

	<b>AGENDA ITEM EXECUTIVE SUMMARY</b>		Agenda Item number: *4f
	Title:	Recommendation to approve a Change Order to a Professional Services Agreement with TPI Building and Code Consultants Inc. for Code Enforcement Services	
	Presenter:	Russell Colby, Community Development Director	
<b>Meeting:</b> Planning & Development Committee <b>Date:</b> November 13, 2023			
<b>Proposed Cost:</b> \$65/hour, \$20,000 total anticipated amount <i>(\$5,000 monthly for 4 months)</i>		<b>Budgeted Amount:</b> Funds to be offset from budgeted salary	<b>Not Budgeted:</b> <input type="checkbox"/>
<b>TIF District:</b> None			
<b>Executive Summary</b> (if not budgeted, please explain):  <p>In May 2022, the City entered into a Professional Services Agreement with TPI Building and Code Consultants, Inc. for Code Enforcement Services.</p> <p>The City's sole Code Enforcement Officer in Community Development retired unexpectedly this year, and the position has remained vacant while staff has been reevaluating the staffing role and function. The hiring process for a Code Enforcement Manager position is underway and the position is expected to be filled by January 2024.</p> <p>During the vacancy, a contract inspector from TPI has been assisting with Code Enforcement fieldwork. We are anticipating utilizing contract services from TPI until the manager position is staffed and fully onboarded in January.</p> <p>The contract is based on hourly rates and the hours needed are adjusted based on workload. Over the past few months, the Code Enforcement field work has averaged around 20 hours per week.</p>			
<b>Attachments</b> (please list): Change Order, Contract			
<b>Recommendation/Suggested Action</b> (briefly explain): Recommendation to approve a Change Order to a Professional Services Agreement with TPI Building and Code Consultants Inc. for Code Enforcement Services.			

**City of St Charles CHANGE ORDER: #1 - Code Enforcement Services****Contract #**      **PO# 119623**

This document is incorporated into the above contract as an amendment to the Contract between the City and the Contractor/Professional Service Provider commencing on the date the last party signs this document. Any change to the character, form, quality, extent, or cost of the Service/Project shall be in writing and approved on this form.

**1. This Change Order is required due to** (check all that apply):

- ☒ Changed / Unforeseen Condition      ☐ Errors and Omissions  
☐ Change in Scope      ☒ Renewal / Extension of Services  
☐ \_\_\_\_\_

**2. The effect of this change is** (check all that apply):

- ☒ Total Cost is increased by \$ 20,000      ☐ Extension of \_\_\_\_\_ (calendar / work) days  
☐ Material is increased by \$ \_\_\_\_\_      ☐ Extension of Completion Date from \_\_\_\_\_ to \_\_\_\_\_  
☐ Emergency Change, not to exceed \$ \_\_\_\_\_  
☐ \_\_\_\_\_

**3. Attachments Supporting Change Order** (check all that apply)

- ☐ Contractor's Proposal      ☒ other: Fee Schedule (\$65.00/hour)  
☐ Description of Change (include Drawing if applicable)

Change in Price		Change in Completion (days / calendar date)	
Original Price (reference Agreement cover page)	\$ <u>24,960.00</u>	<b>a</b>	Original: #days until completion / calendar date for completion (reference date of Work May Proceed) _____
Current Price resulting from Prior Change Orders (reference prior Change Order line d)	\$ _____	<b>b</b>	Current Completion resulting from Prior Change Orders: (reference prior Change Order line d) _____
Net Increase/decrease of this Change Order (reference above #2)	\$ <u>20,000</u>	<b>c</b>	Net increase/decrease of days for this Change Order (reference above #2) _____
New Price inclusive of this Change Order* <i>d=(b+c)</i>	\$ <u>44,960.00</u>	<b>d</b>	New Time of Completion inclusive of this Change Order <i>d=(b+c)</i> _____
Cumulative Price change since execution* <i>e=(d-a)</i>	\$ _____	<b>e</b>	Cumulative Time of completion since execution (expressed as total days)** <i>e=(d-a)</i> _____
*if the total price (d) exceeds \$25,000, and has not been approved by council, council approval is required. *If the cumulative price change (e) exceeds 10% or \$25,000, or exceeds an approved contingency, council approval is required.		**if the cumulative change in days of completion exceeds the contracted dates for completion, are Liquidated Damages applicable? <b>No</b>	

All parties hereby acknowledge and agree this Change Order is inclusive of all known changes to scope, compensation and work schedule on behalf of the undersigned and Contractor's supplier, subcontractor, consultant, and agent necessary to complete the Project/Service. All parties hereby acknowledge that this Change Order is incorporated into the previously executed Contract by the signature of the parties below.

**City Project Manager** \_\_\_\_\_ **Date** \_\_\_\_\_

**Contractor/Professional Service Provider** \_\_\_\_\_ **Date** \_\_\_\_\_

# St. Charles Agreement for Professional Services Code Enforcement Services

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This agreement for professional services ("**Agreement**") has been awarded on June 19, 2023 by City Council and is between the City of St. Charles, an Illinois home rule municipal corporation ("**City**"), located at 2 East Main Street; St. Charles, Illinois 60174 and TPI Building Code Consultants Inc ("**Professional Service Provider**"), located at 321 Spruce Street, South Elgin, IL 60177. City and Professional Service Provider are at times collectively referred to hereinafter as the "Parties."

## RECITALS

**Whereas**, the City issued a Request for Proposal for professional services entitled Code Enforcement Services ("**Project**");

**Whereas**, the Professional Service Provider submitted an offer ("**Offer**") and the Professional Service Provider represents that it is ready, willing and able to perform the services specified in the project;

**Whereas**, the Offer was found to meet the City's requirements as specified in the solicitation;

**Whereas**, the City awarded the Professional Service Provider Code Enforcement Services not to exceed the hourly rates as reflective of prices stated in **Exhibit B – Fee Schedule**;

Now therefore, in consideration of the foregoing and for the mutual promises hereinafter set forth and for other good and valuable consideration, the sufficiency of which is acknowledged, the parties agree as follows to the following terms and conditions:

## Article 1: Contract Documents

- A. Incorporated Documents.** The Contract documents consist of this Agreement and the following attached exhibits. These attachments along with this Agreement represent the entire integrated Contract between the parties and supersede any and all prior negotiations, representations or agreements, written or oral.
- The City's Purchase Order document, to be generated as the Work May Proceed document upon contract execution, is incorporated as the first page of this Contract and said Purchase Order Number will become the identification number for this contract and thus must be referenced on all related documents, inclusive of invoices.
  - The Professional Service Provider's offer and all related documents is attached as **Exhibit B**
  - Insurance Coverage for Professional Service Provider is attached as **Exhibit C**
  - Change Order Form, which is the sole vehicle authorized to amend contract, is attached as **Exhibit D**
- B. Controlling Document.** In the event of a conflict between this Agreement and any attachment or exhibit, the provisions of this Agreement shall control.

## Article 2: Services Contracted

- A. Scope of Services.** Professional Service Provider shall provide awarded Services in accordance with the Offer submitted by the Professional Service Provider [**Exhibit B**].
- Truthful and Accurate.** Professional Service Provider represents that such material and information furnished in connection with the Solicitation and this Contract is truthful and accurate.
  - Necessary Documentation.** Professional Service Provider acknowledges that it has furnished exhibits, as listed previously, and will continue to furnish requested and necessary documentation, including but not limited to certifications, affidavits, reports and other information.
  - Ownership of Project Documents.** All drawings, specifications, reports, and any other project documents prepared by the Professional Service Provider in connection with any or all of the project services shall be delivered to the City for the expressed use of the City. The Professional Service Provider does have the right to retain original documents, but shall cause to be delivered to the City such quality or documents so as to assure total reproducibility of the documents delivered. All information, worksheets, reports, design calculations, plans, and specifications shall be the sole property of the City unless otherwise specified within this negotiated Contract. The Professional Service Provider agrees that the basic survey notes and sketches, charts, computations, and other data prepared or obtained by the Professional Service Provider pursuant to the Contract will be made available, upon request, to the City without cost and without restriction or limitations as to their use. All field notes, test records, and reports

shall be available to the City upon request.

- d. **Non-Solicitation of T.P.I. Building Code Consultants Employees.** In consideration of the mutual promises contained in this Agreement, including the understanding that T.P.I. will be providing the City with consultants specially-trained by T.P.I. and who will utilize T.P.I.'s confidential information and trade secrets, and in recognition that the services to be rendered to the City by T.P.I. are of a special and unique character, the City covenants, warrants and agrees that during the period of time that any individual T.P.I. employee provides consultation to the City and for a period of one (1) year following the last day in which any such T.P.I. employee provides such consulting services for the City, the City shall not, either directly or indirectly, without the prior written consent of T.P.I., solicit, induce or otherwise offer employment to, or engage in discussions regarding employment with, any such T.P.I. employee, or assist any third party with respect to any of these actions, unless that T.P.I. employee has been separated from his or her employment or other relationship with T.P.I. for a period of six (6) consecutive months.

- B. **Status of Independent Professional Service Provider.** Both City and Professional Service Provider agree that Professional Service Provider will act as an Independent Professional Service Provider in the performance of the Project. Accordingly, the Independent Professional Service Provider shall be responsible for payment of all taxes including federal, state, and local taxes arising out of the Professional Service Provider's activities in accordance with this Contract, including by way of illustration but not limitation, federal and state income tax, social security tax, and any other taxes or license fees as may be required under the law. Professional Service Provider further acknowledges under the terms of this Contract, that it is not an agent, employee, or servant for the City for any purpose, and that it shall not hold itself out as an agent, employee, or servant of the City under any circumstance for any reason. Professional Service Provider is not in any way authorized to make any contract, agreement or promise on behalf of the City, or to create any implied obligation on behalf of City, and Professional Service Provider specifically agrees that it shall not do so. City shall have no obligation to provide any compensation or benefits to Professional Service Provider, except those specifically identified in this Contract. City shall not have the authority to control the method or manner by which Professional Service Provider complies with the terms of this Contract.

### Article 3: Term

- A. **Term.** This Contract becomes effective June 19, 2023 and terminates April 30, 2024. Alteration in termination may occur prior to completion of Project in accordance with the following conditions.
- B. **Termination of Contract.** Both City and Professional Service Provider has the right to terminate this Contract, in whole or in part at any time. Written notice of termination is to be served personally or by certified or registered mail, return receipt requested. In the event of termination, the City shall pay the Professional Service Provider for satisfactory services performed as of the effective date of termination. The effective date of termination releases the City from any obligations under this Contract. Professional Service Provider shall deliver to the City any finished and unfinished documents, drawings, studies and reports related to the Project. All such documents, studies and reports shall become the property of the City. The City may terminate this Contract, or any portion of it, as is reasonably necessary in accordance with the following conditions:
- a. **Substitution of Key Personnel.** Should any of the key personnel identified in the offer become unavailable to work on the project; and should no temporary replacement personnel be provided within 24 hours following the commencement of the subject key personnel's unavailability; and/or should no permanent substitute personnel reasonably satisfactory to the City be provided within thirty (30) days of key personnel's unavailability; the City may, at its election, declare breach of contract and terminate the contract for non-performance.
- b. **Non-performance.** Non-adherence to the terms of this Contract and its incorporated documents on the part of the Professional Service Provider is grounds for termination of the Contract. The City will notify the Professional Service Provider in writing with a 24-hour notice specifying the effective date of termination. In the event of termination due to non-performance on the part of the Professional Service Provider, the City has the authority to contract with an alternate Professional Service Provider to complete this Contract. The Professional Service Provider shall be liable to the City for all incidental and consequential expenses incurred in procuring and securing an alternate Professional Service Provider, including any loss due to alternate Professional Service Provider compensation. The City may deduct expenses and loss, due to breach, from payment to the Professional Service Provider for services already performed. Failure to deduct expenses and losses from the City's payment to the Professional Service Provider does not relieve the Professional Service Provider from the Terms of this condition nor bar the

City from seeking alternative legal remedies.

- c. **Unappropriated Funds.** If sufficient funds have not been appropriated to cover the estimated requirement of this Contract, the City may terminate this Contract. The City may terminate for unappropriated funds by serving the Professional Service Provider with a fourteen (14) day written notice specifying the effective date of termination. On that specified termination date, this Contract and all contractual obligations will end. If this Contract is terminated by the City for unappropriated funds after performance by the Professional Service Provider has commenced, the termination date controls the final invoice by the Professional Service Provider for previous services under this Contract. The termination date controls all payment obligations of the City to the Professional Service Provider. Payment by the City to the Professional Service Provider upon termination for unappropriated funds constitutes full satisfaction for services rendered.
- d. **Convenience.** Termination for convenience does not necessitate a reason. The city may terminate for convenience by serving the Professional Service Provider with a seven (7) day written notice specifying the effective date of termination. On that specified termination date, this Contract and all contractual obligations will end. If this Contract is terminated by the City for convenience, the termination date controls the final invoice by the Professional Service Provider for previous services under this Contract. The termination date controls all payment obligations of the City to the Professional Service Provider. Payment by the City to the Professional Service Provider upon termination for convenience constitutes full satisfaction for services rendered.
- e. **Force Majeure.** A party shall not be held liable for failure of or delay in performing its obligations under this Contract if failure of delay is a result of an event of outside force, including a natural disaster, "Act of God", act of war, act of terrorism, government sanction or strike that could not be foreseen or avoided by prudence. Once performance is delayed by this event of outside force, the non-performing party must make every reasonable attempt to minimize delay. Once performance has been delayed one-hundred and twenty (120) days, performance is considered impracticable due to impossibility, and either party may terminate this Contract.

C. **Stop Work.** The City may, at any time by written order, require the Professional Service Provider to stop all or part of the services required by this contract. Upon receipt of such an order, the Professional Service Provider shall immediately comply with its terms and take all steps to minimize the occurrence of costs allocable to the services covered by the order. The City will pay for costs associated with suspension provided they are deemed reasonable by the City.

#### **Article 4: Compensation**

- A. **Price.** The City shall pay the Professional Service Provider for Services in accordance with the amounts set forth in the Offer. **[Exhibit B]** The maximum price stated on page 1 of this agreement may not be increased unless the City's Project Manager is provided with supporting documentation to warrant a change, and if upon review and acceptance, a written change order is approved. All change orders shall be by written schedule on a City Change Order form **[Exhibit D]**, and shall be attached as an amendment to this Contract.
- B. **Invoicing.** The Professional Service Provider shall submit an itemized invoice with all supporting documentation as required by the City. Supporting documentation may include, but is not limited to: a supporting schedule of hours worked making explicit the percentage of completion of services as of the date of the invoice; receipts for travel, postage, duplication, subcontracted services; supplier's invoices to justify material mark-up; certified payroll; waivers of lien; and supplier's invoices to justify material mark-up.
- C. **Invoice Submittals.** All invoices must be submitted directly to [AccountsPayable@stcharlesil.gov](mailto:AccountsPayable@stcharlesil.gov) and reference Purchase Order number. Invoices submitted in any other manner will result in a delay of payment.
- D. **Payment.** The City shall make all payments in accordance with the Illinois Local Government Prompt Payment Act or Professional Service Provider's invoice, whichever is more favorable to the City.
  - a. **Schedule of Payment.** The City shall make all payments on the basis of approved invoices and supporting documents. The City shall use its best efforts to make payments within thirty (30) days after review and approval of the invoice. Each payment requires City Council's approval of the Expenditure Approval List which occurs at publicly scheduled meetings.
  - b. **Non-Payment.** All invoices must be submitted to the City within two (2) months of the Professional Service Provider's final performance on this Contract. The City shall not pay any invoices submitted in excess of two (2) months from the date of last service performed per this Contract.

#### **Article 5: Duties**

- A. **Consent and Approvals.** The City and the Professional Service Provider represent and warrant to each other that

each has obtained all the requisite consents and approvals, whether required by internal operating procedures or otherwise, for entering into this Contract and its contemplated undertakings.

- B. Insurance.** The Professional Service Provider shall, during the entire term of this Contract, maintain, at a minimum, the insurance minimums as specified in the Solicitation and under the terms stipulated in **Exhibit C**.
- C. Standard of Performance.** The Professional Service Provider warrants that the service provided, under the fully incorporated Contract, by the Professional Service Provider and any and all employees, agents, Professional Service Providers, or subcontractors is performed by individuals who are authorized under all applicable licenses and certifications, and who have completed the requisite training as required by industry standards, professional standards, manufacturers' requirements, and statute. Performance by these parties shall be with the degree, skill, care and diligence customarily required of a professional performing service of comparable scope, purpose and magnitude and in conformance with the applicable industry standards. The Professional Service Provider and its employees, agents, Professional Service Providers, or subcontractors shall perform in strict compliance with the laws and regulations of the City, State, and federal government.
- D. Best Efforts.** The Professional Service Provider shall use its best efforts to assure timely and satisfactory rendering and completion of services under this Contract. The Professional Service Provider shall remain solely responsible for the professional and technical accuracy of all services and deliverables furnished, whether such service is rendered by the Professional Service Provider or others on its behalf including, and without limitation, subcontractors, employees, agents, manufacturers, suppliers, fabricators, and consultants. The Professional Service Provider is not to be relieved from its duty to use best efforts, pursuant to the Contract, by the City's review, approval, acceptance, or payment for any of the agreed to services. Any change to the character, form quality or extent of the Project shall be in writing on a City Change Order form [**Exhibit D**], and attached as an addendum to this Contract.
- E. Non-disclosure.** The Professional Service Provider, its employees, agents, consultants, or subcontractors may have access to the City's confidential information during performance of this Contract. Confidential information includes, but is not limited to, methods, processes, formulas, compositions, systems, techniques, computer programs, databases, research projects, resident identification and contact information, financial data, and other data. The Professional Service Provider shall not directly or indirectly use, disclose or disseminate confidential information to any third party for any purpose other than a purpose explicitly allowed for in this Contract and its integrated documents.
- F. No Duty.** The Professional Service Provider shall not imply any authority to act as an agent of the City. The Professional Service Provider's duties to the City are limited by express authorization under this Contract and by statute.
- G. Hold Harmless and Indemnification.**
  - a. Patents and Copyrights.** The Professional Service Provider warrants that all products used or provided in the fulfillment of this Contract will not infringe on any United States or foreign patent. Professional Service Provider shall indemnify the City against any and all judgments, decrees, legal fees, costs and expenses resulting from such alleged infringement. Professional Service Provider will, upon request of the City and at the Professional Service Provider's own expense, defend any suit or action which may be brought against the City by reason of any alleged infringement of any patent or copyright in the sale or use of products provided to the City by the Professional Service Provider.
  - b. Loss and Liability.** The Professional Service Provider shall hereby defend and indemnify the City, its directors, agents, officers, employees, and elected officials from and against any and all liabilities, losses, claims, demands, damages, costs, fines, penalties, expenses, judgments, and settlements, including, but not limited to, reasonable attorneys' fees and costs of litigation, and any and all causes of action of any kind or character, that may be incurred as a result of bodily injury, sickness, death, or property damage or as a result of any other claim or suit arising out of or connected with, directly or indirectly, the negligent acts, errors, omissions, or intentional acts or omissions of any agent, employee, subcontractor, Professional Service Provider, or contractor hired to provide any goods or perform any services on behalf of the Professional Service Provider.

#### **Article 6: Policies**

- A. Illinois Freedom of Information Act.** The Professional Service Provider acknowledges the requirements of the Illinois Freedom of Information Act (FOIA). Professional Service Provider agrees to comply with all requests made by the City for public records (as defined in FOIA § 2(c)) in the undersigned's possession and/or their subcontractors/suppliers' possession.
  - a. Timeliness.** The Professional Service Provider shall provide the requested public records to the City

within two (2) business days of the City's request.

- b. **Free of Charge.** The Professional Service Provider agrees not to apply any costs or charge any fees to the City for the procurement of the requested records pursuant to a FOIA request.
- c. **Hold Harmless.** Should the Professional Service Provider deny the City's request unlawfully or request that the City utilize a lawful exemption available under FOIA, Professional Service Provider agrees to pay any and all costs connected with the defense of the Professional Service Provider's denial. All costs include reasonable attorney and witness fees, filing fees and other expenses related to the defense of a complaint. The Professional Service Provider agrees to indemnify the City against any and all claims, costs, penalties, losses and injuries arising out of or relating to its failure to provide the requested public records to the City under this Contract.

**B. Discrimination Prohibited.**

- a. **Equal Employment Opportunity.** The Professional Service Provider shall comply with all rules and regulations pertaining to public contracts adopted by the State and the City. The City is an equal opportunity employer.
- b. **ADA.** The Professional Service Provider shall be in compliance with current applicable regulations of the Americans with Disabilities Act.

**Article 7: Changes to Contract**

- A. **Changes and Alterations.** Any changes or alterations to this Project affecting, inclusive of but not limited to: scope, cost, terms, milestones, deadlines or other significant factors shall be integrated in writing on a City of St. Charles Change Order form. [Exhibit D]
- B. **Extension or Renewal of Contract.** The City at its option may extend this Contract for an additional to be determined term if the Professional Service Provider either reduces his price, or holds firm to the proposal prices, conditions and specifications.
- C. **Assignment.** The Professional Service Provider shall not assign, transfer, or subcontract this Contract, in whole or in part, without prior written consent of the City.
- D. **Notification.** All notification under this Contract shall be made as follows:

- a. **If to the City**  
City of St. Charles  
Attn: Procurement Division  
2 East Main Street  
St. Charles, IL 60174  
Email: [Procurement@stcharlesil.gov](mailto:Procurement@stcharlesil.gov)
- b. **With electronic copies to**  
Procurement Division: [Procurement@stcharlesil.gov](mailto:Procurement@stcharlesil.gov)  
Project Manager: Allen Fennell: [afennell@stcharlesil.gov](mailto:afennell@stcharlesil.gov)
- c. **If to the Professional Service Provider**  
TPI Building Code Consultants Inc  
Attn: \_\_\_\_\_  
321 Spruce Street  
South Elgin, IL 60177  
Email: [tpil@tpibcc.com](mailto:tpil@tpibcc.com)  
Phone: (630)443-1567

**Article 8: Applicability**

- A. **Other Entity Use.** The Professional Service Provider may, upon mutual agreement with any municipality or governmental unit, permit that unit to participate in this Contract for substantially similar consulting services under the same or more favorable price, terms and conditions.
- B. **Waiver.** Any failure of either the City or the Professional Service Provider to strictly enforce any terms, right, or condition of this Contract, whether implied or expressed, shall not be construed as a waiver of such term right or condition.

- C. Severability.** If any provision of this Professional Service Provider is held to be illegal, invalid, or unenforceable, such provision shall be fully severable, and this Contract shall be construed and enforced as if such illegal, invalid, or unenforceable provision were never a part hereof; the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance; and in lieu of such illegal, invalid, or unenforceable provision there shall be added automatically as part of this Contract, a provision as similar in its terms to such illegal, invalid, or unenforceable provision as may be possible and legal, valid and enforceable.
- D. Governing Jurisdiction.** The parties agree that any disputes, disagreements, or litigation arising from this Contract, between or amongst them, will be heard and resolved exclusively in the courts of the 16<sup>th</sup> Judicial Circuit, Kane County, Illinois.
- E. Governing Law.** The parties agree that the laws of the State of Illinois govern this Contract.



In Witness Whereof, the parties have entered into this Contract upon the latter of the date accepted and signed by the City and the date accepted and signed by the Professional Service Provider.

**For: City of St. Charles**

By:   
Project Manager – Allen Fennell

ATTEST \_\_\_\_\_

DATE 6/6/23

**For: Professional Service Provider**

*If an Individual*

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

*If a Partnership*

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

By: \_\_\_\_\_  
Partner

*If a Corporation*

By:   
Signature of person authorized to sign

CEO  
Title

ATTEST 

*If a Joint Venture*

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

DATE \_\_\_\_\_

# **T.P.I. Building Code Consultants, Inc.**

**Professional Residential & Commercial Plan Review and Inspection Services**

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## **Exhibit B Fee Schedule**

### **Inspection**

- a. Minimum 1 Hour and 1 Hour travel time
- b. If greater than 4 hours/day, no travel time will be charged.

<b>Type</b>	<b>Hourly Normal Business Days</b>	<b>After hours M-F and Saturdays until 5pm</b>	<b>After 5pm Saturdays, Sundays, &amp; Holidays</b>
<b>Property Maintenance</b>	\$65.00	N/A unless requested; fee to be determined	N/A