

BIRMINGHAM CITY COMMISSION AGENDA
REGULAR MEETING
OCTOBER 7, 2024
MUNICIPAL BUILDING, 151 MARTIN
7:30 P.M.

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Elaine McLain, Mayor

II. ROLL CALL

Alexandria Bingham, City Clerk

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

ANNOUNCEMENTS

- State Representative [Samantha Steckloff](#), 19th House District
- Please join the Fire Department this Saturday at their annual Open House 1pm-4pm at Fire Station 1.

APPOINTMENTS

- A. Board of Zoning Appeals
1. John Miller
 2. Erik Morganroth
 3. Susan Friedlaender

To appoint _____ as a regular member to the Board of Zoning Appeals to serve three-year terms to expire October 10, 2027.

To appoint _____ as a regular member to the Board of Zoning Appeals to serve three-year terms to expire October 10, 2027.

- B. Historic District Study Committee
1. Sean Moran

To appoint _____, as a regular member to the Historic District Study Committee to serve the remainder of a three-year term to expire June 25, 2027.

RECOGNITION OF STAFF

- C. Finance Department
1. Mary Chavez, Finance Director Designee

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

V. CONSENT AGENDA

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

- A. Resolution to approve the regular City Commission meeting revised minutes of the meeting held on September 9, 2024.
- B. Resolution to approve the City Commission workshop meeting minutes of the meeting held on September 23, 2024.
- C. Resolution to approve the regular City Commission meeting minutes of the meeting held on September 23, 2024.
- D. Resolution to approve the warrant list, including Automated Clearing House payments, dated September 25, 2024 in the amount of \$14,114,635.41.
- E. Resolution to approve the warrant list, including Automated Clearing House payments, dated October 3, 2024 in the amount of \$1,681,856.73.
- F. Resolution to approve a special event permit as requested by the Ascension of Christ Lutheran Church to hold the 2024 Christmas Nativity Display daily, beginning on December 9, 2024 and ending December 31, 2024, contingent upon compliance with all permit and insurance requirements and payment of all fees, and further pursuant to any minor modifications or event cancellation that may be deemed necessary by administrative staff leading up to or at the time of the event.
- G. Resolution to approve an agreement with Axon Enterprises for the purchase of 11 in-car camera systems, 35 body cameras, and 35 Tasers on a five-year contract for \$727,621.80, funded in the first year from account 101.0-301.000-971.0100 for the amount of \$72,762.20; further authorizing the Mayor to sign said contract on behalf of the City.
- H. Resolution to set a public hearing date of October 28, 2024 to consider the rezoning application for 400 E. Lincoln, to change the zoning designation of the entire parcel from R4 (Two-Family Residential) to PP (Public Property).
- I. Resolution to set a public hearing date of November 18, 2024 to consider the Special Land Use Permit, Final Site Plan & Design Review application for 2211 & 2243 Cole, to permit a use greater than 6,000 square feet in the MX (Mixed-Use) zoning district of Birmingham.

VI. CITY MANAGER'S REPORT

The City Manager's Report regularly occurs on the second City Commission meeting of the month. Additionally, reports from prior months can be viewed on the City's [website bhamgov.org/manager](http://bhamgov.org/manager).

None.

VII. UNFINISHED BUSINESS

- A. Motion adopting an ordinance to amend Chapter 82 – Planning, to add Article VI, to create a standing Environmental Sustainability Committee and establish its composition, terms/membership, organization and duties.

VIII. NEW BUSINESS

- A. Resolution to direct staff to draft a SLUP Amendment, a SLUP Contract, a PILOT Agreement, and Parking Agreement (TBD) based upon the City Commission's preference for Option (1, 2, 3, or 4), and to continue the public hearing to October 28, 2024.
- B. Approve a resolution to direct staff to update the RFP for final design for option C, a new building between 44,500 and 53,000 square feet in size, at a maximum cost of \$32 million dollars. Further, to provide direction to issue the RFP on October 10, 2024 to the three firms that were pre-qualified during the RFQ process earlier this summer, after review by the Ad Hoc Senior/Recreation Center Committee on October 9, 2024.

AND

Approve a resolution to direct staff to negotiate lease agreements with both Next and the YMCA (including apportioned costs and responsibilities, membership rate reductions, building maintenance and other standard terms). Commission Items for Future Discussion. A motion is required to bring up the item for future discussion at the next reasonable agenda, no discussion on the topic will happen tonight.

- C. Commission discussion on items from a prior meeting.
 - 1. Landscaping Code of Conduct

IX. REMOVED FROM CONSENT AGENDA

X. COMMUNICATIONS

- A. Letters regarding YMCA-NEXT
- B. Letters regarding Leaf blowers
- C. Letter regarding Wimbledon
- D. Letter regarding deer population control

XI. REPORTS

- A. Commissioner Reports
- B. Commissioner Comments
- C. Advisory Boards, Committees, Commissions' Reports and Agendas
- D. Legislation
- E. City Staff

INFORMATION ONLY

XII. ADJOURN

Should you wish to participate in this meeting, you are invited to attend the meeting in person or

virtually through ZOOM: <https://zoom.us/j/655079760> Meeting ID: 655 079 760

You may also present your written statement to the City Commission, City of Birmingham, 151 Martin Street, P.O. Box 3001, Birmingham, Michigan 48012-3001 prior to the hearing.

NOTICE: Individuals requiring accommodations, such as mobility, visual, hearing, interpreter or other assistance, for effective participation in this meeting should contact the City Clerk's Office at (248) 530-1880 (voice), or (248) 644-3405 (TDD) at least one day in advance to request mobility, visual, hearing or other assistance.

Las personas que requieren alojamiento, tales como servicios de interpretación, la participación efectiva en esta reunión deben ponerse en contacto con la Oficina del Secretario Municipal al (248) 530-1880 por lo menos el día antes de la reunión pública. (Title VI of the Civil Rights Act of 1964).



NOTICE OF INTENTION TO APPOINT TO BOARD OF ZONING APPEALS

At the regular meeting of October 7, 2024, the Birmingham City Commission intends to appoint 2 regular members, one architect and one real estate and/or building professional, to the Board of Zoning Appeals to serve three-year terms to expire October 10, 2027.

Interested parties may recommend others or themselves for these positions by submitting a form available from the City Clerk's office. Applications must be submitted to the City Clerk's office on or before noon on Wednesday, October 2, 2024. Applications will appear in the public agenda at which time the City Commission will discuss recommendations, and may make nominations and vote on appointments.

Duties of Board

The Board of Zoning Appeals acts on questions arising from the administration of the Zoning Ordinance, including the interpretation of the zoning map. The Board hears and decides appeals from and reviews any order, requirement, decision or determination made by the Building Official.

Applicant Name	Criteria Applicants shall be property owners of record and registered voters.	Qualifications
John Miller	Birmingham Property owner and registered voter	Current board member with a background in architecture
Erik Morganroth	Birmingham Property owner and registered voter	Current Chairperson for the board with a background real estate and building
Susan Friedlaender	Birmingham Property owner and registered voter	Retired attorney with experience in zoning, land use, and historic preservation law.

NOTE: All members of boards and commissions are subject to the provisions of City of Birmingham City Code Chapter 2, Article IX, Ethics and the filing of the Affidavit and Disclosure Statement.

SUGGESTED ACTION:

To appoint _____ as a regular member to the Board of Zoning Appeals to serve three-year terms to expire October 10, 2027.

To appoint _____ as a regular member to the Board of Zoning Appeals to serve three-year terms to expire October 10, 2027.



CLERK'S OFFICE

BIRMINGHAM

A WALKABLE CITY

RECEIVEDSEP 17
1**OFFICE USE ONLY**

Meets Requirements? Yes No

Will Attend / Unable to Attend

APPLICATION FOR CITY BOARD OR COMMITTEE

Thank you for your interest in serving on a Board or Committee. The purpose of this form is to provide the City Commission with basic information about applicants considered for appointment. NOTE: Completed applications are included in the City Commission agenda packets. The information included on this form is open to the public. All Board and Committee members are subject to the provisions of the Ethics Ordinance (Chapter 2, Article IX of the City Code).

Information on various Boards and Committees and a list of current openings can be found on the City website at www.bhamgov.org/boardopportunities.

(Please print clearly)

Board/Committee of Interest BOARD of ZONING APPEALSSpecific Category/Vacancy on Board 3 YEAR TERM (see back of this form for information)Name JOHN N. MILLER AIAPhone 248 703 9384Residential Address 544 BROOKSIDEEmail * jnmillerstudio@gmail.comResidential City, Zip BIRMINGHAM MILength of Residence 33 YEARSBusiness Address — 48009Occupation RETIREDBusiness City, Zip —

Reason for Interest: Explain how your background and skills will enhance the board to which you have applied _____

WITH MY BACKGROUND IN ARCHITECTURE & SERVICE TO THIS BOARD SINCE 2010, I BELIEVE THAT I CAN CONTRIBUTE TO THE CONTINUING COMMUNITY SUPPORT THAT WE PROVIDE.

List your related employment experience 45 YRS. AS A PRACTICING ARCHITECT
VICE PRESIDENT @ TMP BLOOMFIELD HILLS / LTU ADJUNCT INSTRUCTOR

List your related community activities MEMBER: AMER. INST. of ARCHITECTS / BEA
SCARAB CLUB / LEYLAND OLD ARTS BLDG / O.U. PRESIDENTS CLUB

List your related educational experience CAYLAND U. FINE ARTS MAJOR 1972-1974
LTU-B. SCIENCE 1977
LTU-B. ARCHITECTURE 1978

To the best of your knowledge, do you or a member of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the City of Birmingham from which you or they derive direct compensation or financial benefit? If yes, please explain: _____

NONEDo you currently have a relative serving on the board/committee to which you have applied? NOAre you an elector (registered voter) in the City of Birmingham? YESSignature of Applicant John N. Miller AIA

Date

9.17.2024

Return the completed and signed application form to: City of Birmingham, City Clerk's Office, 151 Martin, Birmingham, MI 48009 or by email to clerk@bhamgov.org or fax to 248.530.1080.

3A

Updated 11/18/2020

*By providing your email to the City, you agree to receive news & notifications from the City. If you do not wish to

FromClerksOffice- APPLICATION FOR CITY BOARD OR COMMITTEE [#23]

1 message

'Wufoo' via Clerks Office <ClerksOffice@bhamgov.org>

Tue, Sep 17, 2024 at 1:57 PM

Reply-To: no-reply@wufoo.com

To: clerksOffice@bhamgov.org

Board/Committee of Interest	Board of Zoning appeals
Specific Category/Vacancy on Board (see below)	Reappointment
Name	Erik Morganroth
Residential Address	 631 Ann Street Birmingham, MI 48009 United States
Business Address	 631 Ann Street Birmingham, MI 48009 United States
Phone Number *	(248) 762-9822
Email By providing your email to the City, you agree to receive news and notifications from the City. If you do not wish to receive these messages, you may unsubscribe at any time.	emorganroth@comcast.net
Length of Residence	25 plus
Occupation	Real estate
Reason for Interest: Explain how your background and skills will enhance the board to which you have applied.	I am currently a bza member and currently chair the board.
List your related employment experience	Real estate Builder Development Real estate investor
List your related community activities	Current bza member and chair
List your related educational experience	BA from university of Michigan Real estate license
To the best of your knowledge, do you or a member of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the City of Birmingham from which you or they derive direct	No

compensation or financial benefit? If yes,
please explain.

Do you currently have a relative serving on the board/committee to which you have applied?	No
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Are you an elector (registered voter) in the City of Birmingham? *	Yes
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FromClerksOffice- APPLICATION FOR CITY BOARD OR COMMITTEE [#25]

1 message

'Wufoo' via Clerks Office <ClerksOffice@bhamgov.org>

Sat, Sep 21, 2024 at 3:38 PM

Reply-To: no-reply@wufoo.com

To: clerksOffice@bhamgov.org

Board/Committee of Interest	Board of Zoning Appeals
Name	Susan Friedlaender
Residential Address	 1564 Henrietta Street Birmingham, MI 48009 United States
Business Address	 1564 Henrietta Street Birmingham, MI 48009 United States
Phone Number *	(248) 770-4907
Email By providing your email to the City, you agree to receive news and notifications from the City. If you do not wish to receive these messages, you may unsubscribe at any time.	sfriedlaender@fnrplc.com
Length of Residence	7 years
Occupation	retired attorney
Reason for Interest: Explain how your background and skills will enhance the board to which you have applied.	I spent more than 30 years as an attorney specializing in zoning, land use and historic preservation law. Now that I am retired from the practice of law I would like to continue to use my education and skills in new ways. As an attorney I appeared before many boards and courts regarding a wide range of zoning and other land use issues. I have a deep understanding of the kind zoning laws that ZBA members must apply.
List your related employment experience	Land use and zoning attorney. I started my practice in 1988. From 1988-1999 I was with Butzel Long. I was with Honigman from 1999-2009. I had my own small practice from 2009-2024. My firm from which I retired is Friedlaender, Nykanen and Rogowski PLC located in Troy, MI .
List your related community activities	N/A
List your related educational experience	See above
To the best of your knowledge, do you or a member of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the City of Birmingham from which you or they derive direct	N/A

compensation or financial benefit? If yes,
please explain.

Do you currently have a relative serving on the board/committee to which you have applied?	No
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Are you an elector (registered voter) in the City of Birmingham? *	Yes
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BOARD OF ZONING APPEALS

Chapter 126 – Section 126-671 – Seven Members – Three Year Terms
Requirements – Property owners of record and registered voter

The Board of Zoning Appeals acts on questions arising from the administration of the zoning ordinance, including the interpretation of the zoning map. The board hears and decides appeals from and reviews any order, requirement, decision or determination made by the building official.

Last Name Home Address	First Name	Home Business E-Mail	Appointed	Term Expires
Canvasser 369 Kimberly st	Jason	248-231-9972 <i>jcanvasser@clark.hill.com</i>	 Regular member	10/10/2026
Hart 2051 Villa	Kevin	(248) 4967363 <i>khartassociates@aol.com</i>	2/27/2012 Architect	10/10/2026
Kona 439 W. Merrill St	Carl	(248)540-2810 <i>carlsbox@hotmail.com</i>	4/25/2022 Alternate Member, Financial Services	2/18/2026
Lilley 648 Cherry Ct.	Richard	248-594-6737 <i>dicklilley@icloud.com</i>	9/6/2018 Regular Member	10/10/2025
Miller 544 Brookside	John	(248) 703-9384 <i>jnmillerstudio@gmail.com</i>	1/23/2012 Architect	10/10/2024
Morganroth 631 Ann	Erik	(248) 762-9822 <i>emorganroth@comcast.net</i>	10/12/2015 Real Estate/Builder	10/10/2024

Last Name Home Address	First Name	Home Business E-Mail	Appointed	Term Expires
Reddy 763 Wallace	Ron	(313) 820-7491 <i>ron.reddy01@gmail.com</i>	2/11/2019 Regular member	10/10/2025
Rogers 2409 Buckingham	Don	(313) 820-0987 <i>donrogers4420@gmail.com</i>	7/22/2024 Alternate Member	2/18/2026
Yaldo 1936 Graefield	Pierre	(248) 534-5585 <i>Pierre@BluelandMGT.com</i>	2/28/2022 Attorney	10/10/2025

CITY BOARD/COMMITTEE ATTENDANCE RECORD

Name of Board: Board of Zoning Appeals

Year: 2024

Members Required for Quorum: 4

MEMBER NAME	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	SPEC MTG	SPEC MTG	Total Mtgs. Att.	Total Absent	Percent Attended Available
REGULAR MEMBERS																	
Miller, John	P	P	P	P	P	CM	P	P	P						8	0	100%
Hart, Kevin	A	A	P	A	A	CM	P	P	A						3	5	38%
Morganroth, Erik	P	P	P	P	A	CM	P	P	P						7	1	88%
Canvasser, Jason	NA	P	P	P	P	CM	P	A	P						6	1	86%
Reddy, Ron	P	P	P	A	P	CM	P	A	P						6	2	75%
Yaldo, Pierre	P	P	P	P	P	CM	A	P	P						7	1	88%
Lilley, Richard	P	A	A	P	P	CM	P	P	P						6	2	75%
Reserved															0	0	#DIV/0!
Reserved															0	0	#DIV/0!
ALTERNATES																	
Kona, Carl	P	P	P	P	P	CM	P	P	P						8	0	100%
Rogers, Donald	NA	NA	NA	NA	NA	NA	NA	A	P						1	1	50%
Reserved															0	0	#DIV/0!
Reserved															0	0	#DIV/0!
Present or Available	6	6	7	6	6	0	7	6	8	0	0	0	0	0			

KEY:

- A = Member absent
- P = Member present or available
- CP = Member available, but meeting canceled for lack of quorum
- CA = Member not available and meeting was canceled for lack of quorum
- NA = Member not appointed at that time
- NM = No meeting scheduled that month
- CM = Meeting canceled for lack of business items

Department Head Signature

CITY BOARD/COMMITTEE ATTENDANCE RECORD

Name of Board: Board of Zoning Appeals

Year: 2023

Members Required for Quorum: 4

MEMBER NAME	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	SPEC MTG	SPEC MTG	Total Mtgs. Att.	Total Absent	Percent Attended Available
REGULAR MEMBERS																	
Miller, John	P	P	P	P	A	P	A	P	P	P	P	P	NM	NM	10	2	83%
Hart, Kevin	P	P	P	A	P	P	P	P	P	A	P	P	NM	NM	10	2	83%
Morganroth, Erik	A	P	P	P	P	P	P	P	P	P	A	P	NM	NM	10	2	83%
Canvasser, Jason	P	P	P	P	P	P	A	A	A	NA	NA	NA	NM	NM	6	3	67%
Reddy, Ron	P	P	P	P	P	P	A	P	A	P	A	P	NM	NM	9	3	75%
Yaldo, Pierre	P	P	P	A	P	P	P	A	P	P	P	P	NM	NM	10	2	83%
Lilley, Richard	P	A	A	P	P	P	P	P	P	P	P	A	NM	NM	9	3	75%
Reserved															0	0	#DIV/0!
Reserved															0	0	#DIV/0!
ALTERNATES																	
Kona, Carl	P	P	P	P	P	P	A	P	P	P	P	P	NM	NM	11	1	92%
Member 2	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	0	0	#DIV/0!
Reserved															0	0	#DIV/0!
Reserved															0	0	#DIV/0!
Present or Available	7	7	7	6	7	8	4	6	6	6	5	6	0	0			

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Department Head Signature

CITY BOARD/COMMITTEE ATTENDANCE RECORD

Name of Board: Board of Zoning Appeals

Year: 2022

Members Required for Quorum: 4

MEMBER NAME	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	SPEC MTG	SPEC MTG	Total Mtgs. Att.	Total Absent	Percent Attended Available
REGULAR MEMBERS																	
Lillie, Charles	A	A	A	P	A	A	P	P	P	NA	NA	NA	P	NM	5	5	50%
Miller, John	A	P	A	P	P	P	P	P	P	P	P	A	P	NM	10	3	77%
Hart, Kevin	CP	P	P	P	P	P	A	P	P	P	P	P	P	NM	11	1	92%
Morganroth, Erik	A	P	P	P	P	P	P	P	P	P	P	P	P	NM	12	1	92%
Canvasser, Jason	A	P	P	P	P	P	P	P	P	A	P	P	P	NM	11	2	85%
Reddy, Ron	NA	NA	P	P	P	P	P	P	P	P	P	P	P	NM	11	0	100%
Yaldo, Pierre	NA	NA	P	P	A	P	P	P	P	P	P	P	P	NM	10	1	91%
Rodriguez, Francis	CP	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA			0	0	#DIV/0!
Lilley, Richard	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	P				1	0	100%
ALTERNATES																	
Reddy, Ron	CP	A	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	0	1	0%
Rodenhouse, Erin J.	CP	P	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	1	0	100%
Kona, Carl	NA	NA	NA	NA	P	P	P	P	P	P	P	P	P		9	0	100%
Lilley, Richard	NA	NA	NA	NA	NA	NA	NA	NA	P	P	NA	NA	NA	NA	2	0	100%
Present or Available	4	5	5	7	6	7	7	8	9	7	8	6	8	0			

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Department Head Signature

CITY BOARD/COMMITTEE ATTENDANCE RECORD

Name of Board: Board of Zoning Appeals

Year: 2021

Members Required for Quorum: 4

MEMBER NAME	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	SPEC MTG	SPEC MTG	Total Mtgs. Att.	Total Absent	Percent Attended Available
REGULAR MEMBERS																	
Lillie, Charles	P	P	P	P	P	P	P	A	P	P	P	P	NM	NM	11	1	92%
Miller, John	P	P	P	P	P	P	A	P	P	P	P	P	NM	NM	11	1	92%
Hart, Kevin	P	P	A	P	A	P	A	P	P	P	P	A	NM	NM	8	4	67%
Morganroth, Erik	P	P	P	P	P	P	P	P	P	A	P	P	NM	NM	11	1	92%
Canvasser, Jason	P	P	P	P	P	P	A	P	P	P	P	P	NM	NM	11	1	92%
Rodriguez, Francis	P	A	P	P	P	P	A	P	P	A	A	A	NM	NM	7	5	58%
Lilley, Richard	P	P	P	P	P	P	P	P	P	P	A	P	NM	NM	11	1	92%
Reserved															0	0	#DIV/0!
Reserved															0	0	#DIV/0!
ALTERNATES																	
Reddy, Ron	P	P	P	P	P	P	P	P	P	P	P	P	NM	NM	12	0	100%
Rodenhouse, Erin J.	P	P	P	P	P	P	P	P	P	P	P	P	NM	NM	12	0	100%
Reserved															0	0	#DIV/0!
Reserved															0	0	#DIV/0!
Present or Available	9	8	8	9	8	9	5	8	9	7	7	7	0	0			

KEY:

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Department Head Signature

CITY AND VILLAGE ZONING ACT (EXCERPT)
Act 207 of 1921

***** 125.585 THIS SECTION IS REPEALED BY ACT 110 OF 2006 EFFECTIVE JULY 1, 2006 *****

125.585 Board of appeals; rules governing procedure; appointment and terms of members; powers and duties of board; appeals; variances; remuneration; finality of decision; judicial review.

Sec. 5. (1) The legislative body of a city or village may act as a board of appeals upon questions arising under a zoning ordinance. The legislative body may establish rules to govern its procedure as a board of appeals. In the alternative, the legislative body may appoint a board of appeals consisting of not less than 5 members, each to be appointed for a term of 3 years. Appointments of the first members shall be for terms of 1, 2, and 3 years, respectively, so as nearly as possible to provide for the subsequent appointment of an equal number of members each year. After the initial appointments, each member shall hold office for the full 3-year term.

(2) Under procedures specified in the zoning ordinance, the legislative body of a city or village may appoint not more than 2 alternate members for the same term as regular members of the board of appeals. The alternate members may be called on a rotating basis as specified in the zoning ordinance to sit as regular members of the board of appeals in the absence of a regular member. An alternate member may also be called to serve in the place of a regular member for the purpose of reaching a decision on a case in which the regular member has abstained for reasons of conflict of interest. The alternate member called shall serve in the case until a final decision is made. The alternate member has the same voting rights as a regular member of the board of appeals.

(3) The board of appeals shall hear and decide appeals from and review any order, requirements, decision, or determination made by an administrative official or body charged with the enforcement of an ordinance adopted under this act. The board of appeals shall also hear and decide matters referred to the board or upon which the board is required to pass under an ordinance adopted under this act. For special land use and planned unit development decisions, an appeal may be taken to the board of appeals only if provided for in the zoning ordinance.

(4) In a city or village having a population of less than 1,000,000, the concurring vote of a majority of the members of the board is necessary to reverse an order, requirement, decision, or determination of an administrative official or body, or to decide in favor of the applicant a matter upon which the board is required to pass under an ordinance, or to effect a variation in an ordinance except that a concurring vote of 2/3 of the members of the board is necessary to grant a variance from uses of land permitted in an ordinance. In a city having a population of 1,000,000 or more, the concurring vote of 2/3 of the members of the board is necessary to reverse an order, requirement, decision, or determination of an administrative official or body, or to decide in favor of the applicant a matter upon which the board is required to pass under an ordinance, or to grant a variance in an ordinance.

(5) An appeal may be taken by a person aggrieved, or by an officer, department, board, or bureau of the city or village. In addition, a variance in an ordinance may be applied for and granted pursuant to section 4 of the uniform condemnation procedures act, 1980 PA 87, MCL 213.54, and this act. A board of rules or board of building appeals of a city or village may be enlarged to consist of not less than 5 members, and these may be appointed as the board of appeals as provided in this section.

(6) An appeal under this section shall be taken, within a time prescribed by the board of appeals by general rule, by filing, with the officer or body from whom the appeal is taken and with the board of appeals, a notice of appeal specifying the grounds for the appeal. The officer or body from whom the appeal is taken shall immediately transmit to the board all the papers constituting the record upon which the action appealed from was taken.

(7) An appeal under this section stays all proceedings in furtherance of the action appealed from unless the officer or body from whom the appeal is taken certifies to the board of appeals, after the notice of appeal is filed, that by reason of facts stated in the certificate, a stay would in the opinion of the officer or body cause imminent peril to life or property. If such a certification is filed, the proceedings shall only be stayed by a restraining order. A restraining order may be granted by the board of appeals or by the circuit court, on application, on notice to the officer or body from whom the appeal is taken and on due cause shown.

(8) The board of appeals shall fix a reasonable time for the hearing of the appeal and give notice of the appeal to the persons to whom real property within 300 feet of the premises in question is assessed, and to the occupants of single and 2-family dwellings within 300 feet. The notice shall be delivered personally or by mail addressed to the respective owners and tenants at the address given in the last assessment roll. If a

tenant's name is not known, the term "occupant" may be used. Upon the hearing, a party may appear in person or by agent or by attorney.

(9) The board of appeals shall decide the appeal within a reasonable time. The board of appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and shall make an order, requirement, decision, or determination as in the board's opinion ought to be made in the premises, and to that end shall have all the powers of the officer or body from whom the appeal is taken. If there are practical difficulties or unnecessary hardship in carrying out the strict letter of the ordinance, the board of appeals may in passing upon appeals grant a variance in any of its rules or provisions relating to the construction, or structural changes in, equipment, or alteration of buildings or structures, or the use of land, buildings, or structures, so that the spirit of the ordinance shall be observed, public safety secured, and substantial justice done.

(10) The board of appeals may impose conditions upon an affirmative decision, as provided in section 4c(2). The legislative body of a city or village may authorize the remuneration of the members of the board for attendance at each meeting.

(11) The decision of the board of appeals is final. However, a person having an interest affected by the zoning ordinance may appeal to the circuit court. Upon appeal, the circuit court shall review the record and decision of the board of appeals to ensure that the decision meets all of the following requirements:

- (a) Complies with the constitution and laws of this state.
- (b) Is based upon proper procedure.
- (c) Is supported by competent, material, and substantial evidence on the record.
- (d) Represents the reasonable exercise of discretion granted by law to the board of appeals.

(12) If the court finds the record of the board of appeals inadequate to make the review required by this section, or that additional material evidence exists that with good reason was not presented to the board of appeals, the court shall order further proceedings before the board of appeals on conditions that the court considers proper. The board of appeals may modify its findings and decision as a result of the new proceedings, or may affirm the original decision. The supplementary record and decision shall be filed with the court.

(13) As a result of the review required by this section, the court may affirm, reverse, or modify the decision of the board of appeals.

History: 1921, Act 207, Imd. Eff. May 17, 1921;—CL 1929, 2637;—Am. 1941, Act 306, Eff. Jan. 10, 1942;—Am. 1947, Act 272, Eff. Oct. 11, 1947;—CL 1948, 125.585;—Am. 1952, Act 97, Eff. Sept. 18, 1952;—Am. 1968, Act 202, Eff. Nov. 15, 1968;—Am. 1973, Act 204, Imd. Eff. Jan. 11, 1974;—Am. 1978, Act 638, Eff. Mar. 1, 1979;—Am. 1979, Act 180, Eff. Mar. 18, 1980;—Am. 1986, Act 191, Imd. Eff. July 8, 1986;—Am. 2000, Act 20, Imd. Eff. Mar. 8, 2000.

8.01 The Board of Zoning Appeals

- A. Establish: There shall be established and appointed by the City Commission, in accordance with Section 5, Act No. 207 of the Public Acts of Michigan of 1921 (MCL 125.585, MSA 5.2935), as amended, a Board of Zoning Appeals consisting of seven members each to be appointed for a term of three years.
- B. Alternate Members: The City Commission may also appoint not more than two alternate members for the same term as regular members of the Board of Zoning Appeals. The alternate member may be called on a rotating basis to sit as a regular member of the Board of Zoning Appeals in the absence of a regular member. An alternate member may also be called to service in the place of a regular member for the purpose of reaching a decision on a case in which the regular member has abstained for reasons of conflict of interest. The alternate member having been appointed shall serve in the case until a final decision has been made. The alternate member shall have the same voting rights as a regular member of the Board of Zoning Appeals.
- C. Procedure: Meetings of the Board of Zoning Appeals shall be held at the call of the chairperson, and at such other times as the Board of Zoning Appeals may determine. Such chairperson, or in his/her absence, the acting chairperson, may administer oaths and compel the attendance of witnesses. The Board of Zoning Appeals shall adopt rules of procedure and shall keep records of applications and the action thereon, which shall be a public record.
- D. Appeals: An appeal to the Board of Zoning Appeals, based in whole or in part on the provisions of the Zoning Ordinance, may be taken by any person aggrieved, or by any governmental officer, department, Board of Zoning Appeals or bureau affected by the decision of the Building Official. Such appeal shall be taken by filing with the Board of Zoning Appeals a notice of appeal, on forms provided by the Building Official, specifying the ground thereof, and by paying the required fee. The Building Official shall transmit to the Board of Zoning Appeals all papers constituting the records upon which the appeal action was taken.
- E. Hearing and Notice: The Board of Zoning Appeals shall fix a reasonable time for the hearing of an appeal and shall give due notice of the appeal to the persons to whom real property within 300 feet of the premises in question is assessed, and to the occupants of single- and two-family dwellings within 300 feet, the notice to be delivered personally or by mail to the respective owners and tenants at the address given in the last assessment roll. If the tenant's name is not known, the term "occupant" may be used. A notice sign shall also be posted in a conspicuous place on the subject property. Notice signs will be provided by the City of Birmingham. It is the responsibility of the applicant to post the notice sign as required, to ensure that the notice sign remains posted during the entire notice period and to remove the notice sign the day after the public hearing the notice sign was advertising. At the hearing, any person or party may appear in person, by agent or by attorney. All such hearings shall be open to the public.
- F. Powers and Duties: The Board of Zoning Appeals shall have the powers and duties set forth in MCL 125.581 et seq., MSA 5.2931 et seq. and as more particularly hereinafter enumerated. The Board of Zoning Appeals shall not have the power to change the zoning district of any property. The Board of Zoning Appeal's power and duties shall include the following:
1. Review of administrative decisions.
 - a. The Board of Zoning Appeals shall hear and decide appeals from and review any order, requirement, decision or determination made by an administrative official charged with the enforcement of the Zoning Ordinance.
 - b. It may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and shall make such order, requirement, decision or determination as in its opinion ought to be made in the situation, and to that end shall have all the powers of the officer from whom the appeal is taken.
 2. Mapping disputes.
 - a. Where disputes arise as to the location of the floodplain boundary or the limits of the floodway, the Board of Zoning Appeals shall resolve the dispute and establish the boundary location in accordance with Section 1.15. In all cases, the decision of the Board of Zoning Appeals shall be based upon the most current floodplain studies issued by the Office of Federal Insurance and Hazard Mitigation. Where the Office of Federal Insurance and Hazard Mitigation information is not available, the best available floodplain information shall be utilized.
 - b. Where a dispute involves an allegation that the boundary is incorrect as mapped and Office of Federal Insurance and Hazard Mitigation floodplain studies are being questioned, the Board of Zoning Appeals shall modify the boundary of the floodplain or the floodway only upon receipt of an official letter of map amendment issued by the Office of Federal Insurance and Hazard Mitigation.
 3. Variances.
 - a. The Board of Zoning Appeals shall hear and grant or deny requests for variances from the strict application of the provisions of the Zoning Ordinance where there are practical difficulties or unnecessary hardships in

carrying out the strict letter of such chapter. In granting a variance, the Board of Zoning Appeals may attach such conditions as it may deem reasonably necessary to promote the spirit and intent of the Zoning Ordinance. The Board of Zoning Appeals shall not grant any variance unless it first determines that:

- i. Because of special conditions applicable to the property in question, the provisions of the Zoning Ordinance, if strictly applied, unreasonably prevent the property owner from using the property for a permitted purpose;
 - ii. Literal enforcement of the chapter will result in unnecessary hardship;
 - iii. The granting of the variance will not be contrary to the spirit and purpose of the Zoning Ordinance nor contrary to the public health, safety and welfare; and
 - iv. The granting of the variance will result in substantial justice to the property owner, the owners of property in the area and the general public.
- b. Variances from the provisions of Section 4.13, Floodplain Regulations, shall only be granted by the Board of Zoning Appeals upon a determination of compliance with the general standards for variances contained in the Zoning Ordinance and in accordance with the following:
- i. The variance granted will not result in flood heights in excess of those permitted by the Zoning Ordinance, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing laws or ordinances.
 - ii. The variance granted shall be the minimum necessary, considering the flood hazard, to afford relief to the applicant.
 - iii. Variances may be granted for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the Michigan Historic Markers listing of historic sites, or any other state register of historic places without meeting the requirements of this section.
- c. Sign Variance Procedure. Any person who feels aggrieved by a decision of the City Planner or Design Review Board may have the sign reviewed by the Board of Zoning Appeals. A variance may be granted by the Board of Zoning Appeals only in cases involving practical difficulties when the evidence in the official record of the appeal supports all the following affirmative findings:
- i. That the alleged practical difficulties are peculiar to the property of the person requesting the variance by reasons of the physical and/or dimensional constraints of the building and/or site, and result from conditions which do not exist generally throughout the City;
 - ii. That the granting of the requested variance would not be materially detrimental to the property owners in the immediate vicinity;
 - iii. That the granting of the variance would not be contrary to the general objectives of this Chapter and is in keeping with the spirit and intent of this ordinance; and
 - iv. That granting the variance will result in substantial justice being done, considering the public benefits intended to be secured by this Chapter, the individual hardships that will be suffered by a failure of the Board of Zoning Appeals to grant a variance, and the rights of others whose property would be affected by the allowance of the variance.
 - v. In granting a variance, the Board of Zoning Appeals may attach such conditions as it may deem reasonably necessary to promote the spirit and intent of the Zoning Ordinance and the conditions specified in the sign ordinance, Chapter 86, Article 02, Section 2.06.

G. Miscellaneous:

1. No order of the Board of Zoning Appeals permitting the erection or alteration of buildings shall be valid for a period longer than one year, unless a building permit for such erection or alteration is obtained within such period and such erection or alteration is commenced and proceeds to completion in accordance with the terms of such permit.
2. No order of the Board of Zoning Appeals permitting a use of a building or premises shall be valid for a period longer than one year unless such use is established within such period; provided, however, that if the use of such permit is dependent upon the erection or alteration of a building, such order shall continue in full force and effect if a building permit for such use, erection or alteration is obtained within such period and such erections or alterations are commenced and proceed to completion in accordance with the terms of such permit.

**CITY OF BIRMINGHAM
BOARD OF ZONING APPEALS
RULES OF PROCEDURE**

ARTICLE I - Appeals

- A. Appeals may be filed under the following conditions:
1. A property owner may appeal for variance, modification or adjustment of the requirements of the Zoning Ordinance.
 2. A property owner may appeal for variance, modification or adjustment of the requirements of the Sign Ordinance.
 3. Any aggrieved party may appeal the decision of the Planning Board and/or the Building Official in accordance with the City of Birmingham Zoning Ordinance, Article Eight, Section 8.01 (D) Appeals. If an appellant requests a review of any determination of the Building Official, a complete statement setting forth the facts and reasons for the disagreement with the Building Official's determination shall include the principal point, or points on the decision, order or section of the ordinance appealed from, on which the appeal is based.
- B. Procedures of the Board of Zoning Appeals (BZA) are as follows:
1. Regular BZA meetings, which are open to the public, shall be held on the second Tuesday of the month at 7:30 P.M. provided there are pending appeals. There will be a maximum of seven appeals heard at the regular meeting which are taken in the order received. If an appeal is received on time after the initial seven appeals have been scheduled, it will be scheduled to the next regular meeting.
 2. All applications for appeal shall be submitted to the Community Development Department on or before the 12th day of the month preceding the next regular meeting. If the 12th falls on a Saturday, Sunday, or legal holiday, the next working day shall be considered the last day of acceptance.
 3. All property owners and occupants within 300 feet of the subject property will be given written notice of a hearing by the City of Birmingham.
 4. See the application form for specific requirements. If the application is incomplete, the BZA may refuse to hear the appeal. The Building Official or City Planner may require the applicant to provide additional information as is deemed essential to fully advise the Board in reference to the appeal. Refusal or failure to comply shall be grounds for dismissal of the appeal at the discretion of the Board.

5. In variance requests, applicants must provide a statement that clearly sets forth all special conditions that may have contributed to a practical difficulty that is preventing a reasonable use of the property.
6. Where the Birmingham Zoning Ordinance requires site plan approval of a project by the City Planning Board before the issuance of a building permit, applicants must obtain preliminary site plan approval by the Planning Board before appeal to the BZA for a variance request. If such appeal is granted by the BZA, the applicant must seek final site plan and design review approval from the Planning Board before applying for a building permit.
7. An aggrieved party may appeal a Planning Board decision. Such appeal must be made within 30 days of the date of the decision. The BZA, in its discretion, may grant additional time in exceptional circumstances.
8. Appeals from a decision of the Building Official shall be made within 30 days of the date of the order, denial of permit, or requirement or determination contested. The BZA, in its discretion, may grant additional time in exceptional circumstances.
9. An appeal stays all proceedings in accordance with Act #110, Public Acts of 2006, Article VI, Section 125.3604 (3).

C. The order of hearings shall be:

1. Presentation of official records of the case by the Building Official or City Planner as presented on the application form.
2. Applicant's presentation of his/her case—the applicant or his/her representative must be present at the appeal hearing.
3. Interested parties' comments and view on the appeal.
4. Rebuttal by applicant.
5. The BZA may make a decision on the matter or request additional information.

D. Motions and Voting

1. A motion is made to either grant or deny a petitioner's request
 - a) For a motion to grant or deny a non-use variance request, the motion must receive four (4) affirmative votes to be approved.
 - b) For a motion to grant or deny a use variance request, the motion must receive five (5) affirmative votes to be approved.
 - c) For a motion to grant or deny an appeal of a decision or order by an administrative official or board, the motion must receive four (4) affirmative votes to be approved.

2. When a motion made is to approve or deny a petitioner's request and if there is a tie vote, then the vote results in no action by the board and the petitioner shall be given an opportunity to have his or her request heard the next regularly scheduled meeting when all the members are present.
3. When there are less than seven (7) members of the board present for a meeting, then a petitioner requesting a use variance shall be given an opportunity at the beginning of the meeting to elect to have it heard at the next regularly scheduled meeting.
4. When there are less than six (6) members present for a meeting, then all petitioners shall be given an opportunity at the beginning of the meeting to elect to have the request heard at the next regularly scheduled meeting.

ARTICLE II - Results of an Appeal

- A. The Board may reverse, affirm, vary or modify any order, requirement, decision or determination as in its opinion should be made, and to that end, shall have all the powers of the officer from whom the appeal has been taken.
- B. The decisions of the Board shall not become final until the expiration of five (5) days from the date of entry of such orders or unless the Board shall find that giving the order immediate effect is necessary for the preservation of property and/or personal rights and shall so certify on the record.
- C. Whenever any variation or modification of the Zoning Ordinance is authorized by resolution of the BZA, a Certificate of Survey must be submitted to the Community Development Department with the building permit application. A building permit must be obtained within one year of the approval date.
- D. Failure of the appellant, or his representative, to appear for his appeal hearing will result in the appeal being adjourned to the next regular meeting. If, after notice, the appellant fails to appear for the second time, it will result in an automatic withdrawal of the appeal. The appellant may reapply to the BZA.
- E. Any applicant may, with the consent of the Board, withdraw his application at any time before final action.
- F. Any decision of the Board favorable to the applicant is tied to the plans submitted, including any modifications approved by the Board at the hearing and agreed to by the applicant, and shall remain valid only as long as the information or data provided by the applicant is found to be correct and the conditions upon which the resolution was based are maintained.

ARTICLE III - Rehearings

A. No rehearing of any decision of the Board shall be considered unless new evidence is submitted which could not reasonably have been presented at the previous hearing or unless there has been a material change of facts or law.

B. Application or rehearing of a case shall be in writing and subject to the same rules as an original hearing, clearly stating the new evidence to be presented as the basis of an appeal for rehearing.

I certify that I have read and understand the above rules of procedure for the City of Birmingham Board of Zoning Appeals.

Signature of Applicant



NOTICE OF INTENTION TO APPOINT TO HISTORIC DISTRICT STUDY COMMITTEE

At the regular meeting of Monday, October 7, 2024, the Birmingham City Commission intends to appoint one regular member to the Historic District Study Committee to serve the remainder of a three-year term to expire June 25, 2027.

The goal of the Historic District Study Committee is to conduct historical research regarding the proposed designation of historic landmarks or districts in the City of Birmingham.

A majority of the members shall have a clearly demonstrated interest in or knowledge of historic preservation, although City residency is not required if an expert on the potential historic district topic is not available among City residents. The committee shall include representation of at least one member appointed from one or more duly organized local historic preservation organizations. The meetings are held by resolution of the City Commission.

Interested parties may submit an application available at the City Clerk's Office on or before noon on Wednesday, October 2, 2024. Applications will appear in the public agenda at which time the commission will discuss recommendations, and may make nominations and vote on appointments.

Applicant(s) Presented For City Commission Consideration:

Applicant Name	Criteria/Qualifications
	Shall have a clearly demonstrated interest in or knowledge of historic preservation.
Sean Moran	Retired history professor with previous experience serving on a history preservation committee.

NOTE: All members of boards and commissions are subject to the provisions of City of Birmingham City Code Chapter 2, Article IX, Ethics and the filing of the Affidavit and Disclosure Statement.

SUGGESTED ACTION:

To appoint _____, as a regular member to the Historic District Study Committee to serve the remainder of a three-year term to expire June 25, 2027.

FromClerksOffice- APPLICATION FOR CITY BOARD OR COMMITTEE [#28]

3 messages

'Wufoo' via Clerks Office <ClerksOffice@bhamgov.org>

Thu, Sep 26, 2024 at 2:43 PM

Reply-To: no-reply@wufoo.com

To: clerksOffice@bhamgov.org

Board/Committee of Interest	historic district review committee
Specific Category/Vacancy on Board (see below)	? Historic district review committee
Name	seán moran
Residential Address	 824 Colonial Ct Birmingham, MI 48009 United States
Phone Number *	(248) 990-7242
Email By providing your email to the City, you agree to receive news and notifications from the City. If you do not wish to receive these messages, you may unsubscribe at any time.	moran@oakland.edu
Length of Residence	34 years
Occupation	Retired-Professor of History
Reason for Interest: Explain how your background and skills will enhance the board to which you have applied.	I am a retired Ph.D professor of history, having taught for 34 years at Oakland University. I have published over 60 works in my field. I grew up in the Washington DC area and once served on a Capital Hill Neighborhood Historic Preservation Committee. I have extensive research and writing skills and have always been interested in historical preservation
List your related employment experience	see above
List your related educational experience	I have a BA in Philosophy from American University, and MA and PhD in history from American University.
To the best of your knowledge, do you or a member of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the City of Birmingham from which you or they derive direct compensation or financial benefit? If yes, please explain.	NO
Do you currently have a relative serving on the board/committee to which you have applied?	No

Are you an elector (registered voter) in the City of Birmingham? * yes

Mya Brown <mbrown@bhamgov.org>
To: moran@oakland.edu
Cc: clerksOffice@bhamgov.org

Thu, Sep 26, 2024 at 3:57 PM

Hello,

Can you please clarify which of the two historic committees you were applying for?

Please see as listed below:

- [Historic District Commission](#)
- [Historic District Study Committee](#)

Thank you!

[Quoted text hidden]

moran@oakland.edu <moran@oakland.edu>
Reply-To: moran@oakland.edu
To: Mya Brown <mbrown@bhamgov.org>

Sun, Sep 29, 2024 at 8:59 PM

I would be interested in either committee. Feel free to put me where there might be a need. Seán Farrell Moran, PhD

[Quoted text hidden]

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Sean Farrell Moran, Ph.D.
Associate Professor of History
Department of History
121 Fitzgerald Hall
Oakland University
Rochester, MI 48309-4401
[United States](#) of America
248-370-3533; fax--248-370-3528; email: moran@oakland.edu



HISTORIC DISTRICT STUDY COMMITTEE

Goal: To conduct historical research regarding the proposed designation of historic landmarks or districts in the City of Birmingham.

The committee shall consist of seven members in addition to a city appointed liaison. A majority of the members shall have a clearly demonstrated interest in or knowledge of historic preservation, although city residency is not required if an expert on the potential historic district topic is not available among city residents. The committee shall include representation of at least one member appointed from one or more duly organized local historic preservation organizations.

Terms: three years

Meetings are held by resolution of the City Commission.

Last Name	First Name	Home Business E-Mail	Appointed	Term Expires
Barta	Katherine	(810) 691-9424	2/5/2024	6/25/2026
397 S Cranbrook Road		<i>barta.katie@gmail.com</i>		
German	Jacob	(734) 934-9051	1/14/2019	6/25/2027
475 S. Adams #18		<i>jake@dunaskiss.biz</i>		
Loafman	Thomas	(248)840-6678	9/20/2021	6/25/2025
580 Oakland		<i>thosloafman@gmail.com</i>		
Prena	Andrea	(248)872-5404	6/27/2022	6/25/2025
1524 Villa Road		<i>kalis.andi@gmail.com</i>		

Last Name Home Address	First Name	Home Business E-Mail	Appointed	Term Expires
Roush 2010 Buckingham	Jennifer	(248)736-2801 <i>jennygwtw@comcast.net</i>	8/10/2020	6/25/2025
Vacated	6/24/2024			6/25/2027
Xenos 608 W. Lincoln	Michael	(248) 496-8983 <i>mxenos@comcast.net</i>	2/22/2016 Nat'l Trust for Historic Preservation	6/25/2026

Sec. 127-4. Historic district study committee and the study committee report.

- (a) The city commission shall appoint a standing committee to serve as the historic district study committee. The committee shall consist of seven members in addition to a city appointed liaison. A majority of the members shall have a clearly demonstrated interest in or knowledge of historic preservation, although city residency is not required if an expert on the potential historic district topic is not available among city residents. Members shall be appointed for a term of three years, except the initial appointments of three members for a term of two years and two members for a term of one year. Subsequent appointments shall be for three-year terms. Members shall be eligible for reappointment. In the event of a vacancy on the committee, interim appointments shall be made by the city commission within 60 calendar days to complete the unexpired term of such position. The committee shall include representation of at least one member appointed from one or more duly organized local historic preservation organizations.
- (b) The business that the committee may perform shall be conducted at a public meeting held in compliance with the Open Meetings Act, Public Act 267 of 1976, as amended. Public notice of the date, time, and place of the meeting shall be given in the manner required by Public Act 267. A meeting agenda shall be part of the notice and shall include a listing of each potential district to be reviewed or considered by the committee.
- (c) When directed by a resolution passed by the city commission, the standing historic district study committee shall meet and do all of the following:
 - (1) Conduct a photographic inventory of resources within each proposed historic district following procedures established by the state historic preservation office of the state historical center.
 - (2) Conduct basic research of each proposed historic district and historic resources located within that district.
 - (3) Determine the total number of historic and non-historic resources within a proposed historic district and the percentage of historic resources of that total. In evaluating the significance of historic resources, the committee shall be guided by the criteria for evaluation issued by the United States secretary of the interior for inclusion of resources in the National Register of Historic Places, as set forth in 36 CFR Part 60, and criteria established or approved by the state historic preservation office of the state historical center.
 - (4) Prepare a preliminary historic district study committee report that addresses at a minimum all of the following:
 - a. The charge of the committee.
 - b. The composition of committee membership.
 - c. The historic district(s) studied.
 - d. The boundaries of each proposed historic district in writing and on maps.
 - e. The history of each proposed historic district.
 - f. The significance of each district as a whole, as well as the significance of sufficient number of its individual resources to fully represent the variety of resources found within the district, relative to the evaluation criteria.
 - (5) Transmit copies of the preliminary report for review and recommendations to the city planning board, the state historic preservation office of the Michigan Historical Center, the Michigan Historical Commission, and the state historic preservation review board.
 - (6) Make copies of the preliminary report available to the public pursuant to Section 399.203(4) of Public Act 169 of 1970, as amended.

-
- (7) Not less than 60 calendar days after the transmittal of the preliminary report, the historic district study committee shall hold a public hearing in compliance with Public Act 267 of 1976, as amended. Public notice of the time, date and place of the hearing shall be given in the manner required by Public Act 267. Written notice shall be mailed by first class mail not less than 14 calendar days prior to the hearing to the owners of properties within the proposed historic district, as listed on the most current tax rolls. The report shall be made available to the public in compliance with Public Act 442 of 1976, as amended.
- (8) After the date of the public hearing, the committee and the city commission have not more than one year, unless otherwise authorized by the city commission, to take the following actions:
- a. The committee shall prepare and submit a final report with its recommendations and the recommendations, if any, of the city planning board and the historic district commission, to the city commission as to the establishment of a historic district(s). If the recommendation is to establish a historic district(s), the final report shall include a draft of the proposed ordinance(s).
 - b. After receiving a final report that recommends the establishment of a historic district(s), the city commission, at its discretion, may introduce and pass or reject an ordinance(s). If the city commission passes an ordinance(s) establishing one or more historic districts, the city shall file a copy of the ordinance(s), including a legal description of the property or properties located within the historic district(s) with the register of deeds. The city commission shall not pass an ordinance establishing a contiguous historic district less than 60 days after a majority of the property owners within the proposed historic district, as listed on the tax rolls of the local unit, have approved the establishment of the historic district pursuant to a written petition.
- (9) A writing prepared, owned, used, in the possession of, or retained by a committee in the performance of an official function of the historic district commission should be made available to the public in compliance with Public Act 442 of 1976, as amended.

(Ord. No. 1880, 7-24-06; Ord. No. 2154, 6-29-15)



MEMORANDUM

Finance Department

DATE: October 2, 2024

TO: Jana L. Ecker, City Manager

FROM: Mark Gerber, Finance Director/Treasurer

SUBJECT: Mary Chavez, Finance Director/Treasurer Designee

Mary Chavez started working for the City of Birmingham on September 3, 2024, as the Finance Director/Treasurer Designee. Over the next 6 months, Ms. Chavez will learn about the City of Birmingham's finances, policies, and procedures. During this time, she will gradually transition into the responsibilities of the Finance Director/Treasurer position.

Ms. Chavez brings over a decade of expertise in municipal finance. Mary is an experienced finance professional with a strong background in municipal finance. She has served as Treasurer for the City of Sterling Heights, Finance Director and Treasurer for the City of Fraser, and Deputy Finance Director and Treasurer for the City of Walled Lake. Her extensive experience encompasses maintaining the integrity of municipal financial operations, including accounting, budgeting, reporting, investing, and tax preparation. Mary is noted for her exceptional skills in teamwork and team building.

Ms. Chavez holds an MBA with a specialization in accounting from Walsh College and earned her bachelor's degree in International Relations from Michigan State University. Mary has also served as President of the Board for the Macomb County Treasurers Association and is an active member of the Michigan Municipal Treasurers Association and the Michigan Government Finance Officers Association. Additionally, Mary contributes to overseeing and managing pension-related matters as a member of the Pension Board for Retirement Systems.

Mary is excited to join the City of Birmingham team as the Finance Director and Treasurer Designee. She is eager to collaborate with her colleagues and serve the community in this important role. She is committed to upholding the high standards set by her predecessor and contributing to the City's fiscal responsibility.

Birmingham City Commission Minutes
September 9, 2024
Municipal Building, 151 Martin
7:30 p.m.
Vimeo Link: <https://vimeo.com/1007821549>

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Katie Schafer, temporary Mayor, opened the meeting with the Pledge of Allegiance.

II. ROLL CALL

City Clerk Bingham called the roll.

Present: tMayor Schafer
Commissioner Baller
Commissioner Haig
Commissioner Host
Commissioner Long
Commissioner Longe

Absent: Mayor McLain

Staff: City Manager Ecker; City Clerk Bingham, Assistant City Manager Clemence,
Assistant City Manager Fairbairn, Building Maintenance Superintendent Galik,
Building Official Johnson, Police Captain Kearney, City Attorney Kucharek, Fire
Marshal Scaife, Fire Chief Wells, Human Resources Manager Woods

08-534-24 Nomination of Temporary Mayor Pro Tem

MOTION: Motion by Commissioner Haig:
To nominate Commissioner T. Longe to step in as Mayor Pro Tem.

VOICE VOTE: Ayes, tMayor Schafer
Commissioner Haig
Commissioner Baller
Commissioner Longe
Commissioner Host
Commissioner Long

Nays, None

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

Announcements

Welcome the City of Rito, Japan delegate Shion Moritani to the City of Birmingham.

Happy Birthday Commissioner Host.

The Department of Public Services, Parks Division, is requesting grant funding from the Michigan Department of Natural Resources Trust Fund for the maximum amount of \$400,000 for the Booth Park Entry Plaza and Trail Improvements project. The public is invited to attend either the Parks and Recreation Board meeting on September 10th at 6:30 pm at the Department of Public Services, or the City Commission Meeting on September 23rd at 7:30 pm to share comments and feedback about this resolution requesting funding from the MDNR.

National Recovery Month Proclamation.

National Suicide Prevention Month.

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

Tim Bradley commented regarding a potential special assessment project on Wimbledon.

David Henning commented regarding the drinking water at his home on Arlington.

Brad Coulter commented on the timing of public comment.

Danny Hill commented on the timing of public comment and on email submissions to the Commission.

08-535-24 To Move Agenda Section X - Communications to be Heard Presently

MOTION: Motion by Commissioner Baller, seconded by Commissioner Host:
To move Communications up and hear what these people have to say, and there should be permitted some response if necessary.

VOICE VOTE: Ayes, tMayor Schafer
Commissioner Haig
Commissioner Baller
tMPT Longe
Commissioner Host
Commissioner Long

Nays, None

It was noted that there were eight communications regarding Wimbledon in the evening's agenda packet.

Mr. Hill commented regarding a potential special assessment project on Wimbledon.

Rita Rossi and Kathleen McInerney commented regarding a potential special assessment project on Abbey.

Jeffrey Heichel commented regarding the financing of special assessments.

Jordan Ingram commented regarding the City's emergency response time and regarding a potential special assessment project on Wimbledon.

Mr. Coulter commented regarding a potential special assessment project on Wimbledon.

Commissioners raised the following points during discussion:

- Potential special assessments on Wimbledon and Abbey have not been decided on yet. Residents should continue participating in meetings regarding potential projects.
- Since each special assessment project has varying circumstances, it may or may not be possible to estimate the cost of an upcoming special assessment based on a recently implemented special assessment.
- These special assessments are conducted in order to improve the community's health, safety, and welfare. Often water mains need to be replaced in order to provide the Fire Department with enough water pressure to fight fires on the street.
- The City negotiates with contractors in order to achieve the lowest costs possible.
- A number of Commissioners noted that they have personally gone through the special assessment process.
- Commissioners understood residents' concerns regarding special assessments.
- The Commission has discretion regarding a number of aspects of special assessment projects, and in addition to health, safety, and welfare considerations, public feedback helps inform those decisions.

V. CONSENT AGENDA

08-536-24 Consent Agenda

MOTION: Motion by tMPT Longe, seconded by Commissioner Host:
To move the Consent Agenda excluding Items F, G, and H.

ROLL CALL VOTE: Ayes, tMPT Longe
tMayor Schafer
Commissioner Host
Commissioner Long
Commissioner Haig
Commissioner Baller

Nays, None

- A. Resolution to approve the regular City Commission meeting minutes of the meeting held on August 26, 2024.

- B. Resolution to approve the warrant list, including Automated Clearing House payments, dated August 29, 2024 in the amount of \$9,107,100.72.
- C. Resolution to approve the warrant list, including Automated Clearing House payments, dated September 4, 2024 in the amount of \$1,925,457.77.
- D. Resolution to approve a special event permit as requested by the Birmingham Bloomfield Art Center to hold the 44th Art Birmingham art fair on May 10 and 11, 2025 contingent upon compliance with all permit and insurance requirements and payment of all fees and, further pursuant to any minor modifications that may be deemed necessary by administrative staff at the time of the event, or event cancellation that may be deemed necessary by administrative staff, leading up to or at the time of the event.
- E. Resolution to implement all-way stop control at the intersection of Frank and Pierce Streets, including adding all-way supplemental signs to the existing east and west stop signs and enhanced crosswalk and stop bar markings on all approaches.

08-537-24 Emergency Standby Generators in Single-Family Zoned Districts (Item F)

Commissioner Haig pulled Item F. Staff answered informational questions from the Commission.

Commissioners raised the following points during discussion:

- The City's fire safety efforts and these changes need to be extensively publicized.
- This item would be more appropriately addressed as a regular agenda item, rather than a consent agenda item. A full presentation from staff on the topic would be beneficial as well.

Commissioner Haig made a motion to approve Item V(F) as written. The motion died for lack of a second.

MOTION: Motion by Commissioner Baller, seconded by Commissioner Host:
Move that we have them come back with a full presentation on the normal agenda at the next meeting.

Commissioner comment on the motion was as follows:

- This is a health and safety issue and the Commission supports the Fire Department in their efforts to address it.
- Because questions and topics for further discussion were raised, it would be appropriate to bring the item back at the next meeting.

VOICE VOTE: Ayes, tMPT Longe
 tMayor Schafer
 Commissioner Host
 Commissioner Long
 Commissioner Haig
 Commissioner Baller

Nays, None

08-538-24 Set a Public Hearing for 200 S. Chester Street – Baldwin House Senior Living – Special Land Use Permit Amendment (Item G) (Part I)

Commissioner Long pulled Item G and clarified the item for the public. Staff answered informational questions from the Commission.

MOTION: Motion by Commissioner Long, seconded by Commissioner Host:
To rescind the City Commission's action on August 26, 2024 of setting a public hearing date of October 6, 2024 to consider the Special Land Use Permit Amendments for the Baldwin House Senior Living Center at 200 S. Chester Street.

VOICE VOTE: Ayes, tMPT Longe
tMayor Schafer
Commissioner Host
Commissioner Long
Commissioner Haig
Commissioner Baller

Nays, None

08-539-24 Set a Public Hearing for 200 S. Chester Street – Baldwin House Senior Living – Special Land Use Permit Amendment (Item G) (Part II)

MOTION: Motion by Commissioner Long, seconded by tMPT Longe:
To set a public hearing date of October 7, 2024 to consider the Special Land Use Permit Amendments for the Baldwin House Senior Living Center at 200 S. Chester Street.

VOICE VOTE: Ayes, tMPT Longe
tMayor Schafer
Commissioner Host
Commissioner Long
Commissioner Haig
Commissioner Baller

Nays, None

08-540-24 MDOT Contract (Item H)

Commissioner Haig pulled Item H. Staff answered informational questions from the Commission.

MOTION: Motion by Commissioner Haig, seconded by Commissioner Host:
To approve as written.

ROLL CALL VOTE: Ayes, tMPT Longe
tMayor Schafer

Commissioner Host
Commissioner Long
Commissioner Haig
Commissioner Baller

Nays, None

VI. CITY MANAGER'S REPORT

VII. UNFINISHED BUSINESS

VIII. NEW BUSINESS

Senior/Recreation Center Project

CM Ecker and Mayor Schafer introduced the item, which continued from the evening's workshop. Staff and the City's owner's representative, Brian Deming of KMG, answered informational questions from the Commission.

Cris Braun, Executive Director of Next, and Parrish Underwood, President and CEO of the YMCA of Metropolitan Detroit, also spoke regarding the item.

Commissioners raised the following points during discussion:

- This project has been in flux, and it made sense that staff brought the two options presented at the evening's workshop.
- It might be premature to design this building before determining what amenities may already be available to residents in the community.
- Many residents have spoken in support of maintaining the YMCA and pool use, and foregoing a pool on-site may prevent the YMCA from remaining a participant in this process.
- This project will need to be beneficial to the entire community in order to garner community support.
- It would likely be more appropriate for the City to build and then own the entirety of the building in order to avoid any potential complications regarding ownership in the future. This would also have the advantages of causing less uncertainty and fewer delays. The additional expense would likely be minimal when divided over thirty years and all of Birmingham's taxpayers.
- The City could then lease part of the building to the YMCA, and part of the building to Next, with different agreements in place for each tenant.
- The City would need clarification as to whether the YMCA could have operating and build-out costs available on a faster timeline, if the City covered the construction costs.
- Many residents want the YMCA and its programming and amenities to remain in the City. Finding a way to allow the YMCA to remain in the community could amount to a community/recreational service the City helps offer, as it does with Next.

- If the City builds a building with a pool and locker rooms first, the YMCA might have an easier time fundraising for its own addition to the building. If the YMCA would be unable to do that, the City would have an opportunity to partner with another organization.
- The City should determine how it might move forward in collaboration with the YMCA, with a second option developed in case that collaboration is not possible.
- If the YMCA were not able to occupy the space, the City would also have other uses for which the space could be repurposed.¹
- There would need to be more clarity on how a pool might be operated if a collaboration with the YMCA were not possible.
- It might be possible for the City, Next, and the YMCA to share some spaces, which could reduce costs.
- The Commission and staff will need to determine the potential costs to each partner and the possible ballot language.
- If the City and the YMCA come to an agreement where the City pays the construction costs for the building and the YMCA pays the operating costs for the building, the City would need some financial demonstration that the YMCA could pay the operating costs on an ongoing basis.
- If the City assumes the construction costs and the YMCA assumes the operating costs, Next may be able to provide additional services since it would no longer be responsible for its operating costs. Scheduling the use of the building's facilities might be one service Next could offer.
- The City would need to ensure that any agreement would entail the appropriate use of public funds. Such an agreement should take into account the benefits the YMCA offers to the community, and should also avoid subsidizing the YMCA's business.
- Having a clear timeline for the project would likely help minimize attrition from the Birmingham YMCA location.
- There could be discussions of subsidizing Birmingham residents' use of the Royal Oak YMCA's pool during the construction period.
- The Commission would like the upper square footage limit to be 53,000, and the upper bond amount to be \$32 million. The Commission would like all involved to pursue efficiencies, however, to reduce those figures where possible.
- The RFP for an architect should not be issued before cost optimization has been done.

Public Comment

George Dilgard commented regarding the project's estimated cost per partner, the timing of a possible bond vote, and the timing of the construction process.

Terry Parks commented regarding the benefits the YMCA offers to the community.

Dan Share commented regarding the Commission's upper limit for the bond amount.

Commission Items for Future Discussion

The Commission briefly discussed how workshops might be made more efficient.

Commission Discussion On Items From A Prior Meeting

¹As amended at the September 23, 2024 Commission meeting.

IV. REMOVED FROM CONSENT AGENDA

X. COMMUNICATIONS (Heard during IV. Open To The Public For Matters Not On The Agenda)

- A. Oakland County Circuit Court – Order of Dismissal with Prejudice
- B. Letter regarding Baldwin House
- C. Letters regarding Wimbledon

Mr. Bradley commented on tMayor Schafer's and Commissioner Baller's Commissioner comments regarding the Wimbledon discussion.

- D. Letter regarding Noise

XI. REPORTS

- A. Commissioner Reports
 - 1. Notice of intention to appoint to the Board of Zoning Appeals
- B. Commissioner Comments

Commissioner Host stated that Oakland County Water Resources Commissioner Jim Nash offered to do a presentation for the Commission on ways of reducing basement flooding within the City.

Commissioner Host said he was glad that the Commission moved all public comment during the evening's meeting to earlier in the meeting. He recommended the Commission consider making a similar change for future meetings.

Commissioner Host said that when properties are specially assessed, the lien should be against the property and not against the property owner.

Commissioner Baller clarified that liens for special assessments already operate that way.

Regarding the Ad Hoc Unimproved Street Study Committee's final report, Commissioner Host noted that the Commission accepted the report, but did not endorse it.

Commissioner Baller opined that residents' concerns around special assessments stems largely from misinformation circulating within the community. He recommended that misinformation be countered during meetings whenever it arises.

tMayor Schafer requested that Commissioners be copied on any significant notices sent out to residents.

tMayor Schafer recommended that residents with concerns about special assessments watch the Commission meeting recordings for the Arlington/Shirley and Westwood projects. She said doing so would allow residents to become more informed, and would also allow residents to see that the Commission and residents are not at cross-purposes.

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

INFORMATION ONLY

XII. ADJOURN

The Commission motioned to adjourn at 10:55 p.m.



Alexandria Bingham, City Clerk

Laura Eichenhorn, City Transcriptionist

Birmingham City Commission Special Meeting Minutes - Workshop

September 23, 2024

Municipal Building, 151 Martin

6:00 p.m.

Vimeo Link: <https://vimeo.com/1012181983>

This will be considered a workshop session of the City Commission. No formal actions will be taken. The purpose of this workshop is to engage in a presentation and discussion regarding the Baldwin House.

I. Call to Order

Katie Schafer, Mayor Pro Tem

II. Roll Call

Present: MPT Schafer
Commissioner Baller
Commissioner Haig
Commissioner Host
Commissioner Longe

Absent: Mayor McLain
Commissioner Long

Staff: City Clerk Bingham, Assistant City Manager Clemence, Senior Planner Cowan, City Attorney Kucharek

09-541-24 Nomination of Temporary Mayor

MOTION: Motion by Baller:
To nominate Katie to be temporary Mayor for tonight.

VOICE VOTE: Ayes, MPT Schafer
Commissioner Haig
Commissioner Baller
Commissioner Longe
Commissioner Host

Nays, None

09-542-24 Nomination of Temporary Mayor Pro Tem

MOTION: Motion by Baller:
Nominate Therese Longe.

VOICE VOTE: Ayes, tMayor Schafer
Commissioner Haig
Commissioner Baller
Commissioner Longe
Commissioner Host

Nays, None

III. Presentation and Commission Discussion

SP Cowan presented the topic. John Henke, attorney for the Baldwin House, and Jon Schwartz, co-owner of the Baldwin House, spoke on behalf of the Baldwin House. Staff, Mr. Henke, and Mr. Schwartz answered informational questions from the Commission.

Commissioners raised the following points during discussion:

- The City ought to continue in the spirit of the prior court rulings regarding the Baldwin House.
- The City does not seem to be receiving the value of the bonus floor and bonus units presently, and that raises some concerns about uncapping all 78 units.
- Caution should be exercised in terms of imposing restrictions on the Baldwin House. It is important that any restrictions imposed would still allow the Baldwin House to operate a viable business.
- The high vacancy rate at the Baldwin House may raise questions about whether the intended target market is presently interested in the Baldwin House.
- Each option vis-a-vis the Baldwin House will have social implications that must be considered.
- Commissioners aim to hear everyone's perspectives during the ongoing discussions of the future of the Baldwin House.
- It would be valuable to know whether the landlords of the Baldwin House have signed, or would sign, Birmingham's landlord code of conduct.
- At the next discussion of this topic, it would be helpful to have more information on how the vacant units will be filled, how higher rental rates might influence future improvements to the building, the tax implications of the various options, the demographics of the building presently, the longevity of the current tenants, whether the Baldwin House intends to renovate the low income units, what payment for the parking deck might look like, and how the Commission might advocate for the residents that are not living in the 53 fully-capped apartments.
- The City retains some leverage in the negotiations because a new SLUP will be necessary, as well as a new agreement regarding parking. It would behoove the Baldwin House team to think more broadly than option one in terms of potential outcomes.
- Public comment raised the concern of equitable treatment between the low-income residents of the Baldwin House and the market-rate residents. It would be helpful to know how Baldwin House management intends to address those concerns.
- It would be helpful for FD Gerber to be available to answer questions at the next discussion of this topic.

IV. Public Comment

Linda Buchanan, Vice-President of the Baldwin House Board of Directors, Janice Rowe, President of the Baldwin House Board of Directors, and Josh Hoover, Baldwin House Board of Directors member, commented regarding the item.

V. Adjourn

The meeting was adjourned at 7:30 p.m.



Alexandria Bingham, City Clerk

Laura Eichenhorn, City Transcriptionist

Birmingham City Commission Minutes
September 23, 2024
Municipal Building, 151 Martin
7:30 p.m.
Vimeo Link: <https://vimeo.com/1012181983>

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Katie Schafer, Mayor Pro Tem, opened the meeting with the Pledge of Allegiance.

II. ROLL CALL

City Clerk Bingham called the roll.

Present: MPT Schafer
Commissioner Baller
Commissioner Haig
Commissioner Host
Commissioner Longe

Absent: Mayor McLain
Commissioner Long

Staff: Planning Intern Aldred, City Clerk Bingham, City Planner Blizinski, Assistant City Manager Clemence, City Engineer Coatta, Senior Planner Cowan, Planning Director Dupuis, Police Chief Grewe, City Attorney Kucharek, Parks & Recreation Manager Laird, Department of Public Services Director Zielinski

09-543-24 Nomination of Temporary Mayor

MOTION: Motion by Haig:
Nominate MPT Schafer to be Mayor for the night.

VOICE VOTE: Ayes, MPT Schafer
Commissioner Haig
Commissioner Baller
Commissioner Longe
Commissioner Host

Nays, None

09-544-24 Nomination of Temporary Mayor Pro Tem

MOTION: Motion by Baller:
Nominate Therese Longe.

VOICE VOTE: Ayes, tMayor Schafer
Commissioner Haig
Commissioner Baller
Commissioner Longe
Commissioner Host

Nays, None

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

Announcements

Happy Birthday Mayor McLain

09-545-24 Remove Item VII(A) from the Agenda

ACM Clemence asked that Item VII(A) be removed from the present agenda, with the intention that it would be amended and presented at a later date.

MOTION: Motion by Longe, seconded by Baller:
To cede to the City's wish to remove Unfinished Business Item A from this evening's agenda.

VOICE VOTE: Ayes, tMayor Schafer
Commissioner Haig
Commissioner Baller
tMPT Longe
Commissioner Host

Nays, None

Appointments

09-546-24 Design Review Board

The Commission interviewed Patricia Lang for the appointment.

MOTION: Nomination by Host:
To appoint Patricia Lang as a regular member to the Design Review Board to serve a three-year term to expire September 25, 2027.

VOICE VOTE: Ayes, tMayor Schafer
Commissioner Haig
Commissioner Baller
tMPT Longe
Commissioner Host

Nays, None

09-547-24 Design Review Board

The Commission interviewed Julijana Rasaweher for the appointment.

MOTION: Nomination by Haig:
To appoint Julijana Rasaweher as a regular member to the Design Review Board to serve a three-year term to expire September 25, 2027.

VOICE VOTE: Ayes, tMayor Schafer
Commissioner Haig
Commissioner Baller
tMPT Longe
Commissioner Host

Nays, None

09-548-24 Design Review Board

The Commission interviewed Timothy Collins for the appointment.

MOTION: Nomination by Longe:
To appoint Timothy Collins as a regular member to the Design Review Board to serve a three-year term to expire September 25, 2027.

VOICE VOTE: Ayes, tMayor Schafer
Commissioner Haig
Commissioner Baller
tMPT Longe
Commissioner Host

Nays, None

09-549-24 Historic District Commission

The Commission interviewed Patricia Lang for the appointment.

MOTION: Nomination by Host:
To appoint Patricia Lang as a regular member to the Historic District Commission to serve a three-year term to expire September 25, 2027.

VOICE VOTE: Ayes, tMayor Schafer
Commissioner Haig
Commissioner Baller
tMPT Longe
Commissioner Host

Nays, None

09-550-24 Historic District Commission

The Commission interviewed Gigi Debbrecht for the appointment.

MOTION: Nomination by Baller:

To appoint Gigi Debbrecht as a regular member to the Historic District Commission to serve a three-year term to expire September 25, 2027.

VOICE VOTE: Ayes, tMayor Schafer
Commissioner Haig
Commissioner Baller
tMPT Longe
Commissioner Host

Nays, None

09-551-24 Historic District Commission

The Commission interviewed Timothy Collins for the appointment.

MOTION: Nomination by Haig:

To appoint Timothy Collins as a regular member to the Historic District Commission to serve a three-year term to expire September 25, 2027.

VOICE VOTE: Ayes, tMayor Schafer
Commissioner Haig
Commissioner Baller
tMPT Longe
Commissioner Host

Nays, None

CC Bingham swore in the appointees.

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

Commissioners made the following comments:

- The public should permanently be allowed to comment on X. Communications items during this portion of the meeting.
- While permanently allowing that change could be explored in the future, the public would presently be allowed to comment both on items not on the agenda and on X. Communications items.
- It was noted that residents can provide comments to the Commission in person, via Zoom, and via email.
- Commissioners have spent an immense amount of time reviewing unimproved roads and special assessment projects, and each project that is brought forward is reviewed

individually and on its own merits.

David Stiteler, Tim Bradley, Cliff Rager, and Danny Hill shared concerns about a potential upcoming special assessment district project that would include Wembleton and Henley.

V. CONSENT AGENDA

09-552-24 Consent Agenda

MOTION: Motion by Longe, seconded by Host:
To move the Consent Agenda excluding Item B.

ROLL CALL VOTE: Ayes, tMPT Longe
tMayor Schafer
Commissioner Host
Commissioner Haig
Commissioner Baller

Nays, None

- A. Resolution to approve the City Commission workshop meeting minutes of the meeting held on September 9, 2024.
- C. Resolution to approve the warrant list, including Automated Clearing House payments, dated September 12, 2024 in the amount of \$39,956,276.84.
- D. Resolution to approve the warrant list, including Automated Clearing House payments, dated September 19, 2024 in the amount of \$1,664,264.80.
- E. Resolution to approve a special event permit as requested by the City of Birmingham to hold the Celebrate Birmingham Hometown Parade on May 18, 2025 contingent upon compliance with all permit and insurance requirements and payment of all fees and, further pursuant to any minor modifications that may be deemed necessary by administrative staff at the time of the event, or event cancellation that may be deemed necessary by administrative staff, leading up to or at the time of the event.
- F. Resolution to approve a special event permit as requested by the Birmingham Shopping District to hold the Birmingham Blast on January 25, 2025 contingent upon compliance with all permit and insurance requirements and payment of all fees and, further pursuant to any minor modifications that may be deemed necessary by administrative staff at the time of the event, or event cancellation that may be deemed necessary by administrative staff, leading up to or at the time of the event.
- G. Resolution to approve a request by the Birmingham Shopping District to hold the 2024 Santa House special event beginning the weekend of November 30, 2024 through December 24, 2024 contingent upon compliance with all permit and insurance requirements and payment of all fees and, further, pursuant to any minor modifications that may be deemed necessary by administrative staff at the time of the event.

- H. Resolution to approve a request from the Birmingham Shopping District to hold the 2024 Winter Markt special event on Friday, December 6, 2024 – Sunday, December 8, 2024 contingent upon compliance with all permit and insurance requirements and payment of all fees and, further, pursuant to any minor modifications that may be deemed necessary by administrative staff at the time of the event.
- I. Resolution to amend the Schedule of Fees, Charges, Bond, Insurance, effective October 1, 2024, in the Engineering Department section, to add engineering review fees for non-single family property.
- J. Resolution approving the amendment of the existing OpenGov Contract for purchase of a two year subscription starting July 15, 2024 and ending August 27, 2026 of, as formally known, Cartegraph Solutions Software through OpenGov for a cost not to exceed \$76,235.55 over the life of the contract. Funds are available from the Sewage Disposal account, #590.0-538.000-811.0000, Water System account #591.0-545.000-811.0000, and General Fund, Parks Other Contractual Service account, # 101.0-751.811.0000 for this service. Further, to authorize the Mayor and City Clerk to sign the agreement on behalf of the City.
- K. Resolution appointing election inspectors, absentee voter counting board inspectors, receiving board inspectors and other election officials as recommended by the City Clerk for the November 5, 2024 General Election pursuant to MCL 168.674, and further grant the City Clerk the authority to make emergency appointments of qualified candidates should circumstances warrant in order to maintain adequate staffing in the various precincts, counting boards and receiving boards.

AND

To authorize the use of an Absent Voter Counting Board for the City of Birmingham pursuant to MCL 168.765a(1) as the City Commission previously resolved on May 6, 2024, resolution 05-418-24.

AND

To authorize the use of the Oakland County Absent Voter Counting Board for the purpose of processing and tabulating absent voter ballots on November 5, 2024, as prescribed in the terms and responsibilities previously agreed upon at the July 12, 2020 meeting by Commission resolution 07-120-20.

- L. Resolution designating Finance Director Mark Gerber, Assistant Finance Director Kim Wickenheiser, DPS Director Scott Zielinski, Building Official Bruce Johnson, Assistant Building Official Mike Morad, Museum Director Leslie Pielack, and Police Commander Ryan Kearney as proxy representatives of Election Commissioners Mayor Elaine McLain, Mayor Pro Tem Katie Schafer, Commissioner Clinton Baller, Commissioner Brad Host, Commissioner Andrew Haig, Commissioner Anthony Long, and Commissioner Therese Longe, to conduct the Public Accuracy Test on Tuesday, October 8, 2024 at 9 a.m. in room 205 to test the electronic tabulating equipment which will be used to count votes at Birmingham precincts during the November 5, 2024 General Election.

- M. Resolution to accept the resignation of Joe Zane from the Multi-Modal Transportation Board, to thank him for his service and to direct the City Clerk to begin the process of filling the vacancy.
- N. Resolution to accept the resignation of Kip Cantrick from the Triangle District Board, to thank him for his service and to direct the City Clerk to begin the process of filling the vacancy.
- O. Resolution to accept the resignation of Sarvy Lipari from the Birmingham Shopping District Board, to thank her for his service and to direct the City Clerk to begin the process of filling the vacancy.

Birmingham City Commission Meeting Minutes – September 9, 2024 (Item B)

Commissioner Haig pulled Item B. He recommended that one bullet point be added to the discussion of the Senior/Recreation Center Project.

The minutes would be reviewed at the next Commission meeting.

VI. CITY MANAGER'S REPORT

ACM Clemence presented the report and answered informational questions from the Commission.

Commissioners made the following comments:

- Two complaints of unethical behavior were brought against members of the City administration by members of the public, and both claims were dismissed by the Board of Ethics. Board of Ethics hearings require an expenditure of resources by the City, and it was important for residents to know this was occurring.

VII. UNFINISHED BUSINESS

VIII. NEW BUSINESS

09-553-24 Public Hearing for Lot Division and Lot Combination of 532 & 568 Lakeside Drive, parcels 19-26-427-012 & 19-26-427-011

The tMayor opened the public hearing at 8:19 p.m.

SP Cowan presented the item.

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

Commissioners made the following comments:

- It was pleasant to review a request that was ordinance-compliant.

MOTION: Motion by Baller, seconded by Haig:

To approve the lot division of 532 & 568 Lakeside Drive, parcels 19-26-427-012 & 19-26-427-011.

AND

To approve the lot combination of 532 & 568 Lakeside Drive, parcels 19-26-427-012 & 19-26-427-011.

ROLL CALL VOTE: Ayes, tMPT Longe
tMayor Schafer
Commissioner Host
Commissioner Haig
Commissioner Baller

Nays, None

09-554-24 Michigan Natural Resources Trust Fund Grant Application Update

PRM Laird presented the item.

Commissioners made the following comments:

- Grant deadlines are strict, and it was positive that staff paid attention to the deadlines and to the opportunity to resubmit for more funding.

MOTION: Motion by Longe, seconded by Host:

To authorize Birmingham to submit a revised resolution for a Michigan Natural Resource Trust Fund (MNRTF) grant through the Michigan Department of Natural Resources (MDNR), and further directing the City Clerk to sign the resolution.

ROLL CALL VOTE: Ayes, tMPT Longe
tMayor Schafer
Commissioner Host
Commissioner Haig
Commissioner Baller

Nays, None

09-555-24 Birmingham Green: Healthy Climate Plan – Request for Adoption

PD Dupuis and Ad Hoc Environmental Sustainability Committee (AHESC) Chair Newman presented the item.

Commissioners made the following comments in the course of discussion:

- This Plan should be a cause for celebration in the City. The AHESC and staff deserved commendation and thanks for their work.
- The Plan's navigability and readability was excellent and would make it easier for residents to read. The Plan was also visually and graphically appealing.
- While local government can move slowly, the AHESC came together and completed this

Plan within two years.

- The Plan was circulated to 15 different organizations and communities for comment and received positive feedback from all of them. This Plan raised the bar for ad hoc committees in Birmingham.
- While this Plan sets out a broad vision, each specific step towards implementation will be discussed and reviewed at the Commission level in the future. This process will include continued opportunities for public comment and engagement.
- A number of the 'First Steps' could likely be done in an expedited fashion and concurrently, like encouraging residential rain gardens and working on storm water retention more broadly.
- Birmingham resident Harvey Bell's net-positive home is an example of a residential sustainability success.
- The 'What Can I Do' section was very beneficial, and would help residents work on their own contributions to the City's sustainability efforts. Creating an infographic on the present impact of some behaviors and the likely impact of changed behaviors would be useful for emphasizing the importance of resident participation.
- The 'What Can I Do' section could also provide residents with resources and instructions for implementation, as well as information on other residents in the community who might be able to act as guides towards implementation.
- Aspects of this Plan could also be adapted for use in Birmingham schools. Presentations to students would likely be well-received.

MOTION:

Motion by Schafer, seconded by Longe:

To adopt the Birmingham Green: Healthy Climate Plan in its entirety and through this plan, commit to aspiring toward a resilient and sustainable future.

Commissioners made the following comments on the motion:

- It would be positive to see more residents participate in discussions where the City is showcasing its successes, such as this one.

ROLL CALL VOTE: Ayes, tMPT Longe
 tMayor Schafer
 Commissioner Host
 Commissioner Haig
 Commissioner Baller

Nays, None

The room had a round of applause for the members of the AHESC.

09-556-24 Amendments to Chapter 82 of the Birmingham Code of Ordinances to Create the Environmental Sustainability Committee

PD Dupuis presented the item and staff answered informational questions from the Commission.

Commissioners made the following comments in the course of discussion:

- It would be appropriate to stagger terms, like other City boards do.
- It might be appropriate to require that projects of a certain magnitude go to the

Environmental Sustainability Committee (ESC).

- More discussion should be had on how the ESC would best participate in project review processes.
- More discussion should be had on the possibility of the Planning Board referring items to the ESC.
- Coordination of both the Planning Board and the ESC would be done by the Planning Department.
- While there was clearly Commission support for creating the ESC, it would be appropriate for staff to work on the language a bit more given the questions being raised.
- AHESC Chair Newman should also provide input on the ordinance language.

MOTION: Motion by Baller, seconded by Haig:
To postpone adoption of this ordinance to October 7, 2024.

VOICE VOTE: Ayes, tMPT Longe
tMayor Schafer
Commissioner Host
Commissioner Haig
Commissioner Baller

Nays, None

Public Comment

Harvey Bell commented regarding sustainability opportunities in the community.

Amendments to Chapter 50 of the Birmingham Code of Ordinances to Create Regulations for Leaf Blowers

PD Dupuis presented the item and staff answered informational questions from the Commission.

Commissioners made the following comments in the course of discussion:

- It might be worth considering giving residents using their own equipment a bit longer of a phase-out period.
- 'Gas powered' should be changed to 'two stroke'.
- Ann Arbor, MI has a longer phase-out period, which should be considered.
- Many electric leaf blowers do not yet match the cost-efficiency or the power of two stroke leaf blowers.
- The logistics of reporting and enforcement should be further considered.
- This item and any proposed noise ordinance should be reviewed by the ESC. It would be helpful to have their backing and their insights into the most appropriate approaches.
- While this ordinance change would result in some challenges for commercial businesses, noise emitted by two stroke leaf blowers has a detrimental impact on many residents.
- Leaving leaves on a lawn has immense benefits for pollinators.
- There are other methods for removing leaves that result in less noise and pollution. There should be a push to educate residents on the alternatives.

Commission Items for Future Discussion

09-557-24 Code of Conduct for Landscaping Contractors

MOTION: Motion by Host, seconded by Baller:
To discuss a code of conduct for landscaping contractors in Birmingham.

VOICE VOTE: Ayes, tMPT Longe
tMayor Schafer
Commissioner Host
Commissioner Haig
Commissioner Baller

Nays, None

Commission Discussion On Items From A Prior Meeting

IV. REMOVED FROM CONSENT AGENDA

X. COMMUNICATIONS (Comments heard during IV. Open To The Public For Matters Not On The Agenda)

- A. Letters regarding YMCA-NEXT
- B. Letters regarding Henley

XI. REPORTS

- A. Commissioner Reports
 - 1. Notice of intention to appoint to the Multi Modal Transportation Board
 - 2. Notice of intention to appoint to the Birmingham Shopping District Board
 - 3. Notice of intention to appoint to the Triangle District Corridor Improvement Authority
- B. Commissioner Comments

Commissioner Baller recommended that discussion or updates regarding the Next/YMCA project occur at every Commission meeting.

Commissioners Host and Haig commented regarding funding and next steps for the Next/YMCA project.

- C. Advisory Boards, Committees, Commissions' Reports and Agendas
- D. Legislation
- E. City Staff
 - 1. Kenning Park Parking Lot Traffic

DPSD Zielinski answered informational questions from the Commission on the item.

Commissioners made the following comments:

- Staff should install whatever signs they deem necessary to improve safety in the area.
- This area could be more efficiently designed to create parking.
- The parking area might benefit from speed bumps.

INFORMATION ONLY

XII. ADJOURN

The Commission motioned to adjourn at 10:19 p.m.



Alexandria Bingham, City Clerk

Laura Eichenhorn, City Transcriptionist

DRAFT

City of Birmingham

Warrant List Dated 09/25/2024

Meeting of 10/07/2024

Check Number	Early Release	Vendor #	Vendor	Amount
<u>PAPER CHECK</u>				
300099	*	006965	7UP DETROIT	180.80
300100	*	009589	ALL AMERICAN VENTILATION	620.00
300101	*	006759	AT&T	0.10
300102	*	006759	AT&T	432.81
300103	*	006759	AT&T	210.57
300104	*	003703	AT&T MOBILITY	1,282.94
300106		009609	BALIAN LEGAL, PLC	960.00
300107		008059	BALL EQUIPMENT	755.56
300108		009568	BEDROCK EXPRESS LTD	2,803.17
300109	*	007129	BELFOR PROPERTY RESTORATION	29,390.46
300110	*	000522	BIG BEAVER PLUMBING, HEATING INC.	150.00
300111		003526	BOUND TREE MEDICAL, LLC	1,333.16
300112		003907	CADILLAC ASPHALT, LLC	2,046.87
300113	*	MISC	CAROLINE THOMAS	230.00
300114	*	009935	CHAMPION HARGREAVES	2,232.04
300115	*	008006	CLEAR RATE COMMUNICATIONS, INC	1,627.52
300116	*	000627	CONSUMERS ENERGY	3,162.52
300117		008582	CORE & MAIN LP	1,450.00
300118	*	009815	CULLIGAN OF ANN ARBOR/DETROIT	25.29
300119	*	009873	D/A CENTRAL INC.	3,989.25
300120		009309	DEALER AUTO PARTS	82.06
300121	*	000179	DTE ENERGY	17.77
300122	*	000180	DTE ENERGY	10,311.45
300123		007505	EAGLE LANDSCAPING & SUPPLY	41.00
300125	*	009387	FRAIBERG & PERNIE PLLC	480.00
300126	*	004604	GORDON FOOD	1,092.54
300127	*	008007	GREAT LAKES WATER AUTHORITY	8,490.90
300130		001531	GUNNERS METER & PARTS INC	349.50
300131	*	005959	H2O COMPLIANCE SERVICE INC	890.00
300132	*	001956	HOME DEPOT CREDIT SERVICES	601.06
300136	*	009401	IRENE S WASSEL	420.00
300137	*	009403	JUSTIN ZAYID	1,080.00
300138	*	004088	KGM DISTRIBUTORS INC	183.00
300139	*	007985	L.E.O.R.T.C.	120.00
300140	*	009386	LAW OFFICE OF BRIAN P. FENECH	3,864.00
300142		004687	MICHIGAN DEPT. OF TRANSPORATION	5,116.00
300143	*	009933	MICHIGAN TOURNAMENT FLEET, INC	585.00
300144	*	007051	STATE OF MICHIGAN	596.55
300145		000230	MIKE SAVOIE CHEVROLET INC	4,478.56
300146		009506	NORTH AMERICAN SHOOTING SUPPLY	1,233.00
300147		002853	OAKLAND COMMUNITY COLLEGE	6,850.00
300148	*	000477	OAKLAND COUNTY	508,980.00

City of Birmingham

Warrant List Dated 09/25/2024

Meeting of 10/07/2024

Check Number	Early Release	Vendor #	Vendor	Amount
300150	*	009938	ORLANDO L BLANCO	5,000.00
300152	*	006625	PTS COMMUNICATIONS, INC	78.00
300153		008852	REDGUARD FIRE & SECURITY INC	690.00
300154		000218	ROYAL OAK P.D.Q. LLC	42.95
300155	*	002806	SAM'S CLUB/SYNCHRONY BANK	1,181.87
300156	*	009796	SHERWIN WILLIAMS COMMERCIAL	43.99
300157	*	007142	SHERWIN-WILLIAMS COMPANY	371.61
300158	*	000260	SPARTAN DISTRIBUTORS INC	73.14
300159		004544	STRYKER SALES CORPORATION	97.76
300161	*	009384	THE EDITH BLAKNEY LAW FIRM, PLLC	1,080.00
300162	*	009552	TRAFFIC & SAFETY CONTROL SYSTEMS	3,985.00
300163	*	004379	TURNER SANITATION, INC	150.00
300164	*	001279	US FIGURE SKATING ASSOC.	175.00
300165	*	007226	VALLEY CITY LINEN, INC	183.35
300166	*	000293	VAN DYKE GAS CO.	154.00
300167	*	000158	VERIZON WIRELESS	366.18
300168	*	000158	VERIZON WIRELESS	89.92
300169	*	000158	VERIZON WIRELESS	98.46
300170	*	009806	VFP FIRE SYSTEMS	9,410.00
300171	*	007240	WATERTAP, INC.	22,510.00
300173	*	007620	WJE-WISS, JANNEY, ELSTNER ASSOC.INC	52,500.00
SUBTOTAL PAPER CHECK				\$707,026.68
<u>ACH TRANSACTION</u>				
11621	*	009393	AMANDA MCBRIDE	720.00
11622	*	003243	AMERICAN PRINTING SERVICES INC	5,012.00
11623	*	009383	BATTI LAW PLLC	2,010.00
11624	*	009891	BEST ASPHALT INC.	207,219.23
11625		008840	BIRMINGHAM PUBLIC SCHOOLS-TAXES	4,486,600.14
11626		000605	CINTAS CORPORATION	270.60
11627	*	000605	CINTAS CORPORATION	215.88
11628		009917	CITY OF BIRMINGHAM #259	23,202.14
11629	*	009925	CITY OF BIRMINGHAM #261	52,543.60
11631	*	009195	CROWN CASTLE FIBER LLC	4,655.15
11633	*	009557	ZECO, LLC	550.00
11634	*	006077	DI PONIO CONTRACTING INC	463,142.40
11635	*	007807	G2 CONSULTING GROUP LLC	19,090.00
11636	*	000243	GRAINGER	325.44
11637	*	009382	HB LAW, PLLC	780.00
11639	*	003458	JOE'S AUTO PARTS, INC.	144.27
11641	*	007511	ADAM KNOWLES	25.00
11642	*	004085	KONE INC	2,086.45
11643	*	005876	KROPF MECHANICAL SERVICE COMPANY	516.00
11644	*	009385	LAW OFFICE OF MICHAEL J. DICK	1,164.00

City of Birmingham
Warrant List Dated 09/25/2024

Meeting of 10/07/2024

Check Number	Early Release	Vendor #	Vendor	Amount
11645	*	005550	LEE & ASSOCIATES CO., INC.	1,580.25
11646	*	007977	KAREN LINGENFELTER	181.25
11647	*	009398	MARCIA C ROSS PC	4,002.00
11649		004879	MOTOROLA SOLUTIONS INC	729.00
11651		009276	NEWTONS SOLUTIONS LLC	1,050.00
11651	*	009276	NEWTONS SOLUTIONS LLC	5,050.00
11652	*	007856	NEXT	445.75
11653	*	006359	NYE UNIFORM COMPANY	610.00
11654	*	008843	OAKLAND COUNTY TREASURER- TAX PYMNT	7,785,291.03
11655	*	009395	ORLANDO LAW PRACTICE PC	756.00
11656	*	002767	OSCAR W. LARSON CO.	2,072.92
11657	*	006853	PAUL C SCOTT PLUMBING INC	505.00
11658	*	001753	PEPSI COLA	364.19
11659	*	000486	PLANTE & MORAN PLLC	22,500.00
11660	*	003554	RKA PETROLEUM	7,692.08
11661	*	001181	ROSE PEST SOLUTIONS	950.00
11662	*	009301	SECURE-CENTRIC INC	1,512.00
11663		000254	SOCRRA	79,105.00
11664	*	001097	SOCWA	216,399.96
11666	*	009379	YELLOW DOOR LAW	6,540.00
SUBTOTAL ACH TRANSACTION				\$13,407,608.73
GRAND TOTAL				\$14,114,635.41

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



Mark Gerber
Finance Director/ Treasurer

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

City of Birmingham

Warrant List Dated 10/03/2024

Meeting of 10/07/2024

Check Number	Early Release	Vendor #	Vendor	Amount
<u>PAPER CHECK</u>				
300174	*	000855	48TH DISTRICT COURT	466,481.00
300175		009126	AMAZON CAPITAL SERVICES INC	233.53
300176	*	009126	AMAZON CAPITAL SERVICES INC	11.23
300177		BDREFUND	AMERICAN STANDARD ROOFING	300.00
300178	*	009296	ANTOINETTE LICARI	120.63
300179	*	006759	AT&T	221.05
300180	*	006759	AT&T	3,859.99
300181		000843	BAKER & TAYLOR BOOKS	186.38
300182	*	008708	DAVID BARTLEY	328.09
300183		MISC	BERKLEY APPLIANCE	235.70
300184	*	TAXMISC	BIRMINGHAM SPEECH & LANGUAGE PLLC	46.28
300185		BDREFUND	BLOOMINGDALE HOMES INC	2,000.00
300186		003526	BOUND TREE MEDICAL, LLC	122.59
300187		008256	BRAINFUSE, INC.	4,500.00
300188		BDREFUND	BRICKWORKS PROPERTY RESTORATION	100.00
300189		007772	BRIXNSTONE LLC	600.00
300190	*	TAXMISC	BRYAN & CHERYL TIMLIN	3,513.48
300191		BDREFUND	BUILDING DETAIL INC	500.00
300192		003907	CADILLAC ASPHALT, LLC	924.16
300193	*	009078	CANON SOLUTIONS AMERICA INC	276.11
300194	*	003904	CAPITAL ONE BANK	6,408.27
300196		007732	CAPITAL TIRE, INC.	720.00
300197		008959	CASS COLLISION CLAWSON, INC	510.93
300198		000151	CCI-ATX, LLC	351.70
300199		000444	CDW GOVERNMENT INC	2,355.10
300199	*	000444	CDW GOVERNMENT INC	1,249.90
300200		000902	CENGAGE LEARNING INC	32.79
300201		009137	CGS, INC	1,575.00
300202	*	007774	COMCAST BUSINESS	1,284.40
300203	*	000627	CONSUMERS ENERGY	71.79
300204		BDREFUND	CREATIVE BRICK PAVING & LANDSCAPING	200.00
300205	*	009145	CREATIVE COLLABORATIONS	3,800.00
300206	*	004830	CUMMINS-ALLISON CORP.	598.10
300207		009549	DAN'S LAWN MAINTENANCE	1,500.00
300207	*	009549	DAN'S LAWN MAINTENANCE	2,800.00
300208		009309	DEALER AUTO PARTS	389.28
300209		000575	DEMCO, INC	194.08
300210	*	005125	DEVIN DEROECK	20.35
300211	*	005318	DEWOLF & ASSOCIATES, LLC	845.00
300212	*	000179	DTE ENERGY	10,597.77
300213	*	000179	DTE ENERGY	187.86
300214	*	000179	DTE ENERGY	906.65

City of Birmingham
Warrant List Dated 10/03/2024

Meeting of 10/07/2024

Check Number	Early Release	Vendor #	Vendor	Amount
300215	*	000179	DTE ENERGY	23.30
300216	*	000179	DTE ENERGY	236.00
300217		000179	DTE ENERGY	35.25
300218	*	000179	DTE ENERGY	33.44
300219	*	000179	DTE ENERGY	2,327.39
300220	*	000179	DTE ENERGY	119.13
300221	*	000179	DTE ENERGY	559.94
300222	*	000179	DTE ENERGY	10,067.72
300223	*	000179	DTE ENERGY	1,843.58
300224	*	000179	DTE ENERGY	3,877.69
300225	*	000179	DTE ENERGY	2,095.19
300226	*	000179	DTE ENERGY	17.62
300227	*	000179	DTE ENERGY	1,123.02
300228	*	000179	DTE ENERGY	44.23
300229	*	000179	DTE ENERGY	18.47
300230	*	000179	DTE ENERGY	23.29
300231	*	000179	DTE ENERGY	20.15
300232	*	000179	DTE ENERGY	475.60
300233		008164	GARY EISELE	75.71
300234		004615	ENGLISH GARDENS	504.47
300235		001495	ETNA SUPPLY	4,935.00
300236	*	000936	FEDEX	10.49
300237	*	009193	WORKING FIRE FURNITURE & MATTRESS C	287.03
300238		007212	FOSTER BLUE WATER OIL	744.32
300239		BDREFUND	GGC CONSTRUCTION LLC	435.00
300240		000249	GA BUSINESS PURCHASER LLC	50.00
300241		001447	HALT FIRE INC	191.47
300242	*	001956	HOME DEPOT CREDIT SERVICES	575.96
300243		BDREFUND	HRH CONSTRUCTION LLC	2,500.00
300244	*	006640	IACP	2,500.00
300245	*	009401	IRENE S WASSEL	372.00
300246	*	TAXMISC	JACOB & SHELBY SCHOSTAK	3,040.12
300247	*	009403	JUSTIN ZAYID	1,080.00
300248	*	002659	CHRISTOPHER KOCH	119.99
300249	*	007582	DOMINIC LANE	674.17
300250		MISC	LAUREN FRITH	4.95
300251	*	009386	LAW OFFICE OF BRIAN P. FENECH	2,280.00
300252	*	TAXMISC	LORI BARNETT	1,206.38
300253		007910	MACALLISTER RENTALS	2,919.50
300254		BDREFUND	MAINSTREET DESIGN & BUILD	500.00
300255	*	009546	MASTERS TELECOM	68.81
300256	*	MISC	MEDICARE	936.08
300257	*	009200	MICHAEL MORRISON	3,400.00

City of Birmingham

Warrant List Dated 10/03/2024

Meeting of 10/07/2024

Check Number	Early Release	Vendor #	Vendor	Amount
300258	*	009143	MICHAEL SHUKWIT	1,500.00
300259		002207	MICHIGAN AUTOMATIC SPRINKLER, INC.	646.00
300260		006459	MICHIGAN SHOOTING CENTERS INC	990.00
300261	*	006371	MPELRA	150.00
300262		BDREFUND	PELLA WINDOWS & DOORS, INC.	100.00
300263		007588	PERMACARD	576.82
300264		009612	PLAYAWAY PRODUCTS LLC	574.40
300265		BDREFUND	PRM CUSTOM BUILDERS LLC	300.00
300266		MISC	PURE OAKLAND WATER	105.00
300267	*	008342	RAIN MASTER CONTROL SYSTEMS	38.85
300268		003447	RAFT	685.00
300269		BDREFUND	ROYAL OAK HEATING COOLING	105.00
300270		007142	SHERWIN-WILLIAMS COMPANY	58.77
300270	*	007142	SHERWIN-WILLIAMS COMPANY	572.67
300271	*	009009	SIGNATURE CLEANING LLC	4,937.99
300272	*	TAXMISC	SMIDT REVOCABLE TRUST	7,725.96
300273		BDREFUND	SMOLYANOV HOME IMPROVMENT	400.00
300274		000260	SPARTAN DISTRIBUTORS INC	337.30
300275	*	005079	STATE OF MICHIGAN	150.00
300276	*	009201	STEPHEN SHUKWIT	1,450.00
300277		BDREFUND	Swift Services, LLC	100.00
300278	*	009552	TRAFFIC & SAFETY CONTROL SYSTEMS	566.00
300279	*	004379	TURNER SANITATION, INC	290.00
300280	*	001279	US FIGURE SKATING ASSOC.	87.50
300281	*	000293	VAN DYKE GAS CO.	154.00
300282	*	000158	VERIZON WIRELESS	874.88
300283	*	009705	VIKING ESP CORPORATION	697.25
300284	*	002996	GREG WALD	164.44
300285	*	MISC	WATERWORK PLUMBING	99.00
300286		BDREFUND	WEATHERGARD WINDOWS CO INC	500.00
300287		004512	WOLVERINE POWER SYSTEMS	425.00
SUBTOTAL PAPER CHECK				\$598,873.48

ACH TRANSACTION

11667	*	009323	ALEXANDRIA BINGHAM	43.50
11668	*	009383	BATTI LAW PLLC	1,626.00
11669	*	007345	BEVERLY HILLS ACE	19.53
11670		009183	BOB ADAMS TOWING	118.45
11671	*	008983	BRENNA SANDLES	251.50
11672		009352	CHRISTINA WOODS	47.51
11673		000605	CINTAS CORPORATION	461.67
11674	*	000605	CINTAS CORPORATION	178.02
11675		000605	CINTAS CORPORATION	29.84
11676		002234	CMP DISTRIBUTORS INC	979.00

City of Birmingham
Warrant List Dated 10/03/2024

Meeting of 10/07/2024

Check Number	Early Release	Vendor #	Vendor	Amount
11677		002668	CONTRACTORS CLOTHING CO	2,710.86
11677	*	002668	CONTRACTORS CLOTHING CO	428.83
11678		009840	THOMAS S. KLISE COMPANY, INC	820.31
11679	*	006077	DI PONIO CONTRACTING INC	463,142.40
11680		003801	JANA ECKER	517.00
11681		000196	EJ USA, INC.	900.00
11682	*	007314	FLEIS AND VANDENBRINK ENG. INC	11,902.65
11683	*	001672	HAYES PRECISION INC	185.00
11684		000331	HUBBELL ROTH & CLARK INC	94,763.90
11685	*	008851	INSIGHT INVESTMENT	6,758.97
11686		000261	J.H. HART URBAN FORESTRY	55,960.33
11687	*	003458	JOE'S AUTO PARTS, INC.	611.66
11688	*	004085	KONE INC	902.38
11689	*	005876	KROPF MECHANICAL SERVICE COMPANY	1,350.50
11690	*	009385	LAW OFFICE OF MICHAEL J. DICK	1,020.00
11691		001417	MAJIK GRAPHICS INC	260.00
11692	*	009398	MARCIA C ROSS PC	1,464.00
11693	*	004879	MOTOROLA SOLUTIONS INC	7,921.59
11694	*	007755	NETWORK SERVICES COMPANY	1,918.65
11695		001864	NOWAK & FRAUS ENGINEERS	67,685.50
11696		006027	PENCHURA, LLC	40,000.00
11697		008866	PRECISION CONCRETE CUTTING INC	63,291.00
11698	*	000897	PRINTING SYSTEMS INC	91.57
11699	*	009666	RAM CONSTRUCTION SERVICES OF MICHIG	51,985.00
11700	*	000478	ROAD COMM FOR OAKLAND CO	2,086.65
11701	*	001181	ROSE PEST SOLUTIONS	100.00
11702	*	009939	RYAN KATZ	15.08
11703	*	003785	SIGNS-N-DESIGNS INC	280.00
11704	*	000254	SOCRRA	163.73
11705		005787	SOUTHEASTERN EQUIPMENT CO. INC	55.90
11706	*	002037	TOTAL ARMORED CAR SERVICE, INC.	303.97
11707	*	009379	YELLOW DOOR LAW	6,912.00
11708	*	006318	FRANK J ZAMBONI CO. INC	192,718.80
SUBTOTAL ACH TRANSACTION				\$1,082,983.25

City of Birmingham
Warrant List Dated 10/03/2024

Meeting of 10/07/2024

Check Number	Early Release	Vendor #	Vendor	Amount
GRAND TOTAL				\$1,681,856.73

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



Mark Gerber
Finance Director/ Treasurer

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



MEMORANDUM

City Clerk's Office

DATE: October 2, 2024

TO: Jana L. Ecker, City Manager

FROM: Alexandria Bingham, City Clerk

SUBJECT: Special Event Application: 2024 Christmas Nativity Display

INTRODUCTION:

Ascension of Christ Lutheran Church has submitted a Special Event application to hold the 2024 Christmas Nativity Display beginning Monday, December 9, 2024 through Tuesday, December 31, 2024. Set up for the event is scheduled for Monday, December 9 from 3:00 p.m. - 8:00 p.m. Tear down is scheduled for Tuesday, December 31 from 8:00 a.m. - 12:00 p.m.

This display will be located in Shain Park and will consist of fiberglass figurines mounted on a wooden platform.

BACKGROUND:

Prior to application submission, the various departments reviewed the proposed event details for street closures and the need for safety personnel and approved the details. DPS, Planning, Building, Engineering, Police, and Fire have indicated their approval. The Parking Department has been notified of the event for planning purposes.

Events approved by the City Commission in Shain Park in December include:

- | | | |
|----------------------------------|-------------------|------------|
| • Santa House and Carriage Rides | Nov. 30 – Dec. 24 | Shain Park |
| • Winter Markt | Dec. 6 – Dec. 8 | Shain Park |

LEGAL REVIEW:

No legal review is required for this action.

FISCAL IMPACT:

All costs associated with this event will be paid by the applicant.

SUSATAINABILITY:

There were no sustainability considerations for this event.

DESIGN CONSIDERATIONS:

There were no design considerations for this event.

PUBLIC COMMUNICATIONS:

The applicant notified residents and businesses about the details of this event by letter which was mailed at least two weeks prior to the Commission meeting. The addresses that were notified were owners and occupants within 300 feet of the event space.

SUMMARY:

The City Commission is being asked to approve a special event permit for a Christmas Nativity Scene to be on display from December 9 until December 31, 2024. Set up will take place in Shain Park on Monday, December 9, 2024 from 3:00 p.m. - 8:00 p.m. Tear down will occur on Tuesday, December 31, 2024 from 8:00 a.m. - 12:00 p.m.

ATTACHMENTS:

- Special Event application
- Notification letter with map of event area distributed to residents/businesses within 300 feet of the event area. Notification addresses are on file in the Clerk's Office.
- Department Approval page with comments and estimated costs

SUGGESTED COMMISSION ACTION:

To make a motion adopting a resolution to approve a special event permit as requested by the Ascension of Christ Lutheran Church to hold the 2024 Christmas Nativity Display daily, beginning on December 9, 2024 and ending December 31, 2024, contingent upon compliance with all permit and insurance requirements and payment of all fees, and further pursuant to any minor modifications or event cancellation that may be deemed necessary by administrative staff leading up to or at the time of the event.

II. EVENT INFORMATION

1. Organization Type Not for profit church
(city, non-profit, community group, etc.)
2. Additional sponsors or participants (Provide name, address, contact person, status, etc. for all additional organizations sponsoring your event.)
1. Lutheran Church of the Redeemer, 1800 W. Maple Rd, Birmingham, MI 48009
2. Our Shepherd Lutheran Church, 2225 E. 14 Mile Rd, Birmingham, MI 48009
1. Gary Priskorn 248-644-4010 2. David Priskorn - 248-7087874
3. The city encourages collaboration among nonprofit organizations to bring the greatest benefit to the community. Please explain your efforts to do so
We are three congregations in Birmingham and Beverly Hills that come together for this annual event.
4. Are there any sustainability initiatives associated with this event? Please explain.
We utilize the same materials annually and have already refurbished once without needing to replace.
5. Is the event a fundraiser? YES ☐ NO ☒
List beneficiary _____
List expected income _____ Attach information about the beneficiary.
6. First time event in Birmingham? YES ☐ NO ☒
If no, describe This display has been set up in Shain Park every year since 2006.
7. Total number of people expected to attend per day Unknown
8. The event will be held on the following city property: (Please list)
☐ Street(s) _____
☐ Sidewalk(s) _____
☒ Park(s) Shain Park

9. Will street closures be required? YES ☐ NO ☒

(Police Department acknowledgement prior to submission of application is required) (initial here) RK

What parking arrangements will be necessary to accommodate attendance?

Describe None

10. Will staff be provided to assist with safety, security and maintenance? YES ☒ NO ☐

If yes, please provide number of staff to be provided and any specialized training received.

Describe Periodic inspections for damage and burned out bulbs.

11. Will the event require safety personnel (police, fire, paramedics)? YES ☐ NO ☒

(Police Department acknowledgement prior to submission of application is required.) (initial here) RK

Describe On-duty officers will provide extra patrols.

12. Will alcoholic beverages be served? YES ☐ NO ☒

If yes, additional approval by the City Commission is required, as well as the Michigan Liquor Control Commission.

13. Will music be provided? YES ☐ NO ☒

 Live Amplification Loudspeakers

Recorded Time music will begin

Time music will end

Location of live band, DJ, loudspeakers, equipment
must be shown on the layout map.

14. Will there be signage in the area of the event? YES ☒ NO ☐
 Number of signs/banners 1
 Size of signs/banners 18" x 48" on front of platform, photos attached
 Submit a photo/drawing of the sign(s). **A sign permit may be required.**

15. Will food/beverages/merchandise be sold? YES ☐ NO ☒
- Peddler/vendor permits must be submitted to the Clerk's Office, **at least two weeks prior to the event.**
 - You must obtain approval from the Oakland County Health Department for all food/beverage sales/donations. Contact ehclerk@oakgov.com or 248-535-9612 to obtain Health Department approval.
 - There is a \$50.00 application fee for all vendors and peddlers, in addition to the \$10.00 daily fee, per location.

LIST OF VENDORS/PEDDLERS
 (attach additional sheet if necessary)

VENDOR NAME	GOODS TO BE SOLD	WATER HOOK-UP REQUIRED?	ELECTRIC REQUIRED?

Food Vendors must place some type of protection material under their food trucks to catch oil and food spills.

III. EVENT LAYOUT

- Include a map showing the park set up, street closures, and location of each item listed in this section.
- Include a map and written description of run/walk route and the start/finish area

1. Will the event require the use of any of the following municipal equipment?
(show location of each on map)

EQUIPMENT	QUANTITY	COST	NOTES
Picnic Tables	0	6 for \$800.00	A request for more than six tables will be evaluated based on availability.
Trash Receptacles	0	\$10.00 each includes 1 bag For additional bags, the cost is \$45 per case, 100 bags per case	Trash box placement and removal of trash is the responsibility of the event. Additional cost could occur if DPS is to perform this work.
Dumpsters	0	\$400.00/per dumpster per day	Includes emptying the dumpster one time per day. The City may determine the need for additional dumpsters based on event requirements.
Utilities (electric)	Q # of vendors requiring utilities	Varies	Charges according to final requirements of event.
Water/Fire Hydrant	FOR ELECTRIC - One outlet for lighting of display in the evening	\$224.75/per hydrant Includes the use of 5,000 gallons of water. Any additional water usage will be billed.	Applicant must supply their own means of disposal for all sanitary waste water. Waste water is NOT allowed to be poured into the street or on the grass.
Meter Bags / Traffic Cones / Barricades	# to be determined by the Police Department.		

2. Will the following be constructed or located in the area of the event? YES ☐ NO ☒

(show location of each on map) NOTE: Stakes are not allowed.

TYPE	QUANTITY	SIZE
Tents/Canopies/Awnings (A permit is required for tents over 400 square feet)		
Portable Toilets		
Rides		
Displays		
Vendors		
Temporary Structure (must attach a photo)		
Other (describe)		

FOR EVENTS IN SHAIN PARK ONLY:

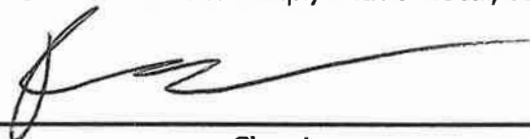
3. Do you want the Fountain on? YES ☐ NO ☐ N/A ☒
The fountain is on weather permitting June 1st through mid-October.
4. Umbrellas should be removed? YES ☐ NO ☐ N/A ☒
Umbrellas are available June 1st through mid-October.
5. Bistro tables/chairs should be removed? YES ☐ NO ☐ N/A ☒
Bistro tables/chairs are available June 1st through mid-October

SIGNATURE OF APPLICANT REQUIRED

EVENT NAME Nativity Scene
EVENT DATE ~~11/30/24~~ 12/31/24
12/19/24 

The Birmingham City Commission shall have sole and complete discretion in deciding whether to issue a permit. Nothing contained in the City Code shall be construed to require the City Commission to issue a permit to an applicant and no applicant shall have any interest or right to receive a permit merely because the applicant has received a permit in the past.

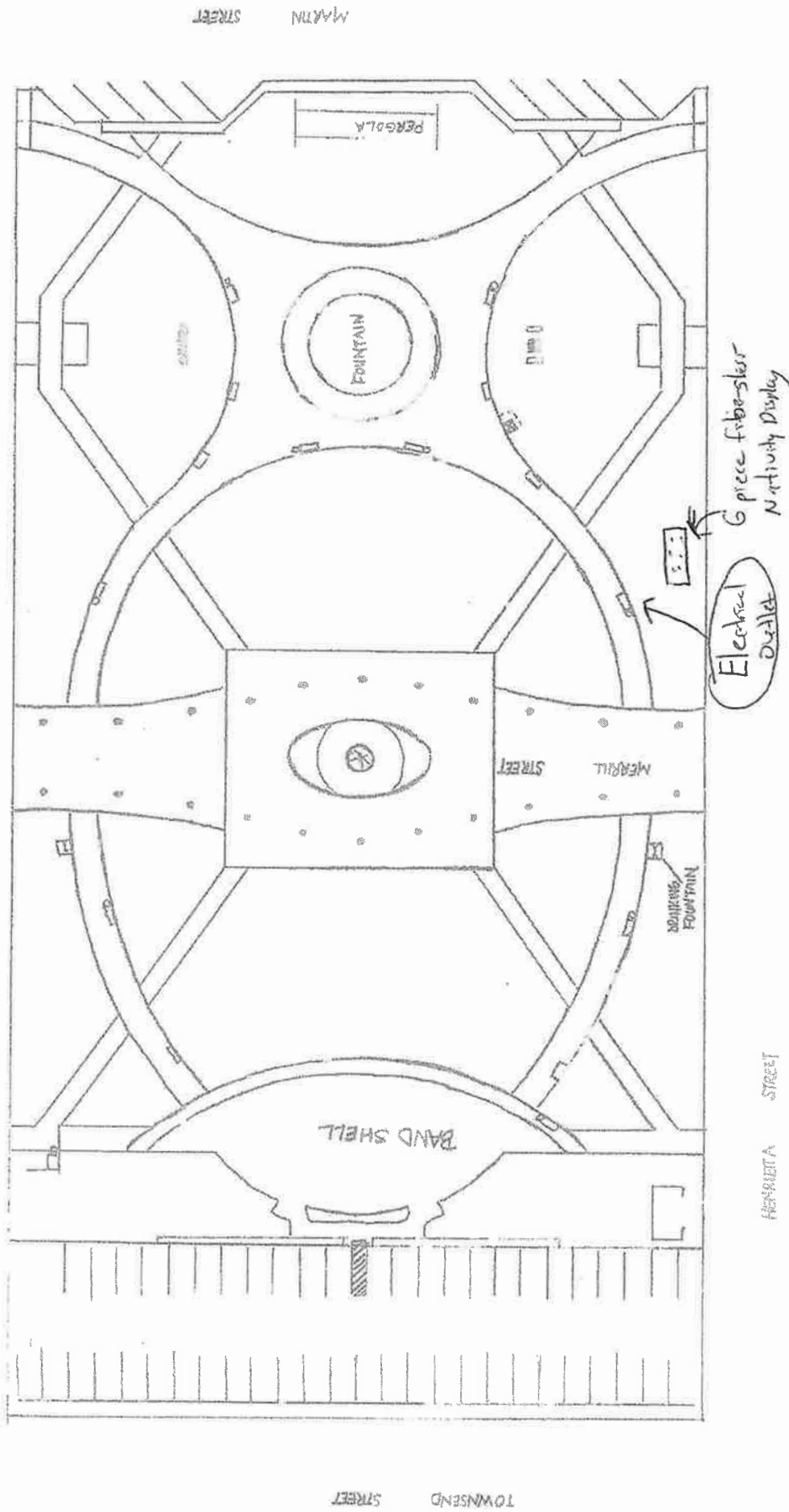
As the authorized agent of the sponsoring organization, I hereby agree that this organization shall abide by all conditions and restrictions specific to this special event as determined by the City administration and will comply with all local, state and federal rules, regulations and laws.

 9-4-24
Signature Date

*By providing your e-mail to the City, you agree to receive news and notifications from the City.
If you do not wish to receive these messages, you may unsubscribe at any time.*

IV. SAMPLE LETTER TO NOTIFY ANY AFFECTED PROPERTY/BUSINESS OWNERS

- V. Organizer must notify all potentially affected residential property and business owners of the date and time this application will be considered by the City Commission. (Sample letter attached to this application.)
- VI. Attach a copy of the proposed letter to this application. The letter will be reviewed and approved by the Clerk's Office. The letter must be distributed at least two weeks prior to the commission meeting.
- VII. A copy of the letter and the distribution list must be submitted to the Clerk's Office at least two weeks prior to the commission meeting.
- VIII. If street closures are necessary, a map must be included with the letter to the affected property/business owners.



Shai5 Park Map



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

9/9/2024

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

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

PRODUCER
Lutheran Trust, Inc.
1500 Wall Street
Saint Charles MO 63303

CONTACT NAME: Lynn Bennett

PHONE (A/C, No, Ext): 800-200-7257

FAX (A/C, No): 866-608-0600

E-MAIL ADDRESS: info@LTCAM.com

INSURER(S) AFFORDING COVERAGE

NAIC #

INSURER A: GuideOne Specialty Mutual Insurance Company

14559

INSURER B:

INSURER C:

INSURER D:

INSURER E:

INSURER F:

INSURED
Ascension of Christ Lutheran Church
16935 West 14 Mile Road
Beverly Hills MI 48025

License#: L100460

ASCEOFC-01

COVERAGES

CERTIFICATE NUMBER: 365166683

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:	Y		010037075	5/1/2024	5/1/2025	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 5,000,000 PRODUCTS - COMP/OP AGG \$ 5,000,000 \$
	☐ AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	☐ UMBRELLA LIAB ☐ EXCESS LIAB ☐ DED ☐ RETENTION \$						OCCUR CLAIMS-MADE EACH OCCURRENCE \$ AGGREGATE \$ \$
	☐ WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

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

The City of Birmingham is listed an additional insured, including all elected and appointed officials, all employee and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof. This coverage shall be primary to any other coverage that may be available to the insured, whether any other coverage be primary, contributing or excess for coverage for a nativity scene put up over the Christmas season by Ascension of Christ Lutheran Church.

CERTIFICATE HOLDER

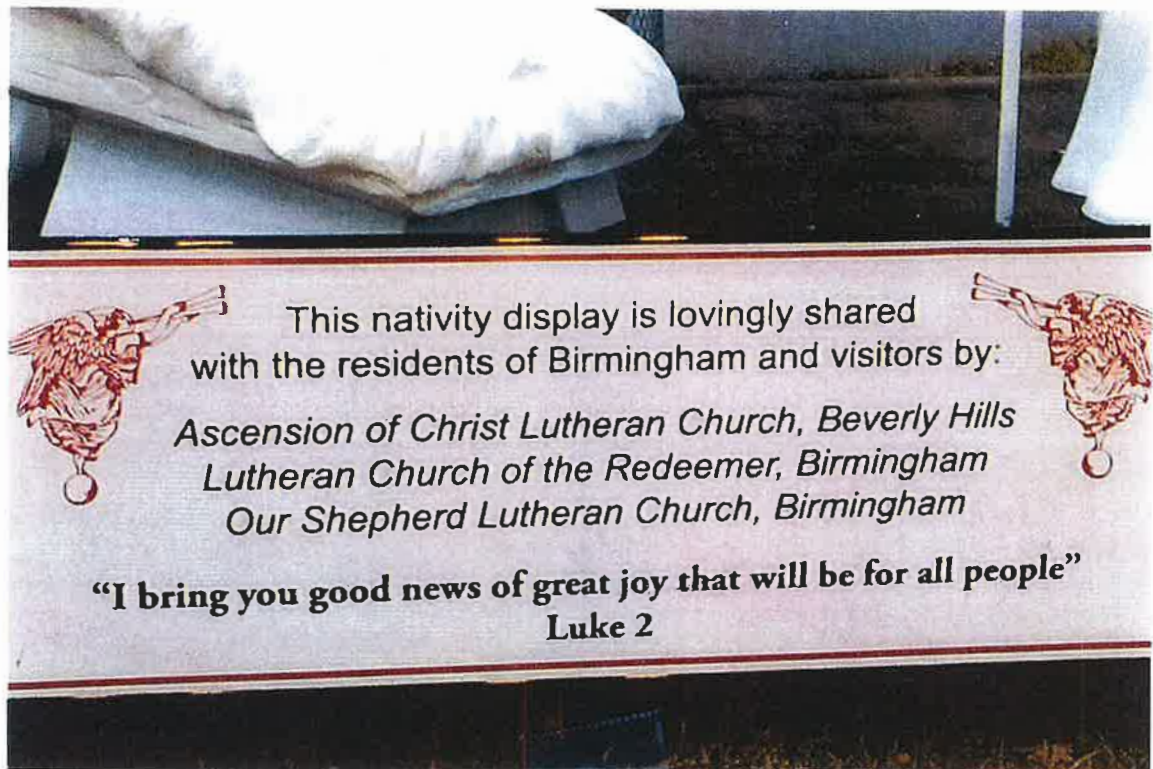
City Of Birmingham
151 Martin
Birmingham MI 48009

CANCELLATION

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

AUTHORIZED REPRESENTATIVE

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Ascension of Christ

LUTHERAN CHURCH

HOLD-HARMLESS AGREEMENT

To the fullest extent permitted by law, the (applicant/organization name) and any entity or person for whom the (applicant/organization name) is legally liable, agrees to be responsible for any liability, defend, pay on behalf of, indemnify, and hold harmless the City of Birmingham, its elected and appointed officials, employees and volunteers and others working on behalf of the City of Birmingham against any and all claims, demands, suits, or loss, including all costs and reasonable attorney fees connected therewith, and for any damages which may be asserted, claimed or recovered against or from the City of Birmingham, its elected and appointed officials, employees, volunteers or others working on behalf of the City of Birmingham, by reason of personal injury, including bodily injury and death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with this activity/event. Such responsibility shall not be construed as liability for damage caused by or resulting from the sole act or omission of the City of Birmingham, its elected or appointed officials, employees, volunteers or others working on behalf of the City of Birmingham.

David R. Preiss

9/9/2024

Applicants Signature

Date



Ascension of Christ

LUTHERAN CHURCH

Date: 9/9/2024

To: Resident/Property Owner/Business Owner

The Birmingham City Code requires that we receive approval from the Birmingham City Commission to hold the following special event. The code further requires that we notify any property owners or business owners that may be affected by the special event of the date and time that the City Commission will consider our request so that an opportunity exists for comments prior to this approval.

Event Information: 2024 Christmas Nativity Display
Location: Shain Park, East Side facing Henrietta
Dates of Event: December 9, 2024—December 31, 2024
Hours of Event: 24 Hours/Day

BRIEF DESCRIPTION OF EVENT: The display includes 6 fiberglass figures (Mary, Joseph, Baby Jesus, and 3 Shepherds) with a sign identifying the 3 churches that share this display with the residents and visitors to the City of Birmingham. The same display has been placed since 2005.

DATE AND HOURS OF SETUP: December 9, 2024, 3pm—8pm

DATE AND HOURS OF TEAR-DOWN: December 31, 2024, 9am-12 noon

Date of City Commission Meeting: _____

The City Commission meets in room 205 of the Municipal Building at 151 Martin at 7:30 p.m. You may also attend virtually through Zoom: <https://zoom.us.com/j/655079760> Meeting ID: 655 079 760. **A complete copy of the application to hold this special event is available for your review at the City Clerk's Office (248/530-1880).** Log on to www.bhamgov.org/events for a complete list of special events.

EVENT ORGANIZER: Ascension of Christ Lutheran Church
ADDRESS: 16935 W 14 Mile Road, Beverly Hills, MI 48025
PHONE: 248-644-8890

FOR QUESTIONS ON DAY OF EVENT, CONTACT: David Preiss, 248-807-6648

(Jointly Sponsored with Our Shepherd Lutheran Church, Birmingham and Lutheran Church of the Redeemer, Birmingham)



Ascension of Christ
Lutheran Church
16935 W. 14 Mile Road
Beverly Hills, MI 48025

METROPLEX MI 480

23 SEP 2024 PM 16 L



CITY OF BIRMINGHAM
PO BOX 3001
BIRMINGHAM, MI 48012

48012-300101



DEPARTMENT APPROVALS

EVENT NAME: Shain Park Nativity Scene

COMMISSION HEARING DATE: October 7, 2024

DATE OF EVENT: 12/9 – 12/31, 2024

LICENSE NUMBER #24-00012593

NOTE TO STAFF: Please submit approval by 9/23/24

DEPARTMENT	APPROVED	COMMENTS	PERMITS REQUIRED (Must be obtained directly from individual departments)	ESTIMATED COSTS (Must be paid two weeks prior to the event. License will not be issued if unpaid.)	ACTUAL COSTS (Event will be invoiced by the Clerk's office after the event)
BUILDING 101.0-000.000.636.0005 248.530.1850	MJM	No Building Department involvement.		\$0	0
FIRE 101.0-000.000-636.0004 248.530.1900	JS	No Fire Department involvement.		\$0.00	0
POLICE 101.0-000.000.636.0003 248.530.1870	RK	On-duty officers will provide extra patrols.		\$0	\$0
PUBLIC SERVICES 101.0-000.000-636.0002 248.530.1642	CL	NO STAKES OF ANY TYPE TO BE DRIVEN INTO THE GROUND TO HOLD DOWN NATIVITY SCENE. 2). DEPARTMENT REPRESENTATIVE WILL MEET WITH ORGANIZATION REPRESENTATIVE ON THE PLACEMENT OF THE NATIVITY SCENE, TO AVOID DAMAGE TO PROPERTY, ELECTRICAL, ETC.		\$0	0
ENGINEERING 101.0-000.000.636.0002 248.530.1839	MC	None	None	\$0	\$0
PARKING	AF	None	None	0	0

INSURANCE 248.530.1807		Need to submit COI no less than 2 weeks prior to event Need to submit Hold Harmless Agreement	None		
CLERK 101.0-000.000-614.0000 248.530.1803		Notification letters to be mailed by applicant no later than ____. Notification addresses on file in the Clerk's Office.	Applications for vendors license must be submitted no later than _____.	165	165
			TOTALS: Estimated and Actual Costs		

FOR CLERK'S OFFICE USE

Deposit paid ____165____

Actual Cost _____

Due/Refund_____



MEMORANDUM

Police Department

DATE: **October 1, 2024**

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

FROM: **Greg Wald, Police Captain**

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

SUBJECT: **Axon Body Camera, In-Car Video, & Taser purchase**

INTRODUCTION:

The Police Department is preparing to upgrade its video recording solutions (body cameras and in-car cameras). The current system has been in place since 2020 and is at the end of its lifespan. The Police Department reviewed multiple products and has selected Axon for numerous reasons. Axon offers video recording solutions for law enforcement, and is believed to be the industry leader in offering this solution in North America and is also the sole vendor of Tasers. The department's Tasers are also due to be replaced and by bundling these together there are considerable savings for the City. The Police Department is seeking approval to purchase 35 new body cameras, 35 new Tasers, and 11 in-car cameras, all from Axon on a five (5) year contract.

BACKGROUND:

For over 25 years, the Police Department has had some sort of video recording solution for officers in the field. Most of that time, the solution was in-car video recording, or "dash cams," and an officer wore a transmitter to capture audio. The current in-car system was purchased in 2018 from WatchGuard Solutions. In August 2020, the Police Department added body-worn cameras to the existing video recording system, also from WatchGuard Solutions. In 2022, WatchGuard Solutions was bought out by Motorola. Body-worn cameras have proven to be an indescribable benefit in providing services to the public, for both evidentiary and transparency reasons. Of the 42 body cameras purchased in 2020, only about 25 still operate properly, and service repairs through WatchGuard have been very unreliable. The 11 in-car recording cameras still work, but need maintenance often.

In 2004, the Police Department began carrying Tasers as a less than lethal option when encountering resistance. From 2004-2020, each officer was assigned a Taser. In 2020,

the Police Department upgraded Tasers to the X2 model, but switched to a shared pool of 14 Tasers. The life expectancy for a Taser is about five years, and of the current 14 Tasers, several are often out of service due to malfunctions. Having a model of a shared pool of Tasers has not worked out well, and often the supply cannot meet staffing demands.

The current body and in-car cameras are in critical need of replacement, and are budgeted for in the 2024-2025 fiscal year. The current X2 Tasers are scheduled to be replaced in the 2025-2026 fiscal year, but are in great need of replacement now. Additionally, the Police Department suggests going back to assigning each officer a Taser to eliminate the issues experienced with the current shared Taser program. If purchased separately, the total cost for body cameras, in-car cameras and Tasers would be \$953,118 (at current rates) on a five-year contract. If bundled together, with a customer loyalty discount, the cost is \$727,621.80, saving over \$225,000. Axon also offers structured pricing in any contract, and as such, the City would not have to pay for Tasers until the 2025-2026 fiscal year, and only pay for the cameras this fiscal year as budgeted.

As mentioned, Axon is the industry leader for public safety recording solutions. Axon body cameras “interact” with each other and weapon holsters. Anytime an Axon body camera is in active recording mode, it activates all other Axon body cameras within a certain proximity, ensuring complete coverage. Additionally, Axon has options to include sensors for holsters, when a weapon is drawn, it automatically activates a recording of the officers’ body camera (if the device was not already actively recording). Supervisors can also view live feeds of officers body cameras should the situation warrant. Axon has cloud-based unlimited storage for videos, as opposed to the current solution of limited on-site storage servers. Axon also owns Evidence.com, the largest and most efficient digital storage platform available that is exclusively used by the Oakland County Prosecutors Office and all five police departments that border Birmingham. Evidence.com allows for quick, seamless and efficient sharing of digital evidence in law enforcement, for those that are on that platform.

Axon’s contract comes with two software and hardware updates at 30 and 60 months. During the contract, if a camera malfunctions or is otherwise damaged, Axon will immediately replace it for free.

LEGAL REVIEW:

The Sourcwell contract and City contract with Axon has been reviewed and approved by the City Attorney.

FISCAL IMPACT:

The City is a member of Sourcwell, a public cooperative purchasing organization out of Minnesota. Sourcwell has awarded Axon two contracts; Conducted Energy Weapons (Taser) contract number 092722-AXN, and Public Safety Video Surveillance Solutions

contract number 101223-AXN. The pricing is universal for any entity using the cooperative purchasing offered by Sourcewell.

If approved, the total five-year contract will be \$727,621.80, structured as follows:

Year 1- \$72,762.20 (budgeted in the 2024-2025 fiscal year)
Year 2- \$163,714.90
Year 3- \$163,714.90
Year 4- \$163,714.90
Year 5- \$163,714.90

The Police Department has applied for a 50% match grant but did not receive the award. The application was with the Small Rural Tribal Body Worn Camera Program with the Department of Justice. The application is reviewed year to year and could be awarded in the future.

SUSTAINABILITY:
N/A

PUBLIC COMMUNICATIONS:
None required.

SUMMARY:
The Police Department needs to replace the existing video recording solutions and Tasers. Both have either reached end of life or will soon. Axon Enterprises is the sole vendor for Tasers and the industry leader for video recording solutions. If approved, the five-year contract with Axon would allow the Police Department to never have a body camera or Taser out of service as damaged or malfunctioning items are replaced immediately. The contract includes a 30 and 60 month hardware and software upgrade, ensuring the systems stay up to date.

ATTACHMENTS:

- Quote from Axon Enterprises
- Sourcewell contract 101223-AXN
- City of Birmingham Contract

SUGGESTED COMMISSION ACTION:
Make a motion adopting a resolution to approve an agreement with Axon Enterprises for the purchase of 11 in-car camera systems, 35 body cameras, and 35 Tasers on a five year contract for \$727,621.80, funded in the first year from account 101.0-301.000-971.0100 for the amount of \$72,762.20; further authorizing the Mayor to sign said contract on behalf of the City.



Axon Enterprise, Inc.
17800 N 85th St.
Scottsdale, Arizona 85255
United States
VAT: 86-0741227
Domestic: (800) 978-2737
International: +1.800.978.2737

Q-584347-45547.636KT

Issued: 09/12/2024

Quote Expiration: 08/30/2024

Estimated Contract Start Date: 01/01/2025

Account Number: 112627

Payment Terms: N30

Delivery Method: UPS Ground

SHIP TO	BILL TO
Birmingham Police Dept. -MI 151 Martin St Birmingham, MI 48009-3368 USA	Birmingham Police Dept. - MI 151 Martin St Birmingham MI 48009-3368 USA Email:

SALES REPRESENTATIVE	PRIMARY CONTACT
Kenny Thomas Phone: (704) 375-1936 Email: kethomas@axon.com Fax:	Greg Wald Phone: (248) 530-1775 Email: gwald@bhamgov.org Fax:

Quote Summary

Program Length	60 Months
TOTAL COST	\$727,621.80
ESTIMATED TOTAL W/ TAX	\$727,621.80

Discount Summary

Average Savings Per Year	\$45,099.52
TOTAL SAVINGS	\$225,497.60

Payment Summary

Date	Subtotal	Tax	Total
Dec 2024	\$72,762.20	\$0.00	\$72,762.20
Dec 2025	\$163,714.90	\$0.00	\$163,714.90
Dec 2026	\$163,714.90	\$0.00	\$163,714.90
Dec 2027	\$163,714.90	\$0.00	\$163,714.90
Dec 2028	\$163,714.90	\$0.00	\$163,714.90
Total	\$727,621.80	\$0.00	\$727,621.80

Quote Unbundled Price:	\$953,119.40
Quote List Price:	\$830,370.80
Quote Subtotal:	\$727,621.80

Pricing

All deliverables are detailed in Delivery Schedules section lower in proposal

Item	Description	Qty	Term	Unbundled	List Price	Net Price	Subtotal	Tax	Total
Program									
Fleet3B+TAP	Fleet 3 Basic + TAP	11	60	\$199.05	\$204.74	\$156.66	\$103,395.60	\$0.00	\$103,395.60
M00012	BUNDLE - OFFICER SAFETY PLAN 10 PLUS	35	60	\$358.14	\$297.90	\$277.18	\$582,078.00	\$0.00	\$582,078.00
A la Carte Hardware									
H00001	AB4 Camera Bundle	35			\$849.00	\$849.00	\$29,715.00	\$0.00	\$29,715.00
H00002	AB4 Multi Bay Dock Bundle	6			\$1,638.90	\$1,638.90	\$9,833.40	\$0.00	\$9,833.40
A la Carte Software									
ProLicense	Pro License Bundle	1	60		\$43.40	\$43.33	\$2,599.80	\$0.00	\$2,599.80
A la Carte Services									
101267	AXON VR - PSO - FULL INSTALLATION	1			\$12,000.00	\$0.00	\$0.00	\$0.00	\$0.00
85144	AXON BODY - PSO - STARTER	1			\$13,000.00	\$0.00	\$0.00	\$0.00	\$0.00
101208	AXON TASER 10 - 2 DAY INSTRUCTOR COURSE - INSIDE SALES	1			\$2,500.00	\$0.00	\$0.00	\$0.00	\$0.00
Total							\$727,621.80	\$0.00	\$727,621.80

Delivery Schedule

Hardware

Bundle	Item	Description	QTY	Shipping Location	Estimated Delivery Date
AB4 Camera Bundle	100147	AXON BODY 4 - CAMERA - NA US FIRST RESPONDER BLK RAPIDLOCK	35	1	12/01/2024
AB4 Camera Bundle	100147	AXON BODY 4 - CAMERA - NA US FIRST RESPONDER BLK RAPIDLOCK	1	1	12/01/2024
AB4 Camera Bundle	100466	AXON BODY 4 - CABLE - USB-C TO USB-C	39	1	12/01/2024
AB4 Camera Bundle	11508	AXON BODY - MOUNT - RAPIDLOCK DOUBLE MOLLE	39	1	12/01/2024
AB4 Multi Bay Dock Bundle	100206	AXON BODY 4 - 8 BAY DOCK	6	1	12/01/2024
AB4 Multi Bay Dock Bundle	70033	AXON - DOCK WALL MOUNT - BRACKET ASSY	6	1	12/01/2024
AB4 Multi Bay Dock Bundle	71019	AXON BODY - DOCK POWERCORD - NORTH AMERICA	6	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100126	AXON VR - TACTICAL BAG	2	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100390	AXON TASER 10 - HANDLE - YELLOW CLASS 3R	1	2	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100390	AXON TASER 10 - HANDLE - YELLOW CLASS 3R	35	2	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100393	AXON TASER 10 - MAGAZINE - LIVE DUTY BLACK	1	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100393	AXON TASER 10 - MAGAZINE - LIVE DUTY BLACK	35	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100394	AXON TASER 10 - MAGAZINE - HALT TRAINING BLUE	4	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100395	AXON TASER 10 - MAGAZINE - LIVE TRAINING PURPLE	3	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100396	AXON TASER 10 - MAGAZINE - INERT RED	30	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100399	AXON TASER 10 - CARTRIDGE - LIVE	700	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100400	AXON TASER 10 - CARTRIDGE - HALT	210	1	12/01/2024

Hardware

Bundle	Item	Description	QTY	Shipping Location	Estimated Delivery Date
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100401	AXON TASER 10 - CARTRIDGE - INERT	300	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100611	AXON TASER 10 - SAFARILAND HOLSTER - RH	35	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100623	AXON TASER - TRAINING - ENHANCED HALT SUIT V2	1	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100681	AXON SIGNAL - SIDEARM SENSOR ONLY	35	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100748	AXON VR - CONTROLLER - TASER 10	2	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100832	AXON VR - CONTROLLER - HANDGUN VR19H	2	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	101122	AXON VR - HOLSTER - T10 SAFARILAND GREY - RH	2	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	101294	AXON VR - TABLET	2	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	101300	AXON VR - TABLET CASE	2	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	20018	AXON TASER - BATTERY PACK - TACTICAL	35	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	20018	AXON TASER - BATTERY PACK - TACTICAL	1	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	20018	AXON TASER - BATTERY PACK - TACTICAL	6	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	20378	AXON VR - HEADSET - HTC FOCUS 3	2	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	70033	AXON - DOCK WALL MOUNT - BRACKET ASSY	1	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	71019	AXON BODY - DOCK POWERCORD - NORTH AMERICA	1	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	71044	AXON SIGNAL - BATTERY - CR2430 SINGLE PACK	70	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	74200	AXON TASER - DOCK - SIX BAY PLUS CORE	1	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	80087	AXON TASER - TARGET - CONDUCTIVE PROFESSIONAL RUGGEDIZED	1	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	80090	AXON TASER - TARGET FRAME - PROFESSIONAL 27.5 IN X 75 IN	1	1	12/01/2024
Fleet 3 Basic + TAP	70112	AXON SIGNAL - SIGNAL UNIT	11	1	12/01/2024
Fleet 3 Basic + TAP	72036	AXON FLEET 3 - STANDARD 2 CAMERA KIT	11	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100399	AXON TASER 10 - CARTRIDGE - LIVE	110	1	12/01/2025
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100400	AXON TASER 10 - CARTRIDGE - HALT	280	1	12/01/2025
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100399	AXON TASER 10 - CARTRIDGE - LIVE	100	1	12/01/2026
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100400	AXON TASER 10 - CARTRIDGE - HALT	280	1	12/01/2026
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100210	AXON VR - TAP REFRESH 1 - TABLET	2	1	06/01/2027
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	101009	AXON VR - TAP REFRESH 1 - SIDEARM CONTROLLER	2	1	06/01/2027
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	101012	AXON VR - TAP REFRESH 1 - CONTROLLER	2	1	06/01/2027
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	20373	AXON VR - TAP REFRESH 1 - HEADSET	2	1	06/01/2027
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73309	AXON BODY - TAP REFRESH 1 - CAMERA	36	1	06/01/2027
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73689	AXON BODY - TAP REFRESH 1 - DOCK MULTI BAY	5	1	06/01/2027
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100399	AXON TASER 10 - CARTRIDGE - LIVE	110	1	12/01/2027
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100400	AXON TASER 10 - CARTRIDGE - HALT	280	1	12/01/2027
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100399	AXON TASER 10 - CARTRIDGE - LIVE	100	1	12/01/2028
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100400	AXON TASER 10 - CARTRIDGE - HALT	280	1	12/01/2028
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73310	AXON BODY - TAP REFRESH 2 - CAMERA	36	1	12/01/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73688	AXON BODY - TAP REFRESH 2 - DOCK MULTI BAY	5	1	12/01/2029
Fleet 3 Basic + TAP	72040	AXON FLEET - TAP REFRESH 1 - 2 CAMERA KIT	11	1	12/01/2029

Software

Bundle	Item	Description	QTY	Estimated Start Date	Estimated End Date
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	101180	AXON TASER - DATA SCIENCE PROGRAM	35	01/01/2025	12/31/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	20248	AXON TASER - EVIDENCE.COM LICENSE	1	01/01/2025	12/31/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	20248	AXON TASER - EVIDENCE.COM LICENSE	35	01/01/2025	12/31/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	20370	AXON VR - FULL ACCESS - TASER ADD-ON USER	35	01/01/2025	12/31/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73478	AXON EVIDENCE - REDACTION ASSISTANT USER LICENSE	35	01/01/2025	12/31/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73618	AXON COMMUNITY REQUEST	35	01/01/2025	12/31/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73638	AXON STANDARDS - LICENSE	35	01/01/2025	12/31/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73680	AXON RESPOND PLUS - LICENSE	35	01/01/2025	12/31/2029

Software

Bundle	Item	Description	QTY	Estimated Start Date	Estimated End Date
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73682	AXON EVIDENCE - AUTO TAGGING LICENSE	35	01/01/2025	12/31/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73683	AXON EVIDENCE - STORAGE - 10GB A LA CARTE	350	01/01/2025	12/31/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73686	AXON EVIDENCE - STORAGE - UNLIMITED (AXON DEVICE)	35	01/01/2025	12/31/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73739	AXON PERFORMANCE - LICENSE	35	01/01/2025	12/31/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73746	AXON EVIDENCE - ECOM LICENSE - PRO	35	01/01/2025	12/31/2029
Fleet 3 Basic + TAP	80400	AXON EVIDENCE - FLEET VEHICLE LICENSE	11	01/01/2025	12/31/2029
Fleet 3 Basic + TAP	80410	AXON EVIDENCE - STORAGE - FLEET 1 CAMERA UNLIMITED	22	01/01/2025	12/31/2029
Pro License Bundle	73683	AXON EVIDENCE - STORAGE - 10GB A LA CARTE	3	01/01/2025	12/31/2029
Pro License Bundle	73746	AXON EVIDENCE - ECOM LICENSE - PRO	1	01/01/2025	12/31/2029

Services

Bundle	Item	Description	QTY
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100751	AXON TASER 10 - REPLACEMENT ACCESS PROGRAM - DUTY CARTRIDGE	35
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	101184	AXON INVESTIGATE - TRAINING - OPERATOR AND EXAMINER	3
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	101193	AXON TASER - ON DEMAND CERTIFICATION	1
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	11642	AXON INVESTIGATE - THIRD PARTY VIDEO SUPPORT	35
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	79999	AXON EVIDENCE - IMPLEMENTATION FOR AUTO TAGGING/PERFORMANCE	1
Fleet 3 Basic + TAP	73391	AXON FLEET 3 - DEPLOYMENT PER VEHICLE - NOT OVERSIZED	11
A la Carte	101208	AXON TASER 10 - 2 DAY INSTRUCTOR COURSE - INSIDE SALES	1
A la Carte	101267	AXON VR - PSO - FULL INSTALLATION	1
A la Carte	85144	AXON BODY - PSO - STARTER	1

Warranties

Bundle	Item	Description	QTY	Estimated Start Date	Estimated End Date
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100197	AXON VR - EXT WARRANTY - HTC FOCUS 3 HEADSET	2	12/01/2025	12/31/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100213	AXON VR - EXT WARRANTY - TABLET	2	12/01/2025	12/31/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100704	AXON TASER 10 - EXT WARRANTY - HANDLE	35	12/01/2025	12/31/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100704	AXON TASER 10 - EXT WARRANTY - HANDLE	1	12/01/2025	12/31/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	101007	AXON VR - EXT WARRANTY - CONTROLLER	2	12/01/2025	12/31/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	101008	AXON VR - EXT WARRANTY - HANDGUN CONTROLLER	2	12/01/2025	12/31/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	80374	AXON TASER - EXT WARRANTY - BATTERY PACK T7/T10	1	12/01/2025	12/31/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	80374	AXON TASER - EXT WARRANTY - BATTERY PACK T7/T10	6	12/01/2025	12/31/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	80374	AXON TASER - EXT WARRANTY - BATTERY PACK T7/T10	35	12/01/2025	12/31/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	80396	AXON TASER - EXT WARRANTY - DOCK SIX BAY T7/T10	1	12/01/2025	12/31/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	80464	AXON BODY - TAP WARRANTY - CAMERA	1	12/01/2025	12/31/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	80464	AXON BODY - TAP WARRANTY - CAMERA	35	12/01/2025	12/31/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	80465	AXON BODY - TAP WARRANTY - MULTI BAY DOCK	5	12/01/2025	12/31/2029
Fleet 3 Basic + TAP	80379	AXON SIGNAL - EXT WARRANTY - SIGNAL UNIT	11	12/01/2025	12/31/2029
Fleet 3 Basic + TAP	80495	AXON FLEET 3 - EXT WARRANTY - 2 CAMERA KIT	11	12/01/2025	12/31/2029

Shipping Locations

Location Number	Street	City	State	Zip	Country
1	151 Martin St	Birmingham	MI	48009-3368	USA
2	151 Martin St	Birmingham	MI	48009-3368	USA

Payment Details

Dec 2024

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 1	101208	AXON TASER 10 - 2 DAY INSTRUCTOR COURSE - INSIDE SALES	1	\$0.00	\$0.00	\$0.00
Year 1	101267	AXON VR - PSO - FULL INSTALLATION	1	\$0.00	\$0.00	\$0.00
Year 1	85144	AXON BODY - PSO - STARTER	1	\$0.00	\$0.00	\$0.00
Year 1	Fleet3B+TAP	Fleet 3 Basic + TAP	11	\$10,339.55	\$0.00	\$10,339.55
Year 1	H00001	AB4 Camera Bundle	35	\$2,971.50	\$0.00	\$2,971.50
Year 1	H00002	AB4 Multi Bay Dock Bundle	6	\$983.34	\$0.00	\$983.34
Year 1	M00012	BUNDLE - OFFICER SAFETY PLAN 10 PLUS	35	\$58,207.83	\$0.00	\$58,207.83
Year 1	ProLicense	Pro License Bundle	1	\$259.98	\$0.00	\$259.98
Total				\$72,762.20	\$0.00	\$72,762.20

Jan 2025

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Invoice Upon Fulfillment	M00012	BUNDLE - OFFICER SAFETY PLAN 10 PLUS	35	\$0.00	\$0.00	\$0.00
Total				\$0.00	\$0.00	\$0.00

Dec 2025

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 2	101208	AXON TASER 10 - 2 DAY INSTRUCTOR COURSE - INSIDE SALES	1	\$0.00	\$0.00	\$0.00
Year 2	101267	AXON VR - PSO - FULL INSTALLATION	1	\$0.00	\$0.00	\$0.00
Year 2	85144	AXON BODY - PSO - STARTER	1	\$0.00	\$0.00	\$0.00
Year 2	Fleet3B+TAP	Fleet 3 Basic + TAP	11	\$23,264.01	\$0.00	\$23,264.01
Year 2	H00001	AB4 Camera Bundle	35	\$6,685.87	\$0.00	\$6,685.87
Year 2	H00002	AB4 Multi Bay Dock Bundle	6	\$2,212.51	\$0.00	\$2,212.51
Year 2	M00012	BUNDLE - OFFICER SAFETY PLAN 10 PLUS	35	\$130,967.56	\$0.00	\$130,967.56
Year 2	ProLicense	Pro License Bundle	1	\$584.95	\$0.00	\$584.95
Total				\$163,714.90	\$0.00	\$163,714.90

Dec 2026

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 3	101208	AXON TASER 10 - 2 DAY INSTRUCTOR COURSE - INSIDE SALES	1	\$0.00	\$0.00	\$0.00
Year 3	101267	AXON VR - PSO - FULL INSTALLATION	1	\$0.00	\$0.00	\$0.00
Year 3	85144	AXON BODY - PSO - STARTER	1	\$0.00	\$0.00	\$0.00
Year 3	Fleet3B+TAP	Fleet 3 Basic + TAP	11	\$23,264.01	\$0.00	\$23,264.01
Year 3	H00001	AB4 Camera Bundle	35	\$6,685.87	\$0.00	\$6,685.87
Year 3	H00002	AB4 Multi Bay Dock Bundle	6	\$2,212.51	\$0.00	\$2,212.51
Year 3	M00012	BUNDLE - OFFICER SAFETY PLAN 10 PLUS	35	\$130,967.56	\$0.00	\$130,967.56

Dec 2026						
Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 3	ProLicense	Pro License Bundle	1	\$584.95	\$0.00	\$584.95
Total				\$163,714.90	\$0.00	\$163,714.90

Dec 2027						
Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 4	101208	AXON TASER 10 - 2 DAY INSTRUCTOR COURSE - INSIDE SALES	1	\$0.00	\$0.00	\$0.00
Year 4	101267	AXON VR - PSO - FULL INSTALLATION	1	\$0.00	\$0.00	\$0.00
Year 4	85144	AXON BODY - PSO - STARTER	1	\$0.00	\$0.00	\$0.00
Year 4	Fleet3B+TAP	Fleet 3 Basic + TAP	11	\$23,264.01	\$0.00	\$23,264.01
Year 4	H00001	AB4 Camera Bundle	35	\$6,685.87	\$0.00	\$6,685.87
Year 4	H00002	AB4 Multi Bay Dock Bundle	6	\$2,212.51	\$0.00	\$2,212.51
Year 4	M00012	BUNDLE - OFFICER SAFETY PLAN 10 PLUS	35	\$130,967.56	\$0.00	\$130,967.56
Year 4	ProLicense	Pro License Bundle	1	\$584.95	\$0.00	\$584.95
Total				\$163,714.90	\$0.00	\$163,714.90

Dec 2028						
Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 5	101208	AXON TASER 10 - 2 DAY INSTRUCTOR COURSE - INSIDE SALES	1	\$0.00	\$0.00	\$0.00
Year 5	101267	AXON VR - PSO - FULL INSTALLATION	1	\$0.00	\$0.00	\$0.00
Year 5	85144	AXON BODY - PSO - STARTER	1	\$0.00	\$0.00	\$0.00
Year 5	Fleet3B+TAP	Fleet 3 Basic + TAP	11	\$23,264.01	\$0.00	\$23,264.01
Year 5	H00001	AB4 Camera Bundle	35	\$6,685.87	\$0.00	\$6,685.87
Year 5	H00002	AB4 Multi Bay Dock Bundle	6	\$2,212.51	\$0.00	\$2,212.51
Year 5	M00012	BUNDLE - OFFICER SAFETY PLAN 10 PLUS	35	\$130,967.56	\$0.00	\$130,967.56
Year 5	ProLicense	Pro License Bundle	1	\$584.95	\$0.00	\$584.95
Total				\$163,714.90	\$0.00	\$163,714.90

Tax is estimated based on rates applicable at date of quote and subject to change at time of invoicing. If a tax exemption certificate should be applied, please submit prior to invoicing.

Contract Sourcewell #101223-AXN is incorporated by reference into the terms and conditions of this Agreement. In the event of conflict the terms of Axon's Master Services and Purchasing Agreement shall govern.

Standard Terms and Conditions

Axon Enterprise Inc. Sales Terms and Conditions

Axon Master Services and Purchasing Agreement:

This Quote is limited to and conditional upon your acceptance of the provisions set forth herein and Axon's Master Services and Purchasing Agreement (posted at <https://www.axon.com/sales-terms-and-conditions>), as well as the attached Statement of Work (SOW) for Axon Fleet and/or Axon Interview Room purchase, if applicable. In the event you and Axon have entered into a prior agreement to govern all future purchases, that agreement shall govern to the extent it includes the products and services being purchased and does not conflict with the Axon Customer Experience Improvement Program Appendix as described below.

ACEIP:

The Axon Customer Experience Improvement Program Appendix, which includes the sharing of de-identified segments of Agency Content with Axon to develop new products and improve your product experience (posted at www.axon.com/legal/sales-terms-and-conditions), is incorporated herein by reference. By signing below, you agree to the terms of the Axon Customer Experience Improvement Program.

Acceptance of Terms:

Any purchase order issued in response to this Quote is subject solely to the above referenced terms and conditions. By signing below, you represent that you are lawfully able to enter into contracts. If you are signing on behalf of an entity (including but not limited to the company, municipality, or government agency for whom you work), you represent to Axon that you have legal authority to bind that entity. If you do not have this authority, please do not sign this Quote.

Signature

Date Signed

9/12/2024





Solicitation Number: 101223

CONTRACT

This Contract is between Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 (Sourcewell) and Axon Enterprise, Inc., 17800 N. 85th St., Scottsdale, AZ 85255-6311 (Supplier).

Sourcewell is a State of Minnesota local government unit and service cooperative created under the laws of the State of Minnesota (Minnesota Statutes Section 123A.21) that offers cooperative procurement solutions to government entities. Participation is open to eligible federal, state/province, and municipal governmental entities, higher education, K-12 education, nonprofit, tribal government, and other public entities located in the United States and Canada. Sourcewell issued a public solicitation for Public Safety Video Surveillance Solutions with Related Equipment, Software and Accessories from which Supplier was awarded a contract.

Supplier desires to contract with Sourcewell to provide equipment, products, or services to Sourcewell and the entities that access Sourcewell's cooperative purchasing contracts (Participating Entities).

1. TERM OF CONTRACT

A. **EFFECTIVE DATE.** This Contract is effective upon the date of the final signature below.

EXPIRATION DATE AND EXTENSION. This Contract expires December 15, 2027, unless it is cancelled sooner pursuant to Article 22. This Contract allows up to three additional one-year extensions upon the request of Sourcewell and written agreement by Supplier. Sourcewell retains the right to consider additional extensions beyond seven years as required under exceptional circumstances.

B. **SURVIVAL OF TERMS.** Notwithstanding any expiration or termination of this Contract, all payment obligations incurred prior to expiration or termination will survive, as will the following: Articles 11 through 14 survive the expiration or cancellation of this Contract. All other rights will cease upon expiration or termination of this Contract.

2. EQUIPMENT, PRODUCTS, OR SERVICES

A. EQUIPMENT, PRODUCTS, OR SERVICES. Supplier will provide the Equipment, Products, or Services as stated in its Proposal submitted under the Solicitation Number listed above. Supplier's Equipment, Products, or Services Proposal (Proposal) is attached and incorporated into this Contract.

All Equipment and Products provided under this Contract must be new and the current model. Supplier may offer close-out or refurbished Equipment or Products if they are clearly indicated in Supplier's product and pricing list. Unless agreed to by the Participating Entities in advance, Equipment or Products must be delivered as operational to the Participating Entity's site.

This Contract offers an indefinite quantity of sales, and while substantial volume is anticipated, sales and sales volume are not guaranteed.

B. WARRANTY. Supplier warrants that all Equipment, Products, and Services furnished are free from liens and encumbrances, and are free from defects in design, materials, and workmanship. In addition, Supplier warrants the Equipment, Products, and Services will perform in accordance with the manufacturer's specifications. Supplier's dealers and distributors must agree to assist the Participating Entity in reaching a resolution in any dispute over warranty terms with the manufacturer. Any manufacturer's warranty that extends beyond the expiration of the Supplier's warranty will be passed on to the Participating Entity.

C. DEALERS, DISTRIBUTORS, AND/OR RESELLERS. Upon Contract execution and throughout the Contract term, Supplier must provide to Sourcwell a current means to validate or authenticate Supplier's authorized dealers, distributors, or resellers relative to the Equipment, Products, and Services offered under this Contract, which will be incorporated into this Contract by reference. It is the Supplier's responsibility to ensure Sourcwell receives the most current information.

3. PRICING

All Equipment, Products, or Services under this Contract will be priced at or below the price stated in Supplier's Proposal.

When providing pricing quotes to Participating Entities, all pricing quoted must reflect a Participating Entity's total cost of acquisition. This means that the quoted cost is for delivered Equipment, Products, and Services that are operational for their intended purpose, and includes all costs to the Participating Entity's requested delivery location.

Regardless of the payment method chosen by the Participating Entity, the total cost associated with any purchase option of the Equipment, Products, or Services must always be disclosed in the pricing quote to the applicable Participating Entity at the time of purchase.

A. **SHIPPING AND SHIPPING COSTS.** All delivered Equipment and Products must be properly packaged. Damaged Equipment and Products may be rejected. If the damage is not readily apparent at the time of delivery, Supplier must permit the Equipment and Products to be returned within a reasonable time at no cost to Sourcewell or its Participating Entities, in accordance with Supplier's warranty process. Participating Entities reserve the right to inspect the Equipment and Products at a reasonable time after delivery where circumstances or conditions prevent effective inspection of the Equipment and Products at the time of delivery. In the event of the delivery of nonconforming Equipment and Products, the Participating Entity will notify the Supplier as soon as possible and the Supplier will replace nonconforming Equipment and Products with conforming Equipment and Products that are acceptable to the Participating Entity in accordance with Supplier's warranty process.

Supplier must arrange for and pay for the return shipment on Equipment and Products that arrive in a defective or inoperable condition.

Sourcewell may declare the Supplier in breach of this Contract if the Supplier intentionally delivers substandard or inferior Equipment or Products.

B. **SALES TAX.** Each Participating Entity is responsible for supplying the Supplier with valid tax-exemption certification(s). When ordering, a Participating Entity must indicate if it is a tax-exempt entity.

C. **HOT LIST PRICING.** At any time during this Contract, Supplier may offer a specific selection of Equipment, Products, or Services at discounts greater than those listed in the Contract. When Supplier determines it will offer Hot List Pricing, it must be submitted electronically to Sourcewell in a line-item format. Equipment, Products, or Services may be added or removed from the Hot List at any time through a Sourcewell Price and Product Change Form as defined in Article 4 below.

Hot List program and pricing may also be used to discount and liquidate close-out and discontinued Equipment and Products as long as those close-out and discontinued items are clearly identified as such. Current ordering process and administrative fees apply. Hot List Pricing must be published and made available to all Participating Entities.

4. PRODUCT AND PRICING CHANGE REQUESTS

Supplier may request Equipment, Product, or Service changes, additions, or deletions at any time. All requests must be made in writing by submitting a signed Sourcewell Price and Product Change Request Form to the assigned Sourcewell Supplier Development Administrator. This approved form is available from the assigned Sourcewell Supplier Development Administrator. At a minimum, the request must:

- Identify the applicable Sourcewell contract number;
- Clearly specify the requested change;
- Provide sufficient detail to justify the requested change;
- Individually list all Equipment, Products, or Services affected by the requested change, along with the requested change (e.g., addition, deletion, price change); and
- Include a complete restatement of pricing documentation in Microsoft Excel with the effective date of the modified pricing, or product addition or deletion. The new pricing restatement must include all Equipment, Products, and Services offered, even for those items where pricing remains unchanged.

A fully executed Sourcewell Price and Product Change Request Form will become an amendment to this Contract and will be incorporated by reference.

5. PARTICIPATION, CONTRACT ACCESS, AND PARTICIPATING ENTITY REQUIREMENTS

A. PARTICIPATION. Sourcewell's cooperative contracts are available and open to public and nonprofit entities across the United States and Canada; such as federal, state/province, municipal, K-12 and higher education, tribal government, and other public entities.

The benefits of this Contract should be available to all Participating Entities that can legally access the Equipment, Products, or Services under this Contract. A Participating Entity's authority to access this Contract is determined through its cooperative purchasing, interlocal, or joint powers laws. Any entity accessing benefits of this Contract will be considered a Service Member of Sourcewell during such time of access. Supplier understands that a Participating Entity's use of this Contract is at the Participating Entity's sole convenience and Participating Entities reserve the right to obtain like Equipment, Products, or Services from any other source.

Supplier is responsible for familiarizing its sales and service forces with Sourcewell contract use eligibility requirements and documentation and will encourage potential participating entities to join Sourcewell. Sourcewell reserves the right to add and remove Participating Entities to its roster during the term of this Contract.

B. PUBLIC FACILITIES. Supplier's employees may be required to perform work at government-owned facilities, including schools. Supplier's employees and agents must conduct themselves in a professional manner while on the premises, and in accordance with Participating Entity policies and procedures, and all applicable laws.

6. PARTICIPATING ENTITY USE AND PURCHASING

A. ORDERS AND PAYMENT. To access the contracted Equipment, Products, or Services under this Contract, a Participating Entity must clearly indicate to Supplier that it intends to access this Contract; however, order flow and procedure will be developed jointly between Sourcewell and

Supplier. Typically, a Participating Entity will issue an order directly to Supplier or its authorized subsidiary, distributor, dealer, or reseller. If a Participating Entity issues a purchase order, it may use its own forms, but the purchase order should clearly note the applicable Sourcewell contract number. All Participating Entity orders under this Contract must be issued prior to expiration or cancellation of this Contract. For avoidance of doubt, if a Participating Entity order extends beyond the Contract's expiration or cancellation, in addition to the survival terms set forth in Section 1.B of this Contract, Supplier's Master Services and Purchasing Agreement (MSPA) shall also apply, governing the order until all obligations of both the Participating Entity and Supplier are fulfilled.

Supplier's acceptable forms of payment are included in its attached Proposal. Participating Entities will be solely responsible for payment and Sourcewell will have no liability for any unpaid invoice of any Participating Entity.

B. ADDITIONAL TERMS AND CONDITIONS/PARTICIPATING ADDENDUM. The Supplier's Master Services and Purchasing Agreement (MSPA) attached hereto as Exhibit A is hereby added and incorporated into this Contract. Additional terms and conditions to a purchase order, or other required transaction documentation, may be negotiated between a Participating Entity and Supplier, such as job or industry-specific requirements, legal requirements (e.g., affirmative action or immigration status requirements), or specific local policy requirements. Some Participating Entities may require the use of a Participating Addendum, the terms of which will be negotiated directly between the Participating Entity and the Supplier or its authorized dealers, distributors, or resellers, as applicable. Any negotiated additional terms and conditions must never be less favorable to the Participating Entity than what is contained in this Contract.

C. SPECIALIZED SERVICE REQUIREMENTS. In the event that the Participating Entity requires service or specialized performance requirements not addressed in this Contract (such as e-commerce specifications, specialized delivery requirements, or other specifications and requirements), the Participating Entity and the Supplier may enter into a separate, standalone agreement, apart from this Contract. Sourcewell, including its agents and employees, will not be made a party to a claim for breach of such agreement.

D. TERMINATION OF ORDERS. Participating Entities may terminate an order, in whole or in part, immediately upon notice to Supplier in the event of any of the following events:

1. The Participating Entity fails to receive funding or appropriation from its governing body at levels sufficient to pay for the equipment, products, or services to be purchased; or
2. Federal, state, or provincial laws or regulations prohibit the purchase or change the Participating Entity's requirements.

E. GOVERNING LAW AND VENUE. The governing law and venue for any action related to a Participating Entity's order will be determined by the Participating Entity making the purchase.

7. CUSTOMER SERVICE

A. **PRIMARY ACCOUNT REPRESENTATIVE.** Supplier will assign an Account Representative to Sourcewell for this Contract and must provide prompt notice to Sourcewell if that person is changed. The Account Representative will be responsible for:

- Maintenance and management of this Contract;
- Timely response to all Sourcewell and Participating Entity inquiries; and
- Business reviews to Sourcewell and Participating Entities, if applicable.

B. **BUSINESS REVIEWS.** Supplier must perform a minimum of one business review with Sourcewell per contract year. The business review will cover sales to Participating Entities, pricing and contract terms, administrative fees, sales data reports, performance issues, supply issues, customer issues, and any other necessary information.

8. REPORT ON CONTRACT SALES ACTIVITY AND ADMINISTRATIVE FEE PAYMENT

A. **CONTRACT SALES ACTIVITY REPORT.** Each calendar quarter, Supplier must provide a contract sales activity report (Report) to the Sourcewell Supplier Development Administrator assigned to this Contract. Reports are due no later than 45 days after the end of each calendar quarter. A Report must be provided regardless of the number or amount of sales during that quarter (i.e., if there are no sales, Supplier must submit a report indicating no sales were made).

The Report must contain the following fields:

- Participating Entity Name (e.g., City of Staples Highway Department);
- Participating Entity Physical Street Address;
- Participating Entity City;
- Participating Entity State/Province;
- Participating Entity Zip/Postal Code;
- Participating Entity Contact Name;
- Participating Entity Contact Email Address;
- Participating Entity Contact Telephone Number;
- Sourcewell Assigned Entity/Participating Entity Number;
- Item Purchased Description;
- Item Purchased Price;
- Sourcewell Administrative Fee Applied; and
- Date Purchase was invoiced/sale was recognized as revenue by Supplier.

B. **ADMINISTRATIVE FEE.** In consideration for the support and services provided by Sourcewell, the Supplier will pay an administrative fee to Sourcewell on all Equipment, Products, and

Services provided to Participating Entities. The Administrative Fee must be included in, and not added to, the pricing. Supplier may not charge Participating Entities more than the contracted price to offset the Administrative Fee.

The Supplier will submit payment to Sourcewell for the percentage of administrative fee stated in the Proposal multiplied by the total sales of all Equipment, Products, and Services purchased by Participating Entities under this Contract during each calendar quarter. Payments should note the Supplier's name and Sourcewell-assigned contract number in the memo; and must be mailed to the address above "Attn: Accounts Receivable" or remitted electronically to Sourcewell's banking institution per Sourcewell's Finance department instructions. Payments must be received no later than 45 calendar days after the end of each calendar quarter.

Supplier agrees to cooperate with Sourcewell in auditing transactions under this Contract to ensure that the administrative fee is paid on all items purchased under this Contract.

In the event the Supplier is delinquent in any undisputed administrative fees, Sourcewell reserves the right to cancel this Contract and reject any proposal submitted by the Supplier in any subsequent solicitation. In the event this Contract is cancelled by either party prior to the Contract's expiration date, the administrative fee payment will be due no more than 30 days from the cancellation date.

9. AUTHORIZED REPRESENTATIVE

Sourcewell's Authorized Representative is its Chief Procurement Officer.

Supplier's Authorized Representative is the person named in the Supplier's Proposal. If Supplier's Authorized Representative changes at any time during this Contract, Supplier must promptly notify Sourcewell in writing.

10. AUDIT, ASSIGNMENT, AMENDMENTS, WAIVER, AND CONTRACT COMPLETE

A. **AUDIT.** Pursuant to Minnesota Statutes Section 16C.05, subdivision 5, the books, records, documents, and accounting procedures and practices relevant to this Contract are subject to examination by Sourcewell or the Minnesota State Auditor for a minimum of six years from the end of this Contract. This clause extends to Participating Entities as it relates to business conducted by that Participating Entity under this Contract.

B. **ASSIGNMENT.** Neither party may assign or otherwise transfer its rights or obligations under this Contract without the prior written consent of the other party and a fully executed assignment agreement. Such consent will not be unreasonably withheld. Any prohibited assignment will be invalid.

C. **AMENDMENTS.** Any amendment to this Contract must be in writing and will not be effective until it has been duly executed by the parties.

D. **WAIVER.** Failure by either party to take action or assert any right under this Contract will not be deemed a waiver of such right in the event of the continuation or repetition of the circumstances giving rise to such right. Any such waiver must be in writing and signed by the parties.

E. **CONTRACT COMPLETE.** This Contract represents the complete agreement between the parties. No other understanding regarding this Contract, whether written or oral, may be used to bind either party. For any conflict between the attached Proposal and the terms set out in Articles 1-22 of this Contract, the terms of Articles 1-22 will govern.

F. **RELATIONSHIP OF THE PARTIES.** The relationship of the parties is one of independent contractors, each free to exercise judgment and discretion with regard to the conduct of their respective businesses. This Contract does not create a partnership, joint venture, or any other relationship such as master-servant, or principal-agent.

11. INDEMNITY AND HOLD HARMLESS

Supplier must indemnify, defend, save, and hold Sourcewell and its Participating Entities, including their agents and employees, harmless from any claims or causes of action, including reasonable attorneys' fees incurred by Sourcewell or its Participating Entities, arising out of any negligent act or omission in the performance of this Contract by the Supplier or its agents or employees; this indemnification includes injury or death to person(s) or property alleged to have been caused by some defect in the Equipment, Products, or Services under this Contract to the extent the Equipment, Product, or Service has been used according to its specifications. In no event will Supplier be liable for any special, indirect, incidental, exemplary, or consequential damages for any cause of action, whether in contract or tort. Sourcewell's responsibility will be governed by the State of Minnesota's Tort Liability Act (Minnesota Statutes Chapter 466) and other applicable law.

12. GOVERNMENT DATA PRACTICES

Supplier and Sourcewell must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by or provided to Sourcewell under this Contract and as it applies to all data created, collected, received, maintained, or disseminated by the Supplier under this Contract.

13. INTELLECTUAL PROPERTY, PUBLICITY, MARKETING, AND ENDORSEMENT

A. INTELLECTUAL PROPERTY

1. *Grant of License.* During the term of this Contract:

- a. Sourcewell grants to Supplier a royalty-free, worldwide, non-exclusive right and license to use the trademark(s) provided to Supplier by Sourcewell in advertising and promotional materials for the purpose of marketing Sourcewell's relationship with Supplier.
 - b. Supplier grants to Sourcewell a royalty-free, worldwide, non-exclusive right and license to use Supplier's trademarks in advertising and promotional materials for the purpose of marketing Supplier's relationship with Sourcewell.
2. *Limited Right of Sublicense.* The right and license granted herein includes a limited right of each party to grant sublicenses to their respective subsidiaries, distributors, dealers, resellers, marketing representatives, and agents (collectively "Permitted Sublicensees") in advertising and promotional materials for the purpose of marketing the Parties' relationship to Participating Entities. Any sublicense granted will be subject to the terms and conditions of this Article. Each party will be responsible for any breach of this Article by any of their respective sublicensees.
3. *Use; Quality Control.*
- a. Neither party may alter the other party's trademarks from the form provided and must comply with removal requests as to specific uses of its trademarks or logos.
 - b. Each party agrees to use, and to cause its Permitted Sublicensees to use, the other party's trademarks only in good faith and in a dignified manner consistent with such party's use of the trademarks. Upon written notice to the breaching party, the breaching party has 30 days of the date of the written notice to cure the breach or the license will be terminated.
4. *Termination.* Upon the termination of this Contract for any reason, each party, including Permitted Sublicensees, will have 30 days to remove all Trademarks from signage, websites, and the like bearing the other party's name or logo (excepting Sourcewell's pre-printed catalog of suppliers which may be used until the next printing). Supplier must return all marketing and promotional materials, including signage, provided by Sourcewell, or dispose of it according to Sourcewell's written directions.

B. **PUBLICITY.** Any publicity regarding the subject matter of this Contract must not be released without prior written approval from the Authorized Representatives. Publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Supplier individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Contract.

C. **MARKETING.** Any direct advertising, marketing, or offers with Participating Entities must be approved by Sourcewell. Send all approval requests to the Sourcewell Supplier Development Administrator assigned to this Contract.

D. **ENDORSEMENT.** The Supplier must not claim that Sourcewell endorses its Equipment, Products, or Services.

14. GOVERNING LAW, JURISDICTION, AND VENUE

The substantive and procedural laws of the State of Minnesota will govern this Contract. Venue for all legal proceedings arising out of this Contract, or its breach, must be in the appropriate state court in Todd County, Minnesota or federal court in Fergus Falls, Minnesota.

15. FORCE MAJEURE

Neither party to this Contract will be held responsible for delay or default caused by acts of God or other conditions that are beyond that party's reasonable control. A party defaulting under this provision must provide the other party prompt written notice of the default.

16. SEVERABILITY

If any provision of this Contract is found by a court of competent jurisdiction to be illegal, unenforceable, or void then both parties will be relieved from all obligations arising from that provision. If the remainder of this Contract is capable of being performed, it will not be affected by such determination or finding and must be fully performed.

17. PERFORMANCE, DEFAULT, AND REMEDIES

A. **PERFORMANCE.** During the term of this Contract, the parties will monitor performance and address unresolved contract issues as follows:

1. *Notification.* The parties must promptly notify each other of any known dispute and work in good faith to resolve such dispute within a reasonable period of time. If necessary, Sourcewell and the Supplier will jointly develop a short briefing document that describes the issue(s), relevant impact, and positions of both parties.
2. *Escalation.* If parties are unable to resolve the issue in a timely manner, as specified above, either Sourcewell or Supplier may escalate the resolution of the issue to a higher level of management. The Supplier will have 30 calendar days to cure an outstanding issue.
3. *Performance while Dispute is Pending.* Notwithstanding the existence of a dispute, the Supplier must continue without delay to carry out all of its responsibilities under the Contract that are not affected by the dispute. If the Supplier fails to continue without delay to perform its responsibilities under the Contract, in the accomplishment of all undisputed work, the Supplier will bear any additional costs incurred by Sourcewell and/or its Participating Entities as a result of such failure to proceed.

B. **DEFAULT AND REMEDIES.** Either of the following constitutes cause to declare this Contract, or any Participating Entity order under this Contract, in default:

1. Nonperformance of contractual requirements, or
2. A material breach of any term or condition of this Contract.

The party claiming default must provide written notice of the default, with 30 calendar days to cure the default. Time allowed for cure will not diminish or eliminate any liability for liquidated or other damages. If the default remains after the opportunity for cure, the non-defaulting party may:

- Exercise any remedy provided by law or equity, or
- Terminate the Contract or any portion thereof, including any orders issued against the Contract.

18. INSURANCE

A. REQUIREMENTS. At its own expense, Supplier must maintain insurance policy(ies) in effect at all times during the performance of this Contract with insurance company(ies) licensed or authorized to do business in the State of Minnesota having an "AM BEST" rating of A- or better, with coverage and limits of insurance not less than the following:

1. *Workers' Compensation and Employer's Liability.*

Workers' Compensation: As required by any applicable law or regulation.

Employer's Liability Insurance: must be provided in amounts not less than listed below:

Minimum limits:

\$500,000 each accident for bodily injury by accident

\$500,000 policy limit for bodily injury by disease

\$500,000 each employee for bodily injury by disease

2. *Commercial General Liability Insurance.* Supplier will maintain insurance covering its operations, with coverage on an occurrence basis, and must be subject to terms no less broad than the Insurance Services Office ("ISO") Commercial General Liability Form CG0001 (2001 or newer edition), or equivalent. At a minimum, coverage must include liability arising from premises, operations, bodily injury and property damage, independent contractors, products-completed operations including construction defect, contractual liability, blanket contractual liability, and personal injury and advertising injury. All required limits, terms and conditions of coverage must be maintained during the term of this Contract.

Minimum Limits:

\$1,000,000 each occurrence Bodily Injury and Property Damage

\$1,000,000 Personal and Advertising Injury

\$2,000,000 aggregate for products liability-completed operations

\$2,000,000 general aggregate

3. *Commercial Automobile Liability Insurance.* During the term of this Contract, Supplier will maintain insurance covering all owned, hired, and non-owned automobiles in limits of liability not less than indicated below. The coverage must be subject to terms

no less broad than ISO Business Auto Coverage Form CA 0001 (2010 edition or newer), or equivalent.

Minimum Limits:

\$1,000,000 each accident, combined single limit

4. *Umbrella Insurance*. During the term of this Contract, Supplier will maintain umbrella coverage over Employer's Liability, Commercial General Liability, and Commercial Automobile.

Minimum Limits:

\$2,000,000

5. *Professional/Technical, Errors and Omissions, and/or Miscellaneous Professional Liability*. During the term of this Contract, Supplier will maintain coverage for all claims the Supplier may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to Supplier's professional services required under this Contract.

Minimum Limits:

\$2,000,000 per claim or event

\$2,000,000 – annual aggregate

6. *Network Security and Privacy Liability Insurance*. During the term of this Contract, Supplier will maintain coverage for network security and privacy liability. The coverage may be endorsed on another form of liability coverage or written on a standalone policy. The insurance must cover claims which may arise from failure of Supplier's security resulting in, but not limited to, computer attacks, unauthorized access, disclosure of not public data – including but not limited to, confidential or private information, transmission of a computer virus, or denial of service.

Minimum limits:

\$2,000,000 per occurrence

\$2,000,000 annual aggregate

Failure of Supplier to maintain the required insurance will constitute a material breach entitling Sourcewell to immediately terminate this Contract for default.

B. CERTIFICATES OF INSURANCE. Prior to commencing under this Contract, Supplier must furnish to Sourcewell a certificate of insurance, as evidence of the insurance required under this Contract. Prior to expiration of the policy(ies), renewal certificates must be mailed to Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 or sent to the Sourcewell Supplier Development Administrator assigned to this Contract. The certificates must be signed by a person authorized by the insurer(s) to bind coverage on their behalf.

Failure to request certificates of insurance by Sourcewell, or failure of Supplier to provide certificates of insurance, in no way limits or relieves Supplier of its duties and responsibilities in this Contract.

C. **ADDITIONAL INSURED ENDORSEMENT AND PRIMARY AND NON-CONTRIBUTORY INSURANCE CLAUSE.** Supplier agrees to list Sourcewell and its Participating Entities, including their officers, agents, and employees, as an additional insured under the Supplier's commercial general liability insurance policy with respect to liability arising out of activities, "operations," or "work" performed by or on behalf of Supplier, and products and completed operations of Supplier. The policy provision(s) or endorsement(s) must further provide that coverage is primary and not excess over or contributory with any other valid, applicable, and collectible insurance or self-insurance in force for the additional insureds.

D. **WAIVER OF SUBROGATION.** Supplier waives and must require (by endorsement or otherwise) all its insurers to waive subrogation rights against Sourcewell and other additional insureds for losses paid under the insurance policies required by this Contract or other insurance applicable to the Supplier or its subcontractors. The waiver must apply to all deductibles and/or self-insured retentions applicable to the required or any other insurance maintained by the Supplier or its subcontractors. Where permitted by law, Supplier must require similar written express waivers of subrogation and insurance clauses from each of its subcontractors.

E. **UMBRELLA/EXCESS LIABILITY/SELF-INSURED RETENTION.** The limits required by this Contract can be met by either providing a primary policy or in combination with umbrella/excess liability policy(ies), or self-insured retention.

19. COMPLIANCE

A. **LAWS AND REGULATIONS.** All Equipment, Products, or Services provided under this Contract must comply fully with applicable federal laws and regulations, and with the laws in the states and provinces in which the Equipment, Products, or Services are sold.

B. **LICENSES.** Supplier must maintain a valid and current status on all required federal, state/provincial, and local licenses, bonds, and permits required for the operation of the business that the Supplier conducts with Sourcewell and Participating Entities.

20. BANKRUPTCY, DEBARMENT, OR SUSPENSION CERTIFICATION

Supplier certifies and warrants that it is not in bankruptcy or that it has previously disclosed in writing certain information to Sourcewell related to bankruptcy actions. If at any time during this Contract Supplier declares bankruptcy, Supplier must immediately notify Sourcewell in writing.

Supplier certifies and warrants that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated by the State of Minnesota; the United States federal government or the Canadian government, as applicable; or any Participating Entity. Supplier certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this Contract. Supplier further warrants that it will provide immediate written notice to Sourcwell if this certification changes at any time.

21. PROVISIONS FOR NON-UNITED STATES FEDERAL ENTITY PROCUREMENTS UNDER UNITED STATES FEDERAL AWARDS OR OTHER AWARDS

Participating Entities that use United States federal grant or FEMA funds to purchase goods or services from this Contract may be subject to additional requirements including the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 C.F.R. § 200. Participating Entities may have additional requirements based on specific funding source terms or conditions. Within this Article, all references to “federal” should be interpreted to mean the United States federal government. The following list only applies when a Participating Entity accesses Supplier’s Equipment, Products, or Services with United States federal funds.

A. **EQUAL EMPLOYMENT OPPORTUNITY.** Except as otherwise provided under 41 C.F.R. § 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. §60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 C.F.R. §, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 C.F.R. § 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.” The equal opportunity clause is incorporated herein by reference.

B. **DAVIS-BACON ACT, AS AMENDED (40 U.S.C. § 3141-3148).** When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. § 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. § 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with

the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 C.F.R. § 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency. Supplier must be in compliance with all applicable Davis-Bacon Act provisions.

C. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. § 3701-3708). Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. § 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. This provision is hereby incorporated by reference into this Contract. Supplier certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Supplier must comply with applicable requirements as referenced above.

D. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT. If the federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 C.F.R. § 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency. Supplier certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Supplier must comply with applicable requirements as referenced above.

E. CLEAN AIR ACT (42 U.S.C. § 7401-7671Q.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. § 1251-1387). Contracts and subgrants of amounts in excess of \$150,000 require the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401- 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Supplier certifies that during the term of this Contract will comply with applicable requirements as referenced above.

F. DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689). A contract award (see 2 C.F.R. § 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. §180 that implement Executive Orders 12549 (3 C.F.R. § 1986 Comp., p. 189) and 12689 (3 C.F.R. § 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Supplier certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

G. BYRD ANTI-LOBBYING AMENDMENT, AS AMENDED (31 U.S.C. § 1352). Suppliers must file any required certifications. Suppliers must not have used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Suppliers must disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award. Suppliers must file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352).

H. RECORD RETENTION REQUIREMENTS. To the extent applicable, Supplier must comply with the record retention requirements detailed in 2 C.F.R. § 200.333. The Supplier further certifies that it will retain all records as required by 2 C.F.R. § 200.333 for a period of 3 years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

I. ENERGY POLICY AND CONSERVATION ACT COMPLIANCE. To the extent applicable, Supplier must comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

J. BUY AMERICAN PROVISIONS COMPLIANCE. To the extent applicable, Supplier must comply with all applicable provisions of the Buy American Act. Purchases made in accordance with the Buy American Act must follow the applicable procurement rules calling for free and open competition.

K. ACCESS TO RECORDS (2 C.F.R. § 200.336). Supplier agrees that duly authorized representatives of a federal agency must have access to any books, documents, papers and

records of Supplier that are directly pertinent to Supplier's discharge of its obligations under this Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to Supplier's personnel for the purpose of interview and discussion relating to such documents.

L. **PROCUREMENT OF RECOVERED MATERIALS (2 C.F.R. § 200.322).** A non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. § 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

M. **FEDERAL SEAL(S), LOGOS, AND FLAGS.** The Supplier cannot use the seal(s), logos, crests, or reproductions of flags or likenesses of Federal agency officials without specific pre-approval.

N. **NO OBLIGATION BY FEDERAL GOVERNMENT.** The U.S. federal government is not a party to this Contract or any purchase by a Participating Entity and is not subject to any obligations or liabilities to the Participating Entity, Supplier, or any other party pertaining to any matter resulting from the Contract or any purchase by an authorized user.

O. **PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.** The Contractor acknowledges that 31 U.S.C. 38 (Administrative Remedies for False Claims and Statements) applies to the Supplier's actions pertaining to this Contract or any purchase by a Participating Entity.

P. **FEDERAL DEBT.** The Supplier certifies that it is non-delinquent in its repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowance, and benefit overpayments.

Q. **CONFLICTS OF INTEREST.** The Supplier must notify the U.S. Office of General Services, Sourcewell, and Participating Entity as soon as possible if this Contract or any aspect related to the anticipated work under this Contract raises an actual or potential conflict of interest (as described in 2 C.F.R. Part 200). The Supplier must explain the actual or potential conflict in writing in sufficient detail so that the U.S. Office of General Services, Sourcewell, and Participating Entity are able to assess the actual or potential conflict; and provide any additional information as necessary or requested.

R. U.S. EXECUTIVE ORDER 13224. The Supplier, and its subcontractors, must comply with U.S. Executive Order 13224 and U.S. Laws that prohibit transactions with and provision of resources and support to individuals and organizations associated with terrorism.

S. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT. To the extent applicable, Supplier certifies that during the term of this Contract it will comply with applicable requirements of 2 C.F.R. § 200.216.

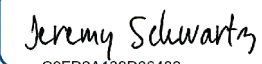
T. DOMESTIC PREFERENCES FOR PROCUREMENTS. To the extent applicable, Supplier certifies that during the term of this Contract will comply with applicable requirements of 2 C.F.R. § 200.322.

22. CANCELLATION

Sourcewell or Supplier may cancel this Contract at any time, with or without cause, upon 60 days' written notice to the other party. However, Sourcewell may cancel this Contract immediately upon discovery of a material defect in any certification made in Supplier's Proposal. Cancellation of this Contract does not relieve either party of financial, product, or service obligations incurred or accrued prior to cancellation.

Sourcewell

Axon Enterprise, Inc.

DocuSigned by:

 By: C0FD2A139D06489...
 Jeremy Schwartz
 Title: Chief Procurement Officer

Date: 2/6/2024 | 12:43 PM CST

DocuSigned by:

 By: 55DAEBB131A4424...
 Robert Driscoll
 Title: Vice President Legal, Associate General Counsel

Date: 2/6/2024 | 11:02 AM MST

Exhibit A
Axon Master Services and Purchasing Agreement (MSPA)



Master Services and Purchasing Agreement for Agency

This Master Services and Purchasing Agreement ("**Agreement**") is between Axon Enterprise, Inc. ("**Axon**"), and the agency listed below or, if no agency is listed below, the agency on the Quote attached hereto ("**Agency**"). This Agreement is effective as of the later of the (a) last signature date on this Agreement or (b) signature date on the Quote ("**Effective Date**"). Axon and Agency are each a "**Party**" and collectively "**Parties**". This Agreement governs Agency's purchase and use of the Axon Devices and Services detailed in the Quote Appendix ("**Quote**"). It is the intent of the Parties that this Agreement will govern all subsequent purchases by Agency for the same Axon Devices and Services in the Quote, and all such subsequent quotes accepted by Agency shall be also incorporated into this Agreement by reference as a Quote. The Parties agree as follows:

1. **Definitions.**

- 1.1. "**Axon Cloud Services**" means Axon's web services for Axon Evidence, Axon Records, Axon Dispatch, and interactions between Axon Evidence and Axon Devices or Axon client software. Axon Cloud Service excludes third-party applications, hardware warranties, and my.evidence.com.
- 1.2. "**Axon Device**" means all hardware provided by Axon under this Agreement. Axon-manufactured Devices are a subset of Axon Devices.
- 1.3. "**Quote**" means an offer to sell and is only valid for devices and services on the offer at the specified prices. Any inconsistent or supplemental terms within Agency's purchase order in response to a Quote will be void. Orders are subject to prior credit approval. Changes in the deployment estimated ship date may change charges in the Quote. Shipping dates are estimates only. Axon is not responsible for typographical errors in any Quote by Axon, and Axon reserves the right to cancel any orders resulting from such errors.
- 1.4. "**Services**" means all services provided by Axon under this Agreement, including software, Axon Cloud Services, and professional services.

2. **Term.** This Agreement begins on the Effective Date and continues until all subscriptions hereunder have expired or have been terminated ("**Term**").

- 2.1. All subscriptions including Axon Evidence, Axon Fleet, Officer Safety Plans, Technology Assurance Plans, and TASER 7 or TASER 10 plans begin on the date stated in the Quote. Each subscription term ends upon completion of the subscription stated in the Quote ("**Subscription Term**").
- 2.2. Upon completion of the Subscription Term, the Subscription Term will automatically renew for an additional 5 years ("**Renewal Term**"). For purchase of TASER 7 or TASER 10 as a standalone, Axon may increase pricing to its then-current list pricing for any Renewal Term. For all other purchases, Axon may increase pricing on all line items in the Quote by up to 3% at the beginning of each year of the Renewal Term. New devices and services may require additional terms. Axon will not authorize services until Axon receives a signed Quote or accepts a purchase order, whichever is first.

3. **Payment.** Axon invoices upon shipment, or on the date specified within the invoicing plan in the Quote. Payment is due net 30 days from the invoice date. Payment obligations are non-cancelable. Unless otherwise prohibited by law, Agency will pay interest on all past-due sums at the lower of one-and-a-half percent (1.5%) per month or the highest rate allowed by law. Agency will pay invoices without setoff, deduction, or withholding. If Axon sends a past due account to collections, Agency is responsible for collection and attorneys' fees.

4. **Taxes.** Agency is responsible for sales and other taxes associated with the order unless Agency provides Axon a valid tax exemption certificate.

5. **Shipping.** Axon may make partial shipments and ship Axon Devices from multiple locations. All shipments are EXW (Incoterms 2020) via common carrier. Title and risk of loss pass to Agency upon Axon's delivery to the common carrier. Agency is responsible for any shipping charges in the Quote.

6. **Returns.** All sales are final. Axon does not allow refunds or exchanges, except warranty returns or as provided by state or federal law.

7. **Warranty.**

- 7.1. **Limited Warranty.** Axon warrants that Axon-manufactured Devices are free from defects in workmanship and materials for one (1) year from the date of Agency's receipt, except Signal Sidearm and Axon-manufactured accessories, which Axon warrants for thirty (30) months and ninety (90) days, respectively, from the date of Agency's receipt. Used conducted energy weapon ("**CEW**") cartridges are deemed to have operated properly. Extended warranties run from the expiration of the one- (1-) year hardware warranty through the extended warranty term.
- 7.2. **Disclaimer.** All software and Axon Cloud Services are provided "**AS IS,**" without any warranty of any kind, either express or implied, including without limitation the implied warranties of merchantability,

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Department: Legal

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fitness for a particular purpose and non-infringement. Axon Devices and Services that are not manufactured, published or performed by Axon ("Third-Party Products") are not covered by Axon's warranty and are only subject to the warranties of the third-party provider or manufacturer.

- 7.3. **Claims.** If Axon receives a valid warranty claim for an Axon-manufactured Device during the warranty term, Axon's sole responsibility is to repair or replace the Axon-manufactured Device with the same or like Axon-manufactured Device, at Axon's option. A replacement Axon-manufactured Device will be new or like new. Axon will warrant the replacement Axon-manufactured Device for the longer of (a) the remaining warranty of the original Axon-manufactured Device or (b) ninety (90) days from the date of repair or replacement.

7.3.1. If Agency exchanges an Axon Device or part, the replacement item becomes Agency's property, and the replaced item becomes Axon's property. Before delivering an Axon-manufactured Device for service, Agency must upload Axon-manufactured Device data to Axon Evidence or download it and retain a copy. Axon is not responsible for any loss of software, data, or other information contained in storage media or any part of the Axon-manufactured Device sent to Axon for service.

- 7.4. **Spare Axon Devices.** At Axon's reasonable discretion, Axon may provide Agency a predetermined number of spare Axon Devices as detailed in the Quote ("**Spare Axon Devices**"). Spare Axon Devices are intended to replace broken or non-functioning units while Agency submits the broken or non-functioning units, through Axon's warranty return process. Axon will repair or replace the unit with a replacement Axon Device. Title and risk of loss for all Spare Axon Devices shall pass to Agency in accordance with shipping terms under Section 5. Axon assumes no liability or obligation in the event Agency does not utilize Spare Axon Devices for the intended purpose.

- 7.5. **Limitations.** Axon's warranty excludes damage related to: (a) failure to follow Axon Device use instructions; (b) Axon Devices used with equipment not manufactured or recommended by Axon; (c) abuse, misuse, or intentional damage to Axon Device; (d) force majeure; (e) Axon Devices repaired or modified by persons other than Axon without Axon's written permission; or (f) Axon Devices with a defaced or removed serial number. Axon's warranty will be void if Agency resells Axon Devices.

7.5.1. **To the extent permitted by law, the above warranties and remedies are exclusive. Axon disclaims all other warranties, remedies, and conditions, whether oral, written, statutory, or implied. If statutory or implied warranties cannot be lawfully disclaimed, then such warranties are limited to the duration of the warranty described above and by the provisions in this Agreement. Agency confirms and agrees that, in deciding whether to sign this Agreement, it has not relied on any statement or representation by Axon or anyone acting on behalf of Axon related to the subject matter of this Agreement that is not in this Agreement.**

7.5.2. **Axon's cumulative liability to any party for any loss or damage resulting from any claim, demand, or action arising out of or relating to any Axon Device or Service will not exceed the purchase price paid to Axon for the Axon Device, or if for Services, the amount paid for such Services over the twelve (12) months preceding the claim. Neither Party will be liable for direct, special, indirect, incidental, punitive or consequential damages, however caused, whether for breach of warranty or contract, negligence, strict liability, tort or any other legal theory.**

- 7.6. **Online Support Platforms.** Use of Axon's online support platforms (e.g., Axon Academy and MyAxon) is governed by the Axon Online Support Platforms Terms of Use Appendix available at www.axon.com/sales-terms-and-conditions.
- 7.7. **Third-Party Software and Services.** Use of software or services other than those provided by Axon is governed by the terms, if any, entered into between Agency and the respective third-party provider, including, without limitation, the terms applicable to such software or services located at www.axon.com/sales-terms-and-conditions, if any.
- 7.8. **Axon Aid.** Upon mutual agreement between Axon and Agency, Axon may provide certain products and services to Agency, as a charitable donation under the Axon Aid program. In such event, Agency expressly waives and releases any and all claims, now known or hereafter known, against Axon and its officers, directors, employees, agents, contractors, affiliates, successors, and assigns (collectively, "**Releasees**"), including but not limited to, on account of injury, death, property damage, or loss of data, arising out of or attributable to the Axon Aid program whether arising out of the negligence of any Releasees or otherwise. Agency agrees not to make or bring any such claim against any Releasee, and forever release and discharge all Releasees from liability under such claims. Agency expressly allows Axon to publicly announce its participation in Axon Aid and use its name in marketing materials. Axon may terminate the Axon Aid program without cause immediately upon notice to the Agency.

8. **Statement of Work.** Certain Axon Devices and Services, including Axon Interview Room, Axon Channel Services,

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and Axon Fleet, may require a Statement of Work that details Axon's Service deliverables ("**SOW**"). In the event Axon provides an SOW to Agency, Axon is only responsible for the performance of Services described in the SOW. Additional services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in fees or schedule. The SOW is incorporated into this Agreement by reference.

9. **Axon Device Warnings.** See www.axon.com/legal for the most current Axon Device warnings.
10. **Design Changes.** Axon may make design changes to any Axon Device or Service without notifying Agency or making the same change to Axon Devices and Services previously purchased by Agency.
11. **Bundled Offerings.** Some offerings in bundled offerings may not be generally available at the time of Agency's purchase. Axon will not provide a refund, credit, or additional discount beyond what is in the Quote due to a delay of availability or Agency's election not to utilize any portion of an Axon bundle.
12. **Insurance.** Axon will maintain General Liability, Workers' Compensation, and Automobile Liability insurance. Upon request, Axon will supply certificates of insurance.
13. **IP Rights.** Axon owns and reserves all right, title, and interest in Axon-manufactured Devices and Services and suggestions to Axon, including all related intellectual property rights. Agency will not cause any Axon proprietary rights to be violated.
14. **IP Indemnification.** Axon will indemnify Agency against all claims, losses, and reasonable expenses from any third-party claim alleging that the use of Axon-manufactured Devices or Services infringes or misappropriates the third-party's intellectual property rights. Agency must promptly provide Axon with written notice of such claim, tender to Axon the defense or settlement of such claim at Axon's expense and cooperate fully with Axon in the defense or settlement of such claim. Axon's IP indemnification obligations do not apply to claims based on (a) modification of Axon-manufactured Devices or Services by Agency or a third-party not approved by Axon; (b) use of Axon-manufactured Devices and Services in combination with hardware or services not approved by Axon; (c) use of Axon Devices and Services other than as permitted in this Agreement; or (d) use of Axon software that is not the most current release provided by Axon.
15. **Agency Responsibilities.** Agency is responsible for (a) Agency's use of Axon Devices; (b) breach of this Agreement or violation of applicable law by Agency or an Agency end user; (c) disputes between Agency and a third-party over Agency's use of Axon Devices; (d) ensuring Axon Devices are destroyed and disposed of securely and sustainably at Agency's cost; and (e) any regulatory violations or fines, as a result of improper destruction or disposal of Axon Devices.
16. **Termination.**
 - 16.1. **For Breach.** A Party may terminate this Agreement for cause if it provides thirty (30) days written notice of the breach to the other Party, and the breach remains uncured at the end of thirty (30) days. If Agency terminates this Agreement due to Axon's uncured breach, Axon will refund prepaid amounts on a prorated basis based on the effective date of termination.
 - 16.2. **By Agency.** If sufficient funds are not appropriated or otherwise legally available to pay the fees, Agency may terminate this Agreement. Agency will deliver notice of termination under this section as soon as reasonably practicable.
 - 16.3. **Effect of Termination.** Upon termination of this Agreement, Agency rights immediately terminate. Agency remains responsible for all fees incurred before the effective date of termination. If Agency purchases Axon Devices for less than the manufacturer's suggested retail price ("**MSRP**") and this Agreement terminates before the end of the Term, Axon will invoice Agency the difference between the MSRP for Axon Devices received, including any Spare Axon Devices, and amounts paid towards those Axon Devices. Only if terminating for non-appropriation, Agency may return Axon Devices to Axon within thirty (30) days of termination. MSRP is the standalone price of the individual Axon Device at the time of sale. For bundled Axon Devices, MSRP is the standalone price of all individual components.
17. **Confidentiality.** "**Confidential Information**" means nonpublic information designated as confidential or, given the nature of the information or circumstances surrounding disclosure, should reasonably be understood to be confidential. Each Party will take reasonable measures to avoid disclosure, dissemination, or unauthorized use of the other Party's Confidential Information. Unless required by law, neither Party will disclose the other Party's Confidential Information during the Term and for five (5) years thereafter. To the extent permissible by law, Axon pricing is Confidential Information and competition sensitive. If Agency receives a public records request to disclose Axon Confidential Information, to the extent allowed by law, Agency will provide notice to Axon before disclosure. Axon may publicly announce information related to this Agreement.



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18. General.

- 18.1. **Force Majeure.** Neither Party will be liable for any delay or failure to perform due to a cause beyond a Party's reasonable control.
- 18.2. **Independent Contractors.** The Parties are independent contractors. Neither Party has the authority to bind the other. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties.
- 18.3. **Third-Party Beneficiaries.** There are no third-party beneficiaries under this Agreement.
- 18.4. **Non-Discrimination.** Neither Party nor its employees will discriminate against any person based on race; religion; creed; color; sex; gender identity and expression; pregnancy; childbirth; breastfeeding; medical conditions related to pregnancy, childbirth, or breastfeeding; sexual orientation; marital status; age; national origin; ancestry; genetic information; disability; veteran status; or any class protected by local, state, or federal law.
- 18.5. **Export Compliance.** Each Party will comply with all import and export control laws and regulations.
- 18.6. **Assignment.** Neither Party may assign this Agreement without the other Party's prior written consent. Axon may assign this Agreement, its rights, or obligations without consent: (a) to an affiliate or subsidiary; or (b) for purposes of financing, merger, acquisition, corporate reorganization, or sale of all or substantially all its assets. This Agreement is binding upon the Parties respective successors and assigns.
- 18.7. **Waiver.** No waiver or delay by either Party in exercising any right under this Agreement constitutes a waiver of that right.
- 18.8. **Severability.** If a court of competent jurisdiction holds any portion of this Agreement invalid or unenforceable, the remaining portions of this Agreement will remain in effect.
- 18.9. **Survival.** The following sections will survive termination: Payment, Warranty, Axon Device Warnings, Indemnification, IP Rights, and Agency Responsibilities.
- 18.10. **Governing Law.** The laws of the country, state, province, or municipality where Agency is physically located, without reference to conflict of law rules, govern this Agreement and any dispute arising from it. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.
- 18.11. **Notices.** All notices must be in English. Notices posted on Agency's Axon Evidence site are effective upon posting. Notices by email are effective on the sent date of the email. Notices by personal delivery are effective immediately. Notices to Agency shall be provided to the address on file with Axon. Notices to Axon shall be provided to Axon Enterprise, Inc., Attn: Legal, 17800 North 85th Street, Scottsdale, Arizona 85255 with a copy to legal@axon.com.
- 18.12. **Entire Agreement.** This Agreement, including the Appendices and any SOW(s), represents the entire agreement between the Parties. This Agreement supersedes all prior agreements or understandings, whether written or verbal, regarding the subject matter of this Agreement. This Agreement may only be modified or amended in a writing signed by the Parties.

Each Party, by and through its respective representative authorized to execute this Agreement, has duly executed and delivered this Agreement as of the date of signature.

AXON:

Choose an item.

Signed by:

Signature:

Robert E. Driscoll Jr.

Name:

Robert E. Driscoll Jr.

Title:

Deputy General Counsel

Date:

10/1/2024 | 12:19 PM MST

AGENCY:

Signature:

Name:

Title:

Date:

Birmingham Police

[Signature]

Scott Green

Police Chief

10.2.24



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Axon Cloud Services Terms of Use Appendix

1. Definitions.

- a. **"Agency Content"** is data uploaded into, ingested by, or created in Axon Cloud Services within Agency's tenant, including media or multimedia uploaded into Axon Cloud Services by Agency. Agency Content includes Evidence but excludes Non-Content Data.
- b. **"Evidence"** is media or multimedia uploaded into Axon Evidence as 'evidence' by an Agency. Evidence is a subset of Agency Content.
- c. **"Non-Content Data"** is data, configuration, and usage information about Agency's Axon Cloud Services tenant, Axon Devices and client software, and users that is transmitted or generated when using Axon Devices. Non-Content Data includes data about users captured during account management and customer support activities. Non-Content Data does not include Agency Content.
- d. **"Personal Data"** means any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

2. **Access.** Upon Axon granting Agency a subscription to Axon Cloud Services, Agency may access and use Axon Cloud Services to store and manage Agency Content. Agency may not exceed more end users than the Quote specifies. Axon Air requires an Axon Evidence subscription for each drone operator. For Axon Evidence Lite, Agency may access and use Axon Evidence only to store and manage TASER CEW and TASER CAM data ("**TASER Data**"). Agency may not upload non-TASER Data to Axon Evidence Lite.

3. **Agency Owns Agency Content.** Agency controls and owns all right, title, and interest in Agency Content. Except as outlined herein, Axon obtains no interest in Agency Content, and Agency Content is not Axon's business records. Agency is solely responsible for uploading, sharing, managing, and deleting Agency Content. Axon will only have access to Agency Content for the limited purposes set forth herein. Agency agrees to allow Axon access to Agency Content to (a) perform troubleshooting, maintenance, or diagnostic screenings; and (b) enforce this Agreement or policies governing use of the Axon products.

4. **Security.** Axon will implement commercially reasonable and appropriate measures to secure Agency Content against accidental or unlawful loss, access or disclosure. Axon will maintain a comprehensive information security program to protect Axon Cloud Services and Agency Content including logical, physical access, vulnerability, risk, and configuration management; incident monitoring and response; encryption of uploaded digital evidence; security education; and data protection. Axon agrees to the Federal Bureau of Investigation Criminal Justice Information Services Security Addendum.

5. **Agency Responsibilities.** Agency is responsible for (a) ensuring Agency owns Agency Content; (b) ensuring no Agency Content or Agency end user's use of Agency Content or Axon Cloud Services violates this Agreement or applicable laws; and (c) maintaining necessary computer equipment and Internet connections for use of Axon Cloud Services. If Agency becomes aware of any violation of this Agreement by an end user, Agency will immediately terminate that end user's access to Axon Cloud Services.

- a. Agency will also maintain the security of end usernames and passwords and security and access by end users to Agency Content. Agency is responsible for ensuring the configuration and utilization of Axon Cloud Services meet applicable Agency regulation and standards. Agency may not sell, transfer, or sublicense access to any other entity or person. Agency shall contact Axon immediately if an unauthorized party may be using Agency's account or Agency Content, or if account information is lost or stolen.
- b. To the extent Agency uses the Axon Cloud Services to interact with YouTube®, such use may be governed by the YouTube Terms of Service, available at <https://www.youtube.com/static?template=terms>.

6. **Privacy.** Agency's use of Axon Cloud Services is subject to the Axon Cloud Services Privacy Policy, a current version of which is available at <https://www.axon.com/legal/cloud-services-privacy-policy>. Agency agrees to allow Axon access to Non-Content Data from Agency to (a) perform troubleshooting, maintenance, or diagnostic



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screenings; (b) provide, develop, improve, and support current and future Axon products and related services; and (c) enforce this Agreement or policies governing the use of Axon products.

7. **Axon Body 3 Wi-Fi Positioning.** Axon Body 3 cameras offer a feature to enhance location services where GPS/GNSS signals may not be available, for instance, within buildings or underground. Agency administrators can manage their choice to use this service within the administrative features of Axon Cloud Services. If Agency chooses to use this service, Axon must also enable the usage of the feature for Agency's Axon Cloud Services tenant. Agency will not see this option with Axon Cloud Services unless Axon has enabled Wi-Fi Positioning for Agency's Axon Cloud Services tenant. When Wi-Fi Positioning is enabled by both Axon and Agency, Non-Content and Personal Data will be sent to Skyhook Holdings, Inc. ("**Skyhook**") to facilitate the Wi-Fi Positioning functionality. Data controlled by Skyhook is outside the scope of the Axon Cloud Services Privacy Policy and is subject to the Skyhook Services Privacy Policy.
8. **Storage.** For Axon Unlimited Device Storage subscriptions, Agency may store unlimited data in Agency's Axon Evidence account only if data originates from Axon Capture or the applicable Axon Device. Axon may charge Agency additional fees for exceeding purchased storage amounts. Axon may place Agency Content that Agency has not viewed or accessed for six (6) months into archival storage. Agency Content in archival storage will not have immediate availability and may take up to twenty-four (24) hours to access.

For Third-Party Unlimited Storage the following restrictions apply: (i) it may only be used in conjunction with a valid Axon's Evidence.com user license; (ii) is limited to data of the law enforcement agency that purchased the Third-Party Unlimited Storage and the Axon's Evidence.com end user or Agency is prohibited from storing data for other law enforcement agencies; and (iii) Agency may only upload and store data that is directly related to: (1) the investigation of, or the prosecution of a crime; (2) common law enforcement activities; or (3) any Agency Content created by Axon Devices or Evidence.com.

9. **Location of Storage.** Axon may transfer Agency Content to third-party subcontractors for storage. Axon will determine the locations of data centers for storage of Agency Content. For United States agencies, Axon will ensure all Agency Content stored in Axon Cloud Services remains within the United States. Ownership of Agency Content remains with Agency.
10. **Suspension.** Axon may temporarily suspend Agency's or any end user's right to access or use any portion or all of Axon Cloud Services immediately upon notice, if Agency or end user's use of or registration for Axon Cloud Services may (a) pose a security risk to Axon Cloud Services or any third-party; (b) adversely impact Axon Cloud Services, the systems, or content of any other customer; (c) subject Axon, Axon's affiliates, or any third-party to liability; or (d) be fraudulent. Agency remains responsible for all fees incurred through suspension. Axon will not delete Agency Content because of suspension, except as specified in this Agreement.
11. **Axon Cloud Services Warranty.** Axon disclaims any warranties or responsibility for data corruption or errors before Agency uploads data to Axon Cloud Services.
12. **Axon Records.** Axon Records is the software-as-a-service product that is generally available at the time Agency purchases an OSP 7 or OSP 10 bundle. During Agency's Axon Records Subscription Term, if any, Agency will be entitled to receive Axon's Update and Upgrade releases on an if-and-when available basis.
 - a. The Axon Records Subscription Term will end upon the completion of the Axon Records Subscription as documented in the Quote, or if purchased as part of an OSP 7 or OSP 10 bundle, upon completion of the OSP 7 or OSP 10 Term ("**Axon Records Subscription**")
 - b. An "**Update**" is a generally available release of Axon Records that Axon makes available from time to time. An "**Upgrade**" includes (i) new versions of Axon Records that enhance features and functionality, as solely determined by Axon; and/or (ii) new versions of Axon Records that provide additional features or perform additional functions. Upgrades exclude new products that Axon introduces and markets as distinct products or applications.
 - c. New or additional Axon products and applications, as well as any Axon professional services needed to configure Axon Records, are not included. If Agency purchases Axon Records as part of a bundled offering, the Axon Record subscription begins on the later of the (1) start date of that bundled offering, or (2) date Axon provisions Axon Records to Agency.
 - d. Users of Axon Records at the Agency may upload files to entities (incidents, reports, cases, etc) in Axon Records with no limit to the number of files and amount of storage. Notwithstanding the foregoing, Axon



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may limit usage should the Agency exceed an average rate of one-hundred (100) GB per user per year of uploaded files. Axon will not bill for overages.

13. **Axon Cloud Services Restrictions.** Agency and Agency end users (including employees, contractors, agents, officers, volunteers, and directors), may not, or may not attempt to:
 - a. copy, modify, tamper with, repair, or create derivative works of any part of Axon Cloud Services;
 - b. reverse engineer, disassemble, or decompile Axon Cloud Services or apply any process to derive any source code included in Axon Cloud Services, or allow others to do the same;
 - c. access or use Axon Cloud Services with the intent to gain unauthorized access, avoid incurring fees or exceeding usage limits or quotas;
 - d. use trade secret information contained in Axon Cloud Services, except as expressly permitted in this Agreement;
 - e. access Axon Cloud Services to build a competitive device or service or copy any features, functions, or graphics of Axon Cloud Services;
 - f. remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon's or Axon's licensors on or within Axon Cloud Services; or
 - g. use Axon Cloud Services to store or transmit infringing, libelous, or other unlawful or tortious material; material in violation of third-party privacy rights; or malicious code.
14. **After Termination.** Axon will not delete Agency Content for ninety (90) days following termination. There will be no functionality of Axon Cloud Services during these ninety (90) days other than the ability to retrieve Agency Content. Agency will not incur additional fees if Agency downloads Agency Content from Axon Cloud Services during this time. Axon has no obligation to maintain or provide Agency Content after these ninety (90) days and will thereafter, unless legally prohibited, delete all Agency Content. Upon request, Axon will provide written proof that Axon successfully deleted and fully removed all Agency Content from Axon Cloud Services.
15. **Post-Termination Assistance.** Axon will provide Agency with the same post-termination data retrieval assistance that Axon generally makes available to all customers. Requests for Axon to provide additional assistance in downloading or transferring Agency Content, including requests for Axon's data egress service, will result in additional fees and Axon will not warrant or guarantee data integrity or readability in the external system.
16. **U.S. Government Rights.** If Agency is a U.S. Federal department or using Axon Cloud Services on behalf of a U.S. Federal department, Axon Cloud Services is provided as a "commercial item," "commercial computer software," "commercial computer software documentation," and "technical data", as defined in the Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement. If Agency is using Axon Cloud Services on behalf of the U.S. Government and these terms fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, Agency will immediately discontinue use of Axon Cloud Services.
17. **Survival.** Upon any termination of this Agreement, the following sections in this Appendix will survive: Agency Owns Agency Content, Privacy, Storage, Axon Cloud Services Warranty, and Axon Cloud Services Restrictions.



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Axon Customer Experience Improvement Program Appendix

1. **Axon Customer Experience Improvement Program (ACEIP).** The ACEIP is designed to accelerate Axon's development of technology, such as building and supporting automated features, to ultimately increase safety within communities and drive efficiency in public safety. To this end, subject to the limitations on Axon as described below, Axon, where allowed by law, may make limited use of Agency Content from all of its customers to provide, develop, improve, and support current and future Axon products (collectively, "ACEIP Purposes"). However, at all times, Axon will comply with its obligations pursuant to the Axon Cloud Services Terms of Use Appendix to maintain a comprehensive data security program (including compliance with the CJIS Security Policy for Criminal Justice Information), privacy program, and data governance policy, including high industry standards of de-identifying Personal Data, to enforce its security and privacy obligations for the ACEIP. ACEIP has 2 tiers of participation, Tier 1 and Tier 2. By default, Agency will be a participant in ACEIP Tier 1. If Agency does not want to participate in ACEIP Tier 1, Agency can revoke its consent at any time. If Agency wants to participate in Tier 2, as detailed below, Agency can check the ACEIP Tier 2 box below. If Agency does not want to participate in ACEIP Tier 2, Agency should leave box unchecked. At any time, Agency may revoke its consent to ACEIP Tier 1, Tier 2, or both Tiers.
2. **ACEIP Tier 1.**
 - 2.1. When Axon uses Agency Content for the ACEIP Purposes, Axon will extract from Agency Content and may store separately copies of certain segments or elements of the Agency Content (collectively, "**ACEIP Content**"). When extracting ACEIP Content, Axon will use commercially reasonable efforts to aggregate, transform or de-identify Agency Content so that the extracted ACEIP Content is no longer reasonably capable of being associated with, or could reasonably be linked directly or indirectly to a particular individual ("**Privacy Preserving Technique(s)**"). For illustrative purposes, some examples are described in footnote 1¹. For clarity, ACEIP Content will still be linked indirectly, with an attribution, to the Agency from which it was extracted. This attribution will be stored separately from the data itself, but is necessary for and will be solely used to enable Axon to identify and delete all ACEIP Content upon Agency request. Once de-identified, ACEIP Content may then be further modified, analyzed, and used to create derivative works. At any time, Agency may revoke the consent granted herein to Axon to access and use Agency Content for ACEIP Purposes. Within 30 days of receiving the Agency's request, Axon will no longer access or use Agency Content for ACEIP Purposes and will delete any and all ACEIP Content. Axon will also delete any derivative works which may reasonably be capable of being associated with, or could reasonably be linked directly or indirectly to Agency. In addition, if Axon uses Agency Content for the ACEIP Purposes, upon request, Axon will make available to Agency a list of the specific type of Agency Content being used to generate ACEIP Content, the purpose of such use, and the retention, privacy preserving extraction technique, and relevant data protection practices applicable to the Agency Content or ACEIP Content ("**Use Case**"). From time to time, Axon may develop and deploy new Use Cases. At least 30 days prior to authorizing the deployment of any new Use Case, Axon will provide Agency notice (by updating the list of Use Case at <https://www.axon.com/aceip> and providing Agency with a mechanism to obtain notice of that update or another commercially reasonable method to Agency designated contact) ("**New Use Case**").
 - 2.2. **Expiration of ACEIP Tier 1.** Agency consent granted herein will expire upon termination of the Agreement. In accordance with section 1.1.1, within 30 days of receiving the Agency's request, Axon will no longer access or use Agency Content for ACEIP Purposes and will delete ACEIP Content. Axon will also delete any derivative works which may reasonably be capable of being associated with, or could reasonably be linked directly or indirectly to, Agency.
3. **ACEIP Tier 2.** In addition to ACEIP Tier 1, if Agency wants to help further improve Axon's services, Agency may choose to participate in Tier 2 of the ACEIP. ACEIP Tier 2 grants Axon certain additional rights to use Agency Content, in addition to those set forth in Tier 1 above, without the guaranteed deployment of a Privacy Preserving Technique

¹ For example; (a) when extracting specific text to improve automated transcription capabilities, text that could be used to directly identify a particular individual would not be extracted, and extracted text would be disassociated from identifying metadata of any speakers, and the extracted text would be split into individual words and aggregated with other data sources (including publicly available data) to remove any reasonable ability to link any specific text directly or indirectly back to a particular individual; (b) when extracting license plate data to improve Automated License Plate Recognition (ALPR) capabilities, individual license plate characters would be extracted and disassociated from each other so a complete plate could not be reconstituted, and all association to other elements of the source video, such as the vehicle, location, time, and the surrounding environment would also be removed; (c) when extracting audio of potential acoustic events (such as glass breaking or gun shots), very short segments (<1 second) of audio that only contains the likely acoustic events would be extracted and all human utterances would be removed.



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to enable product development, improvement, and support that cannot be accomplished with aggregated, transformed, or de-identified data.

☐ Check this box if Agency wants to help further improve Axon's services by participating in ACEIP Tier 2 in addition to Tier 1. Axon will not enroll Agency into ACEIP Tier 2 until Axon and Agency agree to terms in writing providing for such participation in ACEIP Tier 2.



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Professional Services Appendix

If any of the Professional Services specified below are included on the Quote, this Appendix applies.

1. **Utilization of Services.** Agency must use professional services as outlined in the Quote and this Appendix within six (6) months of the Effective Date.
2. **Axon Full Service (Axon Full Service).** Axon Full Service includes advance remote project planning and configuration support and up to four (4) consecutive days of on-site service and a professional services manager to work with Agency to assess Agency's deployment and determine which on-site services are appropriate. If Agency requires more than four (4) consecutive on-site days, Agency must purchase additional days. Axon Full Service options include:

System set up and configuration

- Instructor-led setup of Axon View on smartphones (if applicable)
- Configure categories and custom roles based on Agency need
- Register cameras to Agency domain
- Troubleshoot IT issues with Axon Evidence and Axon Dock ("Dock") access
- One on-site session included

Dock configuration

- Work with Agency to decide the ideal location of Docks and set configurations on Dock
- Authenticate Dock with Axon Evidence using admin credentials from Agency
- On-site assistance, not to include physical mounting of docks

Best practice implementation planning session

- Provide considerations for the establishment of video policy and system operations best practices based on Axon's observations with other agencies
- Discuss the importance of entering metadata in the field for organization purposes and other best practices for digital data management
- Provide referrals of other agencies using the Axon camera devices and Axon Evidence
- Recommend rollout plan based on review of shift schedules

System Admin and troubleshooting training sessions

Step-by-step explanation and assistance for Agency's configuration of security, roles & permissions, categories & retention, and other specific settings for Axon Evidence

Axon instructor training (Train the Trainer)

Training for Agency's in-house instructors who can support Agency's Axon camera and Axon Evidence training needs after Axon has fulfilled its contractual on-site obligations

Evidence sharing training

Tailored workflow instruction for Investigative Units on sharing Cases and Evidence with local prosecuting agencies

End user go-live training and support sessions

- Assistance with device set up and configuration
- Training on device use, Axon Evidence, and Evidence Sync

[Implementation document packet](#)

Axon Evidence administrator guides, camera implementation guides, network setup guide, sample policies, and categories & roles guide

Post go-live review

3. **Body-Worn Camera Starter Service (Axon Starter).** Axon Starter includes advance remote project planning and configuration support and one (1) day of on-site Services and a professional services manager to work closely with Agency to assess Agency's deployment and determine which Services are appropriate. If Agency requires more than one (1) day of on-site Services, Agency must purchase additional on-site Services. The Axon Starter options include:

System set up and configuration (Remote Support)

- Instructor-led setup of Axon View on smartphones (if applicable)
- Configure categories & custom roles based on Agency need
- Troubleshoot IT issues with Axon Evidence and Dock access



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Dock configuration

- Work with Agency to decide the ideal location of Dock setup and set configurations on Dock
- Authenticate Dock with Axon Evidence using "Administrator" credentials from Agency
- Does not include physical mounting of docks

Axon instructor training (Train the Trainer)

Training for Agency's in-house instructors who can support Agency's Axon camera and Axon Evidence training needs after Axon's has fulfilled its contracted on-site obligations

End user go-live training and support sessions

- Assistance with device set up and configuration
- Training on device use, Axon Evidence, and Evidence Sync

[Implementation document packet](#)

Axon Evidence administrator guides, camera implementation guides, network setup guide, sample policies, and categories & roles guide

4. **Body-Worn Camera Virtual 1-Day Service (Axon Virtual).** Axon Virtual includes all items in the BWC Starter Service Package, except one (1) day of on-site services.
5. **CEW Services Packages.** CEW Services Packages are detailed below:

System set up and configuration

- Configure Axon Evidence categories & custom roles based on Agency need.
- Troubleshoot IT issues with Axon Evidence.
- Register users and assign roles in Axon Evidence.
- **For the CEW Full Service Package:** On-site assistance included
- **For the CEW Starter Package:** Virtual assistance included

Dedicated Project Manager

Assignment of specific Axon representative for all aspects of planning the rollout (Project Manager). Ideally, Project Manager will be assigned to Agency 4–6 weeks before rollout

Best practice implementation planning session to include:

- Provide considerations for the establishment of CEW policy and system operations best practices based on Axon's observations with other agencies
- Discuss the importance of entering metadata and best practices for digital data management
- Provide referrals to other agencies using TASER CEWs and Axon Evidence
- **For the CEW Full Service Package:** On-site assistance included
- **For the CEW Starter Package:** Virtual assistance included

System Admin and troubleshooting training sessions

On-site sessions providing a step-by-step explanation and assistance for Agency's configuration of security, roles & permissions, categories & retention, and other specific settings for Axon Evidence

Axon Evidence Instructor training

- Provide training on the Axon Evidence to educate instructors who can support Agency's subsequent Axon Evidence training needs.
- **For the CEW Full Service Package:** Training for up to 3 individuals at Agency
- **For the CEW Starter Package:** Training for up to 1 individual at Agency

TASER CEW inspection and device assignment

Axon's on-site professional services team will perform functions check on all new TASER CEW Smart weapons and assign them to a user on Axon Evidence.

Post go-live review

For the CEW Full Service Package: On-site assistance included.

For the CEW Starter Package: Virtual assistance included.

6. **Smart Weapon Transition Service.** The Smart Weapon Transition Service includes:

Archival of CEW Firing Logs

Axon's on-site professional services team will upload CEW firing logs to Axon Evidence from all TASER CEW Smart Weapons that Agency is replacing with newer Smart Weapon models.



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Return of Old Weapons

Axon's on-site professional service team will ship all old weapons back to Axon's headquarters.
Axon will provide Agency with a Certificate of Destruction

*Note: CEW Full Service packages for TASER 7 or TASER 10 include Smart Weapon Transition Service instead of 1-Day Device Specific Instructor Course.

7. **VR Services Package.** VR Service includes advance remote project planning and configuration support and one (1) day of on-site service and a professional services manager to work with Agency to assess Agency's deployment and determine which Services are appropriate. The VR Service training options include:

System set up and configuration (Remote Support)

- Instructor-led setup of Axon VR headset content
- Configure agency settings based on Agency need
- Troubleshoot IT issues with Axon VR headset

Axon instructor training (Train the Trainer)

Training for up to five (5) Agency's in-house instructors who can support Agency's Axon VR CET and SIM training needs after Axon's has fulfilled its contracted on-site obligations

Classroom and practical training sessions

Step-by-step explanation and assistance for Agency's configuration of Axon VR CET and SIM functionality, basic operation, and best practices

8. **Axon Air, On-Site Training.** Axon Air, On-Site training includes advance remote project planning and configuration support and one (1) day of on-site Services and a professional services manager to work closely with Agency to assess Agency's deployment and determine which Services are appropriate. If Agency's requires more than one (1) day of on-site Services, Agency must purchase additional on-site Services. The Axon Air, On-Site training options include:

System set up and configuration (Remote Support)

- Instructor-led setup of Axon Air App (ASDS)
- Configure agency settings based on Agency need
- Configure drone controller
- Troubleshoot IT issues with Axon Evidence

Axon instructor training (Train the Trainer)

Training for Agency's in-house instructors who can support Agency's Axon Air and Axon Evidence training needs after Axon's has fulfilled its contracted on-site obligations

Classroom and practical training sessions

Step-by-step explanation and assistance for Agency's configuration of Axon Respond+ livestreaming functionality, basic operation, and best practices

9. **Axon Air, Virtual Training.** Axon Air, Virtual training includes all items in the Axon Air, On-Site Training Package, except the practical training session, with the Axon Instructor training for up to four hours virtually.

10. **Signal Sidearm Installation Service.**

- Purchases of 50 SSA units or more:** Axon will provide one (1) day of on-site service and one professional services manager and will provide train the trainer instruction, with direct assistance on the first of each unique holster/mounting type. Agency is responsible for providing a suitable work/training area.
- Purchases of less than 50 SSA units:** Axon will provide a 1-hour virtual instruction session on the basics of installation and device calibration.

11. **Out of Scope Services.** Axon is only responsible to perform the professional services described in the Quote and this Appendix. Any additional professional services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in the charges or schedule.

12. **Delivery of Services.** Axon personnel will work Monday through Friday, 8:30 a.m. to 5:30 p.m., except holidays. Axon will perform all on-site tasks over a consecutive timeframe. Axon will not charge Agency travel time by Axon personnel to Agency premises as work hours.



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13. **Access Computer Systems to Perform Services.** Agency authorizes Axon to access relevant Agency computers and networks, solely for performing the Services. Axon will work to identify as soon as reasonably practicable resources and information Axon expects to use and will provide an initial itemized list to Agency. Agency is responsible for and assumes the risk of any problems, delays, losses, claims, or expenses resulting from the content, accuracy, completeness, and consistency of all data, materials, and information supplied by Agency.
14. **Site Preparation.** Axon will provide a hardcopy or digital copy of current user documentation for the Axon Devices ("**User Documentation**"). User Documentation will include all required environmental specifications for the professional services and Axon Devices to operate per the Axon Device User Documentation. Before installation of Axon Devices (whether performed by Agency or Axon), Agency must prepare the location(s) where Axon Devices are to be installed ("**Installation Site**") per the environmental specifications in the Axon Device User Documentation. Following installation, Agency must maintain the Installation Site per the environmental specifications. If Axon modifies Axon Device User Documentation for any Axon Devices under this Agreement, Axon will provide the update to Agency when Axon generally releases it
15. **Acceptance.** When Axon completes professional services, Axon will present an acceptance form ("**Acceptance Form**") to Agency. Agency will sign the Acceptance Form acknowledging completion. If Agency reasonably believes Axon did not complete the professional services in substantial conformance with this Agreement, Agency must notify Axon in writing of the specific reasons for rejection within seven (7) calendar days from delivery of the Acceptance Form. Axon will address the issues and re-present the Acceptance Form for signature. If Axon does not receive the signed Acceptance Form or written notification of reasons for rejection within seven (7) calendar days of delivery of the Acceptance Form, Axon will deem Agency to have accepted the professional services.
16. **Agency Network.** For work performed by Axon transiting or making use of Agency's network, Agency is solely responsible for maintenance and functionality of the network. In no event will Axon be liable for loss, damage, or corruption of Agency's network from any cause.



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Technology Assurance Plan Appendix

If Technology Assurance Plan ("TAP") or a bundle including TAP is on the Quote, this appendix applies.

1. **TAP Warranty**. The TAP warranty is an extended warranty that starts at the end of the one- (1-) year hardware limited warranty.
2. **Officer Safety Plan**. If Agency purchases an Officer Safety Plan ("OSP"), Agency will receive the deliverables detailed in the Quote. Agency must accept delivery of the TASER CEW and accessories as soon as available from Axon.
3. **OSP 7 or OSP 10 Term**. OSP 7 or OSP 10 begins on the date specified in the Quote ("OSP Term").
4. **TAP BWC Upgrade**. If Agency has no outstanding payment obligations and purchased TAP, Axon will provide Agency a new Axon body-worn camera ("BWC Upgrade") as scheduled in the Quote. If Agency purchased TAP, Axon will provide a BWC Upgrade that is the same or like Axon Device, at Axon's option. Axon makes no guarantee the BWC Upgrade will utilize the same accessories or Axon Dock.
5. **TAP Dock Upgrade**. If Agency has no outstanding payment obligations and purchased TAP, Axon will provide Agency a new Axon Dock as scheduled in the Quote ("Dock Upgrade"). Accessories associated with any Dock Upgrades are subject to change at Axon discretion. Dock Upgrades will only include a new Axon Dock bay configuration unless a new Axon Dock core is required for BWC compatibility. If Agency originally purchased a single-bay Axon Dock, the Dock Upgrade will be a single-bay Axon Dock model that is the same or like Axon Device, at Axon's option. If Agency originally purchased a multi-bay Axon Dock, the Dock Upgrade will be a multi-bay Axon Dock that is the same or like Axon Device, at Axon's option.
6. **Upgrade Delay**. Axon may ship the BWC and Dock Upgrades as scheduled in the Quote without prior confirmation from Agency unless the Parties agree in writing otherwise at least ninety (90) days in advance. Axon may ship the final BWC and Dock Upgrade as scheduled in the Quote sixty (60) days before the end of the Subscription Term without prior confirmation from Agency.
7. **Upgrade Change**. If Agency wants to upgrade Axon Device models from the current Axon Device to an upgraded Axon Device, Agency must pay the price difference between the MSRP for the current Axon Device and the MSRP for the upgraded Axon Device. If the model Agency desires has an MSRP less than the MSRP of the offered BWC Upgrade or Dock Upgrade, Axon will not provide a refund. The MSRP is the MSRP in effect at the time of the upgrade.
8. **Return of Original Axon Device**. Within thirty (30) days of receiving a BWC or Dock Upgrade, Agency must return the original Axon Devices to Axon or destroy the Axon Devices and provide a certificate of destruction to Axon including serial numbers for the destroyed Axon Devices. If Agency does not return or destroy the Axon Devices, Axon will deactivate the serial numbers for the Axon Devices received by Agency.
9. **Termination**. If Agency's payment for TAP, OSP, or Axon Evidence is more than thirty (30) days past due, Axon may terminate TAP or OSP. Once TAP or OSP terminates for any reason:
 - 9.1. TAP and OSP coverage terminate as of the date of termination and no refunds will be given.
 - 9.2. Axon will not and has no obligation to provide the Upgrade Models.
 - 9.3. Agency must make any missed payments due to the termination before Agency may purchase any future TAP or OSP.



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TASER 7 Appendix

This TASER 7 Appendix applies to Agency's TASER 7, OSP 7, or OSP 7 Plus purchase from Axon, if applicable.

1. **Duty Cartridge Replenishment Plan.** If the Quote includes "Duty Cartridge Replenishment Plan", Agency must purchase the plan for each CEW user. A CEW user includes officers that use a CEW in the line of duty and those that only use a CEW for training. Agency may not resell cartridges received. Axon will only replace cartridges used in the line of duty.
2. **Training.** If the Quote includes a training voucher, Agency must use the voucher within one (1) year of issuance, or the voucher will be void. Axon will issue Agency a voucher annually beginning on the start of the TASER Subscription Term. The voucher has no cash value. Agency cannot exchange it for another device or service. Unless stated in the Quote, the voucher does not include travel expenses and will be Agency's responsibility. If the Quote includes Axon Online Training or Virtual Reality Content Empathy Development for Autism/Schizophrenia (collectively, "Training Content"), Agency may access Training Content. Axon will deliver all Training Content electronically.
3. **TASER Upgrade.** If Agency purchases Axon's 10-year certification program for Axon's latest version of its TASER energy weapon ("Certification Program") and has no outstanding payment obligations as of the beginning of the sixth (6th) year of the Certification Program, Agency will qualify for an upgrade to any subsequent version of the Certification Program ("CEW Upgrade"). Agency will receive the CEW Upgrade at no additional cost, only to the extent such subsequent version of the Certification Program includes the same products or features as the Certification Program purchased by Agency. If Agency wants to upgrade to a Certification Program that includes additional products or features, Agency will pay the additional cost associated with such products and features. For the avoidance of doubt, Agency is not required to upgrade to any subsequent version of the Certification Program. Axon may ship the CEW Upgrade as scheduled in the Quote without prior confirmation from agency unless the Parties agree in writing otherwise at least ninety (90) days in advance. If necessary to maintain compatibility among Axon Devices, within thirty (30) days of receiving the CEW Upgrade, Agency must, if requested by Axon, return all hardware and related accessories received in connection with the Certification Program to Axon. In such event, Agency must ship batteries via ground shipping or in accordance with federal regulations in place at the time of the return. Axon will pay shipping costs for the return if Agency uses Axon's RMA process.
4. **Extended Warranty.** If the Quote includes an extended warranty, the extended warranty coverage period warranty will be for a five- (5-) year term, which includes the hardware manufacturer's warranty plus the four- (4-) year extended term.
5. **Trade-in.** If the Quote contains a discount on CEW-related line items, including items related to OSP, then that discount may only be applied as a trade-in credit, and Agency must return used hardware and accessories associated with the discount ("Trade-In Units") to Axon. Agency must ship batteries via ground shipping. Axon will pay shipping costs of the return. If Axon does not receive Trade-In Units within the timeframe below, Axon will invoice Agency the value of the trade-in credit. Agency may not destroy Trade-In Units and receive a trade-in credit.

<u>Agency Size</u>	<u>Days to Return from Start Date of TASER 7 Subscription</u>
Less than 100 officers	30 days
100 to 499 officers	90 days
500+ officers	180 days

6. **TASER 7 Subscription Term.** The TASER 7 Subscription Term for a standalone TASER 7 purchase begins on shipment of the TASER 7 hardware. The TASER 7 Subscription Term for OSP 7 begins on the OSP 7 start date.
7. **Access Rights.** Upon Axon granting Agency a TASER 7 Axon Evidence subscription, Agency may access and use Axon Evidence for the storage and management of data from TASER 7 CEW devices during the TASER 7 Subscription Term. Agency may not exceed the number of end users the Quote specifies.
8. **Privacy.** Axon will not disclose Agency Content or any information about Agency except as compelled by a court or administrative body or required by any law or regulation. Axon will give notice if any disclosure request is received for Agency Content, so Agency may file an objection with the court or administrative body.
9. **Termination.** If payment for TASER 7 is more than thirty (30) days past due, Axon may terminate Agency's TASER 7 plan by notifying Agency. Upon termination for any reason, then as of the date of termination:
 - 9.1. TASER 7 extended warranties and access to Training Content will terminate. No refunds will be given.



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- 9.2. Axon will invoice Agency the remaining MSRP for TASER 7 products received before termination. If terminating for non-appropriations, Axon will not invoice Agency if Agency returns the CEW, rechargeable battery, holster, dock, core, training suits, and unused cartridges to Axon within thirty (30) days of the date of termination.
 - 9.3. Agency will be responsible for payment of any missed payments due to the termination before being allowed to purchase any future TASER 7 plan.



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TASER 10 Appendix

This TASER 10 Appendix applies to Agency's TASER 10, OSP 10, OSP Plus, or OSP 10 Plus Premium purchase from Axon, if applicable.

1. **Duty Cartridge Replenishment Plan**. If the Quote includes "Duty Cartridge Replenishment Plan", Agency must purchase the plan for each CEW user. A CEW user includes officers that use a CEW in the line of duty and those that only use a CEW for training. Agency may not resell cartridges received. Axon will only replace cartridges used in the line of duty.
2. **Training**. If the Quote includes a training voucher, Agency must use the voucher within one (1) year of issuance, or the voucher will be void. Axon will issue Agency a voucher annually beginning on the start of the TASER Subscription Term. The voucher has no cash value. Agency cannot exchange it for another device or service. Unless stated in the Quote, the voucher does not include travel expenses and will be Agency's responsibility. If the Quote includes Axon Online Training or Virtual Reality Content Empathy Development for Autism/Schizophrenia (collectively, "Training Content"), Agency may access Training Content. Axon will deliver all Training Content electronically.
3. **Extended Warranty**. If the Quote includes an extended warranty, the extended warranty coverage period warranty will be for a five- (5-) year term, which includes the hardware manufacturer's warranty plus the four- (4-) year extended term.
4. **Trade-in**. If the Quote contains a discount on CEW-related line items, including items related to OSP, then that discount may only be applied as a trade-in credit, and Agency must return used hardware and accessories associated with the discount ("Trade-In Units") to Axon. Agency must ship batteries via ground shipping. Axon will pay shipping costs of the return. If Axon does not receive Trade-In Units within the timeframe below, Axon will invoice Agency the value of the trade-in credit. Agency may not destroy Trade-In Units and receive a trade-in credit.

<u>Agency Size</u>	<u>Days to Return from Start Date of TASER 10 Subscription</u>
Less than 100 officers	60 days
100 to 499 officers	90 days
500+ officers	180 days

5. **TASER 10 Subscription Term**. The TASER 10 Subscription Term for a standalone TASER 10 purchase begins on shipment of the TASER 10 hardware. The TASER 10 Subscription Term for OSP 10 begins on the OSP 10 start date.
6. **Access Rights**. Upon Axon granting Agency a TASER 10 Axon Evidence subscription, Agency may access and use Axon Evidence for the storage and management of data from TASER 10 CEW devices during the TASER 10 Subscription Term. Agency may not exceed the number of end users the Quote specifies.
7. **Agency Warranty**. If Agency is located in the US, Agency warrants and acknowledges that TASER 10 is classified as a firearm and is being acquired for official Agency use pursuant to a law enforcement agency transfer under the Gun Control Act of 1968.
8. **Purchase Order**. To comply with applicable laws and regulations, Agency must provide a purchase order to Axon prior to shipment of TASER 10.
9. **Apollo Grant (US only)**. If Agency has received an Apollo Grant from Axon, Agency must pay all fees in the Quote prior to upgrading to any new TASER CEW offered by Axon.



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Axon Auto-Tagging Appendix

If Auto-Tagging is included on the Quote, this Appendix applies.

1. **Scope.** Axon Auto-Tagging consists of the development of a module to allow Axon Evidence to interact with Agency's Computer-Aided Dispatch ("**CAD**") or Records Management Systems ("**RMS**"). This allows end users to auto-populate Axon video meta-data with a case ID, category, and location-based on data maintained in Agency's CAD or RMS.
2. **Support.** For thirty (30) days after completing Auto-Tagging Services, Axon will provide up to five (5) hours of remote support at no additional charge. Axon will provide free support due to a change in Axon Evidence, if Agency maintains an Axon Evidence and Auto-Tagging subscription. Axon will not provide support if a change is required because Agency changes its CAD or RMS.
3. **Changes.** Axon is only responsible to perform the Services in this Appendix. Any additional Services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in fees or schedule.
4. **Agency Responsibilities.** Axon's performance of Auto-Tagging Services requires Agency to:
 - 4.1. Make available relevant systems, including Agency's current CAD or RMS, for assessment by Axon (including remote access if possible);
 - 4.2. Make required modifications, upgrades or alterations to Agency's hardware, facilities, systems and networks related to Axon's performance of Auto-Tagging Services;
 - 4.3. Provide access to the premises where Axon is performing Auto-Tagging Services, subject to Agency safety and security restrictions, and allow Axon to enter and exit the premises with laptops and materials needed to perform Auto-Tagging Services;
 - 4.4. Provide all infrastructure and software information (TCP/IP addresses, node names, network configuration) necessary for Axon to provide Auto-Tagging Services;
 - 4.5. Promptly install and implement any software updates provided by Axon;
 - 4.6. Ensure that all appropriate data backups are performed;
 - 4.7. Provide assistance, participation, and approvals in testing Auto-Tagging Services;
 - 4.8. Provide Axon with remote access to Agency's Axon Evidence account when required;
 - 4.9. Notify Axon of any network or machine maintenance that may impact the performance of the module at Agency; and
 - 4.10. Ensure reasonable availability of knowledgeable staff and personnel to provide timely, accurate, complete, and up-to-date documentation and information to Axon.
5. **Access to Systems.** Agency authorizes Axon to access Agency's relevant computers, network systems, and CAD or RMS solely for performing Auto-Tagging Services. Axon will work diligently to identify the resources and information Axon expects to use and will provide an initial list to Agency. Agency is responsible for and assumes the risk of any problems, delays, losses, claims, or expenses resulting from the content, accuracy, completeness, and consistency of all data, materials, and information supplied by Agency.



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Axon Fleet Appendix

If Axon Fleet is included on the Quote, this Appendix applies.

1. Agency Responsibilities.
 19. Agency must ensure its infrastructure and vehicles adhere to the minimum requirements to operate Axon Fleet 2 or Axon Fleet 3 (collectively, "**Axon Fleet**") as established by Axon during the qualifier call and on-site assessment at Agency and in any technical qualifying questions. If Agency's representations are inaccurate, the Quote is subject to change.
 20. Agency is responsible for providing a suitable work area for Axon or Axon third-party providers to install Axon Fleet systems into Agency vehicles. Agency is responsible for making available all vehicles for which installation services were purchased, during the agreed upon onsite installation dates. Failure to make vehicles available may require an equitable adjustment in fees or schedule.
2. **Cradlepoint.** If Agency purchases Cradlepoint Enterprise Cloud Manager, Agency will comply with Cradlepoint's end user license agreement. The term of the Cradlepoint license may differ from the Axon Evidence Subscription. If Agency requires Cradlepoint support, Agency will contact Cradlepoint directly.
3. **Third-party Installer.** Axon will not be liable for the failure of Axon Fleet hardware to operate per specifications if such failure results from installation not performed by, or as directed by Axon.
4. Wireless Offload Server.
 - 4.1. **License Grant.** Axon grants Agency a non-exclusive, royalty-free, worldwide, perpetual license to use Wireless Offload Server ("**WOS**"). "Use" means storing, loading, installing, or executing WOS solely for data communication with Axon Devices for the number of licenses purchased. The WOS term begins upon the start of the Axon Evidence Subscription.
 - 4.2. **Restrictions.** Agency may not: (a) modify, alter, tamper with, repair, or create derivative works of WOS; (b) reverse engineer, disassemble, or decompile WOS, apply any process to derive the source code of WOS, or allow others to do so; (c) access or use WOS to avoid incurring fees or exceeding usage limits; (d) copy WOS in whole or part; (e) use trade secret information contained in WOS; (f) resell, rent, loan or sublicense WOS; (g) access WOS to build a competitive device or service or copy any features, functions or graphics of WOS; or (h) remove, alter or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon or Axon's licensors on or within WOS.
 - 4.3. **Updates.** If Agency purchases WOS maintenance, Axon will make updates and error corrections to WOS ("**WOS Updates**") available electronically via the Internet or media as determined by Axon. Agency is responsible for establishing and maintaining adequate Internet access to receive WOS Updates and maintaining computer equipment necessary for use of WOS. The Quote will detail the maintenance term.
 - 4.4. **WOS Support.** Upon request by Axon, Agency will provide Axon with access to Agency's store and forward servers solely for troubleshooting and maintenance.
5. Axon Vehicle Software.
 - 5.1. **License Grant.** Axon grants Agency a non-exclusive, royalty-free, worldwide, perpetual license to use ViewXL or Dashboard (collectively, "**Axon Vehicle Software**".) "Use" means storing, loading, installing, or executing Axon Vehicle Software solely for data communication with Axon Devices. The Axon Vehicle Software term begins upon the start of the Axon Evidence Subscription.
 - 5.2. **Restrictions.** Agency may not: (a) modify, alter, tamper with, repair, or create derivative works of Axon Vehicle Software; (b) reverse engineer, disassemble, or decompile Axon Vehicle Software, apply any process to derive the source code of Axon Vehicle Software, or allow others to do so; (c) access or use Axon Vehicle Software to avoid incurring fees or exceeding usage limits; (d) copy Axon Vehicle Software in whole or part; (e) use trade secret information contained in Axon Vehicle Software; (f) resell, rent, loan or sublicense Axon Vehicle Software; (g) access Axon Vehicle Software to build a competitive device or service or copy any features, functions or graphics of Axon Vehicle Software; or (h) remove, alter or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon or Axon's licensors on or within Axon Vehicle Software.



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6. **Acceptance Checklist.** If Axon provides services to Agency pursuant to any statement of work in connection with Axon Fleet, within seven (7) days of the date on which Agency retrieves Agency's vehicle(s) from the Axon installer, said vehicle having been installed and configured with tested and fully and properly operational in-car hardware and software identified above, Agency will receive a Professional Services Acceptance Checklist to submit to Axon indicating acceptance or denial of said deliverables.
7. **Axon Fleet Upgrade.** If Agency has no outstanding payment obligations and has purchased the "Fleet Technology Assurance Plan" (Fleet TAP), Axon will provide Agency with the same or like model of Fleet hardware ("**Axon Fleet Upgrade**") as scheduled on the Quote.
 - 7.1. If Agency would like to change models for the Axon Fleet Upgrade, Agency must pay the difference between the MSRP for the offered Axon Fleet Upgrade and the MSRP for the model desired. The MSRP is the MSRP in effect at the time of the upgrade. Agency is responsible for the removal of previously installed hardware and installation of the Axon Fleet Upgrade.
 - 7.2. Within thirty (30) days of receiving the Axon Fleet Upgrade, Agency must return the original Axon Devices to Axon or destroy the Axon Devices and provide a certificate of destruction to Axon, including serial numbers of the destroyed Axon Devices. If Agency does not destroy or return the Axon Devices to Axon, Axon will deactivate the serial numbers for the Axon Devices received by Agency.
8. **Axon Fleet Termination.** Axon may terminate Agency's Fleet subscription for non-payment. Upon any termination:
 - 8.1. Axon Fleet subscription coverage terminates, and no refunds will be given.
 - 8.2. Axon will not and has no obligation to provide the Axon Fleet Upgrade.
 - 8.3. Agency will be responsible for payment of any missed payments due to the termination before being allowed to purchase any future Fleet TAP.



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Axon Respond Appendix

This Axon Respond Appendix applies to both Axon Respond and Axon Respond Plus, if either is included on the Quote.

1. **Axon Respond Subscription Term.** If Agency purchases Axon Respond as part of a bundled offering, the Axon Respond subscription begins on the later of the (1) start date of that bundled offering, or (2) date Axon provisions Axon Respond to Agency. If Agency purchases Axon Respond as a standalone, the Axon Respond subscription begins the later of the (1) date Axon provisions Axon Respond to Agency, or (2) first day of the month following the Effective Date. The Axon Respond subscription term will end upon the completion of the Axon Evidence Subscription associated with Axon Respond.
2. **Scope of Axon Respond.** The scope of Axon Respond is to assist Agency with real-time situational awareness during critical incidents to improve officer safety, effectiveness, and awareness. In the event Agency uses Axon Respond outside this scope, Axon may initiate good-faith discussions with Agency on upgrading Agency's Axon Respond to better meet Agency's needs.
3. **Axon Body 3 LTE Requirements.** Axon Respond is only available and usable with an LTE enabled body-worn camera. Axon is not liable if Agency utilizes the LTE device outside of the coverage area or if the LTE carrier is unavailable. LTE coverage is only available in the United States, including any U.S. territories. Axon may utilize a carrier of Axon's choice to provide LTE service. Axon may change LTE carriers during the Term without Agency's consent.
4. **Axon Fleet 3 LTE Requirements.** Axon Respond is only available and usable with a Fleet 3 system configured with LTE modem and service. Agency is responsible for providing LTE service for the modem. Coverage and availability of LTE service is subject to Agency's LTE carrier.
5. **Axon Respond Service Limitations.** Agency acknowledges that LTE service is made available only within the operating range of the networks. Service may be temporarily refused, interrupted, or limited because of: (a) facilities limitations; (b) transmission limitations caused by atmospheric, terrain, other natural or artificial conditions adversely affecting transmission, weak batteries, system overcapacity, movement outside a service area or gaps in coverage in a service area, and other causes reasonably outside of the carrier's control such as intentional or negligent acts of third parties that damage or impair the network or disrupt service; or (c) equipment modifications, upgrades, relocations, repairs, and other similar activities necessary for the proper or improved operation of service.
 - 5.1. With regard to Axon Body 3, Partner networks are made available as-is and the carrier makes no warranties or representations as to the availability or quality of roaming service provided by carrier partners, and the carrier will not be liable in any capacity for any errors, outages, or failures of carrier partner networks. Agency expressly understands and agrees that it has no contractual relationship whatsoever with the underlying wireless service provider or its affiliates or contractors and Agency is not a third-party beneficiary of any agreement between Axon and the underlying carrier.
6. **Termination.** Upon termination of this Agreement, or if Agency stops paying for Axon Respond or bundles that include Axon Respond, Axon will end Axon Respond services, including any Axon-provided LTE service.



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Add-on Services Appendix

This Appendix applies if Axon Community Request, Axon Redaction Assistant, and/or Axon Performance are included on the Quote.

1. **Subscription Term.** If Agency purchases Axon Community Request, Axon Redaction Assistant, or Axon Performance as part of OSP 7 or OSP 10, the subscription begins on the later of the (1) start date of the OSP 7 or OSP 10 Term, or (2) date Axon provisions Axon Community Request Axon Redaction Assistant, or Axon Performance to Agency.
 - 1.1. If Agency purchases Axon Community Request, Axon Redaction Assistant, or Axon Performance as a standalone, the subscription begins the later of the (1) date Axon provisions Axon Community Request, Axon Redaction Assistant, or Axon Performance to Agency, or (2) first day of the month following the Effective Date.
 - 1.2. The subscription term will end upon the completion of the Axon Evidence Subscription associated with the add-on.
2. **Axon Community Request Storage.** For Axon Community Request, Agency may store an unlimited amount of data submitted through the public portal ("**Portal Content**"), within Agency's Axon Evidence instance. The post-termination provisions outlined in the Axon Cloud Services Terms of Use Appendix also apply to Portal Content.
3. **Performance Auto-Tagging Data.** In order to provide some features of Axon Performance to Agency, Axon will need to store call for service data from Agency's CAD or RMS.



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Axon Auto-Transcribe Appendix

This Appendix applies if Axon Auto-Transcribe is included on the Quote.

1. **Subscription Term.** If Agency purchases Axon Auto-Transcribe as part of a bundle or Axon Cloud Services subscription, the subscription begins on the later of the (1) start date of the bundle or Axon Cloud Services license term, or (2) date Axon provisions Axon Auto-Transcribe to Agency. If Agency purchases Axon Auto-Transcribe minutes as a standalone, the subscription begins on the date Axon provisions Axon Auto-Transcribe to Agency.
 - 1.1. If Agency cancels Auto-Transcribe services, any amounts owed by the Parties will be based on the amount of time passed under the annual subscription, rather than on the number of minutes used, regardless of usage.
2. **Auto-Transcribe A-La-Carte Minutes.** Upon Axon granting Agency a set number of minutes, Agency may utilize Axon Auto-Transcribe, subject to the number of minutes allowed on the Quote. Agency will not have the ability to roll over unused minutes to future Auto-Transcribe terms. Axon may charge Agency additional fees for exceeding the number of purchased minutes. Axon Auto-Transcribe minutes expire one year after being provisioned to Agency by Axon.
3. **Axon Unlimited Transcribe.** Upon Axon granting Agency an Unlimited Transcribe subscription to Axon Auto-Transcribe, Agency may utilize Axon Auto-Transcribe with no limit on the number of minutes. Unlimited Transcribe includes automatic transcription of all Axon BWC and Axon Capture footage. With regard to Axon Interview Room, Axon Fleet, Axon Citizen, or third-party transcription, transcription must be requested on demand. Notwithstanding the foregoing, Axon may limit usage after 5,000 minutes per user per month for multiple months in a row. Axon will not bill for overages.
4. **Warranty.** Axon disclaims all warranties, express or implied, for Axon Auto-Transcribe.



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Axon Virtual Reality Content Terms of Use Appendix

If Virtual Reality is included on the Quote, this Appendix applies.

1. **Term.** The Quote will detail the products and license duration, as applicable, of the goods, services, and software, and contents thereof, provided by Axon to Agency related to virtual reality (collectively, "**Virtual Reality Media**").
2. **Headsets.** Agency may purchase additional virtual reality headsets from Axon. In the event Agency decides to purchase additional virtual reality headsets for use with Virtual Reality Media, Agency must purchase those headsets from Axon.
3. **License Restrictions.** All licenses will immediately terminate if Agency does not comply with any term of this Agreement. If Agency utilizes more users than stated in this Agreement, Agency must purchase additional Virtual Reality Media licenses from Axon. Agency may not use Virtual Reality Media for any purpose other than as expressly permitted by this Agreement. Agency may not:
 - 3.1. modify, tamper with, repair, or otherwise create derivative works of Virtual Reality Media;
 - 3.2. reverse engineer, disassemble, or decompile Virtual Reality Media or apply any process to derive the source code of Virtual Reality Media, or allow others to do the same;
 - 3.3. copy Virtual Reality Media in whole or part, except as expressly permitted in this Agreement;
 - 3.4. use trade secret information contained in Virtual Reality Media;
 - 3.5. resell, rent, loan or sublicense Virtual Reality Media;
 - 3.6. access Virtual Reality Media to build a competitive device or service or copy any features, functions, or graphics of Virtual Reality Media; or
 - 3.7. remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon or Axon's licensors on or within Virtual Reality Media or any copies of Virtual Reality Media.
4. **Privacy.** Agency's use of the Virtual Reality Media is subject to the Axon Virtual Reality Privacy Policy, a current version of which is available at <https://www.axon.com/axonvrprivacypolicy>.
5. **Termination.** Axon may terminate Agency's license immediately for Agency's failure to comply with any of the terms in this Agreement.



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Axon Evidence Local Software Appendix

This Appendix applies if Axon Evidence Local is included on the Quote.

1. **License.** Axon owns all executable instructions, images, icons, sound, and text in Axon Evidence Local. All rights are reserved to Axon. Axon grants a non-exclusive, royalty-free, worldwide right and license to use Axon Evidence Local. "Use" means storing, loading, installing, or executing Axon Evidence Local exclusively for data communication with an Axon Device. Agency may use Axon Evidence Local in a networked environment on computers other than the computer it installs Axon Evidence Local on, so long as each execution of Axon Evidence Local is for data communication with an Axon Device. Agency may make copies of Axon Evidence Local for archival purposes only. Axon shall retain all copyright, trademark, and proprietary notices in Axon Evidence Local on all copies or adaptations.
2. **Term.** The Quote will detail the duration of the Axon Evidence Local license, as well as any maintenance. The term will begin upon installation of Axon Evidence Local.
3. **License Restrictions.** All licenses will immediately terminate if Agency does not comply with any term of this Agreement. Agency may not use Axon Evidence Local for any purpose other than as expressly permitted by this Agreement. Agency may not:
 - 3.1. modify, tamper with, repair, or otherwise create derivative works of Axon Evidence Local;
 - 3.2. reverse engineer, disassemble, or decompile Axon Evidence Local or apply any process to derive the source code of Axon Evidence Local, or allow others to do the same;
 - 3.3. access or use Axon Evidence Local to avoid incurring fees or exceeding usage limits or quotas;
 - 3.4. copy Axon Evidence Local in whole or part, except as expressly permitted in this Agreement;
 - 3.5. use trade secret information contained in Axon Evidence Local;
 - 3.6. resell, rent, loan or sublicense Axon Evidence Local;
 - 3.7. access Axon Evidence Local to build a competitive device or service or copy any features, functions, or graphics of Axon Evidence Local; or
 - 3.8. remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon or Axon's licensors on or within Axon Evidence Local or any copies of Axon Evidence Local.
4. **Support.** Axon may make available updates and error corrections ("**Updates**") to Axon Evidence Local. Axon will provide Updates electronically via the Internet or media as determined by Axon. Agency is responsible for establishing and maintaining adequate access to the Internet to receive Updates. Agency is responsible for maintaining the computer equipment necessary to use Axon Evidence Local. Axon may provide technical support of a prior release/version of Axon Evidence Local for six (6) months from when Axon made the subsequent release/version available.
5. **Termination.** Axon may terminate Agency's license immediately for Agency's failure to comply with any of the terms in this Agreement. Upon termination, Axon may disable Agency's right to login to Axon Evidence Local.



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Axon Application Programming Interface Appendix

This Appendix applies if Axon's API Services are included on the Quote.

1. **Definitions.**

- 1.1. **"API Client"** means the software that acts as the interface between Agency's computer and the server, which is already developed or to be developed by Agency.
- 1.2. **"API Interface"** means software implemented by Agency to configure Agency's independent API Client Software to operate in conjunction with the API Service for Agency's authorized Use.
- 1.3. **"Axon Evidence Partner API, API or Axon API"** (collectively **"API Service"**) means Axon's API which provides a programmatic means to access data in Agency's Axon Evidence account or integrate Agency's Axon Evidence account with other systems.
- 1.4. **"Use"** means any operation on Agency's data enabled by the supported API functionality.

2. **Purpose and License.**

- 2.1. Agency may use API Service and data made available through API Service, in connection with an API Client developed by Agency. Axon may monitor Agency's use of API Service to ensure quality, improve Axon devices and services, and verify compliance with this Agreement. Agency agrees to not interfere with such monitoring or obscure from Axon Agency's use of API Service. Agency will not use API Service for commercial use.
- 2.2. Axon grants Agency a non-exclusive, non-transferable, non-sublicensable, worldwide, revocable right and license during the Term to use API Service, solely for Agency's Use in connection with Agency's API Client.
- 2.3. Axon reserves the right to set limitations on Agency's use of the API Service, such as a quota on operations, to ensure stability and availability of Axon's API. Axon will use reasonable efforts to accommodate use beyond the designated limits.

3. **Configuration.** Agency will work independently to configure Agency's API Client with API Service for Agency's applicable Use. Agency will be required to provide certain information (such as identification or contact details) as part of the registration. Registration information provided to Axon must be accurate. Agency will inform Axon promptly of any updates. Upon Agency's registration, Axon will provide documentation outlining API Service information.

4. **Agency Responsibilities.** When using API Service, Agency and its end users may not:

- 4.1. use API Service in any way other than as expressly permitted under this Agreement;
- 4.2. use in any way that results in, or could result in, any security breach to Axon;
- 4.3. perform an action with the intent of introducing any viruses, worms, defect, Trojan horses, malware, or any items of a destructive nature to Axon Devices and Services;
- 4.4. interfere with, modify, disrupt or disable features or functionality of API Service or the servers or networks providing API Service;
- 4.5. reverse engineer, decompile, disassemble, or translate or attempt to extract the source code from API Service or any related software;
- 4.6. create an API Interface that functions substantially the same as API Service and offer it for use by third parties;
- 4.7. provide use of API Service on a service bureau, rental or managed services basis or permit other individuals or entities to create links to API Service;
- 4.8. frame or mirror API Service on any other server, or wireless or Internet-based device;
- 4.9. make available to a third-party, any token, key, password or other login credentials to API Service;
- 4.10. take any action or inaction resulting in illegal, unauthorized or improper purposes; or
- 4.11. disclose Axon's API manual.

5. **API Content.** All content related to API Service, other than Agency Content or Agency's API Client content, is considered Axon's API Content, including:

- 5.1. the design, structure and naming of API Service fields in all responses and requests;



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- 5.2. the resources available within API Service for which Agency takes actions on, such as evidence, cases, users, or reports;
 - 5.3. the structure of and relationship of API Service resources; and
 - 5.4. the design of API Service, in any part or as a whole.
 6. **Prohibitions on API Content.** Neither Agency nor its end users will use API content returned from the API Interface to:
 - 6.1. scrape, build databases, or otherwise create permanent copies of such content, or keep cached copies longer than permitted by the cache header;
 - 6.2. copy, translate, modify, create a derivative work of, sell, lease, lend, convey, distribute, publicly display, or sublicense to any third-party;
 - 6.3. misrepresent the source or ownership; or
 - 6.4. remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices).
 7. **API Updates.** Axon may update or modify the API Service from time to time ("**API Update**"). Agency is required to implement and use the most current version of API Service and to make any applicable changes to Agency's API Client required as a result of such API Update. API Updates may adversely affect how Agency's API Client access or communicate with API Service or the API Interface. Each API Client must contain means for Agency to update API Client to the most current version of API Service. Axon will provide support for one (1) year following the release of an API Update for all depreciated API Service versions.



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Advanced User Management Appendix

This Appendix applies if Axon Advanced User Management is included on the Quote.

1. **Scope.** Advanced User Management allows Agency to (a) utilize bulk user creation and management, (b) automate user creation and management through System for Cross-domain Identity Management ("**SCIM**"), and (c) automate group creation and management through SCIM.
2. **Advanced User Management Configuration.** Agency will work independently to configure Agency's Advanced User Management for Agency's applicable Use. Upon request, Axon will provide general guidance to Agency, including documentation that details the setup and configuration process.



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Axon Channel Services Appendix

This Appendix applies if Agency purchases Axon Channel Service, as set forth on the Quote.

1. **Definitions.**
 - 1.1. **"Axon Digital Evidence Management System"** means Axon Evidence or Axon Evidence Local, as specified in the attached Channel Services Statement of Work.
 - 1.2. **"Active Channel"** means a third-party system that is continuously communicating with an Axon Digital Evidence Management System.
 - 1.3. **"Inactive Channel"** means a third-party system that will have a one-time communication to an Axon Digital Evidence Management System.
2. **Scope.** Agency currently has a third-party system or data repository from which Agency desires to share data with Axon Digital Evidence Management. Axon will facilitate the transfer of Agency's third-party data into an Axon Digital Evidence Management System or the transfer of Agency data out of an Axon Digital Evidence Management System as defined in the Channel Services Statement of Work ("**Channel Services SOW**"). Channel Services will not delete any Agency Content. Agency is responsible for verifying all necessary data is migrated correctly and retained per Agency policy.
3. **Changes.** Axon is only responsible to perform the Services described in this Appendix and Channel Services SOW. Any additional services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in the charges or schedule.
4. **Purpose and Use.** Agency is responsible for verifying Agency has the right to share data from and provide access to third-party system as it relates to the Services described in this Appendix and the Channel Services SOW. For Active Channels, Agency is responsible for any changes to a third-party system that may affect the functionality of the channel service. Any additional work required for the continuation of the Service may require additional fees. An Axon Field Engineer may require access to Agency's network and systems to perform the Services described in the Channel Services SOW. Agency is responsible for facilitating this access per all laws and policies applicable to Agency.
5. **Project Management.** Axon will assign a Project Manager to work closely with Agency's project manager and project team members and will be responsible for completing the tasks required to meet all contract deliverables on time and budget.
6. **Warranty.** Axon warrants that it will perform the Channel Services in a good and workmanlike manner.
7. **Monitoring.** Axon may monitor Agency's use of Channel Services to ensure quality, improve Axon devices and services, prepare invoices based on the total amount of data migrated, and verify compliance with this Agreement. Agency agrees not to interfere with such monitoring or obscure from Axon Agency's use of channel services.
8. **Agency's Responsibilities.** Axon's successful performance of the Channel Services requires Agency:
 - 8.1. Make available its relevant systems for assessment by Axon (including making these systems available to Axon via remote access);
 - 8.2. Provide access to the building facilities and where Axon is to perform the Channel Services, subject to safety and security restrictions imposed by the Agency (including providing security passes or other necessary documentation to Axon representatives performing the Channel Services permitting them to enter and exit Agency premises with laptop personal computers and any other materials needed to perform the Channel Services);
 - 8.3. Provide all necessary infrastructure and software information (TCP/IP addresses, node names, and network configuration) for Axon to provide the Channel Services;
 - 8.4. Ensure all appropriate data backups are performed;
 - 8.5. Provide Axon with remote access to the Agency's network and third-party systems when required for Axon to perform the Channel Services;
 - 8.6. Notify Axon of any network or machine maintenance that may impact the performance of the Channel Services; and
 - 8.7. Ensure the reasonable availability by phone or email of knowledgeable staff, personnel, system administrators,

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and operators to provide timely, accurate, complete, and up-to-date documentation and information to Axon (these contacts are to provide background information and clarification of information required to perform the Channel Services).



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VIEVU Data Migration Appendix

This Appendix applies if Agency purchases Migration services, as set forth on the Quote.

1. **Scope.** Agency currently has legacy data in the VIEVU solution from which Agency desires to move to Axon Evidence. Axon will work with Agency to copy legacy data from the VIEVU solution into Axon Evidence ("**Migration**"). Before Migration, Agency and Axon will work together to develop a Statement of Work ("**Migration SOW**") to detail all deliverables and responsibilities. The Migration will require the availability of Agency resources. Such resources will be identified in the SOW. On-site support during Migration is not required. Upon Agency's request, Axon will provide on-site support for an additional fee. Any request for on-site support will need to be pre-scheduled and is subject to Axon's resource availability.
 - 1.1. A small amount of unexposed data related to system information will not be migrated from the VIEVU solution to Axon Evidence. Upon request, some of this data can be manually exported before Migration and provided to Agency. The Migration SOW will provide further detail.
2. **Changes.** Axon is only responsible to perform the Services described in this Appendix and Migration SOW. Any additional services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in the charges or schedule.
3. **Project Management.** Axon will assign a Project Manager to work closely with Agency's project manager and project team members and will be responsible for completing the tasks required to meet all contract deliverables on time and budget.
4. **Downtime.** There may be downtime during the Migration. The duration of the downtime will depend on the amount of data that Agency is migrating. Axon will work with Agency to minimize any downtime. Any VIEVU mobile application will need to be disabled upon Migration.
5. **Functionality Changes.** Due to device differences between the VIEVU solution and the Axon's Axon Evidence solution, there may be functionality gaps that will not allow for all migrated data to be displayed the same way in the user interface after Migration.
6. **Acceptance.** Once the Migration is complete, Axon will notify Agency and provide an acceptance form. Agency is responsible for verifying that the scope of the project has been completed and all necessary data is migrated correctly and retained per Agency policy. Agency will have ninety (90) days to provide Axon acceptance that the Migration was successful, or Axon will deem the Migration accepted.
 - 6.1. In the event Agency does not accept the Migration, Agency agrees to notify Axon within a reasonable time. Agency also agrees to allow Axon a reasonable time to resolve any issue. In the event Agency does not provide Axon with a written rejection of the Migration during these ninety (90) days, Agency may be charged for additional monthly storage costs. After Agency provides acceptance of the Migration, Axon will delete all data from the VIEVU solution ninety (90) days after the Migration.
7. **Post-Migration.** After Migration, the VIEVU solution may not be supported and updates may not be provided. Axon may end of life the VIEVU solution in the future. If Agency elects to maintain data within the VIEVU solution, Axon will provide Agency ninety (90) days' notice before ending support for the VIEVU solution.
8. **Warranty.** Axon warrants that it will perform the Migration in a good and workmanlike manner.
9. **Monitoring.** Axon may monitor Agency's use of Migration to ensure quality, improve Axon Devices and Services, prepare invoices based on the total amount of data migrated, and verify compliance with this Agreement. Agency agrees not to interfere with such monitoring or obscure Agency's use of Migration from Axon.



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Axon Technical Account Manager Appendix

This Appendix applies if Axon Support Engineer services are included on the Quote.

1. **Axon Technical Account Manager Payment.** Axon will invoice for Axon Technical Account Manager ("TAM") services, as outlined in the Quote, when the TAM commences work on-site at Agency.

2. **Full-Time TAM Scope of Services.**

- 2.1. A Full-Time TAM will work on-site four (4) days per week, unless an alternate schedule or reporting location is mutually agreed upon by Axon and Customer.
- 2.2. Agency's Axon sales representative and Axon's Agency Success team will work with Agency to define its support needs and ensure the Full-Time TAM has skills to align with those needs. There may be up to a six- (6-) month waiting period before the Full-Time TAM can work on-site, depending upon Agency's needs and availability of a Full-Time TAM.
- 2.3. The purchase of Full-Time TAM Services includes two (2) complimentary Axon Accelerate tickets per year of the Agreement, so long as the TAM has started work at Agency, and Agency is current on all payments for the Full-Time TAM Service.
- 2.4. The Full-Time TAM **Service options are listed below:**

Ongoing System Set-up and Configuration

Assisting with assigning cameras and registering docks

Maintaining **Agency's Axon Evidence account**

Connecting Agency to "Early Access" programs for new devices

Account Maintenance

Conducting on-site training on new features and **devices for Agency leadership team(s)**

Thoroughly documenting issues and workflows and suggesting new workflows to improve **the effectiveness of the Axon program**

Conducting weekly meetings to cover current issues and program status

Data Analysis

Providing on-demand Axon usage data to identify trends and insights for improving daily workflows

Comparing **Agency's Axon usage and trends to peers to establish best practices**

Proactively monitoring the health of Axon equipment and coordinating returns when needed

Direct Support

Providing on-site, Tier 1 and Tier 2 (as defined in Axon's Service Level Agreement) technical support for Axon Devices

Proactively monitoring the health of **Axon equipment**

Creating and monitoring RMAs **on-site**

Providing Axon app support

Monitoring and testing new firmware and workflows before they are released to Agency's production environment

Agency Advocacy

Coordinating **bi-annual voice of customer meetings with Axon's Device Management team**

Recording and tracking Agency feature requests and major bugs

3. **Regional TAM Scope of Services**

- 3.1. A Regional TAM will work on-site for three (3) consecutive days per quarter. Agency must schedule the on-site days at least two (2) weeks in advance. The Regional TAM will also be available by phone and email during regular business hours up to eight (8) hours per week.
- 3.2. There may be up to a six- (6-) month waiting period before Axon assigns a Regional TAM to Agency, depending upon the availability of a Regional TAM.
- 3.3. The purchase of Regional TAM Services includes two (2) complimentary Axon Accelerate tickets per year of the Agreement, so long as the TAM has started work at Agency and Agency is current on all payments for the Regional TAM Service.
- 3.4. The Regional TAM service options are listed below:



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Account Maintenance

Conducting remote training on new features and **devices for Agency's leadership**
 Thoroughly documenting issues and workflows and suggesting new **workflows to improve the effectiveness of the Axon program**
 Conducting weekly conference calls to cover **current issues and program status**
 Visiting Agency quarterly (up to 3 consecutive days) to perform a quarterly business review, discuss Agency's goals for your Axon program, and continue to ensure a successful deployment of Axon Devices

Direct Support

Providing remote, Tier 1 and Tier 2 (As defined Axon's Service Level Agreement) technical support for Axon Devices
 Creating and monitoring RMAs remotely

Data Analysis

Providing quarterly Axon **usage data to identify trends and program efficiency opportunities**
 Comparing an **Agency's Axon usage and trends to peers to establish best practices**
 Proactively monitoring the health of Axon equipment and coordinating returns when needed

Agency Advocacy

Coordinating bi-yearly Voice of **Agency meetings with Device Management team**
 Recording and tracking Agency feature requests and major bugs

4. **Out of Scope Services.** The TAM is responsible to perform only the Services described in this Appendix. Any additional Services discussed or implied that are not defined explicitly in this Appendix will be considered out of the scope.
5. **TAM Leave Time.** The TAM will be allowed up seven (7) days of sick leave and up to fifteen (15) days of vacation time per each calendar year. The TAM will work with Agency to coordinate any time off and will provide Agency with at least two (2) weeks' notice before utilizing any vacation days.



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Axon Investigate Appendix

If the Quote includes Axon's On Prem Video Suite known as Axon Investigate or Third Party Video Support License, the following appendix shall apply.

1. **License Grant.** Subject to the terms and conditions specified below and upon payment of the applicable fees set forth in the Quote, Axon grants to Agency a nonexclusive, nontransferable license to install, use, and display the Axon Investigate software ("**Software**") solely for its own internal use only and for no other purpose, for the duration of subscription term set forth in the Quote. This Agreement does not grant Agency any right to enhancements or updates, but if such are made available to Agency and obtained by Agency they shall become part of the Software and governed by the terms of this Agreement.
2. **Third-Party Licenses.** Axon licenses several third-party codecs and applications that are integrated into the Software. Users with an active support contract with Axon are granted access to these additional features. By accepting this agreement, Agency agrees to and understands that an active support contract is required for all of the following features: DNxHD output formats, decoding files via the "fast indexing" method, proprietary file metadata, telephone and email support, and all future updates to the software. If Agency terminates the annual support contract with Axon, the features listed above will be disabled within the Software. It is recommended that users remain on an active support contract to maintain the full functionality of the Software.
3. **Restrictions on Use.** Agency may not permit any other person to use the Software unless such use is in accordance with the terms of this Agreement. Agency may not modify, translate, reverse engineer, reverse compile, decompile, disassemble or create derivative works with respect to the Software, except to the extent applicable laws specifically prohibit such restrictions. Agency may not rent, lease, sublicense, grant a security interest in or otherwise transfer Agency's rights to or to use the Software. Any rights not granted are reserved to Axon.
4. **Term.** For purchased perpetual Licenses only—excluding Licenses leased for a pre-determined period, evaluation licenses, companion licenses, as well as temporary licenses--the license shall be perpetual unless Agency fails to observe any of its terms, in which case it shall terminate immediately, and without additional prior notice. The terms of Paragraphs 1, 2, 3, 5, 6, 8 and 9 shall survive termination of this Agreement. For licenses leased for a pre-determined period, for evaluation licenses, companion licenses, as well as temporary licenses, the license is granted for a period beginning at the installation date and for the duration of the evaluation period or temporary period as agreed between Axon and Agency.
5. **Title.** Axon and its licensors shall have sole and exclusive ownership of all right, title, and interest in and to the Software and all changes, modifications, and enhancements thereof (including ownership of all trade secrets and copyrights pertaining thereto), regardless of the form or media in which the original or copies may exist, subject only to the rights and privileges expressly granted by Axon. This Agreement does not provide Agency with title or ownership of the Software, but only a right of limited use.
6. **Copies.** The Software is copyrighted under the laws of the United States and international treaty provisions. Agency may not copy the Software except for backup or archival purposes, and all such copies shall contain all Axon's notices regarding proprietary rights as contained in the Software as originally provided to Agency. If Agency receives one copy electronically and another copy on media, the copy on media may be used only for archival purposes and this license does not authorize Agency to use the copy of media on an additional server.
7. **Actions Required Upon Termination.** Upon termination of the license associated with this Agreement, Agency agrees to destroy all copies of the Software and other text and/or graphical documentation, whether in electronic or printed format, that describe the features, functions and operation of the Software that are provided by Axon to Agency ("**Software Documentation**") or return such copies to Axon. Regarding any copies of media containing regular backups of Agency's computer or computer system, Agency agrees not to access such media for the purpose of recovering the Software or online Software Documentation.
8. **Export Controls.** None of the Software, Software Documentation or underlying information may be downloaded or otherwise exported, directly or indirectly, without the prior written consent, if required, of the office of Export Administration of the United States, Department of Commerce, nor to any country to which the U.S. has embargoed goods, to any person on the U.S. Treasury Department's list of Specially Designated Nations, or the U.S. Department of Commerce's Table of Denials.
9. **U.S. Government Restricted Rights.** The Software and Software Documentation are Commercial Computer Software provided with Restricted Rights under Federal Acquisition Regulations and agency supplements to them. Use, duplication or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFAR 255.227-7013 et. Seq. or 252.211-7015, or

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subparagraphs (a) through (d) of the Commercial Computer Software Restricted Rights at FAR 52.227-19, as applicable, or similar clauses in the NASA FAR Supplement. Contractor/manufacturer is Axon Enterprise, Inc., 17800 North 85th Street, Scottsdale, Arizona 85255.



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My90 Terms of Use Appendix

Definitions.

- 1.1. **"My90"** means Axon's proprietary platform and methodology to obtain and analyze feedback, and other related offerings, including, without limitation, interactions between My90 and Axon products.
- 1.2. **"Recipient Contact Information"** means contact information, as applicable, including phone number or email address (if available) of the individual whom Agency would like to obtain feedback.
- 1.3. **"Agency Data"** means
 - 1.3.1. "My90 Agency Content" which means data, including Recipient Contact Information, provided to My90 directly by Agency or at their direction, or by permitting My90 to access or connect to an information system or similar technology. My90 Agency Content does not include My90 Non-Content Data.
 - 1.3.2. "My90 Non-Content Data" which means data, configuration, and usage information about Agency's My90 tenant, and client software, users, and survey recipients that is Processed (as defined in Section 1.6 of this Appendix) when using My90 or responding to a My90 Survey. My90 Non-Content Data includes data about users and survey recipients captured during account management and customer support activities. My90 Non-Content Data does not include My90 Agency Content.
 - 1.3.3. "Survey Response" which means survey recipients' response to My90 Survey.
- 1.4. **"My90 Data"** means
 - 1.4.1. "My90 Survey" which means surveys, material(s) or content(s) made available by Axon to Agency and survey recipients within My90.
 - 1.4.2. "Aggregated Survey Response" which means Survey Response that has been de-identified and aggregated or transformed so that it is no longer reasonably capable of being associated with, or could reasonably be linked directly or indirectly to, a particular individual.
- 1.5. **"Personal Data"** means any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, or social identity of that natural person.
- 1.6. **"Processing"** means any operation or set of operations which is performed on data or on sets of data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure, or destruction.
- 1.7. **"Sensitive Personal Data"** means Personal Data that reveals an individual's health, racial or ethnic origin, sexual orientation, disability, religious or philosophical beliefs, or trade union membership.
2. **Access.** Upon Axon granting Agency a subscription to My90, Agency may access and use My90 to store and manage My90 Agency Content, and applicable My90 Surveys and Aggregated Survey Responses. This Appendix is subject to the Terms and Conditions of Axon's Master Service and Purchasing Agreement or in the event you and Axon have entered into a prior agreement to govern all future purchases, that agreement shall govern.
3. **IP address.** Axon will not store survey respondents' IP address.
4. **Agency Owns My90 Agency Content.** Agency controls or owns all right, title, and interest in My90 Agency Content. Except as outlined herein, Axon obtains no interest in My90 Agency Content, and My90 Agency Content is not Axon's business records. Except as set forth in this Agreement, Agency is responsible for uploading, sharing, managing, and deleting My90 Agency Content. Axon will only have access to My90 Agency Content for the limited purposes set forth herein. Agency agrees to allow Axon access to My90 Agency Content to (a) perform troubleshooting, maintenance, or diagnostic screenings; and (b) enforce this Agreement or policies governing use of My90 and other Axon products.
5. **Details of the Processing.** The nature and purpose of the Processing under this Appendix are further specified



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in Schedule 1 Details of the Processing, to this Appendix.

6. **Security.** Axon will implement commercially reasonable and appropriate measures to secure Agency Data against accidental or unlawful loss, access, or disclosure. Axon will maintain a comprehensive information security program to protect Agency Data including logical, physical access, vulnerability, risk, and configuration management; incident monitoring and response; security education; and data protection. Axon will not treat Agency Data in accordance with FBI CJIS Security Policy requirements and does not agree to the CJIS Security Addendum for this engagement or any other security or privacy related commitments that have been established between Axon and Agency, such as ISO 27001 certification or SOC 2 Reporting.
7. **Privacy.** Agency use of My90 is subject to the My90 Privacy Policy, a current version of which is available at <https://www.axon.com/legal/my90privacypolicy>. Agency agrees to allow Axon access to My90 Non-Content Data from Agency to (a) perform troubleshooting, maintenance, or diagnostic screenings; (b) provide, develop, improve, and support current and future Axon products including My90 and related services; and (c) enforce this Agreement or policies governing the use of My90 or other Axon products.
8. **Location of Storage.** Axon may transfer Agency Data to third-party subcontractors for Processing. Axon will determine the locations for Processing of Agency Data. For all Agency, Axon will Process and store Agency Data within the United States. Ownership of My90 Agency Content remains with Agency.
9. **Required Disclosures.** Axon will not disclose Agency Data that Agency shares with Axon except as compelled by a court or administrative body or required by any law or regulation. Axon will notify Agency if any disclosure request is received for Agency Data so Agency may file an objection with the court or administrative body, unless prohibited by law.
10. **Data Sharing.** Axon may share data only with entities that control or are controlled by or under common control of Axon, and as described below:
 - 10.1. Axon may share Agency Data with third parties it employs to perform tasks on Axon's behalf to provide products or services to Customer.
 - 10.2. Axon may share Aggregated Survey Response with third parties, such as other Axon customers, local city agencies, private companies, or members of the public that are seeking a way to collect analysis on general policing and community trends. Aggregated Survey Response will not be reasonably capable of being associated with or reasonably be linked directly or indirectly to a particular individual.
11. **License and Intellectual Property.** Agency grants Axon, its affiliates, and assignees the irrevocable, perpetual, fully paid, royalty-free, and worldwide right and license to use Agency Data for internal use including but not limited to analysis and creation of derivatives. Axon may not release Agency Data to any third party under this right that is not aggregated and de-identified. Agency acknowledges that Agency will have no intellectual property right in any media, good or service developed or improved by Axon. Agency acknowledges that Axon may make any lawful use of My90 Data and any derivative of Agency Data including, without limitation, the right to monetize, redistribute, make modification of, and make derivatives of the surveys, survey responses and associated data, and Agency will have no intellectual property right in any good, service, media, or other product that uses My90 Data.
12. **Agency Use of Aggregated Survey Response.** Axon will make available to Agency Aggregated Survey Response and rights to use for any Agency purpose.
13. **Data Subject Rights.** Taking into account the nature of the Processing, Axon shall assist Agency by appropriate technical and organizational measures, insofar as this is reasonable, for the fulfilment of Agency's obligation to respond to a Data Subject Request regarding any Personal Data contained within My90 Agency Content. If in regard to My90 Agency Content, Axon receives a Data Subject Request from Agency's data subject to exercise one or more of its rights under applicable Data Protection Law, Axon will redirect the data subject within seventy-two (72) hours, to make its request directly to Agency. Agency will be responsible for responding to any such request.
14. **Assistance with Requests Related to My90 Agency Content.** With regard to the processing of My90 Agency Content, Axon shall, if not prohibited by applicable law, notify Agency without delay after receipt, if Axon: (a) receives a request for information from the Supervisory Authority or any other competent authority regarding My90 Agency Content; (b) receives a complaint or request from a third party regarding the obligations of Agency or Axon under applicable Data Protection Law; or (c) receives any other communication which directly or indirectly pertains to My90 Agency Content or the Processing or protection of My90 Agency Content. Axon shall not respond to such requests, complaints, or communications, unless Agency has given Axon written instructions to

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that effect or if such is required under a statutory provision. In the latter case, prior to responding to the request, Axon shall notify Agency of the relevant statutory provision and Axon shall limit its response to what is necessary to comply with the request.

15. **Axon Evidence Partner Sharing.** If Axon Evidence partner sharing is used to share My90 Agency Content, Agency will manage the data sharing partnership with Axon and access to allow only for authorized data sharing with Axon. Agency acknowledges that any applicable audit trail on the original source data will not include activities and processing performed against the instances, copies or clips that has been shared with Axon. Agency also acknowledges that the retention policy from the original source data is not applied to any data shared with Axon. Except as provided herein, data shared with Axon may be retained indefinitely by Axon.
16. **Data Retention.** Phone numbers provided to Axon directly by Agency or at their direction, or by permitting My90 to access or connect to an information system or similar technology will be retained for twenty-four (24) hours. Axon will not delete Aggregated Survey Response for four (4) years following termination of this Agreement. There will be no functionality of My90 during these four (4) years other than the ability to submit a request to retrieve Aggregated Survey Response. Axon has no obligation to maintain or provide Aggregated Survey Response after these four years and may thereafter, unless legally prohibited, delete all Aggregated Survey Response.
17. **Termination.** Termination of an My90 Agreement will not result in the removal or modification of previously shared My90 Agency Content or the potential monetization of Survey Response and Aggregated Survey Response.
18. **Managing Data Shared.** Agency is responsible for:
 - 18.1. Ensuring My90 Agency Content is appropriate for use in My90. This includes, prior to sharing: (a) applying any and all required redactions, clipping, removal of metadata, logs, etc. and (b) coordination with applicable public disclosure officers and related legal teams;
 - 18.2. Ensuring that only My90 Agency Content that is authorized to be shared for the purposes outlined is shared with Axon. Agency will periodically monitor or audit this shared data;
 - 18.3. Using an appropriately secure data transfer mechanism to provide My90 Agency Content to Axon;
 - 18.4. Immediately notifying Axon if My90 Agency Content that is not authorized for sharing has been shared. Axon may not be able to immediately retrieve or locate all instances, copies or clips of My90 Agency Content in the event Agency requests to un-share previously shared My90 Agency Content;
19. **Prior to enrollment in My90.** Prior to enrolling in My90, Agency will:
 - 19.1. determine how to use My90 in accordance with applicable laws and regulations including but not limited to consents, use of info or other legal considerations;
 - 19.2. develop a set of default qualification criteria of what My90 Agency Content may be shared with Axon; and
 - 19.3. assign responsibilities for managing what My90 Agency Content is shared with Axon and educate users on what data may or not be shared with Axon.
20. **Agency Responsibilities.** Agency is responsible for:
 - 20.1. ensuring no My90 Agency Content or Agency end user's use of My90 Agency Content or My90 violates this Agreement or applicable laws;
 - 20.2. providing, and will continue to provide, all notices and has obtained, and will continue to obtain, all consents and rights necessary under applicable laws for Axon to process Agency Data in accordance with this Agreement; and
 - 20.3. maintaining necessary computer equipment and Internet connections for use of My90. If Agency becomes aware of any violation of this Agreement by an end user, Agency will immediately terminate that end user's access to My90. Agency will also maintain the security of end usernames and passwords and security and access by end users to My90 Agency Content. Agency is responsible for ensuring the configuration and utilization of My90 meets applicable Agency regulations and standards. Agency may not sell, transfer, or sublicense access to any other entity or person. Agency shall contact Axon immediately if an unauthorized party may be using Agency's account or My90 Agency Content or if account information is lost or stolen.
21. **Suspension.** Axon may temporarily suspend Agency's or any end user's right to access or use any portion or all of My90 immediately upon notice, if Agency or end user's use of or registration for My90 may (a) pose a security



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risk to Axon products including My90, or any third-party; (b) adversely impact My90, the systems, or content of any other customer; (c) subject Axon, Axon's affiliates, or any third-party to liability; or (d) be fraudulent. Agency remains responsible for all fees, if applicable, incurred through suspension. Axon will not delete My90 Agency Content or Aggregated Survey Response because of suspension, except as specified in this Agreement.

22. My90 Restrictions. Agency and Agency end users (including employees, contractors, agents, officers, volunteers, and directors), may not, or may not attempt to:

- 22.1. copy, modify, tamper with, repair, or create derivative works of any part of My90;
- 22.2. reverse engineer, disassemble, or decompile My90 or apply any process to derive any source code included in My90, or allow others to do the same;
- 22.3. access or use My90 with the intent to gain unauthorized access, avoid incurring fees or exceeding usage limits or quotas;
- 22.4. use trade secret information contained in My90, except as expressly permitted in this Agreement;
- 22.5. access My90 to build a competitive product or service or copy any features, functions, or graphics of My90;
- 22.6. remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon's or Axon's licensors on or within My90; or
- 22.7. use My90 to store or transmit infringing, libelous, or other unlawful or tortious material; to store or transmit material in violation of third-party privacy rights; or to store or transmit malicious code.



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Schedule 1- Details of the Processing

1. **Nature and Purpose of the Processing.** To help Agency obtain feedback from individuals, such as members of their community, staff, or officers. Features of My90 may include:
 - 1.1. Survey Tool where Agency may create, distribute, and analyze feedback from individuals it designates. Agency may designate members of the community, staff or officers from whom they would like to obtain feedback;
 - 1.2. Creation of custom forms for surveys. Agency may select questions from a list of pre-drafted questions or create their own;
 - 1.3. Distribution of survey via multiple distribution channels such as text message;
 - 1.4. Ability to access and analyze Survey Response. Axon may also provide Agency Aggregated Survey Responses which contain analysis and insights from the Survey Response;
 - 1.5. Direct integrations into information systems including Computer Aided Dispatch ("CAD"). This will enable Agency to share contact information easily and quickly with Axon of any individuals from whom it wishes to obtain feedback, enabling Axon to communicate directly with these individuals;
 - 1.6. Data Dashboard Beta Test ("**Data Dashboard**") where Survey Response and Aggregated Survey Response will be displayed for Agency use. Agency will be able to analyze, interpret, and share results of the Survey Response. My90 may provide beta versions of the Data Dashboard that are specifically designed for Agency to test before they are publicly available;
 - 1.7. Survey Responses will be aggregated and de-identified and may be subsequently distributed and disclosed through various mediums to: (1) Agency; (2) other Axon Agency; (3) private companies; and (4) members of the public. The purpose of disclosure is to provide ongoing insights and comparisons on general policing and community trends. Prior to disclosing this information, Axon will ensure that the Survey Response has been de-identified and aggregated or transformed so that it is no longer reasonably capable of being associated with, or could reasonably be linked directly or indirectly to a particular individual; and
 - 1.8. Provide services and materials to engage Agency stakeholders, market the partnership to the public, and facilitate training.

AGREEMENT BETWEEN The City of Birmingham and Axon Enterprise, Inc.

THIS AGREEMENT is entered into this 7th day of October, 2024, by and between the **CITY OF BIRMINGHAM**, whose address is 151 Martin Street, Birmingham, MI 48009 (hereinafter referred to as the City) and **Axon Enterprise, Inc.**, a Corporation, whose address is 17800 N 85th St, Scottsdale, AZ 85255 (hereafter referred to as Vendor) and the foregoing shall collectively be referred to as the parties, and effective upon the date of the Mayor's signature.

WHEREAS, the City desires to purchase body cameras, in-car fleet cameras, and TASERS, through a government cooperative purchasing agreement (Sourcewell contract #101223-AXN) as described in attachment A; and

WHEREAS, Vendor has qualifications that meet the project requirements and has provided a response and cost proposal to perform the sale through the government cooperative agreement Sourcewell contract #101223-AXN for the required body cameras, in-car cameras, and TASERS.

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

1. **MUTUALLY AGREE:** It is mutually agreed by and between the parties that the Vendors Quotation (Quote Q-584347) for body cameras, in-car cameras, and TASERS dated September 12, 2024, which includes the description of body cameras, in-car cameras, TASERS, and associated software and services, shall be fully incorporated herein by reference and shall become a part of this Agreement, and shall be binding upon both parties hereto. (Attached hereto as Attachment "B.")

2. **TERM:** This Agreement shall have a term of 60 months from the date stated above. Termination is permitted per section 6d "Termination of Orders" in the Sourcewell contract. In the event of termination, section 16 of Axon's Master Services and Purchasing Agreement ("MSPA"), as included in the Sourcewell contract, shall govern.

3. **TERMS OF PAYMENT:** The Vendor will invoice annually. In no event shall invoices be submitted more than 45 days after completion of services. The City may, at its sole discretion demand review and the right to request at any time further detailed accounting information for any or all bills. The right to inspection of any bill and invoice shall never be at any cost or billings to the City, nor shall preparation of said invoices be billed to the City or against the general retainer. Payment terms will be net 30 days from the invoice date.

4. **GOOD MORAL CHARACTER:** Vendor shall employ personnel of good moral character and fitness in performing all services under this Agreement.

5. **INSURANCE SUBMISSION REQUIREMENTS:** The vendor has submitted

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

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

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

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

9. NON-COMPLIANCE WITH INSURANCE REQUIREMENTS: Failure to deliver and maintain insurance in accordance with the terms of this Agreement will be cause for the City, by and through its City Manager, to terminate this Agreement. Nothing in this paragraph shall be deemed to create or be interpreted as establishing a "for cause" termination.

10. INDEMNIFICATION: This provision shall be governed by section 11 of the

Sourcewell Contract. Such responsibility shall not be construed as liability for damage caused by or resulting from the sole act or omission of its elected or appointed officials, employees, volunteers or others working on behalf of the City.

11. STANDARD INSURANCE REQUIREMENTS:

The Vendor shall maintain during the life of this Agreement the applicable types of insurance coverage and minimum limits as set forth below:

A. Workers' Compensation Insurance:

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

B. Commercial General Liability Insurance: _____

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

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

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

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

F. Coverage Expiration: If any of the above coverages expire during the term of this Agreement, Vendor shall deliver renewal certificates and/or policies to the City as soon as practicable upon receiving new certificates.

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

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

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

City: City of Birmingham
P.O. Box 3001
Birmingham, Michigan 48012
Attn: Scott A. Grewe

Vendor: Axon Enterprise, Inc.
17800 N. 85th Street
Scottsdale, AZ 85255
Attn: Legal

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

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

15. COMPLETE AGREEMENT: The parties agree that the conditions set forth in this Agreement along with the Sourcewell Contract sets forth all terms and conditions of Vendors agreement with the City of Birmingham. This Agreement supersedes all prior agreements or understandings between the parties. There are no promises, conditions or understandings other than those stated herein, and, that any prior negotiations, terms or conditions discussed between the City and the Vendor shall not constitute a part of this Agreement. The term "agreement"

as used in this clause shall include any future written amendments, modifications, or supplements made in accordance herewith.

16. DIRECT OR INDIRECT INTEREST: Conflicts of Interest shall be governed by section 21Q of the Sourcewell Contract. Ownership of less than one percent (1%) of the stock or other equity interest in a corporation or partnership shall not be a disqualifying interest. Employment shall be a disqualifying interest.

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

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

19. RESPONSE TO REQUESTS FOR PROPOSALS: The Vendor shall be held to and bound by all terms, conditions, warranties and representations which it made in its written response dated September 12, 2024. In the event of a conflict in any of the terms of this Agreement and the Vendor September 12, 2024 response, the terms of this Agreement shall prevail. (Attached hereto as Attachment "A.")

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

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

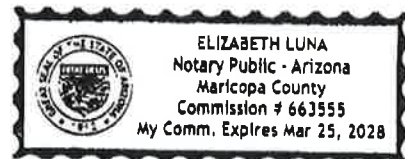
Axon Enterprise, Inc
(Vendor)

By: [Signature]
Its: Deputy General Counsel

STATE OF ARIZONA)
) ss:
COUNTY OF MARICOPA)

On this 1st day of October, 2024 before me personally appeared Robert E. Driscoll, Jr. who acknowledged that with authority on behalf of Axon Enterprise, Inc. do so he/she signed this Agreement.

[Signature]
Notary Public
Maricopa County, Arizona
Acting in Maricopa County, Arizona
My commission expires: 3/25/28



CITY OF BIRMINGHAM:

By: _____
Elaine McLain, Mayor
Dated: _____

By: _____
Alexandria D. Bingham, City Clerk
Dated: _____

APPROVED:

[Signature]
Jana L. Ecker, City Manager
(Approved as to substance)

[Signature]
Scott A. Grewe
(Approved as to substance)

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

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

**VENDOR CERTIFICATION
THAT IT IS NOT AN
"IRAN LINKED BUSINESS"**

Pursuant to Michigan law, (*the Iran Economic Sanctions Act, 2012 PA 517, MCL*

129.311 et seq.), before accepting any bid or proposal, or entering into any contract for goods or services with any prospective Vendor, the Vendor must first certify that it is not an "IRAN LINKED BUSINESS, as defined by law.

Vendor	
Legal Name	Axon Enterprise, Inc.
Street Address	17800 N. 85th Street
City	Scottsdale
State, Zip	Arizona, 85255
Corporate I.D. Number / State	3337819 - Delaware, USA
Taxpayer I.D. #	86-6741227

The undersigned, with: 1) full knowledge of all of Vendors business activities, 2) full knowledge of the requirements and possible penalties under the law MCL 129.311 et seq. and 3) the full and complete authority to make this certification on behalf of the Vendor, by his/her signature below, certifies that: the Vendor is NOT an "IRAN LINKED BUSINESS" as required by MCL 129.311 et seq., and as such that Vendor is legally eligible to submit a bid and be considered for a possible contract to supply goods and/or services to the County of Oakland.

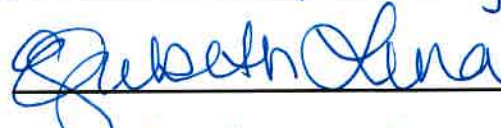
Signature of Vendor's
Authorized Agent:



Printed Name of Vendor's
Authorized Agent:

Robert E. Driscoll, Jr.

Witness Signature:



Printed Name of Witness:

Elizabeth Luna



MEMORANDUM

Planning Division

DATE: October 1, 2024

TO: Jana L. Ecker, City Manager

FROM: Nicholas Dupuis, Planning Director

SUBJECT: Set Public Hearing for 400 E. Lincoln – Rezoning Request to change the zoning designation from R4 (Two-Family Residential) to PP (Public Property)

INTRODUCTION:

The applicant has submitted a rezoning application for 400 E. Lincoln to change the zoning designation of the entire parcel from R4 (Two-Family Residential) to PP (Public Property). The subject site is located on the south side of Lincoln between Edgewood Rd. and Floyd St.

The City of Birmingham purchased the parcel at 400 E. Lincoln in the summer of 2023. At the time of purchase, it was the intention of the City to re-model or replace the existing structure (the current Birmingham YMCA) to create a permanent home for senior services (provided by Next) with an additional recreational component for all community members. The City is now in the early planning stages of replacing the existing building with a new senior recreation center.

BACKGROUND:

The Planning Board is scheduled to review the rezoning application on October 9, 2024 and will provide a recommendation to the City Commission regarding the rezoning request. A full analysis of the findings of fact and other requirements from Article 7, Section 7.02 of the Zoning Ordinance will be provided at the public hearing.

LEGAL REVIEW:

The City Attorney has reviewed this request and has no objections as to form and content.

FISCAL IMPACT:

There are no direct fiscal impacts for this agenda item.

SUSTAINABILITY:

There are no major sustainability considerations at this time, as this request is more about the use of the property than the development itself.

DESIGN CONSIDERATIONS:

There are no direct design considerations at this time. However, the Planning Department does acknowledge that the transition from R4 to PP zoning will have implications as to the potential bulk, area, and setback for a future development and the overall building design. The design of a new building will be reviewed at the site plan stage.

PUBLIC COMMUNICATIONS:

As required for rezoning requests, a legal ad was placed in a newspaper of local circulation to advertise the public hearing at the Planning Board on October 9, 2024. In addition, postcards were sent out to property owners and occupants within 300 feet of the subject site. Similar notices will be sent out in advance of the public hearing at the City Commission on October 28, 2024.

SUMMARY:

The Planning Department requests that the City Commission set a public hearing date of October 28, 2024 to consider the rezoning application for 400 E. Lincoln, to change the zoning designation of 400 E. Lincoln from R4 (Two-Family Residential) to PP (Public Property).

ATTACHMENTS:

Please see attached the following documents:

- Rezoning Application Materials

SUGGESTED COMMISSION ACTION:

Make a motion adopting a resolution to set a public hearing date of October 28, 2024 to consider the rezoning application for 400 E. Lincoln, to change the zoning designation of the entire parcel from R4 (Two-Family Residential) to PP (Public Property).

City of Birmingham
151 Martin
Birmingham, MI 48012

Planning Board
City Commission
City of Birmingham
151 Martin
Birmingham, MI 48012

*Re: Application for Zoning Map and Ordinance Change for 400 East Lincoln, Birmingham,
("subject property") from R4 to PP*

Dear Members of the Planning Board and City Commission,

This letter supports the above referenced Application for Zoning Map and Ordinance Change of the Subject property. The Applicant requests one amendment:

- i. To change the subject property from R4 (Two-Family Residential) to PP (Public Property)

Executive Summary - The Subject Property

The City of Birmingham purchased the parcel at 400 E. Lincoln in the summer of 2023. At the time of purchase, it was the intention of the City to re-model or replace the existing structure (the current Birmingham YMCA) to create a permanent home for senior services (provided by Next) with an additional community component for all community members.

The City is now in the planning stages of replacing the existing building with a new Senior/Community Center. This report is the application for changing the current zoning of the parcel, R4 (Two-Family Residential) to PP (Public Property).

The City's zoning ordinance (Chapter 126, Section 1.04) is intended to guide the growth and development of the City in accordance with the goals, objectives and strategies stated within the City's Birmingham Plan 2040.

The City's Birmingham Plan 2040 specifically refers to Next and the YMCA as civic destinations regarding efforts to encourage community gathering places. Civic destinations include fire stations, meeting halls, museums, post offices, schools and specialized institutions such as Next and the YMCA. The City plans to use the subject property for a new building to provide senior services for older adults (proposed partnership with Next) and provide community based services for all residents of the community (proposed partnership with the YMCA).

The City's Birmingham Plan 2040 has a comprehensive examination of sustainability goals and objectives. On page 80 of the Birmingham Plan 2040, it states, "Advance building sustainability in new construction, such as through the use of green building standards within the City's mixed-use districts and municipal buildings and increasing energy standards for new residential construction above those of the State energy code, ideally implementing 2030 District goals." In that the City is going to undertake the construction of a new municipal building, it would fall in line with the suggestions of the City's Birmingham Plan 2040 to incorporate advanced building

sustainability components into the project. The increased costs of incorporating sustainability components in the project could be off-set by seeking grants or other forms of assistance and in reduced building operation costs.

The Birmingham Plan 2040 also discusses reducing the impacts that municipal operations have on the environment. The following goals were stated:

- a. Establish policies for municipal buildings, following the green buildings discussion in the next section.
- b. Study sustainability opportunities in Parks and Recreation, such as pollinator gardens, solar panel pavilions, plant species, tree canopy, landscape maintenance processes, and environmental regulations.

Given that the subject property will be built adjacent to St. James Park (already zoned PP), it has always been the desire to incorporate the park into the design and operation of the new Senior/Recreation Center, thus allowing the potential for many of the sustainable initiatives listed above.

The Birmingham Plan 2040 specifically addresses updating the City's current zoning code to encourage greater clarity and simplicity in zoning. Rezoning the subject property to PP clarifies it as distinctly public use and removes the existing residential designation.

In summary, the City's proposed rezoning of the subject property from R4 to PP not only aligns with the Birmingham Plan 2040, but also supports the simplification of the zoning code and planning by district.

Rezoning Amendment (Chapter 126, Article 7.02)

The City Commission may, by ordinance, amend, supplement or change the zoning only after the Planning Board has held at least one public hearing regarding the proposed amendment and has reported to the City Commission thereon. The City Commission may hold additional public hearings as it deems necessary.

Article 7.02 (B)(2)(i)-(iii)

The Zoning Ordinance requires that as part of the application for rezoning, the applicant address the following issues to be considered by the Planning Board and the City Commission. The applicant's responses are outlined below each requirement.

- i. **An explanation of why the rezoning is necessary for the preservation and enjoyment of the rights and usage commonly associated with property ownership.**

The current zoning of the parcel is R4 (Two-Family Residential). With the transfer of ownership to the City, it is necessary to be rezoned as PP (Public Property) to allow the construction of the proposed building. Rezoning allows the subject property to be developed as public property for the usage and benefit of all residents, with social and recreational opportunities for seniors and families.

ii. **An explanation of why the existing zoning classification is no longer appropriate.**

The current zoning of the parcel is R4 (Two-Family Residential). The rezoning to PP compliments the City's Birmingham Plan 2040 by creating a new civic destination that aligns perfectly with the existing attached public park (St. James Park) that is already zoned PP. The City is a public entity and will be providing services to older adults (Next), recreational services to families, and a community and civic destination for all residents.

iii. **An explanation of why the proposed zoning will not be detrimental to the surrounding properties.**

The change in zoning to PP fits well within the illustrated master plan, the Birmingham Plan 2040, to enhance the surrounding properties and provide a connection to St. James Park by replacing the exiting private building with a new municipal Senior/Recreation Center that benefits the entire community.

The Senior/Recreation Center parcel is intended to be civic destination and encourage the use of outdoor spaces. Page 36 of the Birmingham 2040 Plan identifies the idea of civic destinations to include "specialized civic institutions such as Next and the YMCA." The Senior/Recreation Center building will be a new civic destination for the community providing opportunities for physical, social, educational and recreational uses.

Article 7.02(B)(5)(a) thru (e) - Findings of fact and recommendations of the Planning Board

The Planning Board shall make written findings of fact and transmit same, together with its recommendation, to the City Commission. The City Commission may hold additional hearings if the City Commission considers it necessary. The Planning Board shall make findings based on the evidence presented to it with respect to the following matters:

a. **Applicant meets the objectives of the City's current master plan, the Birmingham Plan 2040.**

One of the major goals of the City's master plan is to "Connect the City." Page 36 of the 2040 Plan states, "Of particular interest to older residents is the lack of a sufficient senior center. While Next's programs and staff meet much of this need, their facilities are insufficient. Surrounding communities boast substantial seniors facilities. Beyond the senior focus, some younger adults use Next's facilities and Next has begun to broaden their appeal beyond the senior cohort. Improved facilities for Next would contribute to both older and younger adult populations. At present Next occupies a former school building located adjacent to Seaholm. New facilities for Next would ideally be located near the center of the city, for more convenient access to all residents."

The subject property is an ideal location to meet all of the listed desires of the City's master plan for a new civic destination that is closer to the center of the City and provides a gathering place for the entire community.

b. The proposed development is consistent with existing uses in the area.

The subject property is the current home of the Birmingham YMCA. The City's proposed new Senior/Recreation Center use is consistent with the location's current use, but will be enhanced by providing senior services, connecting the building to St. James Park and opening up the building for numerous community based and recreational service offerings.

c. The proposed zoning classification is consistent with those in the general area.

Rezoning the subject property from R4 to PP is consistent with zoning in the area. The subject property is surrounded by single family residential zoning to the west and to the north. The parcels to the east are zoned B1, neighborhood business district. The parcel to the south (St. James Park) is zoned PP. The applicant's proposed rezoning is consistent with those in the general area.

d. The proposed use of the subject property is not suitable under existing zoning.

The current R4 zoning allows for institutional permitted uses for government offices, philanthropic uses and public schools. PP zoning permitted uses allows for government uses, not just government offices. In addition, PP zoning allows for the recreational use of a public swimming pool. The issue of whether or not a pool will be a part of the Senior/Recreation Center project has not yet been formally decided, but rezoning to PP will allow for a public pool if that option comes to fruition.

e. The trend of development in the area supports rezoning of the subject property to PP.

The subject property is currently operating under a private operator, the YMCA. It is the City's intention to develop the subject property into a civic destination by creating a Senior/Recreation Center to provide senior services for the City's older adult population and a community centric recreation center and facility that serves the entire community with recreational, social and educational services and uses.

As referenced earlier, several of the City's Birmingham Plan 2040 initiatives will be achieved if the requested rezoning moves forward. Having the subject property rezoned to PP makes logical sense given the public nature of the project and its intended public use as a civic destination.

Conclusion

The building of a new municipal building at the subject property will create a new civic destination close to the center of the City that will provide the Birmingham community with a home to provide

senior services and a hub for community based activities for residents of all ages. The new Senior/Recreation Center has the potential to be the catalyst in connecting the City, one of the major goals of the City's Birmingham Plan 2040.

The subject property will house a public building and serve a public function, adjacent to a public park. A great deal of research and planning have been devoted to ensuring that the proposed Senior/Recreation Center project align with City Commission goals and objectives as well as many of the goals and objectives discussed already as part of the City's Birmingham Plan 2040.

Based upon the findings of fact, the rezoning the subject property from R4 to PP will benefit all residents of the City and benefit surrounding properties.

Thus, the applicant requests that the Planning Board recommend to the City Commission that the subject property be rezoned from R4 (Two -Family Residential) to PP (Public Property).

Respectfully submitted,

Brian Deming
Owner's Representative
City of Birmingham

APPLICATION FOR ZONING MAP OR ORDINANCE CHANGE
Birmingham, Michigan

TO THE CITY COMMISSION:

The undersigned hereby makes application to the City Commission to:

1. Zoning Map Change:

Change premises described as:

No.	Street
-----	--------

Legal Description _____ from its present zoning

classification of _____ to _____.

A sealed land survey showing location, size of lot and placement of building (if any) on the lot to scale must be attached.

Statements and reason for request or other data have a direct bearing on the request.

2. Change premises described as:

400 E. LINCOLN AVENUE

No.	Street
-----	--------

Attached

Legal Description _____ from its present zoning

classification of R4 to PP.

A sealed land survey showing location, size of lot and placement of building (if any) on the lot to scale must be attached.

Statements and reasons for request or other data have a direct bearing on the request.

Signature of Applicant: 

Print Name: BRIAN M. DEMING, OWNER REP, KRAMER MGT GROUP

Name of Owner: CITY OF BIRMINGHAM

Address and Telephone Number: 1305 S. WASHINGTON AVE, Ste 101 LANSING MI
48910
248-752-1126

Legal Description

Site Address: 400 E LINCOLN AVE, BIRMINGHAM, MI, 48009

Parcel Identification Number: 1936403032

Property Description: T2N, R10E, SEC 36 BIRMINGHAM WOODWARD SUB LOTS 5 TO 14 INCL
EXC N 3 FT TAKEN FOR LINCOLN DR WIDENING, ALSO ALL OF VAC ALLEY ADJ TO SAME, ALSO
LOTS 15 TO 18 INCL, ALSO LOTS 64 TO 67 INCL 4-12-93 FR 001 & 002

400 E Lincoln Avenue



- 2 Foot Contours
- 5 Foot Contours
- FEMA Base Flood Elevations
- FEMA Cross Sections
- 100 yr - FEMA Floodplain
- 100 yr (detailed) - FEMA Floodplain
- 500 yr - FEMA Floodplain
- FLOODWAY - FEMA Floodplain

Disclaimer: The information provided herewith has been compiled from recorded deeds, plats, tax maps, surveys and other public records. It is not a legally recorded map or survey and is not intended to be used as one. Users should consult the information sources mentioned above when questions arise. FEMA Floodplain data may not always be present on the map.



David Coulter
Oakland County Executive

Date Created: 9/12/2024



1 inch = 100 feet

5H

02/20/2024 10:00 AM

02/20/2024 10:00 AM

EXISTING BIRMINGHAM YMCA FACILITY:
400 E. LINCOLN & ST. JAMES PARK

LAND / BUILDING / PARKING DATA

LAND
Zoning: R-7: Multi-Family Residential
Site Acreage: 1.28 Acres

EXISTING FACILITY AREA

LOWER LEVEL 17085 SF
GROUND LEVEL 17248 SF
SECOND LEVEL 6297 SF
GROSS BUILDING AREA APPROX. 40631 SF

Floor to Area Ratio (FAR): 0.78

PARKING DATA

Existing Parking

Existing YMCA Spaces : 72 Stalls
Existing St. James Park Spaces : 55 Stalls
Existing Floyd Street ROW Spaces : 22 Stalls
Total Combined Existing Parking Proposed = 149 stalls

Parking - Site Option A - Existing / New Building in same location
Total Combined Parking Required For Proposed Program area = 73,980 SF
Required Parking: 1 stall / 550 s.f. = 135 stalls
Total Combined Parking Proposed = 145 stalls

On the Southern boundary of the project site is the City of Birmingham St James Park with it's ample outdoor space and potential to expand in the project's amenities. The role of outdoor spaces in multi-generational recreation centers is crucial for creating vibrant and engaging environments. With a design goal to promote physical activity, social connections and a sense of community across generations. The survey data and resources provided by the community have identified Outdoor Program Amenities as the top priorities that contribute to inter-generational play and recreation.

Role of Outdoor Space in multi-generation recreation centers.

- Promoting Intergenerational Engagement.
- Inclusive Playgrounds and Equipment.
- Open Fields for Sports.
- Walking Loops and Trails.
- Outdoor Fitness Equipment.

Existing Zoning Setbacks R-7 (Multi-Family Residential)

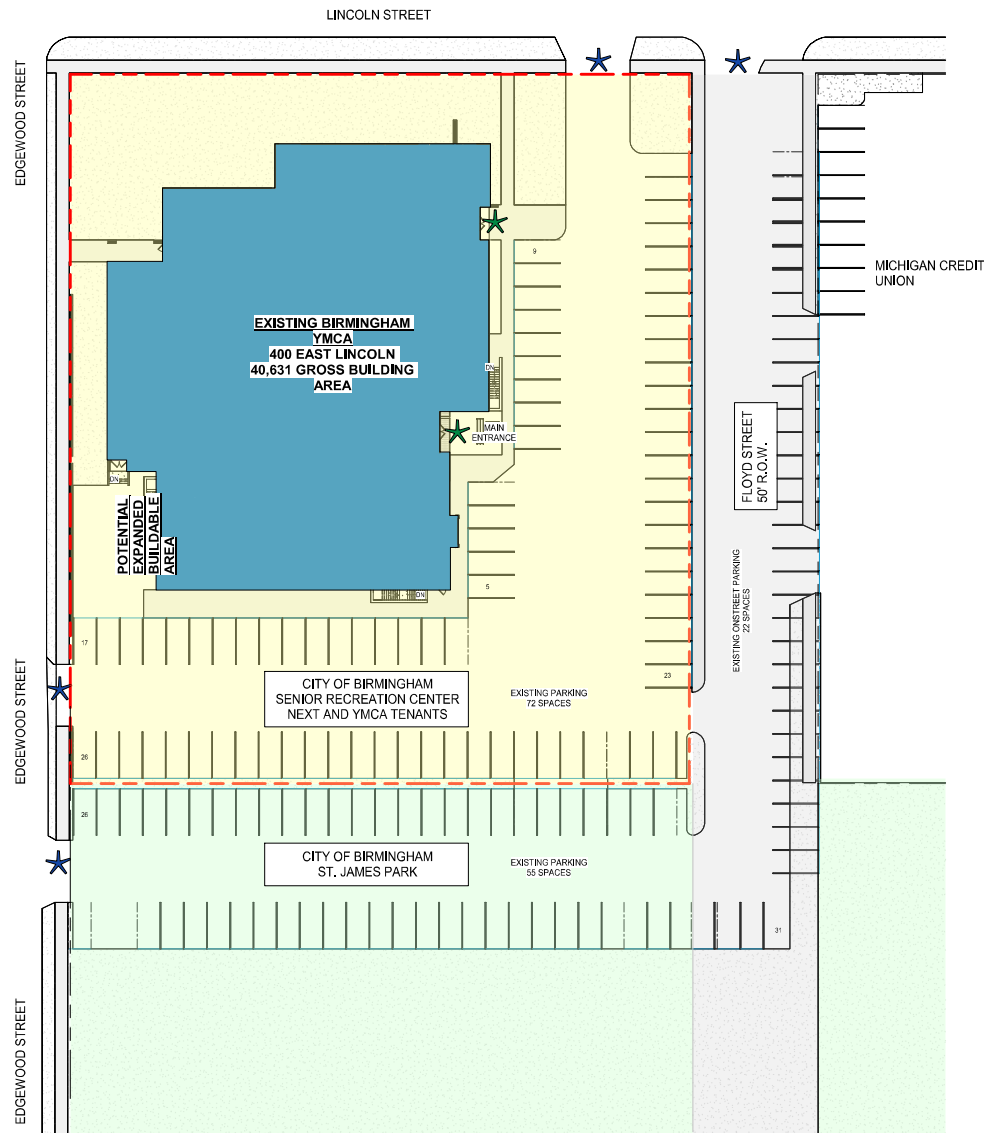
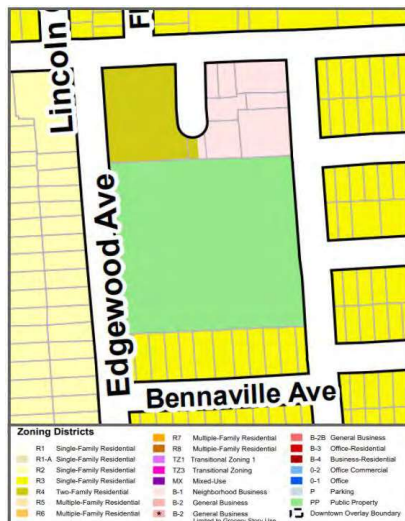
TABLE 2.18.2 – Setbacks (see Figure 2.18.2)	
Minimum Front Yard Setback	average setback of residential buildings within 200 feet, otherwise 25 feet
Minimum Rear Yard Setback	30 feet
Minimum Combined Front and Rear Setback	NA
Minimum Side Yard Setback	1/2 the building height per side yard

Figure 2.18.2 - Setbacks

Zoning Setbacks - PP (Public Property)

TABLE 2.02.2 – Setbacks (see Figure 2.02.2)	
Minimum Front Yard Setback	NA
Minimum Rear Yard Setback	NA
Minimum Combined Front and Rear Setback	NA
Minimum Side Yard Setback	NA

Figure 2.02.2 - Setbacks



EXISTING SITE PLAN
SCALE: 1" = 20'-0"

5H

DATE	ISSUED FOR	REV

This drawing has been prepared solely for the use of CITY OF BIRMINGHAM and there are no representations of any kind made by NORR to any party with whom NORR has not entered into a contract.

This drawing shall not be used for construction purposes until the seal appearing hereon is signed and dated by the Architect or Engineer.

Project Component

Key Plan

Contributors

Survey: NORR
Civil: NORR
Architecture: NORR
Structural: NORR
Mechanical: NORR
Electrical: NORR
Interior: NORR
Landscape: NORR

Scale(s)

2

NORR

NORR OFFICE ADDRESS
nor.com

Project Manager: Drawn
Project Leader: Author
Project Leader: Checked
Project Leader: Checked

Client

CITY OF BIRMINGHAM

Project

CITY OF BIRMINGHAM SENIOR / RECREATION BUILDING ASSESSMENT & CONCEPTUAL DESIGN

Location

400 E LINCOLN ST., BIRMINGHAM, AL

EXISTING SITE PLAN

Scale

As indicated

Project No.

JCD121-0373

Drawing No.

A10-00



MEMORANDUM

Planning Division

DATE: September 30, 2024

TO: Jana L. Ecker, City Manager

FROM: Nicholas Dupuis, Planning Director

SUBJECT: Set Public Hearing for 2211 & 2243 Cole – Dobi – Special Land Use Permit, Final Site Plan & Design Review

INTRODUCTION:

The applicant has submitted a Special Land Use Permit, Final Site Plan & Design Review application to connect two units in an existing commercial building to create a single tenant space. Article 2, Section 2.39 (C) of the Zoning Ordinance states that any permitted principal use in the MX (Mixed-Use) zoning district with a total floor area greater than 6,000 sq. ft. is required to obtain a Special Land Use Permit. Combining the two units would bring the total square footage of that space to 7,645 sq. ft. The DOBI Real Estate offices would comprise the entire footprint.

BACKGROUND:

On September 25, 2024 (Agenda), the Planning Board moved to recommend approval to the City Commission the Special Land Use Permit application for 2211 Cole St – Dobi Real Estate – subject to the following condition:

1. The applicant must comply with the requests of all City Departments.

LEGAL REVIEW:

The City Attorney has reviewed this request and has no objections as to form and content. The executed contract will be thoroughly reviewed at the time of the public hearing.

FISCAL IMPACT:

There are no fiscal impacts for this agenda item.

SUSTAINABILITY:

Not applicable.

DESIGN CONSIDERATIONS:

No design changes proposed.

PUBLIC COMMUNICATIONS:

As required for Special Land Use Permit Reviews, a legal ad was placed in a newspaper of local circulation to advertise the public hearing at the Planning Board on September 25, 2024. In addition, postcards were sent out to property owners and occupants within 300 feet of the subject site. Similar notices will be sent out in advance of the public hearing at the City Commission on November 18, 2024.

SUMMARY:

The Planning Division requests that the City Commission set a public hearing date of November 18, 2024 to consider the Special Land Use Permit, Final Site Plan & Design Review application for 2211 & 2243 Cole, to permit a use greater than 6,000 square feet in the MX (Mixed-Use) zoning district of Birmingham.

ATTACHMENTS:

Please see attached the following documents:

- Special Land Use Permit Resolution
- Special Land Use Permit Contract
- Site/Design Plans
- Planning Board Report

SUGGESTED COMMISSION ACTION:

Make a motion adopting a resolution to set a public hearing date of November 18, 2024 to consider the Special Land Use Permit, Final Site Plan & Design Review application for 2211 & 2243 Cole, to permit a use greater than 6,000 square feet in the MX (Mixed-Use) zoning district of Birmingham.

Dobi
2211 & 2243 Cole
Special Land Use Permit 2024

WHEREAS, A Special Land Use Permit, Final Site Plan & Design Review application was filed in September 2024 for approval of a tenant space greater than 6,000 square feet in the MX (Mixed-Use) zoning district of Birmingham;

WHEREAS, The land for which the Special Land Use Permit is sought is located on the north side of Cole Street, east of South Eton Street;

WHEREAS, The land is zoned MX (Mixed-Use), which permits uses greater than 6,000 square feet with a Special Land Use Permit;

WHEREAS, The applicant is proposing to combine two existing commercial tenant spaces at 2211 and 2243 Cole Street into a single tenant space totaling 7,645 square feet;

WHEREAS, Article 7, section 7.34 of Chapter 126, Zoning requires a Special Land Use Permit to be considered and acted upon by the Birmingham City Commission, after receiving recommendations on the site plan and design from the Planning Board for the proposed Special Land Use;

WHEREAS, The Birmingham Planning Board on September 25, 2024 reviewed the application for Special Land Use Permit, Final Site Plan & Design Review and moved to recommend approval to the City Commission of the proposed tenant space greater than 6,000 square feet in the MX (Mixed-Use) zone;

WHEREAS, The Birmingham City Commission has conducted a public hearing on November 18, 2024, and has reviewed the Special Land Use Permit, Final Site Plan & Design Review application and the standards for such review as set forth in Article 7, section 7.36 of Chapter 126, Zoning, of the City Code;

NOW, THEREFORE, BE IT RESOLVED, The Birmingham City Commission finds the standards imposed under the City Code have been met, subject to the conditions below, and that DOBI Real Estate's application for a Special Land Use Permit, Final Site Plan & Design Review at 2211 & 2243 Cole Street is hereby approved;

BE IT FURTHER RESOLVED, That the City Commission determines that to ensure continued compliance with Code standards and to protect public health, safety, and welfare, this Special Land Use Permit is granted subject to the following conditions:

1. DOBI Real Estate shall abide by all provisions of the Birmingham City Code;
2. DOBI Real Estate shall comply with the approved site and design plans and any amendments thereto; and
3. The Special Land Use Permit may be canceled by the City Commission upon finding after proper notice and a hearing that the continued use is not in the public interest.

BE IT FURTHER RESOLVED, That failure to comply with any of the above conditions shall result in termination of the Special Land Use Permit.

BE IT FURTHER RESOLVED, Except as herein specifically provided, DOBI Real Estate's and its heirs, successors, and assigns shall be bound by all ordinances of the City of Birmingham in effect at the time of the issuance of this permit, and as they may be subsequently amended. Failure of DOBI Real Estate's to comply with all the ordinances of the City may result in the Commission revoking this Special Land Use Permit.

BE IT FURTHER RESOLVED that DOBI Real Estate's is recommended for approval of a tenant space greater than 6,000 square feet in the MX (Mixed-Use) zoning district of Birmingham at 2211 & 2243 Cole Street, subject to final inspection.

I, Alexandria Bingham, City Clerk of the City of Birmingham, Michigan, do hereby certify that the foregoing is a true and correct copy of the resolution adopted by the Birmingham City Commission at its regular meeting held on November 18, 2024.

Alexandria Bingham
City Clerk

CONTRACT FOR A SPECIAL LAND USE PERMIT FOR 2211 & 2243 COLE ST. – DOBI REAL ESTATE

This Contract is entered into this _____ day of _____, 2024 by and between **STH GROUP, LLC**, whose address is 2211 Cole Street, Birmingham MI 48009 (herein referred to as "DOBI Real Estate"), **COLE BUSINESS CENTER, LLC**, whose address is 2271 Cole Street, Birmingham, MI 48009 (Property Owner), and the **CITY OF BIRMINGHAM**, a Michigan Municipal Corporation, whose address is 151 Martin Street, Birmingham, Michigan 48009 (City).

R E C I T A L S:

WHEREAS, A Special Land Use Permit, Final Site Plan & Design Review application was filed in September 2024 for approval of a tenant space greater than 6,000 square feet in the MX (Mixed-Use) zoning district of Birmingham; and

WHEREAS, The land for which the Special Land Use Permit is sought is located on the north side of Cole Street, east of South Eton Street; and

WHEREAS, The land is zoned MX (Mixed-Use), which permits uses greater than 6,000 square feet with a Special Land Use Permit; and

WHEREAS, The applicant is proposing to combine two existing commercial tenant spaces at 2211 and 2243 Cole Street into a single tenant space totaling 7,645 square feet; and

WHEREAS, Article 7, section 7.34 of Chapter 126, Zoning requires a Special Land Use Permit to be considered and acted upon by the Birmingham City Commission, after receiving recommendations on the site plan and design from the Planning Board for the proposed Special Land Use; and

WHEREAS, The Birmingham Planning Board on September 25, 2024 reviewed the application for Special Land Use Permit, Final Site Plan & Design Review and moved to recommend approval to the City Commission of the proposed tenant space greater than 6,000 square feet in the MX (Mixed-Use) zone; and

WHEREAS, The Birmingham City Commission has conducted a public hearing on November 18, 2024, and has reviewed the Special Land Use Permit, Final Site Plan & Design Review application and the standards for such review as set forth in Article 7, section 7.36 of Chapter 126, Zoning, of the City Code.

THEREFORE, the parties agree as follows:

1. DOBI Real Estate acknowledges that no modifications to the site plan, floor plan, elevations or operation of the establishment may be made unless approved by the City Commission through a Special Land Use Permit Amendment as required in the Zoning Ordinance. Modifications include, but are not limited to, name changes, ownership changes, remodeling, etc.

2. DOBI Real Estate agrees that it shall adhere to all Federal, State and Local

ordinances currently in effect or as subsequently amended or enacted.

3. To the fullest extent permitted by law, DOBI Real Estate and any entity or person for whom DOBI Real Estate is legally liable, agrees to be responsible for any liability, defend, pay on behalf of, indemnify, and hold harmless the City, its elected and appointed officials, employees and volunteers and others working on behalf of the City against any and all claims, demands, suits, or loss, including all costs connected therewith, including all costs and actual attorney fees, and for any damages which may be asserted, claimed or recovered against or from the City, its elected and appointed officials, employees, volunteers or others working on behalf of the City, by reason of personal injury, including bodily injury, death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with DOBI Real Estate's operation of an establishment at the Property. DOBI Real Estate is not liable if the act or omission is the City's.

4. In the event DOBI Real Estate fails to reimburse the City the costs and/or attorney fees as required herein, or any part thereof, then said amount could be transferred to the tax roll in accordance with Section 1-14 of the Birmingham City Code as acknowledged by the Property Owner, COLE BUSINESS CENTER, LLC, whose address is 2271 Cole Street, Birmingham, MI 48009.

5. This Contract shall be governed by and performed, interpreted and enforced in accordance with the laws of the State of Michigan.

6. If any provision of this Contract is declared invalid, illegal or unenforceable, such provision shall be severed from this Contract and all other provisions shall remain in full force and effect.

7. The City determines that to ensure continued compliance with Code standards and to protect public health, safety, and welfare, this Special Land Use Permit is granted subject to the following conditions:

- a. DOBI Real Estate shall abide by all provisions of the Birmingham City Code; and
- b. DOBI Real Estate shall comply with the conditions of approval assigned by the Planning Board and City Commission; and
- c. The Special Land Use Permit may be canceled by the City Commission upon finding, after proper notice and a hearing, that the continued use is not in the public interest.

8. Failure to comply with any of the above conditions may result in termination of the Special Land Use Permit after DOBI Real Estate has been given notice and a hearing.

9. Except as herein specifically provided DOBI Real Estate and its heirs, successors, and assigns shall be bound by all ordinances of the City of Birmingham in effect at the time of the issuance of this permit, and as they may be subsequently amended. Failure of DOBI Real Estate to comply with all the ordinances of the City may result in the Commission revoking this Special Land Use Permit, after notice and a hearing.

10. DOBI Real Estate is recommended for the approval of a tenant space greater than 6,000 square feet in the MX (Mixed-Use) zoning district of Birmingham at 2211 & 2243 Cole Street, subject to final inspection.

11. This Contract shall be binding upon and apply and inure to the benefit of the parties hereto and their respective successors or assigns. The covenants, conditions, and the agreements herein contained are hereby declared binding on the City and DOBI Real Estate. It is further agreed that there shall be no change, modification, or alteration hereof, except in writing, signed by all of the parties hereto. No party shall assign any of the rights under this Contract without prior approval, in writing, of the other. Any attempt at assignment without prior written consent shall be void and of no effect.

(This space intentionally left blank)

IN WITNESS WHEREOF, the parties hereby have executed this Contract as of the date set forth above.

STH GROUP, LLC (DOBI Real Estate)

By: _____

Its: _____

Date: _____

STATE OF MICHIGAN)
) ss:
COUNTY OF OAKLAND)

On this _____ day of _____, 2024, before me personally appeared _____ who acknowledged that with authority on behalf **STH GROUP, LLC** to do so signed this Agreement.

Notary Public

County, Michigan
Acting in _____ County, Michigan
My commission expires: _____

COLE BUSINESS CENTER, LLC (Property Owner)
(as to paragraph 10 only)

By: _____

Its: _____

Date: _____

STATE OF MICHIGAN)
) ss:
COUNTY OF OAKLAND)

On this _____ day of _____, 2024, before me personally appeared _____, who acknowledged that with authority on behalf of **COLE BUSINESS CENTER, LLC** to do so signed this Agreement.

Notary Public

County, Michigan
Acting in _____ County, Michigan
My commission expires: _____

CITY OF BIRMINGHAM

By: _____
Elaine McLain, Mayor

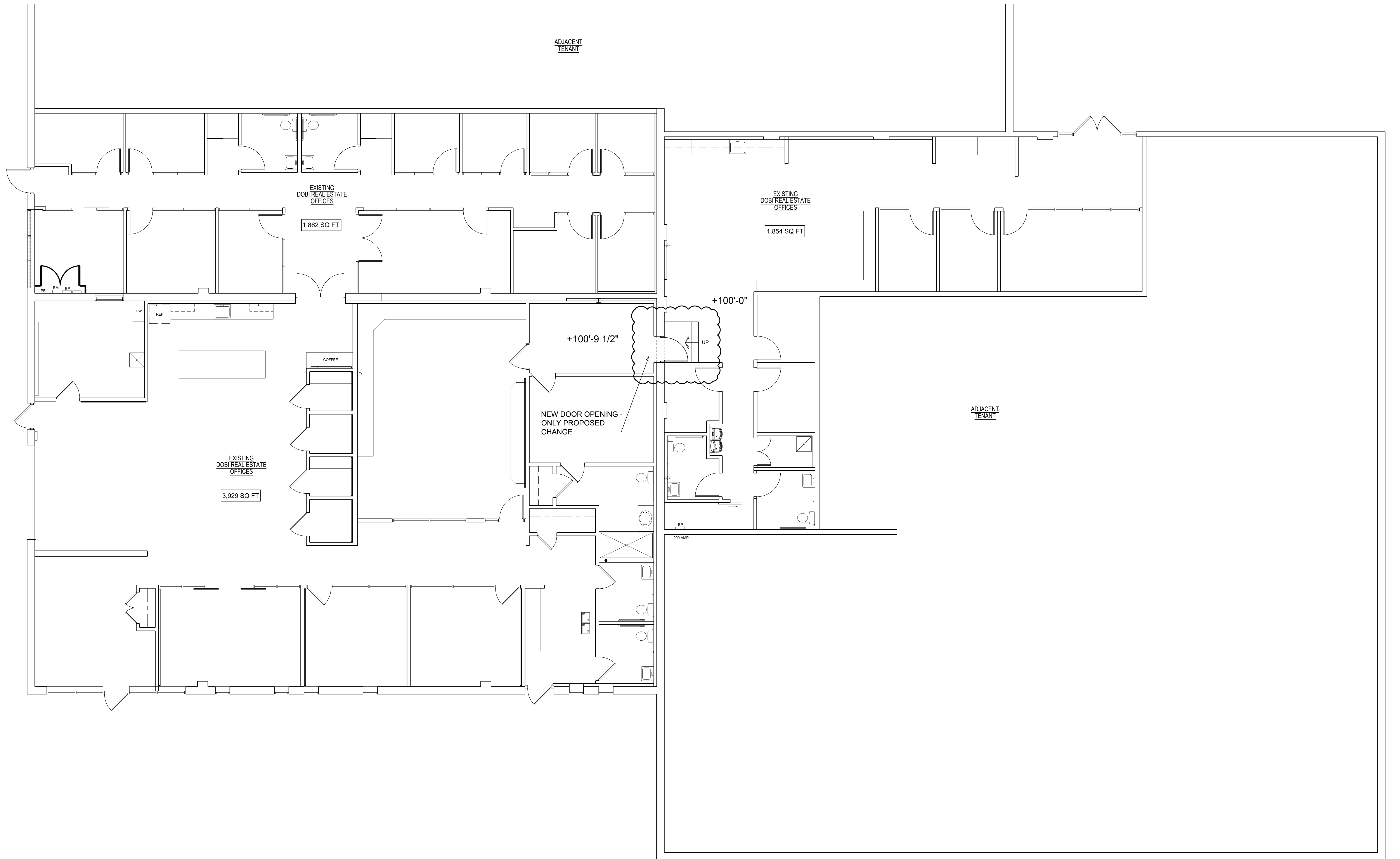
By: _____
Alexandria D. Bingham, City Clerk

APPROVED:

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

Nicholas J. Dupuis, Planning Director
(Approved as to substance)

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

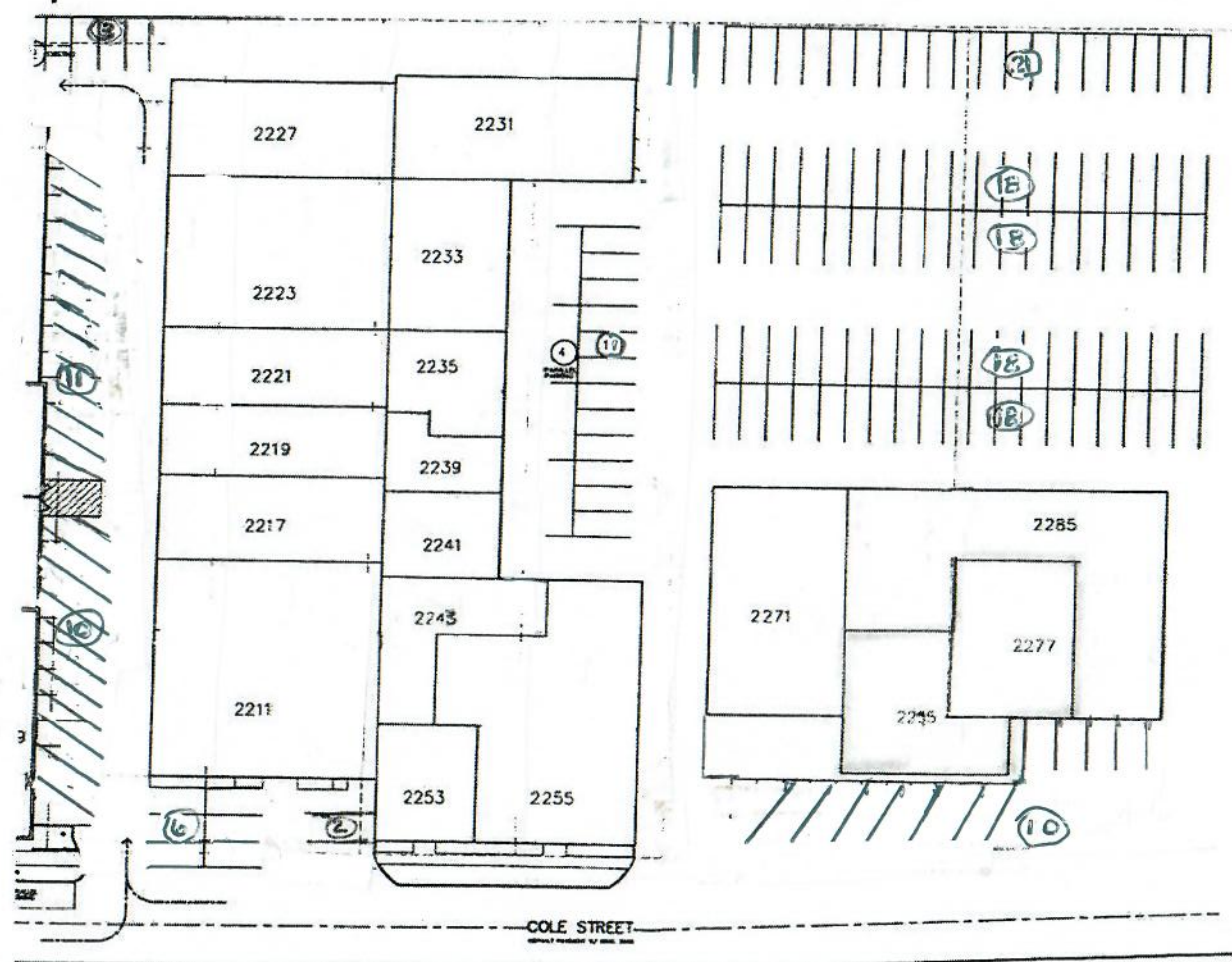


PROPOSED PLAN
2211 & 2243 COLE ST. BIRMINGHAM, MI

8-30-24

SCALE 3/16" = 1'-0"

150 SPACES



ARCHITECTURAL SITE PLAN
SCALE: 1/8" = 1'-0"
REVISIONS PROVIDED BY: JON SARKISIAN ARCHITECTS, P.C.

TOTAL REGULAR PARKING PROVIDED: 150 SPACES

TOTAL REGULAR PARKING PROVIDED AT
COLE BUSINESS CENTER: 235 SPACES

COLE BUSINESS CENTER
JON SARKISIAN ARCHITECTS, P.C.
ARCHITECTS
1000 10TH AVENUE, SUITE 100
DENVER, CO 80202
TEL: 303.733.1111
FAX: 303.733.1112
WWW.JONSAWKISIAN.COM
SHEET NO. A-2 OF 2



MEMORANDUM

Planning Division

DATE: September 20, 2024

TO: Planning Board Members

FROM: Summer Aldred, Planning Intern

APPROVED BY: Nicholas Dupuis, Planning Director

SUBJECT: 2211 Cole Street – Dobi Real Estate – Special Land Use Permit Amendment (SLUP)

The subject site, 2211 Cole Street – Dobi Real Estate, is located on the east side of Birmingham in the MX (Mixed Use) zoning district. There are no overlay districts associated with the property. This area is referred to as the “Rail District.” 2211 Cole Street is also called the Cole Business Center and is comprised of multiple commercial units.

At this time, the applicant has submitted a Special Land Use Permit, Final Site Plan and Design Review application to connect units 2211 and 2243 to create a single tenant space. Article 2, Section 2.39 (C) of the Zoning Ordinance states that any permitted principal use with a total floor area greater than 6,000 sq. ft. is required to submit a Special Land Use Permit. If units 2211 and 2243 are connected, it would bring the total square footage of that space to 7,645 sq. ft.

Article 7, Section 7.20 states that a Special Land Use Permit is required for the operation of a regulated use and the City Commission shall refer the Site Plan and the design to the Planning Board for its review and recommendation. After receiving the recommendation, the City Commission shall review the Site Plan and design of the building(s) and/or use(s) proposed in conjunction with the regulated use application. City Commission approval must be granted prior to the issuance of a regulated use license.

In addition, as required by Article 7, Section 7.37 of the Zoning Ordinance, once a permit for a special land use has been granted as to any parcel of land, no change in that use may be made nor may any addition to or change in the building or improvements on the parcel of land take place until a new request for approval has been filed with the City Commission and the City Commission has approved the request for change.

1.0 Land Use and Zoning

- 1.1 Existing Land Use – The existing site is a 1-story commercial building.
- 1.2 Existing Zoning – MX (Mixed Use)
- 1.3 Summary of Adjacent Land Use and Zoning – The following chart summarizes the existing land use and zoning adjacent to and/or in the vicinity of the subject site.

	North	South	East	West
Existing Land Use	Institutional	Commercial	Single-Family Residential	Commercial
Existing Zoning District	PP	MX	MX	MX
Overlay Zoning District	N/A	N/A	N/A	N/A

2.0 Setback and Height Requirements

There are **no changes** and thus no issues with the bulk, area or placement of the existing building.

3.0 Screening and Landscaping

- 3.1 Dumpster Screening – There are **no changes** proposed to the existing dumpster enclosure as a part of the Special Land Use Permit application submitted.
- 3.2 Parking Lot Screening – There are **no changes** proposed to the existing parking facilities as a part of the Special Land Use Permit application submitted.
- 3.3 Mechanical Equipment Screening – There are **no changes** proposed to the mechanical screening as a part of the Special Land Use Permit application submitted.
- 3.4 Landscaping – There are **no changes** proposed to the landscaping on site as a part of the Special Land Use Permit.
- 3.5 Streetscape – There are **no changes** proposed to the streetscape as a part of the Special Land Use Permit.

4.0 Parking, Loading and Circulation

- 4.1 Parking – There are **no changes** proposed to the existing off-street parking facility as a part of the Special Land Use Permit. At this time, the site is fully parked and the proposed expansion does not require any additional parking spaces at this time.
- 4.2 Loading – There are **no changes** proposed to the loading conditions of the site as a part of the Special Land Use Permit.
- 4.3 Vehicular Circulation and Access – There are **no changes** proposed to the vehicular circulation and access to the site. Vehicles will continue to enter the site from Cole St through one of several drive approaches.
- 1.1 Pedestrian Circulation and Access – There are **no changes** proposed to pedestrian circulation and access of the site. The site will retain the existing pedestrian walkways and main pedestrian entrance.

2.0 Lighting

There are **no changes** to the lighting on site as a part of the Special Land Use Permit application submitted.

3.0 Design Review

There are **no changes** to the exterior of the building as a part of the Special Land Use Permit application submitted. Future changes proposed by the applicant may require a Special Land Use Permit Amendment.

4.0 Required Attachments

	Submitted	Not Submitted	Not Required
Existing Conditions Plan	☒	☐	☐
Detailed and Scaled Site Plan	☒	☐	☐
Certified Land Survey	☐	☐	☒
Interior Floor Plans	☒	☐	☐
Landscape Plan	☐	☐	☒
Photometric Plan	☐	☐	☒
Colored Elevations	☐	☐	☒
Material Specification Sheets	☐	☐	☒
Material Samples	☐	☐	☒
Site & Aerial Photographs	☐	☐	☒

5.0 Approval Criteria

In accordance with Article 7, section 7.27 of the Zoning Ordinance, the proposed plans for development must meet the following conditions:

- (1) The location, size and height of the building, walls and fences shall be such that there is adequate landscaped open space so as to provide light, air and access to the persons occupying the structure.
- (2) The location, size and height of the building, walls and fences shall be such that there will be no interference with adequate light, air and access to adjacent lands and buildings.
- (3) The location, size and height of the building, walls and fences shall be such that they will not hinder the reasonable development of adjoining property nor diminish the value thereof.
- (4) The site plan, and its relation to streets, driveways and sidewalks, shall be such as to not interfere with or be hazardous to vehicular and pedestrian traffic.
- (5) The proposed development will be compatible with other uses and buildings in the neighborhood and will not be contrary to the spirit and purpose of this chapter.
- (6) The location, shape and size of required landscaped open space is such as to provide adequate open space for the benefit of the inhabitants of the building and the surrounding neighborhood.

In addition, Article 7, Section 7.36 requires applications for a Special Land Use Permit to meet the following criteria:

- (1) The use is consistent with and will promote the intent and purpose of this Zoning Ordinance.
- (2) The use will be compatible with adjacent uses of land, the natural environment, and the capabilities of public services and facilities affected by the land use.
- (3) The use is consistent with the public health, safety and welfare of the city.
- (4) The use is in compliance with all other requirements of this Zoning Ordinance.
- (5) The use will not be injurious to the surrounding neighborhood.
- (6) The use is in compliance with state and federal statutes.

6.0 Recommendation

Based on a review of the site plan submitted, the Planning Department recommends that the Planning Board recommend **APPROVAL** of the Special Land Use Permit for 2211 Cole St – Dobi Real Estate – subject to the following conditions:

1. The applicant must comply with the requests of all City Departments.

7.0 Sample Motion Language (*Special Land Use Permit Amendment*)

Motion to recommend for **APPROVAL** to the City Commission the Special Land Use Permit application for 2211 Cole St – Dobi Real Estate – subject to the following conditions:

1. The applicant must comply with the requests of all City Departments.

OR

Motion to **POSTPONE** the Special Land Use Permit 2211 Cole St – Dobi Real Estate – pending receipt of the following:

1. _____
2. _____
3. _____

OR

Motion to recommend for **DENIAL** to the City Commission the Special Land Use Permit for 2211 Cole St – Dobi Real Estate – for the following reasons:

1. _____
2. _____
3. _____

8.0 Sample Motion Language (*Final Site Plan & Design Review*)

Motion to recommend for **APPROVAL** to the City Commission the Final Site Plan & Design Review application for 2211 Cole St – Dobi Real Estate – subject to the following conditions:

1. The applicant must comply with the requests of all City Departments.

OR

Motion to **POSTPONE** the Final Site Plan & Design Review application for 2211 Cole St – Dobi Real Estate – pending receipt of the following:

1. _____
2. _____

3. _____

OR

Motion to recommend for **DENIAL** to the City Commission the Final Site Plan & Design Review for 2211 Cole St – Dobi Real Estate – for the following reasons:

1. _____

2. _____

3. _____



MEMORANDUM

Planning Department

DATE: September 30, 2024

TO: Jana L. Ecker, City Manager

FROM: Nicholas Dupuis, Planning Director

SUBJECT: Amendments to Chapter 82 of the Birmingham Code of Ordinances to Create the Environmental Sustainability Committee (*Postponed from September 23, 2024*)

INTRODUCTION:

The Ad Hoc Environmental Sustainability Committee (ESC) was created by the City Commission on January 23, 2023 ([Agenda](#) – [Minutes](#)) and seated on March 27, 2023 ([Agenda](#) – [Minutes](#)). The specific duties of the ESC were to (1) draft a Sustainability and Climate Action Plan ("SCAP") and (2) complete a greenhouse gas ("GHG") inventory for the community. By resolution, the ESC was given 18 months to complete these two large tasks. At this time, the Planning Department and ESC have successfully completed the above tasks and are seeking designation as a standing committee to oversee work related to the Birmingham Green: Healthy Climate plan and other sustainability and climate action based projects.

BACKGROUND:

Having overseen the drafting of the City's first sustainability and climate action plan, the current Ad Hoc Environmental Sustainability Committee's term has expired. Through the seating of the initial committee, a high level of energy and enthusiasm was observed and the City uncovered a vast level of expertise related to sustainability and climate action within its resident base. A formal, public board made up of these energetic and knowledgeable residents who are dedicated to the management of the Birmingham Green plan and any other ancillary duties that stem from this plan will be essential in ensuring that the public has ample opportunity to participate in the implementation process.

In order to formalize the Environmental Sustainability Committee, ordinance amendments have been proposed to Chapter 82 of the Birmingham Code of Ordinances. The language mirrors that establishing similar boards/commissions in the Code of Ordinances. The language outlines the composition, terms/membership, organization and duties of a standing Environmental Sustainability Committee.

LEGAL REVIEW:

The City Attorney has reviewed the proposed ordinance and has no concerns as to form and content.

FISCAL IMPACT:

There is no fiscal impact for this agenda item.

SUSTAINABILITY:

A standing Environmental Sustainability Committee is proposed to provide oversight and recommendations to the City Commission regarding sustainability and climate action planning in the City.

DESIGN CONSIDERATIONS:

There are no design considerations for this agenda item.

PUBLIC COMMUNICATIONS:

There are no required public communications for this agenda item.

SUMMARY:

The Planning Department requests that the City Commission consider amendments to Chapter 82 – Planning, to add Article VI, to create a standing Environmental Sustainability Committee and establish its composition, terms/membership, organization and duties.

ATTACHMENTS:

Please see the attached documents for review:

- Proposed amendments to Chapter 82 – Planning

SUGGESTED COMMISSION ACTION:

Make a motion adopting an ordinance to amend Chapter 82 – Planning, to add Article VI, to create a standing Environmental Sustainability Committee and establish its composition, terms/membership, organization and duties.

**AN ORDINANCE TO AMEND PART II OF THE CITY CODE, CHAPTER 82. – PLANNING,
TO ADD ARTICLE VI. – ENVIRONMENTAL SUSTAINABILITY COMMITTEE.**

THE CITY OF BIRMINGHAM ORDAINS:

The City Code, Part II, Chapter 82. – Planning, Article VI. – Environmental Sustainability Committee:

ARTICLE VI. – ENVIRONMENTAL SUSTAINABILITY COMMITTEE

Sec. 82-107. – Composition.

- a) The Environmental Sustainability Committee shall consist of seven (7) regular members. Each member of the committee shall reside within the City limits. Members of the Committee shall have a clearly demonstrated interest or knowledge in sustainability and/or climate action. In appointing regular members, the City Commission shall maintain a Committee composition that represents a diverse area of expertise related to sustainability and climate action including, but not limited to, renewable energy, buildings and construction, water and stormwater, solid waste, and environmental law.
- b) The City Commission may appoint two (2) alternate members to serve as needed on the Environmental Sustainability Committee during their term of appointment. An alternate member may be called on a rotating basis to sit as a regular member of the Environmental Sustainability Committee in the absence of a regular member. An alternate member shall have the same voting rights as a regular member of the Environmental Sustainability Committee when seated in the place of a regular member.
- c) The Planning Director and the City Manager, or their authorized representatives, shall be ex officio members of the Environmental Sustainability Committee and shall have all rights of membership thereon, except the right to vote.

Sec. 82-108. – Terms.

- a) Members of the Environmental Sustainability Committee shall be appointed by the City Commission for terms of office of three (3) years; except that two members of the first board shall be appointed to serve for a term of one year, two for terms of two years, and three for terms of three years. All members shall hold office until their successors are appointed. A vacancy occurring in the membership of the Environmental Sustainability Committee for any cause shall be filled by a person appointed by the City Commission for the duration of the unexpired term.

Sec. 82-109. – Organization and meetings.

- a) The Committee shall, from its appointed members, elect a chairperson and vice-chairperson. Each officer will serve a one-year term and may be re-elected. The chairperson shall preside over the Committee and shall have a right to vote. The vice-chairperson shall, in the case of absence or disability of the chairperson, perform the duties of the chairperson. The Planning Director or an authorized representative shall act as secretary of the Committee and shall keep a record of all its proceedings.

- b) At least four (4) members of the Environmental Sustainability Committee shall constitute a quorum for the transaction of its business.
- c) All meetings of the Environmental Sustainability Committee shall be open to the public, and any person or their duly constituted representative shall be entitled to appear and be heard on any matter applicable to the business at hand before the Environmental Sustainability Committee makes its decision.
- d) The concurring affirmative vote of four (4) members of the Environmental Sustainability Committee shall be required for approval of any resolution, motion or other action by the Environmental Sustainability Committee.
- e) The Environmental Sustainability Committee shall hold meetings at such time and place as may be established by the Committee.

Sec. 82-110. – Scope of authority.

- a) The Environmental Sustainability Committee is a non-administrative board serving solely in an advisory capacity. In that capacity, the committee may make recommendations to the City Commission but may not assume any legislative or administrative authority of the City Commission or any department or board established by the City Commission except as specifically provided in this chapter. The Environmental Sustainability Committee is not authorized to expend City funds.

Sec. 82-111. – Purpose and duties.

The purpose of the Environmental Sustainability Committee shall be to assist in instituting policies and practices that enhance the natural & built environment, improve quality of life, and foster equity & resiliency in the City and to advise the City Commission on the implementation of the Birmingham Green: Healthy Climate Plan, including reviewing project phasing and budgeting. In furtherance of its purpose, the Committee shall endeavor to provide the following:

- 1) Support to the Planning Board, Multi-Modal Transportation Board, Historic District Commission, or other boards or commissions regarding the sustainable development of the City.
- 2) Perform reviews and updates of the Birmingham Green: Healthy Climate Plan.
- 3) When requested by the City Manager or Planning Director, an objective and technical evaluation of public development projects.
- 4) When requested by the City Commission or Planning Board, an objective and technical evaluation of private development plans.
- 5) Updated greenhouse gas inventories.
- 6) Education and training opportunities for Birmingham residents and stakeholders.
- 7) Not later than April 1 of each year, the Environmental Sustainability Committee shall prepare and submit to the City Manager a tentative outline of its program for the ensuing year.

Ordained this _____ day of _____, 2024. Effective upon publication.

Elaine McLain, Mayor

Alexandria D. Bingham, City Clerk

I, Alexandria D. Bingham, City Clerk of the City of Birmingham, do hereby certify that the foregoing ordinance was passed by the Commission of the City of Birmingham, Michigan at a regular meeting held _____, 2024 and that a summary was published _____, 2024.

Alexandria D. Bingham, City Clerk



MEMORANDUM

Planning Division

DATE: October 2, 2024

TO: Jana Ecker, City Manager

FROM: Brooks Cowan, Senior Planner

APPROVED: Nicholas Dupuis, Planning Director

SUBJECT: Public Hearing for 200 S. Chester Street – Baldwin House Senior Living – Special Land Use Permit Amendment

INTRODUCTION:

Baldwin House Senior Living is located at 200 Chester St. and has consisted of 131 multi-family units with affordable housing and market rate housing for seniors and families (non-seniors) for the past 30 years. The building operates as “special-purpose housing” under the provisions of a Special Land Use Permit (SLUP) within the R7 Multiple-Family Residential zoning district. The ownership group is proposing to lower the age cohort from 62+ to 55+ and to increase rental rates which have been regulated for the past 30 years. Such changes constitute a substantial change to the operation and use regulated by their Special Land Use Permit, thus the applicant must obtain approval from the City Commission for such requests.

The changes are proposed as the 30 year terms of Baldwin House’s Low Income Housing Tax Credit (LIHTC) Agreement with the State and the Payment In-Lieu of Taxes (PILOT) Agreement with the City are set to expire December 31, 2024. Baldwin House has paid off their mortgage from the Michigan State Housing Development Authority (MSHDA) and has indicated they will extend their LIHTC Agreement with the State. Meanwhile, Baldwin House’s parking agreement with the City for the use of 69 parking spaces in the Chester Street Parking Garage expired September 28, 2024 and they have 90 days to determine how many parking spaces they wish to lease from the City for 2025 and beyond. **Thus, the property’s provision of affordable units, the PILOT Agreement tax exempt status, and the Parking Agreement must be considered for SLUP review, which involves five (5) related documents:**

- 1. Mortgage Agreement (MSHDA)**
- 2. Low-Income Housing Tax Credit (LIHTC) Agreement (MSHDA)**
- 3. Special Land Use Permit (Birmingham)**
- 4. Parking Agreement (Birmingham)**
- 5. Tax Exemption, Payment In-Lieu of Taxes (PILOT) Agreement (Birmingham)**

BACKGROUND:

On [August 26, 2024](#), City staff set a public hearing for a Baldwin House SLUP Amendment. The memo summarized background information related to Baldwin House and detailed correspondences staff had with the Baldwin House management over the past year. This memo also includes the attachments of all relevant agreements for reference.

On [September 23, 2024](#), a detailed summary of Baldwin House's history and policy was presented to the City Commission for the monthly workshop. Staff discussed how the use of Baldwin House over the past 30 years is a result of the City's efforts in the 1970s to have affordable senior housing. Such efforts created controversy between members of the community and resulted in the City being found in violation of the Civil Rights Fair Housing Act of 1968. The US District Court assumed jurisdiction of brokering the terms of development for Baldwin House which resulted in five agreements regulating the development and affordable housing provisions for Baldwin House. City staff emphasized that the mortgage has been paid off and the 30 year terms of the LIHTC Agreement, Parking Agreement, and PILOT Agreement expire this year, thus the City Commission should consider new terms as part of Baldwin House's SLUP Agreement.

The September 23, 2024 workshop presentation consisted of five sections which detailed the affordable housing policy, zoning bonuses, and a local tax exemption agreement related to Baldwin House. Staff concluded with four potential scenarios the City could pursue in terms of rent regulations and subsequent parking and PILOT agreements. Each section of the presentation is summarized below:

1. History: The terms of Baldwin House were brokered by the US District Court due to Birmingham's violation of the Civil Right Fair Housing Act of 1968.
2. Affordable Housing Policy: Baldwin House's LIHTC Agreement requires them to provide a minimum of 53 units for low income households and the Agreement expires at the end of 2024. Baldwin House has indicated they will be extending the LIHTC Agreement for another 30 years and have provided a draft copy of the extension application for the next 30 years.

Baldwin House's Mortgage Agreement required them to provide a minimum of 53 units for low income households to mirror the LIHTC Agreement. The mortgage had an additional requirement that the 78 non-affordable units be rented at an average of 100% of the surrounding area median income (AMI) for the duration of the mortgage. **The mortgage was paid off in October of 2023, therefore Baldwin House is no longer subject to this requirement. The City Commission may wish to require all or some of the 78 non-affordable units to continue to have some type of rental restriction.**

3. Zoning: Baldwin House operates as a Special-Purpose Housing use through the provision of a SLUP. The SLUP requires Baldwin House to provide affordable housing for seniors. By doing so, the City has granted Baldwin House an additional building floor and a bonus of 78 residential units. Maintaining compliance with MSHDA's LIHTC Agreement means that Baldwin House maintains compliance with the affordable housing requirements of their SLUP.

Baldwin House has a Parking Agreement with the City that allowed the use of 69 parking spaces free of charge from the Chester Street Parking Garage for 30 years. At the end of 30 years, Baldwin House may pay a one-time lump sum of \$1.2 million, then pay a monthly parking pass fee for every month thereafter for up to 69 parking spaces in order to satisfy their Zoning Ordinance parking requirements. The Agreement expired September 28, 2024

and Baldwin House has 90 days to pay the required amount, unless the City enters into a new agreement.

4. PILOT Agreement (Payment In-Lieu Of Taxes): Baldwin House has a PILOT Agreement with the City that makes them exempt from paying local property taxes in exchange for providing affordable housing. Baldwin House pays a 4% shelter fee to the City instead of taxes, which means 4% of their collected rents go the City on an annual basis. The 4% fee was applied to all 131 units because all 131 units had a rent cap for the duration of the mortgage. The current PILOT Agreement expires at the end of 2024.
5. Proposals: Staff went over four scenarios the City could pursue given that 78 of the 131 units in Baldwin House now have uncapped rental rates. Each scenario has different rental rate regulations for all 131 units and includes recommendations for the associated Parking Agreement and PILOT Agreement based on the amount of units with rent regulations. As previously mentioned, free parking spaces for Baldwin House in 2025 and beyond would be contingent upon the City entering into a new parking agreement.

SUMMARY TABLE

Options	30% AMI Units	50% AMI Units	100% AMI Units	150% AMI Units	Market Rate Units	Free Spaces IF New Parking Agreement*	New PILOT Agreement 4% Fee
Option 1	13	40			78	27 spaces	53 units
Option 2	13	40	78			69 spaces	131 units
Option 3	13	40	25		53	39 spaces	78 units
Option 4	13	40	25	53		69 spaces	131 units

Notes: Free Parking recommendation based on 0.5 spaces per rent regulated unit, up to 69 max as per original Agreement

The staff presentation was then followed by questions from City Commission for staff and the Baldwin House representatives. Major items of discussion were the Court Orders of 1982 and 1986, the LIHTC Agreement, the Parking Agreement, the provision of senior vs. family units, building operations, past financials, and the implications of the four rent regulation scenarios.

In regards to US District Court Orders of 1982 and 1986, the City of Birmingham has complied with all required terms for Baldwin House and is no longer subject to oversight from the Federal government. On January 11, 1993, the City Commission approved a resolution to authorize the sale of the subject property to the Birmingham Limited Dividend Housing Association Limited Partnership (Baldwin House). The Resolution stated "*WHEREAS, all terms of such Agreement, as amended and modified by a court case entitled United States of America v. City of Birmingham, Michigan in the United States District Court for the Eastern District of Michigan, Southern Division, Case No. 80-70991, has been complied with*". The relevant minutes from January 11, 1993 are attached.

In regards to the LIHTC Agreement, Baldwin House is required by MSHDA to provide a total of 53 units for low-income affordable housing. 40 units are required to be rented to people with an income of 50% or less of the Area Median Income (AMI), and 13 units are required to be rented to people with an income of 30% or less of the Area Median Income (AMI). By providing affordable housing, the LIHTC Agreement allotted Baldwin House \$124k of income tax credits per

year for 10 years (1994-2004). No additional credits are distributed after 10 years. The 30 year term of the existing LIHTC Agreement expires December 31, 2024. **Baldwin House has indicated they will be extending the agreement for another 30 years with the same arrangement of 53 affordable housing units.**

The difference between extending vs. renewing a LIHTC agreement was discussed during the City Commission workshop. The Baldwin House representative clarified they will be extending the agreement, not renewing. Extending a LIHTC agreement does not make a property eligible for a new round of tax credits. Extending the LIHTC agreement means they continue to provide 53 affordable units for another 30 years, and in return, Baldwin House maintains eligibility for a new PILOT Agreement (tax exemption). Renewing a LIHTC agreement makes a property eligible for a new round of tax credits provided that the subject property invests a certain amount of money into rehabbing the affordable units. Baldwin House has indicated they are not pursuing the renewal route. **A draft of the LIHTC Agreement extension titled "Amendment to Regulatory Agreement" was provided to City Commission at the September 23, 2024 and is provided in the attachments.**

In regards to the Parking Agreement, a notification was mailed to Baldwin House Holdings LLC and Birmingham Limited Dividend Housing Association Limited Partnership 501(3)(c) on September 27, 2024 to provide notification that the City of Birmingham's obligation to provide Baldwin House 69 parking spaces free of charge in the Chester Street Garage has expired. The letter further notifies the applicant that within 30 days, Baldwin House must provide to the City a notice of how many parking spaces they wish to lease into the future and provide a payment equal to the monthly rate for each space. The letter also provides notification that within 90 days, Baldwin House must provide a fee of \$18,336 per space for up to 69 parking spaces they wish to lease from the City, a maximum total of \$1,265,184. Baldwin House would then be required to pay the parking rate for the Chester Street Parking Structure on a monthly basis to the City for the number of parking spaces requested to lease to maintain compliance with the City's Zoning Ordinance and Parking Agreement terms. **A copy of the Parking Agreement notification letter sent to the Baldwin House representatives is provided in the attachments.**

If Baldwin House chooses to pay the \$1.2 million lump sum by December 28, 2024 and then continues to pay a monthly pass fee for 69 parking spaces every month thereafter, the property will be in compliance with the terms of the Parking Agreement and with the parking requirements associated with the Zoning Ordinance and their SLUP. **The City Commission may wish to enter into a new Parking Agreement with Baldwin House based on a future amount of rent regulated units to be determined.**

In regards to senior housing, the City Commission had questions related to the requirements of senior housing vs. family (non-senior) for Baldwin House. The original concept approved by the US District Court in 1986 involved 100 elderly dwelling units and 30 family units. Federal and State guidelines continued to evolve after the Court's 1986 approval of the preliminary concept and in 1992, MSHDA required that the building be designed to accommodate 100% elderly occupancy with the provision for a maximum of 20% (26 units) non-elderly units. The shift in policy from 1986 to 1992 capped the amount of family units and made it possible for Baldwin House to be 100% elderly. The Final Site Plan & SLUP approved by the City in 1987 and amended in 1988 was designed to make the 30 family units directly accessible from the building exterior at grade. The shift to designing the building for 100% elderly occupancy meant that all units would

be accessed from the interior corridor. This led to the removal of a service walk, exterior doors, and subsequent site plan and design changes, thus the SLUP Amendment in 1992.

In regards to operations of the Baldwin House, a memorandum from ownership partner Joe Schwartz titled "The Baldwin on Chester Wants to Continue Affordable Housing in Birmingham" was submitted to City staff on October 1, 2024. The letter addresses questions sent to them by staff and provides details related to the future operations of Baldwin House. To summarize, the ownership wishes to formalize a name change to "The Baldwin on Chester" in their SLUP and maintain the provision of 53 affordable units. The building will continue to operate as senior living for 55+ with the provision of up to 26 family units as historically required. The existing residents in the non-affordable units are expected to see rent renewal increases of 3% to 5% for the remainder of 2024 and 2025. A new food program was implemented this year that provides meals from local restaurants on Monday through Friday. Residents who want food available for the weekends are offered the opportunity to purchase extra meals on Fridays for the weekends. The advisory board of local church members and building residents to the property, known as Baldwin House, Inc., expires December 31, 2024. If the group is interested in continuing, the ownership would propose a new written agreement that would govern their roles and responsibilities.

In regards to financials related to the operations of the building, City staff has obtained financial audits conducted on Baldwin House for MSHDA from 2013-2022. City staff has also obtained rent rolls from Baldwin House management for the months of September 2023 and August 2024, before and after the mortgage was paid off. Between 2013 to 2018, Baldwin House had between 4-7 vacant units. From 2019 to 2022, the number of vacancies increased to a range of 18-37. Over a 10 year period, the building's Net Operating Income (NOI) ranged from a high of \$474,090 to a low of (\$285,660). It is of note that all 131 rental units were subject to a cap associated with Oakland County's area median income in this time period. The expenses per unit ranged between \$10k - \$15k over the space of 10 years, averaging \$13,100 per unit per year. Baldwin House's PILOT fee paid to the city was \$42k in 2022 and \$54k in 2023.

City staff was asked to calculate a basic value for Baldwin House and a resulting PILOT Fee based on each of the four scenarios of future regulations presented to the City Commission at the September 23, 2024 workshop. A detailed analysis of such calculations has been provided below in the attachments along with exhibits of data used to justify each value. The report includes basic income, expense, and cap rate assumptions to gain a general idea of the building value and resulting PILOT fee in each rent scenario. It is not an official assessment, it is a 'back-of-the-napkin' calculation on values to help guide decision making between the four scenarios. For income, staff looked at rent rolls and marketed rents on <https://thebaldwinonchester.com/floor-plans/>. Expenses were projected based on audit data received from MSHDA for the past 10 years. The general assumptions and final values were corroborated by Oakland County Assessing. Below is the report's summary table showing a breakdown of the units with rental caps in each option and what the resulting PILOT fee and value would be. More information regarding the assumptions and detailed calculations can be found in the attached report.

SUMMARY TABLE

Options	30% AMI Units	50% AMI Units	100% AMI Units	150% AMI Units	Market Rate Units	Expense Per Unit	Net Operating Income (NOI)	PILOT Fee	Value
Option 1	13	40			78	\$15k	\$ 1,090,824	\$ 292,852	\$ 20,725,656
Option 2	13	40	78			\$12k	\$ 482,304	\$ 78,064	\$ 9,163,776
Option 3	13	40	25		53	\$14k	\$ 900,824	\$ 190,051	\$ 17,115,656
Option 4	13	40	25	53		\$13.5k	\$ 820,044	\$ 103,542	\$ 15,580,836

The September 23, 2024 City Commission workshop concluded with staff agreeing to provide more information on items discussed for the public hearing on October 7, 2024. **City staff is now seeking direction from the City Commission on which of the four rent regulation scenarios they wish to pursue. Once direction is provided, staff will be able to finalize the subsequent SLUP contract, PILOT Agreement, and potential Parking Agreement if desired.**

LEGAL REVIEW:

The city attorney has reviewed the memo and suggested action and concurs with staff.

FISCAL IMPACT:

Baldwin House has been exempt from property taxes since obtaining its Certificate of Occupancy in 1994. The PILOT Agreement that exempted Baldwin House from local property taxes will expire at the end of the year. Terms of a new PILOT Agreement should be considered for Baldwin House. The City may also receive \$1.2 million from Baldwin House to satisfy the expiration of their parking agreement unless a new parking agreement is achieved.

SUSTAINABILITY:

There are no major sustainability items at this time.

DESIGN CONSIDERATIONS:

There are no new design considerations for Baldwin House at this time.

PUBLIC COMMUNICATIONS:

As required for public hearings, a legal ad was placed in a newspaper of local circulation to advertise the nature of the request in advance of the public hearing at the City Commission, and notices were sent out to all property owners and tenants within 300 ft. of the property.

SUMMARY:

The Planning Division requests that the City Commission provide direction to staff on which scenario of rent regulations they prefer and how a PILOT Agreement and potential parking agreement should reflect such preference.

ATTACHMENTS:

- Baldwin House SLUP Amendment – DRAFT
- PILOT Ordinance – DRAFT
- LIHTC Agreement Amendment – DRAFT
- Letter to Baldwin House notification of Parking Agreement expiration – 09.27.2024
- Baldwin House Ownership Letter to City
- January 11, 1993 City Commission Resolution – no longer subject to Court Order
- November 12, 1992 Planning Board Minutes – shift in elderly housing requirement
- Baldwin House Scenarios Financial Summary - Staff Report
- Part V: Proposals – September 23, 2024 City Commission Workshop Slides

SUGGESTED ACTION:

To direct staff to draft a SLUP Amendment, a SLUP Contract, a PILOT Agreement, and Parking Agreement (TBD) based upon the City Commission's preference for Option (1, 2, 3, or 4), and to continue the public hearing to October 28, 2024.

BALDWIN HOUSE
SPECIAL LAND USE AGREEMENT- DRAFT

This Contract is entered into this ____ day of _____, 2024 by and between the **CITY OF BIRMINGHAM**, a Michigan Municipal Corporation, whose address is 151 Martin Street, Birmingham, Michigan 48009 (City), **BIRMINGHAM LIMITED DIVIDEND HOUSING ASSOCIATION LIMITED PARTNERSHIP** (Owner), whose address is 3707 W. Maple Rd, Bloomfield Hills, MI 48301, and **BALDWIN HOUSE HOLDINGS LLC** (Owner), whose address is 511 Hanna Street, Birmingham, MI 48009, and the foregoing shall collectively be referred to as the parties, and effective upon the date of the Mayor's signature.

RECITALS:

WHEREAS, The Baldwin on Chester (Baldwin House) is located at 200 Chester St., Birmingham, MI, 48009; and

WHEREAS, Baldwin House is classified by the Zoning Ordinance as a special-purpose housing use which is defined as "a public or private residential building containing dwelling units designed for the use and occupancy of seniors, the units of which are rented at a rate which would not be more than 110% of the rates permitted under Federal or State subsidized housing for similar units for housing by seniors;" and

WHEREAS, Baldwin House is located in the R7 Multiple-Family Residential which permits the use of special purpose housing through the provisions of a Special Land Use Permit (SLUP); and

WHEREAS, Baldwin House Senior Living obtained Special Land Use Permit approval from the City Commission on August 24, 1987, which was subsequently amended on November 14, 1988 and December 21, 1992; and

WHEREAS, Baldwin House Senior Living consists of a five (5) story building with 131 residential units and obtained zoning bonuses of an additional floor and an additional 78 units through the provisions of special-purpose housing and the associated Special Land Use Permit; and

WHEREAS, Baldwin House entered into a parking agreement with the City of Birmingham for the use of 69 parking spaces in the Chester Street Parking Structure free of charge for a term of 30 years which expired September 28, 2024; and

WHEREAS, the City of Birmingham approved the Baldwin House Tax Exemption Ordinance (No. 1457) on January 22, 1990 which enabled a 4% annual shelter rent fee applied to all 131 units as a payment in lieu of taxes (PILOT) that is set to expire December 31, 2024; and

WHEREAS, Baldwin House would desire to continue to operate as a “special purpose housing” use, through the provision of a Special Land Use Permit by providing affordable senior housing; and

WHEREAS, Baldwin House would desire to enter into a new parking agreement for the use of (to be determined) parking spaces in the Chester Street Parking Structure free of charge; and

WHEREAS, Baldwin House would desire to enter into a new PILOT Agreement through the approval of a new Tax Exemption Ordinance; and

WHEREAS, by providing affordable senior housing, Baldwin House enjoys the benefit of a zoning bonus of one floor and 78 residential units; and

WHEREAS, Baldwin House’s Low Income Housing Tax Credit (LIHTC) Regulatory Agreement required 53 units be designated as affordable per the HUD service area which is Oakland County, specifying that 40 units be required to be rented at 50% of the area median income (AMI) and 13 units be required to be rented at 30% AMI; and

WHEREAS, Baldwin House’s Low Income Housing Tax Credit (LIHTC) Regulatory Agreement expires December 31, 2024; and

WHEREAS, Baldwin House has proposed to extend the Low Income Housing Tax Credit (LIHTC) Regulatory Agreement for another 30 years and to maintain the provision of 53 units as affordable housing with 40 units required to be rented at 50% of the area median income (AMI) or less and 13 units required to be rented at 30% AMI or less; and

WHEREAS, The City of Birmingham purchased the subject property for the intent and purpose of affordable senior housing in 1973, sold the property to Baldwin House for the intent and purpose of affordable senior housing in 1976, and wishes to maintain affordable senior housing at Baldwin House through the provisions of a Special Land Use Permit; and

WHEREAS, The City of Birmingham finds the provision of affordable senior housing to be a public good that is beneficial for the health, safety, and welfare of the community and therefore wishes to maintain and continue the provision of affordable senior housing at Baldwin House; and

NOW, THEREFORE, in order to operate under a Special Land Use Permit and continue to enjoy the benefits of special purpose housing, the parties agree as follows:

1. Baldwin House shall continue to rent 53 units as affordable units with 40 units rented to persons with an income of 50% or less of the area median income and 13 units rented to persons with an income of 30% or less of the area median income per Federal and State standards for Birmingham, Michigan’s service area.

2. For the non-affordable units, Baldwin House shall rent (amount to be determined) of units at an average of (rate to be determined) area median income per Federal and State standards for Birmingham, Michigan’s service area.

3. Baldwin House shall maintain compliance with their Low Income Housing Tax Credit Regulatory Agreement with the Michigan State Housing Development Authority in order to maintain compliance with the requirements of their special-purpose housing use.

4. The City of Birmingham shall approve a new Tax Exemption Ordinance for Baldwin House with a PILOT agreement of 4% shelter rents for all (affordable units OR units with rent restrictions).

5. The City of Birmingham shall enter into a new parking agreement with Baldwin House for the use of (amount to be determined) parking spaces free of charge in the Chester Street Parking Structure for the use of Baldwin residents for as long as (amount to be determined) units have (rent regulations to be determined).

6. Baldwin House shall continue to provide 11 parking spaces on-site to count towards their parking requirement.

7. Baldwin House acknowledges that it must maintain a Special Land Use Permit for the special purpose housing regulations and agrees and acknowledges that any violation of the provisions of this Special Land Use Permit is a violation of the terms of this contract entitling the City to exercise any and all remedies provided herein.

8. Baldwin House acknowledges that no modifications to the site plan, floor plan, elevations, use, or operation of the Special Land Use may be made unless approved by the City Commission through an amendment to the Special Land Use Permit as required in the Zoning Ordinance. Modifications include, but are not limited to, name changes, ownership changes, remodeling changes, and the number of units, percentage of affordable units, etc.

9. Baldwin House agrees that it shall adhere to all Federal, State and local ordinances currently in effect or subsequently amended or enacted.

10. To the fullest extent permitted by law, Baldwin House and any entity or person for whom Baldwin House is legally liable, agrees to be responsible for any liability, defend, pay on behalf of and indemnify and hold harmless the City, its elected and appointed officials, employees and volunteers, and all others working on behalf of the City against any and all claims, demands, suits or loss including all costs connected therewith including all costs and actual attorneys' fees and for any damages which may be asserted, claimed, or recovered against or from the City, its elected and appointed officials, employees, volunteers, or others working on behalf of the City by reason of personal injury, including bodily injury, death and/or property damage including loss thereof which arises out of or in any way connected or associated with the Baldwin House's operation pursuant to the Special Land Use Permit.

11. Any controversy or claim arising out of or relating to this Contract, or the breach thereof, shall be settled either by commencement of a suit in Oakland County Circuit Court, the 48th District Court or by arbitration. If both parties elect to have the dispute resolved by arbitration, it shall be settled pursuant to Chapter 50 of the Revised Judicature Act for the State

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

12. This Contract shall be governed by and performed, interpreted, enforced in accordance with the laws of the State of Michigan.

13. If any provision of this contract is declared invalid, illegal or unenforceable, such provision shall be severed from this contract and all other provisions shall remain in full force and effect.

14. The City Commission determines that to ensure continued compliance with Code standards and to protect public health, safety, and welfare, this Special Land Use Permit is granted subject to the following conditions:

- a. Baldwin House shall abide by all provisions of the Birmingham City Code and Zoning Code; and
- b. Baldwin House shall comply with the conditions and approval assigned by the Planning Board and City Commission; and
- c. The Special Land Use Permit may be canceled by the City Commission upon finding, after proper notice and hearing, that the continued use is not in the public's interest.

15. Failure to comply with any of the above conditions may result in termination of the Special Land Use Permit after Baldwin House has been given a notice and opportunity for a public hearing.

16. Except as herein specifically provided, Baldwin House and its heirs, successors, and assigns shall be bound by all ordinances of the City of Birmingham in effect at the time of the issuance of this permit, and as they may be subsequently amended. Failure of Baldwin House to comply with all the ordinances of the City may result in the City Commission revoking this Special Land Use Permit after notice and hearing.

17. This Contract shall be binding upon and apply and inure to the benefit of the parties hereto and their respective successors or assigns. The covenants, conditions, and the agreements

herein contained are hereby declared binding on the CITY OF BIRMINGHAM and Baldwin House. It is further agreed that there shall be no change, modification, or alteration hereof, except in writing, signed by both of the parties hereto. Neither party shall assign any of the rights under this contract without prior approval, in writing, of the other. Any attempt at assignment without prior written consent shall be void and of no effect.

IN WITNESS WHEREOF, the parties hereby have executed this Contract as of the date set forth above.

**BIRMINGHAM LIMITED DIVIDEND
HOUSING ASSOCIATION LIMITED
PARTNERSHIP (Owner)**

By: _____

Its: _____

Date: _____

**BALDWIN HOUSE HOLDINGS LLC
(Owner)**

By: _____

Its: _____

Date: _____

STATE OF MICHIGAN)
) ss:
COUNTY OF OAKLAND)

On this _____ day of _____, 2024, before me personally appeared _____, who acknowledged that with authority on behalf of BALDWIN HOUSE SENIOR LIVING to do so he/she signed this Agreement.

Notary Public

County, Michigan
Acting in _____ County, Michigan
My commission expires: _____

CITY OF BIRMINGHAM

By: _____
Elaine McLain, Mayor
Date: _____

By: _____
Alexandria D. Bingham, City Clerk
Date: _____

APPROVED:

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

Nicholas Dupuis, Planning Director
(Approved as to substance)

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

CITY OF BIRMINGHAM

ORDINANCE NO. _____

TAX EXEMPTION ORDINANCE - DRAFT

ADOPTED: _____

An Ordinance to provide for a service charge in lieu of taxes for a housing project for low income persons and families to be financed with a Federally-aided or Authority-aided Mortgage Loan pursuant to the provisions of the State Housing Development Authority Act of 1966 (1966 PA 346, as amended; MCL 125.1401, *et seq*) (the "Act").

THE CITY OF BIRMINGHAM ORDAINS:

SECTION 1. This Ordinance shall be known and cited as the "City of Birmingham Tax Exemption Ordinance – Baldwin House."

SECTION 2. Preamble.

It is acknowledged that it is a proper public purpose of the State of Michigan and its political subdivisions to provide housing for its low income persons and families and to encourage the development of such housing by providing for a service charge in lieu of property taxes in accordance with the Act. The City is authorized by this Act to establish or change the service charge to be paid in lieu of taxes by any or all classes of housing exempt from taxation under this Act at any amount it chooses, not to exceed the taxes that would be paid but for this Act. It is further acknowledged that such housing for persons and families of low income is a public necessity, and as the City will be benefited and improved by such housing, the encouragement of the same by providing real estate tax exemption for such housing is a valid public purpose. It is further acknowledged that the continuance of the provisions of this Ordinance for tax exemption and the service charge in lieu of all *ad valorem* taxes during the period contemplated in this Ordinance are essential to the determination of economic feasibility of the housing projects that is constructed or rehabilitated with financing extended in reliance on such tax exemption.

The City acknowledges that the Sponsor (as defined below) has offered, subject to receipt of a federally- or Authority-aided Mortgage Loan and an allocation under the LIHTC Program from the Michigan State Housing Development Authority, to construct or acquire and rehabilitate, own and operate a housing project identified as Baldwin House on certain property located at 200 S. Chester Street in the City of Birmingham to serve low income persons and families, and that the Sponsor has offered to pay the City on account of this housing project an annual service charge for public services in lieu of all *ad valorem* property taxes.

SECTION 3. Definitions. All terms shall be defined as set forth in the Act, except as

follows:

A. Annual Shelter Rent means the total collections during an agreed annual period from or paid on behalf of all occupants of a housing project representing rent or occupancy charges, exclusive of Utilities.

B. Authority means the Michigan State Housing Development Authority.

C. Contract Rents means the total Contract Rents (as defined by the U.S. Department of Housing and Urban Development in regulations promulgated pursuant to Section 8 of the U.S. Housing Act of 1937, as amended) received in connection with the operation of a housing project during an agreed annual period, exclusive of Utilities.

D. LIHTC Program means the Low Income Housing Tax Credit program administered by the Authority under Section 42 of the Internal Revenue Code of 1986, as amended.

E. Low Income Persons and Families means persons and families eligible to move into a housing project.

F. Mortgage Loan means a loan that is Federally-Aided (as defined in section 11 of the Act) or a loan or grant made or to be made by the Authority to the Sponsor for the construction, rehabilitation, acquisition and/or permanent financing of a housing project, and secured by a mortgage on the housing project.

G. Sponsor means Birmingham Limited Dividend Housing Association and any entity that receives or assumes a Mortgage Loan.

H. Utilities means charges for gas, electric, water, sanitary sewer and other utilities furnished to the occupants that are paid by the housing project.

SECTION 4. Class of Housing Projects.

It is determined that the class of housing projects to which the tax exemption shall apply and for which a service charge shall be paid in lieu of such taxes shall be housing projects for Low Income Persons and Families that are financed with a Mortgage Loan. It is further determined that Baldwin House is of this class.

(This section may be modified to define the class of housing projects that are exempt)

SECTION 5. Establishment of Annual Service Charge.

The housing project identified as Baldwin House and the property on which it is located shall be exempt from all *ad valorem* property taxes from and after the commencement of construction or rehabilitation. The City acknowledges that the Sponsor and the Authority have established the economic feasibility of the housing project in reliance upon the enactment and

continuing effect of this Ordinance, and the qualification of the housing project for exemption from all *ad valorem* property taxes and a payment in lieu of taxes as established in this Ordinance. Therefore, in consideration of the Sponsor's offer to construct/rehabilitate and operate the housing project, the City agrees to accept payment of an annual service charge for public services in lieu of all *ad valorem* property taxes. **The annual service charge shall be equal to (4)% of the Annual Shelter Rents actually collected by the housing project during each operating year.**

(This section is required but may be modified to reflect changes in the amount or calculation of the annual service charge)

SECTION 6. Contractual Effect of Ordinance.

Notwithstanding the provisions of section 15a(7) of the Act to the contrary, a contract between the City and the Sponsor with the Authority as third party beneficiary under the contract, to provide tax exemption and accept payments in lieu of taxes, as previously described, is effectuated by enactment of this Ordinance.

SECTION 7. Limitation on the Payment of Annual Service Charge.

Notwithstanding Section 5, the service charge to be paid each year in lieu of taxes for the part of the housing project that is tax exempt but which is occupied by other than low income persons or families shall be equal to the full amount of the taxes which would be paid on that portion of the housing project if the housing project were not tax exempt.

(This section is required)

SECTION 8. Payment of Service Charge.

The annual service charge in lieu of taxes as determined under this Ordinance shall be payable in the same manner as general property taxes are payable to the City and distributed to the several units levying the general property tax in the same proportion as prevailed with the general property tax in the previous calendar year. The annual payment for each operating year shall be paid on or before *insert date service charge is payable* of the following year. Collection procedures shall be in accordance with the provisions of the General Property Tax Act (1893 PA 206, as amended; MCL 211.1, *et seq*).

SECTION 9. Duration.

This Ordinance shall remain in effect and shall not terminate so long as the housing project remains subject to income and rent restrictions under the LIHTC Program.

SECTION 10. Severability.

The various sections and provisions of this Ordinance shall be deemed to be severable, and should any section or provision of this Ordinance be declared by any court of competent jurisdiction to be unconstitutional or invalid the same shall not affect the validity of this Ordinance

as a whole or any section or provision of this Ordinance, other than the section or provision so declared to be unconstitutional or invalid.

SECTION 11. Inconsistent Ordinances.

All ordinances or parts of ordinances inconsistent or in conflict with the provisions of this Ordinance are repealed to the extent of such inconsistency or conflict.

SECTION 12. Effective Date.

This Ordinance shall become effective on [insert effective date], as provided in the City Charter.

CITY OF BIRMINGHAM:

By: _____
Elaine McLain, Mayor

By: _____
Alexandria D. Bingham, City Clerk

APPROVED:

Jana Ecker, City Manager
(Approved as to substance)

Nick Dupuis, Planning Director
(Approved as to substance)

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

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

AMENDMENT TO REGULATORY AGREEMENT

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
LOW INCOME HOUSING TAX CREDIT
735 East Michigan Avenue
Lansing, Michigan 48912

THIS AGREEMENT, made and entered into as of the 17th day of September, 2024, by and between Birmingham Limited Dividend Housing Association Limited Partnership, a Michigan limited partnership (the "Partnership"), whose address is 21400 Dix Toledo Highway, Brownstown, Michigan 48183, and the MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY, a public body corporate and politic of the State of Michigan (the "Authority"), whose address is 735 East Michigan Avenue, Lansing, Michigan 48912.

RECITALS:

WHEREAS, the Partnership is owner of a certain housing development known as Baldwin House (the "Project"), located in the City of Birmingham, County of Oakland, and State of Michigan, more particularly described in Exhibit A which is attached to and made a part of this Agreement; and

WHEREAS, the Authority has made an allocation of Low Income Housing Tax Credit to the Project; and

WHEREAS, pursuant to Section 42 of the Internal Revenue Code of 1986, as amended, the Partnership and the Authority entered into a "Regulatory Agreement" dated December 28, 1994, that was recorded in the Oakland County Register of Deeds at Liber 15646, Page 843, on September 5, 1995 ("Regulatory Agreement"); and

WHEREAS, the Authority and the Owner have agreed to extend the term of the Restrictive Covenants and to waive certain rights under the Code for the period as described below.

NOW, THEREFORE, the parties agree to amend the Regulatory Agreement as follows:

1. The "extended use period" as set forth in Sections 4 and 6 of the Restrictive Covenants shall terminate on December 31, 2054.
2. The Owner hereby waives the right to request a "qualified contract" from the Authority under Section 42(h)(6) of the Code until ten (10) years have elapsed since the effective date of this Amendment to Restrictive Covenants.
3. The Restrictive Covenants, as amended and modified hereby, is ratified and confirmed in all other respects.

IN WITNESS WHEREOF, the parties have executed this Agreement as of this 17th day of September, 2024.

MICHIGAN STATE HOUSING
DEVELOPMENT AUTHORITY

By: _____
Matthew Bergeon
Director of Asset Management

STATE OF MICHIGAN)
)ss.
COUNTY OF INGHAM)

The foregoing instrument was acknowledged before me this _____ day of _____, 2024, by Matthew Bergeon, as Director of Asset Management of the Michigan State Housing Development Authority, a public body corporate and politic of the State of Michigan.

Notary Public, Ingham County, MI
My Commission Expires: 10/15/2025
Acting in Ingham County, MI

BIRMINGHAM LIMITED DIVIDEND
HOUSING ASSOCIATION LIMITED PARTNERSHIP

By: _____

Its: General Partner

By: _____

Its: Managing Member

By: _____

Its: _____

STATE OF _____)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____,
_____, by _____, as _____,

Birmingham Limited Dividend Housing Association Limited Partnership.

Notary Public, _____ County, _____
My Commission Expires: _____
Acting in _____ County, _____

DRAFTED BY:

Margaret A. Meyers
MICHIGAN STATE HOUSING
DEVELOPMENT AUTHORITY
735 E. Michigan Avenue
P.O. Box 30044
Lansing, Michigan 48909

WHEN RECORDED
PLEASE RETURN TO:

Carol Thompson
MICHIGAN STATE HOUSING
DEVELOPMENT AUTHORITY
735 E. Michigan Avenue
P.O. Box 30044
Lansing, Michigan 48909

EXHIBIT A

The following described premises situated in the City of Birmingham, County of Oakland, State of Michigan:

Land situated in the Northwest $\frac{1}{4}$ of Section 36, Town 2 North, Range 10 East, City of Birmingham, Oakland County, Michigan, being parts of Lots 1, 5, 13, and 17, all of Lots 2, 3, 4, 14, 15 and 16, also adjoining vacated alleys and adjoining South one-half of vacated Martin Street of Castle Addition to the City of Birmingham as recorded in Liber 3 of Plats, Page 9 Oakland County Records, more particularly described as follows: Beginning at a point on the South line of said Lot 17 located South $88^{\circ} 15'$ West 13.65 feet from the Southeast corner of said Lot 17 as platted; thence South $88^{\circ} 15'$ West 271.48 feet along the North line of Merrill Street to a point situated 9.13 feet Westerly of the Southeast corner of said Lot 13 as platted; thence North $1^{\circ} 30'$ West 236.00 feet to the centerline of vacated Martin Street; thence North $88^{\circ} 15'$ East 274.28 feet along said centerline of vacated Martin Street to the West line of Chester Street as widened; thence South $1^{\circ} 47' 25''$ East 232.00 feet along said West line of Chester Street; thence South $43^{\circ} 13' 48''$ West 5.65 feet to the point of beginning of this description.

Part of Tax ID 08-19-36-126-019

DRAFT

EXHIBIT B

The Owner acknowledges that it has made certain representations with respect to the development, all of which remain true. Further, these criteria have been considered by the Authority in awarding Housing Tax Credit and shall be binding on the Owner and on any successor(s) in interest in the Project unless the Authority, in its sole discretion as Housing Credit Agency, grants a specific waiver of any such requirement. All applicable are checked.

1. Credit has been allocated to this development on the basis that a bona fide 501(c)(3) or 501(c)(4) nonprofit organization, having the fostering of housing as one of its exempt purposes and having no affiliation with or controlled by a for profit entity, has an ownership interest in the development and materially participates in the development's operation.
2. Credit has been allocated to this development on the basis that it is designed to serve and will serve the elderly population, that term being the most restrictive of the definition of "elderly" in the Authority's Act, any applicable tax abatement ordinance or resolution, or any applicable regulations under which the development has received assistance.
3. At least square feet (15 square feet per residential unit) of community space will be provided for use by the tenants in this project that serves the elderly and qualifies for the elderly set-aside.
4. Units will be rented to tenants with special needs receiving substantial services as a result of a contract (or equivalent relationship) with a local service provider.
5. X Credit has been allocated to this development on the basis that it will serve tenants at certain area median income restrictions and will also concomitantly reduce rents to those tenants. The number of units so assisted and the incomes of residents for those units are as follows:
 - ◆ 13 units (9.92 %) will be rented to families whose income does not exceed 30% of the area median gross income.
 - ◆ 40 units (30.54 %) will be rented to families whose income does not exceed 50% of the area median gross income.
6. Two and/or three bedroom units will be reserved for households with children.
7. Credit has been allocated to this development on the basis that it will consist of single family or townhouse units that will be sold to eligible tenants at the end of the compliance period.
8. 78 units (59.54%) will be rented to tenants at market rate.



Birmingham Limited Dividend Housing Association Limited Partnership
3707 W. Maple Rd
Bloomfield Hills, MI 48301

September 27, 2024

Dear Mr. Joseph E Schwartz,

The City of Birmingham (City) entered into a Parking Agreement (Agreement) with Baldwin House, a Michigan non-profit corporation on March 26th, 1990. Terms of the Agreement specify that commencing with the date that a certificate of occupancy is issued for the housing project known as Baldwin House, the City shall provide without charge sixty-nine (69) parking spaces in the Chester Street Parking Structure for the exclusive use of Baldwin House tenants and their guests. The City's obligation to furnish such parking spaces shall terminate and the City shall no longer be required to furnish such spaces free of charge upon the expiration of a period of thirty (30) years following the date on which the Certificate of Occupancy is issued. The Certificate of Occupancy was issued to Baldwin House on September 28, 1994, thus the City's obligation to furnish 69 parking spaces to Baldwin House free of charge expires on Saturday, September 28, 2024. This letter serves as a formal written notice that the terms of the Parking Agreement related to the City providing 69 parking spaces free of charge in the Chester Street Parking Garage for the use of Baldwin House residents will expire on September 28, 2024.

Section (B)(i) of the Agreement specifies that within 30 days of receiving this notice, the owner shall commence payment to the City of a monthly amount equal to the monthly charge made to the City by other users of the parking facility who lease on a monthly basis, multiplied by the number of spaces which the owner anticipates that it desires to lease long-term.

Section (B)(i) then specifies that within one hundred twenty days (120) after the receipt of such notice, the owner of the housing project shall give the City written notice of its intent to acquire the right to lease a number of spaces, not to exceed sixty nine (69) or the number for which it is then paying rent, whichever is less, in the parking structure. Delivered with such notice within one hundred twenty days (120) shall be a certified check made payable to the City of Birmingham, the total of which shall be the sum of Fifteen Thousand Dollars (\$15,000) for each parking space which the owner desires to lease, plus a sum equal to the per space capital expenditures incurred by the City in maintaining the parking structure subsequent to its completion, multiplied by the number of spaces to be leased by the owner. Upon payment of such sum, the owner shall have

the right to lease as many parking spaces (not to exceed 69 or the amount being leased, whichever is less) as have been requested and paid for.

Section (B)(iii) specifies that for all spaces which Baldwin House or its successors and assigns have paid, pursuant to (B)(i), there shall be paid to the City a monthly amount equal to the monthly charge for users of the parking facility who lease on a monthly basis. Section (C) specifies that in the event that Baldwin or its successors and assigns exercises its rights under paragraph B above to lease parking spaces from the City, the City shall be obligated to provide the same as described in paragraph B for so long as the Baldwin House project is used for residential housing and public parking is provided at the Chester Street location of the Chester Street Parking Structure.

The current monthly rate for a parking pass in the Chester Street Parking Garage is \$70. The Chester Street Parking Garage has 880 parking spaces and the City has spent \$2,874,022 on capital expenditures since the completion of the structure, which equates to an amount of \$3,266 per space. Baldwin House is required by the Zoning Ordinance to have 66 parking spaces, and currently has 11 parking spaces on-site. In order to maintain compliance with the City's Zoning Ordinance, the applicant must obtain a minimum of 55 spaces from the City, and may obtain a maximum of 69 parking spaces per the Agreement.

Within 30 days of receipt of this notification, the Baldwin House must specify a number of parking spaces they wish to lease from the City and provide a monthly payment in the amount of \$70 for each leased space. Within 120 days of receipt of this notification, the Baldwin House must specify a number of parking spaces they wish to lease from the City in order to maintain compliance with the Zoning Ordinance, and provide payment in the amount of \$18,336 (\$15,000 + \$3,266 + \$70) per space. The maximum of 69 parking spaces would amount to a total of \$1,265,184. Baldwin House would then be required to pay the parking rate for the Chester Street Parking Structure on a monthly basis to the City for the number of parking spaces requested to maintain compliance with the City's Zoning Ordinance and Parking Agreement terms.

Sincerely,

Jana Ecker

City Manager

Birmingham, MI

Memorandum

To: Brooks Cowan

From: Joe Schwartz

Date: September 30, 2024

Subject: The Baldwin on Chester Wants to Continue Affordable Housing in Birmingham

1. Basic overview of concept change and name change

We have changed the name from The Baldwin House to the Baldwin on Chester. There is no concept change in terms of how the building will be operated in 2024 and forward. We plan to continue 53 affordable units & 78 market rate units at the Baldwin on Chester for the next 30 years.

2. Details of the LIHTC Regulatory Agreement Amendment and the extension of the terms regarding the 53 affordable units (Exhibit B breakdown).

A draft of the LIHTC Regulatory Agreement Amendment was presented to the City Commission on 9/23/24. We intend to continue having fifty-three (53) affordable units for the next 30 years with the same regulatory requirements that have been in place since 1994.

3. How many units Baldwin House intends to keep as "Senior", 55+?

We intend the building to be an apartment building for 55+ seniors. We also intend to rent as many as twenty-six (26) units to families since this has been the policy under the regulatory agreement since 1994. As we indicated at the City Commission Meeting on 9/23/24, few families have wished to reside at the Baldwin on Chester since the building opened. Each year since opening in 1994, I believe less than ten

(10) families have chosen to rent apartments at the building in any given year.

4. What will happen to existing "families" (non-seniors)

Nothing will happen to the current families unless they elect to move out at their own choice. We will continue to market to the families as indicated above.

5. Details of paying off Mortgage (date and amount)

Attached please see a copy of MSHDA's payoff letter and a copy of the closing statement from the title company.

6. What will happen to the rental rates for residents occupying the non-affordable units that have been uncapped from 100% AMI?

When all current market rate residents renew their leases, the amounts of rental increases we expect to request will be 3% to 5% for the remainder of 2024 and 2025.

7. How much rent Baldwin House intends on charging for the 78 non-affordable units (Ranges for 1 bedroom & 2 bedroom) - particularly for the 46 vacant units reported for September 2024?

The total monthly payments we are currently offering for one bedroom market rate units are \$1,500 to \$1,700. The total monthly payments for two bedroom, one bath units are currently offered at \$3,000 and two bedroom, two bath units are currently offered at \$3,500.

8. What will happen with the Baldwin House Board Group meant to provide a voice for the low-income residents?

Baldwin House, Inc. a Nonprofit (BHI) has been an advisor to the property for a 30 year term that ends on 12/31/24. We are not aware of BHI's plans for the future. If BHI would like to go forward as an advisor for the building, we would propose a new written agreement that would govern their roles and responsibilities going forward.

9. Details regarding Baldwin on Chester's new meal plan vs old plan

The original meal plan was an optional service that provided 3 meals daily, 365 days a year beginning in 2007. From 1994 to 2007, the building did not provide any type of food plan for the residents. Earlier this year, we implemented the new food program that provides quality meals prepared by local restaurants on Monday through Friday. Residents who want food available for the weekends are offered the opportunity to purchase extra meals on Fridays for the weekends.

10. What are the general operations plans related to security, cleaning, and transportation?

The Baldwin on Chester is an apartment building, not a licensed senior facility. Security procedures at the property will continue in the same capacity it has provided since 1994. The property will continue to be cleaned in an excellent fashion by Continental Management employees. The Baldwin on Chester will also continue to offer complimentary transportation within a 5 mile radius via scheduled transportation.

9:58

**1-6-93: BALDWIN HOUSE - SITE PLAN &
SPECIAL LAND USE PERMIT EXTENSION**

MOTION: Motion by Lanzetta, seconded by Judd:

To approve the request of Baldwin House to extend the Site Plan, the Special Land Use Permit and the Tax Exempt Ordinance to February 28, 1993.

VOTE: Yeas, 7 Nays, None

The City Attorney reported that it is necessary to pass a resolution recognizing that Birmingham Limited Dividend Housing Association Limited Partnership is the assignee of the rights of Baldwin House and to authorize the mayor and clerk to sign a warranty deed from the City to the partnership.

MOTION: Motion by Lanzetta, seconded by Siewert:

To adopt the following resolution:

WHEREAS, the City of Birmingham entered into an Agreement for the sale of certain property to Baldwin House on November 6, 1976, which was amended on December 17, 1990 and on November 4, 1991;

WHEREAS, Birmingham Limited Dividend Housing Association Limited Partnership is the assignee of the rights of Baldwin House under such Agreement; and

WHEREAS, all terms of such Agreement, as amended and modified by a court case entitled United States of America v City of Birmingham, Michigan in the United States District Court for the Eastern District of Michigan, Southern Division, Case No. 80-70991, have been complied with:

NOW, THEREFORE, the City of Birmingham hereby authorizes the sale of such property to the Birmingham Limited Dividend Housing Association Limited Partnership.

BE IT FURTHER RESOLVED that the Mayor and Clerk are hereby authorized to sign a warranty deed from the City to the Birmingham Limited Dividend Housing Association Limited Partnership, conveying such property.

VOTE: Yeas, 7 Nays, None

10:00

1-7-93: MEETING OPEN TO THE PUBLIC

Ms. Lori Eick, Chamber of Commerce, announced that Mr. Jim Helmrich is retiring from Michigan Bell and a reception will be held at the Community House on Wednesday, January 13, 1993 from 5 P.M. to 7 P.M.

10:01 -

**1-8-93: NOTICE OF INTENTION TO APPOINT TWO
MEMBERS TO THE ALLEN HOUSE BOARD**

Notice of intention received regarding the appointment of two members to the Allen House Board; said appointment to be made on February 8, 1993.

10:01

1-9-93: BOARD AND COMMISSION AGENDA TOP SHEETS

Agenda top sheets received for the Board of Zoning Appeals meeting scheduled for January 12, 1993, and for the Planning Board meeting scheduled for January 13, 1993.

10:02

1-10-93: FEE SUMMARY REPORT - BUILDING DEPARTMENT

Fee summary report for the month of December, 1992 received from the Building Official.

10:02

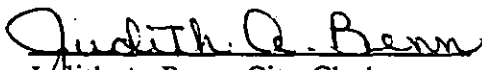
1-11-93: SCHEDULE SPECIAL MEETING

MOTION: Motion by Siewert, seconded by Judd:

To schedule a special meeting for Monday, January 25, 1993, at a time determined by the administration for the purpose of interviewing candidates to serve on the Fourteen Mile Road Citizen's Task Force.

VOTE: Yeas, 7 Nays, None

Meeting adjourned at 10:05 P.M.


Judith A. Benn, City Clerk

BIRMINGHAM PLANNING BOARD PROCEEDINGS

November 11, 1992

The consensus of members was the redraft "B" is much clearer and more concise.

Motion by Blaesing

Supported by Ribits that we recommend to the City Commission to amend Chapter 39, section 5.191 (4) (e) by adopting draft "B" as presented.

Motion carried, 6-0.

11-120-92

Special Land Use Review and Recommendation.

Baldwin House.

Mrs. McCullough recalled the original SLUP was granted on August 24, 1987. Baldwin House is requesting an amendment which involves revisions to the site plan. The revisions involve expanding the landscaping on the project site and proposing minor design changes at the first floor of the building. In addition, the dumpster enclosure has been re-oriented at an angle to allow access by trucks from Martin Street via Southfield Road.

Mr. Daniel A. Tosch, Progressive Associates, Inc., architect, was present, along with Mr. Phil Seymour, spokesperson from the Baldwin House Board of Directors and Ken Bond, Virginia Turner and Paul Lin, Board members. Marvin Rubin from North Cranbrook Associates, the designated developer and general contractor, was also in attendance. Mr. Tosch explained the requested changes to the Board.

The original submission included 100 senior citizen/elderly dwelling units and 30 family/non-elderly dwelling units. The current program, as dictated by MSHDA and Federal guidelines, requires that the building be designed to accommodate 100% elderly occupancy with the provision for a maximum of 20% (26 units) non-elderly, which are to be dispersed throughout the building.

Since the family/non-elderly dwelling units were designed to be directly accessible from the building exterior at grade, a service walk was required. Because the building is intended for 100% elderly occupancy, all dwelling units will be accessed from the interior corridor.

First floor dwelling units that were accessed from a service walk were also provided with an entry porch, shared by an adjacent dwelling unit. Currently, all first floor units, as well as



Baldwin House Scenario Analysis City of Birmingham Staff Report

October 1, 2024

EXECUTIVE SUMMARY

The City of Birmingham staff was asked to provide basic estimates of the property value and PILOT Fee for Baldwin House based on the four rent scenarios presented at the City Commission workshop Monday, September 23, 2024. The following includes basic income, expense, and cap rate assumptions to gain a general idea of the building value and resulting PILOT fee in each rent scenario. This is not an official assessment, it is a 'back-of-the-napkin' calculation on values to help guide decision making between the four scenarios. Net Operating Income (NOI) was calculated by subtracting estimated expenses from estimates rents in each case. The NOI value was then divided by an estimated capitalization rate (Cap Rate) of 5% to gain a general value. Below is a summary table of staff's findings, along with the assumptions used for data inputs and a list of exhibits with information used to justify such assumptions.

Projection Assumptions	
Occupancy	95%
Cap Rate	5.0%
PILOT Fee for Capped Rents	4%
Expense Per Unit	\$12k - \$15k
Area Median Income (AMI)	Oakland County
30% AMI Rent	\$504
50% AMI Rent	\$840
100% AMI Rent	\$1,680
150% AMI Rent	\$2,520
Market Rate Rent	\$2,750

Exhibits	Description
A	Financial summary of past 10 years
B	Oakland County AMI & rent calculations
C	Marketed rents
D	Rent Roll September 2023
E	Rent Roll August 2024
F	2023 PILOT Fee City of Birmingham

SUMMARY TABLE

Options	30% AMI Units	50% AMI Units	100% AMI Units	150% AMI Units	Market Rate Units	Expense Per Unit	Net Operating Income (NOI)	PILOT Fee	Value
Option 1	13	40			78	\$15k	\$ 1,090,824	\$ 292,852	\$ 20,725,656
Option 2	13	40	78			\$12k	\$ 482,304	\$ 78,064	\$ 9,163,776
Option 3	13	40	25		53	\$14k	\$ 900,824	\$ 190,051	\$ 17,115,656
Option 4	13	40	25	53		\$13.5k	\$ 820,044	\$ 103,542	\$ 15,580,836

Summary: Based upon general assumptions from data collected on Baldwin House's rent roll, asking rents, and reported expenses, City staff finds that if all 78 non-affordable units were uncapped, the building would be worth about \$20-21 million. If all historic rental caps are required to be maintained, the value would be approximately \$9-\$10 million. If the City chooses to pursue a mixed income development with low income, middle income, and either upper income or uncapped rental units, the building would be worth approximately \$15-\$17 million.

Staff Notes

Projection Assumptions		Staff Notes	Exhibit(s)
Occupancy	95%	Based on historic occupancies pre-covid	A
Cap Rate	5.0%	Based on downtown Birmingham market, location, and building condition	-
PILOT Fee for Capped Rents	4%	Historic fee past 30 years	F
Expense Per Unit	\$12k-\$15k	Based on \$13.1k avg annual expenses over the past 10 years. The range in expenses will vary based on the PILOT Fee	A
Area Median Income (AMI)	Oakland County	Based on Oakland County calculation from HUD & MSHDA	B
30% AMI Rent	\$504	Based on Oakland County calculation from HUD & MSHDA	B
50% AMI Rent	\$840	Based on Oakland County calculation from HUD & MSHDA	B
100% AMI Rent	\$1,680	Based on Oakland County calculation from HUD & MSHDA	B
150% AMI Rent	\$2,520	Based on Oakland County calculation from HUD & MSHDA	B
Market Rate Rent	\$2,750	The 'Market Rate Rent' value of \$2,750 was used in the calculations for Option 1 and Option 3. The marketed rates on Baldwin House's website thebaldwinonchester.com, as well as Aparments.com and ApartmentGuide.com are between \$2,500 - \$3,200. The August 2024 rent roll also indicated 46 vacant units that could be filled at marketed rental rates. It is also of note that the Rent Rolls from September 2023 and August 2024 provided by Baldwin House indicate a number of units being rented well above \$2,000 and \$3,000 per month. Given this information, staff chose a value weighted more towards marketed rents for the market rate assumption.	A, C, D, E

Option 1—Rent Regulation Scenarios for Baldwin House

Option 1: Uncap 78 Units

Units	Income Category	Rent Values	Monthly Rent - 2024	Months	Max Rent
13	Low Income	30% AMI	\$ 504	12	\$ 78,624
40	Low Income	50% AMI	\$ 840	12	\$ 403,200
78	Uncapped	Market Rate*	\$ 2,750	12	\$ 2,574,000

Total Income

\$ 3,055,824

Estimated Expenses

Units	Expense Per Unit**
131	\$ 15,000

Total Expenses

\$ 1,965,000

NOI

\$ 1,090,824

Occupancy

95%

Cap Rate

5%

Value

\$ 20,725,656

PILOT Agreement Scenario

Units	Income Category	Rate	Proportion of Building	Tax Value Proportion	PILOT Fee
53	Low Income	4%	40%	-	\$ 19,273
78	Uncapped	44 mills	60%	\$ 6,217,697	\$ 273,579
					\$ 292,852

Notes

*Based on rent roll and marketed rents

** Based on independent Auditors for MSHDA

Option 2 - Rent Regulation Scenarios for Baldwin House

Option 2: Maintain Past 30 Years - All 131 Capped

Units	Income Category	Rent Values	Monthly Rent - 2024	Months	Max Rent
13	Low Income	30% AMI	\$ 504	12	\$ 78,624
40	Low Income	50% AMI	\$ 840	12	\$ 403,200
78	Middle Income	100% AMI	\$ 1,680	12	\$ 1,572,480

Total Income
\$ 2,054,304

Estimated Expenses

Units	Expense Per Unit**	Total Expenses
131	\$ 12,000	\$ 1,572,000

NOI
\$ 482,304

Occupancy	Cap Rate	Value
95%	5%	\$ 9,163,776

PILOT Agreement Scenario

Units	Income Category	Rate	Proportion of Building	Tax Value Proportion	PILOT Fee
131	Low & Middle Income	4%	100%	-	\$ 78,063.55

Notes

** Based on independent Auditors for MSHDA

Option 3 - Rent Regulation Scenarios for Baldwin House

Option 3: Cap 78 Bonus Units, Uncap 53 Units

Units	Income Category	Rent Values	Monthly Rent - 2024	Months	Max Rent
13	Low Income	30% AMI	\$ 504	12	\$ 78,624
40	Low Income	50% AMI	\$ 840	12	\$ 403,200
25	Middle Income	100% AMI	\$ 1,680	12	\$ 504,000
53	Uncapped	Market Rate*	\$ 2,750	12	\$ 1,749,000

Total Income
\$ 2,734,824

Estimated Expenses

Units	Expense Per Unit**	Total Expenses
131	\$ 14,000	\$ 1,834,000

NOI
\$ 900,824

Occupancy	Cap Rate	Value
95%	5%	\$ 17,115,656

PILOT Agreement Scenario

Units	Income Category	Rate	Proportion of Building	Tax Value Proportion	PILOT Fee
53	Low Income	4%	40%	-	\$ 19,273
25	Middle Income	4%	20%		\$ 20,160
53	Uncapped	44 mills	40%	\$ 3,423,131	\$ 150,618
					\$ 190,051

Notes

*Based on rent roll and marketed rents

** Based on independent Auditors for MSHDA

Option 4 - Rent Regulation Scenarios for Baldwin House

Option 4: Cap all Units - 30% AMI to 150% AMI

Units	Income Category	Rent Values	Monthly Rent - 2024	Months	Max Rent
13	Low Income	30% AMI	\$ 504	12	\$ 78,624
40	Low Income	50% AMI	\$ 840	12	\$ 403,200
25	Middle Income	100% AMI	\$ 1,680	12	\$ 504,000
53	Upper Income	150% AMI	\$ 2,520	12	\$ 1,602,720

Total Income
\$ 2,588,544

Estimated Expenses

Units	Expense Per Unit**	Total Expenses
131	\$ 13,500	\$ 1,768,500

NOI
\$ 820,044

Occupancy	Cap Rate	Value
95%	5%	\$ 15,580,836

PILOT Agreement Scenario

Units	Income Category	Rate	Proportion of Building	Tax Value Proportion	PILOT Fee
53	Low Income	4%	40%	-	\$ 19,273
25	Middle Income	4%	20%	-	\$ 20,160
53	Upper Income	4%	40%	-	\$ 64,108.80
					\$ 103,542

Notes

** Based on independent Auditors for MSHDA

Exhibit A: Baldwin House Financial Summary 2013-2022

Baldwin House	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Rental Income	2,026,702	2,006,796	2,022,144	2,028,306	1,992,386	1,968,030	1,937,058	1,936,325	1,938,213	1,988,892
Vacancy Loss as Negative	(71,775)	(34,189)	(78,417)	(157,808)	(147,124)	(129,684)	(218,390)	(412,488)	(664,188)	(718,637)
Other Income	88,499	85,575	107,830	100,553	81,806	73,208	(14,792)	87,133	90,448	299,267
Total Revenue	2,043,426	2,058,182	2,051,557	1,971,051	1,927,068	1,911,554	1,703,876	1,610,970	1,364,473	1,569,522
Management Fees	73,229	74,932	76,111	76,111	76,766	77,813	79,647	80,620	80,696	73,622
Administrative Costs	346,420	370,133	377,397	433,815	442,488	424,504	561,622	590,119	422,145	387,717
Operating & Maint	217,225	208,137	268,835	272,747	207,658	238,342	276,747	214,751	197,782	276,806
Interest	296,682	278,019	258,253	237,322	215,153	191,676	167,037	141,330	125,977	101,993
Depreciation	379,686	360,384	388,434	479,601	546,065	551,367	548,927	493,208	408,531	134,463
Other Expenses	286,321	292,487	282,574	321,226	333,366	349,113	341,578	376,602	352,328	414,835
Total Expenses	1,599,563	1,584,092	1,651,604	1,820,822	1,821,496	1,832,815	1,975,558	1,896,630	1,587,459	1,389,436
(Per Unit)	12,210	12,092	12,608	13,899	13,905	13,991	15,081	14,478	12,118	10,606
Net Income	443,863	474,090	399,953	150,229	105,572	78,739	(271,682)	(285,660)	(222,986)	180,086
(Per Unit)	3,388	3,619	3,053	1,147	806	601	(2,074)	(2,181)	(1,702)	1,375
Liquidity	689,746	563,128	508,562	144,247	140,550	227,542	168,225	(11,353)	(224,868)	(497,726)
Economic Vacancy	3.79%	1.76%	4.04%	8.21%	7.63%	6.77%	11.67%	22.64%	35.22%	36.13%
Vacant Units (End of year)	4	4	9	13	3	7	18	27	37	37
Debt Service Coverage Ratio	1.62	1.71	1.70	1.56	1.29	1.34	1.30	0.54	0.60	0.69
Mortgage Principle	314,610	333,184	352,855	373,688	395,750	419,115	443,860	355,135	485,604	84,560
Mortgage Interest	296,682	278,019	258,253	237,322	215,153	191,676	167,037	141,330	125,977	101,993
Annual Debt Service Amount	611,292	611,203	611,108	611,010	610,903	610,791	610,897	496,465	611,581	186,553
Year End Mortgage Balance	5,014,003	4,680,819	4,327,964	3,954,276	3,558,526	3,139,411	2,695,551	2,340,416	1,854,812	1,770,252

Staff Notes: The information in the table above was obtained from MSHDA and their independent audits conducted on an annual basis. The average annual expense per unit ranges between \$10,606 and \$15,081, averaging \$13,100 per unit . The vacancy rate was around 5% in 2013 through 2018, however it appears that the vacancy has dropped since Covid-19 years, and the applicant has been renovating units.

Exhibit B: Oakland County Area Median Income (AMI) & Rent Calculations

04/01/2024 INCOME AND RENT LIMITS

County: 63 Oakland

Effective Date:

4/1/2024

Income	1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person	8 Person
20%	13,440	15,360	17,280	19,180	20,720	22,260	23,800	25,320
25%	16,800	19,200	21,600	23,975	25,900	27,825	29,750	31,650
30%	20,160	23,040	25,920	28,770	31,080	33,390	35,700	37,980
35%	23,520	26,880	30,240	33,565	36,260	38,955	41,650	44,310
40%	26,880	30,720	34,560	38,360	41,440	44,520	47,600	50,640
45%	30,240	34,560	38,880	43,155	46,620	50,085	53,550	56,970
50%	33,600	38,400	43,200	47,950	51,800	55,650	59,500	63,300
55%	36,960	42,240	47,520	52,745	56,980	61,215	65,450	69,630
60%	40,320	46,080	51,840	57,540	62,160	66,780	71,400	75,960
70%	47,040	53,760	60,480	67,130	72,520	77,910	83,300	88,620
80%	53,760	61,440	69,120	76,720	82,880	89,040	95,200	101,280
100%	67,200	76,800	86,400	95,900	103,600	111,300	119,000	126,600
120%	80,640	92,160	103,680	115,080	124,320	133,560	142,800	151,920
125%	84,000	96,000	108,000	119,875	129,500	139,125	148,750	158,250
140%	94,080	107,520	120,960	134,260	145,040	155,820	166,600	177,240
150%	100,800	115,200	129,600	143,850	155,400	166,950	178,500	189,900

Rent By Person	1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person	8 Person
20%	336	384	432	479	518	556	595	633
25%	420	480	540	599	647	695	743	791
30%	504	576	648	719	777	834	892	949
35%	588	672	756	839	906	973	1,041	1,107
40%	672	768	864	959	1,036	1,113	1,190	1,266
45%	756	864	972	1,078	1,165	1,252	1,338	1,424
50%	840	960	1,080	1,198	1,295	1,391	1,487	1,582
55%	924	1,056	1,188	1,318	1,424	1,530	1,636	1,740
60%	1,008	1,152	1,296	1,438	1,554	1,669	1,785	1,899
80%	1,344	1,536	1,728	1,918	2,072	2,226	2,380	2,532
100%	1,680	1,920	2,160	2,397	2,590	2,782	2,975	3,165
120%	2,016	2,304	2,592	2,877	3,108	3,339	3,570	3,798
125%	2,100	2,400	2,700	2,996	3,237	3,478	3,718	3,956
140%	2,352	2,688	3,024	3,356	3,626	3,895	4,165	4,431
150%	2,520	2,880	3,240	3,596	3,885	4,173	4,462	4,747

Exhibit C: The Baldwin on Chester Website - Marketed Rents

ENJOY ELEGANCE, COMFORT, AND CONVENIENCE

Browse Apartment Floor Plans

Experience a harmonious mix of style, comfort, and practicality with our thoughtfully designed one and two-bedroom apartment floor plans at The Baldwin on Chester. Located in the heart of Downtown Birmingham, our active adult community features meticulously crafted units with modern amenities and high-end finishes. Browse our floor plans below to discover your perfect living space.

For more details on any of our floor plans or to schedule a tour, please contact us today.

[Check Availability](#)

[3D Virtual Tour](#)

One-Bedroom Apartments



Renderings are an artist's conception and are intended only as a general reference. Features, materials, finishes and layout of subject unit may be different than shown.

The Adams

Classic: \$2,650 – \$2,700 | 635 sq. ft.
Upgraded: \$2,700 – \$2,800 | 635 sq. ft.
Renovated: \$2,700 – \$3,000 | 635 sq. ft.



Renderings are an artist's conception and are intended only as a general reference. Features, materials, finishes and layout of subject unit may be different than shown.

The Cranbrook

Classic: \$2,600 | 615 sq. ft.
Upgraded: \$2,650 – \$2,800 | 615 sq. ft.
Renovated: \$2,900 | 615 sq. ft.



Renderings are an artist's conception and are intended only as a general reference. Features, materials, finishes and layout of subject unit may be different than shown.

The Baldwin

Upgraded: \$2,750 – \$2,850 | 658 sq. ft.
Renovated: \$2,950 – \$3,000 | 658 sq. ft.

Exhibit C: Apartments.com Marketed Rents - October 2023

Michigan / Oakland County / Birmingham / Baldwin House Birmingham Senior Living 2 Weeks Ago

Baldwin House Birmingham Se...



200 Chester St, Birmingham, MI 48009
Downtown Birmingham



★★★★★ (0 review) Verified Listing

INDEPENDENT LIVING 55+

Monthly Rent	Bedrooms	Bathrooms	Square Feet
\$2,450 - \$3,250	1 - 2 bd	1 - 2 ba	615 - 1,013 sq ft

1 bed 1 bath
\$2,450
1 bed, 1 bath, 615 sq ft
Available Now

Tour This Floor Plan

1 bed 1 bath
\$2,850 - \$2,950
1 bed, 1 bath, 678 sq ft
Available Now

Tour This Floor Plan



2 bed 1 bath
\$3,050
2 beds, 1 bath, 923 sq ft
Available Now

Tour This Floor Plan



The Baldwin on Chester



200 Chester St, Birmingham, MI 48009

Downtown Birmingham

★★★★★ (0 reviews) Verified Listing

Monthly Rent	Bedrooms	Bathrooms	Square Feet
\$2,600 - \$3,000	1 bd	1 ba	615 - 658 sq ft

Cranbrook 1x1 Classic

\$2,600

1 bed, 1 bath, 615 sq ft
Available Now

Adams 1x1 Classic

\$2,650 - \$2,700

1 bed, 1 bath, 635 sq ft
Available Now

Cranbrook 1x1 Upgraded

\$2,650 - \$2,800

1 bed, 1 bath, 615 sq ft
Available Now

Adams 1x1 Upgraded

\$2,700 - \$2,800

1 bed, 1 bath, 635 sq ft
Available Now

Adams 1x1 Renovated

\$2,700 - \$3,000

1 bed, 1 bath, 635 sq ft
Available Now

Baldwin 1x1 Upgraded

\$2,750 - \$2,850

1 bed, 1 bath, 658 sq ft
Available Now

Baldwin 1x1 Renovated

\$2,950 - \$3,000

1 bed, 1 bath, 658 sq ft
Available Now

Exhibit C: ApartmentGuide.com Marketed Rents - September 2024

1 Bedroom

The Cranbrook Classic 1×1

\$2,600

1 Bd, 1 Ba, 615 Sqft

[View 1 Available Unit](#)

The Adams Classic 1×1

\$2,650+

1 Bd, 1 Ba, 635 Sqft

[View 1 Available Unit](#)

The Cranbrook 1×1 Upgraded

\$2,650+

1 Bd, 1 Ba, 615 Sqft

[View 1 Available Unit](#)

The Adams 1×1 Reno

\$2,700+

1 Bd, 1 Ba, 635 Sqft

[View 1 Available Unit](#)

The Adams 1×1 Upgraded

\$2,700+

1 Bd, 1 Ba, 635 Sqft

[View 1 Available Unit](#)

The Baldwin 1×1 Upgraded

\$2,750+

1 Bd, 1 Ba, 658 Sqft

[View 1 Available Unit](#)

The Cranbrook Reno 1×1

\$2,900

1 Bd, 1 Ba, 615 Sqft

[View 1 Available Unit](#)

The Baldwin 1×1 Reno

\$2,950+

1 Bd, 1 Ba, 658 Sqft

[View 1 Available Unit](#)

Part V - Proposals



Proposal Items for Consideration:

1. What to do about 78 non-affordable units?
 - Should they be regulated with a rental cap?
 - If so, how should they be regulated, and at what AMI level?
2. Parking Agreement
 - Should a Parking Agreement be renewed?
 - If so, how should free parking spaces be allocated based on future ratio of affordable units?
3. PILOT Agreement
 - What percentage of units should a shelter fee in lieu of taxes be applied to?
 - How much should the fee be?
4. Rent Changes & Resident Turnover
 - How will proposed changes impact current residents?

Option 1: Uncap Rental Rates for 78 Units

1. SLUP Agreement

- a. 53 units maintained as affordable
- b. 78 units with uncapped rental rates
- c. Require the following terms of LIHTC Agreement, Parking Agreement, & PILOT Agreement

2. LIHTC Agreement Renewal – 2025 & beyond

- a. 53 units maintained as affordable
 - 40 units at 50% AMI & 13 units at 30% AMI

3. Parking Agreement

- a. Baldwin pays \$1.2m per original parking agreement;
OR
- b. New agreement for designated amount of parking spaces free of charge
 - b. (53 affordable units x 0.5 spaces per unit = 27 spaces)

4. PILOT Agreement

- a. 4% fee for 53 affordable units;
- b. Plus a fee proportional to the share of the taxable value for 78 non-affordable units

Option 2: Cap Rents for all 131 units - same as past 30 years

1. SLUP Agreement
 - a. 53 units maintained as affordable
 - b. 78 units required to average 100% AMI rental rates
 - c. Require the following terms of LIHTC Agreement, Parking Agreement, PILOT Agreement, & Restrictive Covenant
2. LIHTC Agreement Renewal – 2025 & beyond
 - a. 53 units maintained as affordable
 - 40 units at 50% AMI & 13 units at 30% AMI
3. Parking Agreement
 - a. Renew contract for 69 parking spaces free of charge
4. PILOT Ordinance
 - a. 53 units maintained as affordable
 - b. 78 units required to average 100% AMI rental rates
 - c. 4% fee for affordable units AND market rate units
5. Restrictive Covenant (new agreement)
 - a. 53 units maintained as affordable
 - b. 78 units required to average 100% AMI rental rates
 - c. would be monitored by staff annually in SLUP review

Option 3: Modify Rent Regulations

- Apply rent regulation to the 78 bonus units enabled by SLUP

1. SLUP Agreement
 - a. 53 units maintained as affordable
 - b. 25 units required to average 100% AMI rental rates
 - c. 53 units with uncapped rental rates
 - d. Require the following terms of LIHTC Agreement, Parking Agreement, PILOT Agreement, & Restrictive Covenant
2. LIHTC Agreement Renewal – 2025 & beyond
 - a. 53 units maintained as affordable
 - 40 units at 50% AMI & 13 units at 30% AMI
3. Parking Agreement
 - a. Renew contract for 39 parking spaces free of charge (0.5 spaces per 78 rent regulated units)
4. PILOT Ordinance
 - a. 53 units maintained as affordable
 - b. 25 units required to average 100% AMI rental rates
 - c. 4% fee for affordable units and market rate units
5. Restrictive Covenant (new agreement)
 - a. 53 units maintained as affordable
 - b. 25 units required to average 100% AMI rental rates
 - c. would be monitored by staff annually

Option 4: Modify Rent Regulations

- Apply levels of rent regulations to all 131 units

1. SLUP Agreement
 - a. 53 units maintained as affordable
 - b. 25 units required to average 100% AMI rental rates
 - c. 53 units required to average 150% AMI rental rates
 - d. Require the following terms of LIHTC Agreement, Parking Agreement, PILOT Agreement, & Restrictive Covenant
2. LIHTC Agreement Renewal – 2025 & beyond
 - a. 53 units maintained as affordable
 - 40 units at 50% AMI & 13 units at 30% AMI
3. Parking Agreement
 - a. Baldwin pays \$1.2m per original parking agreement;
OR
 - b. New agreement for 69 parking spaces free of charge
4. PILOT Ordinance
 - a. 53 units maintained as affordable
 - b. 25 units required to average 100% AMI rental rates
 - c. 53 units required to average 150% AMI rental rates
 - d. 4% fee for affordable units and market rate units (OR, all rent regulated units)
5. Restrictive Covenant (new agreement)
 - a. 53 units maintained as affordable
 - b. 25 units required to average 100% AMI rental rates
 - c. 53 units required to average 150% AMI rental rates
 - d. would be monitored by staff annually



MEMORANDUM

City Manager's Office

DATE: October 2, 2024

TO: City Commission

FROM: Jana L. Ecker, City Manager

SUBJECT: Senior/Recreation Center Project

INTRODUCTION:

In November 2022, the City Commission adopted several strategic goals, one of which was to support an engaged and connected community by offering City services and amenities that enrich the lives of residents of all ages. This strategic goal included a recommendation to "create a task force to facilitate an aging in place plan, develop a plan for a permanent senior/community center to house NEXT senior services and to offer space for multigenerational programs, engage with youth in the community with a teen board or committee."

BACKGROUND:

Since the City purchased the YMCA building last July, we have been working to solidify a long term plan for the redevelopment of the building and/or site for use as the future home of Next senior services, as well as a continued presence of the YMCA. A complete history of the milestones of the past year for this project was contained in previous staff reports in the July 22 and 29, 2024, August 26, 2024 and September 9, 2024 City Commission agenda packets.

On July 29, 2024, the City Commission held a special meeting to discuss the senior/recreation center project, and to review the renovation and new construction options discussed in detail by the Ad Hoc Senior/Recreation Center Committee and outlined in the final NORR report. At the special meeting, the City Commission was asked to answer two questions:

- Should the City renovate the existing YMCA building or demolish it and construct a new building to house Next and the YMCA?

- What is the maximum amount of funding that the City Commission is willing to invest in a future home for Next and the YMCA?

After much discussion, the City Commission answered the first question, and passed a resolution to demolish the existing YMCA building, and to construct a new building. The City Commission determined that additional information was needed before they could answer the second question above. The City Commission approved the following motion with respect to the existing YMCA building and the future senior/recreation center:

1. To demolish and build new.
2. These three parties need to meet, they need to be represented by counsel. They should not stick to any allocation, percentage-wise, of space. They should figure out the sharing arrangement, and they should contemplate, or discuss, a variety of partnership structures they can bring back to us. The City expects the YMCA to contribute commensurate with the square footage they would be utilizing.
3. That we begin the process of doing financial and legal due diligence on our partners. That may involve hiring outside counsel, or our existing auditing firm, to examine tax returns, financial statements, and potential legal structures.

The City Commission requested additional information on the space needs of Next and the YMCA, the potential sharing of space to reduce the overall building size, an outline of the type of agreements that Next and the YMCA are prepared to enter into with the City to formalize our partnership and cost sharing, and requested that the City conduct due diligence with regards to the legal and financial status of both Next and the YMCA prior to entering into any agreements. The City Commission noted that an RFP for final design cannot be issued without a square footage size and estimated construction cost as architect's standard contracts are a percentage of construction costs.

After the special meeting of the City Commission on July 29, 2024, and prior to the August 26, 2024 meeting, City staff met with both Next and the YMCA separately on multiple occasions to conduct legal and financial due diligence on our potential non-profit partners, and to discuss possible partnership arrangements. In addition, City staff also met extensively with our owner's representative to discuss potential funding models and partnership opportunities.

At the August 26, 2024 meeting, the City Commission reviewed the documents provided by both Next and the YMCA with regards to their organization status, structure and budgets. During the lengthy discussion, the following points were raised:

- The City's return on investment in Next is exceptional.
- There were some concerns about the changes to how the City will fund senior services and how the new building will be used. It will be necessary to find some

additional use for the building since Next will not use the building fully during all possible operational hours.

- Next's participating communities should aim to enter into an interlocal agreement in order to assist with funding Next.
- Birmingham should not oversee Next. Each participating community should oversee its taxpayer investment in senior services.
- Next should have a membership drive with the new building and increased programming opportunities as incentive.
- This process has evolved since the original purchase of the YMCA building.
- If a pool is integrated into this building, there will still be a gap in pool availability between the time the existing building is demolished and a new building is constructed. The YMCA should consider emphasizing that pool access would be available at a different YMCA facility during that time.
- There was some concern that present YMCA pool users may not return to using a pool in Birmingham after a gap in availability.
- If the YMCA runs a comprehensive fundraising campaign, it would likely be slower than an individual fundraising campaign.
- The Commission is responsible for making sure that any agreement with the YMCA would be financially sustainable for the City.
- The YMCA provides valuable services to the community.

Ultimately, the City Commission postponed a decision on the matter to conduct a workshop session on September 9, 2024. The Commission directed that Ms. Braun from Next and Mr. Underwood from the YMCA attend the workshop and present their offers, specific directions, ideas, goals, and agreements they would be willing to enter into with the City to partner on the new building at 400 E. Lincoln. The City Commission also requested additional information on the proposed scope for a new building, cost estimates, and funding opportunities.

Based on discussions had prior to September 9, 2024, Next had indicated a willingness to consider:

- Reducing the requested square footage contained in the NORR report by approximately 3,000 square feet if needed;
- Funding their share of the operating costs for a new building;
- Offering free or reduced Next membership to Birmingham residents and to amend their membership fees for all members;
- Approaching the other member communities of Next to solicit additional funding; and
- Entering into a long term lease with the City for use and occupation of the new building.

City staff and our owner's representative have met with Next leadership to discuss reducing their requested square footage on multiple occasions over the past few months. Next has agreed to remove two open programming rooms, reduce the size of their lobby, eliminate a dining area adjacent to the kitchen, reduce the number of pickleball courts from 4 down to 3, and to reduce the size of the proposed locker rooms and fitness area if a downsizing of the proposed building is needed.

Next leadership has also advised that after the August 26, 2024 City Commission meeting, they met with each of their member communities to discuss increased funding from each to support an expanded operation and new building.

Based on discussions had prior to September 9, 2024, the YMCA has indicated the following:

- A 53,300 square foot building would be sufficient to house Next, community use and a new Birmingham branch of the YMCA, including a pool;
- A willingness to share space with Next, to encourage an efficient use of the building;
- A willingness to fund the construction costs for the YMCA portion of a new building after running a capital campaign;
- A willingness to fund their share of the operating costs for a new building;
- Offering a reduced membership fee for Birmingham residents;
- Offering a single use or day pass option for Birmingham residents to utilize the pool and other YMCA offerings without purchasing a membership;
- Entering into an agreement with the City to be a long term partner in the project and to use and occupy a portion of the building on a long term basis, subject to raising the capital needed to fund construction.

The YMCA believes that the construction of a new Birmingham YMCA will attract an increased membership base at the Birmingham branch to meet their service and financial goals.

City staff and our owner's representative have met with the YMCA leadership to refine the space needs for the YMCA. The desired size of a new Birmingham YMCA space would be approximately 8,800 square feet, plus additional space to house a pool, for a total of about 13,300 square feet, plus shared space within Next's portion of the building (such as gymnasium, fitness room, locker rooms, open program rooms).

During the City Commission workshop on September 9, 2024, staff presented two options to finalize the size and scope of a new building, along with potential funding contributions from the City, Next and the YMCA. The options presented were based on the City Commission's direction at the prior meeting to have the YMCA fund their portion of the building, or to proceed with a building for Next only. The options discussed on September 9, 2024 were as follows:

Option A: 53,300 square foot building for Next and the YMCA

- Fully integrated design of building to include Next and YMCA space (including pool), and community use
- Phased construction:
 - Phase 1:
 - 40,000 square feet for Next (including space to be shared with the YMCA)

- Fiscal impact to City: Maximum bond financing for City of \$23.5 million over 30 years (annual debt service payments of approximately \$1.3 million)
- Fully funded turnkey space for Next and community use
- Operating costs funded by Next estimated at \$236,000/year (includes fund for future improvements)
- Long term lease with Next, rent \$1/year
- Phase 2:
 - 13,300 square feet for YMCA (including pool) in addition to shared space with Next constructed in Phase 1
 - YMCA to fund phase two construction and build out (turnkey space) estimated at \$11 million through capital fundraising campaign
 - Construction would not commence for phase 2 for 3-5 years, conditioned upon funds being raised by the YMCA
 - Operating costs of phase 2 funded by YMCA, estimated at \$141,000/year (includes pool and fund for future improvements)
 - Partnership agreement and long term lease with YMCA, conditioned upon success of fundraising campaign within 3 years

Option B: 36,000 (or 40,000) square foot building for Next only

- Design and construction of building for Next and community use
- 36,000 (or 40,000) square feet for Next and community use
- Fiscal impact to City: Maximum bond financing of \$21.5 million (for 36,000 square feet) over 30 years (annual debt service payments of \$1.21 million)
- Fully funded turnkey space for Next and community use
- Operating costs funded by Next estimated at \$250,000/year (includes fund for future improvements)
- Long-Term lease with Next, rent \$1/year

Both options A and B contemplated a long term lease that allows for the use and occupancy by Next of 36,000 to 40,000 square feet in the new building for \$1 per year in rent, with Next covering the operating costs of this space, including contributing to a fund for future improvements. The agreement that was proposed with the YMCA was to be a partnership agreement and long term lease with the City to construct a new Birmingham YMCA branch as phase two of the project (including a pool), subject to capital fundraising of approximately \$11,000,000 within a specified timeframe.

The City Commission appeared to reach consensus that neither option A or B as presented on September 9, 2024 (and summarized above) would be appropriate to explore given the changes proposed with regard to the YMCA usage with their recent change in leadership and their current financial constraints.

The City Commission discussed changing course and providing an integrated building for both Next and the YMCA, and planning, constructing and funding the entire building at one time, to allow both Next and the YMCA to occupy fully built out spaces at the same time, without phasing construction.

The City Commission also discussed a different option to plan, construct and fund Next's portion of the building (including potential future shared space) and a community pool at the outset, and then allowing the YMCA time to fundraise to construct additional space for the future use of the YMCA.

In addition, the City Commission also discussed the need to staff and program the community uses that were not provided by Next (such as staffing and running the pool, fitness track, pickleball courts on evenings and weekends, scheduling community use of rooms for parties, meetings, etc.).

The City Commission stated the belief that the project should be a comprehensive effort to offer life-long programming that will benefit community members of all ages.

As no action can be taken by the City Commission at the workshop, the senior/recreation center project was also on the regular meeting agenda the same evening to allow for further discussion and potential direction to move forward with the RFP to begin the schematic design of a new building.

At the regular meeting of the City Commission on September 9, 2024, discussion continued, and the following points were raised by Commissioners:

- This project has been in flux, and it made sense that staff brought the two options presented at the evening's workshop.
- It might be premature to design this building before determining what amenities may already be available to residents in the community.
- Many residents have spoken in support of maintaining the YMCA and pool use, and foregoing a pool on-site may prevent the YMCA from remaining a participant in this process.
- This project will need to be beneficial to the entire community in order to garner community support.
- It would likely be more appropriate for the City to build and then own the entirety of the building in order to avoid any potential complications regarding ownership in the future. This would also have the advantages of causing less uncertainty and fewer delays. The additional expense would likely be minimal when divided over time and all of Birmingham's taxpayers.
- The City could then lease part of the building to the YMCA, and part of the building to Next, with different agreements in place for each tenant.

- The City would need clarification as to whether the YMCA could have operating and build-out costs available on a faster timeline, if the City covered the construction costs.
- Many residents want the YMCA and its programming and amenities to remain in the City. Finding a way to allow the YMCA to remain in the community could amount to a community/recreational service the City helps offer, as it does with Next.
- If the City builds a building with a pool and locker rooms first, the YMCA might have an easier time fundraising for its own addition to the building. If the YMCA would be unable to do that, the City would have an opportunity to partner with another organization.
- The City should determine how it might move forward in collaboration with the YMCA, with a second option developed in case that collaboration is not possible. There would need to be more clarity on how a pool might be operated if a collaboration with the YMCA were not possible.
- It might be possible for the City, Next, and the YMCA to share some spaces, which could reduce costs.
- The Commission and staff will need to determine the potential costs to each partner and the possible ballot language.
- If the City and the YMCA come to an agreement where the City pays the construction costs for the building and the YMCA pays the operating costs for the building, the City would need some financial demonstration that the YMCA could pay the operating costs on an ongoing basis.
- If the City assumes the construction costs and the YMCA assumes the operating costs, Next may be able to provide additional services since it would no longer be responsible for its operating costs. Scheduling the use of the building's facilities might be one service Next could offer.
- The City would need to ensure that any agreement would entail the appropriate use of public funds. Such an agreement should take into account the benefits the YMCA offers to the community, and should also avoid subsidizing the YMCA's business.
- Having a clear timeline for the project would likely help minimize attrition from the Birmingham YMCA location. There could be discussions of subsidizing Birmingham residents' use of the Royal Oak YMCA's pool during the construction period.
- The Commission would like the upper square footage limit to be 53,000, and the upper bond amount to be \$32 million. The Commission would like all involved to pursue efficiencies, however, to reduce those figures where possible.
- The RFP for an architect should not be issued before cost optimization has been done.

To summarize, the City Commission did not wish to pursue options A or B as described above, and requested City staff to provide two new options for their consideration. One option that proposes the City building the entirety of a new building to house Next and the YMCA (including a pool) to ensure that life-long programming can be provided to residents, that will benefit community members of all ages. And a second option that proposes the City building a new building to house Next and community uses, including a pool, but that proposes a second phase of construction for the YMCA, to be funded by the YMCA through a capital fundraising campaign. Further, the City Commission provided direction that the maximum size of the building be limited to 53,000 square feet, the maximum bond amount to be sought for construction be capped at \$32 million, and directed staff to work with Next and the YMCA to study programming needs and the potential for space sharing, in order to reduce the size and cost of a new building where possible.

Since September 9, 2024, City staff have been working extensively with Kramer Management's team of experts, our attorneys, the leadership team from Next and their attorney, and the leadership team from the YMCA and their attorney. Discussions have included a deep dive into the programming needs of Next, the YMCA and community uses, including a shared space plan to reduce the size of the building where possible and the development of new options and a cost analysis of each for the City Commission to consider. Based on the programming analysis and cost optimization completed, it is clear that the shared space portion of the building can be reduced or "right sized" and still accommodate all Next and YMCA programming that currently exists, as well as an expanded program for Next, the YMCA and the community.

The new options and the cost analysis prepared for discussion as requested by the City Commission on September 9, 2024 are as follows:

NEW Option C: 44,500 – 53,000 square foot building for Next and the YMCA

- Fully integrated design of building to include Next and YMCA space (including pool), and community use
 - Exclusive space for Next with private entrance
 - Exclusive space for YMCA with private entrance
 - Shared flex space available for use by Next, YMCA and the community at large
 - **Fiscal impact to City: Maximum bond financing for City of \$32 million over 20 years (annual debt service payments of approximately \$2.3 million)**
 - Fully funded turnkey space for Next, YMCA and community use
 - Operating costs funded by Next and/or the YMCA estimated at \$377,000/year (includes utilities, fund for future improvements etc. for entire building)
 - Long term lease with Next, rent \$1/year, reduced rate memberships to Next for Birmingham residents

- Long term lease with YMCA, rent \$___/year, reduced rate memberships to YMCA for Birmingham residents
- **Fiscal impact to average resident: \$212/year, offset by the benefit of reduced memberships rate to join Next and YMCA**

NEW Option D: 44,500 – 53,000 square foot building for Next and the YMCA

- Fully integrated design of building to include Next and YMCA space (including pool), and community use
- Phased construction:
 - Phase 1:
 - Maximum of 40,000 square feet for Next (including space to be shared with the YMCA)
 - Approximately 4,500 square feet for a pool
 - **Fiscal impact to City: Maximum bond financing for City of \$27.5 million over 20 years (annual debt service payments of approximately \$2 million)**
 - Fully funded turnkey space for Next and community use, including a pool
 - Operating costs funded by Next estimated at \$236,000/year (includes fund for future improvements)
 - Operating costs funded by City estimated at \$82,000/year for pool and community use
 - Long term lease with Next, rent \$1/year
 - **Fiscal impact to average resident: \$182/year, offset by the benefit of reduced membership rate to join Next**
 - Phase 2:
 - Maximum of 9,000 square feet for YMCA in addition to shared space with Next and pool constructed in Phase 1
 - YMCA to fund phase two construction and build out (turnkey space) estimated at \$4.5 million through capital fundraising campaign
 - Construction would not commence for phase 2 for 3-5 years, conditioned upon funds being raised by the YMCA
 - Operating costs of phase 2 funded by YMCA
 - Partnership agreement and long term lease with YMCA, conditioned upon success of fundraising campaign within 3 years

As a result of our discussions since September 9, 2024, Next has provided additional information on current programming details not included in their monthly published schedule, as well as future expanded programming, and has reviewed the program and space analysis completed for a new building. Next has advised that they are willing to reduce space where possible through the use of shared programming space with the YMCA. The City is currently working with Next to draft a formal agreement beyond the

existing Memorandum of Understanding between Next and the City, which would then go to the Next board and City Commission for consideration and approval. The agreement will take into account the benefits that Next offers to our residents to demonstrate the appropriate use of public funds.

As a result of our discussions since September 9, 2024, the YMCA has provided information on current programming details, and has studied potential future growth models and space needs if the YMCA remains a partner in the project. In addition, the YMCA has reviewed their financial models in order to demonstrate the amount that they can provide in operating costs for their portion of a new building, as well as the operational costs for the entirety of a new building. The YMCA continues to express a willingness to share space with Next. The City is currently working with the YMCA to draft a formal agreement between the YMCA and the City, which would then go to the YMCA board and City Commission for consideration and approval. The agreement will take into account the benefits the YMCA offers to residents of all ages to demonstrate the appropriate use of public funds.

It should be noted that both Next and the YMCA have the capability of assisting the City with the coordinated scheduling of shared portion of the building for use by Next, the YMCA and the community at large.

On September 9, 2024, the City Commission provided direction that the maximum size of a new senior/recreation building be limited to 53,000 square feet and that the maximum bond amount to be sought for construction be capped at \$32 million, and seemed to favor what is now proposed as option C (build the entire building at once). The conceptual program study, shared space analysis and cost optimization requested by the City Commission has now been completed, and it has been determined that a 53,000 square foot building can certainly accommodate Next, the YMCA and community use, and that this size can be reduced as much as 8,500 square feet if desired by the City Commission and the public. The optimal size of a new building to comfortably accommodate Next, the YMCA and the community now and into the future would be approximately 48,000 square feet in size.

At this time, City staff and the Kramer Management team recommend that the City Commission provide direction to update the RFP for final design for option C, a new building between 44,500 and 53,000 square feet in size, at a maximum cost of \$32 million dollars. And further, to provide direction to issue the RFP on October 10, 2024 to the three firms that were pre-qualified during the RFQ process earlier this summer, after review by the Ad Hoc Senior Center Committee on October 9, 2024.

Should this direction be given, it is anticipated that the selection of an architectural team could be made at the City Commission meeting on November 25, 2024. Doing so would minimize the delay in getting a new building constructed and open for operations, but it

does extend the timeline from a June 2026 building opening to a December 2026 building opening.

During the two months it takes to work through the RFP selection process, City staff and the Kramer Management team will continue with the following:

- Proceed with a public hearing for rezoning from R4 to PP at the Planning Board on October 9, 2024;
- Schedule a public hearing on the rezoning at the City Commission on or after October 28, 2024;
- Continue negotiations with both Next and YMCA to formalize lease agreements with each (including apportioned costs and responsibilities, membership rate reductions, building maintenance and other standard terms);
- Bringing the architects that respond to the RFP to the City Commission on November 25, 2024 for consideration by the City Commission;
- Work with the City's bond attorney to prepare draft bond language for review by the City Commission in January 2025 once final size and costs are determined by the architectural team;
- Prepare a draft RFP for a construction manager to work with the City and the architectural team;
- Schedule a special election in May 2025 for a vote on the bond proposal.

LEGAL REVIEW:

The City Attorney has been present at all of the SCC meetings and all individual meetings with both Next and the YMCA. The City Attorney is very familiar with the project and assisted the City with the original purchase of the property. The City Attorney will continue to be involved and to work with our partners' legal counsel to draft the necessary legal agreements.

FISCAL IMPACT:

From the time of the purchase of the YMCA building by the City in spring/summer of 2023, it has been contemplated that the City may have to invest funds into the construction of the building to provide for senior services and to create a permanent home for Next and to support Next services. It is anticipated that there will be senior millages and/or increased funding approved by the member communities, as well as the potential for ongoing fundraising and the possibility of the issuance of bonds for construction of a new building.

As has been previously stated, the City proposed a senior millage in November of 2023 for a 0.3 mill senior millage. The senior millage passed overwhelmingly, 69% in favor of the millage and 31% opposed. This senior millage will generate approximately one million dollars a year for the next three years (2024-2025 budget year through the 2026-2027 budget year) to assist with construction costs. It is important to note that the current senior millage that was approved is for building renovation and/or construction, and to

start a “sinking fund” for future building renovations and/or repairs. This millage will not be sufficient to fund construction of a new building to house Next, or to house Next and the YMCA, if desired. However, these funds could be used to offset the amount of bond financing needed by up to \$3 million. In addition, the City will continue to seek grant and funding opportunities to fund construction to reduce the amount of bond financing needed.

For Next to continue to provide the high levels of programming, or to expand as membership increases, Next will need to continue to seek additional funding from all of their member communities. Currently, Bingham Farms, Beverly Hills and the Village of Franklin contribute funds to Next to provide senior services to their residents through an inter-local agreement with Birmingham. An updated inter-local agreement could be negotiated between the municipalities to increase the contributions for operating expenses and/or construction costs. Both Next and the City have been in discussion with all three of these member communities to discuss the need for additional funding in the future to allow for the expansion of senior services and the relocation of Next to 400 E. Lincoln. Member communities may choose to contribute their share of funding for senior services through a bond issue, senior millage, general fund payments, and/or through a prorated membership fee structure.

Should the City Commission decide to proceed with option C, a combined building for Next, the YMCA and community use to be constructed by the City, without phasing, at a maximum cost of \$32 million, the debt service costs to the City will be \$1.8 million/year over the course of 20 years. This will amount to a debt service millage for the average resident in the amount of \$212 per year, to be offset by reduced membership rates at both Next and the YMCA. These amounts will be reduced accordingly if the building is reduced in size as noted above.

SUSTAINIBILITY:

The senior/recreation center project has the potential to include multiple sustainability components. Various building materials and/or sustainable initiatives will be considered by the final design architect and the City Commission at a later date. The costs associated with sustainable building materials and/or practices as well as LEED certification can be considered by the City Commission during the next phase of this project (final design and construction plans).

DESIGN CONSIDERATIONS:

All of the work to date on the senior/recreation center project has been to complete a comprehensive assessment of the existing facility, conduct a space program analysis for both Next and the YMCA and to receive public input into the project, both from a community survey and two town hall meetings. The City has created the Ad Hoc Senior/Recreation Center Committee to assist and guide City staff and to make recommendations to the City Commission on the project. The City also hired an Owner’s Representative to assist City staff and the SCC in accomplishing their goals and objectives

and the City has also hired a professional architectural firm to complete the assessment and preliminary conceptual plans and cost options.

Design considerations will be far more prevalent in the next phase of the project, final design and construction plans. City staff, the Owner's Representative and the SCC have already completed an RFQ for final design and construction plans and architectural/engineering services. City staff, the Owner's Representative and the SCC have identified three professional architectural firms that have been selected through the RFQ to bid on the preferred option of the City Commission.

PUBLIC COMMUNICATIONS:

There have been considerable public communications on this project. From the purchase of the YMCA Building in the spring of 2023 until now, the project has received media attention, attention from Next members, attention from YMCA members and attention from the general public. The City has provided the following public communications:

- Press releases
- E- Blasts
- Created a web page on the City's website dedicated to the project
- Promoted the project on the home page of the City's website
- Updates have been provided in all of the monthly City Manager's Reports as well as the City's Around Town E-Newsletters
- Updates have been provided in the City's summer and fall/winter edition of the Birmingham Beat Newsletter
- The project has been promoted on the City's social media channels including Facebook and Instagram
- Two in-person town hall meetings were held at the YMCA and Next
- The Ad Hoc Senior/Recreation Center Committee was created and has met almost weekly since its inception. All meetings were open to the public and provided an opportunity for members of the public to speak.

SUMMARY:

City staff and the Kramer Management team recommend that the City Commission provide direction to update the RFP for final design for a new building between 44,500 and 53,000 square feet in size, at a maximum cost of \$32 million dollars, and to issue the RFP on October 10, 2024 to the three firms that were pre-qualified during the RFQ process earlier this summer, after review by the Ad Hoc Senior/Recreation Center Committee on October 9, 2024. Should this direction be given, it is anticipated that the selection of an architectural team could be made at the City Commission meeting on November 25, 2024. Doing so would minimize the delay in getting a new building constructed and open for operations, but it does extend the timeline from a June 2026 building opening to a December 2026 building opening.

ATTACHMENTS:

- PowerPoint presentation
- Summary of programming needs for Next and the YMCA
- Draft RFP

SUGGESTED COMMISSION ACTION:

Approve a resolution to direct staff to update the RFP for final design for option C, a new building between 44,500 and 53,000 square feet in size, at a maximum cost of \$32 million dollars. Further, to provide direction to issue the RFP on October 10, 2024 to the three firms that were pre-qualified during the RFQ process earlier this summer, after review by the Ad Hoc Senior/Recreation Center Committee on October 9, 2024.

AND

Approve a resolution to direct staff to negotiate lease agreements with both Next and the YMCA (including apportioned costs and responsibilities, membership rate reductions, building maintenance and other standard terms).

City Manager's Office

Presented by: Melissa Fairbairn,
Assistant City Manager

Date: October 7, 2024

Senior/Recreation Center Update



Programming Review

- Staff reviewed the September 2024 Next and YMCA programming schedules.
 - Studied the number & type of rooms used by each organization in a typical week.
 - Evaluated the room utilization to determine whether each organization could offer their current programming in a 53,000 SF building (including a pool).
 - Assessed whether the 53,000 SF building (including a pool) allowed for additional future programming for each organization.

Conclusions from Programming Review

- A 53,000 SF building (including a pool) would definitely allow Next and the YMCA to offer their current programming and to add programs in the future.
- The design architect will very likely be able to refine the building's square footage further while still meeting programming needs.
- Staff is confident that the needs of the community (including Next and the YMCA) can be met by a 44,500 – 53,000 SF building that includes a pool.

Cost Analysis

53,000 SF (pool included)

- Bond
 - Principal: \$32M
 - Years: 20
 - Annual payment: \$2,323,447.48
 - Mills: 0.6715
 - Estimated taxes (avg. residence): \$211.70/yr
- Operating Expenses
 - \$376,317/yr

44,500 SF (pool included)

- Bond
 - Principal: \$27.5M
 - Years: 20
 - Annual payment: \$1,996,712.68
 - Mills: .5771
 - Estimated taxes (avg. residence): \$181.93
- Operating Expenses
 - \$317,711/yr

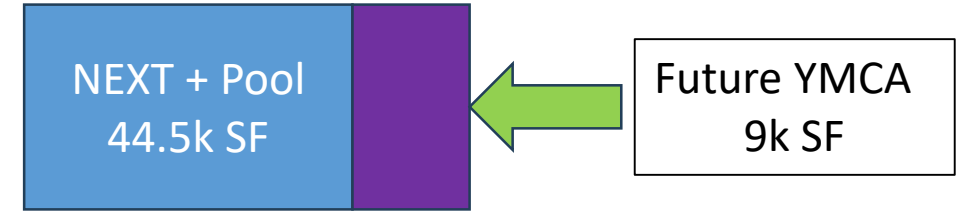
Option C

NEXT
40k SF

YMCA +
Pool 13k
SF

- Construction of 44,500 – 53,000 SF building
 - Bond financing \$32M for 20 years if 53,000 SF
 - Annual debt service payments \$2.3M
 - Fully funded turnkey to build out for Next, YMCA and City
 - Building Operating Costs provided by YMCA approx. \$377k/yr
- New long-term lease signed by Next and YMCA

Option D



- Phased Construction of 44,500 – 53,000 SF building
 - Phase I → Next + City Pool (approx. 44.5k SF)
 - Bond financing \$27.5M for 30 years
 - Annual debt service payments \$2.0M
 - Fully funded turnkey to build out for Next and Pool with Locker Rooms
 - Building Operating Costs \$318k/yr
 - Phase II → YMCA (approx. 9k SF)
 - Design completed concurrently with Phase I
 - Construction of YMCA conditioned upon receiving funding by YMCA
 - Estimated Capital Funding by YMCA \$4.5M
 - Additional Building operating costs provided by YMCA approx. \$78k/yr
- New long-term lease signed by Next and YMCA

Proposed Schedule

Phase 3: Final Site Plan & Design Review, Preparation of Construction Plans	
10/7 – CC	• Review of due diligence of options from workshop • Release of RFP for final design and construction plan preparation
10/9 – SCC	• Final review of RFP for final design and construction plan preparation
10/10	• Post RFP for final design and construction plan preparation (due 10/30)
10/30 – RFP Proposals	• Final design and construction plan proposals due
11/13 - SCC	• Interview architectural consultants • Recommend architectural consultants to City Commission
11/25 – CC	• Recommend and/or interview architectural consultants at City Commission • Award consultant contract
11/27 - SCC	• Begin design discussions with architectural consultants • Post RFP for Construction Manager(due 12/18)
1/15/25 – SCC	• Interview CM firms • Recommend CM firm to City Commission • Review Schematic Design
1/20/25 - CC	• Approve Bond Language (May Vote) • Recommend and/or interview CM firms at City Commission • Review Funding Options

Proposed Schedule (Cont.)

1/22/25 - SCC	Kickoff CM firm, present SD with comments, estimate by 2/12
2/11/25	Bond Language to County Deadline
2/17/25 - CC	- Present SD and Budget Estimate to City Commission for comments - Further Funding Discussions
4/21/25 -CC	- Present Design Development and Budget Estimate to CC for comments - Adjust/Finalize AE Contract Value
4/23/25 - SCC	Review CC comments with AE and CM, prepare Construction Documents
May 2025	Bond Vote
6/11/25 - SCC	- Final Review Construction Documents for Bidding - CM updates Budget Estimate for CDs
6/23/25 – CC	- Present Final Design to City Commission for comments - Funding Approval
6/25/25 – SCC	AE Issues Documents for Bidding

Proposed Schedule (Cont.)

Phase 4: Construction & Construction Management

8/6/25	• CM Submits GMP from bidding
8/13/25 -- SCC	• Review of GMP and recommendation to City Commission
8/18/25 -- CC	• Present GMP to CC for Approval and Award
8/18/25 – 9/26(12/26)	• 12 – 15 months of Construction

Architectural Contracting Process

- Request for Proposal defines that fees to be based on \$24M Construction Cost (75% of Total Cost \$32M) as Lump Sum
 - Payment Schedule identifies milestones of:
 1. Schematic Design
 2. Design Development
 3. Construction Documentation
 4. Contract Administration
 - City Awards Construction Manager Contract during Schematic Design for estimating at each of milestones
 - Architectural Contract to be adjusted and finalized to Construction Value of Project at Design Development Phase

Day	Time Slot	YMCA Rooms Used	Next Rooms Used	Next Exercise Room(s) Used	Total Number of MP Exercise Rooms Used by Next & YMCA
Sunday	6:00 AM - 7:00 AM				
Sunday	7:00 AM - 8:00 AM				
Sunday	8:00 AM - 9:00 AM				
Sunday	9:00 AM - 10:00 AM				
Sunday	10:00 AM - 11:00 AM	G			
Sunday	11:00 AM - 12:00 PM	G			
Sunday	12:00 PM - 1:00 PM	1 + G + P			1
Sunday	1:00 PM - 2:00 PM	G + P			
Sunday	2:00 PM - 3:00 PM	G + P			
Sunday	3:00 PM - 4:00 PM	G + P			
Sunday	4:00 PM - 5:00 PM	G + P			
Sunday	5:00 PM - 6:00 PM				
Sunday	6:00 PM - 7:00 PM				
Sunday	7:00 PM - 8:00 PM				
Sunday	8:00 PM - 9:00 PM				
Monday	6:00 AM - 7:00 AM	C + G + P			
Monday	7:00 AM - 8:00 AM	G + P			
Monday	8:00 AM - 9:00 AM	G + P	0		
Monday	9:00 AM - 10:00 AM	1 + G + P	3	2	3
Monday	10:00 AM - 11:00 AM	1 + G + P	3	2	3
Monday	11:00 AM - 12:00 PM	1 + G + P	3 + W	0	1
Monday	12:00 PM - 1:00 PM	G	2 + G		
Monday	1:00 PM - 2:00 PM	G	3 + G		
Monday	2:00 PM - 3:00 PM	G	2 + G		
Monday	3:00 PM - 4:00 PM	G	2	1	1
Monday	4:00 PM - 5:00 PM	G + P	2 + G	1	1
Monday	5:00 PM - 6:00 PM	G + P	1 + G		
Monday	6:00 PM - 7:00 PM	1 + G + P	1 + G		1
Monday	7:00 PM - 8:00 PM	1 + G + P			1
Monday	8:00 PM - 9:00 PM	G			

Tuesday	6:00 AM - 7:00 AM	G + P			
Tuesday	7:00 AM - 8:00 AM	G + P			
Tuesday	8:00 AM - 9:00 AM	G + P	0		
Tuesday	9:00 AM - 10:00 AM	1 + G + P	0		
Tuesday	10:00 AM - 11:00 AM	G + P	2		
Tuesday	11:00 AM - 12:00 PM	G + P	3		
Tuesday	12:00 PM - 1:00 PM	G	3 + G		
Tuesday	1:00 PM - 2:00 PM	G	5 + G		
Tuesday	2:00 PM - 3:00 PM	G	2 + G		
Tuesday	3:00 PM - 4:00 PM	G	2		
Tuesday	4:00 PM - 5:00 PM	G + P	1 + G	1	1
Tuesday	5:00 PM - 6:00 PM	1 + G + P	G		1
Tuesday	6:00 PM - 7:00 PM	1 + G + P	G		1
Tuesday	7:00 PM - 8:00 PM	G + P	1 + G		
Tuesday	8:00 PM - 9:00 PM	0	1		
Wednesday	6:00 AM - 7:00 AM	C + G + P			
Wednesday	7:00 AM - 8:00 AM	G + P			
Wednesday	8:00 AM - 9:00 AM	G + P	0		
Wednesday	9:00 AM - 10:00 AM	2 + G + P	2	1	3
Wednesday	10:00 AM - 11:00 AM	1 + G + P	3	1	2
Wednesday	11:00 AM - 12:00 PM	G + P	3	1	1
Wednesday	12:00 PM - 1:00 PM	G	3		
Wednesday	1:00 PM - 2:00 PM	G	4	1	1
Wednesday	2:00 PM - 3:00 PM	G	2 + G	1	1
Wednesday	3:00 PM - 4:00 PM	G	3 + G	1	1
Wednesday	4:00 PM - 5:00 PM	G + P	2 + G		
Wednesday	5:00 PM - 6:00 PM	G + P	1 + G		
Wednesday	6:00 PM - 7:00 PM	1 + G + P	2 + G		1
Wednesday	7:00 PM - 8:00 PM	1 + G + P	1 + G		1
Wednesday	8:00 PM - 9:00 PM	G			
Thursday	6:00 AM - 7:00 AM	1 + G + P			1
Thursday	7:00 AM - 8:00 AM	G + P			
Thursday	8:00 AM - 9:00 AM	G + P	0		
Thursday	9:00 AM - 10:00 AM	1 + G + P	3	1	2
Thursday	10:00 AM - 11:00 AM	G + P	4		

Thursday	11:00 AM - 12:00 PM	G + P	3		
Thursday	12:00 PM - 1:00 PM	G	3 + G		
Thursday	1:00 PM - 2:00 PM	G	4 + G	1	1
Thursday	2:00 PM - 3:00 PM	G	2		
Thursday	3:00 PM - 4:00 PM	G	1 + G		
Thursday	4:00 PM - 5:00 PM	G + P	2 + G		
Thursday	5:00 PM - 6:00 PM	G + P	1 + G		
Thursday	6:00 PM - 7:00 PM	1 + C + G + P	1 + G		1
Thursday	7:00 PM - 8:00 PM	1 + G + P	1 + G		1
Thursday	8:00 PM - 9:00 PM	0			
Friday	6:00 AM - 7:00 AM	1 + G + P			1
Friday	7:00 AM - 8:00 AM	G + P			
Friday	8:00 AM - 9:00 AM	G + P	0		
Friday	9:00 AM - 10:00 AM	1 + G + P	1	1	2
Friday	10:00 AM - 11:00 AM	1 + G + P	3	2	3
Friday	11:00 AM - 12:00 PM	1 + G + P	2		1
Friday	12:00 PM - 1:00 PM	G	3 + G		
Friday	1:00 PM - 2:00 PM	G	3 + G		
Friday	2:00 PM - 3:00 PM	G	2 + G		
Friday	3:00 PM - 4:00 PM	G	1		
Friday	4:00 PM - 5:00 PM	G + P			
Friday	5:00 PM - 6:00 PM	G + P			
Friday	6:00 PM - 7:00 PM	G + P			
Friday	7:00 PM - 8:00 PM	G + P			
Friday	8:00 PM - 9:00 PM	0			
Saturday	6:00 AM - 7:00 AM				
Saturday	7:00 AM - 8:00 AM				
Saturday	8:00 AM - 9:00 AM	C + G			
Saturday	9:00 AM - 10:00 AM	1 + G + P			
Saturday	10:00 AM - 11:00 AM	1 + G + P			
Saturday	11:00 AM - 12:00 PM	G + P			
Saturday	12:00 PM - 1:00 PM	G + P			
Saturday	1:00 PM - 2:00 PM	G + P			
Saturday	2:00 PM - 3:00 PM	G + P			
Saturday	3:00 PM - 4:00 PM				

Saturday	4:00 PM - 5:00 PM				
Saturday	5:00 PM - 6:00 PM				
Saturday	6:00 PM - 7:00 PM				
Saturday	7:00 PM - 8:00 PM				
Saturday	8:00 PM - 9:00 PM				

Legend:

C - Cycling Room

G - Gym

P - Pool



**REQUEST FOR PROPOSAL ARCHITECTURAL/ENGINEERING SERVICES FOR
FINAL DESIGN AND CONSTRUCTION PLAN PREPARATION BIRMINGHAM
SENIOR/RECREATION CENTER**

Sealed proposals endorsed **"Architectural/Engineering Services for Final Design and Construction Plan Preparation"**, will be received at Birmingham City Hall, ATTN: City Clerk, 151 Martin Street, Birmingham, Michigan, 48009; until **Wednesday, October 30, 2024 at 10:00 am** after which time proposals will be publicly opened and read.

The City of Birmingham, Michigan is accepting sealed proposals from selected professional architectural/engineering firms for Architectural/Engineering Services for the Final Design and Construction Plan Preparation to support the potential renovation/expansion or demolition/new build of the building at 400 East Lincoln, currently the Birmingham YMCA building. The project must be performed in accordance with the specifications contained in the Request for Proposal (RFP).

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

Submitted to Qualified Bidders: Thursday, October 10, 2024

Deadline for Submissions: Wednesday, October 30, 2024 at 10:00 am

Birmingham Contact Person: Jana Ecker, City Manager
151 Martin Street
Birmingham, MI 48009
Phone: 248-530-1811
Email: jecker@bhamgov.org

**REQUEST FOR PROPOSAL
ARCHITECTURAL SERVICES FOR FINAL DESIGN PLAN PREPARATION
BIRMINGHAM SENIOR/RECREATION CENTER**

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INTRODUCTION

For purpose of this request for proposal, the City of Birmingham will hereby be referred to as "the City" and the private firm or person(s) responding will hereby be referred to as "Contractor." The City is accepting sealed proposals from prequalified professional architectural/engineering firms or persons for architectural/engineering services to provide for final design and construction plan preparation for the approved conceptual design of the existing property located at 400 East Lincoln in the City of Birmingham ("the Project"). This work must be performed as specified, in accordance with the specifications and the compressed timeline contained in this Request for Proposal (RFP).

During the evaluation process, the City reserves the right to request additional information or clarification from contractors, or to allow corrections of errors or omissions. At the discretion of the City, contractors submitting proposals may be requested to make oral presentations as part of the evaluation.

PROJECT BACKGROUND

The City of Birmingham purchased the Birmingham YMCA building, located at 400 East Lincoln, Birmingham, MI in June 2023. The City purchased the building as a permanent home for Next, a 501(c)(3) organization that provides senior services to residents of Birmingham, Bingham Farms, Beverly Hills, and Franklin. Also contemplated in the purchase was the additional space that would not be used by Next would allow for the current YMCA to continue to have a presence in the building and/or other public use, such as community or recreational uses and/or office space for City Parks and Recreation personnel. The goal is to provide a new home for Next in a renovated or new construction building at 400 East Lincoln by June 2026.

The Project property contains approximately 1.52 acres, and is currently zoned R4, Two Family Residential. The maximum height permitted in the R4 zone is 2.5 stories and 35'. The Project property is located immediately north of the City owned St. James Park and an existing public parking lot, and is surrounded by single family residential, multi-family residential and small scale commercial buildings. All future renovations/construction to the building and site should be compatible with the surrounding neighborhood and integrated with St. James Park.

The City, through an RFP, contracted with an architectural firm, NORR, LLC to conduct a needs assessment of the existing building, develop a preliminary space program and to provide conceptual design alternatives with estimates. The City also formed an Ad Hoc Senior/Recreation Committee to assist City Staff and the City Commission to formalize a plan moving forward on the Project. The needs assessment will assist the City Commission in determining whether or not the building should be renovated/expanded or demolished to build a new facility. Previous reports, studies and the top conceptual design alternatives approved by the City is provided as attachment for use in Contractor response to this RFP.

The City, also through an RFP, contracted with a professional owner's representative, Kramer Management Group, to serve as an extension of the City to protect the City's interests

throughout the development process. The owner's representative will oversee and coordinate all phases of the project to ensure that the project is completed on time and within budget. The owner's representative will also provide ongoing communication between the City and hired consultants, project managers, and/or construction managers and assist with resolution of any issues that arise.

PROJECT VISION, GOALS & OBJECTIVES

The City has adopted a vision statement for the Project:

Vision Statement:

Create a welcoming and dynamic hub where all the members of the community can gather in an environment that promotes socialization, physical activity and lifelong learning that enhance both personal and community wellness.

The City has adopted the following goals and objectives for the Project:

Goals:

1. Develop a plan for an open, welcoming, adaptable active senior/community facility with flexibility for current and future uses.
2. Integrate the design and use of the senior/community center with St. James Park.
3. Ensure safe and accessible design of the building(s) and site for users of all ages and abilities.
4. Incorporate sustainable concepts, design and materials, when practical, to reduce environmental impact.
5. Complete design and construction of a new or renovated facility and site on time and within the established budget.

Objectives:

1. Create a permanent home for Next.
2. Support Next in providing a wide range of programs and services.
3. Provide community gathering spaces (indoors and outdoors).
4. Provide a facility that promotes the provision of health, fitness, and recreation programming for the community.
5. Design a facility that encourages social interaction and emotional enrichment for the community.
6. Design a facility that promotes multigenerational programming opportunities and lifelong learning.

The adopted vision statement will guide the Contractor in preparing final design and construction plans for the Project. Contractors will be expected to present creative concepts for the final design and construction plans that incorporate the Project goals and objectives.

REQUEST FOR PROPOSAL PROCESS

The selected Contractor will provide architectural/engineering services to design a

Senior/Recreation Center and develop the accompanying construction and bid documents. The selected firm will work closely with City staff, the Ad Hoc Senior/Recreation Center Committee, Owner's Representative, and the City Commission to develop a final design. The Contractor will be required to meet with City staff and attend Ad-Hoc Committee and City Commission meetings in person when the project is on agenda. The Contractor will submit construction drawings to the City of Birmingham Community Development Department for review. The Contractor will work with City selected Construction Manager in the development and construction of the Project. The Contractor will prepare bid document plans and specifications to be posted by the City for the Senior/Recreation Center. Upon acceptance of Guaranteed Maximum Price (GMP) by the City Commission and issuance of a building permit, the selected Contractor will perform construction administrative duties working closely with the City of Birmingham and the City's Owner Representative until the completed building has received a Certificate of Occupancy and the warranty process is completed.

Questions are to be directed to Jana Ecker by email to jecker@bhamgov.org by **Tuesday, October 22nd**. Responses will be provided to all bidders on Monday October 28th.

All proposal responses must be received by the City Clerk no later than October 30, 2024 at 10:00 a.m. Submission requirements and guidelines are detailed below.

SCOPE OF WORK

The Architect selected under this RFP shall be considered as the Architect of Record for the project throughout all phases of design and construction administration, using the City Commission's Approved Conceptual Design.

Generally, the scope of the Architect's services required in this proposal shall include all architectural and engineering services of disciplines required to deliver the Owner the information necessary to fulfill the requirements of the Project. Expectations of deliverables outlined in Attachment A; services defined as:

Basic Services

- Architectural
- Interior Design
- Structural Engineering
- Mechanical and Plumbing Engineering
- Electrical Engineering (including power lighting, building security and low voltage)
- Civil Engineering
- Landscape Architecture
- Pool Design
- Furniture, Fixtures, and Equipment Selection and Specification

Services Not Included (City may contract directly for some of these services)

- Audio, Visual, Technology Services
- MEP Systems Commissioning

The City of Birmingham intends to hire or Construction Manager at Risk during the preconstruction process to support with cost estimating, constructability, phasing and other construction related items. The City intends that the relationship between the City Representatives, Design Professional, Construction Manager, Owner Representative and City function in the spirit of mutual cooperation and respect in order to promote efficiency and cooperation between all parties.

If the City of Birmingham or Construction Manager engages in any vendor design-assist partners, Contractor will remain the Architect/Engineer of Record for all disciplines.

The project will be designed to meet LEED Silver certification from the United States Green Building Council (USGBC).

Based on size of building City of Birmingham requires a community impact study and this contractor will be responsible for preparing for review by Planning Board. Requirements are described Chapter 126 – Zoning; Article 7.27 (<http://online.encodeplus.com/regs/birmingham-mi/index.aspx>).

The City of Birmingham will engage any commissioning, testing, and quality assurance service providers directly. The Contractor will be responsible for coordinating design work with, but not services of, such vendors.

Key project deliverables are outlined by project phase below. Please also see Attachment A for a deliverable matrix that will be utilized in conjunction with the outline below for determining progress and evaluation of deliverable in each phase by areas of discipline.

1. Schematic Design

- a. Refine approved design concept and develop functional space plans.
- b. Prepare Schematic Design (SD) Documents for the building to include floor plans, elevations, outline specification, descriptions, calculations, exterior materials and typical finishes.
- c. Provide conceptual design and performance specifications for mechanical, electrical, plumbing, fire protection, voice/data and landscape design.
- d. Develop site plan showing relationships to park and neighborhood. Include review of Zoning Ordinances and identify non-conformance with ways to improve.
- e. Consider the value of alternate materials, prefab building components and equipment based upon program in developing a design that is consistent with the schedule and the budget.
- f. Develop presentation quality renderings to help visualize the project, including two exterior and two interior renderings.

2. Design Development:

- a. Prepare Design Development (“DD”) Documents including plans, sections, elevations, construction details, outline specifications, schedules and layouts of building systems.
- b. Prepare site plan indicating building locations and site improvements.

- c. If revisions to DD documents are required to conform to the approved budget, the design team will be responsible for making such revisions.
- d. Assist with preparation of outline of required commissioning services for building systems and envelope.
- e. Schedule preliminary reviews with required regulatory agencies.

3. Construction Documents:

- a. Prepare Construction Documents ("CD") consisting of drawings, schedules and specifications setting forth in detail requirements for construction.
- b. Provide meticulous coordination of the CD among all design disciplines.
- c. Collaborate with the owner representative and construction manager to ensure the design is consistent with the approved budget. If revisions to CD are required to conform to the approved budget, the Contractor will be responsible for making such revisions.
- d. Prepare up to three (3) Bid Packages to assist the Construction Manager in the competitive bid process.
- e. Assist in evaluation of subcontractors and bid results.

4. Construction Administration:

- a. Provide Contract Administration (CA) during construction to verify that the project is being built according to plans and specifications.
- b. Participate in the review and certification of payments due to the Contractor.
- c. Prepare a monthly field evaluation for each site visit to keep the owner informed on the progress of the work.
- d. Inspect the project to confirm substantial completion and respond to the punch list of remaining work to be repaired or completed.
- e. Provide record drawings from information provided by Construction Manager- two paper copies, one pdf copy.

5. Post Construction Phase

- a. Provide observational report at 6-month and 12-month review after occupancy to review building performance, primarily building envelope and mechanical systems.

REQUIREMENTS FOR PROPOSAL

Contractor shall carefully read the information contained in the following criteria and submit a response to all questions in this section, formatted as directed in Format for Proposal. Provide the following information in A3 Format:

1. Criteria 1: Specific Project Experience

- a. Based on the current understanding of the goals and objectives of this Project and review of Conceptual Design provided, provide 3 examples that best describe your experience with similar projects.
- b. Specifically address the challenges and opportunities of the project and how the experience on the referenced projects best qualifies your team for this specific project.

- c. Demonstrate firm expertise and experience in sustainable and universal accessibility construction practices. Identify experience in utilizing an integrated design approach, life cycle cost analysis, and other practices used by your firm in meeting sustainable design goals.
- d. Summarize why the City of Birmingham should select your firm for this Project.

2. Criteria 2: Proposed Project Team

- a. Provide a description of the team that will be responsible for delivery of all design services for the Project including an organizational chart and description of roles and responsibilities throughout each phase of the Project. Communicate clearly how the team members experiences on the specific projects from Criteria 1 relate to the Project.
- b. Provide resumes and references for all key team members proposed for the Project, clearly identifying their experience with similar facilities. Specifically identify team members from all required architectural and engineering disciplines.
- c. Demonstrate how team members have worked together with demonstrated projects.
- d. Identify participating team members with appropriate experience, including LEED/Sustainable Design and Accessible Design experience.
- e. Clearly state team availability to meet defined project schedule requirements.

3. Criteria 3: Design Approach and Work Plan

- a. Provide a detailed work plan for the delivery of all architectural and engineering responsibilities required to meet the requirements of the Project. Work Plan must be a narrative description of the major tasks, as well as a graphical schedule indicating the workflow and interaction required with the City.
- b. Include anticipated dates for specific design deliverables and any critical dates when information or decisions are required by the City to maintain the design schedule. Identify typical review periods and decision points in the workflow.
- c. Describe the recommended user groups required including a list of suggested user attendees. Provide sufficient detail for the City to understand their role in the process and the overall duration of the work groups.

4. Criteria 4: Financial Proposal

- a. For the Scope of Work identified, submit a fixed-price fee to provide all design services required to complete the project as contemplated. The fee should include all services necessary to produce complete Schematic Design documents, Design Development documents, Construction Documents and Construction Administration services. The fee should include all design disciplines.
- b. Provide a breakout of your proposed fee, for each discipline, in attached level of effort table, Attachment B, based on Construction Cost of \$24 Million. At the completion of the Design Development Documents Phase, a lump sum fee ("Fee") shall be adjusted for all Basic Services under this Agreement, which Fee shall be a percent (%) of the estimated amount of the building construction costs. Until such lump sum Fee is established, payments for Basic Services shall be made as

provided in proposed attachment.

- c. In addition to your proposed fee for the above, submit a not to exceed proposal for reimbursable expenses. Provide a cost breakdown of reimbursable expenses for both design and construction phases. Reimbursable expenses shall be in addition to the basic services fee. These expenses shall be for "out-of-pocket" expenses on behalf of the Project such as printing, deliveries, travel, etc. No home office charges for accounting, computer systems, computer support will be allowed. Supporting documentation will be required. No mark-up will be allowed on reimbursable expenses.
- d. Provide a Personnel Hourly Rate Schedule for Additional Services that shall be binding for the duration of the project.
- e. Additional services known, anticipated, or recommended and the compensation basis for services of the AE team to provide additional services should not be included as part of your proposed fee or Reimbursable Expenses for Basic Services.

FORMAT FOR PROPOSAL

The Owner is using A3's for succinct decision making. The document allows more concise communication of the requested information. Respondents have the discretion to organize the information for each Criteria on the A3's in the best manner to demonstrate their qualifications, provided it responds to all data requested.

- Proposal shall be prepared simply and economically, providing a straightforward, concise description of the firm's ability to meet the requirements of this RFP.
- Respondents shall carefully read the information contained in this RFP and submit a complete response to all requirements and questions in the order presented. Incomplete Proposals will be considered non-responsive and subject to rejection.
- Proposal and any other information submitted by respondents in response to this RFP shall become the property of the City.
- The City makes no representations of any kind that an award will be made as a result of this RFP, or subsequent RFPs.
- Proposal shall include responses to all Criteria described in Requirements for Proposal Section of the RFP.

SELECTION PROCESS

Following a review of Contractor qualifications submitted in response to the RFP, the City may establish a list of Contractors that will be extended an invitation to participate in an interview with the Ad Hoc Senior/Recreation Committee and/or the City Commission to discuss their qualifications for the Project. Only pre-qualified Contractors will be offered the opportunity to submit a proposal under this Request for Proposals (RFP). The agreement included as Attachment A is the required agreement that will be used between the City and the Contractor selected under the RFP.

During the evaluation process, the City reserves the right, where it may serve the City's best interest, to request additional information or clarification from Contractors, or to allow corrections of errors or omissions. At the discretion of the City, firms or persons submitting qualifications

may be requested to make public presentations as part of the evaluation process.

EVALUATION CRITERIA

The City will utilize the following criteria to evaluate each Contractor's proposal:

Selection Criteria	Score
Criteria 1: Specific Experience with projects of similar nature, size and scope	25
Criteria 2: Proposed Project Team, Organization and Structure	25
Criteria 3: Detailed description of Project approach and Work Plan	25
Criteria 4: Financial Proposal	25
Available Scoring Points in Total:	100

PROJECT SCHEDULE

The overall Project schedule consists of a standard design, bid, and construction process ultimately resulting in anticipated occupancy in January 2027. The conceptual design phase is currently underway, and the final design phase is scheduled to start in October 2024 and be completed by June 2025. Construction is scheduled to start in the fall of 2025 with substantial completion by December 2026. Please see Attachment C for the proposed timeline for the Project. The proposed selection schedule for contractors is as follows:

Anticipated Submittal & Review Process	Target Date
Request for Proposals to Pre-Qualified Bidders	October 10, 2024
Questions from Bidders	October 22, 2024
Submittal date for RFP	October 30, 2024
City Commission Interviews of Contractors	November 18, 2024
Contractor Award	November 18, 2024
Final Site Plan and Design Period	Nov. 20 – June 20, 2025
Schematic Design (SD)	Nov 20 – Jan 15, 2025 (8 wks)
SD Review and City Commission Approval	Jan 15 – Feb 17, 2025 (4 wks)
Design Development (DD)	Feb 17 – Mar 26, 2025 (6 wks)
DD Review and City Commission Approval	Mar 26 – Apr 21, 2025 (3 wks)
Construction Plans Completed for Bidding	Apr 21 – June 11, 2025 (8 wks)
Construction Procurement	Jun 11 – Aug 6, 2025 (8 wks)

TERMS AND CONDITIONS

1. The City reserves the right to reject any or all proposals received at any time during this process, waive informalities, or accept any qualifications in whole or in part, it deems best.
2. The City reserves the right to request clarification of information submitted and to request additional information of one or more Contractors.

3. Any response may be withdrawn up until the date and time set above for the opening of the proposals. Any proposal not so withdrawn shall constitute an irrevocable offer, for a period of one hundred and twenty (120) days, to provide the services set forth in accordance with the specifications outlined in this RFP.
4. The Contractor will not exceed the timelines established for the completion of this Project.
5. The cost of preparing and submitting a proposal is the responsibility of the Contractor and shall not be chargeable in any manner to the City.

SUBMISSION PROCEDURE

Three (3) hard copies and one (1) PDF copy on a thumb drive of the proposal shall be submitted no later than 10:00 a.m., on October 30, 2024 to:

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

Submittals should be firmly sealed in an envelope, which shall be clearly marked on the outside, "Request for Proposal – Senior/Recreation Center Project". Any proposal received after the due date cannot be accepted and will be rejected and returned, unopened, to the proposer. Proposer may submit more than one submittal provided each proposal meets the functional requirements.

Submittal must include Proposal and signed copy of Attachment C: BIRMINGHAM SENIOR/RECREATION CENTER FINAL DESIGN AND CONSTRUCTION PLAN PREPARATION AGREEMENT.

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

The City of Birmingham reserves the right, at its sole discretion, to reject any or all submittals when, in its opinion, it is determined to be in the public interest to do so; to waive minor irregularities and informalities of a submittal; or to cancel, revise, or extend this solicitation. The Request for Proposals does not obligate the City of Birmingham to pay any costs incurred by any respondent in the submission of a proposal or in making necessary studies or designs for the preparation of that proposal, or for procuring or contracting for the services to be furnished under this Request for Proposal.

**ATTACHMENT A:
Design
Deliverables**

Matrix of Deliverables to be attached by area of discipline

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Design Phase Deliverables Document Requirements

The following requirements will be used to evaluate a Design Schedule of Values for progress payments, and, completion of contractual requirements. This list is not meant to represent the documentation needs for estimating preparation. Requirements per design phase are in addition to items in previous phases of design and are to be further developed during the indicated phase.

Item	SCHEMATIC DESIGN	DESIGN DEVELOPMENT	CONSTRUCTION DOCUMENTS
General Description	1. Scope of Work narrative	1. Description of construction phasing	1. Documentation on drawings as required by building codes
	2. Comparison of capacities (see "Building Interior" for area comparison) to program	2. Building code review (describe means of compliance for major code issues and building systems)	2. If multiple bid packages, clear indication of scope of each release
	3. List of applicable building codes on drawing title sheet	3. Description of water & vapor characteristics of roof & exterior walls	3. Identification of construction phasing, including temporary requirements during each phase
	4. List of anticipated building code variance requests	4. Design intent document (rough draft)	4. Design intent document (completed design)
Specifications	1. System & material narrative description	1. Outline specification w/same section numbering as final	1. Complete specification including draft front end documents
	2. List of Owner's preferred suppliers / vendors	2. List of items which are sole-sources or dual-sources and justification for not specifying three acceptable products	2. For items listed in "Preferred Manufacture List", a table of specified items that are NOT indicated in PML and the justification for specifying these items.
			3. For door hardware sets that require electricity, indicate the proposed sequence of operations for hardware.
Site	Site Plan(s), to include the following:	1. General dimensions & elevations	1. Extent of construction area
	1. Existing conditions		
	2. Demolition	2. Permanent exterior signage	2. Area traffic plan, if existing roads/walkways are impacted
	3. Building Outline(s)	3. Parking / roadway plans & elevations	3. Site development phasing
	4. Future expansion	4. Vehicle & pedestrian traffic controls	4. Construction site access
	5. Site entrance	5. Grading plan	5. Staging area / general fencing layout
	6. Roads & driveways	6. Lighting plan	6. Site details, including landscape
	7. Parking locations	7. Concept details of site fixtures & equipment	7. Pipe sizes
	8. Loading dock location	8. Utility plans, elevations & details	8. Connection details
	9. Waste/recycling collection locations	9. Sanitary sewer flow calculations	9. Copy of local government review comments on utilities and modification in right(s)-of-way
	10. Walkway locations	11. Soil erosion and sedimentation control plan (for both construction and occupancy)	10. Photometrics of proposed site lighting
	11. Stairway locations	12. Calculation of site and disturbed areas	11. Protection requirements for construction, plantings that remain
	12. Emergency telephones	13. Dewatering plan	
	13. Utility requirements		
	14. Site utilities		
	15. Preliminary grading plan		
	16. Soil retention work, if needed		
	17. Storm water management plan		
	18. Preliminary site lighting layout		
	19. Plan to address existing hazardous / contaminated materials, if applicable		

Item	SCHEMATIC DESIGN	DESIGN DEVELOPMENT	CONSTRUCTION DOCUMENTS
Landscaping	1. Existing conditions	1. Planting plan	1. Existing tree protection
	2. Landscaping concept	2. Irrigation plan	2. Soil preparation & planting specifications
	3. Existing irrigation		3. Guying diagrams
			4. Piping diagrams
			5. Pipe sizes
			6. Landscape and irrigation details and legends
Structural	1. Structural scheme	1. Typical floor framing plan	1. Definition of control joints
	2. Written description	2. Framing plan(s) at unique features	2. Beam, column & slab schedules
	3. Preliminary grid layout	3. Main member sizing	3. Mechanical and electrical concrete house keeping pads
	4. Structure weigh (#/SF)	4. Structural sections	4. Foundation details
	5. Foundation Plan		5. Structural details
			6. Structural notes
Building Exterior Envelope	1. Typical elevations	1. All building elevations 2/dimensional heights	1. Roof-mounted equipment
	2. Fenestration layout	2. Typical wall sections	2. Roof details
	3. Material designations	3. Parapet & coping details	3. Exterior details
	4. Overall building cross-sections	4. Roof & drainage plan	4. Flashing details
	5. Roof layout	5. Exterior door details	5. Control joint definition details
	6. Energy code requirements	6. Typical window details	
		7. Details of unique features	
		8. expansion joint locations	
		9. Large scale building cross-sections	
Building Interior	1. Typical floor plans (min 1/16" scale) w/legends	1. All floor plans (min 1/16" scale)	1. Dimensioned floor plans
	2. Demolition	2. Enlarged plans at elevation changes (such as stairs)	2. Enlarged plans
	3. All room numbers/designators	3. Enlarged plans at toilet rooms	3. Partitioned details
	4. Area use identification & area in square feet	4. Reflected ceiling plans	4. Interior details
	5. Mechanical, electrical & other service closets & rooms	5. Wall types, fire ratings, smoke control zones	5. Interior elevations
	6. Circulation paths / Exiting Plan	6. Plan to address existing hazardous materials, if applicable	6. Finish schedules
	7. Area tabulation compared to program requirements	7. Fixed seating	7. Door & hardware schedules
	8. Preliminary layout of major spaces w/fixed equipment	8. Defined seating, serving & kitchen facilities	8. Room signage
	9. Areas of upgraded finishes	9. Equipment & furniture layouts	9. Schedule of proposed movable equipment that is NOT indicated on documents (for reference)
	10. Narrative of typical finishes	10. Important interior elevations	10. Equipment plans with equipment designations
		11. Details of unique features	
		12. Details of fixed equipment	
		13. Preliminary finish schedule	
		14. Preliminary door schedule	
		15. Information signage	
		16. All room numbers	

Item	SCHEMATIC DESIGN	DESIGN DEVELOPMENT	CONSTRUCTION DOCUMENTS
Elevator	1. Elevator location(s)	1. Elevator shaft section	1. Dimensioned plans
	2. Equipment room locations(s)	2. Equipment description	2. Sections & details of hydraulic cylinder, if applicable
			3. Description of shaft sump pit(s)
			4. Elevator car & equipment support details
			5. Description of controls & fixtures
			6. Door & frame details
			7. Interior details including lighting
HVAC	1. Identify all systems	1. Updated design criteria for each mechanical system (including any room T&H specs, NC levels, etc.)	1. One line flow diagrams for all mechanical systems: chilled water, etc.
	2. One-line flow diagrams	2. One-line diagrams and other materials as required to describe the fundamental design concept for all mechanical systems	2. Floor plans with all components and required service access areas drawn to actual scale: and on the plans, indicate duct sizes and airflow quantities relative to each room, including CFM in and out of all doors. Indicate location of control panels.
	3. Exterior equipment locations	3. Indication of the amount of redundancy for all majored pieces of mechanical equipment, e.g. "two pumps 100% capacity each"	3. Control valves and volume control boxes (note that each is to be identified by a unique number assigned by the engineer). Provide a schedule that indicates the control sequence that applies to each room (room#, room descriptor, control sequence #).
	4. Air intake & discharge locations	4. Overall building air flow diagram indicating air handlers, exhaust fans, duct risers, and, duct mains	4. Detailed floor plans of mechanical rooms w/all components and required service access areas drawn to actual scale
	5. Mechanical legend	5. Plans indicating shaft, chase, recess requirements	5. Cross-sections through mechanical rooms and areas where there are installation/coordination issues (tight space, zoning of utilities). Indicate required service access areas.
	6. Energy code requirements	6. Equipment schedules (major equipment)	6. Connection to fire alarm & building control system
	7. System narrative including schedules of major equipment	7. Equipment locations (with enlarged mechanical plan(s))	7. Equipment details, including structural support requirements
		8. Control diagrams (concept form) for all mechanical and plumbing systems	8. Penetration details
		9. Description of major sequences of operation	9. Installation details
		10. Central automation operation	10. Duct construction schedule (on the drawings), indicating materials and pressure class for each duct system.
		12. Preliminary calculations	11. Detailed sequences of operation
		13. Indicate major pipe runs and sizes	12. Design calculations

Item	SCHEMATIC DESIGN	DESIGN DEVELOPMENT	CONSTRUCTION DOCUMENTS
Plumbing & Piping	1. Main water supply	1. Updated design criteria for each plumbing system (including set points, water quality levels, etc.)	1. Water riser diagram, including assumed fixture counts per floor connection
	2. Restroom location(s)	2. One-line diagrams, etc. that describe the fundamental design concept for all plumbing systems	2. Waste and vent riser diagrams including assumed fixture counts per floor connection
	3. Plumbing legend	3. Piping plans (domestic & process) with indication of required service access areas. Indicate pipe sizing for mains & risers	3. Radiation riser diagram
	4. System narrative	4. Water header diagram	4. Central cooling water riser diagram
		5. Central cooling water header diagram	5. Chilled water riser diagram
		6. Steam header diagram	6. Riser diagrams of other plumbing systems, such as natural gas and pure water
		7. Steam metering concept	7. Foundation drains
			8. Pipe sizes
			9. Typical plumbing details including structural support requirements
			10. Water heating piping detail
			11. Coil piping detail
			12. Convectector piping detail
			13. Penetration details
			14. Design calculations
Fire Protection	1. Report documenting adequacy of utility	1. Riser diagram	1. Fire protection service entrance details
	2. connection to utility	2. One-line layout	2. Fire protection plans (including header and riser layout) with indication of any required service access areas
	3. Location of sprinkler valve	3. Fire pump sizing calculations	3. Pipe sizes
	4. Sprinkler legend		4. Typical sprinkler installation details, including structural support requirements
	5. Optional Fire Protection systems		5. Penetration details
	6. System narrative		6. Design calculations
Lighting		1. Typical lighting plans	1. Lighting plans, including control devices , switching and circuiting
		2. Fixture/switching layout	2. Control diagrams
		3. Fixture types & schedule	3. Installation details, including structural support requirements
		4. General light fixture descriptions	4. Design calculations
		5. Light level calculations	5. General notes on conduit and wire sizes for all lighting branch circuits
		6. Energy code requirements	

Item	SCHEMATIC DESIGN	DESIGN DEVELOPMENT	CONSTRUCTION DOCUMENTS
Electric Power Distribution	1. One-line diagrams	1. Normal power riser diagram with circuit breaker & fuse sizes	1. Load summary
	2. Electrical vault locations	2. Emergency power riser diagram with circuit breaker & fuse sizes	2. Panel schedules
	3. Exterior equipment locations	3. Grounding riser diagrams	3. Details of power service to building
	4. Electric closet(s) locations(s)	4. List of equipment on emergency power	4. Power plans, including power cable trays, electrical loads, special and duplex receptacles, and, circuiting
	5. Electric legend	5. Emergency generator layout	5. Plans and details of emergency power generations system and controls
	6. System narrative including sizing of major equipment	6. Equipment layout/sizes, e/receptacles	6. Connection to other building systems including fire alarm & HVAC systems
		7. Panel locations/schedules	7. Details of special terminal devices
		8. Load estimates	8. Conduit and wire sizes for services, feeders, and, special branch circuits
		9. Plan for temporary power during construction	9. General notes on conduit and wire sizes for 20 amp single phase branch circuits
			10. Grounding details
			11. MCC details
			12. Penetration details
			13. Design calculations
Fire Alarm	1. Panel locations	1. Riser diagram	1. Indication of connection to electrical, HVAC & FCC
	2. Fire Command Center location	2. Fire alarm zones	2. Connection details
		3. Smoke zones	
		4. Device locations	
Communications	1. Building distribution	1. Riser diagrams	1. Communications plans that indicate the location of all voice, data, video & other special systems outlets
	2. Frame closet locations & size	2. Voice/data utility outlet locations	2. Details of telecommunications service to building
	3. Cable tray locations	3. Conduit and cable tray plans	3. Backboard layout & connection diagrams
	4. List of Owner preferred vendors	4. Material cut-sheets	4. Cable schedule
		5. Description of audio/visual systems	5. Connection details
		6. Description of paging and other special systems	6. Structural support requirements
		7. Equipment locations (indicate hangers, cabinets & connection boxes)	7. Equipment list
		8. IT and low voltage system descriptions, apparatus and equipment locations, and, specifications	8. Riser diagram(s)
			9. IT system plans, network and cabling plans, network electronics, drops, etc.
Security	1. Preliminary security narrative identifying major areas to be secured	1. General security / CCTV system description	1. Riser diagrams
		2. General description of card access system	2. Equipment closet layout & elevations
		3. Security system riser diagrams	3. Concealed and exposed raceways
		4. Security equipment locations	4. Installation details
		5. Card access equipment closet layout & elevations	

Item	SCHEMATIC DESIGN	DESIGN DEVELOPMENT	CONSTRUCTION DOCUMENTS
Food Service	1. Identify elements such as walls, counters, and key pieces of equipment.	1. Incorporate all pieces of the equipment into the design drawings including any key elevations.	1. Provide completed and coordinated drawings accounting for all MEP services.
	2. Evaluate existing equipment for re-use.	2. Provide complete equipment schedule with cut-sheets.	2. Complete equipment layout and elevations.
Other Graphics	1. Rendering(s), models, or other graphics as necessary to clearly present concept		

**ATTACHMENT B:
Fee Proposal**

DRAFT

Attachment B

PROPOSAL FORM AND WORKSHEET Birmingham Senior/Recreation Center Architectural and Engineering Services

Proposals must be received no later than: **Wednesday, October 30th, 2024 at 10:00am EST - Respondents must use this page as "Criteria 4: Financial Proposal" in their RFP response**

RFP Total Proposal Amount:

\$ _____

Respondents must complete the Proposal Worksheet on the following page and include with submission.

The undersigned Bidder states that this proposal is made in conformity with the Proposal Documents and agrees that, in the event of any discrepancies or differences between any conditions of their proposal and the Proposal Documents, the provisions of the latter shall prevail. No verbal or written agreements or understandings considered or entered into prior to signing of a contract shall be binding after the signing of the contract unless incorporated in the contract.

The undersigned Bidder certifies that this proposal is made in good faith, without collusion or connection with any other person or persons submitting proposals for the work.

Company Name:
Signature:
Name:
Title:
Date:

Proposal Worksheet(Based on Construction Cost \$24 Million)

General Discipline	Check One		Consultant Name	%	TOTAL COST (\$)
	In-House	Consultant			
Civil Engineering					
Architectural Design					
Interior Design					
MEP and Fire Protection Engineering					
Landscape Design					
Security Design					
FF&E Design					
Food Service					
Pool Consultant					
Other					
Other					
Other					
Other					
Total Design Fees (A)					

Design Phase Reimbursables	QTY.	UNIT	UNIT PRICE	TOTAL COST
Item				
item				
item				
Subtotal Design Phase Reimbursables				
Construction Phase Reimbursables	QTY.	UNIT	UNIT PRICE	TOTAL COST
item				
item				
item				
Subtotal Construction Phase Reimbursables				
Total Reimbursables (B)				

Total Proposal Amount (A+B) Transfer to cover page		
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Labor Rate Schedule

Overview: The Rate Schedule is effective throughout the term of the Agreement.

Rates do not include allowable reimbursables. Proposers shall insert the roles and / or job title for additional services requested by owner and the billable hourly rate in the table below. Include rates for consultants as required.

Job Title	Short Job Description	Billing Rate

**ATTACHMENT C: BIRMINGHAM
SENIOR/RECREATION CENTER FINAL
DESIGN AND CONSTRUCTION PLAN
PREPARATION AGREEMENT**

DRAFT



ConsensusDocs® 240 STANDARD AGREEMENT BETWEEN OWNER AND DESIGN PROFESSIONAL



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ConsensusDocs® 240
STANDARD AGREEMENT BETWEEN OWNER AND DESIGN PROFESSIONAL

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ARTICLE 1 AGREEMENT

This Agreement is made this [] Day of [] in the year [], by and between the

OWNER, []

and the

DESIGN PROFESSIONAL, []

Tax identification number (TIN) []

License Identification for the state of the Project []

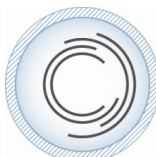
for services in connection with the following

PROJECT []

ARTICLE 2 GENERAL PROVISIONS

2.1 STANDARD OF CARE Design Professional shall furnish or provide the architectural and engineering Services necessary to design the Project in accordance with Owner's requirements, as outlined in Owner's Program and other relevant data defining the Project, which are attached as Exhibit A. The Services shall include Basic Services plus any Additional Services as may be authorized by Owner. Services shall be performed in accordance with the standard of professional skill and care required for a project of similar size, location, scope, and complexity, during the time in which the Services are provided.

2.2 RELATIONSHIP OF THE PARTIES Design Professional will cooperate and exercise the skill and judgment required above in performing Services. Design Professional represents that it possesses the skill, expertise, and licensing to perform the Services. The Parties each agree to work together in good



faith and fair dealings, and shall take actions reasonably necessary to enable each other to perform this Agreement in a timely, efficient, and economical manner. The Parties shall each endeavor to promote harmony and cooperation among all Project participants.

2.2.1 All communication between the Owner and Design Professional shall be through the Owner's Representative (if applicable). The Owner's Representative shall provide overall project administration, management, and coordination of the Project on the Owner's behalf. The Owner's Representative shall not be responsible for the design and engineering of the Project.

2.3 Neither Design Professional nor any of its agents or employees shall act on behalf of or in the name of Owner except as provided in this Agreement or authorized in writing by Owner.

2.4 ETHICS The Parties shall each perform their obligations with integrity, so that, at a minimum each: (a) avoids conflicts of interest; and (b) promptly discloses to the other Party any conflicts of interest which may arise. Each party warrants to the other Party that it has not and shall not pay nor receive any contingent fees or gratuities to or from the other Party, including its agents, officers, and employees, subconsultants, or others for whom they may be liable, to secure preferential treatment.

2.5 DEFINITIONS

2.5.1 "Agreement" means this ConsensusDocs 240, Standard Agreement Between Owner and Design Professional, as modified, and exhibits and attachments made part of this Agreement upon its execution.

2.5.1.1 The following exhibits are part of this Agreement:

EXHIBIT A: Project and Worksite information, including Owner's Program, other relevant data defining the Project, and information as set forth in §4.1.1 dated [____], [____] pages.

EXHIBIT B: Direct Personnel Expense Rates, dated [____], [____] pages.

EXHIBIT C: Key Project Personnel, dated [____], [____] pages.

EXHIBIT D: Reimbursable Expenses, dated [____], [____] pages.

EXHIBIT E: Schedule of Worksite visits, dated [____], [____] pages.

EXHIBIT F: Services related to Basic Services.

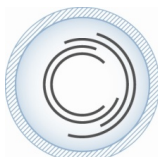
EXHIBIT G: Other Additional Services.

2.5.2 "Business Days" are all Days, except weekends and official federal or state holidays where the Project is located.

2.5.3 "Constructor" means the person or entity retained by Owner to perform Work for the Project and includes Constructor's Representative.

2.5.4 "Consultant" is a person or entity that contracts with Design Professional to provide professional architectural, engineering, or other consulting services for this Project.

2.5.5 "Cost of Construction" means Owner's total cost of Project components. In the event the Project is not completed, Cost of Construction shall mean the final approved estimated cost of Project components.



2.5.6 “Day” means a calendar day.

2.5.7 “Design Professional” is the person or entity identified in ARTICLE 1 and includes Design Professional’s representative.

2.5.8 A “Hazardous Material” is any substance or material identified as hazardous under any federal, state, or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal, or clean-up.

2.5.9 “Laws” mean federal, state, and local laws, ordinances, codes, rules, and regulations applicable to the Services and with which Design Professional must comply that are enacted as of the Agreement date.

2.5.10 “Others” mean other contractors, suppliers, and persons at the Worksite who are not employed by Constructor or Subcontractors.

2.5.11 “Owner” is the person or entity identified in ARTICLE 1 and includes Owner’s representative and Owner’s Representative consultant.

2.5.12 “Owner’s Program” means an initial description of Owner’s objectives that shall include budgetary and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

2.5.13 “Parties” mean Owner and Design Professional collectively.

2.5.14 The “Project,” as identified in ARTICLE 1, is the building, facility, or other improvements to be designed by Design Professional for which Constructor is to perform Work under the agreement between Owner and Constructor. It may also include construction by Owner, or Others.

2.5.15 The “Schedule of the Work” is the document prepared by Constructor that specifies the dates on which Constructor plans to begin and complete various parts of the Work, and the Project, including dates on which information and approvals are required from Owner.

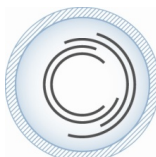
2.5.16 “Services” mean the services provided by Design Professional or by consultants retained by Design Professional for the Project, including coordination of design services of subcontractors who may be procured by Constructor or Subcontractors. The Services include basic services and Additional Services as may be authorized by Owner.

2.5.17 A “Subcontractor” is a person or entity retained by Constructor as an independent contractor to provide the labor, materials, equipment, or services necessary to complete a specific portion of the Work. The term Subcontractor does not include Design Professional or Others.

2.5.18 A “Subsubcontractor” is a person or entity who has an agreement with a Subcontractor to perform any portion of the Subcontractor’s Work.

2.5.19 “Work” means the construction and services necessary or incidental to fulfill Constructor’s obligations for the Project in conformance with the agreement between Owner and Constructor.

2.5.20 “Worksite” means the geographical area of the Project location as identified in ARTICLE 1 where the Work is to be performed.



ARTICLE 3 DESIGN PROFESSIONAL'S RESPONSIBILITIES

3.1 GENERAL RESPONSIBILITIES

3.1.1 PROJECT REQUIREMENTS Design Professional, in order to determine the requirements of the Services, shall conduct a preliminary evaluation of the information set forth in Exhibit A. Design Professional shall confirm its understanding of such requirements with Owner and shall assist Owner to refine or make clarifications to Owner's Program for the Project.

3.1.2 Design Professional shall not proceed with the development of successive design documents until receiving written approval from Owner. Design Professional shall promptly revise without additional compensation:

3.1.2.1 those documents which have not been previously approved by Owner and to which Owner has reasonable objections;

3.1.2.2 those documents identified by Constructor and reasonably accepted by Owner as presenting constructability problems; and

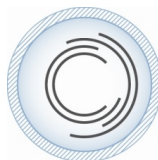
3.1.2.3 those documents needing revisions to reflect clarifications and assumptions and allowances on which a guaranteed maximum price is based. To the extent that any design documents approved by Owner deviate from the requirements of Owner's Program, the approved design documents shall govern.

3.1.3 Design Professional shall have reasonable access to the Worksite at all times.

3.1.4 Design Professional shall assist Owner with filing required documents with governmental authorities having jurisdiction over the Project, including filing documents required to obtain permits necessary for construction of the Project.

3.1.5 Design Professional shall not be responsible for the acts or omissions of Owner, Constructor, and Subcontractors, and their respective agents or employees, or any other persons or entities performing work on the Project who are not under the direct control or authority of Design Professional.

3.2 BASIC SERVICES Design Professional's Basic Services consist of any Services provided pursuant to §3.1 and §3.2 Design Professional shall identify in Exhibit F: (a) other Services included in Basic Services; (b) the specific design disciplines included in Basic Services; (c) those portions of the Project design to be furnished by Owner, Constructor, or Others; and (d) design services that are required to comply with elected green measures and green status identified in Owner's Program. If additional services are required (i.e., serving as a green building facilitator), such services shall be included as Additional Services. Documents generated by Design Professional shall be in a format consistent with Owner's articulated intended use. If applicable, BIM use shall be governed by the ConsensusDocs 301 BIM Addendum or a separate addendum: If professional design services are to be furnished by Owner, Constructor, or Others, Design Professional shall indicate all performance and design criteria to be satisfied in accordance with Owner's Program, and Owner, Constructor, or Others shall not be responsible for the adequacy of such performance and design criteria. Whenever a license is required, Design services furnished by a party other than Design Professional shall be obtained from licensed design professionals, who shall affix their signature and seal on all drawings, specifications, calculations,



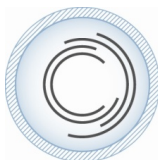
and submittals prepared by them, and Design Professional shall be entitled to rely upon the adequacy, accuracy, and completeness of such design services.

3.2.1 COST ESTIMATES Except when estimates are the responsibility of Constructor retained to provide preconstruction services as part of the Work, Design Professional shall prepare for Owner's review and approval (a) a preliminary estimate of the Cost of Construction utilizing area, volume, or similar conceptual estimating techniques and based upon Owner's Program and other relevant information in Exhibit A, and (b) updated estimates of the Cost of Construction at the completion of the Schematic Design Documents, the Design Development Documents, and the Construction Documents, except when construction commences before the completion of such documents. If at any time Design Professional's estimate exceeds Owner's previously approved estimate, Design Professional shall make recommendations to Owner describing ways to proceed within Owner's budget described in Owner's Program for Owner's written approval.

3.2.2 PROJECT SCHEDULE Design Professional shall prepare for Owner's review and approval a preliminary Project schedule that shall show the timing and sequencing of the design and construction required to meet the time criteria set forth in Owner's Program. The Project schedule shall be updated for Owner's review and approval at the completion of Schematic Design Documents, Design Development Documents, and Construction Documents, except when construction commences before the completion of such Documents. If Constructor has been retained to provide preconstruction services as part of the Work, Design Professional shall coordinate and update the Project Schedule with the Schedule of the Work prepared by Constructor. Design Professional shall make appropriate recommendations if any Project Schedule shows a deviation from previously approved Project Schedules.

3.2.3 SCHEMATIC DESIGN DOCUMENTS Based on Owner's Program, including any approved refinements or clarifications, Design Professional shall prepare, for Owner's review and approval, Schematic Design Documents consisting of drawings, outline specifications, and other documents illustrating the Project's basic elements, scale, and their relationship to the Worksite. Schematic Design Documents shall include, as applicable, conceptual plans of the site and structures; preliminary sections and elevations; approximate areas, volumes, and dimensions; and preliminary selections of materials and systems. Unless documents are required to be transmitted in electronic form, two printed sets and one reproducible set of Schematic Design Documents shall be provided to Owner. When Design Professional submits the Schematic Design Documents, Design Professional shall identify in writing for Owner's approval all material changes and deviations that have taken place from Design Professional's approved preliminary estimate of the Cost of Construction and Project Schedule.

3.2.4 DESIGN DEVELOPMENT DOCUMENTS Based on the approved Schematic Design Documents and the updated estimate of the Cost of Construction and Project Schedule, Design Professional shall prepare, for Owner's review and approval, Design Development Documents. The Design Development Documents shall further define the Project, including drawings and outline specifications fixing and describing the Project size, character, and site relationships, and other appropriate elements describing the structural, architectural, mechanical, and electrical systems. Design Development Documents shall include, as applicable, plans, sections, and elevations; criteria and sizing of major components; equipment sizes and capacities and approximate layouts, including required spaces and clearances; typical details; materials selections and general quality levels. When Design Professional submits Design Development Documents, Design Professional shall identify in writing for Owner's approval all material changes and deviations that have taken place from the Schematic Design Documents and the previously approved estimate of the Cost of Construction and Project Schedule. If requested by Owner, Design Professional shall prepare alternate bid documents.



Unless documents are required to be transmitted in electronic form, two printed sets and one reproducible set of Design Development Documents shall be provided to Owner.

3.2.5 CONSTRUCTION DOCUMENTS Based on the approved Design Development Documents and updated estimate of the Cost of Construction and Project Schedule, Design Professional shall prepare, for Owner's review and approval and the approval of governmental authorities, Construction Documents, including any revisions necessary to secure such approvals, setting forth in detail the quality levels of and the requirements for construction of the Project, and consisting of drawings and specifications that comply with Laws. When Design Professional submits the Construction Documents, Design Professional shall identify in writing for Owner's approval all material changes and deviations that have taken place from the Design Development Documents and the previously approved estimate of the Cost of Construction and Project Schedule. The Construction Documents shall describe all work necessary to bid and construct the Project. Unless documents are required to be transmitted in electronic form, two printed sets and one reproducible set of the Construction Documents shall be provided to Owner.

3.2.6 DESIGN COORDINATION Design Professional shall coordinate the services of all design consultants for the Project, who are or will be: [____]. Design Professional shall promptly report any known errors or omissions to Owner. However, unless retained by Design Professional or a Consultant, Design Professional does not assume an affirmative responsibility to detect errors, omissions, or inconsistencies in a design consultant's services.

3.2.7 BIDDING OR NEGOTIATION ASSISTANCE Design Professional shall assist Owner in obtaining bids or negotiated proposals from contractors by providing up to six (6) sets of drawings, specifications, and any addendum, attending pre-bid and pre-award meetings, clarifying the scope and intent of the Construction Documents, and, if appropriate, evaluating proposed subcontractors and suppliers for portions of the Work. Design Professional shall issue any required addenda or clarifications promptly in writing.

3.2.7.1 If the lowest bona fide bid or negotiated proposal exceeds the final approved estimate of the Cost of Construction, and Owner, in its sole discretion, elects not to accept such bid or proposal or elects to rebid or renegotiate the Project, Design Professional, without additional compensation, shall work with Owner to make the necessary modifications to the Construction Documents to reduce the Cost of Construction to an amount less than or equal to the final approved estimate of the Cost of Construction. This subsection shall not apply if estimates are prepared by or are the responsibility of Constructor or Others.

3.2.8 CONSTRUCTION PHASE SERVICES The Construction Phase will commence upon the issuance of a written notice from Owner to the Constructor to proceed with the Work, with contemporaneous notification to Design Professional. Design Professional shall (a) review and advise Owner as to the accuracy and sufficiency of the schedule of values submitted by Constructor for the Work, (b) coordinate the Project Schedule with the Schedule of the Work submitted by Constructor and approved by Owner, (c) prepare design documents in connection with change orders, (d) respond to Constructor requests for information, and (e) prepare alternate bid documents after completion of schematic design documents. Design Professional shall furnish to Owner and, if directed, to Constructor interpretations and clarifications of the drawings and specifications, by means of additional drawings, addenda, or otherwise, as are necessary for the proper execution and progress of the Work. All such interpretations and clarifications shall be consistent with the intent of the Construction Documents and reasonably inferable from them.



3.2.8.1 SUBMITTALS Design Professional shall review Constructor's submittals, including shop drawings, product data, and samples, and make approvals of or recommendations about such submittals to Owner within ten (10) Business Days of receiving the submittals from Constructor, unless mutually agreed otherwise by Design Professional, Constructor, and Owner. Design Professional shall check Constructor's submittals for conformance with the design and the scope of the Project and for compliance with the Construction Documents. Design Professional's review shall not extend to Constructor's means, methods, techniques, sequences, or procedures, unless such means, methods, techniques, sequences, or procedures have been specified by Owner or Design Professional.

3.2.8.2 Design Professional shall assist Owner in the evaluation and processing of requests for changes in the Work. Based on its evaluation, Design Professional shall make appropriate recommendations to Owner.

3.2.8.3 Design Professional shall visit the Worksite at appropriate intervals, but not less than bi-monthly or pursuant to such schedule as the Parties may establish by attachment of Exhibit E to this Agreement, to become generally familiar with the quality of the Work and to determine in general if the Work is proceeding in accordance with the Construction Documents. After each Worksite visit, Design Professional shall promptly provide Owner with a written report. If Design Professional becomes aware of any defects or deficiencies in the Work, or failure of the Work to progress in conformity with the Schedule of the Work, Design Professional shall provide prompt notice, followed by written confirmation, to Owner. If, in Design Professional's opinion, special testing or inspection of the Work is needed, Design Professional shall recommend to Owner such testing or inspection procedures and appropriate consultants. Design Professional shall not be responsible for construction means, methods, techniques, sequences, and procedures, unless they are specified by Design Professional, or for ensuring that the Work is in accordance with the Construction Documents.

3.2.8.4 SAFETY Design Professional shall not be responsible for Constructor's safety precautions and programs. However, if Design Professional has actual knowledge of safety violations, Design Professional shall give prompt written notice to Owner.

3.2.8.5 Design Professional shall attend weekly virtual or in person meetings with Owner and Constructor upon reasonable request of Owner.

3.2.8.6 Design Professional shall assist Owner in conducting up to Three (3) inspections to determine the date or dates of Constructor's Substantial Completion of the Work. Such assistance shall include compiling a list of items to be completed or corrected so that Owner may occupy or utilize the Work or a designated portion for its intended use, without unscheduled disruption.

3.2.8.7 Design Professional shall assist Owner in conducting up to Two (2) inspections to determine Constructor's final completion of the Work.

3.2.8.8 COMMISSIONING Design Professional shall assist with the implementation of formal commissioning.

3.2.8.9 If requested by Owner, Design Professional shall make up to two (2) visits to the Worksite during Constructor's one-year correction period to assist Owner in evaluating the need for any corrective measures.



3.2.8.10 Design Professional shall prepare record drawings from marked-up prints, drawings, or other documents that incorporated changes made during the Construction Phase.

3.2.9 HAZARDOUS MATERIAL To the extent not identified in this Agreement, if a Hazardous Material is discovered at the Worksite, Design Professional shall not be required to perform Services relating to or in the area of the Hazardous Material without written mutual agreement.

3.2.10 Except as otherwise provided in this Agreement, Design Professional hereby grants a license to use design and construction documents prepared by Design Professional to those retained by Owner or Constructor to perform construction services for the Project.

3.3 ADDITIONAL SERVICES The following Services shall be provided by Design Professional and paid for as Additional Services if they are authorized in advance by Owner in writing and are not included in Basic Services as set forth in §3.1 and §3.2: (REVIEW ADDITIONAL SERVICES LIST BELOW AND CONFIRM NOT PART OF EXPECTED BASIC SERVICES)

3.3.1 investigation of sources of financing, general business planning, and other information and documentation as may be required to establish the feasibility of the Project;

3.3.2 consultations, negotiations, and documentation supporting the procurement of Project financing;

3.3.3 assistance with the preparation of Owner's Program and planning surveys;

3.3.4 surveys, site evaluations, legal descriptions, and aerial photographs;

3.3.5 soils, subsurface, and environmental studies, reports, and investigations required for submission to governmental authorities or others having jurisdiction over the Project;

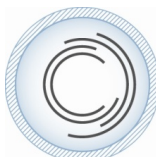
3.3.6 document reproduction exceeding the limits provided for under §3.2;

3.3.7 preparing measured drawings of existing conditions;

3.3.8 Design Professional will assist Owner in processing Constructor's applications for payment. Based on its on-site observations and other relevant information, Design Professional shall certify to Owner the amounts due Constructor and that the Work has progressed to the point indicated in the payment application based on the schedule of values submitted by Constructor. Design Professional's certification for payment shall not be a representation that Design Professional has: (a) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (b) reviewed construction means, methods, techniques, sequences, or procedures for Constructor's Work; (c) reviewed copies of requisitions received from Subcontractors and Material Suppliers and other data requested by Owner to substantiate Constructor's right to payment; or (d) ascertained how or for what purpose Constructor has used money previously paid. Design Professional shall be entitled to rely on Constructor's certification as to the application of moneys previously paid;

3.3.9 artistic renderings, models, and mockups of the Project or any part of the Project;

3.3.10 inventories of existing furniture, fixtures, furnishings, and equipment which might be under consideration for incorporation into the Project;



3.3.11 interior design and related services, including procurement and placement of furniture, furnishings, artwork, and decorations;

3.3.12 Other than as provided by §3.2.7.1, making revisions to the Schematic Design, Design Development, or Construction Documents after they have been approved by Owner, and which are due to causes beyond the control of Design Professional;

3.3.13 design, coordination, management, expediting, and other services supporting the procurement of materials to be obtained or work to be performed by Owner, including but not limited to telephone systems, computer wiring networks, sound systems, alarms, security systems, and other specialty systems which are not otherwise required by this Agreement;

3.3.14 estimates, proposals, appraisals, consultations, negotiations, and services in connection with the repair or replacement of an insured loss;

3.3.15 the premium portion of overtime work ordered by Owner other than that required by Design Professional to maintain the Project Schedule for causes that are the responsibility of Design Professional;

3.3.16 obtaining service contractors and training maintenance personnel; or assisting and consulting in the use of systems and equipment after the initial startup;

3.3.17 services for tenant or rental spaces which are not otherwise required by this Agreement;

3.3.18 except when Design Professional is a party to the proceeding, serving or preparing to serve as an expert witness in connection with any proceeding, legal or otherwise, regarding the Project;

3.3.19 Worksite visits in excess of the number of visits provided for in §§3.2.8.3, 3.2.8.7–3.2.8.9 or the number of visits in a schedule established by attachment to this Agreement;

3.3.20 attending meetings in excess of those provided for in §3.2.8.5;

3.3.21 providing Services relating to Hazardous Material discovered at the Worksite;

3.3.22 consultations and representations before governmental authorities or others having jurisdiction over the Project other than normal assistance in securing building permits;

3.3.23 out-of-town travel by Design Professional in connection with Services, except between Design Professional's office, Owner's office, and the Worksite;

3.3.24 services requested by Owner or required by the Work that are not normally part of generally accepted design and construction practice and not otherwise required by this Agreement;

3.3.25 acting as a Green Building Facilitator as identified in the ConsensusDocs 310 Green Building Addendum or separate addenda, which, at a minimum, shall address: (a) coordinating and facilitating the achievement of elected green measures and green status, such as achieving Leadership in Energy and Environmental Design "LEED" certification; (b) identifying, preparing, and submitting necessary documentation for elected green status; and (c) identifying project participants responsible to complete physical and procedural green measures;

3.3.26 furnishing services related to the suspension of construction work;



3.3.27 performing formal commissioning services; and

3.3.28 other additional services as agreed to by the Parties and identified in an attached exhibit.

3.4 QUALIFICATIONS Design Professional warrants and represents that Design Professional and its consultants are duly qualified, licensed, registered, and authorized by law to perform the Services under this Agreement.

3.5 CONSULTANTS Design Professional shall not engage the services of any consultant without first obtaining Owner's written approval, which approval shall not be unreasonably withheld. Such approval by Owner shall not be deemed to create any contractual relationship between Owner and any such consultant, except that Owner shall be considered the intended third-party beneficiary of the performance of their services. Except for the waivers required under §5.4 and §7.3.2, Design Professional shall not include any limits of liability in its agreements with any Consultants without the prior written approval of Owner. Design Professional shall bind its Consultants in the same manner as Design Professional is bound to Owner under this Agreement.

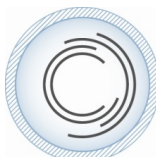
3.6 DESIGN PROFESSIONAL'S REPRESENTATIVE Design Professional's representative is [____], who shall possess full authority to receive and act on instructions from Owner, in accordance with this Agreement. If Design Professional changes its representative or the representative's authority, Design Professional shall immediately notify Owner in writing.

3.7 KEY PROJECT PERSONNEL The key Project personnel whom Design Professional shall assign and their anticipated time percentage each shall devote to Design Professional's Services shall be set forth in Exhibit C. Such personnel shall not be changed without the written approval of Owner, which approval shall not be unreasonably withheld.

3.8 FINANCIAL INFORMATION Prior to commencement of Services, and thereafter, Design Professional shall have the right, upon written request, to receive from Owner evidence of Owner's financial ability to pay for Design Professional's Services. Evidence of Owner's financial ability to pay for Services shall be a condition precedent to Design Professional commencing or continuing Services. Design Professional shall be notified prior to any material change in Owner's ability to pay for Services.

3.9 ROYALTIES, PENALTIES, AND COPYRIGHTS Design Professional shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods, or systems selected by Design Professional and incorporated in the design or construction documents prepared by Design Professional. Design Professional warrants that it possesses the copyright or permission to use the copyright of materials, methods, or systems selected by Design Professional and incorporated in the design or construction documents prepared by Design Professional. Design Professional shall defend, indemnify, and hold Owner, Constructor, and Subcontractors harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection.

3.10 CONFIDENTIALITY Design Professional shall treat as confidential and not disclose to any third parties, except as necessary for the performance of this Agreement or as required by law, or use for its own benefit, any of Owner's confidential information, know-how, discoveries, production methods, and the like that are so identified in writing and disclosed to Design Professional or which Design Professional acquires in performing the Services required by this Agreement. Except for information that Owner obtains through ownership of the copyright, Owner shall treat as confidential information all design systems that may be disclosed to Owner in connection with the performance of this Agreement. Owner



and Design Professional shall each specify those items to be treated as confidential and shall mark them as "Confidential."

ARTICLE 4 OWNER'S RESPONSIBILITIES

4.1 INFORMATION AND SERVICES PROVIDED BY OWNER

4.1.1 To the extent Owner has obtained the information and services identified below, Owner shall provide them to Design Professional with reasonable promptness. Unless otherwise limited by Owner in writing, Design Professional shall be entitled to rely on the accuracy of such information and services:

4.1.1.1 information describing the physical characteristics of the Worksite, including surveys, Worksite evaluations, legal descriptions, existing conditions, subsurface and environmental studies, reports, and investigations all in reasonable detail and as set forth in Exhibit A.;

4.1.1.2 inspection reports and testing services conducted during construction as required by law or as mutually agreed;

4.1.1.3 unless otherwise provided in this Agreement, documentation evidencing any necessary approvals, site plan review, rezoning, easements and assessments, fees, and charges required for the construction, use, occupancy, or renovation of permanent structures.

4.1.2 Owner shall promptly report to Design Professional errors, inconsistencies, and omissions it discovers in the Construction Documents; however, nothing in this subsection shall relieve Design Professional of responsibility for its own errors, inconsistencies, and omissions.

4.1.3 Approvals by Owner shall not be deemed to be an assumption of responsibility by Owner for any error, inconsistency, or omission in the drawings and specifications or other documents prepared by Design Professional, its employees, agents, or consultants. Owner shall provide all approvals required under this Agreement in a timely manner.

4.2 OWNER'S REPRESENTATIVE Owner's representative is [____]. The Representative shall be fully acquainted with the Project; agrees to furnish the information and services required of Owner pursuant to §4.1 in a timely manner; and shall have authority to bind Owner in matters requiring Owner's approval, authorization, or written notice, but may not change this ConsensusDocs 240, Standard Agreement Between Owner and Design Professional, as modified by the Parties. If Owner changes its representative or their authority, Owner shall immediately notify Design Professional in writing.

4.3 ROYALTIES, PATENTS, AND COPYRIGHTS Owner shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods, or systems specifically required by Owner to be incorporated in the design and construction documents prepared by Design Professional. Owner warrants that it possesses the copyright or permission to use the copyright of materials, methods, or systems required by Owner to be incorporated in the design documents of Design Professional. Owner agrees to defend, indemnify, and hold Design Professional harmless from any suits or claims of infringement of any patent rights or copyrights arising out of any patented or copyrighted materials, methods, or systems required by Owner or used by Constructor but not required by Owner or Design Professional.

ARTICLE 5 TIME



5.1 TIME FOR SERVICES Time is of the essence. Design Professional shall provide the Services required by this Agreement in a timely manner and in conformance with the most recent Project Schedule approved by Owner. Design Professional's Fee as set forth in §6.1 is based on completion of Construction Documents no later than [] ([]) Days following execution of this Agreement. If completion of Construction Documents is not achieved within this time through no fault of Design Professional, Design Professional may seek an adjustment to its compensation and time for Services in accordance with this Agreement.

5.2 DELAYS BY DESIGN PROFESSIONAL If the progress or completion of the Project is delayed by reason of any error, inconsistency, or omission of Design Professional which violates its standard of care, Design Professional shall compensate Owner for and indemnify it against all damages that may accrue as a result of such delay, except as otherwise provided in §5.4. In addition, Design Professional shall provide Services at its own cost, including any overtime costs and expenses, required to make up time lost to Owner because of such delay. Owner shall provide prompt written notice to Design Professional of such delay after Owner first recognizes the delay.

5.3 DELAYS BY OWNER If Design Professional is delayed in the performance of its Services by any act or omission of Owner, or by changes ordered by Owner which are due to causes beyond Design Professional's control, or by a delay authorized by Owner pending dispute resolution, then the time allotted in the Project Schedule for Design Professional's Services shall be extended for the period of such delay or Owner shall authorize and approve Design Professional to work to make up such lost time. Design Professional may seek an equitable adjustment under this Agreement. Design Professional shall provide prompt written notice to Owner of such delay after Design Professional first recognizes such delay.

5.4 LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES

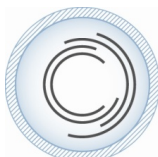
5.4.1 The Parties each waive claims against each other for consequential damages arising out of or relating to this Agreement, whether arising in contract, warranty, tort (including negligence), strict liability, or otherwise, including but not limited to losses of use, profits, business, reputation, or financing, except for those specific items of damages excluded from this waiver, as mutually agreed upon by the Parties and identified below. Owner agrees to waive damages including but not limited to Owner's loss of use of the Project, any rental expenses incurred, loss of income, profit, or financing related to the Project, as well as the loss of business, loss of financing, loss of profits not related to this Project, loss of reputation, or insolvency. Design Professional agrees to waive damages including, but not limited to, loss of business, loss of financing, loss of profits not related to this Project, loss of reputation, or insolvency. The following items of damages are excluded from this mutual waiver: None.

5.4.1.1 The provisions of this subsection shall also apply to the termination of this Agreement and shall survive such termination. The Parties shall each require similar waivers in contracts with their contractors and consultants retained for the Project.

ARTICLE 6 COMPENSATION AND PAYMENTS

6.1 COMPENSATION FOR BASIC SERVICES

6.1.1 For Basic Services as described in §3.1 and §3.2, Owner shall compensate Design Professional on the following basis, including applicable sales taxes (designate only one of the following options):



☐ Stipulated Fee. The amount of [] dollars (\$[]).

☐ Guaranteed Maximum Fee. The actual cost of the following:

- a. Design Professional's personnel at the rates listed in Exhibit B.
- b. Services of consultants and subcontractors are included in the Stipulated Fee.
- c. Reimbursable Expenses incurred in connection with Basic Services.

☒ Other basis of fee as follows: At the completion of the Design Development Documents Phase, a lump sum fee ("Fee") shall be established for all Basic Services under this Agreement, which Fee shall be [TBD]% of the estimated amount of the building construction costs. Until such lump sum Fee is established, payments for Basic Services shall be made as provided in Exhibit B attached hereto.

6.2 ADDITIONAL SERVICES AND REIMBURSABLE EXPENSES

6.2.1 Design Professional shall be compensated for Additional Services as described in §3.3 on the following basis: Lump Sum.

6.2.2 Design Professional shall be compensated for the Reimbursable Expenses described in Exhibit B at their actual cost, unless otherwise provided in §6.1.1.

6.3 PAYMENTS

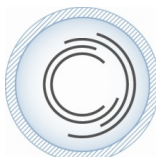
6.3.1 Design Professional shall submit to Owner for its approval monthly applications for payment for Basic and Additional Services and Reimbursable Expenses, if any, with reasonable supporting detail. Owner shall pay approved amounts no later than thirty (30) Days after Design Professional has submitted its applications for payment. No matter how computed in §6.1, payments for Basic Services either:

6.3.1.1 shall not exceed the following lump sum amounts for each Phase of Design Professional's Services:

Schematic Design Documents	[] dollars (\$[])
Design Development Documents	[] dollars (\$[])
Construction Documents	[] dollars (\$[])
Bidding or Negotiation Assistance	[] dollars (\$[])
Construction Phase	[] dollars (\$[])
TOTAL	[] dollars (\$[])

Upon receipt of payment from Owner, Design Professional shall promptly make payment to its Consultants as appropriate.

6.3.2 Prior to final payment to Design Professional, Design Professional shall furnish evidence satisfactory to Owner that there are no claims, obligations, or liens outstanding in connection with its



Services. Acceptance of final payment shall constitute a waiver of all claims by Design Professional for compensation for its Services.

6.3.3 Should there be any claim, obligation, or lien asserted before or after final payment is made that arises from Design Professional's Services, Design Professional shall reimburse Owner for any costs and expenses, including attorneys' fees, costs, and expenses, incurred by Owner in satisfying, discharging, or defending against any such claim, obligation, or lien, including any action brought or judgment recovered, provided Owner is making payments or has made payments to Design Professional in accordance with the terms of this Agreement.

6.3.4 Should Design Professional or its Consultants cause damage to the Project, or fail to perform or otherwise be in default under the terms of this Agreement, Owner shall have the right to withhold from any payment due or to become due, or otherwise be reimbursed for, an amount sufficient to protect Owner from any loss that may result. Payment of the amount withheld shall be made when the grounds for the withholding have been removed.

6.3.5 Design Professional's expense records shall be maintained in accordance with generally accepted accounting principles and shall be available to Owner at mutually convenient times for all Services to be compensated on the basis of actual cost.

6.3.6 LATE PAYMENT Payments due but unpaid shall bear interest from the date payment is due at the statutory rate at the place of the Project.

6.3.7 If Owner disputes in good faith all or any portion of any application for payment, Owner shall notify the Design Professional within fifteen (15) days of receipt of the disputed application. In the event of a good faith dispute regarding payment due to Design Professional under this Agreement for fees and reimbursable expenses, the Owner shall pay the undisputed amount due and the Design Professional shall not suspend its services, withhold deliverables, or terminate the Agreement. Such payment shall not act as Owner's waiver of any claims that may be asserted against Design Professional for the performance of defective or deficient services.

ARTICLE 7 INDEMNITY AND INSURANCE

7.1 INDEMNITY

7.1.1 To the fullest extent permitted by law, Design Professional shall indemnify, defend, and hold harmless Owner, the Owner's Representative, and their affiliates, officers, directors, members, consultants, agents, and employees, Constructor, Subcontractors, and Others (the Indemnitees) from and against all claims, losses, damages, liabilities, including reasonable attorneys' fees, costs, and expenses, for bodily injury, sickness, or death, and property damage, that may arise from the performance of or the failure to perform Services under this Agreement, but only to the extent caused by the negligent acts or omissions of Design Professional, Design Professional's consultants or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. Design Professional shall be entitled to reimbursement of any defense costs paid above Design Professional's percentage of liability for the underlying claim to the extent provided for under §7.1.2 immediately below.

7.1.2 NO LIMITATION ON LIABILITY In any and all claims against the Indemnitees by any employee of Design Professional, anyone directly or indirectly employed by Design Professional or anyone for



whose acts Design Professional may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Design Professional under Workers' Compensation acts, disability benefit acts, or other employee benefit acts.

7.2 INSURANCE

7.2.1 Before commencing its Services and as a condition of payment, Design Professional shall purchase and maintain such insurance as will protect it from claims arising out of the performance of its Services under this Agreement, whether such Services are provided by Design Professional or by any of its consultants or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

7.2.2 Design Professional shall maintain in effect all insurance coverage required under this §7.2 with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located and which are reasonably satisfactory to Owner:

7.2.2.1 Workers' Compensation and Employers' Liability Insurance in accordance with Laws and wherever Design Professional's Services are being performed. Employers' Liability coverage shall be written with at least the following limits of liability:

- a. \$1,000,000 bodily injury per accident
- b. \$1,000,000 bodily injury by disease policy limit
- c. \$1,000,000 bodily injury by disease per employee

7.2.2.2 Commercial General Liability Insurance, including contractual liability insurance for the liability assumed in §7.1.1, with at least the following limits of liability:

- a. \$2,000,000 per occurrence
- b. \$2,000,000 general aggregate
- c. \$2,000,000 products/completed operations aggregate
- d. \$2,000,000 personal and advertising injury limit

7.2.2.3 Business Automobile Liability Insurance \$1,000,000 per occurrence.

7.2.3 Design Professional shall require its consultants to maintain Business General Liability and Business Automobile Liability coverage with a company satisfactory to Owner and with limits acceptable to Owner.

7.2.4 PROFESSIONAL LIABILITY INSURANCE Design Professional shall maintain Professional Liability Insurance with a company satisfactory to Owner, whose approval shall not be unreasonably withheld, for claims arising from the negligent performance of Services under this Agreement, which shall be either (designate one only):

- ☐ Practice Policy
- ☒ Project Specific Coverage

written for not less than \$2,000,000 per claim and in the aggregate. The Professional Liability Insurance shall contain prior acts coverage sufficient to cover all Services performed by Design Professional for this Project. If Project Specific Coverage is used, these requirements shall be



continued in effect for one (1) year(s) following final payment to Design Professional. The deductible shall be paid by Design Professional.

7.2.5 Consultants retained by Design Professional for this Project shall maintain Professional Liability Insurance with a company and for such amounts as are satisfactory to Owner for claims arising from the negligent performance of its Services, which shall be either (designate one only):

- ☐ Practice Policy
- ☒ Project Specific Coverage.

The Professional Liability Insurance shall contain prior acts coverage sufficient to cover all services performed by the consultants for this Project. If Project Specific Coverage is used, these requirements shall be continued in effect for one (1) year(s) following final payment to Design Professional. Deductibles shall be paid by Design Professional.

7.2.6 Design Professional shall furnish to Owner certificates of insurance evidencing the required coverages listed in this section and a copy of its Professional Liability policy. No policy shall be cancelled or modified without thirty (30) Days' prior written notice to Owner. Such requirement for prior written notice does not apply to modifications caused by claims made against the policy. Design Professional and its Professional Liability insurance carrier shall notify Owner within thirty (30) Days of any claims made or loss expenses incurred against the Professional Liability policy. Owner shall have the right to notify directly Design Professional's Professional Liability insurance carrier of a claim against the policy. The Professional Liability policies shall be continued in effect for one (1) year(s) following final payment to Design Professional.

7.3 PROPERTY INSURANCE

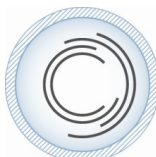
7.3.1 Owner shall provide, or cause Constructor to provide, property insurance that names Design Professional and its consultants as named additional insureds. Owner shall furnish to Design Professional certificates of insurance evidencing such coverage.

7.3.2 WAIVER OF SUBROGATION The Parties each waive all rights against each other and Constructor, for loss or damage to the extent covered by property insurance, except such rights as they may have to the proceeds of such insurance. Owner and Design Professional shall require similar waivers from all of their consultants retained for the Project.

ARTICLE 8 TERMINATION

8.1 TERMINATION BY EITHER PARTY Should either Party be in material breach of this Agreement, the other Party may give written notice to the breaching Party that it intends to terminate this Agreement for default absent appropriate corrective action upon seven (7) Days from receipt. Upon such time and absent appropriate corrective action, the non-breaching party may terminate this Agreement in writing.

8.2 TERMINATION BY OWNER FOR CONVENIENCE Upon seven (7) Days' written notice, Owner may, without cause, terminate this Agreement with Design Professional. If this Agreement is terminated pursuant to this section, Design Professional may recover from Owner: (a) payment for Services performed to the date of termination, in accordance with this Agreement; (b) any cost, or expense in connection with the Services, including those resulting from the termination, but not including lost profits on unperformed Services; and (c) a premium as set forth here [_____]



ARTICLE 9 DISPUTE MITIGATION AND RESOLUTION

9.1 CONTINUANCE OF SERVICES AND PAYMENT Unless otherwise agreed in writing, Design Professional shall continue to perform its Services during any dispute mitigation or resolution proceeding. If Design Professional continues to perform, Owner shall continue to make payments in accordance with this Agreement for amounts not in dispute.

9.2 DIRECT DISCUSSIONS If the Parties cannot reach resolution on a matter relating to or arising out of this Agreement, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions. If the Parties' representatives are not able to resolve such matter within five (5) Business Days of the date of first discussion, the Parties' representatives shall immediately inform senior executives of the Parties in writing that resolution could not be reached. Upon receipt of such notice, the senior executives of the Parties shall meet within five (5) Business Days to endeavor to reach resolution. If the dispute remains unresolved after fifteen (15) Days from the date of first discussion, the Parties shall submit such matter to the dispute mitigation and dispute resolution procedures selected herein.

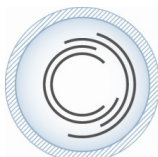
9.3 MITIGATION If the Parties select one of the dispute mitigation procedures provided in this section, disputes remaining unresolved after direct discussions shall be directed to the selected mitigation procedure. The dispute mitigation procedure shall result in a nonbinding finding on the matter, which may be introduced as evidence at a subsequent binding adjudication of the matter, as designated in §9.5. The Parties agree that the dispute mitigation procedure shall be:

- ☐ Project Neutral
- ☐ Dispute Review Board.

9.3.1 MITIGATION PROCEDURES As soon as practicable after the execution of this Agreement, the Project Neutral/Dispute Review Board ("Neutral/Board") shall be mutually selected and appointed by the Parties and shall execute a retainer agreement with the Parties establishing the scope of the Neutral's/Board's responsibilities. The costs and expenses of the Neutral/Board shall be shared equally by the Parties. The Neutral/Board shall be available to either Party, upon request, throughout the course of the Project, and shall make regular visits to the Project so as to maintain an up-to-date understanding of the Project progress and issues and to enable the Neutral/Board to address matters in dispute between the Parties promptly and knowledgeably. The Neutral/Board shall issue nonbinding findings within five (5) Business Days of referral of the matter to the Neutral/Board, unless good cause is shown.

9.3.2 If the matter remains unresolved following the issuance of the nonbinding finding by the mitigation procedure or if the Neutral/Board fails to issue nonbinding findings within five (5) Business Days of the referral, the Parties shall submit the matter to the binding dispute resolution procedure designated in §9.5.

9.4 MEDIATION If direct discussions pursuant to §9.2 do not result in resolution of the matter and no dispute mitigation procedure is selected under §9.3, the Parties shall endeavor to resolve the matter by mediation through the current Construction Industry Mediation Rules of the American Arbitration Association, or the Parties may mutually agree to select another set of mediation rules. The administration of the mediation shall be as mutually agreed by the Parties. The mediation shall be convened within thirty (30) Days of the matter first being discussed and shall conclude within forty-five (45) Business Days of the matter first being discussed. Either Party may terminate the mediation at any



time after the first session by written notice to the non-terminating Party and mediator. The costs of the mediation shall be shared equally by the Parties.

9.5 BINDING DISPUTE RESOLUTION If the matter is unresolved after submission of the matter to a mitigation procedure or to mediation, the Parties shall submit the matter to the binding dispute resolution procedure selected below:

9.5.1 ARBITRATION

☒ The Parties choose binding arbitration for any claim or dispute arising out of or relating to this Agreement. **EACH PARTY WAIVES THEIR RIGHT TO BE HEARD IN A COURT OF LAW**, with or without a jury. Arbitration does not involve a judge or jury. Instead, an arbitrator with the power to award damages and other appropriate relief will decide claims and disputes. An arbitrator's award shall be final and binding upon the Parties, and judgment may be entered upon it in any court having jurisdiction.

9.5.1.1 Neither Party may commence arbitration if the claim or cause of action would be barred by the applicable statute of limitations had the claim or cause of action been filed in a state or federal court. Receipt of a demand for arbitration by the person or entity administering the arbitration shall constitute the commencement of legal proceedings for the purposes of determining whether a claim or cause of action is barred by the applicable statute of limitations. If, however, a state or federal court exercising jurisdiction over a timely filed claim or cause of action orders that the claim or cause of action be submitted to arbitration, the arbitration proceeding shall be deemed commenced as of the date the court action was filed, provided that the Party asserting the claim or cause of action files its demand for arbitration with the person or entity administering the arbitration within thirty (30) Days after the entry of such order.

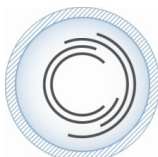
9.5.1.2 The arbitration shall use the following rules:

- ☒ the current AAA Construction Industry Arbitration Rules and AAA administration. AAA Construction Fast Track Rules shall apply to all two-party cases when neither Party's disclosed claim or counterclaim exceeds \$250,000. If arbitration is selected but no rules are selected, then this subsection shall apply by default;
- ☐ the current JAMS Engineering and Construction Arbitration Rules and Procedures and administered by JAMS; or
- ☐ the current arbitration rules of [_____] and administered by [_____].

9.5.2 COSTS The costs of any binding dispute resolution procedures and reasonable attorneys' fees shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute.

9.5.3 VENUE To the extent permitted by Law, the venue of any binding dispute resolution procedure shall be the location of the Project.

9.6 MULTIPARTY PROCEEDINGS All parties necessary to resolve a claim agree to be parties to the same dispute resolution procedure, if possible. Appropriate provisions shall be included in all other contracts relating to the Project to provide for the joinder or consolidation of such dispute resolution procedures.



9.7 LIEN RIGHTS Nothing in this article shall limit any rights or remedies not expressly waived by Design Professional that Design Professional may have under lien laws.

ARTICLE 10 MISCELLANEOUS

10.1 OWNERSHIP OF TANGIBLE DOCUMENTS Owner shall receive ownership of the property rights, except for copyrights, of all documents, drawings, specifications, electronic data, and information ("Documents") prepared, provided, or procured by Design Professional or by consultants retained by Design Professional and distributed to Owner for this Project, upon making the final payment to Design Professional or in the event of termination under ARTICLE 8, upon payment for all sums due to Design Professional under ARTICLE 8. Owner's acquisition of the copyright shall be subject to Owner's making of all payments required by this Agreement.

10.1.1 COPYRIGHT The Parties agree that Owner ☒shall/ ☐shall not obtain ownership of the copyright of all Documents. Owner's acquisition of the copyright for all Documents shall be subject to the making of payments as required by §10.1.

If the Parties have not made a selection to transfer copyright interests in the Documents, the copyright shall remain with Design Professional.

10.1.2 USE OF DOCUMENTS IN EVENT OF TERMINATION In the event of a termination of this Agreement pursuant to ARTICLE 8, Owner shall have the right to use, to reproduce, and to make derivative works of the Documents to complete the Project, regardless of whether there has been a transfer of copyright under §10.1.1, provided payment has been made pursuant to §10.1.

10.1.3 OWNER'S USE OF DOCUMENTS AFTER COMPLETION OF PROJECT After completion of the Project, Owner may reuse, reproduce, or make derivative works from the Documents solely for the purposes of maintaining, renovating, remodeling, or expanding the Project at the Worksite. Owner's use of the Documents without Design Professional's involvement or on other projects is at Owner's sole risk, except for Design Professional's indemnification obligations pursuant to §3.9, and Owner shall defend, indemnify, and hold harmless Design Professional and its consultants, and the agents, officers, directors, and employees of each of them, from and against any and all claims, damages, losses, costs, and expenses, including reasonable attorneys' fees and costs, arising out of or resulting from any such prohibited use.

10.1.4 DESIGN PROFESSIONAL'S USE OF DOCUMENTS Where Design Professional has transferred its copyright interest in the Documents under §10.1.1, Design Professional may reuse Documents prepared by it pursuant to this Agreement in its practice, but only in their separate constituent parts and not as a whole.

10.1.5 Design Professional shall obtain from its consultants rights and rights of use that correspond to the rights given by Design Professional to Owner in this Agreement, and Design Professional shall provide evidence that such rights have been secured.

10.2 EXTENT OF AGREEMENT Except to the extent expressly provided in this Agreement, this Agreement represents the entire and integrated agreement between Owner and Design Professional and supersedes all prior negotiations, representations, and agreements, either written or oral. This Agreement and each and every provision is for the exclusive benefit of Owner and Design Professional and not for the benefit of any third party.



10.3 DOCUMENTS IN ELECTRONIC FORM If Owner requires that Owner, Design Professional, and Constructor exchange documents and data in electronic or digital form, prior to any such exchange, Owner, Design Professional, and Constructor shall agree on a written protocol governing all exchanges, which, at a minimum, shall specify: (a) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (b) management and coordination responsibilities; (c) necessary equipment, software, and services; (d) acceptable formats, transmission methods, and verification procedures; (e) methods for maintaining version control; (f) privacy and security requirements; and (g) storage and retrieval requirements. Except as otherwise agreed to by the Parties in writing, each Party shall bear its own costs for requirements identified in the protocol. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient. Notwithstanding other provisions in this Agreement, printed documents and sets shall not be required if such documents are required to be prepared and transmitted in electronic form.

10.4 ASSIGNMENT Except for an assignment of proceeds, neither Owner nor Design Professional shall assign its interest in this Agreement without the written consent of the other Party, except that Owner may assign the Agreement to a wholly owned subsidiary of Owner when Owner has fully indemnified Design Professional or to an institutional lender providing construction financing for the Project as long as the assignment is no less favorable to Design Professional than this Agreement. If such assignment occurs, Design Professional shall execute any consent reasonably required. In such event, the wholly owned subsidiary or lender shall assume Owner's rights and obligations under the contract documents. If either Party attempts to make such an assignment, that Party shall nevertheless remain legally responsible for all obligations under this Agreement, unless otherwise agreed by the other Party.

10.5 GOVERNING LAW The law in effect at the location of the Project shall govern this Agreement.

10.6 SEVERABILITY The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

10.7 NOTICE Unless changed in writing, a Party's address indicated in Article 1 shall be used when delivering notice to a physical address. Except for agreement termination, notice is effective upon transmission by any effective means, including U.S. postal service and overnight delivery service.

10.8 NO WAIVER OF PERFORMANCE Either Party's failure to insist upon any, in any one or more instances, on the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right with respect to further performance.

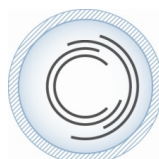
10.9 TITLES The title given to the articles and sections are for ease of reference only and shall not be relied upon or cited for any other purpose.

10.10 JOINT DRAFTING The Parties expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

OWNER: []

BY: _____ NAME: _____ TITLE: _____

WITNESS: _____ NAME: _____ TITLE: _____



DESIGN PROFESSIONAL: [_____]

BY: _____ NAME: _____ TITLE: _____

WITNESS: _____ NAME: _____ TITLE: _____

END OF DOCUMENT.



**ATTACHMENT
D: Proposed
Timeline**

<u>Phase 1: Needs Assessment</u>	
2/12 - CC	Hired Consultants for Needs Assessment & Concept Plans
3/4 - CC	Creation of Ad Hoc Senior/Recreation Center Committee
3/18 - CC	Appointments to Ad Hoc Senior/Recreation Center Committee
3/20 - SCC	- Select Chair and Vice-Chair - Establish future meeting schedule - Review purpose of Ad Hoc Committee - Discuss duties of Ad Hoc Committee - Review draft Community Survey - Begin crafting vision, goals & objectives of project - Prepare draft project process and timeline
3/22 - Survey	Go live with Community Survey (through 4/26)
3/27 - SCC	- Finalize vision, goals and objectives of project - Finalize project process and timeline
4/3 - SCC	- Finalize project process and timeline - Discuss use and timing of owner's representative
4/8 - CC	- Appointment of City Commissioner to Ad Hoc Senior/Recreation Center Committee - Present vision, goals and objectives to City Commission for approval - Present project process and timeline to City Commission for approval
4/10 - SCC	YMCA facility tour (meeting to be held on site at 400 E. Lincoln)
4/17 - SCC	- Review findings of Programming Study - Review and finalize RFP for owner's representative
4/18 - Post RFP for OR	Post RFP on MITN for owner's representative (due 5/10)
4/24 - SCC	Finalize RFQ for architects to qualify for final design and construction plan preparation
4/25 - Post RFQ for Architects	Post RFQ on MITN for architects to qualify for final design and construction plan preparation (due 5/16)
4/26 - Report	Delivery of Needs Assessment Report
4/29 - Open House	- Conduct community open house at YMCA (6-8pm) - Present findings of Community Survey
5/1 - SCC	- Review community survey & open house public input - Review Needs Assessment Report
5/8 - SCC	Final review and recommendation of Needs Assessment Report to City Commission
5/10 - OR Responses	Responses due from RFP for owner's representative
5/15 - SCC	- Review and evaluate proposals for owner's representative - Recommend preferred owner's representative to City Commission
5/16 - RFQ Responses	Responses due from RFQ for architects
5/20 - CC	- Needs Assessment Report presented to City Commission for approval - City Commission selects owner's representative

Phase 2: Concept Plans

5/22 - SCC	- Owner's representative attends first ad hoc meeting - Review responses from RFQ for architects
5/29 - SCC	Review draft RFP for final design and construction plan preparation
6/11 – Report (90%)	Delivery of Draft Report (90% complete)
6/12 - SCC	- Finalize RFP for final design and construction plan preparation - Discuss potential funding options
6/19 - SCC	Review Draft Report
6/21 – Concept Plans & Final Report	- Delivery of concept plan options - Delivery of Final Report
6/26 - SCC	- Evaluate concept plan options - Review Final Report
7/17 - SCC	Recommend preferred concept plan & Final Report to City Commission
7/29 - CC	- Preferred concept plan & Final Report presented to City Commission for approval - Discuss potential funding options
9/9 – CC	Workshop with Next/YMCA to further develop strategy for building use and city participation
10/7 – CC	- Review of due diligence of options from workshop - Release of RFP for final design and construction plan preparation

Phase 3: Final Site Plan & Design Review, Preparation of Construction Plans

10/9 – SCC	Final review of RFP for final design and construction plan preparation
10/10	Post RFP for final design and construction plan preparation (due 10/30)
10/23 - SCC	Available if needed
10/30 – RFP Proposals	Final design and construction plan proposals due
11/6 - SCC	- Review and evaluate architectural proposals received - Review RFP for CM proposals
11/13 - SCC	- Interview architectural consultants - Recommend architectural consultants to City Commission
11/18 – CC	- Recommend and/or interview architectural consultants at City Commission - Award consultant contract
11/20 - SCC	- Begin design discussions with architectural consultants - Post RFP for Construction Manager(due 12/18)
12/4 - SCC	Begin site plan and design review
12/18 – SCC	Continue site plan and design review
1/8/25 - SCC	- Continue site plan and design review - Review and evaluate CM proposals received
1/15/25 – SCC	- Interview CM firms - Recommend CM firm to City Commission - Review Schematic Design
1/20/25 - CC	- Approve Bond Language (May Vote) - Recommend and/or interview CM firms at City Commission - Review Funding Options
1/22/25 - SCC	Kickoff CM firm, present SD with comments, estimate by 2/12

2/11/25	Bond Language to County Deadline
2/12/25 - SCC	Review SD Estimate
2/17/25 - CC	- Present SD and Budget Estimate to City Commission for comments - Further Funding Discussions
2/19/25 – SCC	Continue Design Development review
3/5/25 - SCC	Continue Design Development review
3/26/25 -SCC	Review Design Development
4/9/25 – SCC	Review Design Development Budget Estimate
4/21/25 -CC	- Present Design Development and Budget Estimate to CC for comments - Funding Decision
4/23/25 - SCC	Review CC comments with AE and CM, prepare Construction Documents
May 2025	Bond Vote
5/7/25 – SCC	Continue CD review, Review proposed bid package from CM
5/21/25 – SCC	Continue CD review
6/4/25 – SCC	Continue CD review
6/11/25 - SCC	- Final Review Construction Documents for Bidding - CM updates Budget Estimate for CDs
6/23/25 – CC	- Present Final Design to City Commission for comments - Funding Approval
6/25/25 – SCC	AE Issues Documents for Bidding

Phase 4: Construction & Construction Management

8/6/25	CM Submits GMP from bidding
8/13/25 -- SCC	Review of GMP and recommendation to City Commission
8/18/25 -- CC	Present GMP to CC for Approval and Award
8/18/25 --	12 – 15 months of Construction

**ATTACHMENT E:
Conceptual Design,
Building
Assessment,
Programming
Information and
Estimates**

DRAFT



Alex Bingham <abingham@bhamgov.org>

Re: NEXT member

1 message

Jana Ecker <Jecker@bhamgov.org>
To: Toby <tbyberger@yahoo.com>
Cc: Alex Bingham <abingham@bhamgov.org>

Mon, Sep 30, 2024 at 12:50 PM

Thank you for your comments. I will share your email with the City Commission as part of the agenda packet when this issue is discussed again next Monday.

Have a great day,

Jana L. Ecker
City Manager
Birmingham, MI
(248) 530-1811

On Mon, Sep 30, 2024 at 11:47 AM Toby <tbyberger@yahoo.com> wrote:

Ms. Ecker:

I'm writing to underline the necessity of respecting and implementing NEXT's plans for their allotted space for the new construction at the Birmingham YMCA building.

As you are aware, NEXT needs a larger facility to expand their daily operations. This would allow members to continue to enjoy a variety of activities such as exercise classes, educational programs, lectures, and social events. NEXT will have the opportunity to offer more programs that they couldn't hold in their current location.

Aside from the space needed for NEXT, the new structure must be ADA compliant in order to accommodate people of all ages and abilities, and provide ample parking, including spaces reserved for handicapped drivers.

NEXT will continue to provide a variety of activities while members enjoy the camaraderie of others, but in a larger space. All of this will not only improve their physical and mental health, but will also combat social isolation, which can lead to depression and other health problems. This will result in a healthier and more vibrant community for all.

Denying NEXT their expected 75% share of the new facility will prevent its members and Birmingham adults from experiencing all of the above in a building dedicated to bringing them together.

Thank you.

Toby Berger
NEXT member



Alex Bingham <abingham@bhamgov.org>

Fwd: NEXT Building Proposal

2 messages

Clinton Baller <clinton@baller4bham.com>

Sun, Sep 22, 2024 at 11:09 AM

To: julie hollinshead <jhollinshead@gmail.com>

Cc: City Commission <city-commission@bhamgov.org>, Jana Ecker <jecker@bhamgov.org>, DShare <dshare@bsdd.com>, Cris Braun <cbraun@birmingham.k12.mi.us>

Dear Ms. Hollinshead,

Thank you for your thoughtful and detailed letter regarding the proposed building for NEXT and the YMCA. I appreciate the time you took to raise these important concerns, which echo questions I have heard from other taxpayers.

When the conversation about a future home for NEXT involved costs in the low single-digit millions, the matter seemed relatively simple. However, as the proposal expanded to potentially exceed \$30 million in city bonds to support NEXT, the YMCA, and services for the broader community (including a pool), the nature of the project fundamentally changed. The city now faces questions about how much taxpayers should bear for this and whether all residents will benefit proportionately.

One of the key issues, as you highlighted, is the lack of clarity around "seniors" and "senior services." There has been no comprehensive analysis of the actual needs of this population (however it is defined and counted), nor of the population at-large. Additionally, we have not yet conducted a survey of existing services already available to seniors or the community as a whole, whether through the Birmingham/Bloomfield Art Association, Baldwin Public Library, the school system or other community organizations or private entities. Without this understanding, it is challenging to justify a proposed the new building, and inclusions such as a pool, and art and tech rooms, when similar services may already be available nearby.

Moreover, we have not presented taxpayers with a holistic view of broader community needs. This includes important considerations like infrastructure updates, City Hall renovations, and the potential need for a new police station. Any large-scale project, such as this proposed building, should be justified with deep analysis and a clear understanding of long-term benefits and costs.

I understand your concern that before we consider asking taxpayers to fund such an ambitious project, a gap analysis and cost/benefit assessment should be conducted. This would help ensure that we are making informed decisions that serve the best interests of all Birmingham residents.

Let me add one more thing: I consider NEXT to be a valuable organization that merits our support. In helping it find a new home at reasonable cost -- a noble undertaking -- we have unfortunately become mired in a much bigger, and to many unanticipated, debate.

Again, thank you for your thoughtful engagement on this issue. I will continue to advocate for rigorous analysis, and I encourage further community input as we move forward.

Sincerely,

Clinton Baller
Commissioner

On Fri, Sep 20, 2024 at 12:09 PM julie hollinshead <jhollinshead@gmail.com> wrote:

Dear Clint,

I have been following the presentations to the City Commission related to the proposals for the building for NEXT and the YMCA. I am very concerned about the

lack of cost justification for the plans put forth by NEXT and the city manager., and the expense for the building for NEXT that may be borne by Birmingham taxpayers.

The original plan by NEXT was to spend \$7 million for space in what is currently the YMCA. NEXT, the YMCA, and the city manager recently proposed a plan that would cost \$32 million (\$11 million for the YMCA and \$21.5 million for NEXT). This means that NEXT and the city manager have proposed a \$21 million building at a cost 300% higher than the original estimate of \$ 7 million.

From what I have heard at city commission meetings, there is no evidence of a gap analysis, detailing what services are currently available at existing organizations in Birmingham and what services are desired and needed by all Birmingham taxpayers. The gap analysis, as well as a cost/benefit analysis, should be done and made available to all Birmingham taxpayers for a project of this size to be funded by taxpayers.

There are many types of spaces envisioned for the 30,000 square foot building proposed by NEXT and the city manager without estimates of the expected level of demand and long-term revenue generation potential.

- What is the justification for building an art room at NEXT? The Birmingham/Bloomfield Art Association offers many art classes throughout the year. Seniors can sign up for these classes and receive instruction suited to their skills and interest.
- What is the justification for space designated for a tech room with eight computers? The Baldwin Public Library, an entity supported by Birmingham taxpayers, has many offerings to enhance technology skills for residents and numerous computers for public use. Why should taxpayers support the building costs for a tech room at NEXT with eight computers when this space and the computers already exist at the library?
- It is my understanding that the proposed building for NEXT includes space for ten offices, yet there are two full-time employees at NEXT. Why are 10 offices needed?

These are just a few examples where cost justification and gap analyses are greatly needed for this large building if all taxpayers will be asked to pay for it. Recognize that seniors ages 65+ comprise a minority, at 17% of Birmingham's population, and the actual proportion of seniors using NEXT is likely less due to seasonal residency preferences and recreational and learning options currently available in town and nearby.

NEXT is a non-profit organization that is not part of the city government. It is seeking your approval to request that taxpayers pay for a building largely for its use. NEXT has already secured an agreement with the city to pay rent at below market rates. This is a dangerous precedent. Which nonprofit will step forward following this "sweetheart" rent deal, and request a taxpayer funded building with sub-market rent ?

I urge you and the other City Commissioners to rigorously assess the costs, the need for and the uses of building proposed by NEXT and the city manager prior to allowing a millage request on an upcoming ballot.

Respectfully,

Julie Hollinshead

Birmingham resident

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Jana Ecker <Jecker@bhamgov.org>

Sun, Sep 22, 2024 at 11:19 AM

To: Alex Bingham <abingham@bhamgov.org>, Mark Clemence <clemencem@bhamgov.org>, Melissa Fairbairn <mfairbairn@bhamgov.org>

Jana L. Ecker
City Manager
Birmingham, MI
(248) 530-1811

----- Forwarded message -----

From: **Clinton Baller** <cmballer@avidpays.com>
Date: Fri, Sep 20, 2024 at 10:08 PM
Subject: Fwd: NEXT Building Proposal
To: Jana Ecker <Jecker@bhamgov.org>, Kucharek, Mary <mkucharek@bhlaw.us.com>

----- Forwarded message -----

From: **julie hollinshead** <jhollinshead@gmail.com>
Date: Fri, Sep 20, 2024 at 5:10 PM
Subject: Re: NEXT Building Proposal
To: Clinton Baller <cmballer@avidpays.com>

Clint,

That is fine with me.

I sent this email to the other city commissioners.

Julie

10A

On Sep 20, 2024, at 2:34 PM, Clinton Baller <cmballer@avidpays.com> wrote:

Julie,

May I share your email with others?

Clint

[Quoted text hidden]



Alex Bingham <abingham@bhamgov.org>

Senior Center

1 message

'MARGARET PETERSON' via City Commission <city-commission@bhamgov.org>

Thu, Sep 26, 2024 at 11:49 AM

Reply-To: MARGARET PETERSON <peggy.p@comcast.net>

To: "city-commission@bhamgov.org" <city-commission@bhamgov.org>

Dear Commissioners:

To a resident and homeowner, with all of the proposals and changes for a new facility to support and expand NEXT, it appears that the Commission hasn't decided what the ultimate goal is - a senior center or YMCA? As a volunteer at NEXT, I can't give enough support and praise regarding its value to community through all their programming and services. Plus, the staff are undauntedly dedicated to their mission.

It appears to me, and other citizens, that the building was purchased without enough foresight and then proposed and passed a millage to support it. Since then, the Commission continues to change the proposals based feedback, and pushback, from the citizenry. I understand there should be a processes to get it right, but perhaps all the surveys, workshops, and meetings should have been done prior to the purchase and the millage.

Citizens are losing trust in the process as this drags on, especially if another millage is proposed in support of what looks like a mishmash to many.

Thank you and regards,

Peggy Peterson
1543 Hazel St.*As a side, note:**On the commissioners' website, what looks like a link that would allow one to contact all commissioners in a single email, ISN'T A LINK. It takes you into a loop back to the main page.**Perhaps, you can request that the IT staff make it an actual link so one doesn't have to: 1. copy and paste your email address one-by-one or 2. call your office to get the instructions steps to activate it by going back to your own email. Your constituents would appreciate it. :)*

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Alex Bingham <abingham@bhamgov.org>

Fwd: blower ban

1 message

Jana Ecker <Jecker@bhamgov.org>
To: Alex Bingham <abingham@bhamgov.org>

Fri, Sep 20, 2024 at 3:55 PM

Jana L. Ecker
City Manager
Birmingham, MI
(248) 530-1811

----- Forwarded message -----

From: **Therese Longe** <tlonge@bhamgov.org>
Date: Fri, Sep 20, 2024 at 2:59 PM
Subject: Fwd: blower ban
To: Jana Ecker <Jecker@bhamgov.org>

----- Forwarded message -----

From: **John Cheek** <johncheek07@yahoo.com>
Date: Fri, Sep 20, 2024, 2:26 PM
Subject: blower ban
To: emclain@bhamgov.org <emclain@bhamgov.org>, kschafer@bhamgov.org <kschafer@bhamgov.org>, cballer@bhamgov.org <cballer@bhamgov.org>, ahaig@bhamgov.org <ahaig@bhamgov.org>, bhost@bhamgov.org <bhost@bhamgov.org>, along@bhamgov.org <along@bhamgov.org>, tlonge@bhamgov.org <tlonge@bhamgov.org>

Today is 9/20 and I was just notified by the city that on 9/23 the Council will vote to ban gas powered blowers which are legal for Birmingham citizens to buy. That gives just the weekend for citizens to digest and notify you of our concerns, I would hardly call that a reasonable notification for something that outlaws an item we can freely purchase anywhere.

Concerns:

- *no plan to reimburse citizens for their current gas blower
- *no data showing that citizens want to ban property that's legal to buy/own across 99% of state
- *the only "objective" this ordinance vaguely supports is around sustainability and again, zero data to show this ban will have any impact (current air pollution metrics vs. future if we ban them)

I'm not a fan of blowers, but I'm even less a fan of the way this has been handled and the unreasonable nature of it.

Please vote this down, or at least rebuild it with above considerations.

-John



Alex Bingham <abingham@bhamgov.org>

Proposal to prohibit gas leaf blowers

1 message

Lanie Hardy Cosgrove <lanie@hardycosgrove.com>
To: "city-commission@bhamgov.org" <city-commission@bhamgov.org>

Sun, Sep 22, 2024 at 7:09 PM

Dear City Commission,

This past Friday I received the Birmingham Newsletter with a notice that Birmingham is considering outlawing gas leaf blowers.

This was the first that I had heard about this proposal and I now must voice my opinion that the commission is completely out of line.

The banning of leaf blowers will create a major hardship on landscapers which will ultimately be a cost passed on to the consumer. The benefits and effectiveness of gas powered leaf blowers far outweighs the impact on the environment.

This is a clear example of a misuse of the city commissions time and resources. Maybe more time should be spent on enforcing building codes. I have witnessed my street, Wimbleton, destroyed by the city allowing homes that are too close and homes that should never have been allowed to have been built in the first place. I believe this is the same commission who had the bright idea to add the traffic islands down Woodward which have created havoc and unsafe conditions for those who are unfortunate enough to live or work on Woodward where their entrances have been blocked by these berms.

Let's get back to making decisions that are beneficial to the residents.

Sincerely,

Lanie cosgrove
40 year resident
Sent from my iPhone

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Gas Leaf Blower Ban

1 message

William Farnen <wjfarnen@gmail.com>
To: city-commission@bhamgov.org

Tue, Oct 1, 2024 at 6:52 AM

Just became aware of your policy proposal to ban gas leaf blowers to follow Ann Arbor's lead. Has anyone done any analysis of the practicality in adopting this ordinance. Are you aware that Ann Arbor gave their own maintenance department a waiver? I would expect more out of our commission than following blindly any directive another community advocates for environmental purposes. William & Anne Farnen 1185 Lake Park Drive
Sent from my iPhone

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Alex Bingham <abingham@bhamgov.org>

Landscape Industry Opposition to Banning Gasoline Powered Leaf Blowers

Jake German <jake@dunaskiss.biz>

Mon, Sep 23, 2024 at 9:23 AM

To: emclain@bhamgov.org, city-commission@bhamgov.org, Jana Ecker <jecker@bhamgov.org>

Cc: Michelle Atkinson <michelle@landscape.org>, Mat Dunaskiss <mat@dunaskiss.biz>

Dear Mayor McLain & City Commissioners:

On behalf of my client, the Michigan Green Industry Association, I'd like to submit the following letter to the commission with comments from industry on your consideration this evening of a potential ordinance to amend the Birmingham City Code to phase out two-stroke gas powered leaf blowers by July 1, 2026.

We thank you in advance for your kind attention and consideration of these important comments.

Very truly yours,

Jacob J. German

Government Affairs Specialist

Dunaskiss Consulting & Development, Inc.

900 S. Lapeer Road

Oxford, MI 48371

Office | (248) 693.1391

Mobile | (734) 934.9051

jake@dunaskiss.biz



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**MGIAGasLeafBlowerBanComments.docx**

286K



**MICHIGAN GREEN
INDUSTRY ASSOCIATION**

A Beautiful Landscape Starts Here...
www.landscape.org

"The Voice of Michigan's Green Industry"

30600 Telegraph Road
Suite 3360
Bingham Farms, MI 48025
Ph: (248) 646-4992
Fax: (248) 646-4994

September 23, 2024

Mayor Elaine McLain & Birmingham City Commissioners
151 Martin Street
Birmingham, MI 48012

RE: Proposed ordinance to amend Birmingham City Code to phase out two-stroke gas powered leaf blowers by 1 July 2026

Landscape Industry Opposition to Banning Gasoline Powered Leaf Blowers

Dear Mayor & Commissioners,

The Michigan Green Industry Association represents landscape companies throughout Michigan that specialize in lawn care, landscape maintenance, tree care, irrigation and water management. Landscape professionals work daily performing essential services to homes and businesses to maintain their landscapes, sustain the environment and enhance and maintain healthy and safe green spaces.

We share in the Birmingham City Commission and other policymakers' intent to reduce carbon emissions from gas powered leaf blowers as quickly as possible. Still, we must do so in a responsible manner that mitigates the negative financial impact on the landscape industry that relies significantly on the ability to use high performing leaf blowers. The landscape industry in Michigan has more than 19,000 businesses, most of these businesses are considered small businesses and a vital industry for entrepreneurs throughout the state.

Leaf blowers are essential for landscape industry professionals. This is because these machines are efficient tools for cleaning up leaves, grass, fertilizer granules, and other small debris from lawn and landscape sites. Since their development in the 1970s, to a large extent, leaf blowers have supplanted brooms, hoses, and rakes. Leaf blowers even perform functions that no other tool can handle effectively, such as cleaning areas covered by rock, gravel, bark, or mulch. Leaf blowers save enormous amounts of time. Most estimates suggest that it takes at least five times as long to lean a typical landscape site with a broom and rake than it does with a power leaf blower.

Landscape professionals work every day to take care of Michigan's green spaces. The landscape industry cares deeply about the environment, and we do support a responsible transition to zero-emission leaf blowers. However, the July 1, 2026, timeline to *completely* phase out gas blowers proposed by the Ordinance to Amend Part II of City Code Chapter 50 is too fast of a transition for commercial users. In addition, the commercial-grade battery-powered equipment currently on the market has significant performance issues and cost issues.

Performance

Equipment performance and run-time are common concerns for landscape professionals and present technological challenges that must be overcome for widespread use of electric leaf blowers. Unlike a homeowner that uses an electric powered leaf blower for less than an hour, in each week, the landscape industry is operating commercially using this equipment daily, under rigorous conditions and during long durations. Also, many landscape professionals operate on commercial properties like corporate campuses, parks, resorts and other large green spaces which demand stronger performance and power capabilities. Unfortunately, the available electric leaf blowers are not capable of this sort of use pattern currently.

Data provided by one major equipment manufacturer that produces both gas and electric equipment illustrates the challenge. In a side-by-side comparison the performance of the electric leaf blower immediately begins to decline the moment it begins until the battery dies only 18 minutes later, while the gas-powered blower maintains a strong performance the entire hour and without unnecessary downtime to change batteries.

Cost

The entire cost for transitioning away from gas powered leaf blowers must be completely understood and realized. First, there is the immediate cost of purchasing the actual equipment, which by itself is not that different. Where the price starts to jump is when you factor in the cost of batteries, the cost to change and retrofit your shop and how you handle inferior products amid a labor crisis.

From a battery perspective they are expensive, and you need multiple per each piece of equipment. One major equipment manufacturer's most advanced electric commercial/professional grade *backpack blower* has \$379 manufacturer's suggested retail price (MSRP), this is without a charger. The battery cost for this unit ranges from \$870 to \$1,100 MSRP, more than double the price for the actual equipment. For a *handheld leaf blower*, the professional batteries range from \$120 - \$240 and based on only 18 – 22 minutes run time we estimate that a typical leaf blower would need nearly 10 batteries to complete routine daily tasks escalating prices of batteries per unit to approach \$2,400.

Compatibility is also an issue for batteries. Battery technology for leaf blowers is proprietary information and therefore the batteries are not compatible between different manufacturers. This presents a problem because it would require landscape companies to move to a single manufacturer approach rather than using different equipment from different manufacturers. This

could lead to companies being locked into one manufacturer, reduce competition, and strengthening manufacturer influence over the company based on their specific needs.

The infrastructure on both the micro and the macro level is not currently in place to fully support this transition. On the micro level landscape companies will need to fully retrofit their shops to support the amount of voltage that will need to be used each day to safely charge all of the electric leaf blowers. Vehicles used to transport crews and equipment will also need to be redesigned to support charging stations to ensure complete operational capabilities once out in the field, this will raise the overall “cost” factor detailed above significantly. From a macro level there is currently not enough electric equipment in the stream of commerce due to supply chain issues and even if the equipment were available the dealerships that play a critical role in assisting in maintaining this equipment is not yet in place.

The last issue with cost that we want to address is labor. Electric leaf blowers lack the same performance capabilities detailed above and require frequent battery changes both of which reduce the productivity and efficiency of a landscape crew in the field. This reduction in productivity puts landscape companies in a tough spot since they are already faced with a historic work force crisis. This proposal pushes an industry that cannot find enough willing and capable employees to now rely on less efficient equipment that takes more time and requires additional labor to perform the same task in the same amount of time to remain competitive and profitable.

All of this considered together (equipment cost, battery cost, increased labor) represents significant cost impediments to make a complete transition to electric leaf blowers by July 1, 2026.

Unenforceable & Federal Preemption

Aside from the barriers from the perspective of the landscape industry there are also practical and legal matters to consider. First, this legislation will be very difficult to enforce and will likely lead to additional problems and conflicts. Where is the funding coming from to enforce this? Who will enforce this? Should police be brought into handle disputes? We have seen in California those that don’t understand that in California the “use” of gas-powered equipment has not been banned yet we have seen social media posts of angry neighbors getting into altercations with landscape professionals and their crews. We also believe this will lead to neighbor versus neighbor disputes. All of these are unintended consequences of passing a policy to ban the use of equipment when there is not yet a viable alternative.

The Clean Air Act (CAA) is the federal statute that outlines the statutory and regulatory paradigm that emissions are regulated in the United States. Under the CAA, Congress delegated to California the exclusive authority to also regulate emissions but only after being granted a waiver that must be approved by the U.S. Environmental Protection Agency (EPA). The other 49 states are federally preempted to act in this manner. As currently drafted this legislation is attempting to regulate the sale and use of leaf blowers based on emissions and therefore this legislation is federally preempted. If passed the City of Birmingham would be subject to legal action from homeowners and businesses that are adversely impacted by this legislation.

The Solution

The MGIA supports the efforts of the National Association of Landscape Professionals, which centers around more reasonable timelines and incentives to help support the infrastructures for the transition. MGIA did endorse the “Promoting Reduction of Emissions Through Landscaping Equipment Act” along with other state associations, and U.S. Representative Lou Correa (D-CA) introduced it in October of 2023. This proposed bill creates a federal tax credit to enable landscaping businesses of all sizes to transition to zero-emission equipment. The bill provides a 40% credit for businesses on the purchase of zero-emission equipment, such as mowers, leaf blowers, hedgers and accessories up to \$25,000 every year and up to \$100,000 over the course of 10 consecutive years. The tax credit, which applies to any equipment purchased on or after January 1, 2023, also extends to retrofitting equipment that transforms gas power devices to zero-emission.

Conclusion

For the reasons stated herein, MGIA and NALP support a responsible transition to electric leaf blowers. Unfortunately, we believe that due to the performance, cost and infrastructure issues that this transition cannot occur by July 1, 2026, but we would welcome the idea of working on proactive legislation that begins to encourage this transition rather than setting a premature mandate and penalizing the thousands of small businesses that rely on this equipment.

Sincerely,



Michelle Atkinson
Executive Director
Michigan Green Industry Association



Alex Bingham <abingham@bhamgov.org>

Leaf Blowers

2 messages

Charles E. Hamill <charleshamill@outlook.com>

Sat, Sep 21, 2024 at 8:26 AM

To: "city-commission@bhamgov.org" <city-commission@bhamgov.org>

Dear Birmingham City Commission,

As a 60 year resident of Birmingham I am completely against the city spending their time and residents money to ammend an ordinance to dictate what type of blower residents and their contractors may use on their property.

If passed, the city will raise lawn care costs for every resident. Additionally, resident tax dollars will be needed to replace city equipment.

Residents are more concerned about the environmental impact of builders and their contractors over running our neighborhoods than having the city dictate what type of blower may be used on our property.

Please vote no on this amendment.

Charles E. Hamill

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Jana Ecker <Jecker@bhamgov.org>

Sun, Sep 22, 2024 at 11:20 AM

To: Alex Bingham <abingham@bhamgov.org>, Nicholas Dupuis <ndupuis@bhamgov.org>, Mark Clemence <clemencem@bhamgov.org>

Jana L. Ecker
City Manager
Birmingham, MI
(248) 530-1811

[Quoted text hidden]



Alex Bingham <abingham@bhamgov.org>

Fwd: Potential Leaf Blower Regulations

1 message

Jana Ecker <Jecker@bhamgov.org>
To: Alex Bingham <abingham@bhamgov.org>

Fri, Sep 20, 2024 at 3:38 PM

Jana L. Ecker
City Manager
Birmingham, MI
(248) 530-1811

----- Forwarded message -----

From: **Michelle Love** <mmlove1133@gmail.com>
Date: Fri, Sep 20, 2024 at 1:00 PM
Subject: Fwd: Potential Leaf Blower Regulations
To: <emclain@bhamgov.org>, <kschafer@bhamgov.org>, <cballer@bhamgov.org>, <ahaig@bhamgov.org>, <bhost@bhamgov.org>, <along@bhamgov.org>, <tlonge@bhamgov.org>, <Jecker@bhamgov.org>

Good Afternoon-

I am shocked to read Birmingham's elected officials might support this level of overreach and attempt to infringe on citizens' rights. It's mind boggling. If this passes, it opens up a door, and I wonder what's next. Very concerning.

Michelle Love
1133 Villa Road

----- Forwarded message -----

From: **City of Birmingham, MI** <socialmedia@bhamgov.org>
Date: Fri, Sep 20, 2024 at 12:11 PM
Subject: Potential Leaf Blower Regulations
To: <mmlove1133@gmail.com>

**Potential Leaf Blower Regulations**

Over the past two years, the City Commission has discussed the hazards of leaf blowers many times. On Monday, September 23, 2024, they will consider an ordinance to amend

10B

the City Code to phase out two-stroke gas powered leaf blowers by July 1, 2026. Like Ann Arbor and many other communities across the country with similar regulations, this initiative is directly tied to sustainability goals and will significantly reduce negative effects on the environment and public health.

Follow this [link to view detailed information and the proposed ordinance amendment](#). View frequently asked questions and learn more about emissions, noise and environmental impacts at bhamgov.org/leafblowers.



Learn about City resources and more by visiting www.bhamgov.org, liking the "[City Government of Birmingham, MI](#)" Facebook page and following @bhamgov on [Instagram](#).

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151 Martin St. P.O. Box 3001 Birmingham, MI 48012

Office Hours: Mon-Fri 8 a.m. to 5 p.m.

Tel: 248-530-1800



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Alex Bingham <abingham@bhamgov.org>

Leaf Blower Ordinance Revision

1 message

'friedrex@aol.com' via City Commission <city-commission@bhamgov.org>

Fri, Sep 20, 2024 at 1:52 PM

Reply-To: "friedrex@aol.com" <friedrex@aol.com>

To: "city-commission@bhamgov.org" <city-commission@bhamgov.org>

Ladies and Gentlemen:

I have received the city email advising of plans to revise the leaf blower ordinance to reduce and eventually ban the use of leaf blowers having gas-powered, two-stroke engines. For present purposes, I'm neither for nor against the ban, but my eye was drawn to this excerpt in the forwarding document:

"FISCAL IMPACT: As stated in previous reports, two-stroke leaf blowers are easier to maintain and have a lifespan that could exceed 10 years. Because of this, the City may incur an additional cost to replace gas-powered leaf blowers with electric leaf blowers. This cost may be offset by the sale of the City's existing leaf blowers, as well as the reduction in gas/oil consumption over time."

If the sale is carried out, then, the city would not eliminate, but simply export, the objectionable aspects of these devices. As set forth in the email, I can imagine no place or situation in which those aspects would be acceptable, and I caution against the sale strategy as an instance of manifest hypocrisy.

Respectfully,

Paul Seibold
921 Knox

--

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To view this discussion on the web visit <https://groups.google.com/a/bhamgov.org/d/msgid/city-commission/1076439630.8463631.1726854728921%40mail.yahoo.com>.



Alex Bingham <abingham@bhamgov.org>

Fwd: FW: Potential Leaf Blower Regulations

1 message

Jana Ecker <Jecker@bhamgov.org>
To: Alex Bingham <abingham@bhamgov.org>

Fri, Sep 20, 2024 at 3:58 PM

Jana L. Ecker
City Manager
Birmingham, MI
(248) 530-1811

----- Forwarded message -----

From: **Therese Longe** <tlonge@bhamgov.org>
Date: Fri, Sep 20, 2024 at 3:01 PM
Subject: Fwd: FW: Potential Leaf Blower Regulations
To: Jana Ecker <Jecker@bhamgov.org>

----- Forwarded message -----

From: **wade spencer** <wadecspencer@gmail.com>
Date: Fri, Sep 20, 2024, 1:16 PM
Subject: FW: Potential Leaf Blower Regulations
To: emclain@bhamgov.org <emclain@bhamgov.org>, kschafer@bhamgov.org <kschafer@bhamgov.org>, cballer@bhamgov.org <cballer@bhamgov.org>, ahaig@bhamgov.org <ahaig@bhamgov.org>, bhost@bhamgov.org <bhost@bhamgov.org>, along@bhamgov.org <along@bhamgov.org>, tlonge@bhamgov.org <tlonge@bhamgov.org>

City Commissioners:

I may not be able to join the meeting/ceremonies on Monday night to voice my displeasure of this initiative, but let me lay out why I think this should be voted down as a Birmingham resident, homeowner, taxpayer and supporter of the environment:

1. The Fiscal Impact section is woefully incomplete:
 - a. How many batteries will be required to power the city's fleet of blowers?
 - i. What is the impact to produce and dispose of said batteries
 - ii. How much time will city workers spend managing the charging of these new batteries?
 - iii. What are the risks related to fires of maintaining batteries and chargers?
 - iv. Will city services be deferred as batteries are charged?
 - b. What is the lifespan of battery blowers?
 - i. Do they have a longer or shorter service life than gas blowers?

10B

- ii. What are the true costs to acquire a fleet of electric blowers? Is there a true secondary market for gas blowers – has anyone researched this?
 - iii. How many batteries are required over the service life of the equipment?
 - iv. Will new batteries be required when the initial/on-going fleet reaches end-of-life? Will good batteries have to be disposed of?
 - v. Can the service life of electric blowers be extended via servicing, or are they “disposable”?
- c. There is no mention of the fiscal impact on residents – which I hope you seem to care about, but the fact that it isn’t mentioned at all is STUNNING!
 - i. Cost to transition for those that use their own equipment?
 - 1. Personally – to upgrade my 600CFM blower to an electric equivalent will be \$600, plus about \$175 for a second battery that would be required (at a minimum) for my lot. I am pretty sure that my “California-rated” two stroke (that was bought in 2007 – and runs perfectly!!) is worth \$0. So, this ordinance will cost this voter/homeowner \$850 at least.
 - 2. If there are 9400 households, and 75% need to replace their blowers – that cost to the voters and homeowners and residents you represent will be conservatively \$3.5 million dollars (9400 households x 75% that have/need a blower x \$500 per blower)
 - ii. Increased cost for those that use lawn services.
 - 1. Don’t kid yourselves that services won’t justify a penalty to Birmingham home owners
- c. How much savings will the reduction in oil and gas consumption truly be? Is this identified?
- 1. Sustainability:
 - a. There is mention of a “phased transition to electric or manual leaf removal will significantly reduce the effects on the environment and public health” but there is no mention of what benefits, or if there are any downsides
 - b. Not sure that this is a “phased approach” as much as an absolute one-time “deadline”
 - c. The insertion of “manual” has us going back to the stone ages – thank you!
 - d. What about the environmental impacts to mine and dispose of the lithium, the fire risk, the landfill waste being created to dispose of all the old serviceable gas blowers (don’t kid yourself – no secondary market, pennies on dollar), and if we sell our blowers, aren’t we just making another community worse?

From a practical point of view – I am personally phasing out my gas equipment and replacing with electric as my implements have reached their end of service life. I am struggling with the mandate of this initiative. I would be much more interested in establishing quality-of-life improvements related to when such equipment can be used – be they time of day, day of week, or on holidays. My concern too is that this will create more mandates related to lawnmowers, snowblowers, string trimmers, edge trimmers, motorcycles, cars, trucks, washers, water heaters, furnaces, air conditioning, underwear and all sorts of things that government should stay out of – including the Birmingham City Council.

Hopefully I will see you Monday and I can express my concerns directly in front of you, but this should be a “recommendation” not a mandate.

Thank you,

Wade Spencer

10B

187 Pilgrim Ave.

617.763.9085

From: "City of Birmingham, MI" <socialmedia@bhamgov.org>
Reply-To: "socialmedia@bhamgov.org" <socialmedia@bhamgov.org>
Date: Friday, September 20, 2024 at 12:10 PM
To: Wade Spencer <wadecspencer@gmail.com>
Subject: Potential Leaf Blower Regulations



Potential Leaf Blower Regulations

Over the past two years, the City Commission has discussed the hazards of leaf blowers many times. On Monday, September 23, 2024, they will consider an ordinance to amend the City Code to phase out two-stroke gas powered leaf blowers by July 1, 2026. Like Ann Arbor and many other communities across the country with similar regulations, this initiative is directly tied to sustainability goals and will significantly reduce negative effects on the environment and public health.

Follow this [link to view detailed information and the proposed ordinance amendment](#). View frequently asked questions and learn more about emissions, noise and environmental impacts at bhamgov.org/leafblowers.



Learn about City resources and more by visiting www.bhamgov.org, liking the "City Government of Birmingham, MI" Facebook page and following @bhamgov on Instagram.

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Alex Bingham <abingham@bhamgov.org>

Gasoline leaf blowers

2 messages

'Christopher E Wicks' via City Commission <city-commission@bhamgov.org>

Sat, Sep 21, 2024 at 11:11 AM

Reply-To: Christopher E Wicks <cwicks@comcast.net>

To: city-commission@bhamgov.org

To Whom it may concern:

The issue of protecting the environment is an important one and should definitely be considered when drafting policy, however, all aspects of policy should be examined. This should definitely be the case with the proposed leaf blower regulations.

To begin, I am an almost 30 year resident of Birmingham. Prior to this I would visit Birmingham frequently as a youth and aspired to live here when I was an adult, and after my medical training in Madison Wisconsin I did. It is truly a wonderful place. I love the well manicured homes and their green spaces. I personally mow my own lawn, clear my own driveway in the winter, and maintain my grounds throughout the year. I have used all manner of lawn and garden equipment both gas and electric. My experience is that electric powered equipment is not, at this time, equivalent to their gas powered counterparts in their ability to perform their required tasks in either quality or time efficiency. As such, I have continued to use my gas powered equipment.

No one likes the sound of a lawn mower or leaf blower. But electric equipment is not noise free, it is also quite irritating. What is different is how long it takes to do the same job with the electric equipment. It takes significantly longer to do the same job, with significantly longer duration. As such everyone is exposed to longer periods of intrusive noise.

If enacted, this would require the residents of the city to replace their perfectly functional gasoline powered equipment with expensive, and inferior, electric ones. This is no small expense. I believe that most people who do their own lawn work would find this expense to be unjustified. And for those who choose to hire out their lawn work the expense would also go up. The time it takes to perform the work previously done with more efficient gasoline powered equipment would be significantly prolonged. As such, the cost of labor to get these same things done would be significantly higher. Another consideration being that many lawn companies would no longer perform the services resulting in decreased competition and further driving up prices. Would any of them even be able to do it as battery powered equipment isn't capable of working all day.

Would this legislation; due to increased costs, reduced access to services, and increased difficulty in maintaining properties compared to gasoline powered equipment result in less thorough maintenance of properties? Would leaves and debris during the fall be more prevalent than they are now? Aside from the aesthetics, this would create safety issues as leaves are slippery and can make roads more difficult to navigate.

Environmentally, the use of gasoline powered equipment, specifically leaf blowers, is insignificant. They are used for a very short time as they perform their duties quickly and efficiently. They are also primarily used during a very short period in the fall as well. If one wants to improve the environmental impact of anything, perhaps banning the driving of gas guzzling, oil leaking Range Rovers which are driven all year by residents would make more sense.

And that is what this is about.....common sense. At this time electric equipment is not capable of doing the work that is easily performed by gasoline powered equipment. When it is, then most people and companies will make the switch without any mandates.

The bottom line is that the proposed legislation banning gas leaf blowers is not necessary and will harm the residents of the city, especially those with limited means to pay the increased costs.

I look forward to your response to this letter.

Sincerely, Christopher Wicks, M.D.

--

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Jana Ecker <Jecker@bhamgov.org>

Sun, Sep 22, 2024 at 11:18 AM

To: Alex Bingham <abingham@bhamgov.org>, Nicholas Dupuis <ndupuis@bhamgov.org>

Jana L. Ecker
City Manager

10B

Birmingham, MI
(248) 530-1811

----- Forwarded message -----

From: **Therese Longe** <tlonge@bhamgov.org>

Date: Sat, Sep 21, 2024 at 11:17 AM

Subject: Fwd: Gasoline leaf blowers

To: Jana Ecker <Jecker@bhamgov.org>

[Quoted text hidden]



Alex Bingham <abingham@bhamgov.org>

Fwd: Wimbleton Costs Requested

1 message

Jana Ecker <Jecker@bhamgov.org>
To: Alex Bingham <abingham@bhamgov.org>

Tue, Sep 24, 2024 at 4:54 PM

Please add to the communications section for the next CC meeting.

Thanks,

Jana L. Ecker
City Manager
Birmingham, MI
(248) 530-1811

----- Forwarded message -----

From: **Brad Coulter** <bradcoulter@gmail.com>
Date: Tue, Sep 24, 2024 at 2:13 AM
Subject: Fwd: Wimbleton Costs Requested
To: Jana Ecker <jecker@bhamgov.org>, <emclain@bhamgov.org>, <kschafer@bhamgov.org>

I noticed my below communication to the City Commission was not included in last nights meeting package. Please include the below in the communications section for the next meeting.

Regards,

Brad Coulter
498 Wimbleton

----- Forwarded message -----

From: **Brad Coulter** <bradcoulter@gmail.com>
Date: Tue, Sep 10, 2024 at 7:52 AM
Subject: Wimbleton Costs Requested
To: <emclain@bhamgov.org>, <kschafer@bhamgov.org>, <cballer@bhamgov.org>, <ahaig@bhamgov.org>, Brad Host <bhost@bhamgov.org>, <along@bhamgov.org>, <tlonge@bhamgov.org>
Cc: Jana Ecker <jecker@bhamgov.org>, mcoatta@bhamgov.org <mcoatta@bhamgov.org>

I wanted to follow up on last night's meeting regarding the need for more accurate costs on both the cape seal and improved road options for Wimbleton. As noted by a few Commissioners, there is a lot of misinformation that needs to be corrected so we can have an informed discussion on the options. In order to clear up the confusion, I request the Engineering Department do a more detailed study on what the actual costs will be. Right now all we know is based on the Engineering presentation to residents stating the cost for an improved road is \$150-\$350 per foot and \$35-\$50 per foot for cape seal. It's no wonder there is confusion given this wide of range on cost.

In addition I am requesting Engineering to opine on Commissioner Long's statement that installing a larger water main needs improved roads to protect the water main. That point has never been made by the Engineering Department and should be clarified.

Thank you again for moving Wimbleton comments forward in the meeting.

Regards,

Brad Coulter
498 Wimbleton

10C

To: Village of Beverly Hills; Southfield Township; City of Southfield; and City of Birmingham

Date: Sept. 22, 2024

Re: Application to do Bow and Arrow culling of out-of-control deer population.

To Whom It May Concern:

I have spoken to the DNR who have told me that the Cities/Townships/Villages must apply to their office for a license to do a bow and arrow deer culling in highly populated residential areas such as ours. If the application is approved, DNR can supply the hunters, who are involved with "Sportsmen to Feed the Hungry", who then donate their kills to a processing center who then makes it available to families.

Ann Arbor instituted a "fertility" program, where the does were given IUD's of some sort. This seems quite impractical to me. I do not have data on whether this program was successful or not, in terms of downsizing their deer population.

As every local person knows in this area, the deer population needs to be managed far better than it is currently being managed. The deer are on our streets during the day, simply meandering as they wish—and often ending up as road kill. I would like a written response re: this inquiry as to what the consensus is on better management techniques to keep the deer population down. My email is:

Carolyn.beauvais@gmail.com

Thank you in advance for helping me to understand the ideas that are under consideration, if any, to help downsize the deer population. I know we have coyotes as deer predators, but they don't seem to be managing the deer explosion either.

Sincerely,

Carolyn Beauvais



CLERK'S OFFICE

RECEIVED



CITY OF AUBURN HILLS, VILLAGE OF BEVERLY HILLS, VILLAGE OF BINGHAM FARMS, CITY OF BIRMINGHAM, CHARTER TOWNSHIP OF BLOOMFIELD, CITY OF BLOOMFIELD HILLS, CITY OF FARMINGTON, CITY OF FARMINGTON HILLS, VILLAGE OF FRANKLIN, CITY OF KEEGO HARBOR, CITY OF LATHRUP VILLAGE, CITY OF ORCHARD LAKE VILLAGE, CITY OF SOUTHFIELD, CITY OF TROY, CHARTER TOWNSHIP OF WEST BLOOMFIELD
COUNTY OF OAKLAND

NOTICE OF HEARING

RE: PETITIONS TO LOCATE, ESTABLISH AND CONSTRUCT AN INTRA-COUNTY DRAIN PROJECT IN THE CITY OF AUBURN HILLS, VILLAGE OF BEVERLY HILLS, VILLAGE OF BINGHAM FARMS, CITY OF BIRMINGHAM, CHARTER TOWNSHIP OF BLOOMFIELD, CITY OF BLOOMFIELD HILLS, CITY OF FARMINGTON, CITY OF FARMINGTON HILLS, VILLAGE OF FRANKLIN, CITY OF KEEGO HARBOR, CITY OF LATHRUP VILLAGE, CITY OF ORCHARD LAKE VILLAGE, CITY OF SOUTHFIELD, CITY OF TROY, CHARTER TOWNSHIP OF WEST BLOOMFIELD, OAKLAND COUNTY, MICHIGAN.

NOTICE IS HEREBY GIVEN, that pursuant to the provisions of Chapter 20 of Act No. 40 of the Public Acts of 1956, as amended, petitions were filed with the Water Resources Commissioner of Oakland County, Michigan, petitioning for the location, establishment and construction of an intra-county drain project consisting of extending the Evergreen-Farmington Sanitary Drain by adding a branch to said Drain known as the 10 Mile - Rouge Arm and conducting an assessment of pipe condition, including without limitation closed-circuit televising and cleaning of pipes, which Drain serves property located within the City of Auburn Hills, the Village of Beverly Hills, the Village of Bingham Farms, the City of Birmingham, the Charter Township of Bloomfield, the City of Bloomfield Hills, the City of Farmington, the City of Farmington Hills, the Village of Franklin, the City of Keego Harbor, the City of Lathrup Village, the City of Orchard Lake Village, the City of Southfield, the City of Troy and the Charter Township of West Bloomfield.

NOTICE IS FURTHER GIVEN, that the Drainage Board for the drain project has considered the petitions and has made a tentative determination that the petitions are sufficient and that the drain project is practical; has given the name "EVERGREEN-FARMINGTON SANITARY DRAIN EXTENSION" as the name of the drain project and the name "EVERGREEN-FARMINGTON SANITARY DRAIN DRAINAGE DISTRICT" is confirmed as the name of the drainage district therefor; and has made a tentative determination that the following public corporations should be assessed for the cost of the drain project, to wit:

City of Auburn Hills
Village of Beverly Hills

INFORMATION ONLY

Village of Bingham Farms
City of Birmingham
Charter Township of Bloomfield
City of Bloomfield Hills
City of Farmington
City of Farmington Hills
Village of Franklin
City of Keego Harbor
City of Lathrup Village
City of Orchard Lake Village
City of Southfield
City of Troy
Charter Township of West Bloomfield

NOTICE IS FURTHER GIVEN, that the Drainage Board will meet on the 22nd day of October, 2024, at 2:00 p.m., prevailing Eastern Time, at the Office of the Oakland County Water Resources Commissioner, One Public Works Drive, Waterford, Michigan, for the purpose of hearing any objections to the drain project, to the petitions therefor, and to the matter of assessing the cost thereof to the public corporations above named. This notice is given to and for the benefit of the said public corporations and all taxpayers thereof. At the hearing any of said public corporations or any taxpayer thereof will be entitled to be heard.

NOTICE IS FURTHER GIVEN, that after such hearing the Drainage Board shall make a determination as to the sufficiency of the petitions, the practicability of the drain project, whether the drain project should be constructed, and if so, the public corporations to be assessed and shall issue an order known as the Final Order of Determination. Section 483 of Act No. 40 of the Public Acts of 1956, as amended, provides that the Final Order of Determination shall not be subject to attack in any court, except by proceedings in certiorari brought within 20 days after the order is filed in the Office of the Oakland County Water Resources Commissioner, the Chairperson of the Drainage Board for the Evergreen-Farmington Sanitary Drain Extension, and that if no such proceeding shall be brought within said 20 day period the drain project shall not thereafter be questioned in any suit at law or in equity, either on jurisdictional or non-jurisdictional grounds.

This notice is given by order of the Drainage Board for the Evergreen-Farmington Sanitary Drain Extension.



Jim Nash, Chairperson of the Drainage Board
for the Evergreen-Farmington Sanitary Drain
Extension; Oakland County Water Resources
Commissioner

Dated: September 24, 2024

4869-8464-9188 v1 [12840-447]

CITY CLERK
CITY OF BIRMINGHAM
P.O. BOX 3001, 151 MARTIN STREET
BIRMINGHAM, MI 48012

**STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION NOTICE
OF HEARING
FOR THE ELECTRIC & GAS CUSTOMERS OF
DTE ENERGY COMPANY
CASE NO. U-21322**

- DTE Electric Company & DTE Gas Company requests Michigan Public Service Commission for approval of the amendment of their Energy Waste Reduction plans, of which a settlement was approved by the Commission on or about November 9, 2023.
- The information below describes how a person may participate in this case.
- You may call or write DTE Energy Company, One Energy Plaza, Detroit, MI 48226, 800-477-4747, for a free copy of its application. Any person may review the documents at the offices of DTE Energy Company or on the Commission's website at: michigan.gov/mpscdockets.
- A pre-hearing will be held:

DATE/TIME: Thursday, September 26, 2024 at 9:00 AM

BEFORE: Administrative Law Judge James M. Varchetti

LOCATION: Video/Teleconference

PARTICIPATION: Any interested person may participate. Persons needing any assistance to participate should contact the Commission's Executive Secretary at (517) 284-8096, or by email at mpscdockets@michigan.gov in advance of the hearing.

The Michigan Public Service Commission (Commission) will hold a pre-hearing to consider DTE Electric Company & DTE Gas Company's (DTE Electric & DTE Gas) August 22, 2024 application requesting the Commission to amend its previously approved Energy Waste Reduction plans by approving its proposed changes to the Settlement, to come in line with Act 229; updating the performance incentive mechanism as modified by Act 229, including criteria used to qualify customers to participate in income qualified programs, and aligning with Workforce Development programs; and grant DTE Electric & DTE Gas other and further relief as is just and reasonable.

All documents filed in this case shall be submitted electronically through the Commission's E-Dockets website at: michigan.gov/mpscedockets. Requirements and instructions for filing can be found in the User Manual on the E-Dockets help page. Documents may also be submitted, in Word or PDF format, as an attachment to an email sent to: mpscedockets@michigan.gov. If you require assistance prior to e-filing, contact Commission staff at (517) 284-8090 or by email at: mpscedockets@michigan.gov.

Any person wishing to intervene and become a party to the case shall electronically file a petition to intervene with this Commission by September 19, 2024. (Interested persons may elect to file using the traditional paper format.) The proof of service shall indicate service upon DTE Energy Company's attorney, Breanne K. Reitzel, One Energy Plaza., 1650 WCB, Detroit, MI 48226.

The prehearing is scheduled to be held remotely by video conference or teleconference. Persons filing a petition to intervene will be advised of the process to participate in the hearing.

Any person wishing to participate without intervention under Mich Admin Code, R 792.10413 (Rule 413), or file a public comment, may do so by filing a written statement in this docket. The written statement may be mailed or emailed and should reference Case No. **U-21322**. Statements may be emailed to: mpscedockets@michigan.gov. Statements may be mailed to: Executive Secretary, Michigan Public Service Commission, 7109 West Saginaw Hwy., Lansing, MI 48917. All information submitted to the Commission in this matter becomes public information, thus available on the Michigan Public Service Commission's website, and subject to disclosure. Please do not include information you wish to remain private. For more information on how to participate in a case, you may contact the Commission at the above address or by telephone at (517) 284-8090.

Requests for adjournment must be made pursuant to Michigan Office of Administrative Hearings and Rules R 792.10422 and R 792.10432. Requests for further information on adjournment should be directed to (517) 284-8130.

For more information on how to participate in a case, you may contact the Commission at the above address or by telephone at (517) 284-8090.

Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 et seq.; 1909 PA 300, as amended, MCL 462.2 et seq.; 1919 PA 419, as amended, MCL 460.54 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; 2008 PA 295, as amended, MCL 460.1001 et seq., and Parts 1 & 4 of the Michigan Office of Administrative Hearings and Rules, Mich. Admin Code, R 792.10106 and R 792.10401 through R 792.10448.

U-21322