

**CITY OF MADISON HEIGHTS
300 W. 13 MILE ROAD
REGULAR COUNCIL MEETING AGENDA
APRIL 11, 2022
7:30 P.M.**

AGENDA:

CALL TO ORDER

ROLL CALL

INVOCATION – COUNCILOR ROHRBACH

PLEDGE OF ALLEGIANCE

APPOINTMENT OF TOYA AARON TO THE VACANT COUNCIL SEAT

OATH OF OFFICE ADMINISTERED TO COUNCILWOMAN AARON

ELECTION OF MAYOR PRO-TEM

APPROVAL OF AGENDA:

1. Additions
2. Deletions

PRESENTATIONS

1. 2022 National Animal Control Officer's Week Proclamation
2. 2022 National Public Safety Telecommunication Week Proclamation

A – PUBLIC HEARINGS:

ITEMS ON AGENDA OF INTEREST TO PARTIES IN THE AUDIENCE

B - MEETING OPEN TO THE PUBLIC:

C – COMMUNICATIONS:

1. Toya Aaron - Resignation from the Human Relations & Equity Commission

D – REPORTS:

1. City Manager – Resolution to Declare Arbor Day
2. Police Chief – Narcotics Enforcement Team (NET)/High Intensity Drug Trafficking Area (HIDA) Agreement and Resolution
3. City Manager – Resolution Demanding Impacted GLWA member Communities not be Responsible for the City of Highland Park's GLWA Debt

E - ITEMS FOR FUTURE PUBLIC HEARINGS:

F - BID AWARDS/PURCHASES:

1. City Manager – Partners in Architecture Construction Documents

G - ORDINANCES:

1. City Clerk – Ordinance No. 2180, Amendment to Precinct 8 Polling Location – First Reading

H - UNFINISHED BUSINESS:

MINUTES:

1. Special City Council meeting minutes of 03-28-22 and Regular City Council meeting minutes of 03-28-22

COUNCIL APPOINTMENTS:

Council Boards and Commissions – terms to expire 11-13-23

Board/Commission vacancies:

1. Active Adult Center – Council Representative
2. Historical Commission – Council Representative
3. Library Advisory Board – Council Representative
4. Parks and Recreation Advisory Board – Council Alternate
5. Zoning Board of Appeals – Council Representative

J - EXECUTIVE SESSION:

ADJOURNMENT

NOTICE: Persons with disabilities who qualify under the Americans with Disabilities Act needing accommodations for effective participation through electronic or other means in this meeting should contact the City Clerk at (248) 583-0826 or by email: clerks@madison-heights.org at least two working days in advance of the meeting. An attempt will be made to make reasonable accommodations.

DATE: April 7, 2022

TO: City Council

FROM: Melissa R. Marsh, City Manager

SUBJECT: Agenda Comments for the Regular Council Meeting of Monday, April 11, 2022

The following are my comments on items appearing on the agenda of the Regular Council Meeting of Monday, April 11, 2022.

P- PRESENTATIONS

NUMBER 1: 2022 NATIONAL ANIMAL CONTROL OFFICER'S WEEK PROCLAMATION

The Mayor and City Council are scheduled to present a proclamation to Animal Control Officer Justin Holland, part-time assistants Jillian Whalin and Hannah Korzenborn, acknowledging and thanking them for their services to the City and declaring the week of April 10 through April 16, 2022, as National Animal Control Officers Week in Madison Heights.

NUMBER 2: 2022 NATIONAL PUBLIC SAFETY TELECOMMUNICATION WEEK PROCLAMATION

The Mayor and City Council is scheduled to present a proclamation declaring the week of April 10 through April 16, 2022, as National Public Safety Telecommunications Week in Madison Heights to recognize Madison Height's Police Service Assistant Dispatchers for the vital work they perform in service to our community.

C - COMMUNICATIONS:

NUMBER 1: TOYA AARON – RESIGNATION FROM THE HUMAN RELATIONS AND EQUITY COMMISSION

Toya Aaron has submitted her resignation from the Human Relations and Equity Commission. Staff recommends accepting the resignation and declaring her seat vacant. This seat expires on August 31, 2023.

D - REPORTS:

NUMBER 1: CITY MANAGER – RESOLUTION TO DECLARE ARBOR DAY

With the City Council's support to increase our commitment to strengthen and improve the City's tree canopy, the City staff applied for and was awarded Tree City USA status for the second year in a row. Tree City USA is a nationwide movement that provides the framework necessary for communities to manage and expand their public trees. One of the standards required for application is that City Council adopts a resolution proclaiming Arbor Day with a celebration.

Therefore the City will observe Arbor Day on Friday, April 29. To celebrate and acknowledge Arbor Day, the City will promote and offer a limited number of trees through our citywide neighborhood Right-Of-Way (ROW) Street Tree Planting Program, which was new last year. This is an annual first-come, first-serve program to replace trees throughout the City. The number of trees planted annually is based on available funding; additional requests above and beyond this will be added to a waitlist in the order received.

Staff and I recommend City Council adopt this resolution declaring Friday, April 29, 2022, as Arbor Day in Madison Heights.

**NUMBER 2: POLICE CHIEF – NARCOTICS ENFORCEMENT TEAM
(NET)/HIGH-INTENSITY DRUG TRAFFICKING AREA (HIDA) AGREEMENT AND
RESOLUTION**

The City of Madison Heights currently has a police officer assigned to the Oakland County Narcotics Enforcement Team (NET). Oakland County has applied for a grant from the United States Office of National Drug Control Policy (ONDCP) for funding for \$115,500 to reimburse NET participating agencies for eligible law enforcement officer overtime costs. If Oakland County grants NET this award, the funds reimburse the City of Madison Heights up to \$5,250 for qualifying expenses.

Therefore, Staff and I recommend that the City Council adopt the resolution and approve the 2022 High Intensity Drug Trafficking Area (HIDTA) Subrecipient Agreement Between The County of Oakland and City of Madison Heights authorizing the City Manager and City Clerk to sign on behalf of the City.

**NUMBER 2: CITY MANAGER – RESOLUTION DEMANDING IMPACTED
GLWA MEMBER COMMUNITIES NOT BE RESPONSIBLE FOR THE CITY OF
HIGHLAND PARK'S GLWA DEBT**

City Council is being requested to approve a resolution demanding that the State of Michigan and the Great Lakes Water Authority do not require the 87 paying member communities to pay for the City of Highland Park's debt to GLWA. Further, this resolution commits Madison Heights to not paying this debt. Madison Heights' allocated portion is \$60,900, with \$6,600 allocated this upcoming year.

F - BID AWARDS/PURCHASES:

NUMBER 1: CITY MANAGER: PARTNERS IN ARCHITECTURE CONTRACTED SERVICES THROUGH CONSTRUCTION DOCUMENTS

On May 10, 2021, City Council approved an agreement with Partners in Architecture (Partners) for Design Development for the Civic Center Plaza ad Fire Station #2 projects. The total project fees were \$170,000, and a contract with FRS for Preconstruction Management Services was estimated to be \$8,500. At that time, we explained that the total for Phase 2 for Partners was \$570,000 if we moved to the construction documents phase. We are now requesting approval for the next phase contract for Partners at \$431,400; this includes \$380,600 for Partners to complete Construction Documentation and a \$50,800 fee for FRS for Construction Services, including the early bid packages that were recently presented to City Council. The contract is pending final legal review.

Staff and I would respectfully request that Council Approve moving to the Construction Documents and Bidding stage of the contract with Partners in Architecture for \$431,400.

G - ORDINANCES:

NUMBER 1: CITY CLERK ORDINANCE NO. 2180, AMENDMENT TO PRECINCT 8 POLLING LOCATION

In conjunction with the recently approved precinct boundary location changes, Lamphere Schools has agreed to let the City use John Page Middle School, 29615 Tawas St., as the permanent location for Precinct 8. Precinct 8 has been located at the Active Adult Center, which will not be available as a polling location in the future.

This will enable us to include the location change on the new Voter ID cards that will be sent out due to re-districting.

As required by the City Charter, Staff recommends approval of Ordinance 2180, Amendment to Polling Location, on the First Reading and schedule a Second Reading for April 25, 2022.

CITY OF MADISON HEIGHTS
ELECTRONIC COUNCIL AGENDA REQUEST FORM

SUBMITTED TO: _____

SUBMITTED BY: _____ DATE: _____

FOR CONSIDERATION AT THE COUNCIL MEETING OF: _____

ACTION REQUESTED

PRESENTATION	_____	FUTURE PUBLIC HEARING	_____
PUBLIC HEARING – SPECIAL APPROVAL	_____	BID AWARDS / PURCHASES	_____
PUBLIC HEARING – OTHER	_____	ORDINANCE - FIRST	_____
COMMUNICATION	_____	ORDINANCE - SECOND	_____
REPORT	_____	OLD BUSINESS	_____

DESCRIPTION OF ITEM

IF ORDINANCE, CITE TITLE/CHAPTER SECTIONS

POLICY CONSIDERATION

FINANCIAL IMPACT

No Impact	_____	Fee Waiver Proposed	_____
Budgeted Fund Name(s)	_____	Department Name	_____
Appropriated in Acct. No.	_____	Budget Amount	_____
Amount Available in Acct.	_____	Budget Amount	_____
Second Account Number	_____	Revenue Generated	_____
Amount Available in 2 nd Acct.	_____		
Other Comments	_____		

REVIEW CHECKLIST

DEPARTMENT _____ DATE _____

DEPARTMENT _____ DATE _____

CITY MANAGER _____ DATE _____

PROCLAMATION

WHEREAS, when a call for animal control services is requested, the prompt response of the animal control officer is very important for the protection of human life and the welfare of helpless animals and pets that are rescued from injury, disease, harm and inhumane treatment; and,

WHEREAS, our Animal Control Officer provides a number of services to this community including, responding to domestic animal calls and complaints, checking the welfare of pets, inspecting pet stores and other animal facilities, catching and returning loose pets, ensuring pets are properly vaccinated and licensed, investigating complaints and animal bites, responding to calls on wildlife and moving wildlife to other locations for their safety; and,

WHEREAS, our Animal Control Officer is a hard-working member of the Madison Heights Police Department and is dedicated to the service of animal control needs in this community; and,

WHEREAS, this week of appreciation recognizes and honors ACO Justin Holland and part-time assistants Jillian Whalin and Hannah Korzenborn.

NOW, THEREFORE BE IT RESOLVED that the City Council of Madison Heights declares the week of:

April 10-16, 2022
NATIONAL ANIMAL CONTROL OFFICER APPRECIATION

in Madison Heights, in honor of the men and women whose diligence, caring and protections of animals help keep our City, citizens and animals safe.



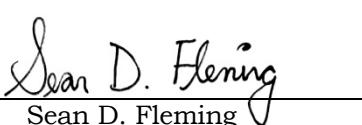
Roslyn Grafstein
Mayor



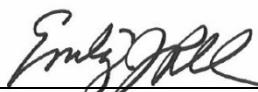
Toya Aaron
Councilwoman



Mark Bliss
Councilman



Sean D. Fleming
Councilman



Emily J. Rohrbach
Councilor



David M. Soltis
Councilman



Quinn J. Wright
Councilor

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CITY MANAGER _____ DATE _____

PROCLAMATION

WHEREAS, emergencies can occur at any time that require police, fire or emergency medical services; and,

WHEREAS, when an emergency occurs the prompt response of law enforcement, firefighters and paramedics is critical to the protection of life and preservation of property; and,

WHEREAS, the safety of our police officers and firefighters is dependent upon the quality and accuracy of information obtained from citizens who telephone the Madison Heights Dispatch Center; and,

WHEREAS, Public Safety Dispatchers are the first and most critical contact our citizens have with emergency services; and,

WHEREAS, Public Safety Dispatchers are the single vital link for our law enforcement, and fire personnel by monitoring their activities by radio, providing them information and insuring their safety; and,

WHEREAS, Public Safety Dispatchers of the Madison Heights Dispatch Center contributed substantially to the apprehension of criminals, suppression of fires and treatment of patients; and,

WHEREAS, each dispatcher has exhibited compassion, understanding and professionalism during the performance of their job in the past year;

NOW, THEREFORE BE IT RESOLVED that the City Council of Madison Heights declares the week of:

April 10-16, 2022
NATIONAL PUBLIC SAFETY TELECOMMUNICATORS WEEK

in Madison Heights, in honor of the men and women whose diligence and professionalism keep our



Roslyn Grafstein

Mayor



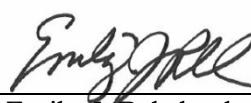
Toya Aaron
Councilwoman



Mark Bliss
Councilman



Sean D. Fleming
Councilman



Emily J. Rohrbach
Councilor



David M. Soltis
Councilman



Quinn J. Wright
Councilor

city and citizens safe.

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ELECTRONIC COUNCIL AGENDA REQUEST FORM

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CITY MANAGER _____ DATE _____



RESOLUTION OF THE CITY OF MADISON HEIGHTS, COMMITTING TO HONORING ARBOR DAY.

WHEREAS, the City of Madison Heights is committed to establishing a strong tree canopy within the city; and

WHEREAS, trees are proven to improve air quality, cut heating and cooling costs, moderate the temperature, produce life-giving oxygen, provide habitat for wildlife and reduce the erosion of topsoil by wind and water; and

WHEREAS, in 1872, J. Sterling Morton proposed to Nebraska Board of Agriculture that a special day be set aside for planting of trees, and

WHEREAS, this holiday is called Arbor Day and in 2022 this holiday is nationally observed on April 29, 2022; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MADISON HEIGHTS, AS FOLLOWS:

Recognizing that trees, in addition to all the benefits listed above, increase property values, enhance the economic vitality of business areas, and beautify our community; and,

On April 29, 2022 in honor of Arbor Day, the City Department of Services will announce our new residential tree program with additional funding, and celebration of the City's Second Tree City Award Presentation,

The City Council and Staff is dedicated to including tree replacements in future budgets including grant matches for any tree grants available;

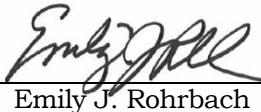
Furthermore, the City of Madison Heights urges all citizens to celebrate Arbor Day and to support efforts to protect our trees increasing the City tree canopy to promote the well-being of our community.


Roslyn Grafstein
Mayor


Toya Aaron
Councilwoman


Mark Bliss
Councilman


Sean D. Fleming
Councilman


Emily J. Rohrbach
Councilor


David M. Soltis
Councilman


Quinn J. Wright
Councilor

CITY OF MADISON HEIGHTS
ELECTRONIC COUNCIL AGENDA REQUEST FORM

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REVIEW CHECKLIST

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DEPARTMENT _____ DATE _____

CITY MANAGER _____ DATE _____

Date: March 28, 2022
To: Melissa R. Marsh, City Manager
From: Corey K. Haines, Chief of Police
Subject: 2022 High Intensity Drug Trafficking Area (HIDTA) Subrecipient Agreement
Between The County of Oakland and City of Madison Heights

The City of Madison Heights currently has a police officer assigned to the Oakland County Narcotics Enforcement Team (NET). Oakland County has applied for a grant from the United States Office of National Drug Control Policy (ONDCP) for funding in the amount of \$135,000 to reimburse NET participating agencies for eligible law enforcement officer overtime costs. If Oakland County grants NET an award the funds will be distributed to the Michigan State Police and then the Michigan State Police will distribute the funds to Oakland County. The County will reimburse the City of Madison Heights, up to \$5,000.00, for qualifying N.E.T. related overtime as described in the agreement.

In order for the City of Madison Heights to be reimbursed the overtime wages earned by our officer assigned to the NET Taskforce for these investigations, Oakland County is requiring all participating agencies to enter into a Subrecipient Agreement. Oakland County is also requiring that the local governing board of the participating agencies enter into this agreement by a Resolution by the local governing board allowing the City Manager and the City Clerk to sign the Subrecipient Agreement on behalf of the city.

The City Attorney's Office has reviewed the Subrecipient Agreement and the Resolution and they have approved both as drafted.

I respectfully recommend that the City Council adopt the Resolution and allow the City Manager and the City Clerk to sign the 2022 High Intensity Drug Trafficking Area (HIDTA) Subrecipient Agreement Between The County of Oakland and City of Madison Heights.

PROGRAM YEAR 2022
HIGH INTENSITY DRUG TRAFFICKING AREA (HIDTA)
SUBRECIPIENT AGREEMENT BETWEEN
THE COUNTY OF OAKLAND AND CITY OF MADISON HEIGHTS
Data Universal Numbering System (DUNS) #: 010863405

This Agreement is made between Oakland County, a Constitutional Corporation, 1200 North Telegraph, Pontiac, Michigan 48341 ("County") and City of Madison Heights, 300 W. Thirteen Mile Rd., a Michigan Municipal Corporation ("Municipality"). The County and Municipality shall be collectively referred to as the "Parties."

PURPOSE OF AGREEMENT.

The Parties enter into this Agreement for the purpose of delineating their relationship and responsibilities regarding the County's use of Grant funds (defined below) to reimburse the Municipality for overtime expenses that it incurred related to its participation in the Oakland County Narcotic Enforcement Team ("N.E.T."), a multijurisdictional drug enforcement task force under the direction and supervision of the Oakland County Sheriff's Office ("OCSO").

Under the Parties' separate N.E.T. agreement, the Municipality is responsible for providing a full-time employee for participation in N.E.T. and for all costs associated with that employment, including overtime.

The County, as the legal entity that administers N.E.T., submitted an Initiative Description and Budget Proposal (Exhibit A) 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) 2022 to reimburse N.E.T. participating agencies for eligible law enforcement officer overtime. PY 2022 begins January 1, 2022 and ends December 31, 2022.

If ONDCP grants N.E.T. an award for PY 2022, the ONDCP disburses the HIDTA grant funds to the Michigan State Police ("MSP"). To receive the Grant funds for overtime costs, N.E.T. must submit requests for reimbursement with the required supporting documentation to Michigan HIDTA. If Michigan HIDTA approves the N.E.T. overtime reimbursement requests, the MSP should distribute the Grant funds to County on behalf of N.E.T. The County has the authority to allocate a portion of the Grant funds to reimburse the Municipality for qualifying overtime costs subject to the terms and conditions of this Agreement.

In consideration of the mutual promises, obligations, representations, and assurances in this Agreement, the Parties agree to the following:

- 1. DEFINITIONS.** The following terms, whether used in the singular or plural, within or without quotation marks, or possessive or nonpossessive, shall be defined, read, and interpreted as follows.

- 1.1. **Claim** means any alleged loss, claim, complaint, demand for relief or damages, cause of action, proceeding, judgment, deficiency, liability, penalty, fine, litigation, costs, and/or expenses, including, but not limited to, reimbursement for attorney fees, witness fees, court costs, investigation expenses, litigation expenses, and amounts paid in settlement, which are imposed on, incurred by, or asserted against the County or Municipality, or the County's or Municipality's agents or employees, whether such claim is brought in law or equity, tort, contract, or otherwise.
- 1.2. **Grant funds** mean the funds that may be awarded to the County and the other participating agencies in N.E.T. pursuant to Michigan HIDTA Initiative Description and Budget Proposal Version 2022 (Exhibit A) submitted to Michigan HIDTA by County on behalf of itself and the other participating agencies in N.E.T.

2. **EXHIBITS.** The Exhibits listed below are incorporated and are part of this Agreement.

- 2.1. **Exhibit A** – Michigan HIDTA Initiative Description and Budget Proposal Version 2022.
- 2.2. **Exhibit B** - Template Request for HIDTA Overtime Reimbursement (Locals to County).
- 2.3. **Exhibit C** – Sample letter regarding notification of current overtime pay rate.
- 2.4. **Exhibit D** – Sample overtime slip, signed by the officer's supervisor that supports each Request for HIDTA Overtime Reimbursement.
- 2.5. **Exhibit E** – Sample paystub or payroll report that supports each Request for HIDTA Overtime Reimbursement.

3. **FEDERAL AWARD PROJECT DESCRIPTION.**

- 3.1. Catalog of Federal Domestic Assistance ("CFDA") #: 95.001
- 3.2. Federal Awarding Agency: United States Office of National Drug Control Policy ("ONDCP")
- 3.3. Program: High Intensity Drug Trafficking Areas (HIDTA)
 - 3.3.1. HIDTA Objective: To reduce drug trafficking and drug production in the United States by: (A) facilitating cooperation among Federal, State, local, and tribal law enforcement agencies to share information and implement coordinated enforcement activities; (B) enhancing law enforcement intelligence sharing among Federal, State, local, and tribal law enforcement agencies; (C) providing reliable law enforcement intelligence to law enforcement agencies needed to design effective enforcement strategies and operations; and (D) supporting coordinated law enforcement strategies which maximize use of available resources to reduce the supply of illegal drugs in designated areas and in the United States as a whole.
- 3.4. Period of Performance: January 1, 2022 through December 31, 2022.

3.5. The Federal Award Identification Number (FAIN) is provided in the HIDTA Grant Agreement between ONDCP and MSP, which is incorporated into this Agreement by reference.

4. USE OF HIDTA FUNDS.

4.1. The total amount of the federal award for overtime costs committed to the Municipality and obligated by this action by the County to the Municipality is not to exceed **\$5,000.00** for each participating law enforcement officer unless otherwise provided herein. That amount is based on the number of N.E.T participating agencies and eligible law enforcement officers at the time this Agreement was executed by both Parties. If the number of N.E.T participating agencies and/or eligible law enforcement officers changes during the term of this Agreement, the total amount of the federal award for overtime costs committed to the Municipality and obligated by this action by the County to the Municipality amount may change as funds are available on a pro rata basis. Such commitment and obligation for overtime costs is contingent upon the ONDCP awarding the Grant funds to N.E.T and the MSP reimbursing the County.

4.2. The County will reimburse the Municipality up to **\$5,000.00** for each participating law enforcement officer for qualifying N.E.T.-related overtime unless otherwise provided herein. That amount is based on the number of N.E.T participating agencies and eligible law enforcement officers at the time this Agreement was executed by both Parties. If the number of N.E.T participating agencies and/or eligible law enforcement officers changes during the term of this Agreement, the maximum reimbursement amount may change as funds are available on a pro rata basis. Such reimbursement shall only be made after the supporting documentation is submitted by the Municipality and approved by the County, as described in Paragraph 5.1. Such reimbursement is contingent upon the ONDCP awarding the grant funds to N.E.T and the MSP reimbursing the County.

4.2.1. HIDTA funds shall be used to pay overtime only if the overtime was performed in support of a HIDTA-designated Enforcement initiative or Intelligence and information Sharing Initiative. HIDTA funds shall not be used to pay overtime related to training attendance, financial management, drug treatment, drug demand reduction or prevention, or non-investigative related administrative work.

4.2.2. No HIDTA funds shall be used to supplant the Municipality's funds that would otherwise be made available for the same purposes.

4.3. There is no research and development performed pursuant to this Agreement.

4.4. No indirect costs shall be charged or reimbursed under performance of this Agreement.

5. REIMBURSEMENT OF ELIGIBLE NET OVERTIME.

5.1. To request reimbursement for eligible N.E.T. overtime costs, the Municipality shall submit to the County the documentation described in the following subparagraphs no later than thirty (30) days after PY 2022 has expired. If the County, in its sole discretion, determines that the

documentation submitted by the Municipality does not reconcile, then the Municipality shall provide any additional documentation requested by the County in order to process payment.

- 5.1.1. A fully completed and signed Request for HIDTA Overtime Reimbursement attached as Exhibit B.
- 5.1.2. A letter substantively similar to the sample letter regarding notification of current overtime pay rate attached as Exhibit C.
- 5.1.3. Overtime slips, signed by the officer's supervisor, that support each Request for HIDTA Overtime Reimbursement. The overtime slips shall be substantively similar to the sample overtime slip attached as Exhibit D.
- 5.1.4. The paystub or payroll report that supports each Request for HIDTA Overtime Reimbursement. The paystub or payroll report shall be substantively similar to the sample paystub attached as Exhibit E.

- 5.2. County will only reimburse Municipality for approved overtime costs after County has received the Grant funds from MSP for that particular reimbursement request.

6. GENERAL COMPLIANCE.

- 6.1. The Municipality shall comply with 28 C.F.R. Part 69 (New Restrictions on Lobbying) and 2 C.F.R. Part 25 (Universal Identifier and System of Award Management).
- 6.2. The Municipality shall comply with the Government-wide Suspension and Debarment provision set forth at 2 CFR Part 180.
- 6.3. The Municipality shall perform all activities in accordance with The Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 C.F.R. Part 200 (the "Part 200 Uniform Requirements"), as adopted and implemented by the Office of National Drug Control Policy (ONDCP) in 2 C.F.R. Part 3603. For this award, the Part 200 Uniform Requirements supersede, among other things, the provisions of 28 C.F.R. Parts 66 and 70, as well as those of 2 C.F.R. Parts 215, 220, 225, and 230.
- 6.4. The Municipality shall comply with ONDCP's HIDTA Program Policy and Budget Guidance, all other applicable Federal, state, and local laws and regulations, and the terms and conditions contained in this Agreement.
- 6.5. The Municipality shall comply with all applicable requirements for subrecipients that are provided in the HIDTA Grant Agreement between ONDCP and MSP. The HIDTA Grant Agreement between ONDCP and MSP will be provided to the Municipality within a reasonable time after the County receives a copy of it.
- 6.6. As specified in the HIDTA Program Policy and Budget Guidance, the Municipality must:

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AND
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- 6.6.1. Establish and maintain effective internal controls over the Federal award that provides reasonable assurance that Federal award funds are managed in compliance with Federal statutes, regulations and award terms and conditions. These internal controls should be in compliance with the guidance in “Standards for Internal Control in the Federal Government,” issued by the Comptroller General of the United States and the “Internal Control Integrated Framework,” issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- 6.6.2. Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.
- 6.6.3. Evaluate and monitor compliance with applicable statute and regulations, and the terms and conditions of the Federal award.
- 6.6.4. Take prompt action when instances of noncompliance are identified, including noncompliance identified in audit findings.
- 6.6.5. Take reasonable measures to safeguard protected personally identified information (PII) and other information ONDCP or the Municipality designates consistent with applicable Federal, state, and local laws regarding privacy and obligations of confidentiality.

7. FINANCIAL ACCOUNTABILITY AND AUDIT REQUIREMENTS.

- 7.1. The Municipality shall maintain standards of financial accountability that conform to 2 C.F.R. §200.302 (Financial Management) and 2 C.F.R. §200.303 (Internal Controls).
- 7.2. The Municipality shall comply with audit requirements contained in 2 C.F.R. Part 200, Subpart F, which requires the Municipality to have an annual audit conducted within nine (9) months of the end of their fiscal year, if the Municipality has an aggregate expenditure of more than \$750,000 in federal funds in a fiscal year. Any deficiencies noted in audit reports must be fully cleared by the Municipality within thirty (30) days after receipt of same. The Grant funds spent by the County on behalf of the Municipality for training expenses shall be included on the Schedule of Expenditures of Federal Awards if the Municipality is required to have a single audit performed. Municipalities that are exempt from the Single Audit requirements that receive less than \$750,000 of total Federal funding must submit a Financial Statement Audit prepared in accordance with Generally Accepted Auditing Standards (“GAAS”) if the audit includes disclosures that may negatively impact the HIDTA program including, but not limited to fraud, financial misstatements, and violations of any contract or grant provisions. The County shall have the right to review and audit all records of the Municipality pertaining to any payment by the County.

8. CONFLICT OF INTEREST.

- 8.1. The Municipality shall comply with the following ONDCP conflict of interest policies:

- 8.1.1. As a non-Federal entity, you must maintain written standards of conduct covering conflicts of interest and governing the performance of your employees engaged in the selection, award, and administration of subawards and contracts.
- 8.1.2. None of your employees may participate in the selection, award, or administration of a subaward or contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from an organization considered for a subaward or contract. The officers, employees, and agents of the non-Federal entity must neither solicit nor accept gratuities, favors, or anything of monetary value from subrecipients or contractors or parties to subawards or contracts.
- 8.1.3. If you have a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, you must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, you are unable or appear to be unable to be impartial in conducting a sub-award or procurement action involving a related organization.

9. MANDATORY DISCLOSURE.

- 9.1. As a non-Federal entity, the Municipality must disclose, in a timely manner, in writing to ONDCP all violations of Federal criminal law involving fraud, bribery or gratuity violations potentially affecting the Federal award. Non-Federal entities that have received a Federal award that includes the term and condition outlined in 200 CFR Part 200, Appendix XII "Award Term and Condition for Recipient Integrity and Performance Matters," are required to report certain civil, criminal, or administrative proceedings to System for Award Management (SAM). Failure to make required disclosures can result in remedies such as: temporary withholding of payments pending correction of the deficiency, disallowance of all or part of the costs associated with noncompliance, suspension, termination of award, debarment, or other legally available remedies outlined in 2 CFR 200.338 "Remedies for Noncompliance".

10. RECORD RETENTION.

- 10.1. The Municipality shall comply with the record retention provisions of 2 C.F.R. 200.333 (Retention requirements for records).
- 10.2. The Municipality should, whenever practicable, collect, transmit, and store Federal award-related information in open and machine readable formats rather than in closed formats or on paper in accordance with 2 C.F.R. 200.335 (Methods for collection, transmission and storage of information).

11. ACCESS TO RECORDS.

- 11.1. The Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the County, or any of their authorized representatives, have the right of access to any documents, papers, or other records of the Municipal entity which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the Municipality's personnel for the purpose of interview and discussion related to such documents. The right of access to the Municipality's records is not limited to the required retention period but last as long as the records are retained.
- 11.2. The Municipality shall permit the County and auditors to have access to the Municipality's records and financial statements as necessary for the County to meet the requirements of 2 C.F.R. Part 200.

12. TERM.

- 12.1. This Agreement and any amendments hereto shall be effective when executed by both Parties with concurrent resolutions passed by the governing bodies of each Party, and when the Agreement is filed according to MCL 124.510. The approval and terms of this Agreement and any amendments hereto shall be entered in the official minutes of the governing bodies of each Party. This Agreement shall end on December 31, 2022.

13. ASSURANCES.

- 13.1. Each Party shall be responsible for its own acts and the acts of its employees and agents, the costs associated with those acts, and the defense of those acts.
- 13.2. The Parties have taken all actions and secured all approvals necessary to authorize and complete this Agreement. The persons signing this Agreement on behalf of each Party have legal authority to sign this Agreement and bind the Parties to the terms and conditions contained herein.
- 13.3. Each Party shall comply with all federal, state, and local ordinances, regulations, administrative rules, laws, and requirements applicable to its activities performed under this Agreement.

14. TERMINATION OF AGREEMENT.

- 14.1. This Agreement may be terminated in whole or in part as follows:
 - 14.1.1. by the County, if the Municipality fails to comply with the terms and conditions of this Agreement;
 - 14.1.2. by the County for cause;

- 14.1.3. by the County with the consent of the Municipality, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;
- 14.1.4. by the Municipality upon sending to the County written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the County determines in the case of partial termination that the reduced or modified portion of the subaward will not accomplish the purpose for which this Agreement was made, the County may terminate the Agreement in its entirety.

- 14.2. The County must provide to the Municipality a notice of termination. Written suspension or notice of termination will be sent to the Municipality's business address. If this Agreement is terminated or partially terminated, both the County and the Municipality remain responsible for compliance with the requirements at 2 CFR 200.343 Closeout and 2 CFR 200.344 Post-closeout Adjustments and Continuing Responsibilities.

15. CLOSEOUT.

- 15.1. The County shall close-out this Agreement when it determines that all applicable administrative actions and all required work under this Agreement have been completed by Municipality.
- 15.2. The Municipality shall comply with the closeout provisions of 2 C.F.R. 200.343 (Closeout).

16. POST-CLOSEOUT ADJUSTMENTS AND CONTINUING RESPONSIBILITIES.

- 16.1. The closeout of this Agreement does not affect any of the following:
 - 16.1.1. The right of County to disallow costs and recover funds on the basis of a later audit or other review. The County must make any cost disallowance determination and notify the Municipality within the record retention period;
 - 16.1.2. The obligation of the Municipality to return any funds due as a result of later refunds, corrections, or other transactions including final indirect cost rate adjustments;
 - 16.1.3. Audit requirements in Subpart F—Audit Requirements of 2 C.F.R. Part 200.
 - 16.1.4. Records retention as required in Subpart D—Post Federal Award Requirements of this part, §200.333 Retention requirements for records through §200.337 Restrictions on public access to records.

17. REMEDIES FOR NONCOMPLIANCE.

- 17.1. If the Municipality fails to comply with federal statutes, regulations, or the terms and conditions of this Agreement, the County may impose additional conditions, as described in 2 CFR §200.207 Specific Conditions. If the County determines that noncompliance cannot be

remedied by imposing additional conditions, the County may take one or more of the following actions, as appropriate in the circumstances:

- 17.1.1. temporarily withhold cash payments pending correction of the deficiency by the Municipality or more severe enforcement action by the County;
- 17.1.2. disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance;
- 17.1.3. wholly or partly suspend or terminate the Agreement;
- 17.1.4. recommend that the Federal awarding agency initiate suspension or debarment proceedings as authorized under 2 CFR Part 180 and Federal awarding agency regulations;
- 17.1.5. withhold further funds for the project or program;
- 17.1.6. take other remedies that may be legally available.

18. NO THIRD-PARTY BENEFICIARIES. Except as provided for the benefit of the Parties, this Agreement does not and is not intended to create any obligation, duty, promise, contractual right or benefit, right to indemnification, right to subrogation, and/or any other right, in favor of any other person or entity.

19. DISCRIMINATION. The Parties shall not discriminate against their employees, agents, applicants for employment, or other persons or entities with respect to hire, tenure, terms, conditions, and privileges of employment, or any matter directly or indirectly related to employment in violation of any federal, state or local law.

20. PERMITS AND LICENSES. Each Party shall be responsible for obtaining and maintaining, throughout the term of this Agreement, all licenses, permits, certificates, and governmental authorizations necessary to carry out its obligations and duties pursuant to this Agreement.

21. RESERVATION OF RIGHTS. This Agreement does not, and is not intended to waive, impair, divest, delegate, or contravene any constitutional, statutory, and/or other legal right, privilege, power, obligation, duty, or immunity of the Parties.

22. DELEGATION/SUBCONTRACT/ASSIGNMENT. Neither Party shall delegate, subcontract, and/or assign any obligations or rights under this Agreement without the prior written consent of the other Party.

23. NO IMPLIED WAIVER. Absent a written waiver, no act, failure, or delay by a Party to pursue or enforce any rights or remedies under this Agreement shall constitute a waiver of those rights with regard to any existing or subsequent breach of this Agreement. No waiver of any term, condition, or provision of this Agreement, whether by conduct or otherwise, in one or more instances, shall be deemed or construed as a continuing waiver of any term, condition, or provision of this Agreement.

No waiver by either Party shall subsequently affect its right to require strict performance of this Agreement.

24. SEVERABILITY. If a court of competent jurisdiction finds a term, or condition, of this Agreement to be illegal or invalid, then the term, or condition, shall be deemed severed from this Agreement. All other terms, conditions, and provisions of this Agreement shall remain in full force.

25. CAPTIONS. The section and subsection numbers and captions in this Agreement are intended for the convenience of the reader and are not intended to have any substantive meaning. The numbers and captions shall not be interpreted or be considered as part of this Agreement. Any use of the singular or plural number, any reference to the male, female, or neuter genders, and any possessive or nonpossessive use in this Agreement shall be deemed the appropriate plurality, gender or possession as the context requires.

26. NOTICES. Notices given under this Agreement shall be in writing and shall be personally delivered, sent by express delivery service, certified mail, or first-class U.S. mail postage prepaid, and addressed to the person listed below. Notice will be deemed given on the date when one of the following first occur: (1) the date of actual receipt; (2) the next business day when notice is sent express delivery service or personal delivery; or (3) three days after mailing first class or certified U.S. mail.

- 26.1. If Notice is sent to the County, it shall be addressed and sent to: Oakland County Board of Commissioners Chairperson, 1200 North Telegraph, Pontiac, Michigan 48341, with a copy to Oakland County Sheriff's Office, Sheriff Fiscal Officer, 1200 N. Telegraph, Bldg. 38E, Pontiac, Michigan 48341.
- 26.2. If Notice is sent to the Political Subdivision, it shall be addressed to: City of Madison Heights.
- 26.3. Either Party may change the address and/or individual to which Notice is sent by notifying the other Party in writing of the change.

27. CONTACT INFORMATION.

<u>County of Oakland</u>	<u>City of Madison Heights</u>
<p>Lieutenant Sean Jennings Investigative & Forensic Services Division Narcotics Enforcement Team Office: 248-858-1722 Fax: 248-858-1754 Email: jenningss@oakgov.com</p>	<p>Chief Corey K. Haines 280 W. 13 Mile Rd. Madison Heights, MI 48071 Office: 248-837-2729 Email: coreyhaines@madison-heights.org</p>

28. GOVERNING LAW. This Agreement shall be governed, interpreted, and enforced by the laws of the State of Michigan, without regard to Michigan's conflict of laws provisions.

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SUBRECIPIENT AGREEMENT BETWEEN

OAKLAND COUNTY

AND

CITY OF MADISON HEIGHTS

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29. AGREEMENT MODIFICATIONS OR AMENDMENTS. Any modifications, amendments, rescissions, waivers, or releases to this Agreement must be in writing and executed by both Parties.

30. ENTIRE AGREEMENT. This Agreement represents the entire agreement and understanding between the Parties. This Agreement supersedes all other oral or written agreements between the Parties. The language of this Agreement shall be construed as a whole according to its fair meaning, and not construed strictly for or against any Party.

IN WITNESS WHEREOF, David T. Woodward, Chairperson, Oakland County Board of Commissioners, acknowledges that he has been authorized by a resolution of the Oakland County Board of Commissioners, a certified copy of which is attached, to execute this Agreement, and hereby accepts and binds the County to the terms and conditions of this Agreement.

EXECUTED: _____

DATE: _____

David T. Woodward, Chairperson
Oakland County Board of Commissioners

WITNESSED: _____

DATE: _____

Printed Name:
Title:

IN WITNESS WHEREOF, _____, acknowledges that he/she has been authorized by a resolution of the Municipality's governing body, a certified copy of which is attached, to execute this Agreement, and hereby accepts and binds the Municipality to the terms and conditions of this Agreement.

EXECUTED: _____

DATE: _____

Printed Name:
Title:

WITNESSED: _____

DATE: _____

Printed Name:
Title:



Michigan HIDTA

Initiative Description and Budget Proposal

All Initiatives which seek HIDTA funding must complete this proposal and return to Michigan HIDTA via e-mail by the announced deadline. Completion of all sections of this proposal is required. The Office of National Drug Control Policy examines these submissions very closely. Your proposal must be clear, concise and complete. **A complete proposal consists of this form AND the Michigan HIDTA FMS Budget Sheet.**

Program Year: **2022**Initiative Title: **NET - Oakland County Narcotics Enforcement Team**Submitter's Rank/Name: **D/Lt. Brent H Miles**Submitter's Telephone #: **248-858-1722**Submitter's E-mail Address: **milesbr@oakgov.com****SECTION 1: INITIATIVES**

Level of Activity - Check all that apply

Local DTO Focus Multi-State DTO Focus International DTO Focus Interdiction Focus

Does this Initiative Routinely Provide Information to the HIDTA Investigative Support Center (ISDC)?

YES NO

SECTION 2: PROFILEInitiative DescriptionEnter Lead Agency: **Oakland County Sheriff Office**Enter Location of Initiative (City): **Pontiac**

Check All That Apply

Initiative is Collocated with other HIDTA Initiatives

Initiative is Staffed with Full-Time Federal and Full-Time State/Local Personnel

Full-Time Members of Initiative are Collocated and Commingled with Federal and State/Local Personnel

Initiative Description and Budget Proposal Instructions

Enter your initiative description and budget detail in the text box on the following page. The text box is not character limited, nor is it limited to the visible field on the page. It works best to compose the narrative in Word and copy into the text field on the following page. Please use narrative only to complete this section. The PMP software will not accept graphs, tables, charts, images, etc.

The narrative section is intended to describe the mission and proposed activities for your initiative (dismantling DTOs, meth labs, interdicting drugs/money, apprehending fugitives, etc.) and detail your initiative's funding request. This description should indicate when the initiative was first funded by HIDTA.

Your narrative must be clear, concise and complete. Do not include a long narrative detailing the history or accomplishments of your initiative. Please **limit** your initiative description to several short paragraphs.

The first paragraph should clearly **identify the threat** (drug problem, violent crime, money laundering) in your area. ONDCP expects detailed information regarding the threat in the **HIDTA county/counties which your initiative serves**. Describe the types of drugs being trafficked, the presence/activities of gangs and drug-related violent crime. Include information on DTOs and MLOs operating in your area. DO NOT use specific names/addresses for any organizations or provide any information which is law enforcement sensitive or classified. Referring to the Michigan HIDTA Annual Threat Assessment/Drug Market Analysis is essential when describing the threat in your region.

In the next paragraph **discuss your plan to attack the threat** in your region. Describe your initiative and detail your plan to address the specific threats/problems in your area and achieve your performance targets. If your initiative consists of multiple teams, explain how each team's activities attack the drug threat in your HIDTA county. Detail how you will work more efficiently and effectively by conducting intelligence-driven investigations and sharing information (leads).

The next paragraph(s) should **present your budget request**. Remember that HIDTA funding is added-value funding and cannot be used to supplant normal operating budget items. Each budget line item (overtime, equipment, supplies, vehicles, phones, services, etc.) must be detailed in narrative form, specifying the amount requested and how each line item amount will be utilized. It is important to relate why each line item is needed and how it fits into your plan to attack the threat in your region and attain your performance targets. Provide a clear, concise and complete explanation of all items in your budget request. The budget narrative will be reviewed by the Michigan HIDTA Steering Committee and Executive Board before being sent to ONDCP for review and approval.

ONDCP closely examines **vehicle expenditures**. Lease costs and other vehicle-related expenses must be detailed. Ensure the number of vehicles and expenses match the number of eligible officers in your initiative. Examples: *"6 vehicles @ \$500/month x 12 months = \$36,000; Gasoline Expense, 6 officers @ \$200/month x 12 months = \$14,400 .*

ONDCP also scrutinizes **overtime expenses**. Ensure these expenses line-up with eligible officers in your initiative. ONDCP caps overtime for individual officers at \$9,500 annually. The Michigan HIDTA limits the cap to \$6,500 per officer annually. Each initiative is required to maintain documentation/spreadsheet to ensure these limits are not exceeded. Example: *10 task force officers x \$3,000/annually = \$30,000 annual overtime.*

PLEASE NOTE: Equipment vs. Supplies - There has been a change in how these items are categorized. All items purchased for **\$5,000 or more per item** are categorized as **Equipment**. All items purchased for **\$4,999 or less per item** are categorized as **Supplies**.

Equipment expenses must be detailed. Provide specifics for what will be purchased, the cost, and how it relates to your plan to address the threat. Example: *10 ballistic shields @ \$6,000 each = \$60,000.*

Supplies expenses must be detailed. Provide specifics for what will be purchased, the cost, and how it relates to your plan to address the threat. Example: *12 laptop computers @ \$1,000 each = \$12,000.*

Service expenses must also be detailed. Example: *Monthly cell phone service for 12 officers @ \$100/monthly x 12 months = \$14,400.*

The total of all items must match the total entered in the **"Total Dollar Amount Requested"** field at the top of the next page.

A complete proposal consists of this form AND the Michigan HIDTA FMS Budget Sheet.

Enter Initiative Description and Budget Proposal Detail Below

Total Dollar Amount Requested: \$135,000

Explain the mission of the initiative and provide a detailed explanation of the specific threat(s) identified in the HIDTA Annual Threat Assessment that this initiative is designed to address. ALL SECTIONS MUST BE COMPLETED.

INITIATIVE PURPOSE:

The Oakland County Narcotic Enforcement Team (NET) is a cooperative partnership of Federal, County and local law enforcement agencies in Oakland County located in Southeastern District of Michigan. The task force is located at the Oakland County Sheriff Office in Pontiac, and focuses on mid to upper level drug trafficking organizations (DTOs) and criminal groups operating in Oakland County. The task force also supports street level investigative operations targeting smaller quantities of cocaine, crack cocaine, methamphetamine, fentanyl and controlled prescription drugs.

THREAT FOCUS:

Fentanyl and fentanyl mixed with other narcotics continue to be the most lethal category of illicit substances misused in Oakland County. Heroin-related overdose deaths remain at high levels in the county. The task force has observed a substantial increase in methamphetamine distribution and use. Cocaine has become a resurgent threat and is widely available throughout the county. Controlled prescription drugs remain an area of concern.

Regional and local DTOs are the primary drug trafficking threats in the NET AOR. These DTOs transport cocaine, heroin, fentanyl, and methamphetamine into Oakland County. Most of the illegal narcotics remain and are distributed by local DTOs and criminal groups and eventually consumed by users.

PERSONNEL STRUCTURE AND PARTICIPATING AGENCIES:

NET is led by the Oakland County Sheriff Office and supported by the Drug Enforcement Administration (DEA), Homeland Security (HSI), Oakland County Prosecutors Office, Auburn Hills Police Department, Birmingham Police Department, Bloomfield Township Police Department, Farmington Hills Police Department, Ferndale Police Department, Franklin Police Department, Hazel Park Police Department, Madison Heights Police Department, Rochester City Police Department, Royal Oak Police Department, Troy Police Department, Waterford Police Department, West Bloomfield Police Department in a full time capacity. The multi-agency approach brings local law enforcement officers from each designated area, and combines their local investigative capacities as a means to dismantle and disrupt large and mid-level DTOs and criminal groups in Oakland County.

INVESTIGATIVE APPROACH:

NET will leverage HIDTA funds to support investigative overtime and communication services for investigators. Drug seizures will be thoroughly investigated by NET investigators in order to (1) trace these seizures back to the source(s) of supply, (2) assist investigators in ultimately disrupting and dismantling DTOs and seizures back to the source(s) of supply, and (3) assist investigators in ultimately disrupting and dismantling DTOs and criminal groups. NET investigators monitor DTO trafficking patterns and share the information with our federal partners. The NET task force initiates investigations into upper and mid-level DTOs and criminal groups. The main goal of the task force is to identify, disrupt, and dismantle local DTO's and criminal groups. If the DTO is identified as a multi-state or international organization then this intelligence is passed on to the DEA for investigation and federal prosecution. In addition to DEA participation in NET, NET further assigns two investigators to work closely and coordinate with two other DEA groups. This

Agency Positions

Summarize the staffing levels you confidently expect to be part of your initiative for the Program Year selected. The *HIDTA Funded* box should be marked Yes **ONLY** when HIDTA funding covers the salary/wages for the listed position.

Predicting Expected Outputs: When developing your expected outputs for the Program Year, please ensure you take into consideration your past 2-3 year performance averages. ONDCP frequently refers to these averages when evaluating future performance target numbers.

SECTION 3: DTOs

DTO Expected Outputs:

Predict the number of DTOs and MLOs you expect to disrupt and/or dismantle during the Program Year. Your performance targets should be aggressive but reasonably attainable, considering expected staffing and funding. Remember that your initiative's performance is compared to how successfully it attained its predicted totals. Please note Initiative's performance is not compared to the performance of other initiatives. Include pertinent notes in the Notes/Additional Information box.

DISRUPTED Defined

DISMANTLED Defined

Enter Number of **DTOs** Expected to be Disrupted or Dismantled This Program Year:

Notes/Additional Information:

Enter Number of **MLOs** Expected to be Disrupted or Dismantled This Program Year:

Notes/Additional Information:

SECTION 4: CLANDESTINE LABS

Predict the number of each of the following items which you expect to seize during the Program Year. Include pertinent notes in the Notes/Additional Information box.

Enter the Number of Lab Dump Sites Expected to be Seized

Enter the Number of Chemical/Glassware/Equipment Expected to be Seized

Enter the Number of Children Expected to be Affected

Enter the Number of **Meth Labs** Expected to be Dismantled

Enter the Number of **Other Clan Labs** (Production/Conversion) Expected to be Dismantled

Notes/Additional Information:

SECTION 5: ACTIVITIES

Predict the number of each of the following items for the Program Year. Include pertinent notes in the Notes/Additional Information box.

New HIDTA Cases:

Enter the Number of New HIDTA Initiative Cases Expected to be Opened This Program Year:

Notes/Additional Information:

Case Support:

Enter the Number of Cases Expected to be Provided Analytical Support This Program Year:

Refer to definition of Analytical Support (AS). Project only number of cases which will receive AS from an analyst embedded with your TF or the DSEMIIC/MIOC. Do not include cases which will receive AS from an analyst seated at the HIDTA. A case can be reported receiving AS only **ONCE IN A CALENDAR YEAR** but can be counted each calendar year it receives AS. Project the number of separate cases to receive AS in the year, not the number of times AS is received on all cases. **Important: Remember to submit a completed survey with your quarterly report for each case receiving AS.**

Enter the Number of Event Deconflicts Expected to be Submitted This Program Year:

Enter the Number of Case Matching Requests Expected to be Submitted This Program Year:

Notes/Additional Information:

SECTION 6: FUGITIVES

Predict the number of fugitives you expect to apprehend for the Program Year. A *Fugitive* is defined as an apprehension made pursuant to some type of court-issued pick-up order, such as an arrest warrant, a writ, etc. An *Arrest* is defined as any apprehension made absent any type of court-issued pick-up order, primarily arrests made on probable cause. Initiative plans to make *Arrests* during the year are indicated by selecting *Arrests* from the *Other Outputs* pick list in Section 7.

Enter the Number of Fugitives Expected to be Arrested This Program Year:

Notes/Additional Information:



Michigan HIDTA
Request for HIDTA Overtime Reimbursement

ONE FORM PER OFFICER

REGULAR OVERTIME

OFFICER'S NAME AND RANK

HOME DEPARTMENT NAME

PHONE NUMBER

MAILING ADDRESS

FEDERAL TAX ID OR MSP INDEX/PCA

REQUESTING OFFICER IS REQUIRED TO TYPE HIS/HER NAME IN THE BLUE BORDERED BOX

BELOW. By typing my name in the box below, I certify that this overtime was incurred pursuant to HIDTA-related investigations on the dates and in the amounts listed.

APPROVING TASK FORCE COMMANDER IS REQUIRED TO TYPE HIS/HER NAME IN THE RED BORDERED

BOX BELOW: By typing my name in the box below, I certify I received this overtime request from the Requesting Officer, and have reviewed and approved after determining it to be in compliance with ONDCP Program Policy as previously provided to me.

--	--

ITEM #	COMPLAINT #	DATE OT WORKED	# OT HOURS WORKED	OT HOURLY RATE	TOTAL ENTRY COST	LOCATION: Address, City/Township/County
OVERTIME APPROVED FOR STATE/LOCAL OFFICERS ONLY. LIMIT PER OFFICER IS \$8,000 ANNUALLY AS PER MICHIGAN HIDTA PROGRAM POLICY.						
FEDERAL PARTICIPANTS ARE NOT ELIGIBLE TO RECEIVE HIDTA OVERTIME.						
1					\$0.0000	
2					\$0.0000	
3					\$0.0000	
4					\$0.0000	
5					\$0.0000	
6					\$0.0000	
						\$0.0000

ITEM #	PROVIDE A BRIEF DETAIL OF THE CORRESPONDING ITEM # FROM THE TABLE ABOVE.
1	
2	
3	
4	
5	
6	

THIS INFORMATION IS CONFIDENTIAL. DISCLOSURE OF CONFIDENTIAL INFORMATION IS PROTECTED BY THE FEDERAL PRIVACY ACT.

Exhibit B

Michigan HIDTA
Mary Szymanski - Financial Manager
FAX: 248.356.6513
mszymanski@mi.hidta.net

YOUR AGENCY LETTERHEAD

January 17, 2018

Director Craig Summers
Michigan HIDTA
28 W. Adams
Suite 400
Detroit, MI 48226

Dear Director Summers:

Please accept this correspondence as notification of the current pay rate for the listed **ADD YOUR AGENCY NAME** police officer assigned to the Oakland County Narcotic Enforcement Team (NET). The rate became effective **July 1, 2017**.

Parent Agency:	ADD YOUR AGENCY NAME
Employee Name/Rank:	ADD OFFICER'S NAME AND RANK
Regular Pay Rate:	OFFICER'S REGULAR HOURLY RATE
Overtime Pay Rate:	OFFICER'S OVERTIME HOURLY RATE

As requested, the overtime rate listed does not include any fringe benefits, such as retirement, FICA, etc. Please contact my office if additional information is required.

Sincerely,

Please Note: This document is used for illustrative purposes only and the required documentation does not have to be the same, but must contain the same elements.

Required: Overtime slip signed by officer's supervisor. This item should include name, date, and overtime hours associated with HIDTA. The overtime rate should also be included unless provided in the paystub or payroll report.



TIME SHEET

DATE	HOURS	OVERTIME	NET#
07/11/2016	08:30-16:30		
07/12/2016	08:30-16:30		
07/13/2016	08:30-16:30		
07/14/2016	08:30-16:30		
07/15/2016	08:30-16:30		
		APPROVED	
		8/16/16	
08/01/2016	15:00-23:00		
08/02/2016	15:00-23:00		
08/03/2016	14:00-00:00	2hour	16-net-419
08/04/2016	14:00-23:00	1hour	IR-16-263
08/05/2016	03:00-07:00	4hour	IR-16-264
08/05/2016	15:00-23:00		

APPROVING SIGNATURE: A large rectangular area of the document has been completely blacked out, likely redacting a signature.

OVERTIME IN RED HAS BEEN TAKEN AS NET TIME (COMP)
OVERTIME IN GREEN HAS BEEN SUBMITED FOR MJ OT GRAMP

Please sign and return.

Please Note: This document is used for illustrative purposes only and the required documentation does not have to be the same, but must contain the same elements.

Exhibit E

Required: Pay stub or payroll report containing the same information as pay stub. If the paystub does not indicate the overtime rate of pay, then please include with the overtime slip.

[REDACTED]

Pay Period Ending On: 08/07/2016
Check #: [REDACTED]
Check Date: 08/12/2016
Primary Rate: 31.2962
Withholding Rate: 00
Federal Allowances: 0

PAYCODE_ID	HOURS	OT HOURS	GROSS	YTD	DEDUCTION_ID	AMOUNT	YTD
LONGEVITY_PS	0.00	0.00	0.00	350.00	FITW	475.02	8,268.40
SALARY	80.00	7.00	2,832.31	41,498.79	SITW	112.08	1,906.87
TRAINING_PS	0.00	0.00	0.00	876.28	SOCSEC_EE	176.08	2,991.56
SICK_PS 07/01	0.00	0.00	0.00	625.92	MEDICARE_EE	41.18	699.64
F/Y SICK PAYOUT	0.00	0.00	0.00	594.63	DUES_PSO	29.63	444.38
PS SCK GAP	0.00	0.00	0.00	2,879.25	PS_HBL_VISION	9.13	104.73
IN_LIEU_MED_P_S	0.00	0.00	115.38	1,846.08	RETIRE_PS_OFF	84.97	1,424.49
LIFE_INS	0.00	0.00	0.00	8.96	ICMA_PCNT	117.91	1,959.14
HOLIDAY	0.00	0.00	0.00	1,251.85	FLEX_PLAN	98.50	1,576.00
					SAVINGS_PSO	5.60	84.00
					PNC	647.59	11,474.94
					PNC	1,000.00	16,588.65
					ALLY	150.00	2,400.00
TOTALS:	80.00	7.00	2,947.69	49,931.76	TOTALS:	2,947.69	49,922.80

Net Pay This Period: 1,797.59

LEAVE BANK	PRIOR BALANCE	HOURS ACCRUED	HOURS LOST	HOURS TAKEN	NEW BALANCE
COMP_PS	7.50	0.00	0.00	0.00	7.50
F/Y SICK PAYOUT	0.00	0.00	0.00	0.00	0.00
PS KELLY BANK	0.00	0.00	0.00	0.00	0.00
SICK_PS 07/01	96.00	0.00	0.00	0.00	96.00
SICK_PS_GAP	41.00	0.00	0.00	0.00	41.00
VAC_PS	124.00	0.00	0.00	0.00	124.00

08/12/2016 [REDACTED]

1,797.59

VOID**VOID*****VOID*****CHECK STUB REPRINT*****

[REDACTED]

CITY OF MADISON HEIGHTS
OAKLAND COUNTY, MICHIGAN

RESOLUTION OF SUBRECIPIENT AGREEMENT FOR THE SHERIFFS
OFFICE NARCOTICS ENFORCMENT TEAM HIGH INTENSITY DRUG
TRAFFICKING AREA (HIDTA)

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 of \$135,000 for program year (PY) 2022 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 2022, 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 Madison Heights desires to enter into the attached Subrecipient Agreement between the City and Oakland County; and

WHEREAS, Oakland County Corporate Council and the City of Madison Heights City Attorney's Office have approved the attached Subrecipient Agreement.

NOW THEREFORE BE IT RESOLVED that the City of Madison Heights City Council approves the attached Subrecipient Agreement with the County of Oakland and authorizes the City Manager and City Clerk to sign the agreement.


Roslyn Grafstein
Mayor


Toya Aaron

Councilwoman


Mark Bliss

Councilman


Sean D. Fleming

Councilman


Emily J. Rohrbach

Councilor


David M. Soltis

Councilman


Quinn J. Wright

Councilor

CITY OF MADISON HEIGHTS
ELECTRONIC COUNCIL AGENDA REQUEST FORM

SUBMITTED TO: _____

SUBMITTED BY: _____ DATE: _____

FOR CONSIDERATION AT THE COUNCIL MEETING OF: _____

ACTION REQUESTED

PRESENTATION	_____	FUTURE PUBLIC HEARING	_____
PUBLIC HEARING – SPECIAL APPROVAL	_____	BID AWARDS / PURCHASES	_____
PUBLIC HEARING – OTHER	_____	ORDINANCE - FIRST	_____
COMMUNICATION	_____	ORDINANCE - SECOND	_____
REPORT	_____	OLD BUSINESS	_____

DESCRIPTION OF ITEM

IF ORDINANCE, CITE TITLE/CHAPTER SECTIONS

POLICY CONSIDERATION

FINANCIAL IMPACT

No Impact	_____	Fee Waiver Proposed	_____
Budgeted Fund Name(s)	_____	Department Name	_____
Appropriated in Acct. No.	_____	Budget Amount	_____
Amount Available in Acct.	_____	Budget Amount	_____
Second Account Number	_____	Revenue Generated	_____
Amount Available in 2 nd Acct.	_____		_____
Other Comments	_____		_____

REVIEW CHECKLIST

DEPARTMENT _____ DATE _____

DEPARTMENT _____ DATE _____

CITY MANAGER _____ DATE _____

City of Madison Heights

RESOLUTION DEMANDING IMPACTED GLWA MEMBER COMMUNITIES NOT BE RESPONSIBLE FOR THE CITY OF HIGHLAND PARK'S GLWA DEBT

WHEREAS the City of Madison Heights receives water services from the Great Lakes Water Authority (GLWA) and are paying members of the GLWA; and

WHEREAS the State of Michigan has a direct role in GLWA providing water services to the City of Highland Park; and

WHEREAS the State of Michigan requested then Detroit Water and Sewerage Department (DWSD) provide emergency water services to the City of Highland Park because the State of Michigan determined Highland Park's water treatment plant was creating a public health risk to its residents; and

WHEREAS on November 12, 2012 the State of Michigan stated the repairs to the water treatment plant were to be completed in 3-4 days; and

WHEREAS neither the State of Michigan or the City of Highland Park repaired the water treatment plant and it remains shuttered to this day; and

WHEREAS the City of Highland Park has paid less than 1% of their water services charges since 2012; and

WHEREAS since 2012 Highland Park has accumulated \$54,233,700 in debt to GLWA for both water and sewer services. Should their payment pattern continue, this debt will rise to \$60,977,600 by the end of FY 2023; and

WHEREAS of the \$54,233,700 debt Highland Park has accumulated since 2012 \$19,882,700 (36%) has been allocated to the paying members of the system; and

WHEREAS of the \$60,977,600 debt that will be accumulated by the end of 2023, a total of \$60,900 will be allocated to Madison Heights for this debt; and

WHEREAS Madison Heights has always paid GLWA our services for water in a timely manner; now

THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The Madison Heights City Council requests the State of Michigan and the Great Lakes Water Authority do not require the 87 paying member communities to pay for the City of Highland Park's debt to GLWA.

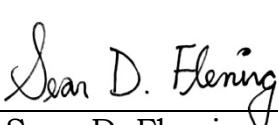
2. The City of Madison Heights will NOT pay any more towards Highland Park's debt for FY 2022 and will NOT pay towards the debt in FY 2023 or beyond.
3. The Madison Heights City Council hereby requests the State of Michigan to become directly involved in solving this dispute.
4. The Madison Heights City Council hereby requests the State of Michigan reimburse all member communities for the almost \$14 million that has already been paid towards this date since 2017.
5. The Madison Heights City Council hereby implores the State of Michigan to develop a long-term infrastructure solution to address the water and sewer issues in Highland Park.
6. The Madison Heights City Council calls on the State of Michigan and the legislature to create a system in which this situation of non-payment and communities being charged the non-payment cannot happen in the future.
7. The Madison Heights City Council hereby requests that our state legislators and our Oakland County Commissioners call on the State of Michigan to not require impacted member partner communities to pay for the City of Highland Park's debt to the GLWA and that the State of Michigan reimburse the debt amounts already paid.



Roslyn Grafstein
Mayor



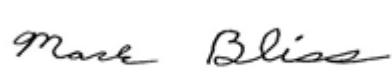
Toya Aaron
Councilwoman



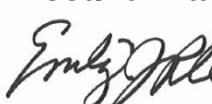
Sean D. Fleming
Councilman



David M. Soltis
Councilman



Mark Bliss
Councilman



Emily J. Rohrbach
Councilor



Quinn J. Wright
Councilor

CITY OF MADISON HEIGHTS
ELECTRONIC COUNCIL AGENDA REQUEST FORM

SUBMITTED TO: _____

SUBMITTED BY: _____ DATE: _____

FOR CONSIDERATION AT THE COUNCIL MEETING OF: _____

ACTION REQUESTED

PRESENTATION	_____	FUTURE PUBLIC HEARING	_____
PUBLIC HEARING – SPECIAL APPROVAL	_____	BID AWARDS / PURCHASES	_____
PUBLIC HEARING – OTHER	_____	ORDINANCE - FIRST	_____
COMMUNICATION	_____	ORDINANCE - SECOND	_____
REPORT	_____	OLD BUSINESS	_____

DESCRIPTION OF ITEM

IF ORDINANCE, CITE TITLE/CHAPTER SECTIONS

POLICY CONSIDERATION

FINANCIAL IMPACT

No Impact	_____	Fee Waiver Proposed	_____
Budgeted Fund Name(s)	_____	Department Name	_____
Appropriated in Acct. No.	_____	Budget Amount	_____
Amount Available in Acct.	_____	Budget Amount	_____
Second Account Number	_____	Revenue Generated	_____
Amount Available in 2 nd Acct.	_____		_____
Other Comments	_____		_____

REVIEW CHECKLIST

DEPARTMENT _____ DATE _____

DEPARTMENT _____ DATE _____

CITY MANAGER _____ DATE _____

Standard Form of Agreement Between Owner and Design-Builder

AGREEMENT made as of the «11th» day of «April» in the year «2022»
(In words, indicate day, month and year.)

BETWEEN the Owner:

(Name, legal status, address and other information)

«City of Madison Heights»«»
«300 West Thirteen Mile Road
Madison Heights, MI 48071»
«»
«»

and the Design-Builder:

(Name, legal status, address and other information)

«PARTNERS in Architecture Design-Build,LLC»«»
«65 Market Street»
«Mount Clemens, MI 48043»
«Telephone Number: 586.469.3600»

for the following Project:

(Name, location and detailed description)

«City of Madison Heights Civic Center Renovation / Addition, including City Hall /
Active Adult Center / Library and Fire Station #2»
«300 West Thirteen Mile Road and 26339 John R Road respectively.
Madison Heights, MI 48071»
«»

The Owner and Design-Builder agree as follows.

1. The new “Civic Center Campus” project at 300 West 13 Mile Road is to include the addition of a New Active Adult Center connecting the existing City Hall and Library. This project was conceived and defined in collaboration with the Owner’s Core Team and representatives from the Active Adult Center, City Clerk, City Manager, Community & Economic Development, Finance and Treasury, Fire, Human Resources, Information Technology and the Library to establish the project definition and scope for a Preliminary Design.
2. The Preliminary Design is a consensus of scope developed and generally agreed to achieve the City Hall & Library renovations, Active Adult Center addition and including identified improvements suggested in the March 5, 2021 Facilities Assessment Report for priorities 1 and 2 categories. Fire Station No. 2 at 26339 John R Road is included and is to receive improvements and remodeling to the extent funds are available based on the Feasibility Assessment, Scope and Preliminary Design as established in collaboration with the Fire Department and Owner’s Core Team.
3. The project will have a Guaranteed Maximum Price (GMP) proposal amendment and will consist of open competitive bidding of contractor trade work, possible negotiated trade work considering timing, quality, or design assist benefits, and possible self-performed trade work by Design-Builder, with recommendations

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.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.



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being presented to the City for review and input prior to the Design-Builder entering into contracts with sub-trades.

4. The initial budget criteria includes a total project cost of **\$12,600,000**, but could be increased if funds become available and include Design, Management & Administration, Building and Site Construction and furnishings. A Guaranteed Maximum Price will be established following construction trade bidding.
5. The GMP will be arrived at from a combination of early release bid packages to optimize delivery schedules and final trades bidding anticipated in the spring 2022. The Civic Center Campus project cost following bidding will be deducted from the project GMP budget and the remaining will constitute the Fire Station #2 funds available. Budgets and tracking of project allocations of funds will be monitored during design and reported to the Owner with scope modification recommendations and options as may be necessary to maintain the GMP objective.
6. Together the Design-Builder and Owner group selected Frank Rewold & Sons as the Primary Contractor as a member of the Design Build Team. Local sub-contractors' will be sought out and encouraged to participate.
7. The Design Build Team including the Owner group will endeavor to improve cost savings throughout the full course of the work including review and consideration of mutually acceptable scope modifications.
8. The Design-Builder with the responsibility of maintaining or improving the GMP has within its discretion the authority to make product or material selections or changes, project bid alternatives and schedule adjustments in order to deliver at the GMP. Such adjustments will be reviewed with the Owner prior to implementing significant changes or adjustments.
9. At the completion of all work and final acceptance by the Owner for the completed contract, the Design-Build Team will provide shared savings achieved below the GMP at 50% for the Owner, and 50% for the Design-Build Team.

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 COMPENSATION AND PROGRESS PAYMENTS
- 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT
- 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT
- 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT
- 6 CHANGES IN THE WORK
- 7 OWNER'S RESPONSIBILITIES
- 8 TIME
- 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION
- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 UNCOVERING AND CORRECTION OF WORK
- 12 COPYRIGHTS AND LICENSES
- 13 TERMINATION OR SUSPENSION
- 14 CLAIMS AND DISPUTE RESOLUTION
- 15 MISCELLANEOUS PROVISIONS
- 16 SCOPE OF THE AGREEMENT

TABLE OF EXHIBITS

- A DESIGN-BUILD AMENDMENT
- B INSURANCE AND BONDS
- C SUSTAINABLE PROJECTS

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Owner's Criteria

This Agreement is based on the Owner's Criteria set forth in this Section 1.1.

(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable" or "unknown at time of execution." If the Owner intends to provide a set of design documents, and the requested information is contained in the design documents, identify the design documents and insert "see Owner's design documents" where appropriate.)

§ 1.1.1 The Owner's program for the Project:

(Set forth the program, identify documentation in which the program is set forth, or state the manner in which the program will be developed.)

«The project program was developed in conjunction with city staff from Administration, the Active Adult Center, City Clerk, Community & Economic Development, Finance and Treasury, Fire, Human Resources, Information Technology and the Library. The project spaces forming the program is illustrated in graphic form in the attached Exhibit C containing floor plans, A3-01,02,03,04,05 and by the Inclusions / Exclusions listing in Exhibit E. »

§ 1.1.2 The Owner's design requirements for the Project and related documentation:

(Identify below, or in an attached exhibit, the documentation that contains the Owner's design requirements, including any performance specifications for the Project.)

« Owner design parameters are provided as indicated on proposed new work plans A3-01,02,03,04,05 as part of Exhibit C and as described in the Building Assessment for priorities 1 & 2 in attached Exhibit D that are to be addressed in the project delivery. »

§ 1.1.3 The Project's physical characteristics:

(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

« Physical characteristics of the site are provided by the owner, Exhibit E including Geotechnical Reports **dated X** and **X** and Exhibit F Site Surveys **dated X and X** and limited existing building drawings **XXX**. »

§ 1.1.4 The Owner's anticipated Sustainable Objective for the Project, if any:

(Identify the Owner's Sustainable Objective for the Project such as Sustainability Certification, benefit to the environment, enhancement to the health and well-being of building occupants, or improvement of energy efficiency. If the Owner identifies a Sustainable Objective, incorporate AIA Document A141™-2014, Exhibit C, Sustainable Projects, into this Agreement to define the terms, conditions and Work related to the Owner's Sustainable Objective.)

«Not Applicable »

§ 1.1.5 Incentive programs the Owner intends to pursue for the Project, including those related to the Sustainable Objective, and any deadlines for receiving the incentives that are dependent on, or related to, the Design-Builder's services, are as follows:

(Identify incentive programs the Owner intends to pursue for the Project and deadlines for submitting or applying for the incentive programs.)

« Not Applicable »

§ 1.1.6 The Owner's budget for the Work to be provided by the Design-Builder is set forth below:

(Provide total for Owner's budget, and if known, a line item breakdown of costs.)

« **\$12,600,000** »

§ 1.1.7 The Owner's design and construction milestone dates:

.1 Design phase milestone dates:

«Phased Bidding including early bid packages:

- February 2022 Mechanical Equipment and Elevator
- March 2022 Steel and Roof Insulation
- May 2022 Final Building Package including Fire Station

.2 Submission of Design-Builder Proposal:

«**May 2022 with GMP** »

.3 Phased completion dates:

« June 2022 Start of Construction »

December 2022 City Hall

July 2023 Active Adult Center

July 2023 Library

Fire Station TBD »

.4 Substantial Completion date:

««December 2022 City Hall
July 2023 Active Adult Center
July 2023 Library
Fire Station TBD »
CCC Site Work TBD

.5 Other milestone dates:

Preliminary Construction Phasing Plan, see attached Exhibit C

§ 1.1.8 The Design-Builder has retained the following Architect, Consultants and Contractors at the Design-Builder's cost:

(List name, legal status, address and other information.)

.1 Architect

«PARTNERS in Architecture, PLC »

.2 Consultants

«Civil Engineering, Spalding DeDecker & Associates, Inc
Structural Engineer, Shymanski & Associates, LLC
Mechanical/Electrical/Plumbing Engineer, MA Engineering, Inc
Landscape Designer, J Eppink Partners, Inc
Food Service Designer, Millis & Associates, Inc

»

.3 Contractors

« Frank Rewold and Sons, LLC »

§ 1.1.9 Additional Owner's Criteria upon which the Agreement is based:

(Identify special characteristics or needs of the Project not identified elsewhere, such as historic preservation requirements.)

«Work shall be phased and implemented for continued City functions within the facilities.

§ 1.1.10 The Design-Builder shall confirm that the information included in the Owner's Criteria complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 1.1.10.1 If the Owner's Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner of the conflict.

§ 1.1.11 If there is a change in the Owner's Criteria, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 1.1.12 If the Owner and Design-Builder 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 agreed, the parties will use AIA Document E203™-2013 to establish the protocols for the development, use, transmission, and exchange of digital data and building information modeling.

§ 1.2 Project Team

§ 1.2.1 The Owner identifies the following representative in accordance with Section 7.1.1:
(List name, address and other information.)

«Melissa Marsh, City Manager »

«300 West Thirteen Mile»
«Madison Heights, MI 48071»
«»
«»
«»

§ 1.2.2 The persons or entities, in addition to the Owner's representative, who are required to review the Design-Builder's Submittals are as follows:

(List name, address and other information.)

«Corey Almas, PE, Director of Public Services
Sean Ballantine, Public Works Supervisor »

§ 1.2.3 The Owner will retain the following consultants and separate contractors:

(List discipline, scope of work, and, if known, identify by name and address.)

«Owner to provide IT system hardware and network consultant to provide new and relocated system integration.
Design-Builder to coordinate and provide infrastructure support for system as directed and informed.

§ 1.2.4 The Design-Builder identifies the following representative in accordance with Section 3.1.2:

(List name, address and other information.)

«David W. Gassen, AIA»
Lauren Lee, Project Manager
«PARTNERS in Architecture Design-BuildLLC»
«65 Market Street»
«Mount Clemens, MI 48071»
«Telephone Number: 586.469-3600»
«Email: dgassen@partnersinarch.com»

§ 1.2.5 Neither the Owner's nor the Design-Builder's representative shall be changed without ten days' written notice to the other party.

§ 1.3 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Section 14.3, the method of binding dispute resolution shall be the following:

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

[«X »] Arbitration pursuant to Section 14.4

[« »] Litigation in a court of competent jurisdiction

[« »] Other: *(Specify)*

« »

§ 1.4 Definitions

§ 1.4.1 **Design-Build Documents.** The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the "Agreement"); other documents listed in this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive.

§ 1.4.2 **The Contract.** The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall

not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder.

§ 1.4.3 The Work. The term “Work” means the design, construction and related services required to fulfill the Design-Builder’s obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project.

§ 1.4.4 The Project. The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and may include design and construction by the Owner and by separate contractors.

§ 1.4.5 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 Design-Builder, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

§ 1.4.6 Submittal. A Submittal is any submission to the Owner for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

§ 1.4.7 Owner. The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term “Owner” means the Owner or the Owner’s authorized representative.

§ 1.4.8 Design-Builder. The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term “Design-Builder” means the Design-Builder or the Design-Builder’s authorized representative.

§ 1.4.9 Consultant. A Consultant is a person or entity providing professional services for the Design-Builder for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

§ 1.4.10 Architect. The Architect is a person or entity providing design services for the Design-Builder for all or a portion of the Work, and is lawfully licensed to practice architecture in the applicable jurisdiction. The Architect is referred to throughout the Design-Build Documents as if singular in number.

§ 1.4.11 Contractor. A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

§ 1.4.12 Confidential Information. Confidential Information is information containing confidential or business proprietary information that is clearly marked as “confidential.”

§ 1.4.13 Contract Time. Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Work.

§ 1.4.14 Day. The term “day” as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

§ 1.4.15 Contract Sum. The Contract Sum is the amount to be paid to the Design-Builder for performance of the Work after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment.

ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

§ 2.1 Compensation for Work Performed Prior To Execution of Design-Build Amendment

§ 2.1.1 Unless otherwise agreed, payments for Work performed prior to Execution of the Design-Build Amendment shall be made monthly. For the Design-Builder's performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

(Insert amount of, or basis for, compensation, including compensation for any Sustainability Services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the execution of the Design-Build Amendment, state the amount of the limit.)

\$50,800 Expanded Design Development Fee.

\$380,600 Construction Documentation Fee for the Civic Center Campus project and Fire Station including early release Bid Packs for HVAC Equip / Elevator / Steel / Roof Insulation and final Bidding.

\$431,400 Total Fee through completion of documentation and bidding up to GMP Amendment. »

Fee above will be made part of and included in the approved GMP total project cost.

§ 2.1.2 The hourly billing rates for services of the Design-Builder and the Design-Builder's Architect, Consultants and Contractors, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

«See Attached Exhibit G »

Individual or Position

Rate

§ 2.1.3 Compensation for Reimbursable Expenses Prior To Execution of Design-Build Amendment

§ 2.1.3.1 Reimbursable Expenses are in addition to compensation set forth in Section 2.1.1 and 2.1.2 and include expenses, directly related to the Project, incurred by the Design-Builder and the Design-Builder's Architect, Consultants, and Contractors, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 All taxes levied on professional services and on reimbursable expenses; and
- .9 Other Project-related expenditures, if authorized in advance by the Owner.

§ 2.1.3.2 For Reimbursable Expenses, the compensation shall be the expenses the Design-Builder and the Design-Builder's Architect, Consultants and Contractors incurred, plus an administrative fee of « Ten » percent (« 10 » %) of the expenses incurred. Reimbursable expenses following approval of the Design-Build Amendment are included in the project GMP. See Exhibit G.

§ 2.1.4 Payments to the Design-Builder Prior To Execution of Design-Build Amendment

§ 2.1.4.1 Payments are due and payable upon presentation of the Design-Builder'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 Design-Builder.

(Insert rate of monthly or annual interest agreed upon.)

«1-1/2 » % «monthly »

§ 2.1.4.2 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of two years following execution of the Design-Build Amendment or termination of this Agreement, whichever occurs first.

§ 2.2 Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment

For the Design-Builder's performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment.

ARTICLE 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT

§ 3.1 General

§ 3.1.1 The Design-Builder shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

§ 3.1.2 The Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder's behalf with respect to the Project.

§ 3.1.3 The Design-Builder shall perform the Work in accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner.

§ 3.1.3.1 The Design-Builder shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

§ 3.1.3.2 Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 3.1.4 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work.

§ 3.1.5 **General Consultation.** The Design-Builder shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.6 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner understands and agrees that the services of the Design-Builder's Architect and the Design-Builder's other Consultants are performed in the sole interest of, and for the exclusive benefit of, the Design-Builder.

§ 3.1.7 The Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ 3.1.8 Progress Reports

§ 3.1.8.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the Owner and Design-Builder, the Design-Builder shall submit written progress reports to the Owner, showing estimated percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to requests for information to be provided by the Owner;
- .5 Approved Change Orders and Change Directives;
- .6 Pending Change Order and Change Directive status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the Owner;
- .9 Status of Claims previously submitted in accordance with Article 14;
- .10 Cumulative total of the Cost of the Work to date including the Design-Builder's compensation and Reimbursable Expenses, if any;
- .11 Current Project cash-flow and forecast reports; and
- .12 Additional information as agreed to by the Owner and Design-Builder.

§ 3.1.8.2 In addition, where the Contract Sum is the Cost of the Work with or without a Guaranteed Maximum Price, the Design-Builder shall include the following additional information in its progress reports:

- .1 Design-Builder's work force report;
- .2 Equipment utilization report; and
- .3 Cost summary, comparing actual costs to updated cost estimates.

§ 3.1.9 Design-Builder's Schedules

§ 3.1.9.1 The Design-Builder, promptly after execution of this Agreement, shall prepare and submit for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build 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 Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ 3.1.9.2 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

§ 3.1.10 Certifications. Upon the Owner's written request, the Design-Builder shall obtain from the Architect, Consultants, and Contractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 3.1.11 Design-Builder's Submittals

§ 3.1.11.1 Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.

§ 3.1.11.2 By providing Submittals the Design-Builder represents to the Owner that it 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 Design-Build Documents.

§ 3.1.11.3 The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner has approved the respective Submittal.

§ 3.1.11.4 The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner in writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

§ 3.1.11.5 All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

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

§ 3.1.13 Royalties, Patents and Copyrights

§ 3.1.13.1 The Design-Builder shall pay all royalties and license fees.

§ 3.1.13.2 The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants 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 Owner, or where the copyright violations are required in the Owner's Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

§ 3.1.14 Indemnification

§ 3.1.14.1 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, including the Owner's agents and employees, 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, but only to the extent caused by the negligent acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. 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 3.1.14.

§ 3.1.14.2 The indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.1.15 Contingent Assignment of Agreements

§ 3.1.15.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause, pursuant to Sections 13.1.4 or 13.2.2, and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; 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 an agreement, the Owner assumes the Design-Builder's rights and obligations under the agreement.

§ 3.1.15.2 Upon such assignment, if the Work has been suspended for more than 30 days, the compensation under the assigned agreement shall be equitably adjusted for increases in cost resulting from the suspension.

§ 3.1.15.3 Upon such assignment to the Owner under this Section 3.1.15, the Owner may further assign the agreement to a successor design-builder or other entity. If the Owner assigns the agreement to a successor design-builder or other entity, the Owner shall nevertheless remain legally responsible for all of the successor design-builder's or other entity's obligations under the agreement.

§ 3.1.16 Design-Builder's Insurance and Bonds. The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Exhibit B.

ARTICLE 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 4.1 General

§ 4.1.1 Any information submitted by the Design-Builder, and any interim decisions made by the Owner, shall be for the purpose of facilitating the design process and shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.1.2 The Design-Builder shall advise the Owner on proposed site use and improvements, selection of materials, and building systems and equipment. The Design-Builder shall also provide the Owner with recommendations, consistent with the Owner's Criteria, 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.

§ 4.2 Evaluation of the Owner's Criteria

§ 4.2.1 The Design-Builder shall schedule and conduct meetings with the Owner and any other necessary individuals or entities to discuss and review the Owner's Criteria as set forth in Section 1.1. The Design-Builder shall thereafter again meet with the Owner to discuss a preliminary evaluation of the Owner's Criteria. The preliminary evaluation shall address possible alternative approaches to design and construction of the Project and include the Design-Builder's recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall consider cost information, constructability, and procurement and construction scheduling issues.

§ 4.2.2 After the Design-Builder meets with the Owner and presents the preliminary evaluation, the Design-Builder shall provide a written report to the Owner, summarizing the Design-Builder's evaluation of the Owner's Criteria. The report shall also include

- .1 allocations of program functions, detailing each function and their square foot areas;
- .2 a preliminary estimate of the Cost of the Work, and, if necessary, recommendations to adjust the Owner's Criteria to conform to the Owner's budget;
- .3 a preliminary schedule, which shall include proposed design milestones; dates for receiving additional information from, or for work to be completed by, the Owner; anticipated date for the Design-Builder's Proposal; and dates of periodic design review sessions with the Owner; and
- .4 the following:

(List additional information, if any, to be included in the Design-Builder's written report.)

«Not Applicable »

§ 4.2.3 The Owner shall review the Design-Builder's written report and, if acceptable, provide the Design-Builder with written consent to proceed to the development of the Preliminary Design as described in Section 4.3. The consent to proceed shall not be understood to modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.3 Preliminary Design

§ 4.3.1 Upon the Owner's issuance of a written consent to proceed under Section 4.2.3, the Design-Builder shall prepare and submit a Preliminary Design to the Owner. The Preliminary Design shall include a report identifying any deviations from the Owner's Criteria, and shall include the following:

- .1 Confirmation of the allocations of program functions;
- .2 Site plan;
- .3 Building plans, sections and elevations;
- .4 Structural system;
- .5 Selections of major building systems, including but not limited to mechanical, electrical and plumbing systems; and
- .6 Outline specifications or sufficient drawing notes describing construction materials.

The Preliminary Design may include some combination of physical study models, perspective sketches, or digital modeling.

§ 4.3.2 The Owner shall review the Preliminary Design and, if acceptable, provide the Design-Builder with written consent to proceed to development of the Design-Builder's Proposal. The Preliminary Design shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.4 Design-Builder's Proposal

§ 4.4.1 Upon the Owner's issuance of a written consent to proceed under Section 4.3.2, the Design-Builder shall prepare and submit the Design-Builder's Proposal to the Owner. The Design-Builder's Proposal shall include the following:

- .1 A list of the Preliminary Design documents and other information, including the Design-Builder's clarifications, assumptions and deviations from the Owner's Criteria, upon which the Design-Builder's Proposal is based;
- .2 The proposed Contract Sum, including the compensation method and, if based upon the Cost of the Work plus a fee, a written statement of estimated cost organized by trade categories, allowances, contingencies, Design-Builder's Fee, and other items that comprise the Contract Sum;
- .3 The proposed date the Design-Builder shall achieve Substantial Completion;
- .4 An enumeration of any qualifications and exclusions, if applicable;
- .5 A list of the Design-Builder's key personnel, Contractors and suppliers; and
- .6 The date on which the Design-Builder's Proposal expires.

§ 4.4.2 Submission of the Design-Builder's Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with local conditions under which the Work is to be completed.

§ 4.4.3 If the Owner and Design-Builder agree on a proposal, the Owner and Design-Builder shall execute the Design-Build Amendment setting forth the terms of their agreement.

ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 5.2 Construction

§ 5.2.1 Commencement. Except as permitted in Section 5.2.2, construction shall not commence prior to execution of the Design-Build Amendment.

§ 5.2.2 If the Owner and Design-Builder agree in writing, construction may proceed prior to the execution of the Design-Build Amendment. However, such authorization shall not waive the Owner's right to reject the Design-Builder's Proposal.

§ 5.2.3 The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder 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 Design-Build Documents give other specific instructions concerning these matters.

§ 5.2.4 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 5.3 Labor and Materials

§ 5.3.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder 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.

§ 5.3.2 When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article 6.

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

§ 5.4 Taxes

The Design-Builder shall pay sales, consumer, use and similar taxes, for the Work provided by the Design-Builder, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect.

§ 5.5 Permits, Fees, Notices and Compliance with Laws

§ 5.5.2 The Design-Builder 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.

§ 5.5.3 **Concealed or Unknown Conditions.** If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build 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 Design-Build Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

§ 5.5.4 If, in the course of the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder 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 14.

§ 5.6 Allowances

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

§ 5.6.2 Unless otherwise provided in the Design-Build Documents,

- .1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 the Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts, shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 5.6.2.1 and (2) changes in Design-Builder's costs under Section 5.6.2.2.

§ 5.6.3 The Owner shall make selections of materials and equipment with reasonable promptness for allowances requiring Owner selection.

§ 5.7 Key Personnel, Contractors and Suppliers

§ 5.7.1 The Design-Builder shall not employ personnel, or contract with Contractors or suppliers to whom the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable and timely objection.

§ 5.7.2 If the Design-Builder changes any of the personnel, Contractors or suppliers identified in the Design-Build Amendment, the Design-Builder shall notify the Owner and provide the name and qualifications of the new personnel, Contractor or supplier. The Owner may reply within 14 days to the Design-Builder in writing, stating (1) whether the Owner has reasonable objection to the proposed personnel, Contractor or supplier or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3 Except for those persons or entities already identified or required in the Design-Build Amendment, the Design-Builder, as soon as practicable after execution of the Design-Build Amendment, shall furnish in writing to the Owner 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 Owner may reply within 14 days to the Design-Builder in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3.1 If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the rejected person or entity 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 person or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

§ 5.8 Documents and Submittals at the Site

The Design-Builder shall maintain at the site for the Owner one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed.

§ 5.9 Use of Site

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

§ 5.10 Cutting and Patching

The Design-Builder shall not cut, patch or otherwise alter fully or partially completed 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 Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

§ 5.11 Cleaning Up

§ 5.11.1 The Design-Builder 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 Design-Builder shall remove waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 5.11.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Design-Builder.

§ 5.12 Access to Work

The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

§ 5.13 Construction by Owner or by Separate Contractors

§ 5.13.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 5.13.1.1 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 terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation. The Owner shall notify the Design-Builder promptly after execution of any separate contract. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.

§ 5.13.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Design-Builder" in the Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with the Owner.

§ 5.13.1.3 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 Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Design-Builder 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 Design-Builder, separate contractors and the Owner until subsequently revised.

§ 5.13.1.4 Unless otherwise provided in the Design-Build Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or separate contractors, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Design-Builder under the Contract.

§ 5.14 Mutual Responsibility

§ 5.14.1 The Design-Builder 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 Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

§ 5.14.2 If part of the Design-Builder's Work depends upon construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, prepare a written report to the Owner, identifying apparent discrepancies or defects in the construction or operations by the Owner or separate contractor that would render it unsuitable for proper execution and results of the Design-Builder's Work. Failure of the Design-Builder 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 Design-Builder's Work, except as to defects not then reasonably discoverable.

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

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

§ 5.14.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching the Work as the Design-Builder has with respect to the construction of the Owner or separate contractors in Section 5.10.

§ 5.15 Owner's Right to Clean Up

If a dispute arises among the Design-Builder, 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 will allocate the cost among those responsible.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 General

§ 6.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Article 6 and elsewhere in the Design-Build Documents.

§ 6.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder.

§ 6.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive.

§ 6.2 Change Orders

A Change Order is a written instrument signed by the Owner and Design-Builder 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 or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 6.3 Change Directives

§ 6.3.1 A Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time. The Owner may by 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 or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time being adjusted accordingly.

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

§ 6.3.3 If the Change Directive provides for an adjustment to the Contract Sum or, if prior to execution of the Design-Build Amendment, an adjustment in the Design-Builder's compensation, 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 Design-Build 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 6.3.7.

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

§ 6.3.5 Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time.

§ 6.3.6 A Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 6.3.7 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builder's compensation, the Owner 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, 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 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:

- .1 Additional costs of professional services;
- .2 Costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;

- .3 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .4 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;
- .5 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .6 Additional costs of supervision and field office personnel directly attributable to the change.

§ 6.3.8 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum or, if prior to execution of the Design-Build Amendment, in the Design-Builder's compensation, shall be actual net cost. 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.

§ 6.3.9 Pending final determination of the total cost of a Change Directive to the Owner, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum or, if prior to execution of the Design-Build Amendment, the Design-Builder's compensation, on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 14.

§ 6.3.10 When the Owner and Design-Builder agree with a determination concerning the adjustments in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

ARTICLE 7 OWNER'S RESPONSIBILITIES

§ 7.1 General

§ 7.1.1 The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization.

§ 7.1.2 The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule agreed to by the Owner. The Owner shall furnish to the Design-Builder, within 15 days after receipt of a written request, information necessary and relevant for the Design-Builder 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.

§ 7.2 Information and Services Required of the Owner

§ 7.2.1 The Owner shall furnish information or services required of the Owner by the Design-Build Documents with reasonable promptness.

§ 7.2.2 The Owner shall provide, to the extent under the Owner's control and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. Upon receipt of a written request from the Design-Builder, the Owner shall also provide surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site under the Owner's control.

§ 7.2.3 The Owner shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.

§ 7.2.4 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections.

§ 7.2.5 The services, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in this Agreement or

elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing, the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

§ 7.2.6 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

§ 7.2.7 Prior to the execution of the Design-Build Amendment, the Design-Builder 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 Design-Build Documents and the Design-Builder's Proposal. Thereafter, the Design-Builder may only request such evidence if (1) the Owner fails to make payments to the Design-Builder as the Design-Build Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Design-Builder 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 Design-Builder.

§ 7.2.8 Except as otherwise provided in the Design-Build Documents or when direct communications have been specially authorized, the Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder.

§ 7.2.9 Unless required by the Design-Build Documents to be provided by the Design-Builder, the Owner shall, upon request from the Design-Builder, furnish the services of geotechnical engineers or other consultants for investigation of subsurface, air and water conditions when such services are reasonably necessary to properly carry out the design services furnished by the Design-Builder. In such event, the Design-Builder shall specify the services required. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ 7.2.10 The Owner shall purchase and maintain insurance as set forth in Exhibit B.

§ 7.3 Submittals

§ 7.3.1 The Owner shall review and approve or take other appropriate action on Submittals. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities; or for substantiating instructions for installation or performance of equipment or systems; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate review. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 7.3.2 Upon review of the Submittals required by the Design-Build Documents, the Owner shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Owner discovers.

§ 7.4 Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

§ 7.5 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of, and will not be

responsible for acts or omissions of the Design-Builder, Architect, Consultants, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ 7.6 The Owner has the authority to reject Work that does not conform to the Design-Build Documents. The Owner shall have authority to require inspection or testing of the Work in accordance with Section 15.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner 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 Owner to the Design-Builder, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 7.7 The Owner shall determine the date or dates of Substantial Completion in accordance with Section 9.8 and the date of final completion in accordance with Section 9.10.

§ 7.8 Owner's Right to Stop Work

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder 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 Design-Builder or any other person or entity, except to the extent required by Section 5.13.1.3.

§ 7.9 Owner's Right to Carry Out the Work

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build 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 Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

ARTICLE 8 TIME

§ 8.1 Progress and Completion

§ 8.1.1 Time limits stated in the Design-Build Documents are of the essence of the Contract. By executing the Design-Build Amendment the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.1.2 The Design-Builder shall not, except by agreement of the Owner in writing, commence the Work prior to the effective date of insurance, other than property insurance, required by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder's failure to obtain insurance required under this Contract.

§ 8.1.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.2 Delays and Extensions of Time

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

§ 8.2.2 Claims relating to time shall be made in accordance with applicable provisions of Article 14.

§ 8.2.3 This Section 8.2 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.

ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

§ 9.1 Contract Sum

The Contract Sum is stated in the Design-Build Amendment.

§ 9.2 Schedule of Values

Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner 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 Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder'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 Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents.

§ 9.3.1.1 As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, 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 Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

§ 9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as 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 Design-Builder 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 Design-Builder warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder 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 Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 Certificates for Payment

The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a Certificate for Payment indicating the amount the Owner determines is properly due, and notify the Design-Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Owner may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Design-Builder as provided in Section 9.4. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner 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 to protect the Owner from loss for which the Design-Builder is responsible because of

- .1 defective Work, including design and construction, 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 Design-Builder;
- .3 failure of the Design-Builder to make payments properly to the Architect, Consultants, Contractors or others, for services, labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Design-Build 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 Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered.

§ 9.6 Progress Payments

§ 9.6.1 After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Design-Build Documents.

§ 9.6.2 The Design-Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder no later than the time period required by applicable law, but in no event more than seven days after receipt of payment from the Owner the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the portion of the Work performed by the Architect, Consultant, Contractor, or other person or entity. The Design-Builder shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.

§ 9.6.3 The Owner will, on request and if practicable, furnish to the Architect, a Consultant, Contractor, or other person or entity providing services or work for the Design-Builder, information regarding percentages of completion or amounts applied for by the Design-Builder and action taken thereon by the Owner on account of portions of the Work done by such Architect, Consultant, Contractor or other person or entity providing services or work for the Design-Builder.

§ 9.6.4 The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, amounts paid by the Owner to the Design-Builder for the Work. If the Design-Builder fails to furnish such evidence within seven days, the Owner shall have the right to contact the Architect, Consultants, and Contractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor, except as may otherwise be required by law.

§ 9.6.5 Design-Builder 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 Design-Build Documents.

§ 9.6.7 Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Design-Builder for Work properly performed by the Architect, Consultants, Contractors and other person or entity providing services or work for the Design-Builder, shall be held by the Design-Builder for the Architect and those Consultants, Contractors, or other person or entity providing services or work for the

Design-Builder, 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 Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

§ 9.7 Failure of Payment

If the Owner does not issue a Certificate for Payment, through no fault of the Design-Builder, within the time required by the Design-Build Documents, then the Design-Builder may, upon seven additional days' written notice to the Owner, 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 Design-Builder's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Design-Build 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 Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8.

§ 9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner 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 Design-Builder to complete all Work in accordance with the Design-Build Documents.

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

§ 9.8.4 Prior to issuance of the Certificate of Substantial Completion under Section 9.8.5, the Owner and Design-Builder shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion.

§ 9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder will prepare for the Owner's signature a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build 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.

§ 9.8.6 The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Upon the Owner's acceptance, and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build 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 Design-Builder, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance 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 Design-Builder 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 Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section 9.8.2. Consent of

the Design-Builder 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 Design-Builder.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder 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 Design-Build Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Design-Builder's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Owner finds the Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 9.10.2, promptly issue a final Certificate for Payment.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (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 Design-Build Documents to remain in force after final payment is currently in effect, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or 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 an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, 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 Design-Builder or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Design-Builder, 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 Design-Build 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 Design-Builder to the Owner prior to issuance of 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 Design-Build Documents; or
- .3 terms of special warranties required by the Design-Build Documents.

§ 9.10.5 Acceptance of final payment by the Design-Builder shall constitute a waiver of claims by the Design-Builder except those previously made in writing and identified by the Design-Builder as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Design-Builder 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 Design-Builder shall be responsible for precautions for the safety of, and 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 Design-Builder or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Design-Builder 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 Design-Builder shall implement, 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 notify owners and users of adjacent sites and utilities of the safeguards and protections.

§ 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 Design-Builder shall exercise utmost care, and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder 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 anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14.

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

§ 10.2.7 The Design-Builder 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 the Owner or Design-Builder suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written notice of the 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 Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the Design-Builder encounters a hazardous material or substance not addressed in the Design-Build 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 Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

§ 10.3.2 Upon receipt of the Design-Builder'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 Design-Builder 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 Design-Build Documents, the Owner shall furnish in writing to the Design-Builder 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 Design-Builder will promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has 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 Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design-Builder'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 Design-Builder, the Architect, Consultants, and Contractors, 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 Design-Builder brings to the site unless such materials or substances are required by the Owner's Criteria. The Owner shall be responsible for materials or substances required by the Owner's Criteria, except to the extent of the Design-Builder's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the Design-Builder 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 Design-Builder, the Design-Builder 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 Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss.

ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

§ 11.1 Uncovering of Work

The Owner may request to examine a portion of the Work that the Design-Builder has covered to determine if the Work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the Design-Build Documents, the Owner and Design-Builder shall execute a Change Order to adjust the Contract Time and Contract Sum, as appropriate. If such Work is not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Work shall be at the Design-Builder's expense and the Design-Builder shall not be entitled to a change in the Contract Time 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 and the Contract Time will be adjusted as appropriate.

§ 11.2 Correction of Work

§ 11.2.1 Before or After Substantial Completion. The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build 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 any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense.

§ 11.2.2 After Substantial Completion

§ 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12, 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 Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder 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 the Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

§ 11.2.2.2 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.

§ 11.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section 11.2.

§ 11.2.3 The Design-Builder shall remove from the site portions of the Work that are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ 11.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Design-Build Documents.

§ 11.2.5 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

§ 11.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Design-Build 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 12 COPYRIGHTS AND LICENSES

§ 12.1 Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. The Design-Builder, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the Design-Builder and the Architect, Consultants, and Contractors, and any other person or entity providing services or work for any of them.

§ 12.2 The Design-Builder and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 12.3 Upon execution of the Agreement, the Design-Builder grants to the Owner a limited, irrevocable and non-exclusive license to use the Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations,

including prompt payment of all sums when due, under the Design-Build Documents. The license granted under this section permits the Owner to authorize its consultants and separate contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Design-Builder rightfully terminates this Agreement for cause as provided in Section 13.1.4 or 13.2.1 the license granted in this Section 12.3 shall terminate.

§ 12.3.1 The Design-Builder shall obtain non-exclusive licenses from the Architect, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12. The Design-Builder's licenses from the Architect and its Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason other than the default of the Owner or in the event the Design-Builder's Architect, Consultants, or Contractors terminate their agreements with the Design-Builder for cause, to obtain a limited, irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner (1) agrees to pay to the Architect, Consultant or Contractor all amounts due, and (2) provide the Architect, Consultant or Contractor with the Owner's written agreement to indemnify and hold harmless the Architect, Consultant or Contractor from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service.

§ 12.3.2 In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service under this Section 12.3.2. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination or Suspension Prior to Execution of the Design-Build Amendment

§ 13.1.1 If the Owner fails to make payments to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design-Builder's option, cause for suspension of performance of services under this Agreement. If the Design-Builder elects to suspend the Work, the Design-Builder shall give seven days' written notice to the Owner before suspending the Work. In the event of a suspension of the Work, the Design-Builder shall have no liability to the Owner for delay or damage caused by the suspension of the Work. Before resuming the Work, the Design-Builder shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.2 If the Owner suspends the Project, the Design-Builder shall be compensated for the Work performed prior to notice of such suspension. When the Project is resumed, the Design-Builder shall be compensated for expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Design-Builder, the Design-Builder may terminate this Agreement by giving not less than seven days' written notice.

§ 13.1.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 13.1.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Design-Builder for the Owner's convenience and without cause.

§ 13.1.6 In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for Work performed prior to termination, together with Reimbursable Expenses then due and any other expenses directly

attributable to termination for which the Design-Builder is not otherwise compensated. In no event shall the Design-Builder's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.

§ 13.2 Termination or Suspension Following Execution of the Design-Build Amendment

§ 13.2.1 Termination by the Design-Builder

§ 13.2.1.1 The Design-Builder may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder, the Architect, a Consultant, or a Contractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, 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 Owner has not issued a Certificate for Payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design-Build Documents; or
- .4 The Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section 7.2.7.

§ 13.2.1.2 The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 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.

§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, 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.

§ 13.2.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or any other persons or entities performing portions of the Work under contract with the Design-Builder because the Owner has repeatedly failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3.

§ 13.2.2 Termination by the Owner For Cause

§ 13.2.2.1 The Owner may terminate the Contract if the Design-Builder

- .1 fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;
- .2 repeatedly refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;
- .3 fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the Design-Builder;
- .4 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .5 is otherwise guilty of substantial breach of a provision of the Design-Build Documents.

§ 13.2.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

- .1 Exclude the Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
- .2 Accept assignment of the Architect, Consultant and Contractor agreements pursuant to Section 3.1.15; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 13.2.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 13.2.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ 13.2.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Contract.

§ 13.2.3 Suspension by the Owner for Convenience

§ 13.2.3.1 The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 13.2.3.2 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 13.2.3.1. 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 Design-Builder is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 13.2.4 Termination by the Owner for Convenience

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

§ 13.2.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder 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 Project agreements, including agreements with the Architect, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders.

§ 13.2.4.3 In case of such termination for the Owner's convenience, the Design-Builder 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 14 CLAIMS AND DISPUTE RESOLUTION

§ 14.1 Claims

§ 14.1.1 **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 Design-Builder arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 14.1.2 **Time Limits on Claims.** The Owner and Design-Builder 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 binding dispute resolution method selected in Section 1.3, 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 Design-Builder waive all claims and causes of action not commenced in accordance with this Section 14.1.2.

§ 14.1.3 Notice of Claims

§ 14.1.3.1 **Prior To Final Payment.** Prior to Final Payment, Claims by either the Owner or Design-Builder must be initiated by written notice to the other party 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.

§ 14.1.3.2 **Claims Arising After Final Payment.** After Final Payment, Claims by either the Owner or Design-Builder that have not otherwise been waived pursuant to Sections 9.10.4 or 9.10.5, must be initiated by prompt written notice to the other party. The notice requirement in Section 14.1.3.1 and the Initial Decision requirement as a condition precedent to mediation in Section 14.2.1 shall not apply.

§ 14.1.4 Continuing Contract Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ 14.1.5 Claims for Additional Cost. If the Design-Builder intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 14.1.6 Claims for Additional Time

§ 14.1.6.1 If the Design-Builder intends to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder'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.

§ 14.1.6.2 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.

§ 14.1.7 Claims for Consequential Damages

The Design-Builder 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 Design-Builder 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 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.

§ 14.2 Initial Decision

§ 14.2.1 An initial decision shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder initiated prior to the date final payment is due, excluding those arising under Sections 10.3 and 10.4 of the Agreement and Sections B.3.2.9 and B.3.2.10 of Exhibit B to this Agreement, unless 30 days have passed after the Claim has been initiated with no decision having been rendered. Unless otherwise mutually agreed in writing, the Owner shall render the initial decision on Claims.

§ 14.2.2 Procedure

§ 14.2.2.1 Claims Initiated by the Owner. If the Owner initiates a Claim, the Design-Builder shall provide a written response to Owner within ten days after receipt of the notice required under Section 14.1.3.1. Thereafter, the Owner shall render an initial decision within ten days of receiving the Design-Builder's response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.

§ 14.2.2.2 Claims Initiated by the Design-Builder. If the Design-Builder initiates a Claim, the Owner will take one or more of the following actions within ten days after receipt of the notice required under Section 14.1.3.1: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Owner lacks sufficient information to evaluate the merits of the Claim.

§ 14.2.3 In evaluating Claims, the Owner may, but shall not be obligated to, consult with or seek information from persons with special knowledge or expertise who may assist the Owner in rendering a decision. The retention of such persons shall be at the Owner's expense.

§ 14.2.4 If the Owner requests the Design-Builder to provide a response to a Claim or to furnish additional supporting data, the Design-Builder 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 Owner when the response or supporting data will be furnished or (3) advise the Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Owner will either reject or approve the Claim in whole or in part.

§ 14.2.5 The Owner's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify 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.

§ 14.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 14.2.6.1.

§ 14.2.6.1 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.

§ 14.2.7 In the event of a Claim against the Design-Builder, 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 Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 14.2.8 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.

§ 14.3 Mediation

§ 14.3.1 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 14.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 14.3.2 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 proceeding is stayed pursuant to this Section 14.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 14.3.3 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.

§ 14.4 Arbitration

§ 14.4.1 If the parties have selected arbitration as the method for binding dispute resolution in Section 1.3, 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.

§ 14.4.1.1 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 or statute of repose. For statute of limitations or statute of repose 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.

§ 14.4.2 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.

§ 14.4.3 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.

§ 14.4.4 Consolidation or Joinder

§ 14.4.4.1 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).

§ 14.4.4.2 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.

§ 14.4.4.3 The Owner and Design-Builder grant to any person or entity made a party to an arbitration conducted under this Section 14.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Design-Builder under this Agreement.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 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 14.4.

§ 15.2 Successors and Assigns

§ 15.2.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section 15.2.2, 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.

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

§ 15.2.3 If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute certificates, other than those required by Section 3.1.10, the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least 14 days prior to execution. The Design-Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 15.3 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.

§ 15.4 Rights and Remedies

§ 15.4.1 Duties and obligations imposed by the Design-Build 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.

§ 15.4.2 No action or failure to act by the Owner or Design-Builder 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 thereunder, except as may be specifically agreed in writing.

§ 15.5 Tests and Inspections

§ 15.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder 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 Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner 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 Design-Builder.

§ 15.5.2 If the Owner determines that portions of the Work require additional testing, inspection or approval not included under Section 15.5.1, the Owner will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 15.5.3, shall be at the Owner's expense.

§ 15.5.3 If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure shall be at the Design-Builder's expense.

§ 15.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

§ 15.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

§ 15.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 15.6 Confidential Information

If the Owner or Design-Builder transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 15.6.1.

§ 15.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

§ 15.7 Capitalization

Terms capitalized in the Contract 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.

§ 15.8 Interpretation

§ 15.8.1 In the interest of brevity the Design-Build 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.

§ 15.8.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

ARTICLE 16 SCOPE OF THE AGREEMENT

§ 16.1 This Agreement is comprised of the following documents listed below:

- .1 AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder
- .2 AIA Document A141™-2014, Exhibit A, Design-Build Amendment, if executed
- .3 AIA Document A141™-2014, Exhibit B, Insurance and Bonds
- .4 Exhibit C Scope Floor Plans indicating Program and Building Layout
- .5 Exhibit D Facility Assessment indicating Priority 1 & 2 items to be addressed in the scope of work.
- .6 Exhibit E Owner provided Geotechnical Investigation Report for Civic Center Campus and Fire Station
- .7 Exhibit F Owner provided Site Survey for Civic Center Campus and Fire Station Sites.
- .8 Exhibit G Personnel Hourly Billing Rates

« »

.6 Other:

« »

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

OWNER (Signature)

«Malissa Marsh, City Manager
(Printed name and title)

DESIGN-BUILDER (Signature)

«David W. Gassen, AIA Principal»« »
(Printed name and title)

**CITY OF MADISON HEIGHTS
ELECTRONIC COUNCIL AGENDA REQUEST FORM**

SUBMITTED TO: _____

SUBMITTED BY: _____ DATE: _____

FOR CONSIDERATION AT THE COUNCIL MEETING OF: _____

ACTION REQUESTED

PRESENTATION	_____	FUTURE PUBLIC HEARING	_____
PUBLIC HEARING – SPECIAL APPROVAL	_____	BID AWARDS / PURCHASES	_____
PUBLIC HEARING – OTHER	_____	ORDINANCE - FIRST	_____
COMMUNICATION	_____	ORDINANCE - SECOND	_____
REPORT	_____	UNFINISHED BUSINESS	_____

DESCRIPTION OF ITEM

IF ORDINANCE, CITE TITLE/CHAPTER SECTIONS

POLICY CONSIDERATION

FINANCIAL IMPACT

No Impact	_____	Fee Waiver Proposed	_____
Budgeted Fund Name(s)	_____	Department Name	_____
Appropriated in Acct. No.	_____	Budget Amount	_____
Amount Available in Acct.	_____	Budget Amount	_____
Second Account Number	_____	Revenue Generated	_____
Amount Available in 2 nd Acct.	_____		_____
Other Comments	_____		_____

REVIEW CHECKLIST

DEPARTMENT _____ DATE _____

DEPARTMENT _____ DATE _____

CITY MANAGER _____ DATE _____

ORDINANCE NO. 2180

AN ORDINANCE TO AMEND ORDINANCE 571, BEING AN ORDINANCE CODIFYING AND ADOPTING A NEW CODE OF ORDINANCES FOR THE CITY OF MADISON HEIGHTS BY AMENDING CHAPTER 10, SECTION 10-1, OF THE CODE OF ORDINANCES, CITY OF MADISON HEIGHTS, MICHIGAN, AMENDMENT TO POLLING LOCATION FOR THE CITY OF MADISON HEIGHTS

THE CITY OF MADISON HEIGHTS ORDAINS:

Section 1.

That Chapter 10, Section 10-1 of the Code of Ordinance, City of Madison Heights, Michigan, is hereby amended as follows:

Sec. 10-1. Precincts established; numbers, boundaries.

(b) The following precincts are hereby established and shall be referred to by number, as follows:

Precinct No. 8 shall be the area bounded as follows: Beginning at the intersection of Twelve Mile Road and the Chrysler Expressway; thence east along Twelve Mile Road to John R Road to Point A; thence south along John R Road to Gardenia Avenue; thence west along Gardenia to Dartmouth Street; thence north along Dartmouth Street to Bellaire Avenue; thence west along Bellaire Avenue to the Chrysler Expressway; thence north along the Chrysler Expressway to the point of beginning; thence continuing from said Point A north along John R Road to a line parallel to the south one-half of Section 12, Township 1 North, Range 11 East; thence east to Dequindre Road; thence south along Dequindre Road to Twelve Mile Road; thence west along Twelve Mile to Point A. The voting place shall be at the ~~John Page Middle School, 29615 Tawas Active Adult Center located at 29448 John R Road.~~

Section 2. Repealer.

All ordinances, or parts of ordinances, in conflict with this ordinance are repealed only to the extent necessary to give this ordinance full force and effect.

Section 3. Severability.

Should any section, subdivision, clause, or phrase of this ordinance be declared by the courts to be invalid, the validity of the ordinance as a whole, or in part, shall not be affected other than the part invalidated.

Section 4. Savings.

All proceedings pending and all rights and liabilities existing, acquired or incurred at the time this ordinance takes effect, are saved and may be consummated according to the law in force when they were commenced.

Section 5. Effective Date.

This Ordinance as ordered shall take effect ten (10) days after its adoption and upon publication.

Section 6. Inspection.

A copy of this ordinance may be inspected or purchased at the City Clerk's office between the hours of 8:00 a.m. and 4:30 p.m. on regular business days.

Special City Council Meeting
Madison Heights City Council
Madison Heights, Michigan
March 28, 2022

A Special City Council Meeting of the Madison Heights City Council was held on Monday, March 28, 2022 at 6:45 p.m. in the Executive Conference Room at the Municipal Building at 300 West Thirteen Mile Road, Madison Heights, Michigan.

Present: Mayor Grafstein. Councilmembers: Bliss, Fleming, Rohrbach, Soltis and Wright (arrived at 6:49 p.m.). City Manager Marsh, City Attorney Sherman, and City Clerk Rottmann.

Others Present: Special Labor Counsel Fournier, Human Resources Director Mischak.

CM-22-94. Excuse Councilmembers.

Motion by Councilman Soltis, seconded by Councilman Fleming to excuse Councilor Wright from tonight's meeting.

Yea: Bliss, Fleming, Rohrbach, Soltis, Grafstein

Nay: None

Absent: Wright

Motion Carried

CM-22-95. Meeting Open to the Public.

There were no members of the public wishing to speak.

CM-22-96. Closed Meeting – Attorney/Client Communication and Labor Negotiations.

Motion by Councilman Bliss, seconded by Councilman Soltis to move to a Closed Meeting to discuss Attorney/Client Communication and Labor Negotiations which is exempt from disclosure as provided for under Section 8 of the Open Meetings Act.

Roll Call Vote:

Yea: Bliss, Fleming, Rohrbach, Soltis, Wright, Grafstein

Nay: None

Motion Carried

CM-22-97. Adjournment.

There being no further business, Mayor Grafstein adjourned the meeting at 7:23 p.m.

Roslyn Grafstein
Mayor

Cheryl E. Rottmann
City Clerk

Regular Meeting
Madison Heights City Council
Madison Heights, Michigan
March 28, 2022

A Regular Meeting of the Madison Heights City Council was held on Monday, March 28, 2022 at 7:30 p.m. in the Municipal Building at 300 West Thirteen Mile Road, Madison Heights, Michigan.

Present: Mayor Grafstein. Councilmembers: Bliss, Fleming, Rohrbach, Soltis and Wright.

Others Present: City Manager Marsh, City Attorney Sherman, and City Clerk Rottmann.

Councilman Fleming gave the invocation and the Pledge of Allegiance followed.

CM-22-98. Approval of the Agenda.

Motion by Councilor Rohrbach, seconded by Councilman Bliss, to add D-3, Declare Robert J. Corbett Jr.'s Council Seat Vacant; and D-4, Receive and File Official Election Results of Madison Heights General Election held on November 2, 2021, to the agenda.

Yea: Bliss, Fleming, Rohrbach, Soltis, Wright, Grafstein

Nay: None

Motion carried.

CM-22-99. Meeting Open to the Public.

County Commissioner Gary McGillivray updated the City on Oakland County water infrastructure collaborations. He stated the Oakland County is looking to hire seasonally, if interested you can apply at oakgov.com/jobs. Sign up season for Little League Baseball is currently taking place. They are also looking to hire umpires and managers. To apply visit madisonheightsbaseball.org.

Martha Covert noted the City has lost three pillars of the community in the past six months. She stated Bob Corbett was a fighter and his death is a huge loss for the City.

Toya Aaron expressed condolences to the Corbett family. She requested a patrol officer regularly visit the parking lot of 168 Crab due to individuals hanging out in the parking area and open liquor and marijuana.

Vita Palazzolo expressed condolences to the Corbett family. She noted that Bob Corbett always took the time to listen and we will miss him. She requested no

parking on Gardenia near Lorenz due to the difficult sight lines while driving in that area.

CM-22-100. Zach McKenzie Resignation from the Elected Officials Compensation Commission and Meredith Fleischer Resignation from the Arts Board.

Motion by Councilor Rohrbach, seconded by Councilor Wright, to accept the resignations of Zach McKenzie from the Elected Officials Compensation Commission and Meredith Fleisher from the Arts Board, declare the seats vacant and send Certificates of Appreciation.

Yea: Bliss, Fleming, Rohrbach, Soltis, Wright, Grafstein

Nay: None

Motion carried.

CM-22-101. Appointment of Michael Mitchell as an Administrative Hearing Officer.

Motion by Councilor Rohrbach, seconded by Councilman Fleming, to approve the appointment of Michael Mitchell as an Administrative Hearing Officer effective immediately.

Yea: Bliss, Fleming, Rohrbach, Soltis, Wright, Grafstein

Nay: None

Motion carried.

CM-22-102. Plante Moran Audit Contract Extension.

Motion by Councilman Bliss, seconded by Councilman Soltis, to approve a two-year extension of the contractual agreement with Plante Moran, for fiscal years 2022 and 2023.

Yea: Bliss, Fleming, Rohrbach, Soltis, Wright, Grafstein

Nay: None

Motion carried.

CM-22-103. Declare Robert J. Corbett Jr.'s Council Seat Vacant.

Motion by Councilor Rohrbach, seconded by Councilman Soltis, to declare Robert J. Corbett Jr.'s Council seat vacant.

Yea: Bliss, Fleming, Rohrbach, Soltis, Wright, Grafstein

Nay: None

Motion carried.

CM-22-104. Receive and File Official Election Results of the Madison Heights General Election held on November 2, 2021.

Motion by Councilman Bliss, seconded by Councilor Wright, to receive and file the official election results of the Madison Heights General Election held on November 2, 2021.

Yea: Bliss, Fleming, Rohrbach, Soltis, Wright, Grafstein

Nay: None

Motion carried.

CM-22-105. CDBG Lawn Service.

Motion by Councilor Rohrbach, seconded by Councilman Fleming, to award the bid for CDBG Lawn Service to the lowest responsible bidder Net Solutions LLC for a one-year contract at the unit rate of \$16.00 per lot for the 2022 mowing season; and further the City to proceed to the next lowest qualified bidders, Allen's Landscape & Lawn Services LLC at unit pricing of \$33.50 per lot or Gratiot Landscaping at unit pricing of \$42.00 per lot in the event that the contract with Net Solutions is cancelled due to non-performance or other issues.

Yea: Bliss, Fleming, Rohrbach, Soltis, Wright, Grafstein

Nay: None

Motion carried.

CM-22-106. Self-Contained Breathing Apparatus (SCBA).

Motion by Councilman Soltis, seconded by Councilor Wright, to approve the purchase of MSA G1 SCBAs and related equipment to complete the project from Apollo Fire Equipment in the amount of \$219,257.

Yea: Bliss, Fleming, Rohrbach, Soltis, Wright, Grafstein

Nay: None

Motion carried.

CM-22-107. Ordinance No. 2179 – Precinct Boundary Descriptions, Polling Locations and Precinct Numbers – Second Reading.

Motion by Councilor Rohrbach, seconded by Councilman Soltis, to adopt Ordinance No. 2179, Precinct Boundary Descriptions, Polling Locations and Precinct Numbers, as follows on Second Reading:

ORDINANCE NO. 2179

AN ORDINANCE TO AMEND ORDINANCE 571, BEING AN ORDINANCE CODIFYING AND ADOPTING A NEW CODE OF ORDINANCES FOR THE CITY OF MADISON HEIGHTS BY AMENDING CHAPTER 10, SECTION 10-1, OF THE CODE OF ORDINANCES, CITY OF MADISON HEIGHTS, MICHIGAN, TO APPROVE PRECINCT BOUNDARY DESCRIPTIONS, POLLING LOCATIONS, AND PRECINCT NUMBERS FOR THE CITY OF MADISON HEIGHTS

THE CITY OF MADISON HEIGHTS ORDAINS:

Section 1.

That Chapter 10, Section 10-1 of the Code of Ordinance, City of Madison Heights, Michigan, is hereby repealed in its entirety and replace as follows:

Sec. 10-1. Precincts established; numbers, boundaries.

- (a) There is hereby established, in the City of Madison Heights, 11-9 voting precincts to be used by the electors of the City of Madison Heights for the purpose of casting their ballots at all future elections.
- (b) The following precincts are hereby established and shall be referred to by number, as follows:

Precinct No. 1 shall be the area bounded as follows: Beginning at the intersection of the center line of John R Road and Gardenia Avenue; thence east along the center line of Gardenia Avenue to the southwest corner of Beauty Built Manor Subdivision; thence north along the west subdivision line of Beauty Built Manor Subdivision and Steven Heights Subdivision to the northwest corner of Steven Heights Subdivision; thence east along the north subdivision line of Steven Heights Subdivision to the center line of Dequindre Road; thence south along the center line of Dequindre Road to the center line of Eleven Mile Road; thence west along the center line of Eleven Mile Road to the center line of John R Road; thence north along the center line of John R Road to the point of beginning. The voting place shall be at the Madison Elementary School located at 27107 Hales Street.

Precinct No. 2 shall be the area bounded as follows: Beginning at the intersection of Gardenia and John R Road; thence south along John R Road to Lincoln; thence west along Lincoln to the Chrysler Expressway; thence north along the Chrysler Expressway to Bellaire; thence east along Bellaire to Dartmouth; thence east along Gardenia to the point of beginning. The voting place shall be at Wilkinson Middle School located at 26524 John R Road.

Precinct No. 3 shall be the area bounded on the north by Lincoln Avenue; on the east by Dequindre Road; on the south by Ten Mile Road; and on the west by the Chrysler Expressway. The voting place shall be at the Wilkinson Middle School located at 26524 John R Road.

Precinct No. 4 shall be the area bounded on the north by Eleven Mile; on the east by Dequindre Road; on the south by Lincoln Avenue; and on the west by John R Road. The voting place shall be at the Wilkinson Middle School located at 26524 John R Road.

Precinct No. 5 shall be the area bounded as follows: Beginning as the intersection of the Chrysler Expressway and Fourteen Mile; thence east along Fourteen Mile to Dequindre; thence south along Dequindre to Thirteen Mile; thence west along Thirteen Mile to John R Road; thence south along John R Road to Twelve Mile; thence west along Twelve Mile to the Chrysler Expressway; thence north along the Chrysler Expressway to the point of beginning. The voting place shall be at the Madison Heights Public Library located at 240 West Thirteen Mile Road.

Precinct No. 6 shall be the area bounded on the north by Thirteen Mile Road; on the east by Dequindre Road; on the south by the north boundary lines of the southwest and southeast one-fourth of Section 12, Township 1 North, Range 11 East; and on the west by John R Road. The voting place shall be at the Simonds Elementary School located at 30000 Rose.

Precinct No. 7 shall be the area bounded as follows: Beginning at the intersection of Twelve Mile Road and Campbell Road; thence north along Campbell Road to the southwest corner of parcel 25-02-101-043 also being the corporation line between the City of Madison Heights and the City of Royal Oak; thence east along the southerly boundary of parcel 25-02-101-043 to the southeast corner of parcel 25-02-101-043 also being the corporation line between the City of Madison Heights and the City of Royal Oak; thence north along the west line of the Mally's Industrial Subdivision No. 2 which is the east boundary line of parcel 25-02-101-043, parcel 25-02-101-059, and parcel 25-02-101-058 also being the corporation line between the City of Madison Heights and the City of Royal Oak to the northeast corner of parcel 25-02-101-058; thence west along the north boundary line of parcel 25-02-101-058 and parcel 25-02-101-052 which is also the corporation line between the City of Madison Heights and the City of Royal Oak to the northwest corner of parcel 25-02-101-052 also being the centerline of Campbell Road; thence north along Campbell Road to Fourteen Mile Road; thence east along Fourteen Mile Road to the Chrysler Expressway; thence south along the Chrysler Expressway to Twelve Mile Road; thence west along Twelve Mile Road to the point of beginning. The voting place shall be at the James S. McCann Administration Building located at 31201 Dorchester.

Precinct No. 8 shall be the area bounded as follows: Beginning at the intersection of Twelve Mile Road and the Chrysler Expressway; thence east along Twelve Mile Road to John R Road to Point A; thence south along John R Road to Gardenia Avenue; thence west along Gardenia to Dartmouth Street; thence north along Dartmouth Street to Bellaire Avenue; thence west along Bellaire Avenue to the Chrysler Expressway; thence north along the Chrysler Expressway to the point of beginning; thence continuing from said Point A north along John R Road to a line parallel to the south one-half of Section 12, Township 1 North, Range 11 East; thence east to Dequindre Road; thence south along Dequindre Road to Twelve Mile Road; thence west along Twelve Mile to Point A. The voting place shall be at the Active Adult Center located at 29448 John R. Road.

Precinct No. 9 shall be the area bounded as follows: Beginning at the intersection of Gardenia Avenue and John R Road; thence north along John R Road to Twelve Mile Road; thence east along Twelve Mile Road to Dequindre Road; thence south along Dequindre Road to the northeast corner of the Steven Heights Subdivision; thence west along the north subdivision line of the Steven Heights Subdivision; thence south along the west subdivision line of the Steven Heights Subdivision and the Beauty Built Manor Subdivision to a point on the southwest corner of the Beauty Built Manor Subdivision; thence west along the east-west one-quarter section line of Section 13, Township 1 North Range 11 East along Gardenia Avenue to the centerline of Rialto Street; thence south along Rialto Street to the centerline of Gardenia Avenue; thence west along the centerline of Gardenia Avenue to the centerline of Lorenz Avenue; thence north along Lorenz Avenue to the center of Gardenia Avenue; thence west along Gardenia Avenue to the point of the beginning. The voting place shall be at the Edmondson Elementary School located at 621 East Katherine.

Section 2. Repealer.

All ordinances, or parts of ordinances, in conflict with this ordinance are repealed only to the extent necessary to give this ordinance full force and effect.

Section 3. Severability.

Should any section, subdivision, clause, or phrase of this ordinance be declared by the courts to be invalid, the validity of the ordinance as a whole, or in part, shall not be affected other than the part invalidated.

Section 4. Savings.

All proceedings pending and all rights and liabilities existing, acquired or incurred at the time this ordinance takes effect, are saved and may be consummated according to the law in force when they were commenced.

Section 5. Effective Date.

This Ordinance as ordered shall take effect ten (10) days after its adoption and upon publication.

Section 6. Inspection.

A copy of this ordinance may be inspected or purchased at the City Clerk's office between the hours of 8:00 a.m. and 4:30 p.m. on regular business days.

Yea: Bliss, Fleming, Rohrbach, Soltis, Wright, Grafstein
Nay: None
Motion carried.

CM-22-108. Minutes.

Motion by Councilman Bliss, seconded by Councilman Fleming, to approve the Special City Council meeting minutes of 03-14-22 and the Regular City Council meeting minutes of 03-14-22, as printed.

Yea: Bliss, Fleming, Rohrbach, Soltis, Wright, Grafstein
Nay: None
Motion carried.

CM-22-109. Mayor and Council - Comments.

Councilman Bliss stated that he doesn't normally have the opportunity to make council comments first; he has had the opportunity to first listen to Bob comments and hear his ideas and initiatives. He stated that he has a tape from when he was newly elected and Bob was kind, compassionate, and intellectually smart. The City still has a library due in part to his efforts and he brought accessibility to our parks and play structures. He considers himself lucky to be able to sit next to him and is grateful to all of the years of mentorship. He commented that he valued Bob's wisdom, relied on it and he wouldn't be the public official he is without his guidance; his friendship meant the most to me. He knew my dad for years and our conversations meant a lot and were impactful during a tough time for him. His legacy in the City is incomparable and it wouldn't be the city it is without him. He expressed his condolences to his wife Linda and the entire Corbett family.

Councilor Wright commented that our approval tonight of the fire apparatus is going to save lives and support our City first responders. He stated that Bob Corbett sent him a letter of support and it meant a lot to him and he is grateful for that. When he was sworn in, he appreciated him as person and Bob made

him feel welcomed and included and he has much respect for all he has done for the community.

City Attorney Sherman shared a story of how Bob Corbett came to serve on the City Council due to a recount and tie vote resulting in drawing of a straw lot in 1999 - twenty-three years later what a distinguished record he had. Bob was low keyed, had self-defecating humor and served the citizens in the best way possible. If he didn't agree with you, it was always with respect. On behalf of our family, the entire Sherman family and firm expressed their condolences.

City Manager Marsh stated that she will forever be grateful to Bob for his friendship and mentorship. He truly meant a lot to her and he was always such a wise person and gave her good advice. She expressed her regret for not expressing how much he meant to her and noted that she thinks he was wise and thoughtful, and she is truly going to miss him.

City Clerk Rottmann shared that Bob and her had the same heart surgery and he always checked up on her and her recovery process. He served on the Election Commission with her and although he stated he didn't enjoy that board, she always teased him that he loved it and it was the best board he could serve on. She stated that she appreciated his mentorship and his commitment to the community and he will be greatly missed.

Councilor Rohrbach stated that Bob was kind, thoughtful, and knowledgeable and took the time to talk to people. That can never be undervalued. She noted that she came to one of his library sessions and all three people there didn't agree on the topic, but he was respectful. We are going to miss him.

Councilman Fleming stated that he received a lot of advice from Bob and he was our elder member. He is so happy that he was able to become the Mayor Pro Tem with his leadership abilities and the capability to step in when the Mayor was not here. He noted that he was a long time sponsor of Little League Baseball. He stated his advice and the ability to talk to him in confidence or talk to him about anything will be missed and he expressed his condolences to his family.

Councilman Soltis commented that he is going to miss Bob. He has known him for about nine years and appreciated his mentorship; he was funny and quick witted. He shared a story of their first meeting and realizing right then he could learn a lot from him. His heart goes out to the Corbett family.

Mayor Grafstein noted that this has been the hardest Council meeting she had to Chair. She stated that she starting coming to Council meetings a long time ago and it hit her today that he will never be in that seat again. He leaves behind a wonderful legacy including his commitment to making our parks ADA accessible so that kids with disabilities could use the parks and his dedication

to the Library. She remembered that he had every member of Council sign his baseball. She shared a story of doing Fire Operation training with him. While he would appreciate how much we will miss him, he would want us to be in good spirits.

CM-22-110. Adjournment.

There being no further business, the meeting was adjourned at 8:28 p.m.

Roslyn Grafstein
Mayor

Cheryl E. Rottmann
City Clerk