CALL 37th COUNCIL TO ORDER
APPROVAL OF AGENDA
INVOCATION – PASTOR MATT BRUNNER
PLEDGE OF ALLEGIANCE
CITIZEN COMMENTS
ORDER OF BUSINESS

Consent Agenda

1. **APPROVAL OF THE MINUTES:** Matter of approving the minutes of the 37th City Council meeting on Monday, December 17, 2018.

Regular Agenda

1. **RECOGNITIONS/PRESENTATIONS:** Matter of any recognitions or presentations from the Consent Agenda.

2. **MOTION NO. M-01-19:** Matter of authorizing Stephen Siller Tunnel to Towers to conduct a 5K run on Sunday, October 6, 2019 from 6 a.m. to 2 p.m. beginning at Hurley Field at Anderson Middle School. During the event, representatives of the Stephen Siller Tunnel to Towers will provide volunteers to assist with the event.

3. **MOTION NO. M-02-19:** Matter of approving the Intergovernmental Agreement between the City of Berkley and Berkley School District for Shared Resources and Services.

4. **ORDINANCE NO. O-01-19:** Matter of considering the first reading of an ordinance to amend Section 2-2 of Article I of Chapter 2, Administration, of the City of Berkley Code of Ordinances to Authorize Persons Designated as Zoning Officer, Code Enforcement Officer, and Building Inspector to Issue and Serve Appearance Tickets for Ordinance Violations.


6. **MOTION NO. M-03-19:** Matter of considering the Downtown Development Authority (DDA) Director Agreement with Vivian Carmody of Carmody Consulting.

COMMUNICATIONS

7. **CLOSED SESSION:** Matter of considering whether to meet in closed session after conclusion of the regular meeting to discuss the City Manager’s evaluation.

ADJOURN

Note: The City of Berkley will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired and audio tapes of printed materials being considered at the meeting, to individuals with disabilities at the meeting upon four working days notice to the City. Individuals with disabilities requiring auxiliary aids or services should contact the City by writing or calling: Phommady A. Boucher, ADA Contact, Berkley City Hall, 3338 Coolidge Highway, Berkley, MI 48072 (1-248-658-3310).

Note: Official minutes of City Council Meetings and supporting documents for Council packets are available for public review in the City Clerk’s Office during normal working hours.
THE TWENTIETH REGULAR MEETING OF THE THIRTY-SEVENTH COUNCIL OF THE CITY OF BERKLEY, MICHIGAN WAS CALLED TO ORDER AT 7:00 PM ON MONDAY, DECEMBER 17, 2018 BY MAYOR TERBRACK

PRESENT:  
Steve Baker   Dennis Hennen  
Jack Blanchard   Eileen Steadman  
Bridget Dean   Daniel Terbrack  
Ross Gavin

APPROVAL OF AGENDA  
Councilmember Hennen moved to approve the Agenda.  
Seconded by Mayor Pro Tem Baker.  
Ayes: Blanchard, Dean, Gavin, Hennen, Steadman, Baker, and Terbrack  
Nays: None  
Motion Approved.

INVOCATION PASTOR ZACK DUNLAP

CITIZENS COMMENTS  
Dan Mihaescu, Berkley resident at 1440 Harvard and the Chairperson of the Beautification Advisory Committee, gave a PowerPoint presentation of the homes nominated for the 7th Annual Holiday Spirit Award. The winners are as following and in no particular order:

2617 Phillips   3540 Cummings  
1616 Wiltshire   4252 Prairie  
1615 Wiltshire   4039 Kenmore  
2139 Harvard    3665 Buckingham  
2118 Dorothea   2343 Phillips  
2800 Kenmore   2814 Mortenson  
2740 Griffith  1239 Cambridge  
3162 Bacon  3973 Phillips  
4191 Ellwood

Kevin McNulty, Berkley resident at 1975 Royal, expressed his concerns with a road diet on Coolidge Highway.

Consent Agenda  
Councilmember Gavin moved to approve the following Consent Agenda, seconded by Councilmember Blanchard:

APPROVAL OF THE MINUTES: Matter of approving the minutes of the 37th City Council meeting on Monday, December 3, 2018.

WARRANT: Matter of approving Warrant No. 1333.

Ayes: Dean, Gavin, Hennen, Steadman, Baker, Blanchard, and Terbrack  
Nays: None  
Motion Approved.

Regular Agenda
RECOGNITIONS/PRESENTATIONS: Matter of any recognitions or presentations from the Consent Agenda.

MOTION NO. M-85-18: Matter of approving Special Land Use Approval (SU-02-18), to Michigan State University Federal Credit Union, who is proposing to use the property at 3165 Twelve Mile Rd., as a bank in the Downtown District.
Councilmember Steadman moved to approve Motion No. M-85-18 with an amendment to include conditions recommended by the Planning Commission.
Seconded by Councilmember Dean.
Ayes: Gavin, Hennen, Steadman, Baker, Blanchard, Dean, and Terbrack
Nays: None
Motion Approved.

Seconded by Councilmember Dean.
Councilmember Hennen moved to approve Resolution No. R-39-18 with an amendment to postpone.
Seconded by Councilmember Blanchard.
Ayes: Hennen, Steadman, Blanchard, and Gavin
Nays: Baker, Dean, and Terbrack
Motion Approved.

Mayor Pro Tem Baker moved to approve Resolution No. R-39-18 with an amendment to change the Therefore Section 1 and remove the “.” at the end and add “; and” to the end (to reflect the addition of a second section). Also, add a new SECTION 2: That the Council requires comprehensive metrics, timelines, and communication plans to be refined and included as part of any bid package and public outreach efforts prior to beginning any temporary road re-striping experiments, thereby ensuring the City understands what will be tracked and how the data will be assessed.
Seconded by Councilmember Dean.
Ayes: Steadman, Baker, Dean, and Gavin
Nays: Blanchard, Hennen, and Terbrack
Motion failed because the motion to postpone was approved beforehand.

Seconded by Councilmember Dean.
Ayes: Baker, Blanchard, Dean, Gavin, and Steadman.
Nays: Hennen and Terbrack
Motion failed because the motion to postpone was approved beforehand.

COMMUNICATIONS:

COUNCILMEMBER BLANCHARD: provided the residents with a Carbon Monoxide Safety handout and a Portable Generators and Winter Storms handout. He reminded everyone to stay safe and be careful this winter season. Councilmember Blanchard wished everyone a Merry Christmas.

COUNCILMEMBER STEADMAN: encourages everyone to visit the Berkley Library website at www.berkleylib.mi.us for program information. She thanked Dan and Anela Mihaescu for the Holiday Spirit Award presentation. Councilmembr Steadman informed everyone that the Citizens
Engagement Advisory Committee will be meeting on Wednesday, January 2, 2019 to discuss communication of upcoming events in the community. She wished everyone Happy Holidays.

**MAYOR PRO TEM BAKER:** reminded everyone about the Downtown Development Authority (DDA) MerriMonth. He thanked all the attendees at the James O'Donnell MerriMusic Jazz Concert and the MerriMix & Mingle Ugly Sweater Shindig. Mayor Pro Tem Baker recognized the Library Board members for their participation with the jazz concert. In collaboration with the DDA, the Berkley Public Library is accepting can goods for the Merrily We Share Food Drive until Saturday, December 22, 2018. The holiday window decorating contest voting online will continue until Monday, December 24, 2018, and more information can be found on their website at www.downtownberkley.com. Mayor Pro Tem Baker thanked the Mom’s Club of Berkley for bringing a group of kids to visit the Historical Museum. The Historical Committee welcomes new members to help preserve the city’s past as they pave a new way forward. The museum hours are Wednesdays from 10 a.m. to 1 p.m., Sundays from 2 p.m. to 4 p.m., and appointments are available for groups. Mayor Pro Tem Baker briefly spoke about the Technology Advisory Committees tour of public offices to review their technology needs and short/long term goals. He thanked Public Works Director Derrick Schueller, Public Works Foreman Shawn Young, and the department for the tour of their buildings. Mayor Pro Tem Baker shared a quote from British Politician Winston Churchill, “Christmas is a season not only of rejoicing but of reflection.” He hopes that we all reflect on this 2018 year and what 2019 has to offer. Mayor Pro Tem Baker wished everyone a safe holiday.

**COUNCILMEMBER DEAN:** on behalf of Councilmember Blanchard and Councilmember Gavin, extended a huge thank you to Farina’s for hosting the 11th Annual Senior Luncheon on Monday, December 10, 2018. She announced that the registration for winter programs is now open through the Parks and Recreation Department. The tickets are now available for purchase for the Daddy Daughter Dance on Saturday, January 19, 2019 and Mother Son Dance on Saturday, January 26, 2019. Councilmember Dean recognized the Friends of the Parks and Recreation for their donations to the open gym playgroup. She wished everyone a Merry Christmas, Happy Holidays, and a healthy happy prosperous New Year.

**COUNCILMEMBER HENNEN:** informed everyone that the Tree Boards next meeting is on Monday, January 14, 2019 and the Environmental Advisory Committee’s next meeting is on Thursday, January 23, 2019. His next Talk with Dennis is on Tuesday, January 8, 2019 at the Berkley Public Library between the hours of 6 p.m. to 8 p.m.

**COUNCILMEMBER GAVIN:** gave a brief update from the Coolidge Traffic Committee in regards to Consumer Energy gas line update and the Coolidge Road Diet public input. He spoke briefly about the Planning Commission to include the special land use approval on tonight's agenda, the design overlay district, and façade change ordinance. The Zoning Board of Appeals did not meet in the month of December. Councilmember Gavin wished everyone a great holiday.

**CITY MANAGER BAUMGARTEN:** thanked all the volunteers at the Berkley Historical Museum for all their hard work. He congratulated the homeowners who received the Holiday Spirit Award tonight and recognized his neighbor for the impressive Santa Claus display. On behalf of City Administration, City Hall, and the Baumgarten family, he wished everyone a Merry Christmas, Happy Holidays, and safe and prosperous 2019.

**CITY CLERK BOUCHER:** wished everyone Happy Holidays.

**CITY ATTORNEY STARAN:** wished everyone a festive, safe and reflective holiday season. Happy New Year and enjoy the time spent with your love ones.
MAYOR TERBRACK: announced that an Open House is scheduled for Tuesday, February 19, 2019 to discuss commercial marihuana dispensaries in the city. City Manager Baumgarten confirmed that there will be a speaker from the Michigan Municipal League (MML). Mayor Terbrack briefly spoke about the two unfortunate accidents that occurred these past two weeks at our new crosswalks on Coolidge Highway. As of tonight, the crosswalks are deemed not operational by our Public Safety Director Matt Koehn and barricades have been put in place for our safety. Mayor Terbrack wished everyone a Merry Christmas and Happy Holidays. Have a safe wonderful prosperous New Year.

COUNCIL MEETING ADJOURNMENT:
Motion by Mayor Pro Tem Baker to adjourn the regular meeting at 9:54 PM
Seconded by Councilmember Dean.
Ayes: Blanchard, Dean, Gavin, Hennen, Steadman, Baker, and Terbrack
Nays: None
Motion Approved.
January 7, 2019 City Council Meeting

Moved by Councilmember __________ and seconded by Councilmember __________ to authorize Stephen Siller Tunnel to Towers to conduct a 5K run on Sunday, October 6, 2019 from 6 a.m. to 2 p.m. beginning at Hurley Field at Anderson Middle School. During the event, representatives of the Stephen Siller Tunnel to Towers will provide volunteers to assist with the event.

Ayes:

Nays:
DATE:    January 3, 2019
TO:      Matthew Baumgarten, City Manager
FROM:    Matt Koehn, Director of Public Safety
SUBJECT: 2019 Berkley Stephen Siller Tunnel to Towers 5K

Mr. Tim Aten, the Co-Director of the Berkley Tunnel to Towers 5K, has submitted an application to conduct the 2019 Berkley Stephen Siller Tunnel to Towers 5K. The event will take place on Sunday, October 6, 2019, from 6 AM to 2 PM, with the actual run occurring over an approximately one hour period in the morning. The event will begin and end at Hurley Field at Anderson Middle School. The route will take participants from Hurley Field, west on Oxford to Elwood, south on Elwood to Cambridge, east on Cambridge to Gardner, and north on Gardner back to Hurley Field (see attached map). This is the same route that has been used for previous events. No streets will be closed for the event and the participants will run/walk on the right side of the road, similar to past events.

The Department of Public Safety has reviewed the application. The Stephen Siller Tunnel to Towers Foundation is a 501(c)(3). All funds raised by the Berkley Tunnel to Towers 5K are forwarded to the Stephen Siller Tunnel to Towers Foundation. The funds are used to assist surviving family members of military personnel and first responders killed in the line of duty. In 2018, the Berkley event netted $28,362.02, which was an increase of $12,104.63 from the 2017 net ($16,257.39) that was donated. The Berkley Tunnel to Towers 5K will have numerous volunteers to assist with the event. The application contains all of the necessary accompanying documents.

The Department spoke to Reverend Peter Moore from Greenfield Presbyterian Church, which is located at Greenfield and Oxford. Rev. Moore was advised of the date of this event and was told that the DPS would be in contact with him closer to the event so that his church members can be advised of the run. DPS and DPW personnel will work with the Church to assure that their members can get to the services. Social media and a City Email will also be used to make area residents aware of this event.

The Department of Public Safety will monitor and participate in this event and recommends approval of the Berkley Stephen Siller Tunnel to Towers 5K. A Traffic Control Order (TCO) will be prepared for the event.
### CITY OF BERKLEY

#### CHARITABLE SOLICITATION

#### PERMIT APPLICATION DISPOSITION CHECKLIST

**Event Name:** Berkley Stephen Siller Tunnel To Towers 5K

<table>
<thead>
<tr>
<th>Event Date(s)</th>
<th>Location(s)</th>
<th>Event Hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>October 6, 2019</td>
<td>Hurley Field, Anderson Middle School &amp; area</td>
<td>6am – 2pm</td>
</tr>
</tbody>
</table>

**ORGANIZATION:**

<table>
<thead>
<tr>
<th>Organization Name:</th>
<th>Stephen Siller Foundation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Headquarters Street Address:</td>
<td>2361 Hylan Blvd</td>
</tr>
<tr>
<td>City:</td>
<td>Staten Island</td>
</tr>
<tr>
<td>State:</td>
<td>NY</td>
</tr>
<tr>
<td>Zip Code:</td>
<td>10306</td>
</tr>
<tr>
<td>Phone:</td>
<td>718-987-1931</td>
</tr>
</tbody>
</table>

**Website:** [Tunnel2towers.org](http://Tunnel2towers.org)

**Tax Exempt Status (as defined by the US Internal Revenue Service):**

- Non-Profit: x YES NO
- 501(c)(3): x YES NO
- N/A: x YES NO
- Other (specify):

The following documents have been submitted:

- Completed application: x YES NO
- Valid IRS tax exempt verification: x YES NO
- Financial report for the preceding fiscal year: x YES NO
- Proof of Commercial Liability Coverage: x YES NO
- Estimated cost to execute the solicitation / event: x YES NO
- Charitable Solicitation / Special Event Hold Harmless Agreement: x YES NO

**Application reviewed by:**

- Public Safety: M. Keller 1-3-19
- Public Works: 1-4-19
- Building Official: T. Mclanahan 1-4-19

**Presented to City Council:**

<table>
<thead>
<tr>
<th>Date:</th>
<th>Approved:</th>
<th>Organization Notified</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>x YES NO</td>
<td>x YES NO</td>
</tr>
</tbody>
</table>

**Comments:**

---

**Address:**

2361 Hylan Blvd

Staten Island, NY 10306

**Phone:**

718-987-1931

**Website:**

[Tunnel2towers.org](http://Tunnel2towers.org)
Event Name:

Berkley Stephen Sillers Tunnel To Towers 5K

Event Date(s) Location(s) Event Hours
October 6, 2019 Hurley Field, Anderson Middle School & area 6am – 2pm

ORGANIZATION:

Name:
Stephen Siller Foundation

Street Address:
2361 Hylan Blvd

City: State: Zip Code: Phone:
Staten Island NY 10306 718-987-1931

Website:
Tunnel2towers.org

Tax Exempt Status (as defined by the U.S. Internal Revenue Service):
Non-Profit 501(c)(3) X N/A Other (specify)

CONTACT PERSON (Authorized Representative)

Name Tim Aten Title Co-Director Phone
Email

AGENTS/OFFICERS OF ORGANIZATION

Name Jen Ivey Title Co-Director Phone
Address

Name Liz Curtis Title Natl Coordinator Phone
Address

Name Title Phone
Address

Describe the type and purpose of the solicitation and how collected funds be used.

Proceeds support first responders and military personnel. Builds smart homes for catastrophically disabled veterans, writes off mortgages of Gold Star families.
The amount of wages, fees, commissions, expenses to be paid to any person in connection with the solicitation, together with the manner in which such wages, fees, expenses, commissions are to be paid:

Expenses in 2018 were around $6,000. Fees included advertising, timekeeping, printing, entertainment, food for volunteers.

Estimated cost of the solicitation

$6,000

The following documents must be submitted with this application, pursuant to Chapter 34 Charitable Solicitations, Article I of the City of Berkley Code of Ordinance:
1. Internal Revenue Service tax exempt documentation for the organization
2. Organization’s financial report for the preceding fiscal year
3. Proof of Commercial Liability Coverage on an “occurrence basis” with no less than $500,000 per occurrence and/or combined single limit, Personal Injury, Bodily Injury, and Property Damage. The insured endorsement portion of the Certificate of Insurance must read EXACTLY as follows:
   The City of Berkley, including all elected and appointed officials, all employees, and volunteers, all boards, commissions, and/or authorities and their board members, employees, and volunteers.
4. Charitable Solicitation Hold Harmless Agreement signed by an authorized representative of the organization.

If the above information cannot be furnished, please provide a detailed statement of the reason.

I hereby solemnly swear that no solicitor will be paid, either directly or indirectly, a salary, wage, commission or benefit for his/her service.

Applicant Signature

Print Name/Title

Date

For City Use Only

Approved by

Title

Signature

Date
CITY OF BERKLEY MICHIGAN
TEMPORARY TRAFFIC CONTROL ORDER

In accordance with the duly adopted Uniform Traffic Code for Cities, Townships, and Villages, the Traffic Engineer hereby issues the following Temporary Traffic Control Order.

**Film Permit Applicant:** Please provide the information requested in the shaded area. Submit this page with your application.

<table>
<thead>
<tr>
<th>PROJECT NAME:</th>
<th>Berkley Stephen Siller Tunnel To Towers 5K</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location</td>
<td>Hurley Field, Anderson Middle School, Oxford Rd, Ellwood Ave, Cambridge Rd</td>
</tr>
<tr>
<td>DATE/S/TIMES:</td>
<td>October 6, 2019 6am – 2pm</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>RESPONSIBLE PARTY:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name: Stephen Siller Tunnel To Towers</td>
</tr>
<tr>
<td>Street Address: 2361 Hyland Blvd</td>
</tr>
<tr>
<td>City/State/ZIP: Staten Island, NY 10306</td>
</tr>
<tr>
<td>Contact Phone: 718-987-1931</td>
</tr>
<tr>
<td>Email address: <a href="mailto:berkley@tunnel2towers.org">berkley@tunnel2towers.org</a></td>
</tr>
</tbody>
</table>

**For Official Use Only:**

<table>
<thead>
<tr>
<th>Action required by City:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Attach additional pages if needed)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Approved by: (Print name and title below)</th>
<th>Signature:</th>
<th>Date:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Safety</td>
<td>M. K.</td>
<td>1-3-19</td>
</tr>
<tr>
<td>Public Works</td>
<td>Comment by TCO.</td>
<td>1-4-19</td>
</tr>
<tr>
<td>Building Official</td>
<td>T. M. Jan</td>
<td>1-4-19</td>
</tr>
</tbody>
</table>

**Original – Traffic Control File**

Return copy of completed form to City Clerk’s Office
STEPHEN SILLER TUNNEL TO TOWERS FOUNDATION
% DAN ROGERS
2361 HYLAN BLVD
STATEN ISLAND NY 10306-3100

Employer ID Number: 02-0554654
Form 990 required: Yes

Dear Taxpayer:

This is in response to your request dated Jan. 05, 2017, regarding your tax-exempt status.

We issued you a determination letter in February 2003, recognizing you as tax-exempt under Internal Revenue Code (IRC) Section 501(c)(3).

Our records also indicate you're not a private foundation as defined under IRC Section 509(a) because you're described in IRC Sections 509(a)(1) and 170(b)(1)(A)(vi).

Donors can deduct contributions they make to you as provided in IRC Section 170. You're also qualified to receive tax deductible bequests, legacies, devises, transfers, or gifts under IRC Sections 2055, 2106, and 2522.

In the heading of this letter, we indicated whether you must file an annual information return. If a return is required, you must file Form 990, 990-EZ, 990-N, or 990-PF by the 15th day of the fifth month after the end of your annual accounting period. IRC Section 6033(j) provides that, if you don't file a required annual information return or notice for three consecutive years, your exempt status will be automatically revoked on the filing due date of the third required return or notice.

For tax forms, instructions, and publications, visit www.irs.gov or call 1-800-TAX-FORM (1-800-829-3676).

If you have questions, call 1-877-829-5500 between 8 a.m. and 5 p.m., local time, Monday through Friday (Alaska and Hawaii follow Pacific Time).
Dear Taxpayer:

This is in response to your request dated Jan. 05, 2017, regarding your tax-exempt status.

We issued you a determination letter in February 2003, recognizing you as tax-exempt under Internal Revenue Code (IRC) Section 501(c)(3).

Our records also indicate you're not a private foundation as defined under IRC Section 509(a) because you're described in IRC Sections 509(a)(1) and 170(b)(1)(A)(vi).

Donors can deduct contributions they make to you as provided in IRC Section 170. You're also qualified to receive tax deductible bequests, legacies, devises, transfers, or gifts under IRC Sections 2055, 2106, and 2522.

In the heading of this letter, we indicated whether you must file an annual information return. If a return is required, you must file Form 990, 990-EZ, 990-N, or 990-PF by the 15th day of the fifth month after the end of your annual accounting period. IRC Section 6033(j) provides that, if you don't file a required annual information return or notice for three consecutive years, your exempt status will be automatically revoked on the filing due date of the third required return or notice.

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If you have questions, call 1-877-829-5500 between 8 a.m. and 5 p.m., local time, Monday through Friday (Alaska and Hawaii follow Pacific Time).
Sincerely yours,

Jeffrey I. Cooper
Director, ED Rulings & Agreement
Stephen Siller Tunnel to Towers Foundation

Financial Statements

December 31, 2017

(With Independent Auditor’s Report Thereon)
Stephen Siller Tunnel to Towers Foundation

Table of Contents

Independent Auditor’s Report .................................................. 1 - 2

Statement of Financial Position
December 31, 2017 ................................................................. 3

Statement of Activities
for the Year Ended December 31, 2017 .................................. 4

Statement of Cash Flows
for the Year Ended December 31, 2017 .................................. 5

Statement of Functional Expenses
for the Year Ended December 31, 2017 ................................. 6

Notes to Financial Statements ................................................. 7 - 18
Independent Auditor’s Report

Board of Directors
Stephen Siller Tunnel to Towers Foundation

Report on the Financial Statements

We have audited the accompanying financial statements of Stephen Siller Tunnel to Towers Foundation, which comprise the statement of financial position as of December 31, 2017, and the related statement of activities, cash flows and functional expenses for the year then ended, and the related notes to the financial statements.

Management’s Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor’s Responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity’s preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity’s internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

1675 Richmond Road
Staten Island, NY 10304
Tel: 718-351-2233 / 888-417-6679

www.dkscpa.com

10 East 39th Street – 4th Floor
New York, NY 10016
Fax: 718-979-2435
We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Stephen Siller Tunnel to Towers Foundation as of December 31, 2017, and the changes in its net assets and its cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America.
## Stephen Siller Tunnel to Towers Foundation

### Statement of Financial Position

**December 31, 2017**

### Assets

<table>
<thead>
<tr>
<th>Current Assets:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash and Cash Equivalents</td>
<td>$3,731,819</td>
</tr>
<tr>
<td>Investments</td>
<td>473,554</td>
</tr>
<tr>
<td>Contributions Receivable</td>
<td>175,900</td>
</tr>
<tr>
<td>Prepaid Expenses</td>
<td>125,880</td>
</tr>
<tr>
<td>Restricted Cash</td>
<td>2,745,865</td>
</tr>
<tr>
<td><strong>Total Current Assets</strong></td>
<td><strong>$7,253,018</strong></td>
</tr>
<tr>
<td>Fixed Assets:</td>
<td></td>
</tr>
<tr>
<td>Fixed Assets - Net of Accumulated Depreciation</td>
<td>640,153</td>
</tr>
<tr>
<td><strong>Total Fixed Assets</strong></td>
<td><strong>640,153</strong></td>
</tr>
<tr>
<td>Other Assets:</td>
<td></td>
</tr>
<tr>
<td>Other Assets - Net of Accumulated Amortization</td>
<td>46,022</td>
</tr>
<tr>
<td>Security Deposit</td>
<td>16,013</td>
</tr>
<tr>
<td><strong>Total Other Assets</strong></td>
<td><strong>62,035</strong></td>
</tr>
<tr>
<td><strong>Total Assets</strong></td>
<td><strong>$7,955,206</strong></td>
</tr>
</tbody>
</table>

### Liabilities and Net Assets

<table>
<thead>
<tr>
<th>Current Liabilities:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Accounts Payable and Accrued Expenses</td>
<td>$139,739</td>
</tr>
<tr>
<td>Current Portion of Capital Lease Payable</td>
<td>35,562</td>
</tr>
<tr>
<td><strong>Total Current Liabilities</strong></td>
<td><strong>$175,301</strong></td>
</tr>
<tr>
<td>Total Liabilities</td>
<td>175,301</td>
</tr>
<tr>
<td>Net Assets:</td>
<td></td>
</tr>
<tr>
<td>Unrestricted</td>
<td></td>
</tr>
<tr>
<td>Operating</td>
<td>4,379,993</td>
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<tr>
<td>Board Designated Endowment</td>
<td>478,147</td>
</tr>
<tr>
<td><strong>Total Unrestricted</strong></td>
<td>4,858,140</td>
</tr>
<tr>
<td>Temporarily Restricted</td>
<td>2,921,765</td>
</tr>
<tr>
<td><strong>Total Net Assets</strong></td>
<td><strong>7,779,905</strong></td>
</tr>
<tr>
<td><strong>Total Liabilities and Net Assets</strong></td>
<td><strong>$7,955,206</strong></td>
</tr>
</tbody>
</table>

The Accompanying Notes are an Integral Part of these Financial Statements.  (3)
Stephen Siller Tunnel to Towers Foundation

Statement of Activities
for the Year Ended December 31, 2017

<table>
<thead>
<tr>
<th>Support and Revenue:</th>
<th>Unrestricted</th>
<th>Temporarily Restricted</th>
<th>Permanently Restricted</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Support:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Direct Public Support</td>
<td>$ 9,052,445</td>
<td>$ 1,365,168</td>
<td></td>
<td>$ 10,417,613</td>
</tr>
<tr>
<td>In-Kind Donations</td>
<td>4,312,007</td>
<td></td>
<td>1,556,597</td>
<td>6,069,204</td>
</tr>
<tr>
<td>Net Assets Released from Restriction</td>
<td>2,170,821</td>
<td>(2,135,186)</td>
<td></td>
<td>$ (15,635)</td>
</tr>
<tr>
<td><strong>Total Support</strong></td>
<td>15,735,873</td>
<td></td>
<td>(15,635)</td>
<td>16,486,817</td>
</tr>
<tr>
<td><strong>Revenue:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tunnel to Towers Run</td>
<td>1,950,195</td>
<td></td>
<td></td>
<td>1,950,195</td>
</tr>
<tr>
<td>Runs Across America</td>
<td>969,210</td>
<td></td>
<td></td>
<td>969,210</td>
</tr>
<tr>
<td>Building for America’s Bravest</td>
<td>911,522</td>
<td></td>
<td></td>
<td>911,522</td>
</tr>
<tr>
<td>Stair Climb</td>
<td>591,468</td>
<td></td>
<td></td>
<td>591,468</td>
</tr>
<tr>
<td>Special Event Revenue - Gala</td>
<td>$ 512,768</td>
<td></td>
<td></td>
<td>$ 512,768</td>
</tr>
<tr>
<td>Less: Direct Cost of Benefit to Donors</td>
<td>187,058</td>
<td></td>
<td></td>
<td>187,058</td>
</tr>
<tr>
<td><strong>Net Special Event Revenue</strong></td>
<td>325,710</td>
<td></td>
<td></td>
<td>325,710</td>
</tr>
<tr>
<td>Fundraising Revenue</td>
<td>767,038</td>
<td></td>
<td></td>
<td>767,038</td>
</tr>
<tr>
<td>Interest Income</td>
<td>15,915</td>
<td></td>
<td></td>
<td>15,915</td>
</tr>
<tr>
<td>Unrealized Gain on Investments</td>
<td>23,493</td>
<td></td>
<td></td>
<td>23,493</td>
</tr>
<tr>
<td>Other Revenue</td>
<td>15,237</td>
<td></td>
<td></td>
<td>15,237</td>
</tr>
<tr>
<td><strong>Total Revenue</strong></td>
<td>5,569,788</td>
<td></td>
<td></td>
<td>5,569,788</td>
</tr>
<tr>
<td><strong>Total Support and Revenue</strong></td>
<td>21,305,661</td>
<td></td>
<td>(15,635)</td>
<td>22,056,605</td>
</tr>
<tr>
<td><strong>Expenses:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Program Services</td>
<td>8,770,226</td>
<td></td>
<td></td>
<td>8,770,226</td>
</tr>
<tr>
<td>Smart Homes</td>
<td>9,556,368</td>
<td></td>
<td></td>
<td>9,556,368</td>
</tr>
<tr>
<td><strong>Total Program Services</strong></td>
<td>18,326,594</td>
<td></td>
<td></td>
<td>18,326,594</td>
</tr>
<tr>
<td>Fundraising</td>
<td>1,097,860</td>
<td></td>
<td></td>
<td>1,097,860</td>
</tr>
<tr>
<td>Management and General</td>
<td>500,633</td>
<td></td>
<td></td>
<td>500,633</td>
</tr>
<tr>
<td><strong>Total Expenses</strong></td>
<td>19,925,087</td>
<td></td>
<td></td>
<td>19,925,087</td>
</tr>
<tr>
<td><strong>Change in Net Assets</strong></td>
<td>1,380,574</td>
<td>766,579</td>
<td>(15,635)</td>
<td>2,131,518</td>
</tr>
<tr>
<td><strong>Net Assets, Beginning of Year</strong></td>
<td>3,477,566</td>
<td>2,155,186</td>
<td>15,635</td>
<td>5,648,387</td>
</tr>
<tr>
<td><strong>Net Assets, End of Year</strong></td>
<td>$ 4,858,140</td>
<td>$ 2,921,765</td>
<td>$ 0</td>
<td>$ 7,779,905</td>
</tr>
</tbody>
</table>

The Accompanying Notes are an Integral Part of these Financial Statements.
Stephen Siller Tunnel to Towers Foundation  
Statement of Cash Flows  
for the Year Ended December 31, 2017

Cash Flows from Operating Activities:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Change in Net Assets</td>
<td>$2,131,518</td>
</tr>
<tr>
<td>Adjustments to Reconcile Change in Net Assets to Net Cash Provided By Operating Activities:</td>
<td></td>
</tr>
<tr>
<td>Depreciation and Amortization</td>
<td>$150,502</td>
</tr>
<tr>
<td>Loss on Disposal of Assets</td>
<td>4,946</td>
</tr>
<tr>
<td>(Increase) in Operating Assets</td>
<td></td>
</tr>
<tr>
<td>Accounts Receivable</td>
<td>(175,900)</td>
</tr>
<tr>
<td>Prepaid Expense</td>
<td>(80,151)</td>
</tr>
<tr>
<td>Security Deposit</td>
<td>(6,013)</td>
</tr>
<tr>
<td>Decrease in Operating Liabilities</td>
<td></td>
</tr>
<tr>
<td>Accounts Payable</td>
<td>(98,587)</td>
</tr>
<tr>
<td>Total Adjustments</td>
<td>(205,203)</td>
</tr>
<tr>
<td>Net Cash Provided By Operating Activities</td>
<td>1,926,315</td>
</tr>
</tbody>
</table>

Cash Flows from Investing Activities:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purchase of Investments</td>
<td>(473,554)</td>
</tr>
<tr>
<td>Purchase of Fixed Assets</td>
<td>(120,600)</td>
</tr>
<tr>
<td>Net Cash Used In Investing Activities</td>
<td>(594,154)</td>
</tr>
</tbody>
</table>

Cash Flows from Financing Activities:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Payment of Capital Lease Payable</td>
<td>(48,684)</td>
</tr>
<tr>
<td>Net Cash Used In Financing Activities</td>
<td>(48,684)</td>
</tr>
</tbody>
</table>

Net Increase in Cash, Cash Equivalents, and Restricted Cash

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash, Cash Equivalents, and Restricted Cash - Beginning of Year</td>
<td>5,194,207</td>
</tr>
<tr>
<td>Cash, Cash Equivalents, and Restricted Cash - End of Year</td>
<td>6,477,684</td>
</tr>
</tbody>
</table>

Supplemental Cash Flow Information:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash Paid for Interest</td>
<td>$6,984</td>
</tr>
</tbody>
</table>

The Accompanying Notes are an Integral Part of these Financial Statements.
### Program Services

<table>
<thead>
<tr>
<th>Category</th>
<th>Never Forget</th>
<th>Smart Homes</th>
<th>Total Program Services</th>
<th>Fundraising</th>
<th>Management and General</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaries</td>
<td>$622,701</td>
<td>$828,322</td>
<td>$1,481,023</td>
<td>$309,240</td>
<td>$256,105</td>
<td>$2,046,368</td>
</tr>
<tr>
<td>Payroll Taxes and Benefits</td>
<td>147,925</td>
<td>226,012</td>
<td>373,937</td>
<td>73,081</td>
<td>76,281</td>
<td>523,219</td>
</tr>
<tr>
<td>Total Salaries and Payroll Taxes</td>
<td>800,626</td>
<td>1,054,334</td>
<td>1,854,960</td>
<td>382,241</td>
<td>332,386</td>
<td>2,569,587</td>
</tr>
<tr>
<td>Advertising and Marketing</td>
<td>2,971,159</td>
<td>37,651</td>
<td>3,008,810</td>
<td>47,465</td>
<td>10,744</td>
<td>3,067,019</td>
</tr>
<tr>
<td>Bank Charges</td>
<td>109,022</td>
<td>7,330</td>
<td>116,352</td>
<td>12,086</td>
<td>5,621</td>
<td>134,059</td>
</tr>
<tr>
<td>Building Maintenance</td>
<td>7,820</td>
<td>7,959</td>
<td>15,779</td>
<td>2,609</td>
<td>2,477</td>
<td>20,865</td>
</tr>
<tr>
<td>Computer Expense</td>
<td>35,500</td>
<td>35,364</td>
<td>70,864</td>
<td>11,682</td>
<td>9,914</td>
<td>92,460</td>
</tr>
<tr>
<td>Consultants and Contractors</td>
<td>273,211</td>
<td>74,664</td>
<td>347,875</td>
<td>35,024</td>
<td>257</td>
<td>383,156</td>
</tr>
<tr>
<td>Utilities</td>
<td>4,068</td>
<td>5,504</td>
<td>9,572</td>
<td>1,757</td>
<td>1,646</td>
<td>12,975</td>
</tr>
<tr>
<td>Event Production</td>
<td>85,291</td>
<td>85,291</td>
<td>140,029</td>
<td>4,071</td>
<td>4,071</td>
<td>229,391</td>
</tr>
<tr>
<td>Food</td>
<td>117,810</td>
<td>32,682</td>
<td>150,672</td>
<td>1,744</td>
<td>26</td>
<td>152,442</td>
</tr>
<tr>
<td>Insurance</td>
<td>22,612</td>
<td>31,263</td>
<td>53,875</td>
<td>8,186</td>
<td>15,780</td>
<td>77,841</td>
</tr>
<tr>
<td>Meetings</td>
<td>23,299</td>
<td>14,932</td>
<td>38,231</td>
<td>6,335</td>
<td>2,040</td>
<td>46,606</td>
</tr>
<tr>
<td>Other Expense</td>
<td>5,573</td>
<td>3,126</td>
<td>8,770</td>
<td>2,040</td>
<td>6,279</td>
<td>6,279</td>
</tr>
<tr>
<td>Postage</td>
<td>12,207</td>
<td>9,328</td>
<td>21,535</td>
<td>3,580</td>
<td>2,021</td>
<td>27,136</td>
</tr>
<tr>
<td>Professional Services</td>
<td>216,962</td>
<td>88,037</td>
<td>305,019</td>
<td>1,153</td>
<td>30,558</td>
<td>336,730</td>
</tr>
<tr>
<td>Rent</td>
<td>60,181</td>
<td>75,528</td>
<td>135,709</td>
<td>23,898</td>
<td>22,113</td>
<td>181,720</td>
</tr>
<tr>
<td>Storage</td>
<td>1,751</td>
<td>10,919</td>
<td>12,670</td>
<td>722</td>
<td>1,136</td>
<td>14,528</td>
</tr>
<tr>
<td>Supplies</td>
<td>41,303</td>
<td>73,848</td>
<td>115,151</td>
<td>14,598</td>
<td>30,091</td>
<td>159,840</td>
</tr>
<tr>
<td>Telephone</td>
<td>3,619</td>
<td>4,806</td>
<td>8,425</td>
<td>1,583</td>
<td>1,477</td>
<td>11,485</td>
</tr>
<tr>
<td>Equipment</td>
<td>221,904</td>
<td>2,549</td>
<td>224,453</td>
<td>224,453</td>
<td>224,453</td>
<td>224,453</td>
</tr>
<tr>
<td>Taxes and Permits</td>
<td>15,328</td>
<td>45,746</td>
<td>61,074</td>
<td>107</td>
<td>6,367</td>
<td>67,548</td>
</tr>
<tr>
<td>Travel</td>
<td>298,190</td>
<td>121,675</td>
<td>419,865</td>
<td>38,782</td>
<td>10,375</td>
<td>469,022</td>
</tr>
<tr>
<td>Venue</td>
<td>75,573</td>
<td>75,573</td>
<td>151,146</td>
<td>359,025</td>
<td>434,598</td>
<td>434,598</td>
</tr>
<tr>
<td>Donations</td>
<td>2,638,812</td>
<td>2,638,812</td>
<td>5,277,624</td>
<td>2,684,812</td>
<td>5,277,624</td>
<td>19,925,087</td>
</tr>
<tr>
<td>New York City Run Costs</td>
<td>568,408</td>
<td>568,408</td>
<td>1,136,816</td>
<td>568,408</td>
<td>1,136,816</td>
<td>3,274,495</td>
</tr>
<tr>
<td>BFAB-Homes</td>
<td>2,683,260</td>
<td>2,683,260</td>
<td>5,366,520</td>
<td>2,683,260</td>
<td>5,366,520</td>
<td>10,024,133</td>
</tr>
<tr>
<td>BFAB-Land</td>
<td>5,111,081</td>
<td>5,111,081</td>
<td>10,222,162</td>
<td>5,111,081</td>
<td>10,222,162</td>
<td>20,334,276</td>
</tr>
<tr>
<td>Interest</td>
<td>6,984</td>
<td>6,984</td>
<td>6,984</td>
<td>6,984</td>
<td>6,984</td>
<td>6,984</td>
</tr>
<tr>
<td>Amortization</td>
<td>387</td>
<td>387</td>
<td>387</td>
<td>387</td>
<td>387</td>
<td>387</td>
</tr>
<tr>
<td>Depreciation</td>
<td>112,586</td>
<td>27,021</td>
<td>139,607</td>
<td>5,254</td>
<td>5,254</td>
<td>150,115</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$8,770,226</strong></td>
<td><strong>$9,556,368</strong></td>
<td><strong>$18,326,594</strong></td>
<td><strong>$1,097,860</strong></td>
<td><strong>$500,633</strong></td>
<td><strong>$19,925,087</strong></td>
</tr>
</tbody>
</table>

The Accompanying Notes are an Integral Part of these Financial Statements.
Stephen Siller Tunnel to Towers Foundation

Notes to Financial Statements

December 31, 2017

1. Nature of Activities

The Stephen Siller Tunnel to Towers Foundation (herein referred to as the “Foundation”) is a not-for-profit corporation that was established to support, recognize, and advocate for our first responders and catastrophically injured service members in honor of the legacy of Stephen Siller, who laid down his life to save others on September 11, 2001.

The Foundation accomplishes this mission through the following programs:

SMART HOMES PROGRAM:

Smart Homes program constructs custom, specially adapted Smart Homes for catastrophically injured service members returning home to restore their ability to live a life of independence.

NEVER FORGET PROGRAMS:

1) Tunnel To Towers Runs and Stair Climbs: The New York City and National Tunnel to Towers Run/Climb events are memorial events held in honor of Stephen Siller (FDNY), First Responders, and all who perished on 9/11. The Foundation has established these memorial events so as a nation We Will Never Forget!

2) 9/11 Never Forget Exhibit: Hosts a traveling exhibit as a tribute to all those who sacrificed on September 11, 2001. The memorial provides interactive education including: artifacts, news and video recordings, and live tours from FDNY heroes. The Foundation is committed to ensuring We Never Forget and that America’s youth understand the sacrifice of many on that day.

3) First Responders: The Foundation acknowledges and pays tribute to first responders who continue to sacrifice life and limb for our country. On a case by case basis, we offer financial support to the families of brave men and women killed in the line of duty.

4) Wings of a Hero: To help local community children in need who have lost a parent by providing assistance for school, counseling or other needs.
5) **Legacy Awards:** To assist families of injured or fallen first responders with their specific immediate financial needs.

6) **Memorial Stair Climb:** The Foundation commemorates all those who sacrificed their lives on September 11, 2001 by hosting a stair climb in the newly constructed One World Trade Center building.

2. **Summary of Significant Accounting Policies**

*Method of Accounting*

The financial statements have been prepared on the accrual basis of accounting in accordance with accounting principles generally accepted in the United States of America.

*Basis of Presentation*

The Foundation follows the Financial Accounting Standards Board Accounting Standards Codification (FASB ASC) standard related to financial statements of not-for-profit organizations. Under this standard, the Foundation is required to report information regarding its financial position and activities according to three classes of net assets: unrestricted net assets, temporarily restricted net assets and permanently restricted net assets. In addition, the Foundation is required to present a statement of cash flows.

The Foundation also follows the FASB standard related to accounting for contributions received and contributions made. In accordance with this standard, contributions received are recorded as unrestricted, temporarily restricted or permanently restricted support, depending on the existence and/or nature of any donor restrictions. In addition, the Foundation has received contributions with donor-imposed restrictions that result in temporarily restricted net assets.

It is the Foundation's policy to report donor-restricted contributions whose restrictions are met in the same reporting period as unrestricted support.
Stephen Siller Tunnel to Towers Foundation

Notes to Financial Statements
December 31, 2017

All donor-restricted contributions are reported as increases in temporarily or permanently restricted net assets depending on the nature of the restriction. When a restriction expires (that is, when a stipulated time restriction ends or purpose restriction is accomplished), temporarily restricted net assets are reclassified to unrestricted net assets and reported in the Statement of Activities as net assets released from restrictions.

Cash and Equivalents

Cash and cash equivalents include all monies in banks and highly liquid investments with maturity dates of less than three months. The carrying value of cash and cash equivalents approximates fair value because of the short maturities of those financial instruments.

Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

Investments

Investments are recorded at their fair values in the statement of financial position. Investment return/(loss) is reported in the statement of activities and consists of interest and dividend income and realized and unrealized capital gains and losses.

Interest Income

Income generated from the Foundation’s interest-bearing bank accounts is recognized when earned and reported as interest income on the Statement of Activities.
Stephen Siller Tunnel to Towers Foundation

Notes to Financial Statements
December 31, 2017

Property, Equipment and Depreciation

Acquisitions of property and equipment are recorded at the purchase price. Contributions of land, buildings and equipment are recorded at fair market value when title is conveyed.

Depreciation of property and equipment is recognized over the estimated useful lives of the respective assets on a straight-line basis as follows:

<table>
<thead>
<tr>
<th>Asset</th>
<th>Useful Life</th>
</tr>
</thead>
<tbody>
<tr>
<td>Buildings</td>
<td>3 Years</td>
</tr>
<tr>
<td>Building Improvements</td>
<td>5 to 10 Years</td>
</tr>
<tr>
<td>Furniture, Fixtures and Equipment</td>
<td>3 to 5 Years</td>
</tr>
</tbody>
</table>

Contributions

Contributions received are recorded as unrestricted, temporarily restricted, or permanently restricted support depending on the existence and/or nature of any donor restrictions.

Revenue and Revenue Recognition

Revenue is recognized when earned. Contributions are recognized when cash, securities or other assets, or an unconditional promise to give are received.

Income Tax Status

The Foundation is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code. The Foundation represents that, to the best of its knowledge, the tax-exempt status is still in effect at December 31, 2017.

The Foundation is subject to the provisions of the FASB ASC that addresses accounting and reporting for uncertainty in income taxes. Because of the Foundation's general tax-exempt status, this ASC topic has not had, and is not expected to have, a material impact on its financial statements.
Stephen Siller Tunnel to Towers Foundation

Notes to Financial Statements
December 31, 2017

In-Kind Donations

The Foundation receives donations of supplies, equipment, gift cards and advertising for their various programs and fundraisers. These donations are recorded at their fair market value at the time of the donation. In-kind donations for the year ended December 31, 2017 totaled $3,548,064 for Never Forget, $2,504,345 for Smart Homes, and $16,795 for Fundraising events.

Contributed Services

A significant portion of the Foundation’s functions is conducted by unpaid volunteers. The value of this contributed time is not reflected in the accompanying financial statements because the criteria for recognition under the FASB codification topic that addresses “Contributed Services” have not been met. This criterion requires that contributions of donated services be material in nature, that they create or enhance non-financial assets, or that they require specialized skills, are provided by individuals possessing those skills, and would typically need to be purchased if not provided by donation.

Advertising Expenses

Marketing and advertising costs are expensed as incurred. In 2017, the Foundation received in-kind donations of advertising for the Tunnel to Towers Run and Stair Climb, valued in total at $2,917,865. The Foundation spent an additional $149,154 on advertising and marketing. Total advertising and marketing expense for the year ended December 31, 2017 was $3,067,019.

Functional Allocation of Expenses

The costs of providing the various programs and other activities have been summarized on a functional basis in the Statement of Functional Expenses. Expenses that can be identified with a specific program and supporting service are allocated directly according to their expenditure classification. Other costs that are common to several functions are allocated among the programs and supporting services in reasonable ratios as determined by management.
Stephen Siller Tunnel to Towers Foundation

Notes to Financial Statements
December 31, 2017

Change in Accounting Principle

The Foundation’s financial statements were consolidated in prior years with Sandy Rebuilding Corp., which ceased operations during 2016. The Foundation was the sole shareholder of Sandy Rebuilding Corp. As of 2017, the financial statements of the Foundation are no longer required to be consolidated.

3. Cash, Cash Equivalents, and Restricted Cash

The following table provides a reconciliation of cash, cash equivalents, and restricted cash reported within the statements of financial position that sum to the total of the same such amounts shown in the statements of cash flows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash and Cash Equivalents</td>
<td>$3,731,819</td>
</tr>
<tr>
<td>Restricted Cash</td>
<td>$2,745,865</td>
</tr>
<tr>
<td>**Total Cash, Cash Equivalents, and</td>
<td></td>
</tr>
<tr>
<td>Restricted Cash Shown in the Statement of Cash Flows</td>
<td><strong>$6,477,684</strong></td>
</tr>
</tbody>
</table>

4. Fair Value of Investments

The Foundation reports its investments at their fair values, in the following manner:

- Requiring consideration of non-performance risk when valuing liabilities;
- Defining fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date and establishing a framework for measuring fair values; and
- Establishing a three-level hierarchy for fair-value measurement based upon the observability of inputs to the evaluation of an asset or liability as of the measurement date.
The three-level valuation techniques are based upon observable and unobservable inputs. Observable inputs reflect market data obtained from independent sources, while unobservable inputs reflect market assumptions. These two types of inputs create the following fair-value levels:

- Level 1 — quoted prices for identical instruments in active markets;
- Level 2 — quoted prices for similar instruments in active markets; quoted prices for identical or similar instruments in markets that are not active; and mode-derived valuations for which the significant inputs are observable; and
- Level 3 — instruments for which the significant inputs are unobservable.

The Foundation’s investment assets are classified within Level 1 because they comprise mutual funds and exchange traded funds with readily determinable fair values based on daily redemption values.

The following table presents investments measured at fair value at December 31, 2017:

<table>
<thead>
<tr>
<th>Total</th>
<th>Quoted Prices in Active Markets for Identical Asset (Level 1)</th>
<th>Significant Other Observable Inputs (Level 2)</th>
<th>Significant Unobservable Inputs (Level 3)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mutual Funds</td>
<td>$15,326</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>Exchange-Traded Funds</td>
<td>$458,168</td>
<td>$458,168</td>
<td>$0</td>
</tr>
<tr>
<td>Total</td>
<td>$473,554</td>
<td>$473,554</td>
<td>$0</td>
</tr>
</tbody>
</table>

(13)
5. **Fixed Assets**

The summary of fixed assets at December 31, 2017 is as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building Improvements</td>
<td>$362,788</td>
</tr>
<tr>
<td>Automobile</td>
<td>147,941</td>
</tr>
<tr>
<td>Equipment</td>
<td>337,291</td>
</tr>
<tr>
<td>Asset under Capital Lease</td>
<td>210,000</td>
</tr>
</tbody>
</table>

Subtotal 1,058,020

Accumulated Depreciation (417,867)

Net Fixed Assets $640,153

Depreciation expense for the year ended December 31, 2017 was $150,115.

6. **Other Assets**

The summary of other assets at December 31, 2017 is as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Domain Name</td>
<td>$46,409</td>
</tr>
<tr>
<td>Accumulated Amortization</td>
<td>(387)</td>
</tr>
</tbody>
</table>

Net Other Assets $46,022

Amortization expense was $387 for the year ended December 31, 2017.

7. **Temporarily Restricted Net Assets**

Temporarily restricted net assets consist of the following at December 31, 2017:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Smart Homes</td>
<td>$2,521,019</td>
</tr>
<tr>
<td>First Responders</td>
<td>400,746</td>
</tr>
</tbody>
</table>

Total Temporarily Restricted Net Assets $2,921,765
8. Board Designated Endowment Funds

The Foundation’s endowment fund includes net assets without any donor restrictions that have been designated for endowment by the Board of Directors. As of December 31, 2017, the board designated endowment fund totaled $478,147, which consists of $473,554 in investments and $4,593 in cash.

Investment and Spending Policies

The Foundation has adopted investment and spending policies for the Endowment that attempt to provide a predictable stream of funding for operations while seeking to maintain the purchasing power of the endowment asset. Investments will be diversified to limit the risk of loss resulting from the concentration of assets in a specific type of investment, specific maturity, specific issuer or sector unless the Executive Board prudently determines that, because of special circumstances, the purposes of the Fund are better served without diversification. The Executive Board shall review the diversification strategy periodically, provided, however, that it shall review any decision to not diversify as frequently as circumstances require but, at a minimum, annually.

The Foundation is committed to administering and investing all endowed funds in compliance with all relevant Foundation by-laws, organizational concerns, industry standards, and federal and state laws and regulations, including without limitation the New York Prudent Management of Institutional Funds Act (“NYPMIFA”). No policy will supersede any provision of federal or state law or regulation.

Changes in endowment net assets for the year ended December 31, 2017 are as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Endowment Net Assets, Beginning</td>
<td>$15,635</td>
</tr>
<tr>
<td>Investment Return</td>
<td>73,406</td>
</tr>
<tr>
<td>Contributions</td>
<td>389,106</td>
</tr>
<tr>
<td>Endowment Net Assets, End of Year</td>
<td>$478,147</td>
</tr>
</tbody>
</table>

9. 403(b) Pension Plan

During 2015, the Foundation adopted a 403(b) pension plan where eligible employees are able to contribute part of their salary into an account under their management and control. The Foundation will match employee contributions at 100% of the first 3% and 50% of the next 2%. The Foundation’s share of pension expense totaled $63,386 for the year ended December 31, 2017.
10. Commitments and Contingencies

Operating Leases

The Foundation has entered into a lease for its rental of office space in Staten Island, New York through June 30, 2017. In March 2016, the Foundation elected to renew the lease for an additional 60 months through June 30, 2021. A $10,000 security deposit was paid when the lease was signed on June 15, 2012. The Foundation paid $10,000 per month for rent for the first six months of 2017 and $10,500 for the last six months of 2017, along with an amount equal to 50% of the annual real estate taxes, which has been estimated as $2,197 per month. The Foundation also pays 50% of the insurance which totaled $12,012 for the year ended December 31, 2017. Total rent expense for this lease for the year ended December 31, 2017 was $161,376.

The Foundation entered into a lease for warehouse space in New Fairfield, Connecticut which ends in December 2018. Rent expense is $560 per month.

The Foundation entered into a lease agreement for office space in New Fairfield, Connecticut in December 2017. The initial term of the lease began on December 1, 2017 and ends on December 31, 2022. There is an option to renew the lease for an additional five-year term. A security deposit of $5,213 was paid at the signing of the lease.

These leases have been classified as operating leases and the future minimum rental payments are as follows:

<table>
<thead>
<tr>
<th>Year Ending</th>
<th>Rental Payments</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018</td>
<td>$181,624</td>
</tr>
<tr>
<td>2019</td>
<td>175,580</td>
</tr>
<tr>
<td>2020</td>
<td>176,277</td>
</tr>
<tr>
<td>2021</td>
<td>176,994</td>
</tr>
<tr>
<td>2022</td>
<td>101,554</td>
</tr>
<tr>
<td></td>
<td>$812,029</td>
</tr>
</tbody>
</table>

The Foundation also has several month-to-month leases for warehouse space in the New York City area.
Capital Lease

On August 5, 2013, the Foundation executed a new lease agreement for vehicle equipment to transport its mobile 9/11 exhibit. The lease essentially transfers the risks of ownership and has a bargain purchase option at the end of the lease term and is accounted for as a capital lease. Monthly payments of principal and interest totaled $5,032. The lease expires on September 5, 2018.

An amended lease agreement was signed on May 13, 2014. Monthly payments of principal and interest were reduced to $4,631.

Equipment under capital lease at December 31, 2017 includes:

<table>
<thead>
<tr>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vehicle for 9/11 Exhibit</td>
<td>$210,000</td>
</tr>
<tr>
<td>Accumulated Depreciation</td>
<td>(185,500)</td>
</tr>
<tr>
<td><strong>Net Book Value</strong></td>
<td><strong>$24,500</strong></td>
</tr>
</tbody>
</table>

The future minimum lease payments as of December 31, 2017 are as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018</td>
<td>$35,560</td>
</tr>
<tr>
<td></td>
<td>$35,560</td>
</tr>
</tbody>
</table>

11. Related Party Transaction

The Foundation has entered into transactions with members of the Board of Directors. A company owned by the Chairman of the Board of Directors provides the Foundation with its office space in Staten Island, New York. Amounts paid to this company for rent in accordance with the rental agreement are detailed in Note 9.

12. Line of Credit

The Foundation obtained a $500,000 line of credit with Northfield Bank during 2013. The line bears an interest rate of 5% on the outstanding balance. The line was not used during the year. There were no outstanding balances at December 31, 2017.
13. Concentration of Credit Risk

The Foundation places its temporary cash and money market accounts with various financial institutions throughout the New York City area. Accounts at these institutions were insured for up to $250,000 by the Federal Deposit Insurance Corporation (FDIC) at December 31, 2017. The Foundation had uninsured balances of $4,308,555 at December 31, 2017.

14. Subsequent Events

The Foundation has evaluated subsequent events through May 8, 2018, the date the financial statements were available to be issued and has determined that there are no reportable subsequent events or transactions that need to be disclosed in these financial statements.
CERTIFICATE OF LIABILITY INSURANCE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
John G. Lambros Co., Inc.
4 West Red Oak Lane, Suite 303
White Plains, NY 10604

INSURED
Stephen Biller Tunnel To Towers Foundation
2351 Hylan Boulevard
Staten Island, NY 10306

CONTACT Gary Neal
PHONE (914) 686-0100
FAX (914) 686-0544
EMAIL gnel@gjambros.com

INSURER AFFORDING COVERAGE NAIC #
INSURER A: Philadelphia Insurance Co 23850
INSURER B: Massachusetts Bay Insurance Co 22306
INSURER C: Federal Insurance Company 20281

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

<table>
<thead>
<tr>
<th>INSURER</th>
<th>TYPE OF INSURANCE</th>
<th>COVERAGE LIMITS</th>
<th>CERTIFICATEHOLDER</th>
<th>REVISION NUMBER</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
RE: TDT Run October 6, 2019 Berkley, Michigan
Additional Insured: The City of Berkley, including all elected and appointed officials; all employees, and volunteers, all boards, commissioners, and/or authorities and their board members, employees, and volunteers; Berkley Public Schools; Berkley School District Parking Lots

CERTIFICATE HOLDER

Berkley Police Department
2395 Twelve Mile Rd
Berkley, MI 48072

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

ACORD 25 (2016/03) © 1988-2015 ACORD CORPORATION. All rights reserved.
The ACORD name and logo are registered marks of ACORD
Bernely 2018 Budget Recap
**CITY OF BERKLEY**  
**CHARITABLE SOLICITATION**  
**HOLD HARMLESS AGREEMENT**

This Hold Harmless Agreement is between Stephen Siller Tunnel To Towers Foundation (the Organization) and the City of Berkley, Michigan, (City) for the date(s) specified below.

<table>
<thead>
<tr>
<th>Organization Name</th>
<th>Stephen Siller Tunnel To Towers Foundation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address</td>
<td>2361 Hylan Boulevard</td>
</tr>
<tr>
<td>City</td>
<td>Staten Island</td>
</tr>
<tr>
<td>State</td>
<td>NY</td>
</tr>
<tr>
<td>Zip</td>
<td>10306</td>
</tr>
<tr>
<td>Phone</td>
<td>718-987-1931</td>
</tr>
<tr>
<td>Event Name</td>
<td>Berkley Tunnel To Towers 5K</td>
</tr>
<tr>
<td>Event Location(s)</td>
<td>Anderson Middle School</td>
</tr>
<tr>
<td>Event Date(s)</td>
<td>10-6-19</td>
</tr>
</tbody>
</table>

To the fullest extent permitted by law, the Organization expressly agrees to indemnify and hold harmless the City of Berkley, its elected and appointed officials, its employees and volunteers and others working on behalf of the City, from and against all loss, cost, expense, damage, liability or claims (whether groundless or not) arising out of bodily injury, sickness or disease (including death resulting at any time therefrom) which may be sustained or claimed by any person or persons participating in the above named event.

This includes damage or destruction of any property (including loss of use) based on any act or omission (negligent or otherwise) of the Organization or anyone acting on its behalf in connection with or incidental to this agreement. The Organization shall, at its own cost and expense, defend any such claim and any suit, action, or proceeding which may be commenced hereunder. In the event of any suit, action or proceeding, the Organization shall pay:

- Any and all judgments which may be recovered.
- Any and all expenses, including, but not limited to, costs, attorneys' fees and settlement expenses which may be incurred.

The Organization shall not be responsible to the City on indemnity for damages caused by or resulting from the City's sole negligence.

Authorized Representative:  
**Jeanne Della Ragione**  
Title:  
**Senior Vice President**

**Signature**  
Jeanne Della Ragione  
**Date** 12/11/2018
January 7, 2019 City Council Meeting

Moved by Councilmember _________________________ and seconded by Councilmember _________________________ to approve the Intergovernmental Agreement between the City of Berkley and Berkley School District for Shared Resources and Services.

Ayes:

Nays:

Justification:

1. In the interest of fiscal responsibility, the City of Berkley and the Berkley School District desire to continue an arrangement for shared resources and services.

2. The previous signed agreement will expire in February, 2019.

3. While the agreement allows for a variety of shared resources/services, the primary components to-date include rock salt and unleaded fuel from the City to the School District.

4. The ability to provide materials and equipment will be determined by the providing party. The responsibility of each party to provide resources within its own jurisdiction shall remain the first priority.

5. The term of the agreement is two (2) years from date of last signature with an option to extend/renew for an additional two (2) year term.

I, Phommady A. Boucher, being duly appointed City Clerk of the City of Berkley; hereby certify that this is a true and correct copy of Motion No. M-02-19, which was approved by the Berkley City Council at its regular meeting held on Monday, January 7, 2019.

Phommady A. Boucher, City Clerk
CITY OF BERKLEY
TRANSMITTAL MEMO

Date: January 4, 2019
To: Matthew Baumgarten, City Manager
From: Derrick Schueller, Public Works Director
Subject: Intergovernmental Agreement between City of Berkley & Berkley School District
        Shared Resources & Services

In the interest of fiscal responsibility, the City of Berkley and the Berkley School District desire to continue an
agreement for shared resources and services. This collaboration effort was initially formalized in 2012 and the
current agreement will expire in February, 2019.

Please find attached an updated agreement for your approval and Council consideration. The document has
been reviewed by the City Attorney and has also been shared with the Berkley School District. The appendices
have also been updated to reflect current wholesale charges and labor/equipment rental rates.

While the agreement allows for a variety of collaboration opportunities, the primary components have been
unleaded fuel and rock salt. The City of Berkley has provided the School District with these commodities via
the Public Works facility located at 3238 Bacon Avenue. After use, the City Finance Department invoices the
School District according to current wholesale pricing as reflected in the appendices. Please note a similar
arrangement exists between the City of Berkley and the City of Huntington Woods.

The term of the agreement is two (2) years from date of last signature and does allow for an extension.

Feel free to contact our department with any questions or concerns.

Attachment
DLS
J:\School District\Collaboration for Fuel and Salt\2019\Council\Memo Agreement City_Berkley Schools Collaboration 1-4-19.doc
INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is hereby entered into this ___ day of __________, 20__ by and between the CITY OF BERKLEY ("Berkley"), a Michigan municipal corporation, whose address is 3338 Coolidge Highway, Berkley, Michigan, 48072, and the BERKLEY SCHOOL DISTRICT ("School District"), a Michigan general powers school district, whose address is 14700 W. L. Lincoln, Oak Park, Michigan, 48237 (each a "Party" and collectively, "the Parties").

RECITALS

WHEREAS, Berkley and the School District desire to provide for shared services and resources between the Parties in order to carry out their respective fiscal responsibilities and functions in a more cost-effective manner; and

WHEREAS, pursuant to Sections 11a(3) and (4) of the School Code MCL 380.1 et seq., a general powers school district has the authority to exercise a power incidental or appropriate to the performance of any function related to the operation of the school district in the interests of public elementary and secondary education in the school district and to enter into agreements or cooperative arrangements with other entities, public or private, or join organizations as part of performing the functions of the school district; and

WHEREAS, pursuant to the Urban Cooperation Act of 1967, MCL 124.501 et seq., and the Intergovernmental Contracts between Municipal Corporations Act, 1951 PA 35, MCL 124.1, et seq., each Party to this Agreement may enter into this Agreement in order to establish the terms and conditions upon which they cooperatively perform and carry out services and functions they each may perform separately; and

WHEREAS, in accordance with the above-stated desires and interests, Berkley and the School District desire to enter into this Agreement whereby resources in the form of materials and equipment of their respective departments may be shared.

NOW THEREFORE, in consideration of the mutual promises, obligations, representations and assurances in this Agreement, the Parties agree as follows:

1. Providing of Materials

A. Mutual Providing of Materials

a. The Parties agree to make available to each other certain materials of their respective departments.

b. Requests for such materials shall be documented by and between the Parties’ respective directors and/or their designees.
c. These materials include, but are not limited to the following consumable supplies: rock salt, unleaded fuel, diesel fuel, garbage bags and paper products.

B. Subject to Availability

The providing of materials under this Agreement shall be strictly subject to the availability as determined by the sole and uncontrolled discretion of the providing Party. The responsibility of each Party to provide materials within its own jurisdiction shall remain the first priority.

C. Material Compensation

a. The requesting Party shall pay to the providing Party in an amount consistent with the Appendices A – C attached hereto.

b. Price per Ton and Price Per Gallon may change on a monthly basis based on the current price paid by the providing Party.

c. All purchases for supplies, materials and equipment provided pursuant to this Agreement shall be in accordance with all applicable laws, rules and regulations.

d. The providing Party shall invoice the requesting Party for the providing of such materials on a monthly basis. Invoices shall itemize all charges. Disputes regarding amounts contained in any invoice will be communicated to the non-providing Party, in writing, within five (5) business days of the receipt of the disputed invoice. Payments of disputed amounts will be delayed unless the providing Party is able to resolve the matter to the non-providing Party’s satisfaction prior to payment due date. The non-providing Party will not be assessed any late payment penalties, fines or charges for disputed amounts not timely paid due to the providing Party’s failure to timely resolve the matter as set forth above.

2. Providing of Equipment

A. Equipment Compensation

a. The requesting Party shall pay to the providing Party compensation in the amount of the normal hourly rental rate as established by the Michigan Department of Transportation for each piece of equipment requested and for the number of hours each piece of equipment is allocated to the requesting Party (MDOT Equipment Rental Rates Schedule C, Report 375).

b. The providing Party shall invoice the requesting Party for the providing of such equipment on a monthly basis. Invoices shall itemize all charges. Disputes regarding amounts contained in any invoice will be communicated to the non-providing Party, in writing, within five (5)
business days of the receipt of the disputed invoice. Payments of disputed amounts will be delayed unless the providing Party is able to resolve the matter to the non-providing Party’s satisfaction prior to payment due date. The non-providing Party will not be assessed any late payment penalties, fines or charges for disputed amounts not timely paid due to the providing Party’s failure to timely resolve the matter as set forth above.

B. Maintenance

Each respective Party shall be responsible for the maintenance of its own equipment; provided, however, that in the event such equipment is damaged while in the exclusive control of the requesting Party, the requesting Party shall be responsible for the full repair and/or replacement costs of the equipment, to the extent not covered by any applicable insurance of the providing Party.

C. Insurance

The owner of the equipment listed shall maintain what insurance it feels is necessary relevant to theft, vandalism and if it is a moving equipment, general liability and vehicle liability.

3. Additional Services

The Parties agree that they may expand the scope of this Agreement upon the mutual written agreement of both Parties. Any mutually agreed upon expansion of the supplies, material, equipment or services shall be set forth in a written amendment to this Agreement, executed by both Parties, and shall take effect as of the effective date of the written amendment.

4. Relationship of the Parties

The relationship between Berkley and the School District shall be that of independent contracting parties. Nothing in this Agreement shall create an employment relationship between Berkley employees utilized by the School District or the School District’s the employees utilized by Berkley. Nothing in this Agreement shall be construed to create a joint venture between Berkley and the School District. This Agreement shall not be construed as authority for any Party to act for another Party in any agency or other capacity or to make commitments of any kind for the account of, or on behalf of, another Party. It is expressly agreed that neither Berkley nor the School District are entitled to participate in any plans, arrangements, or distributions pertaining to or in connection with any fringe, pension, bonus, profit sharing, or similar benefits, or any medical, dental, life or disability insurance plans of the other Party.
5. **Workers Compensation, Insurance, and Benefits**

A. **Workers Compensation**

   The Parties shall maintain workers’ compensation insurance and employer’s liability insurance on their respective employees. As between the Parties, the Parties shall be responsible for workers’ compensation coverage for their respective employees regardless of whether employees’ workers’ compensation claims may arise while work is performed within a requesting Party’s jurisdiction or the providing Party’s own jurisdiction.

B. **Insurance and Benefits**

   The Parties shall maintain other insurance and benefits, if any, with regard to their own respective employees.

6. **Liability and Governmental Immunity**

A. **Liability**

   1. Each Party shall be responsible for its own acts or omissions. Notwithstanding the foregoing, this Agreement does not, and is not intended to impair, divest, delegate, or contravene any constitutional, statutory, and/or other legal right, privilege, power, obligation, duty or immunity of each Party and shall not be construed to waive the defense of governmental immunity held by any Party to this Agreement.

B. **There are no third party beneficiaries to this Agreement.**

7. **Applicable Law and Dispute Resolution**

A. **Applicable Law**

   This Agreement shall be governed by the laws of the State of Michigan.

B. **Dispute Resolution**

   Any dispute arising out of this Agreement shall be subject to binding arbitration located in Oakland County, Michigan; provided, however, that prior to arbitration, the parties shall first attempt to resolve any dispute with a meeting between representatives from each Party. Such shall be subject to the following additional terms:

   a. Arbitration must be requested by a Party in writing.

   b. The Parties shall agree upon one (1) neutral arbitrator.
c. The costs of the arbitrator shall be shared equally between the Parties.
d. If, upon written request for arbitration, an arbitrator is not selected within thirty (30) days, either Party may petition the Oakland County Circuit Court for appointment of a neutral arbitrator selected by the Court.
e. The rules of evidence shall apply.

8. Term and Termination

A. Term

This Agreement shall continue for a term of two (2) years from the date of the last signature hereto. The Parties may, by subsequent written agreement(s), renew this Agreement for one or more additional two (2) year terms.

B. Termination

This Agreement is terminable by either Party upon providing not less than thirty (30) days’ written notice to the other Party.

9. Miscellaneous

A. This Agreement shall be construed as having been drafted by both Parties.

B. This Agreement contains the entirety of the Parties’ understanding as to the subject matter contained herein. Any prior understandings as to the subject matter of this Agreement are merged and integrated into this Agreement.

C. This Agreement may not be modified except by a mutual, duly-authorized, written agreement.

D. If any provision of this Agreement is deemed invalid or unenforceable as a matter of law, the remaining portions shall not be affected and shall be enforceable to the fullest extent of the law.

E. Notices and communications to the School District shall be provided to its Superintendent or his/her designee. All notices and communications to Berkley shall be provided to its City Manager, or his/her designee.

F. Each Party hereby authorizes its respective Director and/or their designee to request and to provide equipment and/or personnel as set forth in this Agreement and to receive notices hereunder at their respective business addresses.
G. Both Parties represent that their respective signatories below have been fully authorized by their respective legislative bodies to sign this Agreement and thereby bind their respective cities hereto.

The Berkley School District and the City of Berkley, by the signatures of their respective authorized representatives below, do consent to be bound by the terms of this Agreement, as set forth herein.

**BERKLEY SCHOOL DISTRICT**

By: ____________________________

Its: ____________________________

Date: ____________________________

**THE CITY OF BERKELEY**

By: ____________________________

Its: ____________________________

Date: ____________________________
# ROCK SALT

<table>
<thead>
<tr>
<th>Materials</th>
<th>Tonnage (≈1 Scoop)**</th>
<th>Price per Ton</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulk Rock Salt</td>
<td>1</td>
<td>$51.14</td>
<td>$51.14</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Labor</th>
<th>Avg. Hourly Total Compensation</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Load Salt into Truck</td>
<td>0.25 $38.68</td>
<td>$9.67</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Equipment</th>
<th>Hours</th>
<th>Hourly Rate*</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Front End Loader</td>
<td>0.25</td>
<td>$65.57</td>
<td>$16.39</td>
</tr>
</tbody>
</table>

Subtotal: $77.20  
3% Administrative Fee (Billing, Oversight, etc.): $2.32

**Total Cost per Ton of Salt Received (≈1 Scoop)**: $79.52

---

Variable-Based Upon Most Recent Bill or Report Received

*Based Upon MCOT Equipment Rental Rates Schedule C, Report 375

**Operator of Loader to Track Scoops via Ticket
## UNLEADED FUEL

### Materials

<table>
<thead>
<tr>
<th>Type</th>
<th>Gallons</th>
<th>Price per Gallon</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unleaded Fuel Plus Misc. Charges**</td>
<td>1</td>
<td>$1.732</td>
<td>$1.73</td>
</tr>
</tbody>
</table>

### Labor

<table>
<thead>
<tr>
<th>Activity</th>
<th>Percent-See Below</th>
<th>Monthly Charge</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fuel Island Preventative Maint. &amp; Inspection***</td>
<td>5.95%</td>
<td>$427.50</td>
<td>$25.44</td>
</tr>
</tbody>
</table>

Subtotal $1.73

3% Administrative Fee (Reading, Billing, Oversight, etc.) $0.05

Total Cost per Gallon of Fuel Received $1.78

Flat Monthly Fuel Island Maintenance Cost $25.44

---

Variable-Based Upon Most Recent Bill or Report Received


***Metro Pump Service, LLC currently provides monthly monitoring to meet Federal and State Requirements including On-Site Operator Certifications

### 3 Year Rolling Average of Unleaded Fuel Use (Gallons)

- Berkley: 28258.33333 57.69%
- HW: 18246.66667 37.25%
- Schools: 2915.66667 5.95%
### DIESEL FUEL

<table>
<thead>
<tr>
<th>Type</th>
<th>Gallons</th>
<th>Price per Gallon</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Diesel Fuel Plus Misc. Charges**</td>
<td>1</td>
<td>$2.321</td>
<td>$2.32</td>
</tr>
</tbody>
</table>

| Subtotal                                     |         |                  | $2.32 |
| 3% Administrative Fee (Reading, Billing, Oversight, etc.) |         |                  | $0.07 |

| Total Cost per Gallon of Fuel Received       |         |                  | $2.39 |

*Variable-Based Upon Most Recent Bill or Report Received*

AN ORDINANCE

of the City Council of the City of Berkley, Michigan

Amending Section 2-2 of Article I of Chapter 2, Administration, of the City of Berkley Code of Ordinances to Authorize Persons Designated as Zoning Officer, Code Enforcement Officer, and Building Inspector to Issue and Serve Appearance Tickets for Ordinance Violations

THE CITY OF BERKLEY ORDAINS:

SECTION 1: Section 2-2 of Article I of Chapter 2 of the Berkley Code of Ordinances shall be amended, as follows:

ARTICLE I. – ADMINISTRATION

Sec. 2-2. – Code enforcement; appearance tickets.

Those persons employed by the city in the capacity of zoning officer, code enforcement officer, and building inspector are authorized to issue and serve appearance tickets with respect to misdemeanor ordinance offenses prohibited by this Code other than chapters 10, 14, 22, 30 (articles IX, X, XI), 34, 42, 46, 50, 62, 66, 82, 86, 98, 102, 110, 114, 118, 122 (articles I, II, III) and 134.

SECTION 2: Severability Clause

Should any word, phrase, sentence, paragraph, or section of this Ordinance be held invalid or unconstitutional, the remaining provisions of this ordinance shall remain in full force and effect.

SECTION 3: Effective Date

This Ordinance shall become effective 30 days following the date of adoption.

SECTION 4: Publication

The City Council directs the City Clerk to publish a summary of this ordinance in compliance with Public Act 182 of 1991, as amended, and Section 6.5 of the Berkley City Charter.

Introduced on the First Reading at the Regular City Council Meeting on Monday, January 7, 2019.

_________ on the Second Reading at the Regular City Council Meeting on Monday, _________________.

Daniel J. Terbrack, Mayor

Attest:

Phommady A. Boucher, City Clerk
A RESOLUTION
of the Council of the City of Berkley, Michigan
A RESOLUTION OF SUPPORT FOR AN EVALUATION
OF A LANE REDUCTION ON COOLIDGE HIGHWAY

WHEREAS, Coolidge Highway is a four lane road that is under the jurisdiction of the City of Berkley and serves as one half of Berkley’s Downtown; and

WHEREAS, This project is in alignment with the City of Berkley Complete Street Ordinance; and

WHEREAS, Coolidge Highway, between Eleven and Twelve Mile Roads falls within the boundaries of the Berkley Downtown Development Authority; and

WHEREAS, The City of Berkley and the Berkley Downtown Development Authority have been thoughtfully studying ways to make Coolidge Highway safer for pedestrians and motorists as well as to foster an environment for investment and business growth that benefits both the community and the region; and

WHEREAS, The City of Berkley and the Berkley Downtown Development Authority (DDA) commissioned the Transportation Improvement Association (TIA) to perform a corridor study of Coolidge Highway between I-696 and 12 Mile Road in February 2018, the results of which support a four lane to three lane conversion; and

WHEREAS, Traffic engineers from Spalding DeDecker and Hubble, Roth, & Clark have provided options that include a four lane to three lane conversion, bike lanes and additional parking based upon industry standards and best practices from across the United States; and

WHEREAS, A series of public open houses have been held for the purpose of presenting alternatives and gathering feedback from residents and business owners to strengthen the plan through robust public comment; and

WHEREAS, A lane reduction project has the potential to yield both negative and positive results, the Berkley City Council and the Downtown Development Authority Board of Directors agree that an evaluation period is appropriate in order to study the effects on roadway function, safety, community benefits including economic impact, and multiple modes of transportation; and

WHEREAS, A multidisciplinary panel representing the City’s Departments of Public Works, Public Safety, Administration, and traffic Engineers worked with the DDA Director to develop an evaluation matrix to thoroughly evaluate the performance of Coolidge Highway while re-striped to three lanes; now

THEREFORE, BE IT RESOLVED:

Section 1: That the City Council of Berkley hereby supports converting four lane vehicular traffic into three lanes of vehicular traffic on Coolidge Highway between Eleven Mile Road and Twelve Mile Road to allow for appropriate traffic flow, better emergency vehicle movement, fewer traffic accidents, increased economic development and business growth, and increased pedestrian and bicycle friendliness and safety; and

Section 2: That the City Council requires comprehensive metrics, timelines, and communication plans to be refined and public outreach efforts implemented prior to beginning and throughout any temporary road re-striping experiments and the bid package be reviewed by appropriate departments, thereby ensuring the City understands how the project will be implemented, what will be tracked, and how the data will be assessed; and

Section 3: The City of Berkley and Downtown Development Authority agree to a 24 month comprehensive evaluation, including a 12 month review of road safety performance as detailed in the evaluation matrix to be done by the aforementioned multi-disciplinary panel; and
Section 4: Upon the comprehensive review of the eight evaluation elements by the aforementioned multidisciplinary panel, if it is agreed that the lane reconfiguration is not performing as expected by increasing the safety of motorists, pedestrians, and bicyclists and that there are no alternative options that will allow for the aforementioned safety metrics to improve while maintaining the three lane configuration, then the multidisciplinary panel will recommend to City Council that Coolidge Highway be reverted back to four lanes and re-striped; and

Section 5: Upon the City Council’s review of the evaluation findings at the 12 month period and upon discussing the recommendation of the multidisciplinary panel they will take a vote at a regularly scheduled City Council meeting, and if that vote is in favor of reverting to a four lane reconfiguration then the Downtown Development Authority will re-stripe Coolidge Highway back to four lanes based upon a repayment agreement between the City of Berkley and the Downtown Development Authority for the cost of the restriping project.

RESOLUTION DECLARED ADOPTED

______________________________
Daniel J. Terbrack, Mayor

CERTIFICATION

______________________________
Phommady A. Boucher, City Clerk
Memo

To: Mayor Terbrack and City Council
From: Matthew Baumgarten, City Manager
Date: January 4, 2019
Subject: Coolidge Lane Reduction Proposal

Mayor and Members of City Council,

As all recall, at the City Council meeting on December 17, 2018, the Council reviewed a resolution from the Downtown Development Authority and continued our long standing discussion on the future of Coolidge Hwy. There was also a long discussion on what the City Council would require in order to evaluate a road diet on Coolidge Highway. After much discussion at the meeting, Council voted to postpone the conversation on the resolution.

Since that meeting, City Administration and the Downtown Development Authority Executive Director have worked to supply the City Council with the required items. We jointly created evaluation matrix based upon an existing document used by state department of transportation. The items in the matrix were jointly reviewed at a meeting with the DPW Director and Foreman, Public Safety Director, Traffic Engineers, myself, and the DDA Director. The data points housed within an evaluation matrix can be used to measure the effectiveness of re-striping the roadway in six month increments. As mentioned, during the discussion, review of the safety elements at 12 months should be performed before decided to proceed any further with the evaluation. A communications plan has also been developed to continually inform the community. This can also work in conjunction with the communications plan being developed by the Community Engagement Advisory Committee. Lastly, we have also written a more robust resolution of support that clearly outlines preparatory actions taken that led to the recommendation of a road diet and clearly outlines an the expectations of the evaluation period.

Thank you for your consideration of the included resolution and collaboration in continuing the discussion of this major project.
## Coolidge Road Right Sizing and Safety Corridor Metrics Matrix

### Before and After Metrics

<table>
<thead>
<tr>
<th>Project Elements</th>
<th>Before Road Diet</th>
<th>6 Months</th>
<th>12 Months</th>
<th>18 Months</th>
<th>24 Months</th>
<th>Measurement Tactics</th>
</tr>
</thead>
<tbody>
<tr>
<td>Score</td>
<td>Score</td>
<td>Score</td>
<td>Score</td>
<td>Score</td>
<td>Score</td>
<td></td>
</tr>
<tr>
<td><strong>Roadway Function, Operations &amp; Environment</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Fits within Right of Way</td>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Traffic Engineer Assessment</td>
</tr>
<tr>
<td>2. Matches Desired Land Use Context</td>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Downtown Master Plan/Berkley Comprehensive Plan</td>
</tr>
<tr>
<td>4. Travel Times</td>
<td>3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Traffic Information Association (TIA) Assessment</td>
</tr>
<tr>
<td>5. Roadway Capacity / Daily Volumes</td>
<td>4</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>TIA, Average ADT over 3 days at six months, 12 months, 18 months and 24 months</td>
</tr>
<tr>
<td>7. Traffic Demand at Kipling, Kenmore, and Beverly</td>
<td>3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>TIA Assessment</td>
</tr>
<tr>
<td><strong>AVERAGE SCORE</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>3</td>
<td></td>
</tr>
<tr>
<td><strong>Safety</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8. Crash Rate per Mile</td>
<td>3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Local/State Police and DOT (3 year Assessment recommended by FHWA)</td>
</tr>
<tr>
<td>9. Accommodates Volume of Turning Movements</td>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>TIA Assessment</td>
</tr>
<tr>
<td>10. Provides for Multimodal Uses</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Traffic Engineer Assessment</td>
</tr>
<tr>
<td>11. Complies with ADA</td>
<td>4</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>MDOT</td>
</tr>
<tr>
<td>12. Provides Shorter Pedestrian Crossing Distance</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Traffic Engineer Assessment, Visual Analysis</td>
</tr>
<tr>
<td>13. Vehicle Yield/Stop Compliance Rate for Pedestrians Crossing</td>
<td>3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Visual Analysis, Intercept Survey</td>
</tr>
<tr>
<td>14. Vehicle Speed Matches Design Speed of 30 mph</td>
<td>3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Public Safety, Portable Laser Speed Indicators/Data Collectors</td>
</tr>
<tr>
<td>15. Emergency Vehicle Movement</td>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Beaumont Health, Berkley Public Safety and Related Contractors</td>
</tr>
<tr>
<td><strong>AVERAGE SCORE</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2</td>
<td></td>
</tr>
<tr>
<td><strong>Community</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>16. Complies with Complete Streets Objectives</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Berkley Comprehensive Plan and Complete Street Ordinance</td>
</tr>
<tr>
<td>17. Encourages Business, Property Owner, and Developer Investment</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Private Investment Dollar Tracking via Main Street Statistics</td>
</tr>
<tr>
<td>18. Public Acceptance</td>
<td>3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Online Survey/Public Input Session/Walking Tour</td>
</tr>
<tr>
<td>19. Level of Comfort for Pedestrians</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Visual Assessments, Shopper Intercept Survey via Businesses, Online Survey</td>
</tr>
<tr>
<td>20. Level of Comfort for Cyclists</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Visual Assessments, Shopper Intercept Survey via Businesses, Online Survey</td>
</tr>
<tr>
<td>21. Provides Adequate Parking</td>
<td>3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Parking Survey</td>
</tr>
<tr>
<td>22. Provides a Comfortable Parking Experience</td>
<td>3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Intercept Survey, Business Feedback</td>
</tr>
<tr>
<td>23. Encourages Shopping Activity</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Business Survey</td>
</tr>
<tr>
<td>24. Increased Property Values</td>
<td>3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Oakland County Assessment</td>
</tr>
<tr>
<td><strong>AVERAGE SCORE</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2</td>
<td></td>
</tr>
<tr>
<td><strong>Multimodal Accommodation</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>25. Handles Ped Demand</td>
<td>3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>TIA Assessment</td>
</tr>
<tr>
<td>26. Handles Bike Demand</td>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>TIA Assessment</td>
</tr>
<tr>
<td>27. Integrates Transit Accommodation</td>
<td>4</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Visual Assessment</td>
</tr>
<tr>
<td>28. Integrates Micro-modal Accommodation</td>
<td>3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Visual Assessment</td>
</tr>
<tr>
<td><strong>AVERAGE SCORE</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>3</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL AVERAGE SCORE</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2.5</td>
<td>Written Report at End of Years One and Two</td>
</tr>
</tbody>
</table>

*DPW will monitor regular maintenance activities including sweeping, plowing, and patching.*

*Hatched boxes indicate there is not enough data available to quantify during a specific time period; score will remain the same as previous measurement period.*
COMMUNICATIONS PLAN GOAL:

EDUCATE RESIDENTS AND BUSINESS OWNERS ABOUT UPCOMING COOLIDGE LANE RE-STRIPIING AND RIGHT SIZING PROJECT

Team Members: City of Berkley, Berkley DDA, Berkley Citizens Engagement Advisory Committee

Tactics:

1. **Video:**
   a. Create informational video inhouse specific to Coolidge project re: FAQ, timeline, and benefits of project

2. **Websites – DDA and City**
   a. Create FAQ and benefits page
   b. Post Informational Video

3. **Mailings**
   a. Monthly City Newsletter updates
   b. Monthly mailing to Coolidge businesses

4. **Facebook and Twitter - City and DDA**
   a. Weekly informational update as to timeline of project
   b. Weekly educational posts about Right Sizing benefits
   c. Post informational video

5. **NextDoor – DDA and City**
   a. Bi-weekly informational update as to timeline of project
   b. Bi-weekly educational posts about Right Sizing benefits and FAQ

6. **Digital/Print - DDA and City:**
   a. Monthly News release sent to local news outlets re: project and timeline
   b. Monthly Newsletter updates for Berkley residents re: timeline and right sizing FAQ
   c. Monthly DDA emailing to Coolidge business owners re: timeline and right sizing FAQ
   d. Possible EEDM Mailing to homes throughout Berkley as well as homes in Oak Park and Huntington Woods that are north of I-696.

7. **On Street Warning Traffic Signs**
   a. Educate drivers via traffic warning signs re: upcoming lane reconfiguration one month in advance of re-striping

8. **Neighboring Communities and Beaumont:**
   a. Partner with Huntington Woods and Oak Park to share information via their websites, eblasts, newsletters, and social media
   b. Partner with Beaumont to educate its employees/patients about upcoming project
January 7, 2019 City Council Meeting

Moved by Councilmember ___________________________ and seconded by Councilmember
______________________ to consider the Downtown Development Authority (DDA) Director
Agreement with Vivian Carmody of Carmody Consulting.

Ayes:

Nays:
Mr. Mayor and Members of Council,

Per the state statute, Executive Director for the Downtown Development Authority’s agreement requires the consideration and, if they so choose, approval both the DDA Board of Directors and the City Council.

At their December 12, 2018 meeting, the Downtown Development Authority Board of Directors passed the attached agreement with Carmody Consulting that would allow Vivian Carmody to continue to provide services as the DDA Executive Director.

The DDA’s Organizational Committee worked to develop the agreement. The committee recommended a $4,750/month payment an increase to the "Expenses" section, however, most all other terms and conditions remain unchanged from the 2017 Agreement.

Members of the DDA Board will be available at Monday’s meeting to discuss this item should the City Council have questions.

Thank you,

Matthew Baumgarten
BERKLEY DOWNTOWN DEVELOPMENT
AUTHORITY DIRECTOR AGREEMENT

This Agreement is made between the Berkley Downtown Development Authority (“DDA”), a public corporation, whose address is 3338 Coolidge Hwy, Berkley, MI 48072, and Vivian Carmody d/b/a Carmody Consulting (“Contractor”), whose address is 1514 Chateaufort Place, Detroit, MI 48207, for contractual services as set forth herein:

1. **Contractor’s Duties and Services.** Contractor shall perform the duties of and serve as DDA Director. The Contractor’s duties and scope of services, as DDA Director, shall be as is authorized in the Downtown Development Authority Act and the Berkley Downtown Development Authority Ordinance, and as requested and authorized by the DDA Board of Directors, including, but not limited to, those duties and services set forth in attached Exhibit A. Such duties and services shall be performed personally by Contractor and may not be delegated or subcontracted without the consent of the DDA Board. Contractor shall report to and serve at the pleasure of the DDA Board.

2. **Term of Agreement.** The Effective Date of this Agreement is January 1, 2019, and this Agreement shall continue in effect through December 31, 2020 unless sooner terminated in accordance with this Agreement. The term may be extended or renewed by written agreement signed and dated by both parties. The provisions of this Agreement shall apply to all services and all periods of time in which the Contractor renders services for the DDA.

3. **Payment.** In consideration for the services to be performed by Contractor, the DDA shall pay Contractor the sum of $4,750 per month, plus reimbursable expenses in accordance with this Agreement. Contractor shall invoice the DDA for payment on a monthly basis, and the DDA shall pay any undisputed invoice within fifteen (15) days of receipt.

4. **Hours.** It is anticipated that Contractor will devote an appropriate and sufficient number of hours per month to perform the duties of DDA Director, generally during normal business hours, but occasionally evening and weekend hours.

**Expenses.**

1. Reimbursable expenses shall include license fees, memberships and dues; transportation and travel expense; meals, lodging, conferences; cost of supplies, mobile phone, and other out-of-pocket expenses, provided that any expenses for which the Contractor seeks reimbursement are incidental to or associated with DDA business and are approved as reimbursable by the DDA Board.

In addition to reimbursable expenses noted in this section, the Contractor shall receive a $2,000 stipend each year of this Agreement to cover direct costs incurred inclusive of Workers Compensation Insurance, Commercial General Liability Insurance, mileage and technology.

2. **Independent Contractor Status; No Fringe Benefits.** This Agreement does not create a partnership or employment relationship. Contractor is an independent contractor and is...
not, and shall not be deemed to be, an employee of the DDA or the City of Berkley. Contractor is not entitled to receive any sick, vacation or personal leave; health, dental, vision, life or disability insurance; retirement plan, or any other fringe benefits that DDA or City of Berkley employees may receive. Nor shall Contractor claim or be entitled to unemployment benefits in the event Contractor’s services under this Agreement are curtailed or terminated.

3. **Contracts.** Contractor is not authorized to bind nor enter into contracts on the DDA’s behalf unless such contract is approved or ratified by the DDA Board.

4. **Permits and Licenses.** Contractor shall comply with all federal, state, and local laws requiring business permits, certificates, and licenses required to carry out the services to be performed under this Agreement.

5. **State and Federal Taxes.** The DDA will not:
   
   A. Withhold FICA (Social Security and Medicare taxes) from Contractor’s payments nor make FICA payments on Contractor’s behalf, or
   
   B. Make state or federal unemployment compensation contributions on Contractor’s behalf, nor withhold state or federal income tax from Contractor’s payments.

Contractor shall be responsible for paying all taxes incurred while performing services under this Agreement, including all applicable income taxes and, if Contractor is not a corporation, self-employment (Social Security) taxes. If requested, Contractor shall provide the DDA with proof that such payments have been made.

6. **Indemnification.** To the fullest extent permitted by law, Contractor agrees to indemnify, defend, and hold harmless the DDA and the City of Berkley, and their respective boards and commissions, directors, officials, officers, employees and volunteers, from any and all claims, liability, damages, expenses, costs or losses arising out of or in any way related to Contractor’s negligent, fraudulent, intentional or reckless acts or omissions in the performance of duties and services under this Agreement. Contractor’s obligations under this Section shall survive termination of this Agreement. For purposes of this section, the parties acknowledge the City of Berkley is a third-party beneficiary of this Agreement.

7. **Insurance.** Contractor shall procure and maintain the insurance required under this paragraph, and shall keep such insurance in force during the entire life of this Agreement. All coverage shall be with insurance companies licensed and admitted to do business in the State of Michigan and acceptable to the DDA. The requirements below should not be interpreted to limit the liability of the Contractor.

   A. **Worker’s Compensation Insurance** including Employers’ Liability Coverage, in accordance with all applicable statutes of the State of Michigan.
B. **Commercial General Liability Insurance** on an “Occurrence Basis” with limits of liability not less than One Million Dollars per occurrence and aggregate. Coverage shall include the following extensions: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent, if not already included.

C. **Automobile Liability** including Michigan No-Fault Coverages, with limits of liability not less than One Million Dollars per occurrence, combined single limit for Bodily Injury, and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.

D. **Additional Insured**: Commercial General Liability and Automobile Liability, as described above, shall include an endorsement stating the following shall be Additional Insureds: The Berkley Downtown Development Authority, the City of Berkley, and their respective elected and appointed officials, employees and volunteers, and their boards, commissions, and committees, including members, employees and volunteers thereof. It is understood and agreed by naming the DDA and City of Berkley as additional insureds, coverage afforded is considered to be primary and any other insurance they may have shall be considered secondary and/or excess.

E. **Cancellation Notice**: All policies, as described above, shall include an endorsement stating that it is understood and agreed Thirty (30) days, Ten (10) days for non-payment of premium, Advance Written Notice of Cancellation, Non-Renewal, Reduction, and/or Material Change shall be sent to the DDA and City of Berkley.

F. **Proof of Insurance**: The Contractor shall provide the DDA, at the time this Agreement is returned by her for execution, a certificate of insurance with the required endorsements. In lieu of required endorsements, if applicable, a copy of the policy sections where coverage is provided for additional insured and cancellation notice will be acceptable. Copies or certified copies of all policies mentioned above shall be periodically furnished upon request.

If any coverages expire during the term of this Agreement, the Contractor shall deliver renewal certificates and endorsements to the DDA and City of Berkley at least ten (10) days prior to the expiration date.

8. **Confidentiality**: Contractor will not disclose or use, either during or after the term of this Agreement, any proprietary or confidential information of the DDA without the DDA Board’s permission, except to the extent necessary to perform services on the DDA’s behalf.

9. **Assignment and Delegation**: Contractor may not assign, delegate nor subcontract any rights, duties, services or obligations under this Agreement without the DDA’s prior written approval.
10. **Terminating the Agreement.**

A. **Without Cause.** This Agreement may be terminated by either party for convenience or any reason without cause on two (2) weeks advance written notice to the other party.

B. **With Cause.** With reasonable cause, either party may terminate this Agreement immediately by giving written notice of termination to the other party. For purposes of this Agreement, reasonable cause shall be defined as

1. Material breach or violation of this Agreement;
2. Non-Performance of duties, services, or obligations;
3. Moral turpitude, dishonesty, fraud, embezzlement, theft or criminal act;
4. Misfeasance, malfeasance, or nonfeasance in performance of duties or services;
5. Violation of any applicable DDA or City of Berkley personnel policies or directives; or
6. Any act or conduct that is injurious or embarrassing to the other party or which potentially exposes the other party to liability to third parties for personal injuries or property damage.

11. **Notices.** All notices or other communications required or permitted to be given to a party to this Agreement shall be in writing and shall be (a) personally delivered; (b) emailed; (c) sent by registered or certified mail, postage prepaid, return receipt requested; or (d) sent by an overnight express courier service that provides written confirmation of delivery to the DDA and Contractor at the addresses shown in the first paragraph of this Agreement. Each such notice or other communication shall be deemed given, delivered, and received on its actual receipt, except that if it is mailed or emailed in accordance with this section, then it shall be deemed given on the date of postmark. Any party to this Agreement may give a notice of a change of its address to the other party to this Agreement.

12. **Applicable Law.** This Agreement will be governed by the laws of the State of Michigan. Venue for any dispute resolution or litigation shall be in Oakland County, Michigan.

13. **Modifying the Agreement.** This Agreement may be modified only in writing signed and dated by both parties.

14. **City Approval Required; Oath and Bond.** This Agreement, before it becomes effective, is subject to the approval of the City of Berkley City Council in accordance with MCL 125.1655(1). Before entering the duties of her office, Contractor shall take and subscribe to the constitutional oath, and furnish bond, by posting a bond in the penal sum determined in the City of Berkley Downtown Development Authority ordinance payable to the DDA for use and benefit of the DDA, approved by the DDA Board, and
filed with the Berkley City Clerk, in accordance with MCL 125.1655(1).

15. **Entire Agreement.** This is the entire Agreement between Contractor and the DDA and supersedes any prior understandings or agreements.

BERKLEY DOWNTOWN DEVELOPMENT AUTHORITY

___________________________________
Andrew Gilbert, Chairperson

Dated: December 13, 2018

CONTRACTOR:

___________________________________
Vivian Carmody d/b/a Carmody Consulting

Dated: December 13, 2018
EXHIBIT A

Duties and services for which the DDA Director will be responsible include:

• Managing the administration of the DDA (purchasing, record keeping, budgeting, accounting, preparing reports, and publishing, etc.).

• Coordinating the activities of any committees established by the DDA Board.

• Devising economic development strategies.

• Developing and conducting public awareness and education programs.

• Fostering and assisting tenants and property owners with business recruitment, retention and expansion, and with improvement projects through consultation and programs.

• Providing advice and information about successful downtown management and promotion.

• Manage and coordinate promotional events, activities and materials, such as festivals or cooperative retail promotional events.

• Building strong and productive working relationships with public and private agencies and organizations at the local and state level.

• Representing the community to constituencies at the local, state and national levels.

• Developing and preparing budgets.

• Procuring revenue enhancement through grant writing, events, and securing sponsorships.