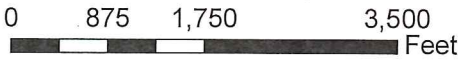
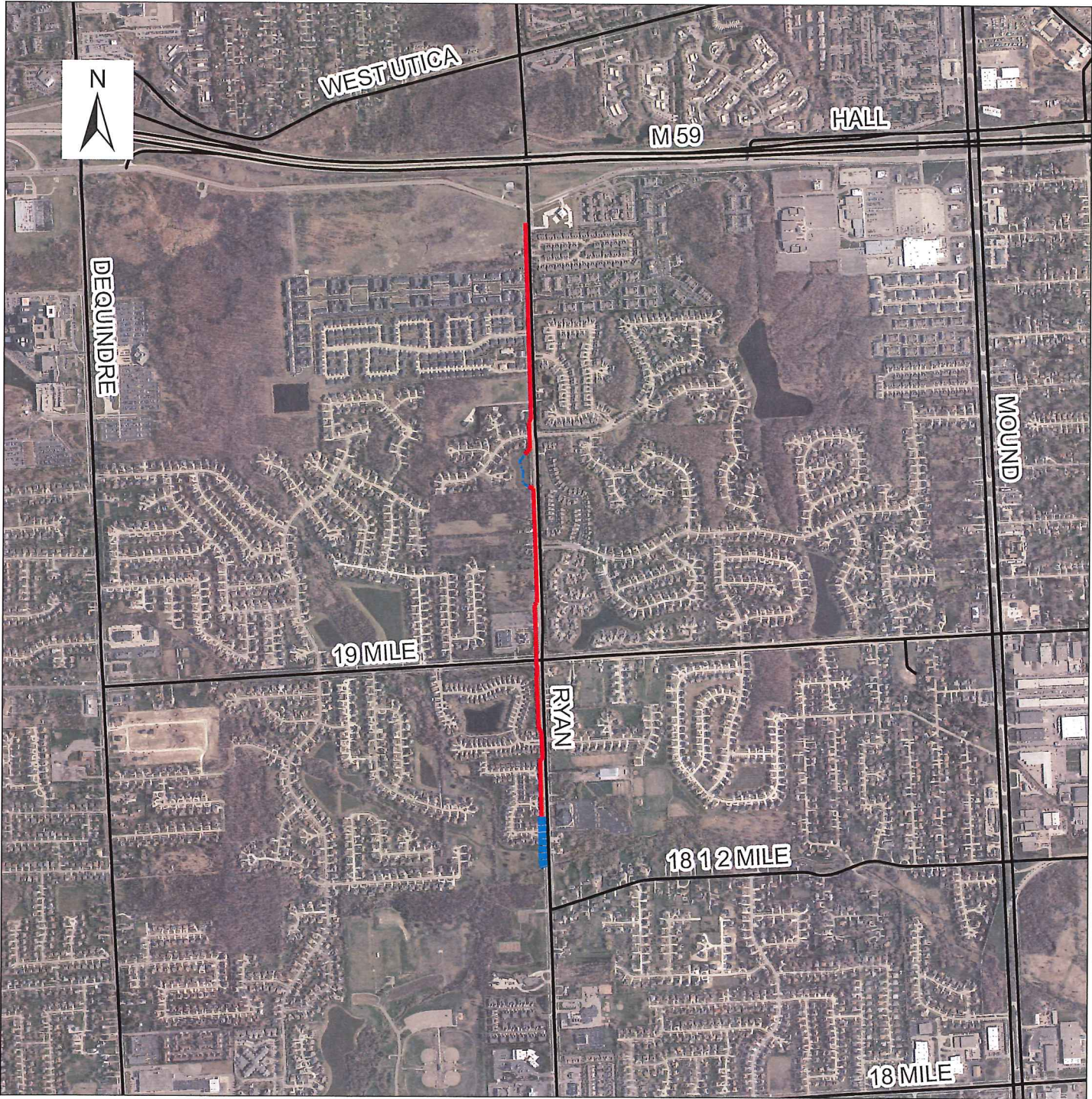


HAWKEN DRAIN  
INTRA-COUNTY DRAINAGE BOARD  
SEPTEMBER 11, 2017  
10:45 A.M.  
AGENDA

	Page
1. Call of meeting to order and roll call	
2. Approval of Agenda for September 11, 2017	
3. Approval of Minutes for August 7, 2017	3
4. Public participation	
5. Consideration for approval of Wade Trim Associates, Inc. proposal for surveying services at 43655 Ryan Road, Sterling Heights, Michigan for a lump sum fee of \$2,400.00 – Richard Ives	5
6. Consideration for approval of the Offer to Purchase Real Estate form and Ryan Road land sale process – Richard Ives	11
7. Consideration for approval of invoice (see attached)	23
8. Financial Report – Bruce Manning	24
9. Adjourn	



# HAWKEN DRAIN



Drain Length (Feet/Miles):  
7,790.30 / 1.48

## Legend

- |  |                     |
|--|---------------------|
| <b>Enclosed Gravity</b>                      | <b>Open Channel</b> |
| <span style="color: red;">—</span> < 60" Dia | Ditch               |
| >= 60" Dia                                   | Pond                |
| Culvert                                      |                     |



An adjourned meeting of the Intra-County Drainage Board for the **HAWKEN DRAIN** was held in the Office of the Macomb County Public Works Commissioner, 21777 Dunham, Clinton Township, Michigan, on August 7, 2017, at 11:10 A.M.

PRESENT: Candice Miller, Chair  
Bryan Santo, Member  
Robert Mijac, Member

ALSO PRESENT: Brian Baker, Chief Deputy, Karen Czernel, Deputy, Keith Graboske, P.E., Chief Engineer, Vincent Astorino, Engineer II, Evans Bantios, Engineer II, Dan Heaton, Public Relations Manager, Anthony Forlini, Operations Manager, Bruce Manning, Financial Manager, Thomas Stockel, Construction Engineer, Barbara Delecke, Administrative Services, Macomb County Public Works; Don Coddington, Chesterfield Township; Jared Beaudoin, City of Sterling Heights; David Richmond, P.E., Spalding DeDecker Associates

The meeting was called to order by the Chair, Candice Miller. The agenda was approved as presented.

Minutes of the meeting of July 10, 2017 were presented. The minutes were approved on a motion by Mr. Santo, supported by Mr. Mijac and unanimously carried.

The meeting was opened to public participation.

Mr. Beaudoin asked the location of the Hawken Drain property that is for sale. The 4.5 acres are located at 19 ½ Mile Road, west of Ryan. The process through which the property is being sold will be revised, the price lowered and relisted for sale.

There being no further comments from the public, the public participation portion of the meeting was closed.

The Chair presented the invoice totaling \$775.00 to the board for review and approval.

A motion was made by Mr. Mijac, supported by Mr. Santo to approve the invoice as presented.

Ayes: Mijac, Santo, Miller  
Nays: None

Motion approved.


The financial report given by Mr. Manning was received and filed as submitted.

The meeting was adjourned at 11:18 a.m. on a motion by Mr. Mijac, seconded by Mr. Santo, and unanimously approved.

  
Candice S. Miller, Chair  
Macomb County Public Works Commissioner

STATE OF MICHIGAN  
COUNTY OF MACOMB

I certify that the foregoing is a true and correct copy of proceedings taken by the Intra-County Drainage Board for the Drainage District shown on the attached set of minutes, on August 7, 2017, the original of which is on file in the Public Works Commissioner's Office. Public notice of the meeting was given pursuant to Act No. 267, Public Acts of Michigan, 1975, including, in the case of a special or rescheduled meeting or a meeting secured for more than 36 hours, notice by posting at least 18 hours prior to the time set for the meeting.



---

Candice S. Miller, Chair  
Macomb County Public Works Commissioner

DATED: 8/8/17

8848.bd





**Candice S. Miller**  
Public Works Commissioner  
Macomb County

September 6, 2017

MEMORANDUM

TO: Brian Baker, Chief Deputy  
FROM: Tamara Keskeny, Property Manager *JK*  
RE: Wade Trim Associates, Inc.  
Professional Surveying Services

Attached is a proposal from Wade Trim Associates, Inc. to provide professional surveying services on the vacant parcel of land located at 43655 Ryan Road, Sterling Heights, Michigan.

If you concur, Wade Trim Associates, Inc. will perform the survey and post it on the Macomb County website for the bid process on the sale of the property.

Attachment

8890.tk



# WADE TRIM

August 23, 2017

Macomb County Public Works Office  
21777 Dunham Road  
Clinton Township, MI 48036

Attention: Ms. Tamara Keskeny  
Real Property Manager

Re: Professional Surveying Services  
43655 Ryan Road  
Sterling Heights, Michigan

Dear Ms. Keskeny:

Wade Trim is pleased to provide this proposal for professional surveying services related to a parcel of land currently owned by Macomb County in the City of Sterling Heights, Macomb County, Michigan located at 43655 Ryan Road, Sterling Heights, Michigan 48314 (Tax Identification No. 10-06-400-005) containing approximately 4.58 acres of land. The following is our understanding of the project.

## **Project Understanding**

It is our understanding that Macomb County is interested in having a boundary survey performed of the subject property currently for sale. The existing land is located off Ryan Road between Nineteen Mile Road and M-59. It is our understanding that a boundary survey, meeting Michigan certified boundary survey requirements, is necessary for the sale of the subject property.

## **Scope of Services**

The survey Scope of Services shall include researching available recorded survey and deed instruments located at the Macomb County Register of Deeds, performing a boundary survey to establish the perimeter for the above-described parcel, creating an Act 132 certified survey with drawing and legal description of the subject parcel, identifying any easements or encumbrances of the subject parcel based on a recent title search, and graphically showing any easements (if any) on the survey drawing based on the outcome of the title search.

The boundary survey shall be performed in accordance with all state and local laws and will follow the standards set forth for certified surveys for the State of Michigan as stated in Act 132 of 1970, as amended. Permanent markers shall be placed at all boundary corners and meander lines. The drawing will be prepared on legal size paper and will have a certificate, signed and sealed by the licensed Land Surveyor who surveyed the parcel. The accuracy of the survey shall be within the limits accepted by the profession of land surveying, and a certification on the drawing will state that all requirements have been met.

Wade Trim Associates, Inc. 734.947.9700  
25251 Northline Road 800.482.2864  
P.O. Box 10 734.947.9726 fax  
Taylor, MI 48180 www.wadetrim.com



**Client Responsibilities**

1. Supply recorded deeds/legal descriptions and any updated title work that may be available of the subject parcels.
2. Provide any existing property information, which you have on file that could aid in the completion of the survey.
3. Provide access to all areas of the site needed by the Surveyors to complete the field survey.

**Assumptions and Exclusions**

1. Changes in the Scope of Services.
2. A survey of the subject parcel will be performed at one time and shown on one Certificate of Survey.
3. If when finding the available recorded deed for the subject parcel it does not correspond to the field survey, you will be informed of any fees necessary to rectify these discrepancies.
4. Additional-surveying services other than what has been discussed above.
5. Revisions or modifications to the delivered signed and sealed survey.

**Fee Estimate**

Wade Trim will provide these services for a Lump Sum Fee of **\$2,400**. We propose to begin the field survey services outlined above within two weeks with an anticipated completion of the deliverable documents within four weeks of receiving Authorization to Proceed, weather permitting.

Wade Trim shall provide five signed copies of the final survey. Additional fees may be required if the client requests modifications or revisions to the delivered survey, including modifying who the survey is certified to. Our Fee includes only those surveying services specifically listed in this proposal. If additional services are requested, Wade Trim can provide these services on a Time and Material Basis in accordance with our current Rate Schedule, or a negotiated fee. Services not identified in this proposal shall be discussed as they arise.

**Invoicing**

All effort and cost will be invoiced monthly for our effort to date. Payment of invoices is expected within 30 days. Any disputes in the invoice amount shall immediately be brought to the attention of Wade Trim. Wade Trim reserves the right to stop work when accounts receivable exceeds 90 days.

Macomb County Public Works Office  
August 23, 2017  
Page 3

Please find attached our Short Form Professional Services Agreement. If this proposal meets with your approval, please sign, date, and return a copy of the Agreement to our office. Our receipt of the executed copy of the Agreement will serve as our Authorization to Proceed.

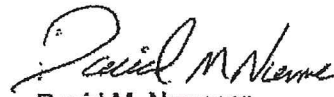
We look forward to assisting you on this project. If you have any questions or require additional information, please contact me at 810.235.2555.

Very truly yours,

Wade Trim Associates, Inc.



John C. Gibson, PLS  
Survey Practice Lead



David M. Nummer  
Senior Project Manager

JCG:DMN;jlb  
AAA 1000.17F  
20170823KESK.DOCX  
Attachment





**Professional Services Agreement for  
Land Development Services  
(Short Form)**

**Agreement for Land Development Services**

To engage the Services of Wade Trim Associates, Inc. as a Design, Planning, Testing and/or Land Survey Professional.

This Agreement, entitled Surveying Services, 43655 Ryan Road, Sterling Heights, Michigan between Macomb County Public Works Office of 21777 Dunham Road, Clinton Township, Michigan 48036, hereinafter called "Owner," and Wade Trim Associates, Inc., 25251 Northline Road, Taylor, Michigan 48180, hereinafter called "Professional," is as follows:

The Owner and Professional, for mutual consideration hereinafter set forth, agree as follows:

A. Professional agrees to perform certain professional services for Owner as follows:

As outlined in our proposal letter dated August 23, 2017.

B. Owner agrees to pay Professional as compensation for his services as follows:

Lump Sum Fee of **\$2,400**.

C. Owner agrees to establish an allowance of \$0 for additional services on this Project (not less than 10% of the compensation amount specified in Item B.)

D. The Owner and Professional agree to conditions as set forth in the General Provisions of this Agreement.

E. The Owner and Professional agree to the following schedule:

As outlined in our proposal letter dated August 23, 2017.

F. Deposit of \$0 to be applied to last payment due. Deposit to be included when Owner returns signed contract.

Owner: \_\_\_\_\_

Professional: David M. Nummer

By: \_\_\_\_\_  
(Print Name)

By: David M. Nummer  
(Print Name)

Title: \_\_\_\_\_

Title: Senior Project Manager

Date Signed: \_\_\_\_\_

Date Signed: 8/23/17

Witness: \_\_\_\_\_

Witness: Camille Lombard



## General Provisions

### 1.01 Basic Agreement

A. Professional shall provide, or cause to be provided, the services set forth in this Agreement, and Owner shall pay Professional for such Services as set forth herein.

### 2.01 Payment Procedures

A. *Preparation of Invoices.* Professional will prepare a monthly invoice in accordance with Professional's standard invoicing practices and submit the invoice to Owner.

B. *Payment of Invoices.* Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Professional for services and expenses within 30 days after receipt of Professional's invoice, the amounts due Professional will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Professional may, without liability, after giving seven days written notice to Owner, suspend services under this Agreement until Professional has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.

### 3.01 Additional Services

A. If authorized by Owner, or if required because of changes in the Project, Professional shall furnish services in addition to those set forth above.

B. Owner shall pay Professional for such additional services as follows: For additional services of Professional's employees engaged directly on the Project an amount equal to the cumulative hours charged to the Project by each class of Professional's employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Professional's consultants' charges with a 15% mark-up, if any.

### 4.01 Termination

A. The obligation to provide further services under this Agreement may be terminated:

#### 1. For cause,

a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party.

b. By Professional:

1) upon seven days written notice if Professional believes that Professional is being requested by Owner to furnish or perform services which are outside of the agreed upon scope of services without compensation, which are contrary to Professional's responsibilities as a licensed professional; or

2) upon seven days written notice if the Professional's services for the Project are delayed or suspended for more than 90 days for reasons beyond Professional's control.

3) Professional shall have no liability to Owner on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under paragraph 4.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon the receipt of notice by Professional.

B. The terminating party under paragraphs 4.01.A.1 or 4.01.A.2 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Professional to demobilize personnel and equipment from the Project site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

### 5.01 Controlling Law

A. This Agreement is to be governed by the law of the state in which the Project is located.

### 6.01 Successors, Assigns, and Beneficiaries

A. Owner and Professional each is hereby bound and the partners, successors, executors, administrators, employees and legal representatives of Owner and Professional (and to the extent permitted by paragraph 6.01.B the assigns of Owner and Professional) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. Neither Owner nor Professional may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

### 7.01 General Considerations

A. The standard of care for all professional engineering and related services performed or furnished by Professional under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Professional makes no warranties, express or implied, under this Agreement or otherwise, in connection with Professional's services. Professional and its consultants may use or rely upon the design services of others, including, but not limited to, contractors, manufacturers, and suppliers.

B. Professional shall not at any time supervise, direct, or have control over any contractor's work, nor shall Professional have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for safety precautions and programs incident to a contractor's work progress, nor for any failure of any contractor to comply with laws and regulations applicable to contractor's work.

C. Professional neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor.

D. Professional shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any contractor's agents or employees or any other persons (except Professional's own employees) at the Project site or otherwise furnishing or performing any of construction work; or for any decision made on interpretations or clarifications of the construction contract given by Owner without consultation and advice of Professional.

E. The provisions in this Agreement supersede and render null and void any contrary provisions in the contract documents between Owner and Contractor.

F. All design documents prepared or furnished by Professional are instruments of service, and Professional retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed.

G. To the fullest extent permitted by law, Owner and Professional (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that Professional's total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Professional, whichever is less.

H. The parties acknowledge that Professional's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste, and radioactive materials). If Professional or any other party encounters a Hazardous Environmental Condition, Professional may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (i) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

### 8.01 Dispute Resolution

Except for debt collection cases for less than \$25,000, and except as otherwise provided herein, all claims, counterclaims, disputes and other matters in question between the parties hereto arising out of or relating to this Agreement or the breach thereof will be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association located in Southfield, Michigan then obtaining, subject to the limitations and restrictions stated below. This agreement to arbitrate and any other agreement or consent to arbitrate entered into in accordance herewith as provided in this paragraph will be specifically enforceable under the prevailing arbitration law of any court having jurisdiction.

Notice of demand for arbitration must be filed in writing with the other parties to this Agreement and with the American Arbitration Association. The demand must be made within a reasonable time after the claim, dispute, or other matter in question has arisen. In no event may the demand for arbitration be made after the expiration of one year from the date the cause of action accrued. The cause of action whether based in tort, contract, indemnity, contribution, or any other form of action, legal or equitable, shall be deemed to have accrued at the time the party asserting the claim either knew or, by the exercise of reasonable diligence, should have known of the existence of the facts underlying such claim, dispute or other matter in question regardless of when damages occur. After the expiration of said one year, any claim between the parties hereto shall be barred.

No arbitration arising out of, or relating to this Agreement may include, by consolidation, joinder or in any other manner, any person or entity who is not a party to this Agreement.

The award rendered by the arbitrators will be final, not subject to appeal and judgment may be entered upon it in any court having jurisdiction thereof.

### 9.01 Total Agreement

A. This Agreement (together with any expressly incorporated appendix), constitutes the entire agreement between Owner and Professional and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.



**HAWKEN DRAIN DRAINAGE DISTRICT**  
**AGENDA ITEM WORKSHEET**

Meeting Date: Monday, September 11, 2017

Property Address: 43655 Ryan Road, Sterling Heights, Michigan (“Ryan Road Property”)

Case Synopsis: Our office has created the enclosed Offer to Purchase Real Estate form in order to market the above referenced Ryan Road Property for sale. This parcel excess land and is developable for residential uses. This Offer to Purchase outlines sale process proposed to be administered through the Macomb County Public Works Office for the benefit of the Hawken Drain Drainage District. There will be a scheduled 30 days offer period where interested parties can submit offers to purchase by: (1) completing, signing and submitting the Offer to Purchase form, (2) for a minimum offer of no less than \$300,000.00, (3) by depositing a minimum deposit of \$30,000.00, and (4) submitting a proof of funds for the balance of the offer amount.

Once the 30 days offer period is concluded, the highest offer will convert to a purchase agreement upon the approval of the Highest Offer by this Drain Board. Once the Offer is converted to a Purchase Agreement, there will be a due diligence period of 60 days, with the opportunity for the purchaser to extend the due diligence period twice by 30 days after depositing a non-refundable \$10,000.00 deposit each time. To encourage offers, the Hawken Drain would provide a copy of a survey and informational title work on its website. This is an “as is” sale, without any representations or warranties whatsoever as the condition of the property.

Recommendation: Approve the enclosed Offer to Purchase Real Estate form and sale process.

**OFFER TO PURCHASE REAL ESTATE**

**THIS OFFER TO PURCHASE REAL ESTATE** (the "Offer") is made as of \_\_\_\_\_, 2017 (the "Offer Date"), by \_\_\_\_\_, whose address is \_\_\_\_\_ (the "Offeror"), who desires to submit an offer for the purchase of real property from the HAWKEN DRAIN DRAINAGE DISTRICT (the "Hawken Drain").

**1. General Terms and Conditions.** Offeror acknowledges and agrees that this Offer is being submitted to the Hawken Drain c/o the Macomb County Department of Public Works ("MCPW") pursuant to an invitation for offers to yield the best price attainable for the Hawken Drain.

**2. Subject Real Property.** The real property that is the subject of this Offer, legally described on **Exhibit A**, is commonly known as:

Address: 43655 Ryan Road  
Sterling Heights, Michigan 48314  
Parcel/Tax ID: 10-06-400-005-000

See **Exhibit A**, Legal Description;

together with all appurtenances, easements, rights, tenements, hereditaments (the "**Subject Property**"). Offeror acknowledges that it is submitting this Offer to acquire whatever title to the Subject Property that is being offered by the Hawken Drain, which may be subject to assessments, debt service fees, taxes, liens, easements, or claims of rights of others, if any.

**3. Eligibility of Offeror.** The Offeror warrants that he/she is not: (a) under 18 years of age; (b) an employee of the Hawken Drain, MCPW or Macomb County; or (c) an agent or immediate member of the household of an employee of the Hawken Drain, MCPW or Macomb County. For breach of this warranty, the Hawken Drain shall have the right to terminate or disqualify this Offer without and further liability on the part of the Hawken Drain and Offeror shall be deemed to be in default as provided in Paragraph 16 below.

**4. Offer to Purchase Real Property.** Subject to the terms and conditions herein, Offeror hereby submits an offer to purchase the Subject Property from the Hawken Drain in the amount of \$\_\_\_\_\_ (the "**Offer Amount**"). In order for this to be a valid Offer, it shall be no less than the amount of Three Hundred Thousand and 00/100 Dollars (\$300,000.00) ("**Minimum Offer Amount**"), and a Minimum Deposit and proof of offer funds as required by Paragraph 6 of this Offer must be submitted to the Hawken Drain simultaneously with this Offer.

**5. Offer Period.** The period in which offers will be collected regarding the Subject Property shall be thirty (30) days beginning on \_\_\_\_\_, 2017, and until the close of business on \_\_\_\_\_, 2017, (the "**Offer Period**"). Once an offer has been submitted during the Offer Period it may only be withdrawn in writing signed by the Offeror and submitted to, and received by, the Hawken Drain during the Offer Period.



**6. Minimum Deposit and Proof of Funds.** A deposit in the amount of Thirty Thousand and 00/100 Dollars (\$30,000.00) in the form of Certified Funds, as defined in this Offer, is hereby submitted simultaneously with this Offer, (the "**Minimum Deposit**"). The Minimum Deposit will be held in escrow by the Hawken Drain, and if an agreement to purchase is ultimately reached between the Offeror and the Hawken Drain then will be applied to the final purchase amount. In addition, the Offeror shall provide the Hawken Drain proof of purchase funds in the form of a bank statement evidencing the balance of the Offer funds on deposit to be used to close on the transaction in the event the Offer is accepted.

**a. Escrow Agreement.** The Minimum Deposit submitted with the Offer shall be held in escrow by the Hawken Drain pursuant to the signed Acknowledgment of Receipt of Offer, Minimum Deposit and Escrow Agreement in the form attached hereto as **Exhibit B**. The Minimum Deposit held in Escrow may only be returned to Offeror if (i) the Offeror withdraws its Offer in a signed written notice submitted to the Hawken Drain during the Offer Period, (ii) the Offeror does not submit the Highest Offer, and receives a notice after the Offer Period how to obtain a refund as outlined in paragraph 7, or (iii) the Offeror withdraws its Offer in a signed written notice submitted to the Hawken Drain during the Due Diligence Period or Extended Due Diligence Period, as described below in paragraph 8, and has requested the Minimum Deposit be returned. In the event of Offeror's Default under this Offer, then Offeror hereby expressly authorizes the Hawken Drain to retain Offeror's Minimum Deposit held in escrow as Liquidated Damages, as more fully provided in paragraph 15 below.

**7. Offer Review Period and Determination of Highest Offer.** After the close of the Offer Period the Hawken Drain shall have fourteen (14) days to review all offers received and to determine the "Highest Offer" (as defined herein below). As used in this Offer, the term "Highest Offer," is the highest offer submitted to the Hawken Drain during the Offer Period, that has met all the terms and conditions of this Offer, including the Minimum Offer Amount, and the submission of the Minimum Deposit and proof of the balance of the Offer funds.

In the event that two or more Offerors have submitted equal qualified Offers for the same value, and the identical qualified Offers are determined to be the Highest Offer ("Identical Highest Offers"), then all offerors who submitted the Identical Highest Offers shall be notified of same and given seven (7) days to submit an increased Offer. At the close of the seven (7) day period provide for in this Paragraph 7(a)(ii), Hawken Drain will notify the Offerors of the new Highest Offer in the same manner as outlined below.

Following the Offer Review Period all Offerors will receive a notice informing them of the amount of the Highest Offer, and if they submitted the Highest Offer, the timeline for formal acceptance of the Offer by the Hawken Drain and the expected initiation date for the Due Diligence Period stated in paragraph 8 below. Those Offerors who did not submit the Highest Offer will also receive information on how to obtain a refund of their Minimum Deposit.

**8. Due Diligence and Access to Property.** Offeror shall inspect and determine the feasibility of the purchase of the Property within sixty (60) days of the Hawken Drain's acceptance of the Offer (the "**Due Diligence Period**"), including, but not limited to investigations relating to zoning and municipal restrictions, easements and title encumbrances, available utilities, development potential, and conducting soil tests, structural, subsurface, environmental,



topographical analysis or any other test or analysis the Offeror desires in order to determine the feasibility of the purchase of the Property in the Offeror's sole discretion (the "Due Diligence"). During the Due Diligence Period, Offeror, its agents and representatives, shall have reasonable access to the Property, including, the right to inspect the Property via Offeror's employees, appraisers, agents, architects, environmental consultants and engineers. All appraisals, inspections, audits, tests, that Offeror requests shall be at the Offeror's sole cost and expense, and shall be performed during reasonable business hours with reasonable prior advance to the Hawken Drain. Offeror shall, at its sole cost and expense, restore any damage to the Subject Property resulting from any of Buyer's inspections or testing. Offeror shall also indemnify, defend, and hold the Hawken Drain harmless with respect to any personal liability, bodily injury, property damage, and construction and/or mechanic's liens resulting from Offeror's entry and conduct of due diligence activities upon the Subject Property, including but not limited to all attorneys' fees and costs incurred in connection therewith. Upon the Hawken Drain's written request, Offeror shall provide a PDF or paper copy to the Hawken Drain of any testing results or reports pertaining to the Subject Property arising out of Offeror's due diligence activities.

If the Offeror deems that the purchase of the Property is not acceptable, which shall be in Offeror's sole, subjective, and discretionary decision, Offeror may terminate this Agreement. In the event that Offeror determines not to proceed with the purchase of the Property, Offeror shall notify Hawken Drain by written notice delivered to Hawken Drain on or before the expiration of the Due Diligence Period and thereby terminating the Agreement. Upon the timely termination of this Agreement, the Offeror shall receive a return of its Minimum Deposit and neither party shall have any further liability or obligation to the other under this Agreement. In the event Purchaser does not terminate this Agreement on or before the expiration of the Due Diligence Period, then Purchaser shall be deemed to have approved all matters relating to Property (other than the conditions to closing set forth in this Agreement) and the Minimum Deposit shall become non-refundable.

a. **Extended Due Diligence Period.** Before the close of the Due Diligence Period the Offeror may request in writing an additional thirty (30) days in order to conduct Due Diligence (the "**Extended Due Diligence Period**"), together with an additional non-refundable deposit of Ten Thousand and 00/100 (\$10,000.00) Dollars (the "**Additional Deposit**"). If Offeror desires to expand the Extended Due Diligence Period by a second thirty (30) day period, then, the Offeror shall submit its request in writing and tender second Ten Thousand and 00/100 (\$10,000.00) Dollars non-refundable Additional Deposit with the Hawken Drain.

If, during the Extended Due Diligence Period, the Offeror deems that the purchase of the Property is not acceptable, which shall be in Offeror's sole, subjective, and discretionary decision, Offeror may terminate this Agreement. In the event that Offeror determines not to proceed with the purchase of the Property, Offeror shall notify Hawken Drain by written notice delivered to Hawken Drain on or before the expiration of the Extended Due Diligence Period and thereby terminate this Agreement and receive a refund of only the Minimum Deposit (\$30,000.00).

9. **Purchase Price.** The Highest Offer received before the close of the Offer Period shall become the "Purchase Price" of the Subject Property. Offeror understands that if it is the



Highest Offeror, it will be required to tender all of the Purchase Price funds and sign the Hawken Drain's Purchase Agreement to close. The Offeror with the then Highest Offer shall pay the Purchase Price in full via "Certified Funds" (as defined herein below).

a. **Certified Funds.** As used in this Bid, the term "Certified Funds" shall mean, funds that are guaranteed by bank, (cashier's check), or paid in cash (subject to the cash limit as defined herein below).

b. **Cash Limit.** No more than Ten Thousand and 00/100 (\$10,000.00) Dollars in total may be paid in cash to MCPDW to pay all, or any part of, the Minimum Deposit, the Purchase Price or the Additional Deposit .

**10. Purchase Agreement and Covenant Deed.** The Hawken Drain must accept the Offer at its formal meeting and sign the Acceptance by Hawken Drain, in the form attached hereto as **Exhibit C** in order for this Offer to convert to a Purchase Agreement. Upon the Hawken Drain signing the Acceptance, this Offer, the Acknowledgment of Receipt of Offer, Minimum Deposit and Escrow Agreement, and the Acceptance by Hawken Drain together shall form the Purchase Agreement, and shall embody the entire understanding between the parties with respect to the purchase of the Subject Property, and supersedes all prior or contemporaneous negotiations, representations, discussions, understandings and written or oral agreements among them with respect to the Subject Property. The Purchase Agreement's terms are contractual and not merely recital, and controls any previous course of dealing and usage of trade.

Offeror further acknowledges that if Offeror ultimately purchases the Subject Property that it will receive a Covenant Deed transferring whatever rights, title and interest the Hawken Drain had in the Subject Property at the time of the sale. The Offeror will also receive a Property Transfer Affidavit that must be submitted to the Sterling Heights Assessor in accordance with state law.

**11. "AS IS" Sale.** THE PROPERTY IS BEING SOLD "AS IS", "WHERE IS" AND "WITH ALL FAULTS" AS OF CLOSING, WITHOUT ANY REPRESENTATION OR WARRANTY AS TO ITS CONDITION, FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED. THE HAWKIN DRAIN SPECIFICALLY DISCLAIMS ANY WARRANTY, GUARANTY OR REPRESENTATION, ORAL OR WRITTEN, PAST OR PRESENT, EXPRESS OR IMPLIED CONCERNING THE PROPERTY. OFFEROR ACKNOWLEDGES THAT OFFEROR IS PURCHASING THE PROPERTY BASED SOLELY UPON OFFEROR'S OWN INDEPENDENT INVESTIGATIONS AND FINDINGS AND NOT IN RELIANCE UPON ANY INFORMATION PROVIDED BY THE HAWKEN DRAIN'S MCPW'S OR MACOMB COUNTY'S, EMPLOYEES, AGENTS, OR CONTRACTORS.

**12. General Release.** Offeror releases Hawken Drain and its agents, employees and representatives, including the MCPW, Macomb County and the Macomb County Public Works Commissioner Candice S. Miller, from any and all claims demands, causes of action, judgments, losses, damages, liabilities, costs and expenses (including without limitation attorney's fees whether suit is instituted or not) whether known or unknown, liquidated or contingent (collectively "Claims") arising from or related to (a) this Offer, the offer process or the purchase process described in this Offer and administered by the Hawken Drain, the MCPW or their agents, employees and contractors, or (b) any defects, errors or omissions in the design or construction of



the Property, whether the same are a result of negligence or otherwise, or (c) other conditions (including, but not limited to environmental conditions, zoning and suitability) affecting the Property, whether the same are a result of negligence or otherwise, or (d) the ownership, title, possession, occupancy, use, management or leasing of the Property.

**13. Environmental Release.** The release set forth in Paragraph 12 above specifically includes any Claims under any Environmental Laws, under the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq., or with respect to any environmental risk. "Environmental Laws" includes, but is not limited to the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. §§6901 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §§9601 et seq.), the Emergency Planning and Community Right to Know Act (42 U.S.C. §§11001 et seq.), the Clean Air Act (42 U.S.C. §§7401 et seq.), the Clean Water Act (33 U.S.C. §§1251 et seq.), the Toxic Substances Control Act (15 U.S.C. §§2601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. §§1801 et seq.), the Occupational Safety and Health Act (29 U.S.C. §§651 et seq.), the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§136 et seq.), and the Safe Drinking Water Act (42 U.S.C. §§300f et seq.), as any of the same may be amended from time to time, and any state or local law dealing with environmental matters, and any regulations, orders, rules, procedures, guidelines and the like promulgated in connection therewith, regardless of whether the same are in existence on the date of this Agreement.

**14. Claims Liability.** The Offeror acknowledges and agrees hold the Hawken Drain harmless from any and all losses, liabilities, actions, claims, debts, demands, judgments, liabilities, costs and attorneys' fees arising out of, claimed on account of, or in any manner predicated upon loss of or damage to property and injuries, illness or disabilities to or death of any and all persons whatsoever, including the Offeror, members of the general public, or to the property of any legal or political entity including State, local and interstate bodies, in any manner caused by or contributed to by the Offeror, its agents, contractors, servants, employees, or any person subject to its control while in, upon or about the sale site and/or the site of the Subject Property during due diligence and before Closing, or while the Subject Property is in the possession of or subject to the control of the Offeror, its agents, servants or employees after the Subject Property has been removed from the Hawken Drain's ownership, possession and control.

**15. Default.** In the event Offeror defaults in its obligations to perform any of the covenants and agreements contained herein to be performed by Offeror after acceptance and within the time for performance as specified herein (including Offeror's obligation to purchase the Subject Property as the Highest Offer), then Hawken Drain may either (i) be entitled to an action for specific performance of the sale and the agreement to purchase the Subject Property expressly provided herein, including the recoupment of actual attorney fees and costs associated with the enforcement of this Offer, as its sole remedy, or (ii) be entitled to terminate this Offer, and to retain Offeror's Minimum Deposit as Liquidated Damages, as its sole remedy.

**16. Right to Cancellation.** It is understood by Offeror that the Hawken Drain can cancel the process described in this Offer at any time, without penalty, liability or default, and return the Offeror's deposit. In the event this occurs Offeror shall have no claim or right to enforce any claim against the Hawken Drain, MCPW, Macomb County or any of their agents, representatives, officials or employees.

17. **Closing.** The closing of this transaction shall take place within seven (7) days of the close of the Due Diligence Period defined paragraph 8, at the offices of the MCPW, or at another mutually acceptable location (the "Closing"). At Closing, the Offeror may obtain a title insurance policy at its own expense; however, the Hawken drain will have no obligation or responsibility to issue or pay for any title insurance policy at or before Closing.

18. **Possession.** Seller shall deliver possession of the Subject Property to Purchaser at Closing.

19. **Construction.** The headings of various Sections in this Offer are for convenience only, and are not to be utilized in construing the content or meaning of the substantive provisions hereof.

20. **Governing Law.** This Offer shall be governed by and construed in accordance with the laws of the State of Michigan, without regard to conflicts of law principles.

21. **Severability.** Whenever possible, each provision of this Offer and all related documents shall be interpreted in such a manner as to be valid under applicable law but to the extent any provision is invalid or prohibited under applicable law such provision shall be ineffective to the extent of such invalidity or prohibition without invalidating the remainder of such provisions of this Offer.

22. **Assignment.** Offeror shall have no right to assign this Offer or any of its rights, title or interests without the written consent of the Hawken Drain, which may be withheld in its sole discretion.

23. **Electronic Signatures.** All electronic copies of signatures of this Offer shall be treated as an original for all purposes.

24. **Notices.** All notices and other communications hereunder shall be in writing and shall be effective if and when sent by registered or certified U.S. mail or reputable same-day or overnight courier, postage prepaid or otherwise accounted for by sender, and sent to the addresses set forth below (or at such other address for a party as shall be specified in a notice given in accordance with this Offer):

If to Hawken Drain:

Hawken Drain  
c/o Macomb County Department of Public Works  
Attn: Tamara Keskeny, Manager Real Property  
21777 Dunham Road  
Clinton Township, MI 48036  
E-mail: [tamara.keskeny@macombgov.org](mailto:tamara.keskeny@macombgov.org)

If to Offeror:

\_\_\_\_\_  
\_\_\_\_\_



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**IN WITNESS WHEREOF**, the Offeror has executed this Offer on the date written below.

**OFFEROR:**

/s/ \_\_\_\_\_  
By:  
Its:  
Date:

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**EXHIBIT A**

**Subject Property Legal Description**

Real property situated in the City of Sterling Heights, County of Macomb, State of Michigan, described as follows:

Town 2 North, Range 12 East, Section 6, beginning at a point 1674.6 feet North 03°30' East of the Southeast corner of Section 6; thence North 03°30' East 166.5 feet; thence North 88°58' West 1263.8 feet; thence South 01°32' West 166.5 feet; thence South 88°58' East 1621.0 feet to the point of beginning, being Parcel 8 of Schoonover Farm, except the Easterly 60.0 feet for road.

Commonly known as: 43655 Ryan Road, Sterling Heights, Michigan 48314  
Tax Parcel ID No. 10-06-400-005-000



**EXHIBIT B**

**ACKNOWLEDGEMENT OF RECEIPT OF OFFER, MINIMUM DEPOSIT,  
PROOF OF OFFER FUNDS AND ESCROW AGREEMENT**

The Macomb County Department of Public Works ("MCPW") on behalf of Hawken Drain Drainage District ("Hawken Drain") hereby acknowledges receipt of a certain signed "Offer to Purchase Real Estate" made by \_\_\_\_\_ (the "Offeror") dated \_\_\_\_\_ 2017 (the "Offer"), together with the receipt the "Minimum Deposit" and proof of the balance of the Offer funds, as required in the Offer, to be held in escrow by the Hawken Drain subject to the terms and conditions of the Offer.

The Minimum Deposit held in Escrow may only be returned to Offeror if (i) the Offeror withdraws its Offer in a signed written notice submitted to the Hawken Drain during the Offer Period, (ii) the Offeror does not submit the Highest Offer, and receives a notice after the Offer Period how to obtain a refund as outlined in paragraph 7, or (iii) the Offeror withdraws its Offer in a signed written notice submitted to the Hawken Drain during the Due Diligence Period, or the Extended Due Diligence Period, as described below in paragraph 8, and has requested the Minimum Deposit be returned. In the event of Offeror's Default under this Offer, then Offeror hereby expressly authorizes the Hawken Drain to retain Offeror's Minimum Deposit held in escrow as Liquidated Damages, as more fully provided in paragraph 15 of the Offer.

Offeror expressly acknowledges and agrees that this receipt is only an acknowledgement of MCPW's receipt of the Offer and Minimum Deposit on behalf of the Hawken Drain, and is in no way to be construed to be an acceptance of said Offer, or to create binding contract or obligation to sell the Subject Property to the Offeror, which will only be sold upon the express written consent and authorization of the Hawken Drain.

Offeror expressly acknowledges that this Offer may be accepted or rejected for any reason in the sole discretion of the Hawken Drain.

**Hawken Drain Drainage District c/o  
Macomb County Department of Public Works:**

Dated: \_\_\_\_\_

/s/ \_\_\_\_\_

By:

Its:

**OFFEROR:**

Dated: \_\_\_\_\_

/s/ \_\_\_\_\_

By:

Its:

**EXHIBIT C**

**ACCEPTANCE OF OFFER BY HAWKEN DRAIN DRAINAGE DISTRICT**

WHEREAS, \_\_\_\_\_ (hereinafter "Purchaser") has voluntarily participated in the HAWKEN DRAIN DRAINAGE DISTRICT's ("Hawken Drain's") Offer process, and has submitted the Highest Offer of \_\_\_\_\_, in the form attached hereto as **Exhibit 1** and incorporated herein ("Offer"), for the sale of following real estate:

Address: 43655 Ryan Road  
Sterling Heights, Michigan 48314  
Parcel/Tax ID: 10-06-400-005-000

See **Exhibit A**, Legal Description;

together with all appurtenances, easements, rights, tenements, hereditaments (the "**Subject Property**").

WHEREAS, Hawken Drain desires to sell the Subject Property to Purchaser, and Purchaser desires to purchase the Subject Property from Seller pursuant to the terms of the Offer.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants provided in the Offer and herein, and in consideration of the terms and conditions of the written Offer submitted by Purchaser, Purchaser the Hawken Drain hereby accepts the Offer attached hereto as **Exhibit 1**, and all of its terms and conditions, including the Purchase Price of \_\_\_\_\_.

**IN WITNESS WHEREOF**, the Purchaser and Seller have executed this Agreement on the date(s) set forth below.

**HAWKEN DRAIN DRAINAGE DISTRICT:**

\_\_\_\_\_  
By: Candice S. Miller  
Its: Chairperson

Dated: \_\_\_\_\_, 2017



**PURCHASER'S ACKNOWLEDGMENT OF RECEIPT OF ACCEPTANCE**

\_\_\_\_\_ (hereinafter "Purchaser") hereby acknowledges receipt of the Acceptance of Offer signed by the HAWKEN DRAIN DRAINAGE DISTRICT ("Hawken Drain"), and that its Due Diligence begins as of \_\_\_\_\_. Purchaser further acknowledges that the Offer attached hereto as Exhibit 1, together with the Acknowledgment of Receipt of Offer, Minimum Deposit and Escrow Agreement, and the Acceptance by Hawken Drain, together form the Purchase Agreement, and shall embody the entire understanding between the parties with respect to the purchase of the Subject Property. This Purchase Agreement supersedes all prior or contemporaneous negotiations, representations, discussions, understandings and written or oral agreements among them with respect to the Subject Property.

**PURCHASER:**

/s/ \_\_\_\_\_  
By:  
Its:  
Date:

HAWKEN DRAIN - 9/11/17

<u>Funding Source</u>	<u>Apportionment</u>	<u>Manager</u>	<u>Vendor</u>	<u>Amount</u>	<u>Invoice Detail</u>	<u>Project Summary</u>	<u>Project Balance</u>
Hawken Drain	Chapter 20	Keskeny	Aloia & Associates, P.C.	\$ 2,327.50	Invoice #16234 - 7/1/17	Vacant Property - Sale of 43655 Ryan Road	
<b>Total</b>				\$ 2,327.50			

8877.bd



YTD Trial Balance

Fund: Hawken

As of Fiscal Period: Oct 1, 2016-Aug 31, 2017

	O&M Balance 9/30/2016	O&M	Total 8/31/2017
Cash - Operating	36,164	(3,528)	32,636
Accounts Receivable			0
Assets			0
Liabilities		2,328	2,328
Revenues		55	55
Expenditures		5,912	5,912
Equity	36,164		30,307