

Roberta Cocco
Mayor

Scott Dzurka
Vice Mayor

Eric Hufnagel
Commissioner

Jean Ruestman
Commissioner

Brad Gurski
Commissioner



Vacant
City Manager

Mindy J. Seavey
City Clerk

Kristina Kinde
City Treasurer

Michael Homier
City Attorney

Justin Smith
Director of Public Services

**CITY OF ST. JOHNS
CITY COMMISSION MEETING
PROPOSED AGENDA**

**Monday, March 20, 2023, 6:00 p.m.
Room 2200 – Clinton County Courthouse**

***Listen to Meeting Via Telephonic Conference
Dial 1 929 205 6099**

<https://zoom.us/j/2050014286>

Meeting ID: 205 001 4286

***Please note, you will not be able to make public comments through Zoom;
only in-person attendants will be able to participate in public comments.**

A. OPENING: (6:00 pm – 6:05 pm)

1. Invocation
2. Pledge of Allegiance
3. Consent Agenda (*Action Item*)

The staff proposes the following items for the Consent Agenda. If any Commissioner wishes to discuss any of these items, it should be placed on the regular agenda. The remaining items and recommendations may be approved en masse:

- a. Approval of Minutes
 - Regular meeting of February 27, 2023
 - Special meeting of March 7, 2023
 - Closed session of March 7, 2023
- b. Approval of Warrants
 - In the amount of \$1,814,157.99
- c. Wombat Services, LLC – Detention Basin Mowing
 - Staff recommends that the city commission approve using Wombat Services, LCC for detention basin mowing in the amount of \$19,100.
- d. Plummers Environmental - Contract for Sanitary and Storm Sewer Cleaning and Assessment/Water Service Line Investigations
 - Staff recommends that the city commission approve the three-year contract with Plummers Environmental Services to perform sanitary, storm and water services per their

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unit pricing listed in the attached contract pending city attorney approval and authorize the mayor and clerk to sign.

e. C2AE – Proposal for Professional Services – Develop 2023 Street Program Bid Package Standard Contract

-Staff recommends that the city commission approve the proposal with C2AE in a lump sum amount of \$7,300.00 with the proposed changes from the city attorney and authorize the mayor and clerk to sign.

f. C2AE – Proposal for Professional Services – St. Johns BR US-127 at Walker Road Intersection Improvements

-Staff recommends that the city commission approve the proposal with C2AE with time and material not to exceed \$22,350 plus reimbursable expenses with the proposed changes from the city attorney and authorize the mayor and clerk to sign.

4. Approval of Agenda: *(6:05 pm – 6:07 pm) Action Item*

B. PUBLIC HEARINGS:

C. PERSONS WISHING TO PRESENT TESTIMONY:

1. Public comment - agenda & non-agenda items *(6:07 pm – 6:10 pm) Discussion only*
Each speaker is only entitled to one (1) three-minute time during each Public Comment period.
2. Tom Webb – Clinton County Arts Council *(6:10 pm – 6:20 pm) Discussion only*

D. COMMUNICATIONS:

1. Letter from Bill Tennant regarding the Wilson Center
2. Letter from Cindy Knight regarding the Wilson Center
3. Notes from Ken Harris regarding the Downtown Parking Plan
(6:20 pm – 6:21 pm) Action Item - acknowledge receipt of communications

E. OLD BUSINESS:

1. 2023 Downtown Parking Plan
(6:21 pm – 6:35 pm) Action Item
(Presenters: Kristina Kinde, Interim City Manager; Heather Hanover, PSD/DDA Director)
2. St. Johns Communications Ad Hoc Advisory Group
(6:35 pm – 6:40 pm) Action Item
(Presenter: Kristina Kinde, Interim City Manager)

F. NEW BUSINESS:

1. Resolution for Designation of Street Administrator - #5-2023
(6:40 pm – 6:45 pm) Action Item
(Presenter: Kristina Kinde, Interim City Manager)
2. City Manager Search Contract with Walsh Municipal Services and Job Posting and Salary Range Discussion
(6:45 pm – 7:00 pm) Action Item
(Presenters: Kristina Kinde, Interim City Manager; Frank Walsh, Walsh Municipal Services)

3. Resolution #6-2023 - DNR Trust Fund Grant Application – City Park Improvements (Pickleball/Basketball Court)
(7:00 pm – 7:05 pm) Action Item
(Presenter: Bill Schafer, Recreation Director)
4. Resolution #7-2023 - DNR Trust Fund Grant Application - Main City Park Improvements (Softball Field)
(7:05 pm – 7:10 pm) Action Item
(Presenter: Bill Schafer, Recreation Director)
5. Resolution #8-2023 - DNR Passport Grant Application - Main City Park Improvements (Softball Field)
(7:10 pm – 7:15 pm) Action Item
(Presenter: Bill Schafer, Recreation Director)
6. Parks and Recreation Board Recommendation – Proposed Main Park Playground Renovation (Fantasy Forest)
(7:15 pm – 7:22 pm) Action Item
(Presenter: Bill Schafer, Recreation Director)
7. Parks and Recreation Board Recommendation – Main Park Road Closure
(7:22 pm – 7:30 pm) Action Item
(Presenter: Bill Schafer, Recreation Director)
8. Water & Sewer Rates
(7:30 pm – 7:40 pm) Action Item
(Presenter: Kristina Kinde, Interim City Manager)
9. Commissioner Comments
(7:40 pm – 7:50 pm) Discussion only

G. ADJOURNMENT: (7:50 pm)

(Next Regular Meeting Scheduled for **Monday, April 24, 2023, 6:00 p.m.**)

NOTICE: People with disabilities needing accommodations for effective participation in this meeting should contact the city clerk 989-224-8944 at least two working days in advance of the meeting. An attempt will be made to make reasonable accommodations.



CONSENT AGENDA

CITY OF ST. JOHNS
CITY COMMISSION MINUTES

FEBRUARY 27, 2023

The regular meeting of the St. Johns City Commission was called to order by Mayor Cocco at 6:00 p.m. at the Clinton County Courthouse, 100 East State Street, 2nd Floor, Suite #2200, St. Johns, Michigan.

COMMISSIONERS PRESENT: Eric Hufnagel, Jean Ruestman, Brad Gurski, Roberta Cocco, Scott Dzurka

COMMISSIONERS ABSENT: None

STAFF PRESENT: Dave Kudwa, City Manager; Mindy J. Seavey, City Clerk; Kristina Kinde, Treasurer; Justin Smith, Director of Public Services; Anne Seurnynck, Attorney (Zoom)

Mayor Cocco asked if any of the commissioners wished to discuss any of the items on the consent agenda.

Commissioner Hufnagel asked to move item h. from the consent agenda to #2 under New Business.

Commissioner Dzurka asked to move item g. to #3 under New Business and move item d. to #9 under New Business.

Motion by Commissioner Gurski seconded by Commissioner Dzurka that the consent agenda be approved as amended.

YEA: Hufnagel, Ruestman, Gurski, Cocco, Dzurka

NAY: None

Motion carried.

a. Approval of Minutes

Motion by Commissioner Gurski seconded by Commissioner Dzurka that the minutes of the January 23, 2023 regular meeting and closed session; special meetings of February 1, 2023 and February 15, 2023 and closed session of February 15, 2023 special meeting be approved as presented.

YEA: Hufnagel, Ruestman, Gurski, Cocco, Dzurka

NAY: None

Motion carried.

b. Approval of Warrants

Motion by Commissioner Gurski seconded by Commissioner Dzurka that warrants be approved as presented in the amount of \$1,850,916.83.

YEA: Hufnagel, Ruestman, Gurski, Cocco, Dzurka

NAY: None

Motion carried.

c. CIPP Lining Project Bid Approval

Motion by Commissioner Gurski seconded by Commissioner Dzurka that the city commission approve the services of Insituform Technology in the amount of \$109,762.10 to install CIPP lining, authorize the mayor and clerk to sign the notice of award and agreement, and authorize \$9,762.10 be transferred from fund balance.

YEA: Hufnagel, Ruestman, Gurski, Cocco, Dzurka

NAY: None

Motion carried.

e. Wolverine Engineers & Surveyors – Professional Services Contract Extension

Motion by Commissioner Gurski seconded by Commissioner Dzurka that the city commission approve the First Amendment to Professional Service Contract Wolverine Engineers & Surveyors, Inc. and authorize the mayor and clerk to sign.

YEA: Hufnagel, Ruestman, Gurski, Cocco, Dzurka

NAY: None

Motion carried.

f. Park Lease – Sparrow Clinton Hospital

Motion by Commissioner Gurski seconded by Commissioner Dzurka that the city commission approve the 2nd amendment to the lease with Sparrow Clinton Hospital and authorize the mayor to sign.

YEA: Hufnagel, Ruestman, Gurski, Cocco, Dzurka

NAY: None

Motion carried.

AGENDA

Mayor Cocco asked if there were any additions or deletions to the agenda.

Motion by Commissioner Dzurka seconded by Commissioner Ruestman that the city commission approve the agenda as amended.

AGENDA

A. OPENING:

1. Invocation
2. Pledge of Allegiance
3. Consent Agenda

The staff proposes the following items for the Consent Agenda. If any Commissioner wishes to discuss any of these items, it should be placed on the regular agenda. The remaining items and recommendations may be approved en masse:

- a. Approval of Minutes
 - Regular meeting of January 23, 2023
 - Closed session of January 23, 2023
 - Special meeting of February 1, 2023
 - Special meeting of February 15, 2023
 - Closed session of February 15, 2023
- b. Approval of Warrants
 - In the amount of \$1,850,916.83
- c. CIPP Lining Project Bid Approval
 - Staff recommends that the city commission approve the services of Insituform Technology in the amount of \$109,762.10 to install CIPP lining, authorize the mayor and clerk to sign the notice of award and agreement, and authorize \$9,762.10 be transferred from fund balance. The City Attorney has reviewed the subject proposal and has indicated it is legally sufficient.
- d. ~~Appointment to Zoning Board of Appeals~~
 - ~~-Staff recommends that the city commission appoint Bob Craig to the Zoning Board of Appeals (remainder of Kevin Gentner's appointment term expires November of 2023).~~
- e. Wolverine Engineers & Surveyors – Professional Services Contract Extension
 - Staff recommends that the city commission approve the First Amendment to Professional Service Contract Wolverine Engineers & Surveyors, Inc. and authorize the mayor and clerk to sign.
- f. Park Lease – Sparrow Clinton Hospital
 - Staff recommends that the city commission approve the 2nd amendment to the lease with Sparrow Clinton Hospital and authorize the mayor to sign.
- g. ~~Deputy Chief Position~~
 - ~~-Staff recommends that the city commission authorize the creation of the Deputy Chief of Police position.~~
- h. ~~City Manager Resignation~~
 - ~~-City commission's acceptance of Dave Kudwa's resignation as city manager.~~
4. Approval of Agenda:

B. PUBLIC HEARINGS:

C. PERSONS WISHING TO PRESENT TESTIMONY:

1. Public comment - agenda & non-agenda items
2. Laurie DeYoung & Coleen King, King Media – Intelligence Report
3. Andy Campbell - Baker Tilly Rate Study Presentation

D. COMMUNICATIONS:

1. Letter from the Executive Board of the Clinton County Arts Council regarding the Wilson Center
2. February 21, 2023 Letter of Support for City Manager Kudwa

E. OLD BUSINESS:

1. Ethics Ordinance Revision – Ordinance #672

F. NEW BUSINESS:

1. Fantasy Forest Playground
2. City Manager Resignation
3. Deputy Chief Position
4. Assessing Related Resolutions (#2-2023 & #3-2023) & Poverty Exemption Guidelines Resolution (#4-2023)
5. Approval of Capital Improvement Plan
6. Ott's Lot (City Parking Lot) Sign Upgrade
7. Appointment of Interim City Manager
8. City Manager Search Process Proposals
9. Appointment to Zoning Board of Appeals
10. Commissioner Comments

G. ADJOURNMENT:

YEA: Hufnagel, Ruestman, Gurski, Cocco, Dzurka

NAY: None

Motion carried.

PUBLIC HEARINGS

PERSONS WISHING TO PRESENT TESTIMONY

1. Public Comment

Mayor Cocco asked if there were any public comments.

Pete Motz, member of Parks and Recreation Board for 43 years, was present. He discussed at times the city is slow in reacting to desires and trends of recreation; recreation projects that volunteers built/funded; Pickleball at the Wilson Center; gyms are scarce and we need the Wilson Center for volleyball, basketball and youth programs; this is an opportunity to repurpose a building that is located close to the courthouse and downtown and it is a rare opportunity.

Dionne O'Dell, resident, was present regarding the Wilson Center. She discussed she works at MSU and teaches theatre; the thriving arts here in St. Johns: the Wilson Center provides an opportunity for community space; and to take that into consideration when making decisions.

Bradley Richman, Capitol City Labor Program (represents city police officers) was present. He discussed his letter that was in the agenda packet and his concerns with the memo from the chief regarding the deputy chief position.

Max Miller was present regarding the Wilson Center. He said he has lived in the community for 26 years, he coaches youth sports, and his children attend school here. He discussed his concern with the costs of rebuilding a structure that is 100 years old; parents saying why isn't there more things for my children to do in a facility that is well-kept; and to invest in parks, fields, courts, and youth and the future.

Bob Craig, 812 W. Park Street, was present regarding the Wilson Center. He discussed he is a 45-year resident; he wants to see the Wilson Center saved and remodeled for community, recreation and arts and culture; economics favorable for remodeling and not building new; the process when the school board sold the Wilson Center; and rooftop solar.

Dan Walsh, taxpayer and homeowner, was present regarding the Wilson Center. He discussed he is in opposition to the city expending tax dollars in the Wilson Center; having a price cap in place; and he heard city has not required an audit or bond on the developer.

Kevin Kramer, lived in St. Johns entire life, was present regarding the Wilson Center. He said he opposed the Wilson Center project and discussed his concern with spending money on that building.

Dan Davenport, Walker & Swegles Street, was present regarding the Wilson Center. He discussed the programs in the gym that his wife and kids participate in; the possibility of turning the space into something useful; and the culture of arts in St. Johns; being diligent; and see if it's possible to save the space in a way that serves everyone.

Susan DeRosia, resident of community and co-founder of Homegrown Productions, was present regarding the Wilson Center. She discussed their use of the auditorium; fundraising for the auditorium renovations and improvements that were made; building is a landmark; and the King Media survey result regarding housing needs and there not being a lot to do in St. Johns.

Amber Lynn was present regarding the Wilson Center. She said she was born here, is a business owner in downtown for 5 years, and is serving on the DDA currently. She discussed modern updates that are needed downtown; her opposition for the Wilson Center project and why it is a priority; high risk; her concern with the investment in the building; and events can still take place and build a new gym or complex.

Bill Tennant, resident, was present regarding the Wilson Center. He discussed the groups that have been brought into the auditorium; the potential with the gym and auditorium space; project is a win/win; moving city offices there is an important part (identity & visibility); housing & memory care are important; school board vetted Dymaxion; his high regard for Dymaxion and the city; and he recommended you continue negotiations.

Heather Hanover, 401 S. Oakland, was present regarding the Wilson Center. She discussed the DDA never had a positive value for tax increment financing; her thanks to Dave and Kristina for restructuring the district and getting tax dollars; and if the project doesn't go through how it could affect the neighborhood and downtown.

Travis Delong, lived in St. Johns his whole life, was present regarding the Wilson Center. He discussed he is a parent and athletics coach; he would like to see money spent on efficient structures; and if you want young families to invest, listen to and acknowledge and invest in kids' futures.

Alan Harr, non-resident and business owner, was present. He discussed he is in favor of having the Wilson Center stay alive; Pickleball at the Wilson Center; and whatever you decide on the building you have to promise the community you are going to put some type of center together.

Toni Zimmerman, Mint City Singers, was present. She discussed hosting shows in the Wilson Center; the chairs, curtains and lighting in the Wilson Center; now there is not a gymnastics team and you can't keep cutting things away; there are a lot of kids that would use the facility for music and theatre as well as sports.

Mayor Cocco said the city doesn't own the Wilson Center: Dymaxion purchased it. She said it is important we represent taxpayers with integrity and ensure we have a solid plan. We have over 8,000 residents to take into consideration.

2. Laurie DeYoung & Coleen King, King Media – Intelligence Report

Coleen King, President & Founder of King Media, was present. She introduced Laurie DeYoung, Vice President.

Ms. DeYoung said they have been working with the city for the past year or so on marketing and communications and are helping the city develop a comprehensive approach. She said it is important to conduct foundational research: identify opportunities and challenges; define city's unique qualities and strengths; and understand resident and non-resident perceptions of the city and its communication efforts. She discussed research: individual interviews, a focus group and online survey. She said they provided a full intelligence report about 3 weeks ago and are here to address specific questions: demographics compared to census data; how did they reach non-electronic users; open-ended survey questions and where we should focus; and how to use Facebook to push more people to the website; common words were friendly, small, safe & community; strong need for affordable housing; residents' opinions on downtown businesses and things to do; She discussed the mega-themes: pride, place, people and communication. She said they are working on communication and marketing plans for the city. She said 50% of respondents are not happy with the city's communication with them and we can work towards solving this with communication that is trustworthy, consistent, and sustainable. She discussed defining your brand that is built on your authentic strengths and is designed to grow with you. Top 3-5 areas the city should address: roads and streets, housing, activities and the downtown. She said public safety is not the most pressing concern, more than 70% satisfied or highly satisfied with public safety.

Mayor Cocco thanked Laurie and Coleen for work they are doing. She said 51% of the community is interested in better communication and it is timely to have your team partnering with us.

Commissioner Hufnagel thanked Laurie and Coleen for work they have done for the last 1½ years. He discussed the results of the survey, how our communication needs more attention; perception & priorities; and this allows us to put together a plan and try to find different strategies to get information out.

Commissioner Dzurka thanked Laurie for her answers to his questions and said he is looking forward to the plan.

3. Andy Campbell - Baker Tilly Rate Study Presentation

Andy Campbell, Baker Tilly, was present. He said they have worked for the city for about ten years now on bond financing and water/sewer rates. He discussed the impact of Glanbia coming on (only impacted the water side). He discussed on the water side: operating expense history; increases in the past few years (Glanbia), utilities going up, chemical costs going up; recommending inflationary increases going forward; combined debt service for water/sewer; no leniency on the debt for the next 10 years; capital improvement funding; water fund in good position to take on improvements with cash (due to Glanbia); tough bidding environment right now; a lot of pressure on costs coming up, Federal; sewer side – funding sewer improvements; not in as good of place cash-wise; \$30 million plus in projects in the next ten years or so; put together rate analysis; recommend SRF funding for some of those projects; Clean Water State Revolving Fund; interest rates have doubled from what you were paying previously; SRF interest rate going up; previously city did not qualify for disadvantaged community – overburden status, but city now meets that status and qualifies for grant; 25-50% grant they typically see; application due May 1st for SRF – sewer side; inflationary increase 3-5%, 3-4% is realistic – 3% is minimum they recommend.

There was a discussion of:

- Baker Tilly has worked with the city for 10 years.
- We are being very conservative.
- A consistent approach is important to keep going forward.
- Lot of communities that are doing massive rate increases right now.
- The city is just above the median bill in the state; a lot of communities that have low rates that are waiting for the bill to come.
- Costs are on the rise; indexes are out of control; it is very difficult right now.
- Getting bids that are only good for 10-15 days.
- Higher cost on projects, equipment, and vehicle prices.
- Clean Water money is not a guarantee; need to make a project competitive in the market.

COMMUNICATIONS

1. Letter from the Executive Board of the Clinton County Arts Council regarding the Wilson Center
2. February 21, 2023 Letter of Support for City Manager Kudwa

Motion by Commissioner Dzurka seconded by Commissioner Ruestman that the city commission acknowledge receipt of communications.

YEA: Hufnagel, Ruestman, Gurski, Cocco, Dzurka

NAY: None

Motion carried.

OLD BUSINESS1. Ethics Ordinance Revision – Ordinance #672

Attorney Seurnyck was present on Zoom. She said this would revise the process for ethics complaints between those who report to the city manager and those who don't report to the city manager. She said in the packet the commission has both a redline version and clean version of the ordinance.

City Manager Kudwa said this is the second reading of the ordinance and there were no changes from the first reading.

Motion by Commissioner Ruestman seconded by Commissioner Hufnagel that the city commission adopt Ordinance #672.

YEA: Hufnagel, Ruestman, Gurski, Cocco, Dzurka

NAY: None

Motion carried.

NEW BUSINESS1. Fantasy Forest Playground

Jason Denovich, St. Johns Area Community Fund, was present. He discussed: videos and renderings of a possible replacement for Fantasy Forest and what it could look like; condition of current structure; St. Johns Area Community Fund and building an endowment; Stephanie Haber is here from Great Lakes Recreation; having parks that serve everyone; the city park leaves out disabled and handicapped; love to see it replaced with one that is universally accessible; materials are aluminum, plastic & poly. He said there is no action item tonight. You own the property and is this the type of park you would like to see replaced? He said the estimate is \$1.8 million and they need to know how much the city's contribution is. He said the community fund board will fundraise for you. He discussed priorities and the Wilson Center or parks and sports complex and a survey. He said this project is going to make us a destination. He said he doesn't know why we haven't ever asked for a parks and recreation millage. He said King Media is an amazing resource that you have.

Mayor Cocco thanked him and said she would entertain a motion to research the idea of a millage and begin to speak to King Media to find out what our community wants us to invest in.

There was a discussion of:

- Not wanting to see this become a competition between projects.
- Support the park and accessibility and equity.
- We need to look into how do we meets the needs of our community.
- The Parks and Recreation Board has conversations about priorities and working with that body.
- There are processes in respect to putting together plans; doesn't have to be mutually exclusive; a millage could also include part of the activities in the gym.
- Since project can be phased in, once people see success in phase 1 it builds further support.

There was a discussion of having the Parks and Recreation Board bring a motion forward

Motion by Commissioner Gurski seconded by Commissioner Ruestman that the city commission refer this to the parks and recreation board for a recommendation.

YEA: Hufnagel, Ruestman, Gurski, Cocco, Dzurka

NAY: None

Motion carried.

2. City Manager Resignation

Mayor Cocco said Dave loves to roll up his sleeves and his longevity will be felt for years to come. She said with regret, she would entertain a motion to accept his resignation.

City Manager Kudwa discussed the fun that people have on the projects they work on. He said it is not just recreation, but with policy development. He discussed the fun we have had over his ten years working for the city; we do work and get things done and that is what he has loved about his time here; cool projects; and people love the community so much. He said thank you for the opportunity and it is time for him to move on. He said how much it meant for him to be here when his family was growing up. Thank you for your comments.

Motion by Commissioner Ruestman seconded by Commissioner Gurski that the city commission accept the letter of resignation.

YEA: Hufnagel, Ruestman, Gurski, Cocco, Dzurka

NAY: None

Motion carried.

3. Deputy Chief Position

Mayor Cocco said she appreciated the union representative being here. She said she also appreciated that over 70% residents are satisfied and that is evident of the leadership. In our community, we love police. She said we continue to support our leader and what he believes is best for our community.

Commissioner Dzurka said he appreciated the union coming forward. He said he feels that we are end-rounding the process and what was discussed at the bargaining table is unresolved. He said the officers deserve an opportunity to work within union. He won't be supporting this.

Commissioner Hufnagel said it is important to provide the chief his discretion. He said you are talking about somebody who is the right hand of the position and he needs someone he feels he can trust and carry out the things he wants to be done. He said he completely supports the chief and trusts his judgment in what he needs to serve the community.

Commissioner Gurski said good points were brought up tonight. He said currently the lieutenant position is not in the union. He said it is really a title situation at this point and he doesn't see the value of adding assistant chief. He said he is for the position, but maybe just not the title of assistant chief.

Commissioner Ruestman said she trusts the chief and his recommendation. She said being in management, structure does matter. She said she feels like he should be able to choose how his management team is structured and supports the recommendation.

Motion by Commissioner Hufnagel seconded by Commissioner Ruestman that the city commission authorize the creation of the Deputy Chief of Police position.

YEA: Hufnagel, Ruestman, Cocco

NAY: Gurski, Dzurka

Motion carried.

4. Assessing Related Resolutions (#2-2023 & #3-2023) & Poverty Exemption Guidelines Resolution (#4-2023)

Treasurer Kinde said these resolutions are housekeeping items: Board of Review alternate dates, income guidelines and asset tests, and allowing property owners to appeal by letter.

Motion by Commissioner Ruestman seconded by Commissioner Gurski that the city commission adopt Resolution #2-2023.

YEA: Hufnagel, Ruestman, Gurski, Cocco, Dzurka

NAY: None

Motion carried.

Motion by Commissioner Dzurka seconded by Commissioner Hufnagel that the city commission adopt Resolution #3-2023.

YEA: Hufnagel, Ruestman, Gurski, Cocco, Dzurka

NAY: None

Motion carried.

Motion by Commissioner Gurski seconded by Commissioner Ruestman that the city commission adopt Resolution #4-2023.

YEA: Hufnagel, Ruestman, Gurski, Cocco, Dzurka

NAY: None

Motion carried.

3. Approval of Capital Improvement Plan

City Manager Kudwa said this is an annual city-wide process that began in 2017. He discussed the timeline of the process: engaging department heads, plan goes to finance committee and planning commission (statutory requirement), and then the city commission approves document. He thanked staff, the planning commission and city commission for their input. He said the planning commission has recommended approval as presented.

Commissioner Hufnagel thanked staff and said they do a great job in being proactive and he appreciates their judgment. He also thanked the planning commission.

Motion by Commissioner Dzurka seconded by Commissioner Hufnagel that the city commission approve the capital improvement plan as presented.

YEA: Hufnagel, Ruestman, Gurski, Cocco, Dzurka

NAY: None

Motion carried.

4. Ott's Lot (City Parking Lot) Sign Upgrade

Director Smith said in 1981 the lot that was behind the police department honored Robert Ott, a longtime sergeant with the police department. He said the sign needs to be replaced and he worked with Michigan Graphics and Signs on a couple of options. He said it includes the normal rules and regulations of the parking lot.

There was a discussion of:

- Move the words “dedicated” to very bottom or very top.

- Talk to King Media about this; ideal spot for QR code.
- Meet ADA requirements for font and color

DDA Director Hanover said they are making a lot of changes in the downtown parking plan and haven't come up with a permanent plan.

City Manager Kudwa said we need to take a broader look at wayfinding in the city and can use King Media to come up with a branding. The cost to do this one sign is not significant and we will come back to the commission with a broader discussion.

7. Appointment of Interim City Manager

City Manager Kudwa said his last day will be March 10th and beginning March 13th we need someone to take over in an official capacity. He said Kristina is a big part of the transition process. He said he had done that twice in his time here and it is important to have continuity. He said the city has an amazing staff who is talented and experienced.

Mayor Cocco said Kristina is the deputy city manager and an excellent candidate to be interim. If agreement, create some kind of a package we can present. A couple of things that would need to be included: compensation for additional responsibilities; suggest support (McKenna or other contractors).

Commissioner Dzurka said Kristina has continued to serve our city in collaboration with Dave and is highly qualified and has an interest in this work. He said he would like to place a motion for Kristina Kinde to be our interim city manager.

Commissioner Gurski said he had a friendly amendment to tie into that a compensation piece. He said with the city manager market it is unknown how long that will take. He said he recommends at the start of March 13th we move Kristina Kinde's wage in line with the city manager's wage at his exit.

There was a discussion of:

- If we look at the current city manager salary it would be about a 10.25% raise; she would also be eligible for an increase on July 1st and it is important to address the July 1st date as well.
 - Bonus for time she is acting in both positions and pay her a certain percent of salary each week she is double duty; shouldn't be a new base salary.
 - How to process the increase.
- It would be a temporary rate adjustment based on percentage.

Commissioner Hufnagel said the precedence we set so far is that the assistant city manager would take on the interim role. He said he thinks she has an interest in that in the future.

Motion by Commissioner Dzurka seconded by Commissioner Hufnagel that the city commission appoint Kristina Kinde as Interim City Manager with a temporary percentage rate increase equal to the city manager's salary.

YEA: Hufnagel, Ruestman, Gurski, Cocco, Dzurka

NAY: None

Motion carried.

8. City Manager Search Process Proposals

City Manager Kudwa said we have pretty good proposals and need to get the process started. Staff would need what direction you would like to go.

Mayor Cocco said she was hoping to potentially have pros/cons.

There was a discussion of:

- City Manager Kudwa's experience as a candidate was good working with Mr. Walsh and at the staff level the communication was really good and the process went well.
- Mr. Walsh provided adequate service last time and his more recent familiarity with us will make it easier to jump back in; MML thought ran a decent process, but they would have to get up to speed as well; MML is pretty straight forward on their fee, they don't waiver.
- History on both sides with Frank Walsh and MML; MML does a great job; Frank Walsh does a great job; Frank Walsh lowered his numbers.
- Being comfortable with Frank; price is prohibitive with the MML;
- No history with the other entities.

Motion by Commissioner Ruestman seconded by Commissioner Gurski that the city commission extend an offer to Frank Walsh to run the city manager search.

YEA: Hufnagel, Ruestman, Gurski, Cocco, Dzurka

NAY: None

Motion carried.

9. Appointment to Zoning Board of Appeals

Commissioner Dzurka asked if anyone else has applied.

Staff said no.

Commissioner Dzurka said he wanted to make sure we are doing all we can in terms of outreach. He recommended bringing this back to the next meeting and give it one more shot.

City Manager Kudwa said there are many members on that board that would look to be replaced. He said there are a couple in particular who would entertain being removed for someone else that would want to come in. He said Bob is a really great candidate for that. He said we can do both of what you are asking.

Motion by Commissioner Dzurka seconded by Commissioner Hufnagel that the city commission appoint Bob Craig to the Zoning Board of Appeals (term expires November of 2023).

YEA: Hufnagel, Ruestman, Gurski, Cocco, Dzurka

NAY: None

Motion carried.

Mayor Cocco said staff has been working with King Media on additional education on boards/committees that Commissioner Ruestman requested; it is in the works.

10. Commissioner Comments

Commissioner Gurski said we want to keep in mind the relevancy of our rates. He said that is a long-standing concern of his. He said it does not mean you have an open blank checkbook and we need to get better at spreading our dollars where we can. He discussed decisions that were made many years ago. He said we need to look at all funding mechanisms in the DPS department. He discussed that high rates will start to hinder development and rates become a concern quickly. We need to keep things moving forward.

Commissioner Ruestman said we received great information from King Media and hopefully we keep moving forward with that. She said the more transparent we can be and easier we can make it to find things. She said she is hoping we improve our communication and is excited to see the proposal.

Commissioner Hufnagel thanked Dave. He said it was great working with him during his time on the city commission. He said he is an outstanding asset and the long list of projects Dave has been involved with: streets program, Midwest Cheese actually decided to come to St. Johns, etc. He said we are going to miss him and wish him well. Thank you to Kristina for being willing to take on the extra responsibilities. He said he is

excited about communications and we need to prioritize this and what tools/resources are going to be needed. He wanted to reiterate his support for the police chief. He said he is a man of integrity and a true professional and he appreciates what he has brought to the City of St. Johns.

Commissioner Dzurka said he appreciated the comments and dialog this evening. He discussed the challenges to do what is best with taxpayer dollars. He acknowledged Dave Kudwa and said he was the first person he ever encountered at city hall and he appreciated the partnership. He acknowledged Dave, the DPW and Consumers Energy and discussed in the last month power poles that needed to go up. He said he had a chance to attend a meeting on Michigan high speed internet and said there are opportunities for Clinton County, but not for the city. He said there are challenges in the city with high-speed internet, but we are not grant eligible at this time. He said that is a huge economic development tool. He also thanked Justin & Jordan for the tours of the water and wastewater plants.

Mayor Cocco acknowledged Dave. She said she appreciated the commissioners too and said we have a great team here. She acknowledged everyone's participation. She said comments from the community are necessary and valuable. She said she wanted to combine a lot of knowledge she received tonight: building costs doubling, making wise choices, spend tax dollars appropriately. She said it was great to hear from different generations. She said we are moving into complex ideas on the Wilson Center and we are losing our project manager. She said she would like to invite the idea we consider putting the project on pause until we are sure. She said she would be remiss if she didn't ask to entertain a motion to pause this project until we can make sure we have our feet under us.

Commissioner Hufnagel said he disagreed with that. We need to be cautious because putting it on hold would be completely detrimental to the project itself. He said he doesn't feel comfortable with taking action during the commissioner comments section of the meeting.

ADJOURNMENT

Motion by Commissioner Gurski seconded by Commissioner Ruestman that the meeting be adjourned.

YEA: Hufnagel, Ruestman, Gurski, Cocco, Dzurka

NAY: None

Motion carried.

The meeting was adjourned at 8:47 p.m.

CITY OF ST. JOHNS
CITY COMMISSION MINUTES

SPECIAL MEETING

MARCH 7, 2023

The special meeting of the St. Johns City Commission was called to order by Mayor Cocco at 5:00 p.m. at the St. Johns Police Department, 409 South Whittemore Street, St. Johns, Michigan.

COMMISSIONERS PRESENT: Eric Hufnagel, Jean Ruestman, Brad Gurski, Roberta Cocco, Scott Dzurka

COMMISSIONERS ABSENT: None

STAFF PRESENT: Mindy J. Seavey, City Clerk; Kristina Kinde, Treasurer; David Kirk, Police Chief; Michael Homier, Attorney (Zoom); Scott Hogan, Attorney (Zoom)

PUBLIC COMMENT

Tom Webb was present regarding the Wilson Center. He discussed comments regarding the need for more gym space, soccer fields, recreation opportunities; Wilson Center gym has a divider; needs creative scheduling; gym was previously used by the youth teams; he was on the committee to raise the funds for the auditorium; the high school auditorium is so hard to get into; and he looks at the Wilson Center as a beginning and adding more opportunities for people in the community.

Tom Karek, city resident, was present regarding the Wilson Center. He said he is proud of our new mayor and appreciate them making hard decisions. He discussed he is neutral on the Wilson Center; wants to hear the numbers on renovating; asbestos and lead paint; make sure we have our numbers straight; and he loves the school gym and stage.

Susan DeRosia was present regarding the Wilson Center. She discussed it is not a question of arts vs. sports or people who have used Wilson Center vs. children coming up, but a matter of saving a jewel; one of the surviving stages with wonderful acoustics and new lighting; and it would cost far more to replace that.

Max Miller was present regarding the Wilson Center. He said he has lived here for 26 years. He discussed he is 100% for the youth; in old buildings you find stuff you didn't foresee; Dymaxion bought this building and why is the city putting \$3 million into a building that someone else owns; Dave Kudwa was the head of this and is leaving; hold

**CITY COMMISSION MINUTES
SPECIAL MEETING**

MARCH 7, 2023

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back; there are other buildings in the community we can look at to put \$3 million into; and take a step back and recalculate things.

Amber Lynn, business owner & DDA, was present regarding the Wilson Center. She discussed the city hired a marketing agency to do a survey; the survey results showed our citizens' top priority: Downtown development and recreation for the youth to do; ask to not to continue with the Wilson Center project; \$3.5 million you can use the same amount for a new auditorium and new gym; Fantasy Forest is falling apart; and why would the building be a priority over what the people want.

Shelly Gunther was present regarding the Wilson Center. She said she has lived here a number of years. She discussed there is very little transparency about any of this; people are saying these numbers, but very little is coming from you; if we lose the theatre, we will probably never have another one; we are not sitting here with two choices: this building already exists and has a gym and theatre; and think hard before you get rid of this.

David Link was present regarding the Wilson Center. He said he has been a resident for 20 years. He discussed he has seen a growth and area of support for the arts that he hasn't seen in a lot of other areas; involved in the St. Johns Community Band and they used auditorium; beautiful venue and great place; he would like to see the city continue to support growth of arts in the area; the school does great job of dividing money between sports and arts and it sets St. Johns apart; and it is a gem and it would be a real shame to lose something we already have.

Heather Hanover was present regarding the Wilson Center. She applauded city staff and the commission on the great work they have been doing to get Wilson Center over the hump. She discussed bringing the building back on the tax rolls; there are not enough apartments in St. Johns; more apartments might bring more students into the school system; people who want to downsize; and when entities have more tax dollars, they put money towards other things.

Deborah McCarty, Mint City Singers, was present to speak on behalf of the Wilson Center. She discussed the beautiful auditorium and acoustics; a lot of money has been raised and put into the facility. She questioned: if the city is making a decision tonight; do you have enough information to make a decision; is a budget put together; is the community aware; does the community have information; where is the survey that was done; how many people were surveyed; what age groups; was it demonstrative of the age range of community; was it a significant sample of the community. She invited them to come to their performance on March 31st and make their decision after that. She

**CITY COMMISSION MINUTES
SPECIAL MEETING**

MARCH 7, 2023

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discussed how much it means to some of the people here; it may not mean the same to everyone; and a lot of people have invested a lot of time and money.

Mayor Cocco said we have been working on communication for some time.

Larry Zuker was present regarding the Wilson Center. He said he is a lifelong resident. He said in the event that the city backs out of the deal, are we open to any lawsuits, and what are the concerns there. He discussed it makes financial sense to not build a sports facility the community can't afford and the spot in Lansing is a great example of that: hockey rink, soccer fields and they went broke and he doesn't see that as money well spent in the community; turn into a liability by neglecting the opportunity to move forward; and he is in favor of proceeding with the project and there is a lot of merit to that.

APPROVAL OF AGENDA

Motion by Commissioner Gurski seconded by Commissioner Dzurka that the city commission approve the agenda as presented.

YEA: Hufnagel, Ruestman, Gurski, Cocco, Dzurka

NAY: None

Motion carried.

SRF FUNDING

Treasurer Kinde said this is following up from the presentation from Baker Tilly. She discussed the State Revolving Fund (SRF) and said there is a wastewater project we would like to submit for a potential loan and forgiveness. We need engineers to do the work and the SRF application is due May 1st.

Supervisor Whitford said he worked with Fishback to put together a proposal for a project funding plan to the State for SRF funding. He discussed ARPA funding is funneled there; principal forgiveness and low interest loan rates; worst scenario is 2.75%; a bond is 4.5%; extremely competitive: last year 42 out of 69 applications and this year 250 with an intent to apply; forgiveness last year ranged from 10% to 100%; doesn't guarantee we are going to get selected; the State has a criteria range with 5 different categories for points; a very tight time schedule: draft project plan due in two weeks, final public ad by April 7th; April 24th city commission meeting to pass a resolution, and due by May 1st to the state; we anticipate October or November we will hear award or denial of funding. He said Foster Swift reviewed the contract and their comments came back

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SPECIAL MEETING**

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today; Fishback said they can make the changes. He said if approved tonight it would be pending Foster Swift's comments in the contract.

Commissioner Gurski urged the consideration of what is going to score the best for us. If UV is placed in the project, it greatly increases the potential of getting funded.

Commissioner Hufnagel said in the past we haven't been eligible.

Treasurer Kinde said this is the first year our wastewater is qualified, we have the disadvantaged status.

Supervisor Whitford said we receive 20 more points for the disadvantaged community status.

Motion by Commissioner Gurski seconded by Commissioner Dzurka that the city commission approve the Fishbeck Professional Services Agreement pending Foster Swift changes made to the contract.

YEA: Hufnagel, Ruestman, Gurski, Cocco, Dzurka

NAY: None

Motion carried.

CONDO DOCUMENT RESPONSE LETTER

Attorney Scott Hogan was present by Zoom. He said the city signed a purchase agreement for the Wilson Center building on September 15th. The city has 30 days after receiving the condo docs to send objections. We received them on February 7th and our response deadline is March 9th. He said he prepared a letter with some objections and we can go through those.

Commissioner Gurski said with the office space, do we have to dissect that out prior to condo docs being approved?

Attorney Hogan said the city can withdraw on the office space any time before the closing.

Commissioner Dzurka asked for clarification on how the cost is assessed based on square footage and city offices vs. no city offices.

Attorney Hogan said the 50/50 split is more convenient, but there are other ways of looking at how the assessment could be charged: square foot of 3 spaces (gym,

**CITY COMMISSION MINUTES
SPECIAL MEETING**

MARCH 7, 2023

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auditorium, city offices) - 32% city; square foot of 2 spaces (gym, auditorium) - 26% city; 2 stories - 41% for all 3 spaces; 2 stories - 34% for 2 spaces.

Mayor Cocco said if we approve the condo docs today and find there isn't an appetite to move city hall, will we have to go back to condo docs to do more revisions? She said she wonders about the common spaces, liability and risks sharing structure and foundation.

Attorney Hogan said Exhibit B would have to be revised and there may be some adjustments to the common spaces too.

Commissioner Hufnagel asked what amount the city would have to pay if we didn't move forward on the condo doc decision.

Attorney Hogan said if the parties are unable to agree upon docs and worked in good faith, the city could terminate the purchase agreement and get the return of \$200,000 earnest money. If negotiating in bad faith or city backed out, the city would forfeit the \$200,000 and pay ½ cost of condo docs, possibly other claims. He said he doesn't think they would be successful claims against the city.

There was a discussion of:

- Item #7, design details
- Item #8, 50/50 vote; division of the association assessments

CLOSED SESSION TO DISCUSS A WRITTEN ATTORNEY/CLIENT COMMUNICATION

Motion by Commissioner Gurski seconded by Commissioner Dzurka that the city commission go into closed session to discuss a written attorney/client communication.

Roll call vote:

YEA: Dzurka

YEA: Gurski

YEA: Hufnagel

YEA: Ruestman

YEA: Cocco

Motion carried.

The commission went into closed session at 5:44 p.m.

Motion by Commissioner Gurski seconded by Commissioner Ruestman that the city commission go into open session.

**CITY COMMISSION MINUTES
SPECIAL MEETING**

MARCH 7, 2023

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YEA: Hufnagel, Ruestman, Gurski, Cocco, Dzurka
NAY: None
Motion carried.

The meeting went back into open session at 6:32 p.m.

Motion by Commissioner Dzurka seconded by Commissioner Hufnagel that the city commission send the objections to the condo documents to Dymaxion and direct staff and city attorney to continue with negotiations as outlined in closed session.

YEA: Hufnagel, Ruestman, Gurski, Cocco, Dzurka
NAY: None
Motion carried.

Motion by Commissioner Dzurka seconded by Commissioner Gurski that the city commission adjourn for a five-minute recess.

YEA: Hufnagel, Ruestman, Gurski, Cocco, Dzurka
NAY: None
Motion carried.

There was a recess at 6:33 p.m.

STRATEGIC PLANNING

Strategic Planning Session #2

- Welcome and Meeting Overview (Emily Houk, Facilitator, Research to Practice Consulting)
- Review: meeting 1 themes, group agreements
- Goal and activity identification
- Next steps: setting up another meeting

ADJOURNMENT

Motion by Commissioner Gurski seconded by Commissioner Dzurka that the meeting be adjourned.

YEA: Hufnagel, Ruestman, Gurski, Cocco, Dzurka
NAY: None
Motion carried.

The meeting was adjourned at 8:11 p.m.



MEMORANDUM
CITY OF ST. JOHNS
Department of Public Services

Date March 8, 2023

To: Kristina Kinde, Interim City Manager
Justin Smith, Director of Public Services

From: Jeremy Ritter, Public Works Supervisor

Subject: Wombat Services, LLC to mow and re-established flow lines in two detention basins

The two detention basins are the Johnella Subdivision and the Townsend Rd/Sunview basin. This mowing process is carried out every few years to keep the basins functioning as they were originally designed. The two basins structures are designed to work when a large amount of rain falls and the ditch water line rises. The high ditch levels will swell to a point where the basin's inlet will allow water to enter and be stored until the ditch level lowers, the stored water is then released back into the stream as the water level goes back to its normal flow.

Wombat Services has a machine which allows them to enter the basins to complete the mowing process and re-establish the flow lines with a minimal footprint. The mowing portion is a rotary cutter attachment that cuts down the weeds, trees, and cattails which will allow for more capacity of the basins. Then the operator is able to change out the attachment with a different attachment that is able to dig with a bucket to re-establish the flow channels to allow the water to flow as designed.

Quote to complete the maintenance of the two basins are:

Johnella Subdivision basin	\$12,800
Townsend Rd. and Sunview basin	\$6,300

Total \$19,100

The recommendation would be to use Wombat Services LCC quote of \$19,100 for the mowing and re-established flow channels of the two basins . Staff would use funds out of current 2022-2023 budget lines 203-463-818.022 and line 202-463-737.003 to fund this maintenance project.



MEMORANDUM
CITY OF ST. JOHNS
Department of Public Services

Date: March 09, 2023

Attn: Kristina Kinde, Interim City Manager
Justin Smith, Director of Public Services

From: Jordan Whitford, Wastewater Division Supervisor
Jeremy Ritter, DPW Division Supervisor
Calvin Galecka, Water Division Supervisor

Re: 2023-2025 Street Project – Utility System Investigations and Assessments

As we again prepare for another round of street improvements, it is important that we continue the assessment of our storm and sanitary collection systems as well meet the new lead service line requirements from EGLE. The assessments performed include both televising and assessing the condition of the sanitary and storm mains, as well as investigating and assessing the material used for the water service lines. Similar to the last five years for sanitary and storm our goal is to prioritize the areas within the street project, then move outward from there with remaining budgeted funds. Water service lines will be investigated over a two-year span covering approximately 170 per year.

Implementing this project will not only meet requirements set forth by EGLE but will also grant city staff a better understanding of the conditions of our sanitary and storm systems. This will also allow staff to make needed repairs prior to any surface work being done, and plan for future infrastructure improvements. Per our purchasing policy bids were solicited from three reputable contractors and are broken down on the attached spreadsheet.

Quotes:	Taplin Group	\$102,161.44
	Plummers Environmental Services	\$109,016.85
	Corby Energy Services	\$144,820.00

We worked with Plumbers through the last five-year street program and for years prior to that. They are currently our on-call contractor for jobs we don't have the equipment for, and have played a big part into the development of our GIS system. Staff has not doubt and feels Plummers is the best suited to complete the work we have for them over the next three years.

Recommendation: City Commission approves the three-year contract with Plummers Environmental Services to perform sanitary, storm and water services per their unit pricing listed in the attached contract. Budgeted funds are available for this project The city attorney has review subject proposal and has indicated it is legally sufficient as to form and content.

Contact Name:	Jordan Whitford	Quote #:	Q-43C-76E-FDD0
Customer Name:	City of St. Johns	Date:	01/26/2023
Customer Address:	PO Box 477 100 East State St., Suite 1100 St. Johns, MI 48879	Prepared By:	Jeff Root
Office Phone:	(989) 224-8944	Office Phone:	616-877-3930
Mobile Phone:	(989) 292-0604	Mobile Phone:	(616) 813-0873
Customer Email:	jwhitford@ci.saint-johns.mi.us	Email:	jroot@plummersenv.com

Statement of Work:

WE HEREBY SUBMIT a proposal to Clean and Video Inspect sewer in the City of St. Johns along with Hydro-Excavation of water services. We will honor our prices for a 3 year period.

All pipeline video inspections will be performed by one of our NASSCO certified PACP inspectors. All sewers will be inspected utilizing one of our IBAK mainline tractor cameras. Inspections will be recorded and PACP coded through Pipe Logix, a NASSCO certified software. We will provide you with a digital copy of the video inspections along with the PACP database.

Sewer cleaning will be completed by high pressure water jetting and vacuuming the debris from the sewer. We will provide you with one of our Vactor 2100+ combination jet/vacuum machines and operators to clean each section of sewer before the sewer is inspected. All solid waste removed from the sewer will be disposed of at the City of St. Johns WWTP at no cost to PES. Water for jetting will be provided from convenient location at no cost to PES.

Price does not include bypass pumping or dewatering.

Storm Sewer Cleaning / Root Cutting will be completed after a video inspection and at the discretion of the City. Price does not include Catch Basin Cleaning or Catch Basin Lead Televising.

Plummer's Environmental Services will provide high velocity vacuum truck with operator and assistant to hydro excavate around each water stop box (Both Sides). We will collect information and input into GIS along with pictures. The work will be performed during our normal business hours of 8 am to 5 pm. The disposal location of the waste will be at a designated by the customer or at WWTP. Price does not include concrete or asphalt removal. City to back fill and restore excavated area.

Services:				
Description	Est Qty	Price	UOM	Ext Amt
8"-48" Storm Sewer Inspection	0.00	\$0.950000	LF	\$0.00
6"-12" Storm Sewer Cleaning (As needed)	0.00	\$2.950000	LF	\$0.00
15"-21" Storm Sewer Cleaning (As needed)	0.00	\$3.850000	LF	\$0.00
24"-30" Storm Sewer Cleaning (As needed)	0.00	\$5.100000	LF	\$0.00
36"-48" Storm Sewer Cleaning (As needed)	0.00	\$6.750000	LF	\$0.00
6"-12" LIGHT Clean and TV Sanitary Sewer	0.00	\$1.500000	LF	\$0.00
6"-12" HEAVY Clean and TV Sanitary Sewer	0.00	\$3.000000	LF	\$0.00
15"-21" LIGHT Clean and TV Sanitary Sewer	0.00	\$2.000000	LF	\$0.00
15"-21" HEAVY Clean and TV Sanitary Sewer	0.00	\$3.500000	LF	\$0.00
Sanitary Easement / Traffic Control Adder	0.00	\$1.000000	LF	\$0.00
Water Service Material Investigation at Curb Stop with Hydro-Excavation (Each Address)	340.00	\$235.000000	EA	\$79,900.00
Manhole Inspection (Level 2)	0.00	\$210.000000	EA	\$0.00
Sub-Total:				\$79,900.00

Equipment:							
Description	Mob Type	Est Mobe Qty	Mobe Price	Est Qty	Price	UOM	Ext Amt
Storm Sewer Root Cutting/ Mechanical Cutting Hourly (As needed)	Flat Mobilization	0.00	\$600.00	0.00	\$410.000000	HR	\$0.00
Water Service Material Investigation at Main (Gooseneck) with Hydro-Excavation (Hourly as needed)	Flat Mobilization	0.00	\$500.00	0.00	\$275.000000	HR	\$0.00
Sub-Total:							\$0.00

Summary of Estimated Charges

Category	Est Total
Services	\$79,900.00
Equipment	\$0.00
Total Estimated Charges	\$79,900.00

STANDARD TERMS AND CONDITIONS

In this agreement "you", "your" and the "Customer" refer to the person signing this Contract ("Contract") with Plummer's Environmental Services Inc. ("Company").

1. You agree to purchase the material and services described in this Contract from the Company at the price and according to the terms stated in this Contract.

2. A service charge of 1 1/2% per month (18% per year) will be paid on past due amounts starting thirty (30) days after the invoice date. If Customer desires to pay invoice by credit card, an additional 3% credit card processing fee will be added to Customer's invoice.

3. All material is guaranteed to be as specified. All work to be completed in a good, workmanlike manner according to standard practices and using the standard of care commonly used by environmental professionals and by-product transporters practicing in the State of Michigan. Company's workers are fully covered by Worker's Compensation insurance. In the event of cancellation of a job in progress by Customer, Customer will reimburse Company for all labor and/or material costs. Company shall have the right to stop work if payments are not made when due. Company shall be held harmless from all liabilities related to the hold up during such period.
4. All terms and conditions in this Contract supersede any other terms and conditions, prior proposals or prior bids. This written Contract constitutes the complete integration of all statements and agreements relating to the Contract and there are no representations or warranties other than those expressly incorporated herein nor is this Contract dependent upon or subject to any conditions or approvals precedent or subsequent not herein stated. No subsequent agreement relating hereto shall be binding upon Customer or Company unless in writing and signed by the party being bound.
5. If Customer requests changes, alteration or deviation from specifications involving extra cost, such work will only be performed upon written change orders, and will become an extra charge over and above the Contract price. The parties may, by giving written notice to the other, terminate this Contract if either breaches this Contract and such breach is not cured within a reasonable period (in any event such period not to exceed thirty days) or such breach is not capable of being cured within a reasonable period.
6. The actual completion time is contingent upon access to Customer's facility, labor strikes, material shortages, accidents, weather, acts of God, changes caused by a body of government, and the like. Change orders will affect the time necessary for completion. Company shall not be liable for any damages suffered by Customer as a result of any delay occasioned by these contingencies.
- 7. EXCEPT AS EXPRESSLY STATED HEREIN, THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, BY OPERATIONS OF LAW OR OTHERWISE, OF THE MATERIALS OR SERVICES FURNISHED UNDER THIS CONTRACT BY COMPANY. COMPANY SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OF FITNESS FOR A PARTICULAR PURPOSE OR ARISING FROM A COURSE OF DEALING OR USAGE OR TRADE. COMPANY SHALL HAVE NO OTHER LIABILITY TO CUSTOMER IN CONNECTION WITH THE MATERIALS OR SERVICES FURNISHED UNDER THIS CONTRACT, INCLUDING WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ANY LIABILITY FOR DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OR ANY INJURY OR DAMAGES TO PERSONS AND PROPERTY.**
8. Customer shall maintain at its sole cost and expense insurance policies meeting the minimum insurance levels set forth below and shall provide certificates of such insurance evidencing the limits and expiration dates upon request;
- a. Worker's Compensations - in accordance with applicable statutory requirements;
- b. Commercial General Liability - not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate,
- c. Automobile Liability - not less than \$1,000,000 per occurrence;
- All policies of insurance shall name Plummer's Environmental Services, Inc. as an additional insured.
9. All issues concerning the construction, validity, enforcement and interpretation of this Contract shall be governed by and construed in accordance with the laws of the State of Michigan. The parties agree that venue is hereby exclusively established in the County of Kent, State of Michigan for any dispute or claim arising out of this Contract. Company, if it prevails in any action shall be entitled to all reasonable attorneys' fees, costs and other expenses incurred in such action and in any subsequent efforts to collect the amount awarded. If Company does not prevail, Customer shall be entitled to all reasonable attorneys' fees, cost and other expenses incurred in such action and in any subsequent efforts to collect the amount awarded.
10. Any portion of this Contract found to be not enforceable by a court of competent jurisdiction will not invalidate the remaining portions of this Contract. Any term of this Contract which is found to be ambiguous shall not be construed against the Company. Nothing herein shall exclude any other rights or remedies to which Company is entitled by law or equity.
11. Customer agrees to indemnify and hold Company harmless, and assume any legal liability to defend Company, its agents, employees, officers and members from any claim or action by any third party arising out of the performance of work pursuant to this Contract except those claims or actions arising out of incidents caused in whole or in part, by employees or agents of the Company.
12. All the terms and provisions of this Contract shall be binding upon, shall inure to the benefit of, and shall be enforceable by the respective heirs, beneficiaries, personal representatives, successors and assigns of the parties to this Contract. This Contract is for the benefit of the parties, their successors and assigns, and is not for the benefit of any third party.
13. Plummer's Environmental Services is not responsible for any sewer back up on private or commercial properties while cleaning sewer lines due to inadequate ventilation on the owners sewer.

Name: Jordan Whitford

Signature: _____

X

Date: _____

March 9, 2023

Mr. Dave Kudwa
City Manager
City of St. Johns
100 East State Street
St. Johns, MI 48879

Re: Proposal for Professional Services: Develop 2023 Street Program Bid Package Standard Contract

Dear Dave,

Thank you for providing us the opportunity to offer engineering services to assist the City of St. Johns with a construction bidding package to perform capital preventative maintenance on the City's local street system for 2023.

PROJECT UNDERSTANDING

Based on discussions with C2AE, the City would like to issue a standardized format to contractors bid on City-identified street resurfacing and various spot repairs to curbs and sidewalks. The City will identify locations using a combination of field reports, photographs, narrative descriptions, or painted limits on the surfaces.

SCOPE

1. Prepare a construction bidding package including general conditions, work scope description, hard surfaces specifications and standard details, insurance, warranty requirements, payment terms, etc.
2. This work does not include construction phase observation and contract administration. C2AE staff is available for these services at your request for an additional fee.

SCHEDULE

Provide a Draft Bidding Package 45 days after the City's Notice to Proceed.

Provide the Final Bidding Package 60 days after the City's Notice to Proceed.

FEE

Fee will be lump sum of \$7,300.00

We have included our Standard Contract Provisions as part of our proposal. If the terms and conditions as stated are acceptable, please countersign and return one (1) copy to our office. Please do not hesitate to contact us should you

Sincerely,
C2AE



Robert D. Winks, PE
Project Manager



Roger F. Marks, PE
Client Services Leader

Accepted by:

City of St. Johns

Date

The parties to this agreement, Capital Consultants, Inc., a Michigan Corporation doing business as C2AE in the State of Michigan, hereinafter called the A|E CONSULTANT and the City of St. Johns, Michigan, hereinafter called the OWNER, hereby agree to the following conditions:

- A. Limit of Scope: The services provided by the A|E CONSULTANT shall be limited to those described in the Scope of Services.
- B. Changed Conditions: If, during the term of this Agreement, circumstances or conditions that were not originally contemplated by or known to the A|E CONSULTANT are revealed, to the extent that they affect the scope of services, compensation, schedule, allocation of risks or other material terms of this Agreement, the A|E CONSULTANT may call for renegotiation of appropriate portions of this Agreement. The A|E CONSULTANT shall notify the OWNER of the changed conditions necessitating renegotiation, and the A|E CONSULTANT and the OWNER shall promptly and in good faith enter into renegotiation of this Agreement to address the changed conditions. If terms cannot be agreed to, the parties agree that either party has the absolute right to terminate this Agreement.
- C. Additional Services: Additional services not specifically identified in the Scope of Services shall be paid for by the OWNER in addition to the fees previously stated, provided the OWNER authorizes such services in writing. Additional services will be billed monthly as work progresses and invoices are due upon receipt.
- D. Standard of Care: In providing services under this Agreement, the A|E CONSULTANT will endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Upon notice to the A|E CONSULTANT and by mutual agreement between the parties, the A|E CONSULTANT will without additional compensation, correct those services not meeting such a standard.
- E. ADA Compliance: The Americans with Disabilities Act (ADA) provides that alterations to a facility must be made in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to persons with disabilities. The OWNER acknowledges that the requirement of the ADA will be subject to various and possibly contradictory interpretations. The A|E CONSULTANT, therefore, will use its reasonable professional efforts and judgment to interpret applicable ADA requirements and other federal, state and local laws, rules, codes, ordinances and regulations as they apply to the project. The A|E CONSULTANT, however, cannot and does not warrant or guarantee that the OWNER's project will comply with all interpretations of the ADA requirements and/or the requirements of other federal, state and local laws, rules, codes, ordinances and regulations as they apply to the project.
- F. Code Compliance: The A|E CONSULTANT shall put forth reasonable professional efforts to comply with applicable laws, codes and regulations in effect as of the date of submission to building authorities. Design changes made necessary by newly enacted laws, codes and regulations after this date shall entitle the A|E CONSULTANT to a reasonable adjustment in the schedule and additional compensation in accordance with the Additional Services provision of this Agreement.
- G. Permits and Approvals: The A|E CONSULTANT shall assist the OWNER in applying for those permits and approvals normally required by law for projects similar to the one for which the A|E CONSULTANT's services are being engaged. This assistance shall consist of completing and submitting forms to the appropriate regulatory agencies having jurisdiction over the construction documents, and other services normally provided by the A|E CONSULTANT and included in the scope of Basic Services of this Agreement.
- H. Opinions of Probable Construction Cost: In providing opinions of probable construction cost, the OWNER understands that the A|E CONSULTANT has no control over the cost or availability of labor, equipment or materials, or over market conditions or the Contractor's method of pricing, and that the A|E CONSULTANT's opinions of probable construction costs are made on the basis of the A|E CONSULTANT's professional judgment and experience. The A|E CONSULTANT makes no warranty, express or implied, that the bids or the negotiated cost of the work will not vary from the A|E CONSULTANT's opinion of probable construction cost.

- I. Schedule for Rendering Services: The A|E CONSULTANT shall prepare and submit for OWNER approval a schedule for the performance of the A|E CONSULTANT's services. This schedule shall include reasonable allowances for review and approval times required by the OWNER, performance of services by the OWNER's consultants, and review and approval times required by public authorities having jurisdiction over the project. This schedule shall be equitably adjusted as the project progresses, allowing for changes in scope, character or size of the project requested by the OWNER, or for delays or other causes beyond the A|E CONSULTANT's reasonable control.
- J. Ownership of Reports, Drawings and Other Materials: The OWNER agrees that all reports, drawings, letters, work sheets, plans, preliminary material tables, supportive data, documents and other materials produced by the A|E CONSULTANT in the course of and for the purpose of meeting this contract are the property of the A|E CONSULTANT, and shall remain in the possession of the A|E CONSULTANT. The OWNER shall have access to the above named material during normal business hours of the A|E CONSULTANT during and after completion of this contract. The OWNER may obtain copies of any of the above named material. Copies of electronic media may be obtained by the OWNER. (See Alteration and Reuse of CAD Information provision of this Agreement.)
- K. Alteration and Reuse of CAD Information: Because computer aided design/drafting (CAD) information stored in electronic form can be modified by other parties, intentionally or otherwise, without notice or indication of said modifications, the A|E CONSULTANT reserves the right to remove all indications of its ownership and/or involvement in the material from each electronic medium not held in its possession. The OWNER may retain copies of the work performed by the A|E CONSULTANT in CAD form. Copies shall be for information and used by the OWNER for the specific purpose for which the A|E CONSULTANT was engaged. Said material shall not be used by the OWNER, or transferred to any other party, for use in other projects, additions to the current project, or any other purpose for which the material was not strictly intended without the A|E CONSULTANT's express written permission. Any unauthorized modification or reuse of the materials shall be at the OWNER's sole risk, and the OWNER agrees to defend, indemnify, and hold the A|E CONSULTANT harmless, from all claims, injuries, damages, losses, expenses, and attorney's fees arising out of the unauthorized modification of these materials.
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If the OWNER fails to make payments when due or otherwise is in breach of this Agreement, the A|E CONSULTANT may suspend performance of services upon five (5) calendar days' notice to the OWNER. The A|E CONSULTANT shall have no liability whatsoever to the OWNER for any costs or damages as a result of such suspension caused by any breach of this Agreement by the OWNER. Upon payment in full by the OWNER, the A|E CONSULTANT shall resume services under this Agreement, and the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and expense necessary for the A|E CONSULTANT to resume performance.

- N. Disputed Invoices: If the OWNER objects to any portion of an invoice, the OWNER shall so notify the A|E CONSULTANT in writing within ten (10) calendar days of receipt of the invoice. The OWNER shall identify in writing the specific cause of the disagreement and the amount in dispute and shall pay that portion of the invoice not in dispute in accordance with other payment terms of this Agreement. Any dispute over invoiced amounts due which cannot be resolved within ten (10) calendar days after receipt of invoice by direct negotiation between the parties shall be resolved within thirty (30) calendar days in accordance with the Dispute Resolution provision of this Agreement. Interest at one-and-one-half (1.5) percent (or the maximum rate allowable by law, whichever is less) shall be paid by the OWNER on all disputed invoice amounts that are subsequently resolved in the A|E CONSULTANT's favor and shall be calculated on the unpaid balance from the due date of the invoice.
- O. Abandonment of Work: If any work is abandoned or suspended, the A|E CONSULTANT shall be paid for services performed prior to receipt of written notice from the OWNER of abandonment or suspension.
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- Q. Betterment: If, due to the A|E CONSULTANT's negligence, a required item or component of the project is omitted from the A|E CONSULTANT's construction documents, the A|E CONSULTANT shall not be responsible for paying the cost required to add such item or component to the extent that such item or component would have been required and included in the original construction documents. In no event will the A|E CONSULTANT be responsible for any cost or expense that provides betterment or upgrades or enhances the value of the project.
- R. Indemnification: The A|E CONSULTANT agrees, to the fullest extent permitted by law, to indemnify and hold harmless the OWNER, its officers, directors and employees (collectively, OWNER) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the A|E CONSULTANT's negligent performance of professional services under this Agreement and that of its subconsultants or anyone for whom the A|E CONSULTANT is legally liable.
- The OWNER agrees, to the fullest extent permitted by law, to indemnify and hold harmless the A|E CONSULTANT, its officers, directors, employees and subconsultants (collectively, A|E CONSULTANT) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the OWNER's negligent acts in connection with the project and the acts of its contractors, subcontractors or consultants or anyone for whom the OWNER is legally liable.
- Neither the OWNER nor the A|E CONSULTANT shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.
- S. Consequential Damages: Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the OWNER nor the A|E CONSULTANT, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the OWNER and the A|E CONSULTANT shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.

T. Jobsite Safety: Neither the professional activities of the A|E CONSULTANT, nor the presence of the A|E CONSULTANT or its employees and subconsultants at a construction/project site, shall relieve the General Contractor of its obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending and coordinating the work in accordance with the Contract Documents and any health or safety precautions required by any regulatory agencies. The A|E CONSULTANT and its personnel have no authority to exercise any control over any construction contractor or its employees in connection with their work or any health or safety programs or procedures. The OWNER agrees that the General Contractor shall be solely responsible for jobsite safety, and warrants that this intent shall be carried out in the OWNER's contract with the General Contractor. The OWNER also agrees that the OWNER, the A|E CONSULTANT and the A|E CONSULTANT's subconsultants shall be indemnified by the General Contractor and shall be made additional insureds under the General Contractor's policies of general liability insurance.

U. Hazardous Materials: As used in this Agreement, the term *hazardous materials* shall mean any substances, including but not limited to asbestos, toxic or hazardous waste, PCBs, combustible gases and materials, petroleum or radioactive materials (as each of these is defined in applicable federal statutes) or any other substances under any conditions and in such quantities as would pose a substantial danger to persons or property exposed to such substances at or near the project site.

Both parties acknowledge that the A|E CONSULTANT's Scope of Services does not include any services related to the presence of any hazardous or toxic materials. In the event the A|E CONSULTANT or any other party encounters any hazardous or toxic materials, or should it become known to the A|E CONSULTANT that such materials may be present on or about the jobsite or any adjacent areas that may affect the performance of the A|E CONSULTANT's services, the A|E CONSULTANT may, at its option and without liability for consequential or any other damages, suspend performance of its services under this Agreement until the OWNER retains appropriate consultants or contractors to identify and abate or remove the hazardous or toxic materials and warrants that the jobsite is in full compliance with all applicable laws and regulations.

The OWNER agrees, notwithstanding any other provision of this Agreement, to the fullest extent permitted by law, to indemnify and hold harmless the A|E CONSULTANT, its officers, partners, employees and consultants (collectively, A|E CONSULTANT) from and against any and all claims, suits, demands, liabilities, losses, damages or costs, including reasonable attorneys' fees and defense costs arising out of or in any way connected with the detection, presence, handling, removal, abatement, or disposal of any asbestos or hazardous or toxic substances, products or materials that exist on, about or adjacent to the project site, whether liability arises under breach of contract or warranty, tort, including negligence, strict liability or statutory liability or any other cause of action, except for the sole negligence or willful misconduct of the A|E CONSULTANT.

V. Change Orders/Stop Work Orders: The A|E CONSULTANT and the OWNER agree that any construction contract change orders or stop work orders must be approved in writing by the OWNER.

W. ~~Agreement Not to Claim for Cost of Certain Change Orders: The OWNER recognizes and expects that certain Change Orders may be required to be issued as the result in whole or part of imprecision, incompleteness, errors, omissions, ambiguities, or inconsistencies in the Drawings, Specifications and other design documentation furnished by the A|E CONSULTANT or in the other professional services performed or furnished by the A|E CONSULTANT under this Agreement whether caused by professional negligence or by imperfections that are within professional standards ("Covered Change Orders"). Accordingly, the OWNER agrees not to sue and otherwise to make no claim directly or indirectly against the A|E CONSULTANT on the basis of professional negligence, breach of contract or otherwise with respect to the costs of approved Covered Change Orders unless the costs of such approved Covered Change Orders exceed 5% of Construction Cost, and then only for an amount in excess of such percentage. Any responsibility of the A|E CONSULTANT for the costs of Covered Change Orders in excess of such percentage will be determined on the basis of applicable contractual obligations and professional liability standards. For purposes of this paragraph, the cost of Covered Change Orders will not include any costs that the OWNER would have incurred if the Covered Change Order work had been included originally in the Contract Documents without any imprecision, incompleteness, error, omission, ambiguity, or inconsistency in the Drawings, Specifications and other design documents furnished by the A|E CONSULTANT or in the A|E CONSULTANT's other professional services related thereto. Nothing in this provision creates a presumption that, or changes the professional liability standard for determining if, the A|E CONSULTANT is liable for the cost of Covered Change Orders in excess of the percentage of Construction Cost stated above or for any other Change Order.~~

- X. Dispute Resolution: The OWNER agrees that all claims, disputes, and other matters in question between the parties arising out of or relating to this Agreement or breach thereof first shall be submitted for nonbinding mediation to any one of the following, as agreed to by the parties: American Arbitration Association, American Intermediation Service, Americord, Dispute Resolution, Inc., Endispute, or Judicate. Any party hereto may initiate mediation within the time allowed for filing per State law and the parties hereto agree to fully cooperate and participate in good faith to resolve the dispute(s). The cost of mediation shall be shared equally by the parties hereto.

If mediation fails to resolve the claim or dispute, the matter  be submitted to a court of competent jurisdiction.

March 9, 2023

Mr. Dave Kudwa
City Manager
City of St. Johns
100 East State Street
St. Johns, MI 48879

Re: Proposal for Professional Services: St. Johns BR US-127 at Walker Road Intersection Improvements

Dear Dave,

Thank you for providing us the opportunity to offer engineering services to assist MDOT and the City of St. Johns with the planning improvements to the BR US-127 intersection at Walker Road for safety and traffic management.

PROJECT UNDERSTANDING

Based on discussions with C2AE, the intersection of BR US-127 at Walker Street needs to be evaluated due the substantial increase of milk hauler traffic to and from MWC Cheese Plant through this intersection. This evaluation will be used to design solutions to increase the safety and improve traffic flow at this intersection. These solutions will be evaluated by MDOT and the City for recommendation and implementation.

SCOPE

1. Document Existing Conditions: Perform a survey of the intersection. Obtain historic traffic flow data from MDOT and the City on BR US-127 and Walker Road.
2. Perform a desktop analysis of the intersection and develop programming solution(s) for MDOT and City review. Upon review, identify the option to implement and issue a Notice to Proceed with Detailed Design.
3. Complete the Detailed Design and review with the City and MDOT for approval. The City to Issue a Notice to Proceed for Construction Documents.
4. Prepare Construction Drawings and Specifications for Bid.
5. Provide Bidding services.

Construction Administration and Inspection services fees are NOT INCLUDED in this proposal and will be determined after Construction Documents are completed.

ASSUMPTIONS

Traffic data is available from MDOT and the City.

SCHEDULE

Phase	Completion
Preliminary Design / Design Development	April 14, 2023
Final Design / Construction Documents	May 12, 2023
Advertise for Bid	May 19, 2023
Bid Review and Award	June 16, 2023
Start Construction	July 5, 2023
Complete Construction	September 29, 2023
Final Design / Construction Documents	May 15, 2023

FEE

Fee will be Time and Material not to exceed \$22,350 plus reimbursable expenses.


We have included our Standard Contract Provisions as part of our proposal. If the terms and conditions as stated are acceptable, please countersign and return one (1) copy to our office. Please do not hesitate to contact us should you have any questions or concerns, or if you need additional information.

Sincerely,
C2AE

Accepted by:


Robert D. Winks, PE
Project Manager

City of St. Johns


Roger F. Marks, PE
Client Services Leader

Date

The parties to this agreement, Capital Consultants, Inc., a Michigan Corporation doing business as C2AE in the State of Michigan, hereinafter called the A|E CONSULTANT and the City of St. Johns, Michigan, hereinafter called the OWNER, hereby agree to the following conditions:

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T. Jobsite Safety: Neither the professional activities of the A|E CONSULTANT, nor the presence of the A|E CONSULTANT or its employees and subconsultants at a construction/project site, shall relieve the General Contractor of its obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending and coordinating the work in accordance with the Contract Documents and any health or safety precautions required by any regulatory agencies. The A|E CONSULTANT and its personnel have no authority to exercise any control over any construction contractor or its employees in connection with their work or any health or safety programs or procedures. The OWNER agrees that the General Contractor shall be solely responsible for jobsite safety, and warrants that this intent shall be carried out in the OWNER's contract with the General Contractor. The OWNER also agrees that the OWNER, the A|E CONSULTANT and the A|E CONSULTANT's subconsultants shall be indemnified by the General Contractor and shall be made additional insureds under the General Contractor's policies of general liability insurance.

U. Hazardous Materials: As used in this Agreement, the term *hazardous materials* shall mean any substances, including but not limited to asbestos, toxic or hazardous waste, PCBs, combustible gases and materials, petroleum or radioactive materials (as each of these is defined in applicable federal statutes) or any other substances under any conditions and in such quantities as would pose a substantial danger to persons or property exposed to such substances at or near the project site.

Both parties acknowledge that the A|E CONSULTANT's Scope of Services does not include any services related to the presence of any hazardous or toxic materials. In the event the A|E CONSULTANT or any other party encounters any hazardous or toxic materials, or should it become known to the A|E CONSULTANT that such materials may be present on or about the jobsite or any adjacent areas that may affect the performance of the A|E CONSULTANT's services, the A|E CONSULTANT may, at its option and without liability for consequential or any other damages, suspend performance of its services under this Agreement until the OWNER retains appropriate consultants or contractors to identify and abate or remove the hazardous or toxic materials and warrants that the jobsite is in full compliance with all applicable laws and regulations.

The OWNER agrees, notwithstanding any other provision of this Agreement, to the fullest extent permitted by law, to indemnify and hold harmless the A|E CONSULTANT, its officers, partners, employees and consultants (collectively, A|E CONSULTANT) from and against any and all claims, suits, demands, liabilities, losses, damages or costs, including reasonable attorneys' fees and defense costs arising out of or in any way connected with the detection, presence, handling, removal, abatement, or disposal of any asbestos or hazardous or toxic substances, products or materials that exist on, about or adjacent to the project site, whether liability arises under breach of contract or warranty, tort, including negligence, strict liability or statutory liability or any other cause of action, except for the sole negligence or willful misconduct of the A|E CONSULTANT.

V. Change Orders/Stop Work Orders: The A|E CONSULTANT and the OWNER agree that any construction contract change orders or stop work orders must be approved in writing by the OWNER.

W. ~~Agreement Not to Claim for Cost of Certain Change Orders: The OWNER recognizes and expects that certain Change Orders may be required to be issued as the result in whole or part of imprecision, incompleteness, errors, omissions, ambiguities, or inconsistencies in the Drawings, Specifications and other design documentation furnished by the A|E CONSULTANT or in the other professional services performed or furnished by the A|E CONSULTANT under this Agreement whether caused by professional negligence or by imperfections that are within professional standards ("Covered Change Orders"). Accordingly, the OWNER agrees not to sue and otherwise to make no claim directly or indirectly against the A|E CONSULTANT on the basis of professional negligence, breach of contract or otherwise with respect to the costs of approved Covered Change Orders unless the costs of such approved Covered Change Orders exceed 5% of Construction Cost, and then only for an amount in excess of such percentage. Any responsibility of the A|E CONSULTANT for the costs of Covered Change Orders in excess of such percentage will be determined on the basis of applicable contractual obligations and professional liability standards. For purposes of this paragraph, the cost of Covered Change Orders will not include any costs that the OWNER would have incurred if the Covered Change Order work had been included originally in the Contract Documents without any imprecision, incompleteness, error, omission, ambiguity, or inconsistency in the Drawings, Specifications and other design documents furnished by the A|E CONSULTANT or in the A|E CONSULTANT's other professional services related thereto. Nothing in this provision creates a presumption that, or changes the professional liability standard for determining if, the A|E CONSULTANT is liable for the cost of Covered Change Orders in excess of the percentage of Construction Cost stated above or for any other Change Order.~~

- X. Dispute Resolution: The OWNER agrees that all claims, disputes, and other matters in question between the parties arising out of or relating to this Agreement or breach thereof first shall be submitted for nonbinding mediation to any one of the following, as agreed to by the parties: American Arbitration Association, American Intermediation Service, Americord, Dispute Resolution, Inc., Endispute, or Judicate. Any party hereto may initiate mediation within the time allowed for filing per State law and the parties hereto agree to fully cooperate and participate in good faith to resolve the dispute(s). The cost of mediation shall be shared equally by the parties hereto.

If mediation fails to resolve the claim or dispute, the matter  shall be submitted to a court of competent jurisdiction.