

CITY OF BLOOMINGTON
SPECIAL MEETING NOTICE
109 E. OLIVE
MONDAY, SEPTEMBER 15, 2014 5:30 P.M.

1. Call to Order
2. Roll Call
3. Public Comment
4. Adjourn to Closed Session.
 - a. Pending/Probable Litigation – Section 2(c)(11) of 5 ILCS 120.
5. Return to Open Session.
6. Approval of a Memorandum of Understanding Resolving Design and Construction Claims Involving the US Cellular Coliseum and Pepsi Ice Center Garage. (Recommend that the Memorandum of Understanding be approved.)
7. Approval of a Change Order with Structural Preservation Systems, LLC for the Pepsi Ice Center Garage. (Recommend that the Change Order be approved and the Resolution adopted.)
8. Adjourn.

MEMORANDUM OF UNDERSTANDING

The parties hereto have reached an agreement in principle for the settlement of the claims asserted by the City of Bloomington in regards to the design and construction defects of the U.S. Cellular Coliseum and Pepsi Ice Parking Garage completed in 2006 pursuant to the following terms and conditions.

1. The parties agree to execute a definitive settlement agreement within 28 days of the date hereof, or such other time as mutually agreed by the parties ("Settlement Agreement").

2. The parties shall make settlement payments to the City within 14 days from the date of the Settlement Agreement as follows:

a.	<u>IPC, Inc. and Cretex Companies, Inc.</u> <u>(including \$50,000 from Losch Engineering)</u>	\$350,000
b.	<u>Mid Illinois Mechanical, Inc.</u>	\$100,000
c.	<u>BBB Architects and SCI</u> <u>(including \$75,000 from TMP)</u>	\$175,000
d.	<u>Yolles/CH2M Hill</u>	\$ 85,000
e.	<u>Johnston Contractors, Inc.</u>	\$ 85,000
	Total	\$795,000

3. The Settlement Agreement shall contain a broad mutual general release of all past, current and future claims, whether known or unknown, by and between all the participating parties listed above and their insurance carriers for the entire project including building and parking structure, with no exceptions to such release. The Settlement Agreement shall not prejudice the rights of any participating party to seek reimbursement from any non-participating insurer or non-participating party.

4. The Settlement Agreement shall provide for a dismissal with prejudice of the pending arbitration and shall also contain a mutual non-disparagement clause typical for similar settlement agreements, a non-admission of liability clause typical for similar settlement agreements, a mutually agreeable joint press release, and agreement that all parties may, but not necessarily, participate in a joint press conference discussing the Settlement Agreement.

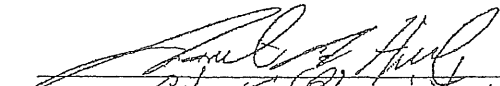
5. Notwithstanding the above, Johnston Contractors shall make three (3) equal payments of \$28,333.33, the first upon the signing of the Settlement Agreement, the second 90 days after the date of the Settlement Agreement, and the third 180 days after the date of the Settlement Agreement.

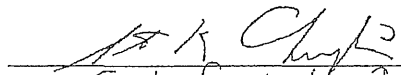
6. The agreement stated herein is contingent upon the City of Bloomington obtaining the City Council approval of this deal in principle, which the City Council shall consider and vote upon at its session on Monday, September 15, 2014.

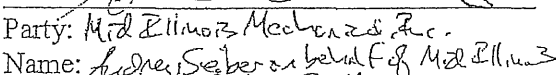
7. This agreement was reached pursuant to a mediation conducted and presided over by Ty D. Laurie, Esq.

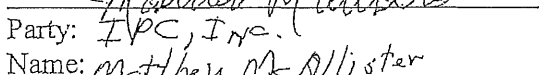
8. The parties agree that should a dispute arise during the negotiation of the Settlement Agreement regarding the inclusion or exclusion of language necessary to effectuate the intent of the parties as set forth herein, Ty D. Laurie shall act as arbitrator of all such disputes, and his decision shall be final, binding upon the parties and non-appealable.

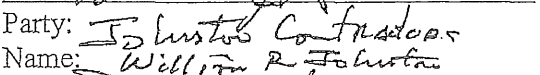
Made this 10 day of September, 2014.

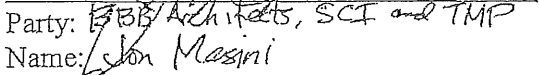

Party: City of Bloomington
Name: Steven Champ
Title: City of Bloomington



Party: Crater Companies, Inc.
Name: Steven Champ, III
Title: Counsel

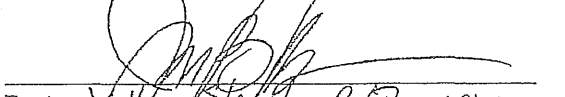

Party: Mid Illinois Mechanical, Inc.
Name: Andrew Seiber on behalf of Mid Illinois
Title: Counsel for Mid Illinois Mechanical

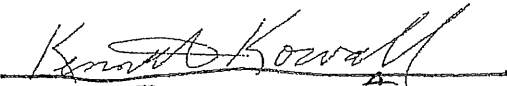

Party: IPC, Inc.
Name: Matthew McAllister
Title: President


Party: Johnston Contractors
Name: William R. Johnston
Title: President


Party: BBB Architects, SCI and TMP
Name: Jon Masini
Title: Counsel


Party: Mediators
Name: Ty D. Laurie
Title:


Party: Tolles Structural Engineers
Name: Jon Masini
Title: Counsel o/b/o Matt Toller


Losch Engineering Corp.
Kenneth Kowall
General Manager



FOR COUNCIL: September 15, 2014

SUBJECT: Change Order for Contract with Structural Preservation Systems, LLC for Repair of Pepsi Ice Center Parking Structure

RECOMMENDATION/MOTION: Recommend the Change Order using the unit prices from Structural Preservation Systems, LLC’s Bid, for necessary repairs to the Pepsi Ice Center Parking structure be accepted, the Change Order be approved in the base amount of \$634,978 to be paid out of General Fund Balance, the Mayor and City Clerk be authorized to execute the necessary documents, and the Resolution adopted.

STRATEGIC PLAN LINK: Goal 2. Upgrade City infrastructure and facilities.

STRATEGIC PLAN SIGNIFICANCE: Objective 2d. Well-designed, well-maintained City facilities emphasizing productivity and customer service.

BACKGROUND: Following mediation and extensive collaboration between the City and the mediation parties, there is now an approximate \$463,022 savings in the projected repair costs for the Pepsi Ice Center Parking structure as measured against the \$1,098,836 contract amount awarded to Structural Preservation Systems, LLC on September 8, 2014. The mediation process allowed the original design team and expert structural engineers to coordinate their efforts and develop a plan for a more efficient way to move forward with the repairs. The proposed amended unit cost schedule is as follows:

Work Item	Description	Quantity	Unit	Unit Cost	Extension
1.0	General Requirements	1	L.S.	\$113,750	\$113,750
	Performance and Payment Bond	1	L.S.	\$11,455	\$11,455
2.1	New Double Tee	1	Ea.	\$263,741	\$263,741
3.1	New Double Tee FRP Strengthening with Protection	0	Ea.	0	
4.1	Double Tee Strengthening without protection	30	Ea.	\$5,492	\$164,7600
5.1	Spandrel Panel FRP Strengthening	0	Ea.	0	
6.1	Column FRP Strengthening	11	Ea.	\$5,374	\$59,114
8.1	Epoxy Injection	0	Ea.	0	-
9.1	Elastomeric Coating (N&S Exterior Columns)	1	L.S.	\$22,158	\$22,158
				Total	\$634,978

COMMUNITY GROUPS/INTERESTED PERSONS CONTACTED: Holland & Knight LLP.

FINANCIAL IMPACT: Since the total cost of this project is sizeable, unknown, and subject to a potential reimbursement; it is recommended by Finance staff that General Fund balance be utilized in the short term for all related costs until the design and repair of the garage is complete. Once full project costs are known the City can execute a short term debt instrument to reimburse

General Fund balance and finance the project until reimbursement can be achieved. The City's General Fund balance is limited and will be further impacted by upcoming year end budget transfers related to FY 2014 and therefore, this financing approach has been recommended.

Respectfully submitted for Council consideration.

Prepared by: Alexander S. McElroy, Assistant to the City Manager

Legal review by: Jeffrey Jurgens, Corporation Counsel

Recommended by:

David A. Hales
City Manager

Attachments: Attachment 1. Resolution

Motion: That the Change Order using the unit prices from Structural Preservation Systems, LLC's Bid, for necessary repairs to the Pepsi Ice Center Parking structure be accepted, the Change Order be approved in the base amount of \$634,978 to be paid out of General Fund Balance, the Mayor and City Clerk be authorized to execute the necessary documents, and the Resolution adopted.

Motion: _____ Seconded by: _____

	Aye	Nay	Other		Aye	Nay	Other
Alderman Black				Alderman Painter			
Alderman				Alderman Sage			
Alderman Fruin				Alderman Schmidt			
Alderman Lower				Alderman Stearns			
Alderman Mwilambwe							
				Mayor Renner			

RESOLUTION NO. 2014 -

**A RESOLUTION AUTHORIZING A CHANGE ORDER
IN THE AMOUNT OF \$634,978 IN THE CONTRACT BETWEEN THE
CITY OF BLOOMINGTON AND STRUCTURAL PRESERVATION SYSTEMS, LLC**

WHEREAS, the City of Bloomington has previously entered into a contract with Structural Preservation Systems, LLC. and

WHEREAS, for the reasons set forth in a staff report dated September 15, 2014 it was necessary to; and

WHEREAS, it is the finding of the City Council that the decision to perform the work described in the September 15, 2014 memo was in the best interest of the citizens of the City of Bloomington.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BLOOMINGTON, ILLINOIS:

That a change order in the amount of \$634,978 in the contract between the City of Bloomington and Structural Preservation Systems, LLC be approved.

ADOPTED this 15^h day of September, 2014.

APPROVED this _____th day of September, 2014.

APPROVED:

Tari Renner
Mayor

ATTEST:

Tracey Covert
City Clerk

**CITY OF BLOOMINGTON
CONTRACT FOR THE CONSTRUCTION OF
PEPSI ICE CENTER PARKING STRUCTURE REPAIRS
BID # 2015-25**

CHANGE ORDER NO. 1

I. CHANGE IN DESCRIPTION OF WORK AND CONTRACT PRICE

- A. DESCRIPTION OF CHANGES INVOLVED: The Work described in the Contract Drawings is modified from that shown on the original Contract Drawings to that shown on the revised Contract Drawings identified as "Revised Scope September 12, 2014." The List of Drawings in Attachment C is hereby revised in full to read as follows:

LIST OF DRAWINGS

Prepared By Walker Restoration Consultants

<u>SHEET NO.</u>	<u>SHEET TITLE</u>	<u>DATE LAST REVISED</u>
	Cover Sheet	9/12/14
R-001	General Notes and Work Item Schedule	9/12/14
R-002	Phasing Plans	9/12/14
R-101	Level 2 Plan	9/12/14
R-102	Level 3 Plan	9/12/14
R-201	North and South Elevations	9/12/14
R-501	Repair Details	9/12/14
R-502	Repair Details	9/12/14

- B. REASON FOR CHANGE: Based on the results of the mediation process for design and construction claims relating to the original construction of the Pepsi Ice Center Parking Structure and extensive mediation collaboration between the City, its consultants, and the original architects, contractors and engineers who constructed the Pepsi Ice Center Parking Structure, it has been determined that certain elements of the Work that were included in the original bidding can be deleted from the Work through value engineering without compromising the safety of the parking structure.
- C. REVISION IN PRICE: The Contract Price is hereby adjusted to reflect the changes in the Work by replacing the Schedule of Prices in Section 7 of Attachment A of the Contract to read as follows:

SCHEDULE OF PRICES

A. LUMP SUM CONTRACT

For providing, performing, and completing all Work, the total Contract Price of:

Six Hundred Thirty Four Thousand
Nine Hundred Seventy Eight Dollars and Zero Cents
(in writing) (in writing)

634,978 Dollars and 00 Cents
(in figures) (in figures)

B. BREAKDOWN SCHEDULE

To inform Owner of the basis for its Lump Sum Bid, Bidders shall provide the values assigned to each of the following components of the Work that are included in Bidder's Lump Sum Price. Such values shall be subject to review and revision as part of the Breakdown Schedule process under the Contract:

COMPLETE TABLE AS INDICATED

<u>Item Description</u>	<u>Unit</u>	<u>Quantity</u>	<u>Price Per Unit</u>
1.0 General Conditions	L.S.	1	\$ 113,750.00
Performance Bond and Payment Bond	L.S.	1	\$ 11,455.00
2.1 New Double Tee	Ea.	1	\$ 263,741.00
3.1 Double Tee FRP Strengthening with Protection	Ea.	0	\$ 0.00
4.1 Double Tee FRP Strengthening without Protection	Ea.	30	\$ 5,492.00
5.1 Spandrel Panel FRP Strengthening	Ea.	0	\$ 0.00
6.1 Column FRP Strengthening	Ea.	11	\$ 5,374.00
8.1.1 Epoxy Injection—Tee Stem Crack	Loc.	0	\$ 0.00
8.1.2 Epoxy Injection—Spandrel Panel Crack	Loc.	0	\$ 0.00
9.1 Elastomeric Coating (N&S Exterior Columns)	L.S.	1	\$ 22,158.00

C. BASIS FOR DETERMINING PRICES

It is expressly understood and agreed that:

1. The approximate quantities set forth in this Schedule of Prices for each Unit Price Item are Owner's estimate only, that Owner reserves the right to increase or decrease such quantities, and that payment for each Unit Price Item shall be made only on the actual number of acceptable units of such Unit Price Item installed complete in place, measured on the basis defined in the Contract;
2. Owner is not subject to state or local sales, use and excise taxes and no such taxes are included in this Schedule of Prices;
3. All other applicable federal, state, and local taxes of every kind and nature applicable to the Work as well as all taxes, contributions, and premiums for unemployment insurance, old age or retirement benefits, pensions, annuities, or other similar benefits are included in this Schedule of Prices; and
4. All costs, royalties, and fees arising from the use on, or the incorporation into, the Work of patented equipment, materials, supplies, tools, appliances, devices, processes, or inventions are included in this Schedule of Prices.

All claim or right to dispute or complain of any such estimated quantity, or to assert that there was any misunderstanding in regard to the nature or amount of any Unit Price Item to be provided or performed, or to claim any additional compensation by reason of the payment of any such tax, contribution, or premium or any such cost, royalty or fee is hereby waived and released.

II. ADJUSTMENTS IN AMOUNT OF CONTRACT:

1.	Amount of Original Contract Price	\$ 1,098,836.00
2.	Net (addition) (reduction) due to all previous Change Orders Nos. _____ to _____	\$ Not applicable
3.	Amount of Contract Price, not including this Change Order	\$ 1,098,836.00
4.	Reduction to Contract Price due to this Change Order	\$ 463,858.00
5.	Amount of Contract Price including this Change Order	\$ 634,978.00

III. FINDINGS.

Pursuant to the requirements of Section 33E-9 of the Illinois Criminal Code of 1961, the undersigned do hereby find that the Change Order: [check all that are appropriate]

X is necessary due to circumstances that were not foreseeable at the time the Owner entered into the Contract;

X is germane to the Contract in its original form as signed; and/or

X is in the best interest of the Owner and authorized by law.

RECOMMENDED FOR ACCEPTANCE:

Walker Restoration Consultants

Date: _____

By: _____
Name:

ACCEPTED: By my authorized signature below, being first duly sworn on oath, I certify on behalf of Contractor that in the event this Change Order authorizes or necessitates an increase in the price of any Subcontract under the Contract that is 50% or more of the original Subcontract price, such change to the Subcontract has been resubmitted for bidding in the same manner for which the original Subcontract was bid.

Structural Preservation Systems, LLC

Date: _____

By: _____
Name:

APPROVED:

City of Bloomington, Illinois

Date: _____

By: _____
Tari Renner, Mayor