

May 7, 2019 Council QA

Monday, May 6, 2019 8:47 AM

F. AWARDS AND RECOGNITIONS:

1. **19-414** Presentation of Naperville Police Department's Saved by the Belt Certificate
2. **19-423** Present the Accessible Community Task Force Student Recognition Awards
3. **19-440** Proclaim May as Mental Health Awareness Month
4. **19-442** Proclaim May 7, 2019 as Naperville News Day
5. **19-443** Proclaim May 11, 2019 as the 27th Annual Letter Carriers' Stamp Out Hunger" Food Drive Day.

I. CONSENT AGENDA:

1. **19-450** Approve the regular City Council meeting minutes of April 16, 2019
2. **19-452** Approve the City Council meeting schedule for May, June & July 2019
3. **19-282** Approve the award of Bid 19-059, Sanitary Sewer Manhole Rehabilitation, to Front Range Environmental for an amount not to exceed \$112,070, plus a 5% Contingency
4. **19-292** Approve the award of Option Year Two to Contract 16-260, Contract Meter Reading Services for Water, to Alexander's Inc. for an amount not to exceed \$483,600
5. **19-349** Approve the award of RFQ 19-046, Strategic Update to the Comprehensive Master Plan, to Houseal Lavigne Associates, LLC. for an amount not to exceed \$124,355

Q:	Will a street map be provided in this request so we can see the specifics verses the attached circled drawing? Also, will you request Houseal company to include live, work, play demands? Circle "A" with existing Top Golf, Whirlyball restaurant, and Odyssey Fun World plus future ice and concert venue should promote a nice entertainment corridor.	Gustin
A:	<p>The RFP requested that the Consultant conduct a future land use assessment for the 10 geographic areas stipulated below (note: these are the areas circled on the map):</p> <ol style="list-style-type: none"> 1. Property located north of I-88, West of Route 59 to the City's Western Boundary 2. Key Sites along the Tollway Corridor (BP, Former DuPage County Transportation Property, Nokia Property) 3. Key Sites along East Ogden Avenue (Ogden Mall, Iroquois Center, Fair Oaks Ford, Regency Hotel) 4. North Downtown, including Washington Street Corridor 5. Area Reserved for StarLine Station at 91st Street and 248th Avenue 6. City's South 20 Property (southeast corner of 103rd and Route 59) 7. Spring Avenue from Mill Street to western terminus 8. Northwest Corner of Naper Boulevard and Plank Road to Ogden Avenue 9. Area within general radius of the intersection of 75th Street and Wehrli Road 10. Southeast corner of Mill Street and Bauer Road <p>The consultant will complete an analysis and make land-use recommendations regarding current trends in residential and non-residential markets, including needs and gaps.</p>	Laff

6. **19-350** Approve the use of an alternative procurement method as a pilot and award Procurement 19-152, Hot Mix Asphalt to Arrow Road Construction, Builders Asphalt, Chicago Materials Corporation, PT Ferro, RW Dundeman and Superior Asphalt Materials for an amount not to exceed \$175,000 and for a one-year term
7. **19-364** Approve the award of Change Order #1 to Contract 18-102, Goodyear Flow Control Valve Installation, to Joseph J. Henderson & Son for an amount not to exceed \$18,862.34 and a total award of \$166,290.34
8. **19-370** Approve the award of Option Year Two to Contract 17-077, Heating, Ventilation, Air Conditioning and Dehumidification Services, to Beery Heating and Cooling and Hayes Mechanical LLC for an amount not to exceed \$197,390
9. **19-371** Approve the award of Option Year One to Contract 17-020, Custodial/Janitorial Services for City Sites, to Citywide Building Maintenance for an amount not to exceed \$456,950
10. **19-385** Approve the award of Cooperative Procurement 19-141, Unit 341 Vehicle Replacement, to Foster Coach Sales, Inc. for an amount not to exceed \$281,564
11. **19-418** Approve the award of Sole Source Procurement 19-142, Telvent ArcFM Solution Software Maintenance, to Schneider Electric for an amount not to exceed \$177,584.21 and for a five-year term
12. **19-332** Approve the awards of Option Year Two to Contract 16-173, Leaf Disposal Services, to BioAg and Option Year One to Contract 18-146, Leaf Disposal, to Tri-County Excavation & Construction, Inc. and Steve Piper and Sons for an amount not to exceed \$260,000 for both contracts

	We are resubmitting the following document because the initial attachment only had odd numbered pages. Please find a corrected version attached hereto.	CMO
--	--	------------

Q:	Can our new refuse provider, Groot provide a comparative price for leaf services broken down by service components below and cubic yards? BioAg is cheapest service provider at \$4.50 cubic yards at a max of 52,000 cubic yards receiving only approximately 26,500 last year. What was the reason BioAg did not receive more at their lower price than other provider? 1) Groot pickup and delivery to their leaf biodegradable lots 2) City pick up and deliver to Groot lots 3) City pick up from curb depositing in to Groot trucks for delivery to their lots .	Gustin
A	DPW would need to reach out to Groot and get pricing for leaf disposal services. Although Groot helped with disposal in December of last year, they only accepted 10,000 cubic yards and did it as a favor to the City prior to their new contract for trash and recycling. The most efficient means for disposal of leaves is through Piper and Tri-County since they are picking up leaves on a hard surface from two DPW sites and trucking it back to their locations for composting. The process with Piper and Tri-County, which was piloted last leaf season, was hugely successful and going to be expanded in 2019 to help get the leaves off site as expeditiously as possible. Using Piper and Tri-County essentially keeps our trucks out of the local farm fields as much as possible. This is critical since the farm fields are become scarcer and are not regularly accessible as a result of bad weather and/or crops in them. Staff's proposal is to use BioAg as needed but no longer as a primary source for disposal. The EPA regulates how long leaves can be stored on a property, so getting them to a compost facility as quick as possible ensures compliance.	Rutkowski

13. **19-404** Authorize the City Manager to Extend the Lease for Three Parcels of City Property for Leaf Disposal (Item 2 of 2)

We are resubmitting the following document for this item because the initial attachment only had odd numbered pages. Please find a corrected version attached hereto.		CMO
--	--	------------

Q:	Current lease was two years expiring April 2018. How long will the new lease be?	Hinterlong
A:	Initial lease had a two year term (5/1/16 - 4/30/18) with three one-year extension options. In 2018, Council authorized the first one-year extension option in (5/1/18-4/30/19) and staff is now recommended Council now authorize the second one-year extension option for a term of 5/1/19 - 4/30/20. If Council authorizes the exercise of the second one-year extension, the City will have one remaining one-year extension option to consider in 2020 if Council chooses.	DiSanto

14. **19-422** Accept the public underground improvements at Iron Gate Motor Condos and authorize the City Clerk to reduce the corresponding public improvement surety.

15. **19-387** Pass the ordinance establishing a weight restriction for the 5th Avenue Bridge over Cress Creek

16. **19-376B** Pass the ordinance granting a variance to permit a 6' tall privacy fence in the required corner side yard at the subject property located at 1214 Needham Road - PZC 19-1-036

Q:	Can you explain the hardship?	Gustin
A:	The petitioner's lot is uniquely shaped, with a significantly wider front yard (along Needham Road) than rear yard. This results in an angled corner lot line (along Spring Hill Circle) as well as a reduced back yard.	Venard

17. **19-383B** Pass the ordinance approving a Conditional Use for a Massage Establishment for the subject property located at 1112 S. Washington Street (Soma Sage Health and Healing)- PZC 19-1-025

18. **19-395** Pass the ordinance establishing temporary traffic controls and issue a Special Event and Amplifier Permit for the Inaugural Naperville 10K and 5K Run (formerly the Naperville Women's Triathlon) on June 9, 2019

19. **19-428** Pass the ordinance approving a variance to Section 705.8.1 (Allowable Area of Openings) of the 2018 International Building Code for 110 S. Washington Street

20. **19-438** Conduct the first reading of an ordinance amending Sections 3-3-3, 3-3-5, 3-3-10, 3-3-11, 3-3-12 and 3-3-14 of the Naperville Municipal Code pertaining to liquor license applications, liquor and tobacco violation penalties, liquor license and permit classifications, liquor license restrictions, and unlawful acts and conditions pertaining to liquor.

Q:	I20. Just to confirm: the liquor commission turned down BYOB and the infused ice cream? I thought we had a corking permit where you could bring your own wine and pay a corking fee if the establishment didn't carry your choice of wine?	Hinterlong

A:	<p>Correct. The Liquor Commission did not recommend implementation of BYOB or creation of a license classification for liquor infused ice cream.</p> <p>Previously, the City's Code specifically allowed for corkage, which permitted a patron to bring a bottle of wine into licensees with a Class A, B, I or J license. However, this provision was omitted during the rewrite of the liquor code in 2016. The proposed amendment is intended to address that omission through the creation of a Corkage Permit. The Corkage Permit will permit a patron to bring in one bottle of wine not exceeding 750 milliliters for consumption with the service of food at Class A, B, I or J licensees. The Corkage Permit was reviewed and recommended by the Liquor Commission.</p>	Lutzke
----	--	--------

21. **19-104** Adopt the resolution authorizing the City Manager to execute the Intergovernmental Agreement between DuPage County and the City of Naperville for mowing along County roads and rights-of-way.
22. **19-435** Adopt the resolution approving the settlement contract between Daniel Simpson and the City of Naperville
23. **19-437** Adopt the resolution approving the settlement contract between James Streu and the City of Naperville
24. **19-451** Adopt the resolution authorizing the City Manager to execute the Intergovernmental Agreement between DuPage County and the City of Naperville for the continued operation of the regional Household Hazardous Waste Facility.
25. **19-430** Receive the report regarding the Ride DuPage to Work program (Item 1 of 3)

Q:	Why did Pace opt-out and discontinue in 2009?	Gustin
A:	Staff does not have specific information on why Pace discontinued its role as the grant administrator. However, it should be noted that Pace provides the service through an agreement with the Ride DuPage to Work Partnership at our request. Pace is not a beneficiary of the reimbursement.	Venard

26. **19-431** Adopt the resolution authorizing the City Manager to execute the attached Technical Services Agreement with the Regional Transportation Authority (RTA) to receive and administer a Section 5310 Enhanced Mobility of Seniors and Individuals with Disabilities grant award for the Ride DuPage to Work Program (Item 2 of 3)
27. **19-432** Adopt the resolution authorizing the City Manager to execute the associated intergovernmental agreement with the Ride DuPage to Work Partners (Item 3 of 3)
28. **19-444** Receive the staff report for Wagner Farms Final - PZC 19-1-017 (Item 1 of 6)

	We are resubmitting page 5 (of 11) of the Wagner Farms OAA, Section 7.2	Lord
	Please see attached.	

Q:	Please provide roofing quality on this product?	Gustin
A:	We have requested this information from the developer. It should be noted that the City does not have specific requirements for roofing materials; however, roofers are required to be licensed by the State and utilize certified/suitable	Laff

	materials and installation methods.	
--	-------------------------------------	--

29. **19-445** Pass the ordinance approving the final plat of subdivision for Wagner Farms - Phase 1A - PZC 19-1-017 (Item 2 of 6)
30. **19-446** Pass the ordinance approving the final plat of subdivision for Wagner Farms - Phase 1B - PZC 19-1-017 (Item 3 of 6)
31. **19-447** Pass the ordinance approving the final plat of subdivision for Wagner Farms - Phase 2 - PZC 19-1-034 (Item 4 of 6)
32. **19-448** Pass the ordinance approving the final plat of subdivision for Wagner Farms - Phase 3 - PZC 19-1-033 (Item 5 of 6)
33. **19-449** Pass the ordinance approving a temporary use for 5 marketing signs for Wagner Farms - PZC 19-1-017 (Item 6 of 6)
34. **19-454** Receive the staff report for Naperville Elderly Homes (310 Martin Avenue) - BRB Case #96/PZC 18-1-130 (Item 1 of 6)

Q:	What is the position of Fire Chief Puknaitis regarding the concerns by BBR?	Gustin
A:	The Fire Department, including Chief Puknaitis, support the BRB's interpretation regarding the Naperville Elderly Homes project as presented in the ordinance.	Laff

35. **19-455** Pass the ordinance upholding the Building Review Board's interpretation of the application of Title 5 (Building Regulations) of the Naperville Municipal Code for the Naperville Elderly Homes located at 310 Martin Avenue and denying the variances to Table 705.8 and Section 706.1.1 of the 2018 International Building Code - Naperville Elderly Homes - BRB Case 96 (Item 2 of 6)
36. **19-456** Pass the ordinance amending Ordinance 17-075 by approving a Preliminary/Final Plat of Subdivision in place of the previously approved Preliminary Plat of Subdivision for Naperville Elderly Homes - PZC 18-1-130 (item 3 of 6)
37. **19-457** Pass the ordinance amending Ordinance 17-076 approving a conditional use for multi-family dwellings in the OCI District - Naperville Elderly Homes - PZC 18-1-130 (Item 4 of 6)
38. **19-458** Pass the ordinance amending Ordinance 17-077 granting certain zoning variances - Naperville Elderly Homes - PZC 18-1-130 (Item 5 of 6)
39. **19-459** Pass the ordinance amending Ordinance 17-078 granting a variance from Section 5-2C-3 (Exterior Wall Construction) of Title 5 (Building Regulations) of the Naperville Municipal Code - Naperville Elderly Homes - PZC 18-1-130 (Item 6 of 6)

L. ORDINANCES AND RESOLUTIONS:

1. **19-425** Pass the ordinance establishing City of Naperville Special Service Area No. 31 for streetscape improvements near the southwest portion of Block

423 in the downtown area of the City of Naperville

2. **19-384B** Concur with the petitioner and the Planning and Zoning Commission and pass an ordinance approving a variance to Section 6-6B-7.1 of the Naperville Municipal Code to allow an enclosed porch to encroach into the rear yard setback at 1331 N. Webster, subject to certain conditions; or

Concur with staff and deny the request for a variance to Section 6-6B-7.1 of the Naperville Municipal Code to allow an enclosed porch to encroach into the rear yard setback at 1331 N. Webster - PZC 19-1-028.

Q:	What is the Petitioners hardship?	Gustin
A:	The petitioner argues other types of structures are allowed to encroach (i.e. 5' for a detached garage) on nearby properties, and the age of the subdivision is another unique hardship.	Williams

3. **19-399** Adopt the resolution approving a Generation Siting and Operating Agreement between the Illinois Municipal Electric Agency and the City of Naperville at the Springbrook Water Reclamation Facility located at 3712 Plainfield-Naperville Road for a one-megawatt solar array.

Q:	Is this area going to take up any of our space that we use for leaves or eventual brush burning?	Hinterlong
A:	DPW does not use this location for the disposal of leaves as part of the annual leaf program nor for brush disposal.	Rutkowski

Q:	1. If a solar panel or any components of the system are damaged or malfunction will the city be responsible for the cost of repair, if not who? 2. Can funds from the Renewal Energy Grant Fund offset any expenses that will help to promote renewable solutions?	Gustin
A:	1. If any part of the system becomes damaged or malfunctions, it is the responsibility of IMEA or its contractor/supplier to repair and cover any cost associated with the repair. 2. Once this resolution is adopted, staff intends to seek permission from council to consider the Renewable Energy Grant Fund to cover the city's expense for the initial interconnection.	Podlesny

**BULK CURBSIDE LEAF COLLECTION PROGRAM DISPOSAL AGREEMENT
BETWEEN CITY OF NAPERVILLE AND BIOAG, INC.**

THIS AGREEMENT is entered into this 16th day of March, 2016, between the **City of Naperville ("City")**, an Illinois municipal corporation and home rule unit of government, with offices located at 400 South Eagle Street, Naperville, Illinois 60540, and **BIOAG, INC. ("Contractor")**, an Illinois corporation located at 28W753 Davidson Road, Naperville, Illinois 60564 for disposal of leaves collected by the City via the City's bulk curbside leaf collection program ("**Agreement**").

RECITALS

WHEREAS, in addition to the City's bagged leaf collection program that allows residents to dispose of bagged landscape waste weekly, the City Council has determined that it is in the public interest to offer residents with an alternative way to dispose of leaves via a bulk curbside leaf collection program where the City collects leaves that have been deposited on the street next to the curb in front of residences three times per year, between approximately late October and early December, weather permitting; and

WHEREAS, the City's bulk curbside leaf collection program is not administered by the City's contracted waste hauler, but rather is primarily administered by the City's Department of Public Works which is responsible for the curbside pickup and disposal of leaves collected via the City's bulk curbside leaf collection program; and

WHEREAS, the City annually collects between approximately 42,000 and 52,000 cubic yards of leaves through its bulk curbside leaf collection program; and

WHEREAS, the City may with the approval of the City Council, enter into contracts for leaf disposal per 65 ILCS 5/11-19-1 and 4-2-3:2.1, Naperville Municipal Code; and

WHEREAS, the City's current bulk curbside leaf collection program disposal agreement expires on April 30, 2016; and

WHEREAS, leaves collected by the City via the City's bulk curbside leaf collection program must be disposed of in an environmentally appropriate way pursuant to Illinois Environmental Protection Agency ("IEPA") regulations; and

WHEREAS, the use of nearby local farm land to dispose of leaves collected by the City via the City's bulk curbside leaf collection program is crucial to minimizing the City costs by reducing time and costs to transport collected leaves for disposal; and

WHEREAS, nearby local farm land has become increasingly sparse making it increasingly costly and inefficient to transport and dispose of the leaves on farm land located at significant distances; and

WHEREAS, per the Sole Source Procurement Section, 1-9B-4:5, of the City's Procurement Code the City's Chief Procurement Officer has conducted a good faith review of available sources for disposal of leaves collected by the City via the City's bulk curbside leaf collection program, including the publication of notice of intent to sole source this Agreement to the Contractor which did not receive any protests in response, and determined that there is only one source for disposal of leaves collected by the City via the City's bulk curbside leaf collection program; and

WHEREAS, it is in the best interests of the City to enter into this Agreement;

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and undertakings herein contain, the sufficiency of which is mutually acknowledged, the **City** and the **Contractor** (hereinafter jointly referred to as "**Parties**") agree as follows:

1. **Recitals Incorporated.** The foregoing recitals are incorporated in this Section as though fully set forth.
2. **Disposal Service.** The Contractor agrees to receive and appropriately dispose of any and all leaves delivered to it by the City throughout the Term of this Agreement. The Contractor shall be capable of appropriately disposing of no less than fifty two thousand (52,000) cubic yards of leaves delivered to it by the City between October 15 and December 1. The Contractor shall maintain no less than two hundred (200) acres of agricultural land within five (5) miles of the

municipal boundary of the City reserved exclusively for disposal of leaves the Contractor receives from the City. City owned property may not be used to satisfy the two hundred (200) acres of agricultural land requirement. The Contractor shall provide the City with the addresses and available acreage of all locations where the City may deliver leaves for disposal. All provided locations shall be available and able to accept large quantities of leaves delivered by the City Monday through Saturday from 6:30 A.M. until 5:00 P.M., in any weather condition. Leaves delivered by the City to agricultural land designated by the Contractor shall immediately become the property and responsibility of the Contractor. The Contractor shall be solely responsible for spreading, tilling or otherwise appropriately disposing of delivered leaves. The Contractor shall solely responsible for all aspect of disposal of the leaves including but not limited to the provision of material and labor, equipment, fuel, power, machinery, tools, disease-treatment materials, seed, inoculation, fertilizers, licensing and permitting. The Contractor shall appropriately maintain all property where City leaves are delivered.

3. **Regulatory Compliance.** The Contractor shall at all times conduct its leaf disposal services in strict compliance with all federal, state and local laws, ordinances, or rules and regulations, and shall immediately notify the City of any notice of violation received for a site to which residential leaf matter collected in the City has been taken for disposal or processing. Any notice of violation may be considered by the City to be failure to conform to the Agreement and shall be cause for immediate termination of this Amendment.
4. **Defense and Indemnification.** The Contractor shall defend, indemnify, and hold harmless the City, and its officers, agents, employees, and representatives for any injury or damage to person or property, including but not limited to any liability, losses or damages, including court costs and attorney fees, resulting or arising out of the Contractor or its officers, agents, employees, representatives, family or subcontractors' disposal of leaves delivered to it by the City. Such indemnification shall not be limited by reason of any insurance coverage provided by the Contractor. Such indemnification shall not apply to liability resulting solely from the City's own actions. This provision shall survive the expiration or termination of this Agreement.
5. **Consideration.** In consideration of the promises and provisions herein, the City shall pay the Contractor four dollars (\$4.00) per cubic yard of leaves delivered by the City to the Contractor

for disposal. Upon the City's delivery of leaves to the Contractor's designated premises, the City shall record and inform the Contractor of the number of cubic yards of leaves being delivered for disposal. The Contractor shall provide the City with an invoice specifying: (1) the number of cubic yards of leaves delivered the Contractor by the City for disposal; (2) the address where said leaves were delivered, and (3) the date when said leaves were delivered. Invoices submitted shall be paid in accordance with applicable City policy. The Parties shall make a good faith effort to amicably resolve any discrepancies concerning the number of cubic yards of leaves delivered by the City to the Contractor, however, in the event that a discrepancy cannot be amicably resolved, the City's record of the number of cubic yards of leaves it delivered to Contractor shall be controlling and dispositive to resolve any discrepancy.

6. **Term.** The Term of this Agreement shall begin on May 1, 2016 and end on April 30, 2018.
7. **Extension Option.** This City has three (3), one (1) year extension options whereby the City may choose to extend this Agreement for one (1) year up to three (3) times, subject to the same terms and conditions set forth herein, except that upon showing of good cause and upon the agreement of the Parties, the Contractor may require no more than a five percent (5.00%) annual increase in the price per cubic yard consideration. The City may exercise its option upon written notice to the Contractor at the address provided in the Notice Section herein, no less than thirty (30) days prior to the expiration of the Agreement.
8. **Insurance.** The Lessee shall maintain a Commercial General Liability insurance in the amount of two million dollars (\$2,000,000.00) per occurrence; Automobile Liability insurance in the amount of two million dollars (\$2,000,000.00) per occurrence; and Workers' Compensation insurance in accord with the laws of the State of Illinois. The Lessee shall name the City as an additional insured on all applicable policies and tender to the City the original and updated endorsements and certificates of insurance reflecting the same. For any claims related to the performance of the Lessee's work, Lessee's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Lessee's insurance and shall not contribute with it. The Lessee's Workers'

Compensation insurance policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Lessee, its employees, agents and subcontractors.

9. **Termination.** This Agreement may be terminated by the City upon thirty (30) days written notice to the Contractor at the address provided in the Notice Section herein.
10. **No Waiver.** Failure of either Party hereto to insist upon strict and punctual performance of any terms or conditions of this Agreement shall not be construed to constitute a waiver of, or estoppel against, asserting the rights to require such performance.
11. **No Assignment or Subcontract Without Consent.** The Contractor shall not assign nor subcontract any of its responsibilities under this Agreement without the written consent of the City.
12. **Notices.** Any notice provided for herein shall be sent to the following:

For the Contractor:	Benjamin Drendel, President of BIOAG, INC. 28W753 Davidson Road, Naperville, Illinois 60564
For the City:	City of Naperville Department of Public Works ATTN: Director of the Department of Public Works 180 Fort Hill Drive, Naperville, IL 60540
13. **Binding Effect.** This Agreement shall extend to and be binding upon the heirs, executors and administrators of the Parties to this lease.
14. **Amendment.** This Agreement sets forth all of the agreements, conditions, covenants, representations, warranties and understandings between the Parties with respect to the subject matter hereof. No subsequent amendment, modification or waiver of any of the provisions of this Agreement shall be effective unless in writing and executed by the Parties hereto.
15. **Severability.** If any part of this Agreement is determined by a court to be in conflict with statute or constitution or to be unlawful for any reason, the parties intend that the remaining provisions of this Agreement shall remain in full force and effect and be enforced to the greatest extent permitted by law.

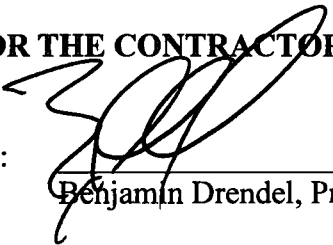
16. **Venue.** The laws of the State of Illinois shall govern the terms of this Agreement both as to interpretation and performance. Venue for any action arising out of the terms or conditions of this Agreement shall be in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.

17. **Authority.** Pursuant to authorization provided by the Naperville City Council, Douglas A. Krieger, City Manager for the City of Naperville warrants and represents that he is authorized to execute this Agreement on behalf of the City. Benjamin Drendel, President of Drendel Farms, Inc., warrants and represents that he is are authorized to execute this Agreement on behalf of the Contractor.

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement as of the Effective Date set forth on page one, and by their signatures hereto acknowledge that they have read and understand this Agreement and intend to be bound by its terms.

FOR THE CONTRACTOR, BIOAG, INC.:

By:


Benjamin Drendel, President of BIOAG, INC.

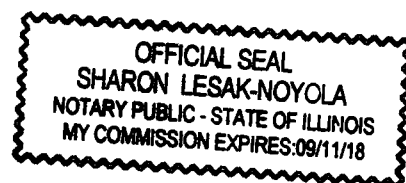
State of Illinois)
) ss
County of DuPage)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that **Benjamin Drendel**, appeared before me this day in person and acknowledged the signature set forth above.

Given under my hand and official seal this 7 day of March 2016.


Notary Public

(seal)



FOR THE CITY OF NAPERVILLE:

By: Doug A Krieger
Douglas A. Krieger, City Manager

Attest: Pam LaFeber
Pam LaFeber, Ph.D., City Clerk



State of Illinois)
) ss
County of DuPage)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that **Douglas A. Krieger and Pam LaFeber**, appeared before me this day in person and acknowledged the signatures set forth above.

Given under my hand and official seal this 18th day of March, 2016.

Nancy L. Leary
Notary Public



**LEASE AGREEMENT BETWEEN
CITY OF NAPERVILLE AND DRENDEL FARMS, INC.**

THIS AGREEMENT is entered into this 16th day of March, 2016, between the **City of Naperville** ("City"), an Illinois municipal corporation and home rule unit of government, with offices located at 400 South Eagle Street, Naperville, Illinois 60540, and **DRENDEL FARMS, INC.** ("Lessee"), an Illinois corporation located at 28W753 Davidson Road, Naperville, Illinois 60564 for the lease of three (3) property parcels owned by the City totaling approximately 52.4 acres to the Lessee to be used, in part, for the disposal of leaves collected by the City via the City's bulk curbside leaf collection program ("**Agreement**").

RECITALS

WHEREAS, in addition to the City's bagged leaf collection program that allows residents to dispose of bagged landscape waste weekly, the City Council has determined that it is in the public interest to offer residents with an alternative way to dispose of leaves via a bulk curbside leaf collection program where the City collects leaves that have been deposited on the street next to the curb in front of residences three times per year between approximately late October and early December, weather permitting; and

WHEREAS, the City's bulk curbside leaf collection program is not administered by the City's contracted waste hauler, but rather is primarily administered by the City's Department of Public Works which is responsible for the curbside pickup and disposal of leaves collected via the City's bulk curbside leaf collection program; and

WHEREAS, the City annually collects between approximately 42,000 and 52,000 cubic yards of leaves through its bulk curbside leaf collection program; and

WHEREAS, leaves collected by the City via the City's bulk curbside leaf collection program must be disposed of in an environmentally appropriate way pursuant to Illinois Environmental Protection Agency ("IEPA") regulations; and

WHEREAS, the use of nearby local farm land to dispose of leaves collected by the City via the City's bulk curbside leaf collection program is crucial to minimizing the City's costs by reducing time and costs to transport collected leaves for disposal; and

WHEREAS, nearby local farm land has become increasing sparse making it increasingly costly and inefficient to transport and dispose of the leaves on farm land located at significant distances; and

WHEREAS, the City currently owns three (3) parcels of land totaling approximately 52.4 acres, legally described in Exhibit A attached hereto, which would provide the City with suitable land for leaf disposal; and

WHEREAS, the City seeks to lease to Lessee the property as described in Exhibit A for purposes of the disposal of the leaves collected by the City through its bulk curbside leaf collection program as determined to be in the best interest of the City; and

WHEREAS, Lessee will allow the Leased Premised to be used for the disposal of leaves collected by the City via the City's bulk curbside leaf collection program; and

WHEREAS, it is in the best interests of the City to enter into this Agreement;

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and undertakings herein contain, the sufficiency of which is mutually acknowledged, the **City** and the **Lessee** (hereinafter jointly referred to as "**Parties**") agree as follows:

1. **Recitals Incorporated.** The foregoing recitals are incorporated in this Section as though fully set forth.
2. **Premises.** The City, in consideration of the covenants set forth herein, hereby leases to the Lessee the three (3) City owned property parcels at the following locations, legally described in Exhibit A attached hereto, (hereinafter "Leased Premises").

1. 4100 Plainfield/Naperville Road Naperville, Illinois 60540	15.9 acres (approximately)
2. Southeast corner of 103 rd at Route 59 Naperville, Illinois 60565	19.0 acres (approximately)
3. Southwest corner of 91 st Street at Wolf's Crossing Road	17.5 acres (approximately)

Naperville, Illinois 60564	
TOTAL	52.4 acres (approximately)

4. **Term.** The Term of this Agreement shall begin on May 1, 2016 and end on April 30, 2018.
5. **Extension Option.** This City has three (3), one (1) year extension options whereby the City may choose to extend this Agreement for one (1) year up to three (3) times, subject to the same terms and conditions set forth herein. The City may exercise its option upon written notice to the Lessee at the address provided in the Notice Section herein, no less than thirty (30) days prior to the expiration of the Agreement.
6. **Consideration.** In consideration of the promises and provisions herein, the Lessee agrees to:
 - a. Pay the City one dollar (\$1.00) per year, the receipt of which is hereby acknowledged by the City; and
 - b. Allow the City to deposit on the Leased Premises leaves collected by the City via the City's bulk curbside leaf collection program for disposal by a contracted third party.
7. **Use of the Leased Premises.** Lessee shall allow the Leased Premised to be used for the disposal of leaves collected by the City via the City's bulk curbside leaf collection program. Lessee may also use the Leased Premises for farming to the extent that said farming does not interfere or limit the proper and appropriate disposal of leaves collected by the City via the City's bulk curbside leaf collection program. Lessee shall be responsible for all aspects of farming the Leased Premises, including but not limited to the provision of material and labor, equipment, fuel, power, machinery, tools, disease-treatment materials, seed, inoculation, and fertilizers. In the event that Lessee decides not to farm all or a portion of the Leased Premises, Lessee shall be responsible to maintain that portion of the Leased Premises in a neat and orderly fashion, including but not limited to mowing the Leased Premises in a timely fashion, or as directed by the City, and shall remain responsible for the leaves deposited by the City as provided in this Agreement. Lessee is responsible for maintaining and mowing the rights-of-way surrounding the Leased Premises. Lessee agrees to maintain the Leased Premises and any farm buildings or structures used in connection with farming operations on the Leased Premises in a neat and orderly manner and in good repair, and to prevent unnecessary waste,

loss or damage to the Leased Premises. The Lessee shall not alter, farm, or otherwise use the Leased Premises in such a manner as to alter any existing detention or flow of water on said Leased Premises. Unless Lessee obtains the written permission of the Director of the Department of Public Works, Lessee shall not cut live trees from the Leased Premises or take any action with respect to the Leased Premises other than as described herein. Survey monuments, if they exist on the Leased Premises, shall not be disturbed by Lessee or Lessee's agents, employees, representatives or subcontractors. If a monument is moved or destroyed, Lessee shall be responsible for its prompt replacement and/or relocation at Lessee's sole cost.

8. **Regulatory Compliance.** The Lessee shall at all times conduct its use of the Leased Premises in strict compliance with all federal, state and local laws, ordinances, or rules and regulations, and shall immediately notify the City of any notice of violation received for Leased Premises. Any notice of violation may be considered by the City to be failure to conform to the Agreement and shall be cause for immediate termination of this Amendment.
9. **Defense and Indemnification.** The Lessee shall defend, indemnify, and hold harmless the City, and its officers, agents, employees, and representatives for any injury or damage to person or property, including but not limited to any liability, losses or damages, including court costs and attorney fees, resulting or arising out of the Lessee or its officers, agents, employees, representatives, family or subcontractors' use of the Leased Premises. Such indemnification shall not be limited by reason of any insurance coverage provided by the Lessee. Such indemnification shall not apply to liability resulting solely from the City's own actions. This provision shall survive the expiration or termination of this Agreement.
10. **Insurance.** The Lessee shall maintain a Commercial General Liability insurance in the amount of two million dollars (\$2,000,000.00) per occurrence; Automobile Liability insurance in the amount of two million dollars (\$2,000,000.00) per occurrence; and Workers' Compensation insurance in accord with the laws of the State of Illinois. The Lessee shall name the City as an additional insured on all applicable policies and tender to the City the original and updated endorsements and certificates of insurance reflecting the same. For any claims related to the performance of the Lessee's work, Lessee's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-

insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Lessee's insurance and shall not contribute with it. The Lessee's Workers' Compensation insurance policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Lessee, its employees, agents and subcontractors.

11. **Termination.** This Agreement may be terminated by the City upon thirty (30) days written notice to the Lessee at the address provided in the Notice Section herein.
12. **No Waiver.** Failure of either Party hereto to insist upon strict and punctual performance of any terms or conditions of this Agreement shall not be construed to constitute a waiver of, or estoppel against, asserting the rights to require such performance.
13. **Real Estate Tax Exemption.** Lessee is responsible for timely filing for a farm exemption for real estate tax assessment purposes for the Leased Premises each year of this Agreement, including any renewal period, and shall be solely responsible for any real property taxes due on the Leased Premises for any time period covered by this Agreement, including or any renewal hereof. In the event that Lessee fails to timely pay any real property taxes that are billed for the Leased Premises which accrued during any part of the Agreement term, the City may opt to pay said tax bill and seek reimbursement therefore from the Lessee. Lessee shall be responsible for all costs and attorneys' fees associated with the enforcement of this provision. This provision shall survive the expiration or termination of this Agreement.
14. **No Assignment or Subletting Without Consent.** The Lessee shall not assign nor sublet the Leased Premises without the written consent of the City.
15. **City Access.** The City maintains the right to enter upon the Leased Premises for any reasonable purpose at any time so long as such access does not unreasonably interfere with Lessee's use of the Leased Premises.
16. **Possession.** Upon expiration or termination of this Agreement, Lessee covenants to return the Leased Premises to the City in at least as good a condition as it was in prior to the Effective Date of this Agreement, ordinary wear and tear excepted.

17. **Notices.** Any notice provided for herein shall be sent to the following:

For the Lessee: Benjamin Drendel, President of Drendel Farms, Inc.
28W753 Davidson Road, Naperville, Illinois 60564

For the City: City of Naperville Department of Public Works
ATTN: Director of the Department of Public Works
180 Fort Hill Drive, Naperville, IL 60540

18. **Binding Effect.** This Agreement shall extend to and be binding upon the heirs, executors and administrators of the Parties to this lease.

19. **Amendment.** This Agreement sets forth all of the agreements, conditions, covenants, representations, warranties and understandings between the Parties with respect to the subject matter hereof. No subsequent amendment, modification or waiver of any of the provisions of this Agreement shall be effective unless in writing and executed by the Parties hereto.

20. **Severability.** If any part of this Agreement is determined by a court to be in conflict with statute or constitution or to be unlawful for any reason, the parties intend that the remaining provisions of this Agreement shall remain in full force and effect and be enforced to the greatest extent permitted by law.

21. **Venue.** The laws of the State of Illinois shall govern the terms of this Agreement both as to interpretation and performance. Venue for any action arising out of the terms or conditions of this Agreement shall be in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.

22. **Authority.** Pursuant to authorization provided by the Naperville City Council, Douglas A. Krieger, City Manager for the City of Naperville warrants and represents that he is authorized to execute this Agreement on behalf of the City. Benjamin Drendel, President of Drendel Farms, Inc., warrants and represents that he is are authorized to execute this Agreement on behalf of the Lessee.

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement as of the Effective Date set forth on page one, and by their signatures hereto acknowledge that they have read and understand this Agreement and intend to be bound by its terms.

FOR THE LESSEE, DRENDEL FARMS, INC.:

By:


Benjamin Drendel, President of Drendel Farms, Inc.

State of Illinois)

) ss

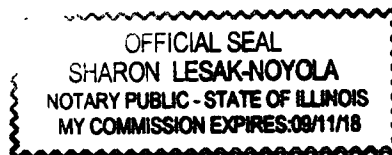
County of DuPage)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that **Benjamin Drendel**, appeared before me this day in person and acknowledged the signature set forth above.

Given under my hand and official seal this 7 day of MARCH, 2016.

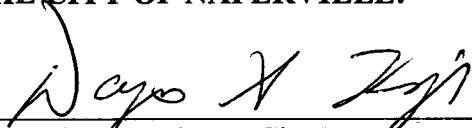

Notary Public

(seal)

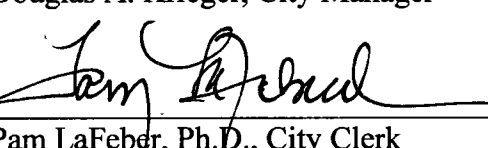


FOR THE CITY OF NAPERVILLE:

By:


Douglas A. Krieger, City Manager

Attest:


Pam LaFeber, Ph.D., City Clerk

State of Illinois)

) ss

County of DuPage)



I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that **Douglas A. Krieger and Pam LaFeber**, appeared before me this day in person and acknowledged the signatures set forth above.

Given under my hand and official seal this 18th day of march, 2016.

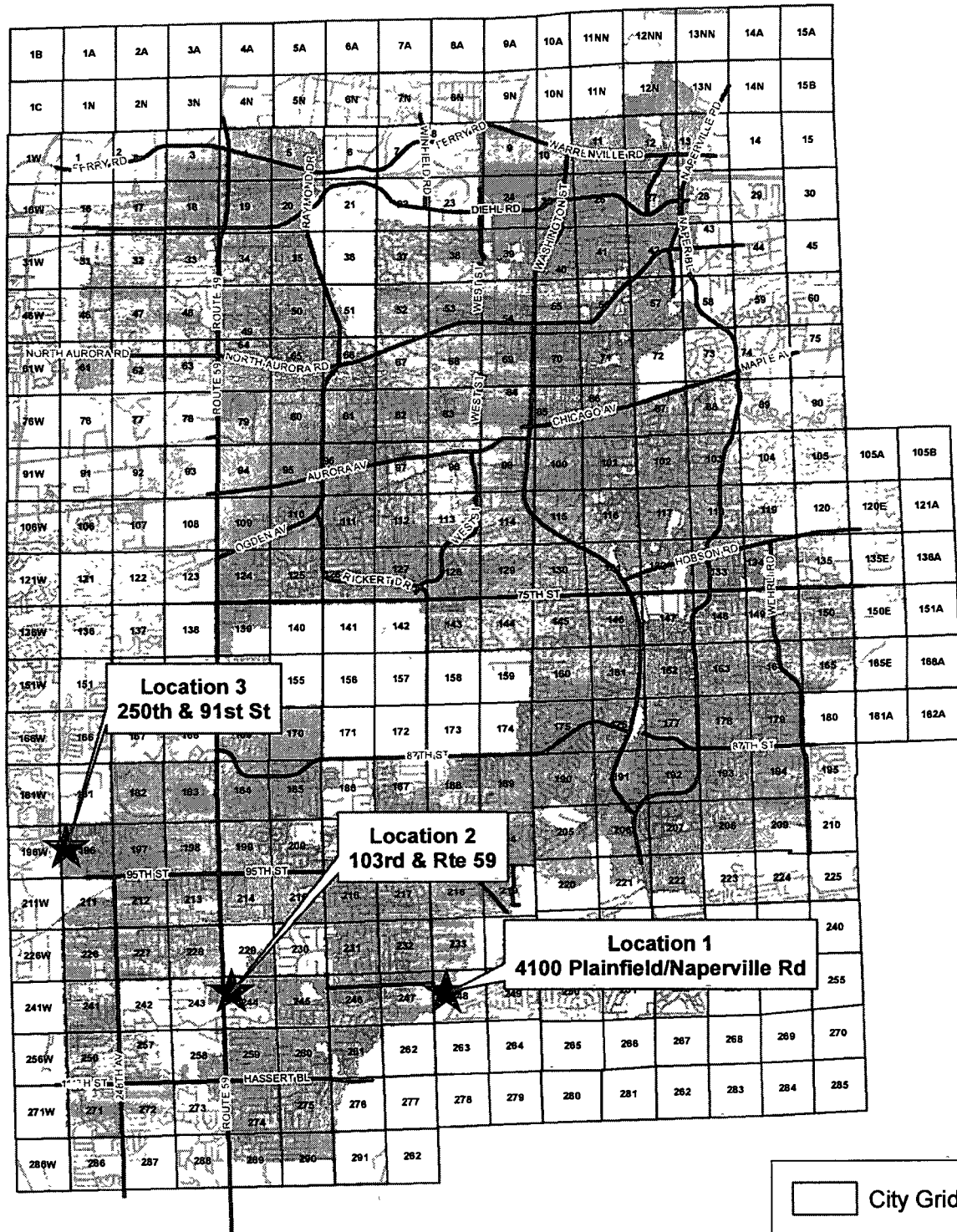

Notary Public

(seal)



EXHIBIT A

City of Naperville LEAF DISPOSAL LOCATIONS



Department of Public Works
Strategic Services Division
www.naperville.il.us
3/4/2016



This map should be used for reference only
The data is subject to change without notice
City of Naperville assumes no liability in the use
or application of the data. Reproduction or redistribution is
forbidden without expressed written consent from the City of Naperville

EXHIBIT A

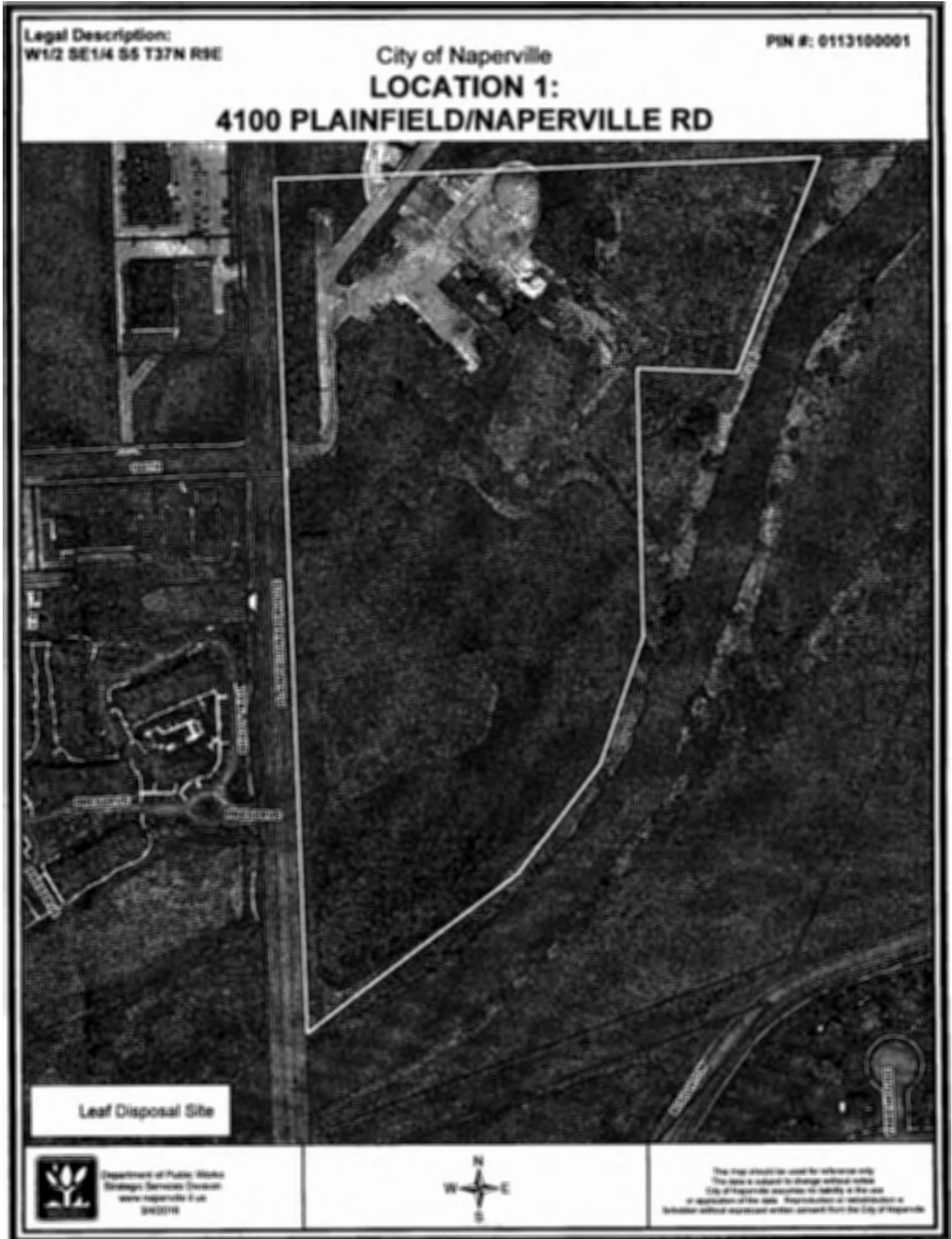
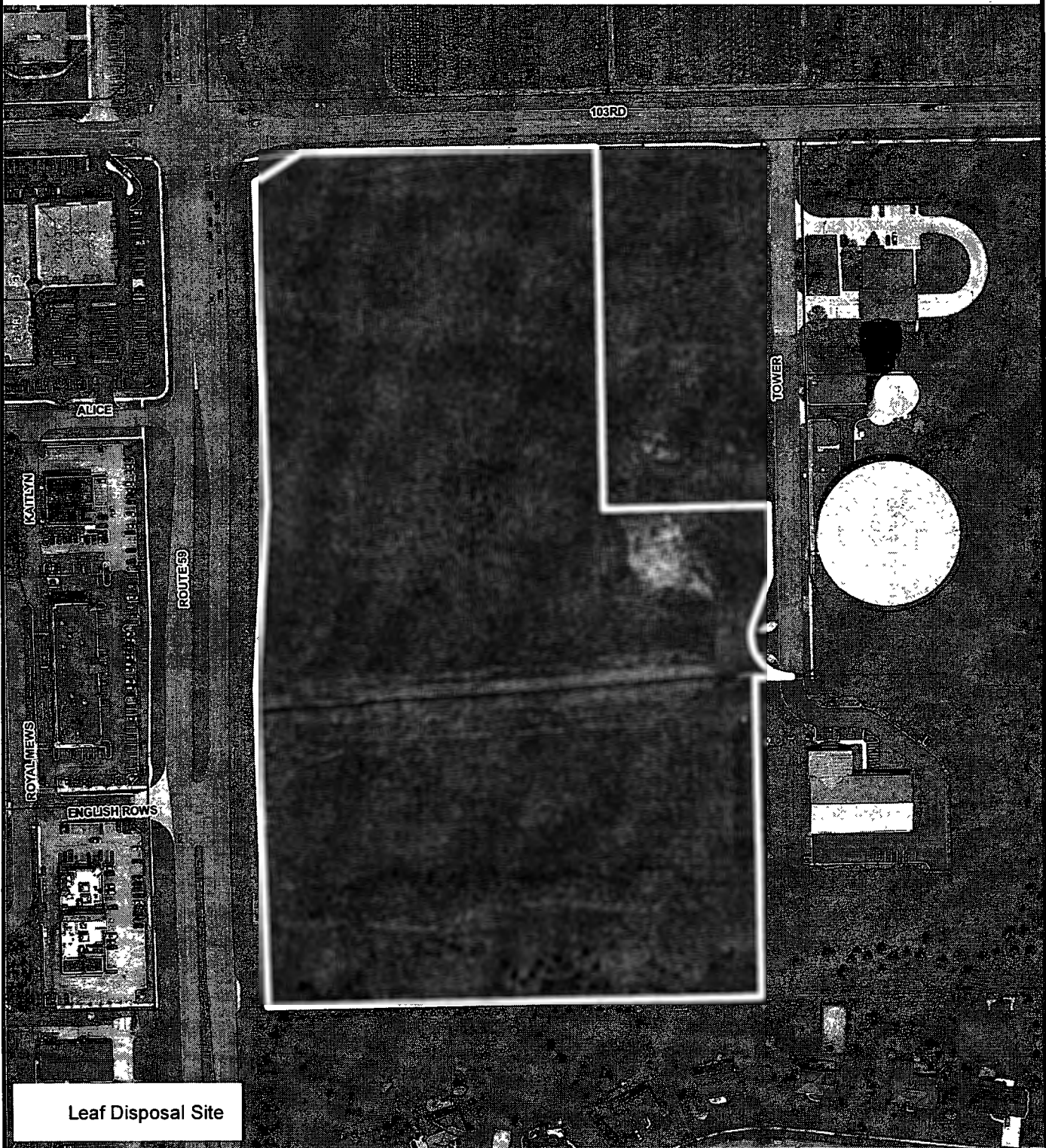


EXHIBIT A

Legal Description:
NW1/4 NW1/4 S15 T37N R9E

PIN #: 0115101044

City of Naperville
LOCATION 2:
NEAR 103RD AND ROUTE 59



Leaf Disposal Site



Department of Public Works
Strategic Services Division
www.naperville.il.us
3/4/2016



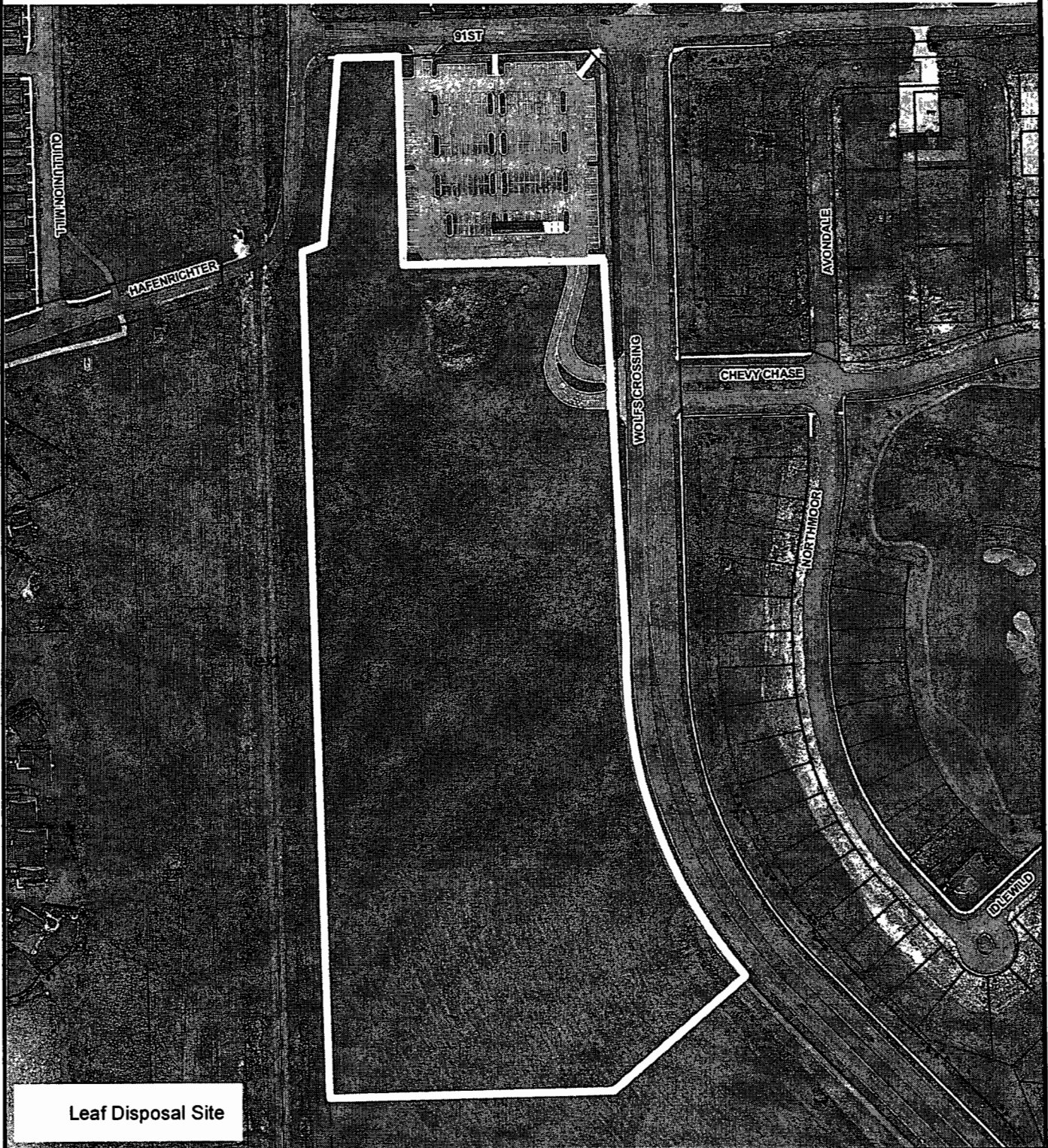
This map should be used for reference only
The data is subject to change without notice
City of Naperville assumes no liability in the use
or application of the data. Reproduction or redistribution is
forbidden without expressed written consent from the City of Naperville

EXHIBIT A

Legal Description:
NW1/4 NW1/4 S15 T37N R9E

PIN #: 0105400012

City of Naperville LOCATION 3: NEAR 250TH AND 91ST STREET



Leaf Disposal Site



Department of Public Works
Strategic Services Division
www.naperville.il.us
3/4/2016



This map should be used for reference only
The data is subject to change without notice
City of Naperville assumes no liability in the use
or application of the data. Reproduction or redistribution is
forbidden without expressed written consent from the City of Naperville

public improvements and soil erosion and sedimentation control for said PHASE of development of the SUBJECT PROPERTY ("Public Improvements"). If the provisions of the Annexation Agreement as to surety and the provisions of the Naperville Municipal Code, as amended from time to time, are in direct conflict with each other, the provisions of the Annexation Agreement shall control. Financial surety shall be received and approved prior to issuance of a site development permit for said PHASE. In addition, OWNER AND DEVELOPER/CHURCH shall provide financial surety in compliance with the Naperville Municipal Code, as amended from time to time, prior to CITY issuance of a site construction permit to OWNER AND DEVELOPER/CHURCH for the development of the WAGNER FARMS-CHURCH PROPERTY. If the provisions of the Annexation Agreement as to surety and the provisions of the Naperville Municipal Code, as amended from time to time, are in direct conflict with each other, the provisions of the Annexation Agreement shall control.

Prior to acceptance of the Public Improvements by the CITY, the OWNER AND DEVELOPER/RESIDENTIAL or OWNER AND DEVELOPER/CHURCH, as may be applicable, shall provide the CITY with: (i) a maintenance surety for the Public Improvements in a form and from a source approved by the City Attorney and in conformity with the Naperville Municipal Code; and with (ii) a Bill of Sale for those Public Improvements as required by the City Engineer.

As to any surety, or maintenance surety, provided by OWNER AND DEVELOPER/RESIDENTIAL or OWNER AND DEVELOPER/CHURCH to the CITY hereunder, each respective OWNER agrees that in the event of a default under its surety or maintenance surety: (1) at no time shall the CITY be liable for attorneys' fees with respect thereto; (2) OWNER shall be liable to pay the CITY'S reasonable attorneys' fees and costs (in-house or outside counsel) in enforcement thereof; and (3) the list of circumstances set forth in such surety (including any exhibit thereto) as bases for default thereunder shall entitle the CITY to draw on said surety.

The financial surety for each PHASE shall be provided in the following amounts:

Phase 1A/1B: \$4,361,611.98
Phase 2: \$1,939,213.10
Phase 3: \$675,643.10

- 7.3 Development of the Subject Property. OWNER AND DEVELOPER/RESIDENTIAL and OWNER AND DEVELOPER/CHURCH shall each construct the improvements related to the development of their respective portion of the SUBJECT PROPERTY, including but not limited to

on behalf of
[Signature]
5/14/19