

1. City Council Meeting Agenda

Documents:

[REGULAR COUNCIL - 05 NOV 2019 - AGENDA.PDF](#)

2. City Council Meeting Packet

Documents:

[REGULAR COUNCIL - 05 NOV 2019 - PACKET.PDF](#)



**CITY OF YPSILANTI
REGULAR COUNCIL MEETING
Tuesday, November 5, 2019 @ 7:00 PM
Council Chambers
One South Huron, Ypsilanti, MI 48197**

Page

I. CALL TO ORDER

II. ROLL CALL

III. INVOCATION

IV. PLEDGE OF ALLEGIANCE

- A. I pledge allegiance to the flag, of the United States of America, and to the Republic for which it stands, one nation, under God, indivisible, with liberty and justice for all.

V. AGENDA APPROVAL

VI. INTRODUCTIONS

VII. PRESENTATIONS

- A. 2020 Healthcare Presentation - Michele Bolser, Director, VTC Insurance Group Benefits Department
- B. Resolution No. 2019-244, approving 2020 Healthcare Cost Contributions in accordance with PA 152 of 2011.
- C. Resolution No. 2019-245, approving a one-year contract from January 1, 2020, to December 31, 2020, to offer Blue Cross Blue Shield and Blue Care Network benefit plans to all eligible participating employees and retirees

VIII. PUBLIC COMMENT (3 MINUTES)

IX. PUBLIC HEARING

- A. Approving an application for a Class C, SDM and Sunday sales liquor license for NPBC Ypsilanti, LLC.
1. Resolution No. 2019-246, determination
 2. Open Public Hearing
 3. Resolution No. 2019-247, close public hearing

X. CONSENT AGENDA

- A. Resolution No. 2019-248, approving the Consent Agenda.
- B. Resolution No. 2019-249, approving the minutes of October 15, 2019.
- C. Resolution No. 2019-250, approving appointments to Boards and Commissions.
- D. Resolution No. 2019-251, approving Ordinance No. 1348 – an Ordinance to amend Chapter 102 Traffic and Vehicles, Article III, Division 4 of the City Code. **(Second Reading)**
- E. Resolution No. 2019-252, authorizing the levy of special assessments on the December 2019 tax roll.
- F. Resolution No. 2019-253, approving a fireworks display permit to Strictly FX.

XI. RESOLUTIONS/MOTIONS/DISCUSSIONS

- A. Resolution No. 2019-254, approving Ordinance 1349, entitled "an ordinance to amend Chapter 99". **(Second Reading)**
- B. Resolution No. 2019-255, approving a project agreement with the Department of Natural Resources for Renovation of the Rutherford Poolhouse
- C. Resolution No. 2019-256, approving the construction contract with Phoenix Contractors, Inc. for the renovation of the Rutherford Poolhouse.
- D. Resolution No. 2019-257, approving the Sub-recipient agreement with Washtenaw County for the demolition of 448 S. Huron
- E. Resolution No. 2019-258, approving the Boards and Commission Orientation Booklet

XII. BOARDS AND COMMISSIONS

- A. Request from the Police Advisory Commission to amend Ordinance 1295.
- B. Recommendation of the Human Relations Commission for diversity in Board and Commission Appointments.

XIII. LIAISON REPORTS

- 1. SEMCOG Update
- 2. Washtenaw Area Transportation Study
- 3. Urban County
- 4. Ypsilanti Downtown Development Authority
- 5. Friends of Rutherford Pool
- 6. Housing Equity Leadership Team

XIV. COUNCIL PROPOSED BUSINESS

XV. COMMUNICATIONS FROM THE MAYOR

XVI. COMMUNICATIONS FROM THE CITY MANAGER

XVII. COMMUNICATIONS

Nominations

Board of Review

- A. Andy Fanta **(Exp.12/31/21) Re-appointment**
1221 Westmoorland
Ypsilanti MI, 48197
- B. Craig Hupy **(Exp.12/31/21) Re-appointment**
1124 N Congress
Ypsilanti, MI 48197

XVIII. PUBLIC COMMENT (3 MINUTES)

XIX. REMARKS FROM THE MAYOR

XX. ADJOURNMENT

- A. Resolution No. 2019-259, adjourning the City Council Meeting.
- B. Please click [here](#) to access the City Council Contact Form. This form can be used to submit any comments/concerns you might have about this agenda.



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- C. Resolution No. 2019-245, approving a one-year contract from January 1, 2020, to December 31, 2020, to offer Blue Cross Blue Shield and Blue Care Network benefit plans to all eligible participating employees and retirees
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- 144 - 163** B. Resolution No. 2019-255, approving a project agreement with the Department of Natural Resources for Renovation of the Rutherford Poolhouse
[2019-255 - Pdf](#)
- 164 - 208** C. Resolution No. 2019-256, approving the construction contract with Phoenix Contractors, Inc. for the renovation of the Rutherford Poolhouse.
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- 209 - 254** D. Resolution No. 2019-257, approving the Sub-recipient agreement with Washtenaw County for the demolition of 448 S. Huron
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- 255 - 293** E. Resolution No. 2019-258, approving the Boards and Commission Orientation Booklet
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- 294 - 300** A. Request from the Police Advisory Commission to amend Ordinance 1295.
[PAC Resolution No. 2019-002](#)

- B. Recommendation of the Human Relations Commission for diversity in Board and Commission Appointments.
[HRC Resolution No 2019-012](#)

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REQUEST FOR LEGISLATION

TO: Mayor and City Council

FROM: Frances McMullan

DATE: November 5, 2019

SUBJECT: Discussion on PA 152 of 2011 Healthcare Cost Contributions for 2020

DESCRIPTION:

Discussion on PA 152 of 2011 Healthcare Cost Contributions for 2020

SUMMARY:

Each year, the City is required to comply with the Michigan Public Act 152 of 2011, as amended, in regard to employer paid health care benefits for employees. The "Act" provides the City with three options to comply with the law.

Option #1 – Take no action and comply with the Hard Cap Limits established by the state.

Option #2 – By majority vote, approve a 20% cost sharing by the employees.

Option #3 - By 2/3 vote of Council, elect the Opt Out Option and exempt itself from the requirements of the Act.

Option #1 would cost the City approximately \$818,921 and the employees approximately \$119,234 annually. (See Funding Options Graph)

Option #2 would cost the City approximately \$750,524 and the employees approximately \$187,631 annually.

Option #3 would cost the City approximately \$831,939 and the employees approximately \$106,216 annually.

Administration recommends Option #3 to Opt Out, thereby exempting itself from the requirements of the Act. This recommendation is due to the use of "Illustrative Rates" whereby the cost for retiree healthcare is not included in the calculation of the total cost for active employees. (Please see attachment regarding *Shelby Township v Command Officers Association of Michigan*.) Shifting from Hard Cap (used in 2018 & 2019) to an 80/20 split would create a significant increase in the employee contribution. Administration is recommending a 15% cost sharing by the employees of the illustrative rates which will keep the City within its budget allocation of \$1,097,432 and at the same time not heavily burdening City employees. There is a potential savings of over \$250,000 with this option.

Recommended Action: Adopt the Opt Out Option as the City's choice of compliance with PA 152 of 2011, as amended, for 2020.

Attachments: Resolution, Funding Options Graph, *Shelby Township v Command Officers Association of Michigan* Article

CITY MANAGER APPROVAL: _____ COUNCIL AGENDA DATE: _____

CITY MANAGER COMMENTS: _____

FISCAL SERVICES DIRECTOR APPROVAL: _____



Resolution No. 2019-244
November 5, 2019

RESOLVED BY THE COUNCIL OF THE CITY OF YPSILANTI:

Whereas, the City Council of the City of Ypsilanti deems it necessary to comply with the State of Michigan 2011 Public Act 152, as amended; and

Whereas, the Act contains three options for complying with the requirements of the Act as follows:

1. **Hard Cap Option, limits employer's total annual health care costs for employees based on coverage levels**
2. **80%/20% Option, limits employer's share of total health care costs to not more than 80%, requires annual majority vote**
3. **Opt Out Option, the City may exempt itself from the requirements of the Act by an annual 2/3 vote; and**

Whereas, the City Council has decided to adopt the Opt Out Option as its choice of compliance under the Act;

NOW THEREFORE BE IT RESOLVED THAT, the Council of the City of Ypsilanti elects to comply with 2011 Public Act 152, by approving and adopting the Opt Out Option for the medical benefit plan coverage year 01/01/2020 through 12/31/2020.

OFFERED BY: _____

SECONDED BY: _____

YES: NO: ABSENT: VOTE:

This resolution is adopted by the Council of the City of Ypsilanti and approved by the Mayor this 5 day of November 2019

#Resolution No. 2019-244



Michigan Supreme Court Affirms Michigan Court of Appeals Decision in Case Regarding PA 152, Shelby Township v Command Officers Association of Michigan

November 9th, 2017

On November 1, 2017, the Michigan Supreme Court affirmed the December 15, 2015 Court of Appeals' judgment, which had affirmed the decision of the Michigan Employment Relations Commission (MERC) in the matter of *Shelby Township v Command Officers of Michigan*, 29 MPER ¶ 38 (2014). Among the issues that were decided: (1) whether the calculation and/or allocation of payments for medical benefit plan costs among represented employees under Michigan Public Act 152 of 2011 (PA 152) is a mandatory subject of bargaining pursuant to the Public Employee Relations Act, MCL §§ 423.201, *et seq.* ("PERA"), and (2) whether PA 152, alone or in conjunction with PERA, precludes a public employer's use of illustrative insurance rates (that include retiree health insurance costs) when calculating employer and employee contributions toward the cost of health insurance under PA 152.

This decision affirms the MERC ruling that, even though the employer's choice under PA 152 between the 80/20, hard cap, or opt-out options is not a mandatory subject of bargaining, once that choice is made, the public employer has a duty to bargain about the calculation of the Union members' premium shares, and how the total employee contributions are to be allocated between bargaining units.

Furthermore, the Supreme Court decision affirms that the public employer is prohibited from using blended insurance rates that include both active and retiree health insurance costs when calculating employer and employee contributions toward the cost of health insurance under PA 152. With respect to the bundled insurance rates, the Court of Appeals held: "[W]e conclude that MERC did not err as a matter of law when it determined that the Township could not use a rate for its employees' premiums that included benefits for retired employees. The definition of 'medical benefit plan' specifically excludes benefits to retired employees. The bundled rate used in this case included retirees' costs."

Please feel free to contact a Keller Thoma attorney at (313) 965-7610 with any questions.

Categories: [Uncategorized](#)

Practice Areas

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[Employment Law](#)

[Workers' Compensation and Disability Law](#)

[Education Law](#)

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[Employee Compensation and Benefits](#)

[Estate Planning and Wealth Management](#)

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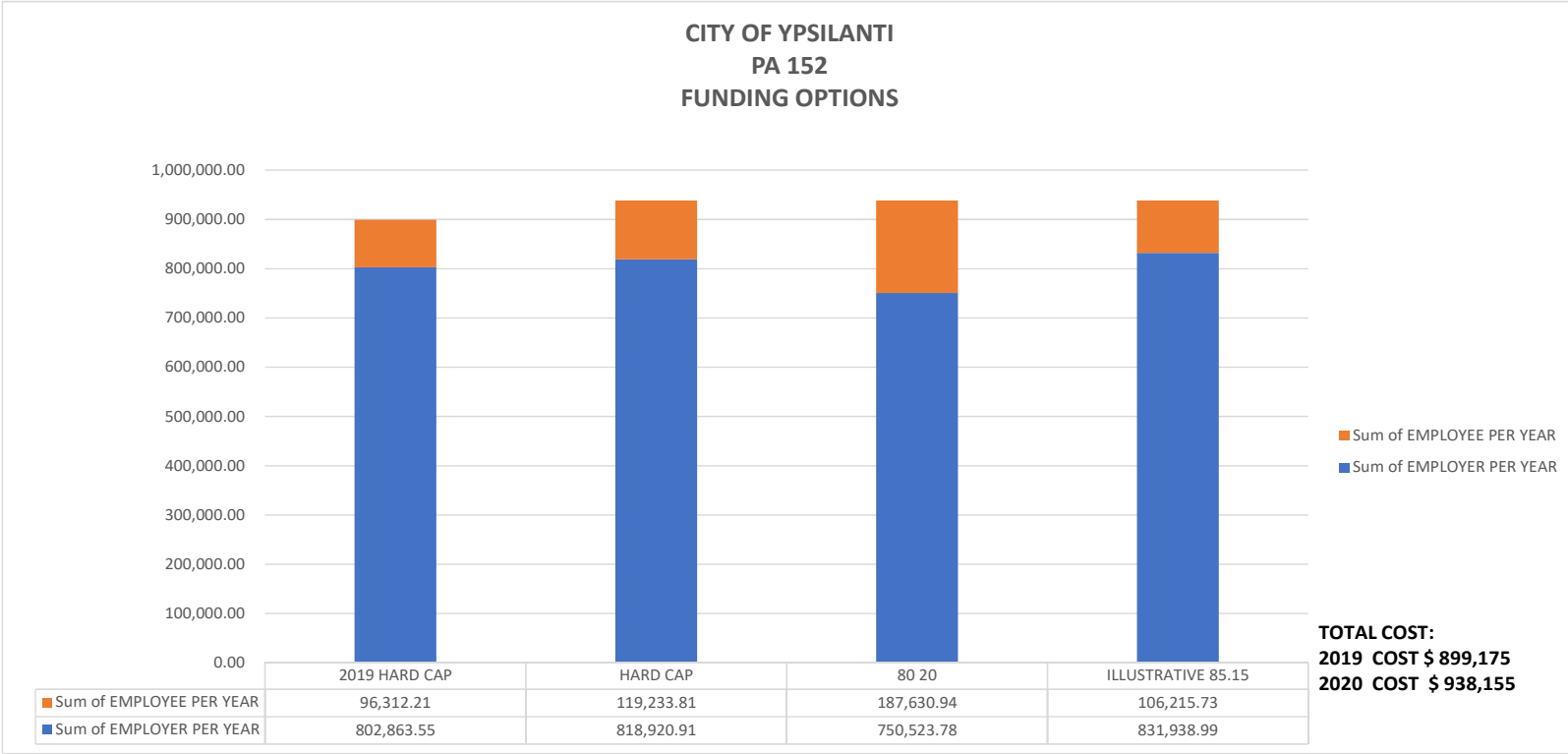
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REQUEST FOR LEGISLATION

TO: Mayor and City Council
FROM: Kim Jones
DATE: November 5, 2019
SUBJECT: Current Health Care Plans for Employees and Retirees

DESCRIPTION:

Current Health Care Plans for Employees and Retirees

SUMMARY:

The City currently provides active employee and retiree health care benefit plans. The City is proposing the following plans for active employees:

BCBS Community Blue PPO – The City self-funds the first \$4,000/\$8,000 of this plan and the prescription coverage is self-funded by the City, through EHIM who administers the program. Employees pay a co-pay on each prescription. The out of pocket maximum for each employee is paid by the City. This option is only available to members of the IAFF as per their collective bargaining agreement.

BCBS Simply Blue PPO 3000 – This is a high deductible (\$3,000/\$6,000) plan and the City contributes to an H.S.A. depending on collective bargaining agreement.

BCN HMO H.S.A. – This is a high deductible (\$3,000/\$6,000) plan and the City contributes to an H.S.A. (\$2,000/\$4,000) regardless of collective bargaining agreement.

BCN HMO with EHIM RX and Optimed GAP \$250 Deductible – This is a new HMO option with a \$250 deductible. The City purchases a GAP plan from Optimed to cover the deductible amounts over \$250(Single)/\$500(2 Person or Family) which is bundled with the BCN premium. EHIM administers the prescription portion of the program. The employee pays flat dollar copays for office visits, urgent care, ER visits, etc. and will carry 3 insurance cards.

The retirees are covered by several different plans, depending on the collective bargaining agreement that the employee retired with, or Medicare eligibility. Retirees under age 65 and those not entitled to Medicare Part B are covered by a BCBS plan, with the prescription plan self-funded by the City. Depending on the retiree's plan, they may pay prescription copays, and some up front out of pocket deductibles. Retirees over age 65 that are eligible for Medicare Part A & B are enrolled in a fully insured BCBS Medicare Advantage plan.

The current budget for healthcare is \$1,097,432 and with these options the city could realize a potential savings of \$250,000.

Recommended Action: Approval

Attachments: Resolution, Employee Share Chart

CITY MANAGER APPROVAL: _____ COUNCIL AGENDA DATE: _____

CITY MANAGER COMMENTS: _____

FISCAL SERVICES DIRECTOR APPROVAL: _____



Resolution No. 2019-245
November 5, 2019

RESOLVED BY THE COUNCIL OF THE CITY OF YPSILANTI:

Whereas, with the rising costs of health care, the Council of the City of Ypsilanti deems it to be in the best interest of the City to continue to keep health care costs in line with our budget; and

Whereas, the current Blue Cross Blue Shield and Blue Care Network Plans will continue to keep health care costs in line with our budget while still offering additional benefits to the active employees and retirees that are eligible to participate.

NOW THEREFORE BE IT RESOLVED THAT, the Council of the City of Ypsilanti approve a one-year contract from January 1, 2020, to December 31, 2020, to offer the following Blue Cross Blue Shield and Blue Care Network benefit plans to all eligible participating employees and retirees: Community Blue PPO, Simply Blue PPO 3000, BCN HMO H.S.A., BCN HMO with EHIM RX and Optimed GAP \$250 Deductible, and Medicare Advantage.

FURTHER THAT, the Council of the City of Ypsilanti approves a one-year contract with EHIM to administer the self-funded portion WRAP, prescription portions of the BCBS Community Blue PPO program and the new BCN HMO program, and coordinate all benefits and costs with Blue Cross Blue Shield of Michigan.

OFFERED BY: _____

SECONDED BY: _____

YES: NO: ABSENT: VOTE:

This resolution is adopted by the Council of the City of Ypsilanti and approved by the Mayor this 5 day of November 2019

#Resolution No. 2019-245

**CITY OF YPSILANTI
EMPLOYEE SHARE UNDER DIFFERENT COVERAGE**

EMPLOYEE SHARE PER PERSON COVERAGE PLAN	Column Labels			ILLUSTRATIVE 85.15
	2019 HARD CAP	HARD CAP	80 20	
Single				
BCN HMO-H.S.A.	287.99	569.89	1,477.75	856.49
COMMUNITY BLUE 4000	2,306.13	1,402.57	1,644.29	896.83
SIMPLY BLUE-PPO 3000	4,811.31	4,498.81	2,263.54	1,308.96
BCN EHIM GAP	531.63	397.93	1,443.36	856.49
Two Person				
BCN HMO-H.S.A.	1,954.69	2,672.83	3,386.64	1,935.59
COMMUNITY BLUE 4000	10,020.81	5,168.95	3,885.86	2,161.06
SIMPLY BLUE-PPO 3000	12,410.85	11,702.23	5,192.52	2,961.49
BCN EHIM GAP	2,564.85	2,285.23	3,309.12	1,935.59
Family				
BCN HMO-H.S.A.	686.93	1,569.52	4,033.30	2,269.49
COMMUNITY BLUE 4000	11,769.73	5,635.60	4,846.51	2,625.71
SIMPLY BLUE-PPO 3000	13,257.37	12,356.32	6,190.66	3,476.86
BCN EHIM GAP	2,595.85	2,231.20	4,165.63	2,269.49



REQUEST FOR LEGISLATION

TO: Mayor and City Council
FROM: Andrew Hellenga
DATE: November 5, 2019
Request approval of a Redevelopment Class C license with
Dance/Entertainment permit for NPBC Ypsilanti, LLC, located at 400 N.
SUBJECT: River

DESCRIPTION:

Request approval of a Redevelopment Class C license with Dance/Entertainment permit for NPBC Ypsilanti, LLC, located at 400 N. River

SUMMARY:

Jon A Carlson, Manager of NPC Ypsilanti, LLC has applied to the Ypsilanti Downtown Development Authority, City of Ypsilanti and State of Michigan Liquor Control Commission (MLCC) for approval of a Redevelopment Class C license with Dance/Entertainment/SDM, Sunday Sales, and Outdoor Service license for NPBC Ypsilanti, LLC, located at 400 N. River.

If approved by the City and MLCC the Class C license will allow NPBC Ypsilanti, LLC, to serve beer, wine, mixed spirit drink, and spirits to customers for consumption on site. The MLCC cannot consider the approval of the reclassification without the approval of City Council.

All required Departments have provided approval for the license, aside from the Building Department. The building still requires a certificate of occupancy.

RECOMMENDED ACTION:

Approval upon Building Department Approval and Issuance of Certificate of Occupancy and approval by the Washtenaw County Health Department

ATTACHMENTS: Resolution
Application

CITY MANAGER APPROVAL: _____ COUNCIL AGENDA DATE: _____

CITY MANAGER COMMENTS: _____

FISCAL SERVICES DIRECTOR APPROVAL: _____



Resolution No. 2019-246
November 5, 2019

RESOLVED BY THE COUNCIL OF THE CITY OF YPSILANTI:

WHEREAS, Jon Carlson, manager of NPBC Ypsilanti, LLC, has applied to the Ypsilanti Downtown Development Authority, City of Ypsilanti and Michigan Liquor Control Commission requesting the following:

Approval of a Redevelopment Class C license, MCL 436.1521a(1)(b), with a Dance/Entertainment permit, A Class C license, as defined by MCL 436.1107(2), is a place licensed to sell, at retail, beer, wine, mixed spirit drink, and spirits for consumption on the premises, SDM as Defined by MCL 436.1111(13), and Sunday Sales at 400 N. River, Ypsilanti, MI 48198, Washtenaw County; and

WHEREAS, a public hearing to consider the application to Class C for NPBC Ypsilanti, LLC was duly noticed and held on November 5, 2019

NOW, THEREFORE, BE IT RESOLVED THAT the request of Jon Carlson, Manager for the property located at 400 N. River be approved contingent upon Building Department approval and Issuance of Certificate of Occupancy as well as Washtenaw County Health Department approval.

OFFERED BY: _____

SECONDED BY: _____

YES: NO: ABSENT: VOTE:

This resolution is adopted by the Council of the City of Ypsilanti and approved by the Mayor this 5 day of November 2019

#Resolution No. 2019-246

SUPPLY ZONING PERMIT OR CLEARANCE FROM THE ZONING ADMINISTRATOR: That the location is in compliance with the Zoning Ordinance.

SUPPLY CERTIFICATE OF OCCUPANCY OR SIMILAR CLEARANCE FROM THE BUILDING OFFICIAL: That the structure and premises is in compliance with local code provisions.

SUPPLY WRITTEN EVIDENCE FROM THE CITY TREASURER: That all real and personal property taxes and City utility bills associated with the premises are paid and that all real and personal property taxes and City utility bills in the name of the applicant are paid.

SUPPLY A WRITTEN STATEMENT: That the applicant will not violate any laws of the State of Michigan or the ordinances of the City of Ypsilanti in conducting the business where the liquor license will be used and that a violation on the premises may be caused for the City objecting to renewal of the license or requesting revocation of the license.

SUPPLY A WRITTEN STATEMENT: That the applicant understands that the City of Ypsilanti has an ordinance prohibiting public nudity, and a violation of the ordinance on the premises where the liquor license is used will be caused for objecting to renewal of the license, or for requesting revocation of the license.

SUPPLY DOCUMENTATION (REDEVELOPMENT APPLICANTS ONLY): That the applicant has invested at least \$75,000 for the rehabilitation or restoration of the building over a period of the preceding five years, or documentation that the applicant has or will commit a capital investment of at least \$75,000 that will be expended for rehabilitation or restoration of the building before the license is issued.

My signature acknowledges the following:

- I have read the above application and am submitting this completed application for consideration of a new or transfer liquor license in the City of Ypsilanti.
- I have (either in hardcopy or on line) received a copy of ordinance number 926, (as amended and codified in section 6-31 et sec) and have read and understand the City's ability to request revocation of the license upon violation of the ordinance terms, and/or breach of any agreement with the City.
- Council Approval **DOES NOT** take the place of or avoid any permitting process of the City, including, but not limited to Building, Zoning, Fire, ADA, etc. Significant issues with regards to non-conforming uses may arise after applicant properly submits detailed plans for such construction and/or use permits.
- Redevelopment Applicants:
 - I affirm that I have attempted to purchase an available on-premise escrowed license or quota license within the city, and that one was not readily available as defined in the Liquor Control Code (MCL 436.1521a).
 - I affirm that the premises described above will be a dining, entertainment, or recreation business open at least 5 days per week and open to the general public at least 10 hours a day.
 - I affirm that I have invested \$75,000 in the real property within the last 5 years, or I will invest \$75,000 prior to issuance of the license. This provision may be enforced

by the City as a breach of contract. In the event I fail to make the required investment and the City is required to enforce this provision, I agree to pay the City's actual attorney fees arising from the breach of contract.

- o I affirm that at least \$75,000 was invested or will be invested in the property by 1/1/19, and that the liquor license may issue on or after that date.

Signature of Applicant: Male

Signature of Applicant: _____

Signature of Applicant: _____

IF THIS IS A LIQUOR LICENSE TRANSFER REQUEST, THE SIGNATURE OF THE CURRENT LICENSE HOLDER IS REQUIRED.

Signature of Current License Holder: _____
Date: _____

.....
For the City Clerk's Office Staff only:

Date application submitted: _____ Staff's Initials: _____

Routed for approval by the following departments: _____ Date: _____

For Department Approval:

____ Building ____ Zoning ____ Fire Dept. ____ Police Dept.

____ Assessor ____ Treasurer ____ City Attorney ____ DDA/DTDDA

Departments: Please conduct the appropriate review to ensure that the applicant does not have any outstanding issues within your department area. When you have completed your review, please report your findings to the City Clerk's Office, and initial on the line provided for your department.



LAW OFFICES

ADKISON, NEED, ALLEN, & RENTROP

PROFESSIONAL LIMITED LIABILITY COMPANY

PHILLIP G. ADKISON
KELLY A. ALLEN
ROBERT M. GOLDMAN
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Facsimile (248) 540-7401
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OF COUNSEL:
KEVIN M. CHUDLER
LINDA S. MAYER
KATHERINE A. TOMASIK

September 20, 2019

VIA OVERNIGHT MAIL

Andrew Hellenga, City Clerk
City of Ypsilanti
1 South Huron Street
Ypsilanti, Michigan 48197

Re: NPBC Ypsilanti, LLC's Request for a Quota Class C Liquor License and SDM Liquor License with Sunday Sales (AM and PM) Permits, One Additional Bar Permit, Dance/Entertainment Permits, and Outdoor Service Area Permit to be Located at 400 N River, Ypsilanti, Washtenaw County, Michigan, to be Issued Pursuant to MCL 436.1521a(1)(b).

Dear Mr. Hellenga:

We represent NPBC Ypsilanti, LLC ("NPBC Ypsilanti") in liquor licensing matters. NPBC Ypsilanti is requesting approval from the City of Ypsilanti for a new Class C license issued under MCL 436.1521a(1)(b). The permits being requested are: Sunday Sales (AM and PM) Permits, SDM License (beer and wine to go), an Entertainment Permit, One Additional Bar Permit, Dance Permit, and an Outdoor Service Area Permit.

NPBC Ypsilanti is owned by NPBC, Inc. ("NPBC"). NPBC's stockholders are Jon Carlson, Greg Lobdell, Wayne Lobdell, and Chester Czaplicka ("Owners").

NPBC Ypsilanti will do business as Thompson & Co ("Thompson & Co") and will be located on the first floor of 400 N. River, Ypsilanti in the Thompson Block Building in historical Depot Town. Thompson & Co is located in a mixed-use development. The development is a 3-story building with the 1st floor being Thompson & Co and floors 2 and 3 will be residential. Thompson & Co will be approximately 10,000 square feet in the interior and will have an outdoor patio area on private property. The interior space will have seating for approximately 240 patrons and the outdoor patio will have seating for approximately 66 patrons. All final occupancies will be determined by the City of Ypsilanti.

In order for NPBC Ypsilanti to qualify for a new Class C license issued pursuant to MCL 436.1521a(1)b, the licensed business must be engaged in dining, entertainment, or recreation, be open to the general public, have a seating capacity for at least 25 persons, have a capital investment of not less than \$75,000.00 in restoration and rehabilitation of the building, and be open at least 5 days a week for at least 10 hours a day to the general public.

Thompson & Co will be a full-service restaurant which will serve small plates, sandwiches, burgers, salads, and a variety of main course lunch and dinner items. Thompson & Co's proposed hours of operation will be 7 days a week from 10 am to 2 am. Thompson & Co may adjust their hours of operation for a private party or special event, or based on customer demand. NPBC Ypsilanti anticipates spending approximately \$500,000 in the renovations and rehabilitation of the building.

In 2017, a company related to the Owners, The Original and Only Thompson Block, LLC ("Landlord"), purchased the real estate. The Landlord has a lease with NPBC Ypsilanti for 12 years with 4 five-year options.

The Owners own and operate several other licensed businesses. NPBC, Inc. has owned and operated a restaurant in Traverse City since 1997, which does business as North Peak Brewing Company, and NPBC, Inc. just opened a new location in Detroit, which does business as Smith & Company. Additionally, the Owners own several other licensed businesses in the State of Michigan located in Ann Arbor, Detroit, Royal Oak, and Traverse City.

Within 120 days of the opening of the restaurant, the owners and all of the managers and employees who serve and sell alcoholic beverages will complete the TIPS or TAM training program.

Enclosed are the following documents for your consideration:

- Check payable to the City of Ypsilanti for \$500;
- City of Ypsilanti Application for a New or Transfer of Liquor License;
- Articles of Organization and Bylaws for NPBC Ypsilanti, LLC;
- Proposed floor plan;
- Proposed menu; and
- Assignment and Assumption of Lease and Lease Agreement.

Additionally, enclosed is a partially completed LCC-106 - Local Governmental Approval Form for the City Council to complete for the MLCC application. If you have any questions or need any further information, please do not hesitate to contact me or my legal assistant, Laura Peters.

Very truly yours,

ADKISON NEED ALLEN & BENTROP PLLC



JOE A. MEYERS

/lbp
Enclosures

cc: Joe Meyers, Director of Economic Development (*with enclosures; via electronic mail*)

LARA Corporations
Online Filing System
Department of Licensing and Regulatory Affairs

Form Revision Date 02/2017

ARTICLES OF ORGANIZATION
For use by DOMESTIC LIMITED LIABILITY COMPANY

Pursuant to the provisions of Act 23, Public Acts of 1993, the undersigned executes the following Articles:

Article I

The name of the limited liability company is:

NPBC YPSILANTI, LLC

Article II

Unless the articles of organization otherwise provide, all limited liability companies formed pursuant to 1993 PA 23 have the purpose of engaging in any activity within the purposes for which a limited liability company may be formed under the Limited Liability Company Act of Michigan. You may provide a more specific purpose:

Article III

The duration of the limited liability company if other than perpetual is:

Article IV

The street address of the registered office of the limited liability company and the name of the resident agent at the registered office (P.O. Boxes are not acceptable):

1. Agent Name: JAMES M. TONER

2. Street Address:

Apt/Suite/Other:

City:

State:

Zip Code: 49546

3. Registered Office Mailing Address:

P.O. Box or Street

Address:

Apt/Suite/Other:

City:

State:

Zip Code:

Article V.

(Insert any desired additional provision authorized by the Act; attach additional pages if needed.)

THE BUSINESS OF THE COMPANY SHALL BE MANAGED BY ONE OR MORE MANAGERS, SUBJECT TO ANY BYLAWS OR OPERATING AGREEMENT THAT MAY BE ENTERED INTO ON OR AFTER THE DATE THESE ARTICLES ARE FILED, RESTRICTING OR ENLARGING THE MANAGEMENT RIGHTS AND DUTIES OF ANY MANAGER OR GROUP OF MANAGERS. JON CARLSON SHALL BE THE INITIAL MANAGER OF THE COMPANY.

Signed this 19th Day of March, 2019 by the organizer(s):

Signature	Title	Title if "Other" was selected
James M. Toner	Organizer	

By selecting ACCEPT, I hereby acknowledge that this electronic document is being signed in accordance with the Act. I further certify

that to the best of my knowledge the information provided is true, accurate, and in compliance with the Act.

☐ Decline ☒ Accept

MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
FILING ENDORSEMENT

This is to Certify that the ARTICLES OF ORGANIZATION

for

NPBC YPSILANTI, LLC

ID Number: 802300746

received by electronic transmission on March 19, 2019 ***, is hereby endorsed.***

Filed on March 19, 2019 ***, by the Administrator.***

The document is effective on the date filed, unless a subsequent effective date within 90 days after received date is stated in the document.



In testimony whereof, I have hereunto set my hand and affixed the Seal of the Department, in the City of Lansing, this 19th day of March, 2019.

[Redacted Signature]

Julia Dale, Director
Corporations, Securities & Commercial Licensing Bureau

BYLAWS
NPBC YPSILANTI, LLC
A Michigan Limited Liability Company

These Bylaws are made and adopted effective as of March 1, 2019, by NPBC Ypsilanti, LLC, a Michigan limited liability company (the "Company") and NPBC, Inc., its sole member (the "Member").

ARTICLE I
ORGANIZATION

1.1 **Formation.** The Company has been organized as a Michigan limited liability company pursuant to the Michigan Limited Liability Company Act; 1993 PA 23, as amended (the "Act"); by the filing of Articles of Organization ("Articles") as required by the Act. The Member is the Company's sole and single member.

1.2 **Name.** The name of the Company is **NPBC YPSILANTI, LLC**. The Company may also conduct its business under one or more assumed names.

1.3 **Purposes.** The purpose of the Company is to engage in any activity for which limited liability companies may be formed under the Act. The Company shall have all the powers necessary or convenient to effect any purpose for which it is formed, including all powers granted by the Act.

1.4 **Duration.** The Company shall be perpetual unless otherwise stated in the Articles or until the Company dissolves and its affairs are wound up in accordance with the Act.

1.5 **Registered Office and Resident Agent.** The Registered Office and Resident Agent of the Company shall be as designated in the initial or amended Articles. The Registered Office and/or Resident Agent may be changed from time to time. Any such change shall be made in accordance with the Act. If the Resident Agent resigns, the Company shall promptly appoint a successor.

ARTICLE II
MEMBERSHIP INTERESTS AND CAPITAL
CONTRIBUTIONS

2.1 **Membership Interests and Capital Contributions.** The Sole Member has made a capital contribution of \$500.00 to the Company and consequently, as of the effective date of this Agreement, the Member owns a Membership Interest in the Company as specified below:

Member	Membership Interest
NPBC, Inc.	100%

**ARTICLE
III
BOOKS, RECORDS, AND
ACCOUNTING**

3.1 Books and Records. The Company shall maintain complete and accurate books and records of the Company's business and affairs as required by the Act. The Company's books and records shall be kept at the Company's Registered Office.

3.2 Fiscal Year. The Company's fiscal year shall be the calendar year.

**ARTICLE IV
MANAGEMENT OF THE
COMPANY**

4.1 Management. The Company shall be managed solely by the Member.

4.2 Powers of Member. Any and all decisions and actions concerning the business and affairs of the Company shall be made by the Member without limitation. The Member has the sole power and authority, on behalf of the Company, to do all things necessary or convenient to carry out the Company's business and affairs, including, without limitation, the sole power and authority to (a) purchase, lease, or otherwise acquire any real or personal property from any source whatsoever, including the Member; (b) sell, convey, mortgage, grant a security interest in, pledge, lease, exchange, or otherwise dispose of or encumber any real or personal property; (c) open one or more depository accounts and make deposits into, write checks against, and make withdrawals against such accounts; (d) borrow money and incur liabilities and other obligations; (e) enter into any contract or agreement and execute any and all contracts, agreements, documents, and instruments of whatever nature; (f) engage employees and agents and define their respective duties and compensation; (g) establish pension plans, trusts, profit-sharing plans, and other benefit and incentive plans for the Member, employees, and agents of the Company; (h) obtain insurance covering the business and affairs of the Company and its property; (i) begin, prosecute, or defend any proceeding in the Company's name; and (j) participate with others in partnerships, joint ventures, and other associations and strategic alliances.

4.3 Third-Party Reliance. Any person (including any financial institution or contracting party) who may deal with the Company or the Member on behalf of the Company shall be entitled, without liability and without any further inquiry or investigation whatsoever, to rely on the sole, exclusive, and unilateral power and authority of the Member to make any and all decisions and to take any and all actions with respect to the Company, and the decisions and actions of the Member shall be binding on and enforceable against the Company without exception.

ARTICLE V
EXCULPATION OF LIABILITY; INDEMNIFICATION

5.1 Exculpation of Liability. Unless otherwise provided by law or expressly assumed, the Member or Managers), or both, shall not be liable for the acts, debts; or liabilities of the Company.

5.2 Indemnification. Except as otherwise provided in this Article, the Company shall indemnify the Member and may indemnify any Manager or other employee or agent of the Company who was or is a party, or is threatened to be made a party, to a threatened, pending, or completed action, suit, or proceeding (whether civil, criminal, administrative, or investigative and whether formal or informal), other than an action by or in the right of the Company, where such person is a party because the person is or was a Manager, the Member, employee, or agent of the Company. The Company shall indemnify the Member and may indemnify such Manager, employee, or agent against expenses, including attorney fees, judgments, penalties, fines, and amounts paid in settlement, actually and reasonably incurred by such person in connection with the action, suit, or proceeding. The Company shall indemnify the Member and may indemnify such Manager, employee, or agent if the person acted in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner that the person reasonably believed to be in the best interests of the Company. With respect to a criminal action or proceeding, the person must have had no reasonable cause to believe that his or her conduct was unlawful. To the extent that a Member or Manager, employee, or agent of the Company has been successful on the merits or otherwise in defense of an action, suit, or proceeding, or in defense of any claim, issue, or other matter in the action, suit, or proceeding, the Member shall be indemnified and such Manager, employee, or agent may be indemnified against the actual and reasonable expenses, including attorney fees, incurred by him or her in connection with the action, suit, or proceeding and any action, suit, or proceeding brought to enforce this mandatory indemnification. Unless ordered by a court, any indemnification permitted under this Article shall be made by the Member after (a) determining that the indemnification is proper under the circumstances because the person to be indemnified has met the applicable standard of conduct and (b) evaluating the reasonableness of the expenses and of the amounts paid in settlement. No indemnification shall be provided for or in connection with (a) the receipt of a financial benefit to which the person is not entitled, or (b) a knowing violation of the law.

ARTICLE VI
DISSOLUTION AND WINDING UP

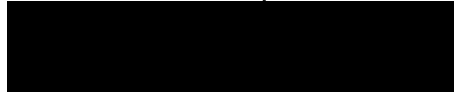
6.1 Dissolution. The Company shall dissolve and its affairs shall be wound up on the first to occur of the following events only: (a) at any time specified in the Articles; (b) on the occurrence of any event specified in the Articles; or (c) consent of the Member.

6.2 Winding Up. On dissolution, the Company shall cease carrying on its business and affairs and shall begin to wind them up. The Company shall complete the winding up as soon as practicable. On the winding up of the Company, its assets shall be distributed in a manner consistent with the Act.

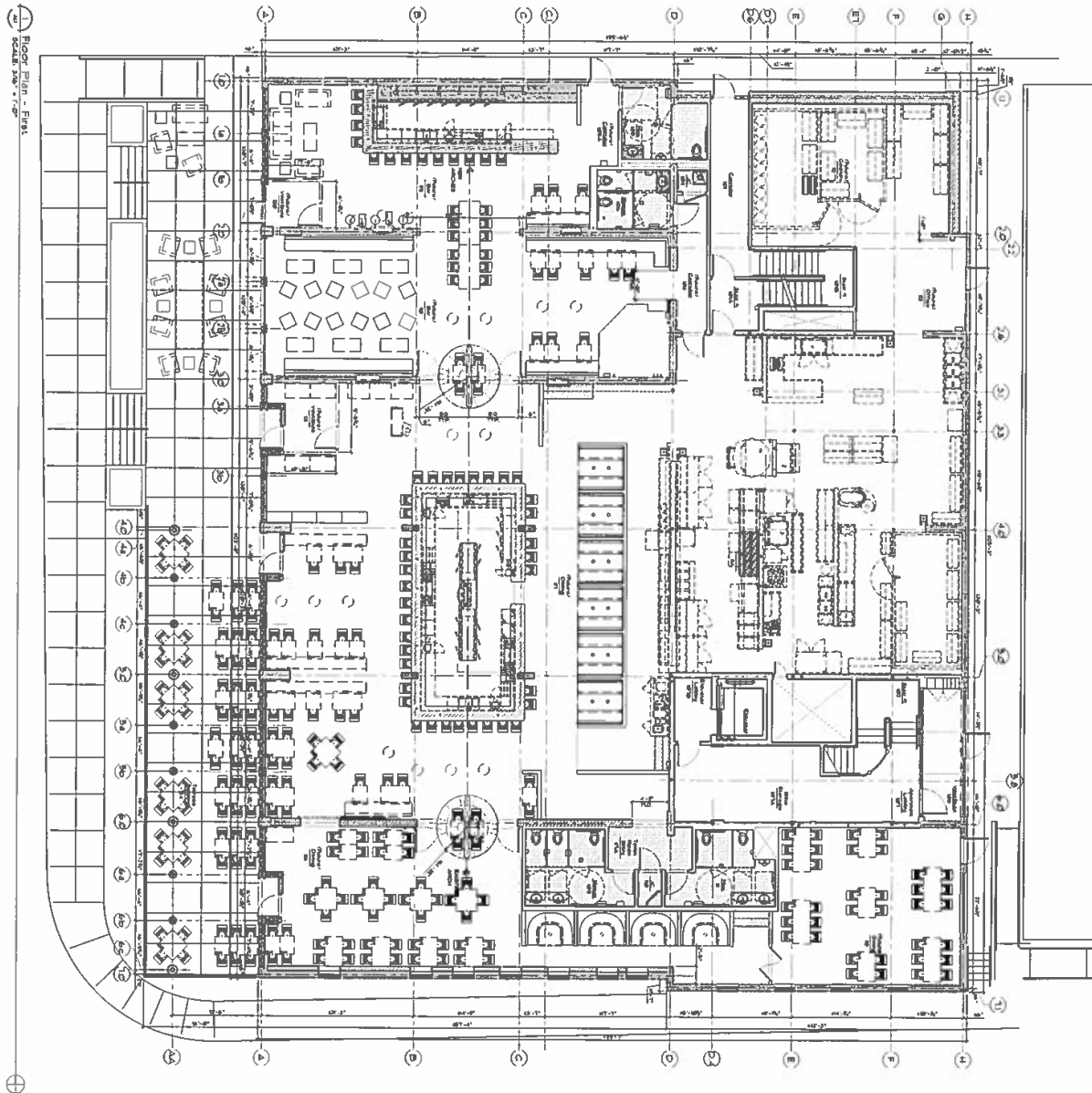
These Bylaws are made and adopted by the Company and its sole Member as of the day and year listed on the first page of this agreement.

NPBC YPSILANTI, LLC
a Michigan limited liability company

By: NPBC, Inc.
Its: Sole Member

A large black rectangular redaction box covering the signature of NPBC, Inc.

By: Jon A. Carlson
Its: President



A1.1

Floor Plan - FIRST

Thompson Block
Thompson Block
Ypsilanti, Michigan
Project Number: 1420

Rev.	Revised For	By	Date
0001	AS BIDDING	MSB/MS	12/01/11
0002	FOR PERMITS	MSB/MS	12/01/11
0003	FOR PERMITS	MSB/MS	12/01/11
0004	FOR PERMITS	MSB/MS	12/01/11

Mitchell
architects
11100 E. Grand Avenue, Suite 200
Ann Arbor, MI 48106-1500
734.769.1234
www.mitchellarchitects.com

application of which insurance proceeds are not prohibited, by reason of any mortgage provision, from being used toward the cost of restoration and repairing the same. If the unexpired portion of the term or any extension of it shall be two (2) years or less on the date of such casualty and the cost of such repair or restoration exceeds twenty percent (20%) of the then replacement value of the damaged Premises, as estimated by two (2) or more reputable contractors, Landlord may by written notice to Tenant, within thirty (30) days after the occurrence of such casualty, terminate this Lease. If Landlord exercises the above right to terminate this Lease and Tenant elects to exercise an option of renewal privilege which Tenant may have under this Lease, which if exercised would extend the unexpired term beyond two (2) years, Tenant may void such notice above of Landlord's right to terminate this Lease by exercising such option renewal privilege within such 30-day period.

If the insurance proceeds are insufficient to effect such restoration or repairs, Landlord at its option may cancel this Lease by written notice to Tenant within thirty (30) days after the occurrence of such casualty.

In the event the repairing and restoring of the buildings cannot be completed within six (6) months after the date of occurrence of such casualty, as estimated by two (2) or more reputable contractors, the Tenant shall have the right to terminate this Lease upon giving written notice to Landlord within thirty (30) days from the date of occurrence of the casualty. From the date of such damage or destruction until the building has been substantially repaired or restored, an equitable abatement of rent shall be allowed the Tenant.

Any property stored in the Premises shall be at the sole risk of Tenant.

Neither Landlord nor Tenant shall be liable to the other for any loss or damage from risks ordinarily insured against under fire insurance policies with extended coverage endorsements, irrespective of whether such loss or damage results from their negligence or that of any of their agents, servants, employees, licensees or contractors to the extent that such losses are covered by valid and collectible insurance on the property at the time of the loss.

- 24) **Eminent Domain.** In the event that the Premises be lawfully condemned or taken in any manner for any public or quasi-public use, this Lease shall terminate as of the date of actual taking. In the event that any part of the Premises be so condemned or taken, Landlord or Tenant shall have the right to terminate this Lease as of the date of actual taking by giving written notice of such termination; but should Landlord or Tenant not so terminate this Lease, this Lease shall cease as to the part taken and the rent adjusted so that Tenant shall pay a pro rata portion of the rent determined by the amount of space (and rate therefor)

remaining after the taking. Landlord shall be entitled to receive the entire award from any such condemnation or taking of the Premises or any part thereof, without deduction therefrom for any estate or interest granted to Tenant by this Lease, provided, that nothing herein contained shall be deemed to prevent Tenant from claiming compensation for relocation costs or loss for interruption of business in the event an award with respect thereto is provided for by law or is fixed in the proceeding in which such taking shall occur.

- 25) **Assignment and Subletting.** Tenant shall not assign, or in any way encumber this Lease, nor any part, right or interest thereof, nor shall Tenant let or sublet or permit any part of the Premises to be used or occupied by others for any reason whatsoever, unless Landlord shall consent thereto in writing in each and every case and instance, which consent shall not be unreasonably withheld; a requirement that Tenant shall remain fully liable on this Lease shall not be deemed an unreasonable requirement to the giving of consent.
- 26) **Default and Termination.** If Tenant shall fail to make payment of rent when due, or if Tenant shall fail to comply with any details, provisions or covenants of this Lease other than the payment of rent and shall not cure such failure within thirty (30) days after written notice thereof, or if Tenant shall become insolvent or shall make a transfer in fraud of creditors or shall make an assignment for the benefit of creditors, or if Tenant shall abandon or vacate the Premises during the term of this Lease, then in any such event, Landlord may terminate this Lease at any time thereafter by giving written notice of such termination to Tenant. Upon termination of this Lease, Landlord may without further notice reenter the Premises, dispossess Tenant or any occupant of the Premises, and remove its effects and hold the Premises as if this Lease had not been made. Landlord shall be entitled to any other remedies that may be provided by law.
- 27) **Damages.** In the event of the termination of this Lease under the provisions of paragraph 23, or under any provisions of law by reason of Tenant's default hereunder, Tenant shall pay Landlord as damages sums equal to the rent which would have been payable by Tenant had this Lease not so terminated, payable as specified in paragraph 4 until the expiration of the term of this Lease plus ten percent (10%) per annum interest on all due but unpaid rent from the due date; provided that if Landlord shall relet all of any part of the Premises during said period, Landlord shall credit Tenant with the excess of the rents received from such reletting over the expenses of the termination of the Lease and of the reletting. In such event, Landlord shall make a good faith effort to relet the Premises.
- 28) **Surrender of Premises.** Upon the expiration or the termination of the term of this Lease, Tenant shall quit and surrender the Premises to Landlord in as good order

and condition as when received, ordinary wear and damage by the elements excepted; and Tenant shall remove all of its property and shall repair any damage to the Premises caused by such removal. Any personal property of Tenant or of anyone claiming under Tenant which shall remain on the Premises after the expiration or termination of the lease term, shall be deemed to have been abandoned by Tenant, and either may be removed by Landlord as its property or may be disposed of in such manner as Landlord may see fit, and Landlord shall not be responsible for the same.

- 29) **Access to Premises.** Landlord shall have the right to enter upon the Premises at all reasonable hours for the purpose of inspecting the same, preventing waste, loss or destruction, removing obstructions, making such repairs or alterations as it is obligated to make under the terms of this Lease, or to enforce any of Landlord's rights or powers under this instrument, and Landlord shall not be liable nor responsible for any loss that may accrue to Tenant's business by reason thereof. The Landlord may show the Premises to prospective tenants at any time during the last six (6) months of the term of this Lease.
- 30) **Subordination.** This Lease is subject and subordinate to all underlying leases, land contracts and mortgages which now or hereafter affect the Premises and to all renewals, modifications, consolidations, replacements and extensions thereof. Tenant shall execute promptly from time to time any certificate or other instrument that Landlord may request to confirm this subordination. Landlord agrees to use its best efforts to obtain from each mortgagee of record their agreement not to disturb this tenancy and to recognize the terms of this Lease in the event of a foreclosure of their mortgage(s).
- 31) **Signs.** Tenant shall be permitted to erect any sign or signs which are permitted by law and the condominium documents and agreement(s), subject to prior approval of Landlord. Such approval will not be unreasonably withheld and in the event that Landlord does not approve or disapprove said plans and specifications within ten (10) days after delivery to it, then such approval shall be conclusively presumed. Tenant will bear all costs of erecting all signs advertising its business.
- 32) **Care of Premises.** Tenant shall at all times keep the Premises in a clean and orderly condition and shall keep the Premises free of all waste material, debris, boxes and other rubbish.
- 33) **Holding Over.** Notwithstanding any provisions of law or any judicial decisions to the contrary, no notice shall be required from either party to terminate this Lease on the expiration date herein specified, and anything therein contained and implied to the contrary notwithstanding, a holding over by the Tenant, its

successors or assigns, beyond the expiration of said term, shall give rise to a tenancy from month to month.

- 34) **Notices.** All notices, bills or statements required hereunder shall be in writing, and shall be deemed to have been given if either delivered personally or mailed by certified or registered mail to Landlord at 3075 Charlevoix Drive SE, Suite 100, Grand Rapids, Michigan 49546, and to Tenant at the Premises. Either party may change the address for notices, bills or statements by giving notice of such changes as hereinabove set out.
- 35) **No Waiver.** The failure of either party to enforce any covenant or condition of this Lease shall not be deemed a waiver thereof or of the right of either party to enforce each and every covenant and condition of this Lease. No provisions of this Lease shall be deemed to have been waived unless such waiver be in writing.
- 36) **Successors and Assigns.** The covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and their respective heirs, distributees, executors, administrators, successors and, except as otherwise provided by this Lease, their assigns.
- 37) **Quiet Enjoyment.** Landlord covenants and agrees with Tenant that upon Tenant paying the rent and observing and performing all the terms, covenants and conditions on Tenant's part to be performed and observed, Tenant may peaceably and quietly enjoy the Premises leased hereby.
- 38) **Corporate Authority.** Tenant has by proper corporate action authorized the execution of this Lease and such Lease shall not violate any provisions of its Articles of Incorporation or By Laws or any agreement by which it is bound.
- 39) **Attorney Fees.** In the event Tenant makes default in the performance of any of the terms, covenants, agreements or conditions in this Lease and Landlord places the enforcement of this Lease or any part thereof, or the collection of any rent due, or to become due hereunder or recovery of the possession of the Premises in the hands of an attorney, or files suit upon the same, Tenant agrees to pay Landlord the actual attorney fees incurred by Landlord.
- 40) **Bankruptcy or Insolvency.** In the event that Tenant shall become a debtor under Chapter 7 of the Bankruptcy Code, or petition for reorganization or adjustment of debts under Chapter 11 or 13 of the Bankruptcy Code and the Trustee or Tenant shall elect to assume this Lease for the purpose of assigning the same or otherwise, such election and assignment at Landlord's option under the provisions of this paragraph shall only be made if all of the following terms and

conditions are satisfied, which terms and conditions are acknowledged by the parties as commercially reasonable:

A. The trustee or Tenant has cured or has provided Landlord adequate assurance (as defined below) that:

1.) Within ten (10) days from the date of such assumption the trustee will cure all monetary defaults under this Lease, and

2.) Within thirty (30) days from the date of such assumption, the trustee will cure all non-monetary defaults under this Lease.

B. The trustee or Tenant has provided Landlord with adequate assurance of the future performance of each of the Tenant's or trustee's obligations under this Lease, provided, however, that:

1.) The trustee or Tenant shall also deposit with Landlord, as security for timely payment of rent, an amount equal to three (3) months rent, and

2.) Trustee or Tenant shall also pay in advance on the date rent is due, one-twelfth (1/12) of Tenant's obligations under this Lease for maintenance, real estate taxes, insurance and other similar charges.

3.) The assumption of the Lease will not breach any provision in any other lease, mortgage, or financing agreement by which Landlord is bound.

For purposes of this paragraph, Landlord and Tenant agree that at a minimum adequate "assurance" shall mean:

4.) The trustee or Tenant has and will continue to have sufficient unencumbered assets after payment of all secured obligations and administrative expenses to assure Landlord that the trustee or Tenant will have sufficient funds to fulfill the obligations of this Lease, and

5.) The Bankruptcy Court shall have entered an Order segregating sufficient cash payable to Landlord to secure to Landlord the obligation of the trustee or Tenant to cure the monetary and non-monetary defaults under this Lease within the time periods above set forth.

If the trustee shall fail to elect or assume this Lease within sixty (60) days after the filing of the Petition, this Lease shall be deemed to have been rejected.

- 41) **Entire Agreement.** This Lease contains the entire agreement between the parties and shall not be modified in any manner except by an instrument in writing executed by the parties. If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.
- 42) **General Provision.** The pronouns and relative words herein used are written in the neuter only. If more than one join in the execution hereof as Landlord or Tenant, or either be of the masculine or feminine sex or a corporation, such words shall be read as if written in plural, masculine, feminine or corporate, respectively.

IN WITNESS WHEREOF, the parties hereunto have executed this Amended and Restated Lease as of the day and year first above written.

WITNESSES:

LANDLORD:

The One and Only Thompson Block, LLC., a Michigan limited liability company

By: 3mission Design and Development, LLC
Its: Manager

By: 
Jon A. Carlson
Its: Member/Manager

TENANT:

NPBC, Inc., a Michigan corporation

By: 
Jon A. Carlson
Its: President

EXHIBIT "A"



Michigan Department of Licensing and Regulatory Affairs
Liquor Control Commission (MLCC)
Toll Free: 1-866-813-0011 • www.michigan.gov/lcc

Business ID: _____
Request ID: _____
(For MLCC use only)

Local Government Approval
(Authorized by MCL 436.1501)

Instructions for Applicants:

- You must obtain a recommendation from the local legislative body for a new on-premises license application, certain types of license classification transfers, and/or a new banquet facility permit.

Instructions for Local Legislative Body:

- Complete this resolution or provide a resolution, along with certification from the clerk or adopted minutes from the meeting at which this request was considered.

At a _____ meeting of the _____ council/board
(regular or special) (township, city, village)
called to order by _____ on _____ at _____
(date) (time)
the following resolution was offered:

Moved by _____ and supported by _____
that the application from NPBC YPSILANTI LLC

(name of applicant)
for the following license(s): New Class C liquor license Issued Pursuant to MCL 436.1521a(1)(b).
(list specific licenses requested)

to be located at: 400 N River, Ypsilanti, MI 48198
and the following permit, if applied for:

☐ Banquet Facility Permit Address of Banquet Facility: _____

It is the consensus of this body that it _____ this application be considered for
(recommends/does not recommend)
approval by the Michigan Liquor Control Commission.

If disapproved, the reasons for disapproval are _____

Vote

Yeas: _____

Nays: _____

Absent: _____

I hereby certify that the foregoing is true and is a complete copy of the resolution offered and adopted by the _____
council/board at a _____ meeting held on _____ (township, city, village)
(regular or special) (date)

Print Name of Clerk

Signature of Clerk

Date

Under Article IV, Section 40, of the Constitution of Michigan (1963), the Commission shall exercise complete control of the alcoholic beverage traffic within this state, including the retail sales thereof, subject to statutory limitations. Further, the Commission shall have the sole right, power, and duty to control the alcoholic beverage traffic and traffic in other alcoholic liquor within this state, including the licensure of businesses and individuals.

Please return this completed form along with any corresponding documents to:

Michigan Liquor Control Commission
Mailing address: P.O. Box 30005, Lansing, MI 48909
Hand deliveries or overnight packages: Constitution Hall - 525 W. Allegan, Lansing, MI 48933
Fax to: 517-763-0059

10/17/2019

**Downtown Development Authority of the
City of Ypsilanti
County of Washtenaw, State of Michigan
RESOLUTION TO APPROVE THE REDEVELOPMENT LIQUOR LICENSE FOR 400
N RIVER- NPBC YPSILANTI LLC**

The following preamble and resolution were offered by Beth Bashert and supported by Janette Rook.

WHEREAS, Jon Carlson, owner of NPBC Ypsilanti LLC, has applied to the Ypsilanti Downtown Development Authority, City of Ypsilanti and Michigan Liquor Control Commission requesting the following:

Approval of a New Class C license with a Dance/Entertainment permit, A New Class C license, as defined by MCL 436.1521(a)(1)(b), is a place licensed to sell, at retail, beer, wine, mixed spirit drink, and spirits for consumption on the premises, at 400 North River St, Ypsilanti, MI 48198, Washtenaw County; and

WHEREAS, a public hearing to consider the application to New Class C for NPBC Ypsilanti LLC will duly noticed and held on November 5th, 2019

NOW, THEREFORE, BE IT RESOLVED THAT the request of Jon Carlson owner of NPBC Ypsilanti LLC for the property located at 400 North River be approved contingent upon approval by the Washtenaw County Health Department.

AYES: Milner, Hinton, Bashert, Eastridge, French, Otto,

Johnson, Rook, Portis

NAYS::

ABSTAINED: YES: NO:



Resolution No. 2019-247
November 5, 2019

RESOLVED BY THE COUNCIL OF THE CITY OF YPSILANTI:

That the public hearing to consider a redevelopment liquor license for NPBC Ypsilanti, LLC be officially closed.

OFFERED BY: _____

SECONDED BY: _____

YES: NO: ABSENT: VOTE:

This resolution is adopted by the Council of the City of Ypsilanti and approved by the Mayor this
5 day of November 2019

#Resolution No. 2019-247



Resolution No. 2019-248
November 5, 2019

RESOLVED BY THE COUNCIL OF THE CITY OF YPSILANTI:

That the following items be approved:

1. **Resolution No. 2019-249, approving the minutes of October 15, 2019.**
2. **Resolution No. 2019-250, approving appointments to Boards and Commissions.**
3. **Resolution No. 2019-251, approving Ordinance No. 1348 – an Ordinance to amend Chapter 102 Traffic and Vehicles, Article III, Division 4 of the City Code. (Second Reading)**
4. **Resolution No. 2019-252, authorizing the levy of special assessments on the December 2019 tax roll.**
5. **Resolution No. 2019-253, approving a fireworks display permit to Strictly FX.**

OFFERED BY: _____

SECONDED BY: _____

YES: NO: ABSENT: VOTE:

This resolution is adopted by the Council of the City of Ypsilanti and approved by the Mayor this
5 day of November 2019

#Resolution No. 2019-248



Resolution No. 2019-249

RESOLVED BY THE COUNCIL OF THE CITY OF YPSILANTI:

THAT the minutes of October 15, 2019 be approved.

OFFERED BY: _____

SECONDED BY: _____

YES:

NO:

ABSENT:

VOTE:

This resolution is adopted by the Council of the City of Ypsilanti and approved by the Mayor this
day of

#Resolution No. 2019-249



DRAFT MINUTES REGULAR COUNCIL Meeting

6:00 PM - Tuesday, October 15, 2019
Council Chambers

The REGULAR COUNCIL of the City of Ypsilanti was called to order on Tuesday, October 15, 2019, at 6:00 PM, in the Council Chambers, with the following members present:

PRESENT: Mayor Beth Bashert, Council Member Jennifer Symanns (7:05 p.m.), Council Member Steven Wilcoxon, Council Member Nicole Brown, Mayor Pro-Tem Lois Richardson, Council Member Anthony Morgan, and Council Member Annie Somerville

I CALL TO ORDER

The meeting was called to order at 6:00 p.m.

II ROLL CALL

III INVOCATION

IV PLEDGE OF ALLEGIANCE

- a) I pledge allegiance to the flag, of the United States of America, and to the Republic for which it stands, one nation, under God, indivisible, with liberty and justice for all.

V AGENDA APPROVAL

The agenda was approved as amended.

VI WORK SESSION - 6:00 PM TO 7:00 PM

- a) Parking Strategy Implementation Plan - Bonnie Wessler, Parking Manager

Parking Manager Wessler provided a brief overview of the parking strategy implementation plan.

Council Member Wilcoxon asked if the parking kiosks could include areas for public postings. Ms. Wessler stated that they are generally designed to be graffiti resilient, but staff can look into options. Mayor Bashert asked if this would address the nonfunctional meters and would include costs for repairing and maintaining meters. Ms. Wessler stated that they receive a weekly report about meters and that will be part of the assessment. Mayor Pro-Tem Richardson asked if the Washington Street lot will be all permit parking. Ms. Wessler responded that it would have both permit and metered parking. Mr. Wilcoxon asked about the timeline for changes on Ballard. Ms. Wessler stated

that they are proposing to remove the meters in the fall. Ms. Bashert asked about the appropriate amount of handicap parking spaces. Ms. Wessler responded that the minimum is one out of every 25 spaces, and recommended to have one per block face, with some other uses being double.

Mr. Wilcoxen asked if angled parking on W Cross is possible. Ms. Wessler stated that it may not increase the number of spaces, but staff can look into it. Mr. Morgan asked about the backlash of faulty lots and poor signage. Ms. Wessler replied that it is difficult to quantify because only current conditions are known. Mr. Wilcoxen asked about permitting on Maple and Oak. Ms. Wessler responded that the residential permit parking ordinance provides options for residents to opt in. Mayor Bashert asked about evening and weekend enforcement. Ms. Wessler replied that this would be looked at after the initial period. Ms. Bashert asked if there will be staffing changes. Ms. Wessler responded that none are anticipated. Mr. Wilcoxen asked about the short-term parking on Washington. Ms. Wessler stated that they will monitor the situation. Ms. Bashert asked if two- and three-hour parking is renewable. Wessler responded that it is not. Council Member Somerville stated that she has some long-term concerns and volunteered to serve on the committee. Mr. Morgan stated that a \$60 ticket is not much of a deterrent for some people to park wherever they want. Mayor Bashert asked about the number of spots per kiosk. Ms. Wessler stated that this is still a discussion. Mr. Wilcoxen asked about the partnership model for a parking structure. Ms. Wessler stated that there are different funding models. Ms. Bashert stated that parking structure on Rice is not likely.

The meeting adjourned at 6:39 p.m. and reconvened at 7:00 p.m.

VII INTRODUCTIONS

Mayor Bashert introduced the following individuals; DPS Director Ron Ackers, Parking Manager Bonnie Wessler, Economic Development Joe Meyers, City Manager Frances McMullan, Deputy City Clerk Sarah Stachnik, City Clerk Andrew Hellenga, City Attorney John Barr, and Vice President of Engineering OHM Kent Early.

VIII PRESENTATIONS

a) YMCA Services - Toni Kayumi, YMCA CEO Ann Arbor.

Toni Kayumi provided a brief overview of services that are currently provided and the potential YMCA in eastern Washtenaw County.

Mayor Pro-Tem Richardson asked if they will be providing free transportation for youth in the City. Ms. Kayumi responded that there have been conversations about after school busing and with the AAATA for convenient bus stop and bus fare to be included with the teen membership. She added that there have also been conversations with MDOT about the pedestrian bridge over I-94. Ms. Richardson expressed concern about transportation for teens and young children. Ms. Kayumi stated that buses often bus to Y

facilities and there are scholarships available. Council Member Morgan asked if the facilities are standard throughout the county. Ms. Kayumi stated that programs are based on community needs assessment and resident input. Mr. Morgan asked if there are culturally competency components. Ms. Kayumi stated that there is a preplanning component to help kids get their first job and other mentorship programs. Mr. Morgan stated that he appreciates the buy-in and is in support of a facility that is close. Mayor Bashert thanked Ms. Kayumi for her presentation.

IX PUBLIC COMMENT (3 MINUTES)

1. Corrine Sikorski, 312 N River, stated that she was pleased to see the outcome of the proposed parking strategy. She encouraged longer enforcement in the evening and a Co-op representative on the advisory board. She approved of the City's involvement with recycling. She spoke in favor of the contract renewal with the Friends of the Freight house.
2. Celeste McClellan, 314 Maple, thanked Parking Manager Wessler for logical assessment of the parking strategy and appreciated the options brought forward in Depot Town.
3. Patty Harrington, 209 N Huron, stated that Ypsilanti Historical Society requested a charity gaming license for fundraising.
4. Liano Sharon, 2022 Washtenaw, as a member of the HRC, spoke in support of the chair term extension to have a smooth transition.
5. Susan Carter, 410 Maple, thanked Parking Manager Wessler for her hard work. She expressed concern about residential permit parking cost on Maple. She spoke against the extension of the HRC chair term extension.
6. Reza Rajabi, 110 N Summit, was disappointed that he has not received a response to his email and that there was no investigation into his claims. He was displeased with additional fees and taxes. He stated that he is suing the City for \$1 million.
7. Larry Yapp, 32-42 N Huron, stated that he is not getting equal justice under the law because the City is failing to enforce the ordinance. He spoke about his neighbor's work that obstructs access to his property.
8. Dave Strenski, 323 Oak, provided an update about Solar Ypsi and asked if he could write grants on behalf of the City for more solar projects.
9. Lee Azus, 319 Garland, spoke in favor of Amber Fellows. He provided a brief history of the Human Relations Commission.
10. Rob Halpern, EMU professor, was displeased with the decision to decommission Amber Fellows and spoke in favor of her term extension.
11. Amber Fellows, Ward 3, spoke in favor of the resolutions to make commission applications publicly available in a central location and her term extension. She was displeased with her removal from the commission. She advised Council to see out Toi Dennis for reappointment.
12. Charles Camren stated that he hopes to open a designated consumption establishment.
13. Srikar Chiravuri, Cream Inc, spoke about local events and GoFundMe community endowment fund that is open to requests for proposals until next year's gun buyback. He spoke about services offered and thanked the City for their involvement in the buyback.
14. Brian Geiringer, Ward 1, spoke in favor of the transparency appointment

resolution and the extension of Commissioner Fellows' term. He spoke about the work done by the HRC. He added that it was inappropriate that Toi Dennis was called a loose cannon.

15. Brian Foley, 425 Ainsworth, spoke in favor of Amber Fellows' extension and spoke in favor of her reappointment.
16. Liano Sharon, spoke in favor of marijuana ordinance, the transparency resolution, and the chair extension.
17. Amry, EMU, spoke in favor of Commissioner Fellow's term extension.

Mayor Pro-Tem Richardson thanked Mr. Azus for the history of the HRC.

X ORDINANCES FIRST READING

- a) *Ordinance No. 1348* - An Ordinance to amend Chapter 102 Traffic and Vehicles, Article III, Division 4 of the City Code.
1. Resolution No. 2019-227, determination
 2. Open Public Hearing
 3. Resolution No. 2019-228, close public hearing

Council Member Jennifer Symanns moved, seconded by Council Member Nicole Brown, to approve Resolution No. 2019-228.

RESULT:	CARRIED.
MOVER:	Council Member Jennifer Symanns
SECONDER:	Council Member Nicole Brown
AYES:	Beth Bashert, Jennifer Symanns, Steven Wilcoxon, Nicole Brown, Lois Richardson, Anthony Morgan, and Annie Somerville

Council Member Jennifer Symanns moved, seconded by Council Member Nicole Brown, to approve Resolution No. 2019-227.

RESULT:	CARRIED.
MOVER:	Council Member Jennifer Symanns
SECONDER:	Council Member Nicole Brown
AYES:	Beth Bashert, Jennifer Symanns, Steven Wilcoxon, Nicole Brown, Lois Richardson, Anthony Morgan, and Annie Somerville

- b) *Ordinance No. 1349* - An Ordinance to Amend Chapter 99, Small Cell Wireless Facilities of the City Code.
1. Resolution No. 2019-229, determination
 2. Open Public Hearing
 3. Resolution No. 2019-230, close public hearing

Council Member Anthony Morgan moved, seconded by Council Member Jennifer Symanns, to approve Resolution No. 2019-230.

RESULT:	CARRIED.
MOVER:	Council Member Anthony Morgan
SECONDER:	Council Member Jennifer Symanns
AYES:	Jennifer Symanns, Anthony Morgan, Beth Bashert, Steven Wilcoxon, Nicole Brown, Lois Richardson, and Annie Somerville

Council Member Anthony Morgan moved, seconded by Council Member Jennifer Symanns, to approve Resolution No. 2019-229.

City Attorney Barr explained the changes to the ordinance.

Mayor Pro-Tem Richardson asked how the city will profit economically from the towers. Mr. Barr stated there is a fee schedule. Council Member Morgan asked how many towers there will be in the City. DPS Director Akers stated it is unknown because the range of 5G towers are shorter than before. Mr. Morgan asked if the towers emit EMF radiation. Mr. Akers stated that it is a requirement that the applications include a certification that the emissions are at an allowable level by the FCC. Mr. Morgan expressed concern for the unintentional consequences to human health.

RESULT:	CARRIED.
MOVER:	Council Member Anthony Morgan
SECONDER:	Council Member Jennifer Symanns
AYES:	Beth Bashert, Jennifer Symanns, Steven Wilcoxon, Nicole Brown, Lois Richardson, and Annie Somerville
NAYS:	Anthony Morgan

XI CONSENT AGENDA

- a) Resolution No. 2019-231, approving the Consent Agenda.

Mayor Pro-Tem Lois Richardson moved, seconded by Council Member Steven Wilcoxon, to approve Resolution No. 2019-231.

RESULT:	CARRIED.
MOVER:	Mayor Pro-Tem Lois Richardson
SECONDER:	Council Member Steven Wilcoxon
AYES:	Beth Bashert, Jennifer Symanns, Steven Wilcoxon, Nicole Brown, Lois Richardson, Anthony Morgan, and Annie Somerville

- b) Resolution No. 2019-232, approving the minutes of September 24 and October 1, 2019.
- c) Resolution No. 2019-233, approving the appointment of Jack Gilbreath as Administrative Hearings Bureau Officer.
- d) ~~Resolution No. 2019-234, authorizing the City Clerk to cast a ballot in the 2019 Michigan Municipal League Board of Directors for the incumbent candidate.~~
(Moved off consent agenda.)
- e) Resolution No. 2019-235, approving a charitable gaming license for the Ypsilanti Historical Society.

XII RESOLUTIONS/MOTIONS/DISCUSSIONS

- a) Resolution No. 2019-236, approving Ordinance 1344 - An Ordinance to amend City Code by adding Chapter 8 - ADULT USE - RECREATIONAL MARIJUANA. (Second Reading). (updated 10/14/19)

Mayor Pro-Tem Richardson stated that she will be voting no due to the timing of this ordinance. Council Member Morgan commented that he hopes that it does what it is intended to do based on the language and that it reflects fairness and balance in the industry that does not currently exist. He stated that he will be voting no. Council Member Somerville stated that she is excited that the City

supports something that has been stigmatized and there should be safe places for consumption. She added that she will be voting yes.

Council Member Annie Somerville moved, seconded by Council Member Steven Wilcoxon, to approve Resolution No. 2019-236.

RESULT:	CARRIED.
MOVER:	Council Member Annie Somerville
SECONDER:	Council Member Steven Wilcoxon
AYES:	Beth Bashert, Jennifer Symanns, Steven Wilcoxon, Nicole Brown, and Annie Somerville
NAYS:	Lois Richardson and Anthony Morgan

- b) Resolution No. 2019-237, extending the term of Amber Fellows on the Human Relations Commission for 60 days.

Council Member Morgan stated that he is not for or against Amber Fellows, but her commitment and consistency is admirable. He added that the HRC is committed to do the hard work and thanked Ms. Fellows for her work. Mr. Wilcoxon stated that Ms. Fellows has been very active and has a lot of support in the community, but this is also a straightforward transfer of power and standard practice. He added that it is the responsibility of a chair to have things wrapped up by end of term. Mayor Pro-Tem Richardson stated that this was a joint resolution and was surprised Ms. Fellows was not reappointed due to the difficulty in getting committed people on commissions. Council Member Symanns thanked Ms. Fellows for her service.

Mayor Pro-Tem Lois Richardson moved, seconded by Council Member Anthony Morgan, to approve Resolution No. 2019-237.

RESULT:	FAILED.
MOVER:	Mayor Pro-Tem Lois Richardson
SECONDER:	Council Member Anthony Morgan
AYES:	Nicole Brown, Lois Richardson, Anthony Morgan, and Annie Somerville
NAYS:	Beth Bashert, Jennifer Symanns, and Steven Wilcoxon

- c) Resolution No. 2019-238, directing the City Clerk to forward copies of boards and commission applications to the commission applied for review.

Clerk Hellenga proposed that the resolution be amended to have the applications available on the website for one year, with the contact and address information redacted.

Council Member Brown, supported by Council Member Somerville moved to amend the resolution to reflect Clerk Hellenga's changes.

Mayor Bashert stated that she is excited about this resolution to increase transparency and hopes that it will excite more applicants.

Council Member Anthony Morgan moved, seconded by Council Member Annie Somerville, to approve Resolution No. 2019-238 as amended.

RESULT:	CARRIED.
MOVER:	Council Member Anthony Morgan
SECONDER:	Council Member Annie Somerville

AYES:	Beth Bashert, Steven Wilcoxon, Nicole Brown, Lois Richardson, Anthony Morgan, and Annie Somerville
NAYS:	Jennifer Symanns

- d) Resolution No. 2019-239, approving fees pursuant to the Small Wireless Communications Facilities Development Act 365 of 2018, and Chapter 99 of Ypsilanti City Code.

City Attorney Barr clarified the fee schedule. Mayor Pro-Tem Richardson asked for clarification about the fees. Mr. Barr replied that they are set by the state. Mr. Morgan asked if there is the potential for multiple carriers. Mr. Barr answered in the affirmative. Mr. Morgan asked if it was possible to determine the number of poles that would be added. Mr. Barr stated that the number of poles is part of the applications reviewed by DPS.

Council Member Steven Wilcoxon moved, seconded by Council Member Annie Somerville, to approve Resolution No. 2019-239.

RESULT:	CARRIED.
MOVER:	Council Member Steven Wilcoxon
SECONDER:	Council Member Annie Somerville
AYES:	Beth Bashert, Jennifer Symanns, Steven Wilcoxon, Nicole Brown, Lois Richardson, Anthony Morgan, and Annie Somerville

- e) Resolution No. 2019-240, approving the proposed timeline and workplan for Parking Strategy Implementation.

Council Member Brown stated that she is excited about the plan. Council Member Morgan asked about the timeline based on weather. Parking Manager Wessler stated that it may be adjusted based on weather.

Council Member Nicole Brown moved, seconded by Council Member Annie Somerville, to approve Resolution No. 2019-240.

RESULT:	CARRIED.
MOVER:	Council Member Nicole Brown
SECONDER:	Council Member Annie Somerville
AYES:	Beth Bashert, Jennifer Symanns, Steven Wilcoxon, Nicole Brown, Lois Richardson, Anthony Morgan, and Annie Somerville

- f) Resolution No. 2019-241, awarding a Youth Mini-Grant to Educate Youth.

Council Member Wilcoxon recused himself because his wife is the Executive Director. The other Council Members expressed their support and excitement for the resolution.

Council Member Nicole Brown moved, seconded by Council Member Annie Somerville, to approve Resolution No. 2019-241.

RESULT:	CARRIED.
MOVER:	Council Member Nicole Brown
SECONDER:	Council Member Annie Somerville
AYES:	Beth Bashert, Jennifer Symanns, Nicole Brown, Lois Richardson, Anthony Morgan, and Annie Somerville
ABSTAINED:	Steven Wilcoxon

- g) Resolution No. 2019-242, authorizing city administration to engage the services of OHM Advisors and Bergman, Architects, Engineers, and Planners to prepare and submit an application for CRISI Grant funding on behalf of the city. (added 10/14/19)

City Manager McMullan provided a brief update about the project. Kent Early, OHM, provided some background about the application and process. Council Member Morgan asked if they will have a better chance to get funding if they increase the amount they put in. Mr. Early responded that the more money a community is able to put in, the better chance they will have to get the grant. Mayor Pro-Tem Richardson asked why the amount was lowered. City Manager McMullan responded that she changed it to get in the range, but Council can increase it. Mr. Early added that they are looking for additional sources of funding. Mayor Bashert thanked OHM, City Manager McMullan, and Economic Development Director Meyers for all their work.

Council Member Jennifer Symanns moved, seconded by Council Member Nicole Brown, to approve Resolution No. 2019-242.

RESULT:	CARRIED.
MOVER:	Council Member Jennifer Symanns
SECONDER:	Council Member Nicole Brown
AYES:	Jennifer Symanns, Nicole Brown, Beth Bashert, Steven Wilcoxon, Lois Richardson, Anthony Morgan, and Annie Somerville

- h) Resolution No. 2019-234, authorizing the City Clerk to cast a ballot in the 2019 Michigan Municipal League Board of Directors for the incumbent candidate. **(moved from consent agenda).**

Mayor Pro-Tem Lois Richardson moved, seconded by Council Member Anthony Morgan, THAT the City Clerk is authorized to cast a ballot on behalf of Ypsilanti City Council in the 2019 Michigan Municipal Risk Management Board of Directors election for the incumbent candidate, Jean Stegeman, seeking reelection.

RESULT:	CARRIED.
MOVER:	Mayor Pro-Tem Lois Richardson
SECONDER:	Council Member Anthony Morgan
AYES:	Beth Bashert, Jennifer Symanns, Steven Wilcoxon, Nicole Brown, Lois Richardson, Anthony Morgan, and Annie Somerville

XIII LIAISON REPORTS

1. SEMCOG Update - None
2. Washtenaw Area Transportation Study - None
3. Urban County - Making sure CDBG funds can be used for the train station
4. Ypsilanti Downtown Development Authority - had a great retreat
5. Friends of Rutherford Pool - contract for renovation of pool house should be on the November 5th meeting.
6. Housing Equity Leadership Team - None

XIV COUNCIL PROPOSED BUSINESS

- a) Somerville

1. Movie night on October 24
2. Asked about Mr. Rajabi. City Manager McMullan stated that they offered to waive the fees, but the building department stated that it was a safety issue.
3. Asked about the situation with Mr. Yapp. Mr. Barr provided a history of the property and determined that it was a neighbor dispute, not a city issue. Staff is continuing to look into ownership and easements.

b) Wilcoxon

1. Constituent concerned for her safety for her property that opens to the alley in the winter. Mr. Barr has stated that the City does not have an obligation to keep an alley in good repair.

c) Richardson

1. The pothole at the intersection at 2nd and Michigan is getting deeper and dangerous. She asked DPS Director Akers about the condition of 2nd Ave.
2. Fundraiser for Abaco Island is at the fire station.

d) Morgan

1. Thanked DPS Director Akers and City Manager McMullan for talking with a constituent upset about a tree removal.
2. Constituents in Ward 3 mentioned that leaves are gathering up.
3. EMU homecoming was last weekend.

e) Brown

1. Black women in politics luncheon at WCC was well-attended, well represented by the City, and a wonderful event.

XV COMMUNICATIONS FROM THE MAYOR

1. Asked about the update for recycling truck.
2. Congratulated Council Member Brown for winning an EMU award
3. Met with the Ahmadiyya Muslim community and was educated about their community.
4. Mentioned Kurtis National Conference at EMU on November 2nd
5. Thanked everyone for coming to the unity event at EMU.
6. Town Hall about the Arts Commission is upcoming. Applications will open at the end of the month.

XVI COMMUNICATIONS FROM THE CITY MANAGER

1. Attended MML and MERS conference, and will attend ICMA conference next week.
2. Pedestrian Bridge Town Hall by Representative Peterson will be on October 24th at the Senior Center at 7:00 p.m.

3. Meeting with YCS to support enrollment and homelessness. They are also revisiting the truancy ordinance to include restorative justice pieces.
4. Recycling drop-off event from 9-1 on Saturday.
5. Roads and recycling work session is upcoming.
6. Water Street work session is November 12th at 7:00 p.m.

XVII COMMUNICATIONS

NOMINATIONS

- a) **Police and Fire Pension Board**
Andrew Hopper
1302 Whittier Road
Ypsilanti, MI 48197
- b) **Human Relations Commission**
Pamela Escalante Gonzalez
108 Washtenaw Ave
Ypsilanti, MI 48197
- c) Potential MML Parliamentary Procedures Training Dates; November 11, 13, 14, 20, & 21

Thursday, November 14th from 6 p.m. – 9 p.m.

XVIII PUBLIC COMMENT (3 MINUTES)

1. Larry Yapp, stated that Mr. Barr and City officials are incorrect. He added that the easement is critical and is displeased because the city has wasted his time.

XIX REMARKS FROM THE MAYOR

XX ADJOURNMENT

- a) Resolution No. 2019-243, adjourning the City Council Meeting.

The meeting adjourned at 9:33 p.m.

- b) Please click [here](#) to access the City Council Contact Form. This form can be used to submit any comments/concerns you might have about this agenda.



Resolution No. 2019-250
November 5, 2019

RESOLVED BY THE COUNCIL OF THE CITY OF YPSILANTI:

THAT, the following individuals be appointed to the City of Ypsilanti Boards and Commissions as indicated below:

<u>NAME</u>	<u>BOARD</u>	<u>EXPIRATION</u>
Andrew Hopper 1302 Whittier Rd Ypsilanti, MI 48197	Fire & Police Pension Board	11/1/2023
Pamela Escalante Gonzales 108 Washtenaw Ave Ypsilanti, MI 48197	Human Relations Commission	7/1/2022

OFFERED BY: _____

SECONDED BY: _____

YES: NO: ABSENT: VOTE:

This resolution is adopted by the Council of the City of Ypsilanti and approved by the Mayor this 5 day of November 2019

#Resolution No. 2019-250



Resolution No. 2019-251
November 5, 2019

RESOLVED BY THE COUNCIL OF THE CITY OF YPSILANTI:

THAT THE YPSILANTI CITY COUNCIL adopt the attached ordinance entitled "Permit Parking in the Central Business District" on Second and Final Reading

OFFERED BY: _____

SECONDED BY: _____

YES: NO: ABSENT: VOTE:

This resolution is adopted by the Council of the City of Ypsilanti and approved by the Mayor this 5 day of November 2019

#Resolution No. 2019-251



**CITY OF YPSILANTI
NOTICE OF ADOPTED ORDINANCE
ORDINANCE NO. 1348**

An Ordinance Entitled "Permit Parking in the Central Business District"

THE CITY OF YPSILANTI ORDAINS:

That CHAPTER 102, ARTICLE III, DIVISION 4 OF THE CODE OF ORDINANCES BE AMENDED TO READ AS FOLLOWS:

DIVISION 4. – Permit Parking in the Central Business District

Sec. 102-131. - Purpose of division.

The purpose of the permit parking program is to provide an area for parking passenger vehicles belonging to residents of and those working in the Central Business Districts (CBDs), defined as the areas within the Downtown Development Authority's Downtown, Depot Town, and West Cross districts. For the purposes of this Division, the Depot Town district shall also include 229 through 307 N River, the 400 block of N River, and all properties addressed to Photo Street.

Sec. 102-132. - Designation of parking areas.

CBD permit areas will be designated by City Council by Resolution. Residents and employees of the Downtown will be eligible to park in Downtown areas; residents and employees of West Cross will be eligible to park in West Cross areas; residents and employees of Depot Town will be eligible to park in Depot Town areas.

Sec. 102-133. - Eligibility.

- (a) Residential permits. Residents of residential units located above ground floor commercial establishments in the CBD will be eligible to purchase a parking permit if they meet the qualifications stated in section 102-134. Residents of other structures in the CBD may be eligible on a case-by-case basis, as determined by the Treasurer.
- (b) Employee permits. Employees of businesses in the CBD will be eligible to purchase a parking permit if they meet the qualifications stated in section 102-134.

Sec. 102-134. - Permits.

(a) Initial Application.

- (1) Residential Permits. Applications shall be made to the Treasurer in person and in their own name. Such application shall establish the following:
 - (i) The applicant must be a licensed driver.
 - (ii) Applicants must show proof of residency by means of utility bills, lease or a valid state driver's license.
 - (iii) The building in which the resident resides must have a business use on the ground floor which has direct access to the street on which the building faces.
 - (iv) The residence of the applicant must be a structure for which parking for tenants or residents is not available on the building site.
 - (v) The resident portion of the building in which the applicant resides must have a current certificate of compliance as required in section 18-146.

#Ordinance No. 1348-Permit Parking in the Central Business District

- (vi) Proof must be shown that the vehicle to be registered belongs to the applicant, spouse, or other immediate family member of the resident.
- (vii) The applicant's vehicle must be currently licensed and be free of all outstanding or unpaid parking or moving violations prior to receiving a permit.
- (2) **Employee Permits.** Applications shall be made to the Treasurer in person and in their own name. Such application shall establish the following:
 - (i) The applicant must be a licensed driver.
 - (ii) The applicant must show proof of employment by means of a pay stub, business card, or letter on letterhead confirming their employment.
 - (iii) The business must have a current Business License.
 - (iv) Proof must be shown that the vehicle to be registered belongs to the applicant, spouse, or other immediate family member of the resident.
 - (v) The applicant's vehicle must be currently licensed and be free of all outstanding or unpaid parking or moving violations prior to receiving a permit.
- (b) *Renewal application.* Renewal applications may be made in person, by mail, or electronically, in the manner prescribed by the Treasurer, and must contain all of the information required from an initial application. The treasurer may make a determination upon their discretion that any application must be made in person.
- (c) *Duration.* Permits shall be available three times annually or on an annual basis. One-third-year permits shall be valid from January 1 to April 30; May 1 to August 31; and September 1 to December 31. Annual permits shall be valid from September 1 to August 31 of the following year
- (d) *Information required.* Each application or reapplication for a parking permit shall contain information sufficient to identify the applicant, resident address, email address, and the license number of the motor vehicle for which application is being made, as well as additional information which may be deemed relevant by the treasurer.
- (e) *Fees.* Annual fees for parking permits shall be as set by resolution of the city council beginning September 1. One-third-year fees shall be as set by resolution of the city council beginning January 1, May 1 and September 1. Permits purchased in succeeding months shall be pro-rated on a monthly basis. Temporary visitor permits shall be available upon application for specific times and dates with the police department at no additional cost.
- (f) *Display.* Permits shall be prominently displayed as indicated on the application. The permit becomes null and void if found on a vehicle other than the vehicle listed on the application.

Sec. 102-135. - Penalty for violation of division.

- (a) It shall be a violation of the application for a person holding a valid parking permit to use or display the permit on a motor vehicle other than the one for which the permit is issued. Violation of this subsection shall result in a fine set by City Council and shall result in revocation of the residential parking permit.
- (b) It shall be unlawful for any person to copy, reproduce or otherwise bring into existence a facsimile or counterfeit parking permit. Any person convicted of violating this subsection shall be guilty of a misdemeanor, and upon conviction shall be punished as provided in section 1-15.

Secs. 102-136—102-160. - Reserved.

MADE, PASSED, AND ADOPTED BY THE YPSILANTI CITY COUNCIL THIS _____ DAY OF _____, 2019

#Ordinance No. 1348-Permit Parking in the Central Business District

Andrew Hellenga, City Clerk

Attest

I do hereby confirm that the above Ordinance No. _____ was published in the Washtenaw
Legal News on the _____ day of _____, 2019.

Andrew Hellenga, City Clerk

CERTIFICATE OF ADOPTING

I hereby certify that the foregoing is a true copy of the Ordinance passed at the regular meeting
of the City Council held on the _____ day of _____, 2019.

Andrew Hellenga, City Clerk

Notice Published: _____

First Reading: _____

Second Reading: _____

Published: _____

Effective Date: _____

#Ordinance No. 1348-Permit Parking in the Central Business District



REQUEST FOR LEGISLATION

TO: Mayor and City Council
FROM: Rheagan Basabica
DATE: November 5, 2019
SUBJECT: Winter 2019 Special Assessment

DESCRIPTION:
Winter 2019 Special Assessment

SUMMARY:

Bi-annually, all bills that remained unpaid for at least 30 days after the billing date, are to be added to the July or December tax roll as special assessments. These unpaid bills include board ups, trash removal, weed removal, rental inspections, dangerous building escrow, dangerous building inspection, graffiti removal snow removal, drains, water and other miscellaneous bills.

Once these items are added to the tax roll, they become a lien on the property in accordance with the City Charter, Special Assessments, and Section 8.01 Article VIII.

Further, at tax settlement, in March the County pays the City for any unpaid items. Washtenaw County Treasurer's Office serves as the collection agent for the City.

Attachments: Summary and detail list of winter 2019 Special Assessments

Recommended Action: City Council authorizes the City Treasurer to levy and assess the Winter 2019 Special Assessments.

CITY MANAGER APPROVAL: _____ COUNCIL AGENDA DATE: _____

CITY MANAGER COMMENTS: _____

FISCAL SERVICES DIRECTOR APPROVAL: _____



Resolution No. 2019-252
November 5, 2019

RESOLVED BY THE COUNCIL OF THE CITY OF YPSILANTI:

That, the City Treasurer be authorized to levy and assess on the December 2019 tax roll the attached listing of unpaid bills totaling \$39,281.03.

OFFERED BY: _____

SECONDED BY: _____

YES: NO: ABSENT: VOTE:

This resolution is adopted by the Council of the City of Ypsilanti and approved by the Mayor this 5 day of November 2019

#Resolution No. 2019-252



November 05, 2019

Frances McMullan
City Manager
1 South Huron
Ypsilanti, MI 48197

RE: Special Assessments

In accordance with the City Charter Chapter, Special Assessments, Chapter 8.01. Article VIII. I hereby certify that the attached is a true copy of all installments on Special Assessment Rolls, which are due and have remained unpaid as of October 31, 2019.

The City Council, at their next meeting, can authorize me to levy these unpaid bills on the December 2019 Tax Roll.

Sincerely,

Rheagan Basabica, CPA, CGFM
Finance Director/Treasurer

**CITY OF YPSILANTI
2019 SPECIAL ASSESSMENT**

A. SUMMARY

CODE	SPECIAL ASSESSMENT DESCRIPTION	AMOUNT
100	Board Up	1,191.53
109	Trash	1,385.00
112	Rental Inspection	19,927.20
116	Graffiti Removal	425.00
124	Dangerous-Escrow	8,100.00
125	Dangerous-Insp.	4,500.00
128	Snow Removal	3,400.00
8260	Recreation Park	352.30
Grand Total		39,281.03

B. DETAIL

PARCEL	ADDRESS	SPECIAL ASSESSMENT CODE	SPECIAL ASSESSMENT DESCRIPTION	AMOUNT
11-11-09-405-015	1275 LIBERTY CT	100	Board Up	175.00
11-11-09-405-015	1275 LIBERTY CT	100	Board Up	747.38
11-11-39-440-021	856 HARRIET ST	100	Board Up	269.15
11-11-05-382-012	1420 WASHTENAW AVE	109	Trash	150.00
11-11-39-130-033	312 W AINSWORTH BLVD	109	Trash	300.00
11-11-39-130-033	312 W AINSWORTH BLVD	109	Trash	130.00
11-11-39-427-010	8765 SPINAKER WAY APT C1	109	Trash	130.00
11-11-40-183-003	3399 DALEVIEW DR	109	Trash	325.00
11-11-40-430-008	4536 CHERRY BLOSSOM DR	109	Trash	350.00
11-11-39-145-029	601 ARMSTRONG	112	Rental Inspection	133.00
11-11-37-153-027	148 ROSE BRIER DR	112	Rental Inspection	155.00
11-11-39-178-009	2474 HICKMAN RD	112	Rental Inspection	155.00
11-11-37-131-020	41089 S. I-94 SERVICE DRIVE	112	Rental Inspection	166.00
11-11-40-181-004	5593 RED BUD CT	112	Rental Inspection	166.00
11-11-40-183-007	529 W CROSS #6	112	Rental Inspection	166.00
11-11-40-482-006	17 E CROSS	112	Rental Inspection	166.00
11-11-06-450-008	7253 FOREST WAY CT	112	Rental Inspection	185.00
11-11-39-431-011	23944 EUREKA RD STE. 105	112	Rental Inspection	185.00
11-11-39-440-024	49311 NORTH HAMPTON CT	112	Rental Inspection	185.00
11-11-40-463-022	920 GRANT ST	112	Rental Inspection	185.00
11-11-39-403-002	1956 ANDOVER DR	112	Rental Inspection	200.00
11-11-40-111-003	410 FLORENCE ST	112	Rental Inspection	200.00
11-11-40-135-003	PO BOX 799	112	Rental Inspection	200.00
11-11-37-155-004	835 JEFFERSON ST	112	Rental Inspection	202.00
11-11-39-414-005	601 ARMSTRONG	112	Rental Inspection	202.00
11-11-39-465-029	1800 W AUSTIN	112	Rental Inspection	202.00
11-11-10-355-033	4123 LITTLE CROWN LANE	112	Rental Inspection	220.00
11-11-37-131-013	1766 EILEEN	112	Rental Inspection	220.00
11-11-39-175-016	450 SECOND	112	Rental Inspection	220.00
11-11-39-440-006	839 FREDERICK ST	112	Rental Inspection	220.00

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PARCEL	ADDRESS	SPECIAL ASSESSMENT CODE	SPECIAL ASSESSMENT DESCRIPTION	AMOUNT
11-11-05-466-004	1021 WASHTENAW	112	Rental Inspection	232.00
11-11-37-127-003	534 MONROE ST	112	Rental Inspection	232.00
11-11-40-108-005	17 E. CROSS ST	112	Rental Inspection	232.00
11-11-40-182-009	811 MOUNT PLEASANT AVE	112	Rental Inspection	232.00
11-11-40-482-015	23 N WASHINGTON	112	Rental Inspection	244.00
11-11-39-174-027	1501 GREGORY	112	Rental Inspection	268.00
11-11-06-409-003	1820 WASHTENAW AVE	112	Rental Inspection	270.00
11-11-37-151-022	464 JEFFERSON STREET	112	Rental Inspection	286.00
11-11-10-335-017	749 MILDRED ST	112	Rental Inspection	304.00
11-11-39-168-023	122 HAWKINS	112	Rental Inspection	304.00
11-11-39-481-010	601 ARMSTRONG	112	Rental Inspection	304.00
11-11-39-484-001	601 ARMSTRONG	112	Rental Inspection	304.00
11-11-40-111-016	3050 BARCLAY WAY	112	Rental Inspection	304.00
11-11-39-102-006	1815 IVYWOOD	112	Rental Inspection	310.00
11-11-04-426-003	1501 GREGORY ST	112	Rental Inspection	322.00
11-11-37-100-006	5930 COMMERCE DR	112	Rental Inspection	322.00
11-11-37-155-005	843 JEFFERSON ST	112	Rental Inspection	322.00
11-11-40-206-004	1213 WESTMOORLAND RD	112	Rental Inspection	322.00
11-11-05-465-003	1456 HARROW AVE	112	Rental Inspection	325.00
11-11-09-192-012	26 S GROVE	112	Rental Inspection	325.00
11-11-04-498-006	23 N WASHINGTON	112	Rental Inspection	331.00
11-11-39-180-002	PO BOX 980469	112	Rental Inspection	340.00
11-11-39-125-011	2394 PETERS RD	112	Rental Inspection	370.00
11-11-37-152-006	2940 LAKEHURST CT	112	Rental Inspection	389.20
11-11-10-345-008	12290 RAWSONVILLE RD	112	Rental Inspection	502.00
11-11-39-181-012	PO BOX 7364	112	Rental Inspection	562.00
11-11-40-108-008	206 N HURON ST	112	Rental Inspection	562.00
11-11-39-180-001	PO BOX 980469	112	Rental Inspection	625.00
11-11-40-430-014	105 E MCKAY	112	Rental Inspection	628.00
11-11-04-340-001	7080 JACKSON RD	112	Rental Inspection	1,041.00
11-11-39-181-010	PO BOX 980469	112	Rental Inspection	1,260.00
11-11-09-405-015	1275 LIBERTY CT	112	Rental Inspection	1,630.00
11-11-40-416-012	517 WASHTENAW AVE	112	Rental Inspection	1,990.00
11-11-10-360-020	525 TYLER RD	116	Graffiti Removal	425.00
11-11-04-360-001	265 BROOKSIDE DR	124	Dangerous-Escrow	1,500.00
11-11-09-106-009	PO BOX 970683	124	Dangerous-Escrow	1,200.00
11-11-09-496-010	31 SE 5TH ST APT. 2905	124	Dangerous-Escrow	1,500.00
11-11-37-130-002	409 MONROE	124	Dangerous-Escrow	1,200.00
11-11-40-480-010	5183 CHRISTINE DR	124	Dangerous-Escrow	1,200.00
11-11-40-482-005	341 CORRIE RD	124	Dangerous-Escrow	1,500.00
11-11-04-360-001	265 BROOKSIDE DR	125	Dangerous-Insp.	525.00
11-11-09-106-009	PO BOX 970683	125	Dangerous-Insp.	450.00
11-11-09-496-010	31 SE 5TH ST APT. 2905	125	Dangerous-Insp.	525.00
11-11-37-130-002	409 MONROE	125	Dangerous-Insp.	450.00
11-11-39-411-005	8233 HUMMINGBIRD DR	125	Dangerous-Insp.	525.00
11-11-39-440-019	2232 SOUTH MAIN #202	125	Dangerous-Insp.	525.00
11-11-40-163-024	455 E EISENHOWER PKWY SUITE 7	125	Dangerous-Insp.	525.00
11-11-40-480-010	5183 CHRISTINE DR	125	Dangerous-Insp.	450.00
11-11-40-482-005	341 CORRIE RD	125	Dangerous-Insp.	525.00

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PARCEL	ADDRESS	SPECIAL ASSESSMENT CODE	SPECIAL ASSESSMENT DESCRIPTION	AMOUNT
11-11-37-126-023	442 MADISON	128	Snow Removal	100.00
11-11-37-127-003	534 MONROE ST	128	Snow Removal	100.00
11-11-37-128-005	866 MONROE	128	Snow Removal	100.00
11-11-37-130-008	352 WORDEN ST	128	Snow Removal	100.00
11-11-37-130-013	986 MADISON ST	128	Snow Removal	100.00
11-11-37-130-016	5277 JACKSON RD #B	128	Snow Removal	100.00
11-11-37-131-010	PO BOX 711	128	Snow Removal	100.00
11-11-37-131-018	3899 PLATT RD	128	Snow Removal	100.00
11-11-37-151-006	8008 PEBBLESTONE DR	128	Snow Removal	100.00
11-11-37-151-007	525 MADISON ST	128	Snow Removal	100.00
11-11-37-151-022	464 JEFFERSON STREET	128	Snow Removal	100.00
11-11-37-152-005	843 MADISON	128	Snow Removal	100.00
11-11-37-153-002	7439 WARWICK DR	128	Snow Removal	100.00
11-11-37-153-010	975 MADISON ST	128	Snow Removal	100.00
11-11-37-153-017	960 JEFFERSON	128	Snow Removal	100.00
11-11-37-154-001	110-122 BRIGHTON	128	Snow Removal	100.00
11-11-37-154-013	979 JEFFERSON ST	128	Snow Removal	100.00
11-11-37-154-016	170 APRILL DR SUITE A	128	Snow Removal	100.00
11-11-37-154-028	904 WATLING	128	Snow Removal	100.00
11-11-37-155-003	827 JEFFERSON ST	128	Snow Removal	100.00
11-11-37-155-008	585 FIRST	128	Snow Removal	100.00
11-11-37-156-003	7926 WINANS LAKE RD	128	Snow Removal	100.00
11-11-37-204-001	1275 LIBERTY CT	128	Snow Removal	100.00
11-11-37-204-011	7232 PAYNE AVE	128	Snow Removal	100.00
11-11-39-130-033	312 W AINSWORTH BLVD	128	Snow Removal	100.00
11-11-39-160-027	396 FIRST AVE	128	Snow Removal	100.00
11-11-39-160-038	312 FIRST AVE	128	Snow Removal	100.00
11-11-39-175-003	507 FERRIS ST	128	Snow Removal	100.00
11-11-39-175-024	302 E AINSWORTH	128	Snow Removal	100.00
11-11-39-302-010	542 HART PLACE	128	Snow Removal	100.00
11-11-39-426-037	12650 INGENUITY DR	128	Snow Removal	100.00
11-11-39-440-018	5179 HICKORY POINTE BLVD	128	Snow Removal	100.00
11-11-39-440-019	2232 SOUTH MAIN #202	128	Snow Removal	100.00
11-11-39-440-020	846 HARRIET ST	128	Snow Removal	100.00
11-11-39-145-018	935 PLEASANT DRIVE	8260	Recreation Park	28.50
11-11-39-145-019	933 PLEASANT DR	8260	Recreation Park	14.60
11-11-39-145-020	931 PLEASANT DR	8260	Recreation Park	19.90
11-11-39-145-043	12 W WARNER AVE	8260	Recreation Park	24.50
11-11-39-145-044	18 W WARNER AVE	8260	Recreation Park	24.50
11-11-39-145-045	2419 FAYE DR	8260	Recreation Park	14.60
11-11-39-145-046	2419 FAYE DR	8260	Recreation Park	14.60
11-11-39-145-047	2419 FAYE DR	8260	Recreation Park	14.60
11-11-39-145-048	2419 FAYE DR	8260	Recreation Park	14.60
11-11-39-214-005	205 E AINSWORTH	8260	Recreation Park	9.30
11-11-39-214-006	205 E AINSWORTH	8260	Recreation Park	9.30
11-11-40-312-013	30 S MANSFIELD ST	8260	Recreation Park	14.00
11-11-40-357-004	PO BOX 980349	8260	Recreation Park	21.90
11-11-40-357-005	31 WARNER	8260	Recreation Park	20.60
11-11-40-357-006	45 W. WARNER AVE	8260	Recreation Park	21.20

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PARCEL	ADDRESS	SPCIAL ASSESSMENT CODE	SPECIAL ASSESSMENT DESCRIPTION	AMOUNT
11-11-40-357-007	195 W WARNER	8260	Recreation Park	22.90
11-11-40-357-009	105 WARNER	8260	Recreation Park	15.60
11-11-40-357-010	135 W WARNER AVE	8260	Recreation Park	15.60
11-11-40-357-011	165 W WARNER	8260	Recreation Park	15.90
11-11-40-357-012	195 WARNER	8260	Recreation Park	15.60
TOTAL				39,281.03



REQUEST FOR LEGISLATION

TO: Mayor and City Council
FROM: Andrew Hellenga
DATE: November 5, 2019
SUBJECT: Fireworks Display Permit Application

DESCRIPTION:
Fireworks Display Permit Application

SUMMARY:

A request for a Fireworks Display Permit was received from Heidi DeGrande of Strictly FX. Strictly FX would like to have a fireworks display at EMU Convocation Center, 799 N. Hewitt Road, for a concert on November 16th, 2019.

Attached is proof of public liability insurance for the proposed display with coverage set at \$10,000,000 and with the City being added as an additional insured.

The City Clerk's office recommends approval of the application subject to inspection and approval of the Ypsilanti Fire Department.

RECOMMENDED ACTION: Approval

CITY MANAGER APPROVAL: _____ COUNCIL AGENDA DATE: _____

CITY MANAGER COMMENTS: _____

FISCAL SERVICES DIRECTOR APPROVAL: _____



Resolution No. 2019-253
November 5, 2019

RESOLVED BY THE COUNCIL OF THE CITY OF YPSILANTI:

WHEREAS, Heidi DeGrnade, Strictly FX, has applied for a fireworks permit to allow a fireworks display for a concert at Eastern Michigan University's Convocation Center. The fireworks are scheduled on November 16, 2019; and

WHEREAS, Strictly FX will operate the display and has obtained public liability insurance in the amount of \$10,000,000 and has added the City of Ypsilanti as an additional insured.

NOW THEREFORE BE IT RESOLVED THAT the Ypsilanti City Council approves a Fireworks Display Permit November 16, 2019, subject to the inspection and approval of the Ypsilanti Fire Department.

OFFERED BY: _____

SECONDED BY: _____

YES: NO: ABSENT: VOTE:

This resolution is adopted by the Council of the City of Ypsilanti and approved by the Mayor this 5 day of November 2019

#Resolution No. 2019-253



strictly

FX

A DAY TO REMEMBER

SPECIAL EFFECTS 2019

CHICAGO

1850 S Elmhurst Rd
Mt Prospect, IL 60056
630.694.2394

NASHVILLE HEADQUARTERS

120 Airpark Center East
Nashville, TN 37217
629.702.3639

HOLLYWOOD

756 S. Glasgow Ave
Inglewood, CA 90301
323.848.4006

© 2019 Strictly FX, I.I.C.

PYROTECHNICS FLAMES CRYOGENICS LASERS CONFETTI MISCHIEF

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Nashville: 120 Airpark Center East Nashville, TN 37217
Chicago: 1850 S Elmhurst Road Mount Prospect, IL 60056
strictlyfx.com P: (630)694-2394 F: (630)694-2395

ABOUT US

Strictly FX is a live special effects company founded in 1996 by industry veterans Mark Grega and Ted Maccabee. The company was started on the principles of utmost client satisfaction and the creation of the most entertaining shows possible. Utilizing a full team of special effects designers and an in-house art department, they've captured numerous industry awards, including the Parnelli Pyro Company of the Year in 2007, 2009, 2010, 2011, 2012, 2014, 2015, 2016, 2017, and 2018.

With over 500 live shows performed a year, if you've been to a concert or caught a sporting event, there's a good chance you've seen some of our exciting work!



2019RIDER

A DAY TO REMEMBER

To Whom It May Concern:

Following is a list of consumables we require to be supplied per show please.

MISC: (PER SHOW) "Please no restricter valves on any CO₂ tanks"

- [12] 50 lbs SIPHON CO₂ Tanks
- [2] Water pressurized fire extinguishers
- [2] CO₂ Fire Extinguishers
- [1] Lockable Set-Up Room for preparing and loading product

If you have any questions, please email Heidi@strictlyfx.com or call (630) 694-2394 and ask to speak to Heidi DeGrande.

SHOW INFORMATION

REHEARSALS

DATE OF REHEARSALS	VENUE	CITY, STATE
10/07 - 10/10/2019		Van Nuys, CA

SHOWS

DATE OF SHOW	VENUE	CITY, STATE
10/12/2019	NOS Events Center	San Bernardino, CA
10/13/2019	Aftershock Festival	Sacramento, CA
10/15/2019	Century Link Arena	Boise, ID
10/16/2019	USANA Amphitheatre	Salt Lake City, UT
10/17/2019	The Fillmore Auditorium	Denver, CO
10/19/2019	Lone Star Pavilion	Lubbock, TX
10/21/2019	Toyota Music Pavilion	Irving, TX
10/22/2019	NRG Arena	Houston, TX
10/23/2019	Concrete Street Amphitheater	Corpus Christi, TX
10/25/2019	Family Arena	St. Charles, MO
10/26/2019	Credit Union 1 Arena	Chicago, IL
10/27/2019	The Armory	Minneapolis, MN
10/29/2019	Scheels Arena	Fargo, ND
10/30/2019	Wells Fargo Arena	Des Moines, IA
10/31/2019	Silverstein Eye Center	Independence, MO
11/02/2019	Petersen Events Center	Pittsburgh, PA
11/03/2019	EagleBank Arena	Fairfax, VA
11/05/2019	Place Bell	Laval, QUE
11/07/2019	Santander Arena	Reading, PA
11/08/2019	Mohegan Sun	Uncasville, CT
11/09/2019	Glens Falls Civic Center	Glens Falls, NY
11/10/2019	Cure Insurance Arena	Trenton, NJ
11/12/2019	On Center	Syracuse, NY
11/14/2019	Allen County Expo Hall	Fort Wayne, IN
11/15/2019	Wolstein Center at CSU	Cleveland, OH
11/16/2019	EMU Concovation Center	Ypsilanti, MI

SHOWS

DATE OF SHOW	VENUE	CITY, STATE
11/17/2019	Big Sandy Superstore Arena	Huntington, WV
11/19/2019	Terminal 5	New York, NY
11/21/2019	Infinite Energy Arena	Duluth, GA
11/22/2019	Municipal Auditorium	Nashville, TN
11/23/2019	Crown Coliseum	Fayetteville, NC
11/25/2019	House of Blues	Orlando, FL
11/26/2019	House of Blues	Orlando, FL
11/27/2019	House of Blues	Orlando, FL
11/29/2019	House of Blues	Orlando, FL
11/30/2019	House of Blues	Orlando, FL
12/01/2019	House of Blues	Orlando, FL

EFFECTDESCRIPTION

Our highly experienced crew members **John Lyons and Bri Osorio** will be on site for the **A Day To Remember** 2019 Tour.

Strictly FX will be providing various flame, pyro, and cryogenics for this event.

FLAMES

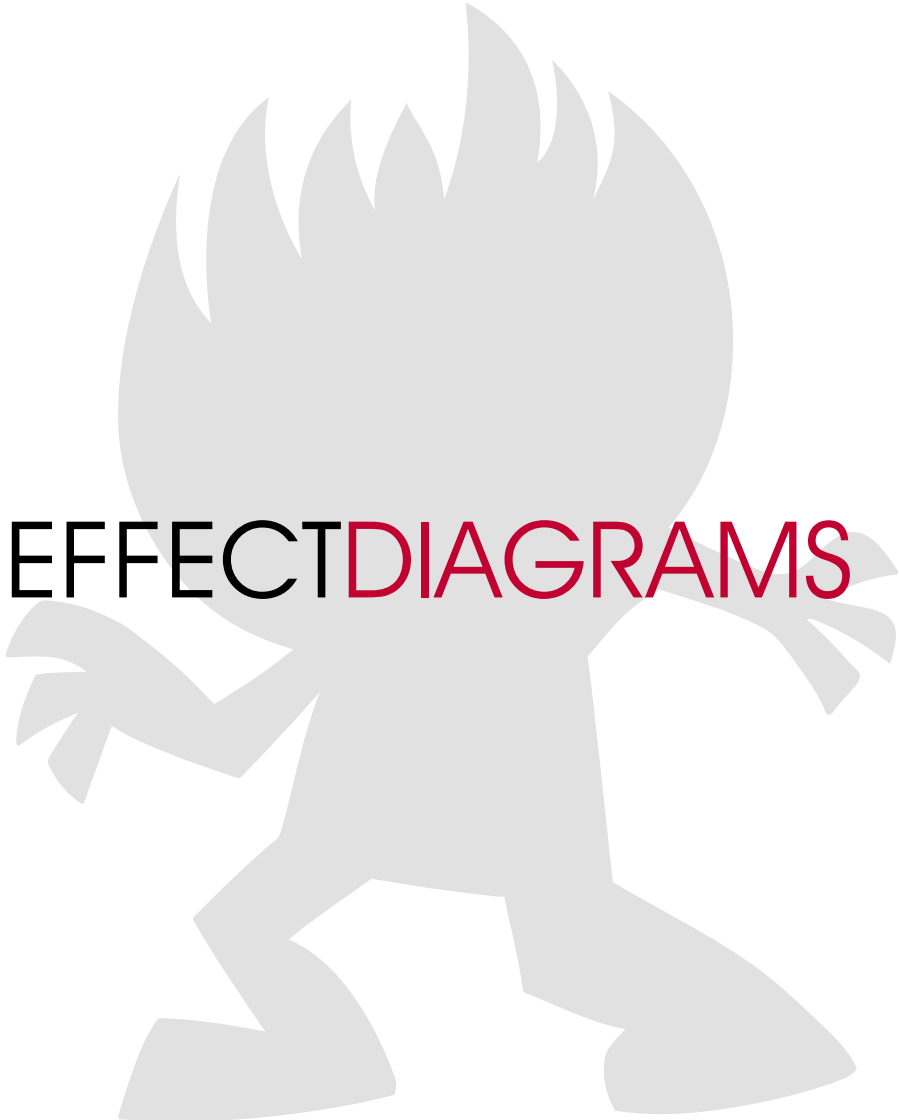
AMOUNT	DESCRIPTION	FX PLACEMENT	DISTRIBUTOR
8	G-FLAME UNITS	SEE DIAGRAM	STRICTLY FX, LLC.
16	FLAME CANNISTERS	-	STRICTLY FX, LLC.

CRYOGENICS

AMOUNT	DESCRIPTION	FX PLACEMENT	DISTRIBUTOR
10	CO2 JETS	SEE DIAGRAM	STRICTLY FX, LLC.

PYROTECHNICS

AMOUNT	DESCRIPTION	FX PLACEMENT	DISTRIBUTOR
12	#10 SILVER AIRBURSTS	SEE DIAGRAM	NEXT FX



EFFECTDIAGRAMS

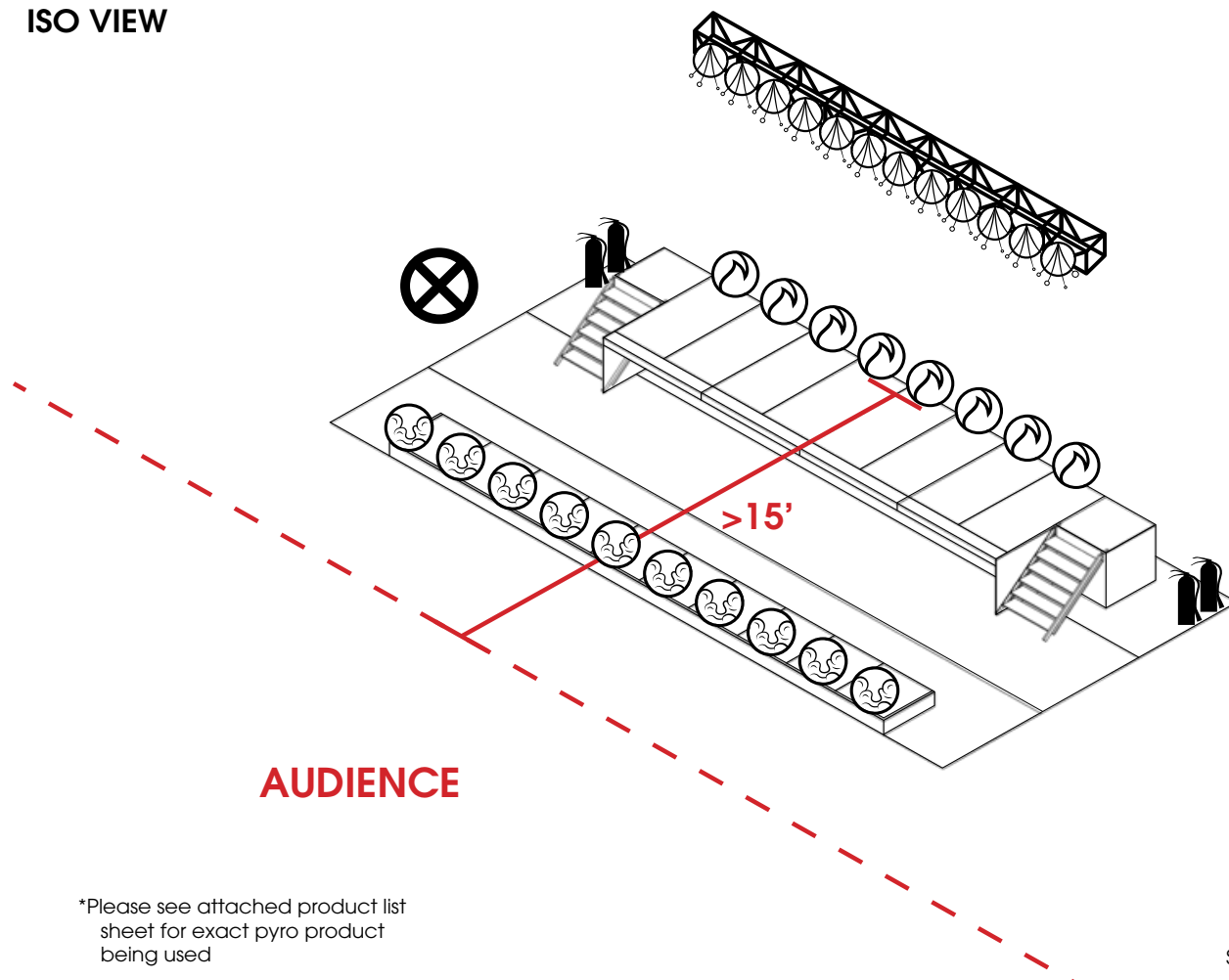
Nashville: 120 Airpark Center East Nashville, TN 37217
Chicago: 1850 S Elmhurst Road Mount Prospect, IL 60056
strictlyfx.com P: (630)694-2394 F: (630)694-2395

8



A DAY TO REMEMBER Effect Layout 2019

ISO VIEW



NOTE: All product 15' min away from audience.
All product placement TBD at show site.

Legend



= G-Flame Units
(8 total, 6'-10' Flames)



= Water Pressurized Fire Extinguishers (4 total)
CO₂ Fire Extinguishers (2 total)



= Pyro Positions: Airbursts
(12 total, TBD Max Effect Height)



= Co2 Jets (10 total)



= Pyro Personnel

all material © Strictly FX, I.I.C.

REVISED:10/01/2019 CREATED:09/25/2019

Nashville: 120 Airpark Center East Nashville, TN 37217
Chicago: 1850 S Elmhurst Road Mount Prospect, IL 60056
strictlyfx.com P: (630)694-2394 F: (630)694-2395

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COMPANYINSURANCE

Nashville: 120 Airpark Center East Nashville, TN 37217
Chicago: 1850 S Elmhurst Road Mount Prospect, IL 60056
strictlyfx.com P: (630)694-2394 F: (630)694-2395

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000000002DRAYTON INSURANCE BROKERS, INC.

2500 CENTER POINT ROAD, SUITE 301

BIRMINGHAM, ALABAMA 35215

PHONE: (205) 854-5806

FAX: (205) 854-5899

POST OFFICE BOX 94067

BIRMINGHAM, ALABAMA 35220

EMAIL: dib@draytonins.com

CERTIFICATE OF INSURANCE

NO. SPECIMEN

We certify that insurance is afforded as stated below. This Certificate does not affirmatively or negatively amend, extend or alter the coverage afforded by the insurance policy and the insurance afforded is subject to all the terms, exclusions and conditions of the policy.

INSURER Admiral Insurance Company

POLICY NO. CA000005300-16

NAMED INSURED Strictly FX, L.L.C.
120 Airpark Center East
Nashville, TN 37217

POLICY TERM October 1, 2019 to October 1, 2020; Both Days 12:01 A.M. Standard Time

COVERAGE Commercial General Liability: Occurrence Basis Claims Made Basis

LIMIT OF LIABILITY \$5,000,000 each occurrence, \$10,000,000 general aggregate, \$10,000,000 products/completed operations aggregate
The limit of liability shall not be increased by the inclusion of more than one insured or additional insured.

RESTRICTION This policy applies only to displays which comprise solely Class "C" Fireworks (Explosives Classification 1.4), pyrotechnics special effects (including indoor pyrotechnics), propane, open flame effects, lasers and other non-pyrotechnic special effects. Excluding the use of Class "B" fireworks (Explosives Classification 1.3).

INSURED OPERATIONS Public fireworks display and special effects contractor

It is certified that, if named below, this policy includes as Additional Insureds 1) the sponsor(s), promoter(s), organizer(s) (including other entities having similar interests), of insured pyrotechnic events and/or 2) the owner(s) of real property (or barges) at which insured pyrotechnic events are held and/or 3) the owner(s), manager(s), tenant(s), mortgagee(s) (including other entities having similar interests), of buildings, stadiums, arenas and similar facilities at which insured pyrotechnic events are held and/or 4) the licensing or permitting authority, or other authority having jurisdiction, issuing licenses/permits for insured pyrotechnic events and/or 5) any other entity for which the insurance is required to be afforded under written contract. Coverage applies only as respects the legal liability of such Additional Insured(s) for bodily injury and property damage caused by the operations of the Named Insured. The insurance afforded any Additional Insured does not include coverage for any bodily injury or property damage arising from the failure of such Additional Insured to fulfill its obligations specified in its contract with the Named Insured.

**NAME(S) OF
ADDITIONAL INSURED(S)**

SPECIMEN

DISPLAY LOCATION

DISPLAY DATE(S)

It is certified that this policy requires a 30 day mutual notice of cancellation between the Insurer and the Named Insured. In the event of such cancellation we will endeavor to mail 10 days written notice to the Additional Insured(s), whose name and address is shown hereon, but failure to mail such notice shall impose no obligation or liability of any kind upon the insurer and/or the undersigned.

DRAYTON INSURANCE BROKERS, INC.

Specimen

Nashville: 120 Airpark Center East Nashville, TN 37217
Chicago: 1850 S Elmhurst Road Mount Prospect, IL 60056
strictlyfx.com P: (630)694-2394 F: (630)694-2395

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CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)
9/27/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER DRAYTON INSURANCE BROKERS INC 2500 Center Point Rd #301 Birmingham, AL 35215	CONTACT NAME: PHONE (A/C No. Ext): (205) 854-5806 FAX (A/C No.): (205) 854-5899 E-MAIL ADDRESS: georgine@draytonins.com
INSURED Strictly FX, LLC 120 Airpark Center East Nashville, TN 37217	INSURER(S) AFFORDING COVERAGE INSURER A: ADMIRAL INSURANCE COMPANY NAIC# 24856 INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INS 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			CA000005300-16	10/1/19	10/1/20	EACH OCCURRENCE \$ 5,000,000
	☐ CLAIMS-MADE ☒ OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
							MED EXP (Anyone person) \$ NONE
							PERSONAL & ADV INJURY \$ 5,000,000
							GENERAL AGGREGATE \$ 10,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:						PRODUCTS - COMP/OP AGG \$ 10,000,000
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$
	☐ ANYAUTO						BODILY INJURY (Per person) \$
	☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS NON-OWNED AUTOS ONLY						BODILY INJURY (Per accident) \$
	☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB ☐ OCCUR						EACH OCCURRENCE \$
	EXCESS LIAB ☐ CLAIMS-MADE						AGGREGATE \$
	DED. ☐ RETENTION \$						\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N ☐ N/A						PER STATUTE ☐ OTH-ER ☐
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. EACH ACCIDENT \$
							E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$

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

PROOF OF INSURANCE

CERTIFICATE HOLDER

CANCELLATION

TO WHOM IT MAY CONCERN	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:

ACORD 25 (2016/03)

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Chicago: 1850 S Elmhurst Road Mount Prospect, IL 60056
strictlyfx.com P: (630)694-2394 F: (630)694-2395

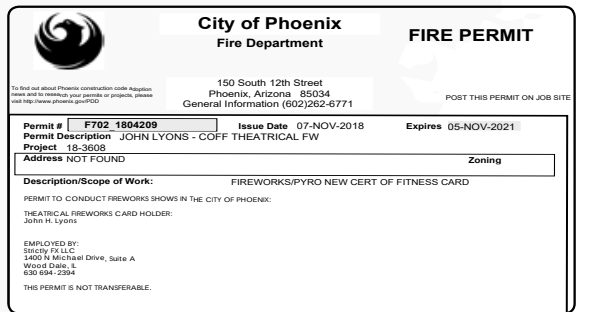
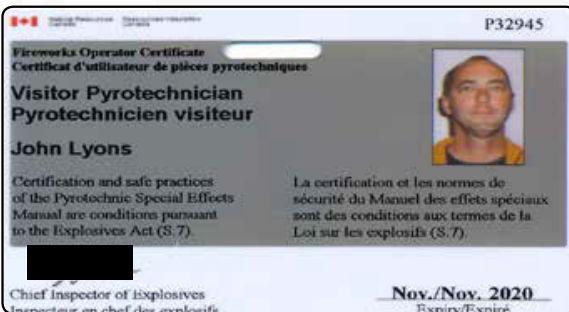
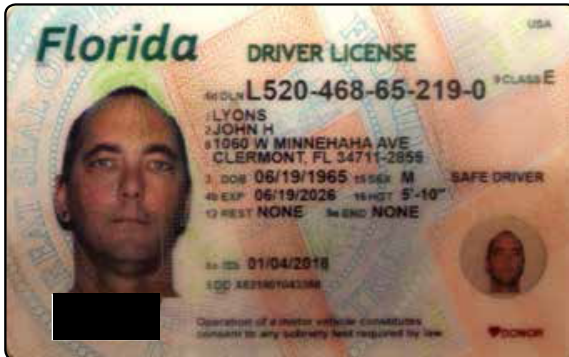
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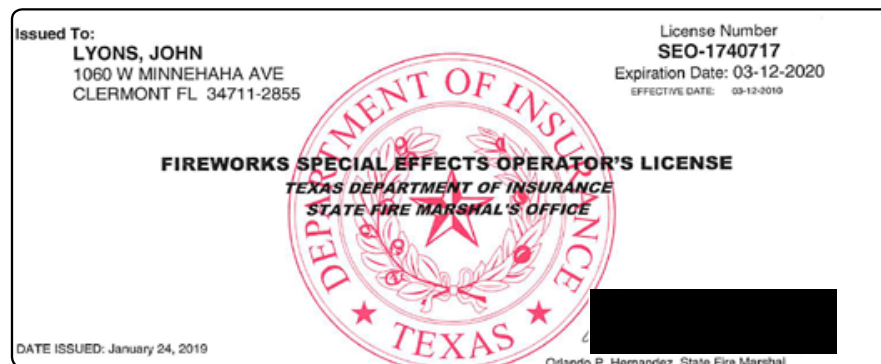
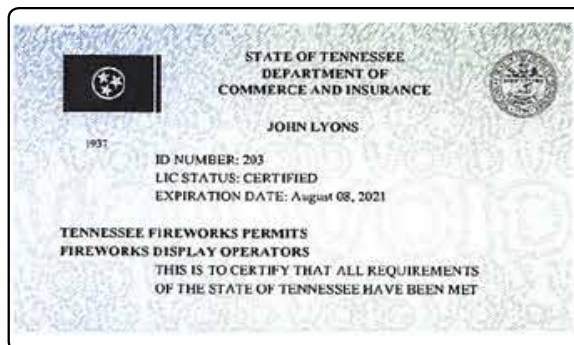
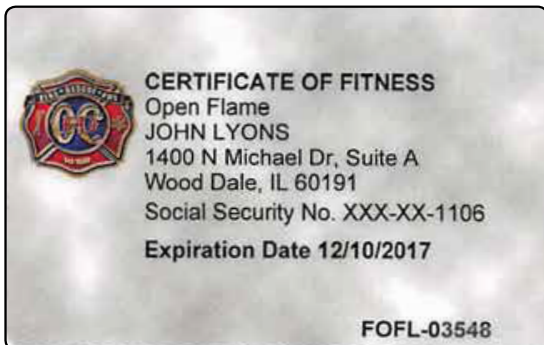
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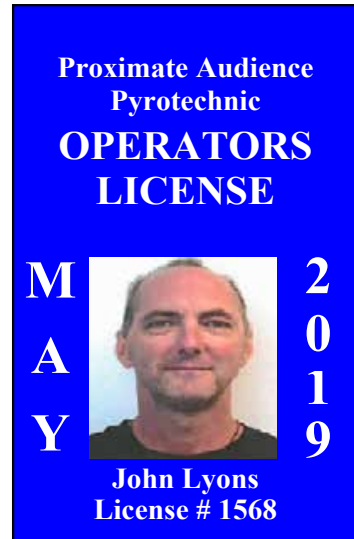
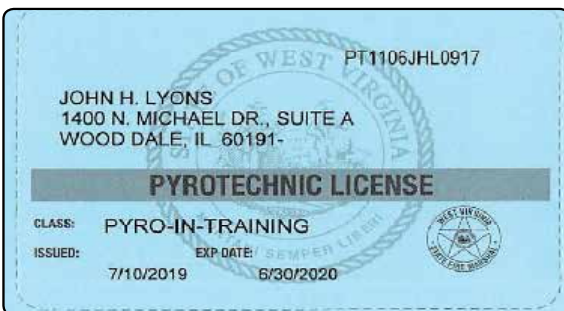
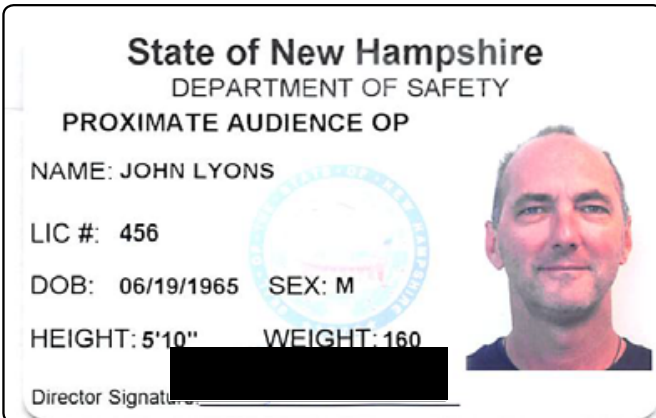
JOHN LYONS



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CITY OF CHICAGO

LICENSE CERTIFICATE

NON-TRANSFERABLE

BY THE AUTHORITY OF THE CITY OF CHICAGO, THE FOLLOWING SPECIFIED LICENSE IS HEREBY GRANTED TO

NAME: **STRICTLY F/X, L.L.C.**

DBA: **STRICTLY F/X, L.L.C. / JOHN LYONS**

AT: **1400 N. MICHAEL DR., Apt./Suite A**
WOOD DALE, IL 60191
Master Lic. # 2133884

LICENSE NO.: **2522549**

LICENSE: **Explosives**

Includes: **Certificate of Fitness;**

PRESIDENT: MARK J. GREGA
SECRETARY: MARK J. GREGA

PRINTED ON:
03/23/2017

CODE **1253**

FEE: **\$*****0.00**

This license is a privilege granted and not a property right. This license is the property of the City of Chicago.

THIS LICENSE IS ISSUED AND ACCEPTED SUBJECT TO THE REPRESENTATIONS MADE ON THE APPLICATION THEREFOR, AND MAY BE SUSPENDED OR REVOKED FOR CAUSE AS PROVIDED BY LAW. LICENSEE SHALL OBSERVE AND COMPLY WITH ALL LAWS, ORDINANCES, RULES AND REGULATIONS OF THE UNITED STATES GOVERNMENT, STATE OF ILLINOIS, COUNTY OF COOK, CITY OF CHICAGO AND ALL AGENCIES THEREOF.

WITNESS THE HAND OF THE MAYOR OF SAID CITY AND THE CORPORATE SEAL THEREOF

THIS _____ DAY OF _____

ATTEST: _____

EXPIRATION DATE: **January 15, 2019**

MAYOR

CITY CLERK

ACCOUNT NO. **57744**

TRANS NO. _____

SITE: **27**

THIS LICENSE MUST BE POSTED IN A CONSPICUOUS PLACE UPON THE LICENSED PREMISES.

John H. Lyons – Strictly FX Operator/Designer



CELL-407-758-0614
WORK-630-694-2394
jlyons@strictlyfx.com

Selected Show Experience

9/19	Drake Rock in Rio	Crew Chief Pyro, Flames, Cryo, Laser assist
7/19 – 9/19	Blink 182 Summer Tour	Crew Chief Flames, Confetti, Cryo
5/19 – 7/19	NKOTB Mixtape Tour	Crew Chief, Pyro Operator Pyro, Flames, Confetti, Cryo
1/19 – 4/19	Panic! At The Disco Pray for the Wicked Tour	Crew Chief, Designer, Operator Pyro, Flames, Confetti, Laser Assist
11/18 – 12/18	Travis Scott Astroworld Tour	Crew Chief, Pyro Operator Pyro, Flames, Confetti, Lasers, Cryo
9/18 – 10/18	Shakira El Dorado South American Tour	Crew Chief Pyro, Flames, Lasers, Confetti
7/18 – 8/18	Panic! At The Disco Pray for the Wicked Tour	Crew Chief, Designer, Operator Pyro, Flames, Confetti, Laser Assist
03/18	Beyonce Coachella	Pyro Chief, Designer, Operator Pyro, Flames Assist
10./17	Drake Boy Meets World Down Under Tour	Crew Chief, Designer, Operator Cryo, Laser Assist, Pyro Assist
08./17	Drake Ovo Festival	Crew Chief, Designer, Operator Pyro, Flames
04/17 – 07/17	New Kids On The Block Total Package Tour	Crew Chief, Designer, Operator Pyro, Flames, cryo, confetti
2/17 – 4/17	Panic! At The Disco Death of a Bachelor Tour	Crew Chief, Designer, Operator Pyro, Flames
2/17	Super Bowl LI Halftime, Post Game	Rooftop Crew Chief, Operator Pyro
8/16	Democratic National Convention Candidate Acceptance Speech	Assist Pyro
6/16	Coldplay A Headful of Dreams / Selected Festivals	Operator Pyro
1/16 – 12/16	Carrie Underwood The Storyteller Tour	Crew Chief, Designer, Operator Pyro, Cryo, Laser Assist
12/15	David Gilmour Rattle That Lock South America Tour	Crew Chief Laser Assist
7/15 – 9/15	Chris Brown One Hell of a Night Tour	Crew Chief, Designer, Operator Pyro, Flames, Laser Assist
4/15 – 7/15	NKOTB The Main Event	Crew Chief, Designer, Operator Pyro, Cryo; Confetti
2/15 – 3/15	Drake Nothing Was The Same Tour	Crew Chief, Designer, Operator Pyro, Flames, Cryo; Laser Assist
2/15	Pro Bowl / Super Bowl XLIX Pre-Game, Halftime	System Engineer, Operator Pyro, Flames
7/14 – 10/14	Drake and Lil Wayne Drake vs. Lil Wayne Tour	Crew Chief, Designer, Operator Pyro, Flames, Cryo, Confetti; Laser Assist
5/14 – 7/14	One Direction Where We Are Stadium Tour	Programmer, Operator Pyro
2/14	Super Bowl XLVIII Pre-Game, Halftime	Programmer, System Engineer, Operator Pyro, Flames

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John H. Lyons – Strictly FX Operator/Designer



2/13	Eric Church Canadian Tour	Operator Pyro, Cryo; Laser Assist
2/13	Super Bow XLVII Pre-Game, Halftime	Crew Chief, Operator Pyro, Flames, Cryo
10/12	Luke Bryan Farm Tour 2012	Pyro Crew Chief, Designer, Operator Pyro, Flames
11/11 – 11/12	Coldplay MX World Tour	Pyro Crew Chief, Designer, Operator Pyro, Confetti; Laser Assist
8/10 – 7/11	Avenged Sevenfold Nightmare Tour	Crew Chief, Designer, Operator Pyro, Flames, Cryo
6/10	Kings of Leon Only The Night Tour Selected Dates	Designer, Operator Pyro
7/10 – 8/10	Rascal Flatts Nothing Like This Tour Selected Dates	Designer, Operator Pyro, Confetti; Laser Assist
5/10 – 6/10	Glee Glee Live U.S. Tour	Crew Chief, Designer, Operator Pyro, Confetti, Cryo
4/10	Coachella Music Festival Muse, Coheed and Cambria	Crew Chief, Designer, Operator Pyro
2008 – 2012	Toby Keith Various Tours Selected Dates	Operator, Assist Pyro, Cryo, Confetti
4/08	Roger Waters Dark Side of the Moon at Coachella	Finale Designer, Operator Pyro, Flames
12/08, 12/09, 12/10	Go Daddy Corporate Christmas Party	Crew Chief, Designer, Operator Pyro; Laser Assist
2007 – 2011	NFL Various NFL Team player intros	Crew Chief, Designer, Operator Pyro, Flames, Confetti
8/07, 8/08	Rite Aid Pharmacies National Corporate Show	Crew Chief, Designer, Operator Pyro, Confetti
10/07	Oklahoma Centennial Live TV Stage Show Broadcast	Crew Chief, Designer, Operator Pyro, Flames, Confetti
06/07	Mel Brook's Young Frankenstein Broadway Musical	Crew Chief, Designer, Installer Pyro
2001 - 2007	Daytona International Speedway Daytona 500, Pepsi 400, Rolex 24 Hour, AMA Supercross	Crew Chief, Operator Pyro, Flames, Confetti

BRIOSORIO



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Safety Data Sheet

according to 1907/2006/EC, Article 31

Printing date 12/23/2010

Revision date 12/23/2010

1 Identification of the substance/preparation and of the company/undertaking

- **Product details**
- **Trade name:** CHAMELEON FLAME 500 ML
- **Article number:** GS0007
- **Application of the substance / the preparation** Cleaning agent/ Cleaner

Le Maitre Ltd.

UK +44 (0) 20 8646 2222

USA 1 (512) 451-4392

2 Hazards identification

- **Hazard description:**



F+ Extremely flammable

- **Information concerning particular hazards for human and environment:**

The product has to be labelled due to the calculation procedure of the "General Classification guideline for preparations of the EU" in the latest valid version.

Warning! Pressurized container.

R 12 Extremely flammable.

Pressurized container: protect from sunlight and do not expose to temperatures exceeding 50°C. Do not pierce or burn, even after use.

Do not spray on a naked flame or any incandescent material. Keep away from sources of ignition - No smoking.

Keep out of the reach of children

- **Classification system:**

The classification is according to the latest editions of the EU-lists, and extended by company and literature data.

- **GHS label elements**



Danger

2.3/1 - Extremely flammable aerosol.

- **Prevention:**

Keep away from heat/sparks/open flames/hot surfaces. - No smoking.

Do not spray on an open flame or other ignition source.

Pressurized container: Do not pierce or burn, even after use.

- **Storage:**

Protect from sunlight. Do not expose to temperatures exceeding 50°C/ 122°F.

GB

(Contd. on page 2)

Trade name: CHAMELEON FLAME 500 ML

(Contd. of page 1)

*

3 Composition/information on ingredients

- **Chemical characterization**
- **Description:** Mixture of substances listed below with nonhazardous additions.

· **Dangerous components:**

CAS: 74-98-6 EINECS: 200-827-9	propane	 F+; R 12 Danger:  2.2/1 Warning:  2.5/L	25-50%
CAS: 106-97-8 EINECS: 203-448-7	butane	 F+; R 12 Danger:  2.2/1 Warning:  2.5/L	25-50%
CAS: 75-28-5 EINECS: 200-857-2	isobutane	 F+; R 12 Danger:  2.2/1 Warning:  2.5/L	25-50%

- **Additional information:** For the wording of the listed risk phrases refer to section 16.

*

4 First-aid measures

- **After inhalation:** Supply fresh air; consult doctor in case of complaints.
- **After skin contact:** Generally the product does not irritate the skin.
- **After eye contact:** Rinse opened eye for several minutes under running water. Then consult a doctor.
- **After swallowing:** Drink plenty of water and provide fresh air. Call for a doctor immediately.

5 Fire-fighting measures

- **Suitable extinguishing agents:**
CO₂, powder or water spray. Fight larger fires with water spray or alcohol resistant foam.
- **For safety reasons unsuitable extinguishing agents:** Water with full jet
- **Protective equipment:** No special measures required.

*

6 Accidental release measures

- **Person-related safety precautions:** Ensure adequate ventilation
- **Measures for environmental protection:**
Do not allow product to reach sewage system or any water course.
Inform respective authorities in case of seepage into water course or sewage system.
- **Measures for cleaning/collecting:** Ensure adequate ventilation.

*

7 Handling and storage

- **Handling:**
- **Information for safe handling:**
No special measures required.
Ensure good ventilation/exhaustion at the workplace.
Open and handle receptacle with care.
- **Information about fire - and explosion protection:**
Do not spray onto a naked flame or any incandescent material.
Keep ignition sources away - Do not smoke.
Protect against electrostatic charges.
Pressurized container: protect from sunlight and do not expose to temperatures exceeding 50°C, i.e. electric lights. Do not pierce or burn, even after use.

(Contd. on page 3)

Trade name: CHAMELEON FLAME 500 ML

(Contd. of page 2)

- **Storage:**
- **Requirements to be met by storerooms and receptacles:**
Store in a cool location.
Observe official regulations on storing packagings with pressurized containers.
- **Information about storage in one common storage facility:** Not required.
- **Further information about storage conditions:**
Keep container tightly sealed.
Do not seal receptacle gas tight.
Store in cool, dry conditions in well sealed receptacles.
Protect from heat and direct sunlight.

8 Exposure controls/personal protection

- **Additional information about design of technical facilities:** No further data; see item 7.

- **Ingredients with limit values that require monitoring at the workplace:**

106-97-8 butane

WEL	Short-term value: 1810 mg/m ³ , 750 ppm Long-term value: 1450 mg/m ³ , 600 ppm Carc (if more than 0.1% of buta-1,3-diene)
-----	---

- **Additional information:** The lists valid during the making were used as basis.
- **Personal protective equipment:**
- **General protective and hygienic measures:**
Wash hands before breaks and at the end of work.
Do not inhale gases / fumes / aerosols.
- **Respiratory protection:** Not required.
- **Protection of hands:** Not required.
- **Material of gloves:** Not required.
- **Penetration time of glove material:** Not required.
- **Eye protection:** Not required.

9 Physical and chemical properties

- **General Information**

Form:	Aerosol
Colour:	According to product specification
Odour:	Characteristic

- **Change in condition**

Melting point/Melting range:	Undetermined.
Boiling point/Boiling range:	Not applicable, as aerosol.

- **Flash point:**

< 0°C (< 32°F)

 Not applicable, as aerosol.

- **Ignition temperature:** 365°C (689°F)

- **Self-igniting:** Product is not selfigniting.

- **Danger of explosion:** Product is not explosive. However, formation of explosive air/vapour mixtures are possible.

- **Explosion limits:**

Lower:	1.5 Vol %
Upper:	10.9 Vol %

- **Vapour pressure at 20°C (68°F):** 3500 hPa (2625 mm Hg)

(Contd. on page 4)

Trade name: CHAMELEON FLAME 500 ML

(Contd. of page 3)

- **Density at 20°C (68°F):** 0.56 g/cm³
- **Solubility in / Miscibility with water:** Not miscible or difficult to mix.
- **Solvent content:**
 - **Organic solvents:** 100.0 %
 - **EU-VOC:** 560.0 g/l
 - **EU-VOC in %:** 100.00 %

10 Stability and reactivity

- **Thermal decomposition / conditions to be avoided:** No decomposition if used according to specifications.
- **Dangerous reactions** No dangerous reactions known.
- **Dangerous decomposition products:** No dangerous decomposition products known.

11 Toxicological information

- **Acute toxicity:**
- **LD/LC50 values relevant for classification:**

106-97-8 butane	
LC50 / 4 h	658 mg/m ³ (rat)
- **Primary irritant effect:**
 - **on the skin:** No irritant effect.
 - **on the eye:** No irritating effect.
- **Sensitization:** No sensitizing effects known.

12 Ecological information

- **General notes:** Generally not hazardous for water

13 Disposal considerations

- **Product:**
- **Recommendation**
Must not be disposed together with household garbage. Do not allow product to reach sewage system.
- **European waste catalogue**

20 01 13	solvents
15 01 04	metallic packaging
- **Uncleaned packaging:**
- **Recommendation:** Disposal must be made according to official regulations.

GB

(Contd. on page 5)

Trade name: CHAMELEON FLAME 500 ML

(Contd. of page 4)

*

14 Transport information

· Land transport ADR/RID (cross-border)



- ADR/RID class: 2 5F Gases.
- Danger code (Kemler): -
- UN-Number: 1950
- Packaging group: -
- Hazard label 2.1
- Description of goods: 1950 AEROSOLS
- Limited quantities (LQ) LQ2
- Transport category 2
- Tunnel restriction code B1D

· Maritime transport IMDG:



- IMDG Class: 2.1
- UN Number: 1950
- Label 2.1
- Packaging group: -
- EMS Number: F-D,S-U
- Marine pollutant: No
- Proper shipping name: AEROSOLS

· Air transport ICAO-TI and IATA-DGR:



- ICAO/IATA Class: 2.1
- UN/ID Number: 1950
- Label 2.1
- Packaging group: -
- Proper shipping name: AEROSOLS, flammable
- UN "Model Regulation": UN1950, AEROSOLS, 2.1

*

15 Regulatory information

· Labelling according to EU guidelines:

The product has been classified and marked in accordance with EU Directives / Ordinance on Hazardous Materials.

· Code letter and hazard designation of product:



F+ Extremely flammable

· Risk phrases:

12 Extremely flammable.

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Trade name: CHAMELEON FLAME 500 ML

(Contd. of page 5)

Safety phrases:

- 2 Keep out of the reach of children.
- 23 Do not breathe aerosol.
- 26 In case of contact with eyes, rinse immediately with plenty of water and seek medical advice.
- 29/56 Do not empty into drains, dispose of this material and its container at hazardous or special waste collection point.
- 46 If swallowed, seek medical advice immediately and show this container or label.
- 51 Use only in well-ventilated areas.

Special labelling of certain preparations:

Pressurized container: protect from sunlight and do not expose to temperatures exceeding 50°C. Do not pierce or burn, even after use.
Do not spray on a naked flame or any incandescent material. Keep away from sources of ignition - No smoking.
Keep out of the reach of children

*

16 Other information

This information is based on our present knowledge. However, this shall not constitute a guarantee for any specific product features and shall not establish a legally valid contractual relationship.

Relevant R-phrases

- 12 Extremely flammable.

Abbreviations and acronyms:

ADR: Accord européen sur le transport des marchandises dangereuses par Route (European Agreement concerning the International Carriage of Dangerous Goods by Road)
RID: Règlement international concernant le transport des marchandises dangereuses par chemin de fer (Regulations Concerning the International Transport of Dangerous Goods by Rail)
IMDG: International Maritime Code for Dangerous Goods
IATA: International Air Transport Association
IATA-DGR: Dangerous Goods Regulations by the "International Air Transport Association" (IATA)
ICAO: International Civil Aviation Organization
ICAO-TI: Technical Instructions by the "International Civil Aviation Organization" (ICAO)
GHS: Globally Harmonized System of Classification and Labelling of Chemicals
LC50: Lethal concentration, 50 percent
LD50: Lethal dose, 50 percent

* **Data compared to the previous version altered.**

GB



184 MCNALEY ROAD
COLUMBUS, MT 59019
(406)322-1303

NEXT FX, INC. SAFETY DATA SHEET

RTG'S (AIR-BURSTS) (ALL COLORS & EFFECTS) SECTION I: PRODUCT & MANUFACTURER IDENTIFICATION

PRODUCT IDENTIFIER RTG'S (AIR-BURSTS) - (ALL COLORS & EFFECTS)		
PRODUCT USE; THEATRICAL PYROTECHNICS AND SPECIAL EFFECTS. DEVICE WILL EXPEL BURNING PROJECTIONS.		
MANUFACTURERS NAME; DISTRIBUTED BY: NEXT FX, INC. MFG. BY: STAGE FX, INC.		
STREET ADDRESS; 184 MCNALEY ROAD		CITY; COLUMBUS
STATE MT - USA		
ZIP CODE; 59019	TELEPHONE NUMBER; (406)322-1303	EMERGENCY NUMBERS; DOMESTIC - (800)255-3924 INTER. - +01 (813)248-0585

SECTION II: HAZARDS IDENTIFICATION

WHMIS CLASSIFICATION/GHS CLASSIFICATION: EXPLOSIVE CLASS 1.4	
	
WARNING	
HAZARD STATEMENT: FIRE OR PROJECTION HAZARD	
PRECAUTIONARY STATEMENTS: PREVENTION; KEEP AWAY FROM HEAT/SPARKS/OPEN FLAMES/HOT SURFACES/STRAY ELECTRICAL CURRENTS - "NO SMOKING"	
RESPONSE; IN CASE OF FIRE: EVACUATE AREA EXPLOSION RISK IN CASE OF FIRE DO NOT FIGHT FIRE WHEN FIRE HAS REACHED EXPLOSIVE PRODUCT.	
PRODUCT USE: BURNING PROJECTIONS CAN AND WILL IGNITE COMBUSTIBLE MATERIALS. RADIAL SAFETY DISTANCES SHOULD BE APPLIED. REFER TO LABEL OR MANUFACTURER FOR APPROPRIATE SAFETY DISTANCES FOR SPECIFIC PRODUCT. "FOR PROFESSIONAL USE ONLY" NOT FOR CONSUMER OR RETAIL SALES.	
SALES TO PERSONS UNDER (18) YEARS PROHIBITED.	
POTENTIAL ACUTE HEALTH EFFECTS: DEVICE COULD CAUSE SERIOUS BURN INJURIES IF INCORRECTLY USED.	
POTENTIAL CHRONIC HEALTH EFFECTS: THERE ARE NO CHRONIC AFFECTS FROM HANDLING THIS PRODUCT APPROPRIATELY. SEE APPROPRIATE MSDS FOR COMPONENT INGREDIENTS.	
NATIONAL FIRE PROTECTION ASSOCIATION RATINGS;	

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NEXT FX, INC. SAFETY DATA SHEET

RTG'S (AIR-BURSTS) (ALL COLORS & EFFECTS)

SECTION III: COMPOSITION/INGREDIENT INFORMATION

HAZARDOUS INGREDIENTS	%	CAS NUMBER
POTASSIUM PERCHLORATE	*	7778-74-7
STRONTIUM NITRATE	*	10042-76-9
SODIUM NITRATE	*	7631-99-4
POLYVINYL CHLORIDE	*	9002-86-2
MAGNESIUM	*	7439-95-4
TITANIUM	*	7440-32-6
BLACK COPPER OXIDE	*	1317-38-0
POTASSIUM NITRATE	*	7757-79-1
SULFUR	*	7704-34-9
BARIUM NITRATE	*	10022-31-8
ALUMINUM	*	7429-90-5

* INGREDIENT PERCENTAGES ARE COMPANY PROPRIETARY. CHEMICAL INGREDIENT LIST COVERS ALL COLOR & EFFECT VARIANTS, BUT MAY VARY WITH SPECIFIC CUSTOM COLORATION AND/OR EFFECT REQUIREMENTS.

SECTION IV: FIRST AID MEASURES

ROUTES OF ENTRY; X SKIN CONTACT - SKIN ABSORPTION X EYE CONTACT X INHALATION X INGESTION
SKIN CONTACT: PRODUCT ITSELF DOES NOT HAVE ANY SKIN CONTACT HAZARDS. SERIOUS BURNS COULD TAKE PLACE IF ACCIDENTAL IGNITION. CONTENTS (IF SPILLED) SHOULD BE WASHED IMMEDIATELY FROM EXPOSED AREA WITH PLENTY OF SOAP AND WATER.
EYE CONTACT: PRODUCT ITSELF DOES NOT HAVE ANY EYE CONTACT HAZARDS. SERIOUS EYE INJURIES COULD RESULT IF ACCIDENTAL IGNITION OCCURS. (IF CONTENTS ARE SPILLED) FLUSH EYES FOR A MINIMUM OF 15 MINUTES. IF IRRITATION PERSISTS, SEEK MEDICAL ATTENTION.
INHALATION: PRODUCT ITSELF DOES NOT PRESENT AN INHALATION HAZARD. SMOKE FROM DEVICE FUNCTIONING MAY CAUSE IRRITATION IF USED WITHIN NON-VENTILATED OR SMALL CONFINED SPACES.
INGESTION: PRODUCT ITSELF DOES NOT PRESENT AN INGESTION HAZARD. IF CONTENTS ARE ACCIDENTALLY INGESTED, SEEK MEDICAL ATTENTION AS SOON AS POSSIBLE.
ACUTE HEALTH EFFECTS: SOME INGREDIENTS ARE CONSIDERED IRRITANTS AND SHOULD BE HANDLED AS SUCH IF EXPOSED. BLACK COPPER OXIDE BARIUM NITRATE ALUMINUM

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NEXT FX, INC. SAFETY DATA SHEET

RTG's (AIR-BURSTS) (ALL COLORS & EFFECTS)

CHRONIC HEALTH EFFECTS:

THERE ARE NO CHRONIC AFFECTS FROM THE HANDLING OF THIS PRODUCT. ALTHOUGH REPEATED CLOSE PROXIMITY USE (WITHOUT HEARING PROTECTION) COULD CAUSE HEARING LOSS.

SECTION V: FIRE FIGHTING MEASURES & RELATED INFORMATION

FLAMMABILITY; ALL PYROTECHNICS ARE HIGHLY FLAMMABLE	NFPA RATING; 4 - SEVERE HAZARD
GENERAL FIRE HAZARDS; PYROTECHNIC COMPOSITIONS/DEVICES BURN VIOLENTLY AND ARE SELF-OXIDIZED. FASTER BURNING COMPOSITIONS MAY REACH DETONATION LEVELS DEPENDENT UPON COMPOSITION, PACKAGED CONFIGURATION AND/OR CONTAINMENT.	
MEANS OF EXTINGUISHMENT; PYROTECHNICS ARE SELF-OXIDIZED AND CANNOT BE EXTINGUISHED WITH NORMAL MEANS. DO NOT FIGHT FIRES INVOLVING THE DEVICES. INCIPIENT FIRES MAY BE FOUGHT. DO NOT USE SUFFOCATION METHODS, CLEAR AREA OF PERSONNEL!	

SECTION VI: ACCIDENTAL RELEASE MEASURES

CONTAINMENT PROCEDURES; DEVICES MAY BE GENTLY PICKED UP AND RE-PACKAGED IN ORIGINAL PACKAGING OR EQUIVALENT. IN CASE PYROTECHNIC COMPOSITION IS SPILLED: KEEP AWAY FROM ANY POSSIBLE IGNITION SOURCES SUCH AS OPEN FLAMES, SPARKS AND NON-RATED ELECTRICAL DEVICES. PREVENT POSSIBLE ELECTROSTATIC DISCHARGES (FOR EXAMPLE: DO NOT USE A SYNTHETIC DUSTPAN AND BRUSH).
CLEAN-UP PROCEDURES; PACKAGED DEVICES CAN BE PICKED UP GENTLY. FOR SPILLED MATERIAL, WHICH MAY BE RELEASED ACCIDENTALLY, FLOOD AREA WITH WATER AND USE CONDUCTIVE OR NATURAL MATERIAL UTENSILS FOR PICK-UP. PLACE INTO A CLOSED CONDUCTIVE CONTAINER FOR DISPOSAL.

SECTION VII: HANDLING AND STORAGE

HANDLING PROCEDURES AND EQUIPMENT; ALL PYROTECHNICS SHOULD BE HANDLED WITH CAUTION. AVOID OPEN FLAMES, SMOKING, FRICTION, IMPACT, EXCESSIVE HEAT, ELECTROSTATIC DISCHARGES, RADIO FREQUENCY INTERFERENCE AND MOISTURE. ITEMS ARE TO BE HUNG FROM NON-COMBUSTIBLE MATERIAL. SAFETY INSTRUCTIONS INCLUDED IN PACKAGING. IN SOME CASES, UNPACKAGED OR EXPLOSIVE/PYROTECHNIC MATERIALS PACKAGED IN OTHER THEN ORIGINAL PACKAGING MAY HAVE TO BE HANDLED AS A HIGHER HAZARD. I.E. 1.1 OR 1.3 CLASSIFICATION.
--

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RTG's (AIR-BURSTS) (ALL COLORS & EFFECTS)

STORAGE REQUIREMENTS;

STORE IN A COOL, WELL VENTILATED, AND DRY AREA. DEPENDENT UPON APPLICATION, SEPARATION DISTANCES AND SECURITY MEASURES ARE TO BE COMPLIED WITH. STORAGE COMPATIBILITY SHOULD BE MAINTAINED IN ACCORDANCE WITH FEDERAL REGULATIONS.

SECTION VIII: EXPOSURE CONTROL/PERSONAL PROTECTION

EXPOSURE LIMITS:	ACGIH TLV = N/A	OSHA PEL = N/A	OTHER = N/A
ENGINEERING CONTROLS; DEVICES NEED TO BE USED IN A VENTILATED AREA FOR REMOVAL OF SMOKE. SOME INGREDIENTS MAY HAVE EXPOSURE CONTROLS.			
PERSONAL PROTECTIVE EQUIPMENT; SAFETY GLASSES ARE REQUIRED WHEN HANDLING. PREVENTION OR REDUCTION OF STATIC ELECTRICITY SHOULD BE ACCOMPLISHED BY WEARING ALL COTTON CLOTHING.			

SECTION IX: PHYSICAL PROPERTIES

PHYSICAL STATE; SOLID	ODOR & APPEARANCE; SMALL PLASTIC SPHERICAL BAG - NO ODOR	SPECIFIC GRAVITY; N/A
ODOR THRESHOLD; N/A	VISCOSITY; N/A	PARTITION COEFFICIENT; (N- OCTONAL/WATER) N/A
VAPOR DENSITY; (AIR=1) N/A	VAPOR PRESSURE; (MM/HG) N/A	EVAPORATION RATE; N/A
BOILING POINT; (°C) N/A	FREEZING POINT; (°C) N/A	PH; N/A
SOLUBILITY IN WATER; N/A	MELTING POINT; PYROTECHNICS WILL REACH AUTO-IGNITION TEMPERATURE BEFORE MELTING	VOC; N/A
FLASHPOINT; N/A	UPPER FLAMMABLE LIMITS; N/A	LOWER FLAMMABLE LIMITS; N/A
AUTO-IGNITION TEMPERATURE; APPROX. - 440° C	SENSITIVITY TO IMPACT; N/A	SENSITIVITY TO ELECTROSTATIC; ONLY WHEN DEVICE IS UN-SHUNTED.

SECTION X: STABILITY & REACTIVITY

CHEMICAL STABILITY; X STABLE UNSTABLE	IF UNSTABLE, UNDER WHAT CONDITIONS;
INCOMPATIBILITIES OR CONDITIONS TO AVOID; IGNITION SOURCES. SHARP OBJECTS, (PUNCTURE THE PLASTIC BAG).	
POSSIBILITY OF HAZARDOUS REACTION; VERY LOW WHEN DEVICE IS SHUNTED OR SHORT CIRCUITED. LOW POSSIBILITY WHEN UN-SHUNTED.	

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RTG's (AIR-BURSTS) (ALL COLORS & EFFECTS)

HAZARDOUS DECOMPOSITION;

DECOMPOSITION DOES NOT OCCUR UNDER NORMAL CIRCUMSTANCES DURING STORAGE, TRANSPORT AND HANDLING. UPON FUNCTIONING, THIS DEVICE CAN PRODUCE NITRATES AND OTHER OXIDES.

SECTION XI: TOXICOLOGICAL INFORMATION

CARCINOGENICITY - IARC;

THESE DEVICES MAY CONTAIN KNOWN OR SUSPECTED CARCINOGENS. THE FOLLOWING LIST OF CHEMICALS ARE CLASSIFIABLE AND YOU SHOULD REFER TO SPECIFIC MSDS FOR ADDITIONAL INFORMATION;
POLYVINYL CHLORIDE

CARCINOGENICITY - ACGIH;

THESE DEVICES MAY CONTAIN KNOWN OR SUSPECTED CARCINOGENS. THE FOLLOWING LIST OF CHEMICALS ARE CLASSIFIABLE AND YOU SHOULD REFER TO SPECIFIC MSDS FOR ADDITIONAL INFORMATION;
POLYVINYL CHLORIDE

ROUTES OF ENTRY;

(ONLY SPILLED COMPOSITIONS) INHALATION & INGESTION

MEASURES OF TOXICITY; (INGREDIENTS ONLY)

MAGNESIUM - (ORAL), LD50 (RAT) 230 MG/KG
STRONTIUM NITRATE - (ORAL), LD50 (RAT) 1892 MG/KG
POTASSIUM NITRATE - (ORAL), LD50 (RAT) 3015 MG/KG
SULFUR - (INHALATION), LC50 (RAT) >9.23 MG/L/4H, (ORAL), LD50 (RAT) >3000 MG/KG; (DERMAL), LD50 (RABBIT) >2000 MG/KG
SODIUM NITRATE - (ORAL), LD50 (RAT) 1267 MG/KG
BARIUM NITRATE - (ORAL), LD50 (RAT) 355 MG/KG

CHRONIC EFFECTS ON HUMANS; (INGREDIENTS ONLY)

(SEE INGREDIENT SDS)

ACUTE EFFECTS ON HUMANS; (INGREDIENTS ONLY)

(SEE INGREDIENT SDS)

OTHER TOXIC EFFECTS ON HUMANS; (SKIN CORROSION/IRRITATION, EYE DAMAGE/IRRITATION, RESPIRATORY OR SKIN SENSITIZER, OR ASPIRATION HAZARDS)

N/A

GERM CELL MUTAGENICITY;

N/A

REPRODUCTIVE TOXICITY;

N/A

STOT - SINGLE EXPOSURE;

N/A

STOT - REPEATED EXPOSURE;

N/A

SYMPTOMS OF OVEREXPOSURE;

NO OVEREXPOSURE HAZARDS ASSOCIATED WITH THE DEVICE OR PRODUCT.

SECTION XII: ECOLOGICAL INFORMATION

ECOTOXICITY;

THE FOLLOWING LIST OF CHEMICALS MAY HAVE ADDITIONAL ECOTOXICITY INFORMATION ON THEIR SPECIFIC MSDS;
SULFUR
SODIUM NITRATE

BOD5 & COD;

NOT AVAILABLE

PRODUCTS OF DEGRADATION;

POSSIBLY HAZARDOUS SHORT TERM, DEGRADATION PRODUCTS ARE NOT LIKELY.

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RTG'S (AIR-BURSTS) (ALL COLORS & EFFECTS)

TOXICITY OF THE PRODUCTS OF BIODEGRADATION:

THE PRODUCTS OF DEGRADATION ARE LESS TOXIC THAN THE PRODUCT ITSELF.

OTHER ADVERSE EFFECTS;

NOT AVAILABLE

BIOACCUMULATION:

N/A

MOBILITY IN SOIL;

N/A

SECTION XIII: DISPOSAL CONSIDERATIONS:

EPA WASTE CODES APPLICABLE;

UNUSED DEVICES WILL EXHIBIT THE CHARACTERISTICS OF REACTIVITY IN ACCORDANCE WITH 40 CFR. D003 WOULD BE APPLICABLE IF DEVICES ARE CONSIDERED WASTE.

WASTE DISPOSAL;

WASTES MUST BE DISPOSED OF IN ACCORDANCE WITH LOCAL, STATE AND FEDERAL REGULATIONS. AS STATED ABOVE, UNUSED DEVICE DOES EXHIBIT A RCRA CHARACTERISTIC AS DEPICTED BY 40 CFR AND/OR OTHER INTERNATIONAL REGULATIONS. BEST SUITED FOR INCINERATION AT A LICENSED EXPERIENCED DISPOSAL FACILITY. USED DEVICES MAY BE DISPOSED OF IN STANDARD REFUSE CONTAINER.

SECTION XIV: TRANSPORTATION INFORMATION

DOT CLASSIFICATION & UN IDENTIFICATION;

**CLASS 1.4G - UN0431
EXPLOSIVE**

PROPER SHIPPING NAME & TECHNICAL NAME;

ARTICLES, PYROTECHNIC

SPECIAL PROVISIONS FOR TRANSPORT;

IN CASE OF AN ACCIDENT, THE ERG SHOULD BE CONSULTED FOR EMERGENCY PROCEDURES. EVACUATION WILL BE NECESSARY IF ACCIDENT HAS INVOLVED MULTIPLE DEVICES IN A FIRE OR THE POTENTIAL FOR A FIRE EXISTS.

SECTION XV: REGULATORY INFORMATION:

FEDERAL & STATE REGULATIONS;

REGULATIONS GOVERNING THE MANUFACTURING, USE AND SALE OF PYROTECHNICS AND/OR CHEMICALS ARE APPLICABLE TO THIS PRODUCT LINE. PLEASE CONTACT YOUR DISTRIBUTOR OR THE MANUFACTURER FOR SPECIFIC REGULATIONS IF YOU HAVE QUESTIONS.

OTHER REGULATIONS;

OSHA: HAZARDOUS BY DEFINITION OF HAZARD COMMUNICATION STANDARD (29 CFR 1910.1200). EINECS: SOME OF THE COMPOSITIONAL INGREDIENTS ARE ON THE EUROPEAN INVENTORY OF EXISTING COMMERCIAL CHEMICAL SUBSTANCES. INGREDIENTS MAY HAVE SPECIFIC FEDERAL, STATE OR LOCAL REGULATIONS GOVERNING THRESHOLDS AND HANDLING PROCEDURES AND ONLY APPLY TO THE MANUFACTURING OF THESE ITEMS. IF ONE OF THE INGREDIENTS IN THESE DEVICES IS POTASSIUM PERCHLORATE,

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RTG'S (AIR-BURSTS) (ALL COLORS & EFFECTS)

PRODUCTS MAY CONTAIN PERCHLORATES. SPECIAL HANDLING MAY APPLY!
SEE WWW.DTSC.CA.GOV/HAZARDOUSWASTE/PERCHLORATE."

SECTION XVI: OTHER INFORMATION

THE INFORMATION ABOVE IS BELIEVED TO BE ACCURATE AND REPRESENTS THE BEST INFORMATION CURRENTLY AVAILABLE TO US. HOWEVER, WE MAKE NO WARRANTY OF MERCHANTABILITY OR ANY OTHER WARRANTY, EXPRESSED OR IMPLIED, WITH RESPECT TO SUCH INFORMATION, AND WE ASSUME NO LIABILITY RESULTING FROM ITS USE. USERS SHOULD MAKE THEIR OWN INVESTIGATIONS TO DETERMINE THE SUITABILITY OF THE INFORMATION FOR THEIR PARTICULAR PURPOSES. IN NO EVENT SHALL NEXT FX, INC. OR ITS AFFILIATES BE LIABLE FOR ANY CLAIMS, LOSSES, OR DAMAGES OF ANY THIRD PARTY OR FOR LOST PROFITS OR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, HOWSOEVER ARISING, EVEN IF NEXT FX, INC. AFFILIATES OR CONSULTANTS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

DATE PREPARED;
28 APRIL, 2015

PREPARED BY;
DENNIS SLIGER

TELEPHONE NUMBER;
(406)322-1304



FLAME CERTIFICATIONS

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CERTIFICATE OF FLAME RETARDANCY

Certification is hereby made that: (only "a" or "b" as checked below applies)



- a) The manufacturer has certified that the fabric listed below has been treated with a flame retardant chemical and has been tested and complies with NFPA 701 (2010 version), Small Scale. The fabric is NOT registered as flame retardant with the State of California unless a CA Reg. No. is noted below:

CA Reg. No.: F-545.07

The Flame Retardant Process Used WILL Be Removed By Washing. Accumulation of dust or repeated dry cleaning may also adversely affect the flame resistance of this fabric. Annual testing using the NFPA 705 Field Test is recommended.



- b) The manufacturer has certified that the fabric listed below has been manufactured using an inherently flame retardant fiber or durable flame retardant process and, therefore, is inherently or durably flame retardant for the life of the fabric and has been tested and complies with NFPA 701 (2010 version), Small Scale. The fabric is NOT registered as flame retardant with the State of California unless a CA Reg. No. is noted below:

Trade name for flame resistant fabric:

CA Reg. No.:

The Flame Retardant Process Used WILL NOT Be Removed By A Single Washing, but may degrade over repeated cleanings. Accumulation of dust may adversely affect the flame resistance of this fabric. Annual testing using the NFPA 705 Field Test is recommended.

Purchaser's Name: Wickley Worldwide

Sew What? OC#: 38986

Date: 10/03/19

Material: FR 10' 9" Sharkstooth Scrim

Color: White

Yards: 8

Notes: (if any)

- 4 White Scrim panels, 4'0"h x 8'0"w, FR 10' 9" Sharkstooth Scrim, White, Sewn flat, seamless, unlined. Top: 1" loop velcro on

By Lynda Vaughn.
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CA Reg. No.: F-545.07

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- b) The manufacturer has certified that the fabric listed below has been manufactured using an inherently flame retardant fiber or durable flame retardant process and, therefore, is inherently or durably flame retardant for the life of the fabric and has been tested and complies with NFPA 701 (2010 version), Small Scale. The fabric is NOT registered as flame retardant with the State of California unless a CA Reg. No. is noted below:

Trade name for flame resistant fabric:

CA Reg. No.:

The Flame Retardant Process Used WILL NOT Be Removed By A Single Washing, but may degrade over repeated cleanings. Accumulation of dust may adversely affect the flame resistance of this fabric. Annual testing using the NFPA 705 Field Test is recommended.

Purchaser's Name: Wickley Worldwide

Sew What? OC#: 38986

Date: 10/03/19

Material: FR 10' 9" Sharkstooth Scrim

Color: White

Yards: 4

Notes: (if any)

- 1 White Scrim panels, 4'0"h x 32'0"w, FR 10' 9" Sharkstooth Scrim, White, Sewn flat, seamless, unlined. Top: 1" loop velcro

By Lynda Vaughn.
Sew What? Inc



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CERTIFICATE OF FLAME RETARDANCY

Certification is hereby made that: (only "a" or "b" as checked below applies)



a) The manufacturer has certified that the fabric listed below has been treated with a flame retardant chemical and has been tested and complies with NFPA 701 (2010 version), Small Scale. The fabric is NOT registered as flame retardant with the State of California unless a CA Reg. No. is noted below:

CA Reg. No.:

The Flame Retardant Process Used WILL Be Removed By Washing. Accumulation of dust or repeated dry cleaning may also adversely affect the flame resistance of this fabric. Annual testing using the NFPA 705 Field Test is recommended.



b) The manufacturer has certified that the fabric listed below has been manufactured using an inherently flame retardant fiber or durable flame retardant process and, therefore, is inherently or durably flame retardant for the life of the fabric and has been tested and complies with NFPA 701 (2010 version), Small Scale. The fabric is NOT registered as flame retardant with the State of California unless a CA Reg. No. is noted below:

Trade name for flame resistant fabric: Polyester

CA Reg. No.:

The Flame Retardant Process Used WILL NOT Be Removed By A Single Washing, but may degrade over repeated cleanings. Accumulation of dust may adversely affect the flame resistance of this fabric. Annual testing using the NFPA 705 Field Test is recommended.

Purchaser's Name: California Music Express for Korn

Sew What? OC#: 38447

Date: 07/09/19

Material: Textura

Color: Silver

Yards: 103.00

Notes: (if any)

1 Curtain 30'h x 50'w

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NEW YORK CITY AFFIDAVIT OF FLAME RETARDANCY

This document is to certify that, in accordance with the Rules of the Fire Department of the City of New York (as specified by Title 3 of the Rules of the City of New York), section §805-01, subsection (e), the material listed was tested and meets the requirements for use as a decoration in a place of public gathering.

According to manufacturers' specifications, the fabric described below consists of **non-combustible materials**, making the fabric **inherently flame retardant** for the life of the fabric without the addition of topical flame retardant chemicals. Washing this fabric will not remove the non-combustible characteristics. With proper care and maintenance the fabric will remain flame retardant for its life.

The NYC Fire Department requires re-testing of the material **every three (3) years**, according to §805-01(d)(2)(C). Due to accumulation of air-borne dust and oils, the flame resistance can diminish over time. Annual testing is recommended.

I have field-tested the fabric described below. The fabric was field-tested using standard methods as set forth in §805-01 (c).

Purchaser's Name: California Music Express for Korn

Order Number: 38447

Location of Use: Northwell Health at Jones Beach

Date of Test and Affidavit: 07/03/19

Materials: 103 Yards of Silver Textura, 100% Polyester, as 1 Drape.

Lynda M. Vaughn

Certificate of Fitness 85298008, Type C-15 for Supervisor of Flameproofing

New York City Fire Department

Certificate of Fitness Expiration Date: July 14, 2019

State of California, County of Los Angeles

On July 3, 2019

before me,

personally appeared

LYNDA VAUGHN, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature





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CERTIFICATE OF FLAME RETARDANCY

Certification is hereby made that: (only "a" or "b" as checked below applies)

☐

- a) The manufacturer has certified that the fabric listed below has been treated with a flame retardant chemical and has been tested and complies with NFPA 701 (2010 version), Small Scale. The fabric is NOT registered as flame retardant with the State of California unless a CA Reg. No. is noted below:

CA Reg. No.:

The Flame Retardant Process Used WILL Be Removed By Washing. Accumulation of dust or repeated dry cleaning may also adversely affect the flame resistance of this fabric. Annual testing using the NFPA 705 Field Test is recommended.

☒

- b) The manufacturer has certified that the fabric listed below has been manufactured using an inherently flame retardant fiber or durable flame retardant process and, therefore, is inherently or durably flame retardant for the life of the fabric and has been tested and complies with NFPA 701 (2010 version), Small Scale. The fabric is NOT registered as flame retardant with the State of California unless a CA Reg. No. is noted below:

Trade name for flame resistant fabric: Trevira CS
CA Reg. No.:

The Flame Retardant Process Used WILL NOT Be Removed By A Single Washing, but may degrade over repeated cleanings. Accumulation of dust may adversely affect the flame resistance of this fabric. Annual testing using the NFPA 705 Field Test is recommended.

Purchaser's Name: A Day To Remember Tour

Sew What? OC#: 39030

Date: 10/07/19

Material: IFR 120" Poly Silk-Intl Cert

Color: 100% Trevira CS, White

Yards: 63

Notes: (if any)

- 1 SILK Kabuki with diaper, 30'0"h x 50'0"w, IFR 120" Poly Silk-Intl Cert, 100% Trevira CS, White, Sewn flat, vertical seams, lined

By Lynda Vaughn.
Sew What? Inc

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CERTIFICATE OF FLAME RETARDANCY

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CA Reg. No.:

The Flame Retardant Process Used WILL Be Removed By Washing. Accumulation of dust or repeated dry cleaning may also adversely affect the flame resistance of this fabric. Annual testing using the NFPA 705 Field Test is recommended.

☒

b) The manufacturer has certified that the fabric listed below has been manufactured using an inherently flame retardant fiber or durable flame retardant process and, therefore, is inherently or durably flame retardant for the life of the fabric and has been tested and complies with NFPA 701 (2010 version), Small Scale. The fabric is NOT registered as flame retardant with the State of California unless a CA Reg. No. is noted below:

Trade name for flame resistant fabric: Trevira CS

CA Reg. No.:

The Flame Retardant Process Used WILL NOT Be Removed By A Single Washing, but may degrade over repeated cleanings. Accumulation of dust may adversely affect the flame resistance of this fabric. Annual testing using the NFPA 705 Field Test is recommended.

Purchaser's Name: A Day To Remember Tour

Sew What? OC#: 39030

Date: 10/07/19

Material: IFR 120" Poly Silk-Intl Cert

Color: 100% Trevira CS, Black

Yards: 7

Notes: (if any)

- 1 SILK Kabuki with diaper, 30'0"h x 50'0"w, IFR 120" Poly Silk-Intl Cert, 100% Trevira CS, White, Sewn flat, vertical seams, lined

By Lynda Vaughn.
Sew What? Inc

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NEW YORK CITY AFFIDAVIT OF FLAME RETARDANCY

This document is to certify that, in accordance with the Rules of the Fire Department of the City of New York (as specified by Title 3 of the Rules of the City of New York), section §805-01, subsection (e), the material listed was tested and meets the requirements for use as a decoration in a place of public gathering.

According to manufacturers' specifications, the fabric described below consists of **non-combustible materials**, making the fabric **inherently flame retardant** for the life of the fabric without the addition of topical flame retardant chemicals. Washing this fabric will not remove the non-combustible characteristics. With proper care and maintenance the fabric will remain flame retardant for its life.

The NYC Fire Department requires re-testing of the material **every three (3) years**, according to §805-01(d)(2)(C). Due to accumulation of air-borne dust and oils, the flame resistance can diminish over time. Annual testing is recommended.

I have field-tested the fabric described below. The fabric was field-tested using standard methods as set forth in §805-01 (c).

Purchaser's Name: A Day to Remember

Order Number: 39030

Location of Use: Terminal 5

Date of Test and Affidavit: 10/04/2019

Materials: 63 Yards of White Poly Silk International, 100% Trevira, as 1 Kabuki Drape.

Ricardo Garcia

Certificate of Fitness 90526726, Type C-15 for Supervisor of Flameproofing

New York City Fire Department

Certificate of Fitness Expiration Date: August 27, 2022

State of California, County of Los Angeles

On October 4, 2019 before me, _____, personally appeared

RICARDO GARCIA, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.





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NEW YORK CITY AFFIDAVIT OF FLAME RETARDANCY

This document is to certify that, in accordance with the Rules of the Fire Department of the City of New York (as specified by Title 3 of the Rules of the City of New York), section §805-01, subsection (e), the material listed was tested and meets the requirements for use as a decoration in a place of public gathering.

According to manufacturers' specifications, the fabric described below consists of **non-combustible materials**, making the fabric **inherently flame retardant** for the life of the fabric without the addition of topical flame retardant chemicals. Washing this fabric will not remove the non-combustible characteristics. With proper care and maintenance the fabric will remain flame retardant for its life.

The NYC Fire Department requires re-testing of the material **every three (3) years**, according to §805-01(d)(2)(C). Due to accumulation of air-borne dust and oils, the flame resistance can diminish over time. Annual testing is recommended.

I have field-tested the fabric described below. The fabric was field-tested using standard methods as set forth in §805-01 (c).

Purchaser's Name: A Day to Remember

Order Number: 39030

Location of Use: Terminal 5

Date of Test and Affidavit: 10/04/2019

Materials: 7 Yards of Black Poly Silk International, 100% Trevira, as lining for 1 Kabuki Drape.


Certificate of Fitness 90526726, Type C-15 for Supervisor of Flameproofing
New York City Fire Department
Certificate of Fitness Expiration Date: August 27, 2022

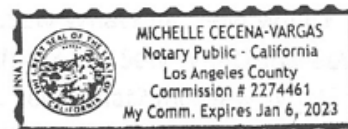
State of California, County of Los Angeles

On OCTOBER 4, 2019 before me  personally appeared RICARDO GARCIA, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature 





COMPANYLICENSES

Nashville: 120 Airpark Center East Nashville, TN 37217
Chicago: 1850 S Elmhurst Road Mount Prospect, IL 60056
strictlyfx.com P: (630)694-2394 F: (630)694-2395

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U.S. Department of Justice
Bureau of Alcohol, Tobacco, Firearms and Explosives

Federal Explosives License/Permit
(18 U.S.C. Chapter 40)

In accordance with the provisions of Title XI, Organized Crime Control Act of 1970, and the regulations issued thereunder (27 CFR Part 555), you may engage in the activity specified in this license or permit within the limitations of Chapter 40, Title 18, United States Code and the regulations issued thereunder, until the expiration date shown. **THIS LICENSE IS NOT TRANSFERABLE UNDER 27 CFR 555.53.** See "WARNINGS" and "NOTICES" on reverse.

Direct ATF ATF - Chief, FELC
Correspondence To 244 Needy Road
 Martinsburg, WV 25405-9431

License/Permit
Number **1-BL--19-2F-12931**

Chief, [REDACTED] Expiration
Date **June 1, 2022**

Name
STRICTLY F/X LLC

Premises Address (Changes? Notify the FELC at least 10 days before the move.)
**120 AIRPARK CENTER DRIVE E
NASHVILLE, TN 37217-**

Type of License or Permit
19-MANUFACTURER OF EXPLOSIVES

Purchasing Certification Statement
The licensee or permittee named above shall use a copy of this license or permit to assist a transferor of explosives to verify the identity and the licensed status of the licensee or permittee as provided by 27 CFR Part 555. The signature on each copy must be an original signature. A faxed, scanned or emailed copy of the license or permit with a signature intended to be an original signature is acceptable. The signature must be that of the Federal Explosives Licensing Center (FELC). I certify that this is a true and correct copy of the license or permit named above to engage in the business of manufacturing explosives.

Mailing Address (Changes? Notify the FELC of any changes.)

**STRICTLY F/X LLC
120 AIRPARK CENTER DRIVE E
NASHVILLE, TN 37217-**

[REDACTED] 1972
Partner/Owner
Position Title
Ted Maccabee
6/28/2019

Printed Name

Date

ATF Form 5400.14-5400.15 Part I
Revised October 2011

Previous Edition is Obsolete STRICTLY F/X LLC 120 AIRPARK CENTER DRIVE E 37217-1 BL--19-2F-12931 June 1, 2022-19-MANUFACTURER OF EXPLOSIVES

Federal Explosives License (FEL) Customer Service Information

Federal Explosives Licensing Center (FELC)
244 Needy Road
Martinsburg, WV 25405-9431

Toll-free Telephone Number: (877) 283-3352
Fax Number: (304) 616-4401
E-mail: FELC@atf.gov

ATF Homepage: www.atf.gov

Change of Address (27 CFR 555.54(a)(1)). Licensees or permittees may during the term of their current license or permit remove their business or operations to a new location at which they intend regularly to carry on such business or operations. The licensee or permittee is required to give notification of the new location of the business or operations not less than 10 days prior to such removal with the Chief, Federal Explosives Licensing Center. The license or permit will be valid for the remainder of the term of the original license or permit. (The Chief, FELC, shall, if the licensee or permittee is not qualified, refer the request for amended license or permit to the Director of Industry Operations for denial in accordance with § 555.54.)

Right of Succession (27 CFR 555.59). (a) Certain persons other than the licensee or permittee may secure the right to carry on the same explosive materials business or operations at the same address shown on, and for the remainder of the term of, a current license or permit. Such persons are: (1) The surviving spouse or child, or executor, administrator, or other legal representative of a deceased licensee or permittee; and (2) A receiver or trustee in bankruptcy, or an assignee for benefit of creditors. (b) In order to secure the right provided by this section, the person or persons continuing the business or operations shall furnish the license or permit for that business or operations for endorsement of such succession to the Chief, FELC, within 30 days from the date on which the successor begins to carry on the business or operations.

(Continued on reverse side)

Cut Here ✂

Federal Explosives License/Permit (FEL) Information Card	
License/Permit Name:	STRICTLY F/X LLC
Business Name:	
License/Permit Number:	1-BL--19-2F-12931
License/Permit Type:	19-MANUFACTURER OF EXPLOSIVES
Expiration:	June 1, 2022
Please Note: Not Valid for the Sale or Other Disposition of Explosives.	

Nashville: 120 Airpark Center East Nashville, TN 37217
Chicago: 1850 S Elmhurst Road Mount Prospect, IL 60056
strictlyfx.com P: (630)694-2394 F: (630)694-2395

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WARNINGS

1. As provided in Title XI of the Organized Crime Control Act of 1970 (U.S.C. § 842(i)), it is unlawful for any person who (1) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year, (2) is a fugitive from justice, (3) is an unlawful user of, or addicted to any controlled substance (*as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)*), (4) has been adjudicated as a mental defective or has been committed to a mental institution, to ship, transport, or receive any explosive materials in interstate or foreign commerce, (5) is an alien, other than an alien who is lawfully admitted for permanent residence (*as that term is defined in section 101(a)(20) of the Immigration and Naturalization Act*), or meets any other exception under section 842(i)(5), (6) has been discharged from the armed forces under dishonorable conditions, or (7) having been a citizen of the United States, has renounced the citizenship of that person.
2. **Federal Regulation 27 CFR 555.53 - Licensees and permits issued under this part are not transferable to another person. In the event of the lease, sale, or other transfer of the business or operations covered by the license or permit, the successor must obtain the license or permit required by this part before commencing business or operations.**
3. **Alteration or Changes to the License or Permit. Alterations or changes in the original license or permit or in duplications thereof violates 18 U.S.C. 1001, an offense punishable by imprisonment for not more than 5 years and/or a fine of not more than \$250,000.**

NOTICES

1. Any change in trade name or control of this business or operations **MUST** be reported within 30 days of the change to the Chief, Federal Explosives Licensing Center (FELC), 244 Needy Road, Martinsburg, WV 25405-9431. (27 CFR 555.56-555.57). A licensee or permittee who reports a Change of Control must, upon expiration of the license or permit, file an ATF Form 5400.13/5400.16.
2. Under § 555.46, Renewal of License/Permit, if a licensee or permittee intends to continue the business or operations described on a license or permit issued under this part during any portion of the ensuing year, the licensee or permittee shall, unless otherwise notified in writing by the Chief, FELC, execute and file with ATF prior to the expiration of the license or permit an application for a license or permit renewal, ATF Form 5400.14/5400.15 Part III, in accordance with the instructions on the form, and the required fee. In the event the licensee or permittee does not timely file an ATF Form 5400.14/5400.15 Part III, the licensee or permittee must file an ATF Form 5400.13/5400.16 as required by § 555.45, and obtain the required license or permit before continuing business or operations. A renewal application will automatically be mailed by ATF to the "mailing address" on the license or permit approximately 60 days prior to the expiration date of the license or permit. If the application is not received 30 days prior to the expiration date, the licensee or permittee should contact the FELC.
Note: The user-limited permits are not renewable.
3. This license or permit is conditional upon compliance by you with the Clean Water Act (33 U.S.C. § 1341(a)).
4. **THIS LICENSE OR PERMIT MUST BE POSTED AND KEPT AVAILABLE FOR INSPECTION (27 CFR 555.101).**

ATF Form 5400.14/5400.15 Part I
Revised October 2011

Federal Explosives License (FEL) Customer Service Information (Continued from front)

Discontinuance of Business (27 CFR 555.61)(27 CFR 555.128). Where an explosives materials business or operations is succeeded by a new licensee or permittee, the records prescribed by this subpart shall appropriately reflect such facts and shall be delivered to the successor, or may be, within 30 days following business discontinuance, delivered to the ATF Out-of-Business Records Center, 244 Needy Road, Martinsburg, WV 25405, or to any ATF office in the division in which the business was located. Where discontinuance of the business is absolute, the records shall be delivered within 30 days following the business discontinuance to the ATF Out-of-Business Records Center, 244 Needy Road, Martinsburg, WV 25405, or to any ATF office in the division in which the business was located.

Explosive materials must be stored in conformance with requirements set forth in 27 CFR, Part 55. It is unlawful for any person to store any explosive materials in a manner not in conformity with these regulations.

**TO REPORT LOST OR STOLEN EXPLOSIVES, YOU MUST IMMEDIATELY NOTIFY ATF:
CALL TOLL FREE - (888) ATF-BOMB**

 **Cut Here**

Federal Explosives Licensing Center (FELC) Toll-free number: (877) 283-3352
244 Needy Road Fax number: (304) 616-4401
Martinsburg, WV 25405-9431 E-mail: FELC@atf.gov

ATF Hotline Numbers

Arson Hotline: 1-888-ATF-FIRE (1-888-283-3473)
Bomb Hotline: 1-888-ATF-BOMB (1-888-283-2662)
Report Illegal Firearms Activity: 1-800-ATF-GUNS (1-800-283-4867)
Firearms Theft Hotline: 1-888-930-9275
Report Stolen, Hijacked or Seized Cigarettes: 1-800-659-6242
Other Criminal Activity: 1-888-ATF-TIPS (1-888-283-8477)

Nashville: 120 Airpark Center East Nashville, TN 37217
Chicago: 1850 S Elmhurst Road Mount Prospect, IL 60056
strictlyfx.com P: (630)694-2394 F: (630)694-2395

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U.S. Department of Justice
Bureau of Alcohol, Tobacco, Firearms and Explosives
Federal Explosives Licensing Center (FELC)
www.atf.gov

Federal Explosives Licensing Center
244 Needy Road
Martinsburg, West Virginia 25405
telephone: (877)283-3352 fax: (304)616-4401

NOTICE OF CLEARANCE

for individuals transporting, shipping, receiving, or possessing explosive materials.

ISSUED TO: STRICTLY F/X LLC

Federal Explosives license/permit no.: 1-BL--19-2F-12931

NOTICE DATE: 09/30/2019

Expiration Date: **June 1, 2022**

Explosives License/Permit Type: 19-MANUFACTURER OF EXPLOSIVES

EXPIRATION DATE: This Notice expires when superseded by a newer Notice which will list all current responsible persons and employee possessors, or when the license or permit expires - whichever comes first.

- ① **WARNING.** Only those individuals listed below as **RESPONSIBLE PERSONS** and **EMPLOYEE POSSESSORS** with a background clearance status of "CLEARED" or "PENDING" are authorized to transport, ship, receive, or possess explosive materials in the course of employment with you.
- ② **"DENIED" STATUS.** If an employee possessor has a background clearance status of "DENIED", you **MUST** take immediate steps to remove the employee from a position requiring the transporting, shipping, receiving, or possessing of explosive materials. Also, if the employee has been listed as a person authorized to accept delivery of explosive materials, you **MUST** remove the employee from such list and immediately, and in no event later than the second business day after such change, notify distributors of such change, as stated in 27 CFR 555.33(a).
- ③ **CHANGE IN RESPONSIBLE PERSONS.** You **MUST** report any change in responsible persons to the Chief, Federal Explosives Licensing Center, within 30 days of the change and new responsible persons **MUST** include "appropriate identifying information" as defined in 27 CFR 555.11. Fingerprints and photos are **NOT** required, however they will be required upon renewal of the license or permit.
- ④ **CHANGE OF EMPLOYEES.** You **MUST** report any change of employee/possessors to the Chief, FELC, within 30 days. Reports relating to newly hired employees must be submitted on ATF Form 5400.28 for EACH employee.

Premises Address: 120 AIRPARK CENTER DRIVE E
NASHVILLE, TN 37217

Mailing Address:

STRICTLY F/X LLC
120 AIRPARK CENTER DRIVE E
NASHVILLE, TN 37217

This 'Notice of Clearance' is provided to you as required by 18 U.S.C. 843(h) and **MUST** be retained as part of your permanent records and be made available for examination or inspection by ATF officers as required by 27 CFR 555.121. If you receive a Notice subsequent to this Notice, this Notice will no longer be valid.

In accordance with 27 CFR 555.33, Background Checks and Clearances, and 27 CFR 555.57, Change of Control, Change in Responsible Persons, and Change of Employees, ATF's Federal Explosives Licensing Center (FELC) has conducted background checks on the individual(s) you identified as a responsible person(s) and an employee/possessor(s) on your application, or reported after the issuance of your license/permit.

The following is a SUMMARY of the results of the background checks conducted on the individuals you reported as responsible persons and employee/possessors. ATF will be notifying ALL individuals listed on this document of their respective status by separate letter mailed to their residence address.

PLEASE BE ADVISED THAT IT IS UNLAWFUL FOR ANY PERSON REFLECTING A STATUS OF "DENIED" TO TRANSPORT, SHIP, RECEIVE, OR POSSESS EXPLOSIVE MATERIALS.

Please carefully review this Notice to ensure that all the information is accurate. If this Notice is incorrect, please return the Notice to the Chief, FELC, with a statement showing the nature of the error(s). The Chief, FELC, shall correct the error, and return a corrected Notice.

Nashville: 120 Airpark Center East Nashville, TN 37217
Chicago: 1850 S Elmhurst Road Mount Prospect, IL 60056
strictlyfx.com P: (630)694-2394 F: (630)694-2395

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CALIFORNIA DEPARTMENT OF FORESTRY and FIRE PROTECTION
OFFICE OF THE STATE FIRE MARSHAL
FIREWORKS LICENSE

License Type: GPD-1254

Issue Date: 05/30/2019

Licensee: STRICTLY FX L.L.C.
ATTN: TED MACCABEE
120 AIRPARK CENTER DRIVE E
NASHVILLE, TN 37217

The named licensee is authorized to perform all acts permitted a fireworks

PUBLIC DISPLAY (GENERAL)

pursuant to Part II, Chapter I of the Health and Safety Code of the State of California.



Deputy State Fire Marshal

Expires: 6/30/2020

FH-10(02-14-01)

**CITY OF BONNER SPRINGS, KANSAS
OCCUPATIONAL LICENSE**

License No: 077
Year: 2019
Fee Paid: \$ 85

Having paid to the CITY OF BONNER SPRINGS, KANSAS, the sum required by law, as evidenced by the receipt therefore, and having complied with the ordinances relating to licenses, or any amendments thereto, is hereby authorized and licensed to do business within the corporate limits of said city; subject nevertheless, to the provisions of said ordinance, or any amendments thereto. The issuance of this license neither confirms or denies the use of land as regulated under the provisions of the Zoning Ordinance. Licensee must obey all laws of the United States, the State of Kansas, and ordinances of the City of Bonner Springs, Kansas.

Street Address: 120 Airpark Center Drive E

Strictly FX, LLC
120 Airpark Center Drive Drive E
Nashville, TN 37217

Jeff Harrington, Mayor

Christina Drake, City Clerk

CITY OF CHICAGO			
LICENSE CERTIFICATE			
NON-TRANSFERABLE			
BY THE AUTHORITY OF THE CITY OF CHICAGO, THE FOLLOWING SPECIFIED LICENSE IS HEREBY GRANTED TO			
NAME:			
DBA:	STRICTLY F/X, L.L.C.	PRINTED ON:	
AT:	STRICTLY F/X, L.L.C.	01/17/2019	
	1400 N. MICHAEL DR., Apt./Suite A		
	WOOD DALE, IL 60191		
LICENSE NO:	SUITE #A	CODE:	FEE:
LICENSE:	2133884	1253	\$****500.00
Includes: Use of Explosives;			
PRESIDENT: MARK J. GREGA			
SECRETARY: MARK J. GREGA			
This license is a privilege granted and not a property right. This license is the property of the City of Chicago.			
THIS LICENSE IS ISSUED AND ACCEPTED SUBJECT TO THE REPRESENTATIONS MADE ON THE APPLICATION THEREOF. AND MAY BE SUSPENDED OR REVOKED FOR CAUSE AS PROVIDED BY LAW. LICENSEE SHALL OBSERVE AND COMPLY WITH ALL LAWS, ORDINANCES, RULES AND REGULATIONS OF THE UNITED STATES GOVERNMENT, STATE OF ILLINOIS, COUNTY OF COOK, CITY OF CHICAGO AND AGENCIES THEREOF.			
WITNESS THE HAND OF THE MAYOR OF SAID CITY AND THE CORPORATE SEAL THEREOF			
THIS 15 DAY OF JANUARY, 2019			
EXPIRATION DATE: January 15, 2021			
TEST:			
ACCOUNT NO. 57744 SITE MAYOR 22			
CITY CLERK			
THIS LICENSE MUST BE POSTED IN A CONSPICUOUS PLACE UPON THE LICENSED PREMISES			

Nashville: 120 Airpark Center East Nashville, TN 37217
Chicago: 1850 S Elmhurst Road Mount Prospect, IL 60056
strictlyfx.com P: (630)694-2394 F: (630)694-2395

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CITY OF SANTA CLARA
MUNICIPAL SERVICES / BUSINESS TAX
1500 Warburton Avenue - Santa Clara, CA 95050
Phone (408) 615-2310

ANNUAL BUSINESS TAX CERTIFICATE / FIRE PERMIT

SCF1213A
4000000002 2/1



STRICTLY FX LLC
1400 N MICHAEL DR A
WOOD DALE IL 60191-1084

CERTIFICATE NO. 201763
ISSUE DATE December 15, 2018
EXPIRES December 14, 2019
LOCATION TYPE



POST CONSPICUOUSLY AT SANTA CLARA LOCATION. NOT TRANSFERABLE, REFUNDABLE OR ASSIGNABLE



STATE OF ILLINOIS
OFFICE OF THE STATE FIRE MARSHAL
DIVISION OF FIRE PREVENTION

1035 Stevenson Drive • Springfield, IL 62703-4259



Pyrotechnic Distributor License

STRICTLY FX INC
120 AIRPARK CENTER DRIVE E
NASHVILLE, TN 37217

IL06-PF-00001

License #



Matt Perez
STATE FIRE MARSHAL

09/15/2021

EXPIRATION DATE

PF

CLASSIFICATION

This license may be revoked by
the Office of the State Fire Marshal
for failure to comply with the lawful
rules regulating this program.

Nashville: 120 Airpark Center East Nashville, TN 37217
Chicago: 1850 S Elmhurst Road Mount Prospect, IL 60056
strictlyfx.com P: (630)694-2394 F: (630)694-2395

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JOHN R KASICH
Governor

State of Ohio
Department of Commerce
Division of State Fire Marshal

JACQUELINE T. WILLIAMS
Director

2018 Fireworks Out-of State Shipping Certificate

This fireworks out of state shipper has met the requirements of Ohio Revised Code 3743.40 and is permitted to ship fireworks of the following type(s) listed below directly into this state to a licensed wholesaler, manufacturer, or an exhibitor at a properly permitted exhibition site

02.89.0054
STRICTLY FX LLC
1400 N MICHAEL DRIVE, SUITE A
WOOD DALE, IL 60191

Expiration Date: 09/24/2019
License is non-transferable
1.4 G; 1.4 S



Ralph T. Hudgens

State of Georgia
Office of
Georgia Safety Fire Commissioner

No. 0312

920 West Tower, 2 Martin Luther King, Jr. Drive
Atlanta, Georgia 30334

PROXIMATE AUDIENCE FIREWORKS AND/OR PYROTECHNICS DISPLAY

Pursuant to O.C.G.A. Title 25, Chapter 10, and the Rules and Regulations of the Safety Fire Commissioner, this license is issued for the purpose of conducting Proximate Audience Fireworks and/or Pyrotechnics Displays only for the following company and listed operators thereof:

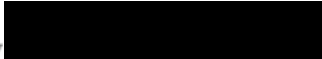
Strictly FX, LLC.
120 Airpark Center Dr. E
Nashville, TN. 37217

This license is revocable and may be suspended upon violation of any of the provisions of the Rules and Regulations promulgated thereunder.

Date Issued: December 27, 2018
Expiration Date: December 31, 2019

Regulatory Fee: \$1,500.00

OPERATORS
See List

By 
Safety Fire Commissioner/Designee

Nashville: 120 Airpark Center East Nashville, TN 37217
Chicago: 1850 S Elmhurst Road Mount Prospect, IL 60056
strictlyfx.com P: (630)694-2394 F: (630)694-2395

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Strictly FX, LLC (License #0312)
Operators/Assistants for 2019

William "Joey" Atkinson
Tony Alaimo
Scott Allen
Adam Biscow
Ron Bleggi
Richard Brisson
Brien Carpenter
Ciro Scotto d'Antuono
Wes Fiske
JeremyFox
Jackson Frazier
Eric Gorleski
Alan Grant
Kurtis Grant
Mark Grega
Mike Hartle
Matt Jackson
Shane Johnson
Jeff Jowdy
Jeffrey Kasdorf
Richard Lass
Steven D. Lewis
Vince Lopez
John Lyons
Tony Magro
Nick Meyer
Reid Nofsinger
Duane Nowak
David Peluso
Edward Romack
Justin Seedle
Grant Sellers
David "Tony" Serrano
Jon Taylor
Patrick Wetli
David Yarbrough

KANSAS STATE FIRE MARSHAL

LICENSE #: 13FDE001
STRICTLY FX LLC
120 AIRPARK CENTER DRIVE E
NASHVILLE TN 37217

Is Granted This License As **Fireworks - Distributor Consumer Fireworks**

To perform duties as a Fireworks Distributor as granted by the Kansas Fire Prevention Code and adopted National Standard NFPA 1124, 2006 Edition within the State of Kansas

As granted under the authority of K.A.R. 22-1-3(x) and other provisions of the Kansas Prevention Code

This License is valid until **6/29/2020** unless suspended, revoked or refused renewal in accordance with the provisions of KAR 22-1-5

Effective Date: **6/29/2019**

Expiration Date: **6/29/2020**

Wally Roberts
Chief of Investigations



STATE OF MAINE - DEPARTMENT OF PUBLIC SAFETY
OFFICE OF STATE FIRE MARSHAL
45 COMMERCE DR STE 1
AUGUSTA, ME 04333-0001

Permit for Explosives User

Permit: USR658

In accordance with the provisions of M.R.S.A. Title 25, Chapter 2473, permission is hereby granted for use of explosives as described herein:

A copy of this permit must be affixed in all trucks and magazines.

Company: STRICTLY FX, LLC
Company Address: 120 AIRPARK CENTER DRIVE E, NASHVILLE, TN 37217

Permit Date: 05/31/2017

Expiration Date: 05/30/2020

Nashville: 120 Airpark Center East Nashville, TN 37217
Chicago: 1850 S Elmhurst Road Mount Prospect, IL 60056
strictlyfx.com P: (630)694-2394 F: (630)694-2395

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SECRETARY OF STATE



**CERTIFICATE OF REGISTRATION
OF
FOREIGN LIMITED LIABILITY COMPANY**

I, ROSS MILLER, the duly elected and qualified Nevada Secretary of State, do hereby certify that I am the legal custodian of the records pertaining to Limited Liability Companies, and that I am the proper officer to execute this certificate.

I further certify upon said records that **STRICTLY FX LLC**, a Limited Liability Company organized under the laws of the State of Delaware did, on April 21, 2011 qualify pursuant to the provisions of the Nevada Revised Statutes and is currently registered to transact business in this State as a Limited Liability Company.



IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of State, at my office on April 26, 2011.

ROSS MILLER
Secretary of State

Certified By: GJ Jallet
Certificate Number: C20110422-0133
You may verify this certificate
online at <http://www.nvsos.gov/>

SECRETARY OF STATE



NEVADA STATE BUSINESS LICENSE

STRICTLY FX LLC

Nevada Business Identification # NV20111281885

Expiration Date: April 30, 2020

In accordance with Title 7 of Nevada Revised Statutes, pursuant to proper application duly filed and payment of appropriate prescribed fees, the above named is hereby granted a Nevada State Business License for business activities conducted within the State of Nevada.

Valid until the expiration date listed unless suspended, revoked or cancelled in accordance with the provisions in Nevada Revised Statutes. License is not transferable and is not in lieu of any local business license, permit or registration.



IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of State, at my office on February 4, 2019



Barbara K. Cegavske
Secretary of State

You may verify this license at www.nvsos.gov under the Nevada Business Search.

License must be cancelled on or before its expiration date if business activity ceases.
Failure to do so will result in late fees or penalties which by law cannot be waived.

NEVADA STATE FIRE MARSHAL LICENSE		
NON-TRANSFERABLE	NON-TRANSFERABLE	NON-TRANSFERABLE
LICENSE NUMBER(S) FE 117 P 2340	TYPE Flame Effect - Propane Pyro - Indoor/Special Effects	Firm & Address STRICTLY FX LLC 120 AIRPARK CENTER DR #E NASHVILLE, TN 37210
The above named firm is hereby authorized to perform services within the limits of the type of license(s) specified above as provided under the Nevada State Fire Marshal's Regulations and Nevada Revised Statutes, Chapter 477. This License remains the property of the State Fire Marshal, and must be surrendered upon demand. Issued: 1 May, 2019 Date Expires: 30 April, 2020		





State of Tennessee	
11540040	
TENNESSEE FIREWORKS PERMITS DISPLAY EXHIBITOR STRICTLY FX, LLC	
<i>This is to certify that all requirements of the State of Tennessee have been met by virtue of Chapter 118, Public Acts of 1961, as amended by Chapter 146, Public Acts of 1969.</i>	
ID NUMBER: 1 LIC STATUS: LICENSED EXPIRATION DATE: April 30, 2020	 IN-1313 DEPARTMENT OF COMMERCE AND INSURANCE

Nashville: 120 Airpark Center East Nashville, TN 37217
 Chicago: 1850 S Elmhurst Road Mount Prospect, IL 60056
 strictlyfx.com P: (630)694-2394 F: (630)694-2395



Office of Attorney General
Fireworks Displays or Exhibitions
Certificate of Registration

Be it known that: **Strictly FX LLC**
 120 Airport Center Drive E
 Nashville, TN 37217
 President: Theodore Maccabee

is registered with the Office of Attorney General, Commonwealth of Pennsylvania,
to perform, provide or supervise fireworks displays for profit within this
Commonwealth.

This Certificate is evidence of registration with the Office of Attorney General only.
The competence, financial fitness and compliance with local requirements by the
above individual or entity are not herein certified.


Jennifer Selber
Executive Deputy Attorney General
Director, Criminal Law Division

February 13, 2019
Date

Registration Expires: February 13, 2020



LYDA KREWSON
MAYOR
JIMMIE EDWARDS
DIRECTOR OF PUBLIC SAFETY

St. Louis
Fire Department
Bureau of Fire Prevention



DENNIS JENKERSON
FIRE CHIEF
CHARLES COYLE
FIRE MARSHAL

DATE ISSUED January 3, 2019

CERTIFICATE NO. #66

CERTIFICATE OF REGISTRATION

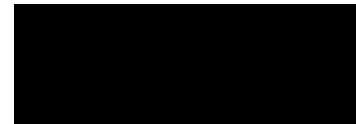
THIS IS TO CERTIFY THAT

NAME OF COMPANY: STRICTLY FX LLC

ADDRESS: 120 AIRPARK CENTER DRIVE E NASHVILLE TN 37217

HAS COMPLIED WITH THE PROVISIONS OF THE ST. LOUIS FIRE PREVENTION
CODE ORDINANCE NO. 70796 SECTION 5608.1.1. THIS CERTIFICATE EXPIRES ON
December 31, 2019 BUT MAY BE REVOKED FOR CAUSE. ISSUED FOR
Pyrotechnics

DEPARTMENT OF PUBLIC SAFETY
DIVISION OF FIRE - FIRE PREVENTION



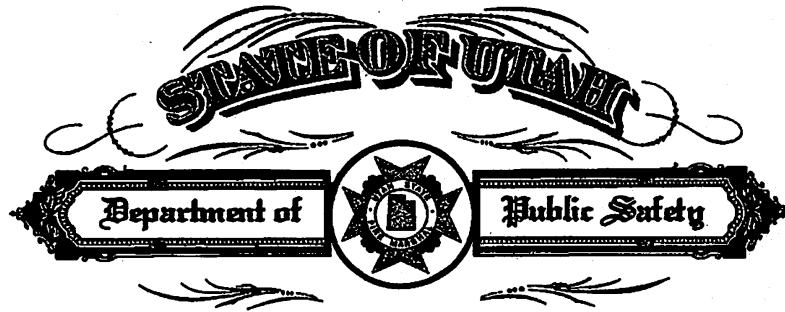
FIRE MARSHAL

STOP FIRES BEFORE THEY START

1421 N. Jefferson • St. Louis, Missouri 63106 • (314) 289-1900 • Fax: (314) 289-1985

Nashville: 120 Airpark Center East Nashville, TN 37217
Chicago: 1850 S Elmhurst Road Mount Prospect, IL 60056
strictlyfx.com P: (630)694-2394 F: (630)694-2395

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Fireworks License

LICENSE

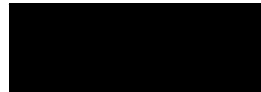
STRICTLY FX, LLC
1400 N MICHAEL DR, STE A
WOOD DALE, IL 60191

License No. F100211
Type Importer

The above named concern is hereby authorized to engage in the act or acts of importing or wholesaling of fireworks within the limits of the type of license as specified above, and as stipulated in the regulations adopted pursuant to Title 53, Chapter 7, Section 204, Utah Code Annotated.

Issued 03/15/2017
Expires 12/31/2019

By



State Fire Marshal

This license is non-transferable. Post in conspicuous place.

Business License for

STRICTLY FX LLC
120 AIRPARK CENTER DR EAST
NASHVILLE TN 37217

Business name . : STRICTLY FX LLC
Location addr . : OUTSIDE CITY MISC ADDRS (BL)
Phone number. . : 630-694-2394
Lic Nbr/Class . : 20-00026393 / ALL OTHER BUSINESSES NOT
LISTED
Control number . : 0023661
Issue date. . . : July 19, 2019
Expiration date : July 31, 2020

LICENSE MUST BE DISPLAYED IN PUBLIC VIEW

The City of Dover

15 LOOCKERMAN PLAZA
DOVER DE 19901

Nashville: 120 Airpark Center East Nashville, TN 37217
Chicago: 1850 S Elmhurst Road Mount Prospect, IL 60056
strictlyfx.com P: (630)694-2394 F: (630)694-2395

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Business License for

STRICTLY FX LLC
120 AIRPARK CENTER DR EAST
NASHVILLE TN 37217

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Location addr . : OUTSIDE CITY MISC ADDRS (BL)
Phone number. . : 630-694-2394
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2019 Permit for Fireworks Other than Consumer or Low Impact

Authority: 2011 PA 256	The LEGISLATIVE BODY OF CITY, VILLAGE OR TOWNSHIP BOARD will not discriminate against any individual or group because of race, sex, religion, age, color, marital status, disability, or political beliefs. If you need assistance with reading, writing, hearing, etc., under the Americans with Disabilities Act, you may make your needs known to this Legislative Body of City, Village or Township Board.
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This permit is not transferable. Possession of this permit authorizes the herein named person to possess, transport and display fireworks in the amounts, for the purpose of and at the place listed below only through permit expiration date.

TYPE OF PERMIT(S) (Select all applicable boxes) ☐ Agricultural or Wildlife Fireworks ☒ Articles Pyrotechnic ☐ Display Fireworks ☐ Public Display ☐ Private Display ☐ Special Effects Manufactured for Outdoor Pest Control or Agricultural Purposes		FOR USE BY LEGISLATIVE BODY OF CITY, VILLAGE OR TOWNSHIP BOARD ONLY. PERMIT(S) EXPIRATION DATE (ENTER DATE OF EXPIRATION)	
NAME OF PERSON PERMIT ISSUED TO Strictly FX, LLC - Penny B Bartlett		AGE (18 YEARS OR OLDER) ☒ YES ☐ NO	
ADDRESS OF PERSON PERMIT ISSUED TO 120 Airpark Center East, Nashville TN 37217			
NAME OF ORGANIZATION, GROUP, FIRM OR CORPORATION Strictly FX, LLC			
ADDRESS 120 Airpark Center East, Nashville, TN 37217			
NUMBER AND TYPES OF FIREWORKS (Please attach additional pages if necessary) Pyrotechnics, Flames, Cryogenics and CO2 effects. Please see booklet for full details			
EXACT LOCATION OF DISPLAY OR USE Eastern Michigan Uni. Convocation Cener, 799 N. Hewitt Road			
CITY, VILLAGE, TOWNSHIP Ypsilanti, MI 48197		DATE 11/16/2019	
BOND OR INSURANCE FILED ☒ YES ☐ NO		TIME 2:00Pm Demo; 8PM Show	
		AMOUNT 5 Million	

Issued by action of the Legislative Body of a

☐ City ☐ Village ☐ Township of _____ on the _____ day of _____

(Signature and Title of Legislative Body Representative)

THIS FORM IS VALID UNTIL THE DATE OF EXPIRATION OF PERMIT



Resolution No. 2019-254
November 5, 2019

RESOLVED BY THE COUNCIL OF THE CITY OF YPSILANTI:

That an ordinance entitled: "An ordinance to Amend Chapter 99" be adopted on Second and Final reading.

OFFERED BY: _____

SECONDED BY: _____

YES: NO: ABSENT: VOTE:

This resolution is adopted by the Council of the City of Ypsilanti and approved by the Mayor this 5 day of November 2019

#Resolution No. 2019-254



**CITY OF YPSILANTI
NOTICE OF ADOPTED ORDINANCE
ORDINANCE NO. 1349**

An Ordinance Entitled "To Amend Chapter 99"

THE CITY OF YPSILANTI ORDAINS:

1. **THE CITY OF YPSILANTI HEREBY ORDAINS** That the Ypsilanti City Code is hereby amended by amending Chapter 99 to read as follows:

CHAPTER 99. - SMALL CELL WIRELESS FACILITIES

Sec. 99-1. - Definitions.

Act means the Small Wireless Communications Facilities Deployment Act, Act 365 of 2018.

Authorization means permission from the city to do work in the public rights-of-way, maintain facilities in the public rights-of-way, or deploy a small cell wireless facility in the city, and includes but is not limited to a license, a permit, a letter, or construction drawing approval. Multiple authorizations may be required for certain activities.

Colocate means to install, mount, maintain, modify, operate, or replace wireless facilities on or adjacent to a wireless support structure or utility pole. Colocate does not include make-ready work or the installation of a new utility pole or new wireless support structure.

Contractor means and includes any of the following licensed entities performing work on an owner's behalf: contractor; subcontractor; or any employee or agent of a contractor, subcontractor, or owner.

Department means the city department of public service.

Emergency means a condition that poses a clear and immediate danger to life or health, or a significant loss of property, or requires immediate repair to restore service to a group of users of a utility service.

Emergency work means the replacement or repair of damage to active facilities, including main lines and services, where all 811 dig requirements are met.

Excavate means without limitation any cutting, digging, grading, tunneling, boring, or other alteration of the surface or subsurface material or earth in the public way.

Facilities means poles, pipes, culverts, conduits, ducts, cables, wires, fiber, amplifiers, pedestals, antennas, transmission or receiving equipment, other electronic equipment, electrical conductors, manholes, appliances, signs, pavement structures, irrigation systems, landscaping, monument signs, monument mailboxes and any other similar equipment, for public or private use.

Owner means any property owner, company owner, or any entity by which work within the public rights-of-way has been ordered, or any entity on behalf of which any work within the public rights-of-way is caused to be performed, or any agent thereof.

#Ordinance No. 1349-To Amend Chapter 99

Person means an individual, association, firm, partnership, limited liability company, joint venture, corporation, government, utility, or other organized entity able to contract for the activities described in this ordinance, whether for profit or not for profit. The term does not include the city.

Public rights-of-way means the area on, below, or above a public roadway, highway, street, alley, easement or waterway. The term "public rights-of-way" does not include a federal, state, or private rights-of-way.

Small cell wireless facility means a wireless facility that meets both of the following requirements:

- (i) Each antenna is located inside an enclosure of not more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements would fit within an imaginary enclosure of not more than six cubic feet.
- (ii) All other wireless equipment associated with the facility is cumulatively not more than 25 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

Utility pole means a pole or similar structure that is or may be used in whole or in part for cable or wireline communications service, electric distribution, lighting, traffic control, signage, or a similar function, or a pole or similar structure that meets the height requirements in section 13(5) of the Act and is designed to support small cell wireless facilities. Utility pole does not include a sign pole less than 15 feet in height above ground.

Wireless facility means equipment at a fixed location that enables the provision of wireless services between user equipment and a communications network, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. Wireless facility includes a small cell wireless facility. Wireless facility does not include (i) the structure or improvements on, under, or within which the equipment is colocated, (ii) a wireline backhaul facility, or (iii) coaxial or fiber-optic cable between utility poles or wireless support structures or that otherwise is not immediately adjacent to or directly associated with a particular antenna.

Wireless infrastructure provider : Any person, including a person authorized to provide telecommunications services in this state but not including a wireless services provider, that builds or installs wireless communication transmission equipment, wireless facilities, or small cell wireless support structures and who, when filing an application with the city under the Small Wireless Facilities Deployment Act, Act 365 of 2018, provides written authorization to perform the work on behalf of a wireless services provider.

Wireless provider means a wireless infrastructure provider or a wireless services provider. Wireless provider does not include an investor-owned utility whose rates are regulated by the Michigan Public Service Commission ("MPSC").

Wireless services means any services, provided using licensed or unlicensed spectrum, including the use of Wi-Fi, whether at a fixed location or mobile location.

Wireless services provider means a person that provides wireless services.

Wireless support structure means a freestanding structure designed to support, or capable of supporting, small cell wireless facilities. Wireless support structure does not include a utility pole.

Sec. 99-2. - General requirements.

- (a) No wireless providers shall occupy, wholly or in part, the streets, alleys, or public rights-of-way within the city without first receiving consent and permit for that purpose. No wireless

provider shall install, collocate, or construct a facility outside the streets, alleys or public rights-of-way within the city without receiving a permit for that purpose.

- (b) No wireless providers shall attach, alter, or modify a city-owned pole or wireless support structure without entering into a license agreement with the city.
- (c) The city may establish appropriate requirements for licenses, and ordinance requirements consistent with state and federal law, and may modify the requirements of this article from time to time to reflect changes in the industry. The city further retains the right to make any modifications based on court rules, injunctions, or statutory amendments addressing the federal and state law mandates requiring the city to provide this process under its current regulations. The city further reserves any constitutional or statutory challenges it may have under federal and state law to the process mandated by the Act and federal law, despite its efforts to comply with the law. If any changes to state or federal law allows the city to take a more restrictive approach, the city reserves the right to alter current franchises, consent, permits and licenses.
- (d) Notwithstanding any other provisions of this article to the contrary, a wireless provider shall at all times comply with all laws and regulations of the state and federal government or any administrative agencies thereof. Provided, however, if any such state or federal law or regulation shall require a wireless provider to perform any service, or shall permit a provider to perform any service, or shall prohibit a wireless provider from performing any service, in conflict with the terms of this article or a resulting license agreement or of any law or regulation of the city, then as soon as possible following knowledge thereof, a wireless provider shall notify the city of the point of conflict believed to exist between such regulation or law and the laws or regulations of the city or any applicable license agreement. If after review by the city, or notice of such conflict, the city council may waive the requirements of this article for any individual franchising consent, permit, or license during review and approval of an application for a permit.
- (e) Subject to this article, wireless providers may occupy and use the public rights-of-way to collocate small cell wireless facilities to provide wireless services upon, along, over and under the public rights-of-way in the city such that such collocations do not inhibit other utility installations within the public rights-of-way.
- (f) The city retains its right to impose fees and compensation consistent with federal and state law.
- (g) Wireless providers shall pay taxes for telecommunications services that are subject to taxation.
- (h) Use of the public rights-of-way is allowed only to the extent the City itself possesses such rights.
- (i) Wireless providers shall obtain approvals legally necessary to use the public rights-of-way from owners, other than the city, of property interests in the public rights-of-way or adjacent to the roadway system located within the city. To the extent any wireless provider obtains approval through a statutory authorization, as opposed to review and approval by the city, the wireless provider's placement or location of any small cell wireless facility, wireless facility, and utility pole within the city's public rights-of-way shall comply with the general and specific design and location requirements of this article, or any relevant zoning requirements.
- (j) No wireless provider shall have the exclusive right or privilege to occupy or use the public rights-of-way for delivery of wireless services or any other purpose.
- (k) The city reserves all rights to use the public rights-of-way for any purpose not prohibited by law, including the provision of wireless services, and all rights to grant authorizations to any other person(s), including any wireless provider, to use the public rights-of-way.

- (l) Wireless providers shall have no right, title, or interest in the public rights-of-way, and any franchise, consent, permit, or license provided by the city provides no right, title or interest to occupy any space outside of the public rights-of-way or any private property not owned by the city.
- (m) Wireless providers' use of the public rights-of-way shall not divest the city of any interest in the public rights-of-way.
- (n) The city does not warrant its legal interest in the public rights-of-way.
- (o) Nothing in this section shall be deemed or construed to stop or limit the city from exercising any regulatory, police, governmental, or legislative function pursuant to applicable law, which powers include, but are not limited to, the authority to enact regulations, ordinances, rules, and orders not prohibited by state or federal law that affect the public rights-of-way or a wireless provider's use of the public rights-of-way.
- (p) The terms of this section do not permit the wireless provider to operate a cable system or to provide cable service, as those terms are defined by Section 602 of the Cable Communications Policy Act of 1984, as amended (47 U.S.C. Section 522), or install any wires or facilities that are required to be permitted under the METRO Act, Public Act 48 of 2002, MCL 484.310, without satisfying any additional legal requirements.
- (q) This article only permits the wireless provider, upon obtaining required approvals and permits, to place its small cell wireless facilities in those portions of the public rights-of-way, or in other locations outside the public rights-of-way, approved by the city.
- (r) Under no circumstances shall any wireless provider be permitted to place small cell wireless facilities on any building that is on the National Register of Historic Places, pursuant to 47 C.F.R. § 1.1307(a)(4) without a permit from the Ypsilanti Historic Commission.
- (s) Collocation of small cell wireless facilities shall be completed within twelve months of permit issuance. A small cell wireless facility collocation in the public rights-of-way that is not completed within one year of permit issuance shall be considered abandoned and shall be removed from the public rights-of-way at the wireless provider's sole expense.
- (t) A wireless provider shall notify the city in writing of the location and date that any wireless facility located in the city whose use will be discontinued. If the use of the facility is discontinued for 180 days without notice from the owner/operator or the owner of the property or other information indicates that the facility is not in use, the city may declare the facility abandoned. The city will provide notice and provide the wireless provider an opportunity to show cause before the city manager as to why the wireless facility should not be removed. Following determination of the city manager, the city may take the necessary steps to remove the facilities from the city's public rights-of-way.

Sec. 99-3. - Permit required.

- (a) *Permit requirement* . Except as otherwise provided in the Act, a wireless provider seeking to use public rights-of-way in the city for its small cell wireless facilities (including collocation, or installing or replace a utility pole), to colocate small cell wireless facilities outside the public rights-of-way, or to install new wireless support structures or modify existing wireless support structures shall apply for and obtain a permit pursuant to this article, except that a permit shall not be required for (i) routine maintenance; and (ii) like-kind modifications to any existing facility that do not materially change its appearance or exceed the structural capacity of the supporting structure.
- (b) *Limitations on facilities in application*. No more than 20 small cell wireless facilities may be included in a single permit application.
- (c) *Application* . A wireless provider shall apply for a permit on an application form made available by the Department of Public Service. A wireless provider shall file four copies of the application with the Director of Public Services, who shall distribute one copy to the city

manager, one copy to the City Planner, and one copy to the City Attorney. Applications shall be complete and include all required information. An application is not considered complete until all required materials have been submitted and accepted by the city. At a minimum, the applications shall require submission of the following:

- (1) Applicant's contact information, including an address, phone contact, twenty-four-hour emergency contact information, e-mail address (which shall be used to receive application updates from the city), and any applicable license numbers;
- (2) Applicant's contractor and subcontractor information, including the names, addresses, phone contact, e-mail addresses, emergency contact numbers, and name of the supervisor(s) assigned to any facility project of all contractors or subcontractors that will work within the city's public rights-of-way under a permit;
- (3) Number of wireless facilities that will be deployed;
- (4) The scope of the deployment, including whether the deployment is modification of a current facility or utility pole, collocation on an existing utility pole or wireless support structure, or installation of a new or replacement wireless support structure or utility pole;
- (5) GIS maps and coordinates detailing locations for each proposed small cell wireless facility and related facilities associated with each facility;
- (6) Site plan at a scale not smaller than one-inch equals twenty feet with dimensions showing the following:
 - a. Proposed location, including nearest cross street intersection;
 - b. Parcel identification number and property ownership for parcels where the small cell wireless facility is located and parcels located within 75 feet of the proposed facility;
 - c. Height of the proposed facility;
 - d. The distance of the proposed facilities and the nearest property line, roadways, rights-of-way, and utilities within the rights-of-way; and
 - e. Any other proposed improvements that are part of the deployment;
- (7) An application fee as established by the city council;
- (9) Specification sheets for all attachments and equipment that will be located within the city, including the dimensional size of the small cell wireless facility and all other wireless equipment;
- (10) Attachment drawings and demonstrations of each type of installation, including photograph simulations showing collocations, new or replacement utility poles, wireless support structures and concealment and design characteristics satisfying this article;
- (11) Pole loading analysis if being colocated on a city utility pole or wireless support structure;
- (12) Attestation that the small cell wireless facilities collocation will be completed by a wireless services provider within one year after the permit issuance date;
- (13) Work plan describing the location of the proposed work, the work to be performed, the limits of disturbance to the public rights-of-way and the method and materials to be used;
- (14) Landscape plans for ground-mounted facilities, if applicable;
- (15) Site/structure remediation plans for restoring any public property after removal of the wireless facilities, if applicable;
- (16) Certificate of compliance with FCC radio frequency emission regulations;
- (17) For all new utility poles, replacement utility poles, and wireless support structures, demonstration of compliance with ANSI/TIA 222-G-2 standards;

- (18) For all new utility poles, replacement utility poles, and wireless support structures, a certification by the wireless provider and a structural analysis sealed by a licensed engineer attesting that the utility poles and wireless support structures will accommodate collocation of additional antennas, including the extent of such collocation space;
- (19) For all new utility poles and wireless support structures within 75 feet of an existing utility pole or wireless support structure, a statement from a licensed engineer why the existing utility pole or wireless support structure is not adequate due to: (i) unreasonable terms and conditions, (ii) unreasonable technical limits, or (iii) significant additional costs ;
- (20) An inventory of the wireless provider's existing and approved small cell wireless facilities, utility poles, and wireless support structures that are within the jurisdiction of the city;
- (22) For deployments in downtown or residential districts, documentation of compliance with design and location requirements;
- (23) For deployments in the public rights-of-way, documentation showing adequate insurance, including the city named as an additional insured;
- (24) A performance bond meeting the requirements of this article; and
- (25) Any additional information requested by the city.
- (d) *Confidential information*. If a wireless provider claims that any portion of the information submitted by it as part of its application contains trade secret, proprietary, or confidential information, which is exempt from the Freedom of Information Act (MCL 15.231 et seq.), the wireless provider shall prominently so indicate on the application.
- (e) *Application fee*. Except as otherwise provided by the Act, the application shall be accompanied by a one-time nonrefundable application fee in the amount as established by city council.
- (f) *Permit approval process* . Permit applications shall comply with the following process.
 - (1) *Pre-meeting* . Prior to submission of an application, the city strongly prefers a wireless provider meet with the city to discuss the application process, a wireless provider's intended deployment, and the requirements of this article.
 - (2) *Submission* . After the pre-meeting is conducted, the wireless provider may file the application, including all required documents, fees and information.
 - (3) *Initial review for completeness* . Submitted applications will first be reviewed for completeness to ensure that all required information is included. If an application is deemed incomplete, the city will provide written notice to the wireless provider which clearly delineates all missing documents or information. Any applicable statutory review times will be tolled from the time the wireless provider receives notice from the city that the application is incomplete until the city receives a supplemental submission.
 - (4) *Review by city staff* . Once an application is deemed complete, it will be reviewed by the city manager, the city department of public works, the city building official, the DDA director, the city attorney and any other designees of the city manager.
 - (5) *Post-application meeting* . If review by the city raises any issues or concerns, meetings with the wireless provider and relevant members of the city staff may be requested.
 - (6) *Final approval* . Upon the conclusion of the city's review, the city manager will review the application and any recommendations from city staff. If the city manager is satisfied that all the requirements of this article are satisfied, the city manager will approve the application. The wireless provider is requested to attend this meeting.

- (7) *Issuance of permit* . Once an application is approved by the city manager, the city department of public works shall issue a permit, signed by the city manager granting the wireless provider authority to deploy the small cell wireless facility, utility pole, or relocated wireless support structures within the city, including use of the public rights-of-way, if applicable.
- (8) *Notice of completion* . Wireless provider will notify the city within 48 hours after completing the work allowed by the permit.
- (9) *Final inspection* . Within 30 days after receiving notice that the wireless provider has completed the work under the permit, the city will inspect the wireless provider's facilities and make a written report as to the satisfaction of the permit, the City Code, any applicable agreements and state and federal law.
- (g) *Timeline for review* . Applications will be processed consistent with the following timelines:
 - (1) *Collocation requests* . Applications requesting to colocate small cell wireless facilities on utility poles or wireless support structures located within the public rights-of-way will be approved or denied within 60 days after the date the application is submitted, subject to the following:
 - a. The city will determine whether the application is complete within 25 days after the application is submitted. The city will provide written notice to the wireless provider if the application is deemed incomplete and a supplemental response is required.
 - b. If a supplemental response is required, the city's deadline for approving or denying the application will be tolled by however many days it takes for the wireless provider to submit a supplemental response to the city after receiving notice that the wireless provider's application was incomplete. The city will notify the wireless provider whether the application remains incomplete within ten days of receiving a supplemental response. If more than one supplemental response is required, the deadline for approving or denying the application will continue to be tolled by the number of days from when the wireless provider receives notice of incompleteness from the city to when the city receives a supplemental submission from the wireless provider.
 - c. The city may add 15 days to the deadline for approving or denying the application if another wireless provider also submitted an application within seven days of the date of the submission of the application in question.
 - d. The city may extend the deadline for approving or denying the application by an additional 15 days if the city notifies the wireless provider in writing that an extension is needed and the reasons for the extension.
 - e. If the city denies a completed application, it will provide written notice explaining the reason for denial. The wireless provider may cure the identified deficiencies and resubmit its application within 30 days after the denial without paying an additional fee. The city will approve or deny the revised application within 30 days after receiving the revised application.
 - f. The deadline for approving or denying the application may be extended by mutual agreement between the city and the wireless provider.
 - (2) *Requests to install a new or replacement utility pole* : Applications requesting to install a new or replacement utility pole and associated small cell wireless facility within the public right of way will be approved or denied within 90 days after the date the application is submitted. The city will determine whether the application is complete, deny the application, and review and consider a revised application as provided for collocation requests.
 - (3) *Requests to install facilities outside the ROW or to modify wireless support structures* . Applications to install or modify small cell wireless facilities outside of the public

rights-of-way and applications to modify wireless support structures to be used for small cell wireless facilities will be approved or denied within 90 days after the date the application is submitted, subject to the following:

- a. The city will determine whether the application is complete within 30 days after the application is submitted. The city will provide written notice to the wireless provider if the application is deemed incomplete and a supplemental response is required.
 - b. If a supplemental response is required, the city's deadline for approving or denying the application will be tolled by however many days it takes for the wireless provider to submit a supplemental response to the city after receiving notice that the wireless provider's application was incomplete. The city will notify the wireless provider whether the application remains incomplete within ten days of receiving a supplemental response. If more than one supplemental response is required, the deadline for approving or denying the application will continue to be tolled by the number of days from when the wireless provider receives notice of incompleteness from the city to when the city receives a supplemental submission from the wireless provider.
 - c. The deadline for approving or denying the application may be extended by mutual agreement between the city and the wireless provider.
- (4) *Requests to install new wireless support structures* . Applications to install or construct new wireless support structures to be used for small cell wireless facilities will be approved or denied within 150 days after the date the application is submitted, subject to the following:
- a. The city will determine whether the application is complete within 30 days after the application is submitted. The city will provide written notice to the wireless provider if the application is deemed incomplete and a supplemental response is required.
 - b. If a supplemental response is required, the city's deadline for approving or denying the application will be tolled by however many days it takes for the wireless provider to submit a supplemental response to the city after receiving notice that the wireless provider's application was incomplete. The city will notify the wireless provider whether the application remains incomplete within ten days of receiving a supplemental response. If more than one supplemental response is required, the deadline for approving or denying the application will continue to be tolled by the number of days from when the wireless provider receives notice of incompleteness from the city to when the city receives a supplemental submission from the wireless provider.
 - c. The deadline for approving or denying the application may be extended by mutual agreement between the city and the wireless provider.
- (h) *Standards for review for deployments within the public rights-of-way* . The city may grant or deny the location and installation of any small cell wireless facility, utility pole, or wireless support structure to be installed within the public rights-of-way, if installation would:
- (1) Materially interfere with the safe operation of traffic control equipment.
 - (2) Materially interfere with sight lines or clear zones for transportation or pedestrians.
 - (3) Materially interfere with compliance with the Americans with Disabilities Act of 1990, Public Law 101-336, or similar federal, state, or local standards regarding pedestrian access or movement.
 - (4) Materially interfere with or endanger the use of city bike paths, walkways, parks, or recreational areas used by city residents.
 - (5) Materially interfere with maintenance or full unobstructed use of the city's public utility infrastructure.

- (6) Materially interfere with maintenance or full unobstructed use of the city's drainage infrastructure as it was originally designed, or not be located a reasonable distance from the drainage infrastructure to ensure maintenance.
- (7) Fail to comply with spacing requirements as set forth in this article.
- (8) Fail to comply with applicable codes.
- (9) Fail to comply with design and concealment requirements as set forth in this article.
- (i) *Standards of review for collocations outside the public rights-of-way* . The city may grant or deny the collocation of any small cell wireless facility outside the public rights-of-way, if installation would:
 - (1) Be conducted without the consent of the legal owner of the property upon which the small cell wireless facility is to be colocated.
 - (2) Materially interfere with or endanger the use of city bike paths, walkways, parks, or recreational areas used by city residents.
 - (3) Fail to comply with spacing requirements as set forth in this article.
 - (4) Fail to comply with applicable codes.
 - (5) Fail to comply with design and concealment requirements as set forth in this article.
 - (6) Fail to meet zoning requirements.

Sec. 99-4. - General design and location requirements.

Small cell wireless facilities, related equipment and accessories, utility poles and wireless support structures shall comply with the following design and concealment standards:

- (a) *Compatible design* . All small cell wireless facilities and related equipment must use materials, colors, textures, and screening as necessary to be aesthetically and architecturally compatible with the surrounding environment, including:
 - (1) Be compatible in design with existing street lights, traffic control devices, utility poles, infrastructure, outside furniture, and adjacent buildings.
 - (2) Be aesthetically consistent with existing utility poles.
 - (3) Be similar in color to existing architecture and adjacent infrastructure.
- (b) *Lighting*. Facilities, utility poles or wireless support structures shall not be artificially lighted. If lighting is required, the lighting fixtures and installation must cause the least disturbance to surrounding properties and comply with Ypsilanti City Code section 122-609(b).
- (c) *Collocation* . Unless physically or technically infeasible, all wireless facilities shall be constructed to accommodate two or more users. Any wireless provider must openly allow another provider to colocate upon its wireless facility under rates and conditions that are acceptable within the industry to promote collocation. Collocation of small cell wireless facilities is strongly encouraged.
- (d) *Ancillary Facility Equipment* . All other wireless equipment with the facility shall be designed and painted to satisfy this section. Ancillary equipment not attachable to the utility pole or wireless support structure will be required by the city to be located underground in any locations where the equipment will be visible from adjacent roadways and lots and public electrical utility lines are already placed underground. Where underground placement of equipment is not required or is not technically feasible, aboveground placement is permitted upon the city's approval. Ground-mounted equipment shall comply with the following requirements:
 - (1) All equipment shall be completely concealed from view within an enclosed cabinet. Cabinets must be compatible in color and design to match existing infrastructure and architecture.
 - (2) So as not to impede or impair public safety or the legal use of the public rights-of-way by the traveling public, in no case shall ground-mounted equipment be located

closer than two feet from the public rights-of-way, edge line, face of curb, sidewalk, bike lane or shared-use path.

- (3) Ground-mounted equipment shall be located a minimum of 12 feet from any permanent object or existing lawful encroachment in the public rights-of-way to allow for access.
- (4) Ground-mounted equipment must be secured to a concrete foundation or slab with a breakaway design in the event of collisions.
- (5) Ground-mounted equipment must either be screened with plant material that is consistent with the characteristics of the surrounding area, be integrated into the base of an existing utility pole, wireless support structure or other infrastructure, or be otherwise camouflaged so as to be aesthetically and architecturally compatible with surrounding environment, without detracting from the streetscape. The City and the wireless provider shall agree on mutually acceptable design criteria prior to any aboveground deployment.
- (e) *Separation distances* . New utility poles, wireless support structures and ground-mounted equipment shall be installed at least 300 feet from any existing or proposed utility pole, wireless support structures or ground-mounted equipment. Any wireless provider desiring to install utility poles less than 300 feet apart shall demonstrate to the City's satisfaction that the wireless provider could not serve a location without the desired placement.
- (f) *Marking and signage* . No small cell wireless facility, utility pole, wireless support structure or any portion thereof shall have any signage except as expressly permitted by this article or as required by state or federal law. Aerial portions of small cell wireless facilities shall be marked with a marker which shall state wireless provider's name and provide a toll-free number to call for assistance. Underground portions of small cell wireless facilities shall have a stake or other appropriate above ground markers with wireless provider's name and a toll-free number indicating that there is buried equipment below. Any marking required by this section shall not be used for advertising purposes and shall not exceed one square foot in area unless approved by the city.

Sec. 99-5. - Design and location requirements for deployments on existing poles.

Small cell wireless facilities installed on existing utility, street light, traffic signal poles, or wireless support structures located in residential and downtown districts shall comply with the following design and concealment standards:

- (a) The maximum pole height shall be 40 feet.
- (b) They shall be aesthetically consistent with existing infrastructure and architecture and the local character of the area and shall not detract from the streetscape.
- (c) To the extent practicable, all accessory cables and equipment shall be installed underground.
 - (1) If any equipment cannot be installed underground, then it shall be installed at the base of the pole and concealed with skirting compatible in design and color to the pole.
- (d) To the extent practicable, antennae shall be installed within the utility pole and not visible. If any antenna cannot be installed within the utility pole and made not visible, then it shall extend vertically from the utility pole or be flush-mounted to the side of the utility pole and shall be designed to be an architecturally compatible extension of the utility pole. The diameter of the antenna shall be consistent with the diameter of the utility pole, not including other appurtenances or extensions from the utility pole, or the base to which the utility pole is mounted. The antenna shall not extend more than ten feet above the top of the utility pole.

#Ordinance No. 1349-To Amend Chapter 99

Sec. 99-6. - Design and location requirements for deployments requiring new utility poles or wireless support structures.

Small cell wireless facilities requiring the installation of a new utility pole or wireless support structure in residential, historic, and downtown districts shall comply with the following design and concealment standards:

- (a) Where feasible, utility poles and wireless support structures shall be designed to accommodate small cell wireless facilities for multiple wireless services providers.
- (b) Utility poles shall be located a minimum of 15 feet from any tree, measured to the tree-trunk center. Additionally, 80 percent of the root protection zone shall remain undisturbed. The root protection zone shall either be a six-foot radius around the tree or a one-foot radius for every inch of tree diameter at breast height, whichever is greater. This minimum separation shall not apply for a new utility pole that replaces an existing utility pole, where the new utility pole is installed in the same place as, or immediate vicinity of, the existing utility pole.
- (c) Utility poles shall be designed pursuant to city standards or the applicable utility's standard, and any new utility poles that will function as street light poles or traffic signal poles, in consultation with the city or the applicable utility, shall be incorporated into the applicable utility or signaling system.
- (d) Utility poles or wireless support structures shall not exceed 40 feet in height from ground level:
 - (1)
- (e) Utility poles shall be designed and installed with materials and appearance consistent with existing utility poles in the adjacent public way, unless materials and appearance are prescribed by other ordinance, law, or city requirements. Utility poles shall be made consistent with the local character of the area and shall not detract from the streetscape.
- (f) Antennae shall be installed within the utility pole and not visible. If any antenna cannot be installed within the utility pole and made not visible, then it shall extend vertically from the utility pole or be flush-mounted to the side of the utility pole and shall be designed to be an architecturally compatible extension of the utility pole. The diameter of the antenna shall be consistent with the diameter of the utility pole, not including other appurtenances or extensions from the utility pole, or the base to which the utility pole is mounted. The antenna shall not extend more than five feet above the top of the utility pole.
- (g) To the extent practicable, all accessory cables and equipment shall be installed within the pole or placed underground as required by this article, unless waived by city council.

Sec. 99-7. - Insurance and bonding requirements for deployments in the public rights-of-way.

- (a) **Insurance**. For deployments in the public rights-of-way, the wireless provider shall furnish proof of insurance in an amount and form satisfactory to the city, including the city as an additional insured. Such insurance shall cover a period of not less than the term of this permit and shall provide that it cannot be cancelled without 30 days advance written notice to the city.
- (b) **Bonding**. Before any work in the public rights-of-way under a permit issued pursuant to this article may commence, a wireless provider shall furnish to the city a performance bond in the form of an irrevocable bank letter of credit form or surety bond form approved by city, in the amount of \$1,000.00 per small cell wireless facility included in the application for a permit, to provide for the reasonable costs of removal of abandoned or improperly maintained small cell wireless facilities, to repair the ROW or to recoup unpaid rates or fees.

#Ordinance No. 1349-To Amend Chapter 99

Sec. 99-8. - Assignment; speculation.

- (a) *Assignment; transfer* . No permit may be transferred or assigned by a wireless provider without the city's express written permission until the construction and installation of all permitted small cell wireless facilities is completed. After completion of such construction, a wireless provider must provide notice to the city no later than thirty days after any assignment or transfer, provided that the transferee or assignee:
- (1) Is qualified to perform under the terms of this article, the permit issued by the city and any applicable agreement with the city, and shall be subject to the obligations set forth in the same;
 - (2) Supplies the city with all relevant information required by this Article, the permit issued by the city and any applicable agreement with the city; and
 - (3) Complies with any updated insurance and bond requirements deemed reasonably necessary by the city.
- (b) *Speculation* . Any permit obtained pursuant to this article shall not be held for speculative purposes.

Sec. 99-9. - Revocation of permit; removal.

- (a) *Revocation of permit* . A permit to install small cell wireless facilities issued pursuant to this article shall be revoked upon the occurrence of any of the following events:
- (2) The permitted small cell wireless facilities collocation is not complete within one year after the date of issuance;
 - (3) The wireless provider or the permitted small cell wireless facilities violate the terms or conditions of this article, any applicable agreement with the city, any permit issued by the city, applicable codes or any relevant provision of state or federal law, and such violations are not corrected within 30 days after receiving written notice from the city;
 - (4) After the permitted small cell wireless facilities become operational, the wireless provider discontinues the use of the small cell wireless facilities for a period of 180 consecutive days;
 - (5) The wireless provider fails to renew the permit, or the permit otherwise expires by its own terms; or
 - (6) The wireless provider voluntarily requests that a permit be terminated.

These deadlines may be extended only with express written permission from the city. If small cell wireless facilities, utility poles or wireless support structures are installed prior to the revocation of a permit, the wireless provider shall comply with the procedures for removal in the following section.

(b) *Removal of facilities; restoration* .

- (1) A wireless provider shall remove all small cell wireless facilities, utility poles and wireless support structures, and shall restore the site to its preinstallation condition within ninety (90) days after receiving written notice from the city that a permit issued pursuant to this article has been revoked.
- (2) If the wireless provider does not complete removal and restoration within 45 days after receiving such notice, the city shall have the right, but not the obligation, to complete the removal and restoration and assess the costs and expenses against the wireless provider, including, without limitation, any administrative costs.
- (3) If the city exercises its right to effectuate removal and restoration, the wireless provider shall pay to the city the costs and expenses incurred by the city in performing any removal work and any storage of the wireless provider's property after removal (including any portion of the small cell wireless facilities) within 15 business days of the date of a written demand for this payment from the city. The city may, in its discretion, obtain reimbursement for the above by making a claim under the wireless provider's

performance bond. After the city receives the reimbursement payment from the wireless provider for the removal work performed by the city, the wireless provider may obtain the property belonging to the wireless provider and removed by the city pursuant to this section at no liability to the city within ten business days at the City Hall. If the city does not receive the reimbursement payment from the wireless provider within such 15 business days, or if city does not elect to remove such items at the city's cost after the wireless provider's failure to so remove prior to ninety (90) days subsequent to the issuance of notice pursuant to this section, any items of the wireless provider's property, including without limitation the small cell wireless facilities, remaining on or about the public rights-of-way or stored by the city after the city's removal thereof may, at the city's option, be deemed abandoned and the city may dispose of such property in any manner allowed by law, and in accordance with any legal rights of persons other than the city who own utility poles located in the public rights-of-way and used by the wireless provider. Alternatively, the city may elect to take title to such abandoned property, regardless of whether the city is provided an instrument satisfactory to the city transferring to the city the ownership of such property.

- (4) The deadline for removal and restoration may be extended only with express written permission from the city.
1. If any clause, sentence, section, paragraph, or part of this ordinance, or the application thereof to any person, firm, corporation, legal entity, or circumstances, shall be for any reason adjudged by a court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not effect, impair, or invalidate the remainder of this Ordinance and the application of such provision to other persons, firms, corporations, legal entities, or circumstances by such judgment shall be confined in its operation to the clause, sentence, section, paragraph, or part of this Ordinance thereof directly involved in the case or controversy in which such judgment shall have been rendered and to the person, firm, corporation, legal entity, or circumstances then and there involved. It is hereby declared to be the legislative intent of this body that the Ordinance would have been adopted had such invalid or unconstitutional provisions not have been included in this Ordinance.
1. All other Ordinances inconsistent with the provisions of this Ordinance are, to the extent of such inconsistencies, hereby repealed.
1. **Savings Clause.** The balance of the Code of Ordinances, City of Ypsilanti, Michigan, except as herein or previously amended, shall remain in full force and effect. The repeal provided herein shall not abrogate or affect any offense or act committed or done, or any penalty or forfeiture incurred, or any pending fee, assessments, litigation, or prosecution of any right established, occurring prior to the effective date hereof.
1. Copies of the Ordinance are available at the office of the city clerk for inspection by, and distribution to, the public during normal office hours. A complete copy of the ordinance is also available for inspection on the City's website, www.cityofypsilanti.com.

1. The City Clerk shall cause this Ordinance, or a summary of this Ordinance, to be published by printing the same in the publication of record. This Ordinance shall become effective after publication at the expiration of 30 days after adoption.

MADE, PASSED, AND ADOPTED BY THE YPSILANTI CITY COUNCIL THIS _____ DAY OF _____, 2019

Andrew Hellenga, City Clerk

Attest

I do hereby confirm that the above Ordinance No. _____ was published in the Washtenaw Legal News on the ____ day of _____, 2019.

Andrew Hellenga, City Clerk

CERTIFICATE OF ADOPTING

I hereby certify that the foregoing is a true copy of the Ordinance passed at the regular meeting of the City Council held on the ____ day of _____, 2019.

Andrew Hellenga, City Clerk

Notice Published: _____

First Reading: _____

Second Reading: _____

Published: _____

Effective Date: _____

#Ordinance No. 1349-To Amend Chapter 99



REQUEST FOR LEGISLATION

TO: Mayor and City Council
FROM: Christopher Jacobs
DATE: November 5, 2019
SUBJECT: Land and Water Conservation Grant Project Agreement

DESCRIPTION:

Land and Water Conservation Grant Project Agreement

SUMMARY:

In April of 2018, the City applied for a \$300,000 grant for Rutherford Pool Renovations from the Michigan Department of Natural Resources Land and Water Conservation Fund. We were awarded the grant in November 2018 and the following resolution is needed to enter into a project agreement with the Michigan DNR. The hope is that we will be able to complete the renovations this winter to and have the new facility open for the summer 2020 season.

The total city contribution for this project will be \$25,000 and the Friends of the Rutherford Pool have raised the remaining funds for the project. The plans include renovations of the bathhouse to include family changing rooms, unisex restrooms and overall better functionally as presented in the grant. The agreement is due to be signed by November 22, 2019 and this RFL authorizes the Mayor to sign the project agreement.

RECOMMENDED ACTION: Staff is seeking Council to approve the resolution provided and authorize the Mayor to sign the Project Agreement

ATTACHMENTS:

Land and Water Conservation Fund Project Agreement

CITY MANAGER APPROVAL: _____ COUNCIL AGENDA DATE: _____

CITY MANAGER COMMENTS: _____

FISCAL SERVICES DIRECTOR APPROVAL: _____



Michigan Department of Natural Resources - Grants Management
**LAND AND WATER CONSERVATION FUND
DEVELOPMENT PROJECT AGREEMENT**

Project Number: 26-01802

Project Title: Rutherford Pool Bathhouse Renovation

This Agreement is between the Michigan Department of Natural Resources and Environment for and on behalf of the State of Michigan ("DEPARTMENT") and the **City of Ypsilanti IN THE COUNTY OF Washtenaw County** ("GRANTEE"). The DEPARTMENT has authority to issue grants to local units of government for the development of public outdoor recreation facilities under Part 703 of the Natural Resources and Environmental Protection Act, Act 451 of 1994, as amended. The GRANTEE has been approved by the DEPARTMENT and the United States Department of the Interior, National Park Service ("SERVICE") to receive a grant. In PA 207 of 2018, the Legislature appropriated funds to the DEPARTMENT for a Land and Water Conservation Fund grant to the GRANTEE. As a precondition to the effectiveness of the Agreement, the GRANTEE is required to sign the Agreement and return it to the DEPARTMENT with the necessary attachments **by 11/22/2019**.

1. The legal description of the project area (APPENDIX A); boundary map of the project area (APPENDIX B); Recreation Grant application bearing the number **26-01802** (APPENDIX C); and Land and Water Conservation Fund Project Agreement General Provisions (APPENDIX D) are, by this reference, made part of this Agreement. The Agreement together with the referenced Appendices constitute the entire Agreement between the parties and may be modified only in writing and executed in the same manner as the Agreement is executed.
2. Grant funds are made available to the GRANTEE through a grant by the SERVICE to the DEPARTMENT. Commitments made by the DEPARTMENT to the SERVICE in APPENDIX D are binding upon the GRANTEE. In such cases where a provision of this AGREEMENT is in conflict with APPENDIX D, the provision in APPENDIX D will prevail.
3. The time period allowed for project completion is **09/23/2019 through 06/30/2022**, hereinafter referred to as the "project period." Requests by the GRANTEE to extend the project period shall be made in writing before the expiration of the project period. Extensions to the project period are at the discretion of the DEPARTMENT. The project period may be extended only by an amendment to this Agreement. This Agreement shall be administered on behalf of the DEPARTMENT through Grants Management.
4. This Agreement shall be administered on behalf of the DEPARTMENT through Grants Management. All reports, documents, or actions required of the GRANTEE shall be submitted through the MiRecGrants website unless otherwise instructed by the DEPARTMENT.
5. The words "project area" shall mean the land and area described in the legal description (APPENDIX A) and the boundary map (APPENDIX B) already referenced as being a part of the project file.
6. The words "project facilities" shall mean the following individual components, as further described in APPENDIX C:
Bathhouse

Landscaping
Permit Fees

7. The DEPARTMENT agrees as follows:

- a. To grant to the GRANTEE a sum of money equal to **Fifty (50%) Percent** of **Six Hundred Thousand (\$600,000.00) dollars and Zero Cents**, which is the total eligible cost of construction of the project facilities including engineering costs, but in any event not to exceed **Three Hundred Thousand (\$300,000.00) dollars and Zero Cents**.
- b. To grant these funds in the form of reimbursements to the GRANTEE for eligible costs and expenses incurred as follows:
 - i. Payments will be made on a reimbursement basis at **Fifty (50%) Percent** of the eligible expenses incurred by the GRANTEE up to 90% of the maximum reimbursement allowable under the grant.
 - ii. Reimbursement will be made only upon DEPARTMENT review and approval of a complete reimbursement request submitted by the GRANTEE on a form provided by the DEPARTMENT which includes an expenditure list supported by documentation as required by the DEPARTMENT, including but not limited to copies of invoices, cancelled checks, and/or list of force account time and attendance records.
 - iii. The DEPARTMENT shall conduct an audit of the project's financial records upon approval of the final reimbursement request by DEPARTMENT engineering staff. The DEPARTMENT may issue an audit report with no deductions or may find some costs ineligible for reimbursement.
 - iv. Final payment will be released pending satisfactory project completion as determined by the DEPARTMENT and completion of a satisfactory audit.

8. The GRANTEE agrees as follows:

- a. To immediately make available all funds required to complete the project and to **Three Hundred Thousand (\$300,000.00) dollars and Zero Cents** in local match. This sum represents **Fifty (50%) Percent** of the total eligible cost of construction including engineering costs. Any cost overruns incurred to complete the project facilities called for by this Agreement shall be the sole responsibility of the GRANTEE.
- b. With the exception of engineering costs as provided for in Section 8, to incur no costs toward completion of the project facilities before execution of this Agreement and before written DEPARTMENT approval of plans, specifications and bid documents.
- c. To complete construction of the project facilities to the satisfaction of the DEPARTMENT and to comply with the development project procedures set forth by the DEPARTMENT in completion of the project, including but not limited to the following:
 - i. Retain the services of a professional architect, landscape architect, or engineer, registered in the State of Michigan to serve as the GRANTEE'S Prime Professional. The Prime Professional shall prepare the plans, specifications and bid documents for the project and oversee project construction.

- ii. Within 180 days of execution of this Agreement and before soliciting bids or quotes or incurring costs other than costs associated with the development of plans, specifications, or bid documents, provide the DEPARTMENT with plans, specifications, and bid documents for the project facilities, sealed by the GRANTEE'S Prime Professional.
 - iii. Upon written DEPARTMENT approval, openly advertise and seek written bids for contracts for purchases or services with a value equal to or greater than \$10,000 and accept the lowest qualified bid as determined by the GRANTEE'S Prime Professional.
 - iv. Upon written DEPARTMENT approval, solicit three (3) written quotes for contracts for purchases or services between \$2,500 and \$10,000 and accept the lowest qualified bid as determined by the GRANTEE'S Prime Professional.
 - v. Maintain detailed written records of the contracting processes used and to submit these records to the DEPARTMENT upon request.
 - vi. Complete construction to all applicable local, state and federal codes, including the federal Americans with Disabilities Act (ADA) of 2010, as amended; the Persons with Disabilities Civil Rights Act, Act 220 of 1976, as amended; the Playground Equipment Safety Act, P.A. 16 of 1997; and the Utilization of Public Facilities by Physically Limited Act, P.A. 1 of 1966, as amended.
 - vii. Bury all overhead utility lines.
 - viii. Correct any deficiencies discovered at the final inspection within 90 days of written notification by the DEPARTMENT. These corrections shall be made at the GRANTEE'S expense and are eligible for reimbursement at the discretion of the DEPARTMENT and only to the degree that the GRANTEE'S prior expenditures made toward completion of the project are less than the grant amount allowed under this Agreement.
- d. To operate the project facilities for a minimum of their useful life as determined by the DEPARTMENT, and as appropriate the SERVICE, to regulate the use thereof to the satisfaction of the DEPARTMENT, and as appropriate the SERVICE, and to appropriate such monies and/or provide such services as shall be necessary to provide such adequate maintenance.
 - e. To provide to the DEPARTMENT for approval, a complete tariff schedule containing all charges to be assessed against the public utilizing the project area and/or any of the facilities constructed thereon, and to provide to the DEPARTMENT for approval, all amendments thereto before the effective date of such amendments. Membership or annual permit systems are prohibited, except to the extent that differences in admission and other fees may be instituted on the basis of residence. Nonresident fees shall not exceed twice that charged residents. If no resident fees are charged, nonresident fees may not exceed the rate charged residents at other comparable state and local public recreation facilities.
 - f. To adopt such ordinances and/or resolutions as shall be required to effectuate the provisions of this Agreement; certified copies of all such ordinances and/or resolutions adopted for such purposes shall be forwarded to the DEPARTMENT before the effective date thereof.
 - g. To separately account for any revenues received from the project area which exceed the demonstrated operating costs and to reserve such surplus revenues for the future maintenance and/or expansion of

the GRANTEE'S park and outdoor recreation program.

- h. To furnish the DEPARTMENT, upon request, detailed statements covering the annual operation of the project area and/or project facilities, including income and expenses and such other information the DEPARTMENT might reasonably require.
 - i. To maintain the premises in such condition as to comply with all federal, state, and local laws which may be applicable and to make any and all payments required for all taxes, fees, or assessments legally imposed against the project area.
 - j. To erect and maintain a plaque on the park entry sign of the property which designates this project as one having been constructed with assistance from the Land and Water Conservation Fund. The size, color, and design of this plaque shall be in accordance with DEPARTMENT and SERVICE specifications.
 - k. To conduct a dedication/ribbon-cutting ceremony as soon as possible after the project is completed and the LWCF sign is erected within the project area. At least 30 days prior to the dedication/ribbon-cutting ceremony, the DEPARTMENT must be notified in writing of the date, time, and location of the dedication/ribbon-cutting ceremony. GRANTEE shall provide notice of ceremony in the local media. Use of the grant program logo and a brief description of the program are strongly encouraged in public recreation brochures produced by the GRANTEE. At the discretion of the DEPARTMENT, the requirement to conduct a dedication/ribbon-cutting ceremony may be waived.
9. Only eligible costs and expenses incurred toward completion of the project facilities during the project period shall be considered for reimbursement under the terms of this Agreement. Eligible engineering costs incurred toward completion of the project facilities in the six months preceding the project period are also eligible for reimbursement. Any costs and expenses incurred after the project period shall be the sole responsibility of the GRANTEE.
10. To be eligible for reimbursement, the GRANTEE shall comply with DEPARTMENT requirements. At a minimum, the GRANTEE shall:
- a. Submit a written progress report every 180 days during the project period.
 - b. Submit complete requests for partial reimbursement when the GRANTEE is eligible to request at least 25 percent of the grant amount and construction contracts have been executed or construction by force account labor has begun.
 - c. Submit a complete request for final reimbursement within 90 days of project completion and no later than **9/30/2022**. If the GRANTEE fails to submit a complete final request for reimbursement by this date, the DEPARTMENT may audit the project costs and expenses and make final payment based on documentation on file as of that date or may terminate this Agreement and require full repayment of grant funds by the GRANTEE.
11. During the project period, the GRANTEE shall obtain prior written authorization from the DEPARTMENT before adding, deleting or making a significant change to any of the project facilities as proposed. Approval of changes is solely at the discretion of the DEPARTMENT. Furthermore, following project completion, the GRANTEE shall obtain prior written authorization from the DEPARTMENT before implementing a change that significantly alters the project facilities as constructed and/or the project area, including but not limited to discontinuing use of a project facility or making a significant change in the

recreational use of the project area. Changes pursuant to this Section may also require prior approval of the SERVICE.

12. All project facilities constructed or purchased by the GRANTEE under this Agreement shall be placed and used at the project area and solely for the purposes specified in APPENDIX C and this Agreement.
13. The project area and all facilities provided thereon and the land and water access ways to the project facilities shall be open to the general public at all times on equal and reasonable terms. No individual shall be denied ingress or egress thereto or the use thereof on the basis of sex, race, color, religion, national origin, residence, age, or disability.
14. Unless an exemption has been authorized by the DEPARTMENT, and as appropriate the SERVICE, pursuant to this Section, the GRANTEE hereby represents that it possesses fee simple title, free of all liens and encumbrances, to the project area. The fee simple title acquired shall not be subject to: (a) any possibility of reverter or right of entry for condition broken or any other executory limitation which may result in defeasance of title or (b) to any reservations or prior conveyance of coal, oil, gas, sand, gravel or other mineral interests.
15. The GRANTEE shall not allow any encumbrance, lien, security interest, mortgage or any evidence of indebtedness to attach to or be perfected against the project area or project facilities included in this Agreement.
16. None of the project area nor any of the project facilities constructed under this Agreement shall be wholly or partially conveyed during the life of said project, either in fee or otherwise or leased for a term of years or for any other period, nor shall there be any whole or partial transfer of the lease title, ownership, or right of maintenance or control by the GRANTEE except with the written approval and consent of the DEPARTMENT and the SERVICE.
17. The assistance provided to the GRANTEE as a result of this Agreement is intended to have a lasting effect on the supply of outdoor recreation, scenic beauty sites, and recreation facilities beyond the financial contribution alone and permanently commits the project area to Michigan's outdoor recreation estate, therefore:
 - a. The GRANTEE agrees that the project area or any portion thereof will not be converted to other than public outdoor recreation use without prior written approval by the DEPARTMENT and the SERVICE and implementation of mitigation approved by the DEPARTMENT and the SERVICE, including, but not limited to, replacement with land of similar recreational and monetary value.
 - b. Approval of a conversion shall be at the sole discretion of the DEPARTMENT and the SERVICE.
 - c. Before completion of the project, the GRANTEE, the DEPARTMENT and the SERVICE may mutually agree to alter the project area through an amendment to this Agreement to provide the most satisfactory public outdoor recreation area.
18. Should title to the project area or any portion thereof be acquired from the GRANTEE by any other entity through exercise of the power of eminent domain, the GRANTEE agrees that the proceeds awarded to the GRANTEE shall be used to replace the lands and project facilities affected with outdoor recreation lands and project facilities of at least equal fair market value, and of reasonably equivalent usefulness and locality. The DEPARTMENT and the SERVICE shall approve such replacement only upon such conditions as it deems necessary to assure the substitution of GRANTEE of other outdoor recreation properties and

project facilities of at least equal fair market value and of reasonably equivalent usefulness and location. Such replacement shall be subject to all the provisions of this Agreement.

19. The GRANTEE acknowledges that:

- a) The GRANTEE has examined the project area and that it has found the property to be safe for public use or that action will be taken by the GRANTEE before beginning the project to assure safe use of the property by the public, and
- b) The GRANTEE is solely responsible for development, operation, and maintenance of the project area and project facilities, and that responsibility for actions taken to develop, operate, or maintain the property is solely that of the GRANTEE, and
- c) The DEPARTMENT'S involvement in the premises is limited solely to the making of a grant to assist the GRANTEE in developing same.

20. The GRANTEE assures the DEPARTMENT that the proposed State-assisted action will not have a negative effect on the environment and, therefore, an Environmental Impact Statement is not required.

21. The GRANTEE hereby acknowledges that this Agreement does not require the State of Michigan or the federal government to issue any permit required by law to construct the outdoor recreational project that is the subject of this Agreement. Such permits include, but are not limited to, permits to fill or otherwise occupy a floodplain, and permits required under Parts 301 and 303 of the Natural Resources and Environmental Protection Act, Act 451 of the Public Acts 451 of 1994, as amended. It is the sole responsibility of the GRANTEE to determine what permits are required for the project, secure the needed permits and remain in compliance with such permits.

22. Before the DEPARTMENT will approve plans, specifications, or bid documents; or give written approval to the GRANTEE to advertise, seek quotes, or incur costs for this project, the GRANTEE must provide documentation to the DEPARTMENT that indicates either:

- a. It is reasonable for the GRANTEE to conclude, based on the advice of an environmental consultant, as appropriate, that no portion of the project area is a facility as defined in Part 201 of the Michigan Natural Resources and Environmental Protection Act, Act 451 of the Public Acts of 1994, as amended; or
- b. If any portion of the project area is a facility, documentation that Department of Natural Resources and Environment-approved response actions have been or will be taken to make the site safe for its intended use within the project period, and that implementation and long-term maintenance of response actions will not hinder public outdoor recreation use and/or the resource protection values of the project area.

23. If the DEPARTMENT determines that, based on contamination, the project area will not be made safe for the planned recreation use within the project period, or another date established by the DEPARTMENT in writing, or if the DEPARTMENT determines that the presence of contamination will reduce the overall usefulness of the property for public recreation and resource protection, the grant may be cancelled by the SERVICE with no reimbursement made to the GRANTEE.

24. The GRANTEE shall acquire and maintain, or cause to be acquired or maintained, insurance which will protect the GRANTEE from claims which may arise out of or result from the GRANTEE'S operations under this Agreement, whether performed by the GRANTEE, a subcontractor or anyone directly or indirectly

employed by the GRANTEE, or anyone for whose acts any of them may be liable. Such insurance shall be with companies authorized to do business in the State of Michigan in such amounts and against such risks as are ordinarily carried by similar entities, including but not limited to public liability insurance, worker's compensation insurance or a program of self-insurance complying with the requirements of Michigan law. The GRANTEE shall provide evidence of such insurance to the DEPARTMENT at its request.

25. Nothing in this Agreement shall be construed to impose any obligation upon the DEPARTMENT or the SERVICE to operate, maintain or provide funding for the operation and/or maintenance of any recreational facilities in the project area.
26. The GRANTEE hereby represents that it will defend any suit brought against either party which involves title, ownership, or specific rights, including appurtenant riparian rights, of any lands connected with or affected by this project.
27. The GRANTEE is responsible for the use and occupancy of the premises, the project area and the facilities thereon. The GRANTEE is responsible for the safety of all individuals who are invitees or licensees of the premises. The GRANTEE will defend all claims resulting from the use and occupancy of the premises, the project area and the facilities thereon. The DEPARTMENT is not responsible for the use and occupancy of the premises, the project area and the facilities thereon.
28. Failure by the GRANTEE to comply any of the provisions of this Agreement shall constitute a material breach of this Agreement.
29. Upon breach of the Agreement by the GRANTEE, the DEPARTMENT, in addition to any other remedy provided by law, may:
 - a. Terminate this Agreement; and/or
 - b. Withhold and/or cancel future payments to the GRANTEE on any or all current recreation grant projects until the violation is resolved to the satisfaction of the DEPARTMENT; and/or
 - c. Withhold action on all pending and future grant applications submitted by the GRANTEE under the Land and Water Conservation Fund and the Michigan Natural Resources Trust Fund; and/or
 - d. Require the GRANTEE to pay penalties or perform other acts of mitigation or compensation as directed by the DEPARTMENT or the SERVICE; and/or
 - e. Require repayment of grant funds paid to GRANTEE; and/or
 - f. Require specific performance of the Agreement.
30. The GRANTEE shall return all grant money if the project area or project facilities are not constructed, operated or used in accordance with this Agreement.
31. The GRANTEE agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, or disability that is unrelated to the person's ability to perform the duties of a particular job or position. The GRANTEE further agrees to comply with the civil rights requirements set forth by the DEPARTMENT and that any subcontract shall contain a non-discrimination provisions which is not less stringent than this

provision and binding upon any and all subcontractors. A breach of this covenant shall be regarded as a material breach of this Agreement.

32. The DEPARTMENT shall terminate and recover grant funds paid if the GRANTEE or any subcontractor, manufacturer, or supplier of the GRANTEE appears in the register compiled by the Michigan Department of Labor and Economic Growth pursuant to Public Act No. 278 of 1980.
33. The GRANTEE may not assign or transfer any interest in this Agreement without prior written authorization of the DEPARTMENT, and as appropriate, the SERVICE.
34. The rights of the DEPARTMENT under this Agreement shall continue in perpetuity.
35. The Agreement may be executed separately by the parties. This Agreement is not effective until:
 - a. The GRANTEE has signed it and returned it together with the necessary attachments within 60 days of the date the Agreement is issued by the DEPARTMENT, and
 - b. the DEPARTMENT has signed it.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and date first above written.

Approved by resolution (true copy attached) of the _____ ,
date

_____ meeting of the _____ .
(special or regular) (name of approving body)

GRANTEE

SIGNED:

By: _____

Print Name: _____

Title: _____

Date: _____

Grantee's Federal ID#
38-6004750

MICHIGAN DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENT

SIGNED:

By: _____
Dan Lord

Title: _____
Manager, Grants Management

Date: _____

APPENDIX D

LAND AND WATER CONSERVATION FUND PROJECT AGREEMENT GENERAL PROVISIONS

Part I - Definitions

- A. The term "NPS" or "Service" as used herein means the National Park Service, United States Department of the Interior.
- B. The term "Director" as used herein means the Director of the National Park Service, or any representative lawfully delegated the authority to act for such Director.
- C. The term "Manual" as used herein means the Land and Water Conservation Fund State Assistance Program Manual .
- D. The term "project" as used herein means a Land and Water Conservation Fund grant which is subject to the project agreement and/or its subsequent amendments.
- E. The term "State" as used herein means the State or Territory which is a party to the project agreement , and, where applicable, the political subdivision or public agency to which funds are to be transferred pursuant to this agreement. Wherever a term, condition, obligation, or requirement refers to the State, such term, condition, obligation, or requirement shall also apply to the recipient political subdivision or public agency, except where it is clear from the nature of the term, condition, obligation, or requirement that it is to apply solely to the State. For purposes of these provisions, the terms "State," "grantee," and "recipient" are deemed synonymous.
- F. The term "Secretary" as used herein means the Secretary of the Interior, or any representative lawfully delegated the authority to act for such Secretary.

Part II - Continuing Assurances

The parties to the project agreement specifically recognize that the Land and Water Conservation Fund project creates an obligation to maintain the property described in the project agreement and supporting application documentation consistent with the Land and Water Conservation Fund Act and the following requirements.

Further, it is the acknowledged intent of the parties hereto that recipients of assistance will use monies granted hereunder for the purposes of this program, and that assistance granted from the Fund will result in a net increase, commensurate at least with the Federal cost-share, in a participant's outdoor recreation.

It is intended by both parties hereto that assistance from the Fund will be added to, rather than replace or be substituted for, State and local outdoor recreation funds.

- A. The State agrees, as recipient of this assistance, that it will meet the following specific requirements and that it will further impose these requirements, and the terms of the project agreement, upon any political subdivision or public agency to which funds are transferred pursuant to the project agreement. The State also agrees that it shall be responsible for compliance with the terms of the project agreement by such a political subdivision or public agency and that failure by such political subdivision or public agency to so comply shall be deemed a failure by the State to comply with the terms of this agreement.
- B. The State agrees that the property described in the project agreement and the signed and dated project boundary map made part of that agreement is being acquired or developed with Land and Water Conservation Fund assistance , or is integral to such acquisition or development, and that, without the approval of the Secretary, it shall not be converted to other than public outdoor recreation use but shall be maintained in public outdoor recreation in perpetuity or for the term of the lease in the case of leased property. The Secretary shall approve such conversion only if it is found to be in accord with the then existing comprehensive statewide outdoor recreation plan and only upon such conditions deemed necessary to assure the substitution of other recreation properties of at least equal fair market value and of reasonably equivalent usefulness and location pursuant to Title 36 Part 59.3 of the *Code of Federal Regulations*. This replacement land becomes subject to Section 6(f)(3) protection. The approval of a conversion shall be at the sole discretion of the Secretary, or his designee.

Prior to the completion of this project, the State and the Director may mutually alter the area described in the project

agreement and the signed and dated project boundary map to provide the most satisfactory public outdoor recreation unit, except that acquired parcels are afforded Section 6(f)(3) protection as Fund reimbursement is provided.

In the event the NPS provides Land and Water Conservation Fund assistance for the acquisition and /or development of property with full knowledge that the project is subject to reversionary rights and outstanding interests, conversion of said property to other than public outdoor recreation uses as a result of such right or interest being exercised will occur. In receipt of this approval, the State agrees to notify the Service of the potential conversion as soon as possible and to seek approval of replacement property in accord with the conditions set forth in these provisions and program regulations. The provisions of this paragraph are also applicable to: leased properties acquired and/or developed with Fund assistance where such lease is terminated prior to its full term due to the existence of provisions in such lease known and agreed to by the Service; and properties subject to other outstanding rights and interests that may result in a conversion when known and agreed to by the Service.

- C. The State agrees that the benefit to be derived by the United States from the full compliance by the State with the terms of this agreement is the preservation, protection, and the net increase in the quality of public outdoor recreation facilities and resources which are available to the people of the State and of the United States, and such benefit exceeds to an immeasurable and unascertainable extent the amount of money furnished by the United States by way of assistance under the terms of this agreement. The State agrees that payment by the State to the United States of an amount equal to the amount of assistance extended under this agreement by the United States would be inadequate compensation to the United States for any breach by the State of this agreement.

The State further agrees, therefore, that the appropriate remedy in the event of a breach by the State of this agreement shall be the specific performance of this agreement or the submission and approval of a conversion-of-use request as described in Section II.B above.

- D. The State agrees to comply with the policies and procedures set forth in Manual. Provisions of said Manual are incorporated into and made a part of the project agreement.
- E. The State agrees that the property and facilities described in the project agreement shall be operated and maintained as prescribed by Manual requirements and published post-completion compliance regulations (Title 36 Part 59 of the *Code of Federal Regulations*).
- F. The State agrees that a permanent record shall be kept in the participant's public property records and available for public inspection to the effect that the property described in the scope of the project agreement , and the signed and dated project boundary map made part of that agreement, has been acquired or developed with Land and Water Conservation Fund assistance and that it cannot be converted to other than public outdoor recreation use without the written approval of the Secretary of the Interior.
- G. Nondiscrimination
1. By signing the LWCF agreement, the State certifies that it will comply with all Federal laws relating to nondiscrimination as outlined in the Civil Rights Assurance appearing at Part III -I herein.
 2. The State shall not discriminate against any person on the basis of residence, except to the extent that reasonable differences in admission or other fees may be maintained on the basis of residence as set forth in the Manual .

Part III - Project Assurances

A. Applicable Federal Circulars

The State shall comply with applicable regulations, policies, guidelines and requirements as they relate to the application, acceptance and use of Federal funds for this federally assisted project, including:

-OMB Circular A-102, Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments;

43 CFR Part 12, Administrative and Audit Requirements and Cost Principles for Assistance Programs , Department of the Interior;

-A-87, Cost Principles for State, Local, and Indian Tribal Governments; and

-A-133, Audits of States, Local Governments, and Non-Profit Organizations.

B. Project Application

1. The Application for Federal Assistance bearing the same project number as the agreement and associated documents is by this reference made a part of the agreement.
2. The State possesses legal authority to apply for the grant, and to finance and construct the proposed facilities. A resolution, motion or similar action has been duly adopted or passed authorizing the filing of the application, including all understandings and assurances contained herein, and directing and authorizing the person identified as the official representative of the State to act in connection with the application and to provide such additional information as may be required.
3. The State has the capability to finance the non-Federal share of the costs for the project. Sufficient funds will be available to assure effective operation and maintenance of the facilities acquired or developed by the project .

C. Project Execution

1. The project period shall begin with the date of approval of the project agreement or the effective date of a waiver of retroactivity and shall terminate at the end of the stated or amended project period unless the project is completed or terminated sooner in which event the project shall end on the date of completion or termination.
2. The State shall transfer to the project sponsor identified in the Application for Federal Assistance or the Description and Notification Form all funds granted hereunder except those reimbursed to the State to cover eligible administrative expenses.
3. The State will cause work on the project to be commenced within a reasonable time after receipt of notification that funds have been approved and assure that the project will be prosecuted to completion with reasonable diligence.
4. The State will require the facility to be designed to comply with the Architectural Barriers Act of 1968 (Public Law 90-480) and DOI Section 504 Regulations (43 CFR Part 17). The State will be responsible for conducting inspections to insure compliance with these specifications by the contractor.
5. The State shall secure completion of the work in accordance with approved construction plans and specifications, and shall secure compliance with all applicable Federal, State, and local laws and regulations.
6. In the event the project covered by the project agreement, cannot be completed in accordance with the plans and specifications for the project; the State shall bring the project to a point of recreational usefulness agreed upon by the State and the Director or his designee.
7. The State will provide for and maintain competent and adequate architectural/engineering supervision and inspection at the construction site to insure that the completed work conforms with the approved plans and specifications; that it will furnish progress reports and such other information as the NPS may require.
8. The State will comply with the terms of Title II and Title III, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646), 94 Stat. 1894 (1970), and the applicable regulations and procedures implementing such Act for all real property acquisitions and where applicable shall assure that the Act has been complied with for property to be developed with assistance under the project agreement.
9. The State will comply with the provisions of: Executive Order 11988, relating to evaluation of flood hazards; Executive Order 11288, relating to the prevention, control, and abatement of water pollution, and Executive Order 11990 relating to the protection of wetlands.
10. The State will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires the purchase of flood insurance in communities where such insurance is available, as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes, for use in any area that has been identified as an area having special flood hazards by the Flood Insurance Administration of the Federal Emergency Management Agency. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment,

rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.

11. The State will assist the NPS in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 11593, and the Archaeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to effects (see CFR Part 800.8) by the activity, and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.
12. The State will comply with "Minority Business Enterprises" and "Women's Business Enterprises" pursuant to Executive Orders 11625 and 12138 as follows:
 - (1) Place minority and women business firms on bidder's mailing lists.
 - (2) Solicit these firms whenever they are potential sources of supplies, equipment, construction, or services.
 - (3) Where feasible, divide total requirements into smaller needs, and set delivery schedules that will encourage participation by these firms.
 - (4) The Department of the Interior is committed to the objectives of this policy and encourages all recipients of its grants and cooperative agreements to take affirmative steps to ensure such fairness.

The National Park Service Regional Offices will work closely with the States to ensure full compliance and that grant recipients take affirmative action in placing a fair share of purchases with minority business firms.

13. The State will comply with the intergovernmental review requirements of Executive Order 12372.

D. Construction Contracted for by the State Shall Meet the Following Requirements:

1. Contracts for construction shall comply with the provisions of 43 CFR Part 12 (Administrative and Audit Requirements and Cost Principles for Assistance Programs, Department of the Interior).
2. No grant or contract may be awarded by any grantee, subgrantee or contractor of any grantee or subgrantee to any party which has been debarred or suspended under Executive Order 12549. By signing the LWCF agreement, the State certifies that it will comply with debarment and suspension provisions appearing at Part III-J herein.

E. Retention and Custodial Requirements for Records

1. Financial records, supporting documents, statistical records, and all other records pertinent to this grant shall be retained in accordance with 43 CFR Part 12 for a period of three years; except the records shall be retained beyond the three-year period if audit findings have not been resolved.
2. The retention period starts from the date of the final expenditure report for the project.
3. State and local governments are authorized to substitute copies in lieu of original records.
4. The Secretary of the Interior and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the State and local governments and their subgrantees which are pertinent to a specific project for the purpose of making audit, examination, excerpts and transcripts.

F. Project Termination

1. The Director may temporarily suspend Federal assistance under the project pending corrective action by the State or pending a decision to terminate the grant by the Service.
2. The State may unilaterally terminate the project at any time prior to the first payment on the project. After the initial payment, the project may be terminated, modified, or amended by the State only by mutual agreement.

3. The Director may terminate the project in whole, or in part, at any time before the date of completion, whenever it is determined that the grantee has failed to comply with the conditions of the grant. The Director will promptly notify the State in writing of the determination and the reasons for the termination, together with the effective date. Payments made to States or recoveries by the Service under projects terminated for cause shall be in accord with the legal rights and liabilities of the parties.
4. The Director or State may terminate grants in whole, or in part at any time before the date of completion, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated. The grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The NPS may allow full credit to the State for the Federal share of the noncancelable obligations, properly incurred by the grantee prior to termination.
5. Termination either for cause or for convenience requires that the project in question be brought to a state of recreational usefulness agreed upon by the State and the Director or that all funds provided by the National Park Service be returned.

G. Lobbying with Appropriated Funds

The State must certify, for the award of grants exceeding \$100,000 in Federal assistance, that no Federally appropriated funds have been paid or will be paid, by or on behalf of the State, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding, extension, continuation, renewal, amendment, or modification of this grant. In compliance with Section 1352, title 31, U.S. Code, the State certifies, as follows:

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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify accordingly.

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

H. Provision of a Drug-Free Workplace

In compliance with the Drug-Free Workplace Act of 1988 (43 CFR Part 12, Subpart D), the State certifies, as follows:

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

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

- (1) The dangers of drug abuse in the workplace;
- (2) The grantee's policy of maintaining a drug-free workplace;
- (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
- (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of a grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

- (1) Abide by the terms of the statement; and
- (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted;

- (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
- (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The State must include with its application for assistance a specification of the site(s) for the performance of work to be done in connection with the grant.

I. Civil Rights Assurance

The State certifies that, as a condition to receiving any Federal assistance from the Department of the Interior, it will comply with all Federal laws relating to nondiscrimination. These laws include, but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-1), which prohibits discrimination on the basis of race, color, or national origin; (b) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicap; (c) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 et. seq.), which prohibits discrimination on the basis of age; and applicable regulatory requirements to the end that no person in the United States shall, on the grounds of race, color, national origin, handicap or age, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity conducted by the applicant. THE APPLICANT HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement. THIS ASSURANCE shall apply to all aspects of the applicant's operations including those parts that have not received or benefited from Federal financial assistance.

If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Applicant by the Department, this assurance shall obligate the Applicant, or in the case of any transfer of such property, any transferee, for the period during which it retains ownership or possession of the property. In all other cases, this assurance shall obligate the Applicant for the period during which the Federal financial assistance is extended to it by the Department.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Applicant by the Department, including installment payments after such date on account of applications for Federal financial assistance which were approved before such date.

The Applicant recognizes and agrees that such Federal financial assistance will be extended in reliance on the

representations and agreements made in this assurance, and that the United State shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, its successors, transferees, assignees, and subrecipients and the person whose signature appears on the grant agreement and who is authorized to sign on behalf of the Applicant.

J. Debarment and Suspension

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

(1) *The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:*

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission or embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statement, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) *Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.*

The State further agrees that it will include the clause "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions" appearing below in any agreement entered into with lower tier participants in the implementation of this grant. Department of Interior Form 1954 (DI-1954) may be used for this purpose.

Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transactions

(1) *The prospective lower tier participant certifies, by submission of this application that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.*

(2) *Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this application.*

Revised 10/01/2008

SAMPLE RESOLUTION
(Development)

Upon motion made by _____, seconded by _____, the following Resolution was adopted:

"RESOLVED, that the _____, Michigan, does hereby accept the terms of the Agreement as received from the Michigan Department of Natural Resources, and that the _____ does hereby specifically agree, but not by way of limitation, as follows:

1. To appropriate all funds necessary to complete the project during the project period and to provide _____ (\$_____) dollars to match the grant authorized by the DEPARTMENT.
2. To maintain satisfactory financial accounts, documents, and records to make them available to the DEPARTMENT for auditing at reasonable times.
3. To construct the project and provide such funds, services, and materials as may be necessary to satisfy the terms of said Agreement.
4. To regulate the use of the facility constructed and reserved under this Agreement to assure the use thereof by the public on equal and reasonable terms.
5. To comply with any and all terms of said Agreement including all terms not specifically set forth in the foregoing portions of this Resolution."

The following aye votes were recorded: _____

The following nay votes were recorded: _____

STATE OF MICHIGAN)

) ss

COUNTY OF _____)

I, _____, Clerk of the _____, Michigan, do hereby certify that the above is a true and correct copy of the Resolution relative to the Agreement with the Michigan Department of Natural Resources, which Resolution was adopted by the _____ at a meeting held _____.

Signature

Title

Dated



Resolution No. 2019-255
November 5, 2019

RESOLVED BY THE COUNCIL OF THE CITY OF YPSILANTI:

That the City of Ypsilanti, Michigan, does hereby accept the terms of the Agreement as received from the Michigan Department of Natural Resources, and that the City Council does hereby specifically agree, but not by way of limitation, as follows:

1. To appropriate all funds necessary to complete the project during the project period and to provide \$300,000 to match the grant authorized by the Department
2. To maintain satisfactory financial accounts, documents, and records to make them available to the Department for auditing at reasonable times.
3. To construct the project and provide such funds, services, and materials as may be necessary to satisfy the terms of said agreement.
4. To regulate the use of the facility constructed and reserved under this Agreement to assure the use thereof by the public on equal and reasonable terms.
5. To comply with any and all terms of said Agreement including all terms not specifically set forth in the foregoing portions of this resolution.

OFFERED BY: _____

SECONDED BY: _____

YES: NO: ABSENT: VOTE:

This resolution is adopted by the Council of the City of Ypsilanti and approved by the Mayor this 5 day of November 2019

#Resolution No. 2019-255



REQUEST FOR LEGISLATION

TO: Mayor and City Council
FROM: Christopher Jacobs
DATE: November 5, 2019
SUBJECT: Rutherford Poolhouse renovation

DESCRIPTION:

Rutherford Poolhouse renovation

SUMMARY:

The Friends of Rutherford Pool have secured funding to renovate the Poolhouse. The City owns the pool and poolhouse and be the actual party to the renovation contract as owner. The City will receive and hold the funds and manage the financial aspects of payments. The job was bid and Phoenix Contractors, Inc. was the preferred bidder. The contract provides for a contract price of Five-Hundred Sixty-Nine Thousand Dollars (\$569,000.00) plus One Thousand Five Hundred Dollars (\$1,500) for alternate 1, (stainless steel edging on laminate toilet partitions).

Joe Meyers will be the City contact for the job. John Weiss is the Friends contact and David Esau is the architect on the job.

A copy of the proposed contract is attached.

ATTACHMENTS: Proposed contract

RECOMMENDED ACTION: Approval

CITY MANAGER APPROVAL: _____ COUNCIL AGENDA DATE: _____

CITY MANAGER COMMENTS: _____

FISCAL SERVICES DIRECTOR APPROVAL: _____



Resolution No. 2019-256
November 5, 2019

RESOLVED BY THE COUNCIL OF THE CITY OF YPSILANTI:

The attached contract with Phoenix Contractors, Inc. for the renovation of the Poolhouse of Rutherford Pool for the sum of Five Hundred Sixty Nine Thousand Dollars (\$569,000.00) plus One Thousand Five Hundred Dollars (\$1,500) for alternate 1, (stainless steel edging on laminate toilet partitions) is approved and Mayor and City Clerk are authorized to sign for and on behalf of the City, subject to the approval of the City Attorney.

The City Manager is authorized to make technical amendments and adjustments to the contract and to approve change orders, subject to the approval of the City Attorney.

OFFERED BY: _____

SECONDED BY: _____

YES: NO: ABSENT: VOTE:

This resolution is adopted by the Council of the City of Ypsilanti and approved by the Mayor this 5 day of November 2019

#Resolution No. 2019-256



CONSTRUCTION AGREEMENT BETWEEN CITY OF YPSILANTI AND PHOENIX CONTRACTORS, INC .

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This Agreement has important legal and insurance consequences. Consultations with an attorney and with insurance and surety consultants are encouraged with respect to its completion or modification. Notes indicate where information is to be inserted to complete this Agreement.

ARTICLE 1 AGREEMENT

This Agreement is made this__ day of November in the year 2019,

By and between the
OWNER (a Michigan municipal Home Rule City)

**The City of Ypsilanti
1 South Huron Street
Ypsilanti, MI 48197**

and the
CONTRACTOR (a Michigan corporation),

**PHX Construction d/b/a Phoenix Contractors, Inc.
2111 Golfside Drive
Ypsilanti, MI 48197**

the Parties

for services in connection with the following
PROJECT

**Rutherford Poolhouse Renovation
975 N. Congress St.
Ypsilanti, MI 48197**

Notice to the Parties shall be given at the above address.

ARTICLE 2 GENERAL PROVISIONS

2.0 GENERAL RECITALS the City of Ypsilanti, Michigan, 48197 is a Michigan Home Rule City that owns Rutherford Pool, a municipal swimming pool and poolhouse (Pool) and related fixtures and equipment located in Recreation Park, with common address of 975 N. Congress Street, Ypsilanti, MI 48197. The City contracts with Friends of Rutherford Pool (Friends), a Michigan nonprofit corporation for the operation and maintenance of the Pool. The Friends determined that the poolhouse needed renovation (the project) and the Friends, together with the City and others raised funds for the project. The Friends worked with the City to hire an architect and develop plans and specifications for the project. The City advertised and requested bids for the project and selected and accepted the bid from PHX Construction d/b/a Phoenix Contractors, Inc. for the project. This construction agreement is to memorialize the agreement of the parties.

2.1 RELATIONSHIP OF PARTIES The Owner and the Contractor (collectively, the "Parties") agree to proceed with the Project on the basis of mutual trust, good faith and fair dealing.

2.1.1 The Contractor shall furnish construction administration and management services and use the Contractor's diligent efforts to perform the Work in an expeditious manner consistent with the Contract Documents. The Parties shall endeavor to promote harmony and cooperation among all Project participants.

2.1.2 The Contractor represents that it is an independent contractor and this in its performance of the Work it shall act as an independent contractor and no liability or benefits such as worker's compensation, pension rights, or other rights or liabilities arising out of or related to a contract for hire or employer/employee relationship shall arise or accrue to either party as a result of this Agreement.

2.1.3 Neither Contractor nor any of its agents or employees shall act on behalf of or in the name of Owner except as provided in this Agreement or unless authorized in writing by Owner's Representative.

2.1.4 The Parties shall perform their obligations with integrity, ensuring at a minimum that

2.1.4.1 Conflicts of Interest shall be avoided or disclosed promptly to the other Party in writing, within 7 days of existence; and

2.1.4.2 The Parties warrant that they have not and shall not pay nor receive any contingent fees or gratuities to or from the other Party, including its agents, officers and employees, Subcontractors or others for whom they may be liable, to secure preferential treatment.

2.2 EXTENT OF AGREEMENT This Agreement is solely for the benefit of the Parties, represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement and each and every provision is for the exclusive benefit of the Parties and not for the benefit of any third party except to the extent expressly provided in this Agreement.

2.3 DEFINITIONS

2.3.1 Agreement means this Standard Agreement and General Conditions Between Owner and Contractor, as modified by the Parties, and exhibits and attachments made part of this Agreement upon its execution.

2.3.1.1 This Agreement includes, by attachment or by reference, the Supplementary General Conditions and the Design and Construction Standards. If at any point there is a conflict in the Contract Documents, including the attachments or exhibits, the strictest provision shall apply, with discretion for relief granted only by the Owner in writing.

2.3.1.2 Other Exhibits or Attachments for this Agreement include:

Drawings and Specifications
Bidding Documents

2.3.2 Design Professional means the licensed Architect, Design Professional or Engineer and its consultants, retained by City to perform design services for the Project. The Owner's Design Professional for the Project is David Esau, AIA , LEED AP, of Cornerstone Design Inc. & MI Accessible Homes, of 210 Collingwood Dr., Suite 106, Ann Arbor, MI 48103.

2.3.3 Change Order is a written order signed by or on behalf of the Owner and Contractor after execution of this Agreement, indicating changes in the scope of the Work, the Contract Price or Contract Time, including substitutions proposed by the Contractor and accepted by the Owner.

2.3.4 The Contract Documents consist of this Agreement, the drawings, specifications, addenda issued prior to execution of this Agreement, information furnished by the Owner under Paragraph 4.3, other documents listed in this Agreement and any modifications issued after execution.

2.3.5 The Contract Price is the amount indicated in Paragraph 7.1 of this Agreement.

2.3.6 The Contract Time is the period between the Date of Commencement and Final Completion. See Article 6.

2.3.7 The Contractor is the person or entity identified in Article 1 and includes the Contractor's Representative.

2.3.8 The term Day shall mean calendar day unless otherwise specifically defined.

2.3.9 Final Completion occurs on the date when the Contractor's obligations under this Agreement are complete and accepted by the Owner and final payment becomes due and payable, as established in Article 6. This date shall be confirmed by a Certificate of Final Completion signed by the Owner and the Contractor.

2.3.10 A Material Supplier is a person or entity retained by the Contractor to provide material or equipment for the Work.

2.3.11 Others means other contractors, material suppliers and persons at the Worksite who are not employed by the Contractor or Subcontractors.

2.3.12 The term Overhead shall mean 1) payroll costs and other compensation of Contractor employees in the Contractor's principal and branch offices; 2) general and administrative expenses of the Contractor's principal and branch offices including deductibles paid on any insurance policy, charges against the Contractor for delinquent payments, and costs related to the correction of defective work; and 3) the Contractor's capital expenses, including interest on capital used for the Work.

2.3.13 Owner is the person or entity identified in Article 1, and includes the Owner's Representative.

2.3.14 The Project, as identified in Article 1, is the building, facility or other improvements for which the Contractor is to perform Work under this Agreement. It may also include construction by the Owner or Others.

2.3.15 The Schedule of the Work is the document prepared by the Contractor that specifies the dates on which the Contractor plans to begin and complete various parts of the Work, including dates on which information and approvals are required from the Owner. The construction schedules required by the Contract Documents shall be a logic network prepared in the critical path method or other sequential network in use within the construction industry and shall depict: 1) a sequence of operations mutually agreeable to the Parties; 2) the dates of commencement and completion of each task of the Work (including lead time activities, drawing and sample submissions, bidding, awarding Trade Contracts, manufacturing and shipping); 3) delivery dates for material and equipment; and 4) at the Owner's request shall include work to be performed by separate contractors. The construction schedule includes a complete itemized breakdown of the Work including a detailed resource loading plan for each activity within the Project and shall illustrate each resource time phased requirements. The construction Schedule of the Work shall show both the Actual and the Planned commencement and completion dates for all activities on the schedule. The Schedule of Work shall take into consideration and shall comply with all of the Owner's standards and policies that are included in the Contract Documents.

2.3.16 A Subcontractor is a person or entity retained by the Contractor as an independent contractor to provide the labor, materials, equipment or services necessary to complete a specific portion of the Work. The term Subcontractor does not include Others.

2.3.17 Substantial Completion of Work, or of a designated portion, occurs on the date when the Work is sufficiently complete in accordance with the Contract Documents so that the Owner may occupy or utilize the Project, or a designated portion, for the use for which it is intended, without unscheduled disruption. This date shall be confirmed by a Certificate of Substantial Completion signed by the Owner and Contractor.

2.3.18 A Sub-subcontractor is a person or entity who has an agreement with a Subcontractor to perform any portion of the Subcontractor's Work.

2.3.19 Terrorism means a violent act, or an act that is dangerous to human life, property or infrastructure, that is committed by an individual or individuals and that appears to be a part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion. Terrorism includes, but is not limited to, any act certified by the United States government as an act of terrorism pursuant to the Terrorism Risk Insurance Act, as amended.

2.3.20 Work means the construction and services necessary or incidental to fulfill the Contractor's obligations for the Project in conformance with this Agreement and the other Contract Documents. The Work may refer to the whole Project or only a part of the Project if work is also being performed by the Owner or Others.

2.3.20.1 Changed Work means work that is different from the original scope of Work; or work that changes the Contract Price or Contract Time.

2.3.20.2 Defective Work is any portion of the Work that is not in conformance with the Contract Documents, as more fully described in Paragraphs 3.5 and 3.8.

2.3.21 Worksite means the geographical area at the location of the Project as identified in Article 1 where the work is to be performed.

2.3.22 Close-out Documents include as-built record drawings and specifications, Operations and Maintenance Manuals, Requests for Information, sketches, submittals, shop drawings, coordination drawings, warranties, lien waivers and approvals from governing bodies.

2.3.23 Delay shall only be recognized as an impact on the time of completion of the performance of the Work by the Contractor that extends the overall duration of the Project beyond the substantial completion and final completion dates specified in the Agreement. A delay shall not be recognized if the time of completion impact on the performance of the Work occurs on a non-critical path activity, and does not extend the overall duration of the Project.

2.3.24 A Claim is a demand or assertion by one of the parties seeking adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the parties arising out of or relating to the Contract. Claims must be made by written notice. The responsibility to substantiate Claims shall rest with the party making the claim.

2.3.25 The phrase "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a Contractor familiar with the Project and exercising the care, skill and diligence required by Contract Documents.

2.3.26 Unsafe persons shall be those individuals that present a safety or other hazard to themselves or others for any reason.

ARTICLE 3 CONTRACTOR'S RESPONSIBILITIES

3.1 GENERAL RESPONSIBILITIES

3.1.1 The Contractor shall provide all labor, materials, equipment and services necessary to complete the Work, all of which shall be provided in full accord with and reasonably inferable from the Contract Documents as being necessary to produce the indicated results.

3.1.2 The Contractor shall be responsible for the supervision and coordination of the Work, including the construction means, methods, techniques, sequences and procedures utilized.

3.1.3 The Contractor shall perform Work only within locations allowed by the Contract Documents, applicable permits and applicable local law.

3.2 COOPERATION WITH WORK OF OWNER AND OTHERS

3.2.1 The Owner may perform work at the Worksite directly or by Others.

3.2.2 In the event that the Owner elects to perform work at the Worksite directly or by Others, the Contractor shall coordinate the activities of all forces at the Worksite and the Schedule of the Work shall reflect the coordination as well as operation procedures for Worksite activities. The Owner shall require each separate contractor to cooperate with the Contractor and assist with the coordination of activities and the review of the Schedule of Work and operations. The Contract Price and Contract Time may be equitably adjusted, a mutually agreed by the Parties, for changes made necessary by the coordination of construction activities, and the Schedule of Work shall be revised accordingly. The Contractor, Owner and Others shall adhere to the revised construction schedule until it may subsequently be revised.

3.2.3 With regard to the work of the Owner and Others, the Contractor shall (a) proceed with the Work in a manner which does not hinder, delay or interfere with the work of the Owner or Others or cause the work of the Owner or Others to become defective, (b) afford the Owner or Others reasonable access for introduction and storage of their materials and equipment and performance of their activities, and (c) coordinate the Contractor's construction and operations with theirs as required by Paragraph 3.2.

3.2.4 Upon completion of all or any part of the construction or operations of the Owner or Others, the Contractor shall inspect the work of Others and give the Owner prompt written notification of any defects the Contractor discovers in their work which will prevent the proper execution of the Work. The Contractor's obligations in this Paragraph do not create a responsibility for the work of the Owner or Others, but are for the purpose of facilitating the Work. If the Contractor does not notify the Owner of defects interfering with the performance of the Work, the Contractor acknowledges that the work of the Owner or Others is not defective and is acceptable for the proper execution of the Work. Following receipt of written notice from the Contractor of defect, the Owner shall promptly inform the Contractor what action, if any, the Contractor shall take with regard to the defects.

3.3 RESPONSIBILITY FOR PERFORMANCE

3.3.1 In order to facilitate its responsibilities for completion of the Work in accordance with and as reasonably inferable from the Contract Documents, prior to commencing the Work the Contractor shall examine and compare the drawings and specifications with information furnished by the

Owner pursuant to Paragraph 4.3, relevant field measurements made by the Contractor and any visible conditions at the Worksite affecting the Work.

3.3.2 The Contractor shall perform the Agreement faithfully and diligently and perform the services in a competent, professional, satisfactory and proper manner and during the Contract Time or extensions thereof, use every best effort and endeavor to promote the interests of the CITY and devote such time, attention, skill, knowledge and ability as is necessary to most effectively and efficiently carry out and perform the Work.

3.3.3 If in the course of the performance of the obligations in Subparagraph 3.3.1 the Contractor discovers any errors, omissions or inconsistencies in the Contract Documents, the Contractor shall promptly report them to the Owner. Following receipt of written notice from the Contractor of defects, the Owner shall promptly inform the Contractor what action, if any, the Contractor shall take with regard to the defects.

3.4 CONSTRUCTION PERSONNEL AND SUPERVISION

3.4.1 The Contractor shall provide competent supervision for the performance of the Work at all times when Work is being performed. Prior to executing this Agreement, Contractor shall notify Owner in writing of the name and qualifications of its proposed superintendent(s) and project manager as well as other key staff as requested by the Owner so that Owner may review the individuals' qualifications. If, for reasonable cause, the Owner refuses to approve the individual, or withdraws its approval after one giving it, Contractor shall name a different superintendent or project manager for Owner's review. Any disapproved construction staff shall not perform in that capacity thereafter at the Worksite.

3.4.2 The Contractor shall be responsible to the Owner for acts or omissions of parties or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

3.4.3 The Contractor shall permit only qualified persons to perform the Work. The Contractor shall enforce safety procedures, strict discipline and good order among persons performing the Work. If the Owner determines that a particular person does not follow safety procedures, or is unfit or unskilled for the assigned work, or is otherwise an Unsafe Person, the Contractor shall immediately remove the person from the Project upon receipt of the Owner's written notice to do so.

3.4.4 CONTRACTOR'S REPRESENTATIVE The Contractor's authorized representative is

Noah D. Hiser. The Contractor's Representative shall possess full authority to receive instructions from the Owner and to act on those instructions. The Contractor shall notify the Owner in writing of a change in the designation of the Contractor's Representative.

3.5 WORKMANSHIP The Work shall be executed in accordance with the Contract Documents in a workmanlike manner. All materials used in the Work shall be furnished in sufficient quantities to facilitate the proper and expeditious execution of the Work and shall be new except such materials as may be expressly provided in the Contract Documents to be otherwise.

3.6 MATERIALS FURNISHED BY THE OWNER OR OTHERS In the event the Work includes installation of materials or equipment furnished by the Owner or Others, it shall be the responsibility of the Contractor to examine the items so provided and thereupon handle, store and install the items, unless otherwise provided in the Contract Documents, with such skill and care as to provide a satisfactory and proper installation. Loss or damage due to acts or omissions of the Contractor shall be the responsibility of the Contractor and may be deducted from any amounts due or to become due the Contractor. Any defects discovered in such materials or equipment shall be reported at once to the Owner. Following receipt of written notice from the Contractor of defects, the Owner shall promptly inform the Contractor what action, if any, the Contractor shall take with regard to the defects.

3.7 TESTS AND INSPECTIONS

3.7.1 The Contractor shall schedule all required tests, approvals and inspections of the Work or portions thereof at appropriate times so as not to delay the progress of the Work or other work related to the Project and in accordance with the Schedule of Work. The Contractor shall give proper notice to all required parties of such test, approvals and inspections. If feasible, the Owner and Others may timely observe the tests at the normal place of testing. Except as provided in Subparagraph 3.7.3, the Owner shall bear all expenses associated with tests, inspections and approvals required by the Contract Documents, which, unless otherwise agreed to, shall be conducted by an independent testing laboratory or entity retained by the Owner. Unless otherwise required by the Contract Documents, required certificates of testing, approval or inspection shall be secured by the Contractor with copies of same promptly delivered to the Owner.

3.7.2 If the Owner or appropriate authorities determine that tests, inspections or approvals in addition to those required by the Contract Documents will be necessary, the Contractor shall arrange for the procedures and give timely notice to the Owner and Others who may observe the procedures. Costs of the additional test, inspections or approvals are at the Owner's expense except as provided in Subparagraph 3.7.3.

3.7.3 If the procedures described in Subparagraphs 3.7.1 and 3.7.2 indicate that portions of the Work fail to comply with the Contract Documents, the Contractor shall be responsible for costs of correction and retesting. Any costs resulting from Contractor's failure to coordinate or failed tests shall be the sole responsibility of the Contractor. If the Contractor's correction or retesting causes damage to or destroys other completed or partially completed Work or existing buildings, the Contractor shall be responsible for the cost of correcting the destroyed or damaged property.

3.8 WARRANTY

3.8.1 The Contractor warrants that all material and equipment shall be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. At the Owner's request, the Contractor shall furnish satisfactory evidence of the quality and type of materials and equipment furnished. The Contractor further warrants that the Work shall be free from material defects not intrinsic in the design or materials required in the Contract Documents. The Contractor's warranty pursuant to this Paragraph 3.8 shall commence on the Date of Substantial Completion.

3.8.2 The Contractor shall obtain from its Subcontractors and Material Suppliers and special or extended warranties required by the Contract Documents. All such warranties shall be listed in an attached Exhibit to this Agreement. Contractor's liability for such warranties shall be limited to the one-year correction period referred to in Paragraph 3.9. After that period Contractor shall assign them to the Owner and provide reasonable assistance to the Owner in enforcing the obligations of Subcontractors or Material Suppliers.

3.9 CORRECTION OF WORK WITHIN ONE YEAR

3.9.1 If, prior to Substantial Completion and within one year after the date of Substantial Completion of the Work, any Defective Work is found, the Owner shall promptly notify the Contractor in writing. Unless the Owner provides written acceptance of the condition, the Contractor shall promptly correct the Defective Work at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible. Correction of Defective Work shall not entitle Contractor to any extension of the Contract Time.

3.9.2 With respect to any portion of work first performed after Substantial Completion, the one-year correction period shall be extended by the period of time between Substantial Completion and the actual performance of the later work.

3.9.3 If the Contractor fails to correct Defective Work within a reasonable time after receipt of written notice from the Owner prior to final payment, the Owner may correct it in accordance with the Owner's right to carry out the Work in Paragraph 11.2. In such case, an appropriate Change Order shall be issued deducting the cost of correcting such deficiencies from payment then or thereafter due the Contractor. If payments then or thereafter due Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

3.9.4 If after the one-year correction period but before the applicable limitation period the Owner discovers any Defective Work, the Owner shall, unless the Defective Work requires emergency correction, promptly notify the Contractor. If the Contractor elects to correct the Work, it shall provide written notice of such intent within fourteen (14) Days of its receipt of notice from the Owner. The Contractor shall complete the correction of Work within a mutually agreed timeframe. If the Contractor does not elect to correct the Work, the Owner may have the Work corrected by itself or Others and charge the Contractor for the reasonable cost of the correction. Owner shall provide Contractor with an accounting of correction costs it incurs.

3.9.5 If the Contractor's correction or removal of Defective Work causes damage to or destroys other completed or partially completed Work or existing buildings, the Contractor shall be responsible for the cost of correcting the destroyed or damaged property.

3.9.6 The one-year period for correction of Defective Work does not constitute a limitation period with respect to the enforcement of the Contractor's other obligations under the Contract Documents.

3.9.7 Prior to final payment, at the Owner's option and with the Contractor's agreement, the Owner may elect to accept Defective Work rather than require its removal and correction. In such case the Contract Price shall be equitably adjusted for the agreed value of the Defective Work. If after final payment the Owner elects in writing to accept Defective Work rather than require its removal and correction, the Contractor shall pay to the Owner the agreed value of the Defective Work whether established by unit price differential, diminution in value or some other measure.

3.10 CORRECTION OF COVERED WORK

3.10.1 On request of the Owner, Work that has been covered without a requirement that it be inspected prior to being covered may be uncovered for the Owner's inspection. The Owner shall pay for the costs of uncovering and replacement if the Work proves to be in conformance with the Contract Documents, or if the defective condition was caused by the Owner or Others. If the uncovered Work proves to be defective, the Contractor shall pay the costs of uncovering, correction and replacement.

3.10.2 If contrary to specific requirements in the Contract Documents or contrary to a specific request from the Owner, a portion of the Work is covered, the Owner, by written request, may require the Contractor to uncover the Work for the Owner's observation. In this circumstance the Work shall be replaced at the Contractor's expense and with no adjustment to the Contract Time.

3.11 SAFETY OF PERSONS AND PROPERTY

3.11.1 SAFETY PRECAUTIONS AND PROGRAMS The Contractor shall have overall responsibility for safety precautions and programs in the performance of the Work. While this Paragraph 3.11 establishes the responsibility for safety between the Owner and Contractor, it does not relieve Subcontractors of their responsibility for safety of persons or property in the performance of their work, nor for compliance with the provisions of applicable laws and regulations.

3.11.2 The Contractor shall seek to avoid injury, loss and damage to persons or property by taking reasonable steps to protect:

3.11.2.1 its employees and other persons at the Worksite;

3.11.2.2 materials and equipment stored at onsite or offsite locations for use in the Work;
and

3.11.2.3 property located at the site and adjacent to Work areas, whether or not the property is part of the Work.

3.11.3 **CONTRACTOR'S SAFETY REPRESENTATIVE** The Contractor's Worksite Safety Representative is Brian Wright, who shall act as the Contractor's authorized safety representative with a duty to prevent accidents in accordance with Subparagraph 3.11.2 and who shall be on the Worksite at all times when Work is being performed. If no individual is identified in the Paragraph 3.11, the authorized safety representative shall be the Contractor's Representative. The Contractor shall report immediately in writing to the Owner all recordable accidents and injuries occurring at the Worksite. When the Contractor is required to file an accident report with a public authority, the Contractor shall furnish a copy of the report to the Owner. The Contractor shall immediately notify the Owner's Representative of the presence of any person on the site representing Michigan Occupation Safety and Health Administration (MIOSHA). The MIOSHA representative shall be accompanied by the Owner's Representative or a designee at all times when on the Project site.

3.11.4 The Contractor shall provide the Owner with copies of all notices required of the Contractor by law or regulation. The Contractor's safety program shall comply with the requirements of governmental and quasi-governmental authorities having jurisdiction.

3.11.5 Damage or loss not insured under property insurance which may arise from the Work, to the extent caused by the negligent acts or omissions of the Contractor, or anyone for whose acts the Contractor may be liable, shall be promptly remedied by the Contractor.

3.11.6 The Contractor is solely responsible for safety of the Worksite. The Owner shall have the right but not the responsibility to require the Contractor to stop performance of the Work or take corrective measures satisfactory to the Owner, or both. If the Contractor does not adopt corrective measures, the Owner may perform them and deduct their cost from the Contract Price. The Contractor agrees to make no claim for damages, for an increase in the Contract Price or for a change in the Contract Time based on the Contractor's compliance with the Owner's reasonable request.

3.11.7 The Contractor shall protect adjoining property and nearby buildings, roads, and other facilities and improvements from dust, dirt, debris and other nuisances arising out of Contractor's operations or storing practices. Dust shall be controlled by sprinkling or other effective methods acceptable to the Owner. An erosion and sedimentation control program shall be initiated, which includes measures addressing erosion caused by wind and water and sediment in runoff from site. A regular watering program shall be initiated to adequately control the amount of fugitive dust.

3.11.8 The Contractor is knowledgeable of and understands that the Owner intends to maintain occupancy of certain portions of the existing facility. The Contractor shall exercise precaution at all times for the protection of persons and their property. 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. The Contractor shall install adequate safety guards and protective devices for all equipment and machinery, whether used in the Work or permanently installed as part of the Project.

3.11.9 The Contractor shall also provide and adequately maintain all proper temporary walks, roads, guards, railings, lights, and warning signs. The Contractor shall comply with all applicable laws relating to safety precautions. The Contractor shall establish and maintain and update as required a Project Specific Safety Program. The Contractor shall submit the Safety Plan to the Owner for review and approval pursuant to Section 3.14. The Safety Plan must be in compliance with Owner's standards and with regulatory requirements.

3.11.10 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.

3.11.11 The Contractor shall require each and every one of its subcontractors and Trade subcontractors to comply with all of the provisions of this section.

3.11.12 The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety. The contractor shall provide documentation of loading or staging on the project site, and when required by the Owner, the documentation shall be sealed by an architect or engineer licensed in the State of Michigan.

3.12 EMERGENCIES

3.12.1 In an emergency, the Contractor shall act in a reasonable manner to prevent personal injury or property damage. Any change in the Contract Price or Contract Time resulting from the actions of the Contractor in an emergency situation shall be determined as provided in Article 8.

3.13 HAZARDOUS MATERIALS

3.13.1 A Hazardous Material is a substance or material identified now or in the future as hazardous under any federal, state or local law or regulation, or any other substance or material that may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal, or cleanup. The Contractor shall be responsible to manage the abatement or remediation of any Hazardous Material encountered at the Worksite. The Contractor shall recommence construction Work after any Hazardous Material identified at the Worksite has been removed, rendered or determined to be harmless as certified by an independent agency or approved by the appropriate government department.

3.13.2 If, after the commencement of the Work, Hazardous Material is discovered at the Worksite, the Contractor shall be entitled to immediately stop Work in the affected area. The Contractor shall report the condition to the Owner and, if required, the government agency with jurisdiction.

3.13.3 The Contractor shall schedule all required abatement test, approvals, and inspections of the Work or portions thereof at appropriate times so as not to delay the progress of the Work or other Work related to the Project. The Contractor shall give proper notice to all required parties of such test, approvals and inspections. If feasible, the Owner's Representative and Others may observe the tests at the normal place of testing. Except as provided in Subparagraph 3.13.5, the Owner shall bear all expenses associated with test, inspections and approvals required by the Contract Document, which, unless otherwise agree to, shall be conducted by an independent testing laboratory or entity retained by the Owner. Unless otherwise required by the Contract Documents, required certificates of testing, approval, or inspection shall be secured by the Contractor and promptly delivered to the Owner.

3.13.4 If the Owner or appropriate authorities determine that tests, inspections, or approvals in addition to those required by the Contract Documents will be necessary, the Contractor shall arrange for the procedures and give timely notice to the Owner and Others who may observe the

procedures. Costs of the additional test, inspections or approvals are at the Owner's expense except as provided in Subparagraph 3.13.5.

3.13.5 If the procedures described in Subparagraphs 3.13.1 through 3.13.4 indicate that portions of the Work fail to comply with the Contract Documents, the Contractor shall be responsible for costs of correction and retesting. Any costs resulting from Contractor's failure to coordinate shall be the sole responsibility of the Contractor.

3.13.6 If the Contractor incurs additional costs or experiences a critical path delay due to the presence or remediation of Hazardous Materials, the Contractor may be entitled to an equitable adjustment of the Contract Sum or the Contract Time for a Claim submitted under the Contract Documents.

3.13.7 MATERIALS BROUGHT TO THE WORKSITE

3.13.7.1 Material Safety Data Sheets (MSDS) as required by law and pertaining to materials or substances used or consumed in the performance of the Work, whether obtained by the Contractor, Subcontractors, the Owner, or Others, shall be maintained at the Worksite by the Contractor and made available to the Owner, Subcontractors, and Others.

3.13.7.2 The Contractor shall be responsible for the proper delivery, handling, application, storage, removal, and disposal of all materials and substances brought to the Worksite by the Contractor in accordance with the Contract Documents and used or consumed in the performance of the Work.

3.13.7.3 To the extent caused by the negligent acts or omissions of the Contractor, its agents, officers, directors, and employees, the Contractor shall indemnify and hold harmless the Owner, its agents, officers, directors and employees, from and against any and all claims, damages, losses, costs and expenses, including but not limited to attorneys' fees, costs and expenses incurred in connection with any dispute resolution procedure, arising out of or relating to the delivery, handling, application, storage, removal, and disposal of all materials and substances brought to the Worksite by the Contractor in accordance with the Contract Documents.

3.13.8 The terms of this Paragraph 3.13 shall survive the completion of the Work or any termination of the Agreement.

3.14 SUBMITTALS

3.14.1 The Contractor shall submit to the Owner, for review and approval, all shop drawings, samples, product data, and similar submittals required by the Contract Documents. Submittals may be submitted in electronic form if required in accordance with this Agreement, Attachments, and Subparagraph 4.6.1. The Contractor shall be responsible to the Owner for the accuracy and conformity of its submittals to the Contract Documents. The Contractor shall prepare and deliver its submittals to the Owner in a manner consistent with the Schedule of the Work and in such time and sequence so as not to delay the performance of the Work or the work of the Owner and Others. All submittals sent by the Contractor to the Owner shall be marked as reviewed and approved by the Contractor. When the Contractor delivers its submittals to the Owner, the Contractor shall identify in writing for each submittal all changes, deviations or substitutions from the requirements of the Contract Documents. The review and approval of any Contractor submittal shall not be deemed to authorize changes, deviations or substitutions from the requirements of the Contract Documents unless express written approval is obtained from the Owner specifically authorizing such deviation, substitution or change. To the extent a change, deviation or substitution causes and impact to the Contract Price or Contract Time, such approval shall be promptly memorialized in a Change Order. Further, the Owner shall not make any change, deviation or substitution through the submittal process without specifically identifying and authorizing such deviation to the Contractor. In the

event that the Contract Documents do not contain submittal requirements pertaining to the Work, the Contractor agrees upon request to submit in a timely fashion to the Owner, for review and approval, any shop drawings, samples, product data, manufacturers' literature or similar submittals as may reasonably be required by the Owner.

3.14.2 The Owner shall be responsible for review and approval of submittals in accordance with the approved Schedule of Work. The Contractor shall reimburse the Owner for all costs incurred by the Owner that were made necessary by the re-review of a previously disapproved or rejected submittal. Further, any time required to prepare, submit, and review a previously rejected submittal will not justify an increase to the Contract Price and/or Contract Time. The Contractor shall not be entitled to an increase in Contract Time or Contract Price resulting from delays in approving submittals that do not conform to the submittal schedule contained in the Schedule of Work.

3.14.3 The Contractor shall perform all Work strictly in accordance with approved submittals, and no Work requiring approval shall be performed prior to obtaining the necessary approvals. Approval of shop drawings is not authorization to Contractor to perform Changed Work, unless the procedures of Article 8 are followed. Approval does not relieve the Contractor from responsibility for Defective Work resulting from errors or omissions of any kind on the approved Shop Drawings.

3.14.4 Record copies of the following, incorporating field changes and selections made during construction, shall be maintained at the Project site on a contemporaneous basis and available to the Owner upon request: drawings, specifications, addenda, Change Order and other modifications, and required submittals including product data, samples and shop drawings.

3.14.5 No substitutions shall be made in the Work unless the procedures stated in this section are followed and substitution is approved in writing by the Owner prior to installation in the Work. All such substitutions shall be promptly memorialized in a Change Order no later than seven (7) Days following approval by the Owner.

3.14.5.1 If the Contractor proposes a product that is of lesser or greater quality or performance than the specified material or equipment, Contractor must both comply with the Contract Documents and submit any cost impact. By submitting a substitute, the Contractor waives any rights to claim a delay due to the processing of this substitution.

3.14.5.2 The Contractor may offer a substitution of a specified or indicated item if it presents complete information concerning the substitution and the benefits thereof to the Owner by reason of lower cost or improved performance, or both, over the specified or indicated item. However, such submission of a proposed substitution does not relieve the Contractor from its obligations under the Contract Documents. In proposing a substitution, the Contractor warrants that the substitution is, at a minimum, equivalent in performance to the specified or indicated item.

3.14.5.3 Any additional costs and changes to the Work (including, but not limited to the Work of other Contractors and additional design costs which may be affected thereby) which may result from the proposed substitution shall be disclosed at the time the substitution is proposed to the Owner. Changes to the Work and any additional costs therefrom shall be the sole responsibility of the Contractor and shall not increase the Contract Price.

3.14.5.4 The Contractor's substitution proposals shall include written descriptions of the items to be substituted (including drawings and/or specifications) and referenced information of the proposed substitution. The Owner's Representative's signature on this proposal is required for acceptance. Shop Drawings will not be considered a substitution proposal pursuant to this section. Verbal approvals or approved Shop Drawings will not be considered as acceptance of proposed substitutions. Any design, testing, or modification costs resulting from any substitution are solely the responsibility of the Contractor. Acceptance by the

Owner does not change the Contractor's responsibility for all costs related to Contractor-initiated substitutions.

3.14.5.5 The burden of proving the comparative quality and suitability of the offered materials or equipment shall be upon the Contractor. Where the material is specified by capacity or performance, the burden of proof shall be on the Contractor to show that any particular equipment or materials meet the minimum capacities of the performance requirements specified. The Contractor shall furnish at its own expense all information necessary for a determination as to whether the minimum capacities or performance requirements will be met. Such information shall be submitted so as not to cause a delay in delivery and/or progress of the Work. The Owner shall be the judge of such matters. If the Owner rejects the use of any substitutions, alternative materials, or equipment, then one of the products designated by brand name shall be furnished. The Schedule of Work shall not be affected by any substitution.

3.14.5.6 If changes to the design or delays result from the proper installation or fit of alternative or substituted materials, articles or equipment or other deviations from the Contract Documents, all such costs, delays, and expenses shall be the sole responsibility of the Contractor.

3.14.6 The Contractor shall prepare and submit to the Owner, as needed:

final marked-up as-built drawings, or updated electronic data, in accordance with this Agreement or Attachment, containing documentation in general documenting how the various elements of the Work were actually constructed or installed.

3.15 PROFESSIONAL SERVICES The Contractor may be required to procure professional services in order to carry out its responsibilities for construction means, methods, techniques, sequences, and procedure for such services specifically called for by the Contract Documents. The Contractor shall obtain these professional services and any design certifications required from design professionals appropriately licensed in the State of Michigan. All drawings, specifications, calculations, certifications and submittals prepared by such design professionals shall bear the signature and seal of such design professionals and the Owner shall be entitled to rely upon the adequacy, accuracy, and completeness of such design services. If professional services are specifically required by the Contract Documents, the Owner shall indicate all required performance and design criteria. The Contractor shall not be required to provide such services in violation of existing laws, rules, and regulations in Michigan. Written acceptance by the Owner must be obtained by the Contractor in advance of Professional Services described in this section.

3.16 WORKSITE CONDITIONS

3.16.1 WORKSITE VISIT The Contractor acknowledges that it has visited, or has had the opportunity to visit, the Worksite to visually inspect the general and local conditions which could affect the Work.

3.16.2 CONCEALED OR UNKNOWN SITE CONDITIONS If the conditions at the Worksite are (a) subsurface or other physical conditions which are materially different from those indicated in the Contract Documents, or (b) unusual or unknown physical conditions which are materially different from conditions ordinary encountered and generally recognized as inherent in Work provided for in the Contract Documents, the Contractor shall stop Work and give immediate written notice of the condition to the Owner. The Contractor shall not be required to perform any work relating to the unknown condition without the written mutual agreement of the Parties. Any change in the Contract Price or Contract Time as a result of the unknown condition shall be determined as provided in Article 8 and, if applicable, MCL 125.1592. The Contractor shall provide the Owner with written notice of any claim as a result of unknown conditions within the time period set forth in Paragraph 8.4 and, if applicable, as required by MCL 125.1592.

3.17 PERMITS AND TAXES

3.17.1 Contractor shall give public authorities all notices required by law and, except for permits and fees which are the sole responsibility of the Owner pursuant to paragraph 4.4, shall obtain and pay for all necessary permits, licenses, and renewals pertaining to the Work. Contractor shall provide to Owner copies of all notices, permits, licenses, and renewals required under this Agreement.

3.17.2 Contractor shall pay all applicable taxes legally enacted when bids are received or negotiations concluded for the Work provided by the Contractor.

3.17.3 The Contract Price or Contract Time shall be equitably adjusted by Change Order for additional costs resulting from any changes in laws, ordinances, rules, and regulations enacted after the date of this Agreement, including increased taxes.

3.17.4 If in accordance with the Owner's direction, the Contractor claims and exemption for taxes, the Owner shall indemnify and hold the Contractor harmless from any liability, penalty, interest, fine, tax assessment, attorney's fees, or other expense or cost incurred by the Contractor as a result of any such action.

3.18 CUTTING, FITTING AND PATCHING

3.18.1 The Contractor shall perform cutting, fitting, and patching necessary to coordinate the various parts of the Work and to prepare its Work for the Work of the Owner or Others.

3.18.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Others by cutting, patching, or otherwise altering such construction, or by excavation. Cutting, patching, or altering the work of the Owner or Others shall only be done with the prior written approval of the Owner. Such approval shall not be unreasonably withheld.

3.19 CLEANING UP

3.19.1 The Contractor shall regularly remove debris and waste materials at the Worksite resulting from the Work. Prior to discontinuing Work in an area, the Contractor shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste, and surplus materials. The Contractor shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, the Contractor shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials, and debris.

3.19.2 If the Contractor fails to commence compliance with cleanup duties within two (2) business Days after written notification from the Owner of non-compliance, the Owner may implement appropriate cleanup measures without further notice and the cost shall be deducted from any amounts due or to become due the Contractor in the next payment period.

3.20 ACCESS TO WORK The Contractor shall provide reasonable access to the Owner and Others to Work in progress.

3.21 CONFIDENTIALITY Unless compelled by law, a governmental agency or authority, an order of a court of competent jurisdiction, or a validly issued subpoena, the Contractor shall treat as confidential and not disclose to third persons, except Subcontractors, Sub-subcontractors and Material Suppliers as is necessary for the performance of the Work, or use for its own benefit, any of the Owner's confidential information, know-how, discoveries, production methods, and the like that may be disclosed to the Contractor or which the Contractor may acquire in connection with the Work.

3.22 UTILITIES

3.22.1 The Contractor shall provide as-built drawings of all utilities encountered and constructed for the Owner, indicating the size, horizontal location, and vertical location based on the Project bench mark or a stable datum.

3.22.2 Unless otherwise specifically stated, the Contractor shall provide or otherwise make all arrangements for utilities required to deliver the work. The costs of utility consumption to deliver the Work shall be the responsibility of the Owner and shall not be included in the Contract Sum. The Contractor shall endeavor to prevent unnecessary waste of utility resources. Willfully wasting utilities shall result in a Contract Sum deduction through a Change Order.

3.22.3 In the event of a utility or system full or partial shutdown, the Contractor shall notify and schedule such utility interruption with the appropriate Owner representative at least three weeks prior to such interruption. The Contractor shall be responsible for all costs incurred as a result of utility interruptions under the control of the Contractor or caused by the Contractor's operations.

3.22.4 In the event of an emergency utility or system full or partial shutdown, the Contractor shall immediately notify the Owner.

ARTICLE 4 OWNER'S RESPONSIBILITIES

4.1 INFORMATION AND SERVICES Any information or services to be provided by the Owner shall be provided in accordance with the approved Schedule of the Work.

4.2 WORKSITE INFORMATION Except to the extent that the Contractor knows of any inaccuracy and following the completion of reasonable measures to verify the accuracy, the Contractor is entitled to rely on Worksite information furnished by the Owner pursuant to this Paragraph 4.3. To the extent the Owner has obtained, or is required elsewhere in the Contract Documents to obtain, the following Worksite information, the Owner shall provide at the Owner's expense and with reasonable promptness:

4.2.1 information describing the physical characteristics of the site, including surveys, site evaluations and legal descriptions

4.2.2 tests, inspections and other reports dealing with environmental matters, Hazardous Material and other existing conditions, including structural, mechanical and chemical tests, required by the Contract Documents or by law; and

4.2.3 any other information or services requested in writing by the Contractor which are relevant to the Contractor's performance of the Work and under the Owner's control.

The information required by Paragraph 4.3 shall be provided in reasonable detail. Legal descriptions shall include easements, title restrictions, boundaries, and zoning restrictions. Worksite descriptions shall include existing buildings and other construction and all other pertinent site conditions. Adjacent property descriptions shall include structures, streets, sidewalks, alleys, and other features relevant to the Work. Utility details to the extent available shall include available services, lines at the Worksite and adjacent thereto and connection points. The information shall include public and private information, grades, contours, and elevations, drainage data, exact locations and dimensions, and benchmarks that can be verified by the Contractor in laying out the Work.

4.3 BUILDING PERMIT, FEES AND APPROVALS Except for those permits and fees related to the Work which are the responsibility of the Contractor pursuant to Subparagraph 3.17.1, the Owner shall secure and pay for all other permits, approvals, easements, assessments, and fees required for the

development, construction, use or occupancy of permanent structure or for permanent changes in existing facilities, including the building permit. Permit Matrix to be developed.

4.4 MECHANICS AND CONSTRUCTION LIEN INFORMATION Deleted.

4.5 CONTRACT DOCUMENTS Unless otherwise specified, Owner shall provide three (3) hard copies of the Contract Documents to the Contractor without cost.

4.5.1 DIGITALIZED DOCUMENTS If the Owner requires that the Owner and Contractor exchange documents and data in electronic or digital form, prior to any such exchange, the Owner and Contractor shall agree on a written protocol governing all exchanges in ConsensusDOCS 200.2 or a separate Agreement, which, at a minimum, shall specify: (1) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (2) management and coordination responsibilities; (3) necessary equipment, software and services; (4) acceptable formats, transmission methods and verification procedures; (5) methods for maintaining version control; (6) privacy and security requirements; and (7) storage and retrieval requirements. Except as otherwise agreed to by the Parties in writing, the Parties shall each bear their own costs as identified in the protocol. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient.

4.6 OWNERS'S REPRESENTATIVE The Owner's authorized representative is Frances McMullan, Ypsilanti City manager. The representative shall be fully acquainted with the Project, and shall have authority to act on behalf of the Owner in all matters requiring the Owner's approval, authorization or written notice, except for any modifications to the Contract Time or the Contract Sum as noted on the attached Authority Matrix. If the Owner changes its representative or the representative's authority as listed above, the Owner shall immediately notify the Contractor in writing.

4.7 OWNER'S RIGHT TO CLEAN UP In case of a dispute between the Contractor and Others with regard to respective responsibilities for cleaning up at the Worksite, the Owner may implement appropriate cleanup measure after two (2) business Days' notice and allocate the cost among those responsible during the following pay period.

4.8 COST OF CORRECTING DAMAGED OR DESTROYED WORK With regard to damage or loss attributable to the acts or omissions of the Owner or Others and not to the Contractor, the Owner may either (a) promptly remedy the damage or loss or (b) accept the damage or loss. If the Contractor incurs additional costs or is delayed due to such loss or damage, the Contractor may be entitled to an equitable adjustment in the Contract Price or Contract Time.

ARTICLE 5 SUBCONTRACTS

5.1 SUBCONTRACTS The Work not performed by the Contractor with its own forces shall be performed by Subcontractors.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.2.1 As soon after the award of the Agreement as possible and in not event more than 15 days following execution of this Agreement, the Contractor shall provide the Owner with a written list of the proposed Subcontractors and significant material suppliers. If the Owner has a reasonable objection to any proposed Subcontractor or material supplier, the Owner shall notify the Contractor in writing.

5.2.2 If the Owner has reasonably and promptly objected as provided in Subparagraph 5.2.1, the Contractor shall not contract with the proposed Subcontractor or material supplier, and the Contractor shall propose another acceptable Subcontractor to the Owner.

5.3 **BINDING OF SUBCONTRACTORS AND MATERIAL SUPPLIERS** The Contractor agrees to bind every Subcontractor and Material Supplier (and require every Subcontractor to so bind its subcontractors and material suppliers) to all the provisions of this Agreement and the Contract Documents as they apply to the Subcontractor's and Material Supplier's portions of the Work. The Owner shall receive a copy of all executed subcontracts and purchase orders issued by the Contractor.

5.4 **LABOR RELATIONS – PREVAILING WAGES**

5.4.1 This project is subject to the Wages and Fringe Benefits on State Projects Act (the Prevailing Wage Act or "the Act"), MCL 408.551 et seq. The Contractor and each Subcontractor shall be responsible to fully comply with all requirements of the Act and shall pay to each class of mechanics and laborers not less than the prevailing wage and fringe benefit rates as determined by the Michigan Department of Labor and Economic Growth, Wage and Hour Division. The Contractor shall post at the Worksite, in a conspicuous place, a copy of all applicable wage and benefit rates, and shall provide the Owner with a copy of the applicable wage and benefit rates.

5.4.2 The Contractor and each Subcontractor shall keep an accurate record showing the name and occupation of and the actual benefits and wages paid to each laborer and mechanic employed in connection with this contract. The Contractor and each Subcontractor shall submit certified payroll records with each application for payment.

5.4.3 If a Contractor or Subcontractor fails to pay the prevailing rates of wages and fringe benefits and does not cure such failure within ten (10) days after notice to do so by the Owner, the Owner shall have the right, at its option, to do any or all of the following:

5.4.3.1 Withhold all or any portion of payments due the Contractor as may be considered necessary by the Owner to pay laborers and mechanics the difference between the rates of wages and fringe benefits required by this Agreement and the actual wage and fringe benefits paid.

5.4.3.2 Terminate part or all of this Agreement or any subagreement and proceed to complete the Agreement or subagreement by separate agreement with another Contractor or otherwise, in which case the Contractor and its sureties shall be liable to the Owner for any excess costs incurred by the Owner.

5.4.4 The Contractor shall include terms identical or substantially similar to this section in any Agreement or subagreement pertaining to the project.

5.5 **CONTINGENT ASSIGNMENT OF SUBCONTRACTS**

5.5.1 If this Agreement is terminated, each subcontract agreement shall be assigned by the Contractor to the Owner, subject to the prior rights of any surety, provided that:

5.5.1.1 this Agreement is terminated by the Owner; and

5.5.1.2 the Owner accepts such assignment after termination by notifying the Subcontractor and Contractor in writing, and assumes all rights of the Contractor pursuant to each subcontract agreement.

5.5.1.3 This language, relative to contingent assignment of subcontracts, shall be included in the subcontracts issued by the Contractor.

5.6 TRADE DISPUTES

5.6.1 Wherever any provision of any section of the Plans and Specification conflicts with any agreement or regulation of any kind at any time in force among members of any Trade Associations, Unions, or Councils which regulate or distinguish that Work shall or shall not be included in the Work of any particular trade, the Contractor shall make all necessary arrangements to reconcile any such conflict without delay, damage, increase to the Contract Sum or recourse to the Owner. The Owner will not be responsible for nor arbitrate disputes among Subcontractors nor between the Contractor and one or more Subcontractors concerning responsibility for performing any part of the Project.

5.6.2 In case the progress of the work is affected by any undue delay in furnishing or installing any items of material or equipment required under the Contract Documents because of conflict involving any agreement or regulation of the type described above, the Owner's Representative may require that other material or equipment of equal kind and quality be provided at no additional cost to the Owner.

ARTICLE 6 CONTRACT TIME

6.1 PERFORMANCE OF THE WORK

6.1.1 DATE OF COMMENCEMENT The Date of Commencement is the date of this Agreement as first written in Article 1).

6.1.2 TIME Substantial Completion of the Work shall be achieved on or before May 3, 2020. The Contractor shall achieve Final Completion on or before May 3, 2020, to allow time to prep the facility for opening he end of May, 2020. Final Completion after May 3, 2020 shall subject the Contractor to liquidated damages.

6.1.3 Time limits stated above are of the essence of this Agreement.

6.1.4 Unless instructed by the Owner in writing, the Contractor shall not knowingly commence the Work before the effective date of insurance that is required to be provided by the Contractor and Owner.

6.2 SCHEDULE OF THE WORK

6.2.1 Before Commencing Work, the Contractor shall submit to the Owner a Schedule of the Work that shall show the dates on which the Contractor plans to commence and complete various parts of the Work, including dates for submittals and on which information and approvals are required from the Owner and all anticipated utility interruptions in accordance with Paragraph 3.22. On the Owner's written approval of the Schedule of Work, the Contractor shall comply with it unless directed by the Owner to do otherwise. An updated construction schedule shall be submitted to the Owner five (5) days prior to the submittal of the Contractor's monthly payment request. The updated Schedule of the Work that satisfies the requirement of this Agreement must accurately reflect the status of the Work, and incorporate all changes into the schedule, including actual dates and cost of Work performed. Submittal of the updated schedules shall be a condition precedent to the processing of monthly payment applications. Updated schedules shall also be submitted at such other times as the Owner may direct. Upon approval of a change order or issuance of a direction to proceed with a change, the approved change shall be reflected in the next updated Schedule of the Work submitted by the Contractor. If completion of any part of the Work, the delivery of equipment or material, or the Contractor submittals is behind the updated Schedule of Work and will cause the end date of the work to be later than the Contract Time, the Contractor

shall submit in writing a plan acceptable to the Owner for completing the Work on or before the current Contract completion date.

6.2.2 The Owner may determine the sequence in which the Work shall be performed, provided it does not unreasonably interfere with the Schedule of the Work. The Owner may require the Contractor to make reasonable changes in the sequence at any time during the performance of the Work in order to facilitate the performance of work by the Owner or Others. To the extent such changes increase Contractor's time and costs the Contract Price and Contract Time may be equitable adjusted if Contractor demonstrates entitlement pursuant to the requirements of the Contract Documents.

6.2.3 Float, slack time, or contingency within the Schedule of the Work at the activity level and total float within the overall schedule, is not for the exclusive use of either the Owner or the Contractor, but is jointly owned by both and is a resource available to and shared by both parties as needed to meet Contract milestones and the Contract completion date. The Contractor shall not sequester shared float through such strategies as extending activity duration estimates to consume available float, using preferential logic, or using extensive crew/resource sequencing, etc. Since float time within the Schedule of the Work is jointly owned, it is acknowledged that Owner-caused delays on the Project may be offset by Owner-caused time savings (i.e., critical path submittals returned in less time than allowed by the Contract, approval of substitution requests which result in a savings of time to the Contractor, etc.). In such an event, the Contractor shall not be entitled to receive a time extension until all Owner-caused time savings are exceeded and the Contract completion date is also exceeded.

6.3 DELAYS AND EXTENSIONS OF TIME

6.3.1 If the Contractor is delayed at any time in the commencement of progress of the Work by any cause beyond the control of the Contractor, the Contractor shall be entitled to an equitable extension of the Contract Time so long as the extension is reasonable, actual, and documented. Examples of causes beyond the control of the Contractor include, but are not limited to, the following: acts or omissions of the Owner or Others; changes in the Work or the sequencing of the Work ordered by the Owner, or arising from decisions of the Owner that impact the time of performance of the Work; transportation delays not reasonably foreseeable; labor disputes not involving the Contractor; general labor disputes impacting the Project but not specifically related to the Worksites; fire; terrorism, epidemics, adverse governmental actions, unavoidable accidents or circumstances; adverse weather conditions not reasonably anticipated; encountering Hazardous Material; concealed or unknown conditions; delay authorized by the Owner pending dispute resolution; and suspension by the Owner under Paragraph 11.1. The Contractor shall submit any requests for equitable extensions of Contract Time in accordance with the provisions of Article 8. Contractor's sole remedy for adverse weather conditions shall be an extension of Contract Time.

6.3.1.1 The Owner shall not recognize labor disputes, strikes, work stoppages, picketing or boycotting by employees of or under the control or direction of the Contractor or its subcontractors, to be cause for extending the Construction Project Schedule or the Contract Time or adjusting the Contract Sum. Such labor disputes, strikes, work stoppages, picketing, or boycotts may constitute grounds for termination of the Contractor.

6.3.2 NOTICE OF DELAYS In the event delays to the Work are encountered for any reason, the Contractor shall provide prompt written notice to the Owner of the cause of such delays after Contractor first recognized the delay. The Owner or Contractor agree to undertake reasonable steps to mitigate the effect of such delays.

6.4 NOTICE OF DELAY CLAIMS If the Contractor requests and equitable extension of Contract Time or an equitable adjustment in Contract Price as a result of a delay described in Subparagraph 6.3.1, the Contractor shall give the Owner written notice of the claim in accordance with Paragraph 8.4. If the Contractor causes delay in the completion of the Work, the Owner shall be entitled to recover its

additional cost incurred as a result of the delay subject to Paragraph 6.6. The Owner shall process any such claim against the Contractor in accordance with Article 8.

6.5 LIQUIDATED DAMAGES

6.5.1 SUBSTANTIAL COMPLETION The Parties agree that this Agreement shall) provide for the imposition of liquidated damages based on the Date of Substantial Completion.

6.5.1.1 The Contractor understands that if the Date of Substantial Completion established by this Agreement, as may be amended by subsequent Change Order, is not attained, the Owner will suffer damages which are difficult to determine and accurately specify. The Contractor agrees that if the actual Date of Substantial Completion is not attained the Contractor shall pay the Owner five hundred Dollars (\$500) as liquidated damages for each Day that actual Substantial Completion extends beyond the Date of Substantial Completion. Liquidated damages for Substantial Completion are capped at 60 total Days. The liquidated damages provided herein shall be in lieu of all liability for and all extra costs, losses, expenses, claims, penalties and any other damages of whatsoever nature incurred by the Owner which are occasioned by any delay in achieving the Date of Substantial Completion, and not as a penalty.

6.5.2 FINAL COMPLETION The Parties agree that this Agreement shall provide for the imposition of liquidated damages based on the Date of Final Completion.

6.5.2.1 The Contractor understands that if the Date of Final completion established by this Agreement, as may be amended by subsequent Change Order is not attained, the Owner will suffer damages which are difficult to determine and accurately specify. The Contractor agrees that if the actual Date of Final Completion is not attained the Contractor shall pay the Owner five hundred Dollars (\$500) as liquidated damages for each Day that actual Final Completion extends beyond the Date of Final Completion. Liquidated damages for Final Completion are capped at 60 total Days. The liquidated damages provided herein shall be in lieu of all liability for and all extra costs, losses, expenses, claims, penalties and any other damages of whatsoever nature incurred by the Owner which are occasioned by any delay in achieving the Date of Final Completion, and not as a penalty.

6.5.3 OTHER LIQUIDATED DAMAGES The Parties may agree upon the imposition of liquidated damages based on other project milestones or performance requirements. Such agreement shall be included as an exhibit to this Agreement.

ARTICLE 7 CONTRACT PRICE

7.1 LUMP SUM As full compensation for performance by the Contractor of the Work in conformance with the Contact Documents, the Owner shall pay the Contractor the lump sum price of Five Hundred Sixty Nine Thousand Dollars (\$569,000.00) plus One Thousand Five Hundred Dollars (\$1,500) for alternate 1, (stainless steel edging on laminate toilet partitions) The lump sum price in hereinafter referred to as the Contract Price, which shall be subject to increase or decrease as provided in Article 8.

7.2 ALLOWANCES

7.2.1 All allowances stated in the Contract Documents shall be included in the Contract Price. While the Owner may direct the amounts of, and particular material suppliers or subcontractors for, specific allowance items, if the Contractor reasonable objects to a material supplier or subcontractor, it shall not be required to contract with them. The Owner shall select allowance items in a timely manner so as not to delay the work.

7.2.2 Allowances shall include the costs of materials, supplies, and equipment delivered to the Worksite, less applicable trade discounts and including requisite taxes, unloading, and handling at the Worksite, and labor and installation, unless specifically stated otherwise. The Contractor's Overhead and profit for the allowances shall be included in the Contract Price, but not in the allowances. The Contract Price shall be adjusted by Change Order to reflect the actual costs when they are greater or less than the allowances.

ARTICLE 8 CHANGES

Changes in the Work that are within the general scope of this Agreement shall be accomplished, without invalidating this Agreement, by Change Order, and Interim Directed Change.

8.1 CHANGE ORDER

8.1.1 The Contractor may request or the Owner may order changes in the Work or the timing or sequencing of the Work that impacts the Contract Price or the Contract Time. All such changes in the Work that affect Contract Time or Contract Price shall be formalized in a Change Order. Any such requests for a change in the Contract Price or the Contract Time shall be processed in accordance with this Article 8.

8.1.2 The Parties shall negotiate in good faith an appropriate adjustment to the Contract Price or the Contract Time and shall conclude these negotiations as expeditiously as possible. Acceptance of the Change Order and any adjustment in the Contract Price or Contract Time shall not be unreasonable withheld.

8.2 INTERIM DIRECTED CHANGE

8.2.1 The Owner may issue a written Interim Directed Change directing a change in the Work prior to reaching agreement with the Contractor on the adjustment, if any, in the Contract Price or the Contract Time. The Contractor shall proceed with the Work on an Interim Directed Change immediately upon its issuance.

8.2.2 The Parties shall negotiate expeditiously and in good faith for appropriate adjustments, as applicable, to the Contract Price or the Contract Time arising out of an Interim Direct Change. As the Change Work is performed, the Contractor shall submit its costs for such work with its application for payment beginning with the next application for payment within thirty (30) Days of the issuance of the Interim Directed Change. If there is a dispute as to the cost to the Owner, the work shall be performed on a time and materials basis. All time sheets and materials invoices shall be submitted for approval of the Owner's Representative daily.

8.2.3 When the Owner and the Contractor agree upon the adjustment in the Contract Price or the Contract Time, for a change in the Work directed by an Interim Directed Change, such agreement shall be the subject of a Change Order. The Change Order shall include all outstanding Interim Directed Changes on which the Owner and Contractor have reached agreement on Contract Price or Contract Time issued since the last Change Order.

8.2.4 No action, conduct, omission, prior failure or course of dealing by the Owner shall act to waive, modify, change, or alter the requirement that Change Orders must be in writing and signed by the Owner and Contractor and that such written Change Orders are the exclusive method for changing or altering the Contract Price or Contract Time. The Owner and Contractor understand and agree that the Contract Price and Contract Time cannot be changed by implication, oral agreement, actions, inactions, course of conduct, or construction change directive.

8.3 DETERMINATION OF COST

8.3.1 The contract language contained in this Article will supplement and take precedence over all other change order pricing contract provisions in file contract documents provided by either the Owner or Contractor. It is understood that these contract provisions will govern the pricing and administration of all change order proposals to be submitted by the Contractor or Subcontractors, and all other lower tier Sub-Subcontractors working on the Project. In the event of a conflict between the language in this Article and the other Contract Documents used for the Project, the change order pricing and contract provisions in this Article shall govern.

8.3.2 The Contractor agrees that it will incorporate the provisions of this Article into all agreements with lower tier Contractors, Subcontractors, etc. It is understood that these change order pricing provisions apply to all types of contracts and subcontracts, specifically including lump sum (or fixed price contracts), unit price contracts, and cost plus contracts with or without a guaranteed maximum. It is further understood that these change order provisions will apply to all methods of change order pricing specifically including lump sum change order proposals, unit price change order proposals, and cost plus change order proposals.

8.3.3 Whenever change order proposals to adjust the contract price become necessary, the Owner will have the right to select the method of pricing to be used by the contractor in accordance with the pricing provisions found in this Article. The options will be (1) lump sum change order proposal, (2) unit price change order proposal, or (3) cost plus change order proposal as defined in the following provisions:

a. Lump Sum Change Order Proposals: The Contractor will submit a properly itemized Lump Sum Change Order Proposal covering the additional work and/or the work to be deleted. This proposal will be itemized for the various components of work and segregated by labor, material, and equipment in a detailed format satisfactory to the Owner. The Owner will require itemized change orders on all change order proposals from the Contractor, Subcontractors, and Sub-subcontractors regardless of tier. Details to be submitted will include detailed line item estimates showing detailed materials quantity take-offs, material prices by item and related labor hour pricing information and extensions (by line item by drawing as applicable).

b. Labor: Estimated labor costs to be included for self-performed work shall be based on the actual cost per hour paid by the contractor for those workers or crews of workers who the contractor reasonably anticipates will perform the change order work. Estimated labor hours shall include hours only for those workmen and working foremen directly involved in performing the change order work. Supervision above the level of working foremen (such as general foremen, superintendent, project manager, etc.) is considered to be included in the agreed upon Markup Percentages as outlined in Paragraph 6 of this Article.

c. Labor Burden: Labor burden allowable in change orders shall be defined as employer's net actual cost of payroll taxes (FICA, Medicare, SUTA, FUTA), net actual cost for employer's cost of union benefits (or other usual and customary fringe benefits if the employees are not union employees), and net actual cost to employers for worker's compensation insurance taking into consideration adjustments for experience modifiers, premium discounts, dividends, rebates, expense constants, assigned risk pool costs, net cost reductions due to policies with deductible for self-insured losses, assigned risk rebates, etc. Contractor shall reduce their standard payroll tax percentages to properly reflect the effective cost reduction due to the estimated impact of the annual maximum wages subject to payroll taxes.

d. Material: Estimated material change order costs shall reflect the Contractor's reasonably anticipated net actual cost for the purchase of the material needed for the change order work. Estimated material costs shall reflect cost reductions available to the Contractor due to trade discounts, free material credits, and/or volume rebates. Cash discounts available on material

purchased for change order work shall be credited to Owner if the Contractor is provided Owner funds in time for Contractor to take advantage of any such cash discounts. Price quotations from material suppliers must be itemized by each specific item to be purchased. "Lot pricing" quotations will not be considered sufficient substantiating detail.

e. Equipment: Allowable change order estimated costs may include appropriate amounts for rental or major equipment specifically needed to perform the change order work (defined as tools and equipment with an individual purchase cost of more than \$1000). For Contractor-owned equipment, the "bare" equipment rental rates allowed to be used for pricing change order proposals shall be 75% of the monthly rate listed in the most current publication of the AED Green Book divided by 173 to arrive at a maximum hourly rate to be applied to the hours the equipment is used performing the change order work. Further, for Contractor-owned equipment, the aggregate equipment rent changes for any single piece of equipment used in any change order work shall be limited to 50% of the fair market value of the piece of equipment when the first change order is priced involving usage of the piece of equipment. Fuel necessary to operate the equipment will be considered as a separate direct cost associated with the change order work.

8.3.3.1 Maximum Markup Percentage Allowable on Self-Performed Work: With respect to pricing change orders to any Lump Sum Contract change order, the maximum Markup Percentage Fee to be paid to any Contractor (regardless of tier) on self-performed work shall be a single markup percentage not to exceed (the following sliding scale of percentages) of the net direct cost of (1) direct labor and allowable labor burden costs applicable to the change order or extra work; (2) the net cost of material and installed equipment incorporated into the change or extra work, and (3) net rental cost of major equipment and related fuel costs necessary to complete the change in the Work. The following sliding scale will apply for the pricing of the self-performed work portion of each change order proposal request:

- a. 15% on the first \$25,000 of the change order direct cost of self-performed work,
- b. 10% on the portion of the change order direct cost of self-performed work between \$25,000 and \$50,000 and,
- c. 7.5% on the portion of the change order direct cost of self-performed work between \$50,000 and \$200,000 and,
- d. 5% on the portion of the change order direct cost of self-performed work greater than \$200,000.

8.3.3.2 Maximum Markup Percentages Allowable on Work Performed by Lower Tier Contractors: With respect to pricing the portion of the change order proposals involving work performed by lower tier contractors, the maximum Markup Percentage Fee allowable to the Contractor supervising the lower tier contractor's work shall not exceed the following sliding scale on the aggregate amount allowed to be charged by the lower tier contractor(s) for each change order event:

- a. 8% on the first \$25,000 of approved change order work performed by all subcontractors combined for any particular change order proposal.
- b. 4% on any amount greater than \$25,000 of approved change order work performed by all the subcontractors combined for any particular change order proposal.

8.3.3.3 Sales and use tax (if applicable) shall not be subject to any Markup Percentage Fee. Any sales or use tax properly payable to the Contractors shall be added, after computing the change order amount before tax.

8.3.3.4 As a further clarification, the agreed upon Markup Percentage Fee is intended to cover the Contractor's profit and all indirect costs associated with the change order work. Items intended to be covered by the Markup Percentage Fee include, but are not limited to: home office expenses, branch office and field office overhead expense of any kind; project management; superintendents, general foremen; estimating, engineering; coordination; expediting; purchasing; detailing; legal, accounting, data processing, or other administrative expenses; shop drawings; permits; comprehensive general liability insurance; auto insurance and umbrella insurance; pick-up truck costs. The cost for the use of small tools is also to be considered covered by the Markup Percentage Fee. Small tools shall be defined as tools and equipment (power or non-power) with an individual value of \$750 or less.

8.3.3.5 The application of the markup percentages referenced in the preceding paragraphs will apply to both additive and deductive change orders. In the case of a deductive change order, after the net credit is computed by applying the sliding scale percentages as outlined, an adjustment will be made to the computed credit by multiplying the credit amount by a factor of .975 to arrive at a final credit amount to be issued to the Owner. In those instances where a change involves both additive and deductive work, the additions and deductions will be netted and the markup percentage adjustments will be applied to the net additive or deductive amount.

8.3.3.6 In no event will any lump sum or percentage amounts for "contingency" be allowed to be added as a separate line item in change order estimates. Unknowns attributable to labor hours will be accounted for when estimating labor hours anticipated to accomplish the work. Unknowns attributable to material scrap and waste will be estimated as part of material costs.

8.3.3.7 The Contractor's proposals for change in the contract amount or time shall be submitted within seven (7) calendar days of the Owner's request, unless the Owner extends such period of time due to the circumstances involved. If such proposals are not received in a timely manner, if the proposals are not acceptable to the Owner, or if the changed work should be started immediately to avoid damages to the project or costly delay, the Owner may direct the Contractor to proceed with the changes without waiting for the Contractor's proposal or for the formal change order to be issued. In the case of an unacceptable Contractor proposal, the Owner may direct the Contractor to proceed with the changed work on a cost-plus basis with an agreed upon "not to exceed" price for the work to be performed. Such directions to the Contractor by the Owner shall be confirmed in writing by a "Notice to Proceed on Changes" letter within seven (7) calendar days. The cost or credit, and or time extensions will be determined by negotiations as soon as practical thereafter and incorporated in a Change Order to the Contract.

8.3.3.8 Contract adjustments related to any increased or decreased costs related to insurance and/or bond coverage shall be reflected in each Change Order and shall not be subject to any Contractor markup for overhead and profit.

8.3.3.9 Unit Price Change Order Proposals: As an alternative to Lump Sum Change Order Proposals, the Owner may choose the option to use Contract Unit Prices. The Contractor will submit within seven (7) days after receipt of the Owner's written request for a Unit Price Proposal, a written Unit Price Proposal itemizing the quantities of each item of work for which there is an applicable Contract Unit Price. The quantities must be itemized in relation to each specific contract drawing.

8.3.3.10 Contract Unit Prices will be applied to net differences of quantities of the same item. Such Contract Unit Prices will be considered to cover all direct and indirect costs of furnishing and installing the item including the Subcontractor's Markup Percentage Fee.

8.3.3.10.1 If unit prices are set forth in the Contract Documents or are subsequently agreed to by the Parties, but the character or quantity of such unit items as originally contemplated is

so different in a proposed Change Order that the original unit prices will cause substantial inequity to the Owner or Contractor, such unit prices shall be equitably be adjusted. Where final in-place quantities vary more than 5% from the original quantity the original unit pricing shall be re-evaluated by the Contractor to determine if an equitable adjustment is warranted.

8.3.3.11 Cost Plus Change Order Proposals: As an alternative to either Lump Sum Change Order Proposals for Unit Price Change Order Proposals, the Owner may elect to have any extra work performed on a cost plus markup percentage fee basis. Upon written notice to proceed, the Contractor shall perform such authorized extra work at actual cost for direct labor (working foremen, journeymen, apprentices, helpers, etc.), actual cost of labor burden, actual cost of material used to perform the extra work, and actual cost of rental of major equipment (without any charge for administration, clerical expense, general supervision or superintendence of any nature whatsoever, including general foremen, or the cost or rental of small tools, minor equipment, or plan (fabrication), plus the approved markup percentage fee. The intent of this clause is to define allowable cost plus chargeable costs to be the same as those allowable when pricing Lump Sum Change Proposals as above. Owner and Contractor may agree in advance in writing on maximum price for this work and Owner shall not be liable for any change in excess of the maximum. Daily time sheets with names of all Contractor's employees working on the project will be required to be submitted to the Owner for both labor and equipment used by the Contractor for time periods during which extra work is performed on a cost plus fee basis. Daily time sheets will break down the paid hours worked by the Contractor's employees showing both base contract work as well as extra work performed by each employee.

8.3.3.12 Accurate Change Order Pricing Information: Contractor agrees that it is responsible for submitting accurate cost and pricing data to support it Change Order Proposals or other contract price adjustments under the contract. Contractor further agrees to submit change order proposals with cost and pricing data, which is accurate, complete, current and in accordance with the terms of the contract with respect to pricing of change orders.

8.3.3.13 Right to Verify Change Order Pricing Information: Contractor agrees that any designated Owner's Representative will have the right to examine the Contractor's records to verify the accuracy and appropriateness of the pricing data used to price change proposals. Even after a Change Order Proposal has been approved, Contractor agrees that if the Owner later determines the cost and pricing data submitted was inaccurate, incomplete, not current, or not in compliance with the terms of the contract regarding pricing of change orders, then the appropriate contract price reduction will be made.

8.3.3.14 Requirements for Detailed Change Order Pricing Information: Contractor agrees to provide and require all Subcontractors to provide a breakdown of allowable labor and labor burden cost information as outlined in the Article. This information will be used to evaluate the potential cost of labor and labor burden related to change order work. It is intended that this information represent an accurate estimate of the Contractor's actual labor and labor burden cost components. This information is not intended to establish fixed billing or change order pricing labor rates. However, at the time change orders are priced, the submitted cost data for labor rates may be used to price change order work. The accuracy of any such agreed upon labor cost components used to price change orders will be subject to later audit. Approved change order amounts may be adjusted later to correct the impact of inaccurate labor cost components if the agreed upon labor cost components are determined to be inaccurate.

8.3.3.15 The Contractor is required to notify the owner within seven (7) calendar days subsequent to and event that may lead to a claim by the Contractor or Subcontractor of any tier. The claim is to be perfected and the Owner provided a full accounting for all costs associated with the claim within thirty (30) calendar days, unless the Contractor requests in

writing and the Owner agrees to a specific extension of this time. The reason for the extension is to be made known to the Owner in the written request. Any claims that are not promptly and accurately reported in keeping with this article will not be entertained. The Owner has the right to verify amounts claimed in the same manner as described in subparts 12 and 13 of this Article.

8.3.4 The Owner and Contractor shall determine the increase or decrease in Contract Time resulting from a change in the Work before the change in the Work is begun. The analysis to be performed is intended to determine the best estimate of the future events related to the change in the Work.

8.3.5 Within 14 days of receiving a change request by the Owner for changes that the Contractor or Owner believe should result in a change to the Contract Time, the Contractor shall submit a request for an equitable extension (or reduction) of Contract Time consisting of the following: (Note that this should be integrated with the other notice provisions associated with contract changes.)

8.3.5.1 A proposed "fragnet" or schedule of the work tasks associated with the change in the Work. The fragnet shall include all associated work activities with a duration defined for each activity. The fragnet should also define the relationships among all of the activities.

8.3.5.2 An explanation of the relationship between the fragnet and the activities in the Contractor's Schedule of the Work, including what activities in the Schedule of the Work are proposed to be replaced, altered, or deleted as a result of the change.

8.3.5.3 A revised Schedule of the Work integrating the fragnet into the current Schedule of the Work. The current Schedule of the Work will be the latest monthly update that has been submitted by the Contractor in the normal schedule submittal process and that has been reviewed and approved by the Owner. (Note that this provision will need to address what happens if the parties have not been following the required scheduling process or if the schedule update has been submitted by is still under review by the Owner. The goal of these provisions is that the parties agree on what is the current Schedule of the Work.)

8.3.5.4 The revised Schedule of the Work will forecast a scheduled project completion date and completion dates for interim milestones or other key dates that considers the effect of the insertion of the fragnet into the schedule. Any change in the forecast completion date and other key dates represents the time impact of the change.

8.3.6 Within seven (7) days of receiving the Contractor's request for an equitable extension (or reduction) of Contract Time, the Owner will take one of the following actions:

8.3.6.1 Accept the Contractor's revised Schedule of the Work and agree to issue a change in Contract Time equal to the difference between the project completion date forecast by the current Schedule of the Work (as defined in Subparagraph 8.3.5.3) and the Schedule of the Work revised by insertion of the fragnet.

8.3.6.2 Reject the Contractor's request as not being a change to the Contract.

8.3.6.3 Provide the Contractor with comments related to those portions of the Contractor's proposal for which the Owner disagrees or that are insufficient to allow evaluation.

8.3.6.4 Provide the Contractor with suggestions for how the time impact may be mitigated or reduced.

8.3.7 In the event that the Owner disagrees with portions of the Contractor's submission, the Contractor will have an additional seven (7) days in which to respond to the comments received from the Owner.

8.3.8 As soon as possible after receiving a revised submission from the Contractor, the parties will meet to discuss any differences related to the determination of time and to negotiate and resolve the Contractor's request for a change to Contract Time.

8.3.9 In the event that the Parties are unable to resolve the time associated with a change, the parties will attempt to agree on the following components of the time analysis method:

8.3.9.1 The current Schedule of the Work.

8.3.9.2 The activities and logic of the fragnet.

8.3.9.3 The relationship between the fragnet and the current Schedule of the Work.

8.4 CLAIMS FOR ADDITIONAL COST OR TIME Except as provided in Subparagraph 6.3.2 and Paragraph 6.4 for any claim for an increase in the Contract price or the Contract Time, the Contractor shall give the Owner written notice of the claim within ten (10) Days after the occurrence giving rise to the claim or within ten (10) Days after the Contractor first recognized the condition giving rise to the claim, whichever is later. Such notice of delay shall describe the nature and cause of the delay, provide a preliminary estimate of impact of said delay on the Schedule of the Work and provide a recovery plan to mitigate the delay. The Contractor's failure to give such notice to the Owner shall constitute a waiver by the Contractor of its ability to request an extension of time. In the case of a continuing cause of delay, only one claim shall be necessary. The giving of such notice shall not of itself establish the validity of the cause of delay or of the extension of the time for completion. Submission of reports and/or schedule updates required at regularly scheduled meetings or as a part of a regularly submitted report shall not constitute such required notice. Prior to submitting any claim by a Subcontractor for additional compensation, the Contractor shall have examined any such claim and verified its accuracy and completeness, and the Contractor shall have identified any Claim or portion of the Claim that is not the responsibility of the Owner. The Owner shall respond in writing denying or approving all or in any part of the Contractor's claim or requesting additional information from the Contractor within twenty-one (21) Days after receipt of the Contractor's claim unless such other longer time is agreed by the parties. Any change in the Contract Price or the Contract Time resulting from such claim shall only be authorized by Change Order.

8.4.1 The Contractor expressly agrees that delays to construction activities which do not affect the overall time of completion of the Work shall not entitle the Contractor to an extension of the Contract Time or provide a basis for additional cost or damages. No delay, obstruction, interference, hindrance, or disruption, from whatever source or cause in the progress of the Contractor's Work shall be a basis for an extension of time unless the delay, obstruction, interference, hindrance, or disruption is without the fault of and not the responsibility of the Contractor and directly affects to overall completion of the Work as reflected in the Contractor's updated and accepted Schedule of the Work.

8.5 RIGHT-TO-AUDIT

8.5.1 Whenever the Owner enters into any type of contractual arrangement including but not limited to lump sum contracts (i.e. fixed price or stipulated sum contracts), unit price, cost plus or time and material contracts with or without a guaranteed maximum (or not-to-exceed amounts), Contractor's "records" shall upon reasonable notice be open to inspection and subject to audit and/or reproduction during normal business working hours. An Owner's Representative or an outside representative engaged by Owner may perform such audits. The Owner or its designee may conduct such audits or inspections throughout the term of this contract and for a period of three (3) years after final payment or longer if required by law.

8.5.2 Contractor's "records" as referred to in this contract shall include any and all information, materials and data of every kind and character, including without limitation, records, books, papers,

documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may, in Owner's judgment, have any bearing on or pertain to any matters, rights, duties, or obligations under or covered by any Contract Document. Such records shall include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; cancelled checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating worksheets; correspondence; change order files (including documentation covering negotiated settlements); backcharge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other Contractor records which may have a bearing on matters of interest to the Owner in connection with Contractor's dealing with the Owner (all foregoing hereinafter referred to as "records") to the extent necessary to adequately permit evaluation and verification of: a) Contractor compliance with contract requirements, b) compliance with Owner's business ethics policies, and c) compliance with provisions for pricing change orders, invoices or claims submitted by the contractor or his payees.

8.5.3 Contractor shall require all payees (examples of payees include subcontractors, insurance agents, material suppliers, etc.) to comply with the provisions of this article by incurring the requirements hereof in a written contract agreement between Contractor and payee. Such requirements to include flow-down right of audit provisions in contracts with payees will also apply to Subcontractors and Sub-Subcontractors, material suppliers, etc. Contractor will cooperate fully and will require Related Parties and all of Contractor's subcontractors (including those entering into lump sum subcontracts) to cooperate fully in furnishing or in making available to Owner from time to time whenever requested in a expeditious manner any and all such information, materials and data.

8.5.4 Owner's authorized representative or designee shall have reasonable access to the Contractor's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this contract and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this Article.

8.5.5 If an audit inspection or examination in accordance with this Article, discloses overpricing or overcharges (of any nature) by the Contractor to the Owner in excess of one-half of one percent (.5%) of the total contract billings, the reasonable actual cost of the Owner's audit shall be reimbursed to the Owner by the Contractor. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the Contractor's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of Owner's findings to Contractor.

ARTICLE 9 PAYMENT

9.1 SCHEDULE OF VALUES Within ten (10) Days from the date of execution of this Agreement, the Contractor shall prepare and submit to the Owner a schedule of values apportioned to the various divisions or phases of the Work. Each line item contained in the schedule of values shall be assigned a value such that the total of all items shall equal the Contract Price.

9.2 PROGRESS PAYMENTS

9.2.1 APPLICATIONS The contractor shall submit to the Owner a monthly application for payment no later than the 10th Day of the calendar month for the preceding thirty (30) Days. Contractor's applications for payment shall be itemized and supported by the Contractor's schedule of values and any other substantiating data a required by this Agreement. Payment applications shall include payment requests on account of properly authorized Change Orders or Interim Directed Change. The Owner shall pay the amount otherwise due on any payment application no later than twenty

(20) Days after the Contractor has submitted a complete and accurate payment application as acknowledged by the Owner's Representative, or such shorter time period as required by applicable state statute. The Owner may deduct from any progress payment amounts as may be retained in Subparagraph 9.2.4.

9.2.2 STORED MATERIALS AND EQUIPMENT Unless otherwise provided in the Contract Documents, applications for payment may include materials and equipment not yet incorporated into the Work by delivered to and suitable stored onsite or offsite including applicable insurance, storage, and costs incurred transporting the materials to an offsite storage facility. Approval of payment applications for stored materials and equipment stored offsite shall be conditioned on submission by the Contractor of bills of sale and proof of required insurance, or such other procedures satisfactory to the Owner to establish the proper valuation of the stored materials and equipment, the Owner's title to such materials and equipment, and to otherwise protect the Owner's interests therein, including transportation to the site.

9.2.3 LIEN WAIVERS AND LIENS

9.2.3.1 PARTIAL LIEN WAIVERS AND AFFIDAVITS If required by the Owner, as a prerequisite for payment, the Contractor shall provide partial conditional lien and claim waivers in the amount of the application for payment and affidavits from its Subcontractors, and Material Suppliers for the completed Work. Contractor shall supply unconditional lien waivers for all prior applications for payment.

9.2.4 RETAINAGE From each progress payment made prior to Substantial Completion, the Owner may retain ten percent (10%) of the amount otherwise due after deduction of any amounts as provided in Paragraph 9.3, and in no event shall such percentage exceed any applicable statutory requirements. If the Owner chooses to use this retainage provision:

9.2.4.1 the Owner may, in its sole discretion, reduce the amount to be retained at any time;

9.2.4.2 the Owner may release retainage on that portion of the Work a Subcontractor has completed in whole or in part, and which the Owner has accepted.

9.3 ADJUSTMENT OF CONTRACTOR'S PAYMENT APPLICATION The Owner may adjust or reject a payment application or nullify a previously approved payment application, in whole or in part, as may reasonably be necessary to protect the Owner from loss or damage based upon the following, to the extent that the Contractor is responsible therefor under this Agreement:

9.3.1 the Contractor's repeated failure to perform the Work as required by the Contract Documents;

9.3.2 loss or damage arising out of or relating to this Agreement and caused by the Contractor to the Owner or to Others to whom the Owner may be liable;

9.3.3 the Contractor's failure to properly pay Subcontractors and Material Suppliers following receipt of such payments from the Owner;

9.3.4 rejected, nonconforming or defective Work and corrected in a timely fashion;

9.3.5 reasonable evidence of delay in performance of the Work such that the Work will not be completed within the Contract Time, and

9.3.6 reasonable evidence demonstrating that the unpaid balance of the Contract Price is insufficient to fund the cost to complete the Work.

9.3.7 third party claims involving the Contractor or reasonable evidence demonstrating that third party claims are likely to be filed unless and until the Contractor furnishes the Owner with adequate

security in the form of a surety bond, letter of credit or other collateral or commitment which are sufficient to discharge such claims if established.

No later than 14 Days after receipt of an application for payment, the Owner shall give written notice to the Contractor, at the time of disapproving or nullifying all or part of an application for payment, stating its specific reasons for such disapproval or nullification, and the remedial actions to be taken by the Contractor in order to receive payment. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be promptly made for the amount previously withheld.

9.4 ACCEPTANCE OF WORK Neither the Owner's payment of progress payments nor its partial or full use or occupancy of the Project constitutes acceptance of Work not complying with the Contract Documents.

9.5 SUBSTANTIAL COMPLETION

9.5.1 The Contractor shall notify the Owner when it considers Substantial Completion of the work or a designated portion to have been achieved, and the Contractor shall provide its list of items of incomplete or remaining unfinished Work. The Owner shall promptly conduct an inspection to determine whether the Work or designated portion can be occupied or utilized for its intended use by the Owner without unscheduled interference in completing any remaining unfinished Work by the Contractor. If the Owner determines that the Work or designated portion has not reached Substantial Completion, the Owner and the Contractor shall add to the Contractor's list of items to be completed or corrected so the Owner may occupy or utilize the Work or designated portion for its intended use. The Contractor shall promptly complete all items on the list.

9.5.2 When Substantial Completion of the Work or a designated portion is achieved, the Contractor shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, and the respective responsibilities of the Owner and Contractor for interim items such as security, maintenance, utilities, insurance and damage to the Work. In the absence of a clear delineation of responsibilities, the Owner shall assume all responsibilities for items such as security, maintenance, utilities, insurance, and damage to the Work. This certificate shall also list the items to be completed or corrected, and establish the time for their completion or correction. The Certificate of Substantial Completion shall be submitted by the Contractor to the Owner for written acceptance of responsibilities assigned in the Certificate.

9.5.3 Unless otherwise provided in the Certificate of Substantial Completion, warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or a designated portion.

9.6 PARTIAL OCCUPANCY OR USE

9.6.1 The Owner may occupy or use completed or partially completed portions of the Work when (a) the portion of the Work is designated in a Certificate of Substantial Completion, (b) appropriate insurer(s) consent to the occupancy or use, and (c) appropriate public authorities authorize the occupancy or use. Such partial occupancy or use shall constitute Substantial Completion of that portion of the Work.

9.7 FINAL COMPLETION AND FINAL PAYMENT

9.7.1 Upon notification from the Contractor that the Work is complete and ready for final inspection and acceptance, the Owner shall promptly conduct an inspection to determine if the Work has been completed and is acceptable under the Contract Documents.

9.7.2 When Final Completion has been achieved, the Contractor shall prepare for the Owner's acceptance a final application for payment stating that to the best of the Contractor's knowledge, and based on the Owner's inspections, the Work has reached Final Completion in accordance with the Contract Documents.

9.7.3 Final payment of the balance of the Contract Price shall be made to the Contractor within 45 Days after the Contractor has submitted and approved, complete and accurate application for final payment, including submissions required under Subparagraph 9.8.4, and a Certificate of Final Completion has been executed by or on behalf of the Owner and the Contractor.

9.7.4 Final payment shall be due on the Contractor's submission of the following to the Owner:

9.7.4.1 an affidavit declaring any indebtedness connected with the Work, e.g. payroll or invoices for materials for equipment, to have been paid, satisfied or to be paid with the proceeds of final payment, so as not to encumber the Owner's property;

9.7.4.2 as-built drawings, manuals, copies of warranties and all other Close-out Documents as defined in Paragraph 2.4.22 as required by the Contract Documents;

9.7.4.3 release of any liens, conditioned on final payment being received;

9.7.4.4 consent of any surety; and

9.7.4.5 any outstanding known and unreported accidents or injuries experienced by the Contractor or its Subcontractors at the Worksite.

9.7.5 If, after Substantial Completion of the Work, the Final Completion of a portion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the balance due for portion(s) of the Work fully completed and accepted. If the remaining contract balance for Work not fully completed and accepted is less than the retained amount prior to payment, the Contractor shall submit to the Owner the written consent of any surety to payment of the balance due for portions of the Work that are fully completed and accepted. Such payment shall not constitute a waiver of claims, but otherwise shall be governed by these final payment provisions.

9.7.6 **CONTRACTOR ACCEPTANCE OF FINAL PAYMENT** Unless the Contractor provides written identification of unsettled claims known to the Contractor at the time of making application for final payment, acceptance of final payment constitutes a waiver of such claims.

ARTICLE 10 INDEMNITY, INSURANCE, WAIVERS AND BONDS

10.1 INSURANCE

10.1.1 **NOTE** – The requirements of this section shall apply, unless the Project Manual, page 4 requirements are greater. Prior to the start of the Work, the Contractor shall procure and maintain in force Workers' Compensation Insurance, Employers' Liability Insurance, Business Automobile Liability Insurance, and Commercial General Liability Insurance (CGL). The CGL policy shall be project specific and shall include coverage for liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, contractual liability, and broad form property damage. Prior to commencing any Work, the Contractor shall provide the Owner with certificates as well as endorsements of the insurance coverage required. All policies and certificates of insurance shall be approved by the Department of City Manager of the City prior to the inception of any work.

10.1.1.1 **Certificate of Insurance**; required language. The Certificate of Insurance obtained by the CONTRACTOR shall contain the following language: "The City of Ypsilanti, Michigan, its elected officials, officers, employees, boards, commission, authorities, voluntary associations, and any other units operating under the jurisdiction of the City and within appointment of its operating budget, including

the City of Ypsilanti, are named as additional insured, and such coverage shall be considered to be the primary coverage rather than any policies and insurance or self-insurance retention owned or maintained by the City of Ypsilanti.”

10.1.2 The Contractor’s Employers’ Liability, Worker’s Compensation, Business Automobile Liability, and Commercial General Liability policies, as required in the Subparagraph 10.2.1, shall be written with at least the following limits of liability:

10.1.2.1 Employers’ Liability Insurance

- a. \$1,000,000
Bodily Injury by Accident
Each Accident
- b. \$1,000,000
Bodily Injury by Disease
Policy Limit
- c. \$1,000,000
Bodily Injury by Disease
Each Employee

10.1.2.2 Worker’s Compensation Insurance

- \$500,000
Each Accident

10.1.2.3 Business Automobile Liability Insurance

- a. \$1,000,000
Each Accident

10.1.2.4 Commercial General Liability Insurance

- a. \$1,000,000
Each Occurrence
- b. \$2,000,000
General Aggregate
- c. \$2,000,000
Products/Completed
Operations Aggregate

d. \$1,000,000

Personal and Advertising

Injury Limit

10.1.2.5 Umbrella Excess Liability

a. \$5,000,000 over primary insurance

b. \$10,000 retention for self-insured hazards per occurrence.

10.1.3 Employers' Liability, Business Automobile Liability, and Commercial General Liability coverage required under Subparagraph 10.2.1 may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by Excess or Umbrella Liability policies.

10.1.4 CONSTRUCTION INSURANCE The Contractor at his own cost and expense shall provide and maintain the applicable construction insurance until the Contract is accepted by the City and/or its designee. This coverage shall be written for 100% of the completed value covering the City as the insured, with a deductible of not more than \$1,000. The Contractor shall provide the original and duplicate policy to the CITY (unless the CITY shall accept, in lieu thereof, all contained endorsements including all applicable provisions and coverages).

10.1.5

10.1.6 The Contractor shall maintain in effect all insurance coverage required under Subparagraph 10.2.1 with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located. If the Contractor fails to obtain or maintain any insurance coverage required under this Agreement, the Owner may purchase such coverage and charge the expense to the Contractor, or terminate this Agreement.

10.1.7 The policies of insurance required under Subparagraph 10.2.1 shall contain a provision that the coverage afforded under the policies shall not be cancelled or allowed to expire until at least 30 Day's prior written notice has been given to the Owner. Prior to commencement of the Work, Contractor shall furnish the Owner with certificates evidencing the required coverage. Contractor shall provide updated proof of insurance on no less than an annual basis or upon the request of the Owner's Representative.

10.2 PROPERTY INSURANCE

10.2.1 Before the start of Work, the Contractor shall obtain and maintain a Builder's Risk Policy upon the entire Project for the full cost of replacement at the time of loss. This insurance shall also name the Owner, Subcontractors, Sub-subcontractors, and Material Suppliers as insureds. This insurance shall be written as a Builder's Risk Policy or equivalent form to cover all risks of physical loss except those specifically excluded by the policy, and shall insure at least against the perils of fire, lightning, explosion, windstorm, hail, smoke, aircraft (except aircraft, including helicopter, operated by or on behalf of Contractor), and vehicles, riot and civil commotion, theft, vandalism, malicious mischief, debris removal, flood, earthquake, earth movement, water damage, wind damage, testing if applicable, collapse however caused, and damage resulting from defective design, workmanship or material, and material or equipment stored offsite, onsite or in transit. This policy shall provide for all waiver of subrogation in favor of the Owner, Subcontractors, Sub-subcontractors, and Material Suppliers. This insurance shall remain in effect until final payment has been made or until no person or entity other than the Owner has an insurable interest in the property to be covered by this insurance, whichever is sooner. Partial occupancy or use of the Work shall not commence until the Owner has notified the insurance company or companies providing the coverage required in the Subparagraph 10.3.1. Prior to commencement of the Work,

the Contractor shall provide a copy of the property policy or policies obtained in compliance with the Subparagraph 10.3.1.

10.2.2 The Contractor shall indemnify and hold harmless the Owner against any and all liability, claims, demands, damages, losses, and expenses, including attorneys' fees, in connection with or arising out of any damage or alleged damage to any of the Owner's existing adjacent property that may arise from the performance of the Work, to the extent caused by the negligent acts or omissions of the Contractor, Subcontractor or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable.

10.2.3 RISK OF LOSS Except to the extent a loss is covered by applicable insurance, risk of loss or damage to the Works shall be upon the Contractor until the Date of Substantial Completion, unless otherwise agreed to by the Parties.

10.3 OWNER'S INSURANCE

10.3.1 BUSINESS INCOME INSURANCE The Owner may procure and maintain insurance against loss of use of the Owner's property caused by fire or other casualty loss.

10.3.2 OWNER'S LIABILITY INSURANCE The Contractor acknowledges that the Owner is self-insured and the Contractor agrees that the Owner is not required to provide or purchase any additional insurance with respect to this Project or the Work required of the Contractor for the Project.

10.4 ADDITIONAL LIABILITY COVERAGE

The Contractor's insurance as required by the Contract Documents (including subcontractor's insurance), by endorsement to the policies and the Certificates of Insurance, shall include the following and may be presented in the form of a rider attached to the Certificates of Insurance:

10.4.1 The City of Ypsilanti, its officers, employees, representatives and agents shall be included as insured for and relating to the Work to be performed by the Contractor or Subcontractors. This shall apply to all claims, costs, injuries, or damages.

10.4.2 A Severability of Interest Clause stating that, "The term 'insured' is hereby used severally and not collectively, both the inclusion herein of more than one insured shall not operate to increase the limits of the insurer's or insurers' liability."

10.4.3 A Cross Liability Clause stating that, "In the event of claims being made under any of the coverages of the policy or policies referred to herein by one or more insured hereunder for which another or other insured hereunder may be liable, then the policy or policies shall cover such insured or insured against whom a claim is made or may be made in the same manner as if separate policies had been issued to each insured hereunder. Nothing contained herein, however, shall operate to increase the insurer's limits of liability as set forth in the insuring agreements."

10.4.4 The City of Ypsilanti, its officers, employees, representative and agents, shall not by reason of their inclusion incur liability to the insurance carriers for payment of premiums for such insurance. However, the City of Ypsilanti may, in its sole discretion after receiving a notice of cancellation for nonpayment, elect to pay the premium due and deduct such payment from any sums due to the Contractor or recover the amount paid from the Contractor if the sums are remaining are insufficient.

10.4.5 Coverage provided is primary and is not in excess of or contributing with any insurance or self-insurance maintained by the City of Ypsilanti, its officers, employees, representatives and agents.

10.5 ROYALTIES, PATENTS AND COPYRIGHTS The Contractor shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods or systems selected by the Contractor and incorporated into the Work. The Contractor shall defend, indemnify and hold the Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. The Owner agrees to defend, indemnify and hold the Contractor harmless from any suits or claims of infringement of any patent rights or copyrights arising out of any patented or copyrighted materials, methods or systems specified by the Owner.

10.6 BONDS

10.6.1 Performance and Payment Bonds are required of the Contractor. Such bonds shall be issued by a surety admitted and licensed in the State in which the Project is located and must be acceptable to the Owner and must comply in all respects with MCL 129.201 et seq. The penal sum of the Payment Bond and of the Performance Bond shall each be 100% of the original Contract Price. Any increase in the Contract Price that exceeds 10% in the aggregate shall require a rider to the Bonds increasing penal sums accordingly. Up to such 10% amount, the penal sum of the bond shall remain equal to 100% of the Contract Price. The Contractor shall endeavor to keep its surety advised of changes potentially impacting the Contract Time and Contract Price, though the Contractor shall require that its surety waives any requirement to be notified of any alteration or extension of time. The Contractor's Payment Bond for the Project, if any, shall be made available by the Owner for review and copying by the Subcontractor.

ARTICLE 11 SUSPENSION, NOTICE TO CURE AND TERMINATION OF THE AGREEMENT

11.1 SUSPENSION BY OWNER FOR CONVENIENCE

11.1.1 OWNER SUSPENSION Should the Owner order the Contractor in writing to suspend, delay, or interrupt the performance of the Work for such period of time as may be determined to be appropriate for the convenience of the Owner and not due to any act or omission of the Contractor or any person or entity for whose acts or omissions the Contractor may be liable, then the Contractor shall immediately suspend, delay or interrupt that portion of the Work as ordered by the Owner. The Contract Price and the Contract Time may only be equitably adjusted by Change Order for the reasonable, actual, measurable and auditable cost and delay resulting from any such suspension.

11.1.2 Any action taken by Owner that is permitted by any other provision of the Contract Documents and those results in a suspension of part or all of the Work does not constitute a suspension of Work under this Paragraph 11.1.

11.2 NOTICE TO CURE A DEFAULT If the Contractor refuses or fails to supply enough properly skilled workers, proper materials, or equipment, to maintain the approved Schedule of the Work in accordance with Article 6, or fails to make prompt payment to its workers, Subcontractors or Material Suppliers, disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or is otherwise guilty of a material breach of a provision of the Agreement, the Contractor may be deemed in default. If the Contractor fails within seven (7) Days after receipt of written notification to correct such default with diligence and promptness, the Owner without prejudice to any other rights or remedies may:

11.2.1 supply workers and materials, equipment and other facilities as the Owner deems necessary for the satisfactory correction of the default, and charge the cost to the Contractor, who shall be liable for the payment of same including reasonable Overhead, profit and attorneys' fees;

11.2.2 contract with Others to perform such part of the Work as the Owner determines shall provide the most expeditious correction of the default, and charge the cost to the Contractor;

11.2.3 withhold payment due the Contractor in accordance with Paragraph 9.3; and

11.2.4 in the event of any emergency affecting the safety of persons or property, immediately commence and continue satisfactory correction of such default as provided in Subparagraphs 11.2.1 and 11.2.2 without first giving written notice to the Contractor, but shall give prompt written notice of such action to the Contractor following commencement of the action.

11.3 OWNER'S RIGHT TO TERMINATE FOR DEFAULT

11.3.1 **TERMINATION BY OWNER FOR DEFAULT** If, within seven (7) Days of receipt of a notice to cure pursuant to Paragraph 11.2, the Contractor fails to commence and satisfactorily continue correction of the default set forth in the notice to cure, the Owner may notify the Contractor that it intends to terminate this Agreement for default absent appropriate corrective action within seven (7) additional Days. After the expiration of the additional seven (7) Days period, the Owner may terminate this Agreement by written notice absent appropriate corrective action. Termination for default is in addition to any other remedies available to Owner under Paragraph 11.2. If the Owner's cost arising out of the Contractor's failure to cure, including the cost of completing the Work and reasonable attorney's fees, exceeds the unpaid Contract Price, the Contractor shall be liable to the Owner for such excess costs.

11.3.2 **USE OF CONTRACTOR'S MATERIALS, SUPPLIES AND EQUIPMENT** If the Owner or Others perform work under this Paragraph 11.3, the Owner shall have the right to take and use any materials, supplies, and equipment belonging to the Contractor and located at the Worksite for the purpose of completing any remaining Work. Immediately upon completion of the Work, any remaining materials, supplies, or equipment not consumed or incorporated in the Work shall be returned to the Contractor in substantially the same condition as when they were taken, reasonable wear and tear expected.

11.3.3 If the Contractor files a petition under the Bankruptcy Code, this Agreement shall terminate if the Contractor or the Contractor's trustee rejects the Agreement or, if there has been a default, the Contractor is unable to give adequate assurance that the Contractor will perform as required by this Agreement or otherwise is unable to comply with the requirements for assuming this Agreement under the applicable provision of the Bankruptcy Code.

11.3.4 In the event that Owner's termination for cause is rejected or found to be without cause, then the Owner's termination shall be deemed to have been for convenience pursuant to Paragraph 11.4.

11.4 TERMINATION BY OWNER FOR CONVENIENCE

11.4.1 Upon written notice to the Contractor, the Owner may, without cause, terminate this Agreement. The Contractor shall immediately stop the Work, follow the Owner's instructions regarding shutdown and termination procedures, and strive to minimize any further costs.

11.4.2 If the Owner terminated this Agreement pursuant to the Paragraph 11.4, the Contractor shall be paid:

11.4.2.1 for the Work performed to date including overhead and profit on that Work completed;

11.4.2.2 for all demobilization costs and costs incurred as a result of the termination but not including overhead or profit on work not performed so long as costs under this section

are reasonable, actual, and documented. This amount shall be the total of all compensation to which the Contractor will be entitled for such termination by the Owner.

11.4.3 If the Owner terminates this Agreement, the Contractor shall:

11.4.3.1 execute and deliver to the Owner all papers and take all action required to assign, transfer, and vest in the Owner the rights of the Contractor to all materials, supplies, and equipment for which payment has or will be made in accordance with the Contract Documents and all Subcontracts, orders and commitments which have been made in accordance with the Contract Documents;

11.4.3.2 eliminate the Owner's liability for subcontracts, orders, and commitments that have not been fulfilled at the time of termination;

11.4.3.3 cancel any Subcontracts, orders, and commitments as the Owner directs; and

11.4.3.4 sell at prices approved by the Owner any materials, supplies, and equipment as the Owner directs, with all proceeds paid or credited to the Owner.

11.5 CONTRACTOR'S RIGHT TO TERMINATE

11.5.1 Upon twenty-one (21) Days' written notice to the Owner, the contractor may terminate this Agreement if the Work has been stopped for a thirty (30) day period through no fault of the Contractor for any of the following reasons:

11.5.1.1 under court order or order of other governmental authorities having jurisdiction;

11.5.1.2 as a result of the declaration of a national emergency or other governmental act during which, through no act or fault of the Contractor, materials are not available; or

11.5.1.3 suspension by Owner for convenience pursuant to Paragraph 11.1.

11.5.2 Upon termination by the Contractor in accordance with Paragraph 11.5, the Contractor shall be entitled to recover from the Owner payment for all Work executed, cost or expense in connection with the Work, including proven demobilization costs plus reasonable overhead and profit on Work not performed.

11.6 OBLIGATIONS ARISING BEFORE TERMINATION Even after termination pursuant to Article 11, the provisions of this Agreement still apply to any Work performed, payments made, events occurring, costs charge or incurred or obligations arising before the termination date.

ARTICLE 12 DISPUTE MITIGATION AND RESOLUTION

12.1 WORK CONTINUANCE AND PAYMENT Unless otherwise agreed in writing, the Contractor shall continue the Work and maintain the Schedule of the Work during any dispute mitigation or resolution proceedings. If the Contractor continues to perform, the Owner shall continue to make payments in accordance with this Agreement.

12.2 DIRECT DISCUSSIONS If the Parties cannot reach resolution on a matter relating to or arising out of the Agreement, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions. If the Parties' representatives are not able to resolve such matter within five (5) business Days of the date of first discussion, the Parties' representatives shall

immediately inform senior executives of the Parties in writing that resolution was not effected. Upon receipt of such notice, senior executive of the Parties shall meet within five (5) business Days to endeavor to reach resolution. If the dispute remains unresolved after 15 Days from the date of first discussion, the Parties shall submit such matter to the dispute mitigation and dispute resolution procedures selected herein.

12.3 MITIGATION If the Parties select one of the dispute mitigation procedures provided in the Paragraph 12.3, disputes remaining unresolved after direct discussions shall be directed to the selected mitigation procedure. The dispute mitigation procedure shall result in a nonbinding finding on the matter, which may be introduced as evidence at a subsequent binding adjudication of the matter, as designated in Paragraph 12.5. The Parties agree that the dispute mitigation procedure shall be Project Neutral.

12.3.1 MITIGATION PROCEDURES The Project Neutral/Dispute Review Board shall be mutually selected and appointed by the Parties and shall execute a retainer agreement with the Parties establishing the scope of the Project Neutral/Dispute Review Board's responsibilities. The costs and expenses of the Project Neutral/Dispute Review Board shall be shared equally by the Parties. The Project Neutral/Dispute Review Board shall be available to either Party, upon request, throughout the course of the Project, and shall make regular visits to the Project so as to maintain and up-to-date understanding of the Project progress and issues and to enable the Project Neutral/Dispute Review Board to address matters in dispute between the Parties promptly and knowledgeably. The Project Neutral/Dispute Review Board shall issue nonbinding findings within five (5) business Days of referral of the matter to the Project Neutral/Dispute Review Board, unless good cause is shown.

12.3.2 If the matter remains unresolved following the issuance of the nonbinding finding by the mitigation procedure or if the Project Neutral/Dispute Review Board fails to issue nonbinding findings within five (5) business Days of the referral, the Parties shall submit the matter to the binding dispute resolution procedure designated in Paragraph 12.5.

12.4 MEDIATION If direct discussions pursuant to Paragraph 12.2 do not result in resolution of the matter and no dispute mitigation procedure is selected under Paragraph 12.3, the Parties shall endeavor to resolve the matter by mediation through the current Construction Industry Mediation Rules of the American Arbitration Association, or the Parties may mutually agree to select another set of mediation rules. The administration of the mediation shall be as mutually agreed by the Parties. The mediation shall be convened within thirty (30) business Days of the matter first being discussed and shall conclude within forty-five (45) business Days of the matter first being discussed. Either Party may terminate the mediation at any time after the first session, but the decision to terminate shall be delivered in person by the terminating Party to the non-terminating Party and to the mediator. The costs of the mediation shall be shared equally by the Parties.

12.5 BINDING DISPUTE RESOLUTION If the matter is unresolved after submission of the matter to a mitigation procedure or mediation, the Parties shall submit the matter to arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. The award rendered by the arbitrator(s) shall be entered in accordance with Michigan law in a court of competent jurisdiction.

12.5.1 The costs of any binding dispute resolution procedures shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute.

12.5.2 VENUE The venue of any binding dispute resolution procedure shall be the City of Ypsilanti, State of Michigan.

12.6 MULTIPARTY PROCEEDINGS All parties necessary to resolve a matter shall be parties to the same dispute resolution procedure. Appropriate provisions shall be included in all other contracts relating to the Work to provide for the joinder or consolidation of such dispute resolution procedures.

ARTICLE 13 MISCELLANEOUS PROVISIONS

13.1 **ASSIGNMENT** The Contractor shall not assign its interest in this Agreement without the written consent of the Owner. The terms and conditions of this Agreement shall be binding upon both Parties, their partners, successors, assigns, and legal representatives.

13.2 **GOVERNING LAW** This Agreement shall be governed by the law in effect in the City of Ypsilanti, County of Washtenaw, State of Michigan.

13.3 **SEVERABILITY** The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

13.4 **NO WAIVER OF PERFORMANCE** The failure of either Party to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance or any other term, covenant, condition or right.

13.5 **TITLES AND GROUPINGS** The titles given to the articles of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose. The grouping of the articles in this Agreement and of the Owner's specifications under the various headings is solely for the purpose of convenient organization and in no event shall the grouping of provisions, the use of paragraphs or the use of headings be construed to limit or alter the meaning of any provisions.

13.6 **JOINT DRAFTING** The Parties expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

13.7 **RIGHTS AND REMEDIES** The Parties' rights, liabilities, responsibilities, and remedies with respect to this Agreement, whether in contract, tort, negligence or otherwise, shall be exclusively those expressly set forth in this Agreement.

13.8 OTHER PROVISIONS

13.8.1 **NON DISCRIMINATION** The Contractor agrees that it will not discriminate against any employee or applicant for employment with respect to their hire, tenure, terms, conditions or privileges of employment, or on a matter directly or indirectly related to employment, because of race, color, religion, sex, age, national origin, ancestry, height, weight, marital status, sexual orientation, gender identity or expression, or disability that is unrelated to the individual's ability to perform the duties of a particular job or position and breach of the covenant may be regarded a material breach of this Contract.

13.8.2 The Contractor further agrees that it will, in all subcontracts relating to the performance of the work under this Contract, provide in its subcontracts that the Subcontractor will not discriminate against any employee or applicant for employment, to be employed in the performance of such Contract, with respect to their hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, sex, age, national origin, ancestry, height, weight, marital status, sexual orientation, gender identity or expression, or disability that is unrelated to the individual's ability to perform the duties of a particular job or position, and that breach of the covenant may be regarded as material breach of this Contract.

13.9 COPELAND ANTI-KICKBACK ACT AND REGULATIONS The Contractor shall comply with the Copeland Anti-Kickback Act and Regulations of the Secretary of Labor (29 CFR, Part 3), which are herein incorporated by reference.

13.10 DAVIS-BACON ACT Pursuant to the Davis-Bacon Act (Title 29, 40 UCS Section 276A-276A-5), the rates of wages paid to employees of the CONTRACTOR on this work shall be no less than the prevailing wages for this locality to all class of workers employed by the CONTRACTOR on this improvement, as set forth in the Code and Act.

13.11 LIVING WAGE

13.11.1 a. , Living Wages shall be paid according to the Ypsilanti Living Wage Ordinance No. 892 (The Ordinance) and City Code Section 2-298(8); and

b. Suitable notices shall be posted in the work place; and

c. Evidence of compliance including payroll records shall be provided to the Ypsilanti Personnel Department within 10 days of written request from the Ypsilanti Personnel Department.

13.11.2 In the event of violation of the provisions of The Ordinance or this contract this contract may be modified or terminated to comply with the provisions of The Ordinance, including withholding of moneys in amount equal to Living Wages not paid in accordance with The Ordinance and the City may also take action to recover the amount of the contract provided to any person found to have violated The ordinance.

13.11.3 Any employee shall have a separate cause of action to enforce the provisions of this contract and The Ordinance and any rights conferred under The Ordinance, in law and or equity, and any court of competent jurisdiction upon proper proof and the prevailing of the employee in such action, shall award actual damages, wage restitution, interest and actual attorney fees.

13.11.4 The City shall have the right to enforce this contract and The Ordinance in law or equity by court process including specific performance.

13.12 MICHIGAN IRAN ECONOMIC SANCTIONS ACT Except in amounts less than \$20 million, Contractor certifies that it, its successor, its parent company, or any of its subsidiaries or subunits does not engage in the practice of committing or contributing funds or property, extending credit, or contract for goods or services to develop petroleum resources, natural gas resources, or nuclear power in Iran.

13.13 ARCHAEOLOGICAL PROTOCOLS DURING CONSTRUCTION Should the Contractor's excavating operations encounter artifacts of historical or archaeological significance, the operations shall be temporarily discontinued. At the direction of the Owner, the Contractor shall excavate the site in such a manner as to preserve the artifacts encountered and allow for their removal. Such excavation will be paid for as extra work.

13.14 PROJECT WEBSITE When applicable, the Owner will provide and maintain an electronic management system, or other web-based project management program, to track information and documentation for the Project. The Contractor will be required to utilize the electronic management system, or other system designated by the Owner, at no additional cost to the Owner.

13.15 NOT IN DEFAULT TO CITY The CONTRACTOR hereby certifies that the CONTRACTOR is not in default to the CITY, and that there are no unpaid taxes, real or personal, owed to the CITY by the CONTRACTOR, and the CONTRACTOR has no other unfulfilled obligations to the CITY and is in

compliance with all Ypsilanti City codes and ordinances. The parties understand that a breach of this provision is a material breach of the agreement.

13.16 AMERICAN'S WITH DISABILITIES ACT COMPLIANCE If this contract alters or resurfaces any streets, intersections, sidewalks, or curb ramps, CONTRACTOR shall ensure that each portion of the project, to the maximum extent feasible, shall be altered in such manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities. Each project shall comply with the American's With Disabilities Act requirements, including 28 C.F.R. §§ 35.151(b),(c),(e)(1) and (e)(2) and 28 C.F.R. Part 36, App. A, the ADAAG.

Note: The City of Ypsilanti has chosen to follow the ADAAG standards rather than the UFAS standards. See United States Department of Justice ADA Title II Technical Assistance Manual, Section II-6.2100)

As used in this Section, the term "resurface" shall have the definition given by the United States Department of Justice Title II Technical Assistance Manual § II-6.6000 "Resurfacing beyond normal maintenance is an alteration. Merely filling potholes is considered to be normal maintenance."

As used in this Section, the term "to the maximum extent feasible" shall have the meaning set forth at 28 C.F.R. § 36.402(c).

As used in this Section, the term "readily accessible to and usable by persons with disabilities" shall have the meaning set forth at Section II-6.1000 of the US Department of Justice ADA Title II Technical Assistance Manual, and set forth at 28 CFR Appendix B Section 36.401.

ARTICLE 14 CONTRACT DOCUMENTS

14.1 The Contract Documents in existence at the time of execution of this Agreement are as follows:

Drawings and Specifications 10/3/19
Project Manual 07/18/19
Request for Proposals
Bidding Documents
Alternative Plan

14.2 INTERPRETATION OF CONTRACT DOCUMENTS

14.2.1 The drawings and specification are complementary. If Work is shown only on one but not on the other, the Contractor shall perform the Work as though fully described on both consistent with the Contract Documents and reasonable inferable from them as being necessary to produce the indicated results.

14.2.2 In case of conflicts between the drawings and specifications, the specifications shall govern. In any case of omissions or errors in figures, drawings or specifications, the Contractor shall immediately submit the matter to the Owner for clarification. The Owner's clarifications are final and binding on all Parties, subject to an equitable adjustment in Contract Time or Price pursuant to Articles 6 and 7 or dispute resolution in accordance with Article 12.

14.2.3 Scaling the drawings is specifically prohibited.

14.2.4 Any terms that have well-known technical or trade meanings, unless otherwise specifically defined in this Agreement, shall be interpreted in accordance with their well-known meanings.

14.2.5 In case of any inconsistency, conflict or ambiguity among the Contract Documents, the documents shall govern in the following order: (a) Change Orders and written amendments to this Agreement; (b) this Agreement; (c) subject to Subparagraph 14.2.2 the drawings (large scale

governing over small scale), specifications and addenda issued prior to the execution of this Agreement; (d) approved submittals; (e) information furnished by the Owner pursuant to Paragraph 4.3; (f) other documents listed in this Agreement. Among categories of documents having the same order of precedence, the term or provision that includes the latest date shall control. Information identified in on Contract Document and not identified in another shall not be considered a conflict or inconsistency. In the event provisions of codes, safety orders, Contract Documents, referenced manufacturer's specifications or industry standards are in conflict, the more restrictive or higher quality shall govern.

14.2.6 If the Contract Documents are not complete as to any minor detail of a required construction system or with regard to the manner of combining or installing of parts, materials, or equipment, but there exists an accepted trade standard for good and skillful construction, such detail shall be deemed to be an implied requirement of the Contract Documents in accordance with such standard. "Minor Detail" shall include the concept of substantially identical components, where the price of each such component is small even though the aggregate cost or importance is substantial, and shall include a single component which is incidental, even though its cost or importance may be substantial. The quality and quantity of the parts or materials so supplied shall conform to trade standards and be compatible with the type, composition, strength, size, and profile of the parts of materials otherwise set forth in the Contract Documents.

14.2.7 If an item or system is either shown or specified, all material and equipment normally furnished with such items and needed o make a complete operating installation shall be provided whether mentioned or not, even though such materials and equipment are not shown on the drawings or described in the specifications, omitting only such parts as are specifically excepted. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

This Agreement is entered into as of the date entered in Article 1.

OWNER: CITY OF YPSILANTI

BY: _____

Beth Bashert, Mayor

BY: _____

Andrew Hellenga, City Clerk

CONTRACTOR: PHX CONSTRUCTION d/b/a PHOENIX CONTRACTORS, INC.

BY: _____

PRINT NAME: Mark W. Hiser

PRINT TITLE: President



REQUEST FOR LEGISLATION

TO: Mayor and City Council
FROM: Christopher Jacobs
DATE: November 5, 2019
SUBJECT: 448 S Huron St Demolition

DESCRIPTION:
448 S Huron St Demolition

SUMMARY:

448 S Huron has been on the vacant and dangerous buildings list since 2015 shortly after it was acquired by quit claim deed to the City. Our office has received little interest in the property due to its very poor condition and it is a major blight problem along a key corridor as people enter the City. The parcel would be more desirable for development after demolition and the City could then sell it under the property disposition program as we have been successful in doing with other vacant lots.

Community Development Block Grant funding is available through the Federal Government for projects like this and Washtenaw County who administers the CDBG funding has been working with staff over the last year to prepare for demolition with Asbestos Abatement and Environmental Review. The following sub-recipient agreement is necessary to receive CDBG funds totaling \$27,247 for the project. This RFL also authorizes the City Manager to act as the official representative in signing standard assurances, certifications, and other administration paperwork as needed to proceed with the Project.

The project will require no direct cost to the City and staff will submit an RFP for a decision to be made on contractor selection by City Council on November 19th.

RECOMMENDED ACTION: Staff is seeking Council to approve the sub-recipient agreement provided and authorize the City Manager as the official representative to sign additional paperwork as needed.

ATTACHMENTS:
Sub-recipient Agreement

CITY MANAGER APPROVAL: _____ COUNCIL AGENDA DATE: _____

CITY MANAGER COMMENTS: _____

FISCAL SERVICES DIRECTOR APPROVAL: _____



Resolution No. 2019-257
November 5, 2019

RESOLVED BY THE COUNCIL OF THE CITY OF YPSILANTI:

The attached sub-recipient agreement needed to proceed with utilizing CDBG Funding for the Demolition of 448 S Huron Street is hereby approved and The City Manager is authorized to make technical amendments and adjustments to the contract and to approve as the authorized representative any additional documentation needed for the project.

OFFERED BY: _____

SECONDED BY: _____

YES: NO: ABSENT: VOTE:

This resolution is adopted by the Council of the City of Ypsilanti and approved by the Mayor this
5 day of November 2019

#Resolution No. 2019-257

Contract # _____

COUNTY OF WASHTENAW, MICHIGAN

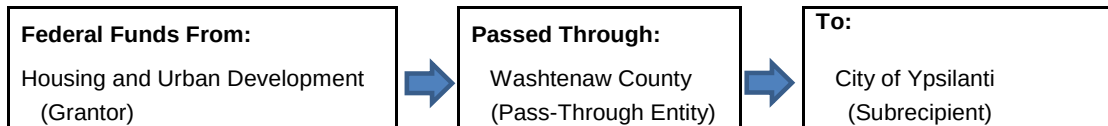
Agreement for Subaward of Federal Financial Assistance

The COUNTY OF WASHTENAW is a recipient of federal financial assistance grant dollars. These funds are received directly from the federal government and indirectly from the State of Michigan and several local entities. The County sometimes passes through a portion of this federal financial assistance to other organizations located within (or in the vicinity of) the geographical boundaries of the County to assist them in carrying out the objectives of the applicable federal grant or program.

AGREEMENT is made this **5th day of November, 2019**, by the COUNTY OF WASHTENAW, a municipal corporation, with offices located in the County Administration Building, 220 North Main Street, Ann Arbor, Michigan, as the pass-through entity (hereinafter referred to as the County) and, **the City of Ypsilanti** located at **One South Huron Street, Ypsilanti, MI 48197**, (hereinafter often referred to as the Subrecipient).

This agreement is a subaward of federal financial assistance by the County to the Subrecipient intended to assist, stimulate, or support the Subrecipient in carrying out its allowable activities under the Continuum of Care as requested by the Subrecipient in its application to the County for federal financial assistance.

Flow of Federal Financial Assistance in this Subaward Agreement



ARTICLE I – REQUIRED DATA ELEMENTS

(As detailed in Section 200.331 of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Chapter I, and Chapter II, Parts 200, 215, 220, 225, 230) issued December 26, 2013 by the Executive Office of the President, Office of Management and Budget, hereinafter referred to as the Uniform Guidance.)

Subrecipient Name (must match registered name in DUNS)	City of Ypsilanti
Subrecipient DUNS Number	131336260
Federal Award Identification Number (FAIN)	\$27,247.00 - B-18-UC-26-006
Federal Award Date (the date when the federal award is signed by the authorized official of the federal awarding agency)	2018 – September 19, 2018
Subaward Period of Performance (start and end date)	10/16/2019 – 10/15/2020
Amount of Federal Funds Obligated by this Agreement	\$27,247.00
Total Amount of Federal Funds Obligated to the Subrecipient	\$27,247.00
Total Amount of the Federal Award	2018 - \$2,109,235.00

Contract # _____

Federal Award Project Description (as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA) described in Title 2 Code of Federal Regulations Part 170)	This contract includes support of eligible costs of demolition and removal of the single family residential structure located at 448 S. Huron Street in the City of Ypsilanti.
Name of Federal Awarding Agency	Department of Housing and Urban Development (HUD)
Name of County (Pass-Through Entity)	Washtenaw County
Name and Contact Information for Awarding Official	Gregory Dill 220 N Main PO Box 8645 Ann Arbor, MI 48107 Phone: 734-222-6850
CFDA Number and Name	14 228 – Community Development Block Grant
Is this Subaward for Research and Development? (answer Yes or No)	No
Indirect Cost Rate for the Federal Award (either an approved federally recognized indirect cost rate negotiated between the Subrecipient and the federal government or, if no such rate exists, either a rate negotiated between the County and Subrecipient or a de minimus indirect cost rate of 10% of modified total direct costs may be used). Subrecipient may choose to charge only direct costs to this agreement.	Not Applicable

WHEREAS, the Grantee receives funds from the United States Department of Housing and Urban Development (HUD) pursuant to HUD's Community Development Block Grant Entitlement Communities Grants ("CDBG") and the Grantee is authorized to award CDBG funds pursuant to Title 1 of the Housing and Community Development Act of 1974, Public Law 93-383, as amended; 42 U.S.C. 5301, et. seq.; and

WHEREAS, the Grantee has been designated as an entitlement county for the CDBG Program and acts as the lead entity for the Washtenaw Urban County, which consists of the City of Ann Arbor, City of Dexter, City of Saline, City of Ypsilanti, Ann Arbor Township, Augusta Township, Bridgewater Township, Dexter Township, Lima Township, Manchester Township, Northfield Township, Pittsfield Township, Salem Township, Saline Township, Scio Township, Superior Township, Sylvan Township, Webster Township, York Township, and Ypsilanti Township; and

WHEREAS, on May 2, 2018 the Urban County Executive Committee approved **\$27,247.00 in 2018-19 Urban County CDBG funding, for a total of \$27,247.00** as a grant to the Subrecipient to support the eligible **448 S. Huron Street Demolition Project** within the Urban County boundaries, as specified in this Agreement;

WHEREAS, the Subrecipient has agreed to collaborate with the Office of Community and Economic Development (OCED) to manage this public improvement project; and

Contract # _____

In consideration of the mutual covenants and obligations contained in this Agreement, including the Attachments, and subject to the terms and conditions stated, THE PARTIES AGREE AS FOLLOWS:

ARTICLE II - SCOPE OF SERVICES

The Subrecipient will agree to use Washtenaw Urban County 2018 funds for the eligible costs to demolish and remove the residential structure located at 448 S. Huron Street in Ypsilanti, Michigan (Parcel Identification Number: 11-11-39-481-015). The structure has been abandoned for approximately a decade and is on the City's Dangerous Building list. Work consists of the removal of asbestos containing materials (ACM), on-site demolition and removal of the vacant structure, driveways and walkways and the contents therein.

ARTICLE III - PAYMENT AND CASH MANAGEMENT

If the County is paid in advance by the federal awarding agency under the above named federal assistance award, the Subrecipient may also be paid in advance if it meets the requirements in Section 1 below.

Section 1 - Cash Advances. The Subrecipient may request an advance of funds under this agreement if it maintains or demonstrates the willingness to maintain both:

1. written procedures that minimize the time elapsing between the transfer of funds from the County and the subsequent disbursement of the funds by the Subrecipient,
2. financial management systems that meet the standards for fund control and accountability as defined in Section 200.305 of the Uniform Guidance.

Requests for advance of funds must be limited to the minimum amount needed and must be timed to be in accordance with the actual, immediate cash requirements of the Subrecipient in carrying out the terms of this agreement. The timing and amount of the advance must be as close as is "administratively feasible" to the actual disbursement to be made by the Subrecipient.

Section 2 - Reimbursement. If the Subrecipient does not meet the requirements in Section 1 above, it shall submit periodic reimbursement requests to the County. This may be done on a monthly or quarterly basis. The reimbursement request shall be accompanied by the agreed upon financial and programmatic reports. The County shall pay the Subrecipient within 30 calendar days after the receipt of the reimbursement request and the agreed upon financial/programmatic reports, unless the County reasonably believes the reimbursement request to be improper.

ARTICLE IV - REPORTING OF SUBRECIPIENT

Section 1 - The Subrecipient is to report to the CDBG Management Analyst and will cooperate and confer with him/her as necessary to insure satisfactory work progress.

Section 2 - The Subrecipient shall submit financial reports **as requested** to the **OCED Fiscal Assistant**. The Subrecipient shall submit programmatic reports **as requested** to **CDBG Management Analyst**.

Section 3 - All reports, estimates, memoranda and documents submitted by the Subrecipient must be dated and bear the Subrecipient's name. Financial reports shall be submitted in a timely manner to the County and shall be in agreement with the amounts shown in the Subrecipient's financial system and shall be supported by appropriate documentation (payroll records, invoices, etc.). Final financial and programmatic reports shall be submitted by the

Contract # _____

Subrecipient within 30 days of the end of this agreement unless an extension of time is granted in writing by the County.

Section 4 - The Subrecipient agrees to only incur costs under this agreement which are eligible under the Cost Principles detailed in Section 200.400-475 of the Uniform Guidance.

Section 5 - The Subrecipient shall retain all reports, records and supporting documentation pertaining to this agreement for a period of three years from the date of submission of the final expenditure report and shall make them available to the County and the federal awarding agency upon request.

Section 6 - All reports made in connection with these services are subject to review and final approval by the County Administrator.

Section 7 - The County may review and inspect the Subrecipient's activities during the term of this agreement.

Section 8 - When applicable, the Subrecipient will submit a final, written report to the County Administrator.

Section 9 - After reasonable notice to the Subrecipient, the County may review any of the Subrecipient's internal records, reports, or insurance policies.

Section 10 - The Subrecipient and/or subcontractors shall disclose in writing to the County any potential conflict of interest it has related to the County or this agreement subject to the provisions 2 CFR 200.318.

Section 11 - The Subrecipient shall disclose in writing to the County in a timely manner all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting this agreement.

Section 12 - The Subrecipient shall report to the County in a timely manner if any adverse or problematic situations arise between reporting deadlines describing the nature of the problem and what is being done to address it.

ARTICLE V - TERM

This contract begins on **November 5, 2019** and ends on **November 5, 2020 with an option to extend for an additional 6 months**. No costs eligible under this agreement shall be incurred by the Subrecipient before or after these dates, except with prior written approval of the County.

ARTICLE VI- RESPONSIBILITIES OF THE SUBRECIPIENT

Section 1 - The Subrecipient agrees to comply with all applicable federal, State, and local regulations including the Uniform Guidance. The Subrecipient agrees to comply with the management systems standards (financial management (Sections 200.302-304), procurement (Sections 200.317-326), and property management (Sections 200.310-316)) of the Uniform Guidance.

Section 2 - The Subrecipient agrees to have performed a Single Audit of its federal expenditures if it reaches the Single Audit dollar threshold in federal expenditures during its fiscal year as detailed in Section 200.501 of the Uniform Guidance. The County reserves the right to perform or cause to be performed additional audits if it deems such to be necessary to insure

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compliance with the terms of this agreement or to determine the eligibility of the reported expenditures for reimbursement.

Section 3 - The Subrecipient agrees to comply with the provisions of the Byrd Amendment (Public Law 101-121, Section 319 - 31 U.S. Code Section 1352) which prohibits the use of federal funds by the recipient or subrecipient of a Federal contract, grant, loan, or cooperative agreement to pay any person to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the federal funds awarded under this agreement.

Section 4 – The Subrecipient agrees to comply with the provisions of the Stevens Amendment (Section 8136 of the Department of Defense Appropriations Act – Public Law 100-463) which stipulates that when issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with federal money, all grantees receiving federal funds, including but not limited to state and local governments, shall clearly state (1) the percentage of the total cost of the program or project which will be financed with federal money, (2) the dollar amount of federal funds for the project or program, and (3) the percentage and dollar amount of the total costs of the project or program that will be funded by non-governmental sources.

Section 5 - In addition to this agreement, the Subrecipient shall complete, sign, and submit to the County the following documents which are attached as part of this agreement:

1. Standard Assurances
2. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements
3. Audit Certification

ARTICLE VII – SUSPENSION OF FUNDING

The County may suspend funding to the Subrecipient, in whole or in part, or other measures may be imposed for any of the following reasons:

1. Failure to expend funds in a timely manner consistent with the agreement milestones, guidance, and assurances.
2. Failure to comply with the requirements or statutory objectives of federal or state law.
3. Failure to follow agreement requirements or special conditions.
4. Proposal or implementation of substantial plan changes to the extent that, if originally submitted, the application would not have been approved for funding.
5. Failure to submit required reports.
6. Filing of a false certification on the application or other report or document.
7. Failure to adequately manage, monitor or direct the activities of its subrecipients that are funded under this agreement.

Before taking action, the County will provide the Subrecipient reasonable notice of intent to impose corrective measures and will make every effort to resolve the problem informally.

The County reserves the right to recommend to the federal government that the Subrecipient be suspended or debarred in the case of sustained significant noncompliance by the Subrecipient with the award provisions.

ARTICLE VIII- PERSONNEL

Section 1 - The Subrecipient will provide the required services and will not subaward or assign the services without the County's written approval.

Contract # _____

Section 2 - The Subrecipient will not hire any County employee for any of the required services without the County's written approval.

Section 3 - The parties agree that all work done under this agreement shall be completed in the United States and that none of the work will be partially or fully completed by either an offshore entity or offshore business interest either owned or affiliated with the Subrecipient. For purposes of this agreement, the term, "offshore" refers to any area outside the contiguous United States, Alaska or Hawaii.

ARTICLE IX-INDEPENDENT CONTRACTOR

Contractor and the County shall, at all times, be deemed to be independent contractors and nothing herein shall be construed to create or imply that there exists between the parties a partnership, joint venture or other business organization. Contractor shall hold no authority, express or implied, to commit, obligate or make representations on behalf of the County and shall make no representation to others to the contrary.

Nothing herein is intended nor shall be construed for any purpose as creating the relationship of employer and employee or agent and principal between the parties. Except as otherwise specified in this contract, Contractor retains the sole right and obligation to direct, control or supervise the details and means by which the services under this contract are provided.

Contractor shall not be eligible for, or participate in, any insurance, pension, workers' compensation insurance, profit sharing or other plans established for the benefit of the County's employees. Contractor shall be solely responsible for payment of all taxes arising out of the Contractor's activities in connection with this Agreement, including, without limitation, federal and state income taxes, social security taxes, unemployment insurance taxes and any other tax or business license fees as required. The County shall not be responsible for withholding any income or employment taxes whatsoever on behalf of the Contractor.

ARTICLE X - INDEMNIFICATION AGREEMENT

The Subrecipient will protect, defend and indemnify the County, its officers, agents, servants, volunteers and employees from any and all liabilities, claims, liens, fines, demands and costs, including legal fees, of whatsoever kind and nature which may result in injury or death to any persons, including the Subrecipient's own employees, and for loss or damage to any property, including property owned or in the care, custody or control of the County in connection with or in any way incident to or arising out of the occupancy, use, service, operations, performance or non-performance of work in connection with this agreement resulting in whole or in part from negligent acts or omissions of Subrecipient, any subcontractor of the Subrecipient, or any employee, agent or representative of the Subrecipient or any subcontractor of the Subrecipient.

ARTICLE XI- INSURANCE REQUIREMENTS

The Subrecipient will maintain at its own expense during the term of this Agreement, the following insurance:

1. Workers' Compensation Insurance with Michigan statutory limits and Employers Liability Insurance with a minimum limit of \$100,000 each accident for any employee.

Contract # _____

2. Commercial General Liability Insurance with a combined single limit of \$1,000,000 each occurrence for bodily injury and property damage. The County shall be added as "additional insured" on general liability policy with respect to the services provided under this agreement.
3. Automobile Liability Insurance covering all owned, hired and non-owned vehicles with Personal Protection Insurance and Property Protection Insurance to comply with the provisions of the Michigan No Fault Insurance Law, including residual liability insurance with a minimum combined single limit of \$1,000,000 each accident for bodily injury and property damage. For transportation services contracts, the County shall be added as additional insured on automobile liability policy with respect to the services provided under this contract.

Insurance companies, named insureds and policy forms may be subject to the approval of the County Administrator, if requested by the County Administrator. Such approval shall not be unreasonably withheld. Insurance policies shall not contain endorsements or policy conditions which reduce coverage provided to The County. Subrecipient shall be responsible to the County or insurance companies insuring the County for all costs resulting from both financially unsound insurance companies selected by Subrecipient and their inadequate insurance coverage. Subrecipient shall furnish the County Administrator with satisfactory certificates of insurance or a certified copy of the policy, if requested by the County Administrator.

No payments will be made to the Subrecipient until the current certificates of insurance have been received and approved by the Administrator. If the insurance as evidenced by the certificates furnished by the Subrecipient expires or is canceled during the term of the agreement, services and related payments will be suspended. Subrecipient shall furnish certification of insurance evidencing such coverage and endorsements at least ten (10) working days prior to commencement of services under this agreement. Certificates shall be addressed to the County c/o: **Office of Community and Economic Development, 415 West Michigan Ave, Suite 2200, Ypsilanti, MI 48197, AND Contract # _____**, and shall provide for written notice to the Certificate holder of cancellation of coverage.

ARTICLE XII - COMPLIANCE WITH LAWS AND REGULATIONS

The Subrecipient will comply with all federal, state and local regulations, including but not limited to all applicable OSHA/MIOSHA requirements and the Americans with Disabilities Act.

The Subrecipient agrees to maintain the proper organizational status (such as 501 (c)(3) if needed) to be eligible to receive federal financial assistance under this grant, including proper licensure, registration, etc. Subrecipient agrees to keep itself in the same legal position/mode of organization as when it entered into this agreement.

ARTICLE XIII - INTEREST OF SUBRECIPIENT AND COUNTY

The Subrecipient promises that it has no interest which would conflict with the performance of services required by this agreement. The Subrecipient also promises that, in the performance of this agreement, no officer, agent, employee of the County, or member of its governing bodies, may participate in any decision relating to this agreement which affects his/her personal interest or the interest of any corporation, partnership or association in which he/she is directly or indirectly interested or has any personal or pecuniary interest. However, this paragraph

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does not apply if there has been compliance with the provisions of Section 3 of Act No. 317 of the Public Acts of 1968 and/or Section 30 of Act No. 156 of Public Acts of 1851, as amended by Act No. 51 of the Public Acts of 1978, whichever is applicable.

ARTICLE XIV - CONTINGENT FEES

The Subrecipient promises that it has not employed or retained any company or person, other than bona fide employees working solely for the Subrecipient, to solicit or secure this agreement, and that it has not paid or agreed to pay any company or person, other than bona fide employees working solely for the Subrecipient, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this agreement. For breach of this promise, the County may cancel this agreement without liability or, at its discretion, deduct the full amount of the fee, commission, percentage, brokerage fee, gift or contingent fee from the compensation due the Subrecipient.

ARTICLE XV - EQUAL EMPLOYMENT OPPORTUNITY

The Subrecipient will not discriminate against any employee or applicant for employment because of race, creed, color, sex, sexual orientation, national origin, physical handicap, age, height, weight, marital status, veteran status, religion and political belief (except as it relates to a bona fide occupational qualification reasonably necessary to the normal operation of the business).

The Subrecipient will take affirmative action to eliminate discrimination based on sex, race, or a handicap in the hiring of applicant and the treatment of employees. Affirmative action will include, but not be limited to: Employment; upgrading, demotion or transfer; recruitment advertisement; layoff or termination; rates of pay or other forms of compensation; selection for training, including apprenticeship.

The Subrecipient agrees to post notices containing this policy against discrimination in conspicuous places available to applicants for employment and employees. All solicitations or advertisements for employees, placed by or on the behalf of the Subrecipient, will state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, sexual orientation, national origin, physical handicap, age, height, weight, marital status, veteran status, religion and political belief.

ARTICLE XVI - LIVING WAGE

The parties understand that the County has enacted a Living Wage Ordinance that requires covered vendors who execute a service or professional service agreement with the County to pay their employees under that agreement, a minimum of either \$13.61 per hour with benefits or \$15.18 per hour without benefits. Agreementor agrees to comply with this Ordinance in paying its employees. The Subrecipient understands and agrees that an adjustment of the living wage amounts, based upon the Health and Human Services poverty guidelines, will be made on or before April 30, 2020 and annually thereafter which amount shall be automatically incorporated into this agreement. County agrees to give the Subrecipient thirty (30) days written notice of such change. The Subrecipient agrees to post a notice containing the County's Living Wage requirements at a location at its place of business accessed by its employees.

ARTICLE XVII - ASSIGNS AND SUCCESSORS

This agreement is binding on the County and the Subrecipient, their successors and assigns. Neither the County nor the Subrecipient will assign or transfer its interest in this agreement without the written consent of the other.

ARTICLE XVIII - TERMINATION OF AGREEMENT

Termination without cause. Either party may terminate the agreement by giving thirty (30) days written notice to the other party. Upon any such termination, the Subrecipient agrees to return to the County any funds not authorized for use, and the County shall have no further obligation to reimburse the Subrecipient. Upon termination of the agreement, the Subrecipient shall submit documentation, in a format specified by the County, to formally end its participation in the agreement.

ARTICLE XIX - EQUAL ACCESS

The Subrecipient shall provide the services set forth in the Scope of Service section of this agreement without discrimination on the basis of race, color, religion, national origin, sex, sexual orientation, marital status, physical handicap, or age.

ARTICLE XX - OWNERSHIP OF DOCUMENTS AND PUBLICATION

All documents developed as a result of this agreement will be freely available to the public. None may be copyrighted by the Subrecipient. During the performance of the services, the Subrecipient will be responsible for any loss of or damage to the documents while they are in its possession and must restore the loss or damage at its expense. Any use of the information and results of this agreement by the Subrecipient must reference the project sponsorship by the County. Any publication of the information or results must be co-authored by the County.

ARTICLE XXI - PAYROLL TAXES

The Subrecipient is responsible for all applicable state and federal social security benefits and unemployment taxes for its employees and agrees to indemnify and protect the County against such liability.

ARTICLE XXII - PRACTICE AND ETHICS

The parties will conform to the code of ethics of their respective national professional associations.

ARTICLE XXIII - CHANGES IN SCOPE OR SCHEDULE OR SERVICES

Changes mutually agreed upon by the County and the Subrecipient, will be incorporated into this agreement by written amendments signed by both parties.

Unilateral modification of the agreement may take place by the County if the underlying programmatic legislation or regulations are changed by the federal government. If this unilateral modification is objectionable to the Subrecipient, it may withdraw from receiving further federal financial assistance under this agreement by giving (thirty) 30 days written notice to the County.

The Subrecipient agrees to inform the County in writing concerning any proposed changes of dates, budget, or services indicated in this agreement, as well as changes of address or personnel affecting this agreement. Changes in dates, budget, or services are subject to prior written approval of the County.

ARTICLE XXIV - CHOICE OF LAW AND FORUM

Contract # _____

This agreement is to be interpreted by the laws of the State of Michigan. The parties agree that the proper forum for any disputes or litigation arising out of this agreement is in Washtenaw County, Michigan.

The County and the Subrecipient agree that each must seek its own legal representative and bear its own costs, including judgments, in any litigation that may arise from performance of this contract. It is specifically understood and agreed that neither party will indemnify the other party in such litigation. This is not to be construed as a waiver of governmental immunity for either party.

ARTICLE XXV - EXTENT OF AGREEMENT

This written agreement, including any attachments thereto, represents the entire agreement between the parties and supersedes all prior representations, negotiations or agreements whether written or oral.

ARTICLE XXVI – PRIVACY / THIRD PARTIES

This agreement is solely between the County and Subrecipient. No other parties are part of this agreement. This agreement is not intended to make any person or entity, not a party to this agreement, a third party beneficiary hereof or to confer on a third party any rights or obligations enforceable in their favor.

ARTICLE XXVII - SEVERABILITY

The invalidity or unenforceability of any provisions of this agreement shall not affect the validity or enforceability of any other provision of this agreement, which shall remain in full force and effect.

Contract # _____

ARTICLE XXVIII - NOTICES

Communication notices for this agreement may be delivered via electronic mail, U.S. mail, hand delivery, or fax.

The individual or officer signing this agreement certifies by his or her signature that he or she is authorized to sign this agreement on behalf of the organization he or she represents. By signing this agreement, the County and the Subrecipient agree to comply with all of the requirements specified in this agreement.

ATTESTED TO:

WASHTENAW COUNTY (Pass-Through Entity)

By: _____
Lawrence Kestenbaum (DATE)
County Clerk/Register

By: _____
Gregory Dill (DATE)
County Administrator

APPROVED AS TO CONTENT:

CITY OF YPSILANTI (Subrecipient)

By: _____
Teresa Gillotti (DATE)
Director

BY: _____
Beth Bashert (DATE)
Mayor

APPROVED AS TO FORM:

By: _____
Curtis N. Hedger (DATE)
Office of Corporation Counsel

Contract # _____

OMB Approval No. 0348-0042

STANDARD ASSURANCES - CONSTRUCTION PROGRAMS

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

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

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure non-discrimination during the useful life of the project.
4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.
5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by the assistance awarding agency or State.
6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
10. Will comply with all Federal statutes relating to non-discrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

Contract # _____

11. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
12. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333) regarding labor standards for federally-assisted construction subagreements.
14. Will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

Signature of Subrecipient's Authorized Representative

Title of Subrecipient's Authorized Representative

Name of Subrecipient Organization

Date Submitted

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when Washtenaw County determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

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

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

Contract # _____

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction; (e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Washtenaw County Administrator's Office, 220 N. Main, P.O. Box 8645, Ann Arbor, MI 48107-8645. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

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

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

Check ☐ if there are workplaces on file that are not identified here.

**DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Washtenaw County Administrator's Office, 220 N. Main, P.O. Box 8645, Ann Arbor, MI 48107-8645. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

Name of Subrecipient Organization

Printed Name and Title of Subrecipient's Authorized Representative

Signature of Subrecipient's Authorized Representative

Date

Contract # _____

Subrecipient Audit Certification

Federal Audit Requirements - Fiscal Years Beginning After December 26, 2014

Non-federal organizations which expend \$750,000 or more in federal funds during their fiscal year are required to have a Single Audit performed in accordance with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Chapter I, and Chapter II, Parts 200, 215, 220, 225, 230) issued December 26, 2013 by the Executive Office of the President, Office of Management and Budget. Subrecipients must submit their audit report to the Federal Audit Clearinghouse within the earlier of 30 days after receipt of the auditor's report, or within 9 months after the end of the audit period for each year the Subrecipient meets the \$750,000 federal expenditure threshold.

Program: _____ CFDA Number: _____

Subrecipient Information:

Organization Name: _____

Street Address: _____

City, State, Zip Code: _____

Independent Audit Firm: _____

Certification for Fiscal Year Ending (mm/dd/yyyy): _____

(Check appropriate box):

- ☐ I certify that the Subrecipient shown above **does not expect** to expend \$750,000 or more in federal funds during at least one fiscal year that funds are received for the above listed program and thus it will not be required to have a Single Audit performed under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Chapter I, and Chapter II, Parts 200, 215, 220, 225, 230) issued December 26, 2013 by the Executive Office of the President, Office of Management and Budget, for the above listed program.
- ☐ I certify that the Subrecipient shown above **expects it will** expend \$750,000 or more in federal funds during at least one fiscal year that funds are received for the above listed program and thus it will be required to have a Single Audit performed under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Chapter I, and Chapter II, Parts 200, 215, 220, 225, 230) issued December 26, 2013 by the Executive Office of the President, Office of Management and Budget.

Signature of Subrecipient's Authorized Representative

Date

For Washtenaw County Use Only

Reviewed By: _____

Date: _____

ATTACHMENT A- SCOPE AND LOCATION OF SERVICES & PROJECT TIMELINE

NARRATIVE DESCRIPTION/ SCOPE OF WORK:

WASHTENAW COUNTY will contract with the **CITY OF YPSILANTI** for the eligible costs of demolition and removal of the single residential housing structure located at 448 S. Huron Street in the City of Ypsilanti.

These activities will be paid for with 2018 CDBG funding in accordance with the budget in **Attachment B.**

Activities are to comply with the bid specifications, including detailed requirements specific to the removal of a 250-gallon home heating oil above ground storage tank (AST) on the subject property prior to demolition of the residential structure, and the requirements for notification of demolition and asbestos removal, among other details, as approved by OCED on 10/22/19 for inclusion in the Request for Proposals.

For project close-out, the City will be required to:

- 1) Provide the County with the following items related to removal of asbestos-containing materials:
 - i. Asbestos Clearance Certification – **Must come from AKT Peerless or other environmental professional**
 - ii. Copy of Asbestos Abatement Contractor's Asbestos Abatement License
 - iii. Copy of Michigan DEQ/LARA 10-Day Notice of Intent to Renovate/Demolish OR Abatement Contractor Letter explaining the reason that the notice was not necessary according to NESHAP requirements
 - iv. Landfill Manifest at the time that abated Asbestos was disposed
- 2) Submit proof from the County Clerk/Register of Deeds of having recorded the Notice attached (See **Attachment D**) in accordance with the State of Michigan Seller's Disclosure Act (Act 92 of 1993) to inform any future buyers of the characteristics of the prior structure (including the home heating oil above ground storage tank).
- 3) Submit copies of receipts for all costs associated with the draining, cleaning, removal and recycling of the home heating oil above-ground storage tank. Receipts must include the name, address, and phone numbers for the companies providing the services.

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PROJECT TIMELINE:

A competitive Request for Proposals process will be administered by the City of Ypsilanti. A bid award is expected to be approved by the City of Ypsilanti City Council on November 19th, 2019. The expected timeline for demolition, removal, and backfill as will be outlined in the bid specifications is as follows:

Activity	Deadline
City of Ypsilanti will award contract to most responsible and responsive bidder.	November 19, 2019
Contractor will begin demolition project.	November 21, 2019
Contractor will achieve substantial completion of project	December 21, 2019
Contractor will complete final site clean-up, and City of Ypsilanti will perform a final inspection.	December 27, 2019
City of Ypsilanti will submit request for reimbursement from Washtenaw County OCED, along with accompanying proof of payment, and any required close-out documentation.	January 15, 2020
Project Completion Date:	
January 30, 2020	

Contract # _____

ATTACHMENT B- PROJECT BUDGET

SUMMARY OF TERMS:

The COUNTY agrees to pay to or on behalf of the **CITY OF YPSILANTI** an amount not to exceed **Twenty Seven Thousand Two Hundred and Forty Seven Dollars and Zero Cents (\$27,247.00)** in 2018 CDBG Funds according to the budget below:

PROJECT BUDGET:

448 S. Huron Street Demolition Project Budget	
REVENUE SOURCE(S):	TOTAL
Grant Amounts CDBG (2018) - allocation	\$27,247.00
Other Support (In-Kind)	
Status of Funds	
Total Revenues	\$27,247.00
PROGRAM EXPENSES	TOTAL
Personnel, Taxes & Fringe Benefits	
Consultant & Contractual Fees	
Space & Related Costs	
Printing / Supplies	
Specific Assistance - scholarships	
Audit	
Program Evaluation	
Marketing	
Other – postage, communications	
Other – travel, insurance	
Other – staff development	
Other – construction	\$27,247.00
Total Expenditures	\$27,247.00

ATTACHMENT C - BIDDING SPECIFICATIONS

I. BID SPECIFICATIONS

Scope

The work shall be subject to the conditions of these general specifications and the furnishing of all labor, materials, tools, accessories, equipment, drawings, all necessary permits and services to demolish and remove the building and all of the necessary filling and backfilling to leave the site in a smooth, safe, level condition.

Statement

The work shall include but not be limited to, on-site demolition and removal of the vacant structure, driveway and walkway at the project sites and all of the contents therein. The vacant structure shall be demolished in place and the debris disposed at a site where such debris is legally accepted. Site clearance shall consist of the removal of all associated debris from the demolition but not limited to, fixtures, shrubbery, building contents and any related substructures within the boundaries of the location listed below. The site must be backfilled/filled and returned to the existing surrounding grade, topsoil added and seeded. The three (3) mature trees located on the property along the south property line with 454 S. Huron St. will remain on the property and will not be disturbed as part of this project.

Location

The proposed Demolition is located in the City of Ypsilanti at the following address:

(1) 448 S. Huron St. **Parcel ID: 11-11-39-481-015**

Description of Work

The Contractor shall, at their expense, remove and dispose of the existing vacant structure and its contents, all walkways leading to the vacant structure, basement, foundations, footings, piping, wiring, construction materials and any related substructures. The Contractor shall perform all work in accordance with Federal, State and local laws. The Contractor shall make every reasonable effort to recycle/salvage reclaimable materials. **Receipt of materials recycled will be required by the City of Ypsilanti.**

Backfill/fill the former basement/crawlspace, former drive/walkways and any low areas or depressions related to the demolition work using a granular backfill material that has been tested by an approved agency and verified as suitable for residential areas. The granular material may be pit run or crusher run that will pass through a 3-inch sieve. This material will not contain bituminous particles, oversize stone, rock or concrete fragments. Rough grade the area concurrent with the surrounding area.

After completion of the grading concurrent with the surrounding area, the Contractor shall place topsoil over any areas that were filled, graded or otherwise disturbed by the work, to a specified depth of four inches. The topsoil will be spread uniformly, then tamped or compacted. The topsoil will be graded even with the surrounding surfaces or slightly "crowned" to allow for settling. The Contractor shall rake all areas of topsoil in preparation for the placement of seed. The top 2 inches shall be loose and allow for the topsoil shall be fertile loam, neither excessive acid or alkaline, suitable for the growth of turf grasses. The Contractor shall provide proof that the soil has been tested and is acceptable for use in such an application.

The Contractor will then spread grass seed with the appropriate equipment to provide uniform coverage. The minimum application rate will be five pounds per one thousand square feet. The seed shall be sufficiently incorporated into the soil then covered with paper mulch or hay. Hydro seeding is acceptable as long as it meets the specifications outlined above. Grass seed will not be an invasive species as defined by Michigan State University Extension.

The Contractor will apply a starter fertilizer in accordance with the manufacturer's recommendations.

Asbestos Abatement

All line items listed as an *****ABATEMENT ACTIVITY***** must be completed in accordance to 40 CFR part 61 Subpart M of the Code of Federal Regulations. This includes homeowner/State notifications, demolitions, removal, disposal, installation, cleaning, and testing. The contractor will be responsible for providing the City of Ypsilanti with a copy of all notification forms made to the Michigan Department of Environmental Quality (MDEQ)/Michigan Department of Environment, Great Lakes and Energy (EGLE) and the Michigan Occupational Health and Safety Administration (MIOSHA) for abatement and demolition activities. In addition, landfill receipts of asbestos material shall be provided to the City of Ypsilanti. **See "Attachment A" of this RFP for Asbestos Reports for 448 S. Huron St.** The contractor will also be required to comply with all Michigan Occupational and Health Administration (MIOSHA) Asbestos requirements for training and project site safety. A copy of the state asbestos abatement license from asbestos abatement contractor shall also be provided to the City of Ypsilanti.

Removal of Home Heating Oil Tank (Approximately 250 Gallons)

The home heating oil tank located in the basement of the structure must be legally removed and legally disposed prior to demolition following the Flammable and Combustible Liquids (FL/CL) Rules, Part 4, 2003, AACCS R29.5101 et seq. , which were promulgated under the authority of the Michigan Fire Prevention Code, 1941 PA 207, as amended. The tank must be taken out of service and properly closed. Proper closure for both an above ground storage tank (AST) and an underground storage tank (UST) is defined as emptying the tank and related piping of heating oil. After the oil is drained, the tank must be properly cleaned to remove all vapors and residual oil. Once the AST has been emptied and cleaned and there is no evidence that the tank leaked, the tank is considered closed and can be removed. If a leak is found, the project will be stopped immediately and the City of Ypsilanti will be contacted immediately and informed of the leak and the City of Ypsilanti will provide further direction based on consultation with county and state

agencies. After the tank is properly cleaned, the UST must be removed from the ground. The Michigan Department of Licensing and Regulatory Affairs (LARA) recommends that you hire a tank professional; such as a heating system vendor, oil supplier, or an environmental consultant; to properly drain the heating oil and clean out the tank. Once the tank is closed and removed, the next step is to properly dispose of the tank. The Michigan DEQ recommends taking the tank to a metal recycler. Tanks can also be landfilled if the landfill operators will accept it. A tank professional can handle the arrangements for the proper disposal of your tank. Copies of the receipts for all costs associated with the draining, cleaning, removal, and recycling of the tank will be provided to the City of Ypsilanti. The receipts should give the name, address, and phone numbers for the companies that are providing the services.

Products

Grass seed will be 30% Shamrock Kentucky Blue Grass, 20% Merit Kentucky Blue Grass, 20% Commander Perennial Rye Grass, 20% Baron Kentucky Blue Grass, 10% PS8990 Perennial Rye Grass (Lesco has this specific mix).

Permits

The Contractor shall at his/her expense procure all permits necessary for this work, including those where streets or parking areas may be obstructed by its operations. An application will be submitted to the City of Ypsilanti Building Department for a demolition permit in accordance with Section 105 of the 2015 Michigan Residential Code. All applicable inspections and requirements will be strictly adhered to.

Safety Provisions

Where hazardous conditions are created incident to the Contract operations, the Contractor at his expense, shall furnish, erect and maintain suitable barricades to protect and safeguard the public in accordance with Chapter 33 of the 2015 Michigan Building Code.

The Contractor shall take all appropriate measures to insure the health and safety of the public by incorporating pollution control measures by **using water sprinkling, temporary enclosures, and/ or methods to limit dust and dirt rising from the project site.**

At no time will explosives be utilized for any of these demolition projects.

All work shall be conducted in strict compliance with safety regulations and guidelines including OSHA.

Working Hours

If it is determined that any construction activity related to the project is causing a hardship to the surrounding residents, the Contractor will be required to limit the work to hours agreed upon by the adjoining homeowners, the Contractor, and the City of Ypsilanti.

No work may be accomplished during weekends or off hours without prior approval. Regular work hours are from 8:00 am to 6:00 pm M-F.

Public Utilities

The City of Ypsilanti has ordered the cutting and capping of the Gas and Electrical lines. Confirmation/ utility clearance for the property will be provided to the winning bidder.

The contractor will be responsible for ensuring water/sewer lines have been cut and capped for all properties.

A permit to demolish and remove the structure will not be issued until a clearance is obtained from each utility stating the respective service connection and related appurtenant equipment such as wires, pipes, lines meters and regulators have been removed and or sealed in a safe manner for each property being demolished.

Disposal

All materials removed, other than utility owned fixtures, and all debris resulting from this project shall become the property of the Contractor.

Burning of debris on site shall not be permitted.

All salvageable materials present at the time that work commences will become the property of the Contractor.

All materials disposed of shall be in accordance with Federal, State, and local laws. Proof of such shall be provided to the City of Ypsilanti prior to payment.

Inspections

The Contractor will inspect and insure that all work is being performed in accordance with these specifications. A rough inspection will be held at a time to be agreed upon between the City, the Washtenaw County Office of Community and Economic Development and Contractor. The City and the Washtenaw County Office of Community and Economic Development reserves the right to make periodic progress inspections during the project to ensure the work is being completed in accordance with these specifications. A final Inspection will be held at a time agreed to be upon between the City, the Washtenaw County Office of Community and Economic Development and the Contractor. The contractor must contact the City and the Washtenaw County Office of Community and Economic Development to schedule the final inspection before the release of any payments.

The Contractor will call for any inspections required by the City Building Official and project permits.

Submittals

The Contractor shall submit all records of debris disposed of related to the work outlined for this demolition project. This includes landfill receipts for asbestos and regular waste generated from the demolition as well as recycling receipts.

The Contractor will submit the “**Notification of Intent to Renovate / Demolish**” form prior to any asbestos abatement or demolition activities. The notification form must be postmarked or hand delivered at least **10 days prior** to beginning any abatement or demolition activities on the project sites. Copies of the Notification forms will be submitted to the City of Ypsilanti.

Installation, Warranty, and Service

The Contractor shall guarantee all materials and workmanship to be free of defects for a period of one (1) year from the date of the Owner’s acceptance, including grass in the area of disturbance.

Occupancy

Structure to be demolished will be discontinued in use and vacated prior to the start of work. Should the contractor find a structure occupied on or in use, he or she shall immediately notify the City of Ypsilanti and temporary stop work on that structure until instructed to continue by the City of Ypsilanti.

Completion

The project will not be considered complete until all final inspections have been approved by the City and the Washtenaw County Office of Community and Economic Development and the contractor has submitted the required sworn statement and lien waivers.

Construction shall start within 14 calendar days of the Notice to Proceed and completed within 60 calendar days (unless otherwise agreed upon, in writing, by the City of Ypsilanti Planning and Development Department and the Contractor).

Full payment shall be made by the City of Ypsilanti within 21 calendar days of receipt of invoice and all required documents from the contractor upon completion of work.

General

The requirements of these specifications shall be understood to be the minimum requirements of the City of Ypsilanti and the Washtenaw County Office of Community and Economic Development. The requirements shall be expanded as necessary to insure quality. However, unless approval from the City of Ypsilanti is obtained, the requirements herein shall not be deleted or revised.

Precedence:

If any statement in this or any other specification is in conflict with any provision of the General Terms and Conditions to the contract, the provision stated in the General Terms and Conditions shall take precedence. Any questions, which require additional interpretation and guidance, shall be immediately brought to the Owners attention.

References:

Referenced standards and recommended practices referred to herein shall be the latest edition or revision of the document.

Quality assurance:

The Contractor shall be regularly engaged in providing demolition work for a period of not less than Five years prior to bid submittal.

The Contractor shall use care at all times to prevent damage to or marking of the fencing, landscaping, or any other property or equipment during this project. Any damage caused by the Contractor will be repaired at the contractor's expense.

Addenda and Explanations

The City of Ypsilanti shall not give verbal answers to inquiries regarding the meaning of the specifications. Explanations desired by prospective bidders shall be requested in writing no later than _____, 2019. Please direct requests to the City of Ypsilanti Planning and Development Department.

In the event that explanations are necessary, a reply shall be made in the form of an addendum. A copy of which shall be forwarded to each bidder. Addenda issued to bidders prior to the date of receipt of bids shall become a part of the specifications and all bids shall include the work described in the addenda. Failure of the City of Ypsilanti to send or of the bidders to receive such interpretations shall not relieve the bidder from obligation under the bid as submitted.

Contract # _____

ATTACHMENT D - NOTICE TO BE RECORDED AT COUNTY CLERK/REGISTER OF DEEDS

As a condition of this contract, the City is required to record the enclosed Notice with the Washtenaw County Clerk/Register of Deeds for 448 S. Huron Street in Ypsilanti, MI. The notice was written in accordance with the Seller's Disclosure Act (Michigan Public Act 92 of 1993 (Act 92), and includes:

- pre-demolition photographs;
- map showing the previous location of the home heating oil above-ground storage tank
- MI DEQ pamphlet "Home Heating Oil Tanks"
- Copies of receipts for all costs associated with draining, cleaning, removal, and recycling of the above-ground storage tank. Note: Receipts must include the name, address, and phone number for the company providing the service; account numbers should be redacted.

For project closeout, the City must provide proof of the above submission to the County Clerk/Register of Deeds.

Notice of Above-ground Storage Tank Extant prior to and Removed prior to Demolition

448 S. Huron St.

Ypsilanti, MI 48197

PIN #: 11-11-39-481-015

Legal Description: *OLD SID - 11 11-010-072-00 YP CITY 1-W53 LD COM AT PT ON E LINE WASHINGTON ST 713.52 FT S OFS LINE BUFFALO ST, TH S 70 FT ALONG E LINE WASHINGTON ST, TH S 83 DEG 59' E 91.80 FT, TH N 17 DEG 11' E 70 FT ALONG W LINE HURON ST, TH WLY TO BEG.

The following notice is provided in accordance with the Seller's Disclosure Act (Michigan Public Act 92 of 1993 (Act 92)).

Home Heating Oil Above-ground Storage Tank (approximately 250-gallons capacity) approximate location (in basement underneath Front Den/Bedroom of 1st Floor of house).

Approximate Latitude/Longitude Location: 42°14'03.1"N 83°36'50.6"W (42.234193, -83.614061).

Distance from East Property Line (facing S. Huron St.): 28 feet

Distance from North Property Line (facing 438 S. Huron St.): 32 feet

The Home Heating Oil Above-ground Storage Tank provided long-term storage of heating fuel oil for gravity octopus furnace located on the property prior to the demolition of the home located at 448 S. Huron St. (PIN #: 11-11-39-481-015). The tank was filled with home heating oil through an apparent Fill Pipe located at the northeast corner of the home where trucks containing home heating oil would connect onto fill pipe to fill home heating oil above-ground storage tank located in the basement of the home. Pipes were located between the Exterior fill pipe and the home heating oil above-ground storage tank and between the tank and the gravity octopus furnace. Below are the approximately locations of the affiliated equipment to the home heating oil above-ground storage tank where the home heating oil was transporting through piping to and from the home heating oil above-ground storage tank.

Gravity Octopus Furnace approximate location (in basement next to chimney underneath Living Room/big open room in mid-house 1st Floor)

Approximate Latitude/Longitude Location: 42°14'03.2"N 83°36'50.8"W (42.234208, -83.614110)

Distance from East Property Line (facing S. Huron St.): 45 feet

Distance from North Property Line (facing 438 S. Huron St.): 28 feet

Exterior Fill Pipe (intake) northeast corner of house

Approximate Latitude/Longitude Location: 42°14'03.2"N 83°36'50.5"W (42.234224, -83.614038)

Distance from East Property Line (facing S. Huron St.): 23 feet

Distance from North Property Line (facing 438 S. Huron St.): 17 feet

The locations of the Home Heating Oil Above-ground Storage Tank, the Gravity Octopus Furnace and the Exterior Fill Pipe are all approximate locations, including latitude and longitude and the distances from the east and north property lines. These locations were only estimated based on the 7/16/2019 site visit and were not surveyed according to an official land survey. Please note that locations on the aerial photography may not match the locations of property lines or actual locations on the property.

The following includes a property map pre-demolition that indicates the approximate location of the home heating oil above-ground storage tank, the gravity octopus furnace and the exterior fill pipe, as well as photos of these three sites. Also attached are copies of receipts for all costs associated with the draining, cleaning, removing, and recycling of the tank in accordance with the Flammable and Combustible Liquids Rules, Part 4, 2003, AACR R29.5101 et seq.



448 S. Huron St. Home Heating Oil Above-ground Storage Tank Pre-Demolition Location Map

Legend

- Home Heating Oil Above-ground Storage Tank (Basement)
- Gravity Octopus Furnace (Basement)
- Home Heating Oil Fill Pipe (Exterior)
- Parcels

Latitude/Longitude Locations:

Home Heating Oil Above-ground Storage Tank
42°14'03.1"N 83°36'50.6"W (42.234193, -83.614061)

Gravity Octopus Furnace:
42°14'03.2"N 83°36'50.8"W (42.234208, -83.614110)

Exterior Fill Pipe:
42°14'03.2"N 83°36'50.5"W (42.234224, -83.614038)

The locations of the Home Heating Oil Above-ground Storage Tank, the Gravity Octopus Furnace and the Exterior Fill Pipe are all approximate locations, including latitude and longitude and the distances from the east and north property lines. These locations were only estimated based on the 7/16/2019 site visit and were not surveyed according to an official land survey. Please note that locations on the aerial photography may not match the locations of property lines or actual locations on the property.

Sources: Washtenaw County Aerial Photography 2015 --
Washtenaw County GIS, Washtenaw County Office of
Community and Economic Development Site Visit 7/16/2019



0 5 10 20 Feet

The map shown here is for illustrative purposes only, and is not suitable for site-specific decision-making. The data depicted is compiled from a variety of sources, thus this information is provided with the understanding that the conclusions drawn from the data are solely the responsibility of the user. Any assumptions of the legal status of this data are hereby disclaimed. Last Update: 10/16/2019 Washtenaw County Office of Community & Economic Development.



Home Heating Oil Above-ground Storage Tank (approximately 250-gallon capacity) approximate location: in basement underneath Front Den/Bedroom of 1st Floor of house—approximately 7 feet below grade/1st floor of house, Approximate Latitude/Longitude Location: 42°14'03.1"N 83°36'50.6"W (42.234193, -83.614061) – Photos taken 7/16/2019 during site visit





pipes

connected to furnace





pipes

connected to exterior fill pipe (northeast corner of house)



Pre-

demolition home heating oil tank contains liquid (possibly fuel) – note wet mark of plastic tube

Gravity Octopus Furnace approximate location (in basement next to chimney underneath Living Room/big open room in mid-house 1st Floor), —approximately 3 to 7 feet below grade/1st floor of house
 Approximate Latitude/Longitude Location: 42°14'03.2"N 83°36'50.8"W (42.234208, -83.614110) --
 Photos taken 7/16/2019 during site visit



Gravity

Octopus Furnace Unit



Ductwork



Gravity

Octopus Ductwork, chimney is white brick



Gravity

Octopus Ductwork, chimney is white brick, furnace is located on the other side of water heater



Gravity

Octopus Ductwork



Gravity

Octopus Ductwork

Exterior Fill Pipe (intake) northeast corner of house (grade level) – located at the location of shrub in photo, Approximate Latitude/Longitude Location: 42°14'03.2"N 83°36'50.5"W (42.234224, -83.614038) - Photos taken 7/16/2019 during site visit



Front

façade of 448 S. Huron house – at northeast corner at shrub is Exterior Fill Pipe



Exterior

Fill Pipe at northeast corner of house close up with shrub moved aside



Exterior

Fill Pipe at northeast corner shrub moved aside



Surrounding photos of northeast corner of house



Surrounding photos of northeast corner of house



Surrounding photos of northeast corner of house – north side where porch used to stand

Home Heating Oil Tanks



This document provides guidance to homeowners on how to maintain a home heating oil tank, causes and signs of a leaking tank, steps to take in the event of a leak or release from the tank, and how to properly close a tank when it is no longer used. A heating oil tank is defined as an aboveground storage tank (AST) or underground storage tank (UST) that stores heating oil that fuels a boiler or furnace to supply heat to a home. A tank that is located in the basement of a residence is categorized as an AST. A business or industry that utilizes heating oil tanks may have different or additional regulatory requirements and should contact the Department of Licensing and Regulatory Affairs (LARA), Storage Tank Division (BFS-STD) at 517-241-8847 for more information.

TANK MAINTENANCE AND LEAK PREVENTION

- Quarterly inspect and maintain both AST and UST heating oil tanks: scrutinize the fill lines, pipes, filters, sight glass, valves, gauges, and AST tank supports for any visible signs of rust and decay, or dark staining under the AST. An owner of a heating oil system, that has not been properly maintained, will likely be considered liable for a release should the tank or tank system leak.
- Most insurance companies will not cover the cost of cleaning up a release from a heating oil tank, vandalism, or even an act of God. Some insurance companies can write a rider policy to insure the heating oil tank. Contact your insurance company for more information on rider policies and to determine what the current policy covers.
- Maintain the pad or drip pan upon which the AST is placed. If the AST was not installed on a pad or in a drip pan, it is a good investment to update the AST with a pad or drip pan.
- Keep the furnace and related piping in good working order.
- In the winter, keep the roof and eaves nearest the AST, free from ice. To prevent ice from forming, the owner could have heat tape installed at the edge of the roof. If the AST is 660 gallons or less, the owner could have a shed or a roof constructed over the AST. The vent and fill pipes would have to terminate beyond the roof perimeter. If the tank is larger than 660 gallons, the owner is advised to call the BFS-STD at 517-241-8847.
- If the tank is no longer used; properly close the tank (see the 'Closing a Tank' section), remove the fill pipe or lock it closed with a bolt to prevent a mistaken delivery.

COMMON CAUSES OF LEAKS OR RELEASES

- Underground storage tanks leak due to rust, decay, or frost shift;
- Overfilling of either UST's or AST's;
- Failing tank supports, sight gauges, valves, and other equipment problems;
- Leaking fittings;
- Accidentally broken lines, tank tipping over, or lines severed due to falling ice, snow removal, or landscaping; or
- Negligent delivery of heating oil into the wrong piping system, such as disconnected lines, abandoned groundwater well piping, or other pipes that look like fill pipes;
- Not inspecting and maintaining the tank on a routine basis.

SIGNS OF A LEAKING TANK

A leaking heating oil tank can cause indoor air pollution and can potentially contaminate soil; surface, ground and drinking water. Often, a UST release will not be detected unless the tank is removed from the ground. At the tank removal, the owner should carefully observe the removal for signs that the tank leaked. The following scenarios may indicate a leaking tank:

- Fuel consumption greatly increases, even though the weather is not unusually cold;
- Dead or dying vegetation in the area of the tank;
- Heating oil odors in the house or emanating from the ground;
- Dark stained soils compared to the surrounding native soils;
- Oily rainbow sheen on water beneath the tank, in basement sump or footing drain discharge;
- Staining around the fill pipe;
- Water in fuel lines.

STEPS TO TAKE UPON DISCOVERING A LEAK

- Try to identify the source of the release.
- Take immediate steps to stop the leak and contain the escaped heating oil with absorbent material such as kitty litter, shredded paper, or sawdust. You can also place a drip pan under a leak from an aboveground tank. Use absorbent pads to control discharges from basement sumps.
- Turn off all the oil furnace shut off switches and close the oil line valve. Verify that the furnace blower is turned off to prevent spreading the odors throughout the house. For indoor spills, open windows to ventilate the odors.
- Minimize skin contact with the spilled oil. You should wear rubber gloves, if you are cleaning up the spill, to prevent the oil from getting on your hands.
- Contact your heating oil supplier for assistance and to drain the heating oil from the tank, if necessary.
- With releases from AST's or UST's, the actual quantity of heating oil released is frequently hard to determine. In order to assure compliance with all applicable regulations, it is highly recommended that any release be reported to the nearest Department of Environmental Quality (DEQ) Remediation and Redevelopment Division (RRD) District Office within 24 hours of the discovery. The Environmental Assistance Center, 800-662-9278, can help you find the phone number of the RRD district office nearest to you. If the release has created an emergency situation, call the Pollution Emergency Alerting System at 800-292-4706.
- Begin the cleanup process. Releases affecting only small amounts of soil may be handled by removal of the contaminated soil and disposal at an appropriate disposal location. For releases that have affected large quantities of soil or groundwater, the DEQ strongly recommends that you contact an environmental consultant to prepare a cleanup plan and take care of the release. Environmental consultants may be found under the "Environmental & Ecological Services" section in the yellow pages of most phone books.
- Contact the insurance company to inform them of the situation and to determine what the policy covers.
- Contact your landlord if the property is rented.
- In the event you have knowledge of contamination migrating onto your neighbor's property, you must provide notice to the DEQ RRD and affected property owners.
- Contact your local landfill to properly dispose of contaminated soils generated from the cleanup. The environmental consultant can address disposal of contaminated soils and/or groundwater, or you may contact the local DEQ office for further guidance.
- Keep all the records of the cleanup together: the cleanup plan, receipts for services, dates, location, amount of contaminated soils and/or groundwater disposed of and photographs taken to document the activities. Also, you should keep a logbook in which you record the time and date that the release was found, the dates on which work was done and by whom.



POTENTIAL HEALTH EFFECTS

- Short-term exposure to heating oil odors can cause headaches, nausea, dizziness, increased blood pressure, and difficulty concentrating.
- Long-term exposure to some heating oils has been associated with an increased risk of developing cancer.
- If you have a drinking water well and notice any strange taste, color or odors, have the well tested periodically for heating oil contamination.

Closing a Tank: In the event your heating oil tank is no longer used, the tank must be taken out of service and properly closed. Proper closure for both an AST and UST is defined as emptying the tank and related piping of heating oil. After the oil is drained, the tank must be properly cleaned to remove all vapors and residual oil. Once the AST has been emptied and cleaned and there is no evidence that the tank leaked, the tank is considered closed and can be removed.

Removing a UST: State regulations require a UST, that is not being used, must be removed from the ground within one year from the last date it was used. After the tank is properly cleaned, the UST must be removed from the ground unless removing the tank could jeopardize the structural integrity of an adjacent structure. For example, if the tank is under the garage, the tank can remain in the ground. However, if the UST is to remain in place, it must be filled to 100% capacity with an inert material. An example of inert materials would be pea gravel or cement slurry. The material must have the consistency to eliminate the air space within the tank and not dam up under the fill port. The inert materials will prevent your UST from collapsing and creating a sinkhole.

The LARA recommends that you hire a tank professional; such as a heating system vendor, oil supplier, or an environmental consultant; to properly drain the heating oil and clean out the tank.

Tank professionals usually list their services in the yellow pages of major city phone books. The listings can be found under, "Environmental & Ecological Services" or under "Tank". Heating oil suppliers may also know of tank professionals that are available in your area to clean and remove tanks.

Tank Disposal: Once the tank is closed and removed, the next step is to properly dispose of the tank. The DEQ recommends taking the tank to a metal recycler. Tanks can also be landfilled if the landfill operators will accept it. The yellow pages of your telephone book can be an excellent resource to locate both metal recyclers and landfills. Scrap metal recyclers can be found under the heading "Scrap Metals" and landfills under the heading "Landfills". Metal recyclers are also listed in the Michigan Recycled Materials Market Directory at www.michigan.gov/deqrecycling. A tank professional can handle the arrangements for the proper disposal of your tank. For record keeping purposes, you should retain copies of the receipts for all costs associated with the draining, cleaning, removal, and recycling of the tank. The receipts should give the name, address, and phone numbers for the companies that are providing the services.

Seller's Disclosure Act: The seller of a residential property is required to disclose any known environmental problems with the home and property under Michigan Public Act 92 of 1993 (Act 92). However, the prospective purchaser should carefully inspect the property for signs of a heating oil tank. The potential buyer should look carefully for unidentified piping jutting out from the ground, hidden under bushes near the house, or cut-off pipes sticking out of the basement wall. The aforementioned red flags could indicate the presence of a heating oil tank. If a tank has been disclosed, the potential buyer should inspect the tank for signs of a release (refer back to the "Signs of a Leaking Tank" section). The prospective purchaser would be best advised to have a home safety inspection, conducted by an experienced inspector, prior to the purchase of the house with an added emphasis on inspecting the heating oil equipment and tank. Part 201 (324.20116) also has a transfer of interest in real property notice.

INFORMATION RESOURCES

- For information on the rules and regulations regarding the installation, maintenance, or removal of heating oil tanks, release reporting, or cleanup of contamination, call the Office of Environmental Assistance at 800-662-9278.
- For the potential health effects of exposure to heating oil call the Michigan Department of Community Health, Toxics Hotline at 800-648-6942.

Copies of receipts for all costs associated with the draining, cleaning, removal and recycling of the home heating oil above-ground storage tank.

Receipts must include the name, address, and phone numbers for the companies providing the services. Copies of receipts will be attached here below:

The following receipts confirm the draining, cleaning, removal and recycling of the home heating oil above-ground storage tank located in the basement of 448 S. Huron St., Ypsilanti, MI 48197 prior to demolition:

[INSERT COPIES OF RECEIPTS HERE]



REQUEST FOR LEGISLATION

TO: Mayor and City Council
FROM: Andrew Hellenga
DATE: November 5, 2019
SUBJECT: Boards and Commission Orientation Booklet

DESCRIPTION:

Boards and Commission Orientation Booklet

SUMMARY:

City Boards and Commissions are tasked with advisory, quasi-judicial, and powers granted by state statute. Currently, there is not a mechanism in place to provide new boards and commissioners with pertinent information on how a board or commission functions.

The Human Relations Commission approved a welcome packet in May of 2019 that has served new members of the commission become acclimated to the function of a city commission. As a result of the success of that packet. The Clerk Department is recommending expanding on the HRC welcome packet as an Orientation Booklet to provide new members upon their oath of office.

CITY MANAGER APPROVAL: _____ COUNCIL AGENDA DATE: _____

CITY MANAGER COMMENTS: _____

FISCAL SERVICES DIRECTOR APPROVAL: _____



Resolution No. 2019-258
November 5, 2019

RESOLVED BY THE COUNCIL OF THE CITY OF YPSILANTI:

WHEREAS, city boards and commissions are essential to the success of City Council's governance; and

WHEREAS, new board and commission members would have greater understanding of their role if provided information regarding the function of city boards and commission; and

WHEREAS, effective and efficient board and commission members will better serve the purpose set forth in City Code.

NOW THEREFORE BE IT RESOLVED THAT the Ypsilanti City Council adopt the Board and Commission Welcome Packet and direct the City Clerk to provide said packet electronically upon the administration of the Oath of Office.

OFFERED BY: _____

SECONDED BY: _____

YES:

NO:

ABSENT:

VOTE:

This resolution is adopted by the Council of the City of Ypsilanti and approved by the Mayor this 5 day of November 2019

#Resolution No. 2019-258



City of Ypsilanti Board and Commission Orientation Booklet

On behalf of the City Council I would like to congratulate you on your appointment to a board or commission of the City of Ypsilanti. We encourage and promote community involvement by residents and your willingness to give your time to help our community is sincerely appreciated.

These advisory bodies play a valuable role in the governance process and in assisting City Council in providing the best quality of life for our residents.

This handbook is designed to provide information regarding the functions of board and commissions as allowed by city ordinance and state law.

Again, thank you for your dedication to this community, and offering your time and talents for the betterment of Ypsilanti for those that live, work, and play in this amazing city.

City Boards and Commissions

All city boards and commission operate as advisory bodies to City Council except when otherwise provided by State Statute. Board and commissioners are to be considered experts on the topics outlined in the ordinance establishing each body.

Arts Commission

The purpose of the Art Commission (YAC) is to act as an advisory body to the mayor, city council, and city manager for all things art in the City of Ypsilanti.

Board of Ethics

The Board of Ethics administers and enforces the ordinances governing the standards of conduct. The term limit for board members is five years.

Fire and Police Retirement Board

The Fire and Police Retirement Board administers the Police and Fire Pension Fund and approves pensions for police and fire personnel.

Fire Civil Service Commission

Pursuant to Civil Service Act 78, the Fire Civil Service Commission runs a civil service system based upon examination and investigation to determine merit, efficiency, and fitness for appointment, employment, and promotion of all full-time paid members appointed in the fire and police department. The Commission regulates the transfer, reinstatement, suspension, and discharge of officers, fire fighters, and police officers while prescribing penalties and providing remedies. The term length for Commissioners is 6 years.

Historic District Commission

The Historic District Commission (HDC) guides development and renovation in the Historic District in order to safeguard Ypsilanti's built resources. Any proposed work done on the exterior of a structure within the District must be reviewed by the HDC. This includes new construction, reconstruction, renovation, restoration, or painting of any property or historic landmark within the Historic District, as well as work on site features such as driveways, retaining walls, and fences.

Human Relations Commission

The Human Relations Commission supports efforts to enhance mutual understanding among the City's culturally diverse residents. The term length for Regular Commissioners is 3 years and 1 year for Youth Members.

Huron River Watershed Council

The Huron River Watershed Council is a council of the local governmental units that have jurisdiction over property in the watershed. HRWC provides water resource information and research services to member governments. Term length for members of HRWC is 2 years.

Parks and Recreation Commission

The Parks and Recreation Commission is appointed by City Council to ensure recreational programs and opportunities are afforded all citizens, by encouraging public-private partnerships between the City, local businesses, organizations, neighborhoods, Washtenaw County, and neighboring townships and by encouraging volunteerism. The goal of the Recreation Commission is to seek sustainable alternatives and methods for making recreational programming available to the citizens of the City of Ypsilanti.

Planning Commission

The Ypsilanti Planning Commission administers compliance with the City Zoning Ordinance and reviews requests for rezoning, special use permits, street or alley vacations, capital improvements, planned unit developments, and site plans. The Planning Commission is also responsible for amendments to the Master Plan and Zoning Ordinance.

Police Advisory Commission

The Police Advisory Commission works to strengthen the relationship between the community of the City of Ypsilanti and the Ypsilanti Police Department and to serve as a liaison to enhance community and police relations and serve as an advocate for programs, ideas, and methods to improve the relations between the police and the community.

Review & Tax Assessment Board

The Board of Review is tasked with hearing and deciding property assessment appeals and hardship requests. The term length for Board Members is 2 years.

SmartZone Local Development Finance Authority

The LDFA provides local financing for the Ann Arbor/Ypsilanti SmartZone through a tax capture mechanism within a specific district. The geographic boundaries for the Ann Arbor/Ypsilanti SmartZone LDFA was defined as the combined DDAs of the two respective cities, and under the tax capture formula, tax levies eligible for capture include only those for which a prior claim had not been established by either DDA.

Sustainability Commission

The Sustainability Commission will seek to create a model of sustainability through efforts to advocate, educate and promote the social, economic and environmental health of the community now and into the future.

Ypsilanti Community Utilities Authority

The Ypsilanti Community Utilities Authority (YCUA) Board oversees the activities of YCUA in providing top quality, cost effective, and environmentally safe water and wastewater to customers. Term length for Board Members is 3 years.

Ypsilanti Downtown Development Authority

The mission of the Ypsilanti Downtown Development Authority (YDDA) is to undertake district-wide improvements that have the greatest impact in strengthening the downtown areas and attracting new business. The primary goal of the YDDA is to implement positive economic, physical, aesthetic, and community changes in each of our four districts. The term length for Board Members is 4 years.

Ypsilanti Housing Commission

The Ypsilanti Housing Commission provides affordable housing opportunities to moderate and low-income families and individuals in the City of Ypsilanti. The YHC owns 342 units of affordable housing within the City. It is the project sponsor of Hamilton Crossing, a nationally recognized, award-winning 144-unit affordable housing development.

Zoning Board of Appeals

The Zoning Board of Appeals interprets the City Zoning Ordinance and the official zoning map; decides upon requests for nonuse variances from the zoning code; hears appeals regarding determinations made by an administrative official; and other activities as authorized under the zoning ordinance and the Michigan Zoning Enabling Act. The term length for Board Members is 3 years.

Purpose

This handbook is designed to serve as a guide to assist a new board and commissioner acclimate to their new role, general policies, and procedures that apply to all city advisory bodies. As a new member it is recommended that you schedule time to meet with the staff liaison of your specific board or commission. Also, refer to past meeting agendas and minutes to bring yourself up to speed on what is currently under consideration.

Boards and Commissions – 9.03 City Charter

- Council may create or discontinue, by ordinance, boards and commissions as the Council deems necessary or of benefit to the City of Ypsilanti. Council will provide for the duties and functions of boards and commissions, subject to law. **The boards and commissions shall not administer any activity, or agency of the City government unless specifically required to do so by State statute, but shall serve solely in an advisory capacity of in the capacity of a quasi-judicial appeal board.**
- All members of the City boards and commissions established under this Charter, by statute or otherwise, shall be appointed by the Mayor, subject to the approval and confirmation by a majority vote of the City Council. Council Members may be appointed by the Council to serve on a board or commission only when the service is required by State law. Whenever any statute or law requires that the appointment of members of a board or a commission established under this Charter, by statute or otherwise, be by the chief executive or administrative officer of the City, such chief executive or administrative officer, for the purposes of such appointment, shall be deemed to be the Mayor, and an appointment in such cases shall be subject to the approval and confirmation by a majority vote of the City Council.
- In addition to those reasons and limitations set forth in the ordinances creating the board or commission, members of City boards and commissions appointed under this Section may be removed from office upon a 2/3 affirmative vote of City Council for misfeasance, malfeasance, or nonfeasance in office, or as otherwise authorized by statute.

Attendance Requirement

Boards and commission benefit through the participation of all of its seated members. A quorum (majority) is required by the Michigan Open Meetings Act for a board to take any action. Members are expected to attend all meetings as attendance is necessary for a board and commission to function and be effective. If a member must miss a meeting, either as a result of illness, vacation, or long term leave the member should make the chair and staff liaison aware prior to the meeting. If a member is unable to meet this requirement a resignation is recommended. If the member has several unexcused absences they can be removed by Council through five affirmative votes.

Ethical Standards of Conduct

All City Council Members, City Officers, and City Staff are subject to Article III of the City Code. That section of the Code is included below and any questions regarding this section should be directed to the City Attorney, or staff liaison.

All Board and Commission members are required to complete and sign a conflict of interest form upon appointment. That form is included in this packet and should be submitted to the City Clerk prior to the first meeting as a member.

ARTICLE III – ETHICAL STANDARDS OF CONDUCT

Division 1

Section 46-72 – Penalty

- Any person who shall be convicted, by a court of competent jurisdiction, of violating any of the provisions of this article shall be guilty of a misdemeanor and shall be punished as provided in section 1-15.
- In addition, any person so convicted by a court of competent jurisdiction shall forfeit any city employment or office held. The office shall be vacant upon conviction.
- Any person convicted by a court of competent jurisdiction of a misdemeanor involving election fraud, or any felony, or a misdemeanor involving moral turpitude committed in the course of employment with the city, shall forfeit any city employment or office held. The office shall be vacant upon conviction.

Section 46-73 – Financial/Conflict Disclosure

- All city councilmembers, the city manager, city treasurer, city finance officer, and all city department heads, shall file an annual disclosure statement with the city clerk on or before April 15 of each year. The statement shall disclose and detail any interest of the filer in any company, business, trust or entity of any kind doing business with the city for the past year and state the type of interest, cost, income and benefits received and present value. The statement shall also include any interest of the filer's immediate family in any such company, business, trust or entity. The disclosure statement shall be a public document.
- Disclosure need not be made of benefits received from any entity when an ownership interest is the only connection, and:
 - The company has stock traded on a national exchange and the filer owns \$25,000.00 or less of stock of the entity; or
 - The stockholder owns one percent or less of the total stock by value; whichever is greater.
- Disclosure need not be made of wages or salary received from a public community college, junior college or state college or university.

Section 46-74 – Legal Process

- No city councilmember, city officer or employee of the city shall interfere with the ordinary course of law enforcement within the city, and no special favors, consideration or disposition shall be suggested to or requested of any law enforcement person of the city including city manager, police chief, police officers, ordinance officers, city attorney and/or administrative staff concerning any city law enforcement matter, including, but not limited to, parking tickets, traffic tickets, ordinance tickets or enforcement of city codes.
- This section shall not prohibit the city manager, city attorney, and all law enforcement officials from exercising the usual power, control and discretion which are part of their duties. This section shall not prohibit the mayor and city council from making policy decisions, enacting legislation, and directing the affairs of the city in accordance with their legal powers and responsibility.

Section 46-75 – Offering gifts, loans, contributions, etc., for influence

- No person shall offer or give to any of the following persons a gift, loan, contribution, forbearance, reward or promise of future employment based on an agreement, promise, or expectation that the vote or official action or decision of an officer, employee or candidate for elected office in the city would be influenced thereby:
 - A city officer, an employee of the city or a candidate for elected office in the city;

- A member of the immediate family of an individual referred to in subsection (1) of this section; or
- A business or other entity with which an individual referred to in subsection (1) or (2) of this section is associated.

Section 46-76 – Accepting gifts, loans, contributions, etc., for influence.

- No person referred to in section 46-75 shall accept a gift, loan, contribution, reward or promise of future employment based on an agreement that the vote or the official action or decision of an officer, employee or candidate for elected office in the city would be influenced thereby.
- Section 46-75 and subsection (a) of this section shall not prohibit a city officer, employee or candidate for elected office in the city from accepting minor gifts such as meals, awards, pens, pencils, and other token items valued at \$25.00 or less when the gift is extended during the course of city business and no return promise is made by the recipient.

Section 46-77 – Exceptions

- This article does not prohibit the expression of views and opinions or communications of plans for future action, nor does it prohibit contributions to political parties or candidates as permitted by law.

Section 46-78 – Disclosure of confidential information

- No city officer, employee, contractor or agent shall divulge to any unauthorized person confidential information acquired in the course of holding city office, employment or position (including but not limited to information provided, obtained or discussed in closed or executive sessions of the city council) in advance of the time authorized by the appropriate governmental body, department head, city manager or law, except as otherwise provided by law.

Section 46-79 – Prohibited use of position or confidential information

- No city of officer or employee shall make use of his public position, or any confidential information received through holding such public position, to obtain financial gain for themselves, a member of his immediate family or an associated business or organization or entity.
- This section shall not prevent any officer or employee from accepting their regular compensation.

Section 46-80 – Prohibited use of city personnel, resources, property, etc.

- No officer or employee shall make use of city personnel, resources, property or funds to obtain financial gain for themselves, a member of his immediate family or an associated business.
- This section shall not prevent any city officer or employee from benefiting a nonprofit charitable organization when authorized by proper city council, manager or other legal authority action.

Section 46-81 – Authority to make contracts

- No officer or employee shall act on behalf of the city in the making of contracts when such officer or employee has, in fact, no authority to so do.

Parliamentary Procedures

The City Council of the City of Ypsilanti currently employs the use of Robert's Rules of Order 10th Edition. While it is not required that all boards and commissions follow this format most city boards and commissions do. There is a Robert's Rules of Order cheat sheet included in this packet. Please contact your chair or staff liaison regarding current practices of your specific board or commission.

Michigan Open Meetings Act (OMA)

The Open Meetings Act took effect on January 1, 1977 to promote a new era of government accountability and foster openness in government to enhance responsible decision making. As a governmental body all city boards and commissions are subject to this act. Included in this packet is an overview of the act, please direct all questions to the City Attorney, or staff liaison.

Roles and Responsibilities

Chairperson

Each board and commission should elect a chairperson at their first meeting of the calendar year. Please ensure the person elected is aware of the responsibilities that are associated with the position.

The Chairperson will preside at all official meetings and generally ensures that the group reviews and acts upon the items on the agenda. The Chairperson shall ensure that decisions are made in a timely manner while being careful not to limit discussion.

Responsibilities of the Chair

- Preside at all official meetings of the board or commission.
- Consult with the staff liaison in drafting the meeting agenda.
- Attend City Council meetings as needed to represent the board or commission.
- Serve as a model of leadership and inspire public confidence in Ypsilanti's Government.
- Should speak last when the board or commission is deliberating.

The Chair is also the person vested with authority to:

- Call a meeting to order and propose adjournment.
- Recognize and call upon speakers.
- Call for debate and vote on motions.
- Clarify or request clarifications of motions made by members.
- Rule motions out of order.
- Interpret and enforce any meeting management bylaws or rules of procedure.
- Call members to order if they disregard rules of procedure or decorum for the meeting.

An effective Chair also:

- Solicits discussion and opinions from all members.
- Does not allow personal attacks.
- Keeps the discussion focused on the issue.

Role of Board/Commission Members

Serving on a board/commission is a privilege that implies a responsibility to act in the best interest of the City of Ypsilanti. Members serve as ambassadors of the city, and represent the interests of Ypsilanti at official meetings as well as outside City Hall. As an ambassador of the city, it is important to understand that your words and actions reflect that role at all times.

A member shall:

- Attend scheduled meetings or let the staff liaison and chair know if you are absent.
- Prepare in advance of meetings. Read the agenda packet prior to the meeting and be familiar with issues on the agenda.
- Fully participate in meetings and carry out assignments.

- Contact staff liaisons if there are questions or if additional information on an agenda item is required prior to the meeting.
- Use community members to obtain feedback on topics under consideration.
- Be considerate of fellow members and staff.
- Demonstrate respect, kindness, consideration, and courtesy to others.
- Be respectful of other people's time. Stay focused and act efficiently during meetings.
- Act and speak with honesty and integrity.
- Do not speak for the board/commission unless authorized by the action of the board/commission.

Relationship with City Council

Members serve an important role in extending the reach of the democratic process into the community. However, members should be aware of, and sensitive to, Council's need to balance priorities and goals for the entire city.

Board and Commissioners should:

- Think of themselves as advisors to the City Council and ambassadors of the city.
- Make their decisions based on the collective judgment and not try to predict what action the City Council may take.

Relationship with other Boards and Commissions

It is reasonable for boards and commission to work together on topics of overlap between said bodies. However, this should be done through formal action of the body. Boards and Commissions speak through resolution, and no member may approach another board or commission as representative of the body, or which they are a member, without formal direction.

Form of Government

The City of Ypsilanti is a Council-Manager form of government. All powers of the City shall be vested in the City Council, except as otherwise provided by law or this Charter, and Council shall provide for the exercise and for the performance of duties and obligations imposed by law (City Charter 2.01). The City Manager is the chief administrative officer of the city, responsible to Council for the administration of all City affairs placed in the Manager's charge by or under this Charter (City Charter 4.03(a)).

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ANNUAL FINANCIAL/CONFLICT OF INTEREST
BOARD AND COMMISSIONER DISCLOSURE REPORT

I, _____, commissioner, City of Ypsilanti, make the following annual report:

___ I have no interest in any company, business, trust or entity of any kind which has done business with the city of Ypsilanti during the past calendar year.

___ No member of my immediate family has any interest in any company, business, trust or entity of any kind which has done business with the city of Ypsilanti during the past calendar year.

___ I have an interest in the following company, business, trust or entity, which has done business with the City of Ypsilanti during the past calendar year:

Name: _____

The nature of my interest is as follows:

Type of Interest: _____

Cost of such interest: _____

Income and benefits received from such interest in the past year: \$_____

Present value of such interest: \$_____

___ A member of my immediate family (my _____, whose name is _____) has an interest in the following company, business, trust or entity, which has done business with the City of Ypsilanti during the past calendar year:

Name: _____

The nature of this interest is as follows:

Type of Interest: _____

Cost of such interest: _____

Income and benefits received from such interest in the past year: \$_____

Present value of such interest: \$_____

Dated: _____, 20__

Signature

Robert's Rules Cheat Sheet

To:	Say:	Interrupt Speaker	Second Needed	Debatable	Amendable	Decided by:
Adjourn	"I move to adjourn."	No	Yes	No	No	Majority vote
Recess	"I move to recess for/until..."	No	Yes	No	Yes	Majority vote
Complain about hearing, comfort, etc.	"Point of privilege..."	Yes	No	No	No	Chair
End debate and vote on question	"I move the previous question."	No	Yes	No	No	Majority vote
Suspend further consideration of something	"I move to table this matter."	No	Yes	No	No	2/3 vote
Postpone deciding the question	"I move to postpone this matter until..."	No	Yes	Yes	Yes	Majority vote
Amend a motion	"I move to amend this motion by..."	No	Yes	Yes	Yes	Majority vote
Introduce business (a main motion)	"I move that..."	No	Yes	Yes	Yes	Majority vote

The motions and points listed above are in order of preference. When a motion or point of inquiry is pending, only those listed *above* the pending point may be raised.

To:	Say:	Interrupt Speaker	Second Needed	Debatable	Amendable	Decided by:
Redress any violation of the body's Rules	"Point of order..."	Yes	No	No	No	Chair
Request information	"Point of inquiry..."	Yes	No	No	No	N/A
Verify a recent voice vote by actual count (before next motion only)	"I call for division."	Yes	No	No	No	Majority vote
Prevent body from considering a matter	"I object to considering this question."	Yes	No	No	No	2/3
Consider a suspended matter	"I move to take from the table..."	Yes	Yes	No	No	Majority
Reconsider a previous motion	"I move to reconsider..."	Yes	Yes	No	No	2/3
Consider something out of schedule	"I move to suspend the rules to consider..."	No	Yes	No	No	2/3
Vote on the Chair's decision	"I appeal the Chair's decision."	Yes	Yes	Yes	No	Majority

The motions and points above have no precedence. Any of them may be raised in response to any motion or question, with the exception of the **three items in gray** (motion to adjourn, motion to recess, and point of privilege)

MAIN MOTIONS

To Introduce New Business

Obtaining and assigning the floor

- A member raises their hand (or rises, depending on your rules) and waits to be acknowledged
- The chair recognizes the member by name

Note. It is never proper to raise your hand or rise to be acknowledged while another is speaking. If your point or motion is one of the kind that can interrupt the speaker, make your point or motion without waiting for recognition.

How the Motion is Brought Before the Assembly

- The member makes the motion: *I move that (or "to") ...* and resumes his seat.
- Another member seconds the motion: *I second the motion* or *I second it* or *second*.
- The chair states the motion: *It is moved and seconded that ... Are you ready for the question?*

Consideration of the Motion

- Members can debate main motions before the question is voted on or otherwise decided.
- Before speaking in debate, members must obtain the floor.
- The maker of the motion has first right to the floor.
- Debate must be confined to the merits of the motion.
- Debate can be closed only by order of the assembly (2/3 vote) or by the chair if no one seeks the floor for further debate.

The chair puts the motion to a vote

- The chair asks: *Are you ready for the question?*
- If no one rises to claim the floor, the chair proceeds to take the vote.
- The chair says: *The question is on the adoption of the motion that ... As many as are in favor, say 'Aye'.* (Pause for response.) *Those opposed, say 'Nay'.* (Pause for response.) *Those abstained please say 'Aye'.*
- Depending on your rules, some kinds of business may call for a vote by show of hands.

The chair announces the result of the vote.

- *The ayes have it, the motion carries, and ...* (indicating the effect of the vote) or
- *The nays have it and the motion fails*

If the count may be incorrect, a member calls for division

- If any member feels that the tally of voice votes is incorrect, they may call for division.
- Any call for division, unless the result of the previous vote was obvious (e.g. a unanimous or nearly-unanimous vote) must be honored.
- The chair will instruct the body on how to vote (e.g. by show of hands or by standing), and the body will vote accordingly.

WHEN DEBATING YOUR MOTIONS

- Listen to the other side
- Be polite
- Focus on issues, not personalities
- Avoid questioning motives

MOTIONS, GENERALLY

MAIN MOTION

You want to propose a new idea or action for the group.

- After recognition, make a main motion.
- Member: "Madame Chairman, I move that _____."

AMENDING A MOTION

You want to change some of the wording that is being discussed.

- After recognition, "Mister Chairman, I move that the motion be amended by adding the following words _____."
- After recognition, "Mister Chairman, I move that the motion be amended by striking out the following words _____."
- After recognition, "Mister Chairman, I move that the motion be amended by striking out the following words, _____, and adding in their place the following words _____."

REFER TO A COMMITTEE

You feel that an idea or proposal being discussed needs more study and investigation.

- After recognition, "Madame Chairman, I move that the question be referred to a committee made up of members Smith, Jones and Brown."

POSTPONE DEFINITELY

You want the membership to have more time to consider the question under discussion and you want to postpone it to a definite time or day, and have it come up for further consideration.

- After recognition, "Mister Chairman, I move to postpone the question until _____."

PREVIOUS QUESTION

You think discussion has gone on for too long and you want to stop discussion and vote.

- After recognition, "Madam Chairman, I move the previous question."

LIMIT DEBATE

You think discussion is getting long, but you want to give a reasonable length of time for consideration of the question. After recognition, "Mister President, I move to limit discussion to two minutes per speaker."

POSTPONE INDEFINITELY

You want to kill a motion that is being discussed.

- After recognition, "Mister Chairman, I move to postpone the question indefinitely."

RECESS

You want to take a break for a while.

- After recognition, "Mister Chairman, I move to recess for ten minutes."

ADJOURNMENT

You want the meeting to end.

MOTIONS, GENERALLY

- After recognition, "Madame Chairman, I move to adjourn."

PERMISSION TO WITHDRAW A MOTION

You have made a motion and after discussion, are sorry you made it.

- After recognition, "Mister Chairman, I ask permission to withdraw my motion."

CALL FOR ORDERS OF THE DAY

At the beginning of the meeting, the agenda was adopted. The chairman is not following the order of the approved agenda.

- Without recognition, "Call for orders of the day."

SUSPENDING THE RULES

The agenda has been approved and as the meeting progressed, it became obvious that an item you are interested in will not come up before adjournment.

- After recognition, "Madam Chairman, I move to suspend the rules and move item 5 to position 2."

POINT OF PERSONAL PRIVILEGE

The noise outside the meeting has become so great that you are having trouble hearing, or the temperature in the room is uncomfortable, or some other concern.

- Without recognition, "Point of personal privilege."
- Chairman: "State your point."
- Member: "There is too much noise, I can't hear."

COMMITTEE OF THE WHOLE

You are going to propose a question that is likely to be controversial and you feel that some of the members will try to kill it by various maneuvers. Also you want to keep out visitors and the press.

- After recognition, "Mister Chairman, I move that we go into a committee of the whole."

POINT OF ORDER

It is obvious that the meeting is not following proper rules. E.g. a motion is passed without the right kind of vote, or a member is breaking the rules of debate.

- Without recognition, "I rise to a point of order," or "Point of order."

POINT OF INQUIRY

You are wondering about some of the facts under discussion, such as the balance in the treasury when expenditures are being discussed.

- Without recognition, "point of inquiry."

POINT OF PARLIAMENTARY INQUIRY

You are confused about some of the parliamentary rules.

- Without recognition, "Point of parliamentary inquiry."

MOTIONS, GENERALLY

APPEAL FROM THE DECISION OF THE CHAIR

The Chair has made a decision that you wish the body to vote on.

- Without recognition, "I appeal from the decision of the Chair."

OPEN MEETINGS ACT HANDBOOK



Attorney General Dana Nessel

Additional copies available at mi.gov/foia-oma

The Handbook is intended to be a quick reference guide. It is not intended to be encyclopedic on every subject or resolve every situation that may be encountered.

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OPEN MEETINGS ACT

THE BASICS

The Act – the [Open Meetings Act \(OMA\)](#) is 1976 PA 267, MCL 15.261 through 15.275. The OMA took effect January 1, 1977. In enacting the OMA, the Legislature promoted a new era in governmental accountability and fostered openness in government to enhance responsible decision making.¹

Nothing in the OMA prohibits a public body from adopting an ordinance, resolution, rule, or charter provision that requires a greater degree of openness relative to public body meetings than the standards provided for in the [OMA](#).²

What bodies are covered? – the OMA applies to all meetings of a [public body](#).³ A "public body" is broadly defined as:

[A]ny state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, that is empowered by state constitution, statute, charter, ordinance, resolution, or rule to *exercise governmental or proprietary authority or perform a governmental or proprietary function*; a lessee of such a body performing an essential public purpose and function pursuant to the [lease agreement](#).⁴ [Emphasis added.]

As used in the OMA, the term "[public body](#)" connotes a collective entity and does not include an individual government official.⁵ The OMA does not apply to [private, nonprofit corporations](#).⁶

Public notice requirements – a meeting of a public body cannot be held unless public notice is given consistent with the [OMA](#).⁷ A [public notice](#) must contain the public body's name, telephone number, and address, and must be posted at its principal office and any other locations

¹ *Booth Newspapers, Inc v Univ of Michigan Bd of Regents*, 444 Mich 211, 222-223; 507 NW2d 422 (1993).

² MCL 15.261.

³ MCL 15.263. When the Handbook refers to a "board," the term encompasses all boards, commissions, councils, authorities, committees, subcommittees, panels, and any other public body.

⁴ MCL 15.262(a). The provision in the OMA that includes a lessee of a public body performing an essential public purpose is unconstitutional because the title of the act does not refer to organizations other than "public bodies." OAG, 1977-1978, No 5207, p 157 (June 24, 1977). Certain boards are excluded "when deliberating the merits of a case." MCL 15.263(7). See also MCL 15.263(8) and (10).

⁵ *Herald Co v Bay City*, 463 Mich 111, 129-133; 614 NW2d 873 (2000) – a city manager is not subject to the OMA. *Craig v Detroit Public Schools Chief Executive Officer*, 265 Mich App 572, 579; 697 NW2d 529 (2005). OAG, 1977-1978, No 5183A, p 97 (April 18, 1977).

⁶ OAG, 1985-1986, No 6352, p 252 (April 8, 1986) – the Michigan High School Athletic Association is not subject to the OMA. See also *Perlongo v Iron River Cooperative TV Antenna Corp*, 122 Mich App 433; 332 NW2d 502 (1983).

⁷ MCL 15.265(1). *Nicholas v Meridian Charter Twp*, 239 Mich App 525, 531; 609 NW2d 574 (2000).

the public body considers appropriate.⁸ If a public body is a part of a state department, a [public notice](#) must also be posted in the principal office of the state department.⁹

Public notice requirements are specific to the type of meeting:

- (1) For regular meetings of a public body, there shall be posted within 10 days after the first meeting of the public body in each calendar or fiscal year a public notice stating the dates, times, and places of its regular meetings.
- (2) For a change in schedule of regular meetings of a public body, there shall be posted within three days after the meeting at which the change is made, a public notice stating the new dates, times, and places of its regular meetings.
- (3) For a rescheduled regular or a special meeting of a public body, a public notice stating the date, time, and place of the meeting shall be posted at least 18 hours before the meeting.
- (4) A meeting of a public body which is recessed for more than 36 hours shall be reconvened only after [public notice](#) has been posted at least 18 hours before the reconvened meeting.¹⁰

At their first meeting of the calendar or fiscal year, each board must set the dates, times, and places of the board's regular meetings for the coming year. The OMA does not require any particular number of meetings. The board's schedule of regular meetings is not, of course, set in stone. The board is free to cancel or reschedule its meetings.

The minimum 18-hour notice requirement is not fulfilled if the public is denied access to the notice of the meeting for any part of the [18 hours](#).¹¹ The requirement may be met by posting at least 18 hours in advance of the meeting using a method designed to assure access to the notice. For example, the public body can post the [notice](#) at the main entrance visible on the outside of the building that houses the principal office of the public body.¹²

A public body must send copies of the public notices by first class mail to a requesting party, upon the party's payment of a yearly fee of not more than the reasonable estimated cost of printing and postage. Upon written request, a public body, at the same time a public notice of a meeting is posted, must provide a copy of the public notice to any newspaper published in the state or any radio or television station located in the state, [free of charge](#).¹³

⁸ MCL 15.264(a)-(c).

⁹ MCL 15.264(c).

¹⁰ MCL 15.265(2)-(5).

¹¹ OAG, 1979-1980, No 5724, p 840 (June 20, 1980).

¹² OAG No 5724.

¹³ MCL 15.266.

Agendas and the OMA – while the OMA requires a public body to give public notice when it meets, it has no requirement that the [public notice](#) include an agenda or a specific statement as to the purpose of a meeting.¹⁴ No agenda format is required by the OMA.¹⁵

Penalties for OMA violations – a public official who "intentionally violates" the OMA may be found guilty of a [misdemeanor](#)¹⁶ and may be [personally liable](#) for actual and exemplary damages of not more than \$500 for a single meeting.¹⁷ The exemptions in the OMA must be strictly construed. The "rule of lenity" (i.e., courts should mitigate punishment when the punishment in the criminal statute is unclear) does not apply to construction of the OMA's exemptions.¹⁸

A decision made by a public body may be invalidated by a court, if the public body has not complied with the requirements of [MCL 15.263\(1\), \(2\), and \(3\)](#) [i.e., making decisions at a public meeting] or if failure to give notice in accordance with section 5 has interfered with substantial compliance with [MCL 15.263\(1\), \(2\), and \(3\)](#) and the court finds that the noncompliance has impaired the rights of the public under the OMA.

Lawsuits to compel compliance – actions must be brought within [60 days](#) after the public body's approved minutes involving the challenged decision are made publicly available.¹⁹ If the decision involves the approval of contracts, the receipt or acceptance of bids, or the procedures pertaining to the issuance of bonds or other evidences of indebtedness, the action must be brought within [30 days](#) after the approved minutes are made publicly available.²⁰ If the decision of a state public body is challenged, venue is in [Ingham County](#).²¹

Correcting non-conforming decisions – in any case where a lawsuit has been initiated to invalidate a public body's decision on the ground that it was not made in conformity with the OMA, the public body may, without being deemed to make any admission contrary to its interest, reenact the disputed decision in conformity with the OMA. A decision reenacted in this manner shall be effective from the [date of reenactment](#) and is not rendered invalid by any deficiency in its initial enactment.²² If the board acts quickly, the reenactment may defeat a claim for attorney's fees, since plaintiffs would not be successful in "obtaining relief in the action" within the meaning of the OMA.²³

¹⁴ OAG, 1993-1994, No 6821, p 199 (October 18, 1994). But, as discussed in OAG No 6821, other statutes may require a public body to state in its notice the business to be transacted at the meeting.

¹⁵ *Lysogorski v Bridgeport Charter Twp*, 256 Mich App 297, 299; 662 NW2d 108 (2003).

¹⁶ MCL 15.272.

¹⁷ MCL 15.273.

¹⁸ *People v Whitney*, 228 Mich App 230, 244; 578 NW2d 329 (1998).

¹⁹ MCL 15.270(3)(a).

²⁰ MCL 15.270(3)(b).

²¹ MCL 15.270(4).

²² MCL 15.270(5).

²³ *Leemreis v Sherman Twp*, 273 Mich App 691, 700; 731 NW2d 787 (2007). *Felice v Cheboygan County Zoning Comm*, 103 Mich App 742, 746; 304 NW2d 1 (1981).

DECISIONS MUST BE MADE IN PUBLIC MEETINGS

All decisions must be made at a meeting open to the public – the OMA defines "decision" to mean "a determination, action, vote, or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill, or measure on which a vote by members of a public body is required and by which a [public body](#) effectuates or formulates public policy."²⁴ The OMA provides that "[a]ll decisions of a public body shall be made at a meeting open to the public," and that, with limited exceptions, "[a]ll deliberations of a public body constituting a quorum of its members shall take place at a meeting [open to the public](#)."²⁵

The OMA does not contain a "voting requirement" or any form of "formal voting requirement." A "consensus building process" that equates to decision-making would fall under the act.²⁶ For example, where board members use telephone calls or sub-quorum meetings to achieve the same intercommunication that could have been achieved in a full board or commission meeting, the members' conduct is susceptible to "round-the-horn" decision-making, which achieves the same effect as if the entire board had met publicly and formally cast its votes. A "round-the-horn" process violates the OMA.²⁷

Meeting "informally" to discuss matters – while the OMA "does not apply to a meeting which is a [social or chance gathering or conference](#) not designed to avoid this act,"²⁸ a meeting of a public body must be open to the public. The OMA does not define the terms "social or chance gathering" or "conference," and provides little direct guidance as to the precise scope of this [exemption](#).²⁹ To promote openness in government, however, the OMA is entitled to a broad interpretation and exceptions to conduct closed sessions must be construed strictly.³⁰ Thus, the [closed session exception](#) does not apply to a quorum of a public body that meets to discuss matters of public policy, even if there is no intention that the deliberations will lead to a decision on that occasion.³¹

Canvassing board members on how they might vote – an informal canvas by one member of a public body to find out where the votes would be on a particular issue does not violate the OMA,

²⁴ MCL 15.262(d).

²⁵ MCL 15.263(2) and (3).

²⁶ *Booth Newspapers, Inc v Univ of Michigan Bd of Regents*, 444 Mich at 229.

²⁷ *Booth Newspapers, Inc*, 444 Mich at 229 – "any alleged distinction between the [public body's] consensus building and a determination or action, as advanced in the OMA's definition of 'decision,' is a distinction without a difference."

²⁸ MCL 15.263(10).

²⁹ OAG, 1981-1982, No 6074, p 662, 663 (June 11, 1982).

³⁰ *Wexford County Prosecutor v Pranger*, 83 Mich App 197, 201, 204; 268 NW2d 344 (1978).

³¹ OAG, 1977-1978, No 5298, p 434, 435 (May 2, 1978). See also OAG, 1979-1980, No 5444, p 55, 56 (February 21, 1979) – anytime a quorum of a public body meets and considers a matter of public policy, the meeting must comply with the OMA's requirements. Compare OAG, 1979-1980, No 5437, p 36, 37 (February 2, 1979), where members of a public body constituting a quorum come together by chance, the gathering is exempt from the OMA; however, even at a chance meeting, matters of public policy may not be discussed by the members with each other.

so long as no decisions are made during the discussions and the discussions are not a deliberate attempt to avoid the OMA.³²

May a quorum of a board gather outside an open meeting without violating the OMA? – yes, in some instances. In addition to a purely [social gathering or chance gathering](#)³³ that does not involve discussions of public policy among the members of the board, a quorum may accept an invitation to address a [civic organization](#),³⁴ listen to the concerns of a neighborhood organization, or observe demonstrations, if the board doesn't deliberate toward, or make, a [decision](#).³⁵

A board quorum also may meet for a workshop, seminar, informational gathering, or professional conference designed to convey, to the conference participants, information about areas of [professional interest](#) common to all conference participants.³⁶ These kinds of meetings involve a conference designed primarily to provide training or background information and involve a relatively broad focus upon issues of general concern, rather than a more limited focus on matters or issues of [particular interest](#) to a single public body.³⁷ However, when gatherings are designed to receive input from officers or employees of the public body, the OMA requires that the gathering be held at a [public meeting](#).³⁸

The OMA was not violated when several members of the board of county commissioners attended a public meeting of the county planning committee (which had more than fifty members, two who were county commissioners), which resulted in a quorum of the board being present at the meeting (without the meeting also being noticed as a county commission meeting), so long as the nonmember commissioners did not engage in deliberations or render [decisions](#).³⁹

Advisory committees and the OMA – the OMA does not apply to committees and subcommittees composed of less than a quorum of the full public body if they "are merely [advisory](#) or only capable of making 'recommendations concerning the exercise of governmental authority.'"⁴⁰

Where, on the other hand, a committee or subcommittee is empowered to act on matters in such a fashion as to deprive the full public body of the opportunity to consider a matter, a decision of the committee or subcommittee "is an exercise of governmental authority which effectuates

³² *St Aubin v Ishpeming City Council*, 197 Mich App 100, 103; 494 NW2d 803 (1992).

³³ OAG, 1979-1980, No 5437, p 36 (February 2, 1979).

³⁴ OAG, 1977-1978, No 5183, p 21, 35 (March 8, 1977).

³⁵ OAG, 1977-1978, No 5364, p 606, 607 (September 7, 1978).

³⁶ OAG, 1979-1980, No 5433, p 29, 31 (January 31, 1979).

³⁷ OAG, 1981-1982, No 6074, at p 664.

³⁸ OAG No 5433 at p 31.

³⁹ OAG, 1989-1990, No 6636, p 253 (October 23, 1989), cited with approval in *Ryant v Cleveland Twp*, 239 Mich App 430, 434-435; 608 NW2d 101 (2000) and *Nicholas v Meridian Charter Twp*, 239 Mich App at 531-532. If, however, the noncommittee board members participate in committee deliberations, the OMA would be violated. *Nicholas*, 239 Mich App at 532.

⁴⁰ OAG, 1997-1998, No 6935, p 18 (April 2, 1997); OAG No 5183 at p 40.

public policy" and the committee or subcommittee proceedings are, therefore, subject to the [OMA](#).⁴¹

If a joint meeting of two committees of a board (each with less than a quorum of the board) results in the presence of a quorum of the board, the board must comply in all respects with the OMA and notice of the joint meeting must include the fact that a [quorum](#) of the board will be present.⁴²

Use of e-mail or other electronic communications among board members during an open meeting – e-mail, texting, or other forms of electronic communications among members of a board or commission during the course of an open meeting that constitutes deliberations toward decision-making or actual decisions violates the OMA, since it is in effect a "closed" session. While the OMA does not require that all votes by a public body must be by roll call, voting requirements under the act are met when a vote is taken by roll call, show of hands, or other method that informs the public of the public official's decision rendered by his or her vote. Thus, the OMA bars the use of e-mail or other electronic communications to conduct a secret ballot at a public meeting, since it would prevent citizens from knowing how members of the public body have [voted](#).⁴³

Moreover, the use of electronic communications for discussions or deliberations, which are not, at a minimum, able to be heard by the public in attendance at an open meeting are contrary to the OMA's core purpose – the promotion of openness in government.⁴⁴

Using e-mail to distribute handouts, agenda items, statistical information, or other such material during an open meeting should be permissible under the OMA, particularly when copies of that information are also made available to the public before or during the meeting.

⁴¹ *Schmiedicke v Clare School Bd*, 228 Mich App 259, 261, 263-264; 577 NW2d 706 (1998); *Morrison v East Lansing*, 255 Mich App 505; 660 NW2d 395 (2003); and OAG, 1997-1998, No 7000, p 197 (December 1, 1998) – a committee composed of less than a quorum of a full board is subject to the OMA, if the committee is effectively authorized to determine whether items will or will not be referred for action by the full board, citing OAG, 1977-1978, No 5222, p 216 (September 1, 1977).

⁴² OAG, 1989-1990, No 6636, at p 254.

⁴³ See *Esperance v Chesterfield Twp*, 89 Mich App 456, 464; 280 NW2d 559 (1979) and OAG, 1977-1978, No 5262, p 338 (January 31, 1978).

⁴⁴ See *Booth Newspapers, Inc*, 444 Mich at 229; *Schmiedicke*, 228 Mich App at 263, 264; and *Wexford County Prosecutor*, 83 Mich App at 204.

CLOSED SESSIONS

Meeting in closed session – a public body may meet in a [closed session](#) *only* for one or more of the permitted purposes specified in section 8 of the OMA.⁴⁵ The [limited purposes](#) for which closed sessions are permitted include, among others⁴⁶:

- (1) To consider the dismissal, suspension, or disciplining of, or to hear complaints or charges brought against, or to consider a periodic personnel evaluation of, a public officer, employee, staff member, or individual agent, *if the named person requests a [closed hearing](#)*.⁴⁷
- (2) For strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement *if either negotiating party requests a [closed hearing](#)*.⁴⁸
- (3) To consider the purchase or lease of real property up to the time an option to purchase or lease that [real property](#) is obtained.⁴⁹
- (4) To consult with its attorney regarding trial or settlement strategy in connection with specific pending litigation, *but only if an [open meeting](#) would have a detrimental financial effect on the litigating or settlement position of the public body*.⁵⁰
- (5) To review and consider the contents of an application for employment or appointment to a public office *if the candidate requests that the application remain confidential*. However, all [interviews](#) by a public body for employment or appointment to a public office shall be held in an open meeting pursuant to this act.⁵¹
- (6) To consider material [exempt](#) from discussion or disclosure by state or federal statute.⁵² But note – a board is not permitted to go into closed session to discuss an attorney's oral opinion, as opposed to a written legal memorandum.⁵³

A closed session must be conducted during the course of an open meeting – section 2(c) of the OMA defines "[closed session](#)" as "a meeting or part of a meeting of a public body that is

⁴⁵ MCL 15.268. OAG, 1977-1978, No 5183, at p 37.

⁴⁶ The other permissible purposes deal with public primary, secondary, and post-secondary student disciplinary hearings – section 8(b); state legislature party caucuses – section 8(g); compliance conferences conducted by the Michigan Department of Community Health – section 8(i); and public university presidential search committee discussions – section 8(j).

⁴⁷ MCL 15.268(a) (Emphasis added.)

⁴⁸ MCL 15.268(c) (Emphasis added.)

⁴⁹ MCL 15.268(d).

⁵⁰ MCL 15.268(e) (Emphasis added.)

⁵¹ MCL 15.268(f) (Emphasis added.)

⁵² MCL 15.268(h).

⁵³ *Booth Newspapers, Inc v Wyoming City Council*, 168 Mich App 459, 467, 469-470; 425 NW2d 695 (1988).

closed to the public."⁵⁴ Section 9(1) of the OMA provides that the [minutes](#) of an open meeting must include "the purpose or purposes for which a closed session is held."⁵⁵

Going into closed session – section 7(1) of the [OMA](#)⁵⁶ sets out the procedure for calling a closed session:

A 2/3 roll call vote of members elected or appointed and serving is required to call a closed session, except for the closed sessions permitted under section 8(a), (b), (c), (g), (i), and (j). The roll call vote and the purpose or purposes for calling the closed session shall be entered into the minutes of the meeting at which the vote is taken.

Thus, a public body may go into closed session only upon a motion duly made, seconded, and adopted by a [2/3 roll call vote](#) of the members appointed and serving⁵⁷ during an open meeting for the purpose of (1) considering the purchase or lease of real property, (2) consulting with their attorney, (3) considering an employment application, or (4) considering material exempt from disclosure under state or federal law. A majority vote is sufficient for going into closed session for the other OMA permitted purposes.

We suggest that every motion to go into closed session should cite one or more of the permissible purposes listed in section 8 of the [OMA](#).⁵⁸ An example of a motion to go into closed session is:

I move that the Board meet in closed session under section 8(e) of the Open Meetings Act, to consult with our attorney regarding trial or settlement strategy in connection with [the name of the specific lawsuit].

Another example is the need to privately discuss with the public body's attorney a memorandum of advice as permitted under section 8(h) of the OMA – "to consider material [exempt](#) from discussion or disclosure by state or federal statute."⁵⁹ The motion should cite section 8(h) of the OMA and the statutory basis for the closed session, such as section 13(1)(g) of the [Freedom of Information Act](#), which exempts from public disclosure "[i]nformation or records subject to the attorney-client privilege."⁶⁰

Leaving a closed session – the OMA is silent as to how to leave a closed session. We suggest that you recommend a motion be made to end the closed session with a majority vote needed for

⁵⁴ MCL 15.262(c).

⁵⁵ MCL 15.269(1).

⁵⁶ MCL 15.267(1).

⁵⁷ And not just those attending the meeting. OAG No 5183 at p 37.

⁵⁸ MCL 15.268.

⁵⁹ MCL 15.268(h). Proper discussion of a written legal opinion at a closed meeting is, with regard to the attorney-client privilege exemption to the OMA, limited to the meaning of any strictly legal advice presented in the written opinion. *People v Whitney*, 228 Mich App at 245-248.

⁶⁰ MCL 15.243(1)(g).

approval. Admittedly, this is a decision made in a closed session, but it certainly isn't a decision that "effectuates or formulates public policy."

When the public body has concluded its closed session, the open meeting minutes should state the time the public body reconvened in open session and, of course, any votes on matters discussed in the closed session must occur in an open meeting.

Decisions must be made during an open meeting, not the closed session – section 3(2) of the OMA requires that "[a]ll decisions of a public body shall be made at a meeting [open to the public](#)."⁶¹ Section 2(d) of the OMA defines "[decision](#)" to mean "a determination, action, vote, or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill, or measure on which a vote by members of a public body is required and by which a public body effectuates or formulates public policy."⁶²

Avoid using the terms "closed session" and "executive session" interchangeably – we suggest that a public body not use the term "executive session" to refer to a "closed session." The term "executive session" does not appear in the OMA, but "closed session" does. "Executive session" is more of a private sector term and is often used to describe a private session of a board of directors, which is not limited as to purpose, where actions can be taken, and no minutes are recorded.

Staff and others may join the board in a closed session – a public body may rely upon its officers and employees for [assistance](#) when considering matters in a closed session. A public body may also request private citizens to assist, as appropriate, in its considerations.⁶³

Forcibly excluding persons from a closed session – a public body may, if necessary, exclude an [unauthorized individual](#) who intrudes upon a closed session by either (1) having the individual forcibly removed by a law enforcement officer, or (2) by recessing and removing the closed session to a new location.⁶⁴

⁶¹ MCL 15.263(2). *St Aubin v Ishpeming City Council*, 197 Mich App at 103. See also, OAG, 1977-1978, No 5262, at p 338-339 – the OMA prohibits a voting procedure at a public meeting which prevents citizens from knowing how members of the public body have voted and OAG, 1979-1980, No 5445, p 57 (February 22, 1979) – a public body may not take final action on any matter during a closed meeting.

⁶² MCL 15.262(d).

⁶³ OAG, 1979-1980, No 5532, p 324 (August 7, 1979).

⁶⁴ OAG, 1985-1986, No 6358, p 268 (April 29, 1986), citing *Regents of the Univ of Michigan v Washtenaw County Coalition Against Apartheid*, 97 Mich App 532; 296 NW2d 94 (1980).

PUBLIC ATTENDING OPEN MEETINGS

Excluding individuals – no one may be excluded from a meeting otherwise open to the public except for a [breach of the peace](#) actually committed at the meeting.⁶⁵

Identifying public attendees – no one may be required to register or otherwise provide his or her name or other information or otherwise to fulfill a [condition](#) precedent to attend a public meeting.⁶⁶

Building security at the meeting site may cause issues. Members of the public might object, based on the [OMA](#), to signing in to gain access to the building where a public meeting is being held.⁶⁷ We, therefore, recommend that public bodies meet in facilities or areas not subject to public access restrictions.

If the public body wishes the members of the public to identify themselves at the meeting, we suggest the board chair announce something like this:

The Board would appreciate having the members of the public attending the meeting today identify themselves and mention if they would like the opportunity to speak during the public comment period. However, you do not need to give your name to attend this meeting. When the time comes to introduce yourself and you do not want to do so, just say pass.

Since speaking at the meeting is a step beyond "attending" the public meeting and the OMA provides that a person may address the public body "under rules established and recorded by the public body," the board may establish a [rule](#) requiring individuals to identify themselves if they wish to speak at a meeting.⁶⁸

Limiting public comment – a public body may adopt a [rule](#) imposing individual time limits for members of the public addressing the public body.⁶⁹ In order to carry out its responsibilities, the board can also consider establishing rules allowing the chairperson to encourage groups to designate one or more individuals to speak on their behalf to avoid cumulative comments. But a [rule](#) limiting the period of public comment may not be applied in a manner that denies a person the right to address the public body, such as by limiting all public comment to a half-hour period.⁷⁰

⁶⁵ MCL 15.263(6).

⁶⁶ MCL 15.263(4).

⁶⁷ In addition, "[a]ll meetings of a public body . . . shall be held in a place available to the general public." MCL 15.263(1).

⁶⁸ MCL 15.263(5). OAG, 1977-1978, No 5183, at p 34.

⁶⁹ OAG, 1977-1978, No 5332, p 536 (July 13, 1978). The rule must be duly adopted and recorded. OAG, 1977-1978, No 5183, at p 34.

⁷⁰ OAG No 5332 at p 538.

Meeting location – the [OMA](#) only requires that a meeting be held "in a place available to the general public;" it does not dictate that the meeting be held within the geographical limits of the public body's jurisdiction.⁷¹ However, if a meeting is held so far from the public which it serves that it would be difficult or inconvenient for its citizens to attend, the meeting may not be considered as being held at a place available to the general public. Whenever possible, the meeting should be held within the public body's geographical boundaries.

Timing of public comment – a public body has discretion under the OMA when to schedule [public comment](#) during the meeting.⁷² Thus, scheduling public comment at the beginning⁷³ or the [end](#)⁷⁴ of the meeting agenda does not violate the OMA. The public has no right to address the [commission](#) during its deliberations on a particular matter.⁷⁵

Taping and broadcasting – the [right](#) to attend a public meeting includes the right to tape-record, videotape, broadcast live on radio, and telecast live on television the proceedings of a public body at the public meeting.⁷⁶ A board may establish reasonable [regulations](#) governing the televising or filming by the electronic media of a hearing open to the public in order to minimize any disruption to the hearing, but it may not prohibit such coverage.⁷⁷ And the exercise of the [right](#) to tape-record, videotape, and broadcast public meetings may not be dependent upon the prior approval of the public body.⁷⁸

⁷¹ OAG, 1979-1980, No 5560, p 386 (September 13, 1979). Of course, local charter provisions or ordinances may impose geographical limits on public body meetings.

⁷² MCL 15.263(5).

⁷³ *Lysogorski v. Bridgeport Charter Twp*, 256 Mich App at 302.

⁷⁴ OAG, 1979-1980, No 5716, p 812 (June 4, 1980).

⁷⁵ OAG, 1977-1978, No 5310, p 465, 468 (June 7, 1978).

⁷⁶ MCL 15.263(1).

⁷⁷ OAG, 1987-1988, No 6499, p 280 (February 24, 1988).

⁷⁸ MCL 15.263(1).

MINUTES

What must be in the minutes – at a minimum, the minutes must show the date, time, place, members present, members absent, any decisions made at a meeting open to the public, and the purpose or purposes for which a closed session is held. The [minutes](#) must include all roll call votes taken at the meeting.⁷⁹ The OMA does not prohibit a public body from preparing a more detailed set of minutes of its public meetings if it chooses to do so.⁸⁰

When must the minutes be available – proposed minutes must be made available for public inspection within eight days after the applicable meeting. Approved [minutes](#) must be made available for public inspection within five days after the public body's approval.⁸¹

When must the minutes be approved – at the board's [next meeting](#).⁸² Corrected minutes must show both the original entry and the correction (for example, using a "strikethrough" word processing feature).

Closed session minutes – a separate set of minutes must be taken for closed sessions. While closed session minutes must be approved in an open meeting (with contents of the minutes kept confidential), the board may meet in [closed session](#) to consider approving the minutes.⁸³

Closed session minutes shall only be disclosed if required by a civil action filed under sections 10, 11, or 13 of the [OMA](#).⁸⁴ The board secretary may furnish the minutes of a closed session of the body to a board member. A member's [dissemination](#) of closed session minutes to the public, however, is a violation of the OMA, and the member risks criminal prosecution and civil penalties.⁸⁵ An audiotape of a closed session meeting of a public body is part of the minutes of the session meeting and, thus, must be filed with the clerk of the public body for retention under the OMA.⁸⁶

Closed session minutes may be [destroyed](#) one year and one day *after approval of the minutes of the regular meeting at which the closed session occurred*.⁸⁷

⁷⁹ MCL 15.269(1).

⁸⁰ Informational letter to Representative Jack Brandenburg from Chief Deputy Attorney General Carol Isaacs dated May 8, 2003.

⁸¹ MCL 15.269(3).

⁸² MCL 15.269(1)

⁸³ OAG, 1985-1986, No 6365, p 288 (June 2, 1986). This, of course, triggers the need for more closed session minutes.

⁸⁴ MCL 15.270, 15.271, and 15.273; *Local Area Watch v Grand Rapids*, 262 Mich App 136, 143; 683 NW2d 745 (2004); OAG, 1985-1986 No 6353, p 255 (April 11, 1986).

⁸⁵ OAG, 1999-2000, No 7061, p 144 (August 31, 2000).

⁸⁶ *Kitchen v Ferndale City Council*, 253 Mich App 115; 654 NW2d 918 (2002).

⁸⁷ MCL 15.267(2).

Inadvertent omissions from the minutes – the OMA does not invalidate a decision due to a simple error in the minutes, such as inadvertently omitting the vote to go into closed session from a meeting's minutes.⁸⁸

⁸⁸ *Willis v Deerfield Twp*, 257 Mich App 541, 554; 669 NW2d 279 (2003).

PARLIAMENTARY PROCEDURES

Core principle – for the actions of a public body to be valid, they must be approved by a [majority vote](#) of a quorum, absent a controlling provision to the contrary, at a lawfully convened meeting.⁸⁹

QUORUM

Quorum – is the minimum number of members who must be present for a board to act. Any substantive action taken in the absence of a quorum is invalid. If a public body properly notices the meeting under OMA, but lacks a quorum when it actually convenes, the board members in attendance may receive reports and comments from the public or staff, ask questions, and comment on matters of interest.⁹⁰

What is the quorum? – look to the statute, charter provision, or ordinance creating the board. On the state level, the Legislature in recent years has taken care to set the board quorum in the statute itself. The statute will often provide that "a majority of the board appointed and serving shall constitute a quorum." For a 15-member board, that means eight would be the quorum, assuming you have 15 members appointed and serving. Without more in the statute, as few as five board members could then decide an issue, since they would be a majority of a [quorum](#).⁹¹ But, be careful, recent statutes often provide that "voting upon action taken by the board shall be conducted by [majority vote](#) of the members appointed and serving." In that instance, the board needs at least eight favorable votes to act.⁹² The Legislature has a backstop statute, which provides that any provision that gives "joint authority to 3 or more public officers or other persons shall be construed as giving such authority to a majority of such officers or other persons, unless it shall be otherwise expressly declared in the law giving the authority."⁹³

Disqualified members – a member of a public body who is disqualified due to a [conflict of interest](#) may not be counted to establish a quorum to consider that matter.⁹⁴

⁸⁹ OAG, 1979-1980, No 5808, p 1060 (October 30, 1980). Robert's Rules of Order Newly Revised (RRONR) (10th ed.), p 4. We cite to Robert's Rules in this Handbook as a leading guide on parliamentary procedures. This is not to imply that public bodies are, as a general rule, bound by Robert's Rules.

⁹⁰ OAG, 2009-2010, No 7235, p (October 9, 2009).

⁹¹ See OAG, 1977-1978, No 5238, p 261 (November 2, 1977).

⁹² See OAG, 1979-1980, No 5808, at p 1061.

⁹³ MCL 8.3c. *Wood v Bd of Trustees of the Policemen and Firemen Retirement System of Detroit*, 108 Mich App 38, 43; 310 NW2d 39 (1981).

⁹⁴ OAG, 1981-1982, No 5916, p 218 (June 8, 1981). But see MCL 15.342a, which provides a procedure for disqualified public officials to vote in some limited circumstances where a quorum is otherwise lacking for a public body to conduct business.

Losing a quorum – even if a meeting begins with a quorum present, the board loses its right to conduct substantive action whenever the attendance of its members falls below the necessary quorum.⁹⁵

Resigned members – the common law rule in Michigan is that a public officer's resignation is not effective until it has been accepted by the appointing authority (who, at the state level, is usually the governor). Acceptance of the [resignation](#) may be manifested by formal acceptance or by the appointment of a successor.⁹⁶ Thus, until a resignation is formally accepted or a successor appointed, the resigning member must be considered "appointed and serving," be counted for quorum purposes, and be permitted to vote.

⁹⁵ RRONR (10th ed.), p 337-338.

⁹⁶ OAG, 1985-1986, No 6405, p 429, 430 (December 9, 1986), citing *Clark v Detroit Bd of Education*, 112 Mich 656; 71 NW 177 (1897).

VOTING

Abstain – means to refuse to vote. Thus, a board member does not "vote" to abstain. If a vote requires a majority or a certain percentage of the members present for approval, an abstention has the same effect as a "no" vote.⁹⁷

Adjourning the meeting - a presiding officer cannot arbitrarily adjourn a meeting without first calling for a vote of the members present.⁹⁸

Chairperson voting – perhaps as a spillover from the well-known constitutional rule that the vice president can only vote to break a tie in the United States Senate⁹⁹ or that a legislative presiding officer usually refrains from voting unless his or her vote affects the result,¹⁰⁰ some believe that a board's presiding officer (usually, the chairperson) can only vote to break a tie. However, absent a contrary controlling provision, all board members may [vote](#) on any matter coming before a board.¹⁰¹ A board's presiding officer can't vote on a motion and then, if the vote is tied, vote to break the tie unless explicitly authorized by law.¹⁰²

Expired-term members – look first to the statute, charter provision, or ordinance creating the public body. Many statutes provide that "a member shall serve until a successor is appointed." Absent a contrary controlling provision, the general rule is that a public officer holding over after his or her term expires may [continue](#) to act until a successor is appointed and qualified.¹⁰³

Imposing a greater voting requirement – where the Legislature has required only a majority vote to act, public bodies can't impose a greater voting requirement, such as requiring a two-thirds vote of its members to [alter](#) certain policies or bylaws.¹⁰⁴

Majority – means simply "more than half."¹⁰⁵ Thus, on a 15-member board, eight members constitute a majority.

⁹⁷ RRONR (10th ed.), p 390-395.

⁹⁸ *Dingwall v Detroit Common Council*, 82 Mich 568, 571; 46 NW 938 (1890).

⁹⁹ US Const, art I, §3.

¹⁰⁰ RRONR (10th ed.), p 392-393 – an assembly's presiding officer can break or create a tie vote.

¹⁰¹ See OAG, 1981-1982, No 6054, p 617 (April 14, 1982).

¹⁰² *Price v Oakfield Twp Bd*, 182 Mich 216; 148 NW 438 (1914).

¹⁰³ OAG, 1979-1980, No 5606, p 493 (December 13, 1979), citing *Greyhound Corp v Public Service Comm*, 360 Mich 578, 589-590; 104 NW2d 395 (1960). See also, *Cantwell v City of Southfield*, 95 Mich App 375; 290 NW2d 151 (1980).

¹⁰⁴ OAG, 1979-1980, No 5738, p 870 (July 14, 1980). OAG, 2001-2002, No 7081, p 27 (April 17, 2001), citing *Wagner v Ypsilanti Village Clerk*, 302 Mich 636; 5 NW2d 513 (1942).

¹⁰⁵ RRONR (10th ed.), p 387.

Proxy voting – the OMA requires that the deliberation and formulation of decisions effectuating public policy be conducted at open meetings.¹⁰⁶ Voting by proxy effectively forecloses any involvement by the absent board member in the board's public discussion and deliberations before the board votes on a matter effectuating public policy.¹⁰⁷ Without explicit statutory authority, this [practice](#) is not allowed.¹⁰⁸

Roll call vote – there is no bright line rule for conducting a [roll call vote](#).¹⁰⁹ We suggest some rules of thumb. One, when a voice vote reveals a divided vote on the board (i.e., more than one no vote), a roll call vote should be conducted to remove doubt about the vote's count. Two, if you have board members participating by teleconference, a roll call will permit the secretary to accurately record the entire vote. Three, when the board is acting on matters of significance, such as, contracts of substantial size or decisions that will have multi-year impacts, a roll call vote is the best choice.

Round-robin voting – means approval for an action outside of a public meeting by passing around a sign-off sheet. This practice has its roots in the legislative committee practice of passing around a tally sheet to gain approval for discharging a bill without a committee meeting. "[Round-robinning](#)" defeats the public's right to be present and observe the manner in which the body's decisions are made and violates the letter and the spirit of the OMA.¹¹⁰

Rule of necessity – if a state agency's involvement in prior administrative or judicial proceedings involving a party could require recusal of all of its board members or enough of them to prevent a quorum from assembling, the common law rule of necessity precludes recusing all members, if the disqualification would leave the agency unable to adjudicate a question.¹¹¹ But the rule of necessity may not be applied to allow members of a public body to vote on matters that could benefit their [private employer](#).¹¹²

¹⁰⁶ *Esperance v Chesterfield Twp*, 89 Mich App at 464, quoting *Wexford County Prosecutor v Pranger*, 83 Mich App 197; 268 NW2d 344 (1978).

¹⁰⁷ Robert's Rules concur: "Ordinarily it [proxy voting] should neither be allowed nor required, because proxy voting is incompatible with the essential characteristics of a deliberative assembly in which membership is individual, personal, and nontransferable." RRONR (10th ed.), p 414. The Michigan House and Senate do not allow proxy voting for their members.

¹⁰⁸ OAG, 2009-2010, No 7227, p (March 19, 2009). OAG, 1993-1994, No 6828, p 212 (December 22, 1994), citing *Dingwall*, 82 Mich at 571, where the city council counted and recorded the vote of absent members in appointing election inspectors. The Michigan Supreme Court rejected these appointments, ruling that "the counting of absent members and recording them as voting in the affirmative on all questions, was also an inexcusable outrage."

¹⁰⁹ "The fact that the Open Meetings Act prohibits secret balloting does not mean that all votes must be roll call votes." *Esperance v Chesterfield Twp*, 89 Mich App at 464 n 9. The OMA does provide that votes to go into closed session must be by roll call. MCL 15.267.

¹¹⁰ OAG, 1977-1978, No 5222, at p 218. See also, *Booth Newspapers*, 444 Mich at 229, which concluded that "round-the-horn" deliberations can constitute decisions under the OMA.

¹¹¹ *Champion's Auto Ferry, Inc v Michigan Public Service Comm*, 231 Mich App 699; 588 NW2d 153 (1998). The Court noted that the PSC members did not have any personal financial interest in the matter. *Id.* at 708-709.

¹¹² OAG, 1981-1982, No 6005, p 439, 446 (November 2, 1981). After OAG No 6005 was issued, the Legislature amended section 2a of 1973 PA 196, MCL 15.342a, to provide a procedure for voting by public officials in some limited circumstances where a quorum is otherwise lacking for a public entity to conduct business.

Secret ballot – the OMA requires that all decisions and deliberations of a public body must be made at an open meeting and the term "[decision](#)" is defined to include voting.¹¹³ The OMA prohibits a "[voting procedure](#)" at a public meeting that prevents citizens from knowing how members of a public body have voted."¹¹⁴ Obviously, the use of a secret ballot process would prevent this transparency. All board decisions subject to the OMA must be made by a public vote at an open meeting.¹¹⁵

Tie vote – a tie vote on a motion means that the motion did not gain a majority. Thus, the motion fails.¹¹⁶

¹¹³ See MCL 15.262(d) and 15.263(2) and (3).

¹¹⁴ OAG, 1977-1978, No 5262, at p 338-339.

¹¹⁵ *Esperance*, 89 Mich App at 464.

¹¹⁶ *Rouse v Rogers*, 267 Mich 338; 255 NW 203 (1934). RRONR (10th ed.), p 392.



Resolution No. 2019-002
October 24, 2019

RESOLVED BY THE POLICE ADVISORY COMMISSION OF THE CITY OF YPSILANTI:

That the Police Advisory Commission recommends City Council amend City Ordinance 1295 that created the Police Advisory Commission as proposed in the attached document.

OFFERED BY: Commissioner Humes

SUPPORTED BY: Commissioner Berkovitz

YES: 5 NO: 0 ABSENT: 0 VOTE: Carried

I do hereby certify that the above resolution is a true and correct copy of Resolution 2019-002 as passed by the Ypsilanti Police Advisory Commission, at their meeting held on October 24, 2019.

Andrew Hellenga, City Clerk



**CITY OF YPSILANTI
NOTICE OF ADOPTED
ORDINANCE
Ordinance No. 1295**

An ordinance to establish the Ypsilanti Police Advisory Commission

1. THE CITY OF YPSILANTI HEREBY ORDAINS that Chapter 2, Article IV of the Ypsilanti City Code of Ordinances is hereby amended to add a new Division 6, as follows:

DIVISION 6. POLICE ADVISORY COMMISSION
Section 2.200. Created.

Pursuant to Ypsilanti City Charter section 9.03, there is hereby created a commission known as the "Ypsilanti Police Advisory Commission."

Section 2.201. Purpose.

The purpose of the Ypsilanti Police Advisory Commission is:

- a. To strengthen the relationship between the community of the City of Ypsilanti and the Ypsilanti Police Department.
- b. To serve as a liaison to enhance community and police relations and serve as an advocate for programs, ideas, and methods to improve the relations between the police and the community
- c. To Review police complaint investigatory findings, and report to council on the Commission's analysis of these findings
- d. To collect, review, and audit summary data and compile aggregate statistics relating to individual or community police complaints and other issues of importance
- e. To educate the public about complaint process, and ensure and recommend ways to make the process accessible to all
- f. To make recommendations to the City Manager with regard to organizational matters and procedures.
- g. To participate in annual review of the Ypsilanti Police Department's Citizen Police Academy.
- h. To consult and advise the City Manager on the Ypsilanti Police Department's strategic plan.

Section 2.202. Appointment and Terms.

The Ypsilanti Police Advisory Commission shall consist of 7 members and a non-voting youth member. All members to the Ypsilanti Police Advisory Commission shall be appointed by the Mayor, with the approval and confirmation of a majority of City Council. There shall be at least one member from each Ward.

The term of members of the Ypsilanti Police Advisory Commission shall be three years, except that of the members first appointed. Terms shall be staggered as far as practicable. Members shall be appointed for a maximum of two full terms.

—Diversity in Membership – The Ypsilanti City Council shall endeavor to ensure that (a) the Commission is representative, as much as possible, to the diversity of Ypsilanti's population, including income level, race, ethnicity, age, gender, sexual orientation, and experience; (b) segments of the community that are vulnerable and have been marginalized, and that tend to have significant interactions with the police, are represented (c) commissioners have a verity of skills, expertise, and life experiences bearing on the work of the commission.

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Section 2.203. Duties.

The duties of the Ypsilanti Police Advisory Commission shall be to:

- a. Establish and update rules by-laws for the transaction of its business, subject to the approval of the City Council. Such rules and by-laws shall be in a manner not inconsistent with this Article, other City ordinances, the City Charter, or laws of the state and federal government.
- b. Elect officers, including a chair.
- c. Establish and maintain a meeting schedule and meet at least quarterly.
- d. Take all necessary action to fulfill the purpose for the Ypsilanti Police Advisory Commission as stated in this Division.
- e. To file a written report of its activities, findings, and recommendations, if any, to City Council at least annually.

Section 2.204. Procedure.

Procedure for the operation of the Ypsilanti Police Advisory Commission shall be as follows:

- a. A majority of the Ypsilanti Police Advisory Commission members appointed shall constitute a quorum.
- b. No meeting of the Ypsilanti Police Advisory Commission shall commence or continue in the absence of a quorum.
- c. A majority vote of those forming a quorum shall be required for any action by the Ypsilanti Police Advisory Commission, except where otherwise specified in this Article, other City ordinances, or the City Charter.
- d. Regular meetings of Ypsilanti Police Advisory Commission shall be held no less than quarterly. Any scheduled meeting may be rescheduled at the

- preceding regular meeting.
- e. The records of the Ypsilanti Police Advisory Commission shall be subject to the Freedom of Information Act, Act No. 442 of the Public Acts of Michigan of 1976 (MCL 15.231 et seq.), as amended.
 - f. All meetings of the Ypsilanti Police Advisory Commission shall be subject to the Open Meetings Act, Act No. 267 of the Public Acts of Michigan of 1967 (MCL 15.261 et seq.), as amended.
 - g. The Ypsilanti Police Advisory Commission shall provide an opportunity for public comment as to the business being conducted by the Ypsilanti Police Advisory Commission, pursuant to its established rules and by-laws.

Section 2.205 – Incident Review

- a. The Commission shall have the authority to review and examine the sections of the Department with respect to individual incidents after the Department has acted. The review extends to both the conduct of the police officers involved in the incident and to those police officers who examine the incident for disciplinary or other purposes. The Commission's review and examination shall not precede or be concurrent with Department actions except by resolution of the Commission, but shall occur after the department and city have complete all proceedings, generally.
- b. The Commission holds the authority to question any additional parties that may have information regarding the complaint.
- c. Filing a Complaint
 - a. Any individual, whether or not involved in the incident in question and without respect to citizenship or residence, may file a complaint with the commission of the department. The commission shall not inquire about any complaint's immigration status or gender identity.
- d. Contents of Report – The commission's final report with respect to an incident shall state its conclusions, including (a) whether under the facts and circumstances there was any inappropriate conduct by the police; (b) what the response of the department and, if appropriate, of the city, should be or should have been; and (c) any changes in policies or procedures that ought to be made as a result of the incident; (d) reports will avoid the use of identifying the use of police officers names.

Section 2.06 – Reports by Chief

- a. Upon closure of its internal investigation of a complaint referred by the Commission by the Commission, the Police Chief will report to the Commission stating the Police Chief's Determinatino as to:
 - i. The facts of the incident;
 - ii. Whether there was any inappropriate conduct by the police;
 - iii. Any discipline that has been or will be imposed;
 - iv. Any changes in department polices or procedures that ought

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to be made as a result of the incident

b. The Police Chief shall make the report within 30 days of the complaint disposition, providing that if the ongoing disciplinary or criminal proceedings or investigations preclude the Police Chief from making the report in that time, then the Police Chief shall make the report within 14 days after the conclusion of those proceedings generally. Extensions may be granted, but only for a reasonable time.

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Sections 2.2075 – 2.225 - Reserved.

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2 Severability. If any clause, sentence, section, paragraph, or part of this ordinance, or the application thereof to any person, firm, corporation, legal entity, or circumstances, shall be for any reason adjudged by a court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not effect, impair, or invalidate the remainder of this Ordinance and the application of such provision to other persons, firms, corporations, legal entities, or circumstances by such judgment shall be confined in its operation to the clause, sentence, section, paragraph, or part of this Ordinance thereof directly involved in the case or controversy in which such judgment shall have been rendered and to the person, firm, corporation, legal entity, or circumstances then and there involved. It is hereby declared to be the legislative intent of this body that the Ordinance would have been adopted had such invalid or unconstitutional provisions not have been included in this Ordinance.

3 Repeal. All other Ordinances inconsistent with the provisions of this Ordinance are, to the extent of such inconsistencies, hereby repealed.

4 Savings Clause. The balance of the Code of Ordinances, City of Ypsilanti, Michigan, except as herein or previously amended, shall remain in full force and effect. The repeal provided herein shall not abrogate or affect any offense or act committed or done, or any penalty or forfeiture incurred, or any pending fee, assessments, litigation, or prosecution of any right established, occurring prior to the effective date hereof.

5 Copies to be available. Copies of the Ordinance are available at the office of the city clerk for inspection by, and distribution to, the public during normal office hours.

6 Publication and Effective Date. The City Clerk shall cause this Ordinance, or a summary of this Ordinance, to be published according to Section 11.13 of the City Charter. This Ordinance shall become effective after publication at the expiration of 30 days after adoption.

MADE, PASSED AND ADOPTED BY THE YPSILANTI CITY COUNCIL THIS 14th DAY OF November, 2017.

Frances McMullan, City Clerk

Attest

I do hereby confirm that the above Ordinance No. 1295 was published according to Section 11.13 of the City Charter on the 28th day of September, 2017.

Frances McMullan, City Clerk

CERTIFICATE OF ADOPTING

I hereby certify that the foregoing is a true copy of the Ordinance passed at the regular meeting of the City Council held on the 14th day of November, 2017.

Frances McMullan, City Clerk

Notice Published: September 28, 2017

First Reading: October 17, 2017

Second Reading: November 14, 2017

Published: November 20, 2017

Effective Date: December 14, 2017



Resolution No. 2019-012
October 17, 2019

**RESOLVED BY THE HUMAN RELATIONS COMMISSION OF THE
CITY OF YPSILANTI:**

That the Human Relations Commission recommends that boards and commission membership as a whole shall be expressive of the diversity of the entire community and will act as a bridge (or coordinating agency) between protected classes in the community and the city, for the development of policies and educational programs which promote empowerment and a socially just community.

OFFERED BY: Commissioner Rosser

SUPPORTED BY: Commissioner Hunter

YES: 5 NO: 0 ABSENT: 3 (Choudhuri, Gaines, Hicks) VOTE: Carried

I do hereby certify that the above resolution is a true and correct copy of Resolution 2019-012 as passed by the Ypsilanti Human Relations Commission, at their meeting held on October 17, 2019.

Sarah Stachnik, Deputy City Clerk



Resolution No. 2019-259
November 5, 2019

RESOLVED BY THE COUNCIL OF THE CITY OF YPSILANTI:

That the City Council Meeting be adjourned, on call, by the Mayor or three (3) members of Council.

OFFERED BY: _____

SECONDED BY: _____

YES: NO: ABSENT: VOTE:

This resolution is adopted by the Council of the City of Ypsilanti and approved by the Mayor this
5 day of November 2019

#Resolution No. 2019-259