

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

**The Preservation Alliance of
Minnesota and The Cultural
Landscape Foundation for themselves
and on behalf of the State of
Minnesota,**

COURT FILE NO. 27-CV-12-14220

Hon. Edward T. Wahl

SETTLEMENT AGREEMENT

Plaintiffs,

vs.

City of Minneapolis, Minnesota,

Defendant.

WHEREAS, Peavey Plaza ("Plaza") is an urban park plaza located at 1101 Nicollet Avenue South, Minneapolis MN, along Nicollet Mall in downtown Minneapolis between Eleventh and Twelfth Streets;

WHEREAS, Peavey Plaza was built in 1975 and was designed by M. Paul Friedberg, a master landscape architect;

WHEREAS, shortly after its completion the Plaza was recognized as a modernist landmark by the American Society of Landscape Architects and was awarded the American Society of Landscape Architects' Professional Design Competition in 1978;

WHEREAS, on January 14, 2013, the Plaza was listed by the federal government in the National Register of Historic Places as a progenitor of the modernist "park plaza" style of landscape architecture design;

WHEREAS, on May 25, 2012 (effective on June 2, 2012 upon publication in Finance and Commerce), the Minneapolis City Council approved the demolition of the Plaza as part of an overall plan to redesign the space;

WHEREAS, on June 29, 2012, Plaintiffs the Preservation Alliance of Minnesota and The Cultural Landscape Foundation served upon Defendant City of Minneapolis a lawsuit asserting claims under the Minnesota Environmental Rights Act ("MERA"), Minn. Stat. § 116B *et seq.*, and Minn. Stat. § 462.361, which provides for district court review of municipal zoning decisions, and seeking to prevent the City from proceeding with the demolition that had been approved on May 25, 2012;

WHEREAS, Defendant City answered the Complaint denying the asserted claims;

WHEREAS, Plaintiffs allege that the Plaza is a historical resource protected from demolition under MERA;

WHEREAS, the City now acknowledges and agrees that the Plaza is a historical resource within the meaning of MERA;

WHEREAS, the City contends that there is "no feasible and prudent alternative" to demolition for any conceived redesign scenario regardless of the historic merit of the Plaza;

WHEREAS, Plaintiffs dispute the City's assertion of "no feasible and prudent alternative" to demolition;

WHEREAS, the parties conducted discovery and brought cross-motions for summary judgment which were fully briefed and filed with the Court;

WHEREAS, although the City still maintains that there may be no feasible and prudent alternative to demolishing the Plaza, it now acknowledges that the demolition approval at issue expired on June 2, 2013, pursuant to Minneapolis Code of Ordinances § 599.70 (one year from June 2, 2012 effective date of decision based on ordinance in effect at that time);

WHEREAS, the parties agree and acknowledge that there are problems with the current state of the Plaza; including, but not limited to, accessibility, broken plumbing, general deteriorating condition, and escalating maintenance costs that warrant appropriate redress;

WHEREAS, the City contends that the Plaza is lacking infrastructure elements sufficient to efficiently support income producing event usage;

WHEREAS, the parties have met and negotiated a new design concept for the Plaza and have reached agreement as to a framework design, potential improvements, and a common rehabilitation goal – SEE ATTACHED EXHIBIT A;

WHEREAS, specific details beyond the general design concept have yet to be established for the rehabilitation of the Plaza;

WHEREAS, the parties have conducted substantial work with each other on a rehabilitation of the Plaza in good faith with a focus on preservation of the historic elements of the Plaza, while permitting the Plaza to be changed and/or modified in order to achieve some of the objectives of the City;

NOW, THEREFORE, the parties stipulate and agree that this matter may be closed administratively according to the following terms:

1. The City stipulates and agrees that it will not proceed with the original redesign plan that was authorized by the City Council because the demolition approval has now expired. The City further stipulates that the original redesign plan, had it been implemented, would have likely altered significant elements of the Plaza.

2. The parties agree that the goal of the plan will be to preserve the Plaza through a rehabilitation that is consistent with the Secretary of Interior's STANDARDS FOR TREATMENT OF HISTORIC PROPERTIES, and specifically with the GUIDELINES FOR THE TREATMENT OF CULTURAL LANDSCAPES published by the U.S. National Park Service.

3. The parties agree to work on this plan together in good faith in order to maximize the economic, cultural, and societal benefits of the Plaza with the common goals of fostering event space use of the Plaza, addressing the existing deteriorated condition, and correcting the lack of dignified disability access, all while maintaining the Plaza's historic integrity.

4. The City will retain its inherent authority as a political and governmental body and the property owner herein to make the choices it sees fit regarding the Plaza subject to all relevant and applicable law, including MERA.

5. Based on the Plaza's listing in the National Register of Historic Places, the City recognizes that it is required by law to take the historic significance of the property into account when it makes any decision to alter a significant portion or part of the Plaza.

6. Unless one party files a motion to reopen the case within one year of the date of this agreement, this matter shall be dismissed with prejudice and without costs or award of attorneys' fees to either party.

7. The parties hereby stipulate and agree that by settling this matter pursuant to this agreement that the settlement, and future dismissal with prejudice, have no preclusive effect whatsoever regarding any subsequent claim regarding Peavey Plaza, or any other property located within the geographic confines of the City of Minneapolis. The instant litigation was based upon the authorization to proceed with demolition approved on May 25, 2012 and nothing herein shall preclude Plaintiffs from asserting future claims to prevent demolition or alteration of the Plaza. For purposes of MERA, and all other claims, this settlement and the accompanying dismissal cannot be used for res judicata, equitable estoppel or other defenses of claim preclusion. Likewise, it cannot be used for offensive estoppel, res judicata, nor can it have an offensive preclusive effect in any subsequent action brought by any party.

8. This agreement constitutes the total agreement of the parties and may only be modified upon the express written consent of the parties with Court approval.

9. The parties acknowledge that this agreement has been negotiated through attorneys of record and that no party shall be deemed the drafter of this agreement for purposes of contract interpretation.

10. This agreement, should it be signed, is lawful and binding upon the signatories and subject to City Council approval, as necessary.

11. All parties have had the opportunity to consult with their counsel, and enter this agreement freely and knowingly with understanding of that which they enter.

12. The City hereby agrees that for a period of three (3) years after the execution of this agreement, it will send fourteen (14) days written notice of any intent to demolish the Plaza to Plaintiffs at the address of legal counsel of record below.

Dated: August 23, 2013

SUSAN L. SEGAL
City Attorney
By



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Dated: August 23, 2013

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By



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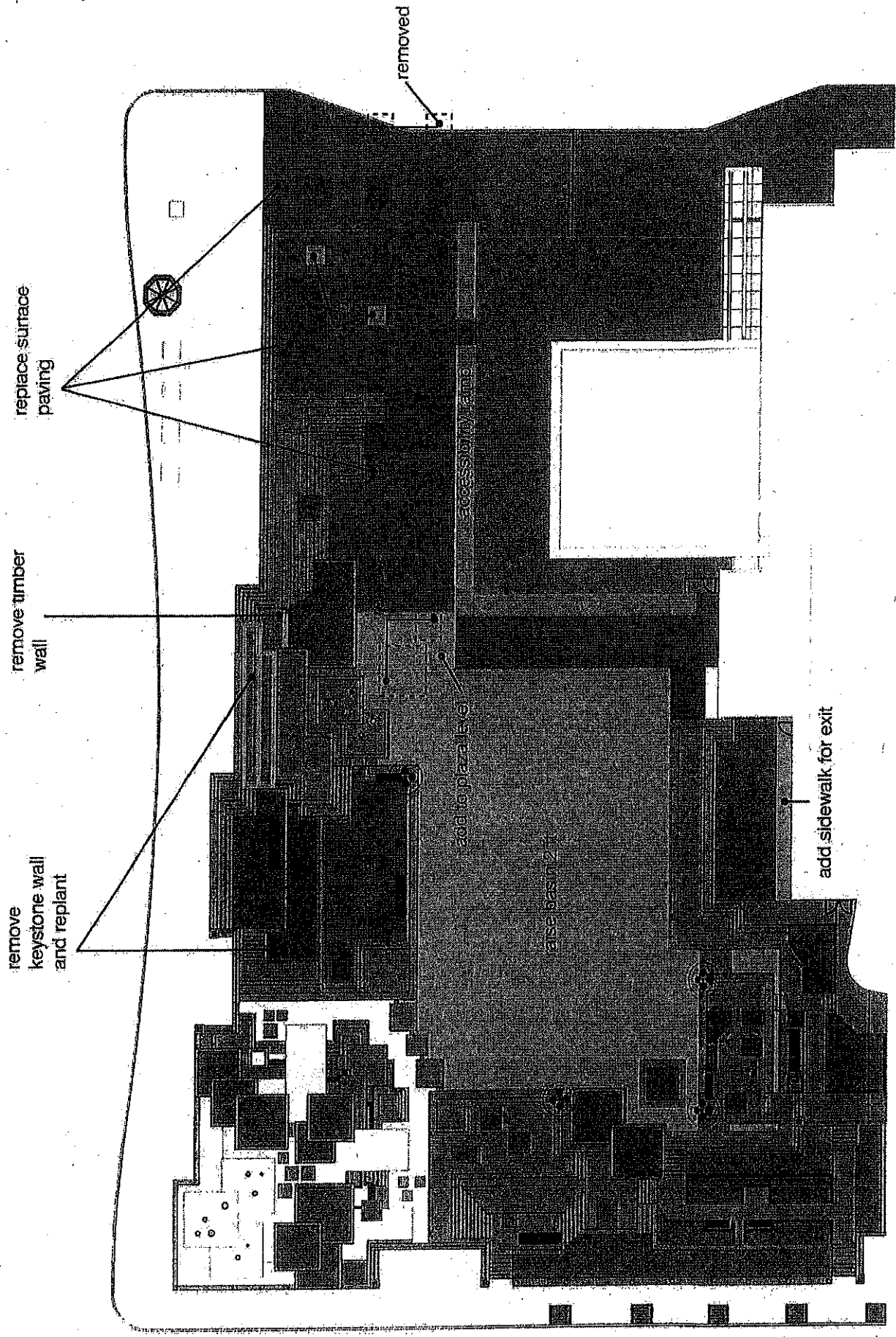
PEAVEY PLAZA SETTLEMENT AGREEMENT – EXHIBIT A

Under the agreement, the parties will work together to develop a design that integrates design features and elements that reflect the interests of the City as owner and operator of the plaza, while respecting the historic integrity of the Plaza.

1. The City's original objectives for the redesign included the following:
 - a. Make the Plaza accessible for all citizens including those with disabilities and make the Plaza accessible to maintenance vehicles and equipment for use in maintaining and repairing the Plaza, moving equipment, removing snow, setting up for public events, and etc.
 - b. Replace the storm water system and the water feature systems with new systems that meet current codes and reflect the City's values related to water usage.
 - c. Install infrastructure that makes the Plaza more efficient and economical to use for events including increased power and increased number of outlets to access power.
 - d. Design the Plaza so that it is easier to use for events.
 - e. Increase perceptions of public safety and design to reflect Crime Prevention Through Environmental Design Principles (CPTED).
 - f. Integrate concessions or other revenue generating features that will help the Plaza earn revenue that can be used to offset operating and maintenance costs.

2. The new Oslund and Associates' design concept illustrated in the attached "Scheme 3" assumes that the spatial configuration of the existing Plaza will be respected to the greatest extent possible. The design also assumes the inclusion of some or all of the following elements and features in an attempt to achieve the City's goals stated above:
 - a. Create an ADA compliant accessible route to lower level that begins in the area of Nicollet Mall and 11th Street
 - b. Provide new, separate sanitary and storm water treatment systems including a new storm water management system and tank beneath the reflecting basin
 - c. Replace the existing reflecting basin with a flat/flush water feature. The new feature will be approximately ¼" deep, will be drainable to a reservoir, and when drained, will provide a flat, walkable, accessible area for event use.
 - d. Replace the fountain mechanical pumps and systems with contemporary, code-compliant system, repair and replace fountain system piping to ensure a long life for the new system, and recast the precast fountain weirs
 - e. Remove and replant all plants and trees
 - f. Recast, repair, or restore all stairs
 - g. Replace all benches and furniture
 - h. Remove all timber framing
 - i. Increase power service, provide more new integrated power sources and connections throughout the plaza, and provide a new electrical service room.
 - j. Remove all non-conforming wall materials

3. More specifically, in order to maximize the safety, accessibility, and functionality of the Plaza, the City also expects that any final design will seek to integrate the following design elements and features as requested by the City's Public Works Department and the Access Committee of the Minneapolis Advisory Committee on People with Disabilities:
 - a. Recast, repair, or restore as required walking surfaces and stairs that have cracked, settled, and created tipping hazards and water ponding.
 - b. Recast, repair, or restore concrete elements where the finish has spalled off and exposed steel reinforcing bars, including the undersides of the "bridge" slabs at the lower level.
 - c. Retrofit the existing non-ADA compliant ramp on 12th Street to function as a service ramp only for use in moving equipment and material in and out of the lower level of plaza. Modifications may include cutting down and removing existing concrete walls, re-arranging the ramp, widening the ramp, and using a portion of the overlook/landing at the top as space to create a more useful ramp.
 - d. Retrofit the existing light poles in the plaza to allow for "heads" that can be raised and lowered for the purpose of replacing lamps, fixtures and housings.
 - e. Consider the potential use of railings, truncated domes, or both throughout the plaza to reduce the potential of tripping and falling for sight impaired people and other people with disabilities.
 - f. Consider how to bridge gaps in the pavement and the water in between at the lower level with grates or other devices to allow 100% use of the plaza for people with disabilities.
 - g. Consider straightening the edge of the reflecting basin on the west/Nicollet Mall side to allow for an accessible walking path along that side of the reflecting basin.
 - h. Consider grouting solid the cavity beneath the stair treads or cover the stair risers with a metal plate to cover that cavity.
 - i. Consider whether the set of four stairs that run parallel to 11th Street, closest to 11th Street, could be relocated a few feet to the southwest to better accommodate standard 10 foot by 10 foot vendor tents in the area at street level that runs along 11th Street.



- few changes to existing condition
- raise basin 2 ft to meet existing lower plaza level

SCHEME 3: CHANGES

April 3, 2013

oslund and assoc

Peavey Plaza Revitalization

Minneapolis MN



Cost Model - Scheme 3 Summary

June 6, 2013

Construction Start: Summer 2015

Description of Work	
Item 1	Accessibility Ramp \$ 385,000
Item 2	Upper Plaza Pavement Resurfacing \$ 329,000
Item 3	Timber Retaining Wall Demolition \$ 7,000
Item 4	Demo Keystone Wall/ Restore Site Finish Elements \$ 43,000
Item 5	Re-Planting of Landscape Areas \$ 56,000
Item 6	Upgrade Existing Stair to Meet ADA Code Requirements \$ 234,000
Item 7	Restoration of Existing Site Finish Elements/ Furnishings \$ 430,000
Item 8	Existing Site Furnishings Demolition (Light Poles & etc) \$ 24,000
Item 9	Site Electrical Rough-Ins \$ 100,000
	General Conditions/ Fee \$ 347,000
	Building/ Street Closure Permit \$ 49,000
	Escalation/ Estimating & Const. Contingency \$ 311,000
	Liability Insurance \$ 23,000
	P&P Bond/ Builder Risk Insurance - Not Included NIC
Total \$ 2,338,000	

Peavey Plaza Revitalization

Minneapolis MN

Cost Model - Scheme 3

June 6, 2013

Construction Start: Summer 2015



Description of Work	Quantity	U.M.	Unit Cost	Total Cost
Item 1 Accessibility Ramp				
Demolition (Bollards, Post Footings, & etc.)	1,050.0	SF	\$20.00	\$ 21,000
Demolition of Existing Accessible Ramp	250.0	SF	\$18.00	\$ 4,500
Post Foundations (4'-0" o.c.)	44.0	EA	\$500.00	\$ 22,000
Structure (Galv. Metal Structural Support & Post, & Embeds)	1,050.0	SF	\$100.00	\$ 105,000
Patch Pavers/ CIP Sidewalk	1.0	LS	\$15,000.00	\$ 15,000
Misc. Tie in at Existing Orchestra Hall Concrete Ramp	250.0	SF	\$42.00	\$ 10,500
Ramp Floor Grating	1,050.0	SF	\$75.00	\$ 78,750
Ornamental Handrail (Glass Handrails w/ Side Mounted Button Railing U-Channel Captured Cap)	175.0	LF	\$700.00	\$ 122,500
Paint Structure/ Misc.	1,050.0	SF	\$5.00	\$ 5,250
CMU Partition @ Ramp Closure - Not Included		NIC	\$	\$
Item 1 Total Accessibility Ramp				\$ 384,500
Item 2 Upper Plaza Pavement Resurfacing				
Demolition of Existing Pavers - Exposed Aggregate	6,399	SF	\$8.35	\$ 40,634
Demolition Existing CIP Paving	2,834	SF	\$3.00	\$ 8,502
Paving Allowance - Pavers	6,399	SF	\$22.00	\$ 140,778
Paving Allowance - CIP Paving	2,834	SF	\$8.00	\$ 22,672
Landscape Allowance	9,233	SF	\$5.00	\$ 46,165
Misc. Tie-in to Existing Surfaces	46,538	SF	\$1.50	\$ 69,807
Irrigation - Not Included		NIC	\$	\$
Paving Demolition & Placement Along 12th Street - Not Included		NIC	\$	\$
Demolition & Replacement of Existing Stairs - Not Included		NIC	\$	\$
Demolition Existing Planter Boxes/ Plants - Not Included		NIC	\$	\$
Demolition and replacement of Paving at all Lower Basin - Not Included		NIC	\$	\$
Tree Removal - Not Included		NIC	\$	\$
Storm Utilities Relocation/ Re-Routing - Not Included		NIC	\$	\$
Traffic Control Box Relocation - Not Included		NIC	\$	\$
Item 2 Total Plaza Pavement Resurfacing				\$ 328,558
Item 3 Timber Retaining Wall Demolition				
Demolition	30.0	SF	\$15.00	\$ 450
Earthwork/ Regrading	604.0	SF	\$5.00	\$ 2,520
Keystone Retaining Walls	30.0	SF	\$50.00	\$ 1,500
Landscaping Allowance	1.0	LS	\$2,500.00	\$ 2,500
Irrigation - Not Included		NIC	\$	\$
Item 3 Total Timber Retaining wall Demolition				\$ 6,970
Item 4 Demo Keystone Wall/ Restore Site Finish Elements				
Retaining Wall Demolition	525.0	SF	\$5.00	\$ 2,625
Earthwork/ Regrading	878.0	SF	\$10.00	\$ 8,780
Landscaping Allowance	1.0	LS	\$5,000.00	\$ 5,000
Keystone Retaining Walls	525.0	SF	\$50.00	\$ 26,250
Irrigation - Not Included		NIC	\$	\$
Retaining Wall Demolition & Replacement Demolition Along 12th Street - Not Included		NIC	\$	\$
Item 4 Total Keystone Wall Demolition/ Site Finish Element Restoration				\$ 42,655
Item 5 Re-Planting of Landscape Areas				
Demolition/ Clear & Grub	1,760.0	SF	\$3.00	\$ 5,280
Trees Replacement Allowance	1.0	LS	\$25,000.00	\$ 25,000
Landscaping Allowance	1.0	LS	\$25,000.00	\$ 25,000
Demolition/ Tree Removal - Along 12th Street - Not Included		NIC	\$	\$

Peavey Plaza Revitalization

Minneapolis MN

Cost Model - Scheme 3

June 6, 2013

Construction Start: Summer 2015



Description of Work	Quantity	U.M.	Unit Cost	Total Cost
Irrigation - Not Included		NIC		\$
Item 5 Total Re-Planting of Landscape Area				\$ 55,280
Item 6 Upgrade Existing Stair to Meet ADA Code Requirements				
Grout Base of all Stair (Include Stairs Along 12th Street)	2,045.0	LF	\$85.00	\$ 173,825
Misc. Stair Patching/ Restoration Allowance	1.0	LS	\$25,000.00	\$ 25,000
Joint Fillers	2,045.0	LF	\$2.50	\$ 5,113
Electrical Conduit Re-Routing Allowance	1.0	LS	\$30,000.00	\$ 30,000
Item 6 Total Stair Upgrade				\$ 233,938
Item 7 Restoration of Existing Site Finish Elements/ Furnishings				
Demo Site Boulevard Benches - Frames/ Timbers Only	148.0	LF	\$50.00	\$ 7,400
Demo Site Individual Benches - Frames/ Timber Only	5.0	EA	\$75.00	\$ 375
New Site Benches Allowance (8' L BLVD Benches) - Reuse Existing Bases	18.0	EA	\$4,000.00	\$ 72,000
New Site Benches Allowance (Individual Benches) - Reuse Existing Bases	5.0	EA	\$1,500.00	\$ 7,500
Finish Bench Seats & Refinish Existing Bases	1.0	LS	\$20,000.00	\$ 20,000
Patch/ Seal Existing Concrete Wall Surfaces (Exposed Rebar, Conduits, Tie-Holes & Cracks) - Allowance	1.0	LS	\$200,000.00	\$ 200,000
Clean/ Restore Existing Concrete Wall Surfaces (Pressure Wash) - Allowance	48,538	SF	\$2.25	\$ 104,711
Re-Finish/ Paint Existing Handrails	75.0	LF	\$30.00	\$ 2,250
Misc. Site Furnishing Allowance	1.0	LS	\$15,000.00	\$ 15,000
Patching/ Resurfacing of Concrete Elements @ Pool & Fountain Locations - Not Included		NIC		\$
Removal & Replacement of Trash Receptacles - Not Included		NIC		\$
Item 7 Total Furnishing				\$ 429,236
Item 8 Existing Site Furnishings Demolition (Light Poles & etc)				
Demolition of Existing Light Post	1.0	EA	\$3,000.00	\$ 3,000
New Light Post Allowance	2	EA	\$8,500.00	\$ 17,000
Pavement Patching	1.0	LS	\$3,500.00	\$ 3,500
Item 8 Total Site Furnishing Demolition				\$ 23,500
Item 9 Site Electrical Rough-Ins				
Site Electrical Rough-In @ Pavement Resurfacing Locations	1.0	LS	\$100,000.00	\$ 100,000
Item 9 Total Site Electrical Rough-Ins				\$ 100,000
Total Construction Cost				\$ 1,604,636