

Local Development Finance Authority

Regular Meeting Agenda

Monday, December 8, 2014
4:00 p.m., Council Chambers
South Haven City Hall



City of South Haven

1. Call to Order

2. Roll Call

Chairman Art Bolt, Thomas Erdmann, Eugen Gawreliuk, Mike Henry, Robert Herrera, Lynn Kerber, Andy Klavins, Mike Rainey, Doug Schaffer, Christine Valentine.

3. Approval of Agenda

4. Approval of Minutes – July 14, 2014 Regular Meeting

5. Interested Citizens in the Audience Will be Heard on Items Not on the Agenda

6. Financial Report

7. Economic Development Report

8. Water Tower Painting Project

9. 220 Aylworth Agency Agreement

10. 220 Aylworth Purchase Offer

11. General Comments

12. Adjourn

RESPECTFULLY SUBMITTED,
Paul VandenBosch
Secretary, Local Development Finance Authority

SOUTH HAVEN CITY HALL IS BARRIER FREE AND THE CITY OF SOUTH HAVEN WILL PROVIDE THE NECESSARY REASONABLE AUXILIARY AIDS AND SERVICES FOR PERSONS WITH DISABILITIES, SUCH AS SIGNERS FOR THE HEARING IMPAIRED AND AUDIO TAPES OF PRINTED MATERIALS BEING CONSIDERED AT THE MEETING TO INDIVIDUALS WITH DISABILITIES AT THE MEETING UPON SEVEN (7) DAYS NOTICE TO THE SOUTH HAVEN CITY HALL.

Local Development Finance Authority

Regular Meeting Minutes

Monday, July 14, 2014
4:00 p.m., Council Chambers
South Haven City Hall



1. Call to Order by Valentine at 4:03 p.m.

2. Roll Call

Present: Erdmann, Gawreliuk, Kerber, Klavins, Valentine, Varney
Absent: Henry, Herrera, Rainey, Bolt

3. Approval of Agenda

Motion by Gawreliuk, second by Varney to approve the agenda as presented.

All in favor. Motion carried.

4. Approval of Minutes – April 14, 2014 Regular Meeting

Motion by Klavins, second by Varney to approve the April 14, 2014 regular meeting minutes as written.

All in favor. Motion carried.

5. Interested Citizens in the Audience Will be Heard on Items Not on the Agenda

There were none.

6. Financial Report

VandenBosch reviewed the Financial Report.

Erdmann asked if we are going to have administrative costs in the future to which VandenBosch responded, "Yes, the administrative expenses cover staff time, finance department services. We stopped the administrative expense transfers that for a while when there were revenues were low, but added the transfers back in through the budget process."

Motion by Erdmann, second by Klavins to approve the financial report.

All in favor. Motion carried.

7. Stieve Drive Sign

VandenBosch noted there are two designs for signs in the packet. The current sign is looking aged and there will need to be landscaping work as well. Related the costs of the two designs. VandenBosch noted that the issue was brought to his attention by one of the companies in the industrial park.

Motion by Kerber, second by Erdmann to approve the sign replacement repair up to \$2,400.

Discussion regarding additional costs for tree removal and landscaping. Vanden Bosch will try to have that work done by Parks crews.

All in favor. Motion carried.

8. Executive Session

The Local Development Finance Authority will move to a closed session under Section 8(d) of the Open Meetings Act to discuss a potential real estate acquisition.

Motion by Varney to move into Executive Session. Second by Klavins.

A roll call vote was taken:

Yeas: Gawreliuk, Kerber, Klavins, Valentine, Varney, Erdmann

Nays: None

All in favor. Motion carried.

Executive Session was held.

Motion by Gawreliuk, second by Erdmann to go out of Executive Session.

All in favor. Motion carried.

Valentine: "Are we ready to discuss dollar amounts?" VandenBosch noted that we are trying to find financing to purchase a mortgage for the Overton building. In response to a question from Erdmann, VandenBosch stated that he does not believe the purchase will be covered by a Brownfield Plan. Kerber noted if the property were sold the money would be repaid. The board discussed offering \$125,000. Gawreliuk suggested an offer of \$80,000. Erdmann noted that then the city will have to come up with the difference and they are in no better shape than we are. Klavins agreed.

Valentine called the question.

All in favor. Motion carried.

Kerber noted that if the city purchases documents from the bank make sure we have indemnity from them on liability or counter claims that could be in the bank's documents. VandenBosch made note of that and Smith indicated he had also.

9. General Comments

Erdman stated he does not like to make that kind of decision.

10. Adjourn

Motion by Erdman, second by Gawreliuk to adjourn at 4:46 p. m.

All in favor. Motion carried.

RESPECTFULLY SUBMITTED,

Marsha Ransom
Recording Secretary

City of South Haven
 Local Development Finance Authority
 For the period ended November 30, 2014

	LDFA #1	LDFA #2	LDFA #3
Revenues			
Property Tax Captures	191,193	25,741	49,336
Interest Income	2,519	228	2,626
Land Sales			-
Other Revenue	-	-	-
Other Transfers In	-	-	-
Total Revenue	193,711	25,969	51,962
Expenditures			
Economic Liaison	5,807	6,388	7,163
Administrative Costs	-	-	-
Professional Fees	2,400	-	-
Contractual Services	1,845	-	-
Capital Projects	-	-	605
General Fund Administration	-	-	2,083
Transfer to Building Authority Debt Service	-	5,394	-
MEDC Loan Payments	-	-	6,802
Transfer to St. Joe Project Debt Service	50,000	-	-
Other Transfers Out	-	-	-
Total Expenditures	60,052	11,782	16,653
Year-to-Date Fund Gain/(Loss)	133,659	14,187	35,309
Cash and Investments			
Cash	316,033	171,882	373,840
Certificates of Deposit	261,053	-	-
Other Financial Investments	163,216	35,503	227,114
Total	740,302	207,385	600,954

Land Assets - 345 Kalamazoo St	5.19 acres	\$	46,710	Mkt Value per assessor
Land Assets - 1391 Kalamazoo St	1.54 acres	\$	36,729	Mkt Value per assessor
220 Aylworth Ave	13.22 acres	\$	118,980	Mkt Value per assessor
1280 Kalamazoo St.	3.48 acres	\$	31,320	Mkt Value per assessor

LDFA Debt Obligations

St. Joe Projects Bonds - Final Maturity - May 2027	\$120,000/Year		
DPW Relocation Bonds - Final Maturity - Nov. 2021		\$13,990 Average/Year	
MEDC Loan -0% Interest - Final Payment - April 2016			\$27,208/Year



City of South Haven

Department of Public Works

DPW Building • 1199 8th Ave. • South Haven, Michigan 49090
Telephone (269) 637-0737 • Fax (269) 637-4778

MEMORANDUM

To: Paul Vandebosch, Assistant City Manager

CC: Brian Dissette, City Manager
Roger Huff, DPW Director
Bob Miller, WFP Supervisor

From: Larry Halberstadt, PE, City Engineer

Date: December 1, 2014

RE: I-196 Business Park, Water Tower Painting

Background Information

In 1998, the City constructed a water booster pump station and a 300,000 gallon spheroid water storage tank east of I-196. This created a high pressure service district, enabling the City to extend its water distribution system into an area of higher ground elevation. The improvements permitted the construction of a water distribution system to serve the properties in and adjacent to LDFA 3. Properties in LDFA 2 are also served by this water storage tank.

At the March 10, 2014 LDFA meeting, the Board approved their annual budget for the 2014-15 fiscal year. This budget includes \$75,000 for repainting of the exterior of the water storage tank in the I-196 business park, located within the boundary of LDFA 3.

The water storage tank coating is an epoxy urethane system. When last inspected in 2008, the coating was noted to be in overall good condition with some minor failures on the baseplate, roof vent neck, and on the painter's rail and roof safety rail. The consultant who performed the inspection advised the City to budget for exterior overcoating in 3-5 years. The consultant's report indicates that average exterior coating life is 12-15 years.

The proposed work will recoat the exterior of the tank with a full coat of epoxy, followed by two full coats of polyurethane. This system will have a life span of 12-15 years and can be recoated again at that time. Performing these periodic recoatings will postpone the need to strip the tank down to bare metal until 2038. Minor repairs to some interior coatings will also be completed.

The consultant that prepared the 2008 inspection report estimates the cost of work as follows:

Exterior overcoat:	\$55,000
Dry interior spot repaint:	<u>\$5,000</u>
Subtotal:	\$60,000
Engineering and contingencies:	<u>\$15,000</u>
Total Project Cost:	\$75,000

Dixon Engineering of Lake Odessa, Michigan has provided a proposal to the City of South Haven to provide engineering, bidding, and inspection services for the tank recoating project in the amount of \$10,225.00. Dixon has performed tank inspections for the City for many years and has provided engineering services on various projects including wet interior repainting of the Blueberry Tank and exterior recoating of the Covert Township Tank.

Recommendation

It is recommended that the LDFA Board review and approve the Dixon Engineering proposal at their December 8, 2014 meeting. This will permit Dixon to complete the bid documents and solicit bids during the winter months in anticipation of completing the work in the spring.

Once bids are obtained, the LDFA will be requested to award the construction contract.

Attachments

Dixon Engineering Proposal



DIXON

ENGINEERING AND
INSPECTION SERVICES
FOR THE COATING INDUSTRY

December 8, 2014
LDFA Agenda
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1104 Third Avenue
Lake Odessa, MI 48849
Telephone 1-616-374/3221
Fax 1-616-374/7116

February 9, 2014

Mr. Larry Halberstadt P.E.
City of South Haven
539 Phoenix St.
South Haven, MI 49090-1499

Subject: Engineering and Inspection Services for the 300,000 Gallon Industrial Park Elevated Tank

Dear Larry:

As we discussed, enclosed is the engineering services proposal for the 300,000 gallon Industrial Park elevated tank. Our scope of services includes preparation of technical specifications, bid documents, bid review, letter of recommendation, notice of award and contract documents. We would also conduct the preconstruction meeting and provide project administration and field inspection of all coating work. This scope is very similar the services we provided on the Blueberry Hill tank repainting project a few years ago.

We appreciate the opportunity to submit this proposal. If you have any questions regarding our proposal, please contact me at (616) 374-3221, ext. 303.

FOR DIXON ENGINEERING, INC.,

Ira M. Gabin, P.E.
Vice President

Enclosure

Members: Steel Structures Painting Council
American Water Works Association
Consulting Engineers Council



DIXON

ENGINEERING AND
INSPECTION SERVICES
FOR THE COATING INDUSTRY

1104 Third Avenue
Lake Odessa, MI 48849
Telephone 1-616-374/3221
Fax 1-616-374/7116

Proposal/Contract Agreement for Water Storage Tank 300,000 Gallon Spheroid, (Industrial Park), #22-80-03-02

The Agreement is between Dixon Engineering, Inc. (DIXON) and the City of South Haven, Michigan (Owner) to contract with DIXON for technical services for the 300,000 Gallon Spheroid (Project). This Agreement inclusive together with any expressly incorporated appendix or Schedule constitutes the entire Agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

1.01 BASIC AGREEMENT

DIXON shall provide, or cause to be provided, services detailed in Scope of Services and Owner agrees to pay DIXON as compensation for their services the fee/lump sum of Ten Thousand, Two Hundred, and Twenty Five dollars (\$10,225.00). Terms of charges and payments per details in Schedule B. (Prices quoted are subject to change ninety (90) days after proposal date, if not contracted.)

2.01 SCOPE OF SERVICES

Preparation of Technical Specifications and Contract Documents, Project Administration, Pre-Construction Meeting, and Paint Inspection Services per Schedule A

3.01 SIGNATURES

Ira M. Gabin, P.E., Vice President

February 9, 2014

PROPOSED by DIXON (Not a contract until approved by an officer)

PROPOSAL DATE

CONTRACT APPROVED by OWNER

POSITION

DATE

CO SIGNATURE (if required)

POSITION

DATE

CONTRACT APPROVED by DIXON OFFICER

POSITION

EFFECTIVE CONTRACT DATE

Members: Steel Structures Painting Council
American Water Works Association
Consulting Engineers Council

SCHEDULE A
300,000 Gallon Spheroid, (Industrial Park), #22-80-03-02
South Haven, Michigan

1104 Third Avenue
Lake Odessa, MI 48849
Telephone 1-616-374/3221
Fax 1-616-374/7116

I. Technical Specifications & Contract Documents**A. Owner agrees:**

1. Use, unaltered, the Contract Documents provided by Dixon when entering into an agreement with the Contractor. Dixon will not unreasonably withhold a request to alter the document. This clause is essential to protect Dixon's interest in regards to Contractor pays for default clauses. This provision in no way creates any contractual obligation, including those of third party beneficiary status, or relationship between DIXON and Contractor.
2. Pay all advertising costs. The method of advertising is to be determined by the Owner.
3. Provide a place for the bid opening.
4. Open the bids received.
5. Review Payment and Performance Bonds, and insurance certificates of selected Contractor. These should be reviewed by the Owner's insurance consultant and attorney.
6. Sign and forward to the Contractor the notice to proceed. This Notice to Proceed will be supplied to Owner by Dixon.

B. DIXON agrees:

1. Preparation of Technical Specifications and Contract Documents:
 - a. Prepare Technical Specifications and Contract Documents for project to include, but not limited to, the following:
 - 1) Advertisement for Bids
 - 2) Information for Bidders
 - 3) General Conditions
 - 4) Detailed specifications
 - 5) Inspection Form
 - 6) Bid/Agreement Form
 - b. Address all questions, written or verbal response, concerning the project that are submitted to DIXON. (Dixon will not be held to any non-written statement.)
 - c. Direct mail advertisements to Contractors who have been prior approved as capable and conscientious by DIXON.
 - d. Send specifications to selected, appropriate Builders Exchanges and Dodge Reports.
 - e. Review the bids submitted to the Owner and recommend award based on lowest responsible and responsive bidder.
 - f. Furnish Owner and Contractor the Contract Documents to complete.

- g. Furnish Owner with complete Notice to Proceed to sign and forward to the Contractor.

II. Project Administration:

1. Project administration for the purpose of coordinating the inspection program, local inspector assistance, secretarial services, shop drawing review, and project finalization.
2. Review Contractor's Schedule of Values and work schedule.
3. Review shop drawings for compliance with technical specifications.
4. DIXON shall record a written record of all Project meetings with the Owner. Meeting minutes shall be submitted to the Owner not more than ten (10) days after the meeting.
5. Perform services expected of Engineer and detailed in the EJCDC General Conditions.

III. Pre-construction Meeting:

1. Attend a pre-construction meeting, and distribute minutes to major participants. Topics of discussion will include Contractor's:
 - a. emergency response plan,
 - b. responsibilities to the Owner,
 - c. responsibilities to her/his workers,
 - d. responsibilities to the public
 - e. inspection start time
 - f. inspection schedule
 - g. liquidated damages
2. Contractor will have submittals which are to be submitted ten (10) days prior to the pre-construction meeting. Some of these include: Contractor's schedule, ventilation, fall prevention, confined space, waste hauler certifications, welder certifications, etc. These will be reviewed prior to meeting and only deficiencies discussed.

IV. Critical Phase Inspections:

A. Exterior – Painting:

1. Two (2) visit(s) to set the standard for exterior water blast cleaning, examine surface profile and feathering created for compliance with specifications.
2. Two (2) visit(s) to inspect the exterior prime coating for uniformity, coverage, and dry film thickness prior to application of the succeeding paint coat.
3. Two (2) visit(s) to inspect the exterior intermediate urethane coating for uniformity, coverage, and dry film thickness prior to application of the succeeding paint coat.
4. Two (2) visit(s) to inspect the exterior topcoat for uniformity, coverage, performance, and dry film thickness for compliance with specifications. Examine the overall project for possible damage caused by equipment removal. Inspect the application of top coats/installation of screens, light bulbs, etc.
5. One (1) visit(s) to inspect the application of the lettering/logo to the exterior for thoroughness, location and aesthetic appearance in accordance with specification requirements.

B. Dry Interior – Painting:

1. Set standard for dry interior abrasive cleaning and examine surface profile created
2. Inspect the dry interior primer coat for uniformity, coverage, and dry film thickness, prior to application of the succeeding paint coat.
3. Inspect the dry interior topcoat for uniformity, coverage, performance, and dry film thickness for compliance with specifications. Examine the overall project for possible damage caused by equipment removal. Review all contract items to assure they have been completed according to contract requirements.

C. Project Finalization

1. One (1) visit(s) to formulate a punch list of items to complete.
2. One (1) visit(s) to finalize the project to assure all items in the contract specifications have been completed, and the quality of workmanship meets contract requirements.

Collection of samples will be taken during regularly scheduled visits. If additional sampling is requested that cannot be completed during a regular visit, it shall be considered an additional service.

SCHEDULE B

300,000 Gallon Spheroid, (Industrial Park), #22-80-03-02 South Haven, Michigan

1. Payment for Scope of Services, Schedule A – Technical Specifications & Contract Documents, is the lump sum fee of \$2,800.00.
2. Compensation for Schedule A – Project Administration, shall be the time and material fee of \$600.00. Payment due as project progresses.
3. Compensation for participation at the pre-construction meeting shall be the lump sum fee of \$500.00, and will include preparation and travel time.
4. Compensation for paint inspections, Schedule A – Critical Phase Inspections is \$6,325.00 based on a \$575.00 per visit fee with eleven (11) visit(s) recommended. DIXON reserves the right to send the level of inspector they feel necessary based on the Contractor, project scope and project progress.
5. DIXON reserves the right to adjust individual inspection line items as necessary based on the Contractor's performance and pace of work. The total fees for Schedule B will not be exceeded without prior approval from the Owner.
6. Invoices will be compiled after the 20th of the month and shall include from the 20th of the preceding month to the 20th of the invoiced month. Bimonthly invoicing will be completed on larger projects, or at the Owner's request.
7. All DIXON service invoices which are paid within ten (10) days of date of issue shall be discounted (Owner's favor) one percent (1%).
8. All DIXON service invoices which are outstanding more than sixty (60) days from date of issue shall be assessed (DIXON's favor) one and one half percent (1½%) per month interest from date thirty (30) days after date of issue.
9. Delay in completing the work which is the responsibility of the Owner and which extends the amount of time required for DIXON to complete their work shall be considered an additional service, and DIXON shall be compensated for this delay under the provisions of Schedule C of the Agreement.
10. Failure by the Contractor to notify DIXON of the necessity to change inspection dates more than twenty-four (24) hours in advance and which results in unnecessary travel and/or expense to DIXON shall cause this travel and expense to be considered an additional service, and DIXON shall be compensated for travel and/or expense under the provisions of Schedule C of the Agreement.
11. Requests for attending council meetings shall be forthcoming from the Owner in writing unless other arrangements are made between the Owner and DIXON. Attendance of council meetings shall be considered an additional service and DIXON shall be compensated under the provisions of Schedule C of the Agreement.

SCHEDULE C

Engineering Services Fees

<u>Labor Class</u>	<u>Per Hour</u>	<u>*Overtime Rate</u>
Principal.....	\$175.00	
Expert Witness (Office, Travel & Court).....	\$185.00	
Project Manager.....	\$100.00	
Registered Professional Engineer.....	\$100.00	
Certified NACE Inspector.....	\$90.00	
Assistant Project Manager.....	\$80.00	
Staff Engineer – Level III.....	\$72.00 to \$85.00	
Staff Engineer – Level II.....	\$67.00 to \$80.00	
Staff Engineer – Level I.....	\$62.00 to \$75.00	
CAD Supervisor.....	\$65.00 to \$75.00	
CAWI or CWI Welding Inspector.....	\$67.00 to \$85.00	
Inspector – Level III.....	\$63.00 to \$80.00	
Inspector – Level II.....	\$60.00 to \$75.00	
Inspector – Level I.....		
CAD Technician.....	\$60.00 to \$70.00	
Secretarial Services.....	\$48.00 & expenses	
Bookkeeping Services.....	\$44.00	
Project Status Meetings w/Project Engineers and Council or Board Meetings.....	Time and Expenses, Including Preparation Time	

*All Saturday, Sunday, and holiday inspections are overtime rate. Overtime rate is 1 ½ time the hourly rate. Overtime rate does not apply to Principal.

Expenses:

	<u>Metropolitan</u>	<u>Non–Metropolitan</u>
Mileage.....	\$0.70/mile (including tolls)	\$0.60/mile
Meals & Lodging,	\$135 per diem <i>(may be increased based on location)</i>	\$125 per diem
Without Lodging.....	\$35/day	\$30/day
Air Travel.....	Business fare from Grand Rapids, Chicago O’Hare, or Milwaukee, plus full size car rental	
Material (gaskets, cathodic protection caps, etc.).....	Negotiated	

FEES EFFECTIVE THROUGH JUNE 30, 2015

Revised 08/12

4.01 ADDITIONAL SERVICES

- A. If additional services are **Requested and Authorized** by the Owner which are not within the proposed Scope of Services (Schedule A) or because of changes in the Project, these additional services will be on a time and material basis per fee schedule of attached Schedule C.
- B. **Delay by the Owner** in completing the work, which is their responsibility per Schedule A (Owner) and which extends the amount of time required for DIXON to complete their work, will be charged as an Additional Service.
- C. **Failure by the Owner to notify** DIXON of the necessity to change inspection dates more than twenty-four (24) hours in advance and which results in unnecessary travel and/or expense to DIXON shall cause this travel and expense to be charged as Additional Service.

5.01 Termination

- A. The obligation to provide further services under this Agreement may be terminated:
 - 1. For cause,
 - a. By either party upon thirty (30) days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party. Agreement will not terminate as a result of substantial failure under paragraph 5.01.A.1.a if the party receiving such notice begins, within seven (7) days of receipt of such notice, to correct its failure and proceeds diligently to cure such failure within no more than thirty (30) days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such thirty (30) day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, sixty (60) days after the date of receipt of the notice.
 - b. By DIXON upon seven (7) days written notice:
 - 1) If Owner fails to pay invoices within sixty (60) days.
 - 2) Upon seven (7) days written notice if the DIXON's services for the Project are delayed or suspended for more than ninety (90) days for reasons beyond DIXON's control.
 - 3) If DIXON believes that Engineer is being requested by Owner to furnish or perform services contrary to Engineer's responsibilities as a licensed professional.
 - 4) DIXON shall have no liability to Owner on account of such termination.
 - 2. For Convenience,
 - a. By Owner effective upon the receipt of notice by DIXON.
- B. The terminating party may set the effective date of termination at a time up to thirty (30) days later to allow Engineer to demobilize personnel and equipment from the Project site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

6.01 Controlling Law

- A. This Agreement is to be governed by the law of the state in which the Project is located.

7.01 Successors, Assigns, and Beneficiaries

- A. OWNER and DIXON and their successors are hereby bound to successors and legal representatives of the other to the extent permitted by law in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither OWNER nor DIXON may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement.

8.01 General Considerations

- A. The **Standard of Care** for all professional engineering and related services performed or furnished by DIXON under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. DIXON makes no warranties, expressed or implied, under this Agreement or otherwise, in connection with DIXON's services. DIXON and its consultants may use or rely upon the design services of others, including, but not limited to, contractors, manufacturers, and suppliers.
- B. DIXON shall **Not** at any time **Supervise**, direct, or have control over any of the **Owner's** work, nor shall DIXON have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Owner, for safety precautions and programs incident to Owner's performance of Schedule A (Owner's).
- C. All **Design Documents** prepared or furnished by DIXON are instruments of service, and DIXON retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed.
- D. DIXON agrees to defend, **Indemnify**, and hold harmless the Owner, its officers, agents, and employees, from and against legal liability for all claims, losses, damages, or expenses to the extent such claims, losses, damages, or expenses are caused by Engineer's negligent or intentional acts, errors, or omissions. Limits of liability for negligence are based on the comparative negligence principle.
- E. The parties acknowledge that DIXON's Scope of Services does not include any services related to a **Hazardous Environmental Condition** (the presence of asbestos, PCBs, petroleum, hazardous substances or waste, and radioactive materials). DIXON acknowledges that some hazardous metals may be encountered in coatings.

8.02 Severability

- A. If any clause or paragraph or sentence is found to be in opposition to any law in the state of the Project, that clause or paragraph or sentence may be severed from the Agreement with no effect on remaining clauses.

8.03 Headings

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions. Words in the first sentence are in bold to act as secondary headings and should not be interpreted any different than a numbered heading.

LDFA 3

LDFA 1 2014-2015 Budget, Approved March 10, 2014

	2011	2012	2013	2014	2014	2015	2016	2017
	Actual	Actual	Actual	Budget	Projected	Proposed Budget	Projection	Projection
Revenue								
Property Tax Captures	44,666	41,460	40,986	49,546	52,014	52,204	52,204	52,204
Interest Income	7,652	5,839	-646	2,000	2,000	2,000	2,000	2,000
Land Sales		217,501						
Other Revenue	4,422	5,920	5,920					
Other Transfers In								
Total Revenue	56,740	270,720	46,260	51,546	54,014	54,204	54,204	54,204
Expenditure								
Economic Liaison	19,063	20,751	31,108	18,715	18,715	18,715	19,089	19,471
Administrative Costs								
Professional Fees								
Contractual Services	12,089	64,731	249	500	500	500	500	500
Capital Projects		148,464	8,519			75,000		
General Fund Administration	5,000	10,000	10,000	0	0	5,000	5,000	20,000
Transfer to Building Authority Debt Service								
MEDC Loan Payments	27,208	27,208	27,208	27,208	27,208	27,208	27,208	0
Transfer to St. Joe St. Project Debt Service								
Other Transfers Out			250,000					
Total Expenditure	63,360	271,154	327,084	46,423	46,423	126,423	51,797	39,971
Balance	-6,620	-434	-280,824	5,123	7,591	-72,219	2,407	14,233
Cash and Investments								
Cash and Investments	513,361	306,366	180,087					
Certificates of Deposit	100,000		2,250					
Other Financial Investments	208,511	559,495	363,921					
Total	821,872	865,861	546,258	551,381	553,849	481,630	484,037	498,270

Water Tower Painting

MEDC Loan Payment extends to 2016.
 LDFA 3 Development Plan extends to 2025.

December 1, 2014

TO: Local Development Finance Authority

FR: Paul VandenBosch

RE: 220 Aylworth Agency Agreement

The real estate brokerage listing agreement for the Bohn plant which had been in place expired on November 30, 2014. That agency agreement was with the Bradley Company, LLC.

Dane Davis has offered an agency agreement with NAI Wisinski of West Michigan.

The commission is seven percent, with a minimum commission of \$5,000 per transaction.

The previous agreement did not have the \$5,000 minimum commission.

The \$5,000 minimum commission is equivalent to a seven percent commission on a sale price of \$71,428.

Other terms of the agency agreement are substantially the same.

The new agreement runs through November 30 of 2015.



**AGENCY AGREEMENT
(PROPERTIES FOR SALE)**

1. **CONSIDERATION AND TERMS OF CONTRACT.** In consideration of Broker's agreement to list the real Premises and all equipment, fixtures, and/or personal property appurtenant to and currently used in connection with the improvements thereon except office furniture and office equipment described below in the Commercial Alliance of REALTORS® Multiple Listing Service (hereinafter "MLS") and to pay the fee therefore and to cause the listing information to be distributed to the participating members in the MLS and in further consideration of Broker's agreement to use Broker's best effort to find a Buyer, Seller hereby grants NAI Wisinski of West Michigan, the Broker, from 12/1/14 (date) to 12:00 midnight on 11/30/15 (date) the exclusive irrevocable right and privilege to sell the Premises located in the City Township Village of South Haven, Van Buren County, Michigan, commonly known as: 220 Aylworth Ave & 1280 Kalamazoo Street and legally described as:

See Attached

PP# 80-53-220-001-10 & 80-53-220-002-10. Seller understands that any real estate agents who show the property may not be acting as Seller's agent; therefore, Seller understands that Seller should not disclose confidential information to any salesperson that Seller would not disclose to a Buyer.

Approx. lot size and/or acreage: 16.8 acres +/-;

Approx. building square footage offered: 84,900 SF + 11 acres vacant land.

2. **PRICE, TERMS AND BROKERAGE FEE.** Seller agrees to sell the Premises for the sum \$ 750,000; payable as follows (terms of purchase shall be as indicated by "X" below; check all that apply):

CASH NEW MORTGAGE MORTGAGE ASSUMPTION ASSIGNMENT OF LAND CONTRACT

OTHER— please specify: _____

LAND CONTRACT. The Buyer shall pay the full purchase price to the Seller pursuant to the terms and conditions stated in the Commercial Alliance of REALTORS® Land Contract or a Purchase Money Mortgage. The Land Contract shall provide a down payment of

\$ _____ and payment of the balance \$ _____ in installments of

\$ _____ per _____ or more, at Buyer's option, including interest at the rate of _____ % per annum computed monthly or with Seller's consent for a lesser sum or on other terms. Interest shall commence on the agreed upon date of closing. **Seller understands that consummation of the sale or transfer of the Premises shall not relieve Seller of any liability that Seller may have under the mortgage(s) to which the Premises are subject, unless otherwise agreed to by the lender or required by law or regulation.**

OR with Seller's consent for a lesser sum or other terms, WHICH PRICE INCLUDES ALL ENCUMBRANCES, TAXES, ASSESSMENTS, AND BALANCES OWING ON ALL EQUIPMENT. The term "sale" shall be deemed to include any direct or indirect exchange, trade, or transfer of any direct or indirect interest in the above-listed Premises to which Seller consents, or the exchange, trade or transfer of a controlling interest in any entity with an interest in the Premises. The term "Premises" shall be deemed to include the above-listed Premises and any direct or indirect interest therein. In the event of a sale, if applicable, Seller will convey, or agree in writing to convey by warranty deed, a good and marketable title to said Premises to the Buyer thereof. Further, Seller will furnish a policy of title insurance.

Seller agrees to pay Broker a brokerage fee of Seven (7%) percent of the sales price due and payable if: there is a sale or trade by Broker or by Seller or anyone else during the listing period (including sales occurring after the listing period pursuant to options granted or contracts executed during the listing period); or a prospective Buyer ready, willing and able to purchase the Premises on the terms specified herein or other terms acceptable to Seller is produced by Broker or any agent or person during the listing period; or there is a sale within six (6) months after expiration of the listing period (including sales pursuant to options granted or contracts executed within that period following expiration) to a Buyer who had been introduced to or provided information regarding the Premises during the listing period by Broker or Seller or any other agent or person, except that this provision shall not apply if the Premises is sold pursuant to a valid listing agreement entered into with another member of an Association of REALTORS subsequent to the expiration of the listing period of this agreement.

The brokerage fee may be shared by the Broker with any cooperating broker who participates in the sale per the following compensation schedule:

Subagent (of the Seller) zero (0%) percent of the sale price or Buyer's Agent Three and a Half (3.5%) percent of the sale price or Transaction Coordinator 3.5% percent of the sale price. Participation in the MLS requires cooperation with at least one type of relationship as listed above.

If, during the listing period, the Premises is leased by Broker or Seller or anyone else, or if within N/A months after the expiration of said period, a lease is made to any person who has been introduced to or provided information regarding the property during said listing period by

Broker or Seller or anyone else, Seller agrees to pay Broker a brokerage fee of N/A of the total Rent and/or other consideration paid, except that this provision shall not apply if the Premises is leased pursuant to a valid listing agreement entered into with another member of an Association of REALTORS subsequent to the expiration of the listing period of this agreement. The total brokerage fee owed pursuant to this Paragraph shall be paid upon execution of a lease for the Premises, renewal brokerage fees shall be paid upon tenant's exercise of renewal option. Brokerage fees shall not be otherwise affected by a later breach or termination of such lease by Landlord or Tenant. This brokerage fee shall be paid in full promptly after it is earned, but not later than any applicable closing.

Seller represents and warrants that: (i) there are no obligations to pay brokerage fees to any person or entity except as specified in this Agreement; and (ii) there are no rights of first refusal or options to lease or purchase applicable to the Premises. If these representations and warranties prove to be inaccurate, no such obligation shall diminish the obligation to pay the brokerage fee specified herein. Seller and Broker agree that Broker shall be entitled to payment of reasonable attorney's fees and costs incurred by Broker to collect any commission owed under the terms of this Agreement. Seller agrees that interest shall accrue, and be paid to Broker, at highest rate allowed by law on any unpaid balance, compounded monthly until paid.

Property Address 220 Aylworth Ave/1280 Kalamazoo Street

Seller's Initials

CAR Agency Agreement (Properties For Sale)

3. **REFERRAL.** Seller agrees to refer to Broker all inquiries received concerning the Premises during the period of this listing.
4. **INDEMNIFICATION.** Seller shall indemnify and hold Broker and Broker's agents and subagents harmless from any and all liability for any reason as a result of injury to a person(s) or damage or loss to Premises arising out of a showing of the Premises pursuant to this listing.
5. **OPTIONS.** In the event Seller grants an option to purchase or lease the property, other than an option which is part of a lease, Seller agrees that the running of the term of this listing shall automatically be suspended for the duration of the option and, upon the expiration of the option, shall automatically recommence and continue for the remainder of said term so that the listing period before and after the option will total the original term of this listing.
6. **POSSESSION.** Possession to be given upon close or as negotiated in the purchase agreement. _____ subject to rights of tenants, if any.
7. **MARKETING.** Broker is hereby authorized to photograph the Premises and publish pictures, place a marketing sign on said Premises and to remove all other marketing signs. Broker is also authorized to have access to said Premises and all parts thereof for the purposes of showing same at reasonable hours and to promote the Premises in any media it deems necessary.
8. **OFFERS.** Broker shall present all offers to Seller unless otherwise agreed in writing with Broker, except for an accepted offer that prohibits solicitation or consideration of other offers during the period that the resulting Purchase Agreement is in effect.
9. **PRICE AND TERMS.** Seller acknowledges that the purchase price will be disclosed by the Commercial Alliance of REALTORS® in the ordinary conduct of its business.
10. **NON-DISCRIMINATION.** Broker and Seller acknowledge that discrimination because of religion, race, color, national origin, age, sex, marital status, disability, or familial status in connection with the offer, sale or lease of the real estate is prohibited by law.
11. **HEIRS AND SUCCESSORS.** This contract binds Seller, Broker, their personal representatives and heirs, and anyone succeeding to their interest in the property.
12. **COST OF SERVICES OF PRODUCTS OBTAINED FROM OUTSIDE SOURCES.** Broker will not obtain or order products or services from outside sources (e.g. surveys, environmental tests, title insurances, inspections, etc.) without the prior consent of Client, and Client agrees to pay all costs of products or services obtained.
13. **CONFIDENTIAL INFORMATION.** Broker acknowledges that Seller may disclose confidential information to Broker in connection with performance of services under this Agreement, and Broker agrees to preserve such information in confidence and not to disclose any such information to the detriment of Seller in connection with any transaction described herein. Similarly, Seller acknowledges that Broker may have received confidential information in the past from a party on the opposite side of a proposed transaction with Seller, and Seller agrees that Broker's faithful maintenance of such information in confidence will not be a breach of any duty to Seller.
14. **ENVIRONMENTAL DISCLOSURE.** Michigan environmental law provides that a person who has knowledge that his/her real property is a "facility" may not transfer an interest in that real property (including by sale or lease) unless the person provides written notice to the purchaser or lessee. The notice should state that the real property is a facility and disclose the general nature and extent of the release of contamination. A "facility" is any property where contamination in excess of certain concentrations has been released or otherwise exists. An owner should seek legal and technical counsel from experienced professionals if the owner is concerned whether their property is a facility.
15. **OTHER CONDITIONS.**
See Exhibit for Other Conditions.
16. **MISCELLANEOUS.** This contract contains all of the terms and conditions of the Agreement between the parties with respect to its subject matter, and there are no representations, warranties, conditions, or promises except those expressly set for in this contract. This contract may be modified only by a writing signed by the parties. If Seller is an entity, the undersigned represents that he/she has the legal authority to execute this instrument on behalf of the Seller and that Seller has full power and authority to enter into and perform this contract including the conveyance of title as specified. Each of the undersigned individuals who have signed this instrument on behalf of Seller represent and warrant that he/she is authorized to sign this instrument on behalf of such party and to bind such party to the requirements of this instrument. Seller hereby acknowledges receipt of a completed copy of this contract. This Agreement shall be governed by Michigan law.

Seller acknowledges that if a commission is owed under a prior agreement, execution of this agreement will not eliminate the prior agreement.

SELLER

Listed by: _____
NAI Wisinski of West Michigan

Entity: South Haven Local Development Finance Authority

By: _____
(Note: Please sign as you wish your name to appear on the final documents.)

Through _____
Agent

Printed Name of Signatory: _____

Its: _____

Entity: _____

By: _____
(Note: Please sign as you wish your name to appear on the final papers.)

Its: _____

Printed Name of Signatory: _____

Type of Ownership: Sole Joint Other _____
(Please specify)

Exhibit A – Legal Description

Parcel 1: Beginning at the Northeast corner of Lot 1, Supervisor's Plat of Irving T. Olson Industrial Subdivision, according to the recorded plat thereof, as recorded in Liber 5 of Plats on Page 74, in the Office of the Register of Deeds for Van Buren County, said point being North 89°22'00" West 531.87 feet along the North line of Section 15, Town 1 South, Range 17 West, and South 00°00'12" West 32.44 feet from the North Quarter corner of said Section 15, according to the Government Survey thereof; and proceeding thence South 00°00'12" West 177.79 feet, along the East line of said Lot 1; thence South 89°57'04" West 413.51 feet; thence South 00°08'05" West 218.71 feet; thence South 89°57'07" East 70.76 feet; thence South 00°10'41" East 80.67 feet; thence South 89°53'18" East 146.13 feet; thence South 00°42'47" West 167.54 feet; thence South 89°36'44" West 22.45 feet; thence South 00°00'12" West 218.26 feet; thence North 89°59'48" West 269.0 feet; thence South 00°00'12" West 414.70 feet to the South line of said Lot 1; thence North 89°21'02" West, along the South line of said Lot 1, 276.97 feet; thence North 00°04'12" East, along the West line of said Lot 1, 1283.27 feet; thence South 89°21'36" East, along the North line of said Lot 1, 764.90 feet to the point of beginning.

Parcel 2: Beginning at a point on the East line of Lot 1, Supervisor's Plat of Irving T. Olson Industrial Subdivision, according to the recorded plat thereof, as recorded in Liber 5 of Plats on Page 74, in the Office of the Register of Deeds for Van Buren County, South 00°00'12" West 177.79 feet from the Northeast corner of said Lot 1, said point also being North 89°22'00" West 531.87 feet along the North line of Section 15, Town 1 South, Range 17 West, and South 00°00'12" West 210.23 feet from the North Quarter corner of said Section 15, according to the Government Survey thereof; and proceeding thence South 00°00'12" West, along the East line of said Lot 1, 466.26 feet; thence South 89°36'44" West 198.95 feet; thence North 00°42'47" East 167.54 feet; thence North 89°53'18" West 146.13 feet; thence North 00°10'41" West 80.67 feet; thence North 89°57'07" West 70.76 feet; thence North 00°08'05" East 218.71 feet; thence North 89°57'04" East 413.51 feet to the point of beginning.

And being together with and subject to an easement for ingress, egress and utilities being described as: Beginning at a point of the East line of Lot 1 distant South 00°00'12" West 644.05 feet from the Northeast corner of Lot 1 said point also being distant North 89°22'00" West 531.87 feet along the North line of Section 15 and South 00°00'12" West 676.49 feet from the North 1/4 corner of Section 15 and proceeding thence South 00°00'12" West 30.00 feet along the East line of Lot 1; thence South 89°36'44" West 221.39 feet; thence South 00°00'12" West

377.06 feet; thence South 89°59'48" East 21.40 feet; thence South 00°00'12" West 229.14 feet along the West line of Lot 11 and the extension thereof; thence North 89°21'02" West 71.40 feet along the South line of Lot 1; thence North 00°00'12" East 635.06 feet; thence North 89°36'44" East 271.40 feet to the point of beginning.

Exhibit B

Objective: It is understood by Broker that Seller/Client's objective is to sell the property to an owner occupant that will increase the employment and tax base for the City of South Haven. Any prospective buyer will not be considered ready, willing and able unless they meet the above stated objective for the Seller/Client.

Minimum Fee: The minimum commission per transaction shall be \$5,000.00 paid at Closing.

December 1, 2014

TO: Local Development Finance Authority

FR: Paul VandenBosch

RE: Buy and Sell Agreement Comments

Section 24 states that "Seller acknowledges that if a commission is owed under a prior agreement, execution of this agreement will not eliminate the prior agreement".

Our agency agreement is with Bradley Company until November 30, 2014. We received this Buy and Sell Agreement on November 19. The Buy and Sell Agreement is with NAI Wisinski of West Michigan. We need some assurance that we will only pay one commission. We need some assurance that Bradley knows about this Buy and Sell Agreement and accepts that it is being done under another agency. Clarification as to who will be paid a commission is needed.

Closing Obligations that the Seller (LDFA) Must Meet

Section 7. Inspections refers to Exhibit E, which lists work items that the Seller would be required to perform. (see attached memo)

Section 26. Other Provisions lists a number of contingencies. (see attached memo)

The buyer gives the broker 30 days to obtain written acceptance of the offer. The agreement is dated November 6. We received the agreement November 19. Because of the extensive list of work items which the Seller must perform under this agreement, I do not believe that staff can provide a cost estimate of work items before about early January.

Because the offer is a substantial discount from the initial offer price, and because of the cost of work items included in the offer, a sale under the terms of the agreement would provide economic development incentives to the buyer. Staff has requested information from the buyer to allow the LDFA to determine whether it desires to provide economic development incentives for the proposed use of the site.

Procedure Recommendation:

Staff recommends that a subcommittee of three persons be formed to discuss the offer and recommend a response to the Buy and Sell Agreement to the entire LDFA board.

Staff will work on a cost estimate of the work items of the Buy and Sell Agreement.

December 1, 2014

TO: Local Development Finance Authority

FR: Paul VandenBosch

RE: Fox Group Buy and Sell Agreement Conditions and Contingencies

26. Other Provisions:

This agreement shall be contingent on:

1. Buyers receipt of an acceptable construction estimate cost from A.E. Coleman Construction. Buyer will have ten (10) calendar days from receipt of this proposal to terminate the Contract.

2. Buyers ability to obtain funding assistance with asbestos removal at the Property.

3. Economic Incentives Contingency: Buyer shall within ninety (90) days of the Effective Date, have the right to apply for, pursue and obtain all governmental approvals necessary or desirable to receive the benefit of development incentives available to the Property from federal, state or local governmental authorities pursuant to applicable law, including without limitation, tax abatements, tax credits, tax exemptions, tax increment financing, grants, bonds and special zoning designations ("Incentives"). If Buyer elects to apply for any such Incentives, (I) Buyer shall diligently pursue the requisite approvals and authorizations and shall do all things necessary to facilitate the approval process, and (ii) Seller shall cooperate with Buyer and provide such documentation, information, consent, and assistance as Buyer may reasonably request in furtherance of securing such Incentives at no out-of-pocket to Seller.

Exhibit E

Seller's Work- Addition to Section 7, Inspections

The Following contingencies will be added at the end of Inspections, Section 7:

Within 90 days from the Closing Date, Seller agrees to:

- 1) Restore Electric Service to Building including transformers adequate to meet Buyer needs.
- 2) All Electric facility to be run underground
- 3) Remove electrical poles from Property
- 4) Connect natural gas service to facility
- 5) Remove curb openings from Kalamazoo St./Addition of Curb Cut to Aylworth Ave
- 6) Resurface remaining parking lot (approx. 50 cars)
- 7) Make fire suppression operable.

November 24, 2014

TO: Dane Davis

FR: Paul VandenBosch

RE: Questions for Mel Fox

Please provide a written narrative description that includes the following information:

What is the proposed use of the site?

How do you plan to develop the site?

What is the estimated value to be invested on the site?

How many jobs will be created on site?

How many jobs will be preserved?

How many jobs will be moved?

Information needed to estimate utility connection costs:

Electric Service

Which buildings require electric service?

Your expectation is that we are required to construct electric service to the meter, correct?

What is the expected peak electric load?

Single phase or three phase?

What are the desired secondary voltages?

Curb and Parking Lot

Which curb cuts should be closed?

Where should a new curb cut be installed?

Which area of the parking lot must be resurfaced?

Paul Vandenbosch

From: Kara Schroer <karas@naiwwm.com>
Sent: Wednesday, November 19, 2014 11:57 AM
To: Paul Vandenbosch
Cc: Dane Davis; Cynthia Compton
Subject: Offer on 220 Aylworth
Attachments: _1118170238_001.pdf

Paul-
The attached offer came in on the 220 Aylworth property from Mel Fox from West Michigan Flocking. It's an aggressive offer. Let us know a good time to call and discuss.
Best regards,
Kara

Kara Schroer
Realtor Associate
karas@naiwwm.com

NAI Wisinski of West Michigan
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NAI Wisinski of
West Michigan
Commercial Real Estate Services, Worldwide.

NAI Global is the single largest, most powerful global network of owner-operated commercial real estate brokerage firms. NAI Global Member firms, leaders in their local markets, are actively managed to work in unison and provide clients with exceptional solutions to their commercial real estate needs. NAI Global has more than 375 offices strategically located throughout North America, Latin America, Europe and Asia Pacific, with over 6,700 local market professionals, managing over 380 million square feet of property.



**BUY AND SELL AGREEMENT
FOR OFFICE, COMMERCIAL, INDUSTRIAL AND MULTI-FAMILY**

Office of NAI Wisinski of West Michigan, BROKER,

Grand Rapids (city), Michigan Phone: 269-459-0434 Fax: 616.776.0101

Email: daned@naiwmm.com Offer Date: 11/6/2014, Noon (time)

1. **Agency Disclosure.** The undersigned Buyer and Seller each acknowledge the Broker named above is acting as (choose one):

- Subagent of the Seller Agent of the Buyer Dual Agent (with written, informed consent of both Buyer and Seller)
- Other (specify): Agent of the Seller Only

2. **Buyer's Offer.** The undersigned Buyer hereby offers and agrees to purchase property located in the City South Haven of Van Buren County, Michigan, commonly known as 220 Aylworth Avenue & 1280 Kalamazoo Street, South Haven, MI

Permanent Parcel Number 80-53-220-001-10 & 80-53-220-002-10 and legally described as follows:
See Attached Addendum.

(the "Land"), together with all buildings, fixtures and improvements situated on the Land (the "Improvements"), and all equipment and other personal property listed on Exhibit D (the "Personal Property"), all of which is collectively referred to herein as the "Premises".

3. **Purchase Price.** The purchase price for the Premises is:
Two Hundred Seventy Five Thousand Dollars

Dollars (\$275,000.00). Any allocation of the purchase price between Land, Improvements, and Personal Property shall be set forth on an attached Exhibit.

4. **Terms of Payment.** The purchase price shall be paid at the closing as indicated by "X" below (other unmarked terms of purchase do not apply):

Cash. Buyer shall pay the full purchase price to Seller upon execution and delivery of a warranty deed and performance by Seller of the closing obligations specified in this agreement.

New Mortgage. The Buyer shall pay the full purchase price to Seller upon execution and delivery of a warranty deed and performance by Seller of the closing obligations specified in this Agreement, contingent upon Buyer's ability to obtain a conventional/private type 20 amor year mortgage loan in the amount of \$220,000.00 bearing interest at a rate no greater than 7 % per annum. Buyer shall apply for the mortgage loan immediately and accept it promptly if tendered. If Buyer does not deliver to Seller on or before December 31, 2014 (date), proof that Buyer has accepted a mortgage loan commitment, Seller may thereafter at any time treat this contingency as not having been satisfied and terminate this Agreement by written notice to Buyer, unless Buyer has waived this contingency in writing, prior to the date indicated in this paragraph.

Land Contract. Buyer shall pay the full purchase price to Seller pursuant to the terms and conditions stated in the Commercial Alliance of REALTORS® Land Contract form upon performance by Seller of the closing obligations specified in this Agreement. The Land Contract shall provide a down payment of \$_____ and payment of the balance \$_____ in _____ installments of \$_____ or more, at Buyer's option, including interest at the rate of _____ % per annum computed monthly, interest to start on date of closing, and first payment to become due _____ days after date of closing. The entire unpaid balance will become due and payable _____ months after closing. Seller understands that consummation of the sale or transfer of the Premises shall not relieve Seller of any liability that Seller may have under the mortgage(s) to which the Premises are subject, unless otherwise agreed to by the lender or required by law or regulation.

Additional Provisions:

5. **Survey (select one of the following):**

- A new survey:
 - ALTA showing all easements of record, improvements, and encroachments, if any, and completed to the most current ALTA/ACMS minimum requirements; or
 - boundary survey with iron corner stakes and with all easements of record, improvements, and encroachments (if any);

A recertified survey;

An existing survey (if available)

shall be provided by Buyer Seller as soon as possible after the later to occur of (i) the title insurance commitment reference in this Agreement is delivered to the party responsible for the survey; and (ii) Buyer's right to terminate under this Agreement is waived or deemed to have been waived. ~~If Seller fails to provide the new or recertified survey as required by this paragraph, the Buyer may elect to order the required survey at Seller's cost.~~ If the survey reveals a matter that materially and adversely affects the value of the Premises or Buyer's intended use of the Premises, Buyer shall have the right to terminate this Agreement by giving Seller written notice within seven (7) calendar days after copies of both the survey and title commitment referenced in this Agreement are delivered to Buyer, otherwise Buyer's right to terminate this Agreement pursuant to this paragraph shall be deemed to have been waived. Other:

N/A

Buyer's Initials

Seller's Initials

Buy and Sell Agreement for Office, Commercial, Industrial, and Multi-Family Property **Page 2 of 6**

6. **Title Insurance.** At Seller's expense, Seller shall provide Buyer with a standard ALTA owner's policy of title insurance in the amount of the purchase price, effective as of the date of closing. A commitment to issue such policy insuring marketable title (as defined in this Agreement) vested in Buyer, including a tax status report, shall be ordered within seven (7) calendar days after the Effective Date, and shall be delivered, with copies of all title exception documents, as soon as feasible thereafter. (Note that some title commitments do not report on the status of oil, gas, or mineral rights.) If any matter disclosed by the title commitment adversely and materially affects the value of the Premises or Buyer's intended use of the Premises, Buyer shall have the right to terminate this Agreement by giving Seller written notice within seven (7) calendar days after copies of both the title commitment and survey referenced in this Agreement above are delivered to Buyer, otherwise Buyer's right to terminate this Agreement pursuant to this paragraph shall be deemed to have been waived. A matter disclosed in the title commitment that is in the form of an encumbrance that is liquidated in amount and that can be readily discharged (such as a mortgage) shall not be grounds for termination of this Agreement by Buyer under this paragraph so long as Seller discharges such encumbrance at the closing. Other:

None

7. **Inspections.** After the Effective Date, Buyer and Buyer's agents shall have the right to enter upon the Premises during reasonable business hours for the purposes of conducting such inspections of the Premises that Buyer deems appropriate; provided, however, that such inspections shall not interfere with the rights of the tenants in possession. Buyer shall indemnify, defend and hold Seller and Broker harmless from and against any damage to persons or property caused by Buyer or Buyer's agents in conducting such inspections. Buyer shall have the right to terminate this Agreement if the inspections are not acceptable to Buyer by giving Seller written notice within 60 calendar days after the Effective Date, otherwise the right to terminate shall be deemed to have been waived.

Buyer agrees that Buyer is not relying on any representation or statement made by Seller or any real estate salesperson regarding any aspect of the Premises, or this sale transaction, except as may be expressly set forth in this Agreement, a written amendment to this Agreement, or a disclosure statement separately signed by Seller. Accordingly, Buyer agrees to accept the Premises "as is" and "with all faults", except as otherwise expressly provided in the documents specified in the preceding sentence. Other:

See Attached Exhibit E for required Seller Work.

8. **Closing Adjustments.** The following adjustments shall be made between the parties as of the close of business on the closing date, with Buyer receiving a credit or assuming responsibility, as the case may be, for amounts attributable to time periods following the closing date:

- a. Prepaid rent;
- b. Interest on any existing indebtedness assumed by Buyer;
- c. Charges for any transferable service contracts assigned to Buyer described in Exhibit C;
- d. Utility deposits;
- e. Security deposits;
- f. Additional Rent (as defined below).

If any tenant is late, delinquent or otherwise in default in the payment of rent on the closing date, Seller shall assign to Buyer the claim for and the right to collect the rent; Buyer shall pay such past due rent to Seller promptly upon receipt; but Buyer shall not be obligated to file suit to collect such rent and shall reassign the claim to Seller on demand. If any tenants are required to pay percentage rent, escalation charges for real estate taxes, operating expenses, cost-of-living adjustments or other charges of a similar nature ("Additional Rent"), and such amounts shall be allocated between the parties pursuant to the terms of the applicable leases. If any Additional Rent is collected by Buyer after closing which is attributable in whole or in part to any period prior to closing, Buyer shall promptly pay to Seller Seller's proportionate share of the Additional Rent. Other:

None. There is no existing tenant at the Property.

9. **Property Taxes.** All property taxes first billed prior to the year of closing will be paid by Seller, without proration. All property taxes billed or to be billed in the year of closing will be paid as follows (choose one):

- No Proration:
 - Buyer Seller shall pay the taxes billed in July.
 - Buyer Seller shall pay the taxes billed in December.
- Calendar Year Proration. Combined per diem tax amount representing both the July bill and the December bill shall be calculated based on a 365 day year. Seller shall be responsible for the per diem total from January 1 to, but not including, the day of closing. Buyer shall be responsible for the difference between the total of the two tax bills and the Seller's share. If the amount of either tax bill is unknown on the day of closing, it shall be calculated using the taxable value and the current millage rate assigned to the Premises as of the day of closing.

10. **Special Assessments (choose one):**

- Seller shall pay all special assessments which have become a lien on the Premises prior to the Effective Date, whether due in installments or otherwise.
- Seller shall pay all special assessments which have become a lien on the Premises prior to the Effective Date, provide, however, that in the event a special assessment is payable in installments, Seller shall only be responsible for those installments covering the years prior to the year of closing, and Buyer shall be responsible for all installments covering all years after the year of closing. Installments of special assessments covering the year of closing shall be prorated using the same method set forth in this Agreement for the proration of real estate taxes.
- Other:

Buy and Sell Agreement for Office, Commercial, Industrial, and Multi-Family Property Page 3 of 6

11. **Conveyance.** Upon performance by Buyer of the closing obligations specified in this Agreement, Seller shall convey the marketable title to the Premises to Buyer by warranty deed or agree to convey marketable title by land contract or assignment, as required by this Agreement, including oil, gas and other mineral rights owned by Seller, if any, subject only to existing zoning ordinances, and the following matters of record: building and use restrictions, easements, oil and gas leases, and reservations, if any. As used herein, "marketable title" means marketable title within the meaning of the Michigan 40-Year Marketable Title Act (Mich. Comp. Laws §§ 565.101 et seq.).

The following paragraph applies only if the Premises include unplatted land:

Seller agrees to grant Buyer at closing the right to make (insert number) all division(s) under Section 108 (2), (3) and (4) of the Michigan Land Division Act. (if no number is inserted, the right to make divisions under the sections referenced above stays with any remainder of the parent parcel retained by Seller. If a number is inserted, Seller retains all available divisions in excess of the number stated; however, Seller and/or Broker do not warrant that the number of divisions stated is actually available.) ~~If this sale will create a new division, Seller's obligations under this Agreement are contingent on Seller's receipt of municipal approval, on or before _____ (date), of the proposed division to create the Real Estate.~~ Other:

None

12. **Warranties of Buyer.** Except as otherwise provided or acknowledged in this Agreement, Buyer represents and warrants to Seller as follows:

- a. The performance of the obligations of Buyer under this Agreement will not violate any contract, indenture, statute, ordinance, judicial or administrative order or judgment applicable to Buyer.
- b. There is no litigation or proceeding pending, or to Buyer's knowledge threatened, against or involving Buyer, and Buyer does not know or have reason to know of any ground for any such litigation or proceeding, which could have an adverse impact on Buyer's ability to perform, or Seller's interests, under this Agreement.
- c. In entering into this Agreement, Buyer has not relied upon any written or verbal representations made by Seller or any representative of Seller, including any real estate salesperson, regarding the Premises or any aspect of this transaction, which are not expressly set forth in this Agreement.
- d. Other:

None

13. **Warranties of Seller.** Except as otherwise provided or acknowledged in this Agreement, Seller represents and warrants to, and agrees with Buyer as follows:

- a. The performance of the obligations of Seller under this Agreement will not violate any contract, indenture, statute, ordinance, judicial or administrative order or judgment applicable to Seller or the Premises.
- b. There is no litigation or proceeding pending or to Seller's knowledge threatened against or involving Seller or the Premises, and Seller does not know or have reason to know of any ground for any such litigation or proceeding which could have an adverse impact on Seller's ability to perform under this Agreement or that could adversely affect Buyer's title or use of the Premises.
- c. Seller shall continue to operate the Premises in the ordinary course of business and maintain the Premises in a state of good condition and repair during the interim between the signing of this Agreement and the closing date.
- d. If a statement(s) of income and expense with respect to the operation of the Premises is (are) described in Exhibit A, such statement(s) is (are) accurate for the period(s) designated in the statement(s).
- e. The information concerning written leases and tenancies not arising out of written leases described in Exhibit B is accurate as of the Effective Date, and there are no leases or tenancies with respect to the Premises other than those described in Exhibit B (the "Leases"). The warranties in this paragraph do not apply to oil and gas leases, if any. Except as otherwise described in Exhibit B:
 - (1) All of the leases are in full force and effect, no party thereto is in material default there under, and none of them have been modified, amended, or extended;
 - (2) No renewal or extension options have been granted to tenants;
 - (3) No tenant has an option to purchase the Premises;
 - (4) The rents set forth are being collected on a current basis and there are no arrearages or advance payments in excess of one month;
 - (5) There are no security deposits, and
 - (6) No real estate brokerage commission will become owing in the event of any tenant's exercise of any existing option to renew the term of any lease or purchase of the Premises.
- f. If a schedule of service, maintenance, supply and management contracts ("Service Contracts") is described in Exhibit C, the Exhibit lists all the Service Contracts currently in effect with respect to the Premises.
- ~~g. The Premises will be in compliance with any applicable smoke detector ordinances as of the closing date.~~
- h. With respect to underlying land contracts or mortgages, the sale will not accelerate indebtedness, increase interest rates, or impose penalties and sanctions.
- ~~i. Seller is without personal knowledge as to the presence on the Premises of any toxic or hazardous substances or of any underground storage tanks.~~
- j. Other:

Seller has provided all available (if any) Environmental Reports to Buyer & has fully disclosed any knowledge of Environmental issues with the Property to Buyer as of the Effective Date.

14. **Damage to Premises.** If between the Effective Date and the closing date, all or any part of the Premises is damaged by fire or natural elements or other causes beyond Seller's control that cannot be repaired prior to the closing date, or any part of the Premises is taken pursuant to any power of eminent domain, Seller shall immediately notify Buyer or such occurrence, and either Seller or Buyer may terminate this Agreement by written notice to the other within fifteen (15) days after the date of damage or taking. If neither elects to terminate this Agreement, there shall be no reduction in the purchase price and, at closing, Seller shall assign to Buyer whatever rights Seller may be with respect to any insurance proceeds or eminent domain award.



Buyer's Initials



Seller's Initials

- 15. **Closing.** The closing shall be held on or before March 1, 2015 (date) and as promptly as practical after all necessary documents have been prepared. An additional period of twenty (20) days shall be allowed for closing to accommodate delays in title work or the correction of title defects and/or survey problems which can be readily correctable, delays in obtaining any required inspections, surveys or repairs, delays in completing Environmental Site Assessments, Baseline Environmental Assessment or Due Care Plan/Section 7a Compliance Analysis (if such assessments or plans were ordered in a timely manner), or if the terms of purchase require participation of a lender and the lender has issued a commitment consistent with the requirement but is unable to participate in the closing on or before the required date.
- 16. **Possession.** Seller shall tender to Buyer possession of the Premises upon completion of the closing, subject to all existing leases and rights of tenants in possession. Other:

Or upon completion of Seller's Work as outlined on Exhibit E which will occur post closing.

- 17. **Seller's Closing Obligations.** At closing, Seller shall deliver the following to Buyer:
 - a. The warranty deed, land contract or assignment of land contract required by this Agreement.
 - b. A bill of sale for any Personal Property (described in Exhibit "D").
 - c. ~~A written assignment by Seller of Seller's interest in all leases and a transfer to Buyer of all security deposits, accompanied by the original or a true copy of each lease.~~
 - d. An assignment of all Seller's rights under any Service Contracts described in Exhibit C which are assignable by their terms and which Buyer wishes to assume, together with an original or true copy of each Service Contract assigned.
 - e. ~~A notice to any tenants advising the tenants of the sale and directing that future payments be made to Buyer.~~
 - f. ~~An accounting of operating expenses including, but not limited to, CAM, taxes, insurance and Additional Rent, collected in advance or arrears, spent or not yet spent by Seller, showing an accurate allocation between the parties pursuant to the leases.~~
 - g. Payment of the County and State real estate transfer tax.
 - h. Any other documents required by this Agreement to be delivered by Seller.
- 18. **Buyer's Closing Obligations.** At closing, Buyer shall deliver to Seller the following:
 - a. The cash portion of the purchase price specified in this Agreement shall be paid by cashier's check or other immediately available funds, as adjusted by the apportionments and assignments in accordance to this Agreement.
 - b. ~~A written assumption by Buyer of the obligations of Seller under the leases arising after closing, including an acknowledgement of the receipt of all security deposits.~~
 - c. Any other documents required by this Agreement to be delivered by Buyer.
- 19. **1031 Tax Deferred Exchange.** Upon either party's request, the other party shall cooperate and reasonably assist the requesting party in structuring the purchase and sale contemplated by this Agreement as part of a tax deferred, like-kind exchange under Section 1031 of the Internal Revenue code of 1986, as amended; provided, however, that in connection therewith, the non-requesting party shall not be required to (a) incur any additional costs or expenses; (b) take legal title to additional real property (i.e. the requesting party's "replacement property" or "relinquished property"); or (c) agree to delay the closing.
- 20. **Earnest Money.** Buyer gives NAI Wisinski of West Michigan, Broker, thirty (30) days to obtain the written acceptance of this offer and agrees that this offer, when accepted by Seller, will constitute a binding agreement between Buyer and Seller.
Buyer shall deposit \$ 5,000.00 with Chicago Title, Escrow Agent, [insert name of Broker, Title Company or other] with this offer or within 3 business days after acceptance of this offer, evidencing Buyer's good faith, to be held by the Escrow Agent and to apply to the purchase price or the down payment portion thereof where applicable. If this offer is not accepted, or the title is not marketable, or if the purchase is contingent upon conditions specified that cannot be met, this deposit shall be promptly refunded. If the Buyer defaults, all deposits made may be forfeited as liquidated damages at Seller's election, or alternatively, Seller may retain the deposits as part payment of the purchase price and pursue Seller's legal or equitable remedies against Buyer. If the sale is not closed according to its terms, the selling Broker may notify Buyer(s) and Seller(s) of Escrow Agent's intended disposition of earnest deposit, and all parties shall be deemed to have agreed to the disposition of the earnest money deposit unless Escrow Agent is notified of a court action pending concerning this sale or disposition of earnest money within thirty (30) days after notice to the parties.
- 21. **Disclosure of Price and Terms.** The purchase price and the terms of this sale may be disclosed by the Commercial Alliance of REALTORS® Multiple Listing Service (CARWM) in the ordinary conduct of its business. Deletion of this paragraph shall not be considered a counter offer that would require a counter acceptance.
- 22. **Credit Reports.** Buyer consents that, if not otherwise prohibited, the Broker(s) may give Seller information about the Buyer contained in a credit report that may be furnished to the Brokers(s) by a credit reporting agency.
- 23. **Advice of Counsel.** Buyer acknowledges that the Broker has recommended that the parties retain an attorney or attorneys to review the terms of this Agreement.
- 24. **Brokerage Fee.** Seller and/or Buyer agree(s) to pay the broker(s) involved in this transaction a brokerage fee as specified in any agency agreement or other written agreement between them. In the event no such agreement exists, Buyer Seller agrees to pay a brokerage fee of _____ This brokerage fee shall be paid in full promptly after it is earned, but not later than any applicable closing. Unless otherwise previously agreed, Buyer and/or Seller agree(s) that the brokerage fee may be shared by the recipient with any cooperating broker who participates in the sale, in such amount as the recipient decides, without further disclosure to or consent from Buyer and/or Seller. Other:

Buyer acknowledges that they are not represented by a Broker in this transaction and will not be seeking a brokerage fee for a representative.

Seller acknowledges that if a commission is owed under a prior agreement, execution of this agreement will not eliminate the prior agreement.

Buyer's Initials

Seller's Initials

25. Environmental.

a. Notice to sellers, buyers, landlords and tenants (environmental risks).

Whenever real property is acquired or occupied, the buyer incurs some degree of risk with regard to potential environmental contamination and/or protected natural resources on the property. Various federal, state, and local laws may impose liability upon the buyer for the remediation of the contamination even though the buyer did not cause it, or may restrict the buyer's ability to fully develop or utilize the property. Such risk can be minimized through the performance of environmental due diligence.

No real estate brokers/salespersons in this transaction possess the expertise necessary to assess the nature or extent of these environmental risks or to determine the presence of environmental contamination or protected natural resources. The real estate brokers/salespersons involved in this transaction do not make independent investigations as to environmental contamination or protected natural resources with respect to any property, and they make no representations regarding the presence or absence, now or in the past, of environmental contamination. It is therefore prudent for each party to this transaction to seek legal and technical counsel from professionals experienced in environmental matters to provide an evaluation of the environmental risks associated with the transaction.

b. Environmental reports and assessments.

(1) Seller shall provide copies of any existing Environmental Assessments or reports involving the Premises within five (5) calendar days after the Effective Date.

(2) Buyer shall be given access to the Premises during normal business hours to perform an ASTM 1527 Phase 1 Site Assessment. Buyer shall pay 100% and Seller shall pay 0% of the cost of the Environmental Assessment. The Environmental Assessment shall be ordered by the Buyer Seller. The Environmental Assessment shall be completed within 60 calendar days after the Effective Date and shall be certified to Buyer. Seller shall promptly cooperate and request its tenants to cooperate with Buyer in completing the Environmental Assessment.

(3) If an Environmental Assessment of the Premises reveals recognized environmental conditions as defined by ASTM, then Buyer shall have the right to:

- a. terminate this Agreement within ten (10) calendar days after receipt of the Environmental Assessment report; or
- b. provide Seller with the Environmental Addendum (Seller's refusal to execute the Environmental Addendum within 30 days shall, at Buyers option, terminate this Agreement); or
- c. proceed with the purchase.

(4) For residential housing units, Seller will attach either the Seller's acknowledgement Form Concerning Lead-Based Paint or a Lead-Based Paint Seller's Disclosure form, depending on whether the improvements were built prior to 1978 or 1978 or later.

c. Nondisclosure.

If Buyer exercises its right to terminate this Agreement pursuant to subparagraph b. above, Buyer shall not disclose his/her Environmental Assessment report(s) to any third party. At Seller's request, Buyer shall provide copies of any Environmental Assessment report(s) to Seller.

d. Other: Seller has already submitted any available Environmental Reports to Buyer as of the Effective Date.

26. Other Provisions:

This agreement shall be contingent on:

- 1. Buyers receipt of an acceptable construction estimate cost from from A.E. Coleman Construction. Buyer will have ten (10) calendar days from receipt of this proposal to terminate the Contract.
- 2. Buyers ability to obtain funding assistance with asbestos removal at the Property.
- 3. Economic Incentives Contingency: Buyer shall, within ninety (90) days of the Effective Date, have the right to apply for, pursue and obtain all governmental approvals necessary or desirable to receive the benefit of development incentives available to the Property from federal, state or local governmental authorities pursuant to applicable law, including without limitation, tax abatements, tax credits, tax exemptions, tax increment financing, grants, bonds and special zoning designations ("Incentives"). If Buyer elects to apply for any such Incentives, (i) Buyer shall diligently pursue the requisite approvals and authorizations and shall do all things necessary to facilitate the approval process, and (ii) Seller shall cooperate with Buyer and provide such documentation, information, consent, and assistance as Buyer may reasonably request in furtherance of securing such Incentives at no out-of-pocket cost to Seller.

27. Notices. Any notice required or permitted to be given hereunder shall be deemed to have been properly given, if in writing and delivered to the parties at the addresses shown below, and shall be deemed received (a) upon delivery, if delivered in person or by facsimile transmission, with receipt thereof confirmed by printed facsimile acknowledgement, (b) one (1) business day after having been deposited for next day overnight delivery with a nationally recognized overnight courier service, (c) two (2) business days after having been deposited in any U.S. post office or mail depository and sent by certified mail, postage paid, return receipt requested, or (d) upon sending, if sent by email (with a confirmation copy sent the same day by overnight delivery).

28. Additional Acts. Buyer and Seller agree to execute and deliver such additional documents and to perform such additional acts after the closing as may become necessary to effectuate the transfers contemplated by this Agreement.

29. Authority of the Parties. Each of the undersigned individuals who have signed this Agreement on behalf of Seller and Buyer entities represent and warrant that he/she is authorized to sign this Agreement on behalf of such party and to bind such party to the requirements of this Agreement.

30. Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the sale of the Premises. All contemporaneous or prior negotiations have been merged into this Agreement. This Agreement may be modified or amended only by written instrument signed by the parties to this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan.

For purposes of this Agreement, the phrase, "Effective Date of this Agreement" ("Effective Date") shall be the date upon which this Agreement is fully executed (as described below):

 

Buyer's Initials

 

Seller's Initials

Buy and Sell Agreement for Office, Commercial, Industrial, and Multi-Family Property

31. Index of Exhibits.

Not Applicable	Attached	Seller to Furnish	Exhibit #	Subject
X			A	Income and expense with respect to the operation of the Premises
X			B	Written leases and any tenancies not arising out of written leases
		X	C	Service Contracts
		X	D	List of personal Property
	X		E	Seller's Work

As to any "Seller to furnish" item(s) listed above, Buyer shall have the right to terminate this Agreement if any such item is not acceptable to Buyer by giving Seller written notice within five calendar days after receipt of such item(s), otherwise the right to terminate this Agreement pursuant to this paragraph shall be deemed to have been waived.

32. By signing below, Buyer acknowledges having read and received a copy of this Agreement.

Witness: _____ Buyer: [Signature]
(Note: Please sign as you wish your name to appear on the final papers.)

Buyer: _____
(Note: Please sign as you wish your name to appear on the final papers.)

Entity of the Buyer: FOX GROUP

Buyer's Address: 200 Louisa St Bus. Phone: 2696391639 Fax: _____
SOUTH HAVEN, MI 49090 Email: MFOX@WMFBCKY.COM

SELLER'S ACCEPTANCE

Date: _____ Time: _____

33. The above offer is hereby accepted:

By signing below, Seller acknowledges having read and received a copy of this Agreement. If this Agreement is signed by Seller without any modifications, this becomes the Effective Date.

Seller gives Broker above named until _____ (time) _____ (date) to obtain Buyer's written acceptance of counter offer, if any.

Witness: _____ Seller: _____
(Note: Please sign as you wish your name to appear on the final papers.)

Seller: _____
(Note: Please sign as you wish your name to appear on the final papers.)

Entity of the Seller: _____

Seller's Address: _____ Bus. Phone: _____ Fax: _____

_____ Email: _____

BUYER'S RECEIPT OF ACCEPTANCE

Date: _____ Time: _____

34. Buyer acknowledges receipt of Seller's acceptance of Buyer's offer. If the acceptance was subject to changes from Buyer's offer, Buyer agrees to accept those changes, all other terms and conditions remaining unchanged. If this Agreement is signed by Buyer without any modification, this becomes the Effective Date.

Witness: _____ Buyer: _____

Buyer: _____

SELLER'S RECEIPT OF ACCEPTANCE

Date: _____ Time: _____

35. Seller acknowledges receipt of a copy of Buyer's acceptance of the counter-offer (if Seller made a counter-offer)

Witness: _____ Seller: _____

Seller: _____

Exhibit A – Legal Description

Parcel 1: Beginning at the Northeast corner of Lot 1, Supervisor's Plat of Irving T. Olson Industrial Subdivision, according to the recorded plat thereof, as recorded in Liber 5 of Plats on Page 74, in the Office of the Register of Deeds for Van Buren County, said point being North 89°22'00" West 531.87 feet along the North line of Section 15, Town 1 South, Range 17 West, and South 00°00'12" West 32.44 feet from the North Quarter corner of said Section 15, according to the Government Survey thereof; and proceeding thence South 00°00'12" West 177.79 feet, along the East line of said Lot 1; thence South 89°57'04" West 413.51 feet; thence South 00°08'05" West 218.71 feet; thence South 89°57'07" East 70.76 feet; thence South 00°10'41" East 80.67 feet; thence South 89°53'18" East 146.13 feet; thence South 00°42'47" West 167.54 feet; thence South 89°36'44" West 22.45 feet; thence South 00°00'12" West 218.26 feet; thence North 89°59'48" West 269.0 feet; thence South 00°00'12" West 414.70 feet to the South line of said Lot 1; thence North 89°21'02" West, along the South line of said Lot 1, 276.97 feet; thence North 00°04'12" East, along the West line of said Lot 1, 1283.27 feet; thence South 89°21'36" East, along the North line of said Lot 1, 764.90 feet to the point of beginning.

Parcel 2: Beginning at a point on the East line of Lot 1, Supervisor's Plat of Irving T. Olson Industrial Subdivision, according to the recorded plat thereof, as recorded in Liber 5 of Plats on Page 74, in the Office of the Register of Deeds for Van Buren County, South 00°00'12" West 177.79 feet from the Northeast corner of said Lot 1, said point also being North 89°22'00" West 531.87 feet along the North line of Section 15, Town 1 South, Range 17 West, and South 00°00'12" West 210.23 feet from the North Quarter corner of said Section 15, according to the Government Survey thereof; and proceeding thence South 00°00'12" West, along the East line of said Lot 1, 466.26 feet; thence South 89°36'44" West 198.95 feet; thence North 00°42'47" East 167.54 feet; thence North 89°53'18" West 146.13 feet; thence North 00°10'41" West 80.67 feet; thence North 89°57'07" West 70.76 feet; thence North 00°08'05" East 218.71 feet; thence North 89°57'04" East 413.51 feet to the point of beginning.

And being together with and subject to an easement for ingress, egress and utilities being described as: Beginning at a point of the East line of Lot 1 distant South 00°00'12" West 644.05 feet from the Northeast corner of Lot 1 said point also being distant North 89°22'00" West 531.87 feet along the North line of Section 15 and South 00°00'12" West 676.49 feet from the North 1/4 corner of Section 15 and proceeding thence South 00°00'12" West 30.00 feet along the East line of Lot 1; thence South 89°36'44" West 221.39 feet; thence South 00°00'12" West

377.06 feet; thence South 89°59'48" East 21.40 feet; thence South 00°00'12" West 229.14 feet along the West line of Lot 11 and the extension thereof; thence North 89°21'02" West 71.40 feet along the South line of Lot 1; thence North 00°00'12" East 635.06 feet; thence North 89°36'44" East 271.40 feet to the point of beginning.

Exhibit E

Seller's Work – Addition to Section 7, Inspections

The Following contingencies will be added at the end of Inspections, Section 7:

Within 90 days from the Closing Date, Seller agrees to:

- 1) Restore Electric Service to Building including transformers adequate to meet Buyer needs.
- 2) All Electric facility to be run underground
- 3) Remove electrical poles from Property
- 4) Connect natural gas service to facility
- 5) Remove curb openings from Kalamazoo St./Addition of Curb Cut to Aylworth Ave
- 6) Resurface remaining parking lot (approx. 50 cars)
- 7) Make fire suppression operable.

15.268 Closed sessions; permissible purposes.

Sec. 8. A public body may meet in a closed session only for the following purposes:

(a) To consider the dismissal, suspension, or disciplining of, or to hear complaints or charges brought against, or to consider a periodic personnel evaluation of, a public officer, employee, staff member, or individual agent, if the named person requests a closed hearing. A person requesting a closed hearing may rescind the request at any time, in which case the matter at issue shall be considered after the rescission only in open sessions.

(b) To consider the dismissal, suspension, or disciplining of a student if the public body is part of the school district, intermediate school district, or institution of higher education that the student is attending, and if the student or the student's parent or guardian requests a closed hearing.

(c) For strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement if either negotiating party requests a closed hearing.

(d) To consider the purchase or lease of real property up to the time an option to purchase or lease that real property is obtained.

(e) To consult with its attorney regarding trial or settlement strategy in connection with specific pending litigation, but only if an open meeting would have a detrimental financial effect on the litigating or settlement position of the public body.

(f) To review and consider the contents of an application for employment or appointment to a public office if the candidate requests that the application remain confidential. However, except as otherwise provided in this subdivision, all interviews by a public body for employment or appointment to a public office shall be held in an open meeting pursuant to this act. This subdivision does not apply to a public office described in subdivision (j).

(g) Partisan caucuses of members of the state legislature.

(h) To consider material exempt from discussion or disclosure by state or federal statute.

(i) For a compliance conference conducted by the department of commerce under section 16231 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.16231 of the Michigan Compiled Laws, before a complaint is issued.

(j) In the process of searching for and selecting a president of an institution of higher education established under section 4, 5, or 6 of article VIII of the state constitution of 1963, to review the specific contents of an application, to conduct an interview with a candidate, or to discuss the specific qualifications of a candidate if the particular process of searching for and selecting a president of an institution of higher education meets all of the following requirements:

(i) The search committee in the process, appointed by the governing board, consists of at least 1 student of the institution, 1 faculty member of the institution, 1 administrator of the institution, 1 alumnus of the institution, and 1 representative of the general public. The search committee also may include 1 or more members of the governing board of the institution, but the number shall not constitute a quorum of the governing board. However, the search committee shall not be constituted in such a way that any 1 of the groups described in this subparagraph constitutes a majority of the search committee.

(ii) After the search committee recommends the 5 final candidates, the governing board does not take a vote on a final selection for the president until at least 30 days after the 5 final candidates have been publicly identified by the search committee.

(iii) The deliberations and vote of the governing board of the institution on selecting the president take place in an open session of the governing board.

History: 1976, Act 267, Eff. Mar. 31, 1977;—Am. 1984, Act 202, Imd. Eff. July 3, 1984;—Am. 1993, Act 81, Eff. Apr. 1, 1994;—Am. 1996, Act 464, Imd. Eff. Dec. 26, 1996.

15.269 Minutes.

Sec. 9. (1) Each public body shall keep minutes of each meeting showing the date, time, place, members present, members absent, any decisions made at a meeting open to the public, and the purpose or purposes for which a closed session is held. The minutes shall include all roll call votes taken at the meeting. The public body shall make any corrections in the minutes at the next meeting after the meeting to which the minutes refer. The public body shall make corrected minutes available at or before the next subsequent meeting after correction. The corrected minutes shall show both the original entry and the correction.

(2) Minutes are public records open to public inspection, and a public body shall make the minutes available at the address designated on posted public notices pursuant to section 4. The public body shall make copies of the minutes available to the public at the reasonable estimated cost for printing and copying.

(3) A public body shall make proposed minutes available for public inspection within 8 business days after the meeting to which the minutes refer. The public body shall make approved minutes available for public