



**CITY COMMISSION  
MEETING  
January 5, 2015**



# COMMISSION AGENDA

**AGENDA**  
**ADRIAN CITY COMMISSION**  
**JANUARY 5, 2015**  
**7:00PM**

- I. PRAYER AND PLEDGE OF ALLEGIANCE TO THE FLAG
- II. ROLL CALL
- III. APPROVAL OF THE MINUTES OF THE DECEMBER 15, 2014 REGULAR MEETING OF THE ADRIAN CITY COMMISSION.
- IV. PRESENTATION OF ACCOUNTS
- V. REGULAR AGENDA

RESOLUTIONS

- 1. **R15-001. City Commission.** Resolution to reschedule the regular meeting of the City Commission scheduled for Monday, January 19, 2015 to Tuesday, January 20, 2015 at 7:00pm in observance of Martin Luther King Day.
  - 2. **R15-002. Utilities.** Resolution to approve a change order from Jones & Henry of Toledo, Ohio for Brick Arch Engineering Services.
  - 3. **R15-003. Engineering.** Resolution to award a bid for the City's Sidewalk Snow & Ice Removal Program.
  - 4. **R15-004. Administration.** Resolution to authorize the Mayor and City Clerk to sign a Quit Claim Deed in order to clear title regarding property at 347 Mulzer Ave. that the City previously deeded to A. J. Brown.
  - 5. **R15-005. Administration.** Resolution to approve the sale and authorize the Mayor and City Clerk to sign a purchase agreement for the sale of property near N. Main and Albert to Sundance, Inc. for the amount of \$25,000.00.
- VI. PUBLIC COMMENT
  - VII. COMMISSIONER COMMENTS



# MINUTES

**MINUTES  
ADRIAN CITY COMMISSION  
DECEMBER 15, 2014  
7:00 P.M.**

Official proceedings of the December 15, 2014 regular meeting of the City Commission, Adrian, Michigan.

The regular meeting was opened with a moment of silent prayer for families of Rick Coy and William Burkert and the Pledge of Allegiance to the Flag.

PRESENT: Mayor Berryman and Commissioners Dudas, Munson, Rising, Gallatin, Berryman Adams and Faulhaber.

Mayor Berryman in the Chair.

Commissioner Dudas motioned to approve the minutes from the regular meeting on December 1, 2014, this was seconded by Commissioner Berryman Adams, and the minutes were adopted by a 7-0 vote.

**PRESENTATION OF ACCOUNTS**

Utility Department Receiving Fund Voucher #4054 through #4061	\$210,403.57
General Fund Vouchers #22183 through #22195	\$254,033.56
Clearing Account Vouchers amounting to	<u>\$834,514.62</u>
TOTAL EXPENDITURES	<u>\$1,298,951.75</u>

On motion by Commissioner Berryman Adams, seconded by Commissioner Dudas, this resolution was adopted by a 7-0 vote.

**COMMUNICATIONS**

**C.1 – FINANCE – November Expenditure and Revenue Report.**

**REGULAR AGENDA**

**RESOLUTIONS**

**R14-150**

RE: **ENGINEERING– Church Street parking Lot Contract Modification**

WHEREAS the Adrian City Commission, by resolution authorized through contract the paving and concrete work for the Church Street Parking Lot project to Gerken Paving, Napoleon, OH in the amount of \$151,564.50; and

WHEREAS, the original estimated bid quantities and the actual as-built quantities differ. The actual as-built quantities resulted in a net increase of \$9,299.64 which is an increase of 6.14% of the contract price; and

WHEREAS, it is requested that authorization of this contract be modified to allow for payment of the work that Gerken Paving has completed in the amount of \$9,299.64; and

WHEREAS, the Finance Director indicates that sufficient funds are available for this purpose in accounts:

(Account 585-546.00-975.000) Capital Improvements

NOW THEREFORE BE IT RESOLVED that the Adrian City Commission, by this resolution, hereby approves the contract modification in the amount of \$9,299.64 for the purpose of a contract modification due to quantity adjustment.

On motion by Commissioner Rising, seconded by Commissioner Munson, this resolution is adopted by a 7-0 vote.

#### **R14-151**

#### **RE: UTILITIES DEPARTMENT –Wastewater Treatment Plant and O & M Facility - Authorization to Contract with Brint Electric for LED Lighting Projects at the Wastewater Treatment Plant and O&M Facility**

WHEREAS the yard security lighting at the Wastewater Treatment Plant and garage lights at the Operations & Maintenance facility are inefficient, require frequent repair, and are in need of replacement; and

WHEREAS a request for proposal for lighting projects was sent to interested bidders for the removal and replacement of these fixtures with new, efficient, LED fixtures; and

WHEREAS on Tuesday December 2, 2014 the Purchasing Office received eight (8) qualified bids for the aforementioned lighting projects with the following results:

<u>Vendor</u>	<u>Location</u>	<u>O &amp; M</u>	<u>WWTP</u>	<u>Total</u>
Adrian Electric & Generator	Adrian, MI	\$14,535.00	\$9,600.00	\$24,135.00
MB Electric	Adrian, MI	\$16,988.00	\$32,849.00	\$49,837.00
J Ranck Electric	Mt. Pleasant, MI	\$18,250.00	\$16,850.00	\$35,100.00
FET Construction Services	Sylvania, OH	\$14,251.00	\$14,138.00	\$28,434.00
Industrial Power Systems	Rossford, OH	\$17,018.00	\$23,555.00	\$40,573.00
Great Lakes Power & Light	Casco, MI	\$18,700.00	\$17,450.00	\$36,150.00
US Utility Electrical Service	Perrysburg, OH	\$20,350.00	\$5,300.00	\$25,650.00
Brint Electric	Adrian, MI	\$13,977.00	\$8,696.00	\$22,673.00;and

WHEREAS the Finance Director indicates that there are sufficient funds available for this purpose in the Water Capital Project Fund and Sewer Capital Projects Fund (497-553.00-977.578) as follows:

496-539.00-975.108 Capital Improvements – Merrick St.	\$13,977.00
497-553.00-977.578 Plant Lighting Upgrades	<u>\$ 8,696.00</u>
Total	\$22,673.00;and

WHEREAS, the Utilities Director and City Administrator recommend engagement of Brint Electric of Adrian, MI., in the City's Standard Professional Services Contract for the purpose of removing existing lighting fixtures and installing new LED fixtures at a cost not to exceed \$22,673.00.

NOW THEREFORE BE IT RESOLVED that the Adrian City Commission, by this resolution, hereby authorizes the engagement of Brint Electric of Adrian, MI in the City's Standard Professional Services Contract for the purpose of removing existing lighting fixtures and installing new LED fixtures at a cost not to exceed \$22,673.00.

BE IT FURTHER RESOLVED that the FY2014-15 budget be amended as follows to properly fund this project:

Expenditures:	
496-539.00-975.108 Capital Improvements – Merrick St.	(\$13,977.00)
496-549.00-977.578 Plant Lighting Upgrades	\$13,977.00

On motion by Commissioner Faulhaber, seconded by Commissioner Berryman Adams, this resolution was adopted by a 7-0 vote.

#### **MISCELLANEOUS**

1. Adrian Fire Department Report.
2. Departmental Report
3. D.A.R.T. Passenger Ridership Report.
4. See Click Fix Report.

#### **PUBLIC COMMENT**

1. Dale Stewart – Adrian – expressed his disapproval of the non-discrimination ordinance
2. Thomas Nastali – Manitou Beach – thanked the City for allowing him to be Santa Claus in the Holiday Lights Parade.

#### **COMMISSIONER COMMENTS**

1. Commissioner Faulhaber expressed his concern regarding the traffic backup at the intersection of US 223 and W Maumee St. during rush hour. Feels that the stop sign should be removed and that this should be an entrance ramp onto 223.

2. Mayor Berryman expressed his pleasure at the success of the December 1<sup>st</sup> Friday, including the Holiday Lights Parade and the lighting of the Christmas trees on the Comstock Riverwalk. It has been wonderful to see so many people walking in Comstock Park, enjoying the Christmas trees.

The next regular meeting of the Adrian City Commission will be held on Monday, January 5, 2015 at 7:00 p.m. in the City Chambers Building, 159 E. Maumee St, Adrian, MI 49221.

Jim Berryman  
Mayor

Pat Baker  
City Clerk



# CHECK REGISTER

January 5, 2015

I have examined the attached vouchers and recommend approval of them for payment.



Shane Horn  
City Administrator

SAH:mld

RESOLVED, that disbursements be and they are hereby authorized for warrants directed to be drawn on the City Treasurer for the following:

Utility Department Vouchers	
Vouchers #4061 through 4066.....	\$90,315.48
General Fund	
Vouchers #22196 through #22216 .....	\$332,927.52
Clearing Account Vouchers	
amounting to.....	<u>\$409,844.07</u>
TOTAL EXPENDITURES .....	<u>\$833,087.07</u>

On motion by Commissioner \_\_\_\_\_, seconded by  
Commissioner \_\_\_\_\_, this resolution was \_\_\_\_\_  
by a \_\_\_\_\_ vote.

January 5, 2015

UTILITIES FUND  
CHECK REGISTER

CHECK#	AMOUNT	PAYEE	DESCRIPTION
4061	\$ 561,679.78	City of Adrian - Clearing	AP Check Register 12/15/14
4062	\$ 65,642.27	City of Adrian - Payroll	Payroll w/e 12/19/14
4063	\$ 16,155.57	Consumers Energy	December 2014 Electric
4064	\$ 78.82	City of Adrian - Utilities	November 2014 Water
4065	\$ 39.28	Frontier Communication	December 2014 Telephone
4066	\$ 8,399.54	Citizens Gas	November 2014 Heating
	\$ 651,995.26		
	\$ (561,679.78)	Less: Check 4061	
	\$ 90,315.48	TOTAL	

January 5, 2015

January 5, 2015

GENERAL FUND  
CHECK REGISTER

CHECK#	AMOUNT	PAYEE	DESCRIPTION
22196	\$ 100.00	Jeni LaGore	Piotter Center Rental Deposit
22197	\$ 35.00	AJ Brady Underground	Permit Refund
22198	\$ 101,008.96	City of Adrian - Clearing	AP Check Register 12/15/14
22199		City of Adrian - Utilities	EFT State of Michigan December 2014
22200	\$ 4,250.00	CHIEF Team	Forfeiture Sharing
22201	\$ 183,851.24	City of Adrian - Payroll	Payroll w/e 12/19/14
22202	\$ 14,007.68	First Federal Bank	Social Security w/e 12/19/14
22203		City of Adrian - Utilities	EFT State of Michigan December 2014
22204	\$ 148.00	Lenawee Co Register of Deeds	Registering Deeds
22205		City of Adrian - Utilities	EFT State of Michigan December 2014
22206	\$ 257.00	Lenawee Co Register of Deeds	Registering Deeds
22207	\$ 4.68	Beatrice Vasquez	Over/Short towards water bill
22208	\$ 7,906.02	Nola's Transportation	Payroll w/e 12/24/14
22209	\$ 60.24	Gwen Donahue	Refund Jan 2015 BCBS Premiums
22210	\$ 104.64	Justin Doehring	Refund Jan 2015 BCBS Premiums
22211	\$ 40.40	Jim Dailey	Refund Jan 2015 BCBS Premiums
22212	\$ 86,641.74	BCBS of Michigan	Jan 2015 BCBS Premiums
22213	\$ 25,899.04	Lenawee Fuels Inc.	Fuel Delivery 12/12/14
22214	\$ 8,467.30	Citizens Gas	November 2014 Heating
22215	\$ 369.83	Frontier Communications	December 2014 Telephone
22216	\$ 784.71	Consumers Energy	December 2014 Electric
	\$ 433,936.48		
	\$ (101,008.96)	Less : Check 22198	
	\$ 332,927.52		

January 5, 2015

User: SHOLTZ

EXP CHECK RUN DATES 01/01/2014 - 12/30/2015

DB: Adrian

BOTH JOURNALIZED AND UNJOURNALIZED

Claimant	OPEN Amount Claimed	Amount Owed	Amount Rejected
1. ADRIAN FABRICARE CENTER INC.	698.00		
2. ADRIAN LOCKSMITH & CYCLERY	7.92		
3. ADRIAN MECHANICAL SERVICES CO	1,213.13		
4. ADRIAN NAPA	62.17		
5. ADRIAN PAINTERS SUPPLY & EQUIPMENT	35.85		
6. ADRIAN SENIOR CENTER	525.00		
7. ADVANCE AUTO PARTS COMMERCIAL CHRG	24.18		
8. AIRGAS CARBONIC	650.00		
9. AIRGAS USA, LLC	123.97		
10. DENISE ALVERSON	20.00		
11. AMERICAN PATRIOT PICTURES, LLC	19.99		
12. AMERICAN PRESSURE SYSTEMS	63.73		
13. AMERICAN WATER WORKS ASSN	1,698.00		
14. APPLE MAT RENTAL	350.90		
15. ARCHBOLD EQUIPMENT CO	70.03		
16. AUTO ZONE COMMERCIAL	13.87		
17. BAKER & TAYLOR BOOKS	1,157.23		
18. BARRACUDA NETWORKS	2,799.00		
19. BARRETT'S GARDEN CENTER, INC	399.75		
20. BATTERY WHOLESALE	133.98		
21. A.J. BAYLON CONSTRUCTION	225.00		
22. GREG BELL CHEVROLET CADILLAC INC	0.91		
23. BEST AIRE COMPRESSOR SERVICES, INC.	1,148.00		
24. DAVID BIRDSSELL	24.01		
25. MARK BISHOP	20.00		
26. ROBERT BISHOP	252.40		
27. BLACK SWAMP EQUIPMENT	65.28		
28. BLISSFIELD VILLAGE OF	25.00		
29. BRINT ELECTRIC	3,450.00		
30. TODD BROWN	820.00		
31. BUCK & KNOBBY EQUIP CO INC	3,495.00		
32. BUEHRER, ELIA M	270.59		
33. CALIFORNIA CONTRACTORS SUPPLIES INC	356.40		
34. RODNEY CALVIN	241.89		
35. CARMEUSE LIME INC	12,445.66		
36. CARUS CORPORATION	5,865.60		
37. CENGAGE LEARNING	157.13		
38. CHEMICAL SERVICES, INC.	875.50		
39. CITIZENS GAS FUEL CO	2,275.00		
40. CLIA LAB PROGRAM	150.00		
41. C-N CONSTRUCTION SUPPLIES INC	77.90		
42. COMCAST	13.79		
43. CONTROL SYSTEMS OF OHIO	50.00		
44. CORE TECHNOLOGY CORP.	1,750.00		
45. CORREA, PEDRO R	972.33		
46. CTI & ASSOCIATES, INC.	20,085.66		
47. CUTLER DICKERSON CO	532.72		
48. CUTTING EDGE ENGRAVING	81.94		
49. D PRINTER, INC.	247.50		
50. THE DAILY TELEGRAM	615.96		

User: SHOLTZ

EXP CHECK RUN DATES 01/01/2014 - 12/30/2015

DB: Adrian

BOTH JOURNALIZED AND UNJOURNALIZED

Claimant	OPEN Amount Claimed	Amount Owed	Amount Rejected
51. JERRY DAVIS	20.00		
52. DEMCO INC	229.39		
53. MICHELLE DEWEY	20.00		
54. DOAN COMPANIES	900.75		
55. STEVE EBERLE	20.00		
56. ENGLEWOOD ELECTRICAL SUPPLY	1,388.49		
57. EVOQUA WATER TECHNOLOGIES, LLC	748.00		
58. EXTEND YOUR REACH	810.51		
59. FASTENAL COMPANY	693.95		
60. FEDERAL EXPRESS	159.29		
61. FISHER SCIENTIFIC COMPANY LLC	265.01		
62. GALLANT & SON	316.77		
63. J.O. GALLOUP COMPANY	29.40		
64. GERKEN MATERIALS INC.	9,299.64		
65. MARK GIGAX	20.00		
66. GIS INFORMATION SYSTEMS	345.00		
67. GLOBAL GREEN SERVICE GROUP	2,400.00		
68. GOODWILL INDUSTRIES	894.80		
69. GOVCONNECTION INC	9,181.00		
70. JON HARRIS	112.86		
71. GLEN HAWKINS	221.61		
72. WALTER HELSEL	20.00		
73. HOLIDAY LIGHTING SERVICE, INC.	5,212.50		
74. SHANE HORN	20.00		
75. HOWE, NANCY M	290.88		
76. HUBBARD'S AUTO CENTER INC	347.52		
77. I C M A VANTAGE POINT	4,878.55		
78. I.T. RIGHT	472.50		
79. ICMA RETIREMENT CORPORATION	164.01		
80. IDEXX LABORATORIES, INC.	2,764.35		
81. INFOGROUP	630.00		
82. J T OVERHEAD DOORS	1,135.00		
83. JONES & HENRY ENGINEERS, LTD.	10,836.10		
84. JONES CHEMICALS, INC.	3,106.38		
85. K & B ASPHALT SEALCOATING, INC	2,113.35		
86. KAR LABORATORIES INC	1,590.00		
87. JAMES KARLE	20.00		
88. ERIC KELLY	20.00		
89. RICHARD KNORR	111.85		
90. LANSING SANITARY SUPPLY INC	1,427.45		
91. LENAWEE DISTRICT LIBRARY	39.00		
92. LENAWEE INTERMEDIATE SCHOOL	1,926.30		
93. LENAWEE TIRE & SUPPLY CO, INC.	152.76		
94. THE LIBRARY NETWORK	33.15		
95. DOUG LOLLEY	90.00		
96. LYDEN OIL COMPANY	400.00		
97. MADISON TOWNSHIP FIRE DEPT.	434.33		
98. MICHAEL MARVIN	20.00		
99. MASSON'S ELECTRIC, INC	1,308.54		
100. MCGOWAN ELECTRIC SUPPLY INC	140.16		

User: SHOLTZ

EXP CHECK RUN DATES 01/01/2014 - 12/30/2015

DB: Adrian

BOTH JOURNALIZED AND UNJOURNALIZED

Claimant	OPEN Amount Claimed	Amount Owed	Amount Rejected
101. MCMASTER- CARR SUPPLY CO.	459.90		
102. MICHIGAN CAT CORP	9,900.00		
103. MICHIGAN FIRE INSPECTOR'S SOCIETY	600.00		
104. MICHIGAN MUNICIPAL LEAGUE	1,818.53		
105. MICHIGAN MUNICIPAL TREASURERS	50.00		
106. STATE OF MICHIGAN	13,295.57		
107. MICHIGAN WATER ENVIROMENT ASSOC.	375.00		
108. MICROMARKETING LLC	557.13		
109. MIDAS AUTO SERVICE EXPERTS	289.95		
110. MIDWEST TAPE	130.45		
111. MITCHELL WELDING	772.15		
112. MLK, JR. CELEBRATION COMMITTEE	240.00		
113. MUNICIPAL EMPLOYEES' RETIRE	112,518.59		
114. MUNICIPAL WEB SERVICES	200.00		
115. NEWELL, CAROL	310.00		
116. NORTLEY, TIFFANY P & SCOTT W	267.25		
117. MIKE OSBORN	20.00		
118. OTIS ELEVATOR COMPANY	1,008.00		
119. PEERLESS SUPPLY INC	1,434.77		
120. PIERCE, MICHAEL	165.44		
121. PITNEY BOWES INC	175.08		
122. PITNEY BOWES PURCHASE POWER	3,000.00		
123. PLATINUM PLUS	2,666.49		
124. POLLARD WATER	1,387.80		
125. GLENN PRESTON	20.00		
126. QUILL CORPORATION	916.77		
127. R & W NURSERY, LLC	150.00		
128. REPUBLIC SERVICES, INC.	66.78		
129. RHINO	1,230.00		
130. STEVE RIEGER	101.74		
131. TIM RITCHIE	20.00		
132. ROPES & RIGGING TREE SERVICE, LLC	7,399.20		
133. WILLIAM SADLER	20.00		
134. CHARLES SCHMENK	80.00		
135. SCHUG CONCRETE CONSTRUCTION INC	4,233.23		
136. SCHULZ, BOB	100.00		
137. SHERWIN-WILLIAMS CO	295.22		
138. SLUSARSKI EXCAVATING & PAVING INC	18,287.46		
139. SOLARBEE INC	4,795.00		
140. SPICER GROUP	6,216.25		
141. SPOK, INC.	35.19		
142. STAPLES CREDIT PLAN	150.48		
143. STAUDER BARCH & ASSOC INC	500.00		
144. STEVENS DISPOSAL	38,207.75		
145. STEVENSON LUMBER, INC.	5.79		
146. STITCH WIZARD EMBROIDERY INC	24.00		
147. SUPERIOR UNIFORM SALES INC.	21.58		
148. T & L RENTALS	51.00		
149. TEAM SOFTWARE SOLUTIONS	125.00		
150. TETRA TECH INC	9,609.60		

User: SHOLTZ

EXP CHECK RUN DATES 01/01/2014 - 12/30/2015

DB: Adrian

BOTH JOURNALIZED AND UNJOURNALIZED

Claimant	OPEN Amount Claimed	Amount Owed	Amount Rejected
151. THOMPSON, JAMES	67.65		
152. THOMSON WEST	375.95		
153. TIME EMERGENCY EQUIPMENT INC	902.64		
154. T-MOBILE	29.99		
155. TOBIN, MATTHEW P	785.49		
156. TRACTOR SUPPLY COMPANY	124.65		
157. TRI-STATE MEDICAL SUPPLY	10.00		
158. TRUCK & TRAILER SPECIALITIES, INC	33.18		
159. TTB CLEANING LLC	7,650.00		
160. TWISS, MARY F	190.97		
161. U S POSTMASTER	2,220.00		
162. UNIQUE PAVING MATERIALS CORP	2,835.50		
163. UNUM LIFE INSURANCE COMPANY	2,159.04		
164. USA BLUEBOOK	1,230.60		
165. UTILITIES INSTRUMENTATION SERVICE I	9,475.00		
166. VERIZON WIRELESS	64.49		
167. DENNIS VESCELIUS	20.00		
168. VILLEGAS, SANTOS	68.03		
169. WEDECO CHARLOTTE	945.40		
170. WEISKOPF INDUSTRIES CORP	961.96		
171. WHITCHER PLUMBING & HEATING	86.98		
172. RYAN WHITE	20.00		
173. ROCKY WINTERS	145.62		
174. WITMER PUBLIC SAFETY GROUP, INC.	697.77		
***TOTAL ALL CLAIMS***	409,844.07		



# REGULAR AGENDA

**R15-001**

January 5, 2015

**RE: CITY COMMISSION – Change in Commission Meeting Date**

**RESOLUTION**

WHEREAS, the Charter of the City of Adrian requires that regular meeting times be established by City Commission resolution; and

WHEREAS, the regular meeting scheduled for Monday January 19, 2015 occurs on a day City Hall observes Martin Luther King Day; and

NOW, THEREFORE, BE IT RESOLVED that said regular meeting will be held on Tuesday, January 20, 2015 at 7:00 p.m. in the City Chambers Building located at 159 E. Maumee St., Adrian, MI.

On motion by Commissioner \_\_\_\_\_, seconded by  
Commissioner \_\_\_\_\_, this resolution was \_\_\_\_\_  
by a \_\_\_\_\_ vote.



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## **MEMORANDUM – UTILITIES DEPARTMENT**

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DATE: December 29, 2014

TO: Shane Horn, City Administrator

FROM: William Sadler, Utilities Director

SUBJECT: Brick Arch Phase I Change Order

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In June 2014, the City contracted with E.R. Zeiler of Temperance, MI to perform the construction of the first phase of the Brick Arch Sewer Rehabilitation project. This phase included construction of a new storm water outfall west of Winter St, replacement/addition of storm sewer on E. Maumee St. and Locust St., separation of storm and sanitary sewer at the intersection of Toledo/Washburn/N. Main, and the replacement/addition of many manhole structures along the brick arch sewer routes. A large portion of this project included the installation of over 750 feet of cure-in-place pipe through the section of the brick arch that runs through the Church St. parking lot. Unfortunately, for various reasons including issues with the specifications and sub-contractors, and the availability of materials, the contractor was unable to perform this work in a timely manner. Therefore, we made the decision to “non-perform” this work with the current contractor. Because of the importance of removing the extraneous storm water flow and strengthening this portion of the brick arch, it will be necessary to perform this work as a separate project.

At the June 16, 2014 meeting, the City Commission authorized contracting with Jones & Henry Engineering of Toledo, OH for the construction and engineering services for this project at a cost not to exceed \$95,000. Since we have separated this project out, there will be additional costs including preparation of specifications & bid documents, construction meetings, shop drawing review, periodic observation of construction activities, and preparation of as-built drawings at the end of the project. As such, we have solicited a cost from Jones & Henry in the amount of \$16,500 to perform this additional work. Due to the importance of this project and Jones & Henry’s previous work and familiarity with our sanitary and storm water system, I recommend modifying our original contract with Jones & Henry to reflect this additional cost. Please feel free to contact me if you have any questions.

**RE: UTILITIES DEPARTMENT – Change Order for Contract Construction Engineering Services for Brick Arch Sewer Rehabilitation/ Replacement Project**

WHEREAS, the City Commission at the June 16, 2014 meeting approved Resolution R14-061 which authorized the engagement of Jones & Henry of Toledo, OH for Contract Construction Engineering Services for Brick Arch Rehabilitation/ Replacement Project at a cost not to exceed \$95,000.00; and

WHEREAS, the Cure-In-Place portion of the project was non-performed by the contractor at the request of the City resulting in the need for additional engineering services; and

WHEREAS, Jones & Henry has submitted a proposal to provide said additional engineering services for the Brick Arch Project at a cost not to exceed \$16,500.00

WHEREAS, the Finance Director indicates that funds for the \$16,500.00 increase are available in the FY 2014-2015 Budget (497-555.00-975.517 Brick Arch Sewer Project); and

WHEREAS, the Utilities Director and City Administrator recommend approval of this resolution; and

NOW THEREFORE BE IT RESOLVED that the Adrian City Commission, by this resolution, hereby approves the change order from Jones & Henry of Toledo, OH for \$16,500.00 for Brick Arch Engineering Services.

On motion by Commissioner \_\_\_\_\_,

Seconded by Commissioner \_\_\_\_\_, this

Resolution was adopted by a \_\_\_\_\_ vote.

December 30, 2014

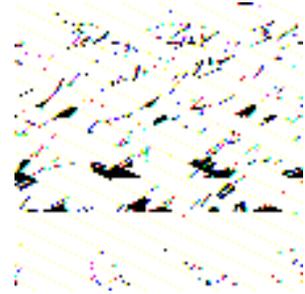
MEMORANDUM

TO: Shane Horn, Acting City Administrator

FROM: Todd Brown, Director of Parks & Engineering Services

SUBJECT: Sidewalk Snow and Ice Removal Contract

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On December 30, 2014 the City received bids for sidewalk snow removal for the 2014-15 Winter season. This contract includes two parts; part one is for the cleaning of properties along the railroad properties during most winter storm events and part two is for private walk cleaning on an as needed basis throughout the winter.

The bid tabulations are as follows:

ITEM	<b>Slusarski Excavating Adrian, Michigan</b>	<b>Underwood Nursery Adrian, Michigan</b>	<b>VanErt's, LLC Adrian, Michigan</b>
Railroad Crossings	\$525.00	\$900.00	\$650.00
Private Walks	.40/per Square Foot	.60/per Square Foot	4.00/per Square Foot
Color Photos	\$5.25/each	\$8.00/each	\$5.00/each

Slusarski Excavating & Paving, Inc. is the lowest bidder for this service. We have used Slusarski for several years and have been extremely happy with their service. It is my recommendation to award this contract to Slusarski Excavating and Paving, Inc. of Adrian, MI.

Funds for snow removal of the railroad crossings and miscellaneous properties will be drawn from the Major Street Fund Winter Maintenance account (202-478.00-801.111) and are available. Any work on the personal property snow removal will be assessed directly to the property owners where the work is completed.

**R15-003**

**RE: ENGINEERING – Sidewalk Snow & Ice Removal Contract**

**RESOLUTION**

WHEREAS the Adrian City Commission, by Resolution adopted the FY2014-15 Budget and General Appropriations Act, which included \$1,500.00 in the Major Street Fund - Winter Maintenance account (202-478.00-801.111) for the City’s Sidewalk Snow & Ice Removal Program; and

WHEREAS bids were solicited by the Purchasing Office and number three bids were submitted on Tuesday, December 30, 2014, as follows:

ITEM	<b>Slusarski Excavating Adrian, Michigan</b>	<b>Underwood Nursery Adrian, Michigan</b>	<b>VanErt’s, LLC Adrian, Michigan</b>
Railroad Crossings	\$525.00	\$900.00	\$650.00
Private Walks	.40/per Square Foot	.60/per Square Foot	4.00/per Square Foot
Color Photos	\$5.25/each	\$8.00/each	\$5.00/each

WHEREAS snow removal from railroad crossings and misc. City properties is the responsibility of the City; any work on private property snow removal will be assessed directly to property owners where the work is done; and

WHEREAS the Finance Director indicates that sufficient funds are available in the FY2014-15 Major Street Fund – Winter Maintenance Budget (Account #202-478.00-801.111 Contract Services) for the railroad crossings; and

WHEREAS, Slusarski Excavating being the lowest bid and has held this contract in years’ past where the City of Adrian has been extremely happy with their; and

WHEREAS, the Director of Parks & Engineering Services and City Administrator recommend acceptance of the bid from Slusarski Excavating, Adrian, MI at a price of \$.40 per square foot, \$5.25 for photos and \$525.00 per event to remove snow from Railroad Crossings; and

NOW THEREFORE BE IT RESOLVED that the Adrian City Commission, by this resolution, hereby authorizes the acceptance of the bid from Slusarski Excavating, Adrian, MI at a price of \$0.40 per square foot, and \$5.25 for photos for the FY2014-15 City’s Sidewalk Snow & Ice Removal Program and \$525.00 per event to remove snow from Railroad Crossings.

On motion by Commissioner \_\_\_\_\_,

seconded by Commissioner \_\_\_\_\_,

this resolution was adopted by a \_\_\_\_\_ vote

***MEMO***

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**DATE:** 1/2/15

**TO:** MAYOR, CITY COMMISSION

**FROM:** SARAH OSBURN, CITY ATTORNEY

**Re:** 347 Mulzer Ave.

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On the Agenda for your review is a quit claim deed for 347 Mulzer Avenue. We were recently contacted by American Title regarding an exception that was discovered when the prepared title insurance for the above property. Many years ago the city deeded this property to AJ Brown. The deed was never recorded. Mr. Brown subsequently deeded the property to someone else in 1991. This owner is now attempting to sell the property. In order to provide clear title, the City needs to have a deed recorded reflecting the transfer to Mr. Brown. We believe the transfer took place in the late 70s but have been unable to locate the original document. Therefore we are asking that you approve the attached resolution giving the mayor and clerk the authority to sign the quit claim deed.

R15-004

January 5, 2015

RE: Administration – Clear Title for 347 Mulzer Ave.

**RESOLUTION**

WHEREAS, in the 1970's the City of Adrian transferred interest in the property at 347 Mulzer Ave. to A.J. Brown, however the quit claim deed was never recorded; and

WHEREAS, A. J. Brown has since quit claimed his interest in the property to another party in 1991, and the current owner is now attempting to sell the property; and

WHEREAS, in order to provide clear title, the City needs to have a quit claim deed recorded that reflects the transfer of interest in the property to A. J. Brown.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and City Clerk are hereby authorized to sign a Quit Claim Deed transferring interest in the property at 347 Mulzer Ave., Adrian, Michigan to A. J. Brown.

On motion by Commissioner \_\_\_\_\_, seconded by  
Commissioner \_\_\_\_\_, this resolution was \_\_\_\_\_  
by a \_\_\_\_\_ vote.

# MEMO

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DATE: January 2, 2015  
TO: Hon. Mayor Berryman and City Commission  
FROM: Shane A. Horn, City Administrator  
SUBJECT: Sale of Property near N. Main & Albert

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A proposed development at 1106 N. Main has requested to purchase additional city-owned property. This site is the former Doc's Frame & Axle location and the proposed development would include a fast-food restaurant with drive-thru capabilities. The developer has an offer to purchase the current parcel but desires to purchase 75 feet of additional property to the North and 10 feet of additional property to the East for a total of 0.27 acres. I have negotiated a purchase price of \$25,000.00. We have internally looked at this project and do not feel that the loss of this park property will be an issue. I respectfully recommend that we proceed with the sale of this city-owned land for \$25,000.00

Respectfully Submitted,

Shane A. Horn

## **AGREEMENT FOR SALE AND PURCHASE OF PROPERTY**

THIS AGREEMENT FOR SALE AND PURCHASE OF PROPERTY (the "Agreement") is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2015, by and between the City of Adrian, Michigan, a Michigan municipal corporation ("Seller"), having a mailing address of 135 E. Maumee St., Adrian, Michigan 49221 and Sundance, Inc., a Michigan corporation ("Purchaser"), having offices at 7915 Kensington Ct., Brighton, Michigan 48116.

### **RECITALS**

A. Seller is the owner of a fee simple interest in the Premises (as such term is hereafter defined) and Seller is also the owner of all of the other Property (as such term is hereafter defined).

B. Seller desires to sell Seller's interests in the Property to Purchaser and Purchaser desires to purchase Seller's interests in the Property from Seller, each upon and subject to the terms and conditions of this Agreement.

THEREFORE, in consideration of and in reliance upon the above Recitals, the terms, covenants and conditions contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser agree as follows:

### **1.0 PURCHASE AND SALE OF SELLER'S INTERESTS IN THE PROPERTY**

Subject to the terms and conditions of this Agreement, Seller shall sell and convey and Purchaser shall purchase the following described interests in property (all of which are hereinafter collectively referred to as the "Property"):

- 1.1 All right, title and interest of Seller in portions of a certain tract of real estate located in Adrian, Michigan, and consisting of approximately \_\_\_\_\_ sq. ft. and \_\_\_\_\_ acres, together with any and all easements, covenants, agreements, rights, privileges, tenements, hereditaments and appurtenances thereunto now or hereafter belonging or appertaining thereto, including but not limited to the right to make all divisions under Section 108 of the Land Division Act, Act No. 288 of the Public Acts of 1967, as amended (the "Land Division Act") (collectively, the "Land"), a depiction of which is attached hereto as Exhibit 1.1(a) and a legal description of which is attached hereto as Exhibit 1.1(b); and
- 1.2 All right, title and interest of Seller (whether now or hereafter existing) in and to any award made or to be made as a result of or in lieu of condemnation, and in and to any award for damage to the Property or any part thereof by reason of casualty (all of the foregoing being included within the term "Land"); and
- 1.3 All of the buildings, structures, fixtures, facilities, installations and other improvements of every kind and description now or hereafter in, on, over and under the Land, if any, including, without limitation, any and all plumbing, air

conditioning, heating, ventilating, mechanical, electrical and other utility systems, parking lots and facilities, landscaping, roadways, sidewalks, security devices, signs and light fixtures (collectively, the "Improvements") (the Land and Improvements being collectively referred to as the "Premises"); and

- 1.4 All fixtures and other tangible personal property of every kind and description situated in, on, over and under the Premises and used in connection therewith, in which Seller has an interest, if any, together with all replacements and substitutions therefor (together with the intangible personal property hereinafter identified, collectively, the "Personal Property"); and
- 1.5 All existing leases (except for any oil and gas leases with respect to the Premises, the rights in which shall be retained by Seller ["Oil and Gas Lease Rights"], surveys, blueprints, drawings, plans and specifications, environmental studies or reports, soil borings or engineering tests, if any, for or with respect to the Property or any part thereof in Seller's possession;
- 1.6 All right, title and interest of Seller in and to the service contracts for maintenance and repair and/or provision of services to the Property, if any (as such term is hereinafter defined) and the other intangible personal property now or hereafter owned by Seller or in which Seller has an interest, and used in connection with the Property or any part thereof, including, without limitation, all certificates of occupancy, permits, licenses, approvals of governmental authorities, claims, choses in action, leases and other contract rights (the "Service Contracts").

## 2.0 **PURCHASE PRICE**

The total consideration to be paid by Purchaser to Seller for Seller's interests in the Property is Twenty Five Thousand Dollars (\$25,000.00) (subject however, to the closing adjustments required by this Agreement and credit for the Earnest Money referred to in Section 2.1) (the "Purchase Price").

### 2.1 **Earnest Money.**

Within three days of the date of this Agreement, Purchaser shall deliver to Seller a check payable to Seller in the sum of One Thousand Dollars (\$1,000.00) (together with all interest earned thereon as hereinafter provided, the "Earnest Money") to be held by Seller in escrow pending consummation of the transaction contemplated herein or termination of this Agreement. If the transaction contemplated by this Agreement closes in accordance with the terms and conditions of this Agreement, at Closing, the Earnest Money shall be delivered to Seller as payment toward the Purchase Price. If the transaction fails to close due to a default on the part of Seller or if a contingency set forth in this Agreement for the benefit of Purchaser is not satisfied or removed and Purchaser terminates this Agreement as provided herein, the Earnest Money shall be delivered by Seller to Purchaser. If the transaction fails to close due to a default on the

part of Purchaser, the Earnest Money shall be retained by Seller as liquidated damages and as Seller's sole and exclusive remedy, as more particularly provided for in Section 9.2 below.

2.2 Cash at Closing.

At Closing, Purchaser shall pay the Purchase Price referred to in Section 2.0 above by delivery of a cashier's check in the amount of Twenty Five Thousand Dollars (\$25,000.00) drawn on a local bank or federal funds wire transferred to an account designated by Seller in writing by notice received by Purchaser and the Title Insurer (as defined below) not less than three (3) business days prior to the Closing Date (as such term is hereinafter defined), subject, however, to such adjustments as are required by this Agreement and credit for the Earnest Money referred to in Section 2.1 above (such amount, as adjusted, being referred to as the "Cash Balance").

3.0 **OPERATION OF PROPERTY THROUGH CLOSING**

Through the Closing Date (as the term is hereinafter defined):

- 3.1 Except as otherwise provided in this Section 3, Seller shall manage and operate the Property in accordance with Seller's existing practices and keep the Premises and the tangible Personal Property, if any, in good condition and repair, ordinary wear and tear excepted.
- 3.2 Seller shall not sell, mortgage, pledge, hypothecate or otherwise transfer or dispose of all or any part of the Property or any interest therein, nor shall Seller initiate, consent to, approve or otherwise take any action with respect to zoning or any other governmental rules or regulations presently applicable to all or any part of the Property without Purchaser's consent, which consent may be granted or withheld in Purchaser's sole discretion.
- 3.3 Without the prior written consent of Purchaser (which consent shall not be unreasonably withheld or delayed), Seller shall not terminate, modify, extend, amend or renew any Service Contract or enter into any new Service Contract. Any new Service Contract entered into with Purchaser's consent shall be subject to the covenants, representations and warranties set forth in this Agreement with respect to Service Contracts. Notwithstanding the foregoing, on or before the Closing Date (as hereafter defined) Seller shall terminate any lease of any portion of the Property that Purchaser requests to be terminated; provided however, that Purchaser has not terminated this Agreement and further provided that Seller shall not be required to take any action to terminate such leases until after the expiration of the Inspection Period set forth in Section 8.1 below.
- 3.4 Seller shall comply with all federal, state, municipal and other governmental laws, ordinances, requirements, rules, regulations, notices and orders, and all

agreements, covenants, conditions, easements and restrictions relating to the Property, including, without limitation, any such requirements, rules, regulations, notices or orders issued or imposed after the date of this Agreement.

3.5 Seller shall promptly give written notice to the Purchaser of the occurrence of any event of which Seller is aware which affects the truth or accuracy of any representations or warranties made or to be made by Seller under or pursuant to this Agreement.

3.6 Purchaser shall have such access to the Property as is necessary for Purchaser to inspect the Property to assure that Seller is complying with the requirements of this Section 3; provided, however, that such access shall be governed by the provisions of Section 8.1 of this Agreement.

#### 4.0 **STATUS OF TITLE TO PROPERTY**

##### 4.1 State of Title.

At Closing, Seller shall convey to Purchaser or Purchaser's designee a fee simple interest in and to the Premises by general warranty deed in accordance with the terms of this Agreement, subject only to: (i) applicable zoning ordinances, (ii) those easements, building and use restrictions, leases, covenants, conditions and other restrictions of record which are acceptable to Purchaser in Purchaser's sole discretion and are reviewed and approved by Purchaser pursuant to Section 4.3 below, (iii) the reservation by Seller of easements for a sanitary sewer interceptor and a water main running across the northerly portion of the Land at locations mutually agreeable to Seller and Purchaser and containing terms and provisions mutually agreeable to Seller and Purchaser (the "Seller Utility Easements") and (iv) the lien of general real estate taxes for the year 2015 and subsequent years which are not yet due (the above enumerated exceptions collectively referred to as the "Permitted Exceptions").

##### 4.2 Preliminary Evidence of Title.

Seller shall furnish Purchaser with the following documents to evidence the condition of Seller's title to the Property:

4.2.1 Within ten (10) days after the date of this Agreement, Seller shall furnish to Purchaser a commitment (the "Title Commitment") (including, to the extent not included in such Title Commitment, a special assessment search with respect to the Property) for the most current form of an ALTA Owner's Title Insurance Policy (the "Title Policy") proposing to insure Purchaser and committing to insure the Property in the amount of the Purchase Price, issued by American Title Insurance Company (the "Title Insurer") Purchaser reserves the right to utilize a title company of their choosing at their expense. The Title Commitment shall be effective as of a date no more than thirty (30) days prior to the date of this Agreement and

shall show fee simple title in Seller. The Title Policy to be issued to Purchaser at Closing pursuant to Section 5.2.1(d) below shall provide gap coverage through the date of recording of the warranty deed from Seller to Purchaser and shall contain (a) an extended coverage endorsement over the so-called general or standard exceptions which are a part of the printed form of the policy (b) an ALTA 3.0 zoning endorsement, (c) an ALTA 9 endorsement with respect to minerals, restrictions and encroachments and (d) such other endorsements as counsel for Purchaser shall reasonably deem appropriate. Seller shall be responsible for and shall pay to the Title Insurer the search fees associated with the Title Commitment and the base premium for the Title Policy without standard exceptions. Purchaser shall be responsible and pay for the endorsements to the Title Policy and for the Survey (as defined below).

- 4.2.2 Within ten (10) days after the date of this Agreement, Seller shall furnish to Purchaser legible copies of all documents of record referred to in the Title Commitment and all other documents evidencing or, to the extent in the possession or control of Seller, relating to, matters reflected in the Title Commitment.
- 4.2.3 Within forty-five (45) days after the date of this Agreement, Purchaser shall obtain a current plat of survey (the "Survey") of the Property dated after the date of this Agreement, certified to Purchaser and the Title Insurer (and such other persons or entities as Purchaser may reasonably designate) by a surveyor registered in the State of Michigan and prepared in accordance with the Minimum Standard Detail Requirements for Land Title Surveys as jointly established by the American Land Title Association and American Congress on Surveying and Mapping (2011 version) including Table A Item Nos. 1, 2, 6(a), 6(b), 7(a), 7(b)(1), 7(c), 8, 11(a), 11(b), 16, 17 and 20(a) which meets the accuracy requirements of a Class A Survey as defined therein and which includes such other standards as the Title Company and the Purchaser may require as a condition to the removal of any survey exception from the Title Policy. The Survey shall also contain the surveyor's certification that the Premises are not located in any area designated by any governmental agency or authority as being a flood-prone or flood-risk area, whether pursuant to the Flood Disaster Act of 1973, as amended, or otherwise, and that the requirements of the National Flood Insurance Program are not applicable to the Premises.
- 4.2.4 Within ten (10) days after the date of this Agreement, Seller shall furnish to Purchaser copies of all of the documents in Seller's possession related to the Property, including but not limited to those described in Sections 1.5 and 1.6 of this Agreement (collectively the "Property Documents").

#### 4.3 Title Defects.

If the Title Commitment, the UCC Searches, the Survey or the Property Documents (or any revision or update of any of them) discloses (i) exceptions to title other than Permitted Exceptions or existing encumbrances in an aggregate amount less than the Purchase Price which Seller shall discharge on or before Closing either by payment or credit against the Purchase Price or (ii) any other matter which does not conform to the requirements of this Agreement, Purchaser shall so notify Seller within thirty (30) days of Purchaser's receipt of the Title Commitment, UCC Searches, Survey or the Property Documents and Seller shall have thirty (30) days from the date of such notice to have each such unpermitted exception to title removed or to correct each such other matter, in each case to the reasonable satisfaction of Purchaser. If within the time specified Seller fails to have each such unpermitted exception removed or correct each such other matter as aforesaid, Purchaser may, at its option, and in addition to all other rights and remedies available to Purchaser under or pursuant to this Agreement, either (i) terminate this Agreement upon written notice to Seller and immediately receive from the Escrowee the Earnest Money, in which event this Agreement, without further action of the parties, shall be deemed terminated and neither party shall have any further rights or obligations under this Agreement, or (ii) elect to accept title to the Property in its then current status with the right to deduct from the Purchase Price a sum equal to the amount required to discharge liens or encumbrances of a definite or ascertainable amount. If Purchaser fails to make either such election and elects not to pursue its other rights and remedies as aforesaid, Purchaser shall be deemed to have elected option (i).

## 5.0 **CLOSING**

### 5.1 **Closing Date.**

The "Closing" of the transaction contemplated by this Agreement (that is, the payment of the Cash Balance by Purchaser to Seller, the transfer by Seller to Purchaser of a fee simple interest in the Premises, and the satisfaction of all other terms and conditions of this Agreement) shall occur at a time mutually agreed upon by Seller and Purchaser within fifteen (15) days after the end of the Inspection Period set forth in Section 8.0 below, as it may be extended, (provided that neither party has terminated this Agreement due to the other party's default or otherwise in accordance with Section 8.0) at the offices of the Title Insurer or at such other time and place as Seller and Purchaser shall agree upon in writing. The "Closing Date" shall be the date of Closing. If the Closing Date above provided for falls on a Saturday, Sunday or legal holiday, the Closing Date shall be the next business day.

### 5.2 **Closing Documents.**

5.2.1 **Seller.** Not later than three (3) business days prior to the Closing Date, Seller shall deliver to Purchaser a copy of each of the following (the original of each in form and substance acceptable to Purchaser if not attached as an Exhibit to this Agreement, to be executed [if necessary] and delivered at Closing):

- (a) a general warranty deed of Seller to Purchaser subject only to the Permitted Exceptions sufficient to transfer and convey good and marketable fee simple title to the Premises to Purchaser upon payment in full of the Purchase Price as required by this Agreement, and otherwise in form acceptable to the Title Insurer;
- (b) a warranty bill of sale sufficient to transfer to Purchaser or Purchaser's designee title to the Personal Property, if any, and containing appropriate warranties of title and condition as required by this Agreement;
- (c) any and all affidavits, certificates or other documents required by the Title Insurer in order to cause it to issue the Title Policy in the form and condition required by this Agreement;
- (d) a pro forma copy of the Title Policy or a "marked-up" copy of the Title Commitment reflecting the Title Company's willingness to insure Purchaser (or Purchaser's designee, if applicable) in the amount of the Purchase Price and insuring that fee simple title as of the Closing Date is vested solely in Seller subject only to Permitted Exceptions, and otherwise in the form and condition required by this Agreement;
- (e) an assignment and assumption of those Service Contracts, if any, of which Purchaser elects to take an assignment, which election Purchaser must provide written notice of to Seller at least fifteen (15) days prior to Closing;
- (f) all of the original written Service Contracts, if any, and any and all leases, if any, blueprints, soil borings, building plans, surveys, site plans, engineering plans and studies, utility plans, landscaping plans, development plans, specifications, drawings and other documentation concerning all or any part of the Property, and in possession or control of Seller if any;
- (g) terminations of all of the leases, if any, of any portion of the Property for which Purchaser has requested termination signed by Seller and the particular tenant;
- (h) any bonds, warranties or guaranties which are in any way applicable to the Property or any part thereof;
- (i) at Closing, all keys and security codes, if any, for the Property, with identification of the lock to which each key or security codes relates;
- (j) all other documents reasonably required by Purchaser in order to evidence Seller's power and authority to sell the Property and to

perfect the conveyance, transfer and assignment of the Property to Purchaser or Purchaser's designee (including, without limitation, an assignment of general intangibles); and

- (k) a closing statement showing the computation of the funds payable to Seller pursuant to this Agreement.

5.2.2 Purchaser. Not later than three (3) business days prior to the Closing Date, Purchaser shall deliver to Seller a copy of each of the following (the original of each in form and substance reasonably acceptable to Seller if not attached as an Exhibit to this Agreement, to be executed [if necessary] and delivered at Closing: all documents reasonably required by Seller in order to evidence Purchaser's power and authority to consummate the transaction contemplated by this Agreement.

5.2.3 Purchaser. Purchaser shall deliver or cause to be delivered to Seller the following at Closing:

- (a) the Cash Balance;
- (b) an assignment and assumption of those Service Contracts, if any, of which Purchaser elects to take an assignment; and
- (c) a closing statement showing the computation of the funds payable to Seller pursuant to this Agreement.

### 5.3 Closing Prorations and Adjustments.

5.3.1 A statement of prorations and other adjustments shall be prepared by Seller in conformity with the provisions of this Agreement and then submitted to Purchaser for review and approval not less than three (3) business days prior to the Closing Date. For purposes of prorations, Purchaser shall be deemed the owner of the Property on the Closing Date. In addition to prorations and other adjustments that may otherwise be provided for in this Agreement, the following items, if applicable, are to be prorated or adjusted, as the case may require, as of the Closing Date:

- (a) Summer 2014 and Winter 2014 (if the Closing takes place prior to July 1, 2015) or Winter 2014 and Summer 2015 (if the Closing takes place on or after July 1, 2015) real property taxes shall be prorated on a due date basis assuming payment in advance.
- (b) All special assessments, if any, shall be paid by Seller prior to or at Closing.
- (c) water, electric, telephone and all other utility and fuel charges, fuel on hand (at cost plus sales tax and minus a reasonable sludge factor, if appropriate), and any assignable deposits with utility

companies (to the extent possible, utility prorations will be handled by meter readings on the Closing Date);

- (d) rents under any leases or occupancy contracts with respect the Property, if any;
- (e) amounts due and prepayments under the Service Contracts;
- (f) assignable license and permit fees; and
- (g) other expenses of operation and similar items.

Any proration which must be estimated at Closing shall be re-prorated and finally adjusted as soon as practicable after the Closing Date upon receipt of definitive data for the relevant time period. Otherwise all prorations shall be final.

#### 5.4 Closing Costs.

Seller shall pay for (a) transfer taxes, documentary stamps, intangible taxes and similar taxes or charges, (b) title search fees related to the Title Commitment and the base title insurance premium for the Title Policy without standard exceptions and any endorsements, and (c) all recording charges other than the recording fees for the warranty deed from Seller to Purchaser and the recording fees associated with any documents related to financing of the acquisition of the Premises by the Purchaser. Purchaser shall pay for (a) the costs of all environmental site assessments, (b) any Property inspection costs, (c) the costs of any endorsements to the Title Policy and the costs of the Survey, (d) the recording fees for the general warranty deed and (e) any costs related to Purchaser's financing. Seller and Purchaser shall, however, be responsible for (i) the fees of their respective attorneys, accountants and advisors and (ii) one-half (1/2) of any costs incurred with respect to any escrow or Title Insurer closing fees.

#### 5.5 Possession.

Upon Closing, Seller shall deliver to Purchaser full and complete possession of the Property, subject only to the Permitted Exceptions.

### 6.0 CONDEMNATION

If, prior to Closing, the Property or any part thereof shall be condemned, Purchaser shall have the option either to terminate this Agreement or to consummate the transaction contemplated by this Agreement notwithstanding such condemnation.

If the Purchaser elects to consummate the transaction contemplated by this Agreement and if the Seller, as of the Closing Date, has not received the condemnation proceeds related to such condemnation, then Seller, at Closing, shall assign all rights to condemnation proceeds to Purchaser by executing and delivering to Purchaser all required assignments of claim and/or proceeds and other similar items. If the Purchaser elects to consummate the transaction

contemplated by this Agreement and if the Seller, as of the Closing Date, has received the condemnation proceeds related to such condemnation, then Seller, at Closing, shall allow Purchaser a credit against the Purchase Price in an amount equal to the amount of condemnation proceeds received by the Seller prior to Closing.

If Purchaser elects to terminate this Agreement, this Agreement shall, without further action of the parties, become null and void and neither party shall have any rights or obligations under this Agreement, except for those obligations which specifically survive termination of this Agreement.

## 7.0 **REPRESENTATIONS AND WARRANTIES**

- 7.1 Seller represents and warrants to Purchaser that the following are true, complete and correct as of the date of this Agreement (unless otherwise indicated):
- 7.1.1 Except for this Agreement, Seller has not entered into any agreement to lease, sell, mortgage or otherwise encumber or dispose of Seller's interest in the Property or any part thereof.
  - 7.1.2 Seller has not leased or otherwise granted to any person other than Purchaser the right to use or occupy the Property or any portion thereof.
  - 7.1.3 There are no outstanding options, rights of first offer or rights of first refusal to purchase the Property or any portion thereof or interest therein.
  - 7.1.4 To the best of Seller's knowledge, there is no condemnation, expropriation or other proceeding in eminent domain, pending or threatened, affecting the Property or any portion thereof or interest therein. To the best of Seller's knowledge, there is no injunction, decree, order, writ or judgment outstanding, nor any claims, litigation, administrative action or similar proceedings, pending or threatened, naming Seller or the Property, relating to the ownership, lease, use or occupancy of the Property or any portion thereof.
  - 7.1.5 To the best of Seller's knowledge, the Property is in material compliance with all applicable building, zoning, subdivision, health and safety and other land use laws and all insurance requirements affecting the Property (collectively, the "Real Property Laws"). Seller has not received any notice of violation of any Real Property Law and, to the Seller's Knowledge, there is no basis for the issuance of any such notice or the taking any action for such violation.
  - 7.1.6 Seller has not received any notice from any governmental authority or other entity having jurisdiction over the Property threatening a suspension, revocation, modification or cancellation of any permit or license related to occupancy or use of the Property and, to the best of Seller's knowledge, there is no basis for the issuance of any such notice or the taking of any such action.

- 7.1.7 To the best of Seller’s knowledge, the current use and occupancy of the Real Property does not violate in any material respect any easement, covenant, condition, restriction or similar provision in any instrument of record or other unrecorded agreement affecting the Property (the “Encumbrance Documents”). Seller has not received any notice of violation of any Encumbrance Documents and, to the best of Seller’s knowledge, there is no basis for the issuance of any such notice or the taking of any action for such violation.
  
- 7.1.8 The Service Contracts comprise every contract, agreement, relationship and commitment, oral or written, which affects the Property, to which Seller is a party, or by which it is bound. Neither Seller nor any other party is in default under the terms of any Service Contract. Except as otherwise noted on Exhibit 1.6, each Service Contract is cancelable without payment of any premium or penalty upon not more than thirty (30) days notice.
  
- 7.1.9 Seller is duly qualified and empowered to conduct Seller’s municipal government operations, and has full power and authority to enter into and fully perform and comply with the terms of this Agreement. Neither the execution and delivery of this Agreement nor its performance by Seller will conflict with or result in the breach of any contract, agreement, rule or regulation to which Seller is a party or by which Seller is bound.
  
- 7.1.10 This Agreement is valid and enforceable against Seller in accordance with its terms and each instrument to be executed by Seller pursuant to this Agreement or in connection herewith will, when executed and delivered, be valid and enforceable against Seller in accordance with its terms, subject only to applicable bankruptcy, reorganization, moratorium, insolvency or other similar laws affecting the enforcement of creditors' rights generally and the application of equitable principles.
  
- 7.1.11 As of Closing, to the best of Seller's knowledge and except as disclosed in the \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_, there are not now, and have not been any gasoline, petroleum products, explosives, radioactive materials, pesticides, hazardous materials, hazardous wastes, hazardous or toxic substances, polychlorinated biphenyls or related or similar materials, asbestos or any material containing asbestos, or any other substance or material as may be defined as a “Hazardous Substance” or toxic substance by any environmental law, ordinance, rule or regulations of any governmental authority (collectively “Hazardous Materials”), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et seq.),

the Hazardous Materials Transportation Act, as amended (49 U.S.C. Section 1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901 et. seq.), the Federal Water Pollution Control Act (33 U.S.C. Sections 1251 et seq.), the Clean Air Act (42 U.S.C. Sections 7401 et seq.) and the Michigan Natural Resources and Environmental Protection Act (MCL 324.101 et seq.) (“Environmental Laws”) and in the regulations adopted and publications promulgated pursuant thereto, at the Property in amounts or concentrations in excess of those permitted under applicable law or under circumstances that violate Environmental Laws. To the best of Seller’s knowledge and except as disclosed in the 2005 BEA and the 2014 Reports, there are not now, and have not been any underground or above ground storage tanks on the Premises which contain gasoline, petroleum products, explosives, flammable or combustible materials, liquid industrial waste, any Hazardous Materials or any materials regulated under Environmental Laws.

- 7.2 Seller represents and warrants to Purchaser that, as of the Closing, each of the warranties and representations set forth in Section 7.1 above shall be true, complete and correct except for changes in the operation of the Property occurring prior to Closing which are specifically permitted by or pursuant to this Agreement.
- 7.3 The foregoing warranties and representations of Seller shall survive the execution and delivery of this Agreement, the Closing and delivery of all documents and any and all performances in accordance with this Agreement. The foregoing warranties and representations shall not be affected by any investigation or verification made by or on behalf of Purchaser prior to Closing.
- 7.4 Other than as expressly set forth in this Agreement and/or in any other document delivered by or on behalf of Seller at Closing: (i) Seller has made no representation, statement, warranty, guaranty or promise regarding the Property and (ii) Purchaser acknowledges that, subject to Purchaser’s rights of inspection during the Inspection Period and Seller’s warranties and representations set forth in Section 7.1 above, Seller is selling the Property in its “AS IS”/“WHERE IS” condition as of the date of this Agreement.

## 8.0 **CONDITIONS PRECEDENT**

### A. **Purchaser’s Conditions Precedent**

At the option of Purchaser, the obligations of Purchaser to purchase the Property under the terms of this Agreement are contingent and conditional upon the satisfaction of all of the following conditions, the failure of any of which shall, at the request of the Purchaser, render this Agreement null and void and neither party shall have any rights or obligations under this Agreement except for those obligations which are specifically stated to survive the termination of this Agreement.

8.1 Purchaser shall have ninety (90) days after the date of this Agreement within which to inspect the Property (the “Inspection Period”). If, during the Inspection Period, Purchaser determines that the Property is unsuitable for Purchaser’s purposes for any reason whatsoever, including but not limited to the following specific reasons:

- (i) any defects in title (as reflected by the Title Commitment, UCC Searches, Survey or Property Documents);
- (ii) environmental problems as identified in the environmental site assessment reports referred to in Section 8.4 below;
- (iii) any difficulties with respect to the Purchaser's proposed use of the Premises (including, but not limited to, easements for ingress and egress, percolation, soil conditions, zoning, parking, utility consumption, utility availability, buildable acreage, occupancy, lot split approval and site plan approval);
- (iv) any defects in the physical condition of the Property;
- (v) any issues or problems identified with respect to the Service Contracts (including the leases); and
- (vi) inability of Purchaser to obtain approval for its proposed development of the Property from third parties, including but not limited to any third party franchisor

and notifies Seller of such decision prior to 5:00 p.m., Eastern Time, on the last day of the Inspection Period, at which time this Agreement shall be null and void and neither party shall have any rights or obligations under this Agreement, except for those obligations which are specifically stated to survive any termination of this Agreement.

Notwithstanding the provisions of this Section 8.1 to the contrary, if Purchaser has not obtained final site plan approval by both applicable municipalities and governmental authorities and third parties (including but not limited to third party franchisees [e.g. Taco Bell Corp.] for development of a drive-thru fast food restaurant on the Premises and adjoining land to the south and west of the Premises (“Adjoining Land”) owned by PJDD, L.L.C. (“PJDD”) (“Final Approval”) and/or lot split approval by Seller and/or Lenawee County for a lot split of the Premises from Seller’s adjoining property to the north and east of the Premises (the “Lot Split Approval”) prior to the expiration of the Inspection Period, then Purchaser shall be entitled to extend the Inspection Period for an additional thirty (30) days solely with respect to obtaining receipt of the Final Approval and/or the Lot Split Approval. If Purchaser notifies Seller that Purchaser has not received Final Approval and/or the Lot Split Approval prior to the end of the extended Inspection Period, then Purchaser shall be entitled to terminate this Agreement, at which time this Agreement shall be deemed

terminated and neither party shall have any rights or obligations under this Agreement, except for those obligations which specifically survive termination of this Agreement.

If Purchaser shall fail to either (i) object to the results of Purchaser's inspections prior to the expiration of the initial Inspection Period for any reason other than failure to receive Final Approval and/or Lot Split Approval or (ii) terminate this Agreement prior to the expiration of the extended Inspection Period due to the Purchaser's failure to receive Final Approval and/or Lot Split Approval prior to the expiration of the extended Inspection Period, then Purchaser shall have waived its right to terminate this Agreement in accordance with this Section 8.1.

From the date of this Agreement through Closing, Purchaser and its agents, engineers, surveyors, appraisers, auditors and other representatives shall have the right to enter upon the Premises to inspect, examine, survey, obtain engineering inspections, appraise and otherwise do that which, in the reasonable opinion of Purchaser, is necessary to determine the boundaries, acreage and condition of the Property and to determine the suitability of the Property for the uses intended by Purchaser (including, without limitation, inspect, review and copy any and all documents in the possession or control of Seller, its agents, contractors or employees, and which pertain to the construction (including subsurface structures, if a Phase II environmental site assessment is performed), ownership, use, occupancy or operation of the Property or any part thereof). Also during such time period, Seller shall make all of Seller's books, files and records relating in any way to the Property available for examination by Purchaser and Purchaser's agents and representatives, who shall have the right to make copies of such books, files and records and to extract therefrom such information as they may desire.

Purchaser agrees to, and shall indemnify, defend, and hold harmless Seller and its officers, members, managers, agents, representatives, affiliates, contractors and employees from and against any and all damages, losses, costs, claims, liabilities, expenses, demands and obligations, of any kind or nature whatsoever (including reasonable attorneys' fees and costs) arising out of or resulting from the entry onto the Premises and/or the conduct of any due diligence activities on the Premises by Purchaser or any of Purchaser's affiliates, employees, officers, agents, representatives or contractors, or caused by the acts or omissions of Purchaser or its affiliates, employees, officers, agents, representatives or contractors, at any time prior to the Closing Date. In the event that any portion of the Property is damaged, disturbed or altered by virtue of Purchaser's investigations or due diligence activities, Purchaser will, at its sole cost and expense, repair any damage to the Property caused by Purchaser's activities upon the Property to the same or better condition as existed immediately prior to such damage occurring on the Property. All of the obligations of Purchaser under this Section 8.1 will survive both the consummation of the sale contemplated hereunder and any earlier termination of this Agreement.

- 8.2 Each and every representation and warranty of Seller is true, correct and complete as of Closing.
- 8.3 As of Closing, Seller shall have fully performed and satisfied each and every obligation, term, and condition to be performed and satisfied by Seller under this Agreement.
- 8.4 Purchaser shall obtain a Level I environmental site assessment and report in form and content approved by Purchaser and Purchaser's prospective lender prepared by an environmental engineering firm approved by Purchaser and Purchaser's prospective lender with respect to an inspection and testing of the Property within forty-five (45) days after the date of this Agreement. Purchaser shall bear the cost of the Level I environmental site assessment and report. If such report, in Purchaser's sole and reasonable judgment discloses the presence of amounts of Hazardous Materials on the Property (in excess of those amounts, if any, permitted by law), or the likelihood of the presence of such amounts of Hazardous Materials on the Property, or the need to investigate further the Property or adjacent property for the presence of such amounts of Hazardous Materials, then Purchaser shall have the option of either (i) obtaining, at Purchaser's sole cost and expense, a Phase II environmental site assessment of the Property within forty-five (45) days of the date of Purchaser's receipt of the Level I environmental site assessment and report, or (ii) terminating this Agreement. If Purchaser elects to obtain a Phase II environmental site assessment and such Phase II environmental site assessment discloses the presence of amounts or concentrations of Hazardous Materials on the Property (in excess of those amounts or concentrations, if any, permitted by local, state and/or federal law) or that the Premises are a "facility" as defined in MCL 324.20101 of the Michigan Natural Resources and Environmental Protection Act of 1994, as amended, MCL 324.101 et seq. ("NREPA"), then Purchaser shall have the option of:
- (i) proceeding with the Closing; or
  - (ii) at Purchaser's expense, submitting a Baseline Environmental Assessment ("BEA") to the Michigan Department of Environmental Quality ("MDEQ") and receiving the protection provided by law from any responsibility on such issues other than duties of due care and non-exacerbation and proceeding with the Closing or
  - (iii) terminating this Agreement.
- 8.5 As of Closing, Purchaser shall have received final approval from Taco Bell Corp. for construction and operation of a drive-thru fast food restaurant on the Land.
- 8.6 Purchaser shall have consummated the purchase of the Adjoining Land.

B. Seller's Conditions Precedent

8.7 At the option of the Seller, the obligations of Seller under this Agreement are contingent and conditional upon the satisfaction of all of the following conditions, the failure of any of which shall, at the request of Seller, render this Agreement null and void:

- (a) as of Closing, Purchaser shall have fully performed and satisfied each and every obligation, term and condition to be performed and satisfied by Purchaser.

## 9.0 **DEFAULTS AND REMEDIES**

9.1 Notwithstanding anything to the contrary contained in this Agreement, if Seller fails to perform in accordance with the terms of this Agreement, at Purchaser's option (a) Purchaser may terminate this Agreement in which case the Earnest Money shall be returned to Purchaser or (b) Purchaser may sue for specific performance of this Agreement.

9.2 Notwithstanding anything to the contrary contained in this Agreement, if Purchaser fails to perform in accordance with the terms of this Agreement, the Earnest Money shall be forfeited to Seller as liquidated damages (which shall be Seller's sole and exclusive remedy against Purchaser), at which time this Agreement shall be deemed terminated and neither party shall have any rights or obligations under this Agreement. Seller acknowledges and agrees that (1) the Earnest Money is a reasonable estimate of and bears a reasonable relationship to the damages that would be suffered and costs incurred by Seller as a result of having withdrawn the Property from sale and the failure of Closing to occur due to a default of Purchaser under this Agreement; (2) the actual damages suffered and costs incurred by Seller as a result of such withdrawal and failure to close due to a default of Purchaser under this Agreement would be extremely difficult and impractical to determine; (3) Purchaser seeks to limit its liability under this Agreement to the amount of the Earnest Money in the event this Agreement is terminated and the transaction contemplated by this Agreement does not close due to a default of Purchaser under this Agreement; and (4) the Earnest Money shall be and constitute valid liquidated damages.

## 10.0 **MISCELLANEOUS**

10.1 Neither this Agreement nor any interest hereunder shall be assigned or transferred by Seller. Purchaser may assign or otherwise transfer Purchaser's interest under this Agreement to an entity formed prior to the Closing Date in which Purchaser or Purchaser's shareholders (in the aggregate) have a majority ownership interest upon Seller's prior written consent to such assignment or transfer, which shall not be unreasonably withheld or delayed and, upon consummation of such assignment, Purchaser, as assignor, shall have no further obligation or liability under the terms of this Agreement and the assignee entity shall assume the rights and obligations of Purchaser under this Agreement. As used in this Agreement, the term "Purchaser" shall be deemed to include any assignee or other transferee

of the initial Purchaser. Subject to the foregoing, this Agreement shall inure to the benefit of and shall be binding upon Seller and Purchaser and their respective successors and assigns.

- 10.2 This Agreement (including the documents referred to herein) constitutes the entire agreement between the parties and supersedes any prior understandings, agreements or representations by or between the parties, written or oral, to the extent they relate in any way to the subject matter hereof.
- 10.3 No amendment of any provision of this Agreement shall be valid unless the same is in writing and signed by Seller and Purchaser. No waiver by any party of any provision of this Agreement or any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be valid unless the same shall be in writing and signed by the party making such waiver nor shall such waiver be deemed to extend to affect in any way any rights arising by virtue of any prior or subsequent such default, misrepresentation or breach of warranty or covenant.
- 10.4 This Agreement constitutes an offer by Purchaser (which shall not be revocable by Purchaser prior to January 16, 2015 and which must be accepted by Seller on or before January 16, 2015). If the Agreement is not so accepted and returned to Purchaser, this offer shall be deemed revoked. The date of this Agreement shall be the date on which Seller signs this Agreement as indicated below the signature line for Seller.
- 10.5 Time is of the essence of this Agreement. In the computation of any period of time provided for in this Agreement or by law, the day of the act or event from which the period of time runs shall be excluded, and the last day of such period shall be included, unless it is a Saturday, Sunday or legal holiday, in which case the period shall be deemed to run until the end of the next day which is not a Saturday, Sunday or legal holiday.
- 10.6 All notices, requests, demands or other communications required or permitted under this Agreement shall be in writing and delivered personally or by certified mail, return receipt requested, postage prepaid, or by telecopy or other facsimile transmission or by recognized overnight courier (e.g. Federal Express, UPS Next Day Air), addressed as follows:

10.6.1 If to Seller: The City of Adrian, Michigan  
135 E. Maumee St.  
Adrian, Michigan 49221  
Attn: Shane Horn, City Administrator  
E-mail Address: shorn@adrianmi.gov  
Facsimile: (517) 265-8016

10.6.2 If to Purchaser: Sundance, Inc.  
7915 Kensington Ct.

Brighton, Michigan 48116  
Attn: Peter Lyders-Petersen  
Facsimile: (248) 446-8521

With a copy to: Dean & Fulkerson, P.C.  
801 W. Big Beaver Rd., Ste. 500  
Troy, Michigan 48084  
Attention: Jeffrey L. Hudson, Esq.  
Facsimile: (248) 362-1358

All notices given in accordance with the terms hereof shall be deemed received forty-eight (48) hours after posting if sent by certified mail or on the date of delivery, when delivered personally, by facsimile transmission or by overnight courier. Any party hereto may change the address for receiving notices, requests, demands or other communication by notice sent in accordance with the terms of this Section 10.7.

- 10.7 This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Michigan without giving effect to any choice or conflict of law provision or rule (whether of the State of Michigan or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Michigan.
- 10.8 At Closing, Seller shall deliver to Purchaser an affidavit stating, under penalty of perjury, Seller's respective U.S. taxpayer identification numbers and that Seller is not a foreign person within the meaning of Section 1445 of the Internal Revenue Code. The purpose of this affidavit is to assure Purchaser that the withholding of taxes by Purchaser is not required by Section 1445 upon Seller's disposition of the Property, and such certification shall be in form prescribed by said Section or regulations promulgated pursuant thereto. If Seller does not deliver such an affidavit to Purchaser at Closing, or if Purchaser has actual knowledge or receives notice that the affidavit is false, then, in either such event, Purchaser shall be entitled to withhold from Seller an amount equal to ten percent (10%) of the Purchase Price, which amount Purchaser shall report and pay over to the Internal Revenue Service within ten (10) days after Closing as required by the Internal Revenue Code or regulations promulgated pursuant thereto.
- 10.9 This Agreement may be executed in any number of identical counterparts (including by means of facsimile), any or all of which may contain the signatures of fewer than all of the parties but all of which shall be taken together as a single instrument.
- 10.10 In the event, prior to Closing, either Seller or Purchaser shall desire to restructure this transaction as a tax deferred exchange for property identified by Seller or Purchaser, as the case may be, pursuant to Section 1031 of the Internal Revenue Code, Seller, as an accommodation to Purchaser, or Purchaser, as an accommodation to Seller, shall enter into and execute any such amendatory

documentation as Purchaser or Seller may reasonably request; provided, however, that the party not requesting the exchange shall not incur any additional cost, expense, risk or potential liability whatsoever on account thereof, and the party requesting the exchange shall indemnify and hold the party not requesting the exchange harmless from all costs, legal fees and damages such non-requesting party incurs due to or arising out of performance or attempted performance of this Section 10.10. The party not requesting the exchange shall have no liability to the party requesting the exchange whatsoever in the event the subject transaction is found, held or adjudicated not to qualify as or as part of a tax deferred exchange pursuant to Section 1031 of the Internal Revenue Code. Notwithstanding the foregoing, no failure to close any transaction involving any premises to be exchanged shall affect Seller's obligation to sell the Property and/or Purchaser's obligation to purchase the Property as and when required hereunder.

- 10.11 The parties represent and warrant to each other that they have not dealt with any real estate broker or agent who would be entitled to a brokerage commission or finders fee as a result of this Agreement

Each party hereto agrees to indemnify and hold the other harmless of and from any and all claims for commissions or broker's or finder's fees claiming by, through or under the indemnifying party, including any damages, costs or attorneys' fees related to any such claim. If a commercial real estate broker representing Seller files a claim of lien against the Property in accordance with the provisions of the Commercial Real Estate Broker's Lien Act (i.e. Act 201 of the Public Acts of 2010 ["Act 201"]), at Closing, notwithstanding the provisions of Section 5(2)(b) of Act 201 to the contrary, Seller, Purchaser and the Title Insurer shall establish an escrow account from the proceeds of the transaction and/or from Seller's funds in an amount sufficient to satisfy the lien or liens. The escrow account shall be funded by Seller in the amount of the lien or liens claimed by the broker or brokers representing Seller. The funds deposited in the escrow account shall remain in the escrow account until the rights to the funds have been determined by written agreement of Seller and Purchaser, a judgment or order by a court of competent jurisdiction or any other method agreeable to Seller and Purchaser. Purchaser shall not unreasonably refuse to execute such written agreement in the case where the broker entitled to the escrowed commission amount and the party responsible for paying such amount (i.e. Seller) have executed the written agreement.

- 10.12 Seller and Purchaser agree that, if any dispute arises out of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney fees and costs from the other party.

- 10.13 [Reserved]

- 10.14. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.
- 10.15 The parties have participated jointly in the negotiation and drafting of this Agreement. In the event any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context required otherwise. The word “including” shall mean including without limitation. Nothing in any Exhibit to this Agreement shall be deemed adequate to disclose an exception to a representation or warranty made herein unless the Exhibit identifies the exception with particularity and describes the relevant facts in detail. Without limiting the generality of the foregoing, the mere listing (or inclusion of any copy) of a document or other item shall not be deemed adequate to disclose an exception to a representation or warranty made herein (unless the representation or warranty has to do with the existence of the document or other item itself). The parties intend that each presentation, warranty and covenant contained herein shall have independent significance. If any party has breached any representation, warranty or covenant contained herein in any respect, the fact that there exists another representation, warranty or covenant relating to the same subject matter (regardless of the relative levels of specificity) which the Party has not breached shall not detract from or mitigate the fact that the Party is in breach of the first representation, warranty or covenant.
- 10.16 The Exhibits identified in this Agreement are incorporated herein by reference and made a part hereof.
- 10.17 Each of the parties submits to the exclusive jurisdiction of the courts of the State of Michigan located in Lenawee County or U.S. District Court for the Eastern District of Michigan, for any action or proceeding arising out of or relating to this Agreement and agrees that all claims in respect of the action or proceeding may be heard and determined in any such court. Each party also agrees not to bring any action or proceeding arising out of or relating to this Agreement in any other court. Each of the parties waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought and waives any bond, surety or other security that might be required of any other party with respect thereto.
- 10.18 To the extent that Seller’s cooperation is required in connection with any governmental approvals sought by Purchaser with respect to its proposed use of the Premises (e.g. site plan approval, lot split approval, re-zoning, etc.), Seller agrees to use its best efforts to provide such cooperation; provided however, that

all reasonable costs of such cooperation (e.g. application fees, survey costs, engineering fees, etc.) shall be borne by Purchaser.

- 10.19 Within \_\_\_\_\_ (\_\_) days after Closing, Purchaser, at Purchaser's sole cost and expense, shall relocate the fire hydrant currently located on the Land to a location on Seller's retained property north of Land. This relocation shall be done in a good and workmanlike manner on a lien-free basis. In the event, Purchaser fails to complete this relocation on a timely basis as set forth above, Seller, after ten (10) days' written notice to Purchaser, shall be entitled to undertake the relocation, pay the costs and expenses associated with the relocation and place a lien upon the Land and/or the Adjoining Land until Seller receives payment in full for the relocation costs (at which point Seller shall release and discharge any lien for relocation costs placed on the Land or on the Adjoining Land).

Notwithstanding any provisions of this Agreement to the contrary, the provisions of this Section 10.19 shall survive the Closing and delivery of the warranty deed by Seller to Purchaser.

[SIGNATURE BLOCKS ON FOLLOWING PAGES]

SELLER: CITY OF ADRIAN, MICHIGAN

By: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2015

PURCHASER: SUNDANCE, INC.

By: \_\_\_\_\_  
Peter Lyders-Petersen

Its: President

Date: \_\_\_\_\_, 2015

**LIST OF EXHIBITS**

Exhibit 1.1(a) – Depiction of the Land

Exhibit 1.1(b) - Legal Description of the Land

**Exhibit 1.1(b)**

**Legal Description of the Land**

Land situated in the City of Adrian, County of Lenawee and State of Michigan, more particularly described as follows:

A part of Lot 1 of "George L. Bidwell's Subdivision" of Lots Numbered 41 through 55, inclusive on "Bidwell's Addition to the City of Adrian," according to the plat thereof, as recorded in Liber 53 of Deeds, Page 801, Lenawee County Records, and being more particularly described as follows:

Commencing at the Southwest Corner of said Lot 1; thence the following three courses along the Westerly boundary of a Parcel (Tax ID No. XAO-430-0003-00) as described in a Warranty Deed recorded in Liber 2299, Page 871, Lenawee County Records:

- (1) N24°52'12"E 233.22 feet along the Easterly line of M-52 Highway a/k/a North Main Street (variable width Right-of-Way - a limited access highway)
- (2) N63°16'51"W 10.03 feet continuing along said Easterly line of M-52 Highway, and
- (3) N22°24'45"E 29.80 feet along the West line of said Lot 1 to the **PLACE OF BEGINNING:**

thence continuing along said West line of Lot 1 N22°24'45"E 75.08 feet; thence S64°59'33"E 149.52 feet; thence S24°52'12"W 338.37 feet; thence N64°57'35"W 10.00 feet along the Northerly line of East Albert Street (66 foot wide Right-of-Way), same being the Southerly line of said Lot 1; thence the following two courses along the boundary of said Parcel No. XAO-430-0003-00:

- (1) N24°52'12"E 263.36 feet, and
- (2) N64°59'33"W (*record N65°21 '43'W*) 136.30 feet to the Place of Beginning. Being a part of the Northeast 1/4 of Section 35, Town 6 South, Range 3 East, City of Adrian, Lenawee County, Michigan. Containing 0.32 acres (Gross) - 0.27 acres (Net) of land, more or less. Subject to the rights of the public over that portion thereof occupied by M-52 Highway a/k/a North Main Street (variable width Right-of-Way) as recorded in Liber 443, Page 291, Lenawee County Records, also subject to and together with all easements and restrictions affecting title to the above described premises.

Commonly known as: \_\_\_\_\_, Adrian, Michigan  
Tax Parcel Identification No.: Part of XAO-850-0228-00

**RESOLUTION**

**RE: ADMINISTRATION – Approve the sale of land near N. Main and Albert to Sundance, Inc. for \$25,000.00**

WHEREAS, Sundance, Inc. of Brighton, MI has a purchase agreement for property located at 1106 N. Main for a proposed fast-food restaurant; and

WHEREAS, the owner desires to purchase additional city-owned property for this development which amounts to 0.27 acres; and

WHEREAS, the City of Adrian has negotiated a price of \$25,000.00 for the sale of this additional property.

NOW, THEREFORE, IT IS RESOLVED that the Adrian City Commission does hereby approve of the sale of city-owned land near N. Main and Albert containing 0.27 acres for \$25,000.00 to Sundance, Inc. of Brighton, MI.

BE IT FURTHER RESOLVED that the Mayor and City Clerk are authorized to execute a warranty deed to close said transaction and to convey title to said property and that the City Administrator is hereby authorized to execute a purchase agreement and other closing documents on behalf of the City.

On motion by Commissioner \_\_\_\_\_, seconded by  
Commissioner \_\_\_\_\_, this resolution was adopted by a  
\_\_\_\_\_ vote.