, NEED, ALLEN, & RENTROP, PLLC


Kelly A. Allen

/kjf
Enclosure

Cc: James Hayosh
Alex Chisholm



Public Café, LLC
DBA: Commonwealth Café
300 Hamilton Row
Birmingham, MI 48009

Commonwealth Cafe has been a community gathering space for locals and visitors for the last decade. We offer a hip, cactus-filled, welcoming atmosphere for everyone from the elite business executive to the family enjoying a walk on the town. The menu consists of fresh food, coffee and pastries prepared in house daily.

Commonwealth Café welcomes all outings from business meetings and birthday parties to Sunday brunch and first dates. During the warmer months, we open our three large garage doors that lead to our inviting patio which creates a fun and unique atmosphere. We pride ourselves on our customer service and are known for having a friendly and approachable staff that has made deep-rooted connections with the local community.

Our menu offers options for everyone including plenty of gluten-free, vegetarian, and vegan items. Some of our most popular dishes include the Fried Egg Sandwich, House-Made Vegan Nutella Pancakes, Chopped Kale Salad, and Grilled Alaskan Salmon. We keep our menu fresh and exciting by offering monthly features, which are always a hit and keep guests coming back. Price point of our menu is kept at a fair approachable price, with most items costing between \$12 - \$16 dollars.



We had the pleasure of being the first specialty coffee shop in Birmingham. Yes, it took some time for that trend to hit the mainstream, but we are happy this is now what people have come to expect from a coffee shop, and we are paving the way for other shops in the area.

Originally Commonwealth only served breakfast, lunch, and brunch on the weekends, but we started serving dinner two years ago due to growing demand. We would like to expand our offerings to include beer, wine, and cocktails. The cocktails will tie into our concept by using staple ingredients like coffee, cold press juices, and matcha tea.

Commonwealth is a counter service restaurant, with guests ordering at the register, receiving a table number, and then sitting at a table. From there, both food and drink are brought to the table by our trained and friendly expediting team. Our staff clears tables once the guest has left. We plan to keep this same service style as it simplifies the guest experience.

We have always strived to be a longstanding pillar in Birmingham, the city that has loved and supported us over the years. With your approval, we can continue to elevate ourselves to be a part of this community for many years to come.



GENERAL INFO

Commonwealth Opening Date
September 9th 2010

Current Hours of Operation:

Monday – Saturday
7:30am – 8pm

Sunday
7:30am – 3pm

Proposed Hours of Operation:

Monday – Thursday
7:30am – 10pm

Friday - Saturday
7:30am – 11pm

Sunday
7:30am – 3pm

Website
www.gocommonwealth.com

Instagram
[@gocommonwealth](https://www.instagram.com/gocommonwealth)

Phone number
(248) 792-9766

James Hayosh (Owner)
26 years of restaurant experience.
Helped found Sushi RA in Arizona
Current owner operator of Ronin Sushi in Royal Oak
(313) 618-9610

Alex Chisholm (Director of Operations)
15 years restaurant experience.
Part of the opening staff, and held the position of General Manager at Commonwealth for 8
years
(248) 635-5661

EVIDENCE OF FINANCIAL ABILITY TO OPERATE THE PROPOSED BISTRO

In order to operate Commonwealth as a Bistro, a Class C liquor license or a Redevelopment Liquor license will be purchased or applied for with the Michigan Liquor Control Commission. Also, Commonwealth will be purchasing alcohol inventory. The total cost will be approximately between \$33,000 and \$80,000 depending on the cost of the license. Commonwealth has ample operating capital to operate the proposed Bistro. A bank statement can be confidentially provided upon request.

Maple & One

Proposed Location:

183 N Old Woodward, Birmingham MI 48009

Owners:

Randy Dickow - Lives In Birmingham, Owns a business in Birmingham, 10+ years of restaurant experience and owner of 4 Restaurant locations

Andrew Dickow - Lives in Birmingham, Partner in Greenwich Capital Group located in Birmingham

About:

Maple & One will bring an approachable and timeless atmosphere to Birmingham. Just as the roads Maple and Woodward are a staple in the Birmingham community, **Maple & One** welcomes all near and far. Our mantra from the start was and will be to provide a welcoming, approachable and timeless environment. Whether an individual is wearing gym clothes, or an individual is in a suit, we want it to be a gathering place for many occasions.

We feel this type of dining experience is lacking in the downtown area. Birmingham has some of the finest restaurants in the state, but needs some additional options that are approachable whether it's day or night. We plan to provide that to the people of Birmingham with a beautiful renovation of a space that has been vacant for years. Please see the layout and concept images.

Reasons behind the relocation:

It has been very painful for the last 24 months. First and foremost, the road construction in front of Mad Hatter Bistro was devastating. We expected it to be advantageous long term and had planned accordingly to make it through. Nothing could've prepare us for the issues that would arise from the construction aftermath. Due to the new layout, where our patio once was, now wasn't and isn't an option. In fact, we essentially lost our patio completely due the new design of the street in post construction. We all know how imperative patios are to be successful in the restaurant industry. To no fault of our own we lost a major revenue stream that gave us the opportunity to make it. Without a patio (which is required by the regulations of having a Bistro) we simply can't survive. During the time in which the proposed space at 183 Woodward was not occupied we were able to have a patio last summer during the pandemic. If we are not able to move the space next door, the landlord will not be able to offer that patio space any longer.

By making another significant investment into the Birmingham market we are solving the problem caused by the road construction, and simultaneously upgrading another ground level space on Old Woodward. Road construction, followed by a year of a pandemic and we still believe in the city of Birmingham. While others to our right and to our left have shut down for good, we are doubling down with our investment in the city. Without this move, we have no chance of survival

Hours Of Operation:

Monday-Wednesday: 11:30am-11:00pm

Thursday-Friday: 11:30am-12:00pm

Lunch & Dinner

Saturday: 10:00am-12:00pm

Sunday: 10:00am-10:00pm

Brunch & Dinner

Chef Bobby Nahra

Robert Nahra, aka **Chef Bobby** to most, has successfully created many unique mouthwatering recipes and dishes that have skyrocketed his culinary career over the years. At the age of 6, Robert started to help his mother in the kitchen and began to learn several recipes along with valuable life lessons from his mom. His mother not only taught him what ingredients to use, but she taught him how to put his heart into each dish, and that cooking is an art, and each dish should be created with passion. He credits his Mother for molding him into who he is today.

Chef Bobby has turned many heads within the Metro Detroit area over the past several years. He is a familiar face on FOX 2 Detroit, as well as hosting Detroit Lions tailgates at every home game, WXYZ-TV Channel 7, Bennett's Society Confidential Column in the Detroit News, 910AM Superstation, Mojo in the Morning on 95.5 and so forth. Where else can you find **Chef Bobby**? - Hour Magazine "Best Chef" 2019 issue.

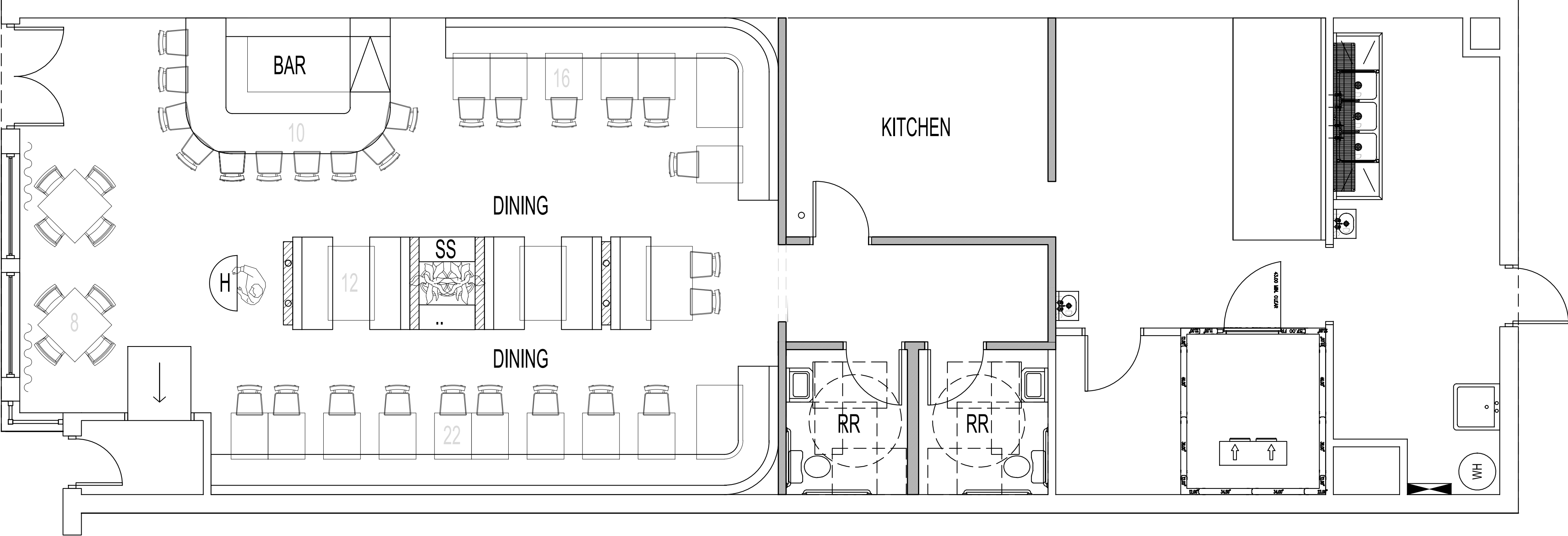
Chef Bobby is nationally ranked after Baron Chocolates brought him on-board as their Chocolatier. Calibrating flavors and flavor profiles for several products. This was one of his favorite things to do while in the kitchen. A dream come true, he was invited to attend the 2016 Academy Awards ceremonies in Los Angeles, California representing Baron Chocolates and hand crafting mouthwatering truffles onsite at several of the A-list festivities. His chocolate creations were included in the Oscar swag bags for the celebrities that attended the event.

Chef Bobby believes in giving back to the community as much as he possibly can by donating his time and talent to help others. His culinary team along with his family donate seven-course gourmet wine dinners to charities such as St. Jude, Angels of Hope, Big Brothers Big Sisters, Father Solanus Casey Center, the Full Circle Foundation, and sits on the board of directors for Feeding the Need Ministry Macomb County. **Chef Bobby** and his team supplement food and provisions week after week for those in need at the ministry. **Chef Bobby** and his team put together picnic baskets for 826 inner city kids on a trip to Cedar Point for the Horatio Williams Foundation and included several delicious and healthy options for the kids to enjoy. **Chef Bobby** goes out of his way on many occasions to help those in need. His heart is not only in the kitchen, but is also on his sleeve.



Floor Plan

68 SEATS



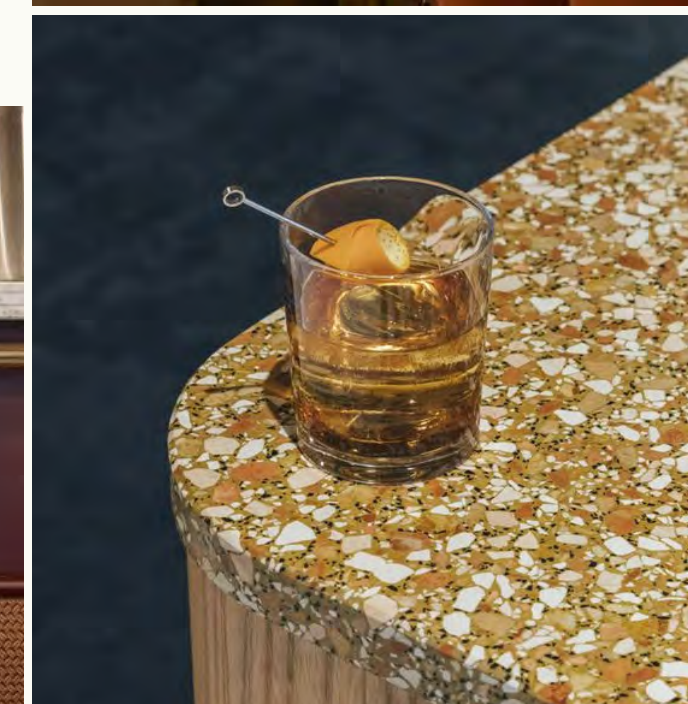
Mood Board



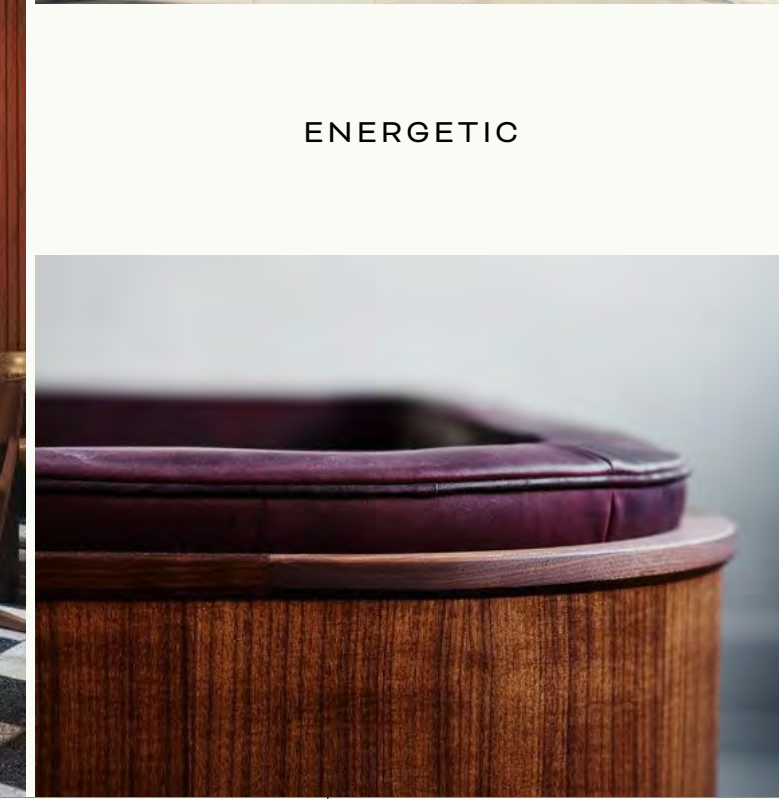
CASUAL



WITTY



ENERGETIC



Menu

Maple & One

APPETIZERS

- CHIPS & DIP
- LETTUCE WRAPS
- SHRIMP COCKTAIL
- CRISPY RISOTTO POPPERS
- BAKED BRIE
- AHI TUNA TARTARE
- STEAK BITES

PASTA

- CAJUN SHRIMP PASTA
- SPICY RIGATONI VODKA
- RAVIOLI

ENTREES

- PRIME BURGER
- NASHVILLE HOT CHICKEN SANDWICH
- CHILEAN SEA BASS
- CHICKEN LIMONE
- ORAKING SALMON
- DOMESTIC LAMB CHOPS
- NEW YORK STRIP
- BLACK BEAN & QUIONA POLPETTE (VEGAN)

SPREADS & SALADS

- MEDITERRANEAN PLATE
- CAESAR SALAD
- HOUSE CHOPPED SALAD
- BRUSSEL SPROUT SALAD
- ROYAL GARDEN SALAD
- ARUGULA SALAD

SIDES

- HOUSE CUT FRENCH FRIES
- CRAB CAKE
- GRILLED CARROTS
- GRILLED ASPARAGUS

DESSERT

- PISTASCHIO CHEESECAKE
- ANGEL WINGS
- 3X CHOCOLATE
- ALMOND CAKE

*Denotes food items are cooked to order or are served raw:
Consuming raw or under cooked animal products may
increase your risk of foodborne illness. Please inform our wait
staff of any allergies you might have.



The French Lady

Proposal for Bistro License

The French Lady

768 N Old Woodward Ave.

Birmingham, MI 48009

248.480.0571

Applicant:

Claude Bouly-Pellerin

248.309.0030

Applicant's Attorney:

John Henke

251 E Merrill St # 212,
Birmingham, MI 48009

248.647.8590

About/Concept:

The French Lady offers its guests an experience like no other. When visiting The French Lady, guests will find themselves in a truly French Bistro; a small restaurant serving traditional, authentic, French home-style meals, while providing a comfortable and relaxing atmosphere.

Whether you are here for breakfast, lunch, or dinner, you will feel like you've truly stepped into a small part of France when walking through the French Lady's doors. The interior reflects a traditional French Bistro. Tables covered with beautiful, colorful table cloths. Shelves with meringues, madeleines, financiers, and house-made jams. Black boards with the menus, reflecting the daily specials. Coffee brewing, buttery quiches cooling down behind the counter, and fresh bread and croissants waiting to be enjoyed. The smell of dinner, slow-cooking in the oven gently wafting through. A harp stands off to the side, out of the way of tables, but in view. Often played by her owner, Claude, so guests can enjoy her beautiful sound while savoring their meals. During the spring, summer, and early fall, you will also have the option of enjoying your meal outdoors on the back patio, which overlooks the Rouge River.

Owner:

The French Lady herself, born in Nord-Pas-de-Calais, has been cooking all her life. In addition to living in the north of France, she has also lived in Strasburg on the French-German border, and Paris. Well-versed in the diverse cuisines of her home country, she can provide an authentic taste of France to anyone who tastes her cooking. Cooking, baking, and entertaining are her passions. She prepares each meal from scratch with not just love and care, but with technique and expertise. Pairing the perfect wine with a corresponding dish is an art. Adherence to tradition, quality, and authenticity is key.

Claude is also a classically trained harpist who has performed internationally, and whose musical career has spanned decades. In addition to being talented and hardworking, she is one of the most selfless people you could ever meet, and always goes out of her way to make people feel welcome, at home, and appreciated. These qualities will undoubtedly create and foster a customer experience that is like no other, because Claude holds herself, her food, and her restaurant to consistently high standards. After spending some years of her twenties in Boston, she moved back to France, always knowing deep down that she wanted to be here in the States. Now she has been living in Michigan since December of 2014, and is sharing her passion for homemade food.

Menu:

The French Lady works with fresh ingredients, following the market and season. The menu changes weekly, offering different specials each day. The French Lady serves only authentic French cuisine, made with fresh, locally-sourced ingredients. Provide guests with the highest quality possible. From crepes, quiches and croissants, to mouthwatering dinners like beef bourguignon, chicken blanquette, or cassoulet, the French Lady has everything you need to make you feel like you're eating in a true Parisian bistro. A true French meal would not be complete without the elegant flavors that come out when pairing our food with delicious wines or beers.

Impact:

The French Lady will offer Birmingham something completely different from any of the other local bistros; a truly authentic French experience that you won't find anywhere else. With fresh, quality ingredients from local farmers and butchers. Being a small bistro, The French Lady also provides a warm at-home atmosphere, creating a stronger sense of community for guests.

Finances:

Having already applied and received our certificate of occupancy, The French Lady has already been able to open her doors, and welcome guests. When setting up the Bistro, everything was constructed with a Bistro license in mind, so there are no additional expenses expected, other than the cost of the liquor license itself, and any associated fees



Breakfast/Lunch		Lunch/Dinner		Soups/Sides	
Plain Croissant	\$ 3.75	Beef Bourguignon	\$ 27	Cheese Board	\$ 20
Chocolate Croissant	\$ 4.25	Cassoulet	\$ 25	Salade du Jour	\$ 8
Almond Croissant	\$ 4.5	Chicken Forestière	\$ 25	Quiche with Salad	\$ 15
Pain Aux Raisin	\$ 4.25	Chicken Blanquette	\$ 25	Ratatouille	\$ 10
		Saumon à l'unilatérale	\$ 26	Soup du Jour	\$ 9
Baguette with Jam	\$ 9	Chicken Basquaise	\$ 25		
Quiche with Fruit	\$15	Risotto	\$ 18	Desserts	
Ham & Cheese Crepe	\$15	Onglet à l'échalote	\$ 28	Chocolate Mousse	\$ 6
Ham & Cheese Croissant	\$15	Lotte Alexandre	\$ 30	Tarte Tatin	\$ 9
Crepe with Butter \$ Sugar	\$ 8	Risotto	\$ 18	Clafoutis	\$ 9
Crepe with Jam or Nutella	\$ 10	Beef Ch'ti	\$ 27	Crème Caramel	\$ 9
				Flight of Desserts	\$ 15
Coffee	\$ 2.5				
Espresso or Tea	\$ 3				
Latte	\$ 4.5				
Orange Juice	\$ 4				









MEMORANDUM

City Manager's Office

DATE: March 18, 2021
TO: City Commission
FROM: Thomas M. Markus, City Manager
SUBJECT: Haig Communication

RECCOMENDATION:

The City Manager has reviewed the communication and recommends that the Commission consider this item under Commission Items for Future Discussion.



Alex Bingham <abingham@bhamgov.org>

Request to discuss streets issues at an upcoming City Commission meeting

A H Public email <ahjunkah@gmail.com>

Tue, Mar 9, 2021 at 5:37 PM

To: Pierre Boutros <pboutros@bhamgov.org>, abingham@bhamgov.org, Brad Host <bhost@bhamgov.org>, Racky Hoff <rhoff@bhamgov.org>, Stuart Sherman <ssherman@bhamgov.org>, Mark Nickita <mnickita@bhamgov.org>, Therese Longe <tlonge@bhamgov.org>, Clinton Baller <cballer@bhamgov.org>, Jana Ecker <Jecker@bhamgov.org>, Markus Tom <tmarkus@bhamgov.org>, lwood@bhamgov.org, Bruce Johnson <Bjohnson@bhamgov.org>

Dear all, I would like to use this as a formal request to discuss the streets and damage to them at a future Commission meeting in the near future with the attached packet being inserted into the agenda as a scheduled item for review.

I have been working on this for some time, as is evident by the chronology in the package and I am sending it today because I saw something going on in the street early today. Lots of noise and lights at 6.00 am (I start work very early so I am up and eating breakfast by 6), I went to see what was going on & saw the Channel 7 news truck in the street filming at the exact spot I have been writing this package about. This was rather interesting as I had no idea that they had any information about our issues here let alone that they were coming to film anything. I found their news segment from this morning on the WXYZ website and watched it with rather a lot of interest.

link:

<https://www.wxyz.com/getting-around-metro-detroit/checking-out-some-of-the-worst-roads-in-birmingham>

That prompted me to send it today as apparently this is a topic that has bothered someone else so much that it obviously has been brought to your attention already so here is what I have been looking at. Most of this package is a photo diary of the degradation of the street and the causes of the destruction. I did not have the opportunity to photograph every single instance of damage, but the data pretty much speaks clearly and loudly for itself.

Please can this also be shared with the Unimproved Streets members, as I do not readily have all their contact info, as it is pertinent to that board & its scope/final report.

There are points in my presentation that I wish to discuss as discrete items - specifically types of permitted vehicles and equipment within the city (soft wheel/rubber track only) and the road damage deposit proposal and not have them linked together.

Personally I have zero interest in having another assessment for a Cape seal on Banbury as it will just continue to be destroyed by developers, I want to refer back to a different proposal I brought to you last year to limit the number of developments within any given radius to reduce the amount of traffic at any given timeframe before we even look at repair or replacement of any roads, anywhere within the City limits. This is because any repair or replacement during this phase of extreme construction overcramping in the residential neighborhoods will only drive cost onto the residents and then the repair costs onto us a 2nd time when all upgraded infrastructure fails to meet the original expected life due to incorrect road load use.

Yours,

Andrew Haig

**3-2021 Streets damage & payment proposal.pdf**

1606K

Builder and developer streets damage.
Issues, costs, remedial action & payment
proposal

Andrew Haig. 3/8/2021

Streets damage issue due to developers and types of equipment used

- Banbury Street is a microcosm case study of many things that are wrong with our City & it's processes that are really not significantly wrong or difficult to rectify.
- Current case point – street damage due to Developers.
- Many posts on Social Media have shown the distress of many residents throughout the city due to developers and noise, interruptions etc. The one factor that has not been very seriously addressed is street damage.
- Developers by the nature of the work, need to bring in heavy equipment.
- No streets in Birmingham, other than main roads such as Maple, or Old Woodward, are designed for consistent ultra heavy and significant daily traffic – in fact certain streets such as South Eton specifically post that these types of traffic are not allowed access.
- In addition, Developers do not appear to care about the type of equipment brought into the city. Many are using steel tracked excavating equipment that is utterly destructive to roads, easements, curbs etc. (this particular case has already been reported to Bruce Johnston a couple of months ago).
- Utility companies, on the other hand have noted this issue many years ago and every single tracked or heavy equipment used by DTE, Consumers etc. is a soft wheel or rubber tracked machine, which cause significantly lower levels of damage to City and residents infrastructure.

A study in pictures of street damage by 1 single Developer

- December 2020. Banbury Street
- Photo diary did not start until December to show the street condition prior to December.
- Note Excavator in both pictures.
- Diesel spill is not visible in these pictures.
- 1st picture shows the damage from the steel tracks (notified to Bruce Johnston).
- 2nd picture shows the overall condition of the already damaged unimproved street
- Track damage data shared with Bruce Johnston.



December 2020 continued

- Diesel spill not very visible in water.
- Shows easement area, intact curbs, undemolished house and some more of the currently intact street surface
- Developer name intentionally obscured



December 2020 – Semi trucks

- Semi trucks lined up, parked down the street, waiting to be loaded with mixed house debris (wood, siding, roofing material and concrete) and excavated soil.
- Street was blocked in this manner for 2+ days.
- Reminder of MI truck loading laws, not including Spring seasonal loading constraints:
- https://www.michigan.gov/documents/Loads_dim_87014_7.pdf
- Highlighting from author to show relevant axle loads on a Semi truck with tandem tractor axles & triple trailer axles



TABLE OF MAXIMUM ALLOWABLE GROSS AXLE LOADINGS				
Spacings Between Axles	Normal Loadings When Seasonal Load Limitations Are Not In Force (Speed Limit 55 MPH)		Seasonal Load Limitations (Speed Limit 35 MPH)	
	Vehicles Exceeding 80,000 lbs. Gross Weight	† Vehicles 80,000 lbs. Or Under Gross Weight	Rigid	Flexible
9 feet or over	18,000 lbs.	20,000 lbs.	13,500 lbs.	11,700 lbs.
More than 3 ½ feet but, less than 9 feet	13,000 lbs.	13,000 lbs.	9,750 lbs.	8,450 lbs.
When part of a tandem axle assembly	*16,000 lbs.	34,000 lbs. on tandem	**12,000 lbs.	***10,400 lbs.
When less than 3 ½ feet	9,000 lbs.	9,000 lbs.	6,750 lbs.	5,850 lbs.
Maximum load on any wheel shall not exceed: (lbs. per inch of tire width)	700 lbs.	700 lbs.	525 lbs.	450 lbs.

† Gross vehicle weight may not exceed 80,000 lbs. and the following: An overall gross weight on a group of 2 or more consecutive

January 14th 2021

- Simultaneous emergency sewer replacement while house deconstruction ongoing – note same excavator in RHS of picture and Semi truck in the background



Social media pictures January 2021

- Photos as posted to Nextdoor.com by a resident of Banbury Street who was blocked in repeatedly by construction & who also lives directly in front of the destroyed street.
- Taken from her front room window.



February 9th 2021

- Screen grab from a video of multiple Semi trucks lined up & waiting to load excavated soil – this was an all day event with trucks blocking the intersection of Taunton & Banbury.
- Mail truck was blocked.
- Same issue on February 11th with Garbage trucks being blocked.



March 1st 2021

- Street condition showing pot holes, destroyed curb, gravel covered easement that is not contained & spilling into the street, damaged sidewalk not obvious from photo.
- Sidewalk damage not shown here, but is visible in person.



March 7th 2021

- Drier street. Shows a shredded vehicle tire found in the middle of the street from an overnight driver.
- Gravel patch on easement (LHS) in photo shows relative location of blown out & shredded tire to the significant street damage



March 7th 2021 continued

- Same view of the same street that was originally shown to be intact in December 2020.
- Street surface has been utterly destroyed, all road integrity is lost, street has truly reverted back to loose gravel road.
- Damage to easement and loose spill from rocks from construction site still present.
- Blown shredded tire now visible on the edge of the 2nd driveway on the LHS of photo where it was removed from the roadway for safety.



March 7th 2021 continued



Summary

- Situation summary:
 - Pictures tell 1,000 words.
 - The preceding pictures show the visible destruction of an unimproved street mostly by one single Developer as the majority of the damage is directly in front of that construction site.
 - The residents left behind are also left with the invoice for repairing the street with tax dues for road patches until the assessment for an unimproved street is levied for full street repair.
 - Residents are left with a road so utterly destroyed, it causes damage to their private vehicles through no fault of their own – see blown tire picture from this week.
 - Developers continue to destroy the city around them as they build with no significant consequences for inconsiderate or damaging actions.
 - This particular developer has now built a track record of non compliance with Builders behavior codes as well as significantly detracted from the quality of life of all surrounding residents – as one single point example. Others exist throughout the City.

Proposal

- Per page 34 of the Unimproved streets report it indicates that a high cost repair of a city street = \$1,600,000 per mile. This is the assumed baseline for a full depth tear out of any road and replacement with a new one, including curbs, not including any sub surface infrastructure.
- Cost = ~\$304 per linear foot assuming full road width.
- Proposal:
 - All developers in the City of Birmingham shall pay a cash deposit into an accrual account equivalent to \$304 per linear foot (2021CY values, adjusted annually for inflation, labor & material cost increases) of roadway for the entire road width and length of any property being remodeled, developed, rebuilt etc. E.g. 45 foot lot width = $\$304 \times 45 = \$13,680$ deposit. Corner lots to be handled in the same manner as Unimproved streets assessments.
 - Deposit will be a cash amount, not a bond or insurance policy, actual deposit of funds and the complete deposit of said funds will be the final hurdle to a building start permit. If a Developer cannot afford this deposit, they should not be issued a permit to build.
 - The road condition of the entire street: road surface, curbs and easements, will be photographically documented with any and all existing conditions noted in a written report that will be required to be signed by the developer and the City.
 - Cash will be held by the City until all work is complete on the site and a C of A is issued by final inspection.
 - Upon completion of the C of A and all equipment has been removed from the site, the street will be reassessed, compared to the original report, any intermediate road patches, repairs or other remedial work also noted and a damage report will be issued.
 - The damage report will indicate the amount of work & cost to bring the road, curbs and easements back up to the original condition at the start of the report. This amount will then be deducted from the cash deposit provided to the city at the start of the project. If the damage assessment exceeds the amount held as a security deposit, the balance will be assessed against the property as Lien if not paid immediately.
 - Any remaining balance of security deposit to be returned to the Developer, with no interest to be paid upon said deposit.
 - All funds accrued in this manner are to be sent to a specific Roads replacement fund to be set up as a specific Capital Project fund to support both the Unimproved and Improved Streets repair & replacement projects throughout the City.
- Residents are NOT to be left to pay for and clean up the mess left behind by any Builder or Developer within the City boundaries. It is also not the responsibility of the new homeowners moving into the city to pay for the damage caused in building their new homes.
- To permit Developers to continue to take advantage of the City – as was astutely noted by Comissioner Sherman early in 2020 when Covid relief measures discussions were held including items such as water bill payments by Developers, some of whom already use the “Bank of the City of Birmingham” as it is cheaper than their construction loan interest, is a totally unacceptable situation to allow to continue.

Title

- Words

2. Medium Cost per Mile

Street rehabilitation at a medium level of cost per mile can fall into several subcategories.

- Major Street Resurfacing* – There are currently several major street segments planned for resurfacing. Minimal underground improvements are planned, but the asphalt surface is in need of replacement. Asphalt work will tend to be at least 2 inches of asphalt removal and replacement. Traffic management on these streets require additional effort. Several of the currently planned projects will be completed with funding from outside sources, such as federal, county, or adjoining jurisdiction. The cost per mile shown reflects the entire expenditure.
- Local Street Rehabilitation* - Many pavements built in the 1950's and 1960's are in need of water main replacements, and in some cases, sewer work. The curb and gutter systems are in relatively good condition, but the driving surface is poor to marginal. Since utility work is needed, the pavement can be removed, while the curb and gutter system is saved. This then saves the cost of drive approach and lawn replacements, and simplifies construction. Since the curb and gutter system is not being replaced, a lower cost asphalt pavement is justified. With its shorter service life, the entire street will age at a more consistent level.
- Unimproved Street Utility Improvements* – As noted before, utility improvements on unimproved streets have not been prioritized, given the difficult task of attempting to completely rebuild a gravel street that has no drainage system. Unimproved streets that have curbs do not have this issue. Water and sewer improvements can be completed with the curbs left intact, and a new cape seal surface can be installed at a lower cost. Two neighborhoods are identified with such work in the near future, including the northwest corner of the city, where water mains and storm sewer work is planned on streets such as Westwood Dr. and N. Glenhurst Dr., as well as water main replacement on Arlington Rd. and Shirley Dr.

Sample estimated costs per mile:

2.a.	Cranbrook Rd. (Maple Rd. to 14 Mile Rd.) =	\$1,600,000 per mile ¹
2.b.	Bowers St. (Hazel St. to Columbia Ave.) =	\$1,830,000 per mile
2.c.	Arlington Rd. (Maple Rd. to Lincoln Ave.) =	\$ 140,000 per mile ²



NOTICE OF INTENTION TO APPOINT TO BOARD OF BUILDING TRADES APPEALS

At the regular meeting of Monday, May 24, 2021 the Birmingham City Commission intends to appoint to the Board of Building Trades Appeals two regular members to serve three-year term to expire May 23, 2024. Applicants shall be qualified by experience or training in fields such as architecture, engineering, mechanical engineering, building, electrical plumbing, heating or refrigeration.

Interested citizens may submit an application available at the City Clerk's office or online at www.bhamgov.org/boardopportunities. Applications must be submitted to the City Clerk's office on or before noon on Wednesday, May 19, 2021. These documents will appear in the public agenda for the regular meeting at which time the City Commission will discuss recommendations, and may make nominations and vote on appointments.

The Board of Building Trades Appeal hears and grants or denies requests for variances from strict application of the provisions of the Michigan Building, Residential, Mechanical and Plumbing Codes and the National Electrical Code. The board will decide on matters pertaining to specific code requirements related to the construction or materials to be used in the erection, alteration or repair of a building or structure.

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.

Criteria/Qualifications of Open Position	Date Applications Due (by noon)	Date of Interview
Members shall be qualified by experience or training. (such as architect, engineer, mechanical engineer, building contractor, electrical contractor, plumbing contractor, heating contractor, and refrigeration contractor)	05/19/2021	05/24/2021



NOTICE OF INTENTION TO APPOINT TO THE MARTHA BALDWIN PARK BOARD

At the regular meeting of Monday, May 24, 2021 the Birmingham City Commission intends to appoint two regular members to the Martha Baldwin Park Board to serve four-year terms to expire May 1, 2024. Members must be electors of the City of Birmingham.

Interested citizens may submit an application available at the city clerk's office or online at www.bhamgov.org/boardopportunities. Applications must be submitted to the city clerk's office on or before noon on Wednesday, May 19, 2021. These documents will appear in the public agenda for the regular meeting at which time the City Commission will discuss recommendations, and may make nominations and vote on appointments.

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.

Criteria/Qualifications of Open Position	Date Applications Due (by noon)	Date of Interview
Members must be electors in the City of Birmingham.	05/19/2021	05/24/2021

**CITY OF BIRMINGHAM
BOARD OF ETHICS
REQUEST FOR ADVISORY OPINION 2021-01**

DECISION

MARCH 15, 2021

I. STATEMENT OF FACTS

Mary Kucharek seeks an advisory opinion from the Board of Ethics concerning a potential conflict of interest relative to the exercise of her responsibilities and duties as an official of the City of Birmingham.^{1, 2}

Ms. Kucharek is an equity partner with the law offices of Beier Howlett, P.C., a law firm that has represented the City of Birmingham for approximately the past 60 years. She has disclosed a personal relationship with one of the City's consulting engineers, Michael McDonald. Mr. McDonald is a managing partner at the engineering firm of Hubbell Roth Clark (hereinafter "HRC"). HRC has been providing engineering services to the City for at least the past 60 years. Mr. McDonald is a member of the board of directors of HRC, which manages the company. Mr. McDonald oversees the work of Jim Surhigh, who is the primary person responsible for oversight of the work for the City of Birmingham with its engineering needs. HRC is party to a consulting contract with the City, and from time-to-time bids on particular jobs.

HRC's contract with the City is periodically reviewed, and no contract is entered into without the approval and review of the City Commission.

Historically, the law offices of Beier Howlett, P.C. and engineering consultants HRC have worked side-by-side in order to best advise the City on its legal needs and engineering needs. The services of Beier Howlett and HRC have been one of parallel professional relationship. Beier Howlett is not responsible to hire or fire HRC, nor is it responsible for drafting or negotiating a contract with HRC without the direction of the City Manager. Also, Beier Howlett is not responsible for developing any RFP for projects, nor awarding those to HRC. Rather, it is within the purview of the City Manager, with final approval of the City Commission, to engage HRC's services through awarding of contracts or of projects for professional engineering consultation.

Ms. Kucharek and Mr. McDonald subsequent to their dating relationship became engaged to marry as of January 15, 2021. They plan to marry sometime later in 2021. Ms. Kucharek came before this Board to provide full disclosure of her personal relationship with this consulting firm member who also serves the City of Birmingham.

Ms. Kucharek represented to this Board that if at any time HRC's contracts or performance needed to be legally reviewed for the City, she will have another member of the Beier Howlett firm review same so that she is always separated from the contract services associated with HRC. At the hearing before this Board, one of Ms. Kucharek's colleagues at Beier Howlett, Peter Gojcaj, appeared and his qualifications were represented as being sufficient to accomplish same. Beier

¹ At time of submission of the Request, Ms. Kucharek held the title of Assistant City Attorney, but at present is the City Attorney.

² Ms. Kucharek references that the requesting party(s) of this advisory opinion is she and City Manager Thomas Markus.

Howlett attorney Michael Gibbons was also mentioned as a stand-in. Ms. Kucharek represented that Beier Howlett does nothing more than review the HRC contract with the City for form, and does not negotiate with HRC. Should that become necessary, Ms. Kucharek stated that she would not be involved with same, but rather another law office member would do so, in an effort to avoid even in the appearance of impropriety. Ms. Kucharek represented that City Manager Markus was aware of, and comfortable with, her relationship with Mr. McDonald.

II. DISCUSSION

The Ethics Ordinance of the City of Birmingham is designed in part to "provide its officials and employees with adequate guidelines for separating their roles as private citizens from their roles as public servants." Ethics Ordinance §2-320.

The ordinance further provides that public officials must:

- (1) Be independent, impartial and responsible to the people;
- (2) Make governmental decisions and policy in the proper governmental channels;
- (3) Not use public office for personal gain.

This section of the ordinance (§2-320) mandates that City officials, such as Ms. Kucharek, must avoid conflicts between their private interests and the public interest. See Decision on Advisory Opinion 2015-05 (Harris). Upon marriage, Ms. Kucharek will have heightened responsibilities in relation to the ordinance as she will thus have "personal interest" and "immediate family" considerations. See §2-322 and Decision on Advisory Opinion 2018-02 (Kalczynski).

Ms. Kucharek correctly acknowledged those responsibilities as in her Request for an Advisory Opinion she cited §2-321-Responsibilities of Public Office in the Ethics Ordinance, as follows: "City officials and employees are bound to observe in their official acts the highest standards of ethical conduct and to discharge the duties of their offices faithfully, regardless of personal consideration, recognizing that their official conduct should be above reproach." See Decision on Advisory Opinion 2012-01 (Nickita).

The Board felt it important in its deliberation of this matter to discuss §2-323 pertaining to the intention of the Code, and specifically the following subsections:

- (2) Giving or accepting preferential treatment, including the use of city property or information, to or from any organization or person;
- (3) Losing complete independence or impartiality of action;
- (4) Making a city decision outside official channels; or
- (5) Affecting adversely the confidence of the public or the integrity of the city government.

The Board further discussed and advised Ms. Kucharek of the following subsections of §2-324(a) pertaining to conflicts of interest, which she should be especially vigilant of:

- (1) No official or employee of the city shall divulge to any unauthorized person, confidential information acquired in the course of employment in advance of the time prescribed for its authorized release to the public.
- (4) No official or employee of the city shall directly or indirectly, solicit or accept any gift or loan of money, goods, services or any other thing of value for the benefit of any person or

organization, other than the city, which tends to influence the manner in which the official or employee or any other official or employee performs his or her official duties.

(5) No official or employee of the city shall engage in a business transaction in which he or she may profit because of his or her official position or authority or benefit financially from confidential information which he or she has obtained or may obtain by reason of such position or authority.

(6) No official or employee of the city shall engage in or accept employment or render services for any private or public interest when that employment or service is incompatible or in conflict with the discharge of his or her official duties or when that employment may tend to impair his or her independence of judgment or action in the performance of his or her official duties.

(7) No official or employee of the city shall participate, as an agent or representative of the city, in the negotiation or execution of contracts, granting of subsidies, fixing of rates, issuance of permits or certificates, or other regulation or supervision, relating to any business entity in which he or she has, directly or indirectly, a financial or personal interest.

(8) No official or employee of the city shall use, or attempt to use, his or her official position to secure, request or grant unreasonably any special consideration, privilege, exemption, advantage, contract or preferential treatment for himself, herself, or others, beyond that which is available to every other citizen. See Decision on Complaint 2007-04 (Vandermeer).

While this Board determined that there is no actual or apparent conflict of interest in the instant case, there is the potential for same; and, for that reason it pointed out subsection 10 of 2-324(a) (pertaining to a determination of conflict of interest), which provides that a conflict of interest exists if:

a. The city official or employee has any financial or personal interest, beyond ownership of his or her place of residence, in the outcome of any matter currently before that city official or employee, or is associated as owner, member, partner, officer, employee, broker or stockholder in an enterprise that will be affected by the outcome of such matter, and such interest is or may be adverse to the public interest in the proper performance of said official's or employee's governmental duties, or;

b. The city official or employee has reason to believe or expect that he or she will derive a direct monetary gain or suffer a direct monetary loss, as the case may be, by reason of his or her official activity, or;

c. The public official has any other prohibited interest as defined by state statutes relating to conflicts of interest. See Decision on Advisory Opinions 2018-02 (Kalczynski) and 2009-01 (Vosburgh).

Finally, the Board referenced §2-324(b)(2), pertaining to the disclosure of any conflict of interest and disqualification. See Decision on Advisory Opinion 2012-02 (Valentine).

As a public agency attorney, Ms. Kucharek must meet a number of requirements (including ethics requirements) to be able to practice law and to continue practicing law in Michigan. Certain of those requirements are features of state law, and others are rules adopted by the State Bar of Michigan. She must adhere to the Rules of Professional Conduct set forth by the State Bar of Michigan and approved by the Michigan Supreme Court. These requirements are in addition to ethics law requirements imposed on public officials. As is the case with rules relating to ethics, these are minimum standards. These rules impose a professional obligation for an attorney to counsel compliance with the law. The City's Ethics Ordinance and its principles encourage a municipal lawyer to promote the rule of law and to rely on sound legal analysis in

providing advice. Promoting a culture of ethics and fidelity to the law is every city official's responsibility in public service.

Ms. Kucharek's obligation is to put the public's interest first. The public may question whether her aforesaid personal relationship affects her ability to be objective, however, she appears to have effectively addressed that within the context of her law firm by agreeing to and being able to step aside from certain situations that may generate such an appearance. Ethical issues arise any time the public might reasonably question whether a romantic/marital relationship results in preferential treatment. Professionalism and regard for others dictate that both Ms. Kucharek and her fiancé/husband be discreet about their relationship in their public conduct. This includes treating each other as if the relationship did not exist in professional situations. Further, they should avoid any tensions or arguments in the work environment, as well as refrain from using the City's communication systems for personal communications.

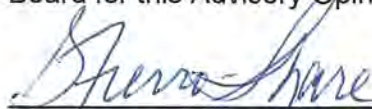
As the City's Ethics Ordinance suggests, public service involves sacrifice. Ms. Kucharek's responsibilities to the City to avoid risks and maintain her objectivity, as well as the perception of objectivity, trump her personal interests. Ms. Kucharek's suggested safeguards should successfully avoid self-dealing and/or the public's perception of same.

III. CONCLUSION

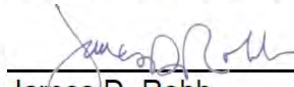
The Board of Ethics concludes that Ms. Kucharek and Beier Howlett could sufficiently enact enough of a virtual wall between City Attorney Kucharek and other attorneys at the firm who may in the future handle matters on behalf of the City of Birmingham regarding HRC at the discretion and direction of the City Manager. There is precedent in both general legal practice and the City's Board of Ethics Opinions for such an ethical wall being adequate to avoid conflicts of interest that might otherwise arise. Should a particularly adversarial matter arise between the City and HRC, such as one that might result in litigation, the City likely should not be represented by Beier Howlett for that matter, and should retain outside legal representation.

Ms. Kucharek will have a continuing obligation to disclose to the City any potentially emerging conflicts of interest. In order to avoid creating the perception of a conflict of interest, Ms. Kucharek and Mr. McDonald should abstain from any nonprofessional behavior in City-related proceedings, as well as abstaining from the use of any City technology to conduct nonprofessional correspondence with each other.

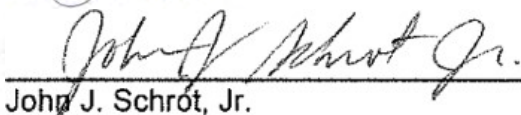
The Board of Ethics commends Ms. Kucharek for having realized that she may have a potential conflict of interest and for bringing it to the Board for this Advisory Opinion.



Sophie Fierro-Share, Chairperson



James D. Robb



John J. Schrot, Jr.

**CITY OF BIRMINGHAM
BOARD OF ETHICS
COMPLAINT 2021-03**

DECISION

March 29, 2021

ADMINISTRATIVE DISMISSAL WITHOUT PREJUDICE

Mr. Cory Holland, Sr. brings this complaint to the Board of Ethics against Mr. Stuart Sherman, a Birmingham city commissioner. Mr. Holland's complaint alleges that he also has pending against Mr. Sherman three other civil, criminal or administrative actions involving substantially the same subject matter:

- a Social Security hearing on fraud
- a Michigan Department of Civil Rights investigation
- a federal investigation with the office of the inspector general.

In particular, attached to Mr. Holland's complaint is a copy of the Michigan Department of Civil Rights complaint he filed, case number 609520. The allegations Mr. Holland brings before the Board of Ethics are the same as those involved in his Michigan Department of Civil Rights case.

The Board of Ethics may administratively dismiss a complaint for either of the following reasons:


- (i) One or more complaints or requests for advisory opinions regarding the same matter are pending.
- (ii) The board previously addressed the subject matter.

Board of Ethics Procedural Rules, Rule 302(b). The Board of Ethics has previously interpreted the phrase "one or more complaints" to cover litigation outside of the Board of Ethics itself. See, Decision 2019-03 (June 19, 2019).


Our decision is that we decline to decide the case at this time. We offer no opinion on its merits. Depending on the disposition of the Michigan Department of Civil Rights and other cases, there may or may not remain a question for us to consider. Accordingly, the Board of Ethics dismisses Complaint 2021-03 without prejudice to Mr. Holland's ability to refile at the appropriate time after those matters are concluded.



Sophie Fierro-Share, Chairperson



James D. Robb, Member



John J. Schrot, Jr., Member

MEMORANDUM

DATE: April 5, 2021
TO: Thomas M. Markus, City Manager
FROM: Mary M. Kucharek
SUBJECT: Indexing of Fees

The question has been raised whether it is appropriate or approvable for the City of Birmingham to index its fees.

Municipal Cost Indexing, or MCI, began sometime in the late 1970's. Municipal Cost Index was designed to determine the rate of inflation of municipal costs; that is the cost of providing services to residents in cities and counties.

It is proposed that the index is useful to local government in at least four ways: 1) to dramatize, justify, or illustrate increased expenditures attributable to inflation when submitting annual budgets; 2) to provide a feel of price trends which may affect the city of a particular department allowing time to minimize the effects of a budget shortfall; 3) to help control price increases for commodities making inflationary price jumps more visible; and 4) to measure the inflation on city expenditures over time. It is proposed that the composite index is adjusted by changes in cost of materials and supplies, wages, and contracted for services. It is a weighted average of more price detailed indexes regarding fluctuations in costs. Costs of labor, materials, and contract services are all factored into the composite Municipal Cost Index, which is different than the Consumer Price Index, which is a statistical measure of change in prices of goods and services. There are private companies that a municipality can hire which provides for the Index.

When we review Municipal Cost Index, we have to be in compliance with section MCL 141.421, which dictates that a local unit of government must provide and budget according to the state treasurer's Uniform Charts of Accounts, which fulfills the requirements of good accounting practices relating to general government. "Such chart of accounts shall conform as nearly as practical to the uniform standards as set forth by the governmental accounting standards board, or by a successor organization that establishes national generally accepted accounting standards and is determined acceptable to the state treasurer."

The Michigan Department of Treasury Uniform Chart of Accounts for local units of government released November of 2020, does not take into account nor does it establish a means of accounting using the MCI. While I cannot find a statute or any language in that document prohibiting the MCI, I do not find in the uniform budgeting that concerns itself with the MCI.

We also need to be mindful that when indexing fees, it could run afoul to the latest Supreme Court case involving municipality fee schedules as decided in *Michigan Association of Home Builders v City of Troy*. In that particular case, the City was contracting with a private company to determine its fees, specifically building inspection fees, for the purpose of satisfying

a historical deficit. The Court found that this violated MCL 125.1522 because neither the "overhead" nor the "cost to the governmental subdivision" was what the fees were designed to cover. The Court found that the law does not demand a precise correlation between cost and fees required, but it does require a reasonable relation. Therefore, the City of Birmingham's fees must demonstrate direct or indirect costs incurred by the building department that were related to the services performed and overhead.

The Court discussed that the practice of creating a surplus in fees for the building department would violate MCL 125.1522(1), which requires that; 1) fees be reasonable; 2) fees be intended to bear a reasonable relation to the cost of building department services; and 3) fees be used only for the operation of the building department. Instead, when fees become for profit or gain, fees could then actually become a prohibition under the Headly Amendment which prohibits taxation by local units of government without voter approval.

I do not think indexing fees is appropriate given the strict confines of MCL 125.1522 and MCL 141.421, and rather our fees must be based upon actual costs incurred and not be based upon an index which would take into account items not directly related to the cost to a department.

MEMORANDUM

DATE: March 26, 2021
TO: Thomas M. Markus
FROM: Mary M. Kucharek
SUBJECT: Prior Communications with Restoration Hardware

INTRODUCTION:

- During the Commission meeting of March 22, 2021, citizens questioned prior communications with Restoration Hardware that were sent by the prior City Manager and City Mayor.

BACKGROUND:

- I have had an opportunity to review this issue and report there were multiple letters sent back and forth from those persons representing Restoration Hardware expressing an interest in developing a project and building site for Restoration Hardware in the City of Birmingham. When Restoration Hardware first began to speak with the City Manager about its proposed building, they had a number of requests in order to feel incentivized to move to the City of Birmingham, including accommodations for parking for their employees and guests and potential tax abatement incentives based upon Michigan laws, such as a commercial rehabilitation district.
- The City Manager and Mayor responded to Restoration Hardware expressing an interest in Restoration Hardware moving to the City of Birmingham and recognizing the potential benefits to the City of Birmingham by having a store like Restoration Hardware in the City's downtown area. The letter penned by the City Manager and Mayor recognized there were many different items that could be discussed, but at no time was a sure promise nor was an offer extended granting the requests of Restoration Hardware.
- As we are all aware, Restoration Hardware is presently proposing a large building project in the City of Birmingham, and based upon very direct communication from yourself, and as I had been present at the meetings involving Restoration Hardware bearing witness, it was made very clear to Restoration Hardware and its representatives that at no time would a commercial rehabilitation district be created. The City has never partaken in such activities, and we would not be doing so now. That incentive was not, and is not, on the table.

SUMMARY:

- In conclusion, while there were requests from Restoration Hardware in the past to have these different incentives offered in order for them to proceed, it is clear that none of the requested tax incentives are on the table at this time, nor will they be. Restoration Hardware is moving forward with its project, and plans to move into the City of Birmingham, and has presented its plans to the Planning Board without such unique or special tax reduction accommodations.



Buffalo passed a parking reform in 2017 to reduce parking requirements for new developments. A new study finds that mixed-use projects have since created 53 percent fewer spaces than previously required. ([Stocksy / Chelsea Victoria](#))

Buffalo ended parking requirements. What did developers do next?

A sweeping zoning reform gave rise to mixed-use, transit-oriented projects with far less parking than they would have had before. But single-use developers showed few signs of change.



Eric Jaffe

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One of the most promising trends in urban planning is the push from a growing number of U.S. cities to reduce minimum parking requirements for new developments. As the name suggests, parking minimums require developers to build a certain amount of spaces, regardless of whether a community wants or needs them. The result is an excess of parking that can lead to more vehicle pollution, worsen traffic congestion, and drive up housing costs. In some cases, the steep cost of building parking prevents a project from moving forward at all.

In theory, ending parking requirements should provide developers with the flexibility to meet transportation needs in more innovative and sustainable ways. For example, development projects in dense, walkable, transit-friendly areas should be able to repurpose would-be parking space into shops, homes, parks, or other community uses that rank above vehicle storage. But the shift away from parking requirements is relatively new, so there's not much evidence about what developers actually do in response.

A new study of Buffalo, which cut parking requirements citywide in 2017, shows that many developers will indeed build less parking if given the chance. The work, set for publication in the *Journal of the American Planning Association*, finds that mixed-use developers, in particular, “readily took advantage of the newfound possibility to include less off-street parking.” The 14 mixed-use projects tracked by the study provided 53 percent less parking than previously required — with four projects building no parking at all.

“Cities of all types stand to benefit from undoing constraining parking policies of the past and allowing developers to transform parking lots into ‘higher uses,’” write study authors Daniel Baldwin Hess and Jeffrey Rehler, urban planning scholars at SUNY-Buffalo. “Conversion of excess off-street parking spaces to such ‘higher uses’ benefits not only municipalities such as Buffalo looking to introduce a denser (and more walkable) urban form but also highly urbanized areas where developable land is limited.”

But the full story isn't quite so straightforward. Many single-use developers actually built *more* parking after the reform took hold. Let's dive a bit deeper.

4 insights from mixed-use projects

Like many U.S. cities, Buffalo introduced parking requirements in the 1950s, largely to boost economic activity by making it easier to drive into town. In 2017, Buffalo removed this rule as part of a sweeping zoning reform known locally as the Green Code. In addition to removing the old parking requirements, the new code encouraged developers to rely on more sustainable mobility approaches.

Buffalo's change presented a timely chance to study what developers do once parking requirements disappear. There's some existing evidence from parts of very dense cities like New York that removing parking minimums can lead developers to build less parking. Buffalo's reform created a wider window into what happens when parking changes cut across a whole city — and a midsize, fairly car-reliant city at that.

For the research, Hess and Rehler reviewed public data on parking plans for 36 developments approved in Buffalo within the first two years after the reform went into effect. All told, the 36 developments built 502 fewer parking spaces than they would have needed to under the old rules, a 21 percent decline. The 14 mixed-use projects (mostly residential plus retail) led the charge, providing 813 fewer spaces (the aforementioned 53 percent decrease) than the previous code required.

Some key insights from the mixed-use development response:

- **Rather than build parking, developers shared parking.** Four mixed-use projects tracked by the research built zero parking spaces, and another project built 91 percent less parking than previously required. Instead of building new parking, these projects relied on shared parking networks, which enabled them to provide parking access without dedicating excess space to vehicle storage.
- **Even new parking became shared parking.** Only one mixed-use project tracked by the researchers built notably more spaces (17) than it would have needed to build under the old rules. But that was intentional, as this project had entered into a shared parking arrangement with an adjacent mixed-use project. The result was 71 *fewer* total spaces between the two sites than previously required.
- **Transit-oriented development got a boost.** Two mixed-use projects along the Main Street transit corridor created hundreds of units of student housing. The rise of two such projects — which the researchers describe as “previously uncommon in

Buffalo” — suggest that the added cost of the old parking requirements had served as a deterrent to new development in transit-friendly areas.

- **Adaptive reuse projects also became more viable.** One small-scale mixed-use development near a light rail station rehabilitated an old structure into 10 new apartments with ground-floor retail space. Despite the close proximity to transit, the project wasn’t feasible under the old parking regime — which called for 10 spaces on the site — because the physical structure occupies nearly its entire parcel. With the new rules, it could finally move forward.

Simply put, by removing parking requirements, Buffalo unlocked the creation of more than 1,000 new homes and a vibrant array of transit-accessible businesses and restaurants — many of which might never have existed given the high cost of creating new parking.

3 takeaways from single-use projects

But the story doesn’t end there. Of the 36 developments tracked by Hess and Rehler, 19 projects actually built the same or *more* parking than would have been required under the previous zoning rules, to the tune of 311 total additional spaces. These projects consisted mostly of single-use residential or commercial developments outside the downtown core, along with a few civic projects:



Since Buffalo reformed its parking requirements, mixed-use developers have created far fewer parking spaces but single-use developers have exceeded the old minimums. (Total projects by land use in parentheses.)

As the table above shows, the dramatic parking reductions from mixed-use developments still resulted in a net reduction in spaces for Buffalo. But the fact that

single-use developers didn't change their parking approach in the face of sweeping reforms might disappoint some urbanists. Are driving norms so deeply entrenched that even an unprecedented, generational policy shift can't move the needle in the direction of more sustainable mobility?

One response to that question is simply that the zoning reform worked just as intended. Buffalo didn't impose parking restrictions — it merely removed parking *requirements*. The whole point was to enable developers to meet local mobility demands. In that sense, parking stayed where it was needed (car-reliant housing complexes far from transit) and left where it wasn't (mixed-use developments in the city center). As one Buffalo city planner told the researchers: "The sky is not falling." While that assessment might sound bleak to some ears, it also might prove compelling to other midsize U.S. cities pushing for similar reforms but facing strong opposition to change.

Another takeaway is that some developers likely need more time to change their ways, or more tools to help them. Development is a slow and traditionally risk-averse industry; it's quite possible that many single-use developers in Buffalo are waiting to see that an innovative approach to parking can work before adopting it themselves, especially for residential projects in car-reliant areas. Shared parking is a great example: the technologies to create these flexible networks are just starting to emerge. Once residents get more comfortable using such networks, more projects are likely to adopt them.

A final takeaway is that parking reform may be a key step toward a more sustainable transportation system, but it's still just one step. If cities don't have the transit corridors in place to provide driving alternatives, then developers may have a harder time responding to parking reforms by creating fewer spaces. Other essential foundations include zoning codes that permit mixed-use development, a commitment to safe bike lanes and accessible sidewalks, and support for the small businesses that remove the need to drive at all. On these core services, local government must lead the way.

A future with far less parking is certainly one Hess and Rehler would like to see for Buffalo — and similar cities. They conclude:

In the absence of [minimum parking requirements], off-street parking lots can transform into parks, shops, workplaces, and residences. Conversion of excess off-street parking spaces to such "higher uses" benefits not only municipalities such as Buffalo looking to introduce a

denser (and more walkable) urban form but also highly urbanized areas where developable land is limited.

The path to that future starts with cities reexamining old rules in the context of new goals — and continues with developers embracing innovative approaches to more sustainable communities.

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**STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION NOTICE
OF HEARING
FOR THE ELECTRIC CUSTOMERS OF
DTE ELECTRIC COMPANY
CASE NO. U-21015**

- DTE Electric Company requests Michigan Public Service Commission's approval of its proposed Financing Order Approving the Securitization of Qualified Costs.
- The information below describes how a person may participate in this case.
- You may call or write DTE Electric Company, One Energy Plaza, 570 SB, Detroit, MI 48226, (800) 477-4747 for a free copy of its application. Any person may review the documents at the offices of DTE Electric Company.
- A pre-hearing will be held:

DATE/TIME: Tuesday, April 20, 2021 at 9:00 AM

BEFORE: Administrative Law Judge Dennis Mack

LOCATION: Video/Teleconferencing

PARTICIPATION: Any interested person may participate. Persons needing any assistance to participate should contact the Commission's Executive Secretary at (517) 284-8090, or by email at mpscedockets@michigan.gov in advance of the hearing.

The Michigan Public Service Commission (Commission) will hold a pre-hearing to consider DTE Electric Company's (DTE Electric) March 26, 2021 application requesting the Commission to: 1) declare that the proposed costs are qualified costs under the Customer Choice and Electricity Reliability Act (CCERA); 2) authorize the issuance of securitization bonds in an amount that will permit recovery of those qualified costs and other related costs. Such order shall reserve to DTE Electric the sole discretion as to whether and when to proceed with a securitization transaction; 3) authorize DTE Electric to impose non-bypassable securitization charges payable to the issuer of the securitization bonds pursuant to CCERA, to be rendered on and after the issuance of securitization bonds, and that are sufficient to pay: a) the principal and interest of the securitization bonds, b) other costs associated with the issuance of the securitization bonds, and c) service and ongoing support of the securitization bonds and the issuer of the

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securitization bonds as proposed. 4) authorize DTE Electric to impose deferred tax surcharges sufficient to recoup the portions of the regulatory assets that are financed by deferred tax benefits as proposed; 5) authorize DTE Electric to include necessary language in its tariffs to accomplish the imposition of the above-referenced non-bypassable securitization charges and initially implement and periodically true-up the securitization charges as proposed; 6) authorize DTE Electric to implement bill credits reflecting the costs related to the portions of the net book value of the investment in the River Rouge generation site and Tree Trim Surge regulatory assets that are included in current base rates, until such time that new base rates are implemented in an electric general rate case reflecting the removal of the securitized assets; 6) authorize DTE Electric to employ appropriate methodology to account for the transactions contemplated by the financing order, including granting any additional accounting authority and appropriate ratemaking treatment as proposed; 7) grant to DTE Electric, pursuant to MCL 460.10i(9), the authority to refund and retire any or all of the securitization bonds that are issued pursuant to this proceeding upon demonstration of an ability to refinance under applicable bond covenants and that securitization charges to service new securitization bonds, including transaction costs, would be less than the securitization charges required to service the securitization bonds being refunded; 8) authorize DTE Electric to create a special purpose entity to which it could transfer securitization property and approve transfers of the securitization property under the rights to any transferee, successor or assignee of DTE Electric in accordance with CCERA; and 9) grant other relief.

All documents filed in this case shall be submitted electronically through the Commission's E-Dockets website at: michigan.gov/mpscedockets. Requirements and instructions for filing can be found in the User Manual on the E-Dockets help page. Documents may also be submitted, in Word or PDF format, as an attachment to an email sent to: mpscedockets@michigan.gov. If you require assistance prior to e-filing, contact Commission staff at (517) 284-8090 or by email at: mpscedockets@michigan.gov.

Any person wishing to intervene and become a party to the case shall electronically file a petition to intervene with this Commission by April 16, 2021. (Interested persons may elect to file using the traditional paper format.) The proof of service shall indicate service upon DTE Electric Company's attorney, Jon P. Christinidis, One Energy Plaza, Detroit, MI 48226.

The prehearing is scheduled to be held remotely by video conference or teleconference. Persons filing a petition to intervene will be advised of the process to participate in the hearing.

Any person wishing to participate without intervention under Mich Admin Code, R 792.10413 (Rule 413), or file a public comment, may do so by filing a written statement in this docket. The written statement may be mailed or emailed and should reference Case No. **U-21015**. Statements may be emailed to: mpscedockets@michigan.gov. Statements may be mailed to: Executive Secretary, Michigan Public Service Commission, 7109 West Saginaw Hwy., Lansing, MI 48917. All information submitted to the Commission in this matter becomes public information, thus available on the Michigan Public Service Commission's website, and subject to disclosure. Please do not include information you wish to remain private. For more information on how to participate in a case, you may contact the Commission at the above address or by telephone at (517) 284-8090.

Requests for adjournment must be made pursuant to Michigan Office of Administrative Hearings and Rules R 792.10422 and R 792.10432. Requests for further information on adjournment should be directed to (517) 284-8130.

A copy of DTE Electric Company's application may be reviewed on the Commission's website at: michigan.gov/mpscedockets, and at the office of DTE Electric Company. For more information on how to participate in a case, you may contact the Commission at the above address or by telephone at (517) 284-8090.

Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 et seq.; 1919 PA 419, as amended, MCL 460.54 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and Parts 1 & 4 of the Michigan Office of Administrative Hearings and Rules, Mich. Admin Code, R 792.10106 and R 792.10401 through R 792.10448.

U-21015

A New Layer of Public Space: The Case for Activating Urban Rooftops



Written by **Andreea Cutieru**

a day ago

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In increasingly denser urban environments, there is a new-found interest in underused spaces as opportunities for further development. [Representing up to 25% of cities' land area](#), [rooftops](#) are among the most exciting spatial resources. From sustainable infrastructure and [urban farming](#) to social spaces and cultural venues, the article looks into the potential of creating a multi-layered city through the activation of urban rooftops.

There are several types of untapped spatial potential, from [gaps within the urban fabric](#) to [residual public spaces](#). Still, an aerial view of any city centre uncovers the roofscape as a significant underused surface. Searching beyond penthouses and private extensions, urban roofs have already entered the conversation surrounding both urban densification and climate resiliency. Moreover, as the pandemic underlined a severe need for more outdoor areas, [rooftops](#) are regarded as a viable addition to the public space.

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With the introduction of roof sealants, the flat roof became a staple of Modern architecture, but the excitement over the technological feat overshadowed the inquiries into its architectural potential. With few exceptions, such as the roof landscape of [Le Corbusier's Unité d'Habitation](#) envisioned as space for children to play, or Giacomo Mattè-Trucco's [Fiat Lingotto Factory](#) in Turin featuring a rooftop racetrack, Modernism's legacy in Europe amounted to vast expanses of inconsequential flat roofs. It wasn't until the 1990s that the roof began to be seen as more than an enclosure, but as an integral part of the project's spatial concept and program, as both architects and developers begin to realize the missed opportunity of an inaccessible, purely technical roof. From [Mecanoo's trailblazing green roof at TU Delft](#) more than two decades old to JAJA Architects' [playground above a car park](#) or [BIG's ski slope on top of the CopenHill](#), the roof has become a subversive tool for transforming the experience of the city.

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[18 Spectacular Living Roofs in Detail](#)

New Recreational Spaces

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However, the existing [roo. ops](#) hold the most significant potential in creating a multi-layered, hyper-connected urban environment. Referring to the 2016 [Stairs of Kriterion installation](#), MVRDV's Winy Mass argues for the use of the 5th facade as means to expand the public space: "[we show what this city could look like if we do that in many places, engaging a series of our existing buildings and giving access to their roofs, to create a new, much more interactive, three dimensional and denser urban topography for the next city generation](#)". The studio has flirted with the idea of activating [rooftops](#) on several other occasions. For the [If Factory](#) renovation project, the studio adds a green bamboo landscape on the roof, packed with activities and accessible through a public staircase.



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popular public garden.

An Opportunity for Sustainable Infrastructure



Existing [roo. ops](#) are most commonly put to good use through green roof systems, [urban farming](#) or the installation of energy production and water management systems. In particular, [living roofs](#) hold a diverse array of benefits, as they capture stormwater runoff, improve air quality, help mitigate urban heat-island effects, and even contribute to the preservation of biodiversity by providing habitats for bees and birds.

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Green roofs [have been mandatory for newly constructed buildings in Copenhagen since 2010](#), and [France requires living roofs or solar panels on the roofs of new buildings since 2015](#). However, [Barcelona is pushing for a re-evaluation of the existing rooftop](#) to deploy sustainability infrastructure across the city and build a more resilient urban environment. The municipality [produced a guide](#) helping residents create different types of green roofs in a city with an already established tradition of using flat roofs for both practical and recreational purposes. Moreover, rooftops might also hold the future for [urban farming](#), as more and more projects pop up across Europe with [promising results in catering to residents and restaurants](#).

Testing Ground

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For several years now, different initiatives and events have made the general public more aware of this untapped resource for expanding the public space. [ROEF Amsterdam](#) is a festival that takes place across several [rooftops](#), allowing dwellers to experience the city differently while also contributing to Amsterdam's roofscape transformation. Similarly, for this year's [Melbourne Design Week](#), [John Wardle Architects](#) and [Finding Infinity](#) created a [rooftop infrastructure for solar power that doubles as a space for socialization](#). The project expands on Melbourne's rooftop culture while also promoting sustainable energy.

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Finally, although unrelated to public space, it is worth mentioning that existing [rooftops](#) are also speculated upon as potential solutions to the housing crisis in dense cities. [London Municipality has been considering rooftop extensions at a large, coordinated scale](#) for some time now to help alleviate the housing shortage. However, opinions on the endeavour's feasibility are divided, and built case studies are yet to be seen.

[Activating existing urban rooftops](#) poses a series of challenges, from accessibility, additional loads on the existing structure to ownership and maintenance. However, the densification of cities prompts architects, dwellers and developers to envision roofscapes as the next frontier in urban transformation.

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Andreea Cutieru
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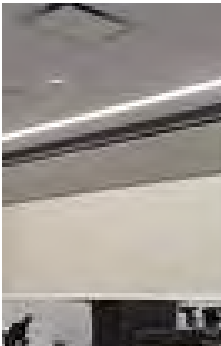
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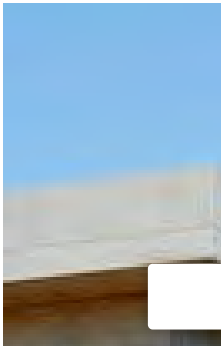
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