AGENDA
REGULAR CITY COUNCIL MEETING
City Council Chambers, 333 S Green Street
Monday, October 15, 2018, 7:00 PM

1. Call to Order.

2. Roll Call.

3. Pledge of Allegiance.

   A. Motion to adopt an Ordinance authorizing the Mayor’s execution of the Proposed Amendment to the Annexation Agreement with The Chapel for property located at 1809 South Illinois Route 31.

5. Public Hearing: Proposed Amendment to the Annexation Agreement with Gerstad Builders for the Liberty Trails Subdivision.
   A. Motion to adopt an Ordinance authorizing the Mayor’s execution of the Proposed Amendment to the Annexation Agreement with Gerstad Builders for the Liberty Trails Subdivision, dated July 5, 2000, relative to the reduction of impact fees through September 24, 2019.

6. Comments: Any member of the public wishing to address the Council is invited to do so by signing in at the meeting entrance and, when recognized, stepping to the podium. Opportunities for Public Comment are also provided under each Individual Action Item.

7. Consent Agenda.
   Motion to Approve the Following Consent Agenda Items:
   A. Resolution of support for CMAP Technical Assistance Grant and authorization for $5,000 local match contribution;
   B. Pay authorization #2 to Maneval Construction Company, Inc. for the Timothy Lane/ Clover Avenue Water main Replacement Project in the amount of $74,948.10;
   C. Budget amendment to the FY18/19 Budget, Fund 100, increasing the Park Decorations by $1,860; and, award a bid for installation of holiday lighting in Veterans Memorial Park to Temple Display, Ltd. For $19,360;
   D. Award contract to re-roof the Merkel Aquatic Center Bath House to Cost Roofing in the amount of $10,798 with an additional price per hour for plywood replacement of $66;
   E. Request to advertise for bids for the installation of a washroom, concessions and storage facility at Fox Ridge Park;
   F. September 4, 2018 Council meeting minutes;
   G. October 1, 2018 Council meeting minutes;
   H. Payment of Bills in the amount of $692,130.49
   I. As Needed Checks in the amount of $107,116.05
8. Individual Action Item Agenda.

A. Motion to adopt an Ordinance approving a Conditional Use Permit for an Assembly Use, including a seven-night per week use as a PADS (Public Action to Deliver Shelter) site, at 1809 South Illinois Route 31, with conditions.

B. Motion to adopt an Ordinance approving a Zoning Map Amendment, Conditional Use Permit and Preliminary Subdivision Plat to allow a long-term skilled-nursing care facility on the property located at the northeast corner of Ridgeview Drive and Bull Valley Road.

C. Motion to grant a Class “A1” liquor license request for Hub Market LLC dba Hub Market Butcher Shop, 1210 N. Green Street, McHenry, Illinois 60050 upon Council Approval and issuance of the State Liquor License; and, an Ordinance Amending Chapter 4, Sec. 4-6(1) of the McHenry Municipal Code, increasing the number of Class “A1” Liquor Licenses in effect from 2 to 3.

D. Motion to approve transfer of Class A-27 from Reprise Corp d/b/a Nicolino’s Trackside, to Salerno’s McHenry, Inc. d/b/a Salerno’s McHenry, Inc. located at 621 Ridgeview Drive, McHenry, Illinois 60050 upon Council Approval and issuance of the State Liquor License.

E. Motion to grant a Class “A” liquor license request for OBT Inc. d/b/a Old Bridge Tavern, 1334 North Riverside Drive, McHenry, Illinois 60050 upon Council Approval and issuance of the State Liquor License.

9. Discussion Only Items.

10. Staff Reports.

11. Mayor and City Council Comments.

12. Executive Session.


The complete City Council packet is available for review online via the City website at www.ci.mchenry.il.us. For further information, please contact the Office of the City Administrator at 815-363-2108.

The proceedings of the City Council meeting are being video-recorded and every attempt is made to ensure that they are posted on the City of McHenry, IL “YouTube” channel within twenty-four (24) hours of the meeting adjournment.

NOTICE: In compliance with the Americans with Disabilities Act (ADA), this and all other City Council meetings are located in facilities that are physically accessible to those who have disabilities. If additional accommodations are needed, please call the Office of the City Administrator at 815-363-2108 at least 72 hours prior to any meeting so that accommodations can be made.
PUBLIC HEARING SUPPLEMENT

TO: Mayor and City Council

FOR: October 15, 2018 Regular City Council Meeting

FROM: Douglas Martin, Director of Economic Development

RE: Public Hearing regarding Amendments to the Annexation Agreement with The Chapel for the property located at 1809 S Illinois Route 31

ATT:

1. Location Map
2. Ordinance Authorizing Amendments to the Annexation Agreement with The Chapel
3. Amendment to the Annexation Agreement with The Chapel
4. Annexation Agreement with the The Chapel
5. Approved Building Elevations

AGENDA ITEM SUMMARY:
Council is being asked to consider four amendments to the existing annexation agreement with The Chapel regarding the property at 1809 S. Illinois Route 31. A public hearing on the annexation agreement is required. Following, a motion to close the public hearing is necessary.

BACKGROUND:
The original annexation agreement for The Chapel was approved on July 20, 2015 when The Chapel moved their administrative offices to 1809 S. Illinois Route 31. Their plans at that time where to construct a church facility at such time that they raised the necessary funds. This fundraising effort is still in process. Since that time an opportunity has presented itself to partner with the Pioneer Center and house a seven day per week McHenry County PADS (Public Action to Deliver Shelter) shelter in their building. The purpose of this agenda item to for the consideration of four amendments to the existing annexation agreement that would permit this to occur. Consideration of a Conditional Use Permit specifically regarding the use of the facility for PADS is a separate action item under the Action Item Agenda.

ANALYSIS:
Amendment #1 - The first amendment The Chapel is seeking is to change their conditional use expiration date. The current expiration date is July 31, 2020 and The Chapel would like to change
the date to July 31, 2027. They are seeking additional time to build out their church at 1809 S. Illinois Route 31.

Amendment #2 - The second amendment being requested is the ability to deviate from the proposed approved building elevations. Attached are the previously approved conceptual renderings of site elevations and The Chapel is seeking construct their church within the current building footprint without raised ceilings. This is a cost savings measure.

Amendment #3 – The third amendment requested is a modification to the connection to the municipal sanitary sewer system. The Chapel has been working with the City to connect a gravity sewer main and the various options to accomplish this. It has been identified that a viable option is to connect to the existing sanitary main to the west and north of The Chapel property, on the same side of Route 31. This would be in lieu of crossing Route 31 and connecting to the sanitary main on Veterans Parkway. This amendment would allow this connection.

Amendment #4 – The final amendment The Chapel is seeking is the removal of the restriction in the original annexation agreement which limits the use of the building to overnight guests until the church is completed. With its current proposal to work with Pioneer Center, The Chapel would complete the buildout of the 6,000 square foot-space within the next few months in order to open the PADS facility within the next year. There are specific building requirements that would be needed to permit this use. These are discussed under the separate Conditional Use Permit agenda item.

Following the close of the Public Hearing, if the City Council wishes to approve these amendments to the original annexation agreement, a 2/3rds, or supermajority vote (6 votes), would be required on a motion to approve the attached Ordinance authorizing the Mayor’s execution of Amendments to the Annexation Agreement with The Chapel.
ORDINANCE NO. 18-

AN ORDINANCE AUTHORIZING THE EXECUTION OF AMENDMENTS TO AN ANNEXATION AGREEMENT FOR AN APPROXIMATELY 4.7 ACRE PROPERTY LOCATED AT 1809 SOUTH ILLINOIS ROUTE 31 IN MCHENRY COUNTY, ILLINOIS

WHEREAS, the City of McHenry, an Illinois Municipal Corporation in the State of Illinois ("City"), McHenry County, Illinois, is a home rule municipality as contemplated under Article VII, Section 6, of the Constitution of the State of Illinois, and the passage of this Ordinance constitutes an exercise of the City’s home rule powers and functions as granted in the Constitution of the State of Illinois; and

WHEREAS, The Chapel, 1200 American Way Libertyville, IL 60048 is the record title holders ("Record Owner") of the real estate located at 4605 W Crystal Lake Road, in McHenry County, Illinois; and

WHEREAS, notice of a public hearing was published in the Northwest Herald, a newspaper of general circulation in the City of McHenry, within the time provided by law, notifying the public of a hearing on said Amendment to the Annexation Agreement before the Corporate Authorities of the City of McHenry; and

WHEREAS, the Corporate Authorities of the City of McHenry have held the public hearing as required by law and have found that entry into said Amendment to the Annexation Agreement is in the best interest of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MCHENRY, MCHENRY COUNTY, ILLINOIS AS FOLLOWS:

SECTION 1: The Amendments to the Annexation Agreement, bearing the date of October 15, 2018 between the City and Record Owner be and the same is hereby approved. A complete and accurate copy of said amended annexation agreement labeled “First Amendment to Chapel Annexation Agreement”, is attached to this ordinance and incorporated herein by reference as Exhibit “A.”

SECTION 2: The Mayor and City Clerk are hereby authorized to affix their signatures as Mayor and City Clerk to said Amended Annexation Agreement for the uses and purposes therein set forth.

SECTION 3: All Ordinance or parts thereof in conflict with the terms and provisions hereof are hereby repealed to the extent of such conflict.
SECTION 4: This Ordinance shall be published in pamphlet form by and under the authority of the corporate authorities of the City of McHenry, McHenry County, Illinois.

SECTION 5: This Ordinance shall be in full force and effect from and after its passage, approval, and publication in pamphlet form as provided by law.

PASSED THIS _______ DAY OF _______________________, 2018

AYES: __________________________________________________________

NAYS: __________________________________________________________

ABSTAINED: ____________________________________________________

ABSENT: _______________________________________________________

NOT VOTING: ___________________________________________________

APPROVED THIS _______ DAY OF _______________________, 2018

_______________________________________________________________

MAYOR

ATTEST:

_______________________________________________________________

CITY CLERK
Exhibit A

Amendments to Chapel Annexation Agreement

Refer to following description of amendments and attached original annexation agreement.
AMENDMENTS TO THE CHAPEL ANNEXATION AGREEMENT

THESE AMENDMENTS TO THE Chapel ANNEXATION AGREEMENT, APPROVED BY THE CITY COUNCIL OF MCHENRY ON July 20, 2015 (“Original Agreement”), is entered into this 15th day of October, 2018, between the City of McHenry, an Illinois municipal corporation, 333 S Green Street, McHenry, IL 60050 (“City”) and The Chapel, 1200 American Way Libertyville, IL 60048 (“Chapel”) regarding the property located at 1809 S Illinois Route 31 in the City of McHenry (“Subject Property”) legally described on Exhibit A attached hereto and incorporated herein (“First Amendment”).

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED HEREIN, IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. **Conditional Use Permit.**
   Paragraph 3 Conditional Use Permit. of the Original Agreement is hereby amended in its entirety by deleting the following language “July 31, 2020” and replacing it with the following language “July 31, 2027.”

2. **Future Improvements-Building Design.**
   Paragraph 4(e) Future Improvements-Building Design. of the Original Agreement is hereby amended by deleting the provision in its entirety.

3. **Connection to CITY Water/Sewer.**
   Paragraph 4(h) Connection to CITY Water/Sewer. shall be amended to add thereto the following language: OWNER shall be permitted to install a west side gravity sanitary sewer main to service the SUBJECT PROPERTY subject to CITY approval.”

4. **Use of Existing Building and SUBJECT PROPERTY Prior to Final Use.**
   Paragraph 5(d) Use of Existing Building and SUBJECT PROPERTY Prior to Final Use. shall be deleted in its entirety.

6. **Binding Effect and Term.**
   This Amendment shall be binding and inure to the benefit of the parties hereto, successor owners of record and their heirs, assigns, and lessees, and upon successor municipal authorities of the CITY and successor municipalities for a period of twenty (20) years from the date of execution hereof, and any extended time agreed to by amendment to this Agreement.
7. **Conflicts**

In the event the terms of this First Amendment conflict with the terms of the The Chapel Annexation Agreement, the terms of this First Amendment shall govern. Except as specifically provided herein, the First Amendment to The Chapel Annexation Agreement shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties hereto have hereunto set their hands and seals, and have caused this instrument to be executed by their duly authorized officials and the corporate seal attached hereto, all on the date and year first above written.

City of McHenry

By: __________________________

Wayne S. Jett, Mayor

Attest:

______________________________

Debra Meadows, Deputy City Clerk

**Owner:**

**The Chapel**

By: __________________________

Print Name: ___________________
Exhibit A

Legal Description of the Subject Property

PARCEL 1: THE SOUTH 299.67 FEET (AS MEASURED BETWEEN PARALLEL LINES) OF THE NORTH HALF OF THE SOUTHEAST QUARTER OF SECTION 10, TOWNSHIP 44 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WESTERLY OF THE CENTER LINE OF PUBLIC HIGHWAY KNOWN AS STATE ROUTE 31, IN MCHENRY COUNTY, ILLINOIS; ALSO

Permanent Real Estate Index Number: 14-10-402-006
The Chapel
Annexation Agreement

This Agreement made and entered into this 20th day of July, 2015 between The Chapel, an Illinois not for profit corporation (hereinafter referred to as “OWNER”) and the City of McHenry, a Municipal Corporation, in the County of McHenry, State of Illinois (hereinafter referred to as “CITY”).

Recitals

A. The OWNER is the record titleholder to the real estate legally described on “Exhibit A” attached hereto and made a part of this Agreement by reference, hereinafter referred to as the “SUBJECT PROPERTY”.

B. The OWNER filed with the CITY Clerk a Petition for Annexation of the SUBJECT PROPERTY to the CITY, contingent upon the terms and provisions of this Agreement, which Petition has been filed in accordance with 65 ILCS 5/7-1-8 and the ordinances of the CITY.

C. The SUBJECT PROPERTY is located at 1809 South Illinois Route 31 and consists of approximately 4.7 acres.

D. The SUBJECT PROPERTY, has no electors residing thereon, and is zoned I-1 Industrial pursuant to the McHenry County Zoning Ordinance. The property contains a one-story 53,000 square-foot building constructed in 1967. There are two freestanding signs currently on the site located east of the building, along with a billboard sign located south of the building.

E. The SUBJECT PROPERTY consists of one (1) tract of land (PIN: 14-10-402-006) which is not within the corporate boundaries of any municipality or subject to an Annexation Agreement with any other municipality and is presently contiguous to the corporate boundaries of the CITY.

F. The OWNER desires to annex the SUBJECT PROPERTY to the CITY in accordance with the terms of this Agreement.

G. The CITY has determined that the annexation of the SUBJECT PROPERTY in accordance with the terms of this Agreement is in the best interest of the CITY, will promote sound planning and growth of the CITY, and otherwise enhance and promote the general welfare of the CITY and its residents.

H. This Agreement is made pursuant to and in accordance with the provisions of 65 ILCS 5/11-15.1-1, et seq., of the Illinois Municipal Code.
1. Notice to the Fire Protection District, Public Library District or Township of the annexation of the SUBJECT PROPERTY is not required.

2. Prior to the date of this Agreement, all public hearings were held upon proper notice and publication as required for the CITY to effect the terms of this Agreement.

Now therefore, in consideration of the respective agreements made herein, the adequacy and sufficiency of which is acknowledged as being received by the parties, it is agreed as follows:

1. **Annexation.** Upon execution of this Agreement the CITY shall enact an ordinance annexing the SUBJECT PROPERTY. A copy of said ordinance, together with an accurate plat of the SUBJECT PROPERTY, shall be filed with the County Clerk of McHenry County and recorded with the Recorder of Deeds of McHenry County. This Agreement in its entirety, together with the aforesaid Petition for Annexation, shall be null, void and of no force and effect unless the SUBJECT PROPERTY is zoned and classified as provided in this Agreement by the adoption of ordinances by the CITY immediately following the execution of this Agreement.

2. **Variance.** Immediately following annexation of the SUBJECT PROPERTY to the CITY, the CITY Council shall approve a temporary sign variance to allow two (2) freestanding signs and one (1) billboard which currently exist on the SUBJECT PROPERTY.

3. **Conditional Use Permit.** Immediately following the annexation of the SUBJECT PROPERTY, the CITY shall adopt an ordinance approving a conditional use permit for assembly use on the SUBJECT PROPERTY, not to exceed 460 people ("FINAL USE"). The CITY is aware that extensive interior and exterior building and site renovations may not be constructed on the SUBJECT PROPERTY for several years ("FUTURE IMPROVEMENTS"). These FUTURE IMPROVEMENTS include but are not limited to construction of a church facility in one principal building on the SUBJECT PROPERTY, with a seating capacity of approximately 460 people, installation of a sprinkler system and extension and connection of service lines to the CITY'S sanitary and water main and parking lot improvements. The CITY shall not revoke the conditional use permit based on the fact that the FUTURE IMPROVEMENTS have not been installed. Provided, however, in the event the FUTURE IMPROVEMENTS are not constructed and an occupancy permit is not issued for the Final Use on or before July 31, 2020, the Conditional Use Permit granted herein for the Final Use shall expire without any further action by any party to this Agreement.

Approval of the conditional use permit, Final Use, shall also entitle the OWNER to use the principal building constructed thereon as a Public Action to Deliver Shelter ("PADS") site, operated as an overnight shelter for a maximum of one night/week. Development of the Final Use shall be in substantial conformity with the site plan prepared by
Skiffington Architects, LTD dated 9/25/14, attached hereto and incorporated herein as "Exhibit B" ("SITE PLAN"), which SITE PLAN may be amended from time to time by written agreement of the CITY Council and OWNER. All applicable CITY laws, ordinances, rules and regulations including the CITY'S zoning, municipal code, stormwater and subdivision control and development ordinances shall be followed.

4. **Conditions of the Conditional Use Permit, Final Use.** Construction of the FUTURE IMPROVEMENTS shall be subject to the following conditions:

   a. **Parking Lot Improvements.** Parking lot patching and restriping shall be completed to the reasonable satisfaction of the CITY engineer.

   b. **Dumpster Screening.** Dumpsters currently located on the north side of building shall be relocated to the west of the building including all enclosure and screening requirements of the CITY of dumpsters.

   c. **Mechanical Equipment Screening.** All mechanical equipment shall be enclosed and screened in accordance with all applicable CITY laws, ordinances, rules and regulations.

   d. **Future Improvements – Code Compliance.** Construction of all FUTURE IMPROVEMENTS shall be completed in accordance with the terms of this Agreement and all applicable CITY ordinances, rules and regulations including but not limited to: subdivision control and development, zoning and stormwater management ordinances and municipal code.

   e. **Future Improvements – Building Design.** The proposed building constructed on the SUBJECT PROPERTY shall have an appearance substantially in accordance with "Exhibit C" entitled "CONCEPTUAL BUILDING RENDERINGS" attached hereto as Exhibit "C". Changes to the CONCEPTUAL BUILDING RENDERINGS may be made only upon written agreement of the parties hereto.

   f. **Existing Billboard.** The existing billboard on the SUBJECT PROPERTY shall be removed.

   g. **Cross Access Agreement.** OWNER shall make every reasonable effort to obtain a cross-access easement from the property owner to the north of the SUBJECT PROPERTY (currently, Waste Management), PIN # 14-10-402-005, to facilitate access to the proposed future traffic signal to be constructed at Veterans Parkway and Illinois Route 31. If a traffic control signal is not erected at the intersection of Veterans Parkway and Illinois Route 31 by the time the FINAL USE of the SUBJECT PROPERTY is occupied, the CITY shall reconsider this condition.

   h. **Connection to CITY Water/Sewer.** The SUBJECT PROPERTY shall be connected to CITY sanitary sewer and water service and all private wells and septic systems shall be abandoned as required by law. Water and sanitary treatment plant and main capacity will be made available to the development by the CITY on the same basis as it is made available to other developments. OWNER shall be permitted to install an on-site grinder pump, lift station or other device approved by the CITY and extend a sanitary sewer force main, size to be determined by the CITY, to the existing sanitary sewer main on Veterans Parkway. OWNER shall be required to construct a sanitary
sewer force main across the frontage of the SUBJECT PROPERTY with connections/stubs to the north and south of the SUBJECT PROPERTY to allow future connections of the adjacent properties to the CITY'S sanitary sewer system. The maintenance of the grinder pump, lift station or other device approved by the CITY shall be the responsibility of the OWNER.

i. **CITY Water and Sewer Capacity.** The CITY acknowledges that there is currently sanitary sewer treatment plant capacity available from the CITY to service the SUBJECT PROPERTY; however, the CITY does not agree to reserve any capacity for the SUBJECT PROPERTY. The CITY further acknowledges that adequate municipal water is currently available for the FUTURE IMPROVEMENTS to the SUBJECT PROPERTY. No action of the CITY regarding application to the Illinois or U.S. Environmental Protection Agency for permission to construct sanitary sewer lines on any part of the SUBJECT PROPERTY shall be construed to constitute any representation, warranty, or reservation by the CITY to OWNER that municipal sanitary sewer treatment plant or sanitary sewer main capacity or municipal water will be available to service the SUBJECT PROPERTY when OWNER applies to the CITY for connection permits. In the event that municipal sanitary sewer treatment, sanitary sewer main capacity or municipal water is not available, the CITY agrees that OWNER may construct private systems, in compliance with all applicable laws, rules, regulations and ordinances, necessary to serve the development on the SUBJECT PROPERTY.

j. **Stormwater and Sidewalk Requirements.** Curb and gutter and an enclosed storm sewer system shall be installed in areas of the SUBJECT PROPERTY, in compliance with the ordinances of the CITY as determined by the CITY. Stormwater detention/retention areas shall be installed and maintained onsite in accordance with all applicable laws, rules, regulations and CITY ordinances. OWNER shall install a public sidewalk or multi-use path, location, size and composition to be determined by the CITY working in conjunction with the Illinois Department of Transportation (IDOT) along the entire length of the frontage of the SUBJECT PROPERTY along Illinois Route 31.

5. **Use of Existing Building and SUBJECT PROPERTY Prior to the Final Use.** Immediately following annexation to the CITY, until the FUTURE IMPROVEMENTS for the FINAL USE are fully completed, the following conditions shall apply to use of the existing building and SUBJECT PROPERTY:

   a. **Removal of Sign.** The freestanding sign, located at the southeast corner of the SUBJECT PROPERTY, shall be removed from the SUBJECT PROPERTY within ninety (90) days of annexation approval by the CITY Council.
   
   b. **Code Compliance.** The existing building shall only be utilized following a successful code compliance inspection by the CITY and McHenry Township Fire Protection District;
c. **Limited Assembly Use.** The existing building shall be permitted assembly use, however, such use be limited to a maximum occupancy of one hundred (100) people at any one time;

d. **No Overnight Use.** The existing building shall not be utilized as an overnight PADS temporary shelter site.

e. **Property Maintenance Requirements.** Property maintenance issues on the SUBJECT PROPERTY including: cutting and removal of overgrown grass and weeds and trash and debris removal shall be completed within ninety (90) days following annexation approval by the CITY Council.

f. **Outside Lighting.** Except with regard to the existing outside lights located in the rear parking lot, all existing lighting standards on the SUBJECT PROPERTY shall be tested to ensure the minimum parking lot lighting requirements, outlined in the CITY’S zoning ordinance are met within ninety (90) days of CITY Council approval of the annexation.

g. **Compliance with IDOT Requirements.** OWNER shall comply with all IDOT permit requirements which may apply to any use of or any improvements made on the SUBJECT PROPERTY.

h. **Continued Use of Well and Septic.** Continued use of private well and septic shall be permitted.

6. **Tree Survey and Preservation Plan.** At all times, OWNER shall obtain a tree removal permit prior to the removal of any trees on the SUBJECT PROPERTY. Any tree removal and replacement on the SUBJECT PROPERTY shall be in accordance with the CITY’S Tree Preservation Ordinance. A tree survey shall be submitted prior the issuance of a tree removal permit for the SUBJECT PROPERTY.

7. **Right-of-Way Dedication.** At all times, OWNER shall dedicate sufficient right-of-way necessary to accommodate required FUTURE IMPROVEMENTS along Illinois Route 31 as part of current and future development of the SUBJECT PROPERTY free and clear of any liens and encumbrances to the CITY. The CITY will work with OWNER and IDOT to determine amount of right-of-way which may be required. All off-site and on-site (access and roadway) improvements shall be in accordance with the requirements of IDOT and the CITY. A plat of dedication for right-of-way required along Illinois Route 31 shall be prepared and submitted by OWNER prior to issuance of a certificate of occupancy for any assembly use on the SUBJECT PROPERTY.

8. **Reimbursement Provision.** At such time the OWNER commences the FUTURE IMPROVEMENTS on the SUBJECT PROPERTY, the CITY reserves the right to request OWNER to construct additional, expanded or oversize municipal public improvements onsite which benefit not only the SUBJECT PROPERTY, but also other properties being or to be developed in the relevant service areas for such improvements. In the event OWNER makes such improvements, the following provisions shall apply and be included in a subsequent reimbursement/recapture agreement:
a. The properties which may reasonably be expected to benefit directly or indirectly from the construction and installation of such additional onsite expanded or oversized improvements ("BENEFITED PROPERTY") will be determined by the CITY'S Consulting Engineer.

b. The CITY shall endeavor to collect a pro rata sum of money from the owners of the BENEFITED PROPERTY upon connection. The total sum subject to reimbursement to the OWNER, as well as the pro rata sum to be collected from the BENEFITED PROPERTY owners shall be reasonably determined by the CITY'S Consulting Engineer taking into account the following factors: construction and easement costs; professional fees; testing and analysis fees; and legal and administrative expenses.

c. Subject to a non-appealable final court order, directing CITY to act otherwise, the CITY shall not issue any connection permits until the BENEFITED PROPERTY owner pays the reimbursement charge to the Owner as set forth in this paragraph.

d. The CITY will use its best effort to collect the cost provided herein from the BENEFITED PROPERTY owners but shall not be liable to OWNERS if the CITY is, for any reason, unable to collect said cost. The CITY'S liability to reimburse OWNERS shall be limited to payment from funds actually collected from BENEFITED PROPERTY Owners.

e. The CITY and OWNER reserve the right to, at any time during the term of this Agreement, file the Reimbursement Agreement with the McHenry County Recorder of Deeds and notify the owners of the BENEFITED PROPERTY of the terms of this reimbursement provision.

f. This reimbursement provision shall have a commencement date when the CITY Engineer issues a letter indicating substantial completion of the public improvements which are the subject of the Reimbursement Agreement and shall terminate upon the earlier of ten years thereafter or upon full reimbursement by the BENEFITED PROPERTY owners of the charges referred to in this reimbursement provision. The Reimbursement Agreement shall automatically renew for an additional period of 10 years in the event full OWNER reimbursement has not occurred.

9. **Underground Utilities.** The OWNER shall install all new electricity, gas, telephone lines and any other utility or cable devices, lines, or conduits necessary to service the FUTURE IMPROVEMENTS to the extent that said utilities are not already located underground at the SUBJECT PROPERTY.

10. **Annexation Fees.** Not later than sixty (60) days following CITY Council approval of the annexation of the SUBJECT PROPERTY to the CITY, OWNER shall pay to the CITY the sum of $4,700, representing $1,000 per acre zoned residential.

11. **Binding Effect and Term.** This Agreement shall be binding upon and inure to the benefit of the parties hereto, successor owners of record and their heirs, assigns, and lessees, and upon successor municipal authorities of the CITY and successor municipalities for a
period of twenty (20) years from the date of execution hereof, and any extended time agreed to by amendment to this Agreement.

12. Amendment. This Agreement may only be amended by written instrument executed by all parties hereto. Provided, however, in the event title to the SUBJECT PROPERTY, in whole or part, is transferred to successors in interest, future amendments relating to the SUBJECT PROPERTY may be made by and between the CITY and the title holders to the parcel directly effected by the requested amendment without consent required by other record owners of the SUBJECT PROPERTY.

13. Notice and Default. Before any failure of any party to this Agreement to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the party alleging the breach shall provide notice to the party alleged to be in default specifying the nature of said default, and thirty (30) days shall elapse from the receipt of said default notice without the default being cured. Where such failed performance is of a nature that curing the default is not reasonably possible within thirty (30) days, then such failed performance shall not be deemed a breach hereunder so long as the alleged breaching party undertakes to cure within the thirty (30) day period and diligently pursues the cure to reasonable completion thereafter. Notice shall be in writing and delivered via certified or regular United States first class mail, addressed as follows:

CITY
City Administrator
333 S. Green Street
McHenry, IL 60050

ATTORNEY FOR CITY
David W. McArdle
Zukowski, Rogers, Flood & McArdle
50 Virginia Street
Crystal Lake, IL 60014

OWNER
The Chapel
Director of Finance and Administration
1200 American Way
Libertyville, IL 60048

ATTORNEY FOR OWNER
Ron Senechalle
Pluymert, MacDonald, Hargrove & Lee, Ltd.
2300 Barrington Road, Suite 220
Hoffman Estates, IL 60169
14. **Stop Orders.** The CITY will issue no stop orders directing work stoppage on buildings or parts of the development of the SUBJECT PROPERTY without setting forth the section of CITY ordinances or of this Agreement allegedly violated by OWNER, and OWNER may forthwith proceed to correct such violations as may exist; provided, however, that the CITY shall give notice in advance to the OWNER of its intention to issue stop orders at least twenty-four (24) hours in advance of the actual issuance of such stop orders, except in the event a health, life or safety emergency is deemed to exist by the CITY.

15. **Ordinance Changes.** Except as otherwise specified herein, all ordinances, laws, rules and regulations of the CITY and other applicable jurisdictions shall apply to the SUBJECT PROPERTY, OWNER and all successors and assigns in title. If during the term of this Agreement, the provisions of the existing ordinances, laws, rules and regulations which may relate to the development or FUTURE IMPROVEMENTS to the SUBJECT PROPERTY, are amended or modified in any manner so as to impose more restrictive requirements, such more restrictive requirements shall be enforceable as applied to the SUBJECT PROPERTY, so long as such amendments or modifications are non-discriminatory in their application and effect throughout the CITY or other applicable jurisdictions.

16. **Obligations.** All obligations of the OWNER and the CITY in this Agreement, including monetary obligations in existence now and in the future, as a result of this Agreement, shall constitute covenants running with the land. Such monetary obligations shall also be liens upon the land. OWNER hereby consents to the filing of a lien on the SUBJECT PROPERTY or parts thereof for which obligations are owed when any obligations are more than ninety (90) days overdue, subject to the cure provision provided for above.

17. **Enforceability.** Any action to enforce this Agreement shall only be filed in the Twenty-Second Judicial Circuit, McHenry County, Illinois. The party who prevails in any such action shall be entitled to recover its reasonable attorney’s fees from the other party.

18. **Waiver.** The failure of the CITY or OWNER to insist, in any one or more instances, upon performance of any terms or conditions of this Agreement, shall not be construed as a waiver of future strict performance of any such term, covenant or condition and the obligations of the OWNER or CITY shall continue in full force and effect.

19. **Insurance.** OWNER shall, during construction of any FUTURE IMPROVEMENTS in the public right-of-way, carry, at its own cost and expense, the following insurance: (i) workers’ compensation insurance as required by law; and (ii) commercial general liability (CGL) insurance with respect to construction and maintenance activities on the SUBJECT PROPERTY, such insurance to afford protection of up to Five Million Dollars ($5,000,000) per occurrence and Six Million Dollars ($6,000,000) general aggregate, based on Insurance Services Office (ISO) Form CG 00 01 or a substitute form providing substantially equivalent coverage. OWNER’S CGL insurance shall contain a provision including the CITY, its officers and employees as an additional insured. Evidence of this insurance coverage shall be provided to the CITY prior to the commencement of any
public improvements related to or in conjunction with the FUTURE IMPROVEMENTS on the SUBJECT PROPERTY.

20. **Letter of Credit.** A letter of credit for all public improvements undertaken on the SUBJECT PROPERTY shall be submitted to the CITY, in the manner and form reasonably provided by the CITY and in accordance with the CITY'S subdivision control and development ordinance, prior to the OWNER constructing any public improvements related to or in conjunction with the improvement to or FUTURE IMPROVEMENTS on the SUBJECT PROPERTY.

21. **Severability.** If any provision of this Agreement, other than the provisions relating to the requested zoning changes described herein and the ordinance adopted in connection therewith, is held invalid by any court of competent jurisdiction, such provision shall be deemed to be excised here from and the invalidity thereof shall not affect any of the other provisions contained herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date indicated above.

**OWNER**

Director of Finance and Administration

Attest:

__________________________, its ______________

**CITY**

Susan E. Low, its Mayor

Attest:

Janice C. Jones City Clerk

Z:\M\McHenryCityof\Chapel\AA2 - The Chapel 1809 S Illinois Route 31 draft dated 7-2-15.doc
Exhibit A
Legal Description of the SUBJECT PROPERTY
Exhibit B
Site Plan
Exhibit C
Conceptual Building Renderings
The following renderings are conceptual but give a picture of what the site might look like once completed. Adjustments will likely be made during the planning process.
PUBLIC HEARING

TO: Mayor and City Council
FOR: October 15, 2018 Regular City Council Meeting
FROM: Ross Polerecky, Director of Community Development
RE: Public Hearing regarding an Amendment to the Annexation Agreement with Gerstad Builders for the Liberty Trails Subdivision, reducing impact fees by 50% through September 24, 2019

ATT: 1. Ordinance Authorizing the execution of a First Amendment to the Annexation Agreement with Gerstad Builders for the Liberty Trails Subdivision
2. First Amendment to the Annexation Agreement with Gerstad Builders
3. Annexation Agreement with Gerstad Builders

AGENDA ITEM SUMMARY:
The purpose of this agenda item is for the City Council to consider a request made by Gerstad Builders to adopt an Ordinance amending an existing annexation agreement for the Liberty Trails Subdivision that would result in a reduction of the impact fees for this development by 50%. While the actual dollar amounts are different, the requested action, and language in the proposed Ordinance, is the same that applied to the recently approved Oaks at Irish Prairie annexation agreement amendment, including an expiration date for the fee reduction of September 24, 2019. A Public Hearing on the annexation agreement is required with a vote on the amendment to follow. A 2/3 (supermajority) vote of 6 (Mayor and Council voting) is required for the adoption of the amendment.

ANALYSIS:
Over the past few months staff and City Council have been in discussions about reducing impact and capital development fees in order to incentivize residential building within our existing platted subdivisions. At the September 24th meeting, the City Council approved a 50% reduction in our standard impact and capital development fees for all platted lots that are not included under a current annexation agreement. Also approved at this meeting was a reduction in fees by 50% for the Oaks at Irish Prairie subdivision through the adoption of an Ordinance amending an existing annexation agreement for this development. Mr. Roger Gerstad on behalf of Gerstad Builders has requested a similar reduction in fees for the Liberty Trails Subdivision, which is under
a current annexation agreement through July of 2020. There are currently 48 vacant lots within the Liberty Trails Subdivision. The following analysis identifies the current impacts of a 50% reduction in impact fees. Of note, Council has already approved a 50% reduction in Capital Development Fees through September 24, 2019. As such, only the Special Developer Impact Fees specific to Liberty Trails are included below.

<table>
<thead>
<tr>
<th>Liberty Trails (48 lots)</th>
<th>Current</th>
<th>Proposed</th>
<th>Reduction Amount</th>
<th>Property Tax 1st Full Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>District 15</td>
<td>4,527.25</td>
<td>2,263.63</td>
<td>2,263.63</td>
<td>3,684.00</td>
</tr>
<tr>
<td>District 156</td>
<td>2,437.75</td>
<td>1,218.88</td>
<td>1,218.88</td>
<td>1,808.00</td>
</tr>
<tr>
<td>Library</td>
<td>356.00</td>
<td>178.00</td>
<td>178.00</td>
<td>222.60</td>
</tr>
<tr>
<td>Fire</td>
<td>356.00</td>
<td>178.00</td>
<td>178.00</td>
<td>378.95</td>
</tr>
<tr>
<td>Park</td>
<td>2,728.00</td>
<td>1,364.00</td>
<td>1,364.00</td>
<td>492.94</td>
</tr>
<tr>
<td>TOTALS</td>
<td>$10,405.00</td>
<td>$5,202.50</td>
<td>$5,202.50</td>
<td>$6,586.49</td>
</tr>
</tbody>
</table>

Total Impact of 50% Reduction Per Entity Based on 48 Homes (amount waived is equal to the amount received):

District 15: $108,654.24
District 156: $58,506.24
Library: $8,544.00
Fire: $8,544.00
Park: $65,472.00
TOTAL: $249,720.48 (this is also the approximate prepayment option amount)

Total Property Taxes Generated Per Identified Entity Over 10 Years Based on 48 Homes at the Current Tax Rates:

District 15: $1,768,320.00
District 156: $867,840.00
Library: $106,848.00
Fire: $181,896.00
City: $236,611.20
TOTAL: $3,161,515.20

As identified above, the total amount of fees that would be waived with a 50% reduction is approximately $249,720.48. This does not include annexation fees, building fees, plumbing inspection fees, water and sewer connection fees, or operations fees (school, library, fire). Water
and sewer capital development fees are already reduced by 50% based on City Council action of September 24, 2018.

RECOMMENDATION:
Therefore, if Council concurs, it is recommended that a motion be made to adopt an Ordinance authorizing the Execution of an Amendment to an Existing Annexation Agreement with Gerstad Builders for the Liberty Trails Subdivision, dated July 5, 2000, relative to the reduction of impact fees by 50% through September 24, 2019.

Mayor votes on this issue. At least 6 votes are required for passage.
ORDINANCE NO. 18-

AN ORDINANCE AUTHORIZING THE EXECUTION OF AN AMENDMENT TO AN ANNEXATION AGREEMENT FOR AN APPROXIMATELY 100 ACRE PROPERTY LOCATED IN THE LIBERTY TRAILS SUBDIVISION

WHEREAS, the City of McHenry, an Illinois Municipal Corporation in the State of Illinois ("City"), McHenry County, Illinois, is a home rule municipality as contemplated under Article VII, Section 6, of the Constitution of the State of Illinois, and the passage of this Ordinance constitutes an exercise of the City’s home rule powers and functions as granted in the Constitution of the State of Illinois; and

WHEREAS, Gerstad Builders Inc., 2703 Bush Terrace, McHenry Illinois 60051 is the record title holder ("Sole Beneficiary and Developer") of the real estate located within the Liberty Trails Subdivision, in McHenry County, Illinois; and

WHEREAS, notice of a public hearing was published in the Northwest Herald, a newspaper of general circulation in the City of McHenry, within the time provided by law, notifying the public of a hearing on said Amendment to the Annexation Agreement before the Corporate Authorities of the City of McHenry; and

WHEREAS, the Corporate Authorities of the City of McHenry have held the public hearing as required by law and have found that entry into said Amendment to the Annexation Agreement is in the best interest of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MCHENRY, MCHENRY COUNTY, ILLINOIS AS FOLLOWS:

SECTION 1: The Amendment to the Annexation Agreement, bearing the date of October 15, 2018 between the City and Record Owner be and the same is hereby approved. A complete and accurate copy of said amended annexation agreement labeled “First Amendment to Liberty Trails Annexation Agreement”, is attached to this ordinance and incorporated herein by reference as Exhibit “A.”

SECTION 2: The Mayor and City Clerk are hereby authorized to affix their signatures as Mayor and City Clerk to said Amended Annexation Agreement for the uses and purposes therein set forth.
SECTION 3: All Ordinance or parts thereof in conflict with the terms and provisions hereof are hereby repealed to the extent of such conflict.

SECTION 4: This Ordinance shall be published in pamphlet form by and under the authority of the corporate authorities of the City of McHenry, McHenry County, Illinois.

SECTION 5: This Ordinance shall be in full force and effect from and after its passage, approval, and publication in pamphlet form as provided by law.

PASSED THIS _____ DAY OF ____________________, 2018

AYES: ______________________________________________________

NAYS: ____________________________________________________

ABSTAINED: _______________________________________________

ABSENT: _________________________________________________

NOT VOTING: ______________________________________________

APPROVED THIS _______ DAY OF _____________________, 2018

___________________________________________________________

MAYOR

ATTEST:

___________________________________________________________

CITY CLERK
Exhibit A

First Amendment to the Liberty Trails Subdivision Annexation Agreement

THIS FIRST AMENDMENT TO THE LIBERTY TRAILS ANNEXATION AGREEMENT, APPROVED BY THE CITY COUNCIL OF MCHENRY ON JULY 5th 2000 ("Original Agreement"), is entered into this 15th day of October, 2018, between the City of McHenry, an Illinois municipal corporation, 333 S Green Street, McHenry, IL 60050 ("City") and Gerstad Builders Inc., 2703 Bush Terrace, McHenry Illinois 60051 regarding the property located north of Lincoln Road and west of Chapel Hill Road in the City of McHenry ("Subject Property") legally described on Exhibit A attached hereto and incorporated herein ("First Amendment").

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED HEREIN, IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

19. Donations, Contributions and Fees
Notwithstanding anything contained in the Original Annexation Agreement to the contrary, the Parties agree that the annexation fees required pursuant to paragraph 19(1)(2) thereof, and the Cash Donations required pursuant to paragraph 19(3) thereof, all as adjusted for the passage of time in accordance with the Original Annexation Agreement, shall be reduced by fifty percent (50%) for a period beginning October 15, 2018 through September 24, 2019 ("Fee and Donation Discount Period"). The discount shall be calculated based on the amount due as of the date of payment thereof. All of said fees and donations shall be payable at the time of building permit, on a lot by lot basis. All of the foregoing shall remain in effect for the Owner Lots notwithstanding any future fee or donation increases pursuant to City ordinances and further notwithstanding any new fees or donations which may hereafter be adopted by the City. Owner shall have the right to prepay any fees or donations due or to become due pursuant to the Original Annexation Agreement (as amended), and such fees and donations shall be at the discounted rates as described herein, provided they are paid to the City within the Fee and Donation Discount Period.
IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, and have caused this instrument to be executed by their duly authorized officials and the corporate seal attached hereto, all on the date and year first above written.

City of McHenry

By: ____________________________
   Wayne S. Jett, Mayor

Attest:

______________________________
Debra Meadows, Deputy City Clerk

Owner:

Gerstad Builders

By: ____________________________

Print Name: ____________________________
Exhibit B
Legal Description of the Subject Property

PARCEL 1: LOT 1 OF THE COUNTY CLERK’S PLAT OF THE WEST HALF OF SECTION 25, TOWNSHIP 45 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED IN BOOK 2 OF PLATS, PAGE 38, (EXCEPTING THOSE PARTS THEREOF INCLUDED WITHIN THE BOUNDARIES OF THE DIEDRICH’S FIRST ADDITION TO WOODDLAWN PARK, DIEDRICH’S SECOND ADDITION TO WOODDLAWN PARK AND DIEDRICH’S THIRD ADDITION TO WOODDLAWN PARK; ALSO EXCEPTING THAT PART THEREOF CONVEYED BY WARRANTY DEED BY JACOB M. DIEDRICH AND WIFE, TO ELSA LOUISE KRENZ DATED SEPTEMBER 9, 1921 AND RECORDED JANUARY 6, 1923 IN BOOK 166 OF DEEDS, PAGE 441; ALSO EXCEPTING THAT PART THEREOF CONVEYED BY WARRANTY DEED FROM JACOB M. DIEDRICH AND WIFE TO ELSA LOUISE KRENZ DATED NOVEMBER 17, 1921 AND RECORDED JANUARY 6, 1923 IN BOOK 163 OF DEEDS, PAGE 347; ALSO EXCEPTING A TRACT OF LAND DESCRIBED AS BEGINNING AT A POINT ON THE SOUTHWESTERLY LINE OF LOT 1, EXTENDED NORTHWESTERLY, IN DIEDRICH’S THIRD ADDITION TO WOODDLAWN PARK, A SUBDIVISION OF PART OF THE NORTH HALF OF FRACTIONAL SECTION 25, TOWNSHIP 45 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 9, 1921 AS DOCUMENT NUMBER 51849, IN BOOK 4 OF PLATS, PAGE 35, WHICH IS 16 1/2 FEET, MORE OR LESS, FROM THE WESTERLY CORNER OF LOT 1, AFORESAID, FOR A PLACE OF BEGINNING; THENCE SOUTHWESTERLY ALONG THE SOUTHEASTERLY RIGHT OF WAY THE EXISTING ROADWAY, FOR A DISTANCE OF 125 FEET; THENCE EASTERLY ALONG A STRAIGHT LINE TO A POINT WHICH IS 35 FEET SOUTHWESTERLY FROM THE SOUTH CORNER OF LOT 1 ALSO SAID SOUTH LINE EXTENDED SOUTHWESTERLY OF DIEDRICH’S THIRD ADDITION TO WOODDLAWN PARK, AFORESAID: THENCE NORTHEASTERLY 35 FEET TO THE SOUTHERLY CORNER OF LOT 1, AFORESAID; THENCE NORTHWESTERLY ALONG THE SOUTHWESTERLY LOT LINE OF LOT 1 AND SAID LINE AS EXTENDED NORTHWESTERLY TO THE PLACE OF BEGINNING, ALSO EXCEPTING THAT PART OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF SAID SECTION 25, LYING 40 FEET NORTHERLY OF THE FOLLOWING DESCRIBED CENTER LINE; BEGINNING AT A POINT 680 FEET WEST OF THE CENTER OF SAID SECTION 25; THENCE EASTERLY ALONG SAID CENTER LINE, A DISTANCE OF 680 FEET TO THE CENTER OF SAID SECTION 25; ALSO EXCEPTING THAT PART LYING ON THE EASTERLY SIDE OF FOX RIVER, DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTH QUARTER CORNER OF SAID SECTION 25; THENCE SOUTH 20 DEGREES, 45 MINUTES WEST, 161.5 FEET TO AN IRON STAKE AT THE MOST EASTERLY CORNER OF LOT 13, ACCORDING TO THE PLAT THEREOF RECORDED IN THE
DIEDRICH’S SECOND ADDITION TO WOODLAWN PARK, AS RECORDED IN THE RECORDER’S OFFICE OF MCHENRY COUNTY, ILLINOIS, IN BOOK 4 OF PLATS, PAGE 35; THENCE NORTH 49 DEGREES WEST ALONG THE NORTHEASTERLY LINE OF SAID LOT 13, A DISTANCE OF 163.7 FEET; THENCE NORTH 36 DEGREES, 55 MINUTES EAST, 52.2 FEET TO A POINT ON THE NORTH LINE OF SAID SECTION 25; THENCE EAST, 149.5 FEET TO THE PLACE OF BEGINNING; ALSO EXCEPTING AN ADJOINING PARCEL OF LAND DESCRIBED BY BEGINNING AT THE MOST WESTERLY CORNER OF THE LAST ABOVE DESCRIBED TRACT; THENCE NORTH 49 DEGREES WEST, 12 FEET, MORE OR LESS, TO THE WATER’S EDGE OF FOX RIVER; THENCE NORTHEASTERLY ALONG THE WATER’S EDGE OF SAID FOX RIVER, TO AN INTERSECTION WITH THE NORTH LINE OF SAID SECTION 25; THENCE EAST ON SAID SECTION LINE, 20 FEET, MORE OR LESS, TO THE NORTHWESTERLY CORNER OF SAID ABOVE DESCRIBED TRACT; THENCE SOUTH 36 DEGREES, 55 MINUTES WEST, 52.2 FEET TO THE PLACE OF BEGINNING, ALSO EXCEPTING THEREFROM ALL THAT PART OF THE NORTH 508.65 FEET THEREOF AS MEASURED ALONG THE EAST LINE OF SAID LOT 1 NOT PREVIOUSLY EXCEPTED ABOVE), IN MCHENRY COUNTY, ILLINOIS. ALSO PARCEL 2: THE NORTH HALF OF THE NORTHEAST QUARTER (EXCEPT THE NORTH 508.65 FEET OF THE WEST 350.41 FEET) OF SECTION 25, TOWNSHIP 45 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN MCHENRY COUNTY, ILLINOIS.
Amendment to the Liberty Trails Annexation Agreement

This Amendment to the Liberty Trails Annexation Agreement ("Amendment") is entered into as of the 15th day of October, 2018, between the City of McHenry, an Illinois municipal corporation, 333 S. Green Street, McHenry, Illinois 60050 ("City") and Gerstad Builders Inc., 2703 Bush Terrace, McHenry, Illinois 60051 ("Owner").

RECITALS

A. The Parties hereto previously entered into that certain Liberty Trails Annexation Agreement effective as of ___________ and recorded on ___________ in the office of the McHenry County Recorder as Document No. ___________, approved by the City Council of McHenry on July 5, 2000 ("Original Annexation Agreement").

B. The Original Annexation Agreement set forth the terms and conditions to the annexation, zoning and development of real property located north of Lincoln Road and west of Chapel Hill Road in the City legally described on the attached Exhibit A ("Subject Property").

C. All notices were prepared and sent and a public hearing was conducted in accordance with Illinois law prior to the adoption of this Ordinance and approval of this Amendment.

D. The Original Annexation Agreement provided, in part, in Section 19 therein, the following with regard to "Donations, Contributions and Fees":

Cash Donations. During the term of this First Amendment, Owner shall be obligated to pay to the City certain cash donations per single family dwelling unit developed on the Subject Property. These cash donations shall be paid upon issuance at the time application is made to the City for the issuance of each residential building permit and calculated in accordance with this paragraph. During the terms of this First Amendment, the Owner shall be required to pay the cash donations referred to herein. The cash donations payable by the Owner to the City shall be calculated as follows:
<table>
<thead>
<tr>
<th></th>
<th>Schools</th>
<th>Park</th>
<th>Library</th>
<th>Fire District</th>
<th>Total/Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 Bedroom or less</td>
<td>$2,071</td>
<td>$1,072</td>
<td>$250</td>
<td>$250</td>
<td>$3,643</td>
</tr>
<tr>
<td>3 Bedroom</td>
<td>$4,371</td>
<td>$1,552</td>
<td>$250</td>
<td>$250</td>
<td>$6,423</td>
</tr>
<tr>
<td>4 Bedroom</td>
<td>$5,082</td>
<td>$1,991</td>
<td>$250</td>
<td>$250</td>
<td>$7,573</td>
</tr>
<tr>
<td>5 Bedroom or more</td>
<td>$4,797</td>
<td>$1,949</td>
<td>$250</td>
<td>$250</td>
<td>$7,246</td>
</tr>
</tbody>
</table>

The cash donations referred to in this chart shall collectively be referenced as “Minimum Cash Contribution Amounts.”

E. In an effort to increase new home construction in the City, the parties hereto desire to amend Section 19 of the Original Annexation Agreement, for a period ending September 24, 2019, to temporarily reduce the Cash Donations required therein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the adequacy and sufficiency of which is acknowledged as being received by the parties hereto, it is hereby agreed by and between the Parties hereto as follows:

1. With regard to Section 19. 3. 1. of the Original Annexation Agreement, each of the cash donations required to be paid in the stated chart of cash donations shall be reduced by 50% from the full execution of this Agreement through the end of business on September 24, 2019. This reduction shall be calculated by applying 50% to the cash donation sum that would have been due under the Original Annexation Agreement, as of the date of payment thereof. The cash donations fees shall be payable at the time of building permit, on a lot by lot basis. Owner shall have the right to prepay any of these cash donations, at the reduced amount, provided that any prepayment is paid to the City prior to September 25, 2019.

2. Conflicts. Except as specifically provided herein, the Original Annexation Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed by their duly authorized officials on the date and year written below.

City of McHenry

By: ____________________________
    Wayne S. Jett, Mayor         Date

Owner:

Gerstad Builders Inc

By: ____________________________
    Roger O. Gerstad, Pres.     Date
Parcel 1: Lot 1 of the County Clerk’s Plat of the West half of Section 25, Township 45 North, Range 8 East of the Third Principal Meridian, according to the Plat thereof recorded in Book 2 of Plats, Page 38, (excepting those parts thereof included within the boundaries of the Diedrich’s First Addition to Woodlawn Park, Diedrich’s Second Addition to Woodlawn Park and Diedrich’s Third Addition to Woodlawn Park; also excepting that part thereof conveyed by Warranty Deed by Jacob M. Diedrich and wife, to Elsa Louise Krenz dated September 9, 1921 and recorded January 6, 1923 in Book 166 of Deeds, Page 441; also excepting that part thereof conveyed by Warranty Deed from Jacob M. Diedrich and wife to Elsa Louise Krenz dated November 17, 1921 and recorded January 6, 1923 in Book 163 of Deeds, Page 347; also excepting a tract of land described as beginning at a point on the Southwesterly line of Lot 1, extended Northwesterly, in Diedrich’s Third Addition to Woodlawn Park, a subdivision of part of the North half of fractional Section 25, Township 45 North, Range 8 East of the Third Principal Meridian, according to the Plat thereof recorded July 9, 1921 as Document Number 51849, in Book 4 of Plats, Page 35, which is 16 1/2 feet, more or less, from the Westerly corner of Lot 1, aforesaid, for a place of beginning; thence Southwesterly along the Southeasterly right of way the existing roadway, for a distance of 125 feet; thence Easterly along a straight line to a point which is 35 feet Southwesterly from the South corner of Lot 1 also said South line extended Southwesterly of Diedrich’s Third Addition to Woodlawn Park, aforesaid: Thence Northeasterly 35 feet to the Southerly corner of Lot 1, aforesaid; thence Northwesterly along the Southwesterly Lot line of Lot 1 and said line as extended Northwesterly to the place of beginning, also excepting that part of the South half of the Northwest Quarter of said Section 25, lying 40 feet Northerly of the following described center line; beginning at a point 680 feet West of the center of said Section 25; thence Easterly along said center line, a distance of 680 feet to the center of said Section 25; also excepting that part lying on the Easterly side of Fox River, described as follows: beginning at the North Quarter corner of said Section 25; thence South 20 Degrees, 45 Minutes West, 161.5 feet to an iron stake at the Most Easterly corner of Lot 13, according to the Plat thereof recorded in the Diedrich’s Second Addition to Woodlawn Park, as recorded in the Recorder’s Office of McHenry County, Illinois, in Book 4 of Plats, Page 35; thence North 49 Degrees West along the Northeasterly line of said Lot 13, a distance of 163.7 feet; thence North 36 Degrees, 55 Minutes East, 52.2 feet to a point on the North line of said Section 25; thence East, 149.5 feet to the place of beginning; also excepting an adjoining parcel of land described by beginning at the most Westerly corner of the last above described Tract; thence North 49 Degrees West, 12 feet, more or less, to the Water’s Edge of Fox River; thence Northeasterly along the Water’s Edge of said Fox River, to an intersection with the North line of said Section 25; thence East on said Section line, 20 feet, more or less, to the Northwesterly corner of said above described Tract; thence South 36 Degrees, 55 Minutes West, 52.2 feet to the place of beginning, also excepting therefrom all that part of the North 508.65 feet thereof as measured along the East line of said Lot 1 not previously excepted above), in McHenry County, Illinois. Also Parcel 2: the North half of the Northeast Quarter (except the North 508.65 feet of the West 350.41 feet) of Section 25, Township 45 North, Range 8 East of the Third Principal Meridian, in McHenry County, Illinois.
CERTIFICATION

I, Pamela J. Althoff, City Clerk in and for the City of McHenry, Illinois, and keeper of the official records, files, and seal thereof, do hereby certify that the attached document is a true and correct copy of City of McHenry Ordinance No. ORD-00-966, authorizing the execution of an Annexation Agreement between the City of McHenry and First Midwest Trust Company Trust No 13255 for the Gerstad Diedrich Farm Property located on the north side of Lincoln Road and west of Chapel Hill Road, McHenry, Illinois, comprised of approximately 100 acres. Said Ordinance was passed and approved by the McHenry City Council at a regularly scheduled meeting held on the 5th day of July, 2000, and was signed by the Mayor of the City of McHenry on July 5, 2000.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City of McHenry, Illinois this 1st day of August, 2000.

Pamela J. Althoff, City Clerk of the City of McHenry, Illinois

Prepared by and Mail to:
City of McHenry
Office of the City Clerk
333 S. Green Street
McHenry IL 60050
ORDINANCE NO. __ORD-00-966__

AN ORDINANCE AUTHORIZING THE EXECUTION OF AN ANNEXATION AGREEMENT WITH FIRST MIDWEST BANK TRUST NO. 13255 AND GERSTAD BUILDERS, INC., FOR A 100 ACRE PROPERTY LOCATED ON THE NORTH SIDE OF LINCOLN ROAD AND THE WEST SIDE OF CHAPEL HILL ROAD, IN MCHERNY COUNTY, ILLINOIS (DIEDRICH PROPERTY)

WHEREAS, First Midwest Bank, N.A., successor in interest to McHenry State Bank, not individually but as trustee under a trust agreement dated December 23, 1997, and known as Trust No. 13255 is the legal owner of record of the real estate herein after described, and Gerstad Builders, Inc. is the sole beneficiary of Trust No. 13255; and

WHEREAS, notice of public hearing was published in the Northwest Herald, a newspaper of general circulation in the City of McHenry, within the time provided by law, notifying the public of a hearing on said Annexation Agreement before the Corporate Authorities of the City of McHenry; and

WHEREAS, the Corporate Authorities of the City of McHenry have held the public hearing as required by law and have found that entry into said Annexation Agreement is in the best interest of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MCHENRY, MCHENRY COUNTY, ILLINOIS AS FOLLOWS:

SECTION 1: The annexation agreement, bearing the date of ____JULY 5____, 2000, between the City of McHenry, a Municipal Corporation in the State of Illinois, First Midwest Bank Trust No. 13255, and Gerstad Builders, Inc., record owners, be and the same is hereby approved. A complete and accurate copy of said Annexation Agreement, labeled "Diedrich Property Annexation Agreement", is attached to this ordinance and incorporated herein by reference.
SECTION 2: The Mayor and City Clerk are hereby authorized to affix their signatures as Mayor and City Clerk to said Annexation Agreement for the uses and purposes therein set forth.

SECTION 3: All Ordinance or parts thereof in conflict with the terms and provisions hereof are hereby repealed to the extent of such conflict.

SECTION 4: This Ordinance shall be published in pamphlet form by and under the authority of the corporate authorities of the City of McHenry, McHenry County, Illinois.

SECTION 5: This Ordinance shall be in full force and effect from and after its passage, approval, and publication in pamphlet form as provided by law.

PASSED THIS 5TH DAY OF JULY, 2000

AYS: BOLGER, GLAB, MURGATROYD, BAIRD, CUDA.

NAYS: MCCLATCHEY.

ABSTAINED: NONE.

ABSENT: NONE.

NOT VOTING: NONE.

APPROVED THIS 5TH DAY OF JULY, 2000

ATTEST:

MAYOR

CITY CLERK
THIS AGREEMENT made and entered into this ___ day of ___ , 2000, by and between the CITY OF McHENRY ("City"), a municipal corporation, in the County of McHenry, State of Illinois, and FIRST MIDWEST TRUST COMPANY, NOT INDIVIDUALLY BUT AS TRUSTEE UNDER A TRUST AGREEMENT DATED DECEMBER 23, 1997, AND KNOWN AS TRUST NO. 13255 ("Trust"), and GERSTAD BUILDERS, INC. ("Beneficiary"). The Trust and Beneficiary shall hereinafter collectively be referred to as “Owners.”

RECITALS

1. The Trust holds fee simple title to the parcel of real estate legally described on the attached “Exhibit A” ("Property"). Beneficiary is the holder of 100% of the beneficial interest in the Trust.

2. Owners filed with the City Clerk a Petition for Annexation of the Property to the City, contingent upon the terms and provisions of this Agreement, which Petition has been filed in accordance with 65 ILCS 5/7-1-8 and the ordinances of the City.

3. The Property is irregularly shaped and composed of approximately 100 acres and is located on the north side of Lincoln Road and the west side of Chapel Hill Road. The Lincoln Road frontage is approximately 680 feet and commences approximately 2630 feet west of the intersection of Chapel Hill Road and Lincoln Road. The frontage on Chapel Hill Road is composed of approximately 82.43 feet and commences approximately 1265 feet north of the intersection of Chapel Hill Road and Lincoln Road.

4. The Property is presently vacant, unimproved, and has no electors residing thereon and is presently zoned “R-1" Residential and “E-1" Estate, pursuant to the McHenry County Zoning Ordinance.

5. The Property constitutes territory, which may be annexed to the City as provided for in 65 ILCS 5/7-1-1, et seq.

6. The owners and developer desire to have the Property annexed to the City upon the terms and conditions provided herein and the City, after due and careful consideration, has concluded that the annexation of the Property to the City, under the terms and conditions hereafter set forth, will further the growth of the City, enable the City to control the development of the area and serve the best interests of the City.

7. Pursuant to 65 ILCS 5/11-15.1-1, et seq., a proposed annexation agreement was submitted to the City, and a public hearing was held thereon.
8. The City does not furnish fire protection or library services. Lincoln Road abuts portions of the subject Property and is currently under the McHenry Township jurisdiction and notice, pursuant to 65 ILCS 7-1-1, has been provided.

9. Prior to the date of this Agreement, public hearings were held upon proper notice pursuant to the City's zoning ordinance, as are necessary for the City to grant "RS-2" Medium Density Single-Family Residential District zoning for the Property, and upon annexation of the Property into the City, no further action need be taken by the Owner to cause said Property to be rezoned as such once the Property is annexed into the City.

NOW THEREFORE, in consideration of the covenants and conditions herein contained, IT IS HEREBY AGREED AS FOLLOWS:

10. ANNEXATION

Upon execution of this Agreement, the City shall enact a proper ordinance annexing the Property legally described in Exhibits A. A copy of said ordinance shall be filed in the Office of the County Clerk of McHenry County and recorded in the McHenry County Recorder of Deed's Office. This Agreement in its entirety, together with the aforesaid Petition for Annexation, shall be null, void and of no force and effect unless the Property is zoned and classified as provided in this Agreement by the adoption of ordinances by the City immediately following execution of this Agreement.

11. ZONING

Immediately upon the annexation of the Property, the City shall adopt an ordinance amending the provisions of the McHenry Zoning Ordinance to provide that the Property shall be classified in the "RS-2" Medium-Density Single Family Residential District.

12. LIMITED CONCEPT PLAN

1. Owners have submitted a Concept Plan attached hereto as Exhibit B. The City and Owners agree that only limited representations on the Concept Plan will be binding on the parties, and to the extent of these limited representations, the City approves the Concept Plan, with regard to future development of the Property. Those representations only include the following:

1. Locations, but not the dimensions, of storm water detention ponds. The City shall not be limited to imposing the size or the number of storm water detention ponds depicted on the Concept Plan, and the same shall be constructed in accordance with the directions of the City Engineer.

2. The donated park land may consist of 1 or 2 locations on the Subject Property, as determined in the sole discretion of the City Council. However, in no event shall the total park land dedicated be less than 2 acres. In the event that some or all of the park land is located
on the west side of the Subject Property, the park lot shall be located where the City’s existing test well site is located.

3. Location of proposed street accessing Stanley Archacki’s property to the east, between lot numbers 4 and 5.

4. Location and description of landscape screening abutting Garsky’s Subdivision. The screening shall have a continuous opacity of 50% when viewed horizontally from grade level to a height of six feet (6’). Existing vegetation on the Property along with new plant material may be used to meet this standard.

5. The maximum density of residential lots permitted to be developed of 191 over the entire 100 acres of the Property.

2. No other representations on the Concept Plan shall be binding on the City in the future, and in all other respects, the Property shall be developed in compliance with, and the Owners shall follow, the procedures in the City’s zoning, subdivision and building ordinances, as amended from time to time.

13. PUBLIC IMPROVEMENT REIMBURSEMENT

1. In the event Owners construct additional, expanded or oversized municipal sanitary sewer mains and/or lift stations and water mains (the foregoing improvements are collectively referred to as “Municipal Improvements”) for purposes of this paragraph and its subparagraph(s) which benefit not only the Property, but also other properties being or to be developed in the relevant service areas for such utilities. In the event such Municipal Improvements are made by Owners, the following provisions shall apply:

1. The properties which will benefit directly or indirectly from the construction and/or installation of such Municipal Improvements (“Benefited Property”) will be determined by the City Engineer at the time such Municipal Improvements are constructed. The Benefited Property shall include the Property subject to this Agreement.

2. The City shall endeavor to collect a pro rata sum of money from the Owners of the Benefited Property as a pre-condition to said Owners being granted a permit to connect the Benefited Property to any of the Municipal Improvements. The total cost of improvements will be spread over the Benefited Property pro rata. The total sum subject to reimbursement to Owners, as well as the pro rata sum to be collected from the Benefited Property owners, shall be determined by the City’s consulting engineer taking into account the following factors: total construction and easement costs; professional fees; and testing and analysis fees. Any legal and administrative expense shall not be considered. The pro rata sum calculated shall be based upon the ratio of acreage that the particular Benefited Property bears to the acreage of the entire Benefited Property. Interest shall be collected from the commencement date of this reimbursement provision, calculated annually at nine percent (9%) per annum, compounded, not to exceed ten (10) years from the date of this Agreement.
Any reimbursement provision shall have a commencement date when the public improvements which are the subject of the reimbursement agreement are placed into service and shall end on the date of the termination of this Agreement. The sum collected shall be paid to Owners after deduction of two percent (2%) for administrative charges due to the City. In the event that any state statute shall determine an interest rate other than set forth in this paragraph, the state interest rate shall prevail.

3. Subject to a non-appealable final court order directing City to act otherwise, City shall not issue any connection permits until the Benefited Property owner either pays the reimbursement charge set forth in this paragraph or adequately assures the City that the payment will be made.

4. The City will use its best efforts to collect the costs provided herein from the Benefited Property owners but shall not be liable to Owners if the City is, for any reason, unable to collect said costs. The City’s liability to reimburse Owners shall be limited to payment from funds actually collected from Benefited Property owners.

5. City shall file this Agreement with the McHenry County Recorder of Deeds and notify the owners of the Benefited Property of the terms of this reimbursement provision.

6. Owners shall reimburse and indemnify City for all costs, engineering and attorney’s fees and liability incurred by the City with regard to the drafting and implementation of the Reimbursement Agreement contemplated under this Article IV.

7. The Adams Property or School District 15 Property as referenced in paragraph V below shall not be included within any recapture area for potable water or sanitary sewer improvements servicing the Property.

2. The City shall cooperate with Owners in obtaining such permits as may be necessary from time to time by both Federal and State law, including, but not limited to, the Illinois Environmental Protection Agency, to permit the development of the Property. Further, the City agrees to execute when and where required all necessary applications for permits to the Environmental Protection Agency and U.S. Army Corps. of Engineers for road access and the construction and use of the sewer and water mains described herein as well as the construction of roadways and the storm water detention areas located within wetlands, if any, on the Property. No action of the City regarding applications to the Illinois or U.S. Environmental Agency for permission to construct sanitary sewer lines on any part of the Property shall be construed to constitute any representation, warranty or reservation by the City to the Owners that municipal sanitary sewer treatment plant or sanitary sewer main capacity or water will be available to service the Property when Owners apply to the City for individual sewer or water service connection permits.

3. The City shall exercise its power of eminent domain, if necessary, to assist Owners in obtaining all necessary easements, not already in existence, to enable the installation of the aforesaid improvements. Owners shall pay for all of the eminent domain costs and expenses incurred by the City, including but not limited to attorney’s fees, title charges, appraisals, survey cost, deposition
cost, witness fees, litigation expenses and judgments in the acquisition of any easement. Such costs and expenses of acquisition by eminent domain shall be includable in the costs and expenses that are subject to recapture by Owners from Benefiting Parties.

14. **SEWER AND WATER**

1. The Property is located within the City’s Facility Planning Area as determined by the Northern Illinois Planning Commission and the Illinois Environmental Protection Agency. At the time of development, the Property shall be developed with the municipal sewer and water. The City does not guarantee the availability of sewer and water, however, if sewer and water are available to the site at the time of development and the City has adequate capacity for such, the Owners shall be allowed to connect to such in accordance with the applicable City regulations then in effect at locations determined by the City Engineer.

2. Except as otherwise specifically provided in this Agreement, all required sanitary sewer and water main connection charges and capital development fees shall be paid in accordance with ordinances in effect at time of connection.

3. In the event that Owners connect the water mains servicing the Property into water mains previously constructed and installed by Richard Adams, Owners shall be obligated to reimburse Richard Adams, pro rata in accordance with any applicable water reimbursement or recapture agreement.

4. The parties acknowledge that the development of the Property by the Owners will cause the existing sanitary sewer lift station capacity on River Road and Boone Lagoon to be reduced. To compensate the City for this impact, upon issuance of the 75th building permit relating to the Property, Owners shall pay the lump sum of Eleven Thousand One Hundred Twenty-Five Dollars ($11,125) to the City to replace the lift station capacity required to service the Property when fully developed in the future. This payment is based upon the maximum housing density permitted in this Agreement of 191 residential lots.

5. The Property shall be serviced with potable water by connection to the existing water main previously constructed by Richard Adams, located on the south side of Lincoln Road at its terminus, and no other off-site water main extensions shall be required to be installed by the Owners except as required by the City’s Subdivision Control Ordinance.

6. The Owners shall extend the existing City sanitary sewer main from its present terminus located approximately at the intersection of Lincoln Road and Maryville Road, northeasterly along Lincoln Road to the Property and in accordance with the Subdivision Control Ordinance.
15. **STORM WATER**

The exact size, release rate, dimensions and construction of the storm water detention pond(s) servicing the Property shall be approved by the City prior to final subdivision plat approval of the first phase of development of the Property. The release rate of each detention pond shall not exceed .15 cfs per acre. Such detention improvements must be fully constructed and preliminarily approved by the City prior to any occupancy permits being issued on the first final plat of subdivision. At a minimum, Owners shall design the storm water detention basin outlet structure(s) and piping to convey all flows released from the basin(s) during a 100-year frequency event by underground storm sewer pipes to discharge points acceptable to the City. Such flows shall not be conveyed by means of open ditches or swales unless authorized in writing by the City.

16. **DEVELOPMENT IN PHASES - SECURITY**

The City shall permit the Owners to subdivide the Property with one (1) preliminary subdivision plat and no more than five (5) final plats of subdivision or “phases.” To secure Owners’ completion of on-site and off-site public improvements, including those referenced in paragraphs V(C) and VII and other subdivision public improvements, including sidewalks, public streets, sanitary sewer mains, water mains, off-site and on-site storm drainage improvements, the Owners shall, prior to each final subdivision plat approval, file with the City a letter of credit in a form, amount and drawn upon an institution approved by the City. Each final plat of subdivision relating to the Property will be reviewed by the City, but not executed prior to delivery of all applicable letters of credit by the Owners to the City. Owners shall be permitted no more than three (3) reductions in the letters of credit filed with the City and the last reduction, shall not leave a balance securing public improvements in the an amount less than $50,000.00.

17. **OFF-SITE AND ON-SITE IMPROVEMENTS – BUILDING PERMITS**

The City agrees that after the applicable letter of credit is delivered to the City and a final plat of subdivision is recorded, the Owner shall not be required to construct all on and off-site improvements prior to issuance of a building permit for buildings or improvements on any portion of said subdivided land. Rather, the Owners shall be allowed to construct the required off-site and on-site improvements simultaneously with the issuance of building permits for individual lots and/or buildings. In no instance, however, shall a building permit be issued where a minimum 20'-wide gravel road base does not exist within 200' of said lot. All off-site and on-site improvements (except the final lift of bituminous asphalt surface on roads and landscaping), serving any phase shall be installed by Owners and approved by the City before an occupancy permit is issued for said lot or building.

18. **SCHEDULE OF DEVELOPMENT**

Owners shall submit to the City a schedule of development encompassing the Property on a semi-annual basis so the City can adequately plan for and provide municipal services to the Property. The first schedule shall be submitted within one hundred twenty (120) days following annexation of
the Property, and shall include work to be completed in the then current and following calendar year. It is acknowledged that said schedules are anticipatory in nature and will change from time to time as circumstances change and shall represent Owners' best reasonable estimate at the time of its intended schedule of development. Owners understand that timely schedules are in the best interest of all parties to this Agreement.

19. DONATIONS, CONTRIBUTIONS AND FEES

Owners acknowledge that the development of the Property will impact on schools, parks, the library and fire protection districts and other public services within the City. To reduce this impact, and as a condition of this Agreement, Owners shall be obligated to pay and/or donate, or cause to be donated to the City, or provide improvements for the benefit of the City as follows:

1. **Annexation Fees.** Owners shall pay to the City annexation fees in addition to fees previously referred to in this Agreement as follows:

   1. A lump sum of $100,000 shall be paid to the City within sixty (60) days following City Council execution of the annexation of the Property to the City.

   2. The sum of $530 per residential unit shall be paid to the City upon issuance of each building permit relating to the residential lots.

   3. The sum of $1,683 per residential unit ($954 to School District 15, $673 to School District 156 and $56 to the Library District) shall be paid to the City upon issuance of each occupancy permit. Provided however, on or before the end of the thirty-sixth (36th) month after the City's execution of each final plat of subdivision, the payment obligation in this paragraph shall accelerate, if not already paid in full, and Owners shall pay to the City the balance then due and owing in one lump sum for that plat. That portion of these funds to be distributed to the schools, as determined exclusively by the City, may be distributed for the benefit of some or all schools within School Districts 15 and 156, at the discretion of the City Council. To the extent any of these funds are distributed to said school districts, they shall be used for operating expenses at those schools, within School Districts 15 and 156, as directed by the City Council, at the time of distribution. In the event a distribution agreement, in a form approved by the City, is not executed by the school districts prior to distribution of said funds to the school districts, the City may retain the entire amount paid pursuant to this paragraph 3 for City use. Nothing herein is intended to create third party beneficiary rights in School District Nos. 15 and 156 or the Library District.

   4. At the end of each one-year period, with Owners' first payment increase beginning May 1, 2001, the fees referenced in the preceding paragraph numbers 2 and 3 shall be adjusted upward, by the percent which the Chicago Area Consumer Price Index has moved upwards annually since December 31, 2000, and every December 31 thereafter. For purposes of this paragraph, the price index to be used for comparative purposes shall be that index published for the annual average Chicago area CPI-U, as published by the United States Department of Labor, Bureau of Labor Statistics.
5. Owners hereby release the City from any liability or damage to Owners and waive any right to challenge, by lawsuit or otherwise, the legality or validity of the fees chargeable to Owners or purpose for which the money is spent herein, provided, however, if at any time the aforementioned school districts are able to impose their own fees on a developer, any such fees imposed by such school districts will be used to off-set the aforementioned fees described herein.

2. Public Land.

1. The City agrees to provide reconveyances of any Public Land dedicated by Owners to the extent required to allow Owners to correct, if necessary, the legal description of such conveyance in order to conform to the requirements of final engineering and the Owners shall convey the Public Land back to the City with the corrected legal description.

2. Upon approval of the Owners’ applicable final plat of subdivision, Owners shall convey to the City, by fee simple title, the recreational park lot(s) on the Property as designated on Exhibit B. Within ninety (90) days of completion of all Public Improvements in their respective final plat, the Owners shall, at their expense, develop the park(s) in accordance with a development plan submitted by the Owners and approved by the City Council. It shall be the responsibility of the Owners to supply water for turf and landscape development for a period of sixty (60) days after installation. Title to the park(s) shall be conveyed free and clear of all liens and encumbrances and any easements, covenants or restrictions that would limit or prohibit the use of such property as public land. Evidence as to the condition of title shall be provided in the form of a title commitment acceptable to the City at the time of the conveyance.

3. Owners hereby release the City from any and all liability or damage to Owners and waive any right to challenge, by lawsuit or otherwise, the validity or legality of the Public Land dedication in this paragraph.

3. Cash Donations.

1. During the term of this Agreement, Owners shall be obligated to pay to the City certain cash donations per single family dwelling unit developed on the Property. These cash donations shall be paid upon issuance at the time application is made to the City for the issuance of each residential building permit and calculated in accordance with this paragraph. During the term of this Agreement, the Owners shall be required to pay the cash donations referred to herein. The cash donations payable by the Owners to the City shall be calculated as follows:
The cash donations referred to in this chart shall collectively be referenced as “Minimum Cash Contribution Amounts.”

2. At the end of each one-year period and beginning on May 1, 2001, these Minimum Cash Contribution Amounts shall be adjusted upward by the percent which the Chicago Area Consumer Price Index has moved upwards since December 31, 2000, and every December 31 thereafter. For purposes of this paragraph, the price index to be used for comparative purposes shall be that index published for the annual average Chicago area CPI-U, as published by the United States Department of Labor, Bureau of Labor Statistics.

3. In the event the Minimum Cash Contribution Amount, as calculated above, is less than the cash contribution amounts set forth in the City’s cash contribution ordinance for schools, libraries and fire districts, as amended from time to time, an amount equal to the amounts specified in the City’s cash contribution ordinance shall be paid, rather than the Minimum Cash Contribution Amount provided in this Agreement.

4. In the event the City’s cash contribution ordinance, or any other ordinance of the City relating to developer cash contributions for schools, libraries, parks and fire districts, is repealed or declared by a court of law to be found unenforceable and all appeals have been exhausted, Owners agree to pay, subsequent to such final court action, the Minimum Cash Contribution Amount set forth in this Agreement. In the event such a final court order requires the City or school districts to return or refund monies paid by the Owners pursuant to the City’s ordinances, Owners expressly agree that they will allow the City or school districts to retain the Minimum Cash Contribution Amount previously paid by Owners. It is the express intent of the Owners to release the City and school districts from any liability or obligation to refund the Minimum Cash Contribution Amount paid pursuant to this paragraph under any circumstances.

5. Owners hereby release the City from any and all liability or damage to Owners and waive any right to challenge, by lawsuit or otherwise, the validity, legality or enforceability of the cash donation provision set forth herein or the purpose for which the money is spent.

4. **Donation Distinguished from Fees.**

Other than the donations specified in the foregoing paragraphs, during the term of this Agreement, and irrespective of any existing, new or revised donation ordinances of the City, Owners shall not be required to donate any land or money to the City or, by action of the City, to any other governmental body. Building permit fees, tap-on fees and other similar fees (which are charged for
specific services provided by the City) shall be payable in accordance with City Ordinances in existence and as amended from time to time, except as specifically provided for in this Agreement.

20. DEVELOPMENT ISSUES

1. **Roads.**

1. After installation of all the roads and streets in a particular phase, the City agrees, subject to bonding requirements set forth in its ordinances, to accept the dedication and snowplowing responsibility of all streets in said phase at the time homes in such phase become eligible for occupancy permits and provided manhole covers are protected.

2. Upon request of the City, but in any event upon application of the final lift and acceptance by the City, Owners shall convey title to all roads located on the Property to the City for public street purposes. Title to such roads shall be conveyed free and clear of all liens and encumbrances and any easements, covenants, or restrictions that would limit or prohibit the use of such property as public roads. Evidence as to the condition of title shall be provided in the form of a title commitment acceptable to the City at the time of the conveyance.

3. No lots of the Property shall have direct access to Lincoln Road or Chapel Hill Road.

4. There shall be no private streets in the Property. All streets are minor residential streets to be built in accordance with the City’s subdivision control ordinance.

5. Owners agree that, they will provide a roadway connection to Stanley Archacki’s property to the east of the Property.

6. The City shall not require Owners to submit a traffic study relative to development of the Property.

7. Simultaneously with the installation of any subdivision streets that intersect Lincoln Road or Chapel Hill Road, Owners shall construct left and right turn lanes within the right-of-ways of Lincoln Road or Chapel Hill Road. In the event dedication of additional right-of-way adjacent to Lincoln Road or Chapel Hill Road is deemed necessary by the City, upon written request by the City, Owners shall provide such dedication to the City at no charge. Upon request by the Owners, the City shall cooperate in using its eminent domain powers if necessary to acquire the necessary right-of-way referenced in this Paragraph. The obligation of the City hereunder is contingent upon reimbursement by Owners of all costs incurred by the City, including reasonable attorneys’ fees and expert witness fees relating to any eminent domain proceedings.

8. The parties agree that, due to the development of the Property, stop lights at the intersection of Chapel Hill Road and Lincoln Road may be warranted in the future. It shall be the obligation of the Owners to contribute toward the payment of these improvements. In order to
secure the Owners' obligations hereunder, Owners agree to deposit the amount of $5,500 with the City to be used by the City for the construction of these stop light improvements. The sum of $5,500 is based upon the maximum density permitted in this Agreement of 191 residential lots. The City will retain these funds until the funds are either used for the stop light improvements or this Agreement expires, whichever occurs first. In the event that this Agreement expires first, the City will return the funds to the Owners, plus interest at an average rate received by the City during the term of the Agreement.

2. Underground Utilities.

Owners shall install all new electricity, gas, telephone lines and any other utility or cable devices, lines or conduits underground. This shall include any aforementioned utilities that must be replaced due to the development of this Property, but shall not include existing utilities not being disturbed.

3. Easements.

Upon request by the City, Owners shall execute such easements as are necessary to effectuate the terms and conditions of this Agreement and as may be necessary in connection with the completing of the final plat of subdivision of the Property. The form of the easement shall be as approved by the City engineer and/or City Attorney. The form of the easement may be that noted on the plat of subdivision or such other format as the City Engineer or City attorney deems appropriate.


It is understood that the City has the responsibility for water quality which encompasses erosion and sedimentation control, surface water drainage control and ground water protection, all of which are regulated pursuant to existing ordinances of the City. Such ordinances shall regulate the development of the Property. Owners shall provide erosion and sedimentation controls in compliance with the Illinois EPA Standards and all applicable City ordinances or regulations.

5. Wetland Protection.

Owners shall not disturb any areas of the property designated as wetlands by any governmental agency without the consent of the appropriate governmental agency.
6. **Model Home Construction, Sales Offices, Trailers, Advertising, Signs and Construction.**

1. Upon the annexation and approval of any final plat or engineering approval, the Owners shall be permitted, at the Owners’ sole risk, to construct, maintain and occupy model units in one or more product lines being offered by the Owners in any phase so approved. Provided, however, model construction shall comply with the City’s building codes, shall require approval of the building department prior to use and shall comply with health department standards for model home sales offices. No residential occupancy permit will be issued for such models until said models are ready to be sold and the models will not be served by private well or septic system. The models may contain a sales office, however, upon the sale of all lots on the final plat, the sales office shall be removed from the model and abandoned by the Owners. Sales and construction trailers shall be allowed on the Property as approved by the City Council.

2. All advertising signs will be governed by the City’s Sign Ordinance or such variations as may be granted by the Council. On-site directional signs identifying the sales office and model shall be allowed subject to approval by the applicable city department with a one-time fee with said signs to be removed on or before termination of sales facilities. Upon payment of the required permit fees to the City, temporary marketing signs shall be permitted to the Owners for participation in the Festival of Homes sponsored by the Chicago Tribune. These temporary marketing signs shall not exceed four (4) feet by nine (9) feet and are posted for five (5) consecutive weeks at a time, not more than four (4) times per year. Owners shall be permitted to construct one entrance sign at each entrance on Lincoln and Chapel Hill Roads. Provided, however, these signs shall not be erected until the first final plat of subdivision is approved by the City. These entrance signs shall be located off the City’s right of way, maintained by the Owners and removed upon sale of all lots in the subdivision. The lighting and design of the entrance signs shall be subject to City approval. These entrance signs shall not exceed the dimensions of twelve (12) feet by eight (8) feet or ninety-six (96) square feet.

3. The City agrees to allow the Owners to construct temporary parking facilities paved to the sidewalk with curb depressed or other appurtenances to the model units and sales office subject to the approval of the City Community Development Department and compliance with building codes of the City.

4. Identical models or models of similar design with identical front elevations may be erected no more often than every second lot along the same frontage; i.e., two (2) dissimilar models must be erected between each identical model with identical front elevations without regard to intervening street lines. Identical models or models of similar design, with identical front elevations, shall not be constructed directly across the street or other right-of-way from the front of that model. Identical models or models of similar design with significantly different front elevations may be erected on every second lot; i.e., a completely different model must be erected between identical models with different elevations without regard to intervening street lines.

5. Construction trailers used to build homes shall be allowed in each phase of development. Provided, however, upon the sale of 75% of the lots in each phase, all construction
trailers shall be removed from that phase of development. Prior to reaching 75% of development, construction trailers shall be located on the Property as approved by the City.

21. **COMPLIANCE AND AMENDMENTS**

1. **More Restrictive Requirements.**

   Except as otherwise specified herein, all City ordinances shall apply to the Property, Owners and all successors and assigns in title. If, during the terms of this Agreement, the provisions of the existing ordinances and regulations which may relate to the development, construction of improvements, buildings, appurtenances and all other development of any kind and character of the Property, are amended or modified in any manner so as to impose more stringent requirements shall unless otherwise excepted herein, be effective as applied to the Property so long as such amendments or modifications are non-discriminatory in their application and effect throughout the City (excepting those developments in the City having annexation agreements - past, present, or future - providing otherwise).

2. **Less Restrictive Requirements.**

   If, during the term of this Agreement, except as otherwise specifically agreed upon in this Agreement, any existing, amended, modified or new ordinances, codes or regulations affecting the zoning, subdivision development, construction of improvements, buildings or appurtenances, or any other development of any kind or character upon the Property, are amended or modified in a manner to impose less restrictive requirements on development of, or construction upon, properties in similarly zoned or developed parcels within the City, then the benefit of such less restrictive requirements shall inure to the benefit of the Owners and, the Owners may elect to proceed with respect to the development of, or construction upon, the Property with the less restrictive amendment or modification so long as such amendments or modifications are non-discriminatory in their application and effect throughout the City and are applicable generally to similarly zoned or developed parcels within the City (excepting those developments in the City having annexation agreements - past, present or future - providing otherwise).

22. **OBLIGATIONS**

1. **All obligations of the Owners in this Agreement, including monetary obligations in existence now, as well as those which may come to exist in the future, as a result of this Agreement, shall constitute covenants running with the land and such monetary obligations shall also be liens upon the land. Owners hereby consent to the filing of a lien on the Property for which the obligations are owed when any obligations are more than thirty (30) days overdue. Provided, however, to the extent that any portion of the Property has been conveyed to a purchaser of a residential unit constructed hereon prior to the filing of a lien, any such lien shall be deemed released with respect to such residential unit. Monetary obligations as used herein shall include professional fees incurred by the City to monitor and/or litigate this Agreement.**
2. It is specifically understood and agreed that the Owners shall have the right to sell, transfer, mortgage and assign all or any part of the Property and the improvements thereon to other persons, trusts, partnerships, firms or corporations for investment, building, financing, developing and all such purposes, and that said persons, trusts, partnerships, firms or corporations shall be entitled to the same rights and privileges and shall have the same obligations as the Owners have under this Agreement and upon such transfer, such obligations shall be the sole obligations of the transferee, except for any bonds or guarantees posted by Owners on any subdivided or unimproved property for which an acceptable substitute letter of credit has not been submitted to the City; such obligations as to any vacant, unsubdivided land shall be the sole obligation of the transferee. The foregoing rights shall apply to any and all successors and assigns of the Owners.

3. Upon any sale or conveyance of any part of the Property by Owners or their successors or assigns and upon each said sale and conveyance, the purchaser shall be bound by and entitled to the benefits and obligations of this Agreement with respect to that part of the Property sold or conveyed. When any such purchaser agrees to assume Owners’ obligations hereunder, and when the City is notified of such purchaser and such agreement of assumption, the City hereby covenants and agrees it shall consent to such assumption and it shall release Owners from their obligations hereunder with respect to that part of that Property sold or conveyed. A selling owner however, may only be released where: (a) provision has been made that all public improvements required by this Agreement or applicable City Ordinance for the development of any parcel currently under development and being sold will be installed and guaranteed in accordance with this Agreement and the ordinances of the City; (b) all monetary obligations of the Owners then due to the City as of the time of conveyance and attributable to the Property being conveyed have been satisfied in full; and (c) the purchaser will assume all of the obligations of the selling owner as to the portion of the Property being conveyed.

23. PARTIAL INVALIDITY OF AGREEMENT

1. If any provision of this Agreement (except those provisions relating to the requested rezoning of the Property identified herein and the ordinances adopted in connection therewith), or its application to any person, entity or property is held invalid, such provision shall be deemed to be excised herefrom and the invalidity thereof shall not affect the application or validity of any other terms, conditions or provisions of this Agreement and, to that end, any terms, conditions and provisions of this Agreement are declared to be severable.

2. If, for any reason during the terms of this Agreement, any approval or permission granted hereunder regarding plans or plats of subdivision or zoning are declared invalid, the City agrees to take whatever action is necessary to reconfirm such plans and zoning ordinances effectuating the zoning, variances and plat approvals proposed herein.

24. BINDING EFFECT AND TERM

This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns including, but not limited to, successor owners of record, successor
developers, lessees and successor lessees, and upon any successor municipal authority of the City and successor municipalities for a period of twenty (20) years form the date of the City Council’s execution of this Agreement. Provided, however, in the event that this Agreement is not fully executed by all required parties within thirty (30) days of approval by the City Council, it shall be deemed void without any further action by any party hereto. It is agreed that in the event that the annexation of the Property or the terms of this Agreement are challenged in any court proceeding, the period of time during which such litigation is pending shall not be included in the calculation of said twenty (20) year period.

25. **AGRICULTURAL USE OF PROPERTY**

The parties hereto agree that the Property, or so much thereof that is not under development, may continue to be used for the agricultural use of crop farming and that said uses shall survive the termination of this Agreement as provided by statute; in addition thereto, all said agricultural use shall be considered a legal, non-conforming use.

26. **NOTICES AND REMEDIES**

1. Upon a breach of this Agreement, any of the parties, by any action or proceeding at law or in equity, may exercise any remedy available at law or in equity. The remedies of the City shall include, but not be limited to, the right to stop construction of the development and refuse issuance of further building permits in the event the City deems the terms of this Agreement to have been violated.

2. Before any failure of any party to this Agreement to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the party claiming such failure shall notify, in writing, by certified mail/return receipt requested, the party alleged to have failed to perform and performance shall be demanded.

3. In the event the City chooses to sue in order to enforce the obligations hereunder, Owners shall pay all costs and expenses incurred by the City, including, but not limited to, attorneys’ fees and costs and expenses incurred by the City, including, but not limited to, attorneys’ fees and costs, provided the City substantially prevails. In addition, if the Owners do not pay any fees provided for herein, the City may withhold the issuance of building permits until payment is received, or if the appropriate security is not deposited, withhold approval of plat of subdivision until the appropriate security is delivered. City may use remedies available to it to collect such fees and charges as are due.

4. Notice shall be provided at the following addresses:

City: City of McHenry
333 South Green Street
McHenry, IL 60050
Attn: City Clerk
27. **WAIVER**

The failure of the City to insist, in any one or more instances, upon performance of any terms or conditions of this Agreement, shall not be construed as a waiver of future strict performance of any such term, covenant or condition and the obligations of the Owners shall continue in full force and effect.

28. **AMENDMENT**

This Agreement may only be amended by written instrument executed by all parties hereto. It is understood and agreed that all subsequent amendments of this Agreement as approved by the City, may be obtained for portions of the Property without affecting the rights, duties or obligations of the parties hereunder or their assigns as to the balance of the Property not included in the afore-described action, so long as the owners of the affected property consent to such. The approval of Owners of the Property not included in the aforesaid actions shall not be required.

29. **VENUE**

In the event any legal action arising out of this Agreement is instituted by the parties hereto, the venue for such action shall be restricted to the Circuit Court of the 19th Judicial Circuit, McHenry
County, and no action shall be brought by the parties hereto, their successors or assigns, in any Federal Court.

FIRST MIDWEST TRUST COMPANY,
NOT INDIVIDUALLY, BUT AS TRUSTEE
UNDER A TRUST AGREEMENT DATED
DECEMBER 23, 1997, AND KNOWN AS
TRUST NO. 13255

CITY OF McHENRY

SEE TRUSTEE'S RIDER ATTACHED HERETO
By: AND MADE A PART HEREOF

Name/Print: Steven J. Cuda
Its: Mayor

GERSTAD BUILDERS, INC.

ATTEST:
By: 

Name/Print: Roger Gerstad
Its: President

Name/Print: Pamela J. Althoff
Its: City Clerk
RIDER ATTACHED AND MADE A PART OF
ANNEXATION AGREEMENT
DATED July 5, 2000

This instrument is executed by FIRST MIDWEST TRUST COMPANY, National Association, not personally but solely as Trustee under trust No. 13255, in the exercise of the power and authority conferred upon and vested in it as such Trustee. All the terms, provisions, stipulations, covenants and conditions to be performed by FIRST MIDWEST TRUST COMPANY, National Association, are undertaken by it solely as Trustee, as aforesaid, and not individually, and all statements herein made are made on information and belief and are to be construed accordingly, and no personal liability shall be asserted or be enforceable against FIRST MIDWEST TRUST COMPANY, National Association, by reason of any of the terms, provisions, stipulations, covenants and/or statements contained in this instrument.

In witness whereof, the undersigned corporation, not personally but as trustee as aforesaid, has caused these presents to be signed by its Trust Assistant and its corporate seal to be hereunto affixed and attested by its Trust Assistant this July 25, 2000.

First Midwest Trust Company, N. A. as Trustee as aforesaid and not personally.

By:  

[Signature]

Trust Assistant

Attest:  

[Signature]

Trust Assistant

STATE OF ILLINOIS, Ss:
COUNTY OF MCHenry

I, the Undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Sharon L. Hettermann, Trust Assistant of FIRST MIDWEST TRUST COMPANY, National Association, and Nancy Majercik, the attesting Trust Assistant thereof, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Trust Assistant and the attesting Trust Assistant respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of said Trust Company, for the uses and purposes therein set forth; and the said attesting Trust Assistant did also then and there acknowledge that he as custodian of the corporate seal of said Trust Company, did affix the said corporate seal of said Trust Company instrument as his own free and voluntary act, and as the free and voluntary act of said Trust Company for the uses and purposes therein set forth.

[Notary Seal]

Priscilla Beitz
Notary Public, State of Illinois
My Commission Expires 06/10/04

NOTARY PUBLIC
EXHIBIT

PHYLLIS K. WALTERS
McHENRY COUNTY RECORDER
WOODSTOCK, ILLINOIS

EXHIBIT TO DOC. NO: 2000 R 00 41461

NO. OF PAGES 1

NOTES: Exhibit A to Diedrich Property
Annexation Agreement

Parcel 1 - PT NV2 NEV4 25-45-8

Parcel 2 - PT EV2 NWV4 25-45-8

SEE MAP IN PLAT FILE
CONSENT AGENDA

TO: Mayor and City Council

FOR: October 15, 2018 Regular City Council Meeting

FROM: Douglas Martin, Director of Economic Development

RE: Resolution of support for a Chicago Metropolitan Agency for Planning (CMAP) technical assistance grant to be submitted by McHenry County Department of Planning and Development and to authorize a contribution of $5,000 towards the study as part of a required local match

ATT:

1. Resolution to accept planning staff assistance services delivered by the Chicago Metropolitan Agency for Planning in conjunction with McHenry County and Contribution of $5,000

2. Proposed Project Area Map

3. Application for CMAP Local Technical Assistance Grant

4. Resolution approved by City Council in June 2017

Staff was contacted by Kim Kolner with the McHenry County Department of Planning and Development, inquiring if the City of McHenry would be interested in partnering with McHenry County in application for a Chicago Metropolitan Agency for Planning (CMAP) Local Technical Assistance Grant (LTA). This is the continuation of an ongoing study of the Fox River, with sections south of McHenry already completed.

The proposed grant would focus on the Fox River Corridor adjacent to the City of McHenry. A map depicting the proposed area of study is attached. Staff believes this would be a worthwhile opportunity in advancing the City of McHenry’s goals of downtown revitalization, development of the Riverwalk and, preserving and capitalizing on one of the City’s most valuable assets, the Fox River, and will be useful in applying for future grant funding assistance for projects.

The City of McHenry partnered with the City of Crystal Lake and Villages of Prairie Grove and Oakwood Hills in applying for a technical assistance grant from CMAP to evaluate the City’s comprehensive plan and ordinances and develop recommendations to be consistent with the Sleepy Hollow/Silver Creek Watershed Plan. The project and report generated from this grant
was extremely thorough and produced a valuable set of ordinance recommendations the City could pursue.

The County is also seeking a $5,000 contribution from the City to offset a portion of the project costs. CMAP requires a 20% local match which cannot include in-kind services. While the total cost of the study is not yet known it is projected the local match will be between $20,000-$25,000 (past studies have been done south of McHenry). Staff believes $5,000 is a nominal amount for a project of this magnitude given the Fox River and its importance to the region and the City of McHenry. The City Council approved a similar request last year however the County was not awarded the funding.

RECOMMENDATION:
Therefore, if the City Council concurs, it is recommended that a motion be made to approve the attached resolution to accept planning staff assistance services delivered by the Chicago Metropolitan Agency for Planning in conjunction with McHenry County Planning and Development Department and other partner agencies; and authorize a $5,000 contribution towards the costs for completing the study.
PROPOSED STUDY AREA

STUDY AREA OF CURRENT FOX RIVER CORRIDOR PLAN

APPROXIMATE STUDY AREA OF ALGONQUIN-CARPENTERSVILLE PLAN
APPLICATION FORM
RTA Community Planning Program and CMAP Local Technical Assistance Program
Deadline: Noon on Friday, October 26, 2018

This application form is online at www.rtachicago.org/applications. You may submit the form by email to applications@rtachicago.org. Please submit one application per project as a PDF package. Please avoid submitting multiple PDFs for the same application.

Please list the members of the group (including government and nongovernmental organizations):
City of McHenry
Fox Waterway Agency
Illinois Department of Natural Resources
McHenry County Conservation District

Name: McHenry County, Planning and Development
Applicant

Name: Dennis Sandquist
Main Contact of Application

Title: Director

Phone: 815-334-4560

Email: dasandquist@mchenrycountyil.gov

TYPE OF APPLICANT
(please check all that apply)

☐ Local Government
☐ Multijurisdictional group*
☐ Nongovernmental organization*

*Applications submitted by multijurisdictional groups and nongovernmental organizations must include a letter indicating support from each relevant local government. See the FAQs for more information. Nongovernmental applicants are strongly encouraged to contact CMAP or the RTA prior to submitting their application to discuss their project and the demonstration of local support.
1. **Project Location.** Please provide a brief description of the location of your project. You may include a map if that helps to describe location, but this is not required. If your project helps to implement a past plan, please include a link to that plan.

The planning area in this proposal consists of the Fox River (and directly adjacent lands) as it runs through McHenry county. The goal of this proposal is to build upon the previous and current Fox River planning efforts from Carpentersville to the Burtons Bridge area, which have been made possible through CMAP’s Local Technical Assistance program. It will begin at the north end of the current study area at Burtons Bridge and extend up river touching multiple municipalities, conservation areas, and parks over a distance of about 10 miles until reaching the Dutch Creek inlet at Johnsburg. A planning area map is attached to this application. Depending on the final scope of work, this plan may help implement other plans, including:
- McHenry County Green Infrastructure Plan
- McHenry County 2030 Comprehensive Plan
- City of McHenry Core-Downtown Sub-Area Plan
- McHenry County Conservation District Comprehensive Site Development and Public Access Plan

(Need to hyper link plans above)
2. Project Description. Please tell us what you would like to do in your community, and what assistance is needed. If you have more than one idea, please submit a separate application for each project. Please be specific, but also brief (less than two pages per project idea)—we simply want to have a basic understanding of what you want to do. For plan updates please tell us how you will be building upon (or replacing) the previous work. Program staff will follow-up with you if we need any additional information to fully understand your proposed project. (Please limit your responses to 6000 characters including spaces).

The Fox River holds great promise for McHenry County. Historically, it has played a major role in development—attracting residents, vacationers, and businesses—but today its full potential remains unrealized. This is due in part to the lack of vision and comprehensive planning for the river. That is why CMAP’s assistance is needed. We need the kind of expertise and perspective that comes from a regional planning agency to help our communities, parks districts, businesses, and residents come together to craft a common vision for the river.

In 2015, McHenry County recognized the outstanding planning work being done under the LTA program for the cities of Algonquin and Carpentersville. That study’s focus on increasing access to the Fox River, improving water quality, and enhancing downtown areas was seen as equally important for the Fox River northward through McHenry County. Seeking to build upon the foundation and successes of that planning work, McHenry County submitted its own LTA program application and was accepted—though it was determined that only half of the proposed planning area could be accommodated. Over the last two years, CMAP has provided invaluable expertise and guidance and has just produced the first draft of the existing conditions report. As that study moves forward, the county and its partner agencies are once again looking to the next phase of this regional plan. At this time we are asking for assistance with Fox River planning that extends north from the current planning area to Dutch Creek, a distance of about ten miles.

The following are goals for our study:

- Focus attention upon the Fox River and on how a multijurisdictional planning effort can benefit the communities, businesses, and residents along it.
- Provide a forum for dialogue between the jurisdictions, neighborhoods, and businesses along the river that might not otherwise engage with one another, despite their common interests and concerns regarding the river.
- Review existing plans and seek to identify common goals, potential connections, and opportunities to update and align those plans.
- Look for ways in which current plans can be implemented through the planning process or as a result of it.
- Study current conditions and potential opportunities for transit and intermodal connections to, along, and on the river.
- Study current conditions and potential opportunities for public access and recreational use along the river.
- Study current conditions and potential opportunities for open space along the river that preserves and enhances quality of life, environmental conditions, and water quality of the river.
- Study current conditions and potential opportunities for commerce aimed at users of the river.
- Develop strategies for attracting residents and tourists to the river and the central business districts adjacent to it.
- Examine perceived and actual barriers to recreational use and enjoyment of the river.

These goals align with the GO TO 2040 plan’s calls for more livable communities through expanded and improved parks and open space, access to green space, local planning, and cooperation between communities. In particular, the ties between green spaces, personal well-being, and the regional economy are at the heart of this proposal. “Access to parks and open space improves the health of our region’s residents and the value of their homes,” states the GO TO 2040 plan. Furthermore, the opportunity to develop businesses along the river and in downtowns that provide services for river goers could serve as an economic engine for the region. The emerging priorities of the ON TO 2050 plan also align with these goals, by improving the economic conditions, conserving public open space, and evaluating flooding and possible climate change impacts.

According to 2015 population estimates from the US Census, more than 30,000 people live in the census tracts that border this stretch of the Fox River. The Fox Waterway Agency reports more than 20,000 boating permits annually, making its jurisdiction one of the most travelled inland waterways in the country. This is a corridor ripe for regional planning. With the leadership and skills of CMAP, this can become a reality.
2. Project Description (continued)
3. Additional Strategic Partnerships. Please list any additional partners you may want to include in this planning project, and specify if you have made contact with them in advance of submitting this application. (Please limit your response to 1400 characters).

The McHenry County Department of Planning and Development has completed numerous multijurisdictional planning efforts in the past several years. For this project we would plan to partner with the City of McHenry, who has already agreed to assist with some of the matching funds required for this grant. The Illinois Department of Natural Resources, whose state park (Moraine Hills) borders the Fox River within the proposed study area also supports the project. The McHenry County Conservation District has noted there support of the application in a support letter. The Fox Waterway Agency would also be an important partner for this project. In regards to possible members of a steering committee, the current steering committee involved in the current Fox River Corridor Plan would be evaluated to determine if any of the existing members could carry over into the next plan and new members appropriate to the study area would be added.

<table>
<thead>
<tr>
<th>PLAN CHARACTERISTICS</th>
<th>ON TO 2050 ALIGNMENT</th>
<th>RTA INVEST IN TRANSIT ALIGNMENT</th>
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<td>My project involves:</td>
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<td>(please check all that apply)</td>
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<tr>
<td>✓ The preparation of a plan.</td>
<td>☐ Inclusive Growth</td>
<td>☐ Deliver Value on our transit investments</td>
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<tr>
<td>☐ Updating an existing plan.</td>
<td>✓ Prioritized Investment</td>
<td>☐ Build on the strengths of the transit network</td>
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<tr>
<td>☐ Implementation of a previous plan.</td>
<td>✓ Resilience</td>
<td>☐ Keep transit competitive</td>
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<tr>
<td>✓ My project has direct relevance to public transit and supports the use of the existing transit system.</td>
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<td>✓ My project is not directly related to transportation or land use, but addresses ON TO 2050 and/or Invest in Transit in other ways.</td>
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RESOLUTION NO. R-17-013

A RESOLUTION TO SUPPORT A LOCAL
TECHNICAL PLANNING ASSISTANCE GRANT DELIVERED BY
THE CHICAGO METROPOLITAN AGENCY FOR PLANNING

WHEREAS, the City of McHenry, McHenry County, Illinois, is a home rule municipality as contemplated under Article VII, Section 6, of the Constitution of the State of Illinois, and the passage of this Resolution constitutes an exercise of the City’s home rule powers and functions as granted in the Constitution of the State of Illinois; and

WHEREAS, the City of McHenry (“City”), in conjunction with the McHenry County Department of Planning and Development and other partner agencies, will apply for staff assistance services through the Chicago Metropolitan Agency for Planning (“CMAP”) and the Local Technical Grant Assistance Program, to evaluate the Fox River Corridor and develop recommendations to implement to further utilize and enhance the environmental and recreational benefits the Fox River offers; and

WHEREAS, CMAP has adopted the GO TO 2040 Plan as the long-range regional comprehensive plan for the seven-county Chicago region, encompassing Cook, DuPage, Kane, Kendall, Lake, Oakwood Hills and Will counties, and is offering staff assistance, through the Local Technical Grant Assistance Program as a means of advancing the plan’s implementation;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MCHENRY, MCHENRY COUNTY, ILLINOIS AS FOLLOWS:

SECTION 1: The City Council supports the proposed project, in conjunction with McHenry County, to study, review and provide recommendations and outline specific amendments to implement following a comprehensive study of the Fox River Corridor.

SECTION 2: The City Council accepts the offer of staff assistance services by CMAP.

SECTION 3: The City Council recognizes the importance of the Fox River.

SECTION 4: The City will contribute $5,000 towards the completion of the study.

SECTION 5: This resolution shall be effective as of the date of its adoption.

PASSED AND APPROVED this 19th day of June 2017.

Voting Aye: Condon, Devine, Mihevc, Schaefer, Santi, Glab
Voting Nay: None
Absent: Curry
Abstain: None

[Signature]
Mayor Wayne S. Jett

ATTEST:

[Signature]
City Clerk Lynzi Nevitt
RESOLUTION NO. 18-

A RESOLUTION TO SUPPORT A LOCAL TECHNICAL PLANNING ASSISTANCE GRANT DELIVERED BY THE CHICAGO METROPOLITAN AGENCY FOR PLANNING

WHEREAS, the City of McHenry, McHenry County, Illinois, is a home rule municipality as contemplated under Article VII, Section 6, of the Constitution of the State of Illinois, and the passage of this Resolution constitutes an exercise of the City’s home rule powers and functions as granted in the Constitution of the State of Illinois; and

WHEREAS, the City of McHenry ("City"), in conjunction with the McHenry County Department of Planning and Development and other partner agencies, will apply for staff assistance services through the Chicago Metropolitan Agency for Planning ("CMAP") and the Local Technical Grant Assistance Program, to evaluate the Fox River Corridor and develop recommendations to implement to further utilize and enhance the environmental and recreational benefits the Fox River offers; and

WHEREAS, CMAP has adopted the GO TO 2040 Plan as the long-range regional comprehensive plan for the seven-county Chicago region, encompassing Cook, DuPage, Kane, Kendall, Lake, Oakwood Hills and Will counties, and is offering staff assistance, through the Local Technical Grant Assistance Program as a means of advancing the plan’s implementation;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF McHENRY, MCHENRY COUNTY, ILLINOIS AS FOLLOWS:

SECTION 1: The City Council supports the proposed project, in conjunction with McHenry County, to study, review and provide recommendations and outline specific amendments to implement following a comprehensive study of the Fox River Corridor.

SECTION 2: The City Council accepts the offer of staff assistance services by CMAP.

SECTION 3: The City Council recognizes the importance of the Fox River.

SECTION 4: The City of McHenry will contribute $5,000 towards the completion of the study.

SECTION 5: This resolution shall be effective as of the date of its adoption.
DATED at the City of McHenry, this 15th day of October 2018.

________________________________________
Mayor Wayne S. Jett

ATTEST:

________________________________________
Deputy City Clerk Debra Meadows
CONSENT AGENDA SUPPLEMENT

DATE: October 15, 2018

TO: Mayor and City Council

FROM: Jon M. Schmitt, Director of Public Works

RE: Timothy Lane and Clover Avenue, Water Main Replacement

ATT: Authorization #2

AGENDA ITEM SUMMARY:
Staff requests City Council to consider Authorization #2 to Maneval Construction Company, Inc. of Ingleside, Illinois for the Timothy Lane and Clover Avenue Water Main Replacement Project.

BACKGROUND:
At the June 18, 2018 City Council meeting, City Council awarded a contract in the amount of $734,879.89 to Maneval Construction Company, Inc. of Ingleside, Illinois for the construction of the Timothy Lane and Clover Avenue Water Main Replacement Project. Authorization #1 in the amount of $17,257.54 was approved by City Council at the September 24, 2018 City Council meeting.

ANALYSIS:
The project plans called for a 2-1/4” asphalt milling and resurfacing, however, due to the heavy loading and damage done to the pavement during the course of the water main installation a majority of the pavement will need to be removed in its entirety to allow for the installation of a full 2-1/4” Binder Course and 1-1/2” Surface Course as well as base preparation and subgrade repairs.

The proposed valve vault location for connection to the 12” water main along Green Street was in conflict with a 4” water main which was thought to be abandoned. The shutdown of the water main to properly abandon this 4” main was difficult to achieve by staff who are required to operate the main. This delay caused idle expenses and additional work to properly abandon the 4” water main which was not accounted for in the contract pay items.
Other items include the addition of a catch basin to collect a sump pump discharge which would have otherwise been buried by proposed fill material and the repair of an existing water service leak which was uncovered during the course of service installations on Clover Avenue.

Staff has prepared the attached authorization in the amount of $74,948.10 for the recommended changes. This change increases the total contract price to $827,085.53. The budgeted amount for the project was $1,175,000.

RECOMMENDATION:
Therefore, if Council concurs, it is recommended a motion be made to approve Authorization #2 to Maneval Construction Company, Inc. of Ingleside, Illinois for the Timothy Lane and Clover Avenue Water Main Replacement Project in the amount of $74,948.10.
Date: 10/8/18
County: McHenry

Request No: 2 □ Final
Road District or Municipality: City of McHenry
Contractor: Maneval Construction Company
Project: Timothy-Clover WM Rep
Address: 28090 West Concrete Drive
Lake Bluff, IL 60044

I recommend that this addition be made to the above contract.
(adDITION, extension, deduction) (to, from)

The estimated quantities are shown below and the contractor agrees to furnish the materials and do the work at the unit prices.

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<th>Item Description</th>
<th>Unit</th>
<th>Quantity</th>
<th>Unit Price</th>
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Total Net Change: $74,948.10
Amount of Original Contract $734,879.89
Amount of Previous Change Orders: $752,137.43
Amount of adjusted/final contract $827,085.53

Total net to date $92,205.64 which is 12.55% of Contract Price

State fully the nature and reason for the change.
See Attached

When the net increase or decrease in the cost of the contract is $10,000 or more or the time of completion is increased or decreased by 30 days or more, one of the following statements shall be checked.

X The undersigned has determined that the circumstances which necessitates this change were not reasonably foreseeable at the time the contract was signed.

☐ The undersigned has determined that the change is germane to the original contract as signed.

☐ The undersigned has determined that this change is in the best interest of the local agency and is authorized by law.

Prepared by: _____________________________
Title of Preparer

For County and Road District Projects

Highway Commissioner

Date

Submitted/Approved

County Engineer/Superintendent of Highways

Date

For Municipal Project

Municipal Officer

Title of Municipal Officer

Date

Approved

Regional Engineer

Date

Note: Make out a separate form for change in length quantities.
Give net quantities
Submit 6 Originals
If plans are required attached 3 sets
CONSENT AGENDA SUPPLEMENT

DATE: October 15, 2018

TO: Mayor and City Council

FROM: Bill Hobson, Director of Parks and Recreation

RE: Holiday Lighting in Veterans Memorial Park

ATT: Budget Amendment Ordinance
    Bid Packet

Agenda Item Summary. On September 4th, the City Council authorized staff to advertise for bids for the installation of holiday lighting in Veterans Memorial Park.

Background: The bid notice was published in the Northwest Herald on September 21, and bid packets were mailed to three known vendors. Bid opening occurred on October 9th. Two bidders were interested and met on site however only one bid was submitted by Temple Display in the amount of $19,360.

Analysis. The 2018/19 FY budget includes $17,500 for the project. The lone bid submitted by Temple Display Ltd is $1,860 over budget. Approval of the bid will necessitate Council approval of a budget amendment.

If approve, lighting will be installed prior to the annual Downtown Christmas Walk on November 16. The contract includes maintenance throughout the holiday season and removal of the lights no later than February 8, 2019.

Temple Display has satisfactorily installed holiday lighting in Veterans Memorial Park for the past 110 years. The cost to install the lighting in 2017 was $19,860.

If Council concurs, then it is recommended a motion is considered to approve an amendment to the FY 18/19 Budget, Fund 100, increasing the amount for Park Decorations by $1,860; and, award a bid for installation of holiday lighting in Veterans Memorial Park to Temple Display, Ltd. for $19,360 as presented.
CITY OF MCHENRY
DEPARTMENT OF PUBLIC WORKS
333 S. GREEN STREET
MCHENRY, IL 60050

BID FORM: SERVICES TO INSTALL, MAINTAIN, and REMOVE
CHRISTMAS LIGHTS – 2018-19

Bid Opening: 11:00 a.m., Tuesday, October 9, 2018

The undersigned hereby agrees to provide and deliver the services described in these
specifications and the literature attached to this bid proposal at the bid price shown below.

Total Bid Price $19,360.00
Number of Lights to be Installed 89,800
Price per 1,000 Lights $215.59

SUBMITTED BY:

Company Temple Display, Ltd
Address 114 C-Kirkland Circle Oswego IL 60543

Name & Title Tyler Temple, President
(Please Print)
Signature

Phone 630-851-3331 Date 9/27/18
ORDINANCE NO. ORD-18-

AN ORDINANCE AMENDING THE FY2018/2019 BUDGET FOR THE
FISCAL YEAR ENDING APRIL 30, 2019

WHEREAS, the City of McHenry, McHenry County, Illinois, is a home rule municipality as contemplated under Article VII, Section 6, of the Constitution of the State of Illinois, and the passage of this Ordinance constitutes an exercise of the City’s home rule powers and functions as granted in the Constitution of the State of Illinois; and

WHEREAS, the City of McHenry acting by and through its Mayor and City Council has previously approved the FY18/19 Annual Budget for the Fiscal Year Ending April 30, 2019 by a motion at the Annual City Council Meeting held on April 30, 2018; and

WHEREAS, it is necessary and appropriate to delete, add to, or otherwise change certain line items in said Budget Ordinance as provided in Exhibit A to this Ordinance;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of McHenry, McHenry County, Illinois, as follows:

SECTION 1: That the amendments to the Budget Ordinance for the Fiscal Year Ending April 30, 2019 are hereby approved in the form and content as provided by Exhibit “A” which is attached hereto and made part hereof.

SECTION 2: If any section, paragraph, subdivision, clause, sentence or provision of this Ordinance shall be adjudged by any Court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate or nullify the remainder thereof, which remainder shall remain and continue in full force and effect.

SECTION 3: All ordinances, or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 4: This ordinance shall be published in pamphlet form by and under the authority of the corporate authorities of the City of McHenry, Illinois.

SECTION 5: This ordinance shall be in full force and effect from and after its passage, approval and publication, as provided by law.

Passed this 1st day of October 2018 by roll call vote as follows:

Voting Nay:0
Absent: 0
EXHIBIT A
The following budget items are amended by this Ordinance:

Fund 100 (Parks and Recreation) - $1,860
CONSENT AGENDA SUPPLEMENT

DATE: October 15, 2018

TO: Mayor and City Council

FROM: Bill Hobson, Director of Parks and Recreation

RE: Award of low quote for the roof replacement of the Merkel Aquatic Center Bathhouse

ATT: Three quotes for roof replacement

---

**Agenda Item Summary:** The roof on the bath house for the Merkel Aquatic Center has multiple leaks and is currently covered by a tarp. Pursuant to the City of McHenry Purchasing Policy for projects under $20,000, staff secured three quotes for the project. The low quote was provided by Cost Roofing in the amount of $10,798 with a time and material price for replacement of bad plywood at $66 per man hour.

**Background:** The roof on the bath house of the Merkel Aquatic Center is over 20 years old and has multiple leaks. The roof will be torn down to the bare plywood to assess what plywood is in need of replacement due to the leaks.

Staff has secured three quotes for the project which are attached. Staff estimates that less than 10 sheets of plywood will require replacement. The low quote is from Cost Roofing with a proposed price of $10,798. Funds for the project will be taken from the Parks and Recreation Maintenance Contractual account.

If City Council concurs, then staff is seeking a motion to award the re-roof of the Merkel Aquatic Center Bath House to Cost Roofing in the amount of $10,798 with an additional price per man hour for plywood replacement of $66.
CONTRACT

City of McHenry
201 S Green St.
McHenry, IL 60050
Attn: Pat Gorniak

DATE: August 16, 2018
PROPOSAL NO: 18-201S
PHONE: 815-403-8028

PROJECT: Pool Building
SCOPE OF WORK: TEAR OFF AND RE-ROOF

SPECIFICATIONS: FOLLOW ALL CURRENT BUILDING CODES.

We propose to furnish labor and materials in strict accordance with the plans and specifications.

Position equipment to protect the siding and landscaping. Tear off all old layers of roofing down to the bare wood. Replace any bad wood on a “time and materials” basis. Tear off and clean with labor and materials are based on yard prices; this includes rafters, fascia’s and related areas. Clean off deck and prepare for roofing. Optional Pricing—$1.95 per Sq ft (4 by 8) ½ inch wood decking.

Install Ice and Water Armor (County Approval) 6ft high across all bottoms, & 3ft wide up all valleys. Apply Synthetic Underlayment to the rest of the deck area. Starter courses will be run along the bottom roof edges and gable roof ends. Install Owens Corning Duration Shingles- (130 mph, limited lifetime architectural, Algae resistant using large 7/16 headed, 1 1/4 electro plated galvanized roofing nails per shingle as stated by the National Roofing Contractors Association specifications. Replace existing roof/ridge vents to areas cut open for it. Replace soil pipe flashings with new 2 ½ lb lead flashings. Rework walls and all other existing flashings.

All debris caused by this work will be picked up and hauled away.

PRICE FOR PROPOSED WORK $ [Price]
Labor guarantee for 10 years- Limited lifetime guarantee by manufacturer

We propose to furnish labor and materials in strict accordance with the plans and specifications.

CONDITIONS

Prices quoted in this proposal are based upon present prices and conditions that the proposal will be accepted within 15 days. It is understood and agreed that Cost Roofing’s labor guarantee against leaks-normal conditions shall not be held liable for any loss, damage or delays occasioned by fire strikes or materials stolen after delivery upon premises, lockouts, acts of God or the public enemy accidents, boycotts, material shortages, disturbed labor, embargoes, causes incident to national emergencies, war or other causes beyond the reasonable control of the seller whether of like or different character or other causes beyond his control. Also general conditions which are standard for specialty contractors.

TERMS

Deposit to be made 50% upon delivery of materials to job, the remaining balance upon completion.

This proposal is submitted in duplicate. The return of one signed copy constitutes a contract.

SUBMITTED: Cost Roofing
4547 Prime Parkway
McHenry, IL 60050
(815) 344-3929

ACCEPTED:

STATE LICENSE NO: 104-000724
We hereby submit specifications and estimates for:

- Re-roof building. Scope of work is as follows;
- Place tarps over any delicate vegetation or mechanical property as needed.
- Remove 1 layer of existing roof to wood deck.
- Replace any bad wood at an additional cost of $100 per linear ft if plywood and/or $6.00 per linear ft if planks, includes material and labor.
- Install ice and water shield at all penetrations including chimneys, skylights, vents and soil stacks.
- Install 6" ice and watershield at eaves, 3" at valleys.
- Install 15 lb felt paper.
- Fabricate and install new step and counterflashing at base of two (2) square fans (Metal to be used is 24 gauge prefinished Kynar 500 galvalume). Color to be ____________
- Install new aluminum drip edge on all gables. Color to be ____________
- Install new metal baby tins as needed.
- Install Owens Corning "Oakridge" 110 mph wind rated, Algae Resistant, Lifetime Ltd warranty, Architectural shingles. Includes starter strips and matching hip and ridge. Fasten Shingles using a minimum of (4) 1.25" roofing nails per shingle.
- Shingle color to be ____________ Initial ____________
- Install two (2) new 3" PVC pipe boots.
- Install one (1) new 4" PVC pipe boot.
- Pull magnet for stray nails, clean up and haul away roofing debris.
- All workmanship is warranted for a period of five (5) years, manufacturer warrants materials.
- Homeowner is responsible for Homeowner Association approval if required.
- Contract price includes permit. Allowance of 50.00.
- Options: Install Owens Corning "Tru-Definition Duration" 130 mph wind rated, Algae Resistant, Lifetime Ltd warranty Architectural shingles. Includes starter strips and match hip and ridge caps. ADD- 150.00.
- Install GAF "Snow Country" premium quality, rigid style ridge vent with Snow Guard filter on ridges ADD- 500.00.
- "NOTE" Price includes prevailing wage.

Estimated start date: ____________________________ Estimated completion date: ____________________________

We propose hereby to furnish material and labor - complete in accordance with above specifications, for the sum of: ____________________________

Payment Terms: 50% down, balance due upon completion.

Make Checks payable to: AMB Roofing & Sheetmetal
August 30, 2018

**Proposal**

<table>
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<tr>
<th>PROPOSAL FOR:</th>
<th>CONTACT INFO:</th>
<th>JOB INFO (IF DIFFERENT)</th>
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<tbody>
<tr>
<td>City of McHenry</td>
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<tr>
<td>Attn: Pat Gorniak</td>
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<td></td>
</tr>
<tr>
<td>333 S. Green Street</td>
<td></td>
<td></td>
</tr>
<tr>
<td>McHenry, IL 60050</td>
<td>Phone:</td>
<td></td>
</tr>
<tr>
<td>Email: <a href="mailto:pgorniak@mchenry.il.us">pgorniak@mchenry.il.us</a></td>
<td>Cell: 815-403-8028</td>
<td></td>
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<tr>
<td>Knox Park</td>
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<tr>
<td>201 S. Green Street</td>
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<tr>
<td>McHenry, IL 60050</td>
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</table>

Thank you for the opportunity to provide this proposal. Please read all pages (both sides) carefully. If you choose to accept, please initial Accept or Decline for each segment of the proposal, sign the proposal in the acceptance block at the end & initial on the bottom of the Important Notes page. Return one signed copy (all pages) to Copley Roofing. You may also need to make color selection(s). Color samples of materials are available at our office.

PROPOSED ROOFING (POOL HOUSE):
1. Tear off 1 layer of existing roofing materials down to bare roof sheathing. Remove & replace all existing plywood.
2. Install Grace Select Ice & Water Shield 6' up from the eaves, 3' in the valleys.
3. Install approx 120 lin ft of almond aluminum drip edge to gables.
4. Cover remaining roof area with Grip-Rite synthetic underlayment or equivalent.
5. Install approx 34 squares of GAF Timberline HD Limited Lifetime architectural shingles. Hand-nail each shingle with (5) 1 ¾" galvanized roofing nails, ten nails per shingle. Also choice of Owens Corning.
6. Replace (3) 4" Neoprene soil stack flashing.
7. Clean up & remove all job related debris from gutters & surrounding area.

** Price is based on in-stock colors. **

<table>
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<tr>
<th>JOB</th>
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<th>Decline</th>
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</table>

** ALTERNATE:**
Cut in & install approx 120 lin ft of Edge Vent soffit & venting system.

<table>
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<tr>
<th>JOB COST: $1,200.00</th>
<th>Accept</th>
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** ALTERNATE:**
Cut-in approx 65 lin ft of ridge vent with Air Vent - Shingle Vent II continuous ridge vent & ridge cap shingles over vent.

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<th>Decline</th>
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** ALTERNATE:**
Install proper vent chutes between all of the rafters.

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**Proud To Be A GAF Master Elite Contractor**

**Maximize Your GAF Roofing Investment – GO Solar**

Illinois incentives for installing DecoTech solar roofing systems are among the highest in the country. Talk to your estimator about your options for a fully Integrated GAF Roofing & Solar Warranty.

*** Keep it clean! Insulate your attic while your roof is open. ***

Now offering AttiCat blown-in insulation. Ask your estimator to evaluate your energy saving possibilities. Discounts are available for add-on blown-in insulation services.
CHARLES COPLEYN ROOFING, INC.

~ PROPOSAL CONTINUED ~

All work shall be performed by skilled tradesmen fully covered by Liability Insurance & Workman’s Compensation Insurance. A Certificate of Insurance for your job is available from our insurance carrier on request. Property owner shall carry appropriate property owners insurance.

The respective manufacturers warrant their materials to be and to perform as specified. Charles Copley Roofing warrants installation & workmanship for ten years.

*No warranty on repairs. Installation shall comply with standard industry practices and manufacturers’ specifications. Charles Copley Roofing is not liable to repair or replace materials damaged by accident, vandalism, foreign object, shifting in the building structure, excessive forces of nature, or acts of God.

Any deviation from the signed proposal that results in additional cost (except wood replacement or necessary repairs) will be performed only with the property owner’s authorization and will become an extra charge above the original contract price. Timely performance may be affected by weather, labor disputes, material shortages, accidents, or delays beyond our control. In breach of contract, the property owner is responsible for all legal fees.

PERMITS: Property owner is responsible for obtaining any permits required for the contracted work or a $50.00 processing fee will be charged plus any permit fees.

TERMS: PAYMENT IN FULL IS DUE ON COMPLETION. A 2% per month late charge will be added to past-due accounts. We accept cash, check, bank draft, title company check, credit/debit card (up to $3,000.00), or any combination thereof. We do not offer installment payment plans.

Prices are subject to change after 30 days due to material cost.

PROPOSAL SUBMITTED BY:

Mike Lesko

ACCEPTANCE: I hereby authorize the work to be performed in accordance with the prices, terms and conditions of this proposal.

X ___________________________ ___________________________

ACCEPTANCE SIGNATURE: DATE

PRINTED NAME: ___________________________

How did you hear about us? (Circle One)

Referral ______ Our Trucks ______ Online ______ Radio ______ Job-Site Sign ______ Phone Book ______ Other ______

Page 2 of 2
CONSENT AGENDA SUPPLEMENT

DATE: October 15, 2018
TO: Mayor and City Council
FROM: Bill Hobson, Director of Parks and Recreation
RE: Request to Advertise for Bids for the Washroom, Concession & Storage building at Fox Ridge Park

ATTACHMENTS: HR Green Bid Documents for Fox Ridge Park Washroom & Sanitary Line

Agenda Item Summary: As a part of the 2018-19 Capital Improvement Project budget, $400,000 was included for the renovation and addition of restrooms at Fox Ridge Park and Veterans Memorial Park. Engineering for the project has been completed and staff is seeking city council approval to competitively bid the project.

Background: Fox Ridge Park is one of the department’s busiest parks for athletic activities. There are softball, soccer and lacrosse fields all located the park. The addition of permanent washroom and concession facilities to the park has long been discussed. In order to facilitate the washroom structure HR Green studied the site to determine the best way to deal with the wastewater as there currently are no wastewater lines in the park. Attached are all the bid documents for the project for the project and for the wastewater lines

Analysis: The introduction of these permanent facilities will not only serve to provide amenities to users but it also will introduce revenue through the concession offerings at this popular park.

If City Council concurs, then staff is seeking a motion to advertise for bids for the washroom, concession and storage facility in Fox Ridge Park.
GENERAL NOTES & SPECIFICATIONS

SPECIFICATIONS, DRAWINGS, AND SPECIAL PROVISIONS:

As written on the top of the page.

[The text continues with various specifications and notes related to the construction project.]

DRAWINGS:

All drawings shall conform to the latest edition of ANSI B54.1. All dimensions shall be in feet, unless otherwise noted, and all measurements shall be given to the nearest 1/8".

MATERIALS:

The following materials shall be used in the construction of this project:

- Concrete
- Steel
- Wood
- Brick
- Asphalt

EXCAVATION:

All excavation work shall be performed to the specifications outlined in the drawings and specifications. All excavation shall be performed in accordance with OSHA regulations.

STRUCTURAL:

All structural elements shall be designed and constructed in accordance with the latest edition of the AASHTO Bridge Design Specifications. All steel shall be hot-rolled and all concrete shall be high-strength.

WATER MAINS:

All water mains shall be installed in accordance with the latest edition of the AWWA Standard for Water Mains. The pipe shall be of cast iron and all joints shall be of the bell and spigot type.

SEWER LINES:

All sewer lines shall be installed in accordance with the latest edition of the AWWA Standard for Sewer Lines. The pipe shall be of clay and all joints shall be of the vitrified clay type.

ELECTRICAL:

All electrical work shall be performed in accordance with the latest edition of the National Electrical Code. All wires shall be of copper and all joints shall be of the soldered type.

MECHANICAL:

All mechanical work shall be performed in accordance with the latest edition of the ASME Boiler and Pressure Vessel Code. All equipment shall be of the latest design and all joints shall be of the welded type.

GENERAL:

All work shall be performed in accordance with the latest edition of the American Standard for Safety in Construction. All workers shall be properly trained and all work shall be performed in a safe manner.

[The text continues with additional specifications and notes related to the construction project.]

[The signature block is present at the bottom of the page.]
PROJECT MANUAL
FOR
Fox Ridge Park Concession
Building
City of McHenry, Illinois
2018
FOR BID
OWNERSHIP OF DOCUMENT

This document, and the ideas and designs incorporated herein, as an instrument of professional service, is the property of HR Green, Inc. and is not to be used, in whole or in part, for any other project without the written authorization of HR Green, Inc.

CERTIFICATIONS

I hereby certify that the portion of this technical submission described below was prepared by me or under my direct personal supervision and that I am a duly licensed Professional Engineer under the laws of the State of Illinois.

[Signature]

Date: 10/1/2018

Chad J. Pieper, P.E.
License No. 062-060005
My renewal date is November 30, 2019
Divisions covered by this seal:
All divisions.
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108975 Fox Ridge Park Concession Building
### SPECIFICATIONS

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### DIVISION 2 – EXISTING CONDITIONS

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### CONSTRUCTION ADMINISTRATION FORMS

- TR-1 to TR-2: Contractor’s Submittal Transmittal
- CCR-1: Contract Clarification/Interpretation Request
- WCD-1: Work Change Directive (EJDC No. C-940)
- CO-1: Change Order (EJDC No. C-941)
- AP-1 to AP-4: Contractor’s Application for Payment
- CSC-1: Certificate of Substantial Completion
- CIS-1: Certificate of Installation Services
- RFS-1 to RFS-2: Contractor’s Request for Substitution
- RFI-1: Contractor’s Request for Information
- FO-1: Field Order

108975 Fox Ridge Park Concession Building
SECTION 00100
OFFICIAL NOTICE TO BIDDERS
City of McHenry, Illinois
Fox Ridge Park Concession Building
Job No.: 180975

OWNER AND WORK: The City of McHenry, Illinois, hereby gives notice that sealed Bids will be received for the construction of the Fox Ridge Park Concession Building. The Work of the Contract is generally described as follows:

The Project includes furnishing all labor, materials, and equipment and performing all work generally described as follows:

- Site grading for building
- Masonry building for concessions with 2 bathrooms and storage area (plans from City of McHenry), wood frame roof with asphalt shingle finish
- E-One Grinder pump with 1 ½” force main,
- Complete restoration of site, and patching of asphalt roadway and PCC curb and gutter, as necessary.

TIME AND PLACE OF BID OPENING: Sealed bids will be received until 11:00 a.m., local time, on October 19, 2018, at the City of McHenry City Hall, 333 S. Green Street, McHenry, Illinois. All bids must be submitted in sealed envelopes upon the blank form included in the furnished proposal. Sealed envelopes shall be marked in the upper left hand corner as follows:

Sealed Bid
City of McHenry – Fox Ridge Park Concession Building
Date: October 19, 2018
Time: 11:00 a.m.

After the official bids closing time, the bids will be publicly opened and read aloud.

BIDDING DOCUMENTS: The Bidding Documents and the Contract may be examined at the McHenry Recreation Center, 3636 Municipal Drive, McHenry, Illinois 60050, Monday through Friday between the hours of 7:00am and 3:00pm. The Bidding Documents will be available on October 5, 2018. Copies of Bidding Documents may be obtained on the City website at http://www.ci.mchenry.il.us/index.asp?SEC=590EFF1A-B7B8-405D-8398-C7A70F44A7F7&Type=B_BASIC or at the office of the Project Engineer HR Green, 420 N Front Street, McHenry, Illinois, telephone 815-385-1778. Include company name, street address, name of contact person, telephone number, and fax number with application.
Questions relating to these Bidding Documents shall be directed, in writing, to Chad Pieper, P.E. at HR Green, email cpleper@hrgreen.com.

WAGE RATES: This contract calls for the construction of a “public work” within the meaning of the Illinois Prevailing Wage Act, 820 ILCS 130/01 et seq. (“the Act”). The Act requires contractors and subcontractors to pay laborers, workers and mechanics performing services on public works projects no less than the current “prevailing rate of wages” (hourly cash wages plus amount for fringe benefits) in the county where the work is performed. The department publishes the prevailing wage rates on its websites at

http://www.state.il.us/agency/idol/rates/rates.HTM.

The Department revises the prevailing wage rates and the contractor/subcontractor has an obligation to check the Department’s web site for revisions to prevailing wage rates. For information regarding current prevailing wage rates, please refer to the Illinois Department of Labor’s website. All contractors and subcontractors rendering services under this contract must comply with all requirements of the Act, including but not limited to, all wage requirements and notice and record keeping duties.

PRE-BID CONFERENCE: No pre-bid conference will be held for this project. Please submit all questions in writing to Chad Pieper, email cpleper@hrgreen.com.

BID SECURITY: Bid Security in the amount of not less than 10% of the Bid price shall accompany each Bid in accordance with the Instructions to Bidders.

CONTRACT SECURITY: The Bidder to whom a Contract is awarded shall furnish a Performance Bond and a Payment Bond each in an amount equal to the Contract Price.

BID REJECTION/ACCEPTANCE: The awarding authority for this Contract is the City Council of The City of McHenry, and reserves the right to reject any and all Bids, waive informalities in bidding, or to accept the Bid or Bids, which best serve the interests of the OWNER.

BID WITHDRAWAL: No Bid shall be withdrawn for a period of 60 days after the scheduled opening of the bids without the consent of OWNER.

DATED this 5th day of October, 2018

City of McHenry

By:

Mr. Bill Hobson, Director of Parks and Recreation

END OF SECTION
SECTION 00200  
INSTRUCTIONS TO BIDDERS

ARTICLE 1. DEFINED TERMS. Terms used in these Instructions to Bidders and the Advertisement for Bids which are defined in the General Conditions have the meanings assigned to them in the General Conditions. The term "Bidder" means one who submits a Bid directly to Owner, as distinct from a sub-bidder, who submits a Bid to a Bidder.

ARTICLE 2. INTERPRETATIONS AND ADDENDA. All questions about the meaning or intent of the Contract Documents are to be directed to Engineer. Additions, deletions, or revisions to the Contract Documents considered necessary by the Engineer in response to such questions will be issued by Addenda mailed or delivered to all parties recorded by the Engineer or Owner as having received the Contract Documents. Questions received less than ten (10) days prior to the date of Bids may not be answered. Only answers to such questions issued by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

2.1 Addenda may also be issued to make other additions, deletions, or revisions to the Contract Documents.

ARTICLE 3. BIDDER'S EXAMINATION OF CONTRACT DOCUMENTS AND SITE.

3.1 It is the responsibility of each Bidder before submitting a Bid:

A. To examine thoroughly the Contract Documents and other related data identified in the Bidding Documents (including "technical" data referred to below);

B. To visit the site to become familiar with local conditions that may affect cost, progress, or performance, of the Work;

C. To consider federal, state, and local laws and regulations that may affect cost, progress, or performance of the Work;

D. To study and carefully correlate the Bidder's observations with the Contract Documents; and

E. To notify the Engineer of all conflicts, errors, ambiguities, or discrepancies in or between the Contract Documents and such other related data.

3.2 Reference is made to the Supplementary General Conditions for identification of:

A. Those reports of explorations and tests of subsurface conditions at the site which have been utilized by the Engineer in the preparation of the Contract Documents. The Bidder may rely upon the accuracy of the technical data contained in such reports. However, the interpretation of such technical data, including any interpolation or extrapolation thereof, together with non-technical data, interpretations, and opinions contained therein or the completeness thereof, is the responsibility of the Bidder.
B. Those drawings of physical condition in or relating to existing surface and subsurface conditions (except Underground Utilities) which are at or contiguous to the site have been utilized by the Engineer in the preparation of the Contract Documents. The Bidder may rely upon the accuracy of the technical data contained in such drawings, however, the interpretation of such technical data, including any interpolation or extrapolation thereof, together with non-technical data, interpretations, and opinions contained in such drawings or the completeness thereof, is the responsibility of the Bidder.

3.3 Copies of reports and drawings referred to in Paragraph SGC-4.02 of the Supplementary General Conditions will be made available by the Owner to any Bidder at cost of reproduction, if copies are desired. Those reports and drawings are not part of the Contract Documents, but the technical data contained therein upon which the Bidder is entitled to rely, as provided in Paragraph SGC-4.02 of the Supplementary General Conditions.

3.4 Information and data reflected in the Contract Documents with respect to Underground Utilities at or contiguous to the site is based upon information and data furnished to the Owner and the Engineer by the owners of such Underground Utilities or others, and neither the Owner nor the Engineer assume responsibility for the accuracy or completeness thereof.

3.5 Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders on subsurface conditions, Underground Utilities, and other physical conditions, and possible changes in the Contract Documents due to differing or unanticipated conditions appear in Paragraphs 4.02, 4.03 and 4.04 of the General Conditions.

3.6 Before submitting a Bid, each Bidder will, at Bidder's own expense, make or obtain any additional examinations, investigations, explorations, tests, and studies and obtain any additional information and data which pertain to the physical conditions (surface, subsurface, and Underground Utilities) at or contiguous to the site or otherwise which may affect cost, progress, or performance of the Work and which the Bidder deems necessary to determine its Bid for performing the Work in accordance with the time, price, and other items and conditions of the Contract Documents.

3.7 Upon request and a minimum of 2 days notice, the Owner will provide each Bidder access to the site to conduct such examinations, investigations, explorations, tests, and studies as each Bidder deems necessary for submission of a Bid. Location of any excavation or boring shall be subject to prior approval of Owner and applicable agencies. Bidder shall fill all holes, restore all pavement to match existing structural section, and shall clean up and restore the site to its former condition upon completion of such explorations.

3.8 The lands upon which the Work is to be performed, rights-of-way, and easements for access thereto and other land designated for use by the Contractor in performing the Work are identified in the Contract Documents. All additional lands and access thereto required for temporary construction facilities or storage of materials and equipment are to be provided by the Contractor. Easements for permanent structures or permanent changes in existing structures are to be obtained and paid for by the Owner unless otherwise provided in the Contract Documents.
3.9 The submission of a Bid will constitute an incontrovertible representation by the Bidder that the Bidder has complied with every requirement of this Article 3 and the following:

A. That the Bid is premised upon performing and finishing the Work required by the Contract Documents without exception and applying such means, methods, techniques, sequences or procedures of construction (if any) as may be required by the Contract Documents;

B. That Bidder has given the Engineer written notice of all conflicts, errors, ambiguities, and discrepancies in the Contract Documents and the written resolutions thereof by the Engineer is acceptable to the Bidder; and

C. That the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performing and furnishing of the Work.

ARTICLE 4. BID FORM AND DELIVERY OF BID. Each prospective Bidder shall be furnished an electronic copy of the Contract Documents as stipulated in the Invitation for Bids. The Bid Form is to be printed, completed in ink and submitted with the Bid Bond. All names must be printed below the signatures.

Each Bid shall be submitted in a sealed envelope with "Bid Proposal" and the "Due" date clearly printed on the front. The Bid Bond shall be submitted in the envelope containing the Bid. When sent by mail, the sealed Bid shall be addressed as follows:

City of McHenry
Parks and Recreation
333 S. Green Street
McHenry, IL 60050

The Bidder may attach a substitute Proposal Form printed by a computer in lieu of completing the furnished Form. If a substitute Form is used, it shall be attached to the back side of the furnished Form. Such computer printed substitute Proposal Form shall include, but not limited to, the following at the top of each page:

A. Project Title
B. Project Number
C. Letting Date
D. Bidder’s Name and Address

The substitute computer printed Proposal Form shall have column headings that include the Line Number, Item Description, Unit Designation, Approximate Quantity, Unit Bid Price, Amount Bid for each item, Total or Gross Sum Bid below the last Bid Item and Bidder’s name, signature in ink and title at the end of the Form. The signature and Total Gross Sum Bid shall also be written in ink on the furnished Proposal Form.

Bids shall be filed prior to the time and at the place specified by the Invitation for Bids. Bid proposals received after the time for opening of Bids will be returned to the Bidder unopened.

180975 Fox Ridge Park Concession Building
INSTRUCTIONS TO BIDDERS 00200 - 3
In case of a discrepancy between the line number, Bid Item description, and/or quantity shown in the furnished proposal and those shown on the substitute computer printed Proposal Form, the Bid Item description and the quantity shown in the furnished proposal shall govern. The Unit Bid Price shown on the substitute computer printed Proposal Form shall govern whether or not the amount Bid shown is correct. The substitute Proposal Form page size and size of printed characters shall be approximately the same as the furnished Form. Solid lines for separating columns and line numbers need not be printed. Pages must be arranged and numbered the same as those contained in the furnished Proposal Form. Any irregularities, which are not waived by the Owner as a technicality, will result in rejection of the Bid.

**ARTICLE 5. DISQUALIFICATION OF BIDDERS.**

Bids will be considered non-responsive and shall be rejected for any of the following reasons:

More than one Bid from an individual, firm, partnership, corporation or association under the same or different names will not be considered. If the Owner believes that any Bidder is interested in more than one Bid for the Work contemplated, all Bids in which such Bidder is interested will be rejected. If the Owner believes that collusion exists among the Bidders, all Bids will be rejected. A party who has quoted prices to a Bidder is not hereby disqualified from quoting prices to other Bidders, or from submitting a Bid directly for the Work.

If there are unauthorized additions, conditional or alternate bids, or irregularities of any kind which may tend to make the proposal incomplete, indefinite or ambiguous as to its meaning, the Bid may be rejected.

If the Bidder submits an obviously unbalanced bid, the Bid may be rejected. An unbalanced bid shall be defined as a bid containing lump sum or unit bid prices which do not reflect reasonable actual costs plus a reasonable proportionate share of the Bidder’s anticipated profit, overhead costs and other indirect costs to complete that bid.

**ARTICLE 6. QUANTITIES OF WORK.** Not Used

**ARTICLE 7. SUBSTITUTE OR "OR EQUAL" ITEMS.** Whenever materials or equipment are specified or described in the Contract Documents by using the name of a particular Supplier and the name is followed by the words “or equal”, the procedure for the submittal of substitute or “Or equal” products is specified in Section 01 6000 – Product Requirements.

Bidders wishing to obtain the Engineer’s approval for alternative materials or equipment prior to the bid opening shall do so in writing at least 7 days prior to the opening of sealed bids. Approval, if granted, will be made in the form of an Addendum issued by the Engineer to all plan holders of record. If such approval is not granted prior to the opening of the bids, then consideration of the alternative may be made after award of the Contract if beneficial to the Owner.

**ARTICLE 8. COMPETENCY OF BIDDERS.** In selecting the lowest responsive, responsible Bidder, consideration will be given not only to the financial standing but also to the general competency of the Bidder for the performance of the Work covered by the Bid.
ARTICLE 9. SUBMISSION OF BIDS. The Bid shall be delivered by the time and to the place stipulated in the Invitation for Bids. It is the Bidder's sole responsibility to see that its Bid is received in proper time and at the proper place.

ARTICLE 10. BID SECURITY, BONDS, AND INSURANCE. Each Bid shall be accompanied by a certified or cashier’s check or share draft or approved Bid Bond in the amount stated in the Proposal. Said check or bond shall be made payable to the Owner and shall be given as a guarantee that the Bidder, if awarded the Work, will enter into Contract with the Owner, and will furnish the necessary insurance certificates and Performance, Labor, Material, and Maintenance Bond; said bond to be in the amount stated in the Supplementary General Conditions. In case of refusal or failure to enter into said Contract, the check or Bid Bond, as the case may be, shall be forfeited to the Owner. If the Bidder elects to furnish a Bid Bond as its Bid security, the Bidder shall use the Bid Bond form bound hereon, or one conforming substantially to it in form. Bonds shall be issued by a surety authorized to do business in the State of Illinois. Checks or share drafts shall be certified or issued by a State or National bank, or a credit union in Illinois or chartered under the laws of the United States.

ARTICLE 11. DISCREPANCIES IN BIDS. In the event there is more than one Bid Item in a Bid Schedule, the Bidder shall furnish a price for all Bid Items in the Bid Form, and failure to do so will render the Bid non-responsive and may cause its rejection. In the event there are Unit Price Bid Items in a Bid Schedule and the amount indicated for a Unit Price Bid Item does not equal the product of the unit price and quantity, the unit price shall govern and the amount will be corrected accordingly, and the Bidder shall be bound by said correction. In the event there is more than one Bid Item in a Bid Schedule and the total indicated for the Schedule does not agree with the sum of the prices Bid on the individual items, the prices Bid on the individual items shall govern and the total for the Schedule will be corrected accordingly, and the Bidder shall be bound by said correction.

ARTICLE 12. MODIFICATIONS AND UNAUTHORIZED ALTERNATIVE BIDS. Unauthorized conditions, limitations or provisos attached to the Bid shall render it informal and may cause its rejection as being non-responsive. The completed Bid Form shall be without interlineation, alterations or erasures in the printed text. Alternative Bids will not be considered unless called for. Oral, telegraphic or telephonic Bids or modifications will not be considered.

ARTICLE 13. WITHDRAWAL OF BID. A Bidder may request, without prejudice, to withdraw its Bid after it has been submitted to the Owner, provided such request is made in writing to the Owner prior to the time set for receiving Bids. Modifications or corrections to Bids may be made on the withdrawn Bid provided such modifications or corrections are initiated by the Bidder and are received by the Owner prior to the time set for receiving Bids. Modifications or corrections to a Bid will not be accepted if the modifications or corrections render the bid security inadequate or if not accompanied by sufficient additional bid security.

If a Bidder has requested in writing to withdraw its Bid, said Bidder may submit a different Bid and Bid security any time prior to the time set for receiving proposals.

ARTICLE 14. AWARD OF CONTRACT. Award of the contract, if awarded, will be made to the lowest responsive, responsible Bidder whose Bid complies with the requirements of the Contract Documents. Unless otherwise specified, any such award will be made within the period stated in the Invitation for Bids that the Bids are to remain open. Unless otherwise

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INSTRUCTIONS TO BIDDERS 00200 - 5
indicated, a single award will be made for all the Bid items in an individual Bid Schedule. The Owner reserves the right to reject any or all Bids, to waive any informality in a Bid and to select alternate additive or deductive Bid items as desired by the Owner to determine the award of the Contract.

ARTICLE 15. RETURN OF BID SECURITY. After the Bids are opened, verified, and duly considered, the bid security will be released pursuant to the provisions of the latest edition of the Illinois Code, including revisions. Should the successful Bidder fail to enter into contract, the Bid guaranty shall be forfeited to the Owner to compensate for administrative expenses of making a re-award or issuing a new request.

ARTICLE 16. EXECUTION OF AGREEMENT. The Bidder to whom award is made shall execute a written Agreement with the Owner on the form of agreement provided, shall secure all insurance, and shall furnish all certificates and bonds required by the Contract Documents within fifteen (15) days after the contract is mailed to the bidder. Failure or refusal to enter into contract as herein provided or to conform to any of the stipulated requirements in connection therewith shall be just cause for annulment of the award and forfeiture of the Bid security. If the lowest responsive, responsible Bidder refuses or fails to execute the Agreement, the Owner may award the Contract to the second lowest, responsive, responsible Bidder. If the second lowest responsive, responsible Bidder refuses or fails to execute the Agreement, the Owner may award the Contract to the third lowest, responsive, responsible Bidder.

ARTICLE 17. ADDENDA. Each Bid Form shall include specific acknowledgment, in the space provided in Section 00400, Bid Form, of receipt of all addenda issued and mailed by the Owner during the bidding period. Failure to so acknowledge may result in the Bid being rejected as not responsive.

ARTICLE 18. SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION. The Contractor shall comply with all state and federal laws and county and local ordinances and regulations which in any manner affect those engaged or employed in the Work.

ARTICLE 19. PRE-BID CONFERENCE. No pre-bid conference will be held for this project. Please submit all questions in writing to Chad Pieper at HR Green, email cpieper@hrgreen.com.

ARTICLE 20. LIQUIDATED DAMAGES. Provisions for liquidated damages, if any, are set forth in the Agreement and the Supplementary General Conditions (SGC-12.03).

ARTICLE 21. FEDERAL TAX ID NUMBER. Each Bidder shall state its Federal Tax Identification Number on the line provided on the Bid Form. The Owner is required to report to IRS on Form 1099 all payments involving labor or services provided by vendors, and lack of this number may delay contract payments until the number is provided.

ARTICLE 22. PREVAILING WAGE ACT. This act stipulates that a wage of no less than the general prevailing hourly rate as paid for work of similar character in the locality, in which the work is performed, shall be paid to all laborers, workers and mechanics employed by or on behalf of any and all public bodies engaged in public works. The scale of wages to be paid shall be updated on a monthly basis or as wages change as documented with the Illinois Department of Labor. The scale of wages shall be posted by the Contractor in prominent and easily accessible places at the site of work. Contractor shall regularly check scale of wages and
update as needed. If the Department of Labor revises the wage rates, the revised rate shall apply to this contract and the contractor or subcontractor will not be allowed additional compensation on account of said revisions. Wage rates are subject to the provisions of the Davis-Bacon Act.

The contractor and each subcontractor working on a City project shall submit a certified payroll each month to the City of McHenry. All laborers, mechanics, and other workers employed by them on the project shall include: name, address, telephone number when available, social security number, classification or classifications, hourly wages paid in each pay period, the number of hours worked each day, and the starting and ending times worked each day. The certified payroll shall be accompanied by a statement signed by the contractor or subcontractor that declares: such records are true and accurate, the hourly rate paid to each worker is not less than the general prevailing rate of hourly wages required, and the contractor or subcontractor is aware that filing a certified payroll that he or she knows to be false is a Class B misdemeanor. The contractor and subcontractors submitting their respective payrolls shall sign this certification statement. Upon 2 business days' notice, the contractor and each subcontractor shall make the payroll records available to the City, or the Director of Labor and his deputies and agents. The contractor and each subcontractor shall permit his or her employees to be interviewed on the job, during working hours, by compliance investigators of the Department of Labor. The Contractor shall maintain certified payroll documentation for a period of at least 3 years. The monthly submittal and any additional requests for a certified payroll shall be incidental to the contract.

ARTICLE 23. STORM WATER. The Contractor shall take sufficient precautions to prevent the pollution of streams, lakes, wetlands and storm sewers.

To insure a prompt response to incidents involving storm water runoff, the Contractor shall provide a telephone number where a responsible individual can be contacted 24 hours a day.

When the Engineer is notified, or determines a storm water deficiency exists, the Engineer will notify and direct the Contractor to correct the deficiency within a specified time. The specified time, which begins upon notification to the Contractor, will be from ½ hour to 12 hours based upon the urgency of the situation and the nature of the deficiency. The Engineer shall be the sole judge.

If the Contractor fails to correct the deficiency within the specified time, a daily monetary deduction will be imposed for each calendar day, or fraction thereof the deficiency exists. The calendar day(s) will begin with notification to the Contractor and end with the Engineer’s acceptance of the correction. The daily monetary deduction will be either $1,000 or 0.5% of the awarded contract value whichever is greater.

In addition, if the Contractor fails to respond, the Engineer may correct the deficiency and the cost thereof will be deducted from monies due or which may become due the Contractor. This corrective action will in no way relieve the Contractor of their contractual requirements of responsibilities.

ARTICLE 24. CONSTRUCTION DEBRIS. The Contractor shall not conduct any generation, transportation, or recycling of construction or demolition debris, clean or general or uncontaminated soil generated during construction, remodeling, repair, and demolition of utilities, structures and roads that is not commingled with any waste, without the maintenance of
documentation identifying the hauler, generator, place of origin of the debris or soil, the weight or volume of the debris or soil, and the location, owner, and operator of the facility where the debris or soil was transferred, disposed, recycled or treated. The Contractor must maintain this documentation for a period of at least 3 years.

**ARTICLE 25. BIDDER’S CERTIFICATION.**

**QUALIFICATION OF BIDDER:**

Bidder shall certify that they he is, at the time of bidding, and shall be, throughout the period of the contract, licensed in the State of Illinois. The Bidder shall provide its Illinois Contractor license number on the Bid Form. Bidder shall further certify that he is skilled and regularly engaged in the general class and type of work called for in the Contract Documents.

Bidder also certifies that they are knowledgeable of the unusual and peculiar hazards associated with the general class and type of work required to construct the specified project within the terms given in the Contract Documents.

Bidder shall be competent and skilled in the protective measures necessary for the safe performance of the construction Work with respect to such unusual and peculiar hazards.

**END OF SECTION 00200**
SECTION 00400
BID FORM

BID TO: City of McHenry
Parks and Recreation
333 S. Green Street
McHenry, IL 60050

1. The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with the OWNER in the form included in the Contract Documents to perform the WORK as specified or indicated in said Contract Documents entitled:

   Fox Ridge Park Concession Building

2. Bidder accepts all of the terms and conditions of the Contract Documents, including without limitation those in the Invitation for Bids and Instructions to Bidders, dealing with the disposition of the Bid Security.


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<thead>
<tr>
<th>ITEM NO.</th>
<th>ITEM DESCRIPTION</th>
<th>UNIT</th>
<th>QTY</th>
<th>TOTAL</th>
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<td>1</td>
<td>Concession Building Complete</td>
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<td>1</td>
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<tr>
<td>2</td>
<td>Force Main Complete</td>
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<td>3</td>
<td>Cleanout and Sanitary Main Connection</td>
<td>L SUM</td>
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</tr>
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<td>4</td>
<td>Sanitary Grinder Pump Station</td>
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<td>TOTAL:</td>
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TOTAL CONTRACT PRICE (the sum of the extensions):

________________________________________________________________________
Dollars and __________ Cents (in writing)

________________________________________________________________________
Dollars and __________ Cents (in figures)

180975 Fox Ridge Park Concession Building
BID FORM 00400 - 1
If there is a "Last Minute" change in a price for an item in this Schedule of Prices, Bidder may utilize the item below to avoid changing the tabulated extension of the affected Unit Price Item and resulting Contract Price Total. The amount, if any, shown in the item below shall be added or deducted to the Total Contract Price for the Work, as indicated by Bidder by placing an "X" in the applicable box or boxes below. **Any Bidder's Proposal that fails to indicate whether the amount or amounts shown are to be added to or deducted from the Contract Price Total for such Unit Price Item may be rejected or may be interpreted as a "deduct."**

We will     ☐ ADD     $__________________________

or

☐ DEDUCT     $__________________________

for

(Describe the Unit Price Item No. and/or Basis for the Change)

We will     ☐ ADD     $__________________________

or

☐ DEDUCT     $__________________________

for

(Describe the Unit Price Item No. and/or Basis for the Change)

We will     ☐ ADD     $__________________________

or

☐ DEDUCT     $__________________________

for

(Describe the Unit Price Item No. and/or Basis for the Change)

**NOTE:** THE AMOUNT OR AMOUNTS SHOWN TO BE ADDED TO OR DEDUCTED FROM THE CONTRACT PRICE TOTAL FOR SUCH UNIT PRICE ITEM (I) SHALL NOT BE UTILIZED AS AN ALTERNATE TO SUPPLYING A SEPARATE REQUESTED PRICE FOR EACH AND EVERY ITEM NAMED IN THE BIDDER'S PROPOSAL FORM AND (II) SHALL BE BASED ON UNIT PRICE ITEMS THAT FULLY COMPLY, WITHOUT EXCEPTION, TO THE SPECIFICATIONS INCLUDED IN THIS BID PACKAGE AND ALL OTHER REQUIREMENTS OF THE CONTRACT.
BASIS FOR DETERMINING PRICES

It is expressly understood and agreed that:

1. The approximate quantities set forth in this Schedule of Prices for each Unit Price Item are Engineer's estimate only, that Owner reserves the right to increase or decrease such quantities, and that payment for each Unit Price Item shall be made only on the actual number of acceptable units of such Unit Price Item installed complete in place, measured on the basis defined in the Contract;

2. The Price Proposal includes allowances for contingencies as Bidder deems appropriate with respect to such risks and changes in the Work that Bidder or Contractor, as the case may be, is responsible for dealing with under the Contract without any equitable adjustment in the Contract Price;

3. Bidder or Contractor, as the case may be, shall be compensated only in accordance with the Contract and shall not be entitled to equitable adjustments in the Contract Price as a result of any claims by Subcontractors or Suppliers arising only under their Subcontracts and not provided for in the Contract;

4. Owner is not subject to state or local sales, use and excise taxes and no such taxes are included in this Schedule of Prices;

5. All other applicable federal, state, and local taxes of every kind and nature applicable to the Work as well as all taxes, contributions, and premiums for unemployment insurance, old age or retirement benefits, pensions, annuities, or other similar benefits are included in this Schedule of Prices; and

6. All costs, royalties, and fees arising from the use on, or the incorporation into, the Work of patented equipment, materials, supplies, tools, appliances, devices, processes, or inventions are included in this Schedule of Prices.

All claim or right to dispute or complain of any such estimated quantity, or to assert that there was any misunderstanding in regard to the nature or amount of any Unit Price Item to be provided or performed, or to claim any additional compensation by reason of such risks, changes, and Subcontractor or Supplier claims, or payment of any such tax, contribution, or premium or any such cost, royalty or fee is hereby waived and released.

4. The basis of contract award, if awarded, will be the lowest responsive, responsible bidder that is determined to be in the best interest of the Owner. The Owner reserves the right to reject any and all bids.
5. Name of person who inspected site of proposed WORK for your firm:

Name: ____________________ Date of Inspection: ____________________

6. Project Experience: List three previous projects of similar scope and nature (include project name, brief description, owner, contact person, and phone number) for verification:

1. _________________________________________________________________

2. _________________________________________________________________

3. _________________________________________________________________

7. Bidder has examined copies of all the Contract Documents including the following addenda (receipt of all of which is hereby acknowledged):

   Number   Date
   __________  __________
   __________  __________
   __________  __________

8. Failure to acknowledge addenda may render the Bid non-responsive and be cause for its rejection. Bidder has familiarized itself with the nature and extent of the Contract Documents, WORK, site, locality where the WORK is to be performed, the legal requirements (federal, state and local laws, ordinances, rules and regulations), and the conditions affecting cost, progress or performance of the WORK and has made such independent investigations as Bidder deems necessary.
To all the foregoing, and including all Bid Forms contained in this Bid, said Bidder further agrees to complete the WORK required under the Contract Documents within the Contract Time stipulated in said Contract Documents, and to accept in full payment therefore the Contract Price based on the Total Bid Price(s) named in the aforementioned Bid Form.

Signed this __________ day of __________, 2018

By: ____________________________
(Firm Name)

______________________________
(Signature)

______________________________
(Typed or Printed Name)

______________________________
(Title)

(1) BIDDER’s name and address:

_____________________________________________________________

_____________________________________________________________

(2) BIDDER’s telephone numbers, fax numbers and e-mail address:

_____________________________________________________________

_____________________________________________________________

(3) Federal Tax I.D. No.:

_____________________________________________________________

(DO NOT OMIT)

END OF SECTION 00400
SECTION 00430
BID BOND

KNOW ALL MEN BY THESE PRESENTS; That we ____________________________,
of __________________________, as Principal, and
of __________________________, as Surety, are held and firmly bound unto the City
of McHenry hereinafter referred to as the Obligee, in the penal sum of
__________________________, ($________________________),

for which payment said Principal and Surety bind themselves, their heirs, executors,
administrators, successors, and assigns jointly and severally, firmly by these presents.

WHEREAS, the Principal is herewith submitting their sealed proposal for constructing the
Timothy & Clover Water Main Replacement as described in Section 00100 Invitation for Bids.

Date of Letting: October 19, 2018

NOW THEREFORE, if the said proposal bid by said Principal is accepted, and the Principal
shall enter into a contract with the Obligee in accordance with the terms of such bid, and shall
post the Performance and Maintenance Bond and Payment Bond required by the contract
documents with good and sufficient surety for the faithful performance of such contract, for the
prompt payment for all labor and material furnished in the prosecution thereof and for the
maintenance of the improvements in good repair and specified working conditions for two (2)
year(s) after final acceptance of the project by the Obligee, then this obligation shall become
null and void, or in the event of the failure of the Principal to enter such contract and give such
Performance and Maintenance Bond and Payment Bond, the Principal and Surety on these
bonds hereby agree to pay to the Obligee the full amount of this bid bnd, together with court
costs, attorney's fees, and any other expense of recovery.

IN WITNESS WHEREOF, the Principal and Surety have caused these presents to be signed
this _____ day of ________________, 2018.

Principal
By __________________________
Contractor's Signature

Surety

END OF SECTION 00430
SECTION 00510
NOTICE OF AWARD

TO: TBD
TBD
TBD

The extent of Work on this project is the furnishing of all labor, equipment, and materials for the construction of Fox Ridge Park Concession Building for the City McHenry, generally described as follows:

- Site grading for building
- Masonry building for concessions with 2 bathrooms and storage area (plans from City of McHenry), wood frame roof with asphalt shingle finish
- E-One Grinder pump with 1 ½” force main,
- Complete restoration of site, and patching of asphalt roadway and PCC curb and gutter, as necessary.

The Owner has considered the Bid submitted by you for the above-described Work.

You are hereby notified that your Bid has been accepted for items in the amount of ______________, ($____________)

You are required by the Instruction to Bidders to execute the Agreement and furnish the required Contractor’s Performance and Maintenance Bond, Payment Bond and Certificates of Insurance within fifteen (15) calendar days after contract is mailed to the bidder.

If you fail to execute said Agreement and to furnish said Bonds within fifteen (15) calendar days after the contract is mailed, said Owner will be entitled to consider all your rights arising out of the Owner’s acceptance of your Bid as abandoned and as a forfeiture of your Bid Bond. The Owner will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this NOTICE OF AWARD to the Owner.

Dated this ___ day of __________, 2018.

City of McHenry

By Bill Hobson

Title Director of Parks and Recreation

180975 Fox Ridge Park Concession Building
NOTICE OF AWARD 00510 - 2
ACCEPTANCE OF NOTICE

Receipt of the above NOTICE OF AWARD is hereby acknowledged by:
<<CONTRACTOR>>.
this the ___ day of ________________, 2018.
By__________________________________________
   <<Name>>,  
   <<Title>>

END OF SECTION 00510
SECTION 00520
AGREEMENT

THIS AGREEMENT is dated as of the _____ day of _________, 2018, by and between the City of McHenry (hereafter called Owner) and ______________, (hereafter called Contractor).

Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1. WORK.

Contractor shall complete all Work as specified or indicated under the Contract Documents entitled Fox Ridge Park Concession Building generally described as follows:

- Site grading for building
- Masonry building for concessions with 2 bathrooms and storage area (plans from City of McHenry), wood frame roof with asphalt shingle finish
- E-One Grinder pump with 1 ½” force main,
- Complete restoration of site, and patching of asphalt roadway and PCC curb and gutter, as necessary.

ARTICLE 2. CONTRACT TIMES.

All time limits for Milestones, if any, Substantial Completion, and completion for readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

Work shall be commenced upon written Notice to Proceed to be issued on or before November 26, 2018. Subject to any extension of time, which may be granted by the OWNER, the work will be substantially complete by April 30, 2019, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions by May 15, 2019.

ARTICLE 3. LIQUIDATED DAMAGES.

Contractor and Owner recognize that time is of the essence as stated in Article 2 above and that Owner will suffer financial loss if the Work is not completed within the times specified in Article 2 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner $500.00 for each day that expires after the time specified in Article 2 above for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract time or any proper extension thereof granted by Owner, Contractor shall Pay Owner $500.00 for each day that expires after the time specified in Article 2 above for completion and readiness for final payment until Work is completed and ready for final payment.
ARTICLE 4. CONTRACT PRICE.

Owner shall pay Contractor for completion of the Work pursuant to the Contractor's Bid Form and in accordance with the Contract Documents in current funds as follows: ___________________________, ($_______).

ARTICLE 5. PAYMENT PROCEDURES.

Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

ARTICLE 6. ASSIGNMENT.

No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation monies that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

Owner and contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

ARTICLE 7. CONTRACT DOCUMENTS.

The Contract Documents, which comprise the entire contract between Owner and Contractor concerning the Work, consist of this Agreement; Performance and Maintenance Bond and Payment Bond; Notice to Proceed; General Conditions; Supplemental Conditions; and Drawings and Specifications, Contractor's Bid Form, and all written amendments and other documents amending, modifying or supplementing the Contract Documents pursuant to paragraph 3.04 of the General Conditions, which may be fully executed after the effective date of the Agreement, for the said project.
IN WITNESS WHEREOF, owner and contractor have caused this Agreement to be executed the day and year first above written.

City of McHenry  <<CONTRACTOR>>

By ___________________________  By ___________________________
Mayor  <<NAME>>  <<TITLE>>

CORPORATE SEAL

Attest: ___________________________  Attest: ___________________________
Printed Name: ___________________________
Title: ___________________________

Address for giving notices  Address for giving notices
City of McHenry  <<NAME, TITLE>>
Village Hall  <<CONTRACTOR>>
333 South Green Street  <<ADDRESS>>
McHenry, IL  60050  <<ADDRESS>>

END OF SECTION 00520
SECTION 00550
NOTICE TO PROCEED

TO: TBD
TBD
TBD

DATE: November 26, 2018

Fox Ridge Park Concession Building
City of McHenry
333 South Green Street
McHenry, IL 60050

You are hereby notified to commence WORK in accordance with the Agreement dated November ___, 2018, on or after November 26, 2018. The date of substantial completion of all WORK is April 30, 2019 with final completion by May 15, 2019.

City of McHenry
By Bill Hobson
Title Director of Parks and Recreation

ACCEPTANCE OF NOTICE
Receipt of the above NOTICE TO PROCEED is hereby acknowledged by:

______________, this the _____ day of November, 2018.

By _________________________________

END OF SECTION 00550
SECTIONS 00610
PERFORMANCE AND MAINTENANCE BOND
BOND NO. ________________

KNOW ALL MEN BY THESE PRESENTS; That

<<CONTRACTOR>>,

<<ADDRESS>>

a __________________, hereafter called Contractor, and

____________________________________
(Name of Surety)

____________________________________
(Address of Surety)

hereafter called Surety, are held and firmly bound unto

City of McHenry

333 South Green Street, McHenry, IL 60050

hereafter called Owner, in the penal sum of ______________ ($_____) in lawful money of
the United States, for the payment of which sum well and truly to be made, we bind ourselves,
successors, and assigns, jointly and severally, firmly by these presences:
THE CONDITION OF THIS OBLIGATION is based upon a certain contract by and between Contractor and Owner dated the_______day of____________, 2018, a copy of which is hereto attached and made a part hereof, for the construction of Fox Ridge Park Concession Building, generally described as follows:

The Work for the said improvement, as required by the Contract Documents, includes furnishing all labor, materials, and equipment and performing all Work generally described as follows:

- Site grading for building
- Masonry building for concessions with 2 bathrooms and storage area (plans from City of McHenry), wood frame roof with asphalt shingle finish
- E-One Grinder pump with 1 ½" force main,
- Complete restoration of site, and patching of asphalt roadway and PCC curb and gutter, as necessary.

NOW THEREFORE, if Contractor well, truly and faithfully performs its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original terms thereof, and any extensions thereof which may be granted by Owner, with or without notice to Surety, and during the two (2) years guarantee and maintenance period, and if it satisfies all claims and demands incurred under such contract, and fully indemnifies and saves harmless the Owner from all costs and damages which Owner may suffer by reason of its failure to do so, and it reimburses and repays Owner all outlay and expense which Owner may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety, for value received hereby, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to Work to be performed thereunder or the Contract Documents accompanying the same shall in any way 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 contract or to the Work or to the Contract Documents.

PROVIDED, FURTHER, that no final settlement between Owner and Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.
IN WITNESS WHEREOF, this instrument is executed in two or more counterparts, each one of which shall be deemed an original, this ______ day of _______________, 2018.

SURETY:

________________________________________

By_______________________________________
Attorney-in-Fact

______________________________
(Address)

ATTEST:

________________________________________

(Surety)

[SEAL]

________________________________________

(Witness as to Surety)

______________________________
(Address)

CONTRACTOR AS PRINCIPAL:

________________________________________

By_______________________________________

______________________________
(Address)

ATTEST:

________________________________________

(Contractor as Principal)

[SEAL]

________________________________________

(Witness as to Contractor as Principal)

______________________________
(Address)

NOTE: Date of BOND must not be prior to date of Contract. If Contractor is partnership, all partners should execute BOND.

END OF SECTION 00610
SECTION 00615
PAYMENT BOND
BOND NO. __________

KNOW ALL MEN BY THESE PRESENTS: That

<<CONTRACTOR>>

<<ADDRESS>>
a ____________________________, hereinafter called Contractor, and

________________________________________
(Name of Surety)

________________________________________
(Address of Surety)

hereinafter called Surety, are held and firmly bound unto

City of McHenry

333 South Green Street, McHenry, IL 60050

hereafter called Owner, in the penal sum of ____________________________,
($ ______) in lawful money of the United States, for the payment of which sum well and truly to
be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these
presences.
THE CONDITION OF THIS OBLIGATION is based upon a certain contract by and between Contractor and Owner dated the __________day of ____________, 2018, a copy of which is hereto attached and made a part hereof, generally described as follows:

The Work for the said improvement, as required by the Contract Documents, includes furnishing all labor, materials, and equipment and performing all Work generally described as follows:

- Site grading for building
- Masonry building for concessions with 2 bathrooms and storage area (plans from City of McHenry), wood frame roof with asphalt shingle finish
- E-One Grinder pump with 1 ½" force main,
- Complete restoration of site, and patching of asphalt roadway and PCC curb and gutter, as necessary.

NOW, THEREFORE, if the Contractor promptly makes payment to all persons, firms, Subcontractors, and corporations furnishing materials for or performing labor in the prosecution of the Work provided for in such contract and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such Work, and all insurance premiums on said Work, and for all labor, performed in such Work whether by Subcontractor or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the Work to be performed thereunder or the Contract Documents accompanying the same shall in any way 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 contract or to the Work or to the Contract Documents.

PROVIDED, FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.
IN WITNESS WHEREOF, this instrument is executed in two or more counterparts, each one of which shall be deemed an original, this _____day of ________________, 2018.

SURETY:

________________________________________

By______________________________________

Attorney-in-Fact

________________________________________

(Address)

CONTRACTOR AS PRINCIPAL:

________________________________________

By______________________________________

(Address)

ATTEST:

________________________________________

(Surety)

[SEAL]

(Witness as to Surety)

________________________________________

(Address)

ATTEST:

________________________________________

(Contractor as Principal)

[SEAL]

(Witness as to Contractor as Principal)

________________________________________

(Address)

NOTE: Date of BOND must not be prior to date of Contract. If Contractor is partnership, all partners should execute BOND.

END OF SECTION 00615
SECTION 00700
STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Reprinted by Permission of the Engineers Joint Contract Documents Committee.
STANDARD GENERAL CONDITIONS
OF THE CONSTRUCTION CONTRACT

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly by

ACEC
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CONSTRUCTION SPECIFICATIONS INSTITUTE
These General Conditions have been prepared for use with the Suggested Forms of Agreement Between Owner and Contractor (EJCDC C-520 or C-525, 2007 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the Narrative Guide to the EJCDC Construction Documents (EJCDC C-001, 2007 Edition). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (EJCDC C-800, 2007 Edition).

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# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 Defined Terms

A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. Addenda—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.

2. Agreement—The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.

3. Application for Payment—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. Asbestos—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

5. Bid—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

6. Bidder—The individual or entity who submits a Bid directly to Owner.


8. Bidding Requirements—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and the Bid Form with any supplements.

9. Change Order—A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

10. Claim—A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

11. Contract—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
12. **Contract Documents**—Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

13. **Contract Price**—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).

14. **Contract Times**—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer’s written recommendation of final payment.

15. **Contractor**—The individual or entity with whom Owner has entered into the Agreement.

16. **Cost of the Work**—See Paragraph 11.01 for definition.

17. **Drawings**—That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.

18. **Effective Date of the Agreement**—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

19. **Engineer**—The individual or entity named as such in the Agreement.

20. **Field Order**—A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

21. **General Requirements**—Sections of Division 1 of the Specifications.

22. **Hazardous Environmental Condition**—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.

23. **Hazardous Waste**—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

24. **Laws and Regulations; Laws or Regulations**—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

25. **Liens**—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

26. **Milestone**—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
27. **Notice of Award**—The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.

28. **Notice to Proceed**—A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.

29. **Owner**—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.

30. **PCBs**—Polychlorinated biphenyls.

31. **Petroleum**—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

32. **Progress Schedule**—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor’s plan to accomplish the Work within the Contract Times.

33. **Project**—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

34. **Project Manual**—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

35. **Radioactive Material**—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

36. **Resident Project Representative**—The authorized representative of Engineer who may be assigned to the Site or any part thereof.

37. **Samples**—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

38. **Schedule of Submittals**—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.

39. **Schedule of Values**—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.
40. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

41. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.

42. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.

43. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

44. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.

45. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.

46. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.

47. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.

48. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

49. *Unit Price Work*—Work to be paid for on the basis of unit prices.

50. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

51. *Work Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an
addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 Terminology

A. The words and terms discussed in Paragraph 1.02.B through F are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

B. Intent of Certain Terms or Adjectives:

1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.

C. Day:

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

D. Defective:

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
   a. does not conform to the Contract Documents; or
   b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
   c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

E. Furnish, Install, Perform, Provide:
1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.

F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 Delivery of Bonds and Evidence of Insurance

A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.

B. Evidence of Insurance: Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.

2.02 Copies of Documents

A. Owner shall furnish to Contractor up to ten printed or hard copies of the Drawings and Project Manual. Additional copies will be furnished upon request at the cost of reproduction.

2.03 Commencement of Contract Times; Notice to Proceed

A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.
2.04 Starting the Work

A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

2.05 Before Starting Construction

A. Preliminary Schedules: Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer for timely review:

1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

2. a preliminary Schedule of Submittals; and

3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.06 Preconstruction Conference; Designation of Authorized Representatives

A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.07 Initial Acceptance of Schedules

A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.

1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of
the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.

3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 Intent

A. The Contract Documents are complementary; what is required by one is as binding as if required by all.

B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.

C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

3.02 Reference Standards

A. Standards, Specifications, Codes, Laws, and Regulations

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 Reporting and Resolving Discrepancies

A. Reporting Discrepancies:
1. *Contractor’s Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.

2. *Contractor’s Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) any standard, specification, manual, or code, or (c) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.

3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies:*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

   a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); or

   b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 Amending and Supplementing Contract Documents

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:

1. A Field Order;

2. Engineer’s approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.17.D.3); or
3. Engineer’s written interpretation or clarification.

3.05 Reuse of Documents

A. Contractor and any Subcontractor or Supplier shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions; or

2. reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer.

B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

3.06 Electronic Data

A. Unless otherwise stated in the Supplementary Conditions, the data furnished by Owner or Engineer to Contractor, or by Contractor to Owner or Engineer, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user’s sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data’s creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.

C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data’s creator.

ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS

4.01 Availability of Lands

A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the
Contract Price or Contract Times, or both, as a result of any delay in Owner’s furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner’s interest therein as necessary for giving notice of or filing a mechanic’s or construction lien against such lands in accordance with applicable Laws and Regulations.

C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 Subsurface and Physical Conditions

A. Reports and Drawings: The Supplementary Conditions identify:

1. those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site; and

2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).

B. Limited Reliance by Contractor on Technical Data Authorized: Contractor may rely upon the accuracy of the “technical data” contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such “technical data” is identified in the Supplementary Conditions. Except for such reliance on such “technical data,” Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

1. the completeness of such reports and drawings for Contractor’s purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any “technical data” or any such other data, interpretations, opinions, or information.

4.03 Differing Subsurface or Physical Conditions

A. Notice: If Contractor believes that any subsurface or physical condition that is uncovered or revealed either:

1. is of such a nature as to establish that any “technical data” on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or

2. is of such a nature as to require a change in the Contract Documents; or
3. differs materially from that shown or indicated in the Contract Documents; or

4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. Engineer’s Review: After receipt of written notice as required by Paragraph 4.03.A, Engineer will promptly review the pertinent condition, determine the necessity of Owner’s obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer’s findings and conclusions.

C. Possible Price and Times Adjustments:

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor’s cost of, or time required for, performance of the Work; subject, however, to the following:

   a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and

   b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.

2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:

   a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or

   b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor’s making such final commitment; or

   c. Contractor failed to give the written notice as required by Paragraph 4.03.A.

3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other
professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 Underground Facilities

A. Shown or Indicated: The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and

2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:

   a. reviewing and checking all such information and data;

   b. locating all Underground Facilities shown or indicated in the Contract Documents;

   c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and

   d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. Not Shown or Indicated:

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price
or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

4.05 Reference Points

A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer’s judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.06 Hazardous Environmental Condition at Site

A. Reports and Drawings: The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.

B. Limited Reliance by Contractor on Technical Data Authorized: Contractor may rely upon the accuracy of the “technical data” contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such “technical data” is identified in the Supplementary Conditions. Except for such reliance on such “technical data,” Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

1. the completeness of such reports and drawings for Contractor’s purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any “technical data” or any such other data, interpretations, opinions or information.

C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.

D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by
Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 4.06.E.

E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.

F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner’s own forces or others in accordance with Article 7.

G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall oblige Owner to indemnify any individual or entity from and against the consequences of that individual’s or entity’s own negligence.

H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall oblige Contractor to indemnify any individual or entity from and against the consequences of that individual’s or entity’s own negligence.
I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 – BONDS AND INSURANCE

5.01 Performance, Payment, and Other Bonds

A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor’s obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.

B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual’s authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.

C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 Licensed Sureties and Insurers

A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 Certificates of Insurance

A. Contractor shall deliver to Owner, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.
B. Owner shall deliver to Contractor, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.

C. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.

E. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

5.04 Contractor's Insurance

A. Contractor shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;

2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;

3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;

4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:
   a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or
   b. by any other person for any other reason;

5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and

6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The policies of insurance required by this Paragraph 5.04 shall:
1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;

3. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;

4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);

5. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and

6. include completed operations coverage:
   a. Such insurance shall remain in effect for two years after final payment.
   b. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

5.05 Owner's Liability Insurance

A. In addition to the insurance required to be provided by Contractor under Paragraph 5.04, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

5.06 Property Insurance

A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee;

2. be written on a Builder’s Risk “all-risk” policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss as may be specifically required by the Supplementary Conditions.

3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;

5. allow for partial utilization of the Work by Owner;

6. include testing and startup; and

7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued.

B. Owner shall purchase and maintain such equipment breakdown insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee.

C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other loss payee to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.

D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property...
insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser’s own expense.

E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under this Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Contractor whether or not such other insurance has been procured by Owner.

5.07 Waiver of Rights

A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or loss payees thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.

B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for:

1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner’s property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and

2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.

C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery
against Contractor, Subcontractors, or Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them.

5.08 Receipt and Application of Insurance Proceeds

A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.

B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

5.09 Acceptance of Bonds and Insurance; Option to Replace

A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 Partial Utilization, Acknowledgment of Property Insurer

A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.
ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES

6.01 Supervision and Superintendence

A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.

B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

6.02 Labor; Working Hours

A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner’s written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

6.03 Services, Materials, and Equipment

A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.
6.04  *Progress Schedule*

A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.

1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

6.05  *Substitutes and “Or-Equals”*

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or “or-equal” item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.

1. “Or-Equal” Items: If in Engineer’s sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an “or-equal” item, in which case review and approval of the proposed item may, in Engineer’s sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

   a. in the exercise of reasonable judgment Engineer determines that:

   1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

   2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole; and

   3) it has a proven record of performance and availability of responsive service.

   b. Contractor certifies that, if approved and incorporated into the Work:

   1) there will be no increase in cost to the Owner or increase in Contract Times; and

   2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.
2. *Substitute Items:*

a. If in Engineer’s sole discretion an item of material or equipment proposed by Contractor does not qualify as an “or-equal” item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.

b. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.

c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements, and as Engineer may decide is appropriate under the circumstances.

d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:

1) shall certify that the proposed substitute item will:

a) perform adequately the functions and achieve the results called for by the general design,

b) be similar in substance to that specified, and

c) be suited to the same use as that specified;

2) will state:

a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor’s achievement of Substantial Completion on time,

b) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and

c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;

3) will identify:

a) all variations of the proposed substitute item from that specified, and

b) available engineering, sales, maintenance, repair, and replacement services; and
4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.

B. Substitute Construction Methods or Procedures: If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer’s sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.

C. Engineer’s Evaluation: Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No “or equal” or substitute will be ordered, installed or utilized until Engineer’s review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an “or equal.” Engineer will advise Contractor in writing of any negative determination.

D. Special Guarantee: Owner may require Contractor to furnish at Contractor’s expense a special performance guarantee or other surety with respect to any substitute.

E. Engineer’s Cost Reimbursement: Engineer will record Engineer’s costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

F. Contractor’s Expense: Contractor shall provide all data in support of any proposed substitute or “or-equal” at Contractor’s expense.

6.06 Concerning Subcontractors, Suppliers, and Others

A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.

B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner’s acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or
other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.

C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor’s own acts and omissions. Nothing in the Contract Documents:

1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity; nor

2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.

E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.

F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.
6.07 Patent Fees and Royalties

A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.

B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.

C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.08 Permits

A. Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

6.09 Laws and Regulations

A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.

B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all
court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor’s responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor’s obligations under Paragraph 3.03.

C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 Taxes

A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

6.11 Use of Site and Other Areas

A. Limitation on Use of Site and Other Areas:

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor’s performance of the Work.

B. Removal of Debris During Performance of the Work: During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

C. Cleaning: Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor
shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. Loading Structures: Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.12 Record Documents

A. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Engineer for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to Engineer for Owner.

6.13 Safety and Protection

A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

C. Contractor shall comply with the applicable requirements of Owner’s safety programs, if any. The Supplementary Conditions identify any Owner’s safety programs that are applicable to the Work.
D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor’s safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.

E. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

F. Contractor’s duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 Safety Representative

A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.15 Hazard Communication Programs

A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

6.16 Emergencies

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 Shop Drawings and Samples

A. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.
1. **Shop Drawings:**
   
a. Submit number of copies specified in the General Requirements.

b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.

2. **Samples:**
   
a. Submit number of Samples specified in the Specifications.

b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.

B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer’s review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. **Submittal Procedures:**
   
1. Before submitting each Shop Drawing or Sample, Contractor shall have:
   
a. reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;

b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

c. determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and

d. determined and verified all information relative to Contractor’s responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.

2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor’s obligations under the Contract Documents with respect to Contractor’s review and approval of that submittal.

3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop
Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

D. Engineer's Review:

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer’s review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. Engineer’s review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. Engineer’s review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer’s review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. Resubmittal Procedures:

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

6.18 Continuing the Work

A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 Contractor’s General Warranty and Guarantee

A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on representation of Contractor’s warranty and guarantee.

B. Contractor’s warranty and guarantee hereunder excludes defects or damage caused by:
1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or

2. normal wear and tear under normal usage.

C. Contractor’s obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor’s obligation to perform the Work in accordance with the Contract Documents:

1. observations by Engineer;

2. recommendation by Engineer or payment by Owner of any progress or final payment;

3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;

4. use or occupancy of the Work or any part thereof by Owner;

5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;

6. any inspection, test, or approval by others; or

7. any correction of defective Work by Owner.

6.20 Indemnification

A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.

B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor,
Supplier, or other individual or entity under workers’ compensation acts, disability benefit acts, or other employee benefit acts.

C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer’s officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:

1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or

2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

6.21 Delegation of Professional Design Services

A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor’s responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.

B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.

C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.

D. Pursuant to this Paragraph 6.21, Engineer’s review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer’s review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.

E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.
ARTICLE 7 – OTHER WORK AT THE SITE

7.01 Related Work at Site

A. Owner may perform other work related to the Project at the Site with Owner’s employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. written notice thereof will be given to Contractor prior to starting any such other work; and

2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.

B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner’s employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others’ work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.

C. If the proper execution or results of any part of Contractor’s Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor’s Work. Contractor’s failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor’s Work except for latent defects and deficiencies in such other work.

7.02 Coordination

A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;

2. the specific matters to be covered by such authority and responsibility will be itemized; and

3. the extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.
7.03 Legal Relationships

A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.

B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor’s wrongful actions or inactions.

C. Contractor shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor’s wrongful action or inactions.

ARTICLE 8 – OWNER’S RESPONSIBILITIES

8.01 Communications to Contractor

A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

8.02 Replacement of Engineer

A. In case of termination of the employment of Engineer, Owner shall appoint an engineer to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer.

8.03 Furnish Data

A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

8.04 Pay When Due

A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.

8.05 Lands and Easements; Reports and Tests

A. Owner’s duties with respect to providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner’s identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

8.06 Insurance

A. Owner’s responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

8.07 Change Orders

A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.
8.08  *Inspections, Tests, and Approvals*

A. Owner’s responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.

8.09  *Limitations on Owner’s Responsibilities*

A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor’s failure to perform the Work in accordance with the Contract Documents.

8.10  *Undisclosed Hazardous Environmental Condition*

A. Owner’s responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

8.11  *Evidence of Financial Arrangements*

A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner’s obligations under the Contract Documents.

8.12  *Compliance with Safety Program*

A. While at the Site, Owner’s employees and representatives shall comply with the specific applicable requirements of Contractor’s safety programs of which Owner has been informed pursuant to Paragraph 6.13.D.

**ARTICLE 9 – ENGINEER’S STATUS DURING CONSTRUCTION**

9.01  *Owner’s Representative*

A. Engineer will be Owner’s representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner’s representative during construction are set forth in the Contract Documents.

9.02  *Visits to Site*

A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor’s executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer’s efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits
and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

B. Engineer’s visits and observations are subject to all the limitations on Engineer’s authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer’s visits or observations of Contractor’s Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03 Project Representative

A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer’s consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

9.04 Authorized Variations in Work

A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

9.05 Rejecting Defective Work

A. Engineer will have authority to reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

9.06 Shop Drawings, Change Orders and Payments

A. In connection with Engineer’s authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.
B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.

C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.

D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.07 Determinations for Unit Price Work

A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of Paragraph 10.05.

9.08 Decisions on Requirements of Contract Documents and Acceptability of Work

A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question.

B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.

C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.

D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 Limitations on Engineer's Authority and Responsibilities

A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor’s failure to perform the Work in accordance with the Contract Documents.

C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. Engineer’s review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.

E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

9.10 Compliance with Safety Program

A. While at the Site, Engineer’s employees and representatives shall comply with the specific applicable requirements of Contractor’s safety programs of which Engineer has been informed pursuant to Paragraph 6.13.D.

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

10.01 Authorized Changes in the Work

A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

10.02 Unauthorized Changes in the Work

A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.D.
10.03 Execution of Change Orders

A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:

1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner’s correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;

2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and

3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

10.04 Notification to Surety

A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor’s responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

10.05 Claims

A. Engineer’s Decision Required: All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.

B. Notice: Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant’s written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The
opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).

C. Engineer's Action: Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:

1. deny the Claim in whole or in part;

2. approve the Claim; or

3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.

D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.

E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.

F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

11.01 Cost of the Work

A. Costs Included: The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 11.01.B, and shall include only the following items:

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on
Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.

3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.

5. Supplemental costs including the following:

a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.

b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.

e. Deposits lost or causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor’s fee.

g. The cost of utilities, fuel, and sanitary facilities at the Site.

h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work.

i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

B. Costs Excluded: The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of Contractor’s officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expediters, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor’s principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor’s fee.

2. Expenses of Contractor’s principal and branch offices other than Contractor’s office at the Site.

3. Any part of Contractor’s capital expenses, including interest on Contractor’s capital employed for the Work and charges against Contractor for delinquent payments.

4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A.

C. Contractor’s Fee: When all the Work is performed on the basis of cost-plus, Contractor’s fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor’s fee shall be determined as set forth in Paragraph 12.01.C.
D. **Documentation**: Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

11.02 **Allowances**

A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.

B. **Cash Allowances**:

1. Contractor agrees that:

   a. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

   b. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

C. **Contingency Allowance**:

1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.

D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.03 **Unit Price Work**

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.

C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:

1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

2. there is no corresponding adjustment with respect to any other item of Work; and

3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.01 Change of Contract Price

A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or

2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or

3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor’s fee for overhead and profit (determined as provided in Paragraph 12.01.C).

C. Contractor’s Fee: The Contractor’s fee for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee; or

2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

   a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor’s fee shall be 15 percent;

   b. for costs incurred under Paragraph 11.01.A.3, the Contractor’s fee shall be five percent;
c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;

e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor’s fee by an amount equal to five percent of such net decrease; and

f. when both additions and credits are involved in any one change, the adjustment in Contractor’s fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 Change of Contract Times

A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

12.03 Delays

A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor’s entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor’s ability to complete the Work within the Contract Times.

C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the
control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.

D. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 Notice of Defects

A. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor. Defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 Access to Work

A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor’s safety procedures and programs so that they may comply therewith as applicable.

13.03 Tests and Inspections

A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;

2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and

3. as otherwise specifically provided in the Contract Documents.
C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.

E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation.

F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

13.04 Uncovering Work

A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.

B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.

C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.

D. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.
13.05 Owner May Stop the Work

A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

13.06 Correction or Removal of Defective Work

A. Promptly after receipt of written notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner’s special warranty and guarantee, if any, on said Work.

13.07 Correction Period

A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor’s use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner’s written instructions:

1. repair such defective land or areas; or

2. correct such defective Work; or

3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and

4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.

B. If Contractor does not promptly comply with the terms of Owner’s written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute
resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.

C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.

D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

E. Contractor’s obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

13.08 Acceptance of Defective Work

A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer’s recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner’s evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and for the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Engineer’s recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

13.09 Owner May Correct Defective Work

A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct, or remedy any such deficiency.

B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor’s services related thereto, take possession of Contractor’s tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and
equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner’s representatives, agents and employees, Owner’s other contractors, and Engineer and Engineer’s consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.

C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor’s defective Work.

D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner’s rights and remedies under this Paragraph 13.09.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 Schedule of Values

A. The Schedule of Values established as provided in Paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 Progress Payments

A. Applications for Payments:

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner’s interest therein, all of which must be satisfactory to Owner.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the
Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.

3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. Review of Applications:

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
   a. the Work has progressed to the point indicated;
   b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and any other qualifications stated in the recommendation); and
   c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.

3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
   a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or
   b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
   a. to supervise, direct, or control the Work, or
b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or

c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or

d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or

e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:

a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;

b. the Contract Price has been reduced by Change Orders;

c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or

d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. Payment Becomes Due:

1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

D. Reduction in Payment:

1. Owner may refuse to make payment of the full amount recommended by Engineer because:

a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;

b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;

c. there are other items entitling Owner to a set-off against the amount recommended; or
d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.

2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor remedies the reasons for such action.

3. Upon a subsequent determination that Owner’s refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1 and subject to interest as provided in the Agreement.

14.03 Contractor’s Warranty of Title

A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

14.04 Substantial Completion

A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.

B. Promptly after Contractor’s notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.

C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the tentative certificate to Owner, notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner’s objections, Engineer considers the Work substantially complete, Engineer will, within said 14 days, execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.

D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities.
pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.

E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the tentative list.

14.05 Partial Utilization

A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:

1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 14.04.A through D for that part of the Work.

2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.

3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

14.06 Final Inspection

A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.
14.07 Final Payment

A. Application for Payment:

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:
   a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;
   b. consent of the surety, if any, to final payment;
   c. a list of all Claims against Owner that Contractor believes are unsettled; and
   d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtednesses connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

B. Engineer’s Review of Application and Acceptance:

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer’s review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer’s recommendation of payment and present the Application for Payment to Owner for payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due:
1. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer’s recommendation, including but not limited to liquidated damages, will become due and will be paid by Owner to Contractor.

14.08 Final Completion Delayed

A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor’s final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 Waiver of Claims

A. The making and acceptance of final payment will constitute:

1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor’s continuing obligations under the Contract Documents; and

2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 Owner May Suspend Work

A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

15.02 Owner May Terminate for Cause

A. The occurrence of any one or more of the following events will justify termination for cause:
1. Contractor’s persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);

2. Contractor’s disregard of Laws or Regulations of any public body having jurisdiction;

3. Contractor’s repeated disregard of the authority of Engineer; or


B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:

1. exclude Contractor from the Site, and take possession of the Work and of all Contractor’s tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);

2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere; and

3. complete the Work as Owner may deem expedient.

C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor’s services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

E. Where Contractor’s services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.
F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.

15.03 Owner May Terminate For Convenience

A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):

1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

3. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. reasonable expenses directly attributable to termination.

B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 Contractor May Stop Work or Terminate

A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.

B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.
ARTICLE 16 – DISPUTE RESOLUTION

16.01 Methods and Procedures

A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.

B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.

C. If the Claim is not resolved by mediation, Engineer’s action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:

1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions; or

2. agrees with the other party to submit the Claim to another dispute resolution process; or

3. gives written notice to the other party of the intent to submit the Claim to a court of competent jurisdiction.

ARTICLE 17 – MISCELLANEOUS

17.01 Giving Notice

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:

1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or

2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 Computation of Times

A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.
17.03 *Cumulative Remedies*

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 *Survival of Obligations*

A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

17.05 *Controlling Law*

A. This Contract is to be governed by the law of the state in which the Project is located.

17.06 *Headings*

A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.
SECTION 00800
SUPPLEMENTARY GENERAL CONDITIONS

These Supplementary General Conditions are compatible with EJCDC C0700 Standard General Conditions of the Construction Contract. Copyright 2007 © National Society of Professional Engineers for EJCDC.

GENERAL. These Supplementary General Conditions make additions, deletions, or revisions to the General Conditions as indicated herein. All provisions which are not so amended or supplemental remain in full force and effect. Terms used in these Supplementary General Conditions which are defined in the General Conditions have the meanings assigned to them in the General Conditions.

SGC-1 DEFINITIONS.

Add the following definitions to Article 1:

Conflict. A case where an item of Work is shown or specified differently in two or more places in the Contract Documents. An item of Work shown in one portion of the Contract Documents but not in another is not a conflict.

Consultant: HR Green, Inc.
Engineer: Chad J. Pieper, Project Manager
Address: 420 North Front Street
          McHenry, IL 60050
Phone: 815-385-1778
FAX: 815-385-1781

Furnish. To deliver to the job site or other specified location any item, equipment or material or labor.

Holidays. For general scheduling information, for the City of McHenry, holidays occur on the first day of January, commonly known as New Year’s Day; the last Monday in May, known as Memorial Day; the Fourth day of July, known as Independence Day; the first Monday in September, known as Labor Day; the eleventh day of November, known as Veteran’s Day; the fourth Thursday in November, known as Thanksgiving Day; the fourth Friday in November known as the day after Thanksgiving; the twenty-fourth day in December, known as Christmas Eve; and the twenty-fifth day in December, known as Christmas Day.

When an official holiday falls on Sunday, the following Monday shall be designated as a substitute holiday, and observed as an official holiday. When an official holiday falls on a Saturday, the preceding Friday shall be designated as a substitute holiday, and observed as an official holiday.

Whenever the word ARCHITECT is used in the Specifications, it shall have the same meaning as the word ENGINEER as defined.
Inspect. The act of observing, checking, or verifying that materials provided or Work furnished under this Contract comply with the general intent of the project Contract Documents.

Install. Placing, erecting, or constructing complete in place any item, equipment, or material.

Provide. Furnish and install, complete in place.

Punch List. List of incomplete items of Work and of items of Work which are not in conformance with the Contract. The list will be prepared by the Engineer's representative when the Contractor (1) notifies the Engineer's representative in writing that the Work has been completed in accordance with the contract and (2) requests in writing that the Owner accept the Work.

Shall. Refers to actions by either the Contractor or the Owner and means the Contractor or Owner has entered into a covenant with the other party to do or perform the action.

Submittals. The information which is specified for submission to the Engineer in accordance with Division 1 of the Project Manual.

Final Completion. When the Engineer deems the Project and Punch List fully complete in accordance with Plans and Specification, and when all items including but not limiting to: excess building materials, concrete forms, construction trailers, field offices, and temporary traffic control have been removed from site, the Engineer shall notify the Owner in writing and recommend final acceptance of work. Sales and Use Tax Forms and Lien Waivers do not have to be completed but are encouraged to be completed as a condition of Final Completion. The date of final completion shall be the date the Engineer's written recommendation of final acceptance to the Owner.


SGC - 2.01 DELIVERY OF BONDS AND EVIDENCE OF INSURANCE. Add the following language at the end of paragraph 2.01.A.:

A request for written interpretation or clarification of the Contract Documents shall be submitted on the Clarification/Interpretation Request form provided in the Appendix of this Project Manual.

Delete paragraph 2.01.B in its entirety and insert the following in its place:

Evidence of Insurance:

1. When CONTRACTOR delivers the executed Agreement to OWNER, CONTRACTOR shall also deliver to OWNER, with a copy to each additional
insured, identified certificates of insurance (and other evidence of insurance which OWNER or any additional insured may reasonably request) which CONTRACTOR is required to purchase and maintain in accordance with Article 5.

2. Before any Work at the site is started, OWNER will deliver to CONTRACTOR certificates of insurance (and other evidence of insurance which CONTRACTOR or any additional insured may reasonably request) which OWNER is required to purchase and maintain in accordance with Article 5.

Add the following new paragraph after paragraph 2.01.B:

C. If necessary a request for written interpretation or clarification of the Contract Documents shall be submitted in writing.

SGC-2.02 COPIES OF DOCUMENTS. Delete paragraph 2.02A of the General Conditions and replace with the following paragraph. The Owner shall furnish to the Contractor two (2) copies of the Contract Documents, four (4) sets of Drawings, and one (1) CD with Contract Documents in electronic format. Additional quantities of the Contract Documents will be furnished at reproduction cost.

SGC-4.02 REPORTS OF PHYSICAL CONDITIONS. In the preparation of the Contract Documents, the Engineer has relied upon:

A. The following drawings of physical conditions in or relating to existing surface and subsurface structures (except Underground Utilities) which are at or contiguous to the site of the Work: Drawings, Specifications, and Contract Documents of the previous construction projects at the site.

________________________________________
________________________________________
________________________________________
________________________________________

B. The following reports of explorations and tests of subsurface conditions at the site of the Work:

________________________________________
________________________________________
________________________________________
________________________________________
________________________________________

C. Copies of these documents may be examined at the office of the Owner during regular business hours. As provided in Paragraph 4.02 of the General
Conditions and identified and established above, the Contractor should place limited reliance on the documents. The Contractor shall not rely on the accuracy of the documents or make claims against the Owner, Engineer or Engineer's Consultants as a result of using the documents. These reports and drawings are not part of the Contract Document.

SGC-5.01 BONDS. The Contractor shall furnish a satisfactory Performance, Labor, Material, and Maintenance Bond in the amount of one hundred (100) percent of the Contract Price as security for the faithful performance and payment of all the Contractor obligations under the Contract Documents.

Add the following language at the end of Paragraph 5.01.C:

In addition, no further progress payments under the Agreement will be made by OWNER until CONTRACTOR complies with the provisions of this paragraph.

SGC-5.02 LICENSED SURETIES AND INSURANCE. Add the following language at the end of paragraph 5.02.A:

Surety or insurance companies shall have an A.M. Best rating of A- or better and a financial size category of Class X or better in Best's Insurance Guide.

SGC-5.04 INSURANCE. The limits of liability for the insurance required by Paragraph 5.04 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

A. Workers' Compensation

1. State: Statutory
2. Applicable Federal Statutory
3. Employer's Liability $1,000,000 Each Occurrence

B. Commercial General Liability:

1. Commercial General Liability $1,000,000 Each Occurrence
   $2,000,000 Annual Aggregate
   a. Products/Completed Operations $1,000,000
   b. Personal/Advertising injury $1,000,000
   c. Medical Payments OR $5,000

2. Bodily Injury $1,000,000 Each Occurrence
   $2,000,000 Annual Aggregate
   Property Damage $1,000,000 Each Occurrence
   $2,000,000 Annual Aggregate
3. If policies are written on a claims made basis, certificate should so specify and policies continue in force for 1 year after completion of project. The retro date of the coverage must also be listed.

4. Policies shall include premises/operations, products, completed operations, independent contractors, owners and contractors protective, explosion, collapse, underground hazard, broad form contractual, personal injury with employment exclusion deleted, and broad form

C. Commercial Automobile Liability (including owned, hired, and non-owned Vehicles):
   1. Bodily Injury: $1,000,000 Each Accident

D. Umbrella form excess liability coverage:
   1. Excess/Umbrella Liability $3,000,000 Each Occurrence
      $3,000,000 Annual Aggregate

E. All policies shall provide for 30 days written notice prior to any cancellation or nonrenewal of insurance policies required under Contract.

F. For Worker's Compensation, Commercial General Liability and Commercial Automobile Liability Policies, Contractor agrees to waive all rights of subrogation against the Owner, the Engineer and their Subconsultants, employees, officers and directors, for Work performed under Contract.

G. The Contractor's Commercial General Liability and Commercial Automobile Liability Insurance policies shall be endorsed to add the Owner and Engineer as additional insured.

H. The insurance coverage shall name the City of McHenry, its officers and employees, HR Green, Inc. as additional insured with respect to the liability coverage. Certified copies of the original policies, or certificate(s) of insurance, by the insurer(s) issuing the policies and endorsements shall be submitted to the City prior to the beginning of the work. All costs for insurance specified herein shall be included in the contract.

The Contractual Liability insurance shall be written so as to cover the Indemnification Clause.

SGC-5.06 PROPERTY INSURANCE. Contractor shall secure all-risk type of builders risk insurance covering Work performed under the contract and materials, equipment or other items to be incorporated therein, while the same are located at the construction site, stored off site, or at the place of manufacture. The policy shall cover not less than losses due to fire, flood, explosion, hail, lightning, vandalism, malicious mischief, wind, collapse, riot, aircraft, and smoke until the date of final acceptance of the Work. The policy may exclude loss or damage caused by or resulting from errors in design or from the use of substandard materials or supplies used knowingly by or at the direction of the insured, but not excluding results, physical loss, or damage to other property covered hereunder. Neither exclusion shall apply in the event of fire, explosion, or acts of God.
The maximum deductible allowable under this policy shall be $100,000. The policies providing this insurance shall name the Owner, Contractor, and their subconsultants as additional insureds as their respective interests shall appear. The making of progress payments to the Contractor shall not be construed as creating an insurable interest by or for the Owner or being construed as relieving the Contractor or Subcontractors of responsibility for loss or direct physical loss, damage or destruction occurring prior to final acceptance.

SGC-6.01 SUPERVISION AND SUPERINTENDENCE. Add the following paragraph to 6.01 of the General Conditions:

The Contractor or competent Superintendent must be on the Project when construction activities are taking place. The Superintendent shall supervise, direct, and control the contractor’s operations, personnel, work and the Subcontractor’s operations. The Contractor shall give the Owner and Engineer written notification of the name of the Superintendent. The Superintendent shall be incidental to mobilization. A copy of the Drawings and Specifications shall be available on the project site at all times.

Contractor shall maintain a qualified and responsible person available 24 hours per day, seven days per week to respond to emergencies which may occur after hours. Contractor shall provide to Engineer the phone number and/or paging service of this individual.

Incompetent or incorrigible employees shall be dismissed from Work by Contractor or its representative when requested by Engineer, and such persons shall not again be permitted to return to Work without written consent of Engineer.

Except in connection with safety or protection of persons or Work or property at site or adjacent thereto, and except as otherwise indicated in Contract Documents, all Work at site shall be performed during regular working hours, and Contractor shall not permit overtime work or performance of Work on Saturday, Sunday, or any legal holiday without Owner’s written consent given after prior written notice to Engineer. Workmanship shall be of best quality.

SGC-6.05E ENGINEER’S COST REIMBURSEMENT. In addition to the provisions of Paragraph 6.05E of the General Conditions, the following subparagraph shall be incorporated.

The Contractor shall also reimburse the OWNER for charges by the ENGINEER to review shop drawings and submittals more than once where resubmittal is required.

SGC-6.08 PERMITS. In addition to the provisions of Paragraph 6.08 of the General Conditions, the following subparagraph shall be incorporated:

The Contractor shall obtain all necessary federal, state, and local permits required for any dewatering and storm water discharges necessary during construction. The Contractor shall also provide all monitoring and test reporting relating to the discharges.

SGC-6.10 TAXES. Construction items and materials included in the Project are exempt from State of Illinois and Local Option Sales and Use Taxes. Contractor is responsible for obtaining
the exemption on items included, as provided by law or for applying for reimbursement for such taxes paid. Contractor shall pay all other taxes required to be paid by Contractor in accordance with the laws and regulations of the place of the Project that are applicable during the performance of the Work. Contractor shall NOT include Sales and Use Tax in Contractor’s bid.

SGC-6.16 EMERGENCIES. Add the following new paragraph immediately after paragraph 6.16.A.: 

B. In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, and CONTRACTOR cannot be reached, OWNER may act to attempt to prevent threatened damage, injury, or loss. OWNER will give CONTRACTOR and ENGINEER prompt written notice of such action and the cost of the correction or remedy shall be charged against CONTRACTOR. CONTRACTOR shall give ENGINEER prompt written notice if CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If ENGINEER determines that a change in the Contract Documents is required because of the action taken by OWNER in response to such an emergency, a Work Change Directive or Change Order will be issued.

SGC-6.17 SHOP DRAWINGS AND SAMPLES. Add the following new subparagraph immediately after subparagraph 6.17.D.3.: 

4. After ENGINEER has reviewed and approved a Shop Drawing or Sample, CONTRACTOR shall provide the material or equipment approved. ENGINEER will not review subsequent submittals of a different manufacturer or Supplier unless CONTRACTOR provides sufficient information to ENGINEER that the approved material or equipment is unavailable, time of delivery will delay the construction progress, or OWNER requests a different manufacturer or Supplier.

SGC-6.20 INDEMNIFICATION. Add the following two new paragraphs immediately after Paragraph 6.20.C of the General Conditions: 

A. The obligations of CONTRACTOR under Paragraph 6.20 shall be construed to include injury or damage resulting from any failure to use or misuse by CONTRACTOR, CONTRACTOR’S agents and employees of any scaffold, hoist, crane, stay, ladder, support or other mechanical contrivance erected or constructed by any person or any or all other kinds of equipment whether or not owned or furnished by OWNER. It is understood that this excludes use by OWNER or OWNER’S employees of scaffolding owned and furnished by OWNER.

E. In the event that CONTRACTOR is requested but refused to honor the indemnity obligations of 6.20.A and 6.20.B CONTRACTOR shall, in addition to all other obligations, pay the cost of bringing any such action, including attorneys fees, to the party requesting indemnity.

SGC-9.03 PROJECT REPRESENATIVE. Delete paragraph 9.03 in its entirety and insert the following in its place:

180975 Fox Ridge Park Concession Building
SUPPLEMENTARY GENERAL CONDITIONS 00800 - 7
9.03 Project Representative

A. ENGINEER will furnish a Resident Project Representative (RPR), assistants and other field staff to assist ENGINEER in observing the performance of the Work of CONTRACTOR.

B. Through more extensive on-site observations of the Work in progress and field checks of materials and equipment by the RPR, ENGINEER shall endeavor to provide further protection for OWNER against defects and deficiencies in the Work; but, the furnishing of such services will not make ENGINEER responsible for or give ENGINEER control over construction means, methods, techniques, sequences or procedures or for safety precautions or programs, or responsibility for CONTRACTOR'S failure to perform the Work in accordance with the Contract Documents.

C. The responsibilities, authority, and limitations of the RPR are limited to those of ENGINEER in paragraph 9.10 of the General Conditions, and the Contract Documents, and are further limited and described as follows:

1. RPR is ENGINEER'S agent at the site, will act as directed by and under the supervision of ENGINEER, and will confer with ENGINEER regarding RPR's actions. RPR's dealings in matters pertaining to the on-site work shall in general be with ENGINEER and CONTRACTOR keeping OWNER advised as necessary. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of CONTRACTOR. RPR shall generally communicate with OWNER with the knowledge of and under the direction of ENGINEER.

2. Duties and responsibilities of the RPR:

   a. Conduct a preconstruction conference with OWNER, CONTRACTOR, Utilities, and other appropriate parties affected by the Project. This meeting will allow all parties to the Project the opportunity to develop specific guidelines of involvement, establish timetables of events, and define Project requirements.

   b. Review Applications for Payment submitted by CONTRACTOR. Evaluate applications against work observed as being completed. Forward applications to OWNER for approval and payment after revision, when necessary.

   c. Provide direction for the assistants and coordinate observation activities.

   d. Direct visiting inspectors representing public or other agencies having jurisdiction over the Project to OWNER or CONTRACTOR as appropriate.

   e. Administer all required Written Amendments and other documents amending, modifying, or supplementing the Contract Documents as the Project proceeds.
f. Disapprove or reject Work which is observed to be "defective". Require inspection or testing of Work as provided in Article 13 of the General Conditions when it is deemed necessary.

g. Review the testing of equipment and systems provided by CONTRACTOR and assess its compliance with the Contract Documents.

h. Determine final quantities for Work installed which will serve as the basis for the final payment to CONTRACTOR.

i. Coordinate efforts required to prepare record drawings showing those changes made during construction, based on the marked-up prints, drawings and other data furnished by CONTRACTOR to ENGINEER and which ENGINEER considers significant.

SGC-9.09 AUTHORITY AND RESPONSIBILITIES. Add the following new paragraph immediately after Paragraph 9.09.E:

F. When ENGINEER is on the Project site to perform the duties and responsibilities as set forth in the Contract Documents, ENGINEER will comply with CONTRACTOR’S safety plans, programs, and procedures. In the event ENGINEER determines that CONTRACTOR’S safety plans, programs, and procedures do not provide adequate protection for ENGINEER, ENGINEER may direct its employees to leave the Project site or implement additional safeguards for ENGINEER’S protection. If taken, these actions will be in furtherance of ENGINEER’S responsibility to its own employees only, and ENGINEER will not assume any responsibility for protection of any other persons affected by the Work.

SGC-10.03 EXECUTION OF CHANGE ORDERS. Add the following new paragraph immediately after subparagraph 10.03.A.3.

B. Change Orders will be prepared on the form included in Section C7 of the Contract Documents.

SGC-10.05 CLAIMS. Add the following new subparagraph after paragraph 10.05.A.:

1. Notice of the amount or extent of the claim shall include the following certification:

"CONTRACTOR certifies that this claim is made in good faith, that the supporting data are accurate and complete to the best of CONTRACTOR’S knowledge and
belief, and that the amount or time requested accurately reflects the Contract adjustment for which CONTRACTOR believes OWNER is liable."

Add the following new paragraph immediately after paragraph 10.05.F.:

G. CONTRACTOR acknowledges the applicability of the False Claims Act, 31 U.S.C. §3729, et seq., to this Contract, including liability for false and fraudulent claims resulting in civil penalties of $5,000 to $10,000, treble damages, and award of attorneys' fees and costs.

SGC-11.01.A.5.C RENTAL. The Contractor will be paid for the use of equipment at the rental rate listed for such equipment specified in the current edition of the following reference publication:

"Contractor's Equipment Cost Guide" as published by Primedia Information (a company of the Dunn and Bradstreet Corporation), 1735 Technology Drive, Suite 410, San Jose, CA 95110-1313, telephone number (408) 468-8000 or outside of California (800) 669-3282.

SGC-12.02 CHANGE OF CONTRACT TIMES. Add the following new paragraph immediately after paragraph 12.02.B.:

C. Time extensions provided under paragraphs 12.02 of the General Conditions will only be allowed for controlling items of Work (critical path).

SGC-12.03 LIQUIDATED DAMAGES. Add the following to Paragraph 12.03 of the General Conditions:

F. Terms and conditions for liquidated damages are defined in Section 00520 – Agreement.

SGC-14.02.A.3 AMOUNT OF RETAINAGE. Add the following to Paragraph 14.02.A.3 of the General Conditions:

The Owner shall retain from each monthly payment ten (10) percent of the amount which is determined to be due according to the recommendation of the Engineer. The retainage shall constitute a fund for the payment of claims for materials furnished and labor performed on the project.

SGC-14.04 SUBSTANTIAL COMPLETION. Add the following new subparagraph immediately after paragraph 14.04.A.:

1. CONTRACTOR'S request for issuance of a Certificate of Substantial Completion shall occur after CONTRACTOR has, in the opinion of the ENGINEER, satisfactorily delivered all schedules, guarantees, Bonds, certificates or other evidence of insurance required by ARTICLE 5, certificates of inspection, affidavit of wage rate compliance, marked-up record documents (as provided in paragraph 6.12) and other
documents. ENGINEER will not prepare a tentative certificate of Substantial Completion until all operation and maintenance data has been submitted and approved.

2. Substantial Completion shall be considered achieved when the Owner agrees that the following systems are functioning and usable for their intended purpose: All three pumps are fully functional, and the lift station is complete and able to handle flows.

SC-14.07 FINAL PAYMENT. Amend the first sentence of subparagraph 14.07.A.1. by striking out the following words: "and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance certificates of inspection, marked up record documents (as provided in paragraph 6.12), and other documents".

SGC-15.04 CONTRACTOR MAY STOP WORK OR TERMINATION. Amend paragraph 15.04.A. by striking out the words "30 days" in two places and inserting the words "60 days" in their place and by striking out the words "seven days" in one place and inserting the words "ten days" in their place.

SGC-16 DISPUTE RESOLUTION. Add the following to the General Conditions.

   It is not the intent of these documents to exclude other means of dispute resolution other than Arbitration. Arbitration may be a means of dispute resolution by the Owner. The Owner shall not be restricted to Arbitration. Article 16 of the General Conditions shall not apply when Arbitration is the selected means of dispute resolution.

SGC-17.01 GIVING NOTICE. Delete paragraph 17.01.A in its entirety and insert the following in its place:

   A. Whenever any provision of the Contract Documents requires the giving of a written notice or the delivery of any Bond, Agreement, Certificate of Insurance or any other item, it shall be deemed to have been validly given if delivered in person to the individual, to a member of the firm, or to an officer of the cooperation for whom it is intended, or if delivered at or sent by registered or certified mail (return receipt), postage prepaid, to the last business address known to the giver of the article.

SGC-17.07 LEIN WAIVERS. Add the following new paragraph immediately after paragraph 17.06:

   17.07 Lien Waivers:

   A. OWNER may at any time require CONTRACTOR to furnish lien waivers for labor and materials covered by specified Applications for Payment.

END OF SECTION 00800
SECTION 02 1000
SPECIFICATIONS/SPECIAL PROVISIONS
City of McHenry, Illinois
Fox Ridge Park Concession Building
Job No.: 180975

The following Specifications/Special Provisions supplement the General Conditions and Supplemental Conditions and, in case of conflict, these Specifications shall take precedence and shall govern. The work to be performed and included in this project shall include the furnishing of all labor, material transportation, tools, supplies, plant, equipment, and appurtenances necessary for the complete and satisfactory construction of the work described within these specifications. In case of conflict with any part or parts of said specifications, the said Special Provisions shall take precedence and shall govern.

Location of the Project
The Concession Building shall be constructed within Fox Ridge Park in the City of McHenry, Illinois. The sanitary service shall be connected to the existing main line on Whitmore Trail, in the City of McHenry.

Description of the Project
In general, the nature of the improvements will consist of site grading to allow the construction of a masonry concession building with bathrooms in a mirrored configuration to what is provided in the plan set, an E-one grinder pump and force main shall be installed and connected to the City's sanitary line main, electrical service shall be installed, restoration of all disturbed area and all incidental and collateral work necessary to complete the project as shown on the plans and described herein.

Standard Specifications
The Contractor shall perform all work in conformance with applicable sections of the Standard Specifications for Road and Bridge Construction, latest edition by the State of Illinois, Department of Transportation, including all supplements, the Standard Specifications for Water and Sewer Main Construction in Illinois, prepared by the Illinois Society of Professional Engineers, Consulting Engineers Council of Illinois, et al., current edition, the Project Specifications as contained within the approved engineering plan set entitled "Fox Ridge Park Concession Building" latest revisions, and as contained within the approved architectural plan set entitled "Brookside Park Concession Building" latest revision.

Any pay item not detailed in this section shall be paid for by the special provisions listed above. If a conflict or questions regarding payment of an
item is discovered by the Contractor, this must be clarified, in writing by the City prior to the contractor proceeding with the work.

Safety
The Engineer has not been retained or compensated to provide design and construction review services relating to the Contractor’s safety precautions or to means, methods, techniques, sequences, or procedures required for the Contractor to perform his work.

Guarantee
All work performed under this contract shall be guaranteed by the Contractor and his surety against all defects in materials and workmanship of whatever nature for a period of twelve (12) months from the date of final payment for the work by the Owner.

Before acceptance by the Owner and final payment, all work shall be inspected and approved by the Owner or his representative.

Pre-Construction Conference
A pre-construction conference shall be held with the City prior to work starting. At this time the Contractor shall submit a Progress Schedule to the City for review. The Contractor shall also provide a list of the intended source of materials and the intended list of subcontractors to be used with respect to the project.

The Contractor shall provide original proof of insurance and all required financial guarantees at or prior to this meeting.

Project Duration/ Working Hours
The project shall be substantially complete by April 30, 2019, as specified here in.

The Contractor will be allowed to complete all clean-up work and punch list items by May 15, 2019. Under extenuating circumstances the City Engineer may direct that certain items of work, not affecting the safe opening of the roadway to traffic, may be completed within the guaranteed working days allowed for cleanup work and punch list items.

If the project is not completed within the above time frame, the Contractor is susceptible to any and all liquidated damages provided for in Article 108.09 of the Standard Specifications. No allowance will be made for delay or suspension of work due to the fault of the Contractor.

The Contractor must adhere to the City ordinance work time schedule.
Construction work must be performed during the hours of 7:00 a.m. to 8:00 p.m., Monday thru Friday and 8:00 am to 4:00pm on Saturday. Saturday work requires a request with a minimum 3 days advanced notice, subject to approval by the City. No work must be performed prior to or beyond this period.

**Insurance Requirements**

The Contractor shall indemnify and hold harmless the Awarding Authority (the City of McHenry), the Engineer (HR Green, Inc.), and their employees in accordance with Article 107.26 of the Standard Specifications.

The Contractor shall obtain and shall furnish to the Engineer, prior to beginning any work, certificates of insurance in accordance with the requirements of Article 107.27 of the Standard Specifications naming the Awarding Authority and the Engineer as additionally insured parties.

**Maintenance Guarantee**

A Maintenance Guarantee in the amount of 10% of the final cost of all improvements related to the Fox Ridge Park Concession Building shall be posted with the City for the purpose of:

Guaranteeing and securing the correction of any defect in material or workmanship furnished for such improvements, latent in character and not discernible at the time of final inspection or acceptance by the City; and

Guaranteeing against any damage to such improvements by reason of the settling of ground, base of foundation thereof.

Such Maintenance Guarantee shall also provide that, if such defects have so developed and have not been corrected by developer, then the guarantee may be applied by the City to correct such defects.

**The contractor shall guarantee for one (1) year all work against all defects.**

The Sure or Sureties issuing the bond must be acceptable to the Village and must have a Best's Key Rating Guide rating of "A-", Class XI or greater and be listed in the most recently published "Listing of Approved Sureties of the U.S. Department of Treasury Circular 570, with underwriting limitations in excess of the Contract Price.

The cost of the maintenance bond shall not be paid for separately, but will be considered incidental to the contract.

**The Maintenance Bond must be in place with the City prior to release of the final payment.**
Construction Site Digital Versatile Disc (DVD) Recording

The Contractor shall prepare pre-construction video documentation of all features in the area affected by construction. All preconstruction recording shall be conducted with digital format equipment. Pre-construction video documentation shall consist of a series of high-resolution, color, Digital Versatile Discs (DVD)s showing all areas to be affected by construction.

All pertinent exterior features within the project’s zone of influence shall be shown in sufficient detail as to document its pre-construction condition. Features to be documented shall include, but not be limited to, pavements, curbs, driveways, sidewalks, retaining walls, buildings, landscaping, trees, shrubbery, fences and light poles. View orientation shall be maintained by audio commentary on each DVD to explain what is being viewed.

Two (2) copies of the completed DVD(s) shall be delivered to the Engineer or Owner representative prior to the preconstruction meeting. This work shall be incidental to the contract.

Construction Layout

The Contractor is responsible for all of the construction layout on the project. Layout information including benchmarks, centerline information and station and offset information for the structures have been provided within the plan set.

The design engineer shall be notified prior to any layout.

Traffic Control and Protection

The Contractor should take particular note of the applicable portions of Article 107.14 of the Standard Specifications. All signs, except those referring to daily lane closures, shall be post mounted in accordance with Standard 702001 for all projects that exceed a four-day duration. Construction signs referring to daytime lane closures during working hours shall be removed, covered or turned away from the view of the motorists during nonworking hours.

The Contractor shall furnish, erect, maintain and remove all signs, barricades, flaggers and other traffic control devices as may be necessary for the purpose of regulating, warning or guiding traffic and for providing the Detour per the Detour Plan. Placement and maintenance of all traffic control devices shall be as directed by the Engineer and in accordance with the applicable parts of Section 701 of the Standard Specifications, the Illinois Manual on Uniform Traffic Control Devices for Streets and Highways, the Highway Standard and Detour Plan contained herein.
Special attention is called to Article 107.99 and Sections 701 and 702 of the Standard Specifications and the following Highway Standards relating to traffic control: Standard 701001, 701006, 701301, 701501, 701701, 701801, and 701901.

The governing factor in the execution and staging of work for this project is to provide the motoring public with the safest possible travel conditions along the roadways affected by the work. The Contractor shall arrange his operations to keep the closing of any lane of the roadway to a minimum. Should any lane closures be required, the Contractor shall give the Engineer at least forty-eight hours (48) hours advance notice and provide adequate information regarding the traffic control measures to be employed.

It is the intent of the project to maintain local traffic on Whitmore Trail. Should a road closure be necessary, coordination with the Engineer and the City shall be required prior to the closure occurring.

This item of work will be measured on a lump sum basis for furnishing, installing, maintaining, replacing, relocating and removing the traffic control devices required in the plans and these Special Provisions.

None of the signs or barricades shown on the Detour Plan may block or be mounted on the existing regulatory signs or be mounted on any traffic control poles or trees.

This work will be included in the contract lump sum price for CLEANOUT AND SANITARY MAIN CONNECTION COMPLETE, which price shall be payment in full for all labor, materials, transportation, handling and incidentals necessary to furnish, install, maintain, replace, relocate and remove all traffic control devices indicated in the plans and specifications. The salvage value of the materials removed shall be reflected in the bid price for this item.

Protection and Restoration of and Access to Property

This work shall be performed according to Article 107.20 of the Standard Specifications.

All existing landscaping items within the disturbed area, including but not limited to rocks, flower beds, mulch, and fence that interfere with the work shall be carefully removed and restored to its preconstruction condition or to the satisfaction of the Engineer. Any items that must be replaced with a new item shall be replaced, in kind. This work will be included in the contract lump sum for CLEANOUT AND SANITARY MAIN CONNECTION COMPLETE, which prices shall include all labor, material and equipment necessary to perform the work.

The Contractor shall make every effort to avoid disturbing any existing residential landscaping, walkways, etc., that are not within the disturbed area indicated on the
plans. If damage occurs, the Contractor shall replace, in kind, the residential item/s at his own expense to the satisfaction of the Engineer. All vegetation shall be replaced with the same size and type.

The Contractor shall make every effort to provide all residents with access to their driveways at the end of each work day. **No open holes shall be allowed on the job site at the end of the working day.**

All existing mailboxes within the disturbed area shall be removed and erected at a temporary location by the Contractor. As soon as construction operations permit, OR AS DIRECTED BY THE CITY ENGINEER, the Contractor shall set the mailboxes at their permanent locations. The Contractor shall replace at his expense, any mailbox or post which has been damaged by the contractor’s operations. This work will be included within the cost of the project, which shall include all labor, material and equipment necessary to perform the work.

*Remove and Re-Install Signs*

This work shall be performed according to Article 724 of the Standard Specifications.

All existing signs and posts within the disturbed area that interfere with the work shall be carefully removed and re-installed to its preconstruction condition or to the satisfaction of the Engineer. All regulatory signs and posts shall be re-installed immediately after the contractor is clear of the sign location.

The Contractor shall replace at his expense, any sign or post that has been damaged by the contractor’s operations.

This work will be included within the cost of the project, which shall include all labor, material and equipment necessary to perform the work.

*Exploratory Excavation with Restoration*

It shall be the Contractors responsibility to protect existing underground facilities, to do so, the Contractor shall excavate a trench to determine the location and elevation of known or suspected underground utility facilities, as necessary. The Contractor is to use caution in the location of all underground utility facilities. The Contractor shall be responsible for the repair of any damaged facilities so long as those facilities are not a substantially different locations or elevations than are marked or otherwise located by the responsible utility company.

This work shall include the excavation and restoration of all Exploratory Excavations and shall be included within the cost of the project, which price shall include all labor, material and equipment necessary to perform the work.
Placement and compaction of any required trench backfill material shall be considered included as well. No additional compensation shall be allowed.

Disposal of Materials

It shall be the Contractor's responsibility to dispose of all excess materials (soil, pavement, sidewalk, curb and gutter, etc.) at locations provided by him at his own expense.

Concession Building Complete

This work shall consist of furnishing and installing a masonry concession building with bathrooms as described in the Plans entitled, "Brookside Park Concession Building", as provided by the City of McHenry, at the specified elevation and location shown on the Drawings.

It is to be noted that this building is to be installed in a mirrored configuration to what is shown in the architectural drawing. The engineering plan set describes the orientation of the building.

The contractor shall be responsible for providing all labor, materials, tools, and equipment necessary to complete this work as shown in the plans.

The contractor shall be responsible for all required building permits and inspections required by City code.

The contractor shall coordinate the necessary electric service to provide for all loads shown on the building including the sanitary grinder pump station.

All site work for the project including grading, restoration, erosion control, as shown on the plans, shall be included.

Basis of Payment:
The Schedule of Prices included in the Bid Form shall govern payment for furnishing the labor, material and equipment for the complete installation of CONCESSION BUILDING COMPLETE.

Sanitary Grinder Pump Station

This work shall consist of furnishing and installing an E-One sanitary sewer pumping station, with appurtenant pipe connections, electrical equipment and
electrical connections, of the model specified at elevation and location shown on the Drawings. For information regarding the E-One system, contact Jason Bradley, Covalen Inc., by telephone at 317-726-6615 or by email at jbradley@covalen.com.

CONSTRUCTION REQUIREMENTS

Summary:
Furnish and install an E-One Model DH151-93 sanitary sewer pump station as shown on the Drawings; as specified in this section of the Special Provisions herein; in accordance with the latest edition of the “Standard Specifications for Water and Sewer Main Construction in Illinois”; and as needed for a complete installation.

Provide labor, materials, tools, and equipment necessary to perform all work and testing specified in this Section.

Submittals:
Pipe and Basin Invert Elevations: Contractor shall provide shop drawing mark up of site plan including a profile showing gravity sanitary service invert at building, clean out assembly, gravity pipe slope (minimum 1% slope), surface elevations over service alignment, gravity pipe invert elevation at grinder pump basin, and force main invert elevation at grinder pump basin.

Grinder pump basins are available with alternate orientations to accommodate inlet/discharge alignments other than 180 degrees (straight through). A detail showing the available options is provided in the plans to assist with ordering the unit. Submit site plan showing proposed force main drill set up and pipe alignment with proposed grinder basin inlet/discharge orientation.

Operation and Maintenance Data: Contractor shall supply three (3) copies of Operation and Maintenance Manuals for pumping equipment to address operation and maintenance for all pumping equipment.

Warrantees: The grinder pump manufacturer shall provide parts and labor warrantees on the complete station and accessories, including, but not limited to, panel and redundant check valve, for a period of twenty-four (24) months after notice of Owner's acceptance. Any defects found during the warrantees period will be reported to the Manufacturer by the Owner.

General Construction Requirements:

Use an adequate number of workmen who are thoroughly trained and experienced in the necessary crafts, and who are completely familiar with the
specified requirements and methods needed for proper performance of the Work of this Section.

**Delivery**
Contractor shall follow all manufacturer requirements and recommendations for loading, unloading and handling grinder pump basins, pumps and appurtenant equipment.

**Installation**
Contractor shall follow all manufacturer requirements and recommendations for equipment installation.

Provide all excavation, pits, installation and removal of shoring, backfilling of pits, and providing and compacting excavated material or granular backfill materials where necessary. In grass areas grinder station backfill shall be compacted CA-6 aggregate to one (1) foot above the crown of force main. In paved areas, grinder station backfill shall be compacted CA-6 to pavement subgrade.

The Contractor shall be responsible for handling ground water to provide a firm, dry subgrade for the structure, and shall guard against flotation or other damage resulting from general water of flooding.

Installation shall be accomplished so that 1 to 4 inches of access way, below the bottom of the lid, extends above the finished grade line. The finished grade line shall slope away from the unit. The diameter of the hole must be large enough to allow for the concrete anchor. A 6" minimum layer of naturally rounded aggregate, clean and free flowing, with particle size of not less than 1/8 inch or more than 3/4 inch shall be used as bedding material under the unit.

A concrete anti-flotation collar, outside dimensions 4' x 4' x 2", as detailed on the drawings, shall be required and shall be pre-cast to the grinder pump basin or poured in place. The concrete collar shall encompass the horizontal seam in the HDPE basin to prevent separation of the basin from the concrete ballast. The anti-flotation collar shall have a minimum of three (3) lifting eyes embedded in the concrete to allow for removal of the basin from the hole should removal and replacement be necessary. The concrete class B minimum and shall be manually vibrated to ensure there are no voids. Under no circumstances shall the concrete be poured to a level higher than the 4 inches below the inlet pipe elevation. Sections of the basin, not within the anti-flotation collar, shall be protected from concrete splash.

Connections between male pipe thread and HDPE force main materials shall be made with Ford Meter Box Male Iron Pipe Thread by Pack Joint brass pack joint couplings.
The electrical connection between the basin and the control panel shall be run in 1-1/4" PVC electrical conduit with a minimum bury depth of two (2) feet. Conduit shall be continuous from the basin to the control panel. A minimum four (4) foot loop of control cable shall be coiled in the grinder basin. A flexible waterproof section of electrical conduit shall be installed at the connection to the control panel with a settlement loop to allow for potential settlement of the sidewalk adjacent the structure. Do not allow conduit to be in direct contact with the sidewalk concrete, wrap the conduit with a double layer of 15 pound felt paper and secure in place with tape through the proposed sidewalk.

Mount the control panel four (4) feet off above the finished sidewalk grade at the location shown on the plans.

Seal annular space between cord and conduit, at the control panel, with Duct Seal Compound.

Field Quality Control and Startup Services
The manufacturer and/or Contractor shall provide the services of qualified factory-trained technician(s) who shall inspect the placement and wiring of the station, perform manufacturer required and recommended field tests, and instruct the Owner's personnel in the operation and maintenance of the equipment before the station is accepted by the owner.

Upon completion of the installation, the authorized factory technician will perform, at a minimum, the following tests on the station:
1. Make certain the discharge shut-off valve is fully open. This valve must not be closed when the pump is operating.
2. Turn ON the alarm power circuit.
3. Fill the wet well with water to a depth sufficient to verify the high level alarm is operating. Shut off water.
4. Turn ON pump power circuit. Initiate pump operation to verify automatic "on/off" controls are operative. Pump should immediately turn ON. Within one (1) minute alarm light will turn OFF. Within three (3) minutes the pump will turn OFF. Upon completion of the start-up and testing, the authorized factory technician shall submit to the Engineer the manufacturer's start-up authorization form describing the results of the test performed for the Grinder Pump Station. Final acceptance of the system will not occur until the authorization form has been received for the installed pump station.

Protection of persons and property:
Barricade open depressions and holes occurring as part of this Work. Protect structures, utilities, sidewalks, pavements, and other facilities from damage caused by settlement, lateral movement, undermining, washout, and other
hazards created by operations under this Section.

Basis of Payment:
The Schedule of Prices included in the Bid Form shall govern payment for furnishing the labor, material and equipment for the complete installation of SANITARY GRINDER PUMP STATION.

Force Main Complete

Description:
This work shall consist of furnishing and installing HDPE pipe to be used as a sanitary sewer service by the horizontal directional drilling (HDD) method of pipe installation, of the size and pipe material specified to the alignment, grade and locations shown on the Drawings.

CONSTRUCTION REQUIREMENTS

Summary:
Provide sanitary sewer service pipe that is fusible high density polyethylene (HDPE), and install by the trenchless horizontal directional drilling method as shown on the Drawings; as specified in this section of the Special Provisions herein; in accordance with Section 561 of the “Standard Specifications”; in accordance with the latest edition of the “Standard Specifications for Water and Sewer Main Construction in Illinois”; and as needed for a complete installation.

Provide labor, materials, tools, equipment and chemicals necessary to perform all work and testing specified in this Section.

Submittals:
Provide detailed plan of means and methods to maintain clean and safe conditions in the event drilling material escapes to surface or adjacent storm sewers, including list of material and equipment that will be on-site during drilling and pipe insertion.

General Construction Requirements:
Provide all excavation, pits, installation and removal of tight shoring, backfilling of pits, and providing and compacting excavated material or granular backfill materials where necessary. Use an adequate number of workmen who are thoroughly trained and experienced in the necessary crafts, and who are completely familiar with the specified requirements and methods needed for proper performance of the work of this Section.

Directional Drilling System:
Provide hydraulically or pneumatically operated, fluid-assisted remote guided
drilling system capable of installing pipe indicated on the Drawings by trenchless methods. Provide compressors, pumps, apparatus, tools, and all devices certified as suitable by the system manufacturer to install the new pipe without damaging or stressing the pipe. Provide recovery system that will recover bentonite slurries or other drilling fluids without releasing the slurry onto the surrounding ground or water surfaces. Provide certification from pipe manufacturer that the proposed material and strength classification is appropriate for application.

**Pipe:**
Fusible HDPE Pipe: Provide high density polyethylene extruded pipe material complying with ANSI/AWWA C906, Type III, Class C, Category 5, P34 material as per ASTM D3350 with a minimum cell classification PE345464C. The wall thickness shall be determined by the pipemunufacturer and the HDD installing contractor, but shall be a minimum SDR 11 for iron (IPS) pipe sizes.

Provide green or green striped black colored pipe for sanitary sewer main applications, with ends square to the pipe and free of any bevel or chamfer. The joints of the plain end pipe shall be thermal butt-fused in the field using supplier's/manufacturer's written instructions. The joint strength shall be equal to or greater than the pipe strength. Provide equipment and procedures in strict accordance with manufacturer's recommendations, and record fusing information including surface temperature at heating plate, pressure of pipe to heating plate, soak time, fusion pressure, fusion cooling time, allowable beac height and width. Allow pipe cooling and relaxation time per pipe manufacturer's recommendations, with a minimum of 4 hours, prior to connection to proposed pipes or structures. Use only personnel certified by pipe manufacturer as fusing technicians.

Connections between male pipe thread and HDPE force main materials shall be made with Ford Meter Box Male Iron Pipe Thread by Pack Joint brass pack joint couplings. The transition between the force main and clean out structure shall be made with this coupling.

**Installation and Receiving Pits:**
Comply with OSHA requirements and install shoring and fencing as required to protect the public. If pits are required, provide pits as required to install and receive pipes. Provide shoring where required to provide protection to public, private property, public property, and adjacent utilities. Comply with OSHA requirements for type, installation, and removal of shoring. Provide fencing around pits to secure the area and to provide protection to the public. Provide pits of length and width as necessary to install pipes and sized to fit area available for Work.

Provide dewatering as required to allow excavation of pits and installation of pipes. Provide protection to environment from erosion or sedimentation resulting from all pumping operations. Backfill excavation with compacted granular backfill.
materials where required. Remove all construction debris, materials, excess excavated material, and shoring from construction area upon completion of the Work.

Locator Wire:
Provide a continuous un-spliced 7x19SS (T304) PVC coated stainless steel Aircraft Cable sized to withstand pull required, but of minimum 3/16-inch diameter. In the event an unanticipated splice is required, the splice shall be made with a suitable water tight electrical connection device, Dryconn direct bury lug type or engineer approved equivalent.

Duct taping, zip tying or the use other approved methods to attach the tracer wire to the top of the pipe will be strictly enforced during the installation process.

Contractor shall demonstrate to the engineer a check of the completed tracer wire installation for continuity to verify the tracer wire was installed properly. The Contractor will be required to remedy any pipe tracing problems found at no additional cost to the Owner.

Protection of persons and property:
Barricade open depressions and holes occurring as part of this Work. Protect structures, utilities, sidewalks, pavements, and other facilities from damage caused by settlement, lateral movement, undermining, washout, and other hazards created by operations under this Section.

Provide protection to environment, public and private property, and public or private utilities from drilling mud that is utilized as lubricant or hole support during drilling and pipe insertion. Provide vacuum trucks and apparatus of sufficient size and quantity to reclaim all drilling mud discharged during operations.

Pipe Installation:
Install pipe by pulling the pipe into place. Provide winch systems designed to protect structures, provide directional stability, and pull pipe from insertion point to exit point without causing damage to the pipe. Insert plastic pipe in a continuous operation from point to point. Provide silencers, mufflers, or other devices required to reduce noise from compressors and other equipment to meet limits as outlined by Owner's local ordinances.

Provide a continuous un-spliced stainless steel PVC coated Aircraft Cable for the total length of the force main service, plus additional wire/cable to reach the structure as required below.

Grinder Pump Tracer Termination: Bring wire to the surface inside the grinder pump lateral valve assembly valve box. Provide a minimum two (2) foot loop in
the wire.

Clean Out Tracer Wire Termination: Provide a three (3) foot loop in the tracer wire at the cleanout assembly. Wrap the tracer wire around the clean out at the base of the cap and secure the wrap with four (4) zip ties just below finished grade.

Pressure Testing
After the pipe has been laid as specified herein, all newly-laid pipe shall, unless otherwise expressly specified, be subjected to a hydrostatic pressure of 100 psi at the lowest elevation of the pipe section. The duration of each pressure test shall be not less than one hour. Force main testing shall be in accordance with the applicable portions of AWWA Standards C600 and C603, or as otherwise modified herein. This work is included in the price of the proposed force main.

Procedure for Test - The Contractor shall notify the City' project representative at least 48 hours prior to the pressure test.

The force main service shall be slowly filled with water and the specified test pressure shall be applied by means of a pump connected to the pipe in a satisfactory manner. The pump must be disconnected for the duration of the pressure test. The pump pipe connection and all necessary apparatus, including gauges and meters, shall be furnished by the Contractor. Before applying the specified test pressure, all air shall be expelled from the pipe. Any cracked or defective pipes or fittings, discovered in consequence of this pressure test shall be removed and replaced by the Contractor with sound material, and test shall be repeated until satisfactory to the Engineer and the City. The provisions of AWWA C600 and C603, where applicable, shall apply.

Basis of Payment:
The Schedule of Prices included in the Bid Form shall govern payment for furnishing the labor, material and equipment for the complete installation of FORCE MAIN COMPLETE.

Cleanout and Sanitary Main Connection

Description:
This work shall consist of furnishing and installing PVC pipe to be used as a sanitary sewer service clean out and connection to the City's existing sanitary sewer main line, of the size and pipe material specified to the alignment, grade and locations shown on the Drawings.

CONSTRUCTION REQUIREMENTS
Clean out shall be installed per the detail included on the Plans entitled “Fox Ridge Park Concession Building”, latest revision.
Connection to the existing main line shall be done with a rubber saddle with stainless steel band clamps similar to Fernco Flexible Saddle tap TST-6" or approved equal.

Trench backfill shall be required in all locations where the trench is under or within two (2) feet of existing or proposed pavements including, but not limited to, streets, sidewalks and driveways. The material shall conform to the requirements of Section 208 of the Standard Specifications and conform to gradation CA-6. No recycled concrete shall be allowed for use. The material shall be placed in lifts not exceeding eight (8) inches and shall be mechanically compacted to not less than ninety-five percent (95%) of the standard laboratory density. The Contractor shall provide written verification of density testing prior to final acceptance of the water main.

For areas of trench backfill outside of the standard trench limits, as defined by the Standard Specifications for Sewer and Water Construction in Illinois, will be measured and paid for at the discretion of the Engineer.

This work shall be paid for at the contract Lump Sum price for CLEANOUT AND SANITARY MAIN CONNECTION, in place, and shall include all labor, material and equipment necessary to perform the work.

**Disturbed Area Restoration**

This work shall include the restoration of all turf areas disturbed by the work. The Contractor shall be limited in payment to an area as indicated on the approved engineering plan set for this project. Any damage beyond that limit will be the sole responsibility of the Contractor to restore in accordance with the terms of this Specification.

Any condition deemed unsafe by the City Engineer must be remedied immediately. At the end of each day, all disturbed areas must be, at minimum, leveled off with the backhoe bucket to the satisfaction of the City Engineer.

The restoration shall be performed in accordance with Section 200 of the Standard Specifications for Furnish and Placing Topsoil, Seeding and Placement of Excelsior Blanket.

This work shall be included in the contract Lump Sum price for CLEANOUT AND SANITARY MAIN CONNECTION and CONCESSION BUILDING COMPLETE, and shall include all labor, material and equipment needed to complete this work.

**Combination Curb and Gutter & Removal and Replacement**

This work shall conform to Section 606 of the Standard Specifications.
This work shall consist of installation of new curb and gutter at the locations and grades shown on the plans. The curb shall be M 6-12 type. All preparation of the base for the curb shall be included in this pay item.

This work shall include removing and disposing of the existing curb and gutter as indicated on the plans or as directed by the City Engineer and replacing with a new curb and gutter of the same type and length as indicated on the approved plans or as directed by the City Engineer. All new curb and gutter shall be installed at the same location and to the same grade as the existing curb as shown on the approved plans or as directed by the City Engineer.

This work shall be included in the contract Lump Sum price for CLEANOUT AND SANITARY MAIN CONNECTION, and shall include all labor, material and equipment needed to complete this work.

**Pavement Removal (Full Depth)**

This work shall include all labor, materials and equipment necessary to remove and dispose of any existing pavement as shown in the plans or directed by the Engineer. The Contractor will be required to saw-cut a vertical joint in the existing pavement to provide a clean joint for this work. Should the remaining existing pavement become damaged at any point during the construction, the Contractor will make a new saw-cut at no additional cost.

This work is anticipated to include all driveway pavements and roadway pavements needing to be removed for the installation of the new water main, storm sewer adjustments and removal, as shown on the plans or as directed by the City Engineer.

Compensation shall be limited to the amount of area shown on the plans unless additional areas are otherwise approved by the Engineer. The Contractor should at his sole expense restore any and all additional areas damaged by his construction operations, not shown on the Contract Drawings and not approved by the Engineer.

This work shall be included in the contract Lump Sum price for CLEANOUT AND SANITARY MAIN CONNECTION, and shall include all labor, material and equipment needed to complete this work. Saw cutting of the existing pavement shall be considered included in the pay item cost referenced above.

**Hot Mix Asphalt Road Repair**

This work shall be performed in accordance with Section 403 of the *Standard Specifications.*
Hot-Mix Asphalt Binder Course, IL-19.0, N50, 4" (CLASS D PATCH)
AC Type: PG64-22 / 58-22
Percent Air Voids: 4% @ 50Gyr.
Max RAP %: 25
Unit Weight: 112 Lbs/SqYd/Inch

Mix design to be submitted for review and approval.

This work shall be included in the contract Lump Sum price for CLEANOUT AND SANITARY MAIN CONNECTION, and shall include all labor, material and equipment needed to complete this work.
Special City Council Meeting Minutes
September 4, 2018

Call to Order
Mayor Jett called the meeting to order at 6:00 p.m.

Roll Call
Deputy Clerk Meadows called the roll. Members present: Alderwoman Condon, Alderman Mihevc, Alderman Curry, Alderman Schaefer, Alderman Glab, Alderman Santi and Mayor Jett. Alderman Devine arrived at 6:50 p.m. Others present: Attorney McArdle, Administrator Morefield, Police Chief Birk, Project Engineer Strange, Director of Community Development Polerecky, Finance Director Lynch, Park and Recreation Director Hobson and Director of Economic Development Martin.

Pledge of Allegiance
Mayor Jett proceeded to lead those present in the Pledge of Allegiance.

Public Comment
Mayor Jett acknowledge that resident Ms. Barb Schuer was in attendance. However, she offered no comments at this time.

Executive Session
Attorney McArdle reported at this time he recommends Council defer entering into executive session until the Council Members have an opportunity to engage in a conversation regarding the continued negotiations with respect to the Meyer Material annexation agreement amendments. Both Meyer and Lafarge representatives were present to discuss the proposed amendments. The Council Members concurred with Attorney McArdle’s recommendation to postpone the executive session to allow for continuation of the negotiation conversation.

Meyer representative Mr. Randi Wille presented a series of pictures and a storyboard depicting various site locations regarding the placement of heavy equipment, berms, mining sites, stock piles and the processing center along with a timeline in which each of these operational components will be in the area as depicted on the map. He noted that at a previous Council meeting in which Meyer was in attendance that they agreed that the mining operations would continue for eight years. The dry bank mining operations would be completed by December 31, 2024 and all wet (below water) operations would be completed by December 31, 2026. Mr. Wille spoke in great detail while outlining each remaining year of operations.

Alderman Curry inquired about the location of the secondary crushers. Mr. Wille noted that the secondary crushers will be mobile and will be moved to different areas as needed. The primary crusher is located by the processing plant which is also the location where the trucks exit the site.
The primary crusher would remain in this location for not more than five years and by 2024 the dry banking operations will be completed and the coarse aggregate materials collected. In 2026 the reclamation process will then be completed including the slopes and green fields. Mr. Wille noted that the plans that he is discussing are concept plans depicting the land’s progression in two year intervals.

Mr. Wille continue on to discuss the anticipated stock piling of materials in the year 2024-2027. The stock piled materials could also serve as a barrier. In addition, if approved the current berms could be left in place and continue to serve as noise and dust buffers benefitting the adjacent property owners. Mr. Wille discussed the 2027-2030 footprint in which the conveyer belt running under Route 120 would be used to transport material to and from the plant site.

Attorney McArdle commented on an amended memo received today from Mr. Mark Miller. He questioned what the revisions were. Mr. Wille believed the revisions were in respect to the fees paid over time.

Attorney McArdle reported the main focus of this meeting was to ensure Council approved the points noted in the outline. Mr. Wille reported that his goal is to confirm the Council Members support allowing Meyer to continue the dry bank mining through 2024 and completing the wet mining and restoration simultaneously until December 31, 2026.

Alderman Curry commented on the water feature. Mr. Wille reported that the size of the water feature will be determined by the amount of resources underground. Their geologists conducts soil borings and estimates the amount of resources available in a defined area. However, there is no guarantee of the amount until the wet mining operation is in process. Alderman Curry recalled an earlier conversation in which they collectively discussed the blending of the finest dry materials and when the crushers were no longer needed. Mr. Wille replied yes if 90% of the materials are fine the crushers would be eliminated or moved further north by 2027-2030 and the sand would be transported by the conveyers. Attorney McArdle noted that the issue at hand is the annual reports noting the locations of the crushers. Mr. Wille reported that the primary crusher will be gone in 2024.

The Council Members along with Mr. Wille discussed at length the annexation agreement amendment regarding noise. Noted in the outline is the requirement that Meyer supply the City with a testing device (Dosimeter) which the City will own. This allows the City to investigate noise complaints in a timely fashion. Alderwoman Condon asked if the State’s or City’s noise restrictions were more stringent. Attorney McArdle replied the State’s noise restrictions are currently more restrictive. However, in the near future he will be recommending a code amendment to adopt the State’s noise standards by reference. Alderman Schaefer asked what the difference was between a violation and a noise complaint.
Attorney McArdle reported that he has not drafted the penalty clauses as of yet. However, a complaint would have to be verified in order to be deemed a violation.

The Council Members along with Mr. Wille discussed the dust standards and the monitoring equipment. As noted in the outline Meyer will supply the City with Dusttrac to investigate and ascertain dust levels. A lengthy discussion ensued with respect to visible dust. Alderman Curry noted that the personnel conducting the testing should be trained. There was some discussion regarding the cost of Staff training. Attorney McArdle suggested that Council and Staff discuss this matter with Consultant Thunder.

There was some discussion with respect to the retainage of personnel as described in the outline. Attorney McArdle reported that the original language in the agreement stated that the oversight was for groundwater, dust, noise, over and above reclamation as this ongoing. Council Members agreed that reclamation should be included in the cost of the retainage of personnel including HR Green, Mr. Thunder and Baxter & Woodman as long as it did not include any costs incurred with any violations, in that case Meyer should pay those costs.

There was a lengthy discussion regarding updated site plans. Mr. Wille states at this time he does not have updated plans. However, they do have an updated topo. Mr. Wille noted that some of the reclamation has been completed. Alderman Curry stated that the whole plan has to be written to include the existing conditions and the reclamation process moving forward. Alderman Curry went on to discuss the fact that he recognized the State is the governing authority with regards to the mining operations. However, there are elements of the plan that are not required by the State but by the City, so the plans should be approved by the City as well as the State. Mr. Wille agreed. Mr. Wille stated they could have the reclamation plan completed in sixty to ninety days. Alderman Curry suggested allowing them sixty days to draft the plan with a thirty day review period and then a final plan within a hundred and twenty days. Attorney McArdle recommends including a due date and if the plans are not submitted by that date a penalty will be imposed.

Attorney McArdle along with Council Members discussed the groundwater/stormwater testing and reporting requirements. Attorney McArdle stated that the well sites utilized for testing purposes must be identified on a map along with the frequency of the testing. Written test results must be provided to the City. Mr. Wille agreed and noted that they have and continue to monitor groundwater/stormwater as required. Ms. Schuer a resident, volunteered the use of her private well. Mayor Jett reported that Ms. Schuer is the owner of a farm just west of the mining site. Mr. Wille reported that they currently have four wells on the north side of the property that are periodically tested. However, at this time there are no wells on the south side of the property. The Council Members recommended that Staff review the well sites and the conveyance of the stormwater.
Attorney McArdle discussed the requirements of a Letter of Credit for the areas that will be reclaimed now and in the future. Mr. Wille confirmed that Meyer Material will be providing the City with separate Letters of Credit for all the areas that will be reclaimed.

A lengthy discussion ensued with respect to loose gravel debris and truck tarping requirements. Mr. Wille reported that they have signs posted reminding truck drivers to clean their pans. In addition, as the truck drivers exit the pit area and turn in their tickets the attendant inspects the trucks to the best of their ability. However, they cannot enforce tarping. Chief Birk commented on the fact that there is no State law that requires trucks to be tarped. Mr. Wille discussed the method in which trucks are loaded and weighed. Each axle has a weight limit and as each truck is weighed the drivers can identify if the truck is properly loaded.

Attorney McArdle along with the Council Members discussed annual reporting requirements. The City is requiring annual written reports which will include maps/diagrams. The reports shall also include verification of the annual tonnage mined, inspection reports, noise and dust readings and well water testing results. In addition, Meyer will provide the City with an annual update with respect to the reclamation process and the intended plan for the next twelve months.

Attorney McArdle along with the Council Members discussed the fee terms. The total amount due to City is $1,600,000, which includes an additional $50,000 for retained consultants’ fees excluding Attorney fees. The Council Members agreed with the terms of the fee schedule.

Attorney McArdle along with the Council Members discussed the penalties. Attorney McArdle asked if they would consider mirroring the City’s penalties to the penalties that were applied in the Village of Cary’s agreement. Mr. Wille stated that was a different situation. The Village of Cary’s mining was on Cary’s land so the mining construction produced a deliverable finished product. However, the mining in the City of McHenry is on land owned by Meyer. In addition, Mr. Wille believed in the draft amended agreement there is enough incentives to force Meyer to complete the mining and reclamation process in the time period referenced in the agreement.

Alderman Condon expressed concern with the proposed fine of $40,000 per month for each month that reclamation was not completed on time. In addition, she expressed concern with the suggested $500 fine per each operational violation. In her opinion both fines were not set at a high enough amount to compel compliance. Alderman Curry agreed. However, in his opinion the more important trigger date was the date of December 31, 2024 in which the dry banking mining is required to be completed. Alderman Schaefer agreed. Attorney McArdle stated that he would use Cary’s penalty language as a starting point and work with Staff to determine a penalty amount for each operational violation.
Attorney McArdle along with the Council Members discussed the complaint process. Attorney McArdle reported that there should be a written complaint procedure and a process in which the complaint is closed. He will work with Staff to develop a complaint process.

Executive Session
Motion to enter into Executive Session to discuss probable or imminent litigation as permitted by 5 ILCS 120/2 (c) (11).
Mayor Jett stated at this time he would entertain a motion to enter into executive session to discuss probable or imminent litigation as permitted by 5 ILCS 120/2 (C) (11) and the purchase or lease of real property by the City as permitted by 5 ILCS 120/2 (c)(5) with action to follow. Roll call: Vote: 7-ayes: Alderman Glab, Alderwoman Condon, Alderman Devine, Alderman Mihevc, Alderman Curry, Alderman Schaefer and Alderman Santi. 0-nays, 0-abstained. Motion carried.

The Council Members along with Attorney McArdle, Administrator Morefield, Chief Birk, Project Engineer Strange, Director Polerecky, Finance Director Lynch, Director Hobson, Director Martin and Deputy Clerk Meadows entered into executive session 7:45 p.m.

Reconvene/Roll Call
The Council Members along with Attorney McArdle, Administrator Morefield, Chief Birk, Project Engineer Strange, Director Polerecky, Finance Director Lynch, Director Hobson, Director Martin and Deputy Clerk Meadows returned to the public meeting at 7:56. A Motion was made by Alderwoman Condon and seconded by Alderman Curry to reopen the public meeting. Roll call: Vote: 7-ayes: Alderwoman Condon, Alderman Curry, Alderman Santi, Alderman Glab, Alderman Schaefer, Alderman Mihevc and Alderman Devine. 0-nays, 0-abstained. Motion carried.

Individual Action Items Agenda
Motion to Authorize the Mayor to sign a Seconded Amended and Restated Standstill a/k/a Tolling Agreement with Meyer Material Company.
Attorney McArdle reported that at this time the Council Members and Meyer Material had come to agreement on a majority of the annexation amendments and he is comfortable recommending extending the amended and restated Standstill a/k/a Tolling Agreement until November 13, 2018. A Motion was made by Alderman Curry and seconded by Alderman Santi to authorize the Mayor to sign a Second Amended and Restated Standstill a/k/a Tolling Agreement with Meyer Material Company. Roll call: Vote: 7-ayes: Alderman Curry, Alderman Santi, Alderman Glab, Alderman Schaefer, Alderman Mihevc, Alderman Devine and Alderwoman Condon. 0-nays, 0-abstained. Motion carried.
Motion to Approve an Ordinance Petitioning the City of McHenry Planning and Zoning Commission for Amendments to the City’s Comprehensive Plan and Amendments to the City’s Comprehensive Plan and Amendments to the City’s Zoning Text and Map. This item was removed from the agenda.

Adjournment
There being no further public business to discuss, a Motion was made by Alderman Schaefer and seconded by Alderman Santi to adjourn from the public meeting at 8:00 p.m. Roll call: Vote: 7-ayes: Alderman Schaefer, Alderman Santi, Alderman Curry, Alderman Glab, Alderman Mihevc, Alderman Devine and Alderwoman Condon. 0-nays, 0-abstained. Motion carried.

Respectfully submitted,

Debra Meadows

__________________________  ____________________________
Mayor                        Deputy City Clerk
City Council Meeting
October 1, 2018

Call to Order
Mayor Wayne Jett called the regular meeting scheduled for October 1, 2018 of the McHenry City Council to order at 7:00 pm in the McHenry City Council Chambers, 333 S. Green Street, McHenry, IL.

Roll Call

Proclamation: recognizing Rotary International’s Polio Eradication Efforts and Identifying October 24, 2018 as World Polio Day in the City of McHenry.
Mayor Jett proceeded to read the proclamation proclaiming October 24, 2018 as World Polio Day in the City of McHenry and recognized the International Rotary and the Sunrise Rotary for their humanitarian service and efforts to end polio worldwide along with addressing critical issues as poverty, health, hunger, illiteracy and the environment in this community and abroad. Mayor Jett along the Council Members and those in attendance thanked the organizations for their efforts.

Pledge of Allegiance
Mayor Jett proceeded to lead those present in the Pledge of Allegiance.

Public Comment
Mayor Jett asked if anyone in attendance wished to comment on any items listed on the consent agenda. Those in attendance offered no comments.

Consent Agenda
Motion to Approve the Following Consent Agenda Items:

A. Motion to amend the action item approved on September 10, 2018 relating to the donation of funds for Walsh Park as follows: Motion to accept a donation from Kit Carstens in the amount of $70,000; waive competitive bidding and accept a proposal from Shore Werks in the amount of $28,600 with a 7% contingency; and, amend the Fiscal Year 2018/2019 Budget, increasing Fund 280 (Developer Donations) by $45,000, to undertake improvements to Walsh Park.
B. September 10, 2018 Council meeting minutes;
C. September 24, 2018 Council meeting minutes;
D. Payment of Bills in the amount of $320,665.02

Mayor Jett asked if any of the Council Members wished to remove any items listed on the consent agenda for separate consideration. The Council Members offered no comments. There being no further discussion on the motion, a Motion was made by Alderman Curry and seconded by Alderman Santi to approve the consent agenda items A-D as presented. Mayor Jett asked if there was any discussion on the motion. Alderman Curry asked if consent agenda item 6.A. amended the previous City Council’s actions taken at the meeting held on September 24th. Attorney McArdele replied yes. There being no further discussion on the motion Deputy Clerk Meadows called the roll. Roll call: Vote: 7-ayes: Alderman Curry, Alderman Mihevc, Alderman Schaefer, Alderman Glab, Alderman Santi, Alderman Devine and Alderwoman Condon. 0-nays, 0-abstained. Motion carried.

Discussion Only Items
Discussion regarding Article III, Raffles, Section 12-64, Prizes
Chief Birk reported he along with Attorney McArdele and Administrator Morefield had met today with two VFW representatives to discuss concerns with the Queen of Hearts raffle ticket sales in which the raffle prize reached over 6 million dollars. The VFW representatives concurred with the concerns brought forth with regards to traffic, parking, building capacity and pedestrian safety.

Alderman Schaefer stated that the Northwest Herald recently published an article reporting that the City of McHenry’s American Legion would be hosting a similar raffle. Chief Birk noted that their raffle is different as they will be selling raffle tickets only one day a week with limited hours.

Alderwoman Condon noted that the VFW’s Queen of Hearts raffle ticket sales did place a hardship on residents that were trying to commute around town. Alderwoman Condon commented on the fact that she was uncertain what the magic prize limit was. However, she would like for the Council Members to have an opportunity to review the raffle ticket sales plans moving forward. Administrator Morefield reported that the VFW’s Board will be meeting soon to discuss the concerns and Staff will work directly with their Board to draft a plan for Council consideration.

Alderman Glab reported that he has always supported the VFW. However, in his opinion the recent surge in the VFW’s attendance numbers diminished the services they normally provide to the community. He went on to commend the Police Department in their efforts to direct traffic and control the crowds.
Alderman Condon noted for clarification that the VFW did pay for all the police services they received over the course of the Queen of Hearts Raffle ticket sales. Chief Birk confirmed that Alderwoman Condon’s statement was accurate.

Staff Reports
The Staff Members offered no reports at this time.

Mayor and City Council Comments
Neither the Mayor nor the Council Members provided any reports.

Executive Session
Motion to enter into Executive Session to discuss probable or imminent litigation as permitted by 5 ILCS 120/2 (c) (11) and Purchase of Lease of Real Property as permitted by 5 ILCS 120 (C)(5). Mayor Jett stated at this time he would entertain a motion to enter into executive session to discuss probable or imminent litigation as permitted by 5 ILCS 120/2 (C) (11) and Purchase of Lease of Real Property as permitted by 5 ILCS 120 (C) (5) with no action to follow.

A Motion was made by Alderman Schaefer and seconded by Alderman Santi to enter into executive session to discuss probable or imminent litigation as permitted by 5 ILCS 120/2 (c) (11) and Purchase of Lease of Real Property as permitted by 5 ILCS 120 (C) (5) with no action to follow. Roll call: Vote: 7-ayes: Alderman Schaefer, Alderman Santi, Alderman Curry, Alderman Glab, Alderman Mihevc, Alderman Devine and Alderwoman Condon. 0-nays, 0-abstained. Motion carried.

The Council Members along with Administrator Morefield, Attorney McArdle, Director Martin, Director Hobson and Deputy Clerk Meadows entered into executive session 7:30 p.m.

Reconvene/Roll Call
The Council Members along with Administrator Morefield, Attorney McArdle, Director Martin, Director Hobson and Deputy Clerk Meadows returned to the public meeting at 8:20. A Motion was made by Alderman Santi and seconded by Alderman Curry to reopen the public meeting. Roll call: Vote: 7-ayes: Alderman Schaefer, Alderman Santi, Alderman Glab, Alderman Curry, Alderman Mihevc, Alderman Devine and Alderwoman Condon. 0-nays, 0-abstained. Motion carried.

Alderwoman Condon discussed her belief that City Council should consider implementing elected officials term limits. Attorney McArdle was unclear of the process in which to modify term limits he will research the State Statutes and report back.
Adjournment

There being no further public business to discuss, a Motion was made by Alderman Santi and seconded by Alderman Devine to adjourn from the public meeting at 8:25 p.m. Roll call: Vote: 7-ayes: Alderwoman Condon, Alderman Devine, Alderman Mihevc, Alderman Curry, Alderman Schaefer, Alderman Glab and Alderman Santi. 0-nays, 0-abstained. Motion carried.

Respectfully submitted,

Debra Meadows

Mayor

____________________

Deputy Clerk

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Grand Total: 692,130.49
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**Packet: APPKT01297 - 10-15-18 RECT INVOICE**

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**Vendor RECORE RADIATOR INC Total:** 160.00
**Vendor ROCK ‘N’ KIDS INC Total:** 714.00
**Vendor SAFE SITTER, INC Total:** 253.25
**Vendor STANS LPS MIDWEST Total:** 266.69
**Vendor THELEN MATERIALS LLC Total:** 104.69
**Vendor TONY’S FAMILY TAILOR SHOP Total:** 46.50
**Vendor TOPS IN DOG TRAINING CORP Total:** 300.00
**Vendor VEDOLIA WATER TECHNOLOGIES, INC Total:** 2,797.05
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**Grand Total:** 107,116.05
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FUND 100   175031.32
FUND 200   238.61
FUND 260   11475.00
FUND 270   31538.23
FUND 400   2924.86
FUND 440   36686.09
FUND 510   269132.22
FUND 600   90.00
FUND 620   8703.62
FUND 760   460.00

536279.95
REGULAR AGENDA SUPPLEMENT

TO: Mayor and City Council
FOR: October 15, 2018 Regular City Council Meeting
FROM: Douglas Martin, Director of Economic Development
RE: Ordinance approving a Conditional Use Permit for an Assembly Use, including a seven-night per week use as a PADS (Public Action to Deliver Shelter) site, at 1809 South Illinois Route 31

ATT:

1. Location Map
2. Unapproved Planning and Zoning Commission Minutes dated September 19, 2018
3. Ordinance approving a Conditional Use Permit for an Assembly Use, including a seven-night/week use as a PADS (Public Action to Deliver Shelter) site on the Subject Property
4. Application Packet

AGENDA ITEM SUMMARY:
The Chapel is proposing to partner with Pioneer Center to relocate the PADS facility from Woodstock to McHenry. In order to do this they must expand and obtain a new conditional use permit for an assembly use to allow a seven-night per week shelter at 1809 South Illinois Route 31. Their current conditional use permit only permits their facility to be used as a PADS site for one evening/week.

BACKGROUND:
The Chapel appeared before the Planning and Zoning Commission on July 25, 2013 to obtain a conditional use permit to allow an assembly use to construct a new church building at 414 S Crystal Lake Road and again on June 17, 2015 to obtain a conditional use permit to allow an assembly use for a churchy at 1809 South Illinois Route 31 and use of the facility as a Public Action to Deliver Shelter (PADS) facility for one night. The City Council authorized execution of an annexation agreement, approved an ordinance annexing the property, and granted a conditional use permit to allow an assembly use.

The Chapel subsequently relocated solely their offices to 1809 South Illinois Route 31 and have decided to pursue the renovation of the existing building and eventually hold services at 1809
South Illinois Route 31 site. Currently, the Chapel is utilizing the building, formerly occupied by Tonerhead, for administrative space as well as small group functions. If approved, The Chapel intends to continue utilize the building in the aforementioned manner and, when they raise enough funds to complete interior and exterior alterations, connect to City sewer and water, and install sprinklers they will have a permanent facility and will then discontinue holding services at McHenry West High School.

In accordance with the building code, as long as no more than 50 people occupy the building at 1809 South Illinois Route 31 at any one time, The Chapel can continue to utilize it for administrative space and for holding small group functions. City and McHenry Township Fire Protection District staff have analyzed the building and are comfortable with this plan moving forward. Due to time constraints and obligations in their current annexation agreement at 1809 South Illinois Route 31, The Chapel needs to amend their annexation agreement before the City Council. This was considered earlier in this meeting.

Additionally, the building is serviced by well and septic. In order to accommodate the PADS facility, The Chapel can utilize the existing septic system but must connect to City water and install a sprinkler system, which they are aware of and plan to do.

Assembly uses include religious institutions in addition to any other type of larger gathering place and related uses - such as a PADS facility. Eventually, The Chapel is proposing to renovate a larger portion of the existing building and construct a church facility. The proposed shelter will be approximately 6,000 square feet and have a total capacity of 60-65 people.

**ANALYSIS:**
The Chapel and Pioneer Center are great local partners. There will be staff on-site at all times including case managers, supervisors, program technicians and volunteers. Both The Chapel and Pioneer Center have been great partners with the City and have been extremely cooperative in discussing this effort.

The proposal is certainly a community project and is an identified need in McHenry County. The proposed facility would replace the current PADS facility in Woodstock, which would be repurposed if the proposed project is approved. Currently, an average of approximately 34 homeless individuals use the Woodstock facility. There are also a number of church sites throughout the county that act as individual one-night/week PADS remote sites and serve on average 40-60 people total. These sites operate from October 1 through the end of April. After April and before October people reliant on the PADS system are displaced and do whatever they can to survive, living in the woods, camping out in tents, etc.
The proposed Chapel site would serve as a permanent seven-night per week facility and provide stability for numerous individuals and an opportunity for people to get back on their feet. If approved it is the goal of The Chapel and Pioneer Center to open the shelter prior to October 1, 2019 and preferably sooner.

It is the intent of The Chapel to connect to City water and install a sprinkler system at such time the building renovations are undertaken for the shelter. When these renovations are done all applicable City ordinances will be required to be met.

The Chapel is less than one-quarter mile from an affordable healthcare clinic, an immediate care clinic, a major hospital, and hundreds of companies. PACE services a number of locations along Illinois Route 31 and there will be additional specific transportation options available to the residents at the shelter. The shelter capacity will only be about 65 people, be fully-staffed and take approximately 6,000 square-feet of space. Staff believes that the use meets the requirements in Table 31 of the zoning ordinance.

The Planning and Zoning Commission considered the request on September 19, 2018 (unapproved minutes provided) and unanimously (7-0) approved a recommendation to the City Council a Conditional Use Permit to allow an assembly use, including a seven-night/week use as a PADS (Public Action to Deliver Shelter) site, at 1809 South Illinois Route 31 with the following conditions:

- The previously negotiated annexation agreement be renegotiated and presented to the City Council contemporaneously with this zoning request; and,
- The building shall not be utilized as an overnight PADS site until a final certificate of occupancy is approved, following completed renovations to the building, including connection to the City’s potable water system, installation of a sprinkler system and abandonment of the existing well on the subject property.

**RECOMMENDATION:**

Therefore, if Council concurs with the recommendation of the Planning and Zoning Commission, a motion should be made to adopt an Ordinance approving a Conditional Use Permit for an Assembly Use, including a seven-night per week use as a PADS site, at 1809 South Illinois Route 31, with the identified conditions.
Location Maps: 1809 South Illinois Route 31
City of McHenry

Unapproved Planning and Zoning Commission Minutes

September 19, 2018

H.B. Brewer (The Chapel)
File No. Z-938
1809 S Illinois Route 31

Conditional Use Permit for an Assembly Use Including a Seven Night per Week Use as a PADS (Public Action to Deliver Shelter) site

Chairman Strach called the Public Hearing to order at 7:56 p.m. regarding File No. Z-938 an application for a variance to allow a Conditional Use Permit for an Assembly Use Including a Seven Night per Week Use as a PADS (Public Action to Deliver Shelter) site located at 1809 South Illinois Route 31.

Chairman Strach stated Notice of the Public Hearing was published in the Northwest Herald on August 31, 2018. Notices were mailed to all abutting property owners of record as required by ordinance. The subject property was posted. A Certificate of Publication and Affidavit of Compliance with notice requirements are on file in the City Clerk’s Office.

In attendance were Ryan Chevrier, 960 S. Roxbury Court, Round Lake, IL; H. B. Brewer, 1235 Zange Drive, Algonquin, IL; and Ben Cornick, 5112 Cambridge Drive, McHenry IL, who were sworn in by Chairman Strach. Mr. Brewer stated they are here to bring a request, in conjunction with Pioneer Center, for an assembly use with PADS facility seven nights per week.

Director of Economic Development Martin stated The Chapel currently holds worship services at McHenry West High School campus and appeared before the Planning and Zoning Commission on July 25, 2013 to obtain a conditional use permit to allow an assembly use to construct a new church building at 414 South Crystal Lake Road and on June 17, 2015 to obtain a conditional use permit to allow an assembly use for a church at 1809 South Illinois Route 31 and use of the facility as a public action to deliver shelter (PADS) facility for one night. They want to partner with Pioneer Center to do a PADS facility for seven nights/week. They essentially are expanding their assembly use permit which requires obtaining another conditional use permit.
The Chapel is proposing a partial interior remodel, approximately 6,000 square feet, at 1809 South Illinois Route 31 and plan to partner with Pioneer Center for a PADS facility and relocate the PADS facility from Woodstock to McHenry. However in order to do that they must expand and obtain a new conditional use permit for an assembly use to have a seven-night/week shelter at 1809 South Illinois Route 31. Additionally, in order to accommodate the PADS facility, The Chapel can utilize the existing septic system but must connect to City water and install a sprinkler system, of which they are aware and plan to do. The PADS facility would have a total capacity of 60-65 people. Eventually, The Chapel is proposing to renovate a larger portion of the existing building and construct a church facility.

Director of Economic Development Martin stated it has been a pleasure to work with the Chapel and Pioneer Center/PADS which is a great partnership. He opined what a great opportunity this is, bringing a permanent - seven night per week shelter to our community. It would give continuity of services and stability for the people of the community. There will be staff on-site at all times including case managers, supervisors, program technicians and volunteers. Both The Chapel and Pioneer Center have been great partners, have been extremely cooperative and have worked very well with the City.

Director of Economic Development Martin opined this is a great location for the facility. He stated The Chapel is less than one-quarter mile from an affordable healthcare clinic, an immediate care clinic and a major hospital and hundreds of companies. Pace bus runs service up and down Illinois Route 31 however there will be transportation options available to the residents at the shelter. Pioneer Center is also located less than ¼ mile from the shelter and it’s in between McHenry and Crystal Lake.

Staff and McHenry Township Fire Protection District have walked-through the building and are comfortable with this plan moving forward. Due to some time constraints and obligations in their current annexation agreement at 1809 South Illinois Route 31, The Chapel will need to amend their annexation agreement before the City Council. If approved it’s the goal of The Chapel and Pioneer Center to open the shelter prior to October 1, 2019.

Director of Economic Development Martin stated staff is recommending approval of a Conditional Use Permit to allow an assembly use, including a seven-night/week use as a PADS (Public Action to Deliver Shelter) site, at 1809 South Illinois Route 31 with the following conditions:
The previously negotiated annexation agreement be renegotiated and presented to the City Council contemporaneously with this zoning request;

- The building shall not be utilized as an overnight PADS site until a final certificate of occupancy is approved, following complete renovations to the building, by the City including connection to the City’s potable water system, installation of a sprinkler system and abandonment of the existing well on the subject property.

Staff finds the requirements of Table 31 of the zoning ordinance have been met.

Chairman Starch asked for clarification on the second item on the recommendation, regarding City water hook up. Director of Economic Development Martin stated The Chapel must have a sprinkler system and are also required to do a build out within the building.

Chairman Strach invited questions and/or comments from the Commission.

Commissioner Doherty inquired if the septic is acceptable for 60-65 people and if The Chapel is only requesting water for a sprinkler system. Director of Economic Development Martin stated that they have to connect to city water and install sprinklers. Commissioner Doherty inquired if the clients are housed all day. Mr. Brewer stated that some people are there all day and directed the inquiry to Pioneer Center. Commissioner Doherty expressed concern for vehicle and foot traffic down Illinois Route 31 and inquired about lighting for pedestrians. Mr. Brewer stated that to his knowledge there were not that many people walking to the building but stated that part of the annexation agreement is the expectation of sidewalks and lighting on Illinois Route 31. He opined that a traffic light at the intersection would help. Chairman Strach rephrased the inquiry to - would clients be walking to the facility. Chairman Strach swore in Mr. Sam Tenuto, co-CEO of Pioneer Center, 11304 Caldwell, Huntley. Mr. Tenuto stated that Pioneer Center has shuttle service and that all services from the Kishwaukee facility will transfer including transportation and because of the variety of needs, a set route throughout the community is in place, which is utilized by the vast majority of clients.

Commissioner Miller stated for transparency that she serves on the McHenry County Housing Authority, she opined this is an awesome service with the right partners. She thanked The Chapel for having all the services in one place. She stated that she spoke with Sue Rose, Old Fire House Assistance Center - who was in attendance, and that Ms. Rose stated all of those services were also transferring over to The Chapel PADS site.
Commissioner Walsh stated for transparency that he attends The Chapel. He inquired about security of vehicles of clients that would drive to the facility. Mr. Tenuto stated that currently Kishwaukee has four to six vehicles throughout the day; many families drop off clients, and overnight staff acts as security for the entire campus, similarly there would be staff to monitor at The Chapel. Mr. Tenuto stated there are no known security incidences at the Kishwaukee facility to his knowledge.

Chairman Strach opened the floor to questions and comments from the audience.

Sam Tenuto impressed upon the commission that the people they serve are important. He stated that he has seen homeless individuals and families rise above their situation and have a positive impact on community and mostly strive to give back. He expressed that Pioneer Center has high importance to care for this group and also in operating the homeless shelter. Mr. Tenuto stated he is proud of The Chapel and that Pioneer Center has always done it's best to collaborate with many community services and communicated the importance of wrapping the community around people they want to protect. He indicated Pioneer Center has tremendous resources right across the street from The Chapel and that they are thankful for all the partners who have stepped up. He reported that the community need has been discussed at all levels of government and opined the ability to have one sight would best meet the needs of the community. Mr. Tenuto stated that it's difficult to have people rotate from site to site. He stated that besides the passion, care and excitement for Pastor Ben and his team, the work is important to Pioneer Center. Mr. Tenuto thanked the City of McHenry for stepping up with this project.

Chairman Strach closed the public comment portion of the hearing 8:12 p.m.

Commissioner Doherty inquired if McHenry would be the only location once the project kicks off. Mr. Tenuto responded affirmatively.

Commissioner Miller inquired about the October 2019 deadline. Mr. Tenuto stated that the October 1, 2019 target date is because of church and volunteer schedules but they could be ready sooner.

Motion by Miller, seconded by Walsh, to recommend to the City Council with regard to File No. Z-938 approval of a Conditional Use Permit to allow an assembly use, including a seven-
night/week use as a PADS (Public Action to Deliver Shelter) site, at 1809 South Illinois Route 31 with the following conditions:

- The previously negotiated annexation agreement be renegotiated and presented to the City Council contemporaneously with this zoning request;
- The building shall not be utilized as an overnight PADS site until a final certificate of occupancy is approved, following complete renovations to the building, by the City including connection to the City’s potable water system, installation of a sprinkler system and abandonment of the existing well on the subject property.

be granted, and Staff finds the requirements of Table 31 of the Zoning Ordinance have been met.

Voting Aye: Doherty, Gurda, Miller, Sobotta, Strach, Thacker and Walsh.

Voting Nay: None.

Not Voting: None.

Abstaining: None.

Absent: None.

Motion carried: 7-0.

Chairman Strach closed the Public Hearing regarding File No. Z-938 at 8:17 p.m.
ORDINANCE NO 18-

AN ORDINANCE GRANTING A CONDITIONAL USE PERMIT TO ALLOW AN ASSEMBLY USE FOR A
FOR THE PROPERTY LOCATED AT 1809 S ILLINOIS ROUTE 31 IN THE CITY OF MCHENRY,
MCHENRY COUNTY, ILLINOIS

WHEREAS, the City of McHenry, McHenry County, Illinois, is a home rule municipality as
contemplated under Article VII, Section 6, of the Constitution of the State of Illinois, and the
passage of this Ordinance constitutes an exercise of the City’s home rule powers and functions
as granted in the Constitution of the State of Illinois; and

WHEREAS, a petition has been filed with the City by HB Brewer, 1235 Zange Drive,
Algonquin, IL 60102 requesting a Conditional Use Permit to allow an assembly use including a
seven-night/week use as a PADS (Public Action to Deliver Shelter) site from the Zoning Ordinance
for the property located at 1809 S Illinois Route 31 and legally described on Exhibit “A” attached
hereto and incorporated herein, the “SUBJECT PROPERTY”; and

WHEREAS, a public hearing on said petition was held before the Planning and Zoning
Commission on September 19 2018 in the manner prescribed by ordinance and statute, and as a
result of said hearing, the Planning and Zoning Commission did recommend to the City Council
the granting of the requested Conditional Use Permit; and

WHEREAS, the City Council has considered the evidence and recommendations from the
Planning and Zoning Commission and finds that the approval of the requested Conditional Use
Permit is consistent with the objectives of the City of McHenry Zoning Ordinance to protect the
public health, safety, morals and general welfare of its residents.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MCHENRY,
MCHENRY COUNTY, ILLINOIS, AS FOLLOWS:

SECTION 1: That the SUBJECT PROPERTY is hereby granted a Conditional Use Permit to
allow an Assembly Use subject to the following condition:

- The previously negotiated annexation agreement be renegotiated and presented to the
  City Council contemporaneously with this zoning request;
- The building shall not be utilized as an overnight PADS site until a final certificate of
  occupancy is approved, following the complete revisions to the building, by the City
including connection to the City's potable water system, installation of a sprinkler system and abandonment of the existing well on the subject property.

SECTION 2: All Ordinances or parts thereof in conflict with the terms and provisions hereof are hereby repealed to the extent of such conflict.

SECTION 3: This Ordinance shall be published in pamphlet form by and under the authority of the corporate authorities of the City of McHenry, McHenry County, Illinois.

SECTION 4: This Ordinance shall be in full force and effect from and after its passage, approval, and publication in pamphlet form as provided by law.

PASSED THIS _______ DAY OF _________________________, 2018

AYES: __________________________________________

NAYS: __________________________________________

ABSTAINED: _____________________________________

ABSENT: _________________________________________

NOT VOTING: _____________________________________

APPROVED THIS ________ DAY OF ____________________, 2018

_________________________________________
MAYOR

ATTEST:

_________________________________________
CITY CLERK
Exhibit A

Legal Description of Subject Property

PARCEL 1: THE SOUTH 299.67 FEET (AS MEASURED BETWEEN PARALLEL LINES) OF THE NORTH HALF OF THE SOUTHEAST QUARTER OF SECTION 10, TOWNSHIP 44 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WESTERLY OF THE CENTER LINE OF PUBLIC HIGHWAY KNOWN AS STATE ROUTE 31, IN MCHENRY COUNTY, ILLINOIS; ALSO


Permanent Real Estate Index Number: 14-10-402-006
Narrative

The Chapel currently holds worship services at McHenry High school West campus, and they have done so since 2010. The Chapel appeared before the Planning and Zoning Commission in June 2015 to request a conditional use for its present facility at 1809 South Route 31 for assembly use inclusive of overnight use for one night for PADS program. In July of 2015 the City Council approved the conditional use of the building at 1809 South Route 31 and the Chapel received its Occupancy Permit in Summer of 2016.

Since 2016, The Chapel has been actively using the building for multiple Ministry gatherings and offices Monday through Saturday. This proposal for amendment is requested because The Chapel and the Pioneer Center desire to open at this location PADS - seven nights a week.

Pioneer Center PADS

Description
Our primary service is to provide emergency and day shelter to the Homeless. Immediate shelter needs and support such as bedding, meals, showers, laundry, lockers, mailboxes and phones will be provided. Our plan is to serve all demographics. However, we may scale to best serve specific demographics such as families, women, children and youth at risk.
In addition to providing shelter and substance, our Program Technicians and Case Management team will work with each homeless client to support them in accessing the care and resources they need to move out of homelessness. This is an important point as our shelter will not directly provide the many resources that a client may need. We will proactively link clients with resources such as (medical care, substance abuse treatment, mental health care, domestic violence care, housing, job coaching, mentoring and searches and veterans’ assistance). Linkage will take place in a variety of ways such as, referrals, providing transportation and inviting other providers to screen/serve on-site.
The Emergency and Day Center resources will be open every day (24 hours) and each week (7 days) of the year. We will develop and manage volunteer support that will assist with key areas such as meals, medical services and property care.
Transportation services will be provided to access medical and human service providers, employers and other resources such as libraries, city and county offices.

Facilities
The physical facilities will be 6,000+ Square feet including a dorm style sleeping area to house 60 temporary and movable beds. Appropriate partitioning will be installed to segregate families, women and children. Bathrooms including showers will be built to accommodate the 60 homeless clients. Other amenities will include laundry room with washers and dryers. A full range kitchen with stove, grill, oven and venting will be designed and built to accommodate and provide hot meals to the clients. The facilities will include office space for the Supervisor, Program Technicians, Case Managers and Volunteers. Space to facilitate intake and recovery will be provided as well. If space permits, a recreation room for games, reading and other activities will be provided.

Staffing
The shelter will be staffed appropriately with a Supervisor, Case Managers, Program Technicians and Volunteers. The staffing will vary on a day to day basis depending on the daily clients counts and needs. The staffing will be appropriately scheduled to keep operating cost low and within budget. Volunteers and scheduling them to support daily needs will be critical to the shelter operations and to keep cost at a minimum.
1. Name of Applicant: HB Brewer Tel: 847.347.4635
   Address: 1235 Zange Drive Fax
   City: Algonquin State: IL Zip: 60102

2. Name of Property Owner: The Chapel Te: 847.201.2777
   (If other than Applicant)
   Address: 1200 American Way Fax
   City: Libertyville State: IL Zip: 60048

3. Name of Engineer: N/A Tel
   (If represented)
   Address Fax
   City State Zip

4. Name of Attorney: N/A Tel
   (If represented)
   Address Fax

5. Common Address or Location of Property: 1809 South Route 31, McHenry, IL

6. Requested Action(s) (check all that apply)
   ___ Zoning Map Amendment (Rezoning) ___ Zoning Variance – Minor *
   XX Conditional Use Permit ___ Zoning Text Amendment
   ___ Zoning Variance ___ Use Variance
   ___XX Other – Amend current conditional use permit granted July 20, 2015 to allow 7 nights of
   overnight stay for PADS use by Pioneer Center

*Definition of Minor Variance: A variance granted to the fee owner, contract purchaser or option holder of a single-family detached or attached dwelling, or single-family detached or attached building lot for that dwelling or lot.
7. Current Use of Property: church building type of use - Monday through Saturday used for offices, adult group gatherings and teaching formatted meetings, Student ministry site, team meetings, community events.

8. Current Zoning Classification of Property, Including Variances or Conditional Uses

Estate District Conditional use for assembly

9. Current Zoning Classification and Land Use of Adjoining Properties

North: Unincorporated McHenry County - I 1 Waste Management

South: Unincorporated McHenry County - I 1, A1 Digital Pix & Composites

East: C-5 High Commercial District - open land

West: Unincorporated McHenry County - I I I I V farming

10. Required Attachments (check all items submitted)

Please refer to the Public Hearing Requirements Checklist to determine the required attachments.

X 1. Application Fee (amount) $950.00

X 2. Narrative Description of Request

X 3. FORM A - Public Hearing Application

X 4. FORM B - Zoning Map Amendment (Rezoning) Application

X 5. FORM C - Conditional Use Application

X 6. FORM D - Zoning Variance Application

X 7. FORM E - Use Variance Application

X 8. Proof of Ownership and/or Written Consent from Property Owner in the Form of an Affidavit

X 9. Plat of Survey with Legal Description

X 10. List of Owners of all Adjoining Properties

X 11. Public Hearing Notice

X 12. Sign (Provided by the City, to be posted by the Applicant)

13. Site Plan

14. Landscape Plan

15. Architectural Rendering of Building Elevations

16. Performance Standards Certification

17. Traffic Analysis

18. School Impact Analysis
11. Disclosure of Interest

The party signing the application shall be considered the Applicant. The Applicant must be the owner or trustee of record, trust beneficiary, lessee, contract purchaser, or option holder of the subject property or his or her agent or nominee.

**Applicant is Not Owner**

If the Applicant is not the owner of record of the subject property, the application shall disclose the legal capacity of the Applicant and the full name, address, and telephone number of the owner(s). In addition, an affidavit of the owner(s) shall be filed with the application stating that the Applicant has the authority from the owner(s) to make the application.

**Applicant or Owner is Corporation or Partnership**

If the Applicant, owner, contract purchaser, option holder, or any beneficiary of a land trust is a corporation or partnership, the application shall disclose the name and address of the corporation's officers, directors, and registered agents, or the partnership's general partners and those shareholders or limited partners owning in excess of five percent of the outstanding stock or interest in the corporation or interest shared by the limited partners.

**Applicant or Owner is a Land Trust**

If the Applicant or owner is a land trust or other trust or trustee thereof, the full name, address, telephone number, and extent of interest of each beneficiary shall be disclosed in the application.

12. Certification

I hereby certify that I am aware of all code requirements of the City of McHenry that relate to this property and that the proposed use or development described in this application shall comply with all such codes.

I hereby request that a public hearing to consider this application be held before the Planning and Zoning Commission, and thereafter that a recommendation be forwarded to the City Council for the adoption of an ordinance(s) granting the requested action(s), including any modifications to this application or conditions of approval recommended by the Zoning Board of Appeals or City Council.

**Signature of Applicant(s)**

Print Name and Designation of Applicant(s)
Table 31 of the City of McHenry Zoning Ordinance provides that in recommending approval or conditional approval of a Conditional Use Permit, the Planning and Zoning Commission shall transmit to the City Council written findings that all of the conditions listed below apply to the requested action.

Please respond to each of these conditions as it relates to your request.

1. Traffic
   Any adverse impact of types or volumes of traffic flow not otherwise typical in the zoning district has been minimized.

   Traffic study was submitted at initial conditional use request. Amended conditional use does not change initial impact / study report of June 2015

2. Environmental Nuisance
   Any adverse effects of noise, glare, odor, dust, waste disposal, blockage of light or air, or other adverse environmental effects of a type or degree not characteristic of permitted uses in the zoning district have been appropriately controlled.

   There are no adverse environmental effects

3. Neighborhood Character
   The proposed use will fit harmoniously with the existing natural or man-made character of its surroundings and with permitted uses in the zoning district. The use will not have undue negative effect on the environmental quality, property values, or neighborhood character existing in the area or normally associated with permitted uses in the district. Our current relationship with Waste Management to our north and Digital Pix to our south has been one of significant cooperation on several fronts. They have actually shared in multiple portions of the work here at the 1809 address. The owner of the land west of us, McHenry Heating and Air have worked with us on several proposals for the buildout of the building with again significant positive feed – back as to the work at this location.

   Also, the proposed use will fit well within the current use of the building and Chapel ministry formats.

4. Public Services and Facilities
   The proposed use will not require existing community facilities or services to a degree disproportionate to that normally expected of permitted uses in the district, nor generate disproportionate demand for new services or facilities, in such a way as to place undue burdens upon existing development in the area.
The proposal will not extend any additional burden on public services or facilities.

5. Public Safety and Health
The proposed use will not be detrimental to the safety or health of the employees, patrons, or visitors associated with the use nor of the general public in the vicinity.

The proposal will not be detrimental to the safety or health for those using the property. McHenry County Health Department has verified the septic system design for this amended use and city water and sprinklers throughout the building will be operational prior to use.

6. Other Factors
The proposed use is in harmony with all other elements of compatibility pertinent to the Conditional Use and its particular location.

The proposed amended use in harmony with all other elements of building use and Building location.
5. THE LAND REFERRED TO IN THIS COMMITMENT IS DESCRIBED AS FOLLOWS:
   PARCEL 1: THE SOUTH 210.67 FEET (AS MEASURED BETWEEN PARALLEL LINES) OF THE NORTH
   HALF OF THE SOUTHEAST QUARTER OF SECTION 10, TOWNSHIP 44 NORTH, RANGE 8 EAST OF
   THE THIRD PRINCIPAL MERIDIAN, LYING WESTERLY OF THE CENTER LINE OF PUBLIC
   HIGHWAY KNOWN AS STATE ROUTE 37, IN MCHENRY COUNTY, ILLINOIS; ALSO
   PARCEL 2: EASEMENT FOR THE PURPOSE OF INGRESS AND EGRESS FOR THE BENEFIT OF
   PARCEL 1 AS CREATED BY DEED FROM WASTE MANAGEMENT OF ILLINOIS, INC., A DELAWARE
   CORPORATION, TO ENCLAVE CORPORATION, AN ILLINOIS CORPORATION, DATED MARCH 16,
   FEET, (EXCEPT FOR THE EASTERNLY 30.01 FEET AND THE WESTERLY 164.0 FEET THEREOF),
   OF THE NORTH 251.98 FEET OF THE SOUTH 561.65 FEET OF THE WEST 348.74 FEET OF THE
   NORTH HALF OF THE SOUTHEAST QUARTER OF SECTION 10, TOWNSHIP 44 NORTH, RANGE 8
   EAST OF THE THIRD PRINCIPAL MERIDIAN, IN MCHENRY COUNTY, ILLINOIS.

PIN 14 10 002 006

 Permanent Real Estate Index Number: 14 10 002 006
State of Illinois

\{ SS. \}

County of McHenry

Adrian M. Grode

being duly sworn on oath, states that

\[\text{397. 29th St., Crystal Lake, IL} \]

That the attached deed is not in violation of P.S. 65-1859 for one of the following reasons:

1. Said Act is not applicable as the grantors own no adjoining property to the premises described in said deed; OR

2. The conveyance falls in one of the following exemptions as shown by Amended Act which became effective July 17, 1959.

3. The conveyance does not involve any streets or easements of access.

4. The sale or exchange of parcels adjacent to or contiguous land.

5. The conveyance of parcels of land or interests therein for use as right of way for railroads or other public utility facilities, which does not involve any streets or easements of access.

6. The conveyance of land on a railroad or other public utility which does not involve any streets or easements of access.

7. The conveyance of land for highway or other public purposes or grants or conveyances relating to the dedication of land for public use or instruments relating to the vacation of land impressed with a public use.

8. Conveyances made to correct descriptions in prior conveyances.

9. The sale or exchange of parcels or tracts of land existing on the date of the amending act into no more than two parts and not involving any streets or easements of access.

10. The sale of a single lot of less than 5.0 acres from a larger tract when a survey is made by an Illinois registered surveyor; provided, that this exemption shall not apply to the sale of any subsequent lots from the same larger tract of land, as determined by the dimensions and configuration of the larger tract on October 1, 1973, and provided also that this exemption does not invalidate any local requirements applicable to the subdivision of land. Amended by P.A. 80-310, 1 eff. October 1, 1977.

CIRCLE THE NUMBER ABOVE WHICH IS APPLICABLE TO THE ATTACHED DEED.

Affiant further states that he makes this affidavit for the purpose of inducing the Recorder of Deeds of McHenry County, Illinois, to accept the attached deed for recording.

Adrian M. Grode

SUBSCRIBED and SWORN to before me

this 7th day of May, 2015

[Signature]

[Official Seal]

LISAA SMITH

NOTARY PUBLIC, STATE OF ILLINOIS

MY COMMISSION EXPIRES 8/12/2016
REGULAR AGENDA SUPPLEMENT

TO: Mayor and City Council

FOR: October 15, 2018 Regular City Council Meeting

FROM: Douglas Martin, Director of Economic Development

RE: Consideration of a zoning map amendment, conditional use permit and preliminary subdivision plat approval to allow a long-term skilled-nursing care facility on the property located at the northeast corner of Ridgeview Drive and Bull Valley Road

ATT:
1. Location Map
2. Unapproved Planning and Zoning Commission Minutes dated September 19, 2018
3. Ordinance granting a zoning map amendment to O-1 Local Office, conditional use permit to allow a long-term skilled nursing facility and preliminary subdivision plat approval
4. Application Packet

AGENDA ITEM SUMMARY:
The applicants are proposing to construct a long-term care skilled nursing facility to serve the needs of both short and long-term post-acute care patients. The proposed building is one-story, will be able to accommodate 84 people, 60 singles and 12 doubles. This facility will be constructed as an upscale resort rehabilitation center with a therapy gym, private rooms, bathrooms and showers and an outdoor courtyard. In order to facilitate the planning, engineering and construction of this facility the applicant is seeking the following:

• Zoning Map Amendment from I-1 Industrial to O-1 Local Office;
• Conditional Use Permit for an Institutional Use; and
• Preliminary Subdivision Plat Approval.

ANALYSIS:

Zoning Map Amending from I-1 Industrial to O-1 Local Office
The Subject Property is currently zoned industrial and has been for numerous years and has gone undeveloped. The applicant is seeking a zoning map amendment to O-1 Local Office. This zoning
classification is consistent with the zoning to the west and the office land uses to the south, as well as Northwestern Hospital.

The site is located on a major state highway, at a lighted intersection. There is considerable traffic on Bull Valley Road. There are also thousands of residents within a few miles of this site, and the site is practically equidistant from Illinois Route 31 and Crystal Lake Road. A skilled nursing facility is an extremely practical use at this location. Staff supports the requested zoning map amendment.

Conditional Use Permit to allow an Institutional Use
The applicant is requesting a Conditional Use Permit to allow an institutional use for a skilled nursing facility. An institutional use is a building housing more than 25 persons on a 24 hour basis, who because of age, mental disability or other reasons, live in a supervised environment that provides personal care services. Three access points are proposed off of Ridgeview Drive. The northernmost access point serves primarily as a service drive. The use is very low impact and will not adversely impact adjacent land uses. It will complement surrounding land uses and serve the immediate area well in addition to people from other cities and towns. Staff supports the conditional use permit.

Preliminary Plat Approval
The applicant is also seeking preliminary subdivision plat approval. Staff sent the preliminary plat and preliminary engineering to HR Green for review. There were no major issues reported. Comments of note are a sidewalk or bike path should be provided along Bull Valley Road; additionally Ridgeview Drive is a bike path route on the City's Bike Path Plan. A bike path should be extended along Ridgeview Drive to the northern extent of the property line; a right-of-way dedication is depicted along Bull Valley Road. Staff recommends approval of the preliminary plat.

PLANNING AND ZONING COMMISSION:
Motion by Miller, seconded by Sobotta, to recommend to City Council with regard to File No. Z-935 application for Approval of a Zoning Map Amendment from I-1 Industrial to O-1 Local Office, as presented:

Be granted, and Staff finds the requirements set forth in Table 33 have been met.

Voting Aye: Doherty, Gurda, Miller, Sobotta, Strach, and Thacker and Walsh.
Voting Nay: None.
Not Voting: None.
Abstaining: None.
Absent: None.
Motion carried: 7-0.

Motion by Doherty, seconded by Walsh, to recommend to City Council with regard to File No. Z-935 application for Approval of the Conditional Use Permit to allow an Institutional use for a Skilled Nursing Home Facility subject to the following condition:

- The project is developed in accordance with the Site Plan prepared by 2401 Incorporated dated 7/13/18 and consisting of one page, and Exterior Elevations and Renderings prepared by 2401 Incorporated dated 7/13/18 consisting of two pages.

Be granted, and Staff finds the requirements set forth in Table 31 have been met.

Voting Aye: Doherty, Gurda, Miller, Sobotta, Strach, and Thacker and Walsh.
Voting Nay: None.
Not Voting: None.
Abstaining: None.
Absent: None.
Motion carried: 7-0.

Motion by Sobotta, seconded by Gurda, to recommend to City Council with regard to File No. Z-935 application for Approval of the Preliminary Plat of Subdivision for McHenry Senior Partners Subdivision prepared by Compass Surveying Ltd. dated 6/29/18 consisting of one sheet for the property located at 1809 S Illinois Route 31, subject to the following conditions:

- A sidewalk or bike path shall be installed along Ridgeview Drive along the entire frontage of the property;
- The right-of-way dedication along Bull Valley Road is consistent with the needs of the McHenry County Highway Division;
- Comments in the letter from HR Green dated 7/27/18 are addressed

Commissioner Miller inquired if a bullet point for engineering and drainage would be added. Director of Economic Development Martin stated that would be handled by staff. Chairman Strach opined this was a subdivision issue and not the petitioners.

Voting Aye: Doherty, Gurda, Miller, Sobotta, Strach, and Thacker and Walsh.
Voting Nay: None.
Not Voting: None.
Abstaining: None.
Absent: None.
Motion carried: 7-0.

Chairman Strach closed the Public Hearing regarding File No. Z-935 at 7:55 p.m.

Therefore, if the City Council concurs with the Planning and Zoning Commission recommendation, a motion should be made to approve the attached Ordinance granting a Zoning Map Amendment to O-1 Local Office, a Conditional Use for an institutional use, and a Preliminary Plat of Subdivision.
Department of Community &
Economic Development
McHenry Municipal Center
333 Green Street
McHenry, Illinois 60050
Phone: (815) 363-2170
Fax: (815) 363-2173
www.ci.mchenry.il.us

Location Map
Unapproved Planning and Zoning Commission Minutes dated September 19, 2018

City of McHenry

Planning and Zoning Commission Minutes

September 19, 2018

Chairman Strach called the September 19, 2018 regularly scheduled meeting of the City of McHenry Planning and Zoning Commission to order at 7:32 p.m. In attendance were the following: Doherty, Gurda, Miller, Sobotta, Strach, Thacker, and Walsh. Absent: None. Also in attendance were: Director of Economic Development Martin, Economic Development Coordinator Wolf and Economic Development Assistant Conaway.

Chairman Strach opened the floor to public comment.

Mr. Mike Mrachek, 4582 Loyola Dr, McHenry, IL, was sworn in stating he is representing his family’s business, Colonial Funeral Home. Mr. Mrachek welcomed the new business to McHenry and is happy they chose the subject property. He stated that he spoke with Director of Economic Development Martin regarding the temporary detention area at Colonial Funeral Home and noted that the original future plans were to be for a central detention for the entire development. He wanted to make sure that concept was not lost because Colonial Funeral Home would want to tie into that area for additional parking where the temporary detention is currently located. He presented the commissioners with several documents regarding the original Zoning Map Amendment & Conditional Use for a Mortuary at Bull Valley Road & Ridgeview Drive Extension – Colonial Funeral Home which states “the storm water detention area will be permitted as a temporary improvement, as future subdivision of the larger Pacini property will be required to provide a regional detention area”. Mr. Mrachek stated they are in attendance to have the inquiry on formal record and also were interested to see what the plans for the master detention would be. Director of Economic Development Martin stated he spoke with Mr. Mrachek and Mr. Pacini regarding this expansive property area. He stated Mr. Pacini is open to the regional detention concept and is aware of the concerns of Mr. Mrachek and the petitioner. He stated that staff would follow up with Mr. Pacini. He further stated the property, as proposed tonight,
is fine but he too would like a resolution to Mr. Mrachek’s question about when the regional detention area would be completed.

Commissioner Thacker inquired as to timing of the improvement request. Director of Economic Development Martin stated the original request was in 2009 and that enough time has passed and the project needs to move forward. Chairman Strach stated the commissioners would have the chance to review the documents and suggested that this item be added to a future Planning & Zoning Commission agenda because both properties – Colonial Funeral Home and the applicant, need the detention area. Director of Economic Development Martin stated there would need to be a written agreement between the parties involved.

Chairman Strach closed the public comment portion of the meeting at 7:39 p.m.

Public Hearing: Troy Bersch
File No. Z-935
Bull Valley Road and Ridgeview Road

Zoning Map Amendment request from I-1 Industrial to O-1 Local Office and a Conditional Use Permit to allow for an Institutional Use/Skilled Nursing Home Facility at the Northeast Corner of Bull Valley and Ridgeview Roads

Chairman Strach called the Public Hearing to order at 7:41 p.m. regarding File No. Z-935 an application for a Zoning Map Amendment request from I-1 Industrial to O-1 Local Office and a Conditional Use Permit to Allow for an Institutional Use/Skilled Nursing Home Facility and a Preliminary Subdivision Plat Approval at the Northeast Corner of Bull Valley and Ridgeview Roads.

Chairman Strach stated Notice of the Public Hearing was published in the Northwest Herald on August 23, 2018. Notices were mailed to all abutting property owners of record as required by ordinance. The subject property was posted. A Certificate of Publication and Affidavit of Compliance with notice requirements are on file in the City Clerk’s Office.

In attendance were Nicole Jablonski, 6840 W. Touhy, Niles, IL; Troy Bersch, Director - Leo Brown Group, 802 E 86th Street, Indianapolis, IN, 46204; and Andy Heinen - Civil Engineer, Kimley-Horn, 1001 Warrensville Road, Lisle, IL, who were sworn in by Chairman Strach. Mr. Bersch stated they are a medical health care developer out of Indianapolis, IN. He stated that Bill Morton, Vice President of Business Development was also in attendance. They are excited to bring this
proposed state of the art, fully licensed, long term care and rehab facility before the City of McHenry for a Zoning Map Amendment from O-1 to I-1 to allow for local office use, a Conditional Use Permit and a Preliminary Subdivision Plat Agreement. He opined that the facility would fill a void in the area.

Director of Economic Development Martin stated that in order to facilitate the planning, engineering and construction of this facility the applicant is seeking the following:

- Zoning Map Amendment from I-1 Industrial to O-1 Local Office;
- Conditional Use Permit for an Institutional Use; and
- Preliminary Subdivision Plat Approval.

He further stated the applicant is seeking a zoning map amendment to O-1 Local Office. This zoning classification is consistent with the zoning to the west and the office land uses to the south, as well as Northwestern Hospital.

Director of Economic Development Martin stated that the site is located on a major state highway, at a lighted intersection. There are also thousands of residents within a few miles of this site, and the site is practically equidistant from Illinois Route 31 and Crystal Lake Road.

He further stated that the applicant is requesting a Conditional Use Permit to allow an institutional use for a skilled nursing facility. An institutional use is a building housing more than 25 persons that are cared for on a 24 hour basis. He opined that it will complement surrounding land uses and serve the immediate area well in addition to people from other cities and towns and is compatible with the other medical uses in the area.

Director of Economic Development Martin stated that the applicant is also seeking preliminary subdivision plat approval. Staff sent the preliminary plat and preliminary engineering to HR Green for review but that the applicant would need to come back for final plat/engineering.

There are some minor comments on the plat, a sidewalk or bike path should be provided along Bull Valley Road; additionally Ridgeview Drive is a bike path route on the City’s Bike Path Plan. He stated that the right-of-way dedication along Bull Valley Road is consistent with the needs of the McHenry County Highway Division. He stated there are three access points off of Ridgeview
Drive, two would serve customers and the third is a service drive. He stated this is a $17.4 million improvement project and opined the building would be a great addition to the area.

Director of Economic Development Martin stated staff recommends approval of a Zoning Map Amendment from I-1 Industrial to O-1 Local Office. Staff finds the requirements set forth in Table 33 have been met.

Director of Economic Development Martin stated staff recommends approval of the Conditional Use Permit to allow an Institutional use subject to the following condition:

- The project is developed in accordance with the Site Plan prepared by 2401 Incorporated dated 7/13/18 and consisting of one page, and Exterior Elevations and Renderings prepared by 2401 Incorporated dated 7/13/18 consisting of two pages.

Staff finds the requirements set forth in Table 31 have been met.

Director of Economic Development Martin stated staff recommends approval of the Preliminary Plat of Subdivision for McHenry Senior Partners Subdivision prepared by Compass Surveying Ltd. dated 6/29/18 consisting of one sheet subject to the following conditions:

- A sidewalk or bike path shall be installed along Bull Valley Road along the entire frontage of the property;
- A sidewalk or bike path shall be installed along Ridgeview Drive along the entire frontage of the property;
- The right-of-way dedication along Bull Valley Road is consistent with the needs of the McHenry County Highway Division;
- Comments in the letter from HR Green dated 7/27/18 are addressed.

Chairman Strach invited questions and/or comments from the Commission.

Commission Doherty inquired if the sidewalks would be installed all the way down Bull Valley and Ridgeview Roads. Mr. Heinen stated that they are proposing sidewalks on the east side of Ridgeview from the north property line to the signalized intersection at Bull Valley Road and that they are working with McHenry County to dedicate a sidewalk for future use on Bull Valley Road. Chairman Strach opined that the bike path would be in front of building by next year.
There was nobody in attendance who wished to address the Commission regarding this matter. Chairman Strach closed the public comment portion of the hearing 7:48 p.m.

Motion by Miller, seconded by Sobotta, to recommend to City Council with regard to File No. Z-935 application for Approval of a Zoning Map Amendment from I-1 Industrial to O-1 Local Office, as presented: be granted, and Staff finds the requirements set forth in Table 33 have been met.

Voting Aye: Doherty, Gurda, Miller, Sobotta, Strach, Thacker and Walsh.

Voting Nay: None.

Not Voting: None.

Abstaining: None.

Absent: None.

Motion carried: 7-0.

Motion by Doherty, seconded by Walsh, to recommend to City Council with regard to File No. Z-935 application for Approval of the Conditional Use Permit to allow an Institutional use for a Skilled Nursing Home Facility subject to the following condition:

- The project is developed in accordance with the Site Plan prepared by 2401 Incorporated dated 7/13/18 and consisting of one page, and Exterior Elevations and Renderings prepared by 2401 Incorporated dated 7/13/18 consisting of two pages.

be granted, and Staff finds the requirements set forth in Table 31 have been met.

Voting Aye: Doherty, Gurda, Miller, Sobotta, Strach, Thacker and Walsh.

Voting Nay: None.

Not Voting: None.

Abstaining: None.

Absent: None.
Motion carried: 7-0.

Motion by Sobotta, seconded by Gurda, to recommend to City Council with regard to File No. Z-935 application for Approval of the Preliminary Plat of Subdivision for McHenry Senior Partners Subdivision prepared by Compass Surveying Ltd. dated 6/29/18 consisting of one sheet subject to the following conditions:

- A sidewalk or bike path shall be installed along Bull Valley Road along the entire frontage of the property;
- A sidewalk or bike path shall be installed along Ridgeview Drive along the entire frontage of the property;
- The right-of-way dedication along Bull Valley Road is consistent with the needs of the McHenry County Highway Division;
- Comments in the letter from HR Green dated 7/27/18 are addressed.

Commissioner Miller inquired if a bullet point for engineering and drainage would be added. Director of Economic Development Martin stated that would be handled by staff and separate from this vote. Chairman Strach opined this was a subdivision issue and not the petitioners.

Voting Aye:  Doherty, Gurda, Miller, Sobotta, Strach, Thacker and Walsh.

Voting Nay:  None.

Not Voting:  None.

Abstaining:  None.

Absent:  None.

Motion carried: 7-0.

Chairman Strach closed the Public Hearing regarding File No. Z-935 at 7:55 p.m.
ORDINANCE NO 18-

AN ORDINANCE GRANTING A ZONING MAP AMENDMENT TO O-1 LOCAL OFFICE, A CONDITIONAL USE PERMIT TO ALLOW AN INSTITUTIONAL USE FOR A SKILLED LONG-TERM CARE NURSING FACILITY FROM THE ZONING ORDINANCE AND PRELIMINARY SUBDIVISION PLAT APPROVAL FROM THE SUBDIVISION CONTROL AND DEVELOPMENT ORDINANCE FOR THE PROPERTY LOCATED AT THE NORTHEAST CORNER OF RIDGEVIEW DRIVE AND BULL VALLEY ROAD IN THE CITY OF MCHENRY, MCHENRY COUNTY, ILLINOIS

WHEREAS, the City of McHenry, McHenry County, Illinois, is a home rule municipality as contemplated under Article VII, Section 6, of the Constitution of the State of Illinois, and the passage of this Ordinance constitutes an exercise of the City’s home rule powers and functions as granted in the Constitution of the State of Illinois; and

WHEREAS, a petition has been filed with the City by Troy Bersch, 802 E 86th Street, Indianapolis, IN 46204 requesting a Zoning Map Amendment to O-1 Local Office, a Conditional Use Permit to allow an Institutional Use for a skilled long-term care nursing facility from the Zoning Ordinance and Preliminary Subdivision Plat Approval from the Subdivision Control and Development Ordinance for the property located at the northeast corner of Bull Valley Road and Ridgeview Drive and legally described on Exhibit “A” attached hereto and incorporated herein, the “SUBJECT PROPERTY”; and

WHEREAS, a public hearing on said petition was held before the Planning and Zoning Commission on September 19 2018 in the manner prescribed by ordinance and statute, and as a result of said hearing, the Planning and Zoning Commission did recommend to the City Council the granting of the requested Zoning Map Amendment, Conditional Use Permit and Preliminary Subdivision Plat Approval; and

WHEREAS, the City Council has considered the evidence and recommendations from the Planning and Zoning Commission and finds that the approval of the requested Zoning Map Amendment, Conditional Use Permit and Preliminary Plat Approval is consistent with the objectives of the City of McHenry Zoning Ordinance to protect the public health, safety, morals and general welfare of its residents.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MCHENRY, MCHENRY COUNTY, ILLINOIS, AS FOLLOWS:

SECTION 1: That the SUBJECT PROPERTY is hereby granted a Zoning Map Amendment to O-1 Local Office.
SECTION 2: In granting said Zoning Map Amendment, the City Council finds that the requirements of Table 33 of the Zoning Ordinance have been met in that:

- The requested zoning classification is compatible with the existing uses and zoning of property in the environs;
- The requested zoning classification is supported by the trend of development in the general area;
- The requested zoning classification is consistent with the objectives of the City of McHenry Comprehensive Plan; and
- The requested classification promotes the public interest.

SECTION 3: That the SUBJECT PROPERTY is hereby granted a Conditional Use Permit to allow an Institutional Use subject to the following condition:

- The project is developed in accordance with the Site Plan prepared by 2401 Incorporated dated 7/13/18 and consisting of one page, and Exterior Elevations and Renderings prepared by 2401 Incorporated dated 7/13/18 consisting of two pages.

SECTION 4: The Preliminary Plat of Subdivision for McHenry Senior Partners Subdivision prepared by Compass Surveying Ltd. dated 6/29/18 consisting of one sheet is hereby approved subject to the following conditions:

- A sidewalk or bike path shall be installed along Bull Valley Road along the entire frontage of the property;
- A sidewalk or bike path shall be installed along Ridgeview Drive along the entire frontage of the property;
- The right-of-way dedication along Bull Valley Road is consistent with the needs of the McHenry County Highway Division;
- Comments in the letter from HR Green dated 7/27/18 are addressed.

SECTION 5: All Ordinances or parts thereof in conflict with the terms and provisions hereof are hereby repealed to the extent of such conflict.

SECTION 6: This Ordinance shall be published in pamphlet form by and under the authority of the corporate authorities of the City of McHenry, McHenry County, Illinois.

SECTION 7: This Ordinance shall be in full force and effect from and after its passage, approval, and publication in pamphlet form as provided by law.
PASSED THIS _______ DAY OF ________________________, 2018

AYES: ____________________________________________

NAYS: ____________________________________________

ABSTAINED: _______________________________________

ABSENT: __________________________________________

NOT VOTING: ______________________________________

APPROVED THIS _______ DAY OF ________________________, 2018

________________________________________________________________________

MAYOR

ATTEST:

________________________________________________________________________

CITY CLERK
Exhibit A

Legal Description of the Subject Property
Leo Brown Group

802 E. 86th Street, Indianapolis, IN 46240
bmorton@leobrowngroup.com

07/11/2018

Mr. Doug Martin
Director of Economic Development
City of McHenry
dmartin@ci.mchenry.il.us

Dear Mr. Martin:

We are excited to submit the attached zoning map amendment and preliminary plat application and look forward to working with you during this process. As you are aware, our “5.9-acre site is in the northeast quadrant of the intersection of Ridgeview Drive and Bull Valley Road, directly across the street from the Centegra Hospital McHenry campus. The site currently falls into the “I-1 Industrial” category, and we are requesting a rezone into the “O-1 local office” classification with a conditional use that would allow our project to operate as a skilled nursing facility.

The proposed Project will be a brand-new state of the art Long-Term Care (LTC)/Rehabilitation facility and will serve the needs of short term and long term post-acute care patients. We have several letters of endorsement from the mayor and local politicians and have full support from Centegra Health System executives and its physician group for this project.

The proposed Project will be a one-story structure, consisting of 60 private rooms and 12 shared suites, giving the project 84 total beds. It is important to note that the local area has not had a new skilled nursing facility in many years and this facility will function as a Medical Resort and will combine amenities found in an upscale hotel with care and services of an advanced rehabilitation center. The unique guest centered design will feature the area’s largest therapy gym, the area’s largest supply of private rooms (that will also include all private bathrooms and showers), and an outdoor courtyard with progressive outdoor therapy for healing, and the area’s best nurse and aide to patient ratio ensuring the highest level of care.

We are confident that our project will complement the numerous healthcare related uses that surround the Centegra Hospital-McHenry campus, and look forward to serving the community of McHenry.

Regards,
Leo Brown Group
April 26, 2018

Ms. Courtney Avery, Administrator
Health Facilities and Services Review Board
Illinois Department of Public Health
525 West Jefferson Street, Second Floor
Springfield, IL 62761

Re: Letter of Support for a Replacement CON for a previously approved 84-Bed Skilled Nursing Facility In McHenry, Illinois

Dear Ms. Avery:

It is my understanding that TCO JV, LLC, a joint venture between the Leo Brown Development Group and Ignite Medical Resorts, propose to establish a brand new, state of the art 84-bed long-term care skilled nursing facility in Health Service Area 8. The project was previously approved by the Illinois Health Facility and Service Review Board and now will be located directly across the street from Centegra Hospital-McHenry (and its original project site) on the corners of Bull Valley Rd and Ridgeview in McHenry, Illinois.

I believe that a facility of this type will help fill a need for senior citizens and health care placement needs in our community. In addition, I believe that this undertaking will help to beautify the surrounding neighborhood and improve the overall health care services provided to the area residents of McHenry and McHenry County. An important objective of every organization is a strong commitment to the community and residents' quality of life. Most assuredly, this project will accomplish that goal and have a positive impact on both social and economic development by creating new jobs in the areas of construction, skilled nursing care, administration, food services, activities, laundry, housekeeping, social services and maintenance.

It is estimated this project will create approximately 200 full-time construction jobs and will eventually result in over 120 full-time healthcare related jobs. I completely support and ask for your approval of this worthwhile healthcare project for the residents of the City of McHenry, McHenry County and the surrounding service areas. The City of McHenry is a healthcare community, home to Centegra Hospital, McHenry County's largest employer, as well as Mercy Medical Center. The City also is home to numerous healthcare Industries, such as Medela and Medcor, as well as many independent, assisted and memory care facilities therefore the proposed facility is a natural complement to our existing healthcare base.

Thank you for your consideration.

Sincerely,

Wayne Jett, Mayor City of McHenry

The City of McHenry is dedicated to providing the citizens, businesses and visitors of McHenry with the highest quality of programs and services in a customer-oriented, efficient and fiscally responsible manner.
FORM A  
File Number Z-935

PUBLIC HEARING APPLICATION

Planning and Zoning Commission  
City of McHenry

333 South Green Street  McHenry, IL 60050  Tel: (815) 363-2170  Fax: (815) 363-2173

1. Name of Applicant  Troy Bertsch  Tel  317-669-8404
   Address  802 E. 86th Street, Indianapolis IN 46204  Fax

2. Name of Property Owner  First Nations Bank TR 1761  Tel
   (If other than Applicant)
   Address  7757 W. Devon Ave, Chicago IL 60631  Fax

3. Name of Engineer  Andy Heinen (Kimley-Horn)  Tel  630-487-5553
   (If represented)
   Address  1001 Warrenville Road, Suite 350, Lisle IL 60532  Fax

4. Name of Attorney  N/A  Tel
   (If represented)
   Address

5. Common Address or Location of Property  NEC of Bull Valley Road & Ridgeview Drive,  
   McHenry IL 60050

6. Requested Action(s) (check all that apply)
   X  Zoning Map Amendment (Rezoning)
   X  Conditional Use Permit
   ___ Zoning Variance - Minor
   ___ Zoning Text Amendment
   ___ Other

Provide a brief description of the Requested Action(s). For example, the operation that requires a Conditional Use Permit, the specific Zoning Variance needed, or the new zoning classification that is requested:

   Requesting a Zoning Map Amendment from I-1 Industrial to O-1 Local Office
   and a Conditional Use Permit to allow for a Skilled Nursing Facility.
7. Current Use of Property  Agriculture

8. Current Zoning Classification of Property, Including Variances or Conditional Uses
   I-1 Industrial

9. Current Zoning Classification and Land Use of Adjoining Properties
   North:  I-1 Industrial
   South:  HC HealthCare (Across Bull Valley Road)
   East:  I-1 Industrial
   West:  O-1 Local Office (Across Ridgeview Drive)

10. Required Attachments (check all items submitted)

   Please refer to the Public Hearing Requirements Checklist to determine the required attachments.

   ___ 1. Application Fee (amount) $ ___ $5,600
   __ 2. Narrative Description of Request
   __ 3. FORM A – Public Hearing Application
   __ 4. FORM B – Zoning Map Amendment (Rezoning) Application
   __ 5. FORM C – Conditional Use Application
   ___ 6. FORM D – Zoning Variance Application
   ___ 7. FORM E – Use Variance Application
   __ 8. Proof of Ownership and/or Written Consent from Property Owner in the Form of an Affidavit
   __ 9. Plat of Survey with Legal Description
   __ 10. List of Owners of all Adjoining Properties
   __ 11. Public Hearing Notice
   ___ 12. Sign (Provided by the City, to be posted by the Applicant)
   __ 13. Site Plan
   __ 14. Landscape Plan
   __ 15. Architectural Rendering of Building Elevations
   ___ 16. Performance Standards Certification
   ___ 17. Traffic Analysis
   ___ 18. School Impact Analysis
11. Disclosure of Interest

The party signing the application shall be considered the Applicant. The Applicant must be the owner or trustee of record, trust beneficiary, lessee, contract purchaser, or option holder of the subject property or his or her agent or nominee.

**Applicant is Not Owner**

If the Applicant is not the owner of record of the subject property, the application shall disclose the legal capacity of the Applicant and the full name, address, and telephone number of the owner(s). In addition, an affidavit of the owners(s) shall be filed with the application stating that the Applicant has the authority from the owners(s) to make the application.

**Applicant or Owner is Corporation or Partnership**

If the Applicant, owner, contract purchaser, option holder, or any beneficiary of a land trust is a corporation or partnership, the application shall disclose the name and address of the corporation’s officers, directors, and registered agents, or the partnership’s general partners and those shareholders or limited partners owning in excess of five percent of the outstanding stock or interest in the corporation or interest shared by the limited partners.

**Applicant or Owner is a land Trust**

If the Applicant or owner is a land trust or other trust or trustee thereof, the full name, address, telephone number, and extent of interest of each beneficiary shall be disclosed in the application.

12. Certification

I hereby certify that I am aware of all code requirements of the City of McHenry that relate to this property and that the proposed use or development described in this application shall comply with all such codes.

I hereby request that a public hearing to consider this application be held before the Planning and Zoning Commission, and thereafter that a recommendation be forwarded to the City Council for the adoption of an ordinance(s) granting the requested action(s), including any modifications to this application or conditions of approval recommended by the Zoning Board of Appeals or City Council.

**Signature of Applicant(s)**

Print Name and Designation of Applicant(s)

[Signature]

[Print Name]

[Print Name]
ZONING MAP AMENDMENT (REZONING)

Planning and Zoning Commission
City of McHenry

333 South Green Street • McHenry, IL 60050 • Tel: (815) 363-2170 • Fax: (815) 363-2173

Table 33 of the City of McHenry Zoning Ordinance provides that in recommending approval of a Zoning Map Amendment (Rezoning), the Planning and Zoning Commission shall transmit to the City Council written findings that all of the conditions listed below apply to the requested action.

Please respond to each of these conditions as it relates to your request.

1. Compatible with Use or Zoning of Environs
   The proposed use(s) or the uses permitted under the proposed zoning classification are compatible with existing uses or existing zoning of property in the environs.
   
   The proposed project is compatible with existing uses surrounding the property (Contegra Hospital and other medical offices in the immediate area).

2. Supported by Trend of Development
   The trend of development in the general area since the original zoning of the affected property was established supports the proposed use(s) or zoning classification.
   
   The property to the west was rezoned from I-1 to O-2, The property to the south is HC Healthcare Zoning which is compatible with our proposed use. Property to the north and east are undeveloped.

3. Consistent with Comprehensive Plan Objectives
   The proposed use(s) or zoning classification is in harmony with the objectives of the Comprehensive Plan of the City as viewed in light of any changed conditions since the adoption of the Plan.
   
   The proposed zoning classification is consistent with the immediate area along Bull Valley as a healthcare corridor and compliments the existing medical uses in the area.

4. Further Public Interest
   The proposed use(s) or zoning classification promotes the public interest and not solely the interest of the applicant.
   
   The proposed project will fill a void for healthcare needs of senior residents of McHenry. It is a further benefit to the senior community to have the facility near the hospital and other medical offices.
CONDITIONAL USE PERMIT

Planning and Zoning Commission
City of McHenry

333 South Green Street a McHenry, IL 60050 a Tel: (815) 363-2170 a Fax: (815) 363-2173

Table 31 of the City of McHenry Zoning Ordinance provides that in recommending approval or conditional approval of a Conditional Use Permit, the Planning and Zoning Commission shall transmit to the City Council written findings that all of the conditions listed below apply to the requested action.

Please respond to each of these conditions as it relates to your request.

1. Traffic
Any adverse impact of types or volumes of traffic flow not otherwise typical in the zoning district has been minimized.

   The proposed facility will receive approximately 20 visitors per day. Traffic from staff will be spread over three shifts throughout the day, which will minimize increased traffic flow. All proposed entrances to the property will be from Ridgeview Drive to limit traffic impact on Bull Valley Road.

2. Environmental Nuisance
Any adverse effects of noise, glare, odor, dust, waste disposal, blockage of light or air, or other adverse environmental effects of a type or degree not characteristic of permitted uses in the zoning district have been appropriately controlled.

   The proposed facility will have little to no impact to noise, odor, dust or waste disposal. Service deliveries are expected to be consistent with other skilled nursing facilities that are currently operating in the area. The facility will be single story and should not produce light or air blockage to adjacent properties.

3. Neighborhood Character
The proposed use will fit harmoniously with the existing natural or man-made character of its surroundings and with permitted uses in the zoning district. The use will not have undue deleterious effect on the environmental quality, property values, or neighborhood character existing in the area or normally associated with permitted uses in the district.

   The site for the proposed facility is in a health-care corridor. The proposed use is consistent with nearby uses and will compliment medical facilities and offices in the area. The exterior of the proposed building is designed to be harmonious with adjacent properties. Building colors will be warm neutrals and will blend with the surrounding area.
4. Public Services and Facilities
The proposed use will not require existing community facilities or services to a degree disproportionate to that normally expected of permitted uses in the district, nor generate disproportionate demand for new services or facilities, in such a way as to place undue burdens upon existing development in the area.

The proposed facility will have very little or no impact on local schools and park systems. Other service demand is expected to be similar to other skilled nursing facilities in the area.

5. Public Safety and Health
The proposed use will not be detrimental to the safety or health of the employees, patrons, or visitors associated with the use nor of the general public in the vicinity.

The state-of-the-art facility will be licensed by Illinois Department of Public Health and will be designed and constructed to comply with all applicable building codes.

6. Other Factors
The proposed use is in harmony with all other elements of compatibility pertinent to the Conditional Use and its particular location.

The proposed use compliments existing facilities directly to the south and west of the property, and also provides a needed service to the area.
PLAT/DEVELOPMENT APPLICATION

City of McHenry

333 South Green Street • McHenry, IL 60050 • Tel: (815) 363-2170 • Fax: (815) 363-2173

1. Name of Applicant  Troy Bertsch  Tel 317-669-8404
   Address  802 East 86th Street, Indianapolis, IN  Fax

2. Name of Property Owner  N/A  Tel  
   (If other than Applicant)  Address  Fax

3. Name of Engineer  Andy Heinen  Tel 630-487-5553
   (If represented)  Address  1001 Warrenville Road, Suite 350, Lisle, IL  Fax

4. Name of Attorney  Tel  
   (If represented)  Address  Fax

5. Common Address or Location of Property  NEC of Bull Valley Road & Ridgeview Drive,  McHenry, IL, 60050

6. Requested Action
   X  Preliminary Plat
   ____ Final Plat
   ____ Development

Provide a brief description of the Requested Action. For example, indicate the number of lots and the type of subdivision (single-family, townhome, commercial, industrial, etc.) or include a description of the development project:

Subdivision of a 5.82 acre lot for a new Skilled Nursing Facility, which will include a

55,000 SF building with associated parking, utility, and stormwater management facilities.
7. Current Use of Property  Undeveloped, cultivated farmland.

8. Current Zoning Classification of Property, Including Variances or Conditional Uses
   I-1 Industrial

9. Current Zoning Classification and Land Use of Adjoining Properties
   North:  I-1 Industrial
   South:  HC HealthCare (Across Bull Valley Road)
   East:   I-1 Industrial
   West:   Q-1 Local Office (Across Ridgeview Drive)

10. Required Attachments - Please refer to the attached checklist.

11. Disclosure of Interest

   The party signing the application shall be considered the Applicant. The Applicant must be the owner or trustee of record, trust beneficiary, lessee, contract purchaser, or option holder of the subject property or his or her agent or nominee.

   **Applicant is Not Owner**
   If the Applicant is not the owner of record of the subject property, the application shall disclose the legal capacity of the Applicant and the full name, address, and telephone number of the owner(s). In addition, an affidavit of the owner(s) shall be filed with the application stating that the Applicant has the authority from the owner(s) to make the application.

   **Applicant or Owner is Corporation or Partnership**
   If the Applicant, owner, contract purchaser, option holder, or any beneficiary of a land trust is a corporation or partnership, the application shall disclose the name and address of the corporation's officers, directors, and registered agents, or the partnership's general partners and those shareholders or limited partners owning in excess of five percent of the outstanding stock or interest in the corporation or interest shared by the limited partners.

   **Applicant or Owner is a Land Trust**
   If the Applicant or owner is a land trust or other trust or trustee thereof, the full name, address, telephone number, and extent of interest of each beneficiary shall be disclosed in the application.
12. Certification

I hereby certify that I am aware of all code requirements of the City of McHenry that relate to this property and that the proposed use or development described in this application shall comply with all such codes.

I hereby request that the City process this application in accordance with the codes and ordinances of the City.

Signature of Applicant(s)
Print Name and Designation of Applicant(s)

[Signature]
[Print Name]

[Signature]
[Print Name]
11. Disclosure of Interest

The party signing the application shall be considered the Applicant. The Applicant must be the owner or trustee of record, trust beneficiary, lessee, contract purchaser, or option holder of the subject property or his or her agent or nominee.

**Applicant is Not Owner**

If the Applicant is not the owner of record of the subject property, the application shall disclose the legal capacity of the Applicant and the full name, address, and telephone number of the owner(s). In addition, an affidavit of the owners(s) shall be filed with the application stating that the Applicant has the authority from the owners(s) to make the application.

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**Applicant or Owner is a Land Trust**

If the Applicant or owner is a land trust or other trust or trustee thereof, the full name, address, telephone number, and extent of interest of each beneficiary shall be disclosed in the application.

12. Certification

I hereby certify that I am aware of all code requirements of the City of McHenry that relate to this property and that the proposed use or development described in this application shall comply with all such codes.

I hereby request that a public hearing to consider this application be held before the Planning and Zoning Commission, and thereafter that a recommendation be forwarded to the City Council for the adoption of an ordinance(s) granting the requested action(s), including any modifications to this application or conditions of approval recommended by the Zoning Board of Appeals or City Council.

**Signature of Applicant(s)**

Print Name and Designation of Applicant(s)

[Signature]

________________________
State of Illinois, County of Cook
This instrument was acknowledged before me on ____________ (date)
by _______________, (name of person(s) as
trustee, etc.) of ________________, (name of authority, e.g., officer,
on behalf of whom instrument was executed)

[Signature]

(Signature of Notary Public)
MEMORANDUM

DATE: July 11, 2018

TO: Andy Heinen, PE – Kimley-Horn and Associates, Inc.

FROM: Thomas Kehoe - Christopher B. Burke Engineering, Ltd.

SUBJECT: Wetland/Waters Assessment of Property North of Bull Valley Road, East of Ridgeview Drive in McHenry, McHenry County, Illinois (CBBEL Project No. 150489.mchen)

On July 2, 2018, Christopher B. Burke Engineering, Ltd. (CBBEL) completed a wetland/waters assessment of the above-referenced property located northeast of the intersection of Bull Valley Road and Ridgeview Drive in the City of McHenry, McHenry County, Illinois (Exhibit 1). The study area can be found geographically in Section 3, Township 44 North, Range 8, East of the Third Principal Meridian (Latitude 42.321786; Longitude -88.284722).

The study area contained agricultural land and mowed turf grass/scrub shrubs within the roadside rights-of-way. Offsite wetlands/waters were observed beyond the limits of the study area, primarily to the north and east. No wetlands or waters were identified within the study area at the time of the site visit.

This assessment was based on field conditions at the time of the CBBEL site visit and our understanding of current federal, state and local regulations. An evaluation of historic site conditions was not performed.

METHODOLOGY

The Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Midwest Region (August 2010), identifies technical criteria required for wetland identification. The three essential characteristics of a jurisdictional wetland are hydrophytic vegetation, hydric soils and wetland hydrology as described below:

Hydrophytic Vegetation: The hydrophytic vegetation criterion is based on a separation of plants into five basic groups:

(1) Obligate wetland plants (OBL) almost always occur (estimated probability >99%) in wetlands under natural conditions;

(2) Facultative wetland plants (FACW) usually occur in wetlands (estimated probability 67-99%), but occasionally are found in non-wetlands;
MEMORANDUM

(3) Facultative plants (FAC) are equally likely to occur in wetlands or non-wetlands (estimated probability 34-66%);

(4) Facultative upland plants (FACU) usually occur in non-wetlands (estimated probability 67-99%), but occasionally are found in wetlands; and

(5) Obligate upland plants (UPL) almost always occur (estimated probability >99%) in non-wetlands under natural conditions.

Four procedures completed in the following order are used to determine if hydrophytic vegetation is present:

1) **Rapid Test**: The Rapid Test for hydrophytic vegetation is met if all dominant species across all strata are OBL or FACW, or a combination of the two based on a visual assessment.

2) **Dominance Test**: Using the 50/20 Rule, if greater than 50% of the plants present are FAC, FACW, or OBL, the subject area meets the hydrophytic vegetation criterion.

3) **Prevalence Index**: Each plant species in a sampling plot is assigned a numeric value (OBL=1; FACW=2; FAC=3; FACU=4; UPL=5). Based on the sampling data, the absolute cover is calculated for each species in each stratum and using the specified formula, if the Prevalence Index is 3 or less, hydrophytic vegetation is present.

4) **Morphological Adaptations**: Various species may develop physical characteristics after growing in wetland areas such as multi-stemmed trunks, shallow roots and buttressed stems. Hydrophytic vegetation is present if an adaptation is observed in more than 50% of FACU species growing in an area that contains hydric soil and wetland hydrology.

**Hydric Soils**: Hydric soils are defined in the manual as "soils that are saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper part." Field indicators of hydric soil are found in the NTCHS Field Indicators of Hydric Soils in the United States (USDA Natural Resources Conservation Service 2006b or current version).

**Wetland Hydrology**: The wetland hydrology criterion is often the most difficult to determine. Typically, the presence of water for a portion of the growing season creates anaerobic conditions. Anaerobic conditions lead to the prevalence of wetland plants. Morphological adaptations of plants, driftlines and watermarks are examples of wetland hydrology field indicators.
MEMORANDUM

REFERENCE MATERIALS

The following reference materials were reviewed and used to assist in the field reconnaissance. They are included as Exhibits 2 and 3.

MCHENRY COUNTY WETLAND INVENTORY

The McHenry County Wetland Inventory map (MCWI) for Nunda Township, as shown on Exhibit 2, indicates that no wetland is mapped within the study area. The MCWI serves only as a large-scale guide and actual wetland locations and types often vary from that mapped.

SOIL SURVEY

The Soil Survey of McHenry County, Illinois (2013), was reviewed to determine the location of hydric soils on the property (Exhibit 3). Mapped hydric soil can be indicative of wetland conditions. The following soils are mapped on-site:

<table>
<thead>
<tr>
<th>Soil Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>153A</td>
<td>Pella silty clay loam, hydric</td>
</tr>
<tr>
<td>297A</td>
<td>Ringwood silt loam</td>
</tr>
<tr>
<td>343A</td>
<td>Kane silt loam</td>
</tr>
<tr>
<td>363B</td>
<td>Griswold silt loam</td>
</tr>
</tbody>
</table>
REGULAR AGENDA SUPPLEMENT

DATE: October 15, 2018

TO: Mayor and City Council

FROM: Wayne. S. Jett, Mayor
     Derik Morefield, City Administrator

RE: Consideration of a Liquor License Request for Hub Market Butcher Shop, 1210 N. Green Street, McHenry, Illinois and an Ordinance Amending Chapter 4, Sec. 4-6(1) of the McHenry Municipal Code, increasing the number of Class “A1” Liquor Licenses in effect from 2 to 3.

ATT: Liquor License Application
     Proposed Ordinance

AGENDA ITEM SUMMARY:
The purpose of this agenda item is for the consideration of granting a Class A1 liquor license to a new business – Hub Market Butcher Shop – located at 1210 N. Green Street, just north of the McHenry Downtown Theater – and, if granted, the adoption of an Ordinance increasing the number of Class A1 licenses in effect from 2 to 3. The business is owned by Hub Market, LLC, comprised of eleven (11) individuals. Hub Market, LLC is the petitioner for this request.

BACKGROUND/ANALYSIS:
Hub Market Butcher Shop is a new business that will be located at 1210 N. Green Street, just north of the McHenry Downtown Theater. The business will include a full-service butcher shop, deli, packaged sale of specialty beers and wines, and will have a wine bar. The building is currently under complete renovation with a target opening date prior to the end of November.

Because the business is an LLC, all eleven of the owners must be fingerprinted. This process is currently underway. Fess for the A1 license are $1,250. While permitted based on the A1 license, the business has no intention of having video gaming.

The City of McHenry is dedicated to providing the citizens, businesses and visitors of McHenry with the highest quality of programs and services in a customer-oriented, efficient and fiscally responsible manner.
RECOMMENDATION:
Therefore, if Council concurs, it is recommended that a motion be made to approve a liquor license request for Hub Market Butcher Shop, 1210 N. Green Street, McHenry, Illinois and an Ordinance Amending Chapter 4, Sec. 4-6(1) of the McHenry Municipal Code, increasing the number of Class “A1” Liquor Licenses in effect from 2 to 3, conditioned on the successful completion of fingerprinting and background checks for LLC members.
<table>
<thead>
<tr>
<th>License No.</th>
<th>Fee Received</th>
<th>Date Issued</th>
<th>Date Received</th>
<th>Receipt Issued On</th>
</tr>
</thead>
<tbody>
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<td></td>
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</tbody>
</table>

CITY OF MCHENRY
APPLICATION FOR LIQUOR LICENSE
UNDER
CITY OF MCHENRY LIQUOR CONTROL ORDINANCE

FISCAL YEAR 2018/2019
TO BE FILED WITH THE
OFFICE OF THE MAYOR

ALL LICENSES EXPIRE APRIL 30
FOLLOWING DATE OF ISSUANCE

NAME OF BUSINESS, ADDRESS, TELEPHONE, EMAIL: 
Hub Market LLC
1210 North Green Street

1. Please Indicate form of ownership: CORPORATION _X_ PARTNERSHIP _______ INDIVIDUAL/SOLE PROP.

2. IF CORPORATION:
   Corporation Name: Hub Market LLC
   Corporate Address: 1210 North Green Street
   Corporate Phone Number: 815-451-1493 EMAIL: jon-tbd@yahoo.com


4. IF PARTNERSHIP:
   Name:
   Corporate Address:
   Corporate Phone Number: EMAIL:

5. State of Incorporation:

6. IF INDIVIDUAL/SOLE PROP:
   Applicant's Full Name:
   Date of Birth:
   Residence Address:

7. Home Phone: _______ Business Phone: EMAIL:

8. Citizen of U.S.? _YES_ If a naturalized citizen, when and where naturalized:

9. (A) If Applicant is a PARTNERSHIP, give name and address of all partners holding 5% or more of the partnership Interest:

   ____________________________________________________________
   ____________________________________________________________
   ____________________________________________________________

(B) If Applicant is CORPORATION, give name, address and telephone number of owners holding 5% or more shares and registered agent:

   ____________________________________________________________
   ____________________________________________________________
   ____________________________________________________________

2018
10. If Applicant and Local Manager are not the same, give name, address and telephone number of Local Manager:
   Tan Domanice, 2023 Peterson Ave, Crystal Lake, IL
   Local Manager's: Date of Birth: 6-7-86 Place of Birth: Libertyville Citizen of U.S.?

11. Principal Type of Business: Butcher, Deli & Wine Shop

12. What is current zoning for this property?

13. Type of License Sought: Retail, For Consumption Both Off & On Premises

14. Date on which business was or will begin at this location: November 20th, 2018

15. Does applicant own premises for which license is sought? NO If not, state name and address of owner and attach copy of executed lease.
   Grobax Saini, Havana Properties LLC, 27979 Converse Rd, Island Lake, IL

16. If property is owned by a land trust, trustee must file affidavit disclosing names and addresses of all beneficial owners and percentage of interest.

17. Is the location of applicant's business for which license is sought within one hundred feet of any church, school (except institutions of higher education), hospital, home for aged or indigent persons or for veterans and their families or any military or naval station? NO
   A. If answer to the above is "YES", is the applicant's place of business a hotel offering restaurant service, a regularly organized club, a food shop or other place where the sale of liquor is to the principal business? YES If yes, how long has place of business been in operation?

18. If applicant has ever engaged in the business or sale of alcoholic liquor at retail, list address of all locations (may attach supplemental sheet). NO


20. Give applicant's Retailer's Occupational tax (ROT) Registration Number:

21. Are you delinquent in the payment of the Retailer's Occupational Tax (Sales Tax), and if so, the reasons therefore: NO

22. If this application is for a new license or a transferred license, attach to this Application a copy of Applicant's balance sheet and operating statement for the past three years, or if not available, other proof of financial responsibility.

23. Name and address of dram shop insurance company for both the licensee and owner of the building in which the alcoholic liquor will be sold for the duration of the license AND attach a copy of the declaration page showing the insured parties and amounts of coverage.

24. Describe parking facilities available to the business: co-op parking, municipal lot

25. Are you familiar with all the laws of the United States, State of Illinois and ordinances of the City of McHenry pertaining to the sale of alcoholic liquor; and will you abide by them? YES

26. Will you maintain the entire premises in a safe, clean and sanitary manner free from conditions, which might cause accidents?
   YES

27. Will you attempt to prevent rowdiness, fights and disorderly conduct of any kind and immediately notify the McHenry Police Department in any such events take place? YES

28. Has any manufacturer, importing distributor or distributing of alcoholic liquors directly or indirectly paid or agreed to pay for this license, advanced money or anything else of value or any credit (other than merchandising credit in the ordinary course of business for a period not In excess of 90 days), or is such a person directly or indirectly interested in the ownership, conduct or operation of the place of business? NO If answer is "YES", give particulars:

29. Have you, or in the case of a corporation, the owners of 5% or more shares of the corporation or the local manager, or in the case of partnership, any of the partners, ever been convicted of any violation of any law pertaining to alcoholic liquors? NO If answer is "YES", explain:

30. Have you, or in the case of a corporation, the owners of 5% or more shares of the corporation and the local manager, or in the case of a partnership, any of the partners, ever been convicted of either a felony or a misdemeanor? NO If so, please describe:
31. Is any individual who is directly or indirectly interested in applicant's place of business, a law-enforcing official or elected public official (mayor, alderman, and member of any City commission, committee or board)? No. If so, please state name and address of such person:

32. List your occupation or employment with addresses thereof for the past 10 years (if partnership or corporation, list same information for each partner and the local manager) — (please attach). Restaurant - Butcher

33. Have you ever been convicted of a gambling offense (if a partnership or corporation, include all partners, owners of 5% or more shares of the corporation and the local manager)? No. If so, give all details:

34. Has any owner(s) or member(s) of a Partnership been issued a federal gaming device stamp or a federal wagering stamp by the federal government for the current tax period? No. If a Corporation, has any officer, manager, or director thereof; or, any stockholder owning in the aggregate more than twenty (20) percent of the stock, been issued a federal wagering device stamp or a federal wagering stamp by the federal government for the current tax period?

35. Will you and all your employees refuse to serve or sell alcoholic liquor to an intoxicated person or to a minor? Yes

36. Have you, or any partner, or owner of 5% or more shares of the corporation or local manager, ever had a liquor license revoked or suspended? No

37. If so, give all details, including location of the licensed property (please attach).

CAUTION: Failure to provide accurate or complete information may result in the suspension and/or revocation of your liquor license and/or the issuance of a fine.

No person holding a license issued by the City of McHenry shall, in the conduct of the licensed business or upon the licensed premises, either directly or through the agents or employees of the licensee:

1. Violate or permit a violation of any federal law or state statute.

2. Violate or permit a violation of any City ordinance or resolution regulating the sale of alcoholic liquor or relating to the eligibility of the licensee to hold a liquor license.

3. Violate or permit a violation of any rule or regulation of the Illinois Liquor Control Commission, as revised from time to time.

4. Permit the sale of and/or consumption of any alcoholic beverages outdoors absent a specific permit granted by the McHenry City Council however, provided, outside sales and/or consumption shall be permitted from the hours of 11:00 a.m. to 4:30 p.m. during Sidewalk Sales on the Saturday proceeding Parade Day during Fiesta Days.

5. During Fiesta Days Celebrations on Parade Day, sell or serve (a) carryout alcoholic beverages (not including packaged liquor sales); or (b) alcoholic beverages in non-original containers, such as plastic cups. Only original containers, such as cans, bottle or glassware may be used.

6. Allowing fighting, disorderly conduct or excessive noise constituting a nuisance or tumultuous conduct of patrons and/or employees of licensee as defined in the McHenry City Code, to take place on the licensed premises or on, about and/or adjacent to the property where the licensed premises is located.

7. Allow patrons to serve or distribute alcoholic beverages to minors on the licensed premises or allow minors to drink alcoholic beverages on the licensed premises.

8. Fail to call the City Police Department upon the violation of any City ordinance or state law relating to fighting, disorderly conduct or excessive noise constituting a nuisance or tumultuous conduct of patrons and/or employees on the licensed premises.
AFFIDAVIT

STATE OF ILLINOIS

COUNTY OF MCHENRY

I, the undersigned, being first duly sworn, depose and say that I (we), have read the above and foregoing Application, caused the answers to be provided thereto and all of the information given on said Application to be true and correct, and consent to investigation and background check by the Local Liquor Control Commissioner or his designee and agree to comply with all City Ordinances and the rules stated on this application.

SOLE PROPRIETOR:

Signature of Applicant

Subscribed and sworn to before me this

day of ____________, 20__

NOTARY PUBLIC

PARTNERSHIP:

(Authorized Agent of the Partnership)

Signature

Print Name

Title

Subscribed and sworn to before me this

day of ____________, 20__

NOTARY PUBLIC

CORPORATION:

(Authorized Agent of the Corporation)

Signature

Print Name

Title

Subscribed and sworn to before me this

day of ____________, 20__

NOTARY PUBLIC

MANAGER:

Signature of Local Manager

Print Name

Subscribed and sworn to before me the
day of ____________, 20__

NOTARY PUBLIC
CITY OF McHENRY

MCHENRY COUNTY

STATE OF ILLINOIS

ORDINANCE NUMBER ORD-18-
An Ordinance amending Section 6(1) of Municipal Code Chapter 4, Alcoholic Beverages increasing the number of Class “A1” Liquor Licenses in effect from two (2) to three (3).

Adopted by the
Mayor and City Council
Of the
City of McHenry
McHenry County
State of Illinois

October 15, 2018

Published in pamphlet form by authority of the Mayor and City Council of the City of McHenry, McHenry County, Illinois this 15th day of October, 2018.
ORDINANCE NO. MC-18-

AMENDING SECTION 6(1) OF MUNICIPAL CODE CHAPTER 4, ALCOHOLIC BEVERAGES INCREASING THE NUMBER OF CLASS “AI” LIQUOR LICENSES IN EFFECT FROM TWO (2) TO THREE (3)

(Hub Market Butcher Shop)

WHEREAS, the City of McHenry, McHenry County, Illinois, is a home rule municipality as contemplated under Article VII, Section 6, of the Constitution of the State of Illinois, and the passage of this Ordinance constitutes an exercise of the City’s home rule powers and functions as granted in the Constitution of the State of Illinois.

NOW, THEREFORE BE IT ORDAINED by the City Council of the City of McHenry, McHenry County, Illinois, as follows:

SECTION 1: Section 4-6(1) of the Municipal Code relating to liquor license classifications is hereby amended by:

- Increasing the number of Class “AI” Liquor Licenses in effect from two (2) to three (3).

SECTION 2: If any section, paragraph, subdivision, clause, sentence or provision of this Ordinance shall be adjudged by any Court of competent jurisdiction to be invalid, such judgment shall not effect, impair, invalidate or nullify the remainder thereof, which remainder shall remain and continue in full force and effect.

SECTION 3: All ordinances, or parts thereof, in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 3: This ordinance shall be published in pamphlet form by and under the authority of the corporate authorities of the City of McHenry, Illinois.

SECTION 4: This ordinance shall be in full force and effect from and after its passage, approval and publication, as provided by law.

Passed this 15th day of October, 2018 by roll call vote as follows:

Voting Aye: 
Voting Nay: 
Absent: 

______________________________
Mayor

ATTEST:

______________________________
Deputy City Clerk
REGULAR AGENDA SUPPLEMENT

DATE: October 15, 2018

TO: McHenry City Council

FROM: Wayne Jett, Jr., Mayor

RE: Motion to approve the transfer of Class A-27 from Reprise Corp d/b/a Nicolino’s Trackside, to Salerno’s McHenry, Inc. d/b/a Salerno’s McHenry located at 621 Ridgeview Drive effective upon Council approval and issuance of the State Liquor License.

ATT: Application and supporting documentation

AGENDA ITEM SUMMARY:
Mr. Robert Salerno has submitted an application for the transfer of the Class “A” liquor license at Nicolino’s Trackside located at 621 Ridgeview Drive.

BACKGROUND:
The Class “A” liquor license permits the retail sale of alcoholic beverages for consumption on premises and retail sale of packaged liquors. Mr. Salerno is in the process of purchasing the Nicolino’s Trackside from Michael Bono and will take over operations of the business.

ANALYSIS:
All required paperwork was submitted, fees paid, the applicant met with Mayor Jett and was successfully fingerprinted by McHenry Police.

RECOMMENDATION:
Therefore, if Council concurs, then it is recommended a motion be considered to grant a Class A liquor license to Salerno’s McHenry, Inc. located at 621 Ridgeview Drive.
NAME OF BUSINESS, ADDRESS, & TELEPHONE #: Salerno's Mchenry, INC
621 Ridgeview Dr, Mchenry IL 60050 815-344-9800

1. Please indicate form of ownership: CORPORATION ☑ PARTNERSHIP ☐ INDIVIDUAL/SOLE PROP.

IF CORPORATION:
Corporate Name: Salerno's Mchenry, INC
Corporate Address: 15673 Fairview Ave, Lombard, IL 60148
Corporate Phone Number: 630-878-4878 EMAIL: RSalerno@SalernoPizza.com

3. State of Incorporation: ILLINOIS

5. State of Incorporation:

IF INDIVIDUAL/SOLE PROP:
6. Applicant's Full Name: 

Date of Birth: 
Residence Address: 

7. Home Phone: Business Phone: EMAIL:

8. Citizen of U.S.? ☑ If a naturalized citizen, when and where naturalized: 

Court in which (or law under which) naturalized:

9. (A) If Applicant is a PARTNERSHIP, give name and address of all partners holding 5% or more of the partnership interest:

(B) If Applicant is CORPORATION, give name, address and telephone number of owners holding 5% or more shares and registered agent:

Robert Salerno 15673 Fairview Ave, Lombard, IL 60148 630-878-4878
10. If Applicant and Local Manager are not the same, give name, address and telephone number of Local Manager:

| Local Manager's: Date of Birth: | Place of Birth: | Citizen of U.S.? |

11. Principal Type of Business: Full Service Bank & Eatery
12. What is current zoning for this property? Commercial
13. Type of License Sought: Class A
14. Date on which business was or will begin at this location: Upon Issuance of Liquor License
15. Does applicant own premises for which license is sought? Yes. If not, state name and address of owner and attach copy of executed lease.

16. If property is owned by a land trust, trustee must file affidavit disclosing names and addresses of all beneficial owners and percentage of interest.
17. Is the location of applicant's business for which license is sought within one hundred feet of any church, school (except institutions of higher education), hospital, home for aged or indigent persons or for veterans and their families or any military or naval station? No

A. If answer to the above is "YES", is the applicant's place of business a hotel offering restaurant service, a regularly organized club, a food shop or other place where the sale of liquor is to the principal business? Yes. If yes, how long has place of business been in operation?

18. If applicant has ever engaged in the business or sale of alcoholic liquor at retail, list address of all locations (may attach supplemental sheet).
20. Give applicant's Retailer's Occupational tax (ROT) Registration Number:

21. Are you delinquent in the payment of the Retailer's Occupational Tax (Sales Tax), and if so, the reasons therefore: No

22. If this application is for a new license or a transferred license, attach to this Application a copy of Applicant's balance sheet and operating statement for the past three years, or if not available, other proof of financial responsibility.

23. Name and address of dram shop insurance company for both the licensee and owner of the building in which the alcoholic liquor will be sold for the duration of the license AND attach a copy of the declaration page showing the insured parties and amounts of coverage.

24. Describe parking facilities available to the business: Lot

25. Are you familiar with all the laws of the United States, State of Illinois and ordinances of the City of McHenry pertaining to the sale of alcoholic liquor; and will you abide by them? Yes

26. Will you maintain the entire premises in a safe, clean and sanitary manner free from conditions, which might cause accidents? Yes

27. Will you attempt to prevent rowdiness, fights and disorderly conduct of any kind and immediately notify the McHenry Police Department is any such events take place? Yes

28. Has any manufacturer, importing distributor or distributor of alcoholic liquors directly or indirectly paid or agreed to pay for this license, advanced money or anything else of value or any credit (other than merchandising credit in the ordinary course of business for a period not in excess of 90 days), or is such a person directly or indirectly interested in the ownership, conduct or operation of the place of business? No. If answer is "YES", give particulars:

29. Have you, or in the case of a corporation, the owners of 5% or more shares of the corporation or the local manager, or in the case of partnership, any of the partners, ever been convicted of any violation of any law pertaining to alcoholic liquors? No. If answer is "YES", explain:

30. Have you, or in the case of a corporation, the owners of 5% or more shares of the corporation and the local manager, or in the case of a partnership, any of the partners, ever been convicted of either a felony or a misdemeanor? No. If so, please describe:

2017
31. Is any individual who is directly or indirectly interested in applicant's place of business, a law-enforcing official or elected public official (mayor, alderman, and member of any City commission, committee or board)? [V] Yes. If so, please state name and address of such person:

32. List your occupation or employment with addresses thereof for the past 10 years (if partnership or corporation, list same information for each partner and the local manager — (please attach).

33. Have you ever been convicted of a gambling offense (if a partnership or corporation, include all partners, owners of 5% or more shares of the corporation and the local manager)? [V] No. If so, give all details: ____________________________

34. Has any owner(s) or member(s) of a Partnership been issued a federal gaming device stamp or a federal wagering stamp by the federal government for the current tax period? If a Corporation, has any officer, manager, or director thereof; or, any stockholder owning in the aggregate more than twenty (20) percent of the stock, been issued a federal gaming device stamp or a federal wagering stamp by the federal government for the current tax period?

35. Will you and all your employees refuse to serve or sell alcoholic liquor to an intoxicated person or to a minor? [V] No.

36. Have you, or any partner, or owner of 5% or more shares of the corporation or local manager, ever had a liquor license revoked or suspended? [V] No.

37. If so, give all details, including location of the licensed property (please attach).

CAUTION: Failure to provide accurate or complete information may result in the suspension and/or revocation of your liquor license and/or the issuance of a fine.

No person holding a license issued by the City of McHenry shall, in the conduct of the licensed business or upon the licensed premises, either directly or through the agents or employees of the licensee:

1. Violate or permit a violation of any federal law or state statute.

2. Violate or permit a violation of any City ordinance or resolution regulating the sale of alcoholic liquor or relating to the eligibility of the licensee to hold a liquor license.

3. Violate or permit a violation of any rule or regulation of the Illinois Liquor Control Commission, as revised from time to time.

4. Permit the sale of and/or consumption of any alcoholic beverages outdoors absent a specific permit granted by the McHenry City Council however; provided, outside sales and/or consumption shall be permitted from the hours of 11:00 a.m. to 4:30 p.m. during Sidewalk Sales on the Saturday preceding Parade Day during Fiesta Days.

5. During Fiesta Days Celebrations on Parade Day, sell or serve (a) carryout alcoholic beverages (not including packaged liquor sales); or (b) alcoholic beverages in non-original containers, such as plastic cups. Only original containers, such as cans, bottle or glassware may be used.

6. Allowing fighting, disorderly conduct or excessive noise constituting a nuisance or tumultuous conduct of patrons and/or employees of licensee as defined in the McHenry City Code, to take place on the licensed premises or on, about and/or adjacent to the property where the licensed premises is located.

7. Allow patrons to serve or distribute alcoholic beverages to minors on the licensed premises or allow minors to drink alcoholic beverages on the licensed premises.

8. Fail to call the City Police Department upon the violation of any City ordinance or state law relating to fighting, disorderly conduct or excessive noise constituting a nuisance or tumultuous conduct of patrons and/or employees on the licensed premises.

2017
I, the undersigned, being first duly sworn, deposes and says that I (we), have read the above and foregoing Application, caused the answers to be provided thereto and all of the information given on said Application to be true and correct, and consent to investigation and background check by the Local Liquor Control Commissioner or his designee and agree to comply with all City Ordinances and the rules stated on this application.

SOLE PROPRIETOR:

______________________________
Signature of Applicant

______________________________
Subscribed and sworn to before me this

day of ______________, 20___.

______________________________
NOTARY PUBLIC

PARTNERSHIP:

(Authorized Agent of the Partnership)

______________________________
Signature

______________________________
Print Name

______________________________
Title

______________________________
Subscribed and sworn to before me this

day of ______________, 20___.

______________________________
NOTARY PUBLIC

CORPORATION:

(Authorized Agent of the Corporation)

______________________________
Signature

______________________________
Print Name

______________________________
Title

SUBMITTED TO ME, this 10th day of October, 2018.

______________________________
NOTARY PUBLIC

MANAGER:

______________________________
Signature of Local Manager

______________________________
Print Name

______________________________
Subscribed and sworn to before me this

day of ______________, 20___.

______________________________
NOTARY PUBLIC
Robert Salerno  
1 s 673 Fairview  
Lombard, IL 60148

Employment Last 10 years:

WGN-TV 1995-2007: Chief Financial Officer

IDEACAST 2008-2010: President/CFO

Self Employed 2005-current:
  - R. Salerno Restaurant Group, Various Locations IL 2005-current
  - The Finishing Company, Addison, IL- 2011-Current
DATE: October 15, 2018

TO: Mayor and City Council

FROM: Wayne. S. Jett, Mayor
Derik Morefield, City Administrator

RE: Consideration of a Class A Liquor License Request for Old Bridge Tavern, 1334 North Riverside Drive.

ATT: Liquor License Application

AGENDA ITEM SUMMARY:
The purpose of this agenda item is for the consideration of granting a Class A liquor license to an existing liquor license establishment (formerly Old Bridge Tavern/Kevin Plastina) under new owners Mr. Demos Archos and Ms. Alison Archos located at 1334 North Riverside Drive. The business is owned by OBT Inc. comprised by Mr. Archos and Mrs. Archos. OBT Inc. is the petitioner for this request.

BACKGROUND/ANALYSIS:
Mr. Archos is the owner of the Old Bridge Tavern building located at 1334 North Riverside Drive. He also has two other existing liquor license establishments Bimbos Bar & Grill located at 1318 North Riverside Drive and The Hickory Pit located at 3102 West Route 120.

Mr. Archos is an existing liquor license holder and has been previously fingerprinted. The fees have been paid and he was spoken with the Mayor.

The number of Class A licenses will stay the same since the former Old Bridge Tavern also held a Class A license.

RECOMMENDATION:
Therefore, if Council concurs, it is recommended that a motion be made to approve a Class A liquor license request for OBT Inc. d/b/a Old Bridge Tavern, 1334 North Riverside Drive.
CITY OF MCHENRY  
APPLICATION FOR LIQUOR LICENSE  
UNDER  
CITY OF MCHENRY LIQUOR CONTROL ORDINANCE  
FISCAL YEAR 2018/2019  
TO BE FILED WITH THE OFFICE OF THE MAYOR  
ALL LICENSES EXPIRE APRIL 30 FOLLOWING DATE OF ISSUANCE

Fee Received $1,400  
Date Received 12/11/2018  
Receipt Issued On 12/11/2018  
Check No. 4634  
Cashier's Chk.  
Cert. Check  
Cash  

NAME OF BUSINESS, ADDRESS, TELEPHONE, EMAIL: OLD BRIDGE TAVERN  
1334 N RIVERSIDE DR

1. Please indicate form of ownership: CORPORATION X PARTNERSHIP ________ INDIVIDUAL/SOLE PROP.

2. IF CORPORATION:  
Corporation Name: OBT INC  
Corporate Address: 1318 N RIVERSIDE DR MCHENRY IL 60050  
Corporate Phone Number: 815-385-1444 EMAIL:  

3. State of Incorporation: IL

4. IF PARTNERSHIP:  
Name:  
Corporate Address:  
Corporate Phone Number: EMAIL:

5. State of Incorporation:

6. IF INDIVIDUAL/SOLE PROP:  
Applicant's Full Name:  
Date of Birth:  
Residence Address:  

7. Home Phone: Business Phone: EMAIL:  

8. Citizen of U.S.? ________ If a naturalized citizen, when and where naturalized?  

9. (A) If Applicant is a PARTNERSHIP, give name and address of all partners holding 5% or more of the partnership interest:  
DEMOS ARCHOS 808 N JOHN ST MCHENRY, IL 60050  
ALISON ARCHOS 808 N JOHN ST MCHENRY, IL 60050

(B) If Applicant is CORPORATION, give name, address and telephone number of owners holding 5% or more shares and registered agent:  

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2018
10. If Applicant and Local Manager are not the same, give name, address, and telephone number of Local Manager:

Local Manager's: Date of Birth: ___________________ Place of Birth: _______________ Citizen of U.S.? ____________

11. Principal Type of Business: TAVERN

12. What is the current zoning for this property? COMMERCIAL

13. Type of License Sought: CLASS A

14. Date on which business was or will begin at this location: JAN 1st, 2019

15. Does applicant own premises for which license is sought? If not, state name and address of owner and attach copy of executed lease.

16. If property is owned by a land trust, trustee must file affidavit disclosing names and addresses of all beneficial owners and percentage of interest.

17. Is the location of applicant's business for which license is sought within one hundred feet of any church, school (except institutions of higher education), hospital, home for aged or indigent persons or for veterans and their families or any military or naval station? NO

A. If answer to the above is "YES", is the applicant's place of business a hotel offering restaurant service, a regularly organized club, a food shop or other place where the sale of liquor is to the principal business? ______ If yes, how long has place of business been in operation?

18. If applicant has ever engaged in the business or sale of alcoholic liquor at retail, list address of all locations (may attach supplemental sheet).


20. Give applicant's Retailer's Occupational tax (ROT) Registration Number: 4298-3339

21. Are you delinquent in the payment of the Retailer's Occupational Tax (Sales Tax), and if so, the reasons therefore: NO

22. If this application is for a new license or a transferred license, attach to this Application a copy of Applicant's balance sheet and operating statement for the past three years, or if not available, other proof of financial responsibility.

23. Name and address of dram shop insurance company for both the licensee and owner of the building in which the alcoholic liquor will be sold for the duration of the license AND attach a copy of the declaration page showing the insured parties and amounts of coverage.

24. Describe parking facilities available to the business: PUBLIC

25. Are you familiar with all the laws of the United States, State of Illinois and ordinances of the City of McHenry pertaining to the sale of alcoholic liquor; and will you abide by them? YES

26. Will you maintain the entire premises in a safe, clean and sanitary manner free from conditions, which might cause accidents? YES

27. Will you attempt to prevent rowdiness, fights and disorderly conduct of any kind and immediately notify the McHenry Police Department if any such events take place? YES

28. Has any manufacturer, importer or distributor of alcoholic liquors directly or indirectly paid or agreed to pay for this license, advanced money or anything else of value or any credit (other than merchandising credit in the ordinary course of business for a period not in excess of 90 days), or is such a person directly or indirectly interested in the ownership, conduct or operation of the place of business? If answer is "YES", give particulars: NO

29. Have you, or in the case of a corporation, the owners of 5% or more shares of the corporation or the local manager, or in the case of partnership, any of the partners, ever been convicted of any violation of any law pertaining to alcoholic liquors? NO

answer is "YES", explain: ________________________________________________________________

30. Have you, or in the case of a corporation, the owners of 5% or more shares of the corporation and the local manager, or in the case of a partnership, any of the partners, ever been convicted of either a felony or a misdemeanor? NO If so, please describe: 

18) Bimbus Italian 1318 N Riverose McHenry

2018 Hickory Pit BBQ 302 WIL RT 120 McHenry
31. Is any individual who is directly or indirectly interested in applicant's place of business, a law-enforcing official or elected public official (mayor, alderman, and member of any City commission, committee or board)? NO. If so, please state name and address of such person:

32. List your occupation or employment with addresses thereof for the past 10 years (if partnership or corporation, list same information for each partner and the local manager—please attach).

33. Have you ever been convicted of a gambling offense (if a partnership or corporation, include all partners, owners of 5% or more shares of the corporation and the local manager)? NO. If so, give all details:

34. Has any owner(s) or member(s) of a Partnership been issued a federal gaming device stamp or a federal wagering stamp by the federal government for the current tax period? If a Corporation, has any officer, manager, or director thereof, or, any stockholder owning in the aggregate more than twenty (20) percent of the stock, been issued a federal gaming device stamp or a federal wagering stamp by the federal government for the current tax period? NO

35. Will you and all your employees refuse to serve or sell alcoholic liquor to an intoxicated person or to a minor? YES

36. Have you, or any partner, owner of 5% or more shares of the corporation or local manager, ever had a liquor license revoked or suspended? NO

37. If so, give all details, including location of the licensed property (please attach).

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2. Violate or permit a violation of any City ordinance or resolution regulating the sale of alcoholic liquor or relating to the eligibility of the licensee to hold a liquor license.

3. Violate or permit a violation of any rule or regulation of the Illinois Liquor Control Commission, as revised from time to time.

4. Permit the sale of and/or consumption of any alcoholic beverages outdoors absent a specific permit granted by the McHenry City Council however, provided, outside sales and/or consumption shall be permitted from the hours of 11:00 a.m. to 4:30 p.m. during Sidewalk Sales on the Saturday preceding Parade Day during Fiesta Days.

5. During Fiesta Days Celebrations on Parade Day, sell or serve (a) carryout alcoholic beverages (not including packaged liquor sales); or (b) alcoholic beverages in non-original containers, such as plastic cups. Only original containers, such as cans, bottle or glassware may be used.

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7. Allow patrons to serve or distribute alcoholic beverages to minors on the licensed premises or allow minors to drink alcoholic beverages on the licensed premises.

8. Fail to call the City Police Department upon the violation of any City ordinance or state law relating to fighting, disorderly conduct or excessive noise constituting a nuisance or tumultuous conduct of patrons and/or employees on the licensed premises.
AFFIDAVIT

STATE OF ILLINOIS  
COUNTY OF MCHENRY  

I, the undersigned, being first duly sworn, deposes and says that I (we), have read the above and foregoing Application, caused the answers to be provided thereto and all of the information given on said Application to be true and correct, and consent to investigation and background check by the Local Liquor Control Commissioner or his designee and agree to comply with all City Ordinances and the rules stated on this application.

SOLE PROPRIETOR:

Signature of Applicant

Subscribed and sworn to before me this __________ day of __________, 20____

NOTARY PUBLIC

PARTNERSHIP:

(Authorized Agent of the Partnership)

Signature

Print Name

Title

Subscribed and sworn to before me this __________ day of __________, 20____

NOTARY PUBLIC

CORPORATION:

(Authorized Agent of the Corporation)

Signature

Print Name

Title

Subscribed and sworn to before me this 4th day of Oct, 2018

NOTARY PUBLIC

MANAGER:

Signature of Local Manager

Print Name

Subscribed and sworn to before me this __________ day of __________, 20____

NOTARY PUBLIC
AFFIDAVIT

STATE OF ILLINOIS )
COUNTY OF MCHENRY )

I, the undersigned, being first duly sworn, deposes and says that I (we), have read the above and foregoing Application, caused the answers to be provided thereto and all of the Information given on said Application to be true and correct, and consent to investigation and background check by the Local Liquor Control Commissioner or his designee and agree to comply with all City Ordinances and the rules stated on this application.

SOLE PROPRIETOR:

Signature of Applicant

Subscribed and sworn to before me this

__________ day of ______________, 20____.

NOTARY PUBLIC

PARTNERSHIP:

(Authorized Agent of the Partnership)

Signature

Print Name

Title

Subscribed and sworn to before me this

__________ day of ______________, 20____.

NOTARY PUBLIC

CORPORATION:

(Authorized Agent of the Corporation)

Signature

Print Name

Title

Subscribed and sworn to before me this


NOTARY PUBLIC

MANAGER:

Signature of Local Manager

Print Name

Subscribed and sworn to before me this

__________ day of ______________, 20____.

NOTARY PUBLIC

2018