



CITY OF DETROIT
LAW DEPARTMENT

COLEMAN A. YOUNG MUNICIPAL CENTER
2 WOODWARD AVENUE, SUITE 500
DETROIT, MICHIGAN 48226-3535
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June 23, 2014

Richard T. Doherty, P.E., City Engineer
Detroit Department of Public Works
Engineering Division
65 Cadillac Square, Suite 900
Detroit, MI 48226

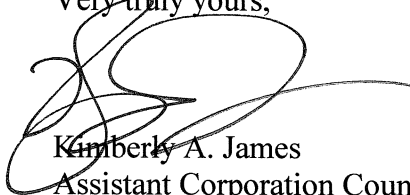
Re: Maintenance Agreement with Detroit Athletic Club for Madison Street Statues

Dear Mr. Doherty:

Enclosed please find a fully executed and approved copy of the Maintenance Agreement between the City of Detroit and the Detroit Athletic Club.

Please contact me should you have any questions.

Very truly yours,



Kimberly A. James
Assistant Corporation Counsel

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CITY ENGINEERING DIVISION - DPW
900 CADILLAC TOWER
DETROIT, MICHIGAN 48226-2873

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MAINTENANCE AND INDEMNIFICATION AGREEMENT

This Agreement is made and entered into this 11th day of June, 2014 ("Agreement"), by and between the **City of Detroit**, a Michigan municipal corporation, by and through its Department of Public Works (the "City"), located at 2 Woodward Avenue, Detroit Michigan 48226 and **The Detroit Athletic Club Foundation** ("DAC"), a Michigan non profit organization located at 241 Madison, Detroit Michigan 48226.

RECITALS:

The DAC desires to install and maintain (a) three bronze structures (the "Sculptures"), each of which will be situated on an approximately three foot by three foot (3' x 3') pedestal square which will be approximately nine feet (9') high and have an approximately three and a half foot (3.5') deep foundation, subject to plan review approval (b) lighting directed on the Sculptures and (c) crushed granite (collectively, the "Encroachments") in the public right-of-way by encroaching into Madison Avenue between Randolph and John R Street and has applied for permission for same from the City of Detroit in Petition No 2414; and

The City of Detroit, through its City Council by a Resolution date July 31, 2012 (the "Resolution") , has authorized the Department of Public Works ("DPW") to grant a permit for such encroachment after being approved through DPW's plan review process, and subject to an agreement for maintenance and indemnification as contained herein.

NOW THEREFORE, for valuable consideration, including the covenants and undertaking herein contained, it is mutually agreed as follows:

1. Purpose.

The City and DAC have entered into this Agreement to govern the installation and removal of the Encroachments and the maintenance and repair of the Encroachments and the public right-of-way (together, the "Encroachment Area), which is legally described as follows:

Lying within approximately the center of Madison Avenue, 200 feet wide, between Randolph Street, variable width, and John R Street, 60 feet wide, adjacent to the Southerly line of the South line of Lots 28 through 30, both inclusive, in the "Plat of the City of Detroit as laid out by the Governor and Judges" recorded in Liber 34, Page 545 of Deeds, the Governor and Judges Journal – Wayne County.

A drawing of the Encroachment Area is attached as Exhibit A.

2. Term.

This Agreement shall continue in full force and effect until the Encroachments are removed and the DAC has completed its restoration obligation under Paragraph 9 of this Agreement (the "Term"). The permit granted by the City may be revoked at any time by resolution of the City Council. Should the City desire the removal of the Encroachments pursuant to a resolution of

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the City Council or the permit for the Encroachments has been revoked pursuant to City Council resolution, the DAC shall have at least thirty (30) days to remove the Encroachments after the DAC has received written notice of any such resolution.

3. Ownership and Financial Responsibility.

The DAC shall retain full ownership of the Encroachments. The Sculptures shall at all times remain the personal property of the DAC and in no event shall they be deemed to have become a fixture or improvement to the Encroachment Area or otherwise part of the Encroachment Area. The DAC shall bear full financial responsibility for the installation, maintenance, repair and removal of the Encroachments during the Term. In addition, the DAC shall, from and after the installation of the Encroachments through the end of the Term, bear full financial responsibility for the maintenance of the Encroachment Area, but in no event shall the DAC be responsible for the maintenance of any utilities or other improvements (other than landscaping) located within the Encroachment Area that are not installed by the DAC (the "Excluded Improvements").

4. Maintenance

The DAC shall be responsible for all maintenance and repair of the Encroachments as necessary, to the reasonable satisfaction of the City. The DAC shall maintain the Encroachment Area on which the Encroachments are installed (other than the Excluded Improvements), including landscaping, snow removal and grass cutting as necessary, to the reasonable satisfaction of the City. Notwithstanding the foregoing or anything to the contrary contained in this Agreement, the City shall, at its expense, repair any damage to the Encroachments or Encroachment Area caused by the negligence or willful misconduct of the City, by the City, or any of its agents, contractors or employees.

5. Access by City

The City shall have 24-hour access to the Encroachment Area for utility maintenance and repair, including but not limited to circuit maintenance and water and sewerage. Pursuant to the Resolution, the DAC shall bear the cost of any necessary removal or rerouting of underground or overhead utility installations for public lighting to accommodate the installation of the Encroachments, as well as all costs incident to the damaging, dismantling, demolition, removal or replacement of the Encroachments for the City's purpose of gaining access to water and sewerage facilities.

6. Indemnification by DAC.

The DAC shall defend, indemnify and hold the City harmless from and against any and all claims, damages, obligations, penalties, costs, charges, losses, demands, liabilities, and expenses (including, without limitation, fees and expenses for attorneys, expert witnesses and other consultants) that may be imposed upon, incurred by, or asserted against the City for property damage and bodily or personal injury or death arising during the Term that arises out of (a) the DAC's installation, maintenance, repair, or removal of the Encroachments, (b) the DAC's maintenance of the Encroachment Area, or (c) the DAC's failure to perform any of its

obligations under this Agreement, except for any such property damage, injury or death arising out of the negligence or willful misconduct of the City or any of its agents, contractors or employees.

7. Insurance.

The DAC shall maintain at its sole cost and expense a commercial general liability insurance policy for the mutual benefit of the DAC and the City covering property damage (including, but not limited to destruction) and bodily injury (including death) occurring upon, in or about the Encroachment Area in connection with the DAC's activities in or about the Encroachment Area, written as occurrence based coverage, with a minimum combined single limit of \$1,000,000.00 for each occurrence of bodily injury and property damage, and \$2,000,000.00 in the aggregate. The City of Detroit shall be named as an additional insured on the certificate of insurance, without limitation, for all preceding coverage. Each policy shall be accompanied by a commitment from the insurer that such policies shall not be canceled, modified, or coverage reduced without at least thirty (30) days prior notice to the City of Detroit. Certificates of Insurance evidencing such coverage and endorsements shall be submitted to the City of Detroit prior to the commencement of performance under this Agreement, and at least fifteen (15) days prior to the expiration dates of expiring policies. This insurance shall be primary and first in priority, and any insurance or self insurance maintained by the City shall be secondary, non-contributory and excess. The DAC shall be responsible for any deductibles and this provision shall not be construed to waive or restrict the liability of the DAC under this Agreement.

8. Assignment

This Agreement may not be assigned or transferred by the DAC without first obtaining the written approval of the City.

9. Removal

The City may revoke the encroachment permit at any time by resolution of the City Council. Should the City desire the removal of the Encroachments pursuant to a resolution of the City Council or the permit for the Encroachments has been revoked pursuant to City Council resolution, the DAC shall have at least thirty (30) days to remove the Encroachments after the DAC has received written notice of any such resolution, and the DAC shall promptly remove the Encroachments within such time period at its expense. The City retains the right to dismantle, demolish or remove the Encroachments should the DAC not remove them within such time period. After removal of the Encroachments by either party as provided above, the DAC shall return the Encroachment Area to its original condition but only to the extent that such original condition was damaged or altered in connection with the installation, maintenance, repair or removal of the Encroachments by the DAC or the maintenance of the Encroachment Area by the DAC.

10. Governing Law.

This agreement shall be governed by and construed in accordance with the laws of the State of Michigan.

11. Severability.

If any terms hereof or the application thereof to any person or circumstance shall be determined to be null and void, ineffectual, invalid, or unenforceable by any competent tribunal, the remaining terms hereof or the application of such term to persons or circumstances other than to those which were determined to be invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

12. Waivers.

The waiver by either party of a breach by the other party of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

13. Notices.

All notices and other communications required or desired to be given under this Agreement shall be in writing and shall be delivered personally or sent by registered mail or overnight delivery to the respective parties at the address of each set forth as follows:

DAC: The Detroit Athletic Club Foundation
 241 Madison
 Detroit, Michigan 48226
 Attn: President

City: City of Detroit
 Department of Public Works
 City Engineering Division
 65 Cadillac Square, Suite 900
 Detroit, Michigan 48226
 Attn.: City Engineer

14. Entire Agreement.

This Agreement contains the entire understanding between and among the parties concerning the matters herein, and supersedes any prior understandings and agreements. Any amendment or modification of this Agreement shall have no effect unless it is in writing and signed by authorized representatives of both parties.

15. Successors and Assigns.

This Agreement shall be binding upon the successors and assigns of the DAC. This Agreement is for the exclusive benefit of the parties stated herein and shall not be deemed to give any legal or equitable right, remedy or claim whatsoever to any other person

16. Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. Such counterparts shall constitute but one and the same instrument and shall be binding upon each of the parties hereto as full and completely as if all had signed but one instrument.

[signature page follows]

