



## **Agenda: Battle Creek City Commission**

Meeting Date: January 3, 2023- 7:00 PM

Location: City Commission Chambers

Chair: Mayor Mark A. Behnke

Title: Battle Creek City Hall - City Commission Chambers, 3rd Floor

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### **INVOCATION**

### **PLEDGE OF ALLEGIANCE**

### **ROLL CALL**

### **CHAIR NOTES ADDED OR DELETED RESOLUTIONS**

### **PETITIONS COMMUNICATIONS REPORTS**

### **PUBLIC COMMENTS REGARDING CONSENTAGENDAAND RESOLUTIONS NOT ON CONSENTAGENDA**

(Limited to three minutes per individual)

### **COMMISSION COMMENT REGARDING MEETING BUSINESS**

### **CONSENTAGENDA**

#### **Minutes:**

Minutes for the December 20, 2022 City Commission Regular Meeting

#### **Petitions, Communications, Reports:**

Ambulance Report for November 2022

City Manager Report for January 3, 2023

#### **Resolutions:**

- 33 A Resolution seeking authorization for the City Manager to execute a METRO Act Bilateral Right-of-Way Telecommunications Permit with Crown Castle Fiber, LLC.
- 34 A Resolution seeking authorization for the City Manager to execute all necessary documents to reassign contract 2022-091B Minges Brook Pump Station Improvements project from Davis Construction, Inc., to RK Davis, Inc.
- 35 A Resolution authorizing the City Manager to remove Public Works Director Carl Fedders as the City of Battle Creek Street Administrator with the Michigan

Department of Transportation, and replace him with Field Services Superintendent, Todd Gerber.

- 36 A Resolution authorizing the City Manager to sign Contract No. 22-5540 with the Michigan Department of Transportation for improvements to the Union St Bridge over the Battle Creek River.
- 37 A Resolution appointing / renewal of 2 members to the North Central Neighborhood Planning Council (NPC # 2).

#### **RESOLUTIONS NOT INCLUDED IN THE CONSENT AGENDA**

- 38 A Resolution seeking approval for the City Manager to enter into six agreements with Binger Holdings LLC and the Battle Creek Tax Increment Finance Authority providing for the grant of permanent and temporary easements to the City for the purpose of a roundabout at the intersection of Skyline Drive, Hill Brady Road, and Logistics Drive.
- 39 A Resolution seeking to approve S17-22, a Special Use Permit to allow for a new child care center at 520 W. Michigan Avenue in a T-3 Neighborhood Commercial District pursuant to Sections 1240.13(C) and 1281.05 of the zoning code.
- 40 A Resolution seeking to approve S18-22 for a Special Use Permit to allow for an Adult Use Marihuana Retailer Establishment at 327 SW Capital Avenue (parcel #1530-00-059-0). The property is zoned T-3 Neighborhood Commercial Zoning District where marihuana retail centers can be allowed as a special use pursuant to Chapter 1240, Section 1240.13 and Chapter 1251 Sections 1251.23-24, 26.
- 41 A Resolution seeking to approve S19-2022, reapplication for a Special Use Permit to allow for an Adult Use Marihuana Retailer Establishment located at 477 W. Michigan Avenue. The property is zoned T-3 Neighborhood Commercial District pursuant to Chapter 1240, Section 1240.13, and Chapter 1251, Sections 1251.23-24, 26.
- 42 A Resolution seeking authorization for the City Manager to execute a Sponsor Contract, and all other related documents as approved by the City Attorney, for Municipal Airport PFAS Grant Funding.
- 43 A Resolution seeking acceptance of the proposal of best value for generators at three fire stations from Shouldice Industrial Manufacturers and Contractors, Inc., in a not-to-exceed amount of \$118,042.00.
- 44 A Resolution seeking acceptance of the proposal of best value for Flash Flood Water Park Pool Resurfacing from Advanced Pool Services, Inc in a not-to-exceed amount of \$264,500.00.
- 45 A Resolution seeking authorization for the City Manager to enter into a new Agreement with Battle Creek Community Foundation (BCCF) for continued police department grant administration services.
- 46 A Resolution seeking authorization for the City Manager to enter into Inter-Agency Agreements related to State of Michigan Stormwater Permits with the following "Nested Jurisdictions": Kellogg Community College, Hart-Dole-Inouye Federal Center, Battle Creek Public Schools and Lakeview School District.

#### **GENERAL PUBLIC COMMENT**

(Limited to three minutes per individual)

#### **COMMISSION COMMENTS**

#### **ADJOURNMENT**

It is the desire of the City Commission to encourage public expression in the course of its meetings. Such expression can be integral to the decision-making process of the City Commission. It is the intention of the City Commission to respect the rights of persons

addressing the Commission. Public comment periods are a time for citizens to make comments; they are not intended as a forum for debate or to engage in question-answer dialogues with the Commission or staff. Commissioners are encouraged not to directly respond to speakers during public comment periods. At the conclusion of the speakers remarks, the Mayor or individual Commissioners may refer a question to City staff, if appropriate. Also, individual Commissioners may choose to respond to speakers during the Commission Comment period. It is with these aims in mind, so as to promote decorum and civility and an orderly process for conducting its public meetings, that the following rules concerning public comments, consistent with applicable law, are adopted by the City Commission.

(1) Persons attending a regular or special Commission Meeting shall be permitted to address the City Commission in conformity with this rule. The opportunity to address the Commission shall be limited to the following:

(a) Persons desiring to address the City Commission are encouraged, but shall not be required, to fill out and turn in to either the City Clerk, Mayor, or presiding Commissioner, prior to the meeting, a comment card disclosing the following information: The person's name, address, and telephone number; the specific issue, topic or resolution the individual wishes to address.

(b) During public hearings when scheduled, speakers may present facts and opinions on the specific matter being heard by the Commission. A three-minute time limit is imposed per speaker. In the discretion of the Mayor or presiding officer, the time limit for individual speakers may be lengthened or shortened when appropriate.

(c) During the consideration of specific ordinances when scheduled, speakers may present facts and opinions on the specific ordinance being considered by the City Commission. Speakers addressing the City Commission during this time shall limit their comments to the specific issue being considered. A three-minute time limit, which may be lengthened or shortened by the Mayor or presiding officer when appropriate, is imposed per speaker, per matter considered.

(d) During the public comment period on the consent agenda and resolutions not on the consent agenda, each speaker may address the Commission once, regarding anything on the consent agenda and resolutions not on the consent agenda, for a total not to exceed three minutes regardless of how many consent agenda items or regular resolutions the speaker is addressing, which time period may be lengthened or shortened by the Mayor or presiding officer when appropriate.

(e) During the General Public Comment portion of the meeting, speakers may address the City Commission on any matter within the control and jurisdiction of the City of Battle Creek. A speaker shall be permitted to address the City Commission once, for up to three minutes, during this portion of the meeting.

(2) An individual wishing to address the City Commission shall wait to be recognized by the Mayor or presiding Commissioner before speaking. An individual who has not filled out a card requesting to address the City Commission shall raise his or her hand and wait to be recognized by the Mayor or presiding Commissioner before speaking and shall identify themselves by name and address and, if appropriate, group affiliation for the record.

(3) Speakers shall address all remarks to the Mayor, or the presiding Commissioner or official, and not to individual Commissioners or staff members. Speakers shall not address their remarks to members of the public in attendance at the meeting.

(4) A speaker will be ruled out-of-order by the Mayor or presiding Commissioner and the Commission will continue with its business, and the speaker may be required to leave the meeting after having been ruled out-of-order for a breach of the peace committed at the meeting as permitted by the OMA, when the speaker violates above sub-section 3 or the following:

- (a) Becomes repetitive or speaks longer than the allotted time;
- (b) Attempts to yield any unused portion of time to other speakers;
- (c) Engages in a personal attack upon a city employee, administrator or Commissioner only if the personal attack is totally unrelated to the manner in which the employee, administrator or Commissioner carries out their public duties or office;
- (d) Uses obscene or profane language;
- (e) Engages in slanderous or defamatory speech;
- (f) Uses derogatory racial, sexual or ethnic slurs or epithets relating to any individual or category of persons; or
- (g) Engages in conduct that interrupts or disrupts the meeting.



General Detail

NO.

Minutes for the December 20, 2022 City Commission Regular Meeting

**BATTLE CREEK, MICHIGAN - 1/3/2023**

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Battle Creek City Commission  
1/3/2023

**Action Summary**

**Staff Member:** Rebecca Forbes, Executive Assistant

**Department:** City Manager

**SUMMARY**

Minutes for the December 20, 2022 City Commission Regular Meeting

**BUDGETARY CONSIDERATIONS**

**HISTORY, BACKGROUND and DISCUSSION**

**DISCUSSION OF THE ISSUE**

**POSITIONS**

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**ATTACHMENTS:**

File Name	Description
☐ Minutes_2022_12_20_Meeting(840).pdf	Minutes for the December 20, 2022 City Commission Regular Meeting



## **Agenda: Battle Creek City Commission**

Meeting Date: December 20, 2022- 7:00 PM

Location: City Commission Chambers

Chair: Mayor Mark A. Behnke

Title: Battle Creek City Hall - City Commission Chambers, 3rd Floor

VIDEO

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### **ATTENDANCE**

#### **Commissioners**

Mayor Mark Behnke

Commissioner Roger Ballard

Commissioner Jenasia Morris

Commissioner Patrick O'Donnell

Commissioner Carla Reynolds

Commissioner Jake Smith

Commissioner Christopher Simmons

Vice Mayor Sherry Sofia

**ABSENT:** Commissioner Jim Lance

#### **City Staff**

Rebecca Fleury, City Manager

Jill Steele, City Attorney

Ted Dearing, Assistant City Manager

Victoria Houser, City Clerk

Carl Fedders, Director of Public Works

Ryan Stange, Network Architect

Marcie Gillette, Community Services  
Director

Susan Cronander, Planning & Zoning  
Coordinator

### **INVOCATION**

### **PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was led by Comm. O'Donnell.

### **ROLL CALL**

### **PROCLAMATIONS AWARDS**

Proclamation for Election Inspectors

Mayor Behnke presented a proclamation extending gratitude to the City of Battle Creek Election Inspectors for their passion and many hours of dedicated service to the voters of the city.

### **PRESENTATIONS**

## 2022 Election Presentation by Victoria Houser, City Clerk

Victoria Houser, City Clerk, presented the monthly staff report.

Responding to Comm. Simmons' concerns related to early voting, Clerk Houser noted early voting requires a precinct to be staffed with a minimum of 3 election inspectors, also noting the City will need to determine a location and staffing needs for early voting. Clerk Houser also expressed understanding of Comm. Simmons' concerns related to the recount of the two state proposals, stating that although the recount would not change the results of the proposals, the recount clearly demonstrated the accuracy of the election equipment and the process.

As to absentee voting compared to early voting, Clerk Houser noted voters who choose early voting will not have an option to change their vote after inserting their ballot into a tabulator, but absentee voting would still allow a voter to spoil their ballot and vote a new ballot prior to Election Day.

### **CHAIR NOTES ADDED OR DELETED RESOLUTIONS**

There were no added or deleted resolutions.

### **PETITIONS COMMUNICATIONS REPORTS**

There were no petitions, communications or reports.

### **ADOPTION OF ORDINANCES**

- 19            A Resolution seeking to adopt Ordinance, 16-2022, to amend Section 12 of Chapter 1022, Snow Removal, of City Ordinances, to expand the length of time to remove snow and ice from public sidewalks after a snowfall and authorize the City to clear snow or ice at the property owner's expense and to repeal Section 13.

Motion to Approve

Moved By: SHERRY SOFIA

Supported By: ROGER BALLARD

David Moore commented on the difficulty to keep the sidewalks clear after snowplows push snow and ice on them.

Jack Cosgrove stated some people in the community can assist residents with snow removal.

John Kenefick commented on the right of way areas that are used by Consumers Energy and other companies.

Reece Adkins stated City Link handyman services can assist residents with snow removal, noting there is a charge for the service.

Ayes: BALLARD, MORRIS, O'DONNELL, BEHNKE, REYNOLDS, SMITH, SIMMONS, SOFIA

Absent: LANCE

MOTION OTHER

- 20            A Resolution seeking to adopt Ordinance, 17-2022, to rezone 183 West Street (Parcel # 7960-00-007-0) from MFR High Density Multiple Family District to T-4 Downtown Commercial District.

Motion to Approve

Moved By: SHERRY SOFIA  
Supported By: ROGER BALLARD

Ayes: BALLARD, MORRIS, O'DONNELL, BEHNKE, REYNOLDS, SMITH, SIMMONS,  
SOFIA

Absent: LANCE  
MOTION PASSED

**PUBLIC COMMENTS REGARDING CONSENT AGENDA AND RESOLUTIONS NOT  
ON CONSENT AGENDA**

Reece Adkins, commenting on resolutions 22-28, thanked staff for including the proposed committee members names in the resolution titles.

John Kenefick commented on the resolutions providing HUD grant funds to VOCES, also stating the city should prioritize funding on necessary services.

(Limited to three minutes per individual)

**COMMISSION COMMENT REGARDING MEETING BUSINESS**

There were no commission comments.

**CONSENT AGENDA**

Motion to Approve  
Moved By: SHERRY SOFIA  
Supported By: ROGER BALLARD

Ayes: BALLARD, MORRIS, O'DONNELL, BEHNKE, REYNOLDS, SMITH, SIMMONS,  
SOFIA

Absent: LANCE  
MOTION PASSED

Minutes for the December 6, 2022 City Commission Organizational Meeting

Minutes for the December 6, 2022 City Commission Regular Meeting

Minutes for the December 6, 2022 City Commission Closed Session are on file  
in the Clerk's office.

City Manager Report for December 20, 2022

**CONSENT RESOLUTIONS**

- 21      A Resolution seeking authorization regarding a contract amendment to contract  
2019-006R with Clark Hill, PLC. for as-needed labor attorney services.

Motion to Approve  
Moved By: SHERRY SOFIA  
Supported By: ROGER BALLARD

Ayes: BALLARD, MORRIS, O'DONNELL, BEHNKE, REYNOLDS, SMITH, SIMMONS,  
SOFIA

Absent: LANCE  
MOTION PASSED

22            A Resolution reappointing Robert Corder to the Battle Creek International  
Relations Committee.

Motion to Approve  
Moved By: SHERRY SOFIA  
Supported By: ROGER BALLARD

Ayes: BALLARD, MORRIS, O'DONNELL, BEHNKE, REYNOLDS, SMITH, SIMMONS,  
SOFIA

Absent: LANCE  
MOTION PASSED

23            A Resolution appointing Terry Youman Jr. to the Battle Creek Transit Local  
Coordinating Committee.

Motion to Approve  
Moved By: SHERRY SOFIA  
Supported By: ROGER BALLARD

Ayes: BALLARD, MORRIS, O'DONNELL, BEHNKE, REYNOLDS, SMITH, SIMMONS,  
SOFIA

Absent: LANCE  
MOTION PASSED

24            A Resolution appointing Lyanna Wesley and Rebecca Fleury and reappointing  
Kathy Szenda-Wilson and Boonikka Herring to the Human Relations Board.

Motion to Approve  
Moved By: SHERRY SOFIA  
Supported By: ROGER BALLARD

Ayes: BALLARD, MORRIS, O'DONNELL, BEHNKE, REYNOLDS, SMITH, SIMMONS,  
SOFIA

Absent: LANCE

MOTION PASSED

- 25            A Resolution appointing Mark Steinrunner to the Lakeview Downtown Development Authority Board.

Motion to Approve

Moved By: SHERRY SOFIA

Supported By: ROGER BALLARD

Ayes: BALLARD, MORRIS, O'DONNELL, BEHNKE, REYNOLDS, SMITH, SIMMONS, SOFIA

Absent: LANCE

MOTION PASSED

- 26            A Resolution reappointing John Hughes, John Godfrey, and Cody Newman to the Planning Commission.

Motion to Approve

Moved By: SHERRY SOFIA

Supported By: ROGER BALLARD

Ayes: BALLARD, MORRIS, O'DONNELL, BEHNKE, REYNOLDS, SMITH, SIMMONS, SOFIA

Absent: LANCE

MOTION PASSED

- 27            A Resolution appointing Michael Andrews to the Water System Advisory Council

Motion to Approve

Moved By: SHERRY SOFIA

Supported By: ROGER BALLARD

Ayes: BALLARD, MORRIS, O'DONNELL, BEHNKE, REYNOLDS, SMITH, SIMMONS, SOFIA

Absent: LANCE

MOTION PASSED

- 28            A Resolution reappointing Bill Hanner to the Zoning Board of Appeals

Motion to Approve

Moved By: SHERRY SOFIA

Supported By: ROGER BALLARD

Ayes: BALLARD, MORRIS, O'DONNELL, BEHNKE, REYNOLDS, SMITH, SIMMONS,

SOFIA

Absent: LANCE  
MOTION PASSED

**RESOLUTIONS NOT INCLUDED IN THE CONSENT AGENDA**

- 29            A Resolution seeking authorization for the City Manager to sign contract #22-5404 with the Michigan Department of Transportation (MDOT).

Motion to Approve  
Moved By: SHERRY SOFIA  
Supported By: ROGER BALLARD

Comm. Smith asked what the aesthetic signing in the right-of-way will be.

Carl Fedders, Director of Public Works, stated it would include artistic sign on the overpass, including a welcome to Battle Creek, along with some wave designs.

Comm. Simmons stated he was really excited for this project, also commending the City and MDOT for their engagement with the community, informing every one of the impact of the project.

Ayes: BALLARD, MORRIS, O'DONNELL, BEHNKE, REYNOLDS, SMITH, SIMMONS, SOFIA

Absent: LANCE  
MOTION PASSED

- 30            A Resolution seeking authorization for the City Manager to execute the 2022 CDBG Voces Housing Liaison Services Grant Agreement for the amount of \$60,000.

Motion to Approve  
Moved By: SHERRY SOFIA  
Supported By: ROGER BALLARD

Comm. Morris thanked staff for making this process more equitable to all residents of the community.

Ayes: BALLARD, MORRIS, O'DONNELL, BEHNKE, REYNOLDS, SMITH, SIMMONS, SOFIA

Absent: LANCE  
MOTION PASSED

- 31            A Resolution seeking authorization for the City Manager to execute an amendment to the agreement with Voces, dated the 26th day of April, 2021 for Interpretation and Housing Advocacy Services.

Motion to Approve  
Moved By: SHERRY SOFIA  
Supported By: ROGER BALLARD

Ayes: BALLARD, MORRIS, O'DONNELL, BEHNKE, REYNOLDS, SMITH, SIMMONS, SOFIA

Absent: LANCE  
MOTION PASSED

- 32            A Resolution seeking authorization for the City Manager to approve Battle Creek Transit's updated Public Transportation Agency Safety Plan (PTASP) and authorize submittal of the plan to the Federal Transit Administration (FTA).

Motion to Approve  
Moved By: SHERRY SOFIA  
Supported By: ROGER BALLARD

Ayes: BALLARD, MORRIS, O'DONNELL, BEHNKE, REYNOLDS, SMITH, SIMMONS, SOFIA

Absent: LANCE  
MOTION PASSED

**GENERAL PUBLIC COMMENT**

Cindi Dian commented on the difficulties created by the Battle Creek Transit (BCT) route reductions.

Jack Cosgrove, 168 Webber Street, expressed understanding of the staffing shortage currently at Battle Creek Transit.

Henrietta McLaughlin also expressed disappointment with the late notice of route changes, but also commending Transit staff for their dedication.

David Moore stated there are a lot of requirements to qualify to be a driver for Battle Creek Transit.

Jerry Steiner reminded everyone that he spoke against the fare increases for BCT, encouraging everyone to find a solution.

(Limited to three minutes per individual)

**COMMISSION COMMENTS**

Rebecca Fleury reminded everyone of the impending snow emergency that is expected to begin Thursday afternoon, encouraging everyone to keep their phone devices charged and to drive safely.

Comm. O'Donnell expressed appreciation to staff for the holiday decorations, echoing the City Manager's cautions about the weather.

Comm. Sofia read a holiday poem, celebrating the past year, while looking forward to the new year.

**ADJOURNMENT**

Mayor Behnke adjourned the meeting at 8:02 pm.

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and shall identify themselves by name and address and, if appropriate, group affiliation for the record.

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- (c) Engages in a personal attack upon a city employee, administrator or Commissioner only if the personal attack is totally unrelated to the manner in which the employee, administrator or Commissioner carries out their public duties or office;
- (d) Uses obscene or profane language;
- (e) Engages in slanderous or defamatory speech;
- (f) Uses derogatory racial, sexual or ethnic slurs or epithets relating to any individual or category of persons; or
- (g) Engages in conduct that interrupts or disrupts the meeting.



General Detail

NO.

Ambulance Report for November 2022

**BATTLE CREEK, MICHIGAN - 1/3/2023**

**AMBULANCE SERVICES  
MONTHLY PERFORMANCE REPORT**

*Report for the month of November 2022*

**Life Care Ambulance Service**

Life Care Ambulance Service is under Contract with the City of Battle Creek effective June 2, 1998.

Under the Contract, they are requested to meet the following criteria at a minimum of 90% of all calls per month:

Life-threatening emergency runs throughout the City -- 8 Minutes, 30 Seconds

Life-threatening emergency runs per Ward -- 9 Minutes, 30 Seconds

Priority 3 Responses -- 15 Minutes

**Life-threatening Emergencies City-wide**

Number of runs for the month 519. Percentage of runs accomplished within guidelines 77.3%

**Life-threatening Emergencies per Ward**

	<b>Ward 1</b>	<b>Ward 2</b>	<b>Ward 3</b>	<b>Ward 4</b>	<b>Ward 5</b>
Number of Runs	102	186	89	65	77
Percentage Achieved	81.4%	89.8%	85.4%	86.2%	68.8%

**Priority 3 Responses**

Number of runs for the month 374. Percentage of runs accomplished within guidelines 75.7%

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Battle Creek City Commission

1/3/2023

**Action Summary**

**Staff Member:** Shawna Beach, Records/Election Clerk

**Department:** City Clerk

**SUMMARY**

Ambulance Report for November 2022

**BUDGETARY CONSIDERATIONS**

**HISTORY, BACKGROUND and DISCUSSION**

**DISCUSSION OF THE ISSUE**

**POSITIONS**

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ATTACHMENTS:

File Name

Description

No Attachments Available



General Detail

NO.

City Manager Report for January 3, 2023

**BATTLE CREEK, MICHIGAN - 1/3/2023**

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Battle Creek City Commission  
1/3/2023

**Action Summary**

**Staff Member:** Rebecca L. Fleury, City Manager

**Department:** City Manager

**SUMMARY**

City Manager Report for January 3, 2023

**BUDGETARY CONSIDERATIONS**

**HISTORY, BACKGROUND and DISCUSSION**

**DISCUSSION OF THE ISSUE**

**POSITIONS**

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**ATTACHMENTS:**

File Name	Description
<input type="checkbox"/> City_Manager_Report_01032023.pdf	City Manager Report for January 3, 2023

**Date:** 01/03/2023

**To:** Mayor and City Commission

**From:** Rebecca L. Fleury, City Manager

**RE:** City Manager's January 03, 2023, Agenda Report

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**38**                    **A Resolution seeking approval for the City Manager to enter into six agreements with Binger Holdings LLC and the Battle Creek Tax Increment Finance Authority providing for the grant of permanent and temporary easements to the City for the purpose of a roundabout at the intersection of Skyline Drive, Hill Brady Road, and Logistics Drive.**

Our DPW team has been working with Binger Holdings LLC and the Battle Creek Tax Increment Finance Authority to secure a grant of permanent and temporary easements to the City for the purpose of a roundabout at the intersection of Skyline Drive, Hill Brady Road, and Logistics Drive.

This Resolution seeks approval for the City Manager to enter into six agreements with Binger Holdings LLC and the Battle Creek Tax Increment Finance Authority providing for the grant of permanent and temporary easements to the City for the purpose of a roundabout at the intersection of Skyline Drive, Hill Brady Road, and Logistics Drive. **Approval is Recommended.**

**39**                    **A Resolution seeking to approve S17-22, a Special Use Permit to allow for a new child care center at 520 W. Michigan Avenue in a T-3 Neighborhood Commercial District pursuant to Sections 1240.13(C) and 1281.05 of the zoning code.**

The subject site for the proposed use is a total of 0.657 acres or 28,618 square feet. The building on the subject site is currently used as the business office for Voces, a local nonprofit serving the LatinX community of Battle Creek.

Voces intends to convert the building (owned by the Battle Creek Downtown Development Authority) from its current office use to a child care center with a capacity to provide service to up to 32 children.

This Resolution seeks to approve S17-22, a Special Use Permit to allow for a new child care center at 520 W. Michigan Avenue in a T-3 Neighborhood Commercial District pursuant to Sections 1240.13(C) and 1281.05 of the zoning code. **Approval is Recommended.**

**40**                    **A Resolution seeking to approve S18-22 for a Special Use Permit to allow for an Adult Use Marihuana Retailer Establishment at 327 SW Capital Avenue (parcel #1530-00-059-0). The property is zoned T-3 Neighborhood Commercial Zoning District where marihuana retail centers can be allowed as a special use pursuant to Chapter 1240, Section 1240.13 and Chapter 1251 Sections 1251.23-24, 26.**

The petitioner, 327 Capital Ave LLC requested a Special Use Permit for an Adult Use Marihuana Establishment in the T-3 Neighborhood Commercial District for the property located at 327 Capital Avenue SW.

The subject site is a total of 15,681 square feet (0.360 of an acre) with a 1,946 square foot main building constructed in 1957 and a 2,520 sq. ft. pole building at the rear of the property intended for storage.

The applicant currently holds a Certificate of Occupancy as a Medical Marihuana Provisioning Center. The applicant is proposing to use the existing vacant building for an Adult Use Marihuana Retail Establishment.

This Resolution seeks to approve S18-22 for a Special Use Permit to allow for an Adult Use Marihuana Retailer Establishment at 327 SW Capital Avenue (parcel #1530-00-059-0). The property is zoned T-3 Neighborhood Commercial Zoning District where marihuana retail centers can be allowed as a special use pursuant to Chapter 1240, Section 1240.13 and Chapter 1251 Sections 1251.23-24, 26. **Approval is Recommended.**

**41**

**A Resolution seeking to approve S19-2022, reapplication for a Special Use Permit to allow for an Adult Use Marihuana Retailer Establishment located at 477 W. Michigan Avenue. The property is zoned T-3 Neighborhood Commercial District pursuant to Chapter 1240, Section 1240.13, and Chapter 1251, Sections 1251.23-24, 26.**

The petitioner, 477 Michigan Ave, Inc reappplied for a Special Use Permit for an Adult Use Marihuana Establishment in the T-3 Neighborhood Commercial District for the property located at 477 W. Michigan Avenue.

This item was initially heard by the Planning Commission at the August 24, 2022 regular meeting. At that meeting, the Planning Commission provided a recommendation to the City Commission for disapproval. The City Commission concurred with the Planning Commission's recommendation and disapproved their item at the September 20, 2022 regular meeting.

The applicant has provided what they state to be new evidence or information to the Planning Commission for consideration as allowable under Section 1281.05(e)(2). "As used in this section, "newly discovered evidence" means a finding that the evidence itself, not merely its materiality, is newly discovered; that the evidence is not cumulative; that the evidence is such as to render a different result probable on rehearing; and that the evidence could not, with reasonable diligence, have been discovered and produced at the time of the original hearing".

This Resolution seeks to approve S19-22, reapplication for a Special Use Permit to allow for an Adult Use Marihuana Retailer Establishment located at 477 W. Michigan Avenue. The property is zoned T-3 Neighborhood Commercial District pursuant to Chapter 1240, Section 1240.13, and Chapter 1251, Sections 1251.23-24, 26. **Approval is Recommended.**

**42**

**A Resolution seeking authorization for the City Manager to execute a Sponsor Contract, and all other related documents as approved by the City Attorney, for Municipal Airport PFAS Grant Funding.**

PFAS are a group of man-made chemicals that have been used in items like carpet, food wrappers and, relevant to this grant award, firefighting foam. These chemicals do not break down in the environment and studies show they may be harmful.

The City's airport was an FAR Part 139 certified airport (able to serve unscheduled air carrier operations with 31 seats or more), until November 2022, and these certified airports were required by the Federal Aviation Administration to use firefighting foams that contain PFAS, because they best handle fires involving jet fuel.

This Resolution seeks authorization for the City Manager to execute a Sponsor Contract, and all other related documents as approved by the City Attorney, for Municipal Airport PFAS Grant Funding. **Approval is Recommended.**

**43**

**A Resolution seeking acceptance of the proposal of best value for generators at three fire stations from Shouldice Industrial Manufacturers and Contractors, Inc., in a not-to-exceed amount of \$118,042.00.**

The City issued an RFP on November 16, 2022, for generators to fully power Station 1 (195 E Michigan), Station 2 (145 N. Washington), and Station 5 (1170 Michigan Ave). These generators would be automatic start, natural gas-powered generators.

The scope of work required contractors to assess each building and make a recommendation for a capacity of generator for each building, with our guess of minimum kilowatts.

This Resolution seeks acceptance of the proposal of best value for generators at three fire stations, from Shouldice Industrial Manufacturers and Contractors, Inc., in a not-to-exceed amount of \$118,042.00. **Approval is Recommended.**

**44**

**A Resolution seeking acceptance of the proposal of best value for Flash Flood Water Park Pool Resurfacing from Advanced Pool Services, Inc in a not-to-exceed amount of \$264,500.00.**

A solicitation was issued October 14, 2022, for the above-mentioned project. This project consists of repairing and resurfacing the entire outdoor pool of Flash Flood Water Park.

This Resolution seeks acceptance of the proposal of best value for Flash Flood Water Park Pool Resurfacing from Advanced Pool Services, Inc in a not-to-exceed amount of \$264,500.00. **Approval is Recommended.**

**45**

**A Resolution seeking authorization for the City Manager to enter into a new Agreement with Battle Creek Community Foundation (BCCF) for continued police department grant administration services.**

For the calendar year 2022, the City paid BCCF to carry out Grant Administration Services. The City found this arrangement to be more cost effective as compared to assigning BCPD staff this responsibility, particularly given the expertise and experience BCCF has with grant seeking, application and administration.

This Resolution seeks authorization for the City Manager to enter into a new Agreement with Battle Creek Community Foundation (BCCF) for continued police department grant administration services. **Approval is Recommended.**

**46**

**A Resolution seeking authorization for the City Manager to enter into Inter-Agency Agreements related to State of Michigan Stormwater Permits with the following "Nested Jurisdictions": Kellogg Community College, Hart-Dole-Inouye Federal Center, Battle Creek Public Schools and Lakeview School District.**

Nested jurisdictions are public institutions or facilities that lie within the City's permitted MS4 area and have separate storm drainage that lies within an urbanized area and the storm drainage meets the concept of "system" as described by the EPA regulations.

The City and nested jurisdictions share responsibilities outlined in each agreement to ensure that the permit requirements are being met and appropriate measures are taken to protect our water resources. These agreements minimize duplication of efforts, increase efficiencies and allow for collaboration in each entity's stormwater program.

This Resolution seeks authorization for the City Manager to enter into Inter-Agency Agreements related to State of Michigan Stormwater Permits with the following "Nested Jurisdictions": Kellogg Community College, Hart-Dole-Inouye Federal Center, Battle Creek Public Schools and Lakeview School District. **Approval is Recommended.**



Resolution

NO. 33

A Resolution seeking authorization for the City Manager to execute a METRO Act Bilateral Right-of-Way Telecommunications Permit with Crown Castle Fiber, LLC.

**BATTLE CREEK, MICHIGAN - 1/3/2023**

**Resolved by the Commission of the City of Battle Creek:**

That Crown Castle Fiber, LLC seeks to enter into a Right-of-Way Telecommunications Permit with the City of Battle Creek, under the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act, Public Act 48 of 2002, as amended, being MCL 484.3101 et seq.

The City Manager is authorized to execute the attached METRO Act Bilateral Right-of-Way Telecommunications Permit with Crown Castle Fiber, LLC, or one with substantially similar terms approved by the City Attorney.

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Battle Creek City Commission  
1/3/2023

**Action Summary**

**Staff Member:** Marcel Stoetzel, Deputy City Attorney

**Department:** City Attorney

**SUMMARY**

A Resolution seeking authorization for the City Manager to execute a METRO Act Bilateral Right-of-Way Telecommunications Permit with Crown Castle Fiber, LLC.

**BUDGETARY CONSIDERATIONS**

None.

**HISTORY, BACKGROUND and DISCUSSION**

On March 14, 2002 three bills were signed into law to stimulate the availability of affordable high-speed Internet connections. Act 48 of the Public Acts of 2002 created a body called the Metropolitan Extension Telecommunication Rights-of-Way Oversight (METRO) Authority, whose purpose is to assist telecommunication providers cut through red tape and obtain permits without having to pay excessive fees

or endure unnecessary delays.

The METRO Authority is empowered to coordinate public right-of-way matters with municipalities, assess the fees required under the Act and have the exclusive power to assess fees on telecommunication providers owning telecommunication facilities in public rights-of-way within a municipality in a metropolitan area to recover the costs of using the rights-of-way by the provider. Under Act 50 of the Public Acts of 2002, tax credits are afforded to telecommunication providers that invest in new broadband infrastructure and, upon certification of the MPSC, for right-of-way fees paid. The providers submit route maps showing the location of telecommunication facilities to both the commission and the affected municipality.

Crown Castle Fiber, LLC seeks to enter into a Right-of-way Telecommunications Permit with the City of Battle Creek, under the METRO Act. Attached is the permit, Crown Castle Fiber, LLC's route map (Exhibit A) and highway use bond (Exhibit B). Crown Castle Fiber, LLC will continue to comply with any updated insurance and performance bond requirements which the City reasonably deems necessary.

Crown Castle Fiber, LLC is a real estate investment trust company and provider of shared communications infrastructure in the United States. Its network includes over 40,000 cell towers and approximately 85,000 route miles of fiber supporting small cells and fiber solutions.

## **DISCUSSION OF THE ISSUE**

### **POSITIONS**

City Engineer Jarret Geering recommends approval.

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#### **ATTACHMENTS:**

<b>File Name</b>	<b>Description</b>
▣ Bilateral_permit_Crown_Castle_Fiber_LLC.pdf	Bilateral_permit Crown Castle Fiber LLC
▣ Exhibit_A_Map_Crown_Castle_Fiber_LLC.pdf	Exhibit A Map Crown Castle Fiber LLC
▣ Exhibit_B_Bond_Crown_Castle_Fiber_LLC.pdf	Exhibit B Bond Crown Castle Fiber LLC

**METRO Act Permit  
Bilateral Form  
Revised 12/06/02**

**RIGHT-OF-WAY  
TELECOMMUNICATIONS PERMIT**

**TERMS AND CONDITIONS**

**1**     **Definitions**

- 1.1     Company shall mean Crown Castle Fiber, LLC organized under the laws of the State of Delaware, whose address is 2000 Corporate Drive, Canonsburg, PA 15317.
- 1.2     Effective Date shall mean the date set forth in Part 13.
- 1.3     Manager shall mean Municipality's City Manager or his or her designee.
- 1.4     METRO Act shall mean the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act, Act No. 48 of the Public Acts of 2002, as amended.
- 1.5     Municipality shall mean City of Battle Creek, a Michigan municipal corporation.
- 1.6     Permit shall mean this document.
- 1.7     Public Right-of-Way shall mean the area on, below, or above a public roadway, highway, street, alley, easement, or waterway, to the extent Municipality has the ability to grant the rights set forth herein. Public right-of-way does not include a federal, state, or private right-of-way.
- 1.8     Telecommunication Facilities or Facilities shall mean the Company's equipment or personal property, such as copper and fiber cables, lines, wires, switches, conduits, pipes, and sheaths, which are used to or can generate, receive, transmit, carry, amplify, or provide telecommunication services or signals. Telecommunication Facilities or Facilities do not include antennas, supporting structures for antennas, equipment shelters or houses, and any ancillary equipment and miscellaneous hardware used to provide federally licensed commercial mobile service as defined in Section 332(d) of Part I of Title III of the Communications Act of 1934, Chapter 652, 48 Stat. 1064, 47 U.S.C. 332 and further defined as commercial mobile radio service in 47 CFR 20.3, and service provided by any wireless, 2-way communications device.

1.9 Term shall have the meaning set forth in Part 7.

## 2 Grant

2.1 Municipality hereby grants a permit under the METRO Act to Company for access to and ongoing use of the Public Right-of-Way to construct, install and maintain Telecommunication Facilities in those portions of the Public Right-of-Way identified on Exhibit A on the terms set forth herein.

2.1.1 Exhibit A may be modified by written request by Company and approval by Manager.

2.1.2 Manager shall not unreasonably condition or deny any request for a modification of Exhibit A. Any decision of Manager on a request for a modification may be appealed by Company to Municipality's legislative body.

2.2 Overlashing. Company shall not allow the wires or any other facilities of a third party to be overlashed to the Telecommunication Facilities without Municipality's prior written consent. Municipality's right to withhold written consent is subject to the authority of the Michigan Public Service Commission under Section 361 of the Michigan Telecommunications Act, MCL § 484.2361.

2.3 Nonexclusive. The rights granted by this Permit are nonexclusive. Municipality reserves the right to approve, at any time, additional permits for access to and ongoing usage of the Public Right-of-Way by telecommunications providers and to enter into agreements for use of the Public Right-of-Way with and grant franchises for use of the Public Right-of-Way to telecommunications providers, cable companies, utilities and other providers.

## 3 Contacts, Maps and Plans

3.1 Company Contacts. The names, addresses and the like for engineering and construction related information for Company and its Telecommunication Facilities are as follows:

3.1.1 The address, e-mail address, phone number and contact person (title or name) at Company's local office (in or near Municipality) is Paul Gilbert, Manager Network Real Estate, 2000 Corporate Drive, Canonsburg, PA 15317, Paul.Gilbert@crowncastle.com, (724) 416-9621.

3.1.2 If Company's engineering drawings, as-built plans and related records for the Telecommunication Facilities will not be located at the preceding local

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office, the location address, phone number and contact person (title or department) for them is 755 Big Beaver Road, Troy, MI 48084, (248) 430-9025, Steven Herald, Mgr. Fiber Engineering Ops., Steven.Herald@crowncastle.com.

- 3.1.3 The name, title, address, e-mail address and telephone numbers of Company's engineering contact person(s) with responsibility for the design, plans and construction of the Telecommunication Facilities is Steven Herald, Mgr. Fiber Engineering Ops., 755 Big Beaver Road, Troy, MI 48084, Steven.Herald@crowncastle.com, (248) 430-9025.
- 3.1.4 The address, phone number and contact person (title or department) at Company's home office/regional office with responsibility for engineering and construction related aspects of the Telecommunication Facilities is 755 Big Beaver Road, Troy, MI 48084, (248) 430-9025, Steven Herald, Mgr. Fiber Engineering Ops., Steven.Herald@crowncastle.com.
- 3.1.5 Company shall at all times provide Manager with the phone number at which a live representative of Company (not voice mail) can be reached 24 hours a day, seven (7) days a week, in the event of a public emergency.

Network Operations Center  
(800) 788-7011

- 3.1.6 The preceding information is accurate as of the Effective Date. Company shall notify Municipality in writing as set forth in Part 12 of any changes in the preceding information.
- 3.2 Route Maps. Within ninety (90) days after the substantial completion of construction of new Facilities in a Municipality, a provider shall submit route maps showing the location of the Telecommunication Facilities to both the Michigan Public Service Commission and to the Municipality, as required under Section 6(7) of the METRO Act, MCL § 484.3106(7).
- 3.3 As-Built Records. Company, without expense to Municipality, shall, upon forty-eight (48) hours notice, give Municipality access to all "as-built" maps, records, plans and specifications showing the Telecommunication Facilities or portions thereof in the Public Right-of-Way. Upon request by Municipality, Company shall inform Municipality as soon as reasonably possible of any changes from previously supplied maps, records, or plans and shall mark up maps provided by Municipality so as to show the location of the Telecommunication Facilities.

#### 4 Use of Public Right-of-Way

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- 4.1 No Burden on Public Right-of-Way. Company, its contractors, subcontractors, and the Telecommunication Facilities shall not unduly burden or interfere with the present or future use of any of the Public Right-of-Way. Company's aerial cables and wires shall be suspended so as to not endanger or injure persons or property in or about the Public Right-of-Way. If Municipality reasonably determines that any portion of the Telecommunication Facilities constitutes an undue burden or interference, due to changed circumstances, Company, at its sole expense, shall modify the Telecommunication Facilities or take such other actions as Municipality may determine is in the public interest to remove or alleviate the burden, and Company shall do so within a reasonable time period. Municipality shall attempt to require all occupants of a pole or conduit whose facilities are a burden to remove or alleviate the burden concurrently.
- 4.2 No Priority. This Permit does not establish any priority of use of the Public Right-of-Way by Company over any present or future permittees or parties having agreements with Municipality or franchises for such use. In the event of any dispute as to the priority of use of the Public Right-of-Way, the first priority shall be to the public generally, the second priority to Municipality, the third priority to the State of Michigan and its political subdivisions in the performance of their various functions, and thereafter as between other permit, agreement or franchise holders, as determined by Municipality in the exercise of its powers, including the police power and other powers reserved to and conferred on it by the State of Michigan.
- 4.3 Restoration of Property. Company, its contractors and subcontractors shall immediately (subject to seasonal work restrictions) restore, at Company's sole expense, in a manner approved by Municipality, any portion of the Public Right-of-Way that is in any way disturbed, damaged, or injured by the construction, installation, operation, maintenance or removal of the Telecommunication Facilities to a reasonably equivalent (or, at Company's option, better) condition as that which existed prior to the disturbance. In the event that Company, its contractors or subcontractors fail to make such repair within a reasonable time, Municipality may make the repair and Company shall pay the costs Municipality incurred for such repair.
- 4.4 Marking. Company shall mark the Telecommunication Facilities as follows: Aerial portions of the Telecommunication Facilities shall be marked with a marker on Company's lines on alternate poles which shall state Company's name and provide a toll-free number to call for assistance. Direct buried underground portions of the Telecommunication Facilities shall have (1) a conducting wire placed in the ground at least several inches above Company's cable (if such cable is nonconductive); (2) at least several inches above that, a continuous colored tape with a statement to the effect that there is buried cable beneath; and (3) stakes or other appropriate above ground markers with Company's name and a toll-free

number indicating that there is buried telephone cable below. Bored underground portions of the Telecommunication Facilities shall have a conducting wire at the same depth as the cable and shall not be required to provide the continuous colored tape. Portions of the Telecommunication Facilities located in conduit, including conduit of others used by Company, shall be marked at its entrance into and exit from each manhole and handhole with Company's name and a toll-free telephone number.

- 4.5 Tree Trimming. Company may trim trees upon and overhanging the Public Right-of-Way so as to prevent the branches of such trees from coming into contact with the Telecommunication Facilities, consistent with any standards adopted by Municipality. Company shall dispose of all trimmed materials. Company shall minimize the trimming of trees to that essential to maintain the integrity of the Telecommunication Facilities. Except in emergencies, all trimming of trees in the Public Right-of-Way shall have the advance approval of Manager.

- 4.6 Installation and Maintenance. The construction and installation of the Telecommunication Facilities shall be performed pursuant to plans approved by Municipality. The open cut of any Public Right-of-Way shall be coordinated with the Manager or his designee. Company shall install and maintain the Telecommunication Facilities in a reasonably safe condition. If the existing poles in the Public Right-of-Way are overburdened or unavailable for Company's use, or the facilities of all users of the poles are required to go underground then Company shall, at its expense, place such portion of its Telecommunication Facilities underground, unless Municipality approves an alternate location. Company may perform maintenance on the Telecommunication Facilities without prior approval of Municipality, provided that Company shall obtain any and all permits required by Municipality in the event that any maintenance will disturb or block vehicular traffic or are otherwise required by Municipality.

- 4.7 Pavement Cut Coordination. Company shall coordinate its construction and all other work in the Public Right-of-Way with Municipality's program for street construction and rebuilding (collectively "Street Construction") and its program for street repaving and resurfacing (except seal coating and patching) (collectively, "Street Resurfacing").

- 4.7.1 The goals of such coordination shall be to encourage Company to conduct all work in the Public Right-of-Way in conjunction with or immediately prior to any Street Construction or Street Resurfacing planned by Municipality.

- 4.8 Compliance with Laws. Company shall comply with all laws, statutes, ordinances, rules and regulations regarding the construction, installation, and

maintenance of its Telecommunication Facilities, whether federal, state or local, now in force or which hereafter may be promulgated. Before any installation is commenced, Company shall secure all necessary permits, licenses and approvals from Municipality or other governmental entity as may be required by law, including, without limitation, all utility line permits and highway permits. Municipality shall not unreasonably delay or deny issuance of any such permits, licenses or approvals. Company shall comply in all respects with applicable codes and industry standards, including but not limited to the National Electrical Safety Code (latest edition adopted by Michigan Public Service Commission) and the National Electric Code (latest edition). Company shall comply with all zoning and land use ordinances and historic preservation ordinances as may exist or may hereafter be amended. This section does not constitute a waiver of Company's right to challenge laws, statutes, ordinances, rules or regulations now in force or established in the future.

- 4.9 Street Vacation. If Municipality vacates or consents to the vacation of Public Right-of-Way within its jurisdiction, and such vacation necessitates the removal and relocation of Company's Facilities in the vacated Public Right-of-Way, Company shall, as a condition of this Permit, consent to the vacation and remove its Facilities at its sole cost and expense when ordered to do so by Municipality or a court of competent jurisdiction. Company shall relocate its Facilities to such alternate route as Municipality and Company mutually agree, applying reasonable engineering standards.
- 4.10 Relocation. If Municipality requests Company to relocate, protect, support, disconnect, or remove its Facilities because of street or utility work, or other public projects, Company shall relocate, protect, support, disconnect, or remove its Facilities, at its sole cost and expense, including where necessary to such alternate route as Municipality and Company mutually agree, applying reasonable engineering standards. The work shall be completed within a reasonable time period.
- 4.11 Public Emergency. Municipality shall have the right to sever, disrupt, dig-up or otherwise destroy Facilities of Company if such action is necessary because of a public emergency. If reasonable to do so under the circumstances, Municipality shall attempt to provide notice to Company. Public emergency shall be any condition which poses an immediate threat to life, health, or property caused by any natural or man-made disaster, including, but not limited to, storms, floods, fire, accidents, explosions, water main breaks, hazardous material spills, etc. Company shall be responsible for repair at its sole cost and expense of any of its Facilities damaged pursuant to any such action taken by Municipality.
- 4.12 Miss Dig. If eligible to join, Company shall subscribe to and be a member of "MISS DIG," the association of utilities formed pursuant to Act 174 of the Public
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Acts of 2013, as amended, MCL § 460.721 et seq., and shall conduct its business in conformance with the statutory provisions and regulations promulgated thereunder.

- 4.13 Underground Relocation. If Company has its Facilities on poles of Consumers Energy, or another electric or telecommunications provider and Consumers Energy, or such other electric or telecommunications provider relocates its system underground, then Company shall relocate its Facilities underground in the same location at Company's sole cost and expense.
- 4.14 Identification. All personnel of Company and its contractors or subcontractors who have as part of their normal duties contact with the general public shall wear on their clothing a clearly visible identification card bearing Company's name, their name and photograph. Company shall account for all identification cards at all times. Every service vehicle of Company and its contractors or subcontractors shall be clearly identified as such to the public, such as by a magnetic sign with Company's name and telephone number.

## 5 Indemnification

- 5.1 Indemnity. Company shall defend, indemnify, protect, and hold harmless Municipality, its officers, agents, employees, elected and appointed officials, departments, boards, and commissions from any and all claims, losses, liabilities, causes of action, demands, judgments, decrees, proceedings, and expenses of any nature (collectively "claim" for this Part 5) (including, without limitation, attorneys' fees) arising out of or resulting from the acts or omissions of Company, its officers, agents, employees, contractors, successors, or assigns, but only to the extent such acts or omissions are related to the Company's use of or installation of facilities in the Public Right-of-Way and only to the extent of the fault or responsibility of Company, its officers, agents, employees, contractors, successors and assigns.
- 5.2 Notice, Cooperation. Municipality shall notify Company promptly in writing of any such claim and the method and means proposed by Municipality for defending or satisfying such claim. Municipality shall cooperate with Company in every reasonable way to facilitate the defense of any such claim. Municipality shall consult with Company respecting the defense and satisfaction of such claim, including the selection and direction of legal counsel.
- 5.3 Settlement. Municipality shall not settle any claim subject to indemnification under this Part 5 without the advance written consent of Company, which consent shall not be unreasonably withheld. Company shall have the right to defend or settle, at its own expense, any claim against Municipality for which Company is responsible hereunder.

6      Insurance

6.1      Coverage Required. Prior to beginning any construction in or installation of the Telecommunication Facilities in the Public Right-of-Way, Company shall obtain insurance as set forth below and file certificates evidencing same with Municipality. Such insurance shall be maintained in full force and effect until the end of the Term. In the alternative, Company may satisfy this requirement through a program of self-insurance, acceptable to Municipality, by providing reasonable evidence of its financial resources to Municipality. Municipality's acceptance of such self-insurance shall not be unreasonably withheld.

6.1.1   Commercial general liability insurance, including Completed Operations Liability, Independent Contractors Liability, Contractual Liability coverage, railroad protective coverage and coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage, in an amount not less than Five Million Dollars (\$5,000,000).

6.1.2   Liability insurance for sudden and accidental environmental contamination with minimum limits of Five Hundred Thousand Dollars (\$500,000) and providing coverage for claims discovered within three (3) years after the term of the policy.

6.1.3   Automobile liability insurance in an amount not less than One Million Dollars (\$1,000,000).

6.1.4   Workers' compensation and employer's liability insurance with statutory limits, and any applicable Federal insurance of a similar nature.

6.1.5   The coverage amounts set forth above may be met by a combination of underlying (primary) and umbrella policies so long as in combination the limits equal or exceed those stated. If more than one insurance policy is purchased to provide the coverage amounts set forth above, then all policies providing coverage limits excess to the primary policy shall provide drop down coverage to the first dollar of coverage and other contractual obligations of the primary policy, should the primary policy carrier not be able to perform any of its contractual obligations or not be collectible for any of its coverages for any reason during the Term, or (when longer) for as long as coverage could have been available pursuant to the terms and conditions of the primary policy.

6.2      Additional Insured. Municipality shall be named as an additional insured on all policies (other than worker's compensation and employer's liability). All  
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insurance policies shall provide that they shall not be canceled, modified or not renewed unless the insurance carrier provides thirty (30) days prior written notice to Municipality. Company shall annually provide Municipality with a certificate of insurance evidencing such coverage. All insurance policies (other than environmental contamination, workers' compensation and employer's liability insurance) shall be written on an occurrence basis and not on a claims made basis.

- 6.3 Qualified Insurers. All insurance shall be issued by insurance carriers licensed to do business by the State of Michigan or by surplus line carriers on the Michigan Insurance Commission approved list of companies qualified to do business in Michigan. All insurance and surplus line carriers shall be rated A+ or better by A.M. Best Company.
- 6.4 Deductibles. If the insurance policies required by this Part 6 are written with retainages or deductibles in excess of \$50,000, they shall be approved by Manager in advance in writing. Company shall indemnify and save harmless Municipality from and against the payment of any deductible and from the payment of any premium on any insurance policy required to be furnished hereunder.
- 6.5 Contractors. Company's contractors and subcontractors working in the Public Right-of-Way shall carry in full force and effect commercial general liability, environmental contamination liability, automobile liability and workers' compensation and employer liability insurance which complies with all terms of this Part 6. In the alternative, Company, at its expense, may provide such coverages for any or all its contractors or subcontractors (such as by adding them to Company's policies).
- 6.6 Insurance Primary. Company's insurance coverage shall be primary insurance with respect to Municipality, its officers, agents, employees, elected and appointed officials, departments, boards, and commissions (collectively "them"). Any insurance or self-insurance maintained by any of them shall be in excess of Company's insurance and shall not contribute to it (where "insurance or self-insurance maintained by any of them" includes any contract or agreement providing any type of indemnification or defense obligation provided to, or for the benefit of them, from any source, and includes any self-insurance program or policy, or self-insured retention or deductible by, for or on behalf of them).

## 7 Term

- 7.1 Term. The term ("Term") of this Permit shall be until the earlier of:

- 7.1.1 Fifteen years (15) from the Effective Date; provided, however, that following such initial term there shall be three subsequent renewal terms of five (5) years. Each renewal term shall be automatic unless

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Municipality notifies Company in writing, at least twelve (12) months prior to the end of any term then in effect, that due to changed circumstances a need exists to negotiate the subsequent renewal with Company. Municipality shall not unreasonably deny a renewal term; or

- 7.1.2 When the Telecommunication Facilities have not been used to provide telecommunications services for a period of one hundred and eighty (180) days by the Company or a successor of an assign of the Company; or
- 7.1.3 When Company, at its election and with or without cause, delivers written notice of termination to Municipality at least one-hundred and eighty (180) days prior to the date of such termination; or
- 7.1.4 Upon either Company or Municipality giving written notice to the other of the occurrence or existence of a default by the other party under Sections 4.8, 6, 8 or 9 of this Permit and such defaulting party failing to cure, or commence good faith efforts to cure, such default within sixty (60) days (or such shorter period of time provided elsewhere in this Permit) after delivery of such notice; or
- 7.1.5 Unless Manager grants a written extension, one year from the Effective Date if prior thereto Company has not started the construction and installation of the Telecommunication Facilities within the Public Right-of-Way and two years from the Effective Date if by such time construction and installation of the Telecommunication Facilities is not complete.

## 8 Performance Bond or Letter of Credit

- 8.1 Municipal Requirement. Municipality may require Company to post a Ten Thousand Dollar (\$10,000) bond (or letter of credit) as provided in Section 15(3) of the METRO Act, as amended, MCL § 484.3115(3).

## 9 Fees

- 9.1 Establishment; Reservation. The METRO Act shall control the establishment of right-of-way fees. The parties reserve their respective rights regarding the nature and amount of any fees which may be charged by Municipality in connection with the Public Right-of-Way.

## 10 Removal

- 10.1 Removal; Underground. As soon as practicable after the Term, Company or its successors and assigns shall remove any underground cable or other portions of the Telecommunication Facilities from the Public Right-of-Way which has been

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installed in such a manner that it can be removed without trenching or other opening of the Public Right-of-Way. Company shall not remove any underground cable or other portions of the Telecommunication Facilities which requires trenching or other opening of the Public Right-of-Way except with the prior written approval of Manager. All removals shall be at Company's sole cost and expense.

10.1.1 For purposes of this Part 10, "cable" means any wire, coaxial cable, fiber optic cable, feed wire or pull wire.

10.2 Removal; Above Ground. As soon as practicable after the Term, Company, or its successor or assigns at its sole cost and expense, shall, unless waived in writing by Manager, remove from the Public Right-of-Way all above ground elements of its Telecommunication Facilities, including but not limited to poles, pedestal mounted terminal boxes, and lines attached to or suspended from poles.

10.3 Schedule. The schedule and timing of removal shall be subject to approval by Manager. Unless extended by Manager, removal shall be completed not later than twelve (12) months following the Term. Portions of the Telecommunication Facilities in the Public Right-of-Way which are not removed within such time period shall be deemed abandoned and, at the option of Municipality exercised by written notice to Company as set forth in Part 12, title to the portions described in such notice shall vest in Municipality.

11 Assignment. Company may assign or transfer its rights under this Permit, or the persons or entities controlling Company may change, in whole or in part, voluntarily, involuntarily, or by operation of law, including by merger or consolidation, change in the ownership or control of Company's business, or by other means, subject to the following:

11.1 No such transfer or assignment or change in the control of Company shall be effective under this Permit, without Municipality's prior approval (not to be unreasonably withheld), during the time period from the Effective Date until the completion of the construction of the Telecommunication Facilities in those portions of the Public Right-of-Way identified on Exhibit A.

11.2 After the completion of such construction, Company must provide notice to Municipality of such transfer, assignment or change in control no later than thirty (30) days after such occurrence; provided, however,

11.2.1 Any transferee or assignee of this Permit shall be qualified to perform under its terms and conditions and comply with applicable law; shall be subject to the obligations of this Permit, including responsibility for any defaults which occurred prior to the transfer or assignment; shall supply Municipality with the information required under Section 3.1; and shall

comply with any updated insurance and performance bond requirements under Sections 6 and 8 respectively, which Municipality reasonably deems necessary, and

11.2.2 In the event of a change in control, it shall not be to an entity lacking the qualifications to assure Company's ability to perform under the terms and conditions of this Permit and comply with applicable law; and Company shall comply with any updated insurance and performance bond requirements under Sections 6 and 8 respectively, which Municipality reasonably deems necessary.

11.3 Company may grant a security interest in this Permit, its rights thereunder or the Telecommunication Facilities at any time without notifying Municipality.

## 12 Notices

12.1 Notices. All notices under this Permit shall be given as follows:

12.1.1 If to Municipality, to:

City of Battle Creek  
ATTN: City Engineer  
Department of Public Works  
150 Kendall Street  
Battle Creek, MI 49037

with a copy to:

City of Battle Creek  
ATTN: City Attorney  
10 N. Division Street, Suite 207  
Battle Creek, MI 49014

12.1.2 If to Company, to:

Crown Castle Fiber, LLC  
Fiber Real Estate Department  
2000 Corporate Drive  
Canonsburg, PA 15317

With a copy to:

Renee.Guider@crowncastle.com

Bilateral\_permit Crown Castle Fiber LLC

- 12.2 Change of Address. Company and Municipality may change its address or personnel for the receipt of notices at any time by giving notice thereof to the other as set forth above.

13 Other items

- 13.1 No Cable, OVS. This Permit does not authorize Company to provide commercial cable type services to the public, such as “cable service” or the services of an “open video system operator” (as such terms are defined in the Federal Communications Act of 1934 and implementing regulations, currently 47 U.S.C. §§ 522 (6), 573 and 47 CFR § 76.1500).
- 13.2 Duties. Company shall faithfully perform all duties required by this Permit.
- 13.3 Effective Date. This Permit shall become effective when issued by Municipality and Company has provided any insurance certificates and bonds required in Parts 6 and 8, and signed the acceptance of the Permit.
- 13.4 Authority. This Permit satisfies the requirement for a permit under Section 5 of the METRO Act, MCL § 484.3105.
- 13.5 Amendment. Except as set forth in Section 2.1 this Permit may be amended by the written agreement of Municipality and Company.
- 13.6 Interpretation and Severability. The provisions of this Permit shall be liberally construed to protect and preserve the peace, health, safety and welfare of the public, and should any provision or section of this Permit be held unconstitutional, invalid, overbroad or otherwise unenforceable, such determination/holding shall not be construed as affecting the validity of any of the remaining conditions of this Permit. If any provision in this Permit is found to be partially overbroad, unenforceable, or invalid, Company and Municipality may nevertheless enforce such provision to the extent permitted under applicable law.
- 13.7 Governing Law. This Permit shall be governed by the laws of the State of Michigan.

City of Battle Creek

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

Rebecca L. Fleury

Its: City Manager

Date: \_\_\_\_\_

“Company accepts the Permit granted by Municipality upon the terms and conditions contained therein.”

Crown Castle Fiber, LLC

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

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

Date: \_\_\_\_\_

**Exhibit A**

**Public Right-of-Way to be Used by Crown Castle Fiber, LLC**

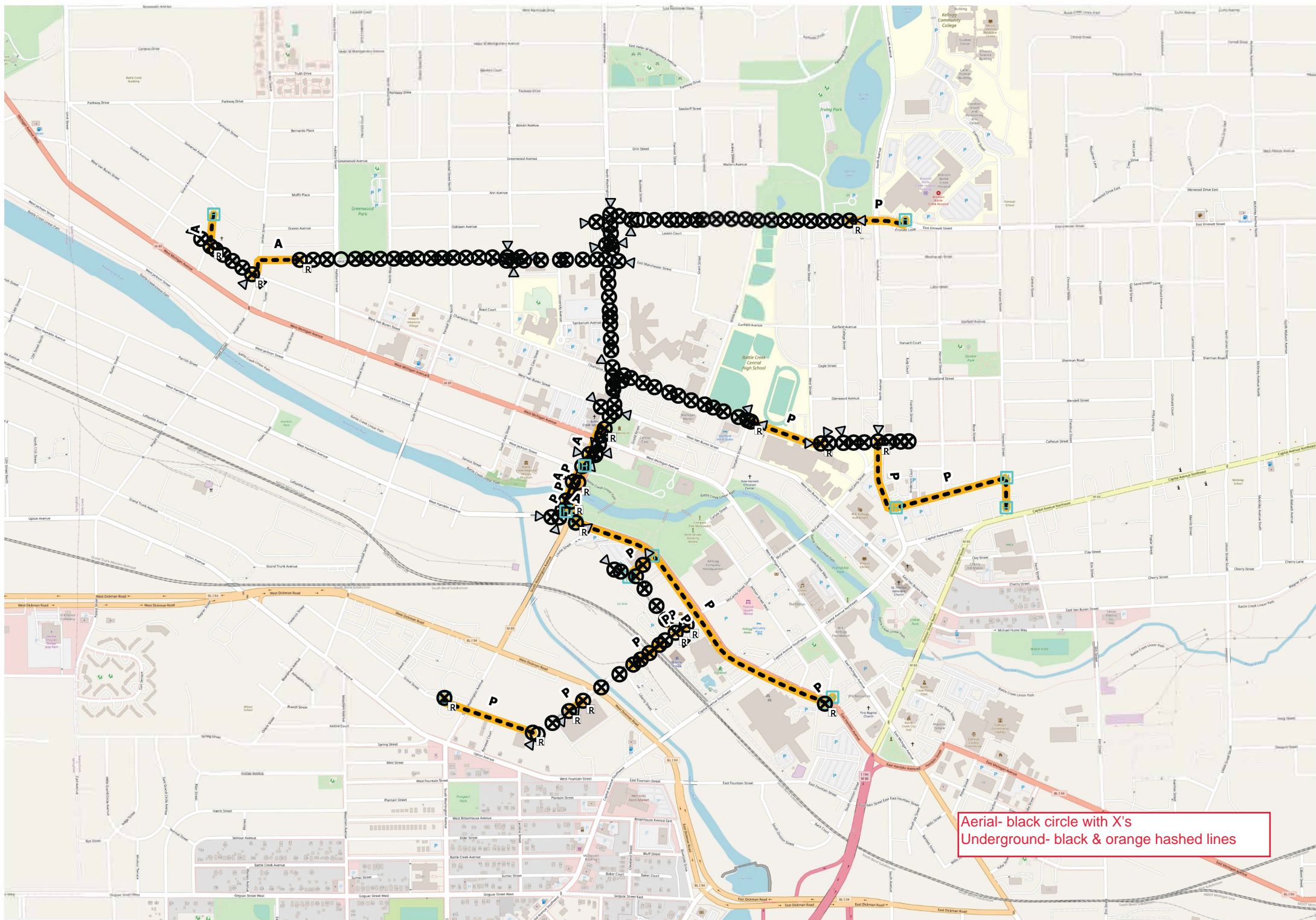
**Exhibit B**

**Bond**

Pending Build Details

 Pending Conduit - 1.45





# Exhibit B

## PERFORMANCE BOND

Bond Number: 20BSBIU6932

KNOW ALL BY THESE PRESENTS, That we Crown Castle Fiber LLC, as Principal, hereinafter called Principal, and Hartford Fire Insurance Company, a CT corporation, as Surety, hereinafter called Surety, are held and firmly bound unto City of Battle Creek, as Oblige, hereinafter called Oblige, in the amount of Ten Thousand Dollars and 00/100 Dollars (\$ 10,000.00) for the payment of which sum, well and truly to be made, the said Principal and Surety bind themselves, and their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, as a condition of said Agreement requires Principal to provide a Bond Metro Act Permit.

NOW, THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That if Principal shall promptly and faithfully perform said agreement, then this obligation is void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, That:

1. It shall be a condition precedent to any right of recovery hereunder, that in event of any default on the part of the Principal, a written statement of the particular facts of such default shall be forwarded to the Surety, within sixty (60) days of the occurrence of such default, delivered by registered mail to Surety at its Home Office in Hartford, CT.
2. That no action, lawsuit or proceeding shall be had or maintained against the Surety on this Bond unless the same be filed and properly served upon the Surety within one year from the effective date of the cancellation of the Bond.
3. That no right of action shall accrue under this Bond to or for the use of a person or entity other than the Oblige, and its successors and assigns.
4. This Bond shall become effective February 15, 2022.
5. This Bond shall continue in full force and effect until canceled by the Surety by providing thirty (30) days written notice to the Oblige.
6. The liability of the Surety shall in no event exceed the aggregate penal sum of the Bond penalty.
7. If any conflict or inconsistency exists between the Surety's obligation or undertakings as described in the Bond and as described in the underlying document, then the terms of the Bond shall prevail.

IN WITNESS WHEREOF, The said Principal has signed and sealed this instrument on this 15th day of February, 2022.



Crown Castle Fiber LLC

By:  Digitally signed by Jessica R. Chiniewicz  
Date: 2022.02.15 15:46:23 -05'00'

Name/Title Jessica R. Chiniewicz, Risk & Surety Bond Manager

IN WITNESS WHEREOF, The said Surety has signed and sealed this instrument on this 15th day of February, 2022.



Hartford Fire Insurance Company

By: Donna M Planeta Digitally signed by Donna M Planeta  
Date: 2022.02.15 11:59:10-05'00'

Donna M Planeta, Attorney-in-Fact

# POWER OF ATTORNEY

Direct Inquiries/Claims to:

THE HARTFORD

BOND, T-11

One Hartford Plaza

Hartford, Connecticut 06155

Bond.Claims@thehartford.com

call: 888-266-3488 or fax: 860-757-5835

KNOW ALL PERSONS BY THESE PRESENTS THAT:

Agency Code: SurePath

- ☒ **Hartford Fire Insurance Company**, a corporation duly organized under the laws of the State of Connecticut
- ☐ **Hartford Casualty Insurance Company**, a corporation duly organized under the laws of the State of Indiana
- ☐ **Hartford Accident and Indemnity Company**, a corporation duly organized under the laws of the State of Connecticut
- ☐ **Hartford Underwriters Insurance Company**, a corporation duly organized under the laws of the State of Connecticut
- ☐ **Twin City Fire Insurance Company**, a corporation duly organized under the laws of the State of Indiana
- ☐ **Hartford Insurance Company of Illinois**, a corporation duly organized under the laws of the State of Illinois
- ☐ **Hartford Insurance Company of the Midwest**, a corporation duly organized under the laws of the State of Indiana
- ☐ **Hartford Insurance Company of the Southeast**, a corporation duly organized under the laws of the State of Florida

having their home office in Hartford, Connecticut (hereinafter collectively referred to as the "Companies") do hereby make, constitute and appoint

**Donna M Planeta of Knoxville, TN**

their true and lawful Attorney-in-Fact, to sign its name as surety(ies) only as delineated above by ☒, and to execute, seal and acknowledge the following bond, undertaking, contract or written instrument:

Bond No. 20BSBU6932

on behalf of

Crown Castle Fiber LLC

naming

City of Battle Creek

as Obligor in the amount of See Bond Form

on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

**In Witness Whereof**, and as authorized by a Resolution of the Board of Directors of the Companies on May 23, 2016 the Companies have caused these presents to be signed by its Assistant Vice President and its corporate seals to be hereto affixed, duly attested by its Assistant Secretary. Further, pursuant to Resolution of the Board of Directors of the Companies, the Companies hereby unambiguously affirm that they are and will be bound by any mechanically applied signatures applied to this Power of Attorney.



*Shelby Wiggins*

Shelby Wiggins, Assistant Secretary

*Joelle L. LaPierre*

Joelle L. LaPierre, Assistant Vice President

STATE OF FLORIDA

COUNTY OF SEMINOLE

SS. Lake Mary

On this 20th day of May, 2021, before me personally came Joelle LaPierre, to me known, who being by me duly sworn, did depose and say: that (s)he resides in Seminole County, State of Florida; that (s)he is the Assistant Vice President of the Companies, the corporations described in and which executed the above instrument; that (s)he knows the seals of the said corporations; that the seals affixed to the said instrument are such corporate seals; that they were so affixed by authority of the Boards of Directors of said corporations and that (s)he signed his/her name thereto by like authority.



*Jessica Ciccone*

Jessica Ciccone  
My Commission HH 122280  
Expires June 20, 2025

I, the undersigned, Assistant Vice President of the Companies, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is still in full force effective as of February 15, 2022.

Signed and sealed in Lake Mary, Florida.



*Keith D. Dozois*

Keith D. Dozois, Assistant Vice President

February 15, 2022

Crown Castle Fiber LLC  
2000 Corporate Drive  
Canonsburg, PA 15317

RE: ***Bond Number: 20BSBIU6932***  
***Obligee: City of Battle Creek***  
***Description: Metro Act Permit***

Attached is the completed document per your request. This was issued based upon the information you provided to our office and we urge you to check all of the information for accuracy (i.e. Power of Attorney, signatures, dates, amounts, description, etc.).

Please verify that the form attached is the form required and complete the execution with the proper signature(s) and seal.

If a premium is charged, our invoice will follow under a separate cover. Please note the premium payment for this bond is due upon receipt.

Thank you for the opportunity to service your surety needs. Should you have any questions, please do not hesitate to contact any member of your Willis Towers Watson Surety Team.

Sincerely,

Autumn Schneider



Resolution

NO. 34

A Resolution seeking authorization for the City Manager to execute all necessary documents to reassign contract 2022-091B Minges Brook Pump Station Improvements project from Davis Construction, Inc., to RK Davis, Inc.

**BATTLE CREEK, MICHIGAN - 1/3/2023**

**Resolved by the Commission of the City of Battle Creek:**

That the City Manager is authorized to execute all necessary documents to reassign contract 2022-091B Minges Brook Pump Station Improvements project from Davis Construction, Inc., to RK Davis, Inc.

---

Battle Creek City Commission  
1/3/2023

### **Action Summary**

**Staff Member:** Christine Huff, Purchasing Agent

**Department:** Purchasing

### **SUMMARY**

A Resolution seeking authorization for the City Manager to execute all necessary documents to reassign contract 2022-091B Minges Brook Pump Station Improvements project from Davis Construction, Inc., to RK Davis, Inc.

### **BUDGETARY CONSIDERATIONS**

### **HISTORY, BACKGROUND and DISCUSSION**

Resolution #432 dated 6/21/22 approved a contract for Minges Brook Pump Station Improvements project with Davis Construction, Inc., in a not-to-exceed amount of \$1,472,280.00, which will be paid from 590.24.6645.801.310 - Sewer Replacement/Street Program.

The resolution tonight seeks authorization for the City Manager to execute all documents that will reassign the contract from Davis Construction, Inc., to RK Davis, Inc.

The following from City of Battle Creek Engineering Administrator Kurt Tribbett explains the reason for the company name change:

“Davis Construction, Inc. has had two divisions: one for bridges and one for general contracting, with emphasis in wastewater and water plants. This general contracting division was created by Rob Kaliniak with the owner Mike Davis. Rob as an associate has created an impressive division and done outstanding work for the City. Mike Davis would like to have the bridge and general divisions become two separate companies as he has come up with bonding issues for his bridge division with having the general division tied to the company. He is supportive of breaking off the general contracting division as its own company, having Rob and his key employees buy into this new company called RK Davis. I'm supportive of continuing this contract 2022-091B with RK Davis.”

No site work has begun on this project, yet, and no payments have been made. Materials are on order.

The first document to be signed is the Consent to Assignment of Construction Contract, which is attached. Our signing this document will release Davis Construction, Inc., from their contract and bonding requirements. This Consent to Assignment of Construction Contract is also the document that RK Davis, Inc., will use to obtain a performance bond (which protects the City) and a payment/material bond (which protects subcontractors and suppliers). These bonds will be obtained in the coverage amount of 100% of the contract amount. We require this bonding on all construction contracts that exceed \$50,000.

This Resolution authorizes the City Manager to sign all documents that may be required (such as, but not limited to, a new contract) to execute this name change. In no case will the City Manager sign anything that deviates from the already approved contract amount or scope of work without additional Commission approval. The reassigned contract will continue fully comply with Resolution #432, with the exception of company name.

## **DISCUSSION OF THE ISSUE**

### **POSITIONS**

---

#### **ATTACHMENTS:**

File Name	Description
☐ Consent_to_Assignment_of_Construction_Contract.pdf	Consent to Assignment of Construction Contract
☐ 2022-091B_Minges_Brook_Pump_Station_Davis_Construction.pdf	Original Contract

## CONSENT TO ASSIGNMENT OF CONSTRUCTION CONTRACT

This Consent to Assignment of Construction Contract, dated as of \_\_\_\_\_, 2022 (the "Consent"), is made by The City of Battle Creek (the "Owner").

WHEREAS, Owner is the owner under that certain construction contract ("Contract") with Davis Construction, Inc., a Michigan corporation ("DCI") dated June 22, 2022 for the project Minges Brook Pump Station O-15 Improvements, located at 1970 SW Capital Ave, Battle Creek MI 49015 ("Project").

WHEREAS, DCI desires to assign to RK Davis, Inc., a Michigan corporation ("RK Davis") DCI's entire interest in the Contract and RK Davis desires to accept the assignment thereof and assume the duties and obligations of DCI thereunder accruing on and after the date of the assignment.

WHEREAS, the Contract requires Owner's written consent to any assignment of the Contract.

NOW, THEREFORE, in consideration of the promises and conditions contained herein, the parties hereby agree as follows:

1. As of the date of this Consent, Owner does hereby consent to the assignment all of DCI's right, title, and interest in and to the Contract to RK Davis. Upon assignment DCI will provide Owner written notice of the assignment.
2. As of the date of this Consent, a true, correct and complete copy of the Contract is attached hereto as Exhibit A.
3. Owner agrees that RK Davis shall assume, perform and discharge any duties or obligations accruing under the Contract on and after the date of the assignment.
4. Owner agrees that on and after the date of assignment, DCI shall have no further duties or obligations accruing under the Contract
5. Effective upon assignment, Owner hereby fully and forever releases, remises, acquits, and discharges DCI and any of its respective employees, shareholders, officers, directors, agents, representatives, predecessors, from any and all manners of action and causes of action, suits, obligations, choses in action, warranties, claims, damages, liens, demands and rights whatsoever, in law or in equity, known or unknown, now existing or which may hereafter accrue, in any way relating to and/or arising out of the Contract or the Project.
6. Effective upon assignment, Owner will release the DCI surety under the bond attached as Exhibit B hereto and accept the bond of the RK Davis surety with respect to RK Davis obligations under the Contract.
7. As of the date of this Consent, Owner has not sent or received any notice of default or any notice for the purpose of terminating the Contract, nor is there any existing circumstance or event which, but for the lapse of time or otherwise, would constitute a default by DCI under the Contract.

8. Owner hereby waives any conditions, requirements, fees, and termination provisions under the Contract in connection with the assignment of the Contract to RK Davis.

9. As of the date of the assignment to RK Davis, the Contract shall continue according to the terms thereof except as modified by this Consent and the assignment.

10. This Consent may not be changed, amended or modified in any way, except by an agreement in writing signed by the party against whom enforcement of any change, amendment or modification is sought.

11. This Consent shall be effective immediately.

IN WITNESS WHEREOF, Owner has executed this Consent, dated as of the date above first written.

OWNER: City of Battle Creek

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

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

## **EXHIBIT A**

**CONTRACT FORM**  
**CONTRACT NO. 2022-091B**  
**MINGES BROOK PUMP STATION O-15 IMPROVEMENTS**

THIS AGREEMENT, made and entered into this 22nd day of June, 2022, by and between Davis Construction, Inc. hereinafter called the "Contractor" and the City of Battle Creek, hereinafter called the "Owner."

In consideration for the mutual covenants hereinafter stated, the parties agree for themselves, their personal representatives, successors, assigns as follows:

**I. The Contractor promises and agrees**, for the Minges Brook Pump Station O-15 Improvements project. This project consists of, but is not limited to, the reconstruction of the sanitary PS O-15, which includes building removal, below grade structure and piping modifications, replacement of existing pumps, channel grinder. As well as rehabilitation of the existing channel monster, electronic/control equipment, new natural gas generator, removal of diesel generator & tank, relocation of bioxide tank and other supporting apparatuses, pavement and landscaping replacement.

A. To furnish all materials, construction water, equipment, tools, dewatering devices, skill and labor of every description necessary or reasonable incidental to carrying forth and completing in good, firm, substantial and workmanlike manner, the work specified, in strict conformity with the true intent of the NOTICE TO BIDDERS, SPECIAL INSTRUCTIONS, GENERAL INSTRUCTIONS, INVITATION FOR BID, SPECIAL CONDITIONS, GENERAL CONDITIONS, AGREEMENT, BONDS, GENERAL SPECIFICATIONS, and Project Specifications, and other contract documents and addenda thereto, which are hereby made a part hereof as fully and to the same effect as though they had been set forth at length herein.

B. To commence work under this contract on or before a date to be specified by the owner in a written Notice to Proceed and complete the project by the date specified in the Invitation for Bid.

C. Requirements for a specific trade or contract will generally be described in that portion of the specifications or drawings related to that trade or contract. Such requirements may, however, be described in other sections of the Contract Documents. The Contractor will be held responsible for having carefully examined all drawings and read all requirements of the specifications and all Contract Documents to avoid omissions or duplications and to insure a complete job.

D. The Contractor must be fully informed about conditions relating to the construction of the project and the employment of labor thereon. Failure to do so will not relieve a successful bidder of their obligation to furnish all material and labor necessary to carry out the provisions of this contract.

E. Any claim by the Contractor of an inability to meet any requirement set forth in the Contract Documents, or that any requirement of these documents is impractical or unreasonable, will not be recognized, unless the claim was made at the time their Bid was submitted, and specific provision is made for such claim in the Agreement between Owner and Contractor (Bid and Agreement).

F. **Warranty:** Contractor shall remove and replace at no additional cost to the City any defects in workmanship or materials that may be apparent or may develop within a period of one (1) year from the date of final acceptance.

G. **NON-DISCRIMINATION CLAUSE:** The bidder agrees not to discriminate against any employee or applicant for employment, to be employed in the performance of such contract with respect to hire tenure, terms, conditions or privileges, of employment, or any matter directly or indirectly related to employment because of his or her actual or perceived race, color, religion, national origin, sex, age, height, weight, marital status, physical or mental disability, family status, sexual orientation, or gender identity. Breach of this covenant may be regarded as a material breach of the contract as provided for in Act 220 and Act 453 of the Public Acts of 1976, as amended, entitled "Michigan Handicapper's Civil Rights Act" and/or the "Michigan Elliott Larson Civil Rights Act" and/or City of Battle Creek Chapter 214 "Discrimination Prohibited" Ordinance. The bidder further agrees to require similar provisions from any subcontractors, or suppliers. The bidder agrees to comply with the Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, as supplemented in Department of Labor regulations (41 CFR, Chapter 60).

**II. The Owner promises and agrees:**

Rev. January 2022

A. To pay the Contractor for said work when completed in accordance with the provisions of these contract documents, and for the contract sum of: **One million, four hundred seventy-two thousand, two hundred eighty dollars and 00/100 (\$1,472,280)**. Payment for work is subject to additions provided therein and for the authorized work complete in place and accepted by the Owner or its authorized representatives.

III. It is further understood and agreed between the parties hereto as follows:

A. The said work is to be done in accordance with the laws of the State of Michigan to the entire satisfaction and approval of the Owner or its duly authorized representatives.

B. The decision of said Owner's authorized representative upon any questions connected with the execution of this Agreement or any failure or delay in the prosecution of the work by said Contractor shall be final and conclusive.

C. If, at any time after the execution of the Agreement and the Bond for its faithful performance, the Owner shall deem the surety or sureties then upon said bond to be unsatisfactory or, if, for any reason said bond shall cease to be adequate security for the performance of the work, the Contractor shall, at their expense, within fifteen (15) calendar days after receipt of written notice from the Owner to do so, furnish an additional bond or bonds in such form and amount and with such surety or sureties as shall be satisfactory to the Owner. In such event, no further payment to the Contractor shall be deemed to be due under this Agreement until such new or additional security for the faithful performance of the work shall be furnished in a manner and form satisfactory to the Owner.

D. VENUE: Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement or the transactions it contemplates shall bring the legal action or proceeding:

(i) in the United States District Court for the Western District of Michigan; or

(ii) in any court of the State of Michigan sitting in Calhoun County, if there is no federal subject matter jurisdiction.

E. GOVERNING LAW: This agreement shall be enforced under the laws of the State of Michigan. Contractor must comply with all applicable federal, state, county, and City laws, ordinances, and regulations. Contractor shall ensure payment of all taxes, licenses, permits, and other expenses of any nature associated with the provision of services herein. Contractor shall maintain in current status all Federal, State and Local licenses and permits required for the operation of the business conducted by the Contractor.

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

STATE OF MICHIGAN)

) ss

COUNTY OF CALHOUN)

In the Presence of:

Jessica Rus

  
Notary Public



SIGNED, SEALED, AND  
EXECUTED BY CONTRACTOR:

I certify, under penalty of perjury, that I have the legal authorization to bind the firm hereunder, and that our firm is not debarred from doing business under the Federal Excluded Parties List System (epls.gov):

By: 

Title: Rob Kaliniak, Vice President

CONTRACT FORM APPROVED BY:

\_\_\_\_\_  
City Attorney

SIGNED, SEALED, & EXECUTED  
BY CITY OF BATTLE CREEK

\_\_\_\_\_  
City Manager

## **EXHIBIT B**

## PERFORMANCE BOND

Let it be known that Davis Construction Co., as Principal, and Westfield Insurance Company, as Surety, are held and firmly bound unto the City of Battle Creek in the sum of \*See Below dollars (\$ 1,472,280.00 ) for the payment of which sum of money to be made, we bind ourselves, heirs, executors, administrators, successors and assigns, jointly and severally, firmly as required by written contract.

WHEREAS, the Principal has entered into a certain written contract dated the 22nd day of June, 2022 for the \*\*See Below complete, as described in the foregoing Bid and Agreement.


NOW THE CONDITIONS OF THIS OBLIGATION ARE SUCH, that if the said Principal shall in all respects well and truly keep and perform the said contract, and shall pay all sums of money due or to become due, for any labor, materials, apparatus, fixtures or equipment furnished for the purpose of constructing the work provided in said contract, and shall defend, indemnify and save harmless said City of Battle Creek against any liens, encumbrances, damages, claims, demands, expenses, costs and charges of every kind except as otherwise provided in said specifications and other Contract Documents arising out of or in relation to the performance of said work and the provisions of said contract, and shall remove and replace any defects in workmanship or materials which may be apparent or may develop within a period of one (1) year from the date of final acceptance, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

And the said Surety, for value received, hereby stipulates and agreed that no change, extension of time, alteration or addition to the terms of the contract or to work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement or to the work or to the specifications.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 21st day of July, 2022.

### PRINCIPAL ATTEST:

Davis Construction Co.  
Principal Business Name  
5236 Dumond Court, Suite A  
Address  
Lansing, MI 48917  
City, State, Zip


  
Principal Secretary Signature & Seal

MARK DAVIS  
Principal Secretary Printed Name

  
Witness of Principal

### SURETY ATTEST:

Westfield Insurance Company  
Surety Business Name  
P.O. Box 5001  
Address  
Westfield Center, OH 44251  
City, State, Zip

BY:   
Attorney-in-Fact Signature & Seal

John T. Foster, Attorney-In-Fact  
Attorney-in-Fact Printed Name

\*One Million Four Hundred Seventy-Two Thousand Two Hundred Eighty and No/100THS

\*\*CONTRACT NO. 2022-091B MINGES BROOK PUMP STATION O-15 IMPROVEMENTS

## LABOR AND MATERIALS BOND

Let it be known that, that we, the undersigned, Davis Construction Co., hereinafter called the "Principal," and Westfield Insurance Company, a corporation organized and existing under the laws of the State of Ohio, having its principal office at \*See Below, hereinafter called the "Surety," are held and firmly bound unto the City of Battle Creek, hereinafter called the "Owner," for use of any and every person, co-partnership, association or corporation interested in sum of \*\*See Below dollars (\$1,472,280.00), to be paid to the said obligees or its or their assigns, to which payment we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents. Sealed with our respective seals and dated this 21st day of July, 2022.

WHEREAS, the above bounded Davis Construction Co., Principal, has entered into a contract with the City of Battle Creek.

Dated the 22nd day of June, 2022, for the \*\*\*See Below.


NOW, THEREFORE, THE CONDITION OF THIS CONDITION IS SUCH, that if the above bounded Principal shall and will promptly pay or cause to be paid all sums of money which may be due any person, co-partnership, association or corporation for all material furnished and labor supplied or performed in the prosecution of the work, whether or not the said material or labor enter into and become component parts of the work or improvement contemplated, then this obligation to be void; otherwise to remain in full force and effect.

The Principal and Surety further jointly and severally agree with the obligee herein that every person, co-partnership, association or corporation who, whether as subcontractor or otherwise, has furnished material or supplied or performed labor in the prosecution of the work as above provided and who has not been paid therefore may sue in assumption on this bond in the name of the Owner for their use prosecute the same to final judgment for such sum or sums as may be justly due to them, and have execution thereon, provided, however, that the Owner shall not be liable for payment of any costs or expenses of any such suit.


IT IS FURTHER AGREED, that any alterations that may be made in the terms of the contract or in the work to be done or materials to be furnished or labor to be supplied or performed under it or the giving by the Owner or any extension of time for the performance of the contract or any other forbearance on the part of either the Owner or the Principal to the other, shall not in any way release the Principal and Surety or Sureties or either or any of them their heirs, executors, administrators, successors or assigns, from their liability hereunder, notice to the Surety or Sureties of any such alteration, extension or forbearance being hereby waived.

IN WITNESS WHEREOF, the said Principal and Surety have duly executed this bond under the seal and day and year first above written.

ATTEST:

  
(Seal)

ATTEST

  
Connor McDowell, Surety Bond Specialist

(SEAL)

Davis Construction Co.

Principal

BY:

Westfield Insurance Company

Surety

BY:

  
Attorney-in-Fact John T. Foster

\*P.O. Box 5001, Westfield Center, OH 44251

\*\*One Million Four Hundred Seventy-Two Thousand Two Hundred Eighty and No/100THS

\*\*\*CONTRACT NO. 2022-091B MINGES BROOK PUMP STATION O-15 IMPROVEMENTS

Rev. January 2022

THIS POWER OF ATTORNEY SUPERCEDES ANY PREVIOUS POWER BEARING THIS SAME POWER # AND ISSUED PRIOR TO 02/04/22, FOR ANY PERSON OR PERSONS NAMED BELOW.

POWER NO. 2140972 05

General  
Power  
of Attorney

**Westfield Insurance Co.**  
**Westfield National Insurance Co.**  
**Ohio Farmers Insurance Co.**  
Westfield Center, Ohio

CERTIFIED COPY

Know All Men by These Presents, That WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, corporations, hereinafter referred to individually as a "Company" and collectively as "Companies," duly organized and existing under the laws of the State of Ohio, and having its principal office in Westfield Center, Medina County, Ohio, do by these presents make, constitute and appoint  
**JOHN T. FOSTER, JAMES N. SLEAR, HEATHER BUONODONO, SHERRY ALTMAN ALEXANDER, IAN T. FOSTER, JOINTLY OR SEVERALLY**

of LANSING and State of MI its true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, undertakings, or other instruments or contracts of suretyship.

**LIMITATION: THIS POWER OF ATTORNEY CANNOT BE USED TO EXECUTE NOTE GUARANTEE, MORTGAGE DEFICIENCY, MORTGAGE GUARANTEE, OR BANK DEPOSITORY BONDS.**

and to bind any of the Companies thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the corporate seal of the applicable Company and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney(s)-in-Fact may do in the premises. Said appointment is made under and by authority of the following resolution adopted by the Board of Directors of each of the WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY:

"Be It Resolved, that the President, any Senior Executive, any Secretary or any Fidelity & Surety Operations Executive or other Executive shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

The Attorney-in-Fact may be given full power and authority for and in the name of and on behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements of indemnity and other conditional or obligatory undertakings and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be as binding upon the Company as if signed by the President and sealed and attested by the Corporate Secretary."

"Be It Further Resolved, that the signature of any such designated person and the seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signatures or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached." (Each adopted at a meeting held on February 8, 2000).

In Witness Whereof, WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY have caused these presents to be signed by their National Surety Leader and Senior Executive and their corporate seals to be hereto affixed this 04th day of FEBRUARY A.D., 2022.

Corporate  
Seals  
Affixed



WESTFIELD INSURANCE COMPANY  
WESTFIELD NATIONAL INSURANCE COMPANY  
OHIO FARMERS INSURANCE COMPANY

By:   
Gary W. Stumper, National Surety Leader and  
Senior Executive

State of Ohio  
County of Medina ss.:

On this 04th day of FEBRUARY A.D., 2022, before me personally came Gary W. Stumper to me known, who, being by me duly sworn, did depose and say, that he resides in Hartford, CT; that he is National Surety Leader and Senior Executive of WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, the companies described in and which executed the above instrument; that he knows the seals of said Companies; that the seals affixed to said instrument are such corporate seals; that they were so affixed by order of the Boards of Directors of said Companies; and that he signed his name thereto by like order.

Notarial  
Seal  
Affixed



David A. Kotnik, Attorney at Law, Notary Public  
My Commission Does Not Expire (Sec. 147.03 Ohio Revised Code)

State of Ohio  
County of Medina ss.:

I, Frank A. Carrino, Secretary of WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Companies, which is still in full force and effect; and furthermore, the resolutions of the Boards of Directors, set out in the Power of Attorney are in full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the seals of said Companies at Westfield Center, Ohio, this 21st day of July A.D., 2022.



Frank A. Carrino, Secretary

Ship To

CITY OF BATTLE CREEK  
FINANCE  
10 DIVISION ST N - ROOM 205  
BATTLE CREEK, MI 49014

Bill To

CITY OF BATTLE CREEK  
FINANCE  
10 DIVISION ST N - ROOM 205  
BATTLE CREEK, MI 49014

**Purchase Order**  
**No.** 2023-00000181  
**DATE** 07/27/2022

**VENDOR** 28891 - DAVIS CONSTRUCTION

Contact

DAVIS CONSTRUCTION - LANSING  
5236 DUMOND CT SUITE A  
LANSING, MI 48917



PURCHASE ORDER NUMBER MUST APPEAR ON  
ALL INVOICES, SHIPPERS, BILL OF LADING AND  
CORRESPONDENCE

**DELIVER BY**  
**SHIP VIA**  
**FREIGHT TERMS**  
PAGE 1 of 1  
**ORIGINATOR:** Christine Huff

**REFERENCE #** per reso #432 dated 6/21/22

QUANTITY	UNIT	DESCRIPTION	UNIT COST	TOTAL COST
1.0000	Each	CONSTRUCTION OR DEMOLITION SERVICES - Minges Brook Pump Station Improvements 590.24.6645.801.310 - Prof & Oth Svcs Service Contracts 1,472,280.00	1,472,280.0000	\$1,472,280.00
TOTAL DUE				\$1,472,280.00

BLANKET  
PURCHASE ORDER

Special Instructions  
per contract 2022-091B

\*\*The articles listed on this order are purchases solely for municipal use and are exempt from all Federal Excise Tax and Sales Tax  
\*\*Purchases are exempt from state and local taxes  
\*\*Federal Tax ID number 38-6004523  
\*\*This order is subject to the PO Terms and Conditions available from our office or website ([www.battlecreekmi.gov](http://www.battlecreekmi.gov))



## Resolution

NO. 432

A Resolution seeking acceptance of the lowest responsive, responsible bid for Minges Brook Pump Station Improvements project from Davis Construction, Inc., in a not-to-exceed amount of \$1,472,280.00.

**BATTLE CREEK, MICHIGAN - 6/21/2022**

### **Resolved by the Commission of the City of Battle Creek:**

That the lowest responsive, responsible bid for Minges Brook Pump Station Improvements project is accepted from Davis Construction, Inc., in a not-to-exceed amount of \$1,472,280.00. The City Manager is authorized to execute Contract No. 2022-091B, which will be paid from 590.24.6645.801.310 – Sewer Replacement/Street Program.

The City Manager or her designee is also authorized to approve change orders for up to 10% in aggregate for City-initiated and pre-approved changes for unforeseen field conditions that are not itemized in the contract.

I, Victoria Houser, City Clerk of the City of Battle Creek, hereby certify the above and foregoing is a true and correct copy of a Resolution adopted by the Battle Creek City Commission at a Regular meeting held on June 21, 2022.



Victoria Houser

---

Battle Creek City Commission  
6/21/2022

### **Action Summary**

**Staff Member:** Chris Huff, Purchasing Agent

**Department:** Purchasing

### **SUMMARY**

A Resolution seeking acceptance of the lowest responsive, responsible bid for Minges Brook Pump Station Improvements project from Davis Construction, Inc., in a not-to-exceed amount of \$1,472,280.00.

### **BUDGETARY CONSIDERATIONS**

### **HISTORY, BACKGROUND and DISCUSSION**

The solicitation was issued May 4, 2022, for the above-mentioned project. This project consists of the reconstruction of the sanitary PS O-15, which includes building removal, below grade structure and piping modifications, replacement of existing pumps, channel grinder. As well as rehabilitation of the existing channel monster, electronic/control equipment, new natural gas generator, removal of diesel generator & tank, relocation of bioxide tank and other supporting apparatuses, pavement and landscaping replacement.

Copies of the IFB were provided to all relevant contractors registered in our secure system and four construction plan houses. Construction companies and subcontracting trades subscribe to planhouses to be aware of all jobs being bid around the region. Bid responses were due on June 9, 2022, submitted online through our secure vendor management website.

The attached memo from engineering firm Jones and Henry provides details on the two responses.

The bids were reviewed by Kurt Tribbett, Engineering Administrator, City of Battle Creek and Tyler Kindle, engineering consultant from Jones and Henry. They recommend award to the lowest responsive, responsible bidder stated above. I concur with the department's recommendation that contract award to this firm would be in the best interest of the City of Battle Creek.

**CONTRACT FORM**  
**CONTRACT NO. 2022-091B**  
**MINGES BROOK PUMP STATION O-15 IMPROVEMENTS**

THIS AGREEMENT, made and entered into this 22nd day of June, 2022, by and between Davis Construction, Inc. hereinafter called the "Contractor" and the City of Battle Creek, hereinafter called the "Owner."

In consideration for the mutual covenants hereinafter stated, the parties agree for themselves, their personal representatives, successors, assigns as follows:

**I. The Contractor promises and agrees,** for the Minges Brook Pump Station O-15 Improvements project. This project consists of, but is not limited to, the reconstruction of the sanitary PS O-15, which includes building removal, below grade structure and piping modifications, replacement of existing pumps, channel grinder. As well as rehabilitation of the existing channel monster, electronic/control equipment, new natural gas generator, removal of diesel generator & tank, relocation of bioxide tank and other supporting apparatuses, pavement and landscaping replacement.

A. To furnish all materials, construction water, equipment, tools, dewatering devices, skill and labor of every description necessary or reasonable incidental to carrying forth and completing in good, firm, substantial and workmanlike manner, the work specified, in strict conformity with the true intent of the NOTICE TO BIDDERS, SPECIAL INSTRUCTIONS, GENERAL INSTRUCTIONS, INVITATION FOR BID, SPECIAL CONDITIONS, GENERAL CONDITIONS, AGREEMENT, BONDS, GENERAL SPECIFICATIONS, and Project Specifications, and other contract documents and addenda thereto, which are hereby made a part hereof as fully and to the same effect as though they had been set forth at length herein.

B. To commence work under this contract on or before a date to be specified by the owner in a written Notice to Proceed and complete the project by the date specified in the Invitation for Bid.

C. Requirements for a specific trade or contract will generally be described in that portion of the specifications or drawings related to that trade or contract. Such requirements may, however, be described in other sections of the Contract Documents. The Contractor will be held responsible for having carefully examined all drawings and read all requirements of the specifications and all Contract Documents to avoid omissions or duplications and to insure a complete job.

D. The Contractor must be fully informed about conditions relating to the construction of the project and the employment of labor thereon. Failure to do so will not relieve a successful bidder of their obligation to furnish all material and labor necessary to carry out the provisions of this contract.

E. Any claim by the Contractor of an inability to meet any requirement set forth in the Contract Documents, or that any requirement of these documents is impractical or unreasonable, will not be recognized, unless the claim was made at the time their Bid was submitted, and specific provision is made for such claim in the Agreement between Owner and Contractor (Bid and Agreement).

F. Warranty: Contractor shall remove and replace at no additional cost to the City any defects in workmanship or materials that may be apparent or may develop within a period of one (1) year from the date of final acceptance.

G. **NON-DISCRIMINATION CLAUSE:** The bidder agrees not to discriminate against any employee or applicant for employment, to be employed in the performance of such contract with respect to hire tenure, terms, conditions or privileges, of employment, or any matter directly or indirectly related to employment because of his or her actual or perceived race, color, religion, national origin, sex, age, height, weight, marital status, physical or mental disability, family status, sexual orientation, or gender identity. Breach of this covenant may be regarded as a material breach of the contract as provided for in Act 220 and Act 453 of the Public Acts of 1976, as amended, entitled "Michigan Handicapper's Civil Rights Act" and/or the "Michigan Elliott Larson Civil Rights Act" and/or City of Battle Creek Chapter 214 "Discrimination Prohibited" Ordinance. The bidder further agrees to require similar provisions from any subcontractors, or suppliers. The bidder agrees to comply with the Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, as supplemented in Department of Labor regulations (41 CFR, Chapter 60).

**II. The Owner promises and agrees:**

A. To pay the Contractor for said work when completed in accordance with the provisions of these contract documents, and for the contract sum of: **One million, four hundred seventy-two thousand, two hundred eighty dollars and 00/100 (\$1,472,280)**. Payment for work is subject to additions provided therein and for the authorized work complete in place and accepted by the Owner or its authorized representatives.

III. It is further understood and agreed between the parties hereto as follows:

A. The said work is to be done in accordance with the laws of the State of Michigan to the entire satisfaction and approval of the Owner or its duly authorized representatives.

B. The decision of said Owner's authorized representative upon any questions connected with the execution of this Agreement or any failure or delay in the prosecution of the work by said Contractor shall be final and conclusive.

C. If, at any time after the execution of the Agreement and the Bond for its faithful performance, the Owner shall deem the surety or sureties then upon said bond to be unsatisfactory or, if, for any reason said bond shall cease to be adequate security for the performance of the work, the Contractor shall, at their expense, within fifteen (15) calendar days after receipt of written notice from the Owner to do so, furnish an additional bond or bonds in such form and amount and with such surety or sureties as shall be satisfactory to the Owner. In such event, no further payment to the Contractor shall be deemed to be due under this Agreement until such new or additional security for the faithful performance of the work shall be furnished in a manner and form satisfactory to the Owner.

D. VENUE: Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement or the transactions it contemplates shall bring the legal action or proceeding:

- (i) in the United States District Court for the Western District of Michigan; or
- (ii) in any court of the State of Michigan sitting in Calhoun County, if there is no federal subject matter jurisdiction.

E. GOVERNING LAW: This agreement shall be enforced under the laws of the State of Michigan. Contractor must comply with all applicable federal, state, county, and City laws, ordinances, and regulations. Contractor shall ensure payment of all taxes, licenses, permits, and other expenses of any nature associated with the provision of services herein. Contractor shall maintain in current status all Federal, State and Local licenses and permits required for the operation of the business conducted by the Contractor.

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

STATE OF MICHIGAN)  
) ss  
COUNTY OF CALHOUN)

In the Presence of:

Jessica Rus

  
Notary Public



SIGNED, SEALED, AND  
EXECUTED BY CONTRACTOR:


I certify, under penalty of perjury, that I have the legal authorization to bind the firm hereunder, and that our firm is not debarred from doing business under the Federal Excluded Parties List System (epls.gov):

By: 

Title: Rob Kaliniak, Vice President

SIGNED, SEALED, & EXECUTED  
BY CITY OF BATTLE CREEK

  
City Manager

 Jill H. Steele  
To: Chris L. Huff  
Cc: Rebecca D. Forbes; Tesia M. Chatman

Tue 7/26/2022 4:59 PM

Hi Chris,

I've reviewed Contract #2022-091B with Davis Construction, Inc. for the Minges Brook Pump Station O-15 Improvements and approve it for Rebecca (or Ted's) signature.

## SECTION II – OFFER TO CONTRACT

DATE: 06/09/2022

NAME OF BIDDER: Davis Construction, Inc.

BUSINESS ADDRESS: 4457 40th St.  
Kentwood M 49512

To: The City of Battle Creek, Michigan

The undersigned, as Bidder, declares that the only person or parties interested in this bid as principals are those named herein; that this bid is made without collusion with any person, firm or corporation; that they have carefully examined the location of the proposed work, the proposed forms of Agreement and Bonds, and the Contract Drawings and Specifications for the above designated work, all other documents referred to or mentioned in the Contract Documents, the Contract Drawings and Specifications, including Addenda issued thereto; and Contractor proposes and agrees if this bid is accepted that they will contract with the City of Battle Creek, Michigan, in the form of the copy of the Agreement included in these Contract Documents, to provide all necessary machinery, tools, apparatus, and other means of construction, including utility and transportation services necessary to do all the work and furnish all materials and equipment specified or referred to in the Contract Documents, in the manner and time therein prescribed and according to the requirements of the City of Battle Creek, Michigan, as therein set forth and to furnish the Contractor's Bonds and Insurance, and to do all other things required of the Contractor by the Contract Documents, and that they will take in full payment therefore the sums set forth BELOW;

A bid must be made on each item with no qualifying statement(s). Bidder acknowledges that quantities are not guaranteed and final payment will be based on actual quantities determined as provided in the Contract Documents. All specific cash allowances are included in the prices set forth below and have been computed in accordance with the Contract Documents.

Acknowledgement of addenda: No. 1 ; No. 2 ; No. 3 ; \_\_\_\_\_ ; \_\_\_\_\_ ; \_\_\_\_\_

## PRICE PAGE

### Minges Brook O-15 Pump Station Improvements 2022-091B

ITEM	DESCRIPTION	ESTIMATED QUANTITY	UNITS	BID AMOUNT
1	Minges Brook Pump Station Improvements	1	LSUM	\$1,443,440.00
2	JWC Channel Monster Rehabilitation Allowance	1	ALLOW	\$30,000

**\$1,472,280.00**

Grand Total of Work Items (Based on 'A' Equipment Items) 1-2 ~~\$1,473,440.00~~

See next pages  
for final price  
calculation

**MAJOR EQUIPMENT ITEMS.** In connection with the items of Major Equipment to be furnished and installed under the Agreement and Contract Documents, the Bidder expressly agrees to the following provisions:

- A. The base bid lump sum or total base bid price stated hereinbefore includes the furnishing and installation of all items of Major Equipment of the manufacturers or suppliers listed in the following tabulation. The items listed with a letter "A" shall be the equipment included in the Contractor's base bid cost. Any other equipment shall require Owner's approval;
- B. The City of Battle Creek may select items of any manufacturer or supplier as listed in the following tabulation, that the undersigned Bidder agrees to furnish and install such items as selected and for a contract price equal to the base bid lump sum or total base bid price stated above, adjusted by the difference between the sum of the installed prices for the items selected by the City of Battle Creek as stated in the following tabulation;
- C. The installed price stated in the following tabulation on all sub-items includes the preparation and submission to the Engineer by the Bidder of detailed Drawings showing all modifications, if any, of the Drawings necessary to accommodate the Major Equipment;
- D. The installed cost stated in the following tabulation on all sub-items includes a complete operating installation, including the furnishing and installation of any and all changes or additions in structures, piping, buildings, mechanical and electrical work, accessories and controls necessary to accommodate the Major Equipment; and
- E. All items offered in the following tabulation, if any, fully comply with the Specifications.

*The City may weigh all factors in determining low bid, using the Tabulation of Major Equipment, and assessing base bids and alternate manufacturers and lead times to determine which combination of options is in the best interest of the City.*

**TABULATION OF MAJOR EQUIPMENT ITEMS**

Section No.	Item No.	Description	Manufacturer or Supplier	Installed Price	Projected Lead Time (Weeks)*
08320	1	Floor Doors	(A) Bilco	\$ 21,629	6
			(B) Halliday	\$ 23,897	6
			(C) EJ	\$ 20,469	6
			( ) Owner Approved Alternate	\$ No Bid	
11735	2	Pumping Equipment	(A) Flygt	\$ 157,000	14-18
			(B) Keen	\$ No Bid	
			(C) Sulzer	\$ 145,000	18-20
			(D) Pentair Hydromatic	\$ 150,000	12-14
			( ) Owner Approved Alternate	\$ No Bid	
16221	3	Generator	(A) Kohler	\$ 76,400	48
			( ) Owner Approved Alternate	\$ 95,400	52
11130	4	Channel Grinder	(A) JWC	\$ 99,000	14-16
			( ) Owner Approved Alternate	\$ No Bid	

**A = BRANDS INCLUDED IN BASE BID**

Bilco \$21,629

- EJ -\$20,469

**\$1,160**  
deduct from base bid of \$1,473,440 using Bilco Floor Doors to use EJ floor doors as approved alternate:  
**\$1,472,280**

see Jones and Henry memo next page



June 13, 2022

Kurt Tribbett  
Engineering Administrator  
City of Battle Creek  
DPW Engineering  
150 South Kendall Street  
Battle Creek, MI 49037

Subject: City of Battle Creek, Michigan  
Minges Brook O-15 Pump Station Improvements - Recommendation of Award  
008-7883.001 (2022-091B)

Dear Mr. Tribbett:

We have reviewed the Bids received on June 9th, 2022 for the Minges Brook O-15 Pump Station Improvements project. Two bids were received, opened, and read aloud at 2:00 pm via public Zoom meeting. The bids received are as follows:

<u>Bidder</u>	<u>Total Bid Price</u>
Davis Construction	\$1,473,440
L.D. Docsa	\$2,157,000

The low bidder is Davis Construction, Incorporated (Davis) out of Kentwood, Michigan. Davis has worked for the City of Battle Creek on past projects and Jones & Henry has no concerns of the Contractor's ability to perform the work.

The Bid Form required the bidding Contractors to provide prices for several major 'A' equipment items along with approved or proposed optional alternatives. After discussion with the City the following major equipment manufacturers have been selected:

- **Floor Doors** – EJ
- **Pumps** - Flygt
- **Generator** – Kohler
- **Channel Grinder** - JWC

The selection of EJ floor doors results in a deduct from the total bid price of (\$1,160).

Therefore, we recommend the City of Battle Creek award the Minges Brook O-15 Pump Station Improvements project to Davis Construction, Inc. for the estimated cost of \$1,472,280.

If the City decides to award the project to Davis, a Notice of Award should be sent to them. Please notify Jones & Henry when you issue the Notice of Award. If you have any additional comments or concerns, please feel free to contact us at your convenience.

City of Battle Creek  
Minges Brook O-15 Pump Station  
Page 2



Sincerely,

JONES & HENRY ENGINEERS, LTD.

A handwritten signature in blue ink, appearing to read 'Tyler L. Kindle', is written over a horizontal line.

Tyler L. Kindle, PE  
Project Engineer  
TLK/tlk

CC: Aaron Davenport - J&H

**BID CONDITIONS**

It is expressly understood and agreed that the total base bid as reflected on the attached Bidding Schedule is the basis for establishing the amount of the bid security on this bid and that this total base bid is not to be construed a Lump Sum Bid. It is further understood that quantities in the Bidding Schedule for unit price items are approximate only, and that payment of a contract will be made only on the actual quantities or work completed in place, measured on the basis defined in the General Provisions, Contract Specifications or other Contract Documents.

The undersigned has carefully checked the attached Bidding Schedule against the Contract Drawings and Specifications and other Contract Documents before preparing this Bid and accepts the said quantities to be substantially correct, both as to classification and amount, and as correctly listing the complete work to be done in accordance with the Contract Drawings, Specifications and other Contract Documents.

**BID SECURITY**

Accompanying this bid is a Bond in the amount of five percent (5%) or \_\_\_\_\_ Dollars (\$\_\_\_\_\_). The total amount of bid security is based on the total base bid of this Bid.

**COMPLETION**

If awarded a contract under this Bid, the undersigned agrees to start work at the site July 12, 2022. The undersigned further agrees to complete the project by October 1, 2023.

**LIQUIDATED DAMAGES**

Liquidated damages of \$1300.00 per calendar day will be assessed for failure to meet any deadline, as noted in the Project Specifications.

**BIDDER'S SIGNATURE:** Complete the applicable paragraph below.

I certify, under penalty of perjury, that I have the legal authorization to bind the firm hereunder, and that our firm is not debarred from doing business under the Federal Excluded Parties List System (epls.gov).

I, the Contractor or Contractor's legally authorized signer, further certify compliance with the City of Battle Creek Ordinance Chapter 214, Discrimination Prohibited. I further acknowledge and agree that the Contractor's violation of Chapter 214 shall be a material breach of this contract. In addition, Contractor acknowledges and agrees that it shall be liable for any costs or expenses incurred by the City in obtaining from other sources, the work and services to be rendered or performed or the goods or properties to be furnished or delivered to the City under the contract as a result of a material breach in the Contract for violations of Chapter 214.

**(a) Corporation**

The bidder is a corporation organized and existing under the State of Michigan, which operates under the legal name of Davis Construction, Inc. and the full names of its officers are as follows:

President: Mark Davis

Secretary: Barb Schultz

Treasurer: \_\_\_\_\_

Manager: Rob Kaliniak

**(b) Co-Partnership**

The bidder is a co-partnership consisting of individual partners whose full names are as follows:

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

**(c) Individual**

The bidder is an individual whose full name is \_\_\_\_\_ and, if operating under a trade name, said trade name is \_\_\_\_\_.

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY & STATE: \_\_\_\_\_

**THIS BID OFFERED BY:**

SIGNATURE: [Signature]

NAME: Rob Kaliniak

PHONE: (616)456-0059

EMAIL: Rob@davisconstruction.us

ADDRESS: 4457 40th St.

Kentwood MI 49512

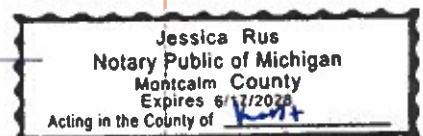
(SEAL)

Subscribed and sworn to before me this 9th day of June, 2022.

[Signature]  
Notary Public

County of Kent

Commission Expires: June 17, 2028



**CERTIFICATE TO BE EXECUTED**

**IF**

**CONTRACTOR IS A CORPORATION**

I, Rob Kaliniak, certify that I am the Vice President of the Corporation named as Contractor hereinabove; that Davis Construction, Inc. who signed the foregoing Agreement on behalf of the Contractor was then the Vice President of said Corporation; that said Agreement was duly signed for and in behalf of said Corporation by authority of its governing body and is within the scope of its corporate powers.



(Corporate Seal)

## **SUBCONTRACTOR AND DBE FORM – submit with bid**

### **I. YOUR FIRM'S BACKGROUND:**

Is your firm an MBE (at least 51% minority ownership)? \_\_\_\_ YES X NO

Is your firm a WBE (at least 51% woman ownership)? \_\_\_\_ YES X NO

Are you subcontracting any part of this project? X YES \_\_\_\_ NO

### **II. SUBCONTRACTING INFORMATION:** If subcontracting any part of the project, the bidder/contractor expressly agrees that:

- (1) If awarded a contract as a result of this bid, the major subcontractors used in the prosecution of the work will be those listed below, and
- (2) The following list includes all subcontractors who will perform work representing approximately five percent (5%) or more of the Total Base Bid.
- (3) The Bidder represents that the subcontractors listed below are financially responsible and are qualified to do the work required.

SUBCONTRACTOR NAME	City/State	Trade or Commodity	MBE	WBE	Approximate dollar value
Velting Contractors	Wayland MI	Sitework	Y / <input checked="" type="checkbox"/> N	Y / <input checked="" type="checkbox"/> N	\$100,000
Franklin Holwerda Company	Wyoming MI	Mechanical	N	N	\$400,000
DVT Electric	Wyoming MI	Electrical	N	N	\$240,000

### **III. DBE RECRUITMENT ACTIVITY LOG:** List the MBE's and WBE's that were approached about being a subcontractor for this job, but who are NOT listed above as a subcontractor.

NAME OF FIRM APPROACHED, BUT NOT USED ON THIS PROJECT	City/State	Trade or Commodity	MBE	WBE	Reason not used on this project
Three Brothers Construction	Kalamazoo MI	Mechanical	<input checked="" type="checkbox"/> Y N	Y / N	Non Responsive
Hirst Electrical	Jackson MI	Electrical	Y		Non Responsive
John Potter Co.	Grand Rapids MI	Watermain/Sewer	Y		Non Responsive

**STATEMENT OF EXPERIENCE OF BIDDER**

The Bidder shall state below the work of similar magnitude or character that they have done, and shall give references that will enable the City of Battle Creek to judge their experience, skill and business standing and of their ability to conduct the work as completely and as rapidly as required under the terms of this contract.

**PROJECT AND LOCATION**

**REFERENCES (include name and phone number)**

- (1) Grandville MI WWTP Improve.

Moore & Bruggink/Brian Hannon (616)363-9801

- (2) St. Joseph MI WWTP Improvements

Jones & Henry 269-353-9650

- (3) Ludingston MI WWTP Improvements

FTCH/Jack Rafter 616-676-6824

- (4) Greenville MI WWPT Contract 1

Williams & Works/Brandon Meirs (616)244-1500

- (5) Dorr MI WWTP Expansion

Williams & Works/Brandon Meirs (616)244-1500

- (6) Howell MI WWTP Expantion

Tetra Tech/Gary Markstrom 517-316-3930

- (7) Battle Creek MI RIMR Facility

Jones & Henry 269-353-9650

- (8) Grand Rapids MI Alger Pump Station

GR Engineering/Jeff McCaul 616-456-3060

- (9) Battle Creek MI Sludge Cake Loading

Jones & Henry 269-353-9650

## PERFORMANCE BOND

Let it be known that Davis Construction Co., as Principal, and Westfield Insurance Company, as Surety, are held and firmly bound unto the City of Battle Creek in the sum of \*See Below dollars (\$ 1,472,280.00 ) for the payment of which sum of money to be made, we bind ourselves, heirs, executors, administrators, successors and assigns, jointly and severally, firmly as required by written contract.

WHEREAS, the Principal has entered into a certain written contract dated the 22nd day of June, 2022 for the \*\*See Below complete, as described in the foregoing Bid and Agreement.

NOW THE CONDITIONS OF THIS OBLIGATION ARE SUCH, that if the said Principal shall in all respects well and truly keep and perform the said contract, and shall pay all sums of money due or to become due, for any labor, materials, apparatus, fixtures or equipment furnished for the purpose of constructing the work provided in said contract, and shall defend, indemnify and save harmless said City of Battle Creek against any liens, encumbrances, damages, claims, demands, expenses, costs and charges of every kind except as otherwise provided in said specifications and other Contract Documents arising out of or in relation to the performance of said work and the provisions of said contract, and shall remove and replace any defects in workmanship or materials which may be apparent or may develop within a period of one (1) year from the date of final acceptance, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

And the said Surety, for value received, hereby stipulates and agreed that no change, extension of time, alteration or addition to the terms of the contract or to work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement or to the work or to the specifications.

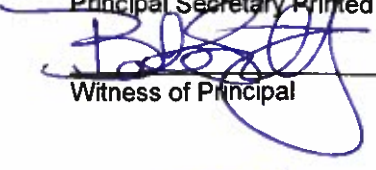
IN WITNESS WHEREOF, we have hereunto set our hands and seals this 21st day of July, 2022.

### PRINCIPAL ATTEST:

Davis Construction Co.  
Principal Business Name  
5236 Dumond Court, Suite A  
Address  
Lansing, MI 48917  
City, State, Zip


  
Principal Secretary Signature & Seal

MARK DAVIS  
Principal Secretary Printed Name

  
Witness of Principal

### SURETY ATTEST:

Westfield Insurance Company  
Surety Business Name  
P.O. Box 5001  
Address  
Westfield Center, OH 44251  
City, State, Zip

BY:   
Attorney-in-Fact Signature & Seal

John T. Foster, Attorney-In-Fact  
Attorney-in-Fact Printed Name

\*One Million Four Hundred Seventy-Two Thousand Two Hundred Eighty and No/100THS

\*\*CONTRACT NO. 2022-091B MINGES BROOK PUMP STATION O-15 IMPROVEMENTS

## LABOR AND MATERIALS BOND

Let it be known that, that we, the undersigned, Davis Construction Co., hereinafter called the "Principal," and Westfield Insurance Company, a corporation organized and existing under the laws of the State of Ohio, having its principal office at \*See Below, hereinafter called the "Surety," are held and firmly bound unto the City of Battle Creek, hereinafter called the "Owner," for use of any and every person, co-partnership, association or corporation interested in sum of \*\*See Below dollars (\$1,472,280.00), to be paid to the said obligees or its or their assigns, to which payment we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents. Sealed with our respective seals and dated this 21st day of July, 2022.

WHEREAS, the above bounded Davis Construction Co., Principal, has entered into a contract with the City of Battle Creek.

Dated the 22nd day of June, 2022, for the \*\*\*See Below.


NOW, THEREFORE, THE CONDITION OF THIS CONDITION IS SUCH, that if the above bounded Principal shall and will promptly pay or cause to be paid all sums of money which may be due any person, co-partnership, association or corporation for all material furnished and labor supplied or performed in the prosecution of the work, whether or not the said material or labor enter into and become component parts of the work or improvement contemplated, then this obligation to be void; otherwise to remain in full force and effect.

The Principal and Surety further jointly and severally agree with the obligee herein that every person, co-partnership, association or corporation who, whether as subcontractor or otherwise, has furnished material or supplied or performed labor in the prosecution of the work as above provided and who has not been paid therefore may sue in assumption on this bond in the name of the Owner for their use prosecute the same to final judgment for such sum or sums as may be justly due to them, and have execution thereon, provided, however, that the Owner shall not be liable for payment of any costs or expenses of any such suit.

IT IS FURTHER AGREED, that any alterations that may be made in the terms of the contract or in the work to be done or materials to be furnished or labor to be supplied or performed under it or the giving by the Owner or any extension of time for the performance of the contract or any other forbearance on the part of either the Owner or the Principal to the other, shall not in any way release the Principal and Surety or Sureties or either or any of them their heirs, executors, administrators, successors or assigns, from their liability hereunder, notice to the Surety or Sureties of any such alteration, extension or forbearance being hereby waived.

IN WITNESS WHEREOF, the said Principal and Surety have duly executed this bond under the seal and day and year first above written.

ATTEST:

  
(Seal)

ATTEST

  
Connor McDowell, Surety Bond Specialist

(SEAL)

Davis Construction Co.

Principal

BY:

Westfield Insurance Company

Surety

BY:

  
Attorney-in-Fact John T. Foster

\*P.O. Box 5001, Westfield Center, OH 44251

\*\*One Million Four Hundred Seventy-Two Thousand Two Hundred Eighty and No/100THS

\*\*\*CONTRACT NO. 2022-091B MINGES BROOK PUMP STATION O-15 IMPROVEMENTS

Rev. January 2022

THIS POWER OF ATTORNEY SUPERCEDES ANY PREVIOUS POWER BEARING THIS SAME POWER # AND ISSUED PRIOR TO 02/04/22, FOR ANY PERSON OR PERSONS NAMED BELOW.

POWER NO. 2140972 05

General  
Power  
of Attorney

**Westfield Insurance Co.**  
**Westfield National Insurance Co.**  
**Ohio Farmers Insurance Co.**  
Westfield Center, Ohio

CERTIFIED COPY

Know All Men by These Presents, That WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, corporations, hereinafter referred to individually as a "Company" and collectively as "Companies," duly organized and existing under the laws of the State of Ohio, and having its principal office in Westfield Center, Medina County, Ohio, do by these presents make, constitute and appoint  
**JOHN T. FOSTER, JAMES N. SLEAR, HEATHER BUONODONO, SHERRY ALTMAN ALEXANDER, IAN T. FOSTER, JOINTLY OR SEVERALLY**

of LANSING and State of MI its true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, undertakings, or other instruments or contracts of suretyship.

**LIMITATION: THIS POWER OF ATTORNEY CANNOT BE USED TO EXECUTE NOTE GUARANTEE, MORTGAGE DEFICIENCY, MORTGAGE GUARANTEE, OR BANK DEPOSITORY BONDS.**

and to bind any of the Companies thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the corporate seal of the applicable Company and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney(s)-in-Fact may do in the premises. Said appointment is made under and by authority of the following resolution adopted by the Board of Directors of each of the WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY:

"Be It Resolved, that the President, any Senior Executive, any Secretary or any Fidelity & Surety Operations Executive or other Executive shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

The Attorney-in-Fact may be given full power and authority for and in the name of and on behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements of indemnity and other conditional or obligatory undertakings and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be as binding upon the Company as if signed by the President and sealed and attested by the Corporate Secretary."

"Be It Further Resolved, that the signature of any such designated person and the seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signatures or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached." (Each adopted at a meeting held on February 8, 2000).

In Witness Whereof, WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY have caused these presents to be signed by their National Surety Leader and Senior Executive and their corporate seals to be hereto affixed this 04th day of FEBRUARY A.D., 2022.

Corporate  
Seals  
Affixed



WESTFIELD INSURANCE COMPANY  
WESTFIELD NATIONAL INSURANCE COMPANY  
OHIO FARMERS INSURANCE COMPANY

By:   
Gary W. Stumper, National Surety Leader and  
Senior Executive

State of Ohio  
County of Medina ss.:

On this 04th day of FEBRUARY A.D., 2022, before me personally came Gary W. Stumper to me known, who, being by me duly sworn, did depose and say, that he resides in Hartford, CT; that he is National Surety Leader and Senior Executive of WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, the companies described in and which executed the above instrument; that he knows the seals of said Companies; that the seals affixed to said instrument are such corporate seals; that they were so affixed by order of the Boards of Directors of said Companies; and that he signed his name thereto by like order.

Notarial  
Seal  
Affixed



David A. Kotnik, Attorney at Law, Notary Public  
My Commission Does Not Expire (Sec. 147.03 Ohio Revised Code)

State of Ohio  
County of Medina ss.:

I, Frank A. Carrino, Secretary of WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Companies, which is still in full force and effect; and furthermore, the resolutions of the Boards of Directors, set out in the Power of Attorney are in full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the seals of said Companies at Westfield Center, Ohio, this 21st day of July A.D., 2022.



Frank A. Carrino, Secretary



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

7/5/2022

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> Gibson Insurance Agency Inc 202 South Michigan St., Suite 1400 South Bend IN 46601	<b>CONTACT NAME:</b> Theresa Burns <b>PHONE (A/C, No, Ext):</b> 574-245-3576 <b>E-MAIL ADDRESS:</b> tburns@thegibsonedge.com <b>FAX (A/C, No):</b> 574-236-6399
<b>INSURED</b> Davis Construction, Inc. 5236 Dumond Ct, Ste A Lansing MI 48917	<b>INSURER(S) AFFORDING COVERAGE</b> <b>INSURER A:</b> Cincinnati Insurance Co. <b>INSURER B:</b> Endurance American Specialty Insurance Company <b>INSURER C:</b> Cincinnati Casualty Company <b>INSURER D:</b> Landmark American Insurance Company <b>INSURER E:</b> <b>INSURER F:</b>

**COVERAGES****CERTIFICATE NUMBER:** 1851808517**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 <input checked="" type="checkbox"/> XCU <input checked="" type="checkbox"/> Contractual Liab GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:			EPP0590305	1/1/2022	1/1/2023	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 - COMP/OP AGG \$ 2,000,000 \$
A	<input checked="" type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <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			EPP0590305	1/1/2022	1/1/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			EPP0590305	1/1/2022	1/1/2023	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 \$
C	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input checked="" type="checkbox"/> N	N/A	EWC0590307	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
B D	Excess Liability - Lead Excess Liability - 2nd Layer			ELD30002112001 LHA096669	1/1/2022 1/1/2022	1/1/2023 1/1/2023	Limit \$5,000,000 Limit \$4,000,000

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

RE: Contract #2022-091B Minges Brook Pump Station O-15 Improvements; Certificate holder is additional insured with respect to general liability coverages as required by written contract.

**CERTIFICATE HOLDER****CANCELLATION**

City of Battle Creek  
10 N Division, Ste 214  
Battle Creek MI 49014

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

*Gibson Insurance Agency*

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Resolution

NO. 35

A Resolution authorizing the City Manager to remove Public Works Director Carl Fedders as the City of Battle Creek Street Administrator with the Michigan Department of Transportation, and replace him with Field Services Superintendent, Todd Gerber.

**BATTLE CREEK, MICHIGAN - 1/3/2023**

**Resolved by the Commission of the City of Battle Creek:**

That the City Manager is authorized to remove Public Works Director Carl Fedders as the City of Battle Creek Street Administrator with the Michigan Department of Transportation, and replace him with Field Services Superintendent Todd Gerber.

---

Battle Creek City Commission  
1/3/2023

### **Action Summary**

**Staff Member:** Carl Fedders, DPW Director

**Department:** DPW - Streets

### **SUMMARY**

A Resolution authorizing the City Manager to remove Public Works Director Carl Fedders as the City of Battle Creek Street Administrator with the Michigan Department of Transportation, and replace him with Field Services Superintendent, Todd Gerber.

### **BUDGETARY CONSIDERATIONS**

None

### **HISTORY, BACKGROUND and DISCUSSION**

Section 13(9) of Act 51, Public Acts of 1951 provided that each incorporated city and village to which funds are returned under the provisions of this section, that, "the responsibility for street improvements, maintenance, and traffic operations work, and the development, construction, or repair of off-street parking facilities and construction or repair of street lighting shall be coordinated by a single administrator to be designated by the governing body who shall be responsible for and shall represent the municipality in transactions with the State Transportation Department pursuant to this act."

On September 3, 2019, the City Commission approved the appointment of Carl Fedders, the Asst. DPW Director/City Engineer at that time, as the Street Administrator (Resolution #221). It is our request that Todd Gerber replace Carl Fedders as the Street Administrator.

## **DISCUSSION OF THE ISSUE**

## **POSITIONS**

---

### ATTACHMENTS:

File Name	Description
 MDOTForm2012_StreetAdmin.pdf	MDOT Form 2012

## RESOLUTION FOR DESIGNATION OF STREET ADMINISTRATOR

*This information is required by Act 51, P.A. 1951 as amended. Failure  
to supply this information will result in funds being withheld.*

**MAIL TO:** Michigan Department of Transportation, Financial Operations  
Division, P.O. Box 30050, Lansing, MI 48909.  
or Fax to: (517) 335-1828

**NOTE:** Indicate, if possible, where Street Administrator can usually be reached during normal working hours, if different than City or Village Office. List any other office held by the Administrator.

Councilperson or Commissioner \_\_\_\_\_  
offered the following resolution and moved its adoption:

Whereas, Section 13(9) of Act 51, Public Acts of 1951 provided that each incorporated city and village to which funds are returned under the provisions of this section, that, "the responsibility for street improvements, maintenance, and traffic operations work, and the development, construction, or repair of off-street parking facilities and construction or repair of street lighting shall be coordinated by a single administrator to be designated by the governing body who shall be responsible for and shall represent the municipality in transactions with the State Transportation Department pursuant to this act."

Therefore, be it resolved, that this Honorable Body designate \_\_\_\_\_  
\_\_\_\_\_ as the single Street Administrator for the City or Village of  
\_\_\_\_\_ in all transactions with the State Transportation Department  
as provided in Section 13 of the Act.

Supported by the Councilperson or Commissioner \_\_\_\_\_

Yeas \_\_\_\_\_

Nays \_\_\_\_\_

I hereby certify that the foregoing is a true and correct copy of a resolution made and adopted at a regular meeting  
of the governing body of this municipality on the \_\_\_\_\_ day of  
\_\_\_\_\_

CITY OR VILLAGE CLERK (SIGNATURE)	E-MAIL ADDRESS	DATE
STREET ADMINISTRATOR (SIGNATURE)	E-MAIL ADDRESS	DATE
ADDRESS OF CITY OR VILLAGE OFFICE		P.O. BOX
CITY OR VILLAGE	ZIP CODE	PHONE NUMBER



Resolution

NO. 36

A Resolution authorizing the City Manager to sign Contract No. 22-5540 with the Michigan Department of Transportation for improvements to the Union St Bridge over the Battle Creek River.

**BATTLE CREEK, MICHIGAN - 1/3/2023**

**Resolved by the Commission of the City of Battle Creek:**

That the City Manager is authorized to sign Contract No. 22-5540 with the Michigan Department of Transportation.

---

Battle Creek City Commission  
1/3/2023

**Action Summary**

**Staff Member:** Jarret Geering, City Engineer

**Department:** Engineering

**SUMMARY**

A Resolution authorizing the City Manager to sign Contract No. 22-5540 with the Michigan Department of Transportation for improvements to the Union St Bridge over the Battle Creek River.

**BUDGETARY CONSIDERATIONS**

The grand total estimated cost of the project is \$2,604,500 with cost participation as follows:

Structure and approach work: \$2,604,500

Less Federal Funds: \$2,471,425

Balance (REQUESTED PARTY'S SHARE): \$133,075

A portion of the project cost shall be met in part by Federal Funds and by state Local Bridge Funds. Upon final settlement of costs, Federal Funds will be applied to the eligible items of the project cost. The state Local Bridge Funds will be applied to the balance of the project cost, after deduction of Federal Funds, such that the combined Federal Funds and state Local Bridge Funds shall equal 95 percent of those project cost eligible for participation by such funds. The remaining 5 percent of the eligible items of the project cost, as well as any ineligible items of project cost, shall be paid 100 percent by the requesting party. The name plate is not eligible for Federal or State participation and shall be charged to and paid 100

percent by the requesting party.

City cost will be charged to: 402.22.4021.801.310-Major Streets Capital Projects

### **HISTORY, BACKGROUND and DISCUSSION**

The City often works with the Michigan Department of Transportation for highway research planning & construction; including earthwork, aggregate base, bridge railing, guardrail, concrete sidewalk, curb and gutter and curb ramps, hot mix asphalt approach and storm sewer work, permanent signing and permanent pavement markings; name plate for the structure; and all together with necessary related work.

This project is consistent with the City of Battle Creek's Asset Management Plan and has been included in the Battle Creek Area Transportation Study's Transportation Improvement Plan.

### **DISCUSSION OF THE ISSUE**

### **POSITIONS**

---

#### ATTACHMENTS:

File Name	Description
 212288CON_Contract_22-5540.pdf	contract

LOCAL BRIDGE  
FEDERAL

CAB

Control Section	BFP 13000
Job Number	212288CON
Project	23A0110
Structure	#1408
CFDA No.	20.205 (Highway Research Planning & Construction)
Contract No.	22-5540

### PART I

THIS CONTRACT, consisting of PART I and PART II (Standard Agreement Provisions), is made by and between the MICHIGAN DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "DEPARTMENT"; and the CITY OF BATTLE CREEK, a Michigan municipal corporation, hereinafter referred to as the "REQUESTING PARTY"; for the purpose of fixing the rights and obligations of the parties in agreeing to the following improvements, in Battle Creek, Michigan, hereinafter referred to as the "PROJECT" and estimated in detail on EXHIBIT "I", dated December 7, 2022, attached hereto and made a part hereof:

#### PART A – FEDERAL AND STATE PARTICIPATION

Superstructure removal and replacement of the structure #1408, with 17 inch prestressed concrete box beams, which carries Union Street over the Battle Creek River, Section 32, T01S, R05E, City of Battle Creek, Michigan; including earthwork, aggregate base, bridge railing, guardrail, concrete sidewalk, curb and gutter and curb ramps, hot mix asphalt approach and storm sewer work, permanent signing and permanent pavement markings; and all together with necessary related work.

#### PART B – NO FEDERAL OR STATE PARTICIPATION

Name plate for the structure as described in PART A; and all together with necessary related work.

WITNESSETH:

WHEREAS, pursuant to Federal and State law, monies have been provided for the performance of certain improvements on public roads; and

WHEREAS, the reference "FHWA" in PART I and PART II refers to the United States Department of Transportation, Federal Highway Administration; and

WHEREAS, the PROJECT, or portions of the PROJECT, at the request of the REQUESTING PARTY, are being programmed with the FHWA, for implementation with the use of Federal funds under the following Federal program:

SECTION 144 OF TITLE 23 USC  
(HIGHWAY BRIDGE REPLACEMENT AND REHABILITATION PROGRAM)

WHEREAS, the PROJECT has been approved for financing in part with funds appropriated to the Local Bridge Fund pursuant to Section 10(5) of Act 51, Public Acts of 1951, as amended, for the state Local Bridge Program; and

WHEREAS, the parties hereto have reached an understanding with each other regarding the performance of the PROJECT work and desire to set forth this understanding in the form of a written contract.

NOW, THEREFORE, in consideration of the premises and of the mutual undertakings of the parties and in conformity with applicable law, it is agreed:

1. The parties hereto shall undertake and complete the PROJECT in accordance with the terms of this contract.

2. The term "PROJECT COST", as herein used, is hereby defined as the cost of the physical construction necessary for the completion of the PROJECT, including any other costs incurred by the DEPARTMENT as a result of this contract, except for construction engineering and inspection.

No charges will be made by the DEPARTMENT to the PROJECT for any inspection work or construction engineering.

The costs incurred by the REQUESTING PARTY for preliminary engineering, construction engineering, construction materials testing, inspection, and right-of-way are excluded from the PROJECT COST as defined by this contract.

The Michigan Department of Environment, Great Lakes, and Energy has informed the DEPARTMENT that it adopted new administrative rules (R 325.10101, et. seq.) which prohibit any governmental agency from connecting and/or reconnecting lead and/or galvanized service lines to existing and/or new water main. Questions regarding these administrative rules should be directed to the Michigan Department of Environment, Great Lakes, and Energy. The cost associated with replacement of any lead and/or galvanized service lines, including but not limited to contractor claims, will be the sole responsibility of the REQUESTING PARTY.

3. The DEPARTMENT is authorized by the REQUESTING PARTY to administer on behalf of the REQUESTING PARTY all phases of the project including advertising and

awarding the construction contract for the PROJECT. Such administration shall be in accordance with PART II Section II of this contract.

Any items of the PROJECT COST incurred by the DEPARTMENT may be charged to the PROJECT.

4. The REQUESTING PARTY, at no cost to the PROJECT or to the DEPARTMENT, shall:

- A. Design or cause to be designed the plans for the PROJECT.
- B. Appoint a project engineer who shall be in responsible charge of the PROJECT and ensure that the plans and specifications are followed.
- C. Perform or cause to be performed the construction engineering, construction materials testing, and inspection services necessary for the completion of the PROJECT.

5. The PROJECT COST shall be met in accordance with the following:

PART A

The PART A portion of the PROJECT COST shall be met in part by Federal Funds and by state Local Bridge Funds. Upon final settlement of costs, Federal Funds will be applied to the eligible items of the PART A portion of the PROJECT COST. The state Local Bridge Funds will be applied to the balance of the PROJECT COST for PART A, after deduction of Federal Funds, such that the combined Federal Funds and state Local Bridge Funds shall equal 95 percent of those PROJECT COSTS for PART A eligible for participation by such funds. The remaining 5 percent of the eligible items of the PART A portion of the PROJECT COST, as well as any ineligible items of PROJECT COST, shall be paid 100 percent by the REQUESTING PARTY in the manner and at the times hereinafter set forth.

PART B

The PART B portion of the PROJECT COST is not eligible for Federal or State participation and shall be charged to and paid 100 percent by the REQUESTING PARTY in the manner and at the times hereinafter set forth.

Any items of PROJECT COST not reimbursed by Federal Funds or paid by state Local Bridge Funds will be the sole responsibility of the REQUESTING PARTY.

6. No working capital deposit will be required for this PROJECT.

In order to fulfill the obligations assumed by the REQUESTING PARTY under the provisions of this contract, the REQUESTING PARTY shall make prompt payments of its share

of the PROJECT COST upon receipt of progress billings from the DEPARTMENT as herein provided. All payments will be made within 30 days of receipt of billings from the DEPARTMENT. Billings to the REQUESTING PARTY will be based upon the REQUESTING PARTY'S share of the actual costs incurred less Federal Funds and State Funds earned as the PROJECT progresses.

7. At such time as traffic volumes and safety requirements warrant, the REQUESTING PARTY will cause to be enacted and enforced such ordinances as may be necessary to prohibit parking in the traveled roadway throughout the limits of the PROJECT.

8. The performance of the entire PROJECT under this contract, whether Federally funded or not, will be subject to the provisions and requirements of PART II that are applicable to a Federally funded project.

In the event of any discrepancies between PART I and PART II of this contract, the provisions of PART I shall prevail.

Buy America Requirements (23 CFR 635.410) shall apply to the PROJECT and will be adhered to, as applicable, by the parties hereto.

9. The REQUESTING PARTY certifies that it is not aware if and has no reason to believe that the property on which the work is to be performed under this agreement is a facility, as defined by the Michigan Natural Resources and Environmental Protection Act [(NREPA), PA 451, 1994, as amended 2012]; MCL 324.20101(1)(s). The REQUESTING PARTY also certifies that it is not a liable party pursuant to either Part 201 or Part 213 of NREPA, MCL 324.20126 et seq. and MCL 324.21323a et seq. The REQUESTING PARTY is a local unit of government that has acquired or will acquire property for the use of either a transportation corridor or public right-of-way and was not responsible for any activities causing a release or threat of release of any hazardous materials at or on the property. The REQUESTING PARTY is not a person who is liable for response activity costs, pursuant to MCL 324.20101 (vv) and (ww).

10. If, subsequent to execution of this contract, previously unknown hazardous substances are discovered within the PROJECT limits, which require environmental remediation pursuant to either state or federal law, the REQUESTING PARTY, in addition to reporting that fact to the Michigan Department of Environment, Great Lakes, and Energy, shall immediately notify the DEPARTMENT, both orally and in writing of such discovery. The DEPARTMENT shall consult with the REQUESTING PARTY to determine if it is willing to pay for the cost of remediation and, with the FHWA, to determine the eligibility, for reimbursement, of the remediation costs. The REQUESTING PARTY shall be charged for and shall pay all costs associated with such remediation, including all delay costs of the contractor for the PROJECT, in the event that remediation and delay costs are not deemed eligible by the FHWA. If the REQUESTING PARTY refuses to participate in the cost of remediation, the DEPARTMENT

shall terminate the PROJECT. The parties agree that any costs or damages that the DEPARTMENT incurs as a result of such termination shall be considered a PROJECT COST.

11. If federal and/or state funds administered by the DEPARTMENT are used to pay the cost of remediating any hazardous substances discovered after the execution of this contract and if there is a reasonable likelihood of recovery, the REQUESTING PARTY, in cooperation with the Michigan Department of Environment, Great Lakes, and Energy and the DEPARTMENT, shall make a diligent effort to recover such costs from all other possible entities. If recovery is made, the DEPARTMENT shall be reimbursed from such recovery for the proportionate share of the amount paid by the FHWA and/or the DEPARTMENT and the DEPARTMENT shall credit such sums to the appropriate funding source.

12. The DEPARTMENT'S sole reason for entering into this contract is to enable the REQUESTING PARTY to obtain and use funds provided by the Federal Highway Administration pursuant to Title 23 of the United States Code and/or State Funds.

Any and all approvals of, reviews of, and recommendations regarding contracts, agreements, permits, plans, specifications, or documents, of any nature, and any inspections of work by the DEPARTMENT pursuant to the terms of this contract are done to assist the REQUESTING PARTY in meeting program guidelines in order to qualify for available funds. Such approvals, reviews, inspections and recommendations by the DEPARTMENT shall not relieve the REQUESTING PARTY and the local agencies, as applicable, of their ultimate control and shall not be construed as a warranty of their propriety or that the DEPARTMENT is assuming any liability, control or jurisdiction.

The providing of recommendations or advice by the DEPARTMENT does not relieve the REQUESTING PARTY and the local agencies, as applicable, of their exclusive jurisdiction of the highway or bridge structure(s) and responsibility under MCL 691.1402 et seq., as amended.

When providing approvals, reviews and recommendations under this contract, the DEPARTMENT is performing a governmental function, as that term is defined in MCL 691.1401 et seq., as amended, which is incidental to the completion of the PROJECT.

13. The DEPARTMENT, by executing this contract, and rendering services pursuant to this contract, has not and does not assume jurisdiction of the highway or bridge structure(s), described as the PROJECT, for purposes of MCL 691.1402 et seq., as amended. Exclusive jurisdiction of such highway for the purposes of MCL 691.1402 et seq., as amended, rests with the REQUESTING PARTY and other local agencies having respective jurisdiction.

14. The REQUESTING PARTY shall approve all of the plans and specifications to be used on the PROJECT and shall be deemed to have approved all changes to the plans and specifications when put into effect. It is agreed that ultimate responsibility and control over the PROJECT rests with the REQUESTING PARTY and local agencies, as applicable.

15. The REQUESTING PARTY agrees that the costs reported to the DEPARTMENT for this contract will represent only those items that are properly chargeable in accordance with this contract. The REQUESTING PARTY also certifies that it has read the contract terms and has made itself aware of the applicable laws, regulations, and terms of this contract that apply to the reporting of costs incurred under the terms of this contract.

16. Each party to this contract will remain responsible for any and all claims arising out of its own acts and/or omissions during the performance of the contract, as provided by this contract or by law. In addition, this is not intended to increase or decrease either party's liability for or immunity from tort claims. This contract is also not intended to nor will it be interpreted as giving either party a right of indemnification, either by contract or by law, for claims arising out of the performance of this contract.

17. The parties shall promptly provide comprehensive assistance and cooperation in defending and resolving construction claims brought against the DEPARTMENT by the contractor, vendors or suppliers as a result of the DEPARTMENT'S award of the construction contract for the PROJECT. Costs incurred by the DEPARTMENT in defending or resolving such claims shall be reasonable and necessary and shall be considered PROJECT COSTS.

18. The DEPARTMENT shall require the contractor who is awarded the contract for the construction of the PROJECT to provide insurance in the amounts specified and in accordance with the DEPARTMENT'S current Standard Specifications for Construction, and to:

- A. Maintain bodily injury and property damage insurance for the duration of the PROJECT.
- B. Provide owner's protective liability insurance naming as insureds the State of Michigan, the Michigan State Transportation Commission, the DEPARTMENT, and its officials, agents and employees, the REQUESTING PARTY and any other county, county road commission, or municipality in whose jurisdiction the PROJECT is located, and their employees, for the duration of the PROJECT and to provide, upon request, copies of certificates of insurance to the insureds. It is understood that the DEPARTMENT does not assume jurisdiction of the highway described as the PROJECT as a result of being named as an insured on the owner's protective liability insurance policy.
- C. Comply with the requirements of notice of cancellation and reduction of insurance set forth in the current standard specifications for construction and to provide, upon request, copies of notices and reports prepared to those insured.

19. This contract shall become binding on the parties hereto and of full force and effect upon the signing thereof by the duly authorized officials for the parties hereto; upon the adoption of the necessary resolution approving said contract and authorizing the signatures thereto of the respective officials of the REQUESTING PARTY, a certified copy of which resolution shall be attached to this contract; and with approval by the State Administrative Board.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed as written below.

CITY OF BATTLE CREEK

MICHIGAN DEPARTMENT  
OF TRANSPORTATION

By \_\_\_\_\_  
Title:

By \_\_\_\_\_  
Department Director MDOT

By \_\_\_\_\_  
Title:



December 7, 2022

EXHIBIT I

	CONTROL SECTION JOB NUMBER PROJECT STRUCTURE		BFP 13000 212288CON 23A0110		
	<u>TOTAL ESTIMATED COST</u>	<u>FEDERAL FUNDS (EST 80%)</u>	<u>STATE LOCAL BRIDGE FUNDS (EST 15%)</u>	<u>TOTAL FEDERAL &amp; STATE AID</u>	<u>BALANCE REQ. PARTY'S SHARE</u>
PART A - STRUCTURE AND APPROACH WORK (FEDERAL & STATE PARTICIPATION)					
Construction (Contracted)	\$2,601,500	\$2,081,200	\$390,225	\$2,471,425	\$130,075
PART B – NAMEPLATE INSTALLATION WORK (NO FEDERAL OR STATE PARTICIPATION)					
Construction (Contracted)	\$3,000	\$0	\$0	\$0	\$3,000
GRAND TOTAL	\$2,604,500	\$2,081,200	\$390,225	\$2,471,425	\$133,075

NO DEPOSIT REQUIRED

DOT

TYPE B  
BUREAU OF HIGHWAYS  
03-15-93

## PART II

### STANDARD AGREEMENT PROVISIONS

SECTION I COMPLIANCE WITH REGULATIONS AND DIRECTIVES

SECTION II PROJECT ADMINISTRATION AND SUPERVISION

SECTION III ACCOUNTING AND BILLING

SECTION IV MAINTENANCE AND OPERATION

SECTION V SPECIAL PROGRAM AND PROJECT CONDITIONS

## SECTION I

### COMPLIANCE WITH REGULATIONS AND DIRECTIVES

- A. To qualify for eligible cost, all work shall be documented in accordance with the requirements and procedures of the DEPARTMENT.
- B. All work on projects for which reimbursement with Federal funds is requested shall be performed in accordance with the requirements and guidelines set forth in the following Directives of the Federal-Aid Policy Guide (FAPG) of the FHWA, as applicable, and as referenced in pertinent sections of Title 23 and Title 49 of the Code of Federal Regulations (CFR), and all supplements and amendments thereto.
  - 1. Engineering
    - a. FAPG (6012.1): Preliminary Engineering
    - b. FAPG (23 CFR 172): Administration of Engineering and Design Related Service Contracts
    - c. FAPG (23 CFR 635A): Contract Procedures
    - d. FAPG (49 CFR 18.22): Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments—Allowable Costs
  - 2. Construction
    - a. FAPG (23 CFR 140E): Administrative Settlement Costs-Contract Claims
    - b. FAPG (23 CFR 140B): Construction Engineering Costs
    - c. FAPG (23 CFR 17): Recordkeeping and Retention Requirements for Federal-Aid Highway Records of State Highway Agencies
    - d. FAPG (23 CFR 635A): Contract Procedures
    - e. FAPG (23 CFR 635B): Force Account Construction
    - f. FAPG (23 CFR 645A): Utility Relocations, Adjustments and Reimbursement

- g. FAPG (23 CFR 645B): Accommodation of Utilities (PPM 30-4.1)
  - h. FAPG (23 CFR 655F): Traffic Control Devices on Federal-Aid and other Streets and Highways
  - i. FAPG (49 CFR 18.22): Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments—Allowable Costs
- 3. Modification Or Construction Of Railroad Facilities
  - a. FAPG (23 CFR 140I): Reimbursement for Railroad Work
  - b. FAPG (23 CFR 646B): Railroad Highway Projects
- C. In conformance with FAPG (23 CFR 630C) Project Agreements, the political subdivisions party to this contract, on those Federally funded projects which exceed a total cost of \$100,000.00 stipulate the following with respect to their specific jurisdictions:
  - 1. That any facility to be utilized in performance under or to benefit from this contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Federal Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended.
  - 2. That they each agree to comply with all of the requirements of Section 114 of the Federal Clean Air Act and Section 308 of the Federal Water Pollution Control Act, and all regulations and guidelines issued thereunder.
  - 3. That as a condition of Federal aid pursuant to this contract they shall notify the DEPARTMENT of the receipt of any advice indicating that a facility to be utilized in performance under or to benefit from this contract is under consideration to be listed on the EPA List of Violating Facilities.
- D. Ensure that the PROJECT is constructed in accordance with and incorporates all committed environmental impact mitigation measures listed in approved environmental documents unless modified or deleted by approval of the FHWA.
- E. All the requirements, guidelines, conditions and restrictions noted in all other pertinent Directives and Instructional Memoranda of the FHWA will apply to this contract and will be adhered to, as applicable, by the parties hereto.

## SECTION II

### PROJECT ADMINISTRATION AND SUPERVISION

- A. The DEPARTMENT shall provide such administrative guidance as it determines is required by the PROJECT in order to facilitate the obtaining of available federal and/or state funds.
- B. The DEPARTMENT will advertise and award all contracted portions of the PROJECT work. Prior to advertising of the PROJECT for receipt of bids, the REQUESTING PARTY may delete any portion or all of the PROJECT work. After receipt of bids for the PROJECT, the REQUESTING PARTY shall have the right to reject the amount bid for the PROJECT prior to the award of the contract for the PROJECT only if such amount exceeds by ten percent (10%) the final engineer's estimate therefor. If such rejection of the bids is not received in writing within two (2) weeks after letting, the DEPARTMENT will assume concurrence. The DEPARTMENT may, upon request, readvertise the PROJECT. Should the REQUESTING PARTY so request in writing within the aforesaid two (2) week period after letting, the PROJECT will be cancelled and the DEPARTMENT will refund the unused balance of the deposit less all costs incurred by the DEPARTMENT.
- C. The DEPARTMENT will perform such inspection services on PROJECT work performed by the REQUESTING PARTY with its own forces as is required to ensure compliance with the approved plans & specifications.
- D. On those projects funded with Federal monies, the DEPARTMENT shall as may be required secure from the FHWA approval of plans and specifications, and such cost estimates for FHWA participation in the PROJECT COST.
- E. All work in connection with the PROJECT shall be performed in conformance with the Michigan Department of Transportation Standard Specifications for Construction, and the supplemental specifications, Special Provisions and plans pertaining to the PROJECT and all materials furnished and used in the construction of the PROJECT shall conform to the aforesaid specifications. No extra work shall be performed nor changes in plans and specifications made until said work or changes are approved by the project engineer and authorized by the DEPARTMENT.

- F. Should it be necessary or desirable that portions of the work covered by this contract be accomplished by a consulting firm, a railway company, or governmental agency, firm, person, or corporation, under a subcontract with the REQUESTING PARTY at PROJECT expense, such subcontracted arrangements will be covered by formal written agreement between the REQUESTING PARTY and that party.

This formal written agreement shall: include a reference to the specific prime contract to which it pertains; include provisions which clearly set forth the maximum reimbursable and the basis of payment; provide for the maintenance of accounting records in accordance with generally accepted accounting principles, which clearly document the actual cost of the services provided; provide that costs eligible for reimbursement shall be in accordance with clearly defined cost criteria such as 49 CFR Part 18, 48 CFR Part 31, 23 CFR Part 140, OMB Circular A-87, etc. as applicable; provide for access to the department or its representatives to inspect and audit all data and records related to the agreement for a minimum of three years after the department's final payment to the local unit.

All such agreements will be submitted for approval by the DEPARTMENT and, if applicable, by the FHWA prior to execution thereof, except for agreements for amounts less than \$100,000 for preliminary engineering and testing services executed under and in accordance with the provisions of the "Small Purchase Procedures" FAPG (23 CFR 172), which do not require prior approval of the DEPARTMENT or the FHWA.

Any such approval by the DEPARTMENT shall in no way be construed as a warranty of the subcontractor's qualifications, financial integrity, or ability to perform the work being subcontracted.

- G. The REQUESTING PARTY, at no cost to the PROJECT or the DEPARTMENT, shall make such arrangements with railway companies, utilities, etc., as may be necessary for the performance of work required for the PROJECT but for which Federal or other reimbursement will not be requested.
- H. The REQUESTING PARTY, at no cost to the PROJECT, or the DEPARTMENT, shall secure, as necessary, all agreements and approvals of the PROJECT with railway companies, the Railroad Safety & Tariffs Division of the DEPARTMENT and other concerned governmental agencies other than the FHWA, and will forward same to the DEPARTMENT for such reviews and approvals as may be required.
- I. No PROJECT work for which reimbursement will be requested by the REQUESTING PARTY is to be subcontracted or performed until the DEPARTMENT gives written notification that such work may commence.

- J. The REQUESTING PARTY shall be responsible for the payment of all costs and expenses incurred in the performance of the work it agrees to undertake and perform.
- K. The REQUESTING PARTY shall pay directly to the party performing the work all billings for the services performed on the PROJECT which are authorized by or through the REQUESTING PARTY.
- L. The REQUESTING PARTY shall submit to the DEPARTMENT all paid billings for which reimbursement is desired in accordance with DEPARTMENT procedures.
- M. All work by a consulting firm will be performed in compliance with the applicable provisions of 1980 PA 299, Subsection 2001, MCL 339.2001; MSA 18.425(2001), as well as in accordance with the provisions of all previously cited Directives of the FHWA.
- N. The project engineer shall be subject to such administrative guidance as may be deemed necessary to ensure compliance with program requirement and, in those instances where a consultant firm is retained to provide engineering and inspection services, the personnel performing those services shall be subject to the same conditions.
- O. The DEPARTMENT, in administering the PROJECT in accordance with applicable Federal and State requirements and regulations, neither assumes nor becomes liable for any obligations undertaken or arising between the REQUESTING PARTY and any other party with respect to the PROJECT.
- P. In the event it is determined by the DEPARTMENT that there will be either insufficient Federal funds or insufficient time to properly administer such funds for the entire PROJECT or portions thereof, the DEPARTMENT, prior to advertising or issuing authorization for work performance, may cancel the PROJECT, or any portion thereof, and upon written notice to the parties this contract shall be void and of no effect with respect to that cancelled portion of the PROJECT. Any PROJECT deposits previously made by the parties on the cancelled portions of the PROJECT will be promptly refunded.
- Q. Those projects funded with Federal monies will be subject to inspection at all times by the DEPARTMENT and the FHWA.

### SECTION III

#### ACCOUNTING AND BILLING

A. Procedures for billing for work undertaken by the REQUESTING PARTY:

1. The REQUESTING PARTY shall establish and maintain accurate records, in accordance with generally accepted accounting principles, of all expenses incurred for which payment is sought or made under this contract, said records to be hereinafter referred to as the "RECORDS". Separate accounts shall be established and maintained for all costs incurred under this contract.

The REQUESTING PARTY shall maintain the RECORDS for at least three (3) years from the date of final payment of Federal Aid made by the DEPARTMENT under this contract. In the event of a dispute with regard to the allowable expenses or any other issue under this contract, the REQUESTING PARTY shall thereafter continue to maintain the RECORDS at least until that dispute has been finally decided and the time for all available challenges or appeals of that decision has expired.

The DEPARTMENT, or its representative, may inspect, copy, or audit the RECORDS at any reasonable time after giving reasonable notice.

If any part of the work is subcontracted, the REQUESTING PARTY shall assure compliance with the above for all subcontracted work.

In the event that an audit performed by or on behalf of the DEPARTMENT indicates an adjustment to the costs reported under this contract, or questions the allowability of an item of expense, the DEPARTMENT shall promptly submit to the REQUESTING PARTY, a Notice of Audit Results and a copy of the audit report which may supplement or modify any tentative findings verbally communicated to the REQUESTING PARTY at the completion of an audit.

Within sixty (60) days after the date of the Notice of Audit Results, the REQUESTING PARTY shall: (a) respond in writing to the responsible Bureau or the DEPARTMENT indicating whether or not it concurs with the audit report, (b) clearly explain the nature and basis for any disagreement as to a disallowed item of expense and, (c) submit to the DEPARTMENT a written explanation as to any questioned or no opinion expressed item of expense, hereinafter referred to as the "RESPONSE". The RESPONSE shall be clearly stated and provide any supporting documentation necessary to resolve any disagreement or questioned or no opinion expressed item of expense. Where the documentation is voluminous, the REQUESTING PARTY may supply appropriate excerpts and make alternate

arrangements to conveniently and reasonably make that documentation available for review by the DEPARTMENT. The RESPONSE shall refer to and apply the language of the contract. The REQUESTING PARTY agrees that failure to submit a RESPONSE within the sixty (60) day period constitutes agreement with any disallowance of an item of expense and authorizes the DEPARTMENT to finally disallow any items of questioned or no opinion expressed cost.

The DEPARTMENT shall make its decision with regard to any Notice of Audit Results and RESPONSE within one hundred twenty (120) days after the date of the Notice of Audit Results. If the DEPARTMENT determines that an overpayment has been made to the REQUESTING PARTY, the REQUESTING PARTY shall repay that amount to the DEPARTMENT or reach agreement with the DEPARTMENT on a repayment schedule within thirty (30) days after the date of an invoice from the DEPARTMENT. If the REQUESTING PARTY fails to repay the overpayment or reach agreement with the DEPARTMENT on a repayment schedule within the thirty (30) day period, the REQUESTING PARTY agrees that the DEPARTMENT shall deduct all or a portion of the overpayment from any funds then or thereafter payable by the DEPARTMENT to the REQUESTING PARTY under this contract or any other agreement, or payable to the REQUESTING PARTY under the terms of 1951 PA 51, as applicable. Interest will be assessed on any partial payments or repayment schedules based on the unpaid balance at the end of each month until the balance is paid in full. The assessment of interest will begin thirty (30) days from the date of the invoice. The rate of interest will be based on the Michigan Department of Treasury common cash funds interest earnings. The rate of interest will be reviewed annually by the DEPARTMENT and adjusted as necessary based on the Michigan Department of Treasury common cash funds interest earnings. The REQUESTING PARTY expressly consents to this withholding or offsetting of funds under those circumstances, reserving the right to file a lawsuit in the Court of Claims to contest the DEPARTMENT'S decision only as to any item of expense the disallowance of which was disputed by the REQUESTING PARTY in a timely filed RESPONSE.

The REQUESTING PARTY shall comply with the Single Audit Act of 1984, as amended, including, but not limited to, the Single Audit Amendments of 1996 (31 USC 7501-7507).

The REQUESTING PARTY shall adhere to the following requirements associated with audits of accounts and records:

- a. Agencies expending a total of \$500,000 or more in federal funds, from one or more funding sources in its fiscal year, shall comply with the requirements of the federal Office of Management and Budget (OMB) Circular A-133, as revised or amended.

The agency shall submit two copies of:

The Reporting Package  
The Data Collection Form  
The management letter to the agency, if one issued by the audit firm

The OMB Circular A-133 audit must be submitted to the address below in accordance with the time frame established in the circular, as revised or amended.

b. Agencies expending less than \$500,000 in federal funds must submit a letter to the Department advising that a circular audit was not required. The letter shall indicate the applicable fiscal year, the amount of federal funds spent, the name(s) of the Department federal programs, and the CFDA grant number(s). This information must also be submitted to the address below.

c. Address: Michigan Department of Education  
Accounting Service Center  
Hannah Building  
608 Allegan Street  
Lansing, MI 48909

d. Agencies must also comply with applicable State laws and regulations relative to audit requirements.

e. Agencies shall not charge audit costs to Department's federal programs which are not in accordance with the OMB Circular A-133 requirements.

f. All agencies are subject to the federally required monitoring activities, which may include limited scope reviews and other on-site monitoring.

2. Agreed Unit Prices Work - All billings for work undertaken by the REQUESTING PARTY on an agreed unit price basis will be submitted in accordance with the Michigan Department of Transportation Standard Specifications for Construction and pertinent FAPG Directives and Guidelines of the FHWA.
3. Force Account Work and Subcontracted Work - All billings submitted to the DEPARTMENT for Federal reimbursement for items of work performed on a force account basis or by any subcontract with a consulting firm, railway company, governmental agency or other party, under the terms of this contract, shall be prepared in accordance with the provisions of the pertinent FHPM Directives and the procedures of the DEPARTMENT. Progress billings may be submitted monthly during the time work is being performed provided, however, that no bill of a lesser amount than \$1,000.00 shall be submitted unless it is a final

or end of fiscal year billing. All billings shall be labeled either "Progress Bill Number \_\_\_\_\_", or "Final Billing".

4. Final billing under this contract shall be submitted in a timely manner but not later than six months after completion of the work. Billings for work submitted later than six months after completion of the work will not be paid.
5. Upon receipt of billings for reimbursement for work undertaken by the REQUESTING PARTY on projects funded with Federal monies, the DEPARTMENT will act as billing agent for the REQUESTING PARTY, consolidating said billings with those for its own force account work and presenting these consolidated billings to the FHWA for payment. Upon receipt of reimbursement from the FHWA, the DEPARTMENT will promptly forward to the REQUESTING PARTY its share of said reimbursement.
6. Upon receipt of billings for reimbursement for work undertaken by the REQUESTING PARTY on projects funded with non-Federal monies, the DEPARTMENT will promptly forward to the REQUESTING PARTY reimbursement of eligible costs.

B. Payment of Contracted and DEPARTMENT Costs:

1. As work on the PROJECT commences, the initial payments for contracted work and/or costs incurred by the DEPARTMENT will be made from the working capital deposit. Receipt of progress payments of Federal funds, and where applicable, State Critical Bridge funds, will be used to replenish the working capital deposit. The REQUESTING PARTY shall make prompt payments of its share of the contracted and/or DEPARTMENT incurred portion of the PROJECT COST upon receipt of progress billings from the DEPARTMENT. Progress billings will be based upon the REQUESTING PARTY'S share of the actual costs incurred as work on the PROJECT progresses and will be submitted, as required, until it is determined by the DEPARTMENT that there is sufficient available working capital to meet the remaining anticipated PROJECT COSTS. All progress payments will be made within thirty (30) days of receipt of billings. No monthly billing of a lesser amount than \$1,000.00 will be made unless it is a final or end of fiscal year billing. Should the DEPARTMENT determine that the available working capital exceeds the remaining anticipated PROJECT COSTS, the DEPARTMENT may reimburse the REQUESTING PARTY such excess. Upon completion of the PROJECT, payment of all PROJECT COSTS, receipt of all applicable monies from the FHWA, and completion of necessary audits, the REQUESTING PARTY will be reimbursed the balance of its deposit.

2. In the event that the bid, plus contingencies, for the contracted, and/or the DEPARTMENT incurred portion of the PROJECT work exceeds the estimated cost therefor as established by this contract, the REQUESTING PARTY may be advised and billed for the additional amount of its share.

C. General Conditions:

1. The DEPARTMENT, in accordance with its procedures in existence and covering the time period involved, shall make payment for interest earned on the balance of working capital deposits for all projects on account with the DEPARTMENT. The REQUESTING PARTY in accordance with DEPARTMENT procedures in existence and covering the time period involved, shall make payment for interest owed on any deficit balance of working capital deposits for all projects on account with the DEPARTMENT. This payment or billing is processed on an annual basis corresponding to the State of Michigan fiscal year. Upon receipt of billing for interest incurred, the REQUESTING PARTY promises and shall promptly pay the DEPARTMENT said amount.
2. Pursuant to the authority granted by law, the REQUESTING PARTY hereby irrevocably pledges a sufficient amount of funds received by it from the Michigan Transportation Fund to meet its obligations as specified in PART I and PART II. If the REQUESTING PARTY shall fail to make any of its required payments when due, as specified herein, the DEPARTMENT shall immediately notify the REQUESTING PARTY and the State Treasurer of the State of Michigan or such other state officer or agency having charge and control over disbursement of the Michigan Transportation Fund, pursuant to law, of the fact of such default and the amount thereof, and, if such default is not cured by payment within ten (10) days, said State Treasurer or other state officer or agency is then authorized and directed to withhold from the first of such monies thereafter allocated by law to the REQUESTING PARTY from the Michigan Transportation Fund sufficient monies to remove the default, and to credit the REQUESTING PARTY with payment thereof, and to notify the REQUESTING PARTY in writing of such fact.
3. Upon completion of all work under this contract and final audit by the DEPARTMENT or the FHWA, the REQUESTING PARTY promises to promptly repay the DEPARTMENT for any disallowed items of costs previously disbursed by the DEPARTMENT. The REQUESTING PARTY pledges its future receipts from the Michigan Transportation Fund for repayment of all disallowed items and, upon failure to make repayment for any disallowed items within ninety (90) days of demand made by the DEPARTMENT, the DEPARTMENT is hereby authorized to withhold an equal amount from the REQUESTING PARTY'S share of any future distribution of Michigan Transportation Funds in settlement of said claim.

4. The DEPARTMENT shall maintain and keep accurate records and accounts relative to the cost of the PROJECT and upon completion of the PROJECT, payment of all items of PROJECT COST, receipt of all Federal Aid, if any, and completion of final audit by the DEPARTMENT and if applicable, by the FHWA, shall make final accounting to the REQUESTING PARTY. The final PROJECT accounting will not include interest earned or charged on working capital deposited for the PROJECT which will be accounted for separately at the close of the State of Michigan fiscal year and as set forth in Section C(1).
5. The costs of engineering and other services performed on those projects involving specific program funds and one hundred percent (100%) local funds will be apportioned to the respective portions of that project in the same ratio as the actual direct construction costs unless otherwise specified in PART I.

## SECTION IV

### MAINTENANCE AND OPERATION

- A. Upon completion of construction of each part of the PROJECT, at no cost to the DEPARTMENT or the PROJECT, each of the parties hereto, within their respective jurisdictions, will make the following provisions for the maintenance and operation of the completed PROJECT:

1. All Projects:

Properly maintain and operate each part of the project, making ample provisions each year for the performance of such maintenance work as may be required, except as qualified in paragraph 2b of this section.

2. Projects Financed in Part with Federal Monies:

- a. Sign and mark each part of the PROJECT, in accordance with the current Michigan Manual of Uniform Traffic control Devices, and will not install, or permit to be installed, any signs, signals or markings not in conformance with the standards approved by the FHWA, pursuant to 23 USC 109(d).

- b. Remove, prior to completion of the PROJECT, all encroachments from the roadway right-of-way within the limits of each part of the PROJECT.

With respect to new or existing utility installations within the right-of-way of Federal Aid projects and pursuant to FAPG (23 CFR 645B): Occupancy of non-limited access right-of-way may be allowed based on consideration for traffic safety and necessary preservation of roadside space and aesthetic quality. Longitudinal occupancy of non-limited access right-of-way by private lines will require a finding of significant economic hardship, the unavailability of practicable alternatives or other extenuating circumstances.

- c. Cause to be enacted, maintained and enforced, ordinances and regulations for proper traffic operations in accordance with the plans of the PROJECT.

- d. Make no changes to ordinances or regulations enacted, or traffic controls installed in conjunction with the PROJECT work without prior review by the DEPARTMENT and approval of the FHWA, if required.

- B. On projects for the removal of roadside obstacles, the parties, upon completion of construction of each part of the PROJECT, at no cost to the PROJECT or the DEPARTMENT, will, within their respective jurisdictions, take such action as is necessary to assure that the roadway right-of-way, cleared as the PROJECT, will be maintained free of such obstacles.
- C. On projects for the construction of bikeways, the parties will enact no ordinances or regulations prohibiting the use of bicycles on the facility hereinbefore described as the PROJECT, and will amend any existing restrictive ordinances in this regard so as to allow use of this facility by bicycles. No motorized vehicles shall be permitted on such bikeways or walkways constructed as the PROJECT except those for maintenance purposes.
- D. Failure of the parties hereto to fulfill their respective responsibilities as outlined herein may disqualify that party from future Federal-aid participation in projects on roads or streets for which it has maintenance responsibility. Federal Aid may be withheld until such time as deficiencies in regulations have been corrected, and the improvements constructed as the PROJECT are brought to a satisfactory condition of maintenance.

## SECTION V

### SPECIAL PROGRAM AND PROJECT CONDITIONS

- A. Those projects for which the REQUESTING PARTY has been reimbursed with Federal monies for the acquisition of right-of-way must be under construction by the close of the twentieth (20th) fiscal year following the fiscal year in which the FHWA and the DEPARTMENT projects agreement covering that work is executed, or the REQUESTING PARTY may be required to repay to the DEPARTMENT, for forwarding to the FHWA, all monies distributed as the FHWA'S contribution to that right-of-way.
- B. Those projects for which the REQUESTING PARTY has been reimbursed with Federal monies for the performance of preliminary engineering must be under construction by the close of the tenth (10th) fiscal year following the fiscal year in which the FHWA and the DEPARTMENT projects agreement covering that work is executed, or the REQUESTING PARTY may be required to repay to the DEPARTMENT, for forwarding to the FHWA, all monies distributed as the FHWA'S contribution to that preliminary engineering.
- C. On those projects funded with Federal monies, the REQUESTING PARTY, at no cost to the PROJECT or the DEPARTMENT, will provide such accident information as is available and such other information as may be required under the program in order to make the proper assessment of the safety benefits derived from the work performed as the PROJECT. The REQUESTING PARTY will cooperate with the DEPARTMENT in the development of reports and such analysis as may be required and will, when requested by the DEPARTMENT, forward to the DEPARTMENT, in such form as is necessary, the required information.
- D. In connection with the performance of PROJECT work under this contract the parties hereto (hereinafter in Appendix "A" referred to as the "contractor") agree to comply with the State of Michigan provisions for "Prohibition of Discrimination in State Contracts", as set forth in Appendix A, attached hereto and made a part hereof. The parties further covenant that they will comply with the Civil Rights Acts of 1964, being P.L. 88-352, 78 Stat. 241, as amended, being Title 42 U.S.C. Sections 1971, 1975a-1975d, and 2000a-2000h-6 and the Regulations of the United States Department of Transportation (49 C.F.R. Part 21) issued pursuant to said Act, including Appendix "B", attached hereto and made a part hereof, and will require similar covenants on the part of any contractor or subcontractor employed in the performance of this contract.
- E. The parties will carry out the applicable requirements of the DEPARTMENT'S Disadvantaged Business Enterprise (DBE) program and 49 CFR, Part 26, including, but not limited to, those requirements set forth in Appendix C.

## APPENDIX A

### PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS

In connection with the performance of work under this contract; the contractor agrees as follows:

1. In accordance with Public Act 453 of 1976 (Elliott-Larsen Civil Rights Act), the contractor shall not discriminate against an employee or applicant for employment with respect to hire, tenure, treatment, terms, conditions, or privileges of employment or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, height, weight, or marital status. A breach of this covenant will be regarded as a material breach of this contract. Further, in accordance with Public Act 220 of 1976 (Persons with Disabilities Civil Rights Act), as amended by Public Act 478 of 1980, the contractor shall not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment or a matter directly or indirectly related to employment because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. A breach of the above covenants will be regarded as a material breach of this contract.
2. The contractor hereby agrees that any and all subcontracts to this contract, whereby a portion of the work set forth in this contract is to be performed, shall contain a covenant the same as hereinabove set forth in Section 1 of this Appendix.
3. The contractor will take affirmative action to ensure that applicants for employment and employees are treated without regard to their race, color, religion, national origin, age, sex, height, weight, marital status, or any disability that is unrelated to the individual's ability to perform the duties of a particular job or position. Such action shall include, but not be limited to, the following: employment; treatment; upgrading; demotion or transfer; recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
4. The contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, age, sex, height, weight, marital status, or disability that is unrelated to the individual's ability to perform the duties of a particular job or position.
5. The contractor or its collective bargaining representative shall send to each labor union or representative of workers with which the contractor has a collective bargaining agreement or other contract or understanding a notice advising such labor union or workers' representative of the contractor's commitments under this Appendix.
6. The contractor shall comply with all relevant published rules, regulations, directives, and orders of the Michigan Civil Rights Commission that may be in effect prior to the taking of bids for any individual state project.

7. The contractor shall furnish and file compliance reports within such time and upon such forms as provided by the Michigan Civil Rights Commission; said forms may also elicit information as to the practices, policies, program, and employment statistics of each subcontractor, as well as the contractor itself, and said contractor shall permit access to the contractor's books, records, and accounts by the Michigan Civil Rights Commission and/or its agent for the purposes of investigation to ascertain compliance under this contract and relevant rules, regulations, and orders of the Michigan Civil Rights Commission.
8. In the event that the Michigan Civil Rights Commission finds, after a hearing held pursuant to its rules, that a contractor has not complied with the contractual obligations under this contract, the Michigan Civil Rights Commission may, as a part of its order based upon such findings, certify said findings to the State Administrative Board of the State of Michigan, which State Administrative Board may order the cancellation of the contract found to have been violated and/or declare the contractor ineligible for future contracts with the state and its political and civil subdivisions, departments, and officers, including the governing boards of institutions of higher education, until the contractor complies with said order of the Michigan Civil Rights Commission. Notice of said declaration of future ineligibility may be given to any or all of the persons with whom the contractor is declared ineligible to contract as a contracting party in future contracts. In any case before the Michigan Civil Rights Commission in which cancellation of an existing contract is a possibility, the contracting agency shall be notified of such possible remedy and shall be given the option by the Michigan Civil Rights Commission to participate in such proceedings.
9. The contractor shall include or incorporate by reference, the provisions of the foregoing paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Michigan Civil Rights Commission; all subcontracts and purchase orders will also state that said provisions will be binding upon each subcontractor or supplier.

Revised June 2011

## APPENDIX B TITLE VI ASSURANCE

During the performance of this contract, the contractor, for itself, its assignees, and its successors in interest (hereinafter referred to as the "contractor"), agrees as follows:

1. **Compliance with Regulations:** For all federally assisted programs, the contractor shall comply with the nondiscrimination regulations set forth in 49 CFR Part 21, as may be amended from time to time (hereinafter referred to as the Regulations). Such Regulations are incorporated herein by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed under the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection, retention, and treatment of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices, when the contractor covers a program set forth in Appendix B of the Regulations.
3. **Solicitation for Subcontracts, Including Procurements of Materials and Equipment:** All solicitations made by the contractor, either by competitive bidding or by negotiation for subcontract work, including procurement of materials or leases of equipment, must include a notification to each potential subcontractor or supplier of the contractor's obligations under the contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and facilities as may be determined to be pertinent by the Department or the United States Department of Transportation (USDOT) in order to ascertain compliance with such Regulations or directives. If required information concerning the contractor is in the exclusive possession of another who fails or refuses to furnish the required information, the contractor shall certify to the Department or the USDOT, as appropriate, and shall set forth the efforts that it made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Department shall impose such contract sanctions as it or the USDOT may determine to be appropriate, including, but not limited to, the following:
  - a. Withholding payments to the contractor until the contractor complies; and/or
  - b. Canceling, terminating, or suspending the contract, in whole or in part.

6. **Incorporation of Provisions:** The contractor shall include the provisions of Sections (1) through (6) in every subcontract, including procurement of material and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Department or the USDOT may direct as a means of enforcing such provisions, including sanctions for non-compliance, provided, however, that in the event a contractor becomes involved in or is threatened with litigation from a subcontractor or supplier as a result of such direction, the contractor may request the Department to enter into such litigation to protect the interests of the state. In addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Revised June 2011

## **APPENDIX C**

### **TO BE INCLUDED IN ALL FINANCIAL ASSISTANCE AGREEMENTS WITH LOCAL AGENCIES**

#### **Assurance that Recipients and Contractors Must Make (Excerpts from US DOT Regulation 49 CFR 26.13)**

- A. Each financial assistance agreement signed with a DOT operating administration (or a primary recipient) must include the following assurance:**

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any US DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of US DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26 and as approved by US DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

- B. Each contract MDOT signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:**

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of US DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.



Resolution

NO. 37

A Resolution appointing / renewal of 2 members to the North Central Neighborhood Planning Council (NPC # 2).

**BATTLE CREEK, MICHIGAN - 1/3/2023**

**Resolved by the Commission of the City of Battle Creek:**

That the following are newly appointed / renewed members to the North Central Neighborhood Planning Council (NPC # 2).

Name	Address	Term Expires
Neighborhoods Inc. of Battle Creek	47 N Washington Ave	12/04/2024
Grace Health	181 W Emmett St	12/04/2024

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Battle Creek City Commission  
1/3/2023

**Action Summary**

**Staff Member:** Michelle Salazar, Community Development Specialist

**Department:** Community Development

**SUMMARY**

A Resolution appointing / renewal of 2 members to the North Central Neighborhood Planning Council (NPC # 2).

**BUDGETARY CONSIDERATIONS**

None.

**HISTORY, BACKGROUND and DISCUSSION**

The City Commission is the appointing authority for Neighborhood Planning Council pursuant to Resolution #423, dated November 20, 1979; it appoints based on the recommendations of

the individual Neighborhood Planning Council. Any person having demonstrable or substantial interest within the defined boundaries of the council area may be appointed upon recommendation by said council.

## **DISCUSSION OF THE ISSUE**

## **POSITIONS**

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### ATTACHMENTS:

File Name	Description
 NPC_#2_term_list.pdf	NPC #2 Term List

## NPC 2 - North Central Neighborhood Planning Council

Name	Address	City	State	Zip	Term Expires
Lynn Ward Gray	245 Irving Park Dr	Battle Creek	MI	49037	12/4/2024
Samuel Gray	245 Irving Park Dr	Battle Creek	MI	49037	12/4/2024
Joe Hooper	382 North Washington	Battle Creek	MI	49037	12/4/2024
Whitney Wardell	143 Oneita St	Battle Creek	MI	49037	12/4/2024
Prentice J Thompson - <b>Secretary</b>	35 W Goodale Ave	Battle Creek	MI	49037	12/4/2024
Ron Sweet	360 Champion St	Battle Creek	MI	49037	12/4/2024
Jeff Breedlove	99 Bryant St	Battle Creek	MI	49017	12/4/2024
Frank Drury	14 Spartan Dr	Battle Creek	MI	49037	12/4/2024
Larz Martin-Bey - <b>Vice Chair</b>	79 Jordan St				12/4/2024
Bettie Robertson	125 East Northside Dr				12/4/2024
Karen Todd	135 Irving Park Dr	Battle Creek	MI	49037	12/4/2024
Pastor Monique French - <b>Chair</b>	153 Wood St	Battle Creek	MI	49037	12/4/2024
Whitney Wardell - <b>NIBC</b>	47 N Washington Ave.	Battle Creek	MI	49037	12/4/2024
Jessica Gerteisen - <b>Grace Health</b>	181 W. Emmett St.	Battle Creek	MI	49037	12/4/2024

Updated 12/05/2022



## Resolution

NO. 38

A Resolution seeking approval for the City Manager to enter into six agreements with Binger Holdings LLC and the Battle Creek Tax Increment Finance Authority providing for the grant of permanent and temporary easements to the City for the purpose of a roundabout at the intersection of Skyline Drive, Hill Brady Road, and Logistics Drive.

**BATTLE CREEK, MICHIGAN - 1/3/2023**

### **Resolved by the Commission of the City of Battle Creek:**

Binger Holdings LLC owns property at 2200 Logistics Drive, identified as tax parcel number 52-0058-00-330-0, and the City's Engineering Department needs a permanent easement and a temporary construction easement across Binger Holdings LLC's property to install a roundabout at the intersection of Skyline Drive, Hill Brady Road, and Logistics Drive.

The Battle Creek Tax Increment Finance Authority owns two parcels of property at the intersection of Skyline Drive, Hill Brady Road, and Logistics Drive, identified as tax parcel numbers 52-0608-34-051-1 and 52-3021-01-117-0, and the City's Engineering Department needs permanent easements, across the Battle Creek Tax Increment Finance Authority's property also related to installing a roundabout at the intersection of Skyline Drive, Hill Brady Road, and Logistics Drive.

The Battle Creek Tax Increment Finance Authority owns a parcel of property at the intersection of Skyline Drive, Hill Brady Road, and Logistics Drive, identified as tax parcel number 52-0608-39-899-0, and the City's Engineering Department needs a permanent easement and a temporary construction easement across the Battle Creek Tax Increment Finance Authority's property also necessary to install a roundabout at the intersection of Skyline Drive, Hill Brady Road, and Logistics Drive.

Therefore, the City Manager is authorized to enter into:

- 1) The attached permanent Easement Agreement with Binger Holdings LLC for tax parcel number 52-0058-00-330-0, or one with substantially similar terms approved by the City Attorney, for the consideration of Five Thousand Dollars (\$5,000) paid by the City; and
- 2) The attached temporary Easement Agreement with Binger Holdings LLC for tax parcel number 52-0058-00-330-0, or one with substantially similar terms approved by the City Attorney, for the consideration of Two Thousand Five Hundred Dollars (\$2,500) paid by the City; and
- 3) The attached permanent Easement Agreement with the Battle Creek Tax Increment Finance Authority for tax parcel number 52-0608-34-051-1, or one with substantially similar terms approved by the City Attorney, for the consideration of One Dollar (\$1.00) paid by the City; and
- 4) The attached permanent Easement Agreement with the Battle Creek Tax Increment Finance Authority for tax parcel number 52-3021-01-117-0, or one with substantially similar terms approved by the City Attorney, for the consideration of One Dollar (\$1.00) paid by the City; and

5) The attached permanent Easement Agreement with the Battle Creek Tax Increment Finance Authority for tax parcel number 52-0608-39-899-0, or one with substantially similar terms approved by the City Attorney, for the consideration of One Thousand Five Hundred Dollars (\$1,500) paid by the City; and

6) The attached temporary Easement Agreement with the Battle Creek Tax Increment Finance Authority for tax parcel number 52-0608-39-899-0, or one with substantially similar terms approved by the City Attorney, for the consideration of Two Thousand Five Hundred Dollars (\$2,500) paid by the City.

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Battle Creek City Commission

1/3/2023

### **Action Summary**

**Staff Member:** Marcel Stoetzel, Deputy City Attorney

**Department:** City Attorney

#### **SUMMARY**

A Resolution seeking approval for the City Manager to enter into six agreements with Binger Holdings LLC and the Battle Creek Tax Increment Finance Authority providing for the grant of permanent and temporary easements to the City for the purpose of a roundabout at the intersection of Skyline Drive, Hill Brady Road, and Logistics Drive.

#### **BUDGETARY CONSIDERATIONS**

The \$11,502 for the permanent and temporary easements will be paid from G/L: 440.61.8890.971.010.

#### **HISTORY, BACKGROUND and DISCUSSION**

The Department of Public Works Director and his team have been working with Binger Holdings LLC and the Battle Creek Tax Increment Finance Authority to secure the grant of permanent and temporary easements to the City for the purpose of a roundabout at the intersection of Skyline Drive, Hill Brady Road, and Logistics Drive.

The six easements will restrict some of the property owner's rights to use and enjoy the land as the easements convey the right to the City of Battle Creek, for the construction of a roundabout at the intersection of Skyline Drive, Hill Brady Road, and Logistics Drive, over, upon, across, in, through the parent parcels. Upon review and analysis of the remainder, taking into consideration potential physical changes and potential uses of the remaining parent parcels the Engineering Department has determined that the total value of the six easement is \$11,500.

The premises disturbed by reason of the exercise of the temporary easements and the permanent easements, shall be reasonably restored to its prior condition by the City.

#### **DISCUSSION OF THE ISSUE**

## **POSITIONS**

Department of Public Works Director Carl Fedders and City Engineer Jarret Geering support this Resolution.

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### **ATTACHMENTS:**

<b>File Name</b>	<b>Description</b>
❏ Binger_Holdings_LLC_Easement.pdf	Binger Holdings LLC Easement
❏ Binger_Holdings_LLC_Temporary_Easement.pdf	Binger Holdings LLC Temporary Easement
❏ BCTIFA_Lot_117_Easement_partially_executed.pdf	BCTIFA Lot 117 Easement
❏ BCTIFA_Shiga_Drive_Easement_partially_executed.pdf	BCTIFA Shiga Drive Easement
❏ BCTIFA_Buckner_Permanent_Easement_partially_executed.pdf	BCTIFA Buckner Permanent Easement
❏ BCTIFA_Buckner_Temporary_Easement_partially_executed.pdf	BCTIFA Buckner Temporary Easement

## **EASEMENT**

KNOW ALL PERSONS BY THESE PRESENTS that BINGER HOLDINGS LLC, a Michigan corporation, hereinafter referred to as “**Grantor**,” whose address is 2200 Logistics Drive, Battle Creek, Michigan 49037-5615, and the CITY OF BATTLE CREEK, a Michigan municipal corporation, Calhoun County, Michigan, and its successors and assigns, hereinafter referred to as “**Grantee**,” whose address is 10 North Division Street, Battle Creek, MI 49014, hereby enter into the Easement upon the terms and conditions set forth herein.

## **WITNESSETH**

For and in consideration of Five Thousand Dollars (\$5,000.00), Grantor hereby grants to Grantee a PERMANENT EASEMENT under, across, upon and over the lands owned by Grantor, (the “Grantor’s Property”) for the purpose of a roundabout at the intersection of Skyline Drive, Hill Brady Road, and Logistics Drive. Grantor’s Property is located south of the intersection and is more fully described as follows:

Land situated in the City of Battle Creek, Calhoun County, Michigan:

Commencing at the South 1/4 post of Section 8, Town 2 South, Range 8 West; thence South 89 degrees 50 minutes 43 seconds West along the South line of said Section 8, a distance of 710.12 feet to a point on the Westerly right-of-way line of Logistics Drive; thence North 00 degrees 12 minutes 58 seconds East along said Westerly right-of-way line, 594.15 feet to the true place of beginning; thence North 00 degrees 12 minutes 58 seconds East, 649.39 feet to the Southeasterly right-of-way line of Martin Luther King Jr. Memorial Highway; thence North 37 degrees 12 minutes 58 seconds East along said Southeasterly right-of-way, 643.83 feet to the Southwesterly right-of-way line of Logistics Drive; thence South 52 degrees 47 minutes 02 seconds East along said Southwesterly right-of-way line, 150 feet; thence South 37 degrees 12 minutes 58 seconds West along the Northwestern right-of-way line of Logistics Drive, 442.74 feet; thence Southwesterly 772.29 feet along said Northwestern right-of-way line and the arc of a curve to the left whose radius is 1195.92 feet and whose chord bears South 18 degrees 42 minutes 58 seconds West, 758.94 feet to the Place of Beginning.

AND,

A parcel of land in Section 8, Town 2 South, Range 8 West, described as: Commencing at the South 1/4 post of Section 8, Town 2 South, Range 8 West; thence South 89 degrees 50 minutes 43 seconds West along the East and West 1/4 line of said Section 8 a distance of 710.12 feet to the West right-of-way line of

Logistics Drive; thence North 00 degrees 12 minutes 58 seconds East along said West right-of-way line, 594.15 feet; thence North 00 degrees 12 minutes 58 seconds East, 325.00 feet to the true point of beginning; thence North 52 degrees 47 minutes 02 seconds West, 195.23 feet to the Southeasterly right-of-way line of Martin Luther King, Jr. Memorial Highway; thence North 37 degrees 12 minutes 58 seconds East along said Southeasterly right-of-way line, 259.07 feet; thence South 00 degrees 12 minutes 58 seconds West, 324.39 feet to the Point of Beginning.

EXCEPT, A parcel of land in Section 8, Town 2 South, Range 8 West, described as: Commencing at the South 1/4 post of Section 8, Town 2 South, Range 8 West; thence South 89 degrees 50 minutes 43 seconds West along the East and West 1/4 line of said Section 8 a distance of 710.12 feet to the West right-of-way line of Logistics Drive; thence North 00 degrees 12 minutes 58 seconds East along said West right-of-way line 594.15 feet to the true point of beginning; thence North 00 degrees 12 minutes 58 seconds East, 325.00 feet; thence South 52 degrees 47 minutes 02 seconds East, 46.85 feet to said West right-of-way line of Logistics Drive; thence Southerly 299.94 feet along said West right-of-way line and the arc of a curve to the left with a radius of 1195.92 feet, and a chord which bears South 07 degrees 24 minutes 04 seconds West, 299.16 feet to the Point of Beginning.

**PIN 0058-00-330-0**

This easement is executed and delivered subject to the following terms:

1. Easement. Grantor hereby grants and conveys to Grantee, its successors and assigns, a permanent easement for a roundabout at the intersection of Skyline Drive, Hill Brady Road, and Logistics Drive.
2. Easement Area. The Easement Area, depicted in the survey attached as Exhibit A, is more fully described as follows:

Part of the Southwest 1/4 of Section 8, Town 2 South, Range 8 West, City of Battle Creek, Calhoun County, Michigan, described as: Commencing at the South 1/4 corner of said Section; thence S89°50'43"W 710.12 feet along the South line of said Section; thence N00°12'58"E 594.15 feet Westerly right-of-way line of Logistics Drive; thence Northeasterly 772.29 feet along a 1195.92 foot radius curve to the right, said curve having a central angle of 37°00'00", and a chord bearing N18°42'58"E 758.94 feet along said Westerly right-of-way line; thence N37°12'58"E 442.74 feet along said Westerly right-of-way line; thence N52°47'02"W 60.00 feet along the Southerly right-of-way line of Logistics Drive to the Point of Beginning; thence S37°12'58"W 17.00 feet; thence N52°47'02"W 14.59 feet; thence Northwesterly 46.48 feet along a 125.00 foot radius curve to the left, said curve having a central angle of 21°18'12", and a chord bearing N63°26'08"W 46.21 feet; thence S37°12'58"W 54.46 feet; thence N52°47'02"W 30.00 feet; thence N37°12'58"E 80.00 feet along the Southeasterly right-of-way

line of Skyline Drive; thence S52°47'02"E 90.00 feet along the Southwesterly right-of-way line of Logistics Drive to the Point of Beginning. Contains 0.08 acres. Subject to easements, restrictions and rights-of-way of record.

3. Access to Easement Area. Grantee has access across the Grantor's Property for ingress and egress to and from the Easement Area for construction, maintenance and repairs of a roundabout at the intersection of Skyline Drive, Hill Brady Road, and Logistics Drive, over and across the Grantor's Property in the area immediately adjacent to the south of the Easement Area. All access shall be reasonable in scope, duration and purpose.
4. Grantee's Rights and Duties. Grantee has the right, pursuant to this Grant of Easement, to cut, trim, or remove vegetation, trees, paving materials, or other property within the Easement Area for the construction, maintenance and repairs of a roundabout at the intersection of Skyline Drive, Hill Brady Road, and Logistics Drive. All work will be performed in accordance with generally accepted practices for this type of work and in a manner which will cause the least interference with the surface of the Easement Area. Surface area that is not part of the roundabout shall be regraded and seeded by Grantee.
5. Indemnification and No Waiver of Defenses. To the extent permitted by law, Grantee shall indemnify and hold harmless Grantor from any and all claims, demands, actions, suits, injuries to persons and damages to property (including reasonable attorneys' fees and costs of litigation) occurring in or about the Easement Area used by Grantee, arising out of Grantee's work in or about the Easement Area, or relating in any way to any action or inaction of Grantee. By entering into this Easement, Grantor and Grantee do not intend to benefit any third party nor waive any defenses, including governmental immunity, with regard to claims by any third party.
6. Entire Agreement. This Agreement constitutes the entire terms and conditions applicable to the Easement granted above and as agreed upon by the parties hereto, except as may be amended in writing by both parties hereafter.
7. Run with the Land. The Easement granted herein will constitute a burden upon and run with the land and shall be binding upon and inure to the benefit of the parties to this instrument, their heirs, personal representatives, successors, and assigns.

IN WITNESS WHEREOF, Grantor and Grantee have caused this instrument to be executed by its duly authorized representative this 11th day of January, 2023.

December 2022.

mg

**GRANTOR, BINGER HOLDINGS LLC**

By: [Signature]  
Macaulay R. Binger  
Its: General Manager and Vice President

STATE OF MICHIGAN     )  
                                      ) ss.  
COUNTY OF CALHOUN    )

The foregoing instrument was acknowledged before me in Calhoun County, Michigan, on December 16th, 2022, by Macaulay R. Binger, the General Manager and Vice President of Binger Holdings LLC, on behalf of the corporation.

**SARAH E MCGINNIS**  
NOTARY PUBLIC, STATE OF MICHIGAN  
COUNTY OF CALHOUN  
My Commission Expires Feb 24, 2028  
Acting in the County of Calhoun

[Signature]  
Notary Public  
Calhoun County, Michigan  
My Commission Expires: Feb 24, 2028

**GRANTEE, CITY OF BATTLE CREEK**, a Michigan municipal corporation

By: \_\_\_\_\_  
Ted Dearing  
Its: Assistant City Manager

STATE OF MICHIGAN     )  
                                      ) ss.  
COUNTY OF CALHOUN    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of January, 2023 by Ted Dearing, Assistant City Manager for the City of Battle Creek, a Michigan municipal corporation, signing on behalf of the City Manager in her absence pursuant to the authority granted by Resolution 246 dated October 4, 2016, and pursuant to Resolution \_\_\_\_\_ dated January \_\_\_, 2023.

\_\_\_\_\_  
Rebecca D. Forbes, Notary Public  
Barry County, MI, Acting in Calhoun County  
My commission expires: 11/3/2024

*This Easement Prepared By:*  
C. Marcel Stoetzel, III  
Deputy City Attorney  
10 N. Division Street  
Suite 207, City Hall  
Battle Creek, Michigan 49014  
(269) 966-3385

## EASEMENT

KNOW ALL PERSONS BY THESE PRESENTS that BINGER HOLDINGS LLC, a Michigan corporation, hereinafter referred to as "**Grantor**," whose address is 2200 Logistics Drive, Battle Creek, Michigan 49037-5615, and the CITY OF BATTLE CREEK, a Michigan municipal corporation, Calhoun County, Michigan, and its successors and assigns, hereinafter referred to as "**Grantee**," whose address is 10 North Division Street, Battle Creek, MI 49014, hereby enter into the Easement upon the terms and conditions set forth herein.

## WITNESSETH

For and in consideration of Two Thousand Five Hundred Dollars (\$2,500.00), Grantor hereby grants to Grantee a TEMPORARY EASEMENT under, across, upon and over the lands owned by the Grantor, for the purpose of constructing a roundabout at the intersection of Skyline Drive, Hill Brady Road, and Logistics Drive. Grantor's Property is located south of the intersection and is more fully described as follows:

Commencing at the South 1/4 post of Section 8, Town 2 South, Range 8 West; thence South 89 degrees 50 minutes 43 seconds West along the South line of said Section 8, a distance of 710.12 feet to a point on the Westerly right-of-way line of Logistics Drive; thence North 00 degrees 12 minutes 58 seconds East along said Westerly right-of-way line, 594.15 feet to the true place of beginning; thence North 00 degrees 12 minutes 58 seconds East, 649.39 feet to the Southeasterly right-of-way line of Martin Luther King Jr. Memorial Highway; thence North 37 degrees 12 minutes 58 seconds East along said Southeasterly right-of-way, 643.83 feet to the Southwesterly right-of-way line of Logistics Drive; thence South 52 degrees 47 minutes 02 seconds East along said Southwesterly right-of-way line, 150 feet; thence South 37 degrees 12 minutes 58 seconds West along the Northwestern right-of-way line of Logistics Drive, 442.74 feet; thence Southwesterly 772.29 feet along said Northwestern right-of-way line and the arc of a curve to the left whose radius is 1195.92 feet and whose chord bears South 18 degrees 42 minutes 58 seconds West, 758.94 feet to the Place of Beginning.

AND,

A parcel of land in Section 8, Town 2 South, Range 8 West, described as: Commencing at the South 1/4 post of Section 8, Town 2 South, Range 8 West; thence South 89 degrees 50 minutes 43 seconds West along the East and West 1/4 line of said Section 8 a distance of 710.12 feet to the West right-of-way line of Logistics Drive; thence North 00 degrees 12 minutes 58 seconds East along said

West right-of-way line, 594.15 feet; thence North 00 degrees 12 minutes 58 seconds East, 325.00 feet to the true point of beginning; thence North 52 degrees 47 minutes 02 seconds West, 195.23 feet to the Southeasterly right-of-way line of Martin Luther King, Jr. Memorial Highway; thence North 37 degrees 12 minutes 58 seconds East along said Southeasterly right-of-way line, 259.07 feet; thence South 00 degrees 12 minutes 58 seconds West, 324.39 feet to the Point of Beginning.

EXCEPT, A parcel of land in Section 8, Town 2 South, Range 8 West, described as: Commencing at the South 1/4 post of Section 8, Town 2 South, Range 8 West; thence South 89 degrees 50 minutes 43 seconds West along the East and West 1/4 line of said Section 8 a distance of 710.12 feet to the West right-of-way line of Logistics Drive; thence North 00 degrees 12 minutes 58 seconds East along said West right-of-way line 594.15 feet to the true point of beginning; thence North 00 degrees 12 minutes 58 seconds East, 325.00 feet; thence South 52 degrees 47 minutes 02 seconds East, 46.85 feet to said West right-of-way line of Logistics Drive; thence Southerly 299.94 feet along said West right-of-way line and the arc of a curve to the left with a radius of 1195.92 feet, and a chord which bears South 07 degrees 24 minutes 04 seconds West, 299.16 feet to the Point of Beginning.

**PIN 0058-00-330-0**

This easement is executed and delivered subject to the following terms:

1. The Grantor hereby grants to Grantee the right of ingress and egress for the operation, maintenance, repair and replacement on this temporary easement, depicted in the survey attached as Exhibit A, the easement description as follows:

Part of the Southwest 1/4 of Section 8, Town 2 South, Range 8 West, City of Battle Creek, Calhoun County, Michigan, described as: Commencing at the South 1/4 corner of said Section; thence S89°50'43"W 710.12 feet along the South line of said Section; thence N00°12'58"E 594.15 feet Westerly right-of-way line of Logistics Drive; thence Northeasterly 772.29 feet along a 1195.92 foot radius curve to the right, said curve having a central angle of 37°00'00", and a chord bearing N18°42'58"E 758.94 feet along said Westerly right-of-way line; thence N37°12'58"E 182.74 feet along said Westerly right-of-way line to the Point of Beginning; thence N37°12'58"E 260.00 feet along said Westerly right-of-way; thence N52°47'02"W 60.00 feet along the Southwesterly right-of-way line; thence S37°12'58"W 17.00 feet; thence N52°47'02"W 14.59 feet; thence Northwesterly 46.48 feet along a 125.00 foot radius curve to the left, said curve having a central angle of 21°18'12", and a chord bearing N63°26'08"W 46.21 feet; thence S37°12'58"W 54.46 feet; thence N52°47'02"W 30.00 feet; thence S37°12'58"W 180.00 feet along the Southeasterly right-of-way line of Skyline Drive; thence S52°47'02"E 150.00 feet to the Point of Beginning. Contains 0.81 acres.

2. The Grantee agrees to indemnify and hold Grantor harmless from any claim of liability arising out of the grant herein given except any claim or liability, which results from the intentional or negligent acts of Grantor.
3. This easement shall remain in effect until November 15, 2023.
4. The Grantee, at no cost to the Grantor, shall restore the area disturbed by construction to a condition equal to or better than what existed prior to construction.

This instrument shall be binding upon and inure to the benefit of the parties hereto, and their respective representatives, successors, and assigns.

IN WITNESS WHEREOF, Grantor and Grantee have caused this instrument to be executed by its duly authorized representative this 11th day of January, 2023.

December 2022

mb

**GRANTOR, BINGER HOLDINGS LLC**

By: [Signature]

Macaulay R. Binger

Its: General Manager and Vice President

STATE OF MICHIGAN     )  
  ) ss.  
COUNTY OF CALHOUN    )

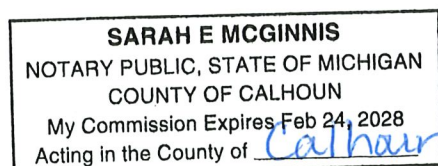
The foregoing instrument was acknowledged before me in Calhoun County, Michigan, on December 11th, 2022, by Macaulay R. Binger, the General Manager and Vice President of Binger Holdings LLC, on behalf of the corporation.

[Signature: Sarah E McGinnis]

Notary Public

Calhoun County, Michigan

My Commission Expires: Feb 24, 2028



**GRANTEE, CITY OF BATTLE CREEK**, a Michigan  
municipal corporation

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

Ted Dearing

Its: Assistant City Manager

STATE OF MICHIGAN     )  
                                      ) ss.  
COUNTY OF CALHOUN    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of January, 2023 by Ted Dearing, Assistant City Manager for the City of Battle Creek, a Michigan municipal corporation, signing on behalf of the City Manager in her absence pursuant to the authority granted by Resolution 246 dated October 4, 2016, and pursuant to Resolution \_\_\_\_\_ dated January \_\_\_, 2023.

\_\_\_\_\_  
Rebecca D. Forbes, Notary Public  
Barry County, MI, Acting in Calhoun County  
My commission expires: 11/3/2024

*This Easement Prepared By:*  
C. Marcel Stoetzel, III  
Deputy City Attorney  
10 N. Division Street  
Suite 207, City Hall  
Battle Creek, Michigan 49014  
(269) 966-3385

## **EASEMENT**

KNOW ALL PERSONS BY THESE PRESENTS that the BATTLE CREEK TAX INCREMENT FINANCE AUTHORITY, an authority authorized and existing under and by virtue of the laws of the State of Michigan, hereinafter referred to as “**Grantor**”, whose address is 4950 West Dickman Road, Ste. 1, Battle Creek, Michigan 49037, and the CITY OF BATTLE CREEK, a Michigan municipal corporation, Calhoun County, Michigan, and its successors and assigns, hereinafter referred to as “**Grantee**”, whose address is 10 North Division Street, Battle Creek, MI 49014, hereby enter into the Easement upon the terms and conditions set forth herein.

## **WITNESSETH**

For and in consideration of One Dollar (\$1.00), Grantor hereby grants to Grantee a PERMANENT EASEMENT under, across, upon and over the lands owned by Grantor, (the “Grantor’s Property”) for the purpose of a roundabout at the intersection of Skyline Drive, Hill Brady Road, and Logistics Drive. Grantor’s Property is located south of the intersection and is more fully described as follows:

Land situated in the City of Battle Creek, Calhoun County, Michigan:

BC – FORT CUSTER URBAN RENEWAL PLAT NO 2 LOT 117.

**PIN 3021-01-117-0**

This easement is executed and delivered subject to the following terms:

1. Easement. Grantor hereby grants and conveys to Grantee, its successors and assigns, a permanent easement for a roundabout at the intersection of Skyline Drive, Hill Brady Road, and Logistics Drive.
2. Easement Area. The Easement Area, depicted in the survey attached as Exhibit A, is more fully described as follows:

Part of Lot 117, Battle Creek-Fort Custer Urban Renewal Plat No. 2, as recorded in Liber 20 of Plats on Page 8, being part of Section 8, T2S, R8W, City of Battle Creek, Calhoun County, Michigan, described as: Beginning at the most Southerly corner of said Lot 117; thence N52°49'22"W 238.43 feet along the Northeasterly right-of-way Hill-Brady Road; thence N81°21'30"E 14.14 feet; thence S64°15'40"E 81.39 feet; thence S58°24'19"E 120.42 feet; thence N51°40'36"E 37.85 feet; thence S53°38'30"E 19.50' to the Northwesterly right-of-way of Skyline Drive; thence S37°11'37"W 74.92 feet along said Northwesterly right-of-


way to the Point of Beginning. Contains 0.10 acres. Subject to easements, restrictions and rights-of-way of record.

3. Access to Easement Area. Grantee has the right to access the Easement Area for construction, maintenance and repairs of a roundabout at the intersection of Skyline Drive, Hill Brady Road, and Logistics Drive, over and across the Grantor's Property in the area immediately adjacent to the north and west of the Easement Area. All access shall be reasonable in scope, duration and purpose.
4. Grantee's Rights and Duties. Grantee has the right, pursuant to this Grant of Easement, to cut, trim, or remove vegetation, trees, paving materials, or other property within the Easement Area for the construction, maintenance and repairs of a roundabout at the intersection of Skyline Drive, Hill Brady Road, and Logistics Drive. All work will be performed in accordance with generally accepted practices for this type of work and in a manner which will cause the least interference with the surface of the Easement Area. Surface area that is not part of the roundabout shall be regraded and seeded.
5. Indemnification and No Waiver of Defenses. To the extent permitted by law, Grantee shall indemnify and hold harmless Grantor from any and all claims, demands, actions, suits, injuries to persons and damages to property (including reasonable attorneys' fees and costs of litigation) occurring in or about the Easement Area used by Grantee, arising out of Grantee's work in or about the Easement Area, or relating in any way to any action or inaction of Grantee. By entering into this Easement, Grantor and Grantee do not intend to benefit any third party nor waive any defenses, including governmental immunity, with regard to claims by any third party.
6. Entire Agreement. This Agreement constitutes the entire terms and conditions applicable to the Easement granted above and as agreed upon by the parties hereto, except as may be amended in writing by both parties hereafter.
7. Run with the Land. The Easement granted herein will constitute a burden upon and run with the land and shall be binding upon and inure to the benefit of the parties to this instrument, their heirs, personal representatives, successors, and assigns.

This document is exempt from real estate transfer taxes pursuant to MCL 207.505(a) and (h)(i) and MCL 207.526(a) and (h)(i).

IN WITNESS WHEREOF, Grantor and Grantee have caused this instrument to be executed by its duly authorized representative this 14<sup>th</sup> day of September, 2022.

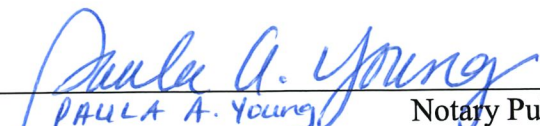
**BATTLE CREEK TAX INCREMENT FINANCE  
AUTHORITY**

By:   
Joe Sobieralski  
Its: President and CEO

STATE OF MICHIGAN     )  
                                  ) ss.  
COUNTY OF CALHOUN    )

The foregoing instrument was acknowledged before me in Calhoun County, Michigan, on September 14, 2022, by Joe Sobieralski, the President and CEO of the Battle Creek Tax Increment Finance Authority, on behalf of the Authority.

PAULA A. YOUNG  
NOTARY PUBLIC, STATE OF MI  
COUNTY OF CALHOUN  
MY COMMISSION EXPIRES Jul 20, 2028  
ACTING IN COUNTY OF

  
PAULA A. Young     Notary Public  
Calhoun County, Michigan  
My Commission Expires: July 20, 2028

**CITY OF BATTLE CREEK**, a Michigan municipal  
corporation

By: \_\_\_\_\_  
Rebecca L. Fleury  
Its: City Manager

STATE OF MICHIGAN     )  
                                  ) ss.  
COUNTY OF CALHOUN    )

The foregoing instrument was acknowledged before me in Calhoun County, Michigan, on September \_\_\_\_\_, 2022, by Rebecca L. Fleury, the City Manager of the City of Battle Creek, on behalf of the corporation.

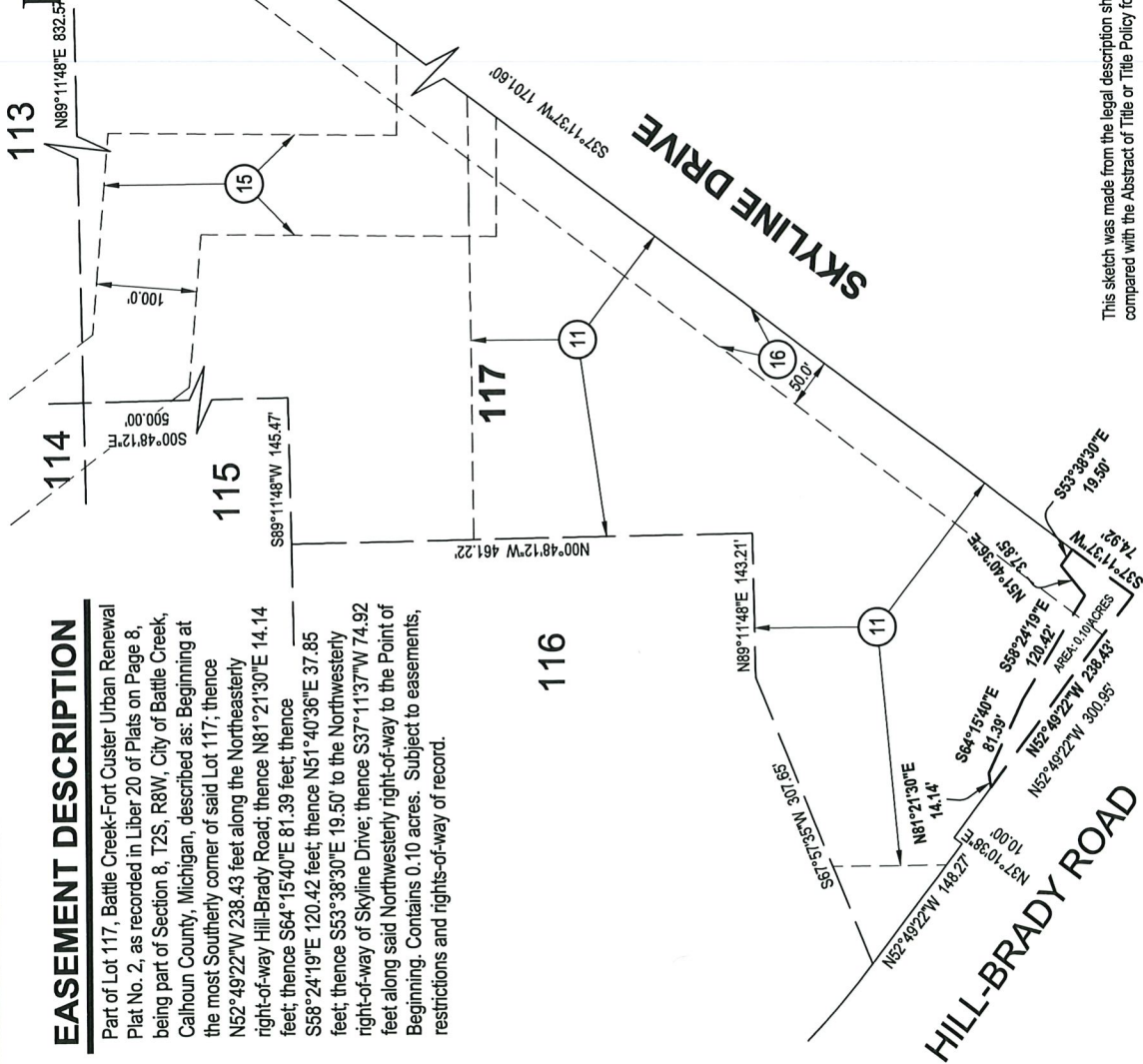
\_\_\_\_\_  
Rebecca D. Forbes, Notary Public  
Barry County, MI, Acting in Calhoun County  
My commission expires: 11-3-2024

*This Easement Prepared By:*  
C. Marcel Stoetzel, III  
Deputy City Attorney  
10 N. Division Street  
Suite 207, City Hall  
Battle Creek, Michigan 49014  
(269) 966-3385

# EXHIBIT A

## EASEMENT DESCRIPTION

Part of Lot 117, Battle Creek-Fort Custer Urban Renewal Plat No. 2, as recorded in Liber 20 of Plats on Page 8, being part of Section 8, T2S, R8W, City of Battle Creek, Calhoun County, Michigan, described as: Beginning at the most Southerly corner of said Lot 117; thence N52°49'22"W 238.43 feet along the Northeasterly right-of-way Hill-Brady Road; thence N81°21'30"E 14.14 feet; thence S64°15'40"E 81.39 feet; thence S58°24'19"E 120.42 feet; thence N51°40'36"E 37.85 feet; thence S53°38'30"E 19.50' to the Northwestern right-of-way of Skyline Drive; thence S37°11'37"W 74.92 feet along said Northwestern right-of-way to the Point of Beginning. Contains 0.10 acres. Subject to easements, restrictions and rights-of-way of record.



## TITLE INFORMATION

The Title Description and Schedule B items hereon are from Sun Title Agency of Michigan, LLC, Commitment No. 210626, dated November 15, 2021.

## TITLE DESCRIPTION

The Land referred to in this commitment is described as follows:

Land situated in the City of Battle Creek, Calhoun County, Michigan:  
Lot 117, Battle Creek-Fort Custer Urban Renewal Plat No. 2, according to the Plat thereof, as recorded in Liber 20 of Plats, Page 8.

## SCHEDULE B - SECTION II NOTES

- ⑪ Right of way in favor of Consumers Power Company (now known as Consumers Energy), as recorded in Liber 437 on Page 537. The easement described in this document is a partial blanket easement. The approximate location of said blanket easement described in this document is shown on this survey. The location of the route of said easement cannot be determined from the record document.
- ⑬ Easement in favor of Consumers Power Company (now known as Consumers Energy), as recorded in Liber 4209 on Page 129. Said easement is not on, does not touch, and/or - based on the description contained in the record document - does not affect the surveyed property.
- ⑮ 100 foot Private Easement for Drain Purposes easements over the insured premises as shown in the recorded plat. The easement described in this document is shown on this survey.
- ⑯ Easement for public utilities as revealed by the recorded plat, over and across the 50 feet bordering the Martin Luther King Memorial Highway of said premises. The easement described in this document is shown on this survey.



By: *Randal J. Vugteveen*  
Randal J. Vugteveen, Licensed Professional Surveyor No. 4001028429

SCALE: 1" = 150' 0' 75' 150' NORTH

Mead & Hunt Inc. (Madison WI)  
Troy Pankratz  
2440 Deming Way  
Middleton, WI 53562

Hill Brady Road & Skyline Drive

DRAWN BY: JAT	DATE: 12.7.21	PRJ #: 20401114DSC2.1
REV. BY: ED	REV. DATE: 01.31.22	
REV.: Added title work and descriptions		1 OF 1

**NEDERVELD**  
www.nederveld.com • 800.222.1888  
Grand Rapids  
277 Grandville Ave., Suite 302  
Grand Rapids, MI 49503  
Ann Arbor, Chicago, Columbus  
Holland, Indianapolis, St. Louis

This sketch was made from the legal description shown above. The description should be compared with the Abstract of Title or Title Policy for accuracy, easements and exceptions.

## **EASEMENT**

KNOW ALL PERSONS BY THESE PRESENTS that the BATTLE CREEK TAX INCREMENT FINANCE AUTHORITY, an authority authorized and existing under and by virtue of the laws of the State of Michigan, hereinafter referred to as “**Grantor**”, whose address is 4950 West Dickman Road, Ste. 1, Battle Creek, Michigan 49037, and the CITY OF BATTLE CREEK, a Michigan municipal corporation, Calhoun County, Michigan, and its successors and assigns, hereinafter referred to as “**Grantee**”, whose address is 10 North Division Street, Battle Creek, MI 49014, hereby enter into the Easement upon the terms and conditions set forth herein.

## **WITNESSETH**

For and in consideration of One Dollar (\$1.00), Grantor hereby grants to Grantee a PERMANENT EASEMENT under, across, upon and over the lands owned by Grantor, (the “Grantor’s Property”) for the purpose of a roundabout at the intersection of Skyline Drive, Hill Brady Road, and Logistics Drive. Grantor’s Property is located south of the intersection and is more fully described as follows:

Land situated in the City of Battle Creek, Calhoun County, Michigan:

ALL OF LOT 121, PART OF LOTS 122, 127 & VACATED INTERNATIONAL LANE ACCORDING TO THE PLAT OF BATTLE CREEK – FORT CUSTER PLAT NO 2, ALSO WLY 100 FT OF MARTIN LUTHER KING JR MEM HWY (SKYLINE DR): COMM W ¼ POST OF SEC 8, T2S R8W – S 00° 52’ 28” E 2263.76 ALG W LI OF SD SEC – N 46° 09’ 53” E 576.31 FT – ELY ALG ARC TO LT, COINCIDENTAL WITH A CUL-DE-SAC AT THE SLY END OF PROPOSED SHIGA DR DIST OF 144.82 FT (RAD 84 FT; CHORD BRG N 85° 06’ 21” E 127.54 FT) – CONTN NLY ALG EXT OF SD ARC TO LT DIST OF 135.61 FT – NLY ALG ARC TO RT DIST OF 62.92 FT (RAD 52 FT; CHORD BRG N 23° 53’ 25” E 59.15 FT) – N 10° 46’ 33” E ALG ELY LI OF PROPOSED SHIGA DR DIST OF 629 FT TO TRUE POB – CONTN N 10° 46’ 33” E ALG SD ELY LI 45 FT M/L TO PT OF CURVATURE OF ARC TO LT – CONTN NLY ALG SD ARC TO LT & SD ELY LI DIST OF COINCIDENTAL WITH AN ARC TO LT 296.75 (RAD 434.12 FT; CHORD BRG N 08° 48’ 26” W 291.01 FT) – SLY, ELY & NLY ALG BOUNDARY OF LOT 120 OF BC – FORT CUSTER URBAN RENEWAL PLAT NO 2 THE FOLLOWING COURSES: S 28° 23’ 25” E 212.75 FT - N 61° 36’ 35” E 473.94 FT – N 01° 34’ 02” W 316.55 FT TO SLY LI OF STANLEY DR – N 89° 11’ 48” E 297.03 FT – N 63° 14’ 12” ALG SD SLY LI 251.80 FT – SELY ALG WLY LI OF HILL-BRADY RD THE FOLLOWING COURSES: ALG ARC TO LT & WLY LI OF HILL-BRADY RD DIST OF 294.99 FT (RAD 869 FT; CHORD BRG S 43° 05’ 53” E 293.57 FT) – S 37° 10’ 38” W 10 FT – S 52° 49’ 22” E 400.98 FT – SWLY ALG WLY LI OF MARTIN LUTHER

KING JR MEMORIAL HWY (SKYLINE DR) DIST OF 610 FT M/L TO A LI  
RNG S 79° 13' 27" E FROM POB – WLY ALG SD LI DIST OF 1163 FT M/L  
TO POB, CONT 20.01 AC, PARCEL IS COINCIDENTAL WITH LOT 129 OF  
PROPOSED AMENDED PLAT OF OUTLOT F AND LOTS 119 THROUGH  
LOT 128 OF BATTLE CREEK – FORT CUSTER URBAN RENEWAL PLAT  
NO 2, CONT 21.45 AC ((2018, ELY 100 FT ASSESSED AS ROW,  
REMAINDER ASSESSED AS #0608-34-051-0; 1994 THRU 2017, ASSESSED  
WITH #3021-01-121-0 AND PART OF #3021-01-122-0 & #3021-01-127-0))  
SPLIT ON 01/24/2022 WITH 0608-35-396-1 INTO 0608-32-452-0, 0608-34-100-  
1.

**PIN 0608-34-051-1**

This easement is executed and delivered subject to the following terms:

1. Easement. Grantor hereby grants and conveys to Grantee, its successors and assigns, a permanent easement for a roundabout at the intersection of Skyline Drive, Hill Brady Road, and Logistics Drive.
2. Easement Area. The Easement Area, depicted in the survey attached as Exhibit A, is more fully described as follows:

Part of Lot 131, Battle Creek - Fort Custer Urban Renewal Plat No. 3, as recorded in Liber 24 of Plats on Pages 14 through 18, being part of the Southwest 1/4 of Section 8, Town 2 South, Range 8 West, City of Battle Creek, Calhoun County, Michigan, described as: Beginning at the most Easterly corner of said Lot 131; thence S37°11'40"W 360.00 feet along the Southeasterly line of said Lot 131; thence N31°29'22"E 100.60 feet; thence N13°47'53"E 201.47 feet; thence N43°16'56"W 212.80 feet; thence N07°14'57"W 55.72 feet; thence S52°48'25"E 338.89 feet along the Northeasterly line of said Lot 131 to the Point of Beginning. Contains 0.67 acres. Subject to easements, restrictions and rights-of-way of record.

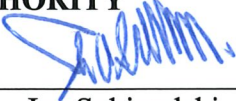
3. Access to Easement Area. Grantee has the right to access the Easement Area for construction, maintenance and repairs of a roundabout at the intersection of Skyline Drive, Hill Brady Road, and Logistics Drive, over and across the Grantor's Property in the area immediately adjacent to the south and west of the Easement Area. All access shall be reasonable in scope, duration and purpose.
4. Grantee's Rights and Duties. Grantee has the right, pursuant to this Grant of Easement, to cut, trim, or remove vegetation, trees, paving materials, or other property within the Easement Area for the construction, maintenance and repairs of a roundabout at the intersection of Skyline Drive, Hill Brady Road, and Logistics Drive. All work will be performed in accordance with generally accepted practices for this type of work and in a manner which will cause the least interference with the surface of the Easement Area. Surface area that is not part of the roundabout shall be regraded and seeded.

5. Indemnification and No Waiver of Defenses. To the extent permitted by law, Grantee shall indemnify and hold harmless Grantor from any and all claims, demands, actions, suits, injuries to persons and damages to property (including reasonable attorneys' fees and costs of litigation) occurring in or about the Easement Area used by Grantee, arising out of Grantee's work in or about the Easement Area, or relating in any way to any action or inaction of Grantee. By entering into this Easement, Grantor and Grantee do not intend to benefit any third party nor waive any defenses, including governmental immunity, with regard to claims by any third party.
6. Entire Agreement. This Agreement constitutes the entire terms and conditions applicable to the Easement granted above and as agreed upon by the parties hereto, except as may be amended in writing by both parties hereafter.
7. Run with the Land. The Easement granted herein will constitute a burden upon and run with the land and shall be binding upon and inure to the benefit of the parties to this instrument, their heirs, personal representatives, successors, and assigns.

This document is exempt from real estate transfer taxes pursuant to MCL 207.505(a) and (h)(i) and MCL 207.526(a) and (h)(i).

IN WITNESS WHEREOF, Grantor and Grantee have caused this instrument to be executed by its duly authorized representative this 14 day of September, 2022.

**BATTLE CREEK TAX INCREMENT FINANCE  
AUTHORITY**

By:   
Joe Sobieralski  
Its: President and CEO

STATE OF MICHIGAN     )  
  ) ss.  
COUNTY OF CALHOUN    )

The foregoing instrument was acknowledged before me in Calhoun County, Michigan, on September 14, 2022, by Joe Sobieralski, the President and CEO of the Battle Creek Tax Increment Finance Authority, on behalf of the Authority.

PAULA A. YOUNG  
NOTARY PUBLIC, STATE OF MI  
COUNTY OF CALHOUN  
MY COMMISSION EXPIRES Jul 20, 2028  
ACTING IN COUNTY OF



*Paula A. Young*  
PAULA A. YOUNG Notary Public  
Calhoun County, Michigan  
My Commission Expires: July 20, 2028

**CITY OF BATTLE CREEK**, a Michigan municipal corporation

By: \_\_\_\_\_  
Rebecca L. Fleury  
Its: City Manager

STATE OF MICHIGAN     )  
  ) ss.  
COUNTY OF CALHOUN    )

The foregoing instrument was acknowledged before me in Calhoun County, Michigan, on September \_\_\_\_\_, 2022, by Rebecca L. Fleury, the City Manager of the City of Battle Creek, on behalf of the corporation.

\_\_\_\_\_  
Rebecca D. Forbes, Notary Public  
Barry County, MI, Acting in Calhoun County  
My commission expires: 11/3/2024

*This Easement Prepared By:*  
C. Marcel Stoetzel, III  
Deputy City Attorney  
10 N. Division Street  
Suite 207, City Hall  
Battle Creek, Michigan 49014  
(269) 966-3385

## TITLE INFORMATION

STANLEY DRIVE



This sketch was made from the legal description shown above. The description should be compared with the Abstract of Title or Title Policy for accuracy, easements and exceptions.

The Land referred to in this commitment is described as follows:  
Land situated in the City of Battle Creek, Calhoun County, Michigan:  
Lot 131, Battle Creek-Fort Custer Urban Renewal Plat No. 3, according to recorded in Liber 24 of Plats, Page 14.

Easement(s), rights or other matters, if any, reserved over a portion of vacated public street or alley as shown in vacation resolution recorded in Liber 4190 on Page 300. The easement described in this document is shown on this survey.

11. Easement(s), rights or other matters, if any, reserved over a portion of vacated public street or alley as shown in vacation resolution recorded in Liber 4190 on Page 300. The easement described in this document is shown on this survey.
13. Right of way in favor of Consumers Power Company (now known as Consumers Energy), as recorded in Liber 437 on Page 537. The easement described in this document is a partial blanket easement. The approximate location of said blanket easement described in this document is shown on this survey. The location of the route of said easement cannot be determined from the record document.
15. Easement in favor of Consumers Power Company (now known as Consumers Energy), as recorded in Liber 4214 on Page 862. The easement described in this document is shown on this survey.
16. Sanitary Sewer easements over the insured premises as shown in the recorded plat. The easement described in this document is shown on this survey.
17. Drainage and Storm Water easements over the insured premises as shown in the recorded plat. The easement described in this document is shown on this survey.

By: Randal J. Vugteveen  
Randal J. Vugteveen, Licensed Professional Surveyor No. 4001028429

By: Kandahar V. Vuytveen  
Randall J. Vuytveen Licensed Professional Surveyor No. 4001028429

SCALE: 1" = 200'

0' 100' 200'

 NORTH

**Mead & Hunt Inc. (Madison WI)**  
**Troy Pankratz**  
**2440 Deming Way**  
**Middleton, WI 53562**

Hill Brady Road &amp; Skyline Drive

DRAWN BY: JAT REV. BY: ED REV.: Added Title Info	DATE: 10.18.21 REV. DATE: 01.31.22	PRJ #: 20401114DSC.1 1 OF 1
--	---------------------------------------	--------------------------------



**NEDERVELD**  
www.nederveld.com • 800.222.1868

**Grand Rapids**  
217 Grandville Ave., Suite 302  
Grand Rapids, MI 49503

## **EASEMENT**

KNOW ALL PERSONS BY THESE PRESENTS that the BATTLE CREEK TAX INCREMENT FINANCE AUTHORITY, an authority authorized and existing under and by virtue of the laws of the State of Michigan, hereinafter referred to as “**Grantor**”, whose address is 4950 West Dickman Road, Ste. 1, Battle Creek, Michigan 49037, and the CITY OF BATTLE CREEK, a Michigan municipal corporation, Calhoun County, Michigan, and its successors and assigns, hereinafter referred to as “**Grantee**”, whose address is 10 North Division Street, Battle Creek, MI 49014, hereby enter into the Easement upon the terms and conditions set forth herein.

## **WITNESSETH**

For and in consideration of One Thousand Five Hundred Dollars (\$1,500.00), Grantor hereby grants to Grantee a PERMANENT EASEMENT under, across, upon and over the lands owned by Grantor, (the “Grantor’s Property”) for the purpose of a roundabout at the intersection of Skyline Drive, Hill Brady Road, and Logistics Drive. Grantor’s Property is located south of the intersection and is more fully described as follows:

Land situated in the City of Battle Creek, Calhoun County, Michigan:  
Part of the North 1/2 of Section 17 and the South 1/2 of Section 8, Town 2 South, Range 8 West, described as: Commencing at the Southwest corner of Section 17, Town 2 South, Range 8 West; thence North 89 degrees 57 minutes 32 seconds East, along the South line of said Section 17 a distance of 433.03 feet to the East right-of-way line of Martin Luther King Jr. Memorial Highway; thence North 00 degrees 54 minutes 42 seconds West, along said East right-of-way line 2376.36 feet to the true point of beginning; thence North 00 degrees 54 minutes 42 seconds West, along said East right-of-way line, 131.66 feet thence Northeasterly 2268.44 feet along said East right-of-way line and the arc of a curve to the right with a radius of 5649.58 feet, and a chord which bears North 10 degrees 35 minutes 29 seconds East, 2253.23 feet; thence North 88 degrees 39 minutes 37 seconds East, 384.04 feet to the Westerly right-of-way line of Logistics Drive; thence South 01 degrees 20 minutes 23 seconds East, along said Westerly right-of-way line 160.00 feet; thence along the Southerly, Easterly and Northerly right-of-way lines of Logistics Drive the following courses; North 88 degrees 39 minutes 37 seconds East, 160.00 feet; thence North 01 degrees 20 minutes 23 seconds West, 60.00 feet; thence North 88 degrees 39 minutes 37 seconds East, 232.94 feet; thence Northeasterly 568.19 feet along the arc of a curve to the left with a radius of 415.00 feet, and a chord which bears North 49 degrees 26 minutes 17 seconds East, 524.84 feet; thence North 10 degrees 12 minutes 58 seconds East, 246.07 feet, thence North 00 degrees 12 minutes 58 seconds East, 655.16 feet; thence Northeasterly 707.71 feet along the arc of a curve to the right with a radius of 1095.92 feet, and a chord which bears

North 18 degrees 42 minutes 58 seconds East, 695.47 feet; thence North 37 degrees 12 minutes 58 seconds East, 542.74 feet; thence North 52 degrees 47 minutes 02 seconds West, 250.00 feet to the Easterly right-of-way line of Martin Luther King Jr. Memorial Highway; thence North 37 degrees 12 minutes 58 seconds East, along said highway, 73.55 feet to the Southerly line of lands now leased to the Michigan Air National Guard; thence South 60 degrees 09 minutes 15 seconds East, 1822.26 feet to the Westerly line of Grand Trunk Western Railroad; thence South 29 degrees 50 minutes 45 seconds West, along said railroad 2986.37 feet; thence North 81 degrees 59 minutes 10 seconds West, 503.14 feet; thence South 45 degrees 12 minutes 54 seconds West, 50.00 feet to the Northerly right-of-way of Buckner Drive (also called Buckner Road); thence along the Northerly and Easterly right-of-way lines of Buckner Drive the following courses; North 89 degrees 47 minutes 06 seconds West, 160.00 feet; thence South 00 degrees 12 minutes 54 seconds West, 30.00 feet; thence North 89 degrees 47 minutes 06 seconds West, 40.00 feet; thence Southwesterly 630.01 feet along the arc of a curve to the left with a radius of 1091.74 feet; and a chord which bears South 73 degrees 40 minutes 59 seconds West, 621.30 feet; thence South 57 degrees 09 minutes 04 seconds West, 343.40 feet; thence Southwesterly 1126.62 feet along the arc of a curve to the left with a radius of 1111.74 feet, and a chord which bears South 28 degrees 07 minutes 11 seconds West, 1079.03 feet to the West line of Martin Luther King Jr. Memorial Highway and the Point of Beginning.

**PIN 0608-39-899-0**

This easement is executed and delivered subject to the following terms:

1. Easement. Grantor hereby grants and conveys to Grantee, its successors and assigns, a permanent easement for a roundabout at the intersection of Skyline Drive, Hill Brady Road, and Logistics Drive.
2. Easement Area. The Easement Area, depicted in the survey attached as Exhibit A, is more fully described as follows:

Part of the Southwest 1/4 of Section 8, Town 2 South, Range 8 West, City of Battle Creek, Calhoun County, Michigan, described as: Commencing at the South 1/4 corner of said Section; thence S89°50'43"W 710.12 feet along the South line of said Section; thence N00°12'58"E 594.15 feet Westerly right-of-way line of Logistics Drive; thence Northeasterly 772.29 feet along a 1195.92 foot radius curve to the right, said curve having a central angle of 37°00'00", and a chord bearing N18°42'58"E 758.94 feet along said Westerly right-of-way line; thence N37°12'58"E 542.74 feet along said Westerly right-of-way line and the extension thereof; thence N52°47'02"W 20.00 feet along the Northerly right-of-way line of Logistic Drive to the Point of Beginning; thence continuing N52°47'02"W 130.00 feet along said Northerly right-of-way; thence N37°12'58"E 73.55 feet along the Southeasterly right-of-way line of Skyline Drive; thence S60°09'15"E 10.08 feet; thence S37°12'58"W 64.84 feet; thence S52°47'02"E 120.00 feet; thence

S37°12'58"W 10.00 feet to the Point of Beginning. Contains 0.05 acres. Subject to easements, restrictions and rights-of-way of record.

3. Access to Easement Area. Grantee has the right to access the Easement Area for construction, maintenance and repairs of a roundabout at the intersection of Skyline Drive, Hill Brady Road, and Logistics Drive, over and across the Grantor's Property in the area immediately adjacent to the north and east of the Easement Area. All access shall be reasonable in scope, duration and purpose.
4. Grantee's Rights and Duties. Grantee has the right, pursuant to this Grant of Easement, to cut, trim, or remove vegetation, trees, paving materials, or other property within the Easement Area for the construction, maintenance and repairs of a roundabout at the intersection of Skyline Drive, Hill Brady Road, and Logistics Drive. All work will be performed in accordance with generally accepted practices for this type of work and in a manner which will cause the least interference with the surface of the Easement Area. Surface area that is not part of the roundabout shall be regraded and seeded.
5. Indemnification and No Waiver of Defenses. To the extent permitted by law, Grantee shall indemnify and hold harmless Grantor from any and all claims, demands, actions, suits, injuries to persons and damages to property (including reasonable attorneys' fees and costs of litigation) occurring in or about the Easement Area used by Grantee, arising out of Grantee's work in or about the Easement Area, or relating in any way to any action or inaction of Grantee. By entering into this Easement, Grantor and Grantee do not intend to benefit any third party nor waive any defenses, including governmental immunity, with regard to claims by any third party.
6. Entire Agreement. This Agreement constitutes the entire terms and conditions applicable to the Easement granted above and as agreed upon by the parties hereto, except as may be amended in writing by both parties hereafter.
7. Run with the Land. The Easement granted herein will constitute a burden upon and run with the land and shall be binding upon and inure to the benefit of the parties to this instrument, their heirs, personal representatives, successors, and assigns.

IN WITNESS WHEREOF, Grantor and Grantee have caused this instrument to be executed by its duly authorized representative this 14 day of September, 2022.

**BATTLE CREEK TAX INCREMENT FINANCE  
AUTHORITY**

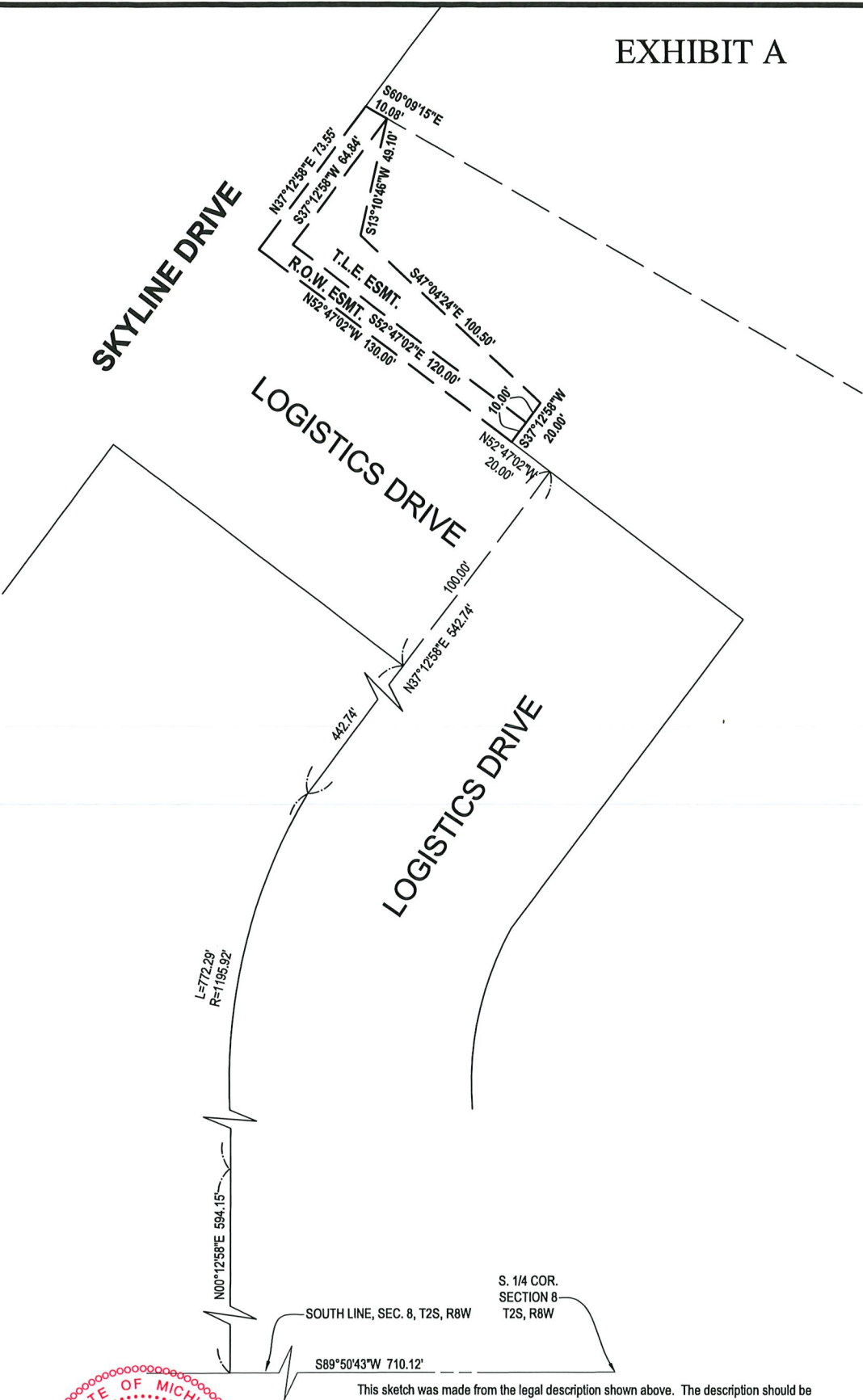
By: \_\_\_\_\_

Joe Sobieralski

Its: President and CEO



EXHIBIT A



By: *Randal J. Vugteveen*  
Randal J. Vugteveen Licensed Professional Surveyor No. 4001028429

This sketch was made from the legal description shown above. The description should be compared with the Abstract of Title or Title Policy for accuracy, easements and exceptions.

SCALE: 1" = 50' 0' 25' 50' NORTH

Mead & Hunt Inc. (Madison WI) Troy Pankratz 2440 Deming Way Middleton, WI 53562		 www.nederveld.com • 800.222.1868 Grand Rapids 217 Grandville Ave., Suite 302 Grand Rapids, MI 49503 Ann Arbor, Chicago, Columbus, Holland, Indianapolis, St. Louis
Hill Brady Road & Skyline Drive		
DRAWN BY: JAT REV. BY: ED REV.: Added title work and descriptions	DATE: 12.7.21 REV. DATE: 01.31.22	PRJ #: 20401114DSC4.1 1 OF 2

## TITLE INFORMATION

The Title Description and Schedule B items hereon are from Sun Title Agency of Michigan, LLC, Commitment No. 210627, dated December 21, 2021.

## TITLE DESCRIPTION

The Land referred to in this commitment is described as follows:

Land situated in the City of Battle Creek, Calhoun County, Michigan:

Part of the North 1/2 of Section 17 and the South 1/2 of Section 8, Town 2 South, Range 8 West, described as:

Commencing at the Southwest corner of Section 17, Town 2 South, Range 8 West; thence North 89 degrees 57 minutes 32 seconds East, along the South line of said Section 17 a distance of 433.03 feet to the East right-of-way line of Martin Luther King Jr. Memorial Highway; thence North 00 degrees 54 minutes 42 seconds West, along said East right-of-way line 2376.36 feet to the true point of beginning; thence North 00 degrees 54 minutes 42 seconds West, along said East right-of-way line, 131.66 feet thence Northeasterly 2268.44 feet along said East right-of-way line and the arc of a curve to the right with a radius of 5649.58 feet, and a chord which bears North 10 degrees 35 minutes 29 seconds East, 2253.23 feet; thence North 88 degrees 39 minutes 37 seconds East, 384.04 feet to the Westerly right-of-way line of Logistics Drive; thence South 01 degrees 20 minutes 23 seconds East, along said Westerly right-of-way line 160.00 feet; thence along the Southerly, Easterly and Northerly right-of-way lines of Logistics Drive the following courses; North 88 degrees 39 minutes 37 seconds East, 160.00 feet; thence North 01 degrees 20 minutes 23 seconds West, 60.00 feet; thence North 88 degrees 39 minutes 37 seconds East, 232.94 feet; thence Northeasterly 568.19 feet along the arc of a curve to the left with a radius of 415.00 feet, and a chord which bears North 49 degrees 26 minutes 17 seconds East, 524.84 feet; thence North 10 degrees 12 minutes 58 seconds East, 246.07 feet, thence North 00 degrees 12 minutes 58 seconds East, 655.16 feet; thence Northeasterly 707.71 feet along the arc of a curve to the right with a radius of 1095.92 feet, and a chord which bears North 18 degrees 42 minutes 58 seconds East, 695.47 feet; thence North 37 degrees 12 minutes 58 seconds East, 542.74 feet; thence North 52 degrees 47 minutes 02 seconds West, 250.00 feet to the Easterly right-of-way line of Martin Luther King Jr. Memorial Highway; thence North 37 degrees 12 minutes 58 seconds East, along said highway, 73.55 feet to the Southerly line of lands now leased to the Michigan Air National Guard; thence South 60 degrees 09 minutes 15 seconds East, 1822.26 feet to the Westerly line of Grand Trunk Western Railroad; thence South 29 degrees 50 minutes 45 seconds West, along said railroad 2986.37 feet; thence North 81 degrees 59 minutes 10 seconds West, 503.14 feet; thence South 45 degrees 12 minutes 54 seconds West, 50.00 feet to the Northerly right-of-way line of Buckner Drive (also called Buckner Road); thence along the Northerly and Easterly right-of-way lines of Buckner Drive the following courses; North 89 degrees 47 minutes 06 seconds West, 160.00 feet; thence South 00 degrees 12 minutes 54 seconds West, 30.00 feet; thence North 89 degrees 47 minutes 06 seconds West, 40.00 feet; thence Southwesterly 630.01 feet along the arc of a curve to the left with a radius of 1091.74 feet; and a chord which bears South 73 degrees 40 minutes 59 seconds West, 621.30 feet; thence South 57 degrees 09 minutes 04 seconds West, 343.40 feet; thence Southwesterly 1126.62 feet along the arc of a curve to the left with a radius of 1111.74 feet, and a chord which bears South 28 degrees 07 minutes 11 seconds West, 1079.03 feet to the West line of Martin Luther King Jr. Memorial Highway and the Point of Beginning.

## SCHEDULE B - SECTION II NOTES

- 13 Terms, covenants, and conditions of Assurance for Land Covenants, as recorded in Liber 1443 on Page 75 and amended by Resolution recorded in Liber 1560 on Page 10. **No survey matters to be shown.**
- 14 Terms, covenants, and conditions of Protective Covenants, as recorded in Liber 1178 on Page 296 and in Liber 1214 on Page 292 and amended by Resolution recorded in Liber 1560 on Page 12. **No survey matters to be shown.**
- 15 Easement for public utilities, sewer and gas main, as evidenced in Warranty Deed recorded in Liber 3725 on Page 714. **The location of said easement cannot be determined from the record document.**

## T.L.E. EASEMENT

Part of the Southwest 1/4 of Section 8, Town 2 South, Range 8 West, City of Battle Creek, Calhoun County, Michigan, described as: Commencing at the South 1/4 corner of said Section; thence S89°50'43"W 710.12 feet along the South line of said Section; thence N00°12'58"E 594.15 feet Westerly right-of-way line of Logistics Drive; thence Northeasterly 772.29 feet along a 1195.92 foot radius curve to the right, said curve having a central angle of 37°00'00", and a chord bearing N18°42'58"E 758.94 feet along said Westerly right-of-way line; thence N37°12'58"E 542.74 feet along said Westerly right-of-way line and the extension thereof; thence N52°47'02"W 20.00 feet along the Northerly right-of-way line of Logistic Drive; thence N37°12'58"E 10.00 feet to the Point of Beginning; thence N52°47'02"W 120.00 feet; thence N37°12'58"E 64.84 feet; thence S13°10'46"W 49.10 feet; thence S47°04'24"E 100.50 feet; thence S37°12'58"W 10.00 feet to the Point of Beginning. Contains 0.05 acres.

## RIGHT-OF-WAY EASEMENT

Part of the Southwest 1/4 of Section 8, Town 2 South, Range 8 West, City of Battle Creek, Calhoun County, Michigan, described as: Commencing at the South 1/4 corner of said Section; thence S89°50'43"W 710.12 feet along the South line of said Section; thence N00°12'58"E 594.15 feet Westerly right-of-way line of Logistics Drive; thence Northeasterly 772.29 feet along a 1195.92 foot radius curve to the right, said curve having a central angle of 37°00'00", and a chord bearing N18°42'58"E 758.94 feet along said Westerly right-of-way line; thence N37°12'58"E 542.74 feet along said Westerly right-of-way line and the extension thereof; thence N52°47'02"W 20.00 feet along the Northerly right-of-way line of Logistic Drive to the Point of Beginning; thence continuing N52°47'02"W 130.00 feet along said Northerly right-of-way; thence N37°12'58"E 73.55 feet along the Southeasterly right-of-way line of Skyline Drive; thence S60°09'15"E 10.08 feet; thence S37°12'58"W 64.84 feet; thence S52°47'02"E 120.00 feet; thence S37°12'58"W 10.00 feet to the Point of Beginning. Contains 0.05 acres.

This sketch was made from the legal description shown above. The description should be compared with the Abstract of Title or Title Policy for accuracy, easements and exceptions.

SCALE: 1" = 50'

0' 25' 50'



Mead & Hunt Inc. (Madison WI)  
Troy Pankratz  
2440 Deming Way  
Middleton, WI 53562

Hill Brady Road & Skyline Drive

DRAWN BY: JAT  
REV. BY: ED  
REV. DATE: 01.31.22  
REV.: Added title work and descriptions

DATE: 12.7.21  
PRJ #: 20401114DSC4.1

2 OF 2

**NEDERVELD**  
www.nederveld.com • 800.222.1668  
Grand Rapids  
217 Grandville Ave., Suite 302  
Grand Rapids, MI 49503  
Ann Arbor, Chicago, Columbus,  
Holland, Indianapolis, St. Louis

By:   
Randal J. Vugteveen Licensed Professional Surveyor No. 4001028429



## **EASEMENT**

KNOW ALL PERSONS BY THESE PRESENTS that the BATTLE CREEK TAX INCREMENT FINANCE AUTHORITY, an authority authorized and existing under and by virtue of the laws of the State of Michigan, hereinafter referred to as “**Grantor**”, whose address is 4950 West Dickman Road, Ste. 1, Battle Creek, Michigan 49037, and the CITY OF BATTLE CREEK, a Michigan municipal corporation, Calhoun County, Michigan, and its successors and assigns, hereinafter referred to as “**Grantee**”, whose address is 10 North Division Street, Battle Creek, MI 49014, hereby enter into the Easement upon the terms and conditions set forth herein.

## **WITNESSETH**

For and in consideration of Two Thousand Five Hundred Dollars (\$2,500.00), Grantor hereby grants to Grantee a TEMPORARY EASEMENT under, across, upon and over the lands owned by the Grantor, for the purpose of a roundabout at the intersection of Skyline Drive, Hill Brady Road, and Logistics Drive. Grantor’s Property is located south of the intersection and is more fully described as follows:

Land situated in the City of Battle Creek, Calhoun County, Michigan:  
Part of the North 1/2 of Section 17 and the South 1/2 of Section 8, Town 2 South, Range 8 West, described as: Commencing at the Southwest corner of Section 17, Town 2 South, Range 8 West; thence North 89 degrees 57 minutes 32 seconds East, along the South line of said Section 17 a distance of 433.03 feet to the East right-of-way line of Martin Luther King Jr. Memorial Highway; thence North 00 degrees 54 minutes 42 seconds West, along said East right-of-way line 2376.36 feet to the true point of beginning; thence North 00 degrees 54 minutes 42 seconds West, along said East right-of-way line, 131.66 feet thence Northeasterly 2268.44 feet along said East right-of-way line and the arc of a curve to the right with a radius of 5649.58 feet, and a chord which bears North 10 degrees 35 minutes 29 seconds East, 2253.23 feet; thence North 88 degrees 39 minutes 37 seconds East, 384.04 feet to the Westerly right-of-way line of Logistics Drive; thence South 01 degrees 20 minutes 23 seconds East, along said Westerly right-of-way line 160.00 feet; thence along the Southerly, Easterly and Northerly right-of-way lines of Logistics Drive the following courses; North 88 degrees 39 minutes 37 seconds East, 160.00 feet; thence North 01 degrees 20 minutes 23 seconds West, 60.00 feet; thence North 88 degrees 39 minutes 37 seconds East, 232.94 feet; thence Northeasterly 568.19 feet along the arc of a curve to the left with a radius of 415.00 feet, and a chord which bears North 49 degrees 26 minutes 17 seconds East, 524.84 feet; thence North 10 degrees 12 minutes 58 seconds East, 246.07 feet, thence North 00 degrees 12 minutes 58 seconds East, 655.16 feet; thence Northeasterly 707.71 feet along the arc of a curve to the right with a radius of 1095.92 feet, and a chord which bears

North 18 degrees 42 minutes 58 seconds East, 695.47 feet; thence North 37 degrees 12 minutes 58 seconds East, 542.74 feet; thence North 52 degrees 47 minutes 02 seconds West, 250.00 feet to the Easterly right-of-way line of Martin Luther King Jr. Memorial Highway; thence North 37 degrees 12 minutes 58 seconds East, along said highway, 73.55 feet to the Southerly line of lands now leased to the Michigan Air National Guard; thence South 60 degrees 09 minutes 15 seconds East, 1822.26 feet to the Westerly line of Grand Trunk Western Railroad; thence South 29 degrees 50 minutes 45 seconds West, along said railroad 2986.37 feet; thence North 81 degrees 59 minutes 10 seconds West, 503.14 feet; thence South 45 degrees 12 minutes 54 seconds West, 50.00 feet to the Northerly right-of-way of Buckner Drive (also called Buckner Road); thence along the Northerly and Easterly right-of-way lines of Buckner Drive the following courses; North 89 degrees 47 minutes 06 seconds West, 160.00 feet; thence South 00 degrees 12 minutes 54 seconds West, 30.00 feet; thence North 89 degrees 47 minutes 06 seconds West, 40.00 feet; thence Southwesterly 630.01 feet along the arc of a curve to the left with a radius of 1091.74 feet; and a chord which bears South 73 degrees 40 minutes 59 seconds West, 621.30 feet; thence South 57 degrees 09 minutes 04 seconds West, 343.40 feet; thence Southwesterly 1126.62 feet along the arc of a curve to the left with a radius of 1111.74 feet, and a chord which bears South 28 degrees 07 minutes 11 seconds West, 1079.03 feet to the West line of Martin Luther King Jr. Memorial Highway and the Point of Beginning.

**PIN 0608-39-899-0**

This easement is executed and delivered subject to the following terms:

1. The Grantor hereby grants to Grantee the right of ingress and egress for the operation, maintenance, repair and replacement on this temporary easement, depicted in the survey attached as Exhibit A, the easement description as follows:

Part of the Southwest 1/4 of Section 8, Town 2 South, Range 8 West, City of Battle Creek, Calhoun County, Michigan, described as: Commencing at the South 1/4 corner of said Section; thence S89°50'43"W 710.12 feet along the South line of said Section; thence N00°12'58"E 594.15 feet Westerly right-of-way line of Logistics Drive; thence Northeasterly 772.29 feet along a 1195.92 foot radius curve to the right, said curve having a central angle of 37°00'00", and a chord bearing N18°42'58"E 758.94 feet along said Westerly right-of-way line; thence N37°12'58"E 542.74 feet along said Westerly right-of-way line and the extension thereof; thence N52°47'02"W 20.00 feet along the Northerly right-of-way line of Logistic Drive; thence N37°12'58"E 10.00 feet to the Point of Beginning; thence N52°47'02"W 120.00 feet; thence N37°12'58"E 64.84 feet; thence S13°10'46"W 49.10 feet; thence S47°04'24"E 100.50 feet; thence S37°12'58"W 10.00 feet to the Point of Beginning. Contains 0.05 acres.

2. The Grantee agrees to indemnify and hold Grantor harmless from any claim of liability arising out of the grant herein given except any claim or liability, which results from the intentional or negligent acts of Grantor.
3. This easement shall remain in effect until November 15, 2023.
4. The Grantee, at no cost to the Grantor, shall restore the area disturbed by construction to a condition equal to or better than what existed prior to construction.

This instrument shall be binding upon and inure to the benefit of the parties hereto, and their respective representatives, successors, and assigns.

IN WITNESS WHEREOF, Grantor and Grantee have caused this instrument to be executed by its duly authorized representative this 14 day of September, 2022.

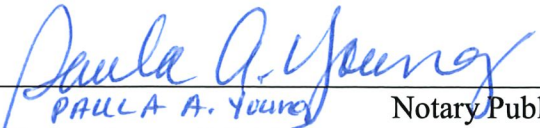
**BATTLE CREEK TAX INCREMENT FINANCE  
AUTHORITY**

By:   
Joe Sobieralski  
Its: President and CEO

STATE OF MICHIGAN     )  
  ) ss.  
COUNTY OF CALHOUN    )

The foregoing instrument was acknowledged before me in Calhoun County, Michigan, on September 14, 2022, by Joe Sobieralski, the President and CEO of the Battle Creek Tax Increment Finance Authority, on behalf of the Authority.

PAULA A. YOUNG  
NOTARY PUBLIC, STATE OF MI  
COUNTY OF CALHOUN  
MY COMMISSION EXPIRES JUL 20, 2028  
ACTING IN COUNTY OF

  
PAULA A. YOUNG     Notary Public  
Calhoun County, Michigan  
My Commission Expires: July 20, 2028

**CITY OF BATTLE CREEK**, a Michigan municipal corporation

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

Rebecca L. Fleury

Its: City Manager

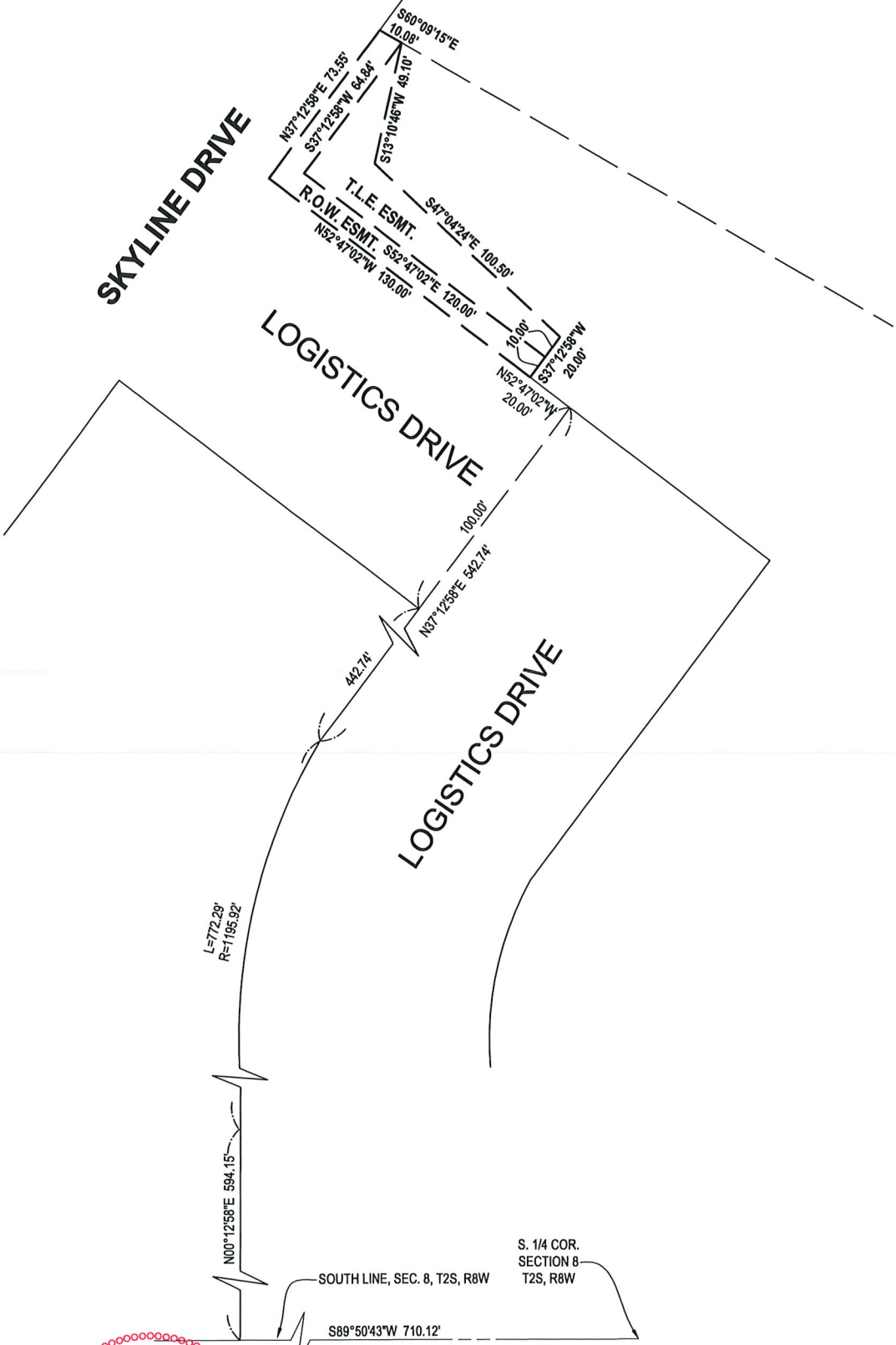
STATE OF MICHIGAN     )  
  ) ss.  
COUNTY OF CALHOUN    )

The foregoing instrument was acknowledged before me in Calhoun County, Michigan, on September \_\_\_\_\_, 2022, by Rebecca L. Fleury, the City Manager of the City of Battle Creek, on behalf of the corporation.

\_\_\_\_\_  
Rebecca D. Forbes, Notary Public  
Barry County, MI, Acting in Calhoun County  
My commission expires: 11-3-2024

*This Easement Prepared By:*  
C. Marcel Stoetzel, III  
Deputy City Attorney  
10 N. Division Street  
Suite 207, City Hall  
Battle Creek, Michigan 49014  
(269) 966-3385

EXHIBIT A



This sketch was made from the legal description shown above. The description should be compared with the Abstract of Title or Title Policy for accuracy, easements and exceptions.

SCALE: 1" = 50' 0' 25' 50' NORTH

Mead & Hunt Inc. (Madison WI)  
Troy Pankratz  
2440 Deming Way  
Middleton, WI 53562

Hill Brady Road & Skyline Drive

DRAWN BY: JAT DATE: 12.7.21  
REV. BY: ED REV. DATE: 01.31.22  
REV.: Added title work and descriptions

PRJ #: 20401114DSC4.1

1 OF 2

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www.nederveld.com • 800.222.1888  
Grand Rapids  
217 Grandville Ave., Suite 302  
Grand Rapids, MI 49503  
Ann Arbor, Chicago, Columbus,  
Holland, Indianapolis, St. Louis



By: *Randal J. Vugteveen*  
Randal J. Vugteveen Licensed Professional Surveyor No. 4001028429

## TITLE INFORMATION

The Title Description and Schedule B items hereon are from Sun Title Agency of Michigan, LLC, Commitment No. 210627, dated December 21, 2021.

## TITLE DESCRIPTION

The Land referred to in this commitment is described as follows:

Land situated in the City of Battle Creek, Calhoun County, Michigan:

Part of the North 1/2 of Section 17 and the South 1/2 of Section 8, Town 2 South, Range 8 West, described as:

Commencing at the Southwest corner of Section 17, Town 2 South, Range 8 West; thence North 89 degrees 57 minutes 32 seconds East, along the South line of said Section 17 a distance of 433.03 feet to the East right-of-way line of Martin Luther King Jr. Memorial Highway; thence North 00 degrees 54 minutes 42 seconds West, along said East right-of-way line 2376.36 feet to the true point of beginning; thence North 00 degrees 54 minutes 42 seconds West, along said East right-of-way line, 131.66 feet thence Northeasterly 2268.44 feet along said East right-of-way line and the arc of a curve to the right with a radius of 5649.58 feet, and a chord which bears North 10 degrees 35 minutes 29 seconds East, 2253.23 feet; thence North 88 degrees 39 minutes 37 seconds East, 384.04 feet to the Westerly right-of-way line of Logistics Drive; thence South 01 degrees 20 minutes 23 seconds East, along said Westerly right-of-way line 160.00 feet; thence along the Southerly, Easterly and Northerly right-of-way lines of Logistics Drive the following courses; North 88 degrees 39 minutes 37 seconds East, 160.00 feet; thence North 01 degrees 20 minutes 23 seconds West, 60.00 feet; thence North 88 degrees 39 minutes 37 seconds East, 232.94 feet; thence Northeasterly 568.19 feet along the arc of a curve to the left with a radius of 415.00 feet, and a chord which bears North 49 degrees 26 minutes 17 seconds East, 524.84 feet; thence North 10 degrees 12 minutes 58 seconds East, 246.07 feet, thence North 00 degrees 12 minutes 58 seconds East, 655.16 feet; thence Northeasterly 707.71 feet along the arc of a curve to the right with a radius of 1095.92 feet, and a chord which bears North 18 degrees 42 minutes 58 seconds East, 695.47 feet; thence North 37 degrees 12 minutes 58 seconds East, 542.74 feet; thence North 52 degrees 47 minutes 02 seconds West, 250.00 feet to the Easterly right-of-way line of Martin Luther King Jr. Memorial Highway; thence North 37 degrees 12 minutes 58 seconds East, along said highway, 73.55 feet to the Southerly line of lands now leased to the Michigan Air National Guard; thence South 60 degrees 09 minutes 15 seconds East, 1822.26 feet to the Westerly line of Grand Trunk Western Railroad; thence South 29 degrees 50 minutes 45 seconds West, along said railroad 2986.37 feet; thence North 81 degrees 59 minutes 10 seconds West, 503.14 feet; thence South 45 degrees 12 minutes 54 seconds West, 50.00 feet to the Northerly right-of-way line of Buckner Drive (also called Buckner Road); thence along the Northerly and Easterly right-of-way lines of Buckner Drive the following courses; North 89 degrees 47 minutes 06 seconds West, 160.00 feet; thence South 00 degrees 12 minutes 54 seconds West, 30.00 feet; thence North 89 degrees 47 minutes 06 seconds West, 40.00 feet; thence Southwesterly 630.01 feet along the arc of a curve to the left with a radius of 1091.74 feet; and a chord which bears South 73 degrees 40 minutes 59 seconds West, 621.30 feet; thence South 57 degrees 09 minutes 04 seconds West, 343.40 feet; thence Southwesterly 1126.62 feet along the arc of a curve to the left with a radius of 1111.74 feet, and a chord which bears South 28 degrees 07 minutes 11 seconds West, 1079.03 feet to the West line of Martin Luther King Jr. Memorial Highway and the Point of Beginning.

## SCHEDULE B - SECTION II NOTES

- 13 Terms, covenants, and conditions of Assurance for Land Covenants, as recorded in Liber 1443 on Page 75 and amended by Resolution recorded in Liber 1560 on Page 10. **No survey matters to be shown.**
- 14 Terms, covenants, and conditions of Protective Covenants, as recorded in Liber 1178 on Page 296 and in Liber 1214 on Page 292 and amended by Resolution recorded in Liber 1560 on Page 12. **No survey matters to be shown.**
- 15 Easement for public utilities, sewer and gas main, as evidenced in Warranty Deed recorded in Liber 3725 on Page 714. **The location of said easement cannot be determined from the record document.**

## T.L.E. EASEMENT

Part of the Southwest 1/4 of Section 8, Town 2 South, Range 8 West, City of Battle Creek, Calhoun County, Michigan, described as: Commencing at the South 1/4 corner of said Section; thence S89°50'43"W 710.12 feet along the South line of said Section; thence N00°12'58"E 594.15 feet Westerly right-of-way line of Logistics Drive; thence Northeasterly 772.29 feet along a 1195.92 foot radius curve to the right, said curve having a central angle of 37°00'00", and a chord bearing N18°42'58"E 758.94 feet along said Westerly right-of-way line; thence N37°12'58"E 542.74 feet along said Westerly right-of-way line and the extension thereof; thence N52°47'02"W 20.00 feet along the Northerly right-of-way line of Logistic Drive; thence N37°12'58"E 10.00 feet to the Point of Beginning; thence N52°47'02"W 120.00 feet; thence N37°12'58"E 64.84 feet; thence S13°10'46"W 49.10 feet; thence S47°04'24"E 100.50 feet; thence S37°12'58"W 10.00 feet to the Point of Beginning. Contains 0.05 acres.

## RIGHT-OF-WAY EASEMENT

Part of the Southwest 1/4 of Section 8, Town 2 South, Range 8 West, City of Battle Creek, Calhoun County, Michigan, described as: Commencing at the South 1/4 corner of said Section; thence S89°50'43"W 710.12 feet along the South line of said Section; thence N00°12'58"E 594.15 feet Westerly right-of-way line of Logistics Drive; thence Northeasterly 772.29 feet along a 1195.92 foot radius curve to the right, said curve having a central angle of 37°00'00", and a chord bearing N18°42'58"E 758.94 feet along said Westerly right-of-way line; thence N37°12'58"E 542.74 feet along said Westerly right-of-way line and the extension thereof; thence N52°47'02"W 20.00 feet along the Northerly right-of-way line of Logistic Drive to the Point of Beginning; thence continuing N52°47'02"W 130.00 feet along said Northerly right-of-way; thence N37°12'58"E 73.55 feet along the Southeasterly right-of-way line of Skyline Drive; thence S60°09'15"E 10.08 feet; thence S37°12'58"W 64.84 feet; thence S52°47'02"E 120.00 feet; thence S37°12'58"W 10.00 feet to the Point of Beginning. Contains 0.05 acres.

This sketch was made from the legal description shown above. The description should be compared with the Abstract of Title or Title Policy for accuracy, easements and exceptions.

SCALE: 1" = 50'

Mead & Hunt Inc. (Madison WI)  
Troy Pankratz  
2440 Deming Way  
Middleton, WI 53562

Hill Brady Road & Skyline Drive

DRAWN BY: JAT  
REV. BY: ED  
REV.: Added title work and descriptions

DATE: 12.7.21  
REV. DATE: 01.31.22

PRJ #: 20401114DSC4.1  
2 OF 2



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Holland, Indianapolis, St. Louis

By:   
Randal J. Vugteveen Licensed Professional Surveyor No. 4001028429





## Resolution

NO. 39

A Resolution seeking to approve S17-22, a Special Use Permit to allow for a new child care center at 520 W. Michigan Avenue in a T-3 Neighborhood Commercial District pursuant to Sections 1240.13(C) and 1281.05 of the zoning code.

**BATTLE CREEK, MICHIGAN - 1/3/2023**

### **Resolved by the Commission of the City of Battle Creek:**

That the Planning Commission has reviewed the petition from Voces, on behalf of the Battle Creek Downtown Development Authority (DDA), requesting a Special Use Permit to allow a new child care center in a T-3 Neighborhood Commercial District located on the parcel at 520 W. Michigan Avenue (parcel # 7400-00-005-0) as permitted by special use under the Planning and Zoning Ordinance, Chapter 1240, Section, Section 1240.13 of the zoning code.

The Planning Commission held a Public Hearing on this matter at a meeting held on December 14, 2022, and after due consideration, recommended that the Battle Creek City Commission approve the petition for a Special Use Permit based upon the findings and conditions as set forth in the attached report of the Planning Commission.

The Battle Creek City Commission having given its considerations to all information presented to it relating to said petition, adopts the finding and recommendations as set out in the report and supplemented by findings set forth on the record of this date which will be attached hereto, and does by way of this Resolution, approve Special Use Permit S17-22 for a new child care center at 520 W. Michigan Avenue finding beyond reasonable doubt that the general standards set forth in Zoning Code 1281.05 be satisfied by the completion and operation of the proposed development with the following conditions and/or restrictions:

1. The approval of this request is directly tied to the proposed use and elements of the proposed use as provided for by the applicant in the application regarding the child care use and on the plot plan. Any changes contrary to that which is included on the site plan and in the application would require review and approval by the Planning Commission and City Commission.
2. All necessary approvals, and any required permits shall be obtained, and maintained if applicable, from the appropriate agencies, including but not limited to the State of Michigan, Department of Public Works, and Inspections Department prior to Certificate of Occupancy of the City of Battle Creek.
3. Pursuant to Section 1281.02, no change in the use or occupancy of land or in the use or occupancy of an existing building shall be made, nor shall any new building be occupied for any purpose, until a certificate of occupancy has been issued by the Chief Building Official or their designee or agent. Such a certificate shall state that the new occupancy complies with this Zoning Code.
4. Pursuant to Section 1281.05 (D.5), certificates of occupancy for special uses shall be valid for a period established by the City Commission or as long as the use is established and maintained in conformity with the plans submitted and approved. Occupancy permits shall expire after one year if the use is not under construction or maintained. For good cause shown and upon written application, the Planning Commission

may extend a special use permit for six months.

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Battle Creek City Commission

1/3/2023

## **Action Summary**

**Staff Member:** Marcie Gillette, Community Services Director

**Department:** Planning

### **SUMMARY**

A Resolution seeking to approve S17-22, a Special Use Permit to allow for a new child care center at 520 W. Michigan Avenue in a T-3 Neighborhood Commercial District pursuant to Sections 1240.13(C) and 1281.05 of the zoning code.

### **BUDGETARY CONSIDERATIONS**

Costs of the development are the responsibility of the developer. No use of City funds is expected for this development.

### **HISTORY, BACKGROUND and DISCUSSION**

The subject site for the proposed use is a total of 0.657 acres or 28,618 square feet. The building on the subject site is currently used as the business office for Voces, a local nonprofit serving the LatinX community of Battle Creek.

Voces intends to convert the building (owned by the Battle Creek Downtown Development Authority) from its current office use to a child care center with a capacity to provide service to up to 32 children.

Proposed hours of operation are Monday – Friday, 8:00 a.m. to 6:00 p.m. The applicant is proposing minimal alterations to the site, with alterations limited to the construction of an enclosure to house the dumpster on the site, as well as a fenced in area at the rear of the building to allow for the construction of a playground.

Child care centers are defined, but not included as a listed use in the City of Battle Creek's Zoning Ordinance. The Zoning Administrator made a determination last year, as enabled by the City's Zoning Ordinance Section 1240.21, that child care centers were similar to private schools which can also sometimes include preschool. Private schools are permitted as a special use in the T-3 Neighborhood Commercial District. Child care centers are defined as a facility, other than a private residence, receiving one (1) or more children under 13 years of age for care for periods of less than 24 hours a day, where the parents or guardians are not immediately available to the child.

Child care center includes a facility that provides care for not less than two (2) consecutive weeks, regardless of the number of hours of care per day. Child care centers must be licensed by the State of Michigan. The following language is directly from the Michigan.gov LARA webpage for child care centers:

“It is illegal in the State of Michigan to provide child care services without being licensed by the Michigan Department of Licensing and Regulatory Affairs, Child Care Licensing Division.”

## **DISCUSSION OF THE ISSUE**

### **POSITIONS**

As a special use, the Planning Commission is charged with reviewing each Special Use Permit request to determine any effects the proposed use would have on the Master Plan map, goals and objectives, as well as on the character and development of the neighborhood. The ordinance and enabling legislation allow the Planning Commission and the City Commission to impose relevant conditions upon the request that would ensure the general objectives of the zoning ordinance are met and to preserve property values in the neighborhood.

At the December 14, 2022 Planning Commission Special Meeting, the Planning Commission reviewed the request under the Special Use Permit criteria outlined in the zoning code and recommended the approval of the request based on the following findings.

a) The addition of a child care center at this property will be harmonious with the goals of the Neighborhood Commercial land use and is in accordance with the general objectives of the City of Battle Creek Master Plan 2018 to include:

Goal 2; Reposition land use to reflect the anticipated needs of the community.

Goal 3; Promote reinvestment in Battle Creek’s established neighborhoods.

Goal 4; Revitalize commercial corridors as vibrant, successful business districts.

Goal 7; Improve the overall appearance of the community and inspire pride in Battle Creek.

Goal 8; Foster an educated, diverse, and well-trained workforce.

b) The use of this property is proposed to remain commercial, with minimal exterior alterations proposed. The proposed use will remain harmonious and appropriate in appearance with the existing or intended character of the general vicinity.

c) No aspect of the proposed use is anticipated to be hazardous or disturbing to existing or future neighboring uses.

d) This use will represent a substantial improvement to the property in the immediate vicinity and to the community as a whole, as the proposed child care center will provide a needed service to both the neighborhood and the overall community.

e) Current services sufficiently support the existing commercial use. With minimal alterations proposed, the existing services will adequately support the proposed use.

f) The proposed use is not anticipated to create additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community. Any costs associated with the proposed improvements will be born by the applicant.

g) The proposed use is not anticipated to create any activities, processes, materials, equipment or conditions of operations that will be detrimental to any person, property or the general welfare by reason of an excessive generation of traffic, noise, smoke, fumes, glare, vibrations or odors.

h) The proposed use is consistent with the intent and purpose of the Zoning Code.

**Therefore, as the request meets the general standards listed in Section 1281.05 as outlined above,**

planning staff recommends that the Planning Commission recommend approval to the City Commission of Special Use Permit Petition S17-22, which would allow the child care center use on the subject parcel located at 520 W Michigan Ave., Parcel #7400-00-005-0 in a T-3 Neighborhood Commercial District with the following conditions:

1. The approval of this request is directly tied to the proposed use and elements of the proposed use as provided for by the applicant in the application regarding the child care use and on the plot plan. Any changes contrary to that which is included on the site plan and in the application would require review and approval by the Planning Commission and City Commission.
2. All necessary approvals, and any required permits shall be obtained, and maintained if applicable, from the appropriate agencies, including but not limited to the State of Michigan, Department of Public Works, and Inspections Department prior to Certificate of Occupancy of the City of Battle Creek.
3. Pursuant to Section 1281.02, no change in the use or occupancy of land or in the use or occupancy of an existing building shall be made, nor shall any new building be occupied for any purpose, until a certificate of occupancy has been issued by the Chief Building Official or their designee or agent. Such a certificate shall state that the new occupancy complies with this Zoning Code.
4. Pursuant to Section 1281.05 (D.5), certificates of occupancy for special uses shall be valid for a period established by the City Commission or as long as the use is established and maintained in conformity with the plans submitted and approved. Occupancy permits shall expire after one year if the use is not under construction or maintained. For good cause shown and upon written application, the Planning Commission may extend a special use permit for six months.

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ATTACHMENTS:

File Name	Description
❑ 2_520_W_Michigan_Ave_childcare_SUP_staff_report.pdf	Staff Report SUP S-17-22 Child Care Center 520 W. Michigan Ave
❑ 3_Application.pdf	SUP S-17-22 Child Care Center Application 520 W. Michigan Ave
❑ 5_Site_Plan.pdf	Site Plan SUP S-17-22 Child Care Center 520 W. Michigan Ave
❑ PC_12.14.22_Meeting_Minutes_DRAFT.pdf	12.14.22 PC Meeting Minutes DRAFT



## **Battle Creek City Planning Commission**

### **Special Use Permit**

### **Staff report for the December 14, 2022 meeting**

To: Planning Commissioners

From: Travis Sullivan, Planner

Subject: Petition S-17-22, an application for special use approval to allow a Preschool Center (Childcare Center) at 520 W Michigan Ave. (Parcel #7400-00-005-0) in a T-3 Neighborhood Commercial Zoning District where Childcare Centers can be allowed as a special use.

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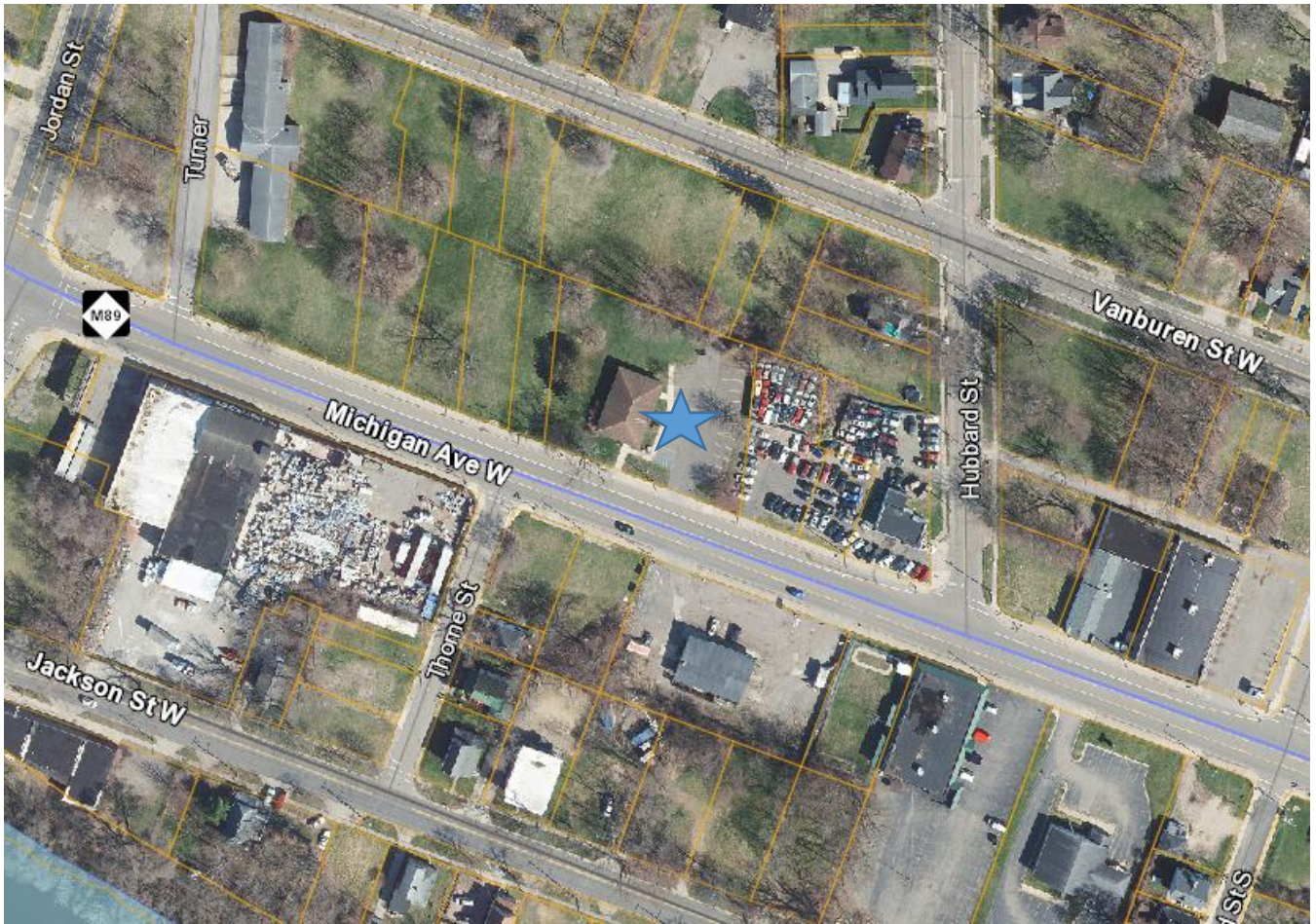
### **Summary**

Petition from Voces, on behalf of the Battle Creek Downtown Development Authority (DDA), requesting special use approval for a Preschool Center (Childcare Center) in a T-3 Neighborhood Commercial District located on the parcel at 520 W Michigan Ave., Battle Creek, Michigan 49037, parcel #7400-00-005-0 as permitted by special use under the Planning and Zoning Ordinance, Chapter 1240, Section 1240.13 T-3 *Neighborhood Commercial District*.

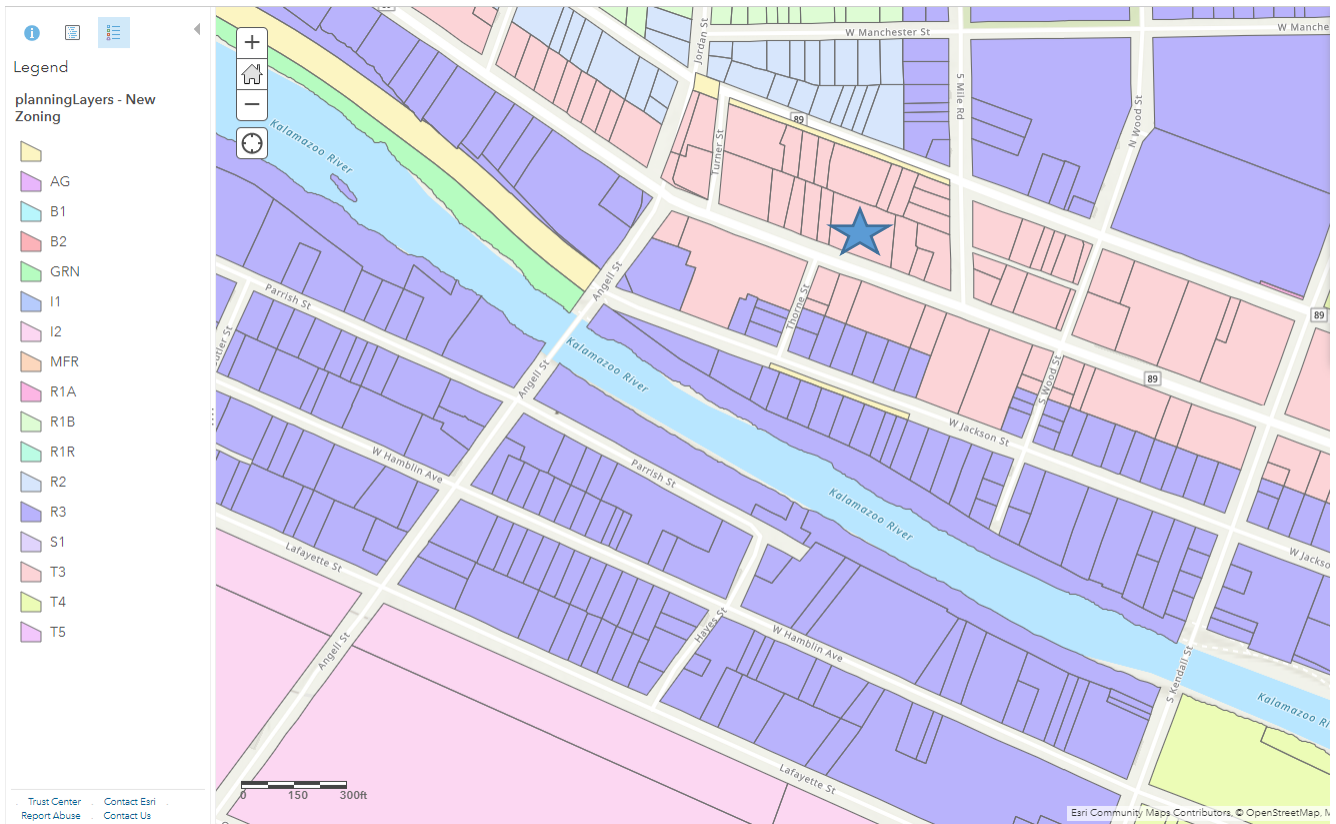
Per City of Battle Creek Zoning Ordinance Section 1240.21 *Zoning Districts. F. Uses Not Specifically Mentioned*, the City's Zoning Administrator had last year classified Childcare Centers as being comparable to private schools and large daycare centers which are allowed by special use permit in the T-3, T-4 and T-5 Zoning Districts.

### **Background/Property Information**

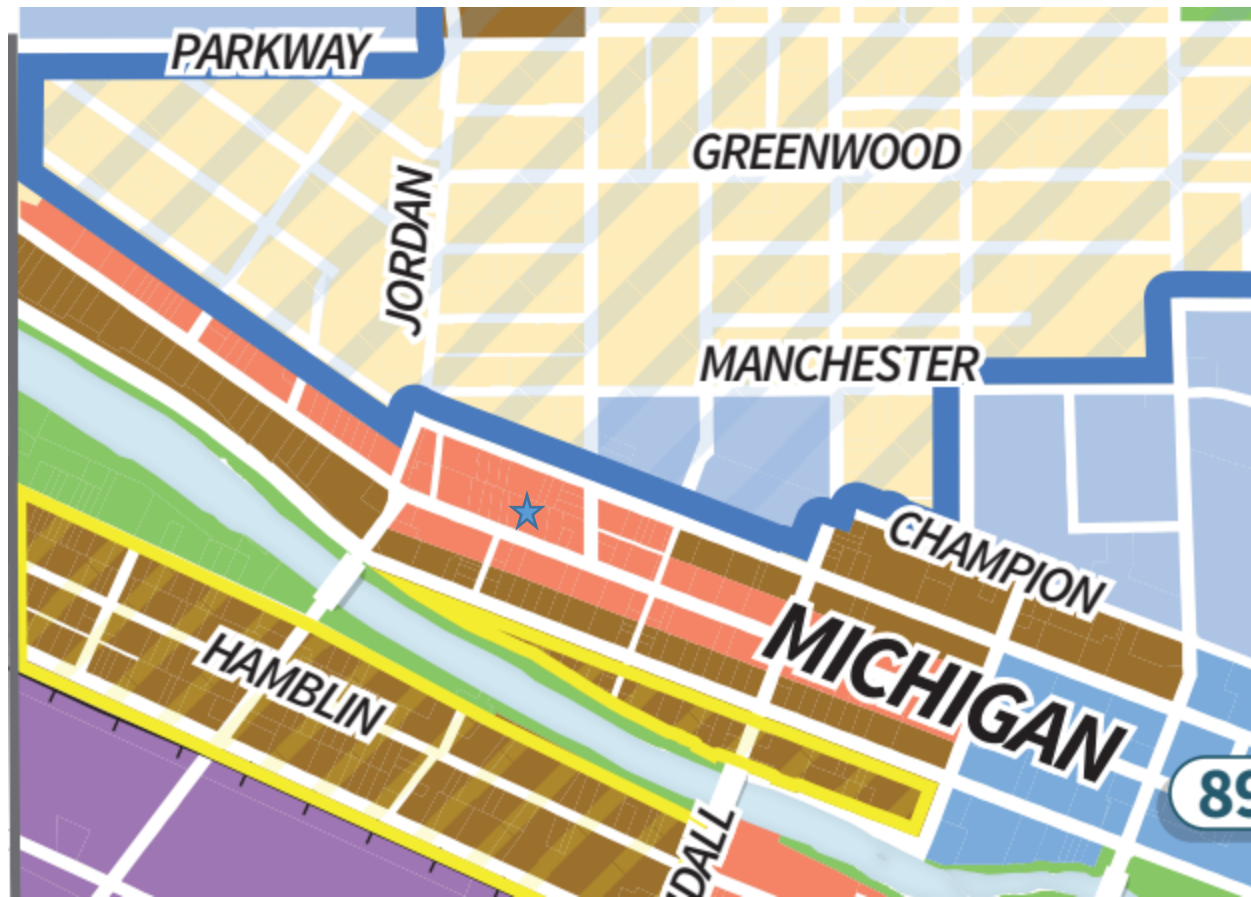
The subject site for the proposed use is a total of 0.657 acres or 28,618 square feet. The building on the subject site is currently used as the business office for Voces, a local nonprofit serving the LatinX community of Battle Creek. Voces intends to convert the building (owned by the Battle Creek Downtown Development Authority) from its current office use to a Childcare Center with a capacity to provide service to up to 32 children.



**Figure 1:** Aerial View of 520 W Michigan Ave., with a blue star indicating the subject site. Photo courtesy of City of Battle Creek staff, approximately 2020.



**Figure 2:** Zoning for 520 W Michigan Ave., with a blue star indicating the subject site.



### Land Use Classifications

Agricultural & Rural Residential	Production & Employment Center
Traditional Neighborhood	Community Open Space & Recreation
Suburban Residential	Transitioning Neighborhood
Multi-Unit Residential	Challenged Neighborhood
Neighborhood Commercial	Development Opportunity Centers
Corridor Commercial	Community Services
Regional Commercial	Urban Growth Boundary
Downtown Commercial	

**Figure 3:** Future Land Use Plan for 520 W Michigan Ave., with a blue star indicating the subject site.



**Figure 4:** Street view of the property from W Michigan Ave. Photo courtesy of Google Street View, September 2019.

**Surrounding Land Uses / Zoning / Existing Uses**

	<b>SUBJECT PROPERTY</b>	<b>NORTH</b>	<b>SOUTH</b>	<b>EAST</b>	<b>WEST</b>
<b>FUTURE LAND USE</b>	Neighborhood Commercial	Neighborhood Commercial	W Michigan Ave., Neighborhood Commercial	Neighborhood Commercial	Neighborhood Commercial
<b>ZONING DISTRICT</b>	T-3 Neighborhood Commercial	T-3 Neighborhood Commercial	W Michigan Ave., T-3 Neighborhood Commercial	T-3 Neighborhood Commercial,	T-3 Neighborhood Commercial
<b>EXISTING USE</b>	Commercial	Vacant Lots	W. Michigan Ave., Combination of Vacant Lots and Commercial Uses	Commercial (Used Auto Sales)	Vacant Lot

**Proposed Scope of Project**

The applicant is seeking special use approval for a Childcare Center for up to 32 children in the T-3 Neighborhood Commercial zoning district at the 520 W Michigan Ave. site. The existing building on the subject site is currently owned by the Battle Creek DDA and leased to Voces for their business

offices, with the applicant proposing a conversion of the existing building to a Childcare Center. Proposed hours of operation are Monday – Friday, 8:00 a.m. to 6 p.m. The applicant is proposing minimal alterations to the site, with alterations limited to the construction of an enclosure to house the dumpster on the site, as well as fenced in area at the rear of the building to allow for the construction of a playground.

Childcare Centers are defined, but not included as a listed use in the City of Battle Creek’s Zoning Ordinance. The Zoning Administrator made a determination last year, as enabled by the City’s Zoning Ordinance Section 1240.21, that Childcare Centers were similar to Private Schools which can also sometimes include preschool. Private schools are permitted as a special use in the T-3 Neighborhood Commercial District.

Child Care Centers are defined as a facility, other than a private residence, receiving one (1) or more children under 13 years of age for care for periods of less than 24 hours a day, where the parents or guardians are not immediately available to the child. Child care center includes a facility that provides care for not less than two (2) consecutive weeks, regardless of the number of hours of care per day. Childcare Centers must be licensed by the State of Michigan. The following language is directly from the Michigan.gov LARA webpage for Childcare Centers: **“It is illegal in the State of Michigan to provide child care services without being licensed by the Michigan Department of Licensing and Regulatory Affairs, Child Care Licensing Division.”**

Section 1281.05 Special Land Uses requires submittal of a site plan, plot plan or development plan to accompany the special use application. The applicant has supplied staff and the Planning Commission with detailed site and floor plans for the proposed use, all of which are included within this meeting packet.

To reiterate, the applicant is proposed minimal exterior alterations, with those alterations limited to the dumpster enclosure and the fence-in playground at the rear of the building.

The parking lot is proposed to remain unaltered, providing 20 parking spaces which will sufficiently accommodate the proposed 6 employees and maximum of 32 children at the site (one per employee, plus a minimum of 10 spaces for drop off / pickup of children, as is consistent with the requirements of Chapter 1261 with regard to Private K-12 Schools).

Battle Creek’s 2018 adopted Master Plan identifies the subject parcel as Neighborhood Commercial. The Plan also contains goals which identify this area of the City for promoting investment, especially in and near the City’s established neighborhoods. A new child care center would also assist with workforce development.

T-3 Neighborhood Commercial allows for Private K-12 Schools, and per the Zoning Administrator’s determination, Childcare Centers as a special use. Commercial zoning districts surround the subject parcel on the north, east and south.

### **Applicable Ordinance Provisions**

Planning and Zoning Ordinance Adopted December 2020:

1. **Chapter 1230.06 Definitions** 178) *State Licensed Residential Facilities* b) Child Care Facilities.  
iii) Child Care Center. *A facility, other than a private residence, receiving one (1) or more children under 13 years of age for care for periods of less than 24 hours a day, where the parents*

*or guardians are not immediately available to the child. Child care center includes a facility that provides care for not less than two (2) consecutive weeks, regardless of the number of hours of care per day.*

**2. Chapter 1240 Section 1240.02 Table of Permitted Uses, 1240.13 T-3 Neighborhood Commercial District C. Special Land Uses.**

**3. Section 1240.21 Zoning Districts. F. Uses Not Specifically Mentioned.**

*The City Zoning Administrator or their designee shall have the power to classify a use which is not specifically mentioned in this Zoning Code, along with a comparable permitted or prohibited use for the purpose of the use regulations in any district. The City Zoning Administrator or their designee may refer these appeals to the Zoning Board of Appeals.*

As enabled by the above Section 1240.21 in the City of Battle Creek's Zoning Ordinance, the Zoning Administrator made the determination in 2021 that Childcare Centers, which are included in the Definitions section of the Zoning Ordinance; but are not listed as a use in the Table of Permitted Uses, is a use similar to private K-12 schools, which sometimes have preschools. Private K-12 schools are listed as a Special Use in the T-3, T-4 and T-5 Zoning Districts. (In a brief review of the last 10 years of special uses, it appears that childcare centers have been treated by the City as special uses since at least 2013.)

- 4.** (This cite is included just for information) 1261.01 D. *Rules for Calculating Required Number of Parking Spaces. 7) Uses Not Specified. The parking space requirement for a use not specifically mentioned herein shall be the same as required for a use of a similar nature as determined by the Zoning Administrator or their designee. In making their determination, the Zoning Administrator or their designee shall refer to the most recent edition of the Parking Generation, published by the Institute of Traffic Engineers (ITE), or other acceptable standard applicable for that use or a similar use.*

### **Public Hearing and Notice Requirements**

As required by the Zoning Enabling Act of 2006, as amended, for noticing not less than 15 days before the request will be considered, a public hearing notice was published in the Battle Creek Enquirer on Tuesday, November 29, 2022 and notices of the public hearing were also sent by regular mail to each of the 22 owners and occupants of properties located within 300 feet of the subject parcel.

### **Neighborhood Outreach**

Due to Covid, the Neighborhood Planning Council (NPC) are in the process of reorganizing. Staff plans to encourage applicants in the future to present proposed plans for special uses to the appropriate NPC for feedback prior to application to the Planning Commission and City Commission.

### **Basis For Determination and Analysis**

As a special use, the Planning Commission is charged with reviewing each Special Use Permit request to determine any effects the proposed use would have on the Master Plan map, goals and objectives, as well as on the character and development of the neighborhood. The ordinance and enabling legislation allow the Planning Commission and the City Commission to impose relevant conditions upon the request

that would ensure the general objectives of the zoning ordinance are met and to preserve property values in the neighborhood.

The request shall be reviewed using the following standards listed in Chapter 1281.05(C) Basis for Determination (for Special Use Permits):

1) The City Commission may deny, approve, or approve with conditions a request for special land use approval. The decision on a special land use shall be incorporated in a statement of findings and conclusions relative to the special land use which specifies the basis for the decision and any conditions imposed.

2) Before approving, or approving with conditions, a request for a special land use, the Planning Commission and the City Commission shall establish, beyond a reasonable doubt, that the general standards specified in the following shall be satisfied by the completion and operation of a proposed development (staff comments in bold typeface):

(a) The use will be harmonious with and in accordance with the general objectives of the Master Plan.

**Staff finds that the proposed use meets the goals of the Neighborhood Commercial land use category. Additionally, the following general goals of the Master Plan are furthered by the proposed use:**

**Goal 2; Reposition land use to reflect the anticipated needs of the community.**

**Goal 3; Promote reinvestment in Battle Creek's established neighborhoods.**

**Goal 4; Revitalize commercial corridors as vibrant, successful business districts.**

**Goal 7; Improve the overall appearance of the community and inspire pride in Battle Creek.**

**Goal 8; Foster an educated, diverse, and well-trained workforce.**

(b) The use will be designed, constructed, operated and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and will not change the essential character of the neighborhood.

**The use of this property is proposed to remain commercial, with minimal exterior alterations proposed. The proposed use will remain harmonious and appropriate in appearance with the existing or intended character of the general vicinity.**

(c) The use will not be hazardous or disturbing to existing or future neighboring uses.

**No aspect of the proposed use is anticipated to be hazardous or disturbing to existing or future neighboring uses.**

(d) The use will be a substantial improvement to property in the immediate vicinity and to the community as a whole.

**This use will represent a substantial improvement to the property in the immediate vicinity and to the community as a whole, as the proposed Childcare Center will provide a needed service to both the neighborhood and the overall community.**

(e) The use will be adequately served by essential public facilities and services, such as streets, highways, police and fire protection, drainage, refuse disposal and schools, or the persons or agencies responsible for the development shall be able to adequately provide such services.

**Current services sufficiently support the existing commercial use. With minimal alterations proposed, the existing services will adequately support the proposed use.**

(f) The use will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community.

**The proposed use is not anticipated to create additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community. Any costs associated with the proposed improvements will be born by the applicant.**

(g) The use will not create activities, processes, materials, equipment or conditions of operation that will be detrimental to any person, property or the general welfare by reason of an excessive generation of traffic, noise, smoke, fumes, glare, vibrations or odors.

**The proposed use is not anticipated to create any activities, processes, materials, equipment or conditions of operations that will be detrimental to any person, property or the general welfare by reason of an excessive generation of traffic, noise, smoke, fumes, glare, vibrations or odors.**

(h) The use will be consistent with the intent and purpose of this Zoning Code.

**The proposed use is consistent with the intent and purpose of the Zoning Code.**

3) A request for approval of a special land use shall be approved (except requests for approval of a group child care home, which are discretionary approvals) if the request is in compliance with the standards stated in this ordinance, the conditions imposed under this ordinance, and other applicable ordinances, and state and federal statutes.

### **Recommendation**

Staff has reviewed the application and finds that it meets all of the requirements for the zoning district and the standards specifically applicable to the T-3 Neighborhood Commercial District. The use of a Childcare Center also meets numerous goals in the City's adopted 2018 Master Plan. Additionally, all Childcare Centers are required to meet State of Michigan regulations for licensing.

If findings of fact dictate the necessity, the Planning Commission may require additional conditions for this special use approval.

Staff finds the request consistent with the general special use standards listed in 1281.05(C), as outlined herein.

**Therefore, as the request meets the general standards listed in Section 1281.05 as outlined above, planning staff recommends that the Planning Commission recommend approval to the City Commission of Special Use Permit Petition S-17-22, which would allow the Childcare Center use on the subject parcel located at 520 W Michigan Ave., Parcel #7400-00-005-0 in a T-3 Neighborhood Commercial District with the following conditions:**

- 1. The approval of this request is directly tied to the proposed use and elements of the proposed use as provided for by the applicant in the application regarding the child care use and on the plot plan. Any changes contrary to that which is included on the site plan and in the application would require review and approval by the Planning Commission and City Commission.**
- 2. All necessary approvals, and any required permits shall be obtained, and maintained if applicable, from the appropriate agencies, including but not limited to the State of Michigan, Department of Public Works, and Inspections Department prior to Certificate of Occupancy of the City of Battle Creek.**
- 3. Pursuant to Section 1281.02, no change in the use or occupancy of land or in the use or occupancy of an existing building shall be made, nor shall any new building be occupied for any purpose, until a certificate of occupancy has been issued by the Chief Building Official or their designee or agent. Such a certificate shall state that the new occupancy complies with this Zoning Code.**
- 4. Pursuant to Section 1281.05 (D.5), certificates of occupancy for special uses shall be valid for a period established by the City Commission or as long as the use is established and maintained in conformity with the plans submitted and approved. Occupancy permits shall expire after one year if the use is not under construction or maintained. For good cause shown and upon written application, the Planning Commission may extend a special use permit for six months.**

The Planning Commission can add additional conditions to those listed above in the staff recommendation. The Planning Commission may also upon deliberation, choose an alternative action from the following alternatives:

- A1: Postpone the project for specific reasons, with agreement from the applicant;
- A2. Articulate revised rationale of the general standards and/or conditions to recommend to the City Commission Approval OR Denial of the subject application.

### **Attachments**

The following information is attached and made part of this Staff report:

1. Special Use Permit application form (Petition #S-17-22)

## **2. Site Plan and Floor Plan**



# City of Battle Creek

## Community Services – Planning and Zoning Division

City Hall • 10 N. Division Street, Ste. 117 • Battle Creek, Michigan 49014

Ph (269) 966-3320 • Fax (269) 966-3555 • [www.battlecreekmi.gov](http://www.battlecreekmi.gov)

---

### **SPECIAL USE PERMIT** **Information and Procedures**

A special land use is one that may be appropriate in certain locations but requires additional review and oversight to ensure that there would be no adverse effects to the property or the surrounding neighborhood. These uses are regulated by Ch. 1290 "Special Land Uses" of the Zoning Ordinance, and only those uses listed in the ordinance are subject to a permit.

#### **BASIS FOR DETERMINATION**

Special Use Permits are subject to review and approval by both the Planning Commission and the City Commission. Each body will review the request to determine if it complies with standards for approval outlined in Chapter 1290.04 "Basis for Determination":

- a) The use will be harmonious with and in accordance with the general objectives of the Master Plan.
- b) The use will be designed, constructed, operated and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and will not change the essential character of the neighborhood.
- c) The use will not be hazardous or disturbing to existing or future neighboring uses.
- d) The use will be a substantial improvement to property in the immediate vicinity and to the community as a whole.
- e) The use will be adequately served by essential public facilities and services, such as streets, highways, police and fire protection, drainage, refuse disposal and schools, or the persons or agencies responsible for the development shall be able to adequately provide such services.
- f) The use will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community.
- g) The use will not create activities, processes, materials, equipment or conditions of operation that will be detrimental to any person, property or the general welfare by reason of an excessive generation of traffic, noise, smoke, fumes, glare, vibrations or odors.
- h) The use will be consistent with the intent and purpose of this Zoning Code.

#### **PRE-APPLICATION RECOMMENDATIONS**

Prior to submitting the special use permit application, it is recommended that an applicant consult with the Planning Department staff to discuss the proposed use and application requirements. It is further recommended that the applicant contact the Inspections Department at (269) 966-3382 to discuss any possible requirements of the building, plumbing, mechanical, electrical, and/or fire code. Additionally, it is recommended that you contact your local Neighborhood Planning Council as well as adjacent property owners to discuss your request prior to submitting this application as you may be able to minimize concerns that would otherwise be addressed during the Public Hearing.

### **SUBMITTAL REQUIREMENTS**

In general, the completed application must be submitted to the Planning Department at least four weeks prior to a scheduled Planning Commission meeting. ***Please call in advance for application deadline dates.*** In order for the application to be accepted, the following items must be submitted with this completed application:

1. Payment of a non-refundable \$600.00 filing fee, made payable to the City of Battle Creek.
2. An affidavit authorizing an applicant to act on behalf of the owner if the petitioner is not the property owner.
3. Legal description of subject property and a list of all deed restrictions.
4. Property Site Plan:
  - a) For residential occupied properties, applicants shall submit a drawing of the property indicating existing and proposed property features, including but not limited to any structures, drives, fences, decks/patios, etc. The drawing shall indicate where the proposed special land use is to be located. The dimensions of all existing and proposed features shall be labeled, as well as property dimensions. Distances between existing and/or proposed buildings and property lines shall also be included on the drawing.
  - b) Non-residential properties that propose any revisions from an approved site plan will require a new site plan submittal, per Ch. 1294 of the Zoning Ordinance. If the requested special use will NOT result in changes to the property including buildings, parking, landscaping, etc. the applicant shall submit a drawing as specified in 4a.

***Please be advised that incomplete and/or applications will not be submitted to the Planning Commission for their review or consideration.***

### **REVIEW PROCESS**

At the time the application is submitted, you will be given the dates of the Planning Commission meeting at which your request will be discussed, and once prepared, an applicant will be mailed a meeting agenda and staff report specific to the application. Regular meetings of the Planning Commission are scheduled for the fourth Wednesday of each month at 4:00 pm, and are conducted in the Commission Chamber (Rm301) of City Hall. ***Please call or email to verify the date of the meetings. It is possible that some months may require a different meeting date to accommodate holidays or other events.***

A request for a special use permit is first submitted to the Planning Commission for their review. A public hearing will be scheduled for this meeting, and as required by state law and local ordinances, notices of this public hearing will be published in the local paper and mailed out to property owners and occupants within 300' feet of the subject parcel. At the meeting, the public hearing is opened and the applicant is asked to present their request. Opportunity is given to any members of the public wishing to comment on the request.

After the public hearing is closed, the Planning Commission will discuss the request, possibly asking additional questions of the applicant and/or staff. The Planning Commission may postpone a decision pending additional information that is needed in order to make a decision. They may also make a recommendation to the City Commission to approve, approve with conditions, or deny the request



# City of Battle Creek

Community Services – Planning and Zoning Division

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Ph (269) 966-3320 • Fax (269) 966-3555 • [www.battlecreekmi.gov](http://www.battlecreekmi.gov)

## SPECIAL USE PERMIT Application

Petition No. S-17-22

Date Received: 11/16/22

### APPLICANT

NAME: Voces

ADDRESS: 520 West Michigan Avenue

PHONE: 269-841-4111

FAX: \_\_\_\_\_

EMAIL: joseorozco@vocesbc.org

### OWNER (if different from applicant)

NAME: Battle Creek Downtown Development Authority

ADDRESS: \_\_\_\_\_

PHONE: \_\_\_\_\_ FAX: \_\_\_\_\_

EMAIL: \_\_\_\_\_

**\*\*If the applicant is not the property owner, a letter signed by the owner agreeing to the Special Use Permit must be included with the application.**

### EXISTING CONDITIONS

Address(es) of property for which the request is being sought: 520 West Michigan Avenue

Current use of the property: Voces' business offices.

List existing structures on the property and the approximate age of each. \_\_\_\_\_

There are no other structures on the property other than the 5,290 Sq. ft. building that was build in 1991.

Has property involved ever been the subject of a previous application? If yes, please list each one and the date the request came before the Planning Commission.

No

based on the standards listed above. The request will then be placed on the next available City Commission meeting agenda, and the applicant is notified as to the date/time of that meeting.

Similar to the process at the Planning Commission meeting, the request is placed on the City Commission agenda as a "Resolution", and opportunity is given for public comment on the request. The City Commission has the ability to postpone a decision or take action on the request by way of approval, approval with conditions, or denial of the request based on the standards listed above in Basis for Determination.

**The applicant or a representative is highly encouraged to attend both meetings to present your request and answer any questions.**

#### **ADDITIONAL CONSIDERATIONS**

Please ensure that the application fully details the proposed use that warrants the special use permit. The approval of the special use permit is based upon the contents of the submitted application, including but not limited to the nature of the use as outlined in the application. Any future proposed change must be reviewed with the Planning Department to ensure consistency with the approved special use permit, and may be subject to approval of a revision of the special use permit by the Planning Commission and City Commission.

All necessary approvals and any required permits shall be obtained from the appropriate agencies, including but not limited to the State of Michigan, Department of Public Works, and Inspections Department prior to issuance of a Certificate of Occupancy.

Pursuant to Chapter 1290.02 (e), Certificates of Occupancy for special uses shall be valid for a period established by the City Commission or as long as the use is established and maintained in conformity with the plans submitted and approved. Occupancy permits shall expire after one-year if the use is not under construction or maintained. For good cause shown and upon written application, the Planning Commission may extend a special use permit for six-months.

#### **QUESTIONS**

Please contact the Planning Department at (269) 966-3320 if you have any questions regarding special land uses, the application, or other requirements.

## PROJECT DESCRIPTION

What is the proposed use of the property that warrants the special use permit? Preschool Center

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Please list all activities that will take place on the property if the special use permit were approved?  
Voces would like to operate a preschool center

---

How many employees currently work on the property? How many will be added if the special use permit is approved, and what days/times will they be onsite? 9 employees currently work on the property.

If approved, the Preschool would have 6 employees onsite. 8-6pm

---

Will the approval of the special land use necessitate changes to the property, i.e. building construction, additional parking, driveways, fencing? If yes, please provide a list of property improvements that will be associated with the special use permit. Inside the building, some minor renovations to the existing walls and the addition of a bathroom. On the outside, a Fenced-in playground will be added to the property.

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What are the proposed hours of operation for the special use? Please indicate if the special land use will be temporary, seasonal, or long term in nature, providing dates and timeframes if applicable:  
The Preschool will operate from 9-5, Monday-Friday.

---

## STANDARDS FOR APPROVAL

Chapter 1290 Special Uses and Land Development lists standards that will be reviewed by the Planning Commission and City Commission and the request for special use permit will only be approved if these standards are met. Provide factual and supportive evidence that your application meets each of these standards. Additional sheets may be attached if necessary.

Will the special land use be designed, constructed, maintained, and/or operated in a manner harmonious with the character of adjacent properties and the surrounding area? ☒ Yes ☐ No

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Will the special land use change the character of adjacent properties and the surrounding area?  
☐ Yes ☒ No

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Will the special land use be hazardous to adjacent properties or involve uses, activities, materials or equipment which will be detrimental to the health, safety or welfare of persons or properties?

☐ Yes ☒ No

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Will the special land use be a substantial improvement to property in the immediate vicinity and to the community as a whole? ☒ Yes ☐ No

Establishing a Preschool will be addition to the community and neighborhood.

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Will the special land use place demands on public facilities or services in excess of current capacity?

☐ Yes ☒ No

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Will the special land use produce excessive traffic, noise, smoke, fumes, or glare? ☐ Yes ☒ No

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#### **SUBMITTAL REQUIREMENTS**

Each request requires the following items to be submitted along with the completed application; incomplete applications will not be forwarded to the Planning Commission.

1. Payment of a non-refundable \$600.00 filing fee, made payable to the City of Battle Creek.
2. An affidavit authorizing an applicant to act on behalf of the owner if the petitioner is not the owner.
3. Legal description of subject property and a list of all deed restrictions.
4. Property Site Plan as outlined in "Special Use Permit, Information and Procedures".

#### **APPLICANT SIGNATURE**

By signing this application, the applicant hereby declares that all answers given herein are true to the best of their knowledge, and confirms that all information required for submission of a special use permit have been submitted. Furthermore, the applicant confirms that they have thoroughly read "Special Use Permit, Information and Procedures" and agrees to comply with all requirements and procedures for special use permit.

---

Name

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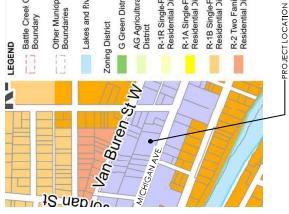
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520 W MICHIGAN AVE, BATTLE CREEK, MI

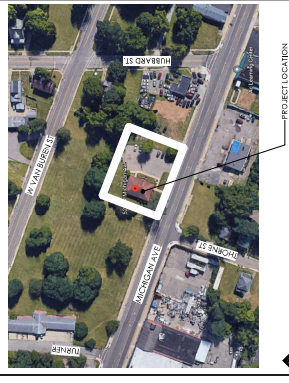


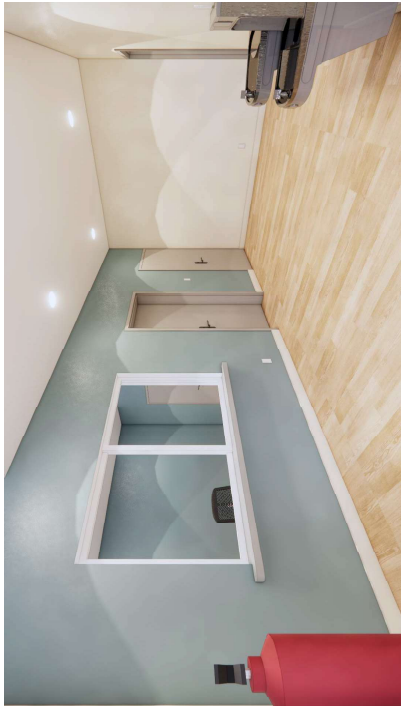
AN EXISTING OFFICE BUILDING IS BEING CONVERTED INTO A DAYCARE FACILITY.

## ZONING - T-3 NEIGHBORHOOD COMMERCIAL DISTRICT

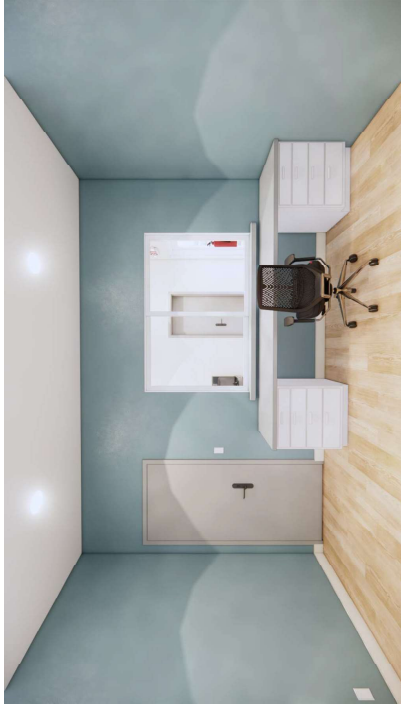


\_\_\_\_\_





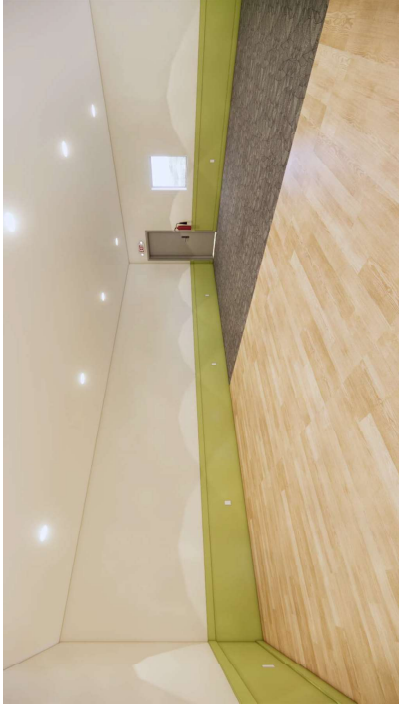
VIEW OF RECEPTION ROOM



VIEW FROM BEHIND RECEPTION



VIEW OF 3 YEAR OLDS



VIEW OF 4 YEAR OLDS

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DRIVEN DESIGN  
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CODY  
VOICES

DATE  
BULLETIN #1

REVISION

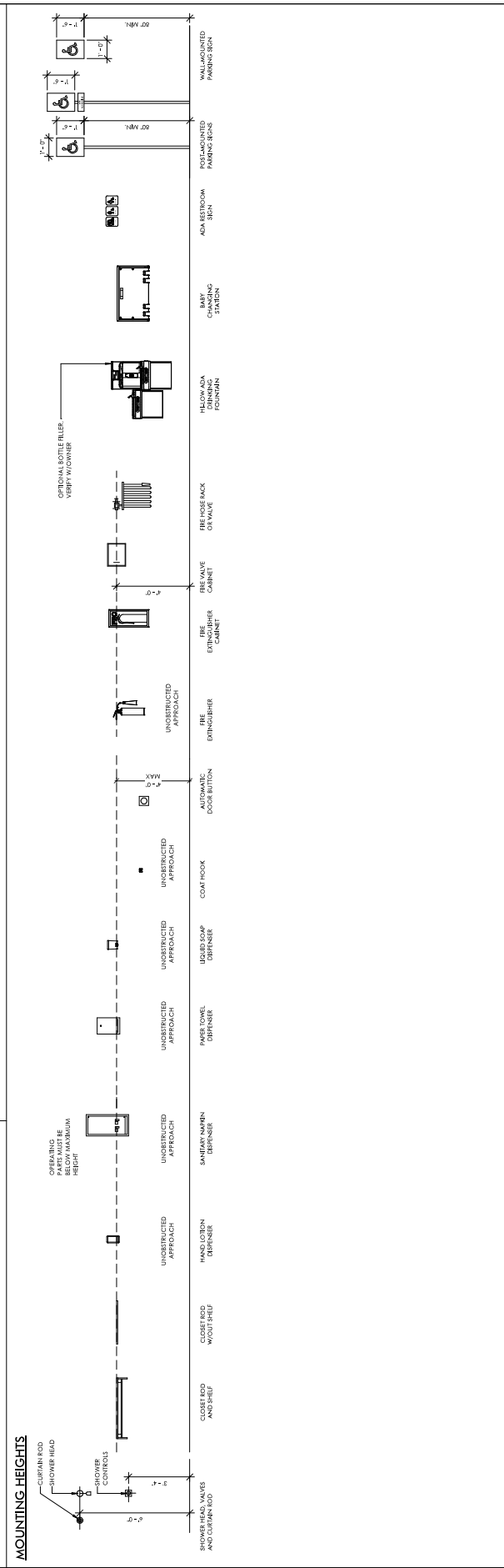
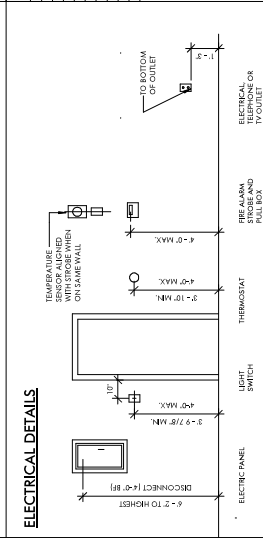
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SCALE  
1/2" = 1'-0"

PROJECT NUMBER  
2022.118

DRIVEN DESIGN

T001



[illegible]

# CODE COMPLIANCE GENERAL NOTES

EXISTS WHERE LOCATED ABOVE THE BOARD AND JIBBLE FROM 21 FEET AWAY. ALL EXISTING LIFELINES TO BE MOVED DOWN TO ILLUMINATE THE EGRESS WAY OF TRAVEL.

ALL FIRE EXTINGUISHERS ARE TO BE CONSIDERED. UNLESS NOTED OTHERWISE, ALL EXTINGUISHERS ARE TO BE TAGGED WITH THE CURRENT TAGGING NOTIFICATION ON AN ANNUAL INSPECTION DATE AS A PART OF THE EXTINGUISHING.

PROVIDE A CLEAR EJECTION SIGN AT ALL RETROSCOPES. CORRESPONDING TO THE CORRECT LEVEL.

SEE NOTES FOR ADDITIONAL HEIGHTS AND LOCATIONS

SEE NOTES FOR ADDITIONAL COMPLIANCE INFORMATION

FINISHES AND EQUIPMENT SHOWN ON COMPLIANCE DRAWINGS ARE FOR REFERENCE ONLY

MICHIGAN CHILD CARE REQUIREMENTS 1 TABLE 1.1 SIGN FOR ENTRY IS CHILDED

# COMPLIANCE LEGEND

EXAMPLE	ITEM
---------	------

1. ENGINE EXTINGUISHERS ARE MOUNTED ABOVE THE DOORS AND VISIBLE FROM 75 FEET AWAY. ALL EXGRESS LIGHTING IS POINT DOWN TO ILLUMINATE THE EGRESS PATH OF TRAVEL.
2. ALL FIRE EXTINGUISHERS ARE TO BE ABC EXTINGUISHERS. UNLESS NOTED OTHERWISE ALL EXTINGUISHERS ARE TO BE 10 LB. CO2 TYPES WITH THE CURRENT YEAR'S INSPECTION ON IT. ANNUAL INSPECTIONS ARE TO OCCUR FOR ALL FIRE EXTINGUISHERS.
3. PROVIDE ADA RESTROOM SIGNS AT ALL RESTROOMS, CORRESPONDING TO THE CORRECT SEX.
4. SEE T002 FOR MOUNTING HEIGHTS AND LOCATIONS.

SYMBOL	ITEM
FF 	FIRE EXTINGUISHER
	EXIT SIGN W/ EGRESS LIGHTS
	EGRESS LIGHTING
	TRAVEL DISTANCE
	2 HOUR WALL
	SMOKE DETECTOR
	CARBON MONOXIDE DETECTOR

GENERAL NOTES

1. THE INFORMATION FROM GE DATA FROM THE CITY OF SATEL CREEK AND B TO BE USED FOR REFERENCE ONLY

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117 West Michigan Avenue  
Battle Creek, MI 49017  
313.463.0000  
cody@drivendesignstudio.com

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PROJECT ADDRESS  
117 WEST MICHIGAN AVE BATTLE CREEK, MI  
CITY  
VOCES

DATE  
BULLETIN #1

REVISION

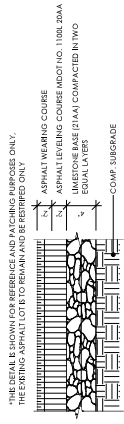
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DATE  
TIME

PROJECT NUMBER  
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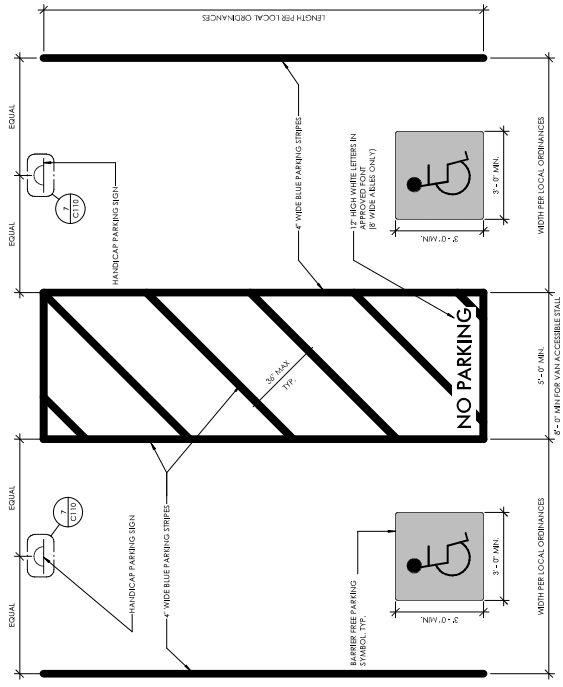
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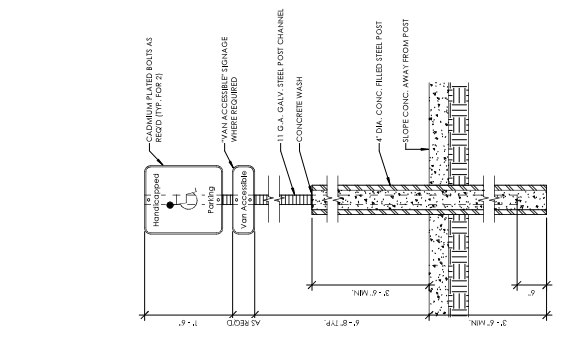




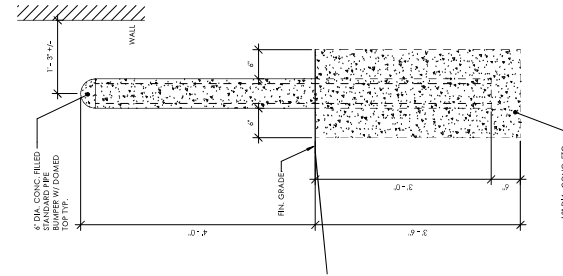
3 BITUMINOUS PAVING DETAIL  
C110 1/12 E 1-3



4 BARRIER FREE PARKING STALL LAYOUT  
C110 1/12 E 1-3



5 HANDICAP PARKING SIGN  
C110 1/12 E 1-3



6 BUMPER POST/BOLLARD DETAIL  
C110 1/12 E 1-3







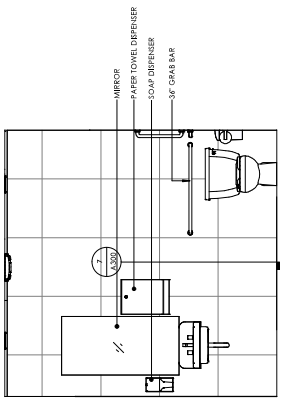




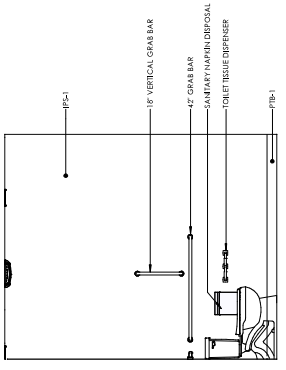


GENERAL NOTES

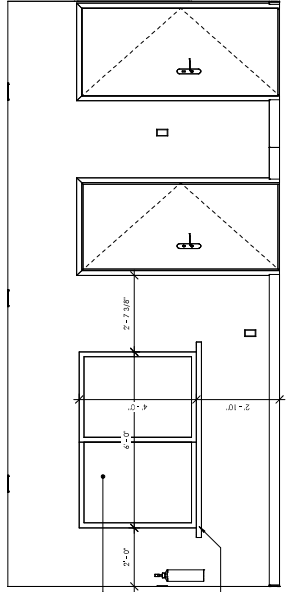
- 1. REFER TO ROOM FINISH SCHEDULE FOR FINISH DESIGNATIONS
- 2. ACTUAL GROUNDWATER LOCATIONS TO BE DETERMINED BY OWNER. SEE ROOM FINISH SCHEDULE FOR GROUNDWATER LOCATIONS. PROVIDE GROUNDWATER AT ALL FINISH LOCATIONS
- 3. PROVIDE FILLER PIECES AT CASEWORK TOP
- 4. LAMINATE ALL VISIBLE SURFACES OF CASEWORK TOP
- 5. PROVIDE INSULATED PIPE WRAP ON ALL EXPOSED PIPING
- 6. SEE SHEET 1002 FOR ACCESSORY MOUNTING HEIGHTS UNLESS SHOWN OTHERWISE
- 7. WHERE A SPECIFIED BRACKET IS NOT INDICATED PROVIDE WITH BRACKETS AS REQUIRED TO SUPPORT COUNTERS AND SHELVES. BRACKETS SHOULD BE LOCATED AT ANY UNSUPPORTED LENGTH GREATER THAN 36" PANT BRACKETS TO MATCH ADJACENT WALL
- 8. REFER TO SHEET 1002 FOR TOILET ROOM ACCESSORIES AND THEIR DESIGNATIONS
- 9. PROVIDE BLOCKING IN WALLS WHERE NECESSARY. THESE LOCATIONS CONSIST OF BUT ARE NOT LIMITED TO: WALLS WITH TOILETS, SINKS, COUNTERS, HANDRAILS, WALL MOUNTED EQUIPMENT AND OWNED DESIGNATED EQUIPMENT LOCATIONS
- 10. PAINT GRUBS AND OPENERS TO MATCH ADJACENT WALL
- 11. ALL DIMENSIONS ARE FROM FINISHED FACE TO FINISHED FACE UNLESS INDICATED OTHERWISE
- 12. SEE 1002 AND 1003 FOR MOUNTING HEIGHT LOCATIONS



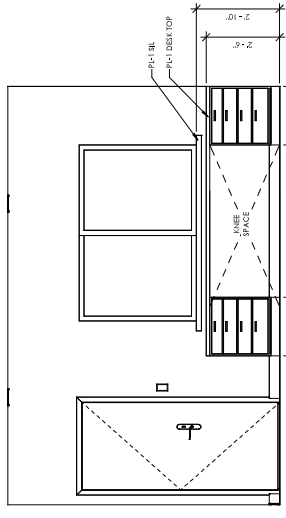
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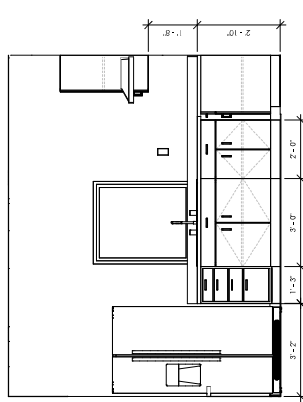
2. RESTROOM 2  
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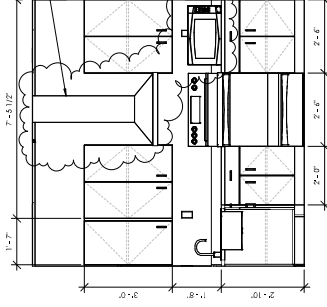
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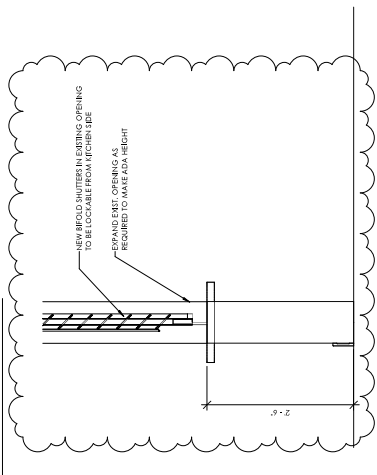
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5. KITCHEN 1  
1/2" = 1'-0"



6. KITCHEN 2  
1/2" = 1'-0"



7. PLATFORM DEAL  
1/2" = 1'-0"

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VOCES

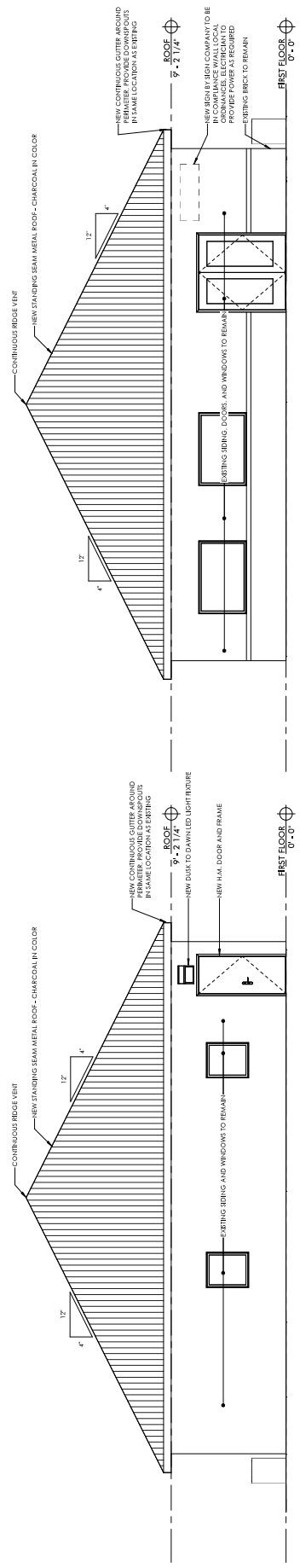
DATE  
BULLETIN #1

DESIGN  
PHASE

DESIGNED BY  
CASH  
DATE  
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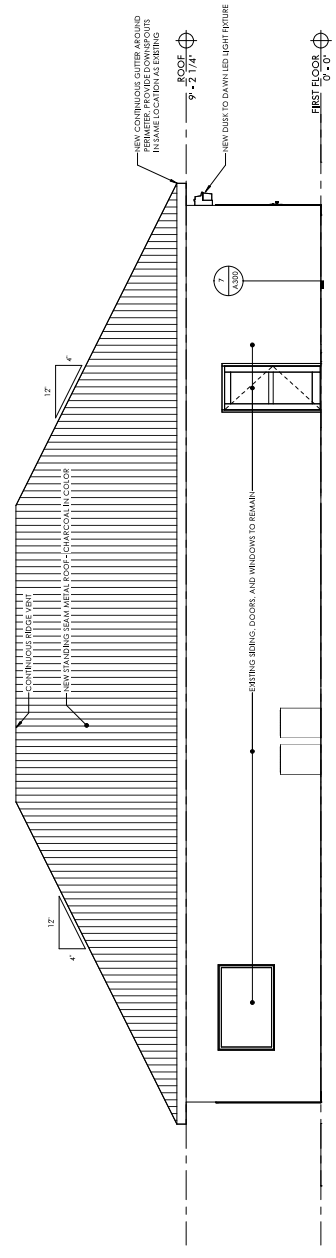
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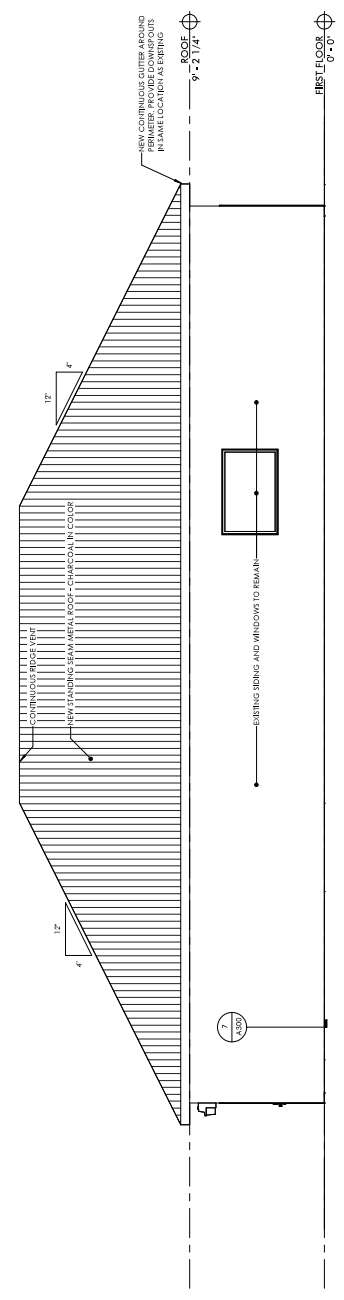


1 NORTH ELEVATION  
1/4" = 1'-0"

2 SOUTH ELEVATION  
1/4" = 1'-0"



3 EAST ELEVATION  
1/4" = 1'-0"



4 WEST ELEVATION  
1/4" = 1'-0"

**ARCHITECTURAL SYMBOL LEGEND**

CHAU	METAL ROOFING
BRICK	ASPH/FLT ROOFING
STONE	KNOT WOOD
SIDING / METAL SIDING	

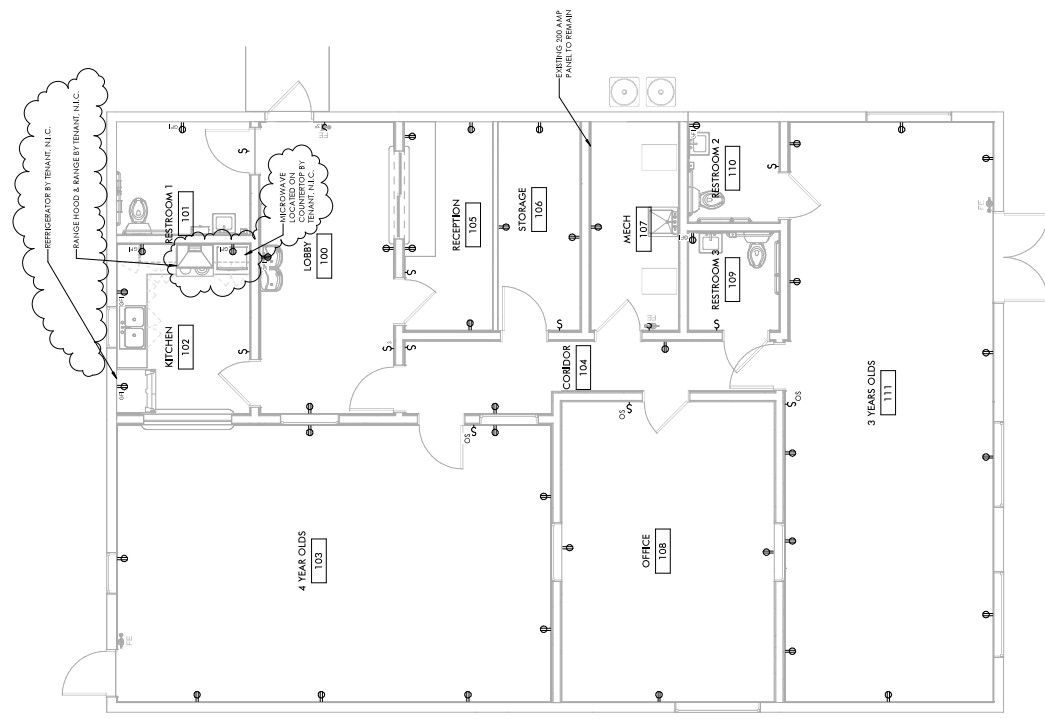





1. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST ADOPTED EDITION OF THE NATIONAL ELECTRIC CODE AND ALL AUTHORITIES HAVING JURISDICTION.
2. ELECTRICAL CONTRACTOR TO SECURE AND PAY FOR ALL PERMITS AND FEES.
3. ELECTRICAL CONTRACTOR SHALL COORDINATE WITH ALL OTHER TRADES FOR INSTALLATION OF ALL EQUIPMENT INSTALL COMPANIMENT THE MANUFACTURERS RECOMMENDATIONS. CONTRACTOR SHALL FIELD VERIFY EXISTING CONDITIONS.
4. ALL WIRING SHALL BE INSTALLED IN 12 AWG MINIMUM BARE TYPE, RUN IN RIGID INSULATION.
5. ALL WIRING SHALL BE CONFINED TO A METALLIC CONDUIT SYSTEM, RUN IN LOW CONDUIT CONCEALED IN FINISH WALLS.
6. ALL ELECTRICAL WORK SHALL BE DONE IN ACCORDANCE WITH THE NATIONAL ELECTRICAL CODE. PROVIDE THE FOLLOWING SHOWING OF WORKS WITHIN THE PROJECT WITH THE FOLLOWING REQUIREMENTS:
  - A. ALL ELECTRICAL WORK SHALL BE DONE IN ACCORDANCE WITH THE NATIONAL ELECTRICAL CODE.
  - B. COORDINATE ALL POWER OUTLETS AND LOCATIONS WITH OWNER PRIOR TO INSTALLATION.
  - C. ALL LIGHT SWITCHES SHALL BE BLIND TYPE 3P, 20 AMP, TO BE WIRED WITH WHITE COVERS.
  - D. MAXIMUM LOAD FOR A 20 AMP BREAKER SHALL BE 15 AMPS @ 1800 WATT AT 120 VAC.
7. PROVIDE NEW 1/2" RIGID PIPES IN ORDER TO INSTALL ELECTRICAL PANELS THAT BE REQUIRED.
8. IDENTIFY SHOWING SCHEMATICALLY ON ALL SELECTED CEILING TRAY, CENTER LIGHTING ROOM UNLESS OTHERWISE NOTED.
9. ELECTRICAL CONTRACTOR TO FIELD VERIFY ALL EXISTING CONDITIONS.
10. GUARANTEE ELECTRICAL MATERIALS AND WORKMANSHIP FOR A PERIOD OF ONE YEAR AFTER ACCEPTANCE.
11. THE UNDERSIGNED AND AGREES THAT THE INSTALLER THAT WORK HEREIN DESCRIBED SHALL BE COMPLETION BE HELD TO PROVIDE ALL LABOR AND MATERIALS NECESSARY FOR THE WORK INTENDED AND DESCRIBED FOR A COMPLETE AND OPERATIONAL SYSTEM. CONTRACTOR SHALL BE RESPONSIBLE FOR THE FOLLOWING TO COMPLY WITH THE REQUIREMENTS OF THE NATIONAL ELECTRICAL CODE AND ALL LOCAL CODES. THE FOLLOWING INCLUDES EQUIPMENT REQUIRED BY STATE AND LOCAL CODES.
  - A. ELECTRICAL AND DATA OUTLETS ARE KNOWN CONDITIONS IN NATURE, REVIEW PLACEMENT WITH OWNER REPRESENTATIVE.
  - B. ELECTRICAL AND DATA OUTLETS ARE KNOWN CONDITIONS IN NATURE, REVIEW PLACEMENT WITH OWNER REPRESENTATIVE.
12. THE UNDERSIGNED AND AGREES THAT THE INSTALLER THAT WORK HEREIN DESCRIBED SHALL BE COMPLETION BE HELD TO PROVIDE ALL LABOR AND MATERIALS NECESSARY FOR THE WORK INTENDED AND DESCRIBED FOR A COMPLETE AND OPERATIONAL SYSTEM. CONTRACTOR SHALL BE RESPONSIBLE FOR THE FOLLOWING TO COMPLY WITH THE REQUIREMENTS OF THE NATIONAL ELECTRICAL CODE AND ALL LOCAL CODES. THE FOLLOWING INCLUDES EQUIPMENT REQUIRED BY STATE AND LOCAL CODES.
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  - B. ELECTRICAL AND DATA OUTLETS ARE KNOWN CONDITIONS IN NATURE, REVIEW PLACEMENT WITH OWNER REPRESENTATIVE.
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14. ELECTRICAL AND DATA OUTLETS ARE KNOWN CONDITIONS IN NATURE, REVIEW PLACEMENT WITH OWNER REPRESENTATIVE.
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  - B. ELECTRICAL AND DATA OUTLETS ARE KNOWN CONDITIONS IN NATURE, REVIEW PLACEMENT WITH OWNER REPRESENTATIVE.

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	THREE-WAY SWITCH
	SWITCH
	GROUNDING FAULT IN
	QUADPLEX OUTLET
	DUPLEX OUTLET

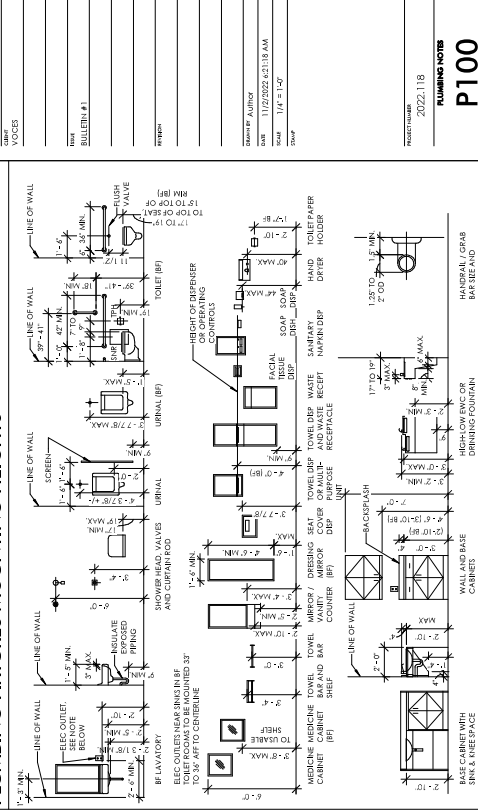


 **1** FIRST FLOOR ELECTRICAL PLAN

**ARCHITECT**  
Driven Design Studio PLLC  
10000 13th Avenue NW  
Bottle Creek, MI 48017  
(249) 755-8040  
cody@drivendesignstudio.com

<p>OR USED FOR OTHER THAN THE          PREPARED WITHOUT THE EXPLICIT          CONSENT OF DARTMOUTH COLLEGE.</p>	
<p>STUDENT NAME          VOICE DAY/CARE</p>	<p>PROFESSOR NAME          CLASS NUMBER          CLASS NAME          VOICES</p>
<p>TABLET          BULLETIN #1</p>	
<p>REPORT</p>	
<p>STUDENT ADDRESS          DATE          NAME          YEAR          GROUP</p>	<p>11/2/2022 4:21:18 AM          144 1-147</p>
<p>PROJECT NUMBER</p>	
<p>2022.118</p>	
<p>FLUERING NOTES</p>	
<p>P100</p>	

# PLUMBING FIXTURES MOUNTING HEIGHTS





**CITY OF BATTLE CREEK  
PLANNING COMMISSION  
10 North Division, Battle Creek, MI 49014  
Minutes for Wednesday, December 14, 2022**

**MEETING CALLED TO ORDER:**

By Chairperson Godfrey at 4:15 p.m. This meeting was held in person.

**ATTENDANCE:** Chairperson Godfrey asked for attendance to be noted.

**Commission Members Present:**

**Comm. Newman**, present

**Comm. Spranger**, present

**Comm. Godfrey III** present

**Comm. Gray**, present

**Commissioners Absent:**

**Mayor Behnke**, present

**Comm. Morris**, present

**Comm. Hughes**, present

**Staff Present:** Travis Sullivan, Planner, Melody Carlsen, Administrative Assistant, Marcel Stoetzel, Deputy City Attorney, Marcie Gillette, Community Services Director.

**APPROVAL OF MINUTES:** Previous meeting minutes submitted for approval for November 16, 2022.

**MOTION MADE BY COMM. NEWMAN TO APPROVE THE MINUTES FOR NOVEMBER 16, 2022 MEETING MINUTES AS PRESENTED BY STAFF. SECONDED BY COMM. SPRANGER.**

**ROLL VOTE:** Chairperson Godfrey asked everyone in favor to signify by saying “aye”:

**ALL IN FAVOR, NONE OPPOSED, MOTION APPROVED.**

**CORRESPONDENCE:** None.

**ADDITIONS/DELETIONS:** Removal of item B; Z-04-22. Removal of Special Use Permit for 50 Spencer Street, Kingdom Builders as advertised in the public hearing notice. Will be added to the future body when it is ready.

**PUBLIC HEARINGS/DELIBERATIONS:**

**CHAIRPERSON GODFREY** asked to open the public hearing for item A; (S-19-22) on the agenda.

- A. SPECIAL USE PERMIT S-19-22:** Petition from 477 W Michigan, Inc., reapplying for a Special Use Permit for property located at 477 W Michigan Ave. The request is for an Adult Use marijuana retail center. Property is zoned “T-3 Neighborhood Commercial District” pursuant to Sections 1251.23, 1251.24, 1251.26, 1240.13 and 1281.05 of the zoning code. PARCEL #5620-00-003-0. LEGALLY DESCRIBED AS MOREYS ADD LOTS 2, 3, 8 & 9 ((LOT 3 ASSESSED AS 5620-00-004-0 IN 1999; LOT 8 ASSESSED AS 5620-00-009-0 IN 1999; LOT 9 ASSESSED AS 5620-00-010-0 IN 1999)).

**Staff Presentation:** Travis Sullivan, City Planner, gave the staff report presentation. Reapplication for 477 W Michigan Avenue. Originally presented at the August Planning Commission meeting with a recommendation for disapproval to the City Commission. City Commission disapproved the item at their September meeting. Applicant is reapplying for a special use permit for an Adult-Use Marijuana facility at the location at 477 W Michigan Avenue.

**CHAIRPERSON GODFREY** called for Commissioner Questions: None.

**Applicant:** Joey Kejbou, attorney was present on behalf of the applicant. He stated his client is resubmitting the same application for the same location. Stated they have done their due diligence in research for regulatory and zoning ordinances as it is required for marijuana facilities in the city of Battle Creek. No proximity requirements for Day Care Centers. They have submitted their application and paid the fees. Stated a Day Care center currently does not exist on Michigan Avenue, anywhere near the proposed facility.

**Deputy City Attorney Stoetzel** discussed the procedure whereby the Planning Commission will decide whether to conduct a re-hearing of the item.

**MOTION MADE BY COMM. GRAY, SECONDED BY COMM. NEWMAN, TO MOVE FORWARD WITH THE REAPPLICATION OF SPECIAL USE PERMIT S-19-22.**

**Voted Yes:**

Comm. Gray  
Comm. Newman  
Comm. Hughes  
Chair Godfrey

**Voted No:**

Comm. Spranger  
Comm. Morris  
Mayor Behnke

**Chairperson Godfrey** asked for staff to provide a report.

**Staff Presentation:** Travis Sullivan, City Planner, gave a brief review of the item, as presented at the August 2022 Planning Commission meeting.

**Applicant:** Joey Kejbou presented briefly on behalf of the applicant.

**MOTION MADE BY COMM. GRAY, SECONDED BY COMM. NEWMAN, TO RECOMMEND APPROVAL OF S-19-22.**

**Chairperson Godfrey** called for discussion. Comm. Gray asked attorney Stoetzel for clarification on exemptions in the ordinance for childcare centers. Comm. Gray also asked the Chairperson if he would entertain hearing from Voces leadership. Chairperson Godfrey agreed.

**Jose Luis Orozco Jr., Voces Executive Director**, expressed his concerns with a marijuana shop being close to their facility. Stated he had not heard from the facility until the day before the meeting and the day of. Did not feel their concern for community was sincere. Asked the commission to consider adding Preschools to the city ordinance.

**Mayor Behnke** expressed concerns about Special Needs Adult Care Facility close by and the proposed Childcare Center next door.

**CHAIRPERSON GODFREY** asked for a roll call vote.

**Voted Yes:**

Comm. Hughes  
Comm. Godfrey  
Comm. Newman

**Voted No:**

Comm. Spranger  
Comm. Morris  
Comm. Gray  
Mayor Behnke

Mayor Benke stated concerns about the proposed use meeting item C (use will not be hazardous to existing or future neighborhood uses). Mayor Behnke expressed concern regarding the special needs adult care facility next door, as well as the proposed Voces preschool facility.

Comm. Gray expressed concerns regarding the harmoniousness of the proposed use within the neighborhood. Does not feel the item satisfies items A and C.

Comm. Spranger voted no based on adverse effects upon the neighborhood and that this is the third facility within a three mile radius.

Comm. Morris stated that his no vote was based on the same information provided by Comm. Spranger.

**MOTION FAILED.****PUBLIC HEARINGS/DELIBERATIONS:**

**CHAIRPERSON GODFREY** asked to open the public hearing for item C: Special Use Permit (S-17-22) on the agenda.

- C. SECIAL USE PERMIT S-17-22:** Petition from Voces to allow for a Childcare Center located at 520 W Michigan Avenue. Property is zoned T-3 Neighborhood Commercial District pursuant to Section 1240.12(c) of the zoning code. PARECEL 37400-00-005. LEGALLY DESCRIBED AS RIVERS ADD LOGTS3, 4, & E 40 FT OF LOT 5 AS MEASURED ALG SLY LI OF LOT 5.

**Commissioner Newman:** recusing himself from this petition based on the fact that he was the architect for the project.

**Staff presentation:** Travis Sullivan, City Planner, gave the staff report presentation. Special use permit to convert the existing building at 520 W Michigan Avenue from the Voces business offices to a preschool. This property is zoned T-3 Neighborhood Commercial District. Adding dumpster enclosure and fencing for a playground at the rear of the building. Staff finds that the item complies with the zoning administrator's determination for childcare centers by a special use, private K- 12 schools are permitted. Staff finds the item is compatible with a number of goals stated in The Master Plan and recommends this approval with the conditions as described in the staff report.

**PUBLIC HEARINGS/DELIBERATIONS:**

**CHAIRPERSON GODFREY** declares public hearing open and calls applicant forward.

**Jose Luis Orozco Jr., Voces Executive Director**, presented. Would like to convert current office spaces into 2 preschool classrooms for 3-4 year olds. Housing up to 32 children. Has communicated with the community and found there is a need for a bilingual and bicultural preschool in the area. Stated there are not enough preschools for student and no bilingual or bicultural preschools.

**Public Comments:**

**Hexxon Villa of 482 W Michigan Avenue:** In favor of school next to his business. Feels it would be a great addition to the neighborhood.

**Resident, Ms. Castillo:** Parent in the community who feels this is a dream come true for her family, the children and the community.

**Resident, Ms. Anna of 236 Ridgeview Drive:** Spoke as a former preschool teacher and feels this project is a good opportunity, especially the fact that it is a bilingual and bicultural preschool. Finds it is hard for parents to find preschools in the city of Battle Creek. States it would be good resource for parents who do not understand the language for school processes here and feels this project would be beneficial to the community.

**Resident, Ms. Clarissa of 85 Battle Creek Avenue:** Feels having a bilingual and bicultural preschool would create a great model for the rest of Battle Creek to follow. In favor of this preschool.

**CHAIRPERSON GODFREY** closed the public hearing and called for a motion.

**MOTION MADE BY COMM. MORRIS AND SUPPORTED BY COMM. SPRANGER TO APPROVE SPECIAL USE PERMIT #S-17-22, FOR A CHILDCARE CENTER LOCATED AT 250 W MICHIGAN AVENUE.**

**CHAIRPERSON GODFREY** called for a roll vote.

**Voted Yes:**

Comm. Spranger  
Comm. Godfrey III  
Comm. Morris  
Comm. Hughes  
Comm. Gray  
Mayor Behnke

**Voted No:**

None

**Recused:**

Comm. Newman

**MOTION APPROVED**

**CHAIRPERSON GODFREY** asked to open the public hearing for item D, Special Use Permit S-18-22 on the agenda.

**D. SPECIAL USE PERMIT S-18-22:** Petition from 327 Capital Avenue SW, LLC requesting a Special Use Permit for property located at 347 Capital Avenue SW. The request is for an Adult Use Marijuana retail center.

Property to zoned "T-3 Neighborhood Commercial District": pursuant to Sections 1251.23, 1251.24, 1251.26, 1240.13 and 1281.05 of the zoning code. PARCEL #1530-00-059-0 LEGALLY DESCRIBED AS ASSRS REPLAT OF CALDWELLS ADD LOTS 56, 57, & 58.

**Staff report:** Travis Sullivan, City Planner, gave the staff report presentation. Applying for an Adult Use Marijuana Retail establishment special use permit. Applicant went through the site plan review process and application process for a medial provisioning facility and did not complete the process. They are not applying for an Adult Use retail establishment. The zoning requirements for this location require a special use permit for the use they are applying for. No site improvements, have provided an as built for the property as it exits. Staff finds item S-18-22 is compatible with the zoning ordinance, as it allows a special use permit for T-3 district, and meets the standards and various goals stated in The Master Plan. With that staff recommends approval with the conditions as outlined in the report.

**CHAIRPERSON GODFREY** declares public hearing open and call for the applicant to come forward.

**Applicant:** Joey Kejbou, attorney was present on behalf of the applicant. Emphasized they have met all criteria and construction is complete minus a few minor repairs, parking lot is complete, lighting is complete. All requirements for state regulations are met.

**Public Comment:**

**Jose Luis Orozco Jr., Voces Executive Director:** Expressed concerns for the neighborhood, it is a dense community and questions if another marijuana shop is needed so close by.

**Resident, Ms. Clarissa of 85 Battle Creek Avenue:** This center would be down the street from her neighborhood, does not feel this is needed there.

**Hexxon Villa of 482 W Michigan Avenue:** Expressed concerns about the value of these buildings. So much money is put into them, making the value go up. If there permits are not approved, the building sit empty and now no one else and purchase them.

**CHAIRPERSON GODFREY** closed the public hearing and called for a motion.

**MOTION MADE BY MAYOR BEHNKE AND SUPPORTED BY COMM. NEWMAN TO APPROVE SPECIAL USE PERMIT #S-18-22, FOR AN ADULT USE MARIJUANA FACILITY AT 327 CAPITAL AVENUE SW.**

**COMMISSIONER COMMENTS:**

Comm. Spranger questioned the approval of the 2019 medical marijuana license that was approved by the Planning Commission for this property. Travis Sullivan stated they did not complete the application process so it is currently not operation. Comm. Spranger asked if there is any guarantee they will open this time if a permit is approved. Marcie Gillette clarified the approval time for an appicate being approved to the permit expiring is one year.

Another public comment was approved by Chairperson Godfrey III. Scott Harrington spoke on behalf of this project. Stated he was involved in the project and that they are moving forward with opening and hiring or personnel.

Chairperson Godfrey III questioned the applicant about the use of the building in the rear of the property. Applicant stated is will be used only for storage.

**CHAIRPERSON GODFREY** called for a role vote.

**Voted Yes:**

Comm. Newman  
Comm. Spranger  
Comm. Morris  
Comm. Hughes  
Comm. Godfrey  
Comm. Gray  
Mayor Behnke

**Voted No:**

None

**MOTION APPROVED**

**OLD BUSINESS:** None.

**NEW BUSINESS:**

**2023 Proposed Calendar**

**CHAIRPERSON GODFREY** called for discussion: None.

**MOTION WAS MAID BY COMM. MORRIS AND SUPPORTED BY MAYOR BEHNKE TO APPROVE THE PROPOSED 2023 PLANNING COMMISSION MEETING DATES.**

**ROLL VOTE:** Chairperson Godfrey asked everyone in favor to signify by saying “aye”:

**ALL IN FAVOR, NONE OPPOSED, MOTION APPROVED.**

**Capital Improvement Plan**

**CHAIRPERSON GODFREY** called for discussion: None.

**MOTION WAS MADE BY COMM. MORRIS AND SUPPORTED BY COMM. NEWMAN TO APPROVE THE 2023/2024-2028/2029 6 YEAR CAPITAL IMPROVEMENT PLAN.**

**ROLL VOTE:** Chairperson Godfrey asked everyone in favor to signify by saying “aye”:

**ALL IN FAVOR, NONE OPPOSED, MOTION APPROVED.**

.....  
**PUBLIC COMMENT:** None.

**STAFF COMMENT:**

Marcie Gillette: Introduction of the new Administrative Assistant in Planning and Zoning, Melody Carlsen.

Discussed Planning Commission packet request and how commissioners would like them prior to the Planning Commission meetings. A sheet was given to commissioners to fill out. Packets will be sent electronically. If requesting a paper copy, those will be made available by Melody the day after being posted online and can be picked up in her office.

**JOURNMENT:**

**Chairman Godfrey** adjourned the meeting at 5:15 p.m.

Submitted by: Melody Carlsen, Administrative Assistant, Planning and Zoning

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## Resolution

NO. 40

A Resolution seeking to approve S18-22 for a Special Use Permit to allow for an Adult Use Marihuana Retailer Establishment at 327 SW Capital Avenue (parcel #1530-00-059-0). The property is zoned T-3 Neighborhood Commercial Zoning District where marihuana retail centers can be allowed as a special use pursuant to Chapter 1240, Section 1240.13 and Chapter 1251 Sections 1251.23-24, 26.

**BATTLE CREEK, MICHIGAN - 1/3/2023**

### **Resolved by the Commission of the City of Battle Creek:**

That the Planning Commission has reviewed the petition from 327 Capital Ave SW, LLC requesting a Special Use Permit for property located at 327 Capital Avenue SW. The property is zoned T-3 Neighborhood Commercial District pursuant to Chapter 1240, Section 1240.13 and Chapter 1251, Sections 1251 23-24, 26.

The Planning Commission held a Public Hearing on this matter at its December 14, 2022 meeting, and after due consideration, the Special Use Request was approved for recommendation to the Battle Creek City Commission. Findings and considerations set forth in the attached staff report to the Planning Commission support a recommendation to approve the petition for a Special Use Permit.

The Battle Creek City Commission, having given its considerations to all information presented to it relating to said petition, adopts the finding and recommendations as set out in the report and supplemented by findings set forth on the record of this date which will be attached hereto, and does by way of this Resolution approve Special Use Permit S18-22 for an Adult Use Marihuana Retail Establishment , finding beyond reasonable doubt that the general standards set forth in the Zoning Code Section 1281.05 be satisfied by the completion and operation of the proposed development with the following conditions and/or restrictions:

1. The approval of this request is directly tied to the proposed use and elements of the proposed use as provided for by the applicant in the application and the site plan. Any changes contrary to that which is included on the application would require review and approval by the Planning Commission and City Commission.
2. All necessary approvals, and any required permits shall be obtained, and maintained if applicable, from the appropriate agencies, including but not limited to the State of Michigan, Department of Public Works, and Inspections Department prior to Certificate of Occupancy, as well as the approval of the applicable Adult-Use Marihuana Retailer permits Part A and Part B of the City of Battle Creek.
3. Pursuant to Section 1281.02, no change in the use or occupancy of land or in the use or occupancy of an existing building shall be made, nor shall any new building be occupied for any purpose, until a certificate of occupancy has been issued by the Chief Building Official or their designee or agent. Such a certificate shall state that the new occupancy complies with this Zoning Code.
4. Pursuant to Section 1281.05 (D.5), certificates of occupancy for special uses shall be valid for a period established by the City Commission or as long as the use is established and maintained in conformity with the plans submitted and approved. Occupancy permits shall expire after one year if the use is not under

construction or maintained. For good cause shown and upon written application, the Planning Commission may extend a special use permit for six months.

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Battle Creek City Commission

1/3/2023

## **Action Summary**

**Staff Member:** Marcie Gillette, Community Services Director

**Department:** Planning

### **SUMMARY**

A Resolution seeking to approve S18-22 for a Special Use Permit to allow for an Adult Use Marihuana Retailer Establishment at 327 SW Capital Avenue (parcel #1530-00-059-0). The property is zoned T-3 Neighborhood Commercial Zoning District where marihuana retail centers can be allowed as a special use pursuant to Chapter 1240, Section 1240.13 and Chapter 1251 Sections 1251.23-24, 26.

### **BUDGETARY CONSIDERATIONS**

Costs of the development are the responsibility of the developer. No use of City funds is expected for this development.

### **HISTORY, BACKGROUND and DISCUSSION**

The petitioner, 327 Capital Ave LLC requested a Special Use Permit for an Adult Use Marihuana Establishment in the T-3 Neighborhood Commercial District for the property located at 327 Capital Avenue SW, parcel number 530-00-059-0.

The subject site is a total of 15,681 square feet (0.360 of an acre) with a 1,946 square foot main building constructed in 1957 and a 2,520 sq. ft. pole building at the rear of the property intended for storage.

The applicant currently holds a Certificate of Occupancy as a Medical Marihuana Provisioning Center. The applicant is proposing to use the existing vacant building for an Adult Use Marihuana Retail Establishment. This building is located at the southeast corner of Capital Ave. SW and Goguac St. E.

The property at 327 SW Capital Ave. was issued a 90 day Part A conditional marihuana permit on May 13, 2019 and they were granted a continuation of that permit on September 9, 2019. Part B of the Medical Marijuana Facility application was never completed.

It is important to note that the previous Zoning Ordinance did not require this property to receive a special use permit to operate as a marihuana provisioning or retail establishment. The 2020 rewrite of the Zoning Ordinance and the establishment of the T-3 Neighborhood Commercial District now classifies both provisioning and retail establishments as allowed special uses, thus requiring the applicant to now seek approval from the Planning Commission and City Commission. Adult Use Marihuana Retailers are allowed special uses in the T-3 Neighborhood Commercial District. The Applicant intends to re-apply for their 90

day Part A conditional use marihuana permit for an Adult-Use Marihuana Retailer Establishment.

The building and parking area are all existing, and underwent site plan review and approval in October 2019 for a Medical Marihuana Provisioning Establishment. The applicant at the time offered proposed improvements to the surface and striping of the parking area, along with landscaping on the property, which were completed by the applicant prior to the final inspection of the site by City staff. At this time, the applicant is proposing no exterior alterations to either the main 1,946 sq. ft. building or the 2,520 sq. ft. pole building intended for storage, nor to the parking area on site.

The applicant's proposed hours are: 9:00 a.m. to 8:00 p.m. Monday through Thursday, 9:00 a.m. to 9:00 p.m. on Saturday, and 11:00 a.m. to 7:00 p.m. on Sunday, which fall within the hours allowed by Chapter 835 "Adult-Use Marihuana Establishments" of the City's Code, Section 835.09 "Conduct of Business at a Marihuana Establishment."

Applicable ordinance provisions include: Planning and Zoning Code, Chapter 1240, Section 1240.13 Neighborhood Commercial District and Chapter 1251 Sections 1251.23-24, and 26 Standards Applicable to Specific Uses – Marihuana: Marihuana Business Regulations, Marihuana Facilities and Establishments and Adult-Use Marihuana Retailer Establishment. City Code, Chapter 835.09 Adult Use Marihuana Establishments (d) (allowed hours of operation.)

Adult-Use Marihuana Retailer Establishments are allowed as special uses in the T-3 Neighborhood Commercial District if they meet the conditions listed in the City's Zoning Ordinance for special uses. Sections 1251.23-24 contain additional standards for Marihuana in commercial districts. Adult-Use Marihuana Retailer Establishments must meet 1,000 foot distance requirements from other retailers and provisioning centers, schools and libraries open to the public. At this time, the property lines for Parcel 1530-00-059-0 in which 327 SW Capital Ave. is located are at least 1,000 feet from any parcels with provisioning centers and adult-use retailers, K-12 schools and libraries open to the public. No new marihuana facility has filled out and qualified for a Part A application within 1,000 feet of the property which is the subject of this petition.

## **DISCUSSION OF THE ISSUE**

### **POSITIONS**

As a special use, the Planning Commission is charged with reviewing each Special Use Permit request to determine any effects the proposed use would have on the Master Plan as well as on the character and development of the neighborhood.

The ordinance and enabling legislation allow the Planning Commission and the City Commission to impose any conditions upon the request that would ensure the general objectives of the zoning ordinance are met and to preserve property values in the neighborhood.

At the December 14, 2022 Planning Commission meeting, the Planning Commission reviewed the request under the Special Use Permit Criteria outlined in Section 1281.05 of the zoning code and recommends to the City Commission approval of the Special Use Permit request based on the following findings:

a) The use of this parcel as an Adult-Use Marihuana Retailer Establishment is harmonious and in accordance with a number of the objectives of the Master Plan and future land uses for the Neighborhood Commercial areas. The future land use category for the subject parcel is labeled "Neighborhood Commercial," which includes convenience retail and service businesses.

The site plan approved in 2019 in association with this property's Medical Marihuana Provisioning Center Part A license featured numerous improvements to the site, including the sealing and restriping of the parking area, upgrades to the building's façade and the inclusion of a dumpster enclosure.

Additional landscaping in accordance with the applicant's intended improvements as detailed in their submitted "Pick List" was also installed at the site. The applicant, at this time, is proposing no alterations to the site and has provided the City with an as-built drawing of the site in order to fulfill the site plan submittal requirement associated with their special use permit application.

b) The proposed use will be harmonious and appropriate in appearance with the existing or intended character of the general vicinity since it is located entirely inside an existing building that has existed on this property since 1957. As a result of their 2019 site plan approval, the applicant brought the existing parking area into closer compliance with the standards of the previous (pre-2020 rewrite) Zoning Ordinance. The applicant is proposing no expansion of either existing building and no alteration to the existing parking area.

c) The use of this property has been commercial in the past, and will not produce any additional noise or odors beyond that of any other retail or service facility. Marihuana retailers area also regulated by Chapter 835 of the City's Code of Ordinances which prohibits operations between the hours of 12:00 a.m. and 7:00 a.m.

d) The use will be an improvement to the property in the immediate vicinity and to the community as a whole because the proposed use would fill a formerly vacant, existing older commercial building where there is not much of a current market for commercial space. The applicant also states in their site plan review application that the proposed use is anticipated to generate 8-12 new jobs.

e) Traffic is not anticipated to significantly increase as a result of the proposed use, as this is an existing building and many other similar uses in the area allowed in the T-3 would generate a comparable amount of traffic. Parking on site is adequate for the proposed use. No additional utilities are required for this use as this is an existing building in a built-up neighborhood.

f) There will be no City expenses associated with the maintenance and improvements to the property, and therefore, the use will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community.

g) There will be no activities, processes, materials, equipment, or conditions of operation that will be detrimental to any person, property or the general welfare by reason of an excessive generation of traffic, noise, smoke, fumes, glare, or vibrations.

h) The use will be consistent with the intent and purpose of this Zoning Code in that the facility will be subject to compliance with all relevant sections of the zoning ordinance. Additionally, the facility will be required to be in compliance with all building regulations.

**Therefore, as the request meets the general standards listed in Section 1281.05 as outlined above, planning staff recommends that the Planning Commission recommend to the City Commission approval of Special Use Permit Petition S-18-22 that would allow an Adult-Use Marihuana Retailer Establishment in a T-3 Neighborhood Commercial District located at 327 SW Capital Ave., Parcel #1530-00-059-0 with the following conditions:**

**1. The approval of this request is directly tied to the proposed use and elements of the proposed use as provided for by the applicant in the application and the site plan. Any changes contrary to**

that which is included on the application would require review and approval by the Planning Commission and City Commission.

**2. All necessary approvals, and any required permits shall be obtained, and maintained if applicable, from the appropriate agencies, including but not limited to the State of Michigan, Department of Public Works, and Inspections Department prior to Certificate of Occupancy, as well as the approval of the applicable Adult-Use Marihuana Retailer permits Part A and Part B of the City of Battle Creek.**

**3. Pursuant to Section 1281.02, no change in the use or occupancy of land or in the use or occupancy of an existing building shall be made, nor shall any new building be occupied for any purpose, until a certificate of occupancy has been issued by the Chief Building Official or their designee or agent. Such a certificate shall state that the new occupancy complies with this Zoning Code.**

**4. Pursuant to Section 1281.05 (D.5), certificates of occupancy for special uses shall be valid for a period established by the City Commission or as long as the use is established and maintained in conformity with the plans submitted and approved. Occupancy permits shall expire after one year if the use is not under construction or maintained. For good cause shown and upon written application, the Planning Commission may extend a special use permit for six months.**

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**ATTACHMENTS:**

File Name	Description
❑ 2._327_SW_Capital_Ave._SUP_staff_report.pdf	Staff Report SUP S-18-22 327 Capital Ave SW
❑ 3._327_SW_Capital_Ave_-_Special_Use_Permit_Application.pdf	Application SUP S-18-22 327 Capital Ave SW
❑ 4._327_SW_Capital_Ave_-_Site_Plan_Review_Application.pdf	Site Plan SUP S-18-22 327 Capital Ave SW
❑ 5._Photos_from_applicant.pdf	Photos from Applicant SUP S18-22 327 Capital Ave SW
❑ PC_12.14.22_Meeting_Minutes_DRAFT.pdf	12.14.22 PC Meeting Minutes DRAFT



## **Battle Creek City Planning Commission**

### **Special Use Permit**

**Staff report for the December 14, 2022 meeting**

To: Planning Commissioners

From: Travis Sullivan, Planner

Subject: Petition S-18-22, an application for special use approval of an Adult Use Marihuana Retailer Establishment in a T-3 Neighborhood Commercial Zoning District at 327 SW Capital Ave. on Parcel #1530-00-059-0 where marihuana retail centers can be allowed as a special use.

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### **Summary**

Petition from 327 Capital Ave. SW, LLC on behalf of 327 Capital SW, LLC at 2207 Orchard Lake Road, Suite B, Sylvan Lake, Michigan 48320 requesting special use approval for an Adult-Use Marihuana Retail Establishment in a T-3 Neighborhood Commercial District located at 327 SW Capital Ave., Battle Creek, Michigan 49015, Parcel #1530-00-059-0 as permitted by special use under the Planning and Zoning Code, Chapter 1240, Section 1240.13 Neighborhood Commercial District and Chapter 1251 Sections 1251.23-24, and 26 Standards Applicable to Specific Uses – Marihuana: Marihuana Business Regulations, Marihuana Facilities and Establishments and Adult-Use Marihuana Retailer Center.

### **Background/Property Information**

The subject site is a total of 15,681 square feet (0.360 of an acre) with a 1,946 square foot main building constructed in 1957 and a 2,520 sq. ft. pole building at the rear of the property intended for storage. The applicant currently holds a Certificate of Occupancy as a Medical Marihuana Provisioning Center. The applicant is proposing to use the existing vacant building for an Adult Use Marihuana Retail Establishment. This building is located at the southeast corner of Capital Ave. SW and Goguac St. E.

The property at 327 SW Capital Ave. was issued a 90 day Part A conditional marihuana permit on May 13, 2019 and they were granted a continuation of that permit on September 9, 2019. Part B of the Medical Marijuana Facility application was never completed. It is important to note that the previous Zoning Ordinance did not require this property to receive a special use permit to operate as a marihuana provisioning or retail establishment. The 2020 rewrite of the Zoning Ordinance and the establishment of the T-3 Neighborhood Commercial District now classifies both provisioning and retail establishments as allowed special uses, thus requiring the applicant to now seek approval from the Planning Commission and City Commission.

The applicant is now applying for a special use permit to allow for an Adult-Use Marihuana Retailer Establishment at 327 SW Capital Ave. located in the T-3 Neighborhood Commercial District. Adult-Use Marihuana Retailers are allowed special uses in the T-3 Neighborhood Commercial District. The Applicant intends to re-apply for their 90 day Part A conditional use marihuana permit for an Adult-Use Marihuana Retailer Establishment.



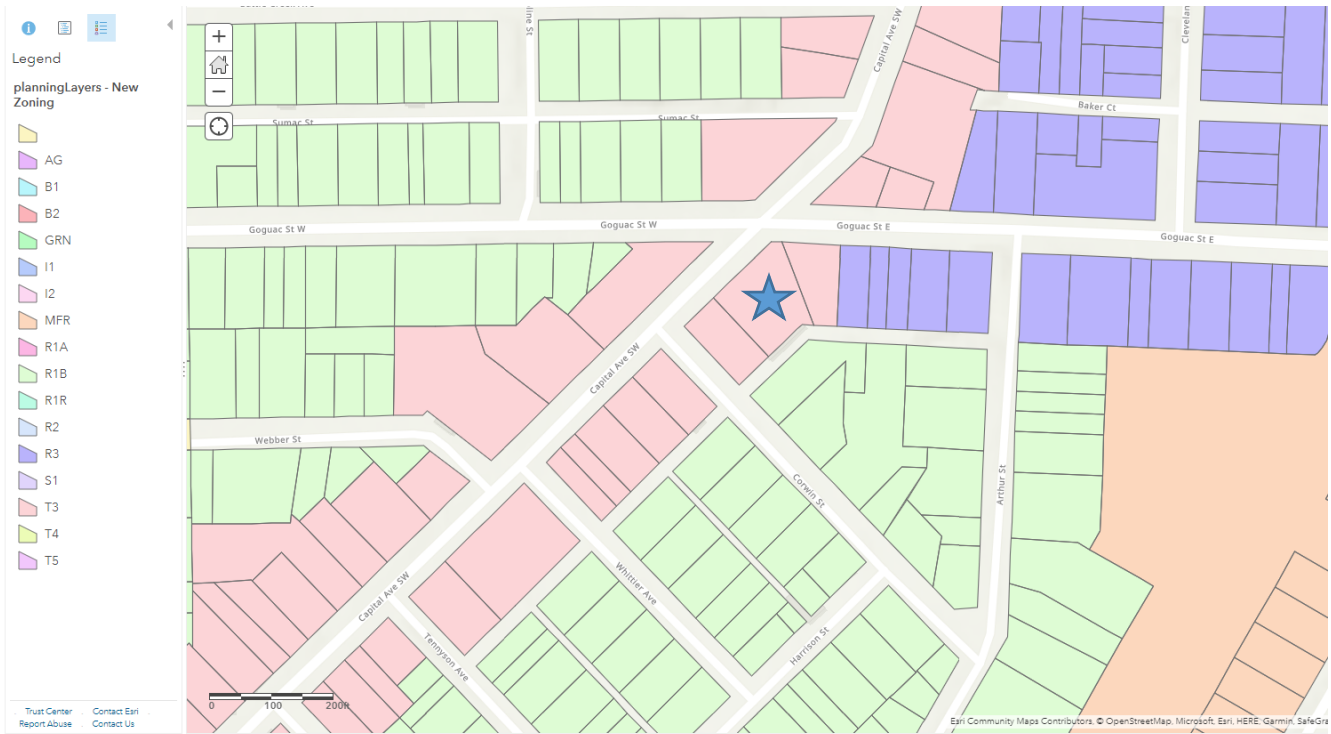
Figure 1: Aerial photo of subject site at 327 SW Capital Ave. Photo courtesy of City of Battle Creek, approx. 2020.



Figure 2: Subject site at 327 SW Capital Ave. Photo courtesy of City of Battle Creek staff, December 2022.

**Surrounding Land Uses / Zoning / Existing Uses**

	<b>SUBJECT PROPERTY</b>	<b>NORTH</b>	<b>SOUTH</b>	<b>EAST</b>	<b>WEST</b>
<b>FUTURE LAND USE</b>	Neighborhood Commercial	W Michigan Ave., Neighborhood Commercial	Jackson St., Multi-Unit Residential	Neighborhood Commercial, Multi-Unit Residential	Neighborhood Commercial
<b>ZONING DISTRICT</b>	T-3 Neighborhood Commercial	Goguac St. E / Capital Ave. SW, T-3 Neighborhood Commercial	Alley, R-1B Single-Family Residential	T-3 Neighborhood Commercial	T-3 Neighborhood Commercial
<b>EXISTING USE</b>	Vacant Commercial Building	Goguac St. E / Capital Ave. SW, Commercial	Alley, Single- Family Residential	Vacant Lot	Vacant Lot



**Figure 3: Zoning map for subject site at 327 SW Capital Ave. and surrounding area. Blue star indicates location of the subject site. 327 SW Capital Ave. lies within the T-3 Neighborhood Commercial District.**

### **Proposed Scope of Project**

The applicant is seeking special use approval for an Adult-Use Marihuana Retail Establishment in the existing building at 327 SW Capital Ave.

The building and parking area are all existing, and underwent site plan review and approval in October 2019 for a Medical Marihuana Provisioning Establishment. The applicant at the time offered proposed improvements to the surface and striping of the parking area, along with landscaping on the property, which were completed by the applicant prior to the final inspection of the site by City staff. At this time, the applicant is proposing no exterior alterations to either the main 1,946 sq. ft. building or the 2,520 sq. ft. pole building intended for storage, nor to the parking area on site.

Site plan approval does not preclude the ability of the Planning Commission to recommend additional specific conditions related to this special use.

The applicant's proposed hours are: 9:00 a.m. to 8:00 p.m. Monday through Thursday, 9:00 a.m. to 9:00 p.m. on Saturday, and 11:00 a.m. to 7:00 p.m. on Sunday, which fall within the hours allowed by Chapter 835 "Adult-Use Marihuana Establishments" of the City's Code, Section 835.09 "Conduct of Business at a Marihuana Establishment."

### **Applicable Ordinance Provisions**

Planning and Zoning Code, Chapter 1240, Section 1240.13 Neighborhood Commercial District and Chapter 1251 Sections 1251.23-24, and 26 Standards Applicable to Specific Uses – Marihuana:

Marihuana Business Regulations, Marihuana Facilities and Establishments and Adult-Use Marihuana Retailer Establishments. City Code, Section 835.09 Adult Use Marihuana Establishments (d) (allowed hours of operation.)

Adult-Use Marihuana Retailer Establishments are allowed as special uses in the T-3 Neighborhood Commercial District if they meet the conditions listed in the City's Zoning Ordinance for special uses. Sections 1251.23-24 contain additional standards for Marihuana in commercial districts. Adult-Use Marihuana Retailer Establishments must meet 1,000 foot distance requirements from other retailers and provisioning centers, schools and libraries open to the public.

At this time, the property lines for Parcel 1530-00-059-0 in which 327 SW Capital Ave. is located are at least 1,000 feet from any parcels with provisioning centers and adult-use retailers, K-12 schools and libraries open to the public. No new marihuana facility has filled out and qualified for a Part A application within 1,000 feet of the property which is the subject of this petition.

### **Public Hearing and Notice Requirements**

As required by the Zoning Enabling Act of 2006, as amended, a public hearing notice was published in the Battle Creek Enquirer on November 29, 2022 and notices of the public hearing were also sent by regular mail on November 29, 2022 to all 23 owners and occupants of properties located within 300 feet of the subject parcel. To date, the Planning Department has not received any questions or comments relative to this request.

### **Neighborhood Outreach**

Due to Covid, the Neighborhood Planning Councils (NPC) are in the process of reorganizing. In the future, staff will encourage applicants to seek feedback from the appropriate NPC prior to application to the Planning Commission and City Commission.

### **Basis For Determination and Analysis**

As a special use, the Planning Commission is charged with reviewing each Special Use Permit request to determine any effects the proposed use would have on the Master Plan as well as on the character and development of the neighborhood. The ordinance and enabling legislation allow the Planning Commission and the City Commission to impose any conditions upon the request that would ensure the general objectives of the zoning ordinance are met and to preserve property values in the neighborhood.

The request shall be reviewed using the following standards listed in Chapter 1281.05(C) Basis for Determination (for Special Use Permits). Staff comments follow each item in bold typeface:

- (a) The use will be harmonious with and in accordance with the general objectives of the Master Plan.

**The use of this parcel as an Adult-Use Marihuana Retailer Establishment is harmonious and in accordance with a number of the objectives of the Master Plan and future land uses for the Neighborhood Commercial areas. The future land use category for the subject parcel is labeled "Neighborhood Commercial," which includes convenience retail and service businesses.**

**The site plan approved in 2019 in association with this property's Medical Marihuana Provisioning Center Part A license featured numerous improvements to the site, including the sealing and restriping of the parking area, upgrades to the building's façade and the inclusion of a dumpster enclosure. Additional landscaping in accordance with the applicant's intended improvements as detailed in their submitted "Pick List" was also installed at the site.**

**The applicant, at this time, is proposing no alterations to the site and has provided the City with an as-built drawing of the site in order to fulfill the site plan submittal requirement associated with their special use permit application.**

(b) The use will be designed, constructed, operated and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and will not change the essential character of the neighborhood.

**The proposed use will be harmonious and appropriate in appearance with the existing or intended character of the general vicinity since it is located entirely inside an existing building that has existed on this property since 1957. As a result of their 2019 site plan approval, the applicant brought the existing parking area into closer compliance with the standards of the previous (pre-2020 rewrite) Zoning Ordinance. The applicant is proposing no expansion of either existing building and no alteration to the existing parking area.**

(c) The use will not be hazardous or disturbing to existing or future neighboring uses.

**The use of this property has been commercial in the past, and will not produce any additional noise or odors beyond that of any other retail or service facility. Marihuana retailers area also regulated by Chapter 835 of the City's Code of Ordinances which prohibits operations between the hours of 12:00 a.m. and 7:00 a.m.**

(d) The use will be a substantial improvement to property in the immediate vicinity and to the community as a whole.

**The use will be an improvement to the property in the immediate vicinity and to the community as a whole because the proposed use would fill a formerly vacant, existing older commercial building where there is not much of a current market for commercial space. The applicant also states in their site plan review application that the proposed use is anticipated to generate 8-12 new jobs.**

(e) The use will be adequately served by essential public facilities and services, such as streets, highways, police and fire protection, drainage, refuse disposal and schools, or the persons or agencies responsible for the development shall be able to adequately provide such services.

**Traffic is not anticipated to significantly increase as a result of the proposed use, as this is an existing building and many other similar uses in the area allowed in the T-3 would generate a comparable amount of traffic. Parking on site is adequate for the proposed use.**

**No additional utilities are required for this use as this is an existing building in a built-up neighborhood.**

(f) The use will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community.

**There will be no City expenses associated with the maintenance and improvements to the property, and therefore, the use will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community.**

(g) The use will not create activities, processes, materials, equipment or conditions of operation that will be detrimental to any person, property or the general welfare by reason of an excessive generation of traffic, noise, smoke, fumes, glare, vibrations or odors.

**There will be no activities, processes, materials, equipment, or conditions of operation that will be detrimental to any person, property or the general welfare by reason of an excessive generation of traffic, noise, smoke, fumes, glare, or vibrations.**

(h) The use will be consistent with the intent and purpose of this Zoning Code.

**The use will be consistent with the intent and purpose of this Zoning Code in that the facility will be subject to compliance with all relevant sections of the zoning ordinance. Additionally, the facility will be required to be in compliance with all building regulations.**

### **Recommendation**

Staff has reviewed the application and finds that it meets all of the requirements for the zoning district and the standards specifically applicable to Adult-Use Marihuana Retail Centers, including meeting the 1,000 foot distance buffer requirement. If findings of fact dictate the necessity, the Planning Commission may require additional conditions for this special use approval.

Staff finds the request consistent with the general special use standards listed in 1281.05(C), as outlined within this report.

**Therefore, as the request meets the general standards listed in Section 1281.05 as outlined above, planning staff recommends that the Planning Commission recommend to the City Commission approval of Special Use Permit Petition S-18-22 that would allow an Adult-Use Marihuana Retailer Establishment in a T-3 Neighborhood Commercial District located at 327 SW Capital Ave., Parcel #1530-00-059-0 with the following conditions:**

- 1. The approval of this request is directly tied to the proposed use and elements of the proposed use as provided for by the applicant in the application and the site plan. Any changes contrary to that which is included on the application would require review and approval by the Planning Commission and City Commission.**
- 2. All necessary approvals, and any required permits shall be obtained, and maintained if applicable, from the appropriate agencies, including but not limited to the State of**

**Michigan, Department of Public Works, and Inspections Department prior to Certificate of Occupancy, as well as the approval of the applicable Adult-Use Marihuana Retailer permits Part A and Part B of the City of Battle Creek.**

- 3. Pursuant to Section 1281.02, no change in the use or occupancy of land or in the use or occupancy of an existing building shall be made, nor shall any new building be occupied for any purpose, until a certificate of occupancy has been issued by the Chief Building Official or their designee or agent. Such a certificate shall state that the new occupancy complies with this Zoning Code.**
- 4. Pursuant to Section 1281.05 (D.5), certificates of occupancy for special uses shall be valid for a period established by the City Commission or as long as the use is established and maintained in conformity with the plans submitted and approved. Occupancy permits shall expire after one year if the use is not under construction or maintained. For good cause shown and upon written application, the Planning Commission may extend a special use permit for six months.**

The Planning Commission can add additional conditions to those listed above in the staff recommendation. The Planning Commission may also upon deliberation, choose an alternative action from the following alternatives:

- A1: Postpone the project for specific reasons, with agreement from the applicant;
- A2. Articulate revised rationale of the general standards and/or conditions to recommend to the City Commission Approval OR Denial of the subject application.

### **Attachments**

The following information is attached and made part of this Staff report:

1. Special Use Permit application form (Petition #S-18-22)
2. Previously approved site plan
3. Additional Photos



# City of Battle Creek

Community Services – Planning and Zoning Division

City Hall • 10 N. Division Street, Ste. 117 • Battle Creek, Michigan 49014

Ph (269) 966-3320 • Fax (269) 966-3555 • [www.battlecreekmi.gov](http://www.battlecreekmi.gov)

## SPECIAL USE PERMIT Application

Petition No. S-18-22

Date Received: 11.18.22

### APPLICANT

NAME: 327 Capital Ave SW, LLC  
ADDRESS: 180 Vesper  
PHONE: 248-935-2303 FAX: N/A  
EMAIL: Dennis@hospitalretail.com

### OWNER (if different from applicant)

NAME: 327 Capital SW, LLC  
ADDRESS: 2207 Orchard Lake, Suite B, Sylvan Lake, MI 48320  
PHONE: \_\_\_\_\_ FAX: \_\_\_\_\_  
EMAIL: \_\_\_\_\_

**\*\*If the applicant is not the property owner, a letter signed by the owner agreeing to the Special Use Permit must be included with the application.**

### EXISTING CONDITIONS

Address(es) of property for which the request is being sought: 327 Capital Ave SW, Battle Creek, MI 49015

Current use of the property: Vacant

List existing structures on the property and the approximate age of each. \_\_\_\_\_

Primary Structure- built in approximately 1957, 1,610 sf

Structure 2- accessory structure built in approximately 1990, garage which is 336 sq ft

Has property involved ever been the subject of a previous application? If yes, please list each one and the date the request came before the Planning Commission.

No

## PROJECT DESCRIPTION

What is the proposed use of the property that warrants the special use permit? \_\_\_\_\_

Adult Use Marijuana Retailer

Please list all activities that will take place on the property if the special use permit were approved?

retail sales of adult use/recreational marijuana

How many employees currently work on the property? How many will be added if the special use permit is approved, and what days/times will they be onsite? Property has been vacant for approximately 5 years

If approved, there will be a total of 8-12 employees. Employees will be on site during working hours which are tentatively

M-Th 9:00 a.m. - 8:00 p.m., Friday and Saturday 9:00 a.m. - 9:00 p.m. and Sunday 11:00 a.m. - 7:00 p.m.

Will the approval of the special land use necessitate changes to the property, i.e. building construction, additional parking, driveways, fencing? If yes, please provide a list of property improvements that will be associated with the special use permit. No. The proposed use will not require any changes to the current condition of the property. The property was previously built out and received a C of O for a similar use. As a result, the applicant

will utilize the same floor plan and be able to avoid any additional changes.

What are the proposed hours of operation for the special use? Please indicate if the special land use will be temporary, seasonal, or long term in nature, providing dates and timeframes if applicable:

M-Th 9:00 a.m. - 8:00 p.m., Friday and Saturday 9:00 a.m. - 9:00 p.m. and Sunday 11:00 a.m. - 7:00 p.m.

The proposed use will be year round.

## STANDARDS FOR APPROVAL

Chapter 1290 Special Uses and Land Development lists standards that will be reviewed by the Planning Commission and City Commission and the request for special use permit will only be approved if these standards are met. Provide factual and supportive evidence that your application meets each of these standards. Additional sheets may be attached if necessary.

Will the special land use be designed, constructed, maintained, and/or operated in a manner harmonious with the character of adjacent properties and the surrounding area? ☒ Yes ☐ No

The property is located on a commercial thoroughfare among many other retail and service oriented businesses

The proposed use is consistent with the future land use maps and zoning regulations. It will provide improvements

such as landscape upgrades/maintenance, lighting and alarm systems that will benefit all of the community.

Will the special land use change the character of adjacent properties and the surrounding area?

☐ Yes ☒ No

The property will not change the character of adjacent properties. It has always operated as a retail/service oriented facility and will continue to be utilized in the same manner. The property has been vacant for several years but the prior improvements will remain intact and seamlessly permit the proposed use to integrate with the surrounding area.

Will the special land use be hazardous to adjacent properties or involve uses, activities, materials or equipment which will be detrimental to the health, safety or welfare of persons or properties?

☐ Yes ☒ No

The proposed use will not incorporate any activities, materials or equipment that will be detrimental to the health, safety or welfare of people or properties. The proposed use is a common retail facility with no unique features that would make it any different than a customary retail facility.

Will the special land use be a substantial improvement to property in the immediate vicinity and to the community as a whole? ☒ Yes ☐ No

The property is currently vacant and underutilized. Once operational, the proposed use would incorporate state of the art security systems, upgraded exterior lighting and on site security services that would be beneficial to all neighboring properties. In addition, the facility will create fluid traffic that would encourage patronage to the proposed use as well as neighboring businesses who could benefit from the additional prospective customers.

Will the special land use place demands on public facilities or services in excess of current capacity?

☐ Yes ☒ No

Public utilities such as water, electric and gas will have nominal usage. In terms of security, the facility will have their own security monitoring services as well as on site security personnel, alleviating the need for any extra policing.

Will the special land use produce excessive traffic, noise, smoke, fumes, or glare? ☐ Yes ☒ No

None of the above nuisances would be applicable to the proposed use. Traffic will be moderate and consistent with current traffic patterns. The proposed use does not incorporate any facet of the business that would create smoke, fumes, glare or excessive noise.

#### SUBMITTAL REQUIREMENTS

Each request requires the following items to be submitted along with the completed application; incomplete applications will not be forwarded to the Planning Commission.

1. Payment of a non-refundable \$600.00 filing fee, made payable to the City of Battle Creek.
2. An affidavit authorizing an applicant to act on behalf of the owner if the petitioner is not the owner.
3. Legal description of subject property and a list of all deed restrictions.
4. Property Site Plan as outlined in "Special Use Permit, Information and Procedures".

#### APPLICANT SIGNATURE

By signing this application, the applicant hereby declares that all answers given herein are true to the best of their knowledge, and confirms that all information required for submission of a special use permit have been submitted. Furthermore, the applicant confirms that they have thoroughly read "Special Use Permit, Information and Procedures" and agrees to comply with all requirements and procedures for special use permit.

Name

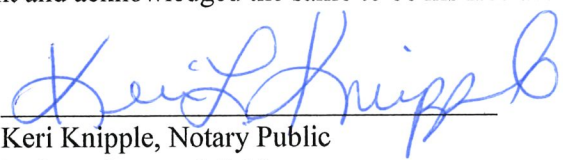
Date

### PROPERTY OWNER'S AFFIDAVIT OF CONSENT

I, Jeffrey Yatooma, on behalf of 327 Capital SW, LLC ("Owner"), certify that 327 Capital Ave SW, LLC is authorized to act on behalf of the Owner to pursue a special land use approval to operate an adult use retailer at 327 Capital Ave SW, Battle Creek, MI 49015 (the "Property"). I am an authorized member of the Owner and authorized to execute this Property Owner's Affidavit of Consent.

  
\_\_\_\_\_  
Jeffrey Yatooma

On this 16<sup>th</sup> day of November, 2022, before me personally appeared Jeffrey Yatooma known to me personally, and who executed the foregoing instrument and acknowledged the same to be his free act and deed.

  
\_\_\_\_\_  
Keri Knipple, Notary Public  
Ingham County, Michigan  
My Commission Expires: 9-23-26  
Acting in the County of Oakland

KERI L KNIPPLE  
NOTARY PUBLIC, STATE OF MI  
COUNTY OF INGHAM  
MY COMMISSION EXPIRES Sep 23, 2026  
ACTING IN COUNTY OF *Oakland*



# City of Battle Creek

## Community Services - Planning and Zoning Division

City Hall • 10 N. Division Street, Ste. 117 • Battle Creek, Michigan 49014

Ph (269) 966-3320 • Fax (269) 966-3555 • [www.battlecreekmi.gov](http://www.battlecreekmi.gov)

Date Received: 11.18.22  
Date Transmitted: \_\_\_\_\_  
Pmt Received: \$ \_\_\_\_\_

Transmitted to:  
DPW  
Planning  
Building

## SITE PLAN REVIEW APPLICATION

(Note: Plan reviews have a 15-day time-frame.)

CHK # 11934

Date: November 16, 2022

Name of Company to Occupy Site: 327 Capital Ave SW, LLC

Address of Site: 327 Capital Ave SW, Battle Creek, MI

PROPERTY OWNER/DEVELOPER:	<input checked="" type="checkbox"/> check if primary contact for this
Name:	327 Capital SW, LLC
Firm:	N/A
Address:	2207 Orchard Lake, Suite B
City/State/Zip:	Sylvan Lake, MI 48320
Phone:	248-669-3400
Fax:	N/A
Email:	Licensing@cannazonedmls.com & Joey@Jpklegal.com

ARCHITECT/ENGINEER:	<input type="checkbox"/> check if primary contact for this
Name:	Nathan Harvey AIA
Firm:	Detroit Architect, LLC
Address:	13718 Woodward Avenue
City/State/Zip:	Highland Park, MI 48203
Phone:	313-869-6900
Fax:	313-869-4141
Email:	Nathan.Harvey@detroitarchitect.com

CONTRACTOR:	<input type="checkbox"/> check if primary contact for this
Name:	N/A- all construction has been complete, the facility was previously issued a C of O for a medical marijuana provisioning center
Firm:	
Address:	
City/State/Zip:	
Phone:	
Fax:	
Email:	

### PROJECT DESCRIPTION

Briefly describe the general character of the proposed development:

The site has already been built out and a C of O was previously issued for a medical marijuana provisioning center.

No additional construction will be performed

Are there any past or present zoning variances, easements, or deed restrictions on this property? If so, please explain the nature of the variance or restriction. None

What is the total size (square feet/acreage) of this property? 15,681 sq feet (.36 acres)

How much of the property is currently developed by impervious surface (in square feet and percentage)?  
8,838 sq feet (56.36%)

At the end of the project, how much of the property will be developed with impervious surface (in square feet and percentage)? 8,838 sq feet (56.36%)

List the existing structures on this property, their square footage, existing use and proposed use.

1 Masonry Building, 1,946 sq feet, currently vacant and proposed use is retail adult use marijuana

retail facility. 1 pole building, 2,520 sq feet is also vacant and will be used for storage

List the structures proposed for this property, their square footage, and proposed use. If this is a residential project, how many units are being proposed and what is the net density being proposed? \_\_\_\_\_

No structures proposed, proposed use is not residential

What is the size (in square feet) of the existing parking area? 5,144 sq ft

How many existing parking spaces exist on the site? What improvements are proposed for the existing parking – removal, reconstruction, seal/stripe? 13 spaces; 5,144 sq feet of parking area will be sealed and striped

What size (in square feet), if any, of parking area will be added? How many parking spaces will be added? \_\_\_\_\_  
No parking area will be added, no parking spaces will be added

Are there any changes proposed in the rights-of-way? Is new water service or a new sewer service required?  
No proposed right of way changes or new utility services

What is the estimated cost of construction? \$80,000

How many people are currently employed on this site, and how many will be added as a result of the project?  
None, property is vacant. 8-12 new jobs will be created

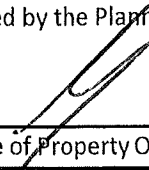
Is this in a flood plain? If yes, what zone? Not in a flood plain

A conceptual site plan review meeting can be organized prior to submittal of this application by contacting the Planning and Zoning Division. By signing this application, the applicant confirms that all information required for submission of a site plan review has been provided:

➤ **Fee Payment (\$150 for properties under 5 acres; \$250 for properties over 5 acres)**

➤ **Digital Copy of Site Plan is to be submitted with site plan application.**

Furthermore, the applicant has thoroughly read Ch. 1294 of the codified ordinances for the City of Battle Creek and agrees to comply with all requirements and procedures for site plan review. The applicant understands that the approved site plan is a legally binding document and any modifications from this approved site plan must be authorized by the Planning Department prior to their implementation.

  
\_\_\_\_\_  
Signature of Property Owner/Representative

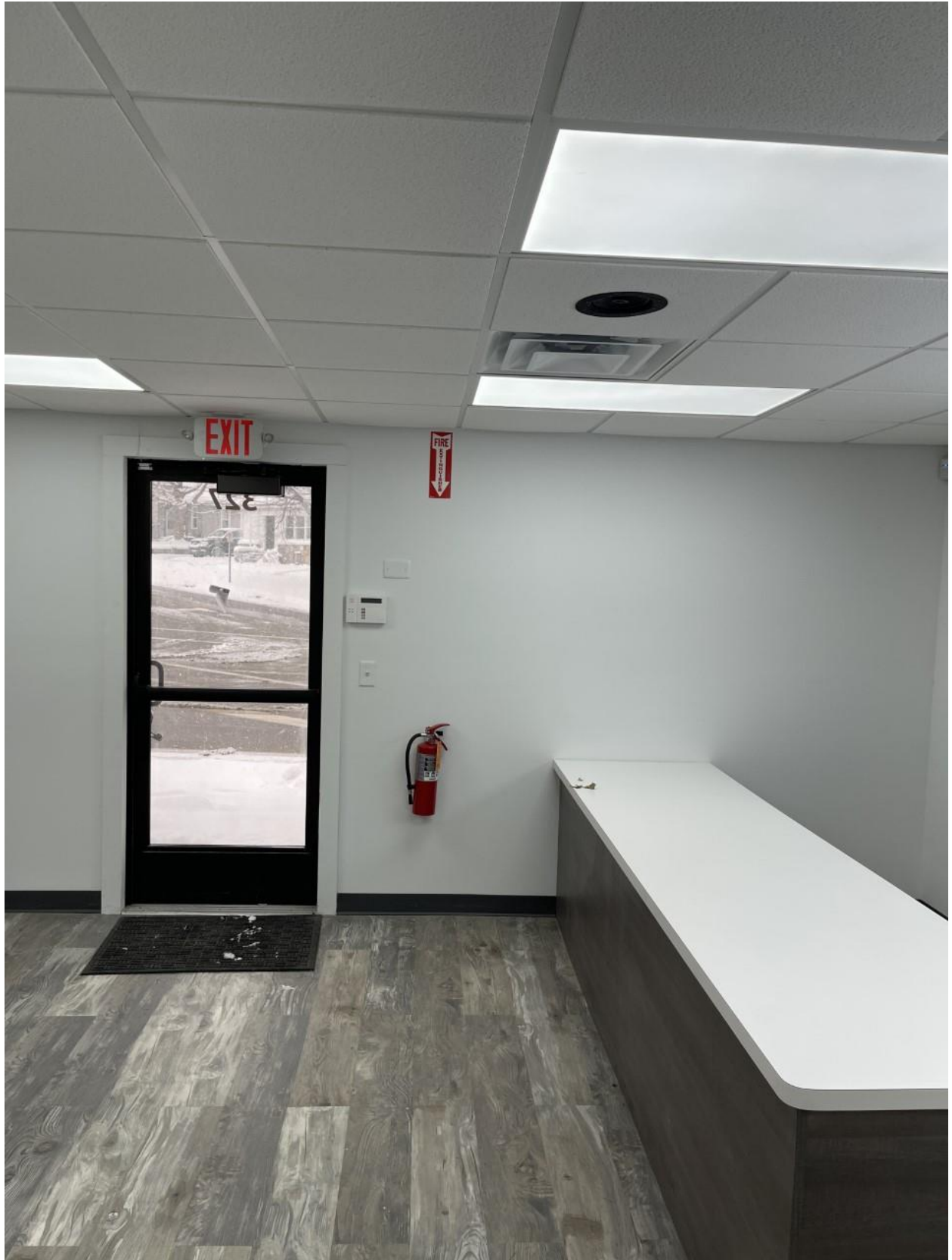
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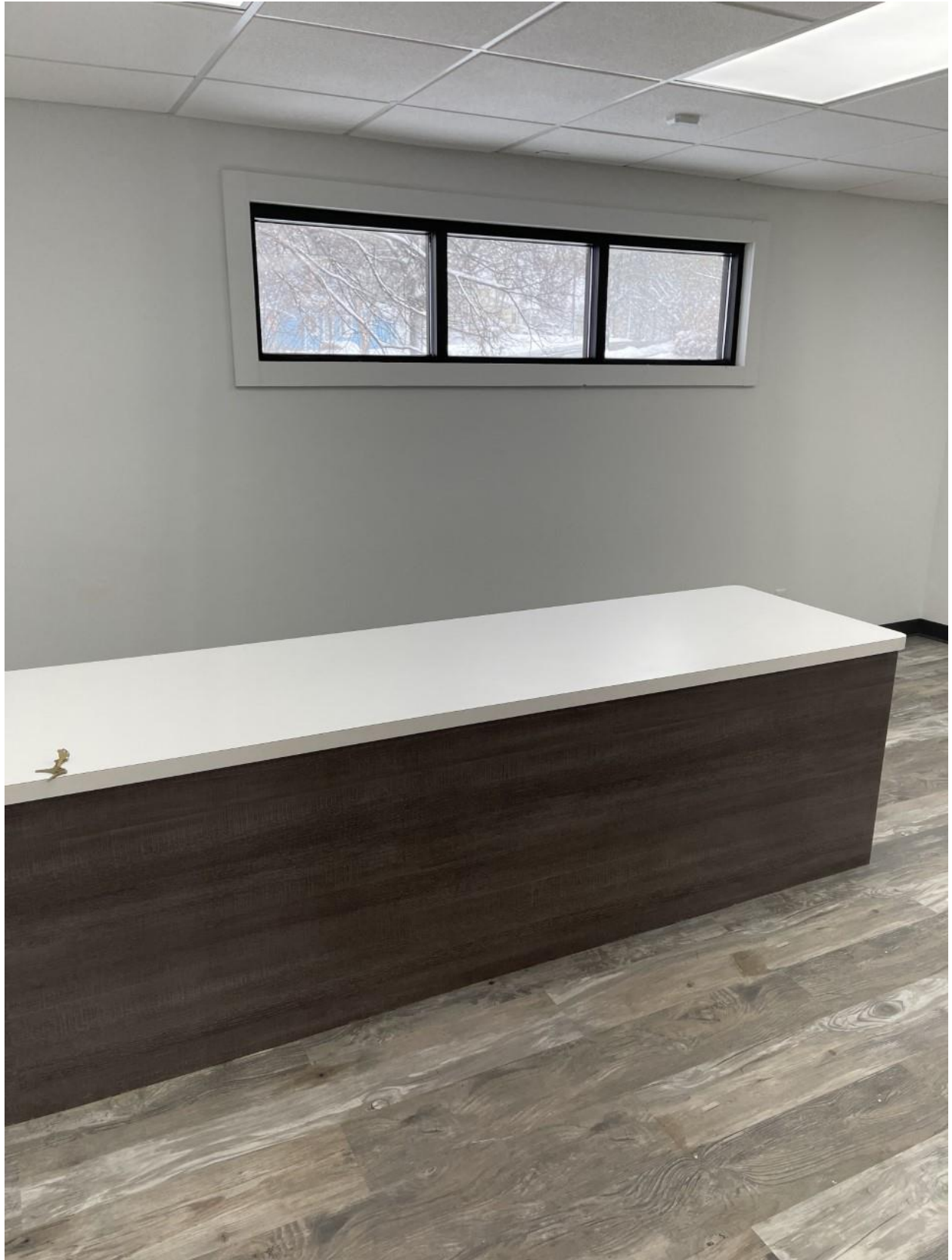




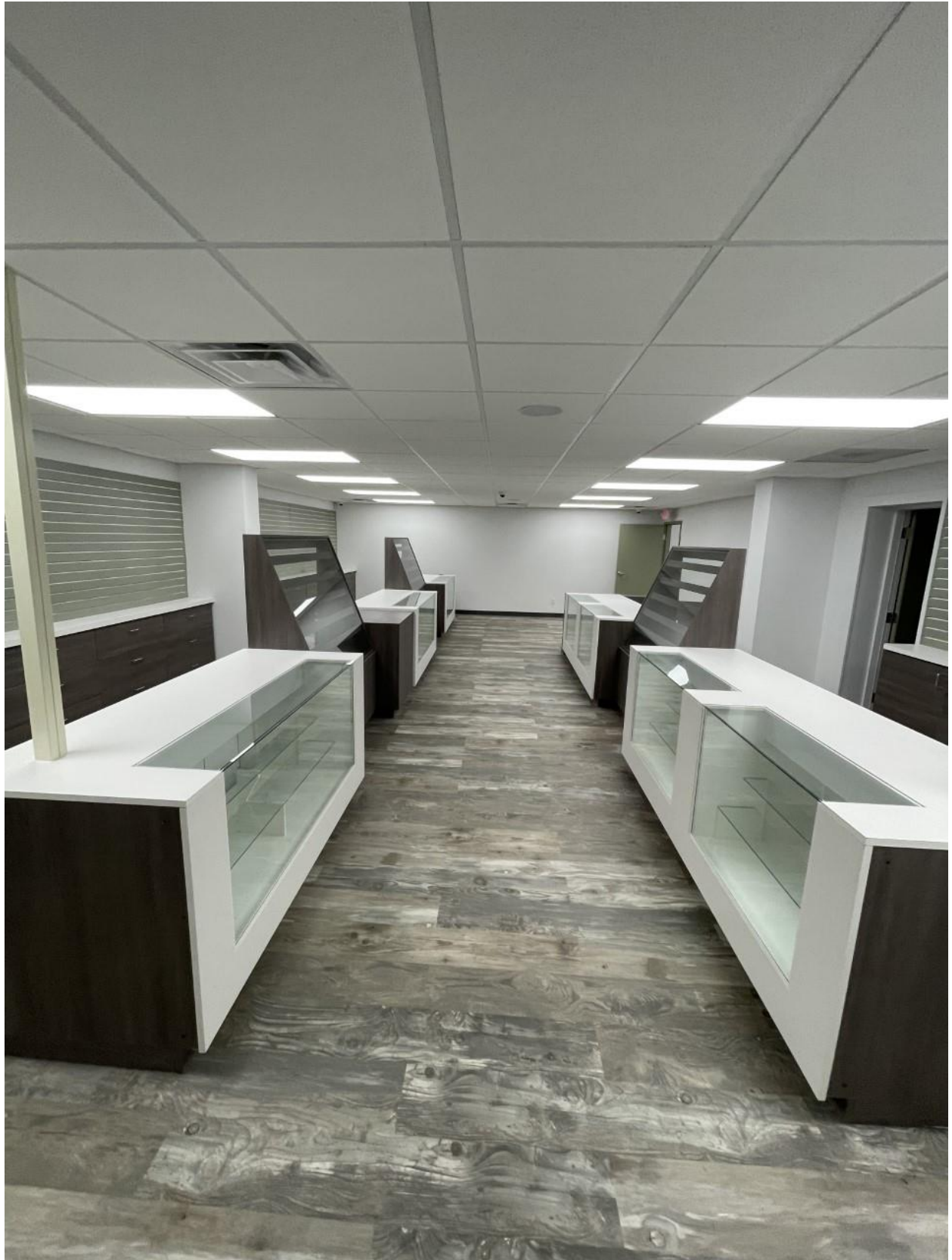
















**CITY OF BATTLE CREEK  
PLANNING COMMISSION  
10 North Division, Battle Creek, MI 49014  
Minutes for Wednesday, December 14, 2022**

**MEETING CALLED TO ORDER:**

By Chairperson Godfrey at 4:15 p.m. This meeting was held in person.

**ATTENDANCE:** Chairperson Godfrey asked for attendance to be noted.

**Commission Members Present:**

**Comm. Newman**, present

**Comm. Spranger**, present

**Comm. Godfrey III** present

**Comm. Gray**, present

**Commissioners Absent:**

**Mayor Behnke**, present

**Comm. Morris**, present

**Comm. Hughes**, present

**Staff Present:** Travis Sullivan, Planner, Melody Carlsen, Administrative Assistant, Marcel Stoetzel, Deputy City Attorney, Marcie Gillette, Community Services Director.

**APPROVAL OF MINUTES:** Previous meeting minutes submitted for approval for November 16, 2022.

**MOTION MADE BY COMM. NEWMAN TO APPROVE THE MINUTES FOR NOVEMBER 16, 2022 MEETING MINUTES AS PRESENTED BY STAFF. SECONDED BY COMM. SPRANGER.**

**ROLL VOTE:** Chairperson Godfrey asked everyone in favor to signify by saying “aye”:

**ALL IN FAVOR, NONE OPPOSED, MOTION APPROVED.**

**CORRESPONDENCE:** None.

**ADDITIONS/DELETIONS:** Removal of item B; Z-04-22. Removal of Special Use Permit for 50 Spencer Street, Kingdom Builders as advertised in the public hearing notice. Will be added to the future body when it is ready.

**PUBLIC HEARINGS/DELIBERATIONS:**

**CHAIRPERSON GODFREY** asked to open the public hearing for item A; (S-19-22) on the agenda.

- A. SPECIAL USE PERMIT S-19-22:** Petition from 477 W Michigan, Inc., reapplying for a Special Use Permit for property located at 477 W Michigan Ave. The request is for an Adult Use marijuana retail center. Property is zoned “T-3 Neighborhood Commercial District” pursuant to Sections 1251.23, 1251.24, 1251.26, 1240.13 and 1281.05 of the zoning code. PARCEL #5620-00-003-0. LEGALLY DESCRIBED AS MOREYS ADD LOTS 2, 3, 8 & 9 ((LOT 3 ASSESSED AS 5620-00-004-0 IN 1999; LOT 8 ASSESSED AS 5620-00-009-0 IN 1999; LOT 9 ASSESSED AS 5620-00-010-0 IN 1999)).

**Staff Presentation:** Travis Sullivan, City Planner, gave the staff report presentation. Reapplication for 477 W Michigan Avenue. Originally presented at the August Planning Commission meeting with a recommendation for disapproval to the City Commission. City Commission disapproved the item at their September meeting. Applicant is reapplying for a special use permit for an Adult-Use Marijuana facility at the location at 477 W Michigan Avenue.

**CHAIRPERSON GODFREY** called for Commissioner Questions: None.

**Applicant:** Joey Kejbou, attorney was present on behalf of the applicant. He stated his client is resubmitting the same application for the same location. Stated they have done their due diligence in research for regulatory and zoning ordinances as it is required for marijuana facilities in the city of Battle Creek. No proximity requirements for Day Care Centers. They have submitted their application and paid the fees. Stated a Day Care center currently does not exist on Michigan Avenue, anywhere near the proposed facility.

**Deputy City Attorney Stoetzel** discussed the procedure whereby the Planning Commission will decide whether to conduct a re-hearing of the item.

**MOTION MADE BY COMM. GRAY, SECONDED BY COMM. NEWMAN, TO MOVE FORWARD WITH THE REAPPLICATION OF SPECIAL USE PERMIT S-19-22.**

**Voted Yes:**

Comm. Gray  
Comm. Newman  
Comm. Hughes  
Chair Godfrey

**Voted No:**

Comm. Spranger  
Comm. Morris  
Mayor Behnke

**Chairperson Godfrey** asked for staff to provide a report.

**Staff Presentation:** Travis Sullivan, City Planner, gave a brief review of the item, as presented at the August 2022 Planning Commission meeting.

**Applicant:** Joey Kejbou presented briefly on behalf of the applicant.

**MOTION MADE BY COMM. GRAY, SECONDED BY COMM. NEWMAN, TO RECOMMEND APPROVAL OF S-19-22.**

**Chairperson Godfrey** called for discussion. Comm. Gray asked attorney Stoetzel for clarification on exemptions in the ordinance for childcare centers. Comm. Gray also asked the Chairperson if he would entertain hearing from Voces leadership. Chairperson Godfrey agreed.

**Jose Luis Orozco Jr., Voces Executive Director**, expressed his concerns with a marijuana shop being close to their facility. Stated he had not heard from the facility until the day before the meeting and the day of. Did not feel their concern for community was sincere. Asked the commission to consider adding Preschools to the city ordinance.

**Mayor Behnke** expressed concerns about Special Needs Adult Care Facility close by and the proposed Childcare Center next door.

**CHAIRPERSON GODFREY** asked for a roll call vote.

**Voted Yes:**

Comm. Hughes  
Comm. Godfrey  
Comm. Newman

**Voted No:**

Comm. Spranger  
Comm. Morris  
Comm. Gray  
Mayor Behnke

Mayor Benke stated concerns about the proposed use meeting item C (use will not be hazardous to existing or future neighborhood uses). Mayor Behnke expressed concern regarding the special needs adult care facility next door, as well as the proposed Voces preschool facility.

Comm. Gray expressed concerns regarding the harmoniousness of the proposed use within the neighborhood. Does not feel the item satisfies items A and C.

Comm. Spranger voted no based on adverse effects upon the neighborhood and that this is the third facility within a three mile radius.

Comm. Morris stated that his no vote was based on the same information provided by Comm. Spranger.

**MOTION FAILED.****PUBLIC HEARINGS/DELIBERATIONS:**

**CHAIRPERSON GODFREY** asked to open the public hearing for item C: Special Use Permit (S-17-22) on the agenda.

- C. SECIAL USE PERMIT S-17-22:** Petition from Voces to allow for a Childcare Center located at 520 W Michigan Avenue. Property is zoned T-3 Neighborhood Commercial District pursuant to Section 1240.12(c) of the zoning code. PARECEL 37400-00-005. LEGALLY DESCRIBED AS RIVERS ADD LOGTS3, 4, & E 40 FT OF LOT 5 AS MEASURED ALG SLY LI OF LOT 5.

**Commissioner Newman:** recusing himself from this petition based on the fact that he was the architect for the project.

**Staff presentation:** Travis Sullivan, City Planner, gave the staff report presentation. Special use permit to convert the existing building at 520 W Michigan Avenue from the Voces business offices to a preschool. This property is zoned T-3 Neighborhood Commercial District. Adding dumpster enclosure and fencing for a playground at the rear of the building. Staff finds that the item complies with the zoning administrator's determination for childcare centers by a special use, private K- 12 schools are permitted. Staff finds the item is compatible with a number of goals stated in The Master Plan and recommends this approval with the conditions as described in the staff report.

**PUBLIC HEARINGS/DELIBERATIONS:**

**CHAIRPERSON GODFREY** declares public hearing open and calls applicant forward.

**Jose Luis Orozco Jr., Voces Executive Director**, presented. Would like to convert current office spaces into 2 preschool classrooms for 3-4 year olds. Housing up to 32 children. Has communicated with the community and found there is a need for a bilingual and bicultural preschool in the area. Stated there are not enough preschools for student and no bilingual or bicultural preschools.

**Public Comments:**

**Hexxon Villa of 482 W Michigan Avenue:** In favor of school next to his business. Feels it would be a great addition to the neighborhood.

**Resident, Ms. Castillo:** Parent in the community who feels this is a dream come true for her family, the children and the community.

**Resident, Ms. Anna of 236 Ridgeview Drive:** Spoke as a former preschool teacher and feels this project is a good opportunity, especially the fact that it is a bilingual and bicultural preschool. Finds it is hard for parents to find preschools in the city of Battle Creek. States it would be good resource for parents who do not understand the language for school processes here and feels this project would be beneficial to the community.

**Resident, Ms. Clarissa of 85 Battle Creek Avenue:** Feels having a bilingual and bicultural preschool would create a great model for the rest of Battle Creek to follow. In favor of this preschool.

**CHAIRPERSON GODFREY** closed the public hearing and called for a motion.

**MOTION MADE BY COMM. MORRIS AND SUPPORTED BY COMM. SPRANGER TO APPROVE SPECIAL USE PERMIT #S-17-22, FOR A CHILDCARE CENTER LOCATED AT 250 W MICHIGAN AVENUE.**

**CHAIRPERSON GODFREY** called for a roll vote.

**Voted Yes:**

Comm. Spranger  
Comm. Godfrey III  
Comm. Morris  
Comm. Hughes  
Comm. Gray  
Mayor Behnke

**Voted No:**

None

**Recused:**

Comm. Newman

**MOTION APPROVED**

**CHAIRPERSON GODFREY** asked to open the public hearing for item D, Special Use Permit S-18-22 on the agenda.

**D. SPECIAL USE PERMIT S-18-22:** Petition from 327 Capital Avenue SW, LLC requesting a Special Use Permit for property located at 347 Capital Avenue SW. The request is for an Adult Use Marijuana retail center.

Property to zoned "T-3 Neighborhood Commercial District": pursuant to Sections 1251.23, 1251.24, 1251.26, 1240.13 and 1281.05 of the zoning code. PARCEL #1530-00-059-0 LEGALLY DESCRIBED AS ASSRS REPLAT OF CALDWELLS ADD LOTS 56, 57, & 58.

**Staff report:** Travis Sullivan, City Planner, gave the staff report presentation. Applying for an Adult Use Marijuana Retail establishment special use permit. Applicant went through the site plan review process and application process for a medial provisioning facility and did not complete the process. They are not applying for an Adult Use retail establishment. The zoning requirements for this location require a special use permit for the use they are applying for. No site improvements, have provided an as built for the property as it exits. Staff finds item S-18-22 is compatible with the zoning ordinance, as it allows a special use permit for T-3 district, and meets the standards and various goals stated in The Master Plan. With that staff recommends approval with the conditions as outlined in the report.

**CHAIRPERSON GODFREY** declares public hearing open and call for the applicant to come forward.

**Applicant:** Joey Kejbou, attorney was present on behalf of the applicant. Emphasized they have met all criteria and construction is complete minus a few minor repairs, parking lot is complete, lighting is complete. All requirements for state regulations are met.

**Public Comment:**

**Jose Luis Orozco Jr., Voces Executive Director:** Expressed concerns for the neighborhood, it is a dense community and questions if another marijuana shop is needed so close by.

**Resident, Ms. Clarissa of 85 Battle Creek Avenue:** This center would be down the street from her neighborhood, does not feel this is needed there.

**Hexxon Villa of 482 W Michigan Avenue:** Expressed concerns about the value of these buildings. So much money is put into them, making the value go up. If there permits are not approved, the building sit empty and now no one else and purchase them.

**CHAIRPERSON GODFREY** closed the public hearing and called for a motion.

**MOTION MADE BY MAYOR BEHNKE AND SUPPORTED BY COMM. NEWMAN TO APPROVE SPECIAL USE PERMIT #S-18-22, FOR AN ADULT USE MARIJUANA FACILITY AT 327 CAPITAL AVENUE SW.**

**COMMISSIONER COMMENTS:**

Comm. Spranger questioned the approval of the 2019 medical marijuana license that was approved by the Planning Commission for this property. Travis Sullivan stated they did not complete the application process so it is currently not operation. Comm. Spranger asked if there is any guarantee they will open this time if a permit is approved. Marcie Gillette clarified the approval time for an applicate being approved to the permit expiring is one year.

Another public comment was approved by Chairperson Godfrey III. Scott Harrington spoke on behalf of this project. Stated he was involved in the project and that they are moving forward with opening and hiring or personnel.

Chairperson Godfrey III questioned the applicant about the use of the building in the rear of the property. Applicant stated is will be used only for storage.

**CHAIRPERSON GODFREY** called for a role vote.

**Voted Yes:**

Comm. Newman  
Comm. Spranger  
Comm. Morris  
Comm. Hughes  
Comm. Godfrey  
Comm. Gray  
Mayor Behnke

**Voted No:**

None

**MOTION APPROVED**

**OLD BUSINESS:** None.

**NEW BUSINESS:**

**2023 Proposed Calendar**

**CHAIRPERSON GODFREY** called for discussion: None.

**MOTION WAS MAID BY COMM. MORRIS AND SUPPORTED BY MAYOR BEHNKE TO APPROVE THE PROPOSED 2023 PLANNING COMMISSION MEETING DATES.**

**ROLL VOTE:** Chairperson Godfrey asked everyone in favor to signify by saying “aye”:

**ALL IN FAVOR, NONE OPPOSED, MOTION APPROVED.**

**Capital Improvement Plan**

**CHAIRPERSON GODFREY** called for discussion: None.

**MOTION WAS MADE BY COMM. MORRIS AND SUPPORTED BY COMM. NEWMAN TO APPROVE THE 2023/2024-2028/2029 6 YEAR CAPITAL IMPROVEMENT PLAN.**

**ROLL VOTE:** Chairperson Godfrey asked everyone in favor to signify by saying “aye”:

**ALL IN FAVOR, NONE OPPOSED, MOTION APPROVED.**

.....  
**PUBLIC COMMENT:** None.

**STAFF COMMENT:**

Marcie Gillette: Introduction of the new Administrative Assistant in Planning and Zoning, Melody Carlsen.

Discussed Planning Commission packet request and how commissioners would like them prior to the Planning Commission meetings. A sheet was given to commissioners to fill out. Packets will be sent electronically. If requesting a paper copy, those will be made available by Melody the day after being posted online and can be picked up in her office.

**JOURNMENT:**

**Chairman Godfrey** adjourned the meeting at 5:15 p.m.

Submitted by: Melody Carlsen, Administrative Assistant, Planning and Zoning

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## Resolution

NO. 41

A Resolution seeking to approve S19-2022, reapplication for a Special Use Permit to allow for an Adult Use Marihuana Retailer Establishment located at 477 W. Michigan Avenue. The property is zoned T-3 Neighborhood Commercial District pursuant to Chapter 1240, Section 1240.13, and Chapter 1251, Sections 1251.23-24, 26.

**BATTLE CREEK, MICHIGAN - 1/3/2023**

### **Resolved by the Commission of the City of Battle Creek:**


That the Planning Commission has reviewed the petition from 477 W. Michigan, Inc, requesting a Special Use Permit for property located at 477 W. Michigan Avenue. The property is zoned T-3 Neighborhood Commercial District pursuant to Chapter 1240, Section 1240.13 and Chapter 1251, Sections 1251 23-24, 26.

The Planning Commission held a Public Hearing on this matter at its December 14, 2022 meeting, and after due consideration, the Special Use Request was not approved for recommendation to the Battle Creek City Commission. Findings and considerations set forth in the attached staff report to the Planning Commission support a recommendation to approve the petition for a Special Use Permit.

The Battle Creek City Commission, having given its considerations to all information presented to it relating to said petition, adopts the finding and recommendations as set out in the report and supplemented by findings set forth on the record of this date which will be attached hereto, and does by way of this Resolution approve Special Use Permit S19-22 for an Adult Use Marihuana Establishment, finding beyond reasonable doubt that the general standards set forth in the Zoning Code Section 1281.05 be satisfied by the completion and operation of the proposed development with the following conditions and/or restrictions:

1. The approval of this request is directly tied to the proposed use and elements of the proposed use as provided for by the applicant in the application. Any changes contrary to that which is included on the application would require review and approval by the Planning Commission and City Commission.
2. All necessary approvals, including site plan review and any required permits shall be obtained, and if applicable, from the appropriate agencies, including but not limited to the State of Michigan, Department of Public Works, and Inspections Division prior to the Certificate of Occupancy.
3. Pursuant to Section 1281.02, no change in the use or occupancy of land or in the use or occupancy of an existing building shall be made, nor shall any new building be occupied for any purpose, until a certificate of occupancy has been issued by the City or his or her agent. Such a certificate shall state that the new occupancy complies with Building and Zoning Codes.
4. Pursuant to Section 1281.05(A)(5), certificates of occupancy for special uses shall be valid for a period established by the City Commission or as long as the use is established and maintained in conformity with the plans submitted and approved. Occupancy permits shall expire after one year if the use is not under construction or maintained. For good cause shown and upon written application, the Planning Commission may extend a special use permit for six months.

I, Victoria Houser, City Clerk of the City of Battle Creek, hereby certify the above and foregoing is a true and correct copy of a Resolution disapproved by the Battle Creek City Commission at a Regular meeting held on September 20, 2022.



Victoria Houser

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Battle Creek City Commission

1/3/2023

### **Action Summary**

**Staff Member:** Marcie Gillette, Community Services Director

**Department:** Planning

#### **SUMMARY**

A Resolution seeking to approve S19-2022, reapplication for a Special Use Permit to allow for an Adult Use Marihuana Retailer Establishment located at 477 W. Michigan Avenue. The property is zoned T-3 Neighborhood Commercial District pursuant to Chapter 1240, Section 1240.13, and Chapter 1251, Sections 1251.23-24, 26.

#### **BUDGETARY CONSIDERATIONS**

Costs of the development are the responsibility of the developer. No use of City funds is expected for this development.

#### **HISTORY, BACKGROUND and DISCUSSION**

The petitioner, 477 Michigan Ave, Inc reappplied for a Special Use Permit for an Adult Use Marihuana Establishment in the T-3 Neighborhood Commercial District for the property located at 477 W. Michigan Avenue, parcel number 5620-00-003-0.

This item was initially heard by the Planning Commission at the August 24, 2022 regular meeting. At that meeting, the Planning Commission provided a recommendation to the City Commission for disapproval. The City Commission concurred with the Planning Commission's recommendation and disapproved their item at the September 20, 2022 regular meeting.

The applicant has provided what they state to be new evidence or information to the Planning Commission for consideration as allowable under Section 1281.05(e)(2). "As used in this section, "newly discovered evidence" means a finding that the evidence itself, not merely its materiality, is newly discovered; that the evidence is not cumulative; that the evidence is such as to render a different result probable on rehearing; and that the evidence could not, with reasonable diligence, have been discovered and produced at the time of the original hearing".

The Planning Commission holds the discretion to determine whether the new information provided is

sufficient to justify a reconsideration. On December 14, 2022, at the regularly scheduled meeting, the Planning Commission voted to allow for the reapplication to be heard.

The subject site is a total of 34,848 square feet (.8 of an acre) with a 2,685 square foot vacant building built in 1999. The Applicant is proposing to use the existing vacant building for an Adult Use Marihuana Establishment. This building is located on the south side of Michigan Avenue West just northwest of Wood Street, south of Hubbard Street.

The property at 477 W Michigan Ave. was issued a 90 day Part A conditional marihuana permit on July 17, 2019 and they were granted a continuation of that permit on January 22, 2020. Part B of the Medical Marijuana Facility application was never completed. It is important to note that the previous Zoning Ordinance did not require this property to receive a special use permit to operate as a marihuana provisioning or retail establishment. The 2020 rewrite of the Zoning Ordinance and the establishment of the T-3 Neighborhood Commercial District now classifies both provisioning and retail establishments as allowed special uses, thus requiring the applicant to now seek approval from the Planning Commission and City Commission.

477 W Michigan Inc. is now applying for a special use to allow for an Adult-Use Marihuana Retailer Establishment at 477 W. Michigan Ave. located in the T-3 Neighborhood Commercial District. Adult-Use Marihuana Retailers are allowed special uses in the T-3 Neighborhood Commercial District. The Applicant intends to re-apply for their 90 day Part A conditional use marihuana permit for an Adult-Use Marihuana Retailer Establishment.

The applicant is seeking special use approval for an Adult Use Marihuana Establishment in the existing building at 477 W. Michigan Ave.

The building and parking area are all existing, and underwent site plan review and approval in October 2019. The Applicant, at the time, offered proposed improvements to the surface and striping of the parking area, along with landscaping on the property, which were completed by the applicant prior to the final inspection of the site by City staff.

Site plan approval does not preclude the ability of the Planning Commission to recommend additional specific conditions related to this special use.

The Applicant's proposed hours are: 9:00 a.m. to 9:00 p.m. Monday through Saturday, and 10:00 a.m. to 8:00 p.m. on Sunday, which fall within the hours allowed by Chapter 835 "Adult-Use Marihuana Establishments" of the City's Code, Section 835.09 "Conduct of Business at a Marihuana Establishment."

Applicable ordinance provisions include: Planning and Zoning Code, Chapter 1240, Section 1240.13 Neighborhood Commercial District and Chapter 1251 Sections 1251.23-24, and 26 Standards Applicable to Specific Uses – Marihuana: Marihuana Business Regulations, Marihuana Facilities and Establishments and Adult-Use Marihuana Retailer Establishments. City Code, Section 835.09 Adult Use Marihuana Establishments (d) (allowed hours of operation.)

Adult-Use Marihuana Retailer Establishments are allowed as special uses in the T-3 Neighborhood Commercial District if they meet the conditions listed in the City's Zoning Ordinance for special uses.

Sections 1251.23-24 contain additional standards for Marihuana in commercial districts. Adult-Use Marihuana Retailer Establishments must meet 1,000 foot distance requirements from other retailers, provisioning centers, micro businesses, schools and libraries open to the public.

At this time, the property lines for Parcel 5620-00-003-0 in which 477 W Michigan Ave. is located are at

least 1,000 feet from any parcels with provisioning centers, adult use retailers and microbusinesses, schools and libraries open to the public. No new marihuana facility has filled out and qualified for a Part A application within 1,000 feet of the property which is the subject of this petition.

## **DISCUSSION OF THE ISSUE**

### **POSITIONS**

As a special use, the Planning Commission is charged with reviewing each Special Use Permit request to determine any effects the proposed use would have on the Master Plan as well as on the character and development of the neighborhood. The ordinance and enabling legislation allow the Planning Commission and the City Commission to impose any conditions upon the request that would ensure the general objectives of the zoning ordinance are met and to preserve property values in the neighborhood.

At the December 14, 2022 Planning Commission meeting, the Planning Commission reviewed the request under the Special Use Permit Criteria outlined in Section 1281.05 of the zoning code and voted to not recommend the approval of the request by a 4-3 vote.

The three (3) Planning Commissioners who voted to recommend the approval did so based on the following findings under the Special Use Permit criteria outlined in Section 1281.05 of the zoning code:

a) The use of this parcel as an Adult-Use Marihuana Retailer Establishment is harmonious and in accordance with a number of the objectives of the Master Plan and future land uses for the Neighborhood Commercial areas. The future land use category for the subject parcel is labeled "Neighborhood Commercial," which includes convenience retail and service businesses.

The site plan approved in 2019 in association with this property's Medical Marihuana Provisioning Center Part A license featured numerous improvements to the site, including the sealing and restriping of the parking area, upgrades to the building's façade and the inclusion of a dumpster enclosure. Additional landscaping in accordance with the applicant's intended improvements as detailed in their submitted "Pick List" was also installed at the site.

The applicant, at this time, is proposing no alterations to the site and has provided the City with an as-built drawing of the site in order to fulfill the site plan submittal requirement associated with their special use permit application.

b) The proposed use will be harmonious and appropriate in appearance with the existing intended character of the general vicinity since it is located entirely inside an existing building that has existed on this property since 1999. As a result of their 2019 site plan approval, the applicant brought the existing parking area into closer compliance with the standards of the previous (pre-2020 rewrite) Zoning Ordinance. The applicant is proposing no expansion of the existing building and no alteration to the existing parking area.

c) The use of this property has been commercial in the past (formerly used as a bank branch), and will not produce any additional noise or odors beyond that of any other retail or service facility. Marihuana retailers area also regulated by Chapter 835 of the City's Code of Ordinances with operations prohibited between 12:00 am and 7:00 am.

d) The use will be an improvement to the property in the immediate vicinity and to the community as a whole because the approved site plan included additional landscaping to the property above and beyond what would normally be required. The proposed use would also fill a formerly vacant, existing older commercial building where there is not much of a current market for commercial space.

e) Traffic is not anticipated to significantly increase as a result of the proposed use, as this is an existing building and many other similar uses that area allowed in the T-3 would generate a comparable amount of traffic. Parking on site is adequate for the proposed use. No additional utilities are required for this use as this is an existing building in a built-up neighborhood.

f) There will be no City expenses associated with the maintenance and improvements to the property, and therefore, the use will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community.

g) There will be no activities, processes, materials, equipment, or conditions of operation that will be detrimental to any person, property or the general welfare by reason of an excessive generation of traffic, noise, smoke, fumes, glare, or vibrations. The Planning Commission may wish to discuss with the applicant whether any odors are expected to be created by the proposed use, and any mitigation strategies that will be used to ensure that odors do not become a nuisance.

h) The use will be consistent with the intent and purpose of this Zoning Code in that the facility will be subject to compliance with all relevant sections of the zoning ordinance. Additionally, the facility will be required to be in compliance with all building regulations.

**Staff has reviewed the application and finds that it meets all of the requirements for the zoning district and the standards specifically applicable to adult use marihuana retailer establishments, including meeting the 1,000 foot distance buffer requirement.**

**Therefore, as the request meets the general standards listed in Chapter 1281.05 as outlined above, planning staff recommends City Commission approval of Special Use Permit Petition S19-22 that would allow an adult-use marihuana retailer establishment in a T-3 Neighborhood Commercial District located at 477 W. Michigan Avenue, Parcel # 5620-00-003-0 with the following conditions:**

- 1. The approval of this request is directly tied to the proposed use and elements of the proposed use as provided for by the applicant in the application and the site plan. Any changes contrary to that which is included on the application would require review and approval by the Planning Commission and City Commission.**
- 2. All necessary approvals, and any required permits shall be obtained, and maintained inapplicable, from the appropriate agencies, including but not limited to the State of Michigan, Department of Public Works, and Inspections Department prior to Certificate of Occupancy, as well as the approval of the applicable Medical Marihuana permits Part A and Part B of the City of Battle Creek.**
- 3. Pursuant to Section 1281.02, no change in the use or occupancy of land or in the use or occupancy of an existing building shall be made, nor shall any new building be occupied for any purpose, until a certificate of occupancy has been issued by the Chief Building Official or their designee or agent. Such a certificate shall state that the new occupancy complies with this Zoning Code.**
- 4. Pursuant to Section 1281.05 (D.5), certificates of occupancy for special uses shall be valid for a period established by the City Commission or as long as the use is established and maintained in conformity with the plans submitted and approved. Occupancy permits shall expire after one year if the use is not under construction or maintained. For good cause shown and upon written**

**application, the Planning Commission may extend a special use permit for six months.**

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**ATTACHMENTS:**

<b>File Name</b>	<b>Description</b>
❏ 1._477_W._Michigan_Ave._SUP_staff_report__Updated_Memo.pdf	Staff Report SUP S19-22 477 W. Michigan Avenue
❏ 3._Reapplication_with_Letter.pdf	Reapplication SUP S-19-22 477 W. Michigan Ave
❏ Site_Plan_Application_477_W._Michigan_Ave.pdf	Site Plan Application 477 W. Michigan Ave
❏ site_plan_floor_plan.pdf	Site Plan Floor Plan 477 W. Michigan Ave
❏ 4._Photos_from_applicant.pdf	Applicant Photos 1 of 2 SUP S-19-22
❏ 5._New_Photos.pdf	Applicant Photos 2 of 2 SUP S-19.22
❏ PC_12.14.22_Meeting_Minutes_DRAFT.pdf	12.14.22 PC Meeting Minutes DRAFT



**Battle Creek City Planning Commission**  
**Special Use Permit, Reapplication**  
**Staff report for the December 14, 2022 meeting**

To: Planning Commissioners

From: Travis Sullivan, Planner

Subject: Petition S-09-22, a reapplication for special use approval of an Adult Use Marihuana Retailer Establishment in a T-3 Neighborhood Commercial Zoning District at 477 W Michigan Ave. on Parcel #5620-00-003-0 where marihuana retail centers can be allowed as a special use.

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**Summary**

Petition from 477 W Michigan, Inc. for 477 Michigan Ave, LLC at 2207 Orchard Lake Road, Suite B, Sylvan Lake, Michigan 48320 requesting special use approval for an Adult Use Marihuana Establishment in a T-3 Neighborhood Commercial District located at 477 W Michigan Ave., Battle Creek, Michigan 49015 parcel #5620-00-003-0 as permitted by special use under the Planning and Zoning Code, Chapter 1240, Section 1240.13 Neighborhood Commercial District and Chapter 1251 Sections 1251.23-24, and 26 Standards Applicable to Specific Uses – Marihuana: Marihuana Business Regulations, Marihuana Facilities and Establishments and Adult-Use Marihuana Retailer Center.

This item was heard by the Planning Commission at the August 24, 2022 regular meeting. At that meeting, the Planning Commission provided a recommendation to the City Commission for disapproval. The City Commission concurred with the Planning Commission's recommendation and disapproved their item at the September 20, 2022 regular meeting.

Section 1281.05(e) states the following;

“(1) No application for a special use permit shall be submitted for the same property, or any part thereof, or as part of a larger parcel, for a period of six months from the Planning Commission decision on a special use application for the property, except on grounds of newly discovered evidence or proof of changed conditions found, in the discretion of the Planning Commission, to be sufficient to justify a reconsideration.

(2) As used in this section, “newly discovered evidence” means a finding that the evidence itself, not merely its materiality, is newly discovered; that the evidence is not cumulative; that the evidence is such as to render a different result probable on rehearing; and that the evidence could

not, with reasonable diligence, have been discovered and produced at the time of the original hearing.

(3) For purposes of this section, “proof of changed conditions” shall not include an application for another or different special use than that originally requested.”

Based upon this section, the applicant, in the attached letter, has provided what they state to be new evidence or information to the Planning Commission for consideration. As stated in Section 1281.05(e)(2), the Planning Commission holds the discretion to determine whether the new information provided is sufficient to justify a reconsideration.

For a full review of this item, as presented at the August 24, 2022 regular meeting, please see the attached staff report and recommendation.



# City of Battle Creek

Community Services – Planning and Zoning Division

City Hall • 10 N. Division Street, Ste. 117 • Battle Creek, Michigan, 49014

Ph (269) 966-3320 • Fax (269) 966-3555 • [www.battlecreekmi.gov](http://www.battlecreekmi.gov)

## SPECIAL USE PERMIT Application

Petition No. S-19-22

Date Received: 11.18.22

### APPLICANT

NAME: 477 W Michigan, Inc.  
ADDRESS: 2207 Orchard Lake Road, Suite B, Sylvan Lake, MI 48320  
PHONE: 248-669-3400 FAX: N/A  
EMAIL: Licensing@cannazonedmls.com

### OWNER (if different from applicant)

NAME: 477 Michigan Ave, LLC  
ADDRESS: 2207 Orchard Lake Road, Suite B, Sylvan Lake, MI 48320  
PHONE: 248-669-3400 FAX: N/A  
EMAIL: Licensing@cannazonedmls.com

**\*\*If the applicant is not the property owner, a letter signed by the owner agreeing to the Special Use Permit must be included with the application.**

### EXISTING CONDITIONS

Address(es) of property for which the request is being sought: 477 W Michigan Ave, Battle Creek, MI 49014

Current use of the property: Vacant but provisionally approved for Medical Marijuana Provisioning Center

List existing structures on the property and the approximate age of each. 1 structure, built in approximately 1999

Has property involved ever been the subject of a previous application? If yes, please list each one and the date the request came before the Planning Commission.

Yes. The subject property was the subject of a previous application.

The hearing for the prior application occurred on August 24, 2022 as Special Use Permit Amendment #S-09-22.



## PROJECT DESCRIPTION

What is the proposed use of the property that warrants the special use permit? \_\_\_\_\_  
Adult use marijuana retailer

Please list all activities that will take place on the property if the special use permit were approved?

retail sales of adult use/recreational marijuana

How many employees currently work on the property? How many will be added if the special use permit is approved, and what days/times will they be onsite? \_\_\_\_\_ Property is not currently operating.

If approved, there will be a total of 8-12 employees.

Will the approval of the special land use necessitate changes to the property, i.e. building construction, additional parking, driveways, fencing? If yes, please provide a list of property improvements that will be associated with the special use permit. \_\_\_\_\_

None- the building has already been built out and is ready for immediate use

if approved for the special use

What are the proposed hours of operation for the special use? Please indicate if the special land use will be temporary, seasonal, or long term in nature, providing dates and timeframes if applicable:

9:00 a.m. - 9:00 p.m. Monday through Saturday, 10:00 a.m. - 8 p.m. Sunday

## STANDARDS FOR APPROVAL

Chapter 1290 Special Uses and Land Development lists standards that will be reviewed by the Planning Commission and City Commission and the request for special use permit will only be approved if these standards are met. Provide factual and supportive evidence that your application meets each of these standards. Additional sheets may be attached if necessary.

Will the special land use be designed, constructed, maintained, and/or operated in a manner harmonious with the character of adjacent properties and the surrounding area? ☒ Yes ☐ No

The property is located in the middle of a commercial business district

The neighboring properties consist of retail and commercial service oriented uses that are consistent with the proposed use

Will the special land use change the character of adjacent properties and the surrounding area?

☐ Yes ☒ No

The proposed use is currently permitted as a special land use and will be consistent with the currently neighboring uses. The characteristics of neighboring property owners will remain consistent and in line with the proposed use

Please see the attached photos of the properties next to and in the general area of the subject property

1. The first part of the document is a letter from the President of the United States to the Congress, dated January 3, 1862. The letter is signed by Abraham Lincoln and is addressed to the Senate and House of Representatives. The letter discusses the state of the Union and the progress of the war against the Confederacy. It also mentions the President's efforts to maintain the Union and his commitment to the principles of liberty and justice for all.

2. The second part of the document is a report from the Secretary of the War Department, dated January 10, 1862. The report is signed by Gideon Welles and is addressed to the President. The report discusses the military situation in the South and the progress of the war. It also mentions the Secretary's efforts to supply the army and his commitment to the principles of efficiency and economy.

3. The third part of the document is a report from the Secretary of the Navy Department, dated January 10, 1862. The report is signed by Gideon Welles and is addressed to the President. The report discusses the naval situation in the South and the progress of the war. It also mentions the Secretary's efforts to supply the navy and his commitment to the principles of efficiency and economy.

4. The fourth part of the document is a report from the Secretary of the Treasury Department, dated January 10, 1862. The report is signed by Gideon Welles and is addressed to the President. The report discusses the financial situation of the United States and the progress of the war. It also mentions the Secretary's efforts to manage the government's finances and his commitment to the principles of efficiency and economy.

5. The fifth part of the document is a report from the Secretary of the Interior Department, dated January 10, 1862. The report is signed by Gideon Welles and is addressed to the President. The report discusses the land situation in the South and the progress of the war. It also mentions the Secretary's efforts to manage the government's lands and his commitment to the principles of efficiency and economy.

6. The sixth part of the document is a report from the Secretary of the War Department, dated January 10, 1862. The report is signed by Gideon Welles and is addressed to the President. The report discusses the military situation in the South and the progress of the war. It also mentions the Secretary's efforts to supply the army and his commitment to the principles of efficiency and economy.

7. The seventh part of the document is a report from the Secretary of the Navy Department, dated January 10, 1862. The report is signed by Gideon Welles and is addressed to the President. The report discusses the naval situation in the South and the progress of the war. It also mentions the Secretary's efforts to supply the navy and his commitment to the principles of efficiency and economy.

8. The eighth part of the document is a report from the Secretary of the Treasury Department, dated January 10, 1862. The report is signed by Gideon Welles and is addressed to the President. The report discusses the financial situation of the United States and the progress of the war. It also mentions the Secretary's efforts to manage the government's finances and his commitment to the principles of efficiency and economy.

9. The ninth part of the document is a report from the Secretary of the Interior Department, dated January 10, 1862. The report is signed by Gideon Welles and is addressed to the President. The report discusses the land situation in the South and the progress of the war. It also mentions the Secretary's efforts to manage the government's lands and his commitment to the principles of efficiency and economy.

10. The tenth part of the document is a report from the Secretary of the War Department, dated January 10, 1862. The report is signed by Gideon Welles and is addressed to the President. The report discusses the military situation in the South and the progress of the war. It also mentions the Secretary's efforts to supply the army and his commitment to the principles of efficiency and economy.

[illegible]

1. The first step in the process of identifying a problem is to recognize that a problem exists. This is often done by comparing current performance with a desired state or goal. If there is a significant difference, a problem is identified.

*[Faint, illegible text from bleed-through]*

Will the special land use be hazardous to adjacent properties or involve uses, activities, materials or equipment which will be detrimental to the health, safety or welfare of persons or properties?

☐ Yes ☒ No

The proposed use does not involve the operation of any uncommon equipment, materials or other matters

which would be detrimental to the health, safety or welfare of persons or properties.

Will the special land use be a substantial improvement to property in the immediate vicinity and to the community as a whole? ☒ Yes ☐ No

The property will be improved aesthetically with new signage and updated decor. In addition, the proposed use

will include state of the art camera systems that monitor the exterior of the property on all sides to provide community monitoring features. Finally, the facility will include lighting that adds vibrance and visibility to the neighboring properties.

Will the special land use place demands on public facilities or services in excess of current capacity?

☐ Yes ☒ No

The proposed use utilizes utilities and public facilities similar to any other common retail business.

Water, electricity, gas and other utilities will have nominal use and the facility will supply their own site security

and will not burden police authorities.

Will the special land use produce excessive traffic, noise, smoke, fumes, or glare? ☐ Yes ☒ No  
As previously mentioned, this will be a traditional retail facility. There is not excessive traffic, smoke, noise, fumes or glare

that would be produced by the proposed use.

#### SUBMITTAL REQUIREMENTS

Each request requires the following items to be submitted along with the completed application; incomplete applications will not be forwarded to the Planning Commission.

1. Payment of a non-refundable \$600.00 filing fee, made payable to the City of Battle Creek.
2. An affidavit authorizing an applicant to act on behalf of the owner if the petitioner is not the owner.
3. Legal description of subject property and a list of all deed restrictions.
4. Property Site Plan as outlined in "Special Use Permit, Information and Procedures".

#### APPLICANT SIGNATURE

By signing this application, the applicant hereby declares that all answers given herein are true to the best of their knowledge, and confirms that all information required for submission of a special use permit have been submitted. Furthermore, the applicant confirms that they have thoroughly read "Special Use Permit, Information and Procedures" and agrees to comply with all requirements and procedures for special use permit.

Name

Date

[illegible]

Joey Patrick Kejbou, P.C.  
Attorney and Counselor

2207 Orchard Lake, Suite B  
Sylvan Lake, MI 48320  
Phone: (248) 720-1200  
Facsimile: (248) 250-5597  
E-Mail: [Joey@jpklegal.com](mailto:Joey@jpklegal.com)

Battle Creek  
ATTN: Planning Department  
10 N Division Street  
Battle Creek, MI 49014

November 9, 2022

**RE: SPECIAL USE PERMIT APPLICATION**  
**Adult Use Retailer**  
**477 Michigan Avenue**  
**Battle Creek, MI 49014**

To Whom It May Concern,

Enclosed please find a special use permit application and associated documents concerning the above-referenced location for the above-listed purpose. Please note the subject property was previously submitted for the same special use and went before the City Commission as proposed resolution 496/S09-22 on September 20, 2022. Unfortunately, at that prior City Commission meeting the proposed resolution was denied. This reapplication is being submitted pursuant to Chapter 1281.05(e)(1) of the Code for the City of Battle Creek.

Chapter 1281.05(e)(1) states as follows:

"No application for a special use permit shall be submitted for the same property, or any part thereof, or as part of a larger parcel, for a period of six months from the date of Planning Commission decision on a special use application for the property, except on grounds of newly discovered evidence or proof of changed conditions found, in the discretion of the Planning Commission, to be sufficient to justify a reconsideration."

Chapter 1281.05(e)(2) goes on to define "newly discovered evidence" as "a finding that the evidence itself, not merely its materiality, is newly discovered; that the evidence is not cumulative; that the evidence is such as to render a different result probable on rehearing; and that the evidence could not, with reasonable diligence, have been discovered and produced at the time of the original hearing."

Prior to discussing the newly discovered evidence below, we would like to address the City of Battle Creek's zoning requirements as it pertains to marijuana retail facilities proximate to sensitive uses. When the City adopted Chapter 1251.24 of the zoning code, they did so after numerous study groups, work sessions, City Commission and Planning Commission hearings. After much deliberation regarding marijuana, the city ultimately adopted Chapter 1251.24 of the zoning code which only prohibited marijuana retail facilities from being located within 1,000 feet of K-12 schools and libraries open to the public. The City did not identify any other "sensitive uses" that required separation distance from marijuana facilities. More specifically, there is no requirement whatsoever in the zoning ordinance that states a marijuana retail facility must be a defined distance from a daycare facility. **We also want to emphasize there is not a**

[illegible]

SECRET

1. The first part of the document is a letter from the President of the United States to the Congress, dated January 1, 1861. It is a very important document, as it is the first official communication from the President to the Congress since the inauguration of Abraham Lincoln. The letter discusses the state of the Union and the challenges facing the country at the time.

[illegible]

1. The first part of the document is a letter from the President of the United States to the President of the Senate, dated January 1, 1901. The letter is signed by William McKinley and is addressed to Charles McNary. The letter is a copy of a letter that was sent to the President of the Senate by the President of the United States.

**daycare facility located anywhere near or around the proposed marijuana facility despite the comments made at the prior Planning Commission and City Commission hearings as described below.**

The applicant initially appeared before the Planning Commission on August 24, 2022. Prior to that hearing, the City Planner, Travis Sullivan, produced a report that supported a recommendation for approval of the proposed special use permit. Consistent with City practices, the report prepared by Mr. Sullivan provided background information about the property and outlined all the requirements for meeting special use guidelines as set forth in Chapter 1281.05(C) in the City's zoning ordinance. The report confirmed the property satisfied every qualification requirement set forth in the ordinance and recommended approval of the proposed facility. Despite the overwhelmingly supportive report, the Planning Commission went on to recommend a denial of the special use permit application.

At the Planning Commission meeting that was held on August 24, 2022, it was alleged by a Planning Commission member that there was a "...childcare facility right next door..." to the proposed marijuana facility. During the Planning Commission's discussions regarding the presence of a daycare facility each of the City Attorney, Marcel Stoetzel, and the City Planner advised that daycare facilities are not identified in the zoning ordinance as uses that require any kind of separation distance. Despite the feedback from both the City Planner and the City Attorney, the Planning Commission declined to recommend approval of the proposed special use permit application based on the proximity to an alleged daycare facility.

Following the Planning Commission hearing, the petitioner diligently researched whether a childcare facility existed next to the proposed marijuana facility. The results of our research confirmed the information provided by the Planning Commission was inaccurate. The property located next door to the proposed marijuana facility is 493 W Michigan Ave and it operates as the "AC Learning Center" or the "Adult Education Life Skills Learning Center." We contacted the AC Learning Center and spoke with their staff. During our discussion, they confirmed the facility does not provide any childcare services whatsoever, rather it operates as a facility that assists special needs *adults* with learning life skills. The facility does not provide any child-oriented services nor does it maintain any type of child day care licensure.

After learning about the AC Learning Center and their services, our office prepared a correspondence to the City in advance of the City Commission meeting that was scheduled for September 20, 2022. The correspondence delivered explained the misinformation that was provided at the Planning Commission meeting and was further intended to be factored into the ultimate decision to be made by the City Commission.

On September 20, 2022, we attended a City Commission meeting and explained that there was not a daycare facility that existed next to the proposed marijuana facility. At that meeting, the commission conceded the property next door was improperly labeled as a daycare facility when in fact it is the AC Learning Center. Former Commissioner Boonikka M. Herring specifically asked the City Attorney what the prescribed distance requirements were from a daycare to a marijuana retail facility. The City Attorney responded to Commissioner Herring's inquiry by advising that the city does not require any separation distances between retail marijuana facilities and daycare facilities. Despite the City Attorney's response, Commissioner Herring doubled down on the falsehoods and stated, in part, "...everyone is talking about the facility right there next door, well three lots over there is a daycare and youth program..." Commissioner Herring's inaccurate comments effectively poisoned the well and contributed to the City Commission's denial of the proposed resolution.

Unfortunately, for the second time, a commission member made untrue statements that were relied on during a public hearing. Following the City Commission hearing, the petitioner again conducted their own diligence to identify the alleged daycare facility or youth center that was "three lots over." As we suspected, our research confirmed there is not a licensed daycare facility anywhere near the proposed

1. The first step in the process of the investigation is the identification of the problem. This is done by the investigator who is responsible for the study. The investigator must first identify the problem that is being investigated. This is done by the investigator who is responsible for the study. The investigator must first identify the problem that is being investigated. This is done by the investigator who is responsible for the study.

1. The first step in the process of the investigation is the identification of the problem. This is done by the investigator who is responsible for the investigation. The investigator must identify the problem and the scope of the investigation. The investigator must also identify the objectives of the investigation and the methods to be used. The investigator must also identify the resources available for the investigation.

1. The first step in the process of the investigation is the identification of the problem. This is done by the investigator who is responsible for the investigation. The investigator must identify the problem and the scope of the investigation.

2. The second step is the collection of data. This is done by the investigator who is responsible for the investigation. The investigator must collect data that is relevant to the problem and the scope of the investigation.

3. The third step is the analysis of the data. This is done by the investigator who is responsible for the investigation. The investigator must analyze the data to determine the cause of the problem and the scope of the investigation.

4. The fourth step is the presentation of the results. This is done by the investigator who is responsible for the investigation. The investigator must present the results of the investigation to the appropriate authorities.

5. The fifth step is the implementation of the results. This is done by the investigator who is responsible for the investigation. The investigator must implement the results of the investigation to solve the problem and the scope of the investigation.

1. *Prüfung der Aufgabenstellung:* Die Aufgabenstellung ist zu lesen und zu verstehen. Es ist zu klären, was verlangt wird und welche Informationen zur Verfügung stehen.

1. The first step in the process of the investigation is the identification of the problem. This is done by the investigator who is responsible for the study. The investigator must first identify the problem and then determine the scope of the study. The next step is to design the study. This involves determining the research objectives, the research questions, and the research methods. The third step is to collect data. This is done by the investigator who is responsible for the study. The data is then analyzed and the results are reported. The final step is to draw conclusions. This is done by the investigator who is responsible for the study. The conclusions are then used to inform the next steps in the process.

[illegible]

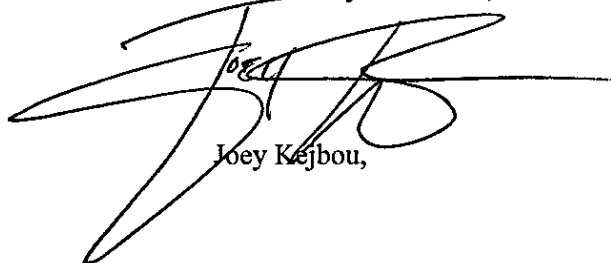
marijuana facility, much less within three lots. The Michigan Department of Licensing and Regulatory Affairs childcare license look up shows only one childcare service located anywhere on Michigan Avenue in all of Battle Creek and that facility, 111 Michigan Avenue, is not anywhere near our proposed marijuana facility. Ironically, that childcare facility at 111 E Michigan is located at the First United Methodist Church on the corner of East Michigan Avenue and Hamblin Avenue, kitty corner and less than 200 feet from another cannabis facility, Gage Cannabis.

On a final note, aside from the comments made concerning the alleged daycare facilities, the Planning Commission members made comments that suggested the proposed use would be inconsistent with the neighborhood. Their comments included statements that the property was located too close to residential properties. Attached to this correspondence we have included several pictures of properties in and around the subject property. Upon review, outside of one neighboring property that appears to be a nonconforming use, it is clear the properties located next to and in the general vicinity of the subject property are not used for residential purposes. In addition, and perhaps more importantly, a review of the attached pictures will show images of commercial properties that are in dilapidated conditions that have not been maintained for an extended period of time. The upgrades that have already been incorporated into the subject property far exceed any improvements made to neighboring properties and the additional modifications that will come once operations begin will improve the entire area. In looking at the attached pictures, it should be clear that the proposed utilization and improvements to the property would be a welcomed addition.

Ultimately, as stated earlier in this correspondence, we believe the underlying reasons for the prior denial was the result of false information. The petitioner has since been given an opportunity to investigate the false information and has presented "newly discovered evidence" that makes the enclosed petition appropriate for resubmission. We respectfully request the enclosed material be reviewed and that our request for a petition be placed on the next available Planning Commission agenda.

Thank you for your time and attention to this matter. Should you have any other questions or concerns please contact me at your earliest convenience.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Joey Kejbou", is written over a horizontal line. The signature is stylized with a large, sweeping initial "J" and "K".

Joey Kejbou,

Enclosures

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# City of Battle Creek

Community Services - Planning and Zoning Division

City Hall • 10 N. Division Street, Ste. 117 • Battle Creek, Michigan 49014

Ph (269) 966-3320 • Fax (269) 966-3555 • [www.battlecreekmi.gov](http://www.battlecreekmi.gov)

Date Received: \_\_\_\_\_  
Date Transmitted: \_\_\_\_\_  
Pmt Received: \$ \_\_\_\_\_

Transmitted to:  
DPW  
Planning  
Building

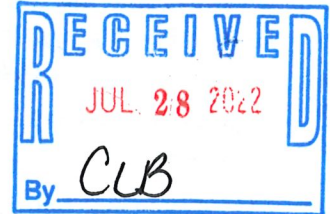
## SITE PLAN REVIEW APPLICATION

(Note: Plan reviews have a 15-day time-frame.)

Date: 7-28-22

Name of Company to Occupy Site: 477 W Michigan, Inc.

Address of Site: 477 W Michigan Ave, Battle Creek, MI 49014



PROPERTY OWNER/DEVELOPER:		<input checked="" type="checkbox"/> check if primary contact for this
Name:	477 Michigan Ave, LLC	
Firm:	N/A	
Address:	2207 Orchard Lake, Suite B	
City/State/Zip:	Sylvan Lake, MI 48320	
Phone:	248-669-3400	Fax: N/A
Email:	Licensing@cannazonedmls.com & Joey@jpklegal.com	

ARCHITECT/ENGINEER:		<input type="checkbox"/> check if primary contact for this
Name:	Nathan Lloyd Harvey	
Firm:	Detroit Architect	
Address:	13718 Woodward Avenue	
City/State/Zip:	Highland Park, MI 48203	
Phone:	313-869-6900	Fax: 313-869-4141
Email:	Nathan.Harvey@detroitarchitect.com	

CONTRACTOR:		<input type="checkbox"/> check if primary contact for this
Name:	N/A- all construction has been complete- the facility already has a C of O for medical marijuana provisioning center	
Firm:		
Address:		
City/State/Zip:		
Phone:		Fax:
Email:		

### PROJECT DESCRIPTION

Briefly describe the general character of the proposed development:

The site has already been built out and a C of O has been issued for medical marijuana. No new construction will be performed.

Are there any past or present zoning variances, easements, or deed restrictions on this property? If so, please explain the nature of the variance or restriction. None

What is the total size (square feet/acreage) of this property? 34,848 sf (.800 acres)

How much of the property is currently developed by impervious surface (in square feet and percentage)?  
29,581 sf/85%

At the end of the project, how much of the property will be developed with impervious surface (in square feet and percentage)? The property will remain with the same level of development

List the existing structures on this property, their square footage, existing use and proposed use.

1 structure, approximately 2,685 square feet, approved as a medical marijuana provisioning center

List the structures proposed for this property, their square footage, and proposed use. If this is a residential project, how many units are being proposed and what is the net density being proposed? \_\_\_\_\_

The property is not residential and the structure will remain as is.

What is the size (in square feet) of the existing parking area? 7,254 sf

How many existing parking spaces exist on the site? What improvements are proposed for the existing parking – removal, reconstruction, seal/stripe? 23

What size (in square feet), if any, of parking area will be added? How many parking spaces will be added? \_\_\_\_\_  
None

Are there any changes proposed in the rights-of-way? Is new water service or a new sewer service required?  
No

What is the estimated cost of construction? None- the property has already been built out and received a COO under the medical marijuana ordinance

How many people are currently employed on this site, and how many will be added as a result of the project?  
There are no current employees, it is anticipated there will be 8-12 total employees

Is this in a flood plain? If yes, what zone? N/A

A conceptual site plan review meeting can be organized prior to submittal of this application by contacting the Planning and Zoning Division. By signing this application, the applicant confirms that all information required for submission of a site plan review has been provided:

➤ **Fee Payment (\$150 for properties under 5 acres; \$250 for properties over 5 acres)**

➤ **Digital Copy of Site Plan is to be submitted with site plan application.**

Furthermore, the applicant has thoroughly read Ch. 1294 of the codified ordinances for the City of Battle Creek and agrees to comply with all requirements and procedures for site plan review. The applicant understands that the approved site plan is a legally binding document and any modifications from this approved site plan must be authorized by the Planning Department prior to their implementation.

Signature of Property Owner/Representative

Date

7-28-2022



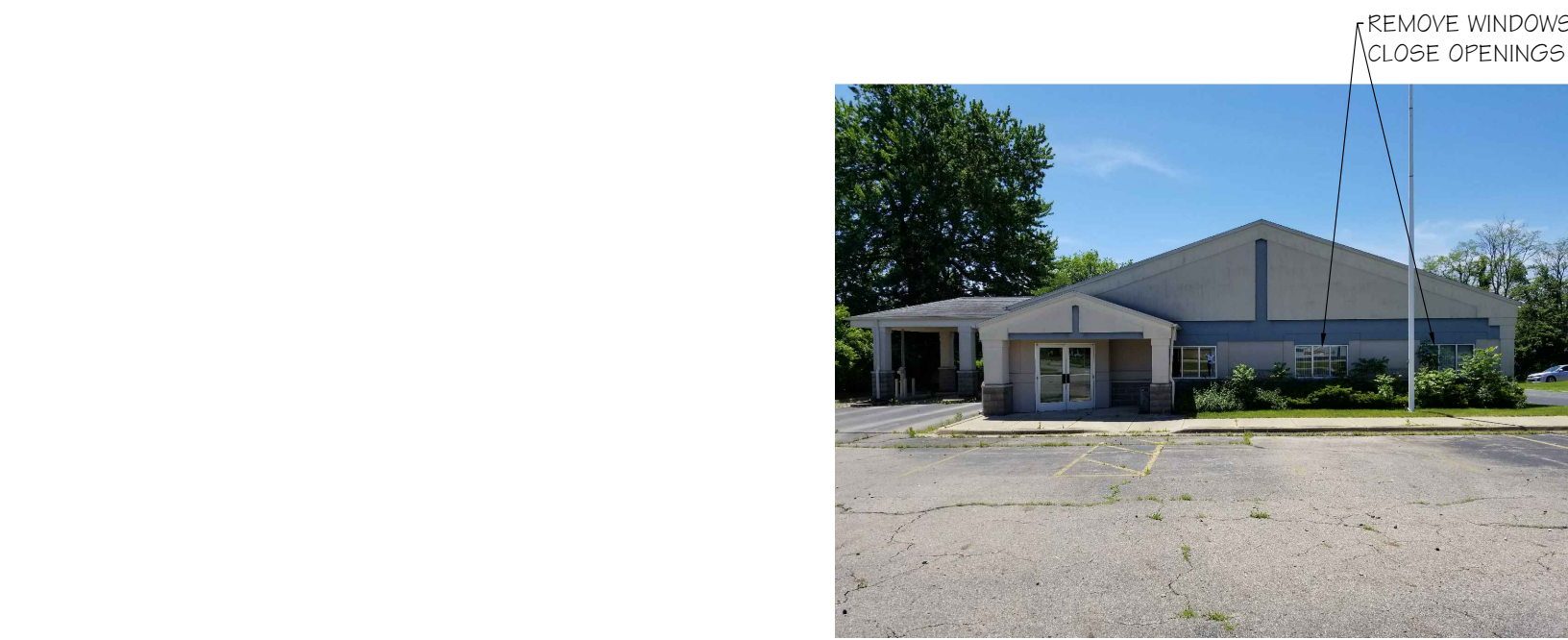
City of Battle Creek  
SITE PLAN REVIEW PROCESS

Revision 10/15/21

Site Plan Review is required for any building addition or new construction of any use other than a single or two family residential use. Site Plan Review is also required for any new parking lot over 4 parking spaces or for any parking lot addition.

<b>INTAKE:</b>	One copy of the completed site plan application and a copy of the digital plans/drawings, along with a check for the fee is submitted to the Planning Department in Rm. 117 of City Hall, 10 N. Division St., Battle Creek, MI. The fee, bond, and insurance schedule adopted the following fees for site plan review:
Planning Admin	<b>For properties under 5 acres in size: \$150; For properties over 5 acres in size: \$250</b>
Planner	<i>NOTE: The site plan review process is a separate process from the building plan review/permit application process, and will be required in a separate submittal. They can occur simultaneously with the understanding by the applicant that required changes to the site plan may result in changes to the building plan necessitating additional submittal. In the instance where a building plan is submitted and includes site plan information for approval, the applicant will be required to separate the plans for independent submittal or submit additional site plans for SPR review/approval.</i>
Planner	<i>In the instance a building plan/permit application is forwarded to the Planning Department where the project requires a site plan review, the Planner will make contact with the applicant and inform them that SPR process is required and the building plan/permit application will be held by Planning until such time the SPR is submitted/approved.</i>
Planning Admin	<p>The Planning Admin. will send an email regarding the application received that will state the address, project name, and basic information (new build/addition, square footage, etc.) of the site plan and application to following individuals letting them know a site plan has been received: Susan Cronander, Planner, Carl Fedders, Tad McCrumb, Duane Davis, Greg Rickmar, Randy Pufpaff, Ted Hanson, Don Wilkinson, Paul Sheldon, Chad Russell, Quincy Jones.</p> <p>The Planning Admin. will enter the site plan onto the site plan tracker located on the shared drive, and create a SPR permit in BS&amp;A with a "Site Plan Review" inspection scheduled for 15 days for the Planner. The application and digital plans will be attached under the permit in BS&amp;A and also, input in DPW "Cityworks" program.</p>
<b>REVIEW:</b>	Site plan review is performed as follows: Planning - zoning, DPW - utilities, traffic, stormwater, legal description, Inspections/Fire - fire suppression needs, hydrant location, FD access. Departments may not necessarily have codes that address the site specifically but should review the site plan to determine if there are any items that may impact layout of a project.
Planning DPW Inspections Fire Inspector	Departments have up to seven days to provide comments to the Planner, Planning Dept.; Comments should indicate if the site plan is approved, approved with conditions, or denied. Comments should also indicate if a revised plan is required. <i>Note: Revised plans will be submitted and reviewed using the same process as original plans.</i>
<b>DECISION</b>	The official response will be drafted and sent to the applicant. Copies of this letter and the one from DPW will be attached into BS&A under the "Site Plan Review" inspection, and the inspection will be approved/denied accordingly. The permit will remain open until such time the project is complete.
: Planner	
<b>INSPECTION:</b>	<u>Request for Footing:</u> At such time a footing inspection is requested, the CSR will schedule a "Compliance Inspection" under the SPR permit for the Planner. For parking lot projects, the Planner will schedule their own "Compliance Inspection".
Inspections / CSR's	
Planner	<u>Zoning Inspection:</u> A compliance inspection will be scheduled and performed by the Planner, and will take place once per month throughout the construction to ensure the property is being constructed as approved in the site plan. The inspection record will be documented in BS&A and project status listed on the SPR tracker. If the site plan is being developed contrary to the approved plan, the Planner will take photos of the violations, contact the developer, and upload photos, comments, and any written correspondence into BS&A.
Inspections / CSR's	<u>Certificate of Occupancy:</u> At the time a project is requesting a Certificate of Occupancy, the CSR will schedule a "Final Inspection" for the Planner for SPR compliance. A C of O shall not be issued until the SPR permit has been closed out.
Planner	<u>SPR Permit Close-Out:</u> The Planner will ensure that a digital copy of the approved site plan has been received and entered into BS&A under the permit. The permit shall be closed out when all final actions on a specific site plan is taken.





NORTH (FRONT) ELEV'N PHOTO

SCALE: NONE



SOUTH (REAR) ELEV'N PHOTO

SCALE: NONE



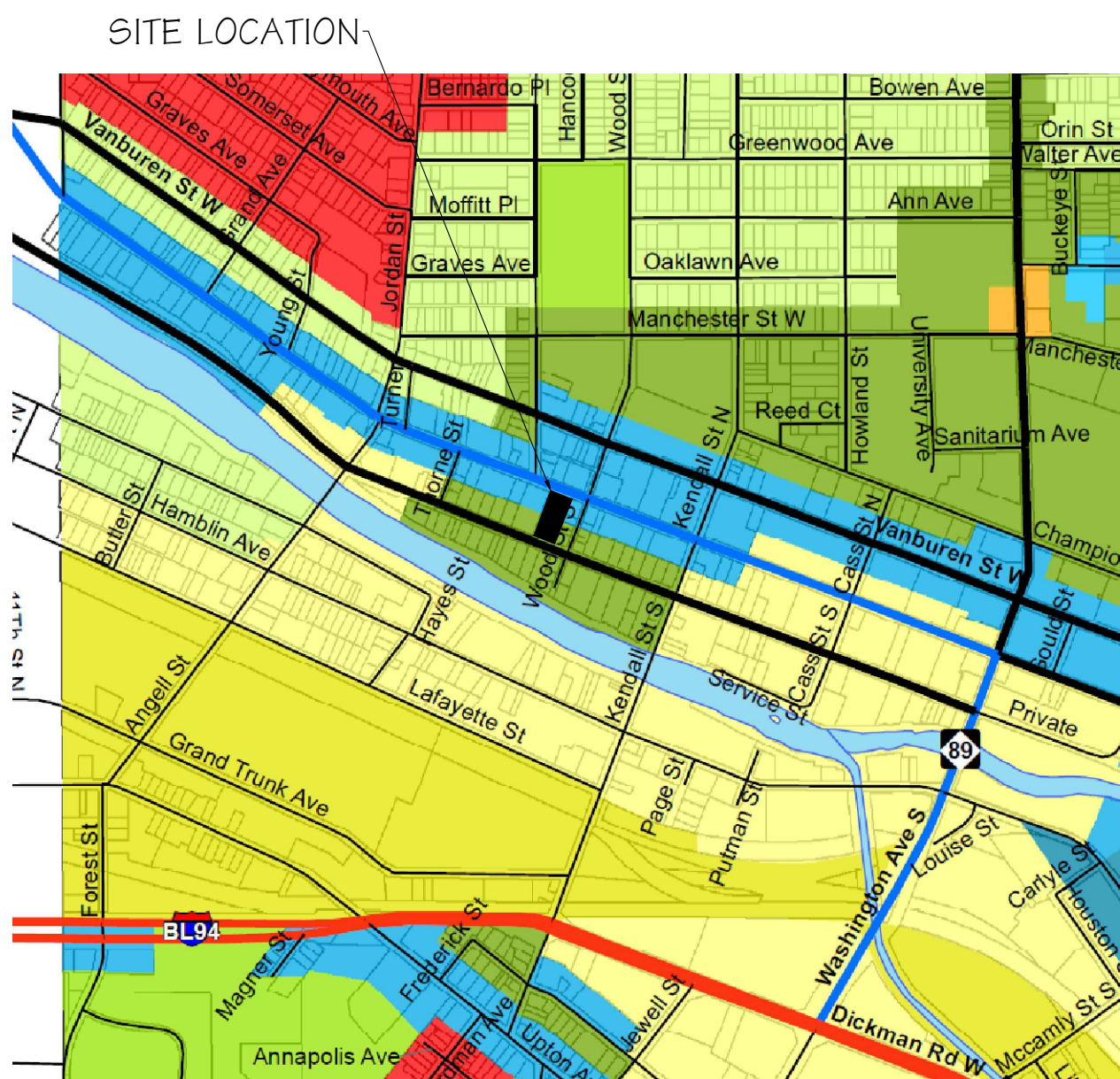
WEST (SIDE) ELEV'N PHOTO

SCALE: NONE



EAST (SIDE) ELEVATION PHOTOGRAPHS

SCALE: NONE



VICINITY MAP

SCALE: NONE



## SITE DATA

LEGAL DESCRIPTION = MOREYS ADDITION LOTS 2, 3, 8, & 9 (LOT 3 ASSESSED AS 5620-00-004-0 IN 1999; LOT 8 ASSESSED AS 5620-00-009-0 IN 1999; LOT 9 ASSESSED AS 5620-00-010-0 IN 1999)

ZONING = C-3

SITE AREA = 34,848 SQ. FT. (0.800 ACRE)

BUILDING AREA = 2,685 SQ. FT.

PARCEL ID# = 5620-00-003-0

PROPERTY ADDRESS = 477 W MICHIGAN AVE, 49037-2232

OWNER = 477 MICHIGAN AVE LLC

TOTAL PARKING REQUIRED = 5 SPACES + 2.5 SPACES PER 1,000 SQ. FT. (RETAIL)  
= (2,685 / 1000) x 2.5 = 6.71 + 5 = 11.71 SPACES  
= 12 SPACES

TOTAL PARKING PROVIDED = 23 SPACES (1 BARRIER FREE)

LOADING REQUIRED / PROVIDED = (1) 12' x 30' SPACE

LANDSCAPING REQUIRED

FRONT PARK'G YARD = 1 TREE, 1 SHRUB / 30 LIN. FT. - ACCESS DR. x 125%  
= 116.5 - 22 / 30 x 1.25 = 3.9 = 4 TREES, 4 SHRUBS  
REAR & SIDE PARK'G YARDS = 1 TREE, 6 SHRUBS / 30 LIN. FT. x 125% =  
84 + 210.5 + 210.5 / 30 x 1.25 = 21.04 = 21 TREES, 126 SHRUBS  
INTERIOR = 1 TREE / 8 SPACES, 10% OF PARKING AREA = 23 / 8 = 3 TREES, 7463 SQ. FT. PARKING AREA x 10% = 746.3 SQ. FT.  
TOTAL LANDSCAPING REQUIRED = 28 TREES, 130 SHRUBS, 750 SQ. FT. INTERIOR PLANTING AREA  
LANDSCAPING PROVIDED = 28 TREES, 130 SHRUBS

USE GROUP = M (MEDICAL MARIHUANA FACILITY - PROVISIONING CENTER)

CONSTRUCTION TYPE = 5B (RETAIL)

OCCUPANT LOAD = (MERCANTILE) 2,685 SF / 60 GROSS = 44.75 PERSONS

= 45 PERSONS

FIRE SUPPRESSION = NOT REQUIRED, OCCUPANCY AREA < 12,000 SQ. FT.

FIRE ALARM = NOT REQUIRED, OCCUPANT LOAD < 500 PERSONS

SECURITY ALARM SYSTEM = REQUIRED, DRAWINGS TO BE SUBMITTED

VIDEO SURVEILLANCE SYSTEM = REQUIRED, DRAWINGS TO BE SUBMITTED

## APPLICABLE CODES

ALL WORK IS TO BE IN ACCORDANCE WITH THE FOLLOWING APPLICABLE CODES:

2015 MICHIGAN BUILDING CODE

2015 MICHIGAN MECHANICAL CODE

2015 MICHIGAN PLUMBING CODE

2015 MICHIGAN REHABILITATION CODE FOR EXISTING BUILDINGS

ICC A117.1-2009 ACCESSIBLE AND USABLE BUILDINGS AND FACILITIES

2014 NATIONAL ELECTRICAL CODE

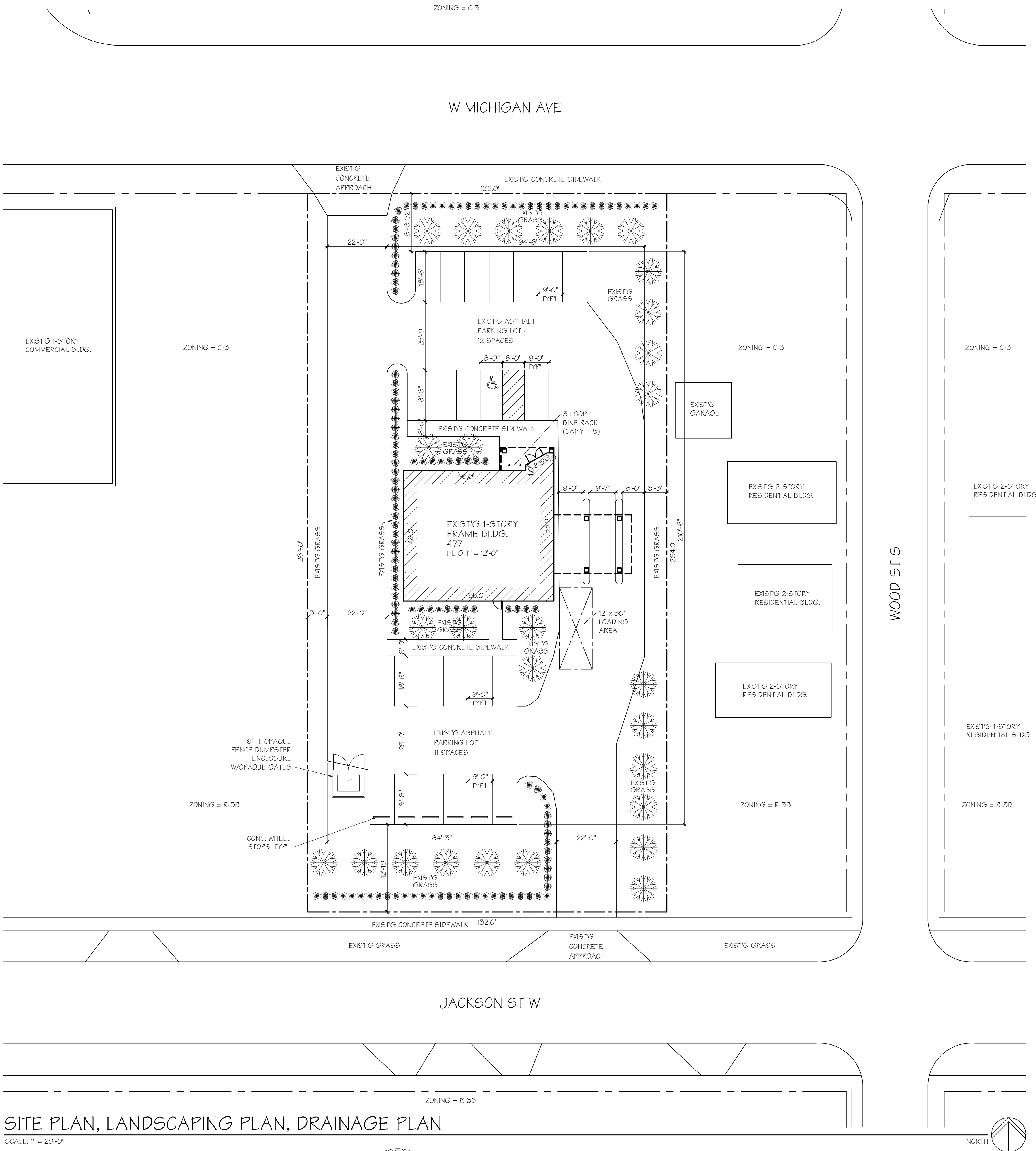
2011 MICHIGAN ELECTRICAL CODE PART 8 RULES

## GENERAL NOTES

1. IT IS THE RESPONSIBILITY OF ALL CONTRACTORS TO CALL THE CITY OF BATTLE CREEK INSPECTIONS DIVISION TO ARRANGE ALL REQUIRED INSPECTIONS PER THAT PARTICULAR TRADE.
2. INSTALL AND MAINTAIN PORTABLE FIRE EXTINGUISHERS AS REQUIRED BY SECTION 906 OF THE INTERNATIONAL FIRE PREVENTION CODE.
3. PARKING LOT AREA TO CONFORM TO ALL BARRIER FREE REQUIREMENTS PER SECTION 1104 OF THE MICHIGAN BUILDING CODE.
4. BUILDING MUST HAVE AT LEAST ONE ACCESSIBLE PUBLIC ENTRANCE (60%) AS REQUIRED BY SECTION 1105 OF THE MICHIGAN BUILDING CODE.
5. EXISTING UTILITY SERVICES TO REMAIN - NO UTILITY SERVICES ARE CHANGED AND NO NEW SERVICES ARE PROPOSED.
6. SEPARATE PERMIT REQUIRED FOR SIGNAGE.

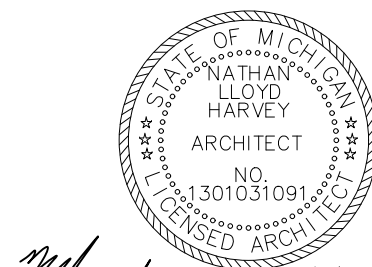
## SITE PLAN REVIEW NOTES

- (a) The title of the proposed project - PROVIDED
- (b) The name of the property owner, proprietor or project director - NAME OF OWNER & DEVELOPER PROVIDED
- (c) The location of the project, the street name and the address - PROVIDED
- (d) Professional seal of the architect, engineer or designer, and their name, address, phone number, and email address, if available - PROVIDED
- (e) The date drawn and subsequent revision dates - PROVIDED
- (f) The scale of the drawing, the north directional arrow, and vicinity map showing location of project - PROVIDED
- (g) Property line dimensions, including all easements and rights-of-way, existing and proposed, building set-back lines; gross and net acreage; and zoning classification of the site and adjacent properties - PROVIDED
- (h) Location of adjacent property lines, buildings and structures, sidewalks, parking lots, rights-of-ways, abutting streets, curb cuts, and access easements within 50 feet of the subject property - PROVIDED
- (i) Existing man-made or natural features such as wetlands, waterways, woodlands, and areas with slopes greater than 10%, with an indication of which features will be retained or removed - NOT APPLICABLE
- (j) The topography, existing and proposed, including contours with a maximum of two-foot contours, or spot elevations sufficient to determine the topography of the site, so as to clearly indicate required cutting, filling, and grading. The site plan shall contain arrows indicating direction of drainage and stormwater calculations - NOT APPLICABLE, PROPOSED SITE WORK DOES NOT ALTER GRADING
- (k) Location and dimension of existing and proposed buildings or structures, including intended uses, floor area, number of floors, width, length, height, number of type of dwelling units (where applicable), and setback distances - PROVIDED
- (l) The location of sidewalks, rights-of-ways, abutting streets, curb cuts, and access easements, ingress and egress drives, both existing and proposed, to thorough-fares, showing traffic patterns into the site from the same, including ultimate pavement width, acceleration lanes and the like; the location of private and public pedestrian walkways - PROVIDED
- (m) On-site traffic circulation and parking areas, including the number and size of parking bays, width of maneuvering aisles, designation of fire lanes, the location and size of handicapped parking, surface materials and striping of the parking lot surface to delineate parking bays and individual spaces - PROVIDED
- (n) The location of loading berths, truck docks, truck wells, service drives and exterior parking lot lighting, including photometric plan - PROVIDED WHERE APPLICABLE
- (o) The location and size of all existing and proposed public and private utilities above and below ground proposed to service the project and the location of any public or private utility easements, to include water, gas, electric, cable, stormwater, stormsewer, catch basins, and fire hydrants - NOT APPLICABLE, NO PROPOSED UTILITY WORK
- (p) The spatial relationship of buildings on the site, including pedestrian walkways, protective or retaining walls, fences, landscaped buffers, either existing or proposed, and the materials to be utilized, if required - PROVIDED
- (q) The location of signs, either existing or proposed, and an indication of their size, height and design pursuant to City sign regulations - TO BE DETERMINED IN ACCORDANCE WITH CHAPTER 1296
- (r) A landscaping plan of the site, including greenbelts or buffers if required, and the identification of all plant and landscape material to be utilized as to type, size and location - PROVIDED WHERE APPLICABLE
- (s) The location and proposed method of screening trash refuse receptacles - NOT APPLICABLE
- (t) Location of outdoor storage/display areas including a description of the items to be located outdoors, as well as the location and description of required screening - NOT APPLICABLE
- (u) Storage and containment areas if the use of hazardous substances is involved - NOT APPLICABLE
- (v) Any additional information as may be required of the applicant to properly evaluate the proposed development.



## SITE PLAN, LANDSCAPING PLAN, DRAINAGE PLAN

SCALE: 1" = 20'-0"

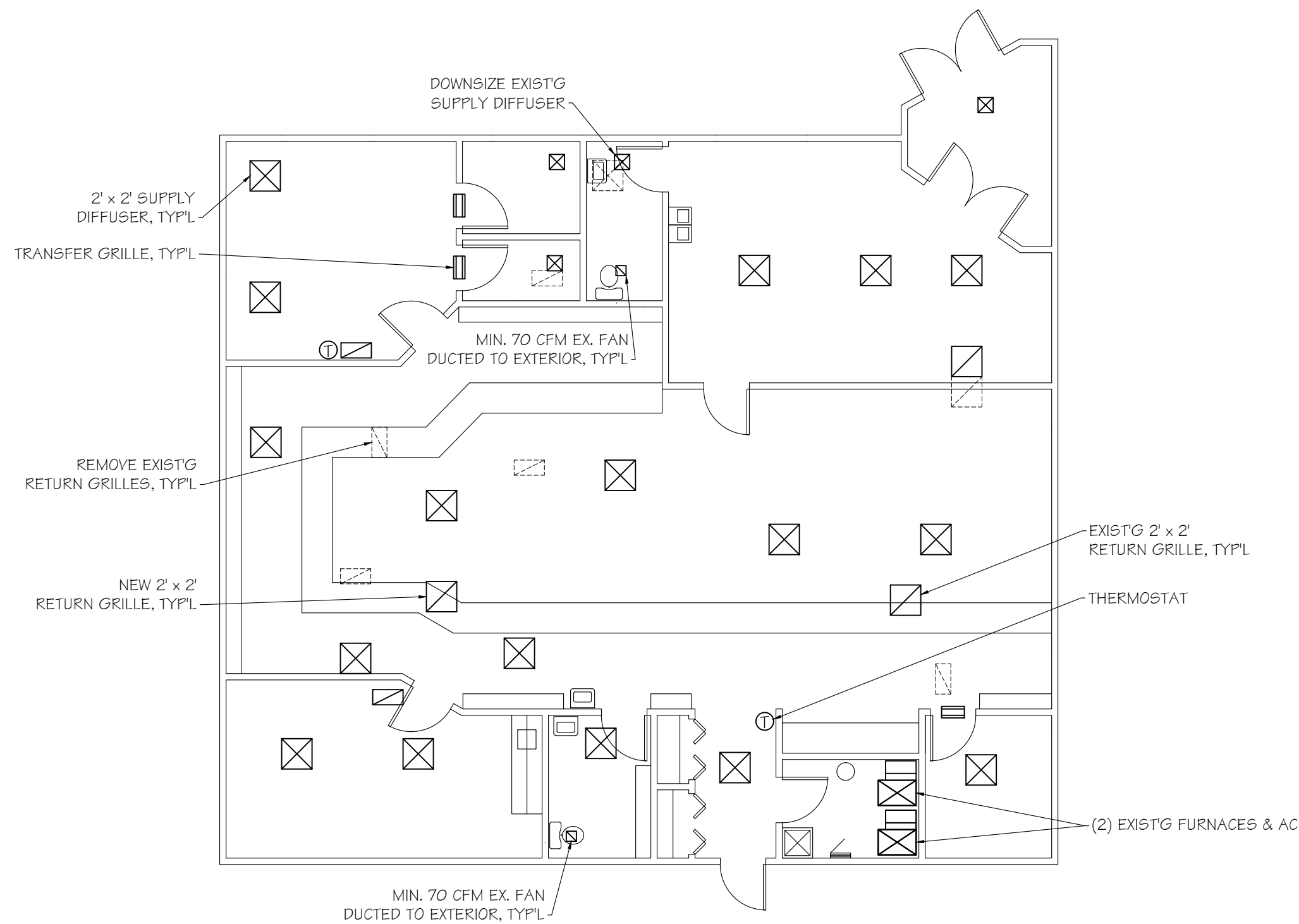


DETROIT ARCHITECT

Nathan L. Harvey, AIA  
Call: (313) 615-1115, Off: (313) 869-4900, Fax: (313) 869-4141  
13718 Woodward Ave, Highland Park, MI 48203, nathan.harvey@detroitarchitect.com

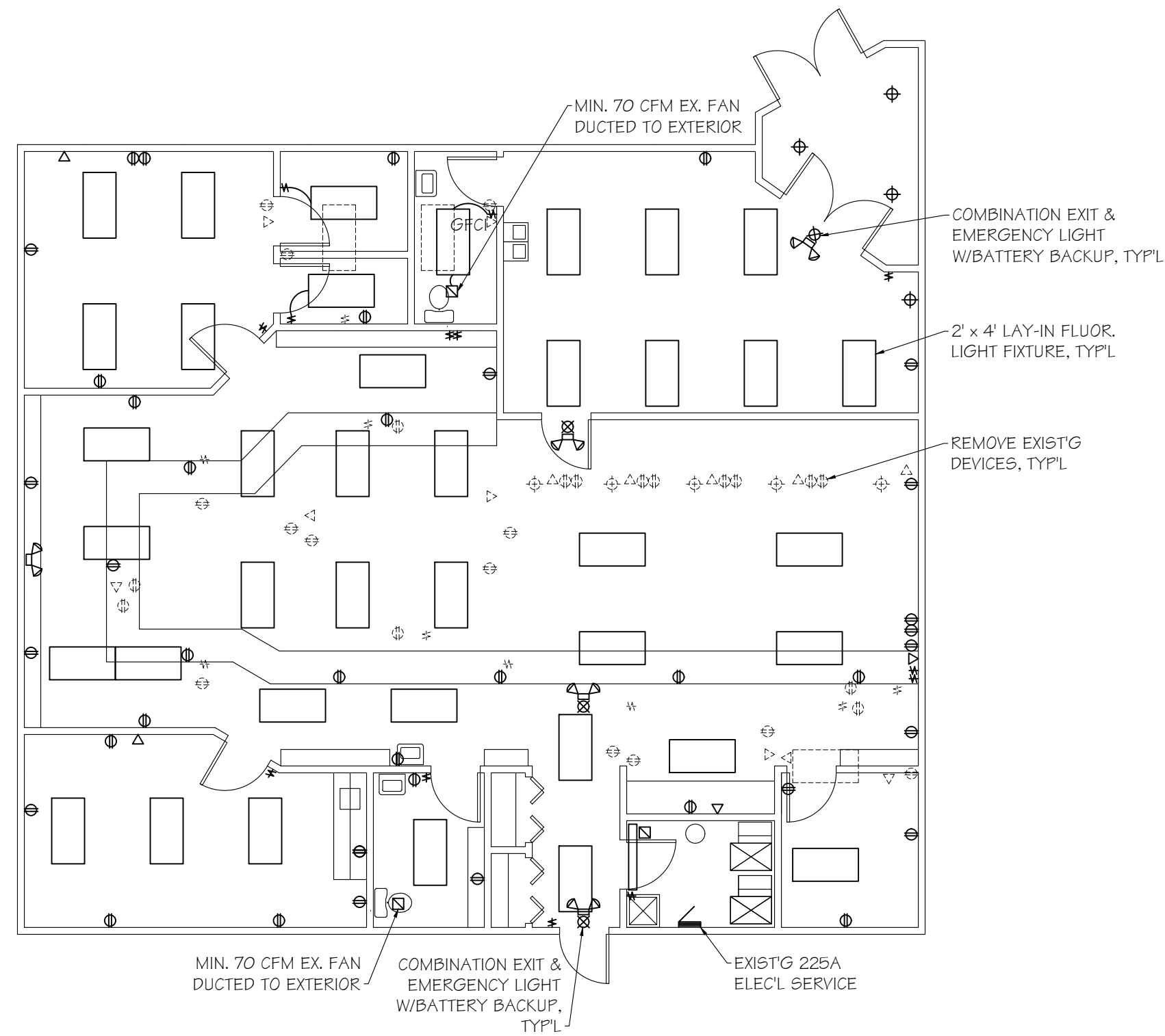
Medical Marihuana Facility Provisioning Center - 477 W Michigan Ave

Developer: PC Development Group LLC, 180 Vester St, Ferndale MI 48220  
Contact: Nathan Harvey, 313-615-1115  
SITE PLAN, SITE DATA, VICINITY MAP, ELEVATION PHOTOGRAPHS, GENERAL NOTES  
Scale: 1" = 20'-0" 7/8/2019



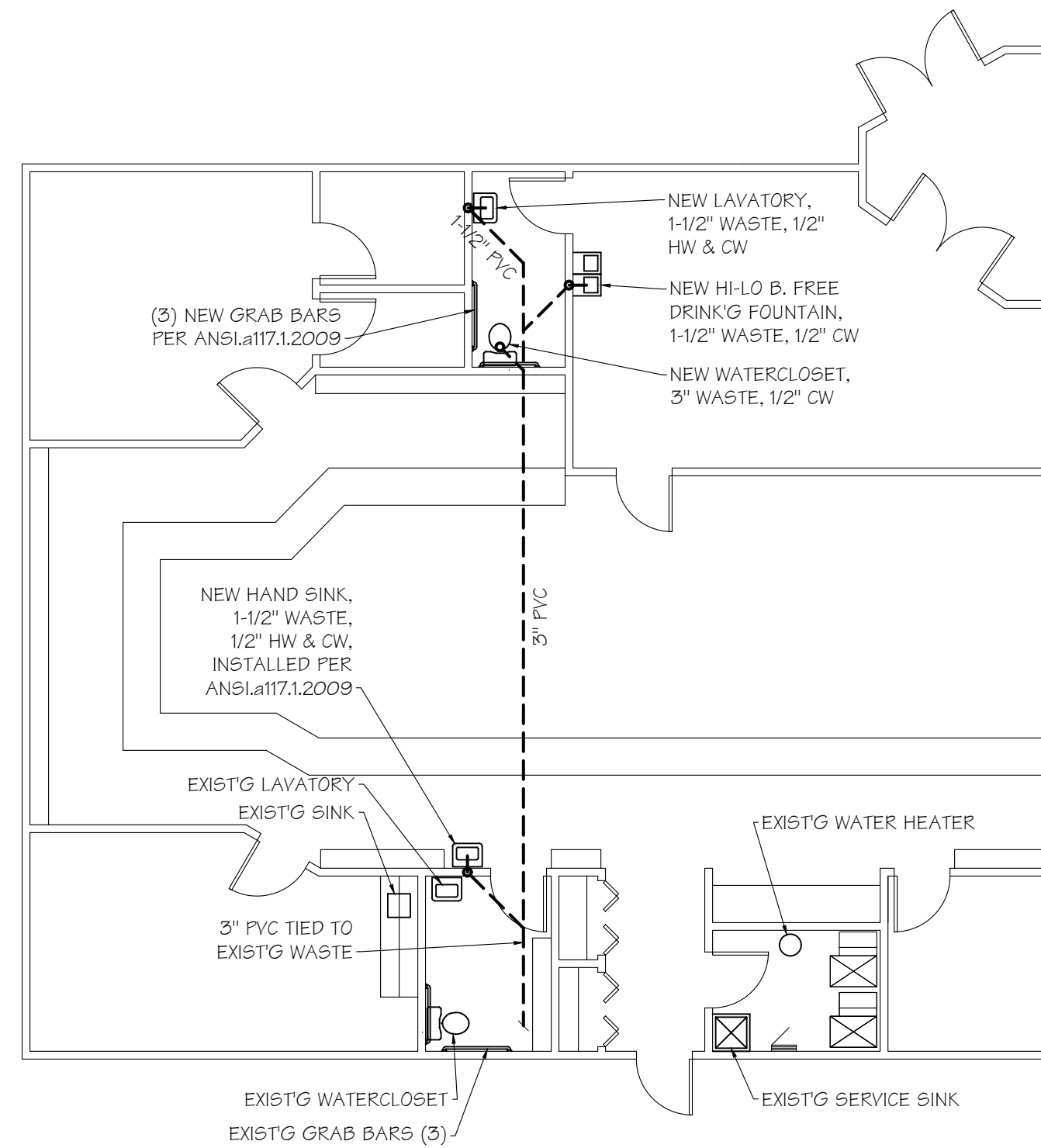
MECHANICAL PLAN

SCALE: 1/8" = 1'-0"



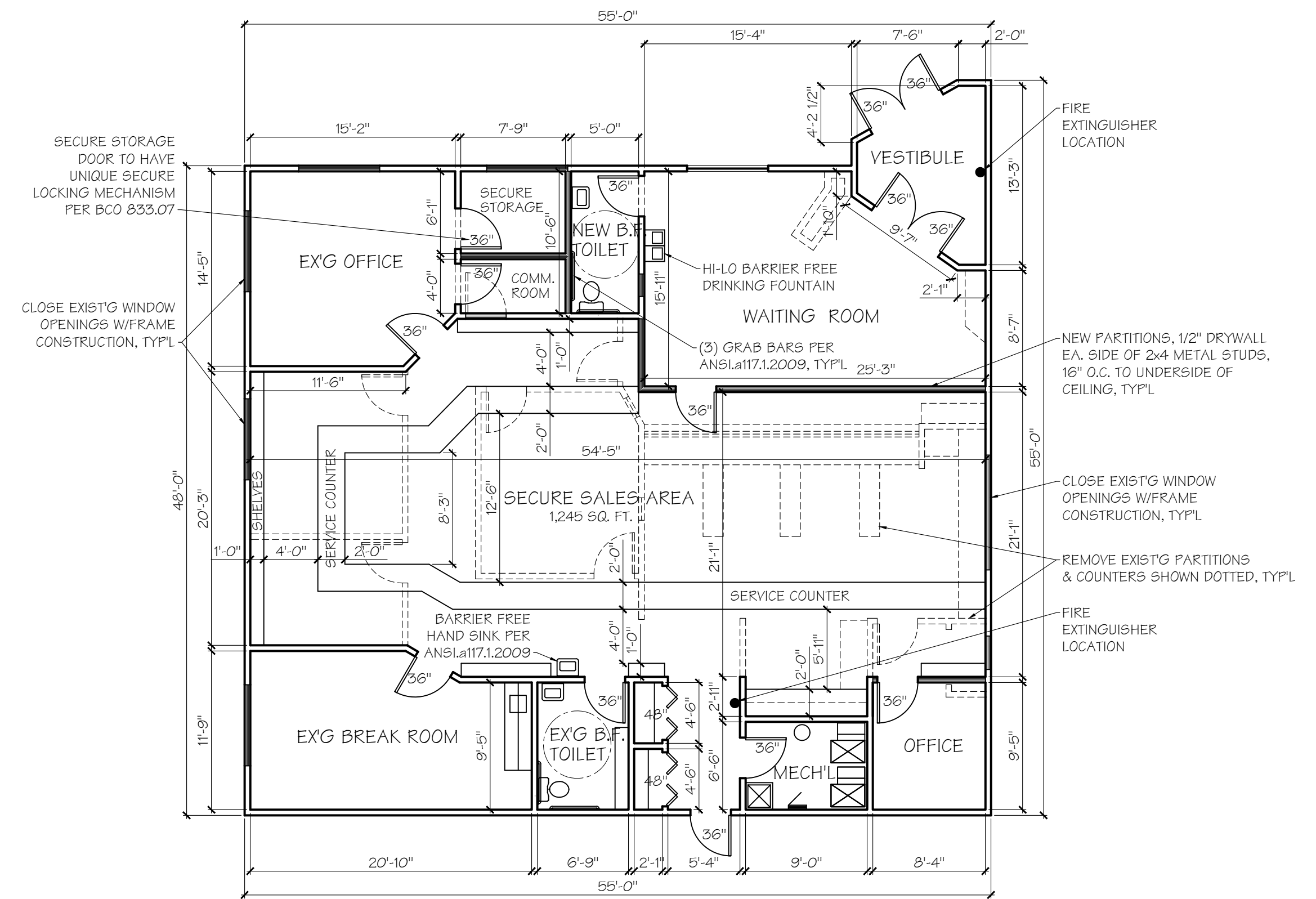
ELECTRICAL PLAN

SCALE: 1/8" = 1'-0"



PLUMBING PLAN

SCALE: 1/8" = 1'-0"



FLOOR PLAN

SCALE: 1/8" = 1'-0"

## GENERAL NOTES

- IT IS THE RESPONSIBILITY OF ALL CONTRACTORS TO CALL THE CITY OF BATTLE CREEK INSPECTIONS DIVISION TO ARRANGE ALL REQUIRED INSPECTIONS PER THAT PARTICULAR TRADE.
- INSTALLED EQUIPMENT TO BE ENERGY STAR CERTIFIED.
- ENTIRE BUILDING WILL MEET THE MOST CURRENT ADOPTED VERSION OF THE MICHIGAN ENERGY CODE FOR COMMERCIAL BUILDINGS.
- ENTIRE BUILDING WILL BE ENERGY STAR CERTIFIED AND INSPECTED BY AN ENERGY STAR QUALIFYING PERSON.
- THERE SHALL NOT BE ANY EXPOSED PAPER FACED INSULATION IN CONCEALED SPACES - MUST HAVE PROPER FLAME SPREAD RATING OR PROTECTED WITH AN APPROVED THERMAL BARRIER.

## MECHANICAL NOTES

- NEW FURNACE & AIR CONDITIONING UNITS TO BE ENERGY STAR CERTIFIED.
- HVAC UNITS TO HAVE CARBON FILTER/SCRUBBER FOR ODOR CONTROL.

## ELECTRICAL NOTES

- DRAWINGS INDICATE BRANCH CIRCUIT WORK ONLY, SERVICE IS LESS THAN 400 AMPS, BUILDING AREA IS LESS THAN 3,500 SQ. FT., PER 2011 MECR PT 8 80.21
- NEW INSTALLED ELECTRICAL EQUIPMENT, INCLUDING WATER HEATER, APPLIANCES (OVEN, REFRIGERATOR, FREEZER), FURNACE & AIR CONDITIONING UNITS, LIGHTING, FANS, TELEVISIONS, VIDEO RECORDING EQUIPMENT, TELEPHONES, SPEAKER SYSTEMS, COMPUTERS & MONITORS, ETC. TO BE ENERGY STAR CERTIFIED.
- ELECTRICAL CONTRACTOR TO PROVIDE SECURITY ALARM SYSTEM & VIDEO SURVEILLANCE SYSTEM. ELECTRICAL CONTRACTOR TO SUBMIT EQUIPMENT SPECIFICATIONS & LAYOUT DRAWING FOR OWNER & MUNICIPALITY APPROVAL PER BCO 833.07 AND MI MMFLA EMERGENCY RULE 27.

## PLUMBING NOTES

- PLUMBING CONTRACTOR TO PROVIDE PROPER CLEANOUTS, VENTING, RE-VENTING & VENTS THRU ROOF AS REQUIRED.
- ALL LAVATORY FIXTURES TO BE WATERSENSE LABELED.



*Nathan L. Harvey*

## DETROIT ARCHITECT

Nathan L. Harvey, AIA  
Call: (313) 615-1115, Off: (313) 869-4900, Fax: (313) 869-4141  
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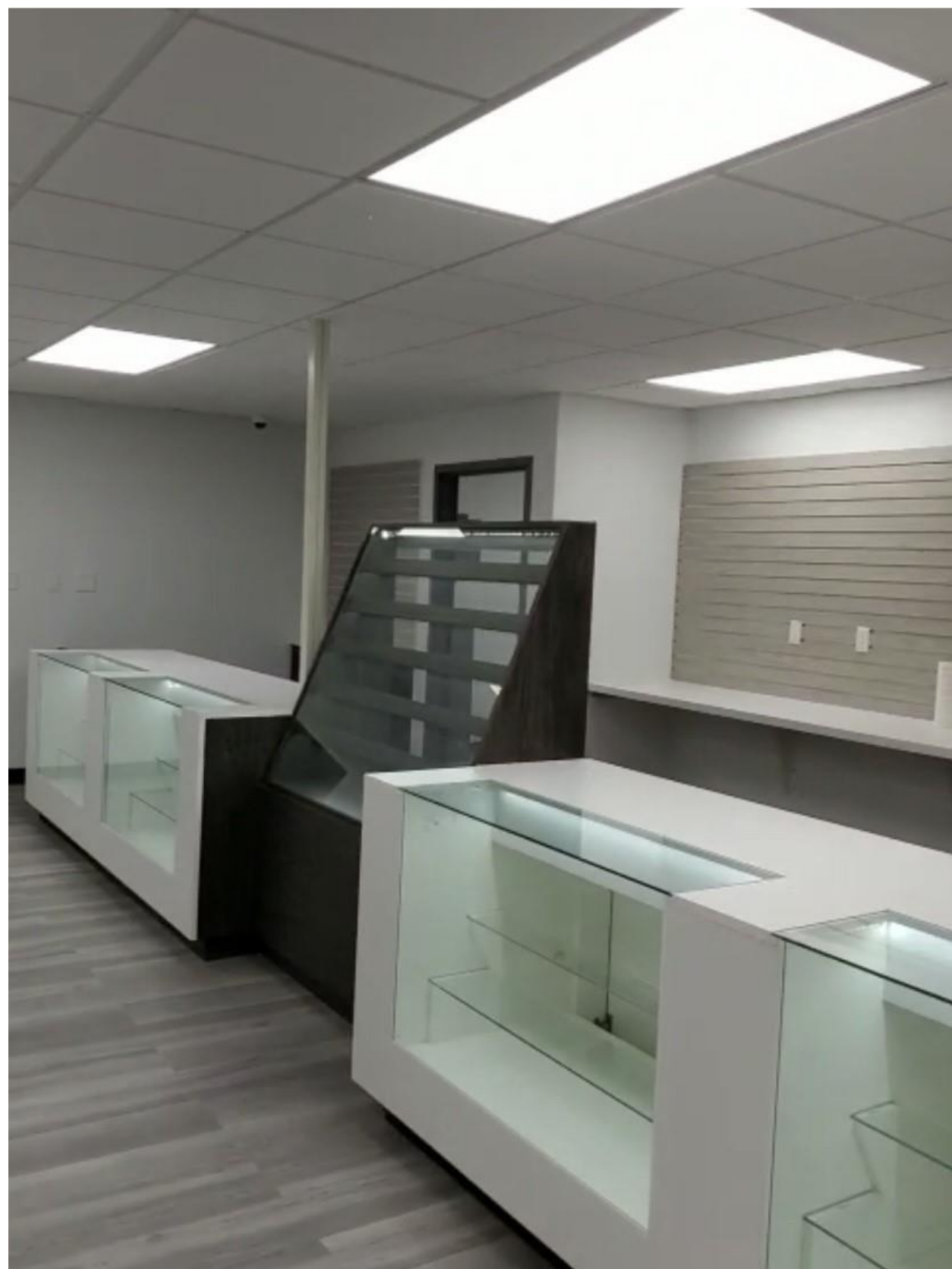
## Medical Marihuana Facility Provisioning Center - 477 W Michigan Ave

Developer: PC Development Group LLC, 180 Vester St, Ferndale MI 48220  
Contact: Nathan Harvey, 313-615-1115  
FLOOR PLAN, MECHANICAL PLAN, ELECTRICAL PLAN, PLUMBING PLAN, DETAILS  
Scale: 1/8" = 1'-0"  
7/8/2019





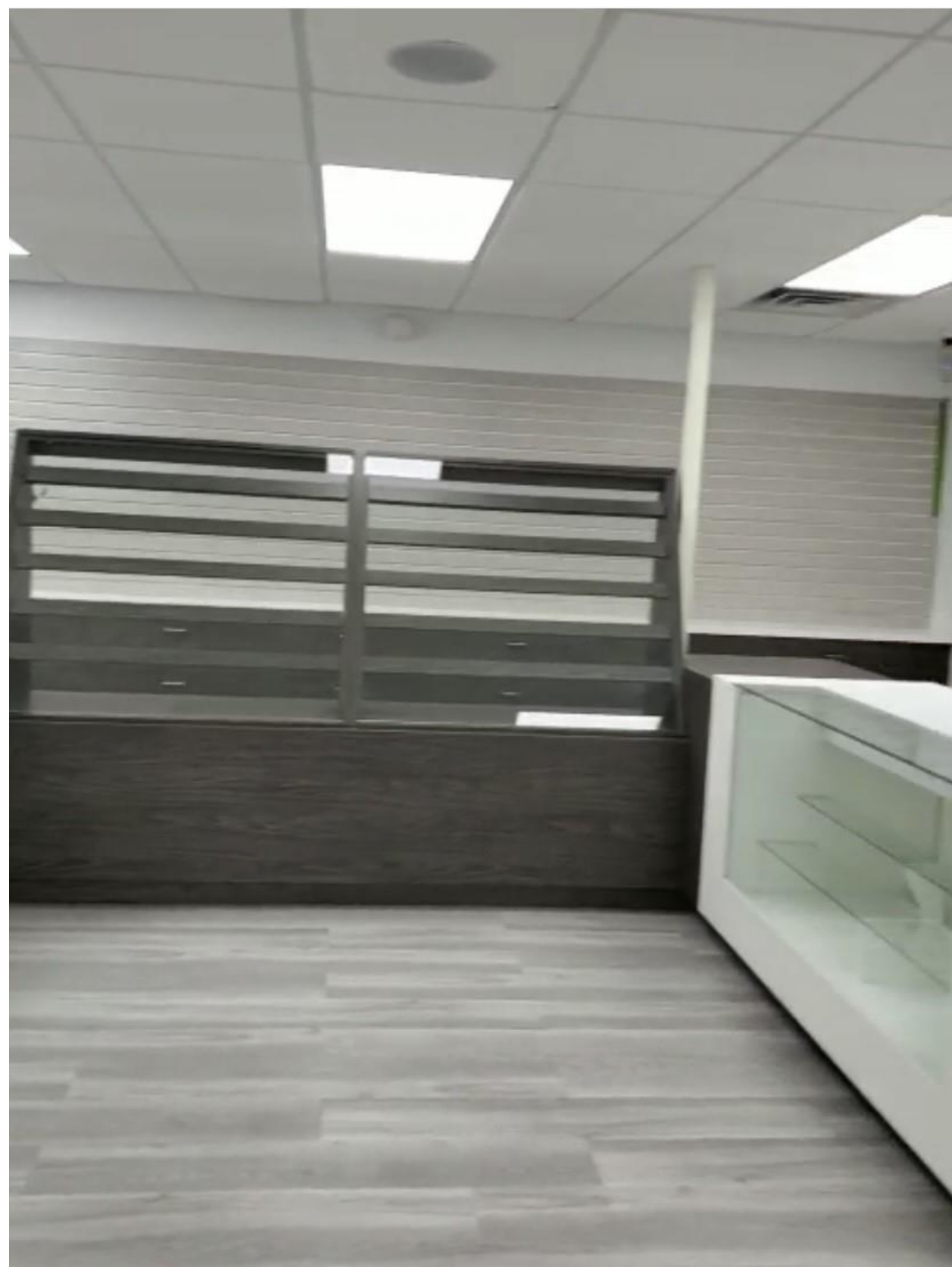


























**CITY OF BATTLE CREEK  
PLANNING COMMISSION  
10 North Division, Battle Creek, MI 49014  
Minutes for Wednesday, December 14, 2022**

**MEETING CALLED TO ORDER:**

By Chairperson Godfrey at 4:15 p.m. This meeting was held in person.

**ATTENDANCE:** Chairperson Godfrey asked for attendance to be noted.

**Commission Members Present:**

**Comm. Newman**, present

**Comm. Spranger**, present

**Comm. Godfrey III** present

**Comm. Gray**, present

**Commissioners Absent:**

**Mayor Behnke**, present

**Comm. Morris**, present

**Comm. Hughes**, present

**Staff Present:** Travis Sullivan, Planner, Melody Carlsen, Administrative Assistant, Marcel Stoetzel, Deputy City Attorney, Marcie Gillette, Community Services Director.

**APPROVAL OF MINUTES:** Previous meeting minutes submitted for approval for November 16, 2022.

**MOTION MADE BY COMM. NEWMAN TO APPROVE THE MINUTES FOR NOVEMBER 16, 2022 MEETING MINUTES AS PRESENTED BY STAFF. SECONDED BY COMM. SPRANGER.**

**ROLL VOTE:** Chairperson Godfrey asked everyone in favor to signify by saying “aye”:

**ALL IN FAVOR, NONE OPPOSED, MOTION APPROVED.**

**CORRESPONDENCE:** None.

**ADDITIONS/DELETIONS:** Removal of item B; Z-04-22. Removal of Special Use Permit for 50 Spencer Street, Kingdom Builders as advertised in the public hearing notice. Will be added to the future body when it is ready.

**PUBLIC HEARINGS/DELIBERATIONS:**

**CHAIRPERSON GODFREY** asked to open the public hearing for item A; (S-19-22) on the agenda.

- A. SPECIAL USE PERMIT S-19-22:** Petition from 477 W Michigan, Inc., reapplying for a Special Use Permit for property located at 477 W Michigan Ave. The request is for an Adult Use marijuana retail center. Property is zoned “T-3 Neighborhood Commercial District” pursuant to Sections 1251.23, 1251.24, 1251.26, 1240.13 and 1281.05 of the zoning code. PARCEL #5620-00-003-0. LEGALLY DESCRIBED AS MOREYS ADD LOTS 2, 3, 8 & 9 ((LOT 3 ASSESSED AS 5620-00-004-0 IN 1999; LOT 8 ASSESSED AS 5620-00-009-0 IN 1999; LOT 9 ASSESSED AS 5620-00-010-0 IN 1999)).

**Staff Presentation:** Travis Sullivan, City Planner, gave the staff report presentation. Reapplication for 477 W Michigan Avenue. Originally presented at the August Planning Commission meeting with a recommendation for disapproval to the City Commission. City Commission disapproved the item at their September meeting. Applicant is reapplying for a special use permit for an Adult-Use Marijuana facility at the location at 477 W Michigan Avenue.

**CHAIRPERSON GODFREY** called for Commissioner Questions: None.

**Applicant:** Joey Kejbou, attorney was present on behalf of the applicant. He stated his client is resubmitting the same application for the same location. Stated they have done their due diligence in research for regulatory and zoning ordinances as it is required for marijuana facilities in the city of Battle Creek. No proximity requirements for Day Care Centers. They have submitted their application and paid the fees. Stated a Day Care center currently does not exist on Michigan Avenue, anywhere near the proposed facility.

**Deputy City Attorney Stoetzel** discussed the procedure whereby the Planning Commission will decide whether to conduct a re-hearing of the item.

**MOTION MADE BY COMM. GRAY, SECONDED BY COMM. NEWMAN, TO MOVE FORWARD WITH THE REAPPLICATION OF SPECIAL USE PERMIT S-19-22.**

**Voted Yes:**

Comm. Gray  
Comm. Newman  
Comm. Hughes  
Chair Godfrey

**Voted No:**

Comm. Spranger  
Comm. Morris  
Mayor Behnke

**Chairperson Godfrey** asked for staff to provide a report.

**Staff Presentation:** Travis Sullivan, City Planner, gave a brief review of the item, as presented at the August 2022 Planning Commission meeting.

**Applicant:** Joey Kejbou presented briefly on behalf of the applicant.

**MOTION MADE BY COMM. GRAY, SECONDED BY COMM. NEWMAN, TO RECOMMEND APPROVAL OF S-19-22.**

**Chairperson Godfrey** called for discussion. Comm. Gray asked attorney Stoetzel for clarification on exemptions in the ordinance for childcare centers. Comm. Gray also asked the Chairperson if he would entertain hearing from Voces leadership. Chairperson Godfrey agreed.

**Jose Luis Orozco Jr., Voces Executive Director**, expressed his concerns with a marijuana shop being close to their facility. Stated he had not heard from the facility until the day before the meeting and the day of. Did not feel their concern for community was sincere. Asked the commission to consider adding Preschools to the city ordinance.

**Mayor Behnke** expressed concerns about Special Needs Adult Care Facility close by and the proposed Childcare Center next door.

**CHAIRPERSON GODFREY** asked for a roll call vote.

**Voted Yes:**

Comm. Hughes  
Comm. Godfrey  
Comm. Newman

**Voted No:**

Comm. Spranger  
Comm. Morris  
Comm. Gray  
Mayor Behnke

Mayor Benke stated concerns about the proposed use meeting item C (use will not be hazardous to existing or future neighborhood uses). Mayor Behnke expressed concern regarding the special needs adult care facility next door, as well as the proposed Voces preschool facility.

Comm. Gray expressed concerns regarding the harmoniousness of the proposed use within the neighborhood. Does not feel the item satisfies items A and C.

Comm. Spranger voted no based on adverse effects upon the neighborhood and that this is the third facility within a three mile radius.

Comm. Morris stated that his no vote was based on the same information provided by Comm. Spranger.

**MOTION FAILED.****PUBLIC HEARINGS/DELIBERATIONS:**

**CHAIRPERSON GODFREY** asked to open the public hearing for item C: Special Use Permit (S-17-22) on the agenda.

- C. SECIAL USE PERMIT S-17-22:** Petition from Voces to allow for a Childcare Center located at 520 W Michigan Avenue. Property is zoned T-3 Neighborhood Commercial District pursuant to Section 1240.12(c) of the zoning code. PARECEL 37400-00-005. LEGALLY DESCRIBED AS RIVERS ADD LOGTS3, 4, & E 40 FT OF LOT 5 AS MEASURED ALG SLY LI OF LOT 5.

**Commissioner Newman:** recusing himself from this petition based on the fact that he was the architect for the project.

**Staff presentation:** Travis Sullivan, City Planner, gave the staff report presentation. Special use permit to convert the existing building at 520 W Michigan Avenue from the Voces business offices to a preschool. This property is zoned T-3 Neighborhood Commercial District. Adding dumpster enclosure and fencing for a playground at the rear of the building. Staff finds that the item complies with the zoning administrator's determination for childcare centers by a special use, private K- 12 schools are permitted. Staff finds the item is compatible with a number of goals stated in The Master Plan and recommends this approval with the conditions as described in the staff report.

**PUBLIC HEARINGS/DELIBERATIONS:**

**CHAIRPERSON GODFREY** declares public hearing open and calls applicant forward.

**Jose Luis Orozco Jr., Voces Executive Director**, presented. Would like to convert current office spaces into 2 preschool classrooms for 3-4 year olds. Housing up to 32 children. Has communicated with the community and found there is a need for a bilingual and bicultural preschool in the area. Stated there are not enough preschools for student and no bilingual or bicultural preschools.

**Public Comments:**

**Hexxon Villa of 482 W Michigan Avenue:** In favor of school next to his business. Feels it would be a great addition to the neighborhood.

**Resident, Ms. Castillo:** Parent in the community who feels this is a dream come true for her family, the children and the community.

**Resident, Ms. Anna of 236 Ridgeview Drive:** Spoke as a former preschool teacher and feels this project is a good opportunity, especially the fact that it is a bilingual and bicultural preschool. Finds it is hard for parents to find preschools in the city of Battle Creek. States it would be good resource for parents who do not understand the language for school processes here and feels this project would be beneficial to the community.

**Resident, Ms. Clarissa of 85 Battle Creek Avenue:** Feels having a bilingual and bicultural preschool would create a great model for the rest of Battle Creek to follow. In favor of this preschool.

**CHAIRPERSON GODFREY** closed the public hearing and called for a motion.

**MOTION MADE BY COMM. MORRIS AND SUPPORTED BY COMM. SPRANGER TO APPROVE SPECIAL USE PERMIT #S-17-22, FOR A CHILDCARE CENTER LOCATED AT 250 W MICHIGAN AVENUE.**

**CHAIRPERSON GODFREY** called for a roll vote.

**Voted Yes:**

Comm. Spranger  
Comm. Godfrey III  
Comm. Morris  
Comm. Hughes  
Comm. Gray  
Mayor Behnke

**Voted No:**

None

**Recused:**

Comm. Newman

**MOTION APPROVED**

**CHAIRPERSON GODFREY** asked to open the public hearing for item D, Special Use Permit S-18-22 on the agenda.

**D. SPECIAL USE PERMIT S-18-22:** Petition from 327 Capital Avenue SW, LLC requesting a Special Use Permit for property located at 347 Capital Avenue SW. The request is for an Adult Use Marijuana retail center.

Property to zoned "T-3 Neighborhood Commercial District": pursuant to Sections 1251.23, 1251.24, 1251.26, 1240.13 and 1281.05 of the zoning code. PARCEL #1530-00-059-0 LEGALLY DESCRIBED AS ASSRS REPLAT OF CALDWELLS ADD LOTS 56, 57, & 58.

**Staff report:** Travis Sullivan, City Planner, gave the staff report presentation. Applying for an Adult Use Marijuana Retail establishment special use permit. Applicant went through the site plan review process and application process for a medial provisioning facility and did not complete the process. They are not applying for an Adult Use retail establishment. The zoning requirements for this location require a special use permit for the use they are applying for. No site improvements, have provided an as built for the property as it exits. Staff finds item S-18-22 is compatible with the zoning ordinance, as it allows a special use permit for T-3 district, and meets the standards and various goals stated in The Master Plan. With that staff recommends approval with the conditions as outlined in the report.

**CHAIRPERSON GODFREY** declares public hearing open and call for the applicant to come forward.

**Applicant:** Joey Kejbou, attorney was present on behalf of the applicant. Emphasized they have met all criteria and construction is complete minus a few minor repairs, parking lot is complete, lighting is complete. All requirements for state regulations are met.

**Public Comment:**

**Jose Luis Orozco Jr., Voces Executive Director:** Expressed concerns for the neighborhood, it is a dense community and questions if another marijuana shop is needed so close by.

**Resident, Ms. Clarissa of 85 Battle Creek Avenue:** This center would be down the street from her neighborhood, does not feel this is needed there.

**Hexxon Villa of 482 W Michigan Avenue:** Expressed concerns about the value of these buildings. So much money is put into them, making the value go up. If there permits are not approved, the building sit empty and now no one else and purchase them.

**CHAIRPERSON GODFREY** closed the public hearing and called for a motion.

**MOTION MADE BY MAYOR BEHNKE AND SUPPORTED BY COMM. NEWMAN TO APPROVE SPECIAL USE PERMIT #S-18-22, FOR AN ADULT USE MARIJUANA FACILITY AT 327 CAPITAL AVENUE SW.**

**COMMISSIONER COMMENTS:**

Comm. Spranger questioned the approval of the 2019 medical marijuana license that was approved by the Planning Commission for this property. Travis Sullivan stated they did not complete the application process so it is currently not operation. Comm. Spranger asked if there is any guarantee they will open this time if a permit is approved. Marcie Gillette clarified the approval time for an appicate being approved to the permit expiring is one year.

Another public comment was approved by Chairperson Godfrey III. Scott Harrington spoke on behalf of this project. Stated he was involved in the project and that they are moving forward with opening and hiring or personnel.

Chairperson Godfrey III questioned the applicant about the use of the building in the rear of the property. Applicant stated is will be used only for storage.

**CHAIRPERSON GODFREY** called for a role vote.

**Voted Yes:**

Comm. Newman  
Comm. Spranger  
Comm. Morris  
Comm. Hughes  
Comm. Godfrey  
Comm. Gray  
Mayor Behnke

**Voted No:**

None

**MOTION APPROVED**

**OLD BUSINESS:** None.

**NEW BUSINESS:**

**2023 Proposed Calendar**

**CHAIRPERSON GODFREY** called for discussion: None.

**MOTION WAS MAID BY COMM. MORRIS AND SUPPORTED BY MAYOR BEHNKE TO APPROVE THE PROPOSED 2023 PLANNING COMMISSION MEETING DATES.**

**ROLL VOTE:** Chairperson Godfrey asked everyone in favor to signify by saying “aye”:

**ALL IN FAVOR, NONE OPPOSED, MOTION APPROVED.**

**Capital Improvement Plan**

**CHAIRPERSON GODFREY** called for discussion: None.

**MOTION WAS MADE BY COMM. MORRIS AND SUPPORTED BY COMM. NEWMAN TO APPROVE THE 2023/2024-2028/2029 6 YEAR CAPITAL IMPROVEMENT PLAN.**

**ROLL VOTE:** Chairperson Godfrey asked everyone in favor to signify by saying “aye”:

**ALL IN FAVOR, NONE OPPOSED, MOTION APPROVED.**

.....  
**PUBLIC COMMENT:** None.

**STAFF COMMENT:**

Marcie Gillette: Introduction of the new Administrative Assistant in Planning and Zoning, Melody Carlsen.

Discussed Planning Commission packet request and how commissioners would like them prior to the Planning Commission meetings. A sheet was given to commissioners to fill out. Packets will be sent electronically. If requesting a paper copy, those will be made available by Melody the day after being posted online and can be picked up in her office.

**JOURNMENT:**

**Chairman Godfrey** adjourned the meeting at 5:15 p.m.

Submitted by: Melody Carlsen, Administrative Assistant, Planning and Zoning

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DRAFT



Resolution

NO. 42

A Resolution seeking authorization for the City Manager to execute a Sponsor Contract, and all other related documents as approved by the City Attorney, for Municipal Airport PFAS Grant Funding.

**BATTLE CREEK, MICHIGAN - 1/3/2023**

**Resolved by the Commission of the City of Battle Creek:**

That the City Manager execute a Sponsor Contract, and all other related documents as approved by the City Attorney, for Municipal Airport PFAS Grant Funding. The grant is from the Department of Environment, Great Lakes and Energy (EGLE) in the amount of \$350,000.

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Battle Creek City Commission  
1/3/2023

**Action Summary**

**Staff Member:** Phil Kroll, Aviation Director

**Department:** Airport

**SUMMARY**

A Resolution seeking authorization for the City Manager to execute a Sponsor Contract, and all other related documents as approved by the City Attorney, for Municipal Airport PFAS Grant Funding.

**BUDGETARY CONSIDERATIONS**

This grant provides \$350.000 in funds and does not require a match.

**HISTORY, BACKGROUND and DISCUSSION**

PFAS are a group of man-made chemicals that have been used in items like carpet, food wrappers and, relevant to this grant award, firefighting foam. These chemicals do not break down in the environment and studies show they may be harmful.

The City's airport was an FAR Part 139 certified airport (able to serve unscheduled air carrier operations with 31 seats or more), until November 2022, and these certified airports were required by the Federal Aviation Administration to use firefighting foams that contain PFAS, because they best handle fires

involving jet fuel.

In 2020, the City received grant funds from EGLE through the MDOT Office of Aeronautics, for an initial round of testing and monitoring of PFAS chemicals in the soil, storm water, and groundwater at the airport where historical records had indicated firefighting foam may have been dispensed. This grant from EGLE will include testing and monitoring of storm water and groundwater at the sites where PFAS chemicals were found during the initial phase of testing and monitoring.

Some details from the first phase of testing and monitoring:

- Areas where firefighting foam was, or may have been, used in the past:
  - 2015 aircraft accident site, in the northeast part of the airfield
  - Runway emergency response area, where foam was reportedly used during two emergency landings, in the southern part of the airfield
  - A west test site, used for required fire equipment calibration, in the western part of the airfield
  - A south test site, used for required fire equipment calibration, in the southern part of the airfield
  - Federal Aviation Administration hangar area and foam storage, in the central part of the airfield
  - A previous possible airport firefighting equipment storage site, in the central part of the airfield
- LimnoTech tested 56 soil samples and 29 groundwater samples.
- LimnoTech collected four rounds of storm water samples at multiple airfield locations (three during wet weather, and one during dry weather).
- Testing found no PFAS levels higher than the state groundwater standard at the crash test site.
- PFAS levels were higher than the cleanup standard for one compound in 29 out of 56 soil samples, including all testing areas.
- The state has cleanup criteria for seven PFAS compounds in groundwater. Testing detected six of those in airport groundwater samples. A total of seven samples showed levels higher than the cleanup criteria for at least one compound.
- Storm water tests found no PFAS levels higher than the surface water quality standards.

LimnoTech, out of Ann Arbor, will perform the testing and monitoring during this phase.

The City took over airport firefighting services from the Michigan Air National Guard in 2014; the grant allows investigation only of non-military uses of PFAS.

The City must use this grant within 24 months, and will submit a report to EGLE. In 2018, the City tested our water system for PFAS; they were not found at any level in the City's drinking water.

## **DISCUSSION OF THE ISSUE**

### **POSITIONS**

---

#### **ATTACHMENTS:**

File Name	Description
2022-12-14_PFAAS_Grant_Agreement_for_Battle_Creek_Executive_-_jan_1_2023_start_date_final.pdf	2022-12-14 PFAS Grant Agreement for Battle Creek Executive - jan 1 2023 start date final



## PFAS AIRPORT GRANT AGREEMENT

BETWEEN THE

MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY

AND **the CITY OF BATTLE CREEK**

This Grant Agreement ("Agreement") is made between the Michigan Department of Environment, Great Lakes, and Energy (EGLE), **Remediation and Redevelopment Division** ("State"), and **City of Battle Creek** ("Grantee").

The purpose of this Agreement is to provide funding in exchange for work to be performed for the project named below. Legislative appropriation of Funds for grant assistance is set forth in PA87 of 2021. This Agreement is subject to the terms and conditions specified herein.

### **PROJECT INFORMATION:**

Project Name: Continuing PFAS Investigation at Battle Creek Executive Airport at Kellogg Field

Amount of grant: \$350,000

% of grant state 100 / % of grant federal 0

Start Date (executed by EGLE): 1/3/2023 End Date: 1/31/2025

### **GRANTEE CONTACT INFORMATION:**

Name/Title: Miles H. Weaver, Operations Manager

Organization: City of Battle Creek

Address: 15551 S. Airport Road

City, State, ZIP: Battle Creek, Michigan 49015

Phone Number: 269-966-3470

E-Mail Address: MHWeaver@battlecreekmi.gov

SIGMA Vendor Number: CV0047623

**STATE'S CONTACT INFORMATION:**

Name/Title: Gregg Brettmann, Senior Environmental Quality Analyst

Division/Bureau/Office: Remediation and Redevelopment Division

Address: 7953 Adobe Road

City, State, ZIP: Kalamazoo, Michigan 49009

Phone Number: 269-567-3528

E-Mail Address: berttmannng@michigan.gov

The individuals signing below certify by their signatures that they are authorized to sign this Agreement on behalf of their agencies and that the parties will fulfill the terms of this Agreement, including any attached appendices, as set forth herein.

**FOR THE GRANTEE:**

---

Signature	Name/Title	Date
-----------	------------	------

**FOR THE STATE:**

---

Signature	Name/Title	Date
-----------	------------	------

## **I. PROJECT SCOPE**

This Agreement and its appendices constitute the entire Agreement between the State and the Grantee and may be modified only by written agreement between the State and the Grantee.

(A) The scope of this project is limited to the activities specified in Appendix A and such activities as are authorized by the State under this Agreement. Any change in project scope requires prior written approval in accordance with Section III, Changes, in this Agreement.

(B) By acceptance of this Agreement, the Grantee commits to complete the project identified in Appendix A within the time period allowed for in this Agreement and in accordance with the terms and conditions of this Agreement.

## **II. AGREEMENT PERIOD**

Upon signature by the State, the Agreement shall be effective from the Start Date until the End Date on page 1. The State shall have no responsibility to provide funding to the Grantee for project work performed except between the Start Date and the End Date specified on page 1. Expenditures made by the Grantee prior to the Start Date or after the End Date of this Agreement are not eligible for payment under this Agreement.

## **III. CHANGES**

Any changes to this Agreement shall be requested by the Grantee or the State in writing and implemented only upon approval in writing by the State. The State reserves the right to deny requests for changes to the Agreement or to the appendices. No changes can be implemented without approval by the State.

## **IV. GRANTEE DELIVERABLES AND REPORTING REQUIREMENTS**

The Grantee shall submit deliverables and follow reporting requirements specified in Appendix A of this Agreement.

(A) The Grantee must complete and submit quarterly financial and progress reports according to a form and format prescribed by the State and must include supporting documentation of eligible project expenses. These reports shall be due according to the following:

<b>Reporting Period</b>	<b>Due Date</b>
January 1 – March 31	April 30
April 1 – June 30	July 31
July 1 – September 30	Before October 15*
October 1 – December 31	January 31

\*Due to the State's year-end closing procedures, there will be an accelerated due date for the report covering July 1 – September 30. Advance notification regarding the due date for the quarter ending September 30 will be sent to the Grantee. If the Grantee is unable to submit a report in early October

for the quarter ending September 30, an estimate of expenditures through September 30 must be submitted to allow the State to complete its accounting for that fiscal year.

The forms provided by the State shall be submitted to the State's contact at the address on page 1. All required supporting documentation (invoices, proof of payment, etc.) for expenses must be included with the report.

(B) The Grantee shall provide a final project report in a format prescribed by the State. The Grantee must provide a draft final report 30 days **prior to the end date** of the agreement. The Grantee shall submit the final status report, including all supporting documentation for expenses, along with the final project report and any other outstanding products within 30 days from the End Date of the Agreement.

## **V. GRANTEE RESPONSIBILITIES**

(A) The Grantee agrees to abide by all applicable local, state, and federal laws, rules, ordinances, and regulations in the performance of this grant.

(B) All local, state, and federal permits, if required, are the responsibility of the Grantee. Award of this grant is not a guarantee of permit approval by the State.

(C) The Grantee shall be solely responsible to pay all applicable taxes and fees, if any, that arise from the Grantee's receipt or execution of this grant.

(D) The Grantee is responsible for the professional quality, technical accuracy, timely completion, and coordination of all designs, drawings, specifications, reports, and other services submitted to the State under this Agreement. The Grantee shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in drawings, designs, specifications, reports, or other services.

(E) The State's approval of drawings, designs, specifications, reports, and incidental work or materials furnished hereunder shall not in any way relieve the Grantee of responsibility for the technical adequacy of the work. The State's review, approval, acceptance, or payment for any of the services shall not be construed as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

(F) The Grantee acknowledges that it is a crime to knowingly and willingly file false information with the State for the purpose of obtaining this Agreement or any payment under the Agreement, and that any such filing may subject the Grantee, its agents, and/or employees to criminal and civil prosecution and/or termination of the grant.

## **VI. USE OF MATERIAL**

Unless otherwise specified in this Agreement, the Grantee may release information or material developed under this Agreement, provided it is acknowledged that the State funded all or a portion of its development.

The State, and federal awarding agency, if applicable, retains a royalty-free, nonexclusive and irrevocable right to reproduce, publish, and use in whole or in part, and authorize others to do so, any copyrightable material or research data submitted under this grant whether or not the material is copyrighted by the Grantee or another person. The Grantee will only submit materials that the State can use in accordance with this paragraph.

## **VII. ASSIGNABILITY**

The Grantee shall not assign this Agreement or assign or delegate any of its duties or obligations under this Agreement to any other party without the prior written consent of the State. The State does not assume responsibility regarding the contractual relationships between the Grantee and any subcontractor.

## **VIII. SUBCONTRACTS**

The State reserves the right to deny the use of any consultant, contractor, associate, or other personnel to perform any portion of the project. The Grantee is solely responsible for all contractual activities performed under this Agreement. Further, the State will consider the Grantee to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the anticipated Grant. All subcontractors used by the Grantee in performing the project shall be subject to the provisions of this Agreement and shall be qualified to perform the duties required.

## **IX. NON-DISCRIMINATION**

The Grantee shall comply with the Elliott Larsen Civil Rights Act, 1976 PA 453, as amended, MCL 37.2101 *et seq.*, the Persons with Disabilities Civil Rights Act, 1976 PA 220, as amended, MCL 37.1101 *et seq.*, and all other federal, state, and local fair employment practices and equal opportunity laws and covenants that it shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to his or her hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of his or her race, religion, color, national origin, age, sex, height, weight, marital status, or physical or mental disability that is unrelated to the individual's ability to perform the duties of a particular job or position. The Grantee agrees to include in every subcontract entered into for the performance of this Agreement this covenant not to discriminate in employment. A breach of this covenant is a material breach of this Agreement.

## **X. UNFAIR LABOR PRACTICES**

The Grantee shall comply with the Employers Engaging in Unfair Labor Practices Act, 1980 PA 278, as amended, MCL 423.321 *et seq.*

## **XI. LIABILITY**

(A) The Grantee, not the State, is responsible for all liabilities as a result of claims, judgments, or costs arising out of activities to be carried out by the Grantee under this Agreement, if the liability is caused by the Grantee, or any employee or agent of the Grantee acting within the scope of their employment or agency.

(B) Nothing in this Agreement should be construed as a waiver of any governmental immunity by the Grantee, the State, its agencies, or their employees as provided by statute or court decisions.

## **XII. CONFLICT OF INTEREST**

No government employee, or member of the legislative, judicial, or executive branches, or member of the Grantee's Board of Directors, its employees, partner agencies, or their families shall benefit financially from any part of this Agreement.

## **XIII. ANTI-LOBBYING**

If all or a portion of this Agreement is funded with federal funds, then in accordance with 2 CFR 200, as appropriate, the Grantee shall comply with the Anti-Lobbying Act, which prohibits the use of all project funds regardless of source, to engage in lobbying the state or federal government or in litigation against the State. Further, the Grantee shall require that the language of this assurance be included in the award documents of all subawards at all tiers.

If all or a portion of this Agreement is funded with state funds, then the Grantee shall not use any of the grant funds awarded in this Agreement for the purpose of lobbying as defined in the State of Michigan's lobbying statute, MCL 4.415(2). "Lobbying" means communicating directly with an official of the executive branch of state government or an official in the legislative branch of state government for the purpose of influencing legislative or administrative action." The Grantee shall not use any of the grant funds awarded in this Agreement for the purpose of litigation against the State. Further, the Grantee shall require that language of this assurance be included in the award documents of all subawards at all tiers.

## **XIV. DEBARMENT AND SUSPENSION**

By signing this Agreement, the Grantee certifies that it has checked the federal debarment/suspension list at [www.SAM.gov](http://www.SAM.gov) to verify that its agents, and its subcontractors:

- (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or the state.
- (2) Have not within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction, as defined in 45 CFR 1185; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
- (3) Are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses enumerated in subsection (2).
- (4) Have not within a three-year period preceding this Agreement had one or more public transactions (federal, state, or local) terminated for cause or default.

- (5) Will comply with all applicable requirements of all other state or federal laws, executive orders, regulations, and policies governing this program.

#### **XV. AUDIT AND ACCESS TO RECORDS**

The State reserves the right to conduct a programmatic and financial audit of the project, and the State may withhold payment until the audit is satisfactorily completed. The Grantee will be required to maintain all pertinent records and evidence pertaining to this Agreement, including grant and any required matching funds, in accordance with generally accepted accounting principles and other procedures specified by the State. The State or any of its duly authorized representatives must have access, upon reasonable notice, to such books, records, documents, and other evidence for the purpose of inspection, audit, and copying. The Grantee will provide proper facilities for such access and inspection. All records must be maintained for a minimum of five years after the final payment has been issued to the Grantee by the State.

#### **XVI. INSURANCE**

- (A) The Grantee must maintain insurance or self-insurance that will protect it from claims that may arise from the Grantee's actions under this Agreement.
- (B) The Grantee must comply with applicable workers' compensation laws while engaging in activities authorized under this Agreement.

#### **XVII. OTHER SOURCES OF FUNDING**

The Grantee guarantees that any claims for reimbursement made to the State under this Agreement must not be financed by any source other than the State under the terms of this Agreement. If funding is received through any other source, the Grantee agrees to delete from Grantee's billings, or to immediately refund to the State, the total amount representing such duplication of funding.

#### **XVIII. COMPENSATION**

- (A) A breakdown of costs allowed under this Agreement is identified in Appendix A. The State will pay the Grantee a total amount not to exceed the amount on page 1 of this Agreement, in accordance with Appendix A, and only for expenses incurred and paid. All other costs necessary to complete the project are the sole responsibility of the Grantee.
- (B) Expenses incurred by the Grantee prior to the Start Date or after the End Date of this Agreement are not allowed under the Agreement.
- (C) The State will approve payment requests after approval of reports and related documentation as required under this Agreement.
- (D) The State reserves the right to request additional information necessary to substantiate payment requests.

(E) Payments under this Agreement may be processed by Electronic Funds Transfer (EFT). The Grantee may register to receive payments by EFT at the SIGMA Vendor Self Service web site (<https://sigma.michigan.gov/webapp/PRDVSS2X1/AltSelfService>).

(F) An amount equal to 5 percent of the grant award, or \$17,500, will be withheld by the State until the project is completed in accordance with Section XIX, Closeout, and Appendix A.

## **XIX. CLOSEOUT**

(A) A determination of project completion, which may include a site inspection and an audit, shall be made by the State after the Grantee has met any match obligations, satisfactorily completed the activities, and provided products and deliverables described in Appendix A.

(B) Upon issuance of final payment from the State, the Grantee releases the State of all claims against the State arising under this Agreement. Unless otherwise provided in this Agreement or by State law, final payment under this Agreement shall not constitute a waiver of the State's claims against the Grantee.

(C) The Grantee shall immediately refund to the State any payments in excess of the costs allowed by this Agreement.

## **XX. CANCELLATION**

This Agreement may be canceled by the State, upon 30 days written notice, due to Executive Order, budgetary reduction, other lack of funding, upon request by the Grantee, or upon mutual agreement by the State and Grantee. The State may honor requests for just and equitable compensation to the Grantee for all satisfactory and eligible work completed under this Agreement up until 30 days after written notice, upon which time all outstanding reports and documents are due to the State and the State will no longer be liable to pay the grantee for any further charges to the grant.

## **XXI. TERMINATION**

(A) This Agreement may be terminated by the State as follows.

(1) Upon 30 days written notice to the Grantee:

- a. If the Grantee fails to comply with the terms and conditions of the Agreement, or with the requirements of the authorizing legislation cited on page 1, or the rules promulgated thereunder, or other applicable law or rules.
- b. If the Grantee knowingly and willingly presents false information to the State for the purpose of obtaining this Agreement or any payment under this Agreement.
- c. If the State finds that the Grantee, or any of the Grantee's agents or representatives, offered or gave gratuities, favors, or gifts of monetary value to any official, employee, or agent of the State in an attempt to secure a subcontract or favorable treatment in awarding, amending, or making any determinations related to the performance of this Agreement.

- d. If the Grantee or any subcontractor, manufacturer, or supplier of the Grantee appears in the register of persons engaging in unfair labor practices that is compiled by the Michigan Department of Licensing and Regulatory Affairs or its successor.
- e. During the 30-day written notice period, the State shall withhold payment for any findings under subparagraphs a through d, above and the Grantee will immediately cease charging to the grant and stop earning match for the project (if applicable).

(2) Immediately and without further liability to the State if the Grantee, or any agent of the Grantee, or any agent of any subcontract is:

- a. Convicted of a criminal offense incident to the application for or performance of a State, public, or private contract or subcontract;
- b. Convicted of a criminal offense, including but not limited to any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees;
- c. Convicted under State or federal antitrust statutes; or
- d. Convicted of any other criminal offense that, in the sole discretion of the State, reflects on the Grantee's business integrity.
- e. Added to the federal or state Suspension and Debarment list.

(B) If a grant is terminated, the State reserves the right to require the Grantee to repay all or a portion of funds received under this Agreement.

## **XXII. IRAN SANCTIONS ACT**

By signing this Agreement the Grantee is certifying that it is not an Iran linked business, and that its contractors are not Iran linked businesses, as defined in MCL 129.312.

If you need this information in an alternate format, contact [EGLE-Accessibility@Michigan.gov](mailto:EGLE-Accessibility@Michigan.gov) or call 800-662-9278.

EGLE does not discriminate on the basis of race, sex, religion, age, national origin, color, marital status, disability, political beliefs, height, weight, genetic information, or sexual orientation in the administration of any of its programs or activities, and prohibits intimidation and retaliation, as required by applicable laws and regulations. Questions or concerns should be directed to the Nondiscrimination Compliance Coordinator at [EGLE-NondiscriminationCC@Michigan.gov](mailto:EGLE-NondiscriminationCC@Michigan.gov) or 517-249-0906.

This form and its contents are subject to the Freedom of Information Act and may be released to the public.

## **APPENDIX A: AIRPORT PER- AND POLYFLUOROALKYL SUBSTANCES (PFAS) GRANT**

<b>Project Name:</b>	Continuing PFAS Investigation at Battle Creek Executive Airport at Kellogg Field
<b>Project Location (County):</b>	Battle Creek Executive Airport at Kellogg Field (Calhoun County)
<b>Grant Amount Requested:</b>	\$350,000
<b>Contact for the Airport:</b>	Miles Weaver, Airport Operations Manager
<b>Contact Phone Number:</b>	(269) 966-3528
<b>Contact E-mail:</b>	<a href="mailto:MHWeaver@battlecreekmi.gov">MHWeaver@battlecreekmi.gov</a>

### **Project Description:**

The proposed work will continue the groundwater and stormwater investigation at the Battle Creek Executive Airport at Kellogg Field (identified by its airport code “BTL” or “Airport”). The work to be performed under this grant has been developed to continue the investigation and determination of PFAS impacts to groundwater and stormwater at BTL. The proposed work is designed to fill several data gaps including:

- Verify previous groundwater sampling results at the existing monitoring wells;
- Further delineate the horizontal and vertical extent of PFAS in groundwater near and downgradient from past AFFF usage areas;
- Provide data for further assessment of groundwater flow direction in the south portion of Airport property where previous PFAS impacts have been noted; and,
- Provide additional characterization of PFAS in stormwater.

## Work Plan:

The proposed scope of work consists of the tasks described below. All field work will be planned and performed by LimnoTech. LimnoTech has performed PFAS investigations, including groundwater and surface water sampling, at more than 15 Part 139 airports, including 13 in Michigan.

- **Task 1. Phase 3 Groundwater Investigation** – This task covers initial proposed field activities which will focus on groundwater and is a continuation of earlier investigation activities. Activities will consist of the advancement of soil borings, installation of additional permanent monitoring wells, collection of groundwater samples, and evaluation of groundwater surface elevation and flow direction. Specifically, the Phase 3 groundwater investigation will include the following elements:
  - Advancement of soil borings in investigation areas where ground water impacts have been noted during earlier investigation activities (i.e. West Test Site, South Test Site, Emergency Response Area). A total of up to 35 new groundwater monitoring wells are planned as part of this task, with up to 19 planned for the West Test Site area, up to 7 planned for the South Test Site, and up to 9 planned for the Emergency Response Area to collect up to 35 groundwater samples to characterize PFAS concentrations in groundwater, if any, at the boring locations;
  - Surveying of the additional monitoring wells and measurement of static groundwater elevations to support the further assessment of groundwater flow direction;
  - Collection of quality assurance (QA) samples (blanks, duplicates, source water); and,
  - Disposal of investigation-derived waste.

Other activities under this task will include utility clearance at proposed drilling locations, coordination with Airport personnel, and other logistical planning. All sampling performed under this scope of work will be performed in accordance with EGLE PFAS sampling guidance. Samples will be submitted for analysis of the 31 PFAS listed in EGLE’s most recent “Recommended Minimum Laboratory Analyte List” for groundwater and surface water. Samples will be submitted to SGS North America for analysis using an isotope dilution method (i.e., modified Method 537), unless another method has been fully approved by USEPA for non-drinking water aqueous samples by then.

Boring locations are shown in Figure 1. Sampling will be conducted in accordance with EGLE PFAS sampling guidance as described in the work plan included with this application.

- **Task 2. Stormwater Characterization** – Under this task, LimnoTech will conduct additional stormwater sampling at the following locations as directed by EGLE in Part 1 of its August 11, 2022 NPDES communication letter:
  - West Outfall located in the west central part of the airfield (Station ID = W OF);
  - Outfall 1 located in the southeast part of the Airport (Station ID = OF 1);
  - Outfall 4 located in the northeast part of the airfield (Station ID = OF4);
  - the storm sewer outlet to surface water on the east side of the airfield (Station ID = E OF);
  - the storm sewer in the north part of the airfield that conveys flow from ANG property onto Airport property (Station ID = Upstream of ANG N); and,
  - the storm sewer in the northwest part of the airfield that conveys flow across Airport property and ultimately to ANG Outfall 2 (Station ID = ANG W).

Monitoring locations are shown in Figure 2. Sampling will be conducted in accordance with EGLE stormwater characterization and as described in the work plan included with this application.


- **Task 3. Grant Management, EGLE Communication, Meetings** – This task includes work necessary to manage the grant, including coordination and communication with EGLE personnel regarding field activities, preparation of quarterly status reports, and meetings with EGLE and other stakeholders (including preparation of materials for those meetings).
- **Task 4. Data Review and Final Report** – Under this task, data generated from field sampling activities will be compiled, undergo quality assurance review, and mapped. Laboratory reports will be provided to EGLE as they become available. A draft report will be prepared describing all field activities completed under the grant and presenting the data and findings with text, tables, and figures. The draft report will be submitted to EGLE for review & comment before it is finalized.

**Maps:**

Two figures are included on the following pages showing the locations of proposed investigation Task 1 and 2 elements. Maps showing known PFAS concentrations measured to date are not included here but are included in reports previously submitted to EGLE.

**Budget:**

The proposed budget for this work is \$350,000. A table of the proposed budget, broken down by task, is presented below.

 <b>MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY</b>  <b>Airport Grant</b> <b>Proposal Budget Form</b>		
<b>Airport Name:</b> Battle Creek Executive Airport at Kellogg Field		
<b>Project Name:</b> Continuing PFAS Investigation at Battle Creek Executive Airport at Kellogg Field		
<b>Contact Name:</b> Miles Weaver	<b>Contact Number:</b> (269) 966-3355	
<b>Contact Email:</b> <a href="mailto:MHWeaver@battlecreekmi.gov">MHWeaver@battlecreekmi.gov</a>		
<b>TASK</b>	<b>Task Number</b>	<b>Amount</b>
Phase 3 Groundwater Investigation	1	\$302,317
Stormwater Characterization	2	\$25,000
Grant Management, EGLE Communication, Meetings	3	\$5,109
Data Review and Final Report	4	\$17,573
<b>Project Total</b>		<b>\$ 350,000</b>



**Figure 1. Proposed Boring and Monitoring Well Locations for BTL Phase 3 Groundwater Investigation .**



**Figure 2. Proposed Sample Locations for Task 2 BTL Stormwater Investigation .**

# **Work Plan For Continuing PFAS Investigation Battle Creek Executive Airport at Kellogg Field (BTL)**

**Prepared for:**  
**City of Battle Creek**

**Prepared by:**  
**LimnoTech**  
**501 Avis Drive**  
**Ann Arbor, MI 48108**

**December 2, 2022**

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## TABLE OF CONTENTS

<b>1 Introduction .....</b>	<b>1</b>
1.1 Background .....	1
1.1 Investigation Location .....	1
1.2 Previous Investigations .....	3
<b>2 Field Investigation and Sampling Plan for Groundwater .....</b>	<b>5</b>
2.1 Health and Safety .....	5
2.2 Investigation Overview .....	5
2.3 Boring Locations .....	5
2.3.1 Planned Boring Locations .....	5
2.4 Sampling Plan .....	7
2.4.1 Boring Methods .....	7
2.4.2 Monitoring Well Construction .....	7
2.4.3 Monitoring Well Sampling Methods .....	8
2.5 Field Documentation .....	8
2.6 Sample Documentation .....	9
2.6.1 Sample Identification .....	9
2.6.2 Chain of Custody .....	9
2.7 PFAS Analysis .....	9
2.8 Investigation-Derived Waste .....	9
<b>3 Stormwater Investigation .....</b>	<b>11</b>
3.1 Weather .....	11
3.2 Stormwater Discharge Monitoring .....	11
3.2.1 Monitoring Locations .....	11
3.2.2 Monitoring Events and Sampling Frequency .....	13
3.3 Field Documentation .....	13
3.4 Sample Documentation .....	13
3.4.1 Sample Identification .....	13
3.4.2 Chain of Custody .....	14
3.5 PFAS Analysis .....	14
<b>4 Data Quality Objectives .....</b>	<b>15</b>
4.1 Investigation Data Quality Objectives .....	15
4.2 Data Quality Indicators .....	15
4.2.1 Accuracy .....	15
4.2.2 Precision .....	15
4.2.3 Completeness .....	16
4.2.4 Comparability .....	16
<b>5 Quality Assurance/Quality Control .....</b>	<b>17</b>
5.1 Sample Handling and Custody .....	17



5.1.1 Field Sampling Custody .....	17
5.1.2 Field Log Books .....	17
5.1.3 Chain-of-Custody Forms .....	18
5.2 Quality Control Requirements .....	18
5.2.1 Field Duplicates.....	18
5.2.2 Field Blanks .....	18
5.2.3 Equipment Blanks.....	18
5.2.4 Source Water Sample.....	18
5.3 Special Precautions: PFC-Free Equipment, Supplies, Materials and Clothing .....	19
5.4 Data Assessment .....	19
5.4.1 Laboratory Data Review and Validation .....	19
5.4.2 LimnoTech Data Review and Validation .....	19

## LIST OF FIGURES

---

Figure 1-1. BTL PFAS Investigation Areas. ....	2
Figure 2-1. BTL Phase 3 Investigation Boring Locations.....	6
Figure 3-1. Proposed Stormwater Monitoring Locations.....	12

## LIST OF TABLES

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Table 2-1. Summary of Planned BTL Phase 3 Borings. ....	7
Table 3-1. Summary of Next Round of BTL Stormwater Characterization Sampling. ....	13



# 1 Introduction

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This work plan describes investigation activities planned at the Battle Creek Executive Airport at Kellogg Field (identified in this plan by its airport code “BTL” or “Airport”), planned as part of proposed activities under the Airport Per- and Poly-Fluoroalkyl Substance (PFAS) Grant program administered by the Michigan Department of Environment, Great Lakes, and Energy (EGLE). The proposed investigation activities in this work plan are intended to further define the extent and distribution of PFAS in groundwater at or near BTL and to provide additional characterization of stormwater at the Airport. Proposed investigation activities are focused on areas associated with City of Battle Creek aqueous film-forming foam (AFFF) use at BTL. It will not investigate potential PFAS contamination associated with activities occurring within land controlled by the Michigan Air National Guard (ANG).

## 1.1 Background

Aqueous Film-Forming Foam (AFFF) containing PFAS was reportedly used historically for training and isolated firefighting purposes at five areas at BTL. Those areas include:

- August 27, 2015 Aircraft Accident Site
- Runway 5L/23R Emergency Response Area
- West Test Site
- South Test Site
- Federal Aviation Administration (FAA) Hangar Area, AFFF Storage and Potential Hangar Release Site
- Possible Aircraft Rescue and Firefighting (ARFF) Equipment Storage Site

The Airport has completed several prior investigation activities, including soil, groundwater, and stormwater sampling. Those efforts are summarized in Section 1.3 below.

## 1.1 Investigation Location

The location of the investigation areas covered by this work plan are shown in Figure 1-1.



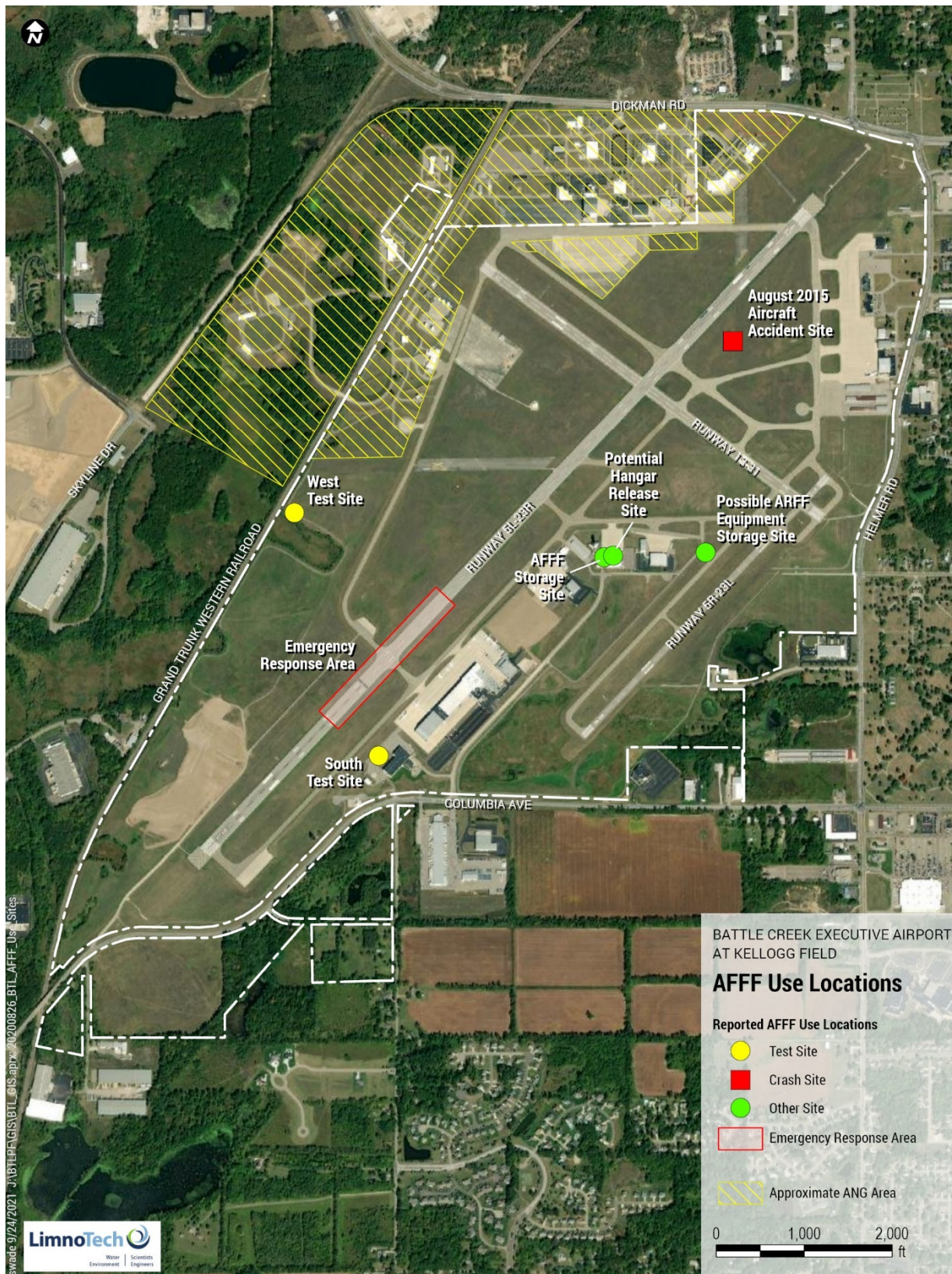


Figure 1-1. BTL PFAS Investigation Areas.



## 1.2 Previous Investigations

Since 2020, the Airport has completed two phases of multi-media investigation activities, most recently, these include Phase 1 and 2 soil, groundwater, and stormwater sampling. Those activities have been previously reported to EGLE (LimnoTech, November 2021 and LimnoTech, March 2022).

Based on the prior investigation findings and EGLE recommendations, the main objectives of this Phase 3 investigation at BTL are to:

- Verify previous groundwater sampling results at the existing monitoring wells;
- Further delineate the horizontal and vertical extent of PFAS in groundwater near and downgradient from past AFFF usage areas;
- Provide data for further assessment of groundwater flow direction in the south portion of Airport property where previous PFAS impacts have been noted; and,
- Provide additional characterization of PFAS in stormwater.

The planned investigation activities to achieve these objectives are described in the following sections.



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## 2 Field Investigation and Sampling Plan for Groundwater

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The details of the planned investigation of shallow groundwater are provided below.

### 2.1 Health and Safety

A project health and safety plan (HASP) will be prepared for this investigation. A copy of the HASP will be provided to each organization participating in field activities. All field staff will have reviewed the site-specific HASP prepared for this investigation and will be aware of the chemical and physical hazards specific to this project. The HASP will be reviewed by all field personnel prior to initiating field activities. In addition, all persons performing field investigative tasks for this project have experience working on similar site investigation projects and have completed OSHA 40-hour HAZWOPER safety training, with 8-hour refresher courses as needed. A copy of the HASP will remain onsite for the duration of field activities.

### 2.2 Investigation Overview

This investigation will consist of multiple borings at the West Test Site, South Test Site, and Emergency Response investigation areas. Monitoring wells will be installed and screened at the depth of previously observed shallow groundwater. The monitoring wells will be surveyed and shallow groundwater (if present) samples will be collected. The investigation is divided into two phases:

- Phase 3a – Conducting up to 35 soil borings and monitoring well installations at the West Test Site ( $\leq 19$  borings/monitoring wells), South Test Site ( $\leq 7$  borings/monitoring wells), and the Emergency Response Area ( $\leq 9$  borings/monitoring wells).
- Phase 3b – Survey the casing elevation of the monitoring wells installed during Phase 3a, collect static groundwater level measurements, and collect groundwater samples. Collect static groundwater level measurements and groundwater samples from the existing five monitoring wells previously installed in the West Test Site investigation area.

Boring locations are described in Section 2.3 and the sampling plan is described in Section 2.4.

### 2.3 Boring Locations

#### 2.3.1 Planned Boring Locations

The planned boring locations for the Phase 3 investigation are shown in Figure 2-1.





**Figure 2-1. BTL Phase 3 Investigation Boring Locations.**



The locations were selected based on results from previous phases of investigation and as recommended by EGLE staff. Boring locations may vary from the planned locations depending on utility locations, accessibility, and other conditions encountered in the field. If it appears that a boring location needs to be changed, the decision will be made jointly between the field team leader and the project manager. All boring locations will be marked in the field using a GPS with sub-meter accuracy.

Table 2-1 summarizes the planned boring and monitoring well installations for this phase of investigation.

**Table 2-1. Summary of Planned BTL Phase 3 Borings.**

Investigation Area	Bore Type	Samples	Expected Total Depth (ft. below grade)	# Phase 3 Locations
West Test Site	Direct Push Auger	Up to 19 borings, monitoring well installations, and groundwater (if present) sample at each location.	<20	≤19
South Test Site	Direct Push Auger	Up to 7 borings, monitoring well installations, and groundwater (if present) sample at each location.	<40	≤7
Emergency Response Area	Direct Push Auger	Up to 9 borings, monitoring well installations, and groundwater (if present) sample at each location.	<40	≤9

Three of the borings at the West Test Site investigation area are planned as couplets where two wells will be installed adjacent to each other and screened at different depth intervals to provide additional information on the vertical distribution of PFAS. One couplet is planned in the main investigation area and two couplets are planned on the west side of the railroad tracks.

## 2.4 Sampling Plan

### 2.4.1 Boring Methods

Borings will be advanced using direct push drilling equipment. Specifically, soil borings will be collected using a one and one half (1.5) inch diameter macro core barrel advanced into the subsurface. Following advancement, the five (5) foot soil core barrel is removed from the borehole and provided to the field geologist for logging. Soil types encountered in each boring will be logged in the field geologist. Once shallow groundwater is encountered, a monitoring well will be installed as described in Section 2.4.2 below. Following installation, the well casings will be surveyed and groundwater sampling will be conducted, as described in Section 2.4.3 below.

Based on observations from previous investigations, the borings are expected to be no more than 40 feet deep.

### 2.4.2 Monitoring Well Construction

All groundwater monitoring wells will be installed within a single borehole as a single-casing (i.e., one [1] casing within a single borehole) monitoring well. The monitoring wells on the airfield will be installed by reaming the 2 inch soil boring to the depth of the permeable layer using a four and one quarter (4.25) inch hollow stem auger. Monitoring well casing will be constructed of Schedule 40 PVC riser pipe with an inner



diameter of two (2) inches. The monitoring well casing will be lowered into the hollow stem auger and the auger will then be pulled back as the filter pack is installed. The well screen will consist of 2.0 inch Schedule 40 PVC factory-slotted screen (0.010 slot size) that is five (5) feet in length.

The filter pack will be a clean sand of proper size in relation to the screen slots to prevent its passage into the well and will be placed in the annulus around the PVC well screen and riser pipe up to two (2) feet above the top of the well screen.

A bentonite seal or hole plug will be placed in the annulus around the well riser pipe and placed directly above the sand filter pack. The bentonite seal or hole plug layer will be two (2) feet in thickness. The remaining annulus space around the riser pipe will then be sealed with grout to just below the surface of the ground and the monitoring well will be finished with a flush mount cover and concrete surface pad.

The monitoring wells to the west of the railroad will be installed using similar procedures but because of site conditions in that area a different drill rig will be used, necessitating the following modifications for well installation. The 2 inch soil borings will be reamed with a 3.25 inch rod with expendable point. The 2.0 inch Schedule 40 PVC factory-slotted screen (0.010 slot size), five (5) feet in length, will be lowered to depth, riser installed, and the tooling will be pulled back, allowing for natural collapse. Sand pack and bentonite seal will be added following extraction of tooling from the boring. The wells will be finished with above grade covers.

### 2.4.3 Monitoring Well Sampling Methods

Following survey of the monitoring well casing elevations, a groundwater (if present) sample will be collected from each well. All groundwater samples collected from the monitoring wells will be obtained using the standard low-flow sampling methodology. Specifically, shallow groundwater samples will be collected via a peristaltic pump and by inserting fresh, clean HDPE tubing into the screened interval of the monitoring well. Groundwater is drawn to the surface through the HDPE tubing. Purged water will be monitored using a flow-through cell and EXO multi-parameter sonde, measuring temperature, conductivity, pH, dissolved oxygen (DO), oxidation-reduction potential (ORP), and turbidity. Once all water quality parameters have achieved stability (i.e., low-flow sampling methodology), a sample will be collected directly from the tubing into the sampling container provided by the laboratory. When sampling is complete, the pump and tubing will be pulled from the monitoring well. Groundwater samples will be collected via the methodology described above following the completion of well construction and the performance of well development. All groundwater sampling will be conducted in accordance with EGLE guidance for PFAS sampling<sup>1</sup>.

## 2.5 Field Documentation

All field activities will be documented by field personnel designated by the field team leader, using the procedures described in LimnoTech's SOP for field documentation and in accordance with EGLE PFAS sampling guidance<sup>2</sup>. Upon completion of investigation activities, field documentation will be stored with other project files at LimnoTech's office in Ann Arbor or at another location designated by the project manager. Further detail on field documentation is contained in Section 5.1.2.

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<sup>1</sup> <https://www.michigan.gov/pfasresponse/-/media/Project/Websites/PFAS-Response/Sampling-Guidance/Groundwater.pdf?rev=0579f6753a7c4715a0fb31eaff0cd9a5>

<sup>2</sup> <https://www.michigan.gov/pfasresponse/-/media/Project/Websites/PFAS-Response/Sampling-Guidance/General.pdf?rev=5fb24f7dabf0468b9415679b60681503>



## 2.6 Sample Documentation

Sample documentation includes assignment of a unique sample identification number at the time of sampling, which is subsequently used through the chain of custody to the final laboratory report.

### 2.6.1 Sample Identification

Samples will be designated with a unique identification that includes the boring identification number, the media type and the depth interval (in feet below ground surface) from which the sample is collected. Shallow groundwater samples collected from monitoring wells will be labeled with the alphanumeric expression “MW23” followed by the designated monitoring well identification with the depth interval of the sample reported in parentheses. An example sample identification code is given below, for a groundwater sample collected from monitoring MW23-05 screened from 10 to 15 feet below ground surface:

MW23-05(10-15)

This unique identification system will eliminate the potential for confusion between sample results.

### 2.6.2 Chain of Custody

At the time of sampling, field sampling personnel will initiate a chain of custody (COC) using the COC form provided by the analytical laboratory. The COC is discussed in more detail in Section 5.1.1.

## 2.7 PFAS Analysis

Samples will be submitted to SGS-NA’s Orlando laboratory for analysis of PFAS using modified Method 537 (liquid chromatography, double mass spectrometry) utilizing isotope dilution. All 31 PFAS parameters on Michigan’s analyte list will be reported.

## 2.8 Investigation-Derived Waste

The investigation activities in this Work Plan are expected to generate the following types of investigation-derived waste (IDW):

- Used expendable materials related to sampling (e.g., nitrile gloves)
- Excess groundwater pumped during groundwater sampling
- Excess soil material generated during boring

Used expendable materials will be placed in sealed trash bags for disposal at a licensed solid waste facility. Environmental media (soil, groundwater (if encountered)) and decontamination water will be stored in drums at a secure location until they can be properly characterized for disposal.



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## 3 Stormwater Investigation

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As noted above, EGLE has requested additional sampling to provide further characterization of stormwater at BTL.

The Monitoring Program described in this section was developed in response to the August 11, 2022 EGLE NPDES communication letter, in consultation with EGLE staff, and following EGLE guidance<sup>3</sup> for conducting Short-Term Stormwater Characterization studies and describes the locations, methods, and frequencies for monitoring activities under this study.

### 3.1 Weather

Meteorological data will be monitored and obtained from the National Weather Service station at BTL. Meteorological data recorded during qualifying rainfall events (defined in Section 3.2.2) will include the following parameters:

- Minimum, maximum, and average temperature
- Total precipitation
- Duration of precipitation

Forecasted rainfall from this station will be used to identify qualifying rainfall events based on forecasted rainfall depth and time since the last event.

### 3.2 Stormwater Discharge Monitoring

Stormwater discharge monitoring will be conducted with the intent of characterizing stormwater runoff during rainfall events and dry weather conditions. Monitoring locations include the West Outfall (W OF), Outfall 1 (OF 1), Outfall 4 (OF 4), East Outfall (E OF), one storm sewer location that conveys stormwater from ANG onto Airport property (ANG N), and one storm sewer location that conveys stormwater from Airport property and ultimately to ANG Outfall 2 (ANG W). Sampling locations, frequency, and analyses are described below.

#### 3.2.1 Monitoring Locations

Stormwater runoff will be sampled at the monitoring locations shown in Figure 3-1.

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<sup>3</sup> <https://www.michigan.gov/pfasresponse/-/media/Project/Websites/PFAS-Response/Sampling-Guidance/Wastewater.pdf?rev=b117222a4819402f91645bbda257830a>





Figure 3-1. Proposed Stormwater Monitoring Locations



### 3.2.2 Monitoring Events and Sampling Frequency

Up to three dry weather observations, up to two qualifying rainfall events, and up to two dry weather events, depending on location, will be collected under this plan to characterize stormwater quality. A summary of monitoring events and sampling locations is shown in Table 3-1.

**Table 3-1. Summary of Next Round of BTL Stormwater Characterization Sampling.**

Location(s)	# Dry Weather Observations	Samples To Be Collected
West Outfall	2	1 dry weather <sup>1</sup>
Outfall 1	2	2 dry weather (if flow observed <sup>2</sup> )
Outfall 4	2	2 dry weather (if flow observed <sup>2</sup> )
East Outfall	3	2 wet weather and 2 dry weather (if dry weather flow is observed, otherwise 3 wet weather)
ANG N and ANG W	3	2 wet weather and 2 dry weather (if dry weather flow is observed, otherwise 3 wet weather)
<sup>1</sup> Flow was observed during dry weather observation and one sample has been collected (8/29/21)		
<sup>2</sup> Flow was not observed during previous dry weather observation (8/29/21)		

A qualifying rainfall event will be defined as a storm event causing greater than 0.1 inch of rainfall and occurring at least 72 hours after the previous measurable storm event that created 0.1 inch of rainfall. Dry weather will be defined as a period at least 72 hours after the previous measurable storm event that created 0.1 inch of rainfall.

Stormwater samples will be collected manually, as grab samples. Samples will be collected at the monitoring locations within 2-4 hours after a rain event commences.

Weather tracking to identify suitable rainfall events for sampling will begin upon approval of this plan by EGLE

### 3.3 Field Documentation

All field activities will be documented by field personnel designated by the field team leader, using the procedures described in LimnoTech's SOP for field documentation and in accordance with EGLE PFAS sampling guidance<sup>4</sup>. Upon completion of investigation activities, field documentation will be stored with other project files at LimnoTech's office in Ann Arbor or at another location designated by the project manager. Further detail on field documentation is contained in Section 5.1.2.

### 3.4 Sample Documentation

Sample documentation includes assignment of a unique sample identification number at the time of sampling, which is subsequently used through the chain of custody to the final laboratory report.

#### 3.4.1 Sample Identification

Samples will be designated with a unique identification that includes the sample identification number, event type, the media type and the sampling date. Media type will be designated by "SW" for stormwater

<sup>4</sup> <https://www.michigan.gov/pfasresponse/-/media/Project/Websites/PFAS-Response/Sampling-Guidance/General.pdf?rev=5fb24f7dabf0468b9415679b60681503>



samples. An example sample identification code is given below, for a wet weather stormwater sample collected at Outfall #1 on December 30, 2022:

OF1-SW-WW-123022

This unique identification system will eliminate the potential for confusion between sample results.

### **3.4.2 Chain of Custody**

At the time of sampling, field sampling personnel will initiate a chain of custody (COC) using the COC form provided by the analytical laboratory. The COC is discussed in more detail in Section 5.1.1.

## **3.5 PFAS Analysis**

Samples will be submitted to SGS-NA's Orlando laboratory for analysis of PFAS using modified Method 537 (liquid chromatography, double mass spectrometry) utilizing isotope dilution. All 31 PFAS parameters on Michigan's analyte list will be reported.



## 4 Data Quality Objectives

Data quality objectives (DQOs) are quantitative and qualitative criteria intended to ensure that the data collected during the investigation are of an adequate level of quality for their intended uses.

### 4.1 Investigation Data Quality Objectives

The following specific DQOs have been identified for this investigation:

1. Analytical results for groundwater and soil samples must accurately represent actual groundwater and soil chemical quality.
2. Analytical results for groundwater and soil samples should be of sufficient quality to inform the conceptual site model and for comparison to regulatory criteria.
3. Analytical results must meet quality control requirements for accuracy, precision, completeness, and comparability.

### 4.2 Data Quality Indicators

Data quality indicators (DQIs) are measures that are used to assess data quality and to verify that DQOs are met. The four DQIs (accuracy, precision, completeness, and comparability) are discussed below.

#### 4.2.1 Accuracy

Accuracy reflects the degree of bias in a measurement. To determine accuracy, a laboratory or field value is compared to a known or true concentration. Accuracy is determined by such QC indicators as: matrix spikes, surrogate spikes, laboratory control samples (blank spikes) and performance samples. Accuracy will be assessed using percent recovery, calculated as follows:

$$\%R = 100 \times (A-B)/C$$

Where:

%R = percent recovery

A = analyte concentration from spiked sample

B = analyte concentration from unspiked sample

C = analyte concentration of spike added

For this investigation, acceptable %R will be 80% - 120%.

#### 4.2.2 Precision

Precision is a measure of the reproducibility of data measurements under similar conditions and is typically assessed by measuring the degree of mutual agreement between or among independent measurements of the same sample. The common measure of precision is the relative percent difference (RPD), calculated as follows:

$$RPD = 100 \times (X_1 - X_2)/[(X_1 + X_2)/2]$$

Where:  $X_1$  = original sample value

$X_2$  = duplicate sample value.



RPD relates to the analysis of duplicate laboratory or field samples. Typically, field precision is assessed by co-located samples, field duplicates, or field splits and laboratory precision is assessed using laboratory duplicates, matrix spike duplicates, or laboratory control sample duplicates.

For this investigation target RPD limits will be 40%. RPDs will not be calculated if the observed concentration is less than five times the reporting limit in either the sample or field duplicate.

#### **4.2.3 Completeness**

Completeness measures the quantity of valid data obtained during the investigation, compared to the quantity of valid data expected. For this investigation, it is expected that all data will be valid.

Completeness is calculated as follows:

$$\text{Completeness} = 100 \times (\text{number of valid samples obtained}) / (\text{number of samples collected})$$

The completeness goal for this investigation is 95%.

#### **4.2.4 Comparability**

Comparability expresses the confidence with which one data set can be compared to another. For this investigation, comparability will be assessed by documenting conformance to the SAP and noting any significant deviations. The data quality assurance review will also be considered in assessing data comparability. It should be noted that the current lack of a standardized methodology for the analysis of PFAS in soil and groundwater matrices must be considered when comparing data generated from different analytical laboratories.



## 5 Quality Assurance/Quality Control

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This section outlines the quality assurance/quality control (QA/QC) measures that will be used during investigation activities.

### 5.1 Sample Handling and Custody

#### 5.1.1 Field Sampling Custody

The objective of field sample custody is to assure that samples are traceable and are not compromised between sample collection and receipt by the analytical laboratory. A person will have custody of a sample when the samples are:

- In their physical possession;
- In their view after being in their possession;
- In their personal possession and secured to prevent tampering (such as in a locked office or vehicle); and
- In a restricted area accessible only to authorized personnel and the person is one of the authorized personnel.

Chain of custody documentation will consist of chain of custody forms. One copy of the COC will be retained by the field sampling personnel and subsequently placed on file along with other documentation of field activities. The remaining copies of the COC will be placed inside the sample cooler. Each time the samples change custody (with the exception of commercial delivery services) the COC will be signed by both the new and former responsible parties.

#### 5.1.2 Field Log Books

Field log books serve as a daily record of events, observations, and measurements during field activities. All information pertinent to monitoring activities is recorded in the log books, and will include:

- Name and title of author
- Name(s) of field crew personnel
- Name of site and project code
- Description of sample location
- Number and volume of samples taken
- Date and time of collection
- Sample identification numbers
- Sampling method
- Preservatives used
- Field measurements (temperature, dissolved oxygen)
- Field observations (weather conditions, flow appearance, etc.)



### **5.1.3 Chain-of-Custody Forms**

Completed chain-of-custody forms will be required for all samples to be analyzed. Chain-of-custody forms will be prepared by the field sampling crew during the daily sample collection events. The chain-of-custody form will contain the following information:

- Unique sample identification number
- Sample location
- Sample date and time
- Sample description
- Sample type
- Sample preservation
- Analyses required

The original chain-of-custody form will accompany the samples to the laboratory. The chain-of-custody forms will remain with the samples at all times and will be signed by a representative of the laboratory upon receipt of the samples.

## **5.2 Quality Control Requirements**

### **5.2.1 Field Duplicates**

Field duplicates (splits) will be collected and analyzed to check the precision or reproducibility of sampling and analytical procedures. Field duplicates are defined as two separate samples collected at a single location and time, labeled with separate identification codes so the laboratory cannot identify the samples as duplicates. Duplicate samples will be collected at the rate of approximately 5 percent. The duplicate samples will be handled and analyzed by the laboratory exactly the same as all other samples.

### **5.2.2 Field Blanks**

Field blanks will be analyzed to check for chemical constituent infiltration and sample bottle contamination originating from sample transport and storage. A field blank will consist of analyte-free water (supplied by the laboratory) poured into a sample bottle at the sample site and preserved according to the parameters to be analyzed. Field blanks will be collected at the rate of approximately 5 percent.

### **5.2.3 Equipment Blanks**

Equipment blanks will be collected and analyzed to check for cross-contamination potential between samples or from sampling equipment. An equipment blank will consist of analyte-free water (supplied by the laboratory) poured over a sampling device or drawn through sample tubing and into a sample bottle at the sample site and preserved according to the parameters to be analyzed. At least one equipment blank will be collected for each sampling device type used during the investigation.

### **5.2.4 Source Water Sample**

It is expected that a local water source will be used to provide water for drilling (if needed) and equipment decontamination. One sample of that water source will be collected for PFAS analysis.



### 5.3 Special Precautions: PFC-Free Equipment, Supplies, Materials and Clothing

In accordance with EGLE PFAS sampling guidance<sup>5</sup>, special precautions shall be employed to minimize the possibility of sample cross-contamination related to the low PFAS detection limits and the widespread use of PFAS in consumer products and industrial processes, including:

- Conduct sampling beginning in areas of known or suspected lowest concentrations and progressing to areas of highest concentrations;
- Water used for equipment cleaning/rinsing will be sampled periodically to evaluate potential PFAS content;
- Drilling and sampling equipment and materials should be free of polytetrafluorethylene (PTFE), ethylene tetrafluoroethylene (ETFE), and fluorocarbon-based products whenever feasible (e.g., field filters, sample tubing, pumps, lubricants, O-rings, pipe-thread pastes, tapes, sealants); and
- Personal protective equipment, clothing, and hygiene products should be free of PFAS (e.g., fluoropolymer linings used on Tyvek, Nomex, and Viton materials, Gore-Tex linings, water resistant/waterproof/stain resistant treatments, sunblock, insect repellants, cosmetics/hand creams, food packaging protective of water and grease. All equipment, materials, supplies, and clothing used during field activities must be PFAS-free in accordance with the guidelines presented below.

### 5.4 Data Assessment

QA review of all data will be conducted and documented before the data are used for any decisions or published in any way other than the original laboratory reports.

#### 5.4.1 Laboratory Data Review and Validation

Laboratory QA review will be conducted in accordance with the laboratory Quality Assurance Plan (QAP). Upon receipt of the laboratory report for each sample batch, the project QA reviewer will verify that internal laboratory QA was conducted.

#### 5.4.2 LimnoTech Data Review and Validation

When data are received from the analytical laboratory, they will be evaluated by the project QA reviewer to determine if they meet project requirements. Specific items to be reviewed during data validation are:

- Chain of custody completeness
- Holding times
- Duplicate analyses data
- Field and equipment blank data
- Precision and accuracy data
- Matrix spike and matrix spike duplicate data
- Surrogate standards (where applicable)
- Overall data assessment

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<sup>5</sup> <https://www.michigan.gov/pfasresponse/-/media/Project/Websites/PFAS-Response/Sampling-Guidance/General.pdf?rev=5fb24f7dabf0468b9415679b60681503>



The QA review of project data will be included in the final project report.





Resolution

NO. 43

A Resolution seeking acceptance of the proposal of best value for generators at three fire stations from Shouldice Industrial Manufacturers and Contractors, Inc., in a not-to-exceed amount of \$118,042.00.

**BATTLE CREEK, MICHIGAN - 1/3/2023**

**Resolved by the Commission of the City of Battle Creek:**

That the proposal of best value for generators at three fire stations is accepted from Shouldice Industrial Manufacturers and Contractors, Inc., in a not-to-exceed amount of \$118,042.00. The City Manager is authorized to execute Contract No. 2023-027R, which will be paid from the following accounts:

Generator Fire Station 1: 223.13.1332.801.010 (\$69,209)

Generator Fire Station 2: 223.13.1334.801.010 (\$31,000)

Generator Fire Station 5: 223.13.1333.801.010 (\$17,833)

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Battle Creek City Commission  
1/3/2023

**Action Summary**

**Staff Member:** Christine Huff, Purchasing Agent

**Department:** Purchasing

**SUMMARY**

A Resolution seeking acceptance of the proposal of best value for generators at three fire stations from Shouldice Industrial Manufacturers and Contractors, Inc., in a not-to-exceed amount of \$118,042.00.

**BUDGETARY CONSIDERATIONS**

This project is ARPA funded.

**HISTORY, BACKGROUND and DISCUSSION**

Fire rescue operations are vital for the protection of the citizens. A fire station losing power could negatively affect fire personnel's ability to do their jobs of protecting the community. This could escalate

into disastrous proportions if there is an emergency in which the entire service area is without power and in need of fire rescue services.

The City issued an RFP on November 16, 2022, for generators to fully power Station 1 (195 E Michigan), Station 2 (145 N. Washington), and Station 5 (1170 Michigan Ave). These generators would be automatic start, natural gas-powered generators. The scope of work required contractors to assess each building and make a recommendation for a capacity of generator for each building, with our guess of minimum kilowatts.

Copies of the RFP were provided to 21 contractors and three plan houses. Construction companies and the trades subscribe to planhouses to be aware of all jobs being bid around the region. In addition, the solicitation was posted to the City's website and advertised in the Battle Creek Shopper. Proposals were due on December 14, 2022. Responses were as follows:

Shouldice  
Motor Shop  
J. Ranck

Copies of the proposals were sent to Battalion Chief Michele Hughey. BC Hughey and I met December 21, 2022, to discuss the proposals and scoring, which came out as follows, out of 175 points:

160 Shouldice  
154 Motor Shop  
110 J. Ranck

All three contractors are well-qualified and have done work for the City and were awarded full points for qualifications. Motor Shop lost points because of the higher price, and J Ranck lost points because of price, and they also did not provide details on a proposed system. J. Ranck viewed this as more of an Invitation for Bid, in which the City would specify make/model and electrical load; however, this was a Request for Proposals in which we stated that we needed automatic natural gas powered generators for 3 fire stations, and asked for vendor recommendations/proposals based on their own site review, as they would for any other commercial customer.

The prices are detailed in the attached score sheet (there are two worksheets in the Excel file). Because Shouldice is well known and has worked for the City, no interviews were necessary.

The Fire Department took up the following options from Shouldice's bid, with standard manufacturer's warranty, for Generac brand generators:

80 kw generator Fire Station 1: (\$69,209)  
35 kw generator Fire Station 2: (\$31,000)  
22 kw generator Fire Station 5: (\$17,833)

I agree awarding to Shouldice for the generators for 3 fire stations is in the best interest of the City.

## **DISCUSSION OF THE ISSUE**

### **POSITIONS**

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## ATTACHMENTS:

File Name	Description
📎 Shouldice_Brothers.pdf	Shouldice Proposal
📎 SCORE_SHEET_BCFD_Generators.xlsx	Score Sheet with prices



City of Battle Creek  
10 N. Division St.  
Battle Creek, MI 49014

December 7, 2022

**Re.: 2023-027R BCFD Generators Bid**

**Re: Generator Replacement - Fire Station #1 - 195 E. Michigan Ave.**

We are pleased to provide a bid price for installing a new 80kw Generac generator with existing transfer switch. This proposal is based on the information that was provided via email, and also site walk-through with your maintenance personnel. The following is a general scope of work included in this quotation:

- Provide and install new 80kW liquid cooled Generac generator 120/208 three phase, with standard enclosure, and existing transfer switch
- To include gas meter upgrade from Semco Energy (allowance of \$1,200.00)
- Provide and install concrete pad
- Provide and install natural gas service from upgraded meter to generator via licensed mechanical contractor. (2lb system with regulators for building and generator unit)
- Manufacturer's warranty to apply
- Provide conduit and wiring from generator to transfer switch location
- Provide circuits for block heater and battery charger
- To include all applicable permits
- Underground trenching not responsible for items not identified by Miss Dig
- Work to be completed during normal hours, and installed in a workman like manner
- For removal & disposal of diesel tank in Basement

**BASE BID for Fire Station #1 = \$69,209.00**

**Alternate: For 45kW Natural-Gas Powered  
Automatic-Start Generator & HVAC  
Chiller lock -out,  
Total Bid Price = \$56,285.00**

## **Fire Station #2 - 145 N. Washington**

We are pleased to provide a bid price for installing a new 35kW Industrial Generac generator with transfer switch at Fire Station #2. This bid is based on the information that was provided by the City, and also site walk-through with your maintenance personnel. The following is a general scope of work included in our bid:

- Provide and install new 35kw air cooled Generac generator with aluminum enclosure, and 200amp 120/240 Nema 3 transfer switch
- To include gas meter upgrade from Semco Energy (allowance of \$1,200.00)
- Provide and install natural gas service from upgraded meter to generator via licensed mechanical contractor.
- Provide conduit and wiring from generator to transfer switch location
- Provide and install cold weather kit on generator unit (block and battery heater)
- Disposal of old diesel unit by owner
- To include all applicable permits
  
- Underground trenching not responsible for items not identified by Miss Dig.
- Work to be completed during normal hours, and installed in a workman like manner.

**BASE BID for Fire Station #2 = \$31,000.00**

**PLEASE NOTE:** Generac does not offer an “industrial” 22kW generator, base bid above is for a 35kW industrial generator.

**Voluntary Alternate:** For Generac 22kW Air Cooled (non-industrial) Generator, total price is = \$18,568.00

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## **Fire Station #5 - 1170 W. Michigan Ave.**

We are pleased to provide a bid price for installing a new 35kW Industrial Generac generator with transfer switch at Fire Station #5. This bid is based on the information that was provided by the City, and also site walk-through with your maintenance personnel. The following is a general scope of work included in our bid:

- Provide and install new 35kW air cooled Generac generator with aluminum enclosure, and 200amp 120/240 Nema 3 transfer switch.
- To include gas meter upgrade from Semco Energy
- Provide and install natural gas service from upgraded meter to generator via licensed mechanical contractor
- Provide conduit and wiring from generator to transfer switch location
- Provide and install cold weather kit on generator unit (block and battery heater)
- Disposal of old diesel unit by owner

- To include all applicable permits
- Manufacturer's warranty applies
- Gas piping for generator to be installed on building
- Work to be completed during normal hours, and installed in a workman like manner

**BASE BID for Fire Station #5 = \$32,432.00**

**PLEASE NOTE:** Generac does not offer an "industrial" 22kW generator, base bid above is for a 35kW industrial generator.

**Voluntary Alternate:** For Generac 22kW Air Cooled (non-industrial) Generator, total price is = \$17,833.00

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**ALL-INCLUSIVE TURKEY GRAND TOTAL = \$132,641.00**

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Thank you for the opportunity to bid this project. Please don't hesitate to contact our office should you have any questions or require additional information.

Sincerely,

SHOULDice INDUSTRIAL MANUFACTURERS AND CONTRACTORS, INC.

*Isaac Burkwalt*

Electrical Division Project Manager/Estimator

Email: [w\\_burkwalt@shouldicebrothers.com](mailto:w_burkwalt@shouldicebrothers.com)

Cell: (269) 300-9482

**2023-027R BCFD Generators**  
**6.0 – PRICE PAGE: Submit with Proposal REVISED Addendum 1**

**Submit ALL-INCLUSIVE TURNKEY prices for the following:**

**Station 1: 195 E Michigan Avenue**

BASE BID: ~~40kw~~ <sup>80kw</sup> natural gas powered automatic-start generator \$ 65,084.00

Removal and proper disposal of diesel tank in the basement of Station 1 \$ 4,125.00

**Station 2: 145 N. Washington Ave**

~~22kw~~ <sup>35kw</sup> industrial natural gas powered automatic-start generator \$ 31,000.00

**Station 5: 1170 W. Michigan Ave**

~~22kw~~ <sup>35kw</sup> industrial natural gas powered automatic-start generator \$ 32,432.00

**ALL-INCLUSIVE TURNKEY GRAND TOTAL** \$ 132,641.00

**ALTERNATE: Station 1**

45kw natural gas powered automatic-start generator (give total price for the 45 kw generator, not an "add" amount). Do NOT include removal of diesel tank in this price. That line item will be the same as listed above. \$ 52,160.00

**VOLUNTARY ALTERNATE: Station 2**

Provide pricing, details, and recommendation if you have an alternate recommendation for Station 2. \$ 18,568.00

**VOLUNTARY ALTERNATE: Station 5**

Provide pricing, details, and recommendation if you have an alternate recommendation for Station 5. <sup>22kw</sup> \$ 17,833.00

**6.1 - OFFER TO CONTRACT: Submit with Proposal**

**ACKNOWLEDGEMENT OF ADDENDA:** 1; \_\_\_\_\_; \_\_\_\_\_; \_\_\_\_\_

**BID SECURITY**

Accompanying this bid is a bid bond in the amount of five percent (5%) or 5% of total bid Dollars (\$\_\_\_\_\_). The total amount of bid security is based on the total base bid of this proposal.

**COMPLETION**

If awarded a contract under this proposal, the undersigned agrees to start work at the site after the receipt from the Owner of a Notice to Proceed. The undersigned further agrees to complete the project by the date stated in your accepted proposal.

**LIQUIDATED DAMAGES**

Not applicable.

**BIDDER'S SIGNATURE** Complete the applicable paragraph below.

I certify, under penalty of perjury, that I have the legal authorization to bind the firm hereunder, and that our firm is not debarred from doing business under the Federal Excluded Parties List System (epls.gov).

I, the Contractor or Contractor's legally authorized signer, further certify compliance with the City of Battle Creek Ordinance Chapter 214, Discrimination Prohibited. I further acknowledge and agree that the Contractor's violation of Chapter 214 shall be a material breach of this contract. In addition, Contractor acknowledges and agrees that it shall be liable for any costs or expenses incurred by the City in obtaining from other sources, the work and services to be rendered or performed or the goods or properties to be furnished or delivered to the City under the contract as a result of a material breach in the Contract for violations of Chapter 214.

**(a) Corporation**

The bidder is a corporation organized and existing under the State of Michigan, which operates under the legal name of Industrial Manufacturers & Contractors, and the full names of its officers are as follows:

President: Daniel R. VanMiddlesworth

Secretary: Randy Sample

Treasurer: John T. Reed

Manager: \_\_\_\_\_

**(b) Co-Partnership**

The bidder is a co-partnership consisting of individual partners whose full names are as follows:

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

**(c) Individual**


The bidder is an individual whose full name is \_\_\_\_\_ and, if operating under a trade name, said trade name is \_\_\_\_\_.

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY & STATE: \_\_\_\_\_

**THIS BID OFFERED BY:**

SIGNATURE: 

NAME: Daniel R. VanMiddlesworth

TITLE: President

PHONE: 269-962-5579


FAX: 269-962-8114

**CERTIFICATE TO BE EXECUTED**

**IF**

**CONTRACTOR IS A CORPORATION**

I, Daniel R. VanMiddlesworth, certify that I am the President of the Corporation named as Contractor hereinabove; that Daniel R. VanMiddlesworth who signed the foregoing Agreement on behalf of the Contractor was then the President of said Corporation; that said Agreement was duly signed for and in behalf of said Corporation by authority of its governing body and is within the scope of its corporate powers..



Daniel R. VanMiddlesworth, President

(Corporate Seal)





Atlantic Specialty Insurance Company  
605 Highway 169 North, Suite 800  
Plymouth, Minnesota 55441  
Phone: 1-800-662-0156  
www.onebeaconsurety.com

## Bid Bond

KNOW ALL MEN BY THESE PRESENTS, that we  
(Here insert full name and address or legal title of Contractor)

Shouldice Industrial Manufacturers and Contractors, Inc

As Principal, hereinafter called the Principal, and  
(Here insert full name and address or legal title of Surety)

Atlantic Specialty Insurance Company  
605 Highway 169 North, Suite 800  
Plymouth, Minnesota 55441

a corporation duly organized under the laws of the State of New York  
as Surety, hereinafter called the Surety, are held and firmly bound unto  
(Here insert full name and address or legal title of Owner)

City of Battle Creek

as Obligor, hereinafter called the Obligor, in the sum of Five Percent of the Attached Bid Dollars  
(\$ 5%), for the payment of which sum well and truly to be made, the said Principal and the said Surety,  
bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for  
(Here insert full name and address and description of project)

Turnkey purchase and installation of  
whole building generators for Battle Creek  
Fire Department stations #1, #2, and #5

NOW, THEREFORE, if the Obligor shall accept the bid of the Principal and the Principal shall enter into a Contract with the  
Obligor in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or Contract  
Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and  
material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such  
bond or bonds, if the Principal shall pay to the Obligor the difference not to exceed the penalty hereof between the amount  
specified in said bid and such larger amount for which the Obligor may in good faith contract with another party to perform the  
Work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this 7 day of December, 2022

(Witness)

Shelley Herschel

(Witness)

Shouldice Industrial Manufacturers and Contractors, Inc. Principal (Seal)

Daniel R. VanMiddlesworth, President

Atlantic Specialty Insurance Company

Rhett Pringle

Rhett Pringle Attorney-in-Fact

(Title)



## Power of Attorney

KNOW ALL MEN BY THESE PRESENTS, that ATLANTIC SPECIALTY INSURANCE COMPANY, a New York corporation with its principal office in Plymouth, Minnesota, does hereby constitute and appoint: **John Avery, Bradford J. Poggi, Rhett Pringle, Renee Scharping**, each individually if there be more than one named, its true and lawful Attorney-in-Fact, to make, execute, seal and deliver, for and on its behalf as surety, any and all bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof; provided that no bond or undertaking executed under this authority shall exceed in amount the sum of: unlimited and the execution of such bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof in pursuance of these presents, shall be as binding upon said Company as if they had been fully signed by an authorized officer of the Company and sealed with the Company seal. This Power of Attorney is made and executed by authority of the following resolutions adopted by the Board of Directors of ATLANTIC SPECIALTY INSURANCE COMPANY on the twenty-fifth day of September, 2012:

Resolved: That the President, any Senior Vice President or Vice-President (each an "Authorized Officer") may execute for and in behalf of the Company any and all bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof, and affix the seal of the Company thereto; and that the Authorized Officer may appoint and authorize an Attorney-in-Fact to execute on behalf of the Company any and all such instruments and to affix the Company seal thereto; and that the Authorized Officer may at any time remove any such Attorney-in-Fact and revoke all power and authority given to any such Attorney-in-Fact.

Resolved: That the Attorney-in-Fact may be given full power and authority to execute for and in the name and on behalf of the Company any and all bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof, and any such instrument executed by any such Attorney-in-Fact shall be as binding upon the Company as if signed and sealed by an Authorized Officer and, further, the Attorney-in-Fact is hereby authorized to verify any affidavit required to be attached to bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof.

This power of attorney is signed and sealed by facsimile under the authority of the following Resolution adopted by the Board of Directors of ATLANTIC SPECIALTY INSURANCE COMPANY on the twenty-fifth day of September, 2012:

Resolved: That the signature of an Authorized Officer, the signature of the Secretary or the Assistant Secretary, and the Company seal may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing an Attorney-in-Fact for purposes only of executing and sealing any bond, undertaking, recognizance or other written obligation in the nature thereof, and any such signature and seal where so used, being hereby adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as though manually affixed.

IN WITNESS WHEREOF, ATLANTIC SPECIALTY INSURANCE COMPANY has caused these presents to be signed by an Authorized Officer and the seal of the Company to be affixed this twenty-seventh day of April, 2020.

STATE OF MINNESOTA  
HENNEPIN COUNTY

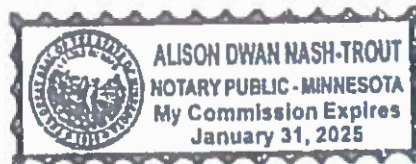


By



Paul J. Brehm, Senior Vice President

On this twenty-seventh day of April, 2020, before me personally came Paul J. Brehm, Senior Vice President of ATLANTIC SPECIALTY INSURANCE COMPANY, to me personally known to be the individual and officer described in and who executed the preceding instrument, and he acknowledged the execution of the same, and being by me duly sworn, that he is the said officer of the Company aforesaid, and that the seal affixed to the preceding instrument is the seal of said Company and that the said seal and the signature as such officer was duly affixed and subscribed to the said instrument by the authority and at the direction of the Company.



Notary Public

I, the undersigned, Secretary of ATLANTIC SPECIALTY INSURANCE COMPANY, a New York Corporation, do hereby certify that the foregoing power of attorney is in full force and has not been revoked, and the resolutions set forth above are now in force.

Signed and sealed. Dated 7 day of December, 2022.



This Power of Attorney expires  
January 31, 2025



Kara Barrow, Secretary

### 6.3 - SUBCONTRACTOR AND DBE FORM – Submit with Proposal

#### I. YOUR FIRM'S BACKGROUND:

Is your firm an MBE (at least 51% minority ownership)? ☐ YES ☒ NO

Is your firm a WBE (at least 51% woman ownership)? ☐ YES ☒ NO

Are you subcontracting any part of this project? ☒ YES ☐ NO

#### II. SUBCONTRACTING INFORMATION: If subcontracting any part of the project, the bidder/contractor expressly agrees that:

- (1) If awarded a contract as a result of this bid, the major subcontractors used in the prosecution of the work will be those listed below, and
- (2) The following list includes all subcontractors who will perform work representing approximately five percent (5%) or more of the Total Base Bid.
- (3) The Bidder represents that the subcontractors listed below are financially responsible and are qualified to do the work required.

SUBCONTRACTOR NAME	City/State	Trade or Commodity	MBE	WBE	Approximate dollar value
Hunter-Prell	Battle Creek, MI	Gas Piping	Y/N	Y/N	\$
			Y/N	Y/N	\$
			Y/N	Y/N	\$
			Y/N	Y/N	\$
			Y/N	Y/N	\$
			Y/N	Y/N	\$
			Y/N	Y/N	\$
			Y/N	Y/N	\$

#### III. DBE RECRUITMENT ACTIVITY LOG: List the MBE's and WBE's that were approached about being a subcontractor for this job, but who are NOT listed above as a subcontractor.

NAME OF FIRM APPROACHED, BUT NOT USED ON THIS PROJECT	City/State	Trade or Commodity	MBE	WBE	Reason not used on this project
			Y/N	Y/N	
			Y/N	Y/N	
			Y/N	Y/N	
			Y/N	Y/N	

182 Elm Street  
Battle Creek, Michigan 49014  
Phone: (269) 962-5579  
Fax: (269) 962-8114  
www.shouldicebrothers.com



Sheet Metal Services  
Millwright Services  
Ironwork Services  
Electrical Services  
Piping Services  
General Trades

## **ELECTRICAL REFERENCES**

➤ **City of Battle Creek**

Contact: Chris Pratt  
Ph. 269.377.8826

WWTP & Water Pumping Stations  
Various Process Controls and Power Distribution Projects

➤ **City of Coldwater**

Contact: Jon Foley  
Ph. 517.278.4118

WWTP & Water Pumping Stations  
Various Process Controls and Power Distribution Projects

➤ **Calhoun County, Michigan**

Contact: Kevin Hamilton  
Ph. 269.420.8435

All County Facilities  
Various Power Distribution, Lighting, and Repair Projects

➤ **Post Foods - Battle Creek, MI**

Contact: Brendan Klok  
Ph. 269.760.8196

Various Process Controls and Power Distribution Projects

➤ **KraftHeinz – Kendallville, IN**

Contact: Sergio Rivera  
Ph. 217.841.1749

Various Process Controls and Power Distribution Projects

# RFP SCORE SHEET

RFP#

2023-027R

Title:

BCFD Generators

Committee Member:

Michele Hughey

		Shouldice	Motor Shop
		Tentative points	Tentative points
		Due to Purchasing at our meeting	Due to Purchasing at our meeting
		Possible Points	
<b>A</b>	<b>Equipment</b>		
1. Evaluate the proposed equipment as specified in the Description of Work, and why it's suitable for each station where it will be set up. 2. Evaluate if and how often automatic testing is programmed to occur, and how often. 3. Evaluate product warranty for each piece of equipment 4. Evaluate annual service plan recommendations and estimated annual cost per generator for the next five years. There is not a place for this on the price page, but they should have recommended a service plan and pricing somewhere in the proposal. This price will not be used in the formal scoring for award, nor will it be binding. This is for information only.		100	90
<b>B.</b>	<b>Qualifications</b>		
1. Evaluate the qualifications and history of the company. 2. List three references of similar work that we may contact. Include name and email		50	50
<b>C</b>	<b>PRICE</b>		
Price comparisons for the 80kw generator, with j. Ranck being an unknown. Assumption that this is 80kw, and higher pricing would only lower their score		25	20
<b>SUBTOTAL TO SHORT LIST OR AWARD</b>		<b>175</b>	<b>160</b>
			<b>154</b>

J. Ranck
Tentative points
Due to Purchasing at our meeting
50
50
10
110

PRICE SCORING

Points for Price: 20

Rank	Vendor Name	40/45 KW		80KW	
		PRICE	Points:	PRICE	Points:
1st lowest	Shouldice	\$ 115,592.00	20	\$ 132,641.00	20
2nd lowest	Motor Shop	\$ 130,919.00	18	\$ 158,126.00	15
3rd lowest	J Ranck	\$ 234,637.00	10	\$ 234,637.00	10

Brand	Shouldice		MotorShop		J
	Generac		Generac	un	
Station 1	80kw	\$ 69,209.00	40kw	\$ 58,639.00	unspec
Station 2	35kw	\$ 31,000.00	22kw	\$ 35,244.00	unspec
Station 5	35kw	\$ 32,432.00	22kw	\$ 37,036.00	unspec
BASE BID W/40/45kw	\$	115,592.00	\$	130,919.00	\$
BASE BID W/80KW	\$	132,641.00	\$	158,126.00	\$
Alternate recommendation St #1	45kw	\$ 52,160.00	80kw	\$ 85,846.00	45kw
Alternate recommendation St #2	22kw	\$ 18,568.00	-		-
Alternate recommendation St #5	22kw	\$ 17,833.00	-		-

SHOULDice

Station 1	80	kw	\$ 69,209
Station 2	35	kw	\$ 31,000
Station 5	22	kw	\$ 17,833
		\$	118,042.00

| Rank

specified

\$	98,422.00
\$	64,151.00
\$	72,064.00
	<b>234,637.00</b>
	<b>234,637.00</b>
\$	105,033.00



Resolution

NO. 44

A Resolution seeking acceptance of the proposal of best value for Flash Flood Water Park Pool Resurfacing from Advanced Pool Services, Inc in a not-to-exceed amount of \$264,500.00.

**BATTLE CREEK, MICHIGAN - 1/3/2023**

**Resolved by the Commission of the City of Battle Creek:**

That the proposal of best value for Flash Flood Water Park Pool Resurfacing is accepted from Advanced Pool Services, Inc. in a not-to-exceed amount of \$264,500.00. The City Manager is authorized to execute Contract No. 2023-028R, which will be paid from:

B/U Account # 401.16.4260.6371.971.020 - Facilities Land Improvement

The City Manager or her designee is also authorized to pre-approved change orders for additional stripping as-needed for \$11.50 per square foot.

---

Battle Creek City Commission  
1/3/2023

**Action Summary**

**Staff Member:** Nils Vos, Senior Buyer

**Department:** Purchasing

**SUMMARY**

A Resolution seeking acceptance of the proposal of best value for Flash Flood Water Park Pool Resurfacing from Advanced Pool Services, Inc in a not-to-exceed amount of \$264,500.00.

**BUDGETARY CONSIDERATIONS**

ARPA funds \$200,000.00, Remaining balance \$64,500.00 is from the General Fund.

**HISTORY, BACKGROUND and DISCUSSION**

The solicitation was issued October 14, 2022, for the Flash Flood Water Park Resurfacing project. This project consists of repairing and resurfacing the entire outdoor pool of Flash Flood Water Park.

Copies of the RFP were provided to 23 vendors who have registered with the City for providing these services, as well as all vendors registered with the Federal Small Business Administration for NAICS (North American Industry Classification System) code 236220- Commercial and Institutional Building Construction. In addition, an advertisement was placed in the Battle Creek Shopper and the City's website. Bid responses were due on November 29, 2022. The following vendors provided responses:

Advanced Pool Services, Inc.  
USA Construction LLC

Proposals were delivered to the following selection committee members for review:

Ted Dearing, Assistant City Manager  
Duska Brumm, Recreation Director  
Katie Norton, Facilities/ Print Shop Manager

Committee members reviewed and scored each proposal relative to the evaluation criteria set forth in the RFP. The Committee met on December 6, 2022, to discuss their scores and arrive at consensus scores for each category, for each vendor. Those scores were as follows, out of a possible 100 points:

USA Construction LLC 73  
Advanced Pool Services, Inc. 70

The vendor recommended work plans and pricing of the vendors were a lot different. USA Construction LLC only suggested repairing the plaster as needed for \$270,000, but Advanced Pool Services, Inc. recommended stripping the entire pool plaster down to the cement and then resurfacing, which is significantly more expensive at \$360,000. Therefore, the committee requested both vendors to inspect the pool again and confirm or recommend their best solution, which is allowed in the RFP process.

Vendors are not told pricing or any other details of other vendors' proposals during the selection process.

As a result of the re-inspection, this time with different staff and without snow covering the pool, Advanced Pool Services, Inc. discovered the pool condition did not warrant the stripping of the entire pool plaster down to the concrete, but rather only repair to the damaged areas as needed, for \$11.50 per square foot. Their price was reduced from \$360,000.00 to \$264,500.00, which is allowed in the RFP process. USA Construction LLC did not change their proposal.

The ratings changed as a result, as follows:

Advanced Pool Services, Inc. 78  
USA Construction LLC 72

The committee decided interviews were not needed and recommended to award the project to Advanced Pool Services, Inc.

Advanced Pool Services, Inc. is a new vendor to the City of Battle Creek and therefore references were checked. The Cities of Oakland and Livonia responded to the reference check and had satisfactory experience with this vendor and recommend Advanced Pool Services, Inc.

I concur with the committee decision that awarding to Advanced Pool Services, Inc. is in the best interest of the City.

## **DISCUSSION OF THE ISSUE**

## **POSITIONS**

---

### ATTACHMENTS:

File Name	Description
 Binder4.pdf	Vendor Proposal

**CONTRACT FORM DRAFT**  
**CONTRACT NO #2023-028R**

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ hereinafter called the "Contractor" and the City of Battle Creek, hereinafter called the "Owner."

WITNESSETH: In consideration for the mutual covenants hereinafter stated, the parties agree for themselves, their personal representatives, successors, assigns as follows:

**I. The Contractor promises and agrees** for Flash Flood Water Park pool repairs.

A. To furnish all necessary materials, equipment, tools, skill and labor of every description necessary or reasonable incidental to carrying forth and completing the work specified, in strict conformity with the true intent of scope of work, and other contract documents that are hereby made a part hereof as fully and to the same effect as though they had been set forth at length herein, listed here with the most recent document taking precedence.

Clarification and response email dated December 16, 2022  
Clarification and revised proposal dated December 12, 2022  
Clarification and response email dated November 30, 2022  
Vendor proposal submitted on November 29, 2022  
Request for proposal dated October 14, 2022

B. To commence work under this contract on or before a date to be specified by the owner in a written Notice to Proceed and complete the project by the date specified in the Request for Proposal, or more recent document as agreed upon in A, above.

C. Requirements for a specific trade or contract will generally be described in that portion of the specifications or drawings related to that trade or contract. Such requirements may, however, be described in other sections of the Contract Documents. The Contractor will be held responsible for having carefully examined all drawings and read all requirements of the specifications and all Contract Documents to avoid omissions or duplications and to insure a complete job.

D. The Contractor must be fully informed about conditions relating to the construction of the project and the employment of labor thereon. Failure to do so will not relieve a successful bidder of the obligation to furnish all material and labor necessary to carry out the provisions of this contract.

E. Any claim by the Contractor of an inability to meet any requirement set forth in the Contract Documents, or that any requirement of these documents is impractical or unreasonable, will not be recognized, unless the claim was made at the time the proposal was submitted, and specific provision is made for such claim in the Agreement between Owner and Contractor (Proposal and Agreement).

F. Warranty: Contractor shall remove and replace at no additional cost to the City any defects in workmanship or materials that may be apparent or may develop within a period of one (1) year from the date of final acceptance.

G. NON-DISCRIMINATION CLAUSE: The bidder agrees not to discriminate against any employee or applicant for employment, to be employed in the performance of such contract with respect to hire tenure, terms, conditions or privileges, of employment, or any matter directly or indirectly related to employment because of his or her actual or perceived race, color, religion, national origin, sex, age, height, weight, marital status, physical or mental disability, family status, sexual orientation, or gender identity. Breach of this covenant may be regarded as a material breach of the contract as provided for in Act 220 and Act 453 of the Public Acts of 1976, as amended, entitled "Michigan Handicapper's Civil Rights Act" and/or the "Michigan Elliott Larson Civil Rights Act" and/or City of Battle Creek Chapter 214 "Discrimination Prohibited" Ordinance. The bidder further agrees to require similar provisions from any subcontractors, or suppliers. The bidder agrees to comply with the Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, as supplemented in Department of Labor regulations (41 CFR, Chapter 60).

**II. The Owner promises and agrees:**

A. To pay the Contractor for said work when completed in accordance with the provisions of these contract documents, and for the contract sum of:

Two Hundred sixty four thousand and 00/100 dollars (\$ 264,000.00 ). Payment for work is subject to additions provided therein and for the authorized work complete in place and accepted by the Owner or its authorized representatives.

III. It is further understood and agreed between the parties hereto as follows:

A. The said work is to be done in accordance with the laws of the State of Michigan to the entire satisfaction and approval of the Owner or its duly authorized representatives.

B. The decision of said Owner's authorized representative upon any questions connected with the execution of this Agreement or any failure or delay in the prosecution of the work by said Contractor shall be final and conclusive.

C. If, at any time after the execution of the Agreement and the Bond for its faithful performance, the Owner shall deem the surety or sureties then upon said bond to be unsatisfactory or, if, for any reason said bond shall cease to be adequate security for the performance of the work, the Contractor shall, at their own expense, within fifteen (15) calendar days after receipt of written notice from the Owner to do so, furnish an additional bond or bonds in such form and amount and with such surety or sureties as shall be satisfactory to the Owner. In such event, no further payment to the Contractor shall be deemed to be due under this Agreement until such new or additional security for the faithful performance of the work shall be furnished in a manner and form satisfactory to the Owner.

D. VENUE: Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement or the transactions it contemplates shall bring the legal action or proceeding:

(i) in the United States District Court for the Western District of Michigan; or

(ii) in any court of the State of Michigan sitting in Calhoun County, if there is no federal subject matter jurisdiction.

E. GOVERNING LAW: This agreement shall be enforced under the laws of the State of Michigan. Contractor must comply with all applicable federal, state, county, and City laws, ordinances, and regulations. Contractor shall ensure payment of all taxes, licenses, permits, and other expenses of any nature associated with the provision of services herein. Contractor shall maintain in current status all Federal, State and Local licenses and permits required for the operation of the business conducted by the Contractor.

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

STATE OF MICHIGAN)

) ss

COUNTY OF CALHOUN)

**I certify, under penalty of perjury, that I have the legal authorization to bind the firm hereunder, and that our firm is not debarred from doing business under the Federal Excluded Parties List System (epls.gov).**

**I, the Contractor or Contractor's legally authorized signer, further certify compliance with the City of Battle Creek Ordinance Chapter 214, Discrimination Prohibited. I further acknowledge and agree that the Contractor's violation of Chapter 214 shall be a material breach of this contract. In addition, Contractor acknowledges and agrees that it shall be liable for any costs or expenses incurred by the City in obtaining from other sources, the work and services to be rendered or performed or the goods or properties to be furnished or delivered to the City under the contract as a result of a material breach in the Contract for violations of Chapter 214.**

City Attorney

SIGNED, SEALED, & EXECUTED  
BY CITY OF BATTLE CREEK

\_\_\_\_\_  
City Manager

SIGNED, SEALED, AND  
EXECUTED BY CONTRACTOR:

**I swear, under penalty of perjury, that I have the legal authorization to bind the firm hereunder:**

CONTRACT FORM APPROVED BY:

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

Title:\_\_\_\_\_

## RE: RFP Questions

Advanced Pool <advancedpool@comcast.net>

Fri 12/16/2022 10:00 AM

To: Nils P. Vos <npvos@battlecreekmi.gov>

Yes, that is part of prep. Saw cutting under gutter is required to get flush application of new finish. Gregg

Sent from [Mail](#) for Windows

---

**From:** [Nils P. Vos](#)

**Sent:** Friday, December 16, 2022 9:34 AM

**To:** [Advanced Pool](#)

**Subject:** Re: RFP Questions

Hello Gregg, We had saw cutting entire perimeter of the pool in the scope of work. Is that included in your original or amended proposal? If not please explain.

 npvos

**From:** Advanced Pool <advancedpool@comcast.net>

**Sent:** Monday, December 12, 2022 12:47 PM

**To:** Nils P. Vos <npvos@battlecreekmi.gov>

**Subject:** RE: RFP Questions

Attached is revised letter as requested. Gregg

Sent from [Mail](#) for Windows

---

**From:** [Nils P. Vos](#)

**Sent:** Monday, December 12, 2022 11:26 AM

**To:** [Advanced Pool](#)

**Subject:** Re: RFP Questions

Hello, Thank you for coming out last week to inspect the pool and revise your proposal. Can you please email me what we talked about for the record. Thank you

 npvos

**From:** Nils P. Vos

**Sent:** Tuesday, December 6, 2022 11:28 AM

**To:** Advanced Pool <advancedpool@comcast.net>

**Subject:** RFP Questions

Hello, the committee met today to discuss your company's submitted proposal for the Flash Flood Water Park Pool Resurfacing project and had the following questions and comments. Please review and respond.

1. Your work plan includes removing the plaster from the entire pool. Why do you recommend this process as compared to, for example repairing the damaged and loose areas only?
2. We recommend a complete re-inspection of the pool to ensure your proposal best fits the job requirements. We ask that you send a representative here by or before **12-13-22** to inspect as there is no snow covering the pool area currently. If you are not able to send someone or

feel you have enough information from the initial inspection, please elaborate on why and how your proposed work plan meets the job requirements.

 npvos

(248)889-8846  
Fax (248)889-8848  
Advancedpool@comcast.net

Mailing/Billing  
PO Box 233  
Milford, MI 48381

Office/Shipping  
1220 N. Milford Rd.  
Highland, MI 48357

## Key Personnel

Gregg Paulsen	51 Years
Brad Coldiron	37 Years
Kevin Steele	40 Years
Jamie Miranda	20 Years
Gilberto Miranda	20 Years
John Spencer	30 Years

Plaster installation subcontracted to Classic Pool Plastering  
Owner- Jose Lopez      20 Years Experience

We are a Swimming Pool Contractor ,specializing in Commercial and Institutional projects.

Project consists of stripping existing finish to original concrete structure This is done by hand with electric demolition hammers. Chipping under tile and around fixtures. Interior will be acid washed, power washed prior to installing Bond Kote material. Pool will then be refinished with quartz enhanced plaster finish.

We will want to start in February to remove existing finish. Bond Kote / Plaster finish cannot be applied until ambient temperature remains consistently above 40 degrees. This usually occurs late April. We cannot control weather, so we need to be ready if we get an early warm spell!

Pool plaster is designed to be submerged,so dry checking is to be expected

in areas left unsubmerged throughout winter, and zero depth areas. We will repair delaminated areas, if any for 2 years as long as proper chemical balances are maintained. Plaster is not warranted for color consistency or staining.

Respectfully,  
Gregg Paulsen- President

Addendum to letter:

We would like to alter our recommendation to you, after conducting on site inspection. The pool will not require total stripping. The process would be as follows:

Drain pool

Clean out debris from pool interior and gutter trough

Utilize electric demolition hammers to detect and remove areas of delamination ( up to 250 square feet )

Acid wash interior of pool

Powerwash interior of pool

Apply Bond Kote to provide suitable substrate for new finish

Refinish interior of pool with quartz enhanced finish

Start system and open pool once pool is filled by owner.

Test and Balance water to Langliers index.

Notes:

Owner to provide fill water and monitor filling. Finish should be misted with hose until submerged.

Areas less unsubmerged throughout winter season will probably show dry checking as pool finishes are designed to be submerged

Finish not warranted against inconsistent colorings or staining.

Structural damage or other issues discovered over course of work will be addressed with a requested change order.

Finish is warranted for 2 years against delamination, which could occur due to be left unsubmerged. Areas will be spot repaired if required at no charge

ADDITIONAL AREAS OF STRIPPING (IF REQUIRED )  
WORK WILL BE COMPLETED PRIOR TO MEMORIAL DAY 2023

WE CANNOT GUARANTEE ON MAY 1<sup>ST</sup> AS REQUESTED

ADDITIONAL AREAS OF STRIPPING IF REQUIRED WILL BE  
COMPLETED @ \$ 11.50 per square foot

Recommendation:

Remove and replace caulking at pool control joints                      \$ 4,500.00

BASE BID :    \$ 260,000.00

Total \$264,500.00

## RE: RFP Questions

Advanced Pool <advancedpool@comcast.net>

Tue 12/6/2022 12:11 PM

To: Nils P. Vos <npvos@battlecreekmi.gov>

Hello, we based bid on entire stripping of pool because the more layers you go over the greater the probability of failure. The finish dries out when left dry and will delaminate especially if left exposed in the sun. We can definitely come back to reexamine pool I don't know the history of the pool, but based on age I would guess the pool has been refinished in past, which means there should be at least 2 layers already. We would strip the pool in Feb/ March The pool could then sit until weather is conducive to install bonding material and pool finish, (this usually doesn't happen until late April/ early May. Completion date given in specification is very questionable, but having pool stripped and ready for material is a lot different than trying to reprep areas that have been broken out and sitting and drying out, then reprepping again. We can amend our bid as follows if you want us to: Refinish pool with quartz enhanced finish, including 350 sq ft of stripping \$260,000.00 Additional stripping @ 11.50 sq. ft. We cannot provide warranty on areas that are not stripped. I will meet you on site Thursday 12-08-22 at 12:00 if that works for you. Respectfully, Gregg Paulsen  
Sent from [Mail](#) for Windows

---

**From:** [Nils P. Vos](#)

**Sent:** Tuesday, December 6, 2022 11:28 AM

**To:** [Advanced Pool](#)

**Subject:** RFP Questions

Hello, the committee met today to discuss your company's submitted proposal for the Flash Flood Water Park Pool Resurfacing project and had the following questions and comments. Please review and respond.

1. Your work plan includes removing the plaster from the entire pool. Why do you recommend this process as compared to, for example repairing the damaged and loose areas only?
2. We recommend a complete re-inspection of the pool to ensure your proposal best fits the job requirements. We ask that you send a representative here by or before 12-13-22 to inspect as there is no snow covering the pool area currently. If you are not able to send someone or feel you have enough information from the initial inspection, please elaborate on why and how your proposed work plan meets the job requirements.

 npvos

**Mission for Battle Creek City Government**

To ensure a safe, prosperous and culturally enriched community.

**Vision for Battle Creek City Government**

We envision Battle Creek as an extraordinary community where people choose to live, work and play.

## Advanced pool

Advanced Pool Services, Inc. <advancedpool@comcast.net>

Wed 11/30/2022 3:27 PM

To: Nils P. Vos <npvos@battlecreekmi.gov>

Email sent from outside of the City of Battle Creek. Use caution before clicking links/attachments.

Good afternoon, here is the information you requested for our quote. let us know if you have any questions.

Thank you,

Kevin Steele

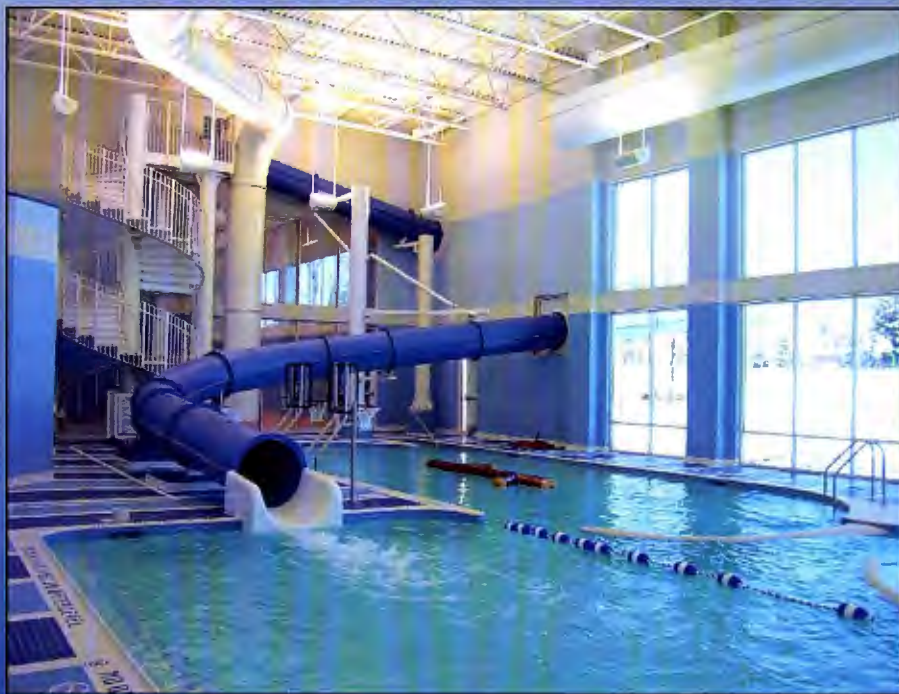
*Service Manager*

**Advanced Pool Services, Inc.**

ph: 248-889-8846

fx: 248-889-8848

Liberty Athletics Club, Ann Arbor, MI

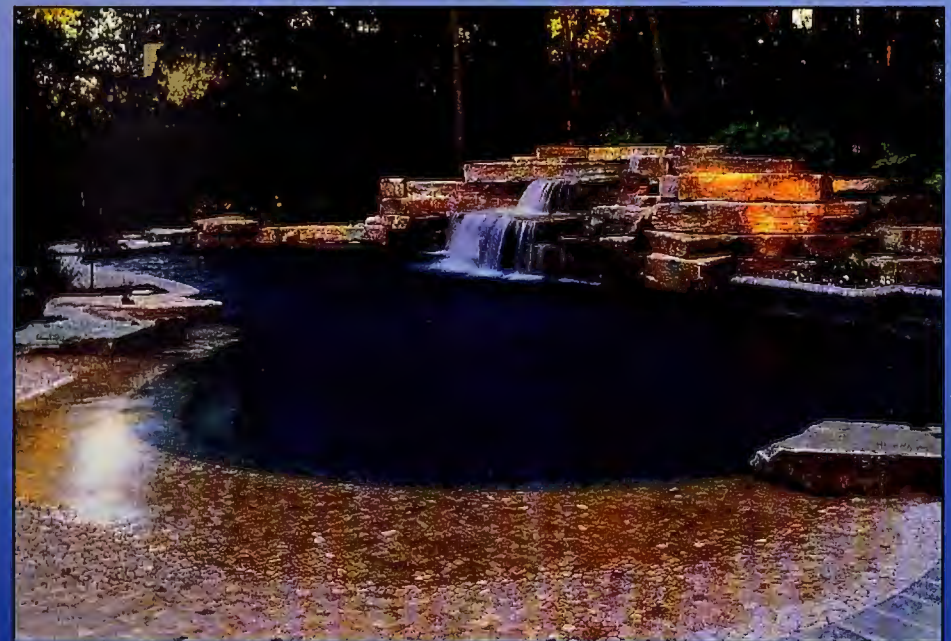


**ADVANCED POOL SERVICES, INC.**  
**800-903-7946**

**ADVANCED POOL SERVICES, INC.**

PO Box 233  
Milford, MI 48381  
800-903-7946 / fx 248-889-8848  
[advancedpool@comcast.net](mailto:advancedpool@comcast.net)

**SERVICE IS OUR ONLY BUSINESS**



**New Pool Construction  
Swimming Pool Repairs  
Complete Renovations**

**Filters & Pumps**

**Deck Equipment**

**Tile • Grout • Marcite**

**Chemical Automation**

**Chemicals**

**Chemical Pumps & Containment**

**John Glenn High School, Bay City, MI**



**Starting Blocks**



**Diving Boards**



**Sand Filters**



**Level Controller**



**Pumps**

**Complete Filter Systems**



**Chemical Feeders**



**Controllers**



**Strainers**









## RE: Proposal Received- Flash Flood Water Park Pool Resurfacing

Advanced Pool <advancedpool@comcast.net>

Wed 11/30/2022 2:10 PM

To: Nils P. Vos <npvos@battlecreekmi.gov>

We do have a brochure, Ill have office manager forward. Incorporated 1994, I started and continue to manage. Prior to that I worked for Paddock Pools for 23 years. Most of my employees Have been with me for a long time. Going back to when I ran renovation side of Paddock (1985) We do a lot of large refinish jobs, and mechanical renovations in the institution pool market. We do all of our preparation work, in house. We used to have in house installation crew for plaster, but decided it was more manageable by utilizing subs that we trust and have a track record with. Classic Pool plastering does more pool plaster work than anyone else in the State and has numerous crews to efficiently handle any size job. I forgot to mention City of Big Rapids, contact Cody, that stripped during the winter as we proposed to you .We generally have sales between 2-3 million per year, although covid put a slight damper on that. I can have office try and find photos of similar jobs in different stages of completion. We have built numerous large pools including a couple for Detroit Public schools, Grace adventures, Lake of the North, Kalamazoo Regional Special Education, Bangor Twp, and others. We prefer to work in renovation field and feel that no one can match our experience or references that we have. Hope this helps. Gregg

Sent from [Mail](#) for Windows

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**From:** [Nils P. Vos](#)

**Sent:** Wednesday, November 30, 2022 1:50 PM

**To:** [Advanced Pool](#)

**Subject:** Re: Proposal Received- Flash Flood Water Park Pool Resurfacing

Hello, thank you for the quick response. Can you elaborate on

1. Describe the qualifications of your firm. Do you have a brochure that highlights your company like years in business, sales amount, employees, products and services offered etc. Examples of similar projects completed with photos.

 npvos

**From:** Advanced Pool <advancedpool@comcast.net>

**Sent:** Wednesday, November 30, 2022 1:17 PM

**To:** Nils P. Vos <npvos@battlecreekmi.gov>

**Subject:** RE: Proposal Received- Flash Flood Water Park Pool Resurfacing

Thanks for opportunity. Please advise asap as we need to schedule accordingly Gregg

Sent from [Mail](#) for Windows

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**From:** [Nils P. Vos](#)

**Sent:** Wednesday, November 30, 2022 12:32 PM

**To:** [advancedpool@comcast.net](#)

**Subject:** Re: Proposal Received- Flash Flood Water Park Pool Resurfacing

In addition please respond to the following

The project is to be completed and ready for final inspection by **May 1, 2023**. Please provide acknowledgement of this timing and a brief timeline or summary of how it can be achieved if awarded to your company.

 npvos

**From:** Nils P. Vos

**Sent:** Wednesday, November 30, 2022 12:10 PM

**To:** advancedpool@comcast.net <advancedpool@comcast.net>

**Subject:** Proposal Received- Flash Flood Water Park Pool Resurfacing

Hello, we have received your company's 8-page proposal response. However, the proposal does not respond to the following evaluation criteria. Please submit your response as soon as possible.

**A. WORK PLAN**

1. Describe your understanding of the requirements presented in this scope of work and your firm's demonstrated capability to perform the type of work requested.
2. Describe in detail what you will do/provide.
3. Provide labor and materials warranty statement.

**C. FIRM and PERSONNEL QUALIFICATIONS**

1. Describe the qualifications of your firm.
2. Indicate the professional personnel/subcontractors who will be assigned to this contract, describing their qualifications, experience, applicable licenses, and special training or certifications.
3. List three references that we may contact for similar projects. Include name and phone number.

 npvos

# Advanced Pool Services, Inc.

(248)889-8846

Fax (248)889-8848

*Advancedpool@comcast.net*

Mailing/Billing  
PO Box 233  
Milford, MI 48381

Office/Shipping  
1220 N. Milford Rd.  
Highland, MI 48357

## **References**

City of Livonia	Michelle	(734) 466-2925
City of St. Clair	Sue Daniels	(810) 329-7121
East Lansing High School	Christopher	(517) 490-2922
City Of Kalamazoo	Steve Youngblood	( 269) 337-8500
City of Port Huron	Nancy Winzer	(810) 984-9700
City of Richmond	Marlo	(586) 727-0525
Oakland County	Tom Garvey	248 343 2309
Huron Clinton Metro Parks	Andrew Caulk	810 623 3555
LifeTime Fitness	Pete Anderson	952 401 2695
La Fitness	Charles Gleeson	248 647 5500
Princeton Management	Jeff Metloff	810 602 3084
Liberty Athletic	Kara	734 665 3738
Wayne State University	Richar Massa	313 577 2278

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Fax (248)889-8848  
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Office/Shipping  
1220 N. Milford Rd.  
Highland, MI 48357

## Key Personnel

Gregg Paulsen	51 Years
Brad Coldiron	37 Years
Kevin Steele	40 Years
Jamie Miranda	20 Years
Gilberto Miranda	20 Years
John Spencer	30 Years

Plaster installation subcontracted to Classic Pool Plastering  
Owner- Jose Lopez      20 Years Experience

We are a Swimming Pool Contractor ,specializing in Commercial and Institutional projects.

Project consists of stripping existing finish to original concrete structure This is done by hand with electric demolition hammers. Chipping under tile and around fixtures. Interior will be acid washed, power washed prior to installing Bond Kote material. Pool will then be refinished with quartz enhanced plaster finish.

We will want to start in February to remove existing finish. Bond Kote / Plaster finish cannot be applied until ambient temperature remains consistently above 40 degrees. This usually occurs late April. We cannot control weather, so we need to be ready if we get an early warm spell!

Pool plaster is designed to be submerged,so dry checking is to be expected

in areas left unsubmerged throughout winter, and zero depth areas. We will repair delaminated areas, if any for 2 years as long as proper chemical balances are maintained. Plaster is not warranted for color consistency or staining.

Respectfully,  
Gregg Paulsen- President

**5.2 - PRICE PAGE: Submit with Proposal**

DATE: 11-29-22

NAME OF BIDDER: ADVANCED Pool Services LLC

BUSINESS ADDRESS: 1220 N. MILFORD RD.  
HIGHLAND MI 48357

To: The City of Battle Creek, Michigan

The undersigned, as Bidder, declares that the only person or parties interested in this bid as principals are those named herein; that this bid is made without collusion with any person, firm or corporation; that the Bidder has carefully examined the location of the proposed work, the proposed forms of Agreement and Bonds, and the Contract Drawings and Specifications for the above designated work, all other documents referred to or mentioned in the Contract Documents, the Contract Drawings and Specifications, including Addenda issued thereto; and the Bidder proposes and agrees if this bid is accepted that they will contract with the City of Battle Creek, Michigan, in the form of the copy of the Agreement included in these Contract Documents, to provide all necessary machinery, tools, apparatus, and other means of construction, including utility and transportation services necessary to do all the work and furnish all materials and equipment specified or referred to in the Contract Documents, in the manner and time therein prescribed and according to the requirements of the City of Battle Creek, Michigan, as therein set forth and to furnish the Contractor's Bonds and Insurance, and to do all other things required of the Contractor by the Contract Documents, and that the Contractor will take in full payment the sums set forth BELOW;

TOTAL **ALL-INCLUSIVE** LUMP SUM PRICE \$ 360,000<sup>00</sup>

Acknowledgement of addenda: \_\_\_\_\_; \_\_\_\_\_; \_\_\_\_\_; \_\_\_\_\_; \_\_\_\_\_; \_\_\_\_\_

**5.3 - OFFER TO CONTRACT: Submit with Proposal**

**COMPLETION**

If awarded a contract under this proposal, the undersigned agrees to start work at the site after the receipt from the Owner of a Notice to Proceed. The undersigned further agrees to complete the project by the date stated in this RFP.

**LIQUIDATED DAMAGES**

Liquidated damages day will be assessed for failure to meet any deadline, as noted in the Section 2.0, Terms and conditions.

**BIDDER'S SIGNATURE** Complete the applicable paragraph below.

I certify, under penalty of perjury, that I have the legal authorization to bind the firm hereunder, and that our firm is not debarred from doing business under the Federal Excluded Parties List System (epls.gov).

I, the Contractor or Contractor's legally authorized signer, further certify compliance with the City of Battle Creek Ordinance Chapter 214, Discrimination Prohibited. I further acknowledge and agree that the Contractor's violation of Chapter 214 shall be a material breach of this contract. In addition, Contractor acknowledges and agrees that it shall be liable for any costs or expenses incurred by the City in obtaining from other sources, the work and services to be rendered or performed or the goods or properties to be furnished or delivered to the City under the contract as a result of a material breach in the Contract for violations of Chapter 214.

**(a) Corporation**

The bidder is a corporation organized and existing under the State of Michigan, which operates under the legal name of Advanced P2P Services and the full names of its officers are as follows:

President: CRESS PAULSEN

Secretary: \_\_\_\_\_

Treasurer: \_\_\_\_\_

Manager: \_\_\_\_\_

**(b) Co-Partnership**

The bidder is a co-partnership consisting of individual partners whose full names are as follows:

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

**(c) Individual**

The bidder is an individual whose full name is \_\_\_\_\_ and, if operating under a trade name, said trade name is \_\_\_\_\_

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY & STATE: \_\_\_\_\_

**THIS BID OFFERED BY:**

SIGNATURE: [Signature]

NAME: CRESS PAULSEN

TITLE: President

PHONE: 248 289-0846

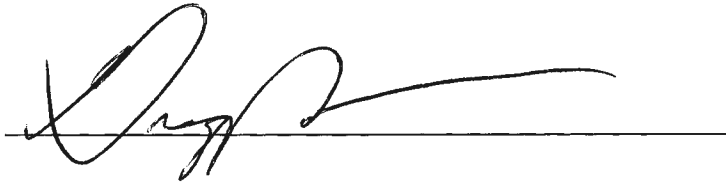
FAX: 248 889-9848

**CERTIFICATE TO BE EXECUTED**

**IF**

**CONTRACTOR IS A CORPORATION**

I, Gregg Pulsen, certify that I am the President of the Corporation named as Contractor hereinabove; that Gregg Pulsen who signed the foregoing Agreement on behalf of the Contractor was then the President of said Corporation; that said Agreement was duly signed for and in behalf of said Corporation by authority of its governing body and is within the scope of its corporate powers..

A handwritten signature in black ink, appearing to read "Gregg Pulsen", is written over a horizontal line.

(Corporate Seal)

### 5.4 - SUBCONTRACTOR AND DBE FORM – Submit with Proposal

#### I. YOUR FIRM'S BACKGROUND:

Is your firm an MBE (at least 51% minority ownership)? \_\_\_\_ YES X NO  
Is your firm a WBE (at least 51% woman ownership)? \_\_\_\_ YES X NO  
Are you subcontracting any part of this project? X YES \_\_\_\_ NO

#### II. SUBCONTRACTING INFORMATION: If subcontracting any part of the project, the bidder/contractor expressly agrees that:

- (1) If awarded a contract as a result of this bid, the major subcontractors used in the prosecution of the work will be those listed below, and
- (2) The following list includes all subcontractors who will perform work representing approximately five percent (5%) or more of the Total Base Bid.
- (3) The Bidder represents that the subcontractors listed below are financially responsible and are qualified to do the work required.

SUBCONTRACTOR NAME	City/State	Trade or Commodity	MBE	WBE	Approximate dollar value
CLASSIC PAT PLASTERING		Finish	<u>(Y)</u> / N	Y / N	\$ 84,000 <sup>00</sup>
			Y / N	Y / N	\$
			Y / N	Y / N	\$
			Y / N	Y / N	\$
			Y / N	Y / N	\$
			Y / N	Y / N	\$
			Y / N	Y / N	\$
			Y / N	Y / N	\$

#### III. DBE RECRUITMENT ACTIVITY LOG: List the MBE's and WBE's that were approached about being a subcontractor for this job, but who are NOT listed above as a subcontractor.

NAME OF FIRM APPROACHED, BUT NOT USED ON THIS PROJECT	City/State	Trade or Commodity	MBE	WBE	Reason not used on this project
<u>N/A</u>			Y / N	Y / N	
			Y / N	Y / N	
			Y / N	Y / N	
			Y / N	Y / N	

**5.5 - DISADVANTAGED BUSINESS FORM – Submit with proposal**

**I. YOUR FIRM'S BACKGROUND:**

Is your firm an MBE (at least 51% minority ownership)? ☐ YES ☒ NO

Is your firm a WBE (at least 51% woman ownership)? ☐ YES ☒ NO

Are you subcontracting any part of this project? ☐ YES ☐ NO

**II. SUBCONTRACTING INFORMATION:** If subcontracting any part of the project, the bidder/contractor expressly agrees that:

- (1) If awarded a contract as a result of this proposal, the major subcontractors used in the prosecution of the work will be those listed below, and
- (2) The following list includes all subcontractors who will perform work representing approximately five percent (5%) or more of the Total Base Bid.
- (4) The Bidder represents that the subcontractors listed below are financially responsible and are qualified to do the work required.

SUBCONTRACTOR NAME	City/State	Trade or Commodity	MBE	WBE	Approximate dollar value
CLASSIC Rock Paving	Portland, ME		(Y/N)	Y/N	\$ 84,000 <sup>00</sup>
			Y/N	Y/N	\$
			Y/N	Y/N	\$
			Y/N	Y/N	\$
			Y/N	Y/N	\$

**III. DBE RECRUITMENT ACTIVITY LOG:** List the MBE's and WBE's that were approached about being a subcontractor for this job, but who are NOT listed above as a subcontractor.

NAME OF FIRM APPROACHED, BUT NOT USED ON THIS PROJECT	City/State	Trade or Commodity	MBE	WBE	Reason not used on this project
N/A			Y/N	Y/N	
			Y/N	Y/N	

Power of Attorney

KNOW ALL MEN BY THESE PRESENTS THAT:

Nationwide Mutual Insurance Company, an Ohio corporation

hereinafter referred to severally as the "Company" and collectively as "the Companies" does hereby make, constitute and appoint:

BARRY C FONAROW; BRIAN F HAUGHN; KATHLEEN A HAWKINS; KIMA BREHM; PHILLIP ROSEN; RACHEL ANNE STONE; STEVEN GLOECKNER.

each in their individual capacity, its true and lawful attorney-in-fact, with full power and authority to sign, seal, and execute on its behalf any and all bonds and undertakings, and other obligatory instruments of similar nature, in penalties not exceeding the sum of

**THREE MILLION AND NO/100 DOLLARS(\$3,000,000.00)**

and to bind the Company thereby, as fully and to the same extent as if such instruments were signed by the duly authorized officers of the Company; and all acts of said Attorney pursuant to the authority given are hereby ratified and confirmed.

This power of attorney is made and executed pursuant to and by authority of the following resolution duly adopted by the board of directors of the Company:

"RESOLVED, that the president, or any vice president be, and each hereby is, authorized and empowered to appoint attorneys-in-fact of the Company, and to authorize them to execute and deliver on behalf of the Company any and all bonds, forms, applications, memorandums, undertakings, recognizances, transfers, contracts of indemnity, policies, contracts guaranteeing the fidelity of persons holding positions of public or private trust, and other writings obligatory in nature that the business of the Company may require; and to modify or revoke, with or without cause, any such appointment or authority; provided, however, that the authority granted hereby shall in no way limit the authority of other duly authorized agents to sign and countersign any of said documents on behalf of the Company."

"RESOLVED FURTHER, that such attorneys-in-fact shall have full power and authority to execute and deliver any and all such documents and to bind the Company subject to the terms and limitations of the power of attorney issued to them, and to affix the seal of the Company thereto; provided, however, that said seal shall not be necessary for the validity of any such documents."

This power of attorney is signed and sealed under and by the following bylaws duly adopted by the board of directors of the Company.

Execution of Instruments. Any vice president, any assistant secretary or any assistant treasurer shall have the power and authority to sign or attest all approved documents, instruments, contracts, or other papers in connection with the operation of the business of the company in addition to the chairman of the board, the chief executive officer, president, treasurer or secretary; provided, however, the signature of any of them may be printed, engraved, or stamped on any approved document, contract, instrument, or other papers of the Company.

IN WITNESS WHEREOF, the Company has caused this instrument to be sealed and duly attested by the signature of its officer the 20th day of August, 2021.

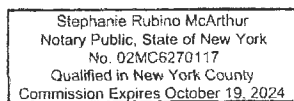


Antonio C. Albanese, Vice President of Nationwide Mutual Insurance Company

ACKNOWLEDGMENT

STATE OF NEW YORK COUNTY OF NEW YORK: ss

On this 20th day of August, 2021, before me came the above-named officer for the Company aforesaid, to me personally known to be the officer described in and who executed the preceding instrument, and he acknowledged the execution of the same, and being by me duly sworn, deposes and says, that he is the officer of the Company aforesaid, that the seal affixed hereto is the corporate seal of said Company, and the said corporate seal and his signature were duly affixed and subscribed to said instrument by the authority and direction of said Company.

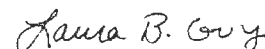


Notary Public  
My Commission Expires  
October 19, 2024

CERTIFICATE

I, Laura B. Guy, Assistant Secretary of the Company, do hereby certify that the foregoing is a full, true and correct copy of the original power of attorney issued by the Company; that the resolution included therein is a true and correct transcript from the minutes of the meetings of the boards of directors and the same has not been revoked or amended in any manner; that said Antonio C. Albanese was on the date of the execution of the foregoing power of attorney the duly elected officer of the Company, and the corporate seal and his signature as officer were duly affixed and subscribed to the said instrument by the authority of said board of directors; and the foregoing power of attorney is still in full force and effect.

IN WITNESS WHEREOF, I have hereunto subscribed my name as Assistant Secretary, and affixed the corporate seal of said Company this 29th day of November, 2022.



Assistant Secretary

BDJ 1(08-21)00

**NATIONWIDE MUTUAL INSURANCE COMPANY  
AND SUBSIDIARIES AND AFFILIATES**

Consolidated and Combined Statutory Statements of Admitted Assets, Liabilities and Surplus

(in millions)	December 31,	
	2021	2020
<b>Admitted assets</b>		
<b>Invested assets</b>		
Bonds	\$ 21,081	\$ 17,725
Stocks	7,935	8,352
Mortgage loans, net of allowance	1,985	1,892
Owner occupied real estate, at cost (less accumulated depreciation of \$431 and \$457 as of December 31, 2021 and 2020, respectively)	341	404
Cash, cash equivalents and short-term investments	558	1,187
Other invested assets	6,372	5,357
<b>Total invested assets</b>	<b>\$ 38,272</b>	<b>\$ 34,917</b>
Premiums in course of collection	4,449	4,182
Accrued investment income	164	135
Corporate-owned life insurance	1,657	1,580
Deferred federal income tax asset	1,747	1,990
Other assets	1,416	963
<b>Total admitted assets</b>	<b>\$ 47,705</b>	<b>\$ 43,767</b>
<b>Liabilities and surplus</b>		
<b>Liabilities</b>		
Losses and loss expense reserves	\$ 16,628	\$ 14,792
Unearned premiums	8,447	7,972
Accrued expenses and taxes, other than federal income taxes	791	803
Agents' security compensation plan reserve	993	1,085
Other liabilities	2,824	2,630
<b>Total liabilities</b>	<b>\$ 29,683</b>	<b>\$ 27,282</b>
<b>Surplus</b>		
Surplus notes, net of unamortized issue discount of \$9 as of December 31, 2021 and 2020	\$ 3,545	\$ 3,545
Unassigned surplus	14,477	12,940
<b>Total surplus</b>	<b>\$ 18,022</b>	<b>\$ 16,485</b>
<b>Total liabilities and surplus</b>	<b>\$ 47,705</b>	<b>\$ 43,767</b>

**Certification**

I, Jodi Abbate, VP, Controller, do hereby certify that the foregoing is a true and correct statement of the statutory balance sheet of said Corporation as of December 31, 2021 and 2020 to the best of my knowledge and belief.

Jodi Abbate

*Jodi Abbate*



ANDREW SWARTZEL  
NOTARY PUBLIC • STATE OF OHIO  
Comm. No. 2021-RE-839107  
My Commission Expires Oct. 24, 2028

County of  
FRANKLIN

*Andrew Swartzel*  
3-22-2022


**AIA® Document A310™ – 2010**
**Bid Bond****CONTRACTOR:**

(Name, legal status and address)

Advanced Pool Services, Inc.  
7769 Farnsworth Drive  
Clay Township, MI 48001

**OWNER:**

(Name, legal status and address)

City of Battle Creek, Michigan  
35 W. Hamblin  
Battle Creek, MI 49017

**BOND AMOUNT:** 5% of the total amount bid-----**PROJECT:**

(Name, location or address, and Project number, if any)

Flash Flood Waterpark Pool Resurface

**SURETY:**

(Name, legal status and principal place of business)

Nationwide Mutual Insurance Company  
1100 Locust St. Dept. 2006  
Des Moines, IA 50391-2006

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

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Signed and sealed this 29th day of November, 2022

Advanced Pool Services, Inc.

(Principal)

(Seal)

(Witness)

(Title)

Nationwide Mutual Insurance Company

(Surety)

Kima Brehm, Attorney-in-Fact

(Title)

(Witness)



**CAUTION:** You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.

Init.

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051110



**CITY OF BATTLE CREEK**  
**NOTICE OF REQUEST FOR PROPOSALS**

**RFP#: 2023-028R**

**TITLE: Flash Flood Water Park Pool Resurfacing**

**ISSUE DATE: October 14, 2022**

**PROPOSAL DUE DATE:** November 29, 2022, at 4:00 PM Local Time

**LOCATION:** **Proposals must be submitted online. See Section 5.0 for instructions.**  
**DO NOT EMAIL PROPOSALS.**

**Pre-Bid Conference:** **There is no pre-bid conference or organized walk through.** A site visit can be arranged by contacting Duska Brumm, Parks & Recreation Director, at [dabrumm@battlecreekmi.gov](mailto:dabrumm@battlecreekmi.gov) or 269-966-3355 x1610.

**Location:** Full Blast 35 W Hamblin Ave, Battle Creek, MI 49017

**Purchasing Contact:** **Nils Vos**  
**E-mail:** [npvos@battlecreekmi.gov](mailto:npvos@battlecreekmi.gov) questions only: **do not email proposals**

**DESCRIPTION:** The City is soliciting proposals for the purpose of contracting for Flash Flood water park pool resurfacing.

<b>PRE-PROPOSAL CONFERENCE:</b> There is no pre-bid conference or organized walk through. A site visit can be arranged by contacting Duska Brumm, Parks & Recreation Director, at: <a href="mailto:dabrumm@battlecreekmi.gov">dabrumm@battlecreekmi.gov</a> or 269-966-3355 x1610.	<b>FUNDING:</b> This project is funded by federal ARPA funds.
<b>TECHNICAL QUESTIONS OR SITE VISITATION:</b> Send your technical questions to: <a href="mailto:npvos@battlecreekmi.gov">npvos@battlecreekmi.gov</a> . A site visit can be arranged by contacting Duska Brumm, Parks & Recreation Director, at: <a href="mailto:dabrumm@battlecreekmi.gov">dabrumm@battlecreekmi.gov</a> or 269-966-3355 x1610.	<b>PREVAILING WAGES:</b> Required for this project. See attached wage rates at the end of this document. Contractor shall abide by all the requirements set forth in Section 208.09, PREVAILING WAGES ON CITY PROJECTS, of the City's Administrative Code.  Applicable for the trades listed in Attachment A.
<b>PLANHOLDERS LIST:</b> Available on website or Email <a href="mailto:purchasing@battlecreekmi.gov">purchasing@battlecreekmi.gov</a>	
<b>PROPOSAL VALID:</b> Proposals may be withdrawn up to the time and date of the proposal opening. After the proposal opening, proposals may not be withdrawn for a period of ninety 90 days thereafter. The City of Battle Creek reserves the right to waive any irregularity or informality in proposals, to reject any and/or all proposals, in whole or in part, or to award any contract to other than the low bidder, should it be deemed in its best interest to do so.	<b>ADDENDA:</b> Each addendum will be on file in the Office of the Purchasing Agent. To the extent possible, copies will be mailed to each person registered as having received a set of proposal documents. It shall be the bidder's responsibility to make inquiry as to addenda issued. All such addenda shall become a binding part of the contract.
<b>BID BOND: NOT REQUIRED</b>	<b>PERFORMANCE/LABOR/MATERIALS BONDS:</b> The accepted bidder will be required to furnish a satisfactory performance bond and labor/materials payment bond, each in an amount equal to 100% of the contract and insurance certificate upon forms acceptable to the City.

**PROPOSAL SUBMITTAL:**

Proposals must be submitted through our secure online portal by registered vendors by the date and time listed above.

Please upload **ONE pdf file** that includes all requested submittals, rather than several parts of the proposal uploaded.

Please visit <http://battlecreekmi.gov/230/Bid-Proposal-Solicitations> and click on Bid & Proposal Solicitations. This will redirect you to our secure VendorRegistry website where you can register as a vendor (required) and obtain this full document and upload your proposal.

Email the purchasing contact listed above if the above link doesn't work.

PROPOSERS ARE STRONGLY ENCOURAGED TO CAREFULLY READ THE ENTIRE REQUEST FOR PROPOSALS.

## TABLE OF CONTENTS

1.0 - GENERAL INFORMATION FOR THE RESPONDING FIRM .....	4
2.0 - TERMS AND CONDITIONS .....	6
3.0 - TERMS AND CONDITIONS CONSTRUCTION/INSTALLATION/DEMOLITION.....	12
4.0 - SCOPE OF WORK.....	13
5.0 - PROPOSAL SUBMITTAL INSTRUCTIONS AND FORMS .....	14
5.1 - EVALUATION CRITERIA and SUBMITTAL CHECKLIST .....	15
5.2 - PRICE PAGE: Submit with Proposal .....	17
5.3 - OFFER TO CONTRACT: Submit with Proposal .....	18
5.4 - SUBCONTRACTOR AND DBE FORM – Submit with Proposal .....	20
5.5 - DISADVANTAGED BUSINESS FORM – Submit with proposal .....	21
6.0 - SAMPLE CONTRACT FORMS .....	22
ATTACHMENT A – PREVAILING WAGES .....	27
ATTACHMENT B – POOL REPAIR AREA MAP .....	33

## 1.0 - GENERAL INFORMATION FOR THE RESPONDING FIRM

1.1 **ISSUING OFFICE:** This RFP is issued for the City of Battle Creek, Michigan (hereinafter referred to as the "City") through the Purchasing Office, which shall be referred to as the "Issuing Office."

1.2 **GENERAL SUBMITTAL INFORMATION:** (See Section 5.0 for detailed information)

- A. Proposals must be submitted in complete original form as **one pdf** submitted through our secure online portal by registered vendors: please visit <http://battlecreekmi.gov/230/Bid-Proposal-Solicitations> and click on Bid & Proposal Solicitations OR email [purchasing@battlecreekmi.gov](mailto:purchasing@battlecreekmi.gov) for links.
- B. Proposals will be accepted via the method listed until the time and date specified herein. There will be no public reading because this is an RFP, wherein price is only one factor in selection and subject to negotiation. All proposals will be available after contract award, under the FOIA.
- C. Late proposals will not be accepted, and the online system will automatically shut off at exactly the specified time.
- D. All proposals submitted in response to this solicitation shall become the property of the City and be a matter of public record available for review. **Vendors are advised that their proposals are subject to FOIA, and are not confidential and should not be marked as such.** However, proposals shall not be considered fully received for the purpose of Freedom of Information Act requests until the City has determined that no additional clarifications or revisions of offers shall be accepted.
- E. The proposal shall be legally signed on the OFFER TO CONTRACT page and the complete address of the proposer given thereon.
- F. The City is exempt from Federal Excise and State Sales Taxes, and such taxes shall not be included in proposal prices

1.3 **TENTATIVE SCHEDULE:** The City may deviate from this schedule. The City will not discuss the status of any proposal or the selection process. All proposers will be notified in writing of the City's decision. Please do not contact City staff for status updates. Interviews, if necessary, will be scheduled at mutually agreed upon times.

Proposal Reviews:	week of December 5th
Interviews, if applicable:	week of January 9th
Final Decision:	week of February 13th

1.4 **AWARD OF CONTRACT:** This project will be awarded to a single contractor who submits the proposal deemed to be in the best interest of the City, unless otherwise noted in this document. Notwithstanding any other provision of the Request for Proposal, the City reserves the right to: (1) waive any immaterial defect or informality; or (2) reject any or all proposals, or portions thereof; or (3) reissue the Request for Proposal.

A response to any Request for Proposal is an offer to contract with the City based upon the terms, conditions, and specifications contained in the City's Request for Proposal. Proposals do not become contracts unless and until the City executes them. A contract has its inception in the award, eliminating a formal signing of a separate contract. For that reason, all of the terms and conditions of the contract are contained in the Request for Proposal, unless any of the terms and conditions are modified by a Request for Proposal amendment, a contract amendment, a Best and Final Offer, or by mutually agreed terms and conditions.

1.5 **SPECIAL INFORMATION**

- A. Addenda to the RFP: In the event it becomes necessary to revise any part of the RFP, addenda will be provided to all contractors who are recorded as having received the RFP. It shall be the proposer's responsibility to make inquiry as to changes or addenda issued. All such changes or addenda shall become part of the contract and all bidders shall be bound by such addenda.
- B. News Releases: News releases pertaining to this RFP or the services, study or project to which it relates will not be made without prior approval, and then only in coordination with the Issuing Office.

1.6 **INDEPENDENT PRICE DETERMINATION**

By submission of a proposal, the offeror certifies that in connection with this proposal:

- A. The fees in the proposal have been arrived at independently, without consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such fees with any other offeror or with any competitor; and,

- B. Unless otherwise required by law, the fees that have been quoted in the proposal have not been knowingly disclosed by the offeror directly or indirectly to any other offeror or city staff member or to any competitor; and,
- C. No attempt has been made or will be made by the offeror to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.

1.7 **CURRENCY:** Prices calculated by the bidder shall be stated in U.S. dollars.

1.8 **DEFINITIONS:**

- A. The "City" – The City of Battle Creek
- B. "Contractor," "Vendor," "Firm," or "Proposer" - The firm submitting a proposal, ultimately responsible for any contract that results from this RFP.
- C. "RFP" – This Request for Proposals.

1.9 **INTERVIEWS:** The City may or may not shortlist the proposers based upon responses to the submittal requirements. If necessary, the City shall conduct interviews/demonstrations. However, the City may determine that shortlisting and/or interviews/demonstrations are not necessary.

1.10 **FIRM QUALIFICATIONS:** Experiences with the City and entities that evaluation committee members represent shall be taken into consideration when evaluating qualifications and experience. The City reserves the right to make any such additional investigations as it deems necessary to establish the competency and financial stability of any firm submitting a proposal.

1.11 **DELIVERY:** Where applicable, proposals shall include all charges for delivery, packing, crating, containers, etc. Prices proposal will be considered as being based on F.O.B. Delivered, freight included.

1.12 **BID PROTEST PROCEDURE:** Protests about the proposal procedure must be in writing. This written protest must be received by the City of Battle Creek, located at 10 N. Division, Suite 214, Battle Creek, MI 49014. This written protest must be received by the City no later than ten (10) working days after notification to all bidders of the contract award decision. The City of Battle Creek must issue its written decision no more than ten (10) business days from the day the written protest was received.

If a protester thinks that the City of Battle Creek has not followed these protest procedures, the protester has ten (10) business days from the alleged infraction to file a subsequent protest with the City of Battle Creek City Manager or federal granting agency if applicable.

1.13 **FEDERAL TERMS AND CONDITIONS**

If there are federal terms and conditions attached to this solicitation, they are hereby incorporated as a material part of this contract. In cases of conflict between terms in this agreement, the federal terms shall prevail.

## 2.0 - TERMS AND CONDITIONS

- 2.1 MATERIALS AND WORKMANSHIP:** Unless otherwise specified, all materials and workmanship shall be new and of the best grade of their respective kinds for the purpose.
- 2.2 NON-DISCRIMINATION CLAUSE:** The bidder agrees not to discriminate against any employee or applicant for employment, to be employed in the performance of such contract, with respect to hire, tenure, terms, conditions or privileges, of employment, or any matter directly or indirectly related to employment, because of his or her actual or perceived race, color, religion, national origin, age, sex, height, weight, physical or mental disability, family status, sexual orientation, gender identity or marital status. Breach of this covenant may be regarded as material breach of the contract as provided for in Act 220 and Act 453 of the Public Acts of 1976, as amended, entitled "Michigan Handicapper's Civil Rights Act" and the Michigan Elliott Larson Civil Rights Act." The bidder further agrees to require similar provisions from any subcontractors, or suppliers. The contractor and any subcontractors shall comply with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
- 2.3 ASSIGNMENT OF CONTRACT:** The contractor shall assign no right or interest in this contract in whole or in part and no delegation of any duty of Contractor shall be made without prior written permission of the City.
- 2.4 INDEMNIFICATION:** The contractor shall protect, defend, and save the City, its officials, employees, departments and agents harmless from and against any claims, demands, suits, actions, or proceedings of any kind or nature, in any way resulting from negligent acts or omissions of the contractor or any of its agents, employees, boards, commissions, divisions, departments, or authorities in performing obligations under this agreement. Each party to this agreement agrees that any bond or insurance protection required by this agreement shall limit the terms of this indemnification provision. In case of any action brought against the City by reason of any such claim, suit, action or demand, upon prompt notice from the City, contractor covenants to defend such action or proceeding by counsel that is reasonably satisfactory to the City.
- 2.5 CONTRACT:** The contract shall contain the entire agreement between the City and the Contractor relating to this requirement and shall prevail over any previous contracts, proposals, negotiations, or master agreements in any form. By signing the Offer to Contract, it is agreed that the RFP in its entirety and all enclosed forms are fully incorporated herein as a material part of the contract. In case of conflicts, the most recent document will prevail.
- 2.6 PROVISIONS REQUIRED BY LAW:** Each provision required by law to be in the contract shall be enforced as though it were included herein, and if any such provision is not inserted, the contract shall be amended to make such insertion or correction.
- 2.7 RELATIONSHIP OF PARTIES:** It is clearly understood that each party shall act in its individual capacity and not as an agent, employee, partner, joint venture, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other party for any purpose. Taxes or social security payments shall not be withheld from a City payment issued hereunder; Contractor should make arrangements to directly pay such expenses, if any.
- 2.8 RIGHTS AND REMEDIES:** No provision in this contract shall be construed as a waiver by either party of any existing or future right or remedy available by law in the event of any claim, default, or breach of contract. The failure of either party to insist upon the strict performance of any term or condition of the contract or to exercise or delay the exercise of any right or remedy provided in the contract, or by law, or the acceptance of materials or services, obligations imposed by this contract or by law, shall not be deemed a waiver of any right of either party to insist upon the strict performance of the contract.
- 2.9 ADVERTISING:** Contractor shall not advertise, issue a press release or otherwise publish information concerning this RFP or contract without prior written consent of the City. The City shall not unreasonably withhold permission.
- 2.10 APPLICABLE REGULATIONS/POLICIES:** The Revised Code of the State of Michigan, the Charter of the City of Battle Creek, all City Ordinances, Rules and Regulations and Policies shall apply. It shall be the responsibility of the Proposer to be familiar and comply with said regulations/policies.
- 2.11 RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT:** Contractor shall give all notices and pay all royalties and fees. Contractor shall defend all suits or claims for infringement of any patent rights and shall save the City harmless from loss on account thereof. Contractor shall comply with all laws, ordinances and codes applicable to any portion of the work. All services, information, computer program elements, reports, and other deliverables that are created under this Agreement shall be the property of the City. The Contractor shall place no restrictions on the City with regard to the distribution of any of these materials; the City shall have full, unrestricted rights to make and distribute unlimited copies of any services, information, computer programs/elements, reports, or any other deliverable. Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Invention Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

- 2.12 SUBCONTRACTORS:** No subcontract shall be made by the contractor with any other party for furnishing any of the services herein contracted for without the advance written approval of the City. All subcontractors shall comply with Federal and State laws and regulations that are applicable to the services covered by the subcontractor and shall include all the terms and conditions set forth herein, which shall apply with equal force to the subcontract, as if the subcontractor were the Contractor referred to herein. Contractor is responsible for contract performance whether or not subcontractors are used.
- 2.13 OTHER FEDERAL COMPLIANCE:** Where applicable, contractor shall comply with: Copeland Anti-kickback Act (18 U.S.C. 874); Sections 3702 and 3704 of the Contract Work Hours and Safety Standards Act (40 USC 40 USC 3701-3708); Section 306 of the Clean Air Act (42 USC 7602, Air Pollution Prevention and Control); Section 508 of the Clean Water Act (33 U.S.C. 1368); Executive Order 11738, and EPA regulations (40 CFR, Part 15); and the Energy Policy and Conservation Act (Pub. L. 94A 163, 89 Stat. 871).
- 2.14 RECORD ACCESS:** Contract shall grant access, if requested, by the City, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor that are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
- 2.15 RECORD RETENTION:** Contractor shall retain all required records for three years after final payments and all other pending matters are closed.
- 2.16 CLEAN AIR ACT:** Contractor shall comply with all applicable standards, orders, or requirements issued under Clean Air Act (42 U. S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended. For contracts and subcontracts of amounts in excess of \$100,000 the contractor or subcontractor shall comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Agency (EPA).
- 2.17 ENERGY EFFICIENCY:** Contractor shall maintain mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).
- 2.18 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)** Contractors who apply or proposal for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.
- 2.19 Debarment and Suspension (E.O.s 12549 and 12689)** No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.
- 2.20 Liquidated Damages**  
Failure of the Contractor to complete the work within the time allowed will result in damages being sustained by the City. Such damages are, and will continue to be, impracticable and extremely difficult to determine. Unless otherwise provided in the Special Conditions, the Contractor will pay to the City for the liquidated damages and not as penalty **one hundred dollars (\$100.00)** for each calendar day of delay in finishing the work in excess of the time specified for completion, plus any Contractor will pay the City for the liquidated damages herein before mentioned are in lieu of the actual damages arising from such breaches of this contract; which said sums the City shall have the right to deduct from any monies in its hands, otherwise due, or to become due, to said Contractor or to sue for and recover compensation or damages for non-performance of this Contract at the time stipulated herein and provided for. The attention of bidders is directed to the provisions and the General
- 2.21 ACCIDENT PREVENTION:** The Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all the damages to persons or property either on or off the site, which occur as a result of the Contractor's fault or negligence in connection with the prosecution of the work. The safety provisions of applicable laws and OSHA standards shall be observed and the Contractor shall take or cause to be taken such additional safety and health measures as the city may determine to be reasonably necessary.
- 2.22 CONFLICTS AND OMISSIONS:** The intent of the contract documents is to provide everything necessary for the proper execution of the work. In case of conflict, the work shall not proceed until a decision has been agreed upon by all parties concerned. The City's decision shall be final.

- 2.23 WORKING CONDITIONS:** All work shall be done in accordance with all regulations governing the City Unit wherein the work is to be performed and with minimum possible interference with the proper functioning of the activities of the City Unit. Materials, tools, etc., shall be confined so as not to unduly encumber the premises.
- 2.24 PRIOR EXAMINATION:** Contractor shall be familiar with local conditions affecting the job prior to submitting the proposal. Contractor shall verify measurements and be responsible for the correctness of same. Contractor shall be held to have made such examinations and no allowances will be made by reason of Contractor error or omission. If any part of the Contractor's work depends on proper results upon existing work or the work of another contractor, the Contractor, before commencing work, shall notify the Building Official in writing of any defects that will affect the results.
- 2.25 OTHER CONTRACTS:** The City may let other contracts in connection with the work and the Contractor shall properly connect and coordinate their own work with the work of such other contractors. The City shall not be liable for any damages or increased costs occasioned by the failure of other contractors or sub-contractors to execute their work as may be anticipated by these documents.
- 2.26 INSPECTION:** Contractor shall at all times permit and facilitate inspection of the work by the City.
- 2.27 CHANGES:** Contractor shall make changes in the contracted work only as ordered in writing by the City. Work will be performed only based on written authorization from the City. If extra work orders are given in accordance with the provisions of this contract, such work shall be considered a part hereof and subject to each and all of its terms and requirements.
- 2.28 GUARANTEE:** Contractor guarantees to remedy any defects due to faulty materials or workmanship, which appear in the work within one year from the date of final acceptance by the City.
- 2.29 PROTECTION:** Contractor shall properly protect all new and existing structures from damage. Contractor shall comply with all safety rules and regulations as published by the Michigan Dept. of Labor, Bureau of Safety and Regulations.
- 2.30 CLEAN-UP:** Contractor shall at all times keep the premises free from accumulations of waste materials or rubbish caused by the Contractor's employees or work. At the completion of the work, Contractor shall remove all their own waste, tools, equipment, staging and surplus materials from the structure and grounds and leave work clean and ready for use.
- 2.31 SAFETY RULES:** Contractor shall perform all work under this contract in conformance with the State of Michigan general safety rules and regulations for the construction industry, as set out or authorized by the Michigan Occupational Safety and Health Act, Public Act 154 of 1974, as amended.
- 2.32 SUBCONTRACTORS:** Bidders should submit with the Bid all known subcontractors to be associated with their bid, including the type of work to be performed. Bidder shall notify the City of all subcontractors before work begins. All subcontractors shall be bound by all of the requirements of this contract; however, the prime contractor shall be responsible for the performance of their subcontractors.
- 2.33 EMPLOYEES AND SUPERINTENDENCE:** Contractor shall enforce good order among their employees and shall not employ on the work site any disorderly, intemperate or unfit person or anyone not skilled in the work assigned. Contractor or a competent person having authority to act for the Contractor, shall be at the worksite at all times.
- 2.34 PROPER DISPOSAL OF DEBRIS:** The Contractor shall dispose of construction debris only in a manner in accordance with any Federal, State, or local laws. Contractor shall be responsible for any fees or fines that result from improper disposal conducted by the Contractor.
- 2.35 STATE LICENSE:** Contractor shall be currently and appropriately licensed by the State of Michigan Department of Licensing and Regulatory Affairs for the trade engaged in this contract.
- 2.36 CONTRACTOR'S OBLIGATIONS:** The contractor shall give all notices required by, and comply with, all applicable laws, ordinances and codes of federal, state and local government. All disconnections and either full or partial demolition shall comply with all applicable ordinances and codes, inclusive of all written waivers.
- 2.37 MATERIAL REMOVAL:** If this solicitation identifies asbestos in this project, Contractor shall be a licensed asbestos abatement firm, or shall subcontract with a licensed asbestos abatement firm, in those cases where asbestos is removed. The City must be notified of all subcontractors, and receive all appropriate licenses for subcontractors, upon bid opening. Not providing this information may result in a bid being deemed non-responsive. Contractor shall be responsible for the actions of their subcontractor. Contractor is responsible for removal of structure, including all structural hazardous material removal as specified in this document, even if completed by a subcontractor.

**2.38 DUST CONTROL:**

- A. The Contractor will use all means necessary, and as required by Federal and/or State and/or local laws, if applicable, to control dust on or near the work and on or near all off site areas if such dust is caused by Contractor's operations during performance of the work or if it results from the conditions in which the Contractor leaves the site.
- B. The Contractor will use all means necessary to protect the adjacent properties before, during, and after, demolition.
- C. In the event of damage, Contractor shall immediately make all repairs and replacements necessary, to the approval of the City of Battle Creek and at no cost to the City of Battle Creek.
- D. Contractor is responsible for conducting operations in a safe and orderly fashion and in compliance with PA 154 of 1974.

**2.39 TIME OF COMPLETION:** The Contractor shall promptly begin work under this contract upon receipt of the Purchase Order, and all portions shall be completed and ready for final inspection by **May 1, 2023**. The City may extend this completion date for contractors who are awarded many properties. Such an extension should be requested at the time of contract award. The City will approve the completion extension in writing.

**2.40 EXTENSION OF TIME:**

- A. **AVOIDABLE DELAYS:** Avoidable delays in the prosecution or completion of the work shall include all delays that might have been avoided by the exercise of care, prudence, foresight or diligence on the part of the contractor.
- B. **UNAVOIDABLE DELAYS:** Unavoidable delays in the prosecution or completion of the work under these contracts shall include all delays that are caused by an act of God, and delays that may be the result of causes beyond the control of the Contractor and that they could not have provided against by the exercise of care, prudence, foresight or diligence. Delays due to equipment failure will not be allowed for more than two (2) days per contract.
- C. **CITY SCHEDULED DELAYS:** If the City deems it necessary, completion dates beyond the allocated time may be scheduled without penalty to the Contractor.

**2.41 NOTICE OF DELAYS:** Immediately upon the foreseeability or occurrence of any delay, Contractor shall notify the Community Services Department in writing of the probability of the occurrence and its cause. After the completion of the work, the Community Services Department, will assume that any delays that have occurred in its prosecution and completion have been avoidable delays, except such delays that have been requested in writing and have been approved in advance by the Community Services Department. The Contractor shall make no claims that any delay not called to the attention of the Community Services Department at the time of its occurrence has been an unavoidable delay.

**2.42 THE CITY OF BATTLE CREEK'S RIGHT TO WITHHOLD CERTAIN AMOUNTS:** The City may withhold from payments to the Contractor such an amount or amounts as may be necessary to cover:

- A. Any Liquidated Damages that have accrued, due to delay;
- B. Any actual damages assessed by EGLE that are the direct result of contractor negligence;
- C. Failure of the Contractor to make proper payments to a subcontractor;
- D. Failure to provide the City with landfill tickets;
- E. Damage to city or neighboring property caused by the Contractor and not remedied.

**2.43 EGLE NOTIFICATION:** The Contractor shall abide by the requirement to notify the Michigan Department of Environmental Quality (EGLE) Air Quality Division of intent to demolish. Notification must be submitted a minimum of 10 working days prior to beginning demolition. The contractor must also provide a copy of this notice to The Building Official of Community Services, 10 days prior to beginning demolition.

**2.44 CONTRACTOR'S INSURANCE:**

- A. The Contractor shall at the time of execution of this contract, file with the City the Certificate of Insurance, which shall cover all insurance as required herein, including evidence of payment of premiums thereon, and the policy or policies or insurance covering said City and their officers, agents and employees. Each such policy and certificate shall be satisfactory to the City. Nothing contained in these insurance requirements is to be construed as limiting the extent of the Contractor's responsibility for payment of damages resulting from the Contractor's operations under this Contract.
- B. The contractor shall maintain insurances in force at all times during the term of this agreement at the minimum amounts and types as indicated. Sole proprietors are not required to have workers' compensation insurance.

**Coverage Afforded**

Workers' Compensation:  
Commercial General Liability:  
including XCU  
or Combined Single Limit

Bodily Injury  
Property Damage

**Limits of Liability**

\$ 100,000 or statutory limit  
\$1,000,000 each occurrence  
\$1,000,000 each occurrence  
\$1,000,000

Automobile Liability:	Bodily Injury	\$ 300,000 each person
Liability		\$ 500,000 each occurrence
Property Damage		\$ 500,000
or Combined Single Limit		\$ 500,000

The City of Battle Creek shall be listed as an additional insured on general liability coverage, and shall be provided with a Certificate of Insurance, prior to award, that reflects this additional insured status. A 30-day notice of cancellation or material change shall be provided to the City and so noted on the Certificate of Insurance. All certificates and notices shall be sent to City of Battle Creek, P.O. Box 1717, Battle Creek, Michigan 49016.

- 2.45 VENDOR EVALUATION:** Experience with the City shall be taken into consideration when evaluating responsibility of the vendor.
- 2.46 PAYMENT:** Payment shall be made monthly, upon pre-agreed milestones, or at the end of each project, within 30 days following the submittal of a correct invoice for goods received or work performed.
- 2.47 FINES:** In the event that the City is fined by EGLE or any other government agency solely due to the negligence of the contractor in following the rules and regulations of that government agency, the City may seek actual damages against Contractor, pursuant to all legal means of collection. In no case shall the City seek damages greater than the fine(s).
- 2.48 PERMITS:** Contractor shall obtain all relevant permits, and those costs shall be included in the bid price.
- 2.49 RESPONSIBILITY TO THE PUBLIC:** Before every construction operation that will substantially affect area residents and businesses adjacent to the project site (such as business driveway closures, mailbox relocation, etc.) the Contractor will attempt to notify those residents and businesses affected. Notification may be verbal or by door hanger notices. The City will provide preprinted door hanger material to carry the Contractor's message. The responsibility for filling out the door hangers and distributing them rests with the Contractor. Payment for this work is included in the payments for other items of work.
- 2.50 ACCIDENT REPORTS FROM CONTRACTOR:** The Contractor shall furnish to the City copies of the reports of all accidents occurring at the construction sites from beginning to completion of the work performed under this contract.
- 2.51 LOCATION AND MARKING UNDERGROUND UTILITIES:** The Contractor shall be responsible for contacting the Calhoun County Construction and Utilities Association (MISS DIG) 72 hours prior to starting construction for the location and marking of all underground utilities.
- 2.52 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT:** all contracts in excess of \$100,000 that involve the employment of mechanics or laborers must comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor shall compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions that are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- 2.53 DAVIS BACON ACT:** as amended (40 U.S.C. 3141-3148: Contractor shall comply with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination as included in this Invitation for Bid. Contractors shall pay wages not less than once a week. Contractor shall not induce, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which they are otherwise entitled.
- 2.54 Build America Buy America** section 70914 of Public Law No. 117-58, §§ 70901-52. Any iron and steel, manufactured products, and construction materials used and become permanently a part of infrastructure must be produced in the United States if the contract value is \$10,000 or more for a federally funded project

**2.55 KEY PERSONNEL:** It is essential that the contractor provide adequate experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this contract. The Contractor must agree to assign specific individuals to the key positions.

- A. The Contractor agrees that, once assigned to work under this contract, key personnel shall not be removed or replaced without written notice to the City.
- B. If key personnel are not available for work under this contract for a continuous period exceeding thirty calendar days, or are expected to devote substantially less effort to the work than initially anticipated, the Contractor shall immediately notify the City, and shall, subject to the concurrence of the City, replace such personnel with personnel of substantially equal ability and qualifications.

**2.56 CANCELLATION FOR CAUSE (BREACH):** The City reserves the right to cancel the whole or any part of this contract due to failure by the contractor to carry out any obligation under this contract. The City shall issue written notice to the contractor for any of the following circumstances:

- A. The contractor fails to adequately perform the services set forth in the specifications of the contract:
- B. The contractor fails to make progress in the performance of the contract or gives the City reason to believe that the contractor will not or cannot perform to the requirements of the contract.

Upon receipt of the written notice of concern, the contractor shall have ten (10) calendar days to provide a satisfactory response to the City. Failure on the part of the contractor to adequately address all issues of concern may result in the City resorting to any single or combination of the following remedies.

- 1. Cancel any contract. If the contract is canceled by the City as provided herein, the Contractor will be paid a fair payment as negotiated with the City for the work completed as of the date of termination.
- 2. Reserve all rights or claims to damage for breach of any covenant of the Contract:
- 3. In case of default, the City reserves the right to complete the required work. The City may recover reasonable excess costs from the contractor by any remedies provided by law.

**2.57 CANCELLATION FOR CONVENIENCE:** The City may terminate this contract at any time for any reason by giving at least 30 days' notice in writing to Contractor. If the contract is canceled by the City as provided herein, the Contractor will be paid a fair payment as negotiated with the City for the work completed as of the date of termination.

### 3.0 - TERMS AND CONDITIONS CONSTRUCTION/INSTALLATION/DEMOLITION

1. **ACCIDENT PREVENTION:** The Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all the damages to persons or property either on or off the site, which occur as a result of the contractor's fault or negligence in connection with the prosecution of the work. The safety provisions of applicable laws and OSHA standards shall be observed and the Contractor shall take or cause to be taken such additional safety and health measures as the city may determine to be reasonably necessary.
2. **CONFLICTS AND OMISSIONS:** The intent of the contract documents is to provide everything necessary for the proper execution of the work. In case of conflict, the work shall not proceed until a decision has been agreed upon by all parties concerned. The City's decision shall be final.
3. **WORKING CONDITIONS:** All work shall be done in accordance with all regulations governing the City Unit wherein the work is to be performed and with minimum possible interference with the proper functioning of the activities of the City Unit. Materials, tools, etc., shall be confined so as not to unduly encumber the premises.
4. **PRIOR EXAMINATION:** Contractor shall be familiar with local conditions affecting the job prior to submitting the bid. Contractor shall take their own measurements and be responsible for the correctness of same. Contractor shall be held to have made such examinations and no allowances will be made in their behalf by reason of error or omission on their part. If any part of the Contractor's work depends for proper results upon existing work or the work of another contractor, the Contractor, before commencing work, shall notify the Director in writing of any defects that will affect the results.
5. **OTHER CONTRACTS:** The City may let other contracts in connection with the work and the Contractor shall properly connect and coordinate their work with the work of such other contractors. The City shall not be liable for any damages or increased costs occasioned by the failure of other contractors or sub-contractors to execute their work as may be anticipated by these documents.
6. **INSPECTION:** Contractor shall at all times permit and facilitate inspection of the work by the City.
7. **CHANGES:** Contractor shall make changes in the contracted work only as ordered in writing by the City. The actual work performed under this contract may be increased 50% or decreased 25% from the approximate quantities set forth in the Schedule included herein. Work will be performed only based on written authorization from the City. The City reserves the right to include other similar projects in this contract over and above those mentioned in said tabulations within these limitations. If extra work orders are given in accordance with the provisions of this contract, such work shall be considered a part hereof and subject to each and all of its terms and requirements.
8. **GUARANTEE:** Contractor guarantees to remedy any defects due to faulty materials or workmanship, which appear in the work within one year from the date of final acceptance by the City.
9. **PROTECTION:** Contractor shall properly protect all new and existing structures from damage. Contractor shall comply with all safety rules and regulations as published by the Michigan Dept. of Labor, Bureau of Safety and Regulations.
10. **CLEAN-UP:** Contractor shall at all times keep the premises free from accumulations of waste materials or rubbish caused by their employees or work and at the completion of the work they shall remove all their waste, tools, equipment, staging and surplus materials from the structure and grounds used by the contractor and leave work clean and ready for use.
11. **SAFETY RULES:** It is understood that the contractor shall perform all work under this contract in conformance with the State of Michigan general safety rules and regulations for the construction industry, being Act 89 of the Public Acts of 1963, as amended.
12. **TERMINATION FOR BREACH:** The City may terminate this contract for violations hereof when violations are not stopped immediately and corrected within a reasonable length of time after notification by the City. In the event of such termination, the City may complete the contracted work and the Contractor will be liable for any excess cost occasioned the City thereby and in such case the City may take possession of and utilize in completing the work such materials and equipment as may be on the site and necessary therefore.
13. **SUBCONTRACTORS:** Bidders shall submit with the Bid any and all subcontractors to be associated with their bid, including the type of work to be performed. Any and all subcontractors shall be bound by all of the terms, conditions and requirements of the bid/contract; however, the prime contractor shall be responsible for the performance of the total work requirements. Contractor must provide copies of licenses for subcontractors.
14. **EMPLOYEES AND SUPERINTENDENCE:** Contractor shall enforce good order among their employees and shall not employ on the work site any disorderly, intemperate or unfit person or anyone not skilled in the work assigned to them. Contractor, or a competent person having authority to act for them, shall be at the work site at all times.

## 4.0 - SCOPE OF WORK

### BACKGROUND

The Recreation Department operates Flash Flood Water Park located at 35 W Hamblin Ave, Battle Creek, MI 49017. Repairs and resurfacing are needed on the entire pool floor before being able to open and operate for the next season. The deep end of the pool was repaired in 2021; however, this area needs to be redone. **The entire pool area needs to be repaired and resurfaced.**

### DESCRIPTION OF WORK TO BE PERFORMED

Before submitting a proposal, firms shall carefully examine the scope of work and shall fully inform themselves as to all existing conditions and limitations and shall indicate in the proposal all items requested.

Repair and resurface entire pool area, including the recently resurfaced deep end.

See ATTACHMENT B – POOL REPAIR AREA MAP.

- Remove loose/damaged plaster from entire pool area
- Saw cut perimeter of entire pool area
- Acid wash entire pool area
- Neutralize entire pool area
- Apply bonding agent and scratch coating to entire pool area
- Apply plaster finish coating to entire pool area

## 5.0 - PROPOSAL SUBMITTAL INSTRUCTIONS AND FORMS

### Submittal terms and conditions

- A. **Basic Submittal Instructions:** Each proposal received by the City in response to this RFP becomes the property of the City and:
1. Shall be signed by an individual authorized to bind the contractor to its provisions.
  2. Proposals shall not be considered fully received for the purpose of Freedom of Information Act requests until the City has determined that no additional clarifications or revisions of offers shall be accepted.
  3. Is an irrevocable offer and may not be withdrawn within 90 days after the deadline for submission. Requests for clarifications or revisions automatically establish a new 90-day period.
- B. **Proposal Costs:** The City is not liable for any costs incurred by contractors in the development of their proposals.
- C. **Exceptions To Contract Terms And Specifications:** Offeror shall clearly identify and reference by paragraphs any proposed deviations from the Contract Terms or Scope in the RFP. Exceptions shall include, the Offeror's proposed substitute language. If no exceptions are noted in the Offeror's proposal, the City will assume complete conformance with this specification and the successful Offeror will be required to perform accordingly. Proposals submitted not meeting all requirements may be rejected.

### Instructions for online submittal:

### DO NOT EMAIL PROPOSALS

### UPLOAD AS ONE (1) PDF! Do not make multiple uploads!

- <http://battlecreekmi.gov/228/Purchasing>
- Follow the link to the VendorRegistry page or email [purchasing@battlecreekmi.gov](mailto:purchasing@battlecreekmi.gov) for links.
- Register as a vendor if you have not already
- Navigate to this RFP (name and number on the front page)
- Click on "Submit proposal" and follow the instructions
- You may rescind your proposal in the system at any time before the due date/time
- Secure: City staff can see who has submitted, but the system will not allow City staff to see submittal content until after the deadline has passed.
- If you have questions about the process in VendorRegistry, please use their "help" function. They are extremely helpful. City staff can't see what the vendor sees, so we are unable to help.

## **5.1 - EVALUATION CRITERIA and SUBMITTAL CHECKLIST**

All proposals received will be evaluated by the City of Battle Creek for selection purposes. The following main categories, listed in relative order of importance, will be considered in selection. The response to this RFP shall focus on these criteria, and shall be submitted in the same order as requested and must contain, at a minimum, all of the items listed below:

### **A. WORK PLAN**

1. Describe your understanding of the requirements presented in this scope of work and your firm's demonstrated capability to perform the type of work requested.
2. Describe in detail what you will do/provide.
3. Provide labor and materials warranty statement.

### **B. PRICE**

1. Submit the Price Sheet attached herein.

### **C. FIRM and PERSONNEL QUALIFICATIONS**

1. Describe the qualifications of your firm.
2. Indicate the professional personnel/subcontractors who will be assigned to this contract, describing their qualifications, experience, applicable licenses, and special training or certifications.
3. List three references that we may contact for similar projects. Include name and phone number.

## Submittal checklist:

**Scan all these documents and submit as ONE pdf upload. Do not upload multiple documents/forms.** If you don't have access to a document scanner, Staples can create a pdf for you if you take your documents there.

**A. Work Plan (above)**

**B. Company Qualifications (above)**

**5.2 Price Page**

**5.3 Offer to Contract**

**5.4 Contractor's bid bond**

**5.5 Subcontractor and DBE form**

**5.6 Disadvantaged Business form**

**UPLOAD AS ONE (1) PDF! Do not make multiple uploads!**

**5.2 - PRICE PAGE: Submit with Proposal**

DATE : \_\_\_\_\_

NAME OF BIDDER: \_\_\_\_\_

BUSINESS ADDRESS: \_\_\_\_\_

\_\_\_\_\_

To: The City of Battle Creek, Michigan

The undersigned, as Bidder, declares that the only person or parties interested in this bid as principals are those named herein; that this bid is made without collusion with any person, firm or corporation; that the Bidder has carefully examined the location of the proposed work, the proposed forms of Agreement and Bonds, and the Contract Drawings and Specifications for the above designated work, all other documents referred to or mentioned in the Contract Documents, the Contract Drawings and Specifications, including Addenda issued thereto; and the Bidder proposes and agrees if this bid is accepted that they will contract with the City of Battle Creek, Michigan, in the form of the copy of the Agreement included in these Contract Documents, to provide all necessary machinery, tools, apparatus, and other means of construction, including utility and transportation services necessary to do all the work and furnish all materials and equipment specified or referred to in the Contract Documents, in the manner and time therein prescribed and according to the requirements of the City of Battle Creek, Michigan, as therein set forth and to furnish the Contractor's Bonds and Insurance, and to do all other things required of the Contractor by the Contract Documents, and that the Contractor will take in full payment the sums set forth BELOW;

TOTAL **ALL-INCLUSIVE** LUMP SUM PRICE \$ \_\_\_\_\_

Acknowledgement of addenda: \_\_\_\_\_; \_\_\_\_\_; \_\_\_\_\_; \_\_\_\_\_; \_\_\_\_\_; \_\_\_\_\_

*Continued on next page*

### 5.3 - OFFER TO CONTRACT: Submit with Proposal

#### **COMPLETION**

If awarded a contract under this proposal, the undersigned agrees to start work at the site after the receipt from the Owner of a Notice to Proceed. The undersigned further agrees to complete the project by the date stated in this RFP.

#### **LIQUIDATED DAMAGES**

Liquidated damages day will be assessed for failure to meet any deadline, as noted in the Section 2.0, Terms and conditions.

#### **BIDDER'S SIGNATURE** Complete the applicable paragraph below.

I certify, under penalty of perjury, that I have the legal authorization to bind the firm hereunder, and that our firm is not debarred from doing business under the Federal Excluded Parties List System (epls.gov).

I, the Contractor or Contractor's legally authorized signer, further certify compliance with the City of Battle Creek Ordinance Chapter 214, Discrimination Prohibited. I further acknowledge and agree that the Contractor's violation of Chapter 214 shall be a material breach of this contract. In addition, Contractor acknowledges and agrees that it shall be liable for any costs or expenses incurred by the City in obtaining from other sources, the work and services to be rendered or performed or the goods or properties to be furnished or delivered to the City under the contract as a result of a material breach in the Contract for violations of Chapter 214.

##### (a) Corporation

The bidder is a corporation organized and existing under the State of \_\_\_\_\_, which operates under the legal name of \_\_\_\_\_, and the full names of its officers are as follows:

President: \_\_\_\_\_

Secretary: \_\_\_\_\_

Treasurer: \_\_\_\_\_

Manager: \_\_\_\_\_

##### (b) Co-Partnership

The bidder is a co-partnership consisting of individual partners whose full names are as follows:

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

##### (c) Individual

The bidder is an individual whose full name is \_\_\_\_\_ and, if operating under a trade name, said trade name is \_\_\_\_\_.

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY & STATE: \_\_\_\_\_

#### **THIS BID OFFERED BY:**

SIGNATURE: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

PHONE: \_\_\_\_\_

FAX: \_\_\_\_\_

**CERTIFICATE TO BE EXECUTED**

**IF**

**CONTRACTOR IS A CORPORATION**

I, \_\_\_\_\_, certify that I am the \_\_\_\_\_ of the Corporation named as Contractor hereinabove; that \_\_\_\_\_ who signed the foregoing Agreement on behalf of the Contractor was then the \_\_\_\_\_ of said Corporation; that said Agreement was duly signed for and in behalf of said Corporation by authority of its governing body and is within the scope of its corporate powers..

\_\_\_\_\_

(Corporate Seal)

## 5.4 - SUBCONTRACTOR AND DBE FORM – Submit with Proposal

### I. YOUR FIRM'S BACKGROUND:

Is your firm an MBE (at least 51% minority ownership)? \_\_\_\_ YES \_\_\_\_ NO

Is your firm a WBE (at least 51% woman ownership)? \_\_\_\_ YES \_\_\_\_ NO

Are you subcontracting any part of this project? \_\_\_\_ YES \_\_\_\_ NO

### II. SUBCONTRACTING INFORMATION: If subcontracting any part of the project, the bidder/contractor expressly agrees that:

- (1) If awarded a contract as a result of this bid, the major subcontractors used in the prosecution of the work will be those listed below, and
- (2) The following list includes all subcontractors who will perform work representing approximately five percent (5%) or more of the Total Base Bid.
- (3) The Bidder represents that the subcontractors listed below are financially responsible and are qualified to do the work required.

SUBCONTRACTOR NAME	City/State	Trade or Commodity	MBE	WBE	Approximate dollar value
_____	_____	_____	Y / N	Y / N	\$ _____
_____	_____	_____	Y / N	Y / N	\$ _____
_____	_____	_____	Y / N	Y / N	\$ _____
_____	_____	_____	Y / N	Y / N	\$ _____
_____	_____	_____	Y / N	Y / N	\$ _____
_____	_____	_____	Y / N	Y / N	\$ _____
_____	_____	_____	Y / N	Y / N	\$ _____

### III. DBE RECRUITMENT ACTIVITY LOG: List the MBE's and WBE's that were approached about being a subcontractor for this job, but who are NOT listed above as a subcontractor.

NAME OF FIRM APPROACHED, BUT NOT USED ON THIS PROJECT	City/State	Trade or Commodity	MBE	WBE	Reason not used on this project
_____	_____	_____	Y / N	Y / N	_____
_____	_____	_____	Y / N	Y / N	_____
_____	_____	_____	Y / N	Y / N	_____
_____	_____	_____	Y / N	Y / N	_____

**5.5 - DISADVANTAGED BUSINESS FORM – Submit with proposal**

**I. YOUR FIRM'S BACKGROUND:**

Is your firm an MBE (at least 51% minority ownership)? \_\_\_\_ YES \_\_\_\_ NO

Is your firm a WBE (at least 51% woman ownership)? \_\_\_\_ YES \_\_\_\_ NO

Are you subcontracting any part of this project? \_\_\_\_ YES \_\_\_\_ NO

**II. SUBCONTRACTING INFORMATION:** If subcontracting any part of the project, the bidder/contractor expressly agrees that:

- (1) If awarded a contract as a result of this proposal, the major subcontractors used in the prosecution of the work will be those listed below, and
- (2) The following list includes all subcontractors who will perform work representing approximately five percent (5%) or more of the Total Base Bid.
- (4) The Bidder represents that the subcontractors listed below are financially responsible and are qualified to do the work required.

SUBCONTRACTOR NAME	City/State	Trade or Commodity	MBE	WBE	Approximate dollar value
_____	_____	_____	Y / N	Y / N	\$ _____
_____	_____	_____	Y / N	Y / N	\$ _____
_____	_____	_____	Y / N	Y / N	\$ _____
_____	_____	_____	Y / N	Y / N	\$ _____
_____	_____	_____	Y / N	Y / N	\$ _____

**III. DBE RECRUITMENT ACTIVITY LOG:** List the MBE's and WBE's that were approached about being a subcontractor for this job, but who are NOT listed above as a subcontractor.

NAME OF FIRM <i>APPROACHED</i> , BUT NOT USED ON THIS PROJECT	City/State	Trade or Commodity	MBE	WBE	Reason not used on this project
_____	_____	_____	Y / N	Y / N	_____
_____	_____	_____	Y / N	Y / N	_____

## **6.0 - SAMPLE CONTRACT FORMS**

THESE FORMS WILL BE REQUIRED IF YOU ARE SELECTED FOR AWARD  
**Do not submit with Proposal**

CONTRACT FORM

PERFORMANCE BOND

LABOR AND MATERIAL BOND

**CONTRACT FORM**  
**CONTRACT NO. – 2023-028R**

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ hereinafter called the "Contractor" and the City of Battle Creek, hereinafter called the "Owner."

WITNESSETH: In consideration for the mutual covenants hereinafter stated, the parties agree for themselves, their personal representatives, successors, assigns as follows:

**I. The Contractor promises and agrees** for Flash Flood Water Park pool repairs.

A. To furnish all necessary materials, equipment, tools, skill and labor of every description necessary or reasonable incidental to carrying forth and completing the work specified, in strict conformity with the true intent of scope of work, and other contract documents that are hereby made a part hereof as fully and to the same effect as though they had been set forth at length herein, listed here with the most recent document taking precedence.

Revised proposal dated xxxxxx  
Vendor proposal submitted on xxxxxx  
Addendum 2 issued xxxxxx  
Addendum 1 issued xxxxxx  
Request for Proposal xxx-xxxx dated xxxxxx

B. To commence work under this contract on or before a date to be specified by the owner in a written Notice to Proceed and complete the project by the date specified in the Request for Proposal, or more recent document as agreed upon in A, above.

C. Requirements for a specific trade or contract will generally be described in that portion of the specifications or drawings related to that trade or contract. Such requirements may, however, be described in other sections of the Contract Documents. The Contractor will be held responsible for having carefully examined all drawings and read all requirements of the specifications and all Contract Documents to avoid omissions or duplications and to insure a complete job.

D. The Contractor must be fully informed about conditions relating to the construction of the project and the employment of labor thereon. Failure to do so will not relieve a successful bidder of the obligation to furnish all material and labor necessary to carry out the provisions of this contract.

E. Any claim by the Contractor of an inability to meet any requirement set forth in the Contract Documents, or that any requirement of these documents is impractical or unreasonable, will not be recognized, unless the claim was made at the time the proposal was submitted, and specific provision is made for such claim in the Agreement between Owner and Contractor (Proposal and Agreement).

F. Warranty: Contractor shall remove and replace at no additional cost to the City any defects in workmanship or materials that may be apparent or may develop within a period of one (1) year from the date of final acceptance.

G. NON-DISCRIMINATION CLAUSE: The bidder agrees not to discriminate against any employee or applicant for employment, to be employed in the performance of such contract with respect to hire tenure, terms, conditions or privileges, of employment, or any matter directly or indirectly related to employment because of his or her actual or perceived race, color, religion, national origin, sex, age, height, weight, marital status, physical or mental disability, family status, sexual orientation, or gender identity. Breach of this covenant may be regarded as a material breach of the contract as provided for in Act 220 and Act 453 of the Public Acts of 1976, as amended, entitled "Michigan Handicapper's Civil Rights Act" and/or the "Michigan Elliott Larson Civil Rights Act" and/or City of Battle Creek Chapter 214 "Discrimination Prohibited" Ordinance. The bidder further agrees to require similar provisions from any subcontractors, or suppliers. The bidder agrees to comply with the Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, as supplemented in Department of Labor regulations (41 CFR, Chapter 60).

**II. The Owner promises and agrees:**

A. To pay the Contractor for said work when completed in accordance with the provisions of these contract documents, and for the contract sum of:

dollars (\$ \_\_\_\_\_).

Payment for work is subject to additions provided therein and for the authorized work complete in place and accepted by the Owner or its authorized representatives.

III. It is further understood and agreed between the parties hereto as follows:

A. The said work is to be done in accordance with the laws of the State of Michigan to the entire satisfaction and approval of the Owner or its duly authorized representatives.

B. The decision of said Owner's authorized representative upon any questions connected with the execution of this Agreement or any failure or delay in the prosecution of the work by said Contractor shall be final and conclusive.

C. If, at any time after the execution of the Agreement and the Bond for its faithful performance, the Owner shall deem the surety or sureties then upon said bond to be unsatisfactory or, if, for any reason said bond shall cease to be adequate security for the performance of the work, the Contractor shall, at their own expense, within fifteen (15) calendar days after receipt of written notice from the Owner to do so, furnish an additional bond or bonds in such form and amount and with such surety or sureties as shall be satisfactory to the Owner. In such event, no further payment to the Contractor shall be deemed to be due under this Agreement until such new or additional security for the faithful performance of the work shall be furnished in a manner and form satisfactory to the Owner.

D. VENUE: Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement or the transactions it contemplates shall bring the legal action or proceeding:

(i) in the United States District Court for the Western District of Michigan; or

(ii) in any court of the State of Michigan sitting in Calhoun County, if there is no federal subject matter jurisdiction.

E. GOVERNING LAW: This agreement shall be enforced under the laws of the State of Michigan. Contractor must comply with all applicable federal, state, county, and City laws, ordinances, and regulations. Contractor shall ensure payment of all taxes, licenses, permits, and other expenses of any nature associated with the provision of services herein. Contractor shall maintain in current status all Federal, State and Local licenses and permits required for the operation of the business conducted by the Contractor.

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

STATE OF MICHIGAN)

) ss

COUNTY OF CALHOUN)

**I certify, under penalty of perjury, that I have the legal authorization to bind the firm hereunder, and that our firm is not debarred from doing business under the Federal Excluded Parties List System (epls.gov).**

**I, the Contractor or Contractor's legally authorized signer, further certify compliance with the City of Battle Creek Ordinance Chapter 214, Discrimination Prohibited. I further acknowledge and agree that the Contractor's violation of Chapter 214 shall be a material breach of this contract. In addition, Contractor acknowledges and agrees that it shall be liable for any costs or expenses incurred by the City in obtaining from other sources, the work and services to be rendered or performed or the goods or properties to be furnished or delivered to the City under the contract as a result of a material breach in the Contract for violations of Chapter 214.**

City Attorney

SIGNED, SEALED, & EXECUTED  
BY CITY OF BATTLE CREEK

\_\_\_\_\_  
City Manager

CONTRACT FORM APPROVED BY:

\_\_\_\_\_

SIGNED, SEALED, AND  
EXECUTED BY CONTRACTOR:

**I swear, under penalty of perjury, that I have the legal authorization to bind the firm hereunder:**

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

Title: \_\_\_\_\_

## **PERFORMANCE BOND**

KNOW ALL BY THESE PRESENTS, that \_\_\_\_\_, as Principal, and \_\_\_\_\_, as Surety, are held and firmly bound unto the City of Battle Creek in the full and just sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) lawful money of the United States of America for the payment of which sum of money well and truly to be made, we bind ourselves, heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ for the \_\_\_\_\_ complete, as described in the foregoing Proposal and Agreement.

NOW THE CONDITIONS OF THIS OBLIGATION ARE SUCH, that if the said Principal shall in all respects well and truly keep and perform the said contract, and shall pay all sums of money due or to become due, for any labor, materials, apparatus, fixtures or equipment furnished for the purpose of constructing the work provided in said contract, and shall defend, indemnify and save harmless said City of Battle Creek and any Consultant working on this project against any and all liens, encumbrances, damages, claims, demands, expenses, costs and charges of every kind except as otherwise provided in said specifications and other Contract Documents arising out of or in relation to the performance of said work and the provisions of said contract, and shall remove and replace any defects in workmanship or materials which may be apparent or may develop within a period of one (1) year from the date of final acceptance, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

And the said Surety, for value received, hereby stipulates and agreed that no change, extension of time, alteration or addition to the terms of the contract or to work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement or to the work or to the specifications.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

### **PRINCIPAL ATTEST:**

\_\_\_\_\_  
Principal Business Name

\_\_\_\_\_  
Principal Secretary Signature & Seal

\_\_\_\_\_  
Address

\_\_\_\_\_  
Principal Secretary Printed Name

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Witness of Principal

### **SURETY ATTEST:**

\_\_\_\_\_  
Surety Business Name

BY: \_\_\_\_\_  
Attorney-in-Fact Signature & Seal

\_\_\_\_\_  
Address

\_\_\_\_\_  
Attorney-in-Fact Printed Name

\_\_\_\_\_  
City, State, Zip

## **LABOR AND MATERIALS BOND**

KNOW ALL BY THESE PRESENT, that we, the undersigned, \_\_\_\_\_, hereinafter called the "Principal," and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, having its principal office at \_\_\_\_\_, hereinafter called the "Surety," are held and firmly bound unto the City of Battle Creek, hereinafter called the "Owner," for use of any and every person, co-partnership, association or corporation interested in the full and just sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), lawful money of the United States of America, to be paid to the said obligees or its or their assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents. Sealed with our respective seals and dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

WHEREAS, the above bounded \_\_\_\_\_, Principal, has entered into a contract with the City of Battle Creek.

Dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, for the \_\_\_\_\_.

NOW, THEREFORE, THE CONDITION OF THIS CONDITION IS SUCH, that if the above bounded Principal shall and will promptly pay or cause to be paid all sums of money that may be due any person, co-partnership, association or corporation for all material furnished and labor supplied or performed in the prosecution of the work, whether or not the said material or labor enter into and become component parts of the work or improvement contemplated, then this obligation to be void; otherwise to remain in full force and effect.

The Principal and Surety further jointly and severally agree with the obligee herein that every person, co-partnership, association or corporation who, whether as subcontractor or otherwise, has furnished material or supplied or performed labor in the prosecution of the work as above provided and who has not been paid therefore may sue in assumption on this bond in the name of the Owner, for their use, prosecute the same to final judgment for such sum or sums as may be justly due to the Owner, and have execution thereon, provided, however, that the Owner shall not be liable for payment of any costs or expenses of any such suit.

IT IS FURTHER AGREED, that any alterations which may be made in the terms of the contract or in the work to be done or materials to be furnished or labor to be supplied or performed under it or the giving by the Owner or any extension of time for the performance of the contract or any other forbearance on the part of either the Owner or the Principal to the other, shall not in any way release the Principal and Surety or Sureties or either or any of them their heirs, executors, administrators, successors or assigns, from their liability hereunder, notice to the Surety or Sureties of any such alteration, extension or forbearance being hereby waived.

IN WITNESS WHEREOF, the said Principal and Surety have duly executed this bond under the seal and day and year first above written.

ATTEST:

\_\_\_\_\_  
Principal

BY: \_\_\_\_\_

\_\_\_\_\_  
(Seal)

\_\_\_\_\_  
Surety

ATTEST

BY: \_\_\_\_\_  
Attorney-in-Fact

\_\_\_\_\_  
(SEAL)

## ATTACHMENT A – PREVAILING WAGES

"General Decision Number: MI20220079 08/05/2022  
Superseded General Decision Number: MI20210079  
State: Michigan  
Construction Type: Building  
County: Calhoun County in Michigan.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	. Executive Order 14026 generally applies to the contract.	
	. The contractor must pay all covered workers at least \$15.00 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2022.	
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	. Executive Order 13658 generally applies to the contract.	
	. The contractor must pay all covered workers at least \$11.25 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2022.	

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Modification Number	Publication Date
0	01/07/2022
1	02/18/2022
2	02/25/2022
3	04/01/2022
4	06/24/2022
5	07/01/2022

6	07/08/2022
7	07/15/2022
8	08/05/2022

\* ASBE0047-002 07/01/2022

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR.....	\$ 34.62	18.58

BOIL0169-001 01/01/2021

	Rates	Fringes
BOILERMAKER.....	\$ 35.95	34.52

BRMI0009-031 08/01/2020

	Rates	Fringes
BRICKLAYER.....	\$ 31.01	20.36
TILE FINISHER.....	\$ 23.17	13.79
TILE SETTER.....	\$ 24.23	15.56

CARP0525-003 06/01/2021

	Rates	Fringes
CARPENTER, Includes Acoustical Ceiling Installation, Drywall Hanging, and Form Work.....	\$ 25.94	20.59

CARP1102-001 06/01/2019

	Rates	Fringes
MILLWRIGHT.....	\$ 28.59	24.79

ELEC0445-011 05/31/2022

	Rates	Fringes
ELECTRICIAN.....	\$ 35.40	22.29

ENGI0324-002 06/01/2022

	Rates	Fringes
OPERATOR: Power Equipment		
GROUP 1.....	\$ 44.13	24.85
GROUP 2.....	\$ 40.83	24.85
GROUP 3.....	\$ 38.18	24.85
GROUP 4.....	\$ 36.47	24.85
GROUP 5.....	\$ 36.47	24.85
GROUP 6.....	\$ 30.61	24.85
GROUP 7.....	\$ 28.13	24.85

FOOTNOTES:

Crane operator with main boom and jib 300' or longer: \$1.50  
per hour above the group 1 rate.  
Crane operator with main boom and jib 400' or longer: \$3.00  
per hour above the group 1 rate.

PAID HOLIDAYS: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving  
Day and Christmas Day.

POWER EQUIPMENT OPERATOR CLASSIFICATIONS

GROUP 1: Crane operator with main boom and jib 400', 300', or 220' or longer.

GROUP 2: Crane operator with main boom and jib 140' or longer, tower crane, gantry crane, whirley derrick

GROUP 3: Backhoe/Excavator/Trackhoe; Crane; Concrete Pump; Grader/Blade; Highlift; Hoist; Loader; Roller; Scraper; Stiff Leg Derrick; Trencher

GROUP 4: Bobcat/Skid Loader; Broom/Sweeper; Fork Truck (over 20' lift)

GROUP 5: Boom Truck (non-swinging)

GROUP 6: Fork Truck (20' lift and under for masonry work)

GROUP 7: Oiler

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IRON0340-002 06/19/2017		
	Rates	Fringes
IRONWORKER, REINFORCING AND STRUCTURAL.....	\$ 24.43	24.67

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LABO0355-022 06/01/2022		
	Rates	Fringes
LABORER		
Common or General; Grade Checker; Mason Tender - Brick; Mason Tender - Cement/Concrete;		
Sandblaster.....	\$ 26.70	12.95
Pipelayer.....	\$ 20.34	12.85

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PAIN0312-002 06/01/2020		
	Rates	Fringes
PAINTER: Brush and Roller.....	\$ 23.74	13.35
PAINTER: Drywall		
Finishing/Taping.....	\$ 23.74	13.35
PAINTER: Spray.....	\$ 25.22	13.47

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PLAS0016-007 04/01/2014		
	Rates	Fringes
PLASTERER.....	\$ 21.18	12.43

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PLUM0333-006 06/01/2021		
	Rates	Fringes
PIPEFITTER, Includes HVAC Pipe and Unit Installation.....	\$ 40.29	23.83
PLUMBER, Excludes HVAC Pipe and Unit Installation.....	\$ 40.29	23.83

FOOTNOTE: Paid Holidays: Memorial Day, Independence Day and Labor Day, if the employee works the work day preceding and following the holiday unless proven illness or injury prevents the employee from working.

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ROOF0070-002 06/01/2022		
	Rates	Fringes
ROOFER.....	\$ 30.03	16.84

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SFMI0669-001 04/01/2022		
	Rates	Fringes

SPRINKLER FITTER (Fire Sprinklers).....	\$ 38.69	24.66
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SHEE0007-004 05/01/2018

Rates	Fringes
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SHEET METAL WORKER (Including HVAC Duct Installation; Excluding HVAC System Installation).....	\$ 32.61	19.66
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\* SUMI2011-004 02/01/2011

Rates	Fringes
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CEMENT MASON/CONCRETE FINISHER...	\$ 25.23	1.80
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IRONWORKER, ORNAMENTAL.....	\$ 18.48	7.93
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LABORER: Landscape & Irrigation.....	\$ 10.38 **	0.50
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OPERATOR: Bulldozer.....	\$ 19.68	6.64
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OPERATOR: Compactor.....	\$ 17.68	6.70
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OPERATOR: Tractor.....	\$ 19.10	8.48
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TRUCK DRIVER, Includes Dump and Tandem Truck.....	\$ 17.26	11.42
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TRUCK DRIVER: Lowboy Truck.....	\$ 14.50 **	0.44
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TRUCK DRIVER: Tractor Haul Truck.....	\$ 13.57 **	1.18
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WELDERS - Receive rate prescribed for craft performing operation to which welding is  
incidental.

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\*\* Workers in this classification may be entitled to a higher minimum wage under  
Executive Order 14026 (\$15.00) or 13658 (\$11.25). Please see the Note at the top of  
the wage determination for more information.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors  
applies to all contracts subject to the Davis-Bacon Act for which the contract is  
awarded (and any solicitation was issued) on or after January 1, 2017. If this  
contract is covered by the EO, the contractor must provide employees with 1 hour of  
paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each  
year. Employees must be permitted to use paid sick leave for their own illness, injury  
or other health-related needs, including preventive care; to assist a family member  
(or person who is like family to the employee) who is ill, injured, or has other  
health-related needs, including preventive care; or for reasons resulting from, or to  
assist a family member (or person who is like family to the employee) who is a victim  
of, domestic violence, sexual assault, or stalking. Additional information on  
contractor requirements and worker protections under the EO is available at  
<https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

## ATTACHMENT B – POOL REPAIR AREA MAP





Resolution

NO. 45

A Resolution seeking authorization for the City Manager to enter into a new Agreement with Battle Creek Community Foundation (BCCF) for continued police department grant administration services.

**BATTLE CREEK, MICHIGAN - 1/3/2023**

**Resolved by the Commission of the City of Battle Creek:**

That for the last several years, the City has contracted with the Battle Creek Community Foundation (BCCF) to assist Battle Creek Police Department (BCPD) with grant administration following the retirement of BCPD staff who had handled grant applications and administration. Chief Blocker has found it to be most economical to contract with the BCCF to seek out and apply for grants to assist BCPD in carrying out its mission and duties and to have them administer these grants since this is an area of expertise with BCCF.

For the 2021 and 2022 calendar years, the City contracted with BCCF for these duties and the City has been very satisfied with this arrangement.

For the 2023 calendar year, the City currently has 16 awarded grants to benefit BCPD that need monitoring, reporting and to ensure compliance with statutory requirements.

The City Manager is authorized to enter into the attached agreement with BCCF for grant seeking, application and administration services to benefit BCPD in the amount of Thirty Thousand Dollars (\$30,000) for the calendar year 2023 to be paid quarterly.

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Battle Creek City Commission  
1/3/2023

**Action Summary**

**Staff Member:** Jill Humphreys Steele, City Attorney

**Department:** City Attorney

**SUMMARY**

A Resolution seeking authorization for the City Manager to enter into a new Agreement with Battle Creek

Community Foundation (BCCF) for continued police department grant administration services.

### **BUDGETARY CONSIDERATIONS**

The quarterly payments of Seven Thousand Five Hundred Dollars (\$7,500) will be paid from G/L: 101.14.3040.801.010.

### **HISTORY, BACKGROUND and DISCUSSION**

For the calendar year 2022, the City paid BCCF Twenty-Five Thousand Dollars (\$25,000) to carry out Grant Administration Services. The City found this arrangement to be more cost effective as compared to assigning BCPD staff this responsibility, particularly given the expertise and experience BCCF has with grant seeking, application and administration.

BCPD had 16 awarded grants that were administered by BCCF in 2022; there had been 17 at the beginning of 2022, but one expired by its terms before the end of the calendar year. The following is a summary from BCCF of the work they performed in 2022 for BCPD under our agreement:

- Wrote (7) grant applications:
  - o First Responder Grant-Apex head seats
  - o Firehouse Subs-computer replacement in patrol cars
  - o Office of Justice-Connect & Protect LE Behavioral Health for Mobile Crisis Response Team
  - o Patrick Leahy Bulletproof Vest Partnership for Bulletproof Vests
  - o MDHHS 2023 STOP LE Grant for Domestic Violence Detective and Liaison
  - o BJA JAG Edward Byrne for general purposes
  - o Project Safe Neighborhoods for LPR's
- BCPD was awarded 5 out of 7 of the grants amounting to \$763,000.
- Administered 16 different grants:
  - o Quarterly grant reporting
  - o Grant Modifications
  - o Budget Adjustments
  - o Meetings
  - o Pay Requests
- Wrote and received (2) scholarships for FETI training for (2) detectives out of the DB
- Jointly supervised and employed Victim Advocate
- Jointly supervised and employed DV Liaison

### **DISCUSSION OF THE ISSUE**

### **POSITIONS**

The Police Chief and the City Manager support approval of this Resolution.

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#### ATTACHMENTS:

File Name

Description





# General Agreement

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**THIS AGREEMENT** made this \_\_\_\_\_ by and between the Battle Creek Community Foundation (First Party) and the City of Battle Creek/Battle Creek Police Department (Second Party).

**WITNESSETH:** That in consideration of the mutual covenants and agreements to be kept and performed on the part of said parties hereto, respectively as herein stated:

- I. Said party of the first part covenants and agrees that it shall work with the City of Battle Creek's Police Department on grant administration of local, state and federal grants. Said party of the first part shall provide the following:
  - Attendance at grant meetings
  - Submittal of grant reporting
  - Compliance with local, state and federal agencies for all grant requirements
  - Submittal of grant applications
  - Coordination with all subgrantees
  - Coordination with BCPD administration and City Finance Department
  - Knowledge of local, state and federal grant frameworks
- II. And said party of the second part covenants and agrees that it shall provide the following:
  - Access to existing grant files
  - Access credentials to local, state and federal grant frameworks for grant administration purposes
  - Data for grant reporting and writing purposes
  - Direction and program development for new grant proposals
- III. BCCF shall be paid a total of \$30,000.00 for services, paid in quarterly installments of \$7,500.00. The total charges for services shall be all-inclusive covering the costs associated with completing this work, including but not limited to salaries, travel, fringes, supplies, miscellaneous expenses, and administrative costs. No benefits, unemployment, social security or any other compensation or withholdings will be made to or on behalf of BCCF, as they are an independent contractor and not an employee.
- IV. Either party may terminate this contract upon ten (10) days written notice. Upon termination, the party of the second part shall have no further obligation to pay the compensation specified above.

The contract will terminate on December 31, 2023, unless terminated earlier in accordance with this provision.

- V. Party of the First Part agrees that in carrying out the terms of this agreement that it shall not deny any person the equal protection of the laws; nor shall it deny any person the enjoyment of his or her civil rights or discriminate against any person because of his or her actual or perceived race, color, religion, national origin, sex, age, height, weight, marital status, physical or mental disability, family status, sexual orientation, or gender identity.

The Party of the First Part's signature on this Agreement is a certification that it is in compliance with the provisions of Chapter 214 of Battle Creek City ordinances. Party of the First Part further acknowledges and agrees that its breach of the agreement not to discriminate shall be a material breach of this contract.

- VI. This agreement shall be effective immediately upon the last date of signing below and be binding upon the parties, their successors, assigns and personal representatives. This agreement shall be enforced under the laws of the state of Michigan.

First Party: \_\_\_\_\_ Date: \_\_\_\_\_  
**Brenda L. Hunt, President & CEO**

Second Party: \_\_\_\_\_ Date: \_\_\_\_\_  
**Rebecca L. Fleury, City Manager**



Resolution

NO. 46

A Resolution seeking authorization for the City Manager to enter into Inter-Agency Agreements related to State of Michigan Stormwater Permits with the following "Nested Jurisdictions": Kellogg Community College, Hart-Dole-Inouye Federal Center, Battle Creek Public Schools and Lakeview School District.

**BATTLE CREEK, MICHIGAN - 1/3/2023**

**Resolved by the Commission of the City of Battle Creek:**

That The City of Battle Creek is required to maintain an MS4 stormwater permit with the State of Michigan to satisfy the Phase II Stormwater Regulations published by the United States Environmental Protection Agency. This permit covers the City of Battle Creek as well as four "nested jurisdictions."

The CITY OF BATTLE CREEK is willing to provide coverage for Nested Jurisdiction Facility under the General permit to enable the CITY OF BATTLE CREEK and the Nested Jurisdiction Facility to comply with the requirements of the Phase II Regulations, the General permit and to engage in other storm water management activities related thereto; and

Since the City of Battle Creek has the expertise and experience in working with Storm Water Issues and permits with the federal government and is already obligated to perform all compliance and reporting obligations under the Storm Water Permit, the parties have decided it is most efficient for the Nested Jurisdictions to pay the City to perform the same work for the Nested Jurisdictions, which is allowed under federal guidelines.

The City Manager is authorized to enter into Agreements with Nested Jurisdictions Battle Creek Public Schools, Kellogg Community College, Lakeview School District, and Hart-Dole-Inouye Federal Center for coverage under the Phase II NDPS Permit, which agreements may be amended in order to comply with federal government guidelines, for a term up to the expiration date of the CITY OF BATTLE CREEK's Certificate of Coverage (COC) under the General permit; and

The authorization to enter into the above referenced agreements is retroactive to September 23, 2019 for Lakeview School District; June 6, 2019 for Kellogg Community College; September 25, 2019 for Battle Creek Public Schools; and June 11, 2019 for the Hart-Dole-Inouye Federal Center.

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Battle Creek City Commission

1/3/2023

**Action Summary**

**Staff Member:** Jill Humphreys Steele, City Attorney

**Department:** City Attorney

## **SUMMARY**

A Resolution seeking authorization for the City Manager to enter into Inter-Agency Agreements related to State of Michigan Stormwater Permits with the following "Nested Jurisdictions": Kellogg Community College, Hart-Dole-Inouye Federal Center, Battle Creek Public Schools and Lakeview School District.

## **BUDGETARY CONSIDERATIONS**

Each of the four nested jurisdictions is obligated under the agreements to pay the City \$1,300 per year for each year the agreements are in effect for the duties the City is obligated to undertake, totaling \$5,200 per year.

## **HISTORY, BACKGROUND and DISCUSSION**

Nested jurisdictions are public institutions or facilities that lie within the City's permitted MS4 area and have separate storm drainage that lies within an urbanized area and the storm drainage meets the concept of "system" as described by the EPA regulations. The City and nested jurisdictions share responsibilities outlined in each agreement to ensure that the permit requirements are being met and appropriate measures are taken to protect our water resources. These agreements minimize duplication of efforts, increase efficiencies and allow for collaboration in each entity's stormwater program.

Under these agreements with nested jurisdictions, the City has the following obligations:

1. Prepare and submit the permit application and required attachments.
2. Be responsible for the general administration of the permit related compliance program including maintenance of records, permit compliance tracking, and submittal of required plans, reports, and related correspondence.
3. Provide access to all correspondence and records related to the permit to Nested Jurisdiction.
4. Advise Nested Jurisdiction of any permit compliance issues or actions.
5. Hold meetings with Nested Jurisdiction to provide updates on compliance and storm water management related issues, as necessary.

The agreements were inadvertently entered into in 2019 without first seeking City Commission authorization as required by the terms of the agreements.

## **DISCUSSION OF THE ISSUE**

## **POSITIONS**

Staff in Public Works Environmental Division support approval of this Resolution.

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## **ATTACHMENTS:**

File Name	Description
❑ Battle_Creek_Public_Schools_Nested_Agreement.pdf	Battle Creek Public Schools Agreement
❑ Kellogg_Community_College_Nested_Agreement.pdf	Kellogg Community College Nested Agreement
❑ Lakeview_School_District_Nested_Agreement.pdf	Lakeview Schools Nested Agreement
❑ Federal_Center_(1)_InterAgency_2019.pdf	Federal Center Nested Agreement

**INTER-AGENCY AGREEMENT  
FOR COVERAGE UNDER THE PHASE II NPDES PERMIT**

***Battle Creek Public Schools  
(Nested Agency)***

***THIS AGREEMENT*** is made and entered into as of the 25 day of September, 2019, by the CITY OF BATTLE CREEK, a Michigan municipal corporation whose address is 10 N. Division St., Battle Creek, MI 49016, and BATTLE CREEK PUBLIC SCHOOLS (Hereafter, Nested Jurisdiction), a Michigan general powers school district organized and operating under the provisions of the Revised School Code, MCL 380.1, et seq., as amended, whose address is 3 Van Buren West, Battle Creek, MI 49017.

***RECITALS:***

1. The CITY OF BATTLE CREEK and Nested Jurisdiction Facility are subject to the requirements of the Phase II Storm Water Regulations (the "Phase II Regulations"), 33 USC 1251, et seq., published by the United States Environmental Protection Agency ("EPA") in the Federal Register on December 8, 1999; and
2. The Phase I Regulations of the existing National Pollutant Discharge Elimination System (NPDES) storm water program were published in the Federal Register on November 16, 1990 and the Phase II Regulation expands the existing program to address storm water discharges from small public separate storm drainage systems and construction sites that disturb one to five acres. The CITY OF BATTLE CREEK is subject to Phase II because it is specifically identified in the list of "Incorporated Places and Counties Proposed to be Automatically Designated Under the Storm Water Phase II Proposed Rule". The Nested Jurisdiction Facility is regulated as it is a public facility with separate storm drainage that lies within an urbanized area and the facility's separate storm drainage meets the concept of a "system" as described in the Federal regulation; and
3. The CITY OF BATTLE CREEK has applied for a National Pollutant Discharge Elimination System Wastewater Discharge General permit for Storm Water Discharges from Municipal Separate Storm Sewer Systems (MS4s) Subject to Watershed Plan Requirements (MIG610045.V2.0) (herein after permit or General permit) through the Michigan Department of Environment, Great Lakes, and Energy (EGLE). The CITY OF BATTLE CREEK is also applying to cover the Nested Jurisdiction Facility, which lies within the jurisdictional limits of the CITY OF BATTLE CREEK under the CITY OF BATTLE CREEK's permit as allowed in the General permit; and
4. The Phase II Regulations and the General permit impose certain requirements on the CITY OF BATTLE CREEK and Nested Jurisdiction that must be satisfied; and
5. Schools and other public facilities have the potential to impact storm water from the operation and maintenance of facilities. Potential sources include boiler and cooling system maintenance, janitorial and cleaning services, remodeling, lawn and grounds maintenance, athletic field maintenance, vehicle maintenance and storage, refuse and waste handling, storage and disposal, and the storage of chemicals, materials and salt; and
6. The CITY OF BATTLE CREEK is willing to provide coverage for Nested Jurisdiction Facility under the General permit to enable the CITY OF BATTLE CREEK and the Nested Jurisdiction Facility to comply with the requirements of the Phase II Regulations, the General permit and to engage in other storm water management activities related thereto; and
7. The CITY OF BATTLE CREEK and Nested Jurisdiction agree to cooperate and actively participate in the activities necessary to enable the CITY OF BATTLE CREEK and the Nested Jurisdiction Facility to comply with the Phase II Regulations and the General permit; and

**INTER-AGENCY AGREEMENT  
FOR COVERAGE UNDER THE PHASE II NPDES PERMIT**

8. The CITY OF BATTLE CREEK and Nested Jurisdiction are authorized to enter into an Agreement for a term up to the expiration date of the CITY OF BATTLE CREEK's Certificate of Coverage (COC) under the General permit; CITY OF BATTLE CREEK and Nested Jurisdiction are authorized to extend the agreement prior to the expiration date of the CITY OF BATTLE CREEK's COC; and
9. In order to provide permit coverage, it is necessary that the CITY OF BATTLE CREEK and Nested Jurisdiction enter into this Agreement.

***THEREFORE***, in consideration of the premises and the covenants of each other, the parties hereto agree as follows:

**General permit Compliance**

The CITY OF BATTLE CREEK agrees to:

1. Prepare and submit the permit application and required attachments.
2. Be responsible for the general administration of the permit related compliance program including maintenance of records, permit compliance tracking, and submittal of required plans, reports, and related correspondence.
3. Provide access to all correspondence and records related to the permit to Nested Jurisdiction.
4. Advise Nested Jurisdiction of any permit compliance issues or actions.
5. Hold meetings with Nested Jurisdiction to provide updates on compliance and storm water management related issues, as necessary.
6. Be responsible for the primary development and implementation of the Public Education Plan (PEP), the watershed management plan, and the Storm Water Management Plan (SWMP) elements within the CITY OF BATTLE CREEK. The SWMP elements include an Illicit Discharge Elimination Plan (IDEP), Public Education Plan (PEP), Total Maximum Daily Load (TMDL), Post Construction for Storm Water Control for New Developments and Redevelopment Projects, Construction Storm Water Runoff Control, and Pollution Prevention and Good Housekeeping Activities for Municipal Operations.
7. Attend and actively participate in watershed planning efforts, including quarterly meetings of the Battle Creek Area Clean Water Partners (BCACWP).
8. If not already provided, provide SWMP template and Standard Operating Procedure (SOP) templates to be completed by the Nested Jurisdiction to comply with permit requirements by April 1, 2019. Provide updated templates within 90 days of any new EGLE General Permit Certificates of Coverage (COC) after the signing of this agreement.

NESTED JURISDICTION agrees to:

1. Provide by May 1, 2019, an inventory of properties to be covered under this agreement. Properties would be owned or operated by the district, for example charter schools, adult education facilities, alternative school facilities, ball fields, administration buildings, bus garages, and maintenance facilities.
2. Provide by May 1, 2019, and within 30 days of any change to previously provided information (unless a sooner time is required elsewhere in this Agreement as to a particular item), site drawings and plans of the Nested Jurisdiction MS4 system, and any current and past environmental problems, spills, or violations, or other requested documentation to the CITY OF BATTLE CREEK to ensure compliance with the permit.

**INTER-AGENCY AGREEMENT  
FOR COVERAGE UNDER THE PHASE II NPDES PERMIT**

3. Provide by May 1, 2019, a completed SWMP template, including Nested Jurisdiction SOPs and other commitments to SWMP actions, to the CITY OF BATTLE CREEK for permit compliance. Provide completed updated templates within 120 days of any new EGLE General Permit Certificates of Coverage (COC) after the signing of this agreement.
4. Be responsible for SWMP implementation for the Nested Jurisdiction facilities.
5. Name a contact position and the current person holding that position, with authority for ensuring compliance with this Agreement.
6. Name a storm water management contact position and the current person or persons holding that position who will be responsible for implementing the SWMP for the Nested Jurisdiction.
7. Name a representative who will participate in the Public Education and Public Participation efforts. The representative will be required to participate in meetings of the Public Information and Education Subcommittee (PIE) of the BCACWP.
8. Provide a representative to participate in watershed planning and implementation activities through participation with the BCACWP. A representative must attend quarterly BCACWP meetings.
9. In addition to the information required by specific dates set forth in particular provisions of this Agreement, on December 1, 2019, and annually on the December 1, thereafter, provide to the CITY OF BATTLE CREEK, a report documenting compliance with each requirement of the SWMP.
10. In order to assure compliance with the SWMP, City of Battle Creek may also request information from Nested Jurisdiction at other times than those set out herein and Nested Jurisdiction must provide the information as requested.
11. Nested Jurisdiction shall notify the EGLE within 24 hours upon becoming aware of any discharge to or from the MS4 that the Nested Jurisdiction suspects may endanger public health or the environment. Notification shall include (if known) the name of the person responsible for the discharge, the location of the discharge into the MS4, the location where the MS4 discharges to the surface waters, the nature of the discharge and the pollutants and clean-up and recovery measures taken or planned. The Nesting Jurisdiction must contact the EGLE's 24 Hour Pollution Emergency Alerting System (PEAS) telephone number (currently 1-800-292-4706) to report the occurrence. The Nested Jurisdiction shall also notify the City of Battle Creek within 24 hours of any such discharge.

**SWMP: Illicit Discharge Elimination Plan (IDEP)**

The CITY OF BATTLE CREEK agrees to:

1. Update, as necessary, the existing, overall approved, IDEP and submit to the EGLE as necessary.
2. Implement the overall approved IDEP.
3. Notify the designated authority for the Nested Jurisdiction in writing prior to entering the Nested Jurisdiction Facility for the purposes of IDEP implementation. In emergency situations, the CITY OF BATTLE CREEK shall provide written notice of the emergency and the need to enter the Facility within 48 hours after entry.
4. Provide IDEP training materials to Nested Jurisdiction Facility staff to enable the Nested Jurisdiction to implement the approved IDEP at their facility.
5. Inform Nested Jurisdiction of any complaints that may be received regarding storm water at the Nested Jurisdiction Facility and assist the Nested Jurisdiction as appropriate.
6. Inform Nested Jurisdiction's storm water management contact person in writing of all mandatory training requirements imposed by the EGLE on the Nested Jurisdiction's personnel, the notice of which mandatory training shall be provided within a reasonable period of time before the training is required.

**INTER-AGENCY AGREEMENT  
FOR COVERAGE UNDER THE PHASE II NPDES PERMIT**

NESTED JURISDICTION agrees to:

1. By December 31, 2019, and within 30 days of any change to previously provided information (unless a sooner time is required elsewhere in this Agreement as to a particular item), provide information to the CITY OF BATTLE CREEK on the separate storm conveyances and on-site sewage disposal systems (OSDS) at the Nested Jurisdiction Facility for inclusion in the IDEP.
2. Allow CITY OF BATTLE CREEK access to the Nested Jurisdiction Facility for the purposes of IDEP implementation.
3. Comply with CITY OF BATTLE CREEK ordinances as they relate to storm water management.
4. Comply with and implement the approved IDEP.
5. By December 31, 2019, and within 30 days of any change to previously provided information, develop and provide to the CITY OF BATTLE CREEK, an SOP that shows how the Nested Jurisdiction will conduct IDEP investigations and will respond and correct any illicit connections or discharges. Provide to the CITY OF BATTLE CREEK any changes to the SOP within 30 days of the change being made.
6. Document any and all IDEP investigations, including dry weather screening investigations, location and number of observations, any sample analysis and detailed information on any illicit connections and discharges that were discovered.
7. Report any significant illicit connections or discharges to the CITY OF BATTLE CREEK within 24 hours of discovery.
8. Obtain training for Nested Jurisdiction facility staff to allow them to recognize illicit connections and discharges, and to implement the approved IDEP on facility property. Topics to be included, but not be limited to: what are illicit discharges/connections, techniques for finding and identifying illicit discharges/connections; techniques for sampling, analyzing, and recording information; proper methods/procedures for eliminating the illicit discharges/connections; recognition of naturally occurring phenomena and their sources (bacteria sheens, slimes, and films; bryozoans, pollen, blue-green algae, green algae, tannins, and foams).
9. Respond to and document any complaints received regarding storm water at the Nested Jurisdiction Facility and inform the CITY OF BATTLE CREEK of the details of the complaint and its resolution within 30 days of the complaint.

**SWMP: Public Education Plan (PEP)**

The CITY OF BATTLE CREEK agrees to:

1. Develop a PEP with Nested Jurisdiction input and submit the PEP to the EGLE as required in the COC.
2. Implement the approved PEP and include Nested Jurisdiction in education efforts and activities as appropriate.
3. Utilize any Nested Jurisdiction expertise in education to offset costs associated with permit application and compliance.
4. Assist K-12 Nested Jurisdictions in the development of curriculum in the appropriate science benchmarks to focus on the water cycle, groundwater, surface water, storm water, and water quality issues within the Kalamazoo River Watershed. Development and implementation of the curriculum will need to be in place by the 2019/20120 school year (if not already in place).

NESTED JURISDICTION agrees to:

## **INTER-AGENCY AGREEMENT FOR COVERAGE UNDER THE PHASE II NPDES PERMIT**

1. Participate fully in PEP development and implementation and utilize its expertise, contacts and resources to provide watershed and environmental education as described in the approved PEP. The education will be provided to the citizens, business owners, visitors to and employees of CITY OF BATTLE CREEK, and to the visitors to and employees and students of the Nested Jurisdiction and will follow the established monthly message calendar.
2. Provide education on the PEP topics required by the General Permit to all staff and in schools also to students.
3. The Nested Jurisdiction is required to send the named representative to participate in meetings of the Public Information and Education Subcommittee (PIE) of the BCACWP. The representative will be required to attend, at a minimum, fifty percent of the scheduled PIE meetings.
4. K-12 Nested Jurisdictions is required to (1) develop curriculum in the appropriate science benchmarks to focus on the water cycle, groundwater, surface water, storm water, and water quality issues within the Kalamazoo River Watershed, and (2) send eight to ten classrooms to the Children's Water Festival annually. Development and implementation of the curriculum will need to be in place by the 2019-2020 school year if not already in place. Commencing with the 2019-2020 school year, all new students will receive informational materials as a part of the enrollment packet, all new staff will receive informational materials upon hire, and existing staff will receive informational material annually.
5. Community College Nested Jurisdiction is required to incorporate the topics of the water cycle, groundwater, surface water, storm water, and water quality issues within the Kalamazoo River Watershed in appropriate college courses. Development and implementation will need to be in place by the 2019-2020 school year if not yet already in place. Commencing with the 2019-2020 school year, all new students will receive informational materials as a part of the enrollment packet. All new staff will receive informational materials upon hire. Existing staff will receive informational materials annually.
6. Federal Government Nested Jurisdiction is required to distribute informational materials to new hires. Existing staff will receive informational materials annually.
7. Other nested jurisdictions must participate in at least one public education event annually.

### **SWMP: Total Maximum Daily Load (TMDL)**

The CITY OF BATTLE CREEK agrees to:

1. Develop and implement TMDL permit requirements with assistance from Nested Jurisdiction, as needed.

NESTED JURISDICTION agrees to:

1. Assist the CITY OF BATTLE CREEK in the development and implementation of the TMDL permit requirements, as needed.

### **SWMP: Post-Construction Storm Water Control for New Developments and Redevelopment Projects (Post-Construction Storm Water Controls)**

The CITY OF BATTLE CREEK agrees to:

1. Develop, implement, and enforce a program through an ordinance and other regulatory mechanisms to address post-construction storm water runoff from all new and redevelopment projects that

## **INTER-AGENCY AGREEMENT FOR COVERAGE UNDER THE PHASE II NPDES PERMIT**

disturb one (1) acre or more, including projects less than one (1) acre that are part of a larger common plan of development or sale that would disturb one (1) acre or more.

2. Review preliminary and final Post-Construction Storm Water Control plans from the Nested Jurisdiction facility to insure the controls and Best Management Practices (BMPs) required in the ordinance or other regulatory mechanism will be used.
3. Provide information and training materials to Nested Jurisdiction on proper post-construction storm water controls.

NESTED JURISDICTION agrees to:

1. Comply with ordinances or regulatory mechanisms that the CITY OF BATTLE CREEK may develop to implement the Post-Construction Storm Water Controls.
2. On at least an annual basis commencing no later than 120 days after executing this Agreement, provide training to staff on post-construction site storm water runoff control and the use of approved BMPs.
3. Provide documentation to the CITY OF BATTLE CREEK of the use of Post-Control Storm Water Control BMPs to control runoff.
4. Respond to any complaints received regarding storm water runoff control at the facility and inform the CITY OF BATTLE CREEK of the details of the complaint and its resolution within 14 days of the complaint.

### **Construction Storm Water Runoff Control**

The CITY OF BATTLE CREEK agrees to:

1. Inform the Nested Jurisdiction of any complaints that may be received regarding construction site activities at the Nested Jurisdiction facility that result in a land disturbance of greater than or equal to one (1) acre, or land disturbance is within 500 feet of a lake, stream, wetland, or county drain.
2. Provide information and training materials to Nested Jurisdiction on construction storm water runoff controls.

NESTED JURISDICTION agrees to:

1. Provide training to staff on construction storm water runoff control and the use of approved BMPs.
2. Obtain a Soil Erosion and Sedimentation Control (SESC) permit prior to obtaining a building permit when construction is within 500 feet of a lake, stream, wetland, or county drain or if construction disturbs one acre or more of land.
3. Respond to any construction storm water runoff complaints received and report resolution to CITY OF BATTLE CREEK within 14 days of the complaint.

### **SWMP: Good Housekeeping and Pollution Prevention for Municipal Facilities**

The CITY OF BATTLE CREEK agrees to:

1. Assist the Nested Jurisdiction in developing a pollution prevention and good housekeeping plan for the Nested Jurisdiction facilities. These include, but are not limited to, roadways; parking lots; transportation and equipment garages; fueling areas, warehouses; stockpiles of salt and other raw materials; open ditches and storm sewers; and turf and landscaping for Nested Jurisdiction facilities.
2. Provide information and training materials to the Nested Jurisdiction on pollution prevention and good housekeeping.

**INTER-AGENCY AGREEMENT  
FOR COVERAGE UNDER THE PHASE II NPDES PERMIT**

NESTED JURISDICTION agrees to:

1. Provide training for existing employees once per permit cycle on pollution prevention and good housekeeping.
2. Provide training for new employees during the first year of employment on pollution prevention and good housekeeping

**COST SHARE**

The CITY OF BATTLE CREEK agrees to:

1. Administer the overall compliance with the permit with the assistance of the Nested Jurisdiction.
2. Use the payments made by the Nested Jurisdiction solely and only for the costs associated with compliance, education, and implementation.

NESTED JURISDICTION agrees to:

1. Pay the CITY OF BATTLE CREEK \$1,300.00 annually for each year of this agreement.
2. Pay the required amount promptly upon receipt of an invoice for the same from the CITY OF BATTLE CREEK, no later than 30 days after receipt. The CITY OF BATTLE CREEK intends to send such an invoice(s) to Nested Jurisdiction annually.
3. Reimburse the CITY OF BATTLE CREEK for all costs that it incurs in addressing noncompliance issues that are the result of the actions or inactions of the Nested Jurisdiction Facility.

**General Agreement**

1. In the event that any one or more of the provisions of this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof, but this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
2. This Agreement shall become effective after approval by the governing bodies of the CITY OF BATTLE CREEK and Nested Jurisdiction and execution by the authorized officials of the parties. It shall terminate on the expiration date of the General permit Certificate of Coverage, unless extended by the parties in writing, or unless otherwise terminated in accordance with the provisions of this Agreement. The CITY OF BATTLE CREEK will provide an opportunity to meet and review this Agreement at least once every permit cycle (every five years).
3. This Agreement may be executed in several counterparts and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
4. The CITY OF BATTLE CREEK may notify the Nested Jurisdiction in writing that the Nested Jurisdiction is deficient in meeting one or more requirements of this Agreement and request that the nested jurisdiction cure the deficiency within 30 days, unless a longer time is agreed to by the CITY OF BATTLE CREEK. If the nested jurisdiction fails to cure the deficiency the CITY OF BATTLE CREEK may, terminate this Agreement. Nested Jurisdiction shall then be required seek NPDES permit coverage on its own.
5. Either the CITY OF BATTLE CREEK or Nested Jurisdiction may terminate this Agreement within thirty (30) day written notice to the Contact Person identified in this Agreement.

**INTER-AGENCY AGREEMENT  
FOR COVERAGE UNDER THE PHASE II NPDES PERMIT**

6. The CITY OF BATTLE CREEK recognizes that some Nested Jurisdiction are a public entity and may not have the legal authority to indemnify and hold harmless. Subject to the foregoing, and to the extent permitted by law, Nested Jurisdiction agrees to indemnify and defend the CITY OF BATTLE CREEK against all causes of action, claims, liabilities, violations, penalties, and losses arising out of or related to Nested Jurisdictions performance or failure to perform its obligations under this Agreement. This agreement to indemnify and defend survives the termination of this Agreement.
7. Modifications, amendments or waivers of any provisions of this Agreement may be made only by the written mutual consent of the parties.
8. Contacts:

**CITY OF BATTLE CREEK:**

**Nested Jurisdiction**

1. Environmental Program Coordinator  
Attn: Elizabeth Paul  
City of Battle Creek  
150 S. Kendall St.  
Battle Creek, MI 49015  
T: 269-966-3355 Ext.: 1889  
E: egpaul@battlecreekmi.gov

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cc to:

2. Battle Creek City Manager  
10 N. Division St.  
Battle Creek, MI 49016  
T: 269-966-3378

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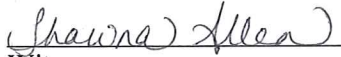
**INTER-AGENCY AGREEMENT  
FOR COVERAGE UNDER THE PHASE II NPDES PERMIT**

**IN WITNESS WHEREOF**, The parties hereto have caused this Agreement to be executed and delivered by their respective duly authorized officers:

**City of Battle Creek**

Date: 10/17/2019

  
By: Rebecca L. Fleury  
Its: City Manager


  
Witness

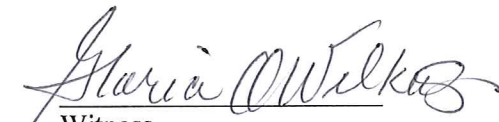
  
Witness



**Battle Creek Public Schools**

Date: September 25, 2019

  
By: Kimberly Carter  
Its: Superintendent

  
Witness

  
Witness

**INTER-AGENCY AGREEMENT  
FOR COVERAGE UNDER THE PHASE II NPDES PERMIT**

Kellogg Community College  
(Nested Agency)

**THIS AGREEMENT** is made and entered into as of the 6<sup>th</sup> day of June, 2019, by the CITY OF BATTLE CREEK, a municipal corporation whose address is 10 N. Division St., Battle Creek, MI 49016, and Kellogg Community College (Hereafter, Nested Jurisdiction), a Community College, whose address is 450 North Ave, Battle Creek, MI 49017.

**RECITALS:**

1. The CITY OF BATTLE CREEK and Nested Jurisdiction Facility are subject to the requirements of the Phase II Storm Water Regulations (the "Phase II Regulations"), 33 USC 1251, *et seq.*, published by the United States Environmental Protection Agency ("EPA") in the Federal Register on December 8, 1999; and
2. The Phase I Regulations of the existing National Pollutant Discharge Elimination System (NPDES) storm water program were published in the Federal Register on November 16, 1990 and the Phase II Regulation expands the existing program to address storm water discharges from small public separate storm drainage systems and construction sites that disturb one to five acres. The CITY OF BATTLE CREEK is subject to Phase II because it is specifically identified in the list of "Incorporated Places and Counties Proposed to be Automatically Designated Under the Storm Water Phase II Proposed Rule". The Nested Jurisdiction Facility is regulated as it is a public facility with separate storm drainage that lies within an urbanized area and the facility's separate storm drainage meets the concept of a "system" as described in the Federal regulation; and
3. The CITY OF BATTLE CREEK has applied for a National Pollutant Discharge Elimination System Wastewater Discharge General permit for Storm Water Discharges from Municipal Separate Storm Sewer Systems (MS4s) Subject to Watershed Plan Requirements (MIG610045.V2.0) (herein after permit or General permit) through the Michigan Department of Environmental Quality (MDEQ) or Department of Environment, Great Lakes, and Energy (EGLE). The CITY OF BATTLE CREEK is also applying to cover the Nested Jurisdiction Facility, which lies within the jurisdictional limits of the CITY OF BATTLE CREEK under the CITY OF BATTLE CREEK's permit as allowed in the General permit; and
4. The Phase II Regulations and the General permit impose certain requirements on the CITY OF BATTLE CREEK and Nested Jurisdiction that must be satisfied; and
5. Schools and other public facilities have the potential to impact storm water from the operation and maintenance of facilities. Potential sources include boiler and cooling system maintenance, janitorial and cleaning services, remodeling, lawn and grounds maintenance, athletic field maintenance, vehicle maintenance and storage, refuse and waste handling, storage and disposal, and the storage of chemicals, materials and salt, and
6. The CITY OF BATTLE CREEK is willing to provide coverage for Nested Jurisdiction Facility under the General permit to enable the CITY OF BATTLE CREEK and the Nested Jurisdiction Facility to comply with the requirements of the Phase II Regulations, the General permit and to engage in other storm water management activities related thereto; and
7. The CITY OF BATTLE CREEK and Nested Jurisdiction agree to cooperate and actively participate in the activities necessary to enable the CITY OF BATTLE CREEK and the Nested Jurisdiction Facility to comply with the Phase II Regulations and the General permit; and

**INTER-AGENCY AGREEMENT  
FOR COVERAGE UNDER THE PHASE II NPDES PERMIT**

8. The CITY OF BATTLE CREEK and Nested Jurisdiction are authorized to enter into an Agreement for a term up to the expiration date of the CITY OF BATTLE CREEK's Certificate of Coverage (COC) under the General permit; CITY OF BATTLE CREEK and Nested Jurisdiction are authorized to extend the agreement prior to the expiration date of the CITY OF BATTLE CREEK's COC; and
9. In order to provide permit coverage, it is necessary that the CITY OF BATTLE CREEK and Nested Jurisdiction enter into this Agreement.

**THEREFORE**, in consideration of the premises and the covenants of each other, the parties hereto agree as follows:

**General permit Compliance**

The CITY OF BATTLE CREEK agrees to:

1. Prepare and submit the permit application and required attachments.
2. Be responsible for the general administration of the permit related compliance program including maintenance of records, permit compliance tracking, and submittal of required plans, reports, and related correspondence.
3. Provide access to all correspondence and records related to the permit to Nested Jurisdiction.
4. Advise Nested Jurisdiction of any permit compliance issues or actions.
5. Hold meetings with Nested Jurisdiction to provide updates on compliance and storm water management related issues, as necessary.
6. Be responsible for the primary development and implementation of the Public Education Plan (PEP), the watershed management plan, and the Storm Water Management Plan (SWMP) elements within the CITY OF BATTLE CREEK. The SWMP elements include an Illicit Discharge Elimination Plan (IDEP), Public Education Plan (PEP), Total Maximum Daily Load (TMDL), Post Construction for Storm Water Control for New Developments and Redevelopment Projects, Construction Storm Water Runoff Control, and Pollution Prevention and Good Housekeeping Activities for Municipal Operations.
7. Attend and actively participate in watershed planning efforts, including quarterly meetings of the Battle Creek Area Clean Water Partners (BCACWP).
8. If not already provided, provide SWMP template and Standard Operating Procedure (SOP) templates to be completed by the Nested Jurisdiction to comply with permit requirements by April 1, 2019. Provide updated templates within 90 days of any new MDEQ General Permit Certificates of Coverage (COC) after the signing of this agreement.

NESTED JURISDICTION agrees to:

1. Provide an inventory of properties to be covered under this agreement. Properties would be owned or operated by the district, for example charter schools, adult education facilities, alternative school facilities, ball fields, administration buildings, bus garages, and maintenance facilities.
2. Provide site drawings and plans of the Nested Jurisdiction MS4 system, and any current and past environmental problems, spills, or violations, or other requested documentation to the CITY OF BATTLE CREEK to ensure compliance with the permit.
3. Provide a completed SWMP template, including Nested Jurisdiction SOPs and other commitments to SWMP actions, to the CITY OF BATTLE CREEK for permit compliance. Provide completed updated templates within 120 days of any new MDEQ General Permit Certificates of Coverage (COC) after the signing of this agreement.

**INTER-AGENCY AGREEMENT  
FOR COVERAGE UNDER THE PHASE II NPDES PERMIT**

4. Be responsible for SWMP implementation for the Nested Jurisdiction facilities.
5. Name a contact position and the current person holding that position, with authority for ensuring compliance with this Agreement.
6. Name a storm water management contact position and the current person or persons holding that position who will be responsible for implementing the SWMP for the Nested Jurisdiction.
7. Name a representative who will participate in the Public Education and Public Participation efforts. The representative will be required to participate in meetings of the Public Information and Education Subcommittee (PIE) of the BCACWP.
8. Provide a representative to participate in watershed planning and implementation activities through participation with the BCACWP. A representative must attend quarterly BCACWP meetings.
9. In addition to the information required by specific dates set forth in particular provisions of this Agreement, on December 1, 2019, and annually on the December 1, thereafter, provide to the CITY OF BATTLE CREEK, a report documenting compliance with each requirement of the SWMP.
10. In order to assure compliance with the SWMP, City of Battle Creek may also request information from Nested Jurisdiction at other times than those set out herein and Nested Jurisdiction must provide the information as requested.
11. Nested Jurisdiction shall notify the MDEQ within 24 hours upon becoming aware of any discharge to or from the MS4 that the Nested Jurisdiction suspects may endanger public health or the environment. Notification shall include (if known) the name of the person responsible for the discharge, the location of the discharge into the MS4, the location where the MS4 discharges to the surface waters, the nature of the discharge and the pollutants and clean-up and recovery measures taken or planned. The Nested Jurisdiction must contact the MDEQ's 24 Hour Pollution Emergency Alerting System (PEAS) telephone number (currently 1-800-292-4706) to report the occurrence. The Nested Jurisdiction shall also notify the City of Battle Creek within 24 hours of any such discharge.

**SWMP: Illicit Discharge Elimination Plan (IDEP)**

The CITY OF BATTLE CREEK agrees to:

1. Update, as necessary, the existing, overall approved, IDEP and submit to the MDEQ as necessary.
2. Implement the overall approved IDEP.
3. Notify the designated authority for the Nested Jurisdiction to enter the Nested Jurisdiction Facility for the purposes of IDEP implementation.
4. Provide IDEP training materials to Nested Jurisdiction Facility staff to enable the Nested Jurisdiction to implement the approved IDEP at their facility
5. Inform Nested Jurisdiction of any complaints that may be received regarding storm water at the Nested Jurisdiction Facility and assist the Nested Jurisdiction as appropriate.

NESTED JURISDICTION agrees to:

1. By December 31, 2019, and within 30 days of any change to previously provided information (unless a sooner time is required elsewhere in this Agreement as to a particular item), provide information to the CITY OF BATTLE CREEK on the separate storm conveyances and on-site sewage disposal systems (OSDS) at the Nested Jurisdiction Facility for inclusion in the IDEP.
2. Allow CITY OF BATTLE CREEK access to the Nested Jurisdiction Facility for the purposes of IDEP implementation.
3. Comply with CITY OF BATTLE CREEK ordinances as they relate to storm water management.
4. Comply with and implement the approved IDEP.

**INTER-AGENCY AGREEMENT  
FOR COVERAGE UNDER THE PHASE II NPDES PERMIT**

5. By December 31, 2019, and within 30 days of any change to previously provided information, develop and provide to the City of Battle Creek, an SOP that shows how the Nested Jurisdiction will conduct IDEP investigations and will respond and correct any illicit connections or discharges. Provide to the City of Battle Creek any changes to the SOP within 30 days of the change being made.
6. Document any and all IDEP investigations, including dry weather screening investigations, location and number of observations, any sample analysis and detailed information on any illicit connections and discharges that were discovered.
7. Report any significant illicit connections or discharges to the CITY OF BATTLE CREEK within 24 hours of discovery.
8. Obtain training for Nested Jurisdiction facility staff to allow them to recognize illicit connections and discharges, and to implement the approved IDEP on facility property. Topics to be included, but not be limited to: what are illicit discharges/connections, techniques for finding and identifying illicit discharges/connections; techniques for sampling, analyzing, and recording information; proper methods/procedures for eliminating the illicit discharges/connections; recognition of naturally occurring phenomena and their sources (bacteria sheens, slimes, and films; bryozoans, pollen, blue-green algae, green algae, tannins, and foams).
9. Respond to and document any complaints received regarding storm water at the Nested Jurisdiction Facility and inform the CITY OF BATTLE CREEK of the details of the complaint and its resolution within 30 days of the complaint.

**SWMP: Public Education Plan (PEP)**

The CITY OF BATTLE CREEK agrees to:

1. Develop a PEP with Nested Jurisdiction input and submit the PEP to the MDEQ as required in the COC.
2. Implement the approved PEP and include Nested Jurisdiction in education efforts and activities as appropriate.
3. Utilize any Nested Jurisdiction expertise in education to offset costs associated with permit application and compliance.
4. Assist K-12 Nested Jurisdictions in the development of curriculum in the appropriate science benchmarks to focus on the water cycle, groundwater, surface water, storm water, and water quality issues within the Kalamazoo River Watershed. Development and implementation of the curriculum will need to be in place by the 2019/2020 school year (if not already in place).

NESTED JURISDICTION agrees to:

1. Participate fully in PEP development and implementation and utilize its expertise, contacts and resources to provide watershed and environmental education as described in the approved PEP. The education will be provided to the citizens, business owners, visitors to and employees of CITY OF BATTLE CREEK, and to the visitors to and employees and students of the Nested Jurisdiction and will follow the established monthly message calendar.
2. Provide education on the PEP topics required by the General Permit to all staff and in schools also to students.
3. The Nested Jurisdiction is required to send the named representative to participate in monthly meetings of the Public Information and Education Subcommittee (PIE) of the BCACWP. The representative will be required to attend, at a minimum, fifty percent of the scheduled PIE meetings.

**INTER-AGENCY AGREEMENT  
FOR COVERAGE UNDER THE PHASE II NPDES PERMIT**

4. K-12 Nested Jurisdictions will be required to develop curriculum in the appropriate science benchmarks to focus on the water cycle, groundwater, surface water, storm water, and water quality issues within the Kalamazoo River Watershed. They will be required to send eight to ten classrooms to the Children's Water Festival annually. Development and implementation of the curriculum will need to be in place by the 2019/2020 school year if not already in place. Commencing with the 2019-2020 school year, all new students will receive informational materials as a part of the enrollment packet, all new staff will receive informational materials upon hire, and existing staff will receive informational material annually.
5. Community College Nested Jurisdiction will be required to incorporate the topics of the water cycle, groundwater, surface water, storm water, and water quality issues within the Kalamazoo River Watershed in appropriate college courses. Development and implementation will need to be in place by the 2019/2020 school year if not yet already in place. Commencing with the 2019/2020 school year, all new students will receive informational materials as a part of the enrollment packet. All new staff will receive informational materials upon hire. Existing staff will receive informational materials annually.
6. Federal Government Nested Jurisdiction will be required to distribute informational materials to new hires. Existing staff will receive informational materials annually.
7. Other nested jurisdictions must participate in at least one public education event annually.

**SWMP: Total Maximum Daily Load (TMDL)**

The CITY OF BATTLE CREEK agrees to:

1. Develop and implement TMDL permit requirements with assistance from Nested Jurisdiction, as needed.

NESTED JURISDICTION agrees to:

1. Assist the CITY OF BATTLE CREEK in the development and implementation of the TMDL permit requirements, as needed.

**SWMP: Post-Construction Storm Water Control for New Developments and Redevelopment Projects (Post-Construction Storm Water Controls)**

The CITY OF BATTLE CREEK agrees to:

1. Develop, implement, and enforce a program through an ordinance and other regulatory mechanisms to address post-construction storm water runoff from all new and redevelopment projects that disturb one (1) acre or more, including projects less than one (1) acre that are part of a larger common plan of development or sale that would disturb one (1) acre or more.
2. Review preliminary and final Post-Construction Storm Water Control plans from the Nested Jurisdiction facility to insure the controls and Best Management Practices (BMPs) required in the ordinance or other regulatory mechanism will be used.
3. Provide information and training materials to Nested Jurisdiction on proper post-construction storm water controls.

NESTED JURISDICTION agrees to:

1. Comply with ordinances or regulatory mechanisms that the CITY OF BATTLE CREEK may develop to implement the Post-Construction Storm Water Controls.

**INTER-AGENCY AGREEMENT  
FOR COVERAGE UNDER THE PHASE II NPDES PERMIT**

2. On at least an annual basis commencing no later than 120 days after executing this Agreement, provide training to staff on post-construction site storm water runoff control and the use of approved BMPs.
3. Provide documentation to the CITY OF BATTLE CREEK of the use of Post-Control Storm Water Control BMPs to control runoff.
4. Respond to any complaints received regarding storm water runoff control at the facility and inform the CITY OF BATTLE CREEK of the details of the complaint and its resolution within 14 days of the complaint.

**Construction Storm Water Runoff Control**

The CITY OF BATTLE CREEK agrees to:

1. Inform the Nested Jurisdiction of any complaints that may be received regarding construction site activities at the Nested Jurisdiction facility that result in a land disturbance of greater than or equal to one (1) acre, or land disturbance is within 500 feet of a lake, stream, wetland, or county drain.
2. Provide information and training materials to Nested Jurisdiction on construction storm water runoff controls.

NESTED JURISDICTION agrees to:

1. Provide training to staff on construction storm water runoff control and the use of approved BMPs.
2. Obtain a Soil Erosion and Sedimentation Control (SESC) permit prior to obtaining a building permit when construction is within 500 feet of a lake, stream, wetland, or county drain or if construction disturbs one acre or more of land.
3. Respond to any construction storm water runoff complaints received and report resolution to CITY OF BATTLE CREEK within 14 days of the complaint.

**SWMP: Good Housekeeping and Pollution Prevention for Municipal Facilities**

The CITY OF BATTLE CREEK agrees to:

1. Assist the Nested Jurisdiction in developing a pollution prevention and good housekeeping plan for the Nested Jurisdiction facilities. These include, but are not limited to, roadways; parking lots; transportation and equipment garages; fueling areas, warehouses; stockpiles of salt and other raw materials; open ditches and storm sewers; and turf and landscaping for Nested Jurisdiction facilities.
2. Provide information and training materials to the Nested Jurisdiction on pollution prevention and good housekeeping.

NESTED JURISDICTION agrees to:

1. Provide training for existing employees once per permit cycle on pollution prevention and good housekeeping.
2. Provide training for new employees during the first year of employment on pollution prevention and good housekeeping.

**INTER-AGENCY AGREEMENT  
FOR COVERAGE UNDER THE PHASE II NPDES PERMIT**

**COST SHARE**

The CITY OF BATTLE CREEK agrees to:

1. Administer the overall compliance with the permit with the assistance of the Nested Jurisdiction.
2. Use the payments made by the Nested Jurisdiction solely and only for the costs associated with compliance, education, and implementation.

NESTED JURISDICTION agrees to:

1. Pay the CITY OF BATTLE CREEK \$1,300.00 annually for each year of this agreement.
2. Pay the required amount promptly upon receipt of an invoice for the same from the CITY OF BATTLE CREEK, but no later than 30 days after receipt. The CITY OF BATTLE CREEK intends to send such an invoice(s) to Nested Jurisdiction annually.
3. Reimburse the CITY OF BATTLE CREEK for all costs that it incurs in addressing noncompliance issues that are the result of the actions or inactions of the Nested Jurisdiction Facility.

**General Agreement**

1. In the event that any one or more of the provisions of this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof, but this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
2. This Agreement shall become effective after approval by the governing bodies of the CITY OF BATTLE CREEK and Nested Jurisdiction and execution by the authorized officials of the parties. It shall terminate on the expiration date of the General permit Certificate of Coverage, unless extended by the parties in writing, or unless otherwise terminated in accordance with the provisions of this Agreement. The City of Battle Creek will provide an opportunity to meet and review agreement at least once every permit cycle (every five years).
3. This Agreement may be executed in several counterparts and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
4. The CITY OF BATTLE CREEK may notify the Nested Jurisdiction in writing that the Nested Jurisdiction is deficient in meeting one or more requirements of this Agreement and request that the nested jurisdiction cure the deficiency within 30 days, unless a longer time is agreed to by the CITY OF BATTLE CREEK. If the nested jurisdiction fails to cure the deficiency the CITY OF BATTLE CREEK may, terminate this Agreement. Nested Jurisdiction shall then be required seek NPDES permit coverage on its own.
5. Either the CITY OF BATTLE CREEK or Nested Jurisdiction may terminate this Agreement within thirty (30) day written notice to the Contact Person identified in this Agreement.
6. Nested Jurisdiction agrees to indemnify and defend the City of Battle Creek against all causes of action, claims, liabilities, violations, penalties, and losses arising out of or related to Nested Jurisdictions performance or failure to perform its obligations under this Agreement. This agreement to indemnify and defend survives the termination of this Agreement.
7. Modifications, amendments or waivers of any provisions of this Agreement may be made only by the written mutual consent of the parties.
8. Contacts:

**INTER-AGENCY AGREEMENT  
FOR COVERAGE UNDER THE PHASE II NPDES PERMIT**

City of Battle Creek:

Nested Jurisdiction

1. Environmental Program Coordinator  
Attn: Elizabeth Paul  
City of Battle Creek  
150 S. Kendall St.  
Battle Creek, MI 49015  
T: 269-966-3355 Ext.: 1889  
E: egpaul@battlecreekmi.gov

cc to:

2. Battle Creek City Manager  
10 N. Division St.  
Battle Creek, MI 49016  
T: 269-966-3378

Director, Institutional Facilities  
Attn: Brad Fuller  
Kellogg Community College  
450 N. Avenue  
Battle Creek, MI 49017  
(616) 565-2032  
Fac-Dept@kellogg.edu  
FullerBR@kellogg.edu

Facilities Department  
450 N. Avenue  
Battle Creek, MI 49017  
(616) 660-7768  
Fac-Dept@kellogg.edu

**IN WITNESS WHEREOF**, The parties hereto have caused this Agreement to be executed and delivered by their respective duly authorized officers:

City of Battle Creek

Date: 6/17/19

Rebecca L. Fleury  
By: Rebecca L. Fleury  
Its: City Manager

Jessica Vandulak  
Witness  
Jessica Vandulak  
Witness



(Nested Jurisdiction)

Date: 6/6/19

Brad Fuller  
By: Brad Fuller  
Its: Director, Institutional Facilities

Adam R. [Signature]  
Witness  
Jason [Signature]  
Witness

**INTER-AGENCY AGREEMENT  
FOR COVERAGE UNDER THE PHASE II NPDES PERMIT**

*Lakeview School District VERSION*  
*(Nested Agency)*

*THIS AGREEMENT* is made and entered into as of the 23 day of Sept, 2019, by the CITY OF BATTLE CREEK, a Michigan municipal corporation whose address is 10 N. Division St., Battle Creek, MI 49016, and LAKEVIEW SCHOOL DISTRICT (Hereafter, "Nested Jurisdiction"), a Michigan general powers school district organized and operating under the provisions of the Revised School Code, MCL 380.1, et seq., as amended, whose address is 15 Arbor Street, Battle Creek, Michigan 49015.

**RECITALS:**

1. The CITY OF BATTLE CREEK and Nested Jurisdiction Facility are subject to the requirements of the Phase II Storm Water Regulations (the "Phase II Regulations"), 33 USC 1251, et seq., published by the United States Environmental Protection Agency ("EPA") in the Federal Register on December 8, 1999; and
2. The Phase I Regulations of the existing National Pollutant Discharge Elimination System (NPDES) storm water program were published in the Federal Register on November 16, 1990 and the Phase II Regulation expands the existing program to address storm water discharges from small public separate storm drainage systems and construction sites that disturb one to five acres. The CITY OF BATTLE CREEK is subject to Phase II because it is specifically identified in the list of "Incorporated Places and Counties Proposed to be Automatically Designated Under the Storm Water Phase II Proposed Rule". The Nested Jurisdiction Facility is regulated as it is a public facility with separate storm drainage that lies within an urbanized area and the facility's separate storm drainage meets the concept of a "system" as described in the Federal regulation; and
3. The CITY OF BATTLE CREEK has applied for a National Pollutant Discharge Elimination System Wastewater Discharge General permit for Storm Water Discharges from Municipal Separate Storm Sewer Systems (MS4s) Subject to Watershed Plan Requirements (MIG610045.V2.0) (herein after permit or General permit) through the Michigan Department of Environment, Great Lakes, and Energy (EGLE). The CITY OF BATTLE CREEK is also applying to cover the Nested Jurisdiction Facility, which lies within the jurisdictional limits of the CITY OF BATTLE CREEK under the CITY OF BATTLE CREEK's permit as allowed in the General permit; and
4. The Phase II Regulations and the General permit impose certain requirements on the CITY OF BATTLE CREEK and Nested Jurisdiction that must be satisfied; and
5. Schools and other public facilities have the potential to impact storm water from the operation and maintenance of facilities. Potential sources include boiler and cooling system maintenance, janitorial and cleaning services, remodeling, lawn and grounds maintenance, athletic field maintenance, vehicle maintenance and storage, refuse and waste handling, storage and disposal, and the storage of chemicals, materials and salt; and
6. The CITY OF BATTLE CREEK is willing to provide coverage for Nested Jurisdiction Facility under the General permit to enable the CITY OF BATTLE CREEK and the Nested Jurisdiction Facility to comply with the requirements of the Phase II Regulations, the General permit and to engage in other storm water management activities related thereto; and
7. The CITY OF BATTLE CREEK and Nested Jurisdiction agree to cooperate and actively participate in the activities necessary to enable the CITY OF BATTLE CREEK and the Nested Jurisdiction Facility to comply with the Phase II Regulations and the General permit; and

**INTER-AGENCY AGREEMENT  
FOR COVERAGE UNDER THE PHASE II NPDES PERMIT**

8. The CITY OF BATTLE CREEK and Nested Jurisdiction are authorized to enter into an Agreement for a term up to the expiration date of the CITY OF BATTLE CREEK's Certificate of Coverage (COC) under the General permit; CITY OF BATTLE CREEK and Nested Jurisdiction are authorized to extend the agreement prior to the expiration date of the CITY OF BATTLE CREEK's COC; and
9. In order to provide permit coverage, it is necessary that the CITY OF BATTLE CREEK and Nested Jurisdiction enter into this Agreement.

***THEREFORE***, in consideration of the premises and the covenants of each other, the parties hereto agree as follows:

**General permit Compliance**

The CITY OF BATTLE CREEK agrees to:

1. Prepare and submit the permit application and required attachments.
2. Be responsible for the general administration of the permit related compliance program including maintenance of records, permit compliance tracking, and submittal of required plans, reports, and related correspondence.
3. Provide access to all correspondence and records related to the permit to Nested Jurisdiction.
4. Advise Nested Jurisdiction of any permit compliance issues or actions.
5. Hold meetings with Nested Jurisdiction to provide updates on compliance and storm water management related issues, as necessary but at least annually.
6. Be responsible for the primary development and implementation of the Public Education Plan (PEP), the watershed management plan, and the Storm Water Management Plan (SWMP) elements within the CITY OF BATTLE CREEK. The SWMP elements include an Illicit Discharge Elimination Plan (IDEP), Public Education Plan (PEP), Total Maximum Daily Load (TMDL), Post Construction for Storm Water Control for New Developments and Redevelopment Projects, Construction Storm Water Runoff Control, and Pollution Prevention and Good Housekeeping Activities for Municipal Operations.
7. Attend and actively participate in watershed planning efforts, including quarterly meetings of the Battle Creek Area Clean Water Partners (BCACWP).
8. If not already provided, provide SWMP template and Standard Operating Procedure (SOP) templates to be completed by the Nested Jurisdiction to comply with permit requirements by April 1, 2019. Provide updated templates within 90 days of any new EGLE General Permit Certificates of Coverage (COC) after the signing of this agreement.

NESTED JURISDICTION agrees to:

1. Provide an inventory of properties to be covered under this agreement. Properties would be owned or operated by the district, for example charter schools, adult education facilities, alternative school facilities, ball fields, administration buildings, bus garages, and maintenance facilities.
2. Provide site drawings and plans of the Nested Jurisdiction MS4 system, and any current and past environmental problems, spills, or violations, or other requested documentation to the CITY OF BATTLE CREEK to ensure compliance with the permit.

**INTER-AGENCY AGREEMENT  
FOR COVERAGE UNDER THE PHASE II NPDES PERMIT**

3. Provide a completed SWMP template, including Nested Jurisdiction SOPs and other commitments to SWMP actions, to the CITY OF BATTLE CREEK for permit compliance. Provide completed updated templates within 120 days of any new EGLE General Permit Certificates of Coverage (COC) after the signing of this agreement.
4. Be responsible for SWMP implementation for the Nested Jurisdiction facilities.
5. Name a contact position and the current person holding that position, with authority for ensuring compliance with this Agreement.
6. Name a storm water management contact position and the current person or persons holding that position who will be responsible for implementing the SWMP for the Nested Jurisdiction.
7. Name a representative who will participate in the Public Education and Public Participation efforts. The representative will be required to participate in meetings of the Public Information and Education Subcommittee (PIE) of the BCACWP.
8. Provide a representative to participate in watershed planning and implementation activities through participation with the BCACWP. A representative must attend quarterly BCACWP meetings.
9. In addition to the information required by specific dates set forth in particular provisions of this Agreement, on December 1, 2019, and annually on the December 1, thereafter, provide to the CITY OF BATTLE CREEK, a report documenting compliance with each requirement of the SWMP.
10. In order to assure compliance with the SWMP, City of Battle Creek may also request information from Nested Jurisdiction at other times than those set out herein and Nested Jurisdiction must provide the information as requested.
11. Nested Jurisdiction shall notify the EGLE within 24 hours upon becoming aware of any discharge to or from the MS4 that the Nested Jurisdiction suspects may endanger public health or the environment. Notification shall include (if known) the name of the person responsible for the discharge, the location of the discharge into the MS4, the location where the MS4 discharges to the surface waters, the nature of the discharge and the pollutants and clean-up and recovery measures taken or planned. The Nesting Jurisdiction must contact the EGLE's 24 Hour Pollution Emergency Alerting System (PEAS) telephone number (currently 1-800-292-4706) to report the occurrence. The Nested Jurisdiction shall also notify the City of Battle Creek within 24 hours of any such discharge.

**SWMP: Illicit Discharge Elimination Plan (IDEP)**

The CITY OF BATTLE CREEK agrees to:

1. Update, as necessary, the existing, overall approved, IDEP and submit to the EGLE as necessary.
2. Implement the overall approved IDEP.
3. Notify the designated authority for the Nested Jurisdiction in writing before entering the Nested Jurisdiction Facility for the purposes of IDEP implementation. In emergency situations, the CITY OF BATTLE CREEK shall provide written notice of the emergency and the need to enter the Nested Jurisdiction Facility within 48 hours after entry.
4. Provide IDEP training materials to Nested Jurisdiction Facility staff to enable the Nested Jurisdiction to implement the approved IDEP at their facility.
5. Inform Nested Jurisdiction of any complaints that may be received regarding storm water at the Nested Jurisdiction Facility and assist the Nested Jurisdiction as appropriate.
6. Inform Nested Jurisdiction's storm water management contact person in writing of all mandatory training requirements imposed by the EGLE on the Nested Jurisdiction's personnel, the notice of

**INTER-AGENCY AGREEMENT  
FOR COVERAGE UNDER THE PHASE II NPDES PERMIT**

which mandatory training shall be provided within a reasonable period of time before the training is required.

NESTED JURISDICTION agrees to:

1. By December 31, 2019, and within 30 days of any change to previously provided information (unless a sooner time is required elsewhere in this Agreement as to a particular item), provide information to the CITY OF BATTLE CREEK on the separate storm conveyances and on-site sewage disposal systems (OSDS) at the Nested Jurisdiction Facility for inclusion in the IDEP.
2. Allow CITY OF BATTLE CREEK access to the Nested Jurisdiction Facility for the purposes of IDEP implementation.
3. Comply with CITY OF BATTLE CREEK ordinances as they relate to storm water management.
4. Comply with and implement the approved IDEP.
5. By December 31, 2019, and within 30 days of any change to previously provided information, develop and provide to the City of Battle Creek, an SOP that shows how the Nested Jurisdiction will conduct IDEP investigations and will respond and correct any illicit connections or discharges. Provide to the City of Battle Creek any changes to the SOP within 30 days of the change being made.
6. Document any and all IDEP investigations, including dry weather screening investigations, location and number of observations, any sample analysis and detailed information on any illicit connections and discharges that were discovered.
7. Report any significant illicit connections or discharges to the CITY OF BATTLE CREEK within 24 hours of discovery.
8. Obtain training for Nested Jurisdiction facility staff to allow them to recognize illicit connections and discharges, and to implement the approved IDEP on facility property. Topics to be included, but not be limited to: what are illicit discharges/connections, techniques for finding and identifying illicit discharges/connections; techniques for sampling, analyzing, and recording information; proper methods/procedures for eliminating the illicit discharges/connections; recognition of naturally occurring phenomena and their sources (bacteria sheens, slimes, and films; bryozoans, pollen, blue-green algae, green algae, tannins, and foams).
9. Respond to and document any complaints received regarding storm water at the Nested Jurisdiction Facility and inform the CITY OF BATTLE CREEK of the details of the complaint and its resolution within 30 days of the complaint.

**SWMP: Public Education Plan (PEP)**

The CITY OF BATTLE CREEK agrees to:

1. Develop a PEP with Nested Jurisdiction input and submit the PEP to the EGLE as required in the COC.
2. Implement the approved PEP and include Nested Jurisdiction in education efforts and activities as appropriate.
3. Utilize any Nested Jurisdiction expertise in education to offset costs associated with permit application and compliance.
4. Assist K-12 Nested Jurisdictions in the development of curriculum in the appropriate science benchmarks to focus on the water cycle, groundwater, surface water, storm water, and water quality

**INTER-AGENCY AGREEMENT  
FOR COVERAGE UNDER THE PHASE II NPDES PERMIT**

issues within the Kalamazoo River Watershed. Development and implementation of the curriculum will need to be in place by the 2019/2020 school year (if not already in place).

NESTED JURISDICTION agrees to:

1. Participate fully in PEP development and implementation and utilize its expertise, contacts and resources to provide watershed and environmental education as described in the approved PEP. The education will be provided to the citizens, business owners, visitors to and employees of CITY OF BATTLE CREEK, and to the visitors to and employees and students of the Nested Jurisdiction and will follow the established monthly message calendar.
2. Provide education on the PEP topics required by the General Permit to all staff and in schools also to students.
3. The Nested Jurisdiction is required to send the named representative to participate in meetings of the Public Information and Education Subcommittee (PIE) of the BCACWP, which meetings are held monthly. The representative will be required to attend, at a minimum, fifty percent of the scheduled PIE meetings.
4. K-12 Nested Jurisdictions will be required to develop curriculum in the appropriate science benchmarks to focus on the water cycle, groundwater, surface water, storm water, and water quality issues within the Kalamazoo River Watershed. They will be required to send eight to ten classrooms to the Children's Water Festival annually. Development and implementation of the curriculum will need to be in place by the 2019/2020 school year if not already in place. Commencing with the 2019-2020 school year, all new students will receive informational materials as a part of the enrollment packet, all new staff will receive informational materials upon hire, and existing staff will receive informational material annually.

**SWMP: Total Maximum Daily Load (TMDL)**

The CITY OF BATTLE CREEK agrees to:

1. Develop and implement TMDL permit requirements with assistance from Nested Jurisdiction, as needed.

NESTED JURISDICTION agrees to:

1. Assist the CITY OF BATTLE CREEK in the development and implementation of the TMDL permit requirements, as needed.

**SWMP: Post-Construction Storm Water Control for New Developments and Redevelopment Projects (Post-Construction Storm Water Controls)**

The CITY OF BATTLE CREEK agrees to:

1. Develop, implement, and enforce a program through an ordinance and other regulatory mechanisms to address post-construction storm water runoff from all new and redevelopment projects that disturb one (1) acre or more, including projects less than one (1) acre that are part of a larger common plan of development or sale that would disturb one (1) acre or more.

**INTER-AGENCY AGREEMENT  
FOR COVERAGE UNDER THE PHASE II NPDES PERMIT**

2. Review preliminary and final Post-Construction Storm Water Control plans from the Nested Jurisdiction facility to insure the controls and Best Management Practices (BMPs) required in the ordinance or other regulatory mechanism will be used.
3. Provide information and training materials to Nested Jurisdiction on proper post-construction storm water controls.

NESTED JURISDICTION agrees to:

1. Comply with ordinances or regulatory mechanisms that the CITY OF BATTLE CREEK may develop to implement the Post-Construction Storm Water Controls.
2. On at least an annual basis commencing no later than 120 days after executing this Agreement, provide training to staff on post-construction site storm water runoff control and the use of approved BMPs.
3. Provide documentation to the CITY OF BATTLE CREEK of the use of Post-Control Storm Water Control BMPs to control runoff.
4. Respond to any complaints received regarding storm water runoff control at the facility and inform the CITY OF BATTLE CREEK of the details of the complaint and its resolution within 14 days of the complaint.

**Construction Storm Water Runoff Control**

The CITY OF BATTLE CREEK agrees to:

1. Inform the Nested Jurisdiction of any complaints that may be received regarding construction site activities at the Nested Jurisdiction facility that result in a land disturbance of greater than or equal to one (1) acre, or land disturbance is within 500 feet of a lake, stream, wetland, or county drain.
2. Provide information and training materials to Nested Jurisdiction on construction storm water runoff controls.

NESTED JURISDICTION agrees to:

1. Provide training to staff on construction storm water runoff control and the use of approved BMPs.
2. Obtain a Soil Erosion and Sedimentation Control (SESC) permit prior to obtaining a building permit when construction is within 500 feet of a lake, stream, wetland, or county drain or if construction disturbs one acre or more of land.
3. Respond to any construction storm water runoff complaints received and report resolution to CITY OF BATTLE CREEK within 14 days of the complaint.

**SWMP: Good Housekeeping and Pollution Prevention for Municipal Facilities**

The CITY OF BATTLE CREEK agrees to:

1. Assist the Nested Jurisdiction in developing a pollution prevention and good housekeeping plan for the Nested Jurisdiction facilities. These include, but are not limited to, roadways; parking lots; transportation and equipment garages; fueling areas, warehouses; stockpiles of salt and other raw materials; open ditches and storm sewers; and turf and landscaping for Nested Jurisdiction facilities.

**INTER-AGENCY AGREEMENT  
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2. Provide information and training materials to the Nested Jurisdiction on pollution prevention and good housekeeping.

NESTED JURISDICTION agrees to:

1. Provide training for existing employees once per permit cycle on pollution prevention and good housekeeping.
2. Provide training for new employees during the first year of employment on pollution prevention and good housekeeping

**COST SHARE**

The CITY OF BATTLE CREEK agrees to:

1. Administer the overall compliance with the permit with the assistance of the Nested Jurisdiction.
2. Use the payments made by the Nested Jurisdiction solely and only for the costs associated with compliance, education, and implementation.

NESTED JURISDICTION agrees to:

1. Pay the CITY OF BATTLE CREEK \$1,300.00 annually for each year of this agreement.
2. Pay the required amount promptly upon receipt of an invoice for the same from the CITY OF BATTLE CREEK, no later than 30 days after receipt. The CITY OF BATTLE CREEK intends to send such an invoice(s) to Nested Jurisdiction annually.
3. Reimburse the CITY OF BATTLE CREEK for all costs that it incurs in addressing noncompliance issues that are the result of the actions or inactions of the Nested Jurisdiction Facility.

**General Agreement**

1. In the event that any one or more of the provisions of this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof, but this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
2. This Agreement shall become effective after approval by the governing bodies of the CITY OF BATTLE CREEK and Nested Jurisdiction and execution by the authorized officials of the parties. It shall terminate on the expiration date of the General permit Certificate of Coverage, unless extended by the parties in writing, or unless otherwise terminated in accordance with the provisions of this Agreement. The CITY OF BATTLE CREEK will provide an opportunity to meet and review agreement at least once every permit cycle (every five years).
3. This Agreement may be executed in several counterparts and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
4. The CITY OF BATTLE CREEK may notify the Nested Jurisdiction in writing that the Nested Jurisdiction is deficient in meeting one or more requirements of this Agreement and request that the nested jurisdiction cure the deficiency within 30 days, unless a longer time is agreed to by the CITY OF BATTLE CREEK. If the nested jurisdiction fails to cure the deficiency the CITY OF BATTLE CREEK may, terminate this Agreement. Nested Jurisdiction shall then be required seek NPDES permit coverage on its own.

**INTER-AGENCY AGREEMENT  
FOR COVERAGE UNDER THE PHASE II NPDES PERMIT**

5. Either the CITY OF BATTLE CREEK or Nested Jurisdiction may terminate this Agreement with thirty (30) day written notice to the Contact Person identified in this Agreement.
6. The CITY OF BATTLE CREEK recognizes that the Nested Jurisdiction is a public entity and more specifically a Michigan general powers school district, which may not have the legal authority to indemnify and hold harmless third parties. Subject to the foregoing and to the extent permitted by law, the Nested Jurisdiction agrees to indemnify and defend the CITY OF BATTLE CREEK against all causes of action, claims, liabilities, violations, penalties, and losses arising out of or related to Nested Jurisdiction's performance or failure to perform its obligations under this Agreement. This agreement to indemnify and defend survives the termination of this Agreement.
7. Modifications, amendments or waivers of any provisions of this Agreement may be made only by the written mutual consent of the parties.
8. Contacts:

**CITY OF BATTLE CREEK:**

1. Environmental Program Coordinator  
Attn: Elizabeth Paul  
City of Battle Creek  
150 S. Kendall St.  
Battle Creek, MI 49015  
T: 269-966-3355 Ext.: 1889  
E: egpaul@battlecreekmi.gov

cc to:

2. Battle Creek City Manager  
10 N. Division St.  
Battle Creek, MI 49016  
T: 269-966-3378

**Nested Jurisdiction:**

Superintendent  
Attn: Blake Prewitt  
15 Arbor Street  
Battle Creek, Michigan 49015  
T: 269-565-2400  
E: bprewitt@lakeviewspartans.org

cc to:

Director of Operations  
Attn: Frank Schumacher  
15 Arbor Street  
Battle Creek, Michigan 49015  
T: 269-565-3996  
E: fschumacher@lakeviewspartans.org

*[SIGNATURES APPEAR ON FOLLOWING PAGE.]*

**INTER-AGENCY AGREEMENT  
FOR COVERAGE UNDER THE PHASE II NPDES PERMIT**

*IN WITNESS WHEREOF*, the parties hereto have caused this Agreement to be executed and delivered by their respective duly authorized officers:

City of Battle Creek

Date: 9/23/19

Rebecca L. Fleury  
By: Rebecca L. Fleury  
Its: City Manager

[Signature]  
Witness  
Shawna Flores  
Witness

Lakeview School District

Date: 9/23/19

[Signature]  
By: Blake Prewitt  
Its: Superintendent

Mary Anne Morales  
Witness  
[Signature]  
Witness



**INTER-AGENCY AGREEMENT  
FOR COVERAGE UNDER THE PHASE II NPDES PERMIT**

Hart- Dole- Inouye Federal Center  
*(Nested Agency)*

**THIS AGREEMENT** is made and entered into as of the 11 day of June, 2019, by the CITY OF BATTLE CREEK, a municipal corporation whose address is 10 N. Division St., Battle Creek, MI 49016, and Hart- Dole- Inouye Federal Center (Hereafter, Nested Jurisdiction), a United States Government Campus whose address is 74 N. Washington Ave, Battle Creek, MI 49037.

**RECITALS:**

1. The CITY OF BATTLE CREEK and Nested Jurisdiction Facility are subject to the requirements of the Phase II Storm Water Regulations (the "Phase II Regulations"), 33 USC 1251, et seq., published by the United States Environmental Protection Agency ("EPA") in the Federal Register on December 8, 1999; and
2. The Phase I Regulations of the existing National Pollutant Discharge Elimination System (NPDES) storm water program were published in the Federal Register on November 16, 1990 and the Phase II Regulation expands the existing program to address storm water discharges from small public separate storm drainage systems and construction sites that disturb one to five acres. The CITY OF BATTLE CREEK is subject to Phase II because it is specifically identified in the list of "Incorporated Places and Counties Proposed to be Automatically Designated Under the Storm Water Phase II Proposed Rule". The Nested Jurisdiction Facility is regulated as it is a public facility with separate storm drainage that lies within an urbanized area and the facility's separate storm drainage meets the concept of a "system" as described in the Federal regulation; and
3. The CITY OF BATTLE CREEK has applied for a National Pollutant Discharge Elimination System Wastewater Discharge General permit for Storm Water Discharges from Municipal Separate Storm Sewer Systems (MS4s) Subject to Watershed Plan Requirements (MIG610045.V2.0) (herein after permit or General permit) through the Michigan Department of Environmental Quality (MDEQ) or Department of Environment, Great Lakes, and Energy (EGLE). The CITY OF BATTLE CREEK is also applying to cover the Nested Jurisdiction Facility, which lies within the jurisdictional limits of the CITY OF BATTLE CREEK under the CITY OF BATTLE CREEK's permit as allowed in the General permit; and
4. The Phase II Regulations and the General permit impose certain requirements on the CITY OF BATTLE CREEK and Nested Jurisdiction that must be satisfied; and
5. Schools and other public facilities have the potential to impact storm water from the operation and maintenance of facilities. Potential sources include boiler and cooling system maintenance, janitorial and cleaning services, remodeling, lawn and grounds maintenance, athletic field maintenance, vehicle maintenance and storage, refuse and waste handling, storage and disposal, and the storage of chemicals, materials and salt, and
6. The CITY OF BATTLE CREEK is willing to provide coverage for Nested Jurisdiction Facility under the General permit to enable the CITY OF BATTLE CREEK and the Nested Jurisdiction Facility to comply with the requirements of the Phase II Regulations, the General permit and to engage in other storm water management activities related thereto; and
7. The CITY OF BATTLE CREEK and Nested Jurisdiction agree to cooperate and actively participate in the activities necessary to enable the CITY OF BATTLE CREEK and the Nested Jurisdiction Facility to comply with the Phase II Regulations and the General permit; and

**INTER-AGENCY AGREEMENT  
FOR COVERAGE UNDER THE PHASE II NPDES PERMIT**

8. The CITY OF BATTLE CREEK and Nested Jurisdiction are authorized to enter into an Agreement for a term up to the expiration date of the CITY OF BATTLE CREEK's Certificate of Coverage (COC) under the General permit; CITY OF BATTLE CREEK and Nested Jurisdiction are authorized to extend the agreement prior to the expiration date of the CITY OF BATTLE CREEK's COC; and
9. In order to provide permit coverage, it is necessary that the CITY OF BATTLE CREEK and Nested Jurisdiction enter into this Agreement.

***THEREFORE***, in consideration of the premises and the covenants of each other, the parties hereto agree as follows:

**General permit Compliance**

The CITY OF BATTLE CREEK agrees to:

1. Prepare and submit the permit application and required attachments.
2. Be responsible for the general administration of the permit related compliance program including maintenance of records, permit compliance tracking, and submittal of required plans, reports, and related correspondence.
3. Provide access to all correspondence and records related to the permit to Nested Jurisdiction.
4. Advise Nested Jurisdiction of any permit compliance issues or actions.
5. Hold meetings with Nested Jurisdiction to provide updates on compliance and storm water management related issues, as necessary.
6. Be responsible for the primary development and implementation of the Public Education Plan (PEP), the watershed management plan, and the Storm Water Management Plan (SWMP) elements within the CITY OF BATTLE CREEK. The SWMP elements include an Illicit Discharge Elimination Plan (IDEP), Public Education Plan (PEP), Total Maximum Daily Load (TMDL), Post Construction for Storm Water Control for New Developments and Redevelopment Projects, Construction Storm Water Runoff Control, and Pollution Prevention and Good Housekeeping Activities for Municipal Operations.
7. Attend and actively participate in watershed planning efforts, including quarterly meetings of the Battle Creek Area Clean Water Partners (BCACWP).
8. If not already provided, provide SWMP template and Standard Operating Procedure (SOP) templates to be completed by the Nested Jurisdiction to comply with permit requirements by April 1, 2019. Provide updated templates within 90 days of any new MDEQ General Permit Certificates of Coverage (COC) after the signing of this agreement.

NESTED JURISDICTION agrees to:

1. Provide an inventory of properties to be covered under this agreement. Properties would be owned or operated by the district, for example charter schools, adult education facilities, alternative school facilities, ball fields, administration buildings, bus garages, and maintenance facilities.
2. Provide site drawings and plans of the Nested Jurisdiction MS4 system, and any current and past environmental problems, spills, or violations, or other requested documentation to the CITY OF BATTLE CREEK to ensure compliance with the permit.
3. Provide a completed SWMP template, including Nested Jurisdiction SOPs and other commitments to SWMP actions, to the CITY OF BATTLE CREEK for permit compliance. Provide completed updated templates within 120 days of any new MDEQ General Permit Certificates of Coverage (COC) after the signing of this agreement.

**INTER-AGENCY AGREEMENT  
FOR COVERAGE UNDER THE PHASE II NPDES PERMIT**

4. Be responsible for SWMP implementation for the Nested Jurisdiction facilities.
5. Name a contact position and the current person holding that position, with authority for ensuring compliance with this Agreement.
6. Name a storm water management contact position and the current person or persons holding that position who will be responsible for implementing the SWMP for the Nested Jurisdiction.
7. Name a representative who will participate in the Public Education and Public Participation efforts. The representative will be required to participate in meetings of the Public Information and Education Subcommittee (PIE) of the BCACWP.
8. Provide a representative to participate in watershed planning and implementation activities through participation with the BCACWP. A representative must attend quarterly BCACWP meetings.
9. In addition to the information required by specific dates set forth in particular provisions of this Agreement, on December 1, 2019, and annually on the December 1, thereafter, provide to the CITY OF BATTLE CREEK, a report documenting compliance with each requirement of the SWMP.
10. In order to assure compliance with the SWMP, City of Battle Creek may also request information from Nested Jurisdiction at other times than those set out herein and Nested Jurisdiction must provide the information as requested.
11. Nested Jurisdiction shall notify the MDEQ within 24 hours upon becoming aware of any discharge to or from the MS4 that the Nested Jurisdiction suspects may endanger public health or the environment. Notification shall include (if known) the name of the person responsible for the discharge, the location of the discharge into the MS4, the location where the MS4 discharges to the surface waters, the nature of the discharge and the pollutants and clean-up and recovery measures taken or planned. The Nested Jurisdiction must contact the MDEQ's 24 Hour Pollution Emergency Alerting System (PEAS) telephone number (currently 1-800-292-4706) to report the occurrence. The Nested Jurisdiction shall also notify the City of Battle Creek within 24 hours of any such discharge.

**SWMP: Illicit Discharge Elimination Plan (IDEP)**

The CITY OF BATTLE CREEK agrees to:

1. Update, as necessary, the existing, overall approved, IDEP and submit to the MDEQ as necessary.
2. Implement the overall approved IDEP.
3. Notify the designated authority for the Nested Jurisdiction to enter the Nested Jurisdiction Facility for the purposes of IDEP implementation.
4. Provide IDEP training materials to Nested Jurisdiction Facility staff to enable the Nested Jurisdiction to implement the approved IDEP at their facility
5. Inform Nested Jurisdiction of any complaints that may be received regarding storm water at the Nested Jurisdiction Facility and assist the Nested Jurisdiction as appropriate.

NESTED JURISDICTION agrees to:

1. By December 31, 2019, and within 30 days of any change to previously provided information (unless a sooner time is required elsewhere in this Agreement as to a particular item), provide information to the CITY OF BATTLE CREEK on the separate storm conveyances and on-site sewage disposal systems (OSDS) at the Nested Jurisdiction Facility for inclusion in the IDEP.
2. Allow CITY OF BATTLE CREEK access to the Nested Jurisdiction Facility for the purposes of IDEP implementation.
3. Comply with CITY OF BATTLE CREEK ordinances as they relate to storm water management.
4. Comply with and implement the approved IDEP.

**INTER-AGENCY AGREEMENT  
FOR COVERAGE UNDER THE PHASE II NPDES PERMIT**

5. By December 31, 2019, and within 30 days of any change to previously provided information, develop and provide to the City of Battle Creek, an SOP that shows how the Nested Jurisdiction will conduct IDEP investigations and will respond and correct any illicit connections or discharges. Provide to the City of Battle Creek any changes to the SOP within 30 days of the change being made.
6. Document any and all IDEP investigations, including dry weather screening investigations, location and number of observations, any sample analysis and detailed information on any illicit connections and discharges that were discovered.
7. Report any significant illicit connections or discharges to the CITY OF BATTLE CREEK within 24 hours of discovery.
8. Obtain training for Nested Jurisdiction facility staff to allow them to recognize illicit connections and discharges, and to implement the approved IDEP on facility property. Topics to be included, but not be limited to: what are illicit discharges/connections, techniques for finding and identifying illicit discharges/connections; techniques for sampling, analyzing, and recording information; proper methods/procedures for eliminating the illicit discharges/connections; recognition of naturally occurring phenomena and their sources (bacteria sheens, slimes, and films; bryozoans, pollen, blue-green algae, green algae, tannins, and foams).
9. Respond to and document any complaints received regarding storm water at the Nested Jurisdiction Facility and inform the CITY OF BATTLE CREEK of the details of the complaint and its resolution within 30 days of the complaint.

**SWMP: Public Education Plan (PEP)**

The CITY OF BATTLE CREEK agrees to:

1. Develop a PEP with Nested Jurisdiction input and submit the PEP to the MDEQ as required in the COC.
2. Implement the approved PEP and include Nested Jurisdiction in education efforts and activities as appropriate.
3. Utilize any Nested Jurisdiction expertise in education to offset costs associated with permit application and compliance.
4. Assist K-12 Nested Jurisdictions in the development of curriculum in the appropriate science benchmarks to focus on the water cycle, groundwater, surface water, storm water, and water quality issues within the Kalamazoo River Watershed. Development and implementation of the curriculum will need to be in place by the 2019/2020 school year (if not already in place).

NESTED JURISDICTION agrees to:

1. Participate fully in PEP development and implementation and utilize its expertise, contacts and resources to provide watershed and environmental education as described in the approved PEP. The education will be provided to the citizens, business owners, visitors to and employees of CITY OF BATTLE CREEK, and to the visitors to and employees and students of the Nested Jurisdiction and will follow the established monthly message calendar.
2. Provide education on the PEP topics required by the General Permit to all staff and in schools also to students.
3. The Nested Jurisdiction is required to send the named representative to participate in monthly meetings of the Public Information and Education Subcommittee (PIE) of the BCACWP. The representative will be required to attend, at a minimum, fifty percent of the scheduled PIE meetings.

**INTER-AGENCY AGREEMENT  
FOR COVERAGE UNDER THE PHASE II NPDES PERMIT**

4. K-12 Nested Jurisdictions will be required to develop curriculum in the appropriate science benchmarks to focus on the water cycle, groundwater, surface water, storm water, and water quality issues within the Kalamazoo River Watershed. They will be required to send eight to ten classrooms to the Children's Water Festival annually. Development and implementation of the curriculum will need to be in place by the 2019/2020 school year if not already in place. Commencing with the 2019-2020 school year, all new students will receive informational materials as a part of the enrollment packet, all new staff will receive informational materials upon hire, and existing staff will receive informational material annually.
5. Community College Nested Jurisdiction will be required to incorporate the topics of the water cycle, groundwater, surface water, storm water, and water quality issues within the Kalamazoo River Watershed in appropriate college courses. Development and implementation will need to be in place by the 2019/2020 school year if not yet already in place. Commencing with the 2019/2020 school year, all new students will receive informational materials as a part of the enrollment packet. All new staff will receive informational materials upon hire. Existing staff will receive informational materials annually.
6. Federal Government Nested Jurisdiction will be required to distribute informational materials to new hires. Existing staff will receive informational materials annually.
7. Other nested jurisdictions must participate in at least one public education event annually.

**SWMP: Total Maximum Daily Load (TMDL)**

The CITY OF BATTLE CREEK agrees to:

1. Develop and implement TMDL permit requirements with assistance from Nested Jurisdiction, as needed.

NESTED JURISDICTION agrees to:

1. Assist the CITY OF BATTLE CREEK in the development and implementation of the TMDL permit requirements, as needed.

**SWMP: Post-Construction Storm Water Control for New Developments and Redevelopment Projects (Post-Construction Storm Water Controls)**

The CITY OF BATTLE CREEK agrees to:

1. Develop, implement, and enforce a program through an ordinance and other regulatory mechanisms to address post-construction storm water runoff from all new and redevelopment projects that disturb one (1) acre or more, including projects less than one (1) acre that are part of a larger common plan of development or sale that would disturb one (1) acre or more.
2. Review preliminary and final Post-Construction Storm Water Control plans from the Nested Jurisdiction facility to insure the controls and Best Management Practices (BMPs) required in the ordinance or other regulatory mechanism will be used.
3. Provide information and training materials to Nested Jurisdiction on proper post-construction storm water controls.

NESTED JURISDICTION agrees to:

1. Comply with ordinances or regulatory mechanisms that the CITY OF BATTLE CREEK may develop to implement the Post-Construction Storm Water Controls.

**INTER-AGENCY AGREEMENT  
FOR COVERAGE UNDER THE PHASE II NPDES PERMIT**

2. On at least an annual basis commencing no later than 120 days after executing this Agreement, provide training to staff on post-construction site storm water runoff control and the use of approved BMPs.
3. Provide documentation to the CITY OF BATTLE CREEK of the use of Post-Control Storm Water Control BMPs to control runoff.
4. Respond to any complaints received regarding storm water runoff control at the facility and inform the CITY OF BATTLE CREEK of the details of the complaint and its resolution within 14 days of the complaint.

**Construction Storm Water Runoff Control**

The CITY OF BATTLE CREEK agrees to:

1. Inform the Nested Jurisdiction of any complaints that may be received regarding construction site activities at the Nested Jurisdiction facility that result in a land disturbance of greater than or equal to one (1) acre, or land disturbance is within 500 feet of a lake, stream, wetland, or county drain.
2. Provide information and training materials to Nested Jurisdiction on construction storm water runoff controls.

NESTED JURISDICTION agrees to:

1. Provide training to staff on construction storm water runoff control and the use of approved BMPs.
2. Obtain a Soil Erosion and Sedimentation Control (SESC) permit prior to obtaining a building permit when construction is within 500 feet of a lake, stream, wetland, or county drain or if construction disturbs one acre or more of land.
3. Respond to any construction storm water runoff complaints received and report resolution to CITY OF BATTLE CREEK within 14 days of the complaint.

**SWMP: Good Housekeeping and Pollution Prevention for Municipal Facilities**

The CITY OF BATTLE CREEK agrees to:

1. Assist the Nested Jurisdiction in developing a pollution prevention and good housekeeping plan for the Nested Jurisdiction facilities. These include, but are not limited to, roadways; parking lots; transportation and equipment garages; fueling areas, warehouses; stockpiles of salt and other raw materials; open ditches and storm sewers; and turf and landscaping for Nested Jurisdiction facilities.
2. Provide information and training materials to the Nested Jurisdiction on pollution prevention and good housekeeping.

NESTED JURISDICTION agrees to:

1. Provide training for existing employees once per permit cycle on pollution prevention and good housekeeping.
2. Provide training for new employees during the first year of employment on pollution prevention and good housekeeping.

**INTER-AGENCY AGREEMENT  
FOR COVERAGE UNDER THE PHASE II NPDES PERMIT**

**COST SHARE**

The CITY OF BATTLE CREEK agrees to:

1. Administer the overall compliance with the permit with the assistance of the Nested Jurisdiction.
2. Use the payments made by the Nested Jurisdiction solely and only for the costs associated with compliance, education, and implementation.

NESTED JURISDICTION agrees to:

1. Pay the CITY OF BATTLE CREEK \$1,300.00 annually for each year of this agreement.
2. Pay the required amount promptly upon receipt of an invoice for the same from the CITY OF BATTLE CREEK, but no later than 30 days after receipt. The CITY OF BATTLE CREEK intends to send such an invoice(s) to Nested Jurisdiction annually.
3. Reimburse the CITY OF BATTLE CREEK for all costs that it incurs in addressing noncompliance issues that are the result of the actions or inactions of the Nested Jurisdiction Facility.

**General Agreement**

1. In the event that any one or more of the provisions of this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof, but this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
2. This Agreement shall become effective after approval by the governing bodies of the CITY OF BATTLE CREEK and Nested Jurisdiction and execution by the authorized officials of the parties. It shall terminate on the expiration date of the General permit Certificate of Coverage, unless extended by the parties in writing, or unless otherwise terminated in accordance with the provisions of this Agreement. The City of Battle Creek will provide an opportunity to meet and review agreement at least once every permit cycle (every five years).
3. This Agreement may be executed in several counterparts and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
4. The CITY OF BATTLE CREEK may notify the Nested Jurisdiction in writing that the Nested Jurisdiction is deficient in meeting one or more requirements of this Agreement and request that the nested jurisdiction cure the deficiency within 30 days, unless a longer time is agreed to by the CITY OF BATTLE CREEK. If the nested jurisdiction fails to cure the deficiency the CITY OF BATTLE CREEK may, terminate this Agreement. Nested Jurisdiction shall then be required seek NPDES permit coverage on its own.
5. Either the CITY OF BATTLE CREEK or Nested Jurisdiction may terminate this Agreement within thirty (30) day written notice to the Contact Person identified in this Agreement.
6. Nested Jurisdiction agrees to indemnify and defend the City of Battle Creek against all causes of action, claims, liabilities, violations, penalties, and losses arising out of or related to Nested Jurisdictions performance or failure to perform its obligations under this Agreement. This agreement to indemnify and defend survives the termination of this Agreement.
7. Modifications, amendments or waivers of any provisions of this Agreement may be made only by the written mutual consent of the parties.
8. Contacts:

**INTER-AGENCY AGREEMENT  
FOR COVERAGE UNDER THE PHASE II NPDES PERMIT**

City of Battle Creek:

Nested Jurisdiction

1. Environmental Program Coordinator  
Attn: Elizabeth Paul  
City of Battle Creek  
150 S. Kendall St.  
Battle Creek, MI 49015  
T: 269-966-3355 Ext.: 1889  
E: egpaul@battlecreekmi.gov

GSA Property Management Office

Attn: Pete Noot / peter.noot@gsa.gov  
Hart- Dole- Inouye Federal Center  
74 N. Washington Ave.  
Battle Creek MI, 49037  
269 425 3350

cc to:

2. Battle Creek City Manager  
10 N. Division St.  
Battle Creek, MI 49016  
T: 269-966-3378

**IN WITNESS WHEREOF**, The parties hereto have caused this Agreement to be executed and delivered by their respective duly authorized officers:

Date: 6/13/19

City of Battle Creek

Rebecca L. Fleury  
By: Rebecca L. Fleury  
Its: City Manager



Michelle Culp

Witness

Shawna J. Allen

Witness

(Nested Jurisdiction)

Date: 11 June 2019

Pete Noot  
By: Pete Noot  
Its: GSA Property Manager

John P. [Signature]  
Witness  
[Signature]  
Witness