City of Hart, Michigan
CITY COUNCIL AGENDA
January 25, 2022, 7:30 PM
407 State St. – Council Chamber
NOTICE OF PUBLIC MEETING
REGULAR COUNCIL MEETING

1. Call to Order
2. Roll Call – Burillo, Evans, Hodges, Klotz, Rybarz Jr., Trygstad, Platt
3. Pledge of Allegiance
4. Approval of Agenda
5. Public Comments – **Public comment on any matter that is not included on the agenda for a public hearing by the Council. We ask that you please limit your comments to 3 minutes**
    a. Correspondence, Events, Presentations
        i. Maner Costerian – Jordan Smith annual audit presentation
6. Consent Agenda:
    a. Approval of Minutes from January 11th, 2021 Council meeting.
    b. Bills, Claims, Payroll
    c. Reports of Boards, Commissions, and Committees
    d. Department Reports – Police/BioPure/Public Works/Energy/C&E Dvlp.
7. Action Items
    a. Ordinance 2022-01 A TEXT AMENDMENT TO REMOVE THE MAXIMUM LOT COVERAGE REQUIREMENTS FOR THE C-2 ZONING DISTRICT IN SECTION 1251.04 AND THE D-1 ZONING DISTRICT IN SECTION 1252.04 – **First Reading**
    b. Ordinance 2022-02: A TEXT AMENDMENT TO DEFINE PERMANENT COSMETIC SERVICES IN SECTION 1241.01, REGULATE PERMANENT COSMETIC SERVICES IN SECTION 1249.02 (B), AND AMEND THE DEFINITION OF TATTOO PARLOR IN SECTION 1256.13 (B)(20) – **First Reading**
    c. Resolution 2022 - 02 Intent to issue revenue bonds to finance proposed sewer
    d. Resolution 2022 - 03 Accept proposal for Environmental consulting services
8. Discussion Items
    a. Hart Fire Department snow plowing assistance
9. City Manager Report
10. Communications from the Mayor and Council
11. Adjournment –

Access is provided through the Michigan Relay Service for individuals with speech or hearing impairments. *https://hamiltonrelay.com/michigan/index.html*

With advance notice of seven calendar days, the City will provide interpreter services at all public meetings, including language translation and signage for the hearing impaired. Call 231-873-2488. La Ciudad proporcionará servicio de intérprete para esta reunión pública si se pide con siete días de anticipación, lo cual incluye la traducción de idioma y letreros para los con una discapacidad auditiva. Llame al 231-873-2488.

Payables Date: 01/11/2022	Description	Total	General +	DPW	Energy	BPTF	Water
Adams, Matt	Phone Reimbursement	$ 35.00		$ 35.00			
Anderson, Shawn	Phone Reimbursement	$ 35.00	$ 35.00				
Bell Equipment	Street Sweeper Pmt	$ 5,800.00		$ 5,800.00			
Ceres Solutions	Fuel	$ 668.18				$ 668.18	
Charter	Historic District	$ 49.99	$ 49.99				
Charter	PD/CH Fax Line	$ 119.15	$ 119.15				
Charter	Starting Block	$ 169.97			$ 169.97		
City of Hart	Utilities	$ 39,597.99	$ 1,387.55	$ 1,097.16	$ 2,058.57	$ 30,274.84	$ 4,779.87
City Web Central	Website Hosting Services	$ 782.00	$ 782.00				
Consumers Energy	Utilities	$ 289.99			$ 289.99		
CS Erickson (Hart Middle School)	Energy Efficiency Incentive	$ 23,700.00			$ 23,700.00		
Custom Tree Service	Stump Grinding	$ 3,650.00			$ 3,650.00		
Dacott	Power Purchase Report	$ 650.00			$ 650.00		
Dave's	Fuel	$ 2,790.93	$ 1,073.80	$ 678.13	$ 1,020.62	$ 18.38	
DuBois Tree Service	Tree Removal/Trimming	$ 6,198.75			$ 6,198.75		
DuBois-Cooper	Rotating assembly	$ 5,135.00				$ 5,135.00	
Eisenlohr, Mike	Phone Reimbursement	$ 35.00		$ 35.00			
ETNA	Parts/Supplies	$ 314.00					$ 314.00
Fife Water Services	Anthrone/Polysaccharde Test	$ 250.00				$ 250.00	
First Advantage	Drug Screening	$ 265.20			$ 265.20		
Fischer LP Gas	LP Gas	$ 716.56			$ 716.56		
Frontier	Energy Dept #2	$ 74.77			$ 74.77		
Frontier	JGP	$ 98.58	$ 98.58				
Frontier	Diesel Plant	$ 93.23			$ 93.23		
Galeton	Winter Wear	$ 177.52				$ 177.52	
Gracon	Microsoft 365 GCC G1-1Y	$ 25.14	$ 25.14				
GRP Engineering	GIS Development	$ 1,193.38			$ 1,193.38		
Hansen's	UPS Services	$ 12.60		$ 12.60			
Hart Automotive	Auto Parts/Supplies	$ 157.11		$ 6.62	$ 150.49		
Hart Cemetery Commission	4th Qtr 2021 (O-N-D)	$ 4,250.00		$ 4,250.00			
Hart Cemetery Commission	Winter Taxes	$ 63.83	$ 63.83				
Heritage Preservation	Repairs/Maintenance Historic District	$ 600.38	$ 600.38				
HydroCorp	Cross Connection Control Program	$ 750.00					$ 750.00
Ingalls, Joseph	Phone Reimbursement	$ 35.00	$ 35.00				
Kies, Chris	Phone Reimbursement	$ 35.00				$ 35.00	
Kleiner, Nichole	Phone Reimbursement	$ 35.00	$ 35.00				
Klotz	Auto Parts/Supplies	$ 600.48		$ 63.03	$ 357.95	$ 179.50	
LARA	LIEAF	$ 980.98			$ 980.98		
Lighthouse Car Care	Tires/Repairs/Oil Changes	$ 1,040.00	$ 40.00	$ 960.00	$ 40.00		
Linde Gas & Equip.	Cylinder Rental	$ 75.70			$ 75.70		
Ludington Daily News	Publications/Printing	$ 503.80	$ 503.80				
Mantyck, Elizabeth	Phone Reimbursement	$ 35.00	$ 35.00				
Model	Uniforms	$ 505.19		$ 175.00	$ 59.85	$ 270.34	
MPPA	Purchased Power	$ 15,484.41			$ 15,484.41		
MPPA	Dues/Purchased Power	$ 131,723.88			$ 131,723.88		
MPPA	Purchased Power	$ 57,030.69			$ 57,030.69		
NCL	Lab Supplies	$ 237.88				$ 237.88	
Northern Tool Co.	Equipment Purchase	$ 763.99				$ 763.99	
Oceana County Treasurer	Chargebacks - BOR	$ 224.11	$ 224.11				
Oceana County Treasurer	Chargebacks - BOR	$ 211.89	$ 211.89				
Pixel Grafix	Envelopes	$ 300.00	$ 300.00				
Power Line Supply	Parts/Supplies	$ 155.08			$ 155.08		
Power Line Supply	Parts/Supplies	$ 1.82			$ 1.82		
Power Line Supply	Parts/Supplies	$ 902.54			$ 902.54		
Power Line Supply	Parts/Supplies	$ 263.73			$ 263.73		
Power Line Supply	Parts/Supplies	$ 677.02			$ 677.02		
Power Line Supply	Transformer	$ 1,495.08			$ 1,495.08		
Power Line Supply	Hot Sticks Testing	$ 18.00			$ 18.00		
Power Line Supply	Glove Testing	$ 2,116.00			$ 2,116.00		
Pranger Property Mgmt	CH/CC Cleaning Svcs	$ 224.00	$ 224.00				
Pranger Property Mgmt	CH/CC Cleaning Svcs	$ 112.00	$ 112.00				
Quill	Office Supplies	$ 26.99	$ 26.99				
Quill	Office/Bldg Supplies	$ 297.96	$ 297.96				
Quill	Batteries	$ 29.99	$ 29.99				
Quill	Office/Kitchen Supplies	$ 138.84	$ 138.84				
Republic Services	Starting Block - Garbage Svc	$ 193.05			$ 193.05		
Republic Services	Monthly Garbage Services	$ 16,497.25		$ 16,497.25			
Ricoh	Copier Overage Fees	$ 51.89	$ 51.89				
Riggs, Jason	Phone Reimbursement	$ 35.00		$ 35.00			

--OVER--

Payroll ID: 141

Pay Period End Date: 01/16/2022 Check Post Date: 01/20/2022 Bank ID: GEN

Grand Totals for Payroll:

Pay Code Id	Hours	OT Hours	Cur. Amnt.	YTD Amnt.
15X	0.00	74.25	3,103.12	3,746.16
225X	0.00	21.00	1,301.79	4,525.27
2X	0.00	8.25	438.20	1,067.49
COMP	3.00	0.00	76.17	501.05
ETO	225.50	0.00	7,053.72	12,516.57
HOL	40.00	0.00	1,146.32	4,585.28
HOURLY	1,716.50	0.00	52,674.30	89,513.12
SALARY	0.00	0.00	615.38	615.38

Ded/Exp Id	Cur. Amnt.	YTD Amnt.
AFLAC	210.99	421.98
AFLDI	154.36	308.72
AFLIF	15.72	31.44
ALERUS 401	1,577.05	3,141.26
ALERUS 401 AD	8.00	16.00
ALERUS 457	1,200.00	2,400.00
ALERUS 457P	2,057.30	6,419.48
DENTAL_EE	108.17	213.53
DENTAL_ER	432.47	853.69
FITW	6,967.55	27,794.88
GAP_EE	326.51	633.75
GAP_ER	1,306.08	2,535.06
GUARDIAN _EE	19.05	37.03
GUARDIAN_ER	193.44	382.60
LOAN	159.86	319.72
MED_EE	1,133.15	2,228.87
MED_ER	4,532.59	8,915.48
MEDICARE_EE	943.45	3,278.70
MEDICARE_ER	943.45	3,278.70
SITW	2,547.76	8,458.63
SOCSEC_EE	4,034.04	14,019.29
SOCSEC_ER	4,034.04	14,019.29
UNI46	253.08	253.08
UNIFM	20.80	41.60

Gross Pay This Period	Deduction Refund	Ded. This Period	Net Pay This Period	Gross Pay YTD	Dir. Dep.	Expense This Period
66,409.00	0.00	21,736.84	44,672.16	228,768.29	41,792.52	11,442.07

* = Check Adjustment

City Of Hart

407 S. State St
Hart, Mi 49420
Planning Commission
Thursday, January 6th, 2022
Minutes

MEMBERS PRESENT: Betty Root, Jim Cunningham, Jim Evans, Gale Goldberg,
LATE: Jack Wittman, Peggy Wittman, and D. LaPorte
ABSENT:
OTHERS PRESENT: City Manager – Rob Splane, and Jodi Eilleinger

B. Root called the meeting to order at 4:00 pm.

APPROVAL OF AGENDA: J. Evans moved to approve the agenda and supported by J. Cunningham
Ayes: 4 Nays: 0 Absent: 3

APPROVAL OF MINUTES: J. Evans moved to approve minutes from December 2nd, 2021, and supported by J. Cunningham
Ayes: 4 Nays: 0 Absent: 3

PUBLIC COMMENTS, CORRESPONDENCE, EVENTS, PRESENTATIONS:
PUBLIC HEARING:
J. Cunningham moved to open the public hearing and supported by J. Evans
Ayes: 4 Nays: 0 Absent: 3
CITY OF HART CODE OF ORDIANCES PART 12, TITLE FOUR, ZONING ORDINANCE, A TEXT AMENDMENT TO REMOVE THE MAZIMUM LOT COVERAGE REQUIREMENTS FOR THE C-2 ZONING DISTRICT IN SECTION 1251.04 AND THE D-1 ZONING DISTRICT IN SECTION 1252.04
With no Public Comments Public Hearing was closed. Moved by J. Cunningham and Supported by J. Evans
Ayes: 4 Nays: 0 Absent: 3
J. Cunningham moved to open the Public hearing and supported by J. Evan
Ayes: 4 Nays: 0 Absent: 3
CITY OF HART CODE OF ORDIANCES, PART 12, TITLE FOUR, ZONING ORDIANCE, A TEXT AMENDMENT TO DEFINE PERMANENT COSMETIC SERVICES IN SECTION 1241.01, REGULATE PERMANENT COSMETIC SERVICES IN SECTION 1249.02(B), AND AMEND THE DEFINITION OF TATTOO PARLOR IN SECTION 1256.13 (B)(20).
J. Eilleinger supported the Amendment.
With no further comments public hearing was closed. Moved by J. Cunningham and Supported by J. Evans
Ayes: 4 Nays: 0 Absent: 3

ACTION ITEMS:

- Consider recommendation to the City Council:

CITY OF HART CODE OF ORDIANCES, PART 12, TITLE FOUR, ZONING ORDIANCES, A TEXT AMENDMENT TO REMOVE THE MAXIMUM LOT COVERAGE REQUIREMENTS FOR THE C-2 ZONING DISTRICT IN SECTION 1251.04 AND THE D-1 ZONING DISTRICT IN SECTION 1252.04.

CITY OF HART
ORDINANCE NO.
ZONING ORDINANCE TEXT AMENDMENT

At a regular meeting of the Hart City Council held at City Hall on the ____ day of _____,2022 at _____p.m.

PRESENT:_____

ABSENT:_____

The following ordinance was offered by _____ and supported by _____:

THE CITY OF HART, COUNTY OF OCEANA, STATE OF MICHIGAN ORDAINS:

CITY OF HART CODE OF ORDINANCES, PART 12, TITLE FOUR, ZONING ORDIANCE, A TEXT AMENDMENT TO RMEOVE THE MAXIMIUM LOT COVERAGE REQUIREMENTS FOR THE C-2 ZONING DISTRICT IN SECTION 1251.04 AND THE D-1 ZONING DISTRICT IN SECTION 1252.04

Section 1. Chapter 1251 C-2 Limited Commercial. Chapter 1251, Section 1251.04, is amended to strike paragraph ©, which currently, states "Maximum lot coverage – 40 percent," and to re-letter the section accordingly.

Section 1. Chapter 1252 D-1, Industrial District. Chapter 1252, Section 11252.04, is amended to strike paragraph ©, which currently, states "Maximum lot coverage – 40 percent," and to re-letter the section accordingly.

Section 3. Effective Date. The Ordinance shall be effective seven (7) days after the publication of a summary of its provisions in a local newspaper of general circulation in the City of Hart.

AYES: _____

NAYS: _____

ORDINANCE, DECLARED ADOPTED.

Karla Swihart

City Clerk

I hereby certify that the foregoing is a true and complete copy of an Ordinance adopted by the Hart City Council at a regular meeting held on the date first stated above, and I further certify that public notice of such meeting was given as provided by law.

Karla Swihart

City Clerk

- Consider recommendation to the City Council:

CITY OF HART CODE OF ORDIANCES, PART 12, TITLE FOUR, ZONING ORDINANCE, A TEXT AMENDMENT TO DEFINE PERMANENT COSMETIC SERVICES IN SECITON 1241.01. REGULATE PERMANENT COSMETIC SERVICES IN SECTION 1249.02 (B), AMEND THE DEFINITION OF TATTOO PARLOR IN SECTION 1256.13(B)(20).

J. Cunningham moved to recommend approval to City Council and supported by J. Evan

Ayes: 7 Nays: 0 Absent: 0

CITY OF HART

ORDIANCE NO.

ZONING ORDINANCE TEXT AMENDMENT

At a regular meeting of the Hart City Council held at City Hall on the _____ day of ____,2022 at _____p.m.

PRESENT:_____

ABSENT:_____

The Following ordinance was offered by _____ and Supported by_____:

THE CITY OF HART, COUNTY OF OCEANA, STATE OF MICHIGAN ORDAINS:

CITY OF HART CODE OF ORDINANCES, PART 12, TITLE FOUR, ZONING ORDINANCE, A TEXT AMENDMENT TO DEFINE PERMANENT COSMETIC SERVICES IN SECTION 1241.01, REGULATE PERMANENT COSMETIC SERVICES IN SECTION 1249.02 (B), AND AMEND THE DEFINITION OF TATTOO PARLOR IN SECTION 1256.13 (B)(20)

Section 1. Chapter 1241 Definitions. Chapter 1241, Section 1241.01, is amended to include the Following definition to be inserted in alphabetical order:

"Permanent cosmetic services" means a personal service establishment that applies permanent Cosmetic coloration to the skin using muted pigmentations to: disguise scars or tattoos: Provide pigmentation in areas of the body affected by surgery or medical procedures: or apply

Permanent cosmetics, generally to individuals with impairments or medical conditions, but Not limited to these individuals. Services may include permanent eye lining, lip lining, Re-pigmentation, or similar procedures but do not include traditional tattooing services Associated with tattoo parlors, as defined in this ordinance.

Section 2. Chapter 1249 B-1, Central Business District. Chapter 1249, Section 1249.02 (b) is amended to read in its entirety as follows:

(b) Any personal service establishment which performs services on the premises within a Completely enclosed building, such as, but not limited to: repair shops (watches, radio, Television, shoe, etc.), tailor shops, beauty parlors, barber shops, interior decorators, Photographers, and permanent cosmetic services.

Section 3. Chapter 1256 Special Land Uses. Chapter 1256, Section 1256.13 (b)(20), is amended to read in its entirety as follows:

"Tattoo parlor" means a business having as its principal activity the application or placing, by Any method, of designs, letters, scrolls, figures, symbols, or other marks upon or under the Human skin with ink or any other substance resulting in the coloration of the skin by the aid Of needles or any other instrument designed to touch or puncture the skin, not including Permanent cosmetic services.

Section 4. Effective Date. This Ordinance shall be effective seven (7) days after the publication of a summary of its provisions in a local newspaper of general circulation in the City of Hart

AYES: _____

NAYS: _____

ORDIANCE DECLARED ADOPTED.

Karla Swihart

City Clerk

I hereby certify that the foregoing is a true and complete copy of an Ordinance adopted by the Hart City Council at a regular meeting held on the date first stated above, and I further certify that public notice of such meeting was given as provided by law.

Karla Swihart

City Clerk

J. Cunningham moved to recommend approval to City Council and supported by J. Evan

Ayes: 5 Nays: 2 Absent: 0

DISCUSSION ITEMS:

OTHER BUSINESS AND COMMUNICATIONS FROM THE COMMISSION MEMBERS:

ADJOURN:

- There being no further business to come before the Planning Commission, the meeting adjourned at 4:26 pm upon a motion by G. Goldberg and supported by J. Evans. The next scheduled meeting will be held on February 3rd 2022

Karla Swihart

Karla Swihart
City Clerk

Hart Cemetery Commission
November 29, 2021
Meeting Minutes

Meeting called to order at 7:30 P.M.
Roll call: Jay McGhan, Karen Urick, Jim Evans and Sally Veurink, present. Cal Moul was absent

Motion by Sally Veurink and supported by Karen Urick to approve the minutes of the October 18, 2021 Minutes. All ayes, motion carried.

Motion by Karen Urick and supported by Jim Evans to approve the financial report for November 29, 2021. All ayes motion carried.

Sexton reviewed current activity, 19 burials, 42 cremations for this past season and. $21,500 in revenues.
Exploring water transfer from city of Hart to Hart Cemetery putting down their own well.
Discussion regarding purchase of Kubota lawn tractor (costs are $12,900 and 13,000)
Andy explained crematorium memorial design in Ludington.
Burial tents to be ended November 1, each year (exceptions possible)

Commission voiced support for crematorium. Also addition at Beacon funeral Home.
Authorized Tanner to perform plumbing repair at main building at the cemetery.

Motion by Karen Urick and seconded by Jim Evans to adjourn. All ayes, motion carried.

Meeting adjourned at 8:17 P.M.

Respectfully Submitted,

Carol Tariske, Sec./Treasurer

Note: Jim Evans took notes in my absence

Next meeting January 17, 2022

Hart Cemetery Commission

Agenda

January 17, 2022

7:00 P.M.

1. Roll Call: Jay McGhan( ), Cal Moul ( ), Karen Urick ( ), Sally Veurink ( ), Jim Evans ( ). Audience ( )

2. Approval of the November 29, 2021 meeting minutes

3. Financial Report:

   a) As of December 31, 2021 the checking has $
   b) As of Dcember 31, 2021 the savings has $

4. As of December 31,, 2021 the CD has a balance of #1596 $
   #6318 $

5. Sexton's Report

6. Old Business: set budget for the 2022 year . Add meeting date to calendar?
7. New Business :

8. Adjournment

Next meeting is Monday April 18, 2022
7:00 P.M. at the Hart Township Hall

Hart Cemetery Commission

P.O. Box 813
Hart, MI 49420

All meetings are held
On the third Monday of the month
Following a quarter at 7:00 P.M.
At the Hart Township Hall
3437 W. Polk Rd.

2022 meeting schedule

January 17, 2022

April 18, 2022

July 18, 2022

October 17, 2022

November 21, 2022
(Budget Meeting)



CITY OF HART
ORDINANCE NO. 22-01
ZONING ORDINANCE TEXT AMENDMENT

At a regular meeting of the Hart City Council held at City Hall on the 8th day of February 2022, at 7:30 p.m.

PRESENT: _____

ABSENT: _____

The following ordinance was offered by _____ and supported by _____:

THE CITY OF HART, COUNTY OF OCEANA, STATE OF MICHIGAN ORDAINS:

CITY OF HART CODE OF ORDINANCES, PART 12, TITLE FOUR, ZONING ORDINANCE, A TEXT AMENDMENT TO REMOVE THE MAXIMUM LOT COVERAGE REQUIREMENTS FOR THE C-2 ZONING DISTRICT IN SECTION 1251.04 AND THE D-1 ZONING DISTRICT IN SECTION 1252.04

Section 1. Chapter 1251 C-2, Limited Commercial. Chapter 1251, Section 1251.04, is amended to strike paragraph (c), which currently, states "Maximum lot coverage - 40 percent," and to re-letter the section accordingly.

Section 1. Chapter 1252 D-1, Industrial District. Chapter 1252, Section 1252.04, is amended to strike paragraph (c), which currently, states "Maximum lot coverage - 40 percent," and to re-letter the section accordingly.

Section 3 Effective Date. This Ordinance shall become effective ten (10) days after its publication or ten (10) days after publication of a summary of its provisions in a local newspaper of general circulation in the City of Hart.

AYES: _____

NAYS: _____

ORDINANCE DECLARED ADOPTED.

_____
Karla Swihart, City Clerk
City of Hart

CERTIFICATION

I, the undersigned duly appointed City Clerk of the City of Hart, Oceana County, Michigan, do hereby certify that the above ordinance, or a summary thereof, was published in the *Oceana's*

Herald-Journal, a newspaper of general circulation in the City, on _____, 2022, and that such ordinance was entered with the Ordinance Book of the City on _____, 2022.

Dated: _____, 2022.

Karla Swihart, City Clerk
City of Hart

First reading: January 25, 2022

Second reading: February 8, 2022

Ordinance becomes effective: February 28, 2022

CITY OF HART
ORDINANCE NO. 22-02
ZONING ORDINANCE TEXT AMENDMENT

At a regular meeting of the Hart City Council held at City Hall on the 8th day of February 2022, at 7:30 p.m.

PRESENT: _____

ABSENT: _____

The following ordinance was offered by _____ and supported by _____:

THE CITY OF HART, COUNTY OF OCEANA, STATE OF MICHIGAN ORDAINS:

CITY OF HART CODE OF ORDINANCES, PART 12, TITLE FOUR, ZONING ORDINANCE, A TEXT AMENDMENT TO DEFINE PERMANENT COSMETIC SERVICES IN SECTION 1241.01, REGULATE PERMANENT COSMETIC SERVICES IN SECTION 1249.02 (B), AND AMEND THE DEFINITION OF TATTOO PARLOR IN SECTION 1256.13 (B)(20)

Section 1. Chapter 1241 Definitions. Chapter 1241, Section 1241.01, is amended to include the following definition to be inserted in alphabetical order:

> "Permanent cosmetic services" means a personal service establishment that applies permanent cosmetic coloration to the skin using muted pigmentations to: disguise scars or tattoos; provide pigmentation in areas of the body affected by surgery or medical procedures; or apply permanent cosmetics, generally to individuals with impairments or medical conditions, but not limited to these individuals. Services may include permanent eye lining, lip lining, re-pigmentation, or similar procedures but do not include traditional tattooing services associated with tattoo parlors, as defined in this ordinance.

Section 2. Chapter 1249 B-1, Central Business District. Chapter 1249, Section 1249.02 (b), is amended to read in its entirety as follows:

> (b) Any personal service establishment which performs services on the premises within a completely enclosed building, such as, but not limited to: repair shops (watches, radio, television, shoe, etc.), tailor shops, beauty parlors, barber shops, interior decorators, photographers, and permanent cosmetic services.

Section 3. Chapter 1256 Special Land Uses. Chapter 1256, Section 1256.13 (b)(20), is amended to read in its entirety as follows:

> "Tattoo parlor" means a business having as its principal activity the application or placing, by any method, of designs, letters, scrolls, figures, symbols or other marks upon or under the human skin with ink or any other substance resulting in the coloration of the

skin by the aid of needles or any other instrument designed to touch or puncture the skin, not including permanent cosmetic services.

Section 4 Effective Date. This Ordinance shall become effective ten (10) days after its publication or ten (10) days after publication of a summary of its provisions in a local newspaper of general circulation in the City of Hart.

AYES: _____

NAYS: _____

ORDINANCE DECLARED ADOPTED.

_____
Karla Swihart, City Clerk
City of Hart

CERTIFICATION

I, the undersigned duly appointed City Clerk of the City of Hart, Oceana County, Michigan, do hereby certify that the above ordinance, or a summary thereof, was published in the *Oceana's Herald-Journal*, a newspaper of general circulation in the City, on _____, 2022, and that such ordinance was entered with the Ordinance Book of the City on _____, 2022.

Dated: _____, 2022.

_____
Karla Swihart, City Clerk
City of Hart

First reading: January 25, 2022

Second reading: February 8, 2022

Ordinance becomes effective: February 28, 2022

Mika Meyers PLC

900 Monroe Ave NW Grand Rapids, MI 49503
Tel (616) 632-8000 Fax (616) 632-8002
Web mikameyers.com

Attorneys at Law

Mark E. Nettleton
Direct Dial/Fax (616) 632-8048
E-mail mnettleton@mikameyers.com

January 17, 2022

Mr. Rob Splane
City Manager
City of Hart
407 State Street
Hart, Michigan 49420

Re: Proposed CWSRF–financed Sewer Project

Dear Rob:

I have prepared and enclose a resolution of intent for consideration by the City Council at the Council's January 25, 2022 meeting.

The resolution expresses the City's intent to issue sewer revenue bonds as authorized by Act 94 of the Public Acts of Michigan of 1933, as amended ("Act 94") to evidence the loan to be provided by the State of Michigan through the Clean Water State Revolving Fund loan program ("CWSRF") to allow the City to finance the costs of the City's sewer improvement project (the "Project"). The use of a revenue bond to finance improvements to a municipal sewer system is fairly common in Michigan.

Under Act 94, the collateral pledged to repay the bonds is the "net revenues" of the City sewer system. For this purpose, the "net revenues" are the revenues of the sewer system derived from rates and charges paid by system customers which remain after expenses of operation and maintenance have been provided for. At this time, we do not anticipate that it will be necessary for the City to pledge its full faith and credit to support the repayment of the revenue bonds; if no such pledge is made, the bonds will not constitute a general obligation of the City. In that case, in the event of a shortfall in available monies in the sewer enterprise fund, the City would not be legally obligated to advance funds from its general fund to cover the shortfall. With solely a revenue pledge, the remedy for a shortfall is a rate increase.

Act 94 has many detailed requirements which apply to the revenue bonds, including a right of referendum. The enclosed resolution authorizes the publication of a "notice of intent" to issue revenue bonds.

The resolution authorizes publication of the referendum notice in the *Oceana's Herald-Journal*, as a newspaper of general circulation within the City. The form of the notice to be

published is attached as Exhibit A to the resolution. This notice is intended to alert City electors and taxpayers of the City's intent to issue revenue bonds in the not to exceed amount of $9,500,000 without a vote of the electors unless petitions signed by not less than 10% of the registered voters of the City are filed with the City Clerk within 45 days following the date of publication of the notice.

If during the 45-day period valid petitions signed by 10% or more of the registered voters are filed with the City Clerk, then the City may not proceed to issue the revenue bonds without first submitting a ballot proposal to City electors at an election and the proposal is approved by a majority of the electors voting on the proposal. On the other hand, if no petitions are filed during the 45-day period or valid petitions signed by fewer than 10% of the registered voters are filed with the City Clerk, then the City may proceed and authorize the issuance of the bonds by ordinance adopted by the City Council.

Assuming this resolution is considered and adopted at the January 25, 2022 meeting, please send me the minutes of the Council meeting so that we can prepare the resolution for the Clerk's signature. In addition, we will make arrangements to have the referendum notice published in the *Oceana's Herald-Journal* at the next available publication date.

The not to exceed amount of $9,500,000 was determined based on the estimated cost of the Project, which is $8,409,000 and provides a "healthy" cushion should project prices escalate given the current state of inflation in the economy.

The resolution also reflects the City's intent to use a portion of the proceeds of the revenue bonds to reimburse the City for expenses incurred prior to the issuance of the bonds. Pursuant to federal tax regulations, in order for the City to be able to reimburse itself for expenditures related to the Project that were incurred prior to the issuance of the bonds (other than *de minimis* expenditures), the City must express its intent, in the form of a resolution, to reimburse prior expenditures from the bond proceeds and specify the estimated amount to be reimbursed and the fund from which those expenditures will be made. To that end, I have included language in numbered paragraphs 5 and 6 of the enclosed resolution to comply with the federal tax regulations and, consistent with information from Barbara Marczak at Prein & Newhof, provided that the City's intent is to pay preliminary Project expenses from monies on hand in the City's Sewer Fund in the estimated amount of $500,000, and use bond proceeds to reimburse those expenditures once the bonds are issued.

As I noted previously, even though we have included the $500,000 amount in the resolution as preliminary project expenditures, the City is not obligated to spend that much (or any amount at all prior to issuance of the bonds). Including the language in the resolution provides the City with a "safe harbor" under the federal tax rules so that to the extent the City does incur preliminary

project expenditures that need to be reimbursed from bond proceeds, the City will have satisfied the necessary conditions for that reimbursement.

Following adoption of the resolution, I will follow up with the City's registered municipal advisor, Andy Campbell of Baker Tilly, and the Project engineer, Barbara Marczak of Prein & Newhof, to further consider and outline the next steps with the financing of the Project.

If you have questions regarding these matters, please let know.

Very truly yours,

Mark E. Nettleton

Mark E. Nettleton

sgc
Enclosure
By E-Mail
cc w/enc: Barbara Marczak, Prein & Newhof
Andy Campbell, Baker Tilly

RESOLUTION 2022 - 02
City Council
City of Hart, Michigan
Oceana County

At a regular meeting of the City Council of the City of Hart, held at the City Hall, 407 S. State Street, Hart, Michigan, on the 25th day of January 2022, at 7:30 p.m., Local Time.
PRESENT: Members: _____

_____

ABSENT: Members: _____

The following resolution was offered by Member _____ and supported by Member _____:

RESOLUTION TO PURCHASE, ACQUIRE AND CONSTRUCT IMPROVEMENTS TO THE CITY OF HART SEWER SYSTEM; AUTHORIZE PUBLICATION OF NOTICE OF INTENT TO ISSUE REVENUE BONDS; DECLARE INTENT TO REIMBURSE EXPENDITURES FOR PROJECT FROM BOND PROCEEDS AND MATTERS RELATED THERETO

WHEREAS, this City Council hereby determines that it is necessary for the public health, safety and welfare of the City of Hart (the "City") to issue and sell revenue bonds in one or more series pursuant to Act 94 of the Public Acts of Michigan of 1933, as amended ("Act 94") to pay the cost of improvements to the City's wastewater collection and treatment system including, but not limited to, the replacement of undersized gravity sewer, lift station replacement and upgrades, additions/modifications to the wastewater treatment plant, and related improvements; legal, engineering, financing, and contingency costs; and related appurtenances, which improvements will increase capacity at the wastewater treatment plant, meet increasing flows and loading, replace aging infrastructure, and increase reliability and efficiency (the "Project"); and

WHEREAS, the current estimated cost of the Project, including engineering, construction, legal, financial and contingency costs is $8,409,000; and

WHEREAS, the City has received an offer of funding assistance from the State of Michigan Clean Water State Revolving Loan Program (the "CWSRF Loan Program") to pay all or part of the cost of the Project by means of a long-term low interest loan to be evidenced by the proposed revenue bonds under Act 94 (the "Revenue Bonds"); and

WHEREAS, it is necessary to publish a Notice of Intent of the City's intent to issue the Revenue Bonds in the not-to-exceed amount of $9,500,000 (the "Notice of Intent"); and

WHEREAS, it is anticipated that the City will advance a portion of the cost of the Project prior to issuance of the bonds, such advance to be reimbursed, without interest, to the City from proceeds of the bonds upon the issuance thereof; and

WHEREAS, Section 1.150-2 of the Treasury Regulations on Income Tax (the "Reimbursement Regulations") specifies conditions under which a reimbursement allocation may be treated as an expenditure of financing proceeds, and the City intends by this resolution to qualify monies advanced by the City to the Project for reimbursement from proceeds of the bonds in accordance with the requirements of the Reimbursement Regulations.

NOW, THEREFORE, BE IT HEREBY RESOLVED:

1. The City hereby determines to purchase, acquire and construct the Project and to pay for the costs of the Project by the issuance of the Revenue Bonds in one or more series pursuant to Act 94 in the maximum principal amount of $9,500,000.

2. A Notice of Intent, substantially in the form attached hereto as Exhibit A, shall be published in accordance with Section 33 of Act 94 in the *Oceana's Herald-Journal*, a newspaper of general circulation in the City and determined to be the newspaper reaching the largest number of persons to whom said Notice is directed.

3. The City Council does hereby determine that the foregoing form of Notice of Intent to Issue and the manner of publication directed is the method best calculated to give notice to the City's water system users and the City's taxpayers and electors of this City's intent to issue the Revenue Bonds, the maximum principal amount of bonds to be issued, the purpose of the bonds, the security and source of repayment for the bonds, and the right of referendum relating thereto, and such other information as the City Council determines necessary to adequately inform City electors of the nature of the Project and the proposed Revenue Bonds.

4. It is reasonably expected that the City has advanced, or will advance, funds for the Project prior to issuance of the Revenue Bonds, including items exempt from the Reimbursement Regulations, from monies on hand in the City's Sewer Fund in the estimated amount of $500,000.

5. The City hereby declares its official intent, and reasonable expectation, to reimburse all or a portion of the amounts so advanced by the City for the Project from the proceeds of the Revenue Bonds.

6. The City Council hereby retains Mika Meyers PLC, Attorneys of Grand Rapids, as Bond Counsel and Baker Tilly, Lansing, as registered municipal advisor for the Project and the Revenue Bonds.

7. All resolutions or portions thereof inconsistent with the provisions of this resolution are hereby rescinded.

YEAS: Members: _____

_____

NAYS: Members: _____

ABSENT: Members: _____

RESOLUTION DECLARED ADOPTED.

_____
Karla Swihart, Clerk
City of Hart

STATE OF MICHIGAN)
) ss.
COUNTY OF OCEANA)

I, Karla Swihart, the duly qualified and acting Clerk of the City of Hart, Oceana County, Michigan (the "City") do hereby certify that the foregoing is a true and complete copy of a resolution adopted by the City Council at a regular meeting held on the 25th day of January 2022, the original of which is on file in my office. Public notice of said meeting was given pursuant to and in compliance with Act No. 267, Public Acts of Michigan, 1976, as amended, including in the case of a special or rescheduled meeting, notice by publication or posting at least eighteen (18) hours prior to the time set for the meeting.

IN WITNESS WHEREOF, I have hereto affixed my official signature this ____ day of January 2022.

Karla Swihart, Clerk
City of Hart

EXHIBIT A

NOTICE TO ELECTORS AND TAXPAYERS OF THE CITY OF HART OF THE CITY'S INTENT TO ISSUE REVENUE BONDS AND THE RIGHT OF REFERENDUM RELATING THERETO

PLEASE TAKE NOTICE THAT THE CITY OF HART intends to issue revenue bonds in a maximum amount not to exceed $9,500,000 as set forth in this notice.

PURPOSE

The Bonds shall be issued for the purpose of defraying the cost of the purchase, acquisition and construction of improvements to the City's wastewater collection and treatment system including, but not limited to, the replacement of undersized gravity sewer, lift station replacement and upgrades, additions/modifications to the wastewater treatment plant, and related improvements; legal, engineering, financing, and contingency costs; and related appurtenances, which improvements will increase capacity at the wastewater treatment plant, meet increasing flows and loading, replace aging infrastructure, and increase reliability and efficiency (the "Project").

ESTIMATED PROJECT COST

The total estimated cost of the proposed Project is $8,409,000. The cost of the Project shall be paid from the proposed bond issue. The City has received an offer of funding assistance from the State of Michigan Clean Water Revolving Loan Program (the "CWSRF Program") to pay the cost of the Project comprised of long-term low-interest loans to be evidenced by the proposed Bonds under Act 94 of the Public Acts of Michigan of 1933, as amended ("Act 94"), in a not to exceed amount of $9,500,000.

MAXIMUM AMOUNT AND TERMS OF REPAYMENT

The Bonds to be issued in one or more series in a maximum aggregate amount not to exceed $9,500,000, shall mature serially with interest on the unpaid balance at a rate which shall not exceed the maximum rate of interest allowed by law and which is currently expected to be 1.875% per annum and shall be repaid over a term not to exceed the maximum term permitted by law. The Bonds shall be issued pursuant to Act 94.

SOURCE OF PAYMENT OF BONDS

The principal of and interest on the Bonds shall be payable from the revenues received by the City from the operation of the City's Sewer system and from other legally available funds. The revenues will be derived from rates and charges billed to the users of the System, a schedule of which is presently on file in the office of the City Clerk. Said rates and charges may be revised from time to time to provide sufficient revenues to provide for the expenses of operating and maintaining the System, to pay the principal of and interest on the proposed bonds and to pay other obligations of the System.

In addition, the Bonds may be additionally secured by the City's full faith and credit and limited tax pledge, within applicable charter, statutory and constitutional tax limitations applicable to the City. THE CITY WILL NOT HAVE THE AUTHORITY TO LEVY ADDITIONAL TAXES TO PAY THE PRINCIPAL OF AND INTEREST ON THE BONDS OVER PRESENTLY EXISTING CITY MILLAGE LIMITS WITHOUT A FURTHER VOTE OF CITY ELECTORS.

RIGHT OF REFERENDUM

THE BONDS WILL BE ISSUED WITHOUT A VOTE OF THE ELECTORS APPROVING THE BONDS, UNLESS, WITHIN 45 DAYS FROM THE DATE OF PUBLICATION OF THIS NOTICE OF INTENT, A PETITION, SIGNED BY NOT LESS THAN 10% OF THE REGISTERED ELECTORS RESIDING WITHIN THE LIMITS OF THE CITY OF HART, SHALL HAVE BEEN FILED WITH THE CITY CLERK REQUESTING A REFERENDUM UPON THE QUESTION OF THE ISSUANCE OF THE BONDS. IF PETITIONS ARE SO FILED, THE BONDS SHALL NOT BE ISSUED UNTIL APPROVED BY THE VOTE OF A MAJORITY OF THE ELECTORS OF THE CITY QUALIFIED TO VOTE AND VOTING ON THE ISSUANCE OF THE BONDS AT A GENERAL OR SPECIAL ELECTION.

This Notice is published pursuant to the requirements of Section 33 of Act 94 of the Public Acts of Michigan of 1933, as amended, and was approved by the City Council of the City of Hart on January 25, 2022.

Karla Swihart, City Clerk
City of Hart

RESOLUTION 2022 - 03
City Council
City of Hart, Michigan
Oceana County

Accept environmental consulting services proposal for BioPure forcemain project

WHEREAS, as part of the City of Hart has been awarded a $810,000 grant by the Michigan Economic Development Corporation to assist the city in the replacement of the aging wastewater forcemain from the Griswold lift station to the BioPure treatment facility; and

WHEREAS, it is necessary for the City to obtain a qualified environmental consultant to perform a National Environmental Policy Act review to comply with Michigan Economic Development Corporation and Community Development Block Grant requirements; and

WHEREAS; Fishbeck corporation has submitted the most qualified proposal for services to support the city through this project by indicating their ability to perform the work in a timely matter allowing the city to meet its anticipated bidding timeline; and

WHEREAS, in order to secure the benefits of efficient self-government and to promote and protect our common interests and welfare, the City Council hereby declares:

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL

> *Accepts the proposal for environmental consulting services from Fishbeck for a lump sum cost of $5,500 to complete the required NEPA assessment and all related environmental survey and documentation work as required by the terms of the MEDC distributed CDBG grant. Council authorizes the City Manger to sign and execute said agreement.*

Moved by _____, supported by _____, and thereafter adopted by the Hart City Council at a regularly scheduled meeting held on January 25, 2022.

Ayes: __ Nays: __ Absent: __

MICHIGAN ECONOMIC
DEVELOPMENT CORPORATION

January 14, 2022

Mr. Rob Splane (Via electronic mail)
City Manager
City of Hart
407 State Street
Hart, Michigan 49420

RE: Community Development Block Grant (CDBG) Proposed Project; City of Hart Water Related Infrastructure Project MSC 221008- WRI

Dear Mr. Splane:

The Michigan Economic Development Corporation, on behalf of the Michigan Strategic Fund, has received the Request for Release of Funds and Certification of Environmental Review Procedures as required by federal regulations 24 CFR Part 58 for the City of Hart's proposed Michigan CDBG Project, Water Related Infrastructure Project. In addition, we have received your emailed letter on January 14, 2022 requesting authorization to incur costs in the amount of $5,500 for Fishbeck Inc. for the environmental assessment on the project. I am pleased to inform the city that the request has been approved. The City and Fishbeck may incur non-CDBG environmental review costs up to $5,500 for the activities specified above and referenced in your letter.

Please note these activities may be subject to Davis Bacon. Please ensure that the City and Environmental consultant are aware of and comply with federal labor standard requirements. If applicable, contracts must be executed and must include the required federal wage decisions and other federal labor standard language. The contracts cannot include any work to be paid for with CDBG funds. The City's and MEDC's files must include a copy of the executed contracts.

This letter is intended only to grant permission to incur costs mentioned above and is not to be construed as permission to conduct any other project activities. The City and Environmental consultant may incur only those expenses to be paid for with non-CDBG funds. The City and Environmental are cautioned that any public or private expenses incurred, or any work done on this project, prior to final approval of a grant is solely at the risk of the City of Hart and the Environmental consultant. Approval of this request does not imply approval of your project, which will be reviewed according to the published program requirements.

Should you have any questions on these requirements, please contact me at (517) 599-8033 or vinsonL1@michigan.org.

Sincerely,

Louis Vinson

CDBG Senior Program Specialist

CC: CDBG File

fishbeck
Engineers | Architects | Scientists | Constructors

921 West Eleventh Street, Unit 2E
Traverse City, Michigan 49684

800.456.3824 | fishbeck.com

December 27, 2021

Rob Splane
City Manager
City of Hart
407 State Street
Hart, Michigan 49420

Proposal for Consulting Services
CDBG Environmental Review 2021
Griswold Wastewater Force Main Project

Dear Rob:

Fishbeck is pleased to provide this proposal for environmental consulting services to compile and review data and assist the City of Hart with an environmental review. The proposed redevelopment project, the Griswold Wastewater Force Main Project, will be funded in part by a Michigan Economic Development Corporation (MEDC) Community Development Block Grant (CDBG), which requires an environmental review pursuant to the National Environmental Policy Act (NEPA) and related laws and authorities.

Project Understanding

The City of Hart plans to replace approximately 6,000 feet of sanitary sewer and force main and connect the new system to the existing Griswold Lift Station. Per my conversation with Louis Vinson of MEDC, the City needs a consultant to compile and review existing environmental data and complete MEDC forms to secure a CDBG for the project.

The project does not include conducting environmental, wetland, or other site assessments.

Scope of Services

Fishbeck will:

- Compile and review documents needed to complete the MEDC's Chapter 5 forms for Environmental Assessment.
- Identify data gaps (if any) and work with the City to secure information needed for the environmental review.
- Complete the appropriate MEDC Chapter 5 forms for Environmental Assessment.

Cost and Authorization

Fishbeck proposes to perform the scope of services described above for a lump sum fee of **Five Thousand Five Hundred Dollars ($5,500).**

Attached is our Professional Services Agreement. If you concur with our scope of services, please sign in the space provided and return the executed contract to the attention of Ariane Savoy (asavoy@fishbeck.com). This proposal is made subject to the attached Terms and Conditions for Professional Services. Invoices will be submitted every four weeks and payment is due upon receipt.

fishbeck
Engineers | Architects | Scientists | Constructors

1515 Arboretum Drive, SE
Grand Rapids, Michigan 49546

616.575.3824 | fishbeck.com

Professional Services Agreement

PROJECT NAME	Environmental Review
PROJECT ADDRESS	Griswold Force Main, Hart, Michigan
FISHBECK CONTACT	Susan Wenzlick
CLIENT	City of Hart
CLIENT CONTACT	Rob Splane, City Manager
CLIENT ADDRESS	407 State Street, Hart, Michigan

Client hereby requests and authorizes Fishbeck to perform the following:

SCOPE OF SERVICES:
Completion of environmental services, in accordance to the attached Fishbeck letter proposal.

AGREEMENT. The Agreement consists of this page and the documents that are checked:
☒ **Terms and Conditions for Professional Services, attached.**
☒ **Proposal dated** December 27, 2021
☐ **Other:**

METHOD OF COMPENSATION:
☒ **Lump Sum for Defined Scope of Services**
☐ **Hourly Billing Rates plus Reimbursable Expenses-**
☐ **Other:**

Budget for Above Scope of Services:
Five Thousand Five Hundred Dollars ($5,500)

ADDITIONAL PROVISIONS (IF ANY): None.

APPROVED FOR:		**ACCEPTED FOR:**	
City of Hart		Fishbeck	
BY:	_____	**BY:**	Michael S Colvin
TITLE:	_____	**TITLE:**	Senior Vice President
DATE:	_____	**DATE:**	December 27, 2021

Schedule

Within two weeks of authorization to proceed, Fishbeck will coordinate initial steps with the City to collect project data and begin its review.

We appreciate the opportunity to work with the City of Hart on this project. If you have any questions or require additional information, please contact me at 231.394.1657.

Sincerely,

Susan Wenzlick
Senior Brownfield Specialist

Attachments
By email
Copy: Roman Wilson – Fishbeck

Terms and Conditions for Professional Services

1. **METHOD OF AUTHORIZATION.** Client may authorize Fishbeck to proceed with work either by signing a Professional Services Agreement or by issuance of an acknowledgment, confirmation, purchase order, or other communication. Regardless of the method used, these Terms and Conditions shall prevail as the basis of Client's authorization to Fishbeck. Any Client document or communication in addition to or in conflict with these Terms and Conditions is rejected.

2. **CLIENT RESPONSIBILITIES.** Client shall provide all criteria and full information as to requirements for the Project and designate in writing a person with authority to act on Client's behalf on all matters concerning the Project. If Fishbeck's services under this Agreement do not include full-time construction observation or review of Contractor's performance, Client shall assume responsibility for interpretation of contract documents and for construction observation, and shall waive all claims against Fishbeck that may be in any way connected thereto.

3. **HOURLY BILLING RATES.** Unless stipulated otherwise, Client shall compensate Fishbeck at hourly billing rates in effect when services are provided by Fishbeck employees of various classifications.

4. **REIMBURSABLE EXPENSES.** Those costs incurred on or directly for Client's Project. Reimbursement shall be at Fishbeck's current rate for mileage for service vehicles and automobiles, special equipment, and copying, printing, and binding. Reimbursement for commercial transportation, meals, lodging, special fees, licenses, permits, insurances, etc., and outside technical or professional services shall be on the basis of actual charges plus 10 percent.

5. **OPINIONS OF COST.** Any opinions of probable construction cost and/or total project cost provided by Fishbeck will be on a basis of experience and judgment, but since it has no control over market conditions or bidding procedures, Fishbeck cannot warrant that bids or ultimate construction or total project costs will not vary from such estimates.

6. **PROFESSIONAL STANDARDS; WARRANTY.** The standard of care for services performed or furnished by Fishbeck will be the care and skill ordinarily used by members of Fishbeck's profession practicing under similar circumstances at the same time and in the same locality. Fishbeck makes no warranties, express or implied, under this Agreement or otherwise, in connection with Fishbeck's services.

7. **TERMINATION.** Either Client or Fishbeck may terminate this Agreement by giving ten days' written notice to the other party. In such event, Client shall pay Fishbeck in full for all work previously authorized and performed prior to the effective date of termination, plus (at the discretion of Fishbeck) a termination charge to cover finalization work necessary to bring ongoing work to a logical conclusion. Such charge shall not exceed 30 percent of all charges previously incurred. Upon receipt of such payment, Fishbeck will return to Client all documents and information which are the property of Client.

8. **SUBCONTRACTORS.** Fishbeck may engage subcontractors on behalf of Client to perform any portion of the services to be provided by Fishbeck hereunder.

9. **PAYMENT TO FISHBECK.** Invoices will be issued every four weeks, payable upon receipt, unless otherwise agreed. Interest of 1 percent per four-week period will be payable on all amounts not paid within 28 days from date of invoice, payment thereafter to be applied first to accrued interest and then to the principal unpaid amount. Any attorney's fees or other costs incurred in collecting any delinquent amount shall be paid by Client.

   Client agrees to pay on a current basis, in addition to any proposal or contract fee understandings, all taxes including, but not limited to, sales taxes on services or related expenses which may be imposed on Fishbeck by any governmental entity.

   If Client directs Fishbeck to invoice another, Fishbeck will do so, but Client agrees to be ultimately responsible for Fishbeck's compensation until Client provides Fishbeck with that third party's written acceptance of all terms of this Agreement and until Fishbeck agrees to the substitution.

   In addition to any other remedies Fishbeck may have, Fishbeck shall have the absolute right to cease performing any basic or additional services in the event payment has not been made on a current basis.

10. **HAZARDOUS WASTE.** Fishbeck has neither created nor contributed to the creation or existence of any hazardous, radioactive, toxic, irritant, pollutant, or otherwise dangerous substance or condition at any site, and its compensation hereunder is in no way commensurate with the potential risk of injury or loss that may be caused by exposure to such substances or conditions. Fishbeck shall not be responsible for any alleged contamination, whether such contamination occurred in the past, is occurring presently, or will occur in the future, and the performance of services hereunder does not imply risk-sharing on the part of Fishbeck.

11. **LIMITATION OF LIABILITY.** To the fullest extent permitted by law, Fishbeck's total liability to Client for any cause or combination of causes, which arise out of claims based upon professional liability errors or omissions, whether based upon contract, warranty, negligence, strict liability, or otherwise is, in the aggregate, limited to the greater of $250,000 or the amount of the fee earned under this Agreement.

    To the fullest extent permitted by law, Fishbeck's total liability to Client for any cause or combination of causes, which arise out of claims for which Fishbeck is covered by insurance other than professional liability errors and omissions, whether based upon contract, warranty, negligence, strict liability, or otherwise is, in the aggregate, limited to the total insurance proceeds paid on behalf of or to Fishbeck by Fishbeck's insurers in settlement or satisfaction of Client's claims under the terms and conditions of Fishbeck's insurance policies applicable thereto.

    Higher limits of liability may be considered upon Client's written request, prior to commencement of services, and agreement to pay an additional fee.

12. **DELEGATED DESIGN.** Client recognizes and holds Fishbeck harmless for the performance of certain components of the Project which are traditionally specified to be designed by the Contractor.

13. **INSURANCE.** Client shall cause Fishbeck and Fishbeck's consultants, employees, and agents to be listed as additional insureds on all commercial general liability and property insurance policies carried by Client which are applicable to the Project. Client shall also provide workers' compensation insurance for Client's employees. Client agrees to have their insurers endorse these insurance policies to reflect that, in the event of payment of any loss or damages, subrogation rights under this Agreement are hereby waived by the insurer with respect to claims against Fishbeck.

    Upon request, Client and Fishbeck shall each deliver to the other certificates of insurance evidencing their coverages.

    Client shall require Contractor to purchase and maintain commercial general liability and other insurance as specified in the contract documents and to cause Fishbeck and Fishbeck's consultants, employees, and agents to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project. Contractor must agree to have their insurers endorse these insurance policies to reflect that, in the event of payment of any loss or damages, subrogation rights under this Agreement are hereby waived by the insurer with respect to claims against Fishbeck.

14. **INDEMNIFICATION.** Fishbeck will defend, indemnify, and hold Client harmless from any claim, liability, or defense cost for injury or loss sustained by any party from exposures to the extent caused by Fishbeck's negligence or willful misconduct. Client agrees to defend, indemnify, and hold Fishbeck harmless from any claim, liability, or defense cost for injury or loss sustained by any party from exposures allegedly caused by Fishbeck's performance of services hereunder, except for injury or loss to the extent caused by the negligence or willful misconduct of Fishbeck. These indemnities are subject to specific limitations provided for in this Agreement.

15. **CONSEQUENTIAL DAMAGES.** Client and Fishbeck waive consequential damages for claims, disputes, or other matters in question relating to this Agreement including, but not limited to, loss of business.

16. **LEGAL EXPENSES.** If either Client or Fishbeck makes a claim against the other as to issues arising out of the performance of this Agreement, the prevailing party will be entitled to recover its reasonable expenses of litigation, including reasonable attorney's fees. If Fishbeck brings a lawsuit against Client to collect invoiced fees and expenses, Client agrees to pay Fishbeck's reasonable collection expenses including attorney fees.

17. **OWNERSHIP OF WORK PRODUCT.** Fishbeck shall remain the owner of all drawings, reports, and other material provided to Client, whether in hard copy or electronic media form. Client shall be authorized to use the copies provided by Fishbeck only in connection with the Project. Any other use or reuse by Client or others for any purpose whatsoever shall be at Client's risk and full legal responsibility, without liability to Fishbeck. Client shall defend, indemnify, and hold harmless Fishbeck from all claims, damages, losses, and expenses, including attorney's fees arising out of or resulting therefrom.

18. **ELECTRONIC MEDIA.** Data, reports, drawings, specifications, and other material and deliverables may be transmitted to Client in either hard copy, digital, or both formats. If transmitted electronically, and a discrepancy or conflict with the electronically transmitted version occurs, the hard copy in Fishbeck's files used to create the digital version shall govern. If a hard copy does not exist, the version of the material or document residing on Fishbeck's computer network shall govern. Fishbeck cannot guarantee the longevity of any material transmitted electronically nor can Fishbeck guarantee the ability of the Client to open and use the digital versions of the documents in the future.

19. **GENERAL CONSIDERATIONS.** Client and Fishbeck each are hereby bound and the partners, successors, executors, administrators, and legal representatives of Client and Fishbeck are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

    Neither Client nor Fishbeck shall assign this Agreement without the written consent of the other.

    Neither Client nor Fishbeck will have any liability for nonperformance caused in whole or in part by causes beyond Fishbeck's reasonable control. Such causes include, but are not limited to, Acts of God, civil unrest and war, labor unrest and strikes, acts of authorities, and events that could not be reasonably anticipated.

    This Agreement shall be governed by the law of the principal place of business of Fishbeck.

    This Agreement constitutes the entire agreement between Client and Fishbeck and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

End of Terms and Conditions for Professional Services