



OAKLAND
COUNTY MICHIGAN

OAKLAND COUNTY BUILDING AUTHORITY

OAKLAND COUNTY EXECUTIVE L. BROOKS PATTERSON

JAY SHAH, Chairperson
ANDY MEISNER, Vice-Chairperson &
O.C. Treasurer
DONALD SNIDER, Secretary
JAMELE HAGE
L. BROOKS PATTERSON, O.C. Executive

AGENDA

WEDNESDAY, OCTOBER 10, 2018

9:00 a.m.

Public Works Building
Facilities Management Conference Room, 1st Floor
One Public Works Drive
Waterford, MI 48328

1. Roll Call
2. Approval of Agenda – *Committee Action Required*
3. Approval of Minutes – *Committee Action Required*
4. Comments from Public
5. Settlement Agreement & Release for Phoenix Center (pages 1 thru 36)
 - a) Memo from Jody Hall, Corp Counsel (pages 1 thru 3) – *Informational*
 - b) Settlement Agreement & Release (pages 4 thru 36) - *Committee Action Required*
6. Animal Shelter Project (pages 37 thru 53)
 - a) Project Work In Progress, Statement of Fund Balance, Balance Sheet (pages 37 thru 40) – *Informational*
 - b) Project Estimate & Quote for Fencing (pages 41 thru 43) - *Committee Action Required*
 - c) Project Estimate & Quote for Existing Building Commissioning Services (pages 44 thru 53) - *Committee Action Required*
7. Infrastructure – IT Projects (pages 54 thru 59)
 - a) Project Work In Progress, Statement of Fund Balance, Balance Sheet (pages 54 thru 56) – *Informational*
 - b) Invoice(s) Project (page 57) - *Committee Action Required*
8. Other Business
9. Adjourn until next regular meeting on *Wednesday, November 14, 2018*

OAKLAND COUNTY

MEMO

CORPORATION COUNSEL

To: Oakland County Building Authority
From: Jody Hall, Assistant Corporation Counsel
Date: September 26, 2018
Re: Request for Agenda Item for October 10, 2018 Meeting: Settlement Agreement and Release for the Phoenix Center

I am requesting that the above-referenced item be placed on the Building Authority Agenda for review and approval on October 10, 2018.

Below is a brief overview of the events leading to the "Settlement Agreement and Release."

On October 30, 1979, the City of Pontiac ("City"), the Pontiac Downtown Development Authority, and the Downtown Pontiac Development Company entered into a Comprehensive Development Agreement ("Development Agreement"), recorded at Liber 7770, Page 127, Oakland County Records, which required, among other obligations, that the developer construct a parking deck (the "Deck"), a plaza (the "Plaza"), and other improvements on the public sites of a certain parcel of land located in the City of Pontiac, now commonly known as the "Phoenix Center."

The Development Agreement provided that the City convey certain parcels of land within the project area to the developer to develop various buildings on private sites within the project area, including, but not limited to, two office buildings now known as the Ottawa Towers.

On May 8, 1980, a Declaration of Easements ("Declaration of Easements") was executed and recorded at Liber 7788, Page 01, Oakland County Records, which created certain easements and other rights and obligations as referenced therein.

The Ottawa Towers office buildings are now owned by Ottawa Tower II, LLC and the North Bay Drywall, Inc. Profit Sharing Plan and Trust.

On July 5, 2012, the City's Emergency Manager issued Order S-221 regarding the demolition of the Phoenix Center. Thereafter, in July 2012, the Ottawa Towers commenced litigation against Defendants (City of Pontiac, Louis Schimmel, Emergency Manager of the City of Pontiac, Oakland County, and Oakland County Building Authority) to prevent the demolition of the Phoenix Center and to assert related claims against the Defendants (Oakland County Circuit Court Case No. 12-130331-CH, the "2012 Case"). The City and County filed counterclaims against the Ottawa Towers. On November 30, 2012, the Oakland County Circuit Court entered a preliminary injunction preventing the demolition of the Phoenix Center, among other relief. At the time the case was commenced, the Building Authority held title to the Phoenix Center (due to bonds issued to refinance the debt associated with the Phoenix Center). However, during the pendency of the case, the City paid the bonds and the Building Authority transferred title of the Phoenix Center to the City (as required by the lease and sublease); thereafter, the counterclaims were dismissed.

On March 28, 2014, the City filed a condemnation action against the Ottawa Towers, among others, relating to the Phoenix Center (Oakland County Case No. 14-139761-CC, the "2014 Case"). The City's condemnation action was dismissed in October 2014 by the Oakland County Circuit Court, which dismissal was thereafter affirmed upon appeal; however, the Ottawa Towers' claim for reimbursement of attorney fees and costs under MCL 213.66 remains pending.

The Parties participated in mediation, facilitated by the Hon. Gerald Rosen (retired), to assist with the resolution of the remaining claim. The Parties agreed upon the material terms for settling the remaining claim in the form of a Proposed Term Sheet dated April 30, 2018 ("Proposed Term Sheet"). Based upon the Proposed Term Sheet, the Parties drafted a Settlement Agreement and Release, which resolves the claim related to 2012 Case and 2014 Case.

All payments and obligations included in the Settlement Agreement and Release are the sole responsibility of the City. The Building Authority and County assume no liability or responsibilities in connection with the proposed Settlement Agreement and Release.

The City is scheduled to consider and (hopefully approve) the Settlement Agreement and Release on October 9, 2018 and there is a status conference scheduled in front of Judge Warren on October 10, 2018 at 1:30 p.m. regarding the 2012 Case and 2014 Case.

Request for Placement on Agenda
September 26, 2018
Page 3 of 3

Myself and our outside counsel, David Timmis, will be the presenters of this item at the October 10, 2018 meeting. Please let me know if you have any questions or if you need anything else from me. I will be forwarding a copy of the actual Settlement Agreement and Release by the end of this week. The City's attorney and Plaintiff's attorney are making a few more changes.

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is entered into effective as of the 1st day of October, 2018 (the "Effective Date"), by and among OTTAWA TOWER II, LLC, a Michigan limited liability company, and the NORTH BAY DRYWALL, INC. PROFIT SHARING PLAN & TRUST, a California pension and profit sharing trust, (individually a "Plaintiff" and collectively herein "Plaintiffs" or "Ottawa Towers"), and the CITY OF PONTIAC, a Michigan municipal corporation, ("City"), LOUIS SCHIMMEL, an individual formerly acting as the Emergency Manager of the City of Pontiac, ("Emergency Manager"), OAKLAND COUNTY ("County"), a Michigan municipal corporation, and the OAKLAND COUNTY BUILDING AUTHORITY ("Building Authority"), a Michigan building authority, (collectively herein "Defendants"). The Plaintiffs and Defendants are hereinafter individually a "Party" and collectively the "Parties."

RECITALS

A. On October 30, 1979, the City, the Pontiac Downtown Development Authority, and the Downtown Pontiac Development Company entered into a Comprehensive Development Agreement ("Development Agreement"), recorded at Liber 7770, Page 127, Oakland County Records, that required, among other obligations, that the developer construct a parking deck (the "Deck"), a plaza (the "Plaza"), and other improvements on the public sites of a certain parcel of land located in the City of Pontiac, now commonly known as the "Phoenix Center."

B. The Development Agreement provided that the City would convey certain parcels of land within the project area to the developer to develop various buildings on the private sites within the project area including, but not limited to, two office buildings that are now known as the Ottawa Towers.

C. On May 8, 1980, a Declaration of Easements ("Declaration of Easements") was executed and recorded at Liber 7788, Page 01, Oakland County Records, that created certain easements and other rights and obligations as referenced therein.

D. The Ottawa Towers office buildings are now owned by Ottawa Tower II, LLC and the North Bay Drywall, Inc. Profit Sharing Plan and Trust.

E. On July 5, 2012, the City's Emergency Manager issued Order S-221 Regarding the Approval to Request the County of Oakland to Approve the Demolition of the Phoenix Center. Thereafter, in July 2012, the Ottawa Towers commenced litigation against Defendants to prevent the demolition and to assert related claims against the Defendants (Oakland County Circuit Court Case No. 12-130331-CH, the "2012 Case"). The City and County filed counterclaims against the Ottawa Towers. On November 30, 2012, the Oakland County Circuit Court entered a preliminary injunction preventing the demolition of the Phoenix Center, among other relief. At the time the case was commenced, the Building Authority held title to the Phoenix Center. However, during the pendency of the case, the Building Authority transferred title to the Phoenix Center back to the City, and thereafter the County dismissed its counterclaim.

F. On March 28, 2014, the City filed a condemnation action against the Ottawa Towers, among others, relating to the Phoenix Center (Oakland County Case No. 14-139761-CC, the "2014 Case"). The City's condemnation action was dismissed in October 2014 by the Oakland County Circuit Court, which dismissal was thereafter affirmed upon appeal; however, the Ottawa Towers' claim for reimbursement of attorney fees and costs under MCL 213.66 remains pending. Both the 2012 Case and the 2014 Case are referred to herein as the "Litigation."

G. The Parties participated in mediation facilitated by the Hon. Gerald Rosen (retired), and the Parties agreed upon the material terms of the settlement of their disputes in the form of a Proposed Term

Sheet dated April 30, 2018 ("Proposed Term Sheet"). Based upon the Proposed Term Sheet, the Parties now desire to memorialize the settlement by this Agreement which shall control and which has been duly authorized by all Parties and, as necessary, their duly authorized officials or agents.

NOW, THEREFORE, in consideration of the mutual promises and agreements herein contained, the Parties agree as follows:

1.0 PARTIES TO THIS AGREEMENT

1.1 As used in this Agreement, "Plaintiffs" shall include Ottawa Tower II, LLC, and North Bay Drywall, Inc. Profit Sharing Plan and Trust, their respective owners, managers, employees, officers, trustees, members, agents, attorneys, past and present, and their successors and assigns. The signatories for Plaintiffs acknowledge and represent that they have been duly authorized by their respective entities to execute this Agreement and are acting in their official capacity.

1.2 As used in this Agreement, "Defendants" shall include the City, the Emergency Manager, the County and the Oakland County Building Authority and their elected officials, emergency managers, appointees, employees, insurers, representatives, agents, attorneys, past and present, and their successors, and assigns. The signatories for Defendants acknowledge and represent that they have been duly authorized by their respective entities to execute this Agreement and are acting in their official capacity. The City represents that no approval is required from the State of Michigan, the Michigan Department of Treasury or any Transition Advisory Board.

2.0 DISMISSAL OF LITIGATION AND DISCHARGE OF LIENS

2.1 The Parties agree that upon payment in full of the settlement payments as set forth in Section 3.1.1 and 3.1.3, they shall execute and concurrently submit to the court for entry a stipulated order of voluntary dismissal with prejudice in the form attached hereto as **Exhibit 1** that resolves all pending claims and closes Case Nos. 12-130331-CH and 14-139761-CC. By entering into this Agreement, no Party admits to any wrongdoing, liability, or responsibility for damages of any kind whatsoever.

2.2 Concurrently, upon payment in full by the City of the amounts set forth in Section 3.1.1 and 3.1.3, Plaintiffs shall discharge and release any and all existing liens that Plaintiffs have filed against the Phoenix Center. The discharge and release of the liens shall be recorded with the Oakland County Register of Deeds at the expense of the Plaintiffs. Any future lien claims after the Effective Date of this Agreement shall be subject to conclusion of the alternative dispute resolution process established in Section 6.4, below, prior to the filing of the liens.

3.0 PAYMENTS

3.1 In consideration of the immediate discharge of all liens and encumbrances on the Phoenix Center as provided herein at Section 2.2, and the full, final and absolute release of all claims described in Section 4.0 Release and Waiver of Claims, the City shall pay Ottawa Towers II, LLC and North Bay Drywall, Inc. Profit Sharing Plan & Trust, jointly and severally, a total of Seven Million Three Hundred and Fifty Thousand Dollars and 00/100 (\$7,350,000.00), without any offset or deduction for any reason, in the manner and form as provided below:

3.1.1 Three Million Five Hundred Thousand Dollars (\$3,500,000.00) (the "Initial Payment") shall be paid upon the execution of all settlement documents, including stipulations and orders for dismissal with prejudice of the Oakland County Circuit Court Case No. 12-130331-CH, with One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000.00) paid to Ottawa Tower II,

LLC, and One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000.00) paid to North Bay Drywall, Inc. Profit Sharing Plan & Trust (Charles Stephens, Trustee).

3.1.2 Three Million Five Hundred Thousand Dollars (\$3,500,000.00) payable, to North Bay Drywall, Inc. Profit Sharing Plan & Trust (Charles Stephens, Trustee), in five (5) annual installments of \$700,000.00 ("annual installment payment(s)"), without interest, the first annual installment shall be due on the date all settlement documents are executed. No interest shall accrue on any balance due hereunder. The City may elect to pay the balance of the remaining settlement amount in full at any time. If the City fails to make any installment payment within twenty (20) days of the date that such payment is due, then the entire remaining balance shall be due and payable immediately. Upon written notice from North Bay Drywall, Inc. Profit Sharing Plan & Trust (Charles Stephens, Trustee), or its counsel, given at least 90 days before an installment payment is due, the City shall then pay some or all of the remaining installment payments to Ottawa Tower II, LLC and/or such other payee(s) as set forth in such notice.

3.1.3 The City shall pay Plaintiffs the sum of Three Hundred and Fifty Thousand Dollars (\$350,000.00) as full and final reimbursement for all attorney fees and costs incurred by Plaintiffs in the condemnation action, being Oakland Circuit Case No. 14-139761-CC. This reimbursement shall be paid with the Initial Payment in Section 3.1.1 above. Upon payment, Plaintiffs and the City shall submit to the court a final stipulated order of dismissal to close the 2014 Case.

3.2 To secure the payments due to Plaintiffs in 3.1.2 above, the City will execute a confession of judgment (a/k/a "pocket judgment"), in favor of Plaintiffs, which shall expire and terminate by its terms upon delivery of the final payment under Section 3.1.2. If the City fails to make timely payment of any amount required in Section 3.1, Plaintiffs may enter the confession of judgment with the Court. The confession of judgment shall be in the form attached hereto as **Exhibit 2**. Unless and until there is a default in payment by the City, Plaintiffs' counsel shall hold the confession of judgment and shall immediately provide the confession of judgment to the City's counsel upon the City's payment of the City's final payment required by Section 3.1.2.

3.3 The Parties acknowledge and represent that none of the other Parties, or their attorneys, have made any representations regarding the tax consequences of this Agreement. Each Party shall be solely responsible for any tax consequences resulting from the Agreement or the payments or other actions taken to effectuate its provisions. Any and all reporting or payment of taxes, if any, shall be governed by and in compliance with state and federal laws and regulations governing the same. Plaintiffs will provide the City with a completed Form W-9 for reporting of the payments to each of the Plaintiffs by the City to the Internal Revenue Service.

4.0 RELEASE AND WAIVER OF CLAIMS BY PLAINTIFFS

4.1 Other than as set forth in this Agreement, Plaintiffs hereby forever release, waive, and discharge each of the Defendants and their agents, officers, elected officials, directors, supervisors, emergency managers, appointees, employees, insurers, representatives, agents, attorneys, past and present, in their official and/or individual capacities, and their successors, predecessors and assigns, from any and all suits, causes of action, complaints, charges, obligations, demands or claims of any kind, whether in law or in equity, either direct or indirect, and known or unknown, which Plaintiffs ever had or may have as of the Effective Date of this Agreement (hereinafter collectively referred to as "Claims") related to any of the allegations as pled in any of the versions of Plaintiffs' Complaints as filed in the Litigation described herein from the beginning of time up to and through the Effective Date of this Agreement. Plaintiffs' release and waiver of claims specifically includes, but is not limited to, the release, waiver, and discharge of the following:

4.1.1 Any and all Claims actually pled or that could have been pled as part of the Litigation or any other action at law or in equity;

4.1.2 Any and all Claims of alleged violations of any federal, state or local statute, ordinance, regulation, judicial precedent or executive order, including, but not limited to, claims of breach of contract, breach of declaration of easements, and/or any other applicable federal, state or local law, regulation, rule or ordinance of any kind;

4.1.3 Any and all Claims in tort, not limited to, any claims for innocent misrepresentation, fraudulent misrepresentation, fraud, negligence, breach of implied covenant of good faith and fair dealing, misappropriation, self-dealing, defamation, libel, slander, intentional infliction of emotional distress, for emotional distress damages, breach of fiduciary duty, business torts, and all other tort claims of any kind;

4.1.4 Any and all Claims for attorney's fees, sanctions and costs under statute, including, but not limited to MCL 213.66 and 42 USC §§ 1983 and 1988 (b) and (c), court rules or case law;

4.1.5 Any and all Claims arising under the United States Constitution or the Michigan Constitution of 1963, as amended.

4.2 Plaintiffs acknowledge and agree that this Release and Waiver of Claims covers all of the aforementioned claims and potential claims, which arose on or accrued from the beginning of time and through the Effective Date of this Agreement, whether known or unknown, suspected or unsuspected, matured or not matured, and that this constitutes the essential basis of this Agreement. This Release and Waiver of Claims shall be read as broadly as possible such that the Defendants shall have no further obligations or liability of any sort or nature to Plaintiffs, directly or indirectly, in the existing Litigation other than as provided in this Agreement.

5.0 RELEASE AND WAIVER OF CLAIMS BY DEFENDANTS

5.1 Other than as set forth in this Agreement, Defendants hereby forever release, waive, and discharge each of the Plaintiffs and their agents, trustees, members, managers, officers, directors, supervisors, employees, insurers, representatives, agents, attorneys, past and present, in their official and/or individual capacities, and their successors, predecessors and assigns, from any and all suits, causes of action, complaints, charges, obligations, demands or claims of any kind, whether in law or in equity, either direct or indirect, and known or unknown, which Defendants ever had or may have as of the Effective Date of this Agreement (hereinafter collectively referred to as "Claims") related to any of the allegations made or that could have been made in the Litigation from the beginning of time up to and through the Effective Date of this Agreement. Defendants' release and waiver of claims specifically includes, but is not limited to, the release, waiver, and discharge of the following:

5.1.1 Any and all Claims actually pled or that could have been pled as part of the Litigation or any other action at law or in equity;

5.1.2 Any and all Claims of alleged past violations of any federal, state or local statute, ordinance, regulation, judicial precedent or executive order, including, but not limited to, claims of breach of contract, breach of declaration of easements, inverse condemnation, improper or illegal taking of property rights, reformation/modification of easements, slander of title, specific performance and/or any other applicable federal, state or local law, regulation, rule or ordinance of any kind;

5.1.3 Any and all Claims in tort, not limited to, any claims for innocent misrepresentation, fraudulent misrepresentation, fraud, negligence, breach of implied covenant of good faith and fair dealing, misappropriation, self-dealing, defamation, libel, slander, intentional infliction of emotional distress, for emotional distress damages, breach of fiduciary duty, business torts, and all other tort claims of any kind;

5.1.4 Any and all Claims for attorney's fees, sanctions and costs under statute, including, but not limited to MCL 213.66 and 42 USC §§ 1983 and 1988 (b) and (c), court rules or case law;

5.1.5 Any and all Claims arising under the United States Constitution or the Michigan Constitution of 1963, as amended.

5.2 Defendants acknowledge and agree that this Agreement covers all of the aforementioned claims and potential claims, which arose on or accrued from the beginning of time and through the Effective Date of this Agreement, whether known or unknown, suspected or unsuspected, matured or not matured, and that this constitutes the essential basis of this Agreement. This Release and Waiver of Claims shall be read as broadly as possible such that the Plaintiffs shall have no further obligations or liability of any sort or nature to Defendants, directly or indirectly, in the existing Litigation other than as provided in this Agreement.

6.0 REPAIR AND MAINTENANCE OF THE PHOENIX CENTER AND TUNNEL

6.1 The City is the owner of the Plaza, the Deck, and the Orchard Lake Road Tunnel ("Tunnel"), subject to the existing encumbrances on title, as of the Effective Date of this Agreement.

6.2 In addition to the payments set forth in Section 3.0 of this Agreement, the City shall pay up to Six Million & 00/100 (\$6,000,000.00) dollars over a ten (10) year period beginning as of the Effective Date of this Agreement for the repair and maintenance of the Phoenix Center so as to do all maintenance and repairs necessary to bring and maintain the Phoenix Center into conformance with the requirements of the International Property Maintenance Code (2015 edition), as referenced in the Michigan Building Code and the Michigan Rehabilitation Code (2015 edition)(herein "Code").

6.3 The repairs and maintenance that the City commits to make shall include all electrical, lighting, elevator and structural repairs in the north and south sections of the Deck to be completed within the first two years after the Effective Date of this Agreement as more fully detailed on **Exhibit 3** attached hereto. The repairs and maintenance performed by the City shall be done in a good and workmanlike manner in conformance with the Code. A detailed schedule to perform the specific work on the Phoenix Center as required by **Exhibit 3** shall be prepared by the Parties' respective engineering contractors and/or experts after meeting to develop a specific scope of work, scheduling, and staging; provided, however, that the minimum required work and timeframes listed on **Exhibit 3** shall not be delayed or diminished in scope. Plaintiffs have provided the City with all of Plaintiffs' relevant engineering reports, drawings, specifications, and cost estimates for the completed repairs to the Phoenix Center as of the Effective Date of this Agreement, without any representation that the drawings or source documents may be useable by the City without paying fees to, or retaining for itself, the preparers and/or experts.

6.4 In the event Plaintiffs (or successors in title) believe that the City is not maintaining or repairing the Phoenix Center in compliance with its obligations hereunder or under the Declaration, then the following procedures shall be followed; Plaintiffs (or successors in title) shall provide written notice to the City identifying and explaining the alleged deficiency. The City shall then have seven (7) days after receipt of such written notice to confirm in writing that the City will remedy the deficiency expeditiously within a defined time period specified in the City's written response. If the City either declines or otherwise fails to

confirm that a remedy will be made expeditiously, or fails to respond in writing, or if the time period specified by the City is not reasonable or expeditious, Plaintiffs (or successors in title) may commence an expedited mediation by contacting Judicial Arbitration and Mediation Services, Inc., now known as "JAMS" (and, if available, utilizing Hon. Judge Gerald Rosen) or another qualified mediation organization if JAMS is unavailable. Plaintiffs (or successors in title) and the City shall mediate their dispute within seven (7) days, or on the first mutually available date, but no later than thirty (30) days after Plaintiff's initial written request letter to the City. The mediator's fees and expenses shall be borne equally by the parties, but the mediator shall award to the substantially-prevailing party the mediator's fees and expenses, and the reasonable attorneys' fees and costs incurred by such party. If the mediator is unable to resolve the dispute within thirty (30) days of the mediator's retention to serve as mediator, or if the City declines, fails and/or refuses to participate in the mediation and in good faith, and the mediator terminates the mediation, then the parties shall proceed as provided by the Declaration relating to liens. Notwithstanding the forgoing, nothing in this paragraph shall be deemed or construed to permit or justify the City to delay responding to and remedying any dangerous conditions for which it is responsible to repair under the Declaration.

7.0 PARKING RIGHTS AND ACCESS

The Parties have agreed to amend the Declaration of Easements in order to clarify Plaintiffs' parking and access rights with respect to the Deck. The form of amendment to the Declaration of Easement is set forth as **Exhibit 4** and shall be executed and recorded with the Oakland County Register of Deeds concurrent with the discharge of liens referenced herein. In addition to the provisions of the Declaration of Easements, the access and parking rights by Plaintiffs, their tenants, and employees in the Phoenix Center are set forth on **Exhibit 5**. The City shall install a card-reader system (or equivalent) and thereafter issue parking cards to the Ottawa Towers as set forth on **Exhibit 5**. Plaintiffs represent that the parking cards referenced therein are for use only by Plaintiffs (or successors in title) and their tenants and employees and shall not be resold or transferred to any other person or entity. The City shall provide replacement cards to the Ottawa Towers immediately upon request from Plaintiffs or their tenants or their successors in title, as set forth on **Exhibit 5**.

8.0 INTERIM MAINTENANCE, AND MANAGEMENT OF THE PHOENIX CENTER

In anticipation of the City reassuming and undertaking its obligations for sole day-to-day property management of the Deck, Plaintiffs shall continue their services at the Phoenix Center, in conformity with their same level, extent and scope of services as of the date of the execution of this Agreement, to perform the day-to-day maintenance, operations and facilities management for the South Side (being that portion of the Deck located to the south of Orchard Lake Road) of the Deck that is in use by Plaintiffs, their tenants and employees, as set forth on **Exhibit 6**, for \$9,810.00 per month payable in advance on the first day of each month to be paid by the City to Plaintiffs commencing upon May 1, 2018 through the earlier of: (i) the City undertaking sole day-to-day property management of the Deck, Tunnel, and Plaza as set forth on **Exhibit 6**; or (ii) six (6) months from the Effective Date of this Agreement. Plaintiffs shall name the City as an additional insured on its insurance policies and provide certificates of insurance to the City. This amount does not include charges for materials (such as salt, lightbulbs/fixtures, scaffolding, fuel, waste containers, etc.), permit fees, subcontractor charges (although scheduling and coordination of painting of lines for parking spaces is included, actual layout and painting will be by subcontractor as an additional cost), equipment rental or other similar non-labor expenses, or services for any activities not currently performed by Plaintiffs, all to be at 10% overhead and 10% profit. Any and all cleanup, repairs and costs of vandalism and graffiti removal shall be an extra charge; provided, however, that Plaintiffs will not perform such additional work and incur such extra charges until first providing to the City ten (10) days' prior written notice of the need therefor. Any invoices submitted by Plaintiffs to the City for the period after May 1, 2018 shall be paid in full upon execution of this Agreement. Payments to Plaintiffs for the monthly payment under this section and also the monthly payment for the electrical charges relating to the Tunnel

shall be made by the City through electronic deposit to Plaintiffs' account as provided in writing to the City by Plaintiffs with Plaintiffs' invoices. Any of Plaintiffs' invoices that are not timely paid by the City within twenty days shall incur a late fee of 5% of the amount of the invoice, plus interest of 1% per month from the date due.

9.0 RIGHTS IN FOYER, CONNECTOR, AND ATRIUM CONNECTOR

The City will execute a quitclaim deed to Ottawa Tower II, LLC, for all of the City's claimed right, title and interest in or to the Atrium Connector, which is the 2-story atrium structure adjacent to the Judson Tower and located upon North Bay's property between the Judson Tower and the Phoenix Center, in the form of quitclaim deed attached as **Exhibit 7**. The City acknowledges and agrees that Plaintiffs shall have an easement for rights to ingress and egress through the Foyer and Connector as defined in the City's Counterclaim to/from the Phoenix Center to/from both of Plaintiff's office towers, and such rights are set forth in the Amended Declaration of Easements attached as **Exhibit 4**.

10.0 REVIEW OF AGREEMENT

The Parties acknowledge and agree that they have been advised of the right to consult with an attorney regarding the terms of this Agreement and their rights under this Agreement and state and federal statutes and common law. Each Party acknowledges that before signing this Agreement they have read the entire Agreement and fully understands the terms, content, and effect of the Agreement; that they have had the benefit of advice from an attorney of their choosing; and that they relied fully and completely on their own judgment and/or on the advice of their attorney in executing this Agreement.

11.0 ASSIGNMENT

Plaintiffs may, but are not obligated to, assign this Agreement, in whole or in part, upon the sale of either or both of the Towers, the sale of Ottawa Tower II, LLC, or the transfer of all, or substantially all of a Plaintiff's assets.

12.0 GOVERNING LAW

This Agreement is executed under the laws of the State of Michigan, and shall be governed by, the laws of the State of Michigan.

13.0 SEVERABILITY

Each provision of this Agreement is intended to be severable. If any term or provision is held to be invalid, void, or unenforceable by a court of competent jurisdiction for any reason whatsoever, such ruling shall not affect the validity of the other terms or the remainder of this Agreement.

14.0 INTEGRATION

The Parties acknowledge and agree that this Agreement, and the Exhibits and schedules attached hereto, contains all of the terms and conditions agreed upon by the Parties hereto regarding the subject matter of this Agreement. This Agreement supersedes any prior agreements, promises, negotiations, or representations concerning the subject matter of this Agreement not expressly set forth in this Agreement. This Agreement, including its schedules and exhibits, may not be amended, revoked, waived, changed or modified, except in a writing executed by all of the Parties to this Agreement.

15.0 CLOSING AND EXECUTION OF DOCUMENTS

This Agreement and any other settlement document of which an original signature is not required may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement. This Agreement may be recorded by any Party with the Oakland County Register of Deeds.

16.0 SCOPE OF AGREEMENT

The Parties understand that this Agreement covers all of the aforementioned claims and potential claims, which arose on or before the date that they executed this Agreement, whether known or unknown, suspected or unsuspected, and that this constitutes an essential term of this Agreement. The Parties acknowledge that, except as otherwise provided herein, the terms and conditions of this Agreement represent a full and complete disposition and satisfaction of each Party's legal, statutory, regulatory, and contractual obligations to the other Parties through the Effective Date hereof.

17.0 SECTION HEADINGS

The section headings contained in this Agreement are for the convenience of the Parties only and are not to be used in interpreting this Agreement.

18.0 SUCCESSORS AND ASSIGNS

The terms, rights and obligations of the Parties under this Agreement shall be binding on, inure to the benefit of, and be enforceable by any successors or assigns of the Parties.

19.0 WARRANTIES

Each Party and signatory hereto warrants and represents that:

19.1 The Party relies exclusively on its own judgment, and that the Party has not been influenced by any statement made by or on behalf of any of the other Parties to this Agreement;

19.2 The Party has been fully informed and has full knowledge of the terms, conditions, and effects of this Agreement;

19.3 The Party has, either on its own or through its attorneys, fully investigated, to its full satisfaction, all the facts surrounding the various claims, controversies, and disputes and is fully satisfied with the terms and effects of the Agreement;

19.4 The Party has not assigned or transferred any of the claims, demands, actions and rights being released by such party in this Agreement;

19.5 The Party has the full and complete authority to enter into this Agreement, to release the Claims that the Party is releasing herein, and to execute any and all documents required pursuant to this Agreement, and that this Agreement is binding upon the Party; and

19.6 The Parties have executed this Agreement as their own free act and without reliance upon any representations, warranties, or promises other than those contained in this Agreement.

20.0 NOTICES

All notices, requests or other communications required or permitted to be given hereunder shall be given in writing, and shall be deemed received (a) when hand delivered, or (b) one (1) business day

after delivery to FedEx or similar overnight delivery service, when posted for next business day delivery, or (c) when received after deposit in the U.S. certified mail, return receipt requested, or (d) when sent, if sent during normal business hours by email transmission, and such transmission is promptly followed by any of the other methods for giving notice. In all cases notices shall be addressed to the parties at their respective addresses as follows or to such other address as either party hereto may designate by a notice given in accordance with this Section:

To City: The City of Pontiac
 Attn: John Balint, Director of Public Works
 47450 Woodward Ave.
 Pontiac, MI 48342
 Email: jbalint@pontiac.mi.us

With a copy to: Giarmarco, Mullins & Horton, P.C.
 Attn: John Clark
 Tenth Floor Columbia Center
 101 West Big Beaver Road
 Troy, Michigan 48084-5280
 Email: jclark@gmhlaw.com

To Ottawa Towers: OTTAWA TOWER II, LLC
 Attn: Charles Stephens, Manager
 715 Southpoint Blvd., Suite B
 Petaluma, CA 94954-6836
 Email: cstephens@northbayco.com

And:
NORTH BAY DRYWALL, INC. PROFIT SHARING PLAN & TRUST
Attn: Charles Stephens, Trustee
715 Southpoint Blvd., Suite B
Petaluma, CA 94954-6836
Email: cstephens@northbayco.com

With a copy to: Maddin Hauser Roth & Heller, PC
 Attn: Steven D. Sallen, Esq.
 28400 Northwestern Hwy., Suite 200
 Southfield, MI 48034
 Email: ssallen@maddinhauser.com

IN WITNESS WHEREOF, the Parties acknowledge and agree that each is acting of their own free will to cause the execution of this Agreement as of the Effective Date first written above.

Plaintiff:

OTTAWA TOWER II, LLC

By: Charles R. Stephens
Its: Authorized Manager

Plaintiff:

NORTH BAY DRYWALL, INC. PROFIT
SHARING PLAN & TRUST

By: Charles R. Stephens
Its: Authorized Trustee

Defendants:

CITY OF PONTIAC, on behalf of itself and
LOUIS H. SCHIMMEL, formerly acting as the
Emergency Manager of the City

By: Deirdre Waterman
Its: Mayor, duly authorized and approved by City
Council Resolution No. ____,
approved ____, 2018.

OAKLAND COUNTY

By: L. Brooks Patterson, or his designee
Its: Oakland County Executive

OAKLAND COUNTY BUILDING
AUTHORITY

By:
Its:

2198003v1

EXHIBIT 1 – DISMISSAL ORDERS

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

OTTAWA TOWER II, LLC, A Michigan
Limited Liability Company, and NORTH
BAY DRYWALL, INC., PROFIT
SHARING PLAN & TRUST, a California
Pension and Profit Sharing Trust,

Case No. 12-130331-CH
Hon. Michael Warren

Plaintiffs/Counter Defendants,

vs.

CITY OF PONTIAC, a Michigan Municipal
Corporation, LOUIS SCHIMMEL, an individual
acting as the Emergency Manager of the City of
Pontiac, and OAKLAND COUNTY, a Michigan
Municipal Corporation, and OAKLAND COUNTY
BUILDING AUTHORITY, a Michigan Building
Authority,

Defendants/Counter-Plaintiffs.

**STIPULATED
ORDER FOR
DISMISSAL WITH
PREJUDICE AND
WITHOUT COSTS
OR FEES**

MICHELLE C. HARRELL (P48768)
Maddin Hauser Wartell Roth & Heller, P.C.
Attorneys for Plaintiff
28400 Northwestern Highway, 3rd Floor
Southfield, Michigan 48034
(248) 354-4030 or (248) 355-5200

DAVID B. TIMMIS (P40539)
Vandever Garzia, P.C.
Attorneys for Defendant Oakland County
840 W. Long Lake Road, Suite 600
Troy, Michigan 48098
(248) 312-2800

JOHN C. CLARK (P51356)
Giarmarco Mullins & Horton
Attorneys for City of Pontiac & Schimmel
101 West Big Beaver Road, Tenth Floor
Troy, Michigan 48084-5280
(248) 457-7000/(248) 404-6313

KEITH J. LERMINIAUX (P30190)
Attorney for Defendants Oakland County
1200 N. Telegraph Road, Bldg. 14E
Pontiac, Michigan 48341
(248) 858-0557

THOMAS J. McCARTHY (P36755)
Monaghan, P.C.
Attorneys for Defendant City of Pontiac and
Louis Schimmel
33 Bloomfield Hills Pkwy., Ste. 260
Bloomfield Hills, MI 48304
(248) 642-5770

JEROME P. PESICK (P29029)
Steinhardt Pesick & Cohen
Co-Counsel for Plaintiffs
380 N. Old Woodward, Ste. 120
Birmingham, MI 48009
(248) 646-0888

**STIPULATED ORDER FOR DISMISSAL WITH PREJUDICE
AND WITHOUT COSTS OR FEES**

THIS MATTER is before the court upon the stipulation of counsel for the parties and with the Court being duly advised that the parties have settled this case in its entirety, and with the Court being otherwise fully advised in the premises:

IT IS ORDERED THAT this case is dismissed in its entirety with prejudice and without costs or fees to any party. This Court retains jurisdiction to enforce the Settlement Agreement and Release dated effective as of October 1, 2018 which is incorporated herein by reference as if fully restated herein.

This Order resolves the last pending claim and closes the case.

CIRCUIT COURT JUDGE

I STIPULATE TO ENTRY OF THE ABOVE ORDER:

/s/ Michelle C. Harrell
Michelle C. Harrell (P48768)
Attorney for Plaintiffs

/s/ John C. Clark
John C. Clark (P51356)
Attorney for City of Pontiac and Schimmel

/s/ David B. Timmis
David B. Timmis (P40539)
Attorney for Defendant Oakland County

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

*The Condemnation Complaint of the City of Pontiac
for the acquisition of property interests
for public purposes in Oakland County, Michigan*

CITY OF PONTIAC, a Michigan
municipal corporation,

Plaintiff,

Case No. 14-139761-CC
Hon. Michael Warren

v.

OTTAWA TOWER II, LLC,
a Michigan limited liability company;
CHARLES R. STEPHENS, as Trustee of the
NORTH BAY DRYWALL, INC. PROFIT SHARING
PLAN AND TRUST DATED OCTOBER 1, 1985,
a California entity,

Defendants.

Thomas J. McCarthy (P36755)
Matthew T. Jane (P58396)
MONAGHAN, P.C.
Attorneys for Plaintiff
33 Bloomfield Hills Pkwy., Ste. 260
Bloomfield Hills, MI 48304
(248) 642-5770

Jerome P. Pesick (P29039)
Jason C. Long (P59244)
STEINHARDT PESICK & COHEN
Attorneys for Defendants Ottawa Tower II, LLC
and Charles R. Stephens, as Trustee of the North
Bay Drywall, Inc. Profit Sharing Plan and Trust
Dated October 1, 1985
380 N. Old Woodward Ave., Suite 120
Birmingham, MI 48009
(248) 646-0888

Steven D. Sallen (P36991)
Michelle C. Harrell (P48768)
MADDIN, HAUSER, ROTH &
HELLER, P.C.
Attorneys for Defendants Ottawa Tower II, LLC
and Charles R. Stephens, as Trustee of the North
Bay Drywall, Inc. Profit Sharing Plan and Trust
Dated October 1, 1985
28400 Northwestern Hwy., Second Floor
Southfield, MI 48034
(248) 354-4030

**STIPULATED ORDER FOR DISMISSAL OF
DEFENDANTS' RENEWED MOTION FOR REIMBURSEMENT OF FEES AND COSTS**

THIS MATTER is before the court by Defendants' Renewed Motion for Reimbursement of Fees and Costs; and upon the stipulation of counsel for the parties and with the Court being duly advised that the parties have now settled the only remaining issue in this case pursuant to the terms of a Settlement Agreement, and with the Court being otherwise advised in the premises:

IT IS HEREBY ORDERED that Defendants Renewed Motion for Reimbursement of Fees and Costs is dismissed and all claims by Defendants for attorney fees and costs under MCL 213.66 or any other applicable statute or court rule have now been satisfied.

This is a final Order that resolves the last pending claim and closes the case.

CIRCUIT COURT JUDGE

I STIPULATE TO ENTRY OF THE ABOVE ORDER:

/s/ Thomas J. McCarthy
Thomas J. McCarthy (P36755)
Attorney for Plaintiff

/s/ Michelle C. Harrell
Michelle C. Harrell (P48768)
Attorney for Defendants

**EXHIBIT 2 – CONSENT JUDGMENT,
CONFESSION OF JUDGMENT AND AFFIDAVIT OF
CONFESSION OF JUDGMENT**

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

OTTAWA TOWER II, LLC, A Michigan
Limited Liability Company, and NORTH
BAY DRYWALL, INC., PROFIT
SHARING PLAN & TRUST, a California
Pension and Profit Sharing Trust,

Case No. 12-130331-CH
Hon. Michael Warren

Plaintiffs/Counter Defendants,

vs.

**CONSENT
JUDGMENT**

CITY OF PONTIAC, a Michigan Municipal
Corporation, LOUIS SCHIMMEL, an individual
acting as the Emergency Manager of the City of
Pontiac, and OAKLAND COUNTY, a Michigan
Municipal Corporation, and OAKLAND COUNTY
BUILDING AUTHORITY, a Michigan Building
Authority,

Defendants/Counter-Plaintiffs,

MICHELLE C. HARRELL (P48768)
Maddin Hauser Roth & Heller, P.C.
Attorneys for Plaintiffs
28400 Northwestern Highway, 3rd Floor
Southfield, Michigan 48034
(248) 354-4030 or (248) 355-5200

DAVID B. TIMMIS (P40539)
Vandevēer Garzia, P.C.
Attorneys for Defendant Oakland County
840 W. Long Lake Road, Suite 600
Troy, Michigan 48098
(248) 312-2800

JOHN C. CLARK (P51356)
STEPHEN J. HITCHCOCK (P15005)
JOHN L. MILLER (P71913)
Giarmarco Mullins & Horton
Attorneys for City of Pontiac & Schimmel
101 West Big Beaver Road, Tenth Floor
Troy, Michigan 48084-5280
(248) 457-7000/(248) 404-6313

KEITH J. LERMINIAUX (P30190)
Attorney for Defendants Oakland County
1200 N. Telegraph Road, Bldg. 14E
Pontiac, Michigan 48341
(248) 858-0557

THOMAS J. McCARTHY (P36755)
Monaghan, P.C.
Attorneys for Defendant City of Pontiac and
Louis Schimmel
33 Bloomfield Hills Pkwy., Ste. 260
Bloomfield Hills, MI 48304
(248) 642-5770

JEROME P. PESICK (P29029)
Steinhardt Pesick & Cohen
Co-Counsel for Plaintiffs
380 N. Old Woodward, Ste. 120
Birmingham, MI 48009
(248) 646-0888

CONSENT JUDGMENT

THIS MATTER is before the court upon the filing of an Affidavit of Confession of Judgment and the Confession of Judgment by the Plaintiffs pursuant to the Settlement Agreement and Release previously executed by Plaintiffs and Defendant City of Pontiac, and with the Court being otherwise fully advised in the premises:

IT IS ORDERED THAT this case is reopened, and judgment is entered in favor of Plaintiffs and against Defendant City of Pontiac, in the amount of \$3,500,000.00, less amounts paid to Plaintiffs by the City towards such amount due as of the date of entry of this Consent Judgment, for a total judgment due of \$_____. This Consent Judgment shall bear interest at the statutory judgment interest rate until paid in full.

This Order resolves the last pending claim and closes the case.

CIRCUIT COURT JUDGE

I STIPULATE TO ENTRY OF THIS CONSENT JUDGMENT
PURSUANT TO THE TERMS AND CONDITIONS OF THE
SETTLEMENT AGREEMENT AND RELEASE:

/s/ Michelle C. Harrell
Michelle C. Harrell (P48768)
Attorney for Plaintiffs

/s/ John C. Clark
John C. Clark (P51356)
Attorney for City of Pontiac

CONFESSION OF JUDGMENT

The City of Pontiac ("City"), a Michigan municipal corporation, hereby authorizes, without power of revocation, any attorney of any court of record to appear for the City in any such court after a default has been declared by Plaintiffs under the terms of the Settlement Agreement and Release dated effective June 30, 2018 (the "Agreement"), to waive process and service thereof, and to confess judgment against the City and in favor of Plaintiffs Ottawa Tower II, LLC and North Bay Drywall, Inc. Profit Sharing Plan & Trust, which judgment provides for a monetary consent judgment in favor of the Plaintiffs in the amount of \$3,500,000.00, less the amount of any payments made by the City upon such amount. Plaintiffs' counsel is authorized to complete the Consent Judgment to state the current amount due to Plaintiffs, net of any payments then made.

Executed as of this October ____, 2018.

City of Pontiac
By: Deirdre Waterman
Its: Mayor, duly authorized and approved by
City Council Resolution No. ____,
Approved ____, 2018

STATE OF MICHIGAN)
) ss:
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this _____ day of _____, 2018 by Deirdre Waterman, as Mayor of the City of Pontiac.

Notary Public

County, Michigan
Acting in the County of _____
My commission expires _____

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

OTTAWA TOWER II, LLC, A Michigan
Limited Liability Company, and NORTH
BAY DRYWALL, INC., PROFIT
SHARING PLAN & TRUST, a California
Pension and Profit Sharing Trust,

Case No. 12-130331-CH
Hon. Michael Warren

Plaintiffs/Counter Defendants,

vs.

CITY OF PONTIAC, a Michigan Municipal
Corporation, LOUIS SCHIMMEL, an individual
acting as the Emergency Manager of the City of
Pontiac, and OAKLAND COUNTY, a Michigan
Municipal Corporation, and OAKLAND COUNTY
BUILDING AUTHORITY, a Michigan Building
Authority,

Defendants/Counter-Plaintiffs.

**AFFIDAVIT OF DEFAULT AND CONFESSION OF JUDGMENT
AGAINST DEFENDANT CITY OF PONTIAC**

The undersigned, having been duly sworn, states the following under oath to the best of his/her knowledge, information and belief:

1. I am an attorney of record in the above-captioned matter.
2. The parties previously executed a Settlement Agreement and Release that required Defendant City of Pontiac to make installment payments to Plaintiffs on a timely basis. The Settlement Agreement and Release further provided that if such installment payments were not timely made to Plaintiffs, that Defendant City of Pontiac consented and confessed to entry of a consent judgment for the full unpaid settlement amount.
3. Defendant City of Pontiac has defaulted upon its payment obligations as set forth in the Settlement Agreement and Release thereby justifying entry of the Consent Judgment submitted

to this Court for entry.

4. The undersigned certifies the amount stated in the Consent Judgment is true and accurate.

(P _____)
Counsel for Plaintiffs

Subscribed and sworn to before me,
A Notary Public, on this ____ day of
_____.

Notary Public

EXHIBIT 3 – SCHEDULE OF MAINTENANCE AND REPAIRS

- (A) The City shall pay up to Six Million (\$6,000,000) Dollars to do all maintenance and repairs necessary to bring the Phoenix Center into conformance with the requirements of the International Property Maintenance Code (2015 edition), as referenced in the Michigan Building Code and the Michigan Rehabilitation Code (2015 edition), within the ten (10) year period after the Effective Date of this Agreement; provided, however, that:

Within thirty (30) days of the Effective Date of this Agreement, the City shall repair vandalism damage previously reported by Plaintiffs; within twenty-four (24) months of the Effective Date of this Agreement, the City shall complete all necessary electrical, lighting, elevator and serious structural repairs to the Deck in the following stages:

- 1) repairs to the third (3rd) floor of the north side of the Deck which is defined as that portion of the Deck located to the north of Orchard Lake Road (“North Side”) – both electrical and structural and the repairs to both of the south side elevators;
- 2) then all south side sections of the Deck, being that portion of the Deck located to the South of Orchard Lake Road (“South Side”);
- 3) then return to repair the remaining portions of the North Side of the Deck.

- (B) Notwithstanding the 24-month schedule above, if Ottawa Towers II, LLC, or any subsequent owner, leases the Judson tower (or portion thereof), the City shall, within six (6) months of the date that City is served written notice of such lease execution (“Notice of Lease”), complete the following repairs to the Deck:

- 1) all electrical and structural repairs on the south side of the Deck;
- 2) two elevators on the south side of the Deck;
- 3) make both electrical and structural repairs to have the 3rd floor on the north side of the Deck ready for parking;

- (C) Commencing upon May 1, 2018, the City will reimburse Plaintiffs in advance on the first day of each month for the actual costs of providing electricity to the Deck and Tunnel (\$4,374.00 per month) to continue until such time as the City can establish and assume the costs of providing electricity to the Deck and Tunnel; all payments to be paid electronically to an account designated by Plaintiffs on or before the first day of the month. The City shall immediately upon execution of this Agreement pay any past due invoices to Plaintiffs for the period after the signing of the Term Sheet until this Agreement is signed. As soon as is feasible, the City will have the electrical power for the Deck and Tunnel placed on the City’s account with the electric provider, pay any actual costs associated with doing so, and thereafter pay the electrical charges directly.

- (D) FIRE SUPPRESSION SYSTEM: A portion of the fire suppression system for the Phoenix Center that services the secured parking area on the second floor of the Deck (near Tower I) is connected to fire pumping equipment located in the 31 Judson Tower. The City shall disconnect and relocate the fire suppression service pumping equipment from the 31 Judson Tower, and reconnect it to the City’s own fire suppression pumping equipment. There are 175 parking spaces within this secured parking area on the second floor of the Deck; the City agrees to provide 175 parking spaces within the Deck, free of charge to the owner of the 31 Judson Tower, their tenants and employees, until such time as City completes the work to disconnect/reconnect the fire suppression system as above described.

EXHIBIT 4 – AMENDMENT TO DECLARATION OF EASEMENTS

AMENDMENT TO DECLARATION OF EASEMENTS

This Amendment to Declaration of Easements (“Amendment”) is made as effective of the 1st day of October, 2018, by the City of Pontiac, a municipal corporation of the State of Michigan, with offices at 450 E. Wide Track Drive, Pontiac, Michigan (“City”), and North Bay Drywall Inc. Profit Sharing Plan & Trust, a California Pension and Profit Sharing Trust, (“North Bay”) and Ottawa Tower II, LLC, a Michigan limited liability company with offices at 51111 Woodward Avenue, Pontiac, Michigan (“Ottawa”).

Background

WHEREAS, the City declared that certain Declaration of Easements on May 8, 1980 (“Declaration”), and said Declaration was recorded in the office of Oakland County Register of Deeds on May 19, 1980, in Liber 7788, page 01; and

WHEREAS, North Bay is now the owner of the office building located at 51111 Woodward Avenue, Pontiac, Michigan, and legally described in the Declaration and referred to therein as Parcel D; and

WHEREAS, Ottawa is now the owner of the office building located at 31 E. Judson Street, Pontiac, Michigan, and legally described in the Declaration and referred to therein as Parcel E; and

WHEREAS, The City is the owner of all Sites legally described in the Declaration other than Parcel D and Parcel E [and the grassy lot]; and

WHEREAS, the City, North Bay, and Ottawa desire herein to amend the Declaration;

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the parties herein agree to amend the Declaration as herein provided:

1. The following paragraph is added to the Declaration after Section 1 for the purpose of clarifying the rights of the parties in regards to parking in the Deck:

Parking Easement in the Deck. The City hereby declares, grants conveys and reserves to and for the benefit of all Owners of the Parcels, and the tenants, subtenants and occupants thereof, and their respective agents, employees, customers and invitees, the right and easement to park passenger automobiles in the Deck located on Parcels K and A-1, and for ingress and egress thereto and therefrom, including but not limited to ingress and egress through any connectors, foyers and vestibules located within or connected to the Deck, and

the right to drive passenger automobiles to and from the Deck and the parking spaces therein. Notwithstanding the forgoing, the City shall have the right to charge reasonable parking fees for the use of the Deck for parking. Further notwithstanding the forgoing, the Plaza located at the top level of the Deck is not for parking, except for temporary parking of service and maintenance vehicles, or specialty vehicles specifically participating in events taking place on the top Plaza level of the Deck.

2. The first complete paragraph of Section 3 of the Declaration is hereby amended and restated in its entirety, as follows:
 3. Common Walls. As used herein, the term "Common Walls" shall mean any and all common walls between the (a) Deck or Plaza and (b) the Ottawa Towers office buildings. The Owners of the respective parcels abutting any Common Wall shall have the following rights and obligations with respect to said Common Wall:
4. Section 8 of the Declaration is hereby amended and restated in its entirety, as follows:
 8. Maintenance. Each Owner shall cause the parking areas, driveways and sidewalks contained within its respective portion of the Project and any landscape areas contained therein to be continuously repaired and maintained, including cleaning, lighting, painting, landscaping, removal of debris, removal of snow and ice, making of repairs to the driveways and sidewalks, and other similar maintenance, each at their own expense.
5. The Parties represent and warrant to each other that, with the exception of this Amendment, there are no prior amendments of the Declaration to their knowledge.
6. Except as specifically amended herein, all of the terms and provisions of the Declaration are hereby ratified and affirmed. To the extent of any conflict between the Declaration and this Amendment, the terms and provisions of this Amendment shall govern and control, and any conflicting terms and provisions of the Declaration shall be deemed amended to the extent necessary not to conflict with the provisions hereof.
7. Capitalized terms used herein shall have the same meaning as used in the Declaration, unless a different or contrary meaning is expressly provided in this Amendment.
8. This Amendment shall be promptly recorded in the office of the Oakland County Register of Deeds by Ottawa.

Dated: _____, 2018

OTTAWA TOWER II, LLC, a Michigan
limited liability company

By: _____
Charles Stephens

Its: _____

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

Acknowledged before me on _____, 2018, by Charles Stephens, Manager of Ottawa
Tower II, LLC.

[SEAL]

_____, Notary Public
_____, County, Michigan
Acting in _____ County, MI
My Commission Expires: _____

Drafted by and when recorded, return to:

Steven D. Sallen, Esq.
Maddin Hauser Roth & Heller, PC
28400 Northwestern Highway, 2nd Floor
Southfield, Michigan 48034
248-827-1861

EXHIBIT 5 - PARKING AGREEMENT

PARKING AGREEMENT

This Agreement is entered into effective as of October 1, 2018 between the City of Pontiac ("City"), North Bay Drywall, Inc. Profit Sharing Plan & Trust ("North Bay") and Ottawa Tower II, LLC ("OTII"). OTII and North Bay may also be referred to as "Plaintiffs."

Recitals

1. North Bay and OTII are the owners and operators of two office towers (each, a "Tower" and both, "Towers") that are located adjacent to the Phoenix Center Parking Deck & Plaza ("PC") which is owned by the City.
2. The tenants, invitees and employees of North Bay and OTII utilize the PC for parking and ingress/egress to/from the PC and the Towers.
3. A dispute previously arose between the City, on the one hand, and North Bay and OTII, on the other hand, relating to the PC. The City, North Bay and OTII entered into a Settlement Agreement and Release contemporaneously with this Agreement to resolve their dispute, which resolution includes execution of this Agreement.
4. As part of the settlement, the City, North Bay and OTII entered into an Amendment to Declaration of Easements ("Easement") regarding the use of the PC and related matters as set forth in the Easement.
5. The parties have agreed to the specific terms set forth in this Agreement relating to the parking rights of North Bay and OTII, in furtherance of the Settlement Agreement and Release and the Easement.

Wherefore, the City, North Bay and OTII agree as follows:

- (A) North Bay and OTII shall be entitled to park in the PC at no charge for ten (10) years for the vehicles of all of their employees and their Tenants' employees beginning on the Effective Date of this Agreement. North Bay and OTII may renew this Agreement relating to parking for successive ten-year periods: (a) the maximum parking charge for years 11-20 shall be \$20 per car, per month, provided however that; (b) the maximum parking charge for years 21-30 shall increase to market rates, but in no event more than 100% higher than the preceding period, and (c) the maximum parking charge for any following 10 year period after year 30 shall be indexed according to the Consumer Price Index (Midwest).

This parking agreement shall be freely assignable, in whole or in part, to any purchaser(s) of either or both of the Towers and binding on the City.

- (B) The City shall install a card-reader system (or the equivalent) and issue cards to Plaintiffs for the vehicles of North Bay, OTII, their tenants and employees which cards will be at no cost to North Bay, OTII, and all of their tenants and their employees of both Towers. Parking cards shall be issued to Plaintiffs immediately upon their request, with 1,183 cards being issued to Plaintiffs upon execution of this Agreement or as soon as such cards become required by the City. Upon leasing of the Judson Tower, the City shall immediately provide Plaintiffs with 618 cards. If Plaintiffs or any subsequent owners of Plaintiffs' buildings require any replacement cards in excess of 1,800, then a charge of \$10 per replacement card shall apply.
- (C) The public and visitors shall be charged market rates for use of the Deck by the City; provided however, that the State of Michigan, as Tenant, shall be allowed to validate the parking tickets of its invitees and such invitees upon presenting the validated ticket shall not be charged for parking.
- (D) A reserved parking area is hereby established, for the duration of this Agreement, on the entire south portion of the Deck (being that portion of the Deck located to the south of Orchard Lake Road) and the entire north side (being that portion of the Deck located to the north of Orchard Lake Road) of the third floor of the Deck and to be identified as parking solely for Plaintiffs (and successors and assigns), and their tenants and employees (wording and restrictions to be determined by both Plaintiffs or any successor owner(s) of the Towers). The other parking areas of the Deck shall be available and useable by Plaintiffs, their tenants and employees on a first come, first served basis. The City acknowledges that Plaintiffs may designate within the forgoing reserved parking area certain parking spaces for executive use, provided that the City shall have no obligation to enforce such executive use spaces.
- (E) The parking cards permitting free access are not assignable or transferrable by vehicle owner to any party other than Plaintiff or Plaintiffs' tenants and their employees.
- (F) The parking card is the property of the City, and no property rights are transferred or intended to transfer to the parking card user by issuance or delivery of the parking card.
- (G) Plaintiffs agree not to resell or otherwise charge employees, visitors, or the public for the parking cards it receives under this Agreement. This provision does not apply to any provision in the lease(s) that Plaintiffs may sign with their tenants relating to any charges or rental rate(s).
- (H) This Agreement is intended to be complimentary to the Settlement Agreement and Release and Easement and, in the event of any conflict between this Agreement and those documents, those documents shall control. This Agreement may be recorded with the Oakland County Register of Deeds.

- (I) This Agreement cannot be modified without the signed written consent of the Mayor of the City and either Charles Stephens or his designee identified in writing as having his authority, or future owners of the Towers.
- (J) This Agreement may be freely assigned and transferred by Plaintiffs, in whole or in part, to any future owners of either of the Towers.

Dated: _____, 2018

CITY OF PONTIAC, a municipal
corporation of the State of Michigan

By: _____

Dr. Deirdre Waterman

Its: Mayor

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

Acknowledged before me on _____, 2018, by Dr. Deirdre Waterman, Mayor, for the City of Pontiac.

[SEAL]

_____, Notary Public
_____ County, Michigan
Acting in _____ County, MI
My Commission Expires: _____

Dated: _____, 2018

NORTH BAY DRYWALL INC. PROFIT SHARING PLAN & TRUST, a California Pension and Profit Sharing Trust

By: _____
Charles Stephens
Its: _____

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

Acknowledged before me on _____, 2018, by Charles Stephens, Trustee of North Bay Drywall Inc. Profit Sharing Plan & Trust.

[SEAL]

_____, Notary Public
_____ County, Michigan
Acting in _____ County, MI
My Commission Expires: _____

Dated: _____, 2018

OTTAWA TOWER II, LLC, a Michigan limited liability company

By: _____
Charles Stephens
Its: _____

EXHIBIT 6 – CITY’S MAINTENANCE SCHEDULE

The City’s Day-to-Day Management of the Phoenix Center includes without limitation, the following activities:

(A) Deck and Tunnel Maintenance:

- 1) Lighting and lightbulbs.
- 2) Painting of lines for parking spaces.
- 3) Sweeping and trash removal.
- 4) Snow and Ice Removal (including salting).

(B) Plaza Maintenance:

- 5) Landscaping.
- 6) Trash removal.

7) Snow and ice removal (including salting) as necessary to keep drains clear.

(C) Security. For avoidance of doubt, during the period described in Section 8.0 of the Settlement Agreement, wherein Plaintiffs shall continue their services at the Phoenix Center, Plaintiff’s obligations for security shall be limited to the south section of the Deck, from 7:00 am to 7:00 pm, Monday through Fridays, excluding holidays. Any additional security services requested by the City will cost extra.

(D) Snow and ice removal on short section of Saginaw Street north of Judson street, to the south entrance of the Deck, only.

EXHIBIT 7
QUITCLAIM DEED FOR ATRIUM CONNECTOR – JUDSON TOWER

QUITCLAIM DEED

Grantor: The City of Pontiac, a Michigan Municipal Corporation, with an address of 47450 Woodward Avenue, Pontiac, Michigan 48342, quitclaims to:

Grantee: Ottawa Tower II, LLC, a Michigan limited liability company, whose address is 715 Southpoint Boulevard, Suite B, Petaluma, California 94954, any and all of Grantor's right, title, and interest in, any of the real property and improvements located upon the following described premises situated in Pontiac, Oakland County, Michigan, to-wit:

SEE ATTACHED EXHIBIT "A" (the "Property")

For the sum of: One and 00/100 (\$1.00) Dollar.

Dated: _____, 2018

GRANTOR:

CITY OF PONTIAC,
a Michigan Municipal Corporation

By: _____
Deirdre Waterman

Its: Mayor

STATE OF MICHIGAN)
)
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me _____, 2018 by Deirdre Waterman, the Mayor of the City of Pontiac.

Notary Public, _____ County, MI
My Commission Expires: _____

Instrument Drafted by:
Steven D. Sallen, Esq.
Maddin Hauser Wartell Roth & Heller, PC
28400 Northwestern Highway, 3rd Floor
Southfield, MI 48034
(248) 827-1861

When recorded, return to: Grantee
Send subsequent tax bills to: Grantee

EXHIBIT A – LEGAL DESCRIPTION

All real property and improvements, including but not limited to a two-story atrium and connector area adjacent to the office tower, located upon the following parcel with a common street address of 31 East Judson Street, Pontiac, Michigan, and as legally described as:

Being all or parts of the following lots and parcels in the City of Pontiac, Oakland County, Michigan, Lot numbers 1 through 8 and 14, 15 and that part of vacated Auburn Avenue of Assessor's Plat No. 130, as recorded in Liber 54A, Page 71, Oakland County Records, more particularly described as follows: Beginning at a point located Northerly 79.00 feet along the Easterly right of way line of Saginaw Street from the Northwest corner of Lot 16 of said Assessor's Plat No. 130, said point of beginning also being a point on the North right of way line of New Judson Street; thence North 14 degrees 30 minutes 01 seconds West 144.67 feet; thence North 75 degrees 27 minutes 55 seconds East 128.00 feet; thence North 14 degrees 32 minutes 05 seconds West, 2.42 feet; thence North 75 degrees 27 minutes 55 seconds East 64.00 feet; thence South 14 degrees 32 minutes 05 seconds East 2.42 feet; thence North 75 degrees 27 minutes 55 seconds East 124.91 feet; thence South 14 degrees 32 minutes 05 seconds East 181.79 feet to a point on the Northerly right of way line of Judson Street; thence along said Judson right of way line North 85 degrees 36 minutes 10 seconds West 6.48 feet to the beginning of a curve; thence along a curve to the left 214.75 feet, said curve having a radius of 648.70 feet, delta of 18 degrees 58 minutes 04 seconds, chord bearing and distance of South 84 degrees 54 minutes 44 seconds West 213.77 feet; thence South 75 degrees 25 minutes 42 seconds West 100.00 feet to point of beginning.

Together with the right to the use of the following land in accordance with a License Agreement as granted by Pontiac City Commission meeting December 4, 1979, Resolution No. 738 to Downtown Pontiac Development Company, recorded in Liber 7788, Page 142, as more clearly described, limited and defined as; A parcel of land being part of the Saginaw Street right of way adjacent to Lots 1, 2, 3 and 4 of Assessor's Plat No. 130, as recorded in Liber 54A, Page 71, Oakland County Records, more particularly described as follows: Beginning at a point located Northerly 79.00 feet along the Easterly right of way line of Saginaw Street from the Northwest corner of Lot No. 16 of Assessor's Plat No. 130, in the Northeast 1/4 of Section 32, City of Pontiac, Oakland County, Michigan, said point of beginning also being a point on the North right of way line of New Judson Street; thence North 14 degrees 30 minutes 01 seconds West 144.67 feet; thence South 75 degrees 27 minutes 55 seconds West 15.09 feet to a point; thence South 14 degrees 32 minutes 05 seconds East 144.68 feet to a point; thence North 75 degrees 25 minutes 42 seconds East 15.00 feet to the point of beginning.

Commonly known as: 31 East Judson Street, Pontiac, Michigan
Tax Parcel Identification No.: 14-32-227-002



Facilities Management
PROJECT WORK IN PROGRESS
BA Animal Ctrl Pet Adoption Ct
100000002199
 (as of September 30, 2018)

	Budget Amount	Month-to-Date Expenses	Life-to-Date Expenses	LTD Variance
BLDCO - Building Construction				
702000 - Salaries		0.00	13,079.09	
730352 - Construction		0.00	13,194,856.32	
773535 - Info Tech CLEMIS		0.00	200.59	
777560 - Radio Communications		0.00	3,599.06	
Building Construction TOTALS				
13,429,604.00	0.00	13,211,735.06	\$217,868.94	
CONT - Contingency				
730359 - Contingency		0.00	77,560.00	
730520 - Design Fees		0.00	3,660.00	
Contingency TOTALS				
94,000.00	0.00	81,220.00	\$12,780.00	
FM_CONSTR_DOCS - Construction Documents				
730520 - Design Fees		0.00	847,608.85	
Construction Documents TOTALS				
820,000.00	0.00	847,608.85	(\$27,608.85)	
FM_DESIGN_DEV - Design Development				
702000 - Salaries		0.00	215.25	
Design Development TOTALS				
0.00	0.00	215.25	(\$215.25)	
FM_PRELIM_PLNG - Preliminary Planning				
702000 - Salaries		0.00	77.26	
Preliminary Planning TOTALS				
0.00	0.00	77.26	(\$77.26)	
FRINGE_BENEFITS - Fringe Benefits				
722000 - Fringe Benefits		0.00	8,600.75	
Fringe Benefits TOTALS				
0.00	0.00	8,600.75	(\$8,600.75)	
FURNISHINGS - Furnishings				
760160 - Furniture and Fixtures		0.00	112,402.83	
Furnishings TOTALS				
105,000.00	0.00	112,402.83	(\$7,402.83)	
GLB - GL Balance Sheet				
730352 - Construction		0.00	214.45	
GL Balance Sheet TOTALS				
0.00	0.00	214.45	(\$214.45)	
LEGAL - Legal and Financial				
731073 - Legal Services		0.00	117,337.50	
731528 - Publishing Legal Notices		0.00	1,850.75	
793938 - Discount on Bonds		0.00	23,432.54	
Legal and Financial TOTALS				
250,000.00	0.00	142,620.79	\$107,379.21	
MAT - Storeroom Materials Only				



Facilities Management
PROJECT WORK IN PROGRESS
BA Animal Ctrl Pet Adoption Ct
100000002199
 (as of September 30, 2018)

	Budget Amount	Month-to-Date Expenses	Life-to-Date Expenses	LTD Variance
775754 - Maintenance Department Charges		0.00	486.08	
Storeroom Materials Only TOTALS	0.00	0.00	486.08	(\$486.08)
OWNERS COST - OWNERS COSTS				
702000 - Salaries		0.00	832.91	
730324 - Communications		0.00	3,105.00	
730352 - Construction		0.00	302,718.57	
731115 - Licenses and Permits		0.00	110,435.92	
731241 - Miscellaneous		0.00	8,848.47	
731360 - Planning		0.00	106,230.93	
OWNERS COSTS TOTALS	690,396.00	0.00	532,171.80	\$158,224.20
TESTING - Testing Services				
731906 - Testing Services		0.00	40,168.81	
Testing Services TOTALS	61,000.00	0.00	40,168.81	\$20,831.19

Project 100000002199 - BA Animal Ctrl Pet Adoption Ct			
Total Project Expenses			
Budget Amount	Month-to-Date Expenses	Life-to-Date Expenses	LTD Variance
\$15,450,000.00	\$0.00	\$14,977,521.93	\$472,478.07
Total Project Revenue			
Account	Month-to-Date Revenue	Life-to-Date Revenue	
655077-Accrued Interest Adjustments	\$51.42	\$25,546.64	
655385-Income from Investments	\$916.61	\$210,603.96	
697551-Issuance of Bonds	\$0.00	\$15,450,000.00	
TOTAL REVENUE	\$968.03	\$15,686,150.60	
REVENUE OVER/(UNDER) EXPENSES		\$708,628.67	

County of Oakland
BA Animal Control Pet Adoption
Statement of Fund Balance
For The Twelve Months Ended September 31, 2018
Fund 41425

Revenues:

Income from Investments	20,812.18
Accrued Interest Adjustments	(1,574.64)
	19,237.54

Expenditures:

Charges Against Project	79,280.99
	(60,043.45)

Operating Transfers In	0.00
Operating Transfers Out	0.00

Fund Balance at Beginning of Year	768,672.12
Fund Balance at September 30, 2018	\$708,628.67

**County of Oakland
BA Animal Control Pet Adoption
Balance Sheet
September 30, 2018
Fund 41425**

ASSETS

Cash Operating	683,082.03
Accrued Interest on Investment	25,546.64
	<u>708,628.67</u>

LIABILITIES AND FUND BALANCE

Current Liabilities:

Accounts Payable	0.00
Vouchers Payable	0.00
Total Current Liabilities	<u>0.00</u>

Fund Balance	<u>708,628.67</u>
Total Liabilities and Fund Balance	<u><u>708,628.67</u></u>



Project Estimate

Estimate Date: 9/19/2018

FM Project Manager: MACDOUGALL, MATT

FPE#:

Project: Animal Shelter - 041 Fencing

WO#:757850

TRADE	DESCRIPTION	ESTIMATE
FM-730352 CONSTRUCTION		
FM-730352-Architectural	Fencing Improvements/ Stpls Stl incl.Rewold Mngmt.	\$35,552.00
	CONSTRUCTION Total:	\$35,552.00
FM-730359 CONTINGENCY		
FM-730359-Contingency	15% Contingency	\$5,332.80
	CONTINGENCY Total:	\$5,332.80
	Subtotal:	\$35,552.00
	GRAND TOTAL:	\$40,884.80

MacDougall, Matthew J

From: Matthew DeSchutter <MDeSchutter@frankrewold.com>
Sent: Wednesday, September 19, 2018 9:02 AM
To: MacDougall, Matthew J
Cc: Gene Ferrera
Subject: OCAS - Dog Runs/Kennels Stainless steel add
Attachments: rewold oakland county ss dog panels pricing 8-6-18.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Good Morning Matt,

Attached is the proposed metal panels as discussed with Dan Jones and RSI in regards to the Animal Shelter. Total cost (including Rewold's time) is: \$35,552.00

Let me know if you would like to proceed and we can start to get the ball rolling.

Regards,

Matthew DeSchutter, LEED GA
Project Engineer

o: 248.601.1219 m: 248.310.0825
f: 248.651.5174 e: mdeschutter@frankrewold.com

FRANK REWOLD AND SON INC.
CONSTRUCTION MANAGER | GENERAL CONTRACTOR

#FRS100

ONE COMPANY. ONE FAMILY. ONE CENTURY.
WEB | FACEBOOK | INSTAGRAM | TWITTER



Retail Specialty Inc.
14026 Simone Dr.
Shelby Twp., MI. 48315
rsiceo@yahoo.com
ph 586-566-7716
rsihq.com

CUSTOMER

Frank Rewold & Son, Inc.
gene ferrera
333 east second st.
ROCHESTER, MI. 48307
248-651-7242 fax 248-651-5174
gferrera@frankrewold.com

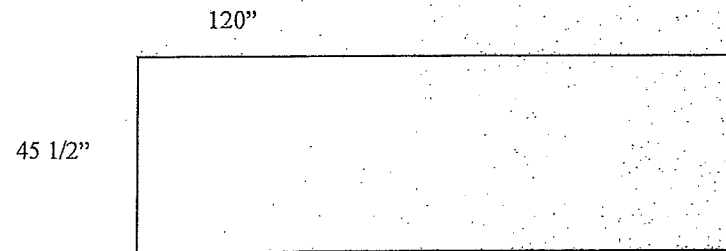
Invoice #

Oakland animal shelter
Michigan
dan jones 248-310-0806
djones@frankrewold.com

Date: 8-6-18

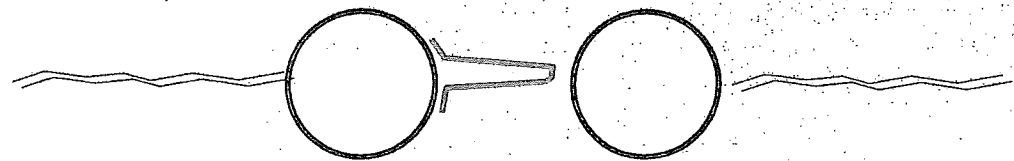
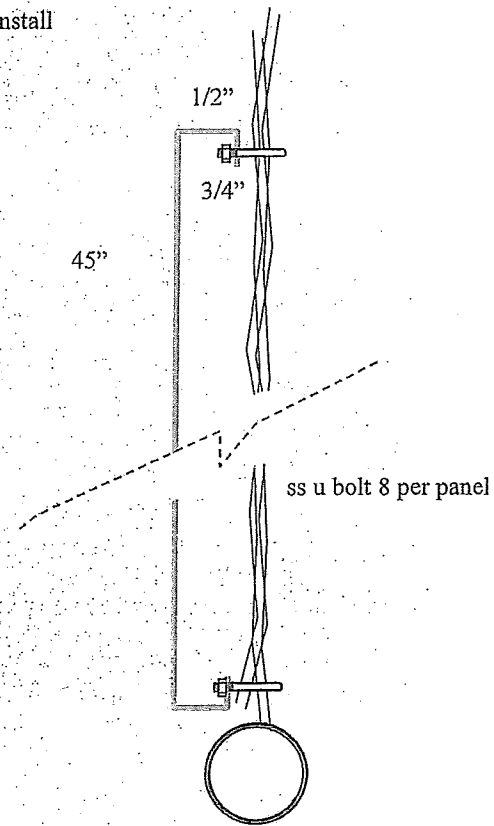
Ship to: site

Stainless steel type 304 grade satin finish 18 ga Furnish and install



18 ga Panel

30 units less than 120"
30 units gates 65"



18 ga BENT PC riveted to pole

11 units 48" height

Survey, staging, travel



material cost \$ included
tax \$ included
labor \$ included



Project Estimate

Estimate Date: 10/1/2018

FM Project Manager: MACDOUGALL, MATT

FPE#:

Project: OCASPAC - Building Commissioning (post occupancy)

WO#:766397

TRADE	DESCRIPTION	ESTIMATE
FM-730352 CONSTRUCTION		
FM-730352-TestingWork	Building Commissioner (Post Occupancy)	\$39,200.00
	CONSTRUCTION Total:	\$39,200.00
FM-730359 CONTINGENCY		
FM-730359-Contingency		\$5,880.00
	CONTINGENCY Total:	\$5,880.00
	Subtotal:	\$39,200.00
	GRAND TOTAL:	\$45,080.00

September 28, 2018

Mr. Matthew MacDougal, AIA
Senior Facilities Project Manager
Oakland County Facilities Management
Building 95 West
1 Public Works Dr.
Waterford, MI 48328

Re: Animal Shelter and Pet Adoption Center Commissioning Services

Dear Matthew:

JMK Consultants, Inc. (JMK), is pleased to present this proposal to provide Existing Building Commissioning Services for the Animal Shelter and Pet Adoption Center in accordance with your RFP and our detailed scope of services below.

Proposed Fee Budget

Terry Harvin: 320 hours x 90/hour = \$28,800
John Kause: 80 hours x 130/hour = \$10,400

Total proposed not to exceed budget = \$39,200

The above services will be performed by John M. Kause, PE, BCxP, LEED and Terry Harvin, CxA. Our hourly fees are \$130 and \$90 per hour, respectively. The above fees are based on completion in the fourth quarter of 2018, and completion of seasonal testing in the spring of 2019 if needed.

Availability

Our team can start as soon as practical. This workload will be managed, scheduled and balanced with client expectations. We will collaborate with Oakland County and coordinate with the commissioning team schedule

Commercial Terms

The above is an estimate only. JMK bills solely on the hours it takes to produce a deliverable plus any outside purchases incurred on the client's behalf. If the project should run longer (or shorter) than anticipated, your costs will change accordingly.

The majority of the work will be completed in JMK's offices and on the job site for on-site meetings and inspections. Travel is not anticipated for this effort. Expenses incurred as a result of project services, such as reproduction, mailings, and any other additional out-of-pocket expenses will be billed at cost.

JMK invoices every two weeks and payments are expected within 30 days from the date of the invoice.

This proposal is good for 30 days from the date of this letter.

If you agree with the terms and conditions of this proposal, please sign on the concur line below and issue purchase order (or amend the existing purchase order). Please scan/send all sheets to:

John M. Kause, PE
JMK Consultants, Inc.
6905 Telegraph Road, Suite 170
Bloomfield Hills, MI 48301
248.930.4377
John.kause@jmkpm.com

I will contact you to answer any questions you may have. In the meantime, you may reach me by telephone at (248) 930-4377 or by e-mail, john.kause@jmkpm.com. JMK appreciates the opportunity to present this proposal to Oakland County.

Sincerely,

John Kause

John M. Kause, PE, BCxP, LEED
Managing Consultant / CxA

Concur



Breakdown of Commissioning Fee Quote

COMMISSIONING ACTIVITY	ESTIMATED FEES
<u>Existing Building Commissioning Activities</u>	
Planning phase	\$8,000
Investigation phase	\$10,000
Implementation phase	\$10,000
Turnover phase	\$7,000
Ongoing phase	\$4,200
Total Commissioning Fee Quoted	\$39,200

Commissioning Scope of Services:

The existing building systems to be commissioned are:

1. All HVAC systems and equipment.

JMK Consultants will perform as the Commissioning Authority (CxA) to provide Existing Building Commissioning Activities which will include:

1. Planning Phase: Development of goals, facility requirements, and a commissioning plan.
2. Investigation Phase: Field inspections, data gathering, oversight and review of testing and analysis to accurately assess system performance and identify improvement opportunities.
3. Implementation Phase: The desired facility improvements are completed and the results and performance are verified.
4. Turnover Phase: Transition from commissioning activities and the Commissioning Team to standard operating practice and the O&M team.
5. Ongoing Phase: Implementation of systems and tools to support both the ongoing of benefits and continuous performance improvement over time.

Commissioning Responsibilities

In addition to duties described above, JMK Consultants will have the following responsibilities and authority:

1. Issue deficiency notices and verify that they have been corrected. An Issues Log will be maintained and reviewed at the commissioning meetings. Deficiencies that are not corrected in a timely manner will be reported to the owner.

JMK Consultants is not required to:

1. Establish design concept, design criteria, compliance with codes, design or general construction scheduling, cost estimating, or construction management. JMK may assist with problem-solving or resolving non-conformance or deficiencies, but ultimately that responsibility resides with the general contractor / construction manager and the design team. JMK will report to the owner any deficiencies or discrepancies.
2. Issue change orders; they do review change orders for compliance with the construction documents. Non-compliances will be reported to the owner.

John M. Kause, PE, BCxP, LEED

MEP Project Management and Commissioning Services



Relevant Experience

Mr. Kause has over 30 years of experience providing building commissioning, MEP project management, scheduling, estimating, inspections, and infrastructure assessments for industrial clients.

Recent projects:

Virginia Mason Memorial Hospital

Energy Plant

Fundamental Commissioning

Oakland County

Multiple Projects

University of Michigan Health System

Multiple Projects

McAlester Regional Hospital

Plant Assessment and Capital Plan

LifeQuest

55 acre site and utilities master schedule to support a 40 Million capital project

Valley Presbyterian Hospital

Plant Assessment and Capital Plan

Copley Hospital

New 15 KV Primary feed

Surgical Suite Expansion

Fundamental Commissioning

Friendship Village of Columbus Senior Living

Facility Condition Assessment

ITC Gordie Howe International Bridge Circuit Relocations

Project Manager to relocate 5 high voltage transmission circuits to support construction of the Gordie Howe International Bridge and Customs Plaza. Utility relocations include 3 underground circuits (120 KV) and 2 aerial circuits (230 KV and 120 KV).

ITC Lake Erie Connector

Project Manager for 1000 MW HVDC underwater cable and converter stations to connect the IESO (Canada) and PJM (US) grids by constructing an international power line across Lake Erie. Project cost 1.6 Billion.

William Beaumont Hospital – Grosse Pointe

Site utilities and infrastructure upgrades

Fundamental Commissioning multiple projects

William Beaumont Hospital – Royal Oak

East Powerhouse Expansion and 40 KV DTE substation

North Pavilion MEP, Site Work and Utility Relocation

West Powerhouse Co-generation Upgrade

West Substation Upgrades

Fundamental Commissioning multiple projects

Copley Hospital

Power Plant Replacement

Fundamental Commissioning

University of Michigan

North Ingalls 40 KV DTE Substation

Medical Campus multiple energy and utility projects

Previous Experience

Prior to joining JMK Consultants, Mr. Kause was Director of Projects at ACM, a Vice President at Jones Lang LaSalle, a Project Executive Jones Lang LaSalle at Beaumont Health System, and a Program Manager for Administrative Controls Management, managing energy and infrastructure construction projects. He has expertise in project controls, earned value, cost engineering, claims mitigation, and avoidance. He also served as a Plant Design Engineer for General Motors and Mechanical Design Engineer for Blount Engineering, with experience on utility scale power plants and energy distribution projects.

Education and Affiliations

Mr. Kause is a Licensed Professional Engineer in several states, a member of ASHRAE, and a member of the Building Commissioning Association. He received his Bachelor of Science in Mechanical Engineering from Western Michigan University.

Professional Licenses

Licensed Professional Engineer, State of Michigan

Licensed Professional Engineer, State of Illinois

Licensed Professional Engineer, State of Florida

ASHRAE Certified BCxP, Commissioning

LEED Green Associate

Experience

Client	Size
ITC Holdings Gordie Howe International Bridge Novi, MI	\$40 million
ITC Holdings Lake Erie Connector Novi, MI	\$1.5 billion
Beaumont Hospital North Pavilion MEP / Site Utilities and Powerhouse Expansion Royal Oak, MI	\$200 million
Copley Hospital New Surgical Suite Addition Stowe, VT	\$15 million
Pfizer Pharmaceuticals 550 and 520 Laboratory Renovations Ann Arbor, MI	\$120 million
University of Michigan Health System DTE North Ingalls Substation Ann Arbor, MI	\$17 million
University of Michigan Health System Medical Campus Power and Utility Distribution / Multiple Projects Ann Arbor, MI	\$10 million

Mobile: (248) 930-4377

Email: john.kause@jmkpm.com

Terrence Harvin, CxA

Mr. Harvin holds a **Bachelor of Science degree in Mechanical Engineering** from the University of Detroit. He has experience as a commissioning provider for multiple large-scale projects with in-depth design / build, operations, processing systems and instrumentation and controls. He has extensive knowledge of Microsoft Office Suite and MS Project.

JMK Consultants, Inc. (JMK)

2018 – Present. Mr. Harvin is a commissioning authority available for assignments for commissioning services. He has completed fundamental commissioning on several K-12 school construction projects.

Reliance One 2016-1 to 2017-9.

Commissioning Engineer contracted to work for Toyota Tech Center assigned to PLE - Maintenance & Operations Group in Ann Arbor to assist in the construction of the new Toyota York Supplier Building, Toyota Prototype Building and the new Powertrain Phase II Building extension at the TTC - AA 1555 Woodridge.

Detroit Water and Sewerage Dept 1993-11 - 2015-10. Construction Management and commissioning with coordination of design consultants and construction contractors. Develop scope of work, negotiate and recommend final price of change order work. Solve issues and problems that develop during construction. Develop detailed cost breakdown used for monthly payments for the work. Determining the final cost of the construction project. Conduct and chair meetings, provide meeting minutes thereafter. Maintain budget for construction projects. Schedule monitoring and ensure that the facility is constructed as designed per the contract documents, permits and all applicable codes and standards. Supervise operation and maintenance of the constructed facility for one year to ensure optimal performance of the new facility. Facility construction includes construction of industrial buildings and all equipment necessary to operate the facility. Provide training to employees for newly installed equipment. Construction of facilities includes process controls and SCADA Systems. Provide one-year operation and maintenance management proof of process equipment and facilities for owner's turnkey operation.

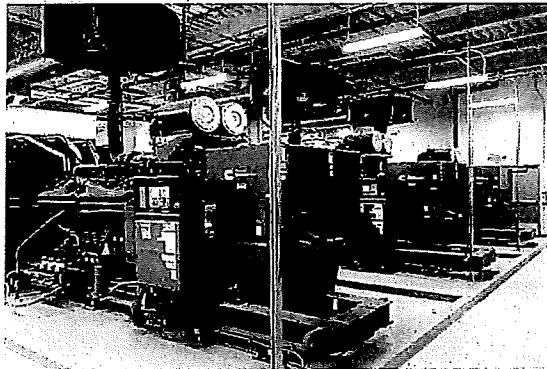
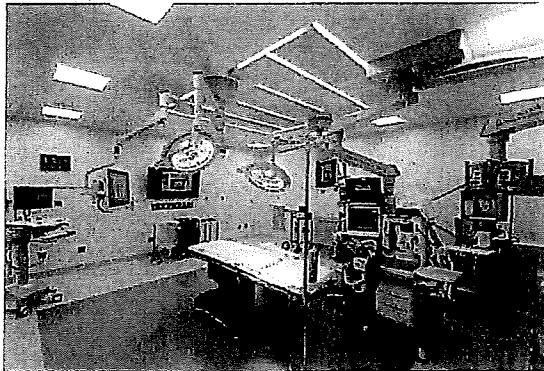
Professional Accomplishment

- Project Engineer of New Construction for Replacement of Belt Filter Presses in the Dewatering facility at the Wastewater Treatment Plant – DWSD. Contract Bid Price: \$30 Million.
- Project Manager of New Construction for Baby Creek Combine Sewer Overflow
Contract Bid Price: \$73.1 Million.
- Project Manager of New Construction for The DWSD System Control Center
Contract Bid Price: \$7 Million.
- Project Engineer of New Construction for DWSD Springwell Water Treatment Plant - Chlorine and HVAC Rehabilitation. Contract Bid Price: \$16.15 Million.
- Project Engineer of New Construction for DWSD Oakwood Pumping Station Improvements
Contract Bid Price: \$4.58 Million.

EDUCATION

Bachelor of Science in Mechanical Engineering
University of Detroit Mercy - Detroit, MI
1987-05

jmk Consultants, Inc.



**Statement of Qualifications
Building Commissioning Services**

August 30, 2018

Mr. Art Holdsworth
Director
Facilities Planning and Engineering
Oakland County
One Public Works Drive
Waterford, MI 48328

Re: Building Commissioning Services

Dear Mr. Holdsworth:

JMK Consultants, Inc. (JMK), is pleased to present our qualifications for your review. We provide commissioning consulting services to help ensure your facility's critical systems are fully functional and optimized for new and existing buildings.

Qualifications:

- Our roots in Large University / Institutional, Pharmaceutical, Healthcare and Utility scale projects separate us from competitors and provide our clients with added value. Our key proposed personnel have commissioning, operational and maintenance experience on large projects with significant MEP systems, equipment, and utilities.
- JMK is an active member of the Building Commissioning Association since 2009.
- Commissioning and MEP infrastructure program management represents 80% of our business, and is not an "add on" service like it may be at MEP design firms. Commissioning is not part of what we do, it is what we do.
- Certification – John Kause, Managing Consultant, is ASHRAE certified for new construction and existing building commissioning services.



Satisfied Clients:

JMK specializes in providing professional services on behalf of healthcare and public facilities. The following is a sample list of our clients:

University of Michigan Health Systems **McAlister Hospital**
Copley Hospital **Valley Presbyterian Hospital**
Virginia Mason Memorial **Life Quest**
Rochester Community Schools

JMK appreciates the opportunity to present this Statement of Qualifications to Oakland County. Please feel free to contact me direct for any questions regarding this proposal.

Sincerely,

John Kause

John M. Kause, PE, BCxP, LEED
Managing Consultant
JMK Consultants, Inc.
248.930.4377
John.kause@jmkpm.com



Major Departmental Projects
PROJECT WORK IN PROGRESS
UCC Netwrk Equip Repl Phase I
10000002710
 (as of September 30, 2018)

	Budget Amount	Month-to-Date Expenses	Life-to-Date Expenses	LTD Variance
BLDG_AUTH - Building Authority Funded				
Building Authority Funded TOTALS	1,277,322.00	0.00	0.00	\$1,277,322.00 ✓
HARDWARE - Hardware Costs - Servers				
750170 - Other Expendable Equipment		0.00	24,203.86	
Hardware Costs - Servers TOTALS	3,114,543.00	0.00	24,203.86	\$3,090,339.14
OC_LABOR_IT - Oakland County Labor - IT				
773630 - Info Tech Development		0.00	71,924.25	
Oakland County Labor - IT TOTALS	419,538.00	0.00	71,924.25	\$347,613.75
PROF_SVCS - Professional Services				
731458 - Professional Services		9,581.00	205,548.79	
Professional Services TOTALS	631,281.00	9,581.00	205,548.79	\$425,732.21
SOFTWARE - Software Licensing Costs				
Software Licensing Costs TOTALS	45,962.00	0.00	0.00	\$45,962.00

Project 10000002710 - UCC Netwrk Equip Repl Phase I			
Total Project Expenses			
Budget Amount	Month-to-Date Expenses	Life-to-Date Expenses	LTD Variance
\$5,488,646.00	\$9,581.00	\$301,676.90	\$5,186,969.10
Total Project Revenue			
Account	Month-to-Date Revenue	Life-to-Date Revenue	
695500-Transfers In	\$0.00	\$4,211,324.00	
TOTAL REVENUE	\$0.00	\$4,211,324.00	
REVENUE OVER/(UNDER) EXPENSES		\$3,909,647.10	

County of Oakland
BA-FAC Infrastructure-IT Projects
Statement of Fund Balance
For The Twelve Months Ended September 30, 2018
Fund 41423

Revenues:	
Income from Investments	59,291.57
Accrued Interest Adjustments	2,655.91
	61,947.48
 Expenditures:	
Charges Against Project	(4,097,901.31)
Subtotal	(4,035,953.83)
Reimbursement General	
Operating Transfers In	
Operating Transfers Out	
Fund Balance at Beginning of Year	5,673,515.20
Fund Balance at September 30, 2018	\$1,637,561.37

**County of Oakland
BA-FAC Infrastructure-IT Projects
Balance Sheet
September 30, 2018
Fund 41423**

ASSETS

Cash Operating	\$1,624,263.95
Accrued Interest on Investment	<u>13,297.42</u>
	<u><u>\$1,637,561.37</u></u>

LIABILITIES AND FUND BALANCE

Current Liabilities:	
Accounts Payable	0.00
Vouchers Payable	<u>0.00</u>
Total Current Liabilities	0.00

Fund Balance	<u>1,637,561.37</u>
Total Liabilities and Fund Balance	<u><u>\$1,637,561.37</u></u>

From: Shawn Phelps, Chief of Fiscal Services
Facilities Management Accounting

S. Phelps

Date: October 10, 2018

Subject: BA FAC Infrastructure-IT project invoices to be paid by fund ~~442000~~ ⁴¹⁴²³

<u>Payable To</u>	<u>Date</u>	<u>Invoice #</u>	<u>Project</u>	<u>Proj #</u>	<u>Amount</u>
Presidio	9/5/2018	3008401704123	UCC Network Equipment Replacement Phase 1	1..2710	1,277,322.00
Total					<u>\$1,277,322.00</u>

OC Building Authority, Jay Shah, Chairperson; Dated

PRESIDIO ✓

Presidio Networked Solutions Group, LLC
 EIN: 76-0515249, DUNS: 15-405-0959
 For questions on this invoice please call:
 Darian Worrell
 (p) 781.970.6487, (f) 781.970.1435
 dworrell@presidio.com

Please send payments made payable to:
 Presidio Networked Solutions Group, LLC
 PO Box 677638
 Dallas, TX 75267-7638

Wire or ACH Payments:
 PNC Bank
 Acct: 8616159745
 ABA 031000053

INVOICE: 3008401704123

DATE: 9/5/2018
 PAGE: 1 of 2

BILL TO: Oakland County
 Accounts Payable
 2100 Pontiac Lake Road
 Building 41W, 4th Floor
 Waterford, MI 48328

PO dated 12/19/17

SHIP TO: Oakland County
 Jonathon Laskowsky
 1200 N. Telegraph Road
 Building 49W
 Pontiac, MI 48341

Vendor 21410

Customer #: OAKLA006
 Account Manager: Scott Sutherland
 Payment Terms: Net 30
 Title: Building Authority

Customer PO#: USCTY-0000298180
 Order #: 3008401704123
 Quote #: 2003417733786-01

BA 41423

1040801-148000-750170-FAEMG-100000002710-BLDG-AUTH

MAJOR

* Comments or Special Instructions:

*Any Tax & Freight charges will be added/amended at time of billing, as applicable.
 Sales tax is an estimate and is subject to change.*

*liphelps
 9.19.18*

Part#	Description	Unit Price	Qty Ordered	Qty Shipped	Tax	Extended Price
C9500-40X-A	Catalyst 9500 40-port 10Gig switch, Network Advantage	\$7,548.00	15		\$0.00	\$113,220.00
C9500-NM-8X	Cisco Catalyst 9500 8 x 10GE Network Module	\$1,360.00	15		\$0.00	\$20,400.00
PWR-C4-950WAC-R	950W AC Config 4 Power Supply front to back cooling	\$680.00	15		\$0.00	\$10,200.00
PWR-C4-950WAC-R/2	950W AC Config 4 Power Supply front to back cooling	\$510.00	11		\$0.00	\$5,610.00
E2C1-C95001-1A	CISCO ONE EA Advantage Term - C9500 40-port	\$6,585.73	31		\$0.00	\$204,157.63
CON-SSSNT-C95004XA	SOLN SUPP 8X5XNBD Catalyst 9500 40-port 10Gig switch, Netw	\$5,163.00	14		\$0.00	\$72,282.00
R-ISE-5VM-K9=	Cisco Identity Services Engine VM - 5 VM Bundle (eDelivery)	\$8,836.60	1		\$0.00	\$8,836.60
CON-ECMUS-ISE5VM	SOLN SUPP SWSS Cisco Identity Services Engine 5 Bundle Migra	\$18,714.00	1		\$0.00	\$18,714.00
L-ISE-TACACS=	Cisco ISE Device Admin License	\$1,360.00	1		\$0.00	\$1,360.00
15216-HD-EXT-PNL=	Mechanical Frame - 4 slots - 1 RU	\$74.80	10		\$0.00	\$748.00
15216-FLD-4-30.3=	Edge 4-Ch Bi-Directional OADM Mod 1530.33 to 1532.68	\$1,122.00	22		\$0.00	\$24,684.00
CON-SNT-1521FLD4	SNTC-8X5XNBD Edge 4-Ch Bi-Directional OADM Mod 1530	\$825.00	24		\$0.00	\$19,800.00
DWDM-SFP-3033=	DWDM SFP 1530.33 nm SFP (100 GHz ITU grid)	\$1,079.10	17		\$0.00	\$18,344.70
C9300-NM-8X=	Catalyst 9300 8 x 10GE Network Module	\$850.00	37		\$0.00	\$31,450.00
DWDM-SFP10G-30.33=	10GBASE-DWDM 1530.33 nm SFP10G (100-GHz ITU grid)	\$3,600.00	4		\$0.00	\$14,400.00
DWDM-SFP10G-31.12=	10GBASE-DWDM 1531.12 nm SFP10G (BUILD-TO-ORDER)	\$3,600.00	22		\$0.00	\$79,200.00
DWDM-SFP10G-31.90=	10GBASE-DWDM 1531.90 nm SFP10G (BUILD-TO-ORDER)	\$3,600.00	24		\$0.00	\$86,400.00
DWDM-SFP10G-32.68=	10GBASE-DWDM 1532.68 nm SFP10G (BUILD-TO-ORDER)	\$3,600.00	6		\$0.00	\$21,600.00
15216-FLD-4-33.4=	Edge 4-Ch Bi-Directional OADM Mod 1533.47 to 1535.82	\$1,122.00	4		\$0.00	\$4,488.00
CON-SNT-15216FLD	SNTC-8X5XNBD Edge 4-Ch Bi-Directional OADM Mod 1533	\$825.00	4		\$0.00	\$3,300.00
DWDM-SFP10G-33.47=	10GBASE-DWDM 1533.47 nm SFP10G (BUILD-TO-ORDER)	\$6,800.00	4		\$0.00	\$27,200.00

63600-1080601-152010-750170

To be paid from Bldg Authority

[Signature] 9/17/18

PRESIDIO

Presidio Networked Solutions Group, LLC
 EIN: 76-0515249, DUNS: 15-405-0959
 For questions on this invoice please call:
 Darlan Worrell
 (p) 781.970.6487, (f) 781.970.1435
 dworrell@presidio.com

Please send payments
 made payable to:
 Presidio Networked Solutions Group, LLC
 PO Box 677638
 Dallas, TX 75267-7638

Wire or ACH Payments:
 PNC Bank
 Acct: 8616159745
 ABA 031000053

INVOICE: 3008401704123

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Part #	Description	Unit Price	Qty Ordered	Qty Shipped	Tax	Extended Price
DWDM-SFP10G-34.25=	10GBASE-DWDM 1534.25 nm SFP10G (100-GHz ITU grid)	\$6,800.00	4		\$0.00	\$27,200.00
SFP-10G-LRM=	10GBASE-LRM SFP Module	\$231.61	141		\$0.00	\$32,685.21
CON-SNTP-DWS10	SNTP-24X7X4 DWDM SFP 1536.61 nm SFP (100 GHz (5 YR)	\$165.00	17		\$0.00	\$2,805.00
CAB-SPWR-30CM	Catalyst Stack Power Cable 30 CM	\$32.30	37		\$0.00	\$1,195.10
PAC-OSP-DN1HWADN	SOLN SUPP 24x7x4 DNA Center Appliance Contract #: New Contract Start Date: 05/01/2018 Billing Frequency: Total In Advance End Date: 04/30/2023	\$53,526.00	3		\$0.00	\$160,578.00
S-ISE-APX-5YR-SK	SVP Cisco ISE 5K Endpoint Apex Subscription License	\$16,830.00	1		\$0.00	\$16,830.00
DN1-HW-APL	DNA Center Appliance	\$33,034.40	3		\$0.00	\$99,103.20
C9300-24UX-A	Catalyst 9300 24-port mGig and UPOE, Network Advantage	\$4,046.00	37		\$0.00	\$149,702.00

Sub Total:	\$1,276,493.44
Miscellaneous:	\$0.00
Shipping & Handling:	\$ 828.56
Tax:	\$0.00
Trade Discount:	\$0.00
Grand Total:	\$1,277,322.00

Discrepancies must be reported within 5 days of receipt of shipment or shipment will be considered complete.