# MAINTENANCE AGREEMENT (1208 Woodward Avenue)

This	agreement	(this	"Agre	ement")	is	made	and	entere	d into	, thi	S	da	y of
		, 202	3, by	and be	twee	en the	City	of D	etroit,	a M	ichigan	muni	cipal
corpo	ration, actin	g by a	ind thr	ough its	Dep	partmen	t of I	Public	Works	(the	"City"),	and	1208
WOO	DWARD L	LC, a	Michig	an limite	ed li	ability	compa	any ("C	)wner'	), wh	ose addi	ess is	630
Wood	lward Ave.,	Detroit	, Michi	gan 4822	26.								

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 real property described in <a href="Exhibit A">Exhibit A</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 <a href="Exhibit B">Exhibit B</a> for the Term, as defined herein.
- 2. **Financial Responsibility:** It is understood that during the Term, all physical improvements and repairs made by Owner 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 constructed 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

1208 WOODWARD LLC.

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 understand 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:

a Michigan limited liability company
BY: Leaft Bouner
(Signature) PRINT NAME: Kofi Bonner
ITS: Authorized Representative
CITY OF DETROIT, through its Department of Public Works - City Engineering Division  BY:  PRINT NAME:  City Engineering Division  City Engineering Division

#### Exhibit A

#### PARCEL DESCRIPTION

Land situated in the City of Detroit in the County of Wayne in the State of Michigan

LOTS 33 THROUGH 39, BOTH INCLUSIVE, AND LOTS 72 THROUGH 78, BOTH INCLUSIVE, TOGETHER WITH ALL OF THE ADJOINING EAST-WEST AND NORTH-SOUTH ALLEYS, 20 FEET WIDE, IN THE BLOCK BOUNDED BY WOODWARD AVENUE, FARMER STREET, GRATIOT AND GRAND RIVER AVENUES OF THE GOVERNOR AND JUDGES PLAN OF SECTION 7 OF THE CITY OF DETROIT, WAYNE COUNTY, MICHIGAN ACCORDING TO THE PLAT THEREOF AS RECORDED IN LIBER 34, PAGE 544 OF DEEDS, WAYNE COUNTY RECORDS. ALL MORE PARTICULARLY DESCRIBED AS:

BEGINNING AT A POINT AT THE NORTHWEST CORNER OF SAID LOT 33, SAID POINT BEING AT THE INTERSECTION OF THE EAST LINE OF WOODWARD AVENUE (120 FEET WIDE) AND THE SOUTH LINE OF E. GRAND RIVER AVE. (60 FEET WIDE); THENCE N 59° 50' 52" E, 220.05 FEET ALONG SAID SOUTH LINE TO A POINT AT THE NORTHEAST CORNER OF SAID LOT 72, SAID POINT BEING AT THE INTERSECTION OF THE SOUTH LINE OF E. GRAND RIVER AVE. (60 FEET WIDE) AND THE WEST LINE OF FARMER STREET (71 FEET WIDE); THENCE S 30° 11' 27" E., 420.00 FEET ALONG SAID WEST LINE TO A POINT AT THE SOUTHEAST CORNER OF SAID LOT 78, SAID POINT BEING AT THE INTERSECTION OF THE WEST LINE OF FARMER STREET (71 FEET WIDE) AND THE NORTH LINE OF GRATIOT AVENUE (60 FEET WIDE); THENCE S 59° 50' 52" W, 220.05 FEET ALONG SAID NORTH LINE TO A POINT AT THE SOUTHWEST CORNER OF SAID LOT 39, SAID POINT BEING AT THE INTERSECTION OF THE SOUTH LINE OF GRATIOT AVENUE (60 FEET WIDE) AND THE EAST LINE OF WOODWARD AVENUE FEET ALONG SAID EAST LINE TO THE POINT OF BEGINNING.

Tax Id Number(s): Ward 01; Item No. 004110-9

Common Address: 1208 Woodward Avenue, Detroit, MI 48226

### Exhibit B Page 2 of 2

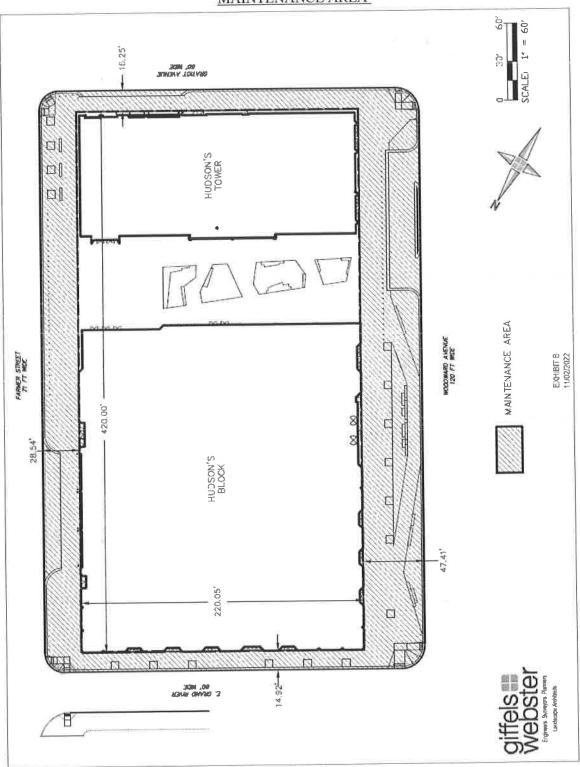
### MAINTENANCE RESPONSIBILITIES

Owner agrees to maintain the temporary improvements installed in the locations depicted on Exhibit B. Prior to: (i) issuing a permit to a private party for work to be carried out in or near the Maintenance Area, or (ii) if a City agency or contractor proposes to carry out such work, the City shall notify Owner of the permit request or the City's plans, as applicable, so that Owner can comment on the possible impact of the proposed work on the temporary improvements and Owner's maintenance activities hereunder. Notwithstanding anything to the contrary, Owner shall have no obligation to repair or replace any of the temporary improvements after their useful life and may remove the temporary improvements at any time, including prior to expiration of the Term.

It is expressly agreed by the parties that Owner's maintenance and repair responsibilities under this Agreement, and Owner's responsibility for any associated costs, shall not cover or extend to (i) work in or affecting the Maintenance Area carried out by a City-Authorized Party, or (ii) repair, maintenance required as a result of any damage brought about by, or other circumstances arising from, activities in or about the Maintenance Area ("Maintenance Area Damage") by the City or its contractors or other designees of or parties authorized by the City or any agency thereof or by any utility company (inclusive of water, sewer, steam, electricity, gas, telephone, internet and other electronic communications facilities or similar service providers) performing work on facilities located in, under or adjacent to the Maintenance Area (collectively, "City-Authorized Parties").

Exhibit B Page 1 of 2

## MAINTENANCE AREA





COLEMAN A. YOUNG MUNICIPAL CENTER 2 WOODWARD AVE. SUITE 601 DETROIT, MICHIGAN 48226 PHONE: (313) 224-3949 • TTY:711 FAX: (313) 224-3471

WWW.DETROITMI.GOV

August 25th, 2023

Honorable City Council:

RE: Petition No. x2023-202 - 1208 Woodward LLC, request for various at-grade encroachments within Woodward Avenue, East Grand River Avenue, Farmer Street, and Gratiot Avenue for the purpose of installing streetscape elements.

Petition No. x2023-202 – 1208 Woodward LLC, request for various at-grade encroachments within Woodward Avenue, East Grand River Avenue, Farmer Street, and Gratiot Avenue for the purpose of installing streetscape elements.

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

The request is being made as part of the streetscape design for the development of the parcel commonly known as 1208 Woodward Avenue (Hudson Site).

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

Cc: Ron Brundidge, Director, DPW
Mayor's Office – City Council Liaison

COUNCIL	MEMBED
COUNCIL	WEWBER

**RESOLVED,** that the Department of Public Works, City Engineering Division is hereby authorized and directed to issue permits to 1208 Woodward LLC or their assigns to install and maintain various at-grade encroachments within Woodward Avenue, East Grand River Avenue, Farmer Street, and Gratiot Avenue, further described as: Land in the City of Detroit, Wayne County, Michigan;

- 1. Woodward Avenue, being land lying westerly of and adjacent to lots 33 through 39 of "Section 7 of Governor & Judge's Plan" as recorded in Liber 34, Page 544 of Plats, Wayne County Records. The proposed at-grade encroachments within Woodward Avenue are further described as:
  - a. <u>Concrete Unit Pavers</u>: being installed between the curb line and the westerly property line of 1208 Woodward Avenue.
  - b. <u>Stone Set Paving</u>: being installed along the centerline of the sidewalk area between the street curb line and the westerly property line of 1208 Woodward Avenue.
  - c. <u>Landscaping and Tree Grates</u>: landscaping areas will be defined using a raised curb and partition to separate the grade. Tree gates are described as being 6' x 6' and 1' in depth.
  - d. <u>Irrigation and conduit Trench</u>: to be installed connecting the landscaping areas and tree grates. Said trench is designed to be constructed at 2' wide and 3.5' deep.
  - e. <u>Bike Racks</u>: to be installed in such a way that bicycles secured to the racks are aligned parallel to Woodward Avenue to ensure the pedestrian pathway is unobstructed. Bike racks shall be installed at a minimum of 3' from the curb line so not to conflict with street signage and positioned away from the main pedestrian path (minimum of 6' wide).
  - f. <u>Bollards</u>: said bollards shall be installed below-grade at a depth of approx. 36" and extend above-grade at approx. 36". Said bollards shall be installed at a minimum of 3' from the curb line so not to conflict with street signage and positioned away from the main pedestrian path (minimum of 6' wide).
  - g. <u>Trash receptacles:</u> to be placed no closer than 3' from the curb line so not to conflict with street signage and positioned away from the main pedestrian path (minimum of 6' wide).
  - h. Metal Benches: to be placed no closer than 3' from the curb line so not to conflict with street signage and positioned away from the main pedestrian path (minimum of 6' wide). Said metal benches are described as being 10' wide, 1.5' in height, and 1.5' long.
- 2. <u>Gratiot Avenue</u>, being land lying northerly of and adjacent to lots 33 and 78 of "Section 7 of Governor & Judge's Plan" as recorded in Liber 34, Page 544 of Plats, Wayne County Records.
  - a. <u>Decorative paving</u>: being installed between the curb line and the southerly property line of 1208 Woodward Avenue.
  - b. <u>Irrigation and conduit Trench</u>: to be installed connecting the landscaping areas and tree grates. Said trench is designed to be constructed at 2' wide and 3.5' deep.
  - c. <u>Bike Racks</u>: to be installed in such a way that bicycles secured to the racks are aligned parallel to Gratiot Avenue to ensure the pedestrian pathway is unobstructed. Bike racks shall be installed at a minimum of 3' from the curb line so not to conflict with street signage and positioned away from the main pedestrian path (minimum of 6' wide).

- 3. <u>Framer Street</u>, being land lying easterly of and adjacent to lots 72 through 78 of "Section 7 of Governor & Judge's Plan" as recorded in Liber 34, Page 544 of Plats, Wayne County Records.
  - a. <u>Decorative paving</u>: being installed between the curb line and the easterly property line of 1208 Woodward Avenue.
  - b. <u>Landscaping and Tree Grates</u>: landscaping areas will be defined using a raised curb and partition to separate the grade. Tree gates are described as being 6' x 6' and 1' in depth.
  - c. <u>Irrigation and conduit Trench</u>: to be installed connecting the landscaping areas and tree grates. Said trench is designed to be constructed at 2' wide and 3.5' deep.
  - d. <u>Bike Racks</u>: to be installed in such a way that bicycles secured to the racks are aligned parallel to Farmer Street to ensure the pedestrian pathway is unobstructed. Bike racks shall be installed at a minimum of 3' from the curb line so not to conflict with street signage and positioned away from the main pedestrian path (minimum of 6' wide).
  - e. <u>Bollards</u>: said bollards shall be installed below-grade at a depth of approx. 36" and extend above-grade at approx. 36". Said bollards shall be installed at a minimum of 3' from the curb line so not to conflict with street signage and positioned away from the main pedestrian path (minimum of 6' wide).
  - f. <u>Trash receptacles:</u> to be placed no closer than 3' from the curb line so not to conflict with street signage and positioned away from the main pedestrian path (minimum of 6' wide).
  - g. Metal Benches: to be placed no closer than 3' from the curb line so not to conflict with street signage and positioned away from the main pedestrian path (minimum of 6' wide). Said metal benches are described as being 10' wide, 1.5' in height, and 1.5' long.
- 4. East Grand River Avenue, being land lying southerly of and adjacent to lots 33 through 72 of "Section 7 of Governor & Judge's Plan" as recorded in Liber 34, Page 544 of Plats, Wayne County Records.
  - a. <u>Decorative paving</u>: being installed between the curb line and the northerly property line of 1208 Woodward Avenue.
  - b. <u>Landscaping and Tree Grates</u>: landscaping areas will be defined using a raised curb and partition to separate the grade. Tree gates are described as being 6' x 6' and 1' in depth.
  - c. <u>Irrigation and conduit Trench</u>: to be installed connecting the landscaping areas and tree grates. Said trench is designed to be constructed at 2' wide and 3.5' deep.
  - d. <u>Bike Racks</u>: to be installed in such a way that bicycles secured to the racks are aligned parallel to East Grand River Avenue to ensure the pedestrian pathway is unobstructed. Bike racks shall be installed at a minimum of 3' from the curb line so not to conflict with street signage and positioned away from the main pedestrian path (minimum of 6' wide).

All encroachments listed within this resolution shall comply with the following restrictions:

- 1. No items shall be installed within 36" of the street curb line, other than decorative or non-standard grading, so not to conflict with street signage.
- 2. A minimum of 6' of clearance must be maintained for pedestrian traffic through the sidewalk area surrounding the site, known as 1208 Woodward Avenue. Said 6' clearance area must be unobstructed by any encroachment approved by this resolution and includes street infrastructure including, but not limited to, street signage, light poles, and fire hydrants.

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, 1208 Woodward 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 1208 Woodward 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 1208 Woodward LLC or their assigns. Should damages to utilities occur 1208 Woodward 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

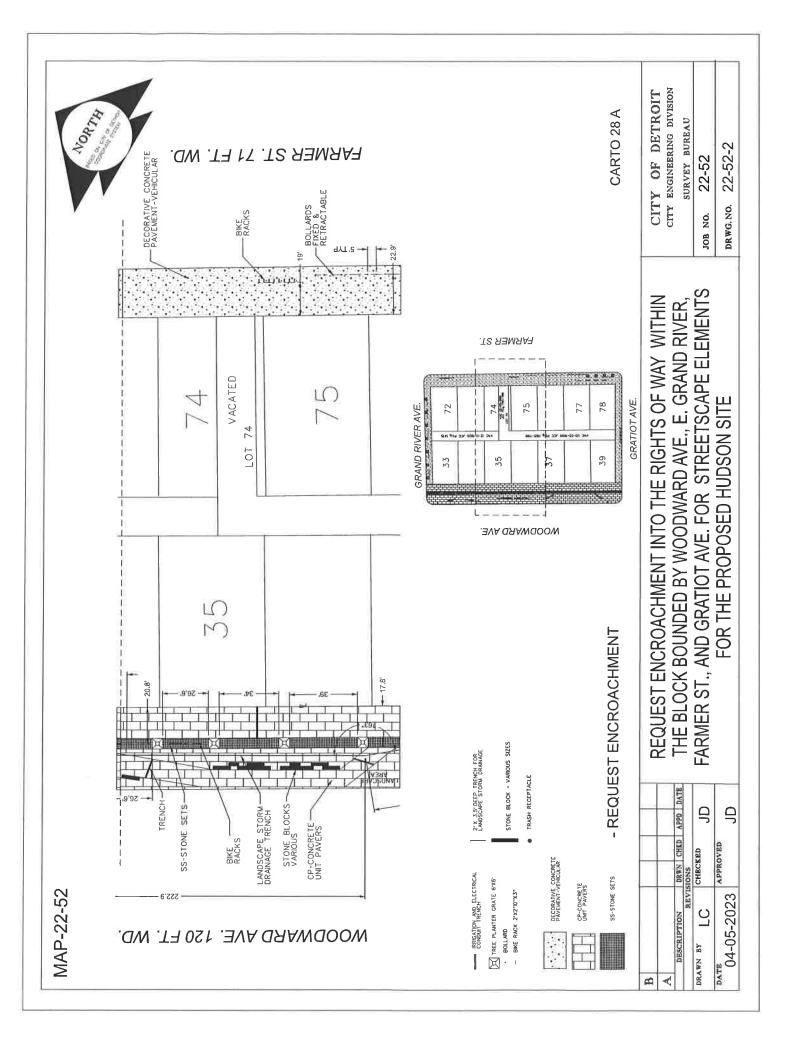
PROVIDED, that 1208 Woodward LLC or their assigns shall file with the Department of Public Works – City Engineering Division an indemnity agreement in form approved by the Law Department. The agreement shall save and protect the City of Detroit from any and all claims, damages or expenses that may arise by reason of the issuance of the permits and the faithful or unfaithful performance of 1208 Woodward LLC or their assigns of the terms thereof. Further, 1208 Woodward 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 1208 Woodward 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

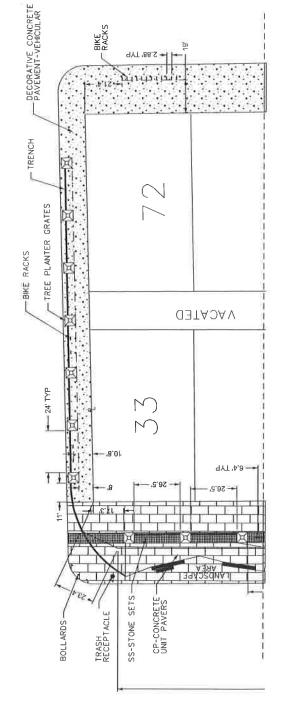
PROVIDED, that the City Clerk shall within 30 days record a certified copy of this resolution with the Wayne County Register of Deeds.



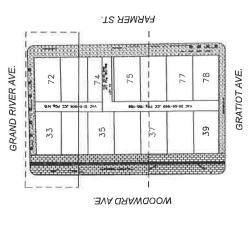
MAP-22-52

GRAND RIVER AVE. 60 FT. WD.

# MOODWARD AVE. 120 FT. WD.



FARMER ST. 71 FT.



2'X 3.5' DEEP TRENCH FOR LANDSCAPE STORM DRAINAGE

TREE PLANTER GRATE 6'X6'

BOLLARD BIKE RACK 2'X2'10"X3"

DESCRIPTION DRWN CHED APPD DATE REVISIONS

9 9

CHECKED

2

DRAWN BY

DATE 04-05-2023

REQUEST ENCROACHMENT

SS-STONE SETS

2

DECORATIVE CONCRETE PAVEMENT-VEHICULAR

CP-CONCRETE
UNIT PAVERS

FARMER ST., AND GRATIOT AVE. FOR STREETSCAPE ELEMENTS REQUEST ENCROACHMENT INTO THE RIGHTS OF WAY WITHIN THE BLOCK BOUNDED BY WOODWARD AVE., E. GRAND RIVER, FOR THE PROPOSED HUDSON SITE

CITY OF DETROIT CITY ENGINEERING DIVISION SURVEY BURBAU JOR NO 22-52
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CARTO 28 A

	22-52	22-52-1
,	JOB NO.	DRWG. NO.

