



Regular Meeting
7:00 p.m., Monday, April 4, 2022
Farmington City Hall
23600 Liberty Street
Farmington, MI 48335

REGULAR MEETING AGENDA

- 1. Roll Call**
- 2. Approval of Agenda**
- 3. Public Comment**
- 4. Board and Commission Interviews**
 - A. Lynn Mullins: Beautification**
 - B. Susan Kramer: Emergency Preparedness Committee**
- 5. First Reading of Ordinance: Election Precinct Boundary Changes**
- 6. Contract with MDOT for Farmington Road Streetscape**
- 7. Consideration to Approve Extension of the IT Agreement with Farmington Hills**
- 8. Other Business**
- 9. Public Comment**
- 10. Council Comment**
- 11. Adjournment**

The City will follow its normal procedures for accommodation of persons with disabilities. Those individuals needing accommodations for effective participation in this meeting should contact the City Clerk (248) 474-5500, ext. 2218 at least two working days in advance of the meeting. An attempt will be made to make reasonable accommodations.

Farmington City Council Staff Report	Council Meeting Date: April 4, 2022	Item Number 4A
Submitted by: Melissa Andrade, Assistant to the City Manager		
Agenda Topic: Beautification Committee interviews		
Proposed Motion: Move to appoint xxxxx to the Beautification Committee Board for a term ending June 30, 2025.		
<p>Background: There is one vacancy on the Beautification Committee Board.</p> <p>At the March 21 City Council Meeting, Council interviewed two candidates. A third, Lynne Mullins, is scheduled to be interviewed at tonight's meeting.</p> <p>Beautification is a 3-year term. This is a new board position, so the term would expire June 30, 2025.</p> <p>The three candidates are:</p> <ul style="list-style-type: none"> • Colleen Coogan (who indicated she'd be interested in a different committee) • Lynne Mullings • Christina Clark <p>Committee Information: <i>The committee meets the second Tuesday of the month at 6 p.m.</i></p> <p><i>Committee purpose a. Consider and propose programs which would improve the physical appearance of the community and implement them as approved by the City Council; b. Organize and execute an annual effort to encourage citizen participation in activities designed to beautify the city; c. Continue with the Beautification Awards Program; and d. Assist where needed with the Community Garden Program; and e. Other possible projects and agreed upon by the Committee and City Council</i></p>		
Materials: Application of Lynne Mullins		

**Farmington City Council
Staff Report**

**Council Meeting
Date: April 4, 2022**

**Item
Number
4B**

Submitted by: Melissa Andrade, Assistant to the City Manager

Agenda Topic: Emergency Preparedness Committee Interview

Proposed Motion: Move to appoint Susan Kramer as an alternate to the Emergency Preparedness Committee for a term ending February 1, 2025.

Background:

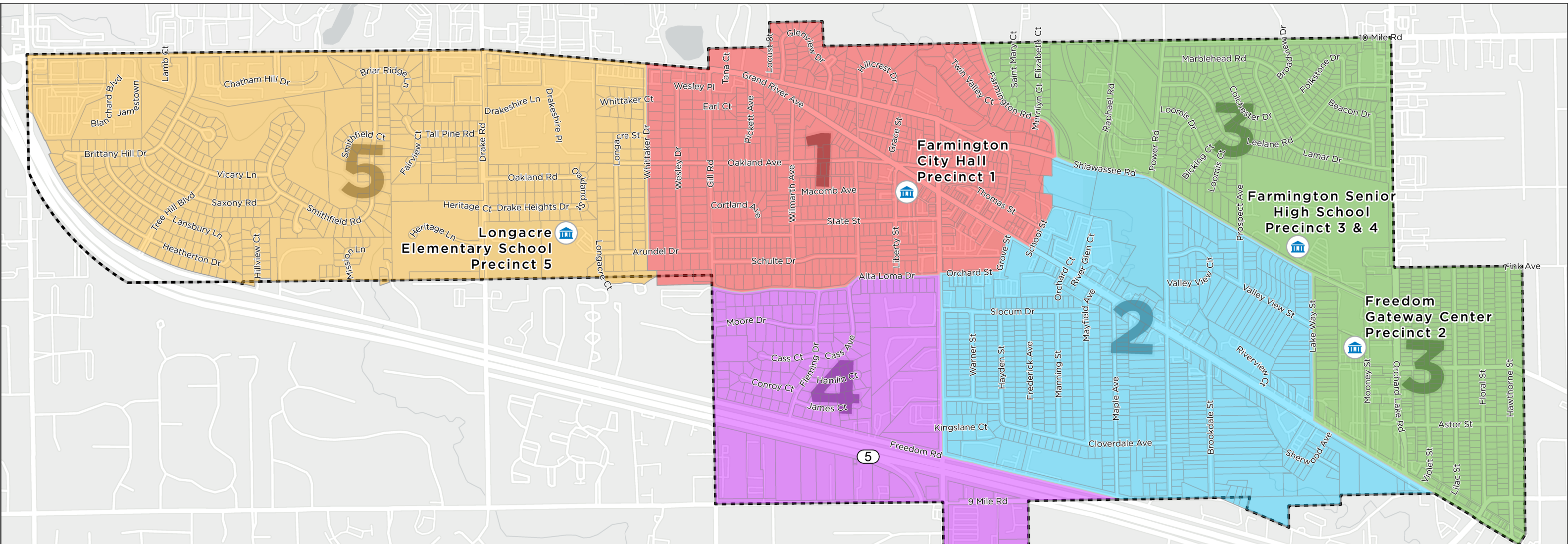
There is a vacancy for an alternate on the Emergency Preparedness Committee.



This is a 3-year term. The committee meets the first Monday of each month at 5 p.m. in Farmington Hills City Hall.

The mission of the Farmington Hills/Farmington Emergency Preparedness Commission is to support and enhance the efforts of local safety organizations in helping ensure that residents and business owners have the information, education, and skills necessary to protect themselves, their families, homes, and businesses in the event of a local emergency.

Materials: Application of Susan Kramer

Farmington City Council Staff Report	Council Meeting Date: April 4, 2021	Item Number 5
Submitted by: Mary Mullison, City Clerk		
Agenda Topic: Election Precinct Boundary Changes		
Proposed Motion: Move to approve First Reading of Special Ordinance to Consolidate Election Precincts and revise the precincts previously established in Special Ordinance C-628-96 pursuant to State law and City Charter.		
Background: Special Ordinance No. C-628-96 established six voting precincts within the City of Farmington. Michigan Election Law provides that in the second year following the federal census, city election commissions shall divide precinct boundaries no later than 120 days before the primary election next preceding a general November election, in order that a precinct, as far as practical is not split between districts exceeding 2,999 registered voters (MCL 168.661(3)). In following this process and considering the increase in the number of persons voting by absent voter ballots, on March 25, 2022 the city election commission agreed with the recommendation of the City Clerk that there will be additional efficiency if the six election precincts are consolidated into five election precincts. No precinct will exceed 2,999 registered voters. City Charter Section 3.3 and City Code Section 12.1 require that a special ordinance be adopted to recognize the city's precinct boundaries A Second Reading is planned for April 18, 2022.		
Materials:		
2021 Precinct Map 2022 Election Commission Approved Precinct Map Special Ordinance		




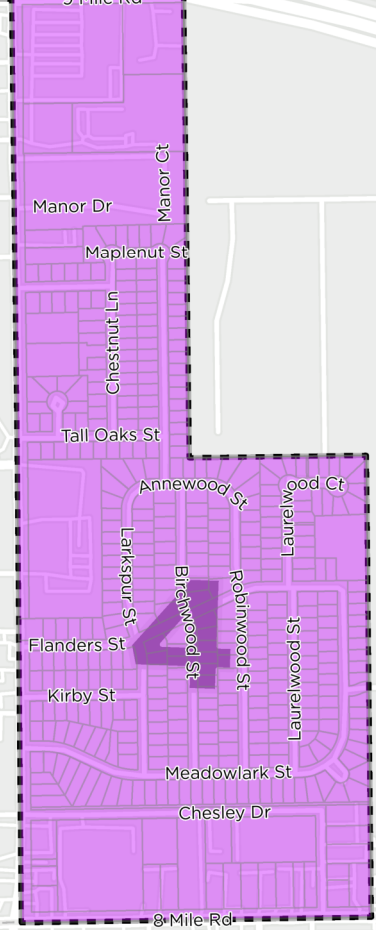
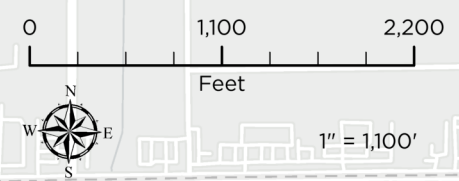
Map Key	Precinct #	Location Name	Location Address	Location Within	Location Description
	Precinct 1	Farmington City Hall	23600 Liberty St., Farmington, MI 48336	Council Chambers	Located west of Farmington Rd. and Grand River Ave.
	Precinct 2	Freedom Gateway Center	31590 Grand River Ave., Farmington, MI 48336	Large Meeting Room	Located at Mooney St. and Grand River Ave.
	Precinct 3	Farmington Senior High School	32000 Shiawassee Rd., Farmington, MI 48336	Cafeteria, South Entrance	Located between Prospect Ave. and Orchard Lake Rd.
	Precinct 4	Farmington Senior High School	32000 Shiawassee Rd., Farmington, MI 48336	Cafeteria, North Entrance	Located between Prospect Ave. and Orchard Lake Rd.
	Precinct 5	Longacre Elementary School	34850 Arundel St., Farmington, MI 48336	Gymnasium	Located between Gill Rd. and Drake Rd., south of Grand River Ave.

Farmington Precinct Map

Source: Data provided by City of Farmington, Oakland County, and Esri. OHM Advisors does not warrant the accuracy of the data and/or the map. This document is intended to depict the approximate spatial location of the mapped features within the Community and all use is strictly at the user's own risk.

Coordinate System: NAD 1983 StatePlane Michigan South FIPS 2113 Feet Intl

Map Published: March 15, 2022

<https://bit.ly/FarmingtonVotes>

STATE OF MICHIGAN

COUNTY OF OAKLAND

CITY OF FARMINGTON

SPECIAL ORDINANCE NO. C-____-2022

**AN ORDINANCE TO CONSOLIDATE ELECTION PRECINCTS
AND REVISE THE PRECINCTS PREVIOUSLY ESTABLISHED
IN THE CITY OF FARMINGTON SPECIAL ORDINANCE
C-628-96 PURSUANT TO STATE LAW, CITY CHARTER
SEC 3.3 AND CITY CODE SEC. 12.1**

THE CITY OF FARMINGTON ORDAINS:

PART I. Special Ordinance No. C-628-96 established six voting precincts within the City of Farmington. Michigan Election Law provides that in the second year following the federal census, city election commissions shall divide precinct boundaries no later than 120 days before the primary election next preceding a general November election, in order that a precinct, as far as practical is not split between districts exceeding 2,999 registered voters. MCL 168.661(3). In following this process and considering the increase in the number of persons voting by absent vote ballots, the city election commission agrees with the recommendation of the city Clerk that there will be additional efficiency if the six election precincts are consolidated into five election precincts. No precinct will exceed 2,999 registered voters. City Charter Section 3.3 and City Code Section 12.1 require that a special ordinance be adopted to recognize the city's precinct boundaries, which shall be as follows:

- Precinct 1:** Beginning at the city limits, south on Farmington Road, through lot boundaries and continuing to School Street; west on Grand River Avenue to Grove Street; south on Grove Street to Orchard Street; west on Orchard Street to Farmington Road; continuing west on Alta Loma Drive to Gill Road; north on Gill Road to south of Schulte Drive; west along the city limits to the lot line leading to Whittaker Drive; north on Whittaker Drive to Grand River Avenue; east on Grand River Avenue until the city limits turn north; east along city limits to point of beginning.
- Precinct 2:** Beginning at Shiawassee Road and Lake Way Street, south on Lake Way Street to Grand River Avenue; east on Grand River Avenue to the city limits; west along the city limits to Freedom Road; west on Freedom Road to Farmington Road; north on Farmington Road to Orchard Street; east on Orchard Street to Grove Street; north on Grove Street to Grand River Avenue; east on Grand River Avenue to School Street; north on School Street and along lot boundaries to Shiawassee Road; east on Shiawassee Road to point of beginning.

Precinct 3: Beginning at the city limits, south on Orchard Lake Road to Fink Street; east on Fink Street to the city limits; south along city limits to Grand River Avenue; west on Grand River Avenue to Lake Way Street; north on Lake Way Street to Shiawassee Road; west on Shiawassee Road to Farmington Road; north on Farmington Road to 10 Mile Road; east on 10 Mile Road to point of beginning.

Precinct 4: Beginning at Alta Loma Drive, south on Farmington Road to Freedom Road; east on Freedom Road to city limits; west along city limits to 9 Mile Road; south along city limits to 8 Mile Road; west on 8 Mile Road to Farmington Road; north on Farmington Road to 9 Mile Road; west on 9 Mile Road to Gill Road; north on Gill Road to Alta Loma Drive; east on Alta Loma Drive to point of beginning.

Precinct 5: Beginning at the city limits, south on Whittaker Street to the city limits; west along the city limits to Freedom Road; north on Freedom Road to Grand River Avenue; east on Grand River Avenue to point of beginning.

Part II **Severability**

Should any section, subsection, paragraph, sentence, clause, or word of this ordinance be held invalid for any reason, such decisions shall not affect the validity of the remaining portions of the ordinance.

Part III **Repealer**

All other ordinances or parts of ordinances in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

Part IV **Savings**

This amendatory ordinance shall not affect violations of the zoning ordinance or any other ordinance existing prior to the effective date of this ordinance and such violation shall be governed and shall continue to be separately punishable to the full extent of the law under the provisions of such ordinance at the time the violation was committed.

Part V Effective Date: Publication.

This amendatory ordinance shall be effective 10 days after adoption by the City Council and after publication as provided by the Charter of the City of Farmington.

Ayes:

Nays:
Abstentions:
Absent:

STATE OF MICHIGAN)
)ss.
COUNTY OF OAKLAND)

I, the undersigned, the qualified and acting City Clerk of the City of Farmington, Oakland County, Michigan, do certify that the foregoing is a true and complete copy of the Ordinance adopted by the City Council of the City of Farmington at a meeting held on the ____ day of _____, 2022, the original of which is on file in my office.

MARY MULLISON,
City Clerk
City of Farmington

Adopted:
Published:
Effective:

**Farmington City Council
Agenda Item**

**Council Meeting
Date: April 4, 2022**

**Item Number
6**

Submitted by: City Manager

Agenda Topic: MDOT Contract – Cost Participation for Grant Funding for the Farmington Road Streetscape

Proposed Motion: Approve the MDOT Contract for Cost Participation for Grant Funding for a total estimated project cost of \$2,875,800 with \$1,047,352 provided by federal grant funding and the estimated amount of \$1,828,448 to be paid by the City and the DDA.

Background: MDOT has submitted its Cost Participation Agreement for the City's approval for the grant funding for the Farmington Road Streetscape Project. The Agreement provides for the estimated project costs and identifies the City's share and the expected share of federal grant funding to be provided. The amounts may change depending on the final contract bids submitted, and the final project costs incurred. The Contract must be executed to move forward with the project and the federal grant funding.

The agreement is MDOT's standard form for a Cost Participation Agreement for a federally funded project and has been reviewed by the City Attorney's office.

Materials Attached: Attorney letter to City Manager regarding the contract, MDOT Contract – Cost Participation for Grant Funding for the Farmington Road Streetscape

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ROSATI | SCHULTZ
JOPPICH | AMTSBUECHLER

March 14, 2022

David M. Murphy, City Manager
City of Farmington
3600 Liberty Street
Farmington, MI, 48335

***Re: MDOT Contract – Cost Participation for Grant Funding
Farmington Road Streetscape Project***

Dear Mr. Murphy:

We have received and reviewed the proposed contract between the City and MDOT for the TAP Grant Funding for the Farmington Road Streetscape Project. Responsibility for each aspect of the project is identified in Part A and Part B of the Contract. The City is entirely responsible for the Part B costs. Part A costs will be divided between the City and MDOT – with the federal funding amounts identified on the Page 9 of the Contract. The City's Project Engineer should review the breakdown for accuracy with the project plans. The City is responsible for all costs for design, construction engineering, inspection, materials testing, and right-of-way acquisition.

The contract is MDOT's standard format for designating responsibility for project costs. The primary purpose of the contract is to set forth the assignment of the estimated project costs, and to provide the City with terms of payment to be made to the State. Some insurance obligations are included, however, MDOT is the administrator of the Contract and administering the Contract once awarded will remain with MDOT.

The contract is not for the purpose of (1) setting forth project specifications and requirement, or (2) designating specific contractor for the project.

In addition to general administrative provisions, such as how billing will occur, MDOT has included several additional obligations that the City must comply with for a federally funded contract, including:

- MDOT must be provided 10-days' notice of ceremonies held in connection with the project;
- MDOT and FHWA must be given credit for the project in news releases, with a copy going to MDOT;
- The City must ensure ordinances do not prohibit bicycle use on any bicycle related improvements;
- The City must maintain new landscaping, including watering, for two full growing seasons;

Dave Murphy, City Manager
City of Farmington
March 14, 2022
Page 2

- Projects including work on water/sewer lines may not reconnect lead or galvanized service lines
- If the City fails to meet any of the requirements of the Contract, the City may be disqualified from future Federal Aid participation

Additionally, Paragraph 16 provides that each party is responsible from claims arising out of its own actions. Immunity is not waived by this provision.

While we do not object to the content of the provisions, the City should be aware of them while the project proceeds and after completion so that the City is not disqualified from future Federal funding opportunities.

Overall, the Contract is in MDOT's standard format for federal funded projects for the purpose of assigning estimated project costs between the parties.

The Contract identifies the "City of Farmington" as the "Responsible Party," under the Contract. In the event that Contract is not consistent with the grant application, MDOT may need to revise the signature page to include the DDA. Otherwise, it appears that the expected reimbursement payments from the DDA should also come through the City. Once MDOT confirms the signature pages are accurate, the Contract may be placed on an upcoming City Council Agenda for approval, and DDA Board Meeting, as necessary.

If you have any questions regarding the above, please do not hesitate to contact me.

Very truly yours,

ROSATI SCHULTZ JOPPICH
& AMTSBUECHLER PC



Elizabeth Kudla Saarela

Enclosure

C: Mary Mullison, Clerk (w/ Enclosure)
Kate Knight, Downtown Development Authority Director (w/Enclosure)
Matt Parks and Austin Downie, OHM (w/Enclosure)
Thomas R. Schultz, Esquire (w/Enclosure)

TAP

DA

Control Section	TA 63000
Job Number	210631CON
Project	22A0324
CFDA No.	20.205 (Highway Research Planning & Construction)
Contract No.	22-5055

PART I

THIS CONTRACT, consisting of PART I and PART II (Standard Agreement Provisions), is made by and between the MICHIGAN DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "DEPARTMENT"; and the CITY OF FARMINGTON, a Michigan municipal corporation, hereinafter referred to as the "REQUESTING PARTY"; for the purpose of fixing the rights and obligations of the parties in agreeing to the following improvements, in Farmington, Michigan, hereinafter referred to as the "PROJECT" and estimated in detail on EXHIBIT "I", dated March 1, 2022, attached hereto and made a part hereof:

PART A – FEDERAL PARTICIPATION

Concrete sidewalk widening, sidewalk ramps, planter curb, crosswalks, lighting, landscaping, bike racks, trash receptacles, ornamental fence, benches and reinforced concrete modular wall along Farmington Road from Grand River to Alta Loma Drive; and all together with necessary related work.

PART B – NO FEDERAL PARTICIPATION

Concrete road reconstruction, traffic signals and irrigation along Farmington Road from Grand River to Alta Loma Drive, including open graded drainage course, underdrain, aggregate base, storm sewer, hot mix asphalt approach, concrete driveway and pedestrian pushbuttons, and pavement markings along Farmington Road from Grand River to Freedom Road; and all together with necessary related work.

WITNESSETH:

WHEREAS, pursuant to Federal law, monies have been provided for the performance of transportation enhancement activities; and

WHEREAS, it has been determined that the PROJECT qualifies for such funding by virtue of its direct relationship with the intermodal transportation system; and

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

WHEREAS, the PROJECT, or portions of the PROJECT, at the request of the REQUESTING PARTY, are being programmed with the FHWA, for implementation with the use of Federal Funds under the following Federal program(s) or funding:

TRANSPORTATION ALTERNATIVES PROGRAM

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

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

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

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

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

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

The Michigan Department of Environment, Great Lakes, and Energy (EGLE) has informed the DEPARTMENT that it adopted new administrative rules (R 325.10101, et. seq.) which prohibit any governmental agency from connecting and/or reconnecting lead and/or galvanized service lines to existing and/or new water main. Questions regarding these administrative rules should be directed to EGLE. The cost associated with replacement of any lead and/or galvanized service lines, including but not limited to contractor claims, will be the sole responsibility of the REQUESTING PARTY.

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

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

4. The REQUESTING PARTY, under the terms of this contract, shall:
 - A. At no cost to the PROJECT
 - (1) Design or cause to be designed the plans for the PROJECT.
 - (2) Appoint a project engineer who shall be in responsible charge of the PROJECT and ensure that the plans and specifications are followed.
 - (3) Perform or cause to be performed the construction engineering, construction materials testing, and inspection services necessary for the completion of the PROJECT.
 - B. At least 10 days prior to any ceremony to be held in connection with the PROJECT, notify the DEPARTMENT.
 - C. When issuing any news release or promotional material regarding the PROJECT, give the DEPARTMENT and FHWA credit for participation in the PROJECT and provide a copy of such material to the DEPARTMENT.

The REQUESTING PARTY will furnish the DEPARTMENT proposed timing sequences for trunkline signals that, if any, are being made part of the improvement. No timing adjustments shall be made by the REQUESTING PARTY at any trunkline intersection, without prior issuances by the DEPARTMENT of Standard Traffic Signal Timing Permits.

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

PART A

Federal Transportation Alternatives Program Funds shall be applied to the eligible items of the PART A portion of the PROJECT COST up to the lesser of: (1) \$1,061,632, or (2) an amount such that 81.85 percent, the normal Federal participation ratio for such funds, for the PART A portion of the PROJECT is not exceeded at the time of the award of the construction contract, with Federal Transportation Alternative Funds Statewide limited to \$530,816 and used first, followed by Federal Transportation Alternative Funds Detroit. The balance of the PART A portion of the PROJECT COST, after deduction of Federal Funds, shall be charged to and paid by the REQUESTING PARTY in the manner and at the times hereinafter set forth.

PART B

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

Any items of PROJECT COST not reimbursed by Federal Funds will be the sole responsibility of the REQUESTING PARTY.

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

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

7. It is understood that the REQUESTING PARTY is responsible for the facilities constructed as the PROJECT and that said facilities may require special or unusual operation and/or maintenance. The REQUESTING PARTY certifies, by execution of this contract, that upon completion of construction and at no cost to the PROJECT or the DEPARTMENT, it will properly maintain or provide for the maintenance and operation of the PROJECT, making ample provisions each year for the performance of such maintenance work as may be required. Upon completion of the PROJECT, the REQUESTING PARTY shall accept the facilities constructed as built to specifications within the construction contract documents.

On projects involving the mobility for bicyclists, the REQUESTING PARTY will enact no ordinances or regulations prohibiting the use of bicycles on the facility hereinbefore described as the PROJECT and will amend any existing restrictive ordinances in this regard so as to allow use of this facility by bicycles. No motorized vehicles shall be permitted on such facility constructed as the PROJECT except those for maintenance or emergency assistance purposes, or mobility for persons with disabilities.

On projects involving the restoration of historic facilities, the REQUESTING PARTY agrees that the project will not be awarded until the owner of such facilities has an Historic Preservation Covenant, which includes an Historic Preservation Easement, or an Historic Preservation Agreement, as appropriate, with the Michigan State Historic Preservation Office in accordance with 1995 PA 60 for the purpose of ensuring that the historic property will be preserved. The REQUESTING PARTY also agrees that such facilities shall be maintained and repaired by the REQUESTING PARTY or owner, as applicable, at no cost to the DEPARTMENT or the PROJECT, in such a manner as to preserve the historical integrity of features, materials, appearance, workmanship, and environment.

On projects which include landscaping, the DEPARTMENT, at PROJECT COST, agrees to perform or cause to be performed, the watering and cultivating necessary to properly establish the plantings for a period of two growing seasons, in general conformance with Section 815.03(L) of the DEPARTMENT'S Standard Specifications for Construction. The REQUESTING PARTY shall maintain all plantings following completion of said period of establishment.

Failure of the REQUESTING PARTY to fulfill its responsibilities as outlined herein may disqualify the REQUESTING PARTY from future Federal aid participation in Transportation Alternatives Program projects or in other projects on roads or streets for which it has maintenance responsibility. Federal aid may be withheld until such time as deficiencies in regulations have been corrected, and the improvements constructed as the PROJECT are brought to a satisfactory condition of maintenance.

8. The performance of the entire PROJECT under this contract, whether Federally funded or not, will be subject to the provisions and requirements of PART II that are applicable to a Federally funded project.

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

Buy America Requirements (23 CFR 635.410) shall apply to the PROJECT and will be adhered to, as applicable, by the parties hereto.

9. The REQUESTING PARTY certifies that it is not aware if and has no reason to believe that the property on which the work is to be performed under this agreement is a facility, as defined by the Michigan Natural Resources and Environmental Protection Act [(NREPA), PA 451, 1994, as amended 2012]; MCL 324.20101(1)(s). The REQUESTING PARTY also certifies that it is not a liable party pursuant to either Part 201 or Part 213 of NREPA, MCL 324.20126 et seq. and MCL 324.21323a et seq. The REQUESTING PARTY is a local unit of government that has acquired or will acquire property for the use of either a transportation corridor or public right-of-way and was not responsible for any activities causing a release or threat of release of any hazardous materials at or on the property. The REQUESTING PARTY is not a person who is liable for response activity costs, pursuant to MCL 324.20101 (vv) and (ww).

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

11. If federal and/or state funds administered by the DEPARTMENT are used to pay the cost of remediating any hazardous substances discovered after the execution of this contract and if there is a reasonable likelihood of recovery, the REQUESTING PARTY, in cooperation

with the Department of Environmental Quality and the DEPARTMENT, shall make a diligent effort to recover such costs from all other possible entities. If recovery is made, the DEPARTMENT shall be reimbursed from such recovery for the proportionate share of the amount paid by the FHWA and/or the DEPARTMENT and the DEPARTMENT shall credit such sums to the appropriate funding source.

12. The DEPARTMENT'S sole reason for entering into this contract is to enable the REQUESTING PARTY to obtain and use funds provided by the Federal Highway Administration pursuant to Title 23 of the United States Code.

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

The providing of recommendations or advice by the DEPARTMENT or its agents does not relieve the REQUESTING PARTY and the local agencies, as applicable of their exclusive jurisdiction of any of their highways and responsibility under MCL 691.1402 et seq., as amended.

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

Upon completion of the PROJECT, the REQUESTING PARTY shall accept the facilities constructed as built to specifications within the contract documents. It is understood that the REQUESTING PARTY shall own the facilities and shall operate and maintain the facilities in accordance with applicable law.

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

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

15. The REQUESTING PARTY agrees that the costs reported to the DEPARTMENT for this contract will represent only those items that are properly chargeable in accordance with this contract. The REQUESTING PARTY also certifies that it has read the contract terms and

has made itself aware of the applicable laws, regulations, and terms of this contract that apply to the reporting of costs incurred under the terms of this contract.

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

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

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

- A. Maintain bodily injury and property damage insurance for the duration of the PROJECT.
- B. Provide owner's protective liability insurance naming as insureds the State of Michigan, the Michigan State Transportation Commission, the DEPARTMENT and its officials, agents and employees, the REQUESTING PARTY and any other county, county road commission, or municipality in whose jurisdiction the PROJECT is located, and their employees, for the duration of the PROJECT and to provide, upon request, copies of certificates of insurance to the insureds. It is understood that the DEPARTMENT does not assume either ownership of any portion of the PROJECT or jurisdiction of any REQUESTING PARTY highway as a result of being named as an insured on the owner's protective liability insurance policy.
- C. Comply with the requirements of notice of cancellation and reduction of insurance set forth in the current standard specifications for construction and to provide, upon request, copies of notices and reports prepared to those insured.

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

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed as written below.

CITY OF FARMINGTON

MICHIGAN DEPARTMENT
OF TRANSPORTATION

By _____
Title:

By _____
Department Director MDOT

By _____
Title:



March 1, 2022

EXHIBIT I

CONTROL SECTION TA 63000
JOB NUMBER 210631CON
PROJECT 22A0324

ESTIMATED COST

CONTRACTED WORK

	<u>PART A</u>	<u>PART B</u>	<u>TOTAL</u>
Estimated Cost	\$1,279,600	\$1,596,200	\$2,875,800

COST PARTICIPATION

GRAND TOTAL ESTIMATED COST	\$1,279,600	\$1,596,200	\$2,875,800
Less Federal Funds*	<u>\$1,047,352</u>	<u>\$ 0</u>	<u>\$1,047,352</u>
BALANCE (REQUESTING PARTY'S SHARE)	\$ 232,248	\$1,596,200	\$1,828,448

*Federal Funds for the PROJECT are limited to an amount as described in Section 5.

NO DEPOSIT

DOT

TYPE B
BUREAU OF HIGHWAYS
03-15-93

PART II

STANDARD AGREEMENT PROVISIONS

SECTION I COMPLIANCE WITH REGULATIONS AND DIRECTIVES

SECTION II PROJECT ADMINISTRATION AND SUPERVISION

SECTION III ACCOUNTING AND BILLING

SECTION IV MAINTENANCE AND OPERATION

SECTION V SPECIAL PROGRAM AND PROJECT CONDITIONS

SECTION I

COMPLIANCE WITH REGULATIONS AND DIRECTIVES

- A. To qualify for eligible cost, all work shall be documented in accordance with the requirements and procedures of the DEPARTMENT.
- B. All work on projects for which reimbursement with Federal funds is requested shall be performed in accordance with the requirements and guidelines set forth in the following Directives of the Federal-Aid Policy Guide (FAPG) of the FHWA, as applicable, and as referenced in pertinent sections of Title 23 and Title 49 of the Code of Federal Regulations (CFR), and all supplements and amendments thereto.
 - 1. Engineering
 - a. FAPG (6012.1): Preliminary Engineering
 - b. FAPG (23 CFR 172): Administration of Engineering and Design Related Service Contracts
 - c. FAPG (23 CFR 635A): Contract Procedures
 - d. FAPG (49 CFR 18.22): Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments—Allowable Costs
 - 2. Construction
 - a. FAPG (23 CFR 140E): Administrative Settlement Costs-Contract Claims
 - b. FAPG (23 CFR 140B): Construction Engineering Costs
 - c. FAPG (23 CFR 17): Recordkeeping and Retention Requirements for Federal-Aid Highway Records of State Highway Agencies
 - d. FAPG (23 CFR 635A): Contract Procedures
 - e. FAPG (23 CFR 635B): Force Account Construction
 - f. FAPG (23 CFR 645A): Utility Relocations, Adjustments and Reimbursement

- g. FAPG (23 CFR 645B): Accommodation of Utilities (PPM 30-4.1)
 - h. FAPG (23 CFR 655F): Traffic Control Devices on Federal-Aid and other Streets and Highways
 - i. FAPG (49 CFR 18.22): Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments--Allowable Costs
3. Modification Or Construction Of Railroad Facilities
- a. FAPG (23 CFR 140I): Reimbursement for Railroad Work
 - b. FAPG (23 CFR 646B): Railroad Highway Projects
- C. In conformance with FAPG (23 CFR 630C) Project Agreements, the political subdivisions party to this contract, on those Federally funded projects which exceed a total cost of \$100,000.00 stipulate the following with respect to their specific jurisdictions:
- 1. That any facility to be utilized in performance under or to benefit from this contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Federal Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended.
 - 2. That they each agree to comply with all of the requirements of Section 114 of the Federal Clean Air Act and Section 308 of the Federal Water Pollution Control Act, and all regulations and guidelines issued thereunder.
 - 3. That as a condition of Federal aid pursuant to this contract they shall notify the DEPARTMENT of the receipt of any advice indicating that a facility to be utilized in performance under or to benefit from this contract is under consideration to be listed on the EPA List of Violating Facilities.
- D. Ensure that the PROJECT is constructed in accordance with and incorporates all committed environmental impact mitigation measures listed in approved environmental documents unless modified or deleted by approval of the FHWA.
- E. All the requirements, guidelines, conditions and restrictions noted in all other pertinent Directives and Instructional Memoranda of the FHWA will apply to this contract and will be adhered to, as applicable, by the parties hereto.

SECTION II

PROJECT ADMINISTRATION AND SUPERVISION

- A. The DEPARTMENT shall provide such administrative guidance as it determines is required by the PROJECT in order to facilitate the obtaining of available federal and/or state funds.
- B. The DEPARTMENT will advertise and award all contracted portions of the PROJECT work. Prior to advertising of the PROJECT for receipt of bids, the REQUESTING PARTY may delete any portion or all of the PROJECT work. After receipt of bids for the PROJECT, the REQUESTING PARTY shall have the right to reject the amount bid for the PROJECT prior to the award of the contract for the PROJECT only if such amount exceeds by ten percent (10%) the final engineer's estimate therefor. If such rejection of the bids is not received in writing within two (2) weeks after letting, the DEPARTMENT will assume concurrence. The DEPARTMENT may, upon request, readvertise the PROJECT. Should the REQUESTING PARTY so request in writing within the aforesaid two (2) week period after letting, the PROJECT will be cancelled and the DEPARTMENT will refund the unused balance of the deposit less all costs incurred by the DEPARTMENT.
- C. The DEPARTMENT will perform such inspection services on PROJECT work performed by the REQUESTING PARTY with its own forces as is required to ensure compliance with the approved plans & specifications.
- D. On those projects funded with Federal monies, the DEPARTMENT shall as may be required secure from the FHWA approval of plans and specifications, and such cost estimates for FHWA participation in the PROJECT COST.
- E. All work in connection with the PROJECT shall be performed in conformance with the Michigan Department of Transportation Standard Specifications for Construction, and the supplemental specifications, Special Provisions and plans pertaining to the PROJECT and all materials furnished and used in the construction of the PROJECT shall conform to the aforesaid specifications. No extra work shall be performed nor changes in plans and specifications made until said work or changes are approved by the project engineer and authorized by the DEPARTMENT.

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

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

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

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

- G. The REQUESTING PARTY, at no cost to the PROJECT or the DEPARTMENT, shall make such arrangements with railway companies, utilities, etc., as may be necessary for the performance of work required for the PROJECT but for which Federal or other reimbursement will not be requested.
- H. The REQUESTING PARTY, at no cost to the PROJECT, or the DEPARTMENT, shall secure, as necessary, all agreements and approvals of the PROJECT with railway companies, the Railroad Safety & Tariffs Division of the DEPARTMENT and other concerned governmental agencies other than the FHWA, and will forward same to the DEPARTMENT for such reviews and approvals as may be required.
- I. No PROJECT work for which reimbursement will be requested by the REQUESTING PARTY is to be subcontracted or performed until the DEPARTMENT gives written notification that such work may commence.

- J. The REQUESTING PARTY shall be responsible for the payment of all costs and expenses incurred in the performance of the work it agrees to undertake and perform.
- K. The REQUESTING PARTY shall pay directly to the party performing the work all billings for the services performed on the PROJECT which are authorized by or through the REQUESTING PARTY.
- L. The REQUESTING PARTY shall submit to the DEPARTMENT all paid billings for which reimbursement is desired in accordance with DEPARTMENT procedures.
- M. All work by a consulting firm will be performed in compliance with the applicable provisions of 1980 PA 299, Subsection 2001, MCL 339.2001; MSA 18.425(2001), as well as in accordance with the provisions of all previously cited Directives of the FHWA.
- N. The project engineer shall be subject to such administrative guidance as may be deemed necessary to ensure compliance with program requirement and, in those instances where a consultant firm is retained to provide engineering and inspection services, the personnel performing those services shall be subject to the same conditions.
- O. The DEPARTMENT, in administering the PROJECT in accordance with applicable Federal and State requirements and regulations, neither assumes nor becomes liable for any obligations undertaken or arising between the REQUESTING PARTY and any other party with respect to the PROJECT.
- P. In the event it is determined by the DEPARTMENT that there will be either insufficient Federal funds or insufficient time to properly administer such funds for the entire PROJECT or portions thereof, the DEPARTMENT, prior to advertising or issuing authorization for work performance, may cancel the PROJECT, or any portion thereof, and upon written notice to the parties this contract shall be void and of no effect with respect to that cancelled portion of the PROJECT. Any PROJECT deposits previously made by the parties on the cancelled portions of the PROJECT will be promptly refunded.
- Q. Those projects funded with Federal monies will be subject to inspection at all times by the DEPARTMENT and the FHWA.

SECTION III

ACCOUNTING AND BILLING

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

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

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

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

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

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

Within sixty (60) days after the date of the Notice of Audit Results, the REQUESTING PARTY shall: (a) respond in writing to the responsible Bureau or the DEPARTMENT indicating whether or not it concurs with the audit report, (b) clearly explain the nature and basis for any disagreement as to a disallowed item of expense and, (c) submit to the DEPARTMENT a written explanation as to any questioned or no opinion expressed item of expense, hereinafter referred to as the "RESPONSE". The RESPONSE shall be clearly stated and provide any supporting documentation necessary to resolve any disagreement or questioned or no opinion expressed item of expense. Where the documentation is voluminous, the REQUESTING PARTY may supply appropriate excerpts and make alternate

arrangements to conveniently and reasonably make that documentation available for review by the DEPARTMENT. The RESPONSE shall refer to and apply the language of the contract. The REQUESTING PARTY agrees that failure to submit a RESPONSE within the sixty (60) day period constitutes agreement with any disallowance of an item of expense and authorizes the DEPARTMENT to finally disallow any items of questioned or no opinion expressed cost.

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

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

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

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

The agency shall submit two copies of:

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

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

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

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

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

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

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

2. Agreed Unit Prices Work - All billings for work undertaken by the REQUESTING PARTY on an agreed unit price basis will be submitted in accordance with the Michigan Department of Transportation Standard Specifications for Construction and pertinent FAPG Directives and Guidelines of the FHWA.
3. Force Account Work and Subcontracted Work - All billings submitted to the DEPARTMENT for Federal reimbursement for items of work performed on a force account basis or by any subcontract with a consulting firm, railway company, governmental agency or other party, under the terms of this contract, shall be prepared in accordance with the provisions of the pertinent FHPM Directives and the procedures of the DEPARTMENT. Progress billings may be submitted monthly during the time work is being performed provided, however, that no bill of a lesser amount than \$1,000.00 shall be submitted unless it is a final

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

4. Final billing under this contract shall be submitted in a timely manner but not later than six months after completion of the work. Billings for work submitted later than six months after completion of the work will not be paid.
5. Upon receipt of billings for reimbursement for work undertaken by the REQUESTING PARTY on projects funded with Federal monies, the DEPARTMENT will act as billing agent for the REQUESTING PARTY, consolidating said billings with those for its own force account work and presenting these consolidated billings to the FHWA for payment. Upon receipt of reimbursement from the FHWA, the DEPARTMENT will promptly forward to the REQUESTING PARTY its share of said reimbursement.
6. Upon receipt of billings for reimbursement for work undertaken by the REQUESTING PARTY on projects funded with non-Federal monies, the DEPARTMENT will promptly forward to the REQUESTING PARTY reimbursement of eligible costs.

B. Payment of Contracted and DEPARTMENT Costs:

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

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

C. General Conditions:

1. The DEPARTMENT, in accordance with its procedures in existence and covering the time period involved, shall make payment for interest earned on the balance of working capital deposits for all projects on account with the DEPARTMENT. The REQUESTING PARTY in accordance with DEPARTMENT procedures in existence and covering the time period involved, shall make payment for interest owed on any deficit balance of working capital deposits for all projects on account with the DEPARTMENT. This payment or billing is processed on an annual basis corresponding to the State of Michigan fiscal year. Upon receipt of billing for interest incurred, the REQUESTING PARTY promises and shall promptly pay the DEPARTMENT said amount.
2. Pursuant to the authority granted by law, the REQUESTING PARTY hereby irrevocably pledges a sufficient amount of funds received by it from the Michigan Transportation Fund to meet its obligations as specified in PART I and PART II. If the REQUESTING PARTY shall fail to make any of its required payments when due, as specified herein, the DEPARTMENT shall immediately notify the REQUESTING PARTY and the State Treasurer of the State of Michigan or such other state officer or agency having charge and control over disbursement of the Michigan Transportation Fund, pursuant to law, of the fact of such default and the amount thereof, and, if such default is not cured by payment within ten (10) days, said State Treasurer or other state officer or agency is then authorized and directed to withhold from the first of such monies thereafter allocated by law to the REQUESTING PARTY from the Michigan Transportation Fund sufficient monies to remove the default, and to credit the REQUESTING PARTY with payment thereof, and to notify the REQUESTING PARTY in writing of such fact.
3. Upon completion of all work under this contract and final audit by the DEPARTMENT or the FHWA, the REQUESTING PARTY promises to promptly repay the DEPARTMENT for any disallowed items of costs previously disbursed by the DEPARTMENT. The REQUESTING PARTY pledges its future receipts from the Michigan Transportation Fund for repayment of all disallowed items and, upon failure to make repayment for any disallowed items within ninety (90) days of demand made by the DEPARTMENT, the DEPARTMENT is hereby authorized to withhold an equal amount from the REQUESTING PARTY'S share of any future distribution of Michigan Transportation Funds in settlement of said claim.

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

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

SECTION IV

MAINTENANCE AND OPERATION

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

1. All Projects:

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

2. Projects Financed in Part with Federal Monies:

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

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

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

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

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

- B. On projects for the removal of roadside obstacles, the parties, upon completion of construction of each part of the PROJECT, at no cost to the PROJECT or the DEPARTMENT, will, within their respective jurisdictions, take such action as is necessary to assure that the roadway right-of-way, cleared as the PROJECT, will be maintained free of such obstacles.
- C. On projects for the construction of bikeways, the parties will enact no ordinances or regulations prohibiting the use of bicycles on the facility hereinbefore described as the PROJECT, and will amend any existing restrictive ordinances in this regard so as to allow use of this facility by bicycles. No motorized vehicles shall be permitted on such bikeways or walkways constructed as the PROJECT except those for maintenance purposes.
- D. Failure of the parties hereto to fulfill their respective responsibilities as outlined herein may disqualify that party from future Federal-aid participation in projects on roads or streets for which it has maintenance responsibility. Federal Aid may be withheld until such time as deficiencies in regulations have been corrected, and the improvements constructed as the PROJECT are brought to a satisfactory condition of maintenance.

SECTION V

SPECIAL PROGRAM AND PROJECT CONDITIONS

- A. Those projects for which the REQUESTING PARTY has been reimbursed with Federal monies for the acquisition of right-of-way must be under construction by the close of the twentieth (20th) fiscal year following the fiscal year in which the FHWA and the DEPARTMENT projects agreement covering that work is executed, or the REQUESTING PARTY may be required to repay to the DEPARTMENT, for forwarding to the FHWA, all monies distributed as the FHWA'S contribution to that right-of-way.
- B. Those projects for which the REQUESTING PARTY has been reimbursed with Federal monies for the performance of preliminary engineering must be under construction by the close of the tenth (10th) fiscal year following the fiscal year in which the FHWA and the DEPARTMENT projects agreement covering that work is executed, or the REQUESTING PARTY may be required to repay to the DEPARTMENT, for forwarding to the FHWA, all monies distributed as the FHWA'S contribution to that preliminary engineering.
- C. On those projects funded with Federal monies, the REQUESTING PARTY, at no cost to the PROJECT or the DEPARTMENT, will provide such accident information as is available and such other information as may be required under the program in order to make the proper assessment of the safety benefits derived from the work performed as the PROJECT. The REQUESTING PARTY will cooperate with the DEPARTMENT in the development of reports and such analysis as may be required and will, when requested by the DEPARTMENT, forward to the DEPARTMENT, in such form as is necessary, the required information.
- D. In connection with the performance of PROJECT work under this contract the parties hereto (hereinafter in Appendix "A" referred to as the "contractor") agree to comply with the State of Michigan provisions for "Prohibition of Discrimination in State Contracts", as set forth in Appendix A, attached hereto and made a part hereof. The parties further covenant that they will comply with the Civil Rights Acts of 1964, being P.L. 88-352, 78 Stat. 241, as amended, being Title 42 U.S.C. Sections 1971, 1975a-1975d, and 2000a-2000h-6 and the Regulations of the United States Department of Transportation (49 C.F.R. Part 21) issued pursuant to said Act, including Appendix "B", attached hereto and made a part hereof, and will require similar covenants on the part of any contractor or subcontractor employed in the performance of this contract.
- E. The parties will carry out the applicable requirements of the DEPARTMENT'S Disadvantaged Business Enterprise (DBE) program and 49 CFR, Part 26, including, but not limited to, those requirements set forth in Appendix C.

APPENDIX A
PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS

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

1. In accordance with Public Act 453 of 1976 (Elliott-Larsen Civil Rights Act), the contractor shall not discriminate against an employee or applicant for employment with respect to hire, tenure, treatment, terms, conditions, or privileges of employment or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, height, weight, or marital status. A breach of this covenant will be regarded as a material breach of this contract. Further, in accordance with Public Act 220 of 1976 (Persons with Disabilities Civil Rights Act), as amended by Public Act 478 of 1980, the contractor shall not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment or a matter directly or indirectly related to employment because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. A breach of the above covenants will be regarded as a material breach of this contract.
2. The contractor hereby agrees that any and all subcontracts to this contract, whereby a portion of the work set forth in this contract is to be performed, shall contain a covenant the same as hereinabove set forth in Section 1 of this Appendix.
3. The contractor will take affirmative action to ensure that applicants for employment and employees are treated without regard to their race, color, religion, national origin, age, sex, height, weight, marital status, or any disability that is unrelated to the individual's ability to perform the duties of a particular job or position. Such action shall include, but not be limited to, the following: employment; treatment; upgrading; demotion or transfer; recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
4. The contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, age, sex, height, weight, marital status, or disability that is unrelated to the individual's ability to perform the duties of a particular job or position.
5. The contractor or its collective bargaining representative shall send to each labor union or representative of workers with which the contractor has a collective bargaining agreement or other contract or understanding a notice advising such labor union or workers' representative of the contractor's commitments under this Appendix.
6. The contractor shall comply with all relevant published rules, regulations, directives, and orders of the Michigan Civil Rights Commission that may be in effect prior to the taking of bids for any individual state project.

7. The contractor shall furnish and file compliance reports within such time and upon such forms as provided by the Michigan Civil Rights Commission; said forms may also elicit information as to the practices, policies, program, and employment statistics of each subcontractor, as well as the contractor itself, and said contractor shall permit access to the contractor's books, records, and accounts by the Michigan Civil Rights Commission and/or its agent for the purposes of investigation to ascertain compliance under this contract and relevant rules, regulations, and orders of the Michigan Civil Rights Commission.
8. In the event that the Michigan Civil Rights Commission finds, after a hearing held pursuant to its rules, that a contractor has not complied with the contractual obligations under this contract, the Michigan Civil Rights Commission may, as a part of its order based upon such findings, certify said findings to the State Administrative Board of the State of Michigan, which State Administrative Board may order the cancellation of the contract found to have been violated and/or declare the contractor ineligible for future contracts with the state and its political and civil subdivisions, departments, and officers, including the governing boards of institutions of higher education, until the contractor complies with said order of the Michigan Civil Rights Commission. Notice of said declaration of future ineligibility may be given to any or all of the persons with whom the contractor is declared ineligible to contract as a contracting party in future contracts. In any case before the Michigan Civil Rights Commission in which cancellation of an existing contract is a possibility, the contracting agency shall be notified of such possible remedy and shall be given the option by the Michigan Civil Rights Commission to participate in such proceedings.
9. The contractor shall include or incorporate by reference, the provisions of the foregoing paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Michigan Civil Rights Commission; all subcontracts and purchase orders will also state that said provisions will be binding upon each subcontractor or supplier.

Revised June 2011

**APPENDIX B
TITLE VI ASSURANCE**

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

1. **Compliance with Regulations:** For all federally assisted programs, the contractor shall comply with the nondiscrimination regulations set forth in 49 CFR Part 21, as may be amended from time to time (hereinafter referred to as the Regulations). Such Regulations are incorporated herein by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed under the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection, retention, and treatment of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices, when the contractor covers a program set forth in Appendix B of the Regulations.
3. **Solicitation for Subcontracts, Including Procurements of Materials and Equipment:** All solicitations made by the contractor, either by competitive bidding or by negotiation for subcontract work, including procurement of materials or leases of equipment, must include a notification to each potential subcontractor or supplier of the contractor's obligations under the contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and facilities as may be determined to be pertinent by the Department or the United States Department of Transportation (USDOT) in order to ascertain compliance with such Regulations or directives. If required information concerning the contractor is in the exclusive possession of another who fails or refuses to furnish the required information, the contractor shall certify to the Department or the USDOT, as appropriate, and shall set forth the efforts that it made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Department shall impose such contract sanctions as it or the USDOT may determine to be appropriate, including, but not limited to, the following:
 - a. Withholding payments to the contractor until the contractor complies; and/or
 - b. Canceling, terminating, or suspending the contract, in whole or in part.

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

Revised June 2011

APPENDIX C

TO BE INCLUDED IN ALL FINANCIAL ASSISTANCE AGREEMENTS WITH LOCAL AGENCIES

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

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

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

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

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

**Farmington City Council
Agenda Item**

**Council Meeting
Date:** 4-1-22

**Item Number
7**

Submitted by: City Manager

Agenda Topic: Extension of the IT Agreement with Farmington Hills

Proposed Motion: Approve the proposed agreement with Farmington Hills for Farmington Hills to provide Information Technology Support to the City of Farmington from April 1, 2022 through June 20, 2027 for the fees listed in the agreement with possible additional extensions at the rate of the Consumer Price Index (CPI) or 3% whichever is less, and authorize the City Manager and City Clerk to execute the attached Interlocal agreement

Background: In 2012 the cities of Farmington & Farmington Hills applied jointly for an Economic Vitality Incentive Program (EVIP) grant to assist in funding the consolidation of Information Technology systems. Since that time Farmington Hills has been providing miscellaneous Technology Services to the City of Farmington.

For the purposes of the agreement "Information Technology Services" is defined as professional services to manage, maintain, assist, train, consult, repair, update and install software and hardware devices connected to the Farmington Hills network and contained within Farmington buildings. It does not include hard cost for infrastructure, equipment, and software licensing (other than network security & maintenance related licensing). The City of Farmington is responsible for these hard costs. Additionally, specific service exemptions to the agreement include: non-networked devices, non-networked copiers & printers, CLEMIS network, mobile phones, and items not currently supported by Farmington Hills I.T. staff.

Over the past ten (10) years Farmington has seen a dramatic improvement in their computing & communication environment. Farmington Hills I.T. staff has assisted in replacing outdated and obsolete infrastructure & equipment, implemented advanced security measures, managed the upgrade to the police in-car video system, transitioned (along with the Farmington Hills) to Microsoft Windows 10, Office 365 & Outlook and is currently assisting with the implementation of a new VoIP telephone system.

Over the life of this agreement both cities learned that flexibility of resources and standardization of software & equipment has been the key to the success of this interlocal arrangement. Farmington implemented an Information Technology policy document consistent with the City of Farmington Hills which helps to keep the network secure, we have agreed to a standardized desktop for user support, and minimized the amount of unique systems so that Farmington Hills staff can remain capably trained on all network components.

The current agreement expired at the end of March, 2022. The new agreement includes a first short term of April 1, 2022 through June 30, 2022, and then five (5) years starting July 1, 2022 through June 20, 2027 (in order to align with both cities fiscal years). In addition, the attached agreement allows for additional yearly extensions at the rate of the Consumer Price Index (CPI) or 3% whichever is less. Please note fees listed on the attached agreement include optional GIS support if we decide to implement that support model during the life of the agreement.

Materials Attached: I.T. Services Agreement with Farmington Hills.

**INTERGOVERNMENTAL AGREEMENT
FOR INFORMATION TECHNOLOGY SERVICES**

BETWEEN

CITY OF FARMINGTON HILLS

AND

CITY OF FARMINGTON

This Agreement (“Agreement”) is entered into as of the date of the last signature below and is between the City of Farmington (“Farmington”), whose address is 23600 Liberty Street, Farmington, MI 48335, and the City of Farmington Hills (“Farmington Hills”) whose address is 31555 West Eleven Mile Road, Farmington Hills, MI 48336, for the purpose of having Farmington Hills provide Information Technology (“I.T.”) Services to Farmington.

RECITALS:

- A. Farmington Hills maintains and operates an I.T. Division within the Central Services Department with staffing capable of performing such services for Farmington.
- B. Farmington currently contracts with the City of Farmington Hills for I.T. Services and wishes to continue this practice.
- C. Farmington Hills agrees to provide I.T. Services under the terms and conditions of this Agreement.
- D. This Agreement is authorized by the charters of Farmington and Farmington Hills, MCL 41.806, and the Urban Cooperation Act of 1967, MCL 124.501 – 124.512.

IT IS THEREFORE AGREED:

- 1. *Information Technology Services Defined.* The terms “Information Technology Services” and “I.T. Services” shall mean professional services to manage, maintain, assist, train, consult, repair, update and install software and hardware devices connected to the Farmington Hills network and contained within Farmington buildings.
- 2. *I.T. Services to be Provided by Farmington Hills.* Farmington Hills will provide to Farmington I.T. Services, as described in this Agreement, on a routine work hour schedule of 7:30 a.m. to 5:30 p.m. Monday – Friday, except designated City of Farmington Hills holidays. Exceptions to these hours will be special projects, upgrades, downed systems, or any unforeseen circumstance. All laws, ordinances,

and policies of the City of Farmington Hills applicable to the provision of I.T. Services shall apply to the I.T. Services provided to Farmington under this Agreement.

3. No Additional Services. Except for other services expressly approved by other Agreements, Farmington Hills shall not be obligated under this Agreement to provide or assist Farmington or any Farmington personnel with any other direct, indirect, backup, or supplemental support of City of Farmington Hills related service, of any kind or nature. This provision is not intended to alter or amend any exiting mutual aid arrangement or intergovernmental agreement.
4. Standardization. This Agreement does not, and is not intended to, obligate, or require Farmington Hills to change, alter, modify, or develop any different procedures for I.T. services and the products/services/application that it maintains. Farmington understands the need for standardization for support and will at all times endeavor to accept the same products/services/application as used by Farmington Hills unless there is a specific business related reason to use something different, in which case it will then be the option of Farmington Hills, in its discretion, to support or not support the new product/service/application.
5. I.T. Policies and Procedures. Farmington will adopt the Farmington Hills Information Technology Policies and Procedures as attached and updated from time to time. This will allow Farmington Hills I.T. to standardize its support procedures and assist with network and data security.
6. Term. This Agreement shall be from April 1, 2022 through June 30, 2027. If this Agreement is not terminated as provided below, it shall automatically renew annually for a Renewal Term of one (1) year, subject to the terms and conditions below. The Renewal Terms possible under this Section are not limited.
7. Fee for Services. In consideration of the I.T. Services described herein, Farmington shall pay Farmington Hills an annual fee as follows:

April 1-2022- June 30,2022	\$10,532	;	\$13,366 with GIS
July 1, 2022-June 30, 2023	\$46,341	;	\$57,374 with GIS
July 1, 2023-June 30, 2024	\$47,731	;	\$59,095 with GIS
July 1, 2024-June 30, 2025	\$49,163	;	\$60,868 with GIS
July 1, 2025-June 30, 2026	\$50,638	;	\$62,694 with GIS
July 1, 2026-June 30, 2027	\$52,157	;	\$64,575 with GIS

For additional, Renewal Terms, the fee shall increase from the previous year by the rate of the Consumer Price Index (CPI) or 3% whichever is less.

The fees from April 1, 2022-June 30, 2022 shall be payable on or before May 1, 2022. Beginning July 1, 2022 fees shall be payable in quarterly installments, with the

first such quarterly payment being made on or before July 31, 2022, and the subsequent quarterly payments being made and due on each October 1st, January 1st, April 1st and July 1st thereafter. Interest at the rate of 1% per month shall be paid by Farmington to Farmington Hills for any amounts not received by Farmington Hills by the payment due date.

8. *I.T. Equipment.* Farmington shall be solely and exclusively responsible for all costs, expenses, and liabilities associated with the purchase, lease, installation, operation, and/or use of any Farmington I.T. equipment. Farmington Hills shall not be obligated to provide Farmington with any equipment required. In the event data from either party's network is stored on the other party's network, there shall be no entitlement to ownership of that equipment.
9. *Data Ownership.* Data from Farmington and Farmington Hills will be solely owned by each entity. Farmington Hills will perform backups of data. Each entity is responsible for processing its own Freedom of Information Act requests, regardless of where data may be stored or maintained.
10. *Independent Contractor.* Farmington Hills shall provide I.T. Services to Farmington as an independent contractor, with Farmington Hills being responsible for all workers' compensation and other insurance, income tax, social security, and other withholding, and all other compensation or benefits for Farmington Hills employees involved in providing I.T. Services. At no time shall any Farmington Hills employee involved in providing services be considered or claimed to be an employee or agent of Farmington, and Farmington shall not be deemed or allowed to control, supervise, or direct Farmington Hills' employees involved in providing I.T. Services.
11. *No Transfer of Farmington Legal Obligations to Farmington Hills.* This Agreement does not, and is not intended to, transfer, delegate, or assign to Farmington Hills or its employees, any constitutional, statutory, or other legal responsibility, duty, obligation, or liability of Farmington, for which Farmington shall remain solely liable. Farmington shall be solely and exclusively responsible, during the term of this Agreement, for: (a) guaranteeing that all Farmington existing software systems have been legally obtained, licensed, and maintained through appropriate support contracts; and (b) endeavoring to protect, maintain and support its I.T. infrastructure.
12. *Farmington Hills Staffing Responsibilities.* In providing I.T. Services pursuant to the terms and conditions of this Agreement, Farmington Hills further agrees to take all necessary actions required to support Farmington's I.T. hardware and software systems and that:
 - a. Its assigned Central Services/I.T. staff is adequately trained in the support of I.T. systems.
 - b. It will make available I.T. support staff to maintain a reliable, stable, and safe network environment.

- c. Its assigned personnel will respond to requests for service from Farmington staff members.
 - d. Its assigned I.T. personnel and administrative personnel will take such actions as are necessary and appropriate to provide full and complete I.T. services as are commonly provided by one government entity to another.
13. Network & Data Security-Farmington Hills shall implement technical and organizational measures and safeguards that ensure the adequate protection of Farmington data, confidentiality, integrity, availability and resilience of processing systems and services and shall implement a process for regularly testing, assessing, and evaluating the effectiveness of technical and organizational measures for ensuring the security of the network
14. Security Breach Action. Farmington Hills will notify Farmington as promptly as possible under the circumstances and without unreasonable delay, of any Security Breach involving any network data, infrastructure, or application. As used herein, "Security Breach" is defined as any event involving a known, actual, or suspected compromise of the security, confidentiality or integrity of network data, infrastructure, or application. Farmington Hills will use commercially reasonable efforts to contain such a breach and provide Farmington with a detailed description of the Security Breach, the type of data that was the subject of the Security Breach and the identity of each affected department (or person, to the extent permitted by Law), promptly after such information can be collected or otherwise becomes available. Farmington Hills agrees to take action immediately, to investigate the Security Breach, to take all commercially reasonable actions to identify, prevent, and mitigate the effects of any such Security Breach, and to carry out any recovery or other action necessary to remedy the Security Breach. Farmington Hills shall make commercially reasonable efforts to give Farmington a reasonable opportunity to communicate to its citizens regarding security breaches, but Farmington Hills will have the final say on any technical explanation of the security breach.
15. Control of I.T. Services. I.T. Services shall be under the exclusive control and jurisdiction of the Director of Central Services for Farmington Hills. If the City Manager for Farmington objects to a policy or procedure utilized in the provision of delivering I.T. Services to Farmington, the Farmington Hills Director of Central Services or his designee shall respond to same in writing within 72 hours, providing such facts and opinions which support his determination of the issue. In the event that the matter is not resolved to Farmington's satisfaction, the City Managers of Farmington and Farmington Hills shall meet to review the matter.
- a. Specific Exemptions include: non-networked devices, non-networked copiers & printers, CLEMIS network, mobile phones, and items not currently supported by Farmington Hills I.T. staff.

16. Insurance. Farmington Hills shall obtain and maintain in force during the term of this Agreement insurance coverage for general liability, motor vehicle liability, and worker's compensation in amounts it determines to be appropriate, with Farmington named as an additional insured on all liability policies and entitled to copies of Certificates of Insurance confirming the required insurance during the entire term of this Agreement.
17. Liability and Indemnification. To the fullest extent permitted by law, Farmington agrees to hold Farmington Hills harmless from any claims, suits, demands, judgments, or causes of action made against Farmington Hills, their elected or appointed officials, employees, agents, or volunteers for the actions of Farmington's elected or appointed officials, employees, agents, or volunteers arising from or in connection with the performance of this agreement. To the fullest extent permitted by law, Farmington Hills agrees to hold Farmington harmless from any and all claims, suits, demands, judgments, or causes of action made against Farmington, its elected or appointed officials, employees, agents, or volunteers, for the actions of Farmington Hills' elected or appointed officials, employees, agents, or volunteers arising from or in connection with performance of this agreement. Otherwise, each Party shall be responsible for the acts of its officials or employees in the performance of this Agreement and shall seek its own legal representation and bear the costs associated with such representation, including any attorneys' fees. Except as provided herein, neither Party shall have any right under any legal principle to be indemnified by the other party or any of its employees or agents in connection with any claim.
18. Governmental Immunity and Authority Unaffected. Nothing in this Agreement is intended, nor shall it operate, to diminish, delegate, divest, impair, or contravene any constitutional, statutory, and/or other legal right, privilege, power, obligation, duty, capacity, immunity, or character of office including, but not limited to, governmental immunity on behalf of either Party or any of its agents.
19. Termination.
- a. This Agreement may be terminated for any reason, and with or without cause, by the mutual written agreement of Farmington Hills and Farmington, approved by concurrent resolutions of the Farmington Hills City Council and the Farmington City Council.
 - b. This Agreement may be terminated by Farmington Hills if Farmington fails to pay an amount owing under Section 7, including applicable late charges and interest, within 60 days of when the payment was due. Such termination by Farmington Hills shall be by written notice to Farmington that contains a clearly stated effective date of the termination that is at least 30 days after the date of the notice. If all amounts owing, including past due installments, late charges, interest, and any new installments coming due during that time are not paid, the termination shall be effective, relieving Farmington Hills from any obligation to provide any

further I.T. Services. Before Farmington Hills gives notice of termination under this provision, it shall first notify Farmington of its failure to timely pay the amount owed and allow a reasonable opportunity for Farmington to pay such amount.

- c. In addition to a termination under subsections (a) and (b), either Party may terminate this Agreement for any reason, and with or without cause, by written notice to the other Party. During the Initial Term, six (6) months' written notice shall be required before termination. During any Renewal Term, 90 days' written notice shall be required before termination.

- 20. No Third Party Beneficiaries. The sole and exclusive purpose of this Agreement is to provide I.T. Services for Farmington. This Agreement is not intended to, and does not create any special or other duty, obligation, promise, benefit or right to I.T. Services in favor or for the benefit of any person, entity, organization that is not a party to this Agreement.
- 21. Assignments. Farmington Hills's obligations under this Agreement may not be assigned except with the written approval of Farmington.
- 22. Notices. Notices under this Agreement shall be to the City Managers of the respective Parties at the addresses on Page 1.
- 23. Amendments. Amendments of this Agreement shall be in writing, approved by concurrent resolutions of Farmington Hills and Farmington City Councils, and be signed by authorized representatives of the Parties.
- 24. Severability. If a court of competent jurisdiction finds a term, or condition, of this Agreement to be illegal or invalid, then the term, or condition, shall be deemed severed from this Agreement. All other terms, conditions, and provisions of this Agreement shall remain in full force.
- 25. Applicable Law. This Agreement is made and entered into in the State of Michigan and shall in all respects be interpreted, enforced, and governed under the laws of the State of Michigan. The language of all parts of this Agreement is intended to and, in all cases, shall be construed as a whole, according to its fair meaning, and not construed strictly for or against any Party. As used in this Agreement, the singular or plural number, possessive, or non-possessive, shall be deemed to include the other whenever the context so suggests or requires.
- 26. No Waiver. Absent an express written waiver, the failure of any party to pursue any right granted under this Agreement shall not be deemed a waiver of that right regarding any existing or subsequent breach or default under this Agreement. No failure or delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall a single or partial exercise of

any right, power or privilege preclude any other or further exercise of any other right, power, or privilege.

- 27. Compliance with Laws. Each Party shall comply with all federal, state, and local statutes, ordinances, regulations, administrative rules, and requirements applicable to its activities performed under this Agreement.
- 28. Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the subject matter of this Agreement, and supersedes all prior negotiations, agreements, and understandings with respect thereto.
- 29. Filing. As provided in MCL 124.510, this Agreement and any amendments of it shall be filed with the Oakland County Clerk and Michigan Secretary of State.

IN WITNESS WHEREOF, and pursuant to the concurrent resolutions adopted by City of Farmington Hills City Council and the City of Farmington City Council, approving and authorizing the signing of this Agreement, the undersigned officials have signed this Agreement on the dates indicated next to their signatures.

FARMINGTON HILLS

DATE: _____ BY: _____
Gary Mekjian, City Manager

DATE: _____ BY: _____
Pam Smith, City Clerk

FARMINGTON

DATE: _____ BY: _____
David Murphy, City Manager

DATE: _____ BY: _____
Mary Mullison, City Clerk