

# PONTIAC CITY COUNCIL

**Kermit Williams, District 7**  
**President**  
**Randy Carter, District 4**  
**President Pro Tem**



**Patrice Waterman, District 1**  
**Don Woodward, District 2**  
**Mary Pietila, District 3**  
**Gloria Miller, District 5**  
**Dr. Doris Taylor Burks, District 6**

*It is this Council's mission "To serve the citizens of Pontiac by committing to help provide an enhanced quality of life for its residents, fostering the vision of a family-friendly community that is a great place to live, work and play."*

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Sheila Grandison, CMMC  
Deputy City Clerk

## **STUDY SESSION (AMENDED AGENDA)**

**May 21, 2019**

**6:00 P.M.**

**87<sup>th</sup> Session of the 10<sup>th</sup> Council**

**Call to order**

**Roll Call**

**Authorization to Excuse Councilmembers**

**Amendments to the Agenda (Remove Item #2, Remove Item # 6, Add resolution for City to have a line by line Budget and Add an Ordinance to repeal Ordinance #2288)**

**Approval of the Amended Agenda**

**Approval of the Minutes**

1. Meeting of May 14, 2019

### **Presentation**

2. Update on Pontiac Public Schools  
Presentation Presenter: Superintendent Kelley Williams

### **Public Hearings**

3. Public Hearing on the Approval of an Obsolete Property Rehabilitation (OPRA) Application for the Following Parcel: 50 Wayne Street, Pontiac, MI 48342, Tax Parcel Number: 14-29-433-003- JBD Indian Hill Ventures, LLC.
4. Public Hearing on the Reprogramming of Community Development Block Grant (CDBG) for Program Year 2016 from Senior Center-Replace air conditioning systems at Ruth Peterson Senior Center and Robert Bowens Senior Center to Senior Center-replace deck at Robert Bowens Senior Center

### **Presentation**

5. The Medical Marihuana Zoning Ordinance (Ordinance 2363) conflicting provision with the City of Pontiac Medical Marihuana Facilities Ordinance (Ordinance 2357(B)) (Presentation requested by Councilwoman Miller)  
Presentation Presenter: Marcelus Brice

**Public Comment**

## Agenda Items for Consideration

### Resolutions

6. Resolution to schedule a Public Hearing for the City of Pontiac's Proposed Annual Budget for FY 2019-2020 and City Tax Rate, for Tuesday, June 4, 2019.

#### Department of Public Works

7. Resolution to authorize the Mayor to enter a one year contract with Auch for Owners Representative services for a not-to-exceed cost of \$283,482.37.

#### Planning

8. Resolution to approve Planning Commission's recommendation to vacate a sewer plant easement submitted by The Hamilton LP on Parcel ID Number 14-29-408-020; Lot 10, Assessor Plat 42, Lot 35, Assessor Plat 119; Lot 8, Assessor Plat 42.

#### Youth Recreation

9. Resolution to authorize Mayor to exercise option to purchase 825 Golf Drive for the purpose of a Youth Recreation and Empowerment Center and to allow necessary actions to consummate transaction.

#### City Council

10. Resolution honoring Young Heroes of 2019 Parrish A. Bush, Ian J. Chambers, Christian L. Grant, Myles R. Harris, Raymond W. Johnson III and Quinton V. M. Keyes.
11. Resolution to adopt 2019-2020 Budget by line item for expenditures. (Agenda Ad-On)
12. Ordinance to Repeal Ordinance No. #2288. (Agenda Ad-On)

### Monthly Mayoral Reports

13. City Credit Card Statement  
(The City Council adopted a resolution that the Mayor will provide the monthly credit card statements for the prior month to the City Clerk, to be included in the Pontiac City Council Agenda, the first meeting of each month, commencing with the March 5, 2019 Agenda. **The City Clerk did not receive the March 2019 or April 2019 statements.** The Mayor distributed an internal statement at the Council Meeting on May 14, 2019. **The City Council informed the Mayor that the resolution states the Mayor is to provide statements issued by the credit card company (PNC). The Council is awaiting the PNC statements for March 2019 and April 2019.** This item was brought back from the April 9, April 23, April 30, May 7, and May 14, 2019 Council Meetings. )

### Adjournment

**#1**

**MINUTES**

May 14, 2019

**Official Proceedings  
Pontiac City Council  
85<sup>th</sup> Session of the Tenth Council**

A Formal Meeting of the City Council of Pontiac, Michigan was called to order in City Hall, Tuesday, May 14, 2019 at 6:00 p.m. by Council President Kermit Williams.

Call to Order

Invocation

Pledge of Allegiance

Roll Call

Members Present: Carter, Pietila, Taylor-Burks, Waterman, Williams and Woodward.

Members Absent: Miller.

Mayor Waterman was present.

Clerk announced a quorum.

19-175           **Excuse Councilperson Gloria Miller for personal reasons.** Moved by Councilperson Pietila and second by Councilperson Taylor-Burks.

Ayes: Pietila, Taylor-Burks, Waterman, Williams, Woodward and Carter

No: None

**Motion Carried.**

Councilwoman Gloria Miller arrived at 6:02 p.m.

19-176           **Amendments to the Agenda: remove item #11, (resolution for Alma Marie Bradley-Pettress) remove items #15-#17, we will postpone items 15-17 until May 28, 2019 and move presentations 4-6 after agenda Item #18.** Moved by Councilperson Woodward and second by Councilperson Pietila.

Ayes: Pietila, Taylor-Burks, Waterman, Williams, Woodward, Carter and Miller

No: None

**Motion Carried.**

19-177           **Approval of the Agenda with amendments.** Moved by Councilperson Taylor-Burks and second by Councilperson Pietila.

Ayes: Taylor-Burks, Waterman, Williams, Woodward, Carter, Miller and Pietila

No: None

**Motion Carried.**



May 14, 2019

19-178        **Approval of meeting minutes for May 7, 2019.** Moved by Councilperson Pietila and second by Councilperson Woodward.

Ayes: Waterman, Williams, Woodward, Carter, Miller, Pietila and Taylor-Burks

No: None

**Motion Carried.**

### **Subcommittee Reports**

Public Safety – May 10, 2019 received.

### **Special Presentation**

Waterford Regional Fire Presentation (Presentation requested by Councilwoman Mary Pietila)  
Presentation Presenter: Chief John Lyman, Fire Chief, Waterford Regional Fire Department

Agenda Address – Chuck Johnson

19-179        **First reading of an Ordinance to Amend Ordinance #2288 to change how City Council adopts the budget from functional basis to line item basis for Fiscal Year 2019-2020.**  
Moved by Councilperson Carter and second by Councilperson Taylor-Burks.

Ayes: Williams, Woodward, Carter, Miller, Pietila, Taylor-Burks and Waterman

No: None

**Motion Carried.**

**\*\*See Ordinance attachment after minutes\*\***

19-180        **Resolution to schedule a special meeting for Friday, May 17, 2019 at 12:00 p.m. to consider an Ordinance to Amend Ordinance #2288 to change how City Council adopts the budget from functional basis to line item basis for Fiscal Year 2019-2020.** Moved by Councilperson Pietila and second by Councilperson Miller.

Whereas, the Pontiac City Council will hold a Special Meeting on Friday, May 17, 2019 at 12:00 p.m. in the Council Chambers of City Hall 47450 Woodward Ave. Pontiac, Michigan 48342 to adopt an Ordinance to Amend Ordinance #2288 to change how City Council adopts the budget from functional basis to line item basis for Fiscal Year 2019-2020.

NOW, THEREFORE, BE IT RESOLVED, that the Pontiac City Council schedules a Special Meeting on Friday, May 17, 2019 at 12:00 p.m. in the Council Chambers of City Hall 47450 Woodward Ave. Pontiac, Michigan.

Ayes: Woodward, Carter, Miller, Pietila, Taylor-Burks, Waterman and Williams

No: None

May 14, 2019

**Resolution Passed.**

19-181        **Resolution for the City Attorney to review the Ordinance to Amend Ordinance #2288 to change how City Council adopts the budget from functional basis to line item basis for Fiscal Year 2019-2020 by May 16, 2019.** Moved by Councilperson Pietila second by Councilperson Taylor-Burks.

Whereas, pursuant to the Pontiac City Charter section 4.202 more specifically, section 4.202 (b), the City Attorney is hereby requested to review the ordinance to Amend Ordinance #2288 and make changes that are only necessary for the ordinance to be in compliance with the Charter and in proper form for implementation by May 16, 2019.

NOW, THEREFORE, BE IT RESOLVED, that the Pontiac City Council request that the City Attorney have this review and if needed any modifications made to the ordinance completed by May 16, 2019 to ensure it is in proper form.

Ayes: Carter, Miller, Pietila, Taylor-Burks, Waterman, Williams and Woodard

No: None

**Resolution Passed.**

19-182        **Resolution for Kevon Davenport.** Moved by Councilperson Pietila and second by Councilperson Taylor-Burks.

WHEREAS, It is the sense of this legislative body to honor an outstanding, young adult of remarkable character, who is inspirational and who serves as a role-model to others; and,

WHEREAS, Kevon Davenport has the unique distinction and privilege of becoming the first four-time African-American State Wrestling Champion, after winning the 2019 MHSAA State Championship 145lbs; and,

WHEREAS, Kevon Davenport is a Pontiac resident and attends Novi Detroit Catholic Central; and,

WHEREAS, Kevon Davenport started his career in wrestling at the early age of eight, as he played for the Pontiac Jr. Huskies under coaches Adam Polk, Cisco McKinney, Time Gomez, Marvin McClellan and Jim Hayward; and,

WHEREAS, Kevon Davenport's talent did not go unrecognized, as both his parents were eagerly committed and devoted to his development and as a consequence, his father studied the sport and became indoctrinated in wrestling, ultimately becoming his primary coach; and

WHEREAS, Kevon Davenport is an exceptional and accomplished wrestler who was taught to always place God first and to maintain great sportsmanship like conduct at all times; and,

WHEREAS, Kevon Davenport has won several tournaments and championships, some include: the MYWA State Tournament, Tournament of Champions in Ohio, Liberty Nationals in Missouri, the Grappler Fall Classic, the 2013 and 2014 Monster Medal Championship, the 2014 and 2015 Great Lakes Championship, was the 2016 MHSAA State Champion 119lbs, the 2017 MHSAA State Champion 130lbs, the 2018 MHSAA State Champion 145lbs and on March 2, 2019, recently became the 2019 MHSAA State Champion 145lbs.

May 14, 2019

NOW, THEREFORE BE IT RESOLVED, that the Pontiac City Council, and members of this great community, honor and salute the personal accomplishments and achievements of Kevon Davenport for a job well done and for truly, representing the City of Pontiac. Congratulations.

Ayes: Miller, Pietila, Taylor-Burks, Waterman, Williams, Woodward and Carter

No: None

Resolution Passed.

19-183        **Resolution to approve the 2019 High Intensity Drug Trafficking (HIDTA) Subrecipient Agreement between the City of Pontiac and Oakland County and that the Mayor be authorized to sign this agreement.** Moved by Councilperson Pietila and second by Councilperson Taylor-Burks.

WHEREAS, Oakland County as the legal entity that administers N.E.T., submitted an Initiative Description and Budget Proposal to the Executive Board for Michigan HIDTA requesting the United States Office of National Drug Control Policy (ONDCP) to grant N.E.T. an award for program year (PY) 2019 to reimburse N.E.T. participating agencies for eligible law enforcement officer overtime costs; and, WHEREAS, if ONDCP grants N.E.T. an award for PY 2019, the ONDCP disburses the HIDTA funds to the Michigan State Police (MSP); and,

WHEREAS, the County has the authority to allocate a portion of the Grant funds to reimburse a participating municipality for qualifying overtime costs subject to the terms and conditions of the agreement; and,

WHEREAS, the County requires any participating unit of government to approve the proposed Subrecipient Agreement by Resolution of the governing board of the local unit of government; and,

WHEREAS, the Oakland County Board of Commissioners has agreed to the attached Subrecipient Agreement; and,

WHEREAS, the City of Pontiac desires to enter into the attached Subrecipient Agreement between the City and Oakland County; and

WHEREAS, Oakland County Corporate Council and the City of Pontiac have approved the attached Subrecipient Agreement.

NOW THEREFORE BE IT RESOLVED that the City of Pontiac Council approves the attached Subrecipient Agreement with the County of Oakland and authorizes the Mayor to sign on behalf of the City.

Ayes: Pietila, Taylor-Burks, Waterman, Williams, Woodward, Carter and Miller

No: None

**Resolution Passed.**

19-184        **Resolution to formally affirm the City of Pontiac commitment to proceed with our endeavor to obtain Redevelopment Ready Community Certification status from Michigan Economic Development Corporation (MEDC); and furthermore, that this resolution be sent to MEDC as required.** Moved by Councilperson Pietila and second by Councilperson Woodward.

May 14, 2019

Discussion on the floor. Motion to refer this resolution to the Community Development Subcommittee; Councilperson Pietila withdrew her motion, Councilperson Woodward withdrew his second.

19-184 (b) **Refer resolution to formally affirm the City of Pontiac commitment to proceed with our endeavor to obtain Redevelopment Ready Community Certification status from Michigan Economic Development Corporation (MEDC); and furthermore, that this resolution be sent to MEDC as required to the Community Development Subcommittee Meeting.** Moved by Councilperson Woodward and second by Councilperson Pietila.

Ayes: Waterman, Williams, Woodward, Carter, Miller, Pietila and Taylor-Burks

No: None

**Motion Carried.**

19-185 **Resolution to authorize the Mayor to enter into a contract agreement with North American Construction Enterprises for the 50<sup>th</sup> District Court Renovations at a cost not to exceed \$1,318,453.00.** Moved by Councilperson Taylor-Burks and second by Councilperson Woodward.

Whereas, the City of Pontiac has advertised and received responses to a request for proposal for 50<sup>th</sup> District Courthouse Renovations on April 8, 2019 and publically opened bids, and;  
Whereas, the Department of Public Works, Engineering Division has reviewed the subject proposals and;  
Now, therefore, Be It resolved, that the Pontiac City Council authorized the Mayor or Deputy Mayor to enter into a contract with North American Construction Enterprises for the 50<sup>th</sup> District Court Renovations for \$1,318,453.00.

Ayes: Williams, Woodward, Carter, Miller, Pietila, Taylor-Burks and Waterman

No: None

**Resolution Passed.**

19-186 **Resolution to appeal the Planning Commission's decision and grant a Special Designated Distributor License for parcel 64-14-07-483-011, also known as 355 W. Walton Blvd from Applicant, Jamal Safidine.** Moved by Councilperson Miller and second by Councilperson Pietila.

Whereas, the City has received an application for a Special Exception Permit for parcel 64-14-07-483-011, also known as 355 W. Walton Blvd. from the Applicant, Jamal Safidine, and;  
Whereas, the Planning Division has reviewed the applicant's Special Exception Permit request to sell packaged alcoholic beverages with a Special Designated Distributer [SDD] license, in addition to the existing Special Designated Merchant [SDM] license for the sale of beer and wine sales, and;  
Whereas, the Planning Division has reviewed the requirements set forth in Section 2.515 of the Zoning Ordinance and Section 10.188 of the Pontiac Municipal Code and the Planning Division determined that aforementioned request and proposed sale of package liquor does comply with the City of Pontiac Zoning Ordinance, and;  
Whereas, in accordance with the procedures outlined in the Zoning Ordinance, Section 6.302 as it related to Special Exception Permit Review Procedures and Requirements, the request has undergone the required; technical review, Public Hearing and Planning Commission decision, and;

May 14, 2019

Whereas, on November 28, 2018 a Public Hearing was held, the Planning Commission voted to deny the request the sale of packaged liquor at 355 W. Walton Blvd., and;

Whereas, following Section 6.303, [H. Appeals] of the Zoning Ordinance, the applicant submitted a letter to the Planning Manager Gustafsson within ten days of the Planning Commission decision requesting an appeal from the City Council and provided a property line survey from a licensed professional surveyor that showed the nearest distance of 515.16 feet between Marimont Church property line and BP gas/convenience building, and;

Now, Therefore, Be It Resolved, that the City Council for the City of Pontiac appeal the Planning Commission decision and grant a Special Designated Distributor license at parcel 64-14-07-483-011, also known as 355 W. Walton Blvd. from the Applicant, Jamal Safidine.

Ayes: None

No: Woodward, Carter, Miller, Pietila, Taylor-Burks, Waterman and Williams

**Resolution Denied.**

19-187      **Resolution to authorize the Mayor to enter into a two-year contract with AUCH for Owner Representative Services for the Phoenix Center Restoration at a cost not to exceed \$357,987.00 will be brought back next week due to awaiting items from the Administration.** Moved by Councilperson Woodward and second by Councilperson Taylor-Burks.

Ayes: Carter, Miller, Pietila, Taylor-Burks, Waterman, Williams and Woodward

No: None

**Motion Carried to bring back item next week.**

19-188      **Suspend the Rules.** Moved by Councilperson Pietila and second by Councilperson Taylor-Burks.

Ayes: Miller, Pietila, Taylor-Burks, waterman, Williams and Woodward

No: None

**Motion Carried.**

19-189      **Motion to remove item #20 Communication from the Mayor regarding Oakland County Sheriff's request for more patrol deputies in 2019-2020 from the Agenda.** Moved by Councilperson Waterman and second by Councilperson Taylor-Burks.

Ayes: Pietila, Taylor-Burks, Waterman, Williams, Woodward, Carter and Miller

No: None

**Motion Carried.**

Monthly Mayoral Reports

#### **City Credit Card Statement**

(The City Council adopted a resolution that the Mayor will provide the monthly credit card statements for the prior month to the City Clerk, to be included in the Pontiac City Council Agenda, the first meeting of

May 14, 2019

each month. **The City Clerk did not receive the March 2019 or April 2019 statements. This item was brought back from the April 9, April 23, April 30, and May 7, 2019 Council Meetings.)**

Check Register for April 2019 was received.

Eight (8) individuals addressed the body during public comment.

Mayor Deirdre Waterman, Interim City Clerk Garland Doyle, Councilwoman Patrice Waterman, Councilwoman Mary Pietila, Councilwoman Doris Taylor-Burks, Councilwoman Gloria Miller, Council Pro-Tem Randy Carter and Council President Kermit Williams made closing comments.

President Kermit Williams adjourned the meeting at 8:51 p.m.

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GARLAND S. DOYLE  
INTERIM CITY CLERK

**ORDINANCE NO.**

**AN ORDINANCE TO AMEND ORDINANCE NO. 2288 TO PROVIDE FOR THE MAYOR TO SUBMIT A PROPOSED TWO-YEAR BALANCED BUDGET TO THE CITY COUNCIL FOR CONSIDERATION, TO ESTABLISH MINIMUM REQUIREMENTS FOR THE PROPOSED BUDGET DOCUMENT, AND TO REQUIRE THE CITY COUNCIL TO ADOPT A BUDGET BY JUNE 9 OF EACH YEAR.**

The City of Pontiac ordains:

**Section 1. Title.**

The title of this ordinance shall be the "Executive Balanced Budget Ordinance."

**Section 2. Definitions.**

- a. **Balanced Budget** – The phrase "balanced budget" shall mean that the total proposed expenditures, including an accrued deficit, shall not exceed proposed revenue, including an available surplus.
- b. **Budget Request Packet** – The phrase "budget request packet" shall mean the formal documents prepared by the Finance Director in which all budget requests shall be justified and made by department heads.

**Section 3. Budget Preparation.**

- a. On or before March 15 in each year, the Finance Director shall distribute the budget request packet to each department head, whom shall return the completed budget request packet to the Finance Director on or before April 1 in each year.
- b. On or before April 15 in each year, the Finance Director shall transmit the departmental requests to the Mayor, who may revise or alter the estimates, and then shall return a copy of a balanced budget as revised to the Finance Director for tabulation on or before May 1 each year along with a list clearly indicating the changes the Mayor made in order to arrive at a balanced budget.
- c. The Finance Director shall recalculate the balanced budget proposed by the Mayor and shall inform the Mayor of any inconsistencies.
- d. On or before May 15 in each year, the Mayor shall submit to the City Council the proposed budget and appropriations ordinance for the ensuing two fiscal years and the proposed tax rate for the ensuing fiscal year. The proposed budgets shall be balanced. The Mayor shall provide a budget message with the proposed budgets that identifies revenues, expenditures, and significant revenues and significant expenditures.

**Section 4. The budget document.**

The budget for each fund of the city shall be presented in a format that is readable and understandable to the general public and classified by character, object, function, and activity consistent with the uniform chart of accounts prescribed by the state treasurer, provided that long-term and short-term goals and measurable objectives of the program are clearly identified (MCL 141.421). The Finance Director shall prepare the budget document and make it available to the public during the time the budget is available for public inspection, and shall revise the

document upon adoption of the resolution adopting the budget. The budget document shall consist of the following components, not necessarily in the order presented:

a. Part I. Revenues.

Part I shall contain estimates of all anticipated revenues for the two ensuing fiscal years applicable to proposed expenditures. It shall include a summary statement of anticipated revenues classified by fund and source; a comparison between revenues actually received during the last completed fiscal year, those received and anticipated for the current fiscal year, and those anticipated for the next two ensuing fiscal years; the estimated surplus or unobligated balance of the current fiscal year, and any additional information required by the Mayor.

b. Part II. Expenditures.

Part II shall contain estimates of all operating and capital outlay expenditures for the two ensuing fiscal years. It shall include a statement of proposed expenditures for all funds classified by function. It shall show, in the same classification of expenditure, the expenditures of the last completed fiscal year, those anticipated for the current fiscal year, estimated expenditures for the budgetary center for the next two ensuing fiscal years; it shall include as separate items any deficit from the preceding fiscal year that was not included in the budget for the current year and any anticipated deficit resulting from operations of the current year; and any other additional information required by the Mayor.

c. Part III. Capital Outlay.

Part III shall consist of the capital improvement plan. These recommendations shall be accompanied by a statement indicating recommended priorities for projects and shall set forth for each project:

1. the intended use of the land, building, or equipment requested;
2. the total estimated cost at completion;
3. appropriations and expenditures made to date;
4. actual expenditures and encumbrances at the close of the last completed fiscal year;
5. estimated expenditures and encumbrances for the current fiscal year;
6. estimates of the amount of money necessary for the next five fiscal years; and,
7. estimates of annual operating costs, if any, and the method of financing those costs, for the next five fiscal years.

d. Part IV. Supplementary Information.

Part IV shall consist of the following information, at a minimum, that shall be included at some point in the budget document:

1. a table of contents to assist the reader in locating information;
2. an explanation of the budget process and accounting procedures followed by the city in the preparation of the budget;
3. a glossary of terminology that may not be readily understood by the average reader;
4. a community profile;



5. an current organizational chart that denotes all departments and offices and the positions in those departments and/or offices within the executive branch and the legislative branch;
6. a list of all contracts, identification of service provided, value of the contract, and expiration date of the contract;
7. a list of all full-time employees, their salaries, the total value of fringe benefits, and an indication if the employee could potentially receive a defined benefit pension or other post employment benefits upon retirement;
8. a comparable summary of personnel in each office from the previous fiscal year to the ensuing fiscal year and an explanation of proposed changes;
9. a description of funds subject to appropriation;
10. a description of activities, services, and functions subject to appropriation;
11. a ten-year history of property tax levies and taxable value;
12. a list of outstanding debt obligations of the city;
13. a description of proposed capital outlays included in the budget as identified in the City's capital improvement plan;
14. a budget message from the Mayor that summarizes its proposed budget and any significant changes from previous years;
15. charts, graphs, graphics, organizational charts, and other data used effectively to describe allocations and operations and measure results;
16. the proposed tax rate to support the budget;
17. a budget summary of revenues and expenditures;
18. a proposed general appropriations ordinance; and
19. additional information that the Mayor deems appropriate.

#### **Section 5. Budget Adoption.**

- a. ~~On or Before June 2~~, the City Council shall authorize and publish a notice of public hearing on the proposed budget and tax rate and shall introduce the proposed appropriation ordinance at a city council meeting.
- b. On or Before June 4, the City Council shall have separate budget hearings with each department and/or office of the Executive Branch and each department or office of the Legislative Branch.
- ~~a.~~
- b.c. The City Council shall not amend the proposed appropriation ordinance or tax rate until after the public hearing. The City Council shall be permitted to make unlimited amendments to the budget subsequent to the public hearing on the budget and before its adoption.
- d. ~~By June 9 and No~~ less than six days after the notice of public hearing on the proposed budget and tax rate is published and the proposed appropriation ordinance had been introduced at a city council meeting, the City Council shall hold a public hearing on the proposed budget and proposed tax rate.

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- ~~c-e.~~ By June 9, the City Council ~~and~~ shall adopt an appropriations ordinance and tax rate. The budget shall be adopted on a line item basis ~~functional basis~~ for expenditures, rather than on a departmental or functional line item basis.
- ~~d-f.~~ At the meeting wherein the City Council adopts the appropriations ordinance, the Council shall adopt a resolution setting user fees for the ensuing fiscal year. Such fees shall be amended or waived by the City Council from time to time during the fiscal year only upon recommendation from the Finance Director and Mayor.
- ~~e-g.~~ The Mayor shall be allowed to exercise the Mayor's ~~his~~ veto authority as granted by the city charter.
- ~~f-h.~~ During the fiscal year, whenever it appears to the Finance Director that the actual and probable revenues in any fund will be less than the estimated revenues upon which appropriations from such fund were based, and when it appears that expenditures will exceed an appropriation upon which appropriations from such fund were based, the Finance Director shall present to the Mayor recommendations to prevent expenditures from exceeding available revenues or appropriations for the fiscal year. Such recommendations shall include proposals for reducing appropriations, increasing revenues or both. The Finance Director is hereby authorized to amend accounts within a line item or department that does not exceed Ten Thousand (\$10,000.00) Dollars. Any budget amendments to a line item or department that exceeds Ten Thousand (\$10,000.00) must be approved by the City Council prior to the amendment. ~~functions in a fund and among functions in a fund during the fiscal year provided that such amendments do not change the total revenues, expenditures, transfers, and other uses for the fund as approved by the City Council. If the total revenues or the total expenditures, including transfers in and out and other sources and uses within a single fund must be changed, then~~ The Mayor shall present such amendments for departments within the Executive Branch to the City Council for approval by resolution. The amendments to the budget for the Legislative Branch do not have to be presented by the Mayor but still must be approved by ~~to the City Council resolution for approval by resolution.~~ Budget amendments shall be made by June 30 of each year.

#### **Section 6. Penalty.**

- ~~a.~~ Any violation of Sections 3, 4, or 5 by the Mayor shall result in the deduction of one month pay for every month or portion thereof that the Mayor ~~he~~ is late in fulfilling the his budget preparation duties.
- ~~a-b.~~ Any violation of Section 5 (f) by the Mayor shall result in the deduction of one month pay for every month that the Mayor is found to have violated this section of the Ordinance.
- ~~b-c.~~ Any violation of Sections 3, 4, or 5 by the city council shall result in the deduction of one month pay for every month or portion thereof that the council is late in adopting the budget.
- ~~e-d.~~ The retroactive payment of compensation deducted in accordance with this section upon fulfillment of duties is expressly prohibited.
- ~~d-e.~~ The city attorney, or any resident of the city, may file a complaint with the district court to enforce this section in the event that a deduction of pay is not made.

#### **Section 7. Severability.**

This ordinance and the various parts, sections, and clauses are hereby declared severable. If any clause, sentence, or paragraph or part of this ordinance shall, for any reason, be adjudged or decreed to be invalid by any Court of competent jurisdiction, such judgment or decree shall not

effect, impair, or invalidate the remainder of this ordinance, but such judgment or decree shall be confined in its operation to the clause, sentence, paragraph, or part thereof, directly involved in the controversy in which such judgment or decrees shall have been entered.

**Section 8. Repealer.**

That all ordinances or parts of ordinances, of the City of Pontiac in conflict herewith are hereby repealed.

**Section 9. Effective Date.**

This Ordinance shall take immediate effect upon publication thereof after its adoption by the City Council.

**Section 10. Publication.**

The Clerk shall publish this Ordinance in a newspaper of general circulation.

**Section 11. Effective Date.**

This Ordinance shall be effective ten days after date of adoption. ~~The ordinance and/or ordinance amendments were adopted by the emergency manager with an effective date of June 27, 2013. Sherikia L. Hawkins, Clerk of Pontiac, Michigan, does hereby certify that the forgoing ordinance was published in the Oakland County News on this 19th day of June 2013.~~  
~~Sherikia L. Hawkins, City Clerk.~~

**#3**

**PUBLIC  
HEARING**

**Resolution to Set Public Hearing on the Application from JBD Indian Hill Ventures, LLC for the approval of an Obsolete Property Rehabilitation Application Certificate**

- Whereas, Indian Hill Ventures, LLC has submitted an application for an Obsolete Property Rehabilitation Certificate to rehabilitate 50 Wayne Street, Pontiac, MI 48342 into a mixed-use development; and
- Whereas, Application has been sent to the Office of the City Clerk for certification; and
- Whereas, a public hearing on the establishment of the Obsolete Property Rehabilitation District was held at a meeting of the Pontiac City Council on Monday, December 30, 2002 at 7:00 p.m. in the evening;

Land situated in the City of Pontiac, Oakland County, Michigan, to-wit:

Commonly known as: 50 Wayne Street, Pontiac, MI 48342

Tax Parcel Number: 14-29-433-003

NOW, THEREFORE, BE IT RESOLVED, that the Pontiac City Council, direct the City Clerk to schedule a public hearing on May 21, 2019 in accordance with the Obsolete Property Rehabilitation Act (Public Act 146 of 2000, as amended) for the approval of the Obsolete Property Rehabilitation Application Certificate.



# City of Pontiac

## City Council Memo

### Economic Development

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To: Honorable Mayor Waterman, Council President and City Council

From: Rachel Loughrin, Director of Economic Development

Through: Office of the Deputy Mayor, Jane Bais-DiSessa

Date: 5-16-19

RE: Public Hearing for Obsolete Property Rehabilitation Certificate Approval  
50 Wayne Street

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Dear Mayor, Council President and City Council Members,

The request for a public hearing is in accordance with the Obsolete Property Rehabilitation Act (PA146 of 2000, as amended) to consider the approval of an Obsolete Property Rehabilitation Application (OPRA) Certificate for JBD Indian Hill Ventures, LLC. Tax Parcel Number 14-29-433-003, commonly known as 50 Wayne Street, Pontiac, MI 48342.

JBD Indian Hill Ventures, LLC has formally requested the approval of a Brownfield and Obsolete Property Rehabilitation Certificate for their Four Million, Three Hundred Thousand Dollar renovation of 50 Wayne Street into a mixed use development. The Brownfield will run for 26 years and the Certificate approval will be granted for a total of 12 years with the option for a claw back of the final six years following the first six, should the developer not meet the conditions for job creation as stated in Section 6.B of the development agreement (attached and further explained below).

The request is that the City Council set a public hearing for May 21, 2019 to vote upon the OPRA Certificate request as well as vote to concur with the two Oakland County resolutions for the Brownfield request.

The parcel is currently zoned C-2 Downtown, the property is commercially developed with a 26,880 square foot vacant office building in an area characterized by commercial and warehouse uses. The zoning will remain the same and permits the proposed future use. Standard and other historical sources were able to document that the property was developed prior to 1888 with a portion of the current building in the southwestern portion and a stable in the northeastern portion. Several additions were constructed to the original portion of the building between the late 1800s and 1940. Additionally, the former eastern portion of the building was demolished between 1924 and 1940 and the eastern portion was converted to a parking lot. However, a basement under the northeastern portion of the property/parking lot remains. The property was occupied by Pontiac Electric Light and Power Co. and/or Pontiac Lighting Co. from prior to 1888 until between 1915 and 1919, and operations included power generation utilizing four dynamos and two engines. Fuel sources included coal and fuel oil (stored in a former shed located in the northern portion between at least 1909 and 1919), and the dynamos and engines were historically located in the western and central portions of the building. By 1919, power generation operations had ceased on the property and the building was converted to office use. The building was occupied by Consumers Power Company and utilized as an office and sales building from at least 1919 until 1970. The building was utilized as a multi-tenant office space for various non-profit, County, and medical organizations as well as by Michigan Bell Telephone from at least 1975 until 2014. The building has been vacant since 2014.

The project will entail a rehabilitation of the current building. Office/retail space will be provided on the first floor and on the three floors above, 25 loft-style, market rate apartments will be constructed.

The building will be brought up to code and will receive new utilities including electrical and plumbing. A new access stairwell will be installed and the elevator will be upgraded. A new heating and cooling system will also be installed, along with energy efficient windows and doors. All apartment units will receive new kitchen and bathroom cabinetry along with appliances and fixtures.

Exterior improvements will include balconies or patios for some of the units, parking lot improvements to the west adjoining surface lot, and as part of the

community benefits section of the development agreement the developer will also fix all broken, uneven or sinking sidewalk that surrounds the building.

Section 6.B of the development agreement requires that the developer create 10 or more full time jobs and report the job creation back to the City at the six year anniversary of the OPRA .

Approximately 30 - 40 temporary construction jobs and approximately 25 full-time equivalent jobs associated with the office space and property maintenance will be created in connection with this development.

Upon completion, the redevelopment of this historic building will bring new activity and life to a vacant corner of our downtown. The addition of 25 new apartments means 25 City of Pontiac residents living in and frequenting the establishments in the downtown.



RECEIVED

## Application for Obsolete Property Rehabilitation Exemption Certificate

This form is issued as provided by Public Act 146 of 2000, as amended. This application should be filed after the district is established. This project will not receive tax benefits until approved by the State Tax Commission. Applications received after October 31 may not be acted upon in the current year. This application is subject to audit by the State Tax Commission.

**INSTRUCTIONS:** File the original and two copies of this form and the required attachments with the clerk of the local government unit. (The State Tax Commission requires two copies of the Application and attachments. The original is retained by the clerk.) Please see State Tax Commission Bulletin 9 of 2000 for more information about the Obsolete Property Rehabilitation Exemption. The following must be provided to the local government unit as attachments to this application: (a) General description of the obsolete facility (year built, original use, most recent use, number of stories, square footage); (b) General description of the proposed use of the rehabilitated facility, (c) Description of the general nature and extent of the rehabilitation to be undertaken, (d) A descriptive list of the fixed building equipment that will be a part of the rehabilitated facility, (e) A time schedule for undertaking and completing the rehabilitation of the facility, (f) A statement of the economic advantages expected from the exemption. A statement from the assessor of the local unit of government, describing the required obsolescence has been met for this building, is required with each application. Rehabilitation may commence after establishment of district.

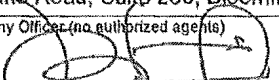
Applicant (Company) Name (applicant must be the OWNER of the facility)		
JBD Indian Hill Ventures, LLC		
Company Mailing address (No. and street, P.O. Box, City, State, ZIP Code)		
300 E Long Lake Road, Suite 280, Bloomfield Hills, MI 48304		
Location of obsolete facility (No. and street, City, State, ZIP Code)		
50 Wayne Street, Pontiac, MI 48342		
City, Township, Village (Indicate which)		County
Pontiac		Oakland County
Date of Commencement of Rehabilitation (mm/dd/yyyy)	Planned date of Completion of Rehabilitation (mm/dd/yyyy)	School District where facility is located (include school code)
9/1/2019	12/1/2020	
Estimated Cost of Rehabilitation	Number of years exemption requested	Attach Legal description of Obsolete Property on separate sheet
\$3,500,000.00	12	
Expected project likelihood (check all that apply):		
<input checked="" type="checkbox"/> Increase Commercial activity	<input type="checkbox"/> Retain employment	<input checked="" type="checkbox"/> Revitalize urban areas
<input checked="" type="checkbox"/> Create employment	<input type="checkbox"/> Prevent a loss of employment	<input checked="" type="checkbox"/> Increase number of residents in the community in which the facility is situated
Indicate the number of jobs to be retained or created as a result of rehabilitating the facility, including expected construction employment <u>55-65</u>		
Each year, the State Treasurer may approve 25 additional reductions of half the school operating and state education taxes for a period not to exceed six years. Check the following box if you wish to be considered for this exclusion.		
<input type="checkbox"/>		

### APPLICANT'S CERTIFICATION

The undersigned, authorized officer of the company making this application certifies that, to the best of his/her knowledge, no information contained herein or in the attachments hereto is false in any way and that all of the information is truly descriptive of the property for which this application is being submitted. Further, the undersigned is aware that, if any statement or information provided is untrue, the exemption provided by Public Act 146 of 2000 may be in jeopardy.


The applicant certifies that this application relates to a rehabilitation program that, when completed, constitutes a rehabilitated facility, as defined by Public Act 146 of 2000, as amended, and that the rehabilitation of the facility would not be undertaken without the applicant's receipt of the exemption certificate.

It is further certified that the undersigned is familiar with the provisions of Public Act 146 of 2000, as amended, of the Michigan Compiled Laws; and to the best of his/her knowledge and belief, (s)he has complied or will be able to comply with all of the requirements thereof which are prerequisite to the approval of the application by the local unit of government and the issuance of an Obsolete Property Rehabilitation Exemption Certificate by the State Tax Commission.

Name of Company Officer (no authorized agents)	Telephone Number	Fax Number
JB Davies	(248) 646-4030	(248) 646-4598
Mailing Address	Email Address	
300 E Long Lake Road, Suite 280, Bloomfield Hills, MI 48304	left6jb@gmail.com	
Signature of Company Officer (no authorized agents)	Title	
	Managing Member	

### LOCAL GOVERNMENT UNIT CLERK CERTIFICATION

The Clerk must also complete Parts 1, 2 and 4 on Page 2. Part 3 is to be completed by the Assessor.

Signature	Date application received
	4/3/19

FOR STATE TAX COMMISSION USE		
Application Number	Date Received	LUCI Code

**LOCAL GOVERNMENT ACTION**

This section is to be completed by the clerk of the local governing unit before submitting the application to the State Tax Commission. Include a copy of the resolution which approves the application and instruction items (a) through (f) on page 1, and a separate statement of obsolescence from the assessor of record with the State Assessor's Board. All sections must be completed in order to process.

**PART 1: ACTION TAKEN**

Action Date: _____		
<input type="checkbox"/> Exemption Approved for _____ Years, ending December 30, _____ (not to exceed 12 years)		
<input type="checkbox"/> Denied		
Date District Established	LUCI Code	School Code

**PART 2: RESOLUTIONS (the following statements must be included in resolutions approving)**

<p>A statement that the local unit is a Qualified Local Governmental Unit.</p> <p>A statement that the Obsolete Property Rehabilitation District was legally established including the date established and the date of hearing as provided by section 3 of Public Act 146 of 2000.</p> <p>A statement indicating whether the taxable value of the property proposed to be exempt plus the aggregate taxable value of property already exempt under Public Act 146 of 2000 and under Public Act 198 of 1974 (IFT's) exceeds 5% of the total taxable value of the unit.</p> <p>A statement of the factors, criteria and objectives, if any, necessary for extending the exemption, when the certificate is for less than 12 years.</p> <p>A statement that a public hearing was held on the application as provided by section 4(2) of Public Act 146 of 2000 including the date of the hearing.</p> <p>A statement that the applicant is not delinquent in any taxes related to the facility.</p> <p>If it exceeds 5% (see above), a statement that exceeding 5% will not have the effect of substantially impeding the operation of the Qualified Local Governmental Unit or of impairing the financial soundness of an affected taxing unit.</p> <p>A statement that all of the items described under "Instructions" (a) through (f) of the Application for Obsolete Property Rehabilitation Exemption Certificate have been provided to the Qualified Local Governmental Unit by the applicant.</p>	<p>A statement that the application is for obsolete property as defined in section 2(h) of Public Act 146 of 2000.</p> <p>A statement that the commencement of the rehabilitation of the facility did not occur before the establishment of the Obsolete Property Rehabilitation District.</p> <p>A statement that the application relates to a rehabilitation program that when completed constitutes a rehabilitated facility within the meaning of Public Act 146 of 2000 and that is situated within an Obsolete Property Rehabilitation District established in a Qualified Local Governmental Unit eligible under Public Act 146 of 2000 to establish such a district.</p> <p>A statement that completion of the rehabilitated facility is calculated to, and will at the time of issuance of the certificate, have the reasonable likelihood to, increase commercial activity, create employment, retain employment, prevent a loss of employment, revitalize urban areas, or increase the number of residents in the community in which the facility is situated. The statement should indicate which of these the rehabilitation is likely to result in.</p> <p>A statement that the rehabilitation includes improvements aggregating 10% or more of the true cash value of the property at commencement of the rehabilitation as provided by section 2(i) of Public Act 146 of 2000.</p> <p>A statement of the period of time authorized by the Qualified Local Governmental Unit for completion of the rehabilitation.</p>
--	---

**PART 3: ASSESSOR RECOMMENDATIONS**

Provide the Taxable Value and State Equalized Value of the Obsolete Property, as provided in Public Act 146 of 2000, as amended, for the tax year immediately preceding the effective date of the certificate (December 31st of the year approved by the STC).

Taxable Value		State Equalized Value (SEV)	
Building(s)			
Name of Governmental Unit	Date of Action on application	Date of Statement of Obsolescence	

**PART 4: CLERK CERTIFICATION**

The undersigned clerk certifies that, to the best of his/her knowledge, no information contained herein or in the attachments hereto is false in any way. Further, the undersigned is aware that if any information provided is untrue, the exemption provided by Public Act 146 of 2000 may be in jeopardy.

Name of Clerk	Clerk Signature	Date	
Clerk's Mailing Address	City	State	ZIP Code
	Telephone Number	Fax Number	Email Address

Mail completed application and attachments to: Michigan Department of Treasury  
State Tax Commission  
P.O. Box 30471  
Lansing, Michigan 48909-7971

If you have any questions, call (517) 373-2408.

For guaranteed receipt by the State Tax Commission, it is recommended that applications and attachments are sent by certified mail.

April 1, 2019

Pontiac City Council  
City Hall  
47450 Woodward Avenue  
Pontiac, MI 48342

RE: Request for the Establishment of an Obsolete Property Rehabilitation Act (OPRA)  
Certificate at 50 Wayne Street, Pontiac, Michigan 48342  
for JBD Indian Hill Ventures, LLC

Honorable City Council:

Please accept this letter as a request to establish an Obsolete Property Rehabilitation Act (OPRA) Certificate for the property located at 50 Wayne Street, Michigan 48342, which is referred to herein as the "Property" and described on Attachment A. The Property will be rehabilitated by the petitioner and current owner, JBD Indian Hill Ventures, LLC. The property is located in an existing OPRA District.

#### Company and Project Synopsis

JBD Indian Hill Ventures, LLC (the "Developer") is a partnership between JB Davies and Fred Blechman. JBD Indian Hill Ventures, LLC was founded in 2018 and is managed by both JB Davies and Fred Blechman. JB Davies has spent his entire career in real estate, beginning as a Tax Specialist in 1983. From humble beginnings, in 1993 JB Davies was named in the "40 Under 40" issue of Crain's Detroit Business and recognized by Detroit Monthly Magazine among 75 individuals who have or will have an influence on the future of the City of Detroit. His work since 1996 has consisted of acquiring and developing commercial properties. Fred Blechman had a vision in 1974 while working in his father's hardware store. He followed that vision which led to the creation of Management Supply Company (MSC), an apartment supply company he founded in Michigan. After years of success, MSC was sold to a company seeking to create a national distribution network. Entering real estate for himself following the sale of MSC, Fred Blechman began purchasing and redeveloping real estate throughout metro-Detroit. In 2003, Creative Urbane was formed for the purpose of purchasing, renovating, and marketing the properties under the Urbane Apartments brand. They have completed 15 properties to-date and are currently redeveloping a building in midtown-Detroit.

The project, which is in an approved Obsolete Property Rehabilitation District (OPRD) contains a single approximately 0.29 acre parcel at 50 Wayne Street and is bounded by West Lawrence Street to the south, Wayne Street to the west, the property line to the north, and the alley between North Saginaw Street and Wayne Street to the east. The project is located in the heart of downtown Pontiac with access to the Amtrak railway and Greyhound bus station just over one-quarter mile southwest at Pontiac Station, as well as many fixed SMART Bus routes within walking distance. The property is occupied by a vacant 4-story office building totaling approximately 26,880 square feet including the basement level. The building has been vacant since 2014 and currently remains uninhabitable.

The 50 Wayne project will entail the rehabilitation of the current building into first floor office/retail space with 25 edgy loft-style apartments on floors two through four. Historical

*Request for Establishment of an Obsolete Property Rehabilitation Certificate at  
50 Wayne Street, Pontiac MI 48342  
for JBD Indian Hill Ventures, LLC*

features such as the granite floors and mold-work ceilings will be preserved where possible, and abstract expressionism artwork will be portrayed throughout the hallways.

As part of the rehabilitation, the building will receive new utilities including electrical and plumbing, new energy efficient heating, cooling and ventilation systems, new energy efficient windows and doors, construction of balconies or patios for certain units, kitchen and bathroom cabinetry, appliances and fixtures, elevator upgrades, a new access stairwell for the upper and lower units, and repairs to the building structure as needed. The structure will also be brought up to code per ADA and Fire requirements, which may include an ADA lift and fire suppression/alarm system if deemed required.

Additionally, the Developer intends to make improvements to the west adjoining surface parking lot for resident and tenant parking, however, those parcels are not included within this request.

#### **The Necessity for Tax Relief**

Substantial investment is necessary to rehabilitate the area into a viable, long-term development. Additionally, the property currently contains a dilapidated and damaged building that will require repair and selective demolition with the property rehabilitation. The overall internal rate of return for the proposed development will be extremely low without the receipt of the Obsolete Property Rehabilitation Certificate, and therefore, the development would not be possible without it.

The costs associated with the rehabilitation require multiple capital sources including equity contributed by JBD Indian Hill Ventures, LLC Members as well as an interim construction loan, and upon completion, a long-term loan product. In order to secure this financing and future tenants, the operating costs of the proposed renovations and redevelopment of the project need to be kept as low as possible (including property taxes).

The proposed Development included within the request will result in approximately 30-40 construction jobs and approximately 25 full-time equivalent (FTE) job associated with the office space and property maintenance.

#### **PA 146 Request**

A 12-year abatement is being requested.

#### **Economic Advantages of the Rehabilitation**

Upon completion, the Development will return an obsolete property to productive use and will increase residential density in an area characterized by vacant buildings and disinvestment. Activation of this property will spur further growth and act as a catalyst for further redevelopment of numerous vacant and blighted properties along the West Lawrence, Wayne, and North Saginaw corridors and the surrounding neighborhoods, providing spinoff consumer spending in an area of downtown that is currently trying to reestablish itself.

The granting of the OPRA tax abatement will not result in any fewer taxes to the City of Pontiac in the short-term or long-term. On a short-term basis, approximately 30-40 construction jobs will be created. The general contractor (GC), Urbane Management and Creative Urbane Development, will perform the contracting work for this project. Metro-Detroit based, the GC

*Request for Establishment of an Obsolete Property Rehabilitation Certificate at  
50 Wayne Street, Pontiac MI 48342  
for JBD Indian Hill Ventures, LLC*

insures locally sourced contractors and workers benefit from the redevelopment. The GC has also reached out to local contractors to inquire about providing references for other Pontiac based trades that could provide services for this development.

Upon successful redevelopment, the Development will create approximately 25 FTE jobs related to the management and maintenance and from the first floor office/retail space expected. These new jobs, along with any new residents living at the development, will generate increased income taxes for the City of Pontiac.

Following expiration of the 12-year abatement, the building will deliver a significant increase in tax revenue. Over time, the successful redevelopment and cultural growth will serve as a catalyst for additional investment within this downtown neighborhood.

**Closing**

JBD Indian Hill Ventures, LLC is a partnership between seasoned real estate professionals with extensive experience in multi-family investments and redevelopments throughout metro-Detroit.

Members of the Development team have reached out to City Council members, local businesses and local contractors in Pontiac regarding the project and have received extremely positive feedback.

The team is looking forward to pursuing this redevelopment and creating a community space in the heart of Pontiac's downtown neighborhood.

Respectfully Submitted,

JB Davies  
Managing Partner  
JBD Indian Hill Ventures, LLC

**Attachment A: Detailed Project Description**

**Attachment A**

**Detailed Project Description**



## General Description

The proposed Development is located at the intersection of Wayne Street and West Lawrence Street in downtown Pontiac. The property is loosely bounded by West Lawrence Street to the south, Wayne Street to the west, the property line to the north, and the alley between North Saginaw Street and Wayne Street to the east. The property consists of one parcel, which is outlined in the map below.



The property is occupied by a 4-story office building totaling approximately 26,880 square feet including the basement level. The building has been vacant since 2014 and currently remains uninhabitable. The proposed project currently consists of a complete building rehabilitation to create 25 residential apartment units. The Developer intends to make improvements on the west adjoining surface parking lot for resident and tenant parking, however, those parcels are not included within this request.

The associated address and parcel identification number can be found below and a copy of the corresponding legal description can

be found at the end of this attachment.

## **Description of Proposed Use**

The proposed redevelopment will create additional housing and increased residential density in the heart of downtown Pontiac that has been behind the curve for investment and redevelopment, and will entail the rehabilitation of the current building into first floor office/retail space with 25 edgy loft-style apartment units on the second through fourth floor. Each unit will include modern, open floor plans with custom cabinetry for cozy living and restored historical features where applicable. The proposed redevelopment will include approximately 5,000 square feet of office space on the first floor.

The developers will seek to install landscape per city requirements for surface lots. The developer will also seek to provide some common gym and laundry amenities within the building.

## **Nature and Extent of the Rehabilitation**

As part of the rehabilitation, the building will receive new utilities including electrical and plumbing, new energy efficient heating, cooling and ventilation systems, new energy efficient windows and doors, construction of balconies or patios for certain units, new kitchen and bathroom cabinetry, appliances, and fixtures, elevator upgrades, a new access stairwell for the upper and lower units, and repairs to the building structure as needed, and may include stabilization efforts, brick repair, and other activities to honor the building's historic appearance. The structure will also be brought up to code per ADA and Fire requirements, which may include an ADA lift and fire suppression/alarm system if deemed required.



*Existing building located at 50 Wayne Street*







*Current interior conditions of 50 Wayne Street*

The Development will create residential tenant spaces which are both historic and modern, with abstract expressionism artwork throughout. These developments are necessary components crucial to attracting resident and visitor interest along with investment in this blighted area of Pontiac.

JBD Indian Hill Ventures, LLC intends to apply for a 12-year real property tax abatement under the provisions of an Obsolete Property Rehabilitation Act tax abatement.

### **Descriptive List of the Fixed Building Equipment/Renovations**

Renovations and new fixed building equipment and materials for the project include;

- Masonry; restoration activities associated with the existing building
- Carpentry; including framing, kitchen cabinetry, vanities, trim work
- Thermal and Moisture Protection; roofing system, caulking and sealing, waterproofing
- Doors and Windows; exterior doors, interior doors/frames/hardware
- Fire alarm/suppression system if required per City code. Developers are working with City/Fire Marshal to identify requirements currently.
- Mechanical; plumbing and HVAC
- Electrical; electrical work, security system, and communications
- Finishes; drywall and steel studs/insulation, hard tile, hardwood/LVT flooring, painting
- Specialties; ADA Lift (If required), fire extinguishers, toilet accessories, and stainless steel appliances.

Total construction hard cost investment is estimated at \$3.5 million.

### **Time Schedule**

Construction activities are anticipated to commence in the fall of 2019. Construction completion is anticipated for late in the fourth quarter of 2020.

## **Statement of Economic Advantages**

The proposed Development will bring needed investment into an area of downtown Pontiac characterized by vacant buildings and disinvestment. The Development will increase residential density in the blocks of downtown that are characterized by vacancy and have the perception of being unsafe. Activation of this property will spur further growth and act as a catalyst for future redevelopment of numerous vacant and blighted properties along the West Lawrence, Wayne, and North Saginaw corridors and the surrounding neighborhoods, providing spinoff consumer spending in an area of downtown that is currently trying to reestablish itself.

Upon successful redevelopment, the Development will generate increased income taxes, through the new jobs and residents that the project will create.

On a short-term basis approximately 30-40 construction jobs will be created. The general contractor (GC) has several metro-Detroit based contractors that they have used in the past and that they have requested bids from to ensure Pontiac-based contractors and workers benefit from the redevelopment. The GC has also reached out to Pontiac contractors with to inquire about providing references for other Detroit based trades that could provide services for this development.

On a long-term basis the proposed redevelopment associated with the Development will create approximately 25 FTE jobs one full-time equivalent (FTE) jobs associated with property maintenance and within the office space. The apartments are anticipated to house an estimated 39 residents. Based on the targeted end uses it is anticipated that two-thirds will be new residents to Pontiac. It is anticipated the City of Pontiac will collect income taxes from these residents at a value greater than the value of this tax abatement request.

Additionally, there will be other indirect benefits such as spin off spending in the City that will contribute to the economic benefits produced by this investment. It will further help meet the demand for housing in Pontiac, with a reported 2.6% vacancy rate across metro-Detroit (Crain's, 5/13/17) and a desperate need for investment into the City. Indeed, investments in the community such as this that will have long-term effects and provide sustainable principals will retain and foster local talent that is vital to securing the City's economic future.

Following expiration of the 12 year abatement the building will deliver a significant increase in tax revenue. Over time, the successful redevelopment and cultural growth will have a catalyst effect within this downtown neighborhood.

## **Legal Description**

Parcel Number: 64-14-29-433-003

Address: 50 Wayne Street

Acres: 0.29

Legal Description:

T3N, R10E, SEC 29 ASSESSOR'S PLAT NO. 113 LOT 3

AFFIDAVIT

STATE OF MICHIGAN)  
CITY OF PONTIAC)  
COUNTY OF OAKLAND)

NOW COME David M. Hieber and Jane Walsh, of Oakland County Equalization, both being first duly sworn, depose and state as follows:

I, David M. Hieber, MIAO (4), am the Assessor for the City of Pontiac, Oakland County, Michigan and make this affidavit in conjunction with an application under the Obsolete Property Rehabilitation Act (OPRA), PA 146 of 2000, as amended, for a commercial building and land improvements located at 50 Wayne Street, City of Pontiac, Oakland County, Michigan. The related parcel identified as follows: Parcel No. 64-14-29-433-003.

I, Jane Walsh MAAO (3), did on March 20, 2019 inspect the above referenced parcel in the City of Pontiac and issue the following opinion:

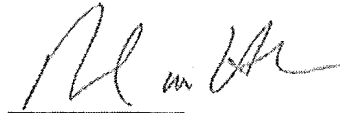
It is my expert opinion that the commercial office building found on the above referenced property is functionally obsolete as defined in MCL 125.2652 of the Brownfield Redevelopment Financing Act. Based on the functional inutility, which is defined as an impairment of the functional utility of a property or building according to market tastes and standards; equivalent to functional obsolescence because ongoing change makes the plan, form, style, design, layouts, or features obsolete. (Appraisal Institute's Dictionary of Real Estate Appraisal Fifth Edition).

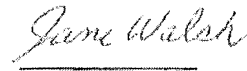
The current building is a four-story, 26,880 square foot office building with basement foundation. The entire building has suffered from extensive deferred maintenance over the last ten years. All interior floors are in extremely poor condition. Prior owner left many areas unfinished and in post-demolition condition. Piles of construction debris including insulation, ceiling tiles, and plaster are left exposed throughout the building. The entire structure will require repair or replacement of interior walls, flooring, ceiling tiles, lighting and windows. All mechanicals, including heating and cooling, fire suppression, elevator and electrical system, require upgrading and/or replacement. Some of the building contains asbestos which will require assessment and removal. The basement foundation has sustained water damage and as a result currently has areas of mold which will require remediation. All parking areas require resurfacing and remarking.

In the opinion of the Assessor, because of the many building deficiencies including overall condition, mechanical systems and parking repair, combined with possible asbestos and mold remediation, the property suffers more than 50% functional obsolescence.

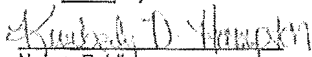
I, David M. Hieber, after inquiry and review of the findings of Jane Walsh, as well as, review of records of the City of Pontiac related to this property find the above property functionally obsolete.

Further deponents sayeth not.

  
David M. Hieber

  
Jane Walsh

Subscribed and sworn to before me  
This 22<sup>nd</sup> day of March 2019

  
Notary Public

Oakland County, Michigan  
My Commission Expires: 9-14-25  
Acting in the County of Oakland

**#4**

**PUBLIC  
HEARING**

# **CITY OF PONTIAC**

## **CDBG DESCRIPTION CHANGE**

### **ADVERTISEMENT**

Notice is hereby given that in accordance with Community Development Block Grant (CDBG) requirements a Public Hearing will be held by the City of Pontiac on Tuesday, May 21, 2019, 6:00 p.m. at 47450 Woodward Ave., to receive written and verbal comment regarding the reprogramming of federal CDBG funds as follows:

#### **Existing - 2016 Program Year**

Activity Number	731696
Name	Senior Center
Description	Replace air conditioning systems at Ruth Peterson Senior Center and Robert Bowens Senior Center

#### **Proposed - 2016 Program Year**

Activity Number	731696
Name	Senior Center
Activity Description	Replace deck at Robert Bowens Senior Center

Arrangements to reasonably accommodate special needs, including handicap accessibility or interpreter, will be made upon receiving 72-hour advance notice. Contact Garland Doyle, Interim City Clerk, at (248) 758-3200 for special services.

**#6**

**RESOLUTION**

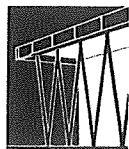


Be it further resolved that the Pontiac City Council schedules a Public Hearing for the City of Pontiac's Proposed Annual Budget for FY 2019-2020 and City Tax Rate for Tuesday, June 4, 2019 in the Pontiac City Council Chambers at 6 p.m.

**#7**

# **RESOLUTION**





# AUCH

**Auch Construction**

Innovative Planners & Construction Managers  
Since 1908

65 University Drive  
Pontiac, Michigan 48342  
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F (248) 334-3404  
[www.auchconstruction.com](http://www.auchconstruction.com)

May 16, 2019

CITY OF PONTIAC  
CITY CLERK  
Garland Doyle, Interim City Clerk  
47450 Woodward Avenue  
Pontiac, MI 48342

**RE: Phoenix Center Parking Garage and Amphitheater Renovation Project  
RFQ for Owner's Representative Services  
Modified for City's Request for Additional Services**

Dear Mr. Doyle,

In response to the May 7 request of both City Council and Mayor Waterman, we are pleased to present our modified proposal which provides a not to exceed amount for preconstruction services (in accordance with our original proposal dated April 1, 2019) and the development of renderings and visualization illustrating the character of the renovation of the Phoenix Center and the potential impact on surrounding properties.

We have attached the detailed cost information which supports the not to exceed amount of \$283,482. The not to exceed amount is based on a 2X multiplier referenced in note #4 of our original proposal. The multiplier would be activated in the event AUCH does not participate in the Construction Phase of the project.

Consistent with our original proposal and as presented at the May 7, 2019 City Council Meeting, AUCH will invoice on a monthly basis for services incurred. The City has the right to end services at any time in accordance with the AIA A134 - 2009 Contract at which time AUCH will prepare a final invoice based on actual hours expended and costs.

Attached to this letter are;

- Revised summary of planning and preconstruction and rendering costs dated May 15, 2019
- Scope of Services for planning and preconstruction and rendering development dated May 16, 2019
- HED's proposal dated May 13, 2019
- Copy of AUCH's original summary of costs dated April 1, 2019
- Timelines for Program/Construction Management Services and Development of Renderings dated May 16, 2019
- City of Pontiac and AUCH Construction Contract Dated May 16, 2019

Upon City Council approval, we request that we be issued a letter of intent so we can start work immediately, we expect to meet with the City's representative to work together to finalize contracts by May 24, 2019.

We look forward to the opportunity to review our proposal with you and discuss how we can work together with the City of Pontiac and others to make this project as successful as possible.

Sincerely,

**AUCH Construction**

Vince DeLeonardis  
President

CC: Jim Munchiando – AUCH Construction  
Gerry McClelland – AUCH Construction

**Phoenix Center Parking Garage and Amphitheater Renovation Project**  
**May 16, 2019**

**EXHIBIT A**

Confirmation of the availability of funds for Preconstruction and Rendering Services

Demonstrate the availability of funds in the amount that covers the Phoenix Center Renovation Project design services estimated at \$1,500,000 prior to the issuance of the RFP for design professional services anticipated on or about July 15, 2019

Inclusion of the Phoenix Center Renovation Timeline in the Contract

Establishment of a budget in-line with the recommendations of the consultants reports and surveys included in the City's RFP to order to achieve a complete restoration of the Phoenix Center facility

Hold Harmless from any claims from Ottawa Tower II, LLC

Use of AIA A134-2009 and General Conditions A207 - 2007



## City of Pontiac, Phoenix Center

Program / Construction Management for PLANNING & PRECONSTRUCTION SERVICES for 2019 for Restoration of the Phoenix Center (6 Months)

	QUANTITY	UNIT PRICE	UNIT	TOTAL
<b>Estimates Management Reimbursable (26 weeks; 5/15/19 - 11/15/19; 6 Months) - Per Original Proposal Dated April 1, 2019</b>				
Project Executive	Included in Fee	\$135.00	Hour	Included in Fee
Preconstruction Estimate Providing	432	\$100.00	Hour	\$43,200
M & E Estimate	Included above	\$100.00	Hour	Included above
Corporate Safety Director	Included in Fee	\$115.00	Hour	Included in Fee
Project V.P./Director (Jim Munchiando)	104	\$112.00	Hour	\$11,648
Project Senior Manager	416	\$100.00	Hour	\$41,600
Project Engineer / Scheduler	235	\$65.00	Hour	\$15,275
Vehicle Cost & Mileage/PD, PM, PE	6	\$175.00	Mo	\$1,050
Mobile Phones/PD, PM, PE	6	\$125.00	Mo	\$750
<b>Subtotal</b>				<b>\$113,523</b>

### Additional Request By City for Vision Plan

Vision Plan By HED (See attached Proposal for HED)	L.S.			\$15,000
Project Director	64	\$112.00	Hour	\$7,168
<b>Subtotal</b>				<b>\$135,691</b>
Administrative Services	0.40%			\$543
				<b>\$136,234</b>
Insurance Program	0.50%			\$681
				<b>\$136,915</b>
Program Management Fee	2.50%			\$3,423
				<b>\$140,338</b>
Payment & Performance Bond if require	1%			\$1,403.38
				<b>\$141,741</b>

If Owner selects not to pursue construction activities with AUCH Construction, then a not to exceed 2x multiplier will apply to Planning & Precon. (2 times Mult.)

**\$283,482.37**

## **1. SCOPE of SERVICES**

### **A. General Requirements**

- 1) Provide a monthly report to the City containing (a) the status of the Project; (b) Project control budget status through the date of the report; (c) a comparison of the Project schedule to the work actually completed through the date of the report; (d) any revision to the Project schedule or Project budget made during the time period covered by the report; (e) a summary of change orders made during the time period covered by the report; (f) a list of all pending change orders and all outstanding issues requiring action or approval by Owner; (g) the status of any governmental requirements (Permits only) and activities required to facilitate approval of the Project; and (h) any other reports concerning the Project as the City may reasonably request.
- 2) Program /Construction Manager (AUCH Construction) shall be available for questions and follow up either by telephone or via in-person site meetings with City Staff as the circumstances require.
- 3) Program /Construction Manager (AUCH Construction), shall help to develop positive working relationships with and among the City, A & E firm(s), trade contractors, and consultants.
- 4) Provide Phoenix Center Vision Plan per HED Proposal.

### **B. Architect/Engineer Selection**

- 1) Develop interest, prepare list of qualified firms for City's review, and develop RFP for design professional services utilizing recent consultant's reports, studies and survey, and specific project requirements.
- 2) Participate in interviews of A & E firms and give input on qualification of firm(s).
- 3) Assist the City with final determination of award of A & E firm(s).
- 4) Assist the City in processing AIA contract documents between the City and A & E firm(s).
- 5) Trade contractor selection process, bidding, and project execution will be included in Phase II of Program/Construction Management Services; this part of the service will need to be approved by the City Council November 12, 2019.

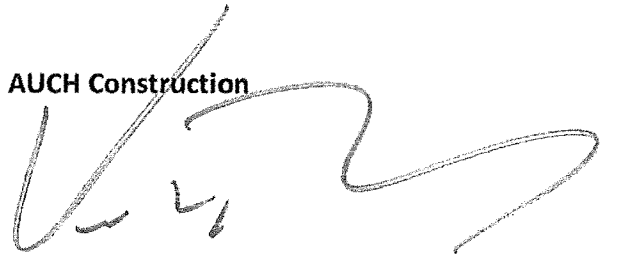
**C. Design & Pre-Construction Services Oversight**

Provide professional expertise and leadership by reviewing, analyzing, and presenting options for the design of the repair and renovation of the Phoenix Center Parking Garage and Amphitheater through the schematic and design development process. Program /Construction Manager (AUCH Construction) will continue working with A & E firm(s) to provide professional expertise to the City during the design development and construction documentation process. Activities shall include the following as reasonably required to complete the project:

- 1) Work with the A & E firm(s), AUCH Construction, City staff, administration and community stakeholders to aid in the creation of a building needs analysis. For comparison purposes respondents should plan on 10 meetings which may include (2) meetings in the evening. These meetings will allow all involved to gain an understanding of the business processes and operations and help identify the strengths and limitations of the existing building to allow for an informed design.
- 2) Participate in a design community showcase (which will be in the evening).
- 3) Review and advise the City regarding Project schedule, arranging the time required for the design development, bidding, construction, and move-in and start-up phases
- 4) Monitor architect's progress through the design process
- 5) Attend progress meetings and produce meeting minutes.
- 6) Assist in the selection of finishes (carpeting, wall coverings, and lighting)
- 7) Compare and establish control budget of preliminary design to Project budget
- 8) Review design for consistency with original Project scope
- 9) Assist the A & E firm(s), and any information from subcontractors or other vendors in the ongoing value-engineering process to identify alternative construction methods or materials, reducing cost and/or construction time
- 10) Assist in providing multiple constructability reviews and assist the A & E firm(s), and any subcontractors in the process of preparing cost analyses.
- 11) Perform budget and schedule updates as necessary.
- 12) Monitor and advise the City regarding the A & E firm services to provide City staff with determination of probable construction costs (cash flow) and phasing.
- 13) Assist in identifying major long lead equipment such as air handling units, network infrastructure, electrical transformers, etc.
- 14) Monitor trade, labor and construction market trends that could impact the cost or schedule for the project.
- 15) Assess material and labor availability in the local marketplace and evaluate alternative systems and building products.
- 16) Identify material in order to preorder items requiring long lead times for delivery
- 17) Review A & E firm(s), invoices on behalf of the City and make recommendations for payment.

- 18) Advise and recommend the City staff and A & E regarding the preparation and dividing of proposal packages for all trades & services related to demolition & construction, determining trades that are sole source and determining trades that are covered under existing City agreements
- 19) All proposals will be received by the City of Pontiac Clerk's Office and opened in the Lion's Den Conference Room
- 20) Review proposals with the City on A & E firms(s) as necessary, prepare evaluation sheet and assist in any post proposal interviews, determine the responsiveness and responsibility of proposers and recommend award.
- 21) Provide Construction Phase Program/Construction Management Services in accordance with the Contract and Proposal Dated April 1, 2019

AUCH Construction



Vince DeLeonardis  
President and CEO

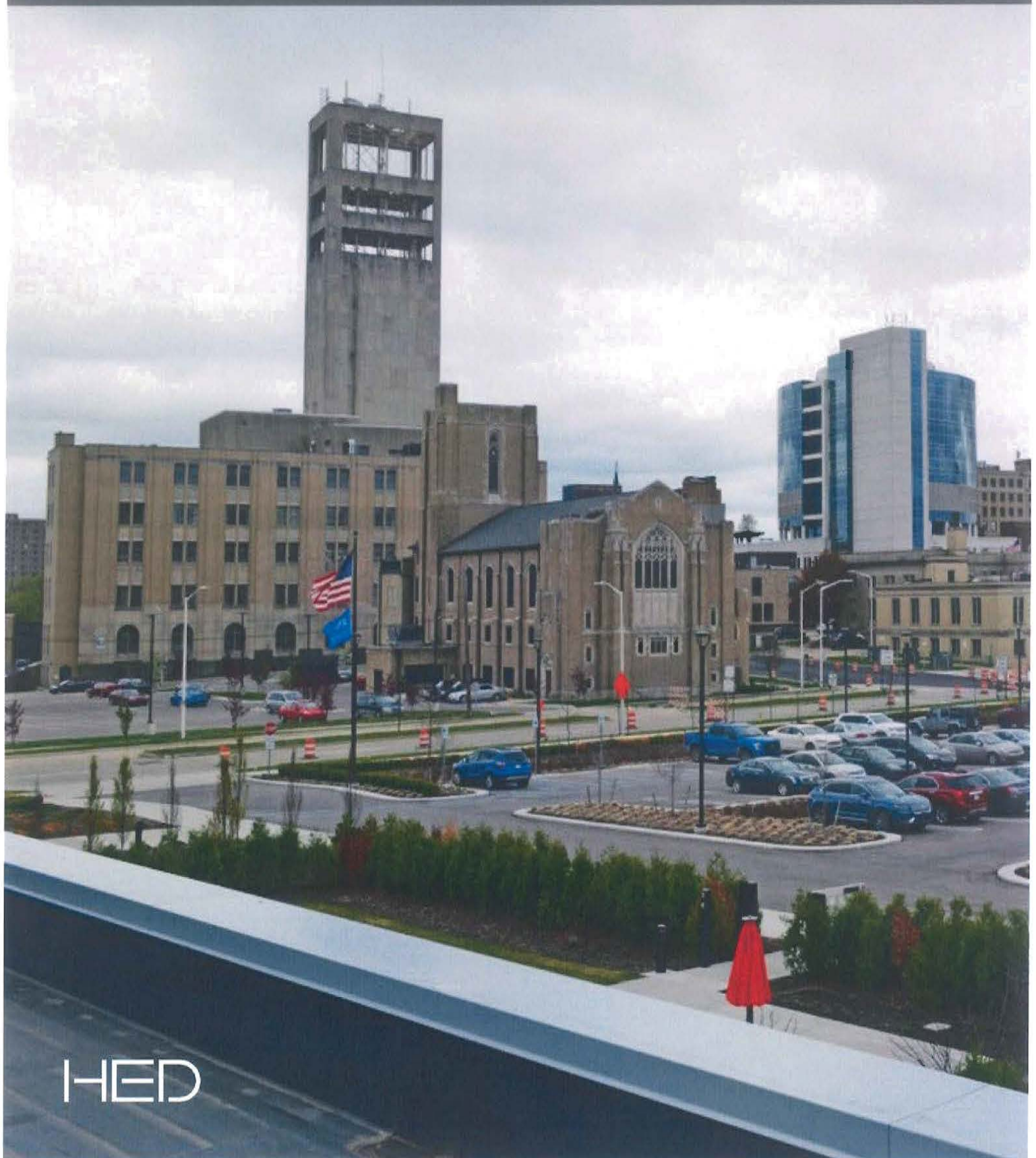
May 16, 2019

Date

# Pontiac Phoenix Center

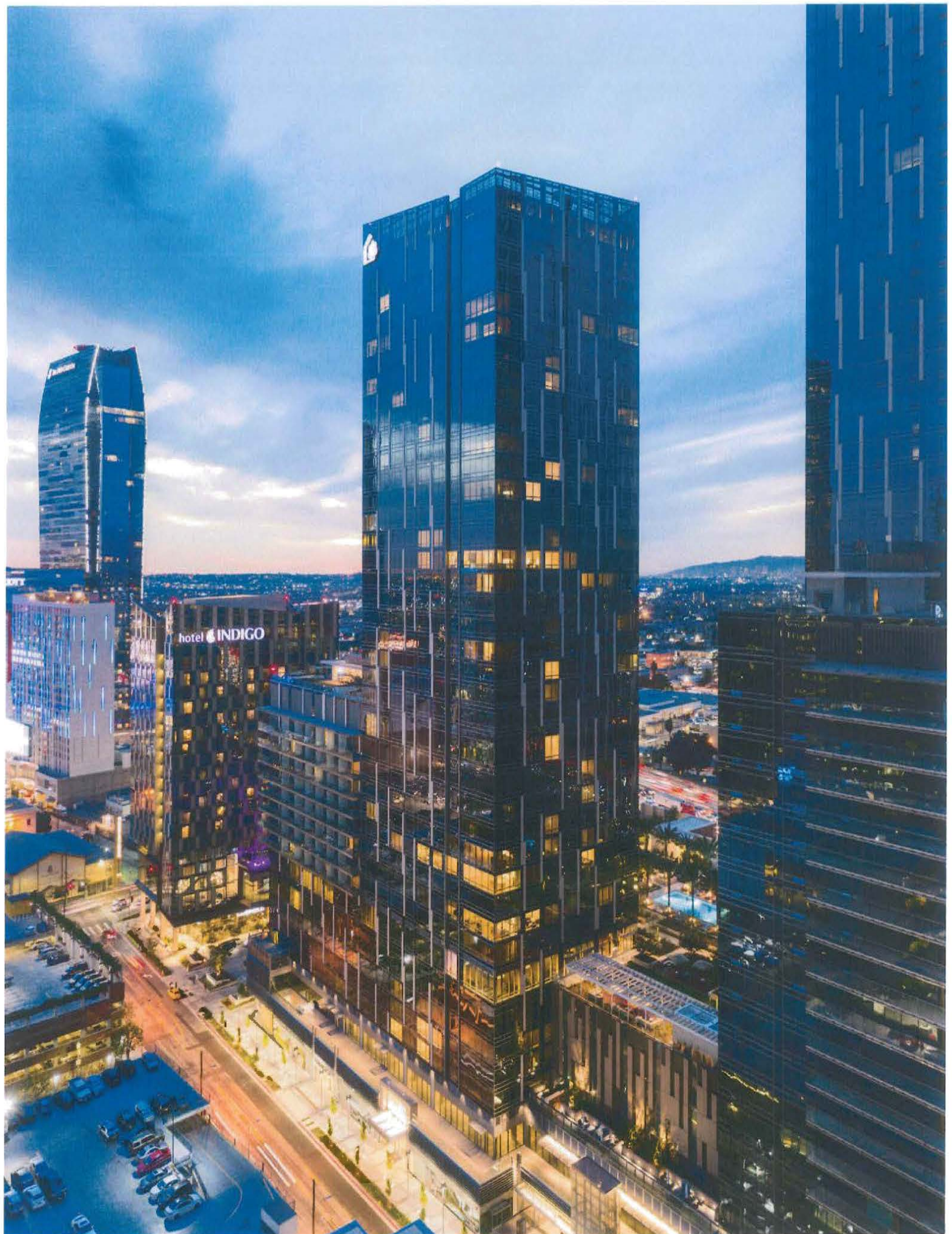
Proposal for Vision Plan

May 13, 2019



IHED









[WWW.HED.DESIGN](http://WWW.HED.DESIGN)

*Advancing Your World*

May 13, 2019

Mr. Vince DeLeonardis  
President  
AUCH Construction  
65 University Drive  
Pontiac, Michigan 48342

Dear Mr. DeLeonardis,

Cities are periodically presented with a need to act in the development of physical places to improve the quality of life of the community and inspire others to consider developing or moving there.

While city leadership may understand the need for that investment, a vision of the future impact of that investment is usually key to achieving support and activating participation. This may certainly be the case as you, with the City of Pontiac, now begin to shape a project for the renovation and reactivation of the Phoenix Center.

In support of your goals, HED is pleased to present our approach and proposal for the development of images to portray a possible future for the Phoenix Center and its surroundings.

All the best,

A handwritten signature in black ink, appearing to read 'J. Meredith'.

James F. Meredith LEED AP  
*Associate Principal, Studio Leadership*

**Boston**

**Chicago**

**Dallas**

**Detroit**

**Los Angeles**

**Sacramento**

**San Diego**

**San Francisco**



**PROJECT UNDERSTANDING**

In preparation of its proposal, AUCH has asked HED for a proposal to develop renderings illustrating the future potential of the Phoenix Center and its surroundings as a result of the City's investment to create the infrastructure required to support private investments in the City.

**PROJECT APPROACH**

HED, in coordination with AUCH and the City of Pontiac, will prepare up to three renderings illustrating the character of the renovation of the Phoenix Center and the potential impact on surrounding properties. These will illustrate both the architectural character of the area as well as depict the nature of the public's experience there.

HED recognizes that there is a history of thinking about the Phoenix Center and its place in serving the community. HED will approach its work with an understanding and appreciation of that past work and the City's more recently framed goals and objectives.

**SCOPE OF SERVICES**

HED will develop these renderings and visualizations for the future of Phoenix Center over a three week period after your acceptance of this proposal and authorization to proceed. This three week period will be composed of the following key activities –

SUMMARY OF SERVICES below, Please see attached for more information see attached

Week One -- Review background documents and recent studies to understand the potentials of the site and the City's goals and objectives.

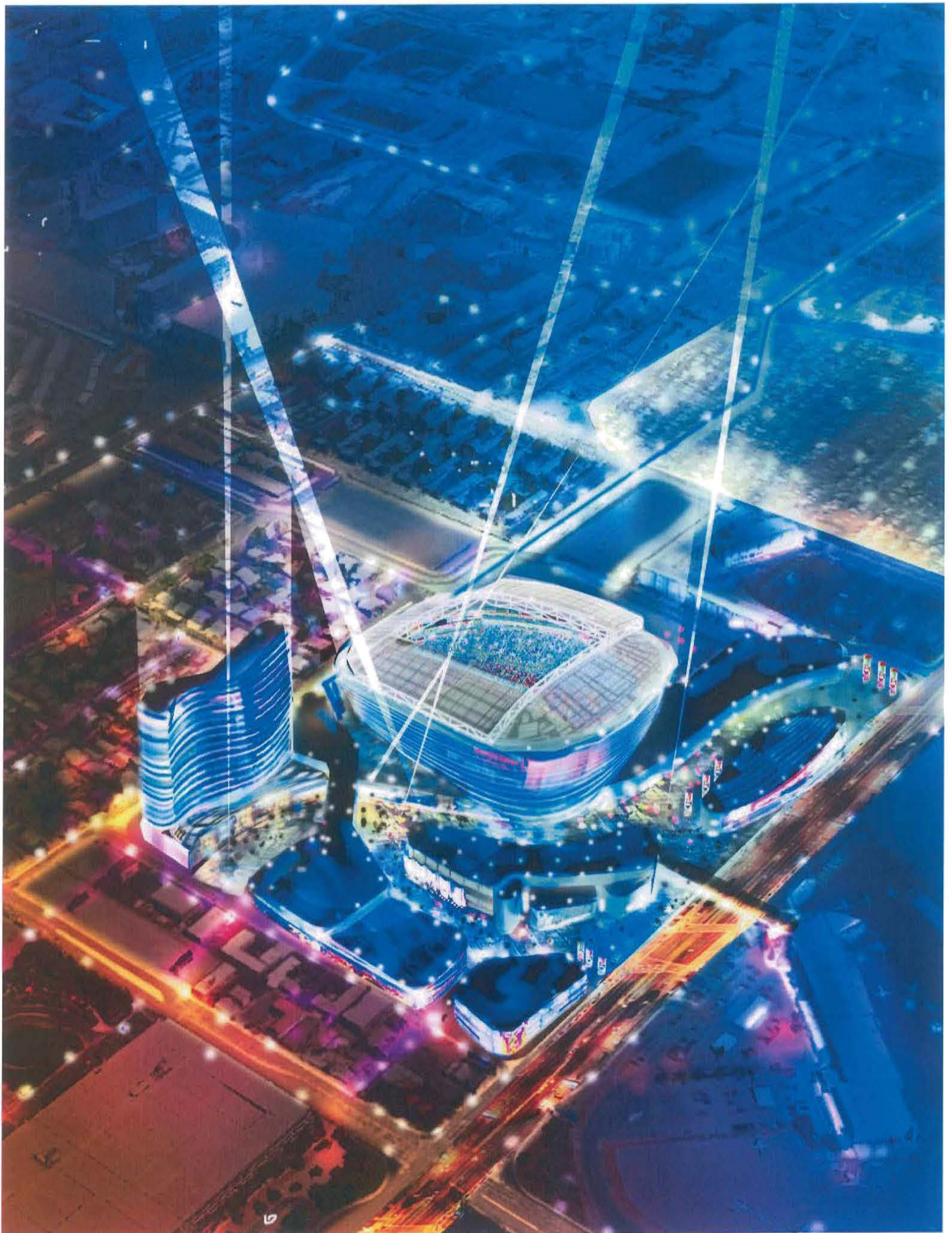
Week Two – Generate alternative visions for the redevelopment of the property including site plans, diagram and rough sketches.

Week Three – Development of up to three renderings based on the general and specific directions provided in AUCH's review of the products of Week Two.

**PROFESSIONAL COMPENSATION**

HED proposes to provide the described services for a professional compensation of \$15,000.00 (Fifteen Thousand Dollars).

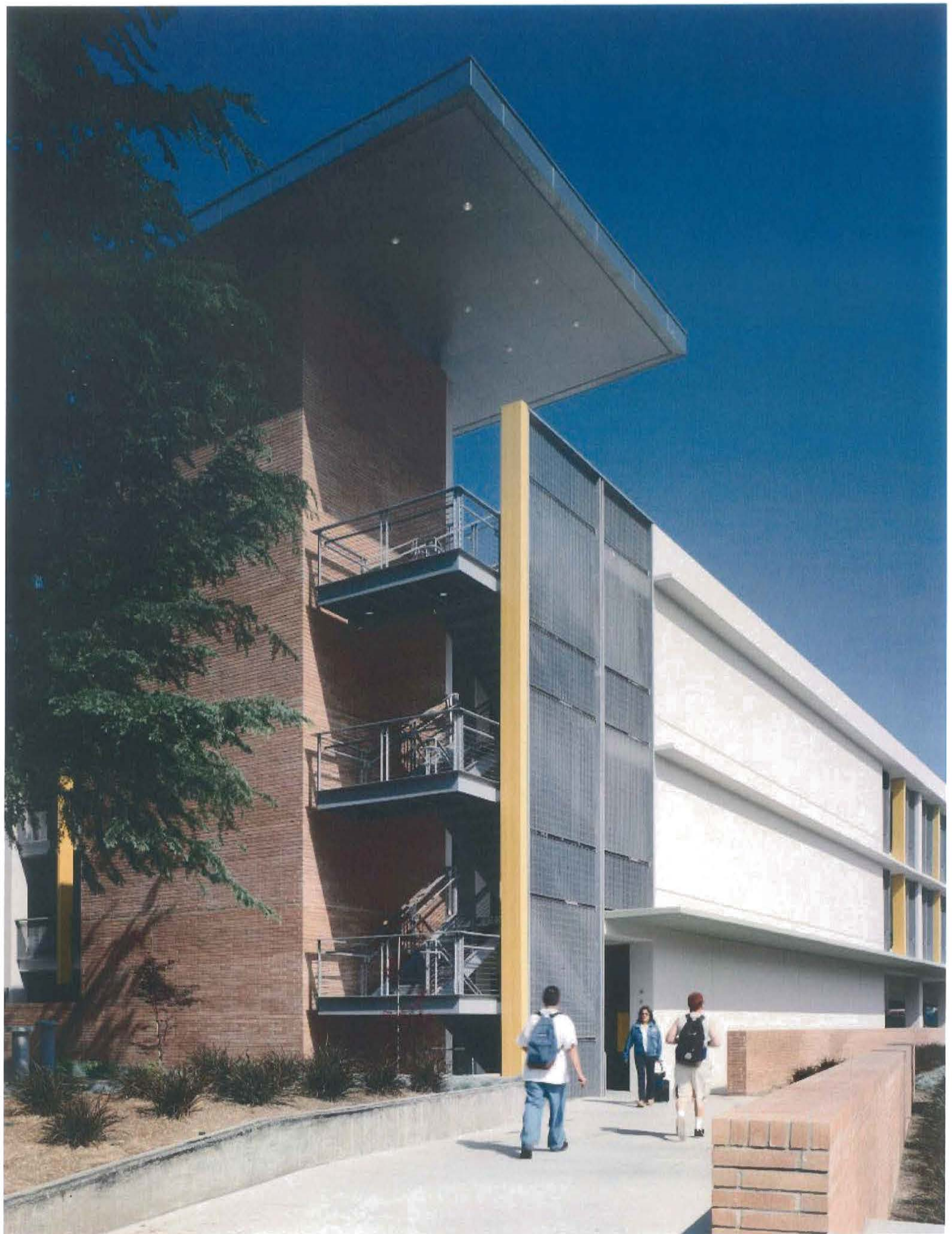




# PHOENIX CENTER VISION | PRELIMINARY PROPOSED WORK PLAN

	Week 1 (3 days)	Week 2 (5 days)	Week 3 (5 days)	Week N (2 days)
Key dates (Tuesdays)	Week of 5/14/2019	Week of 5/21/2019	Week of 5/28/2019	Week of 6/5/2019
Purpose	Develop analysis and obtain concurrence on key "background" conditions	Obtain concurrence and specific direction on concept development	Obtain final comments and directions on concepts and form of presentation	Present "final" vision concepts
Key deliverables	Preliminary findings/ guiding planning principles	Emerging concept alternatives	Final concept visualizations/ draft presentation	Presentation of vision
Activities	<p>Proposal presented and approved by city</p> <p>Project ignition meeting (Auch, HED)</p> <p>Gather and analyze relevant documents</p> <ul style="list-style-type: none"> <li>background maps, drawings</li> <li>prior reports and studies</li> </ul> <p>Identify, coordinate key constituents</p> <ul style="list-style-type: none"> <li>informal conversations re concerns and aspirations, other subjects</li> </ul> <p>Identify planning parameters</p> <ul style="list-style-type: none"> <li>Commitments made</li> <li>Values alignments</li> <li>Policies</li> <li>Goals, aspirations</li> </ul> <p>Collect examples from experience and research illustrating approaches and potentials from other projects and places</p> <p>Prepare a preliminary findings "report" (what we know that will guide the visualization of potentials)</p>	<p>Prepare materials for design workshop</p> <p>Convene a half-day design workshop (Auch, HED, invited others)</p> <p>Workshop agenda</p> <ul style="list-style-type: none"> <li>Present and discuss findings</li> <li>Agree on scope of planning visualization</li> <li>Generate and test alternative sketch concepts</li> </ul> <p>Develop preliminary sketches</p> <ul style="list-style-type: none"> <li>Context analysis</li> <li>Site plans</li> <li>Buildings and event scales and descriptions</li> </ul> <p>Review preliminary sketch concepts with key stakeholders</p> <p>Support development of relevant and related information and data (function, form, economy, time)</p> <p>Prepare an initial concept presentation</p>	<p>Prepare and present initial concept</p> <p>Finalize modes of visualization and presentation</p> <p>Finalize renderings and supporting materials</p> <p>Support development of final related information and data (function, form, economy, time)</p> <p>Informal review meetings</p>	<p>Present final vision documents</p> <p>Final presentation to City</p>
Meetings	Project ignition meeting (Auch, HED)	Interviews, reviews with key stakeholders (?) Design workshop	Presentation to key stakeholders (Mayor, others?)	





## **GENERAL CONDITIONS**

### ***Payments***

Invoices for our services are submitted every month for the portion of services completed. Payments are due and payable once a month by AUCH Construction (15) days from the date of Owner's receipt of a correct and accurate monthly invoice. AUCH Construction shall notify HED within a reasonable time from receipt of invoice of any such errors that would delay payment. Amounts unpaid (45) days after the receipt of the invoice date shall bear interest at the following rate: The Wall Street Journal composite prime rate, as published in its Money Rates section from time to time, plus five percent (5%) per annum.

### ***Insurance***

HED carries both general business and architect's and engineer's professional liability insurance coverage for the protection of both our firm and our clients. We would be pleased to share the details of said coverage if you so request.

### ***Termination, Suspension or Abandonment***

In the event that this project is either terminated, suspended or abandoned by the client, we require seven (7) days notice from the client and payment for services performed and costs incurred up to the termination effective date.

### ***Hazardous Materials***

HED does not have specialized expertise in the specifying of treatment and / or handling of new and / or existing asbestos-containing, asbestos-contaminated, or other hazardous materials, above or below surface, and our professional liability insurance policy does not include coverage of these services. Therefore, HED cannot provide these services. It is our understanding that the Michigan Regional Council of Carpenters will retain, if necessary, a qualified industrial hygienist and / or contractor to provide these services.

### ***Dispute Resolution***

HED believes that the use of Alternate Dispute Resolution (ADR) methods work to the best interest of both parties, in the event that a dispute should arise pertaining to the contract performance of either or both parties. Our firm actively advocates the use of ADR methods including mandatory informal negotiations, mediation and binding arbitration. We will suggest various ADR methods and contract clauses in the final form of contract to be used, upon acceptance of this proposal.

Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or the breach thereof shall be subject to and decided by informal negotiations between authorized representatives of the parties, followed by mediation if the informal negotiations are not successful. Mediation shall be conducted in accordance with the Construction Industry Mediation Rules of the American Arbitration Association in effect at the time the request for mediation is made by either party. In the event that the parties are not successful in resolving the dispute by mediation, then such disputes shall be subject to and decided by arbitration conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association in effect at the time the demand for arbitration is made by either party. The place of the arbitration hearings shall be at the offices of the American Arbitration Association in Southfield, Michigan unless otherwise mutually agreed by the parties. The award rendered by the arbitrator(s) shall be final and binding and enforceable in any court of competent jurisdiction.









WWW.HED.DESIGN

*Advancing Your World*

### **Acceptance**

We suggest that if this proposal-agreement meets with your approval and you choose to award this project to HED, this proposal-agreement letter will serve as the contract between HED and AUCH Construction. To consummate this agreement and to grant us authorization to begin our services, please have an authorized individual sign the Acceptance, retain one signed copy of the proposal for your records and forward the other signed copy to us. This proposal-agreement will be considered valid for sixty (60) days from date of issue.

If you have any questions regarding this proposal-agreement for services, or if you wish to discuss any aspect of the project, please contact me directly. We look forward to this opportunity to serve AUCH Construction.

Very truly yours,



James F. Meredith LEED AP  
*National Workplace Strategy Leader*  
Project Director

Accepted for AUCH Construction by:

Signature

---

Printed Name and Title

---

Date

---

By signing this document, the signatory attests that they are authorized to execute this Agreement on behalf of AUCH Construction.



# Mixed-Use Developments + Parking Structures

We understand how to create the "wow" experience that attracts customers to the storefront and keeps them coming back. We design retail layouts to be intuitive and authentic. Our holistic approach strengthens the brand, impacts the image and drives sales.

HED has also built and planned more than 10,000 spaces of elevated parking decks, ranging from 300-car to 2,500-car parking structures. Parking design and analysis is a complex specialty requiring a thorough understanding of site constraints; vehicular entry / exit design, parking geometrics and traffic flow, functional design, selection of the appropriate ramping system and type of parking layout for the parkers using the facility.

---

**Americana at Brand**  
Lifestyle Center  
330,000 SF Retail  
276,000 SF Residential  
8 Levels of Parking  
Glendale, California

**Detroit Medical Center**  
Heart Hospital Parking Structure +  
Connector Bridge  
1,780 Parking Spaces  
Detroit, Michigan

**California State University, Northridge**  
B-5 Parking Structure  
5 Levels of Parking  
Northridge, California

**Circa**  
Mixed-Use Development  
50,000 SF Retail  
648 Residential Units  
1,700 Parking Spaces  
Los Angeles, California

**GM RenCen**  
Highlands Restaurant  
23,000 SF  
Detroit, Michigan

**Metropolis**  
Mixed-Use Development  
60,000 SF Retail  
1,199 Residential Units  
8 Levels of Parking  
Los Angeles, California

**Miramar College**  
Public Safety Building + Parking Structure  
499 Parking Spaces  
San Diego, California

**Olympia Development of Michigan**  
DMC Mixed-Use Office Building  
130,000 SF  
Detroit, Michigan

**Pops for Champagne**  
Champagne Bar, Jazz Club + Retail Shop  
6,500 SF  
Chicago, Illinois

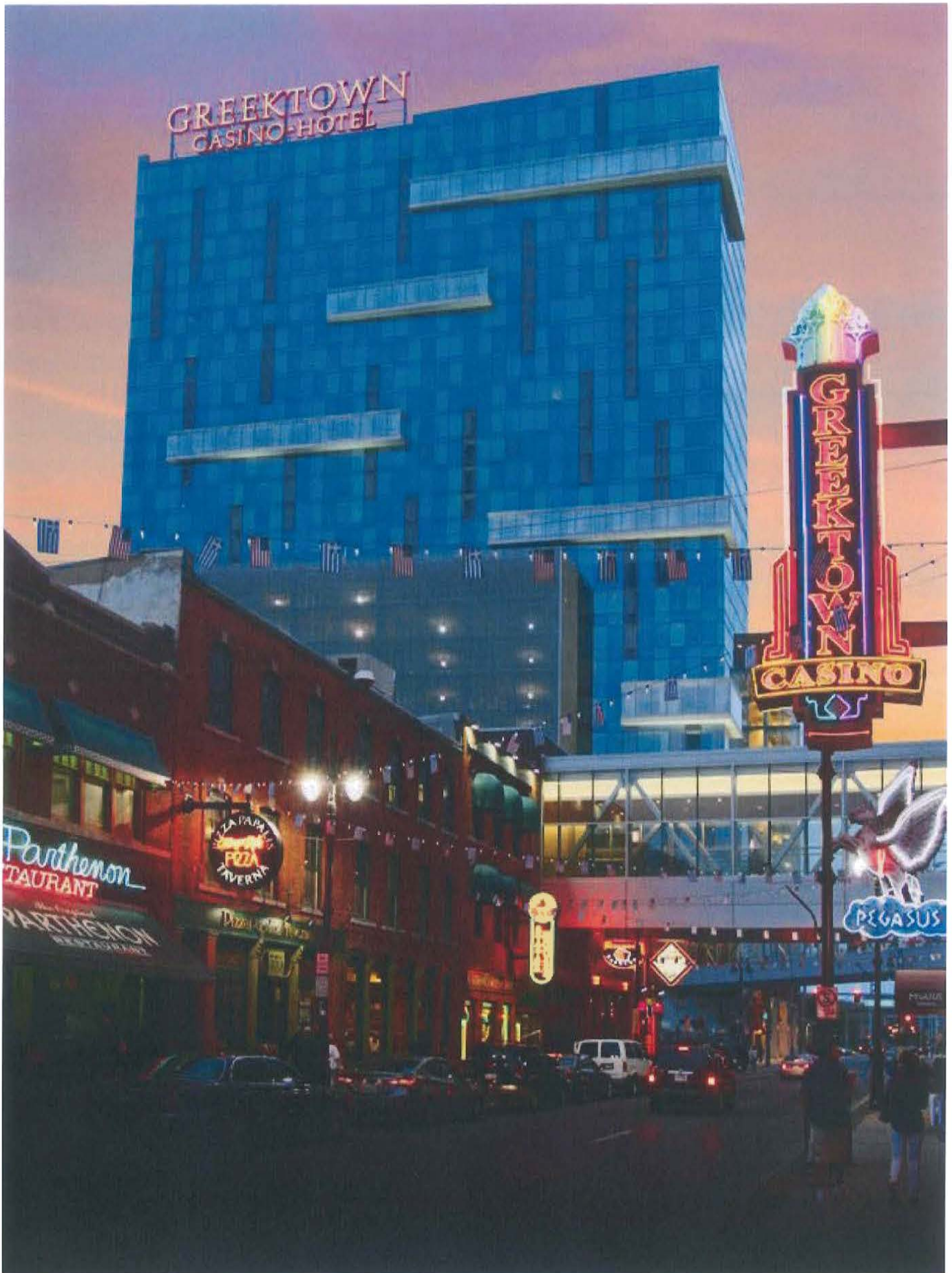












\*work performed by Paul Wang prior to HED



Harley Ellis Devereaux (HED)  
26913 Northwestern Hwy., Suite 200  
Southfield, MI 48033  
**248.262.1500 • WWW.HED.DESIGN**



HED



**CM / Owner Rep. Planning & Preconstruction Services  
for 2019 for Restoration of the Phoenix Center, (6 Months)**

	QUANTITY	UNIT PRICE	UNIT	TOTAL
<b>Estimates Management Reimbursable (26 weeks; 5/15/19 - 11/15/19; 6 Months)</b>				
Project Executive	Included in Fee	\$135.00	Hour	Included in Fee
Preconstruction Estimate Providing	432	\$100.00	Hour	\$43,200
M & E Estimate	Included above	\$100.00	Hour	Included above
Corporate Safety Director	Included in Fee	\$115.00	Hour	Included in Fee
Project V.P. / Director (Jim Munchiando)	104	\$112.00	Hour	\$11,648
Project Senior Manager (Rod Elgie)	416	\$100.00	Hour	\$41,600
Project Engineer / Scheduler	235	\$65.00	Hour	\$15,275
Vehicle Cost & Mileage/PD, PM, PE	6	\$175.00	Mo	\$1,050
Mobile Phones/PD, PM, PE	6	\$125.00	Mo	\$750
				<b>\$113,523</b>

**CM / Owner Rep. Bidding, Award & Construction  
for 2019 to 2021 for Restoration of the Phoenix Center, (18 Months)**

	QUANTITY	UNIT PRICE	UNIT	TOTAL
<b>Estimates Management Reimbursable (78 weeks; 11/02/19 - 4/30/21; 18 Months)</b>				
Project Executive	Included in Fee	\$135.00	Hour	Included in Fee
Corporate Safety Director	Included in Fee	\$115.00	Hour	Included in Fee
Project V.P. / Director (Jim Munchiando)	312	\$112.00	Hour	\$34,944
Project Senior Manager (Rod Elgie)	1248	\$100.00	Hour	\$124,800
Project Engineer / Scheduler	1248	\$65.00	Hour	\$81,120
Vehicle Cost & Mileage/PD, PM, PE	12	\$175.00	Mo	\$2,100
Mobile Phones/PD, PM, PE	12	\$125.00	Mo	\$1,500
				<b>\$244,464</b>

**CM FEE****TOTAL CONSTRUCTION**

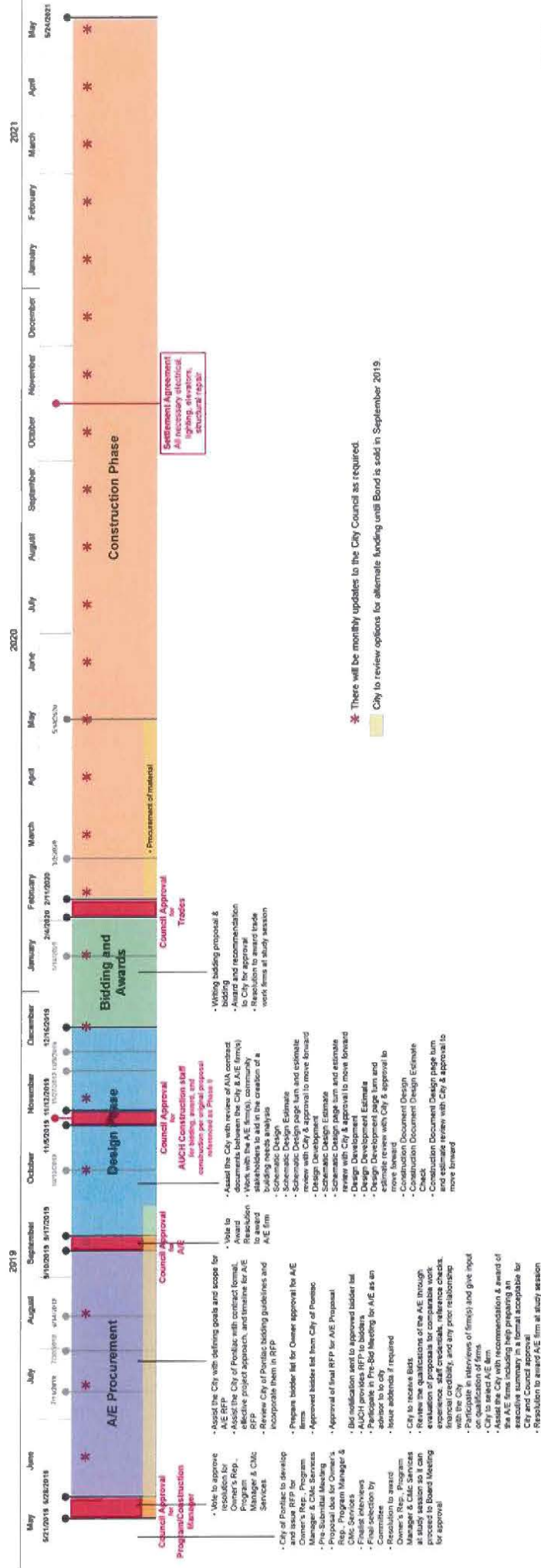
Construction Management Fee	2.50%
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**NOTES**

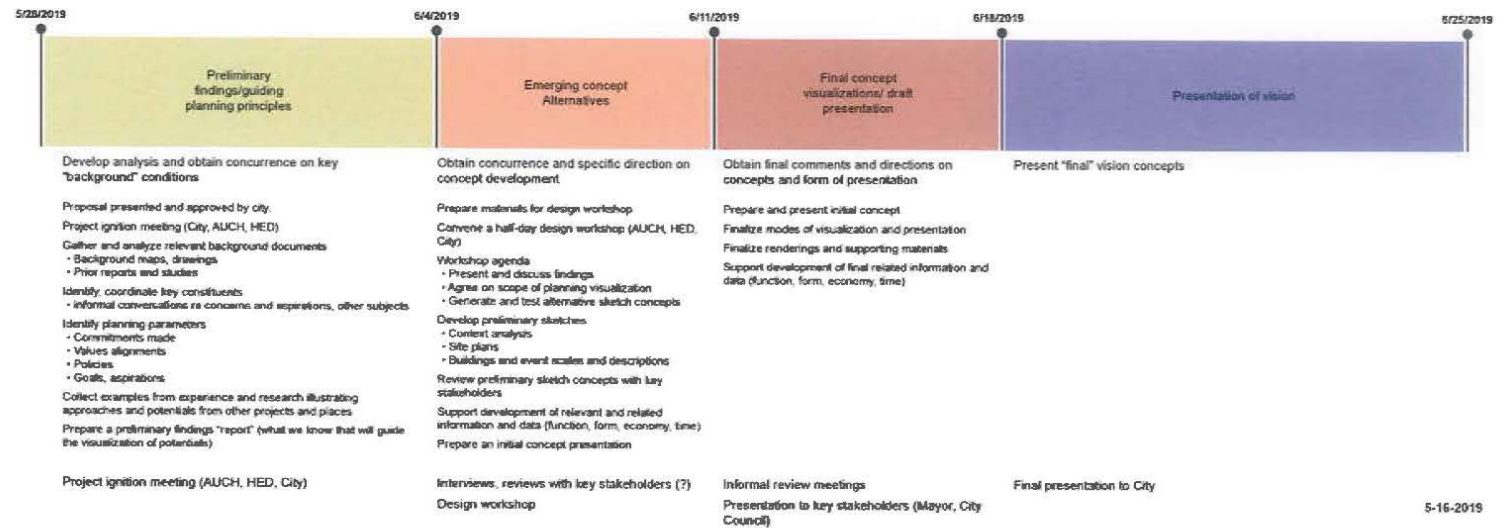
1. The range presented for staff rates represents the various rates for AUCH Team members. Invoicing will be based on the actual cost of the staff required for a particular project.
2. Preconstruction rates are based on the staffing rates presented above.
3. If Owner selects not to pursue construction with AUCH Construction, then 2x multiplier will apply to Planning & Preconstruction Services.
4. Upon the start of each project, an estimate will be prepared. When the project information is better known, we will adjust the hours and durations accordingly. Expenditure would be made on an as needed basis only.
5. General Liability Insurance is ( 0.5% x total cost of construction ).
6. Administrative Services is (0.4% x total cost of construction).
7. CM Payment & Performance Bond is ( 1.0% x total cost of the construction )
8. Our Project Executive and Corporate Safety Director is included in the CM Fee and not job charged.
9. When project information is better known we will adjust the hours and schedule to the revised project plan and update all costs for owner approval.



# CITY OF PONTIAC PHOENIX CENTER PROPOSED PRELIMINARY RESTORATION TIMELINE



## CITY OF PONTIAC PHOENIX CENTER VISION/PRELIMINARY WORK PLAN



# DRAFT AIA® Document A134™ - 2009

## Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price

AGREEMENT made as of the «16th» day of «May» in the year «2019»  
(In words, indicate day, month and year.)

BETWEEN the Owner:  
(Name, legal status and address)

«CITY OF PONTIAC»«(the Owner) »  
«47450 Woodward Avenue  
Pontiac, MI 48342»

and the Construction Manager:  
(Name, legal status and address)

«GEORGE W. AUCH COMPANY d/b/a AUCH CONSTRUCTION »«(the Construction  
Manager and Program Manager)»  
«65 University Drive  
Pontiac, MI 48342»

for the following Project:  
(Name and address or location)

«PHOENIX CENTER PARKING GARAGE & AMPHITHEATER RENOVATION»  
«Pontiac, MI»

The Architect:  
(Name, legal status and address)

«To Be Determined»« »  
« »

The Owner's Designated Representative:  
(Name, address and other information)

«John V. Balint, P.E.»  
«Director of Department of Public Works»  
«City of Pontiac»  
«47450 Woodward Avenue »  
«Pontiac, MI 48342»  
« »

The Construction Manager's Designated Representative:  
(Name, address and other information)

«Gerry McClelland, CPE, LEED AP BD+C, Project Director»  
«AUCH Construction»  
«65 University Drive»  
«Pontiac, MI 48342»  
«Ph: 248-334-2000»  
« »

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

ELECTRONIC COPYING of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

The Architect's Designated Representative:  
(Name, address and other information)

«To Be Determined»

« »  
« »  
« »  
« »  
« »

The Owner and Construction Manager agree as follows.



## TABLE OF ARTICLES

1	GENERAL PROVISIONS
2	CONSTRUCTION MANAGER'S RESPONSIBILITIES
3	OWNER'S RESPONSIBILITIES
4	COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
5	COMPENSATION FOR CONSTRUCTION PHASE SERVICES
6	COST OF THE WORK FOR CONSTRUCTION PHASE
7	PAYMENTS FOR CONSTRUCTION PHASE SERVICES
8	INSURANCE AND BONDS
9	DISPUTE RESOLUTION
10	TERMINATION OR SUSPENSION
11	MISCELLANEOUS PROVISIONS
12	SCOPE OF THE AGREEMENT

## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's approval of the Control Estimate, the Contract Documents will also include the documents described in Section 2.2.4 and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.5. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. (It is understood and agreed that Drawings and Specifications have yet to be prepared for the Project.)

### § 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

### § 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™-2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2007, which document is incorporated herein by reference. The term "Contractor" as used in A201-2007 shall mean the Construction Manager.

### § 1.4 Contract Sum, Contract Time and Changes in the Work

The Contract Sum is the actual Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee as defined in Section 5.1. The Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work as certified by the Architect in accordance with Section

9.8 of AIA Document A201–2007. The Contract Time shall be measured from the date of commencement of the Construction Phase as established pursuant to Section 2.3.1.2 of this Agreement. Changes in the Work shall be governed by Section 5.2 of this Agreement and not by Article 7 of A201–2007. If, however, the Contract Time has been established in accordance with Section 2.2.4.5, Article 7 of A201–2007 shall control adjustments to the Contract Time.

## **ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES**

For the purposes of this Project, the Construction Manager is also the "Program Manager". It is understood and agreed that the Project will be undertaken by the Owner in phases which are generally described as the "Planning and Preconstruction Phase" (with sub-phases for "A/E Procurement", "Design Phase", "Bidding and Awards"), and the "Construction Phase" (see "Preliminary Timeline" at Exhibit D). Note, however, that Owner's execution of this Agreement is authorization for Construction Manager to proceed only with the "Planning and Preconstruction Phase" (sub-phases for "A/E Procurement" and "Design Phase"). It is the intent of the Owner to engage Construction Manager for "Bidding and Awards" and the "Construction Phase". Construction Manager's Planning and Preconstruction Phase scope of services (including Program Management services) are stated in Section 2.1 (below) and further outlined in Exhibit A. Exhibit B states Construction Manager's not-to-exceed amount for Planning and Preconstruction Phase services (in accordance with Construction Manager's original proposal dated April 1, 2019, Exhibit E) and the development of renderings; specifically, Exhibit B contains a cost breakdown of the not-to-exceed amount of \$283,482. At the time Owner authorizes Construction Manager to proceed with the Bidding and Awards and Construction Phase of the Project, Owner and Construction Manager shall execute a written Change Order in accordance with Construction Manager's original proposal April 1, 2019 (which would include Construction Manager's Construction Phase charges), all of which would be in addition to Construction Manager's charges for the Planning and Preconstruction Phase services.

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

### **§ 2.1 Preconstruction Phase**

**§ 2.1.1** The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

#### **§ 2.1.2 Consultation**

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

**§ 2.1.3** When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Control Estimate; the components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

#### **§ 2.1.4 Phased Construction**

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

### **§ 2.1.5 Preliminary Cost Estimates**

**§ 2.1.5.1** Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

**§ 2.1.5.2** As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Construction Manager submits a Control Estimate for the Work, pursuant to Section 2.2. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

### **§ 2.1.6 Subcontractors and Suppliers**

The Construction Manager shall develop bidders' interest in the Project.

**§ 2.1.7** The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the Owner's approval of the Control Estimate, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the Owner's approval of the Control Estimate, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

### **§ 2.1.8 Extent of Responsibility**

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules, including the Control Estimate and the estimated date of Substantial Completion, except as provided in Section 2.2.4.5. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

### **§ 2.1.9 Notices and Compliance with Laws**

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

### **§ 2.2 Control Estimate**

**§ 2.2.1** At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Control Estimate for the Owner's review and acceptance. The Control Estimate shall be the sum of the Construction Manager's estimate of the Cost of the Work and the Construction Manager's Fee and shall include those items set forth in Section 2.2.4 below. When the Control Estimate is acceptable to the Owner, the Owner shall acknowledge it in writing.

**§ 2.2.2** The Construction Manager shall develop and implement a detailed system of cost control that will provide the Owner and Architect with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, in writing, no later than the Construction Manager's first Application for Payment and shall be revised and submitted with each Application for Payment.

**§ 2.2.3** To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Control Estimate for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes

in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated in a revised Control Estimate by mutual agreement of the parties.

**§ 2.2.4** The Control Estimate shall include

- .1 a list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 a list of the clarifications and assumptions made by the Construction Manager in the preparation of the Control Estimate, including assumptions under Section 2.2.3, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, and the Construction Manager's Fee;
- .4 the anticipated date of Substantial Completion upon which the Control Estimate is based, and a schedule for the issuance dates of the Construction Documents upon which the anticipated Substantial Completion date relies; and
- .5 a statement as to whether or not the duration from the stated date of commencement of the Construction Phase to the estimated date of Substantial Completion shall become the Contract Time and be subject to the provisions of Article 8 of A201–2007.

**§ 2.2.5** The Owner shall authorize the Architect to incorporate the agreed-upon assumptions and clarifications contained in the Control Estimate. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Control Estimate and the revised Drawings and Specifications.

**§ 2.3 Construction Phase**

**§ 2.3.1 General**

**§ 2.3.1.1** For purposes of Section 8.1.2 of A201–2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

**§ 2.3.1.2** The Construction Phase shall commence upon the Owner's approval of the Control Estimate or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

**§ 2.3.1.3** Prior to commencement of the Construction Phase, and except for planning and preconstruction services, the Construction Manager shall not incur any other cost to be reimbursed as part of the Cost of the Work.

**§ 2.3.2 Administration**

**§ 2.3.2.1** Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

**§ 2.3.2.2** Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

**§ 2.3.2.3** If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

**§ 2.3.2.4** The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.



§ 2.3.2.5 Upon the Owner's approval of the Control Estimate, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201-2007.

§ 2.3.2.6 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the Work, accidents, injuries, and other information required by the Owner.

#### § 2.4 Professional Services

Section 3.12.10 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

#### § 2.5 Hazardous Materials

Section 10.3 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

### ARTICLE 3 OWNER'S RESPONSIBILITIES

It is understood and agreed that Construction Manager shall be entitled to rely on the completeness and accuracy of the reports and other information provided by Owner and by others on behalf of Owner.

#### § 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 3.1.2 Prior to the Owner's approval of the Control Estimate, or within seven days of receiving the Owner's written acknowledgment required by Section 2.2.1, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the budget for the Cost of the Work or in the Project's scope and quality.

§ 3.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable,

grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

### § 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 3.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

### § 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™-2014, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

## ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

### § 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager's Program Management and Preconstruction Phase services described in Section 2.1 and Exhibit A:

*(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)*

«Not to exceed \$283,482.00 as further described in Exhibit B. The total not-to-exceed amount is based on a 2X (two times) multiplier referenced in note #4 of Construction Manager's April 1, 2019 proposal. The 2X multiplier would be activated in the event Owner does not authorize Construction Manager to proceed with the Construction Phase of the Project.»

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within « » ( « » ) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

### § 4.2 Payments

§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid ~~«forty-five»~~ ( «45» ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.  
(Insert rate of monthly or annual interest agreed upon.)

«4.5» % «annual rate»

## ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

«2.5% the cost of the work including planning, rendering and preconstruction phase services. See proposal dated April 1, 2019 for a statement of fees and costs (attached at Exhibit E).»

§ 5.1.2 The method of adjustment of the Construction Manager's Fee for changes in the Work:

«Construction Manager's Fee shall apply to the cost of the work.»

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

«15% for direct work and materials furnished by trade contractor, 7.5% for work subcontracted by trade contractor.»

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed « » percent ( « » %) of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:

(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
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## § 5.2 Changes in the Work

§ 5.2.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work. The Construction Manager shall incorporate all changes in the Work and Contract Time as separate entries in the Control Estimate.

§ 5.2.2 Increased costs for the items set forth in Sections 6.1 through 6.7 that result from changes in the Work shall become part of the Cost of the Work, and the Construction Manager's Fee shall be adjusted as provided in Section 5.1.2.

§ 5.2.3 If the Construction Manager receives any Drawings, Specifications, interpretations or instructions from the Owner or Architect which are inconsistent with the Contract Documents, or encounters unanticipated conditions, any of which will result in a significant change in the Cost of the Work or estimated date of Substantial Completion in comparison with the Control Estimate, the Construction Manager shall promptly notify the Owner and Architect in writing and shall not proceed with the affected Work until the Construction Manager receives further written instructions from the Owner and Architect.

§ 5.2.4 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment

provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work.

## **ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE**

### **§ 6.1 Costs to Be Reimbursed**

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost.

### **§ 6.2 Labor Costs**

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.

*(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)*

§ 6.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval.

### **§ 6.3 Subcontract Costs**

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

### **§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction**

§ 6.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

### **§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

§ 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation,

minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ 6.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ 6.5.5 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

#### § 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 6.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable. Construction Manager's personnel rates are as included in proposal dated April 1, 2019 (Exhibit E), and all Construction Manager staff except project superintendent and field labor) to be based out of AUCH's Pontiac headquarters.

§ 6.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201-2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

§ 6.6.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 6.6.9 Subject to the Owner's prior approval, expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work.

#### § 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work notwithstanding any provision of AIA Document A201–2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

#### § 6.8 Costs Not to Be Reimbursed

§ 6.8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 through 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 through 6.7; and
- .7 Costs for services incurred during the Preconstruction Phase.

#### § 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

#### § 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

#### § 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all



costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

## ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

### § 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

§ 7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

« »

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the ~~«last»~~ day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the ~~«30th»~~ day of the ~~«following»~~ month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than ~~«thirty»~~ ( ~~«30»~~ ) days after the Architect receives the Application for Payment.

*(Federal, state or local laws may require payment within a certain period of time.)*

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Applications for Payment shall show the Cost of the Work actually incurred by the Construction Manager through the end of the period covered by the Application for Payment and for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment.

§ 7.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take the Cost of the Work as described in Section 6.1.1;
- .2 Add the Construction Manager's Fee, less retainage of ~~«ten»~~ percent ( ~~«10»~~ %). The Construction Manager's Fee shall be computed upon the Cost of the Work described in the preceding Section 7.1.6.1 at the rate stated in Section 5.1.1; or if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract retainage of ~~«ten»~~ percent ( ~~«10»~~ %) from that portion of the Work that the Construction Manager self-performs;
- .4 Subtract the aggregate of previous payments made by the Owner;
- .5 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Subtract amounts, if any, for which the Architect has withheld or withdrawn a Certificate for Payment as provided in the Contract Documents.

§ 7.1.7 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 7.1.8 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 7.1.9 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

## § 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

« »

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment.

## ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance. Construction Manager's insurance shall be as stated in the Certificate of Insurance attached at Exhibit F, and the Owner's insurance shall be as set forth in Article 11 of AIA Document A201-2007.

## ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2007. However, for Claims arising from or relating to the Construction Manager’s Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)*

☒ Arbitration pursuant to Section 15.4 of AIA Document A201–2007

☐ Litigation in a court of competent jurisdiction

☐ Other: *(Specify)*

« »

### § 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007 for Claims arising from or relating to the Construction Manager’s Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

« »

« »

« »

« »

## ARTICLE 10 TERMINATION OR SUSPENSION

### § 10.1 Termination Prior to Owner’s Approval of the Control Estimate

§ 10.1.1 Prior to the Owner’s approval of the Control Estimate, the Owner may terminate this Agreement upon not less than seven days’ written notice to the Construction Manager for the Owner’s convenience and without cause and the Construction Manager may terminate this Agreement, upon not less than seven days’ written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager’s compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 In the event of termination of this Agreement pursuant to Section 10.1.1, after the commencement of the Construction Phase but prior to the Owner’s approval of the Control Estimate, the Owner shall pay to the Construction Manager under Section 10.1.2 an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- 1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- 2 Add the Construction Manager’s Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager’s Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- 3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal

assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

#### **§ 10.2 Termination Subsequent to the Owner's Approval of the Control Estimate**

**§ 10.2.1** Subsequent to the Owner's approval of the Control Estimate, the Contract may be terminated as provided in Sections 14.1.1, 14.1.2 and 14.2.1 of A201–2007. The provisions of Article 14 of A201–2007 do not otherwise apply to this Section 10.2.

**§ 10.2.2** In the event of such termination by the Owner, the amount payable to the Construction Manager shall not exceed the amount the Construction Manager would have been entitled to receive pursuant to Sections 10.1.2 and 10.1.3 of this Agreement, less any compensation that may be awarded to the Owner pursuant to Article 9.

**§ 10.2.3** In the event of such termination by the Construction Manager, the amount payable to the Construction Manager shall be in accordance with Sections 10.1.2 and 10.1.3 of this Agreement, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, including a reasonable estimate of the Cost of the Work for Work not actually completed.

**§ 10.2.4** In addition to the Owner's right to terminate this Agreement for cause as provided in Section 14.2.1 of A201–2007, the Owner may terminate this Agreement for convenience as provided in Section 14.4; however, the Owner shall then only pay the Construction Manager an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner.

#### **§ 10.3 Suspension**

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007. In such case, the Control Estimate and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.2.4 of this Agreement.

### **ARTICLE 11 MISCELLANEOUS PROVISIONS**

**§ 11.1** Terms in this Agreement shall have the same meaning as those in A201–2007.

#### **§ 11.2 Ownership and Use of Documents**

Section 1.5 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

#### **§ 11.3 Governing Law**

Section 13.1 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

#### **§ 11.4 Assignment**

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing

financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201-2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Other provisions:

- «.1 Construction Manager's revised summary of planning and preconstruction and rendering costs dated May 15, 2019 (Exhibit B);
- .2 Construction Manager's Scope of Services for planning and preconstruction and rendering development dated May 15, 2019 (Exhibit A);
- .3 HED's proposal dated May 13, 2019 (Exhibit G, which proposal is for vision planning only, but it is not a "Contract Document");
- .4 AUCH's original summary of costs dated April 1, 2019 (Exhibit C);
- .5 Timelines for Program/Construction Management Services and Development of Renderings (Exhibit D);
- .6 Provisions for Construction Phase services starting during design phase, anticipated on or about the 1<sup>st</sup> of November 2019 (Exhibit H);
- .7 AUCH Certificate of Insurance (Exhibit F);
- .8 AUCH original Proposal letter dated April 1, 2019 (Exhibit E);
- .8 AUCH Modified Proposal letter dated May 16, 2019 (Exhibit I);

»

ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A134-2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price, as amended.
- .2 AIA Document A201-2007, General Conditions of the Contract for Construction, as amended.
- .3 Other documents:  
*(List other documents, if any, forming part of the Agreement.)*

«See Section 11.5.»

This Agreement is entered into as of the day and year first written above.

CITY OF PONTIAC

GEORGE W. AUCH COMPANY  
(aka AUCH Construction)

OWNER (Signature)

« »« »

(Printed name and title)

CONSTRUCTION MANAGER (Signature)

« »« »

(Printed name and title)

# DRAFT AIA® Document A201™ - 2007

## General Conditions of the Contract for Construction

### for the following PROJECT:

(Name and location or address)

«PHOENIX CENTER PARKING GARAGE & AMPHITHEATER RENOVATION»

«Pontiac, MI »

### THE OWNER:

(Name, legal status and address)

«CITY OF PONTIAC »«(the Owner) »

«47450 Woodward Avenue

Pontiac, MI 48342»

### THE ARCHITECT:

(Name, legal status and address)

«To Be Determined»« »

« »

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## **ARTICLE 1 GENERAL PROVISIONS**

### **§ 1.1 BASIC DEFINITIONS**

#### **§ 1.1.1 THE CONTRACT DOCUMENTS**

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

#### **§ 1.1.2 THE CONTRACT**

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

#### **§ 1.1.3 THE WORK**

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

#### **§ 1.1.4 THE PROJECT**

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

#### **§ 1.1.5 THE DRAWINGS**

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

#### **§ 1.1.6 THE SPECIFICATIONS**

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

#### **§ 1.1.7 INSTRUMENTS OF SERVICE**

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

#### **§ 1.1.8 INITIAL DECISION MAKER**

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

### **§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS**

**§ 1.2.1** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

### § 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

### § 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

### § 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Architect and the Architect’s consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common-law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect’s or Architect’s consultants’ reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect’s consultants.

### § 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

## ARTICLE 2 OWNER

### § 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner’s approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term “Owner” means the Owner or the Owner’s authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic’s lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner’s interest therein.

### § 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner’s obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner’s ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

### § 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

### § 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

## ARTICLE 3 CONTRACTOR

### § 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

### § 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.



§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

### § 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

### § 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

### § 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

### § 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

### § 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

### § 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts, and of labor costs for unloading and handling at the site and installation costs;
- .2 Contractor's costs for overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

### § 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

### § 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

### § 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

### § 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. In all cases, the Architect's review process shall be completed within a maximum of ten working days.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

### § 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

### § 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

### § 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

### § 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

### § 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

### § 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.



## **ARTICLE 4 ARCHITECT**

### **§ 4.1 GENERAL**

**§ 4.1.1** The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

**§ 4.1.2** Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

**§ 4.1.3** If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

### **§ 4.2 ADMINISTRATION OF THE CONTRACT**

**§ 4.2.1** The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

**§ 4.2.2** The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

**§ 4.2.3** On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

### **§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION**

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

**§ 4.2.5** Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

**§ 4.2.6** The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

**§ 4.2.7** The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and

completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing immediately or within a maximum of three (3) days or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

### § 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

### § 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

### § 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

## ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

### § 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those

portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

## § 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

## § 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

## § 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

## § 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;



- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field or office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

#### § 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

### ARTICLE 8 TIME

#### § 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

#### § 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

#### § 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

### § 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

### § 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

### § 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of

the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

#### **§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION**

**§ 9.5.1** The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 repeated failure to carry out the Work in accordance with the Contract Documents.

**§ 9.5.2** When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

**§ 9.5.3** If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

#### **§ 9.6 PROGRESS PAYMENTS**

**§ 9.6.1** After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

**§ 9.6.2** The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

**§ 9.6.3** The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

**§ 9.6.4** The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

#### § 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

#### § 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

#### § 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided

the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

#### § 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.



## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS**

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

### **§ 10.2 SAFETY OF PERSONS AND PROPERTY**

**§ 10.2.1** The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

**§ 10.2.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

**§ 10.2.3** The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

**§ 10.2.4** When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

**§ 10.2.5** The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

**§ 10.2.6** The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

**§ 10.2.7** The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

### **§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY**

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

### **§ 10.3 HAZARDOUS MATERIALS**

**§ 10.3.1** The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

#### § 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

### ARTICLE 11 INSURANCE AND BONDS

#### § 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;

- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.1.5 Notwithstanding anything that may appear contrary in this Section 11.1, it is understood and agreed that Contractor shall provide insurance as stated in AUCH Construction's Certificate of Insurance which is attached at Exhibit --- to the Agreement between Owner and Contractor (AIA A134-2009, as amended), and said Certificate of Insurance (and the insurance policies and coverages stated therein) are acceptable and agreed to by Owner.

## § 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

## § 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

#### § 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

#### § 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

#### § 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of

other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

#### § 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

### ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

#### § 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

#### § 12.2 CORRECTION OF WORK

##### § 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

## **§ 12.2.2 AFTER SUBSTANTIAL COMPLETION**

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

**§ 12.2.2.2** The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

**§ 12.2.2.3** The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

**§ 12.2.3** The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

**§ 12.2.4** The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

**§ 12.2.5** Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

## **§ 12.3 ACCEPTANCE OF NONCONFORMING WORK**

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## **ARTICLE 13 MISCELLANEOUS PROVISIONS**

### **§ 13.1 GOVERNING LAW**

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

### **§ 13.2 SUCCESSORS AND ASSIGNS**

**§ 13.2.1** The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

**§ 13.2.2** The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

### **§ 13.3 WRITTEN NOTICE**

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or



certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

#### **§ 13.4 RIGHTS AND REMEDIES**

**§ 13.4.1** Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

**§ 13.4.2** No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

#### **§ 13.5 TESTS AND INSPECTIONS**

**§ 13.5.1** Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

**§ 13.5.2** If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

**§ 13.5.3** If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

**§ 13.5.4** Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

**§ 13.5.5** If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

**§ 13.5.6** Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

#### **§ 13.6 INTEREST**

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

#### **§ 13.7 TIME LIMITS ON CLAIMS**

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

## **ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**

### **§ 14.1 TERMINATION BY THE CONTRACTOR**

**§ 14.1.1** The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

**§ 14.1.2** The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

**§ 14.1.3** If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

**§ 14.1.4** If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

### **§ 14.2 TERMINATION BY THE OWNER FOR CAUSE**

**§ 14.2.1** The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

**§ 14.2.2** When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

**§ 14.2.3** When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

**§ 14.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance,

the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

#### **§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE**

**§ 14.3.1** The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

**§ 14.3.2** The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

#### **§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE**

**§ 14.4.1** The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

**§ 14.4.2** Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

**§ 14.4.3** In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

### **ARTICLE 15 CLAIMS AND DISPUTES**

#### **§ 15.1 CLAIMS**

##### **§ 15.1.1 DEFINITION**

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

##### **§ 15.1.2 NOTICE OF CLAIMS**

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

##### **§ 15.1.3 CONTINUING CONTRACT PERFORMANCE**

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

##### **§ 15.1.4 CLAIMS FOR ADDITIONAL COST**

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

#### **§ 15.1.5 CLAIMS FOR ADDITIONAL TIME**

**§ 15.1.5.1** If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

**§ 15.1.5.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

#### **§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES**

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

#### **§ 15.2 INITIAL DECISION**

**§ 15.2.1** Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

**§ 15.2.2** The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

**§ 15.2.3** In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

**§ 15.2.4** If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

**§ 15.2.5** The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

### § 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

### § 15.4 ARBITRATION

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

### § 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration

permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

10/4/2018

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

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must 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	CONTACT NAME: Gayle Botner
VTC Insurance Group	PHONE (A/C, No, Ext): (248) 828-3377
Troy Office	FAX (A/C, No): (248) 828-3741
1175 W. Long Lake Ste. 200	E-MAIL: gbotner@vtcins.com
Troy MI 48098-4960	ADDRESS:
INSURED	INSURER(S) AFFORDING COVERAGE
George W. Auch Company	INSURER A: Travelers Prop. Cas.Co. Of Ame
65 University Dr	INSURER B: Charter Oak Fire Insurance
Pontiac MI 48342	INSURER C: Scottsdale Insurance Company
	INSURER D:
	INSURER E:
	INSURER F:

## COVERAGES

CERTIFICATE NUMBER: 18-19 Master inc All Cov

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> x, c, u included GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			CO0334C348	10/1/2018	10/1/2019	EACH OCCURRENCE \$ 1,000,00 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COM/OP AGG \$ 2,000,000 \$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			BA0344C348	10/1/2018	10/1/2019	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			CUP8J778265	10/1/2018	10/1/2019	EACH OCCURRENCE \$ 15,000,000 AGGREGATE \$ 15,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	UB0334C348	10/1/2018	10/1/2019	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	LEASED/RENTED EQUIPMENT			6308027B22A	10/1/2018	10/1/2019	\$150,000 limit
C	EXCESS LIABILITY			XL80103344	10/1/2018	10/1/2019	\$5,000,000 over \$15,000,000

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

## CERTIFICATE HOLDER

## CANCELLATION

## FOR EVIDENCE OF COVERAGE PURPOSE ONLY

\*\*\*\*\*  
\*\*\*\*\*  
\*\*\*\*\*  
\*\*\*\*\*  
\*\*\*\*\*

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

AUTHORIZED REPRESENTATIVE

Alan Chandler/V45

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## COMMENTS/REMARKS

### PROFESSIONAL/POLLUTION LIABILITY:

Limits of Coverage: \$2,000,000 Aggregate/\$2,000,000 Occurrence

Company: Allied World Assurance Company

Policy Number: 03092202

Policy Dates: 10/1/2018 to 10/1/2019

\*\*\*\*\*

### CYBER LIABILITY:

Limit of Coverage: \$500,000

Company: Continental Casualty Co.

Policy Number: 596506992

Policy Dates: 10/1/2018 to 10/1/2019

\*\*\*\*\*

### DIRECTORS & OFFICERS LIABILITY:

\$2,000,000 Limit of Liability

### EMPLOYMENT PRACTICES LIABILITY:

\$2,000,000 Limit of Liability

### FIDUCIARY LIABILITY:

\$2,000,000 Limit of Liability

### EMPLOYEE THEFT:

\$500,000 Limit

Company: Hanover Insurance Co.

Policy Number: LHB9726078

Effective Date: 10/1/2018 to 10/1/2019



# CITY OF PONTIAC

## OFFICIAL MEMORANDUM

*Executive Branch*

---

**TO:** Honorable Mayor, Council President and City Council Members

**FROM:** John V. Balint, Director of Public Works/City Engineer, through the Office of the Deputy Mayor, Jane Bais DiSessa

**DATE:** May 14, 2019

**RE: Owners Representative Services – Phoenix Center**

The Department of Public Works has prepared and advertised a request for qualifications for Owners Representative Services. Qualifications were accepted on at April 1, 2019 at 2:00 PM in the office of the City Clerk and publically opened at that time.

There were six respondents to the RFQ. They were:

- Auch
- Hubble, Roth and Clark, Inc.
- JMK Consultants
- NTH Consultants
- Plante Moran CRESA
- Seit Group, LLC

A three-member review panel individually reviewed the responses and awarded points based on the responses. A firm was able to obtain as many as 100 points from each evaluator in the following categories in the following categories:

- Understanding of Service-20 points
- Qualifications of Team-50 points
- Past Performance-30 points

Due to the specific need for this project, it was important to get a firm that has experience in a wide variety of construction management and oversight. Based in the scoring of the panel, that firm is Auch. The budget for this contract will be part of the overall bond request for the repairs and renovations to the Phoenix Center.

It is the recommendation of the Department of Public Works that the City accept the panels recommendations and authorize the Mayor or Deputy Mayor to enter into an Owners Representative contract with Auch.

At the May 7<sup>th</sup>, 2019 City Council Study Session, City Council requested a revised scope of services from the representatives of Auch. This proposal has been received and reviewed by the Department of Public Works and found to be acceptable. The revision in the scope is to begin the process of acquiring design professionals as well as hire an architect to prepare a Vision Plan for the Phoenix

Center. This scope of work proposal is for a Not-To-Exceed amount of \$283,482.37.

WHEREAS, The City of Pontiac has advertised and received responses to a request for qualifications for Owners Representative Services on April 1, 2019 and publically opened bids, and;

WHEREAS, a review panel has scored the responses, and;

WHEREAS, after scoring, the most qualified consultant was Auch.

WHEREAS, At the May 7<sup>th</sup> City Council Study Session, the request was made to revise the scope. This revised scope changes the cost to a Not-To-Exceed cost of \$283,482.37

NOW, THEREFORE,  
BE IT RESOLVED, The Pontiac City Council authorizes the Mayor to enter a one year contract with Auch for Owners Representative services for a Not-To-Exceed amount of \$283,482.37.

JVB

attachments

**#8**

**RESOLUTION**



**CITY OF PONTIAC**  
**Department of Building Safety & Planning**  
**Planning Division**

47450 Woodward Ave • Pontiac, Michigan 48342  
Telephone: (248) 758-2800

*Mayor Deirdre Waterman*

**TO: HONORABLE MAYOR, COUNCIL PRESIDENT AND CITY COUNCIL**

**FROM: VERN GUSTAFSSON – PLANNING MANAGER**  
**THROUGH THE OFFICE OF DEPUTY MAYOR, JANE BAIS-DISESSA**

**SUBJECT: VSA 19-01 SEWER EASEMENT VACATION – 5 CARTER STREET, DOWNTOWN PONTIAC**  
**PARCEL ID NUMBER: 14-29-408-020**

**DATE: MAY 14, 2019**

1. **APPLICANT:** THE HAMILTON LP
2. **REQUEST:** To vacate sewer easements that cross The Hamilton Limited Dividend Housing Association Limited Partnership property, which will be home to The Hamilton, a planned multiple family development in a four-story structure. At the Planning Commission meeting on May 1, 2019, the Commission recommended for approval to City Council.
3. **LEGAL DESCRIPTION:** Vacate the sewer easement on Parcel ID Number 14-29-408-020; Lot 10 Assessor Plat 42; Lot 35, Assessor Plat 119; Lot 8, Assessor Plat 42 [see attached Release of Easement, legal descriptions, support documents, and ALTA/NSPS Land Title Survey].
4. **RELATIONSHIP TO PONTIAC 2014 MASTER PLAN UPDATE:**  
The City of Pontiac's 2014 Master Plan illustrates the property as Downtown future land use. Currently the site is underutilized and is positioned in the northwest section of Downtown Pontiac. Once completed The Hamilton will bring must needed residential development into the Downtown, which is a top priority for the City.

The Downtown is inherently mixed use, both vertically and by block. Must needed residential development helps to support the vibrancy and economics of the commercial, retail and entertainment uses and creates more energy in the Downtown. This development will reinvigorate this Downtown area and become a catalyst for other new investment and development.



**5. ADMINISTRATIVE REVIEW COMMITTEE COMMENTS:**

The Oakland County Water Resources Commission office has reviewed this request to release the sanitary sewer easement, found no indication of an existing sanitary sewer, and has no objection to releasing the sanitary easement [see attached email]. Also, City of Pontiac DPW did not have an objection to release the sewer easement.

**6. PLANNING STAFF FINDINGS:**

- a) The sewer easements are not necessary for the proposed development and adjacent properties.
- b) The vacation of sewer easements will not be a detriment to the utility of adjacent or nearby properties.
- c) All adjacent property owners have signed the sewer vacation petition.

**7. RESOLUTIONS FOR APPROVAL:**

We suggest the City Council consider approval of the sewer easement vacation resolution as noted below.

**REQUEST FOR SEWER EASEMENT VACATION  
RESOLUTION OF APPROVAL**

WHEREAS, The City is in receipt to release sewer easements vacation request submitted by The Hamilton LP on Parcel ID Number: 14-29-408-020; Lot 10, Assessor Plat 42; Lot 35, Assessor Plat 119; Lot 8, Assessor Plat 42, and;

WHEREAS, The Pontiac Planning Commission held a Public Hearing on Wednesday, May 1, 2019 in regards to the sewer easement vacation request, and;

WHEREAS, The Pontiac Planning Commission finds that the subject sewer easement is not required to remain on the subject property and the proposed sewer vacation will not have an adverse effect on the surrounding properties; and

NOW, THEREFORE BE IT RESOLVED that the vacation of a sewer easement submitted by The Hamilton LP on Parcel ID Number: 14-29-408-020; Lot 10, Assessor Plat 42; Lot 35, Assessor Plat 119; Lot 8, Assessor Plat 42, is hereby approved by the City Council on May 21, 2019.



# Application for Vacation or Closure of Street, Alley or Easement

City of Pontiac

Office of Land Use and Strategic Planning

47450 Woodward Ave, Pontiac, MI 48342

T: 248.758.2800

F: 248.758.2827

Property/Project Address: \_\_\_\_\_

5 Carter St.

Sidwell Number: 14 - 29 - 408 - 020

Office Use Only

PF Number: \_\_\_\_\_

Date: 3/30/19

Instructions: Applications for vacation or closure of street, alley, easement or Public right-of-way shall be filed with the Office of Land Use and Strategic Planning along with a \$1,500.00 fee and a map of the area requested for vacation at least 30 days before the regularly scheduled Planning Commission meeting. Applications shall be signed by property owners abutting the street or alley requested for vacation where possible. Incomplete applications will delay the review process. Recommendation of the Planning Commission will be forwarded to the City Council for final action.

Applicant (please print or type)

Name	The Hamilton LP		
Address	500 S. Front St. 10th Floor		
City	Columbus		
State	OH		
ZIP Code	43215		
Telephone	Main: 614-396-3200	Cell:	Fax:
E-Mail	ffugate@wordtagroup.com		

The subject property is legally described as follows (include sidwell numbers):

see attached. 14 - 29 - 408 - 020


I (We) the undersigned, do hereby respectfully petition the City of Pontiac for vacation of the Right-of-Way or Easement described above (*attach additional sheet if necessary*):

Name	Street & Number	Lot No. & Subdivision	Signature
sewer easement 12/12/1956		Lot 10, Assessor Plat 42	
sewer easement 12/28/1916		Lot 35, Assessor Plat 119	
sewer easement 1/26/1957		Lot 5, Assessor Plat 42	

**Reason for Vacation of Right of Way or Easement:**

The easements are not necessary. The Hamilton Limited Dividend Housing Association Limited Partnership, the purchaser of the property, requests that the easements be released in order that The Hamilton LOHA LP may develop the property.

- ☒ Attached is a map indicating the area for which vacation is requested and the location of the applicants property.

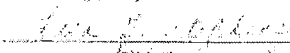


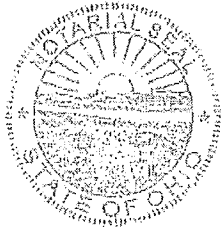
Signature of Applicant

State of Michigan \_\_\_\_\_

County of Oakland \_\_\_\_\_

On this 15th day of March, A.D., 2011, before me personally appeared the above named person, who being duly sworn, stated he/she has read the foregoing application, by him/her signed, and knows the contents thereof, and that the same is true of his/her own knowledge, except as to the matters therein stated to be upon information and belief and so as to those matters he/she believes it to be true.

  
Notary Public, Oakland County, Michigan  
My Commission Expires: \_\_\_\_\_



Lisa G. Stephens  
Notary Public, State of Ohio  
My Commission Expires: 12/31/2011

### RELEASE OF EASEMENTS

WHEREAS, the City of Pontiac, Oakland County, Michigan (the "City") received certain easements for sewer line purposes as to certain real property, which easements are described as follows: an easement for sewer purposes dated December 12, 1956, recorded on April 26, 1957 in Liber 3685, Page 479 and an easement for sewer purposes dated December 28, 1956, recorded on April 26, 1957 in Liber 3685, Page 475 and an easement for sewer purposes dated December 7, 1956, recorded April 26, 1957, in Liber 3685, Page 477, in the Register of Deeds of Oakland County, Michigan (copies of which easement documents are attached hereto as Attachment A (individually and together, the "Easements"); and

WHEREAS, the City acknowledges that certain real property described in Exhibit A attached hereto and made a part hereof (the "Property") has determined that the Easements is not necessary and has decided that the Property may be and should be released from the operation of the Easements, as has been requested by the purchaser of the Property, The Hamilton Limited Dividend Housing Association Limited Partnership, a Michigan limited partnership ("The Hamilton") who is purchasing the property from the current Property owner, 48 W Huron Street, LLC, a Delaware limited liability company (the "Seller"), who is the successor in interest to the Property.

NOW, THEREFORE, in consideration of the need for The Hamilton to have the Property released from the Easements because of The Hamilton's planned development of the Property, the City does hereby release and relinquish forever from the operation of the Easements.

Sources of Title of 48 W Huron Street, LLC are as follows: Liber 47291, Page 235 and Liber 51640, Page 342 and Liber 52520, Page 155, of the Register of Deeds of Oakland County, Michigan.

*(See the signature on the next separate page.)*

(Continuation of Release of Easements as to easements of record in Liber 3685, Page 479 and in Liber 3685, Page 475 and in Liber 3685, Page 477, in the Register of Deeds of Oakland County, Michigan - Page 2)

IN WITNESS WHEREOF, the City has hereto caused this instrument to be executed on this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

CITY OF PONTIAC,  
OAKLAND COUNTY, MICHIGAN

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

State of Michigan,  
County of Oakland, to wit:

Personally, came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019, the above named \_\_\_\_\_, of the City of Pontiac, Oakland County, Michigan, to me known to be the person who executed the foregoing instrument and acknowledged the same.

Notary Public - \_\_\_\_\_, Michigan  
My Commission Expires: \_\_\_\_\_

(SEAL)

This instrument was prepared by:  
James A. Saud, Esq.  
Saud & Saud LLP  
500 South Front Street, Suite 250  
Columbus, Ohio 43215  
Phone: 614-396-3296

ATTACHMENT A

Easements Being Released

[Attached]



3-10  
2-9

THIS INDENTURE, Made the 12<sup>th</sup> day of December 1922  
in the year of our Lord one thousand nine hundred fifty 52  
BETWEEN Frederick K. and Mable J. Roenelme, Deed holders  
Pontiac Federal Savings & Loan Association, Mortgagees  
of the City of Pontiac, Oakland County, Michigan, parties of the  
first part, and the City of Pontiac, a Municipal Corporation of Oak-  
land County, State of Michigan, party of the second part.

WITNESSETH, that the said parties of the first part, for and in con-  
sideration of the sum of one dollar and other valuable consideration  
to them in hand paid by the said party of the second  
part, the receipt whereof is hereby confessed and acknowledged, and  
on the conditions and agreements hereinafter contained to be per-  
formed by said party of the second part, which the said party of the  
second part, by acceptance hereof, agrees to perform and comply with,  
do here by these presents grant and convey unto the said party of  
the second part and to its successors and assigns forever, the right  
to construct and maintain permanently sewers or drains on that cer-  
tain piece or parcel of land situated and being in the City of  
Pontiac, County of Oakland, and the State of Michigan, known and de-  
scribed as follows, to-wit:

Description:

That part of Lot M, Assessor's Plat No. 42, Oakland County, City of Pontiac,  
Michigan, Described as follows:

Beginning at the most northerly corner of said lot thence N. 75° 00' 00" E.,  
along the northerly line of said lot 4, 67 ft; thence S. 10° 45' 00" W., 15 ft to  
the southerly line of said lot; thence S. 75° 00' 00" W., along the southerly  
line of said lot 7.37 ft. to the southwesterly corner of said lot; thence N. 10°  
00' 50" E., along the westerly line of said lot 37.43 ft. to the point of beginning.

RECORDED  
1923 JAN 10 PM 10  
CLERK OF THE DISTRICT COURT  
PONTIAC, MICHIGAN

Attest  
[Signature]

The party of the second part is to have the right to go upon said premises at any time after sewers, drains, ~~connections~~ are constructed thereon, to repair same, when in its judgment they need repair, giving and granting unto said party of the second part, its successors and assigns, the right to use said premises permanently for the use and benefits of said party of the second part, its successors and assigns forever.

The parties of the first part grants this right-of-way for sewers, drains, ~~connections~~ on the following conditions: Whenever repairs to said sewers, drains, ~~connections~~ are found necessary, access thereto shall be obtained outside of said premises if possible. If it is not possible to obtain access outside of said premises, then access may be gained thereto on said premises, and the party of the second part shall reimburse said parties of the first part for any damage resulting therefrom.

Said parties of the first part reserves the right to construct and maintain any lawful kind of buildings or improvements upon or over the above described premises, provided, that the construction of same will not be such to injure the aforementioned sewer, drain, or water main. Thirty days written notice of such anticipated construction shall be given to the party of the second part.

Dated this 12th day of December A.D. 1956

Signed in Presence of:-

John H. Boyd  
George H. Boyd

Frederick B. Houshka, S.  
Frederick B. Houshka  
Frank C. Houshka, L.S.  
Mabel J. Houshka  
L.S.  
Forster Federal Savings & Loan Association  
By John H. Boyd, President

STATE OF MICHIGAN )  
COUNTY OF OAKLAND ) ss.

On this 12th day of December A.D. 1956  
before me, a Notary Public in and for said County, personally appeared

Frederick B. Houshka, Mabel J. Houshka, Frank C. Houshka, John H. Boyd  
as we know to be the same person described in and who executed the within and foregoing instrument, and acknowledged that they executed the same as Frederick B. Houshka, Mabel J. Houshka, Frank C. Houshka, John H. Boyd free not and deed.

John H. Boyd  
Notary Public, Oakland County, Michigan  
John H. Boyd

My Commission expires Oct 1st 1957

3.0  
7/9

3085 on 477

THIS INSTRUMENT, made the 28<sup>th</sup> day of February  
in the year of our Lord one thousand nine hundred fifty eight  
BETWEEN  
Robt E. Lucy and Laura E. Lucy, his wife  
19 Center Street  
Pontiac, Michigan  
of the City of Pontiac, Oakland County, Michigan, parties of the  
first part, and the City of Pontiac, a Municipal Corporation of Oak-  
land County, State of Michigan, party of the second part.

57  
22280

WITNESSETH, That the said parties of the first part, for and in con-  
sideration of the sum of one dollar and other valuable consideration  
to them in hand paid by the said party of the second  
part, the receipt whereof is hereby confessed and acknowledged, and  
on the conditions and agreements hereinafter contained to be per-  
formed by said party of the second part, which the said party of the  
second part, by acceptance hereof, agrees to perform and comply with,  
do here by these presents grant and convey unto the said party of  
the second part and to its successors and assigns forever, the right  
to construct and maintain permanently sewers or drains on that cer-  
tain piece or parcel of land situated and being in the City of  
Pontiac, County of Oakland, and the State of Michigan, known and de-  
scribed as follows, to-wit:

That part of Lot 35, Assessor's Plat 119, Oakland County, City of Pontiac,  
Michigan, described as follows:

Beginning at the most northeasterly corner of said lot; thence S. 13° 00' 30" W.,  
along the easterly line of said lot 57.43 ft; thence S. 75° 51' 35" W., along the  
easterly line of said lot 11.92 ft; thence S. 10° 43' 50" W. along the easterly  
line of said lot 66.51 ft. to the most southerly corner of said lot; thence  
N. 21° 41' 14" W. along the westerly line of said lot 3.71 ft; thence N. 10°  
43' 50" E., 117.13 ft. to the northerly line of said lot; thence N. 71° 12' 59" E.,  
along the northerly line of said lot 17.50 ft. to the point of beginning.

RECORDED  
FEB 28 1958  
PONTIAC, MICHIGAN  
CLERK OF THE DISTRICT COURT

222  
dis. 1/2 p. 1  
not by 12/1/58

The party of the second part is to have the right to go upon said premises at any time after sewers, drains, or ~~water mains~~ are constructed thereon, to repair same, when in its judgment they need repair, giving and granting unto said party of the second part, its successors and assigns, the right to use said premises permanently for the use and benefits of said party of the second part, its successors and assigns forever.

The parties of the first part grant this right-of-use for sewers, drains, or water mains on the following conditions: Whenever repairs to said sewers, drains, or ~~water mains~~ are found necessary, access thereto shall be obtained outside of said premises if possible. If it is not possible to obtain access outside of said premises, then access may be gained thereto on said premises, and the party of the second part shall reimburse said party of the first part for any damage resulting therefrom.

Said parties of the first part reserve the right to construct and maintain any kind of buildings or improvements upon or over the above described premises, provided, that the construction of same will not be such to injure the aforementioned sewer, drain, or water main. Thirty days written notice of such anticipated construction shall be given to the party of the second part.

Dated this 27th day of December A.D. 1926  
 Signed in presence of:  
Ruby E. Lacy L.S.  
Ruby E. Lacy L.S.  
Laura E. Lacy L.S.  
Laura E. Lacy L.S.

STATE OF MICHIGAN )  
 ) ss.  
 COUNTY OF OAKLAND )

On this 27th day of December A.D. 1926  
 before me, a Notary Public in and for said County, personally appeared  
Ruby E. Lacy and Laura E. Lacy  
 to me known to be the same persons described in and who executed the within and foregoing instrument, and acknowledged that they executed the same as their free act and deed.

John E. Lacy  
 Notary Public, Oakland County, Michigan  
 My Commission expires Oct 16 1929

3-10  
29

CHES 3085 ME 477

THIS INDENTURE, made the 7<sup>th</sup> day of December  
in the year of our Lord, one thousand nine hundred fifty, 1950

BETWEEN Fessler  
Harvey and Josephine Fessler, his wife

of the City of Pontiac, Oakland County, Michigan, parties of the  
first part, and the City of Pontiac, a Municipal Corporation of Oak-  
land County, State of Michigan, party of the second part.

WITNESSETH, That the said parties of the first part, for and in con-  
sideration of the sum of one dollar and other valuable consideration  
to them in hand paid by the said party of the second  
part, the receipt whereof is hereby confessed and acknowledged, and  
on the conditions and covenants hereinafter contained to be per-  
formed by said party of the second part, which the said party of the  
second part, by acceptance hereof, agrees to perform and comply with,  
do hereby these presents grant and convey unto the said party of the  
second part and to its successors and assigns forever, the right  
to construct and maintain permanently sewers or drains on the cer-  
tain piece or parcel of land situated and being in the City of  
Pontiac, County of Oakland, and the State of Michigan, known and de-  
scribed as follows, to-wit:

Description # 6

Lot 8, A. P. 42

That part of Lot 8, Assessor's Plat 42, Oakland County, City of Pontiac,  
described as follows:

Beginning at the most northwesterly corner of said lot; thence N. 10° 43' 00" E.  
along the northerly line of said lot 14.25 ft; thence R. 7° 02' 01" W. 33.73 ft. to  
the southerly line of said lot; thence S. 75° 09' 20" W. along the southerly line of  
said lot 16.60 ft. to the northwesterly corner of said lot; thence N. 10° 43' 00" E.  
along the westerly line of said lot 33.73 ft. to the point of beginning.

RECORDED  
OAKLAND COUNTY REGISTER  
1951 MAR 26 PM 1 0

Each portion of the first part reserving the right to construct and maintain any lawful kind of buildings or improvements upon or over the above described premises, provided, that the construction of same will not be such to injure the aforementioned sewer, drain, or water main. Within sixty days written notice of such anticipated construction shall be given to the party of the second part.

STATE OF MICHIGAN }  
COUNTY OF OAKLAND }

Notary Public, Oakland County, Michigan  
John E. Irwin

Permit expires 2/16 19 57



(Property of 48 W Huron Street, LLC)

EXHIBIT A

Property Legal Description

Parcel 1:

Situated in Oakland County, Michigan, more specifically described as:

Part of Lot 23, Assessor's Plat No. 119, as recorded in Liber 53, Page 39 of Plats, Oakland County Records, beginning at the Northeasterly corner of Lot 23, Assessor's Plat No. 119, and running thence South 38 degrees 54 minutes 20 seconds East 76.07 feet along the Easterly end of the said lot to the Southeasterly corner thereof, thence South 75 degrees 43 minutes 30 seconds West 39.02 feet along the Southerly line of the said lot, thence North 18 degrees 19 minutes 40 seconds West 66.63 feet to a point on the Northerly line of said lot, thence North 61 degrees 55 minutes 40 seconds East 12.31 feet to the point of beginning.

Also, Part of Lot 24, Assessor's Plat No. 119, as recorded in Liber 53, Page 39 of Plats, Oakland County Records, beginning at the Northeasterly corner of Lot 24, running thence South 38 degrees 54 minutes 20 seconds East 46.00 feet along the Easterly end of said lot to the Southeasterly corner thereof, thence South 61 degrees 55 minutes 40 seconds West 12.31 along the Southerly line of said lot, thence North 23 degrees 26 minutes 00 seconds West 45.33 feet to the point of beginning.

Also, Lot 26, except the Southwesterly 42 feet and part taken for road, Assessor's Plat No. 119, as recorded in Liber 53, Page 39 of Plats, Oakland County Records.

Also, Lots 30, 31, 32, 33, 34, 37, 38 & 39, also  $\frac{1}{2}$  of Vacated Pine Street abutting Lot 37 and Lot 38, Assessor's Plat No. 119, as recorded in Liber 53, Page 39 of Plats, Oakland County Records.

Also, Lot 7, also  $\frac{1}{2}$  of Vacated Pine Street, Assessor's Plat No. 42, as recorded in Liber 1A, page 42 of Plats, Oakland County Records.

Parcel 2:

Situated in Oakland County, Michigan, more specifically described as:

Lot 9, also  $\frac{1}{2}$  of vacated Pine Street, Assessor's Plat No. 42, as recorded in Liber 1A, Page 42 of Plats, Oakland County Records.

Parcel 3:

Situated in Oakland County, Michigan, more specifically described as:

Lot 10, also  $\frac{1}{2}$  of vacated Pine Street, Assessor's Plat No. 42, as recorded in Liber 1A, Page 42 of Plats, Oakland County Records.

Parcel 4:

Situated in the City of Pontiac, County of Oakland and State of Michigan, to-wit:

Lot 35, "Assessor's Plat No. 119, a Replat of Carter Addition; and Parts of Cornstock and Paddock's Addition, Assessor's Plat No. 35, and Sanderson and Johnston's Subdivision", City of Pontiac, Oakland County, Michigan, according to the Plat thereof as recorded in Liber 53 of Plats, Page 39, Oakland County Records.

Parcel 5:

Situated in Oakland County, Michigan, more specifically described as:

Lot 8, also  $\frac{1}{2}$  of vacated Pine Street, Assessor's Plat No. 42, as recorded in Liber 1A, Page 42 of Plats, Oakland County Records.

END OF LEGAL DESCRIPTION

1764. 1765. 1766. 1767. 1768. 1769. 1770. 1771. 1772. 1773. 1774. 1775. 1776. 1777. 1778. 1779. 1780. 1781. 1782. 1783. 1784. 1785. 1786. 1787. 1788. 1789. 1790. 1791. 1792. 1793. 1794. 1795. 1796. 1797. 1798. 1799. 1800. 1801. 1802. 1803. 1804. 1805. 1806. 1807. 1808. 1809. 1810. 1811. 1812. 1813. 1814. 1815. 1816. 1817. 1818. 1819. 1820. 1821. 1822. 1823. 1824. 1825. 1826. 1827. 1828. 1829. 1830. 1831. 1832. 1833. 1834. 1835. 1836. 1837. 1838. 1839. 1840. 1841. 1842. 1843. 1844. 1845. 1846. 1847. 1848. 1849. 1850. 1851. 1852. 1853. 1854. 1855. 1856. 1857. 1858. 1859. 1860. 1861. 1862. 1863. 1864. 1865. 1866. 1867. 1868. 1869. 1870. 1871. 1872. 1873. 1874. 1875. 1876. 1877. 1878. 1879. 1880. 1881. 1882. 1883. 1884. 1885. 1886. 1887. 1888. 1889. 1890. 1891. 1892. 1893. 1894. 1895. 1896. 1897. 1898. 1899. 1900. 1901. 1902. 1903. 1904. 1905. 1906. 1907. 1908. 1909. 1910. 1911. 1912. 1913. 1914. 1915. 1916. 1917. 1918. 1919. 1920. 1921. 1922. 1923. 1924. 1925. 1926. 1927. 1928. 1929. 1930. 1931. 1932. 1933. 1934. 1935. 1936. 1937. 1938. 1939. 1940. 1941. 1942. 1943. 1944. 1945. 1946. 1947. 1948. 1949. 1950. 1951. 1952. 1953. 1954. 1955. 1956. 1957. 1958. 1959. 1960. 1961. 1962. 1963. 1964. 1965. 1966. 1967. 1968. 1969. 1970. 1971. 1972. 1973. 1974. 1975. 1976. 1977. 1978. 1979. 1980. 1981. 1982. 1983. 1984. 1985. 1986. 1987. 1988. 1989. 1990. 1991. 1992. 1993. 1994. 1995. 1996. 1997. 1998. 1999. 2000. 2001. 2002. 2003. 2004. 2005. 2006. 2007. 2008. 2009. 2010. 2011. 2012. 2013. 2014. 2015. 2016. 2017. 2018. 2019. 2020. 2021. 2022. 2023. 2024. 2025. 2026. 2027. 2028. 2029. 2030. 2031. 2032. 2033. 2034. 2035. 2036. 2037. 2038. 2039. 2040. 2041. 2042. 2043. 2044. 2045. 2046. 2047. 2048. 2049. 2050. 2051. 2052. 2053. 2054. 2055. 2056. 2057. 2058. 2059. 2060. 2061. 2062. 2063. 2064. 2065. 2066. 2067. 2068. 2069. 2070. 2071. 2072. 2073. 2074. 2075. 2076. 2077. 2078. 2079. 2080. 2081. 2082. 2083. 2084. 2085. 2086. 2087. 2088. 2089. 2090. 2091. 2092. 2093. 2094. 2095. 2096. 2097. 2098. 2099. 2100. 2101. 2102. 2103. 2104. 2105. 2106. 2107. 2108. 2109. 2110. 2111. 2112. 2113. 2114. 2115. 2116. 2117. 2118. 2119. 2120. 2121. 2122. 2123. 2124. 2125. 2126. 2127. 2128. 2129. 2130. 2131. 2132. 2133. 2134. 2135. 2136. 2137. 2138. 2139. 2140. 2141. 2142. 2143. 2144. 2145. 2146. 2147. 2148. 2149. 2150. 2151. 2152. 2153. 2154. 2155. 2156. 2157. 2158. 2159. 2160. 2161. 2162. 2163. 2164. 2165. 2166. 2167. 2168. 2169. 2170. 2171. 2172. 2173. 2174. 2175. 2176. 2177. 2178. 2179. 2180. 2181. 2182. 2183. 2184. 2185. 2186. 2187. 2188. 2189. 2190. 2191. 2192. 2193. 2194. 2195. 2196. 2197. 2198. 2199. 2200. 2201. 2202. 2203. 2204. 2205. 2206. 2207. 2208. 2209. 2210. 2211. 2212. 2213. 2214. 2215. 2216. 2217. 2218. 2219. 2220. 2221. 2222. 2223. 2224. 2225. 2226. 2227. 2228. 2229. 2230. 2231. 2232. 2233. 2234. 2235. 2236. 2237. 2238. 2239. 2240. 2241. 2242. 2243. 2244. 2245. 2246. 2247. 2248. 2249. 2250. 2251. 2252. 2253. 2254. 2255. 2256. 2257. 2258. 2259. 2260. 2261. 2262. 2263. 2264. 2265. 2266. 2267. 2268. 2269. 2270. 2271. 2272. 2273. 2274. 2275. 2276. 2277. 2278. 2279. 2280. 2281. 2282. 2283. 2284. 2285. 2286. 2287. 2288. 2289. 2290. 2291. 2292. 2293. 2294. 2295. 2296. 2297. 2298. 2299. 2300. 2301. 2302. 2303. 2304. 2305. 2306. 2307. 2308. 2309. 2310. 2311. 2312. 2313. 2314. 2315. 2316. 2317. 2318. 2319. 2320. 2321. 2322. 2323. 2324. 2325. 2326. 2327. 2328. 2329. 2330. 2331. 2332. 2333. 2334. 2335. 2336. 2337. 2338. 2339. 2340. 2341. 2342. 2343. 2344. 2345. 2346. 2347. 2348. 2349. 2350. 2351. 2352. 2353. 2354. 2355. 2356. 2357. 2358. 2359. 2360. 2361. 2362. 2363. 2364. 2365. 2366. 2367. 2368. 2369. 2370. 2371. 2372. 2373. 2374. 2375. 2376. 2377. 2378. 2379. 2380. 2381. 2382. 2383. 2384. 2385. 2386. 2387. 2388. 2389. 2390. 2391. 2392. 2393. 2394. 2395. 2396. 2397. 2398. 2399. 2400. 2401. 2402. 2403. 2404. 2405. 2406. 2407. 2408. 2409. 2410. 2411. 2412. 2413. 2414. 2415. 2416. 2417. 2418. 2419. 2420. 2421. 2422. 2423. 2424. 2425. 2426. 2427. 2428. 2429. 2430. 2431. 2432. 2433. 2434. 2435. 2436. 2437. 2438. 2439. 2440. 2441. 2442. 2443. 2444. 2445. 24

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**Keywords:** *gender inequality, gender discrimination, gender inequality, gender discrimination, gender inequality, gender discrimination*

Figure 1. The study area.

[illegible]

Red L.A. 5, 1988, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1036, 1037, 1038, 1039, 1040, 1041, 1042, 1043, 1044, 1045, 1046, 1047, 1048, 1049, 1050, 1051, 1052, 1053, 1054, 1055, 1056, 1057, 1058, 1059, 1060, 1061, 1062, 1063, 1064, 1065, 1066, 1067, 1068, 1069, 1070, 1071, 1072, 1073, 1074, 1075, 1076, 1077, 1078, 1079, 1080, 1081, 1082, 1083, 1084, 1085, 1086, 1087, 1088, 1089, 1090, 1091, 1092, 1093, 1094, 1095, 1096, 1097, 1098, 1099, 1100, 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1133, 1134, 1135, 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1146, 1147, 1148, 1149, 1150, 1151, 1152, 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1161, 1162, 1163, 1164, 1165, 1166, 1167, 1168, 1169, 1170, 1171, 1172, 1173, 1174, 1175, 1176, 1177, 1178, 1179, 1180, 1181, 1182, 1183, 1184, 1185, 1186, 1187, 1188, 1189, 1190, 1191, 1192, 1193, 1194, 1195, 1196, 1197, 1198, 1199, 1200, 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227, 1228, 1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236, 1237, 1238, 1239, 1240, 1241, 1242, 1243, 1244, 1245, 1246, 1247, 1248, 1249, 1250, 1251, 1252, 1253, 1254, 1255, 1256, 1257, 1258, 1259, 1260, 1261, 1262, 1263, 1264, 1265, 1266, 1267, 1268, 1269, 1270, 1271, 1272, 1273, 1274, 1275, 1276, 1277, 1278, 1279, 1280, 1281, 1282, 1283, 1284, 1285, 1286, 1287, 1288, 1289, 1290, 1291, 1292, 1293, 1294, 1295, 1296, 1297, 1298, 1299, 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, 1312, 1313, 1314, 1315, 1316, 1317, 1318, 1319, 1320, 1321, 1322, 1323, 1324, 1325, 1326, 1327, 1328, 1329, 1330, 1331, 1332, 1333, 1334, 1335, 1336, 1337, 1338, 1339, 1340, 1341, 1342, 1343, 1344, 1345, 1346, 1347, 1348, 1349, 1350, 1351, 1352, 1353, 1354, 1355, 1356, 1357, 1358, 1359, 1360, 1361, 1362, 1363, 1364, 1365, 1366, 1367, 1368, 1369, 1370, 1371, 1372, 1373, 1374, 1375, 1376, 1377, 1378, 1379, 1380, 1381, 1382, 1383, 1384, 1385, 1386, 1387, 1388, 1389, 1390, 1391, 1392, 1393, 1394, 1395, 1396, 1397, 1398, 1399, 1400, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1410, 1411, 1412, 1413, 1414, 1415, 1416, 1417, 1418, 1419, 1420, 1421, 1422, 1423, 1424, 1425, 1426, 1427, 1428, 1429, 1430, 1431

10. **CONCLUSIONS OF RESEARCHERS** CONDUCTING RESEARCHES ON THE EFFECTS OF THE 1997-1998 ASIAN FINANCIAL CRISIS ON THE ECONOMIC DEVELOPMENT OF THE COUNTRIES OF THE SOUTH-EAST ASIAN REGION

4. The following are the names of the persons who have been appointed to the various committees of the Board of Directors:

| Year | Number of cases | Number of deaths |
|------|-----------------|------------------|
| 1990 | 100             | 10               |
| 1991 | 110             | 11               |
| 1992 | 120             | 12               |
| 1993 | 130             | 13               |
| 1994 | 140             | 14               |
| 1995 | 150             | 15               |
| 1996 | 160             | 16               |
| 1997 | 170             | 17               |
| 1998 | 180             | 18               |
| 1999 | 190             | 19               |
| 2000 | 200             | 20               |
| 2001 | 210             | 21               |
| 2002 | 220             | 22               |
| 2003 | 230             | 23               |
| 2004 | 240             | 24               |
| 2005 | 250             | 25               |
| 2006 | 260             | 26               |
| 2007 | 270             | 27               |
| 2008 | 280             | 28               |
| 2009 | 290             | 29               |
| 2010 | 300             | 30               |
| 2011 | 310             | 31               |
| 2012 | 320             | 32               |
| 2013 | 330             | 33               |
| 2014 | 340             | 34               |
| 2015 | 350             | 35               |
| 2016 | 360             | 36               |
| 2017 | 370             | 37               |
| 2018 | 380             | 38               |
| 2019 | 390             | 39               |
| 2020 | 400             | 40               |

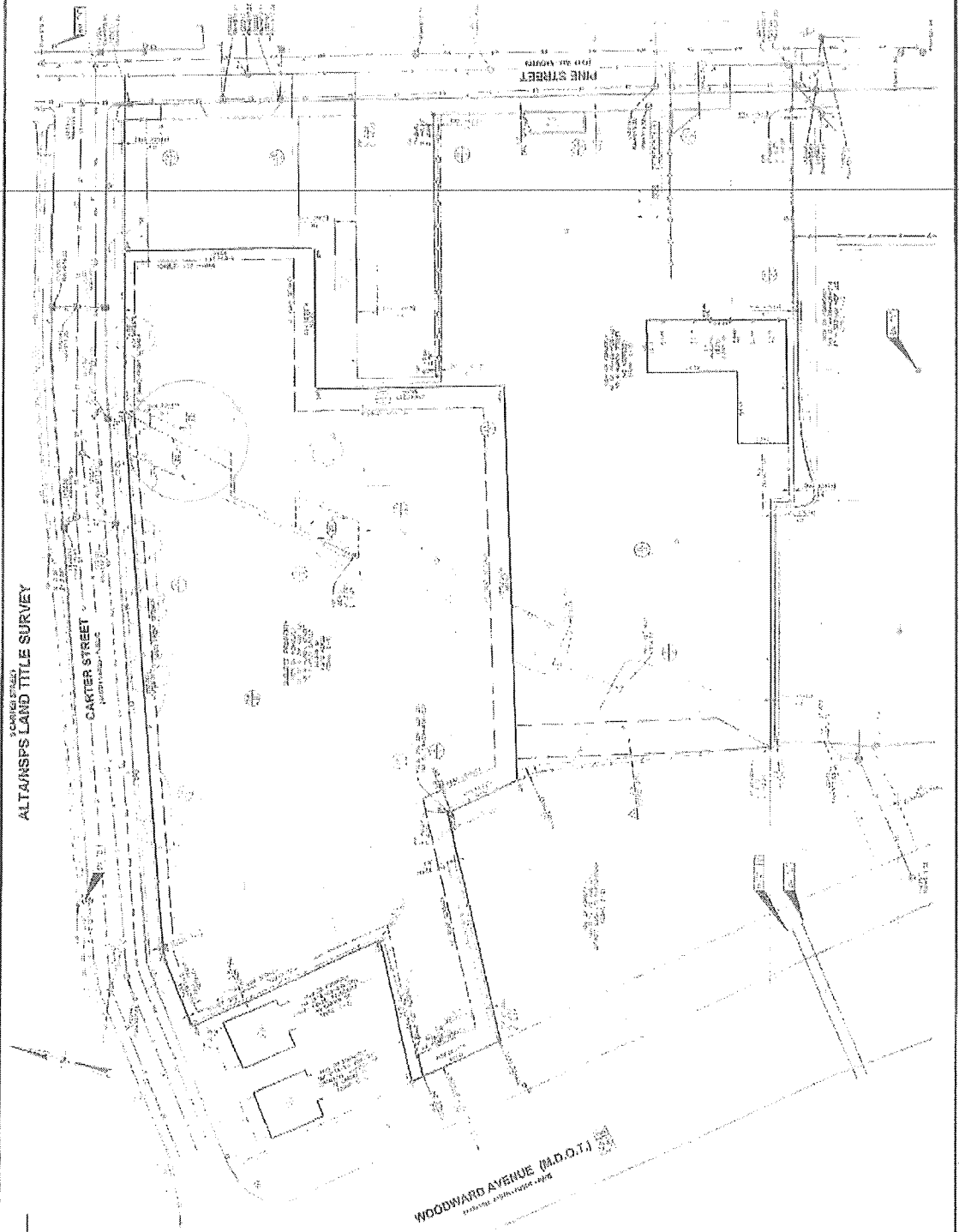
Received 15 November 2005; accepted 15 November 2005  
Published online 15 November 2005 in Wiley InterScience (www.interscience.wiley.com). DOI: 10.1002/anie.200525905

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|-----|--------|
| 2.4 | ALT-10 |
| 2.4 |        |
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| 2.4 |        |



**STRUCTURE SCHEDULE**

| NO. | DESCRIPTION                | DATE     | BY       | CHECKED  |
|-----|----------------------------|----------|----------|----------|
| 1   | WOODWARD AVENUE (M.D.O.T.) | 12/15/10 | J. SMITH | M. JONES |
| 2   | CARTER STREET              | 12/15/10 | J. SMITH | M. JONES |
| 3   | PINE STREET                | 12/15/10 | J. SMITH | M. JONES |
| 4   | ALTAIRPS LAND TITLE SURVEY | 12/15/10 | J. SMITH | M. JONES |
| 5   | WOODWARD AVENUE (M.D.O.T.) | 12/15/10 | J. SMITH | M. JONES |
| 6   | CARTER STREET              | 12/15/10 | J. SMITH | M. JONES |
| 7   | PINE STREET                | 12/15/10 | J. SMITH | M. JONES |
| 8   | ALTAIRPS LAND TITLE SURVEY | 12/15/10 | J. SMITH | M. JONES |
| 9   | WOODWARD AVENUE (M.D.O.T.) | 12/15/10 | J. SMITH | M. JONES |
| 10  | CARTER STREET              | 12/15/10 | J. SMITH | M. JONES |
| 11  | PINE STREET                | 12/15/10 | J. SMITH | M. JONES |
| 12  | ALTAIRPS LAND TITLE SURVEY | 12/15/10 | J. SMITH | M. JONES |
| 13  | WOODWARD AVENUE (M.D.O.T.) | 12/15/10 | J. SMITH | M. JONES |
| 14  | CARTER STREET              | 12/15/10 | J. SMITH | M. JONES |
| 15  | PINE STREET                | 12/15/10 | J. SMITH | M. JONES |
| 16  | ALTAIRPS LAND TITLE SURVEY | 12/15/10 | J. SMITH | M. JONES |
| 17  | WOODWARD AVENUE (M.D.O.T.) | 12/15/10 | J. SMITH | M. JONES |
| 18  | CARTER STREET              | 12/15/10 | J. SMITH | M. JONES |
| 19  | PINE STREET                | 12/15/10 | J. SMITH | M. JONES |
| 20  | ALTAIRPS LAND TITLE SURVEY | 12/15/10 | J. SMITH | M. JONES |



## **Donovan Smith**

---

**From:** Davis, Mark W <davisma@oakgov.com>  
**Sent:** Wednesday, April 24, 2019 11:12 AM  
**To:** Parrott, Jeffrey S; Donovan Smith; Jack Cady  
**Cc:** Vernon Gustafsson; John Balint; DeVisch, Ricky A; Coburn, Brian; Appel, Glenn R  
**Subject:** RE: Release of sewer easement  
**Attachments:** 25 Carter - Map.docx; The Hamilton ALTA 031319 (easments marked).pdf; Release, Easements, Sewer (The Hamilton and 48 W Huron Street, LLC).with....pdf

---

Jeff,

I found no records indicating any existing sanitary sewer located on the subject property. (see attached map)

- OCWRC Permitting Unit has no objection to releasing of the sanitary easements as indicated on the submittal.

Mark W. Davis  
Senior Engineering Systems Coordinator  
248-452-2172 (p)  
248-858-1066 (f)  
M-F 6:30am-3:00pm

**From:** Donovan Smith [mailto:DSmith@pontiac.mi.us]  
**Sent:** Wednesday, April 24, 2019 10:58 AM  
**To:** Jack Cady; Appel, Glenn R; Davis, Mark W; Parrott, Jeffrey S  
**Cc:** Vernon Gustafsson; John Balint  
**Subject:** RE: Release of sewer easement

Good Morning,

Attached in this email are the digital files of the request for sewer easement vacation at 5 Carter Street. In preparation of this request before the Planning Commission, can you respond to this email or in writing support or contest of the sewer vacation request.

Thank You,

Donovan Smith  
City of Pontiac  
City Planner  
DSmith@Pontiac.Mi.Us  
248.758.2815

**From:** Fugate, Frank <FFugate@wodagroup.com>  
**Sent:** Friday, March 15, 2019 4:28 PM  
**To:** Donovan Smith <DSmith@pontiac.mi.us>; Rachel J. Loughrin <RLoughrin@pontiac.mi.us>  
**Cc:** Vernon Gustafsson <vgustafsson@pontiac.mi.us>; Donovan Smith <DSmith@pontiac.mi.us>; Miriam Cox



<MCOX@pontiac.mi.us>; Patterson, Craig <CPatterson@wodagroup.com>  
Subject: Release of sewer easement

WARNING: This email originated from outside of City of Pontiac. DO NOT click on any links or open any attachments unless you recognize the sender and are expecting the message.

Donovan,

We are preparing to close with the seller late next week. We have found two sanitary sewer easements. We will would like these easements released since they are underneath our proposed building.

I have attached the release of easement prepared by our title attorney and it is ready for execution by the city. Also attached is the ALTA survey showing in the red circle the two dotted lines indicating the sewer easements. Note: the reference 25 and 26 on the survey are explained in Schedule B exceptions (sewer easements).

Please let me know what we will need to do to get this completed with the city.

Best regards

Frank

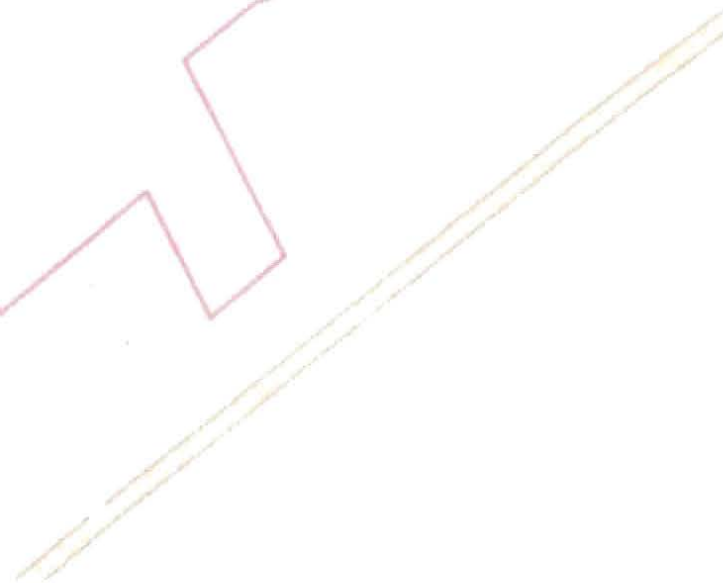
614-406-2931 Cell



Frank Fugate  
Woda Cooper Companies, Inc.  
Mobile: 614-406-2931  
Office: 614-396-3204  
500 S. Front St., 10th Floor  
Columbus, OH 43215

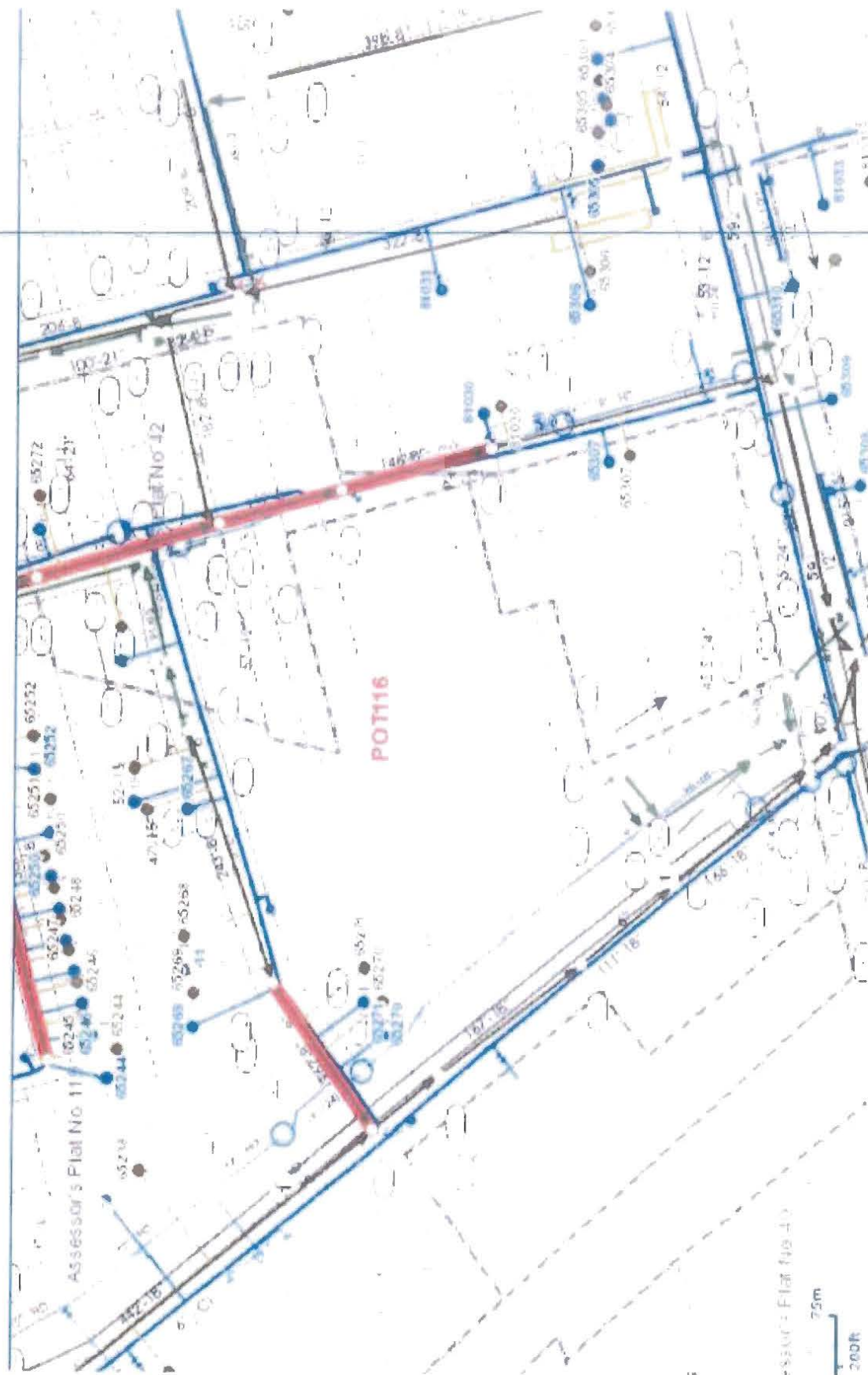
Pine

Center St









**#9**

**RESOLUTION**

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**MEMORANDUM**

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**TO:** Honorable Mayor Waterman, and Honorable Council President and City Council  
**FROM:** Paul A. Thursam, Esq.  
**DATE:** May 16, 2019  
**RE:** 825 Golf Drive – Option to Purchase; Resolution

---

In June of 2018, Council approved a Lease (with option to purchase) for the property located at 825 Golf Drive. The property is currently operated by the City as a youth center. The term of the Lease is 3 years, ending on June 30, 2021. The Lease contains 2 options to purchase. The first option must be exercised by the City, if at all, prior to June 10, 2019. The second option becomes available on January 1, 2021.

The 2019 option must be exercised by June 10, 2019 or it will expire. After exercise of the 2019 option, a closing will take place on or before July 31, 2019. Council previously set aside funds (\$3.2M) for the purpose of purchasing the property. Council can authorize the purchase of 825 Golf Drive by Resolution.

If Council does not exercise the 2019 option, then the Lease would remain in effect, and the City would continue paying rent (\$26,000 per month) until the end of the Lease term in 2021. If Council elects to proceed in this way, then it would be required to approve a budget for fiscal year 2019 which allocated funds for the payment of rent (and all other sums due under the Lease).

Attached to this Memorandum are the following documents for your review:

1. Resolution to Exercise Option, and Purchase Property.
2. Purchase Agreement.



## PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT ("Agreement"), is made and entered into as of the date of the last signature shown on the signature page hereof, by and between the **CITY OF PONTIAC**, located at 47450 Woodward Ave., Pontiac, MI 48342 ("Purchaser"), and **CREATIVE SCHOOLS MANAGEMENT, LLC**, a Michigan limited liability company, located at 4759 Owasco Court, Clarkston, MI 48348 ("Seller").

### RECITALS:

A. On July 1, 2018, Purchaser and Seller executed that certain Lease Agreement (with Option to Purchase) ("Lease Agreement"), which granted to Purchaser the option to purchase certain Real Estate (as defined herein).

B. Seller is the owner of that certain real property located at 825 Golf Drive, Pontiac, MI 48341, the legal description of which is attached as Exhibit "A" and incorporated into this Agreement by this reference (the "Real Estate").

C. Purchaser has exercised its option to purchase the Real Estate, and now Seller desires to sell and Purchaser desires to purchase the Real Estate in accordance with and subject to the terms and conditions hereinafter set forth.

### AGREEMENT:

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby accepted and acknowledged, Seller and Purchaser hereby agree as follows:

1. **Offer.** Purchaser hereby offers and agrees to purchase the Real Estate, together with all improvements and appurtenances, leasehold interests, and all personal property owned by Seller, located upon the Real Estate, and used in its operations by Seller, including, without limitation, the items of personal property described in Exhibit "B", attached hereto and incorporated by reference. Included in this sale are, by way of illustration only, and not in limitation, and to the extent presently located on the Real Estate and owned by Seller, all plumbing, heating, lighting, air conditioning fixtures and units, hot water heaters and equipment, appliances, fire detection and/or extinguishing equipment, awnings, screens, window treatments, carpeting, mirrors, plumbing fixtures, mailboxes, pumps, cleaning and other supplies, office and other furniture, supplies and equipment, carpeting, window coverings and other like items, furniture, fixtures and equipment, if any, and all legally transferable licenses and permits; together with all right, title and interest in any street, road or avenue, open or proposed, in front of or adjoining the Real Estate, or any part thereof, to the centerline thereof; together with all right, title and interest of the Seller in or to the use of any easements or rights-of-way abutting or adjoining the Real Estate, all air, mineral, water and riparian rights, all tenements, hereditaments, privileges and appurtenances belonging or in any way pertaining to the Real Estate, any property adjacent to the Real Estate, if any, all options and other rights to acquire any property adjacent to the Real Estate, all unexpired claims and warranties received by Seller in connection with the construction, improvement or personal property on the Real Estate, if any, all leases of space in the building situated on the Real Estate, and Seller's rights under all service contracts which Purchaser desires to assume. All the foregoing may sometimes collectively be referred to in this Agreement as the "Subject Premises".

2. **[INTENTIONALLY DELETED]**

3. **Acceptance.** Seller, by signature and delivery of a fully executed counterpart of this Agreement, accepts the said Offer of the Purchaser. Such Offer and Acceptance are subject to and in accordance with the terms and conditions hereinafter set forth.

4. **Purchase Price.** The Purchase Price for the Subject Premises shall be **Three Million One Hundred Fifty Thousand and 00/100 Dollars (\$3,150,000.00)**. The Purchase Price, plus or minus Closing adjustments, as the case may be, shall be paid in certified, cashiers or wire transferred funds to Seller at Closing in exchange for a Warranty Deed conveying fee simple, marketable title to the Real Estate to Purchaser, free and clear of any and all liens or encumbrances except as specifically set forth herein and

subject only to those easements and restrictions of record as are agreeable to Purchaser in its sole and absolute discretion (the "Permitted Encumbrances"), a Bill of Sale conveying all personal property in its as-is condition which is part of the Subject Premises free and clear of all liens, security interests and encumbrances, and an assignment of all leases covering any portion of the Subject Premises free and clear of all liens and other assignments (if any). Seller shall execute and deliver such documents as are required to document this transaction, including any document required by the Title Company (as defined below). Seller shall cause any existing land contracts or mortgages pertaining to the Real Estate to be discharged at or before Closing.

**5. Evidence of Title.**

A. Within ten (10) days of the date of Seller's delivery to Purchaser of a fully executed and originally signed copy of this Purchase Agreement, Seller shall furnish or cause to be furnished to Purchaser a Commitment for an A.L.T.A. owner's policy of title insurance to be issued at Closing without standard exceptions, in the amount of the total Purchase Price, which Title Commitment shall be issued by Liberty Title (the "Title Company"), and same to bear a date later than the date of this Agreement, wherein the Title Company shall agree to insure the title to the Real Estate in the condition required hereunder as marketable title (the "Title Commitment"). Together with the Title Commitment, Seller shall deliver to Purchaser legible copies of all documents recorded in the chain of title which are disclosed by the Title Company as exceptions to title. Seller shall, at the time of Closing, order a Policy of Title Insurance from the Title Company pursuant to the Title Commitment for delivery to Purchaser as soon thereafter as possible. The cost of the Title Commitment and Title Insurance Policy shall be paid by Seller. Purchaser, at its option, may initiate the order with the Title Company and provide copies of the Title Commitment and all items of record to Seller.

B. Within ten (10) days of the date of Seller's delivery to Purchaser of a fully executed and originally signed copy of this Purchase Agreement, Seller shall furnish or cause to be furnished to Purchaser a copy of its existing survey of the Real Estate, if any, and Purchaser, at its option, may cause to have the survey updated, or in lieu thereof, obtain a new survey at its cost and expense (in either case, the "New Survey").

C. If objection to the condition of title and/or survey is made the later of: (i) within twenty (20) days after delivery of the Title Commitment to Purchaser indicating that title is not satisfactory to Purchaser; or (ii) the expiration of the Due Diligence Period (as defined herein), Seller shall have thirty (30) days from the date it is notified in writing of the particular defects claimed, at Seller's election, either (1) to remedy the title, or (2) to obtain title insurance as required above. If Seller is unable to remedy the title or obtain title insurance after using best efforts to do so within such thirty (30) day period, Purchaser may elect to waive such defects and proceed with the transaction or terminate this Agreement, and become entitled to a return of the deposit. If the Seller remedies the title and/or survey defects or shall obtain such title insurance within the time specified, the Purchaser shall complete the transaction in accordance with terms of this Agreement.

**6. Possession.** Tenant is currently in exclusive possession of the Subject Premises pursuant to the Lease Agreement.

**7. Representations and Warranties of Seller.** Seller represents and warrants to Purchaser as of the date hereof, and as of the date of Closing, as follows:

A. Seller is duly organized, validly existing and in good standing as an entity under the laws of the State of Michigan and has, as of the date hereof, and will have on the Closing Date the power to sell the Subject Premises to Purchaser and to perform its obligations in accordance with the terms and conditions of this Agreement and each person who executes this Agreement and all other instruments and documents in connection herewith has, as of the date hereof, and will have on the Closing Date, the power and authority to so act.

B. Seller is the fee simple owner of and has good and marketable title to the Subject Premises, and full right, power and authority to enter into this Agreement.

C. With respect to any personal property included in this sale, Seller has and will transfer to Purchaser, at Closing, marketable title free and clear of all liens and encumbrances, subject only to the Permitted Exceptions.

D. Seller is not a "foreign person" as defined in §1445(f)(3) of the Internal Revenue Code and regulations promulgated thereunder, which Seller shall so certify at Closing.

E. Except as set forth in the Title Commitment or on the tax bills for the Real Estate, there are no assessments, charges, paybacks, utility tax or connection fees or obligations for improvements or services affecting the Subject Premises.

F. There are no service contracts or other agreements of any kind or nature whatsoever, written or oral, express or implied, with respect to the Subject Premises, except as identified and, in the event of oral agreements, described in Exhibit "C", to be attached hereto by Seller. Exhibit "C" shall also contain a brief description of all such service contracts.

G. There are no lawsuits, tax appeals, condemnation proceedings, or environmental investigations of any kind, pending or, to Seller's best knowledge, threatened, affecting the Subject Premises or Seller's ability to convey same.

H. Except as may have been otherwise disclosed in any environmental site assessment delivered by Seller to Purchaser, there is no known no chemical, radioactive, toxic or otherwise hazardous material, substance or waste, whether liquid, solid, gaseous or otherwise, stored or disposed of in, upon, under or adjacent to the Subject Premises (including buildings thereon), and the Subject Premises are not now nor were they previously used by Seller, for storage, disposal, manufacture, generation, whether as a by-product or otherwise, of any hazardous or toxic substance. Seller has no knowledge of the current or prior existence on the Subject Premises of any underground storage tank of any kind or size.

I. No bankruptcy, insolvency, rearrangement or similar action or proceeding involving the Subject Premises or Seller is pending or threatened against.

J. Seller has not received any written notice from any governmental authority or regulatory body, nor does Seller have any actual knowledge of, any violations of the law concerning the Subject Premises; provided, however, that Seller makes no representation or warranty with respect to ADA compliance.

K. Seller has not granted to any person or entity any option or other right to purchase the Real Estate or the Subject Premises, or to acquire any other right with respect to same, other than the Easement and Parking Agreement referenced in the Lease Agreement.

L. Seller has not received any written notice from any governmental authority or regulatory body indicating that the Subject Premises is in need of material repair, or that the Subject Premises is unsafe.

8. **Representations and Warranties of Purchaser.** Purchaser represents and warrants to Seller, to the best of its knowledge, as of the date hereof and as of the Closing date, as follows

a. Purchaser (or if assigned by Purchaser to an entity to be formed, the assignee) shall have duly and validly authorized and executed this Agreement or ratified its earlier execution and that Purchaser has full power and authority to enter into and perform its obligations under this Agreement.

b. The execution, delivery, performance or compliance with this Agreement by Purchaser and the transfer of Seller's right, title and interest in the Subject Premises to Purchaser pursuant to this Agreement shall not: (1) violate or conflict with Purchaser's governing documents; or (2) result in a breach or violation of, or constitute a default under, any mortgage, indenture, contract or agreement, lease, instrument, judgment, decree, order or award binding on Purchaser or to which Purchaser is a party.

c. Purchaser is not involved in any litigation or other proceedings that could prevent or delay it from purchasing the Subject Premises pursuant to the terms of this Agreement.

d. Purchaser has been in exclusive possession of the Real Estate since July 1, 2018 under the Lease Agreement.

9. **Conditions Precedent.** The obligation of Purchaser to proceed on this Offer, if accepted, shall be conditioned upon each of the following conditions precedent:

A. Satisfaction of the title and survey conditions in accordance with Section 5.

B. Purchaser and its agents shall have thirty (30) days following the acceptance of this Purchase Agreement (the "Due Diligence Period") to: (i) inspect and review the environmental condition of the Subject Premises; (ii) conduct a physical inspection of the Subject Premises; and (iii) to confer with Seller regarding any information Purchaser may need to evaluate the suitability of the Subject Premises. Access to the Subject Premises and such other information pertinent to the Subject Premises as Purchaser may request, shall be freely granted to Purchaser and/or Purchaser's agents and representatives, at all reasonable times, and Seller shall cooperate with Purchaser in connection therewith. If Purchaser is not satisfied, in its sole and exclusive discretion, with the results of such inspections and reviews contemplated by this Paragraph 9, or for any other reason whatsoever, Purchaser may rescind this transaction by sending written notice to Seller prior to the expiration of the Due Diligence Period, and Purchaser shall be relieved of any and all liability hereunder except those obligations which survive termination of this Agreement, and the deposit tendered pursuant to Section 15 hereof shall be immediately returned to Purchaser without setoff or deduction. Purchaser shall have no obligation to state any reason for its election to rescind this transaction.

Purchaser shall, at its sole cost and expense, restore the Subject Premises to the condition thereof existing prior to entry by Purchaser, its agents or representatives, if Purchaser elects not to close the transaction.

**Except as otherwise expressly provided herein, the Subject Premises is being sold, and the Purchaser hereby agrees to accept the Subject Premises, in "AS IS, WHERE IS, WITH ALL FAULTS" condition as of the Closing.**

C. There shall be no material changes in the physical condition of the Subject Premises from the date hereof to the Closing Date.

D. All of Seller's representations, warranties and agreements contained herein shall be true and correct as of the date hereof and on the date of Closing, which Seller shall certify to at Closing, and Seller shall not have, on the date of Closing, failed to meet, comply with, or perform, any condition or agreement on its part to be performed under the terms and conditions contained herein.

E. The Title Company shall be ready, willing, and able to issue its policy of title insurance in the form required herein, and shall otherwise have been provided with any and all documentation required in connection with same.

10. **Closing.** Purchaser and Seller shall close this transaction ("Closing") no earlier than ten (10) days following expiration of the Due Diligence Period ("Closing Date"); but in no event shall Closing occur prior to the satisfaction of all conditions precedent unless Purchaser elects to waive any such condition precedent. The Closing shall take place at the offices of Purchaser's counsel or other mutually convenient location. At Closing, the following documents, in such form and content as is reasonably satisfactory to Purchaser, shall be executed by Seller and/or delivered to Purchaser:

A. A Warranty Deed conveying marketable title to the Subject Premises to Purchaser, subject only to the Permitted Exceptions, with the consideration therefore stated only in a separate Real Estate Transfer Valuation Affidavit or similar document. If the Real Estate consists of unplatted land and is not a parent parcel, the deed shall contain a statement as follows: "The grantor grants to the grantee the right to make all divisions under Section 108 of the Land Division Act, Act No. 288 of the Public Acts of 1967."

B. A Bill of Sale as to the property rights, other than the Real Estate, described in Section 1 hereof.

C. Seller's Affidavit of No Liens on the Title Company's standard form, sufficient to permit the Title Company to delete standard Schedule B exceptions.

D. Seller's Certificate of Accuracy and Affirmation of Covenant, as of Closing that the Representations and Warranties under Section 7 remain true and correct as of the Closing Date, and that Seller has faithfully kept and performed the covenants under Section 22 hereof.

E. A Closing Statement.

F. A Non-Foreign Person Affidavit.

G. All available plans and specifications relating to the improvements located upon the Subject Premises including as built drawings and site plans (but only to the extent that the same are in Seller's possession).

H. That certain Reciprocal Easement Agreement concerning the Subject Property, and the immediately adjacent property owned by Seller.

I. Any other document or thing required by the Title Company in order to close the transaction as described herein.

11. **Closing Adjustments.** The following shall be apportioned on the Closing Statement against sums due Seller at Closing:

A. All taxes and special assessments of whatever nature and kind which have become due and payable, regardless of whether such special assessments may be paid in installments over a term of years or are delinquent as of the date of Closing, shall be paid and discharged by Seller. Current real and personal property taxes shall be prorated on the due date basis of the taxing authority on the basis of a three hundred sixty-five (365) day year as though the taxes have been paid in advance; Seller shall be responsible for taxes up to but not including the day of Closing.

B. All tenant security deposits if any, and other deposits of whatever nature and kind whatsoever, and whether or not refundable, shall be assumed by Purchaser with credit therefor against sums due at Closing.

C. Seller shall pay for all realty transfer and similar taxes due upon Closing or required to be paid upon recording of the Warranty Deed.

D. Any work fee charged by the Title Company shall be paid by the Purchaser pursuant to the Option Section of the Lease Agreement.

E. Any other charges or fees shall be incurred by the party incurring the charge, or as otherwise is customary for real property transactions in southeast Michigan.

12. **[INTENTIONALLY DELETED]**

13. **Destruction or Damage.** Until the day of Closing and actual exchange of legal title for the consideration to be paid hereunder, all risk of loss with respect to the Subject Premises shall be borne by Seller. In the event of destruction or damage to the Subject Premises prior to the date of Closing, Purchaser shall, at its option, have the right to (a) take the proceeds of the insurance, including any loss of rents insurance, or a present assignment of Seller's rights therein, less any deductible required to be paid by Seller and proceed and go forward with the transaction; or (b) in the event damage exceeds Fifty Thousand Dollars (\$50,000.00) as determined by an independent insurance adjuster, declare the transaction to be void and of no further force or effect and Purchaser shall be relieved of any and all liability hereunder. If Purchaser selects option (a), if necessary the Closing Date shall be delayed until the loss is adjusted, the insurance company acknowledges Purchaser's rights therein by virtue of this Agreement, and the amount of insurance proceeds is determined.

14. **Condemnation.** In the event that notice of any action, suit or proceeding shall be given prior to the Closing Date for the purpose of condemning any part of the Subject Premises, then Purchaser shall have the right to terminate its obligations hereunder within fifteen (15) days after receiving written notice of such condemnation proceeding from Seller, and upon such termination, the proceeds resulting from such condemnation shall be paid to Seller, and Purchaser shall thereupon be relieved of any and all liability hereunder. In the event Purchaser shall not elect to terminate its obligations hereunder, the proceeds of such condemnation shall be assigned and belong to Purchaser.

15. **Deposit; Deposit as Liquidated Damages.** Within 3 days of execution of this Agreement, Purchaser shall deliver a deposit to Seller in the amount of \$300,000.00.

The deposit made in connection with this Agreement shall be held by the Title Company and applied against cash due at Closing when the transaction is consummated or otherwise disbursed in accordance with the terms hereof. In the event this Agreement is not accepted by Seller, or in the event of failure of any condition precedent, or in the case of any uncured default by Seller, the deposit, if any, shall be promptly returned to Purchaser. In the event of a default by Purchaser hereunder, which default remains uncured for a period of ten (10) days after written notice thereof is received by Purchaser, Seller shall be entitled to terminate this Agreement and the deposit, if any, shall be paid to the Seller as liquidated damages as its **sole and exclusive remedy**. In the event of a default by Seller hereunder, which default remains uncured for a period of ten (10) days after written notice thereof is received by Seller, Purchaser may terminate this Agreement and shall be entitled to a return of the deposit in this Agreement, if any, then held by the Title Company, or to maintain an action for specific performance of this Agreement. In addition to the above in the event of any dispute hereunder, the prevailing party shall be entitled to recover all fees and costs including, by way of example and not limitation, such party's attorney fees.

16. **Indemnity.**

A. Seller shall indemnify, defend and hold Purchaser harmless of and from and in respect to any claims asserted by tenants, creditors, vendors, visitors, or employees of or claimants against Seller or of the Subject Premises up to the Closing Date, including any claims for breach of any representation, warranty, or covenant made herein. In no event shall Purchaser assume any liability of Seller, except as expressly set forth herein. The parties acknowledge that this is not a sale of a business nor shall Purchaser be deemed a successor of Seller.

B. Purchaser shall indemnify, defend and hold Seller harmless of and from and in respect to any claims asserted by tenants, creditors, vendors, visitors, or employees of or claimants against Purchaser or of the Subject Premises arising on or after the date of Closing.

17. **Broker.** At Closing, each party shall indemnify and hold harmless the other from and against all claims, demands, causes of action, debts, liabilities, judgments and damages (including costs and reasonable attorneys' fees) which may be asserted by any real estate broker in connection with this transaction.

18. **Governing Law.** This Agreement shall be governed by Michigan law.

19. **Binding Effect.** This Agreement shall bind the parties hereto, their respective heirs and assigns. Purchaser may freely assign its interest hereunder.

20. **Notices.** Any notices, demands or requests required or permitted to be given hereunder must be in writing and shall be deemed to be given (a) when hand delivered, or (b) one (1) business day after delivery to Federal Express or similar nationally recognized overnight service for next business day delivery, or (c) three (3) business days after deposit in the U.S. mail first class postage prepaid, or (d) on the day of transmission, when sent during regular business hours of the intended destination by facsimile or telecopier transmission, if such transmission is immediately followed by any of the other methods for giving notice. In all cases notices shall be addressed to the parties at their respective addresses as follows:

**If to Seller:**

Creative Schools Management, LLC  
Attention: Carl Byerly  
4759 Owasco Court,  
Clarkston, MI 48348

**With a copy to:**

John L. Burket, Esq.  
DBS Attorneys  
10 S. Main Street, Suite 401  
Mt. Clemens, MI 48043  
Email : [jlburket@dbsattorneys.com](mailto:jlburket@dbsattorneys.com)

**If to Purchaser:**

City of Pontiac  
Attention: Mayor  
47450 Woodward Ave.  
Pontiac, MI 48342

**With a copy to:**

Paul A. Thursam, Esq.  
Giarmarco, Mullins & Horton, P.C.  
101 W. Big Beaver Road, Suite 1000  
Troy, Michigan 48084  
Email: [pthursam@gmhlaw.com](mailto:pthursam@gmhlaw.com)

21. **Time for Performance.** In the event the last date for performance of any obligation or for giving any notice hereunder falls on a Saturday, Sunday or legal holiday of the state wherein the Real Estate is located, then the time of such period shall be extended to the next day which is not a Saturday, Sunday or legal holiday in such state. Time shall be of the essence for purposes of this transaction.

22. **Seller's Additional Covenants.** From the date of this Agreement until the Closing Date:

A. Seller shall continue to be obligated under the terms and conditions of the Lease Agreement.

B. Seller shall not transfer any of the Subject Premises, create any lien or encumbrance thereon, grant any easements or rights of way, or enter into any contract or other agreement affecting the Subject Premises which is not cancelable on and as of the Closing Date without Purchaser's prior written consent, in each such instance, other than the Easement and Parking Agreement referenced in the Option Clause of the Lease Agreement.

E. Seller shall pay all its obligations in a timely fashion, including, but not limited to taxes, insurance, debt service payments, and suppliers of labor or materials to the Subject Premises.

23. **Number and Gender.** Whenever required by the context or use in this Agreement, the singular word shall include the plural word and the masculine gender shall include the feminine and/or neuter gender, and vice versa.

24. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which shall constitute and be deemed an original, but all of which together shall constitute one and the same instrument binding on all the parties. This Agreement may be executed in telecopy (faxed) copies and facsimile signatures shall be binding upon the parties.

[SIGNATURE PAGE FOLLOWS]



IN WITNESS WHEREOF, this Agreement shall be deemed entered and effective on the last date shown below.

**Seller:**

**CREATIVE SCHOOLS MANAGEMENT, LLC, a**  
Michigan limited liability company

**Purchaser:**

**CITY OF PONTIAC**

By: \_\_\_\_\_  
Name: Carl Byerly  
Its: President

Dated: \_\_\_\_\_, 2019

By: \_\_\_\_\_  
Name: Deirdre Waterman  
Its: Mayor

Dated: \_\_\_\_\_, 2019

**LIST OF EXHIBITS**

|             |   |
|-------------|---|
| Exhibit "A" | Legal Description                           |
| Exhibit "B" | List of Included Items of Personal Property |
| Exhibit "C" | Service Contracts                           |

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

See attached.

## LEGAL DESCRIPTION (to be confirmed by Title Company)

PART OF THE NORTHWEST  $\frac{1}{4}$  OF SECTION 5, T.2N., R.10E, CITY OF PONTIAC, OAKLAND COUNTY MICHIGAN, DESCRIBED AS FOLLOWS; BEGINNING AT A POINT ON THE WEST LINE OF SAID SECTION 5, SAID POINT BEING S02'00'42"E (RECORDED AS S01'59'37"E). 625.87 FEET FROM THE NORTHWEST CORNER OF SAID SECTION 5; THENCE N88'09'37"E, 216.00 FEET; THENCE N01'59'37"W, 261.76 FEET; THENCE N87'19'39"E, 142.70 FEET; THENCE N87'37'37"E, 98.42 FEET; THENCE S01'33'04 "E, 1272.05 FEET, TO A POINT ON THE NORTH LINE OF "BLOOMFIELD PARK CONDOMINIUM" OAKLAND COUNTY CONDOMINIUM PLAN NO. 1718 AS RECORDED IN LIBER 35092, PAGE 207 OAKLAND COUNTY RECORDS, AS AMENDED; THENCE S87'20'36"W ALONG THE NORTH OF SAID "BLOOMFIELD PARK CONDOMINIUM", 452.60 FEET TO A POINT, SAID POINT BEING 5.61 FEET (RECORDED AS 5.94 FEET) FROM THE WEST LINE OF SAID SECTION 5; THENCE N01'34'38"W, 739.58 FEET (RECORDED AS N01'35'41"W, 738.08 FEET) TO A POINT OF THE WEST LINE OF SAID SECTION 5; THENCE N02'00'42"W ALONG SAID WEST LINE, 274.17 FEET (RECORDED AS N01'59'37"W); TO THE POINT OF BEGINNING . CONTAINING 11.95 ACRES AND SUBJECT TO EASEMENTS AND RIGHTS OF WAY OF RECORD.

**EXHIBIT "B"**  
**LIST OF INCLUDED ITEMS OF PERSONAL PROPERTY**

See attached.

## EXHIBIT B

1. Principal Office - Conference Table with 4 padded chairs and 4 wooden chairs
2. Tech Room - 3 wood tables
3. Front Office - Steel Desk with 2 wood chairs and file cabinet
4. Gym - 2 Vending Machines and 2 glass display cases; sound system; scoreboard
5. Front office - Wood desk and 3 chairs
6. Front Office - 2 wood tables and 2 wood chairs
7. Front Office - Wood Table, 4 wood chairs, moon table 7 tall cabinet
8. Front East Classroom - 10 Rectangular Wood tables (4 belong to JIA) and 70 small elementary plastic chairs
9. Room 18 - 3 file cabinets, 2 teacher desks, & 5 student desks
10. Room 106 -
  - A. 35 Elementary Desk / Chair combo units
  - B. 22 Elementary Blue plastic chairs
  - C. 26 Elementary Gray small hard plastic chairs
  - D. 10 Middle School Hard Plastic chairs
  - E. 15 Upper Elem. Adjustable desks
  - F. 2 science lab tables
  - G. 3 Steel Office Desks
  - H. 2 Middle School Desk / Chair combo units
  - I. 3 File Cabinets
  - J. 2 Wooden Classroom Tables
11. Choir Room - 2 Pianos, Choir risers (4 sections) 12 music stands
12. Band Room - 1 Piano and Music storage cabinet
13. Dance Room - Ballet Bars (4 sets) and File cabinet
14. Fireplace Room - 4 large book shelves, 2 wooden office desks, 4 wood chairs & 1 wood table
15. Room 210 - Wooden teacher desk and 4 moon shaped tables
16. Room 208 - 17 Middle School desk / chair combo units, teacher's desk & file cabinet
17. Room 209 - 12 Middle School Chairs (peach color) & wooden teacher desk
18. Room 206 - (25 Middle School desk / chair combo units belong to JIA) , Adult wood desks and file cabinet
19. Room 207 - 5 wood science tables
20. Room 205 - 11 Middle School desk / chair combo units
21. Room 203 - Wood Table
22. Room 201 - (computer lab) 7 computer tables (assorted) (2 belong to JIA) & 20 chairs
23. Teacher's lounge - refrigerator, 4 wood tables, microwave 7 20 chairs
24. Kitchen - 2 commercial gas stoves, etc.?

**EXHIBIT "C"**  
**SERVICE CONTRACTS**

See attached.



## **CITY OF PONTIAC CITY COUNCIL**

### **RESOLUTION REGARDING 825 GOLF DRIVE; AUTHORITY TO EXERCISE OPTION TO PURCHASE; AUTHORITY TO EXECUTE PURCHASE AGREEMENT AND TAKE ALL OTHER ACTION NECESSARY TO CONSUMMATE THE TRANSACTION**

AT A REGULAR meeting of the Pontiac City Council of the City of Pontiac, Michigan,  
held at Pontiac City Hall on \_\_\_\_\_, 2019, the following resolution was  
offered by \_\_\_\_\_ and supported by \_\_\_\_\_.

**WHEREAS**, the Pontiac City Council authorized the execution of a Lease Agreement (with Purchase Option) by and between the City of Pontiac (the "City") and Creative Schools Management, LLC dated July 1, 2018 (the "Lease"); and

**WHEREAS**, the Lease concerns the property located at 825 Golf Drive (the "Property"), which is currently operated by the City as a youth recreation and education center; and

**WHEREAS**, the Lease contains an option to purchase the Property, which option must be exercised on or before June 10, 2019 (the "Option"); and

**WHEREAS**, the Pontiac City Council previously set aside \$3.2 million for the purchase of the Property.

**NOW THEREFORE, BE IT RESOLVED** as follows:

1. The attorneys for the City are hereby authorized to exercise the Option and take all other action reasonably necessary and prudent in connection therewith.
2. The attorneys for the City are hereby authorized to fully and finally negotiate the attached Purchase Agreement for the Property (but in no event shall the purchase price for the Property exceed \$3,150,000.00).
3. The Mayor for the City of Pontiac is hereby authorized to execute the Purchase Agreement for the Property, and to take any and all other action reasonably necessary



and prudent to consummate the purchase of the Property, including a due diligence investigation of the Property.

**PASSED AND APPROVED BY THE CITY COUNCIL**, Pontiac, Michigan, this \_\_\_\_ day of \_\_\_\_\_, 2019.

AYES: \_\_\_\_\_

NAYS: \_\_\_\_\_

I, Garland Doyle, Interim Clerk of the City of Pontiac, hereby certify that the above Resolution is a true copy and accurate copy of the Resolution passed by the City Council of the City of Pontiac on \_\_\_\_\_, 2019.

\_\_\_\_\_  
GARLAND DOYLE, Interim City Clerk

Dated: \_\_\_\_\_, 2019



## CITY OF PONTIAC

Department of Finance  
47450 Woodward Avenue  
Pontiac, Michigan 48342  
Telephone: (248) 758-3118  
Fax: (248) 758-3197

TO: Mayor Deirdre Waterman, Mayor, City of Pontiac

FROM: Hughey Newsome, Interim Finance Director

CC: Jane Bais-DiSessa, Deputy Mayor

Date: May 16, 2019

Re: Fund Balance committed for Pontiac Youth Recreation and Enrichment Center

This memo is in regards to the purchase of the Pontiac Youth Recreation and Enrichment Center ("PYREC"). The City of Pontiac currently has a lease agreement and a purchase option to buy the property at 825 Golf Drive. This property, referred to as PYREC, is currently under lease from Creative Schools Management, LLC.

On June 8, 2018, the Pontiac City Council voted to both approve this lease agreement (with Purchase option) and to commit \$3.2 million of General Fund's fund balance for the purposes of exercising this purchase option. The city entered into this lease agreement on July 1, 2018. This committed \$3.2 million of General Fund's fund balance remains as of the date of this memo. At the close of fiscal year 2018, based on audited financial statements, the city had \$17,359,201 of fund balance in the General Fund. The city is projecting that this figure will be \$16,806,781 by the end of this fiscal year.

Because the first \$3.2 million of this fund balance has been committed, by aforementioned resolution, to the purchase of PYREC, I can confirm that there is adequate fund balance for exercising the purchase option for PYREC.

A handwritten signature in black ink, appearing to be "Hughey Newsome", is written over a horizontal line.

Hughey Newsome  
Interim Finance Director

Attachment

May 3, 2019

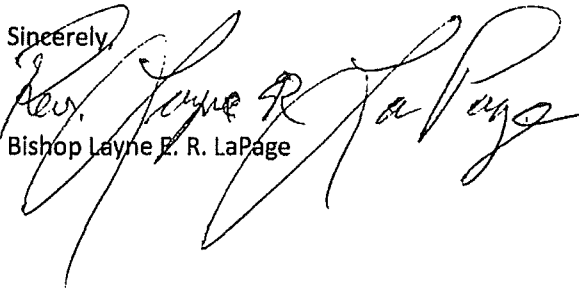
City of Pontiac  
7450 Woodward Avenue  
Pontiac, MI 48342

**RE: Transaction for 825 Golf Drive.**

Dear Honorable Mayor, Council President and City Council:

The purpose of this letter is to inform you that, on behalf of The Cathedral of Valor and myself, we are withdrawing our previous offer regarding the property at 825 Golf Drive.

Sincerely,

  
Bishop Layne E. R. LaPage

**#10**

**RESOLUTION**

**RESOLUTION OF THE PONTIAC CITY COUNCIL  
HONORING OUR YOUNG HEROES**

**WHEREAS**, it is the desire of the City to endorse, recognize and support its young people for their academic, civic achievements, as well as those who contributed to their success; and,

**WHEREAS**, the Delta Fortitude Foundation (DFF) is a 501( C )3 non-profit organization established in 2001 in Pontiac, Michigan, the mission of the organization is to enhance the quality of life of the citizens and youth in the Pontiac metropolitan area, with emphasis on African American males; and,

**WHEREAS**, the Salute to Young Heroes is an eight-month program designed to address the crisis that our young African American males face today; and,

**WHEREAS**, the members of the Pontiac City Council salute the Young Heroes of 2019; **Parrish A. Bush, Ian J. Chambers, Christian L. Grant, Myles R. Harris, Raymond W. Johnson III and Quinton V. M. Keyes.**

**NOW, THEREFORE, BE IT RESOLVED**, on behalf of the citizens, members of the Pontiac City Council, we applaud and celebrate the achievements of these young men and give special thanks to the Delta Fortitude Foundation as they celebrate their Annual Gala Celebration honoring Our Young Heroes of 2019 at the Pontiac Marriott on Sunday, June 9, 2019.

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*Kermit Williams, President*

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*Randy Carter, Pro-Tem*

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*Patrice Waterman, Councilwoman*

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*Don Woodward, Councilman*

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*Mary Pictila, Councilwoman*

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*Gloria Miller, Councilwoman*

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*Doris Taylor-Burks, Councilwoman*

# **RESOLUTION #11**

## Pontiac City Council Resolution



**WHEREAS**, the Pontiac Municipal Code and Pontiac Ordinance No. 2288, sec 4, dated June 27, 2013 provides that the budget shall be adopted on a functional basis for expenditures, rather than on a departmental or line item basis; and,

**WHEREAS**, it is in the best interest of the City of Pontiac to amend the current ordinance to allow the budget to be adopted on a line item basis for expenditures rather than on a functional basis; and,

**WHEREAS**, money shall not be moved within departments without the Pontiac City Council's approval; and,

**WHEREAS**, pursuant to the Pontiac City Charter more specifically, section 4.202, the City Attorney is hereby instructed to amend the ordinance pursuant to the resolution passed by the Pontiac City Council by May 28, 2019.

**NOW, THEREFORE BE IT RESOLVED**, that no more than Ten Thousand (\$10,000.00) Dollars shall be allocated and changed to a different function within a department without the Pontiac City Council's approval and the current 2019-2020 budget shall be adopted by line item for expenditures.



**#12**

**ORDINANCE**

**ORDINANCE NO.**

**AN ORDINANCE TO REPEAL ORDINANCE NO. 2288 AN ORDINANCE TO PROVIDE FOR THE MAYOR TO SUBMIT A PROPOSED TWO YEAR BALANCED BUDGET TO THE CITY COUNCIL FOR CONSIDERATION, TO ESTABLISH MINIMUM REQUIREMENTS FOR THE PROPOSED BUDGET DOCUMENT, AND TO REQUIRE THE CITY COUNCIL TO ADOPT A BUDGET BY JUNE 9 OF EACH YEAR.**

**THE CITY OF PONTIAC ORDAINS:**

Section 1. Amendments

Chapter 2, Article VI, Division 3, Sections 2-531 through 2-536 of the Code of Ordinances, concerning the Executive Balanced Budget Ordinance shall be deleted in its entirety.

Section 2. Repealer

All Ordinances or parts of Ordinances in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.