



Adopted as follows:
 Yeas — Council Members Benson, Durhal, III, Johnson, Santiago-Romero, Tate, Waters, Whitfield-Calloway, Young, II and President Sheffield — 9.
 Nays — None.
 *WAIVER OF RECONSIDERATION (No. 5 Per motions before adjournment.)

**Department of Public Works
 City Engineering Division**
 September 13, 2023

Honorable City Council:
 Re: **Petition No. x2023-327** — WMG Algonquin Detroit Owner LLC, request for encroachment within the public alley, lying easterly of and adjacent to the parcel commonly known as 1610 Algonquin Street, for the purpose of installing a storm-sewer line and manhole to feed the proposed detention pond at 1610 Algonquin Street.

Petition No. x2023-327 — WMG Algonquin Detroit Owner LLC, request for encroachment within the public alley, 18 ft. wide, lying easterly of and adjacent to the parcel commonly known as 1610 Algonquin Street, for the purpose of installing a storm-sewer line and manhole to feed the proposed detention pond at 1610 Algonquin Street

The petition was referred to the City Engineering Division — DPW for investigation and report. This is our report.

The request was approved by the Solid Waste Division — DPW, and City Engineering Division — DPW, Traffic Engineering Division.

Detroit Water and Sewerage Department (DWSD) reports being involved, but they have no objection provided the

DWSD encroachment provisions are followed. The DWSD provisions have been made a part of the resolution.

All other involved City Departments, including the Public Lighting Authority and Public Lighting Department; also privately owned utility companies have reported no objections to the encroachment. Provisions protecting all utility installations are part of the attached resolution.

I am recommending adoption of the attached resolution.

Respectfully submitted,
 RICHARD DOHERTY, P.E.

City Engineer
 City Engineering Division — DPW
 By Council Member Santiago-Romero:

Resolved, That the Department of Public Works, City Engineering Division is hereby authorized and directed to issue permits to WMG Algonquin Detroit Owner LLC or their assigns to install and maintain encroachment within the public alley, further described as: Land in the City of Detroit, Wayne County, Michigan;

1. Public alley, 18 ft. wide, lying east of and adjacent to the west line of the "Sterling Realty Cos Subdivision" as recorded in Liber 27, Page 29 of Plats, Wayne County Records; also lying easterly of and adjacent to approx. the southerly 5 ft. of lot 211 and the northerly 13 ft. of lot 212 of "Sterling Park Subdivision" as recorded in Liber 27, Page 61 of Plats, Wayne County Records. The proposed storm-sewer line is proposed as a 21" line that will connect to the proposed 6-foot diameter manhole, which is being built over the existing storm sewer. Said 21" storm outlet is proposed to tab the manhole at approx. 7.3' below grade.

Provided, That if there is any cost for the removing and/or rerouting of any utility facilities, it shall be done at the expense of the petitioner and/or property owner; and be it further

Provided, That access is maintained to all fire department connections, and be it further

Provided, That by approval of this petition the Detroit Water and Sewerage Department (DWSD) does not waive any of its rights to its facilities located in the right-of-way, and at all times, DWSD, its agents or employees, shall have the right to enter upon the right-of-way to maintain, repair, alter, service, inspect, or install its facilities. All costs incident to the damaging, dismantling, demolishing, removal and replacement of structures or other improvements herein permitted and incurred in gaining access to DWSD's facilities for maintenance, repairing, alteration, servicing or inspection caused by the encroachment shall be borne by the petitioner. All costs associated with gaining access to DWSD's facilities, which could normally be expected had the petitioner not encroached into the right-of-way, shall be borne by DWSD; and be it further

Provided, That all construction performed under this petition shall not be commenced until after (5) days written notice to DWSD. Seventy-two (72) hours' notice shall also be provided in accordance with P.A. 53 1974, as amended, utilizing the MISS DIG one call system; and be it further

Provided, That construction under this petition is subject to inspection and approval by DWSD forces. The cost of such inspection shall, at the discretion of DWSD, be borne by the petitioner; and be it further

Provided, That if DWSD facilities located within the right-of-way shall break or be damaged as the result of any action on the part of the petitioner, then in such event the petitioner agrees to be liable for all costs incident to the repair, replacement or relocation of such broken or damaged DWSD facilities; and be it further

Provided, That the petitioner shall hold DWSD harmless for any damages to the encroaching device constructed or installed under this petition which may be caused by the failure of DWSD's facilities; and be it further

Provided, WMG Algonquin Detroit Owner LLC or their assigns shall apply to the Buildings and Safety Engineering Department for a building permit prior to any construction. Also, if it becomes necessary to open cut public streets, bore, jack, occupy or barricade city rights-of-way for maintenance of encroachments such work shall be according to detail permit application drawings submitted to the City Engineering Division — DPW prior to any public right-of-way construction; and further

Provided, That the necessary permits shall be obtained from the City Engineering Division — DPW and the Buildings

and Safety Engineering Department. The encroachments shall be constructed and maintained under their rules and regulations; and further

Provided, That all cost for the construction, maintenance, permits and use of the encroachments shall be borne by WMG Algonquin Detroit Owner LLC or their assigns, and further

Provided, That all costs incurred by privately owned utility companies and/or city departments to alter, adjust, and/or relocate their existing utility facilities located in close proximity to the encroachments shall be borne by WMG Algonquin Detroit Owner LLC or their assigns. Should damages to utilities occur WMG Algonquin Detroit Owner LLC or their assigns shall be liable for all incidental repair costs and waives all claims for damages to the encroaching installations; and further

Provided, That no other rights in the public streets, alleys or other public place shall be considered waived by this permission which is granted expressly on the condition that said encroachments shall be removed at any time when so directed by the City Council, and the public property affected shall be restored to a condition satisfactory to the City Engineering Division — DPW; and further

Provided, That WMG Algonquin Detroit Owner LLC or their assigns shall file with the Department of Public Works — City Engineering Division an indemnity agreement in form approved by the Law Department. The agreement shall save and protect the City of Detroit from any and all claims, damages or expenses that may arise by reason of the issuance of the permits and the faithful or unfaithful performance of WMG Algonquin Detroit Owner LLC or their assigns of the terms thereof. Further, WMG Algonquin Detroit Owner LLC or their assigns shall agree to pay all claims, damages or expenses that may arise out of the use, repair and maintenance of the proposed encroachments; and further

Provided, That construction of the encroachments shall constitute acceptance of the terms and conditions as set forth in this resolution; and be it further

Provided, This resolution is revocable at the will, whim or caprice of the City Council, and WMG Algonquin Detroit Owner LLC acquires no implied or other privileges hereunder not expressly stated herein; and further

Provided, That the encroachment permits shall not be assigned or transferred without the written approval of the City Council; and be it further

Provided, That the City Clerk shall within 30 days record a certified copy of this resolution with the Wayne County Register of Deeds.

MAINTENANCE AGREEMENT

This agreement (this "Agreement") is made and entered into this 31st day of

May 2023, by and between the City of Detroit, a Michigan municipal corporation, acting by and through its Department of Public Works (the "City"), and WMG Algonquin Detroit Owner, a limited Liability Company ("Owner") whose address is 4800 N. Federal Hwy., Suite 8200, Room 34, Boca Raton, FL 33431.

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

1. **Purpose of Agreement:** Owner holds title to a certain parcel described in Exhibit A attached hereto (the "Parcel"). City owns certain property adjacent to the Parcel. Inasmuch as persons entering or exiting from the Parcel may use the City-owned property, and/or to the extent that certain services benefiting the Parcel (for example, water and sewer) are located in the City-owned property, Owner has agreed to improve and maintain a portion of City-owned property in the location (the "Maintenance Area") and manner detailed in the plan attached as Exhibit B for the Term, as defined herein.

2. **Financial Responsibility:** It is understood that during the Term, all physical improvements and repairs to the Maintenance Area, as set forth herein, shall be at the sole cost and expense of Owner, subject to any express limitations set forth in this Agreement.

3. **Indemnification and Hold Harmless:** Owner hereby agrees to indemnify, defend and hold the City harmless from all loss, costs, expense, actions, claims of action, damages and liability (including attorneys' fees and costs) for injury to or death of any person or persons and for the damage to or destruction of property caused by Owner's actions or omissions in the course of or resulting from the maintenance activities contemplated by this Agreement.

4. **Insurance:** Owner covenants and agrees, at its sole cost and expense, to maintain or cause to be maintained for the mutual benefit of it and the City comprehensive general liability insurance on an occurrence form against claims for bodily injuries (including, but not limited to, death) or property damage (including, but not limited to, destruction) at any time occurring in the course of or resulting from work carried out by Owner upon, in or about the Maintenance Area, at combined single limits of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate. Such insurance coverage shall name the City of Detroit as an additional insured and shall provide that the same may not be cancelled or materially modified without prior written notice by certified mail to the City to the attention of City of Detroit, Finance Department, Coleman A. Young Municipal Center, Detroit, MI 48226; Attention: Risk Management Division. Said coverage may be evidenced by a certificate of insurance issued

upon so-called "blanket" coverage, or by either a certificate or the original of an insurance policy effecting such coverage. The insurance shall be primary and any such insurance or self-insurance maintained by the City shall be secondary and non-contributory and excess. Owner shall be responsible for payment of all deductibles relating to such insurance. The provisions requiring Owner to carry or cause to be carried such insurance shall not be construed as waiving or restricting the liability of Owner under this Agreement.

5. **Term:** The term of this Agreement (the "Term") shall commence on the date of this Agreement and continue for five (5) years thereafter unless terminated or extended pursuant to the following:

- a. The City may terminate this Agreement prior to the end of the Term in the event the City has designed and has committed to implement a uniform scheme for the improvement of an area of City-owned property that encompasses the Maintenance Area and other adjacent City-owned property. The aforesaid may include widening of streets or sidewalks and relocation of water or sewer facilities.
- b. Owner may terminate this Agreement prior to the end of the Term if it sells or ground leases the Parcel or grants a mortgage lien or security interest in the Parcel or portion thereof.
- c. In the event a party elects to terminate this Agreement pursuant to Sections 5(a) or 5(b) above, such party shall deliver to the other party written notice of such election at least thirty (30) days prior to the date on which termination shall be effective.
- d. Following the five-year expiration (but not the early termination) of this Agreement, this Agreement shall automatically continue on month to month basis subject to final termination by either party upon delivery of at least thirty (30) days' written notice to the other party.

6. **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan.

7. **Entire Agreement:** This Agreement constitutes the entire agreement between the parties. Any prior agreements, negotiations or representations not expressly set forth in this Agreement are of no force or effect. Any amendment to or modification of this Agreement shall be of no force or effect unless it is in writing and signed by an authorized signatory for each of the parties.

8. **Successors and Assigns:** 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. Notwithstanding the aforesaid, Owner shall have the right, without requiring the City's consent to assign this Agreement to any purchaser of the Parcel or any affiliate of Owner; provided that if Owner assigns this Agreement to any unaffiliated third party purchaser of the Parcel, Owner shall notify the City in writing no later than thirty (30) days after such assignment, and the City may, by written notice to Owner within forty-five (45) days after receiving such notice from Owner (subject to reasonable extension due to City Council recess), terminate this Agreement. Unless terminated as provided above, this Agreement shall be binding upon the parties' successors and assigns.

9. Improvement Changes: Any changes to the Maintenance Area, except as contemplated by this Agreement, are subject to the prior approval of the City. Owner shall not install or construct in the Maintenance Area any structure, fixture, furniture, or equipment (including but not limited to signs, lighting, fixtures, shades, canopies, or awnings) as may obstruct or in any way encroach upon the Maintenance Area except as set forth in Exhibit B or otherwise properly permitted by the City.

10. Rights of City: The parties under-

stand that this Agreement in no way limits the property rights of the City with regard to the Maintenance Area.

11. Certain Maintenance Obligations of Owner: During the Term, Owner shall be responsible for the improvement and maintenance activities set forth on Exhibit B.

IN WITNESS WHEREOF, the City and the Owner by and through their authorized officers and representatives, have executed this Agreement as follows:

WGM Algonquin Detroit Owner
a Limited Liability Company
BY: Anthony Scavo
ITS: Authorized Representative

CITY OF DETROIT, through its
Department of Public Works –
City Engineering Division
BY: Richard Doherty
ITS: City Engineer

**EXHIBIT A
Parcel Description**

Parcel 21000664.002
S KERCHEVAL THAT PT OF 2 BG N
590.46 FT ON W LINE & BG N 597.89 FT
ON E LINE STERLING REALTY COS
SUB L27 P29 PLATS, WCR 21/311
264,284 SQ FT

**EXHIBIT B
Maintenance Area and Plan for Improvements;
Any Related Maintenance Responsibilities.**



