



City Council Meeting

February 20, 2024

6:00 p.m.

Cadillac Municipal Complex

Council Chambers

200 N. Lake St.

Cadillac, MI 49601



February 20, 2024 City Council Meeting Agenda
6 p.m. at City Hall - 200 N. Lake St. – Cadillac, MI 49601

We trust and assume goodness in intentions

CALL TO ORDER
PLEDGE OF ALLEGIANCE
ROLL CALL

I. APPROVAL OF AGENDA

II. PUBLIC COMMENTS

This opportunity for public comment provides the public with a chance to make a statement regarding any subject matter. Public comment is not an opportunity to necessarily ask questions or converse with City Staff, Council Members or other meeting attendees. Contact information for Council and staff is available on our website, www.cadillac-mi.net, or can be obtained by calling (231) 775-0181. Comment time is limited to 3-minutes, and unused time may not be yielded back or given to someone else to use.

III. CONSENT AGENDA

All items listed on the consent agenda are considered routine and will be enacted by one motion with roll call vote. There will be no separate discussion of these items unless a Council Member so requests it, in which event the items will be removed from the consent agenda and discussed separately.

- A. Minutes from the regular meeting held on February 5, 2024
Support Document III-A

IV. PUBLIC HEARING

- A. Public hearing to consider adoption of Ordinance to Approve Granting of an Easement to Consumers Energy Company for Electric Facilities (Near 908 6th Avenue).
Support Document IV-A

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V. COMMUNICATIONS

- A. Wexford-Missaukee Child Protection Council
Support Document V-A

VI. CITY MANAGER’S REPORT

- A. Recommendation regarding Service Truck Purchase.
Support Document VI-A
- B. Recommendation regarding Speaker Replacement – Rotary Performing Arts Pavilion.
Support Document VI-B
- C. Recommendation regarding Environmental Consultant – PGSI Grant.
Support Document VI-C

VII. PUBLIC COMMENTS

This opportunity for public comment provides the public with a chance to make a statement regarding any subject matter. Public comment is not an opportunity to necessarily ask questions or converse with City Staff, Council Members or other meeting attendees. Contact information for Council and staff is available on our website, www.cadillac-mi.net, or can be obtained by calling (231) 775-0181. Comment time is limited to 3-minutes, and unused time may not be yielded back or given to someone else to use.

VIII. GOOD OF THE ORDER

IX. ADJOURNMENT

Core Values (R.I.T.E.)

Respect

Integrity

Trust

Excellence

Guiding Behaviors

We support each other in serving our community

We communicate openly, honestly, respectfully, and directly

We are fully present

We are all accountable

We trust and assume goodness in intentions

We are continuous learners

CITY COUNCIL MEETING MINUTES

February 5, 2024

Cadillac City Hall - 200 N. Lake St. - Cadillac, Michigan 49601

CALL TO ORDER

Mayor Filkins called the City Council meeting to order at approximately 6:00 pm.

PLEDGE OF ALLEGIANCE

OATH OF OFFICE

City Clerk administered the Oath of Office to Council Member Robert J. Engels. Engels will represent Ward Three and his term will expire on December 31, 2027.

ROLL CALL

Council Present: Elenbaas, Schippers, Engels, King, Mayor Filkins

Council Absent: None

Staff Present: Peccia, Roberts, Homier (via Zoom), Wasson

APPROVAL OF AGENDA

2024-014 Approve agenda as presented.

Motion was made by Elenbaas and supported by Schippers to approve the agenda as presented.

Motion unanimously approved.

PUBLIC COMMENTS

Jaime Stickels, Relay for Life, discussed some of the ideas for "Paint the Town Purple".

CONSENT AGENDA

2024-015 Approve consent agenda as presented.

Motion was made by Schippers and supported by Elenbaas to approve the consent agenda as presented.

Motion unanimously approved.

COMMUNICATIONS

A. Presentation of FY2023 Audit Results by Joe Verlin of Gabridge & Co.

Joe Verlin from Gabridge & Co. presented the results of the independent audit for the fiscal year ended June 30, 2023. Gabridge & Co. issued an "Unmodified" opinion on the financial statements. Verlin indicated that this is the best opinion they can offer on the statements. He added that the City is in sound financial condition and commended the City for continuing to receive the Certificate of Achievement for Excellence in Financial Reporting from the Government Finance Officers Association (GFOA).

B. Downtown Sidewalk Cafés

2024-016 Approve Downtown Sidewalk Cafés.

Motion was made by Schippers and supported by Elenbaas to approve the request from Clam-Torch RMPL, LLC, DBA Clam Lake Beer Company; Raven BBQ, LLC, DBA Raven Social; Feister Enterprises, Inc., DBA Roaring 20's Saloon; Roasted Café, LLC and MI Mezcal Grill, LLC to have sidewalk cafes in front of their businesses in 2024, meeting the two conditions noted.

Motion unanimously approved.

APPOINTMENTS

A. Recommendation regarding reappointment to the Local Development Finance Authority.

2024-017 Approve reappointment to the Local Development Finance Authority.

Motion was made by Elenbaas and supported by Schippers to approve the reappointment of Jennifer Brown to the Local Development Finance Authority for a 4-year term to expire on February 5, 2028.

Motion unanimously approved.

CITY MANAGER'S REPORT

A. Setting of Budget Related Work Sessions

- Goals & Capital Improvement Program Review on March 18, 2024 at 4:15 p.m.
- Fiscal Year 2025 Budget Review on April 1, 2024 at 4:15 p.m.

2024-018 Set budget work sessions.

Motion was made by Schippers and supported by Elenbaas to approve the budget work session dates and times as presented.

Motion unanimously approved.

B. Hardship (Poverty) Exemption Policy

Peccia noted the annual Hardship (Poverty) Exemption Policy is required pursuant to Public Act 390. He stated the recommendation is to adopt the updated Hardship (Poverty) Exemption Policy utilizing the 2023 Health and Human Services Poverty guidelines as well as a \$50,000 asset guideline, excluding the primary home.

2024-019 Adopt updated Hardship (Poverty) Exemption Policy.

Motion was made by Engels and supported by Elenbaas to adopt the updated Hardship (Poverty) Exemption Policy utilizing the 2023 Health and Human Services Poverty guideline as well as a \$50,000 asset guideline, excluding the primary home.

Motion unanimously approved.

MINUTES AND REPORTS OF BOARDS AND COMMISSIONS

A. Cadillac Arts Council

B. Planning Commission

PUBLIC COMMENTS

Don Koshmider discussed various world topics.

GOOD OF THE ORDER

Elenbaas asked for an update on the doors for the Market.

Peccia noted the City was awarded a grant through the Michigan Community Block Grant program. He stated there is a lot of activity behind the scenes.

Elenbaas asked if there is anything new regarding short-rental enforcement.

Peccia stated we have not received any new complaints.

ADJOURNMENT

Respectfully submitted,

Carla J. Filkins, Mayor

Sandra Wasson, City Clerk

City Council

200 North Lake Street
Cadillac, Michigan 49601
Phone (231) 775-0181
Fax (231) 775-8755



Mayor
Carla J. Filkins

Mayor Pro-Tem
Tiyi Schippers

Councilmembers
Stephen King
Robert J. Engels
Bryan Elenbaas

RESOLUTION NO. 2024-_____

**RESOLUTION TO ADOPT ORDINANCE NO. 2024-_____.
ORDINANCE TO APPROVE GRANTING OF AN EASEMENT TO
CONSUMERS ENERGY COMPANY FOR AN ELECTRICAL FACILITIES
(NEAR 908 6TH AVENUE)**

At a meeting of the City Council of the City of Cadillac, Wexford County, Michigan, on the 20th day of February, 2024, at 6:00 p.m. at the Cadillac Municipal Complex, 200 N. Lake Street, Cadillac, Michigan 49601.

PRESENT: _____

ABSENT: _____

The following preamble and resolution was offered by _____ and
seconded by _____.

WHEREAS, the City of Cadillac ("City") is authorized by statute to buy, own and sell
real property (MCL 117.4e); and

WHEREAS, the Charter of the City provides that the City may, by ordinance and
upon the affirmative vote of four or more members of the Council, sell or exchange any real
estate (Charter Sec. 5.6); and

WHEREAS, the Charter further provides that before final adoption of such an
ordinance, the Council shall hold a public hearing and shall publish notice once at least
twenty (20) days and again ten (10) days prior to the hearing; and

WHEREAS, the City wishes to adopt an ordinance that approves the granting of an easement (the “Easement”) to Consumers Energy Company (“Consumers”) for electric facilities on property owned by the City near 908 6th Avenue, Cadillac, Michigan and described in the proposed Easement for Electric Facilities between the City and Consumers; and

WHEREAS, the City Clerk twice published a summary of the Ordinance in a newspaper of general circulation in the City of Cadillac, together with a notice setting the time and place for a public hearing on the Ordinance, in accordance with the Charter. A copy of the Ordinance was and is available for examination at the office of the City Clerk, and copies may be provided for a reasonable charge; and

WHEREAS, a public hearing regarding the Ordinance was held on the 20th day of February, 2024, at 6:00 p.m. ; and

WHEREAS, the granting of the Easement as described in the Ordinance is in the public interest, and a copy of the proposed Easement Agreement is attached to the Ordinance.

NOW, THEREFORE, the City Council of the City of Cadillac, Wexford County, Michigan, resolves as follows:

1. Pursuant to Section 5.2 and 5.6 of the City Charter, the City adopts Ordinance No. 2024-____, Ordinance to Approve Granting of an Easement for Electrical Facilities (Near 908 6th Avenue).

2. The Mayor and the City Clerk are authorized to execute any and all documents, and to take any and all actions, as may be necessary or appropriate to execute

the Easement Agreement and any and all documents related thereto and to make such minor changes to the Easement Agreement as may be necessary or appropriate.

3. A copy of the Ordinance is available for examination at the office of the City Clerk, and copies may be provided for a reasonable charge.

4. Any and all resolutions that are in conflict with this Resolution are hereby repealed to the extent necessary to give this Resolution full force and effect.

YEAS: _____

NAYS: _____

STATE OF MICHIGAN)
)
COUNTY OF WEXFORD)

I, Sandra Wasson, City Clerk of the City of Cadillac, hereby certify this to be a true and complete copy of Resolution No. 2024-____, duly adopted at a regular meeting of the City Council held on the 20th day of February, 2024.

Sandra Wasson
City Clerk

ORDINANCE NO. 2024-_____

**ORDINANCE TO APPROVE GRANTING OF AN EASEMENT TO
CONSUMER'S ENERGY COMPANY FOR ELECTRIC FACILITIES
(NEAR 908 6TH AVENUE)**

THE CITY OF CADILLAC ORDAINS:

Section 1.

Pursuant to MCL 117.4e, the Charter of the City of Cadillac and other applicable authority, the City hereby approves the granting of an easement (the "Easement Agreement") to Consumers Energy Company for electric facilities on a portion of real property owned by the City as described in the attached Easement for Electric Facilities, in the City of Cadillac, Wexford County, Michigan, in accordance with the terms of the attached Easement Agreement between Consumers Energy Company and the City, which is incorporated by reference. The City's real property is located near 908 6th Avenue, Cadillac, Michigan and is legally described in the Easement Agreement.

Section 2.

The Mayor and City Clerk are hereby authorized to execute the Easement Agreement (in substantially the form attached) and any and all documents related thereto, and to make such minor changes as may be necessary or appropriate.

Section 3.

The City Clerk is directed, pursuant to Section 20-4(b) of the City's Code of Ordinances, within 30 days after the adoption of this ordinance, to record a certified copy of this ordinance with the Wexford County Register of Deeds and to send a copy to the State Treasurer.

Section 4.

All other ordinances inconsistent with the provisions of this Ordinance are hereby repealed but only to the extent necessary to give this Ordinance full force and effect.

Section 5.

This Ordinance shall take effect twenty (20) days after its adoption and publication.

Approved this 20th day of February, 2024.

Sandra Wasson, City Clerk

Carla J. Filkins, Mayor

I, Sandra Wasson, City Clerk of the City of Cadillac, Michigan, do hereby certify that a summary of Ordinance No. 2024-____ was published in the Cadillac News on the ____ day of _____, 2024.

Sandra Wasson, City Clerk

STATE OF MICHIGAN)
) ss.
COUNTY OF WEXFORD)

On this ____ day of _____, 2024, before me, a Notary Public, in and for said County, personally appeared Carla J. Filkins, Mayor, and Sandra Wasson, City Clerk, on behalf of the City of Cadillac, who executed the foregoing Ordinance and acknowledged that they have executed it on behalf of the City of Cadillac in their capacity as its Mayor and City Clerk, respectively.

_____, Notary Public
County of _____, State of Michigan
My commission expires: _____

Prepared By:
Scott H. Hogan
Foster, Swift, Collins & Smith PC
1700 East Beltline NE, Suite 200
Grand Rapids, Michigan 49525

EASEMENT FOR ELECTRIC FACILITIES

SAP# 1068367144
Design# 11585008
Agreement# MI00000075770

CITY OF CADILLAC, a municipal corporation, whose address is 200 Lake Street, Cadillac, Michigan 49601 (hereinafter "Owner")

for \$1.00 and other good and valuable consideration [*exempt from real estate transfer tax pursuant to MCLA 207.505(f) and from State real estate transfer tax pursuant to MCLA 207.526(f)*] grants and warrants to

CONSUMERS ENERGY COMPANY, a Michigan corporation, One Energy Plaza, Jackson, Michigan 49201 (hereinafter "Consumers")

a permanent easement to enter Owner's land (hereinafter "Owner's Land") located in the City of Cadillac, County of Wexford, and State of Michigan as more particularly described in the attached Exhibit A to construct, operate, maintain, inspect (including aerial patrol), survey, replace, reconstruct, improve, remove, relocate, change the size of, enlarge, and protect a line or lines of electric facilities in, on, over, under, across, and through a portion of Owner's Land (hereinafter "Easement Area") as more fully described in the attached Exhibit B, together with any pole structures, poles, or any combination of same, wires, cables, conduits, crossarms, braces, guys, anchors, transformers, electric control circuits and devices, location markers and signs, communication systems, utility lines, protective apparatus and all other equipment, appurtenances, associated fixtures, and facilities, whether above or below grade, useful or incidental to or for the operation or protection thereof, and to conduct such other activities as may be convenient in connection therewith as determined by Consumers for the purpose of transmitting and distributing electricity.

Additional Work Space: In addition to the Easement rights granted herein, Owner further grants to Consumers, during initial construction and installation only, the right to temporarily use such additional work space reasonably required to construct said lines. Said temporary work space shall abut the Easement Area, on either side, as required by construction.

Access: Consumers shall have the right to unimpaired access to said line or lines, and the right of ingress and egress on, over, and through Owner's Land for any and all purposes necessary, convenient, or incidental to the exercise by Consumers of the rights granted hereunder.

Trees and Other Vegetation: Owner shall not plant any trees within the Easement Area. Consumers shall have the right from time to time hereafter to enter Owner's Land to trim, cut down, and otherwise remove and control any trees, brush, roots, and other vegetation within the Easement Area. Consumers shall have the right from time to time hereafter to enter Owner's Land to trim, cut down, and otherwise remove and control any trees, brush, or other vegetation located outside of the Easement Area which are of such a height or are of such a species whose mature height that in falling directly to the ground could come into contact with or land directly above Consumers' facilities.

Buildings/Structures: Owner agrees not to build, create, construct, or permit to be built, created, or constructed, any obstruction, building, septic system, drain field, fuel tank, pond, swimming pool, lake, pit, well, foundation, engineering works, installation or any other type of structure over, under, or on said Easement Area, whether temporary or permanent, natural or man-made, without a prior written agreement executed by Consumers' Real Estate Department expressly allowing the aforementioned.

Ground Elevation: Owner shall not materially alter the ground elevation within the Easement Area without a prior written agreement executed by Consumers Real Estate Department allowing said alteration.

Exercise of Easement: Consumers' nonuse or limited use of this Easement shall not preclude Consumers' later use of this Easement to its full extent.

Ownership: Owner covenants with Consumers that they are the lawful fee simple owner of the aforesaid lands, and that they have the right and authority to make this grant, and that they will forever warrant and defend the title thereto against all claims whatsoever.

Successors: This Easement shall bind and benefit Owner's and Consumers' respective heirs, successors, lessees, licensees, and assigns.

Counterparts: This Easement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. It is not necessary that all parties execute any single counterpart if each party executes at least one counterpart.

Date: _____

Owner: CITY OF CADILLAC, a municipal corporation

Signature

By: Carla Filkins

Its: Mayor

Acknowledgment

The foregoing instrument was acknowledged before me in _____ County, _____,

on _____ by Carla Filkins, Mayor of the City of Cadillac, a municipal corporation, on behalf
Date
of the corporation.

Notary Public

Print Name

County, _____

Acting in _____ County

My Commission expires: _____

**PROPERTY OWNERS MAIL
SIGNED EASEMENT TO:**

Kelli Kline
Consumers Energy Company
330 Chestnut Street
Cadillac, MI 49601

Prepared By:
Nicole Corts 01/10/2024, EP7-464
Consumers Energy Company
One Energy Plaza
Jackson, MI 49201

**REGISTER OF DEEDS OFFICE USE
ONLY**

Return recorded instrument to:
Carrie J. Main, EP7-464
Consumers Energy Company
One Energy Plaza
Jackson, MI 49201

Date: _____

Owner: CITY OF CADILLAC, a municipal corporation

Signature

By: Sandra Wasson

Its: Clerk

Acknowledgment

The foregoing instrument was acknowledged before me in _____ County, _____,
on _____ by Sandra Wasson, Clerk of the City of Cadillac, a municipal corporation, on
Date
behalf of the corporation.

Notary Public

Print Name

County, _____

Acting in _____ County

My Commission expires: _____

**PROPERTY OWNERS MAIL
SIGNED EASEMENT TO:**

Kelli Kline
Consumers Energy Company
330 Chestnut Street
Cadillac, MI 49601

Prepared By:
Nicole Corts 01/10/2024, EP7-464
Consumers Energy Company
One Energy Plaza
Jackson, MI 49201

**REGISTER OF DEEDS OFFICE USE
ONLY**

Return recorded instrument to:
Carrie J. Main, EP7-464
Consumers Energy Company
One Energy Plaza
Jackson, MI 49201

EXHIBIT A

Owner's Land

Land situated in the City of Cadillac, County of Wexford, State of Michigan:

A part of the West 1/2 of the Northeast 1/4 of the Southeast 1/4 of Section 32, T22N, R9W, described as commencing at the Center 1/4 corner of said Section 32, City of Cadillac, Wexford County, Michigan; Thence N 89°48'28" E, along the East-West 1/4 Line 1320.14 feet; Thence S 00°00'50" E 33 feet to the South right-of-way of 6th Street to the point of beginning; Thence N 89°48'28" E 446.05 feet, previously recorded as 440.00 feet; Thence S 00°01'09" E along West right-of-way of 8th Avenue, 366.00 feet; Thence N 89°58'51" E 33 feet to the center line; Thence S 00°01'09" E along the center line of vacated 8th Avenue, 367.01', previously recorded as 365.25 feet; Thence N 73°44'00" W, 184.38 feet; Thence S 00°01'09" E 68.00 feet to the North right-of-way of railroad property; Thence N 73°44'00" W along said right-of-way 314.76 feet, previously recorded as 308.51 feet; thence N 00°00'50" W 659.70 feet to the point of beginning.

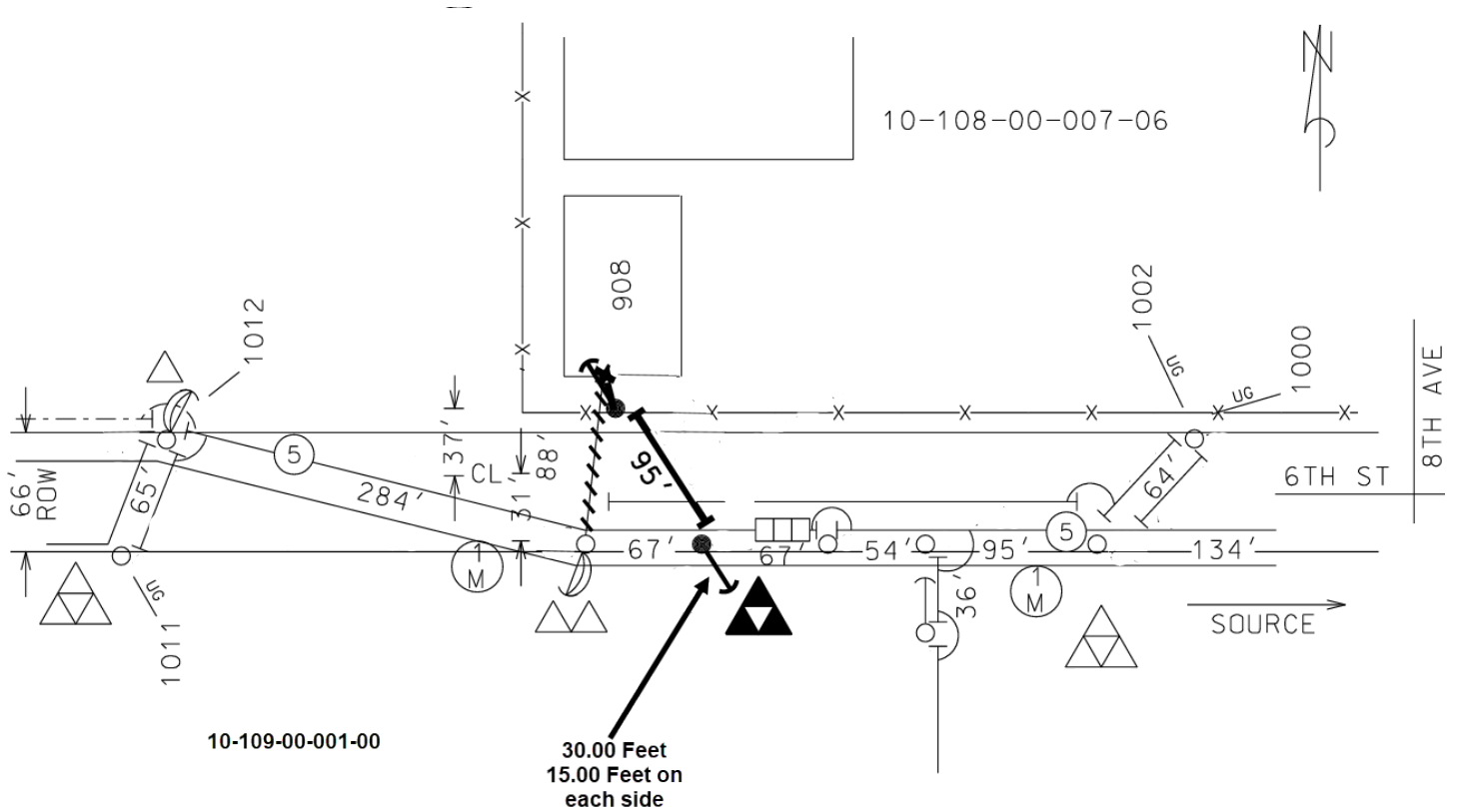
Also known as: 1001 Sixth Street, Cadillac, Michigan 49601

Parcel ID: 10-109-00-001-00

EXHIBIT B

Easement Area

A 30.00-foot-wide strip of land, being 15.00 feet on each side of the centerline of the line constructed on Owner's Land, the centerline to be located approximately as shown in the attached drawing.



To: Cadillac City Council

From: Wexford-Missaukee Child Protection Council

Date: February 11, 2024

Our council would like to ask permission for blue lights to be hung in the downtown area during the month of April in recognition of National Child Abuse Prevention Month.

Thank You for your consideration,

Karen Staub, Prevention Coordinator



www.wexfordmissaukeecpc.com

Follow us on Instagram @wexfordmissaukeecpc

February 20, 2024

Council Communication

Re: Service Truck Purchase

The FY2024 budget for the Water and Sewer Fund includes an appropriation of \$50,000 for the replacement of a service truck. The City recently sought competitive bids and the following bid was received:

Dealer	Bid
Bob Maxey Ford Detroit, Michigan	\$42,950

Staff also checked the MiDEAL contract for the State pricing on this truck. Two MiDEAL dealers offered the same truck at lower prices:

- Gorno Ford (\$41,565)
- Lunghamer Ford (\$42,713)

Gorno Ford also offered a safety lighting package for an additional \$1,795. This lighting is an important safety feature to protect City crews while on job sites. It is typically added separately after a purchase but the package from Gorno Ford is a sensible add-on directly from the dealer.

Recommended Action

It is recommended that the purchase of a work truck be awarded to Gorno Ford in the amount of \$43,360. Funds are available in the Water and Sewer Fund.

February 20, 2024

Council Communication

Re: Speaker Replacement – Rotary Performing Arts Pavilion

The main speakers attached to the sound system at the Rotary Performing Arts pavilion have failed. The failure is attributed to pigeons, weather exposure, and regular wear and tear on electronic equipment for outside use. Bids were solicited to replace the speakers, and the following bids were received:

Vendor	Bid - Replacement	Bid – Upgraded System
Sound Environments Traverse City, MI	\$15,268.63	\$44,290.45
Electromedia Inc. Spring Lake, MI	\$22,913.00	\$23,495.00

Based on a review of the specifications and some local input on the bids received, the upgraded system bid from Electromedia was deemed to have the best value for the system. The City has resolved the pigeon issue and plans to seek a solution to cover the speakers during winter months, so it is anticipated that the new speakers should last well longer than the original units.

Recommended Action

It is recommended that City Council award the pavilion speaker replacement project to Electromedia Inc. in accordance with their bid. Funds for this project are available in the General Fund.

February 20, 2024

Council Communication

Re: Environmental Consultant – PGSI Grant

The City was awarded a \$750,000 Public Gathering Spaces Initiative grant through the Community Development Block Grant program. These are federal funds and as such there are a number of requirements the City must meet in order to fully qualify to receive the funds.

One component of the CDBG rules is to perform an environmental analysis, including the requirements of the State Historic Preservation Office. These rules dictate that the City must seek proposals from a minimum of three consultants on the preapproved list of firms. As such, the City requested proposals from three firms that were included on the preapproved list of environmental consultants:

Consultant	Bid
SES Environmental Grandville, MI	\$7,800
Dixon Environmental Consulting Grand Rapids, MI	No Response
Soils and Materials Engineers, Inc. Grand Rapids, MI	Declined

Recommended Action

It is recommended that City Council waive competitive bidding and approve the proposal from SES Environmental to complete the environmental consulting work for the PGSI Grant. Funds for this project will be reimbursed with grant funds as the work is completed.

Revised 2-12-2024

Public Gathering Spaces Initiative

Appendix B: Budget

ACTIVITY COSTS	CDBG	UGLG	OTHER	TOTAL
Engineering		\$ 84,900		\$ 84,900
3 rd Party Environmental	X			
Construction (includes contingency and bonding)	\$750,000	\$100,000		\$850,000
MEDC CGA	X			
GRAND TOTAL	\$750,000	\$184,900		\$934,900



Shawn Shadley
Senior Project Manager
4455 Chicago Drive SW
Grandville, MI 49418-1544
Phone: 616/531-0503
s.shadley@sesadvantage.com

December 29, 2023

Mr. Owen Roberts
City of Cadillac
200 North Lake Street
Cadillac, MI 49601

Ref: **Proposal for Environmental Assessment, Phase I Environmental Site Assessment, and Pre-Renovation Asbestos Survey**
The Market at Cadillac Commons
117 West Cass Street
Cadillac, Michigan 49601
SES Proposal No.: ER-2023-038

Sent Via Email: oroberts@cadillac-mi.net

Dear Mr. Roberts:

SES Environmental (SES) is pleased to present this proposal to complete an Environmental Assessment, Phase I Environmental Site Assessment (ESA), and a pre-renovation asbestos survey for the above referenced property. It is our understanding that the property is currently developed with a farmer's market.

The Environmental Assessment will be conducted in accordance with 24 CFR Part 58 and in accordance with Housing and Urban Development requirements and the Michigan Economic Development Corporation (MEDC) grant requirements.

WORK SCOPE

Environmental Assessment

The purpose of the Environmental Assessment is to gather sufficient information to confirm the proposed project's compliance with applicable regulations, including:

- The United States Environmental Protection Agency;
- Michigan Department of Environment, Great Lakes, and Energy (EGLE); and
- U.S. Department of Housing and Urban Development.

The effects of the proposed project on the specific natural resources listed below will be evaluated:

- Historic Preservation
- Coastal Areas
- Noise
- Floodplain Management
- Endangered Species

- Wild and Scenic Rivers
- Wetlands
- Sole Source Aquifers
- Air Quality
- Prime Agricultural Land
- Environmental Justice

In addition, SES will evaluate the qualitative and quantitative significance of the effects of the proposed project on the character, features, and resources of the project area will be evaluated, which include:

- Land Development
- Socioeconomic
- Community Facilities and Services
- Natural Features

Depending on the specific potential issues identified in association with the project, unforeseen additional reviews (i.e., archaeological assessments, cultural impact assessments, wetland determination or delineation, endangered species surveys, testing for radon, compliance with applicable environmental permits, regulations or statutes; testing for mold or other indoor air contaminants, assessment of vapor intrusion, and) may also be necessary. SES will obtain permission from the client prior to completing additional, unforeseen reviews. Any document review outside of the of the Environmental Assessment noted above, meetings and consultations or report revisions by third parties will be billed when requested on a time and materials basis at a Senior Project Manager rate of \$125/hour.

Phase I ESA Scope

The Phase I ESA will be conducted in general accordance with (1) the United States EPA Standards and Practices for All Appropriate Inquiries {(AAI), 40 CFR Part 312} and (2) guidelines established by the ASTM in the *Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process / Designation E 1527-21* (ASTM Standard Practice E1527-21).

SES will implement the following scope of work:

SES will gather readily available information concerning the following:

- Site use, description, and location
- Current ownership
- Use and condition of surrounding properties
- Review of government records
- Interviews with site owners/occupants, regulatory agencies and persons knowledgeable of the site

Current and prior use of the property will be evaluated by reviewing the following information sources:

- Soil Conservation Service Maps,
- Historical Sanborn Fire Insurance Maps, as available,
- United States Geological Survey (USGS) Topographic Maps,
- Historical Aerial Photographs, as available,
- City Directories, as available
- Local and State Governmental Offices and Publications

The historical use of the subject property will be identified from the present back to the first developed use or to the year 1940, whichever is earlier.

SES will review published federal and state agency and program records through an environmental database search. These records will be searched for information related to onsite activities and to potential offsite sources of contamination from hazardous substances and/or petroleum products. **SES** will use ASTM-recommended search distances during the review of information from the following databases:

- Comprehensive Environmental Response, Compensation & Liability Information System (CERCLIS)
- CERCLIS No Further Remedial Action Planned (NFRAP) Facilities
- National Priorities List (NPL)
- Delisted NPL Sites List
- Resource Conservation & Recovery Act (RCRA) Corrective Action Report (CORRACTS)
- RCRA Non-CORRACTS & Associated Transfer, Storage, & Disposal (TSD) Facilities
- RCRA Small- & Large-Quantity Generators
- Federal Emergency Response Notification System (ERNS) & State Spills Lists
- Federal Institutional Control/Engineering Control Registries
- State & Tribal Registered Underground Storage Tanks (USTs)
- State & Tribal Leaking Underground Storage Tank Incident Reports (LUST)
- State & Tribal Equivalent NPL/CERCLIS Sites
- State & Tribal Voluntary Cleanup Sites
- State & Tribal Brownfield Sites
- State & Tribal Landfill and/or Solid Waste Disposal Site Lists
- State & Tribal Institutional Control/Engineering Control Registries
- State & Tribal Lists of Hazardous Waste Sites Identified for Investigation/Remediation

SES will visually examine the grounds and onsite structures (as applicable and accessible) in an attempt to identify *recognized environmental conditions* (RECs). RECs are defined as *“The presence or likely presence of any hazardous substances or petroleum products in, on, or at a property: 1) due to release to the environment; 2) under conditions indicative of a release to the environment; or 3) under conditions that pose a material threat of a future release to the environment.”* **SES** will identify the occupant(s), if any, and describe the operations or conditions of each. **SES** will visually observe (from public right-of-ways only) and describe the use of adjoining properties. No entry will be made on adjoining properties.

SES will conduct interviews by phone, in writing, or in person with the Client, owner, onsite representatives (as identified by the Client), representative site occupants, and local government officials, as appropriate and available, to obtain information concerning possible RECs on the site.

Client Responsibilities

Under the “All Appropriate Inquiries” Final Rule (40 C.F.R. Part 312), the “User” of the Phase I ESA is responsible for providing certain information that may assist the environmental professional in identifying RECs. SES will provide the Client with a “User Questionnaire” to assist in gathering the required information. Failure to provide this information will be identified as a data gap in the Phase I ESA report and could result in a determination that “all appropriate inquiries” is not complete. If the Client is aware of any specialized knowledge or experience that is material to RECs in connection with the subject property, or has actual knowledge of any environmental lien or activity or use limitations (AULs) encumbering or in connection with the subject property, it is the Client’s responsibility to provide this information to **SES**.

A search for the existence of environmental liens and AULs that are filed or recorded against the subject property must be conducted. To meet this requirement, the Client may rely on either of the following two methods:

- 1.) *Transaction-Related Title Insurance Documentation* (i.e., Preliminary Title Reports and Title Commitments).
- 2.) *Title Search Information Reports* (i.e., Condition of Title, Title Abstracts, and AUL/Environmental Lien Reports).

Copies of the above title records should be provided to **SES** for review, as applicable. At the request of the Client, SES will order an AUL/Environmental Lien Search Report at an additional cost to be determined based on number of property parcels.

SES also requests that the Client provide any of the following documents, if available, prior to or at the beginning of the site visit:

- Previous Phase I ESA reports,
- Environmental site investigation or cleanup reports,
- Environmental compliance audit reports,
- Environmental permits,
- Registrations for underground or aboveground storage tanks,
- Registration for underground injection systems,
- Material Safety Data Sheets (MSDS),
- Community right-to-know plans,
- Spill prevention, countermeasure, and control (SPCC) or emergency response plans,
- Violation notices,
- Geotechnical/hydrogeologic studies,
- Hazardous waste generator notices,
- Geotechnical studies,
- Risk assessments, and
- Recorded AULs or environmental restrictive covenants (ERCs)

Non-Scope Considerations

The following are environmental issues or conditions at the subject property that the Client may wish to assess that are outside the Phase I ESA scope (i.e., Non-Scope Considerations):

- Asbestos containing building materials,
- Biological agents,
- Cultural and historic resources,
- Ecological resources,
- Endangered species,
- Health and safety,
- Indoor air quality,
- Industrial hygiene,
- Lead based paint,
- Lead in drinking water,
- Mold or microbial growth conditions,
- PCB-containing building materials (i.e., fluorescent ballasts, paint, caulk),
- Radon,
- Regulatory compliance,
- Per-and Polyfluoroalkyl Substances (PFAS), and
- Wetlands.

Pre-Renovation Asbestos Survey

SES will provide accredited asbestos inspectors to conduct a NESHAP asbestos materials inspection for the current site building, which will include interior and exterior building materials. It is our understanding that the building will be renovated as part of improvement activities. This estimate includes all sample analysis for asbestos bulk samples and is as reasonable and accurate as can be made at this time. However, the total cost for this project will not exceed the above estimate without receiving written authorization. Additionally, in an effort to minimize costs, the fee for the asbestos survey assumes the asbestos survey can be completed at the same time as the Phase I ESA. Otherwise, additional fees will be incurred. All laboratory analysis will be conducted by AIHA accredited laboratories utilizing EPA approved asbestos bulk analysis methods. This proposal assumes up to 20 sample layers will be collected for analysis. If additional samples are required to be sampled, the client will be notified and a change order will be prepared. Additional samples will be charged at a rate of \$8 per sample layer.

To complete the proposed Pre-Renovation ACM inspection, SES will:

1. The Client shall provide SES with the existing AHERA Asbestos Surveys and any other environmental inspection or abatement information for each structure (if available).
2. The Client shall provide SES with blueprints for the structures (if available).
3. SES shall perform a limited inspection for ACM in an effort to determine the extent and location of ACM present in the inspection area. This limited inspection will be qualitative and quantitative in that an attempt will be made to locate accessible friable and non-friable ACM areas, as well as estimate the amount of ACM. All accessible areas of the limited inspection area(s) will be inspected. Inaccessible areas not inspected and tested will be listed and located. In the event the structure is renovated, it is also subject to Environmental Protection Agency (EPA) National Emission Standards for Hazardous Air Pollutants (NESHAP) standards.
4. SES will conduct an inspection to inventory building materials that are suspect for asbestos content. The AHERA rule requires that the suspect materials be identified, located and documented. During the inspection, homogeneous areas will be delineated and sampled, as appropriate. Functional spaces will also be identified for purposes of assessing all suspect materials and thermal system insulation, as appropriate. In addition to the inspection, SES will make use of any and all historical asbestos reporting documentation made available to SES during the course of the investigation.
5. Bulk samples of suspect ACM will be collected by a Michigan-Accredited Asbestos Inspector. Samples will be collected in a safe manner; however, damage may occur to the surfaces from which the samples are collected. As required, destructive sampling (i.e. interior wall or ceiling demolition) will be conducted as a part of this assessment in order to gain access to suspect ACM, only in the event it is applicable and necessary.
6. Per EPA-recommended sampling guidelines, bulk samples will be collected in each homogeneous area encountered. A homogeneous area is defined as an area of material that is uniform in color, texture, and appearance. Additions and renovations will require further breakdown of these homogeneous areas. Dates of construction, additions, and renovations and other factors are unknown to SES at this time. SES will contact facility management personnel to determine if

documentation of previous renovations is available and will contact the client if any significant changes in the survey protocol are required.

7. If applicable, it should be noted that core sampling of the roofing materials may void the roof warranty and cause significant water damage to the building interior. Therefore, SES will not core sample building roofs unless directed by the client. If core sampling of a roof is authorized, SES recommends that a roofing contractor patch the roof following sample collection. Unless sampling is conducted, roofing will be presumed asbestos for reporting purposes. ***SES will patch or repair damaged building surfaces that result from building inspection and/or sampling activities.***
8. All samples collected will be submitted with chain-of-custody documentation to an analytical laboratory that participates in the National Voluntary Laboratory Accreditation Program (NVLAP). All samples will be analyzed using polarized light microscopy (PLM) with dispersion staining following USEPA Test Method (EPA-600/M4-82-020) and the National Institute of Standards and Technology (NIST) Bulk Asbestos Handbook. Although PLM is currently the accepted and approved method for analysis, the method is limited in its ability to provide a quantitative result when asbestos represents a small fraction of the material. Current USEPA guidelines specify that when initial laboratory analysis of friable materials detects the presence of asbestos in a quantity between less than one percent (or trace) and less than ten percent, a verification analysis using the point counting analytical method may be considered. If the client does not exercise the option to conduct point counting, the material in question will be considered ACM as identified by PLM analysis. Point counting will be performed on all friable material samples that test between trace and 2% asbestos. Analytical costs for point counting will be charged at an additional fee of \$45 per sample, which will be provided in a change order.
9. SES will also utilize first positive stop analysis methodologies. First positive stop involves analyzing samples by homogeneous area groupings. Laboratory analyses would proceed sample by sample, within each homogeneous area grouping, until a sample is determined to be asbestos containing.
10. Upon completion of the limited field inspection and receipt of laboratory data, SES will prepare a report that will include: (a) a general description of the suspect ACBM identified, (b) an estimation of the quantity of suspect materials observed, (c) diagrams or maps indicating the building layout, (d) a description of the physical assessment of friable and thermal insulating materials, (e) a discussion regarding the quality assurance and quality control, as well as methodology, and (f) laboratory testing results.
11. SES will only sample materials generally accessible from an 8-foot step ladder or 16-foot extension ladder. Elevated heights and lift equipment may require a change in the proposed scope of work. SES also does not propose to enter confined spaces. Inaccessible materials observed will be assumed to contain asbestos. During preparation of this survey, SES will perform these services using its commercially reasonable best efforts consistent with the level and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

BUDGET

Please note, SES will require all proposed building design plans (interior and exterior construction design, window and door installation details, etc.) and drawings to be provided for review, as these documents are required to determine conformance with ER regulations and statutes.

BUDGET

Completion of the Environmental Site Assessment, including the completion of the Section 106 application: **\$4,900**

Completion of the Phase I Environmental Site Assessment and Pre-Renovation Asbestos Survey: **\$2,900***

***Fee assumes the Phase I ESA and Asbestos Survey can be completed concurrently.**

SCHEDULE

SES will initiate project work upon receiving authorization to proceed. It is estimated that the final reports will be completed within 8 to 10 weeks from date of authorization, unless unforeseen requirements arise or SES encounters delays in obtaining required responses from governmental agencies. Please note, SHPO responses typically require a minimum of 30 days following receipt of the Section 106 application.

CLOSING

The proposed work will be performed in accordance with **SES's** attached Standard Terms and Conditions, which are incorporated into this proposal. **SES's** Client (the party authorizing the work) and all parties granted the right to rely on the final report are bound by the limitations in **SES's** scope of work, terms and conditions, and report.

We appreciate the opportunity to submit this proposal. Should you wish to proceed with this project, please sign and return the attached Proposal Acceptance form. Please contact the undersigned with any questions, concerns, or requests for any additional information.

Respectfully Submitted,



Shawn Shadley, EP
Senior Project Manager
SES Environmental

Attachments: Authorization for SES Environmental to Proceed
Standard Terms and Conditions

AUTHORIZATION FOR SES ENVIRONMENTAL TO PROCEED

Proposal Number: ER2023038
Proposal Date: December 29, 2023
Client: City of Cadillac
SES Project Manager: Shawn Shadley
Fee: \$7,800

Proposal Title: *Environmental Assessment, The Market at Cadillac Commons, 117 West Cass Street, Cadillac, Michigan 49601*

The undersigned hereby authorizes **SES** to proceed on the above-described project in accordance with the referenced proposal and its associated work scope, terms, and conditions (attached). The undersigned further acknowledges that they have read, understand, and agree to the terms and conditions governing the project, which are incorporated herein, and are authorized to contractually bind the above-named Client in executing this Authorization.

(Signature)

Carla J. Filkins

(Typed or Printed Name)

City of Cadillac

(Company Name)

Mayor

(Title)

200 N. Lake Street, Cadillac, MI 49601

(Billing Address)

231.775.0181

(Telephone Number)

February 21, 2024

(Date)

(SES will proceed with the work after receiving this Authorization to Proceed via fax, mail, or email.)

[PLEASE RETURN THIS PAGE TO **SES**]

**Standard Terms and Conditions for
SES Environmental Professional Services**

1(a). All work performed by SES Environmental, hereinafter called SES, for Client is subject to these Terms and Conditions, except that these Terms and Conditions incorporate, and may be modified by, the work scope or proposal prepared by SES for the specific project location. In the event of any conflict, the terms of the work scope or proposal shall govern.

2. Unless stated otherwise in SES's work scope or proposal, SES's services are performed on an hourly (time-and-expenses) basis including, but not limited to, project scoping by professional, technical, and clerical staff. Time required for SES personnel to travel between SES's offices and the site (or any other destination applicable to the project) is also charged in accordance with SES's prevailing hourly rate schedule. Client agrees that time for any authorized work that is outside the scope of work in SES's proposal, including meetings and consultation after SES's report is issued, shall be charged to Client in accordance with SES's prevailing hourly rate schedule. Client agrees that SES's hourly rate schedule may be modified from time to time to reflect changes in SES's fees.

3. SES's use of SES-owned vehicles and field equipment and internal expenses incurred by SES during Client's work are chargeable to Client at SES's prevailing rates for equipment use, stock supplies, and internal expenses. These rates may be modified from time to time to reflect changes in SES's equipment and expense charges.

4. For those services or external expenses described in SES's work scope or proposal, Client authorizes SES to engage subcontractors; rent or purchase special equipment; purchase expendable supplies; and so forth. Such purchases or contracts shall be charged to Client at their direct cost plus 15%.

5(a). SES's work scope or proposal and estimated costs therein are firm for 90 calendar days.

(b). Cost estimates provided to Client are opinions of probable costs based on SES's professional experience, information available to SES, and assumptions about possible site conditions, material costs, and equipment charges, many of which are beyond SES's control. Therefore, any cost estimate or "not to exceed" cost limitation provided by SES is not a guaranteed maximum, fixed lump-sum price, or a guarantee that the work will be completed for the estimated amount. Such cost estimate only indicates that SES will not incur fees and expenses in excess of the estimate or cost limitation without obtaining Client's prior agreement. Charges for SES's services and expenses may be less than those estimated, in which case only those charges will be invoiced to Client.

6(a). SES's invoices are payable within 30 days of receipt. Client shall notify SES in writing of any disputed invoiced amounts within ten (10) calendar days after Client receives the invoice. The notice shall include the specific amount(s) and item(s) disputed and the basis for the dispute. Client agrees to pay all undisputed invoiced amounts according to the following terms. Undisputed fees remaining unpaid for more than forty-five (45) calendar days after the invoice date shall incur late charges of 1.5% per month (18% per annum) from the invoice date. If Client fails to pay any invoiced amount within seventy-five (75) calendar days of the invoice date, SES shall have the right to immediately stop work and recover from Client payment for all work executed, late-payment charges, and any additional costs incurred by SES in collecting past-due amounts from Client.

(b). Client acknowledges that payment to SES is not contingent in any way upon the closing date for a property transaction and that Client shall pay SES even if the transaction is not consummated.

7. SES strives to perform its services in a manner consistent with that level of care and skill ordinarily exercised by other environmental consultants practicing in the same locality and under similar conditions prevailing at the time SES's services are performed. **No other warranty, expressed or implied, is intended in these Terms and Conditions or in any other document generated by SES.** Services not expressly described in SES's work scope or proposal shall not be considered part of the work; SES assumes no duty to Client to perform such services.



8. The total cumulative liability of SES, its employees, directors, officers, and agents to Client arising from SES's services, including any legal fees or costs awarded under these Terms and Conditions, shall not exceed 100% of the net compensation received by SES (total fee less any subcontractor charges) for the specific work item at issue, regardless of the legal theory under which such liability is imposed.

9. SES and Client agree to waive any claim against each other for special, incidental, or consequential damages incurred by either due to the fault of the other, regardless of the nature of the fault, or whether it was committed by Client or SES, their employees, agents, or subcontractors. Special, incidental, and consequential damages include, but are not limited to, delays, shutdowns or disruptions, loss of product or inventory, non-operation, cost of capital, loss of use, and loss of profits or revenue.

10(a). Client recognizes that SES's data, interpretations, opinions, and recommendations are based on information available to SES and obtainable with the methods employed. Information obtained from SES's inspections, analysis, and testing is considered evidence with respect to the potential detection, identification, quantification, and distribution of contaminants, but any inference or conclusion based thereon is necessarily an opinion based on SES's professional judgment and shall not be construed as a representation of fact. Client acknowledges that inspecting, sampling, and testing reduce, but do not eliminate, the risk that contaminants may escape detection. A site at which contaminants are not found or do not exist at the time of SES's work may later, due to intervening causes such as natural ground-water flow or human activities, become contaminated. Because these risks are beyond SES's control, Client agrees to indemnify SES to the extent permitted by Indiana law for these risks.

(b). Client shall provide to SES all information in Client's possession concerning the project site that could affect SES's performance of the work. SES may rely on information provided by Client and others in performing its services; however, unless specified in the proposal or work scope, SES will not verify, validate, or warrant the accuracy of work conducted or information provided by independent laboratories, contractors, or consultants, whether retained by SES or Client.

11(a). SES is solely responsible for the on-site activities and safety of its own employees. This responsibility shall not be construed by any party to relieve the site owner, Client, or Client's other contractors or subcontractors from their customary and contractual responsibilities and obligations to maintain a safe site.

(b). Neither SES's professional activities nor the presence of SES's employees or subcontractors shall be construed by any party to imply that SES is responsible for any contractor's work performance, methods, direction, superintendence, sequencing of operations, or safety in, on, or about the project site. Under no circumstances shall SES's field representative have stop-work authority over Client's contractors and subcontractors or any other party active on or near the project site and not under contract to SES.

(c). SES assumes no responsibility for reporting to any federal, state, or local public agencies any conditions or releases that present a potential danger to public health, safety, or the environment. Client agrees to indemnify SES to the extent permitted by Indiana law for any claims related to Client's failure to properly report such conditions or releases to appropriate agencies.

(d). The requirements of this article shall apply continuously and are not limited to normal working hours.

12(a). Professional fees paid to SES by Client are in exchange for SES's services. All reports, recommendations, drawings, specifications, boring logs, field data and notes, laboratory test data, calculations, estimates, and other documents prepared by SES are instruments of service, not products, and as such remain the property of SES. Documents provided to SES by Client shall remain Client's property.

(b). The data and opinions of SES reported and expressed in its instruments of service are for the sole and exclusive use of Client, who may rely on SES's information, findings, and opinions, subject to the limitations expressed therein. Reliance by any third party on the information, findings, and opinions in SES's instruments of service is unauthorized and at their sole risk. If SES is requested by Client or Client's representative to review, update, or provide additional consultation regarding SES's instruments of service, SES shall be entitled to additional compensation for these services in accordance with SES's prevailing rate schedules.

(c). Client agrees to waive any claim against SES and to defend, indemnify to the extent permitted by Indiana law, and hold SES harmless from any claim or liability for injury or loss allegedly arising from the



unauthorized use of SES's information, opinions, or instruments of service or from their use in a manner that is incorrect, inappropriate, not intended by SES, not foreseen at the time SES's services were rendered, or allegedly arising from considering SES's instruments of service as products. Such indemnification shall extend to any claim or liability for injury or loss arising from failure to follow SES's recommendations. Client further agrees to compensate SES for any time spent or expenses incurred in defense of any such claim, in accordance with SES's prevailing rate schedules.

13. SES carries insurance for public liability, property damage, automobile liability, professional liability, and statutory worker's compensation. Certificates of coverage will be forwarded to Client upon request. Within the limits of said insurance and the limitations of article 8, SES agrees to save Client harmless from any loss, damage, injury, or liability arising directly from negligent acts, negligent errors, or negligent omissions by SES, SES's employees, agents, subcontractors and their employees, or agents arising in connection with performance of the work described in SES's proposal or work scope. SES shall not be responsible for property damage from any cause including, but not limited to, fire and explosion, beyond the amounts and coverage of SES's insurance.

14. Client shall furnish, or arrange for, reasonable and safe access to all areas of the site, facilities, or structures necessary for SES and its subcontractors to perform the work specified in the proposal or work scope. In performing Client's work, SES will take reasonable precautions to minimize related damage to pavements, lawns, landscaped areas, and aboveground structures; however, Client recognizes that some unavoidable damage may occur in the normal course of work. Unless specified otherwise in the proposal or work scope and to the extent reasonably practicable, SES will restore the land or facilities substantially to their former condition at Client's expense.

15. Client shall furnish to SES all information in Client's possession identifying the types and locations of buried utility lines and other underground manmade objects within the boundaries of Client's property or site. In performing Client's work, SES will take reasonable precautions to avoid or minimize damage to these underground objects. Client agrees to hold SES harmless for any personal or property damage due to SES's interference with such buried utilities or other underground manmade objects not called to SES's attention, not correctly located by Client or utility-locating services, or incorrectly shown on plans furnished to SES.

16. Client agrees to defend, hold harmless, and indemnify SES to the extent permitted by Indiana law, its officers, representatives, and employees from and against any and all suits, claims, actions, losses and liabilities resulting from (a) Client's violation of any federal, state or local statute, regulation, or ordinance, including without limitation the Resource Conservation and Recovery Act; the Clean Air Act; the Comprehensive Environmental Response, Compensation and Liability Act; and all amendments to these regulations, ordinances, and acts in effect at the time the work is performed; (b) Client's arrangements for treating, storing, disposing, or transporting wastes or residual materials found, identified, or generated at the project site during SES's field activities; and (c) changed conditions or waste materials introduced to the project site by Client, Client's employees or contractors, third persons, or natural processes after SES's on-site work is completed.

17. SES will not intentionally divulge information regarding its services for Client other than to parties designated by Client in writing. Information that is in the public domain at the time SES's work is performed or is provided to SES by third parties is exempt from this limitation.

18(a). All claims, disputes, and other matters in controversy between SES and Client shall be subject to non-binding mediation as a condition precedent to other remedies provided by law. Either party may demand mediation by serving written notice stating the essential nature of the dispute, the amount of time or money at issue, and requiring that the matter be mediated within forty-five (45) days of the service of notice. The mediation shall be administered by the American Arbitration Association in accordance with its most recent applicable mediation rules or by such other person or organization on which the parties agree. No other action or suit may be brought unless the mediation did not occur within forty-five (45) days after the service of notice, the mediation occurred but did not resolve the dispute, or a statute of limitation would elapse if the suit is not filed prior to forty-five (45) days after service of notice.



(b). If a dispute at law arises related to services provided under these Terms and Conditions, Client agrees (a) to personal jurisdiction in the State of Indiana, (b) the claim will be brought and tried in the state or federal courts in Allen County, Indiana, and Client waives the right to move the action to another county or jurisdiction, and (c) the prevailing party, in addition to any other remedy or compensation, shall be awarded reasonable costs incurred in pursuing the claim, including staff time, court costs, attorney and expert witness fees, and other related expenses.

19. In the event that SES's field or technical services are interrupted by causes beyond its control, SES shall be entitled to compensation for the labor, equipment, and other costs SES incurs to maintain its work force and capability for Client's benefit during the interruption. For purposes of these Terms and Conditions, such causes include, but are not limited to, unusual weather conditions or other natural catastrophes; epidemics; war; riots; labor strikes; lockouts or other industrial disturbances; protest demonstrations; unanticipated site conditions; acts of governmental authorities; inability, despite reasonable diligence, to supply personnel, equipment, or material to the project; or any other cause beyond the reasonable control or contemplation of SES.

20. Neither Client nor SES shall delegate, assign, sublet, or transfer any duties, claims, or interest under these Terms and Conditions without the express written consent of the other. These Terms and Conditions shall be binding upon SES and Client, their heirs, executors, administrators, successors, and assigns.

21. These Terms and Conditions and the associated work scope or proposal are the final and entire agreement between SES and Client and supersede any prior written or oral agreements. These Terms and Conditions and work scope or proposal shall not be modified or amended except in writing and signed by Client (or Client's duly authorized representative) and SES. If Client issues a purchase order to authorize SES's work, the purchase order's terms and conditions shall not modify or replace these Terms and Conditions. SES's failure to object to terms in any communication from client shall not be a waiver of the terms set forth in these Terms and Conditions.

22. Any part of these Terms and Conditions later held to violate a law, regulation, or policy shall be deemed void, and all remaining provisions shall continue in force. However, Client and SES shall in good faith attempt to replace any invalid or unenforceable provision with one that is valid and enforceable and which comes as close as possible to expressing the intent of the original voided provision. Terms and Conditions allocating liability and responsibility between Client and SES shall survive completion of SES's services.

