CITY OF BURTON

BURTON CITY COUNCIL MEETING

JULY 6, 2017

AGENDA

Council Chambers	**Regular Meeting**	**7:00 PM**

4303 S. CENTER ROAD
BURTON, MI 48519

A. INVOCATION LED BY: MR. O'KEEFE

B. THE PLEDGE OF ALLEGIANCE IS LED BY: MR. O'KEEFE

C. ROLL CALL

D. STAFF PRESENT

E. APPROVAL OF MINUTES

1. City Council - Committee of the Whole - Jun 19, 2017 6:00 PM
2. City Council - Regular Meeting - Jun 19, 2017 7:00 PM
3. City Council - Special Meeting - Jun 26, 2017 7:00 PM
4. City Council - Special Meeting - Jun 27, 2017 5:30 PM

F. ADMINISTRATIVE REPORTS

G. COMMITTEE REPORTS

H. AUDIENCE PARTICIPATION

Now is the time set-aside for members of the audience to address the Burton City Council. I would ask each individual to give their name and address for the record and to limit their comments to three (3) minutes and to speak on the topics germane to City business.

I. COUNCIL DISCUSSION

J. COUNCIL ACTION

1. Approve and authorize the Attorney Billing (Amanda Doyle) 06/14/17 to06/27/17 in the amount $4,609.75.

2. Signal Improvements at Maple Avenue & Saginaw Street

   Approve & authorize the Mayor and Clerk to enter into a Cost Agreement with the Genesee County Road Commission for Signal Improvements at Maple Avenue and Saginaw Street for the estimated amount of $60,000, and the associated maintenance of said signals.

3. Approve & Authorize the Mayor and Clerk to execute contract number 17-5281 with the Michigan Department of Transportation for the rehabilitation of Structure No. 2714 – Bristol Road over Thread Creek (DPW No. 16-007-P).

4. APPROVE AND AUTHORIZE scheduling a special city council meeting for the purpose of a public hearing on Monday, July 17, 2017 at 6:30 p.m. to consider any objections and/or favorable comments relative to the erection of a 150’ stealth monopole tower facility upon 2462 S. Genesee parcel ID# 59-22-400-006, wireless communication site to be located at the Northwest corner of Genesee Rd. and Atherton Rd.

5. Approve and authorize the Mayor, Clerk, and Human Resources Director to enter into a contract with the DM Burr Group, 4252 Holiday Drive, Flint, MI 48507, for the purpose of hiring up to "4 Summer Labor Workers" for the periods of July 1, 2017 through October 31, 2017 and April 1, 2018 through June 30, 2018 for an amount not to exceed $49,000.00.

CITY OF BURTON

BURTON CITY COUNCIL MEETING

JUNE 19, 2017

MINUTES

Council Chambers	**Committee of the Whole**	**6:00 PM**

4303 S. CENTER ROAD
BURTON, MI 48519

This meeting was opened by President Steven Heffner at 6:00 PM.

A. CALL TO ORDER

Attendee Name	Title	Status	Arrived
Tom Martinbianco	Councilman	Late	6:17 PM
Duane Haskins	Councilman	Present	
Steven Heffner	President	Present	
Steven Hatfield	Councilman	Present	
Christina Conley	Councilwoman	Present	
Dennis O'Keefe	Councilman	Present	
Vaughn Smith	Councilman	Present	

B. STAFF PRESENT

Paula Zelenko, Mayor
Ginger Burke-Miller, Controller
Rik Hayman, Chief of Staff
Racheal Boggs, Deputy Clerk

C. ADMINISTRATIVE REPORT

None.

D. AUDIENCE PARTICIPATION

None.

E. COUNCIL DISCUSSION

1. Presentation and discussion with Pam Hill from Plante Moran regarding governmental accounting.

   Pam Hill stated last year you had the loan for the dump truck before the end of the year but you didn't physically receive that asset. So your cash was over inflated June 16, 2016 by around $408,000.00. The financial statements showed 1.3 million as cash on June 30, 2016. You got the loan but you just hadn't paid out the cash yet for that asset. The available cash on June 13, 2016 was around $900,000.00 minus the dump truck expense. I looked at the cash flow analysis and the general ledger details as of April 30, 2016 and it does make sense given the fact that you had significant use of funds this year for capital purchases. Listed on the bottom of the cash flow statement are the capital expenditures that were paid out of the internal service fund in 2017. It was about 1.1-1.2 million dollars. About $600,000.00 was funded by loans, the rest was physically cash that was paid out of the internal service fund to pay for those assets. This is real close to the cash balance that was there as of April 30th. For the last 4-5 years the net position has been pretty much the same but you can see the capital asset amount has declined as the depreciation or net book value of those assets have gone down. Then when you bought more, it bumped back up.

Mr. O'Keefe said the problem is we are dealing with the proposed income and expense budget. The fund balance appeared to be cash and we were told it was not. We wasted a lot of time on this. Next year on these enterprise funds, the fund balance has to be disclosed as to what the cash position is. We need more detail next year.

Mr. Smith asked Ms. Hill how can we track our labor and get our legacy issues under control and what is the best way to do a line item budget? The last one we did was a disaster.

Ms. Hill suggested sending any questions to the administration first. Try to iron out some of the questions before the meeting. This would make it more productive. The use of different reporting tools may be helpful, such as highlighting areas and putting explanations next to some of the items. You could take a look at your current option within your unions, multipliers that you are giving to retirees and make a more detailed budget for labor and then on a departmental basis. The whole thought process behind governmental accounting is transparency and accountability and as a taxpayer they can see where their money goes.

Mr. O'Keefe said if we approve the line item budget tonight, we have no process to manage that. I agree with the hybrid plan.

Ms. Hill suggested checking with legal council on the hybrid plan.

Mr. Haskins stated the two huge factors of a line item budget are department heads being held accountable and knowing their budget before they overspend and have administration come before the council before they spend the money.

Mr. Haskins stated he supports the line item budget 100 percent. I think this is best for the city and helps you be more fiscally responsible.

Mrs. Burke-Miller said the purchase order system that we implemented July 15, 2016 has been helping. When the department head enters in a purchase order now the system will let them know if there is enough money in there. One of the issues we need to address as well is I.T. The discussion from the conference call with Mr. Smith with regard to the I.T. fund balance and whether it made sense to pull back $100,000.00 out of the general fund allocation.

Ms. Hill said with internal service funds you need to make sure that the way you are allocating and charging anything out of that fund is reasonable and what it's based on. The whole point of this fund is to allocate costs. Whatever methodology you use for this system needs to be consistent and reasonable. It is ok to change it if circumstances change as long as you have a reasonable basis for that change and for the methodology you are using. You have some funds that are paying into that internal service fund in which those monies are restricted. You have to make sure that everyone is paying their fair share based on whatever methodology you have.

Mr. O'Keefe said we made a big change several years ago when we needed to upgrade our hardware and software. We made a decision to lease instead of buy so we know exactly what it is going to cost. In my opinion that's a $100,000.00 that doesn't need to be there.

Mr. Haskins stated there is $180,600.00 left in the fund balance of that.

Ms. Hill said if you transfer out of an internal service fund you do have to transfer equitably based on the allocation you're using to charge funds.

Mrs. Burke-Miller stated there was an extra $100,000.00 in fund balance but there are several different funds that are paying into it. When we are developing the budget we look at how much excess money is in there and then make a determination of how much we want to decrease the amount that is charged out to all funds. What happened this year is that there was still some excess in there. City Council wanted to take $100,000.00, which reduced that money out of the allocation coming in from general fund only and not across each department.

Ms. Hill said Ginger makes the journal entry after the budget gets approved. If you approve the budget one way and you still want her to go back and do the computation to make sure you're going to be ok, she could do that and present it to you at another council meeting. If you needed to make a budget amendment at that time you could.

Meeting was adjourned at 6:56 PM.

CITY OF BURTON

BURTON CITY COUNCIL MEETING

JUNE 19, 2017

MINUTES

Council Chambers	**Regular Meeting**	**7:00 PM**

4303 S. CENTER ROAD
BURTON, MI 48519

This meeting was opened by President Steven Heffner at 7:00 PM.

A. INVOCATION LED BY: MR. MARTINBIANCO

B. THE PLEDGE OF ALLEGIANCE IS LED BY: MR. MARTINBIANCO

C. ROLL CALL

Attendee Name	Title	Status	Arrived
Tom Martinbianco	Councilman	Present	
Duane Haskins	Councilman	Present	
Steven Heffner	President	Present	
Steven Hatfield	Councilman	Present	
Christina Conley	Councilwoman	Present	
Dennis O'Keefe	Councilman	Present	
Vaughn Smith	Councilman	Present	

D. STAFF PRESENT

Paula Zelenko, Mayor
Ginger Burke-Miller, Controller
Bob Slattery, DPW Director
Rik Hayman, Chief of Staff
Racheal Boggs, Deputy Clerk

E. APPROVAL OF MINUTES

1. Budget Meeting - Budget Workshop - May 10, 2017 6:30 PM

RESULT:	**ACCEPTED [UNANIMOUS]**
MOVER:	Dennis O'Keefe, Councilman
SECONDER:	Christina Conley, Councilwoman
AYES:	Martinbianco, Haskins, Heffner, Hatfield, Conley, O'Keefe, Smith

2. Budget Meeting - Budget Workshop - May 23, 2017 6:30 PM

RESULT:	**ACCEPTED [UNANIMOUS]**
MOVER:	Dennis O'Keefe, Councilman
SECONDER:	Christina Conley, Councilwoman
AYES:	Martinbianco, Haskins, Heffner, Hatfield, Conley, O'Keefe, Smith

3. Budget Meeting - Budget Workshop - May 31, 2017 6:30 PM

RESULT:	**ACCEPTED [UNANIMOUS]**
MOVER:	Dennis O'Keefe, Councilman
SECONDER:	Christina Conley, Councilwoman
AYES:	Martinbianco, Haskins, Heffner, Hatfield, Conley, O'Keefe, Smith

4. City Council - Regular Meeting - Jun 5, 2017 7:00 PM

RESULT:	**ACCEPTED [UNANIMOUS]**
MOVER:	Dennis O'Keefe, Councilman
SECONDER:	Christina Conley, Councilwoman
AYES:	Martinbianco, Haskins, Heffner, Hatfield, Conley, O'Keefe, Smith

F. ADMINISTRATIVE REPORTS

Mayor Zelenko stated on June 8th, 2017 Burton Place Apartments had a fire that caused evacuation of many residents. They had to find alternate housing until repairs could be made. Our Fire and Police Department were excellent in their response and actions. Two firefighters suffered heat related exposures but were released later and are doing well. Jean Johnson, Burton Senior Center Director, opened the senior center as the headquarters for the residents. Mrs. Morgan reported that we helped about 60 residents, 23 residents spent the night at the Burton Senior Center and MTA provided shuttle and taxi services from Burton Place to our Senior Center. Little Ceaser's on Bristol provided pizza for everyone that night. Mrs. Morgan and her daughter along with two employees and four Red Cross employees stayed the night. Friday morning Starlight Coney Island provided breakfast. Valley Area Agency on the Aged came in with six social workers and did a great job working out how these residents were going to get by until their apartments were ready. Everyone was very professional and kind. The Burton Senior Center fed them lunch on Friday and by 2 p.m. all of the affected residents were taken care of except for one that had a medical appointment but that is now taken care of. In need assessments are ongoing. All but 12 residents have been moved back in. The remaining 12 apartments are expected to be rehabilitated in the next couple of weeks. This is a great example of how our community came together to ease the trauma and provide services to those in need. I am very proud of the City of Burton employees, the emergency response and mutual aid of our neighboring communities and the coordination of the various community agencies and the council members that were there. I can't thank them enough.

The Genesee County Advisory Board will be reviewing and making recommendations on water rates next week. In the next couple of weeks we will have to review our rates according to the rate study and our commitment to the MDEQ Drinking Water Revolving Fund Standards.

On June 12, 2017 I attended the Flint City Council meeting. I am happy to report that they unanimously passed a resolution of acknowledgment and cooperation for the coordination of switching Burton residents in the Elmwood Gardens Subdivision neighborhood from the Flint water lines to the new Burton lines. The construction is slated to begin next week and a letter informing those residents is being mailed out. Elmwood Gardens is the Cheyenne and Menominee area that were affected by the Flint water crisis.

Absentee Voter Ballots started going out today. Chloride application is scheduled for gravel roads this Friday, June 22rd, (weather permitting), and I hope everyone has a safe July 4th holiday.

May's revenue and expenditure report is included in your packet.

1. May 2017 Revenue and Expenditure Report

G. COMMITTEE REPORTS

Mr. O'Keefe spoke regarding the Genesee County 911 surcharge.

H. AUDIENCE PARTICIPATION

Council received comments from the following people:

John Stapish spoke regarding eliminating the 3% Millage Rate, Stantec subcontractors hired and demolition program charges.

Rich Fuhst spoke regarding election equipment freight charges.

I. COUNCIL DISCUSSION

Mr. Smith said I have provided each council member a list of 2017-2018 proposed budget cuts. I have a question for Ginger Burke-Miller. We have about $325,000 that we would like to use towards roads for Stantec Fund that was left over. Did any of that money come from the General Fund? Mrs. Burke-Miller stated no, it is Act 51 money.

Mr. Slattery stated that money is in the construction budget under major streets, which most of it if not all of it is Act 51 funds for DWRF repairs. It has nothing to do with Stantec or engineering fees.

Mr. Hayman said I would like to clarify for the record that the Mayor did propose a budget that was presented on April 3, 2017. The proposed budget cuts that you are presenting are not cuts that the Mayor proposed or in some cases agrees with.

Mr. Heffner asked why a bill was not sent out for salt for the Atherton Schools systems the past two years.

Mr. Hayman said that is correct. Atherton Schools picked up the salt and the information on how much salt was used, it was supposed to be forwarded to the Treasurer's Office to be invoiced. This didn't happen this year because Mr. Southard from the Motor Pool left in February and that doesn't get invoiced until May. We have been working with the superintendent to determine how much salt was used. Bendle is not getting salt from us and DPW delivers Bentley's salt to them.

Mrs. Burke-Miller said for 2016, Atherton Schools will be invoiced $1,256.43 for salt and for 2017 it is $1,245.93.

Mr. Heffner said I think they used more than this and the billed amount should be higher.

Mr. Haskins stated with cutting the fringe benefit amounts in the Clerk's Office, there would be an additional $24,383.00 under election 1001-1091-719.0000 and $8,128.00 under the Clerk 1001-2015-719.0000. The Mayor recommended cutting office supplies 1001-1071-727.0000 by $500.00, postage 1001-1071-731.000 by $300.00, memberships & dues 1001-1071-828.0000 by $500.00, training 1001-1071-864.0000 by an additional $2,000.00 and equipment rental 1001-2065-943.0000 by $3,000.00.

Mr. Heffner suggested cutting council training 1001-1001-864.0000 by $2,000.00.

Mr. Hatfield said a couple weeks ago I brought up a proposal to remove a section of an ordinance that would have reduced the budget by $50,000.00 by eliminating the council's benefits. Why does this have to go through a certain committee, whereas a $5,000.00 newsletter doesn't go through a public access committee?

Mr. Heffner stated we added that through the Budget meetings.

Mr. Slattery spoke regarding the stop signs on Judd Road. He said the traffic study we did not make sense so we are redoing it. We will also get counts on the cross streets which are Columbine, Barnes and Fern in order to see if they all meet the warrant for a four way stop. There are very specific warrants that need to be met for a four way stop.

Mr. Heffner asked if a resident goes around with a petition to have their road repaved, how they are charged. I have been approached with this question.

Mr. Slattery stated they are charged on a sliding scale that uses a front footage factor.

Mr. Haskins said I would like to move forward on the DPW forensic audit. Now would be a good time to do this, with starting a new budget year.

Mr. Smith said I will support this for purpose of discussion however I would like to call Pam Hill to get an opinion.

Mr. Martinbianco said I think this should wait until Pam Hill and her crew come back in and let us know which areas we need to look at.

Mr. Heffner would like to call Pam Hill to see what their recommendations are and bring this back at our next council meeting.

Mayor Zelenko said I want it to be on the record as being opposed to some of the recommendations for reductions for the Fiscal Year 2017-2018 Budget. Especially the reduction of the wages and fringes in the Clerk's office. The intentions of purposefully forcing a reduction in staff and layoff that will lead to unemployment costs, the inability to be able to contract out for help for the collective bargaining agreement and also could jeopardize the quality of our elections. I believe this is not in the best interest of the city. I believe the council cannot approve a budget that is not proposed by the Mayor, or one that the Mayor has not agreed to accept council's recommendations for reductions. I do not agree with the budget that you are proposing tonight and that it's not representative of any budget that I would have proposed.

1. Motion to add the first reading of the new repeal of chapter 153 to replace the sign ordinance with the new chapter 153.

   Mr. Haskins asked Attorney Doyle what will this ordinance do to help the city. Is there a penalty for having the signs up too long. How will this be enforced?

Mrs. Doyle stated the Supreme Court states the time frame allowing non commercial, temporary signs to be up has to be the same with all signs. Violation would be a removal and confiscation of the sign. It would be a civil infraction.

Ms. Ervin-Boggs stated there are different rules and regulations in the Election Accreditation Clerk's Manual specifically for political signs.

Mr. O'Keefe said he would like to remove his motion until the answers are more clear.

Mr. Haskins said after Attorney Doyle does more research and we have more answers, at that time we can decide whether this needs to go to the Legislative committee. I want to thank the council and administration for the love and support that you have shown regarding the passing of my mother.

RESULT:	**WITHDRAWN**

J. COUNCIL ACTION

1. Approve and authorize the Attorney Billing (Amanda Doyle) 05/31/17 to 06/13/17 in the amount $5,881.50.

RESULT:	**CARRIED [UNANIMOUS]**
MOVER:	Duane Haskins, Councilman
SECONDER:	Dennis O'Keefe, Councilman
AYES:	Martinbianco, Haskins, Heffner, Hatfield, Conley, O'Keefe, Smith

2. Approve and authorize the Attorney Billing (Masud) 05/01/17 to 05/31/17 in the amount $5,225.00.

   Mr. Haskins stated in the billing it says that there was an updated explanation as far as a progressive movement back in the beginning of May. I have not seen anything from Masud’s in a long time, only an update regarding negotiations two or three months ago.

   Mayor Zelenko said I don't think they are scheduled to go back into negotiations with SEIU until July 6, 2017.

   Mr. Smith said Masud's have been very active with contract negotiations with the union so perhaps we should bring them in to find out where we are at.

   Mr. Heffner would like Masud to come to the next council meeting July 6, 2017.

RESULT:	**CARRIED [UNANIMOUS]**
MOVER:	Duane Haskins, Councilman
SECONDER:	Christina Conley, Councilwoman
AYES:	Martinbianco, Haskins, Heffner, Hatfield, Conley, O'Keefe, Smith

3. Approve and authorize the following tax millage and fees to be levied for the 2017-2018 fiscal year: General operating 4.000 mills; voted police 8.4876; voted fire 1.0000; a $127.20 per unit rubbish removal fee on all residential improved parcels and those other parcels that utilize the service; a property tax administration fee of 1% on all tax statements and additional 4% late penalty charge when delinquent.

   Mrs. Ginger-Miller stated every resident pays a 1% administrative fee to for paper, envelopes postage and other administration cost.

RESULT:	**CARRIED [6 TO 1]**
MOVER:	Duane Haskins, Councilman
SECONDER:	Tom Martinbianco, Councilman
AYES:	Martinbianco, Haskins, Heffner, Conley, O'Keefe, Smith
NAYS:	Hatfield

4. Approve and authorize the City of Burton budget for all General Appropriations Act funds for the 2017-2018 Fiscal year budget.

   Amended to add the following: as presented by the Mayor on April 3, 2017 and as amended by Council on June 19, 2017

   Deputy Clerk Racheal Boggs reviewed the video and took responsiblity for the motion being passed incorrectly.

RESULT:	**CARRIED AS AMENDED [UNANIMOUS]**
MOVER:	Duane Haskins, Councilman
SECONDER:	Christina Conley, Councilwoman
AYES:	Martinbianco, Haskins, Heffner, Hatfield, Conley, O'Keefe, Smith

5. Motion to reconsider the action taken on item # 4 City of Burton 2017-2018 Budget.

RESULT:	**CARRIED [UNANIMOUS]**
MOVER:	Tom Martinbianco, Councilman
SECONDER:	Vaughn Smith, Councilman
AYES:	Martinbianco, Haskins, Heffner, Hatfield, Conley, O'Keefe, Smith

6. Approve and authorize the City of Burton budget for all General Appropriations Act fund for 2017-2018 fiscal year as presented by the Mayor on April 3, 2017 as amended by the Council on June 19, 2017 and also as a line item budget.

   Mr. Smith ask that the Council work with Pam Hill to come up with a more expeditious way for the line item budget should this moton pass.

RESULT:	**CARRIED [5 TO 2]**
MOVER:	Duane Haskins, Councilman
SECONDER:	Christina Conley, Councilwoman
AYES:	Martinbianco, Haskins, Heffner, Conley, Smith
NAYS:	Hatfield, O'Keefe

7. Approve and authorize the tax millage levy requested of 1.8673 for the Downtown Development Authority in the affected district for the 2017-2018 fiscal year.

RESULT:	**CARRIED [UNANIMOUS]**
MOVER:	Duane Haskins, Councilman
SECONDER:	Christina Conley, Councilwoman
AYES:	Martinbianco, Haskins, Heffner, Hatfield, Conley, O'Keefe, Smith

8. Approve and authorize City of Burton Downtown Development Authority Budget for 2017-2018 Fiscal year.

RESULT:	**CARRIED [UNANIMOUS]**
MOVER:	Duane Haskins, Councilman
SECONDER:	Tom Martinbianco, Councilman
AYES:	Martinbianco, Haskins, Heffner, Hatfield, Conley, O'Keefe, Smith

9. Approve and authorize Resolution 2017-7 for the Mayor and Clerk to execute the State of Michigan Help America Vote Act Agreement for the new election equipment.

Mr. Haskins asked the administration for an explanation of this and how it's going to work.

Ms. Boggs stated in your packet you have an interoffice memorandum from the City Clerk to Mayor Zelenko. This states the City of Burton is given some items as part of a grant but there are some things that we will have to purchase that are in addition to what we are given at no cost. We are allotted 12 precinct tabulators, one absent counting board tabulator and four ADA accessible voting devices. Anything in addition to that we will have to purchase and we have been setting aside money to do so. The extra tabulator for AV Counting Board would be $5,000.00. We normally run two AV counting boards, but when we only run one AV counting boards we would still need another tabulator for backup. We are asking for two extra tabulators at $5,000.00 each due to the County no longer providing spares. At the last election we had four machines go down. We had to get them from the County in order to continue to run the election. We are asking for 15 thumb drives at $45.00 each, 3 verity keys or programming keys. It only comes with one. We have four locations. If a machine goes down at two locations and with one key, we would only be able to take care of one location at a time. We are asking for one six bay battery charger at $540.00 and four extra batteries at $102.00. These new election machines have about a 2-2/2 hour battery life and should we have a power outage it's just not going to be sufficient to be able to run an election without any hitches.

Mr. Haskins asked where we are at in the process of the grant.

Ms. Boggs said we are receiving our election equipment on August 25, 2017.

Mayor Zelenko stated it was an appropriation that was made by the legislature.

RESULT:	**CARRIED [UNANIMOUS]**
MOVER:	Tom Martinbianco, Councilman
SECONDER:	Vaughn Smith, Councilman
AYES:	Martinbianco, Haskins, Heffner, Hatfield, Conley, O'Keefe, Smith

10. Approve and authorize the Mayor and City Clerk to purchase the additional necessary election equipment not provided by the State of Michigan from account # 4001-0000-887.0000 in Fiscal Year 2017-2018 in the amount of $16,863.00 plus freight.

RESULT:	**CARRIED [UNANIMOUS]**
MOVER:	Dennis O'Keefe, Councilman
SECONDER:	Vaughn Smith, Councilman
AYES:	Martinbianco, Haskins, Heffner, Hatfield, Conley, O'Keefe, Smith

11. Approve and authorize the Mayor and Clerk to enter into an agreement with Stantec Consulting Michigan Inc., 3754 Ranchero Drive, Ann Arbor, MI 48108-2771, for professional engineering services, to support development of a Water System Asset Management Program (AMP) for a not-to-exceed fee of $120,000.00.

    Mayor Zelenko stated there is a typo on this motion. It is in the backup correctly. It should read, not-to-exceed the fee of $120,200.00.

RESULT:	**CARRIED [5 TO 2]**
MOVER:	Dennis O'Keefe, Councilman
SECONDER:	Vaughn Smith, Councilman
AYES:	Haskins, Heffner, Hatfield, O'Keefe, Smith
NAYS:	Martinbianco, Conley

12. Motion on amend the agreement with Stantec to read not to exceed a fee of $120,200.00.

    Mr. Martinbianco stated this is a large number and we have done a yeoman's job trying to keep all the nuances in our water system up to date. From reading Mr. Slattery's commentary, that this is something that's driven by DEQ and some regulation that we have to comply by a certain date. I do not have much empathy for DEQ trying to tell us how to manage our own system, when you look at the other side of Center Road and see what a catastrophe that they've done. I'm not going to put $120,200.00 on our taxpayers, making them foot the bill for it. I won't support this.

RESULT:	**CARRIED [5 TO 2]**
MOVER:	Duane Haskins, Councilman
SECONDER:	Dennis O'Keefe, Councilman
AYES:	Haskins, Heffner, Hatfield, O'Keefe, Smith
NAYS:	Martinbianco, Conley

13. Approve and authorize the second and final approval of the sale of parcel #59-30-577-240 Vacant Lot on Allen Street to Terri Hutchison, 1152 Allen Street, Burton, MI 48529 for $100.

RESULT:	**CARRIED [UNANIMOUS]**
MOVER:	Dennis O'Keefe, Councilman
SECONDER:	Duane Haskins, Councilman
AYES:	Martinbianco, Haskins, Heffner, Hatfield, Conley, O'Keefe, Smith

K. SECOND READING OF ORDINANCE

1. Approve and authorize the second reading of Ordinance 2017-1-132.02, an Ordinance amending Chapter 132, section 02 of the City of Burton code of ordinances to provide for the penalty for a minor in possession of alcoholic beverages violation as a civil infraction pursuant to state law.

RESULT:	**CARRIED [UNANIMOUS]**
MOVER:	Duane Haskins, Councilman
SECONDER:	Dennis O'Keefe, Councilman
AYES:	Martinbianco, Haskins, Heffner, Hatfield, Conley, O'Keefe, Smith

2. Approve and authorize the second reading of an Ordinance 2017-2-143.01, an ordinance amending Chapter 143 of the City of Burton code of ordinances by the addition of language prohibiting the contributing to the delinquency of a minor and providing the penalty for the violation thereof.

RESULT:	**CARRIED [UNANIMOUS]**
MOVER:	Duane Haskins, Councilman
SECONDER:	Dennis O'Keefe, Councilman
AYES:	Martinbianco, Haskins, Heffner, Hatfield, Conley, O'Keefe, Smith

3. Approve and authorize the second reading of an Ordinance 2017-3-130.02, an ordinance amending Chapter 130, Section 02 of the City of Burton Code of Ordinances to provide for a 93 day penalty for ordinance violations which substantially correspond to violations of State law.

RESULT:	**CARRIED [UNANIMOUS]**
MOVER:	Duane Haskins, Councilman
SECONDER:	Dennis O'Keefe, Councilman
AYES:	Martinbianco, Haskins, Heffner, Hatfield, Conley, O'Keefe, Smith

4. Approve and authorize second reading of an Ordinance 2017-4-137.03, an ordinance amending Chapter 137 of the City of Burton code of ordinances by the addition of language prohibiting drug tools and paraphernalia and by providing the penalty for the violation thereof.

RESULT:	**CARRIED [UNANIMOUS]**
MOVER:	Duane Haskins, Councilman
SECONDER:	Dennis O'Keefe, Councilman
AYES:	Martinbianco, Haskins, Heffner, Hatfield, Conley, O'Keefe, Smith

5. Approve and authorize second reading of an Ordinance No 2017-5-115.02, an ordinance amending Chapter 115 of the City of Burton code of ordinances to require cash deposits for new constructions, constructions in the right-of-way and any other construction.

RESULT:	**CARRIED [UNANIMOUS]**
MOVER:	Duane Haskins, Councilman
SECONDER:	Dennis O'Keefe, Councilman
AYES:	Martinbianco, Haskins, Heffner, Hatfield, Conley, O'Keefe, Smith

6. Approve and authorize the second reading of an Ordinance No 2017-6-115.03, an ordinance amending Chapter 115 of the City of Burton code of ordinances to provide for the receipt, use and return of deposits made with the City.

RESULT:	**CARRIED [UNANIMOUS]**
MOVER:	Duane Haskins, Councilman
SECONDER:	Dennis O'Keefe, Councilman
AYES:	Martinbianco, Haskins, Heffner, Hatfield, Conley, O'Keefe, Smith

Meeting was adjourned at 9:30 PM.

CITY OF BURTON

BURTON CITY COUNCIL MEETING

JUNE 26, 2017

MINUTES

Council Chambers | **Special Meeting** | **7:00 PM**

4303 S. CENTER ROAD
BURTON, MI 48519

This meeting was opened by President Steven Heffner at 7:02 PM.

A. ROLL CALL

Attendee Name	Title	Status	Arrived
Tom Martinbianco	Councilman	Present	
Duane Haskins	Councilman	Present	
Steven Heffner	President	Present	
Steven Hatfield	Councilman	Present	
Christina Conley	Councilwoman	Present	
Dennis O'Keefe	Councilman	Present	
Vaughn Smith	Councilman	Present	

B. STAFF PRESENT

Paula Zelenko, Mayor
Thomas Osterholzer, Police Chief
Rik Hayman, Chief of Staff
Teresa Karsney, Clerk

C. ADMINISTRATIVE REPORT

Mayor Zelenko stated she had no report tonight. Thank you.

D. AUDIENCE PARTICIPATION

Council received comments from the following:

Robert Long of Burton, How much is this going to cost the City for this Attorney? Thought the $17.00 per household should have gone in to the retirement fund or to roads. Mayor working on water issues and trying to bring business to Burton. Though the council has a vendetta against the Mayor. Wants to see the city flourish.

E. COUNCIL ACTION

1. Consideration and possible action regarding retaining outside Counsel to represent the Burton City Council in legal action to enforce the City's adopted Fiscal Year 2017-2018 Budget.

   -Mr. Martinbianco stated he thought this is unprecedented in every step of the way. I respect what the Mayor's consideration is relative to her submission of a budget. I would call to the attention of the Council that we did have our legal counsel talk about the impact of what our council did and move it forward which was consistent with past practice and with the Uniform Budgeting Act. We had to make some tough decisions, which we did, and what we have is the final analysis. What we are here for tonight is hiring outside counsel to represent the City in legal action. My hope is that we don't have to go that way. In my reading I don't see that the Mayor has the authority to do that. The Attorney opinion stated the Mayor proposes the budget, the council adds or deletes from it as we choose to do so. If it happens to be a problem with the administration of the budget and execution of her duties than and only then will we have those problems. Looking at we proposed, looking what the charter says, looking at what the council has brought forth I didn't see a problem there. The Mayor has chosen not to veto the budget and the City Attorney has given her opinion. If the Mayor has chosen not to accept the budget the City Council has put forward that at that time would I consider taking action.

Mr. O'Keefe wants to make sure he has it clear. He asked the City Attorney, the Mayor has declined either to veto or accept the FY2017-2018 budget for the reason that there is no authorization in the Charter of City of Burton for the City Council to initiate its own budget amendments proposals or to alter or amend those submitted by the Mayor. Ever since I have been on Council we have used the same process. Are we voting to have the ability to have outside counsel if we end up in court?

Mr. Martinbianco stated that yes that is what we are doing. It has been done before during Mayor Nimchesky and Mayor Smiley's time in office. City Council passed a budget, the Mayor declined to exercise a veto, and the budget is the budget as passed. Maybe we should ask the Mayor if the office is being impaired by the action the Council took. Basically we said here is the dollars you have to work with and you have to work within what we have given to her. If she chooses not to do that, it is her obligation to take us to court.

Mr. O'Keefe stated that action we are voting on is the action to have the ability to hire an attorney if the Mayor chooses not to follow the budget we set forth. So we are being proactive instead of reactive.

Mr. Martinbianco said over the past 30 years I have never seen this proactivity go on. We have had some disagreements budget wise between City Councils and Mayors but we have always taken care of it through the budget process, we just went through. It has taken us a little longer. We thought we reduced the levy to 4.000 mills a year ago. Maybe we should have sent that message strong to the Mayor this year. Maybe the Mayor can subrogate her meeting for tomorrow night tonight.

Mr. Haskins addressed Mr. Long's question about how much this is going to cost. Council has no idea. This is one thing that any person wants to go through. We have a Charter on how things operate in our City. Even when Mayor Zelenko sat on Council, she did the things the same exact way, as this council is doing it now when it comes to the budget. Just so you know, no road projects were ever stopped. I voted no on raising water and sewer rates, which helps keep business and residents here. You can't just decide one day that you are not going to abide by the Charter and do things that you want to do. The City hasn't operated that way in the years of its existence.

Mr. Smith also responded to Mr. Long. He stated all the organizations that he belongs to and what he has done for the City. I have nothing against the Mayor personally, I do have issues from a financial perspective. If you look back at the 2016 CAFR the number of employees we have in the budget is 103 that is the highest number of employees since 2008. When we had 105 employees the taxable value was a little under 800 million; now it is 540 million. In 2014 payroll was 43 cents out of every dollar in general fund and in 2016 it is 57 cents out of every dollar. If we continue on this spending spree in 4 or 5 years we will be in trouble, we will end up in some type of receivership with the State.

Mr. Hatfield stated that we are here to consider if we should hire an outside counsel to represent City Council in legal action to enforce the City budget as adopted. My question is more of a timing issue. We have adopted a budget, that hasn't been vetoed, and come July 1, 2017 the budget would be in effect. I guess the legal question is going to be, how are we going to know, when are we going to know if the budget is being enforced or not? We have received a letter saying the Mayor doesn't intent to put the budget in place. Do we need outside legal counsel at this time and what kind of action would we take/

Attorney Doyle stated that you can wait until you feel necessary that the budget isn't being adhered to. I have had conversation with Mr. Heffner, Mr. Haskins and Mr. Smith that the tax bills have to go out soon. If the budget isn't going to be followed are the tax bills going out at 4.000 mills? Potently speaking you can file suit at any time.

Mr. Hatfield asked what that suit would be.

Attorney Doyle stated it would be somewhat of an injunction.

Mr. Martinbianco asked if the Mayor is going to pull her stuff back. My suggestion would be if she would withdraw her letter.

Mr. Heffner asked Mayor, are you willing to withdraw this letter and follow the budget as legally adopted by this Council?

Mayor Zelenko stated that is what tomorrow night's meeting is all about.

Mr. Heffner said I am asking you right now.

Mayor Zelenko stated that is not what this meeting is about.

RESULT:	**CARRIED [UNANIMOUS]**
MOVER:	Duane Haskins, Councilman
SECONDER:	Vaughn Smith, Councilman
AYES:	Martinbianco, Haskins, Heffner, Hatfield, Conley, O'Keefe, Smith

Meeting was adjourned at 7:36 PM.

CITY OF BURTON

BURTON CITY COUNCIL MEETING

JUNE 27, 2017

MINUTES

Council Chambers	Special Meeting	5:30 PM

4303 S. CENTER ROAD
BURTON, MI 48519

This meeting was opened by Councilman Dennis O'Keefe at 5:40 PM.

A. ROLL CALL

Attendee Name	Title	Status	Arrived
Tom Martinbianco	Councilman	Absent	
Duane Haskins	Councilman	Absent	
Steven Heffner	President	Excused	
Steven Hatfield	Councilman	Excused	
Christina Conley	Councilwoman	Excused	
Dennis O'Keefe	Councilman	Present	
Vaughn Smith	Councilman	Absent	

B. STAFF PRESENT

Paula Zelenko, Mayor
Teresa Karsney, Clerk
Sue Warren, Human Resources
Rik Hayman, Chief of Staff
Ginger Burke-Miller, Controller
Sergeant Jones

C. AUDIENCE PARTICIPATION

None

D. ADMINISTRATIVE REPORT

Mayor Zelenko stated we do not have a quorum tonight and therefore no action can be taken. We are at liberty to have discussion. Before you is a letter I would like to read into the record the following:

City of Burton
4303 SOUTH CENTER ROAD • BURTON, MI 48519
PHONE (810) 743-1500 • FAX (810) 743-5060 • www.burtonmi.gov

CITY OF BURTON
PAULA K. ZELENKO
Mayor

June 27, 2017

Dear President Heffner and Members of the City Council:

Like you, Mr. President, I take no pleasure in the fact that we are here tonight still working on a budget on which we all can agree.

Last night, at the June 26th Special Council Meeting, you questioned why we're at this point.

If the council will indulge me for a few minutes, I'd like to offer my perspective so that we might be able to move forward tonight. While I will speak frankly, I intend no disrespect to any council member, employee, or member of the public.

The Official Charter of the City of Burton requires the Mayor to propose a balanced budget to City Council on the first regular council meeting in April. That was done. The budget was proposed with the general operating revenues at a rate of 4.707 mills. That millage rate was used because historically it has been the revenue rate used in planning the future services and projects for the city. Moreover, it reflected council's intentions stated on June 20, 2016 that the 4.0 rate would be evaluated next year (2017) for the need to raise it back to 4.707 in the FY 2017-2018 budget. At no time did council indicate at any of their meetings between June 20, 2016 and April 3, 2017 an intention to stay at the reduced levy of 4.000 mills.

On April 17, 2017, the City Council voted to set the general operating millage rate at 4.000 mills. This reduced revenues by approximately $378,000.00 for FY 17-18 and brought the two-year shortfall to approximately $743,000.00.

While I believe lowering the general operating levy at this point is damaging to the city and greatly restricts the city's ability to provide the services that our citizens expect and deserve, I understand and acknowledge the Council's authority to do so. I feel compelled, however, to add that statements made by one or more of you that the levy should be lowered because your re-election meant that, and I quote, "the people spoke loud and clear", end quote, that they wanted a tax cut is an assumption not supported by fact. The people also spoke "loud and clear" that they want our roads fixed, yet council did not see fit to include sufficient money to address that mandate. I believe it is reckless to lower revenues to score political points. I don't like it and I would not be doing my job if I did not voice my objection. However, I respect and accept the City Council's authority to set the rate of the levy.

Now let's talk about the budget and the budget process. On June 15, 2017, just like we have done the past couple of years, the controller and I presented an updated version of the proposed budget. The update incorporated the majority of the City Council's recommendations. There were, however, a few recommendations that we could not include based on conversations with the city's auditor. The administration also made some painful additional reductions in other areas to meet the threshold of our fund balance policy. Among those were limiting the number of vacancies we could fill, which was designed to avoid laying off any current employees. At the meeting, it was my hope to discuss the update with the city council. Inexplicably, I was abruptly silenced and not afforded any opportunity to advise city council or work collaboratively to establish a budget that would meet the operations we are committed to provide. That is the difference, Mr. President, with previous years when the budget process was collaborative. In the past, council has recommended changes and the mayor has consented and vice versa. Budgets are negotiated, and in most cases, with neither side getting everything they want. That is how a collaborative process works and a compromise is reached. The city attorney opined that council adopted a budget in the same manner as they have in the past. I respectfully disagree.

Historically, the city's administrations have allowed for collaborative work sessions; the administration to explain the needs of the appropriations in the mayor's proposed budget and the city council to voice any concerns and make recommendations. This year, this council chose to propose and approve a budget utilizing parts of the initial proposed budget along with deliberate retaliatory reductions and punitive conditions without collaboration and agreement from the administration. THAT is the difference and I believe that the law supports that in a strong mayor form of government, city council does not have the authority to unilaterally make changes to the mayor's proposed budget and then approve that budget without the acceptance from the mayor. Much like the U.S. and State of Michigan Constitutions, when the City Charter does not expressly give a legislative body a particular authority that body does not have that authority.

As Mayor and CEO, I cannot, in good conscience, accept the budget that Council believes they approved on June 19, 2017. Last night, this council threated legal action to force me to accept this budget. I was accused of playing games. For the record, I am not now nor have I ever been playing games. I take my job seriously because the quality of the lives of our citizens depend on the services this city provides. I do recognize the delicate financial situation the city is in and I believe we were trending in the right direction. We ARE making headway with our pension and OPEB unfunded liabilities through the collective bargaining process and through the additional lump sum payments. It is slow and it will take several years to accomplish, but we were on track until the lowering of the general operating levy that compromises progress and affects the direction of the trend.

If legal action comes, so be it. Court rooms exist to resolve disputes. Like you, I find it sad and wasteful to have to litigate a matter that might be resolved by putting aside egos and politics.

So, if the Controller and I can have the courtesy of your full attention, patience, and respect for about thirty minutes, we can pick up where we left off on June 15, 2017. The attached budget report is the same report that you refused to acknowledge on June 15th. The report gives you comparisons - FY 2015-16 audited activity, FY 2016-17 original, amended, and projected activity, as well as the original proposed FY 2017-18 budget at 4.707 mills general operating rate and the last column reflects the FY 2017-18 budget at 4.000 mills general operating rate incorporating the majority of council recommendations and additional reductions proposed by the administration.

In addition to the general operating 4.000 mills, this budget includes the voted police 8.4876 mills; voted fire 1.000 mill; a $127.20 per unit rubbish removal fee on all residential improved parcels and those other parcels that utilize the service; a property tax administration fee of 1% on all tax statements and additional 4% late penalty charge when delinquent. Once again, in building this budget, we worked to maintain a balance between keeping a healthy financial posture and addressing critical needs including public safety, infrastructure improvements, and continuing to pay down unfunded liabilities.

The city council, through workshops, had discussions for possible reduction of expenditures. The majority, but not all, of those recommendations have been incorporated in this second FY 17-18 budget proposal. The recommendations we did not include are explained below:

- The $57,000.00 reduction from the City Hall Building Improvements line was not in the initial proposed budget so it is not there to cut. The same is true with the $111,000.00 from general fund 2016-17.
- The $26,000.00 from the Senior Center Equipment Rental line, as written in the finance chairman's summary, may be a simple typographical error because it would eliminate the entire amount of the line item. Without appropriating equipment rental in the Senior Center Department, we will not be able to provide snow removal and lawn mowing to the Senior Center. Even though the line item has been reduced to $20,000.00, a budget amendment may be needed.
- As confirmed by the city controller and city auditor, generally speaking, non-governmental funds (such as Motor Pool, Rubbish, IT, Water, Sewer) can only be used for those specific purposes. Therefore, the available cash in the motor pool, rubbish, IT, water, sewer, and Act 51 road funds cannot be used to fund a special road account so these recommendations are not included in this budget update.

In order to meet the fund balance policy for the general operating fund, we have had to make $231,300.00 in additional reductions. The additional reductions have come from the following areas: MAYOR, COUNCIL, ASSESSOR, CLERK, ELECTION, CONTROLLER, CITY HALL, PUBLIC SERVICE, PARK AND RECREATION, and TRANSFER TO POLICE FUND.

Let me close by reminding everyone that I work for the citizens of this city, not the City Council. I have a duty to advise the City Council and provide you with the information you need to make legislative decisions to the best of my ability. I have always done that and will continue to do so as long as I hold this office. I am entitled to my opinion, I have the right to express it freely, and I have the duty to voice it publicly.

We also have a duty to uphold not just the Charter, but the State and Federal Constitutions. That includes the separation of powers of executive and legislative branches of government. I have a duty to protect the powers of this strong mayor executive office and you the legislative processes of the city council. By allowing the over-stepping of authority by the majority members of this City Council without taking a stand, I would be doing a grave disservice to future mayors. As I look around this room, I believe I am the only person present who has held office in the legislative branch and the executive branch. These are two very different positions with very different responsibilities and the powers must remain separate in order for democracy to work. When the lines become blurred, as I believe they have, reckless decisions take the place of effective communications and that ultimately tears down the community.

Please feel free to contact me should you need any further information.

Respectfully submitted,

Mayor Paula Zelenko

Mayor Paula Zelenko

E. COUNCIL ACTION

1. Discussion and possible action on the Mayor's Proposed Budget for Fiscal Year 2017-2018.

Mr. Hayman stated from Attorney General Bill Schuette Open Meetings Act Handbook; "If a public body properly notices the meeting under the Open Meetings Act, but lacks a quorum when it actually convenes, the board members in attendance may receive reports and comments from the public or staff, ask quetions, and comment on matters of interest."

Meeting was adjourned at 5:52 PM.

Burton City Council
4303 S. Center Road
Burton, MI 48519

SCHEDULED

Meeting: 07/06/17 07:00 PM
Department: City Council
Category: Attorney Billing
Prepared By: Teresa M. Karsney
Department Head: Teresa M. Karsney

AGENDA ITEM (ID # 3122)

DOC ID: 3122

Approve and authorize the Attorney Billing (Amanda Doyle) 06/14/17 to06/27/17 in the amount $4,609.75.

Signal Improvements at Maple Avenue & Saginaw Street

Approve & authorize the Mayor and Clerk to enter into a Cost Agreement with the Genesee County Road Commission for Signal Improvements at Maple Avenue and Saginaw Street for the estimated amount of $60,000, and the associated maintenance of said signals.

ATTACHMENTS:

- GCRC Maple Ave at Saginaw St signal install agreement (PDF)

GENESEE COUNTY ROAD COMMISSION

Serving the motorists of Genesee County for more than 100 years

211 W. Oakley Street
Flint, MI 48503-3995
Website: www.gcrc.org
Board meetings: first and third Tuesdays at 10:00 A.M.

Phone: (810) 767-4920
Toll Free: (800) 249-4027
Fax (810) 767-5373 – Administration
Fax (810) 767-3634 – Maintenance

June 12, 2017

Mr. Robert Slattery, Jr., DPW Director
City of Burton
4093 Manor Drive
Burton, MI 48519

RE: Signal Improvements at Maple Avenue & Saginaw Street, T-244; City of Burton & Grand Blanc Township

Dear Mr. Slattery,

The Genesee County Road Commission has been working diligently over the past 10 years to upgrade our traffic signal assets. In fact, we plan to have all of our signals converted to LED by December 31, 2018. The signal at Maple Avenue & S. Saginaw Road has reached the top of our "to do" list. This intersection had incandescent signal heads that draw 150 watts per bulb. The proposed LED signal heads will consume 90% less energy! A box span layout with signal back plates is proposed for the intersection.

It is Road Commission policy that the costs involved in the installation, maintenance and operation of traffic signals be shared among the involved parties. In this instance the breakdown of the cost participation by agency is as follows:

AGENCY	INSTALLATION	MAINTENANCE	OPERATION
GCRC	25%	25%	25%
City of Burton	75%	75%	75%

Based on the road classification of the affected roads, the Road Commission will pay 25% of the installation costs with the City responsible for 75% of intersection costs. The City will also be responsible for 75% of the maintenance and operation.

Please take action on the enclosed cost agreement.. These improvements are planned for this fiscal year and bids will be solicited by GCRC by August, 2017.

Please contact me at the office if you have any questions concerning this information.

Sincerely,

GENESEE COUNTY ROAD COMMISSION

Bonnie P. Wood

Bonnie P. Wood, P.E.
Traffic Engineering Manager

BPW: bpw
encl.

xc. ffp, ab, db, file

Attachment: GCRC Maple Ave at Saginaw St signal install agreement (3116 : Signal Improvements at Maple Avenue & Saginaw Street)

GENESEE COUNTY ROAD COMMISSION
COST AGREEMENT FOR TRAFFIC SIGNAL CONTROL

LOCATION: S. Saginaw Road @ Maple Avenue
City of Burton / Grand Blanc Twp.
County of Genesee

SIGNAL PERMIT NO. T-244
DATE: June 12, 2017

TYPE OF INSTALLATION: Box Span - Stop and Go Traffic Signal with Back Plates (8 – 1W-3C-12"-S-A with 4-1Way Case Signs and 2-1W-3C-12" low levels on the NW and SE quadrants)

Under authority of law and by virtue of resolutions formally adopted by respective governing bodies (and herewith submitted), the undersigned hereby agree to participate in the cost of installation, maintenance and operation of the above traffic signal control on the basis of the division of costs as shown hereinafter. Details of the installation are shown on the separate Signal Authorization drawing dated July, 2017. Title to equipment shall remain with the purchasing agency and proper credit of salvaged value shall be issued to all parties upon removal of the equipment, in proportion to their share of original cost.

The term of this contract shall be from the date of its execution, and shall remain in full force and effect therefrom, unless otherwise terminated by either party by giving a thirty (30) day written notice of intent to cancel to the other party.

PARTICIPATION

AGENCY	INSTALLATION		MAINTENANCE	OPERATION
	PERCENT	ESTIMATED COST	PERCENT	PERCENT
GENESEE CO. ROAD COM.	25%	$20,000.00	25%	25%
CITY OF BURTON	75%	$60,000.00	75%	75%
OTHER	0%	$-0-	0%	0%
TOTAL	100%	$80,000.00	100%	100%

It is further agreed that the agency responsible for performing signal maintenance shall be: GENESEE COUNTY ROAD COMMISSION.

Comments: ATTENTION: FINANCE DIVISION: Charge Installation 25% - PM- Genesee County Road Commission & 75% - AR- City of Burton; Maintenance and Operation - 25% -PM- Genesee County Road Commission & 75% - AR- City of Burton

APPROVED: GENESEE COUNTY ROAD COMMISSION

By:____________________________
Manager-Director Date

APPROVED: City of Burton

By:____________________________
Title: Date

Burton City Council
4303 S. Center Road
Burton, MI 48519

SCHEDULED

Meeting: 07/06/17 07:00 PM
Department: Department of Public Works
Category: Contract
Prepared By: Greg Kray
Department Head: Robert Slattery

AGENDA ITEM (ID # 3117)

DOC ID: 3117

Approve & Authorize the Mayor and Clerk to execute contract number 17-5281 with the Michigan Department of Transportation for the rehabilitation of Structure No. 2714 – Bristol Road over Thread Creek (DPW No. 16-007-P).

ATTACHMENTS:

- MDOT Contract No. 17-5281 Str. #2714 Bristol over Thread (PDF)

CAB

LOCAL BRIDGE		Control Section	MCS 25003
NON FED		Job Number	115713A
		Structure	# 2714
		Contract No.	17-5281

PART I

THIS CONTRACT, consisting of PART I and PART II (Standard Agreement Provisions), is made and entered into this date of ________________________, by and between the MICHIGAN DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "DEPARTMENT"; and the CITY OF BURTON, a Michigan municipal corporation, hereinafter referred to as the "REQUESTING PARTY"; for the purpose of fixing the rights and obligations of the parties in agreeing to the following improvements, in the City of Burton, Michigan, hereinafter referred to as the "PROJECT" and estimated in detail on EXHIBIT "I", dated May 22, 2017, attached hereto and made a part hereof:

PART A – STATE PARTICIPATION
Rehabilitation work for the structure # 2714, which carries Bristol Road over Thread Creek, Sections 28 & 33, T07N, R07E, City of Burton, Genesee County, Michigan; the reconstruction of the approaches to the structure for approximately 130 feet westerly and 140 feet easterly of the structure; and all together with necessary related work.

PART B – NO FEDERAL OR STATE PARTICIPATION
Name plate installation work for the structure # 2714, which carries Bristol Road over Thread Creek, Sections 28 & 33, T07N, R07E, City of Burton, Genesee County, Michigan; and all together with necessary related work.

WITNESSETH:

WHEREAS, pursuant to State law, monies have been provided for the performance of certain improvements on public roads; and

WHEREAS, the reference "FHWA" in PART I and PART II refers to the United States Department of Transportation, Federal Highway Administration; and

WHEREAS, the PROJECT has been approved for financing in part with funds appropriated to the Local Bridge Fund pursuant to Section 10(5) of Act 51, Public Acts of 1951, as amended, for the state Local Bridge Program; and

WHEREAS, the parties hereto have reached an understanding with each other regarding the performance of the PROJECT work and desire to set forth this understanding in the form of a written contract.

NOW, THEREFORE, in consideration of the premises and of the mutual undertakings of the parties and in conformity with applicable law, it is agreed:

1. The parties hereto shall undertake and complete the PROJECT in accordance with the terms of this contract.

2. The term "PROJECT COST", as herein used, is hereby defined as the cost of the physical construction necessary for the completion of the PROJECT, including any other costs incurred by the DEPARTMENT as a result of this contract, except for construction engineering and inspection.

No charges will be made by the DEPARTMENT to the PROJECT for any inspection work or construction engineering.

The costs incurred by the REQUESTING PARTY for preliminary engineering, construction engineering, construction materials testing, inspection, and right-of-way are excluded from the PROJECT COST as defined by this contract.

3. The DEPARTMENT is authorized by the REQUESTING PARTY to administer on behalf of the REQUESTING PARTY all phases of the project including advertising and awarding the construction contract for the PROJECT. Such administration shall be in accordance with PART II Section II of this contract.

Any items of the PROJECT COST incurred by the DEPARTMENT may be charged to the PROJECT.

4. The REQUESTING PARTY, at no cost to the PROJECT or to the DEPARTMENT, shall:

A. Design or cause to be designed the plans for the PROJECT.

B. Appoint a project engineer who shall be in responsible charge of the PROJECT and ensure that the plans and specifications are followed.

C. Perform or cause to be performed the construction engineering, construction materials testing, and inspection services necessary for the completion of the PROJECT.

5. The PROJECT COST shall be met in accordance with the following:

PART A
The PART A portion of the PROJECT COST shall be met in part by state Local Bridge Funds. The state Local Bridge Funds will be applied to the eligible items of the PART A portion of the PROJECT COST at a participation ratio equal to 95 percent up to an amount not to exceed $972,420. The remaining balance of the eligible items of the PART A portion of the PROJECT COST, as well as any ineligible items of PROJECT COST, shall be paid 100 percent by the REQUESTING PARTY in the manner and at the times hereinafter set forth.

PART B
The PART B portion of the PROJECT COST is not eligible for State participation and shall be charged to and paid 100 percent by the REQUESTING PARTY in the manner and at the times hereinafter set forth.

Any items of PROJECT COST not paid by state Local Bridge Funds will be the sole responsibility of the REQUESTING PARTY.

6. No working capital deposit will be required for this PROJECT.

In order to fulfill the obligations assumed by the REQUESTING PARTY under the provisions of this contract, the REQUESTING PARTY shall make prompt payments of its share of the PROJECT COST upon receipt of progress billings from the DEPARTMENT as herein provided. All payments will be made within 30 days of receipt of billings from the DEPARTMENT. Billings to the REQUESTING PARTY will be based upon the REQUESTING PARTY'S share of the actual costs incurred less State Funds earned as the PROJECT progresses.

7. Upon completion of construction of the PROJECT, the REQUESTING PARTY will promptly cause to be enacted and enforced such ordinances or regulations as may be necessary to prohibit parking in the roadway right-of-way throughout the limits of the approaches being constructed as a part of the PROJECT.

8. The contracting parties do hereby agree to be bound by all of the provisions and conditions set forth in PART II hereof which are applicable to the PROJECT.

In the event of any discrepancies between PART I and PART II of this contract, the provisions of PART I shall prevail.

9. The REQUESTING PARTY certifies that a) it is a person under the Natural Resources and Environmental Protection Act, MCL 324.2011 et seq., as amended, (NREPA) and is not aware of and has no reason to believe that the property is a facility as defined in the NREPA; b) the REQUESTING PARTY further certifies that it has completed the tasks required by MCL 324.20126 (3)(h); c) it conducted a visual inspection of property within the existing

right of way on which construction is to be performed to determine if any hazardous substances were present; and at sites on which historically were located businesses that involved hazardous substances, it performed a reasonable investigation to determine whether hazardous substances exist. This reasonable investigation should include, at a minimum, contact with local, state and federal environmental agencies to determine if the site has been identified as, or potentially as, a site containing hazardous substances; d) it did not cause or contribute to the release or threat of release of any hazardous substance found within the PROJECT limits.

The REQUESTING PARTY also certifies that, in addition to reporting the presence of any hazardous substances to the Department of Environmental Quality, it has advised the DEPARTMENT of the presence of any and all hazardous substances which the REQUESTING PARTY found within the PROJECT limits, as a result of performing the investigation and visual inspection required herein. The REQUESTING PARTY also certifies that it has been unable to identify any entity who may be liable for the cost of remediation. As a result, the REQUESTING PARTY has included all estimated costs of remediation of such hazardous substances in its estimated cost of construction of the PROJECT.

10. If, subsequent to execution of this contract, previously unknown hazardous substances are discovered within the PROJECT limits, which require environmental remediation pursuant to either state or federal law, the REQUESTING PARTY, in addition to reporting that fact to the Department of Environmental Quality, shall immediately notify the DEPARTMENT, both orally and in writing of such discovery. The DEPARTMENT shall consult with the REQUESTING PARTY to determine if it is willing to pay for the cost of remediation and, if applicable, with the FHWA, to determine the eligibility, for reimbursement, of the remediation costs. The REQUESTING PARTY shall be charged for and shall pay all costs associated with such remediation, including all delay costs of the contractor for the PROJECT, in the event that, if applicable, remediation and delay costs are not deemed eligible by the FHWA. If the REQUESTING PARTY refuses to participate in the cost of remediation, the DEPARTMENT shall terminate the PROJECT. The parties agree that any costs or damages that the DEPARTMENT incurs as a result of such termination shall be considered a PROJECT COST.

11. If federal and/or state funds administered by the DEPARTMENT are used to pay the cost of remediating any hazardous substances discovered after the execution of this contract and if there is a reasonable likelihood of recovery, the REQUESTING PARTY, in cooperation with the Department of Environmental Quality and the DEPARTMENT, shall make a diligent effort to recover such costs from all other possible entities. If recovery is made, the DEPARTMENT shall be reimbursed from such recovery for the proportionate share of the amount paid by the FHWA and/or the DEPARTMENT and the DEPARTMENT shall credit such sums to the appropriate funding source.

12. The DEPARTMENT'S sole reason for entering into this contract is to enable the REQUESTING PARTY to obtain and use the state Local Bridge Funds.

Any and all approvals of, reviews of, and recommendations regarding contracts, agreements, permits, plans, specifications, or documents, of any nature, or any inspections of work by the DEPARTMENT pursuant to the terms of this contract are done to assist the REQUESTING PARTY in meeting program guidelines in order to qualify for available funds. Such approvals, reviews, inspections and recommendations by the DEPARTMENT shall not relieve the REQUESTING PARTY and the local agencies, as applicable, of their ultimate control and shall not be construed as a warranty of their propriety or that the DEPARTMENT is assuming any liability, control or jurisdiction.

The providing of recommendations or advice by the DEPARTMENT does not relieve the REQUESTING PARTY and the local agencies, as applicable, of their exclusive jurisdiction of the highway or bridge structure(s) and responsibility under MCL 691.1402 et seq., as amended.

When providing approvals, reviews and recommendations under this contract, the DEPARTMENT is performing a governmental function, as that term is defined in MCL 691.1401 et seq., as amended, which is incidental to the completion of the PROJECT.

13. The DEPARTMENT, by executing this contract, and rendering services pursuant to this contract, has not and does not assume jurisdiction of the highway or bridge structure(s), described as the PROJECT for purposes of MCL 691.1402 et seq., as amended. Exclusive jurisdiction of such highway for the purposes of MCL 691.1402 et seq., as amended, rests with the REQUESTING PARTY and other local agencies having respective jurisdiction.

14. The REQUESTING PARTY shall approve all of the plans and specifications to be used on the PROJECT and shall be deemed to have approved all changes to the plans and specifications when put into effect. It is agreed that ultimate responsibility and control over the PROJECT rests with the REQUESTING PARTY and local agencies, as applicable.

15. The REQUESTING PARTY agrees that the costs reported to the DEPARTMENT for this contract will represent only those items that are properly chargeable in accordance with this contract. The REQUESTING PARTY also certifies that it has read the contract terms and has made itself aware of the applicable laws, regulations, and terms of this contract that apply to the reporting of costs incurred under the terms of this contract.

16. Each party to this contract will remain responsive for any and all claims arising out of its own acts and/or omissions during the performance of the contract, as provided by this contract or by law. In addition, this is not intended to increase or decrease either party's liability for or immunity from tort claims. This contract is also not intended to nor will it be interpreted as giving either party a right of indemnification, either by contract or by law, for claims arising out of the performance of this contract.

17. The parties shall promptly provide comprehensive assistance and cooperation in defending and resolving any claims brought against the DEPARTMENT by the contractor, vendors or suppliers as a result of the DEPARTMENT'S award of the construction contract for the PROJECT. Costs incurred by the DEPARTMENT in defending or resolving such claims shall be considered PROJECT COSTS.

18. The DEPARTMENT shall require the contractor who is awarded the contract for the construction of the PROJECT to provide insurance in the amounts specified and in accordance with the DEPARTMENT'S current Standard Specifications for Construction, and to:

A. Maintain bodily injury and property damage insurance for the duration of the PROJECT.

B. Provide owner's protective liability insurance naming as insureds the State of Michigan, the Michigan State Transportation Commission, the DEPARTMENT, and its officials, agents and employees, the REQUESTING PARTY and any other county, county road commission, or municipality in whose jurisdiction the PROJECT is located, and their employees, for the duration of the PROJECT and to provide, upon request, copies of certificates of insurance to the insureds. It is understood that the DEPARTMENT does not assume jurisdiction of the highway described as the PROJECT as a result of being named as an insured on the owner's protective liability insurance policy.

C. Comply with the requirements of notice of cancellation and reduction of insurance set forth in the current standard specifications for construction and to provide, upon request, copies of notices and reports prepared to those insured.

19. This contract shall become binding on the parties hereto and of full force and effect upon the signing thereof by the duly authorized officials for the parties hereto; upon the adoption of the necessary resolution approving said contract and authorizing the signatures thereto of the respective officials of the REQUESTING PARTY, a certified copy of which resolution shall be attached to this contract; and with approval by the State Administrative Board.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed the day and year first above written.

CITY OF BURTON	MICHIGAN DEPARTMENT OF TRANSPORTATION
By_____________________________	By_____________________________
Title:	Department Director MDOT
By_____________________________	
Title:	

FORM APPROVED
ND 6/14/17
ASSISTANT ATTORNEY GENERAL

A.G.C.R.
6/6/17

May 22, 2017

EXHIBIT I

CONTROL SECTION	MCS 25003
JOB NUMBER	115713A
STRUCTURE	# 2714

	TOTAL ESTIMATED COST	STATE LOCAL BRIDGE FUNDS*	BALANCE REQ. PARTY'S SHARE
PART A - STRUCTURE AND APPROACHES (STATE PARTICIPATION)			
Construction (Contracted)	$738,600	$701,700	$36,900
PART B – NAMEPLATE INSTALLATION WORK (NO STATE PARTICIPATION)			
Construction (Contracted)	$ 1,000	$ -0-	$ 1,000
GRAND TOTAL	$739,600	$701,700	$37,900

*State Local Bridge Funds shall be applied to the eligible items of the PART A portion of the PROJECT COST at a participation ratio equal to 95 percent up to an amount not to exceed $972,420.

NO DEPOSIT REQUIRED

DOT

TYPE B
BUREAU OF HIGHWAYS
03-15-93

PART II

STANDARD AGREEMENT PROVISIONS

SECTION I

COMPLIANCE WITH REGULATIONS AND DIRECTIVES

A. To qualify for eligible cost, all work shall be documented in accordance with the requirements and procedures of the DEPARTMENT.

B. All work on projects for which reimbursement with Federal funds is requested shall be performed in accordance with the requirements and guidelines set forth in the following Directives of the Federal-Aid Policy Guide (FAPG) of the FHWA, as applicable, and as referenced in pertinent sections of Title 23 and Title 49 of the Code of Federal Regulations (CFR), and all supplements and amendments thereto.

1. Engineering

   a. FAPG (6012.1): Preliminary Engineering

   b. FAPG (23 CFR 172): Administration of Engineering and Design Related Service Contracts

   c. FAPG (23 CFR 635A): Contract Procedures

   d. FAPG (49 CFR 18.22): Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments–Allowable Costs

2. Construction

   a. FAPG (23 CFR 140E): Administrative Settlement Costs-Contract Claims

   b. FAPG (23 CFR 140B): Construction Engineering Costs

   c. FAPG (23 CFR 17): Recordkeeping and Retention Requirements for Federal-Aid Highway Records of State Highway Agencies

   d. FAPG (23 CFR 635A): Contract Procedures

   e. FAPG (23 CFR 635B): Force Account Construction

   f. FAPG (23 CFR 645A): Utility Relocations, Adjustments and Reimbursement

g. FAPG (23 CFR 645B): Accommodation of Utilities (PPM 30-4.1)

h. FAPG (23 CFR 655F): Traffic Control Devices on Federal-Aid and other Streets and Highways

i. FAPG (49 CFR 18.22): Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments–Allowable Costs

3. Modification Or Construction Of Railroad Facilities

a. FAPG (23 CFR 140I): Reimbursement for Railroad Work

b. FAPG (23 CFR 646B): Railroad Highway Projects

C. In conformance with FAPG (23 CFR 630C) Project Agreements, the political subdivisions party to this contract, on those Federally funded projects which exceed a total cost of $100,000.00 stipulate the following with respect to their specific jurisdictions:

1. That any facility to be utilized in performance under or to benefit from this contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Federal Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended.

2. That they each agree to comply with all of the requirements of Section 114 of the Federal Clean Air Act and Section 308 of the Federal Water Pollution Control Act, and all regulations and guidelines issued thereunder.

3. That as a condition of Federal aid pursuant to this contract they shall notify the DEPARTMENT of the receipt of any advice indicating that a facility to be utilized in performance under or to benefit from this contract is under consideration to be listed on the EPA List of Violating Facilities.

D. Ensure that the PROJECT is constructed in accordance with and incorporates all committed environmental impact mitigation measures listed in approved environmental documents unless modified or deleted by approval of the FHWA.

E. All the requirements, guidelines, conditions and restrictions noted in all other pertinent Directives and Instructional Memoranda of the FHWA will apply to this contract and will be adhered to, as applicable, by the parties hereto.

SECTION II

PROJECT ADMINISTRATION AND SUPERVISION

A. The DEPARTMENT shall provide such administrative guidance as it determines is required by the PROJECT in order to facilitate the obtaining of available federal and/or state funds.

B. The DEPARTMENT will advertise and award all contracted portions of the PROJECT work. Prior to advertising of the PROJECT for receipt of bids, the REQUESTING PARTY may delete any portion or all of the PROJECT work. After receipt of bids for the PROJECT, the REQUESTING PARTY shall have the right to reject the amount bid for the PROJECT prior to the award of the contract for the PROJECT only if such amount exceeds by ten percent (10%) the final engineer's estimate therefor. If such rejection of the bids is not received in writing within two (2) weeks after letting, the DEPARTMENT will assume concurrence. The DEPARTMENT may, upon request, readvertise the PROJECT. Should the REQUESTING PARTY so request in writing within the aforesaid two (2) week period after letting, the PROJECT will be cancelled and the DEPARTMENT will refund the unused balance of the deposit less all costs incurred by the DEPARTMENT.

C. The DEPARTMENT will perform such inspection services on PROJECT work performed by the REQUESTING PARTY with its own forces as is required to ensure compliance with the approved plans & specifications.

D. On those projects funded with Federal monies, the DEPARTMENT shall as may be required secure from the FHWA approval of plans and specifications, and such cost estimates for FHWA participation in the PROJECT COST.

E. All work in connection with the PROJECT shall be performed in conformance with the Michigan Department of Transportation Standard Specifications for Construction, and the supplemental specifications, Special Provisions and plans pertaining to the PROJECT and all materials furnished and used in the construction of the PROJECT shall conform to the aforesaid specifications. No extra work shall be performed nor changes in plans and specifications made until said work or changes are approved by the project engineer and authorized by the DEPARTMENT.

F. Should it be necessary or desirable that portions of the work covered by this contract be accomplished by a consulting firm, a railway company, or governmental agency, firm, person, or corporation, under a subcontract with the REQUESTING PARTY at PROJECT expense, such subcontracted arrangements will be covered by formal written agreement between the REQUESTING PARTY and that party.

This formal written agreement shall: include a reference to the specific prime contract to which it pertains; include provisions which clearly set forth the maximum reimbursable and the basis of payment; provide for the maintenance of accounting records in accordance with generally accepted accounting principles, which clearly document the actual cost of the services provided; provide that costs eligible for reimbursement shall be in accordance with clearly defined cost criteria such as 49 CFR Part 18, 48 CFR Part 31, 23 CFR Part 140, OMB Circular A-87, etc. as applicable; provide for access to the department or its representatives to inspect and audit all data and records related to the agreement for a minimum of three years after the department's final payment to the local unit.

All such agreements will be submitted for approval by the DEPARTMENT and, if applicable, by the FHWA prior to execution thereof, except for agreements for amounts less than $100,000 for preliminary engineering and testing services executed under and in accordance with the provisions of the "Small Purchase Procedures" FAPG (23 CFR 172), which do not require prior approval of the DEPARTMENT or the FHWA.

Any such approval by the DEPARTMENT shall in no way be construed as a warranty of the subcontractor's qualifications, financial integrity, or ability to perform the work being subcontracted.

G. The REQUESTING PARTY, at no cost to the PROJECT or the DEPARTMENT, shall make such arrangements with railway companies, utilities, etc., as may be necessary for the performance of work required for the PROJECT but for which Federal or other reimbursement will not be requested.

H. The REQUESTING PARTY, at no cost to the PROJECT, or the DEPARTMENT, shall secure, as necessary, all agreements and approvals of the PROJECT with railway companies, the Railroad Safety & Tariffs Division of the DEPARTMENT and other concerned governmental agencies other than the FHWA, and will forward same to the DEPARTMENT for such reviews and approvals as may be required.

I. No PROJECT work for which reimbursement will be requested by the REQUESTING PARTY is to be subcontracted or performed until the DEPARTMENT gives written notification that such work may commence.

J. The REQUESTING PARTY shall be responsible for the payment of all costs and expenses incurred in the performance of the work it agrees to undertake and perform.

K. The REQUESTING PARTY shall pay directly to the party performing the work all billings for the services performed on the PROJECT which are authorized by or through the REQUESTING PARTY.

L. The REQUESTING PARTY shall submit to the DEPARTMENT all paid billings for which reimbursement is desired in accordance with DEPARTMENT procedures.

M. All work by a consulting firm will be performed in compliance with the applicable provisions of 1980 PA 299, Subsection 2001, MCL 339.2001; MSA 18.425(2001), as well as in accordance with the provisions of all previously cited Directives of the FHWA.

N. The project engineer shall be subject to such administrative guidance as may be deemed necessary to ensure compliance with program requirement and, in those instances where a consultant firm is retained to provide engineering and inspection services, the personnel performing those services shall be subject to the same conditions.

O. The DEPARTMENT, in administering the PROJECT in accordance with applicable Federal and State requirements and regulations, neither assumes nor becomes liable for any obligations undertaken or arising between the REQUESTING PARTY and any other party with respect to the PROJECT.

P. In the event it is determined by the DEPARTMENT that there will be either insufficient Federal funds or insufficient time to properly administer such funds for the entire PROJECT or portions thereof, the DEPARTMENT, prior to advertising or issuing authorization for work performance, may cancel the PROJECT, or any portion thereof, and upon written notice to the parties this contract shall be void and of no effect with respect to that cancelled portion of the PROJECT. Any PROJECT deposits previously made by the parties on the cancelled portions of the PROJECT will be promptly refunded.

Q. Those projects funded with Federal monies will be subject to inspection at all times by the DEPARTMENT and the FHWA.

SECTION III

ACCOUNTING AND BILLING

A. Procedures for billing for work undertaken by the REQUESTING PARTY:

1. The REQUESTING PARTY shall establish and maintain accurate records, in accordance with generally accepted accounting principles, of all expenses incurred for which payment is sought or made under this contract, said records to be hereinafter referred to as the "RECORDS". Separate accounts shall be established and maintained for all costs incurred under this contract.

The REQUESTING PARTY shall maintain the RECORDS for at least three (3) years from the date of final payment of Federal Aid made by the DEPARTMENT under this contract. In the event of a dispute with regard to the allowable expenses or any other issue under this contract, the REQUESTING PARTY shall thereafter continue to maintain the RECORDS at least until that dispute has been finally decided and the time for all available challenges or appeals of that decision has expired.

The DEPARTMENT, or its representative, may inspect, copy, or audit the RECORDS at any reasonable time after giving reasonable notice.

If any part of the work is subcontracted, the REQUESTING PARTY shall assure compliance with the above for all subcontracted work.

In the event that an audit performed by or on behalf of the DEPARTMENT indicates an adjustment to the costs reported under this contract, or questions the allowability of an item of expense, the DEPARTMENT shall promptly submit to the REQUESTING PARTY, a Notice of Audit Results and a copy of the audit report which may supplement or modify any tentative findings verbally communicated to the REQUESTING PARTY at the completion of an audit.

Within sixty (60) days after the date of the Notice of Audit Results, the REQUESTING PARTY shall: (a) respond in writing to the responsible Bureau or the DEPARTMENT indicating whether or not it concurs with the audit report, (b) clearly explain the nature and basis for any disagreement as to a disallowed item of expense and, (c) submit to the DEPARTMENT a written explanation as to any questioned or no opinion expressed item of expense, hereinafter referred to as the "RESPONSE". The RESPONSE shall be clearly stated and provide any supporting documentation necessary to resolve any disagreement or questioned or no opinion expressed item of expense. Where the documentation is voluminous, the REQUESTING PARTY may supply appropriate excerpts and make alternate arrangements to conveniently and reasonably make that documentation available for review by the DEPARTMENT. The RESPONSE shall refer to and apply the language of the contract. The REQUESTING PARTY agrees that failure to submit a RESPONSE within the sixty (60) day period constitutes agreement with any disallowance of an item of expense and authorizes the DEPARTMENT to finally disallow any items of questioned or no opinion expressed cost.

The DEPARTMENT shall make its decision with regard to any Notice of Audit Results and RESPONSE within one hundred twenty (120) days after the date of the Notice of Audit Results. If the DEPARTMENT determines that an overpayment has been made to the REQUESTING PARTY, the REQUESTING PARTY shall repay that amount to the DEPARTMENT or reach agreement with the DEPARTMENT on a repayment schedule within thirty (30) days after the date of an invoice from the DEPARTMENT. If the REQUESTING PARTY fails to repay the overpayment or reach agreement with the DEPARTMENT on a repayment schedule within the thirty (30) day period, the REQUESTING PARTY agrees that the DEPARTMENT shall deduct all or a portion of the overpayment from any funds then or thereafter payable by the DEPARTMENT to the REQUESTING PARTY under this contract or any other agreement, or payable to the REQUESTING PARTY under the terms of 1951 PA 51, as applicable. Interest will be assessed on any partial payments or repayment schedules based on the unpaid balance at the end of each month until the balance is paid in full. The assessment of interest will begin thirty (30) days from the date of the invoice. The rate of interest will be based on the Michigan Department of Treasury common cash funds interest earnings. The rate of interest will be reviewed annually by the DEPARTMENT and adjusted as necessary based on the Michigan Department of Treasury common cash funds interest earnings. The REQUESTING PARTY expressly consents to this withholding or offsetting of funds under those circumstances, reserving the right to file a lawsuit in the Court of Claims to contest the DEPARTMENT'S decision only as to any item of expense the disallowance of which was disputed by the REQUESTING PARTY in a timely filed RESPONSE.

The REQUESTING PARTY shall comply with the Single Audit Act of 1984, as amended, including, but not limited to, the Single Audit Amendments of 1996 (31 USC 7501-7507).

The REQUESTING PARTY shall adhere to the following requirements associated with audits of accounts and records:

a. Agencies expending a total of $500,000 or more in federal funds, from one or more funding sources in its fiscal year, shall comply with the requirements of the federal Office of Management and Budget (OMB) Circular A-133, as revised or amended.

The agency shall submit two copies of:

The Reporting Package
The Data Collection Form
The management letter to the agency, if one issued by the audit firm

The OMB Circular A-133 audit must be submitted to the address below in accordance with the time frame established in the circular, as revised or amended.

b. Agencies expending less than $500,000 in federal funds must submit a letter to the Department advising that a circular audit was not required. The letter shall indicate the applicable fiscal year, the amount of federal funds spent, the name(s) of the Department federal programs, and the CFDA grant number(s). This information must also be submitted to the address below.

c. Address: Michigan Department of Education
Accounting Service Center
Hannah Building
608 Allegan Street
Lansing, MI 48909

d. Agencies must also comply with applicable State laws and regulations relative to audit requirements.

e. Agencies shall not charge audit costs to Department's federal programs which are not in accordance with the OMB Circular A-133 requirements.

f. All agencies are subject to the federally required monitoring activities, which may include limited scope reviews and other on-site monitoring.

2. Agreed Unit Prices Work - All billings for work undertaken by the REQUESTING PARTY on an agreed unit price basis will be submitted in accordance with the Michigan Department of Transportation Standard Specifications for Construction and pertinent FAPG Directives and Guidelines of the FHWA.

3. Force Account Work and Subcontracted Work - All billings submitted to the DEPARTMENT for Federal reimbursement for items of work performed on a force account basis or by any subcontract with a consulting firm, railway company, governmental agency or other party, under the terms of this contract, shall be prepared in accordance with the provisions of the pertinent FHPM Directives and the procedures of the DEPARTMENT. Progress billings may be submitted monthly during the time work is being performed provided, however, that no bill of a lesser amount than $1,000.00 shall be submitted unless it is a final

or end of fiscal year billing. All billings shall be labeled either "Progress Bill Number _______", or "Final Billing".

4. Final billing under this contract shall be submitted in a timely manner but not later than six months after completion of the work. Billings for work submitted later than six months after completion of the work will not be paid.

5. Upon receipt of billings for reimbursement for work undertaken by the REQUESTING PARTY on projects funded with Federal monies, the DEPARTMENT will act as billing agent for the REQUESTING PARTY, consolidating said billings with those for its own force account work and presenting these consolidated billings to the FHWA for payment. Upon receipt of reimbursement from the FHWA, the DEPARTMENT will promptly forward to the REQUESTING PARTY its share of said reimbursement.

6. Upon receipt of billings for reimbursement for work undertaken by the REQUESTING PARTY on projects funded with non-Federal monies, the DEPARTMENT will promptly forward to the REQUESTING PARTY reimbursement of eligible costs.

B. Payment of Contracted and DEPARTMENT Costs:

1. As work on the PROJECT commences, the initial payments for contracted work and/or costs incurred by the DEPARTMENT will be made from the working capital deposit. Receipt of progress payments of Federal funds, and where applicable, State Critical Bridge funds, will be used to replenish the working capital deposit. The REQUESTING PARTY shall make prompt payments of its share of the contracted and/or DEPARTMENT incurred portion of the PROJECT COST upon receipt of progress billings from the DEPARTMENT. Progress billings will be based upon the REQUESTING PARTY'S share of the actual costs incurred as work on the PROJECT progresses and will be submitted, as required, until it is determined by the DEPARTMENT that there is sufficient available working capital to meet the remaining anticipated PROJECT COSTS. All progress payments will be made within thirty (30) days of receipt of billings. No monthly billing of a lesser amount than $1,000.00 will be made unless it is a final or end of fiscal year billing. Should the DEPARTMENT determine that the available working capital exceeds the remaining anticipated PROJECT COSTS, the DEPARTMENT may reimburse the REQUESTING PARTY such excess. Upon completion of the PROJECT, payment of all PROJECT COSTS, receipt of all applicable monies from the FHWA, and completion of necessary audits, the REQUESTING PARTY will be reimbursed the balance of its deposit.

2. In the event that the bid, plus contingencies, for the contracted, and/or the DEPARTMENT incurred portion of the PROJECT work exceeds the estimated cost therefor as established by this contract, the REQUESTING PARTY may be advised and billed for the additional amount of its share.

C. General Conditions:

1. The DEPARTMENT, in accordance with its procedures in existence and covering the time period involved, shall make payment for interest earned on the balance of working capital deposits for all projects on account with the DEPARTMENT. The REQUESTING PARTY in accordance with DEPARTMENT procedures in existence and covering the time period involved, shall make payment for interest owed on any deficit balance of working capital deposits for all projects on account with the DEPARTMENT. This payment or billing is processed on an annual basis corresponding to the State of Michigan fiscal year. Upon receipt of billing for interest incurred, the REQUESTING PARTY promises and shall promptly pay the DEPARTMENT said amount.

2. Pursuant to the authority granted by law, the REQUESTING PARTY hereby irrevocably pledges a sufficient amount of funds received by it from the Michigan Transportation Fund to meet its obligations as specified in PART I and PART II. If the REQUESTING PARTY shall fail to make any of its required payments when due, as specified herein, the DEPARTMENT shall immediately notify the REQUESTING PARTY and the State Treasurer of the State of Michigan or such other state officer or agency having charge and control over disbursement of the Michigan Transportation Fund, pursuant to law, of the fact of such default and the amount thereof, and, if such default is not cured by payment within ten (10) days, said State Treasurer or other state officer or agency is then authorized and directed to withhold from the first of such monies thereafter allocated by law to the REQUESTING PARTY from the Michigan Transportation Fund sufficient monies to remove the default, and to credit the REQUESTING PARTY with payment thereof, and to notify the REQUESTING PARTY in writing of such fact.

3. Upon completion of all work under this contract and final audit by the DEPARTMENT or the FHWA, the REQUESTING PARTY promises to promptly repay the DEPARTMENT for any disallowed items of costs previously disbursed by the DEPARTMENT. The REQUESTING PARTY pledges its future receipts from the Michigan Transportation Fund for repayment of all disallowed items and, upon failure to make repayment for any disallowed items within ninety (90) days of demand made by the DEPARTMENT, the DEPARTMENT is hereby authorized to withhold an equal amount from the REQUESTING PARTY'S share of any future distribution of Michigan Transportation Funds in settlement of said claim.

4. The DEPARTMENT shall maintain and keep accurate records and accounts relative to the cost of the PROJECT and upon completion of the PROJECT, payment of all items of PROJECT COST, receipt of all Federal Aid, if any, and completion of final audit by the DEPARTMENT and if applicable, by the FHWA, shall make final accounting to the REQUESTING PARTY. The final PROJECT accounting will not include interest earned or charged on working capital deposited for the PROJECT which will be accounted for separately at the close of the State of Michigan fiscal year and as set forth in Section C(1).

5. The costs of engineering and other services performed on those projects involving specific program funds and one hundred percent (100%) local funds will be apportioned to the respective portions of that project in the same ratio as the actual direct construction costs unless otherwise specified in PART I.

SECTION IV

MAINTENANCE AND OPERATION

A. Upon completion of construction of each part of the PROJECT, at no cost to the DEPARTMENT or the PROJECT, each of the parties hereto, within their respective jurisdictions, will make the following provisions for the maintenance and operation of the completed PROJECT:

1. All Projects:

   Properly maintain and operate each part of the project, making ample provisions each year for the performance of such maintenance work as may be required, except as qualified in paragraph 2b of this section.

2. Projects Financed in Part with Federal Monies:

   a. Sign and mark each part of the PROJECT, in accordance with the current Michigan Manual of Uniform Traffic control Devices, and will not install, or permit to be installed, any signs, signals or markings not in conformance with the standards approved by the FHWA, pursuant to 23 USC 109(d).

   b. Remove, prior to completion of the PROJECT, all encroachments from the roadway right-of-way within the limits of each part of the PROJECT.

      With respect to new or existing utility installations within the right-of-way of Federal Aid projects and pursuant to FAPG (23 CFR 645B): Occupancy of non-limited access right-of-way may be allowed based on consideration for traffic safety and necessary preservation of roadside space and aesthetic quality. Longitudinal occupancy of non-limited access right-of-way by private lines will require a finding of significant economic hardship, the unavailability of practicable alternatives or other extenuating circumstances.

   c. Cause to be enacted, maintained and enforced, ordinances and regulations for proper traffic operations in accordance with the plans of the PROJECT.

   d. Make no changes to ordinances or regulations enacted, or traffic controls installed in conjunction with the PROJECT work without prior review by the DEPARTMENT and approval of the FHWA, if required.

B. On projects for the removal of roadside obstacles, the parties, upon completion of construction of each part of the PROJECT, at no cost to the PROJECT or the DEPARTMENT, will, within their respective jurisdictions, take such action as is necessary to assure that the roadway right-of-way, cleared as the PROJECT, will be maintained free of such obstacles.

C. On projects for the construction of bikeways, the parties will enact no ordinances or regulations prohibiting the use of bicycles on the facility hereinbefore described as the PROJECT, and will amend any existing restrictive ordinances in this regard so as to allow use of this facility by bicycles. No motorized vehicles shall be permitted on such bikeways or walkways constructed as the PROJECT except those for maintenance purposes.

D. Failure of the parties hereto to fulfill their respective responsibilities as outlined herein may disqualify that party from future Federal-aid participation in projects on roads or streets for which it has maintenance responsibility. Federal Aid may be withheld until such time as deficiencies in regulations have been corrected, and the improvements constructed as the PROJECT are brought to a satisfactory condition of maintenance.

SECTION V

SPECIAL PROGRAM AND PROJECT CONDITIONS

A. Those projects for which the REQUESTING PARTY has been reimbursed with Federal monies for the acquisition of right-of-way must be under construction by the close of the twentieth (20th) fiscal year following the fiscal year in which the FHWA and the DEPARTMENT projects agreement covering that work is executed, or the REQUESTING PARTY may be required to repay to the DEPARTMENT, for forwarding to the FHWA, all monies distributed as the FHWA'S contribution to that right-of-way.

B. Those projects for which the REQUESTING PARTY has been reimbursed with Federal monies for the performance of preliminary engineering must be under construction by the close of the tenth (10th) fiscal year following the fiscal year in which the FHWA and the DEPARTMENT projects agreement covering that work is executed, or the REQUESTING PARTY may be required to repay to the DEPARTMENT, for forwarding to the FHWA, all monies distributed as the FHWA'S contribution to that preliminary engineering.

C. On those projects funded with Federal monies, the REQUESTING PARTY, at no cost to the PROJECT or the DEPARTMENT, will provide such accident information as is available and such other information as may be required under the program in order to make the proper assessment of the safety benefits derived from the work performed as the PROJECT. The REQUESTING PARTY will cooperate with the DEPARTMENT in the development of reports and such analysis as may be required and will, when requested by the DEPARTMENT, forward to the DEPARTMENT, in such form as is necessary, the required information.

D. In connection with the performance of PROJECT work under this contract the parties hereto (hereinafter in Appendix "A" referred to as the "contractor") agree to comply with the State of Michigan provisions for "Prohibition of Discrimination in State Contracts", as set forth in Appendix A, attached hereto and made a part hereof. The parties further covenant that they will comply with the Civil Rights Acts of 1964, being P.L. 88-352, 78 Stat. 241, as amended, being Title 42 U.S.C. Sections 1971, 1975a-1975d, and 2000a-2000h-6 and the Regulations of the United States Department of Transportation (49 C.F.R. Part 21) issued pursuant to said Act, including Appendix "B", attached hereto and made a part hereof, and will require similar covenants on the part of any contractor or subcontractor employed in the performance of this contract.

E. The parties will carry out the applicable requirements of the DEPARTMENT'S Disadvantaged Business Enterprise (DBE) program and 49 CFR, Part 26, including, but not limited to, those requirements set forth in Appendix C.

APPENDIX A
PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS

In connection with the performance of work under this contract; the contractor agrees as follows:

1. In accordance with Public Act 453 of 1976 (Elliott-Larsen Civil Rights Act), the contractor shall not discriminate against an employee or applicant for employment with respect to hire, tenure, treatment, terms, conditions, or privileges of employment or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, height, weight, or marital status. A breach of this covenant will be regarded as a material breach of this contract. Further, in accordance with Public Act 220 of 1976 (Persons with Disabilities Civil Rights Act), as amended by Public Act 478 of 1980, the contractor shall not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment or a matter directly or indirectly related to employment because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. A breach of the above covenants will be regarded as a material breach of this contract.

2. The contractor hereby agrees that any and all subcontracts to this contract, whereby a portion of the work set forth in this contract is to be performed, shall contain a covenant the same as hereinabove set forth in Section 1 of this Appendix.

3. The contractor will take affirmative action to ensure that applicants for employment and employees are treated without regard to their race, color, religion, national origin, age, sex, height, weight, marital status, or any disability that is unrelated to the individual's ability to perform the duties of a particular job or position. Such action shall include, but not be limited to, the following: employment; treatment; upgrading; demotion or transfer; recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

4. The contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, age, sex, height, weight, marital status, or disability that is unrelated to the individual's ability to perform the duties of a particular job or position.

5. The contractor or its collective bargaining representative shall send to each labor union or representative of workers with which the contractor has a collective bargaining agreement or other contract or understanding a notice advising such labor union or workers' representative of the contractor's commitments under this Appendix.

6. The contractor shall comply with all relevant published rules, regulations, directives, and orders of the Michigan Civil Rights Commission that may be in effect prior to the taking of bids for any individual state project.

7. The contractor shall furnish and file compliance reports within such time and upon such forms as provided by the Michigan Civil Rights Commission; said forms may also elicit information as to the practices, policies, program, and employment statistics of each subcontractor, as well as the contractor itself, and said contractor shall permit access to the contractor's books, records, and accounts by the Michigan Civil Rights Commission and/or its agent for the purposes of investigation to ascertain compliance under this contract and relevant rules, regulations, and orders of the Michigan Civil Rights Commission.

8. In the event that the Michigan Civil Rights Commission finds, after a hearing held pursuant to its rules, that a contractor has not complied with the contractual obligations under this contract, the Michigan Civil Rights Commission may, as a part of its order based upon such findings, certify said findings to the State Administrative Board of the State of Michigan, which State Administrative Board may order the cancellation of the contract found to have been violated and/or declare the contractor ineligible for future contracts with the state and its political and civil subdivisions, departments, and officers, including the governing boards of institutions of higher education, until the contractor complies with said order of the Michigan Civil Rights Commission. Notice of said declaration of future ineligibility may be given to any or all of the persons with whom the contractor is declared ineligible to contract as a contracting party in future contracts. In any case before the Michigan Civil Rights Commission in which cancellation of an existing contract is a possibility, the contracting agency shall be notified of such possible remedy and shall be given the option by the Michigan Civil Rights Commission to participate in such proceedings.

9. The contractor shall include or incorporate by reference, the provisions of the foregoing paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Michigan Civil Rights Commission; all subcontracts and purchase orders will also state that said provisions will be binding upon each subcontractor or supplier.

Revised June 2011

APPENDIX B
TITLE VI ASSURANCE

During the performance of this contract, the contractor, for itself, its assignees, and its successors in interest (hereinafter referred to as the "contractor"), agrees as follows:

1. **Compliance with Regulations**: For all federally assisted programs, the contractor shall comply with the nondiscrimination regulations set forth in 49 CFR Part 21, as may be amended from time to time (hereinafter referred to as the Regulations). Such Regulations are incorporated herein by reference and made a part of this contract.

2. **Nondiscrimination**: The contractor, with regard to the work performed under the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection, retention, and treatment of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices, when the contractor covers a program set forth in Appendix B of the Regulations.

3. **Solicitation for Subcontracts, Including Procurements of Materials and Equipment**: All solicitations made by the contractor, either by competitive bidding or by negotiation for subcontract work, including procurement of materials or leases of equipment, must include a notification to each potential subcontractor or supplier of the contractor's obligations under the contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

4. **Information and Reports**: The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and facilities as may be determined to be pertinent by the Department or the United States Department of Transportation (USDOT) in order to ascertain compliance with such Regulations or directives. If required information concerning the contractor is in the exclusive possession of another who fails or refuses to furnish the required information, the contractor shall certify to the Department or the USDOT, as appropriate, and shall set forth the efforts that it made to obtain the information.

5. **Sanctions for Noncompliance**: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Department shall impose such contract sanctions as it or the USDOT may determine to be appropriate, including, but not limited to, the following:

   a. Withholding payments to the contractor until the contractor complies; and/or

   b. Canceling, terminating, or suspending the contract, in whole or in part.

6. **Incorporation of Provisions**: The contractor shall include the provisions of Sections (1) through (6) in every subcontract, including procurement of material and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Department or the USDOT may direct as a means of enforcing such provisions, including sanctions for non-compliance, provided, however, that in the event a contractor becomes involved in or is threatened with litigation from a subcontractor or supplier as a result of such direction, the contractor may request the Department to enter into such litigation to protect the interests of the state. In addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Revised June 2011

APPENDIX C

TO BE INCLUDED IN ALL FINANCIAL ASSISTANCE AGREEMENTS WITH LOCAL AGENCIES

Assurance that Recipients and Contractors Must Make (Excerpts from US DOT Regulation 49 CFR 26.13)

A. Each financial assistance agreement signed with a DOT operating administration (or a primary recipient) must include the following assurance:

> The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any US DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of US DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26 and as approved by US DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

B. Each contract MDOT signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

> The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of US DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

APPROVE AND AUTHORIZE scheduling a special city council meeting for the purpose of a public hearing on Monday, July 17, 2017 at 6:30 p.m. to consider any objections and/or favorable comments relative to the erection of a 150' stealth monopole tower facility upon 2462 S. Genesee parcel ID# 59-22-400-006, wireless communication site to be located at the Northwest corner of Genesee Rd. and Atherton Rd.

Approve and authorize the Mayor, Clerk, and Human Resources Director to enter into a contract with the DM Burr Group, 4252 Holiday Drive, Flint, MI 48507, for the purpose of hiring up to "4 Summer Labor Workers" for the periods of July 1, 2017 through October 31, 2017 and April 1, 2018 through June 30, 2018 for an amount not to exceed $49,000.00.

ATTACHMENTS:

- DM Burr Contract 7-1-17 - 6-30-18 (DOCX)

D.M. BURR
Facilities Management Inc.

SERVICE AGREEMENT

This agreement is entered into this 6th day of July, 2017, by and between **D. M. Burr Facilities Management, Inc.** (hereinafter referred to as Contractor)**,** located at 4252 Holiday Dr., Flint, MI, 48507, and **The City of Burton.** (hereinafter referred to as Owner), located at 4303 S. Center Road, Burton, Michigan 48519.

RECITALS

Owner is the Owner and/or Operator of business property known as City of Burton located in Burton, MI. The business property, for convenience, will from time to time be referred as "the premises."

Contractor is engaged in the business of furnishing light maintenance services including but not limited to lawn care, painting, light maintenance, flag duty, etc...

The Owner and Contractor desire to enter into an agreement whereby Owner will engage the Contractor to perform certain services on the premises under the terms and conditions set forth below.

NOW, THREREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **Engages.** Owner hereby engages Contractor and Contractor agrees to work for Owner for the terms and conditions set forth below.

2. **Relationship of Parties.** The parties intend that an independent contractor/owner relationship will be created by this agreement. Owner is interested in the results to be achieved and the conduct and control of the work involved in performing this contract will be a joint effort with the Contractor and the Owner. The Contractor's employees, officers, owners or agents are not an employee of the Owner and are not entitled to the benefits provided by the Owner to its employees, if any.

3. **Nature and Quality of Services to Be Performed.** Contractor agrees to perform services on the premises in accordance with the accompanying schedules attached hereto in a good and workmanlike manner.

Notification of deficiencies in the performance of the agreement may be made either of two ways:

a. In writing (electronically, or otherwise), stating the exact nature of the deficiency.
b. By telephone call to the Contractor.

In any event, Contractor shall acknowledge the alleged deficiency. After investigation, if Contractor is at fault, the deficiency shall be corrected immediately. If the deficiency is caused by factors other than the Contractor's error, Owner may, at extra charge, hire Contractor to correct deficiency.

4. **Frequency and Direction of Service.** Contractor will provide light maintenance services five (5) days per week in a reliable manner as outlined in the maintenance proposal dated April 26, 2013. The contractor agrees to provide labor at the express direction of the Owner five days per week.

5. **Disputes.** In the event suit of legal action is commenced to enforce any of the provisions of this agreement, the prevailing party shall be entitled to reasonable attorney fees and costs, including costs of appeal to be fixed by the Court hearing this matter.

6. **Indemnity.** Owner agrees that Contractor shall not be liable for liability or loss incurred by Owner for loss or damage or for personal injury, whether such liability or loss is incurred directly by Owner, or as a result of claims asserted against the Owner by others, and whether such property loss or damage or personal injury, except arising out of the willful negligence of the Contractor, by performance or nonperformance of obligations imposed by this Agreement, including those related to the hiring, training, supervision or retention of personnel, by Contractor, its agents or employees, except as caused by the sole neglect acts or omissions by the Contractor. In no event, however, shall Contractor be liable for incidental, special or exemplary damages or loss of profits, the Contractor's liability shall be for compensatory damages only.

   Contractor shall carry and provide evidence of a minimum of $1,000,000 for liability and $2,000,000 excess liability coverage. Said certificates shall specify that Owner will be furnished with ten (10) days written notice prior to any cancellation of said coverage.

   Contractor agrees to indemnify Owner against all liability and loss in connection with, and shall assume all liability for payment of all Federal, State, and Local taxes or contributions imposed or required under Unemployment Insurance, Social Security, Workers' Compensation, and Income Taxes with respect to Contractor or Contractor's employees engaged in the performance of the agreement.

7. **Termination.** This agreement may be modified from time to time as set forth above, and may be terminated in its entirety by either the Owner or the Contractor at any time by giving notice in writing of the desire to do at least thirty (30) days prior to the desired date of termination.

   In no event will any notice of termination give rise to or result of any reduction of service by Contractor, or in any manner reduce or diminish the agreed amount due Contractor for any services performed under the terms of this agreement.

   Owner agrees that during the period of this agreement, or for six (6) months after the termination there of, that it will not employ, engage, or contract with any present or past employee of Contractor to perform any services outlined in this agreement.

8. **Prior Agreements.** This agreement supersedes any and all earlier agreements between Owner and Contractor, whether written or oral, relating to its subject matter.

9. **Severability.** In the case that any provision in this agreement is determined to be invalid or illegal, or unenforceable as written, both the Owner and Contractor intend and desire that such provision be enforced to the fullest extent allowed by law, and that the remainder of this agreement shall not be affected in any way.

10. **Modification.** This agreement is the final and complete agreement of the Owner and Contractor and supersedes and replaces all written and oral agreements heretofore made or existing by and between them. This agreement may not be modified in any respect except upon mutual agreement of the Owner and the Contractor in writing signed by each of them.

11. **Adjustments.** The prices set forth in this agreement are based on the present wage scales and other benefits prevailing us in this locality, the services provided, and the frequency of work. In the event of any changes in the above conditions, the contract price may be increased or decreased however; the Owner will receive a written notification from the Contractor sixty days prior to any price changes, and will have to be mutually agreed upon before any price change is to go into effect.

12. **Healthcare Reform.** The parties agree to reopen and renegotiate terms of this agreement in the event laws related to the Affordable Care Act substantially increase the contractor's operating costs. In the event that the parties cannot agree on renegotiated terms, either party has the right to exercise the termination clause as written in Section 7 of this agreement.

13. **Supplies.** All equipment is to be furnished by the Owner and installed/utilized by the Owner.

14. **Fees.** Owner agrees to pay Contractor for Light Maintenance a rate of seven thousand dollars and 00/100 ($7,000.00) per month.

    The Contractor will send an invoice to the owner by the 20th of each month. The payment will be due within thirty days of the date of the invoice.

    The Owner will pay a late charge of one percent (1%) per month on any past due amounts. The late charge will be included on the following month's invoice.

15. **Additions and Deletions.** Additions or deletions will be calculated and agreed upon, as provided in Section 12.

The term of this agreement will be one year and will commence on the 6th day of July, 2017, and end on the 30th day of June, 2018.

ACCEPTANCE:

D.M. Burr Facilities Management, Inc.

______________________________ ______________________

John Allen Date
Chief Operating Officer

The prices, terms, and conditions of this agreement are satisfactory and hereby accepted. Contractor is authorized to do work as specified. Payments will be made as outlined above.

______________________________ ______________________

City of Burton Date