

BOARD OF ESTIMATES

July 24, 2013

MINUTES

REGULAR MEETING

Honorable Bernard C. "Jack" Young, President
Honorable Stephanie Rawlings-Blake, Mayor
Honorable Joan M. Pratt, Comptroller and Secretary
George A. Nilson, City Solicitor
Alfred H. Foxx, Director of Public Works
David E. Ralph, Deputy City Solicitor
Ben Meli, Deputy Director of Public Works
Bernice H. Taylor, Deputy Comptroller and Clerk

The meeting was called to order by the President.

President: "I will direct the Board members attention to the memorandum from my office dated July 22, 2013, identifying matters to be considered as routine agenda items, together with any corrections and additions that have been noted by the Deputy Comptroller. I will entertain a motion to approve all of the items contained on the routine agenda."

City Solicitor: "Move the approval of all items on the routine agenda."

Comptroller: "Second."

President: "All those in favor say 'AYE'. Those opposed 'NAY'.
The Motion carries. The routine agenda has been adopted."

MINUTES

BOARDS AND COMMISSIONS1. Prequalification of Contractors

In accordance with the Rules for Prequalification of Contractors, as amended by the Board on October 31, 1991, the following contractors are recommended:

Adira Construction, Inc.	\$ 30,204,000.00
American Lighting and Signalization, Inc.	\$ 180,999,000.00
Bradshaw Construction Corporation	\$ 109,269,000.00
Brandenburg Industrial Service Company	\$ 318,645,000.00
Chilmar Corporation	\$ 8,000,000.00
Concrete General, Inc.	\$ 97,983,000.00
Drake Incorporated	\$ 5,931,000.00
Durex Coverings, Inc.	\$ 8,000,000.00
Great Lakes Dredge & Dock Company, LLC	\$1,177,353,000.00
Green Contracting Company, Inc.	\$ 163,755,000.00
HGS, LLC d/b/a Angler Environmental	\$ 34,668,000.00
Liberty Asphalt, LLC	\$ 756,000.00
RWC Contracting, LLC	\$ 8,000,000.00
Super Excavators, Inc.	\$ 137,196,000.00
Triple J Construction, Inc.	\$ 2,070,000.00
Western Summit Constructors, Inc.	\$ 349,875,000.00

MINUTES

BOARDS AND COMMISSIONS - cont'd2. Prequalification of Architects and Engineers

In accordance with the Resolution Relating to Architectural and Engineering Services, as amended by the Board on June 29, 1994, the Office of Boards and Commissions recommends the approval of the prequalification for the following firms:

Accumark, Inc.	Engineer Land Survey
Axiom Engineering Design, LLC	Engineer
Heath Design Group, Inc.	Architect
Louis Berger Water Services, Inc.	Architect Engineer Landscape Architect
Marks, Thomas Architects, Inc.	Architect
Murphy & Dittenhafer Architects	Architect
Stantec Consulting Services, Inc.	Engineer
The Wilson T. Ballard Company	Engineer

There being no objections the Board, UPON MOTION duly made and seconded, approved the prequalification of contractors and architects and engineers for the aforementioned firms.

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OPTIONS/CONDEMNATION/QUICK-TAKES:

<u>Owner(s)</u>	<u>Property</u>	<u>Interest</u>	<u>Amount</u>
<u>Dept. of Housing and Community Development (DHCD) - Options</u>			
1. Skyline Residential 1, LP	2410 E. Eager St.	F/S	\$77,000.00
2. Skyline Residential 1, LP	2430 E. Eager St.	L/H	\$73,975.00
3. Skyline Residential 1, LP	2436 E. Eager St.	L/H	\$81,950.00

Funds are available in account 9910-908044-9588-900000-704040, Milton-Montford Project.

In the event that the option agreement fails and settlement cannot be achieved, the Department requests the Board's approval to purchase the interest in the above property/ies by condemnation proceedings for an amount equal to or lesser than the option amounts.

DHCD - Condemnation or Redemption

4. Unknown	1807 Barclay St.	G/R	\$ 666.67
			\$100.00

Funds are available in account 9910-908044-9588-900000-704040, Undesignated Project.

The Board is requested to approve acquisition of the ground rent interest by condemnation, or in the alternative may, SUBJECT to the prior approval of the Board, make application to the Maryland Department of Assessments and Taxation to redeem or extinguish the ground rent interest for this property.

UPON MOTION duly made and seconded, the Board approved and authorized the foregoing options, condemnation and redemption.

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Mayor's Office of Human Services (MOHS) - Grant Agreements

The Board is requested to approve and authorize execution of the following grant agreements:

1. **HEALTH CARE FOR THE HOMELESS, INC.** **\$ 25,000.00**

Account: 4000-490914-3573-333634-603051

The organization will provide supportive services to individuals or to families who have a family member with AIDS. The period of the agreement is July 1, 2013 through June 30, 2014.

2. **GOVANS ECUMENICAL DEVELOPMENT CORPORATION (GEDCO)** **\$ 33,850.50**

Account: 4000-496213-3573-267850-603051

GEDCO will provide supportive services to five homeless families and 26 individuals. The homeless clients are generally multi-diagnosed with HIV, drug addiction and/or mental illness and are also very low income. The clients will be participants of GEDCO's rental assistance program. The period of the agreement is August 1, 2013 through July 31, 2014.

3. **GOVANS ECUMENICAL DEVELOPMENT CORPORATION (GEDCO)** **\$ 40,036.00**

Account: 4000-490914-3573-333650-603051

GEDCO will provide housing assistance and supportive services to individuals or to families who have a family member with AIDS. GEDCO will serve 25 clients. The period of the agreement is July 1, 2013 through June 30, 2014.

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MOHS - cont'd

4. **SUPPORTIVE HOUSING GROUP, INC.** **\$170,775.00**

Account: 4000-496212-3572-591492-603051

The organization will provide 31 homeless families and two homeless individuals transitional housing and supportive services at the Lanvale Institute Residential Program. The period of the agreement is July 1, 2013 through June 30, 2014.

MWBOO GRANTED A WAIVER.

5. **THE WOMEN'S HOUSING COALITION, INC.** **\$ 55,062.00**

Account: 4000-496212-3573-591435-603051

The organization will provide services to 14 clients who have very low income, are disabled, and have a history of chronic mental illness and/or substance abuse. The services will include case management and support services to help the clients maintain their stability, remain successfully housed, and progress towards greater self-determination. The period of the agreement is July 1, 2013 through June 30, 2014.

MWBOO GRANTED A WAIVER.

APPROVED FOR FUNDS BY FINANCE

AUDITS REVIEWED AND HAD NO OBJECTION.

UPON MOTION duly made and seconded, the Board approved and authorized execution of the grant agreements.

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Police Department - Grant Award**ACTION REQUESTED OF B/E:**

The Board is requested to approve and authorize acceptance of a grant award from the Governor's Office of Crime Control and Prevention (GOCCP). The period of the grant is effective upon Board approval through June 30, 2014.

AMOUNT OF MONEY AND SOURCE:

\$92,728.00 - 4000-473414-2252-690500-600000

BACKGROUND/EXPLANATION:

On June 10, 2013, the GOCCP released a Letter of Intent to fund the Baltimore City's Mayor's Office on Criminal Justice's "Juvenile Accountability Block Grant" Program. This award will pay the salary for a part-time Juvenile Diversion Assessor. The assessor will explore opportunities to expand the program and identify juveniles in need of diversion services.

APPROVED FOR FUNDS BY FINANCE**AUDITS REVIEWED AND HAD NO OBJECTION.**

UPON MOTION duly made and seconded, the Board approved and authorized acceptance of the grant award from the Governor's Office of Crime Control and Prevention.

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Police Department - Grant Adjustment Notice**ACTION REQUESTED OF B/E:**

The Board is requested to approve and authorize acceptance of a no-cost grant adjustment notice (GAN) from the U.S. Department of Justice, Office of Justice Programs. The GAN changes the end date from September 30, 2013 to August 31, 2014.

AMOUNT OF MONEY AND SOURCE:

\$0.00

BACKGROUND/EXPLANATION:

On October 19, 2011, the Board approved the grant award for Baltimore City's Domestic Violence Reduction Initiative, funded by the Department of Justice's Grants to Encourage Arrest Policies and Enforcement of Protection Orders Grant, in the amount of \$749,343.00, for the period October 11, 2011 through September 30, 2013.

The award will assist in the City's coordinated effort to reduce domestic violence, and increase the capacity of the Family Crime Unit to make home visits to "high-danger" domestic violence victims. All other conditions of the grant will remain unchanged.

APPROVED NOTED THE NO-COST TIME EXTENSION.

UPON MOTION duly made and seconded, the Board approved and authorized acceptance of the no-cost grant adjustment notice from the U.S. Department of Justice, Office of Justice Programs.

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Department of Recreation and Parks - Right-of-Entry Agreement**ACTION REQUESTED OF B/E:**

The Board is requested to approve and authorize execution of a right-of-entry agreement with Trout Unlimited, Maryland Chapter, (Trout Unlimited) grantee, for access to a portion of the Jones Falls Stream, in preparation for a restoration project. The period of the agreement is effective upon Board approval ending six months thereafter.

AMOUNT OF MONEY AND SOURCE:

N/A

BACKGROUND/EXPLANATION:

Trout Unlimited has identified a reach of the Jones Falls Stream for restoration, has received a grant from the Chesapeake Bay Trust, and has engaged in fundraising to create a conceptual design for the restored reach. Trout Unlimited has retained Brightwater, Inc. to provide design services in completing the project. The agreement will allow Trout Unlimited and Brightwater, Inc. access to the property to dig eight test pits, to determine the extent of the concrete foundation that remains underground, and to perform wetland delineations, surveys, and forest stand delineations for the purpose of completing the design documents. The Department has not participated in the funding of the project nor in selecting the contractor.

APPROVED FOR FUNDS BY FINANCE

UPON MOTION duly made and seconded, the Board approved and authorized execution of the right-of-entry agreement with Trout Unlimited, Maryland Chapter, grantee, for access to a portion of the Jones Falls Stream, in preparation for a restoration project.

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Department of General Services - Minor Privilege Permit Applications

The Board is requested to approve the following applications for a Minor Privilege Permit. The applications are in order as to the Minor Privilege Regulations of the Board and the Building Regulations of Baltimore City.

<u>LOCATION</u>	<u>APPLICANT</u>	<u>PRIVILEGE/SIZE</u>
1. 2525 Kirk Avenue	Monarch Academy Baltimore Campus, Inc.	Service connection (2) 4" ducts @ 18 linear feet
Annual charge: \$126.00		
2. 2150 Boston Street	Smyrnioudis Brothers, LLC	Retain awning w/ signage 5' x 3'8"
Annual charge: \$105.50		
3. 3500 Boston Street	Harbor Enterprise Center, LLC	Handicap ramp 18'2" x 4.16', one canopy 20'6" x 5'3"
Annual charge: \$297.42		
4. 915 S. Wolfe Street	Union Wharf Apartments, LLC	One illuminated blade sign 21.6 sq. ft.
Annual charge: \$ 75.25		

Since no protests were received, there are no objections to approval.

There being no objections the Board, UPON MOTION duly made and seconded, approved the minor privilege permits.

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Office of the State's Attorney - Memorandum of Understanding

ACTION REQUESTED OF B/E:

The Board is requested to approve and authorize execution of a memorandum of understanding (MOU) with the Community Mediation Program, Inc. (CMP). The period of the MOU is July 1, 2013 through June 30, 2014.

AMOUNT OF MONEY AND SOURCE:

\$40,000.00 - 1001-000000-1151-117900-603026

BACKGROUND/EXPLANATION:

The mission of the CMP is to reduce interpersonal conflict, community violence, and animosity by increasing the use of non-violent conflict resolution strategies by making mediation more accessible in Baltimore City.

The Baltimore City State's Attorney Office has been in partnership with the CMP for over eight years. The MOU sets forth the contractual responsibilities of the parties and provides funding to the CMP.

APPROVED FOR FUNDS BY FINANCE

UPON MOTION duly made and seconded, the Board approved and authorized execution of the memorandum of understanding with the Community Mediation Program, Inc.

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Office of the State's Attorney - Expenditure of Funds**ACTION REQUESTED OF B/E:**

The Board is requested to approve an expenditure of funds for the Client Protection Fund of the Bar of Maryland.

AMOUNT OF MONEY AND SOURCE:

\$25,610.00 - 1001-000000-1151-117900-603026

BACKGROUND/EXPLANATION:

The Client Protection Fund of the Bar of Maryland was created in 1965 for the purpose of maintaining the integrity and protecting the good name of the legal profession. The Client Protection Fund which is supported financially by practicing attorneys reimburses claimants for losses caused by theft of funds by members of the Maryland Bar, acting either as attorneys or as fiduciaries. Payment of the Client Protection Fund assessment is required to practice law in Maryland. The Baltimore City State's Attorney Office will cover the mandatory Client Protection Fund fee for all prosecutors.

APPROVED FOR FUNDS BY FINANCE**AUDITS REVIEWED AND HAD NO OBJECTION.**

UPON MOTION duly mad and seconded, the Board approved the expenditure of funds for the Client Protection Fund of the Bar of Maryland.

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Health Department - Agreements

The Board is requested to approve and authorize execution of the various agreements.

INDIVIDUAL CASE MONITOR AGREEMENTS

The Maryland State Department of Health and Mental Hygiene (DHMH) is designated as the single State agency to administer all aspects of the Maryland Medical Assistance Program. The Health Department has an agreement with the DHMH to participate in the program as the case monitoring agency and to contract with Case Monitors who will supervise personal care services to eligible recipients. The maximum number of assigned cases per individual case monitor at anytime is 75, unless a waiver is granted.

The Case Monitors will exercise independent professional judgment and carry professional liability insurance. Each case monitor will be an independent contractor and not an employee of the City. The period of the case monitoring agreement is July 1, 2013 through June 30, 2014.

The Case Monitors will be responsible for establishing a plan of personal care for each eligible recipient assigned to him/her, unless otherwise indicated. The Case Monitors will make home visits at least once every 90 days, maintain clinical records, consult with each client's personal physician and other providers in order to develop a care plan, and perform other related duties.

<u>Case Monitor</u>	<u>Rate of Pay</u>	<u>Amount</u>
1. GWENDOLYN DELORES JACOBS, INC.	\$45.00 per case	\$94,500.00

Gwendolyn Delores Jacobs, Inc. will render personal care case monitoring services in Baltimore City.

Account: 4000-426214-3110-306800-603018

MWBOO GRANTED A WAIVER.

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Health Dept. - cont'd

<u>Case Monitor</u>	<u>Rate of Pay</u>	<u>Amount</u>
2. DENISE D. HAMMOND, R.N.	\$45.00	\$81,000.00

Ms. Hammond will render personal care case monitoring services in Baltimore City.

Account: 4000-426214-3110-306800-603018

MWBOO GRANTED A WAIVER.

3. JACQUELINE S. GAUGHAN, R.N.	\$45.00	\$67,500.00
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Ms. Gaughan will render personal care case monitoring services in Baltimore City.

Account: 4000-426214-3110-306800-603018

MWBOO GRANTED A WAIVER.

APPROVED FOR FUNDS BY FINANCE

AUDITS REVIEWED AND HAD NO OBJECTION.

UPON MOTION duly made and seconded, the Board approved and authorized execution of the aforementioned agreements.

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Health Department - Agreement**ACTION REQUESTED OF B/E:**

The Board is requested to approve and authorize execution of the agreement with the Baltimore American Indian Center, Inc. The period of the agreement is July 1, 2013 through June 30, 2014.

AMOUNT OF MONEY AND SOURCE:

\$0.00

BACKGROUND/EXPLANATION:

The Baltimore American Indian Center, Inc. will serve as a Volunteer Station for the Senior Companion Program. Through a grant from the Corporation for National and Community Services, the Department sponsors the Senior Companion Program. The grant pays for 100% of the cost of Senior Companions to volunteer to assist special needs clients who want to remain in their homes.

While the senior companions are on duty, the grant provides for their life insurance, transportation and other benefits.

APPROVED FOR FUNDS BY FINANCE

UPON MOTION duly made and seconded, the Board approved and authorized execution of the agreement with the Baltimore American Indian Center, Inc.

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Health Department - Agreements, Amendment to Grant
Award Agreement, and
Ratification of Agreement

The Board is requested to approve and authorize execution of the various agreements, the amendment to grant award agreement, and to ratify an agreement.

AGREEMENTS

1. **HEALTHY TEEN NETWORK, INC.** **\$ 10,745.00**

Accounts: 6000-626613-3080-294200-603020	\$ 9,789.00
4000-422813-3080-294200-603020	\$ 956.00

Healthy Teen Network, Inc. will administer the Teen Pregnancy Prevention Initiative. The organization will provide comprehensive client-centered services training for family planning clinic administrators, providers, and front line staff to ensure youth friendly services. The period of the agreement is May 1, 2013 through August 31, 2013.

The agreement is late because budget revisions delayed processing of the agreement.

2. **HEALTH CARE FOR THE HOMELESS, INC.** **\$664,582.00**

Account: 5000-523014-3110-307500-603051

Health Care for the Homeless, Inc. will provide primary health care services for homeless persons through its clinic and outreach programs in the greater Baltimore area. The period of the agreement is July 1, 2013 through June 30, 2014.

MWBOO GRANTED A WAIVER.

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Health Department - cont'd

3. **MARYLAND DEPARTMENT OF THE ENVIRONMENT** **\$350,000.00**
(MDE)

Account: 4000-426014-3031-579200-404001

Under the terms of this agreement, funds from the MDE will be made available to the Department to expand community-based Childhood Lead Poisoning Prevention programs in Maryland.

The Department will conduct Childhood Lead Poisoning Prevention case and primary prevention activities and provide case management and environmental investigations, in accordance with the MDE approved protocol. In addition, the Department will provide early intervention and coordination with State and local agencies. It will also provide data management, as required for Baltimore City surveillance of childhood lead poisoning, and continued enforcement activities in accordance with all relevant Federal and State statutes and regulations. The period of the agreement is July 1, 2013 through June 30, 2018.

AUDITS REVIEWED THE SUBMITTED DOCUMENTATION AND FOUND THAT IT CONFIRMED THE GRANT AWARD.

	<u>Rate of Pay</u>	<u>Amount</u>
4. EDWARD L. ANSEL, Ph.D.	\$200.00 per comprehensive psychological evaluation, \$50.00 per psychological evaluation	\$ 20,000.00
5. MICHAEL R. BAUM, Ph.D.	\$200.00 per comprehensive psychological evaluation, \$50.00 per psychological evaluation	\$ 20,000.00

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Health Department - cont'd

Account: 4000-425514-3110-306700-603018

Messrs. Ansel and Baum will each perform services on behalf of clients who are eligible to be screened for mental illness, mental retardation, and developmental disabilities as part of the Pre-Admission Screening and Resident Review requirements of Federal Law. They will perform on-site evaluations of clients referred for nursing home placements and on-site psychological evaluations of clients in nursing homes. Messrs. Ansel and Baum will review psychological reports for patients in nursing homes, submit a written psychological report to the Department's Adult Evaluation and Review Services, and delineate a treatment plan for each patient. The period of the agreement is July 1, 2013 through June 30, 2014.

AMENDMENT TO GRANT AWARD AGREEMENT

6. **MARYLAND DEPARTMENT OF AGING (MDoA)** **\$ 0.00**

Account: 5000-587811-3044-273300-404001

On October 3, 2012, the Board approved the original grant agreement, in the amount of \$39,383.00, from the MDoA, Disability Resource Center, known as the Maryland Access Point for the Guided Care Program for the period October 1, 2012 through May 30, 2013. This amendment will extend the period of the grant agreement through December 31, 2013 to allow the Department to complete case management services.

The amendment is late because it was recently received from the MDoA.

AUDITS NOTED THE TIME EXTENSION.

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Health Department - cont'dRATIFICATION OF AGREEMENT

7. SARAH H. CROWNE, Ph.D.

\$ 3,786.64

Account: 6000-651112-3080-708800-603018

The Department's Maternal and Infant Care Program implemented a Nurse Home Visiting Program for multiparous mothers for over a decade, but had not used a standardized program and monitoring framework and these services had not been rigorously evaluated.

Ms. Crowne served as a technical advisor for the Nurse Home Visiting Program. Ms. Crowne assisted the Principal Evaluator in reviewing recent literature regarding home visiting interventions and specific needs for multiparous women. She worked in conjunction with the Principal Evaluator, home visiting expert, and designated Health Department program staff to develop a logic model for nurse home visiting services. This agreement was funded through a grant from the Annie E. Casey Foundation. The period of the agreement was January 1, 2013 through June 30, 2013.

The agreement is late because the Department was waiting for approval of the amendment to the Annie E. Casey Foundation grant that modified the grant period to January 1, 2013 through June 30, 2013. The amendment was approved by the Board on June 5, 2013. Revisions to the budget further delayed processing of the agreement.

APPROVED FOR FUNDS BY FINANCE**AUDITS REVIEWED AND HAD NO OBJECTION.**

UPON MOTION duly made and seconded, the Board approved and authorized execution of the various agreements, the amendment to grant award agreement, and the ratified an agreement.

MINUTES

PERSONNEL MATTERS

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UPON MOTION duly made and seconded,

the Board approved

all of the Personnel matters

listed on the following pages:

2874 - 2883

All of the Personnel matters have been approved

by the EXPENDITURE CONTROL COMMITTEE.

All of the contracts have been approved

by the Law Department

as to form and legal sufficiency.

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PERSONNEL

	<u>Hourly</u>	<u>Amount</u>
<u>Department of Law</u>		
1. HERSH STEIN	\$33.00	\$39,600.00

Account: 1001-000000-5824-408970-601009

Mr. Stein, retiree, will continue to work as a Special Assistant City Solicitor. His duties will include, but will not be limited to reviewing title reports in connection with the City's acquisition of interests in real property, searching land records and other public records to obtain title information, and rendering legal advice to the City agencies concerning acquisition of real property interests and issues of Real Property Law. He will review and approve options, contracts of sale, deeds, and easements for legal sufficiency, represent the City at settlements of real property acquisitions, review and approve settlement sheets, fees and other charges of title companies, and process post settlement procedures established by the Law Department and City agencies. The period of the agreement is August 25, 2013 through August 24, 2014.

Department of Recreation and Parks

2. ARLI M. LIMA	\$22.19	\$42,000.00
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Account: 1001-000000-4711-362100-601009

Ms. Lima will work as a Liaison Officer I. Her duties will include, but will not be limited to acting as a liaison between the City and relevant community groups, associations, businesses, and professional groups, and City, State, and Federal government agencies. She will attend community and neighborhood meetings to gather information for the agency and answer community questions on agency policies and programs. Ms. Lima will also prepare reports on City policies, programs, and projects, interview, evaluate, and recommend candidates for City programs and projects. The period of the agreement is effective upon Board approval for one year.

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PERSONNEL

	<u>Hourly</u>	<u>Amount</u>
<u>State's Attorney's Office (SAO)</u>		
3. DAVID M. ROLLE	\$31.59	\$54,699.00

Account: 1001-000000-1150-118000-601009

Mr. Rolle, retiree, will continue to work as an Investigator. He will review statements of charges, search and seizure information and documents from financial institutions, insurance companies, and other relevant companies. This contract has a 2% increase in the hourly rate from the previous contract period. The period of the agreement is August 15, 2013 through August 14, 2014.

4. WILLIAM E. COLE	\$31.59	\$54,699.00
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Account: 1001-000000-1150-118000-601009

Mr. Cole, retiree, will continue to work as an Investigator. He will investigate homicide cases, locate and interview witnesses, and act as a liaison with police agencies. This contract has a 2% increase in the hourly rate from the previous contract period. The period of the agreement is August 15, 2013 through August 14, 2014.

5. ROBERT W. BITTINGER	\$31.59	\$54,699.00
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Account: 1001-000000-1150-118300-601009

Mr. Bittinger, retiree, will continue to work as an Investigator. He will order the analysis of drugs, obtain lab reports, ascertain the correct names and/or dates of birth of juveniles being prosecuted in Juvenile Court, locate witnesses, and interview victims and witnesses. This contract has a 2% increase in the hourly rate from the previous contract period. The period of the agreement is August 15, 2013 through August 14, 2014.

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PERSONNEL

	<u>Hourly</u>	<u>Amount</u>
SAO - cont'd		
6. CYNTHIA M. WEESE	\$31.59	\$54,699.00

Account: 1001-000000-1150-119200-601009

Ms. Weese, retiree, will continue to work as an Investigator. She will handle investigations of cases involving physical abuse of children and domestic violence cases where other family members have been physically abused during the same incident. Ms. Weese will also review arrests and all corresponding documents from criminal justice agencies and interview witnesses and other individuals involved with the cases. This contract has a 2% increase in the hourly rate from the previous contract period. The period of the agreement is August 15, 2013 through August 14, 2014.

7. MICHAEL A. TOWNSEND	\$26.40	\$45,684.00
8. YOLANDA V. ROBINSON	\$25.88	\$45,684.00

Account: 1001-000000-1150-117900-601009

Mr. Townsend and Ms. Robinson, retirees, will each continue to work as Investigators. They will assist the Assistant State's Attorneys in the movement of cases, input charges, and finalize the charging documents. They will also find open warrants and communicate with Public Safety staff and members of the Baltimore City Police Department. The contracts have a 2% increase in the hourly rate from the previous contract periods. The period of the agreement is August 15, 2013 through August 14, 2014.

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PERSONNEL

	<u>Hourly</u>	<u>Amount</u>
SAO - cont'd		
9. DONALD E. STEINHICE	\$31.59	\$54,699.00

Account: 1001-000000-1150-119200-601009

Mr. Steinhice, retiree, will continue to work as an Investigator. He will handle investigations of cases involving sexual assault on both adults and children, review charging documents and statements of charges, interview and locate witnesses, perform record checks, and appear before the grand jury. This contract has a 2% increase in the hourly rate from the previous contract period. The period of the agreement is August 15, 2013 through August 14, 2014.

On March 3, 1999, the Board approved a waiver of AM 212-1 to hire retired Police Officers as Investigators for the Office of the State's Attorney with no restrictions on the number of work hours and rate of pay.

10. Create the following 3 positions:

01962 - Assistant State's Attorney
 Grade 946 (\$53,900.00 - \$93,800.00)
 Job No.: To be determined by BBMR

Costs: \$220,000.00 - 1001-000000-1150-118000-601001
115,000.00 - 5000-505014-1150-118000-601001
\$335,000.00

These positions are considered a Position of Trust in accordance with Administrative Manual Section 237-1.

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PERSONNELDepartment of Communication Services

11. GWENDOLYN C. HARDIN	\$14.34	\$22,370.40
12. ANN JENKINS	\$14.34	\$22,370.40

Account: 2039-000000-1330-158400-601009

Ms. Hardin and Ms. Jenkins each will continue to work as a Telephone Operator I for the Municipal Telephone Exchange. Their duties will include but are not limited to operating a Centrex telephone console and computer terminal; answering incoming calls; making connections to complete incoming, outgoing, and extension to extension calls; reporting telephone equipment that is out of order; answering calls for assistance and help from City residents and routing such calls to the proper authorities and maintaining confidentiality of phone calls between government and legal officials. The period of the agreement is July 25, 2013 through July 24, 2014.

Police Department

13. LINDA WRIGHT-FAIR	\$25.00	\$26,000.00
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Account: 4000-473414-2252-690500-601009

Ms. Fair will continue to work as a Juvenile Diversion Assessor. She will be responsible for reviewing juvenile charging documents to confirm youth eligibility for the program; inputting client's data into the database; providing referral information to the family and juvenile; maintaining and updating referral resources database, and composing monthly reports on clients. The period of the agreement is effective upon Board approval through June 30, 2014.

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PERSONNELPolice Dept. - cont'd

14. **BARBARA J. DARGAN** \$14.42 **\$30,000.00**

Account: 5000-598314-2013-212900-601009

Ms. Dargan, retiree, will continue to work as a Contract Services Specialist I (Data Entry Operator) for the Gun Violence Reduction Program. She will be responsible for utilizing a computer terminal to record a variety of complex and sensitive data from source documents into a database; examining source documents for completeness and returning documents to the originator for corrections or clarifications. The period of the agreement is effective upon Board approval through June 30, 2014.

15. **ELIZABETH GEISELMAN** \$14.42 **\$30,000.00**

Account: 4000-468211-2022-693700-601009

Ms. Geiselman, retiree, will work as a Contract Service Specialist I (Gun Trace Task Force Analyst). She will be responsible for analyzing new gun submissions for weapons violations; tracking convicted gun offenders; analyzing new Protective Orders/Ex Parte for weapons; analyzing ammunition logs; creating timelines, organizational charts and maps for the purpose of enforcement and prosecution; creating, capturing and coordinating data for investigation purposes. The period of the agreement is August 1, 2013 through July 31, 2014.

Fire Department

16. **SHANI BUGGS** \$25.00 **\$ 18,750.00**

Account: 4000-471312-2023-212602-601009

Ms. Buggs will work as a Policy Analyst. She will be responsible for analyzing and providing recommendations on

BOARD OF ESTIMATES

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MINUTES

PERSONNELFire Dept. - cont'd

homeland security policies and strategies, incorporating those that prevent and deter violence including but not limited to plans for a violent crime reduction plan for final approval by the Director of Emergency Management. The period of the agreement is effective upon Board approval for one year.

Department of PlanningReclassify the following filled position:17. Job No. 4711-47628

From: 74137 - City Planner II
Grade 113

To: 74139 - City Planner Supervisor
Grade 117

Cost: \$10,762.00 - 1001-000000-1875-187400-601001

Enoch Pratt Free Library18. Reclassify the following Position:Job No. 4501-15594

From: 00680 - Personnel Officer
Grade 088 (\$38,939.00 - \$47,176.00)

To: 07395 - Human Resource Generalist II
Grade 111 (\$41,700.00 - \$52,200.00)

Cost: \$2,100.00 - 1001-000000-4501-338700-601001

MINUTES

PERSONNELDepartment of General Services19. a. Create the following Position:

33295 - Permits and Records Technician
Grade 083

b. Reclassify the following four positions

Job Nos. 1911-19996 and 1911-20113

From: 33212 - Office Assistant II
Grade 075

To: 33112 - Data Entry Operator II
Grade 078

Job No. 1911-20001

From: 33253 - Typist III
Grade 078

To: 33112 - Data Entry Operator II
Grade 078

Job No. 1981-20083

From: 33681 - Personnel Assistant I
Grade 081

To: 33683 - Personnel Assistant II
Grade 085

Costs: \$ 5,488.00 - 1001-000000-1911-192100-601001
7,285.00 - 1001-000000-1981-627700-601001
\$12,773.00

Job Nos. to be assigned by BBMR.

MINUTES

PERSONNELDepartment of Finance20. a. Upgrade the following Classifications:

Job Code: 33593 - Minority/Small Business
Purchasing Coordinator

From: Grade 114 (\$48,600.00 - \$68,600.00)

To: Grade 115 (\$51,000.00 - \$72,200.00)

Job Code: 33525 - Procurement Supervisor

From: Grade 116 (\$53,900.00 - \$76,000.00)

To: Grade 119 (\$61,900.00 - \$87,500.00)

b. Reclassify the following three positions:Job No. 1411-49567 (Vacant)

From: 33523 - Procurement Specialist I
Grade 091 (\$44,084.00 - \$53,638.00)

To: 33527 Procurement Specialist III
Grade 115 (\$51,000.00 - \$72,200.00)

Job No. 1411-12146 (Vacant)

From: 33524 - Procurement Specialist II
Grade 114 (\$48,600.00 - \$68,600.00)

To: 33527 - Procurement Specialist III
Grade 115 (\$51,000.00 - \$72,200.00)

BOARD OF ESTIMATES

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MINUTES

PERSONNELDept. of Finance - cont'dJob No. 1411-12258 (Filled)

From: 31102 - Administrative Officer II
 Grade 115 (\$51,000.00 - \$72,200.00)

To: 31103 - Administrative Officer III
 Grade 118 (\$58,800.00 - \$83,800.00)

Cost: \$172,597.16 - 1001-000000-1441-161800-601001

Police Department

	<u>Rate of Pay</u>	<u>Amount</u>
21. JACQUELINE M. BARBOUR	\$75.00	\$15,000.00

Account: 4000-468211-2022-637000-601009

Ms. Barbour, retiree, will continue to work as a Firearms Examiner in the Department's Crime Laboratory, on a part-time basis. She will be responsible for the examination of bullets, bullet fragments, cartridges, and firearms used in crimes. Ms. Barbour will also testify in court.

On June 12, 2013, the Board approved a Grant Adjustment Notice (GAN) received from the U. S. Department of Justice for the Baltimore City Gun and Gang Impact Program 2010, for the period April 30, 2013 through August 31, 2014. Ms. Barbour's salary will be supported by this GAN. The period of the agreement is August 1, 2013 through January 31, 2014.

MINUTES

TRANSFERS OF FUNDS

* * * * *

UPON MOTION duly made and seconded,

the Board approved

the Transfers of Funds

listed on the following page:

2885

SUBJECT to receipt of favorable reports

from the Planning Commission,

the Director of Finance having

reported favorably thereon,

as required by the provisions of the

City Charter.

BOARD OF ESTIMATES

07/24/2013

MINUTES

TRANSFER OF FUNDS

<u>AMOUNT</u>	<u>FROM ACCOUNT/S</u>	<u>TO ACCOUNT/S</u>
<u>Department of Housing and Community Development</u>		
1. \$311,441.00	9991-945002-9587	9987-917900-9593
CDBG 32	Unallocated	HABC Public Housing
	Reserve	
91,407.25	" " "	9989-911900-9593
CDBG 34		HABC Scattered
<u>\$402,848.25</u>		Rehab

This transfer will provide appropriations to support an agreement with the DHCD and the Housing Authority of Baltimore City (HABC), previously approved by the Board on March 14, 2012. The agreement provides for the rehabilitation of vacant scattered site row homes owned and operated by the HABC. Although the transfer of these appropriations was approved by the Board on March 14, 2012 as part of a larger transfer request, the Community Development Block Grant years from which the appropriations were transferred were incorrect, thereby necessitating this corrective transfer of appropriations.

Department of Finance

2. \$1,260,654.20	9958-926001-9522	
Motor Vehicle		
Funds (MVF)		
815,000.00	9958-928001-9526	
General Funds		
1,747,669.48	9958-928001-9526	
MVF		
<u>\$3,823,323.68</u>		
\$3,008,323.68	-----	9958-915315-9525
		MVF
815,000.00	-----	9958-915315-9525
<u>\$3,823,323.68</u>		General Funds

This transfer will fund the costs associated with the repair of the East Monument Street sinkhole that occurred in a section of the 2300 Block of E. Monument Street between Patterson Park and Montford Avenues.

BOARD OF ESTIMATES

07/24/2013

MINUTES

Department of Planning - Ratification of Agreement**ACTION REQUESTED OF B/E:**

The Board is requested to ratify an agreement with Blue Water Baltimore (BWB). The period of the agreement was July 1, 2012 through June 30, 2013.

AMOUNT OF MONEY AND SOURCE:

\$24,750.00 - 9905-926005-9188-900000-703032

BACKGROUND/EXPLANATION:

BWB is a non-profit comprised of four former watershed associations plus the Harbor Waterkeeper. Under the agreement, BWB monitored bacterial levels in the Harbor at 30 sites by taking samples and having them analyzed at a State lab. The resultant data will be shared property with the Department of Public Works (DPW). Additionally, BWB maintained a website to communicate information about water quality with the public and worked with the DPW as necessary to post Water Contract Advisory signs. The BWB was uniquely positioned to do this work because of its long history in the field of water quality in Baltimore City, and its trusted status as public educators and ambassadors between residents and government.

This agreement is for work already performed, and it is the wish of the Department to pay the vendor for this work. The payment for this work was approved by the Critical Areas Commission in 2012. The Department apologizes for the lateness of this agreement. The staff person assigned to this task subsequently left employment with the Department, and the new staff person misunderstood the timing required for Board approval. This situation has since been rectified.

APPROVED FOR FUNDS BY FINANCE**AUDITS REVIEWED AND HAD NO OBJECTION.**

UPON MOTION duly made and seconded, the Board ratified the agreement with Blue Water Baltimore.

BOARD OF ESTIMATES

07/24/2013

MINUTES

Bureau of Budget and Management - Second Amendment to Agreement Research

ACTION REQUESTED OF B/E:

The Board is requested to approve and authorize execution of the second amendment to the agreement with Public Financial Management, Inc. The amendment extends the period of the agreement through September 15, 2014.

AMOUNT OF MONEY AND SOURCE:

\$423,730.00 - 1001-000000-1220-146000-603018

BACKGROUND/EXPLANATION:

The purpose of the Ten-Year Plan is to chart a course for the City to maintain core public services, make its tax structure more competitive, and ensure fiscal sustainability over the coming decade. The Plan considers multiple economic scenarios, projects expenditures and revenues, and comprehensively recommends options for achieving balanced budgets while reducing the property tax rate, making needed capital investments, and delivering results to citizens. Implementation of these initiatives is critical to meeting the financial objectives in the Plan and putting the City on the course to financial stability.

APPROVED FOR FUNDS BY FINANCE

UPON MOTION duly made and seconded, the Board approved and authorized execution of the second amendment to the agreement with Public Financial Management, Inc.

BOARD OF ESTIMATES

07/24/2013

MINUTES

Bureau of Water and Wastewater - Employee Expense Report

The Board is requested to approve the various expense reports for the following employees:

1. **LARRY ALSTON** **\$ 174.83**

Account: 2071-000000-5471-609100-603002 (Sept. 2012 - Mileage)

2. **ANDREW ROBINSON** **\$ 120.99**

Account: 2071-000000-5471-609200-603002 (Sept. 2012 - Mileage)

The Division of Revenue Measurement and Billing inadvertently failed to have the employee mileage expense reports processed in time to be received by the Bureau of Accounting and Payroll Services within the 40 working days from the last calendar day of the month in which the expenses were incurred as directed by the Administrative Manual.

Department of Public Works - Communication and Community Affairs

3. **TEREINA THOMAS** **\$ 22.91**

Account: 1001-000000-1901-191200-603002 (March 2013 Mileage)

4. **EVELYN VARGAS** **\$ 51.51**

Account: 1001-000000-1901-191200-603002 (March 2013 Mileage)

The Administrative Manual, in Section 240-11, states that Employee Expense Report that are submitted more than 40 work days after the last calendar day of the month in which the expenses were incurred require Board of Estimates approval. The requests (items 3 and 4) are late because of the delays in the administrative review process.

APPROVED FOR FUNDS BY FINANCE

AUDITS REVIEWED AND HAD NO OBJECTION.

UPON MOTION duly made and seconded, the Board approved the various expense reports for the aforementioned employees.

BOARD OF ESTIMATES

07/24/2013

MINUTES

Bureau of Water and - Amendment No. 4 to Agreement
Wastewater (BW&WW)

ACTION REQUESTED OF B/E:

The Board is requested to approve and authorize execution of amendment no. 4 to the agreement with KCI Technologies, Inc. for Project No. 1108, Water System Audit and Condition Assessment for Water Infrastructure. The amendment no. 4 extends the agreement through March 3, 2014.

AMOUNT OF MONEY AND SOURCE:

N/A

BACKGROUND/EXPLANATION:

On March 3, 2010, the Board approved the initial agreement with KCI Technologies, Inc. for the Water System Audit and Condition Assessment of Water Infrastructure. The agreement was amended on August 10, 2011, April 25, 2012, and February 13, 2013. Under this amendment, the consultant will continue to provide engineering services for tasks related to water audit, condition assessment of water mains, and dashboard applications. All other terms and conditions remain unchanged. In order to complete these on-going tasks, the Bureau is requesting an extension of the agreement for six months. The consultant was originally approved by the Office of Boards and Commissions and the Architectural and the Engineering Awards Commission.

MBE/WBE PARTICIPATION:

The consultant will continue to comply with all terms and conditions of the MBE/WBE programs in accordance with Baltimore City Code Article 5, Subtitle 28.

AUDITS NOTED THE TIME EXTENSION.

UPON MOTION duly made and seconded, the Board approved and authorized execution of amendment no. 4 to the agreement with KCI Technologies, Inc. for Project No. 1108, Water System Audit and Condition Assessment for Water Infrastructure.

BOARD OF ESTIMATES

07/24/2013

MINUTES

Baltimore City Sheriff's Office - TRANSFER OF LIFE-TO-DATE
SICK LEAVE

The Board is requested to approve the transfer of LIFE-TO-DATE sick leave days from the following City employees to the designated employee, Linette Marshall:

<u>NAMES</u>	<u>DAYS</u>
Attrice Abdul-Adl	3
Tomeka Pindell	2
John J. Parker	3
Anthony Baylor	2
Eric Shepperson	1
Althea Bell	1
Nichole Lawson	1
Sharnell Brown	2
Earline Ward	4
Mark Hughes	5
Rory Wright	1
Allen Swenson	3
Joyce A. Mack	<u>2</u>
	30

The transfer of sick leave days is necessary in order for Ms. Marshall to remain in pay status with continued health coverage. The City employees have asked permission to donate the sick leave days that will be transferred from their LIFE-TO-DATE sick leave balances.

UPON MOTION duly made and seconded, the Board approved the transfer of LIFE-TO-DATE sick leave days from the above-listed City employees to the designated employee, Linette Marshall.

BOARD OF ESTIMATES

07/24/2013

MINUTES

Department of Transportation - Traffic Impact Study Agreement**ACTION REQUESTED OF B/E:**

The Board is requested to approve and authorize execution of a traffic impact study (TIS) agreement with InterPark, LLC. The period of the agreement is effective for 60 business days after the initial payment is made, unless the parties agree in writing that additional time is needed.

AMOUNT OF MONEY AND SOURCE:

\$17,663.40

BACKGROUND/EXPLANATION:

Baltimore City Ordinance 06-345, approved on November 11, 2006, requires that a TIS be performed before permits may be approved for projects, as determined by the Director of the Department of Transportation.

Under the terms of this agreement, a TIS for 300 East Pratt at 300 East Pratt Street will be performed. The applicant has applied for or intends to apply for a Building Permit in Baltimore City to perform the scope of work which includes retaining the existing parking lot land use with revised internal circulation and a second access off South Street. The Traffic Impact Study will assess the development and its relative traffic impacts.

The anticipated cost of the TIS will be covered under Project No. 1134 On-Call Agreement with Whitman, Requardt & Associates.

MBE/WBE PARTICIPATION:

N/A

AUDITS REVIEWED AND HAD NO OBJECTION.

UPON MOTION duly made and seconded, the Board approved and authorized execution of the traffic impact study agreement with InterPark, LLC.

BOARD OF ESTIMATES

07/24/2013

MINUTES

Dept. of Transportation - Amendment No. 1 to Agreements for Federal Aid Resurfacing and Reconstruction On-Call Consultants Services

The Board is requested to approve and authorize execution of amendment no. 1 to agreements with the On-Call Consultants for Federal Aid Resurfacing and Reconstruction Project No. 1113.

<u>Consultant</u>	<u>Amount</u>
1. WHITMAN, REQUARDT & ASSOCIATES, LLP	N/A
On July 28, 2010, the Board approved the original agreement in the amount of \$3,000,000.00.	
2. RUMMEL, KLEPPER & KAHL, LLP	N/A
On July 14, 2010, the Board approved the original agreement in the amount of \$3,000,000.00.	
3. STV, INCORPORATED	N/A
On August 18, 2010, the Board approved the original agreement in the amount of \$3,000,000.00.	

Under the agreement, the above-named consultants perform roadway reconstruction, alignment, resurfacing design, and associated support services for Baltimore City Federal Funded Projects for a three-year period. The Department is requesting a one-year time extension for each contract to continue ongoing tasks. All other terms and conditions of the agreements remain unchanged.

MBE/WBE PARTICIPATION:

The consultant will comply with Title 49 Code of Federal Regulations part 26 and the DBE goal established in the original agreement.

AUDITS NOTED THE TIME EXTENSION AND WILL REVIEW TASK ASSIGNMENTS.

UPON MOTION duly made and seconded, the Board approved and authorized execution of amendment no. 1 to agreements with the above-listed On-Call Consultants.

BOARD OF ESTIMATES

07/24/2013

MINUTES

Department of Transportation - Task Assignment**ACTION REQUESTED OF B/E:**

The Board is requested to approve the assignment of task no. 2 to Wallace, Montgomery & Associates, under Project 1162, On-Call Consultant Services for Reconstruction and Resurfacing Projects.

AMOUNT OF MONEY AND SOURCE:

\$19,984.14 - 9950-913202-9527-900020-703032

BACKGROUND/EXPLANATION:

The Consultant will provide for technical services and concept plans for modernizing the streetscape elements in the West Side area of downtown to create a more appealing atmosphere for motorists/pedestrians, and others who live, work, or shop in the area.

MBE/WBE PARTICIPATION:

The Consultant will comply with Article 5, Subtitle 28 of the Baltimore City Code and MBE and WBE goals established in the original agreement.

MBE: 27% WBE: 9%

AUDITS REVIEWED AND FOUND THE BASIS FOR COMPENSATION CONSISTENT WITH CITY POLICY.

TRANSFER OF FUNDS

<u>AMOUNT</u>	<u>FROM ACCOUNT/S</u>	<u>TO ACCOUNT/S</u>
\$19,984.14	9950-911202-9528	9952-913202-9527
GF - HUR	Constr. Reserve	Westside Strategic
Eligible	Westside Strategic	Infrastructure
	Infrastructure	

This transfer will provide funds to cover costs associated with Task No. 2 assigned to Wallace, Montgomery & Associates, for Project 1162.

MINUTES

Department of Transportation - cont'd

UPON MOTION duly made and seconded, the Board approved the assignment of task no. 2 to Wallace, Montgomery & Associates, under Project 1162, On-Call Consultant Services for Reconstruction and Resurfacing Projects. The Transfer of Funds was approved, SUBJECT to the receipt of a favorable report from the Planning Commission, the Director of Finance having reported favorably thereon, in accordance with the provisions of the City Charter.

BOARD OF ESTIMATES

07/24/2013

MINUTES

Department of Housing - Land Disposition Agreement
and Community Development

ACTION REQUESTED OF B/E:

The Board is requested to approve and authorize execution of a land disposition agreement (LDA) with Jorge Joao Roumbedakis, developer for the sale of the property located at 228 N. Port Street.

AMOUNT OF MONEY AND SOURCE:

\$3,000.00 - Sale Price

BACKGROUND/EXPLANATION:

The property will be purchased and renovated with private funds.

The developer will purchase the vacant row house from the City for rehabilitation as a single family rental. In its current condition the vacant property is causing damage to the developer's other rental property at 226 N. Port Street. The property is located within the Middle East/Patterson Place Community. The purchase price and improvements to the site will be financed through personal funds.

The property was journalized and approved for sale on April 19, 2012.

STATEMENT OF PURPOSE AND RATIONALE FOR SALE BELOW THE VALUE DETERMINED BY THE WAIVER VALUATION PROCESS.

The property is being sold for \$3,000.00. The Waiver valuation process was used in lieu of an appraisal and the price of \$5,570.00 was determined for the property. The property is being sold to Mr. Roumbedakis for less because of the following reasons:

1. the renovation will provide specific benefit to the immediate community by eliminating blight,
2. this sale and rehabilitation will return a vacant building to the tax rolls,

BOARD OF ESTIMATES

07/24/2013

MINUTES

DHCD - cont'd

3. its condition will require extensive and immediate remediation, and
4. in its current condition, the property is causing damage to Mr. Roumbidakis' other rental property at 226 N. Port Street.

The buyer proposes to spend approximately \$50,000.00, inclusive of acquisition and associated costs to complete the project.

MBE/WBE PARTICIPATION:

MBE/WBE participation is not required for this project because the property is being sold below \$49,999.99.

UPON MOTION duly made and seconded, the Board approved and authorized execution of the land disposition agreement with Jorge Joao Roumbidakis, developer for the sale of the property located at 228 N. Port Street.

BOARD OF ESTIMATES

07/24/2013

MINUTES

Department of Housing and - Memorandum of Understanding
Community Development (DHCD)

ACTION REQUESTED OF B/E:

The Board is requested to approve and authorize execution of a memorandum of understanding (MOU) with the Housing Authority of Baltimore City (HABC). The period of the MOU is effective upon Board approval for three years.

AMOUNT OF MONEY AND SOURCE:

No City Funds are involved in this transaction.

BACKGROUND/EXPLANATION:

The DHCD provides a range of energy conservation services to low-income households under its Weatherization Assistance Program (WAP). The HABC desires the DHCD to provide from time to time the WAP services to selected HABC public housing and/or Section 8 voucher rental units, as set forth in the MOU.

The DHCD will provide a wide range of free services to the HABC properties, encompassing an energy audit, safety testing, and repair of heating equipment and the installation of energy conservation measures, as determined necessary by the DHCD. The services may include, but are not limited to the following:

- safety testing for furnaces and boilers,
- cleaning and tuning of heating systems,
- sealing and insulating duct work,
- insulating attics, walls, and floors,
- insulating water heaters and hot water pipes,
- installing weather strips and sweeps on doors,
- installing high efficiency compact fluorescent light bulbs, and
- installing low-flow shower heads and faucet aerators.

BOARD OF ESTIMATES

07/24/2013

MINUTES

DHCD - cont'd

The DHCD will secure funding from sources other than the HABC to finance the cost of the WAP services to the properties and will select and supervise the contractor(s) performing the weatherization work. The HABC will provide project management and inspection services during and after completion of the work. The HABC agrees to notify residents of the selected units of the weatherization work.

MBE/WBE PARTICIPATION:

Article 5, Subtitle 28 of the Baltimore City Code for Minority and Women's Business Opportunity is fully applicable and no request for waiver or exception has been made.

UPON MOTION duly made and seconded, the Board approved and authorized execution of the memorandum of understanding with the Housing Authority of Baltimore City.

BOARD OF ESTIMATES

07/24/2013

MINUTES

Department of Housing and - Loan
Community Development

ACTION REQUESTED OF B/E:

The Board is requested to approve an additional loan to Roberta's House, Inc., (Roberta's House) for the property located at 922-928 E. North Avenue. The Board is further requested to authorize the Commissioner of the Department of Housing and Community Development to execute any and all documents to effectuate this transaction subject to review and approval for form and legal sufficiency by the Law Department.

AMOUNT OF MONEY AND SOURCE:

\$55,000.00 - 9910-903480-9588
(not-to-exceed)

BACKGROUND/EXPLANATION:

Roberta's House, Inc. (the Borrower), a Baltimore-based non-profit center, currently runs Roberta's House, a grief and bereavement center that offers counseling services to children and their families within Baltimore City. Working through the necessary grief stages and understanding the essential needs of a child's grief allow families to support each other and communicate more effectively. Children work in small, age appropriate groups utilizing creative activities to identify feelings and needs, and adults share in groups and are given resources to support them as well as in their journey.

On March 28, 2012, the Board approved a non-amortizing Bond fund loan in the amount of \$148,000.00 to the Borrower to demolish four abandoned row house structures located at 922-928 East North Avenue that are long-term blighting influence and detract from efforts to attract new investment.

The previous costs approved were the best estimates as of the date of approval. Subsequent thereto, it became known that additional funds will be required for the completion of the

BOARD OF ESTIMATES

07/24/2013

MINUTES

DHCD - cont'd

environmental remediation, surveys and assessment work so that demolition can proceed. These line items were not included in the original estimates as approved by the Board. The City's financial commitment to the project will increase from \$148,000.00 to \$203,000.00 (collectively, the City loan).

The City loan will be provided as a no-interest loan that will be forgiven provided the facility is constructed and has received its Use and Occupancy Permit within three years following the demolition and is used for the purposes stated above for 15 years following completion of construction. In the event these conditions are not met, Roberta's House will be responsible for repaying the City the full amount of the City loan.

The City loan will be evidenced by a note, which will be secured by a deed of trust and regulatory agreement (the Deed of Trust), or equivalent documents, ensuring that the Owner complies with the requirements set forth herein. Any Deed of Trust will be recorded in Land Records. Following the completion of construction, the City may require that the Borrower further secure the City loan by placing an additional lien on real property or other collateral whose appraised value is not less than the amount of the City loan. In order to assist Roberta's House with its fundraising efforts to secure a permanent loan, the City agrees to subordinate the City loan to a loan made by a permanent lender so long as the City is able to negotiate a mutually agreeable subordination or intercreditor agreement with such permanent lender.

THE DIRECTOR OF FINANCE RECOMMENDED APPROVAL.

BOARD OF ESTIMATES

07/24/2013

MINUTES

DHCD - cont'd**MBE/WBE PARTICIPATION:**

Article 5, Subtitle 28 of the Baltimore City Code for Minority and Women's Business Opportunity is fully applicable and no request for waiver or exception has been made.

TRANSFER OF FUNDS

<u>AMOUNT</u>	<u>FROM ACCOUNT/S</u>	<u>TO ACCOUNT/S</u>
\$55,000.00	9910-902985-9587	9910-903480-9588
30 th CDB	Housing Development Reserve	East North Avenue 900 Block

This transfer will provide funding to assist with the environmental remediation work of properties located at 22-928 E. North Avenue.

UPON MOTION duly made and seconded, the Board approved an additional loan to Roberta's House, Inc., for the property located at 922-928 E. North Avenue. The Board further authorized the Commissioner of the Department of Housing and Community Development to execute any and all documents to effectuate this transaction subject to review and approval for form and legal sufficiency by the Law Department. The Transfer of Funds was approved, SUBJECT to the receipt of a favorable report from the Planning Commission, the Director of Finance having reported favorably thereon, in accordance with the provisions of the City Charter. The Comptroller **ABSTAINED**.

BOARD OF ESTIMATES

07/24/2013

MINUTES

Department of Housing and - Side Yard Land Disposition Agreement
Community Development

ACTION REQUESTED OF B/E:

The Board is requested to approve and authorize execution of the side yard land disposition agreement (LDA) with Ms. Darlene Seay, purchaser, for the sale of the property located at 4826 Lanier Avenue (Block 4798, Lot 045).

AMOUNT OF MONEY AND SOURCE:

\$1,820.00 - Sale price

BACKGROUND/EXPLANATION:

A good faith deposit was not paid by the purchaser.

The property will be sold under the City's Side Yard Policy approved by the Board on August 17, 2011. The purchaser will be using private funds to pay for the acquisition and maintenance of the property. The Department's Land Resources Division, strategically acquires and manages vacant or abandoned properties, ultimately enabling these properties to be returned to productive use and improving Baltimore's neighborhoods.

In accordance with the City's Side Yard Policy, the City has agreed to convey the property known as 4826 Lanier Avenue, to the owner of the adjacent owner-occupied property. As a condition of conveyance, Ms. Seay has agreed to the terms of the LDA, which prohibits development of the parcel for a minimum of ten years.

The City may dispose of the property by virtue of the following legal authorities: Article 28, Subtitle 8 of the Baltimore City Code (2011 Edition), Article II, Section 15 of the Baltimore City Charter, 2011 Edition; and Article 13 of the City Code.

UPON MOTION duly made and seconded, the Board approved and authorized execution of the side yard land disposition agreement with Ms. Darlene Seay, purchaser, for the sale of the property located at 4826 Lanier Avenue (Block 4798, Lot 045).

BOARD OF ESTIMATES

07/24/2013

MINUTES

Department of Housing and - Side Yard Land Disposition Agreement
Community Development

ACTION REQUESTED OF B/E:

The Board is requested to approve and authorize execution of the side yard land disposition agreement (LDA) with Ms. Franciska Farkas, purchaser, for the sale of the properties located at 332 E. Lafayette Avenue (Block 1095, Lot 046) and 334 E. Lafayette Avenue (Block 1095, Lot 045).

AMOUNT OF MONEY AND SOURCE:

\$ 500.00 - 332 E. Lafayette Avenue
500.00 - 334 E. Lafayette Avenue
\$1,000.00 - Sale price

BACKGROUND/EXPLANATION:

A good faith deposit was not paid by the purchaser.

The properties will be sold under the City's Side Yard Policy approved by the Board on August 17, 2011. The purchaser will be using private funds to pay for the acquisition and maintenance of the property.

The Department's Land Resources Division, strategically acquires and manages vacant or abandoned properties, ultimately enabling these properties to be returned to productive use and improving Baltimore's neighborhoods.

In accordance with the City's Side Yard Policy, the City has agreed to convey the properties known as 332 and 334 E. Lafayette Avenue, to the owner of the adjacent owner-occupied property. As a condition of conveyance, Ms. Farkas has agreed to the terms of the LDA, which prohibits development of the parcel for a minimum of ten years.

BOARD OF ESTIMATES

07/24/2013

MINUTES

DHCD - cont'd

The City may dispose of the properties by virtue of the following legal authorities: Article 28, Subtitle 8 of the Baltimore City Code (2011 Edition), Article II, Section 15 of the Baltimore City Charter, 2011 Edition; and Article 13 of the City Code.

UPON MOTION duly made and seconded, the Board approved and authorized execution of the side yard land disposition agreement with Ms. Franciska Farkas, purchaser, for the sale of the properties located at 332 E. Lafayette Avenue (Block 1095, Lot 046) and 334 E. Lafayette Avenue (Block 1095, Lot 045).

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MINUTES

Department of Housing and - Land Disposition Agreement
Community Development

ACTION REQUESTED OF B/E:

The Board is requested to approve and authorize execution of the land disposition agreement (LDA) with Biff Allender, purchaser, for the sale of the properties located at 2546 Woodbrook Avenue (Block 3404 Lot 023) and 2548 Woodbrook Avenue (Block 3404 Lot 024).

AMOUNT OF MONEY AND SOURCE:

\$1,000.00 - 2546 Woodbrook Avenue
1,000.00 - 2548 Woodbrook Avenue
\$2,000.00 - Sale price

BACKGROUND/EXPLANATION:

The properties will be sold under the City's Side Yard Policy approved by the Board on August 17, 2011. The Purchaser will be using private funds to pay for the acquisition and maintenance of the property. The Department's Land Resources Division, strategically acquires and manages vacant or abandoned properties, ultimately enabling these properties to be returned to productive use and improving Baltimore's neighborhoods.

In accordance with the City's Side Yard Policy, the City has agreed to convey the properties known as 2546 Woodbrook Avenue and 2548 Woodbrook Avenue, to the adjacent non-owner-occupied property. As a condition of conveyance, Biff Allender has agreed to the terms of the LDA, which prohibits development of the parcel for a minimum of ten years.

The City may dispose of the properties by virtue of the following legal authorities: Article 28, Subtitle 8 of the Baltimore City Code (2011 Edition), Article II, Section 15 of the Baltimore City Charter, 2011 Edition; and Article 13 of the City Code.

UPON MOTION duly made and seconded, the Board approved and authorized execution of the land disposition agreement with Biff Allender.

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Department of Housing and - Local Government Resolutions
Community Development

The Board is requested to approve and authorize execution of the local government resolutions.

The listed organizations are applying to the State of Maryland's Department of Housing and Community Development for Community Investment Tax Credit (CITC) or Low-Income Housing Tax Credit (LIHTC) funds. A local government resolution of support is required by the State for all applications to this program for funding.

<u>Organization</u>	<u>Amount</u>
1. HABITAT FOR HUMANITY OF THE CHESAPEAKE	\$ 50,000.00
	(CITC)
<p>The mission of Habitat for Humanity of the Chesapeake is to create affordable homeownership opportunities for families in need in reemerging neighborhoods by either rehabilitating abandoned housing stock or building new homes while also creating self-sustaining homeowner communities, and providing no-interest mortgage loans.</p> <p>These tax credits will support general operating expenses for Habitat for Humanity of the Chesapeake so that they can continue to build capacity for homeowner education programs and ReStores, a social enterprise that supports construction.</p>	
2. HAMPSTEAD POPPLETON PARTNERS III, LP	\$642,256.00
	(LIHTC) Equity

The Poppleton Phase III Apartments located at 858-876, 863 and 865 West Fayette Street are being developed by Hampstead Poppleton Partners III, L.P. The development involves the demolition of 2 existing blighted units and the new construction of 32 units in the Poppleton neighborhood of Baltimore City. Of the 32 units, approximately ten units will be reserved for individuals

MINUTES

DHCD - cont'd

with disabilities. The Housing Authority of Baltimore has pledged to provide a 15 year project based voucher contract on the property for a total of ten units, which includes seven units that will be reserved for non-elderly disabled residents and three units for disabled residents in units that meet the UFAS standards. All of the units will be rented to individuals and families with incomes at or below 60% of the Area Median Income.

UPON MOTION duly made and seconded, the Board approved and authorized execution of the aforementioned local government resolutions.

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INFORMAL AWARDS, RENEWALS, INCREASES TO CONTRACTS AND EXTENSIONS

<u>VENDOR</u>	<u>AMOUNT OF AWARD</u>	<u>AWARD BASIS</u>
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Bureau of Purchases

- | | | |
|--|-------------|-------------------------|
| 1. NCS PEARSON, INC. | \$37,962.00 | Renewal/
Sole Source |
| Solicitation No. 08000 - On-Line Licenses - Mayor's Office of Human Services - Head Start - Req. No. R635915 | | |

On January 11, 2012, the Board approved the initial award in the amount of \$38,073.00. The award contained four 1-year renewal options. On August 15, 2012, the Board approved the first renewal in the amount of \$38,295.00. This renewal in the amount of \$37,962.00 is for the period September 1, 2013 through August 31, 2014, with two 1-year renewal options remaining.

It is hereby certified, that the above procurement is of such a nature that no advantage will result in seeking nor would it be practical to obtain competitive bids. Therefore, pursuant to Article VI, Section 11 (e)(i) of the City Charter, the procurement of the equipment and/or service is recommended.

- | | | |
|---|--------------|----------|
| 2. FASTENAL COMPANY | \$172,856.00 | Increase |
| Solicitation No. B50002250 - Selected Restroom Supplies - Department of General Services - P.O. No. P521012 | | |

On June 13, 2012, the Board approved the initial award in the amount of \$169,492.00. Due to increased usage an increase in the amount of \$172,856.00 is necessary. This increase will make the award amount \$342,348.00. The contract expires on June 12, 2014 with two 1-year renewal options remaining.

MWBOO GRANTED A WAIVER.

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MINUTES

INFORMAL AWARDS, RENEWALS, INCREASES TO CONTRACTS AND EXTENSIONS

<u>VENDOR</u>	<u>AMOUNT OF AWARD</u>	<u>AWARD BASIS</u>
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Bureau of Purchases

3. POINT DEFIANCE AIDS

PROJECT/NASEN	\$ 50,000.00	Renewal
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Solicitation No. 06000 - Needles for Exchange Program - Health Department - P.O. No. P517722

On July 21, 2011, the City Purchasing Agent approved the initial award in the amount of \$14,493.00. On February 1, 2012, the City Purchasing Agent approved an increase in the amount of \$7,471.50. Subsequent actions have been approved. The award contained two 1-year renewal options. Subsequent actions have been approved. This final renewal in the amount of \$50,000.00 is for the period July 25, 2013 through July 24, 2014.

It is hereby certified, that the above procurement is of such a nature that no advantage will result in seeking nor would it be practical to obtain competitive bids. Therefore, pursuant to Article VI, Section 11 (e)(i) of the City Charter, the procurement of the equipment and/or service is recommended.

MWBOO GRANTED A WAIVER.

4. W.W. GRAINGER, INC.	\$2,000,000.00	Increase
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Solicitation No. BPO-001B1400635 - Maryland State Contract - Maintenance, Repair and Operating Supplies - Department of Public Works, Health Department, etc. - P.O. No. P519531

On February 29, 2012, the Board approved the initial award in the amount of \$1,500,000.00. On November 9, 2012, the City Purchasing Agent approved an increase in the amount of \$40,000.00. On November 26, 2012, the City Purchasing Agent approved an increase in the amount of \$10,000.00. On December 19, 2012, the Board approved an increase in the amount of \$1,500,000.00. The award contained one 3-year renewal option.

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MINUTES

INFORMAL AWARDS, RENEWALS, INCREASES TO CONTRACTS AND EXTENSIONS

<u>VENDOR</u>	<u>AMOUNT OF AWARD</u>	<u>AWARD BASIS</u>
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Bureau of Purchases

Due to increased usage an increase in the amount of \$2,000,000.00 is necessary. This increase will make the award amount \$5,050,000.00. The contract expires on February 28, 2014, with one 3-year renewal option remaining.

MWBOO SET GOALS OF 5% MBE AND 0% WBE.

MBE: Marathon, Inc.	\$45,000.00	6%
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MWBOO FOUND VENDOR IN COMPLIANCE.**A PROTEST WAS RECEIVED FROM THE MARYLAND MINORITY CONTRACTORS ASSOCIATION.**

President: The first item on the non-routine agenda can be found on Pages 54 and 55, Maintenance Repair and Operating Supplies, Item 4. Will the parties please come forward?"

"This is the renewal of maintenance repair and operating supplies to Grainger. It is the piggyback off of the Maryland state contract, which uses a competitively bid, cooperative contract to obtain the best pricing for the State, and in this case, the City."

Arnold M. Jolivet, Maryland Minority Contractors Association:

"Good morning."

President: "Good morning."

Mr. Jolivet: "Uh, Arnold M. Jolivet. I, um, importantly in 2008 when this contract first came before the Board, I made an

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argument then, that because it was piggybacked, whatever that means, on an existing State contract, it was not in accordance with Article VI, Section 11 of the Charter, and if the Board would allow me, I would like to incorporate that, uh, argument that I made then, but I just want to emphasize, uh, that under the Charter, the Charter is explicit, plain and unambiguous, in terms of how City contracts shall be awarded. There are no provisions whatsoever, in the Charter, which authorizes the Bureau of Purchases nor this Board of Estimates, to award a contract where there has not been an independent bid by the City. Uh, Mr. Nilson knows that quite clearly! It is a matter of common, every day, horn book law, and I'm just appalled how uh - - this contract can survive so long without going through the competitive bidding process of -- of the Charter. Uh, I have made this argument, uh -- repeatedly, and I think the Board well knows, knows uh well, my position on this, and I'm not going to take the Board's time any further of making the argument on this point.

But, I would ask the Board, in its wisdom, to conform the Board's awarding of contracts, any and all contracts, that come before this Board in strict accordance with Article VI, Section 11 of the Charter. That is a duty, a responsibility on the part of this Board, that I think that the Board cannot, uh -- skirt.

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And again, I would respectfully ask this Board to reject this proposed award and put this contract out for competitive bid. That is the appropriate thing to do; it is the fair thing to do, and I would ask the Board to, uh -- move accordingly."

President: "Mr. Nilson, will you respond to the Article that he cited?"

City Solicitor: "Well, Article VI is the general procurement article of the City Charter. This, this contract, as this Board decided, back in, as early as 2008, and as we have decided, with advice from the Law Department on numerous occasions since then, is in accordance with Article VI of the City Charter, and I, so I would move with approval of this recommendation and deny again, the bid protest."

President: "Um, does the Comptroller have a question?"

Comptroller: "Could you explain in more detail why it's in compliance with the Charter?"

City Solicitor: "Because it is procured as part of a competitively bid undertaking by the State on a cooperative basis and we have participated in those competitively bid undertakings for years on advice of this and previous City solicitors."

Michael Schrock of the Law Department: "Michael Schrock of the Law Department. Um, just to add to what the City Solicitor has

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said, at the State level there is a section in there that allows the State to go out when they procure contracts and allow governments, local, county, to then "piggyback" or use those as a cooperative type contract, so that follows up the advice the Solicitor is talking about in accordance with our own law. It's in the State law and then it works for the City law."

Comptroller: "And so you're saying it's legal?"

Mr. Schrock: "Yes ma'am."

Mr. Jolivet: "Now, would you kindly tell the Board that yes, there is such a law found in State procurement article. But you didn't, you neglected to tell the Board, that likewise, if there is a specific provision which describes and limits the agencies, that can actually "piggyback" on these contracts. You neglected to tell the Board that. And you need to tell the Board the whole story."

Comptroller: "What are the limitations?"

Mr. Jolivet: "The limitations, if I can just say, and he, Mr. Schrock can say on his own, but the, but the legislature specifically described, and limited to the agencies that can participate in these contracts, and it's also stated in the COMAR regulations. It is not a "blanket", wide open thing, where anybody or any locality or any municipality can just come in and participate in these contracts. That is just a non, not a

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proper, appropriate interpretation, uh - uh - uh -- of the description of, of, the article."

City Solicitor: "Which of those limitations, Mr. Jolivet, precludes the City of Baltimore from participating?"

Mr. Jolivet: "The Charter."

City Solicitor: "Which specific exclusion prohibits the City of Baltimore from participating?"

Mr. Jolivet: "Well first of all, the, the Charter,"

City Solicitor: "No, I'm sorry, which of the exclusions under the State law?"

Mr. Jolivet: "Under the statute, under the procurement article?"

City Solicitor: "Under the State law, yes."

Mr. Jolivet: "Because it specifically names the State agencies, and it does not name local and municipal agencies; it confines the agencies that can participate in these cooperative contracts to certain delineated agencies that are part of the State government, not the municipal government; and Mr. Solicitor, you know that. I don't know why we have to debate that this morning."

City Solicitor: "No, I know that the State law does permit that local government and local agencies to participate."

Mr. Jolivet: "No. It permits other"

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City Solicitor: "Well we have a disagreement."

Mr. Jolivet: "it permits other sister State agencies."

City Solicitor: "We have a disagreement."

Director of Public Works: "Just one thing. In order to participate, you have to get the approval of the State agency right?"

Mr. Krus: "In some cases you do have to get the approval, and in other cases, the State has clearly delineated that it's okay for every jurisdiction to "piggyback" on these contracts. I would also -- Tim Krus City Purchasing Agent, by the way -- I would also point out that this is common purchasing practice across the country. We're not doing anything unusual here, and in some of those cases, you will find that the discounts available to the City on these commodities are substantially better because of these cooperative agreements."

President: "Okay, I'll entertain the Motion."

City Solicitor: "I MOVE the approval of the recommendation for the bid protest."

President: "All those in favor, say "aye. Aye."

President: "All those opposed, say 'nay.' The Motion carries."

MMCA- Maryland Minority Contractors Association, Inc.

A Chapter of the American Minority Contractors and Businesses Association, Inc.-AMCBA

Baltimore, Maryland 21210

443-413-3011 Phone

410-323-0932 Fax

July 23, 2013

Via Facsimile 410-685-4416

Honorable Bernard "Jack" Young

President, Baltimore City Board of Estimates

City Hall-Room 204

Baltimore, MD 21202

ATTN: Ms. Bernice Taylor, Esquire, Clerk to the Board

Dear Mr. President:

I represent the Maryland Minority Contractors Association ("MMCA"), its members, clients and constituents.

We wish to protest the following described proposed contract increase and contract awards contained on Your Honorable Board's 07/24/2013 public meeting agenda:

Item No. 4, contained on pages 4-5, which is a proposed \$2,000,000.00 price increase to W.W. Grainger, Inc., under Bureau of Purchases Solicitation No. BPO-001B1400635- MD State contract –"Maintenance repair and Operating Supplies."

Our concern on this contract is that it violates the city's "mandatory" competitive bidding charter provision- Article VI, § 11 et seq.

Additionally, we wish to protest Item No. 1, contained on page 61, which is a proposal to award WC 1256-"Meter Setting Installations and Water Main Replacement at various locations, Patterson Park Vicinity," to the second low bidder, the Spinello Companies, at its high bid price of \$4,673,300.00.

Importantly, bidder, R.E. Harrington Heating and Plumbing, Inc. ("Harrington"), a certified City MBE firm was "the lowest responsive and responsible bidder," within the meaning of Article VI, § 11(h) (1) (ii), of the City Charter. Harrington's bid price was \$4, 598,600.00. Bidder Spinello Companies' bid price was \$4,673,300.00. Bidder J. Fletcher Creamer's bid price was \$5,222,777.00. Thus, the contract award to Harrington would save the city \$74,700.00.

**Discussion of Applicable and Controlling City Competitive
Bidding and Minority Business Enterprise Principles and Law**

Notwithstanding Harrington's bid proposal's apparent failure to fully meet the contract's established MBE goals at bid time, under well settled Maryland contract law, Harrington's bid proposal is still the "lowest responsive and responsible bidder." within the ambit of Article VI, § 11 (h) (1) (ii), of the City Charter. Indeed, Harrington's apparent failure to fully meet and satisfy the contract's established MBE goals at bid time did not, in any substantive way, render Harrington's bid proposal "non-responsive."

Moreover, Your Honorable Board is keenly aware of the fact that applicable and controlling Maryland contract law, as established by the Maryland Board of Contract Appeals, as well as various Maryland Circuit Courts, does not make a bidder's failure to fully meet and comply with applicable contract established M-WBE Utilization goals, a matter of such bidder's "responsiveness." Rather, it is well settled in Maryland that as long as the bidder signs and commits to meeting the contract established M-WBE goals as required by the applicable bid document, even if it does not in fact meet such goals, its bid is thus fully "responsive" on that issue.

A "responsive" bid is defined in MD Code Ann. State Fin. & Proc. § 11-101 (8) and COMAR 21.01.02.01B (78), as one which conforms in all material respects to the invitation for bids or request for proposals. Contrary to the City's MWBOO's determinations herein, Maryland law is well-established that satisfaction and compliance with federal, state and municipal governments' sponsored M-WBE utilization contracting programs is a matter solely of a bidder's "responsibility," and not, in any way, a bidder's "responsiveness," as the City's MWBOO has so unauthorizedly and erroneously determined herein.

It is well settled and there are myriad of state and federal administrative decisions in support of the rule that a bidder's satisfaction of MBE participation goals is a matter of a bidder "responsibility," and not "responsiveness." The Maryland State Board of Contract Appeals has consistently ruled that the failure to submit a completed MBE utilization affidavit and participation schedule as required by COMAR 21.11.03.09C (3) is a matter of a bidder's "responsiveness", but that the sufficiency of the requisite MBE Schedule documentation, as is the case herein, is a matter of "responsibility." See Roofers. Inc. MSBCA 1284, 2 MSBCA ¶ 133 (1984); Central Data Processing, MSBCA 2084, 5 MSBCA ¶ 450 (1998).

The distinction between “responsiveness” and “responsibility” is important because information pertaining to the determination of the bidder’s responsibility may be received and evaluated after bids are opened but prior to contract award. See Cam Construction Company of Maryland, Inc., MSBCA 1393, 2 MSBCA ¶ 195 (1988) (quoting Aquatel Industries, Inc., MSBCA 1192, 1 MSBCA ¶ 82 (1984)). Thus, as opposed to “responsiveness,” a procurement officer has broad discretion in determining whether a bidder is “responsible,” i.e., one who has the capability in all respects to perform fully the contract requirements and possesses the integrity and reliability that will assure good faith performance. It is a long-standing rule that a procurement office must accept, at any time prior to award, information necessary to establish the bidder’s “responsibility”. See Covington Machine and Welding Company, MSBCA 2051, 5 MSBCA ¶ 436 (1998); peninsula General Hospital Medical Center, MSCBA 1248, 1 MSCBA ¶ 109 (1985); Construction Management Associates, MSCBA 1238, 1 MSCBA ¶ 108 (1985).

Applicable and controlling federal procurement law is to the same effect. see Paul N. Howard Company, B-199145, 1980 U.S. Comp. Gen., LEXIS 2158, 80-2 CPD ¶ 399 (1980), *aff’d* on reconsideration, B-199145.2, 60 Comp. Gen. 606, 1981 U.S. Comp. Gen. LEXIS 95, 81-2 CPD ¶ 42 (1981), a case with substantially similar facts as those in this case. In Howard, after the contracting agency deemed a bid to be “non-responsive” because one of the listed subcontractors did not qualify as an MBE, the Comptroller General ruled that satisfaction and compliance with MBE contract goals involve the issue of “responsibility,” and that the bidder should have been allowed to cure its bid error and to substitute a new minority subcontractor. In making this decision, the Comptroller general explained that once the bidder has certified, as here, that it will comply with the solicitation’s minority subcontractor utilization requirements, the bid is fully “responsive” on that point. The issue of actually achieving the MBE goal by using the MBE subcontractors named in the bid or by using an acceptable substitute MBE subcontractor relates to the bidder’s performance, and thus its “responsibility.”

Accordingly, based on the controlling MBE contract legal precedents cited and relied upon above, it is extremely clear and undisputed that in the field of government contracting, the compliance and satisfaction of M-WBE utilization goals is a matter of a bidder’s “responsibility,” and not “responsiveness,” especially in view of the facts in this particular case. The bidder’s failure to meet its MBE goals at bid time was not, in any legal way, fatal to the “responsiveness” of its bid proposal, since its bid proposal was still “the lowest responsive and

responsible bid,” within the ambit of Article VI, Section 11(h)(1)(ii) of the City Charter, notwithstanding its failure to fully meet and comply with the contract’s set MBE utilization goal at bid time.

Plain and simple, bidder Harrington’s bid proposal was completely “responsive,” in every respect, notwithstanding the fact that it may not have fully met and satisfied the contract set MBE participation goal, at the time of bid. Harrington could have very easily met and satisfied the contract set MBE goal at anytime after the bids were opened and before or even after the contract award date. Since Article VI, Section 11(h)(1)(ii), of the City Charter clearly and undisputably requires Your Honorable Board to award the subject contract to “the lowest responsive and responsible [dollar] bidder,” the only factor that matters and is controlling is the important fact that Harrington’s bid proposal contained the “lowest responsive and responsible [dollar] bid price.

Article VI, Section 11 (h)(1)(ii), of the City Charter, requires the City’s Board of Estimates to publicly advertise all city contracts involving an expenditure greater than \$50,000.00 and to award such contract, to “the lowest responsive and responsible bidder,” as therein delineated. This quoted phrase – “lowest responsive and responsible bidder” – is not specifically defined in the City’s competitive bidding charter provision, Article VI, Section 11 (h)(1)(ii), but it and very similar phrases are frequently employed in municipal competitive bidding charter provisions.

In Hilton Construction Co. v. Rockdale County Board of Education, 245 Ga. 533, 266, S.E. 2d 157 (1980), there was a State School Board Regulation which required state funded projects be awarded to “the responsible bidder submitting the lowest acceptable bid.” In spite of this requirement the county school board awarded a construction contract to the second lowest bidder on the basis the second lowest bidder was known to the board while the lowest bidder was unknown to the board. The court held that reason was not an adequate reason, under the new regulations, to reject the low bid.

The phrase “lowest responsible bidder” was the requirement for awarding a construction contract in City of Inglewood-L.A. City County Civic Center Authority v. Superior Court, 7 Cal. 3d 861, 103 Cal. Rpt. 601, 500 P. 2d 601 (1972). The contract was awarded to a contractor other than the lowest bidder because the higher bidder was determined to be superior in ability to perform the contract. But, no determination was made that the lowest bidder was not qualified, hence “responsible” to do the work. The California Supreme Court rejected this approach and in essence held that “lowest responsible bidder” means the lowest bidder must be

awarded the contract unless found not qualified. Beyond that, there was to be no award based upon degree of qualification. The court accepted the argument of counsel which stated the purpose of the lowest bid requirement to be to insure the interest of the public in having contracts awarded without favoritism so that projects will be done, "... without excessive cost, and constructed at, the lowest price consistent with the reasonable quality and expectation of completion." One can reasonably perceive the Baltimore City Charter requirement of "lowest responsible bidder" to have a similar purpose.

In the specific context of an M/WBE affirmative action ordinance akin to the City's M/WBE ordinance which we have before us, the Alabama Court considered the impact of a state statute requiring contracts be awarded to, "the lowest responsible bidder" in Arrington v. Associated General Contractors, S.C., Ala., 403 So. 2d 893 (1981). The affirmative action ordinance required ten percent of each contract be expended with minority business enterprises. Since the affirmative action ordinance would directly conflict with the state bid requirement where the lowest responsible bid did not undertake to expend at least ten percent of the contract amount with minority business enterprises, the Alabama court held the ordinance must yield to the state statute. Again, in a MBE affirmative action versus bid requirements case, the Ninth Circuit Court of Appeals, applying California law, reached the same result in Associated Gen. etc. v. San Francisco Unified Sch. 616 F.2d 1381 (1980). To arrive at the state law rule, the federal appeals court determined the California Supreme Court would construe the bid requirement language, "lowest responsible bidder" to preclude considering any factor other than (1) bid amount, (2) minimum financial and skills qualifications of bidder, and (3) quality of bidder's past work. No consideration or penalty can be given to contractors' lack of compliance with the contract's MBE utilization provisions.

In Georgia Branch, AGC of America, Inc. v. City of Atlanta, 253 Ga. 397, 321 S.E. 2d 325 (1984), the Georgia Supreme Court considered the validity of a City of Atlanta race-gender-based Ordinance which required the City to award 20% to 35% MBE participation on most construction contracts in relationship with the Atlanta City Charter requirement that such contracts be awarded to the lowest and/or best bidder." The court held that, "the legislative purpose in the Atlanta City Charter requirement of 'lowest and/or best bidder' was to further the cause that contracts be awarded without favoritism to obtain reasonable quality at the lowest cost. The MFBE Ordinance requiring certain percentages of contracts measured in dollar value is awarded on the basis of race and sex conflicts with the legislative intent and purpose embodied in the bid requirement. Therefore, the [MFBE] Ordinance is void." See 253 Ga. At 399, 321 S.E. 2d at 328.

In *AGC of California, Inc. v. City and County of San Francisco*, 813 F.2d 922 (9th Cir. 1987), the Court of Appeals for the Ninth Circuit considered the validity of a City of San Francisco race-gender based M/WBE Ordinance requiring the City to award 30% of its contracting dollars to MBEs and 10% to WBEs in relationship to the City charter provision which required all City contracts over \$50,000.00 be awarded “to the lowest reliable and responsible bidder.” The Court invalidated the subject M/WBE Ordinance for the reason “that the Ordinance violates the City charter insofar as it authorizes the award of [City] contracts that are worth more than \$50,000.00 and are not covered by charter section 7.204 to other than the lowest responsible bidder. Insofar as the Ordinance’s bid preferences, subcontracting goals and set asides would result in awards that violate the charter, they are void. See 813. F.2d at 927.

Accordingly, the plain, clear and unambiguous language and purpose contained in Article VI, Section 11 (h)(1)(ii), requiring the City’s Board of Estimates to award all City public contracts with an expenditure greater than \$50,000.00 to “the lowest responsive and responsible bidder,” as therein delineated, completely neutralizes the City’s M-WBE Ordinance. Insofar as the provisions of the City’s MBE Ordinance encourages and is enforced and administered by the City so as to frustrate and prevent the City from awarding its public contracts with an expenditure greater than \$50,000.00, to a bidder, other than “the lowest responsive and responsible bidder,” as specifically mandated by Article VI, Section 11 (h)(1)(ii), of the City Charter, it is completely void. The city’s “mandatory” competitive bidding charter provisions, Article VI, Section 11 (1)(ii), “trumps” its M-WBE Ordinance. See Salisbury University v. Joseph M. Zimmer, Inc., 199 Md. App. 163; 20 A.3d 838; 2011 Md. App. LEXIS 66 (citing University of Md. v. MFE, 345 Md. 86, 104, 691 A.2d 676 (1997) (holding in an analogous case that the Maryland Board of Public Works may not, “adopt [procurement] regulations that would be inconsistent with the [Maryland] procurement statute or the legislative intent behind it”)). Thus, the City M-WBE Ordinance, is completely subordinate to the City’s Charter requirement to award City public contracts to the lowest responsive and responsible bidder as therein delineated.

Respectfully Submitted,

Arnold M. Jolivet

Arnold M. Jolivet
Managing Director

cc: R.E. Harrington Heating and Plumbing

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MINUTES

INFORMAL AWARDS, RENEWALS, INCREASES TO CONTRACTS AND EXTENSIONS

VENDOR	AMOUNT OF AWARD	AWARD BASIS
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Bureau of Purchases

- | | | |
|--|---------------|---------|
| 5. PHI AIR MEDICAL, L.L.C. | \$ 400,000.00 | Renewal |
| Solicitation No. 06000 - Non-Emergent Air Transportation Services - Health Department - Req. No. R636242 | | |

On July 1, 11, 2012, the Board approved the initial in the amount of \$400,000.00. The award contained three 1-year renewal options. This renewal in the amount of \$400,000.00 is for the period July 11, 2013 through July 10, 2014, with three 1-year renewal options remaining.

It is hereby certified, that the above procurement is of such a nature that no advantage will result in seeking nor would it be practical to obtain competitive bids. Therefore, pursuant Article Vi, Section 11 (e)(i) of the City Charter, the procurement of the equipment and/or service is recommended.

MWBOO GRANTED A WAIVER.

- | | | |
|-------------------------------|---------------------|----------|
| 6. FERGUSON ENTERPRISES, INC. | \$ 50,000.00 | Increase |
| | \$200,000.00 | Renewal |
| | \$250,000.00 | |

Solicitation No. B50001420 - Steel Pipes, Valves and Fittings - Agencies - Various - P.O. No. P513535

On May 19, 2010, the Board approved the initial award in the amount of \$80,000.00. The award contained two 1-year renewal options. On April 29, 2013, the City Purchasing Agent approved an increase in the amount of \$49,000.00. Subsequent actions have been approved. Due to increased usage, an increase in the amount of \$50,000.00 is necessary. This increase in the amount of \$50,000.00 is for the period July 25, 2013 through August 31, 2013 and the renewal in the amount of \$200,000.00 is for the period of September 1, 2013 through August 31, 2014, with one 1-year renewal option remaining.

MWBOO GRANTED A WAIVER.

BOARD OF ESTIMATES

07/24/2013

MINUTES

INFORMAL AWARDS, RENEWALS, INCREASES TO CONTRACTS AND EXTENSIONS

VENDOR	AMOUNT OF AWARD	AWARD BASIS
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Bureau of Purchases

7. GEIGER PUMP AND EQUIPMENT

CO.	\$ 50,000.00	Increase
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Solicitation No. 08000 - Replacement of KSB Submersible Pumps
 -Department of Public Works, Bureau of Water and Wastewater
 Division - P.O. No. P518560

On October 26, 2011, the Board approved the initial award in the amount of \$45,000.00. On July 11, 2012, the Board approved an increase in the amount of \$60,000.00. Due to increased usage, an increase in the amount of \$50,000.00 is necessary. This increase in the amount of \$50,000.00 will make the award amount \$155,000.00. The contract expires on October 26, 2013, with no renewal option.

8. SMITH MEDICAL PARTNERS,

LLC	\$102,000.00	Increase
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Solicitation No. B50001982 - Ortho Contraceptives - Health
 Department - P.O. No. P517250

On June 9, 2011, the Board approved the initial award in the amount of \$9,272.20. The award contained two renewal options. Subsequent actions have been approved. This increase in the amount of \$102,000.00 is indicative of the City's anticipation that it will achieve higher participation rates due to a merger of two City health programs. Additional funds have been granted to the program for contraceptives. This increase will make the total award amount \$156,744.00.

It is hereby certified, that the above procurement is of such a nature that no advantage will result in seeking nor would it be practical to obtain competitive bids. Therefore, pursuant to Article VI, Section 11 (e)(i) of the City Charter, the procurement of the equipment and/or service is recommended.

BOARD OF ESTIMATES

07/24/2013

MINUTES

INFORMAL AWARDS, RENEWALS, INCREASES TO CONTRACTS AND EXTENSIONS

<u>VENDOR</u>	<u>AMOUNT OF AWARD</u>	<u>AWARD BASIS</u>
---------------	------------------------	--------------------

Bureau of Purchases

- | | | |
|---|----------------|----------|
| 9. ADP, INC. | \$2,000,000.00 | Increase |
| Solicitation No. 08000 - Automatic Data Processing Human Resources Systems Licensing - Department of Human Resources - Req. No. P636548 | | |

On July 25, 2007, the Board approved the initial award in the amount of \$1,600,000.00. Subsequent actions have been approved. ADP, Inc. is the sole provider of licensing, maintenance, and support of proprietary software for the Automatic Data Processing Human Resources Systems Software in use by the Department of Human Resources. This increase in the amount of \$2,000,000.00 is for Fiscal Year 2014 funding. This increase in the amount of \$2,000,000.00 will make the award amount \$12,000,000.00 and is for the period July 1, 2013 through July 30, 2014. The contract expires June 30, 2015. of \$50,000.00 is for the period July 25, 2013 through August 31, 2013 and the renewal in the amount of \$200,000.00 is for the period of September 1, 2013 through August 31, 2014, with one 1-year renewal option remaining.

MWBOO GRANTED A WAIVER.

It is hereby certified, that the above procurement is of such a nature that no advantage will result in seeking nor would it be practical to obtain competitive bids. Therefore, pursuant to Article VI, Section 11(e)(i) of the City Charter, the procurement of the equipment and/or service is recommended.

BOARD OF ESTIMATES

07/24/2013

MINUTES

INFORMAL AWARDS, RENEWALS, INCREASES TO CONTRACTS AND EXTENSIONS

<u>VENDOR</u>	<u>AMOUNT OF AWARD</u>	<u>AWARD BASIS</u>
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Bureau of Purchases

10. ADP, INC.	\$2,486,000.00	Increase
Solicitation No. 08000 - Human Resource Information, E-time and Enterprise Payroll Systems Licensing - Finance Department - Req. No. P635850		

On August 15, 2007, the Board approved the initial award in the amount of \$1,600,000.00. Subsequent actions have been approved. ADP, Inc. is the sole provider of licensing, maintenance and support of proprietary software for the Human Resource Information, E-time and Enterprise Payroll Systems in use by the Bureau of Accounting and Payroll Services. This increase in the amount of \$2,486,000.00 is for Fiscal Year 2014 funding. This increase will make the award amount \$15,236,000.00 and is for the period July 1, 2013 through June 30, 2014. The contract expires June 30, 2015.

It is hereby certified, that the above procurement is of such a nature that no advantage will result in seeking nor would it be practical to obtain competitive bids. Therefore, pursuant to Article VI, Section 11 (e)(i) of the City Charter, the procurement of the equipment and/or service is recommended.

BOARD OF ESTIMATES

07/24/2013

MINUTES

INFORMAL AWARDS, RENEWALS, INCREASES TO CONTRACTS AND EXTENSIONS

<u>VENDOR</u>	<u>AMOUNT OF AWARD</u>	<u>AWARD BASIS</u>
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Bureau of Purchases

11. APPLIED TECHNOLOGY SERVICES, INC.

HCGI HARTFORD, INC.

USC/CANTERBURY CORP.

SHI INTERNATIONAL CORP.

DALY COMPUTERS, INC.

CARAHSOFT TECHNOLOGY CORP.

DATA NETWORKS, INC.

PC MALL GOV, INC.

DIGICON CORPORATION

ePLUS TECHNOLOGY, INC.

EN NET SERVICES, LLC

\$2,000,000.00

Renewal

Solicitation No. B50001422 - Computer Hardware, Software, and
Related Items - Agencies: MOIT, etc. - Req. Nos.: Various

On August 11, 2010, the Board approved the initial award in the amount of \$5,000,000.00. The award contained two 1-year renewal options. Increases were approved in the amounts of \$12,000,000.00 and \$1,500,000.00 on January 18, 2012 and June 06, 2012. This renewal in the amount of \$2,000,000.00 is for the period August 12, 2013 through August 11, 2014 with one 1-year renewal option remaining.

MWBOO GRANTED A WAIVER.

President: "The second item on the non-routine agenda can be found Page 59, Informal Awards, Renewals, Increases to Contracts

BOARD OF ESTIMATES

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MINUTES

and Extensions, Item 11. Will the parties please come forward?"

Mr. Tim Krus, City Purchasing Agent: "This is the renewal of the Computer Hardware, Software and Related Items contract, to a group of vendors that have been providing these services to the City."

Comptroller: "Mr. Krus, I have a question that I would just like to be put on the record. In 2011, MOIT implemented a Cisco VOIP trial with purchases meant for IT equipment and not for telephones. Could you state for the record why MOIT envisioned purchasing additional handsets and licenses for trial that did not follow procurement guidelines in acquiring this equipment?"

Mr. Krus: "Madam Comptroller, I think I, you know, we are in disagreement about whether or not we followed procurement guidelines. Our position is that no procurement guidelines were violated in that acquisition."

Comptroller: "For the record I would just like to disagree because this contract should not have been used for VOIP or related items, or implementation because the City's Charter requires competitive bidding, and this contract was not for VOIP implementation, and so when it's brought forward, I will object because any purchases of voice-over IP equipment or implementation should be under a contract with IBM that was competitively bid pursuant to the City Charter."

BOARD OF ESTIMATES

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MINUTES

City Solicitor: "And for the record, I asserted just now by the Comptroller was asserted in the litigation that she brought before the Circuit Court and was rejected by the Circuit Court judge ended up in a judgment that is final."

President: "I'll entertain a Motion."

City Solicitor: "I MOVE that approval of the recommendation, um, to move forward with Item 11 on Page 59."

"Second."

President: "All those in favor, say aye. Aye."

President: "All opposed, nay."

Comptroller: "Nay."

President: "Please note the Comptroller votes No. The Motion carries."

UPON MOTION duly made and seconded, the Board approved the informal awards, renewals, increases to contracts and extensions. The Comptroller voted **NO** on item no. 11.

MINUTES

RECOMMENDATIONS FOR CONTRACT AWARDS/REJECTIONS

* * * * *

On the recommendations of the City agencies

hereinafter named, the Board,

UPON MOTION duly made and seconded,

awarded the formally advertised contracts

listed on the following pages:

2924 - 2930

to the low bidders meeting the specifications,

or rejected bids on those as indicated

for the reasons stated.

The Transfers of Funds were approved

SUBJECT to receipt of favorable reports

from the Planning Commission,

the Director of Finance having reported favorably

thereon, as required by the provisions

of the City Charter.

BOARD OF ESTIMATES

07/24/2013

MINUTES

RECOMMENDATIONS FOR CONTRACT AWARDS/REJECTIONSBureau of Water & Wastewater

1. WC 1256, Meter Setting Installations and Water Main Replacement Various Locations, Patterson Park Vicinity	Spiniello Companies	\$4,673,300.00
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TRANSFER OF FUNDS

<u>AMOUNT</u>	<u>FROM ACCOUNT/S</u>	<u>TO ACCOUNT/S</u>
<u>Bureau of Water and Wastewater</u>		
2. \$6,168,756.00	9960-906133-9558	
Water Revenue	Construction Reserve	
Bonds	Meter Replacement	
 \$ 467,330.00	-----	9960-905658-9557-2
		Extra Work
467,330.00	-----	9960-905658-9557-3
		Engineering
280,398.00	-----	9960-905658-9557-5
		Inspection
4,673,300.00	-----	9960-905658-9557-6
		Construction
280,398.00	-----	9960-905658-9557-9
\$6,168,756.00		Administration

The funds are required to cover the cost of the award for WC 1256, Meter Setting Installation and Water Main Replacement at Various Locations, Patterson Park.

A PROTEST WAS RECEIVED FROM THE MARYLAND MINORITY CONTRACTORS ASSOCIATION.

MMCA- Maryland Minority Contractors Association, Inc.

A Chapter of the American Minority Contractors and Businesses Association, Inc.-AMCBA

Baltimore, Maryland 21210

443-413-3011 Phone

410-323-0932 Fax

July 23, 2013

Via Facsimile 410-685-4416

Honorable Bernard "Jack" Young

President, Baltimore City Board of Estimates

City Hall-Room 204

Baltimore, MD 21202

ATTN: Ms. Bernice Taylor, Esquire, Clerk to the Board

Dear Mr. President:

I represent the Maryland Minority Contractors Association ("MMCA"), its members, clients and constituents.

We wish to protest the following described proposed contract increase and contract awards contained on Your Honorable Board's 07/24/2013 public meeting agenda:

Item No. 4, contained on pages 4-5, which is a proposed \$2,000,000.00 price increase to W.W. Grainger, Inc., under Bureau of Purchases Solicitation No. BPO-001B1400635- MD State contract –"Maintenance repair and Operating Supplies."

Our concern on this contract is that it violates the city's "mandatory" competitive bidding charter provision- Article VI, § 11 et seq.

Additionally, we wish to protest Item No. 1, contained on page 61, which is a proposal to award WC 1256-"Meter Setting Installations and Water Main Replacement at various locations, Patterson Park Vicinity," to the second low bidder, the Spinello Companies, at its high bid price of \$4,673,300.00.

Importantly, bidder, R.E. Harrington Heating and Plumbing, Inc. ("Harrington"), a certified City MBE firm was "the lowest responsive and responsible bidder," within the meaning of Article VI, § 11(h) (1) (ii), of the City Charter. Harrington's bid price was \$4, 598,600.00. Bidder Spinello Companies' bid price was \$4,673,300.00. Bidder J. Fletcher Creamer's bid price was \$5,222,777.00. Thus, the contract award to Harrington would save the city \$74,700.00.

**Discussion of Applicable and Controlling City Competitive
Bidding and Minority Business Enterprise Principles and Law**

Notwithstanding Harrington's bid proposal's apparent failure to fully meet the contract's established MBE goals at bid time, under well settled Maryland contract law, Harrington's bid proposal is still the "lowest responsive and responsible bidder." within the ambit of Article VI, § 11 (h) (1) (ii), of the City Charter. Indeed, Harrington's apparent failure to fully meet and satisfy the contract's established MBE goals at bid time did not, in any substantive way, render Harrington's bid proposal "non-responsive."

Moreover, Your Honorable Board is keenly aware of the fact that applicable and controlling Maryland contract law, as established by the Maryland Board of Contract Appeals, as well as various Maryland Circuit Courts, does not make a bidder's failure to fully meet and comply with applicable contract established M-WBE Utilization goals, a matter of such bidder's "responsiveness." Rather, it is well settled in Maryland that as long as the bidder signs and commits to meeting the contract established M-WBE goals as required by the applicable bid document, even if it does not in fact meet such goals, its bid is thus fully "responsive" on that issue.

A "responsive" bid is defined in MD Code Ann. State Fin. & Proc. § 11-101 (8) and COMAR 21.01.02.01B (78), as one which conforms in all material respects to the invitation for bids or request for proposals. Contrary to the City's MWBOO's determinations herein, Maryland law is well-established that satisfaction and compliance with federal, state and municipal governments' sponsored M-WBE utilization contracting programs is a matter solely of a bidder's "responsibility," and not, in any way, a bidder's "responsiveness," as the City's MWBOO has so unauthorizedly and erroneously determined herein.

It is well settled and there are myriad of state and federal administrative decisions in support of the rule that a bidder's satisfaction of MBE participation goals is a matter of a bidder "responsibility," and not "responsiveness." The Maryland State Board of Contract Appeals has consistently ruled that the failure to submit a completed MBE utilization affidavit and participation schedule as required by COMAR 21.11.03.09C (3) is a matter of a bidder's "responsiveness", but that the sufficiency of the requisite MBE Schedule documentation, as is the case herein, is a matter of "responsibility." See Roofers, Inc. MSBCA 1284, 2 MSBCA ¶ 133 (1984); Central Data Processing, MSBCA 2084, 5 MSBCA ¶ 450 (1998).

The distinction between “responsiveness” and “responsibility” is important because information pertaining to the determination of the bidder’s responsibility may be received and evaluated after bids are opened but prior to contract award. See Cam Construction Company of Maryland, Inc., MSBCA 1393, 2 MSBCA ¶ 195 (1988) (quoting Aquatel Industries, Inc., MSBCA 1192, 1 MSBCA ¶ 82 (1984)). Thus, as opposed to “responsiveness,” a procurement officer has broad discretion in determining whether a bidder is “responsible,” i.e., one who has the capability in all respects to perform fully the contract requirements and possesses the integrity and reliability that will assure good faith performance. It is a long-standing rule that a procurement office must accept, at any time prior to award, information necessary to establish the bidder’s “responsibility”. See Covington Machine and Welding Company, MSBCA 2051, 5 MSBCA ¶ 436 (1998); Peninsula General Hospital Medical Center, MSCBA 1248, 1 MSCBA ¶ 109 (1985); Construction Management Associates, MSCBA 1238, 1 MSCBA ¶ 108 (1985).

Applicable and controlling federal procurement law is to the same effect. see Paul N. Howard Company, B-199145, 1980 U.S. Comp. Gen., LEXIS 2158, 80-2 CPD ¶ 399 (1980), *aff’d* on reconsideration, B-199145.2, 60 Comp. Gen. 606, 1981 U.S. Comp. Gen. LEXIS 95, 81-2 CPD ¶ 42 (1981), a case with substantially similar facts as those in this case. In Howard, after the contracting agency deemed a bid to be “non-responsive” because one of the listed subcontractors did not qualify as an MBE, the Comptroller General ruled that satisfaction and compliance with MBE contract goals involve the issue of “responsibility,” and that the bidder should have been allowed to cure its bid error and to substitute a new minority subcontractor. In making this decision, the Comptroller general explained that once the bidder has certified, as here, that it will comply with the solicitation’s minority subcontractor utilization requirements, the bid is fully “responsive” on that point. The issue of actually achieving the MBE goal by using the MBE subcontractors named in the bid or by using an acceptable substitute MBE subcontractor relates to the bidder’s performance, and thus its “responsibility.”

Accordingly, based on the controlling MBE contract legal precedents cited and relied upon above, it is extremely clear and undisputed that in the field of government contracting, the compliance and satisfaction of M-WBE utilization goals is a matter of a bidder’s “responsibility,” and not “responsiveness,” especially in view of the facts in this particular case. The bidder’s failure to meet its MBE goals at bid time was not, in any legal way, fatal to the “responsiveness” of its bid proposal, since its bid proposal was still “the lowest responsive and

responsible bid,” within the ambit of Article VI, Section 11(h)(1)(ii) of the City Charter, notwithstanding its failure to fully meet and comply with the contract’s set MBE utilization goal at bid time.

Plain and simple, bidder Harrington’s bid proposal was completely “responsive,” in every respect, notwithstanding the fact that it may not have fully met and satisfied the contract set MBE participation goal, at the time of bid. Harrington could have very easily met and satisfied the contract set MBE goal at anytime after the bids were opened and before or even after the contract award date. Since Article VI, Section 11(h)(1)(ii), of the City Charter clearly and undisputably requires Your Honorable Board to award the subject contract to “the lowest responsive and responsible [dollar] bidder,” the only factor that matters and is controlling is the important fact that Harrington’s bid proposal contained the “lowest responsive and responsible [dollar] bid price.

Article VI, Section 11 (h)(1)(ii), of the City Charter, requires the City’s Board of Estimates to publicly advertise all city contracts involving an expenditure greater than \$50,000.00 and to award such contract, to “the lowest responsive and responsible bidder,” as therein delineated. This quoted phrase – “lowest responsive and responsible bidder” – is not specifically defined in the City’s competitive bidding charter provision, Article VI, Section 11 (h)(1)(ii), but it and very similar phrases are frequently employed in municipal competitive bidding charter provisions.

In Hilton Construction Co. v. Rockdale County Board of Education, 245 Ga. 533, 266, S.E. 2d 157 (1980), there was a State School Board Regulation which required state funded projects be awarded to “the responsible bidder submitting the lowest acceptable bid.” In spite of this requirement the county school board awarded a construction contract to the second lowest bidder on the basis the second lowest bidder was known to the board while the lowest bidder was unknown to the board. The court held that reason was not an adequate reason, under the new regulations, to reject the low bid.

The phrase “lowest responsible bidder” was the requirement for awarding a construction contract in City of Inglewood-L.A. City County Civic Center Authority v. Superior Court, 7 Cal. 3d 861, 103 Cal. Rpt. 601, 500 P. 2d 601 (1972). The contract was awarded to a contractor other than the lowest bidder because the higher bidder was determined to be superior in ability to perform the contract. But, no determination was made that the lowest bidder was not qualified, hence “responsible” to do the work. The California Supreme Court rejected this approach and in essence held that “lowest responsible bidder” means the lowest bidder must be

awarded the contract unless found not qualified. Beyond that, there was to be no award based upon degree of qualification. The court accepted the argument of counsel which stated the purpose of the lowest bid requirement to be to insure the interest of the public in having contracts awarded without favoritism so that projects will be done, "... without excessive cost, and constructed at, the lowest price consistent with the reasonable quality and expectation of completion." One can reasonably perceive the Baltimore City Charter requirement of "lowest responsible bidder" to have a similar purpose.

In the specific context of an M/WBE affirmative action ordinance akin to the City's M/WBE ordinance which we have before us, the Alabama Court considered the impact of a state statute requiring contracts be awarded to, "the lowest responsible bidder" in Arrington v. Associated General Contractors, S.C., Ala., 403 So. 2d 893 (1981). The affirmative action ordinance required ten percent of each contract be expended with minority business enterprises. Since the affirmative action ordinance would directly conflict with the state bid requirement where the lowest responsible bid did not undertake to expend at least ten percent of the contract amount with minority business enterprises, the Alabama court held the ordinance must yield to the state statute. Again, in a MBE affirmative action versus bid requirements case, the Ninth Circuit Court of Appeals, applying California law, reached the same result in Associated Gen. etc. v. San Francisco Unified Sch. 616 F.2d 1381 (1980). To arrive at the state law rule, the federal appeals court determined the California Supreme Court would construe the bid requirement language, "lowest responsible bidder" to preclude considering any factor other than (1) bid amount, (2) minimum financial and skills qualifications of bidder, and (3) quality of bidder's past work. No consideration or penalty can be given to contractors' lack of compliance with the contract's MBE utilization provisions.

In Georgia Branch, AGC of America, Inc. v. City of Atlanta, 253 Ga. 397, 321 S.E. 2d 325 (1984), the Georgia Supreme Court considered the validity of a City of Atlanta race-gender-based Ordinance which required the City to award 20% to 35% MBE participation on most construction contracts in relationship with the Atlanta City Charter requirement that such contracts be awarded to the lowest and/or best bidder." The court held that, "the legislative purpose in the Atlanta City Charter requirement of 'lowest and/or best bidder' was to further the cause that contracts be awarded without favoritism to obtain reasonable quality at the lowest cost. The MFBE Ordinance requiring certain percentages of contracts measured in dollar value is awarded on the basis of race and sex conflicts with the legislative intent and purpose embodied in the bid requirement. Therefore, the [MFBE] Ordinance is void." See 253 Ga. At 399, 321 S.E. 2d at 328.

In *AGC of California, Inc. v. City and County of San Francisco*, 813 F.2d 922 (9th Cir. 1987), the Court of Appeals for the Ninth Circuit considered the validity of a City of San Francisco race-gender based M/WBE Ordinance requiring the City to award 30% of its contracting dollars to MBEs and 10% to WBEs in relationship to the City charter provision which required all City contracts over \$50,000.00 be awarded “to the lowest reliable and responsible bidder.” The Court invalidated the subject M/WBE Ordinance for the reason “that the Ordinance violates the City charter insofar as it authorizes the award of [City] contracts that are worth more than \$50,000.00 and are not covered by charter section 7.204 to other than the lowest responsible bidder. Insofar as the Ordinance’s bid preferences, subcontracting goals and set asides would result in awards that violate the charter, they are void. See 813. F.2d at 927.

Accordingly, the plain, clear and unambiguous language and purpose contained in Article VI, Section 11 (h)(1)(ii), requiring the City’s Board of Estimates to award all City public contracts with an expenditure greater than \$50,000.00 to “the lowest responsive and responsible bidder,” as therein delineated, completely neutralizes the City’s M-WBE Ordinance. Insofar as the provisions of the City’s MBE Ordinance encourages and is enforced and administered by the City so as to frustrate and prevent the City from awarding its public contracts with an expenditure greater than \$50,000.00, to a bidder, other than “the lowest responsive and responsible bidder,” as specifically mandated by Article VI, Section 11 (h)(1)(ii), of the City Charter, it is completely void. The city’s “mandatory” competitive bidding charter provisions, Article VI, Section 11 (1)(ii), “trumps” its M-WBE Ordinance. See Salisbury University v. Joseph M. Zimmer, Inc., 199 Md. App. 163; 20 A.3d 838; 2011 Md. App. LEXIS 66 (citing University of Md. v. MFE, 345 Md. 86, 104, 691 A.2d 676 (1997) (holding in an analogous case that the Maryland Board of Public Works may not, “adopt [procurement] regulations that would be inconsistent with the [Maryland] procurement statute or the legislative intent behind it”)). Thus, the City M-WBE Ordinance, is completely subordinate to the City’s Charter requirement to award City public contracts to the lowest responsive and responsible bidder as therein delineated.

Respectfully Submitted,

Arnold M. Jolivet

Arnold M. Jolivet
Managing Director

cc: R.E. Harrington Heating and Plumbing

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MINUTES

President: "The third item on the non-routine agenda can be found on Page 61, "Recommendations for Contract Awards/Rejections, Items 1 and 2. Will the parties please come forward?"

Mr. Thomas Corey, Head of MWBOO: "Good morning Mr. President and Members of the Board. Uh, my name is Thomas Corey, I'm Chief of the Minority and Women's Business Opportunity Office. Um, the contract before us, uh, um, places Spiniello as the successful bidder. I believe the protest here is from R.E. Harrington and perhaps the Board would want to hear from . . ."

President: "The protest is from Harrington?"

Mr. Corey: "Yes."

President: "Okay."

Mr. Arnold M. Jolivet, Maryland Minority Contractors Association: "Mr. President, Arnold M. Jolivet. Uh, I actually sent the Board a letter. I actually sent the Board a letter and in all due respect, I will not rehash everything that I said in my letter, but I would like the Board to, uh -- be responsive to the fact that the City is paying an increased amount of taxes, funds for these contracts. We had a very similar contract last week and, I believe the City paid \$426,000 in increased City monies uh, for, uh, awarding the contract to the second bidder. Uh -- this week I believe the City is paying an additional

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\$75,000.00 uh -- for awarding the contract to the second bidder. Uh -- as I said in my communications, to the Board, uh -- this procurement, like all procurements, are governed very strictly by Article VI, Section 5 of the Charter. Uh - now - uh -- the Charter makes it very clear, unequivocally crystal clear, that contracts involving a taxpayer expense exceeding \$50,000.00 must be awarded to the lowest responsive responsible bidder uh -- as therein specifically delineated. I would call the Board's attention to the fact that the City MBE Ordinance, as worthy as it is, as worthy as it is, cannot override and trump the mandate of the Charter. The Charter provision predominates over an ordinance provision plain. It's been that way for a number of years and it's not likely to change. Mr. Nilson knows this. He knows this very vividly. Now my concern is the City has taken a mere Ordinance and radically changed the Charter. The Ordinance works to invalidate the Charter. Mr. President that is just not the way that the Ordinance should work. While there's nothing intrinsically wrong with the City's MBE Ordinance, and it's actually a very worthy thing, but you cannot enforce and administer the Ordinance in such a way that would require this Board to award a contract, to award City contracts involving an expenditure of \$50,000.00 or more to bidders other than the lowest responsive responsible bidder. You can't do it. I think I

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made my point in the uh -- in my communications to this Board, uh -- I just want to, I just want to put one other thing on the record and that is ironically, the City is actually going against its own policy, and here's this, here, here's what I'm saying. In 16 opinions of the City Solicitor, the Law Department determined that the Law Department and the Board of Estimates cannot raise or modify the terms and conditions prescribed by the Charter regulating the filing of bids and the awarding of bids. Essentially, the Board, as powerful as you think you is, you cannot modify the terms of the Charter, and if for some reason that you're doing it, Mr. President, I suggest to you that it's not right. Mr. Nilson -- and Mr. Nilson knows this, and it's very baffling how he can continue every week and continue to go forward as though this is not the law. Very baffling. And I want to read something else because I think the Board needs to be reminded, the Board needs to be reminded of -- of -- the fact that this can be the failure to meet and satisfy the MBE goal at bid time, can probably, more appropriately be actually considered a minor irregularity, which gives the Board the discretion to waive the minor irregularity. Let, let me, let me just read what the Court of Appeals said in Maryland Pavement vs. Mahool. The Board said, the, the Court said 'Slight irregularities in the bid, not affecting the substantial

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characteristics may be disregarded.' In full, the Court of Appeals said 'It is not every failure in bidding to comply with bid specifications that disqualifies the bidder and the test seems to be whether or not the alleged irregularity, evaluation, is material and goes to the heart of the bid.' And, I believe I cited to you very extensively --."

President: "You did."

Mr. Jolivet: "very extensively cases from the Maryland Board of Contract Appeals, and other cases where, the failure of the bidder to satisfy the MBE goal at bid time was not in any way fatal to the bid, because it was not an element of a bidder's responsiveness, but rather an element of a bidder's responsibility, and unfortunately, the City Solicitor seems to be oblivious of this rule followed in every jurisdiction in Maryland, but Baltimore. Every jurisdiction in Maryland follows that rule, but we can't, and we spend countless numbers of dollars, in excess of what we ought to be paying, because the City Solicitor fails to recognize that the MBE program and the Ordinance, can be administered in such a way that it can still be effective, where a bidder can comply with the MBE goals even after a bid comes in."

President: "Well, I'm going to ask the um, the City Solicitor to respond and give the call for the vote."

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City Solicitor: "Yes, I would be pleased to because I don't want Mr. Jolivet to be puzzled about what my view of the law is or what the Board's consistent position has been over at least a decade, if not more than a decade. Um, it's the Board's view that but a failure of a bidder to comply with his bid materials with the requirements of the MBE/WBE Ordinance is a failure of responsiveness, and under those circumstances, that bidder, no matter however much lower his or her price might be or however much expertise they might bring to the table, if they do not comply with that law, the bid is not responsive and therefore is not deemed to be the lowest responsive and responsible bid. There are some circumstances under which minor irregularities have been waived, but not under the kinds of circumstances presented by this procurement, so I would, if the floor is open for motions, I would MOVE that we reject the protest, as we did last week and likely because we will hear more from Mr. Jolivet in the future, and that we award the contract, as recommended by the Bureau of Water and Wastewater to Spiniello."

President: "Is there a "second?"

"Second."

President: "All those in favor, say "aye. AYE."

President: "All opposed, "nay." The Motion carries."

MINUTES

RECOMMENDATIONS FOR CONTRACT AWARDS/REJECTIONSBureau of Water & Wastewater

3. SWC 7762, Rehabilitation and Replacement of the Highlandtown Storm Water Pump Station

REJECTION: On July 03, 2013, the Board opened one bid for SWC 7762. The one bid, at \$1,948,000.00, was 40% above the engineer's estimate of \$1,366,773.00. The Department of Public Works, Bureau of Water & Wastewater recommends rejection of the bid as being in the best interest of the City.

Bureau of Purchases

4. B50003017, Articulated Dump Trucks
Department of General Services/Fleet Management

Jesco, Inc.

\$329,884.74

MWBOO GRANTED A WAIVER.

BOARD OF ESTIMATES

07/24/2013

MINUTES

Department of Finance - General Fund Operating
Appropriation Transfer

ACTION REQUESTED OF B/E:

The Board is requested to approve the general fund operating appropriation transfers in the total amount of \$1,470,000.00 from the various agency services to various agency services.

AMOUNT OF MONEY AND SOURCE:

<u>From</u>	<u>Agency</u>	<u>Service No.</u>	<u>Name</u>
\$ 750,000.00	Police	622	Police Patrol
58,000.00	Mayoralty- Related (M-R): Educational Grants	446	Educational Grants
100,000.00	M-R: MOIT	803	Enterprise Innova- tion and Applica- tions
100,000.00	Recreation and Parks	648	Community Recrea- tion Centers
100,000.00	Police	621	Administration
20,960.00	Finance	702	Accounts Payable
20,960.00	Finance	703	Payroll
37,348.00	Finance	704	Accounting
76,463.00	Transportation	681	Administration
<u>206,269.00</u>	M-R: Miscel- laneous General	122	Miscellaneous General
\$1,470,000.00			

BOARD OF ESTIMATES

07/24/2013

MINUTES

Finance - cont'd

<u>To</u>	<u>Agency</u>	<u>Service No.</u>	<u>Name</u>
\$1,100,000.00	M-R: Educational	446	Educational Grants
160,000.00	State's Attorney	115	Prosecution of Criminals
65,000.00	Housing	745	Housing Code Enforcement
45,000.00	Health	716	Animal Services
50,000.00	Housing	593	Community Support Projects
<u>50,000.00</u>	Health	316	Youth Violence Prevention

\$1,470,000.00

The sums to be transferred from the agency services designated in this Ordinance are not for the purpose for which they were appropriated and, therefore, are available for transfer to another agency.

BACKGROUND/EXPLANATION:

As a part of the Fiscal 2014 budget process, the Mayor and City Council worked together to find additional funding for after-school programs and other shared priorities. This approval will initiate a transfer of appropriation to fund the following items: Family League after-school programming in the amount of \$1,100,000.00, two Assistant State's Attorney positions in the amount of \$160,000.00, a Commercial Code Enforcement Inspector in the amount of \$65,000.00, additional grant funding for BARCS in the amount of \$45,000.00, a grant to Edmondson Village Healthy

BOARD OF ESTIMATES

07/24/2013

MINUTES

Finance - cont'd

Neighborhoods in the amount of \$50,000.00, and additional funding for Operation Safe Streets in Cherry Hill in the amount of \$50,000.00.

MBE/WBE PARTICIPATION:

N/A

A PROTEST WAS RECEIVED FROM MS. KIM TRUEHEART.

The Board of Estimates received and reviewed Ms. Trueheart's protest. As Ms. Trueheart does not have a specific interest that is different from that of the general public, the Board will not hear her protest. Her correspondence has been sent to the appropriate agency and/or committee which will respond directly to Ms. Trueheart.

UPON MOTION duly made and seconded, the Board approved the general fund operating appropriation transfers in the total amount of \$1,470,000.00 from the various agency services to various agency services. The Mayor **ABSTAINED** on the Mayoralty Related items. The President **ABSTAINED**.

Kim A. Trueheart

July 23, 2013

Board of Estimates
Attn: Clerk
City Hall, Room 204
100 N. Holliday Street,
Baltimore, Maryland 21202

Dear Ms. Taylor:

Herein is my written protest on behalf of the underserved and disparately treated citizens of the Baltimore City who appear to be victims of a lack of vision, poor fiscal planning and management and failure to capitalize on strategic investment opportunities in our youth by the Mayor of Baltimore City and the various Departments and Agencies.

The following details are provided to initiate this action as required by the Board of Estimates:

1. Whom you represent: Self
2. What the issues are:
 - a. Page 63, General Fund Operating Appropriation Transfer, if approved:
 - i. Fails to correct the DISS-Investment in our growing underserved youth population;
 - ii. Fails to satisfy the emergent funding priorities outlined by Baltimore citizens during this most recent budget planning process for FY 2014;
 - iii. Fails to consider the lost opportunity costs associated with the continued DISS-Investment in our growing underserved youth population;
 - iv. Furthers the FLAWED budgetary priorities of this seemingly self serving, special interest focused and highly politically motivated administration;
3. How the protestant will be harmed by the proposed Board of Estimates' action: The half-hearted funding realignment makes a mockery of the untenable DISS-Investment in Baltimore's most precious resource, our youth. As a citizen I am significantly impacted by our underserved youth, who because they observe the lack of concern for and investment in their positive development, make everyday life choices which often result in grave harm to others, as evidenced by my own family tragedies.
4. The remedy I seek and respectfully request is that this action be withdrawn and resubmitted after the children's budget has been promulgated for public review and is confirmed to increase the investment in our youth by doubling after-school programming and doubling the number of YouthWorks jobs.

I look forward to the opportunity to address this matter in person at your upcoming meeting of the Board of Estimates on July 24, 2013.

If you have any questions regarding this request, please telephone me at (410) 205-5114.

Sincerely, Kim Trueheart, Citizen & Resident

Ktrueheart@whatfits.net
5519 Belleville Ave
Baltimore, MD 21207

BOARD OF ESTIMATES

07/24/2013

MINUTES

Parking Authority of - Parking Facility Operations
Baltimore City (PABC) and Management Agreement

ACTION REQUESTED OF B/E:

The Board is requested to approve and authorize execution of a parking facility operations and management agreement with ImPark/Danas Parking, LLC for the management of the Arena, Marriott, Penn Station, and Redwood garages. The period of the agreement is August 01, 2013 through July 31, 2014.

AMOUNT OF MONEY AND SOURCE:ARENA GARAGE

\$ 3,600.00	- 2075-000000-2321-407200-603026	Mgmt. Fees
397,299.00	- 2075-000000-2321-407200-603016	Operating Expenses
96,000.00	- 2075-000000-2321-407200-603038	Security Expenses
\$496,899.00		

MARRIOTT GARAGE

\$ 3,600.00	- 2075-000000-2321-407000-603026	Mgmt. Fees
367,050.00	- 2075-000000-2321-407000-603016	Operating Expenses
60,000.00	- 2075-000000-2321-407000-603038	Security Expenses
\$430,650.00		

PENN STATION

\$ 3,600.00	- 2075-000000-2321-407600-603026	Mgmt. Fees
450,425.00	- 2075-000000-2321-407600-603016	Operating Expenses
84,000.00	- 2075-000000-2321-407600-603038	Security Expenses
\$538,025.00		

REDWOOD GARAGE

\$ 3,600.00	- 2076-000000-2321-253900-603026	Mgmt. Fees
362,550.00	- 2076-000000-2321-253900-603016	Operating Expenses
60,000.00	- 2076-000000-2321-253900-603038	Security Expenses
\$426,150.00		

BOARD OF ESTIMATES

07/24/2013

MINUTES

PABC - cont'd**BACKGROUND/EXPLANATION:**

The PABC issued a Request for Qualifications and Bids (RFQ&B) for this management agreement on April 10, 2013. Five responses were received in response to the RFQ&B. All five responses were determined to be qualified. Of those respondents, Republic Parking submitted the lowest management fee bid. However, the Minority and Women's Business Opportunity Office (MWBOO) found that Republic Parking's response was non-compliant. ImPark/Danas submitted the next lowest fee bid, and MWBOO found that ImPark/Danas' response was compliant. The recommendation of award of this contract to ImPark/Danas was unanimously approved by the Board of Directors of the Parking Authority.

MBE/WBE PARTICIPATION:

ImPark/Danas has committed to comply with all terms and conditions of the Minority and Women's Business Program in accordance with Article 5, Subtitle 28 of the Baltimore City Code (Edition 2000) and has presented a plan to the MWBOO per the Office's specifications.

MWBOO SET MBE GOALS AT 27% AND WBE GOALS AT 10%.

MBE: Xecutive Security Investigation	\$300,000.00	41.6%
WBE: AJ Stationers	\$ 7,500.00*	1.04%
Tote-It, Inc.	63,000.00	8.74%
Sign Solutions	10,800.00	1.49%
	\$81,300.00	11.27%

*Not more than 25% of each MBE/WBE goal may be attained by expenditures to suppliers who are not manufacturers. Therefore, the maximum value allowed (\$7,500) has been applied.

MWBOO FOUND VENDOR IN COMPLIANCE.**APPROVED FOR FUNDS BY FINANCE****AUDITS REVIEWED AND HAD NO OBJECTION.****A PROTEST WAS BEEN RECEIVED FROM PMS AND LAZ PARKING.**

N. Scott Phillips Attorney at Law

322 North Howard Street, Baltimore, MD 21201

410.984-5050

nscottphillips@nscottphillips.com

July 23, 2013

Honorable Members of Baltimore City Board of
Estimates

100 Holliday Street, Suite 204
Baltimore, Maryland 21202

Honorable Stephanie Rawlings Blake, Mayor
Honorable Joan Pratt, Comptroller
Honorable Bernard C "Jack" Young, City Council President
Mr. George Nilson, City Solicitor
Mr. Alfred H. Foxx, Jr. Director of Public Works

clo Harriett Taylor, Secretary/Deputy Comptroller

Re: Parking Authority of Baltimore City Recommendation for Management
Contract Award for Marriott, Penn Station, Arena and Redwood Garages

Dear Board Members:

PMS parking is renewing its protest to the above referenced matter which was deferred by this board on July 3, 2013. Please refer to our letter dated June 24, 2013.

Thank you for your consideration

Sincerely,

A handwritten signature in cursive script that reads "Scott Phillips".

N. Scott Phillips, Esq.

cc: Amsale Geletu, PMS Parking
Joe Leightner, LAZ Parking

June 24, 2013

Honorable Members of Baltimore City Board of
Estimates

100 Holliday Street, Suite 204
Baltimore, Maryland 21202

Honorable Stephanie Rawlings Blake, Mayor
Honorable Joan Pratt, Comptroller
Honorable Bernard C "Jack" Young, City Council President
Mr. George Nilson, City Solicitor
Mr. Alfred H. Foxx, Jr. Director of Public Works

clo Harriett Taylor, Secretary/Deputy Comptroller

Re: Parking Authority of Baltimore City Recommendation for Management
Contract Award for Marriott, Penn Station, Arena and Redwood Garages

Dear Board Members:

I represent the joint venture of PMS Parking and LAZ Parking (PMS/LAZ), an offeror who submitted a proposal to manage the above referenced Baltimore City owned and managed parking facilities. It has come to our attention that the Parking Authority of Baltimore City is recommending an award of a management contract to an offeror other than PMS/LAZ. PMS/LAZ is asking the members of the Board of Estimates to vote against the recommendation of the Parking Authority Board of Baltimore City and for this board to recommend the PABC rebid the proposed management contracts for the following reasons:

1. The PABC violated the Maryland Open Meetings Act
2. The PABC did not follow standard Baltimore City Government bid processes and procedures
3. The recommendation is not in the City's best interest

Item 1: Maryland Open Meetings Statute

1. The PABC recommendation was voted on during a meeting on May 21, 2013 or June 10, 2013 it is unclear based upon the published agendas which meeting the vote was taken, neither agenda included an item suggesting the selection of a parking management firm. During the May 21 meeting a representative of LAZ/PMS was in attendance. A closed session of the Board was called. It is unclear what actions were taken during the closed session. A vote regarding the selection of the parking management firm during a closed

session would violate the Maryland Open Meetings Act.

2. The meeting held on June 10 was originally scheduled for June 18. The meeting was rescheduled without appropriate notice required to meet the Maryland Open Meetings Act. PABC meetings are generally held on the third Tuesday of each month. A representative of the PMS/LAZ joint venture was present on June 18th and informed the meeting had already taken place. It is unclear whether a quorum of the board was physically present for the June 10 meeting. Based on the lack of notice and the assumed lack of a quorum any actions taken during the June 10 meeting are void or voidable pursuant to the Act.
3. The published agenda for the June 10 meeting was misleading and did not include an intention to select a parking management operator for the facilities in question.

Item 2: Bid Process and Procedures

1. The Parking Authority has latitude to conduct its own bid process and procedures, however, the authority should be held by this body to a reasonable standard. The Board of Estimates has in the past required the PABC to conduct fair and open bid processes. This includes:
 - a. Public bid opening
 - b. Review by an impartial panel of individuals
 - c. Clearly defined evaluation criteria

These basic procedures were not followed. The process used was inconsistent with past RFP practices by the PABC.

2. During the bid process, PMS/LAZ raised an issue regarding the selection process. The Parking Authority has traditionally issued Best Value Requests for Proposals. This approach takes into consideration the value associated with past performance, increases in revenue generated, responsiveness, customer satisfaction surveys etc. These factors are considered in addition to price. The original language in the proposal stated: "1.E. PABC staff will provide a recommendation to the PABC Board of Directors which shall consider the recommendation of Parking Authority staff, for the Qualified Firm whose bid is determined to represent the "Best Value" to the City and the PABC." This language was removed from the bid during the bidding process. We contend this change was not in the best interest of the city.

Item 3: Best Interest of the City

1. Selecting the lowest technically accepted bidder is not in the best interest of the city. The financial model for managing millions of dollars of Baltimore City assets should not be vested in the hands of the lowest bidder. There is little

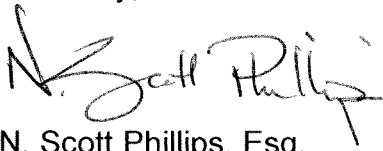
incentive for the operator to be concerned with quality management.

We request that you reject the PABC recommendation. In the alternative we request a deferral period sufficient to review the transcript and or minutes of the May 21 and June 10, 2013 meeting of the PABC Board. PMS/LAZ submitted a FOIA request on Monday, July 1, 2013 (see attached).

Note: PMS Parking is a Baltimore City based minority owned firm that has provided parking management services to the City of Baltimore for over 20 years. The PMS/LAZ joint venture has provided parking management services to the city for over 10 years. Our team has brought significant value to the PABC and the City of Baltimore increasing revenue, reducing operating expenses and improving customer satisfaction.

Thank you for your consideration

Sincerely,

A handwritten signature in black ink, appearing to read "N. Scott Phillips". The signature is fluid and cursive, with the first name "N." and last name "Phillips" clearly distinguishable.

N. Scott Phillips, Esq.

cc: Amsale Geletu, PMS Parking
Joe Leightner, LAZ Parking

N. Scott Phillips Attorney at Law

322 North Howard Street, Baltimore, MD 21201

410.984-5050

nscottphillips@nscottphillips.com

July 1, 2013

Peter Little
Executive Director
Parking Authority of Baltimore City
200 W. Lombard Street, Suite B
Baltimore, Maryland 21201

Dear Mr. Little,

Pursuant to the state open records law, Md. Code Ann., State Government Secs. 10-611 to 10-628, I write to request access to and a copy of The minutes of the May 21, 2013 and June 17, 2013 Parking Authority of Baltimore City (PABC) Board Meetings, to include discussions held in Executive Session. In addition a copy of the RFP response received by the PABC from the Impark/Danas Joint Venture for the management of the Penn Station and related garages. . If your agency does not maintain these public records, please let me know who does and include the proper custodian's name and address.

I agree to pay any reasonable copying and postage fees of not more than \$100. If the cost would be greater than this amount, please notify me. Please provide a receipt indicating the charges for each document.

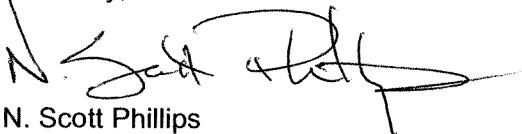
As provided by the open records law, if you deny this request, I will expect a written response within ten (10) working days. See Md. Code Ann., State Government Sec. 10-614(b)(3). If my request is approved, the law requires that you respond as soon as reasonably possible. In no case, however, can this period exceed thirty (30) days. See Sec. 10-614(b)(1).

If you choose to deny this request, please provide a written explanation for the denial including a reference to the specific statutory exemption(s) upon which you rely. Also, please provide all segregable portions of otherwise exempt material.

Please be advised that I am prepared to pursue whatever legal remedy necessary to obtain access to the requested records. I would note that willful violation of the open records law can result in a fine of up to \$1,000 and the award of actual damages, reasonable counsel fees and other litigation costs. See Md. Code Ann., State Government Secs. 10-623(d) and (f), and 10-627(b).

Thank you for your assistance.

Sincerely,



N. Scott Phillips

cc: David G. Rhodes, Esq.

July 23, 2013

Honorable Members of the Baltimore City Board of Estimates
100 Holliday Street, Suite 204
Baltimore, Maryland 21202

Honorable Stephanie Rawlings Blake, Mayor
Honorable Joan Pratt, Comptroller
Honorable Bernard C "Jack" Young, City Council President
Mr. George Nilson, City Solicitor
Mr. Alfred H. Foxx, Jr. Director of Public Works

c/o Harriett Taylor, Secretary/Deputy Comptroller

Re: Renewal of Protest of Parking Authority of Baltimore City Recommendation for Management Contract Award
for Marriott, Penn Station, Arena and Redwood Garages

Dear Board Members:

The Parking Authority of Baltimore City (PABC) has received the renewal of protest of the Parking Facility Operations and Management Agreement for the Marriott, Penn Station, Arena and Redwood Garages (the Agreement) from Mr. N. Scott Philips Esq. PABC has restated the issues raised in order and interlineated its responses in bold italics below.

1. The PABC violated the Maryland Open Meetings Act

PABC did not violate the Maryland Open Meetings Act.

2. The PABC did not follow standard Baltimore City Government bid processes and procedures.

PABC is exempt from standard Baltimore City Government bid processes pursuant to Article 31, §13-4(h)(2).

PABC has developed and follows a fair and impartial process for procurement of Parking Facility Operation and Management Agreements.

3. The recommendation is not in the City's best interest

The recommendation is in the City's best interest. If the Agreement is approved, the City will realize a savings of at least \$66,000.00, and up to \$146,400, annually in management fees.

Item 1: Maryland Open Meetings Statute

1. The PABC recommendation was voted on during a meeting on May 21, 2013 or June 10, 2013 it is unclear based upon the published agendas which meeting the vote was taken, neither agenda included an item suggesting the selection of a parking management firm. During the May 21 meeting a representative of LAZ/PMS was in attendance. A closed session of the Board was called. It is unclear what actions were (sic) taken during the closed session. A vote regarding the selection of the parking management firm during a closed session would violate the Maryland Open Meetings Act.

There was no discussion of the protested Agreement at the June 10, 2013 meeting of the Parking Authority Board of Directors so any protests of actions taken during the June 10, 2013 meeting that relate to this Agreement are irrelevant.

The May 21, 2013 meeting of the Board of Directors advertised an agenda item - Contract Negotiations with three sub-categories. One of the three sub-categories was Facilities Management. A copy of the advertised agenda is attached hereto. We believe this advertisement meets the requirement for the Maryland Open Meetings Act.

The Parking Authority Board of Directors reviews the bids and makes a recommendation on negotiation of the Agreement with the lowest qualified respondent that meets the MBE and WBE requirements.

This review and recommendation in a closed meeting falls under the statutory authority to close a public meeting, State Government Article §10-508(a)(14). The meeting was closed after a unanimous vote to close by the Board members present (all were present) and the Form Statement for Closing a Meeting was completed and signed by the PABC Board Chairperson citing the exception upon its closure.

All actions taken by the PABC Board of Directors relating to the protested agreement are preliminary and deliberative. It is the Board of Estimates' approval of the resulting negotiated contract that is the ultimate vote and award of the contract. The Board of Estimates is also subject to the Open Meetings Act.

LAZ/PMS has alleged no harm as a result of the alleged violation – they merely allege a violation.

The PABC Board of Directors met on Monday July 23, 2013 and discussed the protest in an open session with LAZ/PMS and counsel present, and did not change their recommendation.

2. The meeting held on June 10 was originally scheduled for June 18. The meeting was rescheduled without appropriate notice required to meet the Maryland Open Meetings Act. PABC meetings are generally held on the third Tuesday of each month. A representative of the PMS/LAZ joint venture was present on June 18th and informed the meeting had already taken place. It is unclear whether a quorum of the board was physically present for the June 10 meeting. Based on the lack of notice and the assumed lack of a quorum any actions taken during the June 10 meeting are void or voidable pursuant to the Act.

There was no discussion of the protested Agreement at the June 10, 2013 meeting of the Parking Authority Board of Directors so any protests of actions taken during the June 10, 2013 meeting that relate to this Agreement are irrelevant.

3. The published agenda for the June 10 meeting was misleading and did not include an intention to select a parking management operator for the facilities in question.

There was no discussion of the protested Agreement at the June 10, 2013 meeting of the Parking Authority Board of Directors so any protests of actions taken during the June 10, 2013 meeting that relate to this Agreement are irrelevant.

Item 2: Bid Process and Procedures

1. The Parking Authority has latitude to conduct its own bid process and procedures, however, the authority should be held by this body to a reasonable standard. The Board of Estimates has in the past required the PABC to conduct fair and open bid processes. This includes:

- a. Public bid opening

This has never been required.

- b. Review by an impartial panel of individuals

An impartial panel was never required, but in the past, was utilized to review proposals – there were no proposals to review for the procurement of this Agreement. This was a request for qualifications and bids.

- c. Clearly defined evaluation criteria

The evaluation criteria were very clearly defined. The qualified bidder, bidding the lowest monthly management fee and meeting the M/WBE requirements were the criteria utilized. This was clearly articulated in the Request for Qualifications and Bids. A copy of the Request for Qualifications and Bids is attached hereto. The Exhibits mentioned in the Request for Qualifications and bids that are not attached became the Agreement before this Board.

These basic procedures were not followed. The process used was inconsistent with past RFP practices by the PABC.

There is no requirement for the PABC to remain consistent in its procurement of Facilities Operations and Management Agreements, particularly when PABC believes there is opportunity to improve the process. The PABC has developed and followed a fair and impartial process to procure this Agreement - we believe it is more fair and impartial than the previous “best value” form of procurement. The modification to the process has made the process clearer, more objective, and more advantageous to the City.

2. During the bid process, PMS/LAZ raised an issue regarding the selection process. The Parking Authority has traditionally issued Best Value Requests for Proposals. This approach takes into consideration the value associated with past performance, increases in revenue generated, responsiveness, customer satisfaction surveys etc. These factors are considered in addition to price. The original language in the proposal stated: “i.e.

PABC staff will provide a recommendation to the PABC Board of Directors which shall consider the recommendation of Parking Authority staff, for the Qualified Firm whose bid is determined to represent the "Best Value" to the City and the PABC." This language was removed from the bid during the bidding process. We contend this change was not in the best interest of the city.

The Parking Authority respectfully disagrees and believes that the process utilized for this procurement has provided the best value to the City. As a result of this procurement, the City will see a savings of at least \$66,000.00 annually in management fees, with potential additional savings of \$80,400.00 in incentive fees, while obtaining a firm that has proven to be capable and qualified to perform the services.

The "Best Value" form of procurement did not produce the value anticipated. PABC staff determined, and the Parking Authority Board of Directors agreed, that utilizing a more objective approach to procurement of garage management firms was in the best interest of the PABC and the City.

Item 3: Best Interest of the City

1. Selecting the lowest technically accepted bidder is not in the best interest of the city. The financial model for managing millions of dollars of Baltimore City assets should not be vested in the hands of the lowest bidder. There is little incentive for the operator to be concerned with quality management.

PABC set the qualifications and accepted the lowest QUALIFIED bidder. PABC oversees the operation of these assets and is ultimately responsible for the quality of the operation and management of the facilities, and the revenue generated by the facilities. The resulting agreement is with a firm that has proven to be capable and qualified to perform the service. Should the firm not provide quality management of the facilities, the Parking Authority has the ability to terminate the Agreement with the firm with thirty (30) days notice. That, in itself, is incentive for the operator to provide quality management.

The PABC Board of Directors met on July 22, 2013 and discussed the issues raised by this protest in open session with the protesting vendor and did not change its recommendation. The PABC thanks you for your consideration of this matter and respectfully requests approval of the Parking Facility Operations and Management Agreement.

Sincerely,

Peter Little, Executive Director

Attachments



PABC Board of Directors Meeting Agenda May 21, 2013

Board Approvals

- Board Meeting Minutes of April 16, 2013

Financial Reports

- Residential Permit Parking Program
- Facilities
- Parking Meters
- Administrative Office

New Business

- Facilities Expense Approvals

Old Business

- RPP Program Master Plan Implementation Update
- RPP Program Update
- Facilities Update
- Parking Meters Program Update
- Parking Meters Accessibility Program Update
- Office Relocation Update
- Previous Agenda Updates

Closed Meeting

- Contract Negotiations Matters
 - Car Sharing
 - Facilities Management
 - On-Line Parking Pre-Purchase Service



REQUEST FOR QUALIFICATIONS AND BIDS

FOR THE MANAGEMENT OF THE FOUR PARKING FACILITIES

Located at

**PENN STATION – 1511 N. CHARLES STREET
BALTIMORE, MARYLAND 21201**

**ARENA – 99 S. HOWARD STREET
BALTIMORE, MARYLAND 21201**

**MARRIOTT – 405 W. LOMBARD STREET
BALTIMORE, MARYLAND 21201**

**REDWOOD – 11 S. EUTAW STREET
BALTIMORE, MARYLAND 21201**

**Date: April 9, 2013
Prepared By: Baltimore City Parking Authority
Off-Street Parking Department**

BIDS DUE: APRIL 29, 2013, 4:00 PM

I.

INSTRUCTIONS TO RESPONDENTS

- A. Thank you for your interest in submitting a bid for a Parking Facilities Operations and Management Agreement with the Baltimore City Parking Authority, (“The Authority”, or “PABC”) acting on behalf of the City of Baltimore (the “City”). P A B C is a quasi-public, non-profit corporation, organized under the laws of the State of Maryland that oversees the management of all City owned garages and lots. In that capacity, and to facilitate the Authority’s management of those assets, the Authority has assumed all of the duties previously performed by the City’s Purchasing Agent; and any decision or notice issued by the Authority with regard to this Request for Qualifications and Bids (“RFB”) or the resultant Parking Facilities Operations and Management Agreement (“Agreement”) shall be construed as if it was notice from the City Purchasing Agent. You should note, however, that pursuant to the Baltimore City Code, the Authority is not bound to comply with the general procurement regulations and procedures otherwise applicable to City agencies. Although this RFB has been drafted to reflect a typical procurement procedure, this format is for ease of consideration of bids and to further a fair and impartial procurement process. The effect of any irregularities in this RFB, the bids received, the review process, and/or the award of a contract is within the sound discretion of the Authority and no rights or legal causes of action shall accrue to any bidder as a result of this process.
- B. The Authority will recommend award of the Agreement to the Qualified Firm bidding the lowest management fee.
- C. For purposes of this RFB, a parking management firm must first demonstrate that it meets each of the following criteria to become a Qualified Firm:**
1. The firm has been in the business of parking facilities management for at least the past five (5) years. If the bidder is a partnership or other assemblage of parking management firms, a component of the assembled entity must be a firm that has been in the business of parking facilities management for at least the past five (5) years. Firm must provide evidence of this criteria.
 2. The firm currently operates at least four (4) parking facilities with a minimum of 500 spaces each, and each facility must have annual revenue in excess of \$1,000,000.00. The firm must have operated these facilities for at least the past two (2) years. Firms must describe the facilities (locations, number of spaces, annual revenue) and provide the contact information for the owner and/or property manager of these facilities. Management and/or ownership of these facilities will be contacted by the PABC.
 3. The firm maintains a management office within 20 miles of the City, with at least one dedicated senior level manager (must possess at least 7 years of parking management experience). Firm must provide address and telephone number of the office and the name and qualifications of the manager.
 4. The firm must be in good standing with the Maryland State Department of Assessment and Taxation, City of Baltimore, and Parking Authority of Baltimore City.
- D. Parking management firms that are not Qualified Firms will not have their**

bid opened and will not be considered for award of the Agreement.

Respondents will submit qualifications in an envelope that is separate from the Bid form and M/WBE documents. Qualifications will be reviewed by PABC staff.

- E. PABC staff will provide a recommendation to the PABC Board of Directors which shall consider the recommendation of Parking Authority staff, for the Qualified Firm whose bid is determined to represent the “Best Value” to the City and the PABC.
- F. Attached to this RFB is a copy of the PABC Standard Agreement. Respondent’s bid must include affirmation that respondent will operate these facilities under this Standard Agreement. While the Standard Agreement has been previously approved by the City’s Law Department, The Standard Agreement is subject to review and modification by the City’s Law Department before submission to the City’s Board of Estimates. If the City’s Law Department requires modifications to the Standard Agreement that are not acceptable to the first selected Respondent, the PABC may in its sole discretion, elect to contract with the Respondent representing the next best value, and continue in that manner until a Respondent agrees to the Standard Agreement as modified by the City’s Law Department.
- G. Nothing contained in this RFB or in the Agreement shall be construed to constitute or create any employment or agency with the City. The Operator is not, and shall not be, an agent or employee of the City or the Authority.

II. Required Bid Documents

Respondent must provide the following:

- A. Evidence that the Respondent is a Qualified Firm as detailed in section I (c) above.
- B. Proposed monthly management fee, utilizing the form provided (Exhibit 4), which shall be a flat monthly management fee only, with no incentive management fee, that shall include, among other things:
 - 1. Salaries travel, and accommodation expenses of all executive and supervisory personnel of Respondent not stationed at the garage and lot;
 - 2. Administrative and accounting expenses (including payroll processing fees and bookkeeping fees), including salary or wages of any person employed in the main or any branch office of the Respondent, home office, and overhead;
 - 3. Personal property taxes of Respondent’s property; and
 - 4. All profit for Respondent.
- C. **MBE/WBE Requirements:**
 - 1. **MBE/WBE PARTICIPATION** - In the making of the prospective Agreement,

the Authority mandates compliance with the City of Baltimore's Minority and Women's Business Enterprises (MBE/WBE) program to be utilized in connection with the servicing of this Agreement. Refer to **Exhibit 2** hereof for details.

2. With the monthly management fee being limited to items 1, 2, 3 and 4 above, and all facility related expenses being reimbursable, the percentage of the Agreement relative to ("M/WBE") contracting will be shifted to those line items stipulated within the budget included under **Exhibit 1**. Consequently, for purposes of this RFB and in the making of the Agreement, there will be a ("M/WBE") requirement under the Agreement limited to a percentage of said line items. Refer to **Exhibit 2** hereof for details. The current goals established by the City's Office of Minority and Women's Business Opportunity (M/WBOO) are 27.0%-MBE and 10.0%-WBE of the non-salary related line items listed in the pro forma and **Exhibit 2**.
3. Respondents will complete and submit with their response, their commitment to comply with the Baltimore City - Minority and Women's Business Enterprises Program statement, and Statement(s) of Intent completed by each MBE or WBE sub-contractor proposed for use, attached hereto as **Exhibit 2**.
4. One original and one copy of the MBE/WBE package shall be submitted with Respondent's proposal, **but shall not be bound with the proposal**. It is the responsibility of the Respondent to ensure that these documents are completed. **Failure to submit the completed and compliant MBE/WBE statements will result in the proposal being rejected as "non-responsive."** Any questions regarding compliance with the MBE/WBE requirements should be directed to the City's MWBOO office at 410-396-3305.
5. It is the policy of the City of Baltimore that minority individuals, minority, and women's business enterprises have the maximum opportunity to participate in any ownership, financing, management, operations, and employment. The Authority supports this policy and requires that all Respondents commit to the program goals. Respondents are encouraged to Partner or Joint Venture with Minority and Women's Business Enterprises, and Minority and Women's Business Enterprises are encouraged to respond to this Request for Bid.
6. The Respondent will complete and submit with its bid, its commitment to comply with the Baltimore City - Minority and Women's Business Enterprises Program package attached hereto as **Exhibit 2**.
- D. Affirmation (see Exhibit 4) that Respondent can and will operate the facilities under the Standard Agreement, within the budgets provided in **Exhibit 1**, and with the staffing schedules provided in **Exhibit 1**.

III. TERMS OF OFFERING

- A. The Parking Authority of Baltimore City is seeking competitive bids from interested parties, (hereinafter referred to as the **"Respondent(s)"** or **"Operator(s)"**) who are willing and able to negotiate and enter into **a one (1)**

year agreement (with 1 – one-year extension option) to operate, and manage the Facilities as public parking garages in accordance with the terms of this RFB, in accordance with the policies and objectives of the Facilities as established by the Authority in the Agreement, and within the mandated budget and staffing schedules. In addition, the Respondent will manage the Facilities consistent with “*best-in-class*” garage management practices in the areas of financial reporting, cash control, customer service, facility maintenance, and public safety.

- B. The goals of the Authority in offering an agreement for the Facilities include, but are not limited to, the following:
1. To establish efficient parking operations that serve the monthly customers of major employers, commercial tenants, and provide maximized daily transient parking opportunities, accommodate special parking programs, occasional event parking, tourist attractions, and neighboring residential developments.
 2. To provide a positive and beneficial parking experience to all garage and lot patrons who utilize the Facilities. This is to be accomplished by providing functional, first-class, clean, excellent state-of-repair, secure and efficient parking for its customers; and provide an escalating, maximized, and auditable stream of revenue to the Authority through the remittance of parking revenue. Respondent should also provide fiscally prudent management of the Facilities by meeting an operating expense budget provided by the Authority.

IV. AGREEMENT AND CONDITIONS

As stated above, attached to this RFB as **Exhibit 3** is the Authority’s Standard Agreement (with its exhibits). Some of the essential terms are, without limitation:

- A. The parking operation and the Facilities shall respect the character of the area and the parking operations shall use “Best-in-Class” urban parking practices recognized within the Baltimore-Washington Area.
- B. The Authority will offer the Facilities to an Operator for a term of **one (1) year** with one PABC option for a one (1) year extension.
1. The successful Operator will assume and pay ALL expenses in connection with the operations of the Facilities according to the operating budget, collect all revenue and deposit all revenue into a City account designated by the Authority on a daily basis, and the Authority shall reimburse the Operator for budgeted expenses at the end of each month upon submittal of all invoices. **All expenses in excess of \$500.00 of the budget amount for that month must be pre-approved by the Authority prior to reimbursement.**
 2. **The pro forma budget attached to this RFP and the staffing schedules are not negotiable and respondents shall not propose amendments to these items. This RFB is for a fixed budget and staffing requirement.**
 3. No storage of materials, refuse, garbage, unlicensed vehicles, etc., shall be

permitted to remain on the Facility, except as allowed by Baltimore City Regulations. All dumpsters or trash receptacles shall be screened from view at all times.

C. The Operator will be required to provide insurance coverage for **each Facility** as follows:

Commercial General Liability	\$1,000,000 combined single limit each occurrence for bodily injury and property damage.
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Umbrella Excess Coverage	\$5,000,000
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Garage keeper's Legal Liability	\$1,000,000 combined single limit each occurrence
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Crime: Policy Limits:	\$10,000 commercial blanket \$10,000 broad form money inside \$10,000 broad form money outside
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Workers' Compensation:	Coverage A – Statutory Coverage B - \$100,000
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Deductibles:	Not to exceed \$2,000 per occurrence
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- D.** Business Automobile Liability shall be provided at limits of not less than One Million Dollars (\$1,000,000) per occurrence for all claims arising out of bodily injuries or death and property damages. The insurance shall apply to any owned, non-owned, leased, or hired automobiles used in the performance of the prospective Agreement.
- E.** The Mayor and City Council of Baltimore, its elected/appointed officials, and employees, The Baltimore City Parking Authority, and its employees shall be covered, by endorsement, as additional insured's with respect to: liability arising out of activities performed by or on behalf of the Operator in connection with the prospective Agreement.
- F.** The Operator's insurance shall apply separately to each insured against whom claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability. To the extent of the Operator's negligence, the Operator's insurance coverage shall be primary insurance as respects the City, its elected/appointed officials, employees, and agents. Any insurance and/or self-insurance maintained by the City, its elected/appointed officials, employees, or agents shall not contribute with the Operator's insurance or benefit the Operator in any way.
- G.** Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, except by the reduction of the applicable aggregate limit by claims paid, until after forty-five (45) days prior written notice has been given to the Authority. There will be an exception for non-payment of premium, which is ten (10) days notice of cancellation.

- H. Insurance is to be placed with insurers with a Best's rating of no less than A: VII, or, if not rated with Best's, with minimum surpluses the equivalent of Best's surplus size VII, and must be licensed/approved to do business in the State of Maryland. The Operator shall furnish the Authority a Certificate of Insurance with a copy of the additional insured endorsement as verification that coverage is in force. The Authority reserves the right to require complete copies of insurance policies at any time.
- I. Failure to obtain insurance coverage as required or failure to furnish Certificate(s) of Insurance as required may render the prospective Agreement null and void; provided, however, that no act or omission of the Authority shall in any way limit, modify or affect the obligations of Operator under any provision of the prospective Agreement.
- J. Neither Operator nor Authority shall be liable to the other for having caused or contributed to any occurrence, which gives rise to a casualty or claim required to be insured under the prospective Agreement. All policies of insurance to be obtained by the Operator shall provide that any loss shall be payable notwithstanding any act or omission of the Authority or Operator that might otherwise result in a forfeiture or disclaimer of such insurance by the carrier. The insurance carried by the Operator shall provide for (i.e., consent to) the waiver of subrogation against the Authority.
- K. The Operator shall indemnify, defend, and hold harmless the Authority, the City, its elected/appointed officials, employees, agents, and volunteers from any and all claims, demands, suits, and actions, including attorney's fees and court costs, connected therewith, brought against the Authority and/or City, its elected/appointed officials, employees, agents, and volunteers, arising as a result of any direct or indirect, willful, or negligent act or omission of the Operator, its employees, agents, or volunteers, EXCEPT for activities caused by the sole negligent act or omission of the Authority and/or City, its elected/appointed officials, employees, agents, and volunteers arising out of the prospective Agreement.

V. SUBMISSION REQUIREMENTS, PROPOSAL ACCEPTANCE, REJECTION, ADDENDA, AND SUPPLEMENTS

The Authority will not be limited solely to the information provided by the Respondent, and may utilize other sources of information useful in evaluating the capabilities of the Respondent.

- A. **Submission Requirements: Each of the following numbered items must be submitted in a separate envelope and must be submitted to the Authority before the closing date and time stated in Section IX. Each numbered item below must be submitted in its own envelope.** Oral, fax, telegraphic, electronic mail, or mail-gram proposals will not be accepted. Bids or unsolicited amendments to proposals arriving after the closing date and time will not be accepted.

1. Respondent's Qualifications – See Section I. C.

- a) Provided in a sealed envelope or package clearly marked as to its contents.

- b) Evidence of meeting the qualifications shall be limited to 10 pages.
- c) PABC will be responsible for confirming that respondents are in good standing with the State, City and Parking Authority.

2. Respondent's Bid Form and Affirmations (Exhibit 4):

- a) Provided in a sealed envelope or package and clearly marked as to its contents.
- b) *Bids shall be submitted with a \$100.00 non-refundable fee. The \$100.00 fee shall be refunded should the Authority reject all proposals submitted.* Checks should be made payable to the Baltimore City Parking Authority. All proposals not accompanied by this fee will be returned and marked rejected.

3. MBE/WBE package:

- a) Provided in a sealed envelope or package and clearly marked as to its contents.
- b) An original and one copy of Respondent's MBE/WBE package (Exhibit 2) must be submitted along with, but separate from, Respondent's proposals.

B. Bid Acceptance

To be considered, Respondent must submit a complete, written response to this RFB, any addenda issued, and any responses to questions and inquiries related to this RFB. It is essential that each Respondent adhere to these guidelines and the Bid Contents listed in **Sections II and V. Failure to do so will be grounds for rejection of the bid.**

C. Addenda and Supplements to the RFB

Should it become necessary to revise any part of this RFB, provide additional information necessary to adequately interpret provisions and requirements of this RFB, or respond to written inquiries concerning the RFB, an Addendum to the RFB shall be provided to all entities that received the initial RFB.

D. Cancellation of the RFB; Rejection of all Bids

The Authority may in its sole discretion, cancel this RFB, in whole or in part, or reject all proposals submitted when this action is determined to be advantageous or in the best interest of the Authority. The \$100.00 fee shall be refunded should the Authority reject all proposals.

VII. SELECTION PROCEDURES

A. Eligibility for Selection

Generally, see Section I of these Instructions for the selection criteria and process. In order to be eligible for selection resulting from this RFB, the Respondent must clearly demonstrate to the Authority that it is a Qualified Firm and that the Respondent's bid is the "BEST VALUE" to the City as follows:

1. Utilization of Minority/Women's Business Enterprises.
2. Lowest monthly management fees for operating the facilities
3. Complies with the method and timeliness of submission, conformance to the requirements of the RFB
4. Each Respondent must be a registered business in the State of Maryland, and possess or obtain, prior to award, the necessary permit(s) as required by law.
5. The selected Operator shall obtain, maintain, and keep in full force and effect the types of insurance described in the RFB. The successful Respondent should deliver such Certificates of Insurance to Authority at least ten (10) days prior to the start of the Agreement.

B. Approval by the Parking Authority Board of Directors

The Parking Authority will summarize and recommend its selection to its Board of Directors. Following approval by the PABC Board, the Agreement will be prepared on behalf of the Authority and submitted to the successful Respondent.

C. Execution of Agreement

Following recommendation of an award to the Authority's Board of Directors, the successful Respondent and the Authority will execute the Agreement. If the successful Respondent fails to execute the Agreement in a timely manner, and after notice to the first successful Respondent, then the Authority, at its sole discretion, may cancel Agreement execution with the first selected Respondent and proceed with the next most acceptable Respondent, solicit new proposals, or abandon the RFB and reject all proposals. The Operator shall execute six (6) originals of the Agreement and return them to the Parking Authority's General Counsel for presentation to the City's Law Department and Board of Estimates.

D. Board of Estimates Approval

1. Decisions regarding selection of the Respondent shall be made by the Parking Authority and recommended to the City of Baltimore Board of Estimates for its formal approval. The final acceptance of any bid and resultant Agreement is subject to the approval of the Board of Estimates of Baltimore City. **Unless and until approved by the Baltimore City Board of Estimates, the Agreement contemplated herein shall be null and void and of no legal effect.**
2. Nothing contained in this RFB shall obligate the Authority to conduct a post-award debriefing with Respondents.

3. The successful Respondent must be able to mobilize, transition, and assume control of the Facility from the current operator within ten (10) days from the Authority's notice to proceed.

VIII. RIGHTS RESERVED BY AUTHORITY

- A. The Authority reserves the right in its sole discretion to recommend or not recommend the award of an Agreement related to this RFB based upon the bids and qualifications received by the Authority. All portions of this RFB and the Respondent's proposal will be considered a part of the Agreement and will be incorporated by reference.
- B. The Authority reserves the right, in its sole and absolute discretion, to accept or reject any and all bids and qualifications received as a result of this RFB.
- C. No bid may be withdrawn for a period of one-hundred and eighty (180) days subsequent to the Bid Due Date without the consent of Authority.
- D. No interpretation, explanation, or clarification of the Agreement will be binding on the Authority unless reduced to writing and signed by the Executive Director of the Authority.

IX. ADMINISTRATIVE INFORMATION

A. Issue Date

The issue date of this RFB is Tuesday April 9, 2013. For a schedule of events for this RFB see **Section XII**.

B. Pre-Bid Conference

A Pre-Bid Conference will be held on **April 15, 2013** beginning at **2:00 p.m. at the Issuing Office**. Attendance is not mandatory; however, information presented may be valuable in the preparation of proposals, and all interested Respondents are urged to attend. Each respondent is limited to no more than three (3) representatives.

C. Questions and Inquiries

Questions and Inquiries, both verbal and written, will be accepted from Respondents attending the Pre-Bid conference. Questions apart from the Pre-Bid conference must be in writing. A summary of all substantive questions and answers will be distributed to all entities receiving the RFB. The closing date for submitting written questions is 4:00 p.m. **on April 18, 2013**. Questions or requests received after this deadline shall not be considered.

Responses to all written questions received, and addenda (if any) will be distributed to all recipients of the RFB on or before **April 23, 2013**.

D. Closing Date for Bids - The closing date for receipt of proposals is 4:00 p.m., April 29, 2013. Respondents who submit their proposals by mail or delivery service should allow sufficient mailing and delivery time to ensure receipt by the Issuing Officer by the time and date stated above. Bids will not be opened publicly.

E. Issuing Office The Baltimore City Parking Authority issues this RFB. All proposals, whether mailed or hand delivered, must be received by **4:00 pm, at:**

Baltimore City Parking Authority
200 West Lombard Street Suite B
Baltimore, Maryland 21202
Attention: Off-Street Parking

F. Incurring Expenses

Neither the Authority, nor City shall be responsible for any cost incurred by any Respondent in preparing and submitting a proposal or requested supplemental information in response to the RFB.

G. Duration of Bid

Bids are to be valid and irrevocable for a period of one-hundred and eighty (180) days following final date for submission of proposals.

H. Public Information Act Notice

Respondent should give specific attention to identifying those portions of their proposals that they deem to be confidential, proprietary information or trade secrets and provide any justification of why such material, upon request, should not be disclosed by Authority under the Maryland Public Information Act §1-601 et seq. of the State Government Article, Annotated Code of Maryland.

I. Compliance with the Law

By submitting an offer in response to this RFB, the Respondent selected for award agrees that it will comply with all Federal, State, and City laws, rules, regulations, and ordinances applicable to its activities and obligations under this RFB and the Contract.

X. SCHEDULE OF EVENTS:

- RFB issuance: April 9, 2013
- Pre-bid conference: April 15, 2013, 2:00 PM
- Deadline for written questions: April 18, 2013, 4:00 PM
- Addenda (if any) issued: April 23, 2013
- Bids due: April 29, 2013, 4:00 PM

Thank you for your interest,

Baltimore City Parking Authority

(443) 573-2800

Exhibit 3

Monthly Management Fee and Affirmation

- A. Monthly management fees are flat monthly fees and will be the management fees for the entire term including option year(s) of the Agreement, and are inclusive of, among other things:
1. Salaries, travel, and accommodation expenses of all executive and supervisory personnel of Respondent not stationed at the garage and lot;
 2. Administrative and accounting expenses (including payroll processing fees and bookkeeping fees), including salary or wages of any person employed in the main or any branch office of the Respondent, home office, and overhead;
 3. Personal property taxes of Respondent's property; and
 4. All operator profit.
- B. Please note that the Parking Authority may terminate operation at one or more facilities during the term. Complete the form below and submit it with your proposal.

Facility	Monthly Management Fee Proposed
Penn Station Garage	
Arena Garage	
Marriott Garage	
Redwood Garage	
Total Monthly Management Fees	

C. NAME/TITLE OF OFFICIAL SUBMITTING RESPONSE

Name: _____

Title: _____

Email Address: _____

Direct Phone: _____

D. INDIVIDUAL AUTHORIZED TO SIGN AGREEMENT

Name: _____

Title: _____

- E. I have read and agree to the terms of the Standard Agreement. I affirm that we will operate the Facilities under the terms of the Standard Agreement, within the budgets provided by PABC and with the staffing schedules provided.

Signature of Official Submitting Response

**Penn Station, Arena, Marriott & Redwood Garages RFQ&B
Addendum
April 23, 2013**

1. What are the facility space counts?

<i>Garage</i>	<i>Spaces</i>
<i>Penn Station</i>	<i>525</i>
<i>Arena</i>	<i>888</i>
<i>Marriott</i>	<i>599</i>
<i>Redwood</i>	<i>744</i>

2. What is the current PARC equipment and what is the age on this equipment?
All locations have Scheidt & Bachmann Equipment. The equipment is all between 8 and 10 years old, but upgrades have been made within the past 4 years.

3. Can you supply the monthly contract breakdown?
We are not asking for revenue assumptions or projections, this is not relevant.

4. General liability \$2,000,000 vs \$1,000,000? Insurance clarifications on RFB vs E.

Required insurance coverages are as follow:

- ***Commercial General Liability: \$1,000,000 combined single limit each occurrence for bodily injury and property damage.***
- ***Umbrella Excess Coverage: \$5,000,000***
- ***Garage keeper's Legal Liability: \$1,000,000 combined single limit each occurrence***
- ***Crime: Policy Limits:***
 - ***\$10,000 commercial blanket***
 - ***\$10,000 broad form money inside***
 - ***\$10,000 broad form money outside***
- ***Workers' Compensation:***
 - ***Coverage A – Statutory***
 - ***Coverage B - \$100,000***
- ***Deductibles: Not to exceed \$2,000 per occurrence***

5. What is the peak occupancy per day?
Peak occupancy for each facility is as follows:
- ***Penn Station: Weekdays, middle of the day***
 - ***Arena Garage: Large Arena events***
 - ***Marriott: Ravens games***
 - ***Redwood: Weekdays, middle of the day***

6. Does a joint venture count toward the MWBOO %?

No. These are subcontract goals. Please contact the City's MWBOO office for clarification.

7. Will there be any opportunity to negotiate changes to the agreement in Exhibit 3?

No.

8. Can we propose a right, as the Operator, to consent on the renewal terms (p. 3-4 of the RFP, and p.1-2 of the sample contract)?

No.

9. May the Operator propose an annual escalator to the Management Fee for the renewal term?

No.

10. Exhibit B: Approved Standard Elevator Maintenance Agreement; Exhibit D: Operator Repair Authorization, Payment and Reimbursement Procedure: Please confirm that the cost associated with this subcontract are fully reimbursable.

If procedure is followed and expenses are approved by the Authority, then these expenses will be fully reimbursable.

11. Please confirm that a two month operating advance for budgeted reimbursable operating expenses will be provided.

Yes.

12. Regarding Exhibit A of the sample contract: Operator is required to remedy all damage or loss to property at the facility if such damage or loss is caused directly or indirectly, in whole or in part, by Operator or Operator's subcontractors. Can the scope of the Operator's liability be limited to to the extent of the Operator's acts or omissions that caused damage or loss to property at the facility?

No.

13. Regarding Page 6 of the sample contract: Please clarify what is meant by Section IV(J): "all policies of insurance to be obtained by the Operator shall provide that any loss shall be payable notwithstanding any act or omission of the Authority or Operator that might otherwise result in a forfeiture or disclaimer of such insurance by the carrier." Is the Operator liable for the Authority's acts or omissions breaches, or negligence that cause any loss?

Insurance coverage obtained by the Operator must provide that any loss shall be payable notwithstanding any act or omission of the Authority or Operator.

14. Regarding Exhibit A of the sample contract (Audits): May any payment related to an audit with a discrepancy of greater than two percent be annualized?

No.

15. Will the Operator have the opportunity to dispute audit results?

Yes, at the discretion of the Parking Authority.

16. In the documents provided the Umbrella coverage for insurance is \$50,000,000 (each occurrence & aggregate)...would the PABC potentially entertain a lower amount for the umbrella coverage?

Umbrella Excess Coverage required is \$5,000,000.

17. In reviewing the RFQ document I wanted to clarify how many copies of the Respondent's Qualifications you are seeking when the documents are submitted.

One copy.

18. Section 1.B of the RFP states the following:

1.B. The Authority will recommend award of the Agreement to the Qualified Firm bidding the lowest management fee.

Section 1.E of the RFP states the following:

1.E. PABC staff will provide a recommendation to the PABC Board of Directors which shall consider the recommendation of Parking Authority staff, for the Qualified Firm whose bid is determined to represent the "Best Value" to the City and the PABC.

Can you please specify if this bid will be considered lowest bid technically acceptable or a best value contract with specific criteria where management fee is a percentage of the total score for each RFP respondent?

The qualified firm with the lowest management fee will be recommended for award.

19. Page 2 Section II. B states that there will be no incentive fee. Will the City consider an incentive fee for these locations for revenue found in excess of historic figures?

No.

20. As reference by Exhibit A section 2.1.D it states that a credit can be applied for with respect to the incentive fee if spaces are taken out of service. Please state whether or not there is an incentive fee for this contract or if this section will be deleted from this exhibit.

There is no incentive fee. The section will be deleted.

21. In the past procurements of this nature have requested a response within 45 to 90 days. We are requesting an extension to prepare this RFP given that it consists of four facilities. Will the City approve an extension of the due date?

No

22. Please clarify that all fees, profit centers, etc. will be contain only in the management fee of this response?

We don't understand the question.

23. Please state that payroll expense payment will only be accepted and approved at actual certified cost including health insurance, worker compensation, 401 K etc.

Please see Exhibit C, Compensation & Payment Procedures, of the Standard Agreement for a full explanation of expense payments.

24. Exhibit A Section 2.2C makes reference to deductions of management fees, please clarify what is considered routine tasks and what should be performed by the Operator. We are requesting clearly defined tasks can you further define the areas subject to this requirement in the RFP.

The routine tasks that should be performed by the Operator include, but are not limited to, ticket jams, manual gate repairs, service related to facility breakers and power not associated with equipment, operator error or damage, device reset, and loop reset.

25. Under this RFP will the responsive operator sign four individual contracts or one contract with four separate management fees?

1 contract with 4 separate management fees.

26. Section 4.2 Reports, states that the operator shall “provide” the following reports. Currently, these reports are available for review. Is it the intention of this RFP to require the operator to submit these reports to a contact person weekly or on the schedule specified in the RFP?

Section 4 clearly outlines the reporting requirements of this RFB.

27. Page 10 4.2 Reports section b specifies a certification of a member of management of the operator utilizing the forms provided in Exhibit I. Can you please provide Exhibit I for review and further clarify if the facility manager for the location is acceptable to certify this report?

Yes and yes.

28. Page 11 4.2 Reports section D.4 can you please clarify the time frames to submit a certified audit as there are references to different time frames i.e. sixty (30) days?

60 days requirement, 30 days preferred. Audit will be performed by the operator at the operator’s expense

29. With respect to the “Parking Facility Operations and Management Agreement” can you please provide Exhibit C, D, E, F, G, I, J for our review and give us time for review and to process any related questions or answers. These exhibits are reference throughout Exhibit A but are not contained in the RFP attachments.

All relevant exhibits were posted on PABC website on April 10th & 11th .

30. Section 14 page 7-8 Section h. Can you provide boundaries, right-of-way details etc. so that an operator can see the reference boundaries for snow removal, plant maintenance and repair etc.

Snow removal is directly around PARC equipment (east and west) following the circle into level 1 of the Penn Station Garage. All other snow removal on the Penn Station plaza is handled by Amtrak.

All landscaping, cleaning and repair are within the garage and the plaza from the station façade to the boundaries of the Plaza (including, without limitation, the taxi service area, all roadways and any planters and or barricades.) all trash pickup and trash removal from the plaza and garage, all landscaping and maintenance including

plantings in the planters and barricades, regular sweeping and power washing of the plaza.

31. The RFP references that this RFP is a “Best Value Contract” but states that award will be made to the responder with the lowest management fee. How will the City determine best value to the City if there are no criteria or opportunities for an operator to provide “Best In Class” service provisions by extending programs and services other than what is specified in the Exhibits of this RFP?

The qualified firm with the lowest management fee will be recommended for award.

32. Will this procurement follow the bid opening procedures for lowest bid technically acceptable such as your previous meter location proposal where the bids are open in public session at City Hall in front of the Board of Estimates?

No.

33. In the past technical specifications followed a required format for submission is there any required format?

No.

34. If management firms state how they meet the minimum criteria is this sufficient information to be deemed technically acceptable?

We do not understand this question. The criteria to become a Qualified Firm are clearly stated in the RFQ&B.

35. The RFP does not specify a contact person for the administration of this RFP can you specify who all correspondences should be directed to so that questions are routed to the correct contact person?

All correspondence regarding this RFQ&B should be addressed to Chance Dunbar, Off-Street Parking Manager

Chance.dunbar@baltimorecity.gov

36. Will all questions submitted be released to all responders?

Yes.

37. It was noted that payroll taxes and benefits are budgeted at 25% of payroll, is this negotiable?

No.

BOARD OF ESTIMATES

07/24/2013

MINUTES

PABC - cont'd

President: "The fourth item on the non-routine agenda can be found on Pages 65-67, Parking Authority of Baltimore City, Parking Facilities Operations and Management Agreements. Will the parties please come forward? Good morning."

Pete Little, Executive Director of the Parking Authority of Baltimore City: "Good morning. My name is Pete Little, Executive Director of the Parking Authority of Baltimore City, with me is David Rhodes, General Counsel for the Parking Authority of Baltimore City."

Mr. Scott Phillips: "Good morning. My name is Scott Phillips representing PMS Parking, Miss Amsale Geletu and Mr. Samson Saifu with PMS Parking. Mr. President, good morning."

President: "Good morning."

Mr. Phillips: "I'm going to push this back a little bit. I understand I may have been too loud a few weeks ago. What I'd like to do is first my um--"

Mayor: "You're whispering, relatively speaking."

Mr. Phillips: "Okay. At this point what I'd like to do is just share with the Board my comments this morning. I hope there are enough copies there, and I apologize for any uh, grammatical errors. That was done after learning that this was going to go

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back on the Board, uh today. At this point, we're a little disappointed that we're at this juncture, um, as we had reviewed the situation, it is our perspective that the Parking Authority staff has been a little disingenuous and somewhat short-sighted in its decision-making processes. Um -- my sense is, based on the discussions we've had with the Parking Authority staff, that, in essence, their response is just to refute or deny, um - - the things that we raised on July, the items that we raised on July the third. So, to that point, um -- we want to just address a couple of issues. First, let me raise before this concept of low bid versus best value. The history of the Parking Authority and the City of Baltimore is that parking management contracts have uh -- basically always been, best value. Uh -- this is a, a change from past experience. The um -- reason for that is it clearly incents the parking management companies to provide quality service and to focus on increasing revenue, rather than manage the expense line. The current low bid process provides no incentives to increase revenue, um -- and very little incentive to insure quality. As a matter of fact, with the rates, the management fee, rates that are provided, uh -- there's really very little availability for the management company to go outside of simply the vanilla providing of management services. Based on a little research, and any of you could do this, if you

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went out today to Google parking management RFPs, a number would come up. Based on my review, I personally did not find one. I've set some examples: the State of New York; the City of Anaheim, California; the City of Richmond, Virginia; the City of Harrisburg, Pennsylvania; the City of Cleveland; Cleveland Airport Authority; Maryland Stadium Authority; all of which have had uh -- parking management RFPs out within the last two to three years -- none of which -- all of which were best value based on a point score of performance of the parking management company and the history of the parking management company. When you go to an IPI, and it should be the National Parking Association, forgive me for saying IPI and you look at their model of fees, all of them are basically on the best value concept. Uh, so if you choose to move forward, one of the things we would suggest is that you really do review this very closely. Um, I would share two examples of how best value has worked here in the City to the City's advantage, and this is just recently, within the last 24 months. Um, PMS/LAZ manages both the Baltimore City Arena garage and the Redwood garage. If you look at the numbers here in the memo, within a year after PMS taking over, transient revenue increased by \$288,037.11 and event revenue increased by \$106,769.00; at the Redwood garage, transient revenue increased by \$114,216.00 and event revenue

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increased by \$176,665.00. This basically demonstrates to what we say, in terms of fiduciary responsibility and diligence of the parking management company. I would also add that if you look at the potential savings associated with, with a reduced management fee, um -- depending upon the, um -- the -- the revenue, whether it increases or stays the same, or potentially even decreases, management fee alone should not be the rationale for making this selection. Um -- the low bidders margins, the parking management fee industry standard for municipal garages is about two to three percent of net operating Indus-uh - uh --income. That's pretty much the standard, so we want to make sure you understand the backdrop that we're dealing with. The issue of conflict, which I'm sure the Parking Authority is basically going to say there's no conflict. The reality is you have individuals who have been engaged in parking management firms, um, in recent terms, and their firms have been displaced by a competitor, whether, you know, there's a psychological issue here, and whether you can say the individuals involved have no bias, I think raises a question, and there's an appearance, if nothing else. There's an appearance and I think it sets a bad example from a practical manner, uh, and we've this kind of scene plays out more recently; basically we've had a number of uh -- incidents, that uh -- from, uh -- particularly from PMS/LAZ that

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suggest that there are some concerns that have been raised that really, in our opinion, are not uh -- "fair"; examples of people being asked to be removed from contracts; um -- scathing e-mails about operations; all of which, if I look back 24 months ago, were not occurring. So, it just sets a bad precedent. The last item that uh-- I'm going to address today, and you have my memos from three weeks ago, and the issues that we raised at that point remain the same. But, but the last issue I think speaks more to the overall process and the Parking Authority and the Parking Authority Board and how it does its work, which was the open meeting. Um, it is my understanding, and it was clearly stated here in the hearing July 3rd Board of Estimates meeting, that a vote was taken during the closed session uh -- to make a recommendation to this Board on the determination as to who the parking management firm would be. Um -- I shared with you at that time that that was outside of the exceptions that were provided for open meetings and that that vote should have been taken in an open meeting and not in a closed session. Um -- the Parking Authority in my estimation, had actually an opportunity to rectify that. The Parking Authority met on Monday, um, uh, after scheduling a meeting which appropriate notice was not provided and then having to reschedule the meeting for this past Monday, and I understand mistakes happen, so that's, that's just

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how things work. They did provide appropriate notice, um in my estimation, but then we get to the meeting um, and instead of taking a more affirmative vote on the action that was taken in closed meetings, a decision was made that they did not need to do that. Um -- I would suggest to you, that once again, that was against the Open Meetings Act um -- and it should be followed. I think just for transparency, that could have been easily rectified by a vote at the meeting on Monday to reaffirm whatever they decided to do in the closed meeting; and to that, um, there are a couple of things I would cite: um -- New Carrollton vs. Rodgers, which really speaks to the openness of the deliberative process, particularly as it relates to contracts, um -- and the decision-making process there, and the checklist. Um, and the only, the only item and I will share this checklist with you, these are the 14 um -- these are the 14 exceptions to the Open Meetings Act, and of those 14 exceptions, the only one, because clearly within the, within the Code, um -- the Baltimore City Charter, the Code, it specifically states that the Parking Authority is subject to open meetings. Would I be right, Mr. Director?"

Director of Public Works: "Yes, it specifically states that."

Mr. Phillips: "And so, so, if it is subject to open meetings, they would be subject to uh, providing its actions in a public

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view; um, deliberations can be taken in closed session, particularly deliberations associated with purchasing. But, the action, the final action is a vote, and that vote is the final action of that Board to be presented to this Board, and so I would say that clearly that is part of the deliberative process. And so in New Carrollton we read one thing, "One purpose of the government in the Sunshine Law was to prevent a non-public meeting, in a non-public meeting, the crystallization of secret decisions to a point just short of ceremonial acceptance, whether there could be any difference to a non-public pre-meeting conference, or in essence, closed meeting, except to conduct some part of the decisional process behind closed doors. The statute should be construed so as to frustrate all evasive devices", and I would suggest to you clearly, that action in closed meeting, um, did that. So, those are, those are the points. I would also kind of close with this, we would ask you to reject, uh, this recommendation and to send it back out for bid. Uh -- short of that we would suggest to you, that in the best interest of the City, if you think about practices across the country, if you think about past history and you think about the performance of, not just PMS, but the garage managers under this concept, and the significant increase in revenue, that was done jointly with the Parking Authority and the Parking Managers

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of Baltimore City. But that was done under a principle that says "we're going to pick best value and not simply low bid."

Mr. Little: "Um, I won't address each point in order, but--"

Comptroller: "State your name."

Mr. Little: "Um, sorry. Pete Little, Executive Director with the Parking Authority of Baltimore City. Um, so I won't address each issue in order, but I will address, uh, each item here. The fact, of the allegation here, that the Parking Authority's Board of Directors violated the Maryland Open Meetings Act, the Parking Authority did not violate the Maryland Open Meetings Act and we believe that this has been affirmed by the City's Law Department. The second item, uh, that we didn't follow, um, uh, our previous bid process that, that we had before. Uh -- As some of you know, Council President knows, because he's served on our Board, that we're always looking for better ways to do things, and that includes our procurement processes, especially if we uh -- recognize an opportunity to improve the process. The Parking Authority has developed, and followed here, a fair and impartial process to procure this agreement. We believe it is, that it is more fair and impartial than the previous "best value" form of, uh -- procurement that we had before, and that the modification of the process has made the process clearer, more objective and more advantageous to the City, and in fact, um -- the, the

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protest item of the recommendation is not in the City's best interest. We would say that the recommendation is definitely in the City's best interest. If the agreement is approved, we would realize savings of at least \$66,000.00 and up to \$146,400.00 annually in management fees. Uh, the protest item that the individual handed in the bids to the Parking Authority has a conflict of interest because he worked for a parking management firm prior to coming to the Parking Authority; that particular individual, our off-street parking manager, has no interest in his prior firm and his firm was not the recommended management firm. And to go a little bit further, several of us working in the Parking Authority have worked in the private sector before in parking management. Um -- to me that is a good thing to have that prior experience in parking management in order to hope to manage these very important City assets here. That particular off-street parking manager takes his job very, very seriously and impartially. He is critical of every operation and every operator, that's part of his job here, and if that makes him impartial, then I say let's have more impartiality. So, um -- and in closing, um -- we ask that the Board to accept this recommendation."

President: "Mr. Phillips"

Mr. Phillips: "Mr. President."

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President: "Go ahead."

Mr. Phillips: "In terms of the 14 exceptions, can you state which exception you believe the Board acted under that is appropriate, and please, if you could share?"

President: "Give your name please."

David Rhodes, General Counsel for the Parking Authority: "David Rhodes, General Counsel for the Parking Authority. The 14th exception allows for closing a session to discuss bids and contracts prior to award."

City Solicitor: "And is that the exception that was invoked at the time the session was closed?"

Mr. Rhodes: "Correct."

City Solicitor: "And was that procedure for taking that open voted on by the Board members of the Parking Authority on that closure were those procedures followed?"

Mr. Rhodes: "Yes sir. The form statement for closing a meeting was utilized, noting that exception."

Mr. Phillips: "Mr., um, Rhodes, and Mr. Nilson, a couple of things. Several weeks ago, we requested a FOIA to review the minutes and agenda. Generally, under that principle, there is a 10-day "window" for a response. To date we've not received a response, because we'd like to review."

City Solicitor: "Well, there's actually a 30-day response, but

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my understanding is that, that, um -- that you know, that the records of the Authority have already been reviewed and examined, and the reference to the 14th, um -- exceptional item has been located in those minutes and there is written confirmation that apparently is why, when the Parking Authority Board convenes this week, they decided it was not necessary to go through the process again of more deliberation and effectually close an open meeting."

Mr. Phillips: "Go ahead."

City Solicitor: "because the documentary, there was documentary confirmation of the um -- of the invocation of the 14th item. I would also point out, just for the benefit of the Board, that case law allowed, while the discussion is not complete, that the Courts in the case law afford ample flexibility and deference to decisions made by bodies like the Parking Authority Board, when they invoke provisions like this to close the meeting, especially if they properly invoke the procedures and take the steps to close that the open meetings law does require."

Mr. Phillips: "--And I would suggest that that's a fair statement. However, the provision addresses a discussion, it does not address final action, which unless its --"

City Solicitor: "Final action is here today, is before the Board today --"

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Mr. Phillips: "and -- and the final action of the Parking Authority, which is part of the process, and which is also part of the practice, which comes in as well, um -- to the best of my knowledge up unto this point, votes on procurement matters have been taken in open session, so this is a change. Not, only is it a change, it is a final action that is part of the deliberative process of making a decision. It would be, you know, equivalent to um -- sending something from the -- the, as an example, from the Planning Board to the City Council and the Planning Board making a vote and not doing that in a closed session. Uh -- uh - - I would suggest um - um -- that it's incorrect and we'll have to see how it plays itself out with the uh -- with the uh -- the Appeals Board."

City Solicitor: "Right. There is a, there is a, an Open Meetings Compliance Board which is available if you want to press that point and provide. . .provide us, provide all of us with guidance on that subject for the future. But one view of this matter is that what the Parking Authority did was not final action, it was to formulate and agree upon its recommendation to this Board for final procurement action."

Mr. Phillips: "And, and I understand --I understand their argument. Once again I would suggest that it is a final action of the Board as established by the City of Baltimore."

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City Solicitor: "Let me ask you a question if I could about your first issue, and that is, the Board did not use the "best value" approach. Was that objection registered with the Parking Authority Board by your clients at the time okay the RFP?"

Mr. Phillips: "Actually the question was raised. An objection was not issued, so I'll be candid about that; the question was raised because there was ambiguity in the RFP when it first came out, because it actually said "best value." So, yes, we were concerned about that at the time of the bid."

City Solicitor: "Okay."

President: "Comptroller?"

Comptroller: "Yes, since we knew that this contract was going to be awarded, not on best value, but on lower fees, what I would like you to do is to confirm um-- PMS and LAZ numbers on increased revenue. Because I'm always concerned, about increased revenue and also I would like you to report back to this Board next year. You stated that there were going to be lower expenses, and I would also like to see if there are going to be increased fees, revenues, uh -- revenues, increased revenues that would benefit the City."

Mr. Little: "Uh, we can uh, do that. I don't have what Mr. Phillips provided to you. In terms of numbers, I can tell you that there has been increased revenues at these facilities and

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frankly, at almost all of the City's facilities that we operate on behalf of the City across the board --"

Comptroller: "Okay."

Mr. Little: "-- and that we've done a diligent job in working with all operators and uh -- the, potential awardee um, is, one of those that, uh -- has worked with us. Um -- having worked, we have worked to increase revenues across the board. Um -- there are certain factors out there that have, uh -- contributed to those uh -- increases in revenues, not just ours but, the work of the operators. Our work at the Parking Authority, we're fortunate to expand our contract with the University of Maryland, which was an effort of our staff. We won a large bid for our Veterans Administration parking at the uh, at the City-owned facilities, which will mean an additional \$400,000.00 per year to the City with that award. The Orioles, as we all know, have had a terrific season, that's benefited us in terms of more parking, and specifically at these facilities. Of course, the Ravens and their Super Bowl season and their play-off game as well too, has helped to increase revenues across the board. So, yes, there has been increased revenues across the board."

Comptroller: "So, what I'm requesting is next year could you come back with a comparison of the increased revenues that is, that's mentioned here, and with the new contract?"

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Mr. Little: "Absolutely."

Comptroller: "Okay, thank you."

President: "I'll entertain a Motion."

City Solicitor: "I just would add something for the edification of the Board. There is a Court of Appeals decision, um -- 19 um - fairly recent um-- I'm sorry, 2006, that makes it clear that items that are covered by the 14 exceptions uh -- may be discussed and acted on by the body that is doing so at a closed session. So, that has and I'm sure the factual circumstances were slightly different from this case. Although other than that it does stand for the principle that a vote can be taken as well as a discussion held. I MOVE that the Board deny the protest and move forward and accept the recommendation of the Parking Authority."

President: "Is there a "second?""

Director of Public Works: "Second."

President: "All in favor, say aye. AYE."

President: "All opposed, nay. The Motion carries."

Mr. Phillips: "Mr. Nilson, for the record, could you cite that case?"

City Solicitor: "Sure. J.P. Delphy Limited Partnership vs. Mayor and City of Frederick, 396 Md. 180, 2006."

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ACKNOWLEDGEMENT

President: "Okay, before we -- do you have something to say
Madam Mayor?

Mayor: "Um-um"

President: "I want to recognize Councilman Curran, who has
joined us, in the back. Uh, Madam Mayor."

Mayor: "Thank you very much, Mr. President. Uh, I think this
might be Mr. -- did you really change your name to Ryan Rock for
some good reason? and his last BOE meeting in his official
capacity. uh, the party will be held later. I just want to thank
you for um, your, your years here, working for my
administration. It certainly has been my pleasure and I look
forward to working with you in your new capacity. Thank you."

Mayor: "Yes, that was it."

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TRAVEL REQUESTS

<u>Name</u>	<u>To Attend</u>	<u>Fund Source</u>	<u>Amount</u>
<u>Dept. of Communication Services</u>			
1. Simon Etta	The World's Conf. ITEXPO Las Vegas, NV Aug. 26 - 29, 2013 (Reg. Fee \$99.00)	Internal Service	\$1,076.79

Department of Public Works

2. Rudolph Chow	2013 International Public Works Congress & Exposition Chicago, IL Aug. 24 - 29, 2013 (Reg. Fee \$695.00)*	Water	\$2,380.30
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The *registration fee in the amount of \$695.00 was prepaid using a procurement card assigned to Mr. Lorenzo Garrett. Therefore, the disbursement to Mr. Chow will be in the amount of \$1,685.30.

Baltimore City Health Department

3. Elouise Mayne	Chronic Disease Self Management Master Training New Bern, NC Aug. 18 - 23, 2013 (Reg. Fee \$500.00)	Federal Title III D	\$2,094.95
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The subsistence rate for this location is \$139.00 per day. The hotel cost is \$138.60 per night plus a total hotel tax of \$88.36. The Department is requesting additional subsistence of \$40.00 per day for a total of \$200.00 to cover the cost of food and incidentals.

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TRAVEL REQUESTS

<u>Name</u>	<u>To Attend</u>	<u>Fund Source</u>	<u>Amount</u>
<u>Baltimore City Health Department</u> - cont'd			

The registration fees were paid under Expenditure Authorization #120355. Therefore, the disbursement to Ms. Mayne will be in the amount of \$1,594.95.

Office of the Mayor

4.	Stephanie Rawlings-Blake Andrew Smullian	United States Conference of Mayors Park City, UT July 31 - Aug. 4, 2013	General Fund	\$3,534.72
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The subsistence rate for this location is \$165.00 per day for a total of \$660.00 for each representative. The hotel cost is \$199.00 per night for a total of \$796.00 for each representative plus occupancy taxes are \$21.89 per night for a total of \$87.56. Therefore, the Office of the Mayor is requesting additional subsistence of \$34.00 per day for a total of \$136.00 for each representative to cover the additional hotel costs and \$40.00 per night for a total of \$160.00 for each representative for food and incidentals. The airfare and hotel have been prepaid with a City issued credit card assigned to Ms. Kathe Hammond. The amount to be disbursed to Ms. Rawlings-Blake will be \$160.00. The amount to be disbursed to Mr. Smullian is \$220.00.

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TRAVEL REQUESTS

<u>Name</u>	<u>To Attend</u>	<u>Fund Source</u>	<u>Amount</u>
<u>Department of Recreation and Parks - cont'd</u>			
5. Garfield Thompson	2013 Amateur Athletic Union (AAU) Junior Olympic Games	Track & Field Account	\$ 2,364.00
Vaughn DeV Vaughn	Track & Field		
Raynard Bennett	Detroit, MI		
Silas Berry	July 28, 2013 - Aug. 3, 2013		
6. Jerry Molyneaux	2013 AAU Junior Olympic Games -	Track & Field Account	\$20,285.53**
Lutalo Bakari	Track and Field		
Etosha Bakari	Detroit, MI		
Mary Haynes	July 26 - 28, 2013**		
	July 28, 2013 - Aug. 3, 2013		

In an effort to reduce costs, Mr. Thompson and Mr. DeV Vaughn will share a room. Mr. Bakari and Ms. Bakari will share a room. Mr. Bennett and Mr. Barry will share a room and act as chaperones. Therefore, the subsistence amount will be less. Mr. DeV Vaughn, Ms. Bakeri, and Mr. Barry will only receive \$50.00/day each for food.

** The Department is renting a Motor Coach Bus to transport all attendees to and from the event and a van for Mr. Molyneaux. The Woodlawn Motor Coach, Inc. will provide the motor coach for \$16,580.00. The cost of the van rental is \$465.53. The funds for the bus and van are provided by the Baltimore City Foundation.

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TRAVEL REQUESTS

<u>Name</u>	<u>To Attend</u>	<u>Fund Source</u>	<u>Amount</u>
<u>Fire & Police Employees Retirement System</u>			
7. Victor Gearhart	Program for Advanced Trustee Studies Cambridge, MA August 19 - 22, 2013 (Reg. Fee \$800.00)	Special Funds- F&P	\$1,758.00

TRAVEL APPROVAL AND REIMBURSEMENTBaltimore City Health Department

8. Rebecca Dineen	Maternal Health Child Health	\$ 663.89
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Ms. Dineen traveled to Washington, DC to attend the 2013 Association of Maternal and Child Health Programs Annual Conference from February 09 - February 11, 2013. The Department is requesting retroactive approval and reimbursement of this travel for Ms. Dineen for the costs of transportation in the amount of \$44.80, parking in the amount of \$60.00, food in the amount of \$9.09, and conference registration fees in the amount of \$550.00 for a total of \$663.89.

The registration fees were paid using a City issued credit card assigned to Ms. Jacquelyn Duval-Harvey. Therefore, the disbursement to Ms. Dineen will be in the amount of \$113.89.

This request is late because of a delay in receiving the appropriate receipts and conference information. The Department apologizes for the lateness of this request.

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TRAVEL APPROVAL AND REIMBURSEMENTBaltimore Police Department

9. Pamela K. Shaw	State	\$2,047.83
	Coverdell	
	FY12 Grant	

Ms. Shaw traveled to Durham, NC to attend the American Society of Crime Laboratory Directors 2013 Symposium & Workshop from May 04 - 10, 2013. The Police Department is requesting retroactive approval and reimbursement of this travel for Ms. Shaw for the costs of transportation in the amount of \$389.51, meals in the amount of \$98.58, lodging in the amount of \$619.74, and registration fees in the amount of \$940.00 for a total of \$2,047.83.

The travel request is late because the availability of grant funds were confirmed at the last minute.

The Board, UPON MOTION duly made and seconded, approved the travel requests, travel approval and travel reimbursement. The Mayor **ABSTAINED** on item no. 4. The Comptroller **ABSTAINED** on item nos. 1 and 7.

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PROPOSAL AND SPECIFICATIONS

1. Dept. of Public Works,
Bur of Water & Wastewater - S.C. 932, Improvements to Lower Gwynns Run Interceptor - Phase II from Franklin Street to Baltimore Street
BIDS TO BE RECV'D: 08/28/2013
BIDS TO BE OPENED: 08/28/2013

2. Dept. of Public Works,
Bur of Water & Wastewater - S.C. 933, High Level Interceptor Cleaning
BIDS TO BE RECV'D: 08/28/2013
BIDS TO BE OPENED: 08/28/2013

3. Dept. of General Services - GS 13805, Canton Library No. 4 Renovations
1030 S. Ellwood Avenue
BIDS TO BE RECV'D: 09/11/2013
BIDS TO BE OPENED: 09/11/2013

4. Dept. of Recreation &
Parks - RP 13809, Federal Hill Playground
BIDS TO BE RECV'D: 08/28/2013
BIDS TO BE OPENED: 08/28/2013

There being no objections, the Board, UPON MOTION duly made and seconded, approved the Proposals and Specifications to be advertised for receipt and opening of bids on the dates indicated.

President: "There being no more business before the Board, the meeting will recess until bid opening at 12 noon."

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CLERK: "The Board is now in session for the receiving and opening of bids."

BIDS, PROPOSALS AND CONTRACT AWARDS

Prior to the reading of bids received today and the opening of bids scheduled for today, the Clerk announced that the following agencies had issued an Addendum extending the dates for receipt and opening of bids on the following contract. There were no objections.

Bureau of Water and
Wastewater

- SC 875, Rehabilitation of Southwest Diversion Pressure/Gravity Sewer - Phase III
BIDS TO BE RECV'D: 08/14/2013
BIDS TO BE OPENED: 08/14/2013

Bureau of Water and
Wastewater

- WC 1251R, Repaving Utility Cuts at Various Locations
BIDS TO BE RECV'D: 08/14/2013
BIDS TO BE OPENED: 08/14/2013

Bureau of Water and
Wastewater

- SC 868, Liquid Oxygen Plant Improvements, Patapsco Wastewater Treatment Plant
BIDS TO BE RECV'D: 08/14/2013
BIDS TO BE OPENED: 08/14/2013

Bureau of Purchases

- B50003032, Rollout Containers with RFID
BIDS TO BE RECV'D: 08/14/2013
BIDS TO BE OPENED: 08/14/2013

Dept. of Transportation -

- TR 11313, Kent Street Transit Plaza and Pedestrian Corridor
BIDS TO BE RECV'D: 07/31/2013
BIDS TO BE OPENED: 07/31/2013

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Thereafter, UPON MOTION duly made and seconded, the Board received, opened, and referred the following bids to the respective departments for tabulation and report:

Department of General - GS 12808, Waverly Library
Services Branch No. 9 Renovations

JAK Construction Co., Inc.
 Towson Mechanical, Inc.
 JLN Construction Services, LLC
 E. Pikounis Construction Co., Inc.
 J A Argetakis Contracting Co., Inc.
 *Tuckman-Barbee Construction Co., Inc.

*The bid of Tuckman-Barbee Construction Co., Inc. was considered **NON RESPONSIVE** due to the company's failure to submit an entire original bid book as required by the bid instructions.

Bureau of Purchases - B50002905, Dental Health
 Maintenance Organization (DHMO)
 & Dental Preferred Provider
Organizations (DPPO) Plans

Benefit Services of America
 MetLife Group Dental Insurance
 UnitedHealthcare
 Delta Dental of Pennsylvania
 United Concordia
 CareFirst BlueCross BlueShield

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There being no objections, the Board UPON MOTION duly made and seconded, the Board adjourned until its next regularly scheduled meeting on Wednesday, July 31, 2013.


 JOAN M. PRATT
 Secretary