

**BIRMINGHAM CITY COMMISSION AGENDA**  
**SEPTEMBER 11, 2023**  
**MUNICIPAL BUILDING, 151 MARTIN**  
**7:30 P.M.**

**I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

Therese Longe, Mayor

**II. ROLL CALL**

Alexandria Bingham, City Clerk

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

**ANNOUNCEMENTS**

- Happy Birthday Commissioner Host
- National Recovery Month Proclamation
- National Suicide Prevention Month Proclamation

**EMPLOYEE RECOGNITION**

- Police Department
  - Chyna Harmon - Part-Time Dispatcher, hired on July 31, 2023
  - Ashley Martin - Part-Time Parking Enforcement Assistant, hired on July 31, 2023
  - Cameron Lease - Police Officer, hired on August 14, 2023
  - Matthew Walker – Police Officer, hired on September 5, 2023
  - Robert Van Acker - Auxiliary Police Officer, hired on April 15, 2023

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

**V. CONSENT AGENDA**

All items listed on the consent agenda are considered to be routine and will be enacted by one motion and approved by a roll call vote. There will be no separate discussion of the items unless a Commissioner or citizen so requests, in which event the item will be removed from the general order of business and considered under the last item of new business.

- A. Resolution to approve the City Commission meeting minutes of August 28, 2023.
- B. Resolution to approve the warrant list, including Automated Clearing House payments, dated August 31, 2023, in the amount of \$1,269,029.63.
- C. Resolution to approve the warrant list, including Automated Clearing House payments, dated September 7, 2023, in the amount of \$405,946.67.
- D. Resolution to add an alternate position to the Ad Hoc Aging in Place Committee for a term consistent with all regular members of the committee ending in January 2025 and to

- E. Resolution to enter into a lease agreement with F.H.S Birmingham, LLC in the amount of \$200.00 per year for an encroachment of 160 sq. ft. of right-of-way for private residential balconies at 707 S. Worth. In addition, to authorize the Mayor and City Clerk to sign the agreement on behalf of the City.
- F. Resolution to approve the addendum to extend the contract for 2022-23 handwork pavement markings plus additional cost with Hart Pavement Striping Corporation in the amount of \$252,270.00 annually to May 26, 2025; further to approve the addendum to extend the contract for spring 2023 long/center lines with PK Contracting, Inc. for \$12,697.00 annually to June 1, 2025; and further to fund both contracts from account 202.0-316.000-937.0200. In addition, to authorize the Mayor and City Clerk to sign the agreements on behalf of the City.
- G. Resolution to approve the 5 Year METRO Act Permit Extension of Michigan Bell Telephone Company d/b/a AT&T Michigan, and to authorize the Mayor to sign the Extension Form on behalf of the City.

**VI. UNFINISHED BUSINESS**

- A. Resolution to declare the intent of the City Commission in regards to two-stroke, gas powered leaf blowers and to set goals in regards to the phasing out of such.

**VII. NEW BUSINESS**

- A. Resolution to accept the Trail Improvement Concept Plan  
AND,  
To direct staff to move forward with the preparation of a Request for Proposal to prepare construction drawings for the Booth Park Section of the Trail Improvements Concept Plan.
- B. Commission Items for Future Discussion. A motion is required to bring up the item for future discussion at the next reasonable agenda, no discussion on the topic will happen tonight.
- C. Commission discussion on items from a prior meeting.
  - 1. ROW Plantings/Biodiversity – Haig
- D. Resolution to meet in closed session to discuss pending litigation pursuant to MCL § 15.268 Sec. 8(e) of the Open Meetings Act regarding John Reinhart, et al v City of Birmingham; U.S. District Court Case No.: 2:22-cv-11074-MAG-DRG, and The New 555 Commercial, LLC, The New 555 Residential, LLC, Manorwood Properties, LLC and Associates of 555, LP v City of Birmingham, State of Michigan Department of Licensing & Regulatory Affairs, Michigan Administrative Hearing System, Michigan Tax Tribunal Docket No.: 22-000772-TT, Property Nos.: 08-19-36-210-001, 08-19-36-210-003, and 08-19-36-210-005, which was appealed to the Michigan Court of Appeals bearing Docket 364563, and currently appealed to the Michigan Supreme Court bearing Docket No.: 165973.

**(A roll call vote is required and the vote must be approved by a 2/3 majority of the commission. The commission will adjourn to closed session after all other business has been addressed in open session and reconvene to open session, after the closed session, for purposes of taking formal action resulting from the closed session and for purposes of adjourning the meeting.)**

**VIII. REMOVED FROM CONSENT AGENDA**

**IX. COMMUNICATIONS**

- A. Letter regarding the YMCA Pool from Catherine Stoll

**X. REPORTS**

- A. Commissioner Reports
  - 1. Notice of Intention to appoint to the Board of Zoning Appeals
  - 2. Notice of Intention to appoint tot the Birmingham Shopping District Board
- B. Commissioner Comments
- C. Advisory Boards, Committees, Commissions' Reports and Agendas
  - 1. 2022-2023 Greenwood Cemetery Advisory Board Annual Report
- D. Legislation
- E. City Staff
  - 1. Local Regulation of Short-Term Rentals – Mary M. Kucharek

INFORMATION ONLY

**XI. ADJOURN**

Should you wish to participate in this meeting, you are invited to attend the meeting in person or virtually through ZOOM: <https://zoom.us/j/655079760> Meeting ID: 655 079 760  
You may also present your written statement to the City Commission, City of Birmingham, 151 Martin Street, P.O. Box 3001, Birmingham, Michigan 48012-3001 prior to the hearing.

*NOTICE: Individuals requiring accommodations, such as mobility, visual, hearing, interpreter or other assistance, for effective participation in this meeting should contact the City Clerk's Office at (248) 530-1880 (voice), or (248) 644-5115 (TDD) at least one day in advance to request mobility, visual, hearing or other assistance.  
Las personas que requieren alojamiento, tales como servicios de interpretación, la participación efectiva en esta reunión deben ponerse en contacto con la Oficina del Secretario Municipal al (248) 530-1880 por lo menos el día antes de la reunión pública. (Title VI of the Civil Rights Act of 1964).*



# PROCLAMATION

## National Recovery Month - September 2023

- WHEREAS,** According to the Substance Abuse and Mental Health Services Administration (SAMHSA), in 2021, 16.5 percent of Americans (or 46.3 million people) 12 years or older, were classified as having a substance use disorder in the past year, including 29.5 million people who were classified as having an alcohol use disorder and 24 million people who were classified as having a drug use disorder; and
- WHEREAS,** According to the Centers for Disease Control and Prevention (CDC) over 105,000 overdose deaths occurred in the United States in 2022, a 2% decrease from 2021; and
- WHEREAS,** Substance use recovery is important for individual well-being and vitality, as well as for families, friends, communities, and businesses; and
- WHEREAS,** Oakland Community Health Network (OCHN) continues to educate and raise awareness of the risks and potential harm associated with prescription drug misuse; and
- WHEREAS,** Stigma and stereotypes associated with substance use disorders often keep people from seeking treatment that could improve their quality of life; and
- WHEREAS,** Substance use disorders occur when the re-current use of alcohol and/or other drugs cause clinically or functionally significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home; and
- WHEREAS,** Substance use disorder recovery is a journey of healing and transformation, enabling people to live in a community of their choice while striving to achieve their full potential; and
- WHEREAS,** Substance use disorder recovery benefits individuals with substance use disorders by focusing on their abilities to live, work, learn, and fully participate and contribute to society and enriches community culture; and
- THEREFORE,  
BE IT RESOLVED** That I, Therese Longe, Mayor of the City of Birmingham, on behalf of the citizens of Birmingham, do hereby recognize September 2023 as National Recovery Month.

*On Behalf of the City of Birmingham and the residents of Birmingham this 11<sup>th</sup> day of September, 2023.*

Therese Longe, Mayor



## PROCLAMATION

### National Suicide Prevention Month - September 2023

- WHEREAS,** September is known as National Suicide Prevention Month and is intended to help raise awareness surrounding suicide prevention resources available in the community; and
- WHEREAS,** World Suicide Prevention Day is observed each year on September 10th; and
- WHEREAS,** Suicidal thoughts can affect anyone regardless of age, gender, race, orientation, income level, religion, or background; and
- WHEREAS,** According to the Centers for Disease Control and Prevention (CDC), each year more than 48,000 people die by suicide; and
- WHEREAS,** Suicide is the second leading cause of death for people 10 to 34 years of age, the fourth leading cause among people 35 to 54 years of age, and the eighth leading cause among people 55 to 64 years of age; and
- WHEREAS,** Organizations like the National Alliance on Mental Illness (NAMI) and National Suicide Prevention Lifeline, 988, work to help individuals in crisis and provide resources to shed light on this highly stigmatized topic; and
- WHEREAS,** Every member of our community should understand that throughout life's struggles we all need the occasional reminder that we are all silently fighting our own battles; and
- WHEREAS,** The City of Birmingham supports Oakland Community Health Network's commitment to being a Zero Suicide organization and cultivate a network of providers who are engaged in the Zero Suicide philosophy; and
- THEREFORE,  
BE IT RESOLVED** that I, Therese Longe, Mayor of the City of Birmingham, on behalf of the citizens of Birmingham, do hereby recognize September 2023 as National Suicide Prevention Month.

*On Behalf of the City of Birmingham and the  
residents of Birmingham this 11<sup>th</sup> day of September 2023.*

Therese Longe, Mayor



## **MEMORANDUM**

Police Department

**DATE:** September 5, 2023

**TO:** Jana L. Ecker, City Manager

**FROM:** Ryan J. Kearney, Operations Captain

**APPROVED BY:** Scott A. Grewe, Chief of Police

**SUBJECT:** Recognition of employment

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### INTRODUCTION:

We are excited to welcome our newest police employees to Birmingham. Their arrival marks the culmination of extensive recruitment efforts, where we sought dedicated individuals committed to upholding the highest standards of professionalism, integrity, and community service. As they embark on their journey with us, we are confident they will make meaningful contributions to our mission of ensuring safety and security for our community.

The Birmingham Police Department is proud to announce the newest members of our agency:

1. Chyna Harmon - Part-Time Dispatcher, hired on July 31, 2023
2. Ashley Martin - Part-Time Parking Enforcement Assistant, hired on July 31, 2023
3. Cameron Lease - Police Officer, hired on August 14, 2023
4. Matthew Walker – Police Officer, hired on September 5, 2023
5. Robert Van Acker - Auxiliary Police Officer, hired on April 15, 2023

**Birmingham City Commission Minutes**  
**August 28, 2023**  
**Municipal Building, 151 Martin**  
**7:30 p.m.**  
Vimeo Link: <https://vimeo.com/858765340>

**I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

Therese Longe, Mayor, opened the meeting with the Pledge of Allegiance.

**II. ROLL CALL**

City Clerk Bingham called the roll.

Present: Mayor Longe  
Mayor Pro Tem McLain  
Commissioner Haig  
Commissioner Host  
Commissioner Schafer

Absent: Commissioner Baller  
Commissioner Boutros

Staff: City Manager Ecker; City Clerk Bingham, Planning Director Dupuis, Assistant City Manager Fairbairn, City Attorney Kucharek

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

**Announcements**

- The City Commission proudly declares August as Civility Month. Our City government stresses the importance of respectful dialogue and behavior in our community. To recognize Civility Month, we shall aim to create a place of understanding, empathy, and clear communication. Encouraging civility strengthens the bond between citizens and government, making our City more welcoming and inclusive.

**Appointments**

**08-196-23 Ad Hoc Aging in Place**

Jay Reynolds was interviewed by the Commission.

**MOTION:** Nomination by Commissioner Host:  
To appoint Jay Reynolds to the Ad Hoc Aging in Place Committee as a regular member who is a senior resident and Birmingham voter to serve an 18-month term to expire January 31, 2025.

VOICE VOTE: Ayes, Commissioner Host

Commissioner Haig

Nays, MPT McLain  
Mayor Longe  
Commissioner Schafer

**08-197-23 Ad Hoc Aging in Place**

Pam DeWeese was interviewed by the Commission.

**MOTION:** Nomination by MPT McLain:  
To appoint Pam DeWeese to the Ad Hoc Aging in Place Committee as a regular member who is a senior resident and Birmingham voter to serve an 18-month term to expire January 31, 2025.

VOICE VOTE: Ayes, MPT McLain  
Mayor Longe  
Commissioner Schafer

Nays, Commissioner Host  
Commissioner Haig

**08-198-23 Advisory Parking Committee**

Mary-Claire Petcoff was unavailable for an interview. The Mayor noted this would be a reappointment.

**MOTION:** Nomination by Commissioner Haig:  
To appoint Mary-Claire Petcoff to the Advisory Parking Committee as an alternate member who is a resident to serve a three-year term to expire September 4, 2026.

VOICE VOTE: Ayes, MPT McLain  
Commissioner Host  
Mayor Longe  
Commissioner Haig  
Commissioner Schafer

Nays, None

The Clerk swore in Ms. DeWeese.

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

Nicole Stone made a comment about the non-motorized pathway project and the impact on her home.

**V. CONSENT AGENDA**

**08-199-23 Consent Agenda**



The following items were pulled from the Consent Agenda:

MPT McLain, Staff, Public:

Item A – City Commission Minutes of August 14, 2023

MPT McLain:

Item C – Warrant List – August 23, 2023

Item D – Election Commission Designation of Representatives –  
Public Accuracy Tests for the November 7, 2023 Election

Item F – ExteNet Systems, LLC Metropolitan Extension

Telecommunications Rights-of-Way Oversight (METRO) Act Permit  
Application

**MOTION:**

Motion by Commissioner Haig, seconded by Commissioner Host:

To approve the Consent Agenda minus Items A, C, D, and F.

**ROLL CALL VOTE:**

Ayes, MPT McLain  
Commissioner Host  
Mayor Longe  
Commissioner Haig  
Commissioner Schafer

Nays, None

- B. Resolution to approve the warrant list, including Automated Clearing House payments, dated August 16, 2023, in the amount of \$2,818,117.02.
- E. Resolution to claim an exemption from the Publicly-funded Health Insurance Contribution Act 2011 PA 152. Further, to direct the City Engineer and Finance Director to sign the Annual Certification of Employee-related Conditions for the year 2023 and submit the required form to the Michigan Department of Transportation as required by Public Act 51.
- G. Resolution approving a two-year contract between the City and Oakland County for assessing services for the period of July 1, 2023 through June 30, 2025 and to authorize the Mayor and the City Clerk to sign the agreement on behalf of the City.
- H. Resolution approving the Addendum to the contract to RAM Construction, Inc. for the proposed 2023 North Old Woodward Parking Structure Repair Project in the amount of \$44,876.000; further, to charge the contract to the structures capital outlay (514.1-594.005-977.0000) account as costs are incurred. Furthermore, to authorize the Mayor and City Clerk to sign the contract on behalf of the City.

**08-200-23 City Commission Minutes of August 14, 2023 (Item A)**

It was noted that the minutes required a spelling correction.

Public Comment

David Bloom made a comment regarding detail in the minutes.

**MOTION:** Motion by MPT McLain, seconded by Commissioner Host:  
To approve the City Commission meeting minutes of August 14, 2023 as amended.

VOICE VOTE: Ayes, Commissioner Host  
Mayor Longe  
Commissioner Haig  
Commissioner Schafer  
MPT McLain

Nays, None

**08-201-23 Warrant List – August 23, 2023 (Item C)**

MPT McLain noted for the public that two payments were made to the 48th District Court as part of this warrant list.

**MOTION:** Motion by MPT McLain, seconded by Commissioner Host:  
To approve the warrant list, including Automated Clearing House payments, dated August 23, 2023, in the amount of \$13,793,838.49.

ROLL CALL VOTE: Ayes, Commissioner Host  
Mayor Longe  
Commissioner Haig  
Commissioner Schafer  
MPT McLain

Nays, None

**08-202-23 Election Commission Designation of Representatives – Public Accuracy Tests for the November 7, 2023 Election (Item D)**

In reply to MPT McLain, CC Bingham summarized the item. She noted that the Public Accuracy Test for the November 7, 2023 General Election is scheduled for Tuesday, October 3, 2023 at 1:00 p.m. in room 205 of the Birmingham Municipal Building, 151 Martin, Birmingham.

**MOTION:** Motion by MPT McLain, seconded by Commissioner Haig:  
To designate Finance Director Mark Gerber, Assistant Finance Director Kim Wickenheiser, DPS Director Scott Zielinski, Building Official Bruce Johnson, Assistant Building Official Mike Morad, Museum Director Leslie Pielack, and Police Commander Ryan Kearney as proxy representatives of Election Commissioners Mayor Therese Longe, Mayor Pro Tem Elaine McLain, Commissioner Clinton Baller, Commissioner Brad Host, Commissioner Andrew Haig, Commissioner Pierre Boutros, and Commissioner Katie Shafer, to conduct the Public Accuracy Tests of the electronic tabulating equipment which will be used to count votes at Birmingham precincts during the November 7, 2023 election.

VOICE VOTE: Ayes, Commissioner Host  
Mayor Longe  
Commissioner Haig

Commissioner Schafer  
MPT McLain

Nays, None

**08-203-23 ExteNet Systems, LLC Metropolitan Extension Telecommunications Rights-of-Way Oversight (METRO) Act Permit Application (Item F)**

MPT McLain summarized the item for the public. She noted any residents concerned about their internet or cell service speeds could contact their provider and/or the Birmingham Area Cable Board. She encouraged residents to be aware of public rights of way in terms of potential future state legislation.

**MOTION:** Motion by MPT McLain, seconded by Commissioner Schafer:  
To approve the METRO Act Application of ExteNet Systems, LLC and the METRO Act Permit for the project locations shown on the exhibit. In addition, to authorize the Mayor and City Clerk to sign the Bilateral Form on behalf of the City.

ROLL CALL VOTE: Ayes, Commissioner Host  
Mayor Longe  
Commissioner Haig  
Commissioner Schafer  
MPT McLain

Nays, None

**VI. UNFINISHED BUSINESS**

**08-204-23 Principles of Conduct**

ACM Fairbairn and CM Ecker presented the item. CA Kucharek answered questions about the item.

Commission discussion was as follows:

- The one-pager prepared by ACM Fairbairn accurately reflected the Commission's prior request;
- Under Respectful Communication, business owners could be added to the list of 'Commissioners, residents, and staff'. 'All' or 'each person' could also be used to convey similar meaning;
- Under Respectful Communication, 'equally and' could be added before 'with respect';
- Under Respectful Communication, 'or accusatory statements' could be added after 'personal attacks';
- The Principles could be useful for everyone in the City to sign on to;
- Alternatively, the Principles may not be appropriate for non-Commissioners to sign on to since the language was specific to Commissioners; and,
- Once the Principles were determined, they should be posted on the Commission room door.

Commission consensus was that under Respectful Communication, 'Commissioners, residents, and staff' should be changed to 'all', and that after 'personal attacks' 'and accusatory statements' should be added.

**MOTION:** Motion by Commissioner Haig, no second:  
To adopt the City Commission Principles of Conduct with the two verbiage modifications for Item Number Two as noted by the Mayor.

Commissioner Host thanked ACM Fairbairn for her work.

Commissioner Haig said that 'We shall promote healthy discourse and avoid spreading false information or making personal attacks' should be considered applicable for as long as a Commissioner serves as an elected official. He said he did not consider it an infringement of the First Amendment, and rather saw it as a responsibility every Commissioner assumes in becoming an elected official.

MPT McLain agreed strongly. She said that being a Commissioner is a calling, and that truth is the defense. She thanked ACM Fairbairn for her work on the item.

Public Comment

Mr. Bloom made a comment complementing the work of city staff and then critiqued the fact that the Principles of Conduct only applied in City Commission meetings and he didn't like the prohibition on spreading false information as, "one person's false information can be another person's truth."

CA Kucharek and CM Ecker provided a brief reply to Mr. Bloom's comment.

ROLL CALL VOTE: Ayes, Commissioner Host  
Mayor Longe  
Commissioner Haig  
Commissioner Schafer  
MPT McLain

Nays, None

**VII. NEW BUSINESS**

**08-205-23 Public Hearing for 245 S. Eton – Big Rock Italian Chophouse – Special Land Use Permit, Final Site Plan & Design Review**

The Mayor opened the public hearing at 8:18 p.m.

PD Dupuis presented the item. Mark Knauer spoke on behalf of the project.

Seeing no public comment, the Mayor closed the public hearing at 8:22 p.m.

Staff answered informational questions from the Commission.

Commission discussion was as follows:

- The applicant’s and City’s negotiations regarding the easement benefitted both parties and should be considered exemplary for future negotiations between the City and private parties; and,
- The applicant should be commended for their commitment to historic preservation.

**MOTION:** Motion by MPT McLain, Commissioner Schafer:  
To approve the Special Land Use Permit, Final Site Plan and Design Review application for 245 S. Eton – Big Rock Italian Chophouse.

MPT McLain thanked the applicants.

VOICE VOTE: Ayes, Commissioner Host  
Mayor Longe  
Commissioner Haig  
Commissioner Schafer  
MPT McLain

Nays, None

**08-206-23 Budgeting Software**

FD Gerber presented the item and answered informational questions from the Commission.

Two Commissioners stated their support for the item.

**MOTION:** Motion by Commissioner Haig, Commissioner Host:  
To approve the Master Services Agreement with OpenGov in the amount of \$78,997, charging this cost to account number 101.0-191.000-901.0000, authorizing the Mayor and the City Clerk to sign the master services agreement on behalf of the City, and authorizing the Finance Director to sign the order form. Furthermore, to amend the General Fund appropriations and budget as follows:

Revenues:		
Appropriation from Fund Balance	101.0-000.000-400.0000	\$39,000
Expenditures:		
General Government-Finance	101.0-191.000-901.0000	\$39,000

VOICE VOTE: Ayes, Commissioner Host  
Mayor Longe  
Commissioner Haig  
Commissioner Schafer  
MPT McLain

Nays, None

**Commission Items for Future Discussion**

**08-207-23 Stormwater Presentation**

**MOTION:** Motion by MPT McLain, Commissioner Host:  
To have a presentation or workshop on how the City handles stormwater in the City and up and down the Woodward corridor.

VOICE VOTE: Ayes, Commissioner Host  
Mayor Longe  
Commissioner Haig  
Commissioner Schafer  
MPT McLain

Nays, None

The Mayor provided information on City services being offered in the aftermath of the recent storms.

**Ad Hoc Aging in Place Alternate**

MPT McLain asked that adding an alternate to the Ad Hoc Aging in Place Committee be brought as a future item for consideration.

In reply to the Mayor, CM Ecker confirmed that was sufficient direction.

**08-208-23 Pollinator Gardens**

**MOTION:** Motion by Commissioner Haig, Commissioner Host:  
To, as soon as possible, discuss changing any median areas and City green spaces that are not used as actual park areas into things like pollinator gardens using native Michigan perennials and wildflowers.

Commissioner Haig noted that having the discussion in the near future might allow for some of the changes in planting to be implemented in the fall.

VOICE VOTE: Ayes, Commissioner Host  
Mayor Longe  
Commissioner Haig  
Commissioner Schafer  
MPT McLain

Nays, None

Commissioner Schafer recommended that other potential locations be studied as part of the discussion. Commissioner Haig concurred.

MPT McLain noted that the plantings would need to remain low enough that those in sedans would be able to maintain lines of sight.

## Short Term Rentals

In reply to Commissioner Host, CA Kucharek confirmed she was working on a follow-up report based on prior Commission direction regarding short term rentals.

MPT McLain said she would pass along any updates on short term rentals provided by the MML.

## Commission Discussion On Items From A Prior Meeting

None

### VIII. REMOVED FROM CONSENT AGENDA

### IX. COMMUNICATIONS

- A. Email from Maureen Bell Field regarding the YMCA Pool

### X. REPORTS

- A. Commissioner Reports
- B. Commissioner Comments

Commissioner Haig commended the BSD, Police, Fire and additional City staff for their work on the 2023 Dream Cruise.

MPT McLain reported that Birmingham USPS flooded and was still able to deliver all mail. She said the Post Office plans on addressing the roof of the building going forward.

- C. Advisory Boards, Committees, Commissions' Reports and Agendas
- D. Legislation
- E. City Staff
  - 1. City Manager's Report

Commissioner Haig asked when upgrades to City Hall would be discussed again.

MPT McLain thanked the City administration for the work on W. Brown. She asked about the Wesley Stamps memorial sign being replaced.

CM Ecker replied to both inquiries.

INFORMATION ONLY

### XI. ADJOURN

Mayor Longe adjourned the meeting at 9:18 p.m.



Alexandria Bingham, City Clerk

Laura Eichenhorn, City Transcriptionist

DRAFT



## **Impact of the Cranbrook and Lincoln Non-Motorized Pathway Improvements to Polo Place Homes**

**Background:** Polo Place is a small street located off of Cranbrook near Seaholm with 4 homes. The homes were built in the 1980's. All homes ~10 feet below the street level. All homes have yards with ~1/2 acre of land. These yards are composed of tree filled forest rather than grass.

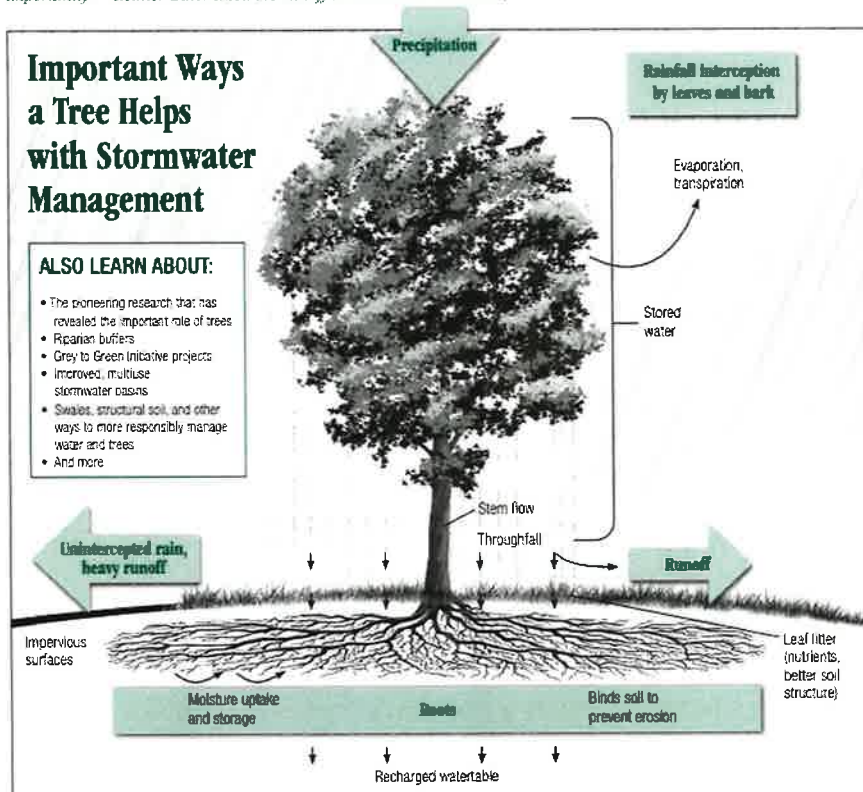
**Late Feb:** Requests are made by David Wisz (2446 Polo Place) to meet with Melissa A. Coatta, P.E. regarding the tree removal plan for the pathway. Melissa offers to meet with the residents on Polo Place AFTER multiple large, leafed trees were removed along Cranbrook are removed. See email exchange below. Note that leafed trees are critical to the control of water runoff and prevention of ground saturation. Their leaf canopies help reduce erosion caused by falling rain. They also provide surface area where rainwater lands and evaporates. Roots take up water and help create conditions in the soil that promote infiltration.

*Trees in our communities provide many services beyond the inherent beauty they lend to streets and properties. One of the most overlooked and underappreciated is their ability to reduce the volume of water rushing through gutters and pipes following a storm. This means less investment in expensive infrastructure and — importantly — cleaner water when the runoff reaches rivers and lakes.*

## Important Ways a Tree Helps with Stormwater Management

### ALSO LEARN ABOUT:

- The pioneering research that has revealed the important role of trees
- Riparian buffers
- Grey to Green Initiative projects
- Improved, multi-use stormwater basins
- Swales, structural soil, and other ways to more responsibly manage water and trees
- And more



Trees help reduce stormwater runoff in several ways. One is to intercept falling rain and hold a portion of it on the leaves and bark. Part of this intercepted water will evaporate and part will be gradually released into the soil below. At the surface of the soil, fallen tree leaves help form a spongy layer that moderates soil temperature, helps retain soil moisture, and harbors organisms that break down organic matter and recycle elements for use in plant growth. This important layer also allows rainwater to percolate into the soil rather than rushing off carrying with it oil, metal particles, and other pollutants. Below ground, roots hold the soil in place and absorb water that will eventually be released into the atmosphere by transpiration.

**July/Early Aug:** More large, leafed trees were removed along Lincoln to make way for the pathway.

**Aug 11th:** U Construction lays down sand base for concrete pathway.

**Aug 12th:** Rain falls in the evening.

**Aug 13th:** In multiple areas where sand was laid for the pathway, the sand caved in creating streams of sand and water into my backyard.

Stakes labeled "silt fence" have no such fence in place. There was so much sand that it pressed up against and bent my wooden fence. Previously, no dirt was against my fence.



Sand, up to 4 inches in some areas, is in multiple parts of my backyard, and there is sandy standing water in my back and front yard. Multiple plants covered. The sand is visible on my house.



**Aug 21st: My neighbor, David Wisz, emails city to notify them that there is sand in my backyard.**

dwisz@wiszgroup.com

Mon, Aug 21, 9:20 AM (6 days ago) ☆ ↶ ⋮

to Scott, Mkucharek@bhlaw.us.com, cborton@bhamgov.org, Kameron, Melissa, Brian, me ▾

Dear Sirs:

I would like to note that since the removal of the vegetation and trees along Cranbrook rd. there has been a significant amount of stagnant water collecting at polo place and Cranbrook. I have never had an issue with water in the basement before and if I experience such now it will be a direct result of this project. I would note that my neighbor along Lincoln Nicole Stone, has also now had "sand slides" onto her property that seems to have effected her fence.

Please advise what measures are being taken to avoid these new water issues.

Best Regards,

David L. Wisz  
WiszGroup PC  
2466 Polo Place  
Birmingham MI 48009  
dwisz@WiszGroup.com  
248.561.9910

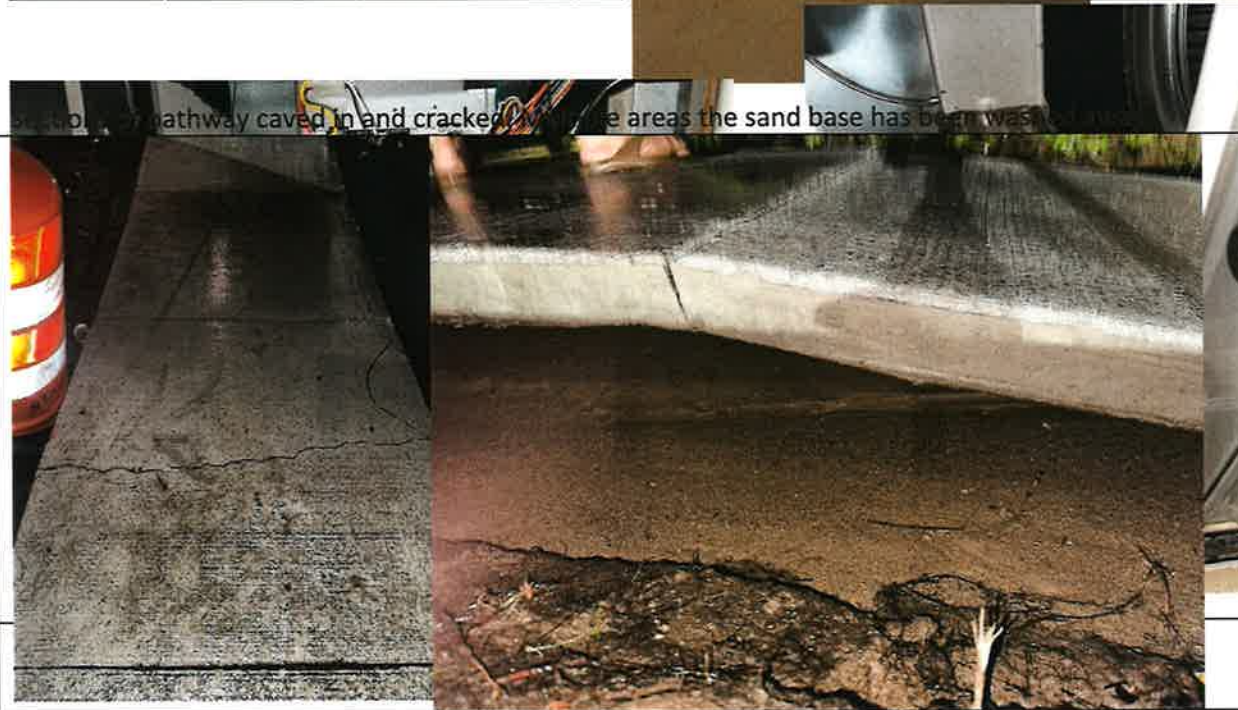
**Aug 22nd:** I still have sandy standing water in my backyard. This has not occurred in the previous years that I have lived here.

**Aug 23rd:** I observed a temporary silt fence constructed at the foot of my fence. No other attempts to prevent sand from moving out of place were seen. Silt fence has prevented some sand from touching my fence. This is evidence that even small rains will cause the sand base to erode. The fence is bending more. The cement is poured. Standing water remains in my backyard.



**Aug 24th at night:** After it has been raining for a while, I hear rushing water in the basement. I observe water coming into my home from the wall around my basement egress window, then the window shatters with me and my boyfriend and I about 15 feet away. We leave the room as quickly as possible, but the door slams extremely hard on my boyfriend's arm as we exit due to the rush of water. After the rain stops, approximately 1 hour after the window is pushed out, the dug in drainage system and sump is able to pump the water out of the basement and a layer of muck and debris is left. Flooding occurs in front yard due to debris clogging storm drain and already saturated ground.



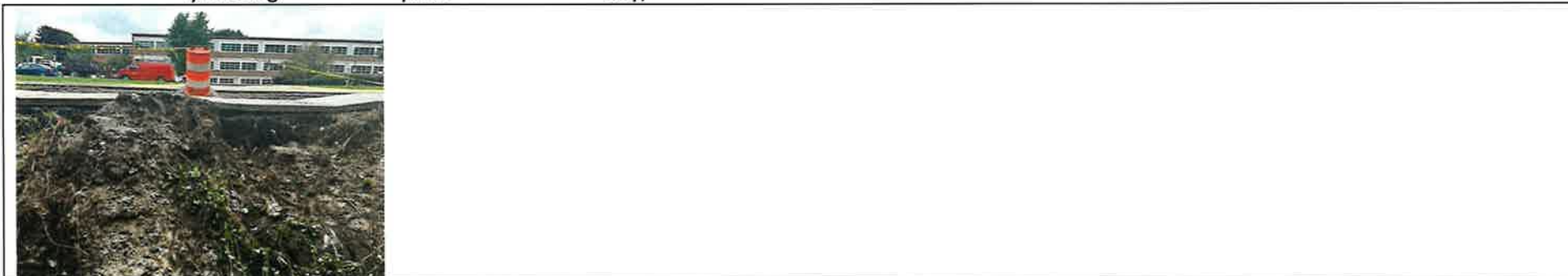


**Aug 25<sup>th</sup>:** In the morning I see that a large fence post was broken out of the ground, and panels of the fence are on the ground which is concerning since I have a large dog, my basement is covered in debris and broken glass, and from the water line in the basement I can see that there has been about 20 inches of water in my basement. My deciduous forest backyard now looks like a dirty beach. I contacted a company to mitigate my water damage.





Sand base is visibly missing from under path. Later on in the day, 66 feet of concrete is removed.



**Aug 26<sup>th</sup>:** Sand is removed from my backyard by contractor who is working the city pathway project. A fence panel was removed and two trees were cut down to make way for the steam shovel. Two steam shovel buckets of sand removed, and two temporary silt fences set up. Spoke to Kameron Dimitry, Birmingham City Inspector, that the plan is to add more sand and repour concrete so that the pathway can be complete and ready for the public to use. Other than the temporary silt fences, no other supports will be used to stabilize the sand underneath the cement slab. Sand missing under remaining slabs of cement. Noted that storm drain adjacent to my backyard, in area of removed concrete is clogged with sand.

(313) 864-7790 Detroit  
 (248) 882-3440 222nd  
 (248) 882-8448 Fax

Nickle Stone  
 2414 Mt Hope  
 Birmingham

Half of today's fee will go  
 towards final bill  
 Please collect when calling to schedule

Service Charge Reschedule 277 50  
 ASHP  
 likely using cobb equipment  
 and micro jet to clean  
 perimeter drain from  
 cleanout access to sump  
 pit. And make sure sump  
 pit is free of debris  
 and pumping working  
 properly. Basement is  
 very muddy. Could be  
 most, if not all day

RECEIVED BY: Jim  
 HELPER:

TOTAL LABOR 277 50  
 8/26/23 TOTAL 277 50





**Concerns:**

What has this done to the market value of my home? I am extremely worried as to what this project has done to my property, and the safety of my basement. Health hazard. Marked increase in the number of mosquitos. This is not only a nuisance but also a concern for health for my street and the other homes in the area. Eastern Equine Encephalitis (EEE). In 2020, there were four human cases of EEE, two of which were fatal. In 2019, Michigan had 10 cases of EEE, six of which were fatal.

<https://www.michigan.gov/mdhhs/inside-mdhhs/newsroom/2023/07/03/eee-bay>

Health & Human Services

July 03, 2023

Michiganders should take precautions to prevent mosquito bites

-----LANSING, Mich. – Michiganders are urged to take precautions against mosquito bites as mosquitos recently collected in Bay County have tested positive for Eastern Equine Encephalitis (EEE) at the Michigan Department of Health and Human Services (MDHHS) Bureau of Laboratories.

Although no cases have been diagnosed in people or animals, it is important to know they can be infected with EEE from one bite of a mosquito carrying the virus. Anyone can become ill with EEE. People under age 15 and over age 50 are at greatest risk of severe disease following an EEE infection.

“This testing information confirms the virus is here in mosquitos in Michigan,” said Dr. Natasha Bagdasarian, MDHHS chief medical executive. “EEE is one of the most dangerous mosquito-borne diseases in the United States, with a 33% fatality rate in people who become ill.”

Thanks,  
Nicole

**City of Birmingham**  
**Warrant List Dated 08/31/2023**

Meeting of 09/11/2023

Check Number	Early Release	Vendor #	Vendor	Amount
<u>PAPER CHECK</u>				
293872	*	005430	21ST CENTURY MEDIA- MICHIGAN	802.20
293873	*	006965	7UP DETROIT	184.20
293874		009725	ALL TRAFFIC SOLUTIONS, INC.	7,842.00
293875	*	009589	ALL AMERICAN VENTILATION	605.00
293876	*	000500	ARTECH PRINTING INC	43.00
293877	*	006759	AT&T	3,122.81
293878		006759	AT&T	362.96
293879	*	003703	AT&T MOBILITY	837.80
293880		BDREFUND	BARAN BUILDING COMPANY INC	100.00
293881		009568	BEDROCK EXPRESS LTD	7,974.52
293882		003526	BOUND TREE MEDICAL, LLC	550.95
293883		BDREFUND	C & L WARD BROS CO	200.00
293884		003907	CADILLAC ASPHALT, LLC	645.99
293885	*	009078	CANON SOLUTIONS AMERICA INC	45.16
293886	*	003904	CAPITAL ONE BANK	4,649.51
293887		BDREFUND	CEDAR PRESERVATION SYSTEMS LLC	500.00
293888		000902	CENGAGE LEARNING INC	88.77
293889		008006	CLEAR RATE COMMUNICATIONS, INC	1,646.12
293890	*	000627	CONSUMERS ENERGY	722.24
293891		MISC	CONTROLLED FORCE PROFESSIONAL	1,340.00
293892		BDREFUND	COUNTRYSIDE CONSTRUCTION COMPANY, I	200.00
293893		009309	DEALER AUTO PARTS	170.47
293894		000575	DEMCO, INC	94.40
293895	*	000179	DTE ENERGY	8,534.61
293896	*	000179	DTE ENERGY	21.83
293897	*	000179	DTE ENERGY	914.39
293898	*	000179	DTE ENERGY	21.32
293899	*	000179	DTE ENERGY	22.65
293900	*	000179	DTE ENERGY	474.00
293901		000179	DTE ENERGY	23.79
293902	*	000179	DTE ENERGY	2,267.43
293903	*	000179	DTE ENERGY	110.22
293904	*	000179	DTE ENERGY	402.86
293905	*	000179	DTE ENERGY	9,696.98
293906	*	000179	DTE ENERGY	1,591.19
293907	*	000179	DTE ENERGY	3,883.52
293908	*	000179	DTE ENERGY	2,170.41
293909	*	000179	DTE ENERGY	15.49
293910	*	000179	DTE ENERGY	1,183.48
293911	*	000179	DTE ENERGY	36.32
293912	*	000179	DTE ENERGY	16.23
293913	*	000179	DTE ENERGY	16.96

**City of Birmingham**  
**Warrant List Dated 08/31/2023**

Meeting of 09/11/2023

Check Number	Early Release	Vendor #	Vendor	Amount
293914	*	000179	DTE ENERGY	362.39
293915	*	005446	ETHNIC ARTWORK, INC	261.00
293916		007415	EZ GOLF CART CO. INC	8,556.41
293917		001489	FEDERAL PIPE & SUPPLY CO., INC	843.00
293918		004514	FEDEX OFFICE	14.40
293919		BDREFUND	FOUNDATION SYSTEMS OF MICHIGAN INC.	100.00
293920	*	004604	GORDON FOOD	1,642.10
293921		009275	GREAT LAKES COCA-COLA DISTRIBUTION	425.59
293922		000249	GUARDIAN ALARM	279.60
293923		001531	GUNNERS METER & PARTS INC	6,290.00
293924	*	001956	HOME DEPOT CREDIT SERVICES	1,053.60
293925		BDREFUND	HOME DEPOT USA INC	500.00
293926		BDREFUND	Jesus Lopez	100.00
293927		BDREFUND	K.D. CEMENT LLC	100.00
293928		005291	KAESER & BLAIR INC	371.26
293929		004088	KGM DISTRIBUTORS INC	422.00
293929	*	004088	KGM DISTRIBUTORS INC	447.00
293930		BDREFUND	KOSYAKIN, ANDRIY	100.00
293931	*	000362	KROGER COMPANY	250.85
293932		008553	L.G.K. BUILDING, INC	55,300.00
293933		004317	LEXISNEXIS	100.00
293934		009375	LITHIA MOTORS, INC SUPPORT SERVICES	94.50
293935		008207	METAL MART U.S.A.	183.86
293936		008160	MPARKS	1,150.00
293937		008250	OAKLAND COUNTY TACTICAL	500.00
293938	*	009478	ODP BUSINESS SOLUTIONS, LLC	104.03
293939	*	MISC	PAMELA STOLER	43.00
293940		BDREFUND	PAUL CAPPUSO	1,000.00
293941		009612	PLAYAWAY PRODUCTS LLC	159.90
293942		003629	PREMIUM AIR SYSTEMS INC	529.50
293943		004137	R & R FIRE TRUCK REPAIR INC	15,576.00
293944		002566	REYNOLDS WATER	88.60
293945		000218	ROYAL OAK P.D.Q. LLC	76.00
293946	*	002806	SAM'S CLUB/SYNCHRONY BANK	217.50
293947		007907	SP+ CORPORATION	11,030.00
293948		000260	SPARTAN DISTRIBUTORS INC	55.87
293949	*	001005	STATE OF MICHIGAN	140.00
293950		004544	STRYKER SALES CORPORATION	14,118.03
293951		BDREFUND	TALL TIMBER TRAIL BULDING LLC	10,000.00
293952		007695	TEAM GOLF	105.71
293953		008145	TOWN SQUARE PUBLICATIONS	2,295.00
293954		009552	TRAFFIC & SAFETY CONTROL SYSTEMS	2,750.00
293955		004379	TURNER SANITATION, INC	150.00

**City of Birmingham**  
**Warrant List Dated 08/31/2023**

Meeting of 09/11/2023

Check Number	Early Release	Vendor #	Vendor	Amount
293955	*	004379	TURNER SANITATION, INC	85.00
293956	*	001279	US FIGURE SKATING ASSOC.	350.00
293957		007226	VALLEY CITY LINEN, INC	60.00
293958	*	000293	VAN DYKE GAS CO.	146.00
293959	*	000158	VERIZON WIRELESS	847.92
293960	*	004497	WATERFORD REGIONAL FIRE DEPT.	165.26
293961	*	008391	XEROX CORPORATION	38.93
293962	*	009727	LAFONTAINE CHRYSLER	40,930.00
SUBTOTAL PAPER CHECK				\$244,641.59

ACH TRANSACTION

8928		007622	ALLSTAR PRO GOLF	950.37
8929	*	000518	BELL EQUIPMENT COMPANY	1,195.00
8930		009183	BOB ADAMS TOWING	140.00
8931	*	008983	BRENNA SANDLES	541.75
8932	*	009122	CLAIRE CHUNG	184.00
8933		002668	CONTRACTORS CLOTHING CO	106.97
8934		009181	DELTA TEMP SERVICES INC	1,283.17
8935	*	007359	DETROIT CHEMICAL & PAPER SUPPLY	168.95
8936	*	007538	EGANIX, INC.	720.00
8937	*	000995	EQUATURE	1,400.30
8938	*	006689	F.D.M. CONTRACTING INC.	240,804.90
8939	*	000243	GRAINGER	896.50
8940	*	001672	HAYES PRECISION INC	165.00
8941		000261	J.H. HART URBAN FORESTRY	28,441.50
8942		009298	JCR SUPPLY INC	287.97
8943	*	003458	JOE'S AUTO PARTS, INC.	1,619.82
8944		004085	KONE INC	538.87
8945		005550	LEE & ASSOCIATES CO., INC.	957.50
8946	*	007977	KAREN LINGENFELTER	126.00
8947		002013	MIDWEST TAPE	1,150.05
8948	*	001035	MUNICIPAL EMERGENCY SERVICES INC	464.65
8949	*	001194	NELSON BROTHERS SEWER	2,648.00
8950		007755	NETWORK SERVICES COMPANY	903.00
8951		001864	NOWAK & FRAUS ENGINEERS	52,612.50
8952	*	006359	NYE UNIFORM COMPANY	1,122.00
8953	*	003351	PAMAR ENTERPRISES INC	564,530.16
8954	*	003554	RKA PETROLEUM	16,590.93
8955	*	000478	ROAD COMM FOR OAKLAND CO	1,502.09
8956	*	003785	SIGNS-N-DESIGNS INC	618.00
8957	*	000254	SOCRRA	50.00
8958		000273	TERMINAL SUPPLY CO.	290.58
8959	*	002974	VILLAGE OF BEVERLY HILLS	101,377.51

**City of Birmingham**  
**Warrant List Dated 08/31/2023**

Meeting of 09/11/2023

<u>Check Number</u>	<u>Early Release</u>	<u>Vendor #</u>	<u>Vendor</u>	<u>Amount</u>
			SUBTOTAL ACH TRANSACTION	\$1,024,388.04
			GRAND TOTAL	<u>\$1,269,029.63</u>

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



Mark Gerber  
Finance Director/ Treasurer

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

**City of Birmingham**  
**Warrant List Dated 09/07/2023**

Meeting of 09/11/2023

Check Number	Early Release	Vendor #	Vendor	Amount
<u>PAPER CHECK</u>				
293963		006638	ACTION MAT & TOWEL RENTAL, INC	40.00
293964	*	007266	AETNA BEHAVIORAL HEALTH LLC	1,737.27
293965		BDREFUND	ANDRE & LATACHA KING	100.00
293966		000500	ARTECH PRINTING INC	84.00
293967		BDREFUND	Benchmark Pool, LLC	1,150.00
293968		002231	BILLINGS LAWN EQUIPMENT INC.	416.23
293969		BDREFUND	BIRMINGHAM PLBG CO INC	900.00
293970		BDREFUND	BLOOMINGDALE HOMES INC	1,400.00
293971		BDREFUND	BLS ROOFING	200.00
293972		003526	BOUND TREE MEDICAL, LLC	56.40
293973		005717	BSB COMMUNICATIONS, INC.	87.50
293974	*	008658	BWMS-BLUE WATER MGMT INC	660.00
293975		003907	CADILLAC ASPHALT, LLC	551.75
293976	*	009078	CANON SOLUTIONS AMERICA INC	210.26
293977		000595	CARRIER & GABLE INC	2,590.50
293978	*	TAXMISC	CLIENTFIRST TITLE LLC	6,842.92
293979		002234	CMP DISTRIBUTORS INC	769.00
293980	*	TAXMISC	CORELOGIC TAX SERVICE	28,295.67
293981		009145	CREATIVE COLLABORATIONS	3,800.00
293982		BDREFUND	CREGGER SERVICES INC	1,400.00
293983		003923	CUMMINS BRIDGEWAY LLC	284.89
293984		005693	DISPATCH PRODUCTS CO.	6,975.00
293985	*	000179	DTE ENERGY	33.39
293986	*	MISC	DYNAMIC SYSTEMS INC.	11,050.00
293987		008164	GARY EISELE	72.71
293988		009425	ENCURATE MOBILE TECHNOLOGY	300.00
293989		001495	ETNA SUPPLY	2,430.00
293990		BDREFUND	EVER-DRY OF SOUTHEASTERN MI	100.00
293991		009737	FIRECATT, LLC	5,778.95
293992	*	007366	FIRST ADVANTAGE OCCUPATIONAL CORP	262.20
293993		007314	FLEIS AND VANDENBRINK ENG. INC	5,186.75
293994		BDREFUND	FORTRESS HOME IMPROVEMENT	100.00
293995		BDREFUND	FOUNDATION SYSTEMS OF MICHIGAN INC.	100.00
293996		BDREFUND	GILBERT HOMES INC	2,500.00
293997		BDREFUND	GREAT LAKES LANDSCAPE DESIGN, INC	300.00
293998		000249	GUARDIAN ALARM	98.00
293999		001531	GUNNERS METER & PARTS INC	1,400.00
294000		005959	H2O COMPLIANCE SERVICE INC	4,830.00
294000	*	005959	H2O COMPLIANCE SERVICE INC	805.00
294001		BDREFUND	HARTFORD ROOFING & WARRANTY CO LLC	100.00
294002	*	001956	HOME DEPOT CREDIT SERVICES	1,987.71
294003	*	009563	HOWIES HOCKEY INC	249.78



**City of Birmingham**  
**Warrant List Dated 09/07/2023**

Meeting of 09/11/2023

Check Number	Early Release	Vendor #	Vendor	Amount
294004		BDREFUND	HRH CONSTRUCTION LLC	2,200.00
294005		000948	HYDROCORP	1,381.00
294006		000342	IBS OF SE MICHIGAN	1,326.54
294007		BDREFUND	IDEAL BUILDERS AND REMODELING INC	2,000.00
294008		001090	INGRAM LIBRARY SERVICES	5,979.38
294009	*	009559	JENETTE MAITZ	728.00
294010		008564	JERRY'S TIRE INC	1,862.00
294011		BDREFUND	JSK DESIGN GROUP	500.00
294012		BDREFUND	KENDALL DESIGN AND BUILD	200.00
294013		BDREFUND	KING, ANDRE S	1,000.00
294014		BDREFUND	LAKESIDE CONSTRUCTION GROUP	200.00
294015		006127	LANDSCAPE FORMS, INC	9,929.50
294016		MISC	LAUREN PAUL	17.99
294017	*	TAXMISC	LERETA LLC	5,477.25
294018		009375	LITHIA MOTORS, INC SUPPORT SERVICES	1,182.57
294019		BDREFUND	LIVE WELL CUSTOM HOME LLC	2,400.00
294020		BDREFUND	LYNCH CUSTOM HOMES	1,213.00
294021		008793	MERGE MOBILE, INC.	73.00
294022		002022	MICHIGAN ASSN. OF FIRE CHIEFS	250.00
294023	*	TAXMISC	MIDFIELD CONCESSION ENTERPRISES	19,655.75
294024		BDREFUND	MONARCH ROOFING COMPANY	200.00
294025		BDREFUND	MOSHER DOLAN	5,000.00
294026		BDREFUND	NAGIA, ZIAD	100.00
294027		BDREFUND	NICHOLAS JON LENICZEK	200.00
294028	*	001450	OAKLAND COUNTY PKS & REC COMM.	278.00
294029	*	004370	OCCUPATIONAL HEALTH CENTERS	645.00
294030	*	009478	ODP BUSINESS SOLUTIONS, LLC	374.24
294031		008669	OHM ADVISORS INC	5,893.50
294032	*	MISC	PAUL A COUSINEAU	100.00
294033		BDREFUND	PERFORMANCE ROOF SYSTEMS LLC	100.00
294034		008028	PK SAFETY SUPPLY	656.00
294035		BDREFUND	PRM CUSTOM BUILDERS LLC	2,500.00
294036		BDREFUND	PROFESSIONAL RENOVATIONS SVS,	1,100.00
294037		000492	REGISTER OF DEEDS	30.00
294038	*	TAXMISC	RENEE LOSSIA ACHO	1,381.78
294039		BDREFUND	RENEWAL BY ANDERSEN LLC	500.00
294040		BDREFUND	SCOTT QUALITY HOMES II LLC	1,000.00
294041	*	009009	SIGNATURE CLEANING LLC	4,937.99
294042		BDREFUND	STAR BUILDERS INC	1,000.00
294043		005863	SUCCESS COMMUNICATIONS, INC.	1,690.00
294043	*	005863	SUCCESS COMMUNICATIONS, INC.	945.00
294044		BDREFUND	TEMPLETON BUILDING COMPANY	200.00
294045		009738	THE FIRE DEPOT	1,108.70

**City of Birmingham**  
**Warrant List Dated 09/07/2023**

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Check Number	Early Release	Vendor #	Vendor	Amount
294046		000275	TIRE WHOLESALERS CO INC	996.60
294047		BDREFUND	TRESNAK CONSTRUCTION INC	100.00
294048	*	004379	TURNER SANITATION, INC	290.00
294049		BDREFUND	UNITED MASONRY HARDSCAPE LLC	100.00
294050	*	000158	VERIZON WIRELESS	49.07
294051	*	000158	VERIZON WIRELESS	103.19
294052	*	000158	VERIZON WIRELESS	147.21
294053		BDREFUND	WALLSIDE INC	500.00
294054		000299	WEINGARTZ SUPPLY CO.	653.44
294055		BDREFUND	ZACCAGNINI, ANTHONY	2,500.00
294056		007999	ZEROFRICTION, LLC	62.80
SUBTOTAL PAPER CHECK				\$189,254.38

ACH TRANSACTION

8968	*	008847	ABS- AUTOMATED BENEFIT SVCS, INC	38.46
8969		000167	ANDERSON ECKSTEIN WESTRICK INC	5,795.60
8970	*	008655	ANGELO IAFRATE CONSTRUCTION	140,797.00
8971	*	003946	ARAMARK	156.78
8972	*	000518	BELL EQUIPMENT COMPANY	2,934.78
8973	*	007345	BEVERLY HILLS ACE	27.30
8974		006683	BIRMINGHAM LAWN MAINTENANCE, INC	176.00
8975	*	007624	BIRMINGHAM OIL CHANGE CENTER, LLC	38.47
8976	*	000542	BLUE WATER INDUSTRIAL PRODUCTS INC	193.00
8977		009183	BOB ADAMS TOWING	556.20
8978	*	003282	LISA MARIE BRADLEY	140.00
8979		000605	CINTAS CORPORATION	425.80
8980	*	000605	CINTAS CORPORATION	128.83
8981		002668	CONTRACTORS CLOTHING CO	519.05
8982	*	009736	DAYSMAST SOFTWARE	4,235.00
8983	*	000565	DORNBOS SIGN & SAFETY INC	326.40
8984		003801	JANA ECKER	500.00
8985	*	001230	FIRE SYSTEMS OF MICHIGAN LLC	720.00
8986	*	009357	BRENDT FREDERICK	84.22
8987	*	007807	G2 CONSULTING GROUP LLC	7,926.99
8988		001023	GABRIEL, ROEDER, SMITH & CO.	3,200.00
8989	*	000243	GRAINGER	73.14
8990	*	008851	INSIGHT INVESTMENT	5,803.91
8991		000261	J.H. HART URBAN FORESTRY	29,915.79
8992		009249	JCC CREATIVE LLC	750.00
8993	*	003458	JOE'S AUTO PARTS, INC.	1,040.96
8994	*	007827	HAILEY R KASPER	156.00
8995		009536	LEXIPOL	2,500.36
8996	*	003527	LOWER HURON SUPPLY CO INC	395.43
8997		002013	MIDWEST TAPE	1,456.52

**City of Birmingham**  
**Warrant List Dated 09/07/2023**

Meeting of 09/11/2023

Check Number	Early Release	Vendor #	Vendor	Amount
8998	*	007856	NEXT	3,200.00
8999	*	009706	NORTHSTAR MAT SERVICE	477.80
9000		008866	PRECISION CONCRETE CUTTING INC	739.05
9001	*	001181	ROSE PEST SOLUTIONS	957.00
9002	*	003466	ALAN SOAVE	25.00
9003	*	002037	TOTAL ARMORED CAR SERVICE, INC.	281.45
SUBTOTAL ACH TRANSACTION				\$216,692.29
GRAND TOTAL				\$405,946.67

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



Mark Gerber  
 Finance Director/ Treasurer

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



## **MEMORANDUM**

City Manager's Office

**DATE:** September 5, 2023

**TO:** Jana L. Ecker, City Manager

**FROM:** Mark H. Clemence, Assistant City Manager

**SUBJECT:** Addition of an Alternate Member for the Ad Hoc Aging in Place Committee

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### **INTRODUCTION:**

The City Commission established the seven-member Ad Hoc Aging in Place Committee on April 24, 2023. On August 28, 2023, the seventh and final member was appointed to the Ad Hoc Aging in Place Committee by the City Commission. At that meeting, it was suggested that it would be a good idea to add an alternate committee member to the Ad Hoc Aging in Place Committee.

### **BACKGROUND:**

The City Commission adopted strategic goals in November of 2022 that included supporting an engaged and connected community by offering services and amenities that enrich the lives of residents of all ages as a main goal. This strategic goal included a recommendation to "create a task force to facilitate an aging in place plan, develop a plan for a permanent senior/community center to house Next senior services and offer space for multigenerational programs and engage with youth in the community with a teen board or committee." On April 3, 2023, the City Commission unanimously passed a motion to direct the formation of an ad hoc committee. The City Commission unanimously passed a motion establishing the Ad Hoc Aging in Place Committee at their April 24, 2023 meeting. The motion established the Ad Hoc Aging in Place Committee for a term of 18 months and directed staff to advertise for upcoming appointments to the committee. Further, the motion directed staff to facilitate the requested studies and research needed to develop an action plan to improve the health, safety and welfare of senior citizens in Birmingham.

The Ad Hoc Aging in Place Committee consists of seven members who were appointed by the City Commission. A majority of the members are residents of Birmingham and qualified voters. Their professional expertise and experience include: gerontologist, senior health or nutrition, adult education, elder law, representative of Birmingham Next and

intergenerational specialist. Staff from the Manager's Office serves as ex-officio member(s) of the committee. All terms will expire in January of 2025.

The function of the Ad Hoc Aging in Place Committee is to study current demographic trends, evaluate the needs of the City's population and to prepare a City-wide action plan outlining the vision and goals to improve the health, safety and welfare of senior citizens and encourage residents to age comfortably in Birmingham.

On August 28, 2023, the City Commission appointed the seventh and final member to the Ad Hoc Aging in Place Committee. At that meeting, it was suggested that it would be a good idea to add an alternate committee member to the Ad Hoc Aging in Place Committee.

**LEGAL REVIEW:**

The City Attorney has no objection to adding an alternate committee member to the Ad Hoc Aging in Place Committee following standard City policy.

**FISCAL IMPACT:**

None.

**SUSTAINABILITY:**

No impact.

**PUBLIC COMMUNICATIONS:**

All prior appointments to the Ad Hoc Aging in Place Committee were properly noticed and the public invited to make comments. Staff will be directed to advertise for the upcoming alternate position to the Ad Hoc Aging in Place Committee in accordance with City policy.

**SUMMARY:**

The City established an Ad Hoc Aging in Place Committee by resolution on April 24, 2023 with seven members. The City Commission would like to add an alternate position to the Ad Hoc Aging in Place Committee consistent with the same criteria previously established and a term ending in January 2025.

**ATTACHMENTS:**

None.

**SUGGESTED COMMISSION ACTION:**

Make a motion adopting a resolution to add an alternate position to the Ad Hoc Aging in Place Committee for a term consistent with all regular members of the committee ending in January 2025 and to further direct the City Clerk to notice the available alternate Ad Hoc Aging in Place Committee member position and begin the process of filling this vacancy.



## MEMORANDUM

Planning Division

**DATE:** September 11, 2023

**TO:** Jana L. Ecker, City Manager

**FROM:** Nicholas Dupuis, Planning Director

**SUBJECT:** 707 S. Worth – Air Lease Agreement

---

### INTRODUCTION:

The development at 707 S. Worth (formerly 770 S. Adams) is a mixed-use building ranging from 4-6 stories in height, and will contain nearly 160 residential units. Many of the units contain balconies that project into the right-of-way, which requires the property owner to enter into a lease with the City of Birmingham for use of this space.

### BACKGROUND:

On May 11, 2022 ([Agenda](#) – [Minutes](#)), the Planning Board moved to approve the Final Site Plan and Design review application for the development with several conditions, one of which being a clarification on the encroachment dimensions of the canopies and balconies proposed. Once the dimensions were clarified, the requirements of Article 4, Section 4.74 (D)(4)(c)(ii) of the Zoning Ordinance were triggered:

“Permanent architectural features such as windows, balconies, overhangs and other architectural features that encroach into the right of way above 8’ may be approved by the Planning Board, Design Review Board and/or the Historic District Commission provided that they do not extend 2’ or more into the right of way or create an obstruction and that the encroachment complies with the design review standards set forth in Article 07 of the Birmingham Chapter 126 - Zoning. Encroachments that extend more than 2’ into the right of way will also require the approval of the City Commission through a lease agreement.”

The total encroachment of balcony projections beyond 2 ft. was determined to be 160 sq. ft. over 56 balconies and 4 stories. This figure was produced by Burgoyne Appraisal Company, who was secured to provide the analysis for fair market value of the space. The appraisal was reviewed in-depth by the City Attorney.

### LEGAL REVIEW:

The City Attorney has reviewed this item as to form and content and has no concerns.

**FISCAL IMPACT:**

The lease agreement is structured as a \$200.00 per year lease payable to the City of Birmingham.

**SUSTAINABILITY:**

There are no sustainability issues in regards to the proposed lease agreement.

**PUBLIC COMMUNICATIONS:**

No public communications are required for this agenda item.

**SUMMARY:**

The Planning Division requests that the City Commission consider entering into a lease agreement with F.H.S Birmingham, LLC in the amount of \$200.00 per year for an encroachment of 160 sq. ft. of right-of-way for private residential balconies at 707 S. Worth.

**ATTACHMENTS:**

- Executed Lease Agreement

**SUGGESTED COMMISSION ACTION:**

Make a motion adopting a resolution to enter into a lease agreement with F.H.S Birmingham, LLC in the amount of \$200.00 per year for an encroachment of 160 sq. ft. of right-of-way for private residential balconies at 707 S. Worth. In addition, to authorize the Mayor and City Clerk to sign the agreement on behalf of the City.

## LEASE OF AIR PREMISES

**THIS LEASE OF AIR PREMISES** ("Lease"), dated as of \_\_\_\_\_, 2023 (the "Commencement Date"), is made by and between **THE CITY OF BIRMINGHAM**, a Michigan municipal corporation ("Landlord"), whose address is 151 Martin Street, Birmingham, Michigan 48009, and **FHS BIRMINGHAM, L.L.C.**, a Michigan limited liability company ("Tenant"), whose address is 3400 East Lafayette, Detroit, Michigan 48207.

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

### SECTION 1 BACKGROUND.

A. Tenant owns real property located in the City of Birmingham (the "City"), Oakland County, Michigan, more particularly described in Exhibit A hereto (the "FHS Property"). Tenant's final site plan for development of a mixed use residential-commercial building on the FHS Property (the "Project") received final approval from Landlord on May 11, 2022, as depicted on Exhibit B hereto (the "Final Site Plan").

B. The Final Site Plan includes fifty-six (56) total balconies for the use and enjoyment of occupants of the residential units, some of which encroach up to three feet (3') above the public sidewalk right-of-way.

C. Landlord's zoning ordinance at Article 4, 4.74SS-01 (D.4.ii and iii) provides that permanent architectural feature such as balconies that encroach into the right-of-way more than two feet (2') may be approved by the Planning Board, which has been formally granted, and be evidenced by a lease agreement approved by the City Commission.

D. This Lease evidences the terms and conditions upon which the City approves the exclusive rights of Tenant and the occupants of the residential units to construct, use, lease, occupy, maintain, repair, replace and remove any and all balconies extending up to six inches (6") into the public right-of-way as depicted in the Final Site Plan (the "Balconies").

E. Landlord and Tenant mutually agree that this Lease is an essential component of the Project.

### SECTION 2 DEMISED AIR PREMISES; USE.

A. Landlord hereby grants, demises and lets to Tenant, and Tenant hereby takes and hires from Landlord, on the terms, covenants and agreements hereinafter provided, those portions of the public right-of-way immediately adjacent to the Project into which Tenant constructs the Balconies, and all air space above the lowest physical component of each such Balcony (collectively, the "Demised Air Premises")

B. Tenant, and its architects, contractors, consultants, vendors, licensees, vendors, tenants, occupants, and guests, shall have the exclusive right to use the Demised Air Premises for the construction, operation, use, occupancy, repair, maintenance, alteration, and removal of the Balconies, and for any other legal use or purpose in connection therewith.

C. Title to the Balconies, together with all fixtures, components, attachments, additions, improvements, alterations, and personal property connected thereto or located within the Demised Air Premises shall at all time remain in Tenant and/or its designee(s).



**SECTION 3 TERM.** The term of this Lease shall commence on the Commencement Date and expire ninety-nine (99) years after the Commencement Date (the "Term"); provided, however, that Tenant and Landlord shall have the right to terminate this Lease at any time upon delivering written notice of termination at least one hundred days prior to the effective date of such termination.

**SECTION 4 RENT.**

A. Commencing on the Commencement Date and continuing through the Term, Tenant agrees to pay to Landlord, as "Rent", the sum of Two Hundred and 00/100 Dollars (\$200.00) per year, payable on or before the Commencement Date and January 1 of each calendar year of the Term. Rent shall be paid to the Birmingham City Hall office address first shown above, or at such other place as Landlord from time to time may designate in written notice to Tenant. If this Lease is terminated on a day other than December 31, Rent for such partial calendar year shall be prorated per diem and returned to Tenant. The Lease will be adjusted annually by the Consumer Price Index for the Detroit-Warren-Dearborn area as published by the U.S. Bureau of Labor Statistics. The Lease amount will be adjusted annually by multiplying the current Lease amount by the index for the month of the anniversary date of the Lease and dividing by the index from the same month from the previous year. If no index is published for the month of the anniversary date, the index from the prior month will be used for the purposes of calculating the annual adjustment. This value has been determined by a fair market value analysis (attached as Exhibit C).

B. Any Rent which is not paid within thirty (30) days after receipt by Tenant of written notice from Landlord that the same is overdue will be subject to interest at a per annum rate equal to the prime rate announced in the Wall Street Journal (the "Default Rate") on the date when the Rent became due, but in any event not in excess of the maximum interest rate permitted by law. Such interest shall be due and payable as additional Rent on or before the next yearly installment of Rent is due and will accrue until paid from the date that such Rent was due and payable under this Lease.

**SECTION 5 TRANSFER.** Tenant may, without Landlord's written consent, assign or transfer any right, title or interest under, in or to this Lease or sublet or license the whole or any portion of the Demised Air Premises, including, without limitation, in connection with a sale of all or any portion of the FHS Property or in pledge or assignment of this Lease or any right, title or interest in all or any part of the Demised Air Premises, to any lender, financial institution or investor.

**SECTION 6 INSURANCE.**

A. During the Term, Tenant shall maintain or cause to be maintained, at its expense, the following insurance:

(i) Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than \$2,000,000.00 per occurrence, combined single limit, Personal Injury, Bodily Injury and Property Damage, and include the following extensions: (A) contractual liability, (B) products and completed operation, (C) independent contractors coverage; (D) broad form general liability extension or equivalent; and (E) deletion of explosion, collapse and underground (XCU) exclusions, if applicable;

(ii) during initial construction of the Project, builders risk insurance covering such risks, in such amounts and with such companies as reasonable and customarily maintained in southeastern Michigan; and

(iii) workers' compensation insurance, including employers' liability coverage, in amounts and in accordance with all applicable statutes of the State of Michigan.

B. All coverages shall be with insurance companies licensed and admitted to do business in the State of Michigan. The insurance under Section 6.A. shall include an endorsement stating the following: "Thirty (30) days Advance Written Notice of Cancellation or Non-Renewal shall be sent

to: City of Birmingham, P.O. Box 3001, 151 Martin Street, Birmingham, Michigan 48012." Commercial General Liability Insurance shall include an endorsement stating the following shall be Additional Insureds: The City of Birmingham including all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof. This coverage shall be primary to any coverage that may be available to the additional insured, whether any other available coverage be primary, contributing or excess. Upon written request from Landlord (not more often than once per year), Tenant shall provide Landlord certificates or other evidence of such insurance. Notwithstanding the foregoing, any insurance required under Section 6.A. may be obtained in connection and/or combined with Tenant's insurance for the Project so long as the requirements of this Section 6 are satisfied.

**SECTION 7 INDEMNITY.** Tenant shall defend, indemnify and hold harmless Landlord, including Landlord's elected and appointed officials, employees and volunteers, against any and all claims, demands, suits or losses, including all costs and reasonable attorneys' fees connected therewith, and for any damages which may be asserted, claimed or recovered against or from Landlord, its elected and appointed officials, employees or volunteers (collectively, "Costs and Damages"), by reason of personal injury, including bodily injury and death, and/or property damage, including loss of use thereof, to the extent such Costs and Damages are directly attributable to the negligence or intentional misconduct of Tenant, its architects, contractors, consultants, vendors, licensees, tenants, occupants or guests within the Demised Air Premises. Tenant shall not be legally or equitably liable or responsible for any Costs and Damages caused by or resulting from the acts or omissions of Landlord or its elected or appointed officials, employees, volunteers or contractors.

**SECTION 8 DAMAGE.** If any Balcony or components thereof located within the Demised Air Premises is/are destroyed by fire or other casualty during the Term, then that portion of the Demised Air Premises in which such Balcony was located shall, in Tenant's sole discretion, be excluded from the definition of Demised Air Premises, unless and until such time thereafter that Tenant elects, in its sole discretion, to replace, rebuild or restore such Balcony and/or components. No such destruction or damage shall terminate this Lease and it shall continue in full force and effect.

**SECTION 9 NON-DISTURBANCE AND ESTOPPEL CERTIFICATES.** Landlord shall, without charge, within thirty (30) days after Tenant's request: (a) enter into a Subordination, Non-disturbance and Attornment Agreement(s) ("SNDA") in form reasonably satisfactory to Tenant, in favor of Tenant and Tenant's lender, and (b) certify by written instrument that this Lease is unmodified and in full force and effect, the date through which Rent has been paid, that Tenant is not in default under this Lease, and such other information as Tenant and/or its lender may reasonably request.

**SECTION 10 OWNERSHIP OF IMPROVEMENTS.** Tenant shall own and have the right to take the depreciation deductions under the tax laws for the Balconies, together with all fixtures, components, attachments, additions, improvements, alterations and personal property connected thereto or located within the Demised Air Premises.

**SECTION 11 DEFAULT.** If Tenant fails to pay Rent when due and such failure is not cured within ten (10) days after Tenant's receipt of written notice from Landlord or Tenant fails to perform any material covenant or agreement under this Lease and such failure is not cured within thirty (30) days after Tenant's receipt of written notice from Landlord (or if such failure cannot with due diligence be cured within such 30-day period, then such time as may be necessary to cure the same with due diligence), then Landlord shall have the right to declare a default and, as its sole remedy, either: (i) place a lien on the FHS Property for the amount of the Rent unpaid or any damages incurred by Landlord as a direct result of such default, or (ii) seek specific performance of such covenant or obligations. It is acknowledged and agreed that, regardless of the default, Landlord shall not, in any event, have the right, option or remedy to terminate this Lease, Landlord waiving and releasing any such right, option or remedy which may exist at law or equity.

**SECTION 12 QUIET ENJOYMENT.** Landlord agrees, covenants and warrants that, notwithstanding the fact that the Demised Air Premises is situated in the City right-of-way, as long as this Lease remains in effect, Tenant shall peaceably, quietly and exclusively have, hold and enjoy the Demised Air Premises for the Term hereby granted without molestation or disturbance by any person or entity and free of any and all easements, encumbrances or adverse matters within Landlord's control.

**SECTION 13 NOTICES.** All notices and communications under this Lease ("Notice") shall be in writing and addressed and delivered to the parties' respective addresses first above written (or such other address as designated by a party in accordance with this Section) by: (a) registered mail, return receipt requested, postage prepaid (in which case Notice shall be deemed given on the date the return receipt is signed or refused), or (b) nationally-recognized overnight courier, prepaid and marked for "next day" delivery (in which case Notice shall be deemed given on the next business day after deposit with the overnight courier). All notices sent to Landlord shall be sent to the attention of the Birmingham City Manager unless otherwise provided herein. A copy of all notices to Landlord shall also be sent to the Birmingham City Attorney, Mary Kucharek, at 3001 W. Big Beaver Road, Suite 600, Troy, Michigan, 48084-3103. All notices sent to Tenant shall be sent to the attention of the Senior Vice President of Real Estate. A copy of all notices to Tenant shall also be sent to Richard D. Rattner, 380 North Old Woodward Ave, suite 300 Birmingham, Michigan 48009.

**SECTION 14 BINDING ON SUCCESSORS AND ASSIGNS.** All covenants, agreements, provisions and conditions of this Lease shall be binding on and inure to the benefit of the parties hereto, and their respective successors and assigns.

**SECTION 15 MISCELLANEOUS.**

A. This Lease may not be amended, modified, terminated, released or discharged, in whole or in part, except by an instrument in writing signed by all of the parties hereto.

B. If any term, covenant, condition or provision of this Lease or the application thereof to any person or circumstances shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to other persons or circumstances shall not be affected thereby, and each term, covenant, condition and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

C. This Lease shall be construed in accordance with the laws of the State of Michigan. Whenever the contents of any provision shall require it, the singular number shall be held to include the plural number and vice versa, and the neuter gender includes the masculine and the feminine. The captions of this Lease are solely for convenience and shall not be deemed a part of this Lease for the purposes of construing the meaning thereof or any other purpose.

D. This Lease contains the entire agreement of the parties hereto with respect to the Demised Air Premises, and all prior agreements, whether oral or written, with respect thereto are hereby merged in and superseded by the terms and conditions of this Lease.

E. No waiver of any covenant or condition contained in this Lease, or of any breach of any such covenant or condition, shall constitute a waiver of any subsequent breach of such covenant or condition by either party, or justify or authorize the non-observance on any other occasion of the same or any other covenant or condition hereof of either party.

F. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled either by commencement of a suit in Oakland County Circuit Court, the 48<sup>th</sup> District Court or by arbitration. If both parties elect to have the dispute resolved by arbitration, it shall be settled pursuant to Chapter 50 of the Revised Judicature Act for the State of Michigan and administered by the American Arbitration Association with one arbitrator being used, or three arbitrators in the event any party's claim

exceeds \$1,000,000. Each party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Such arbitration shall qualify as statutory arbitration pursuant to MCL §600.5001 et seq., and the Oakland County Circuit Court or any court having jurisdiction shall render judgment upon the award of the arbitrator made pursuant to this Agreement. The laws of the State of Michigan shall govern this Agreement, and the arbitration shall take place in Oakland County, Michigan. In the event that the parties elect not to have the matter in dispute arbitrated, any dispute between the parties may be resolved by the filing of a suit in a federal or state court with jurisdiction over Oakland County, Michigan.

**SECTION 16 SHORT FORM LEASE.** Within thirty (30) days of receipt of request from Landlord or Tenant, each party will promptly execute and deliver a short form of this Lease in recordable form, setting forth the names and addresses of the parties, reference to this Lease, the description of the Demised Air Premises, the date of commencement and expiration of this Lease, Tenant's right to build, alter, repair, improve, change or demolish structures, improvements and fixtures in the Demised Air Premises, and such other information as either party may reasonably request. The short form Lease may be recorded by either party, at that party's expense.

[SIGNATURE PAGES FOLLOW]

IN AGREEMENT HERETO, the parties have caused this Lease to be signed and delivered by their respective authorized parties as of the Commencement Date above.

TENANT:  
FHS BIRMINGHAM, L.L.C.,  
a Michigan limited liability company

By: Christopher C. Corden

Its: Authorized Representative

Date signed by Lessee: Aug. 3, 2023

STATE OF MICHIGAN        )  
  ) ss:  
COUNTY OF OAKLAND     )

On this 3 day of August, 2023, before me personally appeared Christopher Corden, Authorized Rep who acknowledged that, with authority on behalf of FHS BIRMINGHAM, L.L.C to do so, signed this Agreement.

Michelle Arbogast  
Notary Public

\_\_\_\_\_ County, Michigan  
Acting in \_\_\_\_\_ County, Michigan  
My commission expires: \_\_\_\_\_

Michelle Arbogast  
Notary Public of Michigan  
Livingston County  
Expires 08/03/2024  
Acting in the County of Wayne

[SIGNATURE PAGES CONTINUED]


**LANDLORD:  
CITY OF BIRMINGHAM**

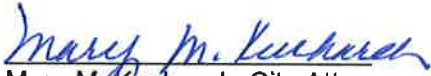
By: \_\_\_\_\_  
Therese Longe, Mayor


By: \_\_\_\_\_  
Alexandria D. Bingham, City Clerk

Date signed by Lessor: \_\_\_\_\_, 2023

**APPROVED**

  
\_\_\_\_\_  
Jana Ecker, City Manager  
(Approved as to substance)

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

  
\_\_\_\_\_  
Mark A. Gerber, Finance Director  
(Approved as to Finances)

**EXHIBIT A**

Legal Description of FHS Property

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

A parcel of land being all of Lot 11 and part of Lots 14, 15, 16 and 17 of "O. E. Shattuck Subdivision", Village, now City of Birmingham, Oakland County, Michigan, as recorded in Liber 8 of Plats, Page 14, Oakland County Records, and Lots 5 through 11, inclusive, "Rural Subdivision of Lots 5, 6, 7, 8, 9 and 10 of O.E. Shattuck Subdivision" in the Village of Birmingham, as recorded in Liber 16 of Plats, Page 14, Oakland County Records.

Said land being more particularly described as:

Commencing at the southeast corner of said Lot 17 of "O. E. Shattuck Subdivision"; thence along the south line of said Lot 17, S86°48'15"W, 7.19 feet to the west line of Adams Road and the Point of Beginning;

Thence continuing along said south line of said Lot 17, S86°48'15"W, 166.31 feet, said line also being the north line of an 18' wide public alley to the southeast corner of Lot 11;

Thence along the south line of Lot 11 of "Rural Subdivision of Lots 5, 6, 7, 8, 9 and 10 of O.E. Shattuck Subdivision", said line also being the north line of an 18' wide public alley, S86°48'15"W, 132.00 feet to the east line of Worth Street (50 foot wide);

Thence along said east line, N11°16'30"W, 307.10 feet to the south line of Haynes Avenue (60 foot wide), said point also being the northwest corner of Lot 5 of "Rural Subdivision";

Thence along said south line, N77°46'42"E, 198.00 feet to the east line of Lot 11 of aforementioned "O. E. Shattuck Subdivision";

Thence along said east line, S03°15'06"E, 103.14 feet to the north line of Lot 14 of said Subdivision;

Thence along said line, N86°48'15"E, 144.74 feet to the west line of Adams Road;

Thence along said west line, S03°27'52"E, 231.97 feet to the aforementioned south line of said Lot 17 and the Point of Beginning.

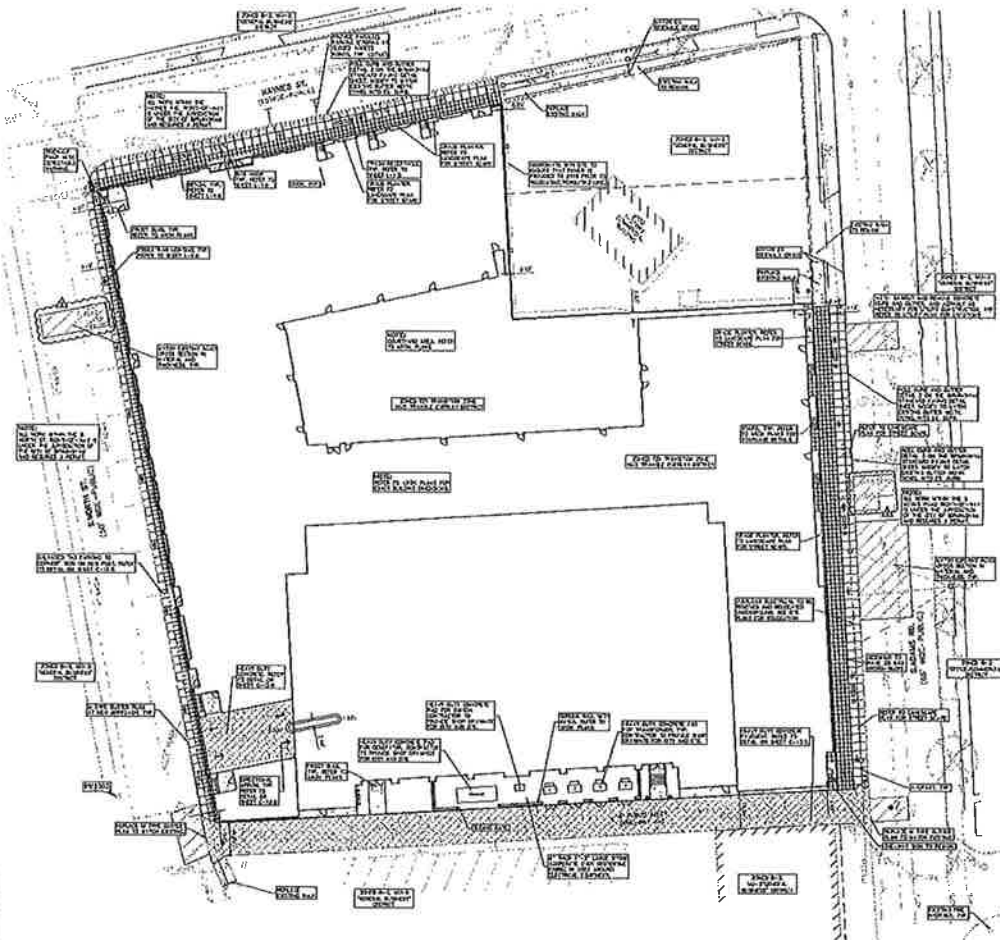
Containing 2.06 Acres of land, more or less.

**EXHIBIT B**

Final Site Plan

[See attached]



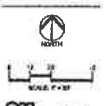


GENERAL NOTES	
1. ALL DIMENSIONS SHOWN ON THIS PLAN ARE TO FACE UNLESS OTHERWISE NOTED.	
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**TOPOGRAPHIC AND BOUNDARY SURVEY DATA**  
 THE SURVEY DATA FOR THIS PROJECT WAS OBTAINED FROM THE FOLLOWING SOURCES:  
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**FHS-BIRMINGHAM, LLC**  
 PROFESSIONAL ENGINEER  
 LICENSE NO. 12345

**PROJECT TITLE**  
 FHS-BHM  
 ADAMS/SHAYNE  
 MIXED USE  
 DEVELOPMENT

**REVISIONS**

NO.	DESCRIPTION	DATE

**PREPARED BY** [Name]  
**CHECKED BY** [Name]  
**DATE** [Date]  
**SCALE** [Scale]  
**ORIGINAL DATE** [Date]  
**DATE** [Date]

REV.	NO.	DESCRIPTION

NOT FOR CONSTRUCTION C-3.0

**EXHIBIT C**

Appraisal

[See attached]



July 24, 2023

Christopher Owen Corden and Rod Blake  
FHS Birmingham L.L.C.  
3400 East Lafayette  
Detroit, MI 48207

Re: Appraisal Report of Balcony Easements over Public Sidewalks ("Subject Parcel")  
Adjoining 89,519 Square Foot Parcel at Haynes and Adams ("Development Parcel")  
City of Birmingham, Oakland County, Michigan

Gentlemen:

In compliance with your request, I have inspected and analyzed the above captioned parcels of real estate and prepared this real estate appraisal. The purpose of this report is to address the market value of the balcony easement over public sidewalks (the "Subject Parcel") associated with and adjoining the "Development Parcel" of land wrapping the southwest corner of Haynes Street and Adams Road in the City of Birmingham located east of Woodward Avenue and Downtown. The Development Parcel is zoned B-2 General Business but also lies within the Triangle District overlaid Mixed Use-3 and Mixed Use-5 by the City of Birmingham.

I have considered the appraisal assignment and am familiar with the scope of the analysis that will be required. The appraisal will be performed in accordance with the *Uniform Standards of Professional Appraisal Practice* (USPAP), and the Codes of Ethics of the International Right-of-Way Association and American Society of Appraisers. The effective Date of Valuation for this report is July 1, 2023.

This appraisal is an Appraisal Report per USPAP in an appropriate format for negotiation with the City of Birmingham. While not expected to be used for litigation purposes, the appraisal will use the standard Michigan definitions applicable to right-of-way acquisition and eminent domain. The easement to be appraised is a one-foot overhang into the airspace above the public sidewalk to allow for the integration of balconies associated with a mixed-use residential development on the Development Parcel located at Haynes and Adams Roads, within the City of Birmingham, Oakland County, Michigan.

The Subject Property is adjoining the Development Parcel and located in Section 36, Town 2 North, Range 10 East, in the City of Birmingham, Oakland County, Michigan. More specifically, both the Subject Parcel and the Development Parcel are located at the southwest corner of S. Worth and Haynes Streets, south of East Maple Road. A small portion of the Development Parcel also fronts S. Adams Road. The Development Parcel is the assemblage of two separately identified parcels of land formerly identified as 770 S. Adams Road (0.66± net acres) and 1000 Haynes Street (1.40± net acres). According to assessing records, the two sale parcels were combined in October of 2022 to create a 2.06 net acre parcel identified as 707 S. Worth Street (the Development Parcel). The newly created Development Parcel is also identified as Tax Parcel 19-36-283-026. An aerial reproduction of the property is depicted on Page Four.

The assembled Development Parcel consists of 2.06± acres or 89,519± square feet net of any existing road right of way. The Development Parcel is irregular in shape and all utilities are available to the site. The property has 307.1 feet of frontage on S. Worth Street, 198 feet of frontage on Haynes Street and 231.97 feet of frontage on S. Adams Road. The adjoining Development Parcel is primarily zoned B-2 General Business but also lies within the Triangle District and is overlaid Mixed Use-3 and Mixed Use-5 by the City of Birmingham. Land within the Triangle District is bordered by E. Maple Avenue, S. Adams Road and Old Woodward Avenue. In addition to typical road and utility easements, the appraiser is not aware of any other easements that may affect the value of the Subject or Development Parcels. The legal description of the assembled land (the Development Parcel) is provided later in this report.

It is my understanding that the City of Birmingham is requiring the property owner to purchase easements (or enter into an airspace lease) to accommodate the extension of four stories of balcony over the public sidewalk, and has required an appraisal of the air space to be encumbered. A two-foot overhang is permitted without an easement or lease, but a three-foot overhang is proposed. As a result, this report addresses the market value of a one-foot easement, containing 160 square feet.

Images of the north (Haynes) and west (Worth) elevations of the building under construction, showing the balconies, are included later in this report. There are balconies on floors 2-5 that are the subject of this appraisal. The balconies on these two elevations extend into the right-of-way by three feet, encroaching by a single foot beyond the permitted two feet. A typical section showing the encroachment is also included later in the report. Apparently, none of the balconies encroach onto Adams Road. According to the City's ordinance (attached later), a permanent structure that is at least 8 feet above grade, such as a balcony, may encroach up to 2 feet. The area of concern for this appraisal is the additional 1-foot that the balconies extend beyond what is permitted. 52 of the 56 balconies are 10 feet wide. The balconies are aligned vertically, such that the balconies on each floor align with the balconies above and below, and all balconies in a specific column encroach into the same airspace. The remaining four balconies wrap the corner of the building and each has a total length of ~30 feet.

**52 balconies x 10 feet x 1 foot = 520 SF**

**4 balconies x 30 feet x 1 foot = 120 SF**

**640 SF Total/4 stories = 160 SF of total area air space encroachment at One Foot.**

The client for this appraisal is FHS Birmingham, L.L.C. Intended users of this report include Christopher Owen Corden and Rod Blake of FHS Birmingham, L.L.C., as the client and owner of the Development Parcel, as well as FHS Birmingham, L.L.C.'s legal representatives, if any. It is expected that representatives for the City of Birmingham will also see this appraisal, although they are not intended users. Use of this report by others is not intended by the appraiser. This appraisal is prepared in accordance with the *Uniform Standards of Professional Appraisal Practice* of the Appraisal Foundation and the Codes of Ethics and Standards of the International Right-of-Way Association and the American Society of Appraisers.

Given that the Subject Parcel is airspace above a public right-of-way, there are obviously no comparable sales of similar parcels or easements available. The methodologies of this report are applied to the Development Parcel and that unit valuation is extrapolated to the Subject Parcel in a method referred to as Across the Fence (AFT) valuation. While the airspace that comprises the subject property does not have the attributes or potential uses as real estate applicable to the Development Parcel, it is reasonable to use the unit rate applicable to the Development Parcel to help determine the value of the adjoining the easement. When appraising properties similar to the Subject Parcel with unusual shapes and/or configurations that have associated property rights them that are being combined with adjoining properties, appraisers do not generally apply a discount for size and shape, nor apply a plottage or assembly premium. The underlying unit value used is determined form "Across the Fence."

The interest appraised is the unencumbered fee simple estate of the subject property. This appraisal is based on several assumptions, limiting conditions and restrictions on disclosure and use that are included later in this document. Based on the information and analysis presented in the following report, it is my opinion that the market value of the subject easement as proposed as of July 1, 2023 is as summarized below.

**ONE-FOOT AIRSPACE EASEMENT CONTAINING 16,000 SQUARE FEET      MARKET VALUE \$2,500**  
**(THIS PRESUMES A SINGLE ONE-TIME PAYMENT)**

**ALTERNATIVELY, ANNUAL RENTAL IN LIEU OF SINGLE PAYMENT      \$200 PER YEAR**

**EFFECTIVE DATE OF VALUE OPINION      JULY 1, 2023**

This appraisal is based upon the property as I find it and upon certain details and limiting conditions attached hereto and made a part hereof, without any consideration of title, restrictions or tax history that might impair its value. I have no interest in this property or any property in the immediate vicinity and my fee is in no way contingent upon the amount of value herein reported. I have performed no services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.

Respectfully submitted,



David Edward Burgoyne, ASA, SRWA, R/W-AC  
Certified General Real Estate Appraiser (Michigan)  
#1205-000222

A. Aerial Photograph and Development Parcel Identification



Owner of Record: FHS Birmingham, L.L.C.

Address of Development Parcel: Wrapping Southwest Corner  
Haynes Street and Adams Road.  
707 S. Worth Street, City of Birmingham.  
County of Oakland, State of Michigan.

Development Parcel Identification: Tax Parcel 19-36-283-026.

Current Use of Development Parcel: Six Story Building Under Construction

Highest and Best Use of Development Parcel: Commercial Mixed Use as Zoned

Date of Appraisal Report: July 24, 2023

Date of Valuation: July 1, 2023

Appraiser: David Edward Burgoyne, ASA, SR/WA, R/W-AC  
Certified General Real Estate Appraiser (Michigan) - #1205-000222

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Comparable Sale Write-Ups  
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Ordinance Re: Overhanging Structures  
Qualifications of Appraiser

C. Summary of Salient Facts

Property Owner: FHS Birmingham, L.L.C..

Property Type: Mixed Use.

Improvements: Six Story Mixed Use Building Under Construction

Shape of Lot: Generally Ell-Shaped.

Utilities: Subject site is serviced by public water and sanitary sewer service. All other typical public and/or utilities are available.

Road Frontage: 307.1 feet of frontage on S. Worth Street  
198 feet of frontage on Haynes Street  
231.97 feet of frontage on S. Adams Road.

Zoning: The parcel is primarily zoned B-2 General Business but also lies within the Triangle District and is overlaid Mixed Use-3 and Mixed Use-5 by the City of Birmingham.

Highest & Best Use: Commercial and Residential Mixed-Use as Zoned

Topography: Level and at grade with surrounding road frontages.

Land Area: 89,519 Square Feet

Date of Appraisal Report: July 24, 2023.

Effective Date of Valuation: July 1, 2023

Market Value of One-Foot Airspace Easement of 16,000 Square feet \$2,500  
(This presumes a single one-time payment)

Alternatively, Annual rental in Lieu of Single Payment \$200 per year



D. Legal Description of Ownership

The Subject Parcel being appraised is a proposed 160 square foot airspace easement overhanging the public sidewalk adjoining the Development Parcel. The adjoining Development Parcel, known as Tax Parcel 19-36-283-026, is legally described as follows:

T2N, R10E, SEC 36 O E SHATTUCK SUB LOT 11, ALSO PART OF LOTS 14 TO 17 INCL, ALSO OF 'RURAL SUB' LOTS 5 TO 11 INCL ALL DESC AS BEG AT PT DIST S 86-48-15 W 7.19 FT FROM SE COR OF SD LOT 17, TH S 86-48-15 W 166.31 FT, TH S 86-48-15 W 132 FT, TH N 11-16-30 W 307.10 FT, TH N 77-46-42 E 198 FT, TH S 03-15-06 E 103.14 FT, TH N 86-48-15 E 144.74 FT, TH S 03-27-52 E 231.97 FT TO BEG 9-28-22 FR 016 & 024

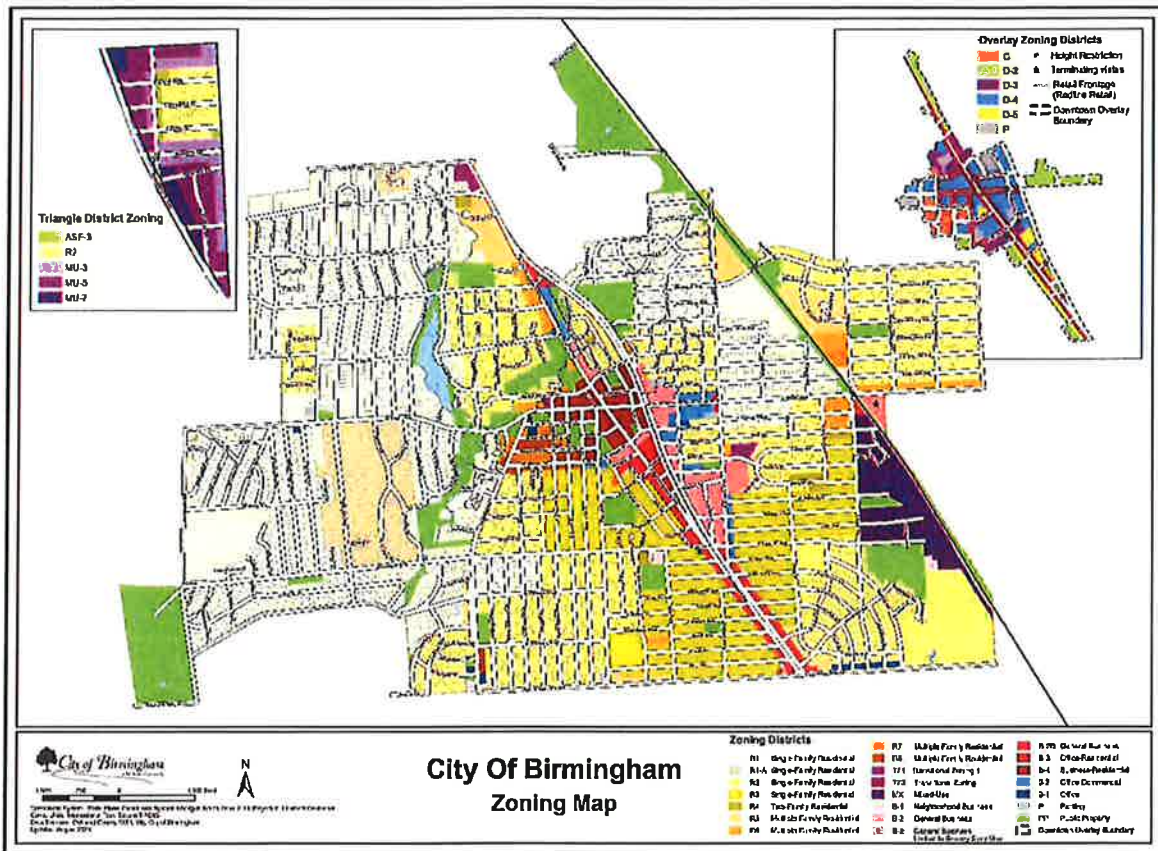
E. Zoning

The Development Parcel is primarily zoned B-2 General Business but also lies within the Triangle District and is overlaid Mixed Use-3 and Mixed Use-5 by the City of Birmingham. The zoning ordinance for the City of Birmingham can be viewed in its entirety at the following website link:

<https://online.encodeplus.com/regs/birmingham-mi/doc-viewer.aspx#secid-1>

F. Sale History of Property

The Uniform Standards of Professional Appraisal Practice (USPAP) requires the appraiser to report all sales of the subject occurring within three years prior to the date of value. The subject parcel was purchased in two parts in May 2021 within three years of the effective date of valuation.



The first purchase included the parcel located at 770 S. Adams Road in the Triangle District of the City of Birmingham. Land within the Triangle District is bordered by E. Maple Avenue, S. Adams Road and Old Woodward Avenue. This purchase, along with Comparable 2, comprise the Development Parcel adjoining the Subject Parcel addressed in this appraisal. The slightly irregular site consists of 28,760± square feet or 0.66± acres net existing road right of way. The purchase from 770 Adams, LLC to FHS Birmingham, LLC occurred on May 21, 2021 for \$6,200,000. At the time of the purchase, the site was improved with a 13,866 square foot two-story commercial building. Both buildings were demolished in 2022 at a cost of \$249,400. The building size of this purchase represents 50.8% of the total size of both buildings. Multiplying the building size by 50.8% yields \$126,695 as the allocated demolition cost for the building. This increases the purchase price to \$6,326,695 and the unit rates to \$219.98 per square foot and \$9,582,435 per acre. The parcel has 172 feet of frontage on S. Adams Road and all utilities are available to the site.

The second purchase includes the parcel located at 1000 Haynes Street, west of S. Adams Road in the Triangle District of the City of Birmingham. Land within the Triangle District is bordered by E. Maple Avenue, S. Adams Road and Old Woodward Avenue. This purchase, along with Comparable 1, comprise the Development Parcel adjoining the Subject Parcel addressed in this appraisal. The irregular site consists of 60,759± square feet or 1.40± acres net existing road right of way. The purchase from Citizen Bank N.A. to FHS Birmingham, LLC occurred on May 21, 2021 for \$2,500,000. At the time of the purchase, the site was improved with a 13,444 square foot two-story commercial building. Both buildings were demolished in 2022 at a cost of \$249,400. The building size of the second represents 49.2% of the total size of both buildings. Multiplying the building size by 49.2% yields \$122,705 as the allocated demolition cost for the building. This increases the purchase price to \$2,622,705 and the unit rates to \$43.17 per square foot and \$1,880,298 per acre. The parcel has 198 feet of frontage on Haynes Street, 59.9 feet on S. Adams Road and 307.1 feet on S. Worth Street. All utilities are available to the site.

Please note that these two sale parcels that adjoin the Subject Parcel (and comprise the Development Parcel) have been combined into the Development Parcel and construction of a new mixed use development is currently underway. The combined land size of the property is 89,519 square feet or 2.06 net acres and the combined sale price is \$8,700,000. Adding demolition costs for both buildings of \$249,400 increases the total sale price to \$8,949,400. This equates to a combined unit rate of \$99.97 per square foot or \$4,354,783 per acre. The address of the new development is 707 S. Worth Street and is further identified as Tax Parcel 19-36-283-026. This recent assemblage adjoining the Subject Property is considered relevant to the market value of the Development Parcel and the Subject Parcel (i.e., the subject easement). Both sales and the combined assemblage are utilized as comparable sales within the Direct Sales Comparison Approach section of this appraisal report.

G. Ownership, Occupancy and Contact with the Owner

The Development Parcel is owned by FHS Birmingham, LLC. The Subject Parcel is owned by the City of Birmingham. David E. Burgoyne ASA, SR/WA, R/W-AC inspected and photographed both properties on both June 8 and June 20, 2023. The comparable sales were also inspected and photographed on June 20, 2023. Contact with FHS Birmingham L.L.C. as client has been with Christopher Owen Corden and Rod Blake as representatives of FHS Birmingham, L.L.C. Messrs. Corden and Blake were very helpful and provided elevations, drawing, plans, documents, and all purchase and sale details regarding the properties.

H. Interest Appraised

The interest appraised is a proposed airspace easement over the adjoining sidewalks benefitting the unencumbered fee simple estate of the Development Parcel.

I. Purpose of the Appraisal

The purpose of this report is to establish the market value of the Subject Parcel, being the airspace easements over the adjoining sidewalks and right-of-way that comprise the Subject Property. With respect to the scope of this assignment, it is important to define the important terms governing the preparation of this appraisal. The following pages include definitions and comments relative to the application of these fundamental concepts and standards.

**Just Compensation** - "Whenever private property is taken for a public purpose, the Constitution commands that the owner shall be paid just compensation. Just compensation is the amount of money that will put the person whose property has been taken in as good a position as the person would have been in had the taking not occurred. The owner must not be forced to sacrifice or suffer by receiving less than full and fair value for the property. Just compensation should neither enrich the individual at the expense of the public, nor the public at the expense of the individual." (M CIV JI 90.05)

**Market Value** - "The highest price estimated in terms of money that the property will bring if exposed for sale on the open market, with a reasonable time allowed to find a purchaser with knowledge of all the uses and purposes to which it is adapted, and for which it is capable of being used. The amount of money which the property would bring if it were offered for sale by one who desired, but was not obliged to sell, and was bought by one who was willing but not obliged to buy. What the property would bring in the hands of the prudent seller, at liberty to fix the time and conditions of the sale. What the property would sell for in negotiations resulting in a sale between an owner, willing but not obliged to sell, and a willing buyer not obliged to buy. What the property would be reasonably worth on the market for a cash price allowing a reasonable time within which to affect the sale." (M CIV JI 90.06)

**Highest and Best Use** - "Highest and Best Use" is defined as the most profitable and advantageous use the owner may make of the property even if the property is presently used for a different purpose, or is vacant, so long as there is a market demand for such use" (M CIV JI 90.09). Typically, the highest and best use must be physically possible, legally permissible, economically feasible and maximally productive. (*Appraisal Institute - The Appraisal of Real Estate*, Fifteenth Edition (2020), pp. 306-308).

J. Discussion of the Appraisal Problem and Scope of Work

The purpose of this report is to address the market value of proposed balcony easements that overhang the public sidewalks abutting the Development Parcel (the Subject Parcel). The properties are positioned wrapping the southwest corner of Haynes Street and Adams Road in the City of Birmingham, east of its downtown area. The Development Parcel is primarily zoned B-2 General Business but also lies within the Triangle District and is overlaid Mixed Use-3 and Mixed Use-5 by the City of Birmingham.

This appraisal is an Appraisal Report per USPAP in an appropriate format for negotiation with the City of Birmingham. While not expected to be used for litigation purposes, the appraisal will use the standard Michigan definitions applicable to right-of-way acquisition and eminent domain. The easement to be appraised is a one-foot overhang extending into the airspace above the public sidewalk associated with a mixed-use residential development located at Haynes and Adams Roads, within the City of Birmingham, Oakland County, Michigan.

**“Easement” is defined on Page 11 of the Glossary of The International Right of Way Association’s publication Principles of Right of Way (2006) as:**

*“A non-possessory interest held by one person in property of another with the first person is accorded partial use of the property for a specific purpose. An easement restricts but does not abrogate the fee owner’s right to the use and enjoyment of the property.”*

*“An easement is a non-possessory interest one has in the property of another for a specific purpose. Easements may involve the right to use only the property’s surface, only the airspace above the real estate, only its surface, or any combination of the three. Easement rights may be granted exclusively to one user or not exclusively, to benefit many uses they may be affirmative or negative and affirmative easement conveys an affirmative right to the grantee to enter on the real estate of another for a specific purpose. A negative easement restricts the real estate owner whose property is burdened by the easement. (Chapter 2, P4 of The International Right of Way Association’s publication Principles of Right of Way (2006))*

Easements and their value are also discussed in Section 4.6.5. of the Uniform Appraisal Standards for Federal Land Acquisitions prepared by the Appraisal Foundation, Washington DC 2016. [The Yellow Book] on Page 168:

4.6.5. **Easement Valuation Issues.** In general terms, an easement is a limited right to use or control land owned by another for specified purposes.<sup>821</sup> An easement is a property interest less than the fee estate, with the owner of the underlying fee (the servient estate) retaining full dominion over the realty, subject only to the easement (the dominant estate); the fee owner may make any use of the realty that does not interfere with the easement holder's reasonable use of the easement and is not specifically excluded by the terms of the easement.

The specific terms and impact of each specific easement must be carefully considered.

In terms of underlying land value, one does not specifically appraise the City's sidewalk, the airspace above it, nor individual strips of land (some measuring as little one foot by ten feet). The appraiser believes the application of a "through the fence" valuation methodology is appropriate. Through the fence, also referred to as "across the fence" (ATF), is a well-established valuation concept whereby the unit value of a parcel of land is based on the value of abutting land. In other words, the value of the Subject Property as unencumbered will be established as what it is worth as part of a larger parcel, without specific consideration accorded to its relative position within subject, its relative size, or the fact that it is airspace only. Doing this results in a balanced and uniform evaluation of the Subject Parcel's market value. After determining the underlying ATF value, the market value of the easement over said land is determined as a percentage of the fee value.

The scope of work for this assignment involved examining conveyances of land in and near Birmingham's downtown area, with particular emphasis on those having a similar highest and best use to the subject. Relevant transactions are used as comparables the Direct Sale Comparison analysis. Other documents reviewed include the a land survey of the Development Parcel and various other assessing and tax records specific to the Development Parcel.

This appraisal of the Subject Parcel is a logical process which involves the collection of both general and specific data relevant to both the Subject and Development Parcels, determination of the highest and best use as of the date of valuation, selection of the appropriate approaches to value, and subsequent application of those approaches. The three basic approaches to value are the Replacement Cost Less Depreciation Approach (or, simply the Cost Approach) the Income Approach and the Direct Sales Comparison Approach.

The Cost Approach is a method in which the value of a property is derived by estimating the replacement cost of the improvements and deducting the estimated depreciation. This approach is based on the assumption that the replacement cost new sets the upper limit of building value, provided that the improvements represent the highest and best use of the land. The Cost Approach was considered but was deemed not relevant to the valuation issues for this assignment.

The Income Approach is an appraisal technique in which the anticipated net income is processed to indicate the capital amount of the investment that produces the net income. The capital amount, called the capitalized value, is in effect the sum of the anticipated annual rents less the loss of interest to the time of collection. The Cost Approach was considered but was deemed not relevant to the valuation issues for this assignment as an airspace easement over land.

The Direct Sales Comparison Approach is an appraisal technique in which the value is predicated upon prices paid in arms-length market transactions and prices asked demonstrated by current listings for similar properties. Unusual financing terms paid or offered must be reflected in terms of cash or in terms equivalent to cash. Given the availability of relevant sales data, the Direct sales Comparison approach will be used to establish the market value of the Subject Parcel.



K. Intended Use and Intended Users

The client for this appraisal is FHS Birmingham, L.L.C. Intended users of this report include Christopher Owen Corden and Rod Blake of FHS Birmingham, L.L.C., as the client and owner of the Development Parcel, as well as FHS Birmingham, L.L.C.'s legal representatives, if any. It is expected that representatives for the City of Birmingham will also see this appraisal, although they are not intended users. Use of this report by others is not intended by the appraiser. This appraisal is prepared in accordance with the *Uniform Standards of Professional Appraisal Practice* of the Appraisal Foundation and the Codes of Ethics and Standards of the International Right-of-Way Association and the American Society of Appraisers.

L. Personal Property

No equipment or personal property is considered in this appraisal report.

M. Environmental Conditions

We have assumed the subject to be free of hazardous waste or toxins. The existence of toxins or hazardous material, which may or may not be present on the property, was not observed by the appraiser. The appraiser has no knowledge of the existence of such materials on or in the property. The appraiser, however, is neither trained nor qualified to detect hazardous materials. The presence of asbestos, urea-formaldehyde foam insulation, heavy metals, petroleum distillates, solvents, radioactive or other potentially hazardous materials may affect the value of the property. This determination of market value is predicated on the assumption that there is no such material present at the subject property that would cause a diminution in value. No responsibility is assumed for any such conditions or for any expertise or knowledge required to discover them. The client, and any other interested party, is urged to retain an expert trained in the detection of toxins and hazardous substances, if desired.

SECTION II - VALUATION OF SUBJECT PROPERTY

A. Description of Development Parcel

The subject property is generally located in Section 36, Town 2 North, Range 10 East, in the City of Birmingham, Oakland County, Michigan. More specifically, the Development Parcel is located at the southwest corner of S. Worth and Haynes Streets, south of East Maple Road. A small portion of the site also fronts S. Adams Road. The Development Parcel is the assemblage of two separately identified parcels of land formerly identified as 770 S. Adams Road (0.66± net acres) and 1000 Haynes Street (1.40± net acres). According to assessing records, the parcels were combined in October of 2022 to create a 2.06 net acre parcel identified as 707 S. Worth Street. The newly created Development Parcel is also identified as Tax Parcel 19-36-283-026. An aerial reproduction of the property is depicted below.



Real Estate Appraisal of Balcony Easements over Public Sidewalks  
Adjoining 89,519 Square Foot Development Parcel Located at Haynes and Adams  
City of Birmingham - Page 16 -Oakland County, Michigan  
© Burgoyne Appraisal Company LLC. 400 Congdon Street, Chelsea, Michigan 48118-1206

The assembled Development Parcel consists of 2.06± acres or 89,519± square feet net of existing road right of way. The Development Parcel is irregular in shape and all utilities are available to the site. The property has 307.1 feet of frontage on S. Worth Street, 198 feet of frontage on Haynes Street and 231.97 feet of frontage on S. Adams Road. The Development Parcel is primarily zoned B-2 General Business but also lies within the Triangle District and is overlaid Mixed Use-3 and Mixed Use-5 by the City of Birmingham. Land within the Triangle District is bordered by E. Maple Avenue, S. Adams Road and Old Woodward Avenue. In addition to typical road and utility easements, the appraiser is not aware of any other easements that may affect the value of the property. The legal description of the assembled land (the Development Parcel) was previously provided.

The property (the Subject Parcel) being appraised is limited to proposed airspace easements for balconies that overhang public sidewalks owned by the City of Birmingham. It is my understanding that the City of Birmingham is requiring the property owner to purchase (or lease) airspace easements over a public sidewalk for four stories of balcony overhangs. A two-foot overhang is permitted but a three-foot overhang is proposed. As a result, this report addresses the market value of a one-foot airspace easement, containing 160 square feet.

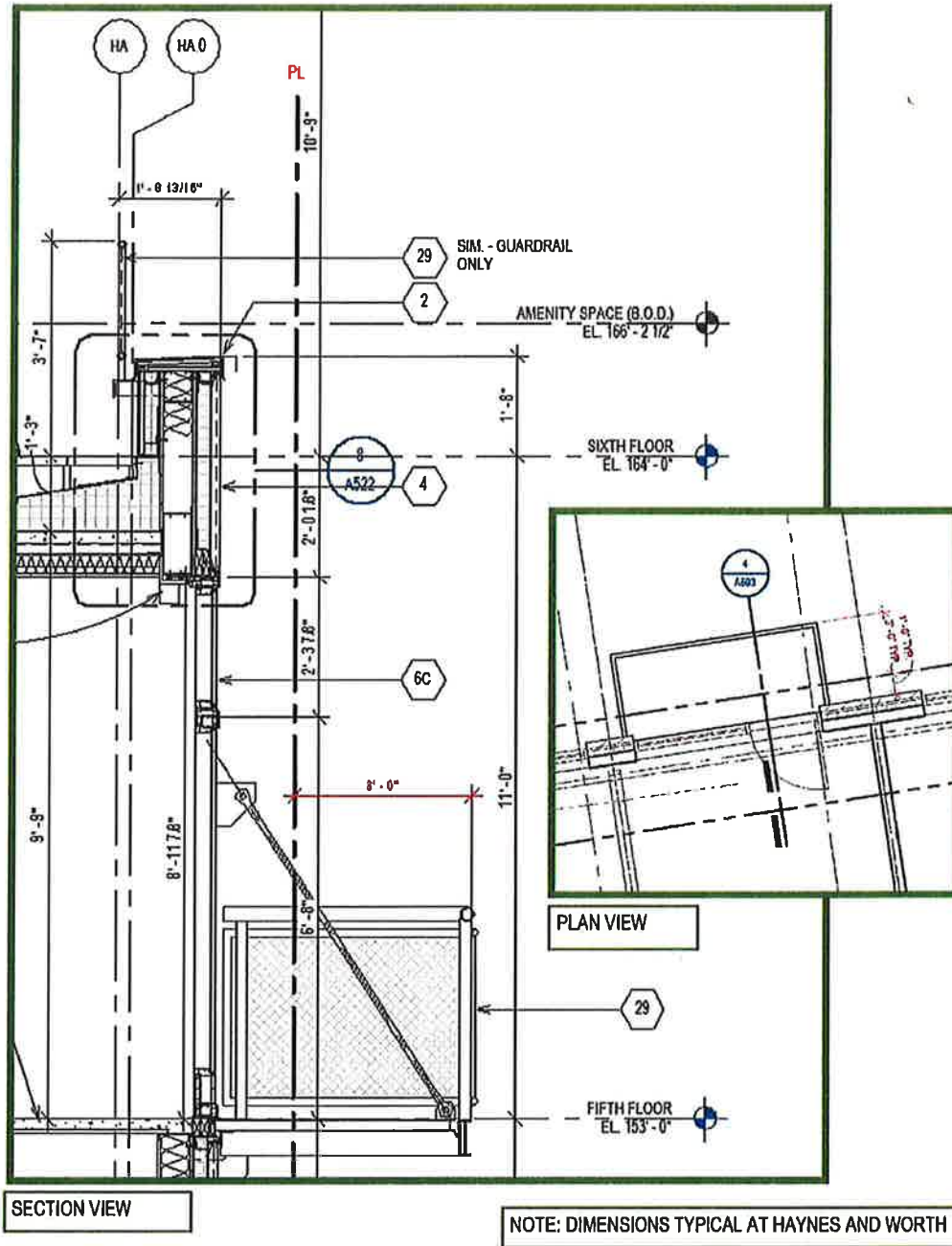
Images of the north (Haynes) and west (Worth) elevations of the building under construction, showing the balconies, are included later in this report. There are balconies on floors 2-5 that are the subject of this appraisal. The balconies on these two elevations extend into the right-of-way by three feet, encroaching by a single foot beyond the permitted two feet. A typical section showing the encroachment is also included later in the report. Apparently, none of the balconies encroach onto Adams Road. According to the City's ordinance (attached later), a permanent structure that is at least 8 feet above grade, such as a balcony, may encroach up to 2 feet. The area of concern for this appraisal is the additional 1-foot that the balconies extend beyond what is permitted. 52 of the 56 balconies are 10 feet wide. The balconies are aligned vertically, such that the balconies on each floor align with the balconies above and below, and all balconies in a specific column encroach into the same airspace. The remaining four wrap the corner of the building and each has a total length of ~30 feet.

52 balconies x 10 feet x 1 foot = 520 SF

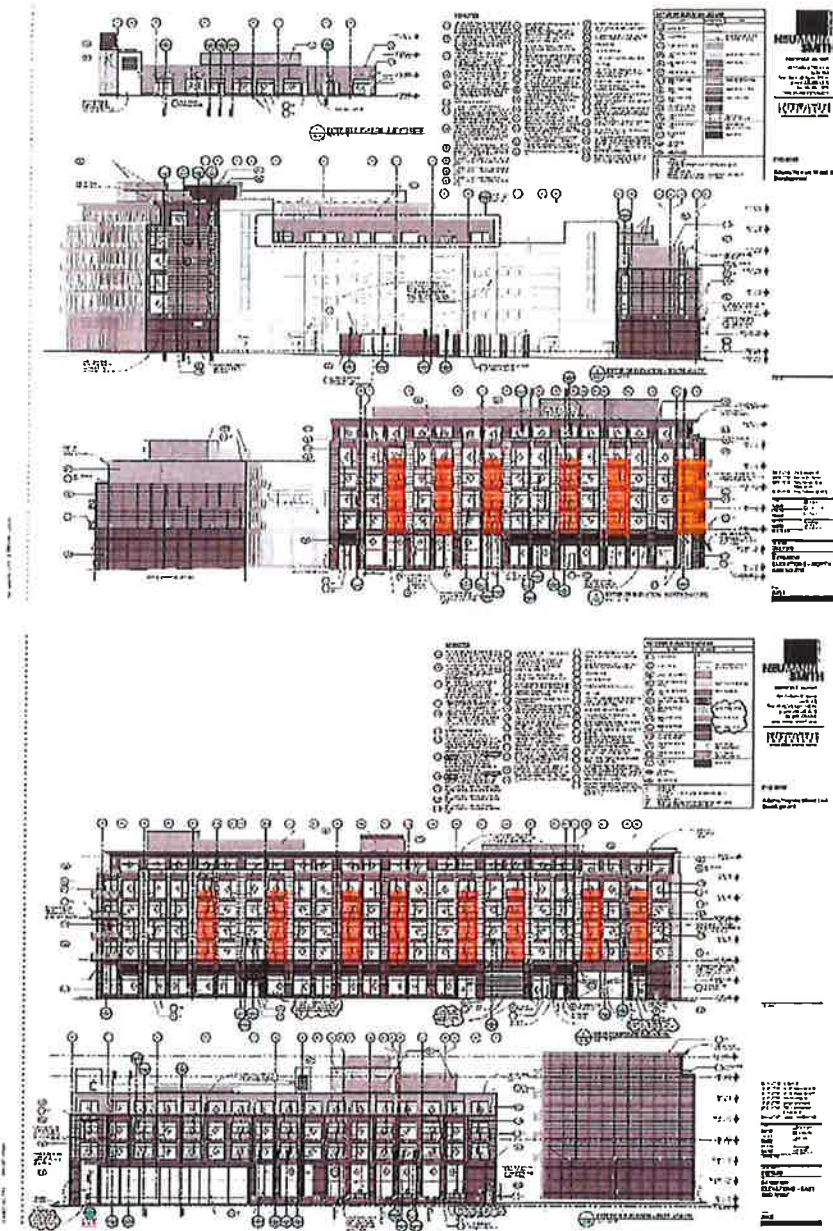
4 balconies x 30 feet x 1 foot = 120 SF

640 SF Total/4 stories = 160 SF of total area air space encroachment of One Foot.

NS (MEW) - 2023-03-10



Real Estate Appraisal of Balcony Easements over Public Sidewalks  
Adjoining 89,519 Square Foot Development Parcel Located at Haynes and Adams  
City of Birmingham - Page 18 -Oakland County, Michigan  
© Burgoyne Appraisal Company LLC. 400 Congdon Street, Chelsea, Michigan 48118-1206



B. Present Use of Development Parcel

The adjoining Development Parcel is currently being developed as a six-story mixed-use building that contains five floors of residential units, including four floors with overhanging balconies. The building is under construction. This development is what causes the need for the one-foot airspace easement over the public right-of-way.

C. Highest and Best Use of Development Parcel

"Highest and Best Use" is defined by Courts in Michigan as the most profitable and advantageous use the owner may make of the property even if the property is presently used for a different purpose, or is vacant, so long as there is a market demand for such use" (M CIV JI 90.09). Typically the highest and best use must be "the reasonably probable use of property that results in the highest value" (Appraisal Institute - The Appraisal of Real Estate, Fifteenth Edition - Page 305).

The following offers a more detailed analysis of the Highest and Best Use criteria:

1. **Physically Possible:** The site must possess adequate size, shape, and soil conditions to support the proposed use.
2. **Legally Permissible:** The proposed use of the property must conform to all local and state zoning and use restrictions for the site.
3. **Financially Feasible:** The proposed use must be capable of providing a net return to the property owner.
4. **Maximally Productive:** Of those physically possible, legally permissible, and financially feasible uses, the highest and best use for a property is that use which provides the greatest net return to the property owner over a given period of time.

These criteria should usually be considered sequentially. It makes no difference that a use is financially feasible if it is physically impossible to construct the improvement or if such a use is not legally permitted. Only when there is a reasonable possibility that one of the prior unacceptable conditions can be changed is it appropriate to continue with the analysis. The fact that the land adjoining the Subject Parcel is currently being developed for commercial and residential mixed-use, and has been historically used, for retail use demonstrates that this use is physically possible, legally permissible and financially feasible. Given the B-2 General Business zoning, MU-3 and MU-5 mixed-use overlay zoning, its specific physical attributes, the current six-story and its location in the City of Birmingham, the maximally productive use is judged to be consistent with its current mixed-use development. Therefore, the highest and best use of the Development Parcel is determined to be for its current use.

There is no alternative use that is more profitable and advantageous that the owner could make of the property. Of course, while the actual Subject Parcel, as an airspace easement overhanging public sidewalks, does not have a separate highest and best use for development, its value as such, consistent with the valuation of the adjoining Development Parcel, in an application of ATF valuation.

D. Estimated Value via Cost Approach

The Cost Approach is a method in which the value of a property is derived by estimating the replacement cost of the improvements, deducting therefrom the estimated depreciation and then adding the market value of the land. Depreciation is loss in value due to any cause. This depreciation represents the degree by which the improvements suffer in comparison with totally new substitute improvements. As this is an appraisal of an airspace easement over public right-of-way (being land) only, the Cost Approach does not have direct application to this assignment and is not utilized.

E. Estimated Value Via Income Approach

The Income Approach is typically applied to properties that are designed and built as income producing investment properties. The most appropriate determinant in establishing value for a property designed and built for its income producing capability is to consider the quantity and quality of that income. The Income Approach to value properly reflects the behavior of typical market participants (investors) who base their investment decisions on the quantity and quality of that income stream. As this is an appraisal of an airspace easement over a public right-of-way (being land) only, the Income Approach was considered but rejected as inapplicable to the appraisal problem.

F. Estimated Value via Direct Sales Comparison Approach

The Direct Sales Comparison approach is an appraisal technique in which the market value is predicated upon prices paid in arms-length market transactions and prices asked demonstrated by current listings for similar properties. Unusual financing terms paid or offered must be reflected in terms of cash or in terms equivalent to cash.

The first step in determining the market value of the instant airspace easements being appraised is determining the 100% unencumbered fee value of the land to be encumbered. Although the easements are to encumber the airspace over a city-owned public sidewalk, the value of the land within those easements is directly comparable to the market value of the FHS Birmingham L.L.C. Site as if vacant on an ATF basis. The unit rate applicable to the 89,519 SF Development Parcel is, therefore, the starting point for the easement appraisal.

Both properties are generally located in Section 36, Town 2 North, Range 10 East, in the City of Birmingham, Oakland County, Michigan. More specifically, the property is located at the southwest corner of S. Worth and Haynes Streets, south of East Maple Road. A small portion of the Development Parcel also fronts S. Adams Road. The Development Parcel is the assemblage of two separately identified parcels of land formerly identified as 770 S. Adams Road (0.66± net acres) and 1000 Haynes Street (1.40± net acres). According to assessing records, the parcels were combined in October of 2022 to create a 2.06 net acre parcel identified as 707 S. Worth Street. The newly created Development Parcel is also identified as Tax Parcel 19-36-283-026.

The assembled Development Parcel consists of 2.06± acres or 89,519± square feet net of existing road right of way. The parcel is irregular in shape and all utilities are available to the site. The property has 307.1 feet of frontage on S. Worth Street, 198 feet of frontage on Haynes Street and 231.97 feet of frontage on S. Adams Road. The Development Parcel is primarily zoned B-2 General Business but also lies within the Triangle District and is overlaid Mixed Use-3 and Mixed Use-5 by the City of Birmingham.



Land within the Triangle District is bordered by E. Maple Avenue, S. Adams Road and Old Woodward Avenue. In addition to typical road and utility easements, the appraiser is not aware of any other easements that may affect the value of the property. The legal description of the assembled Development Parcel was previously provided.

Five comparable sales within and near downtown Birmingham have been identified and are summarized below. Two of five sales are part of the assemblage of the adjoining Development Parcel itself. While discussed separately, these two purchases, consisting of the assemblage of the Development Parcel are also analyzed and discussed as a single assemblage. Please note that Sales 1 and 2 are the adjoining assemblage, while Sales 3, 4, and 5 have different locations. Sales 3, 4, and 5 are all located in the City of Birmingham, but Sale #3 has a vastly inferior location east of town on the north side of 14 Mile Road in an area of modest office development. Sales 4 and 5 are truly located in Downtown Birmingham, west of Woodward Avenue, and enjoy superior locations are compared to the subject property. Sales 3, 4, and 5 are also considerably smaller than the subject property.

COMPARABLE VACANT COMMERCIAL LAND SALES - BIRMINGHAM					
#	Location of Comparable	Sale Date	Sale Price	Land Size / Zoning	Unit Rate
1	770 S. Adams Road South of Haynes Street City of Birmingham	MAY 2021	\$6,200,000 + \$126,695 Demo costs	28,760 SF 0.66 Acres B-2 + MU-3 & MU-5	\$219.98 PSF \$9,582,435 PA
2	1000 Haynes Street West of S. Adams Road City of Birmingham	MAY 2021	\$2,500,000 + \$122,705 Demo costs	60,759 SF 1.40 Acres B-2 +MU-3 & MU-5	\$43.17 PSF \$1,880,298 PA
1 and 2	Wrapping Corner of Adams & Haynes City of Birmingham	MAY 2021	\$8,700,000 + \$249,400 Demo costs	89,519 SF 2.06 Acres B-2 +MU-3 & MU-5	\$99.98 PSF \$4,355,000 PA
3	2101 E. 14 Mile Road At NEC of Mansfield Road City of Birmingham	NOV 2020	\$400,000	14,850 SF 0.34 Acres O-1	\$26.94 PSF \$1,173,333 PA
4	460 N. Old Woodward Between Ravine & Euclid Aves. City of Birmingham	SEPT 2018	\$1,450,000 + \$29,000 Demo costs	5,532 SF 0.13 Acres D-2	\$267.35 PSF \$11,645,922 PA
5	277 Pierce Street At NEC of E. Merrill Street City of Birmingham	SEPT 2016	\$3,150,000 + \$75,500 Demo costs	4,829 SF 0.11 Acres D-4	\$667.94 PSF \$29,095,626 PA

Please note that when improved properties are purchased to be developed as vacant land (like Comparable Sales 1, 2, 4, and 5), not only do the existing improvement not contribute to the price or value of the sale property, demolition costs must be *added* to the sale price in analyzing the comparable sale and determining an appropriate unit rate for comparison.

**Comparable 1** is located at 770 S. Adams Road in the Triangle District of the City of Birmingham. Land within the Triangle District is bordered by E. Maple Avenue, S. Adams Road and Old Woodward Avenue. This purchase, along with Comparable 2, comprise the Development Parcel adjoining the Subject Parcel addressed in this appraisal. The slightly irregular site consists of 28,760± square feet or 0.66± acres net existing road right of way. The sale from 770 Adams, LLC to FHS Birmingham, LLC occurred on May 21, 2021 for \$6,200,000. At the time of the sale, the site was improved with a 13,866 square foot two-story commercial building. Both buildings were demolished in 2022 at a cost of \$249,400. The building size of Sale 1 represents 50.8% of the total size of both buildings. Multiplying the building size by 50.8% yields \$126,695 as the allocated demolition cost for the building. This increases the sale price to \$6,326,695 and the unit rates to \$219.98 per square foot and \$9,582,435 per acre. The sale parcel has 172 feet of frontage on S. Adams Road and all utilities are available to the site. The sale parcel is primarily zoned B-2 General Business but also lies within the Triangle District and is overlaid Mixed Use-3 and Mixed Use-5 by the City of Birmingham.

**Comparable 2** is located at 1000 Haynes Street, west of S. Adams Road in the Triangle District of the City of Birmingham. Land within the Triangle District is bordered by E. Maple Avenue, S. Adams Road and Old Woodward Avenue. This purchase, along with Comparable 1, comprise the Development Parcel adjoining the Subject Parcel addressed in this appraisal. The irregular site consists of 60,759± square feet or 1.40± acres net existing road right of way. The sale from Citizen Bank N.A. to FHS Birmingham, LLC occurred on May 21, 2021 for \$2,500,000. At the time of the sale, the site was improved with a 13,444 square foot two-story commercial building. Both buildings were demolished in 2022 at a cost of \$249,400. The building size of Sale 2 represents 49.2% of the total size of both buildings. Multiplying the building size by 49.2% yields \$122,705 as the allocated demolition cost for the building. This increases the sale price to \$2,622,705 and the unit rates to \$43.17 per square foot and \$1,880,298 per acre. The sale parcel has 198 feet of frontage on Haynes Street, 59.9 feet on S. Adams Road and 307.1 feet on S. Worth Street. All utilities are available to the site. The sale parcel is primarily zoned B-2 General Business but also lies within the Triangle District and is overlaid Mixed Use-3 and Mixed Use-5 by the City of Birmingham.

Please note that these two sale parcels have been combined and construction of a new development is currently underway on the Development Parcel. The combined land size of the property is 89,519 square feet or 2.06 net acres and the combined sale price is \$8,700,000. Adding demolition costs for both buildings of \$249,400 increases the total sale price to \$8,949,400. This equates to a combined unit rate of \$99.97 per square foot or \$4,354,783 per acre. The address of the new development is 707 S. Worth Street and is further identified as Tax Parcel 19-36-283-026.

**Comparable 3** is located at 2101 E. 14 Mile Road at the northeast corner of Mansfield Road, in the City of Birmingham. The site consists of 14,850 square feet or 0.34 acres net existing road right of way. The site was vacant at the time of the sale. The sale from Kelly Building and Development Company to Thirty One Real Estate, LLC (Michigan Smile Design) occurred on November 25, 2020 for \$400,000. This equates to a unit rate of \$26.94 per square foot or \$1,173,333 per net acre. The rectangular parcel has 135 feet of frontage on E. 14 Mile Road and 110 feet on Mansfield Road. All utilities are available to the site and the land is zoned O-1 Office District.

**Comparable 4** is located at 460 N. Old Woodward Avenue, between Ravine and Euclid Avenues, in the City of Birmingham. The rectangular site consists of 5,532± square feet or 0.127± acres net existing road right of way. The sale from Junior League of Birmingham MI to 460 Parkview occurred on September 4, 2018 for \$1,450,000. At the time of the sale, the site was improved with a 3,232 square foot commercial building. A demolition permit was issued in June of 2022 and a new commercial building was issued in January 2013. The demolition costs in 2021 for Sales 1 and 2 established a rounded unit rate for demolition of \$9.00 per square foot. Multiplying the building size of 3,232 square feet by \$9.00 per square foot yields estimated demolition costs of \$29,088, rounded to \$29,000. This increases the sale price to \$1,479,000 and the unit rates to \$267.35 per square foot and \$11,645,922 per acre. The parcel has 46 feet of frontage on N. Old Woodward Avenue and all utilities are available to the site. The parcel is zoned D-2 and lies within the Downtown Overlay District.

**Comparable 5** is located at 277 Pierce Street, at the northeast corner of E. Merrill Street, in the City of Birmingham. The rectangular site consists of 4,829± square feet or 0.11± acres

net existing road right of way. The sale from Secontine Family, LP to 277 Development Associates, LLC occurred on September 6, 2016 for \$3,150,000. At the time of the sale, the site was improved with an 8,387 square foot commercial building. The demolish cost in 2021 for Sales 1 and 2 established a rounded unit rate for demolition of \$9.00 per square foot. Multiplying the building size of 8,387 square feet by \$9.00 per square foot yields estimated demolition costs of \$75,483, rounded to \$75,500. This increases the sale price to \$3,225,500 and the unit rates to \$667.35 per square foot and \$29,095,626 per acre. The parcel has 49.926 feet and 97.08 feet of frontage on Pierce and E. Merrill Streets, respectively. All utilities are available to the site and the parcel is zoned D-4 and lies within the Downtown Overlay District.

Only the two sales of the adjoining Development Parcel are located in close proximity and within the Triangle District. They support an unencumbered unit rate of \$100 per square foot based on the combined assembly price in May 2021. There is no evidence of any significant change in market conditions between May 2021 and July 2023 so no adjustment is applied. However, the property owners believe that they overpaid for Sale 1 at almost \$220 per square foot.

The unit rate supported by the other three sales is also consistent with \$100 per square foot for the subject property. Sale #3 at about \$27 per square foot is vastly inferior to the subject location, while Sales #4 and #5 are truly located in Downtown Birmingham (west of Woodward Avenue) and, at \$267 per square foot and \$668 per square foot, enjoy vastly superior locations as a result. The three sales are also much smaller than the subject.

Therefore, based on the foregoing analysis, it is my opinion that the market value on a unit basis of the Subject Property using the Direct Sales Comparison approach to value as of July 1, 2023 is \$100 per square foot. This can be applied to the area proposed for within the easement, 160 square feet, to determine the unencumbered fee value of the subject easement area. Multiplying 160 square feet by \$100 per square foot yields \$16,000 the unencumbered fee value of the subject easement area before consideration of the easement rights. The market value of said easement is, therefore, some percentage of \$16,000.

Please note that I have appraised perhaps a thousand easements throughout my 38½ years as a real estate appraiser: easements of all types. The market value of an easement is based upon its impact upon the servient estate, in this case the city of Birmingham. Generally, the benefit to the dominant estate, my client, is not considered in valuing the easement. Of course, regardless, the maximum benefit that would accrue to the property owner, FHS Birmingham L.L.C., is \$16,000, the unencumbered fee value of the property involved.

In many ways one could also argue that the impact upon the City of Birmingham, their property rights, and the sidewalk over which the balconies hang is zero, as balconies located at least 8 feet in the air do not interfere with the use of the sidewalk in any way. Indeed, the existing sidewalk has no real development potential or independent market value, and the proposed use of the airspace easement is perhaps the only way to viably monetize the property rights for the Subject Parcel. However, this is equally inappropriate as an easement does involve the acquisition of a property right from the city, which should be compensated.

While not particularly impactful, the property rights being taken are more than nominal and do benefit the property owner. Nominal easements are often valued at five to 10% of the unencumbered fee value of the land and rarely do easements with minor impact, such as the subject easement, exceed 20% of the unencumbered fee value. It is therefore my opinion that a percentage between 10 and 20% appropriately compensates the city of Birmingham for the acquisition of this airspace easement overhanging their public sidewalk. While the answer could be only 10%, or as much as 20%, it is my opinion that a percentage at the midpoint or 15% is appropriate. Fifteen percent of \$16,000 (the unencumbered fee value of the property subject to the easements) is \$2,400. This is rounded to \$2,500 as my opinion of the market value of the airspace easement. This means that a single one-time payment of \$2,500 from FHS Birmingham L.L.C. to the City of Birmingham would appropriately compensate them for the acquisition of this airspace easement. Please note that this is a single one-time lump-sum payment.

**Market Value of One-Foot Easement containing 16,000 Square feet                    \$2,500**  
**(This presumes a single one-time payment)**

Although it is typical for permanent easements to be paid for with a single lump sum payment as indicated above, I was also asked to estimate on annual rental payment as an alternative to a single lump sum payment. An annual rental payment is based upon an appropriate rate of return applied to the market value of the easement. As a result, it is necessary to determine an appropriate rate of return. Land lease rates are gleaned from RealtyRates.com, a real estate rate survey published quarterly. The most recent chart is included on the page following.

Given the small magnitude and low risk, a rate of return of between seven to nine percent is supported by the table of published rates. A rate of 8% is considered appropriate. Multiplying \$2,500 as the market value of the airspace easement as a single lump-sum payment by 8% yields an equivalent annual payment of \$200 per year.

RealtyRates.com INVESTOR SURVEY - 2nd Quarter 2023*						
LAND LEASES						
Property Type	Capitalization Rates			Discount Rates		
	Min.	Max.	Avg.	Min.	Max.	Avg.
Apartments	3.86%	10.55%	7.99%	6.46%	11.05%	8.99%
Golf	4.40%	15.67%	10.14%	7.00%	16.17%	11.14%
Health Care/Senior Housing	4.30%	11.95%	8.56%	6.90%	12.35%	9.56%
Industrial	4.21%	11.51%	8.43%	6.81%	12.01%	9.43%
Lodging	4.37%	15.60%	8.72%	6.97%	16.10%	9.72%
Mobile Home/RV Park	4.26%	14.15%	9.27%	6.86%	14.65%	10.27%
Office	4.22%	11.35%	8.09%	6.82%	11.85%	9.09%
Restaurant	4.89%	17.75%	9.93%	7.49%	18.25%	10.93%
Retail	4.00%	11.50%	8.53%	6.60%	12.00%	9.53%
Self-Storage	4.22%	11.65%	9.46%	6.82%	12.15%	10.46%
Special Purpose	5.00%	17.35%	10.26%	7.36%	19.92%	10.57%
All Properties	3.86%	17.75%	9.03%	6.46%	18.25%	9.91%

\*1st Quarter 2023 Data

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**Annual rental in Lieu of Single Payment**

**\$200 per year**

These opinions are based on the foregoing analysis and all available facts relevant to the subject parcel. It is subject to assumptions and limiting conditions attached hereto and made a part hereof. It cannot be considered apart from those conditions and this report.

**G. Correlation and Conclusion of Value**

The method of valuation employed, the Direct Sales Comparison Approach, is the method deemed most appropriate in the valuation of the subject. The Direct Sales Comparison Approach is clearly preferred in that it is the method of valuation that most closely resembles the motivations of buyers and sellers in the market for this type of property. The Direct Sales Comparison Approach is directly based on confirmed, empirical market data.

The Reproduction Cost Less Depreciation Approach and Income Approach were considered but rejected as not applicable to the appraisal problem. The Direct Sales Comparison Approach to value established a market value for the 160 square foot easement of \$2,500 for the subject property as of July 1, 2023. Likewise, an alternative equivalent annual payment of \$200 per year is also appropriate.

**ONE-FOOT AIRSPACE EASEMENT CONTAINING 16,000 SQUARE FEET MARKET VALUE \$2,500  
(THIS PRESUMES A SINGLE ONE-TIME PAYMENT)**

**ALTERNATIVELY, AN ANNUAL RENTAL IN LIEU OF SINGLE PAYMENT**

**\$200 PER YEAR**

**EFFECTIVE DATE OF VALUE OPINION**

**JULY 1, 2023**

These opinions are based on the foregoing analysis and all available facts relevant to the subject parcel. It is subject to assumptions and limiting conditions attached hereto and made a part hereof. It cannot be considered apart from those conditions and this report.

CERTIFICATION OF DAVID E. BURGOYNE, ASA, SR/WA

I hereby certify that, to the best of my knowledge and belief, unless specifically noted otherwise. The statements of fact contained in this report are true and correct. The reported analyses, opinions and conclusions are limited only by the reported assumptions, limiting conditions and restrictions on disclosure and use. They are my personal, impartial, and unbiased professional analyses, opinions and conclusions.

I have no present or prospective interest in the property that is the subject of this report. I have no personal interest with respect to the parties involved. I have no bias with respect to the property that is the subject of this report or to the parties involved in this assignment. My engagement in this assignment was not contingent upon developing or reporting predetermined results.

My compensation for completing this assignment is not contingent upon development or reporting of a predetermined value or direction of value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.

My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the *Uniform Standards of Professional Appraisal Practice* of the Appraisal Foundation.

I have made a personal interior and exterior inspection of the subject property. I have performed no services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period prior to acceptance of this assignment. No one, except for Richard J. Antio #1201-004039, assisted with this assignment. Mr. Antio assisted with market research and preparing certain sections of the appraisal report.

My analyses, opinions, and conclusions were developed, and this review report was prepared in conformity with the *Code of Professional Ethics and Standards of Professional Appraisal Practice* of the American Society of Appraiser and the *Code of Ethics and Professional Standards* of the International Right of Way Association.

As of the date of this report, I *have* completed the continuing education program for Designated members of the American Society of Appraiser and the International Right of Way Association. The use of this report is subject to the requirements of the American Society of Appraiser and the International Right of Way Association relating to review by their duly authorized representatives.

In my opinion, the market value of the subject airspace easement as a lump-sum payment as of July 1, 2023 is \$2,500. An annual lease payment would be \$200 per year.



David E. Burgoyne, ASA, SR/WA, R/W-AC, Certified General Real Estate Appraiser (Michigan)  
Certified General Real Estate Appraiser #1205-000222



**THIS APPRAISAL IS SUBJECT TO THE FOLLOWING LIMITING CONDITIONS  
& RESTRICTIONS UPON DISCLOSURE AND USE (Page One of Two Pages)**

Use of this appraisal report is contingent upon fulfillment of the appraisal contract, whether written or oral. Upon full payment of all sums due the appraiser, this appraisal report becomes property of the client subject to all restrictions upon disclosure and use included herein and made a part hereof. The report and its conclusions will not be released to a third party by the appraiser or his employees without the client's consent. This limitation on release does not apply to market data or other information obtained by the appraiser for use within the report.

Neither all nor part of the contents of this report, especially conclusions as to value and the identity and affiliations of the appraiser, shall be disseminated to the public through advertising media, public relations media, news media, sales media or any other public means of communication without the prior written consent and specific approval of the appraiser.

No responsibility is assumed for matters legal in character nor is any opinion rendered as to title, which is assumed to be good. All existing liens and encumbrances have been disregarded except, as noted otherwise, and the property is appraised as though free and clear, under responsible ownership and competent management.

No engineering survey or analysis of the property has been made.

Unless expressly indicated within this report, no regulated wetlands or other environmentally sensitive areas, such as woodlands, were observed on the property.

Unless otherwise stated in this report, the existence of toxins or hazardous material, which may or may not be present on the property, was not observed by the appraiser. The appraiser has no knowledge of the existence of such materials on or in the property. The appraiser, however, is neither trained nor qualified to detect hazardous materials. The presence of asbestos, urea-formaldehyde foam insulation, heavy metals, petroleum distillates, solvents, radioactive or other potentially hazardous materials may affect the market value of the property. This determination of fair market value is predicated on the assumption that there is no such material present at the subject property that would cause a diminution in value. No responsibility is assumed for any such conditions or for any expertise or knowledge required to discover them. The client, and any other interested party, is urged to retain an expert trained in the detection of toxins and hazardous substances, if desired.

**THIS APPRAISAL IS SUBJECT TO THE FOLLOWING LIMITING CONDITIONS & RESTRICTIONS UPON DISCLOSURE AND USE (Page Two of Two Pages)**

Comparable sales data and sources are confidential and for purposes of this report only. The maps, sketches and photographs included in this report are included to assist in locating and identifying parcels and comparable sales. Map and sketch details are approximate and no responsibility is assumed for accuracy.

Property rights appraised are, unless otherwise indicated, fee simple interest subject to recorded or known restrictions and easements, if any.

Unit values applied to the subject parcel as a whole are applicable only to the entire parcel as defined. All unit values or other means of comparison should not be applied to other properties or individual sub-parcels or divisions of the subject. It is also inappropriate to make a partition based upon fractional or minority ownership interests, unless specifically addressed within the appraisal report.

Values assigned to improvements covered by this report are in proportion to the contribution made by said improvements to the market value of the property as a whole.

Real estate appraisers in Michigan are required by law to be licensed. This licensure is administrated and appraisers are regulated by the Department of Licensing and Regulatory Affairs, PO Box 30004, Lansing, Michigan 48909.

The legal description furnished is assumed to be correct. Other information identified in this report as being furnished by others is believed to be reliable but no responsibility is assumed for its accuracy.

This is an Appraisal Report as defined by the Uniform Standards of Professional Appraisal Practice (USPAP).

## **ADDENDA**

Real Estate Appraisal of Balcony Easements over Public Sidewalks  
Adjoining 89,519 Square Foot Development Parcel Located at Haynes and Adams  
City of Birmingham - Page 33 -Oakland County, Michigan  
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# COMPARABLE LAND SALE 1



Real Estate Appraisal of Balcony Easements over Public Sidewalks  
Adjoining 89,519 Square Foot Development Parcel Located at Haynes and Adams  
City of Birmingham - Page 34 -Oakland County, Michigan  
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# COMPARABLE LAND SALE 1

**Location:** 770 S. Adams Road, South of Haynes Street  
City of Birmingham, Oakland County

**Tax ID#:** Tax Parcel 19-36-283-016 - Original Number

**Date of Sale:** May 21, 2021

**Sale Price:** \$6,326,695 (\$6,200,000 + \$126,695 demo costs)

**Land Area:** 28,760± square feet - 0.66± net acres

**Unit Price:** \$219.98 per square foot - \$9,582,435 per net acre (including demo)

**Dimensions/Shape:** Slightly irregular

**Zoning:** B-2 General Business  
Parcel is located in the Triangle District  
Overlaid Mixed Use-3 and Mixed Use-5

**Utilities:** All available

**Frontage:** 172 LF on S. Adams Road

**Grantor:** 770 Adams, LLC

**Grantee:** FHS Birmingham, LLC

**Verification:** Buyer and Property Transfer Affidavit

**Remarks:** The site was improved with a 2 story building consisting of 13,866 SF. The building and site improvements, along with the building at 1000 Haynes, were demolished at a total cost of \$249,400. The prorated demo costs allocated to Sale 1 is \$126,695. Sales 1 and 2 were combined and are currently being developed. The new development is identified as 707 S. Worth Street (Tax #19-36-283-026). The combined unit rate is \$99.97 PSF or \$4,354,783 PA (\$8,949,400/89,519 SF)

## COMPARABLE LAND SALE 2



Real Estate Appraisal of Balcony Easements over Public Sidewalks  
Adjoining 89,519 Square Foot Development Parcel Located at Haynes and Adams  
City of Birmingham - Page 36 -Oakland County, Michigan  
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## COMPARABLE LAND SALE 2

**Location:** 1000 Haynes Street, West of S. Adams Road  
City of Birmingham, Oakland County

**Tax ID#:** Tax Parcel 19-36-283-024 - Original Number

**Date of Sale:** May 21, 2021

**Sale Price:** \$2,622,705 (\$2,500,000 + \$122,705 demo costs)

**Land Area:** 60,759± square feet - 1.40± net acres

**Unit Price:** \$43.17 per square foot - \$1,880,298 per net acre

**Dimensions/Shape:** Irregular

**Zoning:** B-2 General Business  
Parcel is located in the Triangle District  
Overlaid Mixed Use-3 and Mixed Use-5

**Utilities:** All available

**Frontage:** 198 LF on Haynes, 59.9 LF on S. Adams Road, 307.1 LF on S. Worth

**Grantor:** Citizens Bank, N.A.

**Grantee:** FHS Birmingham, LLC

**Verification:** Buyer's Settlement Statement

**Remarks:** The site was improved with a 2 story building consisting of 13,444 SF. The building and site improvements, along with the building at 770 S. Adams, were demolished at a total cost of \$249,400. The prorated demo costs allocated to Sale 2 is \$122,705. Sales 1 and 2 were combined and are currently being developed. The new development is identified as 707 S. Worth Street (Tax #19-36-283-026). The combined unit rate is \$99.97 PSF or \$4,354,783 PA (\$8,949,400/89,519 SF)

### COMPARABLE LAND SALE 3



Real Estate Appraisal of Balcony Easements over Public Sidewalks  
 Adjoining 89,519 Square Foot Development Parcel Located at Haynes and Adams  
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## COMPARABLE LAND SALE 3

**Location:** 2101 E. 14 Mile Road, at NEC of Mansfield Road  
City of Birmingham, Oakland County

**Tax ID#:** Tax Parcel 20-31-455-006

**Date of Sale:** November 25, 2020

**Sale Price:** \$400,000

**Land Area:** 14,850 square feet - 0.34 net acres

**Unit Price:** \$26.94 per square foot - \$1,173,333 per net acre

**Dimensions/Shape:** Rectangular – 135' x 110'

**Zoning:** O-1, Office District

**Utilities:** All available

**Frontage:** 135 LF on E. 14 Mile Road  
110 LF on Mansfield Road

**Grantor:** Kelly Building and Development Company

**Grantee:** Thirty One Real Estate, LLC (Michigan Smile Design)

**Verification:** Assessing records and CoStar

**Remarks:** The vacant site was improved with a 4,140 square foot dental clinic in 2021

# COMPARABLE LAND SALE 4



Real Estate Appraisal of Balcony Easements over Public Sidewalks  
Adjoining 89,519 Square Foot Development Parcel Located at Haynes and Adams  
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## COMPARABLE LAND SALE 4

**Location:** 460 N. Old Woodward Avenue  
Between Ravine and Euclid Avenues  
City of Birmingham, Oakland County

**Tax ID#:** Tax Parcel 19-25-330-008

**Date of Sale:** September 4, 2018

**Sale Price:** \$1,479,000 (\$1,450,000 + \$29,000)

**Land Area:** 5,532 square feet - 0.127 net acres

**Unit Price:** \$267.35 per square foot - \$11,645,922 per net acre

**Dimensions/Shape:** Rectangular – 46' x 120.26' (averaged)

**Zoning:** Parcel is zoned D-2 in the Downtown Overlay District

**Utilities:** All available

**Frontage:** 46 LF on N. Old Woodward Avenue

**Grantor:** Junior League of Birmingham MI

**Grantee:** 460 Parkview

**Verification:** Assessing records

**Remarks:** A demolition permit was issued in June of 2022 and a permit for construction of a new commercial building was issued on January 13, 2023. Sales 1 and 2 were demolished in 2021 at a total cost of \$249,400. This equates to a unit rate of \$9.00 per square foot (rounded). Applying this unit to the building size of 3,232 SF by the demolition unit rate established in Sales 1 and 2 of \$9.00 PSF yields demolition costs of 29,088, rounded to \$29,000.

# COMPARABLE LAND SALE 5



Real Estate Appraisal of Balcony Easements over Public Sidewalks  
Adjoining 89,519 Square Foot Development Parcel Located at Haynes and Adams  
City of Birmingham - Page 42 -Oakland County, Michigan  
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## COMPARABLE LAND SALE 5

**Location:** 277 Pierce Street, at NEC of E. Merrill Street  
City of Birmingham, Oakland County

**Tax ID#:** Tax Parcel 19-36-201-010 - Original Number

**Date of Sale:** September 6, 2016

**Sale Price:** \$3,225,500 (\$3,150,000 + \$75,500 demo costs)

**Land Area:** 4,829± square feet - 0.11± net acres

**Unit Price:** \$667.94 per square foot - \$29,095,626 per net acre

**Dimensions/Shape:** Rectangular – 49.82' x 96.92' (averaged)

**Zoning:** Parcel is zoned D-4 in the Downtown Overlay District

**Utilities:** All available

**Frontage:** 49.82 LF on Pierce Street  
97.08 LF on E. Merrill Street

**Grantor:** Secontine Family Limited Partnership

**Grantee:** 277 Development Associates, LLC

**Verification:** Broker's Selling Statement (Signature)

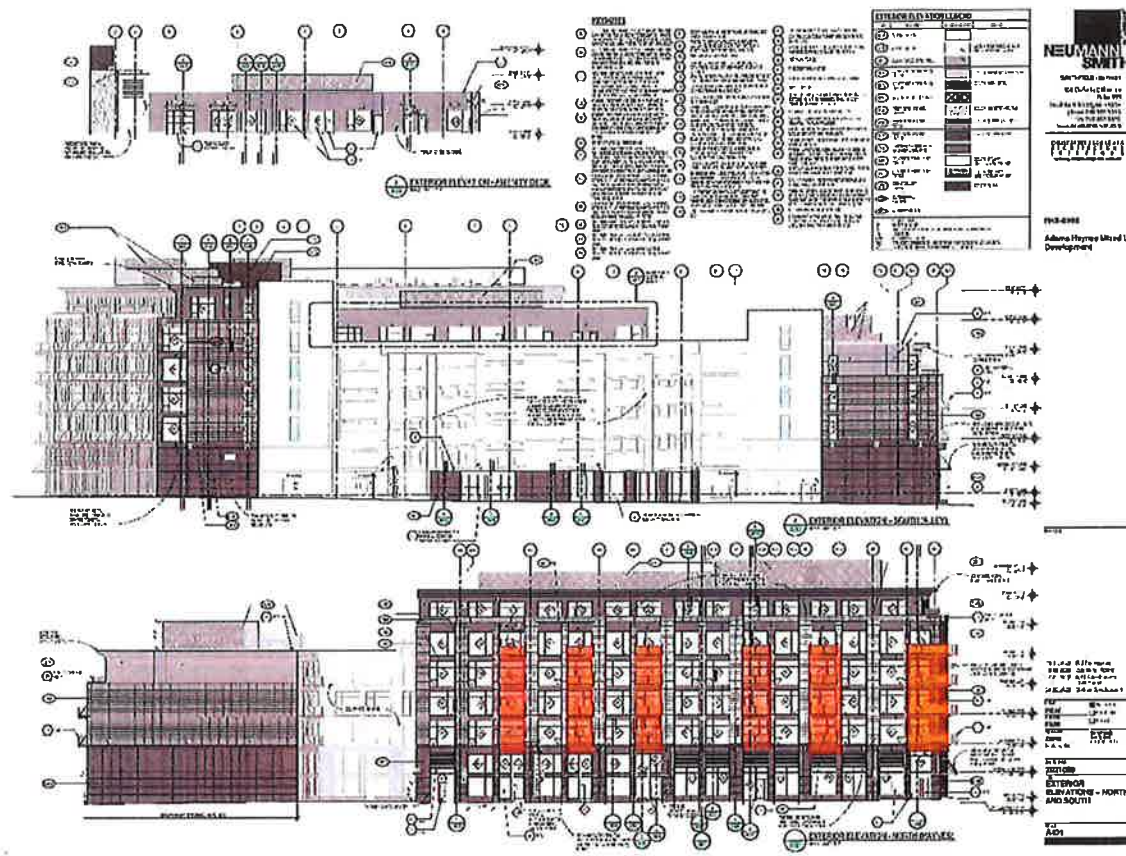
**Remarks:** The site was improved with an existing building consisting of 8,387 SF. The building was demolished circa 2021 and a five story commercial condo building was constructed in 2022. The new Tax ID#'s are 19-36-201-023-24-25. Multiplying the building size of 8,387 SF by the demolition unit rate established in Sales 1 and 2 of \$9.00 PSF yields demolition costs of 75,483, rounded to \$75,500.



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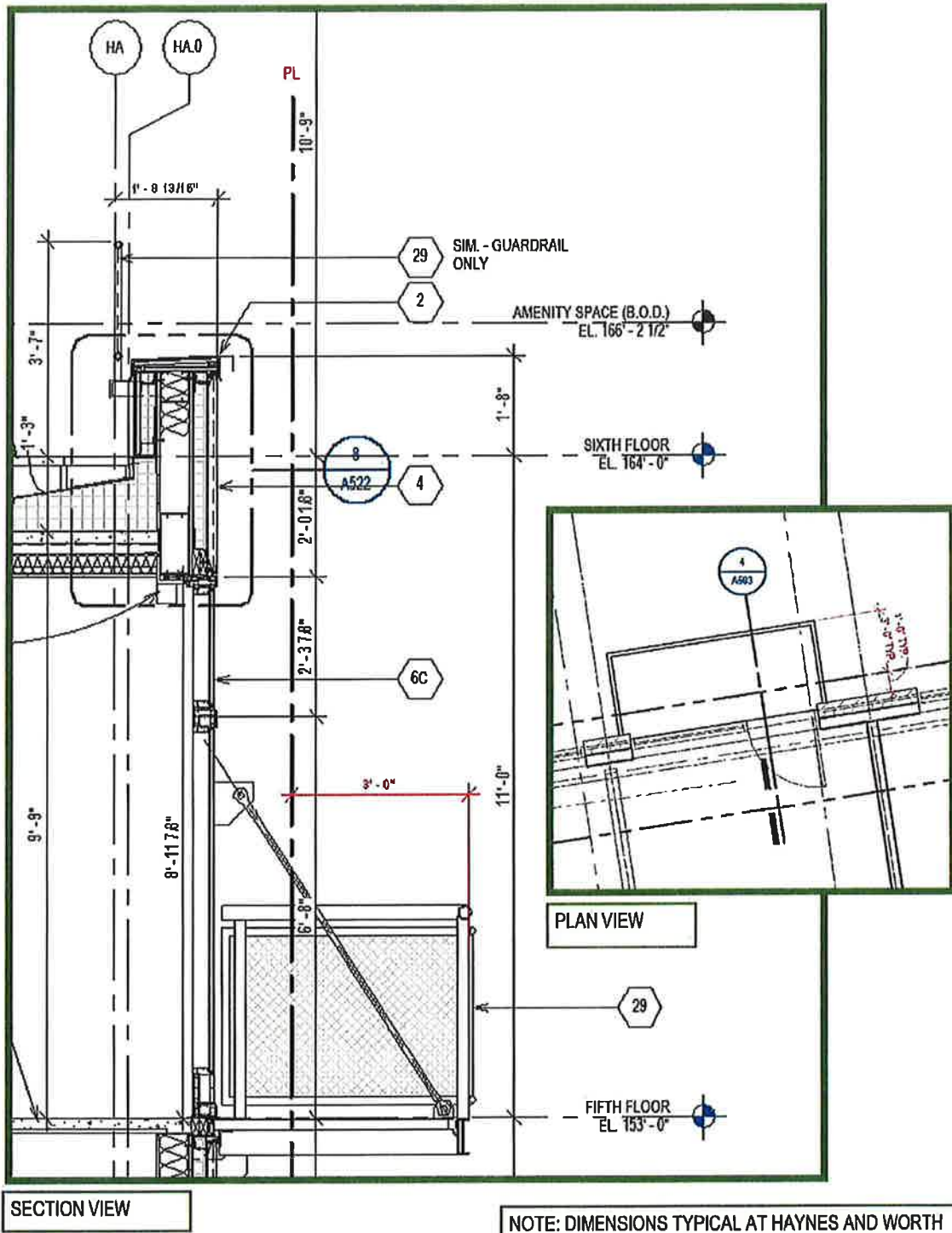


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**CITY OF BIRMINGHAM  
ORDINANCE NO. 2319**

**THE CITY OF BIRMINGHAM ORDAINS: AN ORDINANCE TO AMEND CHAPTER 126,  
ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:**

**TO AMEND ARTICLE 4, SECTION 4.74 SS-01, STRUCTURE STANDARDS TO  
ADD INTENT AND STANDARDS REGULATING ENCROACHMENTS INTO THE  
RIGHT OF WAY.**

4.74 SS-01  
(A-C Unchanged)

**D. Encroachments Into the Right of Way**

1. **Purpose and Intent:** The purpose and intent of this section is to ensure that any allowable encroachments into the right of way do not impede the safety and welfare of the general public and foster a pedestrian friendly environment that prioritizes the accessibility of space, light and air for all users while simultaneously allowing for creative and innovative architectural design and construction.
2. **Applicability:** This section applies to all encroachments that extend into the public right of way at, above or below grade.
3. **Approval Required:** Any encroachment into the public right of way must comply with the Michigan Building Code and requires City approval. Encroachments may be subject to a Special Treatment License approved by the Engineering Department, lease agreement approved by the City Commission and/or may require monetary compensation to the City. Encroachments into the right of way may also require approval by an appropriate reviewing body as per Article 07, Processes, Permits and Fees and are subject to the requirements set forth in this section.
4. **General Encroachment Standards:**
  - a) **Below Grade Encroachments:** All below grade encroachments must be reviewed by the Community Development Department and approved by the City Commission through a lease agreement.
  - b) **Above grade encroachments 8' and below:** Permanent architectural features such as columns, pilasters, belt courses, lintels pediments and similar features may be approved by the Planning Board, Design Review Board and/or Historic District Commission or through administrative approval, as determined by the Planning Director, to project into the right of way provided they do not create any obstruction and that the encroachment complies with the design review standards set forth in Article 07 of the Birmingham Zoning Ordinance.
  - c) **Above grade encroachments above 8':**
    1. Removable architectural elements such as awnings, canopies, marquees may be approved by the Planning Board, Design Review Board and/or Historic District Commission or through administrative approval, as determined by the Planning Director, to project into the right of way provided that they are constructed to support applicable loads without any ground mounted supports on public property. Encroachments with less than 15' of clearance above the sidewalk shall not extend into or occupy more than two-thirds of the width of the sidewalk or 5 feet,

- whichever is less, and must not interfere with any existing or planned streetscape elements or infrastructure.
- ii. Permanent architectural features such as windows, balconies, overhangs and other architectural features that encroach into the right of way above 8' may be approved by the Planning Board, Design Review Board and/or the Historic District Commission provided that they do not extend 2' or more into the right of way or create an obstruction and that the encroachment complies with the design review standards set forth in Article 07 of the Birmingham Zoning Ordinance. Encroachments that extend more than 2' into the right of way will also require the approval of the City Commission through a lease agreement.
  - iii. Permanent encroachments that create usable space such as cantilevered rooms, dormers, elevated walkways, balconies, bridges and similar projections may be approved by the Planning Board, Design Review Board and/or the Historic District Commission provided they comply with the design review standards set forth in Article 07 of the Birmingham Zoning Ordinance and must be approved by the City Commission through a lease agreement.
- d. *Temporary encroachments:*
- i. Temporary encroachments associated with construction projects are subject to approval of an obstruction permit or logistical plan to be reviewed and approved by the Community Development and Engineering Departments.
  - ii. Temporary encroachments that are seasonal in nature such as vestibules or storm enclosures may be approved by the Planning Board, Design Review Board and/or Historic District Commission through the site plan and design review process provided that an unobstructed 5' public pedestrian path is provided at all times and that the temporary encroachments are subject to a rental fee rate as indicated by the Birmingham Schedule for Fees, Charges, Bonds and Insurance.

ORDAINED this 6th day of May, 2019 to become effective 7 days after publication.

\_\_\_\_\_  
Patricia Bordman, Mayor

\_\_\_\_\_  
J. Cherilynn Mynsberge, City Clerk

I, J. Cherilynn Mynsberge, City Clerk of the City of Birmingham, do hereby certify that the foregoing ordinance was passed by the Commission of the City of Birmingham, Michigan at a regular meeting held May 6, 2019, and that a summary was published in the Observer & Eccentric Newspaper on May 19, 2019.

\_\_\_\_\_  
J. Cherilynn Mynsberge, City Clerk

May 2023

**QUALIFICATIONS OF DAVID E. BURGOYNE, ASA, SR/WA, R/W-AC**  
**CERTIFIED GENERAL REAL ESTATE APPRAISER - MICHIGAN**  
**IDAHO, INDIANA, IOWA, NORTH CAROLINA, OREGON, SOUTH CAROLINA, VIRGINIA, AND WASHINGTON**  
**AQB CERTIFIED USPAP INSTRUCTOR**

David E. Burgoyne, ASA, SR/WA, R/W-AC is a native of Ann Arbor, Michigan and attended Greenhills School in Ann Arbor. He graduated in 1981 from Colgate University in Hamilton, New York with a Bachelor of Arts Degree in Liberal Arts with a concentration in Physics-Astronomy. He also served as a graduate instructor at the University of Wyoming as a Doctoral Candidate in Astrophysics.

Mr. Burgoyne is an independent fee appraiser currently licensed as a Certified General Real Estate Appraiser by the States of Michigan, Idaho, Indiana, Iowa, North Carolina, Oregon, South Carolina, Virginia, and Washington. Michigan State licensure and certification is administered and appraisers are regulated by the Department of Licensing and Regulatory Affairs, PO Box 30004, Lansing, Michigan 48909. Continuing education is required. Mr. Burgoyne holds Michigan Certified General Real Appraiser License No. 1205-000222, first issued in August 1991. His current Michigan license expires July 31, 2024. He also currently holds Certified General Real Appraiser Licenses in Idaho - No. CGA-5985, Indiana - No. CG 41300020, Iowa - #CG03760, North Carolina - No. A8123, Oregon - C001483, South Carolina - #7473, Virginia - Number 4001017872, and Washington State - #1102579.

Mr. Burgoyne is a Senior Member of the American Society of Appraisers holding the ASA Designation for Real Property. Mr. Burgoyne is currently re-accredited as an ASA through June 10, 2027. He is also a senior member holding the SR/WA designation and is a Past Chapter President of the International Right of Way Association. Mr. Burgoyne is currently re-certified as an SR/WA through June 15, 2028. He is also Appraisal Certified (R/W-AC) by IRWA, currently certified through February 1, 2026.

Mr. Burgoyne is an AQB Certified USPAP Instructor #44603 (expiring March 31, 2024) and is also a CLIMB Certified Instructor of right-of-way appraisal and other courses for IRWA, including courses on the appraisal of partial takings, easement valuation, appraisal review, ethics and standards, USPAP, adult education, and the valuation of contaminated properties. He is an Indiana Registered Continuing Education Instructor (#INS1001074). Mr. Burgoyne contributed to the course development for the Alliance for Valuation Education's first new course. Mr. Burgoyne is also a Master Scuba Diver Trainer (#197535) certified by PADI, the Professional Association of Diving Instructors.

In 2015, Mr. Burgoyne was awarded the 2014 W. Howard Armstrong International Instructor of the Year Award by the International Right of Way Association. This is the highest award given to instructors by the IRWA. He was also a finalist for the 2013 Award in 2014.

Mr. Burgoyne has qualified as an expert witness in the United States Court of Federal Claims, the United States District Courts for the Eastern and Western Districts of Michigan; the Michigan Circuit Courts of Allegan, Barry, Cass, Eaton, Genesee, Grand Traverse, Huron, Ingham, Jackson, Kent, Lapeer, Leelanau, Lenawee, Macomb, Montmorency, Muskegon, Oakland, Ottawa, Tuscola, Washtenaw, Wayne, and Wexford Counties; Allen, Hamilton, and Marion Counties in Indiana, The Michigan Public Service Commission, and The Michigan Tax Tribunal. He has also been appointed as an independent appraiser by the U. S. District Court, Eastern District of Michigan.

**FORMAL EDUCATION**

*Greenhills School* - Ann Arbor, Michigan (1976)

*Colgate University* - Hamilton, New York: BA in Liberal Arts - concentrating in Physics-Astronomy (1981)  
Courses included Architecture, Economics, Mathematics, Statistics and Economic Geography.

*University of Wyoming* - Laramie, Wyoming: Ph.D. candidate in Astrophysics. (1981-1982)

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## REAL ESTATE APPRAISAL & RIGHT OF WAY EDUCATION

### International Right of Way Association:

Course 103	Ethics and the Right of Way Profession (1992, 2000, & 2007)	
Course 104	Standards of Practice for the Right of Way Professional	
Course 201	Communications in Right of Way Acquisition	
Course 205	Bargaining Negotiations	
Course 219	Introduction to Presentation, Instruction, and Facilitation	
Course 407	Valuation of Contaminated Properties	
Course 409	Integrating Appraisal Standards	
Course 417	Valuation of Environmentally Contaminated RE (Exam Challenged)	
Course 421	Appraisal of Partial Acquisitions	
Course 431	Problems in the Valuation of Partial Acquisitions	
Course 802	Legal Aspects of Easements	
Course 901	Engineering Plan Development and Application	
Course 902	Property Descriptions	
	Instructor Clinic (1990)	Master Instructor Clinic (2009)
	CLIMB Instructor Training (2016)	PEAK Instructor Training (2023)
	New Course 100 Training (2017)	New Course 219 Training (2023)

### American Institute of Real Estate Appraisers/Appraisal Institute:

Course 1A-1	Principles of Real Estate Appraisal
Course 1A-2	Basic Valuation Procedures (Exam Challenged in Lieu of Attendance)
Course 1B-A	Capitalization Theory & Techniques Part One (Exam Challenged)
Course 1B-B	Capitalization Theory & Techniques Part Two (Exam Challenged)
Course 2-1	Case Studies in Real Estate Valuation (Exam Challenged)
Course SPP/410	Standards of Professional Practice (1988). Also Part A (1993) Small Hotel/Motel Valuation – Limited Service Lodging (2010)

### American Society of Appraisers:

Course AR120-WEB	Delivering Expert Testimony via Online Technology (2020)
Course AR122-WEB	Appraisal Review: Applying the Standards (2020)
Course AR201-OOO	Appraisal Review and Management Overview (2020)
Course AR204-OOO	Appraisal Review and Management Application (2021)

The Appraisal Foundation: 1999 National USPAP Instructor Orientation Seminar, Atlanta, Georgia  
2003 USPAP Instructor Certification Course, Detroit, Michigan  
2006 USPAP Instructor Re-certification Course, Charlotte, North Carolina  
2009, 2011, 2013, 2015, 2017, 2020, 2022 USPAP Instructor Recertification

Marshall Valuation Service: Seminars on the use of building cost estimating services

McKissock Learning: Uniform Appraisal Standards for Federal Land Acquisition (Yellow Book)  
Appraisal of Assisted Living Facilities  
7-Hour USPAP and Michigan License Law Courses  
2-Hour California License Law Course.  
3-Hour West Virginia License Law Course  
Other Law Courses  
Supervisor/Trainee Courses – Michigan, Virginia and West Virginia

## PRESENTATION, INSTRUCTION AND FACILITATION EXPERIENCE

**State Bar of Michigan:** 1988 & 1989 Seminars on Evidence and Expert Testimony  
**Michigan Municipal League:** 1990 Understanding Appraisals for Local Government – Special Problems  
**CLE International:** 2005 USPAP and Licensing Law for the Real Estate Appraiser in Litigation  
2004 Special Purpose Properties for Eminent Domain  
**People's Republic of China:** Presentations in Guangzhou and Shenzhen on Valuation for Acquisition in the USA  
**International R/W Association:** International Conference – Portland 2019. San Antonio 2021. Cleveland 2022.  
Chapter Presentations - 2002, 2006, 2009, 2011, 2014 & 2018. Anchorage 2017

**International Right of Way Association – PEAK and CLIMB Certified Appraisal Instructor:**

- Instructor Clinic - Instructor Certification Clinic – Chicago 2010**
- SR/WA Review Course - Ann Arbor 2007 & 2015, Indianapolis 2008, Milwaukee 2011 & 2017, Madison, WI 2013, Seattle, WA 2016, & Minneapolis, MN 2018. Virtually Online 2021.**  
Assisted with revision of SR/WA Review Course as Subject Matter Expert (SME) 2022-2023.
- Course 900 - Principles of Real Estate Engineering - Dhahran, Saudi Arabia 2015**
- Course 804 - Skills of Expert Testimony - Mackinac Island, MI 1991. Nashville, TN 1995. Springfield, IL 1995. Indianapolis 1996 and 2002. Parkersburg, WV 2002. Williamsburg, VA 2006**
- Course 603 - Understanding Environmental Contamination in RE - Dhahran, Saudi Arabia 2015**
- Course 431 - Problems in the Valuation of Partial Acquisitions – Boise ID and Lincoln NE 2015.**  
Carrollton, KY 2017. Springfield, IL 2017. Boise, ID 2022.
- Course 421 - The Appraisal of Partial Acquisitions - Lansing 1991. Bismarck 1992. Ann Arbor 1990, 1996, 2000, & 2004. Charleston 1999. Indianapolis 1993, 1998 & 2002. Toledo OH 2003.**  
Beijing and Guangzhou, People's Republic of China 2014 and 2015. Springfield, IL 2019.
- Course 417 - Valuation of Environmentally Contaminated RE Ann Arbor 2016.**
- Course 415 - USPAP and the Yellow Book. Ann Arbor 2019. Boise, ID 2019.**
- Course 413 - Uniform Appraisal Standards for Federal Land Acquisitions (Yellow Book).**  
Virtually Online 2021.
- Course 410 - Reviewing Appraisals for Eminent Domain - Charleston WV 2005. Lincoln NE 2008 and 2019, Newington, CT 2012. Seattle, WA 2015. Boise, ID 2019.**
- Course 409 - Integrating Appraisal Standards - Charleston 2007. Lincoln NE 2008. Boise, ID 2015.**
- Course 407 - Valuation of Contaminated Properties - Petoskey 1999. Kalamazoo 2002.**
- Course 406B - 7-Hour USPAP - Ann Arbor 2003, 2005, 2006, 2010, 2013, 2016 & 2018, Traverse City 2008, Charleston WV 2006, 2008, & 2010. Petoskey MI 2014. Online 2020, 2021, and 2022.**
- Course 406A - 15-Hour USPAP - Ann Arbor 1996 & 2000. Newington, CT 2009**
- Course 405 - Preparation of the Narrative Appraisal Report - Lansing 1991.**
- Course 403 - Easement Valuation - Indianapolis 1991. Chicago 1992. Traverse City 1993. Columbus 1994. Louisville 1996. Omaha 1996. Kansas City 1996 & 1997. Ann Arbor 1998. Charleston WV 2006 and 2011. Lincoln, NE 2015. Dhahran, Saudi Arabia 2014 and 2015. Boise, ID 2022.**
- Course 402 - Introduction to Income Capitalization Approach - Ann Arbor 1998. Charleston 2009**
- Course 400 - Principles of Real Estate Appraisal - Ann Arbor 2001, 2003 & 2006. Charleston WV 2007. Cincinnati 2009. Louisville 2010. Dhahran, Saudi Arabia 2014 and 2015. Anchorage, AK 2017. Virtually Online (2021).**  
Assisted with development of Online Course 400 as Subject Matter Expert (SME).
- Course 219 - Adult Communication Principles and Methods - Charleston WV 2013, South Haven, MI 2013, Ann Arbor 2014, Jackson, MI 2015, Charleston, SC 2019, and Ft. Worth, TX 2023.**
- Course 104 - Standards of Practice for the Right of Way Professional - Indianapolis 2002**
- Course 103 - Ethics & the Right-of-Way Profession - Chicago 1992. Indianapolis 1996 and 2008.**  
Columbus 2003. Dhahran, Saudi Arabia 2013. Beijing, China 2014.
- Course 101A - Appraisal Segment of Principles of Right of Way - Lansing 1991. Jefferson City, MO 1992. Okemos, MI 1997. Indianapolis 1993 and 1999.**
- Course 100 - Principles of Land Acquisition - Ann Arbor 1998, 2001 & 2003. Ames, IA 1999. Indianapolis 2007. Dhahran, Saudi Arabia 2013 & 2014. Cedar Rapids, IA 2014. Wisconsin Dells, WI 2016. Boise, ID and Green Bay, WI 2018. Virtually Online 2020 (Twice) and 2022 (Twice). Rockford, IL 2022. Assisted with revision of Course 100 as Subject Matter Expert (SME) 2021-2023.**

## LICENSES AND PROFESSIONAL AFFILIATIONS

- Michigan Certified General Real Estate Appraiser - ID #1205-000222 (Expires July 31, 2024)
- Idaho Certified General Real Estate Appraiser - ID #CGA-5985 (Expires April 30, 2024)
- Indiana Certified General Real Appraiser License No. CG 41300020 (Expires June 30, 2024)
- Iowa Certified General Real Appraiser License No. CG 03760 (Expires June 30, 2024)
- North Carolina Certified General Real Appraiser License No. A8123 (Expires June 30, 2023)
- Oregon Certified General Real Appraiser License No. C001483 (Expires April 30, 2025)
- South Carolina Certified General Real Appraiser License No. 7473 (Expires June 30, 2024)
- Virginia Certified General Real Appraiser License – Number 4001017872 (Expires July 31, 2023)
- Washington Certified General Real Appraiser License #1102579. (Expires April 30, 2025)
- American Society of Appraisers: ASA Real Property #00725800 - Reaccredited to June 10, 2027
- International Right of Way Association:
  - Senior Member #735337 - SR/WA Designation #3993. Re-certified through June 15, 2028
  - CLIMB Certified Instructor – IRWA Instructor since 1990
  - Right of Way – Appraisal Certified. R/W-AC. Certified through February 1, 2026.
  - 2015 2014 Recipient W. Howard Armstrong Instructor of the Year Award (International)
  - 2011-2013 Member of International Instructors Task Force
  - 1991 Professional of the Year Award - Michigan Chapter Seven
  - 1991 Chapter President and International Director
- AQB Certified USPAP Instructor #44603 (Expires March 31, 2024)

## APPRAISAL EXPERIENCE

Over the past 38 years, Mr. Burgoyne has appraised and/or reviewed agricultural, developmental, residential, commercial, dealership, office, industrial, aggregate (sand, gravel, and peat) mining, landfill, environmentally contaminated, waterfront (including Great Lakes and Detroit River waterfront, as well as Missouri River floodplain and Chesapeake Bay area), deep water marine terminals, billboards, easements, corridors, special purpose property, subsidized housing projects, assisted and independent living facilities, underground storage of natural gas, fast food restaurants, and properties having identifiable conservation values. He has appraised vacant and improved property for estate, insurance, consulting, development, sale, and litigation purposes. Litigation appraisals include right of way acquisition, airports and aviation easements, Ad Valorem tax appeals, class actions, special assessment benefit analysis, partnership disputes, environmental contamination, construction defects, divorce, permanent and temporary easements, erosion, zoning, bankruptcy, encroachments, inverse condemnation, trespass, regulatory takings, total and partial takings.



## REPRESENTATIVE LIST OF CLIENTS

### MUNICIPALITIES

- Charter Township of Ann Arbor - Washtenaw County, Michigan
- City of Bay City - Bay County, Michigan
- Village of Clinton - Lenawee County, Michigan
- City of Dearborn Heights - Wayne County, Michigan
- City of Dowagiac - Cass County, Michigan
- City of Howell - Livingston County, Michigan
- Isle of Wight County, Commonwealth of Virginia
- City of Lincoln Park - Wayne County, Michigan
- City of Marysville - St. Clair County, Michigan
- Village of Northport - Leelanau County, Michigan
- City of Plymouth - Wayne County, Michigan
- City of Romulus - Wayne County, Michigan
- City of Southfield - Oakland County, Michigan
- City of Suffolk - Suffolk, Commonwealth of Virginia
- City of Taylor - Wayne County, Michigan
- City of Troy - Oakland County, Michigan
- City of Westland - Wayne County, Michigan
- City of Ann Arbor - Washtenaw County, Michigan
- Charter Township of Bloomfield, Oakland County, Michigan
- City of Dearborn - Wayne County, Michigan
- City of Detroit - Wayne County, Michigan
- City of Grosse Pointe Woods - Wayne County, Michigan
- City of West Des Moines - West Des Moines, Iowa
- City of Kalamazoo - Kalamazoo County, Michigan
- City of Marshall - Calhoun County, Michigan
- City of Midland - Midland and Bay Counties, Michigan
- Charter Township of Oshtemo - Kalamazoo County, Michigan
- City of Riverview - Wayne County, Michigan
- City of Royal Oak - Oakland County, Michigan
- Charter Township of Sny Leer - Wayne County, Michigan
- City of Traverse City - Grand Traverse County, Michigan
- Charter Township of Washington - Macomb County, Michigan
- City of Adrian - Lenawee County, Michigan

### OTHER GOVERNMENTAL AGENCIES

- Detroit Wayne County Stadium Authority - Detroit, Michigan
- East Chicago Water Management District - Lake County, Indiana
- Federal Aviation Administration, Great Lakes Region - Chicago
- Federal Deposit Insurance Corporation - Washington, D.C.
- Flint Bishop Airport - Genesee County, Michigan
- Idaho Transportation Department - Boise, Idaho
- Little Traverse Conservancy, Harbor Springs, Michigan
- County of Livingston - Howell, Michigan
- Macomb County Office of Public Works - Mt. Clemens, Michigan
- Michigan Department of Management & Budget - Lansing, Michigan
- Michigan Department of Natural Resources - Lansing, Michigan
- United States Army Corps of Engineers - Detroit, Michigan
- United States Department of Justice, Environment & Natural Resources Division and Tax Division - Washington, DC
- United States District Court, Eastern District of Michigan - Detroit
- Virginia Department of Transportation - Richmond, Virginia
- Washtenaw County Road Commission - Scio Township, Michigan
- Washtenaw County Water Resources Commissioner - Scio Township, Michigan
- Ypsilanti Community Utility Authority, Ypsilanti, Michigan

### SCHOOL DISTRICTS AND UNIVERSITIES

- Allendale Christian School - Allendale, Ottawa County, Michigan
- Ann Arbor Learning Community - Washtenaw County, Michigan
- Avondale School District - Auburn Hills, Rochester Hills and Troy, Michigan
- Birmingham Public Schools - Birmingham, Oakland County, Michigan
- Bloomfield Hills School District - Bloomfield Hills, Oakland County, Michigan
- Center Line Public Schools - Center Line, Macomb County, Michigan
- Clarkson School District - Oakland County, Michigan
- Crescent Academy - Southfield, Oakland County, Michigan
- Dr. Charles Drew Academy - Ecorse, Wayne County, Michigan
- Farmington Public Schools - City of Farmington, Oakland County, Michigan
- Grand Valley State University - Allendale, Michigan
- Hamtramck Public Schools - Hamtramck, Wayne County, Michigan
- Hazel Park School District - Hazel Park & Ferndale, Oakland County, Michigan
- Huron Valley Public Schools - Highland, Oakland County, Michigan
- Lake Orion Community Schools - Lake Orion, Oakland County, Michigan
- Lakeshore Schools - Stevensville, Berrien County, Michigan
- Lakeview Schools - St. Clair Shores, Macomb County, Michigan
- Lapeer School District - City of Lapeer, Lapeer County, Michigan
- Livonia Public Schools - City of Livonia, Wayne County, Michigan
- Macomb Community College - Clinton Township, Macomb County, Michigan
- Northville Schools - City of Northville, Wayne County, Michigan
- Plymouth Canton Community Schools - Wayne County, Michigan
- Rochester Community Schools - Rochester & Rochester Hills, Oakland County, Michigan
- Romeo Community Schools - Washington & Bruce Townships, Macomb County, Michigan
- Royal Oak Schools - Oakland County, Michigan
- St. Paul Lutheran Church and School - Frankenlust Township, Bay County, Michigan
- Taylor School District - City of Taylor, Wayne County, Michigan
- Troy School District - City of Troy, Oakland County, Michigan
- Warren Fitzgerald School District - City of Warren, Macomb County, Michigan
- West Bloomfield School District - West Bloomfield, Oakland County, Michigan



# MEMORANDUM

Police Department

**DATE:** September 7, 2023

**TO:** Jana L. Ecker, City Manager

**FROM:** Scott A. Grewe, Chief of Police

**SUBJECT:** Contract Lane Painting-Pavement Markings for Fiscal Year 2023-2024 Addendums to Extend the Hart Pavement Striping Corporation and PK Contracting, Inc. Agreements

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## INTRODUCTION:

Latex paint based pavement markings are refreshed on city streets twice per year – during fall and spring. There are two pavement marking classifications – handwork and longline pavement markings. Handwork pavement markings consist of crosswalks, parking spaces, legends and symbols. Long line pavement markings consist of white and yellow “longline” painting such as centerlines, solid white lane markers and bicycle paths. Annual maintenance of pavement markings is identified in the Major Streets contract lane painting budget. Longline pavement markings are applied only once per year (spring) while handwork markings are completed in both spring and fall. Pavement markings that are not of a waterborne nature (polyurea, thermal plastic, etc.) are repaired as part of other contracts or requests for service.

## BACKGROUND:

On May 18, 2022, the Police Department requested sealed Invitations to Bid (ITBs) on MITN for annual pavement markings for the 2022-23 fiscal year. Bids were publicly opened on June 1, 2022. Two bids were received for handwork for the fall of 2022 and spring of 2023 as follows:

Hart Pavement Striping	Fall 2022	\$87,210.00
	Spring 2023	\$156,060.00
	Total	\$243,270.00
PK Contracting, Inc.	Fall 2022	\$178,653.00
	Spring 2023	\$346,272.50
	Total	\$524,925.50

In addition to handwork, long line/center line pavement markings were also listed on the same bid solicitation for spring 2023. Only one bid was submitted:

PK Contracting, Inc.	\$12,697.00
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Also listed on the bid solicitation was a request for grinding any non-conforming crosswalks for fall 2022. Two bid solicitations were submitted:

Hart Pavement Striping	\$70,000.00
------------------------	-------------

PK Contracting, Inc.	\$26,250.00
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On September 12, 2022 the City Commission awarded a contract in the amount of \$243,270.00 for handwork to Hart Pavement Striping Corporation and a contract in the amount of \$38,947.00 to PK Contracting, Inc. for pavement grinding and long line markings. Both contracts were satisfactorily completed.

The contracts provide the City the option to offer the successful vendors an option to extend at the same rate for two additional years through mutual consent. The Police Department recommends extending the contract in the amount of \$243,270.00 to Hart Pavement Striping Corporation for the fall 2023 and spring 2024 handwork painting duties. The Police Department requests an increase of \$9,000 to Hart Pavement Striping Corporation due to additional paint and time necessary to double the width of the existing crosswalks to conform with the standards previously requested by the City Commission. The Police Department additionally recommends extending the contract in the amount of \$12,697.00 to PK Contracting, Inc for the spring 2024 centerline pavement markings.

**LEGAL REVIEW:**

The City Attorney has prepared an Addendum to extend the Hart Pavement Striping Corporation pavement markings contract and the Addendum to extend the PK Contracting, Inc. pavement markings contract.

**FISCAL IMPACT:**

The projects were budgeted for and sufficient funding is available in the 2023-2024 major streets budget contract lane painting account (202.0-316.000-937.0200) for these expenditures.

**SUMMARY:**

Hart Pavement Striping Corporation has been providing pavement marking services for the City of Birmingham since 2003. Hart Pavement Striping is a small locally owned company specializing in handwork (no centerline equipment). Hart has served the City well and has always been responsive to City staff concerning any additions, deletions or alterations to contracts to ensure that the City receives the highest quality products and services.

PK Contracting is an excellent vendor that has provided quality pavement markings to the City of Birmingham for decades.

ATTACHMENTS:

1. Memorandum for 2022-2023 Contract
2. Hart Pavement Striping Corporation – Addendum to Extend Contract
3. Hart Pavement Striping Corporation – Original Contract Agreement
4. PK Contracting, Inc. – Addendum to Extend Contract
5. PK Contracting, Inc. – Original Contract Agreement

SUGGESTED COMMISSION ACTION:

Make a motion adopting a resolution to approve the addendum to extend the contract for 2022-23 handwork pavement markings plus additional cost with Hart Pavement Striping Corporation in the amount of \$252,270.00 annually to May 26, 2025; further to approve the addendum to extend the contract for spring 2023 long/center lines with PK Contracting, Inc. for \$12,697.00 annually to June 1, 2025; and further to fund both contracts from account 202.0-316.000-937.0200. In addition, to authorize the Mayor and City Clerk to sign the agreements on behalf of the City.



# MEMORANDUM

Police Department

**DATE:** September 1, 2022  
**TO:** Thomas M. Markus, City Manager  
**FROM:** Mark H. Clemence, Chief of Police  
**SUBJECT:** Contract Lane Painting-Pavement Markings for Fiscal Year 2022-2023

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## INTRODUCTION:

Latex paint based pavement markings are refreshed on city streets twice per year – during fall and spring. There are two pavement marking classifications – handwork and longline pavement markings. Handwork pavement markings consist of crosswalks, parking spaces, legends and symbols. Long line pavement markings consist of white and yellow “longline” painting such as centerlines, solid white lane markers and bicycle paths. Annual maintenance of pavement markings is identified in the Major Streets contract lane painting budget. Longline pavement markings are applied only once per year (spring) while handwork markings are completed in both spring and fall. Pavement markings that are not of a waterborne nature (polyurea, thermal plastic, etc.) are repaired as part of other contracts or requests for service.

## BACKGROUND:

On July 18, 2019, the police department requested sealed invitations to bid (ITBs) on MITN for annual pavement markings for the 2019-20 fiscal year. Bids were publicly opened on August 1, 2019. Three bids were received for handwork for the fall of 2019 and spring of 2020 as follows:

Hart Pavement Striping	Fall 2019	\$43,200.00
	Spring 2020	\$64,000.00
	Total	\$107,000.00
JV Contracting	Fall 2019	\$59,624.00
	Spring 2020	\$118,412.00
	Total	\$178,036.00
PK Contracting, Inc.	Fall 2022	\$175,166.00
	Spring 2020	\$331,189.50
	Total	\$507,335.50

On September 16, 2019 the City Commission awarded a contract in the amount of \$107,000 to Hart Pavement Striping Corporation for the fall 2019 and spring 2020 handwork painting duties. The work was satisfactorily completed.

As part of the same bid solicitation, proposals were also received for longline / centerline pavement markings for the spring of 2020 as follows:

Hart Pavement Striping	NO BID (vendor does not own equipment for longline work)
JV Contracting	\$12,695.00
PK Contracting, INC.	\$10,027.00

On September 16, 2019 the City Commission awarded a contract in the amount of \$10,027.00 to PK Contracting for spring 2020 centerline painting markings. The work was satisfactorily completed.

The ITB from the August 1, 2019 bid opening and contracts provided for the City to offer the successful vendors an option to extend at the same rate for (2) additional years through mutual consent. On September 14, 2020 the City Commission approved contract extensions for Hart Pavement Striping and PK Contracting, Inc. for the pavement marking services for the 2021-22 fiscal year. The police department recommended extending the contract in the amount of \$107,000.00 to Hart Pavement Striping Corporation for the fall 2021 and spring 2022 handwork painting duties. The police department also recommended extending the contract in the amount of \$10,027.00 to PK Contracting for spring 2022 centerline painting markings.

On May 18, 2022, the police department requested sealed invitations to bid (ITBs) on MITN for annual pavement markings for the 2022-23 fiscal year. Bids were publicly opened on June 1, 2022. Two bids were received for handwork for the fall of 2022 and spring of 2023 as follows:

Hart Pavement Striping	Fall 2022	\$87,210.00
	Spring 2023	\$156,060.00
	Total	\$243,270.00
PK Contracting, Inc.	Fall 2022	\$178,653.00
	Spring 2023	\$346,272.50
	Total	\$524,925.50

In addition to handwork, long line/center line pavement markings were also listed on the same bid solicitation for spring 2023. Only one bid was submitted:

PK Contracting, Inc.	\$12,697.00
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Also listed on the bid solicitation was a request for grinding any non-confirming crosswalks for fall 2022. Two bid solicitations were submitted:

Hart Pavement Striping	\$70,000.00
PK Contracting, Inc.	\$26,250.00

**LEGAL REVIEW:**

The city attorney has reviewed the Invitation to Bid and all other documents associated with this purchase. The city attorney has also approved the attached agreement.

**FISCAL IMPACT:**

There is \$200,230 available in the contract lane painting budget in the Major Street Fund. The total of the handwork painting, long line/center painting, and crosswalk grinding is \$282,217. The City Commission would need to approve a budget amendment to fund all the work. There is sufficient fund balance in the Major Street Fund to fund the approximate \$82,000 difference.

**SUMMARY:**

Hart Pavement Striping Corporation has been providing pavement marking services for the City of Birmingham since 2003. Hart Pavement Striping is a small locally owned company specializing in handwork (no centerline equipment). Hart has served the City well and has always been responsive to City staff concerning any additions, deletions or alterations to contracts to ensure that the City receives the highest quality products and services.

PK Contracting is an excellent vendor that has provided quality pavement markings to the City of Birmingham for decades.

**ATTACHMENTS:**

1. Invitation to Bid
2. Hart Pavement Striping Corporation – Attachment A (Agreement)
3. Hart Pavement Striping Corporation – Attachment B (Central Business Map)
4. Hart Pavement Striping Corporation – Attachment C (Bidder’s Agreement)
5. Hart Pavement Striping Corporation – Attachment D (Cost Proposal – 4 pages)
6. Hart Pavement Striping Corporation – Attachment E (Iran Sanctions Act Vendor Certification Form)
7. PK Contracting, Inc. – Attachment A (Agreement)
8. PK Contracting, Inc. – Attachment B (Central Business Map)
9. PK Contracting, Inc. – Attachment C (Bidder’s Agreement)
10. PK Contracting, Inc. – Attachment D (Cost Proposal – 4 pages)
11. PK Contracting, Inc. – Attachment E (Iran Sanctions Act Vendor Certification Form)

**SUGGESTED COMMISSION ACTION:**

Make a motion adopting a resolution to approve the contract for 2022-23 handwork pavement markings with Hart Pavement Striping Corporation in the amount of \$243,270.00; further to approve the contract for fall 2022 grinding of non-confirming crosswalks with PK Contracting, Inc. for \$26,250.00; further to approve the contract for spring 2023 long/center lines with PK Contracting, Inc. for \$12,697.00; and further to fund all three contracts from account 202.0-316.000-937.0200. In addition, to authorize the Mayor and City Clerk to sign the agreements on behalf of the City and to appropriate and amend the Major Street Fund budget as follows:

**Revenues:**

Draw from Fund Balance	202.0-000.000-400.0000	\$82,000
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Expenditures:		
Public Safety-Traffic Controls	202.0-316.000-937.0200	\$82,000



**ADDENDUM TO EXTEND THE  
HART PAVEMENT STRIPING CORPORATION  
PAVEMENT MARKINGS CONTRACT 2022-2023**

**THIS ADDENDUM** to extend the Pavement Markings Contract 2022-2023, by and between the **CITY OF BIRMINGHAM**, having its principal municipal office at 151 Martin Street, Birmingham, MI and **HART PAVEMENT STRIPING CORPORATION** having its principal office at 3330 Warren Drive, Waterford, MI 48329.

**WHEREAS**, the City and Hart Pavement Striping Corporation entered into a Pavement Markings Contract 2022-2023 on May 26, 2022, which is attached hereto as Attachment A; and,

**WHEREAS**, pursuant to paragraph 2. Term of said Agreement, the parties desire to extend the term of the agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants, terms and conditions set forth in this First Amendment, the parties hereto mutually covenant and agree to amend the Agreement as follows:

2. Term. The initial term of this Agreement shall be for a period of two (2) years commencing on May 26, 2023 through May 26, 2025. The City shall have the right to unilaterally terminate this Agreement on thirty (30) days written notice. In the event of termination, the Contractor shall receive compensation for services to the date the termination takes effect and the City shall be entitled to retain and use the results of all designs and renovations prepared by the Contractor through such date. The City and Contractor may, upon mutual consent, agree to extend the Agreement at the same rate for two (2) additional years.

All other provisions of the Pavement Markings Contract dated May 26, 2022 shall remain in full force and effect.

**IN WITNESS WHEREOF**, the said parties have caused this Addendum to be executed on this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

**HART PAVEMENT STRIPING CORPORATION**

By: \_\_\_\_\_  
Dann D. Hart, President  
Its: President

STATE OF MICHIGAN     )  
  ) ss:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me personally appeared Dann D. Hart, President who acknowledged that with authority on behalf of **Hart Pavement Striping Corporation** to do so he signed this Agreement.

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_ County, Michigan  
Acting in \_\_\_\_\_ County, Michigan  
My commission expires: \_\_\_\_\_

**CITY OF BIRMINGHAM**

By: \_\_\_\_\_  
Therese Longe, Mayor

By: \_\_\_\_\_  
Alexandria D. Bingham, Clerk

Approved:

\_\_\_\_\_  
Jana L. Ecker, City Manager  
(Approved as to substance)

\_\_\_\_\_  
Scott Grewe, Chief of Police  
(Approved as to substance)

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

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

## AGREEMENT OF (PAVEMENT MARKINGS 2022-2023)

**THIS AGREEMENT** is entered into this 26th day of May, 2022, by and between the **CITY OF BIRMINGHAM**, whose address is 151 Martin Street, Birmingham, MI 48009 (hereinafter referred to as the City) and Hart Pavement (name of party) a Michigan Corporation (Corporation, P.C., LLC, etc.), whose address is 3330 Warren Dr., Waterford, MI 48329 hereafter referred to as Contactor and the foregoing shall collectively be referred to as the parties.

**WHEREAS**, the City has solicited sealed bids from qualified parties presenting their qualifications, capabilities and costs to provide **PAVEMENT MARKINGS 2022-2023** per the specifications contained in an Invitation to Bid; and

**WHEREAS**, Contractor has qualifications that meet the project requirements and has provided a response and cost proposal to perform **PAVEMENT MARKINGS 2022-2023** pursuant to the Invitation to Bid.

**NOW, THEREFORE**, in consideration of the foregoing preambles, the adequacy of which is acknowledged by and between the parties to this Agreement, the parties agree as follows:

**1. MUTUALLY AGREE:** It is mutually agreed by and between the parties that the City's Request for Proposal for **PAVEMENT MARKINGS 2022-2023** and all attachments thereto, posted May 10, 2022, and the Contractor's response to the City's Request for Proposal shall be fully incorporated herein by reference and shall become a part of this Agreement, and shall be binding upon both parties hereto (attached hereto as Attachment "A").

**2. TERM:** This Agreement shall have a term of one year from the date stated above. The City shall have the right to unilaterally terminate this Agreement on thirty (30) days written notice. In the event of termination, the Contractor shall receive compensation for services to the date the termination takes effect and the City shall be entitled to retain and use the results of all designs and renovations prepared by the Contractor through such date. The City and Contractor may, upon mutual consent, agree to extend the Agreement at the same rate for two (2) additional years.

**3. TERMS OF PAYMENT:** The Contractor will invoice monthly for all labor and materials supplied for work completed. In no event shall invoices be submitted more than 45 days after completion of services. Submitted invoices shall include the following detailed information: the type of work performed, the time spent on the work, the individual who performed the work and the per hour billing rate charged. The City may, at its sole discretion demand review and the right to request at any time further detailed accounting information for any or all bills. The right to inspection of any bill and invoice shall never be at any cost or billings to the City, nor shall preparation of said invoices be billed to the City or against the general retainer. Payment terms will be net 30 days unless otherwise specified by the City.

**4.** Contractor shall employ personnel of good moral character and fitness in

performing all services under this Agreement.

**5. INSURANCE SUBMISSION REQUIREMENTS:** The Contractor has submitted proof to the City that it meets all City insurance requirements. Insurance, with coverage amounts at no less than the City's minimum requirements, must be held by the Contractor throughout the term of this Agreement. Certificates of insurance as stated below will be required no later than five (5) business days from the date of Contractors acceptance of the terms of this Agreement.

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

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

**8. COMPLIANCE WITH LAWS:** Contractor agrees to fully and faithfully carry out the duties of set forth herein using its best efforts in accomplishing all assignments from the City, and further, in addition to upholding all federal, and state laws and applicable codes of professional conduct to which Contractor is subject, Contractor hereby agrees to be bound by all Federal, State, or City of Birmingham ordinances, rules, regulations and policies as are amended from time to time, and including without limitation the Fair Labor Standards Act, the Equal Employment Opportunity rules and regulations, the Transportation Safety Act and the Occupational Safety and Health Acts.

**9. NON-COMPLIANCE WITH INSURANCE REQUIREMENTS:** Failure to deliver and maintain insurance in accordance with the terms of this Agreement will be cause for the City, by and through its City Manager, to terminate this Agreement, or at the City's option, the City

may purchase on the open market such required insurance and shall be entitled to charge any additional cost to the Contractor, either by offset to any amounts due and owing Contractor for services provided to the City, or, by separate bill and demand for payment. Nothing in this paragraph shall be deemed to create or be interpreted as establishing a "for cause" termination; Contractor agrees and understands that its engagement is at-will and may be terminated by the City Manager for any cause or no cause.

**10. INDEMNIFICATION:** To the fullest extent permitted by law, the Contractor shall indemnify and hold the City of Birmingham, its elected and appointed officials, employees and volunteers and others working on behalf of the City harmless from and against damages, losses and judgments, which may be asserted, claimed, or recovered against or from the City, its elected and appointed officials, employees, volunteers or others working on behalf of the City, including reasonable attorney fees and expenses recoverable under applicable law, but only to the extent of the degree of fault of the Michigan licensed architect for negligent acts or omissions of the Architect, its employees and its consultants in the performance of their professional services, in the performance of this Agreement.

**11. STANDARD INSURANCE REQUIREMENTS:** The Contractor shall maintain during the life of this Agreement the applicable types of insurance coverage and minimum limits as set forth below:

A. Workers' Compensation Insurance:

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

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

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

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

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

E. Professional Liability: If applicable, professional liability insurance with limits of not less than \$2,000,000 per claim if Contractor will provide services that are customarily subject to this type of coverage.

F. Coverage Expiration: If any of the above coverages expire during the term of this Agreement, Contractor shall deliver renewal certificates and/or policies to the City at least (10) days prior to the expiration date.

G. Proof of Insurance Coverage: Contractor shall provide the City of Birmingham at the time the Agreement is returned for execution, Certificates of Insurance and/or policies, acceptable to the City of Birmingham, as listed below.

- 1) Two (2) copies of Certificate of Insurance for Workers' Compensation Insurance, or a signed and notarized copy of the Sole Proprietor Form;
- 2) Two (2) copies of Certificate of Insurance for Commercial General Liability Insurance;
- 3) Two (2) copies of Certificate of Insurance for Vehicle Liability Insurance;
- 4) Two (2) copies of Certificate of Insurance for Professional Liability Insurance, if applicable;
- 5) If so requested, Certified Copies of all policies mentioned above will be furnished.

H. Maintaining Insurance: Upon failure of the Contractor to obtain or maintain such insurance coverage for the term of the Agreement, the City of Birmingham may, at its option, purchase such coverage and subtract the cost of obtaining such coverage from the Agreement amount. In obtaining such

coverage, the City of Birmingham shall have no obligation to procure the most cost-effective coverage but may contract with any insurer for such coverage.

**12. WRITTEN NOTICES:** Written notices regarding this Agreement shall be addressed to the following:

City: City of Birmingham  
P.O. Box 3001  
Birmingham, Michigan 48012  
Attn: Ofc. Gina Moody

Contractor:  
HART PAVEMENT STRIPING CORP  
PO BOX 300998  
WATERFORD, MI 48330  
Attn: DANN HART

**13. COVID:** The Contractor shall follow all of the City's COVID-19 safety protocols while on City property. Additionally, Contractor staff which will be in physical contact with city staff must have current vaccinations against COVID-19. The City, at its discretion, may ask for proof of vaccination of Contractors staff. Failure to provide proof of vaccination when requested will cause the City to request un-vaccinated personnel to leave, request alternate staff, and if the Contractor is unable to comply, this violation of safety protocols will constitute a breach of contract by the Contractor.

**14. AMENDMENTS:** No amendment, modification or supplement to this Agreement shall be binding unless it is in writing and signed by authorized representatives of the parties.

**15. WAIVER OF BREACH:** No waiver by either party of any breach of any of the terms, covenants or conditions herein contained by the other party shall be construed as a waiver of any succeeding breach of this same or of any other term, covenant or condition.

**16. COMPLETE AGREEMENT:** The parties agree that the conditions set forth in this Agreement sets forth all terms and conditions of Contractor agreement with the City of Birmingham. This Agreement supersedes all prior agreements or understandings between the parties. There are no promises, conditions or understandings other than those stated herein, and, that any prior negotiations, terms or conditions discussed between the City and the Contractor shall not constitute a part of this Agreement. The term "agreement" as used in this clause shall include any future written amendments, modifications, or supplements made in accordance herewith.

**17. DIRECT OR INDIRECT INTEREST:** If, after the effective date of this Agreement, any official of the City, or spouse, child, parent or in-law of such official or employee shall become directly or indirectly interested in this Agreement or the affairs of the Contractor, the City shall have the right to terminate this Agreement without further liability to the Contractor if the disqualification has not been removed within thirty (30) days after the City has given the Contractor notice of the disqualifying interest. Ownership of less than one

percent (1%) of the stock or other equity interest in a corporation or partnership shall not be a disqualifying interest. Employment shall be a disqualifying interest.

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

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

**20. RESPONSE TO REQUESTS FOR PROPOSALS:** The Contractor shall be held to and bound by all terms, conditions, warranties and representations which it made in its written response dated 5-18-2022, to the City's Request for Proposals dated 5-18-2022 (attached hereto as Attachment "B"). In the event of a conflict in any of the terms of this Agreement and the Contractor 5-18-2022 (date of response) response, the terms of this Agreement shall prevail.

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



**IN WITNESS WHEREOF**, the parties hereto agree to be bound by the above terms and conditions, and Contractor, by its authorized signature below, expressly accepts this Agreement upon the above provided terms and conditions contained in this Agreement as of the date first above written.

Contractor

By: [Signature] Dann Hart  
Its: President

STATE OF MICHIGAN )  
                                  ) ss:  
COUNTY OF OAKLAND )

On this 26 day of May, 2020 before me personally appeared Dann Hart who acknowledged that with authority on behalf of Hart to do so (he/she) signed this Agreement. Pavement Striping

[Signature]  
Notary Public  
Oakland County, Michigan  
Acting in Oakland County, Michigan  
My commission expires: 9-17-2025



**CITY OF BIRMINGHAM:**

By: [Signature]  
Therese Longe, Mayor

By: [Signature]  
Alexandria D. Bingham, City Clerk

**APPROVED:**  
[Signature]  
Thomas M. Markus, City Manager  
(Approved as to substance)

[Signature]  
Mark H. Clemence, Police Chief  
(Approved as to substance)

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

[Signature]  
Mark A. Gerber, Finance Director  
(Approved as to Financial Obligation)

## Attachment A



### **INVITATION TO BID "PAVEMENT MARKINGS 2022-2023"**

Sealed bids endorsed **"PAVEMENT MARKINGS 2022-23"** will be received by the City of Birmingham, Michigan at the Office of City Clerk, 151 Martin Street, P.O. Box 3001, Birmingham, MI, 48012 until Wednesday, June 1, 2022, at 2:00 p.m., at which time the bids will be publicly opened and read.

The descriptions for markings and quantities of items to be painted are indicated on the attached sheets. The painting will include yellow, white, and blue glass beaded paint to meet or exceed Michigan Department of State Highway and Transportation specifications (waterborne). Two price quotes are requested, one for the fall of 2022 and one for the spring of 2023. Note that quantities differ between spring and fall items to be painted. Additionally, the long line pavement markings are only applied during the spring of 2023, there are no yellow or white long line projects or bid forms for the fall of 2022. This is not an all or none award, vendors may choose to bid for long line only, handwork only, or may submit bids for the entire scope of work. **THE STREETS ARE TO BE PAINTED DURING THE LATE NIGHT/EARLY MORNING HOURS WHEN VEHICULAR TRAFFIC IS MINIMAL.**

Materials and bids shall be submitted in accordance with the attached specifications and bid forms prepared by the Birmingham Police Department. Materials and services must be delivered as detailed in accordance with the specifications contained in the Invitation to Bid (ITB).

The ITB, including the Specifications, may be obtained online from the Michigan Inter-governmental Trade Network at <http://www.mitn.info>.

The City of Birmingham reserves the right to reject any or all proposals and to waive any irregularity in a bid when deemed in the best interest of the City.

The City of Birmingham may offer the successful vendor an option to extend at the same rate for two (2) additional years through mutual consent.

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

<b>Submitted to MITN:</b>	Wednesday, May 18, 2022
<b>Deadline for Submissions:</b>	Wednesday, June 1, 2022 at 2:00 p.m.
<b>Contact Person:</b>	Ofc. Gina Moody, Services Coordinator Birmingham Police Department P.O. Box 3001, 151 Martin Street Birmingham, MI 48012 Phone: (248) 530-1772 Email: <a href="mailto:gmoody@bhamgov.org">gmoody@bhamgov.org</a>



**INVITATION TO BID**  
**For PAVEMENT MARKINGS 2022-2023**

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**GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS**

All information requested of the vendor shall be entered in the appropriate space on the attached form(s). Failure to do so may disqualify the bid.

All information shall be entered in ink or typewritten. Mistakes may be crossed out and corrections inserted before submission of the bid. The person signing the bid shall initial corrections in ink.

Corrections and/or modifications received after the closing time specified will not be accepted.

All bids shall be signed by an authorized officer or employee of the bidder.

Bids must be submitted by the date and at or prior to the time specified to be considered. No late bids, telegraphic bids, telephone bids, or facsimile bids will be accepted.

The City of Birmingham is exempt from State of Michigan and federal excise taxes.

All proposals shall include the following information: Vendor name, address, city, state, zip code, telephone number, and fax number. The company shall also provide the name, address, telephone number and e-mail address of an individual in their organization to whom notices and inquiries by the City should be directed as part of the bid.

The City of Birmingham reserves the right:

1. To award bids received on the basis of individual items, or group of items, or on the entire list of items.
2. To reject any and all bids, or any part thereof.
3. To waive any informality in the bids received.
4. To accept the bid that the City Commission shall deem to be in the best interest of City of Birmingham.



**INVITATION TO BID**  
**For PAVEMENT MARKINGS 2022-2023**

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## **INTRODUCTION**

The purpose of this ITB is to request sealed bids from qualified parties presenting their qualifications, capabilities and costs to provide **PAVEMENT MARKINGS 2022-2023** per the specifications on the attached sheets.

The City of Birmingham, Michigan will grant to the successful bidder a purchase order for the following:

**PAVEMENT MARKINGS 2022-2023 FALL 2022 HANDWORK  
PAVEMENT MARKINGS 2022-2023 SPRING 2023 HANDWORK  
PAVEMENT MARKINGS 2022-2023 SPRING 2023 LONG LINES / CENTER LINES**

For purposes of this Invitation to Bid, the City of Birmingham will hereby be referred to as "City" and the vendor will hereby be referred to as "Contractor."

The City is accepting sealed bids from qualified vendors for the purchase of **PAVEMENT MARKINGS 2022-2023**. This work must be performed in accordance with the specifications outlined by the Scope of Work contained in this ITB.

During the evaluation process, the City reserves the right to request additional information or clarification from bidders. The City reserves the right to allow corrections of errors or omissions. At the discretion of the City, vendors submitting bids may be requested to provide sample materials or equipment. Vendors submitting bids may be requested to make oral presentations as part of the evaluation.

It is anticipated the selection of a vendor will be completed by July 1st, 2022. A purchase order will be issued to the selected Contractor(s) following execution of the Agreement(s). A copy of the Agreement is contained herein for reference. Contract services shall commence upon execution of the Agreement by the City.

## **INVITATION TO SUBMIT A BID**

Proposals shall be submitted no later than Wednesday, June 1, 2022 at 2:00 p.m. to:

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

One (1) original and one (1) copy of the proposal shall be submitted. The bid should be sealed in an envelope, which shall be clearly marked on the outside, "**PAVEMENT MARKINGS 2022-2023**". Any bid proposal received after the due date cannot be accepted and will be rejected and returned, unopened, to the proposer. Proposer may submit more than one bid provided each bid meets the functional requirements of this Invitation To Bid.

## INSTRUCTIONS TO BIDDERS

1. Any and all forms requesting information from the bidder must be completed on the attached forms contained herein (see Contractor's Responsibilities). If more than one bid is submitted, a separate bid proposal form must be used for each bid.
2. Any request for clarification of this ITB shall be made in writing and delivered to: Ofc. Gina Moody, (248) 530-1772, [gmoody@bhamgov.org](mailto:gmoody@bhamgov.org), City of Birmingham, 151 Martin Street, Birmingham, MI 48009. Such request for clarification shall be delivered, in writing, no later than 5 days prior to the deadline for submissions.
3. All bids must be submitted following the ITB format as stated in this document and shall be subject to all requirements of this document including the instruction to Contractors and general information sections. All proposals must be regular in every respect and no interlineations, excisions, or special conditions shall be made or included in the ITB format by the Contractor.
4. The contract will be awarded by the City of Birmingham, at the City's sole discretion, to the most responsive and responsible Contractor with the lowest price and the contract will require the completion of the work pursuant to these documents.
5. **Each respondent shall include in his or her bid, in the format requested, the cost of performing the work, equipment and total budget.** Municipalities are exempt from Michigan State Sales and Federal Excise taxes. Do not include such taxes in the proposal figure. The City will furnish the successful contractor with tax exemption information when requested.
6. Each respondent shall include in their bid the following information: Firm name, address, city, state, zip code, telephone number, and fax number. The company shall also provide the name, address, telephone number and e-mail address of an individual in their organization to whom notices and inquiries by the City should be directed as part of their proposal.

## EVALUATION PROCEDURE AND CRITERIA

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

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

## **TERMS AND CONDITIONS**

1. The City reserves the right to reject any or all bids received, waive informalities, or accept any proposal, in whole or in part, it deems to be in the best interest of the City.
2. The City reserves the right to request clarification of information submitted and to request additional information of one or more Contractors.
3. The City reserves the right to terminate the contract at its discretion should it be determined that the services provided do not meet the specifications contained herein. The City may terminate this Agreement at any point in the process upon notice to Contractor sufficient to indicate the City's desire to do so. In the case of such a stoppage, the City agrees to pay Contractor for services rendered to the time of notice, subject to the contract maximum amount.
4. Any bid may be withdrawn up until the date and time set above for the opening of the proposals. Any bids not so withdrawn shall constitute an irrevocable offer, for a period of ninety (90) days, to provide the services set forth in the proposal.
5. The cost of preparing and submitting a bid proposal is the responsibility of the Contractor and shall not be chargeable in any manner to the City.
6. Payment will be made within thirty (30) days after invoice. Acceptance by the City is defined as authorization by the designated City representative to this project that all the criteria requested under the Scope of Work contained herein have been provided. Invoices are to be rendered each month following the date of execution of an Agreement with the City.
7. The Contractor will not exceed the timelines established for the completion of this project.

## **CONTRACTOR'S RESPONSIBILITIES**

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

1. Completed and sign all forms requested for completion within this ITB.
  - a. Agreement (Attachment A)
  - b. Bidders Agreement (Attachment C)
  - c. Cost Proposal (Attachment D)
  - d. Iran Sanctions Act Vendor Certification Form (Attachment E)
2. A description of completed projects that demonstrate the firm's ability to complete projects of similar scope, size and purpose, in a timely manner, and within budget.
3. A project timeline addressing each section within the Scope of Work and a description of the overall project approach. Include a statement that the Contractor will be available according to the proposed timeline.

4. The Contractor will be responsible for any changes necessary for the plans to be approved by the City of Birmingham.
5. Provide a description of the firm, including resumes and professional qualifications of the principals involved in administering the project.
6. Provide a list of sub-contractors and their qualifications, if applicable.
7. Provide three (3) client references from past projects, include current phone numbers. At least two (2) of the client references should be for projects utilizing the same materials included in the Contractor's proposal.
8. The Contractor will be responsible for the disposal of all material and any damages which occur as a result of any of employees or subcontractors of the Contractor during this project.
9. The Contractor will be responsible for obtaining any associated permits at no cost to the Contractor.

## **CITY RESPONSIBILITY**

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

## **SETTLEMENT OF DISPUTES**

The successful bidder agrees to certain dispute resolution avenues/limitations. Please refer to paragraph 19, of the Agreement attached as Attachment A, for the details and what is required of the successful bidder.

## **INSURANCE**

The successful bidder is required to procure and maintain certain types of insurances. Please refer to paragraph 11, of the Agreement attached as Attachment A, for the details and what is required of the successful bidder.

## **CONTINUATION OF COVERAGE**

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



## **EXECUTION OF CONTRACT**

All proposals submitted must include a signed Agreement as provided in Attachment A. The Contractor whose proposal is accepted shall be required to furnish all insurance coverages as specified within ten (10) days after receiving notice of such acceptance. Any contract awarded pursuant to any bid shall not be binding upon the City until a written contract has been executed by both parties.

## **INDEMNIFICATION**

The successful bidder agrees to indemnify the City and various associated persons. Please refer to paragraph 10, of the Agreement attached as Attachment A, for the details and what is required of the successful bidder.

## **CONFLICT OF INTEREST**

The successful bidder is subject to certain conflict of interest requirements/restrictions in accordance to paragraph 17 of the Agreement, attached as Attachment A.

## **EXAMINATION OF BID MATERIALS**

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

## **PROJECT TIMELINE**

Submitted to MITN: Wednesday, May 18, 2022

Deadline for Submissions: Wednesday, June 1, 2022, at 2:00p.m.-Bids publicly opened  
151 Martin Street, Birmingham, MI, 48009-City Commission  
Room 2<sup>nd</sup> floor.

Award of Bid: Estimated award July 1, 2022

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

## SCOPE OF WORK

The Contractor shall provide the following equipment and services in accordance with the requirements as defined and noted herein: **PAVEMENT MARKINGS 2022-2023**

PROJECT LOCATION: Birmingham, Michigan 48009

1. The City of Birmingham is accepting sealed bids from qualified vendors to provide **PAVEMENT MARKINGS 2022-2023**. Bids may be submitted for Handwork and/or Long Line/Center Line pavement markings.
2. The Contractor shall provide any and all manuals and/or warranty information related to this project to the City upon completion of the project.
3. This section and referenced documents shall constitute the Scope of Work for this project and, as such, all requirements must be met.
4. All bids submitted for the **PAVEMENT MARKINGS 2022-2023** must include specifications as listed in this Invitation to Bid as identified in the cost proposal bid documents (See Attachment D).
5. Crosswalks within the Central Business District (CBD-See Attachment B):
  - a. **FALL OF 2022 ONLY** Crosswalks of any other design will be ground off and the City standard Continental 24" wide bars will be painted.
6. Crosswalks outside the Central Business District:
  - a. Continental Design-Crosswalks with 24" wide bars will be repainted. Continental Design-Crosswalks with smaller width bars will be repainted to the standard 24" wide bars.
  - b. Non-Continental Design-Will be repainted as is.

## **Attachment A**

## **AGREEMENT OF (PAVEMENT MARKINGS 2022-2023)**

**THIS AGREEMENT** is entered into this \_\_\_ day of \_\_\_\_\_, 2022, by and between the **CITY OF BIRMINGHAM**, whose address is 151 Martin Street, Birmingham, MI 48009 (hereinafter referred to as the City) and \_\_\_\_\_ (name of party) a Michigan \_\_\_\_\_ (Corporation, P.C., LLC, etc.), whose address is \_\_\_\_\_, hereafter referred to as Contactor and the foregoing shall collectively be referred to as the parties.

**WHEREAS**, the City has solicited sealed bids from qualified parties presenting their qualifications, capabilities and costs to provide **PAVEMENT MARKINGS 2022-2023** per the specifications contained in an Invitation to Bid; and

**WHEREAS**, Contractor has qualifications that meet the project requirements and has provided a response and cost proposal to perform **PAVEMENT MARKINGS 2022-2023** pursuant to the Invitation to Bid.

**NOW, THEREFORE**, in consideration of the foregoing preambles, the adequacy of which is acknowledged by and between the parties to this Agreement, the parties agree as follows:

**1. MUTUALLY AGREE:** It is mutually agreed by and between the parties that the City's Request for Proposal for **PAVEMENT MARKINGS 2022-2023** and all attachments thereto, posted May 10, 2022, and the Contractor's response to the City's Request for Proposal shall be fully incorporated herein by reference and shall become a part of this Agreement, and shall be binding upon both parties hereto (attached hereto as Attachment "A").

**2. TERM:** This Agreement shall have a term of one year from the date stated above. The City shall have the right to unilaterally terminate this Agreement on thirty (30) days written notice. In the event of termination, the Contractor shall receive compensation for services to the date the termination takes effect and the City shall be entitled to retain and use the results of all designs and renovations prepared by the Contractor through such date. The City and Contractor may, upon mutual consent, agree to extend the Agreement at the same rate for two (2) additional years.

**3. TERMS OF PAYMENT:** The Contractor will invoice monthly for all labor and materials supplied for work completed. In no event shall invoices be submitted more than 45 days after completion of services. Submitted invoices shall include the following detailed information: the type of work performed, the time spent on the work, the individual who performed the work and the per hour billing rate charged. The City may, at its sole discretion demand review and the right to request at any time further detailed accounting information for any or all bills. The right to inspection of any bill and invoice shall never be at any cost or billings to the City, nor shall preparation of said invoices be billed to the City or against the general retainer. Payment terms will be net 30 days unless otherwise specified by the City.

**4.** Contractor shall employ personnel of good moral character and fitness in

performing all services under this Agreement.

**5. INSURANCE SUBMISSION REQUIREMENTS:** The Contractor has submitted proof to the City that it meets all City insurance requirements. Insurance, with coverage amounts at no less than the City's minimum requirements, must be held by the Contractor throughout the term of this Agreement. Certificates of insurance as stated below will be required no later than five (5) business days from the date of Contractors acceptance of the terms of this Agreement.

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

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

**8. COMPLIANCE WITH LAWS:** Contractor agrees to fully and faithfully carry out the duties of set forth herein using its best efforts in accomplishing all assignments from the City, and further, in addition to upholding all federal, and state laws and applicable codes of professional conduct to which Contractor is subject, Contractor hereby agrees to be bound by all Federal, State, or City of Birmingham ordinances, rules, regulations and policies as are amended from time to time, and including without limitation the Fair Labor Standards Act, the Equal Employment Opportunity rules and regulations, the Transportation Safety Act and the Occupational Safety and Health Acts.

**9. NON-COMPLIANCE WITH INSURANCE REQUIREMENTS:** Failure to deliver and maintain insurance in accordance with the terms of this Agreement will be cause for the City, by and through its City Manager, to terminate this Agreement, or at the City's option, the City

may purchase on the open market such required insurance and shall be entitled to charge any additional cost to the Contractor, either by offset to any amounts due and owing Contractor for services provided to the City, or, by separate bill and demand for payment. Nothing in this paragraph shall be deemed to create or be interpreted as establishing a "for cause" termination; Contractor agrees and understands that its engagement is at-will and may be terminated by the City Manager for any cause or no cause.

**10. INDEMNIFICATION:** To the fullest extent permitted by law, the Contractor shall indemnify and hold the City of Birmingham, its elected and appointed officials, employees and volunteers and others working on behalf of the City harmless from and against damages, losses and judgments, which may be asserted, claimed, or recovered against or from the City, its elected and appointed officials, employees, volunteers or others working on behalf of the City, including reasonable attorney fees and expenses recoverable under applicable law, but only to the extent of the degree of fault of the Michigan licensed architect for negligent acts or omissions of the Architect, its employees and its consultants in the performance of their professional services, in the performance of this Agreement.

**11. STANDARD INSURANCE REQUIREMENTS:** The Contractor shall maintain during the life of this Agreement the applicable types of insurance coverage and minimum limits as set forth below:

A. Workers' Compensation Insurance:

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

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

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

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

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

E. Professional Liability: If applicable, professional liability insurance with limits of not less than \$2,000,000 per claim if Contractor will provide services that are customarily subject to this type of coverage.

F. Coverage Expiration: If any of the above coverages expire during the term of this Agreement, Contractor shall deliver renewal certificates and/or policies to the City at least (10) days prior to the expiration date.

G. Proof of Insurance Coverage: Contractor shall provide the City of Birmingham at the time the Agreement is returned for execution, Certificates of Insurance and/or policies, acceptable to the City of Birmingham, as listed below.

- 1) Two (2) copies of Certificate of Insurance for Workers' Compensation Insurance, or a signed and notarized copy of the Sole Proprietor Form;
- 2) Two (2) copies of Certificate of Insurance for Commercial General Liability Insurance;
- 3) Two (2) copies of Certificate of Insurance for Vehicle Liability Insurance;
- 4) Two (2) copies of Certificate of Insurance for Professional Liability Insurance, if applicable;
- 5) If so requested, Certified Copies of all policies mentioned above will be furnished.

H. Maintaining Insurance: Upon failure of the Contractor to obtain or maintain such insurance coverage for the term of the Agreement, the City of Birmingham may, at its option, purchase such coverage and subtract the cost of obtaining such coverage from the Agreement amount. In obtaining such

coverage, the City of Birmingham shall have no obligation to procure the most cost-effective coverage but may contract with any insurer for such coverage.

**12. WRITTEN NOTICES:** Written notices regarding this Agreement shall be addressed to the following:

City: City of Birmingham  
P.O. Box 3001  
Birmingham, Michigan 48012  
Attn: Ofc. Gina Moody

Contractor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

**13. COVID:** The Contractor shall follow all of the City's COVID-19 safety protocols while on City property. Additionally, Contractor staff which will be in physical contact with city staff must have current vaccinations against COVID-19. The City, at its discretion, may ask for proof of vaccination of Contractors staff. Failure to provide proof of vaccination when requested will cause the City to request un-vaccinated personnel to leave, request alternate staff, and if the Contractor is unable to comply, this violation of safety protocols will constitute a breach of contract by the Contractor.

**14. AMENDMENTS:** No amendment, modification or supplement to this Agreement shall be binding unless it is in writing and signed by authorized representatives of the parties.

**15. WAIVER OF BREACH:** No waiver by either party of any breach of any of the terms, covenants or conditions herein contained by the other party shall be construed as a waiver of any succeeding breach of this same or of any other term, covenant or condition.

**16. COMPLETE AGREEMENT:** The parties agree that the conditions set forth in this Agreement sets forth all terms and conditions of Contractor agreement with the City of Birmingham. This Agreement supersedes all prior agreements or understandings between the parties. There are no promises, conditions or understandings other than those stated herein, and, that any prior negotiations, terms or conditions discussed between the City and the Contractor shall not constitute a part of this Agreement. The term "agreement" as used in this clause shall include any future written amendments, modifications, or supplements made in accordance herewith.

**17. DIRECT OR INDIRECT INTEREST:** If, after the effective date of this Agreement, any official of the City, or spouse, child, parent or in-law of such official or employee shall become directly or indirectly interested in this Agreement or the affairs of the Contractor, the City shall have the right to terminate this Agreement without further liability to the Contractor if the disqualification has not been removed within thirty (30) days after the City has given the Contractor notice of the disqualifying interest. Ownership of less than one



percent (1%) of the stock or other equity interest in a corporation or partnership shall not be a disqualifying interest. Employment shall be a disqualifying interest.

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

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

**20. RESPONSE TO REQUESTS FOR PROPOSALS:** The Contractor shall be held to and bound by all terms, conditions, warranties and representations which it made in its written response dated \_\_\_\_\_, to the City's Request for Proposals dated \_\_\_\_\_ (attached hereto as Attachment "B"). In the event of a conflict in any of the terms of this Agreement and the Contractor \_\_\_\_\_ (date of response) response, the terms of this Agreement shall prevail.

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

**IN WITNESS WHEREOF**, the parties hereto agree to be bound by the above terms and conditions, and Contractor, by its authorized signature below, expressly accepts this Agreement upon the above provided terms and conditions contained in this Agreement as of the date first above written.

Contractor

By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF MICHIGAN    )  
                                  ) ss:  
COUNTY OF OAKLAND    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, who acknowledged that with authority on behalf of \_\_\_\_\_ to do so he/she signed this Agreement.

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_  
County, Michigan  
Acting in \_\_\_\_\_ County, Michigan  
My commission expires: \_\_\_\_\_

**CITY OF BIRMINGHAM:**

By: \_\_\_\_\_  
Therese Longe, Mayor

By: \_\_\_\_\_  
Alexandria D. Bingham, City Clerk

**APPROVED:**

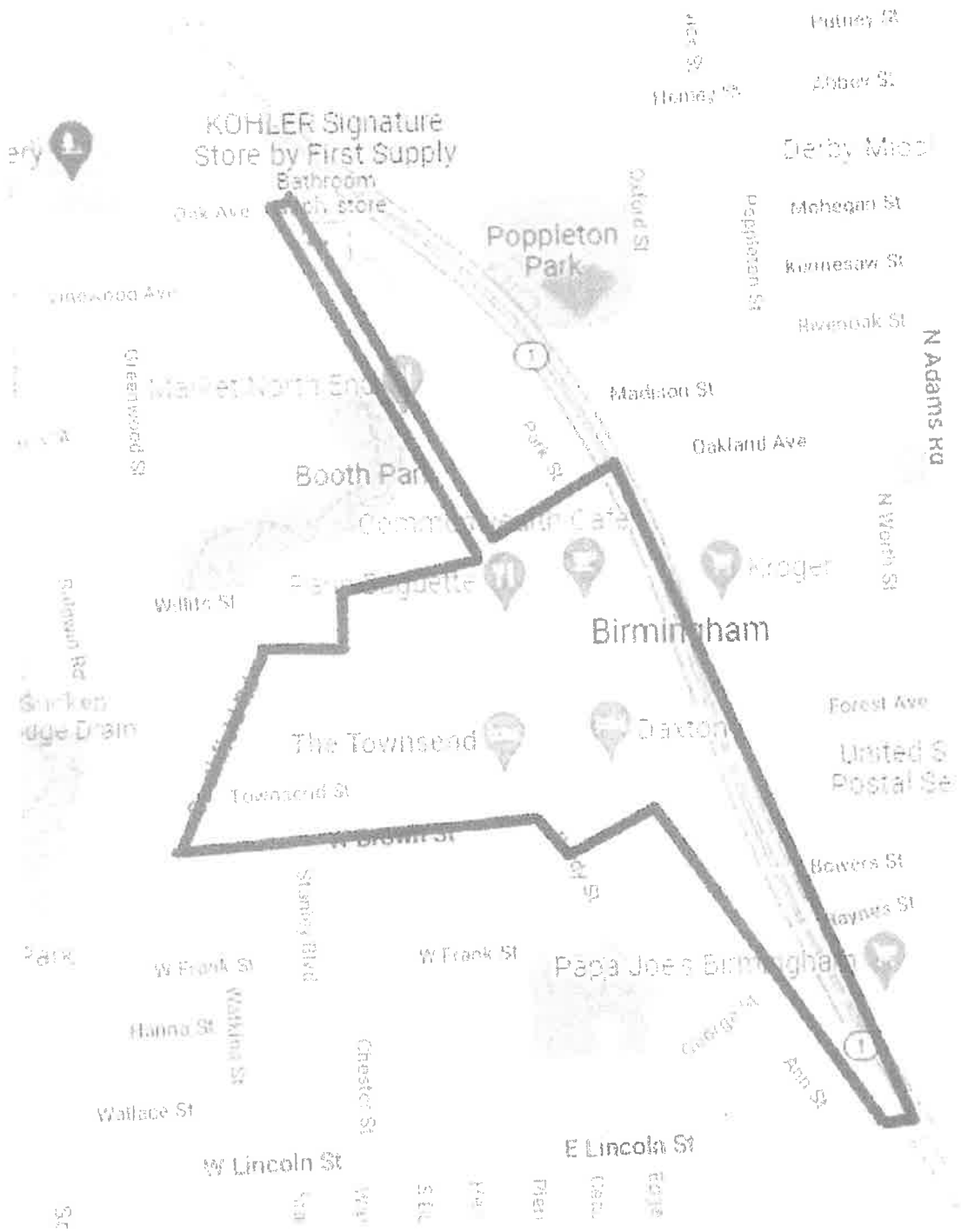
\_\_\_\_\_  
Thomas M. Markus, City Manager  
(Approved as to substance)

\_\_\_\_\_  
Mark H. Clemence, Police Chief  
(Approved as to substance)

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

\_\_\_\_\_  
Mark A. Gerber, Finance Director  
(Approved as to Financial Obligation)

# ATTACHMENT B – CENTRAL BUSINESS DISTRICT MAP For "PAVEMENT MARKINGS 2022-2023"



**ATTACHMENT C - BIDDER'S AGREEMENT  
For "PAVEMENT MARKINGS 2022-2023"**

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

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

Dann Hart	5-18-2022
<b>PREPARED BY</b> (Print Name)	<b>DATE</b>
President	5-18-2022
<b>TITLE</b>	<b>DATE</b>
	ddhart@hartstriping.com
<b>AUTHORIZED SIGNATURE</b>	<b>E-MAIL ADDRESS</b>
HART PAVEMENT STRIPING CORPORATION	
<b>COMPANY</b>	
3330 WARREN DRIVE, Waterford, MI 48329	248-673-3503
<b>ADDRESS</b>	<b>PHONE</b>
<b>NAME OF PARENT COMPANY</b>	<b>PHONE</b>
<b>ADDRESS</b>	

## ATTACHMENT D – COST PROPOSAL (1 OF 4)

### FALL 2022 HANDWORK For "PAVEMENT MARKINGS 2022-2023"

**NOTE: QUANTITIES ARE APPROXIMATE  
BIDDER TO COMPLETE ALL BLANKS IN THIS DOCUMENT**

ITEM	EST QTY	DESCRIPTION OF WORK	UNIT PRICE	ITEM TOTAL
1	11,500	6" CROSS *REFERENCE SCOPE OF WORK	.50	5750.00
2	11,500	12" CROSS *REFERENCE SCOPE OF WORK	1.00	11500.00
3	3,200	24" CROSS *REFERENCE SCOPE OF WORK	3.00	9600.00
4	13,000	YELLOW CURB	.50	6500.00
5	6	SCHOOL LEGENDS	250.00	1500.00
6	55	ONLY LEGENDS	100.00	5500.00
7	0	25 MPH LEGENDS	100.00	0
8	71	LEFT TURN ARROWS	150.00	10650.00
9	14	RIGHT TURN ARROWS	150.00	2100.00
10	11	THRU ARROWS	150.00	1650.00
11	19	COMBO ARROWS	250.00	4750.00
12	0	BLUE CURB	1.00	0
13	7	HANDICAP SYMBOLS	10.00	70.00
14	2,000	6" BLUE	.30	600.00
15	16,000	6" PARKING	.30	4800.00
16	600	6" WHITE HATCH – CROSSWALKS *REFERENCE SCOPE OF WORK	.50	300.00
17	500	12" WHITE HATCH – CROSSWALKS *REFERENCE SCOPE OF WORK	1.00	500.00
18	2,900	16" WHITE HATCH – CROSSWALKS *REFERENCE SCOPE OF WORK	1.50	4350.00
19	100	18" WHITE HATCH – CROSSWALKS *REFERENCE SCOPE OF WORK	2.00	200.00
20	20	12" STOP	3.00	60.00
21	400	18" STOP	3.00	1200.00
22	2,400	24" STOP	3.00	7200.00
23	0	4" WHITE - PARKING LOTS	.30	0
24	2,500	6" WHITE – PARKING LOTS	.30	750.00
25	0	6" YELLOW – PARKING LOTS	.30	0
26	500	YELLOW CURB – PARKING LOTS	.50	250.00
27	2,600	4" BLUE – PARKING LOTS	.30	780.00
28	500	6" BLUE – PARKING LOTS	.30	150.00
29	100	HANDICAP SYMBOLS – PARKING LOTS and METER SPACES	10.00	1000.00
30	0	YELLOW LINE - SEE ATTACHED LIST	NA	0
31	0	WHITE LINE – SEE ATTACHED LIST	NA	0
32	10	SHARROWS (TRAVEL LANE SYMBOL FOR CYCLISTS)	150.00	1500.00
33	40	MOPED SYMBOLS (STENCIL PLUS 4" WHITE LINES)	100.00	4000.00
34		MOBILIZATION / SETUP CHARGE		
<b>BID GRAND TOTAL AMOUNT (FALL 2022)</b>				<b>87210.00</b>

It is understood and agreed that all bid prices shall remain in effect for at least ninety (90) days from the date of bid opening to allow for the award of the bid.

**ATTACHMENT D – COST PROPOSAL (2 OF 4)  
 SPRING 2023 HANDWORK  
 For "PAVEMENT MARKINGS 2022-2023"**

**NOTE: QUANTITIES ARE APPROXIMATE  
 BIDDER TO COMPLETE ALL BLANKS IN THIS DOCUMENT**

ITEM	EST QTY	DESCRIPTION OF WORK	UNIT PRICE	ITEM TOTAL
1	24,000	6" CROSS *REFERENCE SCOPE OF WORK	.50	12000.00
2	19,000	12" CROSS *REFERENCE SCOPE OF WORK	1.00	19000.00
3	3,200	24" CROSS *REFERENCE SCOPE OF WORK	3.00	9600.00
4	28,200	YELLOW CURB	.50	14100.00
5	33	SCHOOL LEGENDS	250.00	8250.00
6	76	ONLY LEGENDS	100.00	7600.00
7	14	25 MPH LEGENDS	100.00	1400.00
8	89	LEFT TURN ARROWS	150.00	13350.00
9	22	RIGHT TURN ARROWS	150.00	3300.00
10	15	THRU ARROWS	150.00	2250.00
11	31	COMBO ARROWS	250.00	7750.00
12	20	BLUE CURB	1.00	20.00
13	9	HANDICAP SYMBOLS	10	90.00
14	2,000	6" BLUE	.30	600.00
15	29,400	6" PARKING	.30	8820.00
16	1,800	6" WHITE HATCH – CROSSWALKS *REFERENCE SCOPE OF WORK	.50	900.00
17	1,600	12" WHITE HATCH – CROSSWALKS *REFERENCE SCOPE OF WORK	1.00	1600.00
18	2,900	16" WHITE HATCH – CROSSWALKS *REFERENCE SCOPE OF WORK	1.50	4350.00
19	90	18" WHITE HATCH – CROSSWALKS *REFERENCE SCOPE OF WORK	2.00	180.00
20	260	12" STOP	3.00	780.00
21	940	18" STOP	3.00	2820.00
22	4,250	24" STOP	3.00	12750.00
23	1,000	4" WHITE - PARKING LOTS	.30	300.00
24	11,420	6" WHITE – PARKING LOTS	.30	3426.00
25	2,130	6" YELLOW – PARKING LOTS	.30	639.00
26	1,100	YELLOW CURB – PARKING LOTS	.50	550.00
27	2,450	4" BLUE – PARKING LOTS	.30	735.00
28	900	6" BLUE – PARKING LOTS	.30	300.00
29	110	HANDICAP SYMBOLS – PARKING LOTS AND METER SPACES	10	1100.00
30	117,000	YELLOW LINE - SEE ATTACHED LIST	NA	NA
31	50,100	WHITE LINE – SEE ATTACHED LIST	NA	NA
32	90	SHARROWS (TRAVEL LANE SYMBOL FOR CYCLISTS)	150.00	13500.00
33	40	MOPED SYMBOLS (STENCIL PLUS 4" WHITE LINES)	100.00	4000.00
34		MOBILIZATION / SETUP CHARGE		
<b>BID GRAND TOTAL AMOUNT (SPRING 2023)</b>				<b>156060.00</b>

It is understood and agreed that all bid prices shall remain in effect for at least ninety (90) days from the date of bid opening to allow for the award of the bid.

**ATTACHMENT D – COST PROPOSAL (3 OF 4)  
 SPRING 2023 YELLOW AND WHITE LONG LINES / CENTER LINES  
 For "PAVEMENT MARKINGS 2022-2023"**

**NOTE: QUANTITIES ARE APPROXIMATE  
 BIDDER TO COMPLETE ALL BLANKS IN THIS DOCUMENT**

**STREETS TO BE PAINTED IN ACCORDANCE WITH MMUTCD:**

- Adams Road/Woodward to Big Beaver
- Bates/Willits to Lincoln, and dead end of Bates
- Bowers/Adams to Woodward
- Bowers/East of Adams for approximately one block
- Brown Street/Southfield to Hunter
- Chester/Brown to Willits
- Chesterfield for approximately 135' south of Quarton and also for approximately 200' North of Maple
- Coolidge southbound between Derby and Maple
- Derby/East of Adams for approximately one block
- Elm Street/Haynes to Bowers
- Elm Street/south of Maple for approximately 40'
- Eton/Derby to Eton one block north of 14 Mile (include in bid amount – do not paint without approval)
- 14 Mile Road/Cummings to east city limits (north lane lines only)
- Hamilton/Woodward to Hunter
- Lincoln/Arlington to Eton and Cranbrook to Hillside
- Maple/Cranbrook to Southfield
- Maple/Woodward to Coolidge (Edenborough to Coolidge, north lane lines only)
- Merrill/Southfield to Woodward
- Oak Street/Hunter Boulevard to Woodward/Lakeside to City limits
- Oakland Boulevard/Hunter to Lawndale
- Old Woodward/North crossover to Willits/Oakland
- Park Street/Maple to Oakland
- Pierce Street/Maple to Brown
- Shirley/from a point 300' north of Lincoln to a point 600' north of Lincoln
- Southfield/Maple to 14 Mile Road
- Willits/Woodward to Chester

ITEM	EST QTY	DESCRIPTION OF WORK	UNIT PRICE	ITEM TOTAL
1	108,600	YELLOW LINE - SEE ATTACHED LIST	NA	NA
2	50,100	WHITE LINE – SEE ATTACHED LIST	NA	NA
3		MOBILIZATION / SETUP CHARGE		
<b>BID GRAND TOTAL AMOUNT (SPRING 2023)</b>				NA

It is understood and agreed that all bid prices shall remain in effect for at least ninety (90) days from the date of bid opening to allow for the award of the bid.

**ATTACHMENT D – COST PROPOSAL (4 OF 4)**

**FALL 2022 HANDWORK  
For "PAVEMENT MARKINGS 2022-2023"**

**NOTE: QUANTITIES ARE APPROXIMATE  
BIDDER TO COMPLETE ALL BLANKS IN THIS DOCUMENT**

ITEM	EST QTY	DESCRIPTION OF WORK	UNIT PRICE	ITEM TOTAL
1	35	GRIND ANY NON-COMFORMING CROSSWALKS WITHIN CBD PRIOR TO PAINTING NEW CITY STANDARD (FALL OF 2022 ONLY)	\$2000	\$70,000.00
		<b>BID GRAND TOTAL AMOUNT (FALL 2022)</b>		\$70,000.00

It is understood and agreed that all bid prices shall remain in effect for at least ninety (90) days from the date of bid opening to allow for the award of the bid.



**ATTACHMENT E - IRAN SANCTIONS ACT VENDOR CERTIFICATION  
FORM For "PAVEMENT MARKINGS 2022-2023"**

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

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

DANN HART	5-18-2022
<b>PREPARED BY</b> (Print Name) PRESIDENT	<b>DATE</b> 5-18-2022
<b>TITLE</b> 	<b>DATE</b> DDHART@HARTSTRIPING.COM
<b>AUTHORIZED SIGNATURE</b> HART PAVEMENT STRIPING CORPORATION	<b>E-MAIL ADDRESS</b> 248-673-3503
<b>COMPANY</b> 3330 WARREN DRIVE, WATERFORD, MI 48329	<b>PHONE</b> 248-673-3503
<b>ADDRESS</b>	<b>PHONE</b>
<b>NAME OF PARENT COMPANY</b>	<b>PHONE</b>
<b>ADDRESS</b> 38-2806542	
<b>TAXPAYER I.D.#</b>	

# Hart Pavement Striping Corporation

P.O. Box 300998, Waterford, MI 48330  
(248) 673-3503 Fax: (248) 673-3438

[www.hartpavement.com](http://www.hartpavement.com)

## Referrals:

**Scott Grewe, Operations Commander**  
**Ellen DeView (over 15 years of working for the City)**  
**Birmingham Police Department**  
**P.O. Box 3001, 151 Martin Street**  
**Birmingham, MI 48012**  
**Phone: (248) 530-1867**  
**Email: [Sgrewe@bhamgov.org](mailto:Sgrewe@bhamgov.org)**

**James G. Boschan, President**  
Adams Development Corporation  
30100 Telegraph Road, Suite 446  
Bingham Farms, Michigan 48025-5809  
(248) 540-8600  
(248) 540-3900 Fax  
[jboschan@adamsdev.com](mailto:jboschan@adamsdev.com)

Worked for the company for over 30 years performing major projects for the company using like products as the City of Birmingham.

Cheryl Tice  
Senior Portfolio Manager, Commercial Management Services  
Friedman Real Estate  
34975 West Twelve Mile Road Farmington Hills, Michigan 48331  
P 248-848-3539 | F 248-284-4124 |  
[cheryl.tice@freg.com](mailto:cheryl.tice@freg.com) | [www.friedmanrealestate.com](http://www.friedmanrealestate.com)

Worked for the company for over 30 years performing major projects for the company using like products as the City of Birmingham.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
01/31/2022

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

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

<b>PRODUCER</b> Oakland Insurance Agency 8031 M-15, Ste. 100 Clarkston, MI 48348 Brian Furmaniak	248-647-2500		<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): 248-647-2500		FAX (A/C, No): 248-647-4689
	<b>E-MAIL ADDRESS:</b> certrequest@oaklandinsurance.com				
<b>INSURER(S) AFFORDING COVERAGE</b>					
<b>INSURER A :</b> Emcasco Insurance Company					NAIC # 21407
<b>INSURER B :</b> EMC Insurance Companies					21415
<b>INSURER C :</b> Accident Fund Ins Co of Amer.					10166
<b>INSURER D :</b> Employers Mutual Casualty Co.					21415
<b>INSURER E :</b>					
<b>INSURER F :</b>					

**INSURED**  
 Hart Pavement Striping Corp.  
 P.O. Box 300998  
 Waterford, MI 48330


**COVERAGES**                      **CERTIFICATE NUMBER:**                      **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER			6D29640	02/01/2022	02/01/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COM/OP AGG \$ 2,000,000
A	<input checked="" type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			6E29640	02/01/2022	02/01/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
D	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 0			6J29640	02/01/2022	02/01/2023	EACH OCCURRENCE \$ 4,000,000 AGGREGATE \$ 4,000,000
C	<input checked="" type="checkbox"/> <b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y <input checked="" type="checkbox"/> N If yes, describe under DESCRIPTION OF OPERATIONS below			100005971	02/01/2022	02/01/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

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

See Page 2;

<b>CERTIFICATE HOLDER</b>  <div style="text-align: right;">BIRMIN1</div> City of Birmingham Police Department 151 Martin Rd Birmingham, MI 48012	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
--	--

**NOTEPAD:**

HOLDER CODE **BIRMIN1**  
INSURED'S NAME **Hart Pavement Striping Corp.**

**HARTP-1**  
**OP ID: KR**

PAGE 2  
Date **01/31/2022**

The City of Birmingham including all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof hereof are additional insured as required by written contract with respects to the general liability. General liability coverage shall be primary to any coverage that may be available to the additional insureds, whether any other available coverage be primary, contributing or excess.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
01/31/2022

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**PRODUCER**  
Oakland Insurance Agency  
8031 M-15, Ste. 100  
Clarkston, MI 48348  
Brian Furmaniak

248-647-2500

**CONTACT NAME:**  
**PHONE (A/C, No, Ext):** 248-647-2500 **FAX (A/C, No):** 248-647-4689  
**E-MAIL ADDRESS:** certrequest@oaklandinsurance.com

**INSURED**  
Hart Pavement Striping Corp.  
P.O. Box 300998  
Waterford, MI 48330

INSURER(S) AFFORDING COVERAGE	NAIC #
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INSURER E :	
INSURER F :	

**COVERAGES** **CERTIFICATE NUMBER:** **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
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A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			6E29640	02/01/2022	02/01/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
D	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 0			6J29640	02/01/2022	02/01/2023	EACH OCCURRENCE \$ 4,000,000 AGGREGATE \$ 4,000,000
C	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	100005971	02/01/2022	02/01/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

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

See Page 2;

**CERTIFICATE HOLDER**

**CANCELLATION**

BIRMIN1

City of Birmingham  
151 Martin Rd  
Birmingham, MI 48012

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

*John J. Brown*

**NOTEPAD:**

HOLDER CODE **BIRMIN1**  
INSURED'S NAME **Hart Pavement Striping Corp.**

**HARTP-1**  
**OP ID: KR**

PAGE 2  
Date **01/31/2022**

The City of Birmingham including all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof hereof are additional insured as required by written contract with respects to the general liability. General Liability coverage shall be primary to any coverage that may be available to the additional insureds, whether any other available coverage be primary, contributing or excess.

**ADDENDUM TO EXTEND THE  
PK CONTRACTING LLC  
PAVEMENT MARKINGS CONTRACT 2022-2023**

**THIS ADDENDUM** to extend the Pavement Markings Contract 2022-2023, by and between the **CITY OF BIRMINGHAM**, having its principal municipal office at 151 Martin Street, Birmingham, MI and **PK CONTRACTING LLC** having its principal office at 1965 Barrett Dr., Troy, MI 48084.

**WHEREAS**, the City and PK Contracting LLC entered into a Pavement Markings Contract 2022-2023 on June 1, 2022, which is attached hereto as Attachment A; and,

**WHEREAS**, pursuant to paragraph 2. Term of said Agreement, the parties desire to extend the term of the agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants, terms and conditions set forth in this First Amendment, the parties hereto mutually covenant and agree to amend the Agreement as follows:

2. Term. The initial term of this Agreement shall be for a period of two (2) years commencing on June 1, 2023 through June 1, 2025. The City shall have the right to unilaterally terminate this Agreement on thirty (30) days written notice. In the event of termination, the Contractor shall receive compensation for services to the date the termination takes effect and the City shall be entitled to retain and use the results of all designs and renovations prepared by the Contractor through such date. The City and Contractor may, upon mutual consent, agree to extend the Agreement at the same rate for two (2) additional years.

All other provisions of the Pavement Markings Contract dated June 1, 2022 shall remain in full force and effect.

**IN WITNESS WHEREOF**, the said parties have caused this Addendum to be executed on this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

**PK CONTRACTING LLC**

By: \_\_\_\_\_  
Nicholas C. Shea  
Its: Vice President

STATE OF MICHIGAN    )  
                                  ) ss:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me personally appeared \_\_\_\_\_, who acknowledged that with authority on behalf of **PK Contracting LLC** to do so he signed this Agreement.

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_ County, Michigan  
Acting in \_\_\_\_\_ County, Michigan

My commission expires: \_\_\_\_\_

**CITY OF BIRMINGHAM**

By: \_\_\_\_\_  
Therese Longe, Mayor

By: \_\_\_\_\_  
Alexandria D. Bingham, Clerk

Approved:

\_\_\_\_\_  
Jana L. Ecker, City Manager  
(Approved as to substance)

\_\_\_\_\_  
Scott Grewe, Chief of Police  
(Approved as to substance)

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

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



**ATTACHMENT A**

## AGREEMENT OF (PAVEMENT MARKINGS 2022-2023)

**THIS AGREEMENT** is entered into this 1 day of JUNE, 2022, by and between the **CITY OF BIRMINGHAM**, whose address is 151 Martin Street, Birmingham, MI 48009 (hereinafter referred to as the City) and P.K. (name of party) a Michigan LLC (Corporation, P.C., LLC, etc.), whose address is 1965 BARRETT DR TR4, MI 48084 hereafter referred to as Contactor and the foregoing shall collectively be referred to as the parties.

**WHEREAS**, the City has solicited sealed bids from qualified parties presenting their qualifications, capabilities and costs to provide **PAVEMENT MARKINGS 2022-2023** per the specifications contained in an Invitation to Bid; and

**WHEREAS**, Contractor has qualifications that meet the project requirements and has provided a response and cost proposal to perform **PAVEMENT MARKINGS 2022-2023** pursuant to the Invitation to Bid.

**NOW, THEREFORE**, in consideration of the foregoing preambles, the adequacy of which is acknowledged by and between the parties to this Agreement, the parties agree as follows:

**1. MUTUALLY AGREE:** It is mutually agreed by and between the parties that the City's Request for Proposal for **PAVEMENT MARKINGS 2022-2023** and all attachments thereto, posted May 10, 2022, and the Contractor's response to the City's Request for Proposal shall be fully incorporated herein by reference and shall become a part of this Agreement, and shall be binding upon both parties hereto (attached hereto as Attachment "A").

**2. TERM:** This Agreement shall have a term of one year from the date stated above. The City shall have the right to unilaterally terminate this Agreement on thirty (30) days written notice. In the event of termination, the Contractor shall receive compensation for services to the date the termination takes effect and the City shall be entitled to retain and use the results of all designs and renovations prepared by the Contractor through such date. The City and Contractor may, upon mutual consent, agree to extend the Agreement at the same rate for two (2) additional years.

**3. TERMS OF PAYMENT:** The Contractor will invoice monthly for all labor and materials supplied for work completed. In no event shall invoices be submitted more than 45 days after completion of services. Submitted invoices shall include the following detailed information: the type of work performed, the time spent on the work, the individual who performed the work and the per hour billing rate charged. The City may, at its sole discretion demand review and the right to request at any time further detailed accounting information for any or all bills. The right to inspection of any bill and invoice shall never be at any cost or billings to the City, nor shall preparation of said invoices be billed to the City or against the general retainer. Payment terms will be net 30 days unless otherwise specified by the City.

**4.** Contractor shall employ personnel of good moral character and fitness in

performing all services under this Agreement.

**5. INSURANCE SUBMISSION REQUIREMENTS:** The Contractor has submitted proof to the City that it meets all City insurance requirements. Insurance, with coverage amounts at no less than the City's minimum requirements, must be held by the Contractor throughout the term of this Agreement. Certificates of insurance as stated below will be required no later than five (5) business days from the date of Contractors acceptance of the terms of this Agreement.

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

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

**8. COMPLIANCE WITH LAWS:** Contractor agrees to fully and faithfully carry out the duties of set forth herein using its best efforts in accomplishing all assignments from the City, and further, in addition to upholding all federal, and state laws and applicable codes of professional conduct to which Contractor is subject, Contractor hereby agrees to be bound by all Federal, State, or City of Birmingham ordinances, rules, regulations and policies as are amended from time to time, and including without limitation the Fair Labor Standards Act, the Equal Employment Opportunity rules and regulations, the Transportation Safety Act and the Occupational Safety and Health Acts.

**9. NON-COMPLIANCE WITH INSURANCE REQUIREMENTS:** Failure to deliver and maintain insurance in accordance with the terms of this Agreement will be cause for the City, by and through its City Manager, to terminate this Agreement, or at the City's option, the City

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may purchase on the open market such required insurance and shall be entitled to charge any additional cost to the Contractor, either by offset to any amounts due and owing Contractor for services provided to the City, or, by separate bill and demand for payment. Nothing in this paragraph shall be deemed to create or be interpreted as establishing a "for cause" termination; Contractor agrees and understands that its engagement is at-will and may be terminated by the City Manager for any cause or no cause.

**10. INDEMNIFICATION:** To the fullest extent permitted by law, the Contractor shall indemnify and hold the City of Birmingham, its elected and appointed officials, employees and volunteers and others working on behalf of the City harmless from and against damages, losses and judgments, which may be asserted, claimed, or recovered against or from the City, its elected and appointed officials, employees, volunteers or others working on behalf of the City, including reasonable attorney fees and expenses recoverable under applicable law, but only to the extent of the degree of fault of the Michigan licensed architect for negligent acts or omissions of the Architect, its employees and its consultants in the performance of their professional services, in the performance of this Agreement.

**11. STANDARD INSURANCE REQUIREMENTS:** The Contractor shall maintain during the life of this Agreement the applicable types of insurance coverage and minimum limits as set forth below:

A. Workers' Compensation Insurance:

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

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

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

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

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

E. Professional Liability: If applicable, professional liability insurance with limits of not less than \$2,000,000 per claim if Contractor will provide services that are customarily subject to this type of coverage.

F. Coverage Expiration: If any of the above coverages expire during the term of this Agreement, Contractor shall deliver renewal certificates and/or policies to the City at least (10) days prior to the expiration date.

G. Proof of Insurance Coverage: Contractor shall provide the City of Birmingham at the time the Agreement is returned for execution, Certificates of Insurance and/or policies, acceptable to the City of Birmingham, as listed below.

- 1) Two (2) copies of Certificate of Insurance for Workers' Compensation Insurance, or a signed and notarized copy of the Sole Proprietor Form;
- 2) Two (2) copies of Certificate of Insurance for Commercial General Liability Insurance;
- 3) Two (2) copies of Certificate of Insurance for Vehicle Liability Insurance;
- 4) Two (2) copies of Certificate of Insurance for Professional Liability Insurance, if applicable;
- 5) If so requested, Certified Copies of all policies mentioned above will be furnished.

H. Maintaining Insurance: Upon failure of the Contactor to obtain or maintain such insurance coverage for the term of the Agreement, the City of Birmingham may, at its option, purchase such coverage and subtract the cost of obtaining such coverage from the Agreement amount. In obtaining such

coverage, the City of Birmingham shall have no obligation to procure the most cost-effective coverage but may contract with any insurer for such coverage.

**12. WRITTEN NOTICES:** Written notices regarding this Agreement shall be addressed to the following:

City: City of Birmingham  
P.O. Box 3001  
Birmingham, Michigan 48012  
Attn: Ofc. Gina Moody

Contractor:  
P.K. CONTRACTING, LLC  
1905 BARRETT DR  
TROY, MI 48064  
Attn: NICHOLAS C. SHEA

**13. COVID:** The Contractor shall follow all of the City's COVID-19 safety protocols while on City property. Additionally, Contractor staff which will be in physical contact with city staff must have current vaccinations against COVID-19. The City, at its discretion, may ask for proof of vaccination of Contractors staff. Failure to provide proof of vaccination when requested will cause the City to request un-vaccinated personnel to leave, request alternate staff, and if the Contractor is unable to comply, this violation of safety protocols will constitute a breach of contract by the Contractor.

**14. AMENDMENTS:** No amendment, modification or supplement to this Agreement shall be binding unless it is in writing and signed by authorized representatives of the parties.

**15. WAIVER OF BREACH:** No waiver by either party of any breach of any of the terms, covenants or conditions herein contained by the other party shall be construed as a waiver of any succeeding breach of this same or of any other term, covenant or condition.

**16. COMPLETE AGREEMENT:** The parties agree that the conditions set forth in this Agreement sets forth all terms and conditions of Contractor agreement with the City of Birmingham. This Agreement supersedes all prior agreements or understandings between the parties. There are no promises, conditions or understandings other than those stated herein, and, that any prior negotiations, terms or conditions discussed between the City and the Contractor shall not constitute a part of this Agreement. The term "agreement" as used in this clause shall include any future written amendments, modifications, or supplements made in accordance herewith.

**17. DIRECT OR INDIRECT INTEREST:** If, after the effective date of this Agreement, any official of the City, or spouse, child, parent or in-law of such official or employee shall become directly or indirectly interested in this Agreement or the affairs of the Contractor, the City shall have the right to terminate this Agreement without further liability to the Contractor if the disqualification has not been removed within thirty (30) days after the City has given the Contractor notice of the disqualifying interest. Ownership of less than one

percent (1%) of the stock or other equity interest in a corporation or partnership shall not be a disqualifying interest. Employment shall be a disqualifying interest.

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

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

**20. RESPONSE TO REQUESTS FOR PROPOSALS:** The Contractor shall be held to and bound by all terms, conditions, warranties and representations which it made in its written response dated \_\_\_\_\_, to the City's Request for Proposals dated \_\_\_\_\_(attached hereto as Attachment "B"). In the event of a conflict in any of the terms of this Agreement and the Contractor \_\_\_\_\_ (date of response) response, the terms of this Agreement shall prevail.

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

**IN WITNESS WHEREOF**, the parties hereto agree to be bound by the above terms and conditions, and Contractor, by its authorized signature below, expressly accepts this Agreement upon the above provided terms and conditions contained in this Agreement as of the date first above written.

Contractor

By: *Nicholas C. Shea*  
Its: VICE PRESIDENT

STATE OF MICHIGAN )  
                                  ) ss:  
COUNTY OF OAKLAND )

On this 27 day of July, 2022, before me personally appeared Nicholas C. Shea who acknowledged that with authority on behalf of PK Parking to do so he/she signed this Agreement.

*Christopher J. Davis*  
Notary Public  
Oakland County, Michigan  
Acting in Oakland County, Michigan  
My commission expires: 12-18-2024

**CITY OF BIRMINGHAM:**

By: *Therese Longe*  
Therese Longe, Mayor

By: *Alex D. Bingham*  
Alexandria D. Bingham, City Clerk

**APPROVED:**

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

*Mark H. Clemence*  
Mark H. Clemence, Police Chief  
(Approved as to substance)

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

*Mark A. Gerber*  
Mark A. Gerber, Finance Director  
(Approved as to Financial Obligation)



## Attachment A



### **INVITATION TO BID "PAVEMENT MARKINGS 2022-2023"**

Sealed bids endorsed **"PAVEMENT MARKINGS 2022-23"** will be received by the City of Birmingham, Michigan at the Office of City Clerk, 151 Martin Street, P.O. Box 3001, Birmingham, MI, 48012 until Wednesday, June 1, 2022, at 2:00 p.m., at which time the bids will be publicly opened and read.

The descriptions for markings and quantities of items to be painted are indicated on the attached sheets. The painting will include yellow, white, and blue glass beaded paint to meet or exceed Michigan Department of State Highway and Transportation specifications (waterborne). Two price quotes are requested, one for the fall of 2022 and one for the spring of 2023. Note that quantities differ between spring and fall items to be painted. Additionally, the long line pavement markings are only applied during the spring of 2023, there are no yellow or white long line projects or bid forms for the fall of 2022. This is not an all or none award, vendors may choose to bid for long line only, handwork only, or may submit bids for the entire scope of work. **THE STREETS ARE TO BE PAINTED DURING THE LATE NIGHT/EARLY MORNING HOURS WHEN VEHICULAR TRAFFIC IS MINIMAL.**

Materials and bids shall be submitted in accordance with the attached specifications and bid forms prepared by the Birmingham Police Department. Materials and services must be delivered as detailed in accordance with the specifications contained in the Invitation to Bid (ITB).

The ITB, including the Specifications, may be obtained online from the Michigan Inter-governmental Trade Network at <http://www.mitn.info>.

The City of Birmingham reserves the right to reject any or all proposals and to waive any irregularity in a bid when deemed in the best interest of the City.

The City of Birmingham may offer the successful vendor an option to extend at the same rate for two (2) additional years through mutual consent.

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

<b>Submitted to MITN:</b>	Wednesday, May 18, 2022
<b>Deadline for Submissions:</b>	Wednesday, June 1, 2022 at 2:00 p.m.
<b>Contact Person:</b>	Ofc. Gina Moody, Services Coordinator Birmingham Police Department P.O. Box 3001, 151 Martin Street Birmingham, MI 48012 Phone: (248) 530-1772 Email: <a href="mailto:gmoody@bhamgov.org">gmoody@bhamgov.org</a>



**INVITATION TO BID**  
**For PAVEMENT MARKINGS 2022-2023**

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**GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS**

All information requested of the vendor shall be entered in the appropriate space on the attached form(s). Failure to do so may disqualify the bid.

All information shall be entered in ink or typewritten. Mistakes may be crossed out and corrections inserted before submission of the bid. The person signing the bid shall initial corrections in ink.

Corrections and/or modifications received after the closing time specified will not be accepted.

All bids shall be signed by an authorized officer or employee of the bidder.

Bids must be submitted by the date and at or prior to the time specified to be considered. No late bids, telegraphic bids, telephone bids, or facsimile bids will be accepted.

The City of Birmingham is exempt from State of Michigan and federal excise taxes.

All proposals shall include the following information: Vendor name, address, city, state, zip code, telephone number, and fax number. The company shall also provide the name, address, telephone number and e-mail address of an individual in their organization to whom notices and inquiries by the City should be directed as part of the bid.

The City of Birmingham reserves the right:

1. To award bids received on the basis of individual items, or group of items, or on the entire list of items.
2. To reject any and all bids, or any part thereof.
3. To waive any informality in the bids received.
4. To accept the bid that the City Commission shall deem to be in the best interest of City of Birmingham.



**INVITATION TO BID**  
**For PAVEMENT MARKINGS 2022-2023**

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## **INTRODUCTION**

The purpose of this ITB is to request sealed bids from qualified parties presenting their qualifications, capabilities and costs to provide **PAVEMENT MARKINGS 2022-2023** per the specifications on the attached sheets.

The City of Birmingham, Michigan will grant to the successful bidder a purchase order for the following:

**PAVEMENT MARKINGS 2022-2023 FALL 2022 HANDWORK  
PAVEMENT MARKINGS 2022-2023 SPRING 2023 HANDWORK  
PAVEMENT MARKINGS 2022-2023 SPRING 2023 LONG LINES / CENTER LINES**

For purposes of this Invitation to Bid, the City of Birmingham will hereby be referred to as "City" and the vendor will hereby be referred to as "Contractor."

The City is accepting sealed bids from qualified vendors for the purchase of **PAVEMENT MARKINGS 2022-2023**. This work must be performed in accordance with the specifications outlined by the Scope of Work contained in this ITB.

During the evaluation process, the City reserves the right to request additional information or clarification from bidders. The City reserves the right to allow corrections of errors or omissions. At the discretion of the City, vendors submitting bids may be requested to provide sample materials or equipment. Vendors submitting bids may be requested to make oral presentations as part of the evaluation.

It is anticipated the selection of a vendor will be completed by July 1st, 2022. A purchase order will be issued to the selected Contractor(s) following execution of the Agreement(s). A copy of the Agreement is contained herein for reference. Contract services shall commence upon execution of the Agreement by the City.

## **INVITATION TO SUBMIT A BID**

Proposals shall be submitted no later than Wednesday, June 1, 2022 at 2:00 p.m. to:

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

One (1) original and one (1) copy of the proposal shall be submitted. The bid should be sealed in an envelope, which shall be clearly marked on the outside, "**PAVEMENT MARKINGS 2022-2023**". Any bid proposal received after the due date cannot be accepted and will be rejected and returned, unopened, to the proposer. Proposer may submit more than one bid provided each bid meets the functional requirements of this Invitation To Bid.

## INSTRUCTIONS TO BIDDERS

1. Any and all forms requesting information from the bidder must be completed on the attached forms contained herein (see Contractor's Responsibilities). If more than one bid is submitted, a separate bid proposal form must be used for each bid.
2. Any request for clarification of this ITB shall be made in writing and delivered to: Ofc. Gina Moody, (248) 530-1772, [gmoody@bhamgov.org](mailto:gmoody@bhamgov.org), City of Birmingham, 151 Martin Street, Birmingham, MI 48009. Such request for clarification shall be delivered, in writing, no later than 5 days prior to the deadline for submissions.
3. All bids must be submitted following the ITB format as stated in this document and shall be subject to all requirements of this document including the instruction to Contractors and general information sections. All proposals must be regular in every respect and no interlineations, excisions, or special conditions shall be made or included in the ITB format by the Contractor.
4. The contract will be awarded by the City of Birmingham, at the City's sole discretion, to the most responsive and responsible Contractor with the lowest price and the contract will require the completion of the work pursuant to these documents.
5. **Each respondent shall include in his or her bid, in the format requested, the cost of performing the work, equipment and total budget.** Municipalities are exempt from Michigan State Sales and Federal Excise taxes. Do not include such taxes in the proposal figure. The City will furnish the successful contractor with tax exemption information when requested.
6. Each respondent shall include in their bid the following information: Firm name, address, city, state, zip code, telephone number, and fax number. The company shall also provide the name, address, telephone number and e-mail address of an individual in their organization to whom notices and inquiries by the City should be directed as part of their proposal.

## EVALUATION PROCEDURE AND CRITERIA

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

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

## **TERMS AND CONDITIONS**

1. The City reserves the right to reject any or all bids received, waive informalities, or accept any proposal, in whole or in part, it deems to be in the best interest of the City.
2. The City reserves the right to request clarification of information submitted and to request additional information of one or more Contractors.
3. The City reserves the right to terminate the contract at its discretion should it be determined that the services provided do not meet the specifications contained herein. The City may terminate this Agreement at any point in the process upon notice to Contractor sufficient to indicate the City's desire to do so. In the case of such a stoppage, the City agrees to pay Contractor for services rendered to the time of notice, subject to the contract maximum amount.
4. Any bid may be withdrawn up until the date and time set above for the opening of the proposals. Any bids not so withdrawn shall constitute an irrevocable offer, for a period of ninety (90) days, to provide the services set forth in the proposal.
5. The cost of preparing and submitting a bid proposal is the responsibility of the Contractor and shall not be chargeable in any manner to the City.
6. Payment will be made within thirty (30) days after invoice. Acceptance by the City is defined as authorization by the designated City representative to this project that all the criteria requested under the Scope of Work contained herein have been provided. Invoices are to be rendered each month following the date of execution of an Agreement with the City.
7. The Contractor will not exceed the timelines established for the completion of this project.

## **CONTRACTOR'S RESPONSIBILITIES**

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

1. Completed and sign all forms requested for completion within this ITB.
  - a. Agreement (Attachment A)
  - b. Bidders Agreement (Attachment C)
  - c. Cost Proposal (Attachment D)
  - d. Iran Sanctions Act Vendor Certification Form (Attachment E)
2. A description of completed projects that demonstrate the firm's ability to complete projects of similar scope, size and purpose, in a timely manner, and within budget.
3. A project timeline addressing each section within the Scope of Work and a description of the overall project approach. Include a statement that the Contractor will be available according to the proposed timeline.

4. The Contractor will be responsible for any changes necessary for the plans to be approved by the City of Birmingham.
5. Provide a description of the firm, including resumes and professional qualifications of the principals involved in administering the project.
6. Provide a list of sub-contractors and their qualifications, if applicable.
7. Provide three (3) client references from past projects, include current phone numbers. At least two (2) of the client references should be for projects utilizing the same materials included in the Contractor's proposal.
8. The Contractor will be responsible for the disposal of all material and any damages which occur as a result of any of employees or subcontractors of the Contractor during this project.
9. The Contractor will be responsible for obtaining any associated permits at no cost to the Contractor.

## **CITY RESPONSIBILITY**

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

## **SETTLEMENT OF DISPUTES**

The successful bidder agrees to certain dispute resolution avenues/limitations. Please refer to paragraph 19, of the Agreement attached as Attachment A, for the details and what is required of the successful bidder.

## **INSURANCE**

The successful bidder is required to procure and maintain certain types of insurances. Please refer to paragraph 11, of the Agreement attached as Attachment A, for the details and what is required of the successful bidder.

## **CONTINUATION OF COVERAGE**

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

## **EXECUTION OF CONTRACT**

All proposals submitted must include a signed Agreement as provided in Attachment A. The Contractor whose proposal is accepted shall be required to furnish all insurance coverages as specified within ten (10) days after receiving notice of such acceptance. Any contract awarded pursuant to any bid shall not be binding upon the City until a written contract has been executed by both parties.

## **INDEMNIFICATION**

The successful bidder agrees to indemnify the City and various associated persons. Please refer to paragraph 10, of the Agreement attached as Attachment A, for the details and what is required of the successful bidder.

## **CONFLICT OF INTEREST**

The successful bidder is subject to certain conflict of interest requirements/restrictions in accordance to paragraph 17 of the Agreement, attached as Attachment A.

## **EXAMINATION OF BID MATERIALS**

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

## **PROJECT TIMELINE**

Submitted to MITN: Wednesday, May 18, 2022

Deadline for Submissions: Wednesday, June 1, 2022, at 2:00p.m.-Bids publicly opened  
151 Martin Street, Birmingham, MI, 48009-City Commission  
Room 2<sup>nd</sup> floor.

Award of Bid: Estimated award July 1, 2022

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



## **SCOPE OF WORK**

The Contractor shall provide the following equipment and services in accordance with the requirements as defined and noted herein: **PAVEMENT MARKINGS 2022-2023**

PROJECT LOCATION: Birmingham, Michigan 48009

1. The City of Birmingham is accepting sealed bids from qualified vendors to provide **PAVEMENT MARKINGS 2022-2023**. Bids may be submitted for Handwork and/or Long Line/Center Line pavement markings.
2. The Contractor shall provide any and all manuals and/or warranty information related to this project to the City upon completion of the project.
3. This section and referenced documents shall constitute the Scope of Work for this project and, as such, all requirements must be met.
4. All bids submitted for the **PAVEMENT MARKINGS 2022-2023** must include specifications as listed in this Invitation to Bid as identified in the cost proposal bid documents (See Attachment D).
5. Crosswalks within the Central Business District (CBD-See Attachment B):
  - a. **FALL OF 2022 ONLY** Crosswalks of any other design will be ground off and the City standard Continental 24" wide bars will be painted.
6. Crosswalks outside the Central Business District:
  - a. Continental Design-Crosswalks with 24" wide bars will be repainted. Continental Design-Crosswalks with smaller width bars will be repainted to the standard 24" wide bars.
  - b. Non-Continental Design-Will be repainted as is.

**Attachment A**

## AGREEMENT OF (PAVEMENT MARKINGS 2022-2023)

**THIS AGREEMENT** is entered into this \_\_\_ day of \_\_\_\_\_, 2022, by and between the **CITY OF BIRMINGHAM**, whose address is 151 Martin Street, Birmingham, MI 48009 (hereinafter referred to as the City) and \_\_\_\_\_ (name of party) a Michigan \_\_\_\_\_ (Corporation, P.C., LLC, etc.), whose address is \_\_\_\_\_, hereafter referred to as Contactor and the foregoing shall collectively be referred to as the parties.

**WHEREAS**, the City has solicited sealed bids from qualified parties presenting their qualifications, capabilities and costs to provide **PAVEMENT MARKINGS 2022-2023** per the specifications contained in an Invitation to Bid; and

**WHEREAS**, Contractor has qualifications that meet the project requirements and has provided a response and cost proposal to perform **PAVEMENT MARKINGS 2022-2023** pursuant to the Invitation to Bid.

**NOW, THEREFORE**, in consideration of the foregoing preambles, the adequacy of which is acknowledged by and between the parties to this Agreement, the parties agree as follows:

**1. MUTUALLY AGREE:** It is mutually agreed by and between the parties that the City's Request for Proposal for **PAVEMENT MARKINGS 2022-2023** and all attachments thereto, posted May 10, 2022, and the Contractor's response to the City's Request for Proposal shall be fully incorporated herein by reference and shall become a part of this Agreement, and shall be binding upon both parties hereto (attached hereto as Attachment "A").

**2. TERM:** This Agreement shall have a term of one year from the date stated above. The City shall have the right to unilaterally terminate this Agreement on thirty (30) days written notice. In the event of termination, the Contractor shall receive compensation for services to the date the termination takes effect and the City shall be entitled to retain and use the results of all designs and renovations prepared by the Contractor through such date. The City and Contractor may, upon mutual consent, agree to extend the Agreement at the same rate for two (2) additional years.

**3. TERMS OF PAYMENT:** The Contractor will invoice monthly for all labor and materials supplied for work completed. In no event shall invoices be submitted more than 45 days after completion of services. Submitted invoices shall include the following detailed information: the type of work performed, the time spent on the work, the individual who performed the work and the per hour billing rate charged. The City may, at its sole discretion demand review and the right to request at any time further detailed accounting information for any or all bills. The right to inspection of any bill and invoice shall never be at any cost or billings to the City, nor shall preparation of said invoices be billed to the City or against the general retainer. Payment terms will be net 30 days unless otherwise specified by the City.

**4.** Contractor shall employ personnel of good moral character and fitness in

performing all services under this Agreement.

**5. INSURANCE SUBMISSION REQUIREMENTS:** The Contractor has submitted proof to the City that it meets all City insurance requirements. Insurance, with coverage amounts at no less than the City's minimum requirements, must be held by the Contractor throughout the term of this Agreement. Certificates of insurance as stated below will be required no later than five (5) business days from the date of Contractors acceptance of the terms of this Agreement.

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

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

**8. COMPLIANCE WITH LAWS:** Contractor agrees to fully and faithfully carry out the duties of set forth herein using its best efforts in accomplishing all assignments from the City, and further, in addition to upholding all federal, and state laws and applicable codes of professional conduct to which Contractor is subject, Contractor hereby agrees to be bound by all Federal, State, or City of Birmingham ordinances, rules, regulations and policies as are amended from time to time, and including without limitation the Fair Labor Standards Act, the Equal Employment Opportunity rules and regulations, the Transportation Safety Act and the Occupational Safety and Health Acts.

**9. NON-COMPLIANCE WITH INSURANCE REQUIREMENTS:** Failure to deliver and maintain insurance in accordance with the terms of this Agreement will be cause for the City, by and through its City Manager, to terminate this Agreement, or at the City's option, the City

may purchase on the open market such required insurance and shall be entitled to charge any additional cost to the Contractor, either by offset to any amounts due and owing Contractor for services provided to the City, or, by separate bill and demand for payment. Nothing in this paragraph shall be deemed to create or be interpreted as establishing a "for cause" termination; Contractor agrees and understands that its engagement is at-will and may be terminated by the City Manager for any cause or no cause.

**10. INDEMNIFICATION:** To the fullest extent permitted by law, the Contractor shall indemnify and hold the City of Birmingham, its elected and appointed officials, employees and volunteers and others working on behalf of the City harmless from and against damages, losses and judgments, which may be asserted, claimed, or recovered against or from the City, its elected and appointed officials, employees, volunteers or others working on behalf of the City, including reasonable attorney fees and expenses recoverable under applicable law, but only to the extent of the degree of fault of the Michigan licensed architect for negligent acts or omissions of the Architect, its employees and its consultants in the performance of their professional services, in the performance of this Agreement.

**11. STANDARD INSURANCE REQUIREMENTS:** The Contractor shall maintain during the life of this Agreement the applicable types of insurance coverage and minimum limits as set forth below:

A. Workers' Compensation Insurance:

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

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

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

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

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

E. Professional Liability: If applicable, professional liability insurance with limits of not less than \$2,000,000 per claim if Contractor will provide services that are customarily subject to this type of coverage.

F. Coverage Expiration: If any of the above coverages expire during the term of this Agreement, Contractor shall deliver renewal certificates and/or policies to the City at least (10) days prior to the expiration date.

G. Proof of Insurance Coverage: Contractor shall provide the City of Birmingham at the time the Agreement is returned for execution, Certificates of Insurance and/or policies, acceptable to the City of Birmingham, as listed below.

- 1) Two (2) copies of Certificate of Insurance for Workers' Compensation Insurance, or a signed and notarized copy of the Sole Proprietor Form;
- 2) Two (2) copies of Certificate of Insurance for Commercial General Liability Insurance;
- 3) Two (2) copies of Certificate of Insurance for Vehicle Liability Insurance;
- 4) Two (2) copies of Certificate of Insurance for Professional Liability Insurance, if applicable;
- 5) If so requested, Certified Copies of all policies mentioned above will be furnished.

H. Maintaining Insurance: Upon failure of the Contractor to obtain or maintain such insurance coverage for the term of the Agreement, the City of Birmingham may, at its option, purchase such coverage and subtract the cost of obtaining such coverage from the Agreement amount. In obtaining such

coverage, the City of Birmingham shall have no obligation to procure the most cost-effective coverage but may contract with any insurer for such coverage.

**12. WRITTEN NOTICES:** Written notices regarding this Agreement shall be addressed to the following:

City: City of Birmingham  
P.O. Box 3001  
Birmingham, Michigan 48012  
Attn: Ofc. Gina Moody

Contractor:

\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

**13. COVID:** The Contractor shall follow all of the City's COVID-19 safety protocols while on City property. Additionally, Contractor staff which will be in physical contact with city staff must have current vaccinations against COVID-19. The City, at its discretion, may ask for proof of vaccination of Contractors staff. Failure to provide proof of vaccination when requested will cause the City to request un-vaccinated personnel to leave, request alternate staff, and if the Contractor is unable to comply, this violation of safety protocols will constitute a breach of contract by the Contractor.

**14. AMENDMENTS:** No amendment, modification or supplement to this Agreement shall be binding unless it is in writing and signed by authorized representatives of the parties.

**15. WAIVER OF BREACH:** No waiver by either party of any breach of any of the terms, covenants or conditions herein contained by the other party shall be construed as a waiver of any succeeding breach of this same or of any other term, covenant or condition.

**16. COMPLETE AGREEMENT:** The parties agree that the conditions set forth in this Agreement sets forth all terms and conditions of Contractor agreement with the City of Birmingham. This Agreement supersedes all prior agreements or understandings between the parties. There are no promises, conditions or understandings other than those stated herein, and, that any prior negotiations, terms or conditions discussed between the City and the Contractor shall not constitute a part of this Agreement. The term "agreement" as used in this clause shall include any future written amendments, modifications, or supplements made in accordance herewith.

**17. DIRECT OR INDIRECT INTEREST:** If, after the effective date of this Agreement, any official of the City, or spouse, child, parent or in-law of such official or employee shall become directly or indirectly interested in this Agreement or the affairs of the Contractor, the City shall have the right to terminate this Agreement without further liability to the Contractor if the disqualification has not been removed within thirty (30) days after the City has given the Contractor notice of the disqualifying interest. Ownership of less than one

percent (1%) of the stock or other equity interest in a corporation or partnership shall not be a disqualifying interest. Employment shall be a disqualifying interest.

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

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

**20. RESPONSE TO REQUESTS FOR PROPOSALS:** The Contractor shall be held to and bound by all terms, conditions, warranties and representations which it made in its written response dated \_\_\_\_\_, to the City's Request for Proposals dated \_\_\_\_\_(attached hereto as Attachment "B"). In the event of a conflict in any of the terms of this Agreement and the Contractor \_\_\_\_\_ (date of response) response, the terms of this Agreement shall prevail.

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



**IN WITNESS WHEREOF**, the parties hereto agree to be bound by the above terms and conditions, and Contractor, by its authorized signature below, expressly accepts this Agreement upon the above provided terms and conditions contained in this Agreement as of the date first above written.

Contractor

By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF MICHIGAN    )  
                                  ) ss:  
COUNTY OF OAKLAND    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me personally appeared \_\_\_\_\_, who acknowledged that with authority on behalf of \_\_\_\_\_ to do so he/she signed this Agreement.

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_ County, Michigan  
Acting in \_\_\_\_\_ County, Michigan  
My commission expires: \_\_\_\_\_

**CITY OF BIRMINGHAM:**

By: \_\_\_\_\_  
Therese Longe, Mayor

By: \_\_\_\_\_  
Alexandria D. Bingham, City Clerk

**APPROVED:**

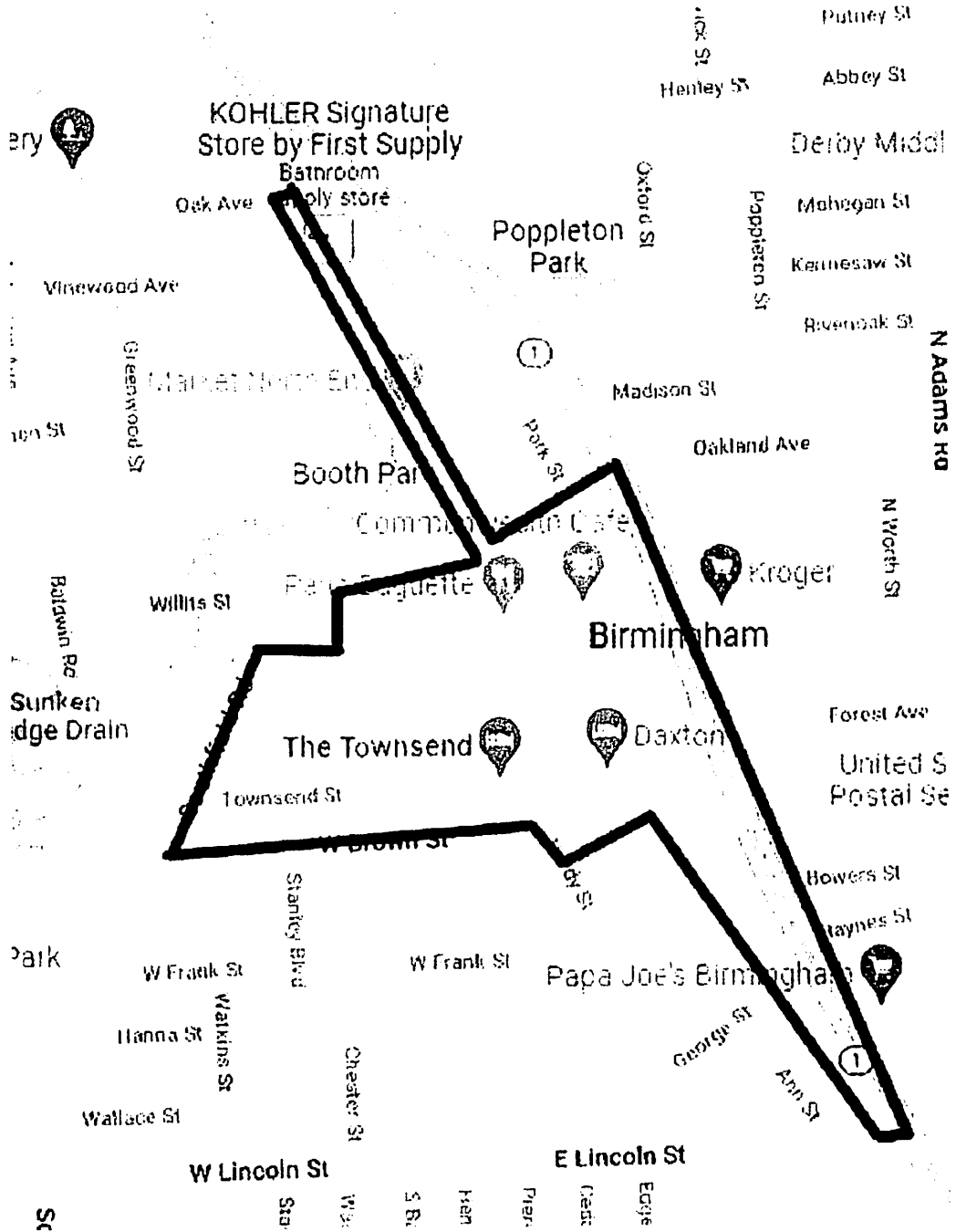
\_\_\_\_\_  
Thomas M. Markus, City Manager  
(Approved as to substance)

\_\_\_\_\_  
Mark H. Clemence, Police Chief  
(Approved as to substance)

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

\_\_\_\_\_  
Mark A. Gerber, Finance Director  
(Approved as to Financial Obligation)

**ATTACHMENT B – CENTRAL BUSINESS DISTRICT MAP  
For "PAVEMENT MARKINGS 2022-2023"**



**ATTACHMENT C - BIDDER'S AGREEMENT  
For "PAVEMENT MARKINGS 2022-2023"**

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

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

NICHOLAS C. SHEA 6.1.22  
PREPARED BY DATE  
(Print Name)

VICE PRESIDENT 6.1.22  
TITLE DATE

  
AUTHORIZED SIGNATURE nick@pkcontracting.com  
E-MAIL ADDRESS

P.K. CONTRACTING, LLC  
COMPANY

1965 BARRETT DR TROY, MI 48064 248 362 2130  
ADDRESS PHONE

NAME OF PARENT COMPANY PHONE

ADDRESS

## ATTACHMENT D – COST PROPOSAL (1 OF 4)

### FALL 2022 HANDWORK For "PAVEMENT MARKINGS 2022-2023"

**NOTE: QUANTITIES ARE APPROXIMATE  
BIDDER TO COMPLETE ALL BLANKS IN THIS DOCUMENT**

ITEM	EST QTY	DESCRIPTION OF WORK	UNIT PRICE	ITEM TOTAL
1	11,500	6" CROSS *REFERENCE SCOPE OF WORK	\$ 1.10	\$12,650.00
2	11,500	12" CROSS *REFERENCE SCOPE OF WORK	\$ 2.15	\$24,725.00
3	3,200	24" CROSS *REFERENCE SCOPE OF WORK	\$ 4.20	\$13,440.00
4	13,000	YELLOW CURB	\$ 4.20	\$54,600.00
5	6	SCHOOL LEGENDS	\$ 80.00	\$ 480.00
6	55	ONLY LEGENDS	\$ 55.00	\$ 3,025.00
7	0	25 MPH LEGENDS	\$ 55.00	0
8	71	LEFT TURN ARROWS	\$ 50.00	\$3,550.00
9	14	RIGHT TURN ARROWS	\$ 50.00	\$ 700.00
10	11	THRU ARROWS	\$ 45.00	\$ 495.00
11	19	COMBO ARROWS	\$ 75.00	\$ 1,425.00
12	0	BLUE CURB	\$ 1.25	0
13	7	HANDICAP SYMBOLS	\$ 25.00	\$ 175.00
14	2,000	6" BLUE	\$ 1.10	\$ 2,200.00
15	16,000	6" PARKING	\$ 1.10	\$17,600.00
16	600	6" WHITE HATCH – CROSSWALKS *REFERENCE SCOPE OF WORK	\$ 1.10	\$ 660.00
17	500	12" WHITE HATCH – CROSSWALKS *REFERENCE SCOPE OF WORK	\$ 2.15	\$ 1,070.00
18	2,900	16" WHITE HATCH – CROSSWALKS *REFERENCE SCOPE OF WORK	\$ 3.10	\$ 9,090.00
19	100	18" WHITE HATCH – CROSSWALKS *REFERENCE SCOPE OF WORK	\$ 4.10	\$ 410.00
20	20	12" STOP	\$ 2.15	\$ 43.00
21	400	18" STOP	\$ 4.10	\$ 1,640.00
22	2,400	24" STOP	\$ 4.20	\$ 10,080.00
23	0	4" WHITE - PARKING LOTS	\$ 1.10	0
24	2,500	6" WHITE – PARKING LOTS	\$ 1.10	\$ 2,750.00
25	0	6" YELLOW – PARKING LOTS	\$ 1.10	0
26	500	YELLOW CURB – PARKING LOTS	\$ 4.20	\$ 2,125.00
27	2,600	4" BLUE – PARKING LOTS	\$ 1.15	\$ 2,990.00
28	500	6" BLUE – PARKING LOTS	\$ 2.15	\$ 1,075.00
29	100	HANDICAP SYMBOLS – PARKING LOTS and METER SPACES	\$ 25.00	\$ 2,500.00
30	0	YELLOW LINE - SEE ATTACHED LIST	\$ 3.10	0
31	0	WHITE LINE – SEE ATTACHED LIST	\$ 3.10	0
32	10	SHARROWS (TRAVEL LANE SYMBOL FOR CYCLISTS)	\$ 105.00	\$ 1,050.00
33	40	MOPED SYMBOLS (STENCIL PLUS 4" WHITE LINES)	\$ 80.00	\$ 3,200.00
34		MOBILIZATION / SETUP CHARGE	\$ 5,000.00	\$ 5,000.00
<b>BID GRAND TOTAL AMOUNT (FALL 2022)</b>				<b>\$178,653.00</b>

It is understood and agreed that all bid prices shall remain in effect for at least ninety (90) days from the date of bid opening to allow for the award of the bid.

**ATTACHMENT D – COST PROPOSAL (2 OF 4)  
 SPRING 2023 HANDWORK  
 For "PAVEMENT MARKINGS 2022-2023"**

**NOTE: QUANTITIES ARE APPROXIMATE  
 BIDDER TO COMPLETE ALL BLANKS IN THIS DOCUMENT**

ITEM	EST QTY	DESCRIPTION OF WORK	UNIT PRICE	ITEM TOTAL
1	24,000	6" CROSS *REFERENCE SCOPE OF WORK	\$ 1.10	\$26,400.00
2	19,000	12" CROSS *REFERENCE SCOPE OF WORK	\$ 2.15	\$40,850.00
3	3,200	24" CROSS *REFERENCE SCOPE OF WORK	\$ 4.20	\$13,440.00
4	28,200	YELLOW CURB	\$ 4.20	\$118,440.00
5	33	SCHOOL LEGENDS	\$ 80.00	\$2,640.00
6	76	ONLY LEGENDS	\$ 55.00	\$4,180.00
7	14	25 MPH LEGENDS	\$ 55.00	\$ 770.00
8	89	LEFT TURN ARROWS	\$ 50.00	\$4,450.00
9	22	RIGHT TURN ARROWS	\$ 50.00	\$1,100.00
10	15	THRU ARROWS	\$ 45.00	\$ 675.00
11	31	COMBO ARROWS	\$ 75.00	\$ 2,325.00
12	20	BLUE CURB	\$ 1.25	\$ 25.00
13	9	HANDICAP SYMBOLS	\$ 25.00	\$ 225.00
14	2,000	6" BLUE	\$ 1.10	\$ 2,200.00
15	29,400	6" PARKING	\$ 1.10	\$32,340.00
16	1,800	6" WHITE HATCH – CROSSWALKS *REFERENCE SCOPE OF WORK	\$ 1.10	\$ 1,980.00
17	1,600	12" WHITE HATCH – CROSSWALKS *REFERENCE SCOPE OF WORK	\$ 2.15	\$ 3,440.00
18	2,900	16" WHITE HATCH – CROSSWALKS *REFERENCE SCOPE OF WORK	\$ 3.10	\$ 8,990.00
19	90	18" WHITE HATCH – CROSSWALKS *REFERENCE SCOPE OF WORK	\$ 4.10	\$ 369.00
20	260	12" STOP	\$ 2.15	\$ 559.00
21	940	18" STOP	\$ 4.10	\$ 3,854.00
22	4,250	24" STOP	\$ 4.10	\$17,425.00
23	1,000	4" WHITE - PARKING LOTS	\$ 1.10	\$ 1,100.00
24	11,420	6" WHITE – PARKING LOTS	\$ 1.10	\$12,562.00
25	2,130	6" YELLOW – PARKING LOTS	\$ 1.10	\$ 2,343.00
26	1,100	YELLOW CURB – PARKING LOTS	\$ 4.20	\$ 4,620.00
27	2,450	4" BLUE – PARKING LOTS	\$ 1.15	\$ 2,817.50
28	900	6" BLUE – PARKING LOTS	\$ 2.15	\$ 1,935.00
29	110	HANDICAP SYMBOLS – PARKING LOTS AND METER SPACES	\$ 25.00	\$ 2,750.00
30	117,000	YELLOW LINE - SEE ATTACHED LIST	\$ .08	\$9,360.00
31	50,100	WHITE LINE – SEE ATTACHED LIST	\$ .08	\$4,008.00
32	90	SHARROWS (TRAVEL LANE SYMBOL FOR CYCLISTS)	\$ 110.00	\$9,900.00
33	40	MOPED SYMBOLS (STENCIL PLUS 4" WHITE LINES)	\$ 80.00	\$ 3,200.00
34		MOBILIZATION / SETUP CHARGE	\$ 5,000.00	\$ 5,000.00
<b>BID GRAND TOTAL AMOUNT (SPRING 2023)</b>				<b>\$ 341,272.50</b>

It is understood and agreed that all bid prices shall remain in effect for at least ninety (90) days from the date of bid opening to allow for the award of the bid.

**ATTACHMENT D – COST PROPOSAL (3 OF 4)**  
**SPRING 2023 YELLOW AND WHITE LONG LINES / CENTER LINES**  
 For "PAVEMENT MARKINGS 2022-2023"

**NOTE: QUANTITIES ARE APPROXIMATE  
 BIDDER TO COMPLETE ALL BLANKS IN THIS DOCUMENT**

**STREETS TO BE PAINTED IN ACCORDANCE WITH MMUTCD:**

Adams Road/Woodward to Big Beaver  
 Bates/Willits to Lincoln, and dead end of Bates  
 Bowers/Adams to Woodward  
 Bowers/East of Adams for approximately one block  
 Brown Street/Southfield to Hunter  
 Chester/Brown to Willits  
 Chesterfield for approximately 135' south of Quarton and also for approximately 200' North of Maple  
 Coolidge southbound between Derby and Maple  
 Derby/East of Adams for approximately one block  
 Elm Street/Haynes to Bowers  
 Elm Street/south of Maple for approximately 40'  
 Eton/Derby to Eton one block north of 14 Mile (include in bid amount – do not paint without approval)  
 14 Mile Road/Cummings to east city limits (north lane lines only)  
 Hamilton/Woodward to Hunter  
 Lincoln/Arlington to Eton and Cranbrook to Hillside  
 Maple/Cranbrook to Southfield  
 Maple/Woodward to Coolidge (Edenborough to Coolidge, north lane lines only)  
 Merrill/Southfield to Woodward  
 Oak Street/Hunter Boulevard to Woodward/Lakeside to City limits  
 Oakland Boulevard/Hunter to Lawndale  
 Old Woodward/North crossover to Willits/Oakland  
 Park Street/Maple to Oakland  
 Pierce Street/Maple to Brown  
 Shirley/from a point 300' north of Lincoln to a point 600' north of Lincoln  
 Southfield/Maple to 14 Mile Road  
 Willits/Woodward to Chester

ITEM	EST QTY	DESCRIPTION OF WORK	UNIT PRICE	ITEM TOTAL
1	108,600	YELLOW LINE - SEE ATTACHED LIST	\$ .08	\$8,688.00
2	50,100	WHITE LINE – SEE ATTACHED LIST	\$ .08	\$4,008.00
3		MOBILIZATION / SETUP CHARGE	\$ 1.00	\$ 1.00
<b>BID GRAND TOTAL AMOUNT (SPRING 2023)</b>				<b>\$12,697.00</b>

It is understood and agreed that all bid prices shall remain in effect for at least ninety (90) days from the date of bid opening to allow for the award of the bid.

**ATTACHMENT D – COST PROPOSAL (4 OF 4)**

**FALL 2022 HANDWORK  
For "PAVEMENT MARKINGS 2022-2023"**

**NOTE: QUANTITIES ARE APPROXIMATE  
BIDDER TO COMPLETE ALL BLANKS IN THIS DOCUMENT**

ITEM	EST QTY	DESCRIPTION OF WORK	UNIT PRICE	ITEM TOTAL
1	35	GRIND ANY NON-COMFORMING CROSSWALKS WITHIN CBD PRIOR TO PAINTING NEW CITY STANDARD (FALL OF 2022 ONLY)	\$ 750.00	\$ 26,250.00
		<b>BID GRAND TOTAL AMOUNT (FALL 2022)</b>		\$ 26,250.00

It is understood and agreed that all bid prices shall remain in effect for at least ninety (90) days from the date of bid opening to allow for the award of the bid.

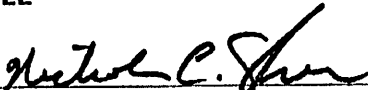
**ATTACHMENT E - IRAN SANCTIONS ACT VENDOR CERTIFICATION  
FORM For "PAVEMENT MARKINGS 2022-2023"**

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

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

NICHOLAS C. SHEA 6.1.22  
PREPARED BY DATE  
(Print Name)

VICE PRESIDENT 6.1.22  
TITLE DATE

 nick@pkcontracting.com  
AUTHORIZED SIGNATURE E-MAIL ADDRESS

P.K. CONTRACTING, LLC  
COMPANY

1965 BARRETT DR TROY, MI 48064 248 302 2130  
ADDRESS PHONE

NAME OF PARENT COMPANY PHONE

ADDRESS

38-2313864  
TAXPAYER I.D.#





# CERTIFICATE OF LIABILITY INSURANCE

1/1/2023

DATE (MM/DD/YYYY)  
7/26/2022

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

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

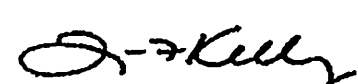
PRODUCER LOCKTON COMPANIES 3657 BRIARPARK DRIVE, SUITE 700 HOUSTON TX 77042 866-260-3538	CONTACT NAME:	
	PHONE (A/C, No, Ext):	FAX (A/C, No):
	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
	INSURER A: The Travelers Indemnity Company	NAIC # 25658
	INSURER B: The Travelers Indemnity Company of Connecticut	25682
	INSURER C: Travelers Property Casualty Co of America	25674
	INSURER D: The Charter Oak Fire Insurance Company	25615
	INSURER E:	
	INSURER F:	

COVERAGES CERTIFICATE NUMBER: 18740227 REVISION NUMBER: XXXXXXXX

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Work within 50' <input checked="" type="checkbox"/> LTD Jobsite Poll GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:	Y	Y	VTC2K-CO-8S997586-IND-22	1/1/2022	1/1/2023	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COM/CP AGG \$ 4,000,000 \$
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	Y	Y	VTC2E-CAP-8S997605-TCT-22 VTK-BAP-8S997617-IND-22	1/1/2022 1/1/2022	1/1/2023 1/1/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX \$ XXXXXXXX
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000	Y	Y	CUP-8S997630-22-25	1/1/2022	1/1/2023	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$ XXXXXXXX
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory In NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	UB-8S548375-22-25-K	1/1/2022	1/1/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
Deductible: \$150,000 General Liability Loss including ALAE. Deductible: \$150,000 Auto Liability Loss including ALAE; \$2,500 Comprehensive; \$2,500 Collision. Deductible: \$150,000 Workers Compensation and Employers Liability Loss including ALAE. Additional insured in favor of City of Birmingham on all policies (except Workers' Compensation/EL) where and to the extent required by written contract.

CERTIFICATE HOLDER	CANCELLATION See Attachment
18740227 City of Birmingham 151 Martin Birmingham MI 48009	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 

All policies (except Workers' Compensation/EL) include a blanket automatic additional insured [provision] that confers additional insured status to the certificate holder only if there is a written contract between the named insured and the certificate holder that requires the named insured to name the certificate holder as additional insured. In the absence of such a contractual obligation on the part of the named insured, the certificate holder is not an additional insured under the policy.

All policies include a blanket automatic waiver of subrogation [provision] that provides this feature only when there is a written contract between the named insured and the certificate holder that requires it. In the absence of such a contractual obligation on the part of the named insured, the waiver of subrogation feature does not apply.

All policies (except Workers' Compensation/EL) contain a special endorsement with "primary and noncontributory" wording.

All Policies include a blanket notice of cancellation to certificate holders endorsement, providing for 30 days' advance notice is canceled by the company other for nonpayment of premium, 10 days' notice if the policy is canceled for nonpayment of premium. Notice is sent to certificate holders with mailing addresses on file with the agent or the company. The endorsement does not provide for notice of cancellation if the named insured requests cancellation.



## MEMORANDUM

Engineering Department

**DATE:** September 7, 2023

**TO:** Jana L. Ecker, City Manager

**FROM:** Cory Borton, Assistant Director of Engineering  
Melissa A. Coatta, City Engineer

**SUBJECT:** AT&T Michigan, Metropolitan Extension Telecommunications Rights-of-Way Oversight (METRO) Act Permit Extension

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### INTRODUCTION:

Michigan Bell Telephone Company d/b/a AT&T Michigan has requested a 5 year extension of the permit application for access to and ongoing use of public ways by telecommunications providers under the Metropolitan Extension Telecommunications Rights-of-Way Oversight (METRO) Act.

### BACKGROUND:

Michigan Bell Telephone d/b/a AT&T Michigan received a permit from the City of Birmingham on December 8, 2003. The City granted a 2-year extension of the permit in 2008, a 3-year extension of the permit in 2010, and 5-year extensions of the permit in 2013 and 2018.

The City received a request from AT&T Michigan to extend the METRO Act Permit an additional 5-years from when the current extension expires on December 31, 2023 to December 31, 2028.

### LEGAL REVIEW:

The City Attorney has reviewed the METRO Act Right-of-Way Permit Extension request and recommends its approval.

### FISCAL IMPACT:

N/A

### SUSTAINABILITY:

N/A

### SUMMARY:

The City Commission is being asked to approve the Michigan Bell Telephone Company d/b/a AT&T Michigan's extension request in accordance with the METRO Act.

ATTACHMENTS:

- AT&T Michigan METRO Act Right-of-Way Permit Extension

SUGGESTED COMMISSION ACTION:

Make a motion adopting a resolution to approve the 5 Year METRO Act Permit Extension of Michigan Bell Telephone Company d/b/a AT&T Michigan, and to authorize the Mayor to sign the Extension Form on behalf of the City.

**RESOLUTION**

Moved by \_\_\_\_\_

Seconded by \_\_\_\_\_

**WHEREAS**, the State of Michigan enacted the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act, Act No. 48 of the Public Acts of 2002 (the "Act"); and

**WHEREAS**, the Act, among other things, provides for a Uniform Safe Harbor Permit Application and a Safe Harbor Unilateral Permit for access to and use of the public rights-of-way by telecommunications providers; and

**WHEREAS**, the Act further provides, among other things, for the City to approve or deny access to the right-of-way within 45 days of receiving the Safe Harbor application from a telecommunications provider; and

**WHEREAS**, Michigan Bell Telephone Company d/b/a AT&T Michigan (AT&T) received a Unilateral Permit pursuant to the Act on December 8, 2003; and

**WHEREAS**, the City granted AT&T an extension of that permit on December 8, 2008, extending the permit expiration date to December 31, 2010; and

**WHEREAS**, the City, on November 16, 2010 received an AT&T Michigan 3 year Permit Extension created by the Metro Authority, seeking to extend the term of the Permit until December 31, 2013; and

**WHEREAS**, the City, on August 6, 2013 received an AT&T Michigan 5 Year Permit Extension created by the Metro Authority, seeking to extend the term of the Permit until December 31, 2018; and

**WHEREAS**, the City, on June 11, 2018 received an AT&T Michigan 5 Year Permit Extension created by the Metro Authority, seeking to extend the term of the Permit until December 31, 2023; and

**WHEREAS**, the City, on July 1, 2023 received an AT&T Michigan 5 Year Permit Extension created by the Metro Authority, seeking to extend the term of the Permit until December 31, 2028; and

**WHEREAS**, the City, at a City Commission meeting held on September 11, 2023, considered the Permit Extension between the City of Birmingham and AT&T Michigan; and

**WHEREAS**, the City of Birmingham determined that the AT&T Michigan Metro Act Right-of-Way Permit Extension complies with the Act.

**NOW, THEREFORE, IT IS HEREBY RESOLVED**, that the 5 Year Permit Extension filed by AT&T Michigan is approved.

Passed, adopted and approved this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

**AYES:** \_\_\_\_\_  
\_\_\_\_\_

**NAYS:** \_\_\_\_\_  
\_\_\_\_\_

**PRESENT:** \_\_\_\_\_  
\_\_\_\_\_

**ABSENT:** \_\_\_\_\_  
\_\_\_\_\_

**CERTIFICATION**

I, Alexandria D. Bingham, being the duly appointed and qualified Clerk of the City of Birmingham, Oakland County, Michigan, do hereby certify and declare that the foregoing is a true and correct copy of the Resolution, the original of which is on file in my office, adopted by the City of Birmingham Commission at a regular meeting held on \_\_\_\_\_, 2023.

\_\_\_\_\_  
Alexandria D. Bingham, City Clerk



AT&T Michigan  
Angela Wesson  
METRO Act Administrator  
54 N. Mill Street  
Mailbox #30  
Pontiac, MI 48342

July 1, 2023

City of Birmingham  
151 Martin St  
Birmingham MI 48012

**METRO ACT RIGHT OF WAY PERMIT EXTENSION**

Dear Ms. Zemke,

This is a letter agreement which extends the existing METRO Act Permit issued by the City of Birmingham/Oakland County to Michigan Bell Telephone Company d/b/a AT&T Michigan ("AT&T") which expires on December 31, 2023. The extension is for a term to end on December 31, 2028.

If this is agreeable, please sign both copies of the extension letter agreement in the place provided below and return to AT&T Michigan at the address on this letterhead. Upon receipt AT&T will acknowledge and return one copy for your files.

Additional information regarding this renewal request may be found at <http://www.michigan.gov/mpsc>. Please click on Regulatory Information, Telecommunications, and METRO Act/Right of Way.

We would appreciate return of the signed copies within 30 days of receiving this request. Your cooperation is appreciated.

If you have any questions feel free to contact Ms. Angela Wesson via e-mail, [AD3245@att.com](mailto:AD3245@att.com) or 248-877-9518.

Agreed to by and on behalf of the  
**City of Birmingham**

**Michigan Bell Telephone Company d/b/a  
AT&T** acknowledges receipt of this  
Permit Extension granted by the municipality.

By: \_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Angela Wesson

Its: \_\_\_\_\_

Its: METRO Act Administrator

Date: \_\_\_\_\_

Date: \_\_\_\_\_



## MEMORANDUM

Planning Division

**DATE:** September 11, 2023

**TO:** Jana L. Ecker, City Manager

**FROM:** Nicholas Dupuis, Planning Director

**SUBJECT:** Leaf Blowers Resolution

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### INTRODUCTION:

As leaf blowers continue to gain national attention, the conversation has come to Birmingham and has remained present in the thoughts of many. The science is clear – leaf blowers with two-stroke engines contribute to air and noise pollution. As cities continue to grapple with what to do with these machines, the problem continues to compound, and the health of the public and environment continues to suffer. Having received direction to study a phased approach to eliminating the use of two-stroke, gas-powered leaf blowers, the Planning Division has drafted a resolution for consideration that declares the intent of the City Commission in regards to two-stroke, gas powered leaf blowers.

### BACKGROUND:

On October 3, 2022 ([Agenda – Minutes](#)), the City Commission held a workshop in which leaf blowers were discussed. City staff presented general information about leaf blowers, as well as some potential actions that could be taken. The City Commission expressed a cautious interest in further exploring a potential ban of leaf blowers, but determined that more study would be necessary before any clear direction could be given on next steps. After some time, the City Commission revived the discussion on June 5, 2023 ([Agenda – Minutes](#)) and moved to place the discussion of leaf blowers on a future agenda as a regular agenda item.

On August 14, 2023 ([Agenda – Minutes](#)), City staff brought a more comprehensive analysis of leaf blowers and their impacts which included emissions, noise, and the greater environment. In this report, staff suggested a stepped phase-out of leaf blowers. Ultimately the City Commission moved to direct the Planning Division, through the City Manager, to study a phased approach to eliminating the use of two-stroke, gas powered leaf blowers in the City of Birmingham.



**LEGAL REVIEW:**

The City Attorney has reviewed this agenda item and has no concerns as to form and content.

**FISCAL IMPACT:**

As noted above, two-stroke leaf blowers are easier to maintain and have a lifespan that could exceed 10 years. Because of this, the City may incur an additional cost to replace gas-powered leaf blowers with electric leaf blowers. This cost may be offset by the sale of the City's existing leaf blowers, as well as the reduction in gas/oil consumption over time. In addition, any registration that may be required of landscaping contractors will generate a revenue stream for the City, as well as the revenue from any tickets that are issued as a result of new ordinances.

**SUSTAINABILITY:**

This agenda item has a direct tie to the City's sustainability goals. As noted in several places above, two-cycle leaf blowers have a uniquely detrimental effect on the environment, and the phased transition to electric or manual leaf removal will significantly reduce the effects on the environment and public health.

**PUBLIC COMMUNICATIONS:**

There are no public communications required for this agenda item at this time.

**SUMMARY:**

The Planning Division requests that the City Commission consider passing a resolution to declare the intent of the City Commission in regards to two-stroke, gas powered leaf blowers and to set goals in regards to the phasing out of such.

**ATTACHMENTS:**

- Leaf Blower Resolution
- Draft Timeline for Phase-Out of Two-Stroke Gas Powered Leaf Blowers

**SUGGESTED COMMISSION ACTION:**

Make a motion adopting a resolution to declare the intent of the City Commission in regards to two-stroke, gas powered leaf blowers and to set goals in regards to the phasing out of such.

**RESOLUTION  
TWO-STROKE GAS POWERED LEAF BLOWERS**

Moved by \_\_\_\_\_

Seconded by \_\_\_\_\_

**WHEREAS**, the City of Birmingham desires to protect and enhance the quality of life for all those who live, work, learn and play in our community, as well as for future generations; and

**WHEREAS**, two-stroke leaf blowers are commonly used for commercial, municipal and residential landscape maintenance and present a unique nuisance because of the character and volume of their noise and pollution emission, their dust and debris projected as a result of high output, and the damage caused to topsoil and native environments; and

**WHEREAS**, the City has received complaints by residents of the City of Birmingham regarding the use of two-stroke gas powered leaf blowers and the problems associated with their excessive sound and environmental pollution; and

**WHEREAS**, excessive and unnecessary noise can cause adverse effects on humans and deprive people of the peaceful enjoyment of their private property; and

**WHEREAS**, the unnecessary and inefficient use of gasoline fuels in two-stroke gas powered leaf blowers contributes to the degradation of the environment and yields direct negative consequences for air and water quality; and

**WHEREAS**, the City of Birmingham has researched alternatives and benefits of phasing out the use of two-stroke gas powered leaf blowers within the City and has determined that discontinuing the use of two-stroke gas powered leaf blowers will provide for an increased quality of life.

**NOW, THEREFORE, BE IT RESOLVED**, the City Commission commits to eliminating the use of all two-stroke gas powered leaf blowers used within the City of Birmingham by July 1, 2026 and directs City staff, through the City Manager, to prioritize this transition in their budgets.

**BE IT FURTHER RESOLVED**, the City will provide public outreach and education about alternatives to two-stroke gas powered leaf blowers and will continue to research opportunities to aid in the transition.

**BE IT FURTHER RESOLVED**, the City Commission encourages and challenges all businesses and residents who use two-stroke gas powered leaf blowers to explore and consider the alternative options available.

Passed, adopted and approved this 11<sup>th</sup> day of September, 2023.

**AYES:** \_\_\_\_\_  
\_\_\_\_\_

**NAYS:** \_\_\_\_\_  
\_\_\_\_\_

**PRESENT:** \_\_\_\_\_  
\_\_\_\_\_

**ABSENT:** \_\_\_\_\_  
\_\_\_\_\_

**CERTIFICATION**

I, Alexandria D. Bingham, being the duly appointed and qualified Clerk of the City of Birmingham, Oakland County, Michigan, do hereby certify and declare that the foregoing is a true and correct copy of the Resolution, the original of which is on file in my office, adopted by the City of Birmingham Commission at a regular meeting held on September 11, 2023.

\_\_\_\_\_  
Alexandria D. Bingham, City Clerk

## Two-Stroke Gas Powered Leaf Blowers

Phase-Out Schedule

DRAFT 9/5/23

Task	2023		2024				2025				2026	
	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2
City Commission Resolution	Yellow	Yellow										
First Notice/Information Campaign		Orange	Orange	Orange	Orange							
Create dedicated Page on City Website				Orange	Orange							
Ordinance Drafting & Approval					Blue	Blue	Blue	Blue				
Second Notice/Information Campaign							Orange	Orange	Orange	Orange		
Phase-Out of City-Owned Leaf Blowers Complete								Yellow	Yellow	Yellow	Yellow	
Phase-Out of Two-Stroke Gas Powered Leaf Blowers Complete											Blue	Blue

Policy Actions	Yellow
Educational Actions	Orange
Regulatory Actions	Blue



## MEMORANDUM

Department of Public Services

**DATE:** September 6, 2023

**TO:** Jana L. Ecker, City Manager

**FROM:** Carrie Laird, Parks & Recreation Manager  
Scott Zielinski, DPS Director

**SUBJECT:** Trail Improvements Concept Plan

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### INTRODUCTION:

A priority project of the Parks and Recreation Bond is to improve the City's trail system. In order to accomplish improvements, as a first step, a concept plan is to be presented to the City Commission for approval.

### BACKGROUND:

In early 2022, the City engaged the services of MCSA Group, Inc., to prepare a concept plan for the trail system (originally prepared by them in 2006). The Draft Trail Improvement Concept Plan was reviewed by the Parks and Recreation Board at the [October 11, 2022 Parks and Recreation Board Meeting](#) and again at an advertised Public Input Session for Trail Improvements at the [November 1, 2022 Parks and Recreation Board Meeting](#). A survey was published and promoted on our [Engage Birmingham website](#) during this timeframe as well. The draft concept was also reviewed at the [City Commission's Long Range Planning Meeting in January of 2023](#).

Since last November, the Draft Trail Improvement Concept Plan has undergone various applicable board reviews including the Multi-Modal Transportation Board, the Museum Board and the Martha Baldwin Park Board. Ad Hoc Environmental Sustainability Committee staff liaisons and every City department examined this plan as well. It has been reviewed by Next, the Birmingham Bloomfield Community Coalition (BBCC), Friends of the Rouge and Friends of the Museum. Comments and feedback have been gathered and, wherever appropriate, incorporated into an [updated Concept Plan dated 6.30.2023](#).

Highlights of the concept plan include:

- Booth Park plaza/entry area improvements, the addition of an accessible restroom facility, new seating, landscaping and trees.
- Five (5) trail entry identifiers.

- Improvements to trail connectivity, especially from Willits to Maple, including:
  - Confidence markers
  - Wayfinding
  - Trail entry identifiers
  - Featuring the Birmingham Museum as a point of interest.
- Accessible boardwalks and viewing areas.
- A new pedestrian bridge between Willits and Baldwin.
- A new pedestrian bridge south of Maple, heading into the Linden Park trail.

Revisions to the concept plan based on feedback include:

Booth Park Section:

- The addition of more sustainability features such as rain barrels, native plantings, utilizing chip stone, Pave Drain® block or comparable product, and recycled or reclaimed site amenities.
- The addition of a donation bench and landscape bed.

Museum Section:

- The addition of a boardwalk in a narrow section north of Willits Street.
- The addition of a sidewalk along the south side of Willits Street.
- An option for a concrete pathway along Maple has been identified.

Linden Section:

- The addition of a pedestrian bridge connection over the Rouge River, north of Maple, east of Baldwin.
- Widened 8' Sidewalk west of Baldwin, up to the Maple Rd pedestrian crosswalk.

On August 1, 2023, the Parks and Recreation Board made a motion supporting the Trail Improvement Concept Plan, and recommended it be presented to the City Commission for acceptance.

**FISCAL IMPACT:**

Remaining bond funds from the first bond issue total \$181,492 as of June 30, 2023. In 2024, we are planning for the second bond issue in the amount of approximately \$6,500,000.

The Trail Improvements Cost Estimate totals \$3,020,310.82, broken down into the three sections: Booth Park Section: \$648,824.13, Museum Section: \$1,511,867.74 (does *not* include any costs related to the Museum Landscape Improvements), Linden Park Section: \$859,618.95. The previous cost estimate from November 2022 (before the changes to the plan and current price estimates) was \$2,095,531.62. Approximately half of the difference in costs (about \$500,000) is due to boardwalk, bridge, and new trail additions, and the rest is associated with general materials and construction cost increases to reflect current pricing.

The City received a pre-development grant for trail improvements for the Booth Park Section in the amount of \$25,000 (the maximum amount for the pre-development category) through the

Oakland County Parks and Recreation Grant Program. This can be applied to surveys, designs for construction and related work in preparation of and for bidding out the project.

The City also applied for round two of the MI Sparks Grant Program in the amount of \$350,000 for development of the Booth Park Section of the plan. It is anticipated award recipients will be announced in September.

DPS plans to work with the communications team to promote donation opportunities for this project as well.

#### SUSTAINABILITY:

The plan calls for features such as native plants, rain gardens, alternate hard surface materials such as chip stone and recycled/reclaimed products, among others. Staff is dedicated to exploring environmentally friendly options as part of the improvements to the trail system.

The City's staff liaisons to the Ad Hoc Environmental Sustainability Committee have reviewed the Trail Improvement Concept Plan and provided the following comments:

- The Planning Division acknowledges and appreciates the sustainability-minded approaches that are included in several aspects of this plan. In general, the notes about using recycled materials, and capturing rainwater in certain areas is good and should be applauded. Areas like the trail entry/identifier points could be more pervious/less impactful. Any pergola or shade structure could be made from recycled materials instead of something newly fabricated. The Planning Division looks forward to any future opportunities to go greener, and will make itself available at any point to offer opinions or ideas to that end.
- Any new plantings along the trail should absolutely be native and support the functions of the river ecosystem.
- Efforts should be made to ensure that any improvements do not interfere with the natural environment or hydrological functions of the river, and should be able to be easily removed in the future without causing damage if ever called for.

#### PUBLIC COMMUNICATIONS:

To date:

- [Parks and Recreation Board Meeting- October 2022](#)
- [Public Input Session at the Parks and Recreation Board Meeting- November 2022](#)
- [Survey on Engage Birmingham- Trail Improvements- October 2022-November 2022](#)
- [Multimodal Transportation Board Meeting- December 2022](#)
- [Museum Board Meeting-December 2022](#)
- [City Commission Long Range Planning Meeting- January 2023](#)
- [Martha Baldwin Park Board Meeting- April 2023](#)
- [Parks and Recreation Board Meeting- August 2023](#)

#### SUMMARY:

Trail improvement is a priority Parks and Recreation Bond project with funding available in the next bond issue slated for 2024. The Department of Public Services recommends the City

Commission accept the Trail Improvements Concept Plan and further, direct staff to pursue the procurement of construction drawings for the Booth Park Section of the plan through its normal purchasing protocols. The Trail Improvement Concept Plan, upon acceptance by the City Commission, will be included in the updated five-year Parks and Recreation Plan, 2024-2028.

ATTACHMENTS:

- Updated Cost Estimate 08.01.2023
- August 1, 2023 Parks and Recreation Board Meeting Report
- [Trail Improvement Concept Plan 06.30.2023](#)
- [Trail Improvement Concept Plan 10.19.2022](#)
- September 11, 2023 Presentation-Trail Improvements Concept Plan

SUGGESTED COMMISSION ACTION:

Make a motion adopting a resolution to accept the Trail Improvement Concept Plan

AND,

To direct staff to move forward with the preparation of a Request for Proposal to prepare construction drawings for the Booth Park Section of the Trail Improvements Concept Plan.





Landscape Architecture  
 Park & Recreation Planning  
 Architecture • Urban Design  
 Sports Facility Planning

**CITY OF BIRMINGHAM**  
**ROUGE RIVER TRAIL IMPROVEMENTS**  
**ORDER OF MAGNITUDE COST ESTIMATE**

**August 1, 2023**

**BOOTH PARK IMPROVEMENTS**

**GENERAL CONDITIONS**

Mobilization	LS	1	\$15,000.00	\$15,000.00
Insurance, Permits, and Bonds	LS	1	\$20,000.00	\$20,000.00
Project Sign	LS	1	\$2,000.00	\$2,000.00
Layout and Staking	LS	1	\$10,000.00	\$10,000.00
General Conditions (M, O & P @5%)	LS	1	\$29,979.00	\$29,979.00
<b>SUBTOTAL</b>				<b>\$76,979.00</b>

**SITE PREPARATION AND REMOVALS**

Soil Erosion & Sedimentation	LS	1	\$10,000.00	\$10,000.00
Site Preparation & Grading	SY	3,494	\$5.00	\$17,470.00
Concrete and Curb Removal	LS	1	\$2,000.00	\$2,000.00
<b>SUBTOTAL</b>				<b>\$29,470.00</b>

**TRAIL ENTRY**

Columns	EA	2	\$15,000.00	\$30,000.00
Granite Pavers	SF	320	\$60.00	\$19,200.00
<b>SUBTOTAL</b>				<b>\$49,200.00</b>

**PLAZA IMPROVEMENTS**

Concrete Plaza Paving (6" depth)	SF	5,966	\$10.00	\$59,660.00
Seat Wall Curb Planter	LF	70	\$350.00	\$24,500.00
Entrance Sign	LS	1	\$15,000.00	\$15,000.00
Cobblestone Pavers	SF	1311	\$25.00	\$32,775.00
Curb and Gutter Patch	LS	1	\$5,000.00	\$5,000.00
Crushed Stone Trail	SY	268	\$18.00	\$4,824.00
Timber Edging	LF	612	\$30.00	\$18,360.00
Bench	EA	2	\$3,000.00	\$6,000.00
<b>SUBTOTAL</b>				<b>\$166,119.00</b>



**MCSA**  
GROUP, Inc.

Landscape Architects and Architects  
EAST GRAND RAPIDS • MICHIGAN

Landscape Architecture  
Park & Recreation Planning  
Architecture • Urban Design  
Sports Facility Planning

**RESTROOM BUILDING**

Easi Set Restroom	LS	1	\$120,000.00	\$120,000.00
Waterline and Connections	LF	118	\$85.00	\$10,030.00
Sanitary Line and Connections	LF	147	\$65.00	\$9,555.00
Electric Line and Connections	LF	172	\$55.00	\$9,460.00

**SUBTOTAL**

**\$149,045.00**

**LANDSCAPE IMPROVEMENTS**

Tree Grates	EA	2	\$4,000.00	\$8,000.00
Trees	EA	2	\$750.00	\$1,500.00
Restoration Seeding and Topsoil	SY	285	\$3.50	\$997.50
Perennial Planting in Planter	LS	1	\$2,500.00	\$2,500.00

**SUBTOTAL**

**\$12,997.50**

**SUBTOTAL**

**\$483,810.50**

**Design and Bidding Contingency (10%)**

**\$48,381.05**

**Construction Contingency (10%)**

**\$48,381.05**

**Professional Fees (9%)**

**\$52,251.53**

**Topographic Survey**

**\$6,000.00**

**Soil Borings**

**\$8,000.00**

**EGLE PERMIT**

**\$2,000.00**

**TOTAL**

**\$648,824.13**

**ALTERNATE**

Locate Restroom Farther to the South	LF	165	\$190.00	\$31,350.00
Traditional Restroom Building	LS	1	\$140,000.00	\$140,000.00



**MCSA**  
GROUP, Inc.

Landscape Architects and Architects  
EAST GRAND RAPIDS • MICHIGAN

Landscape Architecture  
Park & Recreation Planning  
Architecture • Urban Design  
Sports Facility Planning

## MUSEUM TRAIL IMPROVEMENTS

Description	Unit	No. of Units	Price	Extension
-------------	------	--------------	-------	-----------

### GENERAL CONDITIONS

Mobilization	LS	1	\$15,000.00	\$15,000.00
Insurance, Permits, and Bonds	LS	1	\$10,000.00	\$10,000.00
Project Sign	LS	1	\$2,000.00	\$2,000.00
Layout and Staking	LS	1	\$10,000.00	\$10,000.00
General Conditions (M, O & P @5%)	LS	1	\$28,568.00	\$28,568.00
<b>SUBTOTAL</b>				<b>\$65,568.00</b>

### SITE PREPARATION AND REMOVALS

Soil Erosion & Sedimentation	LS	1	\$8,000.00	\$8,000.00
Site Preparation & Grading	SY	5,534	\$3.75	\$20,752.50
Concrete and Curb Removal	LS	1	\$2,000.00	\$2,000.00
<b>SUBTOTAL</b>				<b>\$30,752.50</b>

### TRAIL ENTRY

Columns	EA	6	\$15,000.00	\$90,000.00
Granite Pavers	SF	583	\$60.00	\$34,980.00
Confidence Markers and Trail Signage	EA	8	\$750.00	\$6,000.00
Bench	EA	3	\$3,000.00	\$9,000.00
Waste Receptacle	EA	3	\$2,500.00	\$7,500.00
Concrete Paving	SF	2960	\$7.00	\$20,720.00
Crushed Stone Trail	SY	75	\$18.00	\$1,350.00
Timber Edging	LF	245	\$30.00	\$7,350.00
Trellis	LS	1	\$20,000.00	\$20,000.00
<b>SUBTOTAL</b>				<b>\$196,900.00</b>

### BOARDWALK

Boardwalk Ramp and Overlook	SF	3525	\$200.00	\$705,000.00
Boardwalk Steps	SF	575	\$150.00	\$86,250.00
Timber Abutment at Boardwalk	EA	4	\$3,750.00	\$15,000.00
<b>SUBTOTAL</b>				<b>\$806,250.00</b>



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Landscape Architects and Architects  
EAST GRAND RAPIDS • MICHIGAN

Landscape Architecture  
Park & Recreation Planning  
Architecture • Urban Design  
Sports Facility Planning

Description	Unit	No. of Units	Price	Extension
<b>LANDSCAPE IMPROVEMENTS</b>				
Restoration Seeding and Topsoil	SY	285	\$3.50	\$997.50
Shrubs at Trellis Seating	EA	19	\$300.00	\$5,700.00
				<b>\$6,697.50</b>
<b>SUBTOTAL</b>				<b><u>\$1,106,168.00</u></b>
<b>Design and Bidding Contingency (10%)</b>				<b>\$110,616.80</b>
<b>Construction Contingency (10%)</b>				<b>\$110,616.80</b>
<b>Professional Fees (9%)</b>				<b>\$119,466.14</b>
<b>Topographic Survey</b>				<b>\$5,000.00</b>
<b>EGLE Permit</b>				<b>\$5,000.00</b>
<b>Hydrologic Study</b>				<b>\$40,000.00</b>
<b>Soil Borings</b>				<b>\$15,000.00</b>
<b>TOTAL</b>				<b><u>\$1,511,867.74</u></b>



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Description	Unit	No. of Units	Price	Extension
<b>LINDEN TRAIL IMPROVEMENTS</b>				
<b>GENERAL CONDITIONS</b>				
Mobilization	LS	1	\$15,000.00	\$15,000.00
Insurance, Permits, and Bonds	LS	1	\$10,000.00	\$10,000.00
Project Sign	LS	1	\$2,000.00	\$2,000.00
Layout and Staking	LS	1	\$3,000.00	\$3,000.00
General Conditions (M, O & P @5%)	LS	1	\$25,309.00	\$25,309.00
<b>SUBTOTAL</b>				<b>\$55,309.00</b>
<b>SITE PREPARATION AND REMOVALS</b>				
Soil Erosion & Sedimentation	LS	1	\$20,000.00	\$20,000.00
Site Preparation & Grading	LS	1	\$8,000.00	\$8,000.00
<b>SUBTOTAL</b>				<b>\$28,000.00</b>
<b>TRAIL ENTRY/ OVERLOOK</b>				
Columns	EA	2	\$15,000.00	\$30,000.00
Granite Pavers	SF	240	\$60.00	\$14,400.00
Confidence Markers and Trail Signage	EA	2	\$750.00	\$1,500.00
Bench	EA	1	\$3,000.00	\$3,000.00
Waste Receptacle	EA	1	\$2,500.00	\$2,500.00
<b>SUBTOTAL</b>				<b>\$51,400.00</b>
<b>TRAIL IMPROVEMENTS</b>				
Crushed Stone Trail	SY	286	\$18.00	\$5,148.00
Timber Edging	LF	638	\$30.00	\$19,140.00
Bituminous Paving	SY	877	\$45.00	\$39,465.00
Concrete Paving	SF	329	\$7.00	\$2,303.00
<b>SUBTOTAL</b>				<b>\$66,056.00</b>



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Description	Unit	No. of Units	Price	Extension
<b>BOARDWALK AND BRIDGE</b>				
Pre-Fabricated Bridge (75' x 10')	LS	1	\$250,000.00	\$250,000.00
Elevated Boardwalk	SF	770	\$150.00	\$115,500.00
Concrete Abutment at Bridge	EA	2	\$7,500.00	\$15,000.00
<b>SUBTOTAL</b>				<b>\$380,500.00</b>
<b>SUBTOTAL</b>				<b><u>\$583,265.00</u></b>

**ALTERNATE**

Concrete Sidewalk @ W. Maple RD	SF	7891	\$7.00	\$55,237.00
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<b>Design and Bidding Contingency (10%)</b>	<b>\$58,326.50</b>
<b>Construction Contingency (10%)</b>	<b>\$58,326.50</b>
<b>Professional Fees (9%)</b>	<b>\$67,963.95</b>
<b>Topographic Survey</b>	<b>\$10,000.00</b>
<b>Soil Borings</b>	<b>\$8,000.00</b>
<b>Hydraulic Analysis Study</b>	<b>\$15,000.00</b>
<b>EGLE PERMIT + Hydraulic Review Fee</b>	<b>\$3,500.00</b>
<b>TOTAL</b>	<b><u>\$859,618.95</u></b>

Evaluations of the Project Budget and Estimates of Construction Cost prepared by MCSA Group represents their judgment as design professionals. It is recognized, however, MCSA Group has no control over the cost of labor, materials or equipment, nor a contractor's methods of determining bid prices, or over competitive bidding, or market conditions. Accordingly, MCSA Group cannot and does not warrant or represent that bids or negotiated prices will not vary from the Project Budget or from any estimate of construction cost or evaluation prepared by MCSA Group.



## MEMORANDUM

Department of Public Services

**DATE:** August 1, 2023

**TO:** Parks and Recreation Board

**FROM:** Carrie Laird, Parks and Recreation Manager

**APPROVED:** Scott Zielinski, DPS Director

**SUBJECT:** Trail Improvements Concept Plan

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### INTRODUCTION:

Improving the City's trail system is a priority Parks and Recreation Bond project. In order to accomplish upgrades, as a first step, a concept plan is to be accepted by the City Commission. The Parks and Recreation Board will review the updated concept plan prepared by MCSA Group, Inc. and make a recommendation.

### BACKGROUND:

In early 2022, the city engaged the services of MCSA Group, Inc, to prepare a concept plan for the trail system (originally prepared by them in 2006). The Draft Trail Improvement Concept Plan was reviewed by the Parks and Recreation Board at the [October 11, 2022 Parks and Recreation Board Meeting](#) and again at an advertised Public Input Session for Trail Improvements at the [November 1, 2022 Parks and Recreation Board Meeting](#). A survey was published and promoted on our Engage Birmingham site: <https://engage.bhamgov.org/trail-improvements> during this timeframe as well.

Since November, the Draft Trail Improvement Concept Plan has undergone various applicable board reviews including the Multi-Modal Transportation Board, the Museum Board, and the Martha Baldwin Park Board. Staff sustainability liaisons in addition to each of the City departments have examined this plan as well. Comments and feedback have been gathered and, wherever appropriate, incorporated into an updated Concept Plan dated 6.30.2023, attached.

Changes made to the Draft Concept Plan include:

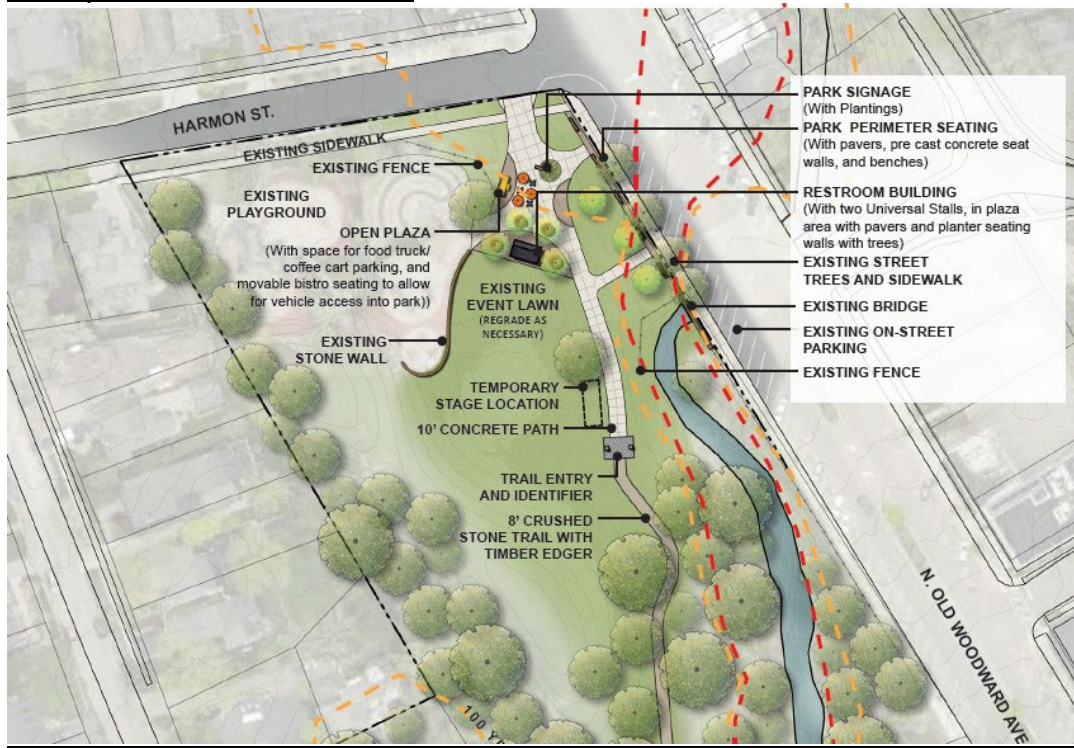
#### Booth Park Section:

Entry plaza: The addition of a rain garden in the swale area.

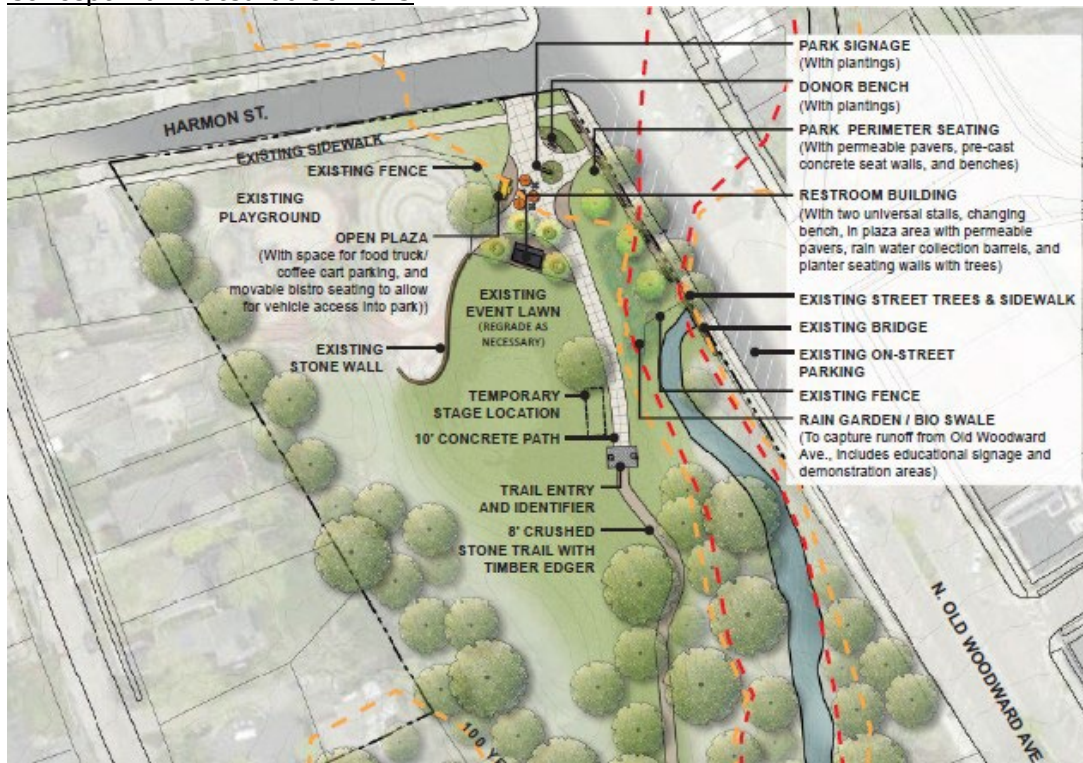
Addition of more sustainability features such as rain barrels, native plantings, utilizing chip stone, Pave Drain® block, and recycled or reclaimed products.

The addition of a Donor Bench and landscape bed. (We have a donor that would like to contribute a custom style bench, could serve as an art piece/destination selfie/photo opportunity).

Concept Plan dated 10.19.2022



Concept Plan dated 06.30.2023

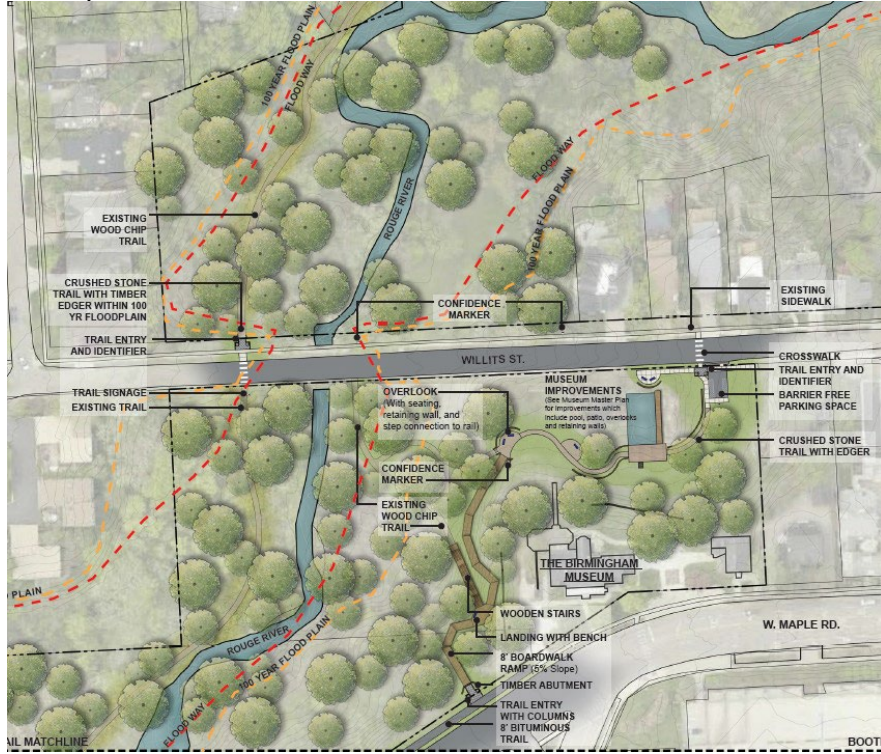




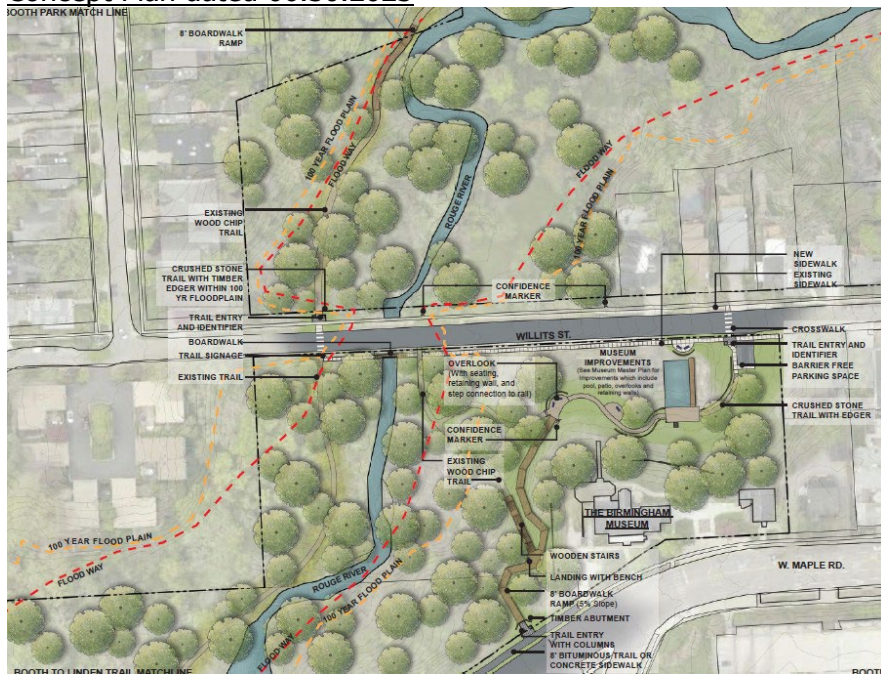
**Museum Section:**

The addition of a boardwalk in the narrow section north of Willits street.  
The addition of a sidewalk along the south side of Willits street.  
An option for concrete pathway along Maple has been identified.

**Concept Plan dated 10.19.2022**



**Concept Plan dated 06.30.2023**

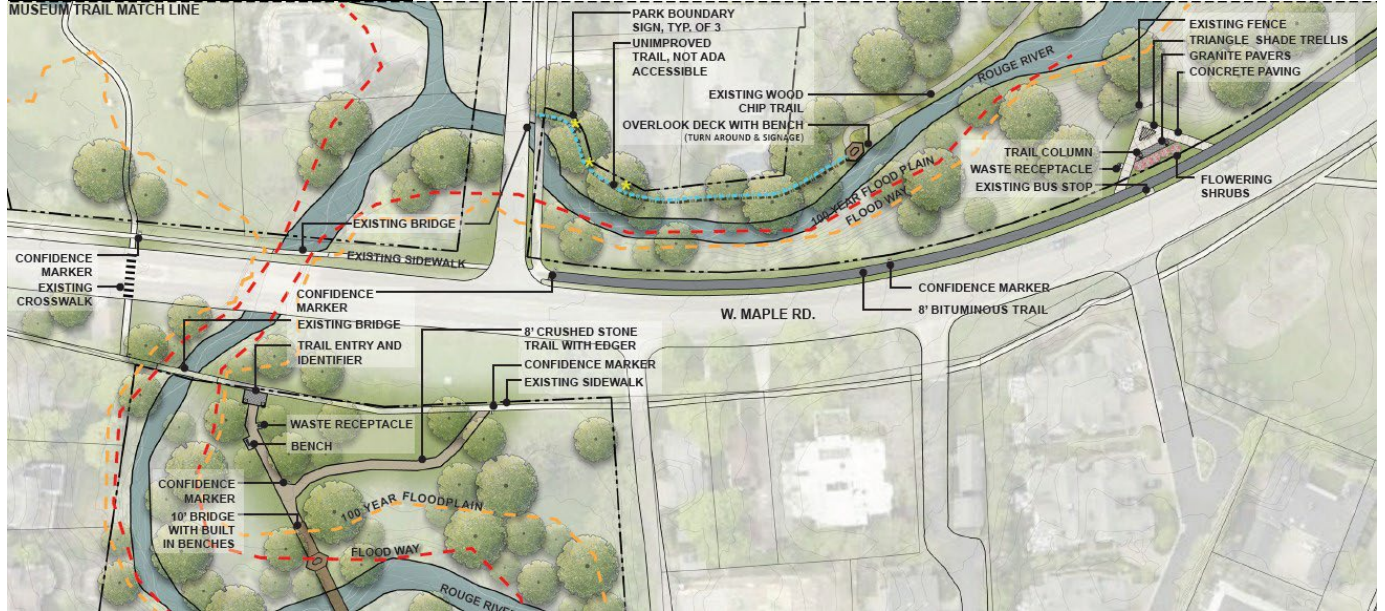


Linden Section:

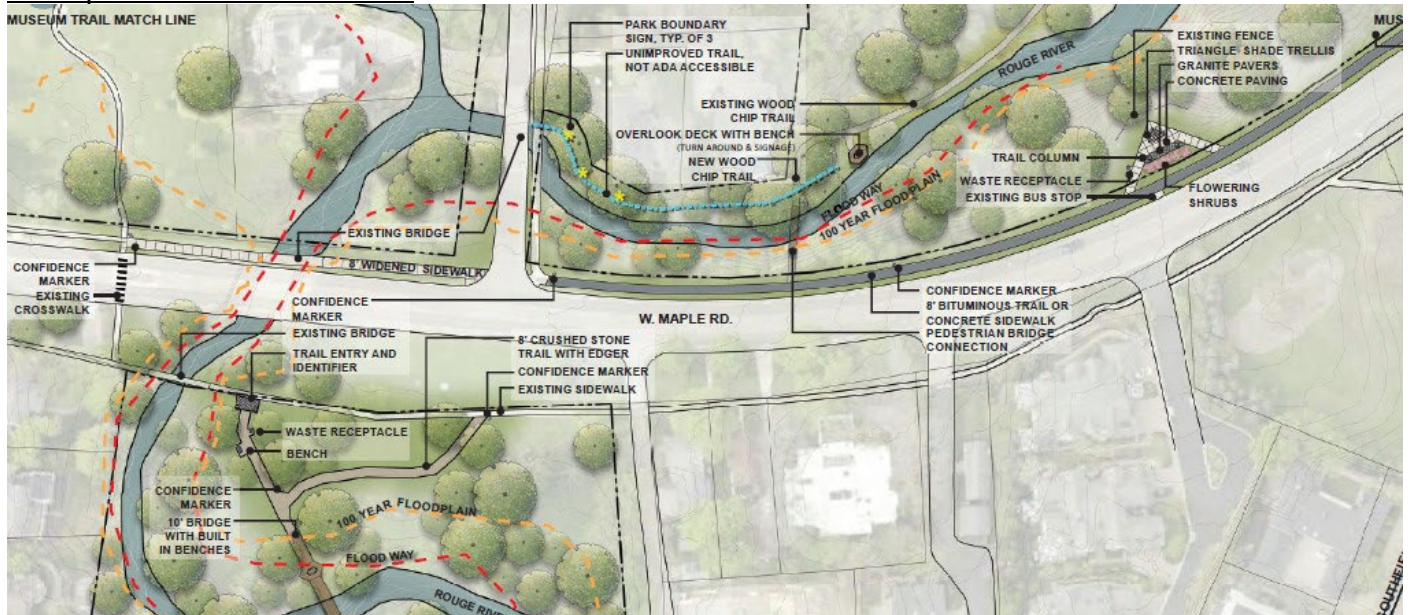
The addition of a pedestrian bridge connection over the Rouge River, north of Maple, east of Baldwin.

Widened 8' Sidewalk west of Baldwin, up to the Maple Rd pedestrian crosswalk.

Concept Plan dated 10.19.2022



Concept Plan dated 06.30.2023



**FISCAL IMPACT:**

Remaining bond funds from the first bond issue total \$181,492 as of June 30, 2023. In 2024, we are planning for the second bond issue in the amount of approximately \$6,500,000.

The Trail Improvements Cost Estimate totals \$2,967,990.82 , broken down into three sections: Booth Park Section: \$648,824.13, Museum Section: \$1,472,627.74, Linden Park Section: \$846,538.95. The previous cost estimate before the changes to the plan was \$2,095,531.62.

The City applied for a pre-development grant for trail improvements in the amount of \$25,000 (the maximum amount) through the Oakland County Parks and Recreation Grant Program, expected announcement early August. If awarded this will help to prepare construction drawings

The City applied for round two of the MI Sparks Grant Program in the amount of \$350,000 for development of the Booth Park Section of the plan.

**SUSTAINABILITY:**

The plan calls for features such as native plants, rain gardens, alternate hard surface materials such as chip stone, recycled/reclaimed products, among others. Staff is dedicated to considering utilizing environmentally friendly alternatives whenever possible.

The City's staff liaisons to the Ad Hoc Environmental Sustainability Committee have reviewed the Trail Improvement Concept Plan and provide the following comments:

- The Planning Division acknowledges and appreciates the sustainability-minded approaches that are included in several aspects of this plan. In general, the notes about using recycled materials, and capturing rainwater in certain areas is good and should be applauded. Areas like the trail entry/identifier points could be more pervious/less impactful. Any pergola or shade structure could be made from recycled materials instead of something newly fabricated. The Planning Division looks forward to any future opportunities to go greener, and will make itself available at any point to offer opinions or ideas to that end.
- Any new plantings along the trail should absolutely be native and support the functions of the river ecosystem.
- Efforts should be made to ensure that any improvements do not interfere with the natural environment or hydrological functions of the river, and should be able to be easily removed in the future without causing damage if ever called for.

**PUBLIC COMMUNICATIONS:**

To date:

- Promotion of the November 2022 Public Input Session at the Parks and Recreation Board Meeting.
- Trail Improvements Survey on Engage Birmingham
- Multimodal Transportation Board Agenda- December 2022
- Museum Board Meeting-December 2022
- Martha Baldwin Park Board Agenda- April 2023
- Promotion of the August 1, 2023 Parks and Recreation Board meeting

**SUMMARY:**

Trail improvements is a priority Parks and Recreation Bond project with funding available with next bond issue slated for 2024. The first step toward improving the trail system is acceptance of a concept plan by the City Commission, of which the Parks and Recreation Board makes the recommendation.

**ATTACHMENTS:**

- [Trail Improvement Concept Plan 06.30.2023](#) (as web link)
- [Trail Improvement Concept Plan 10.19.2022](#) (as web link)
- Updated Cost Estimate 06.30.2023
- Cost Estimate 11.01.2022

**SUGGESTED PARKS & RECREATION BOARD ACTION:**

Make a motion supporting the Trail Improvement Concept Plan and recommending that the plan be presented to the City Commission for acceptance.



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**CITY OF BIRMINGHAM**  
**ROUGE RIVER TRAIL IMPROVEMENTS**  
**ORDER OF MAGNITUDE COST ESTIMATE**

July 26, 2023

**BOOTH PARK IMPROVEMENTS**

**GENERAL CONDITIONS**

Mobilization	LS	1	\$15,000.00	\$15,000.00
Insurance, Permits, and Bonds	LS	1	\$20,000.00	\$20,000.00
Project Sign	LS	1	\$2,000.00	\$2,000.00
Layout and Staking	LS	1	\$10,000.00	\$10,000.00
General Conditions (M, O & P @5%)	LS	1	\$29,979.00	\$29,979.00
<b>SUBTOTAL</b>				<b>\$76,979.00</b>

**SITE PREPARATION AND REMOVALS**

Soil Erosion & Sedimentation	LS	1	\$10,000.00	\$10,000.00
Site Preparation & Grading	SY	3,494	\$5.00	\$17,470.00
Concrete and Curb Removal	LS	1	\$2,000.00	\$2,000.00
<b>SUBTOTAL</b>				<b>\$29,470.00</b>

**TRAIL ENTRY**

Columns	EA	2	\$15,000.00	\$30,000.00
Granite Pavers	SF	320	\$60.00	\$19,200.00
<b>SUBTOTAL</b>				<b>\$49,200.00</b>

**PLAZA IMPROVEMENTS**

Concrete Plaza Paving (6" depth)	SF	5,966	\$10.00	\$59,660.00
Seat Wall Curb Planter	LF	70	\$350.00	\$24,500.00
Entrance Sign	LS	1	\$15,000.00	\$15,000.00
Cobblestone Pavers	SF	1311	\$25.00	\$32,775.00
Curb and Gutter Patch	LS	1	\$5,000.00	\$5,000.00
Crushed Stone Trail	SY	268	\$18.00	\$4,824.00
Timber Edging	LF	612	\$30.00	\$18,360.00
Bench	EA	2	\$3,000.00	\$6,000.00
<b>SUBTOTAL</b>				<b>\$166,119.00</b>



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**RESTROOM BUILDING**

Easi Set Restroom	LS	1	\$120,000.00	\$120,000.00
Waterline and Connections	LF	118	\$85.00	\$10,030.00
Sanitary Line and Connections	LF	147	\$65.00	\$9,555.00
Electric Line and Connections	LF	172	\$55.00	\$9,460.00

**SUBTOTAL**

**\$149,045.00**

**LANDSCAPE IMPROVEMENTS**

Tree Grates	EA	2	\$4,000.00	\$8,000.00
Trees	EA	2	\$750.00	\$1,500.00
Restoration Seeding and Topsoil	SY	285	\$3.50	\$997.50
Perennial Planting in Planter	LS	1	\$2,500.00	\$2,500.00

**SUBTOTAL**

**\$12,997.50**

**SUBTOTAL**

**\$483,810.50**

**Design and Bidding Contingency (10%)**

**\$48,381.05**

**Construction Contingency (10%)**

**\$48,381.05**

**Professional Fees (9%)**

**\$52,251.53**

**Topographic Survey**

**\$6,000.00**

**Soil Borings**

**\$8,000.00**

**EGLE PERMIT**

**\$2,000.00**

**TOTAL**

**\$648,824.13**

**ALTERNATE**

Locate Restroom Farther to the South	LF	165	\$190.00	\$31,350.00
Traditional Restroom Building	LS	1	\$110,000.00	\$110,000.00



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## MUSEUM TRAIL IMPROVEMENTS

Description	Unit	No. of Units	Price	Extension
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### GENERAL CONDITIONS

Mobilization	LS	1	\$15,000.00	\$15,000.00
Insurance, Permits, and Bonds	LS	1	\$10,000.00	\$10,000.00
Project Sign	LS	1	\$2,000.00	\$2,000.00
Layout and Staking	LS	1	\$10,000.00	\$10,000.00
General Conditions (M, O & P @5%)	LS	1	\$28,568.00	\$28,568.00
<b>SUBTOTAL</b>				<b>\$65,568.00</b>

### SITE PREPARATION AND REMOVALS

Soil Erosion & Sedimentation	LS	1	\$8,000.00	\$8,000.00
Site Preparation & Grading	SY	5,534	\$3.75	\$20,752.50
Concrete and Curb Removal	LS	1	\$2,000.00	\$2,000.00
<b>SUBTOTAL</b>				<b>\$30,752.50</b>

### TRAIL ENTRY

Columns	EA	6	\$10,000.00	\$60,000.00
Granite Pavers	SF	583	\$60.00	\$34,980.00
Confidence Markers and Trail Signage	EA	8	\$750.00	\$6,000.00
Bench	EA	3	\$3,000.00	\$9,000.00
Waste Receptacle	EA	3	\$2,500.00	\$7,500.00
Concrete Paving	SF	2960	\$7.00	\$20,720.00
Crushed Stone Trail	SY	75	\$18.00	\$1,350.00
Timber Edging	LF	245	\$30.00	\$7,350.00
Trellis	LS	1	\$20,000.00	\$20,000.00
<b>SUBTOTAL</b>				<b>\$166,900.00</b>

### BOARDWALK

Boardwalk Ramp and Overlook	SF	3525	\$200.00	\$705,000.00
Boardwalk Steps	SF	575	\$150.00	\$86,250.00
Timber Abutment at Boardwalk	EA	4	\$3,750.00	\$15,000.00
<b>SUBTOTAL</b>				<b>\$806,250.00</b>



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Description	Unit	No. of Units	Price	Extension
<b>LANDSCAPE IMPROVEMENTS</b>				
Restoration Seeding and Topsoil	SY	285	\$3.50	\$997.50
Shrubs at Trellis Seating	EA	19	\$300.00	\$5,700.00
				<b>\$6,697.50</b>
<b>SUBTOTAL</b>				<b><u>\$1,076,168.00</u></b>
<b>Design and Bidding Contingency (10%)</b>				<b>\$107,616.80</b>
<b>Construction Contingency (10%)</b>				<b>\$107,616.80</b>
<b>Professional Fees (9%)</b>				<b>\$116,226.14</b>
<b>Topographic Survey</b>				<b>\$5,000.00</b>
<b>EGLE Permit</b>				<b>\$5,000.00</b>
<b>Hydrologic Study</b>				<b>\$40,000.00</b>
<b>Soil Borings</b>				<b>\$15,000.00</b>
<b>TOTAL</b>				<b><u>\$1,472,627.74</u></b>





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Description	Unit	No. of Units	Price	Extension
<b>LINDEN TRAIL IMPROVEMENTS</b>				

**GENERAL CONDITIONS**

Mobilization	LS	1	\$15,000.00	\$15,000.00
Insurance, Permits, and Bonds	LS	1	\$10,000.00	\$10,000.00
Project Sign	LS	1	\$2,000.00	\$2,000.00
Layout and Staking	LS	1	\$3,000.00	\$3,000.00
General Conditions (M, O & P @5%)	LS	1	\$25,309.00	\$25,309.00
<b>SUBTOTAL</b>				<b>\$55,309.00</b>

**SITE PREPARATION AND REMOVALS**

Soil Erosion & Sedimentation	LS	1	\$20,000.00	\$20,000.00
Site Preparation & Grading	LS	1	\$8,000.00	\$8,000.00
<b>SUBTOTAL</b>				<b>\$28,000.00</b>

**TRAIL ENTRY/ OVERLOOK**

Columns	EA	2	\$10,000.00	\$20,000.00
Granite Pavers	SF	240	\$60.00	\$14,400.00
Confidence Markers and Trail Signage	EA	2	\$750.00	\$1,500.00
Bench	EA	1	\$3,000.00	\$3,000.00
Waste Receptacle	EA	1	\$2,500.00	\$2,500.00
<b>SUBTOTAL</b>				<b>\$41,400.00</b>

**TRAIL IMPROVEMENTS**

Crushed Stone Trail	SY	286	\$18.00	\$5,148.00
Timber Edging	LF	638	\$30.00	\$19,140.00
Bituminous Paving	SY	877	\$45.00	\$39,465.00
Concrete Paving	SF	329	\$7.00	\$2,303.00
<b>SUBTOTAL</b>				<b>\$66,056.00</b>



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Description	Unit	No. of Units	Price	Extension
<b>BOARDWALK AND BRIDGE</b>				
Pre-Fabricated Bridge (75' x 10')	LS	1	\$250,000.00	\$250,000.00
Elevated Boardwalk	SF	770	\$150.00	\$115,500.00
Concrete Abutment at Bridge	EA	2	\$7,500.00	\$15,000.00
<b>SUBTOTAL</b>				<b>\$380,500.00</b>
<b>SUBTOTAL</b>				<b><u>\$573,265.00</u></b>

**ALTERNATE**

Concrete Sidewalk @ W. Maple RD	SF	7891	\$7.00	\$55,237.00
<b>Design and Bidding Contingency (10%)</b>				<b>\$57,326.50</b>
<b>Construction Contingency (10%)</b>				<b>\$57,326.50</b>
<b>Professional Fees (9%)</b>				<b>\$66,883.95</b>
<b>Topographic Survey</b>				<b>\$10,000.00</b>
<b>Soil Borings</b>				<b>\$8,000.00</b>
<b>Hydraulic Analysis Study</b>				<b>\$15,000.00</b>
<b>EGLE PERMIT + Hydraulic Review Fee</b>				<b>\$3,500.00</b>
<b>TOTAL</b>				<b><u>\$846,538.95</u></b>

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**CITY OF BIRMINGHAM**  
**ROUGE RIVER TRAIL IMPROVEMENTS**  
**ORDER OF MAGNITUDE COST ESTIMATE**

**November 1, 2022**

**BOOTH PARK IMPROVEMENTS**

**GENERAL CONDITIONS**

Mobilization	LS	1	\$15,000.00	\$15,000.00
Insurance, Permits, and Bonds	LS	1	\$20,000.00	\$20,000.00
Project Sign	LS	1	\$2,000.00	\$2,000.00
Layout and Staking	LS	1	\$10,000.00	\$10,000.00
General Conditions (M, O & P @5%)	LS	1	\$20,028.00	\$20,028.00
<b>SUBTOTAL</b>				<b>\$67,028.00</b>

**SITE PREPARATION AND REMOVALS**

Soil Erosion & Sedimentation	LS	1	\$8,000.00	\$8,000.00
Site Preparation & Grading	SY	3,494	\$3.75	\$13,102.50
Concrete and Curb Removal	LS	1	\$2,000.00	\$2,000.00
<b>SUBTOTAL</b>				<b>\$23,102.50</b>

**TRAIL ENTRY**

Columns	EA	2	\$10,000.00	\$20,000.00
Granite Pavers	SF	320	\$60.00	\$19,200.00
<b>SUBTOTAL</b>				<b>\$39,200.00</b>

**PLAZA IMPROVEMENTS**

Concrete Plaza Paving (6" depth)	SF	6,541	\$10.00	\$65,410.00
Seat Wall Curb Planter	LF	70	\$250.00	\$17,500.00
Entrance Sign	LS	1	\$15,000.00	\$15,000.00
Cobblestone Pavers	SF	1311	\$25.00	\$32,775.00
Curb and Gutter Patch	LS	1	\$5,000.00	\$5,000.00
Crushed Stone Trail	SY	268	\$18.00	\$4,824.00
Timber Edging	LF	612	\$30.00	\$18,360.00
Bench	EA	2	\$3,000.00	\$6,000.00
<b>SUBTOTAL</b>				<b>\$164,869.00</b>



**MCSA**  
GROUP, Inc.

Landscape Architects and Architects  
EAST GRAND RAPIDS • MICHIGAN

Landscape Architecture  
Park & Recreation Planning  
Architecture • Urban Design  
Sports Facility Planning

**RESTROOM BUILDING**

Easi Set Restroom	LS	1	\$90,000.00	\$90,000.00
Waterline and Connections	LF	118	\$85.00	\$10,030.00
Sanitary Line and Connections	LF	147	\$60.00	\$8,820.00
Electric Line and Connections	LF	172	\$45.00	\$7,740.00

**SUBTOTAL**

**\$116,590.00**

**LANDSCAPE IMPROVEMENTS**

Tree Grates	EA	2	\$3,000.00	\$6,000.00
Trees	EA	2	\$650.00	\$1,300.00
Restoration Seeding and Topsoil	SY	285	\$3.50	\$997.50
Perennial Planting in Planter	LS	1	\$1,500.00	\$1,500.00

**SUBTOTAL**

**\$9,797.50**

**SUBTOTAL**

**\$420,587.00**

**Design and Bidding Contingency (10%)**

**\$42,058.70**

**Construction Contingency (10%)**

**\$42,058.70**

**Professional Fees (9%)**

**\$45,423.40**

**Topographic Survey**

**\$6,000.00**

**Soil Borings**

**\$8,000.00**

**EGLE PERMIT**

**\$2,000.00**

**TOTAL**

**\$566,127.80**

**ALTERNATE**

Traditional Restroom Building	LS	1	\$110,000.00	\$110,000.00
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**SUBTOTAL**

**\$110,000.00**



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Sports Facility Planning

## MUSEUM TRAIL IMPROVEMENTS

Description	Unit	No. of Units	Price	Extension
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### GENERAL CONDITIONS

Mobilization	LS	1	\$15,000.00	\$15,000.00
Insurance, Permits, and Bonds	LS	1	\$10,000.00	\$10,000.00
Project Sign	LS	1	\$2,000.00	\$2,000.00
Layout and Staking	LS	1	\$10,000.00	\$10,000.00
General Conditions (M, O & P @5%)	LS	1	\$28,568.00	\$28,568.00
<b>SUBTOTAL</b>				<b>\$65,568.00</b>

### SITE PREPARATION AND REMOVALS

Soil Erosion & Sedimentation	LS	1	\$8,000.00	\$8,000.00
Site Preparation & Grading	SY	5,534	\$3.75	\$20,752.50
Concrete and Curb Removal	LS	1	\$2,000.00	\$2,000.00
<b>SUBTOTAL</b>				<b>\$30,752.50</b>

### TRAIL ENTRY

Columns	EA	6	\$10,000.00	\$60,000.00
Granite Pavers	SF	583	\$60.00	\$34,980.00
Confidence Markers and Trail Signage	EA	8	\$750.00	\$6,000.00
Bench	EA	3	\$3,000.00	\$9,000.00
Waste Receptacle	EA	3	\$2,500.00	\$7,500.00
Trellis	LS	1	\$20,000.00	\$20,000.00
<b>SUBTOTAL</b>				<b>\$137,480.00</b>

### BOARDWALK

Boardwalk Ramp and Overlook	SF	2214	\$120.00	\$265,680.00
Boardwalk Steps	SF	575	\$150.00	\$86,250.00
Timber Abutment at Boardwalk	EA	2	\$3,750.00	\$7,500.00
<b>SUBTOTAL</b>				<b>\$359,430.00</b>



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Landscape Architecture  
Park & Recreation Planning  
Architecture • Urban Design  
Sports Facility Planning

Description	Unit	No. of Units	Price	Extension
<b>LANDSCAPE IMPROVEMENTS</b>				
Restoration Seeding and Topsoil	SY	285	\$3.50	\$997.50
Shrubs at Trellis Seating	EA	19	\$300.00	\$5,700.00
				<b>\$6,697.50</b>
<b>SUBTOTAL</b>				<b><u>\$599,928.00</u></b>
Design and Bidding Contingency (10%)				\$59,992.80
Construction Contingency (10%)				\$59,992.80
Professional Fees (9%)				\$64,792.22
Topographic Survey				\$5,000.00
Soil Borings				\$8,000.00
<b>TOTAL</b>				<b><u><u>\$797,705.82</u></u></b>



**MCSA**  
GROUP, Inc.

Landscape Architects and Architects  
EAST GRAND RAPIDS • MICHIGAN

Landscape Architecture  
Park & Recreation Planning  
Architecture • Urban Design  
Sports Facility Planning

Description	Unit	No. of Units	Price	Extension
<b>LINDEN TRAIL IMPROVEMENTS</b>				

**GENERAL CONDITIONS**

Mobilization	LS	1	\$15,000.00	\$15,000.00
Insurance, Permits, and Bonds	LS	1	\$10,000.00	\$10,000.00
Project Sign	LS	1	\$2,000.00	\$2,000.00
Layout and Staking	LS	1	\$3,000.00	\$3,000.00
General Conditions (M, O & P @5%)	LS	1	\$25,309.00	\$25,309.00
<b>SUBTOTAL</b>				<b>\$55,309.00</b>

**SITE PREPARATION AND REMOVALS**

Soil Erosion & Sedimentation	LS	1	\$20,000.00	\$20,000.00
Site Preparation & Grading	LS	1	\$8,000.00	\$8,000.00
<b>SUBTOTAL</b>				<b>\$28,000.00</b>

**TRAIL ENTRY/ OVERLOOK**

Columns	EA	2	\$10,000.00	\$20,000.00
Granite Pavers	SF	240	\$60.00	\$14,400.00
Confidence Markers and Trail Signage	EA	2	\$750.00	\$1,500.00
Bench	EA	1	\$3,000.00	\$3,000.00
Waste Receptacle	EA	1	\$2,500.00	\$2,500.00
<b>SUBTOTAL</b>				<b>\$41,400.00</b>

**TRAIL IMPROVEMENTS**

Crushed Stone Trail	SY	286	\$18.00	\$5,148.00
Timber Edging	LF	638	\$30.00	\$19,140.00
<b>SUBTOTAL</b>				<b>\$24,288.00</b>



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Landscape Architecture  
Park & Recreation Planning  
Architecture • Urban Design  
Sports Facility Planning

Description	Unit	No. of Units	Price	Extension
<b>BOARDWALK AND BRIDGE</b>				
Pre-Fabricated Bridge (75' x 10')	LS	1	\$250,000.00	\$250,000.00
Elevated Boardwalk	SF	770	\$150.00	\$115,500.00
Concrete Abutment at Bridge	EA	2	\$7,500.00	\$15,000.00
<b>SUBTOTAL</b>				<b>\$380,500.00</b>
<b>SUBTOTAL</b>				<b><u>\$531,497.00</u></b>
Design and Bidding Contingency (10%)				\$53,149.70
Construction Contingency (10%)				\$53,149.70
Professional Fees (9%)				\$57,401.68
Topographic Survey				\$10,000.00
Soil Borings				\$8,000.00
Hydraulic Analysis Study				\$15,000.00
EGLE PERMIT + Hydraulic Review Fee				\$3,500.00
<b>TOTAL</b>				<b><u>\$731,698.08</u></b>

Evaluations of the Project Budget and Estimates of Construction Cost prepared by MCSA Group represents their judgment as design professionals. It is recognized, however, MCSA Group has no control over the cost of labor, materials or equipment, nor a contractor's methods of determining bid prices, or over competitive bidding, or market conditions. Accordingly, MCSA Group cannot and does not warrant or represent that bids or negotiated prices will not vary from the Project Budget or from any estimate of construction cost or evaluation prepared by MCSA Group.



# Trail Improvement Concept Plan

Department of Public  
Services

Presented by: Carrie Laird

Tiffany Smith, MCSA

Date: September 11, 2023



# Trail Improvement Concept Plan

- Parks and Recreation Bond Priority Project
- MCSA Group, Inc. – Concept Plan
- Parks and Recreation Board- October of 2022 -DRAFT plan
- Public Input Session November 1, 2022- Parks and Recreation Board Meeting
- Engage Birmingham Survey- October through November 30, 2022
- City Departments Review
- Board Reviews- Multimodal Transportation, Museum, Martha Baldwin
- Long Range Plan Meeting- January 2023
- Feedback

# Trail Improvement Concept Plan

- Feedback Common Themes:
  - Accessibility
  - Sustainability
  - Connections/More visible
  - Nature- “Up-North” feel
- Parks and Recreation Master Plan
  - Accessibility/Sustainability
  - Restrooms needed!
  - Walking Paths



# Trail Improvement Concept Plan

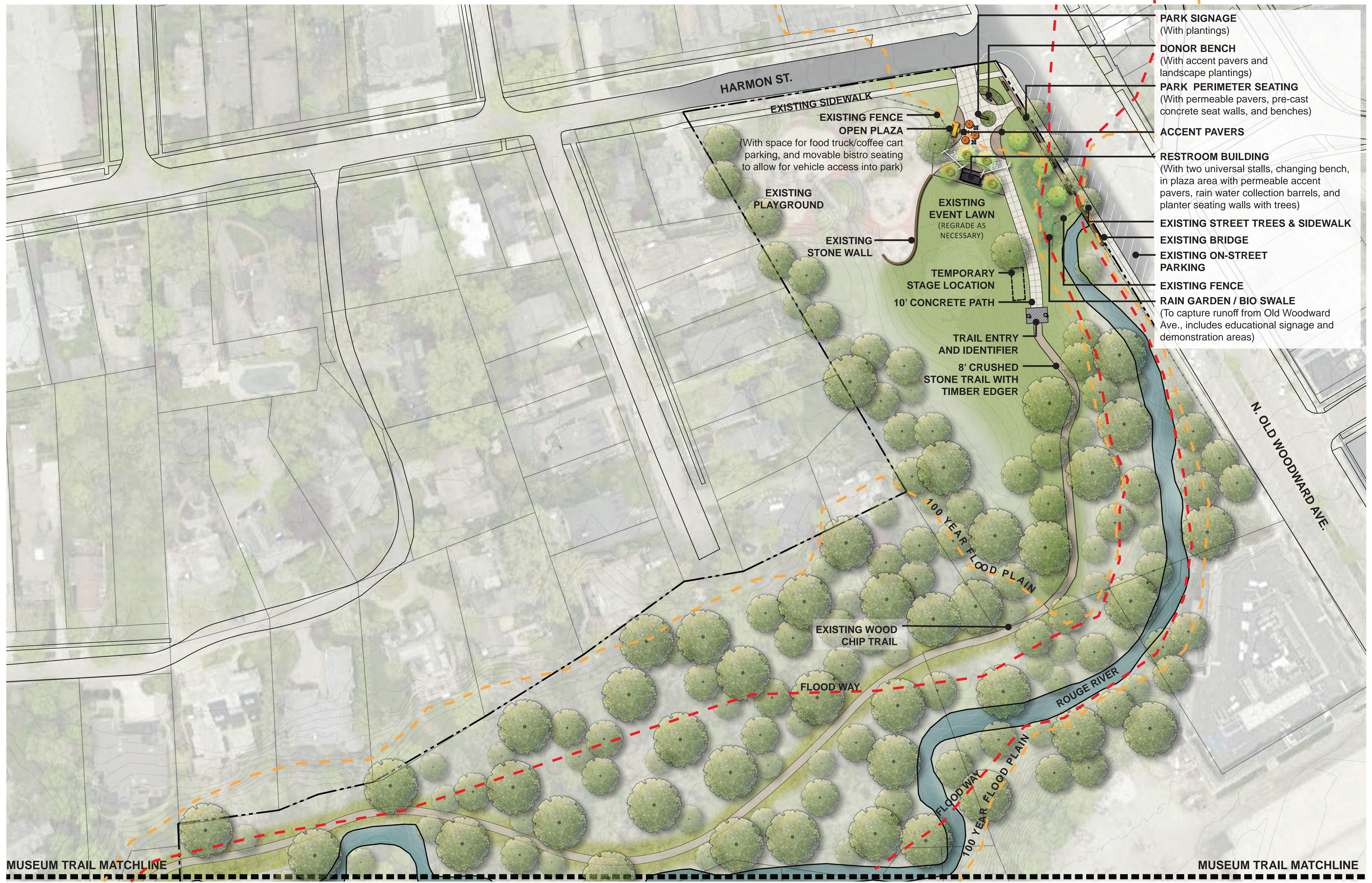
- Accessible Open Plaza/Entry to Booth Park
- Accessible Restroom Facility at Booth Park
- Confidence Markers/Trail Identifiers/Wayfinding
- Accessible Connections and Overlook Areas
- New Pedestrian Bridges and Boardwalks



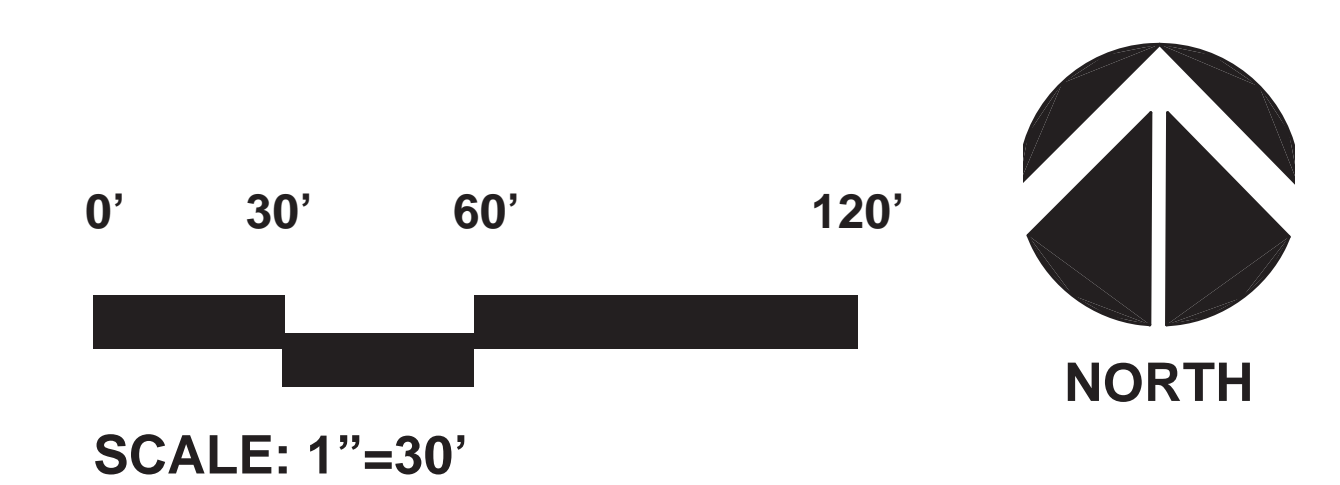


**OVERALL SITE MAP  
TRAIL IMPROVEMENT CONCEPT PLAN  
BIRMINGHAM, MICHIGAN**



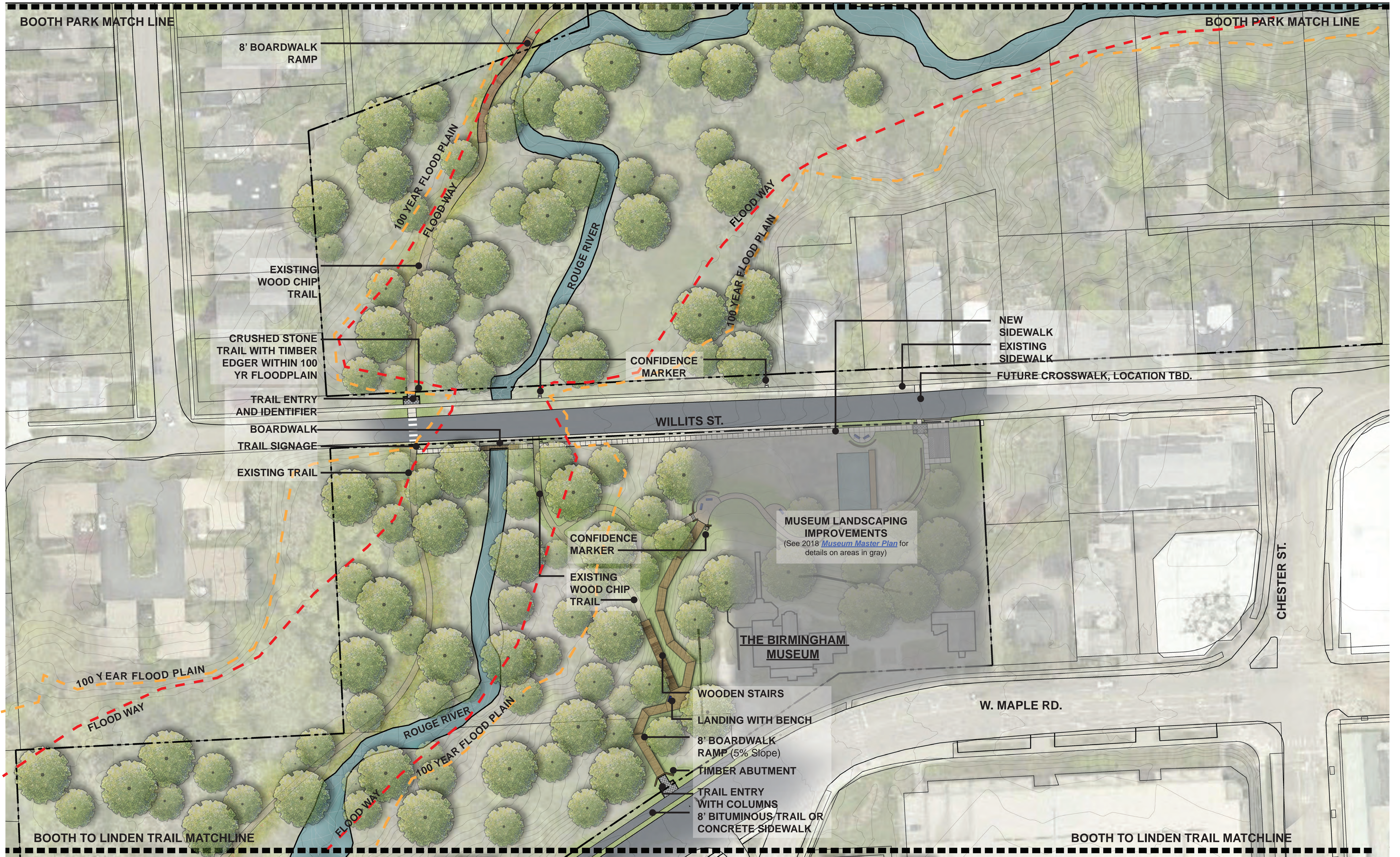


# BOOTH PARK TRAIL IMPROVEMENT CONCEPT PLAN BIRMINGHAM, MICHIGAN



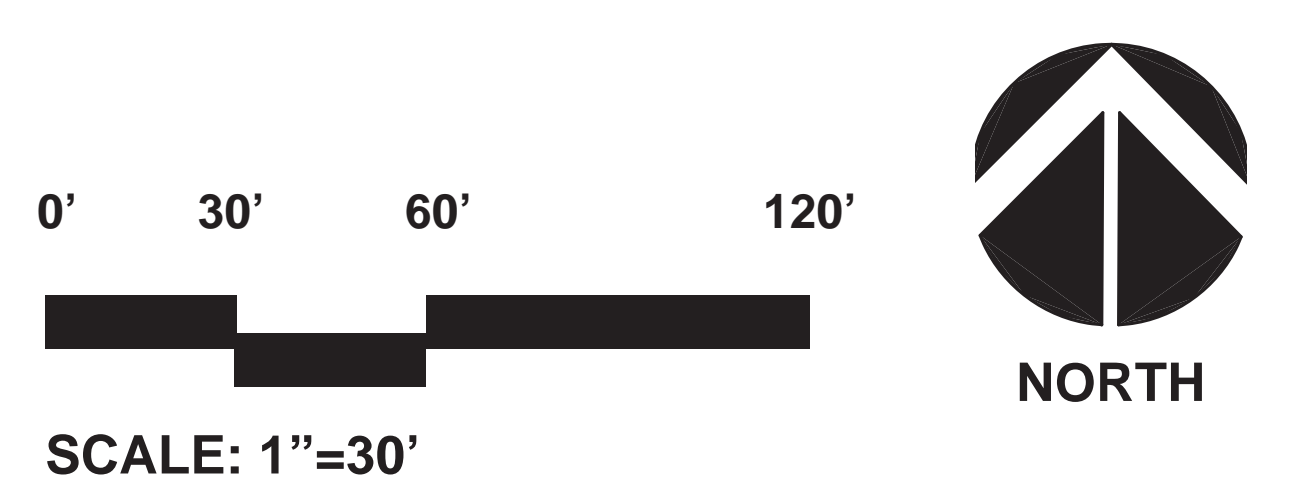
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PROJECT NO.  
2149





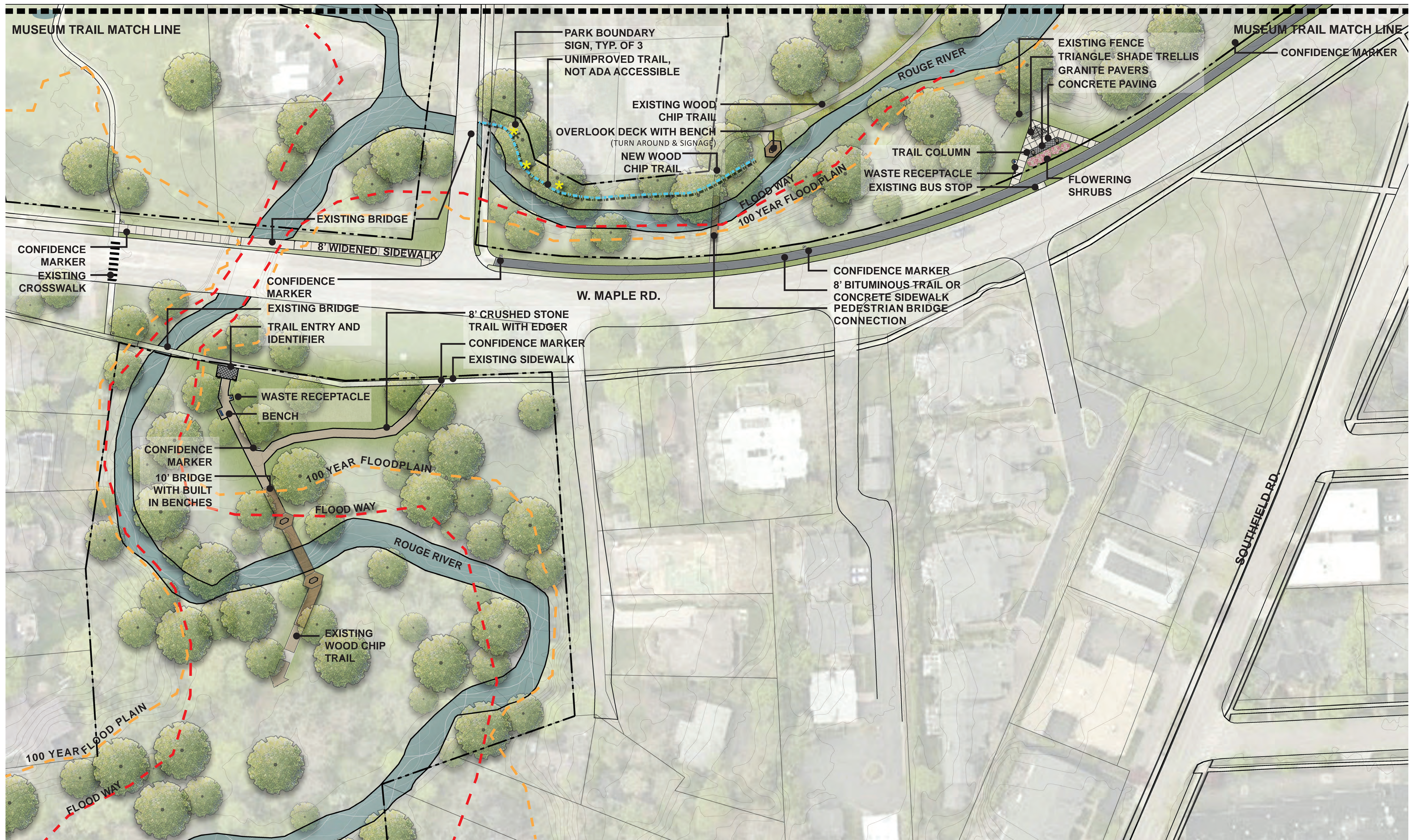
# MUSEUM TRAIL TRAIL IMPROVEMENT CONCEPT PLAN

## BIRMINGHAM, MICHIGAN

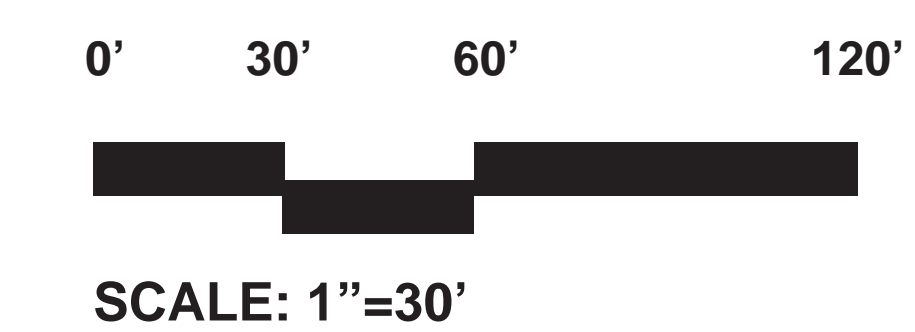


DATE  
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PROJECT NO.  
2149





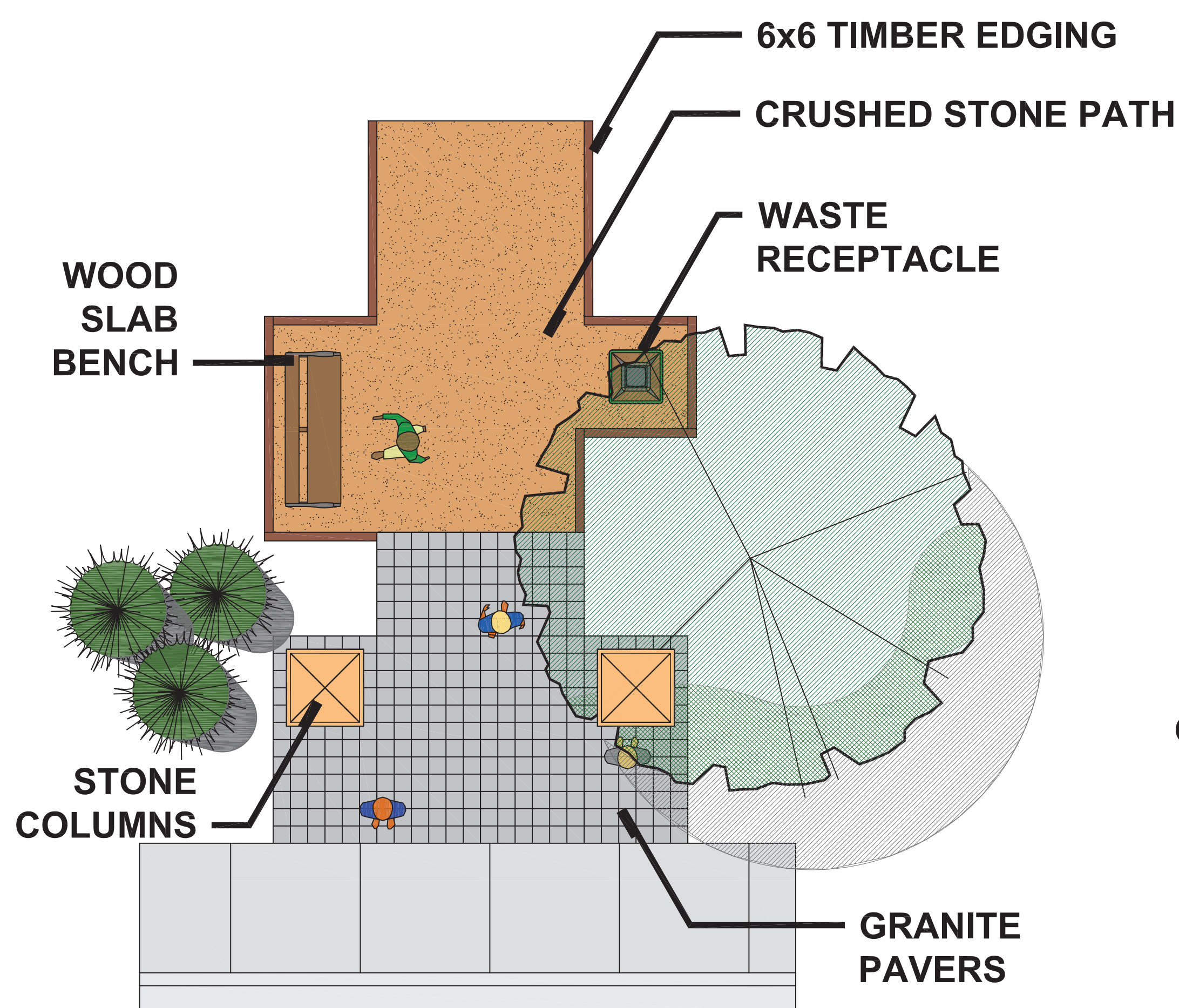
# LINDEN TRAIL TRAIL IMPROVEMENT CONCEPT PLAN BIRMINGHAM, MICHIGAN



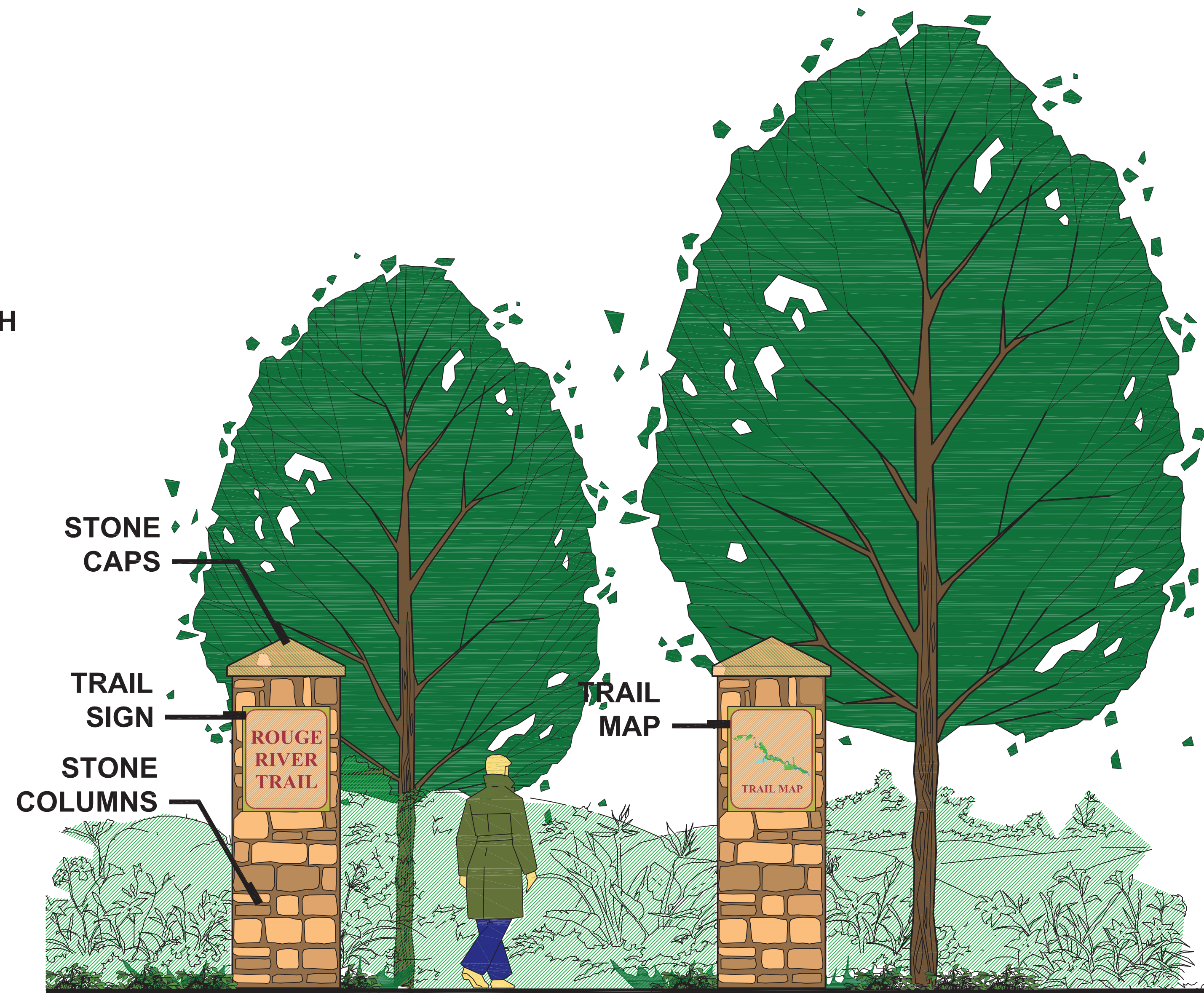
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PROJECT NO.  
2149



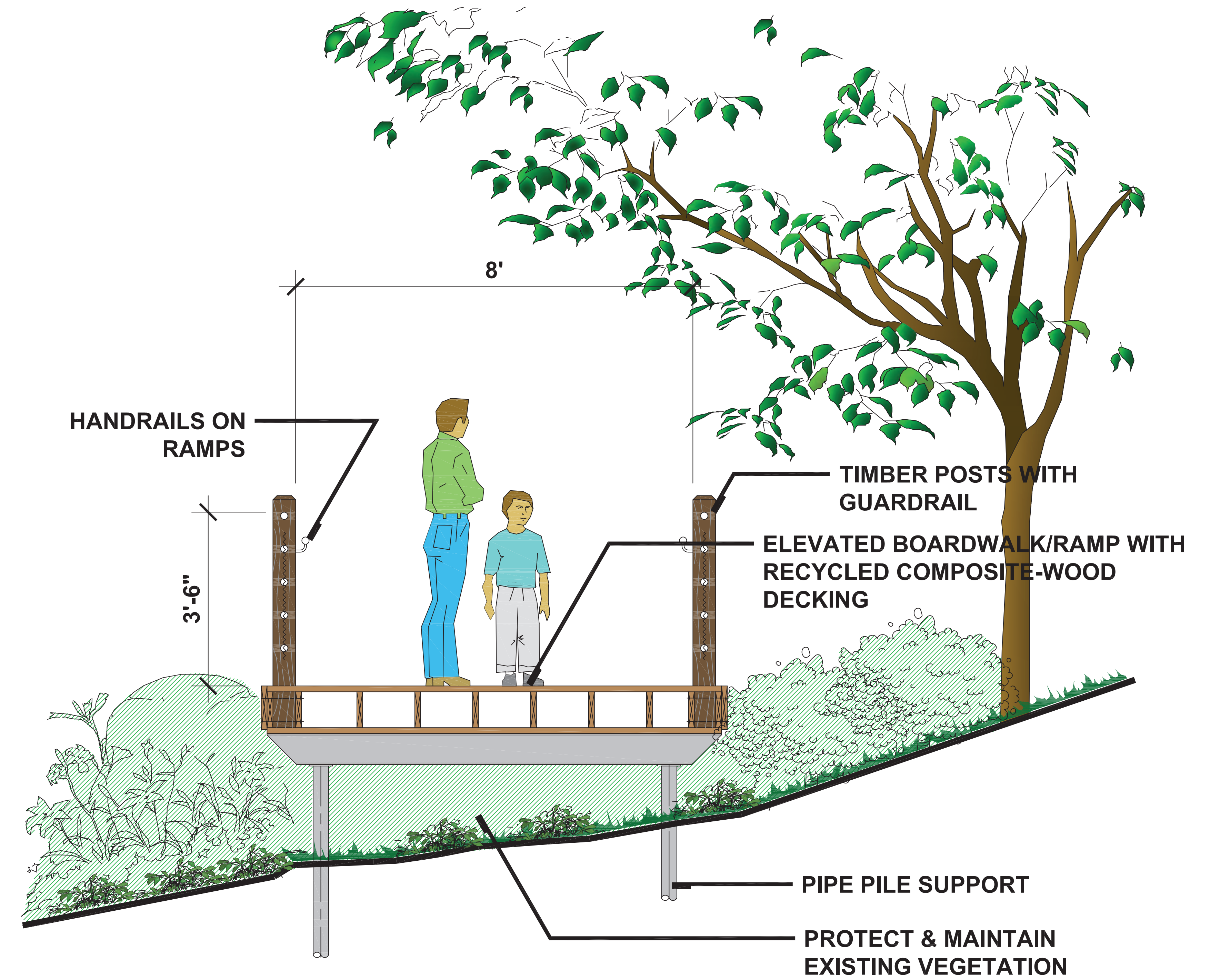




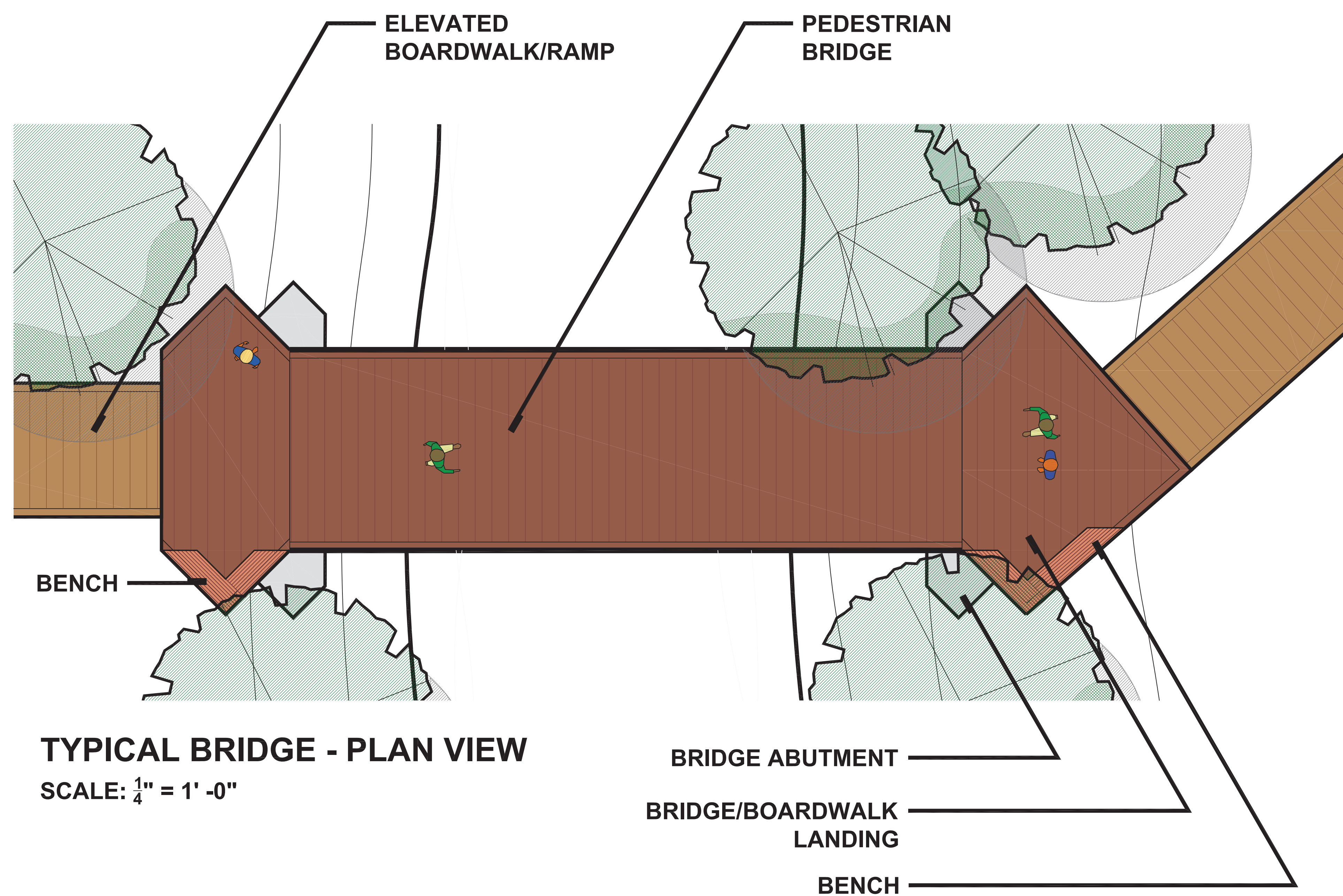
TRAIL ENTRY AND IDENTIFIER - PLAN VIEW  
 SCALE: 1/4" = 1' -0"



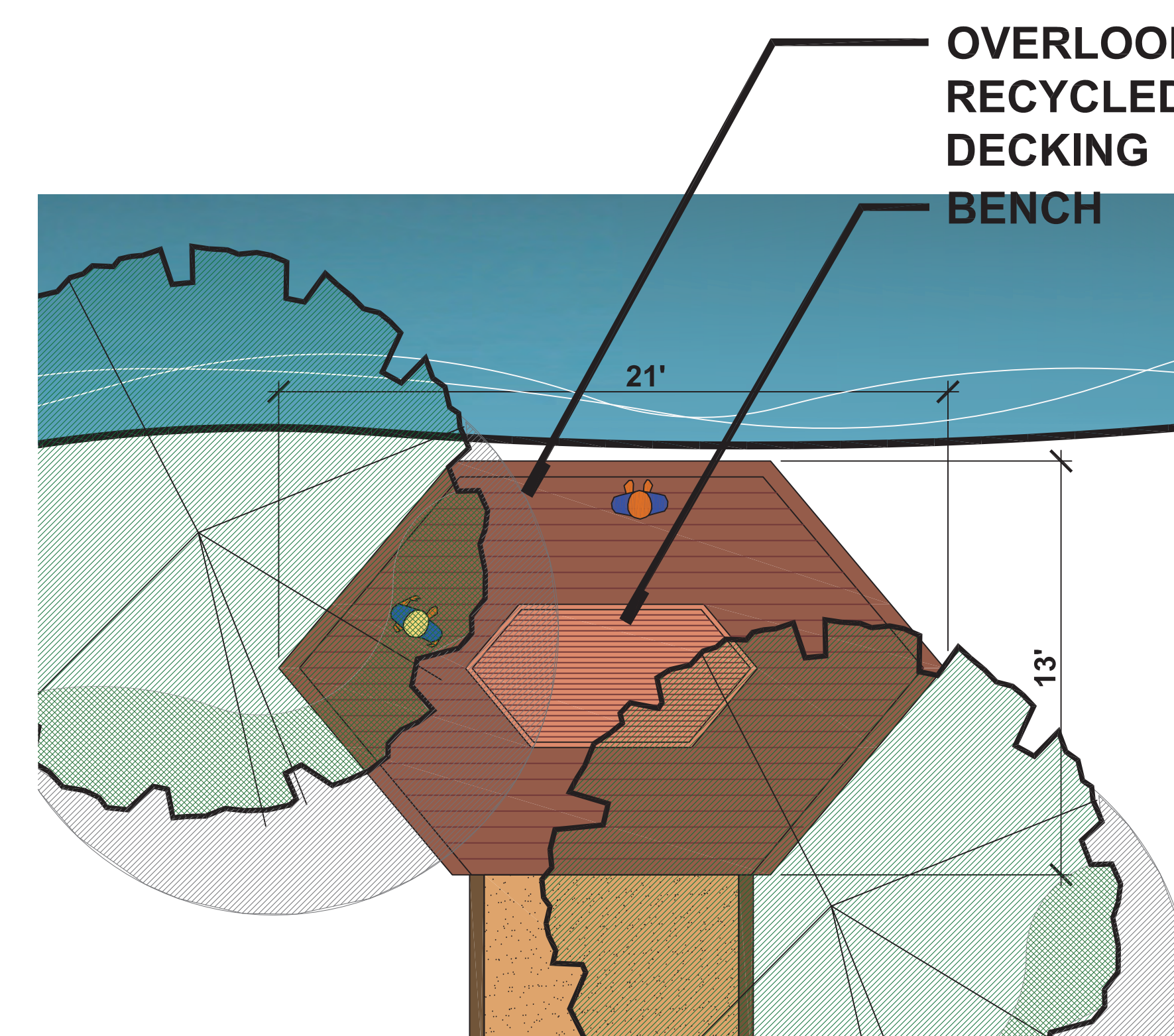
TRAIL ENTRY AND IDENTIFIER - SECTION VIEW  
 SCALE: 1/2" = 1' -0"



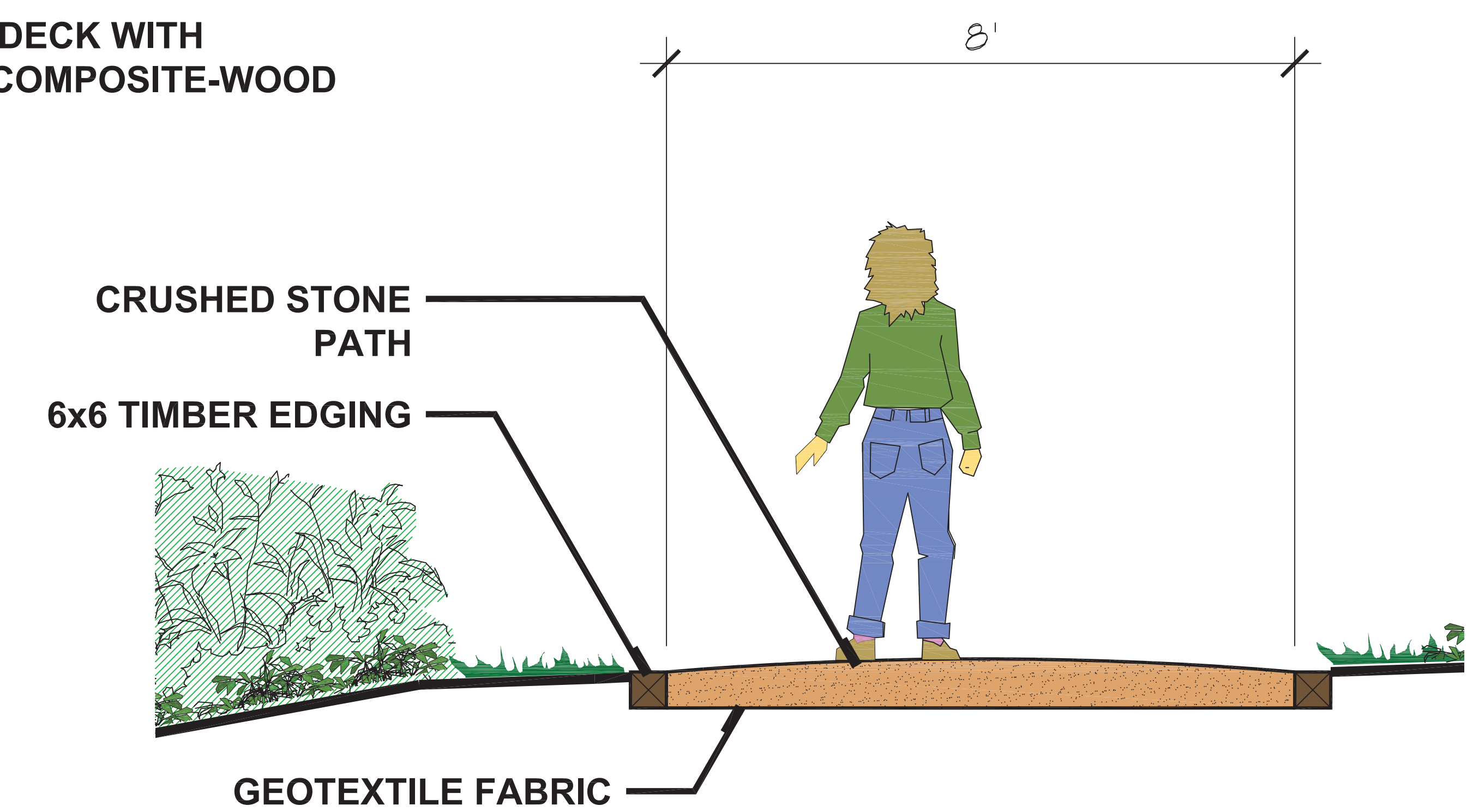
ELEVATED BOARDWALKS AND RAMPS - SECTION VIEW  
 SCALE: 3/4" = 1' -0"



TYPICAL BRIDGE - PLAN VIEW  
 SCALE: 1/4" = 1' -0"



OVERLOOK DECK - PLAN VIEW  
 SCALE: 1/4" = 1' -0"

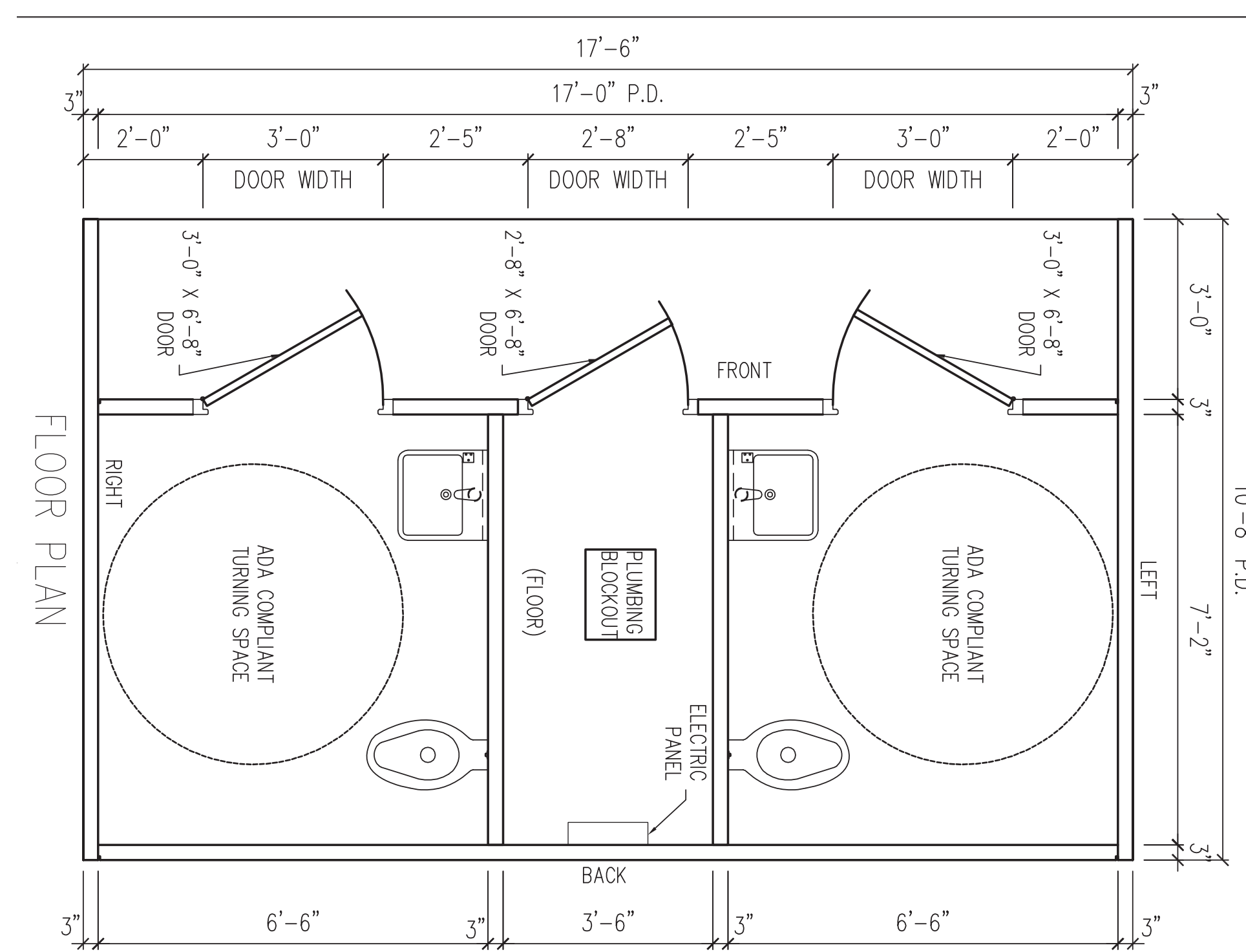


CRUSHED STONE PATH - SECTION VIEW  
 SCALE: 3/4" = 1' -0"

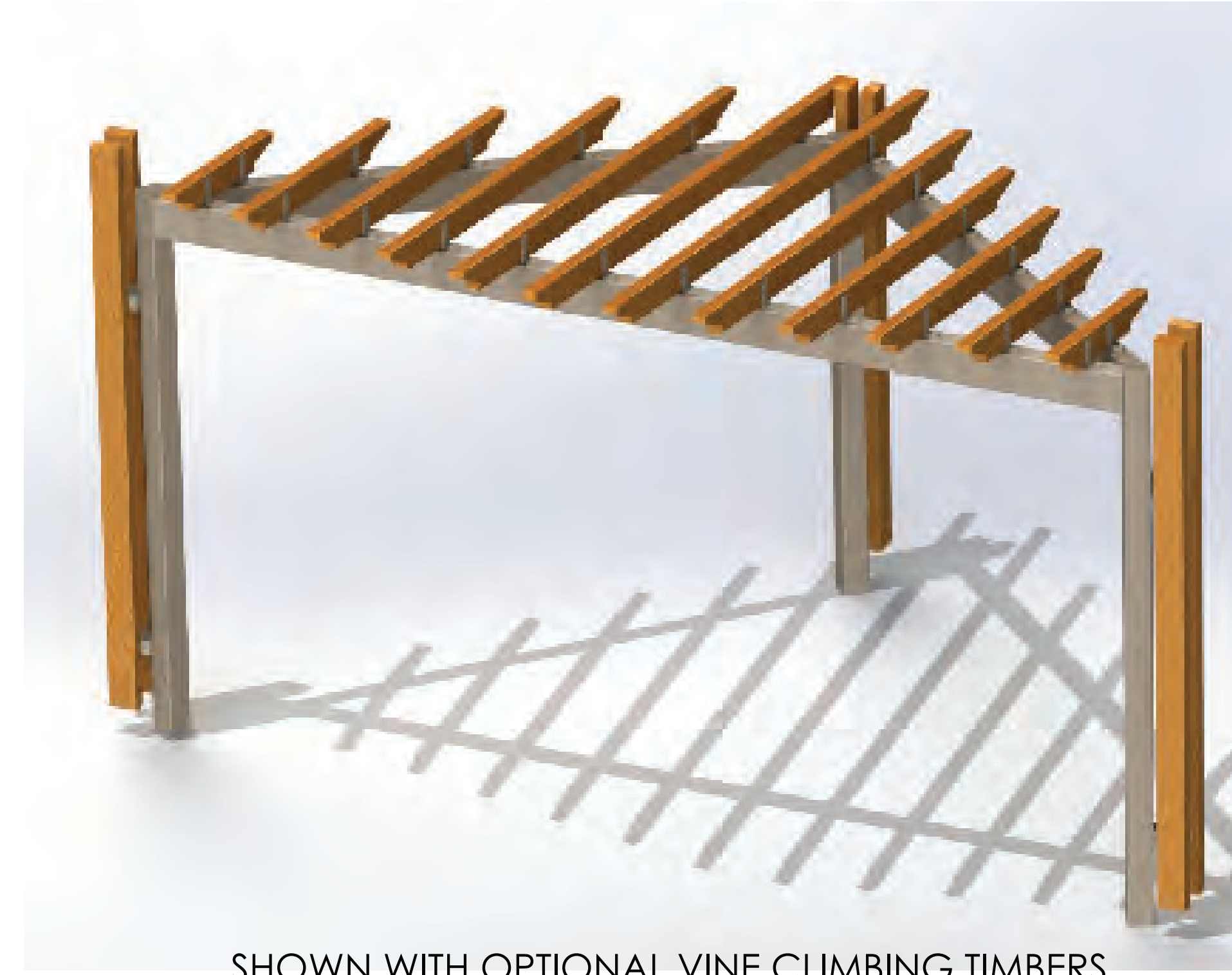
# DESIGN DETAILS TRAIL IMPROVEMENT CONCEPT PLAN BIRMINGHAM, MICHIGAN

# RESTROOM BUILDING

PRE-FABRICATED



# SHADE SHELTER OPTIONS



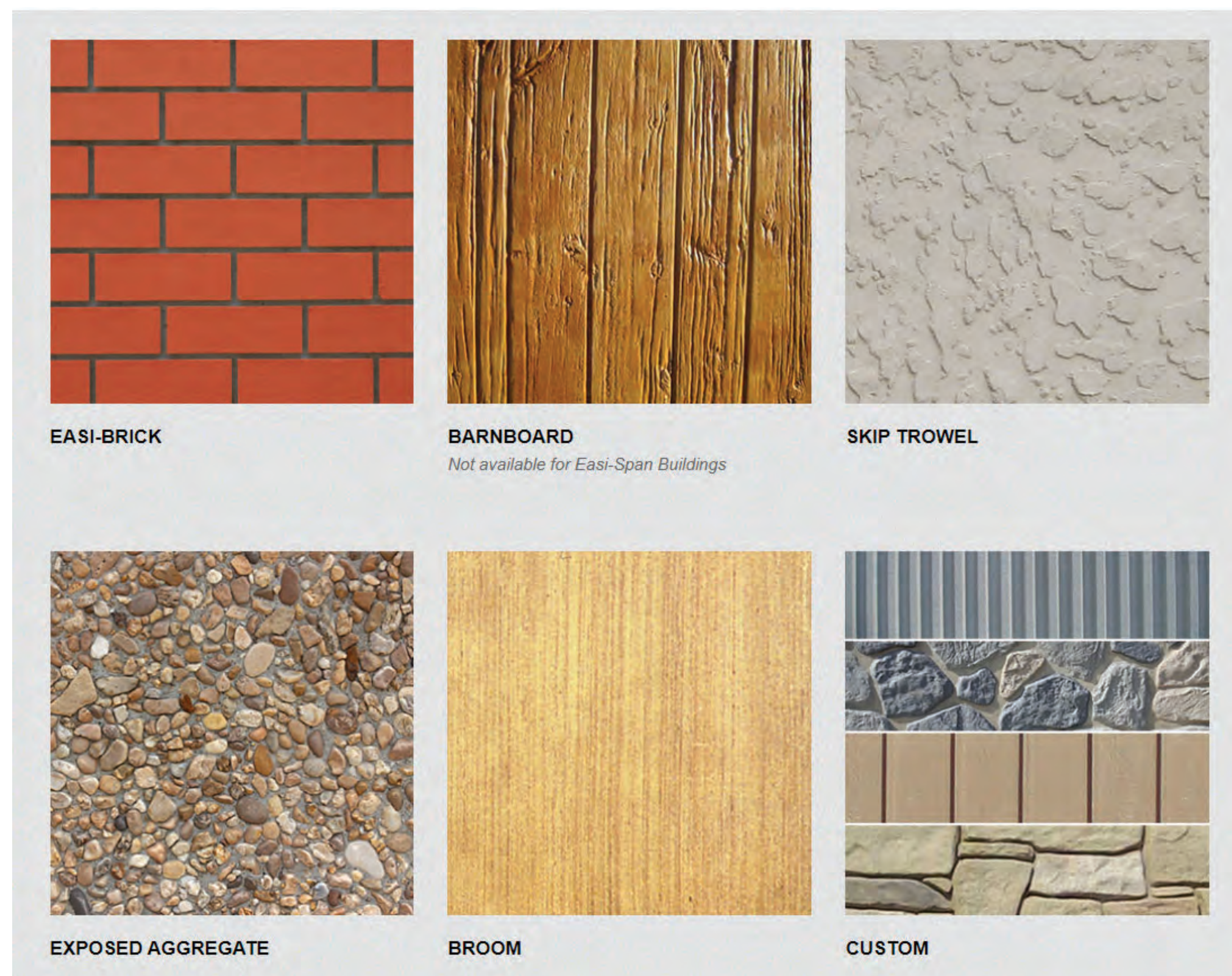
SHOWN WITH OPTIONAL VINE CLIMBING TIMBERS



SHOWN ABOVE WITH OPTIONAL VINE CLIMBING TIMBERS AND BENCHES



# BOOTH PARK ENTRANCE PLAZA



# DESIGN VOCABULARY TRAIL IMPROVEMENT CONCEPT PLAN BIRMINGHAM, MICHIGAN

# Trail Improvement Concept Plan

## Next Steps:

- Survey Work/Construction Drawings:
  - OCPR Grant received- \$25,000 (max for pre-development category)
  - Location/Type of Restroom Facility
  - Sustainable Features
- 2<sup>nd</sup> Bond Issue -2024
- Donation Opportunities
- Continue Public Engagement
- Approval by City Commission





## MEMORANDUM

Legal – City Attorney

**DATE:** August 30, 2023

**TO:** Jana L. Ecker, City Manager

**FROM:** Mary M. Kucharek, City Attorney

**SUBJECT:** Request for Closed Session Under MCL § 15.268 Sec. 8(e) of the Open Meetings Act

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### INTRODUCTION:

This matter concerns pending litigation entitled *John Reinhart, et al v City of Birmingham; U.S. District Court Case No.: 2:22-cv-11074-MAG-DRG*.

This matter also concerns litigation entitled *The New 555 Commercial, LLL, The New 555 Residential, LLC, Manorwood Properties, LLC and Associates of 555, LP v City of Birmingham, State of Michigan Department of Licensing & Regulatory Affairs, Michigan Administrative Hearing System, Michigan Tax Tribunal Docket No.: 22-000772-TT, Property Nos.: 08-19-36-210-001, 08-19-36-210-003, and 08-19-36-210-005*, which was appealed to the Michigan Court of Appeals bearing Docket 364563, and currently appealed to the Michigan Supreme Court bearing Docket No.: 165973.

### BACKGROUND:

As the City Commission is aware, John Reinhart, Managing Partner of the 555 Building, has complained of the parking situation and changes to the SMART Bus route in connection with the Phase 3 Old Woodward Project. As a result, he is now claiming to be one (1) of three (3) plaintiffs alleging they are “handicapped,” and as a result has filed suit in the U.S. District Court. I am requesting closed session on September 11, 2023 pursuant to MCL § 15.268 Sec. 8(e) to discuss pending litigation.

As the City Commission is further aware, New 555 Commercial, LLC complained of a special assessment made against its properties to the Michigan Tax Tribunal which placed the case in abeyance pending the outcome of Petitioner’s interlocutory appeal to the Michigan Court of Appeals. The Michigan Court of Appeals entered an Order on July 7, 2023 denying the application for leave to appeal for failure to persuade the Court for immediate appellate review, and the case has now been appealed to the Michigan Supreme Court.

**LEGAL REVIEW:**

I am requesting closed session on September 11, 2023 pursuant to MCL § 15.268 Sec. 8(e) to discuss pending litigation.

**FISCAL IMPACT:**

To be discussed in closed session.

**ATTACHMENTS:**

Open Meetings Act (Excerpt) Act 267 of 1976, MCL § 15.268 Closed sessions; permissible purposes, Sec. 8(e).

**RECOMMENDED RESOLUTION:**

To adopt a resolution to meet in closed session to discuss pending litigation pursuant to MCL § 15.268 Sec. 8(e) of the Open Meetings Act regarding *John Reinhart, et al v City of Birmingham*; *U.S. District Court Case No.: 2:22-cv-11074-MAG-DRG*, and *The New 555 Commercial, LLC, The New 555 Residential, LLC, Manorwood Properties, LLC and Associates of 555, LP v City of Birmingham*, State of Michigan Department of Licensing & Regulatory Affairs, Michigan Administrative Hearing System, Michigan Tax Tribunal Docket No.: 22-000772-TT, Property Nos.: 08-19-36-210-001, 08-19-36-210-003, and 08-19-36-210-005, which was appealed to the Michigan Court of Appeals bearing Docket 364563, and currently appealed to the Michigan Supreme Court bearing Docket No.: 165973.

**OPEN MEETINGS ACT (EXCERPT)**  
**Act 267 of 1976**

**15.268 Closed sessions; permissible purposes; applicability to independent citizens redistricting commission.**

Sec. 8. (1) Except as otherwise provided in subsection (2), a public body may meet in a closed session only for the following purposes:

(a) To consider the dismissal, suspension, or disciplining of, or to hear complaints or charges brought against, or to consider a periodic personnel evaluation of, a public officer, employee, staff member, or individual agent, if the named individual requests a closed hearing. An individual requesting a closed hearing may rescind the request at any time, in which case the matter at issue must be considered after the rescission only in open sessions.

(b) To consider the dismissal, suspension, or disciplining of a student if the public body is part of the school district, intermediate school district, or institution of higher education that the student is attending, and if the student or the student's parent or guardian requests a closed hearing.

(c) For strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement if either negotiating party requests a closed hearing.

(d) To consider the purchase or lease of real property up to the time an option to purchase or lease that real property is obtained.

(e) To consult with its attorney regarding trial or settlement strategy in connection with specific pending litigation, but only if an open meeting would have a detrimental financial effect on the litigating or settlement position of the public body.

(f) To review and consider the contents of an application for employment or appointment to a public office if the candidate requests that the application remain confidential. However, except as otherwise provided in this subdivision, all interviews by a public body for employment or appointment to a public office must be held in an open meeting pursuant to this act. This subdivision does not apply to a public office described in subdivision (j).

(g) Partisan caucuses of members of the state legislature.

(h) To consider material exempt from discussion or disclosure by state or federal statute.

(i) For a compliance conference conducted under section 16231 of the public health code, 1978 PA 368, MCL 333.16231, before a complaint is issued.

(j) In the process of searching for and selecting a president of an institution of higher education established under section 4, 5, or 6 of article VIII of the state constitution of 1963, to review the specific contents of an application, to conduct an interview with a candidate, or to discuss the specific qualifications of a candidate if the particular process of searching for and selecting a president of an institution of higher education meets all of the following requirements:

(i) The search committee in the process, appointed by the governing board, consists of at least 1 student of the institution, 1 faculty member of the institution, 1 administrator of the institution, 1 alumnus of the institution, and 1 representative of the general public. The search committee also may include 1 or more members of the governing board of the institution, but the number does not constitute a quorum of the governing board. However, the search committee must not be constituted in such a way that any 1 of the groups described in this subparagraph constitutes a majority of the search committee.

(ii) After the search committee recommends the 5 final candidates, the governing board does not take a vote on a final selection for the president until at least 30 days after the 5 final candidates have been publicly identified by the search committee.

(iii) The deliberations and vote of the governing board of the institution on selecting the president take place in an open session of the governing board.

(k) For a school board to consider security planning to address existing threats or prevent potential threats to the safety of the students and staff. As used in this subdivision, "school board" means any of the following:

(i) That term as defined in section 3 of the revised school code, 1976 PA 451, MCL 380.3.

(ii) An intermediate school board as that term is defined in section 4 of the revised school code, 1976 PA 451, MCL 380.4.

(iii) A board of directors of a public school academy as described in section 502 of the revised school code, 1976 PA 451, MCL 380.502.

(iv) The local governing board of a public community or junior college as described in section 7 of article VIII of the state constitution of 1963.

(l) For a county veteran services committee to interview a veteran or a veteran's spouse or dependent regarding that individual's application for benefits or financial assistance and discuss that individual's

application for benefits or financial assistance, if the applicant requests a closed hearing. This subdivision does not apply to a county veteran services committee voting on whether to grant or deny an individual's application for benefits or financial assistance. As used in this subdivision, "county veteran services committee" means a committee created by a county board of commissioners under section 1 of 1953 PA 192, MCL 35.621, or a soldiers' relief commission created under section 2 of 1899 PA 214, MCL 35.22.

(2) This act does not permit the independent citizens redistricting commission to meet in closed session for any purpose. As used in this subsection, "independent citizens redistricting commission" means the independent citizens redistricting commission for state legislative and congressional districts created in section 6 of article IV of the state constitution of 1963.

**History:** 1976, Act 267, Eff. Mar. 31, 1977;—Am. 1984, Act 202, Imd. Eff. July 3, 1984;—Am. 1993, Act 81, Eff. Apr. 1, 1994;—Am. 1996, Act 464, Imd. Eff. Dec. 26, 1996;—Am. 2018, Act 467, Eff. Mar. 27, 2019;—Am. 2021, Act 31, Imd. Eff. June 24, 2021;—Am. 2021, Act 166, Imd. Eff. Dec. 27, 2021.

**Compiler's note:** Enacting section 1 of Act 166 of 2021 provides:

"Enacting section 1. This amendatory act is intended to clarify that the independent citizens redistricting commission for state legislative and congressional districts, since its establishment under section 6 of article IV of the state constitution of 1963, has been required to conduct all of its business at open meetings, without exception and in a manner that invites wide public participation throughout this state, as provided in section 6(10) of article IV of the state constitution of 1963, and that the commission continues to be subject to this unqualified open meetings requirement."

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## Fwd: Keep the pool at the YMCA for NEXT

1 message

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**Jana Ecker** <Jecker@bhamgov.org>  
To: Alex Bingham <abingham@bhamgov.org>

Mon, Aug 28, 2023 at 3:55 PM

Please add this to communications for the Sept 11, 2023 CC meeting.

Thanks,

**Jana L. Ecker**  
**City Manager**  
**Birmingham, MI**  
**(248) 530-1811**

----- Forwarded message -----

From: **C Stoll** <cathstoll@gmail.com>

Date: Sat, Aug 26, 2023 at 12:26 PM

Subject: Keep the pool at the YMCA for NEXT

To: <jecker@bhamgov.org>, <tlonge@bhamgov.org>, <emclain@bhamgov.org>, <pboutros@bhamgov.org>, <bhost@bhamgov.org>, <cballer@bhamgov.org>, <ahaig@bhamgov.org>, <kschafer@bhamgov.org>

Cc: <tmarkus@bhamgov.org>, <Cbraun@birmingham.k12.mi.us>

Dear City Manager Eker and City Commissioners Longe, Mclain, Boutros, Haig, Host, Schafer, and Baller:

I was surprised and very disappointed to read in the recent August 9, 2023 Birmingham-Bloomfield Eagle that "At this point, there is no intent from the city to invest in the ongoing upkeep of the Y's pool." I visit NEXT weekly and was looking forward to finally having a dedicated public pool in my community, as I used to have in Troy and like my friends enjoy in Huntington Woods.

This is a very rare opportunity to significantly upgrade the lifestyle infrastructure available to Birmingham residents, and should not be dismissed.

In Bloomfield Township where my Mother lives the Senior Center has an indoor pool, with a good schedule of water fitness classes. I believe Rochester does as well. A pool like that would be a great asset for the new Next senior center. Pools offer important exercise and therapeutic options that appeal to seniors both for lap swimming and water aerobics/exercise. It would be a real waste and a terrible shame to let an existing working pool structure fall into disuse or be decommissioned and torn out. The YMCA pool was closed for an extended period for maintenance recently and as far as I know it has been regularly maintained throughout its life.

I know many senior Birmingham residents who use the existing YMCA pool many times per week, and other residents as well. That pool is an important asset for healthy seniors in our community (and could certainly continue to be made available to younger residents as well, like it is now). Please listen to the members of our community and maintain the pool when the Senior Center takes over the YMCA building.

Sincerely,



Catherine Stoll  
1765 Croft Rd  
Birmingham, MI 48009



**NOTICE OF INTENTION TO APPOINT TO  
BOARD OF ZONING APPEALS**

At the regular meeting of Monday, October 2, 2023, the Birmingham City Commission intends to appoint two regular members to the Board of Zoning Appeals to serve three-year terms to expire October 10, 2026 and one alternate member to the Board of Zoning Appeals to serve a three-year term to expire February 18, 2026.

Interested parties may submit an application available from the City Clerk's office or online at [www.bhamgov.org/boardopportunities](http://www.bhamgov.org/boardopportunities). Applications must be submitted to the City Clerk's office on or before noon on Wednesday, September 27, 2023. Applications will appear in the public agenda at which time the City Commission may make nominations and vote on appointments.

Duties of Board

The Board of Zoning Appeals acts on questions arising from the administration of the Zoning Ordinance, including the interpretation of the Zoning Map. The Board hears and decides appeals from and reviews any order, requirement, decision or determination made by the Building Official.

<b>Criteria/Qualifications of Open Position</b>	<b>Date Applications Due (by noon)</b>	<b>Date of Interview</b>
Members shall be property owners of record and registered voters.	9/27/2023	10/2/2023

*NOTE: All members of boards and commissions are subject to the provisions of City of Birmingham City Code Chapter 2, Article IX, Ethics and the filing of the Affidavit and Disclosure Statement.*



**NOTICE OF INTENTION TO APPOINT TO THE  
BIRMINGHAM SHOPPING DISTRICT BOARD**

At the regular meeting of Monday, October 16, 2023 the City Manager will appoint with the concurrence of the Birmingham City Commission four members to the Birmingham Shopping District Board to serve three-year terms to expire November 16, 2026.

Interested persons may submit an application available from the City Clerk's office or online at [www.bhamgov.org/boardopportunities](http://www.bhamgov.org/boardopportunities). Applications must be submitted to the City Clerk's office on or before noon on Wednesday, October 11, 2023. These documents will appear in the public agenda for the City Commission meeting.

The goal of the Birmingham Shopping District Board shall be to promote economic activity in the principal shopping districts of the City by undertakings including, but not limited to, conducting market research and public relations campaigns, developing, coordinating and conducting retail and institutional promotions, and sponsoring special events and related activities. (Section 82-97(a)).

The board may expend funds it determines reasonably necessary to achieve its goal, within the limits of those monies made available to it by the city commission from the financing methods specified in this article. (Section 82-97(b)).

The Birmingham Shopping district board shall consist of 12 members. One member shall be the City Manager, one shall be a resident of an area designated as a Principal Shopping District, and one shall be a resident of an adjacent residential area. A majority of the members shall be nominees of individual businesses located within a Principal Shopping District who have an interest in property located in the district. The remaining members shall be representatives of businesses located in the district. (Section 82-92(a)).

**The ordinance states that the City Manager will make the appointment with the concurrence of the City Commission. (Section 82-92(b)).**

<b>Criteria/Qualifications of Open Position</b>	<b>Date Applications Due (by noon)</b>	<b>Date of Commission Meeting</b>
<p>One member shall be a resident from an adjacent neighborhood.</p> <p>One member shall be a resident within the Principal Shopping District.</p> <p>A majority of members shall be business operators or persons with interest in property located within the district.</p>	10/11/23	10/16/23

*NOTE: All members of boards and commissions are subject to the provisions of City of Birmingham City Code Chapter 2, Article IX, Ethics and the filing of the Affidavit and Disclosure Statement.*

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## GREENWOOD CEMETERY ADVISORY BOARD

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# 2022/2023 ANNUAL REPORT

September 2023

Linda Buchanan, Chair

Linda Peterson, Vice Chair

Pam DeWeese, outgoing member July 2023

Laura Schreiner

George Stern, outgoing member July 2023

Margaret Suter

Joseph Vercellone

Jacqueline Patt, incoming member July 2023

Paul Connell, incoming member July 2023

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## INTRODUCTION

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The Greenwood Cemetery Advisory Board (GCAB) was established by the Birmingham City Commission on October 13, 2014. One of its duties is to submit a report to the Commission on an annual basis of the general activities, operation and condition of the cemetery for the preceding 12-month period. The GCAB Annual Report includes a summary and update of the cemetery's status, related finances and the GCAB's planned activities for the next fiscal year.

In alignment with the city's fiscal year, the current GCAB report covers the period from July 1, 2022 through June 30, 2023.

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## GENERAL ACTIVITIES

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### Meetings

The GCAB is required to meet at least quarterly. During the report period, the board met this requirement by conducting meeting on the dates listed below:

July 1, 2022  
September 2, 2022  
November 2, 2022  
December 2, 2022  
February 3, 2023  
April 14, 2023

### 2022/2023 Accomplishments

- Produced the 2021-2022 Annual Report
- Approved the policy for approving and installing markers for persons of historical significance
- Studied <https://www.findagrave.com/> to give feedback to the museum on how this online collaborative forum tool could benefit the City and those interested in information about persons buried in Greenwood Cemetery
- Approved revisions to the Greenwood Cemetery Operational Procedures, Conditions and Regulations
- Approved the application by the Friends of the Birmingham Museum, a non-deed holder, for a marker installation for George and Eliza Taylor, persons of historical significance to Birmingham.
- Initial discussions on a Cemetery Service Provider RFP
- Initial discussion on Strategic Planning
- Q&A with Cheri Arcome, Creative Collaborations – to better understand the demand and services being provided in the cemetery
- Discussed the planning of the next grave release

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## OPERATION

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### Sales and Financial Information

On December 1, 2019, Creative Collaborations, LLC became transitional provider for cemetery services, with the exception of grounds maintenance, which is provided by the City's Department of Public Services. On May 1, 2020, Creative Collaborations entered into a one-year renewable contract with the City to provide cemetery services on an ongoing basis. Grounds maintenance continues to be provided by DPS with ongoing communication and collaboration between Creative Collaborations, DPS, and the City Clerk's office.

On January 14, 2019, the City Commission approved a payment plan policy for cemetery plots that requires full payment within 24 months. During the 2022-2023 fiscal year, no new payment plans have been initiated. The Clerk's Office and Treasurer's Office monitors active payment plans. Plots under a payment plan are considered sold for purposes of availability unless the plot becomes available again in the event of a purchaser default.

Beginning December 1, 2019, Creative Collaborations, LLC, remits 100% of revenue to the City, which then makes payments to the contractor for services performed.

FY 22-23 Grand Totals	
Sales in B	5
Sales in C	10
Sales in Other	1
Resident Purchases	4
Non-Resident Purchases	12
Payment Plans Initiated	0
<b>Total Graves Sold</b>	<b>16</b>
Transfer of Ownership Filed	7
Additional Burial Rights Purchased	6



### Grave Releases

- 4/26/21 The City Commission approved the recommended release of Section B, Rows 17-C, 16-C, 15-C & 14-A for a total of 38 Graves, 9 of which are obstructed)
- 12/23/21 The City Commission approved the release of one grave in section B, row 2-A for an at-need situation for a family with adjacent space.
- 8/15/22 The City Commission approved the release of one grave in section B, row 12-A, for an at-need situation for a family with adjacent space.
- 7/24/23 The City Commission approved the release of 88 available graves suitable for burial in the flush rows in Section B, and to direct Greenwood Cemetery Advisory Board to evaluate the fee schedule again for plot costs after 20% of these plots have been sold which would equate to 18 spaces.

### Notes on Obstructed Graves

- 1/29/21 Creative Collaborations noted that graves 1 & 2 in Section C rows 18-A & 19-A are not able to be used due to obstructions.
- 3/25/21 DPS noted that graves in row 19-A 1,2,13,14,16 are obstructed by trees.
- 4/23/21 DPS noted Row 17-C: Graves 9 and 11 are affected by a 16" Red Maple located at the east edge of both graves. Row 15-C: Grave 5 is obstructed by a monument on the east edge. Grave 10 has a 16" Cedar (eastern arborvitae) obstructing it. Grave 17 has a marker on the east edge that is encroaching onto the grave site. Row 14-A: Graves 15 and 16 have a large shrub located over both sites. Graves 17 and 19 are obstructed by a large monument located east of them.
- 5/31/23 A field survey was completed for the following lots: A-1, 2-D, 3-A, 4-A, 5-C, 6-C, 7-D, 8-C, 9-D, 10-A, 11-A, 12-A and 13-A.  
Of the 312 graves surveyed 189 of them are sold. There are 8 graves unsuitable for burial due to historic memorials. At this time there are 43 graves unsuitable for burial due to trees and tree roots. These graves would become suitable when the trees are removed should the city wish to make them available for sale. There are a total of 72 graves suitable for burial.

### Price Increases

- 4/12/22 The City Commission approved the grave price increase for plots that can accommodate one full burial from \$3,000 to \$4,000 per plot. All graves sold in the 2021-22 FY were at the rate of \$4,000 per grave.
- 7/24/23 The City Commission approved the grave price increase for plots that can accommodate one full burial from \$4,000 to \$6,000 per plot. All new sales after 7/24/23 will be subject to the new rates as indicated in the fee schedule.

Grave Sales Detail, July 2022 - June 2023

Greenwood Cemetery Sales and Availability				
	Sec B	Sec C	Resident	Non-Resident
July 2022	1	1	1	1
August 2022	0	0	0	0
September 2022	1	3	1	3
October 2022	0	0	0	0
November 2022	0	3	0	3
December 2022	0	1	0	1
January 2023	1	1	1	1
February 2023	2	0	0	2
March 2023	0	0	0	0
April 2023	0	1	1	0
May 2023	0	0	0	0
June 2023	0	0	0	0
<b>Total Sold</b>	<b>5</b>	<b>10</b>	<b>4</b>	<b>11</b>
<b>Available Under Current Authorization</b> (20% of remaining inventory)	<b>18</b>			
<b>Total Available</b>	<b>88</b>			

*Notes: Plots in Sections B and C sold under a payment plan are included in the number of sales made for the quarter in which the payment plan was initiated. The remittance to the Perpetual Care Fund of payment for the plots is recorded in total in the quarter in which the final payment is made.*

*One grave was sold outside of section B and C in the July 2022 – June 2023 fiscal year.*

Burials and Inurnments, July 2022 - June 2023

Burials and inurnment activity during the period can be used to understand utilization of graves and assist in planning for future sales.

*Cremation vs. Burial:* According to National Funeral Directors Association 2022 Cremation and Burial Report, the 2022 cremation rate is projected to be 59.3% and the burial rate is projected to be 35.7%, the remaining 5% may be due to alternative methods such as green burials and scatter gardens, which are not available in Greenwood Cemetery. The City of Birmingham’s 2022-2023 cremation rate is below the national average at 56% and the full burial rate is above the national average at 44%.

	Sec B		Sec C		Other		Total by Month	
	Full Crem		Full Crem		Full Crem		Full Crem	
<b>July 2022</b>	1	0	1	0	1	1	3	1
<b>August 2022</b>	0	1	1	0	0	1	1	2
<b>September 2022</b>	1	0	1	1	1	2	3	3
<b>October 2022</b>	0	0	0	2	0	4	0	6
<b>November 2022</b>	1	0	0	0	0	0	1	0
<b>December 2022</b>	0	2	0	0	1	0	1	2
<b>January 2023</b>	1	1	0	1	0	0	1	2
<b>February 2023</b>	1	0	0	0	0	0	1	0
<b>March 2023</b>	0	0	0	1	1	0	1	1
<b>April 2023</b>	0	0	0	1	0	1	0	2
<b>May 2023</b>	0	0	2	0	0	0	2	0
<b>June 2023</b>	0	0	0	0	1	0	1	0
<b>Totals</b>	5	4	5	6	5	9	15	19

## Perpetual Care Fund

Revenues from grave sales are used to increase the Perpetual Care Fund for Greenwood Cemetery, with investment earnings remaining with the PCF. Currently all cemetery care and maintenance is funded through the general fund. Eventually the goal is for the perpetual care fund to be able to take over the financial burden of cemetery maintenance through interest accrued.

### Detail for July 2022 through June 2023:

#### 2022 Q Ending September 30

Proceeds from cemetery plot sales and service fees	\$ 12,000.00
Investment income	<u>6,338.95</u>
Revenue for Perpetual Care Fund	\$ 18,338.95

#### 2022 Q Ending December 31

Proceeds from cemetery plot sales and service fees	\$ 22,750.00
Investment income	<u>8,190.66</u>
Revenue for Perpetual Care Fund	\$ 30,940.66

#### 2023 Q Ending March 31

Proceeds from cemetery plot sales and service fees	\$ 24,850.00
Investment income	<u>7,085.17</u>
Revenue for Perpetual Care Fund	\$ 31,935.17

#### 2023 Q Ending June 30

Proceeds from cemetery plot sales and service fees	\$ 10,300.00
Investment income	7,737.59
Unrealized Gain	<u>76,711.80</u>
Revenue for Perpetual Care Fund	\$ 94,749.39

### Notes

1. We have created a new department within the General Fund to better track cemetery expenses. This will allow the City to get a better estimate of costs that the perpetual care fund will need to cover in the future.
2. The fund has recaptured almost half of the market loss it sustained last fiscal year.
3. The focus of the perpetual care fund is long-term growth. To achieve this goal, the fund is invested in equity investments near the maximum allowed by state law with no more than 40% of the amount invested in equities in any one asset class (large cap, mid cap, small cap) as per our investment policy.
4. The fund is generating approximately enough funds to cover basic lawn maintenance and tree service based on current charges, but not enough for snow removal or other improvements to the cemetery.

CITY OF BIRMINGHAM  
 PERPETUAL CARE FUNDS  
 INVESTMENT REPORT  
 6/30/2023

	PRINCIPAL	INCOME	TOTAL
BEGINNING BALANCE 6/30/2021	\$ 906,316.54	\$ 101,336.06	\$ 1,007,652.60
SALE OF GRAVES	41,250.00	-	41,250.00
CAPITAL GAINS (LOSSES)	-	-	-
INTEREST/DIVIDENDS	-	29,352.37	29,352.37
CHANGE IN MARKET VALUE	76,711.80	-	76,711.80
ENDING BALANCE 6/30/2022	<u>\$ 1,024,278.34</u>	<u>\$ 130,688.43</u>	<u>\$ 1,154,966.77</u>
<u>INVESTMENTS</u>			
BOND MUTUAL FUNDS	\$ 501,064.73	43.4%	
EQUITY MUTUAL FUNDS	<u>653,902.04</u>	56.6%	
TOTAL	<u>\$ 1,154,966.77</u>		

CITY OF BIRMINGHAM  
 PERPETUAL CARE FUNDS  
 ANNUAL INVESTMENT REPORT  
 6/30/2023

	PRINCIPAL (NONSPENDABLE)	INCOME (SPENDABLE)	TOTAL
<b>BEGINNING BALANCE 6/30/2022</b>			
Pooled Funds	\$ -	\$ -	\$ -
Bond Mutual Funds	399,705.11	68,946.80	468,651.91
Equity Mutual Funds	<u>506,611.43</u>	<u>32,389.26</u>	<u>539,000.69</u>
	\$ 906,316.54	\$ 101,336.06	\$ 1,007,652.60
<b>SALE OF PLOTS</b>			
Bond Mutual Funds	16,000.00	-	
Equity Mutual Funds	<u>25,250.00</u>	<u>-</u>	
	\$ 41,250.00	\$ -	\$ 41,250.00
<b>CAPITAL GAINS (LOSSES)</b>			
Pooled Fund	\$ -		
Bond Mutual Funds	-		
Equity Mutual Funds	<u>-</u>		
	\$ -		\$ -
<b>INTEREST/DIVIDENDS</b>			
Pooled Fund		\$ -	
Bond Mutual Funds		19,578.47	
Equity Mutual Funds		<u>9,773.90</u>	
		\$ 29,352.37	\$ 29,352.37
<b>CHANGE IN MARKET VALUE</b>			
Pooled Fund	\$ -		
Bond Mutual Funds	(3,165.65)		
Equity Mutual Funds	<u>79,877.45</u>		
	\$ 76,711.80		\$ 76,711.80
<b>ENDING BALANCE 6/30/2023</b>	<u>\$ 1,024,278.34</u>	<u>\$ 130,688.43</u>	<u>\$ 1,154,966.77</u>
<b>INVESTMENTS</b>			
BOND MUTUAL FUNDS	412,539.46	88,525.27	501,064.73
EQUITY MUTUAL FUNDS	<u>611,738.88</u>	<u>42,163.16</u>	<u>653,902.04</u>
TOTAL	<u>\$ 1,024,278.34</u>	<u>\$ 130,688.43</u>	<u>\$ 1,154,966.77</u>

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## CONDITION

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During the 2022-2023 fiscal year, the City's Department of Public Services has overseen cemetery landscape maintenance, which has included:

- Oversight of lawn mowing contractor including weekly cuts and spring and fall cleanup
- Oversight of forestry contractor for tree maintenance as directed by DPS
- Maintenance of the tree inventory program
- Lawn fertilization twice a year
- Burial topsoil and seeding: spring and fall
- As-needed general clean up: grave blankets, old flowers, fallen branches
- Trash removal: 2 to 3 times per week
- Maintenance of water system: start up, winterizing, and repair as needed
- Repair of turf as needed
- Snow removal
- Building/fencing/road maintenance as needed

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## PLAN FOR 2023/2024

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The Greenwood Cemetery Advisory Board has prioritized the following action items for 2023-2024:

### **CRITICAL GOALS**

#### *Short Term*

- ***Developing and Updating Policy***

- The GCAB is interested in streamlining policy documents to ensure that all policy is held in one document, the Greenwood Cemetery Operational Procedures, Conditions, and Regulations. This includes incorporating new policy regarding restoration efforts on monuments and incorporating the policy on installing monuments for persons of historic significance.

- ***Review the Cemetery Management Agreement***

- Creative Collaborations, LLC. has been the contracted cemetery service provider since December 1, 2019. The contract has been renewed in one-year increments on May 18, 2020, April 26, 2021, and May 9, 2022.
- The GCAB wishes to review the contract to ensure that all Greenwood Cemetery needs are being met. The GCAB is interested in issuing a new RFP to reassess the current market of providers for cemetery services to make sure that the City of Birmingham is able to retain the best cemetery service provider available.
- This includes reviewing the cost of clerical services, as well as cost of labor for installing markers, performing burials, and inurnments.

#### *Long Term*

- ***Confirm the baseline amount of known available plots in the cemetery***

- Record reconciliation is an ongoing process within the Clerk's Office, the GCAB receives reports provided by the Clerk's Office which monitor sales, interments, and inurnments across the entire cemetery. Sections B and C are the most active sections of the cemetery with both sales and burial-related transactions. Sections other than B and C are active in regards to transfers of ownership, interments, and inurnments as well as an occasional private sale. Private sales in the sections other than B and C take place as these plots were all purchased prior to the implementation of the 2014 Lot Resale Policy.
- Confirming the baseline amount of known available plots in the cemetery aligns with the planned monument/marker inventory survey and the GIS mapping initiative, aiming to reaffirm the ownership and utilization status of all cemetery spaces.

- ***Monitor the continued growth of the perpetual care fund***

- The GCAB monitors the growth of the perpetual care fund and may propose strategies for increasing the funds growth in order for the fund to reach a point where the interest accrued can cover most or all of the general maintenance requirements of the cemetery.

- ***Monitor the demand for cemetery services***

- The GCAB members review cemetery data in regards to sales, interments and inurnments and consider trends in order to suggest ways Greenwood Cemetery may need to adapt in order to meet future demands.

- ***Continue historic preservation efforts***

- The GCAB works collaboratively with the Museum Board and Friends of the Birmingham Museum (a.k.a. the Birmingham Historical society) the GCAB develops



projects such as the monument/marker inventory survey, and the Friends of the Birmingham Museum conducts bi-annual tours in the cemetery to continue to educate and engage citizens while preserving history in the cemetery.

## **DESIRED GOALS**

### **Short Term**

- ***Develop a Strategic Plan for the Greenwood Cemetery Advisory Board***
  - The GCAB will benefit from going through the strategic planning process to evaluate strengths, weaknesses, opportunities, and threats/challenges the cemetery faces. In going through the process, the board will come up with a vision of what the cemetery should look like in the future, consider stakeholder perspectives, expectations, and needs as well as reconfirm the mission, vision, and values. Strategic planning will empower the board to function more efficiently. The City Clerk will continue to work as the staff liaison to the board and ensure that the board has a clear understanding of their expectations such as being in “growth” or “maintenance” mode.
- ***Inventory of signs in Greenwood Cemetery***
  - In order to update and streamline communication and wayfinding within the cemetery, the GCAB wishes to inventory and evaluate all signage in the cemetery to determine if updated signage should be budgeted for.

### **Long Term**

- ***Monument/marker inventory survey***
  - The GCAB began working on planning for the process and survey for a monument/marker inventory with the guidance of Museum Director Pielack and City Clerk Bingham at the June 4, 2021 GCAB meeting. The GCAB wishes to conduct this survey with volunteers and the support of city staff in order to cross-reference general information and collect baseline condition data and photos that could potentially be linked with the GIS data project. Monuments or markers that may need maintenance may also be identified through this survey.
- ***GIS Mapping – Launching a digital map for public reference***
  - City Staff in the Planning Department with GIS expertise created a GIS map of the cemetery. Data points from DPS on tree locations within the cemetery were added as a layer to the map in the spring of 2021. This goal ties in with the monument/marker inventory survey and confirming the baseline information of known available plots in the cemetery. Ongoing efforts are being made as time allows, the Clerk’s office provides progress updates to the GCAB as needed.
- ***Determine Capital Outlay Projects***
  - The GCAB may discuss and study the potential benefits of a capital outlay project. The GCAB will provide a recommendation and report to the City Commission if a capital outlay project is identified.
- ***Explore Above Ground Columbarium Opportunities***
  - With the limited space in the cemetery and shifting demand towards cremation and inurnments, the GCAB wishes to explore the costs, benefits, and opportunities for installing a columbarium.
- ***Review and update Greenwood Cemetery Operational Procedures, Conditions and Regulations***
  - The GCAB spent a considerable amount of time in the 2021-2022 FY reviewing and updating the rules and regulations. To keep the rules and regulations current going forward they will conduct an annual read through to maintain the document.

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## SUMMARY AND RECOMMENDATIONS

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Grave sale activity primarily occurs in sections B and C and is closely monitored by the City Clerk's office.

	Section C	Section B	Total
Obstructed – Temporary (trees/roots)	5	50	55
Obstructed – Permanently (monument)	26	12	38
Owned	39	262	301
Available	2	86	88

The GCAB, Clerks Office, DPS, Museum, and contracted cemetery service provider continue to work collaboratively to preserve the historic charm and ambiance of Greenwood Cemetery while ensuring the highest standards of maintenance and service are being provided. The GCAB will continue to monitor data as provided by the City Clerk, work on their goals as laid out in this document, and make recommendations for future grave releases and/or improvements for the preservation and operation of the Historic Greenwood Cemetery.

The cemetery is in a state of slow growth and preservation.

For the 2023-2024 FY, the GCAB is encouraged to continue working on the goals as identified in this report at their regular monthly meetings. Recommendations made by the Greenwood Cemetery Advisory Board will be presented to the City Manager's Office for further direction and implementation.



## REPORT

**DATE:** September 7, 2023  
**TO:** Jana L. Ecker, City Manager  
**FROM:** Mary M. Kucharek, City Attorney  
**SUBJECT:** Local Regulation of Short-Term Rentals

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### INTRODUCTION:

The question presented is whether the City of Birmingham may ban short-term rentals within its jurisdiction. The short answer is "yes," however there are many considerations regarding short-term rentals that need to be examined.

### BACKGROUND:

In Michigan, Courts have upheld, and at times Courts have disfavored, local ordinances restricting short-term rentals. If there were a ban on short-term rentals, the City of Birmingham would have to consider whether it is advisable to have a ban on short-term rentals as part of the City's general ordinances which can regulate health, safety and welfare, or whether it is more appropriate to have a ban on short-term rentals as part of the City's zoning requirements. To date, the City's general ordinances regulate all rental units regardless of the amount of time of tenancy. Short-term rentals are often defined as less than thirty (30) days. All types of rentals are, indeed, regulated by the City's general ordinances at this time. In preparing for the draft of this memorandum, I was reminded that a workshop regarding short-term rentals occurred on Monday, June 14, 2021 Meeting ID: 655 079 760 with the City Commission. I have attached a copy of the materials that were presented that evening. It is interesting to note that the Zoning Ordinance at Chapter 126, Article 5.502 D. states, "D. Renting of Rooms: The renting of rooms is permitted to not more than 2 roomers or boarders per dwelling unit." The Zoning Ordinance prescribes these specific uses and regulations regarding all of the City's zoning districts including residential districts and what uses are allowed. The City's Zoning Ordinance is silent as to short-term rentals, aside from the renting of rooms as noted.

### LEGAL REVIEW:

While the current law allows for regulation, including bans of short-term rentals, in October of 2018, the Michigan Supreme Court published a decision that upheld the right of local ordinances to allow or restrict short-term rentals, however, this may not continue if pending litigation of House Bill 4722 passes in the Senate wherein it has been sent to a Senate Committee for study. Under the proposed amendment to the Michigan Zoning Enabling Act, the law would effectively

prohibit all local governments from enforcing zoning ordinances aimed at preventing short-term rentals. It would allow few regulations limiting the number of short-term rentals within a community's jurisdiction, and would continue to allow the City to enforce ordinances to abate nuisances such as noise and traffic. The new law, if passed by the Senate, would not allow special conditions or special permits regarding short-term rentals to be different from any other requirements of residential dwellings in the same zone. The Bill goes so far as to say that the renting of one's home for short-term rental purposes is not a commercial use. The Bill, however, makes clear that any changes will not prohibit a local unit of government from inspecting a residence for compliance with an ordinance provided that it is for the protection of public health and safety and is not a zoning ordinance, and does not have the effect of prohibiting short-term ordinances.

#### SUMMARY:

In conclusion, the current language of Birmingham ordinances regulates short-term and long-term rentals equally. The City's ordinances do not currently ban or regulate short-term rentals specifically, but rather treat all rentals alike, which I believe to be appropriate. If the City of Birmingham is interested in banning short-term rentals or treating short-term rentals differently, I would advise that it be done through the Zoning Ordinance, and go through the existing process for a Zoning Ordinance Amendment.

#### ATTACHMENTS:

1. Birmingham City Commission Special Meeting Agenda Workshop Materials - Meeting ID: 655 079 760, Monday June 14, 2021.
2. Article regarding short-term rentals in Michigan.

# CITY OF BIRMINGHAM SHORT TERM RENTAL WORKSHOP

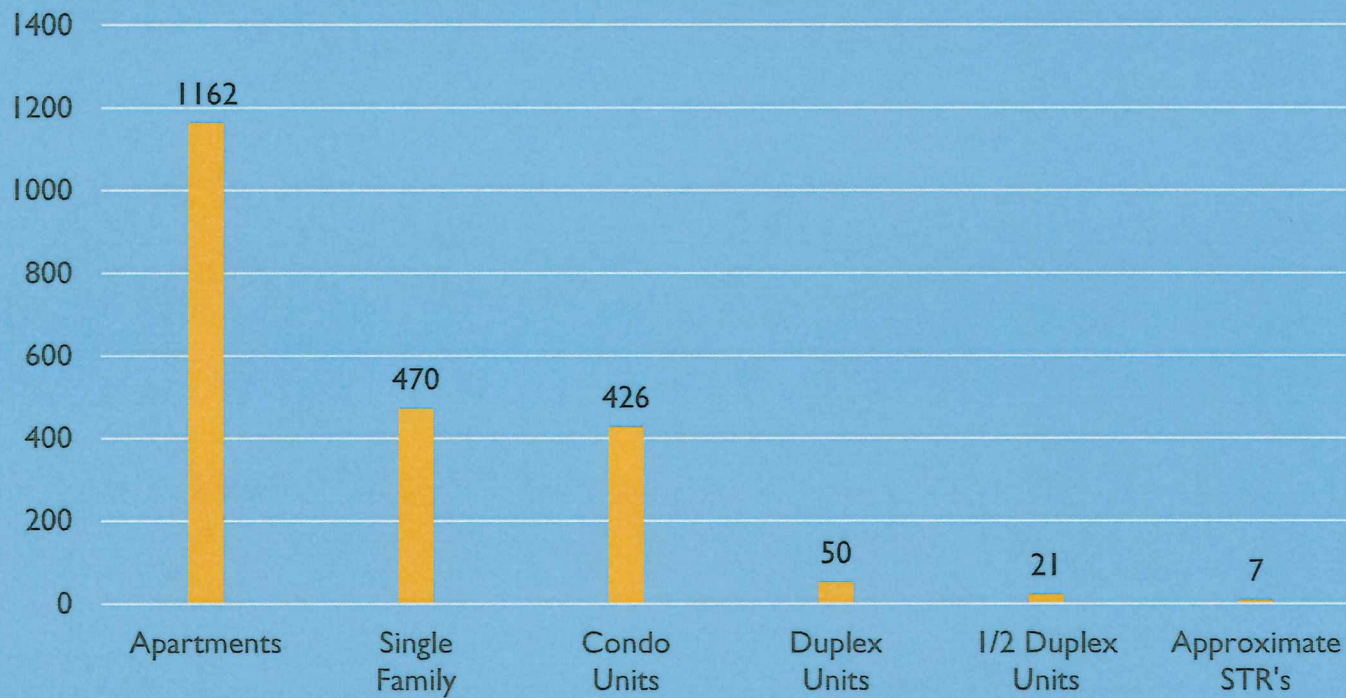
Monday, June 14, 2021

# WORKSHOP OUTLINE

- Current Statistics for Rental Properties in Birmingham
- Birmingham's Current Regulations for Rental Properties
- Allowable Regulations
- Discussion Questions

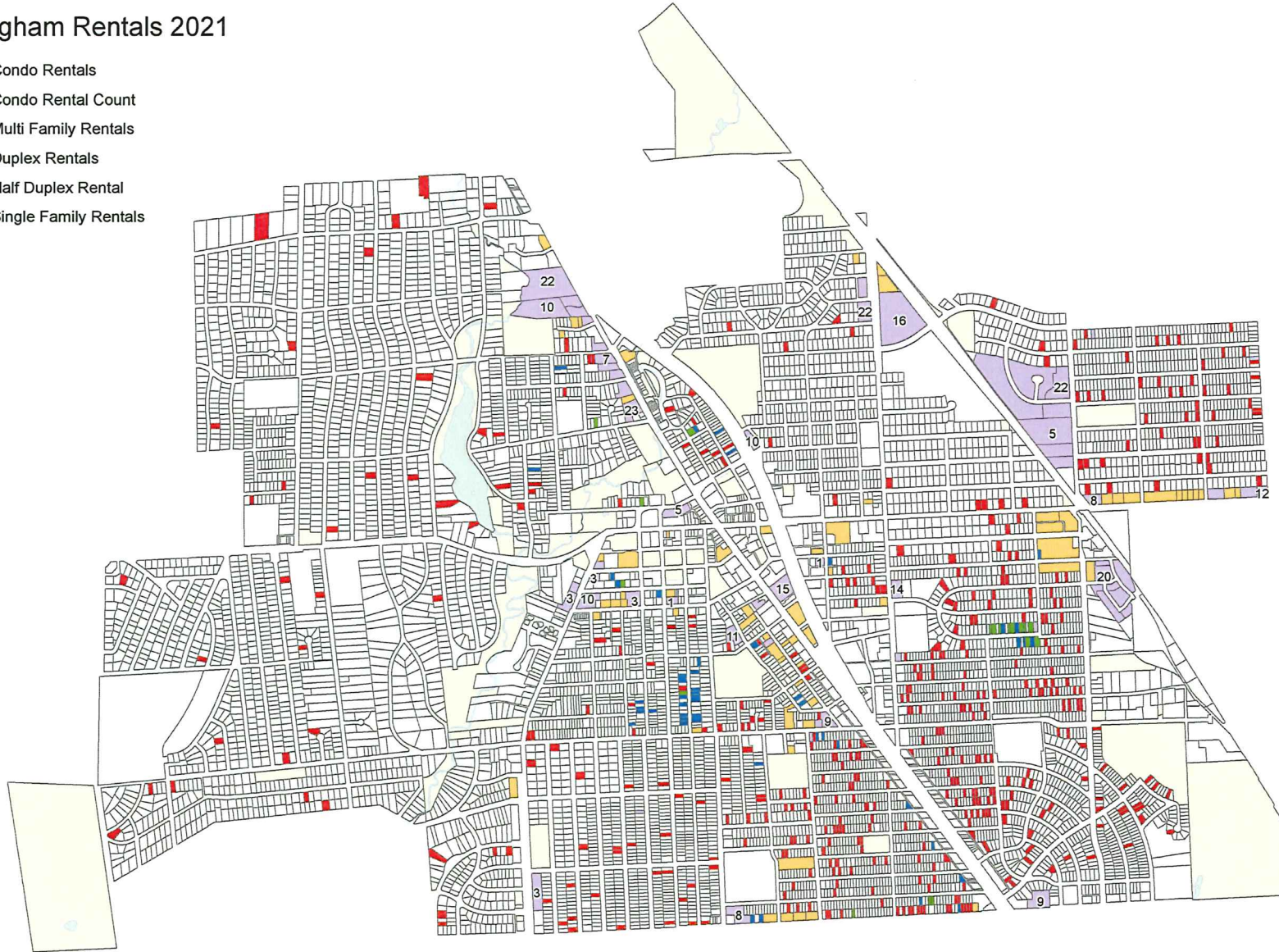
# CURRENT STATISTICS

## Rental Dwelling Units



# Birmingham Rentals 2021

- Condo Rentals
- (#) Condo Rental Count
- Multi Family Rentals
- Duplex Rentals
- Half Duplex Rental
- Single Family Rentals





# CURRENT CITY REGULATIONS

## **Overview of the Current Rules for Rental Properties**

- City Code Chapter 22 Division 4, License for Rented, Leased Premises
- Annual license required
- Maximum number of occupants is established
- Minimum parking space requirements
- Rental units are inspected every two years
- Property owners are responsible for maintenance
- Provisions for violations and penalties provided

# ALLOWABLE REGULATIONS

## **Overview of laws regarding short term rentals**

- Current law permits regulations for Short Term Rentals
- Pending legislation
- Additional regulations to address Short Term Rental situations

## DISCUSSION QUESTIONS

- What specific concerns does the Commission have about Short Term Rentals?
- What additional regulations, other than what is already in place, should be implemented to address the specific concerns the Commission has about Short Term Rentals?
- What are the advantages, or disadvantages, in regulating Short Term Rentals?

## DIVISION 4. - LICENSE FOR RENTED, LEASED PREMISES

## Sec. 22-331. - Required.

No person shall rent or lease or offer to rent or lease a dwelling or a room in a roominghouse until either a temporary or annual license for such rental or leasing has been issued by the building official for the premises being rented or leased or being offered for rent or lease.

(Ord. No. 2070, 10-24-11)

## Sec. 22-332. - Application.

Application for a license required by this division shall be made to the building official on such forms as may be prescribed therefor.

(Ord. No. 2070, 10-24-11)

## Sec. 22-333. - Fee.

- (a) An application for a license shall be accompanied by such fee as set forth in the schedule of fees, charges, bonds and insurance.
- (b) There shall be no registration fee charged under this division for the calendar year in which a dwelling unit is constructed and a certificate of occupancy issued by the building department. Thereafter, all applicable fees under this article shall be due and payable.

(Ord. No. 2070, 10-24-11)

## Sec. 22-334. - Temporary license.

After application for a license under this division, but prior to the time of issuance of the annual license, the building official may, at his discretion, issue without inspection of the premises, a temporary license until such time as a building official has inspected and determined whether or not the dwelling unit or room is in violation of any provision of this Code.

(Ord. No. 2070, 10-24-11)

## Sec. 22-335. - Denial.

The building official shall not issue an annual license for any dwelling unit or room which is in violation of any provision of this article or where the proposed use of the building within which the dwelling unit is located is in violation of any provision of this Code.

(Ord. No. 2070, 10-24-11)

## Sec. 22-336. - Issuance, expiration.

Temporary or annual licenses for leasing or renting of premises located within the city shall be issued by the building official. Each license issued by the building official, whether temporary or annual, shall terminate as of April 15 next following its issuance.

(Ord. No. 2070, 10-24-11)

## Sec. 22-337. - Revocation.

The building official may revoke any license issued under this division, whether temporary or annual, prior to its expiration upon a determination that the licensed premises does not comply with all the provisions of this article or with all the provisions of this Code.

(Ord. No. 2070, 10-24-11)

## Sec. 22-338. - Appeals.

Any person who has applied for a license and feels aggrieved by any decision of the building official may appeal such decision to the housing board of appeals.

(Ord. No. 2070, 10-24-11)

## Sec. 22-339. - Maximum occupancy.

No annual license for the renting or leasing of a dwelling or a room in a roominghouse shall be issued unless the following occupancy requirements are met in full:

- (1) The property owner shall be the responsible party for all violations relating to the maximum number of occupants at a rental property;
- (2) At the time of application or renewal of a rental license, a maximum number of occupants for a rental property shall be established by the building official, or his designee. The maximum number of occupants established for a rental property shall be stated on the rental license;
- (3) The maximum number of occupants for which a rental property may be licensed shall be based upon the size and number of bedrooms as defined by the International Property Maintenance Code, as amended from time to time;
  - a. The minimum area for a one-occupant bedroom shall be 70 square feet;
  - b. The minimum area for bedrooms other than a one-occupant bedroom shall be 50 square feet per occupant;
- (4) A rental property shall comply with the provisions regarding overcrowding as set forth in the International Property Maintenance Code, as amended from time to time;
- (5) The property owner shall provide to any prospective renter or lessee written notice of the maximum number of occupants, as established by the building official, for the dwelling or room in a roominghouse being offered for rent or lease. A copy of said notice shall be furnished to the building official or his designee upon written or verbal request;
- (6) Following the issuance of a notice and order of violation as described in [section 22-343](#), if all violations are not corrected within the allotted time the building official may, at his discretion, issue a code violation ticket and/or revoke the rental license.

(Ord. No. 2070, 10-24-11)

## Sec. 22-340. - On-site parking.

No annual license for the renting or leasing of a dwelling or a room in a roominghouse shall be issued unless the following on-site parking requirements are met in full:

- (1) The property owner shall be the responsible party for all violations relating to the required number of on-site parking spaces at a rental property;

- (2) A parking space shall meet the following criteria in order to satisfy the requirements of this section:
- a. Have a minimum length of 20 feet;
  - b. Have a minimum width of either the width of the existing driveway or nine feet, whichever is less;
- (3) Minimum parking requirements:
- a. For single-family or two-family residential properties, a rental property owner shall provide, at minimum, on-site parking spaces equal to two parking spaces for the first bedroom and one parking space for each additional bedroom.
    1. In no case shall fewer than two on-site parking spaces be required;
    2. For the purposes of this section, an on-site parking space shall be defined as being located within the legal boundaries of the property for which a rental license is being sought and located in either a driveway or a garage that has unobstructed access to the driveway, the required parking space(s) shall not be otherwise obstructed by materials, debris, or use in a manner which prohibits its intended use for parking;
    3. Provided that on-street parking is permitted, a maximum of one on-street parking space may be applied toward satisfying the minimum on-site parking requirements, all other required parking spaces shall be provided off-street;
  - b. For all other properties permitting residential uses, the provisions of chapter 126 shall apply;
- (4) The final determination regarding the location and minimum number of required on-site parking spaces shall be made by the building official or his designee, at the time of application or renewal of a rental license;
- (5) Following the issuance of a notice and order of violation as described in section 22-343, if all violations are not corrected within the allotted time the building official may, at his discretion, issue a code violation ticket and/or revoke the rental license.

(Ord. No. 2070, 10-24-11)

Sec. 22-341. - Inspections.

- (a) The building official, or such persons as the building official may designate, shall make an inspection of the premises, either licensed under this division or for which a license has been applied for, at such times as he may deem desirable but not less often than every two years, or as described in section 22-342.
- (b) By filing an application for a license under this division, an applicant shall be deemed to have consented to such inspections and, upon seven days' written notice, the building official may enter upon and inspect the premises at all reasonable times.

(Ord. No. 2070, 10-24-11)

Sec. 22-342. - Maintenance of rental property.

- (a) The property owner shall be the responsible party for all violations relating to the maintenance of a rental property;
- (b) The property shall be maintained in a manner consistent with the criteria set forth in the International Property Maintenance Code, as amended from time to time;
- (c) At the discretion of the building official, a property with greater than ten violations of either this Code or the International Property Maintenance Code, as amended from time to time, during the 12-month period for which a rental license is effective may be inspected on annual basis for a period of three years, beginning with the subsequent year, as described in section 22-341;
- (d) Following the issuance of a notice and order of violation as described in section 22-343, if all violations are not

corrected within the allotted time the building official may, at his discretion, issue a code violation ticket and/or revoke the rental license;

- (e) Nothing in this section shall prohibit the building official from declaring a property unsafe or unfit for human occupancy in accordance with the provisions set forth in the International Property Maintenance Code, as amended from time to time, and proceeding with the procedures set forth for condemnation.

(Ord. No. 2070, 10-24-11)

Sec. 22-343. - Notice and order of violations.

Any rented or leased premises found by the building official to be in violation of any section of this article and/or the International Property Maintenance Code, as amended for time to time, shall have a notice and order of violation sent to both the property owner and tenant of the property in accordance with the International Property Maintenance Code, as amended from time to time.

(Ord. No. 2070, 10-24-11)

Sec. 22-344. - Violations.

Violations must be corrected in accordance with the provisions of the International Property Maintenance Code, as amended from time to time. In addition to the sanctions provided for in the International Property Maintenance Code, as amended from time to time, the building official may, at his discretion, issue a code violation ticket and/or revoke the rental license if violations are not corrected within the allotted time.

(Ord. No. 2070, 10-24-11)

Sec. 22-345. - Removal of placard of notice of necessary repair.

No person shall remove, obscure or deface a placard from any structure which has been placarded as requiring necessary repairs under this division except by authority in writing from the building official.

(Ord. No. 2070, 10-24-11)

Secs. 22-346—22-355. - Reserved.

# SENATE BILL NO. 446

May 13, 2021, Introduced by Senators NESBITT, ANANICH, SANTANA, MACDONALD, HOLLIER, BARRETT, BIZON and SCHMIDT and referred to the Committee on Regulatory Reform.

A bill to amend 2006 PA 110, entitled  
"Michigan zoning enabling act,"  
(MCL 125.3101 to 125.3702) by adding section 206b.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

- 1           Sec. 206b. (1) For the purposes of zoning, all of the  
2 following apply to the rental of a dwelling, including, but not  
3 limited to, short-term rental:  
4           (a) It is a residential use of property and a permitted use in  
5 all residential zones.  
6           (b) It is not subject to a special use or conditional use



1 permit or procedure different from those required for other  
2 dwellings in the same zone.

3 (c) It is not a commercial use of property.

4 (2) This section does not prohibit regulation applied on a  
5 consistent basis to rental and owner-occupied residences for any of  
6 the following:

7 (a) Noise, advertising, traffic, or other conditions, for the  
8 prevention of nuisances.

9 (b) The number of persons that may occupy a dwelling.

10 (c) Inspections and inspection fees.

11 (d) Taxes otherwise permitted by law.

12 (3) As used in this section, "short-term rental" means the  
13 rental of a single-family residence, a dwelling unit in a 1-to-4-  
14 family house, or any unit or group of units in a condominium, for  
15 terms of not more than 30 consecutive days.

16 Enacting section 1. This amendatory act takes effect 90 days  
17 after the date it is enacted into law.

SUBSTITUTE FOR  
SENATE BILL NO. 446

A bill to amend 2006 PA 110, entitled  
"Michigan zoning enabling act,"  
(MCL 125.3101 to 125.3702) by adding section 206b.

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5 all residential zones.

6           (b) It is not subject to a special use or conditional use  
7 permit or procedure different from those required for other  
8 dwellings in the same zone.

9           (c) It is not a commercial use of property.

1 (2) A local unit of government shall not adopt or enforce  
2 zoning ordinance provisions that have the effect of prohibiting  
3 short-term rentals.

4 (3) This section does not prohibit a zoning ordinance  
5 provision that is applied on a consistent basis to rental and  
6 owner-occupied residences and that regulates any of the following:

7 (a) Noise.

8 (b) Advertising.

9 (c) Traffic.

10 (d) The number of occupants in a dwelling.

11 (e) Any other condition that may create a nuisance.

12 (4) This section does not prohibit a local unit of government  
13 from doing either of the following:

14 (a) Inspecting a residence for compliance with or enforcement  
15 of an ordinance of the local unit of government that meets all of  
16 the following requirements:

17 (i) Is for the protection of public health and safety.

18 (ii) Is not a zoning ordinance.

19 (iii) Does not have the effect of prohibiting short-term  
20 rentals.

21 (b) Collecting taxes otherwise authorized by law.

22 (5) As used in this section, "short-term rental" means the  
23 rental of a single-family residence, a dwelling unit in a 1-to-4-  
24 family house, or any unit or group of units in a condominium, for  
25 terms of not more than 30 consecutive days.

26 Enacting section 1. This amendatory act takes effect 90 days  
27 after the date it is enacted into law.



Senate Fiscal Agency  
P.O. Box 30036  
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383  
Fax: (517) 373-1986

Senate Bill 446 (Substitute S-1 as reported)  
Sponsor: Senator Aric Nesbitt  
Committee: Regulatory Reform

**CONTENT**

The bill would amend Article II (Zoning Authorization and Initiation) of the Michigan Zoning Enabling Act to do the following:

- Specify that, for the purposes of zoning related to the rental of a dwelling, including a short-term rental, that use would be a residential use permitted in all residential zones and would not be subject to a special use or conditional use permit or procedure.
- Prohibit a local unit of government from adopting or enforcing zoning ordinance provisions that would have the effect of prohibiting short-term rentals.
- Specify that the bill would not prohibit regulation applied on a consistent basis to rental and owner-occupied residences for the prevention of nuisances, occupancy, inspections, and taxes.

Proposed MCL 125.3206b

Legislative Analyst: Christian Schmidt

**FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Date Completed: 6-1-21

Fiscal Analyst: Ryan Bergan

# HOUSE BILL NO. 4722

April 27, 2021, Introduced by Reps. Lightner, Wozniak, Brann, Steven Johnson, Bezotte, Mueller, Hall, Borton, Roth, Filler, Cambensy, Green, Paquette, Beeler, Steckloff and Yancey and referred to the Committee on Commerce and Tourism.

A bill to amend 2006 PA 110, entitled  
"Michigan zoning enabling act,"  
(MCL 125.3101 to 125.3702) by adding section 206b.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 206b. (1) For the purposes of zoning, all of the  
2 following apply to the rental of a dwelling, including, but not  
3 limited to, short-term rental:

4           (a) It is a residential use of property and a permitted use in  
5 all residential zones.

1 (b) It is not subject to a special use or conditional use  
2 permit or procedure different from those required for other  
3 dwellings in the same zone.

4 (c) It is not a commercial use of property.

5 (2) This section does not prohibit regulation applied on a  
6 consistent basis to rental and owner-occupied residences for any of  
7 the following:

8 (a) Noise, advertising, traffic, or other conditions, for the  
9 prevention of nuisances.

10 (b) The number of persons that may occupy a dwelling.

11 (c) Inspections and inspection fees.

12 (d) Taxes otherwise permitted by law.

13 (3) As used in this section, "short-term rental" means the  
14 rental of a single-family residence, a dwelling unit in a 1-to-4-  
15 family house, or any unit or group of units in a condominium, for  
16 terms of not more than 30 consecutive days.

17 Enacting section 1. This amendatory act takes effect 90 days  
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SUBSTITUTE FOR  
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5 all residential zones.

6           (b) It is not subject to a special use or conditional use  
7 permit or procedure different from those required for other  
8 dwellings in the same zone.

9           (c) It is not a commercial use of property.



1 (2) A local unit of government shall not adopt or enforce  
2 zoning ordinance provisions that have the effect of prohibiting  
3 short-term rentals.

4 (3) This section does not prohibit a zoning ordinance  
5 provision that is applied on a consistent basis to rental and  
6 owner-occupied residences and that regulates any of the following:

7 (a) Noise.

8 (b) Advertising.

9 (c) Traffic.

10 (d) The number of occupants in a dwelling.

11 (e) Any other condition that may create a nuisance.

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13 from doing either of the following:

14 (a) Inspecting a residence for compliance with or enforcement  
15 of an ordinance of the local unit of government that meets all of  
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17 (i) Is for the protection of public health and safety.

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20 rentals.

21 (b) Collecting taxes otherwise authorized by law.

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23 rental of a single-family residence, a dwelling unit in a 1-to-4-  
24 family house, or any unit or group of units in a condominium, for  
25 terms of not more than 30 consecutive days.

26 Enacting section 1. This amendatory act takes effect 90 days  
27 after the date it is enacted into law.





# Legislative Analysis



## SHORT-TERM RENTALS

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 4722 as introduced**  
**Sponsor: Rep. Sarah L. Lightner**  
**Committee: Commerce and Tourism**  
**Complete to 5-17-21**

Analysis available at  
<http://www.legislature.mi.gov>

## SUMMARY:

House Bill 4722 would amend the Michigan Zoning Enabling Act to provide that the short-term rental a dwelling (for 30 days or less) is a permitted residential use of property that is not subject to a special use or conditional use permit or procedure.

Specifically, under the bill, all of the following would apply to the rental of a dwelling, including a *short-term rental*, for purposes of zoning:

- It is a residential use of property and a permitted use in all residential zones.
- It is not subject to a special use or conditional use permit or procedure different from those required for other dwellings in the same zone.
- It is not a commercial use of property.

*Short-term rental* would mean the rental, for up to 30 consecutive days, of a single-family residence, a dwelling unit in a one- to four-family house, or a unit or group of units in a condominium.

The bill states that it would not prohibit regulation applied on a consistent basis to rental and owner-occupied residences for any of the following:

- Noise, advertising, traffic, or other conditions, for the prevention of nuisances.
- The number of persons that may occupy a dwelling.
- Inspections and inspection fees.
- Taxes otherwise permitted by law.

Proposed MCL 125.3206b

## FISCAL IMPACT:

House Bill 4722 would have an indeterminate, but likely negligible, fiscal impact on local units of government that regulate short-term rentals. Local units of government regulating short-term rentals presumably either prohibit them or charge a permit or licensing fee to cover the costs of regulation. Unless a local unit of government was levying permit or licensing fees in excess of actual regulatory costs, there would be no net fiscal impact for local units of government. There would be no fiscal impact on state government.

Legislative Analyst: Rick Yuille  
Fiscal Analyst: Ben Gielczyk

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.



BUSINESS

LOCAL GOVERNMENT

STATE GOVERNMENT

# What's next in the fight over regulating short-term rentals in Michigan?

Legislation passed the House last year with little debate or compromise

BY: **MARLA R. MILLER** - NOVEMBER 27, 2022 5:21 AM



Susan J. Demas

New Buffalo Mayor John Humphrey has been outspoken about his opposition to the rise of Airbnb-style rentals in his community, which held several packed public meetings in 2021 as

the City Council took up the issue.

Tackling short-term rentals was a tumultuous two-year process that included a moratorium on city-issued licenses for rentals in May 2020, and a Nov. 23, 2021, special session where the [City Council approved a zoning ordinance](#) amendment that prohibits new short-term rentals in certain residentially zoned districts.

Many lakeshore communities have enacted similar ordinances in recent years in an effort to preserve housing stock and residential neighborhoods, maintaining that short-term rentals are a commercial use of property.

But [House Bill 4722](#) narrowly passed the House in a late-night session last October, a move that surprised many who have followed the legislation.

The bill targets those efforts and essentially strips a local municipality's ability to regulate short-term rentals through local zoning ordinances or make them subject to a special-use or conditional-use permit.

It's now up to the Senate to move on the bill in the lame duck session following the Nov. 8 election. While the Legislature is currently controlled by Republicans, Democrats won both chambers, which adds to the uncertainty of what might be on the last session agendas of the year.

There has been some movement. The Republican-led Senate Regulatory Reform Committee in late September moved the legislation to the floor in a 6-3 vote.



Michigan Capitol | Susan J. Demas

“We’re on high alert on that bill,” said Jennifer Rigerink, assistant director of state and federal affairs for the Michigan Municipal League, one organization that opposes the legislation. “There’s definitely work being done to try to get it to a vote.”

Humphrey opposes attempts to legislate the issue from Lansing and says HB 4722 “is a giveaway to private interests at the expense of the taxpayer.” Humphrey said more than 20 community leaders in lakeshore communities in Southwest Michigan have united to oppose the legislation by adopting formal resolutions and contacting legislators.

“It wipes out local zoning control from every municipality,” Humphrey said. “The people in Lansing have no concept about what this bill will do to local municipalities.”

Humphrey said short-term rentals have been “destroying our town for the last seven years.” He moved to New Buffalo, a Southwest Michigan lakefront community 35 miles from Chicago, with a young family and lived the experience in his own neighborhood. A single-family home was sold and renovated into a short-term rental.

“They replaced it as a 20-person Airbnb that completely wrecked our neighborhood,” he said.

At the heart of the issue is whether short-term rentals are a residential or commercial use of property. HB 4722 would amend the Michigan Zoning Enabling Act of 2006 to define and add the term “short-term rental” to the Code as a residential use of property that is permitted in all residential zoning districts.

The legislation aims to protect Michigan property owners’ fundamental right to use their dwelling or home as a short-term rental, according to proponents. In addition, it also codifies the right for counties, cities and townships to continue to, or begin to, require the issuance of a locally issued STR license, limit local licenses to two per person, and implement license enforcement policies to meet the community’s standards.

HB 4722 is supported by Airbnb, the Michigan Association of Realtors and the Rental Property Owners Association. Michigan Municipal League, Michigan Township Association and Michigan Restaurant & Lodging Association oppose the legislation and have offered compromises.

“We still oppose it and there’s been no negotiation,” Rigterink said. “We’re still at the table, ready and willing to negotiate if the opportunity arises.”

Proponents of the bill argue that property owners have the right to do what they want with their property, including renting it out as a vacation home without cumbersome regulations. They maintain local communities are in essence banning short-term rentals by limiting the number of licenses and restricting where they can be located.



📷 A short-term rental in Suttons Bay. | Susan J. Demas

“There is a growing trend in local government to enact zoning bans that preemptively tell property owners they are unable to rent,” according to a statement on the Michigan Realtors [website](#). “The rental of residential property is important to Michigan second home markets and in urban areas around event destinations. Banning the right to rent harms property owners and local businesses in many communities all over Michigan.”

Both the Realtors Association and Airbnb maintain Michiganders have been renting their second homes for decades when not in use, long before online platforms rose to prominence. Short-term rentals also are popular among tourists throughout Michigan. The practice helps Michigan property owners cover the cost of property taxes and maintenance.

In addition, with inflation and the rising cost of living across the country, many short-term rental hosts rely on the additional income. Listings on Airbnb comprise 0.3% of total dwellings across the state, according to data from Airbnb, and 61% of Michigan hosts are women and over 25% are over the age of 60.

Airbnb says HB 4722 and HB 5605 would modernize Michigan’s regulation of short-term rentals. [HB 5605](#), which Rep. Graham Filler (R-DeWitt) introduced in December 2021, proposes an excise tax on short-terms at a rate equal to the tax of traditional lodging, along

with a requirement that accommodation intermediaries such as Airbnb be responsible for the remittance of all their hosts' taxes.

"Families across Michigan rely on home sharing to supplement their income and welcome visitors whose spending supports the state's businesses and tourism economy," said Vincent Frillici, a public policy regional manager for San Francisco-based Airbnb, in a statement. "Airbnb will continue to work with leaders across the state on balanced rules that protect property rights, help address community concerns, and support the state's tourism economy."

Those in opposition counter that year-round residents also have rights to live in residential areas without the issues that come with short-term rentals, such as trash, noise, parties, and parking issues, and local zoning ordinances are designed to minimize conflicting land uses in neighborhoods.

"By common sense, these are commercial uses of property," said Keith Van Beek, city manager of Holland. "You can't all of a sudden convert a single-family house into a store or an auto mechanic shop. ... It just doesn't make sense and it does nothing to protect against the rights of the property owners that live around that vacation rental."

Holland is another West Michigan community that has enacted local ordinances to manage short-term rentals, permitting them in commercially zoned areas such as the downtown. The city also launched a [pilot program for non-owner occupied short-term rentals](#) in residential areas with various regulations that was adopted as part of its local zoning ordinance.

"In general, we definitely feel that the bill as proposed really doesn't have any compromise built into it," Van Beek said. "We're not fundamentally opposed to short-term rentals. We feel local communities are best equipped to deal with planning and zoning issues. We have had a long history of dealing with short-term rentals and a set of regulations that are strongly supported by our community."

In addition, many lakeshore communities are grappling with a [shortage of available, affordable, year-round housing](#) for service-industry workers or people who want to relocate to the community for employment.

"My biggest fear is housing and apartments for our seasonal and everyday laborers in Petoskey; that it will take up those spaces with short-term rentals knowing someone can make one month's rent in a week during the busy season of the year," said Petoskey Mayor John Murphy.

Petoskey has an ordinance that permits short-term rentals in a business district with a city license. The ordinance has been in place since 2014, prohibiting new vacation rentals in residential districts, but Petoskey still has a problem with STRs operating illegally. The city even took an illegal STR operator to court after they were cited numerous times and won.

Murphy said the bill would "void our efforts and the will of the people here in Petoskey."

In Leelanau County, another popular vacation destination, villages and townships continue to grapple with the issue. The Village of Suttons Bay, Suttons Bay Township, Village of Northport, Bingham Township, Empire Township, Leelanau Township, Leland Township and Elmwood Township have adopted short-term rental ordinances.



Carl Court/Getty Images

The Village of Suttons Bay is reexamining its current ordinance after complaints from residents and even hired a firm, Beckett & Raeder of Ann Arbor, to [research short-term rental regulations](#) in communities around Leelanau County and elsewhere. The village issued a moratorium on short-term rental licenses in June and recently extended it for an additional 90 days.

Based on the Beckett & Raeder report, the village currently has 61 operating short-term rentals, which represents 13% of the community’s total housing stock. The current ordinance permits short-term rentals in residential areas.

The average limit is 6.4% of the housing stock based on other Leelanau County communities that have short-term rental caps. Under HB 4722, the cap is up to 30% of a community’s existing housing stock, which opponents say is unreasonable for small communities.

“I do support the [HB 4722] legislation, but I think that a local government’s ability to police these, which still seems to be preserved in that legislation, is still the most important angle,” said Jason A. Metcalf, an attorney and short-term rental owner in Suttons Bay who has been



monitoring the developments at the local and state level. "If 30% becomes the number, then enforcement becomes a huge issue."

The Village of Suttons Bay has decided to grandfather in existing short-term rental licenses and reduce the number through attrition, while looking at ways to update the ordinance and right-size the number of short-term rentals.

Metcalf lives in the area and has several short- and long-term rentals in and around Suttons Bay, which he manages and maintains. He rallied STR owners to attend Suttons Bay council meetings on the issue.

"It was sounding a lot more like they were going to limit it down to nothing, which concerned me," Metcalf said. "There is a tradition up here, long before Vrbo and Airbnb, of short-term rentals. It was just done through less formal means."

While Metcalf feels for people who live next to problematic short-term rentals, he said local communities need to focus on enforcement of occupancy limits, noise, parking and nuisance violations. He also worked to dispel arguments that short-term rentals are driving up prices and displacing locals.

"It's a misnomer; it's a fallacious argument," Metcalf said, noting his Airbnbs often help subsidize the units he rents out to year-round workers. "It's the desirability of the area. If short-term rentals didn't exist here at all, either they would be sold at high prices or they would be rented at high prices, which would preclude workforce housing."

Local officials maintain a one-size-fits-all approach does not work when it comes to short-term rentals because each community has different needs, demographics and public safety and housing concerns.



📷 Old Mission Peninsula | Susan J. Demas

“To me, this is a prime example of cities being allowed to legislate for themselves,” Murphy said. “Local elected officials know better what is good for a small community such as ours rather than it being dictated to us out of Lansing.”

The legislation would give local governments the authority to limit the number of short-term rentals owned by the same person in an effort to prevent investors from buying up multiple homes. It also caps the total number of short-term rentals as a percentage of all residences, but officials say the proposed 30% cap is unreasonable for small communities.

“If it’s 30% as proposed, right now it would allow up to 500 short-term rentals in the city of Petoskey, and I think that’s way too much,” Murphy said.

Humphrey agrees, saying New Buffalo has 150 rentals with active licenses plus a number of illegal rentals that the city struggles to police. Under HB4722, that number could increase to 750 short-term rental units.

Local governments could still enforce ordinances related to parking, noise and nuisance complaints as long as such regulations are applied consistently to owner-occupied residences as well.

Humphrey argues that short-term rental owners don't pay any additional taxes, other than the non-homestead tax rate, or fees to local communities, like a lodging or tourism tax. But short-term rentals do bring added traffic, nuisance and public safety issues. They also create added costs for inspections and code enforcement, which are a strain on public resources.

"Short-term rentals incur a much larger cost due to the number of people they bring in," Humphrey said. "They should be paying lodging taxes, a tourism tax to supplement the municipality."

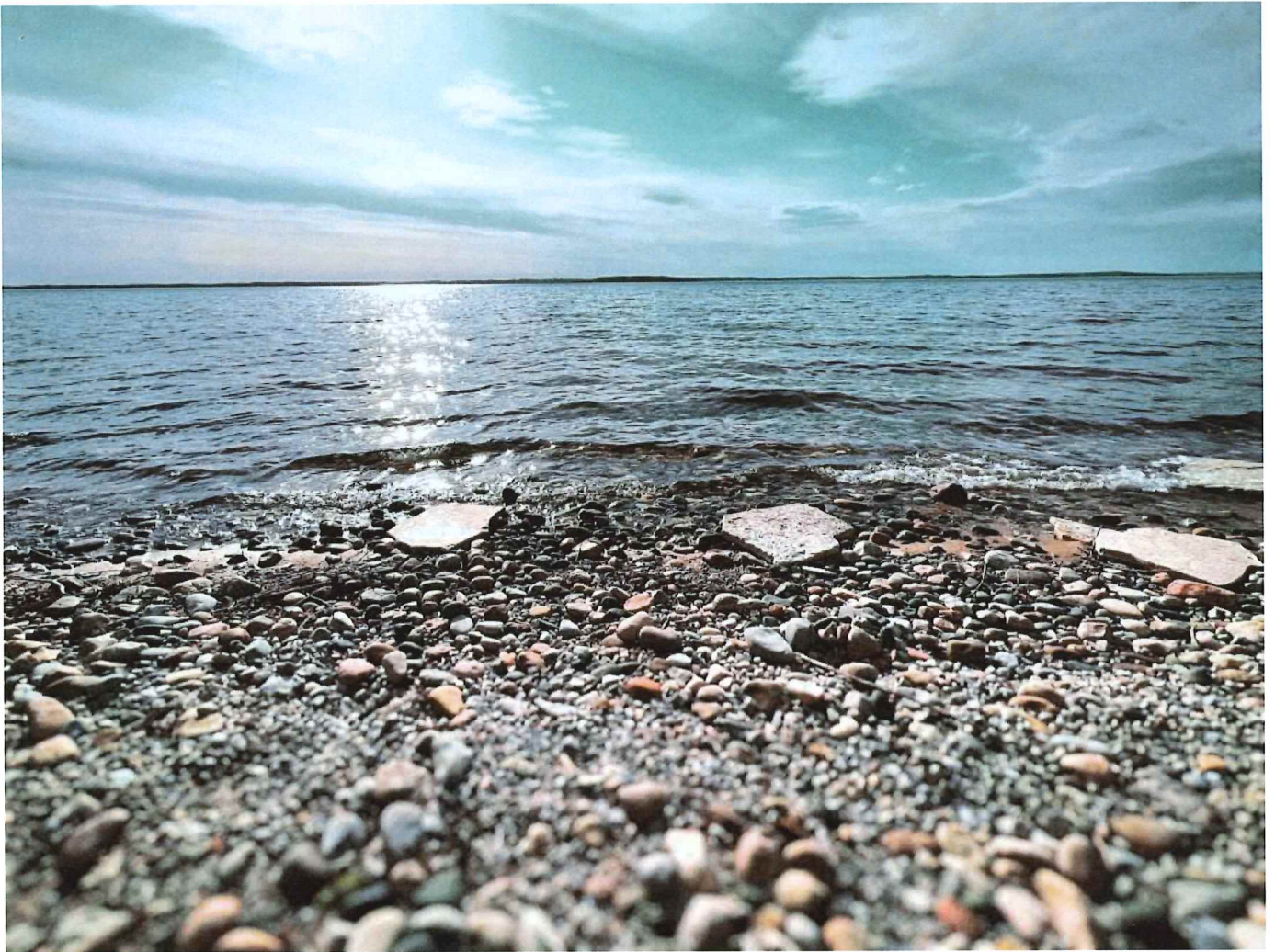
An unintended consequence is a decline in population, school enrollment and quality of life for year-round residents.

"We've had a 33% decrease in school population in 10 years," Humphrey said. "They [legislators] don't understand that people need to live here to pay for public safety and infrastructure."

Lawmakers and opposing groups have worked to introduce [compromise legislation](#) that recognizes the difference between homeowners who rent their properties a few weekends a year and those who buy up properties to operate them as "mini hotels." House Bills [5465](#) and [5466](#) are supported by a coalition of organizations representing local government, public safety, the restaurant and lodging industry.

Representatives from Michigan Township Association testified in opposition to HB 4722 at early House committee hearings and worked on the compromising legislation, but it hasn't gained traction, said Judy Allen, MTA's director of government relations.

"We have put forth compromise after compromise," Allen said. "Each community is different. I don't have two identical townships. Each one has different needs and different makeups. ... The state wants to come in and say, 'We know better,' preempting them from the work that they have done."



📷 Suttons Bay | Susan J. Demas

Zoning is intended to regulate conflicting land uses and problems that ensue, and communities zone based on master plans, local needs, and the Michigan Zoning Enabling Act.

“If the sole purpose is to be a commercial activity to make money that is different from families who live, work, raise their children there, and want to have a quality of life in a community,” she said.

Those looking for a compromise say HB 4722 fails to address a key issue, which is how to distinguish between homeowners with a second home who occasionally rent it out versus owners and investors that buy up homes and operate them from out-of-state as for-profit enterprises. They often never visit Michigan, or the city where the home is located, and have no stake in the community other than profit.

Although short-term rentals have been a concern in resort communities for several years, the issue has expanded to inland cities and rural townships due to a general housing shortage. Businesses that want to relocate to a community worry about housing for their employees.

“Homes are being purchased and not available when they have a business locate in their community,” Allen said. “Where are people going to live, and is there a quality of life that

employees are going to want?"

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### MARLA R. MILLER

Marla R. Miller is an award-winning journalist and content marketing writer who previously worked for newspapers in Indiana and the Muskegon Chronicle. She lives in Norton Shores and her work can be found at marlarmiller.com.

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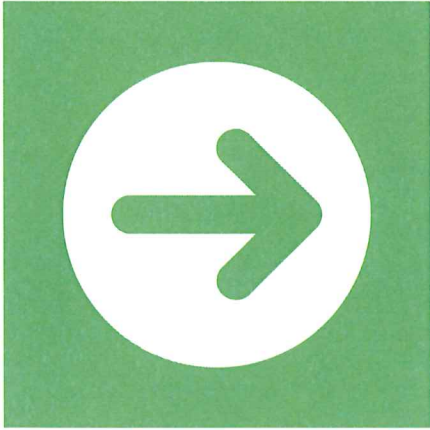
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## MEMORANDUM

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**DATE:** September 7, 2023  
**TO:** Mary Kucharek  
**FROM:** Monika Koleci  
**RE:** Deed Restrictions on Historic Districts

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### ISSUE:

Whether the City of Birmingham can force deed restrictions on historic district properties within its jurisdiction?

### RULE:

Deed restrictions, or restrictive covenants, are rules and regulations that govern one or more lots or parcels of land, and can come from a homeowners' association, the builder of the home, or a local governing body. A restrictive covenant is a contract detailing a deed restriction's full set of terms. Restrictive covenants are established in a deed, or a separately recorded document called a declaration of restrictive covenants. A deed restriction is a limitation on how you can use your property. Deed restrictions can limit what you build and certain other activities you might pursue on your land. Deed restrictions "bind" land which applies to all current and future owners of the lot or parcels involved.

Restrictive covenants or deed restrictions serve three purposes:

- 1) Inform prospective owners or tenants of the environmental conditions of the property,
- 2) Ensure the long-term compliance with use restrictions that are necessary to prevent unacceptable exposure to environmental contamination, and
- 3) Maintain the integrity of the remedy over time.

A deed restriction represents a contract between the buyer and the seller of property. *Uday v. City of Dearborn*, 356 Mich. 542, 546, 96 N.W.2d 775 (1959). Because of the high regard given to the freedom to contract, the Michigan Supreme Court's construction of deed restrictions is highly deferential to the rights of property owners to create and enforce covenants affecting their property. "Undergirding this right to restrict uses of property is, of course, the central vehicle for that restriction: the freedom of contract, which is ... deeply entrenched in the common law of Michigan." *Terrien v. Zwit*, 467 Mich. 56, 60-61, 648 N.W.2d 602 (2002). The United States Supreme Court has listed the "right to make and enforce contracts" among "those fundamental rights which are the essence of civil freedom." *United States v. Stanley*, 109 U.S. 3, 22, 3 S.Ct. 18,

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27 L.Ed. 835 (1883). The Michigan Supreme court “respects the freedom of individuals freely to arrange their affairs via contract” by upholding the “fundamental tenet of our jurisprudence ... that unambiguous contracts are not open to judicial construction and must be *enforced as written*,” unless a contractual provision “would violate law or public policy.” *Rory v. Continental Ins. Co.*, 473 Mich. 457, 468, 470, 703 N.W.2d 23 (2005).

**APPLICATION:** In the case at hand, the City of Birmingham has a few properties within its jurisdiction that are historic districts. The question of forcing deed restrictions on these properties has been presented to the City which would impose a variety of restrictions on the homeowners of these properties. However, the City cannot impose deed restrictions without a homeowner’s permission or consent. If the homeowner is not in agreement the City cannot force a deed restriction on a homeowner because a deed restriction is a contract between parties and each party has the freedom to engage in a contract. Michigan case law is highly deferential to the rights of property owners to create and enforce covenants affecting their property. Further, there are not any exceptions to this rule which apply to historic district properties.

**CONCLUSION:** Therefore, the City of Birmingham cannot force a deed restriction on historic district properties within its jurisdiction because deed restrictions require the consent of the property owners.



CONSERVATION

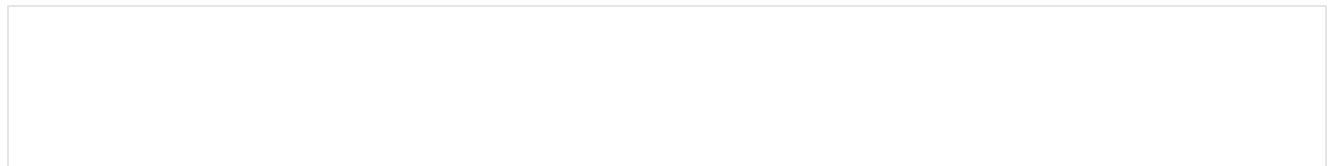
# Biodiversity Flourishes in Historic Lawn Turned Wildflower Meadow

An experiment at the University of Cambridge highlights the environmental cost of a well-manicured lawn

By Jesse Greenspan on September 1, 2023  
Scientific American September 2023 Issue



The King's College wildflower meadow bolstered biodiversity. Credit: Geoff Moggridge/King's College, Cambridge



The well-manicured lawn behind King's College Chapel at the University of Cambridge predated the American Revolution. Then, in 2019, an ecologically minded head gardener secured permission to tear up a portion of the grass and plant a meadow in its place. Before long it bloomed with poppies, buttercups and Queen Anne's lace.

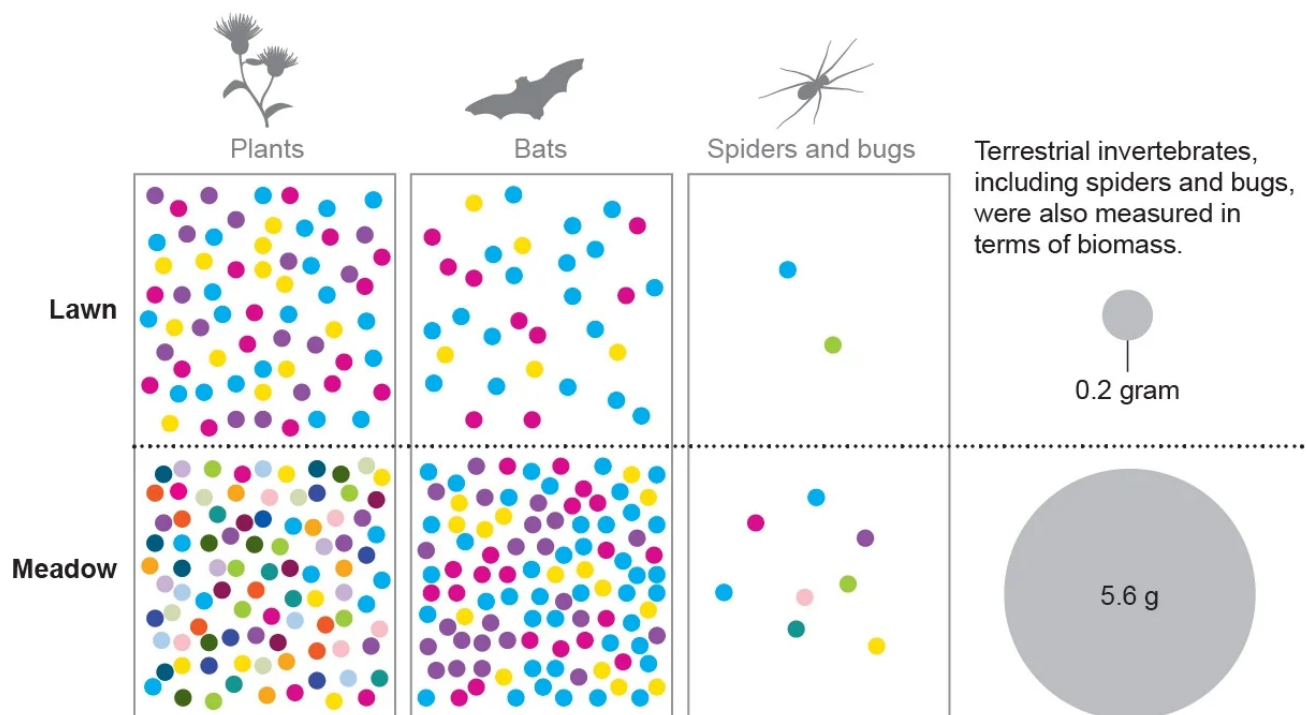
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Lawns, which became popular in the 1700s as displays of wealth, come at an environmental cost. They require far more water than similar-size meadows, especially in arid regions. Lawn grass is often overloaded with fertilizers and pesticides and is regularly clipped with gas-guzzling mowers. Meadows, in contrast, sequester more carbon than lawns and foster far more biodiversity.

Yet at half the size of a soccer field, how much wildlife would the new Cambridge meadow really support? King's College botanist Cicely A. M. Marshall surveyed the site before and after its makeover. She and her colleagues found that, compared with their numbers in the remaining lawn, plants, bats, spiders, true bugs and other invertebrates had flourished in the meadow. And without the need for much mowing or any fertilizer, the meadow's upkeep led to 99 percent less greenhouse gas emissions per hectare than the lawn.

### Meadows Support More Biodiversity

Number of dots represents abundance of organisms at the Cambridge site. Color variations represent richness (number of different species).



Credit: Amanda Montañez; Source: "Urban Wildflower Meadow Planting for Biodiversity, Climate and Society: An Evaluation at King's College, Cambridge," by Cicely A. M. Marshall et al., in *Ecological Solutions and Evidence*, Vol. 4; May 2023

Perhaps because it's hemmed in by buildings and a river, no mammals were observed at the site, and it is too small for grassland birds. In addition, roundworms equally inhabited the meadow and the lawn. Even so, Marshall says she was "quite encouraged" by the results, which were recently published in *Ecological Solutions and Evidence*.

"Lawns represent an incredible loss of habitat," says Sam Quinn, a conservation biologist at the State University of New York College of Environmental Science and Forestry, who was

not involved in the new study but expressed admiration for its experimental setup. Fortunately, “the restoration part is super easy,” he says; once the new plants get established, “beneficial organisms” move right in.

*This article was originally published with the title "Lawn Gone" in Scientific American 329, 2, 10-11 (September 2023)  
doi:10.1038/scientificamerican0923-10*

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## ABOUT THE AUTHOR(S)

**Jesse Greenspan** is a San Francisco Bay Area–based freelance journalist who writes about history and the environment.

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**STATE OF MICHIGAN**

**BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION**

**NOTICE OF HEARING**

**FOR THE GAS CUSTOMERS OF CONSUMERS ENERGY  
COMPANY**

**CASE NO. U-21063**

- Consumers Energy Company requests Michigan Public Service Commission's approval for reconciliation of its gas cost recovery plan (Case No. U-21062) for the 12-month period April 220-March 2023.
- The information below describes how a person may participate in this case.
- You may call or write Consumers Energy Company, One Energy Plaza, Jackson, MI 49201, 517-788-0550 for a free copy of its application. Any person may review the documents at the offices of Consumers Energy Company or on the Commission's website at: [michigan.gov/mpscedockets](http://michigan.gov/mpscedockets).
- A pre-hearing will be held:

**DATE/TIME: Wednesday, September 13, 2023 at  
9:30 AM**

**BEFORE: Administrative Law Judge Lesley  
Fairrow**

**LOCATION: Video/Teleconferencing**

**PARTICIPATION:** Any interested person may participate. Persons needing any assistance to participate should contact the Commission's Executive Secretary at (517) 244-9000 or by email at [mpscedockets@michigan.gov](mailto:mpscedockets@michigan.gov) in advance of the hearing.

\*\*\*\*\*AUTO\*\*ALL FOR AADC 480

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**INFORMATION ONLY**

The Michigan Public Service Commission (Commission) will hold a pre-hearing to consider Consumers Energy Company's (Consumers Energy) June 30, 2023 application requesting the Commission to: 1) approve the April 2022 through March 2023 reconciliation of its Gas Cost Recovery (GCR) plan as proposed by Consumers Energy; 2) approve Consumers Energy's proposed methodology for rolling in the net under-recovery for the GCR period of \$15,090,600; and 3) grant Consumers Energy other and further relief as the Commission deems necessary.

All documents filed in this case shall be submitted electronically through the Commission's E-Dockets website at: [michigan.gov/mpscedockets](https://michigan.gov/mpscedockets). Requirements and instructions for filing can be found in the User Manual on the E-Dockets help page. Documents may also be submitted, in Word or PDF format, as an attachment to an email sent to: [mpscedockets@michigan.gov](mailto:mpscedockets@michigan.gov). If you require assistance prior to e-filing, contact Commission staff at (517) 284-8090 or by email at: [mpscedockets@michigan.gov](mailto:mpscedockets@michigan.gov).

Any person wishing to intervene and become a party to the case shall electronically file a petition to intervene with this Commission by September 6, 2023. (Interested persons may elect to file using the traditional paper format.) The proof of service shall indicate service upon Consumers Energy Company's Legal Department – Regulatory Group, One Energy Plaza, Jackson, MI 49201.

The prehearing is scheduled to be held remotely by video conference or teleconference. Persons filing a petition to intervene will be advised of the process to participate in the hearing.

Any person wishing to participate without intervention under Mich Admin Code, R 792.10413 (Rule 413), or file a public comment, may do so by filing a written statement in this docket. The written statement may be mailed or emailed and should reference Case No. **U-21063**. Statements may be emailed to: [mpscedockets@michigan.gov](mailto:mpscedockets@michigan.gov). Statements may be mailed to: Executive Secretary, Michigan Public Service Commission, 7109 West Saginaw Hwy., Lansing, MI 48917. All information submitted to the Commission in this matter becomes public information, thus available on the Michigan Public Service Commission's website, and subject to disclosure. Please do not include information you wish to remain private. For more information on how to participate in a case, you may contact the Commission at the above address or by telephone at (517) 284-8090.

Requests for adjournment must be made pursuant to Michigan Office of Administrative Hearings and Rules R 792.10422 and R 792.10423. Requests for further information on adjournment should be directed to (517) 284-8090.

For more information on how to participate in a case, you may contact the

The Utility Consumer Representation Fund has been created for the purpose of aiding in the representation of residential utility customers in various Commission proceedings. Contact the Chairperson, Utility Consumer Participation Board, Department of Licensing and Regulatory Affairs, P.O. Box 30004, Lansing, Michigan 48909, for more information.

Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 et seq.; 1911 PA 419, as amended, MCL 460.54 et seq.; 1939 PA 3, as amended, MCL 460.5 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and Parts 1 & 4 of the Michigan Office of Administrative Hearings and Rules, Mich. Admin Code, R 792.10106 and R 792.10401 through R 792.10448.

**THE MICHIGAN PUBLIC SERVICE COMMISSION MAY GRANT OR DENY CONSUMERS ENERGY'S GAS COST RECOVERY RECONCILIATION AND OTHER PROPOSALS IN WHOLE OR IN PART, AND MAY APPROVE LESSER OR GREATER AMOUNTS THAN THOSE REQUESTED.**

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# Tiny Forests With Big Benefits

Native plants crowded onto postage-stamp-size plots have been delivering environmental benefits around the world — and, increasingly, in the U.S.



By Cara Buckley

Published Aug. 24, 2023 Updated Aug. 26, 2023

**Climate Forward** There's an ongoing crisis — and tons of news. Our newsletter keeps you up to date. [Get it with a Times subscription.](#)

The tiny forest lives atop an old landfill in the city of Cambridge, Mass. Though it is still a baby, it's already acting quite a bit older than its actual age, which is just shy of 2.

Its aspens are growing at twice the speed normally expected, with fragrant sumac and tulip trees racing to catch up. It has absorbed storm water without washing out, suppressed many weeds and stayed lush throughout last year's drought. The little forest managed all this because of its enriched soil and density, and despite its diminutive size: 1,400 native shrubs and saplings, thriving in an area roughly the size of a basketball court.

It is part of a sweeping movement that is transforming dusty highway shoulders, parking lots, schoolyards and junkyards worldwide. Tiny forests have been planted across Europe, in Africa, throughout Asia and in South America, Russia and the Middle East. India has hundreds, and Japan, where it all began, has thousands.

Now tiny forests are slowly but steadily appearing in the United States. In recent years, they've been planted alongside a corrections facility on the Yakama reservation in Washington, in Los Angeles's Griffith Park and in Cambridge, where the forest is one of the first of its kind in the Northeast.

"It's just phenomenal," said Andrew Putnam, superintendent of urban forestry and landscapes for the city of Cambridge, on a recent visit to the forest, which was planted in the fall of 2021 in Danehy Park, a green space built atop the former city landfill. As dragonflies and white butterflies floated about, Mr. Putnam noted that within a few years, many of the now 14-foot saplings would be as tall as telephone poles and the forest would be self-sufficient.

Healthy woodlands absorb carbon dioxide, clean the air and provide for wildlife. But these tiny forests promise even more.

They can grow as quickly as ten times the speed of conventional tree plantations, enabling them to support more birds, animals and insects, and to sequester more carbon, while requiring no weeding or watering after the first three years, their creators said.



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Andrew Putnam, superintendent of urban forestry for the city of Cambridge, Mass. Cassandra Klos for The New York Times



Flowers in the Miyawaki forest in Danehy Park, which includes 1,400 native shrubs and saplings, all thriving in an area roughly the size of a basketball court. Cassandra Klos for The New York Times

Perhaps more important for urban areas, tiny forests can help lower temperatures in places where pavement, buildings and concrete surfaces absorb and retain heat from the sun.

“This isn’t just a simple tree-planting method,” said Katherine Pakradouni, a native plant horticulturist who oversaw the forest planting in Los Angeles’s Griffith Park. “This is about a whole system of ecology that supports all manner of life, both above and below ground.”

The Griffith Park forest occupies 1,000 square feet, and has drawn all manner of insects, lizards, birds and ground squirrels, along with western toads that journeyed from the Los Angeles River, Ms. Pakradouni said. To get to the forest, the toads had to clamber up a concrete embankment, traverse a bike trail, venture down another dirt embankment and cross a horse trail.

“It has all the food they need to survive and reproduce, and the shelter they need as a refuge,” Ms. Pakradouni said. “We need habitat refuges, and even a tiny one can, in a year, be life or death for an entire species.”

Known variously as tiny forests, mini forests, pocket forests and, in the United Kingdom, “wee” forests, they trace their lineage to the Japanese botanist and plant ecologist Akira Miyawaki, who in 2006 won the Blue Planet Prize, considered the environmental equivalent of a Nobel award, for his method of creating fast-growing native forests.

Dr. Miyawaki, who died in 2021 at the age of 93, developed his technique in the 1970s, after observing that thickets of indigenous trees around Japan’s temples and shrines were healthier and more resilient than those in single-crop plantations or forests grown in the aftermath of logging. He wanted to protect old-growth forests and encourage the planting of native species, arguing that they provided vital resilience amid climate change, while also reconnecting people with nature.

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“The forest is the root of all life; it is the womb that revives our biological instincts, that deepens our intelligence and increases our sensitivity as human beings,” he wrote.

Dr. Miyawaki’s prescription involves intense soil restoration and planting many native flora close together. Multiple layers are sown — from shrub to canopy — in a dense arrangement of about three to five plantings per square meter. The plants compete for resources as they race toward the sun, while underground bacteria and fungal communities thrive. Where a natural forest could take at least a century to mature, Miyawaki forests take just a few decades, proponents say.



A Miyawaki forest in New Delhi. Arvind Yadav/Hindustan Times, via Getty Images





Butterflies in the Miyawaki forest of Kalina Biodiversity Park at Mumbai University, which opened last year. Vijay Bate/Hindustan Times, via Getty Images

Crucially, the method requires that local residents do the planting, in order to forge connections with young woodlands. In Cambridge, where a second tiny forest, less than half the size of the first one, was planted in late 2022, Mr. Putnam said residents had embraced the small forest with fervor. A third forest is in the works, he said, and all three were planned and organized in conjunction with the non-profit Biodiversity for a Livable Climate.

“This has by far and away gotten the most positive feedback from the public and residents than we’ve had for any project, and we do a lot,” Mr. Putnam said.

Still, there are skeptics. Because a Miyawaki forest requires intense site and soil preparation, and exact sourcing of many native plants, it can be expensive. The Danehy Park forest cost \$18,000 for the plants and soil amendments, Mr. Putnam said, while the pocket forest company, SUGi, covered the forest creators’ consulting fees of roughly \$9,500. By way of comparison, a Cambridge street tree costs \$1,800.

“A massive impact for a pretty small dollar amount in the grand scheme of the urban forestry program,” Mr. Putnam said.

Doug Tallamy, an American entomologist and author of “Nature’s Best Hope,” said that while he applauded efforts to restore degraded habitat, particularly in urban areas, many of the plants would eventually get crowded out and die. Better to plant fewer and save more, he said.

“I don’t want to throw a wet blanket on it, the concept is great, and we have to put the plants back in the ground,” Dr. Tallamy said. “But the ecological concept of a tiny forest packed with dozens of species doesn’t make any sense.”

Kazuo Fujiwara, a longtime Miyawaki collaborator at Yokohama National University, said survival rates are between 85 and 90 percent in the first three years, and then, as the canopy grows, drop to 45 percent after 20 years, with dead trees falling and feeding the soil. The initial density is crucial to stimulating rapid growth, said Hannah Lewis, the author of “Mini-Forest Revolution.” It quickly creates a canopy that shades out weeds, and shelters the microclimate underneath from wind and direct sun, she said.

Throughout his life, Dr. Miyawaki planted forests at industrial sites globally, including at an automotive parts plant in southern Indiana. A turning point came when an engineer named Shubhendu Sharma took part in a Miyawaki planting in India. Enthralled, Mr. Sharma turned his own backyard into a mini-forest, started a planting company called Afforestt, and, in 2014, delivered a TED Talk that, along with a 2016 follow up, ended up drawing millions of views.

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Critics point out that because a Miyawaki forest requires intense preparation and exact sourcing of many native plants, it can be expensive. The Danehy Park forest cost \$18,000 for the plants and soil amendments, plus roughly \$9,500 for the forest creators' consulting fees. Cassandra Klos for The New York Times

Around the world, conservationists took notice.

In the Netherlands, Daan Bleichrodt, an environmental educator, plants tiny forests to bring nature closer to urban dwellers, especially city children. In 2015, he spearheaded the country's first Miyawaki forest, in a community north of Amsterdam, and has overseen the planting of nearly 200 forests since.

Four years later, Elise van Middeltem started SUGi, which has planted more than 160 pocket forests worldwide. The company's first forest was planted on a dumping ground alongside the Beirut River in Lebanon; others were sown later near a power plant in the country's most polluted city, and in several playgrounds badly damaged by the 2020 blast at Beirut's port.

And Earthwatch Europe, an environmental nonprofit, has planted more than 200 forests, most of them the size of a tennis court, throughout the United Kingdom and mainland Europe in the last three years.

Though many of the forests are still very young, their creators say there have already been outsize benefits.

The woodlands in Lebanon have drawn lizards, geckos, birds and tons of insects and fungi, according to Adib Dada, an architect and environmentalist and the main forest creator there. In the West African country of Cameroon, where eight Miyawaki forests have been planted since 2019, there are improved groundwater conditions and higher water tables around the forest sites, according to Limbi Blessing Tata, who has led the reforestation there. Crabs and frogs have also returned, she said, along with birds that were thought to be extinct.

According to Mr. Bleichrodt, a 2021 university study of 11 Dutch mini-forests found over 1,100 types of plants and animals at the sites — kingfishers, foxes, hedgehogs, spider beetles, ants, earthworms and wood lice.

"A Miyawaki forest may be like a drop of rain falling into the ocean," Dr. Fujiwara wrote in an email, "but if Miyawaki forests regenerated urban deserts and degraded areas around the world it will create a river."

"Doing nothing," she added, "is the most pointless thing."

**Cara Buckley** is a climate reporter who focuses on people working toward solutions and off-the-beaten-path tales about responses to the crisis. She joined The Times in 2006 and was part of a team that won a Pulitzer Prize in 2018 for reporting on workplace sexual harassment. More about Cara Buckley

A version of this article appears in print on , Section A, Page 1 of the New York edition with the headline: Planting Tiny Forests, and Yielding Big Benefits

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