

**TOWN OF BRIGHTON TOWN BOARD
FINANCE AND ADMINISTRATIVE SERVICES COMMITTEE
MEETING AGENDA**

**Meeting Date: Tuesday, July 15, 2014 (2:00 pm)
Location: Downstairs Meeting Room, Brighton Town Hall**

1. Contract Extension for Assessment Software Services (RPS V4) (Assessor)
– Request from Elaine Ainsworth for Town Board action to authorize the Supervisor to execute an extension to the agreement with David Miller dba Assessment and Valuation Services (AVS) to provide consulting and updating services for the RPS V4 software at a cost not to exceed \$1,500 (see memo from E. Ainsworth).
2. Discussion – Discussion regarding fence for community garden.
3. Amend Self-Funded Dental Plan Document and Amend Benefits for Permanent Part-Time Employees (Personnel) – Request from Gary Brandt for Town Board authorization to amend the plan document for the Town's self-funded dental plan to include the class of Permanent Part-Time Employees and request Town Board action to amend the benefit offering to a certain class of Permanent Part-Time Employees to allow for purchase of dental coverage through the Town (see memo from G. Brandt).
4. Discussion – Review of the draft 2015–2017 Town Capital Improvement Plan (CIP) along with rankings by the Budget Review Task Force and comments from the Sustainability Oversight Committee.
5. Amendment to Agreement with NYSDOT for Snow and Ice Control (Highway Dept.) – Request from Tim Keef for Town Board action to authorize the Supervisor to execute an amendment to the agreement with NYSDOT for snow and ice removal services due to the severity of the 2013/14 winter season (see letter from T. Keef).
6. Contract Change Order for Sidewalk Repair and Replacement (Highway) – Request from Tim Anderson for Town Board authorization of the Supervisor to execute a change order with Pro Construction for sidewalk replacement and repair in the amount of \$34,000 to allow an additional estimated 3,575 SF of repairs (see letter from T. Anderson).
7. Declare Flow Meters as Lost or Surplus (Sewer) – Request from Amy Banker for Town Board action to declare four (4) flow meters as surplus and dispose of as junk as they have no remaining value and one (1) flow meter as lost (see memo from A. Banker).

8. Authorization to Solicit Bids for Lodge Renovations (Parks) – Request from Tim Keef for Town Board authorization to solicit bids for renovations to the Carmen Clark Lodge at Town Park inclusive of replacing fixtures and appurtenances in the kitchen and bathrooms (see letter from T. Keef).
9. Lease Amendment for AT&T Cell Tower Space Rent (Finance) – Request from Suzanne Zaso for Town Board action to authorize the Supervisor to execute an amended lease agreement with NCWPCS MPL 28-Year Sites Tower Holdings LLC (former agreement with AT&T Wireless PCS, LLC) to lease space at 1941 Elmwood Ave. where AT&T has an existing cell tower and lease agreement (see memo from S. Zaso).

The next regularly scheduled meeting of the FASC will be held **Tuesday, August 5, 2014 at 3:30 pm**, in the Stage Conference Room of the Brighton Town Hall. All members of the public are invited to attend FASC meetings.

1a.

TOWN OF BRIGHTON
ASSESSOR'S OFFICE
2300 Elmwood Avenue
Rochester, NY 14618
(585) 784-5216

July 1, 2014

To: Supervisor Moehle
Finance Committee
Finance Director, Suzanne Zaso
Town Board

From: Elaine K. Ainsworth, Assessor

Re: Contract Extension for 2014 Real Property Tax Software (RPS)
Consulting and Updating Services
Assessment and Valuation Services (AVS)

I am requesting permission to process a 2014 Extension to the 2011 Professional Services Contract for the RPS V4 update services, for an amount not to exceed \$1,500, payable to AVS, Assessment Valuation Services, per the attached quote. The expenditure was approved for my 2014 budget.

AVS provides RPS V4 consulting and updating services to the vast majority of the towns in Monroe County. AVS interfaces with the County of Monroe Real Property and the Batavia Office of Taxation and Finance, Office of Real Property Services for the State of New York. No other vendor in Western New York provides the level of service and expertise offered by AVS. No other vendor has the Monroe County valuation knowledge or working relationship with the County assessment community that AVS has established. There is actually no other vendor located here in Monroe County that could provide the RPS V4 expertise.

Keeping the work we have done to the valuation module of the V4 up-to-date ensures that we can perform single parcel valuation now, and minimized our up front costs as we prepare for our next town wide assessment roll update project.

Please authorize the Supervisor to enter into a third extension of the 2011 PSA with AVS for the detailed services and for me to process the required Purchase Order to facilitate payment for those services. I will make every attempt to answer any questions you may have.

Thank you.

16.

TOWN OF BRIGHTON
ASSESSOR'S OFFICE
2300 Elmwood Avenue
Rochester, NY 14618
(585) 784-5216

Contract Addendum
2014 AVS Professional Services to Town of Brighton

The 2012 Municipal Appraisal Agreement between Assessment and Valuation Services (aka AVS) and the Town of Brighton will be extended to include services for 2014, for an amount not to exceed \$1,500, per the services proposal, copy attached herewith and made a part of this addendum.

Town of Brighton

By: _____
Supervisor William Moehle

Date: _____

Assessment and Valuation Services/AVS

By: _____
David P. Miller

Date: _____



lc.

P.O. Box 428

North Chili, NY 14514

Email: avs@rochester.ny.us

Fax & voice mail: 585-889-9772

To: Elaine Ainsworth; Assessor, Town of Brighton, NY

From: David Miller; AVS

Date: 07-01-14

Dear Elaine,

In response to our discussion regarding services for 2014, I am pleased to provide the following information and quote for the scope you indicated using RPSV4 as your valuation system:

AVS:

- * **Market Data Analysis:** will review sales vs. assessment ratios for the past 3 yr period (07-01-11 thru 06-30-14) for trends and validity, analyze COD's and PRD's for uniformity within neighborhoods, by style and by major property classes [residential, vacant and commercial] and will provide the appropriate statistical documentation.
- * **Annual updates for ongoing single parcel valuation as needed:** work with assessor to maintain RPS valuation programs up-to-date for on-going single parcel valuation

Based on the above scope of services, AVS would charge \$ 1,500

Additional days of assistance may be requested @ \$525/day.

Please let me know if you have any questions on any of the above items.

TO: Christopher Werner, Chair, Finance & Administrative Services Committee

FROM: Gary Brandt, Director of Personnel & Human Resources

DATE: July 11, 2014

RE: Amendments to the Self-Funded Dental Plan and Section 125 Plan

I am requesting approval to expand the benefit eligible class of employees able to enroll in the Self-Funded Town Dental Plan to include all Permanent Part-Time (PPT) to are scheduled to work a regular 20 hr or more work week. Currently the number of employees meeting this definition is nine (9).

I am also requesting approval to authorize Excellus (ESB-RMSCO as TPA) to amend the benefit plan description document to include this new class of eligible employees.

This expansion of the Town Dental Plan, being self-funded from employees monthly rate contributions, will not increase existing costs to the Town other than the minor Excellus charge to amend the benefit plan description document to add this new class (PPT) of eligible employees. That one time charge is \$300.



Town of Brighton

MONROE COUNTY, NEW YORK

DEPARTMENT OF PUBLIC WORKS

2300 ELMWOOD AVENUE ROCHESTER, NEW YORK 14618

PHONE: (585)784-5250 FAX: (585) 784-5368

July 11, 2014

The Honorable Finance and Administrative Services Committee
Town of Brighton
2300 Elmwood Avenue
Rochester, New York 14618

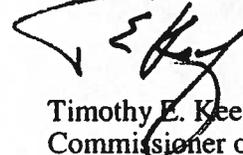
re: Snow and Ice Control Agreement Amendment
with the New York State Department of Transportation (NYSDOT)

Dear Chairman Werner and Committee Members:

The Town of Brighton provides snow and ice control for New York State roads via an agreement with the New York State Department of Transportation. At this time I am requesting your support to amend said agreement with the NYSDOT per the attached communication from the State, recommending that the Finance and Administrative Services Committee authorize the Supervisor to execute these documents. Furthermore, as these are unanticipated revenues, they should be received into the D.HWY.5140.2305 account.

As always, thank you for your consideration. I will be in attendance at your regularly scheduled July 15, 2014 meeting in the event that you have any questions regarding this matter.

Sincerely,



Timothy E. Keef, P.E.
Commissioner of Public Works

TEK/wpd

attachments

cc: T. Anderson
S. Zaso
A. Banker
M. Hussar
K. Gordon

FASC.NYSDOT.SNOW.ICE.AGREEMENT.AMEND.JULY.2014.01

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RECEIVED
JUN 17 2014
MONROE EAST
RESIDENCY



MEMORANDUM
Department of Transportation

B. Severino
TO: Susan Miles, Region 4 TMD

FROM: April Steward, Transportation Maintenance Division, POD 54, Wolf Road

SUBJECT: 2013/14 AMENDMENT B - S&I INDEXED LUMP SUM CONTRACTS

DATE: June 13, 2014

In order for TMD to make payments on indexed lump sum snow and ice contracts that had payment factors over 1.00 we first have to amend their existing S&I contracts. The amendments allow OSC to better track the actual costs associated with each S&I Agreement. In the past we paid adjustments to the S&I contracts with Snow and Ice vouchers. This process did not allow OSC the ability to track all costs associated with each S&I agreement.

If any changes are to be made to the amendment both the municipality and DOT representative should initial by the change. The municipalities will also have to issue a signed and sealed Resolution from their governing body authorizing a Municipal Official to enter in the above Amendment.

It is important that **four (4) Amendments with original signatures and notary seals on each and four (4) resolutions from the municipality, complete with original signatures and certified with the Municipal Seal on each**, be returned to this office as soon as possible for processing. The adjustment payments will be made once the amendments have been approved by OSC.

The amendment is for payment purposes only, the Revised Estimated Expenditure should not be carried over to the next year's contract extension and be used as the Estimated Expenditure. The amendments allow us to put the additional money on the contract so that the municipality can be paid for that season **ONLY**.

If you have any questions you can either call me at (518) 457-9500 or email at april.steward@dot.ny.gov.

ALS:als

5c.

AMENDMENT B

Contract #	Municipality	Ext. Season	Region #
D012050	TOWN OF BRIGHTON/Monroe	2014/15	4
Beginning Date of Contract Period	7/1/1998	Ending Contract Period	6/30/2015

AMENDMENT TO CHANGE THE ESTIMATED EXPENDITURE FOR SNOW & ICE AGREEMENT

Due to the severity of the winter during 2013/14 the MUNICIPALITY requests that the Municipal Snow and Ice Agreement estimated expenditure be revised to reflect the additional lane miles of state roads that were plowed/treated during the winter season. All the terms and conditions of the original contract extension remain in effect except as follows:

ADDITIONAL S&I OPERATIONS						
J-Mile Base	13/14 J-Miles	S&I LM Base	13/14 LM	Pay ¹ Factor	Original Estimated Expenditure	Index Adjustment ²
114,831	164,373	351	422	1.191	\$196,446.69	\$37,521.32
Pay Factor ¹ = (13/14 J-Miles/(13/14 LM))/(J-Mile Base/S&I LM Base)						
Index Adjustment ² = (Original Estimated Expenditure * Pay Factor ¹) - Original Estimated Expenditure						
TOTAL REVISED ESTIMATED EXPENDITURE						
Original Estimated Expenditure		Index Adjustment ²		Rev. Est. Expenditure ³		
\$196,446.69		\$37,521.32		\$233,968.01		
Revised Estimated Expenditure ³ = Original Estimated Expenditure + Index Adjustment ²						

IN WITNESS WHEREOF, this agreement has been executed by the State, acting by and through the duly authorized representative of the COMMISSIONER OF TRANSPORTATION and the MUNICIPALITY, which has caused this Agreement to be executed by its duly authorized officer on the date and year first written in the original contract extension.

5d.

Agency Certification Contract No. D012050

“In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract.”

THE PEOPLE OF THE STATE OF NEW YORK

MUNICIPALITY

BY _____
For Commissioner of Transportation

BY _____

ATTORNEY GENERAL'S SIGNATURE

COMPTROLLER'S SIGNATURE

Dated _____

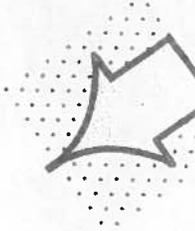
Dated _____

STATE OF NEW YORK)

) SS:

COUNTY OF Monroe)

On the _____ day of _____ in the year _____ before me personally came _____ to me known who, being by me duly sworn, did depose and say that (s)he resides in _____, New York; that (s)he is the _____ of _____ the municipality described in and which executed the above instrument; that (s)he executed said instrument by order of the Governing Body of said municipality pursuant to a resolution which was duly adopted on _____; a certified copy of such resolution attached hereto and made a part hereof.



Notary Public

6.



Town Of Brighton

Operations Center

1941 Elmwood Ave. / Rochester, New York 14620 / Phone (585) 784 - 5280 Fax (585) 784 - 5385

July 8, 2014

The Honorable Finance and Administrative Services Committee
Town of Brighton
2300 Elmwood Ave.
Rochester, NY 14618

Re: Authorize Change Order #1
2014 Sidewalk Repair Program
Pro Construction

Honorable Members:

I recommend that a change order be approved to the 2014 contract with Pro Construction for sidewalk repair and replacement in the amount of \$34,000 for a new total not-to-exceed amount of \$175,927.

The change order reflects the following revision to the work:

#1: Repair an additional 3,575 SF (estimated) of sidewalk

Funds are available from the 2014 Budget in the Sidewalk District account (SK.SWLKD.5411.265) and in the Town - wide sidewalk account (A.DPW.5410.449)

Sincerely,

A handwritten signature in black ink, appearing to read "T. Anderson".

Timothy J. Anderson
Deputy Highway Superintendent

Cc: S. Zaso
A. Banker
M. Hussar
T. Keef

7a.

MEMORANDUM

To: The Honorable Town Board
Attn.: Finance and Administrative Services Committee
Subject: Disposal of Fixed Assets

From: Amy Banker, DPW Operations Accountant

Date: July 14, 2014

In accordance with the Town Board's Fixed Asset Policy and Procedures (as amended), I am requesting that Your Honorable Body authorize the disposal of certain fixed asset items in my care and custody as listed on the attached Fixed Assets/Inventory Update Sheet(s). The item(s) listed are no longer needed or available to support departmental operations. In this particular instance:

The item(s) listed have remaining value, are serviceable, and should be sold to the highest bidder by auction to be conducted by the Town, or by the Town's authorized agent.

The item(s) listed have remaining value, are serviceable, and should be sold to the highest bidder by means of a sealed bid.

The item(s) have no remaining value and/or are no longer serviceable and should be disposed of as junk.

The item(s) listed have been lost or destroyed and should be removed from the Town's fixed asset and inventory records.

The formal action being requested of the Town Board is the declaration as surplus or junk (as indicated above) of the item(s) listed on the attached. As the department head responsible for the care and custody of the item(s) listed, I would be happy to respond to any questions the Committee, or other members of the Town Board may have.

Original to: Mary Ann Hussar

Copies to: Suzanne Zaso, Steve Zimmer

Attached: Disposal of Fixed Asset Sheet

**TOWN OF BRIGHTON
DISPOSAL OF FIXED ASSET SHEET**

NOTE: You must attach a Disposal of Fixed Asset Memo for items \$1,000 and over

DEPT. Sewer

DATE 9-Jul-14

REQUESTING EMPLOYEE Amy Banker/Steve Zimmer

ASSET # *	ITEM DESCRIPTION	MANUFACTURER	MODEL	YEAR	VIN or SERIAL No.	COST	COMMENTS
005161	Flow Meter	Hach	Sigma 910	2004	050100002170	\$2,949.66	junk
005164	Flow Meter	Hach	Sigma 910	2004	050100002172	\$2,949.66	junk
005430	Flow Meter	Hach	Sigma 910	2010	100200348255	\$3,325.00	junk
005431	Flow Meter	Hach	Sigma 910	2010	050600002627	\$3,325.00	junk
005556	Flow Meter, Submersible	Telog	n/a	2013	294324	\$4,992.89	lost in Sewer

* For vehicles use the last 6 characters of the VIN number.

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Town of Brighton

MONROE COUNTY, NEW YORK

DEPARTMENT OF PUBLIC WORKS

2300 ELMWOOD AVENUE ROCHESTER, NEW YORK 14618

PHONE: (585)784-5250 FAX: (585) 784-5368

July 11, 2014

The Honorable Finance and Administrative Services Committee
Town of Brighton
2300 Elmwood Avenue
Rochester, New York 14618

re: Authorization of Bids for Renovations to the Carmen Clark Lodge at Town Park

Dear Chairperson Werner and Committee Members:

Authorization is requested to solicit bids for renovations to the above Town facility. The scope of this work generally includes replacing the existing fixtures and appurtenances in the kitchen and bathroom areas. Funds have been allocated in this year's budget for this purpose. This matter will be returned to your Committee prior to recommending an award.

As always, thank you for your consideration. I will be in attendance at your regularly scheduled July 15, 2014 meeting in the event that you have any questions regarding this matter.

Very truly yours,

Timothy E. Keef, P.E.
Commissioner of Public Works

TEK/wp

cc: M. Beeman
C. Roscoe
S. Zaso
A. Banker
M. Hussar
K. Gordon

9a.



SUZANNE ZASO, DIRECTOR OF FINANCE
2300 ELMWOOD AVENUE
ROCHESTER, NEW YORK 14618
Phone (585) 784-5210 Fax (585) 784-5396

MEMORANDUM

To: The Honorable Town Board
Attn.: Finance and Administrative Services Committee
From: Suzanne Zaso, Director of Finance *W*
Date: July 14, 2014
Subject: Amended Lease Agreement for AT&T Cell Tower Space

I am recommending that the Town Board authorize the Supervisor to enter into an amended lease agreement with NCWPCS MPL 28-Year Sites Tower Holdings LLC (former agreement with AT&T Wireless PCS, LLC) to lease space at 1941 Elmwood Avenue where AT&T has an existing cell tower and has paid rent since August 2000. The term of the lease is from adoption until July 31, 2019 with automatic renewals for up to three (3) additional sixty (60) month terms. The base rent beginning August 1, 2015, will be \$17,457 annually (a 10% increase from current annual base rent) and will increase 15% on August 1, 2020 and for each term thereafter.

I will be happy to respond to any questions that members of the Committee or other members of the Town Board may have regarding this matter.

Copy to: T. Keef

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Cell Site Name: PR245/01/TOWN OF BRIGHT
Fixed Asset No.: 10074142
Market: Upstate New York
Address: 1941 Elmwood Avenue, Rochester, New York 14620
Business Unit No.: 843085

SECOND AMENDMENT TO OPTION AND LEASE AGREEMENT

THIS SECOND AMENDMENT TO OPTION AND LEASE AGREEMENT (“Second Amendment”) dated as of the later date below (the “Effective Date”) is by and between the Town of Brighton, a New York corporation, having a mailing address at 2300 Elmwood Avenue, Rochester, New York 14618 (hereinafter referred to as “Landlord”), and NCWPCS MPL 28 - YEAR SITES TOWER HOLDINGS LLC, a Delaware limited liability company, by and through its attorney-in-fact CCATT LLC, a Delaware limited liability company, having a mailing address of 2000 Corporate Drive, Canonsburg, Pennsylvania 15317 (hereinafter referred to as “Tenant”).

WHEREAS, Landlord and AT&T Wireless PCS, LLC d/b/a AT&T Wireless Services, LLC (“Original Tenant”) entered into that certain Option and Lease Agreement dated June 27, 2000 (“Original Agreement”), as amended by that certain Amendment to Lease Agreement dated June 22, 2000 (“First Amendment”) (hereinafter the Original Lease and First Amendment are collectively referred to as the “Agreement”), whereby Landlord leased to Original Tenant a portion of that property (said leased portion being the “Premises”) located at 1941 Elmwood Avenue, (Assessor’s Parcel Number 262000-136-160-0001-001-100), in the Town of Brighton, County of Monroe, State of New York, which property underlying the Premises (the “Property”) is described in Liber 2734 of Deeds, Page 370 and Liber 1401 of Deeds, Page 577 in the County Register of Deeds Office (“Registry”), together with those certain access, utility and/or maintenance easements and/or rights of way granted in the Agreement; and

WHEREAS, NCWPCS MPL 28 – Year Sites Tower Holdings, LLC is currently the Tenant under the Agreement as successor-in-interest to Original Tenant; and

WHEREAS, the term of the Agreement, including all Renewal Terms (as defined in the Agreement), will expire on July 31, 2015, and Landlord and Tenant now desire to extend the term of the Agreement, to modify, as set forth herein, the Rent (as defined below) payable under the Agreement, and to make certain other changes, all as set forth below.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. **Term.** The term of the Agreement shall be amended to provide that the Agreement has a new initial term of sixty (60) months (“New Initial Term”), commencing on the Effective Date (“New Term Commencement Date”) and expiring on July 31, 2019. As of such New Term Commencement Date, all remaining renewal terms in the Agreement except as set forth herein shall be void and of no further force and consequence. The Agreement will be automatically renewed for up to three (3) additional sixty (60) month terms (each an “Extension Term”) upon the same terms and conditions of the Agreement, as amended herein, without further action by Tenant unless Tenant notifies Landlord in writing of Tenant’s intention not to renew the Agreement at least sixty (60) days prior to the expiration of the then current Extension Term. Hereafter, the defined term “Term” shall include the New Initial Term and any applicable Extension Term. Landlord agrees and acknowledges that except that as such permitted use or other rights may be amended herein, Tenant may continue to use and exercise its rights under the Agreement as permitted prior to the New Initial Term.

9c.

Cell Site Name: PR245/01/TOWN OF BRIGHT
Fixed Asset No.: 10074142
Market: Upstate New York
Address: 1941 Elmwood Avenue, Rochester, New York 14620
Business Unit No.: 843085

2. **Modification of Rent.** Commencing on August 1, 2015, the rent payable under the Agreement shall be Seventeen Thousand Four Hundred Fifty-Seven and No/100 Dollars (\$17,457.00) per year (the "Rent"), and shall continue during the Term, subject to adjustment, if any, as provided below. For the avoidance of doubt, Tenant may offset future Rent by any amount paid to Landlord in excess of Rent due and payable under the Lease as amended hereby.

3. **Future Rent Increase / Extension Term Increase.** The Agreement is amended to provide that commencing on August 1, 2020, Rent shall increase by fifteen percent (15%) and at the beginning of each Extension Term, as applicable.

4. **Acknowledgement.** Landlord acknowledges that: (a) this Second Amendment is entered into of the Landlord's free will and volition; (b) Landlord has read and understands this Second Amendment and the underlying Agreement and, prior to execution of this Second Amendment, was free to consult with counsel of its choosing regarding Landlord's decision to enter into this Second Amendment and to have counsel review the terms and conditions of this Second Amendment; (c) Landlord has been advised and is informed that should Landlord not enter into this Second Amendment, the underlying Agreement between Landlord and Tenant, including any termination or non-renewal provision therein, would remain in full force and effect.

5. **Notices.** Section 17 of the Original Agreement is hereby deleted in its entirety and replaced with the following:

"NOTICES. All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties as follows:

If to Tenant:

NCWPCS MPL 28 - Year Sites Tower Holdings LLC
ATTN: Network Legal
208 S. Akard Street
Dallas, Texas, 75202-4206

With a copy to:

CCATT LLC
Attn: Legal Dept.
2000 Corporate
Canonsburg, Pennsylvania 15317

And as to Landlord:

Town of Brighton
2300 Elmwood Avenue
Rochester, New York 14618

9d.

Cell Site Name: PR245/01/TOWN OF BRIGHT
Fixed Asset No.: 10074142
Market: Upstate New York
Address: 1941 Elmwood Avenue, Rochester, New York 14620
Business Unit No.: 843085

Either party hereto may change the place for the giving of notice to it by thirty (30) days prior written notice to the other as provided herein."

6. **Charges.** All charges payable under the Agreement such as utilities and taxes shall be billed by Landlord within one (1) year from the end of the calendar year in which the charges were incurred; any charges beyond such period shall not be billed by Landlord, and shall not be payable by Tenant. The foregoing shall not apply to monthly rent which is due and payable without a requirement that it be billed by Landlord. The provisions of this subsection shall survive the termination or expiration of the Agreement.

7. **Memorandum of Agreement.** Either party will, at any time upon fifteen (15) days prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum of Agreement substantially in the form of the Attachment 1. Either party may record this memorandum at any time, in its absolute discretion.

8. **Other Terms and Conditions Remain.** In the event of any inconsistencies between the Agreement and this Second Amendment, the terms of this Second Amendment shall control. Except as expressly set forth in this Second Amendment, the Agreement otherwise is unmodified and remains in full force and effect. Each reference in the Agreement to itself shall be deemed also to refer to this Second Amendment.

9. **Capitalized Terms.** All capitalized terms used but not defined herein shall have the same meanings as defined in the Agreement.

[NO MORE TEXT ON THIS PAGE - SIGNATURES TO FOLLOW ON NEXT PAGE]