

MINUTES**REGULAR MEETING**

Honorable Brandon M. Scott, President
Honorable Bernard C. "Jack" Young, Mayor
Honorable Joan M. Pratt, Comptroller and Secretary
Matthew W. Garbark, Acting Director of Public Works
Dana P. Moore, Acting City Solicitor

President: "Good morning everyone. Good morning, good morning, good morning to everyone. Ah -- good morning. The April 1, 2020 meeting of the Board of Estimates-- oh, the April 1, 2020, meeting of the Board Estimates is now called to order. In the interest of promoting and maintaining health and safety as our nation continues to deal with the COVID-19 pandemic, the Board of Estimates will be streamed live virtually. Our top priority is to ensure our City continues to remain reliable, product-- and productive, while keeping you connected during these times as also as we practice social distancing. Ah -- so we will begin. I will direct the Board Members attention to the Memorandum from my office dated March 30, 2020, identifying matters to be considered as routine agenda items together with any corrections and additions that have been made by the Comptroller. I will entertain a motion to approve all of the items contained on the routine agenda."

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Acting City Solicitor: "Mr. President, I move the approval of all items on the routine agenda."

Comptroller: "I Second."

President: "Second. All of those in favor say Aye. All opposed say Nay. The routine agenda items have been adopted. Thank you."

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THE DEPARTMENT OF FINANCE
WILL PRESENT THE
PRELIMINARY BUDGET RECOMMENDATIONS FOR FY 2021
TO THE BOARD OF ESTIMATES

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Preliminary Budget Plan for 2021

President: "The first item on the non-routine agenda can be found on page 1. At this time Bob Cename, the City's Budget Director will present the Preliminary Budget Recommendations for Fiscal Year 2021 to the Board of Estimates. Mr. Cename."

Mr. Robert Cename, Budget Director: "Good morning. This is Bob Cename ah -- from BMMR. I'm also joined by ah -- by Henry Raymond the Finance Director. And ah -- we just wanted to take this opportunity ah --- to provide an update on a series of financial issues that the City is facing. Ah -- we're going to just talk a little bit about Fiscal 2020, and then we'll also introduce the Preliminary Budget for Fiscal 2021. So, as everybody here knows, ah -- the Sister Cities fiscal outlook has changed dramatically due to the ah -- Coronavirus Emergency. Ah -- it's an unprecedented event and there's a high level of uncertainty but we'd like to give an update to the Board on what we know ah -- as of today. So first, on Fiscal 2020, that's the fiscal year that we're in ending on June 30th. We know that many of our revenue streams are tied directly to economic activity ah -- and so as businesses have closed, as tourism and travel has been discouraged and as daily

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activities have slowed really to crawl, we're seeing ah -- projected sharp declines in some of our revenues. Just a couple of examples, ah -- any revenues that are transportation related that depend on people traveling or driving especially, um -- things like garage income, parking taxes, ah -- parking meter revenue, parking fines, ah -- traffic cameras. Those items will all decline for the fourth quarter of Fiscal 2020. Ah -- second anything that is visitor or tourism related, we're seeing sharp declines, so think of things like hotel tax um -- our Convention Center receipts and admissions and amusement tax which is a tax on events. We expect all those things to see sharp declines in the fourth quarter. Ah -- the third bid category is Income Tax. Income Tax of course is based on people working and earning wages. And ah -- with many people in the country filing for unemployment, we feel like that will be ah -- also affected. Um -- overall we have written down our fiscal 2020 projection by \$68.7 million dollars. So, ah -- we're expecting revenues to be down by \$68.7 million dollars versus what we had projected at the end of the second quarter. That would put the City in a ah -- deficit position for the General Fund, and ah -- the Mayor took very quick action to

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put in place a -- a strict non-essential hiring and spending freeze to make sure that we stay as close to in-budget as we can ah -- through the end of Fiscal 2020. Ah -- for Fiscal 2021, for the Preliminary Budget that we're presenting today, ah -- the background on this is that as we saw the -- the pandemic grow in severity in mid-March, we had already been putting the finishing touches on the Preliminary Budget, which we're releasing today. And due to the speed at which the crisis escalated, we did not have enough time to make dramatic changes to the Preliminary Budget, especially on the economic assumption, the revenue assumptions for next fiscal year. Ah -- we decided to release the Preliminary Budget any way as is, so what you'll see today that will be posted online this morning, you'll see a Preliminary Budget that has no changes to reflect ah -- the differences and economic assumptions that we're going to have to make for 2021. So, ah -- Board members should think of it as a pre-Coronavirus Preliminary Budget and what it would have looked like without the emergency we're facing. Ah -- we decided to take this approach because we need to release the budget to the Board today, its' part of our ah -- one of our ah -- timelines that we must meet to make sure that

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the budget can get passed by the ah -- by near the end of this fiscal year. We do expect to make significant changes to the budget when we come back to the Board on May 6, ah -- that's the date that the final Ordinance of Estimates will be submitted to the -- to the Board. Ah -- we are working on a revised revenue estimate for Fiscal 2021 and we will need to make changes to our budget plans to reflect that. Preliminarily what we ah -- are expecting is that ah -- as these social distancing restrictions are in place as they extend potentially into the next fiscal year and as the economy we expect to struggle to recover from the slowdown, our early estimates are that our -- our Fiscal 2021 revenues could be down as much \$100,000,000.00 versus what we were expecting for the preliminary plan. So, it will require some difficult choices, it's premature right at this point to speculate on what will be in there. We're discussing it with the Mayor and the senior team about what our options are, and we have a lot of work ahead of us, but we will plan to produce a revised budget in time for May 6, ah -- when the Ordinance is due to the -- to the Board of Estimates. Ah -- so with that, I'd be happy to pause and Henry and I can take any questions that Board members have."

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President: "Ah yes I actually have one for you Mr. Cename. Do you expect, do you have a timeline for when you will come back to us with ah -- ah change predictions or changes to the budget that you are going to be presenting?"

Mr. Cename: "Sure so, um -- so for the -- for the fiscal 2021 budget, um -- the first time that you'll hear back from us is -- is May 6, when we come with that final budget. Ah -- the work that has to be done over the next month is that we have to make decisions about what will change in the budget, and then ah -- BBMR and my team and our staff will have to put the publications together to get it ready for submittal on May 6th. So that's a really tight time frame, so really that early May will be the first time that you will hear more on the Fiscal 2021 budget just because of the circumstances. On Fiscal 2020, the year when we do a quarterly projection, ah -- and so we did a revised second quarter projection to reflect what's going on currently. We'll also plan to as normal do our third quarter projection which will be based on data ah -- through the end of March. So our staff will start working on that over the next couple of weeks and then as usual we

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will present that data to the City Council ah - I would expect usually those hearings are about a month and half after the end of the quarter. So, I would expect mid-May or so we would be ready to present ah -- the Fiscal 2020 picture and that will give us an idea of what we're seeing in reality on revenues and how our spending has changed because of the emergency. Ah -- so both will be ready in May."

President: "Thank you. Ah -- Madam Comptroller, Mr. Mayor you have questions?"

Comptroller: "No, I do not. I was briefed."

President: "Thank you. Thank you Mr. Cename."

Mayor: "Ah -- Mr. President."

President: "Yes sir."

Mayor: "I have a question for Bob. Hey Bob, is any of this taking into consideration any Federal help we might be receiving?"

Mr. Cename: "So, ah -- at this point ah -- no. The -- the revised revenue projection for 2021 is just based on what the City should expect. We do know that um -- that part of the Stimulus Bill that was passed there is some aid that will come ah -- to the

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City. Ah -- it's unclear at this point what we can use the aid for. We know we can backfill -- we know we can pay for some emergency expenses. We're not yet sure if we can use it just as General Fund Revenues to help the City through ah -- Fiscal 2021. So, you know we're working with you know Mr. Mayor, your team, your Government Relations team to try to get more detail about that. But we know we will likely get reimbursed for some expenses. But beyond that we're not sure ah -- what we can use that aid for."

Mayor: "Okay. Thank you."

Mr. Cename: "Sure."

President: "Thank you. Thank you Mr. Cename. Thank you for that."

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MINUTES

Department of Recreation and Parks - Task Assignment

ACTION REQUESTED OF B/E:

The Board is requested to approve the assignment of Task No. 36 to Rummel, Klepper & Kahl, LLP under Project No. 1232, On-Call Engineering Design. The period of the Task Assignment is approximately six months.

AMOUNT OF MONEY AND SOURCE:

\$ 6,760.78	-	9938-908049-9474-900000-703032
45,687.32	-	9938-911044-9474-900000-703032
\$52,448.10		

BACKGROUND/EXPLANATION:

This task will include Construction Management Services for the Cahill Fitness and Wellness Center.

MBE/WBE PARTICIPATION:

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

MBE: 25%

WBE: 10%

The Consultant has achieved 24.34% MBE at this time. However, they have enough capacity to meet the remaining goal.

The Consultant has achieved 12.47% WBE goal at this time.

THE EAR WAS APPROVED BY MWBOO ON FEBRUARY 19, 2020.

APPROVED FOR FUNDS BY FINANCE

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

MINUTES

Department of Recreation and Parks - cont'd

TRANSFER OF FUNDS

<u>AMOUNT</u>	<u>FROM ACCOUNT</u>	<u>TO ACCOUNT</u>
\$29,000.00	9938-911061-9474	9938-908049-9474
1 st Parks &	FY16 Baltimore	Cahill Community
Public	Playground	Center
Facilities	(Active)	(Active)

This transfer will provide funds to cover the costs associated with design services under On-Call Contract No. 1233, Task No. 36, to Rummel, Klepper & Kahl, LLP.

UPON MOTION duly made and seconded, the Board approved the assignment of Task No. 36 to Rummel, Klepper & Kahl, LLP under Project No. 1232, On-Call Engineering Design. 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.

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Department of Recreation and Parks - Task Assignment

ACTION REQUESTED OF B/E:

The Board is requested to approve the assignment of Task No. 35 to Rummel, Klepper & Kahl, LLP under Project No. 1232, On-Call Engineering Design. The Task Assignment is approximately 12 months.

AMOUNT OF MONEY AND SOURCE:

\$67,209.33 - 9938-911093-9474-900000-703032

BACKGROUND/EXPLANATION:

This task will include engineering design services for Clifton Park/Rita Church Athletic Field.

MBE/WBE PARTICIPATION:

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

MBE: 25%

WBE: 10%

The Consultant has achieved 25.04% MBE goal at this time.

The Consultant has achieved 9.89% WBE goal at this time. However, they have enough capacity to meet the remaining goal.

THE EAR WAS APPROVED BY MWBOO ON FEBRUARY 19, 2020.

APPROVED FOR FUNDS BY FINANCE

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

MINUTES

Department of Recreation and Parks - cont'd

TRANSFER OF FUNDS

<u>AMOUNT</u>	<u>FROM ACCOUNT</u>	<u>TO ACCOUNT</u>
\$70,000.00	9938-910093-9475	9938-911093-9474
State (Program	FY18 Clifton Park	FY18 Clifton Park
Open Space)	Improvements	Improvements
	(Reserve)	(Active)

This transfer will fund the costs associated with Task No. 35 under Project No. 1232, On-Call Engineering Design with Rummel, Klepper & Kahl, LLP.

UPON MOTION duly made and seconded, the Board approved the assignment of Task No. 35 to Rummel, Klepper & Kahl, LLP under Project No. 1232, On-Call Engineering Design. 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.

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Department of Transportation - Amendment No. 3 to Agreement

ACTION REQUESTED OF B/E:

The Board is requested to approve and authorize execution of Amendment No. 3 to Agreement (Amendment No. 3) with Gannett Fleming, Inc. Amendment No. 3 will extend the period of the Agreement through March 29, 2023.

AMOUNT OF MONEY AND SOURCE:

\$1,000,000.00 - increase in upset fee limit

BACKGROUND/EXPLANATION:

On March 30, 2011, the Board approved the original agreement in the amount of \$3,000,000.00 for the period of five years.

On March 2, 2016, the Board approved the first amendment, which extended the period of the agreement through March 29, 2017.

On April 12, 2017, the Board approved the second amendment, which extended the period of the agreement through March 29, 2020.

Amendment No. 3 will extend the period through March 29, 2023 and increase the upset limit by \$1,000,000.00. This will make the new upset limit \$4,000,000.00.

DBE PARTICIPATION:

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

DBE: 25%

The Consultant has achieved 17.03% DBE at this time. However, they have the capacity to meet the remainder of the goal.

MINUTES

Department of Transportation - cont'd

AUDITS NOTED THE TIME EXTENSION AND INCREASE IN THE UPSET LIMIT AND WILL REVIEW TASK ASSIGNMENTS.

UPON MOTION duly made and seconded, the Board approved and authorized execution of Amendment No. 3 to Agreement with Gannett Fleming, Inc.

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TRANSFERS OF FUNDS

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UPON MOTION duly made and seconded,

the Board approved

the Transfers of Fund

listed on the following page:

1394

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.

MINUTES

TRANSFERS OF FUNDS

<u>AMOUNT</u>	<u>FROM ACCOUNT/S</u>	<u>TO ACCOUNT/S</u>
<u>Department of Recreation & and Parks</u>		
1. \$25,000.00	9938-911092-9475	9938-912092-9474
State (Program	FY 18 Comm. Parks	FY 18 Comm. Parks
Open Space)	& Playgrounds	& Playground
	(Reserve)	(Active)

This transfer will provide funds to cover the cost associated with survey and design services for Violetville Park.

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Department of Public Works/Office - Amendment No. 1 for Project
of Engineering and Construction No. 1273 Program Management
 Services for Baltimore
 City's Water Main Replace-
ment/Rehabilitation Program

ACTION REQUESTED OF B/E:

The Board is requested to approve Amendment No. 1 with Mott MacDonald LLC (Amendment No. 1) for Project No. 1273 Program Management Services for Baltimore City's Water Main Replacement/Rehabilitation Program. The Amendment No. 1 will extend the term of the agreement through November 15, 2020.

AMOUNT OF MONEY AND SOURCE:

\$171,428.57	-	9960-905721-9557-900020-703032
283,183.10	-	9960-911610-9557-900020-703032
75,461.29	-	9960-913099-9557-900020-703032
45,714.29	-	9960-903972-9557-900020-703032
<u>\$575,787.25</u>		

BACKGROUND/EXPLANATION:

The Office of Engineering and Construction is requesting this Amendment No. 1 to be approved so the Consultant can continue to provide program management support, design review of various water main replacement and rehabilitation projects, design phase engineering and management support, permitting assistance, and construction phase support.

The scope of the original agreement includes program management services to provide program management/staff augmentation support to consist of but not limited to, design and staff augmentation for the Water Utility Project Delivery Section including design review of various water main replacement and rehabilitation projects and other contracts, design phase engineering and management support services, support of A/E Consultant Management, permitting assistance, construction phase support, and support for community outreach.

MINUTES

Department of Public Works/Office - cont'd
of Engineering and Construction

MBE/WBE PARTICIPATION:

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

MBE: 27%

WBE: 12%

THE EAR WAS APPROVED BY MWBOO ON DECEMBER 27, 2019.

TRANSFER OF FUNDS

<u>AMOUNT</u>	<u>FROM ACCOUNT/S</u>	<u>TO ACCOUNT/S</u>
\$366,641.05 Water Utility	9960-909100-9558 Water Infrastructure Rehabilitation	
\$235,142.86	-----	9960-905721-9557-3 (Design)
\$131,498.19	-----	9960-913099-9557-3
<u>\$366,641.05</u>		(Design)

This transfer will cover cost for Project No. 1273 - Amendment No. 1 Program Management Services for Baltimore City's Water Main Replacement/Rehabilitation Program.

UPON MOTION duly made and seconded, the Board approved Amendment No. 1 with Mott MacDonald LLC for Project No. 1273 Program Management Services for Baltimore City's Water Main

MINUTES

Department of Public Works/Office - cont'd
of Engineering and Construction

Replacement/Rehabilitation Program. 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.

MINUTES

Department of Public Works/Office - Partial Release of Retainage of Engineering and Construction

ACTION REQUESTED OF B/E:

The Board is requested to approve and authorize execution of an Agreement for the Partial Release of Retainage with Spiniello Companies for WC 1339, Upton Neighborhood and Vicinity Water Main Rehabilitation.

AMOUNT OF MONEY AND SOURCE:

\$256,550.00 - 9960-925100-9557-000000-200001

BACKGROUND/EXPLANATION:

As of January 6, 2020, Spiniello Companies has completed 56% of all the work for WC 1339, Upton Neighborhood and Vicinity Water Main Rehabilitation. The Contractor has requested a Partial Release of Retainage in the amount of \$256,550.00. The City currently holds \$366,500.00 in retainage for the referenced project. The remaining \$109,950.00 is sufficient to protect the interests of the City.

MWBOO APPROVED THE RELEASE ON MARCH 20, 2020

APPROVED FOR FUNDS BY FINANCE

AUDITS REVIEWED AND HAD NO OBJECTION.

UPON MOTION duly made and seconded, the Board approved and authorized execution of an Agreement for the Partial Release of Retainage with Spiniello Companies for WC 1339, Upton Neighborhood and Vicinity Water Main Rehabilitation.

MINUTES

Department of Public Works/Office - Amendment No. 1 to Agreement
of Engineering and Construction For Water Contract No. 1326
SCADA/DCS Water Facilities
Design

ACTION REQUESTED OF B/E:

The Board is requested to approve and authorize execution of the Amendment No. 1 to Agreement (Amendment No. 1) with Whitman, Requardt & Associates, LLP under WC 1326, SCADA/DCS Water Facilities Design. Amendment No. 1 extends the period of the agreement to October 30, 2021.

AMOUNT OF MONEY AND SOURCE:

\$0.00

BACKGROUND/EXPLANATION:

The Office of Engineering and Construction is requesting a time extension for the engineering design services that are provided by Whitman, Requardt & Associates, LLP for the Supervisory Control & Data Acquisition/Distributed Control System (SCADA/DCS) Water Facilities Design. The coordination with all the project stakeholders took more time than anticipated during the initial phase of design leading to the development of the Conceptual Design Report. As a result, it is necessary to utilize the option in the original agreement to extend the duration by 12 months to maintain the Consultant's services throughout the design phase and during the advertisement, bidding and award process.

The overall objective for this project is to implement the recommendations of the January 2017 SCADA/DCS Master Plan associated with Water Facilities. The Consultant will develop a conceptual design report that documents the design elements for the project and how those elements will be arranged at the existing sites. The design report will include summaries of technical

MINUTES

Department of Public Works/Office - cont'd
of Engineering and Construction

memoranda, provide estimates of probable construction costs, document permits and other outside regulatory input needed, provide sequencing/phasing, and provide concept level drawings of the planned improvements. The Consultant will produce a set of construction documents for two different construction contracts; one set for all field instrumentation and devices that are needed to provide the required data to the SCADA system. The other set will provide the field SCADA system and the Human Machine Interface (HMI) Data Centers including the Operations and Management Center. The Consultant will schedule and conduct progress meetings during the design phase of the project, meet with regulatory agencies to discuss progress and interim findings, and will prepare monthly progress reports. The Consultant will also provide assistance during the bidding period.

MBE/WBE PARTICIPATION:

The Consultant will comply with Article 5, Subtitle 28 of the Baltimore City Code and the MBE 27.2% and WBE 10.2% goals assigned to the original agreement.

THE EAR WAS APPROVED BY MWBOO MARCH 6, 2020.

APPROVED FOR FUNDS BY FINANCE

AUDITS NOTED THE TIME EXTENSION.

UPON MOTION duly made and seconded, the Board approved and authorized execution of Amendment No. 1 to Agreement with Whitman, Requardt & Associates, LLP under WC 1326, SCADA/DCS Water Facilities Design.

MINUTES

EXTRA WORK ORDER AND TRANSFER OF FUNDS

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UPON MOTION duly made and seconded,

the Board approved the

Extra Work Order

listed on the following pages:

1402 - 1403

The EWO has been reviewed and approved

by the

Department of Audits, CORC,

and MWBOO, unless otherwise indicated.

The Transfer of Funds was approved

SUBJECT to receipt of a favorable report

from the Planning Commission,

the Director of Finance having reported favorably

thereon, as required by the provisions

of the City Charter.

MINUTES

EXTRA WORK ORDER

Contract	Prev. Apprvd.		Time	%
<u>Awd. Amt.</u>	<u>Extra Work</u>	<u>Contractor</u>	<u>Ext.</u>	<u>Compl.</u>

Department of Public Works/Office
of Engineering and Construction

1. EWO #002, \$357,188.13 SWC 16310R, Northwest Transfer Station Building Renovation and Site Improvements

\$3,488,000.00	\$49,161.38	W.M. Schlosser Company, Inc.	5 Months	75%
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The Office is requesting a change order to complete mechanical, electrical, plumbing and additional fire alarm work and compensable time extension of the renovation to the Northwest Transfer Station Building. During shop drawing review, inconsistencies and incompatibilities were discovered in Mechanical, Electrical, and Plumbing (MEP) drawings and specifications, which resulted in additional work to rectify the originally issued contract document. Additional work is also required to address the comments from the Fire Marshall. The services that the Northwest Transfer Station provides are critical to the Bureau of Solid Waste operations. The Certificate of Completion form will not be completed until a scheduled time after final payment and final completion has been given by the agency.

MBE/WBE PARTICIPATION:

The Consultant will comply with Article 5, Subtitle 28 of the Baltimore City Code and the MBE and WBE goals assigned to the original agreement:

MBE: 19%

WBE: 6%

THE EAR WAS APPROVED BY MWBOO ON NOVEMBER 12, 2019.

MINUTES

EXTRA WORK ORDER

Department of Public Works/Office - cont'd
of Engineering and Construction

TRANSFERS OF FUNDS

	<u>AMOUNT</u>	<u>FROM ACCOUNT/S</u>	<u>TO ACCOUNT/S</u>
2.	\$ 52,004.00	9948-909550-9516	
	General Fund	Unallocated	
	Revenue	Reserve	
	16,442.00	9948-909550-9516	
	Motor Vehicle	Unallocated	
	Revenue	Reserve	
	91,370.00	9948-959002-9516	
	2 nd Parks &	Bowleys Lane	
	Public	Collection	
	<u>Facilities</u>	Yard	
	\$159,816.00	-----	9948-913035-9517-6
			Construction

This transfer will cover additional costs of SWC 16310R, Northwest Transfer Building Renovation and Site Improvements.

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Department of Housing and - Community Block Grant Agreements
Community Development

The Board is requested to approve and authorize execution of the Community Block Grant Agreements. The period of the agreements is July 1, 2019 through June 30, 2020.

1. **STRONG CITY BALTIMORE, INC.** **\$ 50,000.00**

Account: 2089-208920-5930-427630-603051

Strong City Baltimore, Inc., will utilize the funds to subsidize The Club at Collington Square, an after-school and summer camp program that will serve 90 Kindergarten through 8th grade children in the Collington Square neighborhood of East Baltimore.

MWBOO GRANTED A WAIVER ON DECEMBER 9, 2019.

2. **THE FAMILY LEAGUE OF BALTIMORE CITY, INC.** **\$377,000.00**

Account: 2089-208920-5930-786930-603051

The Family League of Baltimore City, Inc. will provide funding to local community-based organizations, to implement Out-Of-School Time (OST) programs. The OST programs will provide City youth with a safe place after school, academic skills development, healthy meals and extra-curricular activities.

MWBOO GRANTED A WAIVER ON NOVEMBER 20, 2019.

On July 17, 2019, the Board approved the Resolution authorizing the Commissioner of the Department of Housing and Community Development (DHCD), on behalf of the Mayor and City Council, to file a Federal FY 2019 Annual Action Plan for the following formula programs:

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DHCD - cont'd

1. Community Development Block Grant (CDBG)
2. HOME Investment Partnership Act (HOME)
3. Emergency Solutions Grant (ESG)
4. Housing Opportunity for People with AIDS (HOPWA)

The DHCD began negotiating and processing the CDBG agreements effective July 1, 2019 and beyond, as outlined in the Plan, pending approval of the Resolution. Consequently, the agreements were delayed due to final negotiations and processing.

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 foregoing Community Block Grant Agreements. The Acting City Solicitor **ABSTAINED** on item no. 1.

MINUTES

Health Department - Second Amendment to Agreement

ACTION REQUESTED OF B/E:

The Board is requested to approve and authorize execution of the Second Amendment to Agreement (Second Amendment) with University of Maryland, Baltimore.

AMOUNT OF MONEY AND SOURCE:

(\$5,500.00) - 4000-484519-3160-308600-603051

BACKGROUND/EXPLANATION:

On August 16, 2017 the Board approved the original agreement in the amount of \$70,420.00 for the period of October 1, 2015 through September 30, 2018.

On March 14, 2018 the Board approved the First Amendment in the amount of \$202,815.00 for additional services, which made the total amount \$273,235.00. The First Amendment extended the period of the Agreement through September 30, 2020.

The Second Amendment reduces the award by \$5,500.00, making the total amount \$267,735.00.

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 Second Amendment to Agreement with University of Maryland, Baltimore.

MINUTES

Health Department - Agreement

ACTION REQUESTED OF B/E:

The Board is requested to approve and authorize execution of the Agreement with N.M. Carroll Manor, Inc., Provider. The period of the Agreement is October 1, 2019 through September 30, 2020.

AMOUNT OF MONEY AND SOURCE:

\$49,275.00 - 4000-432920-3255-761200-604014

BACKGROUND/EXPLANATION:

The Provider will serve 30 seniors per meal/day at \$4.50 per meal at the N.M. Carroll Manor. All meals will be reviewed by a licensed dietitian or nutritionist and/or the Maryland Department of Aging allowing periodic menu conferences between a representative of the Provider and the Department as requested by either party.

The Agreement is late because of administrative delays.

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 Agreement with N.M. Carroll Manor, Inc.

MINUTES

Health Department - Agreements

The Board is requested to approve and authorize execution of the various agreements. The period of the agreement is July 1, 2019 through June 30, 2020.

1. **AIDS INTERFAITH RESIDENTIAL SERVICES, INC.** **\$376,450.00**

Account: 5000-569720-3023-273410-603051

AIDS Interfaith Residential Services, Inc. will provide assisted living services for 10 clients living with HIV/AIDS who require 24-hour care.

MWBOO GRANTED A WAIVER ON FEBRUARY 28, 2020.

2. **SISTERS TOGETHER AND REACHING (STAR), INC.** **\$545,000.00**

Account: 5000-569720-3023-273365-603051

STAR will provide Early Intervention Services to help the unaware learn of their HIV Status and receive referral to HIV care and treatment services if found to be HIV infected. The organization will provide street outreach, education, pop-up blood pressure clinics, and events which will lead to increased testing, awareness of status, education, referrals to housing, substance abuse clinics, ID providers and support groups.

MWBOO GRANTED A WAIVER ON FEBRUARY 6, 2020

3. **JOHNS HOPKINS UNIVERSITY** **\$108,750.00**

Account: 5000-569720-3023-273406-603051

Johns Hopkins University (Moore Clinic) will provide services, which include, screening, assessment, diagnosis and/or treatment of drug or alcohol use disorders.

MWBOO GRANTED A WAIVER ON FEBRUARY 28, 2020

MINUTES

Health Department - cont'd

4. **JOHNS HOPKINS UNIVERSITY** **\$217,350.00**

Account: 5000-569720-3023-273404-603051

Johns Hopkins University (Moore Clinic) will provide a range of client-centered Medical Case Management activities focused on improving health outcomes in support of the HIV care continuum.

MWBOO GRANTED A WAIVER ON FEBRUARY 28, 2020

5. **JOHNS HOPKINS UNIVERSITY** **\$ 50,000.00**

Account: 5000-569720-3023-273330-603051

Johns Hopkins University, Bloomberg School of Public Health will provide HIV testing, health education/risk reduction services, and healthy, fresh foods to women who access the SPARC Women's Center. Specifically services will be targeted to sex workers, female drug users and minority women living or working in Baltimore City.

MWBOO GRANTED A WAIVER ON JANUARY 28, 2020

6. **JOHNS HOPKINS UNIVERSITY** **\$184,000.00**

Account: 4000-480620-3080-291900-603051

Johns Hopkins University, Center for Adolescent Health (JHU CAH) is a Center for Disease Control Prevention Research

MINUTES

Health Department - cont'd

Centers Program. The JHU CAH has worked in partnership with community agencies in Baltimore to understand and reduce adolescent risk behaviors such as tobacco and alcohol use, violence and early sexual activity. The purpose of JHU CAH's work on the U Choose project is to design and conduct an evaluation guided by the principles of implementation science.

The JHU CAH will identify key successes, challenges and lessons learned and complete an implementation study report.

MWBOO GRANTED A WAIVER ON OCTOBER 10, 2019

The agreements are late because the State of Maryland, Department of Health and Mental Hygiene's Prevention and Health Promotion Administration programmatically manages Ryan White Part B HIV/AIDS State Special Services. The Providers are asked to submit a budget, budget narrative, and scope of services. The Department thoroughly reviews the entire package before preparing a contract and submitting it to the Board. These budgets are many times revised because of inadequate information from the providers. The review is required to comply with the grant requirements.

7. **BEHAVIORAL HEALTH SYSTEM** **\$400,000.00**
BALTIMORE, INC.

Account: 5000-531120-3070-518500-603051

On December 18, 2019, the Board approved the Intergovernmental Agreement (IGA) with the State of Maryland, Department of Public Safety and Correctional Services/ Division of Parole and Probation (DPSCS/DPP) in the amount of \$400,000.00.

The IGA established the terms and conditions of the grant award from DPSCS/DPP for the purpose of funding the Behavioral Health System Baltimore (BHSB), Inc. to contract with

MINUTES

Health Department - cont'd

providers for substance abuse treatment services. BHSB will administer substance abuse treatment services to certain offenders in the criminal justice system.

The agreement is late because of administrative delays.

MWBOO GRANTED A WAIVER ON JANUARY 24, 2020.

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 above-listed agreements. The Mayor **ABSTAINED** on item nos. 3, 4, 5 and 6. The President **ABSTAINED** on item nos. 3, 4, 5 and 6.

MINUTES

Baltimore City Fire Department - Agreement

ACTION REQUESTED OF B/E:

The Board is requested to approve and authorize execution of an Agreement with SporeData, Inc. The period of the agreement is May 1, 2019 to April 30, 2021.

AMOUNT OF MONEY AND SOURCE:

\$156,200.00 - 5000-512719-3191-308700-405001
Maryland Community Health Resource Commission Grant Award (CHRC)

BACKGROUND/EXPLANATION:

Under this agreement, SporeData, Inc. will develop a machine-learning model. The machine-learning model related to the Mobile Integrative Health/ CHRC program, a component of above-referenced grant award is to provide the Baltimore City Fire Department with the ability to expand the transitional health support program by maximizing EMS resources, reducing hospital readmission and improving quality of health in West Baltimore. This request meets the condition that it is not practicable to competitively bid because it is a Sole Source.

STATEMENT OF PURPOSE AND RATIONALE FOR NON-COMPETITIVE PROCUREMENT

SporeData, Inc., creates artificial intelligence to make patient specific predictions based on 9-1-1 call data, guide a Chat-Bot two way communication technology, and conducts a detailed evaluation on well-defined outcomes for the program between BCFD and University of Maryland Medical Center.

It is the only Contractor that can perform the services required by BCFD and conform to the requirements of the CHRC Grant Agreement which was approved by the Board of Estimates on July 10, 2019

MWBOO GRANTED A WAIVER ON MARCH 2, 2020

MINUTES

Baltimore City Fire Department - cont'd

APPROVED FOR FUNDS BY FINANCE

AUDITS REVIEWED AND HAD NO OBJECTION.

UPON MOTION duly made and seconded, the Board approved and authorized execution of an Agreement with SporeData, Inc.

MINUTES

Department of Finance/Office - FY 20 Renewal for Flood Coverage
of Risk Management (ORM)

ACTION REQUESTED OF B/E:

The Board is requested to approve the renewal of Flood Coverage for the Baltimore City Police Headquarters and Annex buildings, located at 601 E. Fayette Street. This policy is written through Wright National Flood Insurance Company and renews 4/22/2020.

AMOUNT OF MONEY AND SOURCE

\$103,850.00 - 2043-000000-1450-162900-603014

BACKGROUND/EXPLANATION:

On September 13, 2003, heavy rain from Hurricane Isabel caused flooding and inundated the Baltimore City Police Headquarters and Annex Building with 3' of flood water. A claim was made with FEMA. Public Assistance reimbursement was obtained. Both buildings are located in the 100-year floodplain. Distribution of FEMA Public Assistance is contingent upon securing and maintaining flood coverage.

MBE/WBE PARTICIPATION:

There are no MBE/WBE goals for the purchase of this insurance policy.

APPROVED FOR FUNDS BY FINANCE

UPON MOTION duly made and seconded, the Board approved the renewal of Flood Coverage for the Baltimore City Police Headquarters and Annex buildings, located at 601 E. Fayette Street.

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 Procurement

- | | | |
|-----------------------------|---------|---------|
| 1. FIRE LINE EQUIPMENT, LLC | \$ 0.00 | Renewal |
|-----------------------------|---------|---------|
- Contract No. B50004390 - OEM Parts and Service for LT1 Ladder Trucks - Department of General Services - P.O. No.: P534739

On March 2, 2016, the Board approved the initial award in the amount of \$150,000.00. The award contained two renewal options. On May 1, 2019, the Board approved the first renewal in the amount of \$0.00. This final renewal in the amount of \$0.00 is for the period May 1, 2020 through April 30, 2021. The above amount is the City's estimated requirement.

MBE/WBE PARTICIPATION:

On September 30, 2015, it was determined that no goals would be set because of no opportunity to segment the contract.

MWBOO GRANTED A WAIVER ON SEPTEMBER 30, 2015.

- | | | |
|--------------------------------------|--------------|---------|
| 2. TELEMANAGEMENT TECHNOLOGIES, INC. | \$ 24,000.00 | Renewal |
|--------------------------------------|--------------|---------|
- Contract No. B50004932 - Telecom Expense Management System - Municipal Telephone Exchange - P.O. No.: P539781

On June 7, 2017, the Board approved the initial award in the amount of \$111,600.00. The award contained two 1-year renewal options. This first renewal in the amount of \$24,000.00 is for the period June 19, 2020 through June 18, 2021, with one 1-year renewal option remaining. The above amount is the City's estimated requirement.

MBE/WBE PARTICIPATION:

On March 17, 2017, it was determined that no goals would be set because of no opportunity to segment the contract.

MWBOO GRANTED A WAIVER ON MARCH 17, 2017.

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 Procurement - cont'd

3. CORE & MAIN LP L/B WATER SERVICE INC. FERGUSON ENTERPRISES, INC. d/b/a FERGUSON WATERWORKS	\$ 0.00	Renewal
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Contract No. B50004958 - Fire Hydrants and Replacement Parts
- Department of Public Works, Bureau of Water and Wastewater
- P.O. Nos.: P539633, P439634 and P539635

On May 17, 2017, the Board approved the initial award in the amount of \$3,000,000.00. The award contained two 1-year renewal options. Three increases have been approved making the total contract value \$5,900,000.00. This first renewal in the amount of \$0.00 is for the period May 16, 2020 through May 17, 2021, with one 1-year renewal option remaining. The above amount is the City's estimated requirement.

MBE/WBE PARTICIPATION:

On March 13, 2017, it was determined that no goals would be set because of no opportunity to segment the contract. This contract is for the purchase of commodities. No services are being provided under this contract.

MWBOO GRANTED A WAIVER ON MARCH 13, 2017.

4. CITIZENS PHARMACY SERVICES, INC. BOUND TREE MEDICAL, LLC	\$ 0.00	Renewal
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Contract No. B50004394 - Pharmaceuticals for the Baltimore City Fire Department - Baltimore City Fire Department - P.O. Nos.: P535140 and P535141

MINUTES

INFORMAL AWARDS, RENEWALS, INCREASES TO CONTRACTS AND EXTENSIONS

VENDOR	AMOUNT OF AWARD	AWARD BASIS
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Bureau of Procurement - cont'd

On March 30, 2016, the Board approved the initial award in the amount of \$4,821,118.00. The award contained three renewal options. Two renewal options have been exercised. This final renewal in the amount of \$0.00 is for the period May 1, 2020 through April 30, 2021. The above amount is the City's estimated requirement.

MBE/WBE PARTICIPATION:

On October 28, 2015, MWBOO determined that no goals would be set because of no opportunity to segment the contract.

MWBOO GRANTED A WAIVER ON OCTOBER 28, 2015.

- 5. DSI, INC.
 AMERICAN CONTRACTING
 & ENVIRONMENTAL SERVICES,
 INCORPORATED
 EESCO PUMP AND VALVE,
 INC.

\$300,000.00	Increase
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Contract No. B50004075 - Pump Repair and Maintenance Services
 - Department of Public Works, Bureau of Water and Wastewater
 - P.O. Nos.: P532054, P532055 and P532056

On July 22, 2015, the Board approved the initial award in the amount of \$600,000.00. The award contained two renewal options. Two renewal options have been exercised. This increase in the amount of \$300,000.00 is necessary to meet unforeseen repairs needed at the Department of Public Works to continue plants operation. This increase will make the award amount \$1,300,000.00. The contract ends on July 31, 2020, with no renewal options remaining. The above amount is the City's estimated requirement.

MINUTES

INFORMAL AWARDS, RENEWALS, INCREASES TO CONTRACTS AND EXTENSIONS

VENDOR	AMOUNT OF AWARD	AWARD BASIS
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Bureau of Procurement - cont'd

MBE/WBE PARTICIPATION:

On April 20, 2015, MWBOO determined that no goals would be set because of no opportunity to segment the contract.

6. MICHAEL BAKER	\$ 89,225.00	Non-Competitive/ Procurement/Sole Source/Non-Construction Agreement
<u>INTERNATIONAL, INC.</u> Contract No. 08000 - GIS Data Maintenance for Next Generation 911 Agreement - Baltimore City Office of Information and Technology - Req. No.: R838866		

The Board is requested to approve and authorize execution of a Non-Construction Consultant Agreement with Michael Baker International, Inc. The period of the agreement is effective upon Board approval for one year.

This request meets the condition that there is no advantage in seeking competitive responses.

STATEMENT OF PURPOSE AND RATIONALE FOR NON-COMPETITIVE PROCUREMENT:

Execution of this agreement will provide consultant services to assist the City with the Geographic Information System (GIS) data maintenance workflow(s) to support a Next Generation (NG9-1-1) system. The Vendor will complete and provide several data readiness and maintenance services. These services include:

1. Performing data clean-up on the City's Site/Structure Address Point and Road/Street Centerline data, as well as Reconciling data with Automatic Location Information and Master Street Address Guide data provided by City telecommunication vendors.

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 Procurement - cont'd

2. Performing a process named Address Comparison and Evaluation Best Practice.
3. Providing licensing for a Software as a Service application for the City to employ for data maintenance purposes to support a NG9-1-1 system, as well as application software support.

The City has determined it is unable to meet suggested deadlines surrounding deployment of a NG9-1-1 system through internal GIS efforts. Although the City will have the necessary stakeholder resources to maintain GIS data for a NG9-1-1 system once the system is deployed, the initial effort to get the City's data ready for NG9-1-1 is beyond the current capacity of City GIS stakeholders. The above amount is the City's estimated requirement.

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

MBE/WBE PARTICIPATION:

Not applicable. The Consultant is the sole source through the MD State Emergency Number Systems Board to provide these services to the City.

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 Procurement - cont'd

7. P. FLANIGAN & SONS, INC.	\$ 25,000.00	Non-Competitive/ Procurement/Selected Source/Extension
Contract No. 06000 - Aggregate Materials - Department of Transportation - P.O. No.: P549180		

This request meets the condition that there is no advantage in seeking competitive responses.

STATEMENT OF PURPOSE AND RATIONALE FOR NON-COMPETITIVE PROCUREMENT:

On October 9, 2019, the City Procurement Agent approved the initial award in the amount of \$25,000.00. An extension is necessary to continue moving services forward while a new solicitation is released and awarded. The contract expires on May 9, 2020. The period of the extension is May 10, 2020 through November 9, 2020. The above amount is the City's estimated requirement.

MBE/WBE PARTICIPATION:

Not applicable. The initial award was below the MBE/WBE subcontracting threshold.

8. SWARCO INDUSTRIES, INC.	\$ 0.00	Extension
Contract No. B50004915 - Preformed Themoplastic Pavement Markings - Department of Transportation - P.O. No.: P539019		

This request meets the condition that there is no advantage in seeking competitive responses.

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 Procurement - cont'd

STATEMENT OF PURPOSE AND RATIONALE FOR NON-COMPETITIVE PROCUREMENT:

On March 29, 2017, the Board approved the initial award in the amount of \$29,374.20. The award contained two renewal options. Subsequent actions have been approved and all renewals have been exercised. An extension is necessary to continue moving services forward while a new solicitation is released and awarded. The contract expires on March 28, 2020. The period of the extension is March 29, 2020 through September 28, 2020. The above amount is the City's estimated requirement.

MBE/WBE PARTICIPATION:

Not applicable. The initial award was below the MBE/WBE subcontracting threshold of \$50,000.00.

- | | | |
|---|---------|-----------------------|
| 9. SECURITY EQUIPMENT | | Non-Competitive/ |
| CO. | \$ 0.00 | Procurement/Extension |
| Contract No. B50003093 - STIHL Landscaping Equipment and Replacement Parts - Recreation and Parks, Departments of Transportation and Public Works - P.O. No.: P524915 | | |

This request meets the condition that there is no advantage in seeking competitive responses.

STATEMENT OF PURPOSE AND RATIONALE FOR NON-COMPETITIVE PROCUREMENT:

On September 18, 2013, the Board approved the initial award in the amount of \$100,000.00. The award contained four renewal options. Subsequent actions have been approved including four renewals and one extension. A second extension is necessary

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 Procurement - cont'd

to continue services while a new contract is awarded. The contract expired on March 17, 2020. The period of the extension is March 18, 2020 through September 17, 2020. The above amount is the City's estimated requirement.

MBE/WBE PARTICIPATION:

On July 23, 2013, it was determined that no goals would be set because of no opportunity to segment the contract.

MWBOO GRANTED A WAIVER ON JULY 23, 2013.

10. PATRIOT POOL SERVICE, LLC	\$ 75,000.00	Non-Competitive/ Procurement/Extension
Contract No. B50003895 - Provide Public Swimming Pool Maintenance, Repair, and New Replacement Parts - Department of Recreation and Parks - P.O. No.: P530733		

On April 8, 2015, the Board approved the initial award in the amount of \$150,000.00. The award contained three renewal options. Subsequent actions have been approved: three renewals, two extensions, and an increase. A third extension is necessary to continue providing public pool maintenance and repair during the upcoming season while solicitation B50006008 is drafted and awarded. This extension makes the total contract value \$825,000.00. The contract expires on April 8, 2020. The period of the extension is April 9, 2020 through October 8, 2020. The above amount is the City's estimated requirement.

MBE/WBE PARTICIPATION:

On January 21, 2015, it was determined that no goals would be set because of no opportunity to segment the contract.

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 Procurement - cont'd

11. ITEM 1 Supply of Liquid Chlorine in one ton Container

KUEHNE CHEMICAL CO., INC.

ITEM 2 Supply of Liquid Chlorine in 150 LB. Cylinders

UNIVAR SOLUTION USA
INC.

\$1,000,000.00

Award

Solicitation No. B50005779 - Liquid Chlorine - Department of Public Works, Bureau of Water and Wastewater - Req. No.: R823755

Vendors were solicited by posting on CitiBuy, eMaryland Marketplace, and in local newspapers. On June 26, 2019, two bids were received and opened. Award is recommended to the lowest responsive and responsible bidders on an item-by-item basis. The period of the award is June 1, 2020 through May 31, 2021 with four 1-year renewal options. The above amount is the City's estimated requirement.

MBE/WBE PARTICIPATION:

On May 13, 2019, it was determined that no goals would be set because of no opportunity to segment the contract.

MWBOO GRANTED A WAIVER ON MAY 13, 2019.

12. WILLIAMS
SCOTSMAN

Non-Competitive/
Procurement/Selected

\$40,929.54

Source

Contract No. 06000 - Trailers for Mount Pleasant Ice Arena - Department of Recreation and Parks - Req. Nos.: R850092 and R845491

This request meets the condition that there is no advantage in seeking competitive responses.

MINUTES

INFORMAL AWARDS, RENEWALS, INCREASES TO CONTRACTS AND EXTENSIONS

VENDOR	AMOUNT OF AWARD	AWARD BASIS
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Bureau of Procurement - cont'd

STATEMENT OF PURPOSE AND RATIONALE FOR NON-COMPETITIVE PROCUREMENT:

The Department of Recreation and Parks urgently needed four trailers to provide amenities for the patrons of the facility. The trailers were placed and in use before the Bureau of Procurement was notified to start the procurement procedures. Therefore, the Contractor provided the services without a purchase order. An award is recommended to the Contractor as a selected source for payment of providing services without a purchase order during construction time at Mount Pleasant Ice Arena.

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

MBE/WBE PARTICIPATION:

Not applicable. The initial award was below the MBE/WBE subcontracting threshold.

- | | | |
|--|-------------|-------|
| 13. WITMER PUBLIC SAFETY | \$48,884.55 | Award |
| <u>GROUP, INC.</u>
Solicitation No. B50006010 - Fire Helmets and Repair Parts - Baltimore Fire Department - Req. No.: R835371 | | |

Vendors were solicited by posting on CitiBuy. Four bids were received and opened on February 27, 2020. Award is recommended to be made to the lowest responsive and responsible bidder. The period is April 1, 2020 through March 31, 2023, with two one-year renewal options.

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 Procurement - cont'd

The above amount is the City's estimated requirement. However, the vendor will supply the City's entire requirement, be it more or less.

MBE/WBE PARTICIPATION:

Not applicable. The initial award was below the MBE/WBE subcontracting threshold.

14. LEXISNEXIS VITALCHEK NETWORK, INC.	\$ 0.00	Non-Competitive/ Procurement/Selected Source/Ratification and Renewal
<hr/>		
Contract No. 06000 - Credit Debit Card Payment Services - Department of Finance - Req. No.: R540492		

This request meets the condition that there is no advantage in seeking competitive responses.

STATEMENT OF PURPOSE AND RATIONALE FOR NON-COMPETITIVE PROCUREMENT:

On July 19, 2017, the Board approved the initial award in the amount of \$0.00 with LexisNexis VitalChek Network, Inc. a RELEX Group Company that has been providing credit debit payment services for the City with annual renewals subject to agreement by the parties. The ratification period is from February 10, 2018 through February 9, 2020. The renewal period is February 10, 2020 through February 9, 2021, with additional annual renewals, subject to agreement by the parties.

It is hereby certified that the above procurement is of such a nature that no advantage will result in seeking, nor would

MINUTES

INFORMAL AWARDS, RENEWALS, INCREASES TO CONTRACTS AND EXTENSIONS

VENDOR	AMOUNT OF AWARD	AWARD BASIS
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Bureau of Procurement - cont'd

it be practicable to obtain competitive bids. Therefore, pursuant to Article VI, §11 (e)(i) of the City Charter, the procurement of the equipment and/or service is recommended.

MBE/WBE PARTICIPATION:

Not applicable. The award is below the MBE/WBE subcontracting threshold of \$50,000.00.

15. CREATIVE SOFTWARE SOLUTIONS, LLC	\$416,040.00	Non-Competitive Procurement/Selected Source/Ratification/ Extension
Contract No. 06000 - Management Services for Taxi Card Program - Health Department - P.O. No.: P548030		

This request meets the condition that there is no advantage in seeking competitive responses.

STATEMENT OF PURPOSE AND RATIONALE FOR NON-COMPETITIVE PROCUREMENT:

On June 5, 2019, the Board ratified the initial award in the amount of \$707,268.00. The contract expired on November 30, 2019. The Board is requested to ratify services for the period of December 1, 2019 through September 30, 2020. An extension is necessary to continue receiving services while a new solicitation is prepared and awarded. The contract expired on November 30, 2019. The period of the extension is December 1, 2019 through September 30, 2020.

MBE/WBE PARTICIPATION:

On November 14, 2008, MWBOO set goals of 3% MBE and 1% WBE.

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 Procurement - cont'd

Creative Software Solutions, LLC was found in compliance based upon Good Faith Effort on March 11, 2020.

MBE: A.S. Tours, Inc.	3%	\$4,740.00	1.55%
Taylor Made Transportation		<u>3,763.00</u>	<u>1.23%</u>
		\$8,503.00	2.78%

WBE: Curry Printing	1%	\$4,229.40	1.39%
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MWBOO FOUND VENDOR IN COMPLIANCE ON MARCH 11, 2020.

UPON MOTION duly made and seconded, the Board approved the foregoing Informal Awards, Increases and Extensions to Contracts. The Board further approved and authorized execution of the Non-Construction Agreement with Michael Baker International, Inc. (item no. 6).

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:

1429 - 1431

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.

Items 1 and 2 were **DEFERRED** for one week.

MINUTES

RECOMMENDATIONS FOR CONTRACT AWARDS/REJECTIONS

Department of Transportation

1. TR 19017 Conduit System Reconstruction at Various Locations Citywide JOC Allied Contractors Inc. \$6,382,300.00

MBE/WBE PARTICIPATION:

MWBOO SET GOALS OF 9% FOR MBE AND GOALS OF 4% FOR WBE.

MBE: J.M. Murphy Enterprises, Inc.	\$575,000.00	9.00%
WBE: S & L Trucking, LLC.	\$220,752.00	3.45%
Sunrise Safety Services, Inc.	<u>35,000.00</u>	<u>0.55%</u>
	\$255,752.00	4.00%

TRANSFER OF FUNDS

<u>AMOUNT</u>	<u>FROM ACCOUNT/S</u>	<u>TO ACCOUNT/S</u>
2. \$5,139,645.00 Others	9962-937004-9563 Conduit New Construction	
2,200,000.00 Others	9962-937006-9563 Reconstruct Manholes - Various	
\$7,339,645.00		
\$6,382,300.00	-----	9962-903080-9562-6 Structure & Improvements
638,230.00	-----	9962-903080-9562-5 Inspection

MINUTES

RECOMMENDATIONS FOR CONTRACT AWARDS/REJECTIONS

Department of Transportation - cont'd

TRANSFER OF FUNDS

<u>AMOUNT</u>	<u>FROM ACCOUNT/S</u>	<u>TO ACCOUNT/S</u>
319,115.00	-----	9962-903080-9562-2
		Contingencies
		Conduit Reconst.
		CW TR 19017
\$7,339,645.00		

This transfer will fund the costs associated with award of Project TR 19017, Conduit System Reconstruction at Various Locations Citywide JOC, with Allied Contractors, Inc.

A PROTEST WAS RECEIVED FROM ROBERT FULTON DASHIELL, ESQ. P.A. ON BEHALF OF HIGHLANDER CONTRACTING COMPANY, INC.

A RESPONSE TO THE PROTEST WAS RECEIVED FROM BISHOP L. ROBINSON JR. LLC REPRESENTING ALLIED CONTRACTORS, INC.

Robert Fulton Dashiell, ESQ. P.A.

Robert Fulton Dashiell
Principal
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Senchal Dashiell Barrolle
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Woodlawn, Maryland 21207
Telephone: (410) 547-8820
Facsimile: (443) 637-3718

Baltimore City Office
2423 Maryland Avenue, Suite 100
Baltimore, Maryland 21218

March 9, 2020

Honorable President
and Members of the Board of Estimates
c/o Harriette Taylor, Clerk
204 City Hall
100 N. Holliday Street
Baltimore, MD 21202

(Hand-delivery)

Re: Protest of Highlander Contracting Company/
Tr-19017 Conduit System Reconstruction

Dear Mr. President and Honorable Board Members:

I represent the protestor, Highlander Contracting Company, Inc. (“Highlander”), the lowest responsible bidder for the above referenced contract. Highlander opposes the recommendation to award the contract to Allied Contractors, Inc. (“Allied”) on the grounds that Allied is not a responsible bidder. Article 11, Section H of the Baltimore City Charter requires the Board of Estimates (the “Board”) to award competitively bid contracts to the lowest responsive and responsible bidder. A responsible bidder is “one that has the capability in all respects to perform fully the Contract requirements, and the **integrity and reliability which shall assure good faith performance**”. (See Baltimore City Standard Book of Specifications-Green Book, Section 00 23 00.01). We show below that Allied has repeatedly violated the terms of the Green Book and, therefore, should not be regarded as a responsible bidder.

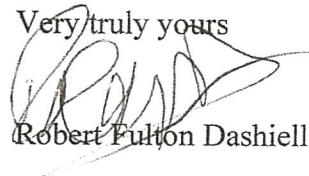
In its bid Allied has proposed to satisfy the MBE participation goals by use of a minority firm known as J.M. Murphy Enterprises (“Murphy”). As shown on Exhibit 1, Allied has utilized Murphy to satisfy some or all of the minority participation requirements on contracts awarded to it by the City since August 2014 (the “Prior Contracts”). The provisions of the Green Book

require that all subcontractors must submit a work capacity statement and be prequalified before they commence work. (See Green Book, sections 00 21 13.20 B, and 00 73 81 A, H and J.).

Before permitting Murphy to commence work on either of the Prior Contracts Allied was required to have made a request to do so and each request should have been accompanied by Murphy's work capacity statement and a consent from Allied's surety. (See Green Book, Section 00 51 00.08 B). Only subcontractors whose prequalification have been reviewed and approved in that manner are authorized to enter upon the work site to perform work. (See Green Book, *id.*). On information and belief, Allied permitted Murphy to enter upon the worksites of each of the Prior Contracts without first obtaining approval from the City, in violation of the express terms of the Green Book.

The fact that Allied has, again, proposed to utilize Murphy exclusively to satisfy the MBE participation goals when Murphy was not prequalified and without insuring that Murphy will have sufficient work capacity suggests that Allied intends to continue its improper actions. For the foregoing reasons, Allied should be declared a non-responsible bidder and the contract should be awarded to Highlander.

Very truly yours

A handwritten signature in black ink, appearing to read "R. Dashiell", written over the typed name.

Robert Fulton Dashiell

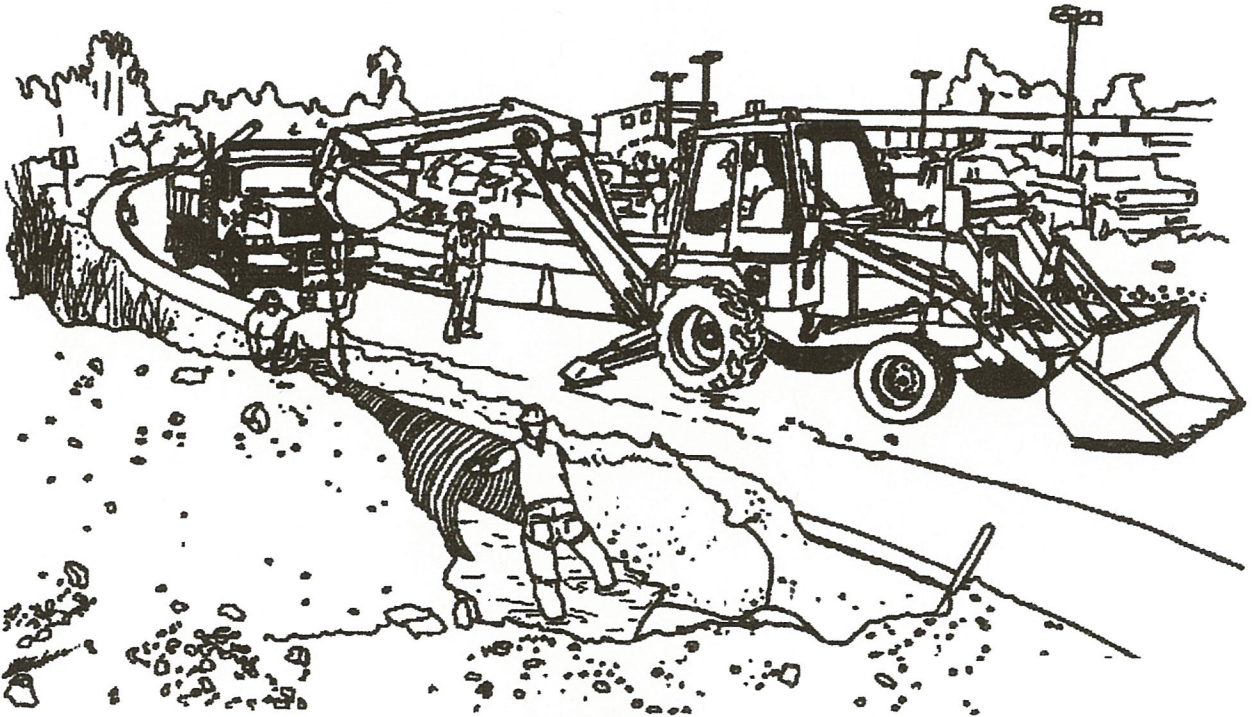
Type	BOE Date	Contract	Description	Total Contract Value/ Change Order Value	JM Murphy Subcontract Value	JM Murphy Prequal Value	JM Murphy Date	Surplus/ Shortfall
Award	8/27/2014	SWC 7764	Race Street Culvert Replacement	\$ 2,437,080.00	\$ 61,000.00			
Award	11/19/2014	TR 10325	Druid Hill Park Neighborhood Access	\$ 1,897,740.00	\$ 317,000.00			
Award	2/11/2015	RP 14827	Northwest Park Playground	\$ 258,000.00	\$ 5,200.00			
Award	3/25/2015	TR 15005	Structural Repairs on Bridges Citywide	\$ 897,600.00	\$ 162,500.00			
Award	4/22/2015	B5001768	Sidewalk repairs	\$ 300,000.00	\$ 22,760.71			
			Total for 5/28/2014 thru 6/10/2015		\$ 568,460.71	\$ 72,000.00	5/28/2014-6/10/2015	Shortfall
Award	10/14/2015	TR 15019	Conduit System Repairs at Various Locations	\$ 1,659,750.00	\$ 100,400.00			
Award	10/21/2015	RP 15816	Cylburn Arboretum Formal Garden Improvements	\$ 222,200.00	\$ 44,500.00			
Award	12/16/2015	RP 15824	Fiscal Year 2015 Playground & Court Improvements	\$ 611,000.00	\$ 25,000.00			
Change Order Award	6/8/2016	TR 15005	Structural Repairs on Bridges Citywide	\$ 741,920.00	\$ 133,545.60			
Award	7/27/2016	TR 15021 R	Citywide Signing for Parking Restrictions	\$ 1,805,080.00	\$ 91,000.00			
			Total for 6/10/2015 thru 8/10/2016		\$ 394,445.60	\$ 288,000.00	6/10/2015-8/10/2016	Shortfall
Award	8/10/2016	TR 16010	Structural Repairs on Bridges Citywide	\$ 824,530.00	\$ 215,000.00			
Award	11/30/2016	ER 4097	Watershed 263 Phase 3 & 4 Repair Western Run	\$ 406,477.00	\$ 57,000.00			
Award	3/1/2017	TR 11319	Jones Falls Trail Phase V	\$ 9,442,752.00	\$ 560,017.60			
Award	4/26/2017	RP 17801	FY-16 Playground Improvements	\$ 719,200.00	\$ 57,600.00			
Change Order Award	9/20/2017	TR 16010	Structural Repairs on Bridges Citywide	\$ 41,440.00				
Award	9/27/2017	TR 17007	Structural Repairs on Bridges Citywide	\$ 767,410.00	\$ 176,000.00			
Change Order Award	10/25/2017	TR 15021 R	Citywide Signing for Parking Restrictions	\$ -				
Award	4/25/2018	RP 17817	Skatepark of Baltimore Phase III	\$ 1,748,200.00	\$ 101,000.00			
Change Order Award	6/6/2018	TR 15021 R	Citywide Signing for Parking Restrictions	\$ 1,327,458.00	\$ 66,372.90			
			Total 8/10/2016 thru 8/10/2018 (2 yr review)		\$ 1,232,990.50	\$ 1,044,000.00	8/10/2016-8/10/2018	Shortfall
Change Order Award	8/15/2018	TR 17007	Structural Repairs on Bridges Citywide	\$ 573,672.00	\$ 131,370.89			
Award	7/24/2019	TR19009	Structural Repair Citywide JOC	\$ 1,494,700.00	\$ 300,025.00			
			Total for Fiscal 2018-2020 (2 Year prequal)		\$ 431,395.89		Not Prequalified	Shortfall
Pending Award		TR 19017	Potential Award	\$ 6,383,300.00	\$ 574,407.00			
			Total for Fiscal 2020-2022 (2 Year prequal)			\$ 360,000.00	1/15/2020	Shortfall

EXH-1

**CITY OF BALTIMORE
DEPARTMENT OF PUBLIC WORKS**

Specifications

**Materials, Highways, Bridges,
Utilities, and Incidental
Structures
2006**



Stephanie Rawlings-Blake, Mayor
City of Baltimore

waived. The City shall ascertain the facts and make the adjustment for extending the completion date as in its judgment the findings justify.

00 21 13.17 BID AND PAYMENT FOR WORK

- A. Unit prices: The Contractor shall Bid and accept a "unit price" for each of the unit price items in the Bid. The price per unit shall be multiplied by the estimated quantity for each item to tabulate the total estimated price for these items. This total price shall be added to the "lump sum" price items in the Bid to arrive at a Bid total for comparison of Bids and award of Contract.
- B. Lump Sum Prices: The Contractor shall Bid and accept a "lump sum" price for each of the "lump sum" items in the Bid. "Lump sum" prices constitute full payment for all Work called for under these items. Any alterations in the Plans and/or Specifications included in such "lump sum" prices which cause increased cost, or results in decreased cost to the Contractor, shall be paid for by the City, or credited to the City, in accordance with 01 26 10.

00 21 13.18 TAXES – RESPONSIBILITY FOR PAYMENT AND EXEMPTIONS

- A. The Contractor is responsible for and, by submitting a Bid, agrees to pay all retail sales tax, income tax, real estate tax, use tax, transportation tax, special taxes and any other taxes applicable to and assessable against any labor, materials, equipment, processes, and/or operations incident to or involved in the Work. The Contractor is responsible for ascertaining and acquainting itself with such taxes and making all necessary arrangements to pay same.
- B. Contractors and Subcontractors should include the Maryland Sales and Use Taxes on all purchases. The Contractor will be required to pay the taxes on all purchases and can recover it only as part of its Bid.

00 21 13.19 COLLUSION AMONG BIDDERS

- A. An affidavit certifying anti-collusion activities of the Contractor is included with the Bid form and made a part thereof.
- B. The Contractor agrees that any violation of any of the representations contained in the foregoing affidavit shall constitute a breach of said Contract, and the City's remedies for any such breach as provided in the Contract Documents shall be in addition to and not in lieu of any other remedies or penalties provided or allowed by law or equity.

00 21 13.20 PRE-QUALIFICATION OF CONTRACTORS AND SUBCONTRACTORS

- A. All Contractors and Subcontractors desiring to Bid on, or subcontract for, work for this Standard (Bid) under the jurisdiction of the City of Baltimore and whose Bid or Contract amount will be twenty-five thousand dollars (\$25,000.00) or more, will be required to be pre-qualified for work categories involved. All Contractors bidding on this standard must first be pre-qualified by the City of Baltimore Contractors Qualification Committee.

RAILROAD GRADE SEPARATION	The term "railroad grade separation" shall mean any overpass or underpass which shall eliminate any railroad grade crossing, and shall embrace the overpass and underpass structure and the approaches thereto, and such entrance plazas, interchanges, connecting highways and other structures which the City may deem necessary in connection therewith, together with all property, rights, easements, franchises and interests acquired by the City for the construction and operation of such railroad grade separation.
RELEASE OF RETAINAGE	Full Retainage is released, at the City's sole discretion, upon Final Acceptance of the project. Partial release of retainage may occur prior to release of the final payment at the City's discretion.
REQUEST FOR INTERPRETATION (RFI)	Request for additional information and/or clarification of the Contract Documents by the Contractor, Design Consultant, or City.
RESPONSIBLE BIDDER OR OFFEROR	A person who has the capability in all respects to perform fully the Contract requirements, and the integrity and reliability which shall assure good faith performance.
RESPONSIVE BIDDER	A person who has submitted a Bid under procurement by competitive sealed bidding which conforms in all material respects to the requirements contained in the Invitation for Bids.
RETAINAGE	The sum withheld from progress payment. The Contract value of Work satisfactorily performed during the preceding calendar month will be paid to the Contractor, less 10%, subject to other provisions of the Contract Documents. When such ten percent (10%) retainage amounts to five percent (5%) of total Contract value, plus authorized extras and additions, no further retainage will be deducted from the monthly payments due the Contractor if the City, in its sole discretion, deems the Contractor's performance up to that point satisfactory. The five percent (5%) retainage will not be released until final payment (unless partially released in a semi-final payment). When the amount earned during any one (1) month period, less the appropriate retained percentage, shall be less than five hundred dollars (\$500.00), no payment will be made except on the last current estimate, until the last preceding payment is at least five hundred dollars (\$500.00).
RIGHT-OF-WAY	The area, which has been acquired and reserved by the City for use in constructing the proposed improvement and appurtenances thereto.

of money, nor any payment for nonacceptance of the whole or any part of the Work by the City or the Engineer, nor any extension of time, nor any possession taken by the City or its employees, shall operate as a waiver of any portion of the Contract Documents or of any power herein reserved by the City, or any right to damage herein provided, nor shall any waiver of any breach of the Contract Documents be held to be a waiver of any other or subsequent breach.

00 73 81 SUB-LETTING OR ASSIGNING OF CONTRACT

- A. The Contractor shall give its personal attention constantly to the faithful performance of the Work, shall keep the same under its own control, and shall not assign the Contract by power of attorney or otherwise, nor sublet the Work or any part thereof, without the previous written consent of the Engineer. The Contractor shall state to the Engineer, in writing, the name of each Subcontractor it intends employing, the portion of the Work which each Subcontractor is to do, their place of business and such other information as the Engineer may require, in order to know whether such Subcontractors are reputable and reliable, and able to perform the Work or to furnish the materials as called for in the Specifications. Only Subcontractors pre-qualified in accordance with 00 21 13.20 shall be allowed at the Work area or allowed to furnish labor. A Subcontractor may not sublet Work assigned to it.
- B. The Contractor shall perform with its own organization, Work amounting to not less than fifty-one percent (51%) of the remainder obtained by subtracting from the total original Contract value the sum of any items designated in the Contract as "specialty items" and/or MWBOO requirements.
- C. The Contractor shall not, either legally or equitably, assign any of the monies payable under the Contract, or its claims thereto, unless by and with the like consent of the Engineer.
- D. The Contractor shall not be released from any of its liabilities or obligations under its Contract should any Subcontractors fail to perform in a satisfactory manner the Work undertaken by them.
- E. The Contractor agrees that it is as fully responsible to the City for the acts and omissions of its Subcontractors, suppliers, consultants, and of persons either directly or indirectly employed by them, as it is for the acts and omissions of those directly employed by it.
- F. Nothing contained in the Contract Documents shall create any contractual relation between any Subcontractor and the City.
- G. No Subcontractor will be considered for approval, unless the Contractor submits the Maryland State License Number of the Subcontractor. The Contractor's attention is hereby directed to 01 41 26 "Permits, Licenses, Charges and Notices", in the general conditions.
- H. All Subcontractors on this project must be pre-qualified by the City of Baltimore in accordance with the procedures adopted by the Board of Estimates.
- I. If a payment and performance Bond is required by the Contractor, the cost of such bond will be paid for by the Contractor.

- J. All proposed Subcontractors must submit a Work Capacity Statement prior to beginning Work on the project.

00 73 82 CONTRACT TIME FOR COMPLETION OF THE WORK

- A. The Contractor accepts this Contract with the understanding and intention to perform fully, entirely and in an acceptable manner the Work contracted for within the time stipulated in the Bid, accounting from the date provided for in 00 55 00.01, "Notice to Proceed and Prosecution of Work". The Contract time is on a Calendar Day basis and it shall consist of the number of consecutive Calendar Days stated in the Contract, including all Sundays, holidays, and non-work days. Time is of the essence of this Contract.
- B. The Contractor shall complete the Work in the number of Calendar Days indicated in the Bid Book and Contract Documents, if subsequently amended by Change Order, or shall be considered in default under the terms of the Contract. If the Contractor is so considered in default, then Contractor and its Surety shall then be required to pay the City an amount/sum equal to the daily amount of liquidated damages as specified in the Contract multiplied by the number of days the Work remained incomplete past the approved Contract completion date. The parties mutually acknowledge and agree that the amount/sum stipulated in the Contract as liquidated damages is based on a reasonable forecast of the damages the City would incur on a daily basis as a result of the Work not being completed by the approved Contract completion date, and is not intended to be nor shall it be construed by either party to be a penalty for late completion of the Work. This amount/sum will be deducted from the monthly and/or final payments on the Contract, unless such time extension and/or waiver of liquidated damages is approved by the City and the Board of Estimates. The decision of the Board of Estimates shall be final, conclusive and binding upon the Contractor.
- C. Any Contractor wishing to extend the number of Calendar Days of its Contract shall make written application thereof, in writing, addressed to the Engineer within ten (10) days after the occurrence of the event for which such allowance is claimed, or be deemed to have forever and unconditionally waived and released any such time extension request, claim and/or costs and expenses arising out of or relating to any such actual or alleged delay.
- D. If the beginning or prosecution of the Work shall be delayed or suspended in consequence of any act or omission of the City, and not by any fault of the Contractor, then subject to other provisions of the Contract Documents, the time for completion of the Work shall be increased by a period of time equal to the aggregate actual time, expressed in Calendar Days and parts of days during which the beginning or prosecution of critical path Work has been so delayed or suspended.
- E. No allowance shall be made for delay or suspension of the prosecution of the Work due to the fault of the Contractor.
- F. Notwithstanding any other provisions of the Contract Documents, Contractor agrees that in no event shall it make a claim or other demand against the City for any delay, disruption or hindrance to the prosecution of the Work unless Contractor is subjected to a complete and full work stoppage resulting in a continuous delay, disruption or hindrance in the prosecution of critical path Work of forty-five (45) days or longer due to causes beyond its fault or control, in whole or in part. In the event a Contractor actually experiences a delay,

THE LAW OFFICES
OF

BISHOP L. ROBINSON JR., LLC

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Practicing in MD and D.C.

March 26, 2020

Honorable President and
Members of the Board of Estimates
204 City Hall
100 N. Holiday Street
Baltimore, MD 21202

Honorable Board Members:

Re: Protest filed by Highlander Contracting Company LLC, against Allied Contractors, Inc., Regarding the Award of TR-19017 — Conduit System Reconstruction

Contents

Attorney Appearance
Allied Inc. Background
I. Reply to Highlander Assertions
II. Allied's Request for a **Preliminary Determination**
III. Allied's Response to Highlanders Protest
Summary
Request for Relief
Exhibits, Attachments and Affidavits

Appearance

I represent Allied Contractors, Inc. (herein Allied). In the event that Highlander Contracting, LLC (herein, Highlander) intend to proceed with its protest. We intent do defend the recommended award of TR-19017 to Allied. I wish to note my appearance on behalf of Allied Contractors, Inc., my client. See Notice of Entry, Attachment A.

It is the position of Allied that there is no reason for this award to be delayed any further. Allied's bid was responsive and responsible. Further, Allied was the lowest bidder when the bids were opened on October 30, 2019. Yet, Allied awaits its award from the City.

It is our contention that the award has been delayed by numerous unfounded allegations and presently a protest of the award from Highlander through its attorney, Mr. Robert Fulton Dashiell, Esquire.

Allied Contractors, Inc.' Background

Allied is a company with an impeccable reputation during the time it has been in operation-since (1944) and incorporated in 1947. The City has awarded numerous contracts to Allied over this span of years. All have been completed satisfactorily for the City. Allied's Baltimore City work evaluations over the past two quarters reveal a near perfect rating in all areas, including performance and safety. See exhibit 1 a,b,c,d.

Allied takes extreme pride in its projects. One example is observed by City employees and other citizens each day that they come to City Hall, War Memorial Plaza. See attachment B. Also see Allied's website at www.allied.constuction.com.

I. ALLIED'S REPLY

Pre-Award and Notice of Protest Complaints by Highlander

Mr. Dashiell has filed several complaints with several City agencies involving prior work that were awarded and completed by Allied. Mr. Dashiell's complaint alleges that:

A. Allied's MBE subcontractor, J.M. Murphy Enterprises (JMM) has performed jobs for amounts in excess of their pre-qualified amounts. The aggregate amount of work that Mr. Dashiell complains of occurred between 2014 and 2019. See Mr. Dashiell's exhibit 1, attached to his Notice of Protest, dated March 9, 2020.

Reply: Highlander's exhibit 1, a spreadsheet that is not titled, not dated and does not provide the source of the document on the spreadsheet or in the text of the written protest. Nor is the contact information for the custodian of this document disclosed. From Allied's analysis, this document is not accurate or reliable.

In addition, the spreadsheet contains inaccurate entries, including listing JMM as the MBE subcontractor when another MBE was the subcontractor, overstating the amount received, and listed jobs that JJM was not on the contract at all). See entries for RPI 5816, TR-15005 (change order), TR-17007 (change order). There are other contracts which were actually someone else's, contract. Allied requests verification of the spreadsheet.

To Allied's knowledge, no job was performed above JMM' s pre-qualification limit. Highlander's spreadsheet does not evidence that Allied and JMM violated MBE participation regulations and it does not prove that JMM exceeded pre-qualified limits for the work performed. In fact, the opposite was confirmed by the City.

In a letter dated March 4, 2020, Ms. Brenda Simmons, Baltimore City Contract Administrator stated that the Department of Transportation investigated JMM' s prequalification status at the time JMM began work on the Allied jobs and found JMM was qualified each time he began work See exhibits 2 a, b, c. and exhibit 3.

Conclusion: Highlander's allegation is false.

B. Mr. Dashiell alleges in a February 8, 2020 letter that JMM's employees were actually more regularly employed by Allied and were violations of the Green Book, MBE regulations. Secondly, Highlander alleges that certified payroll reports, submitted by JMM were actually employees of Allied.

Reply: The Baltimore City Contract Administrator addressed the issue B above in a letter dated February 28, 2020 to Mr. Dashiell. Paraphrasing Ms. Simmons, her findings after investigation were that Dashiell' s suspicions were not founded and that these allegations never existed and are not present today.

This letter, also dated February 28, 2020 from the Chief of Contract Administration, Ms. Simmons disposed this matter too. JMM's work capacity limit was being addressed and that Allied would also address this matter before JMM commenced work on TR-19017. See exhibits 2 d.

In the same letter of the same date, it was stated that no evidence was found of shared employees between Allied and JMM. See exhibit 2 d.

Conclusion: Though the City performed several investigations of Allied and JMM, no evidence was found that could supported Highlanders false accusation(s) of any violations or wrongdoing.

The Board of Estimates is not the forum where past contract behavior should be considered for determining an award of the subject contract recommended for award to Allied. Highlander's protest does not prove that Allied's bid is unresponsive or non-responsible.

Examples of such non-responsibility would be, if: 1. Allied does not meet minimum requirements, 2. that Allied is unable to perform the work at the price it submitted, 3. that the City evaluation failed to give Highlander fair consideration, or 4. that the IFB/RFB contained unfair changes during the solicitation period. Highlander makes no complaint concerning the bid

that Allied submitted to the City for the award of this contract, for instance, non-responsive, like any failure on the part of Allied to submit a bid that does not conform to all the requirements of the solicitation.

Instead, Highlander complains of misconduct during periods before TR-19017 was let and pertaining to prior contracts. The issue that Highlander raises concerning other prior contracts are unrelated to TR-19017. It is the present contract that is before the BOE.

Therefore, these allegations are ultra vires to the City BOE award process, for which use of prior contract incidents (alleged to have happened, but not proven) are beyond the scope of the BOE for Highlander's protest opposing BOE's recommended award to Allied. See exhibits 3, indicating that the award should be made to Allied.

II. ALLIED REQUESTS A PRELIMINARY DETERMINATION BY THE BOARD OF ESTIMATES, PRIOR TO THE AWARD AND PROTEST HEARING BEING CONSIDERED

The purpose for requesting this is for the Board to determine whether Highlander's protest is "proper?" See Protest Regulations II, Baltimore City Board of Estimates Regulations on Procurement, Protests, Minority and Women-Owned Business Enterprise, Debarment/Suspension (effective July 1, 2019). See the relevant sections below:

- C — 3. Whether the issues brought before the Board are germane,
- D — 1. Notification of Speakers who wish to address the Board:
- D - 2, a — c. Whether the protest is proper?

Allied objects Highlander's transparent attempt to hijack this award hearing into a de facto debarment proceeding against Allied and JM Murphy which is prohibited under Maryland Law. Instead, adequate notice and a formal hearing before a neutral administrative tribunal is required before the question can be considered. See Associated Building Maintenance Co, Inc. v. DGS, MCA, No 3130n(2019). See also Warwick. v. DOT, 61 Md. App 239 (1985).

Allied requests time for the following persons to speak before the Board

- Douglas K. Franz, Vice President of Allied. (testimony)
- Daljit Makar, Vice President of Allied. See Affidavit 1
- Jesse Murphy, President of J.M Murphy Enterprises See Affidavit 2
- Saiquan Branch (Affidavit 3)
-

III. ALLIED RESPONSE TO HIGHLANDER'S PROTEST OF THE CONTRACT AWARD TR-19017

Allied submits the following defenses/denials to the alleged misconduct stated in Mr. Dashiell's Notice of Protest, dated March 9, 2020. Highlander alleges:

A. Highlander alleges: That Highlander Contracting Company, Inc. was the lowest responsible bidder.

Denied: See exhibit 4.

B. Highlander alleges: Allied is not a responsible bidder. Highlander agrees a responsible bidder as "one who has the capability in all respects to perform the contract which includes: integrity and reliability to assure good faith performance.". (00 23 00. 01).

Denied: See exhibit 2.

C. Highlander alleges: That Allied repeatedly violated the terms of the Green Book and is not a responsible bidder.

Denied: There is no finding that supports this in Allied records or those of the City. Allied has never been fined, suspended or debarred during the 50 years of performing work under contract with the City.

D. Highlander alleges: JM Murphy Enterprises is one of many minority subcontractors utilized on Allied contracts since 2014.

Admitted in Part: JMM is not the only MBE subcontractor. Allied uses other MBE and WMBE subcontractors. Allied uses; Priority Contracting, Guard Rails Etc. and M & F Contracting, to name a few.

E. Highlander alleges: Before BOE can award the contract to Allied, JMM must be fully prequalified for the subcontract amount in Allies bid. can commence work, it must be prequalified for the subcontract amount.

Denied: Mr. Dashiell's spreadsheet on its face evidences that JMM was prequalified for all periods of time referred to in his document. Must submit a work capacity statement and be prequalified before JMM commences of the work. (013.20 B 21 and OO 73 81 A, H and J).

As of March 12, 2020, JMM was pre-qualified for \$1,500,000.00 which exceeds the \$575,000.00 of subcontract work on TR-19017 when awarded to Allied. The City approved all of JMM's work and he was in compliance for all work that was accurately stated in Highlander's spreadsheet.

Work capacity is derived from a contractor's submission of financial documents submitted to the Office of Boards and Commissions (OBC). The OBC calculates and determines the "work Capacity Rating for) contractors and subcontractors.

The OBC then assigns the minimum and maximum work capacity to the contractor. At 6.8. See *RULES FOR QUALIFICATION OF CONTRACTORS, PERFORMANCE EVALUATIONS OF CONSTRUCTION CONTRACTORS AND CONSULTANTS AND PROCEDURES.* See 6.0. et seq.

In some situations, the contracting agency may waive the capacity rating as a requirement on a particular project provide the firm is able to obtain the appropriate performance bond. See Id @ 6.8.

In cases where the capacity rating is insufficient under Rules 6.1 and 6.2, a prime contractor and/or subcontractor may be permitted to commence work if a specific guarantee of the contractor's specific work is furnished by the contractor's guarantor as long as the guarantor is approved by the OBC and the Law Department of Baltimore City. See Id at 7.0 et seq.

Therefore, the decision to waive capacity rating and allow work to proceed is under the authority of the contracting agency. The contractor is not required to submit a work capacity statement.

2. Highlander alleges: Allied must make a request to do so.

Denied: The work that Highlander complains of was awarded and completed by Allied, JMM and many other MBE and W/MBEs. If these issues were true, the time to file a claim or dispute would have been within 10 calendar days after the violation, in writing, be inserted in the Project Log and copied to the Engineer. See Green Book @ 00 73 84, et seq.

There are no such claims filed by on previous contracts, awarded to Allied nor with ongoing contracts presently being performed by Allied and its subcontractor JMM, nor its many other subcontractors. The above issue(s) are moot as well as irrelevant to the present contract at issue.

3. JMM must have consent from Allied's surety per the Green Book @ 00 51 00.08B.

Denied: A Subcontractor is not required to be qualified until he commences work. See Green book @ 00 21 13.20 B1. The TRI 9017 contract has not been awarded, pending Highlander's protest. Work has not begun. Therefore, no consent is required at this time.

4. Protestor's Exhibit 1 spreadsheet is relied on by Highlander to prove the above.

Denied: The past (prior contracts) are not relevant to the present one being protested by Highlander.

F. Highlander alleges: That based on information and belief JMM was permitted to enter upon worksites without approved prequalification on each of and all the prior Allied contracts.

Denied: Highlander brings forth no admissible evidence (affidavit, photograph, etc.) that is factual pertaining to any prior contract. The standard for proof of this allegation is higher than information and belief (Highlander has produced no admissible evidence to support its information and belief). Lack of evidence makes this assertion a mere assertion.

Highlander implies that Allied and JMM will apply the same behavior if awarded a future contract. This is speculation and cannot be proven by Highlander at this time, given that the subject contract of Highlander's protest has not been awarded to Allied and that work has not commenced.

G. Highlander alleges: Due to Allied and JMM's previous contract violations of prequalification and Allied's supposed, but unproven collusion with JMM employee that the Board of Estimates should not approve the award of TR-19017 to Allied. Allied should be declared a "non-responsible bidder and that JMM is not prequalified. Therefore, the contract should be awarded to Highlander.

Denied: The protest above by Highlander is a completely inappropriate predicate for the BOE to entertain in deciding whether to award TR-19017 to Allied, because it relies on unproven assertions that Allied and JMM violated the Green Book and speculation that Allied and JMM will repeat the asserted behavior if awarded TR-19017.

Allied is and has been both a responsive and responsible bidder. See exhibits 2 a, b, c, and 3 and 4.

H. Asserted by Allied: Finally, Highlander through its notice of protests repeatedly names JMM as a party to all of the misconduct that is alleged. If Highlander protest JMM then Highlander has failed to join JMM an indispensable party in its protest per MD Rule 2-211. This is because complete relief cannot be achieved by singularly protesting Allied, JMM is pre-qualified for the TR-19017 contract if it is awarded to Allied. Therefore, JMM has a property right to work that it is qualified to perform under the responsive and responsible bid recommended for approval and award to Allied.

SUMMARY

Allied vehemently opposes the use or discussion of unproven conclusions stated above or testimony by any witness testifying to the same. Allied objects as well to the introduction of unverified documents supporting Highlander's argument(s) protesting the recommended award to Allied. Allied asks the BOE to consider this declaration a "continuing objection or exception" to the use of any false or unproven evidence herein.

If any additional information or evidence is required including:(1) Documents, letters, e-mails from City or Allied, etc., (2) Witness testimony from Allied and J.M. Murphy or others who were involved in any matter, or .anything else, please do not hesitate to contact me using the information on the letterhead above.

RELIEF REQUESTED

Allied requests a preliminary determination (before the award hearing) to discuss whether Highlander's protest is "proper." All of Highlander's allegations have been investigated and addressed by Baltimore City and found to be unsubstantiated. Allied would also request that the BOE determine what evidence or nonevidence can be used by Highlander to support its protest.

Allied asserts that Highlander's protest is not proper and without merit. Therefore, the protest should be dismissed by the BOE.

In order to prevent further delay of city work, Allied Contractors, Inc. requests and prays that the award for TRI 9017 be approved and awarded to Allied.

Respectfully submitted,

Bishop L. Robinson, Jr.

I HEREBY CERTIFY this _____ day of _____ of 2020, a copy of the above ALLIED REPLY TO HIGHLANDER'S PROTEST TO BALTIMORE CITY'S AWARD OF TR-19017 TO ALLIED was served by; US Regular mail/return receipt requested , hand-delivered , or e-mailed , facsimile , on Protestor's Attorney, Mr. Robert Fulton Dashiell Esq. at 1726 Whitehead Road, Woodlawn, MD 21207.

Bishop L. Robinson, Jr.,
Attorney for Respondent
8550 Timberland Circle
Ellicott City, MD 21043
410-750-7787 office 410-916-
2282 mobile 410-750-9237 fax
lawblrlc@comcast.net e-mail

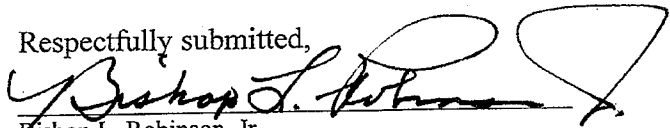
Attachment A

Highlander Contracting Company, LLC	*	Before the Board of Estimates
2401 Stringtown Road	*	For
Sparks, Maryland 21152	*	
Protestor	*	<u>Baltimore City</u>
v.	*	
Allied Contractors, Inc.	*	Protest Contract # <u>Tr-19017</u>
204 East Preston Street	*	
Baltimore, Maryland 21202	*	
Respondent	*	

Dear Clerk,
Ms. Harriett Taylor
Rm. 204 City Hall
100 N. Holiday Street
Baltimore, MD 212202

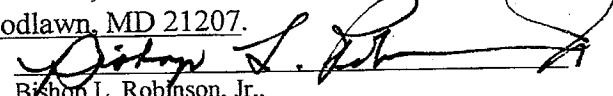
ENTRY OF APPEARANCE

Please enter the appearance of the Law Offices of Bishop L. Robinson, Jr., LLC as counsel for Protestor, Allied Contractors, Inc. in the above matter.

Respectfully submitted,

 Bishop L. Robinson, Jr.,
 Attorney for Respondent
 8550 Timberland Circle
 Ellicott City, MD 21043
 410-750-7787 office
 410-916-2282 mobile
 410-750-9237 fax
lawblrllc@comcast.net e-mail

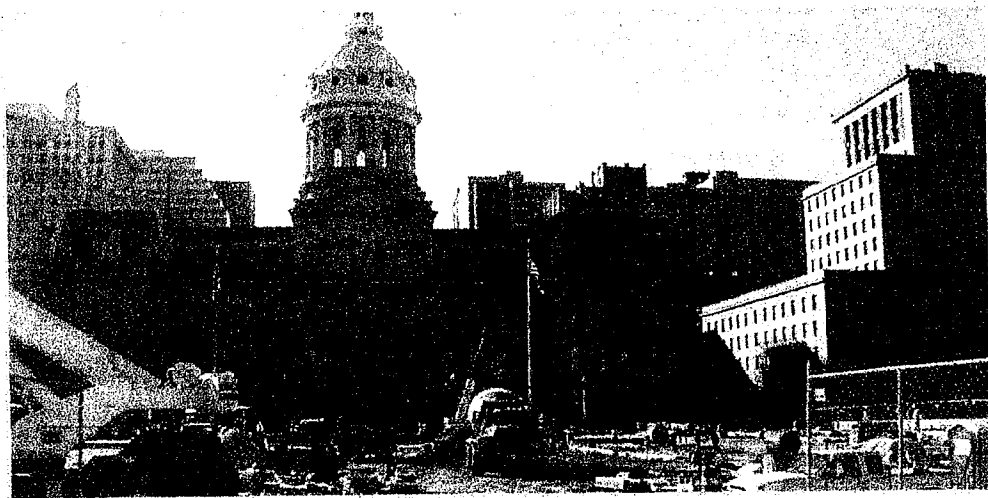
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of March, 2020, a copy of the above ENTRY OF APPEARANCE was served by; US Regular mail/return receipt requested, , hand-delivered , or e-mailed , facsimile , on Protestor's Attorney Mr. Robert Fulton Dashiell, Esq. at 1726 Whitehead Road, Woodlawn, MD 21207.


 Bishop L. Robinson, Jr.,
 Attorney for Respondent
 8550 Timberland Circle
 Ellicott City, MD 21043
 410-750-7787 office
 410-916-2282 mobile
 410-750-9237 fax
lawblrllc@comcast.net e-mail

Attachment B

Attachment B

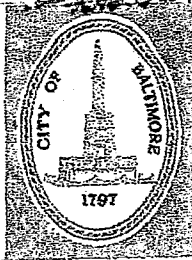


Allied Contractors, Inc. installing War Memorial Plaza at Baltimore's City Hall.

Exhibit 1 a

CITY OF BALTIMORE

BERNARD C. "JACK" YOUNG, Mayor



DEPARTMENT OF TRANSPORTATION

Steve Sharkey, Director
417 E. Fayette Street, 5th Floor
Baltimore, Maryland 21202

Via U.S. Certified Mail

Date: January 31, 2020

Richard F Pecora, Esq
President
Allied Contractors, Inc.
Prestway Building
204 E Preston Street
Baltimore, MD 21202

RE: Contracts for City of Baltimore – Structural Repairs on Bridges Citywide JOC 2 TR-19009

Dear Mr. Pecora,

Enclosed for your review please find a Quarterly evaluation for the 2nd Quarter FY 2020 of your Firm's performance in Contract No Structural Repairs on Bridges Citywide JOC 2 TR-19009

As indicated by the evaluation, your firm's work on the referenced project has been rated:

- Excellent (90 – 100)
- Good (77 – 89)
- Marginal (70 – 76)
- Unsatisfactory (69 or less)
- N/A

If you disagree with this rating, within ten days (10) of the date on this letter, you may appeal in writing to:

Kevin Carter
Construction Project Supervisor I
DOT, TEC Division
417 East Fayette Street, 7th Floor
Baltimore, MD 21202

Consultants and/or Contractors who object to any Interim or Final Project Rating may appeal to the Bureau Head/Division Chief/Office Chief, or such person's designee ("Appeal Evaluator") in writing within ten (10) days of receipt of the rating whether an Interim or Final Project rating. If no written appeal is received within the time required by these rules, the contractor/consultant will be deemed to have waived its right to review of the rating. The Appeal Evaluator shall render a written decision within thirty (30) days from the receipt of an appeal. The decision regarding an appeal of a rating is final. The final rating will be entered into your Firm's record maintained by the Office of Boards and Commissions. Ratings may be used to determine your Firm's qualification to do business with the City of Baltimore.

Exhibit 1B

Should you have any questions, please do not hesitate to contact us. This correspondence is made with an express reservation of all of the City's rights, remedies, and defenses, whether at law or in equity.

Very truly yours,



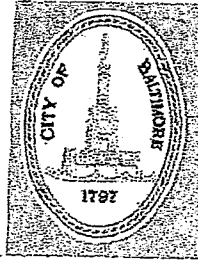
Kevin Carter
Construction Project Supervisor I

cc Bimal Devkota (DOT, TEC Division)
Brenda Simmons (DOT, Contract Administration)
Sections Chiefs (DOT, TEC Division)
Deena Joyce (DPW, OBC)
Latoya Gross (DPW, OBC)

2 - 2020

Exp/Rep/It/C
CITY OF BALTIMORE

BERNARD C. "JACK" YOUNG, Mayor



DEPARTMENT OF TRANSPORTATION

Steve Sharkey, Director
417 E. Fayette Street, 5th Floor
Baltimore, Maryland 21202

Via U.S. Certified Mail

Date: August 06, 2019

Richard F. Pecora, Esq
President
Allied Contractors
Prestway Building
204 E Preston Street
Baltimore, MD 21202

*Requalification
File*

RE: Contracts for City of Baltimore - TR-17007 Structural Repairs on Bridges Citywide JCO2

Dear: Mr. Pecora,

Enclosed for your review please find a Quarterly evaluation for the 4th Quarter FY 2019 of your Firm's performance in Contract No TR-17007 Structural Repairs on Bridges Citywide JCO2

As indicated by the evaluation, your firm's work on the referenced project has been rated:

<input checked="" type="checkbox"/>	Excellent (90 - 100)
<input type="checkbox"/>	Good (77 - 89)
<input type="checkbox"/>	Marginal (70 - 76)
<input type="checkbox"/>	Unsatisfactory (69 or less)
<input type="checkbox"/>	N/A

If you disagree with this rating, within ten days (10) of the date on this letter, you may appeal in writing to:

Kevin Carter
Construction Project Supervisor I
DOT, TEC Division
417 East Fayette Street, 7th Floor
Baltimore, MD 21202

Consultants and/or Contractors who object to any Interim or Final Project Rating may appeal to the Bureau Head/Division Chief/Office Chief, or such person's designee ("Appeal Evaluator") in writing within ten (10) days of receipt of the rating whether an Interim or Final Project rating. If no written appeal is received within the time required by these rules, the contractor/consultant will be deemed to have waived its right to review of the rating. The Appeal Evaluator shall render a written decision within thirty (30) days from the receipt of an appeal. The decision regarding an appeal of a rating is final. The final rating will be entered into your Firm's record maintained by the Office of Boards and Commissions. Ratings may be used to determine your Firm's qualification to do business with the City of Baltimore.

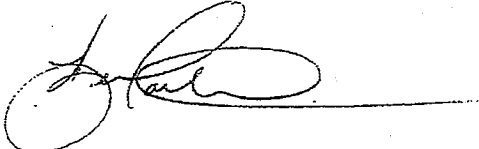
1

2019

Exhibit 1 & 10

Should you have any questions, please do not hesitate to contact us. This correspondence is made with an express reservation of all of the City's rights, remedies, and defenses, whether at law or in equity.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Kevin Carter', with a long horizontal line extending to the right.

Kevin Carter
CPS I

cc Bimal Devkota (DOT, TEC Division)
Brenda Simmons (DOT, Contract Administration)
Sections Chiefs (DOT, TEC Division)
Deena Joyce (DPW, OBC)
Latoya Gross (DPW, OBC)

2 2019

Exhibit 2a

City of Baltimore
Bernard C. "JACK" YOUNG, Mayor



DEPARTMENT OF TRANSPORTATION
Steve Sharkey, Director
417 E. Fayette Street, 5th Floor
Baltimore, Maryland 21202

March 4, 2020

Robert Dashiell, ESQ. P.A.
1726 Whitehead Road
Baltimore, Maryland 21207

Re: TR19017 Conduit System Reconstruction at Various Locations

Dear Mr. Dashiell,

This letter is written in response to your e-mail dated March 2, 2020. As outlined in our letter dated February 28, 2020, the Department of Transportation's position is to move forward in awarding Contract TR19017. Conduit System Reconstruction at Various Locations, to the lowest, responsive and responsible bidder, Allied Contractors, Inc. The Department investigated the prequalification status of the Murphy firm at the time it began work on the Allied jobs referenced in your earlier letter. The Department did not see any evidence that Murphy started work at a time that it was not prequalified. We appreciate you bringing your concern to the attention of the Department. The Department will remind primes that all their subs must be prequalified at the time they start work and must remain prequalified for the duration of their time on the job. Prior to award, the Department has procedures in place to validate the contractor's submission i.e. confirming prequalification with the Office of Boards and Commission, SDAT, SAMS, MWBOO, etc. to validate if a contractor is the lowest, responsive and responsible bidder and we will continue that practice.

Thank you again for the opportunity to review these concerns.

If you have any questions or concerns, please contact me immediately at 410-396-6815 or email me at Brenda.Simmons@baltimorecity.gov.

Sincerely,

Handwritten signature of Brenda Simmons in cursive script.

Brenda Simmons, Chief
Contract Administration

Exhibit 2

DOUGLAS K. FRANZ
VICE PRESIDENT, C.F.O.

J. Jay Pecora, P.E.
(1917-2007)

Anne K. Pecora, Esq.
(1946-2008)

Alfred J. Simpson
(1948-2007)

RICHARD F. PECORA, ESQ.
PRESIDENT

ANDREW J. PECORA
VICE PRESIDENT, ASLA

DALJIT S. MAKAR
VICE PRESIDENT

EDWARD F. JOHN, P.E.
CHIEF ENGINEER

OF COUNSEL
ROBIN JOHN PECORA, ESQ

ALLIED CONTRACTORS, INC.

GENERAL CONTRACTORS

OFFICES: PRESTWAY BLDG., 204 E. PRESTON ST.
BALTIMORE, MD 21202-3997

YARD: 1700 CHESAPEAKE AVENUE

Phone 410-539-6727

Fax 410-332-4594

E-MAIL: allied.contractors@alliedcontractor.com

STREETSCAPES - UTILITIES

DREDGING - GUNTING

HISTORIC RESTORATION - BRIDGES

PUBLIC WORKS

COMMERCIAL

INDUSTRIAL

February 13, 2020

Ms. Brenda Simmons, Chief
Department of Transportation
Contract Administration /
Civil Rights Division
417 E. Fayette Street
Baltimore, Maryland 21202

Re: Our Contract No. 8886
Baltimore City Contract No. TR-19017
Conduit System @ Various Locations -
JOC

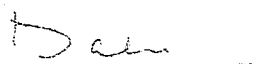
Dear Ms. Simmons:

We wish to acknowledge your letter dated February 12, 2020 and submit as follows:

1. We have informed the office of J. M. Murphy Enterprises regarding this subject matter. His office has informed us that J. M. Murphy Enterprises shall meet with Boards and Commissions office and do the needful to increase his participation prequalification amount beyond \$575,000.00.
2. However to alleviate any concerns by the City for a timely award to avoid any future delays we are enclosing a duly signed Minority Participation form by Priority Construction Corporation in the amount of \$231,000.00 to substantiate any shortfall which may occur in event Boards and Commissions hesitates to increase the prequalification package of J. M. Murphy to at least \$575,000.00.

We trust that the aforementioned shall suffice to process your award of the referenced project at an early date. In event you have any further questions in this regard please do not hesitate to contact this office.

Very truly yours,
ALLIED CONTRACTORS, INC.


Daljit Makar
Vice President

Enclosure
DKF:dmp

FOUNDED 1944

Office-Wpdoc\8886\8886_Subcontractor_Generalist & ENGINEERING CONSTRUCTION

Exhibit 7 C

City of Baltimore
Bernard C. "JACK" YOUNG, Mayor



DEPARTMENT OF TRANSPORTATION
Steve Sharkey, Director
417 E. Fayette Street, 5th Floor
Baltimore, Maryland 21202

February 28, 2020

Robert Dashiell, ESQ. P.A.
1726 Whitehead Road
Baltimore, Maryland 21207

Re: TR19017 Conduit System Resconstruction at Various Locations

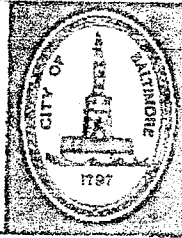
Dear Mr. Dashiell,

This letter is written in response to your letter dated February 8, 2020, addressed to Tamara Brown. The Department of Transportation (Department) has examined the concerns raised in your letter and offers the following;

- 1. Prequalification of J.M. Murphy** – In accordance with the *City of Baltimore Department of Public Works Specifications for Material, Highways, Bridges, Utilities and Incidental Structures (Green Book)* section 00 21 13.20 Prequalification of contractors and subcontractors, subcontractors do not have to be pre-qualified at the date bids are submitted but must be pre-qualified before the subcontractor can begin work. The Department will assist the Subcontractors whenever possible in the pre-qualification procedure. The Department has been in contact with the Office of Boards and Commissions and has been informed that J M Murphy is addressing their work capacity money limit. Additionally, Allied Contractors has assured the Department this matter will be addressed before the subcontracted work is to commence.
- 2. Suspicion of Shared Employees Among Allied and J M Murphy** - The Department has been assured by Allied Contractors that at no time has an employee of Allied and/or J M Murphy been working for each company at the same exact time. Additionally, the Department has reviewed all certified payroll reports for the contracts identified on the list that was attached to your letter that included J M Murphy and found no evidence of the concern you raised.

Exhibit 2d

City of Baltimore
Bernard C. "JACK" YOUNG, Mayor



DEPARTMENT OF TRANSPORTATION
Steve Sharkey, Director
417 E. Fayette Street, 5th Floor
Baltimore, Maryland 21202

February 28, 2020

Robert Dashiell, ESQ. P.A.
1726 Whitehead Road
Baltimore, Maryland 21207

Re: **TR19017 Conduit System Reconstruction at Various Locations**

Dear Mr. Dashiell,

This letter is written in response to your letter dated February 8, 2020, addressed to Tamara Brown. The Department of Transportation (Department) has examined the concerns raised in your letter and offers the following;

1. **Prequalification of J.M. Murphy** - In accordance with the *City of Baltimore Department of Public Works Specifications for Material, Highways, Bridges, Utilities and Incidental Structures (Green Book)* section 00 21 13.20 Prequalification of contractors and subcontractors, subcontractors do not have to be pre-qualified at the date bids are submitted but must be pre-qualified before the subcontractor can begin work. The Department will assist the Subcontractors whenever possible in the pre-qualification procedure. The Department has been in contact with the Office of Boards and Commissions and has been informed that J M Murphy is addressing their work capacity money limit. Additionally, Allied Contractors has assured the Department this matter will be addressed before the subcontracted work is to commence.
2. **Suspicion of Shared Employees Among Allied and J M Murphy** - The Department has been assured by Allied Contractors that at no time has an employee of Allied and/or J M Murphy been working for each company at the same exact time. Additionally, the Department has reviewed all certified payroll reports for the contracts identified on the list that was attached to your letter that included J M Murphy and found no evidence of the concern you raised.

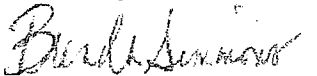
Exhibit 2e.

TR19017 Robert Dashiell, Esq. P. A.
February 28, 2020
Page 2

Thank you for the opportunity to review these concerns.

If you have any questions or concerns, please contact me immediately at 410-396-6815 or email me at Brenda.Simmons@baltimorecity.gov.

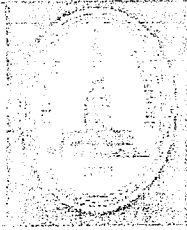
Sincerely,


Brenda Simmons, Chief
Contract Administration

Cc: Tamara Brown

Exhibit 3

CITY OF BALTIMORE
Department of Transportation



February 12, 2020

Allied Contractors, Inc.
204 E. Preston Street
Baltimore, MD 21202

SUBJECT: TR19017 Conduit Systems Reconstruction @ Various Locations Citywide - JOC

Dear Mr. Franz,

On October 31, 2019, bids for the subject contract were opened and later verified and a determination was made that the bid of Allied Contractors was the lowest bid amount. Further review of Allied's MWBE submission led to the examination of each subcontractor prequalification standing. JM Murphy's prequalification (see attached) is currently valued at \$360,000.00 while the Statement of Intent included in Allied's MWBE package states the value of services to be performed at \$575,000.00, an amount that exceeds JM Murphy's prequalification value.

The City's prequalification Rules require that no subcontractor may commence work if the amount of work to be performed exceeds the subcontractor's assigned work capacity rating. Although each subcontractor does not have to be prequalified until the start of work, the Department needs to be assured that this issue will be cured before JM Murphy commences work. If Allied or JM Murphy need assistance to correct the issue, please contact the Office of Boards and Commissions which is responsible for all matters related to prequalification. If JM Murphy's prequalification issue cannot be cured, then Allied will need to request an appropriately prequalified replacement subcontractor before the work assigned to JM Murphy may commence.

Please provide DOT with a cure plan seven (7) calendar days from the date of this notice. Please forward the plan via email to Brenda.Simmons@baltimorecity.gov.

Sincerely,

A handwritten signature in cursive script that reads "Brenda Simmons".

Brenda Simmons, Chief
Contract Administration

Attachments



Affidavit 1

Highlander Contracting Company, LLC *
2401 Stringtown Road *
Sparks, Maryland 21152 *
Protestor *

Before the Board of Estimates
For

* Baltimore City

v.

Allied Contractors, Inc. *
204 East Preston Street *
Baltimore, Maryland 21202 *
Respondent *

Protest Contract # Tr-19017

**RESPONDENT'S AFFIDAVIT IN SUPPORT OF OPPOSITION TO
HIGHLANDER'S PROTEST OF CONTRACT TR19017 AWARD**

Testimony of: Mr. Dalgit Makar Relationship to Respondent: Vice Pres

Address: _____

Telephone Number: _____

I am Dalgit Makar and that I have personal knowledge of the matters set forth herein and I am competent to testify in a Court of Law.

1. William Crites, II was never employed by Allied Contractors, Inc. and was solely employed by J. M. Murphy Enterprises. However, William P. Crites, Sr. was employed by Allied Contractors from April 2014 until July 2018.
2. Saiquan Branch was employed by J. M. Murphy Enterprises from March 2016 until October 2018 and decided to terminate his employment with J. M. Murphy Enterprises. Allied Contractors then hired Saiquan Branch effective November 5, 2018 and he has since been continuously working with Allied on several projects.
3. It should be noted that contractors sometimes hire employees who were previously employed by other contractors/sub-contractors who they think could be beneficial for other projects, and sometimes employees change their employment for their betterment. There is nothing unusual about this practice.
4. J. M. Murphy Enterprises has never hired any employee belonging to Allied Contractors.

There are no such claims filed by any previous contractors, whether awarded or denied an award for contract work, nor with ongoing contracts presently being performed by Allied and its sub-contractor JMM. The above issue(s) are moot as well as irrelevant to the present contract at issue.

Allegation: 3. JMM must have consent from Allied's surety per the Green Book @ 00 51 00.08B.

14. Denied: A Subcontractor is not required to be qualified until he commences work. See Green book @ 00 21 13.20 B1. The TR19017 contract has not be awarded, pending Highlander's protest. Therefore, no consent is required at this time.

Allegation: 4. Protestor's Exhibit 1 spreadsheet is relied on by Highlander to prove the above.

15. Denied: The past contracts are not relevant to the present one being protested by Highlander.

Allegation: 5. on information and belief, JMM was permitted enter upon worksites without approved prequalification on each of and all the prior Allied contracts.

16. Denied: Highland brings forth no admissible evidence (affidavit, photograph, etc.) that is factual pertaining to any prior contract. This is a mere assertion which is false.

17. The att'd. "Allied" letter from me to Ms. Simmons dated Feb. 26, 2020, is true and correct, authentic, and genuine

I do solemnly declare and affirm under the penalties of perjury that the contents of the foregoing document are true and correct.

3/22/16

Date

/s/

Affiant

Affidavit Z

Highlander Contracting Company, LLC *
2401 Stringtown Road *
Sparks, Maryland 21152 *
Protestor *

Before the Board of Estimates
For
Baltimore City
Protest Contract # Tr-19017

v.
Allied Contractors, Inc. *
204 East Preston Street *
Baltimore, Maryland 21202 *
Respondent *

RESPONDENT'S AFFIDAVIT IN SUPPORT OF OPPOSITION TO
HIGHLANDER'S PROTEST OF CONTRACT TR19017 AWARD

Testimony of: Mr. Jesse Murphy Relationship to Respondent: Sub.

Address: _____

Telephone Number: _____

I am Jesse Murphy, Pres. of "JMM" and that I have personal knowledge of the matters set forth herein and I am competent to testify in a Court of Law.

1. William Crites, II was never employed by Allied Contractors, Inc. and was solely employed by J. M. Murphy Enterprises. However, William P. Crites, Sr. was employed by Allied Contractors from April 2014 until July 2018.
2. Saiquan Branch was employed by J. M. Murphy Enterprises from March 2016 until October 2018 and decided to terminate his employment with J. M. Murphy Enterprises. Allied Contractors then hired Saiquan Branch effective November 5, 2018 and he has since been continuously working with Allied on several projects.
3. It should be noted that contractors sometimes hire employees who were previously employed by other contractors/sub-contractors who they think could be beneficial for other projects, and sometimes employees change their employment for their betterment. There is nothing unusual about this practice.
4. J. M. Murphy Enterprises has never hired any employee belonging to Allied Contractors.

I do solemnly declare and affirm under the penalties of perjury that the contents of the foregoing document are true and correct.

3/22/16
Date

_____/s/_____
Affiant

Additional pages: () yes or () check one.. If "yes," continue on next page.

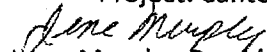
J. M. Murphy Enterprises, Inc.

2539 St. Paul Street

Phone: (410) 366-1145 Fax (410) 366-119

PARTIAL LIST OF CONTRACTORS WORKED FOR SINCE 2014

1. Libey, LLC 210 Lexington St Baltimore Maryland 21202. (571) 436-1569 Project: Housing rehab. Henneman Avenue. 2019
2. St. Bernadine Roman Catholic Church 3812 Edmondson Avenue. Concrete work 2018-2019
3. The Bull Pen. Owner Ms. Christina Abdulghani (410) 967-0685. New water service installation for sprinkler system. 2018.
4. Horizon Retail Construction, Inc. (262) 638-6000. Repairs to concrete trenches at Columbia Mall "Bed and Body Works" # 897. 2018
5. Conboy & Manion Contracting, Inc. 36 Phila Street Saratoga Springs, N. Y. 12866. Owings Mills's concrete ramps demolish and install. (518) 583-4038. 2016
6. Rupert Landscaping (301) 482-0300 Install concrete pavers at REC PIER HOTEL 2016
7. Clark Construction (301) 272-6884. Project 1812 Ashland Avenue. Install concrete curb and gutter, sidewalks and concrete pre-cast pavers. 2016.
8. Urban Built, LLC. (410) 685-1252. Demolition, concrete basement slabs, masonry walls and drainage tiles. 2015.
9. J. A. Argetakis Contracting Company, Inc. 3723 Eastern Avenue Baltimore, MD. 21224 Project: Canton Library 2016. Concrete footings, slabs, ramps. (410) 633-8016.


Jesse Murphy, President

JM Murphy Enterprises, Inc.

Affidavit 3

Highlander Contracting Company, LLC
2401 Stringtown Road
Sparks, Maryland 21152
Protestor

* Before the Board of Estimates
* For
* Baltimore City
*
* Protest Contract # Tr-19017
*
*

v.
Allied Contractors, Inc.
204 East Preston Street
Baltimore, Maryland 21202
Respondent

RESPONDENT'S AFFIDAVIT IN SUPPORT OF OPPOSITION TO
HIGHLANDER'S PROTEST OF CONTRACT TR19017 AWARD

Testimony of: Saiquan Branch Relationship to Respondent: Employee

Address: _____

Telephone Number: _____

I am Mr. Saiquan Branch and that I have personal knowledge of the matters set forth herein and I am competent to testify in a Court of Law.

1. William Crites, II was never employed by Allied Contractors, Inc. and was solely employed by J. M. Murphy Enterprises. However, William P. Crites, Sr. was employed by Allied Contractors from April 2014 until July 2018.
2. Saiquan Branch was employed by J. M. Murphy Enterprises from March 2016 until October 2018 and decided to terminate his employment with J. M. Murphy Enterprises. Allied Contractors then hired Saiquan Branch effective November 5, 2018 and he has since been continuously working with Allied on several projects.
3. It should be noted that contractors sometimes hire employees who were previously employed by other contractors/sub-contractors who they think could be beneficial for other projects, and sometimes employees change their employment for their betterment. There is nothing unusual about this practice.
4. J. M. Murphy Enterprises has never hired any employee belonging to Allied Contractors.

I do solemnly declare and affirm under the penalties of perjury that the contents of the foregoing document are true and correct.

3/22/16

Date

/s/

Affiant

Additional pages: () yes or () check one.. If "yes," continue on next page.

MINUTES**RECOMMENDATIONS FOR CONTRACT AWARDS/REJECTIONS**Bureau of Procurement

3. B50005562, Website Hosting Management and Maintenance Support Mindgrub Technologies, LLC \$400,000.00

(Baltimore City Office of Information and Technology, Baltimore City Police Department, Baltimore City Health Department, etc.)

MBE/WBE PARTICIPATION:

On November 26, 2018, MWBOO determined that no goals would be set because of no opportunity to segment the contract. The Vendor would be solely responsible for the website hosting and support services.

MWBOO GRANTED A WAIVER ON NOVEMBER 26, 2018

MINUTES

Baltimore Police Department - Professional Services Agreement

ACTION REQUESTED OF B/E:

The Board is requested to approve and authorize execution of a Professional Services Agreement with Persistent Surveillance Systems, LLC, an Ohio limited liability company (Contractor). The period of the agreement is effective upon Board approval for one year.

AMOUNT OF MONEY AND SOURCE:

N/A

BACKGROUND/EXPLANATION:

The Contractor will undertake the Aerial Investigation Research (AIR) Pilot Program in an effort to assist the Baltimore Police Department in the investigation of certain crimes. The funding for this Professional Services Agreement does not come from any City public sources, but rather will be paid for by Arnold Ventures, a philanthropic organization.

The purpose of this agreement is for BPD to test and rigorously evaluate the Aerial Investigation Research (AIR) Pilot Program which will be used to assist BPD investigate and reduce violent crime in Baltimore City. The program is at no cost to the City, and is being donated through the term of the agreement by Arnold Ventures, a philanthropic organization. During the term, the Contractor will fly aircraft over Baltimore City to collect imagery data. The resolution is limited and therefore individuals and vehicles are unidentifiable but are shown as a single dot and/or movement that can be tracked from a crime scene. This program will be used for investigative "look-back" after an incident has already occurred and can only be used after receiving a case number or incident number. Included in the agreement are additional safeguards and oversight:

MINUTES

Baltimore Police Department - cont'd

1. Limited Scope and Duration: Flight operations will be active for up to six months in order to collect sufficient data to evaluate and determine the efficacy of the technology. The program will be focused on the following crimes: murder, non-fatal shootings, armed robberies and car-jacking's.
2. Civilian Review and Audits: Independent research partners will evaluate the effectiveness of the program. Potential partners will include: Morgan State University, New York University, University of Baltimore, and the RAND Corporation. Independent civilian verification and validation auditors will be engaged to review system use logs to ensure the program is only being used for its intended public safety purpose.
3. Data Protection: That data that is obtained can only be used for the purposes related to criminal investigations and will not be authorized for any other purpose. Unanalyzed imagery data will be stored for 45 days after which point it will be deleted during the pilot period. However, with respect to specific imagery analyzed to investigate incidents of crimes, the evidence will be compiled into packets and become a permanent part of the case file. As with all evidence, the imagery data and investigative findings will be provided to the prosecution and be made available to defense counsel through the discovery process.

APPROVED FOR FUNDS BY FINANCE

A PROTEST WAS RECEIVED FROM ACLU MARYLAND.

A PROTEST WAS RECEIVED FROM THE NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

ACLU

Maryland

March 24, 2019

VIA EMAIL

Honorable President
and Members of the Board of Estimates
c/o Clerk, Board of Estimates
204 City Hall
100 N. Holliday Street
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GENERAL COUNSEL

Protest re: Baltimore Police Department – Professional Services Agreement
Board of Estimates Agenda, March 25, 2020, pp. 42-43

Dear President Scott and Members of the Board of Estimates,

I write on behalf of the ACLU of Maryland, and its approximately 4,300 members who reside in Baltimore City, to protest the inclusion of the professional services agreement between the Baltimore Police Department (BPD) and Persistent Surveillance Systems, LLC (PSS) on the routine agenda for the March 25, 2020 Board of Estimates, and urge you to postpone any consideration of this item.

Our protest rests on multiple grounds. First, there has been inadequate public information about the decision to enter into this contract. The Consent Decree between the BPD and the United States Department of Justice requires that before the BPD adopts any new technology that is used in enforcement activities (as the technology at issue here will be), it must “timely disclose to the public on its website or disclose to any civilian oversight entity agreed upon by the Parties: (1) the type of new equipment or technology sought; and (2) BPD’s intended use of the equipment.” *United States v. Police Department of Baltimore City*, No. 17-00099, Consent Decree, Dkt. No. 2-2, Jan. 12, 2017, ¶ 276. As discussed below, the BPD’s disclosures regarding this technology have been critically incomplete and misleading.

The BPD had initially scheduled three public meetings to discuss the decision to resume the persistent wide-area motion imagery (WAMI) surveillance of the entire City of Baltimore. However, due to the COVID-19 pandemic crisis, only the first (sparsely attended) meeting was held. The subsequent meetings were moved to online Facebook Live presentations, the first of which was held on March 23. A majority of those who commented during that presentation appeared opposed to the decision to resume the surveillance, or raised questions that were

not meaningfully answered in the presentation. And we are also aware that when persons attempted to submit questions by email to the specified address, questions@baltimorepolice.org, prior to the presentation, the emails were returned as undeliverable, with the message that delivery to that address was restricted. Further, the very existence of the COVID-19 pandemic, and the public health crisis and disruption it has engendered, has significantly impacted the public's ability to focus on or participate in any public discussion of this far reaching new technology.

The public's access to necessary information has also been critically limited by the fact that the contract with PSS, and any memoranda of understanding governing PSS's use of the data, have not yet been publicly disclosed, even though Commissioner Harrison has said during the public presentations that all of the privacy protections for the data were contained in those documents. Without the ability to review those documents before the Board of Estimates votes on them, the public has no meaningful ability to comment or address whether such protections are even minimally adequate.

Further, the BPD's public statements about the surveillance technology that is being deployed have been shamefully and materially misleading, thereby further frustrating the public's ability to understand and comment on what is being proposed. Commissioner Harrison has repeatedly and inaccurately said that the technology is not "surveillance" even though that is precisely what it is (indeed, the company providing the technology is called Persistent Surveillance Systems). And he has repeatedly and inaccurately said that the technology cannot identify anyone, when the entire point of the surveillance is precisely, and only, to identify people.

In design and intent, Persistent Surveillance Systems' technology seeks to create a permanent video record of everywhere that everyone in Baltimore goes any time they go outside. It does this by stitching together and storing incredibly high resolution wide angle photographs taken once per second that capture about half of the City in each frame. Multiple planes will image approximately 90% of the City at a time. This provides a slow frame video that can be zoomed in to show individual people (or cars) moving about the city. And because the video is stored, it is a virtual time machine, allowing police to go back in time to any location or person they are interested in, and to follow a particular person or car backwards (and forwards) in time to see where they went or came from. It is the technological equivalent of having a police officer follow you every time you walk outside (while the plane is flying, which is planned to be at least 40 hours per week). But because it is being done remotely, via high tech surveillance equipment, we do not viscerally experience the intrusion that would be obvious to all if an officer did this.

While it may be true that the current camera resolution is such that a person cannot be identified from a single frame of the video recording, such a statement

is completely misleading, since the sole purpose of capturing the footage is to identify people or vehicles. This is done in multiple ways. First, the person or vehicle being tracked on the stored footage can be linked to images captured by Baltimore's network of more than 700 ground based Citywatch cameras, or to Baltimore's fixed or mobile Automated License Plate Readers, and people and vehicles can be identified that way. Moreover, because the aerial footage allows people or cars to be tracked forward and backward in time until the people enter or leave particular buildings, it can also, without any other technology, be used to identify those same people, which, again, is the entire point. Telling people that this technology is not surveillance, and does not identify people, is not being honest about what is being proposed.

The decision to put all of Baltimore's residents under persistent wide area motion surveillance is a fateful step, that will impact the privacy rights of residents for generations to come. Like most police technologies, this one will have the greatest impacts in Baltimore's black and brown neighborhoods, because it is intimately tied to the City's ground-based cameras, which are concentrated in those communities. The technology represents an utterly new kind of surveillance of American life, which permits the mass collection of information about people across time and space in ways that have never been possible before. The fight over whether it should go forward will be one of the most significant battles in the history of surveillance.

Further, the decision to implement this technology raises grave constitutional concerns, because the Supreme Court has already stated that government acquisition of public movement data over time is a search governed by the Fourth Amendment's restrictions. *E.g. Carpenter v. United States*, 138 S. Ct. 2206 (2017).

It is shameful that the Board of Estimates is the only body that includes elected officials that, under current laws, will ever consider this fateful step. Given that responsibility, and the intense public interest and debate about this technology, any decision to approve the contract with PSS should be postponed until after the current pandemic emergency, and until after the public has a chance to be fully and accurately informed about what is being done, and a chance to fully participate in the debate and make its views known to the Board.

Thank you for considering our protest.

Sincerely,

David Rocah
Senior Staff Attorney

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March 27, 2020

Electronic Mail

Honorable President Brandon Scott
and Members of the Board of Estimates
c/o Clerk, Board of Estimates
204 City Hall
100 N. Holliday Street
Baltimore, MD 21202

Re: Protest of the item referred to as “Baltimore Police Department - Professional Services Agreement” that appeared on Page 42 of the March 25, 2020, Board of Estimates Agenda

Dear President Scott and Members of the Board of Estimates:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF),¹ I write to protest the Board of Estimates’ (the Board) consideration of the professional services agreement between the Baltimore Police Department (BPD) and Persistent Surveillance Systems, LLC, which appeared on the Board’s March 25, 2020 meeting agenda and deferred for one week.² On March 19, 2020, LDF sent a letter to Baltimore City Mayor Young and Police Commissioner Harrison raising several concerns, detailed below, about the BPD Aerial Investigation Research Pilot Program.³ Accordingly, we respectfully urge you to postpone any decision concerning BPD’s contract with Persistent Surveillance Systems to operate the aerial surveillance pilot until the COVID-19 pandemic has ended and the current state of emergency is lifted. Doing so would allow BPD to present the proposed pilot to a larger segment of Baltimore residents and stakeholders consistent with the federal consent decree between BPD and the U.S. Department of Justice

¹ Since its founding in 1940, LDF has used litigation, policy advocacy, public education, and community organizing strategies to achieve racial justice and equity in the areas of education, economic justice, political participation, and criminal justice. It has been a separate organization from the NAACP since 1957. For 80 years, LDF has consistently worked to promote unbiased and accountable policing policies and practices at the national, state, and local levels. For the past five years, we have partnered with local advocates, activists, and attorneys to reform unlawful policing practices in Baltimore City by joining the community call for a federal investigation of the police department, advocating for fair provisions in the police union contract, and calling for more transparency regarding police misconduct complaints.

² Talia Richman, *Baltimore aerial surveillance agreement: \$3.7 million price tag, privacy protections, evaluation plan*, The Baltimore Sun, Mar. 25, 2020, <https://www.baltimoresun.com/politics/bs-md-pol-aerial-surveillance-agreement-boe-20200324-lvpjbsvqs5catntaeva2532a2a-story.html>.

³ Letter from Sherrilyn A. Ifill, President and Director Counsel, NAACP LDF, to Bernard C. Young, Mayor, Baltimore City, *et al.*, Mar. 19, 2020, <https://www.naacpldf.org/press-release/ldf-comment-letter-on-baltimore-aerial-surveillance-pilot-program/>.

(DOJ).⁴ While we are encouraged by city officials' willingness to host public education sessions about the pilot program,⁵ the COVID-19 pandemic likely contributed to low participation in the first public meeting and cancellation of subsequent meetings scheduled for March 16 and 19, thereby substantially limiting the public's opportunity to ask questions and share concerns about the proposed pilot.

I. There is no evidence that the pilot aerial surveillance program will accomplish the anticipated goal – assist the BPD with investigating and solving crimes

In December 2019 when Commissioner Harrison announced plans to pilot an aerial surveillance program in Baltimore, we were struck by his acknowledgement of the uncertain success of the program. Indeed, he stated “the reality is, that we now agree that we don't know if the program will have any impact on the crime in our city.”⁶ Baltimore city officials also stated that Persistent Surveillance Systems has provided no information about the efficacy of the program.⁷ We too question the success of the proposed pilot. Persistent Surveillance Systems has no track record of success in crime reduction and its services have been rejected in several cities.⁸ Additionally, in 2016, the company and BPD failed to disclose to the public the operation of a similar aerial surveillance program that involved secretly flying a plane over the city.

Despite this questionable history, city officials now contemplate utilizing an untested aerial surveillance program, operated by the same company, to assist BPD with investigating and solving crimes. Baltimore would be the first city to use the program for that purpose, according to Commissioner Harrison,⁹ thereby relegating city residents, employees, and visitors as test subjects in an experiment that may cause more harm than good.

Baltimore City residents deserve public safety strategies that are proven effective and not programs with unknown outcomes. Residents have already raised concerns about previous aerial

⁴ BPD is required to “timely disclose to the public” any new type of equipment or technology, including surveillance equipment, that it uses in its enforcement activities. See Consent Decree, *United States v. Police Department of Baltimore City*, ¶ 276, No. 1:17-cv-00099-JKB, Doc. 2-2, (D. MD Jan. 12, 2017), <https://www.justice.gov/crt/case-document/file/925036/download>. [Hereinafter *Consent Decree*].

⁵ Mckenna Oxenden, *Baltimore Police Department holds first community forum on surveillance plane that's set to launch in April*, BALTIMORE SUN (March 11, 2020), <https://www.baltimoresun.com/news/crime/bs-md-ci-cr-community-forum-plane-20200312-xmcrmbzivfc2jp5xgalclqhm-yi-story.html>.

⁶ Tyler Waldman, *Harrison: Surveillance Plane to Return for Trial Program Next Year*, WBAL New Radio 1090 a.m./101.5 FM, (Dec. 20, 2019), <https://www.wbal.com/article/427127/124/harrison-surveillance-plane-to-return-for-trial-program-next-year>; See also, Justin Fenton and Talia Richman, *Baltimore Police back pilot program for surveillance planes, reviving controversial program*, BALTIMORE SUN (Dec. 20, 2019), <https://www.baltimoresun.com/news/crime/bs-md-ci-cr-baltimore-police-support-surveillance-plane-20191220-zfhd5ndtlbdurlj5xfr6xhoe2i-story.html>.

⁷ *Id.*

⁸ Dominique Marie Bonessi, *Who is Dr. Ross McNutt?*, WYPR, Nov. 19, 2018, <https://www.wypr.org/post/who-doctor-ross-mcnutt>.

⁹ Barry Sims, *Harrison announces new pilot program for surveillance plane*, WBALTV (Dec. 20, 2019), <https://www.wbal.com/article/baltimore-surveillance-plane-pilot-program/30297186>.

surveillance activities by BPD, including potential privacy violations due to the nature of round-the-clock surveillance and racial discrimination in the deployment of the planes.¹⁰ City officials must understand that using mass surveillance methods to attempt to solve crimes will likely perpetuate bias by disproportionately surveilling communities of color even though crimes occur in all neighborhoods in the city.¹¹ Data that is “derived from or influenced . . . by individual and societal biases” play a particularly sinister role in policing because they dictate how policing resources are deployed in the future.¹² Additionally, surveillance of individuals on public streets may violate the Fourth Amendment of the U.S. Constitution.¹³ We respectfully urge city officials to weigh the potentially harmful and unlawful consequences of the proposed aerial surveillance program.

II. An aerial surveillance program in a city with a history of racially discriminatory and otherwise unlawful policing is unlikely to engender the public trust needed to maintain public safety

In August 2016, when news reports revealed that Persistent Surveillance Systems secretly flew aerial surveillance planes over the Baltimore City capturing around 300 hours of footage and sending the footage to BPD,¹⁴ the DOJ had just completed its investigation of BPD.¹⁵ The investigation found that BPD engaged in a pattern or practice of racially discriminatory and

¹⁰ Justin Fenton and Talia Richman, *Baltimore Police back pilot program for surveillance planes, reviving controversial program*, BALT. SUN (Dec. 20, 2019), <https://www.baltimoresun.com/news/crime/bs-md-ci-cr-baltimore-police-support-surveillance-plane-20191220-zfhd5ndtlbdurj5xf6xhoe2i-story.html>; Brentin Mock, *Baltimore Police Say Aerial Surveillance is Not a “Secret Spy Program*, CITYLAB (Aug. 24, 2016), <https://www.citylab.com/equity/2016/08/baltimore-police-say-aerial-surveillance-project-is-not-a-secret-spy-program/497327/>; Monte Reel, *Secret Cameras Record Baltimore’s Every Move From Above*, BLOOMBERG BUSINESSWEEK (Aug. 23, 2016), <https://www.bloomberg.com/features/2016-baltimore-secret-surveillance/>; Al Jazeera and Reuters, *FBI spy planes flew 10 times over Freddie Gray protests, documents show*, AL JAZEERA (Oct. 30, 2015), <http://america.aljazeera.com/articles/2015/10/30/fbi-spy-planes-flew-over-baltimore-protests.html>; Jay Stanley, *Mysterious Planes Over Baltimore Spark Surveillance Suspicions*, ACLU (May 6, 2015), <https://www.aclu.org/blog/privacy-technology/mysterious-planes-over-baltimore-spark-surveillance-suspicions>.

¹¹ Rashida Richardson, et al., *Dirty Data, Bad Predictions: How Civil Rights Violations Impact Police Data, Predictive Policing Systems, and Justice*, 94 NYU L. REV. 192 (2019), <https://www.nyulawreview.org/wp-content/uploads/2019/04/NYULawReview-94-Richardson-Schultz-Crawford.pdf> [hereinafter “Richardson”]; see Jay Stanley and Catherine Crump, *Protecting Privacy From Aerial Surveillance: Recommendations for Government Use of Drone Aircraft*, ACLU, Dec. 2011, <https://www.aclu.org/files/assets/protectingprivacyfromaerialsurveillance.pdf>.

¹² Richardson, *supra* note 9, at 196-97.

¹³ See *Carpenter v. United States*, 138 S. Ct. 2206, 2217 (2018) (the unique nature of cell phones to track and maintain the movement of citizens at every moment and with pin point accuracy requires the government to acquire a search warrant before its seizure); see also Matthew Feeney, *Surveillance Tech Still a Concern After Carpenter*, CATO INSTITUTE, June 25, 2018 (commenting that Baltimore’s surveillance program may violate the U.S. Constitution after the *Carpenter* case because it would allow BPD to use a third party to travel back in time to track a person’s movement), <https://www.cato.org/blog/surveillance-tech-still-concern-despite-carpenter>.

¹⁴ Monte Reel, *Secret Cameras Record Baltimore’s Every Move From Above*, BLOOMBERG BUSINESSWEEK (Aug. 23, 2016), <https://www.bloomberg.com/features/2016-baltimore-secret-surveillance/>.

¹⁵ U.S. Dep’t of Justice Civil Rights Div., *Investigation of the Baltimore City Police Dep’t*, (Aug. 10, 2016), available at <https://www.justice.gov/opa/file/883366/download>.

otherwise unlawful policing in violation of the U.S. Constitution and federal civil rights law.¹⁶ Specifically, it found “overwhelming statistical evidence of racial disparities in BPD’s stops, searches, and arrests,”¹⁷ as well as incidents during which BPD officers used racial slurs or other statements that indicated racial bias.¹⁸ And even as DOJ investigated BPD’s policing practices and negotiated an agreement,¹⁹ BPD officers assigned to its Gun Trace Task Force robbed residents, falsified overtime documents, and engaged in other unlawful activities that resulted in the convictions of two and guilty pleas of seven officers.²⁰ Baltimore City prosecutors ultimately dismissed almost 800 criminal cases involving those officers.²¹

Baltimore’s residents of color have suffered enough at the hands of BPD officers and should not suffer the indignation of being subjects in an aerial surveillance experiment that may not amount to anything. Also, the notion that Baltimore City would reportedly use \$3.7 million in private funding,²² instead of public funds, to expose residents to this type of risk offers little comfort to those who have been subjected to unlawful policing practices and policies.

Additionally, during a poorly publicized Facebook Live meeting hosted by BPD on Monday, March 23, 2020, Commissioner Harrison shared that the surveillance planes would capture footage from 90% of the city, 32 square miles of footage per second, and all footage would be owned by the private company.²³ This raises serious concerns as the private surveillance company is not accountable to the public.

As stated in the federal consent decree, public trust is needed to ensure public safety.²⁴ Residents must trust the police to report crimes and be reliable witnesses.²⁵ City officials’ plan to launch the pilot aerial surveillance program to investigate fatal and nonfatal shootings, armed robberies and car jackings committed by residents, but only serious incidents of police

¹⁶ *Id.*

¹⁷ *Id.* at 48-70.

¹⁸ *Id.* at 66.

¹⁹ See generally, *Consent Decree*, *supra* note 4.

²⁰ Jessica Anderson, *Gun Trace Task Force Overview*, BALTIMORE SUN, <http://data.baltimoresun.com/news/gun-trace-overview/>.

²¹ Paul Gessler, *Baltimore State’s Attorney Asks For 790 ‘Tainted’ Criminal Cases To Be Thrown Out*, WJZ (Oct. 4, 2019), <https://baltimore.cbslocal.com/2019/10/04/baltimore-states-attorney-asks-for-nearly-800-tainted-criminal-cases-to-be-thrown-out/>.

²² See, Talia Richman, *Baltimore aerial surveillance agreement: \$3.7 million price tag, privacy protections, evaluation plan*, The Baltimore Sun, Mar. 25, 2020, <https://www.baltimoresun.com/politics/bs-md-pol-aerial-surveillance-agreement-boe-20200324-lvpjbsvqs5catntaeva2532a2a-story.html>.

²³ See, Baltimore Police Department, *Aerial Investigation Research Pilot Program*, 40:30-1:15:00, FACEBOOK, [facebook.com/58771761955/videos/3400646286628872/](https://www.facebook.com/58771761955/videos/3400646286628872/) (last visited March 27, 2020).

²⁴ See *Consent Decree*, *supra* note 4, at ¶ 6 (“The Parties recognize that constitutional and effective policing are interdependent and rely on a strong partnership between the police department and the communities that it serves.”).

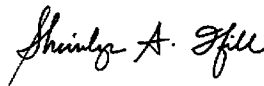
²⁵ See *id.* at ¶¶ 87, 239, 257.

misconduct²⁶ creates a double standard that does not engender public trust. The need to investigate crimes allegedly committed by police officers is especially salient in Baltimore as evidenced by the actions of officers who were members of the Gun Trace Task Force.²⁷ Nevertheless, we are unconvinced that an aerial surveillance program, which Commissioner Harrison reportedly explained has a resolution of “one pixel per person and can’t identify any specific individual because it only appears as a dot on the screen”²⁸ will result in thorough investigations of crimes committed by residents or police.

Accordingly, we urge the Board to postpone consideration of any contract with Persistent Surveillance Systems until after the state of emergency issued due to the COVID-19 pandemic is lifted and after members of the public have a meaningful opportunity to provide feedback on BPD’s proposed aerial surveillance program. In the meantime, city officials should identify and adopt proven public safety strategies that will work to reduce crime *and* build trust between the community and BPD. The proposed aerial surveillance plane program is an unproven strategy that may also violate the constitutional rights Baltimore residents.

Thank you for considering our concerns. Please do not hesitate to contact Monique Dixon, Director of State Advocacy, or me with any questions.

Sincerely yours,



Sherrilyn A. Ifill
President and Director Counsel

cc: Bernard C. Young, Mayor, Baltimore City
Dana P. Moore, Acting City Solicitor, Baltimore City
Joan M. Pratt, Baltimore Comptroller
Matthew W. Garbark, Acting Director, Baltimore City Department of Public Works

²⁶ Mckenna Oxenden, *Baltimore Police Department holds first community forum on surveillance plane that's set to launch in April*, BALT. SUN (March 11, 2020) (“The plane will focus on targeting four specific crime categories: fatal shootings, nonfatal shootings, armed robberies and carjackings. The commissioner said other crimes will be considered by him on a “case-by-case basis” and that the plane will be for “serious” cases of misconduct.”), <https://www.baltimoresun.com/news/crime/bs-md-ci-cr-community-forum-plane-20200312-xmcrmbzivfc2jp5xgalclqhm-yi-story.html>.

²⁷ Phillip Jackson, *At least 20 Baltimore police officers arrested, sentenced or suspended during department's ugly 2019*, BALT. SUN (Dec. 17, 2019), <https://www.baltimoresun.com/news/crime/bs-md-ci-cr-20-baltimore-cops-sentenced-charged-2019-20191217-wtqklwhhqndk3hr-gacufgczem-story.html>.

²⁸ Mckenna Oxenden, *Baltimore Police Department holds first community forum on surveillance plane that's set to launch in April*, BALT. SUN (March 11, 2020), <https://www.baltimoresun.com/news/crime/bs-md-ci-cr-community-forum-plane-20200312-xmcrmbzivfc2jp5xgalclqhm-yi-story.html>.

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President: "The second item on the non-routine agenda can be found on Pages 42 to 43, ah -- Baltimore Police Department Professional Services Agreement. We have received protests on this item. We will hear ah -- the protest from the ACLU first, ah -- the NAACP Legal Defense second, and then a response from the Baltimore Police Department after that. Ah -- Mr. Rocah."

Mr. David Rocah, ACLU Senior Staff Attorney: "Thank you Mr. President and members of the Board. Um -- thank you for considering our protest and for allowing me to speak on behalf of our thousands of members in Baltimore City. It's incredible that we're even having a debate about the deployment of the most far reaching surveillance technology that has ever existed in this country giving the government the power to know where everybody goes all the time at least during daylight. No government in this country has ever had that power and no government that wants to call itself a democracy ever should. It is also absurd that this is being done without the approval of the City Council in perhaps the only City in the United States where the City Council has no

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power over a decision like this with no meaningful public debate or public accountability with inadequate public information and in the middle of one the most far reaching crises that this country has ever experienced. And it's absurd that the only public body that is approving this has members who are not elected by the public. I want to begin by being clear about what the technology that is being proposed does. It is the technological equivalent of having a police officer follow every man, woman and child in Baltimore every time they walk out of their house during daylight. And it is being sold to the public in ways that are de -- deeply misleading, claiming that it cannot identify anyone and that is not surveillance. What we are talking about is technology that was developed for the war in Iraq, which stitches together incredibly high resolution, wide angle photographs taken once per second from planes flying over the City that will capture, will image virtually the entire City, and the images that are recorded provide a slow frame video record that can be -- that is detailed enough to show individual people or cars moving about the City. And because that video is stored, it is a virtual time machine allowing police to go back in time, to any location or any

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person that they are interested in and follow that particular person or car backwards and forwards in time to see where they go or where they came from. So when Commissioner Harrison says to the public that this is not surveillance that is simply not the case. Surveillance is literally the name of the company that we are contracting with. And when Commissioner Harrison says that the technology cannot identify anyone, that is also not the case. It is true that if you look at a single frame of the video the angle of the video and the resolution of the camera does not permit you to photographically identify who it is. But the entire point of this technology is to identify people, and that is the sole reason it is being deployed. If it couldn't identify anyone, it would be utterly useless. The identification happens in multiple ways. First by tracing someone's movements and seeing where they come from or go to. That by itself is often enough to identify them. Second, as the Commissioner acknowledges, the video record is linked to other ground based surveillance technologies, like public or private video cameras and automated license plate readers that allow for photographic identification of the person or car being tracked. The Commissioner says that he wants to study this

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technology but we already had a test of the technology in 2016, and the Police Department failed that test and so did Persistent Surveillance Systems. They failed by deploying the technology in secret hiding it even from prosecutors and defense attorneys not to mention the public and elected officials. They failed when Persistent Surveillance Systems lied about how long they kept the data saying it was only kept for 45 days but keeping it indefinitely. And they failed by saying it would be used only for serious crimes when the most common offense for which it was used was trying to track dirt bike riders. And it's absurd that we are planning to start a study of this techno -- a new study of this technology's effectiveness in the middle of the most significant disruption to American life ever. When the entire City and State is under mandatory lockdown. Virtually none of the data that is collected now could be used to compare to anything because the time that we are living in is completely unprecedented. We are told that all of the privacy protections are in a document that the public has not seen. This is not transparency. And we are asked to put our trust in a company that lied about how long it

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kept the data, gave it to the police and deployed the technology in secret, and that has made such outlandish claims about its effectiveness that even Commissioner Harrison calls them ridiculous. This is the company that we are supposed to trust? It's like giving the key to your house to the person who just robbed it. Based on the foregoing, we ask that you not approve the contract. Barring that, we ask that you defer consideration of the contract until the current state of emergency has ended, and the public can meaningfully participate in the debate with full information. And barring that, given the absurdity of studying anything under current conditions, we ask that any approval require that the deployment be deferred until the state of emergency has ended. Thank you."

President: "Thank you. Ah -- now we will hear from the NAACP Legal Defense Fund."

Ms. Monique L. Dixon, NAACP Legal Defense Fund Deputy Director of Policy and Director of State Advocacy: "Good morning to you and the Board of Estimates' members. On behalf of the NAACP Legal Defense Fund, my name is Monique Dixon, and I serve as the Director of State Advocacy and Deputy Director of Policy. I appreciate the opportunity to present our letter protesting the consideration of

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the Persistent Surveillance Systems um -- Agreement that's before the Board this morning. While I am before you in my official capacity, I'm also a constituent, having lived in Baltimore City for almost 27 years. So this issue is a particular concern to me personally. Our letter of protest includes one request and raises three concerns. In terms of our request, we respectfully urge this Board to postpone consideration of the agreement between Persistent Surveillance Systems and the Baltimore Police Department until after the COVID - 19 Pandemic and the State of Emergency is lifted. This will allow additional consideration by the public of the proposal. Our concerns are three-fold. First, the um -- the aerial surveillance program is untested. Second, it is unlikely to build public trust in a City with a history of racially discriminatory and otherwise unlawful policing, and third, the pilot raises constitutional questions that have not been fully addressed. I will present our questions and concerns in turn. First, as to our request for postponement as has already been said throughout the course of this meeting this morning. We are in the midst of an international public health crisis. City government has essentially shutdown, events have been postponed

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in the City and all over the country as we grapple with this crisis and as we mourn the death of 24 individuals here in Maryland. We're under stay-at-home orders. Many of us for the first time are home schooling our children or caring for elderly parents, while we're also teleworking, even if we -- if we are fortunate enough to have a job that will allow us to telework. With everything that's going on, um -- now is not the time to push through a proposal as controversial as the aerial surveillance program. Many, many people are interested in this, but simply do not have the capacity to chime in to provide comments to ask questions as they would have if we were not under this um -- incredible, unprecedented public health crisis. Another point I'd like to raise is during the Facebook live meetings hosted by Commissioner Harrison, he mentioned that a proposed measure of success for the pilot is public support. Well -- well ah -- to our knowledge thus far we have heard outright opposition to the program or we've heard many, many questions that members of the public have had that I argue have not been fully addressed. So allowing a postponement in the consideration of the agreement that is before you will allow the

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Baltimore Police Department to continue to comply with the letter and spirit of the Federal Consent Decree between it and the Department of Justice. The Consent Decree as you probably know requires the Department to disclose to the public information about any new technology. And that is -- this includes the proposed MOU which is before you and which has -- has -- with -- was just released by the President yesterday and has not been fully considered by the public. The three concerns that we have about the Pilot Aerial Surveillance program follows: first the program is untested. As we stated in our letter of protest we were struck by the comment made by Commissioner Harrison in December that we do not know if the program will have any impact on crime in the City. We too are skeptical. We're unaware of any successful crime reduction track record of the Persistent Surveillance System. This essentially would be an experiment -- an experiment in a City that deserves better. We deserve public safety strategies that are proven effective not an experiment. Additionally, this experiment will do little to build public trust in a City with a history of racially discriminatory and otherwise unlawful policing practices.

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The first time the Persistent Surveillance Systems and the BP and the Baltimore Police Department secretly flew surveillance planes over the City, the US Department of Justice has just concluded its investigation of the Department and ultimately uncovered years of discriminatory policing practices. We're now in the third year of a Consent Decree to address the civil rights violations alleged in the investigation -- in the investigative report. BPD has a long road ahead of it in terms of building trust with City residents. Flying aerial surveillance planes in the middle of a pandemic and without providing adequate opportunity for public consideration including consideration of the actual MOU will do little to build public trust. And public trust is necessary in order for this City to combat the crime that we're seeing um - on -- in our neighborhoods. Lastly, the program raises constitutional questions. City officials have provided little to no assurance that the planes will be deployed in a non-discriminatory manner. Again, in a City with a history of racially biased policing practices. When asked about the potential of discriminatory deployment of the plane, Commissioner Harrison responded that the

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Department will hire an auditor who will ensure that the program complies with the MOU and the law. To our knowledge, the auditor has not been identified and this Board has not considered any agreement between the Police Department and the auditor. This Board and City residents should have an opportunity to consider every aspect of the aerial surveillance program that's being presented to you. You should have -- we should have the opportunity to consider every aspect at one time including all agreements with all individual -- individual or independent entities involved in the program, which is another reason to postpone consideration of the item before this Board. For these reasons, the NAACP Legal Defense Fund respectfully oppose consideration of the Persistent Surveillance System MOU. Thank you for your time and I'm happy to answer any questions."

President: "Thank you. Thank you so much. And now we will hear from the Baltimore Police Department."

Commissioner Harrison: "Good morning everybody. Mr. President, Mr. Mayor, Madam Comptroller and members of the Board of Estimates. Thank you very much for allowing me the opportunity to speak to

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you this morning and for your consideration of our Aerial Investigation Research Program. Almost as soon as I was sworn in as Commissioner, the Vendor and their advocates met with me to present the virtues and the utility of this technology. I made it known to all of them and quite publicly that I was skeptical. I was skeptical not of because of any philosophical opposition and not because I didn't think it would work. But rather I was skeptical in a way in which they -- they were communicating all of the plane's benefits both to me in private and to you and the community in public. Unsubstantiated claims were made as to their ability to cut murders by a third, which were not based off of empirical data. The way the plane was being presented was going to be answer to all of our problems. I can say to you confidently this morning that it's not. No one thing ever is. So why are we here today? Over the course of several months after our initial meeting, the vendors and their supporters repeatedly approached me and asked if there were, if there was anything they could do to address my concerns which are the community's concerns and the answer was we need to address all of the community's concerns. I

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told them that they should start with the need to -- the need to cease making those types of unsubstantiated claims. And they agreed. Then I insisted on a framework of safeguards and extensive review, which is in the agreement before you today. Those include a limited scope and duration. So this will be a Pilot Program active for up to 180 days focused on murders, non-fatal shootings, armed robberies to include carjackings. Then civilian review and audits. Independent researchers and auditors will evaluate the effectiveness of the program while independent auditors were engaged to ensure the program's only being used for its intended purpose which is by the way in that agreement and they agree. Data protection. That the data is obtained and can only be used for the purposes related to the criminal investigation and all other data will be stored for only 45 days during the Pilot Program and then deleted immediately after 45 days if not requested and approved to be turned over to an investigator assigned to an investigation of one of the aforementioned crime indexes and they agreed. Other important points to know. The program will not be real time active surveillance, and it's only used to look back.

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The resolution of the camera that we agreed to was only one pixel per person, which means it cannot identify a particular person or a vehicle but rather only tracks movement as you have already heard. No one can be arrested based solely on the images captured from the plane. We still have to use other good investigative tactics and techniques and we have to do good police work. Now we announced our intention to proceed with the Pilot Program this past December, only to allow the data to inform us of whether or not the program will work or not, not because we have any belief that it will work. I've said that repeatedly and I'll say that again today. Since that time we received the necessary approvals from the Consent Decree Monitors, Judge Bredar, and the US Department of Justice because we did our due diligence as the Consent Decree calls for by bringing new technology to the Department of the Justice. The requirement is that we stay within the confines of the Consent Decree and we do not violate any of the terms of the Consent Decree. We also worked with and received the support of our Law Enforcement partners including the US and our State's Attorney. We held an in-person and two online public

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education sessions, and I'd like to submit this letter of support of our Baltimore's clergy who wish to see this program move forward. It is letter from the United Baptist Missionary Convention and its Auxiliary for the State of Maryland Incorporated. And it reads, Dear Commissioner Harrison: United Baptist Missionary Convention and Auxiliaries of the State of Maryland is comprised of more than 100 churches across the State. The community surrounding many of our churches are impacted by violent crime that impedes the quality of life of our members and its residents. We are aware of the desire of the Baltimore City Police Department to become the first Department in America to research the efficacy of aerial surveillance. Therefore, pending before the Board of Estimates is a request to adopt aerial investigative research, promoted and funded by the Arnold Foundation. We the undersigned faith based leaders support the research and fact finding tests of AIR under the condition that Morgan State University has an independent research role in evaluating the program. Signed sincerely, Dr. Cleveland T.A. Mason and there are other faith leaders of other faith reformations that are the undersigned. Representing the Islamic Faith Imam Earl El-

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Amin. Then we have Bishop Dennis Proctor, Bishop James L. Carter, Dr. Alvin C. Hathaway Sr., Reverend Dr. Beryl Whipple, Reverend Dr. Harold A. Carter, Jr., Reverend Dr. Terris King, Reverend Dr. Reginald Thomas, and Reverend Duane Simmons. So, I believe that we have worked diligently to present you a program that is balanced and well thought out. I fully appreciate that the opponents of this program including two organizations that have filed protests against this agreement have fundamental and philosophical beliefs against this type of technology. While I understand their view point, honest minds can disagree. These different viewpoints are not solely isolated to this claim and extend to many other technological tools BPD uses every day. Our virtual online community education presentations will air once a week on CharmTV for the next eight to ten weeks, and so far we received over 7,000 views of our online community education presentation, which far exceed -- which far exceeds what we would have had if we had done in person meetings. But that is the purpose of the Pilot program to make an absolute determination if the plane will be yet another effective tool. I and my staff who are here today look forward to

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answering your protests and your questions. So thank you for allowing me to speak to this matter. My concerns have been addressed in the document before you, which is only in draft format until approved today, and I respectfully request that the Board ratify this agreement. Once again, thank you very much."

President: "Thank you Mr. Commissioner. And I'll start with some questions that I have and I will start ah -- with your last comment about ah -- the public input. So on page 20 I believe it is no I'm sorry 21 of the agreement it talks about ah -- not 20 hold on one second, it talks -- you have a portion of 23. You have a portion of this document that talks about public education, BPD and the contractor intend there is full transparency and public awareness of this project and its result. And -- we know that amidst this public health crisis where ah -- people aren't outside and we can't have meetings in public, and we know we're in a City where so many residents in the City of Baltimore do not have access to Internet for example, ah -- 39% of the homes in Sandtown Winchester, one of our neighborhoods and most violent, 38% in Pimlico, 35 in southern Park Heights, Cherry Hill and Druid Heights

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ah -- do not have access to Internet. Ah -- couple of questions to that. One, how do you guys feel as though the Facebook lives are you know will suffice knowing those kinds that data of data and knowing that kind of information, but also have you guys tracked back to see, ah -- because I follow you know, you guys are on Facebook and on social media and a good portion of the Baltimore Police Department's online following are not City residents. Ah -- we -- have you guys done the data tracing to see where the views came from? Were they Baltimore City residents, people that actually are going to be impacted by this?"

Commissioner Harrison: "The answer to that question is, we have not tracked um -- whether the, the viewers on the online presentation are in fact or not in fact Baltimore residents. However, that's why we are going to air the community education on Charm TV. There are always opportunities for people to send in questions to us or to communicate with their elected council members who can forward questions as happens every day by virtual of me communicating with all of the council members who have questions on behalf of their constituents. And we will do every-

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thing within our power to make sure we can have access to the people who don't have Internet access by virtue of their neighborhood associations, by way of their faith leaders, by way of their elected officials both State and local leaders. And so we -- we have ways to get information from people who otherwise didn't have it through the Internet."

President: "Well Mr. Commissioner, thank you. But I think that also we have to be mindful that ah -- and in this there are people who are not communicating, right. They're not having community association meetings, and we know that the Council was not even briefed about this, this MOU until ah -- over the last week, and they have no Council member other than me has any say so in this Pilot Program. So, I think that if we were talking about ah -- this program as you guys and that's my next question as you initially proposed it, and we know we are in a public health crisis that no one could have seen coming, there would have been meetings around the City. But right now people don't have the ability or even know to the great extent that this is happening because everyone is focusing COVID. So my second question to you is, what

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ah -- what sparked the move up because originally you guys said that this was going to try to do May, and now what sparked the acceleration of the timeframe?"

Commissioner Harrison: "Well number one, we still have high levels of violence that are crimes of pre-meditation, crimes of passion and not necessarily crimes of opportunity like property crimes and other low level offenses. So we still have that amidst this COVID 19 epidem -- ah pandemic. That's number one. But number two, we -- you know we're able to do more than one thing at a time. This actually can serve as a force multiplier for the Police Department and perhaps could be used as an investigative tool while we're practicing social distancing, um -- because detectives are not being close to one another and we're in this COVID-19. This could be a force multiplier that could actually help us track where violent offenders and where suspected perpetrators are going after they commit crimes. This is only an investigative tool. Once again, you know, I was skeptical in the beginning. I remain skeptical, but I'm open to the idea of a Pilot Program only to allow the data

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to be used. This does not require any further policing manpower because we by virtue of our agreement have removed ourselves from the program. The program has analysts hired by the Vendor that download the data and then upon request of a detective whose assigned to an investigation, the investigative packet would be handed over to the detective. So it doesn't require any more policing services or any more energy given out by the Police to accomplish this. This actually could make it easier for us if done correctly to investigate while we're working in --- in a pandemic, in an international crisis. We acknowledge that we're in an international crisis and by virtue of us using this online order to communicate now, demonstrates that we can continue to work in spite of a pandemic. We didn't shut down and we believe that none of the other policing services need to shut down but rather this very well could be an enhancement. We're not advocating that it works, we're advocating that we will let the data tell us that and we'll let independent researchers speak on behalf of the program and you know if it doesn't work you have my commitment that we will ground the planes."

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President: "So and great -- thank you. And we, listen, we all know and you know ah -- as I spent an hour with your ah -- members of your senior team yesterday, that focusing in on this epidemic of violence in Baltimore amidst a global pandemic of health proportions for COVID-19 is my top priority. But, right now, ah -- more than ever in my opinion while we're doing this, we have to be focused on things that we know absolutely work. And just a couple extra questions for you. So ah -- before when we had this and we had you testify in front of the City Council, you testified that there was no evidence that this helped with any cases. Ah what would be different about it this time and also is any other major City doing this?"

Commissioner Harrison: "To my knowledge, no other major City is doing this, and what's different is we're not doing this with any expectation that it will work. We are only going to rely that's why we call it a Pilot and use it as a Pilot and yes if you want to use the word experiment interchangeably, that's fine. Because that's what it is. And we will let the data speak for itself, but we will let independent researchers validate that and then -- and then report that out to us and to the community. We will only be guided by the data. And so, we're -- we're not saying that this

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will work and we're not doing it the way it was done. We built in safeguards and precautions to remove the Department from any hands-on with the program and built in safeguards to tell you, the public, what it is, what it is not, what we would do and how we would do it, and let the research partners in auditing report out on whether or not we followed the rules that we agreed to. Um -- and so I'm open for a Pilot program and yes I'm an evidence based chief. I believe in evidence based program. We're building our focus deterrence model as we speak to go out and identify the subset of bad actors who are committing violent crimes to give them a pathway away from violent crime and to have good comprehensive investigations to remove those who choose poorly. We're working on evidence based programs every day. But this is a Pilot to determine if it will work. It is not something that we're deploying because we think it works and we will be guided by the data and that's the purpose of the independent researchers and trusted names that you of the community trust whether here in Baltimore or anywhere else in the country, so that you're not relying on me the Police Commissioner to tell you that it works."

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President: "So I want to follow-up on that, ah -- a couple of questions. One, ah -- is the impact of this of the plane race neutral. We know that racial equity is the law of the land in Baltimore and even though the Police Department does not have to follow that as a State agency, ah -- this Board does."

Commissioner Harrison: "If you're asking if its race neutral, what we're looking at is the people who are actually getting killed, the people who are suspected of killing other people, and how we slow that down. And if this is something that could work, if we built in the safeguards and we've built in the concerns that the community would have to protect against abuses then why wouldn't we try something that has never been used if it had the ability to inform us whether it would work or not. And so yes, we're -- we are always looking at race, but we want to look at what will work and figure out how we can best serve the people of Baltimore. We are here to serve and protect everybody and though we -- though race is a top concern, we don't ask the question, we help everybody."

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President: "So thank you, thank you for that. I will take that as a -- as an inconclusive answer. Ah -- to your point about evidence based, ah -- this, this plane um -- relies on partnering up with our existing CCTV Camera and other technology like LPR's. And to my knowledge, we are still ah -- in desperate need of upgrades to our CCTV Camera system and as you know you and I talk about this consistently, we still are not at the level of LPR's especially actually on the back of police cars that we need to be. Can you talk about where our CCTV Camera system is, because what we hear consistently, we know that some of them are down? We know that a lot of them are still old and grainy, grainy footage. Ah -- because for me when you think about something that's going to be used, this plane will be used and we have to as you know if you said this is a -- a -- a investigation tool after something has happened and we're going to be using those cameras to trace back and we're significant -- we continuously talk about how many of them are down and need to be upgraded. Having the plane without having the serious upgrades into CCTV and LPR and things on the front side, it's a lot like in my opinion buying a car with rims and the engine being faulty."

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Commissioner Harrison: "Well we've all acknowledged that there are times when the cameras are down because they are in need of repair. Some of them are older generation models that need to be upgraded. When we brought that to the -- to the City's attention to the Council's attention, there's not been any extra money given to us to fix them, but yes we've acknowledged that from time to time they are down. Ah -- but yes, we have over 800 cameras deployed around the City. We have license plate readers, sporadically and in strategic locations across the City. Yes, we could have a -- we need a good investment to upgrade older generation models and to expand the camera program. But until such time that we can actually do that, this could be a force multiplier to fill the gap until such time that we can actually invest in expanding and upgrading the CCTV camera and the License Plate Reader program. There are more license plate readers that are coming that will be strategically placed around the City in fixed locations and more on vehicles that are around the officers, that officers are driving those vehicles to capture, to capture those license plates where we find that major crimes are being

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committed and then that could inform us and that's an investigative tool. This is no more than what's on the ground. It's actually ah -- we're capturing more data with the License Plate Readers and the cameras on the ground in the same public spaces that the plane would actually capture. Ah -- it's really not any different."

President: "But -- thank you for that. And -- and you know I'll say this again, that ah -- we have not the Council has not been presented with a budget that increases significantly CCTV, but also I would say that we could also talk to this foundation about ah -- to my knowledge for the amount of money they're giving for this plane, they could buy 30 cameras and 40 License Plate Reader Units a year. Ah -- I have two questions and then I'll go to other members of the Board. I know we have questions for protestors as well. Um -- you said that the Department of Justice approved this MOU."

Commissioner Harrison: "They did not. I did not say that they approved this."

President: "Oh -- I'm --."

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Commissioner Harrison: "I did not say -- we did our due diligence and we -- we ah -- abided by the terms of the Consent Decree and we went to the Department of Justice with our intention to deploy new technology. Their response was because we talked about ah -- we talked about civil liberties, we talked about privacy issues, they did not, they did not give us an opinion of that, because we had a pretty compelling case, that there was no expectation of privacy in a public place and pretty compelling argument that we weren't violating the Consent Decree. What they said was that they would be monitoring to ensure that we do not violate the Consent Decree. Ah -- and that was what we brought to the monitors, the Judge and the Consent Decree, and the Department of Justice draft."

President: "And -- but ah -- the Con -- the monitoring team was okay. Correct?"

Commissioner Harrison: "Absolutely."

President: "Madam Comptroller you got questions? You're on mute Madam Comptroller."

Comptroller: "Ah -- one second. Can you hear me?"

Commissioner Harrison: "I can hear you."

Comptroller: "Can you hear me now?"

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Commissioner Harrison: "I can hear you."

Comptroller: "Okay. I would like to address the Professional Services Agreement with Persistent Surveillance Systems. While I support the use of private-public partnerships, I have concerns about this particular contract. Why is a private party Arnold Ventures paying Persistent Surveillance Systems um -- to operate this program for \$3.7 million dollars? And why does Persistent Surveillance Systems rather than the City retain ownership of the data, then how would we know what they will do with the data once the Pilot Program is over. I have concerns that the images collected by the aircraft could be vulnerable to hacking or misappropriation, and then used for inappropriate commercial purposes. I'm also concerned about the independent evaluations referenced in the agreement are not specific enough in scope. Arnold Ventures will be paying RAND Corporation \$900,000.00 to evaluate whether the data collected by the plane improves clearance rates, but they have allocated only \$80,000.00 to NYU Law School to evaluate the civil rights and civil liberty concerns. Also, Arnold Ventures is paying the University of Baltimore \$175,000.00

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to evaluate the public's impression of the program. And Morgan State University is not mentioned at all in the agreement. And finally the agreement refers to an independent validation and verification study of whether the data is used only for the specific purposes specified in the scope of work. This study is not allocated any specific funding in the agreement and it may not even happen, if an evaluator is not selected. Overall, the third party evaluation provisions raise too many unresolved questions for me. Also, it is critical to have greater opportunity for public input on the program. So far there was one public comment meeting and another one held via Facebook Live last week. So for these reasons I -- I do not support the agreement with the Persistent Surveillance Systems."

President: "Thank you Madam Comptroller. Mr. Mayor, do you have any questions, because I have a few more."

Mayor: "You asked every question that I would have asked. But I stand behind my Commissioner."

President: "Thank you. I have a few more questions, Mr. Commissioner. Ah -- when we had the program in 2016 the first

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time, were there any ah -- cases for homicide shooting or mur -- or robbery ah -- that were, were solved because of this the use of this plane?"

Commissioner Harrison: "When this was here in 2016, while I -- certainly you know I wasn't here. When it was here I do not, I think there was only one crime of violence ah - that, that arrived at some solvability. And I do not have any information, because there was poor data being kept. There was poor coordination, collaboration and communication. That is why we did our due diligence to build in the safeguards and precautions in -- you make the vendor agree to those so that we can safeguard against what happened in 2016. The -- we could be clear and transparent to the community about how this work, how it won't work and the results of it would be studied by local and national research experts and then presented out to the community from them not from us. So I believe the way we went about this was thoughtful and careful, to take into account how it happened in 2016 and what lead us to this point today."

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President: "Thank you and thank you Mr. Commissioner. I want to ask a couple of questions of the folks that are protesting. I want to ask both the ACLU and NAACP Legal Defense Fund. Ah -- they brought up questions around the constitutionality of this. Could you guys expand upon that a little bit, and what violations of the Constitution you think that this program will go through."

Mr. Rocah: "Yes thank you. Um -- the Commissioner said ah -- and Mr. McNutt the owner of Persistent Surveillance Systems has repeatedly said that ah -- this technology is perfectly constitutional because nobody has any privacy interests ah -- in what they do in public. But ah -- that is simply not the current state of the law. Um -- the United States Supreme Court in 2 -- ah -- almost in 20 -- 07. The United State Supreme Court recently held in um -- US v. Carpenter that when the government acquires ah -- third party movement tracking data, that that constitutes a search under the Fourth Amendment requiring a warrant. And that is precisely what this technology does. So, I think the cases that ah -- Mr. McNutt has referred to are cases involving photographs of particular people at a particular place at a particular time. And those cases have nothing whatsoever to do

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with what this technology is which is creating a video record of everywhere that everybody goes all the time during daylight. Um -- this is exactly like ah -- actually it's even worse than ah -- what was at issue in Carpenter, because it's tracking everybody all the time. So I think as to constitutionality the law is clear and I think it's clear that this is not constitutional."

President: "Thank you. Ah does the NAA --."

Ms. Dixon: "Mr. President."

President: "Yes madam."

Ms. Dixon: "Yes. That one thing I would add I agree with what Mr. Rocah just shared but we are all in addition to what he shared we're concerned about violations of the 14th Amendment of the US Constitution um -- and of Civil Rights Laws for a potential deployment of planes in racially disproportionate way. So, you know there are numerous constitutional violations that we are concerned about and um -- just -- believe strongly that it hasn't been fully debated and explored um -- through this pilot program."

Mr. Rocah: "Mr. President, can I add one more point on that. Um -- on the point that um -- Ms. Dixon just raised in terms of the

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racial impact of this technology. Because this technology relies on the ground-based cameras significantly to help identify people, um -- and indeed supercharges the effect of those ground-based cameras, it's important to recognize that those cameras are not distributed in Baltimore in a racially neutral way. They are overwhelmingly located in Baltimore's black and brown neighborhoods. And so the racial impact of this technology is significant, and I think that's important to remember."

Commissioner Harrison: "May I -- may I comment on that Mr. President?"

President: "Ah -- sure."

Commissioner Harrison: "Good, while there is -- while that's a true statement it lacks a lot of context, because the cameras were placed strategically based on incidents of violent crime over time. And -- and while that may coincidentally be in some of black and brown neighborhoods, it is about the crime over time that determines where the cameras were placed. That's where they were placed in cities that deploy that technology, but here in this City there are cameras in neighborhoods that don't that are not

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brown and black neighborhoods, and some of the neighborhoods don't have violent crime. Ah -- but rather are there to protect the -- the people who live, work and visit here in Baltimore. Um -- and I'd like ah -- Lisa Walden, my Chief Legal Advisor to weigh in on this also, because we have done our due diligence around constitutionality, and what we've heard is that there are constitutional concerns but no specific examples cited. So if -- if - I'd like Lisa to kind of come in representing the Police Department as our Chief Legal Advisor."

Ms. Lisa Walden, Chief of the Office of Legal Affairs: "Yes thank you Commissioner. Um -- I'm Lisa Walden. Good morning everyone, I'm the Chief Counsel to the Police Department. Um -- I think to sort of set the stage here, it's important to point out as the Commissioner has that this pilot program was assembled with a great deal of thought and care. And legal compliance was a part of that at the Commissioner's behest from the very beginning. Um -- I have looked at the program closely and the relevant legal issues surrounding it. As have Acting Solicitor Moore, as has both of our predecessors, as have external private law firms and the consensus

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is that in fact we're on good constitutional grounds here. Now, I've heard today um -- that we haven't gotten into a fully articulated legal argument as to this program, and I don't know that this is necessarily the forum for that, but ah -- at the end of the day, I've heard two arguments essentially one arising under the Fourth Amendment as to whether or not this a search requiring a warrant. Um -- and you've heard my colleague of the bar Mr. Rochah ah -- reference the Carpenter decision um -- I have to respectfully disagree with his assessment that this is controlling precedent on this issue. Um -- Carpenter was a case related to cell site location information. Um -- and the opinion there pointed out that that information was collected providing over 100 locations of a cellphone ah -- owner per day. Ah -- in both public and private places where that person was located and that this continued over 127 days continuously surveilling a single individual, and that this constituted a detailed I quote 'detailed encyclopedic and effortlessly combined history of their movement and tracked them effectively for that extended period of time.' Um -- that cannot be said for this program um -- in fact this program operates only intermittently. Um -- it operates in a

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manner that requires a great deal of labor to ah -- to distill the data down to usable information. Ah -- so it is -- it is to my mind entirely distinguishable from the Carpenter case. Rather ah -- this seems more in line with the number of Supreme Court cases and the Fourth Circuit cases that have uniformly held that various versions of aerial photography and surveillance, ah -- in fact do pass constitutional muster. So, we do feel that the Department is on good constitutional grounds here in proceeding with this program. Oh and um -- forgive me, the second item that ah -- has been raised by my colleague Ms. Dixon, um -- the question of whether there could be racially discriminatory impact depending on the manner in which this tool is deployed. Um -- I would just say that you know the way the program has been outlined would not have those types of impacts. And as a general rule we do not authorize or not authorize ah -- particularly law enforcement tools ah -- on the suspicion of perhaps they might be misused. Ah -- if they are misused, that is the purpose of the IV and V research to tell us that that's happened and then appropriate action can be taken. But in the first instance we don't give or not give the Police Department a tool on the basis that if it was misused it could have negative impact."

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President: "Thank you. Thank you everybody. Ah -- as I did last week, I think that ah -- this item right, there is no doubt that violent crime in Baltimore City is in the most important thing facing our City. But in the midst of this public health pandemic amidst this crisis, I think that something like this deserves a lot more ah -- public attention, a lot more discussion especially when we know that people cannot ah -- come outside of their homes. So I would just again ah -- offer up a motion that we defer this item until ah -- the -- the Governor's stay at home order is lifted."

Comptroller: "Second that."

President: "All those in favor say Aye. AYE. All Opposed say Nay."

Mayor: "Nay."

Acting Director of Public Works: "Nay."

Acting City Solicitor: "Nay."

President: "Motion fails. Okay. Ah - let's see. I would --."

Mayor: "Mr. President."

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President: "Yes sir Mr. Mayor, go ahead."

Mayor: "Ah -- Lisa you cannot vote. Only members of the Board of Estimates, from Matt, myself and you need to restate the vote."

President: "No it wasn't Lisa."

Ms. Walden: "I did not vote."

President: "That was Dana. Mr. Mayor."

Mayor: "Okay. I thought I heard somebody."

President: "No. No. No sir. Thank you."

Mayor: "Okay."

President: "Well with that I will entertain a Motion."

Acting City Solicitor: "Mr. President, ah -- this is Dana Moore, I move that the protests though well written and very well presented today, I move that the protests be denied and that we move forward to voting on acceptance and approval of the um -- of the proposal."

Acting Director of Public Works: "I second."

President: "All those in favor say aye."

Mayor: "**AYE.**"

President: "All opposed say Nay."

Comptroller: "**NAY.**"

MINUTES

President: "I want to thank -- Madam Comptroller is a NO. I want to explain my vote. As I said, there is no doubt that Baltimore is suffering from a violence epidemic like we have never seen before. Baltimoreans are hurting and fearful of what continues to happen on our streets of our City each and every day and each and every night. So, I understand why communities continuously who experience this trauma of losing loved ones will reach out to anything they think might provide some relief. However, gun violence in Baltimore is a disease that needs to be cured not fought. Unproven experiments and gimmicks designed to simply appease communities in the short term will not provide our residents with the trauma responsive care that they need and deserve. Today our focus should be on the violent criminals who repeatedly exploit our communities, the flow of illegal guns into our City, and actually begin to solve the systematic problems that leave so many Baltimoreans hopeless. Baltimore needs leadership that will strategize with every single one of our City agencies and law enforcement partners to tackle crime in Baltimore with a common mission ah -- and unified plan. This plane, especially right now, in the middle of a global health emergency without true public input and dialogue is not a smart move for our City. If we care

MINUTES

about saving lives, we have no time to be distracted by questionable solutions. We should be laser-focused on solutions like a deep focus on violent repeat offenders that have been proven to work in cities across the country including Baltimore. Ah -- we also know that this doesn't even work at night. The President votes **NO**. But ah -- the motions carries. Ah -- thank you all."

* * * * *

MINUTES

Department of Law - Recommendation for Debarment of Vendor

ACTION REQUESTED OF B/E:

The Board is recommended to institute proceedings pursuant to Baltimore City Code Art. 5, §§ 40-8(3),(4) to debar Holabird Enterprises of Maryland, Inc. d/b/a Holabird Fleet Service; Trans-Tech Transmission Center, its President Lawrence Ward and Officer Daniel Foy, from entering into contracts with the City for not less than five years by: issuing notices of proposed debarment pursuant to Baltimore City Code Article 5, 40-17(b)(1), (2) and suspending the Vendor pursuant to Baltimore City Code Art. 5, 40-18 pending the Board's final decision.

AMOUNT OF MONEY AND SOURCE:

No funds are requested or required.

BACKGROUND EXPLANATION:

On March 12, 2014, the Board of Estimates (Board) awarded the Vendor City Contract No. B50003291 (Contract), which was extended until February 3, 2020. The City paid the Vendor more than \$10,000,000.00 in 700 invoices submitted pursuant to the Contract.

An investigation by the Office of Inspector General ("OIG") and the Law Department reveals grounds to debar the Vendor and its principals, Lawrence F. Ward and Daniel Foy, under Baltimore City Code from entering into new contracts with the City. The Vendor presented invoices to the City for payment under the Contract that: falsely represented that the Vendor performed services that it did not perform; falsely inflated the cost of providing services to the City; falsely inflated the actual cost of goods (parts and equipment) provided to the City; falsely inflated the amount of time incurred to perform services for the City and falsely sought payment for goods not provided to the City.

In addition, the Vendor submitted invoices for goods outside the scope of the Contract, at a falsely inflated cost, that are unusable by the City.

MINUTESDepartment of Law - cont'd

On March 5, 2020, Acting City Purchasing Agent Brown suspended continued performance under the following City contracts: B50004770, B50004990, B50005058, B50005285, B50005755 and B50005812.

The Law Department recommends that the Board institute debarment proceedings against the Vendor and its principals pursuant to Baltimore City Code Art. 5, § 40-13(1), with their suspension pending the Board's decision under Art. 5, § 40-13(2). Suspension of the Vendor suspends performance of the Vendor's current City contracts, which are: B50005285, B50005755 and B50005812. Suspension of the Vendor's principal Ward suspends performance of City contracts B50004770, B50004990 and B50005058 with Holabird Development Corp. d/b/a Port City Equipment Co.

MBE/WBE PARTICIPATION:

Not Applicable.

A PROTEST WAS RECEIVED FROM DANIEL FOY OF HOLABIRD FLEET SERVICE.

A PROTEST WAS RECEIVED FROM HARRIS JONES & MALONE, LLC.

Quarles, Audrey

From: City Council President
Sent: Tuesday, March 24, 2020 12:28 PM
To: Taylor, Harriette
Cc: Quarles, Audrey
Subject: FW: Protest for Recommendation for Debarment of Holabird Enterprises of Maryland

From: Holabird Fleet Service <hfsfix@aol.com>
Sent: Tuesday, March 24, 2020 11:37 AM
To: Schrock, Michael (Law Dept) <Michael.Schrock@baltimorecity.gov>
Cc: City Council President <City.CouncilPresident@baltimorecity.gov>; Goldstein, Sheryl <Sheryl.Goldstein@baltimorecity.gov>; BCYoung <B.Young@baltimorecity.gov>; reuttermark@yahoo.com
Subject: Protest for Recommendation for Debarment of Holabird Enterprises of Maryland

CAUTION: This email originated from outside of Baltimore City IT Network Systems.

Reminder: DO NOT click links or open attachments unless you recognize the sender and know that the content is safe. Report any suspicious activities to BCIT.ServiceDesk@baltimorecity.gov / 410-396-6648.

Good afternoon, my name is Daniel Foy on behalf of Holabird Enterprises of MD. I want to protest the actions that are being recommended against my company. To the allegation that my company falsely presented invoices for services that were not performed, the allegation of my company falsely inflated the cost of providing services to the City, the allegation of falsely inflated the actual cost of goods provided to the City, the allegation of falsely inflated the amount of time incurred to perform services, the allegation of falsely sought payments for goods not provided to the City, the allegation submitting invoices for goods outside the scope of the contract at falsely inflated cost and that are unusable by the City. All of these allegations are unfounded and not true. From the first day after being awarded this contract I have had several problems, I have made every attempt to rectify these problems by seeking assistance from Baltimore City supervisors and purchasing agents, with no results. At no time was myself questioned on any of these matters, and at no time was I given the right to defend my position or shown any proof of any of these allegations. Prior to selling any equipment to the City of Baltimore, a quote was requested from us and approved by City of Baltimore before delivery. Prior to being awarded this contract, there has never been a complaint or any bad vendor report filed against my company. I have been a loyal Baltimore City business and vendor since 2008. I believe my record with the City of Baltimore speaks for itself. If these actions are approved and go forward, it will cause my company to close causing several Baltimore City residents to become unemployed, as well as several Baltimore City registered minority subcontractors to loose employment with my company. My company has already been directly affected due to the work that would be contractually sent to me has stopped based on these allegations.

Holabird Fleet Service
Daniel Foy
2200 Van Deman St Suite 800
Baltimore MD, 21224
410-631-9800

HJM HARRIS JONES & MALONE, LLC

2423 MARYLAND AVENUE
SUITE 100
BALTIMORE, MARYLAND 21218

LISA HARRIS JONES
DIRECT DIAL: (410) 366-1500
FAX NUMBER: (410) 366-1501
lisa.jones@mdlobbyist.com

March 30, 2020

VIA ELECTRONIC TRANSMISSION – Harriette.taylor@baltimorecity.gov

Honorable City Council President and
Members of the Board of Estimates
204 City Hall
100 N. Holliday Street
Baltimore, Maryland 21202

Re: Holabird Enterprises of Maryland, Inc. - Protest of Proposed Suspension and Debarment/
Lawrence Ward and all other persons and/or entities - Protest of Proposed Debarment

Dear Mr. President and Honorable Board of Estimates Members:

The undersigned counsel represent Holabird Enterprises of Maryland, Inc. (“Holabird”), and the other entities and persons referenced in a letter dated March 5, 2020, from the City of Baltimore’s Acting Chief Procurement Officer (the “PO”) to Lawrence F. Ward, et al. (the “Other Persons”), a copy of which is attached hereto (the “PO Notice”). Our clients were unaware of the intended actions of the PO until receipt of the PO Notice, wherein it is asserted that the effective date of the “suspension” was January 24, 2020.

Holabird protests the purported retroactive suspension by the PO, on the grounds that pursuant to Art. V, Subtitle 40 of the City Code, the authority to suspend or debar contractors is reserved to the Board of Estimates (the “Board”) and neither may be taken without prior notice and, as to debarment, an opportunity for a hearing if requested. Holabird also protests the suspension of Contract B50003291 proposed in the Memo to the Board in advance of its meeting scheduled for March 25, 2020 (the “Board Memo”), that requests ratification of the suspension referenced in the PO Notice. Because the PO suspension was unlawful, we request immediate reinstatement of that contract and all others, as listed in the PO Notice, that have been suspended without Board approval. Further, Holabird and the Other Persons protest the debarment proposed in the Board Memo.

City Council President and Members
of the Board of Estimates
March 30, 2020
Page 2 of 2

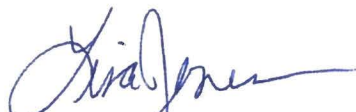
Although the PO listed nine contracts between the City and Holabird the alleged unlawful actions described in the Board Memo relate only to B50003291. To date neither the PO, Law Department or Office of Inspector General (“OIG”) has presented to our clients a single invoice, document or report, as evidence in support of the bald, conclusory allegations set forth in the Board Memo. To the contrary, Holabird has cooperated fully with the OIG and Law Department, and in so doing has presented documentation that clearly refutes these baseless allegations. We have submitted request to the Director of Finance and the OIG to provide for copies of all reports and other documentation relating to or relied upon in reaching the decision for the actions recommended to the Board. Fairness and due process require that we be provided with more than the bald, conclusory accusations contained in the Board Memo.

In addition to our request for immediate reinstatement of Contract number B50003291 and all others listed PO Notice, we request that the Board defer action on the recommendations set forth in the Board Memo until we have been provided with copies of the requested reports and supporting documentation.

Thank you for your consideration.

Very truly yours,


Robert Fulton Dashiell


Lisa Harris Jones

MINUTES

Department of Law - cont'd

UPON MOTION duly made and seconded, the Board instituted proceedings pursuant to Baltimore City Code Art. 5, §§ 40-8(3), (4) to debar Holabird Enterprises of Maryland, Inc. d/b/a Holabird Fleet Service; Trans-Tech Transmission Center, its President Lawrence Ward and Officer Daniel Foy, from entering into contracts with the City for not less than five years by: issuing notices of proposed debarment pursuant to Baltimore City Code Article 5, 40-17(b) (1), (2) and suspending the Vendor pursuant to Baltimore City Code Art. 5, 40-18 pending the Board's final decision.

MINUTES

Department of Housing and - Fourth Amendment to Agreement
Community Development and Indenture of Lease and
Confirmation and Second Amendment
of Sublease Agreement

ACTION REQUESTED OF B/E:

The Board is requested to approve and authorize execution of a Fourth Amendment To Agreement and Indenture of Lease (Land) and Confirmation and Second Amendment of Sublease Agreement (Improvements with The Johns Hopkins Medical Services Corporation, (JHMSC), as Lessee of the Land known as 1000 East Eager Street (Land) and Sublessee of the Improvements located on the Land known as the East Baltimore Medical Center (EBMC).

AMOUNT OF MONEY AND SOURCE:

Not Applicable

BACKGROUND/EXPLANATION:

On August 13, 1975 the Board approved an Agreement and Indenture of Lease, between the City and East Baltimore Community Corporation (EBCC) by which EBC leased the Land from the City and constructed a community medical center thereon known as EBCC (Land Lease). On December 8, 1976 the Board approved an amendment to the Land Lease by and between the original parties. The City subsequently acquired EBMC from EBCC. Due to the City's financing at the time of the City's acquisition of EBMC it was determined that the prior Land Lease would remain in place and title to EMBC would be held by 1033 Aisquith, Inc. (Aisquith); a City controlled corporation. On March 23, 1983 the Board approved an Amendment and Modification of Agreement and Indenture of Lease by which EBC assigned its interest in the Land Lease to Aisquith. Also, on March 23, 1983 Aisquith entered into a Sublease Agreement by which it subleased its interest in the Land Lease and its interest in EBMC to East

MINUTES

Department of Housing and - cont'd
Community Development

Baltimore Medical Plan, Inc. (EBMP) (Improvements Sublease). A Johns Hopkins Hospital controlled entity assumed at that time responsibility for providing medical services at EBMC.

In connection with the City's refinancing all of its investment in the project, on March 9, 1988 the Board approved a Second Amendment to Agreement and Indenture of Lease, dated as of February 1, 1988 by which Aisquith assigned all of its interests in the Land Lease to The Johns Hopkins Health Plan. Inc. (JHHP). The Board authorization mentions that there was also to be an Amendment to Sublease Agreement by and between the City, which was successor to Aisquith, and JHHP which was the successor to EBMP. Unfortunately, neither of the parties have been able to produce a signed copy of such Amendment. The Amendment provided that the rental paid by JHHP would be increased to be in an amount equal to the City's debt service payments under the 1988 refinancing and in 2003 when the City refinancing would be paid in full, the rent would be reduced to a dollar a year. The terms of the Improvements Sublease were extended to 2028 and it provides JHHP the option to purchase EBMC and the Land for a dollar at the end of the term. The JHMSC is the successor to JHHP and is now the Lessee under the Land Lease and the Sublessee under the Improvements Sublease.

The JHMSC approached the City to amend the Land Lease and Improvement Sublease documents to allow it to immediately exercise its option to acquire title to the Land and EBMC to enable it to allow a Federally Qualified Health Center (FQHC) to operate EBMC. JHMSC or one of its affiliates has operated the facility at a considerable loss since 1983 and the FQHC would be eligible to apply for Federal grants and assistance that the JHMSC is not eligible to receive. At that time it was discovered that no signed copy of the 1988 Amendment to Sublease Agreement was available and the City was reluctant to allow the JHMSC to exercise the option to acquire the facility without a signed copy of the Amendment to Sublease confirming such right. The JHHP has operated EBMC since

MINUTES

Department of Housing and - cont'd
Community Development

1988 as if such Amendment was signed and has made all payments due thereunder and operated EBMC in accordance with the terms of such Amendment.

In order to accommodate JHMSC's request to allow a FQHC to operate EBMC the parties have agreed to modify both the Land Lease and Improvements Sublease as follows: (i) allow the subleasing of the facility to an FQHC, (ii) extend the term of the Land Lease and Improvements Sublease to March 31, 2068, (iii) the JHMSC to have the right to suspend medical operations at EBMC on one year's notice, (iv) commitment by The Johns Hopkins Health System Corporation to continue its mission of providing medical services to the underserved East Baltimore Community if medical operations are suspended at EBMC, (v) the JHMSC to continue to maintain the facility after medical services are terminated, but after March 31, 2030, to have the right to terminate the Improvements Sublease and the Ground Lease on 1 year's notice, (vi) the JHMSC and the City each preserve their respective rights regarding the \$1.00 purchase option under the Amendment to Sublease, and (vii) City grants JHMSC a right of first refusal if the City sells the Land or EBMC during the term of the Land Lease or Improvements Sublease.

MBE/WBE PARTICIPATION:

JHMSC has not received a benefit or concession as defined in Article 5 Subtitle 28 of the Baltimore City Code, therefore, the MWBOO goals are not applicable. This determination is based on (i) the rental paid under the 1988 Amendment; and JHMSC's obligation, in accordance with the terms and conditions of the agreement requested to be approved by the Board of Estimates, to (ii) provide medical services at the EBMC; (iii) fund maintenance and required capital improvements to the EBMC and (iv) its funding of all past deficits for the medical services it has provided since 1983 and its commitment to fund certain future deficits for the medical services to be provided at the EBMC. The JHMSC has agreed and

MINUTES

Department of Housing and - cont'd
Community Development

committed that any future improvements it will undertake at the EBMC will be contracted and performed in accordance with the Johns Hopkins Health System's Minority Business Enterprise Utilization Policy that applies to all work done on the East Baltimore Campus of Johns Hopkins Medicine.

UPON MOTION duly made and seconded, the Board approved and authorized execution of a Fourth Amendment to Agreement and Indenture of Lease and Confirmation and Second Amendment of Sublease Agreement Improvements with The Johns Hopkins Medical Services Corporation, as Lessee of the Land known as 1000 East Eager Street and Sublessee of the Improvements located on the Land known as the East Baltimore Medical Center. The Mayor **ABSTAINED**.

MINUTES

Department of Transportation - Developer's Agreement No. 1625

ACTION REQUESTED OF B/E:

The Board is requested to approve and authorize execution of Developer's Agreement No. 1625 with Holladay Baltimore, LLC, Developer.

AMOUNT OF MONEY AND SOURCE:

\$76,799.00 - Performance Bond

BACKGROUND/EXPLANATION:

The Developer will upgrade the utility services for a new hotel building at 415 Central Avenue. This agreement will allow the Developer to do its own installation in accordance with Baltimore City Standards.

A Performance Bond in the amount of \$76,799.00 has been issued to Holladay Baltimore, LLC, which assumes 100% of the financial responsibility.

MBE/WBE PARTICIPATION:

This Developer's Agreement No. 1625 is not the result of City procurement and the Developer is responsible for all costs. Therefore, MBE/WBE goals do not apply.

UPON MOTION duly made and seconded, the Board approved and authorized execution of Developer's Agreement No. 1625 with Holladay Baltimore, LLC.

MINUTES

President: "As there is no more business before the Board we will recess until bid opening at 12:00 noon. Thank you for tuning in. Stay safe and continue to practice social distancing like your life depends on it and your loved ones lives depends on it, because it does. Thank you."

* * * * *

MINUTES

Comptroller: "Good afternoon. The Board of Estimates is now in session for the receiving and opening of bids. In accordance with the directives of the Mayor and Governor prohibiting gatherings of more than 10 people and as part of the overall effort to limit transmission of the COVID-19 virus, the Board of Estimates is conducting bid openings remotely. Members of the public can call in to listen to bid openings live by calling (443) 984-1696. Board of Estimates meetings are also broadcast live on CHARM-TV, Channel 25 on Comcast cable in Baltimore City. Meetings are also streamed on the Internet at www.charmtvbaltimore.com/watch-live. The Board of Estimates will continue to conduct bid openings remotely while the state of emergency declared by the Mayor of Baltimore and the Governor of Maryland remains in effect."

BIDS, PROPOSALS AND CONTRACT AWARDS

Prior to the reading of bids received today and the opening of bids scheduled for today, the Comptroller 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.

MINUTES

- Bureau of Procurement - B50005715, Vehicle Leasing
BIDS TO BE RECV'D: 04/15/2020
BIDS TO BE OPENED: 04/15/2020
- Department of Public Works - SC 954, Rehabilitation of
Primary Settling Tanks (PSTs)
3 and 4
BIDS TO BE RECV'D: 05/06/2020
BIDS TO BE OPENED: 05/06/2020
- Department of Public Works - WC 1291, Wilkens
Avenue/Frederick Avenue and
Vicinity Water Main
Replacements
BIDS TO BE OPENED: 05/13/2020
BIDS TO BE OPENED: 05/13/2020

Thereafter, UPON MOTION duly made and seconded, the Board announced that **NO BIDS WERE SCHEDULED TO BE OPENED**, received, and referred for tabulation and report.

MINUTES

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There being no objections, the Board, UPON MOTION duly made and seconded, adjourned until its next regularly scheduled meeting on Wednesday, April 15, 2020.



JOAN M. PRATT
Secretary