

GENOA CHARTER TOWNSHIP BOARD
Regular Meeting
June 18, 2018
6:30 p.m.

AGENDA

Call to Order:

Pledge of Allegiance:

Call to the Public (Public comment will be limited to two minutes per person)*:

Approval of Consent Agenda:

1. Payment of Bills.
2. Request to Approve Minutes: June 4, 2018
3. Request for approval of a fireworks application from Chris Bonk for a display scheduled June 30, 2018 at middle of Lake Chemung in Genoa Township.
4. Request from AT&T for the Metro Act Right of Way Permit Extension to end December 31, 2023.
5. Request for approval to appoint Michele Kreutzberg to fulfill the remaining term of Greg Rassel as alternate to the Zoning Board Appeals expiring 6-30-21.

Approval of Regular Agenda:

6. Consider approval of a contract with Advanced Disposal for the refuse and recycling collection.
7. Consider request for authorization of payment to Livingston County in the amount of \$8,940 for the development of a park on the Fillmore property located in Section 1 of Genoa Township.

Correspondence
Member Discussion
Adjournment

*Citizen's Comments- In addition to providing the public with an opportunity to address the Township Board at the beginning of the meeting, opportunity to comment on individual agenda items may be offered by the Chairman as they are presented.

CHECK REGISTERS FOR TOWNSHIP BOARD MEETING

DATE: June 18, 2018

TOWNSHIP GENERAL EXPENSES: Thru June 18, 2018	\$162,251.82
06/15/2018 Bi Weekly Payroll	\$96,029.66
OPERATING EXPENSES: Thru June 18, 2018	\$262,391.30
TOTAL:	<u>\$520,672.78</u>

Check Date	Check	Vendor Name	Amount
Bank FNBACK CHECKING ACCOUNT			
05/30/2018	34473	DYKEMA GOSSETT, PLLC	2,924.50
05/30/2018	34474	MASTER MEDIA SUPPLY	277.19
05/30/2018	34475	NETWORK SERVICES GROUP, L.L.C.	50.00
05/31/2018	34476	DELTA DENTAL	3,671.32
05/31/2018	34477	GUARDIAN	2,303.84
05/31/2018	34478	LIVINGSTON COUNTY REGISTER OF DEEDS	90.00
05/31/2018	34479	TAMMY LINDBERG	217.73
05/31/2018	34480	POSTMASTER	1,433.08
06/01/2018	34481	JESSICA BUTTERMORE	19.08
06/01/2018	34482	K/E ELECTRIC SUPPLY CORP	17,603.11
06/01/2018	34483	PERFECT MAINTENANCE CLEANING	565.00
06/05/2018	34484	BORDINE NURSERY	153.87
06/05/2018	34485	DTE ENERGY	149.55
06/05/2018	34486	EVOLVING TECHNOLOGIES INC	3,347.75
06/05/2018	34487	GFL ENVIRONMENTAL USA INC.	83,066.00
06/05/2018	34488	GFL ENVIRONMENTAL USA INC.	2,440.00
06/05/2018	34489	GORDON FOOD SERVICE	241.19
06/08/2018	34490	BS&A SOFTWARE	17,840.00
06/08/2018	34491	ETNA SUPPLY COMPANY	15,107.48
06/08/2018	34492	GENOA TOWNSHIP D.P.W. FUND	60.68
06/08/2018	34493	LIVINGSTON CO. REGISTER OF DEEDS	30.00
06/08/2018	34494	TETRA TECH INC	2,540.00
06/12/2018	34495	AMERICAN AQUA	95.00
06/12/2018	34496	COMCAST	963.94
06/12/2018	34497	CONSUMERS ENERGY	77.86
06/12/2018	34498	CONTINENTAL LINEN SERVICE	119.07
06/12/2018	34499	DTE ENERGY	54.67
06/12/2018	34500	LIVINGSTON CO ASSESSORS ASSOCIATION	40.00
06/12/2018	34501	MICHIGAN ELECTION RESOURCES	57.41
06/12/2018	34502	OFFICE EXPRESS INC.	189.61
06/12/2018	34503	SAFEBUILT STUDIO	3,434.89
06/12/2018	34504	SEWARD PECK & HENDERSON PLLC	3,088.00

FNBACK TOTALS:

Total of 32 Checks:	162,251.82
Less 0 Void Checks:	0.00
Total of 32 Disbursements:	162,251.82

Check Register Report For Genoa Charter Township
For Check Dates 06/15/2018 to 06/15/2018

4

Check Date	Bank	Check Number	Name	Check Gross	Physical Check Amount	Direct Deposit	Status
06/15/2018	FNBCK	EFT231	FLEX SPENDING (TASC)	1,495.77	1,495.77	0.00	Open
06/15/2018	FNBCK	EFT232	INTERNAL REVENUE SERVICE	22,337.98	22,337.98	0.00	Open
06/15/2018	FNBCK	EFT233	PRINCIPAL FINANCIAL	2,901.00	2,901.00	0.00	Cleared
06/15/2018	FNBCK	EFT234	PRINCIPAL FINANCIAL	982.80	982.80	0.00	Cleared
Totals:		Number of Checks: 004		27,717.55	27,717.55	0.00	
	Total Physical Checks:				Dir. Dep.		
	Total Check Stubs:	4			68,312.11		

\$96029.66

5

Check Date	Check	Vendor Name	Amount
Bank 503FN DPW-UTILITIES #503			
06/05/2018	4330	AMERICAN RED CROSS	1,050.00
06/07/2018	4331	AUTO-LAB OF LIVINGSTON	1,024.28
06/07/2018	4332	GRAINGER	59.13
06/07/2018	4333	MWEA	70.00
06/07/2018	4334	RED WING BUSINESS ADVANTAGE ACCOUNT	1,088.70
06/07/2018	4335	TRACTOR SUPPLY CO.	65.96
06/07/2018	4336	WINDSTREAM	45.03
06/11/2018	4337	LOWE'S	2,886.15
06/12/2018	4338	SARAH BRABBS	1,550.00
06/12/2018	4339	WEX BANK	4,143.44

503FN TOTALS:

Total of 10 Checks:	11,982.69
Less 0 Void Checks:	0.00
Total of 10 Disbursements:	11,982.69

06/12/2018 12:50 PM
User: Angie
DB: Genoa Township

CHECK REGISTER FOR GENOA TOWNSHIP
CHECK NUMBERS 4268 - 4400

Page: 1/1

Check Date	Check	Vendor Name	Amount
Bank 592FN OAK POINTE OPERATING FUND #592			
05/30/2018	4268	GENOA TWP OAK POINTE SEWER BOND	102,816.38
06/04/2018	4269	BRIGHTON ANALYTICAL , L.L.C.	370.00
06/04/2018	4270	DTE ENERGY	806.69 V

Void Reason: PAID ONE OF THE BILLS WRONG

06/05/2018	4271	DTE ENERGY	571.50
06/06/2018	4272	DTE ENERGY	3,460.39
06/07/2018	4273	ADVANCE AUTO PARTS	15.96
06/07/2018	4274	COMPLETE BATTERY SOURCE	54.66
06/07/2018	4275	CONSUMERS ENERGY	117.34
06/07/2018	4276	GENOA OCEOLA SEWER	53.13
06/07/2018	4277	GENOA TOWNSHIP D.P.W. FUND	39,100.52
06/07/2018	4278	GENOA TOWNSHIP DPW FUND	204.86
06/07/2018	4279	HACH COMPANY	295.00
06/07/2018	4280	KENNEDY INDUSTRIES	1,390.00
06/07/2018	4281	PRECISON CLIMATE SERVICES INC.	225.43
06/07/2018	4282	STANDARD ELECTRIC	145.89
06/07/2018	4283	STATE OF MICHIGAN	288.00
06/07/2018	4284	TLS CONSTRUCTION	2,613.75
06/07/2018	4285	USA BLUEBOOK	367.07
06/07/2018	4286	UTILITIES INSTRUMENTATION SERVICE	41,982.00
06/12/2018	4287	AT&T LONG DISTANCE	55.63
06/12/2018	4288	BRIGHTON ANALYTICAL , L.L.C.	185.00
06/12/2018	4289	MICHIGAN.COM PRESS & ARGUS	740.00

592FN TOTALS:

Total of 22 Checks:	195,859.20
Less 1 Void Checks:	806.69
Total of 21 Disbursements:	195,052.51

ck Date	6	Check	Vendor Name	Amount
ck 593FN LAKE EDGEWOOD OPERATING FUND #593				
05/2018		3392	BRIGHTON ANALYTICAL , L.L.C.	536.00
06/2018		3393	DTE ENERGY	4,124.86
07/2018		3394	ADVANCED REHABILITATION TECHNOLOGY	15,000.00
07/2018		3395	BIBLE CONSTRUCTION COMPANY	3,337.50
07/2018		3396	COMPLETE BATTERY SOURCE	33.45
07/2018		3397	GENOA OCEOLA SEWER	244.60
07/2018		3398	GENOA TOWNSHIP D.P.W. FUND	11,266.84
07/2018		3399	HARTLAND SEPTIC SERVICE, INC.	4,935.00
07/2018		3400	HUBBELL, ROTH & CLARK, INC	618.34
07/2018		3401	M & K JETTING AND TELEVISIONING LLC	1,480.00
07/2018		3402	PRECISON CLIMATE SERVICES INC.	112.73
07/2018		3403	PVS NOLWOOD CHEMICALS, INC.	932.00
07/2018		3404	TLS CONSTRUCTION	2,587.00
12/2018		3405	BRIGHTON ANALYTICAL , L.L.C.	67.00
12/2018		3406	CONSUMERS ENERGY	80.78

FN TOTALS:

01 of 15 Checks:	45,356.10
00 Void Checks:	0.00
01 of 15 Disbursements:	45,356.10

12/2018 12:55 PM
r: Angie
Genoa Township

CHECK REGISTER FOR GENOA TOWNSHIP
CHECK NUMBERS 2198 - 2300

Page: 1/1

ck Date	Check	Vendor Name	Amount
ck 595FN PINE CREEK OPERATING FUND #595			
1/2018	2198	CITY OF BRIGHTON	10,000.00

FN TOTALS:

01 of 1 Checks:	10,000.00
00 Void Checks:	0.00
01 of 1 Disbursements:	10,000.00

GENOA CHARTER TOWNSHIP BOARD
Regular Meeting and Public Hearing
June 4, 2018

MINUTES

Supervisor Rogers called the regular meeting of the Genoa Charter Township Board to order at 6:30 p.m., with the Pledge of Allegiance. The following members were present constituting a quorum for the transaction of business: Bill Rogers, Paulette Skolarus, Robin Hunt, Jim Mortensen, Terry Croft, Diana Lowe and Jean Ledford. Also present were Township Manager, Michael Archinal; Township Attorney, Joe Seward; and 12 persons in the audience.

A Call to the Public was made with no response.

Approval of Consent Agenda:

Moved by Lowe and supported by Mortensen to approve all items listed under the consent agenda as requested. The motion carried unanimously.

1. Payment of Bills.

2. Request to Approve Minutes: April 30, 2018 Joint Meeting of all Boards

May 7, 2018 Regular Board

3. Request for approval to contract with Source Inc. to provide pre and public accuracy tests relative to the August Primary at a cost not to exceed \$3,065.00.

4. Request for approval of a fireworks application from Calvin Heckman for a display scheduled July 7, 2018 at 4127 Clifford Road in Genoa Township.

5. Request for approval of a fireworks application from Calvin Heckman for a display scheduled July 21, 2018 at Mt. Brighton, 4141 Bauer Road in Genoa Township.

Approval of Regular Agenda:

Moved by Lowe and supported by Mortensen to approve for action all items listed under the regular agenda as requested. The motion carried unanimously.

6. Request for approval of a rezoning (Ordinance Z-18-02) involving approximately 198 acres from Agricultural (AG) to Parks and Recreational Facilities (PRF). The property in question is located north of McClements Road both the east and west of Kellogg Road. The rezoning involves parcels 4711-02-400-004, 4711-01-300-005 and 4711-01-300-006 (known as the Fillmore Property). The request is petitioned by the Livingston County Planning Department.

A call to the public was made with no response.

Moved by Skolarus and supported by Ledford to approve the rezoning of the Fillmore County Park property as requested. The motion carried by roll call vote as follows: Ledford, Croft, Hunt, Lowe, Mortensen, Skolarus and Rogers. Nays – None. Absent – None.

7. Consideration of a request to approve the Environmental Impact Assessment dated May 2, 2018 corresponding to a site plan for the proposed phase 1 of the Fillmore County Park

located at on the north side of McClements Road east of Kellogg Road on parcels 11-01-300-005 and 11-01-300-006. Phase 1 includes a driveway, parking area, vault restroom, multi-purpose field, and 5k trail. The request is petitioned by the Livingston County Planning Department.

Moved by Ledford and supported by Croft to approve the environmental impact assessment dated May 2, 2018 corresponding to the approved site plan for the Fillmore County Park property as requested. The motion carried unanimously.

8. Consideration of a request to approve a special use, site plan and environmental impact assessment for a proposed 30,000 sq. ft. automotive assembly building including outdoor storage and storage of hazardous materials for Truck and Trailer Specialties. The property in question is located on a vacant 10-acre parcel located on the west side of Grand Oaks Drive, south of Grand River Avenue (Parcel# 11-05-300-051). The request is petitioned by ACS Build Inc.

A. Disposition of Special Use Application.

Moved by Croft and supported by Lowe to approve the special use permit for automotive assembly, outdoor equipment/material storage, and accessory storage/use of hazardous material because it has been found that the request meets the requirements of Section 19.03 of the Township Ordinance. The motion carried unanimously.

B. Disposition of Environmental Impact Assessment (4-4-18)

Moved by Hunt and supported by Skolarus to approve the environmental impact assessment dated 04/04/2018 with the following conditions:

1. Item H shall refer to a revised PIP Plan which shall be submitted and that addresses the concerns identified by the Planning Commission. The revised PIP Plan and impact assessment shall be reviewed and approved by the Township staff prior to submittal for a Land Use Permit. The motion carried unanimously.
2. A statement about dust control measures to be utilized on-site shall be added to item E and submitted prior to issuance of a land use permit.

The motion carried unanimously.

C. Disposition of Site Plan (5-24-18)

Moved by Hunt and supported by Lowe to approve the site plan dated May 24, 2018 with the following conditions:

1. The applicant shall return to the Planning Commission for review and approval of a more decorative/attractive fence material for the portion of the fence that is visible from Grand Oaks Drive.
2. The final construction plans shall not have any floor drains in the shop area.
3. The requirements of the Brighton Area Fire Authority shall be met
4. The applicant shall work with the MHOG Utility authority on the construction plan review phase.

5. Utility easements shall be provided prior to the issuance of a Certificate of Occupancy.
6. Any signage proposed will require a permit and should be approved by the Township prior to installation and purchase.

The motion carried unanimously.

9. Consider approval of a request to enter into contract negotiations with Advanced Disposal for refuse and recycling collection services.

Moved by Mortensen and supported by Ledford to allow the township administrative committee to enter into contract negotiations with Advanced Disposal with a five -year contract beginning Oct. 1, 2018. The motion carried unanimously.

10. Final review of the newsletter to be included in the summer tax billing to be mailed July 1, 2018.

The newsletter was approved with minor changes as requested. No formal action was taken by the board.

The regular meeting and public hearing of the board was adjourned at 7:52 p.m.



Paulette A. Skolarus, Clerk
Genoa Charter Township

2018 Application for Fireworks Other Than Consumer or Low Impact

FOR USE BY LEGISLATIVE BODY OF CITY, VILLAGE OR TOWNSHIP BOARD ONLY

10

Authority: 2011 PA 256	The LEGISLATIVE BODY OF CITY, VILLAGE OR TOWNSHIP BOARD will not discriminate against any individual or group because of race, sex, religion, age, national origin, color, marital status, disability, or political beliefs. If you need assistance with reading, writing, hearing, etc., under the Americans with Disabilities Act, you may make your needs known to this Legislative Body of City, Village or Township Board.	DATE PERMIT(S) EXPIRE:
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TYPE OF PERMIT(S) (Select all applicable boxes)

Agricultural or Wildlife Fireworks
 Articles Pyrotechnic
 Display Fireworks
 Public Display
 Private Display
 Special Effects Manufactured for Outdoor Pest Control or Agricultural Purposes

NAME OF APPLICANT Chris Bonk		ADDRESS OF APPLICANT 5474 W. Oldwood	AGE OF APPLICANT 18 YEARS OR OLDER <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
NAME OF PERSON OR RESIDENT AGENT REPRESENTING CORPORATION, LLC, DBA OR OTHER		ADDRESS PERSON OR RESIDENT AGENT REPRESENTING CORPORATION, LLC, DBA OR OTHER	
IF A NON-RESIDENT APPLICANT (LIST NAME OF MICHIGAN ATTORNEY OR MICHIGAN RESIDENT AGENT)		ADDRESS (MICHIGAN ATTORNEY OR MICHIGAN RESIDENT AGENT)	TELEPHONE NUMBER
NAME OF PYROTECHNIC OPERATOR Superior Pyrotechnics		ADDRESS OF PYROTECHNIC OPERATOR 200 S. Crown Street Westland.	AGE OF PYROTECHNIC OPERATOR 18 YEARS OR OLDER <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
NO. YEARS EXPERIENCE 20+	NO. DISPLAYS 100+	WHERE Lake Chemung	
NAME OF ASSISTANT		ADDRESS OF ASSISTANT	AGE OF ASSISTANT 18 YEARS OR OLDER <input type="checkbox"/> YES <input type="checkbox"/> NO
NAME OF OTHER ASSISTANT		ADDRESS OF OTHER ASSISTANT	AGE OF OTHER ASSISTANT 18 YEARS OR OLDER <input type="checkbox"/> YES <input type="checkbox"/> NO

EXACT LOCATION OF PROPOSED DISPLAY
Lake Chemung see map

DATE OF PROPOSED DISPLAY 6/30/2018	TIME OF PROPOSED DISPLAY 10 PM
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MANNER AND PLACE OF STORAGE, SUBJECT TO APPROVAL OF LOCAL FIRE AUTHORITIES, IN ACCORDANCE WITH NFPA 1123, 1124 & 1126 AND OTHER STATE OR FEDERAL REGULATIONS PROVIDE PROOF OF PROPER LICENSING OR PERMITTING BY STATE OR FEDERAL GOVERNMENT

AMOUNT OF BOND OR INSURANCE (TO BE SET BY LOCAL GOVERNMENT) 1,600,000.00	NAME OF BONDING CORPORATION OR INSURANCE COMPANY Partners Group Ltd
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ADDRESS OF BONDING CORPORATION OR INSURANCE COMPANY
11225 SE 6th st Suite 110 Bellevue WA 98004

NUMBER OF FIREWORKS	KIND OF FIREWORKS TO BE DISPLAYED (Please provide additional pages as needed)
	See attached

SIGNATURE OF APPLICANT 	DATE 6/8/2018
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Chris Bonk 517 202 1034



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
2/8/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER The Partners Group Ltd 11225 SE 6th St., Suite 110 Bellevue WA 98004	CONTACT NAME: Janet Nau	
	PHONE (A/C No, Ext): 425-455-5640	FAX (A/C No): 425-455-6727
E-MAIL ADDRESS: jnau@tpgrp.com		
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A: T.H.E. Insurance Company		12866
INSURER B:		
INSURER C:		
INSURER D:		
INSURER E:		
INSURER F:		

COVERAGES	CERTIFICATE NUMBER: 427877085	REVISION NUMBER:
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THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> \$2,000 Deductible GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO.JECT <input type="checkbox"/> LOC	Y		CPP010490703	2/1/2018	2/1/2019	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ Excluded PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ /A PRODUCTS - COMP/OP AGG \$ 2,000,000
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 0			ELP001193203	2/1/2018	2/1/2019	EACH OCCURRENCE \$ 9,000,000 AGGREGATE \$ 9,000,000
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				<input type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
The following are Additional Insured on General Liability as their interest may appear as respects to operations performed by or on behalf of the Named Insured, as required by written contract:

Fireworks display to be discharged on or near the waters of Lake Chemung in Howell, MI
Date of Display: June 30, 2018 (R.D. July 1, 2018)

CERTIFICATE HOLDER Mark Popovich 200 S. Crown Street dba Superior Pyro Westland MI 48186 USA	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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Display Product	Case Quantity	Total
31 Shot 2.25" Dream Weaver		1
300 Shot RWB Crossette		2
100 Shot Assorted Strobe Willow		2
Charlie special		2
132 shot flower pistils		1
280 Shot Fan Shaped 3-Times Whistle		1
130 shot Golden Waterfall		1
250 shot Gold Crossette V cake		1
25 Shot 3" Pink Heart Footprint		1
66 Shot Armageddon (1.75")		1
200 shot crackling tail to blaster Sky Angel		1
31 shot Silver strobing snow		1
25 Shot 2.5" Mammoth Peony/Thunder		2
36 shot 2.5" RWB Peanut Salute		2
24 shot ring shells		1
1.75 Salute, Thiball		1
30 Shot 2" Jubilee		1
49 Shot Homeland		2
66 shot stroll blue		1
90 shot color head		1
100 shot silver spinner		1
100 shot assorted variety color		1
35 Shot Floral Shell		1
31 shot 2.25" gorgeous starb		1
48 Shot Water Cake, Sliver Crown		2
100 Shot Wave Willow		2

Total cake count:

35

72 quantity	3" shells	72	2	144
36 quantity	4" shells	36	1	36
18 quantity	5" shells	18	2	36
9 quantity	6" shells	9	4	36
	5" LBS Salute	1	5	5
	8" 8" Glittering Silver to Red & Blue	1	3	3

I N A L E	3" RWB Tiger Tail w/Report chain	12	18	216
	3" Finale, Red, White, Blue chain	12	18	216
	3" Tit salute chain	12	12	144
Total shell count:				836



Headquarters
 200 S. Crown Street
 Westland, MI 48186
 Main
 (865) 314-6347
 Web
 www.superiorpyro.com

THIS CONTRACT (this "Contract") is made this 6/10 day of June, 2018 by and between Mark Popovich, DBA "Superior Pyro", and Chris Bonk ("Sponsor"), with its principal place of business located in Adrian.

WHEREAS, Superior Pyro is desirous of providing Sponsor with a fireworks exhibition and display for Sponsor's benefit under such terms and conditions as provided herein, and thereby, the parties agree as follows:

1. Fireworks Display.

Superior Pyro shall sell, furnish and deliver to Sponsor certain fireworks which Superior Pyro agrees to exhibit and display on June 30, 2018 @ 10:00 PM in accordance with the program set forth and agreed upon at the time of the signing of this Contract, the specifics of which are set forth in the "Fireworks Exhibition and Display Program" attached hereto and incorporated herein by reference thereto (the "Fireworks Display").

2. Payment Schedule.

For and in consideration of the Fireworks Display, Sponsor agrees to pay Superior Pyro the sum of \$15,500 (the "Contract Price") paid as follows: a. 50% of the Contract Price due upon the signing of this Contract; b. the balance of the Contract Price due within five (5) days of completion of the Fireworks Display.

Sponsor agrees to pay interest at the rate of 50% per month on any delinquent balance of the Contract Price until paid in full. Payment shall be made by certified check or otherwise as agreed by Superior Pyro to: *Mark Popovich at 200 S. Crown St., Westland, MI 48186*. Furthermore, in the event Sponsor fails to perform its obligations and responsibilities as set forth herein and it becomes necessary for Superior Pyro to enforce its rights by hiring an attorney, Sponsor shall be responsible for all attorneys' fees and costs incurred by Superior Pyro to collect said sums.

3. Display Responsibilities.

Superior Pyro and Sponsor will collaborate in the performance of all tasks relating to the Fireworks Display. These tasks include, but are not limited to, (i) procuring and furnishing a place suitable for the Fireworks Display (the "Display Site"), (ii) applying for, obtaining and securing all permits, licenses and approvals required by all applicable local, state and federal laws and regulations as well as those required by any local police and fire departments for the Fireworks Display (collectively, the "Required Approvals"), (iii) providing adequate private and/or public security, police and fire protection, (iv) securing an acceptable location with private and/or public security personnel to park the Superior Pyro fireworks truck(s) overnight (or for such longer or shorter period as Superior Pyro may reasonably require in order to effectively provide the Fireworks Display), (v) securing adequate protection to preclude all individuals, other than those authorized by Superior Pyro, from entering the security area designated by Superior Pyro, (vi) keeping unauthorized persons or personal or real property of any kind, including, without limitation, motor vehicles, outside of the Display Site, fallout area or safe zone. Superior Pyro and Sponsor shall fulfill their responsibilities as set forth herein in accordance with all local, state and federal rules, laws, orders and regulations, including those of the National Fire Protection Association (NFPA).

4. Indemnification and Limitation of Liability.

Sponsor shall indemnify, defend and hold Superior Pyro and its shareholders, directors, officers, employees, agents, representatives and insurers harmless from any and all demands, claims, causes of action, judgments or liability (including, without limitation, the costs of suit and reasonable costs of experts and attorneys) arising from damage to or destruction of property (including, without limitation, real and personal) or bodily or personal injuries (including, without limitation, death), whether arising from tort, contract or otherwise, that occur directly or indirectly from (a) the gross negligence or willful misconduct of Sponsor or its employees, agents, contractors or representatives, or (b) the failure of Sponsor to comply with its obligations and responsibilities as set forth herein. Superior Pyro shall indemnify, defend and hold Sponsor harmless from any and all demands, claims, causes of action, judgments or liability (including, without limitation, the costs of suit and reasonable costs of experts and attorneys) arising from damage to or destruction of property (including, without limitation, real and personal) or bodily or personal injuries (including, without limitation, death), whether arising from tort, contract or otherwise, that occur directly or indirectly from the gross negligence or willful misconduct of Superior Pyro or its employees, agents, contractors or representatives. Sponsor shall not under any circumstances be entitled to recover any consequential, incidental, exemplary, special and/or punitive damages from Superior Pyro, including, without limitation, loss of income, business or profits.



5. Postponement.

In the event that weather is such that Superior Pyro, in its sole and absolute discretion, determines that the Fireworks Display would be impossible, impractical or would unnecessarily increase the risk of damage or danger to person and/or property, the parties agree to immediately hold a postponement meeting at which time an attempt to reschedule the Fireworks Display shall be discussed with a view toward reaching a mutually satisfactory postponement time and/or date. In the event the mutually satisfactory postponement time and/or date is beyond the day following the scheduled Fireworks Display and it is impracticable for the personnel and equipment of Superior Pyro to remain at Sponsor's location until the rescheduled Fireworks Display date, then Sponsor shall pay the actual expenses incurred by Superior Pyro related to the postponement, which shall not exceed forty percent (40%) of the Contract Price. Actual expenses include, but are not limited to, expenses for travel, lodging, labor, meals, rentals, permit fees, set-up and/or dismantling of display, additional taxes or surcharges, or any other additional expenses that incurred prior to and/or as a result of the postponement or cancellation.

6. Cancellation.

If (i) Sponsor cancels this Contract for any reason, or (ii) Superior Pyro is unable to timely complete all tasks relating to the Fireworks Display in accordance with this Contract with the assistance of Sponsor and cancels this Contract despite both parties' best efforts, liquidated damages for such cancellation shall be paid by Sponsor to Superior Pyro as follows: a. In the event the Fireworks Display is cancelled more than thirty (30) days before the date scheduled for the Fireworks Display, twenty-five percent (25%) of the amount of the Contract Price; b. In the event the Fireworks Display is cancelled no more than thirty (30) days and no less than four (4) days before the Contract, fifty percent (50%) of the Contract Price; c. If the Fireworks Display is cancelled no more than three (3) days but before the day scheduled for the Fireworks Display, seventy-five percent (75%) of the Contract Price; or d. On the day scheduled for the Fireworks Display, one hundred percent (100%) of the Contract Price.

In the event that Sponsor chooses to terminate this Contract, it shall do so by written notice via certified mail addressed to: Superior Pyro, 200 S. Crown St., Westland, MI 48186. Notice shall be effective upon receipt of said written notice by Superior Pyro. Except as provided in Section 5 above with respect to weather postponement, in the event of circumstances beyond the control of either party, such as fire, strikes, delay, acts of God or similar causes which prevent the delivery of materials or performances as set forth herein, the parties hereto release one another from any and all obligations and responsibilities contained herein.

7. Venue.

In any action on or relating to this Contract, the parties hereto consent to the exclusive jurisdiction and venue of the state courts located in Howell, Michigan and of the federal courts located in the United States District Court for the Eastern District of Michigan.

8. Legal Construction.

If any provision of this Contract is held to be illegal, invalid or otherwise unenforceable, then: (a) the same shall not affect other terms or provisions of this Contract; and (b) such term or provision shall be deemed modified to the extent necessary to render such term or provision enforceable and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest extent the intent and agreements of the parties set forth herein.

9. Assumptions and Conditions

- i. Adequate space and capability on 5 barges to support 79 racks and 35+ large 1.3g display firework cakes
- ii. Customer will provide dumpster (or disposal process) for spent cakes after show
- iii. Superior Pyro will provide: Crew, liability insurance, display fireworks product, racks/mortars and electronic firing system
- iv. Customer will partner with Superior Pyro to obtain permit from city/township as noted in section 3 of this contract
- v. Product listed in "Fireworks Exhibition and Display Program" is subject to substitution in the event of non-availability
- vi. Customer assumes responsibility for supplied barge sea-worthiness (ability of barges to support weight and down force from ignition and launch of aerial fireworks display)



10. Entire Agreement.

This Contract and the Fireworks Exhibition and Display Program constitutes the entire agreement between the parties hereto, and there are no other understandings, either oral or written, regarding to the subject matter hereof.

IN WITNESS WHEREOF, the undersigned executed this Contract by and through their authorized representatives whose names appear below.

SUPERIOR PYRO

By: _____

Its: _____

SPONSOR:

By: Chris Bonk

Its: [Signature]

Wolverine Fireworks Display Inc.

www.wolverinefireworks.com

Phone 989-662-0121

Fax 989-662-0122

REQUIRED DIAGRAM AND FIRING SITE INFORMATION (DRAWING REQUIRED)

* 1 of 2 *

Dear Customer:

Our Goal is to provide you with the BEST "BANG" for your budget under the safest conditions. In this regard, we ask that you supply us with a diagram of the display site. * The diagram must show the distances from the discharge site ** to the spectators, parking areas, and any buildings.

Below is a check list for you to follow while you are making the diagram. If an item is not applicable to your site, please insert "N/A".

ALL DISTANCES ARE IN FEET FROM THE DISCHARGE SITE TO THE FOLLOWING AREAS:

- | | | |
|--|-------------|------|
| 1) Closest spectator area | <u>800</u> | FEET |
| 2) Parking areas | <u>850</u> | FEET |
| 3) Occupied Buildings: Residents etc, | <u>1000</u> | FEET |
| 4) Public Buildings: (Schools, Churches, Hospitals
correctional Facilities, Etc. | <u>N/A</u> | FEET |
| 5) Fuel Pumps/ Storage, Explosives/Toxic Material
Gasoline Stations, Refineries, Etc. | <u>N/A</u> | FEET |
| 6) Temporary Event Set-ups: Tents, Carnival Rides,
Concession Stands, Etc. | <u>N/A</u> | FEET |
| 7) Highways, Roads, Streets, Active Railroads | <u>950</u> | FEET |
| 8) Overhead Obstructions: Electrical Lines, Lights,
Trees. | <u>950</u> | FEET |

Maximum Shell size being used in display: 6"

Show Name/Date of event: Lake Chemung / Howell, MI - June 30, 2018

Name, Job Position and Address of Person Completing the Above Information:

MARK POPOVICH, OPERATOR (LEAD SHOOTER)
200 S. CROWN ST.
WESTLAND, MI, 48186

Signature Mark Popovich

Date: 2/7/2018

* NFPA 1123 defines "display site": The immediate area where a fireworks display is conducted, including the discharge site, the fall out area, and the required separation distance from mortars to spectator viewing areas, but not spectator viewing areas or vehicle parking areas.

** NFPA 1123 defines "discharge site": The area immediately surrounding the fireworks mortars used for an outdoor fireworks display.

INSURED: Wolverine Fireworks Display, Inc.

REQUEST FOR A CERTIFICATE OF INSURANCE FOR A SHIP SHOW

Certificate Holder
Name & Address:

MARK POPOVICH, DBA: SUPERIOR PYRO

200 S. CROWN STREET

WESTLAND, MI 48186

Additional Insured:

Location of Display

LAKE CHEMUNG - HOWELL, MICHIGAN

Date of Display:

JUNE 30, 2018

Rain Date:

JULY 1, 2018

AM/PM

10:00

Type of Discharge:

Aerial X

Special Effect

WATER CAKES

Insured Fax:

E-mail Address:

glincoln@wolvdisplay.com

Date of Request:

Revision of Certificate #:

Comments:

DISPLAY WILL BE SHOT BY A LICENSED PYROTECHNICIAN IF THE STATE REQUIRES LICENSING.

WARRANTY:

The individual or group applying for coverage for this show to be shot at the date and location shown above, attests to the fact that ALL of the material to be used in this show has been purchased from the named insured, shown above as the Insured.

Signed:

Mark Popovich

Dated:

2/7/2018

Wolverine FIREWORKS

205 West Seidlers Rd. • Kawkawlin, MI 48631
Phone: 989.662.0121 • Fax: 989.662.0122

Display, Inc.

Visit us at www.wolverinefireworks.com

Disclaimer of Insurance Deductible

- SUPERIOR PYRO
MARY POPOVICH - 200 S. CROWN ST., WESTLAND, MI 48186 ["Company"] agrees to
 (Full name and address of Company) * Please Print*
 comply with the most recent edition of the N.F.P.A. 1123 guidelines for Fireworks Display,
 including, but not limited to its Table of Distances, in organizing and conducting a fireworks
 display on 6/30/2018 for CHRIS BONK.
 Date (Name of Event or Organization) * Please print *
- Company fully recognizes, and in consideration of sale of fireworks to Company for use in the display as set forth in paragraph 1 above, agrees to be personally responsible, without off-set or deduction, for the \$5,000.00 deductible provided for in *Wolverine Fireworks Display, Inc.*'s policy of insurance as a result of any claim asserting any injury or property damage as a result of the manner or method in which Company undertakes the fireworks display referenced in paragraph 1 above.
- Company shall pay to *Wolverine* upon *Wolverine's* demand any deductible amount applied and/or charged to and/or assessed against *Wolverine Fireworks Display, Inc.*
- Company understands and agrees that *Wolverine Fireworks Display, Inc.* will not be liable for such deductible amount with respect to any claim made as referenced in paragraph 2 above. Company agrees to indemnify and hold harmless *Wolverine Fireworks Display, Inc.* against any and all responsibility or obligation with respect to such deductible.
- Company further acknowledges and agrees that its responsibility for such deductible is not intended to act as a waiver or limitation of any rights *Wolverine Fireworks Display, Inc.* may otherwise have as to Company's responsibility and/or liability for any claim of injury or property damage associated with the fireworks display referenced in paragraph 1 above.

Company:

By: Mary Popovich

Its: owner

Date: 2/7/2018

ACKNOWLEDGED BY:
WOLVERINE FIREWORKS
DISPLAY, INC.

BY: _____

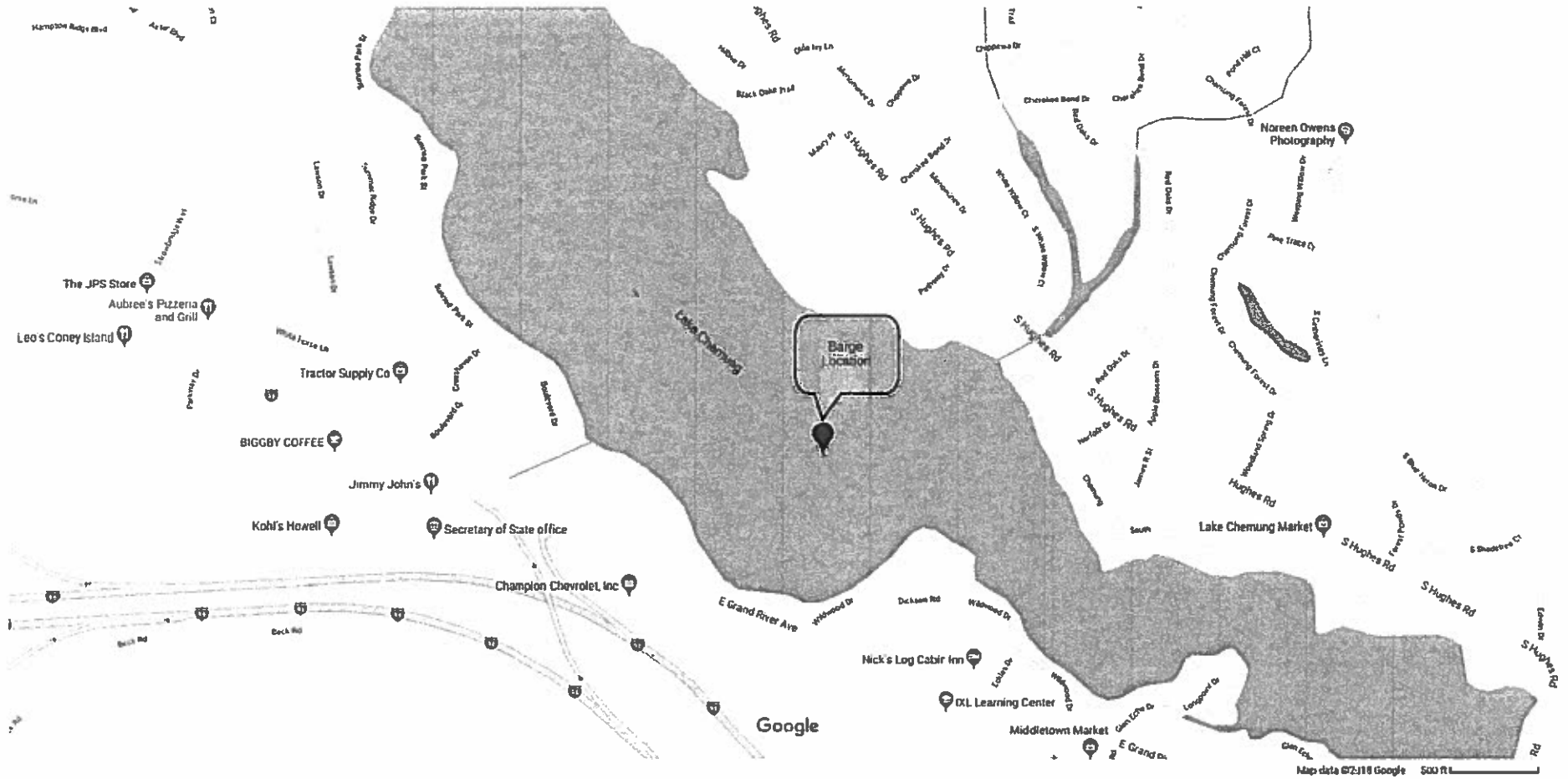
Its: _____

Date: _____

Google Maps

Lake Chemung

June 30th 2018 Fireworks Display show



CERTIFICATE OF ATTENDANCE

This is to verify that
Mark Popovich

Has successfully completed

APA's 6-hour classroom Outdoor Display Operator Continuing Education Fireworks informational seminar on (1.3G & 1.4G) Outdoor Display / Proximate pyrotechnics best industry Practices, Including the safe storage, transportation, and use of fireworks & articles pyrotechnic.

**April 22, 2017
Wolverine Fireworks, Inc.
Kawkawlin, MI**



Gregg Smith

Gregg Smith / Presenter

James B. Lempert
Wolverine Fireworks Display, Inc.

205 West Seidlers Road / Kawkawlin, MI 48631 / (989) 662-0121

ADDITIONAL INSURED – FIREWORKS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The policy is amended to include as an additional insured:

1. The fair or exhibition association, sponsoring organization or committee for the fireworks event covered under the policy;
2. The owner or lessee of any premises used by the Named Insured for the covered fireworks events;
3. The public authority municipality granting a permit to the Named Insured to operate the covered fireworks event; and
4. Any independent contractor who operates the fireworks display on behalf of the Named Insured;

but only as respects accidents arising out of the negligence of you or your employees while acting in the course and scope of their employment.

All other terms and conditions of the policy remain unchanged.



AT&T Michigan
Lynn Dutton
METRO Act Administrator
54 N. Mill Street
Mailbox #30
Pontiac, MI 48342

June 1, 2018

Genoa Township Clerk
2911 Dorr Rd
Brighton, MI 48116

METRO ACT RIGHT OF WAY PERMIT EXTENSION

Dear Genoa Township Clerk,

This is a letter agreement which extends the existing METRO Act Permit issued by the Genoa Township/Livingston County to Michigan Bell Telephone Company d/b/a AT&T Michigan ("AT&T") which expires on December 31, 2018. The extension is for a term to end on December 31, 2023.

If this is agreeable, please sign both copies of the extension letter agreement in the place provided below and return to AT&T Michigan at the address on this letterhead. Upon receipt AT&T will acknowledge and return one copy for your files.

Additional information regarding this renewal request may be found at <http://www.michigan.gov/mpsc>. Please click on Telecommunications, METRO Act/Right of Way, and AT&T 5 Year permit extension.

We would appreciate return of the signed copies within 30 days of receiving this request. Your cooperation is appreciated.

If you have any questions feel free to contact Ms. Lynn Dutton via e-mail, LD1432@att.com or 248-424-0124.

Agreed to by and on behalf of the
Genoa Township

**Michigan Bell Telephone Company d/b/a
AT&T acknowledges receipt of this
Permit Extension granted by the municipality.**

By: _____
Signature

By: _____
Lynn Dutton

Its: _____

Its: METRO Act Administrator

Date: _____

Date: _____

**METROPOLITAN EXTENSION TELECOMMUNICATIONS RIGHTS-OF-WAY OVERSIGHT
ACT
Act 48 of 2002**

AN ACT to create a telecommunication rights-of-way oversight authority; to provide for fees; to prescribe the powers and duties of municipalities and certain state agencies and officials; to provide for penalties; and to repeal acts and parts of acts.

History: 2002, Act 48, Eff. Nov. 1, 2002.

The People of the State of Michigan enact:

484.3101 Short title; purpose of act.

Sec. 1. (1) This act shall be known and may be cited as the "metropolitan extension telecommunication rights-of-way oversight act".

(2) The purpose of this act is to do all of the following:

(a) Encourage competition in the availability, prices, terms, and other conditions of providing telecommunication services.

(b) Encourage the introduction of new services, the entry of new providers, the development of new technologies, and increase investment in the telecommunication infrastructure in this state.

(c) Improve the opportunities for economic development and the delivery of telecommunication services.

(d) Streamline the process for authorizing access to and use of public rights-of-way by telecommunication providers.

(e) Ensure the reasonable control and management of public rights-of-way by municipalities within this state.

(f) Provide for a common public rights-of-way maintenance fee applicable to telecommunication providers.

(g) Ensure effective review and disposition of disputes under this act.

(h) Allow for a tax credit as the sole means by which providers can recover the costs under this act and to insure that the providers do not pass these costs on to the end-users of this state through rates and charges for telecommunication services.

(i) Promote the public health, safety, welfare, convenience, and prosperity of this state.

(j) Create an authority to coordinate public right-of-way matters with municipalities.

History: 2002, Act 48, Eff. Nov. 1, 2002.

Compiler's note: For transfer of powers and duties of the director of the metropolitan extension telecommunication rights-of-way oversight authority to the director of the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

484.3102 Definitions.

Sec. 2. As used in this act:

(a) "Authority" means the metropolitan authority created under the local community stabilization authority act.

(b) "Broadband internet access transport services" means the broadband transmission of data between an end-user and the end-user's internet service provider's point of interconnection at a speed of 200 or more kilobits per second to the end-user's premises.

(c) "Commission" means the Michigan public service commission in the department of licensing and regulatory affairs.

(d) "Exchange" means that term as defined under section 102 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2102.

(e) "Incumbent local exchange carrier" means that term as defined under section 251(h) of title II of the communications act of 1934, chapter 652, 110 Stat. 61, 47 USC 251.

(f) "Metropolitan area" means 1 or more municipalities within this state located, in whole or in part, within a county having a population of 10,000 or more or a municipality within this state that enacts an ordinance or resolution electing to be classified as part of a metropolitan area under this act.

(g) "Municipality" means a township, city, or village.

(h) "Person" means an individual, corporation, partnership, limited partnership, association, limited liability company, governmental entity, or any other legal entity.

(i) "Public right-of-way" means the area on, below, or above a public roadway, highway, street, alley, easement, or waterway. Public right-of-way does not include a federal, state, or private right-of-way.

(j) "Telecommunication facilities" or "facilities" means the equipment or personal property, such as copper

and fiber cables, lines, wires, switches, conduits, pipes, and sheaths, which are used to or can generate, receive, transmit, carry, amplify, or provide telecommunication services or signals. Telecommunication facilities or facilities do not include antennas, supporting structures for antennas, equipment shelters or houses, and any ancillary equipment and miscellaneous hardware used to provide federally licensed commercial mobile service as defined in section 332(d) of part I of title III of the communications act of 1934, chapter 652, 48 Stat. 1064, 47 USC 332 and further defined as commercial mobile radio service in 47 CFR 20.3, and service provided by any wireless, 2-way communications device.

(k) "Telecommunication provider", "provider", and "telecommunication services" mean those terms as defined in section 102 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2102. Telecommunication provider does not include a person or an affiliate of that person when providing a federally licensed commercial mobile radio service as defined in section 332(d) of part I of the communications act of 1934, chapter 652, 48 Stat. 1064, 47 USC 332 and further defined as commercial mobile radio service in 47 CFR 20.3, or service provided by any wireless, 2-way communication device. For the purposes of this act only, a provider also includes all of the following:

(i) A cable television operator that provides a telecommunication service.

(ii) Except as otherwise provided by this act, a person who owns telecommunication facilities located within a public right-of-way.

(iii) A person providing broadband internet transport access service.

(iv) An internet service provider that provides a telecommunication service.

History: 2002, Act 48, Eff. Nov. 1, 2002;—Am. 2014, Act 88, Eff. Oct. 1, 2014.

Compiler's note: Enacting section 2 of Act 88 of 2014 provides:

"Enacting section 2. This amendatory act does not take effect unless Senate Bill No. 822 of the 97th Legislature is approved by a majority of the qualified electors of this state voting on the question at an election to be held on the August regular election date in 2014."

Request no. 03611'13 of the 97th Legislature, referred to in enacting section 2 of Act 88 of 2014, was filed with the Secretary of State on March 28, 2014, and became 2014 PA 80, Eff. Jan. 1, 2015.

Compiler's note: Act 80 of 2014 was approved by a majority of the voters at the August 5, 2014 primary election. The election results were certified by the Michigan Board of State Canvassers on August 22, 2014.

Compiler's note: The conditions in enacting section 1 of Act 404 of 2012 were not met. Act 404 of 2012 did not go into effect.

484.3103 Local community stabilization authority; powers, duties, functions, and responsibilities; annual report; rules; transfer of certain powers, duties, records, and funds from metropolitan extension telecommunications rights-of-way oversight authority to the authority; abolishment; duties of director of department of licensing and regulatory affairs and state budget director; suit, action, or other proceeding; effect of rules, regulations, orders, contracts, and agreements adopted before October 1, 2014.

Sec. 3. (1) The local community stabilization authority shall exercise the powers, duties, functions, and responsibilities vested in the authority under this act and may contract with the department of licensing and regulatory affairs for 1 or more employees of the department to assist in exercising the powers, duties, functions, and responsibilities. The authority shall coordinate public right-of-way matters with municipalities, assess the fees required under this act, and have the exclusive power to assess fees on telecommunication providers owning telecommunication facilities in public rights-of-way within a municipality in a metropolitan area to recover the costs of using the rights-of-way by the provider.

(2) The authority shall file an annual report of its activities for the preceding year with the governor and the members of the legislative committees dealing with energy, technology, and telecommunications issues on or before March 1 of each year.

(3) The authority may promulgate rules for the implementation and administration of this act in a manner that complies with the requirements of the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(4) On October 1, 2014, all of the following shall occur:

(a) The powers, duties, functions, and responsibilities vested in the metropolitan extension telecommunications rights-of-way oversight authority before October 1, 2014 are transferred to and vested in the authority.

(b) All records, property, grants, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available to the metropolitan extension telecommunications rights-of-way oversight authority are transferred to the authority.

(c) The metropolitan extension telecommunications rights-of-way oversight authority is abolished.

(5) The director of the department of licensing and regulatory affairs shall provide executive direction and supervision for the implementation of the transfers to the authority under subsection (4).

(6) The director of the department of licensing and regulatory affairs shall coordinate with the executive director of the metropolitan extension telecommunications rights-of-way oversight authority to facilitate the transfers to the authority under subsection (4) and shall develop and issue a memorandum of record identifying any pending settlements, issues of compliance with applicable federal and state laws and regulations, or other obligations resolved by the metropolitan extension telecommunications rights-of-way oversight authority before the transfers under subsection (4).

(7) State departments, agencies, officers, and employees shall fully and actively cooperate with and assist the director of the department of licensing and regulatory affairs in the implementation of transfers under subsection (4).

(8) The state budget director shall determine and authorize an efficient process for handling financial transactions and records in this state's financial management system necessary to implement the transfers under subsection (4).

(9) Any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected by the transfers under subsection (4) shall not abate by reason of the taking effect of the transfers under subsection (4). Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected by the transfers under subsection (4).

(10) All rules, regulations, orders, contracts, and agreements relating to the former metropolitan extension telecommunications rights-of-way oversight authority or the powers, duties, functions, and responsibilities transferred under subsection (4) lawfully adopted before October 1, 2014 shall continue in effect until revised, amended, repealed, or rescinded by the authority unless prohibited by law.

History: 2002, Act 48, Eff. Nov. 1, 2002;—Am. 2014, Act 88, Eff. Oct. 1, 2014.

Compiler's note: Enacting section 2 of Act 88 of 2014 provides:

"Enacting section 2. This amendatory act does not take effect unless Senate Bill No. 822 of the 97th Legislature is approved by a majority of the qualified electors of this state voting on the question at an election to be held on the August regular election date in 2014."

Request no. 03611'13 of the 97th Legislature, referred to in enacting section 2 of Act 88 of 2014, was filed with the Secretary of State on March 28, 2014, and became 2014 PA 80, Eff. Jan. 1, 2014.

Compiler's note: Act 80 of 2014 was approved by a majority of the voters at the August 5, 2014 primary election. The election results were certified by the Michigan Board of State Canvassers on August 22, 2014.

Compiler's note: The conditions in enacting section 1 of Act 404 of 2012 were not met. Act 404 of 2012 did not go into effect.

484.3104 Enactment of local laws; limitation; existing rights.

Sec. 4. (1) Except as otherwise provided by this act, after the effective date of this act, a municipality in a metropolitan area shall not enact, maintain, or enforce an ordinance, local law, or other legal requirement applicable to telecommunication providers that is inconsistent with this act or that assesses fees or requires other consideration for access to or use of the public rights-of-way that are in addition to the fees required under this act.

(2) This act shall not affect any existing rights that a provider or municipality may have under a permit issued by a municipality or contract between the municipality and the provider related to the use of the public rights-of-way.

(3) Obtaining a permit or paying the fees required under this act does not give a provider a right to use conduit or utility poles.

History: 2002, Act 48, Eff. Nov. 1, 2002.

484.3105 Use of public rights-of-way; providers subject to permit and fee requirements; facilities located in public right-of-way at effective date of act; permit application.

Sec. 5. (1) A provider using or seeking to use public rights-of-way in a metropolitan area for its telecommunication facilities shall obtain a permit under section 15 from the municipality and pay all fees required under this act. Authorizations or permits previously obtained from a municipality under section 251 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2251, satisfy the permit requirement of this section.

(2) A provider asserting rights under 1883 PA 129, MCL 484.1 to 484.10, is subject to the permit and fee requirements of this act.

(3) Within 180 days from the effective date of this act, a provider with facilities located in a public right-of-way as of the effective date of this act that has not previously obtained authorization or a permit under section 251 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2251, shall submit an application for a permit to each municipality in which the provider has facilities located in a public right-of-way. A provider submitting an application under this subsection is not required to pay the administrative fee required under section 6(4).

(4) The authority may, for good cause, allow a provider up to an additional 180 days to submit the

application required under subsection (3).

History: 2002, Act 48, Eff. Nov. 1, 2002.

484.3106 Applications and permits issued after effective date of act; form and process; disagreement on terms; appointment of mediator; determination by commissioner; extension; request for emergency relief; filing permit application with municipality; route maps; maintenance of website by commission.

Sec. 6. (1) For applications and permits issued after the effective date of this act, the commission shall prescribe the form and application process to be used in applying to a municipality for a permit under section 15 and the provisions of a permit issued under section 15. The initial application forms and, unless otherwise agreed to by the parties, permit provisions shall be those approved by the commission as of August 16, 2001.

(2) If the parties cannot agree on the requirement of additional information requested by the municipality or the use of additional or different permit terms, either the municipality or the provider shall notify the commission, which shall appoint a mediator within 7 days from the date of the notice to make recommendations within 30 days from the date of the appointment for a resolution of the dispute. The commission may order that the permit be temporarily granted pending resolution of the dispute. If any of the parties are unwilling to comply with the mediator's recommendations, any party to the dispute may within 30 days of receipt of the recommendation request the commission for a review and determination of a resolution of the dispute. Except as provided in subsection (3), the determination by the commission under this subsection shall be issued within 60 days from the date of the request to the commission. The interested parties to the dispute may agree to an extension for up to 30 days of the 60-day requirement under this subsection.

(3) A request for emergency relief under section 18(1) shall have the same time requirements and procedures as under section 203 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2203.

(4) Except as otherwise provided by this act, a provider shall file an application for a permit and pay a 1-time \$500.00 application fee to each municipality whose boundaries include public rights-of-way for which access or use is sought by the provider.

(5) An application for a permit under this section shall include route maps showing the location of the provider's existing and proposed facilities in the format as required by the authority under subsection (8). Except as otherwise provided by a mandatory protective order issued by the commission, information included in the route maps of a provider's existing and proposed facilities that is a trade secret, proprietary, or confidential information is exempt from the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(6) A municipality shall notify the commission when it grants or denies a permit, including information regarding the date on which the application was filed and the date on which the permit was granted or denied. The commission shall maintain on its website a listing showing the length of time required by each municipality to grant an application during the immediately preceding 3 years.

(7) Within 90 days after the substantial completion of construction of new facilities in a municipality, a provider shall submit route maps showing the location of the telecommunication facilities to both the commission and the affected municipalities.

(8) The commission shall, after input from providers and municipalities, require that the route maps required under this section be in a paper or electronic format as the commission may prescribe.

History: 2002, Act 48, Eff. Nov. 1, 2002.

484.3107 Inability of provider and municipality to agree; appointment of mediator by commission; determination by commission; issuance; extension.

Sec. 7. If a provider and 1 or more municipalities are unable to agree on arrangements for coordinating and minimizing the disruption of public rights-of-way, ensuring the efficient construction of facilities, restoring the public rights-of-way after construction or other activities by a provider, protecting the public health, safety, and welfare, and resolving disputes arising under this act, the commission shall appoint a mediator within 7 days from the date of the notice to make recommendations within 30 days from the date of the appointment for a resolution of the dispute. If any of the parties are unwilling to comply with the mediator's recommendations, any party to the dispute may within 30 days of receipt of the recommendation request the commission for a review and determination of a resolution of the dispute. The determination by the commission under this section shall be issued within 60 days from the date of the request to the commission. The commission shall issue its determination within 15 days from the date of the request if a municipality demonstrates that the public health, safety, and welfare require a determination before the expiration of the 60 days. The interested parties to the dispute may agree to an extension for up to 30 days of the 60-day

requirement under this section.

History: 2002, Act 48, Eff. Nov. 1, 2002.

484.3108 Maintenance fee.

Sec. 8. (1) Except as otherwise provided by this act, a provider shall pay to the authority an annual maintenance fee as required under this act.

(2) The authority shall determine for each provider the amount of fees required under this section. April 1 to March 31 shall be the annual period covered by each assessment and April 29 the date due for payment. The authority shall prescribe the schedule for the allocation and disbursement of the fees under this act. The authority shall disburse the annual maintenance fee to each municipality as provided under sections 10, 11, and 12 on or before the last day of the month following the month of receipt of the fees by the authority. The authority may authorize the department of treasury to collect and make the allocations and disbursements of fees required under this act. Any interest accrued on the revenue collected under this act shall be used only as provided by this act.

(3) Except as otherwise provided under subsection (6), for the period of November 1, 2002 to March 31, 2003, a provider shall pay an initial annual maintenance fee to the authority on April 29, 2003 of 2 cents per each linear foot of public right-of-way occupied by the provider's facilities within a metropolitan area, prorated for the period specified in this subsection.

(4) Except as otherwise provided under subsection (6), for each year after the initial period provided for under subsection (3), a provider shall pay the authority an annual maintenance fee of 5 cents per each linear foot of public right-of-way occupied by the provider's facilities within a metropolitan area.

(5) The fee required under this section is based on the linear feet occupied by the provider regardless of the quantity or type of the provider's facilities utilizing the public right-of-way or whether the facilities are leased to another provider.

(6) In recognition of the need to provide nondiscriminatory compensation to municipalities for management of their rights-of-way, the fees required under this section shall be the lesser of the amounts prescribed under subsections (3) and (4) or 1 of the following:

(a) For a provider that was an incumbent local exchange carrier in this state on January 1, 2002, the fees within the exchange in which that provider was providing basic local exchange service on January 1, 2002, when restated by the authority on a per access line per year basis, shall not exceed the statewide per access line per year fee of the provider with the highest number of access lines in this state. The authority shall annually determine the statewide per access line per year fee by dividing the amount of the total annual fees the provider is required to pay under subsections (3) and (4) by the provider's total number of access lines in this state.

(b) For all other providers in an exchange, the fee per linear foot for the provider's facilities located in the public rights-of-way in that exchange shall be the same as that of the incumbent local exchange carrier.

(7) If the provider with the highest number of access lines in this state is unable to provide the exact number of linear feet for a determination under subsection (6), the provider shall no later than February 1, 2003 make a good faith estimate, in consultation with the staff of the authority, of the number of linear feet of rights-of-way in which facilities owned by the provider are located in a metropolitan area and pay an annual maintenance fee to the authority based upon the estimate.

(8) If an estimate of the linear feet is made under subsection (7), the statewide per access line per year cost shall be determined by the authority based on that provider's good faith estimate. Upon the true up of the estimated linear feet under subsection (9), the authority shall adjust the fees of all providers affected by subsection (6).

(9) Within 360 days of the effective date of this act, a provider making an estimate under subsection (8) shall true up the estimated amount of linear feet of the provider's facilities in rights-of-way in a metropolitan area to the actual amount of linear feet of rights-of-way in a metropolitan area owned by the provider. If the actual amount of linear feet of rights-of-way in which facilities owned by the provider are located exceeds the estimated amount, the provider shall pay the authority the difference within 30 days of the true up. If the actual amount of linear feet of rights-of-way in which facilities owned by the provider are located is less than the estimated amount, the provider shall receive a corresponding credit from the authority against the annual maintenance fee due for payment in the succeeding year.

(10) The authority may prescribe the forms, standards, methodology, and procedures for assessing fees under this act. Each provider and municipality shall provide reasonably requested information regarding public rights-of-way that is required to assist the authority in computing and issuing the assessments under this section.

(11) Notwithstanding any other provision of this act, a provider possessing a franchise or operating with

the consent of a municipality to provide and that is providing cable services within a metropolitan area is subject to an annual maintenance fee of 1 cent per linear foot of public right-of-way occupied by the provider's facilities within the metropolitan area. An affiliate of such a provider shall not pay any additional fees to occupy or use the same facilities in public rights-of-way as initially constructed for and used by a cable provider. The fee required under this subsection is in lieu of any other maintenance fee or other fee except for fees paid by the provider under a cable franchise or consent agreement. A cable franchise or consent agreement from a municipality that allows the municipality to seek right-of-way related information comparable to that required by a permit under this act and that provides insurance for right-of-way related activities shall satisfy any requirement for the holder of the cable franchise or consent agreement or its affiliates to obtain a permit to provide information services or telecommunications services in the municipality.

(12) The cable provider may satisfy the fee requirement under subsection (11) by certifying to the authority that the provider's aggregate investment in this state, since January 1, 1996, in facilities capable of providing broadband internet transport access service exceeds the aggregate amount of the maintenance fees assessed under subsection (11).

(13) The fees collected under this act shall be used only as provided by this act and shall be subject to an audit by the state auditor general.

(14) A provider may apply to the commission for a determination of the maximum amount of credit available under section 13b(5) of 1905 PA 282, MCL 207.13b. Each application shall include sufficient documentation to permit the commission to accurately determine the allowable credit. Except as otherwise provided under subsection (15), the commission shall issue its determination within 45 days from the date of the application. Upon certification by the commission of the documentation provided in subdivisions (a) and (b), a provider shall qualify for a credit equal to the costs paid under this act, less the amount of any credit determined under section 13b(1) of 1905 PA 282, MCL 207.13b, and shall not be subject to subsection (16) if the provider files the following documentation under this subsection:

(a) Verification of the costs paid by the provider under this act.

(b) Verification that the provider's rates and charges for basic local exchange service, including revenues from intrastate subscriber line or end-user line charges, do not exceed the commission's approved rates and charges for those services.

(15) If the commission finds that it cannot make a determination based on the documentation required under subsection (14), it may require the provider to file its application under section 203 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2203.

(16) The maximum credit allowed under subsection (14) or (15) shall be the lesser of the following:

(a) The costs paid under this act, less the amount of any credit determined under section 13b(1) of 1905 PA 282, MCL 207.13b.

(b) The amount that the costs paid under this act, together with the provider's total service long run incremental cost of basic local exchange service, exceeds the provider's rates for basic local exchange service plus any additional charges of the provider used to recover its total service long run incremental cost for basic local exchange service. "Total service long run incremental cost" means that term as defined in section 102 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2102.

(17) The tax credit allowed under subsections (14) and (15) shall be the sole method of recovery for the costs required under this act. A provider shall not recover the costs required under this act through rates and charges to the end-users for telecommunication services.

(18) An educational institution is not required to pay the fees and charges or fulfill the mapping requirements required under this act for facilities that are constructed and used as provided under applicable provisions of section 307 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2307. To the extent that an educational institution provides services beyond that allowed by section 307 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2307, the educational institution shall obtain a permit, pay the fees and charges, and fulfill the mapping requirement required under this act for each linear foot of public right-of-way used in providing telecommunication services to residential or commercial customers. An educational institution shall notify the commission if it provides telecommunication services beyond that allowed by section 307 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2307, to a residential or commercial customer for compensation.

(19) An electric or gas utility, or an affiliate of a utility, or an electric transmission provider is not required to obtain a permit, pay the fees and charges, or fulfill the mapping requirements required under this act for facilities located in the public rights-of-way that are used solely for electric or gas utility services including internal utility communications and customer services such as billing or load management. The electric or gas utility, or an affiliate of a utility, or an electric transmission provider shall only obtain a permit, pay the fees

and charges, and fulfill the mapping requirements required under this act for each linear foot of public right-of-way containing facilities leased or otherwise provided to an unaffiliated telecommunication provider or used in providing telecommunication services to a person other than the utility, or its affiliate, for compensation. An electric or gas utility, or an affiliate of a utility, or an electric transmission provider shall notify the commission if the electric or gas utility, or an affiliate of a utility, or an electric transmission provider provides or leases telecommunication services to a person other than the utility or its affiliate for compensation. For the purposes of this subsection, electric and gas utility services include billing and metering services performed for an alternative electric supplier, an alternative gas supplier, electric utility, electric transmission provider, natural gas utility, or a water utility.

(20) A state, county, municipality, municipally owned utility, or an affiliate is not required to obtain a permit, pay the fees and charges, or fulfill the mapping requirements required under this act for facilities located in the public rights-of-way that are used solely for state, county, municipality, or governmental entity, or utility services including internal state, county, municipality, governmental entity, or utility communications and customer services such as billing or load management. The state, county, municipality, municipally owned utility, or an affiliate shall only obtain a permit, pay the fees and charges, and fulfill the mapping requirements required under this act for each linear foot of public right-of-way containing facilities leased or otherwise provided to an unaffiliated telecommunication provider or used in providing telecommunication services to a person other than the state, county, another governmental entity, municipality, municipally owned utility, or its affiliate for compensation. A state, county, municipality, municipally owned utility, or an affiliate shall notify the commission if the state, county, municipality, municipally owned utility, or an affiliate provides or leases telecommunication services to a person other than the state, county, another governmental entity, municipality, municipally owned utility, or its affiliate for compensation. For the purposes of this subsection, utility services include billing and metering services performed for an alternative electric supplier, an alternative gas supplier, electric utility, electric transmission provider, natural gas utility, or a water utility.

(21) The authority may grant to a provider a waiver of the fee requirement of this section for telecommunication facilities located in underserved areas as identified by the authority if 2/3 of the affected municipalities approve the granting of a waiver. If a waiver is granted under this subsection, the amount of the waived fees shall be deducted from the fee revenue the affected municipalities would otherwise be entitled under sections 11 and 12. A waiver granted under this subsection shall not be for more than 10 years. As used in this subsection, "underserved area" means that term as defined under section 7 of the Michigan broadband development authority act.

History: 2002, Act 48, Eff. Nov. 1, 2002.

484.3109 Fee discount.

Sec. 9. (1) If 2 or more providers implement a shared use arrangement and meet the requirements of this section, each provider participating in the arrangement is entitled to a discount of the fees required under section 8 as provided under this section.

(2) To qualify for the shared use discount, each participating provider shall do all of the following:

(a) To the extent permitted by the safety provisions of the applicable electrical code, occupy and use the same poles, trenches, conduits, ducts, or other common spaces or physical facilities jointly with another provider.

(b) Coordinate the construction or installation of its own facilities with the construction schedules of another provider so that any pavement cuts, excavation, construction, or other activities undertaken to construct or install the facilities occur contemporaneously and do not impair the physical condition, or interrupt the normal uses, of the public rights-of-way on more than 1 occasion.

(c) Enter the shared use arrangement after the effective date of this act.

(3) This section does not apply to the utilization or attachment to poles, trenches, conduits, ducts, or other common facilities that were placed in the public rights-of-way before the effective date of this act.

(4) Two or more providers that qualify for a shared use discount are entitled to a 40% discount of the fees imposed by section 8 for each linear foot of public right-of-way in which the shared use occurs.

History: 2002, Act 48, Eff. Nov. 1, 2002.

484.3110 Fee-sharing payments.

Sec. 10. (1) Except as reduced by the amount provided for under subsection (2), the authority shall allocate the annual maintenance fees collected under this act to fund the fee-sharing mechanism under section 11.

(2) To the extent that fees exceed \$30,000,000.00 in any year and are from fees for linear feet of rights-of-way in which telecommunication facilities are constructed by a provider after the effective date of

this act, the authority shall allocate that amount to fund the fee-sharing mechanism under section 12.

(3) To be eligible to receive fee-sharing payments under this act, a municipality shall comply with this act. For the purpose of the distribution under sections 11 and 12, a municipality is considered to be in compliance with this act unless the authority finds to the contrary in a proceeding against the municipality affording due process initiated by a provider, the commission, or the attorney general. If a municipality is found not to be in compliance, fee-sharing payments shall be held by the authority in escrow until the municipality returns to compliance. A municipality is not ineligible to receive fee-sharing payments for any matter found to be a good faith dispute or matters of first impression under this act or other applicable law.

(4) The amount received under sections 11 and 12 shall be used by the municipality solely for rights-of-way related purposes. Rights-of-way purposes does not include constructing or utilizing telecommunication facilities to serve residential or commercial customers.

(5) A municipality receiving funds under sections 11 and 12 with a population of less than 10,000 may file and a municipality receiving funds under sections 11 and 12 with a population of 10,000 or more shall file an annual report with the authority on the use and disposition of the funds. The authority shall prescribe the form of the report to be filed under this subsection, which report shall be in a simplified format.

History: 2002, Act 48, Eff. Nov. 1, 2002.

484.3111 Fee sharing; allocation of fund under section 10(1); excluded municipalities.

Sec. 11. (1) The authority shall allocate the funding provided for fee sharing under section 10(1) as follows:

(a) 75% to be disbursed to cities and villages in a metropolitan area on the basis of the distribution to each city or village under section 13 of 1951 PA 51, MCL 247.663, for the most recent year as a proportion of the total distribution to all cities and villages located in metropolitan areas under section 13 of 1951 PA 51, MCL 247.663, for the most recent year.

(b) 25% to be disbursed to townships in a metropolitan area on the basis of each township's proportionate share of the total linear feet of public rights-of-way occupied by providers within all townships located in metropolitan areas.

(2) Except as otherwise provided under sections 13 and 14, municipalities that are ineligible under section 13 or 14 shall be excluded from the computation, allocation, and distribution of funding under this section.

History: 2002, Act 48, Eff. Nov. 1, 2002.

484.3112 Fee sharing; allocation of fund under section 10(2); weighted linear feet; excluded municipalities.

Sec. 12. (1) The authority shall allocate the funding provided for fee sharing under section 10(2) as follows:

(a) The amount available under this section multiplied by the percentage of weighted linear feet attributable to cities and villages, as compared to the total weighted linear feet attributable to cities, villages, and townships, shall be disbursed to cities and villages in a metropolitan area on the basis of the distribution to each city or village under section 13 of 1951 PA 51, MCL 247.663, for the most recent year as a proportion of the total distribution to all cities and villages located in metropolitan areas under section 13 of 1951 PA 51, MCL 247.663, for the most recent year.

(b) The amount available under this section multiplied by the percentage of weighted linear feet attributable to townships, as compared to the total weighted linear feet attributable to cities, villages, and townships, shall be disbursed to townships on the basis of each township's proportionate share of the total unweighted linear feet of public rights-of-way in or on which providers' facilities are located within all townships located in metropolitan areas.

(2) The following shall be used under this section in determining the weighted linear feet in which telecommunications facilities are first placed by any telecommunications provider after the effective date of this act:

(a) All underground linear feet shall receive a weight of 3.0.

(b) All linear feet in a city, village, or township with a population in excess of 5,000 and not covered under subdivision (a) shall receive a weight of 2.0.

(c) All other linear feet shall receive a weight of 1.0.

(3) Except as otherwise provided under sections 13 and 14, municipalities that are ineligible under section 13 or 14 shall be excluded from the computation, allocation, and distribution of funding under this section.

History: 2002, Act 48, Eff. Nov. 1, 2002.

484.3113 Modification of fees by municipality.

Sec. 13. (1) A municipality is not eligible to receive funds under sections 11 and 12 unless by December 31, 2007 the municipality has modified to the extent necessary any fees charged to providers after the effective date of this act relating to access to and usage of the public rights-of-way to an amount not exceeding the amounts of fees and charges required under this act.

(2) To the extent a telecommunications provider pays fees to a municipality that have not been modified as required by this section, both of the following apply:

(a) The provider may deduct the fees paid from the fee required to be paid under section 8 for those rights-of-way.

(b) The amounts received shall be deducted from the amounts the municipality is eligible to receive under sections 11 and 12.

(3) The authority may allow a municipality in violation of this section to become eligible to receive funds under sections 11 and 12 if the authority determines that the violation occurred despite good faith efforts and the municipality rebates to the authority any fees received in excess of those required under section 8, including any interest as determined by the authority.

(4) A municipality is considered to have modified the fees under subsection (1) if it has adopted a resolution or ordinance, effective no later than January 1, 2008, approving the modification so that providers with telecommunication facilities in public rights-of-way within the municipality's boundaries pay only those fees required under section 8. The municipality shall provide each provider affected by the fee a copy of the resolution or ordinance passed under this subsection.

(5) Except as otherwise provided by a municipality, if section 8 is found to be invalid or unconstitutional, a modification of fees under this section is void from the date the modification was made.

(6) To be eligible to receive fee-sharing payments under this act, a municipality shall not hold a cable television operator in default or seek any remedy for failure to satisfy an obligation, if any, to pay after the effective date of this act a franchise fee or other similar fee on that portion of gross revenues from charges the cable operator received for cable modem services provided through broadband internet transport access services.

(7) If a municipality adopts a resolution as required under this section but adopts it after the distribution of funds under sections 11 and 12 for 2007, the municipality shall be eligible to receive funds for 2007 from funds available after the 2007 distribution date.

History: 2002, Act 48, Eff. Nov. 1, 2002;—Am. 2008, Act 130, Imd. Eff. May 9, 2008.

484.3114 Telecommunication or cable modem service through broadband internet access transport service; requirements; exceptions; violation; complaint.

Sec. 14. (1) Except as otherwise provided by subsection (2), a county, municipality, or an affiliate, shall comply with all of the following requirements:

(a) Before the passage of any ordinance or resolution authorizing a county or municipality to either construct telecommunication facilities or provide a telecommunication or cable modem service provided through a broadband internet access transport service, a county or municipality shall conduct at least 1 public hearing. A notice of the public hearing shall be provided as required by law.

(b) Not less than 30 days before the hearing required under subdivision (a), the county or municipality shall prepare reasonable projections of at least a 3-year cost-benefit analysis. This analysis shall identify and disclose the total projected direct costs of and the revenues to be derived from constructing the telecommunication facilities and providing the telecommunication or cable modem service through a broadband internet access transport service. The costs shall be determined by using accounting standards developed under the uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a.

(c) A county or municipality shall prepare and maintain accounting records in accordance with accounting standards developed under the uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a. The accounting records required under this subdivision are subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(d) Charges for telecommunication service and cable modem services provided through a broadband internet access transport service shall include all of the following:

(i) All capital costs attributable to the provision of the service.

(ii) All costs attributable to the provision of the service that would be eliminated if the service was discontinued.

(iii) The proportionate share of costs identified with the provision of 2 or more county or municipal services including telecommunication services.

(e) A county or municipality that provides a telecommunication service or cable modem service provided through a broadband internet access transport service shall not adopt an ordinance or a policy that unduly

discriminates against another person providing the same service. Subject to other requirements of this section, this subsection shall not be construed as precluding a county or municipality from establishing rates different from those of another person providing the same service.

(f) In providing a telecommunication or cable modem service provided through a broadband internet access transport service, a municipality shall not employ terms more favorable or less burdensome than those imposed by the municipality upon other providers of the same service within its jurisdiction concerning access to public rights-of-ways.

(g) A municipality shall not impose or enforce against a provider any local regulation with respect to public rights-of-way that is not also applicable to the municipality in its provision of a telecommunication or cable modem service provided through a broadband internet access transport service.

(h) In providing a telecommunication or a cable modem service provided through a broadband internet access transport service, a municipality shall not employ terms more favorable or less burdensome than those imposed by the municipality upon other providers of the same service within its jurisdiction concerning access to and rates for pole attachments.

(2) Subsection (1) does not apply to either of the following:

(a) Telecommunication facilities constructed and operated by a county, municipality, or an affiliate, to provide telecommunication service or a cable modem service provided through a broadband internet access transport service that is not provided to any residential or commercial premises.

(b) Telecommunication facilities that are owned or operated by a county, municipality, or an affiliate for compensation, and that are located within the territory served by the county, municipality or its affiliate that provided a telecommunications service or a cable modem service provided through broadband internet access transport service before December 31, 2001 or that allowed any third party to use the county's or municipality's telecommunication facilities for compensation before December 31, 2001, to provide such a service.

(3) If a complaint is filed under section 18 alleging a violation of this section, the commission shall allow a county or municipality to take reasonable steps to correct a violation found by the commission before the commission imposes any penalties.

(4) The commission, in reviewing a complaint under subsection (3), shall consider, in determining whether charges imposed by a county or municipality are in compliance with subsection (1), the applicable federal, state, county, and local taxes and fees paid by the complainant or providers serving that county or municipality.

History: 2002, Act 48, Eff. Nov. 1, 2002.

484.3115 Provider access to and use of public rights-of-way.

Sec. 15. (1) Except as otherwise provided in this section, a municipality shall, upon application, grant to providers a permit for access to and the ongoing use of all public rights-of-way located within its municipal boundaries. A municipality shall act reasonably and promptly on all applications filed for a permit involving an easement or public place.

(2) This section shall not limit a municipality's right to review and approve a provider's access to and ongoing use of a public right-of-way or limit the municipality's authority to ensure and protect the health, safety, and welfare of the public.

(3) A municipality shall approve or deny access under this section within 45 days from the date a provider files an application for a permit for access to a public right-of-way. A provider's right to access and use of a public right-of-way shall not be unreasonably denied by a municipality. A municipality may require as a condition of the permit that a bond be posted by the provider, which shall not exceed the reasonable cost to ensure that the public right-of-way is returned to its original condition during and after the provider's access and use.

(4) Any conditions of a permit granted under this section shall be limited to the provider's access and usage of any public right-of-way.

(5) A provider undertaking an excavation or constructing or installing facilities within a public right-of-way or temporarily obstructing a public right-of-way, as authorized by the permit, shall promptly repair all damage done to the street surface and all installations on, over, below, or within the public right-of-way and shall promptly restore the public right-of-way to its preexisting condition. The authority shall also have the jurisdiction to require the repair and restoration of any right-of-way, including state right-of-way, which has not been repaired or restored after installation.

History: 2002, Act 48, Eff. Nov. 1, 2002.

484.3116 Cable franchise.

Sec. 16. This act does not affect the requirement of a cable operator to obtain a cable franchise from a municipality.

History: 2002, Act 48, Eff. Nov. 1, 2002.

484.3117 Review of decision or review.

Sec. 17. A decision or assessment of the authority is subject to a de novo review by the commission upon the request of an interested person. A decision or order of the commission issued under this act is subject to review as provided under section 26 of 1909 PA 300, MCL 462.26.

History: 2002, Act 48, Eff. Nov. 1, 2002.

484.3118 Complaint; proceeding; remedies and penalties.

Sec. 18. (1) Except as otherwise provided by this act, the time requirements and procedures governing a complaint proceeding under this act shall be the same as those under section 203 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2203.

(2) If after notice and hearing the commission finds that a person has violated this act, the commission shall order remedies and penalties to protect and make whole persons who have suffered an economic loss as a result of the violation, including, but not limited to, 1 or more of the following:

(a) For failure to pay an undisputed fee assessed by the authority under this act, order the provider to pay a fine of not more than 1% of the amount of the unpaid assessment for each day that the assessment remains unpaid. For each subsequent offense under this subdivision, a fine of not more than 2% for each day the assessment remains unpaid.

(b) For a violation under section 14, order the suspension or termination of all or a portion of the fee-sharing payments to the municipality provided for under section 11 or 12.

(c) Order the person who violated this act to pay a fine of not less than \$200.00 or more than \$20,000.00 per day that the person is in violation. For each subsequent offense, a fine of not less than \$500.00 or more than \$40,000.00 per day that the person is in violation of this act.

(d) If the person is a provider, order that the provider's permit allowing access to and use of a municipality's public right-of-way be conditioned or amended.

(e) Issue cease and desist orders.

(f) Order the person who violates this act to pay attorney fees and actual costs of a person that is not a provider of telecommunication services to 250,000 or more end-users.

History: 2002, Act 48, Eff. Nov. 1, 2002.

484.3119 Provisions found invalid or unconstitutional; effect.

Sec. 19. (1) If the application of any provision of section 8 to a certain person is found to be invalid or unconstitutional, that provision and sections 3 and 15 shall not apply to any person.

(2) If section 15 does not apply under subsection (1), the permit process for access to and use of public rights-of-way shall be as follows:

(a) Except as provided in subdivisions (b) and (c), a local unit of government shall grant a permit for access to and the ongoing use of all rights-of-way, easements, and public places under its control and jurisdiction to providers of telecommunication services.

(b) This section shall not limit a local unit of government's right to review and approve a provider's access to and ongoing use of a right-of-way, easement, or public place or limit the unit's authority to ensure and protect the health, safety, and welfare of the public.

(c) A local unit of government shall approve or deny access under this section within 90 days from the date a provider files an application for a permit for access to a right-of-way, easement, or public place. A provider's right to access and use of a right-of-way, easement, or public place shall not be unreasonably denied by a local unit of government. A local unit of government may require as a condition of the permit that a bond be posted by the provider, which shall not exceed the reasonable cost, to ensure that the right-of-way, easement, or public place is returned to its original condition during and after the provider's access and use.

(d) Any conditions of a permit granted under this subsection shall be limited to the provider's access and usage of any right-of-way, easement, or public place.

(e) Any fees or assessments made under this subsection shall be on a nondiscriminatory basis and shall not exceed the fixed and variable costs to the local unit of government in granting a permit and maintaining the rights-of-way, easements, or public places used by a provider.

(f) A provider using the highways, streets, alleys, or other public places shall obtain a permit as required under this subsection.

(3) If section 15 does not apply under subsection (1), it is the intent of the legislature in enacting subsection

(2) to return to the status quo prior to the effective date of this act for the granting of permits for access to and the use of all rights-of-way. Subsection (2) shall have the same construction and interpretation as sections 251 to 254 of the Michigan telecommunications act, 1991 PA 179, MCL 484.2251 to 484.2254, had prior to the repeal of these sections by this act.

(4) Except as provided under subsection (1), if any other provision or the application of any provision of this act to a certain person is found to be invalid or unconstitutional, the remaining provisions or application of a provision to other persons shall not be affected and will remain in full force and effect.

History: 2002, Act 48, Eff. Nov. 1, 2002.

484.3120 Supreme court opinion; request by legislature or governor.

Sec. 20. Pursuant to section 8 of article III of the state constitution of 1963, either house of the legislature or the governor may request the opinion of the supreme court on important questions of law as to the constitutionality of this act.

History: 2002, Act 48, Eff. Nov. 1, 2002.



Michele Kreutzberg

Profile

Extremely organized & creative, able to compliment business operations with my varied background & experience. Superior customer service skills prove to be my greatest asset. Past employment has provided me the opportunity to advance in Account Management & Customer Service. I believe in the importance of building lasting relationships and earning the respect of customers and co-workers.

Experience

Free Lance Photographer

2014-Present

Advanced studies in Photography

Senior and Family Portraits, Events and Real Estate

Member Service Specialist, Life Time Fitness

Novi, MI

2009-2014

Duties included member reception and retention at the Life Time Fitness Athletic Club. Daily responsibilities such as providing new member information and orientation, registrations for classes, camps and club events as well as building lasting relationships with all guests to facilitate retention.

Client Service Account Manager, Datapak

Howell, MI

2007-2008

Complete account management and fulfillment for Retail, Web, and Tele-market sales. Duties included coordination of initial campaign, marketing strategies, supervision of web development & programming, as well as providing packaging and shipping methods, inventory maintenance and web reports. My role was to communicate and combine efforts with all departments, warehouse, call center and accounting and provide detailed reporting on all levels to monitor and insure successful sales and profits.

Account Manager, Office Depot

Plymouth, MI

2005-2007

Territory Sales Rep for the Business Service Division of Office Depot. Responsible for soliciting contract customers while developing clear understanding of their business needs. Provided on-going support and service to insure customer retention and revenue increases. Advanced to Account Manager of a \$3 million base of business, with goal of annual incremental growth. Performed and provided quarterly business reviews and negotiated annual contracts.

Manager, Member Sales, Events Coordinator, Franklin Athletic Club

2000-2005

Developed and maintained solid customer/membership base through leads, mailings and promotions at premier athletic club. Frequently met and exceeded monthly sales goals. Scheduled, staffed and coordinated club usage to include catering and entertainment details for corporate meetings and member events. Prior management of Franklin's Child Care & Summer Camps.

Education

Oakland Community College

University of Michigan

Skills

- Several years experience in retail management & sales-support, computer / data entry, phone reception
- 2 years certified in Food Service and Child Care for Novi Schools
- Volunteer Coordinator for South Lyon Schools, district projects, staff & student support
- Creative interests in graphic & interior design and extensive studies in photography

MEMORANDUM

TO: Township Board

FROM: Michael Archinal 

DATE: 6/15/2018

RE: Advanced Disposal Contract

Please find attached a draft contract with Advanced Disposal for refuse and recycling collection services. I am meeting with Counsel this afternoon to review. I do not expect any major changes but will forward a clean version when I get one.

**AGREEMENT FOR
RESIDENTIAL SOLID WASTE COLLECTION SERVICES**

THIS AGREEMENT FOR RESIDENTIAL SOLID WASTE COLLECTION SERVICES (this "Agreement") made and entered into on the ____ day of _____, 20__, (the "Effective Date") by and between Genoa Township , a political subdivision of the State of Michigan and, by and through its [Township Council/County Commission] ("City") and ADVANCED DISPOSAL SERVICES SOLID WASTE MIDWEST, LLC, a Wisconsin limited liability company ("Contractor").

WHEREAS, the Township deems it necessary to protect the public health of its citizens by contracting with a private company for the removal of garbage, rubbish and other waste material generated by residents within the Township and that such action is a valid exercise of powers of the City; and

WHEREAS, in connection therewith, the Township solicited bids for Solid Waste Collection Services, Recycling, Bulk Pickup and Yard Waste.

WHEREAS, in response to the solicitation, the Contractor submitted a proposal to Township (the "Proposal") and such Proposal has been accepted by the City; and

WHEREAS, Township and Contractor are desirous of entering into this Agreement, under the terms of which, Contractor shall have an exclusive Agreement for a specified period of time for the provision of services contemplated by this Agreement; and

WHEREAS, the Township has conducted an investigation and has determined that the Contractor and its affiliates have a proven excellent reputation for providing the types of services required under this Agreement and that the Contractor has access to significant capital resources that would be available to fund the fulfillment of its responsibilities under this Agreement, all of which should greatly benefit City; and

WHEREAS, the Township has determined that Contractor has expended substantial capital to acquire this Agreement and will expend significant additional amounts of capital during the term of this Agreement to fulfill its responsibilities in providing high quality solid waste, recycle, yard waste and bulk collection, transportation and disposal and processing services to Township residents, all of which should greatly benefit City; and

WHEREAS, Township and Contractor have agreed to the conditions, terms, rates, provisions and considerations under which Contractor shall perform such solid waste, recyclables, yard trash, bulky waste and white goods collection, transportation and disposal services as herein set out, and for the compensation as hereinafter provided and the Township has deemed it to be in the best interest of the Township and the residents of the Township to enter into this Agreement upon such terms and conditions set forth herein in order to ensure high quality services by the Contractor to the residents of the Township ; and

WHEREAS, Township agrees to pay for the Services to be provided by Contractor as set forth herein.

NOW THEREFORE, in consideration for the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

Section 1.0 - Definitions

For purposes of this Agreement, the following terms shall be defined as follows; provided however, nothing contained herein shall be interpreted to require the Contractor to undertake any conduct which is contrary to federal, state or local law.

1.1 **"Agreement"** has the meaning set forth in the first paragraph above, and includes all Schedules and Exhibits attached hereto.

1.2 **"Biomedical Waste"** means infectious wastes including: sharps; cultures and stocks of infectious agents and associated biologicals; human blood and blood products; pathological waste; contaminated animal carcasses, body parts, and bedding of animals intentionally exposed to pathogens; and isolation waste pursuant to the "Guidelines for Isolation Precautions in Hospitals," Centers for Disease Control.

1.3 **"Bulky Waste"** means discarded items that are larger than three (3) feet in any dimension, and/or heavier than fifty (50) pounds in weight and/or otherwise will not fit within an empty Cart, thus too large or too bulky to be collected by Contractor as contemplated by this Agreement, including but not limited to items such as mattresses and box springs, indoor/outdoor furniture, swing sets, plastic swimming pools, large toys, bicycles, fish aquariums, sofas, chairs, tables, carpets and other similar items.

1.4 **"C&D Material"** means discarded solid wastes resulting from construction, remodeling, repair and demolition of structures, road building, and land clearing. The wastes include, but are not limited to bricks, concrete, and other masonry materials, soil, rock, lumber, road spoils, paving material, and tree and brush stumps, but does not include solid waste from agricultural or silvicultural operations. Mixing of construction and demolition debris with other types of solid waste will cause it to be classified as other than construction and demolition debris.

1.5 **"Cart"** means a rollout receptacle for Residential Solid Waste and Recyclables with a capacity of 96 gallons for Solid Waste and 64 gallons for Recyclables, constructed of plastic, metal or fiberglass, having handles of adequate strength for lifting, and having a tight fitting lid.

1.6 **"Township"** means the Township of Genoa which shall include, for purposes of this Agreement, the incorporated area of the Township and the areas outside the corporate bounds of the Township and receiving Township service(s).

1.7 **"Contractor"** has the meaning set forth in the first paragraph above.

1.8 "Curbside" means the location that is within at least four (4) feet of the curb, paved surface of the public road, closest accessible public right-of-way, or other such location designated by the Contractor that will provide a safe and efficient accessibility to the Contractor's personnel and vehicles for the placement of Carts, Yard Trash, Bulky Waste and White Goods for collection pursuant to the terms of this Agreement. For purposes of this Agreement, public road or public right-of-way means a road owned and maintained by the Township or special district, or a road on private property for which an easement has been granted to the public and such road is constructed and maintained to a standard whereby access is available by the Contractor's vehicles.

1.9 "Customer" means the owner and/or occupant of a Residential Premises.

1.10 "Disabled Person" means the owner of the Residential Premises who is disabled to the extent that he or she is incapable of placing his or her Cart at the Curbside location for collection by the Contractor and otherwise complies with the provisions of Section 3.3 below. Disabled Person shall include an owner of a Residential Premises with a temporary disability not to exceed 90 days.

1.11 "Force Majeure" means any act, event, or condition having a direct material adverse effect on Contractor's ability to perform any obligations, agreement or covenant under this Agreement, including without limitation, Contractor's ability to collect, transport or dispose of Residential Solid Waste, Recyclables, Yard Trash, Bulky Waste and White Goods, if such act, event, or condition is beyond Contractor's reasonable control. Such acts, events, or conditions shall include, but shall not be limited to, the following: (a) an act of God, lightning, earthquake, fire, severe weather conditions, epidemic, land-slide, drought, hurricane, tornado, storm, explosion, partial or entire failure of utilities, flood, nuclear radiation, act of a public enemy, war, blockade, insurrection, riot or civil disturbance, labor strike or interruption, extortion, sabotage, or similar occurrence or any exercise of the power of eminent domain, condemnation, or other taking by the act of any governmental body on behalf of any public, quasi-public, or private entity; or (b) the order, judgment, action, or determination of any federal, state, or local court, administrative agency, or governmental body (excepting decision interpreting federal, state, and local tax laws), which adversely affects: (i) the ability of Contractor to perform the services contemplated hereunder, (ii) the right or ability of the Contractor to dispose of the Residential Solid Waste or (iii) the suspension, termination, interruption, denial, or failure or renewal or issuance of any permit, license, consent, authorization, or approval necessary to for Contractor to perform the services contemplated hereunder.

1.12 "Garbage" means all kitchen and table food waste, animal or vegetative waste that is attendant with or results from the storage, preparation, cooking or handling of food materials.

1.13 "Hazardous Waste" means any and all (a) hazardous substances, pollutants, and contaminants, as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, solid or hazardous wastes, as defined by the Resource Conservation and Recovery Act, as amended, hazardous materials, as defined by the Hazardous Materials Transportation Act, as amended, toxic substances, as defined by the Toxic Substances Control Act, as amended, toxic chemicals or extremely hazardous substances, as defined by the Emergency Planning and Community Right-To-Know Act, as amended, hazardous air pollutants, as defined by the Clean Air Act, as amended, and hazardous substances, as defined by the Clean Water Act, as amended; (b) any other toxins, chemicals, wastes, substances, or materials which pose an unreasonable risk to human health or the

environment, or which are regulated under any applicable federal, state, or local laws rules, or regulations, or any other material which any governmental agency or unit having appropriate jurisdiction shall determine from time to time is harmful, toxic, or dangerous, or otherwise ineligible for disposal at the intended disposal site utilized by Contractor; (c) any material that requires other than normal handling, storage, management, transfer or disposal; or (d) any other material that may present a substantial endangerment to public health or safety, may cause applicable air quality or water standards to be violated by the normal operation of the disposal site to be utilized by the Contractor, or because of its size, durability or composition cannot be disposed of at such disposal site or has a reasonable possibility of otherwise adversely affecting the operation or useful life of such disposal site.

1.14 "Non-Curbside Services" has the meaning set forth in Section 3.3.

1.15 "Recyclables" shall mean items made of glass, aluminum, steel and bimetallic cans; scrap metal not exceeding three (3) feet in any dimension; plastic materials made from PET, and HDPE; newspaper; corrugated paper; and any other materials which may be agreed to from time to time between the parties.

1.16 "Residential Premises" means a dwelling within the Township occupied by a person or group of persons, including single family homes, duplexes, triplexes, quadraplexes, and mobile homes whether such mobile homes are registered as vehicles or assessed as real property.

1.17 "Residential Solid Waste" means all Garbage and Rubbish generated by a Residential Premises, excluding automobile parts, tires, C&D Materials, Recyclables, Yard Trash, Bulky Waste, White Goods, Hazardous Waste, or any Unacceptable waste or materials as determined by the Contractor.

1.18 "Rubbish" means non-combustible solid waste consisting of paper, rags, cardboard, cartons, wood, rubber, plastics, glass, crockery, metal cans or other such waste.

1.19 "Services" has the meaning set forth below in Section 2.2.

1.20 "Special Waste" means nonresidential or commercial solid wastes, other than regulated hazardous wastes, that are either difficult or dangerous to handle and require unusual management at Class Three landfills, including, but not limited to, those wastes in S.C. Code Section 44-96-390.(A).

1.21 "Term" has the meaning set forth below in Section 2.4.

1.22 "Unacceptable Waste" means (a) waste and materials that are not part of the Services contemplated hereunder as determined by Contractor, (b) Hazardous Waste, Biomedical Waste, Special Waste, tires, paints, paint solvents, unemptied aerosol cans, compressed gas cylinders, large engine parts, small engines containing oils or fuels, chemicals, large glass panes, large tree debris, stumps, ammunition of any type, dead animals larger than 10 lbs, and firearms, (c) waste of which the acceptance and handling by Contractor would cause a violation of any permit condition, legal or regulatory requirement, substantial damage to Contractor's vehicles, equipment or facilities, or present a substantial danger to the health or safety of the public or Contractor's employees, and (d) waste which is

or may be prohibited from disposal at the applicable disposal site by local, federal or state law, regulation, rule, code, ordinance, order, permit or permit condition.

1.23 “White Goods” include refrigerators, ranges, water heaters, freezers, dishwashers, trash compactors, washers, dryers, air conditioners, and commercial large appliances.

1.24 “Yard Trash” means solid waste consisting solely of vegetative matter resulting from landscaping maintenance.

Section 2.0 – Scope of Agreement

2.1 Recitals: Conflict The parties hereto acknowledge and agree that the “whereas” recitals set forth above are true and correct and are hereby incorporated herein by this reference. The parties further acknowledge and agree that in the event of any conflict between this Agreement and the RFP, the Proposal, or any other documents submitted by or to the Township and Contractor, this Agreement shall prevail and control.

2.2 Scope The work under this Agreement shall consist of the collection of Residential Solid Waste, Recyclables, Yard Trash, Bulky Waste, and White Goods by Contractor from the Residential Premises, and, if so requested by the Customer under separate agreement between the Customer and Contractor, the collection of Yard Trash from the Residential Premises, located in the Township (collectively, the “Services”). In the performance of the Services, Contractor shall also provide the supervision, materials, and equipment necessary to complete the Services in accordance with the terms of this Agreement. Collection of Residential Solid Waste, Recyclables, Yard Trash, Bulky Waste and White Goods by Contractor shall be mandatory for all Residential Premises in the City, and all such Residential Premises shall be required by the Township to use the Services to be provided by Contractor pursuant to this Agreement. The scope of the Services to be provided by Contractor hereunder shall not be amended or modified without the mutual consent of the parties hereto.

2.3 Exclusivity During Term of the Agreement, Contractor shall provide the Services and in accordance with the terms of this Agreement, and shall have the sole and exclusive right to provide the Services throughout the Township. The Township hereby grants, and the Contractor hereby accepts, the sole and exclusive Agreement license and privilege to provide the Services during the Term of this Agreement and all renewal terms thereof. All such rights shall be exclusive to the Contractor and no other person or entity except the Contractor may offer or provide the Services as contemplated hereby. The Township further agrees that so long as Contractor is not in default hereunder, it will not enter into any agreement or understanding with any other person or entity for performance of the Services contemplated hereby during the Term hereof.

2.4 Term The term of this Agreement shall be for the period beginning on October 01, 2018, and expiring on September 30, 2023 (the “Initial Term”). Upon the expiration of the Initial Term, this Agreement shall be automatically renewed for additional one (3)-year terms (each a “Renewal Term” and together with the Initial Term, the “Term”) unless either party provides at least ninety (90) days prior written notice to the other party of its intent not to renew the Agreement prior to the expiration of the Initial Term or any Renewal Term. The terms and conditions of this Agreement during the Renewal

Term shall be upon the same terms, conditions and fees as set forth herein, unless agreed to otherwise in writing by both parties in an amendment to this Agreement.

Section 3.0 – Contractor Responsibilities

3.1 Services Provided

3.1.1 **Residential Solid Waste** Contractor shall collect Residential Solid Waste that is timely placed in a Cart from each Residential Premises one (1) time per week at Curbside. The Customer located at the Residential Premises shall place only bagged Residential Solid Waste in the Cart designated for Residential Solid Waste and shall place the Cart at Curbside by 7:00 am on the designated collection day. Contractor shall not be deemed to be in default in any manner of this Agreement in the event Contractor fails or refuses to collect any such Residential Solid Waste from any Residential Premises because such Residential Solid Waste was not timely placed in a Cart at Curbside in accordance with this Agreement. Contractor shall not be responsible for collection of any Residential Solid Waste not properly and timely placed in a Cart in the proper location at Curbside at the designated time and on the designated day, and has the right to refuse to collect all Unacceptable Waste. Customer may request more frequent Service or special services at a price to be agreed upon by such Customer and Contractor and paid by the Customer to Contractor.

3.1.2 **Recyclables**. Contractor shall collect Recyclables that are timely placed in a Cart from each Residential Premises every other week at Curbside. The Customer located at the Residential Premises shall place Recyclables in the Cart designated for Recyclables and shall place the Cart at Curbside by 7:00 a.m. on the designated collection day. Contractor shall not be responsible for collection of Recyclables and shall not be deemed to be in default in any manner of this Agreement in the event Contractor fails or refuses to collect Recyclables from any Residential Premises because the Recyclables were not timely or properly placed at Curbside in accordance with this Agreement or if the Recyclables contain Unacceptable Waste. Customer may request more frequent service or special services at a price to be agreed upon by such Customer and Contractor and paid by the Customer to Contractor.

3.1.3 **Bulky Waste and White Goods** Contractor shall collect Bulky Waste and White Goods from the Residential Premises that generated such Bulky Waste and White Goods, one (1) time per week, on the same day as scheduled for Residential Solid Waste collection service, at Curbside. It is the responsibility of the Customers located at the Residential Premises to insure that prior to disposal White Goods are empty of all foods and liquids, and that any CFCs and PCBs have been evacuated and captured by a certified technician in accordance with all applicable law, and that doors have been removed from freezers and refrigerators. The Contractor is not required to collect White Goods that do not meet these standards. Contractor shall not be deemed to be in default of this Agreement in any manner in the event Contractor fails or refuses to collect any such Bulky Waste or White Goods from any Residential Premises because the Bulky Waste and/or White Goods were not timely placed for collection at Curbside in compliance with this Agreement.

3.1.4 Yard Trash: The Contractor shall provide collection of Yard Trash from Residential Premises that have signed up for this service to be performed every other week. Residents will have the option to sign up for yard waste service at a cost of \$10.00 per Month billed directly to the homeowner by Advanced Disposal. Customers shall place Yard Trash at Curbside by 7:00 am on the designated collection day. Contractor shall not be required to collect more than 15 bags per collection of Yard Trash and any such individual Yard Trash included therewith shall not exceed four (4) inches in diameter or more than three feet in length, shall be placed in sturdy paper bags suitable for containing Yard Trash or other suitable containers, excluding the Carts and plastic bags; or if greater than four (4) inches in diameter and not placed in a suitable container Yard Trash shall be tied in a bundle weighing not more than fifty (50) pounds. Customers shall timely place such Yard Trash at the Curbside for collection by the Contractor. Contractor shall not be deemed to be in default in any manner of this Agreement in the event Contractor fails or refuses to collect any such Yard Trash from any Residential Premises requesting service because such Yard Trash was not timely placed at Curbside in accordance with this Agreement.

3.1.5. Disposal of Waste Contractor may deliver all Residential Solid Waste, Recyclables, Yard Trash, Bulky Waste and/or White Goods collected by Contractor to a disposal or other processing facility as determined by the Contractor in its sole discretion.

3.2 Carts

Contractor shall furnish the Carts for every Residential Premises receiving the Services as contemplated by this Agreement. Such Carts shall at all times remain the property of Township. It shall be the responsibility of the Customer of the Residential Premises to properly use and safeguard the Contractor's Carts. Contractor shall maintain the Carts in reasonably good condition, normal wear and tear excepted. Each Customer has the care, custody and control of any Cart furnished by Contractor. Contractor shall have the right to charge Customers for the cost of repair or replacement of Carts, including delivery fees, if such repair or replacement is required as a result of abuse, misuse, or damage, fire, or theft. Customers may request one or more additional Carts from Contractor for an additional volume of collection Services. Customers shall pay Contractor for each additional Cart, including the delivery of such Carts, and Contractor shall receive payment from the Township for the additional Service to be provided to such Customer, as if such additional Service constituted an additional Residential Premises, at the then applicable rate of compensation payable to Contractor as contemplated by this Agreement. See appendix A for additional cart pricing.

3.3 Non-Curbside Service for Disabled Persons

Contractor shall provide back/side-door Residential Solid Waste collection services ("Non-Curbside Service") to Disabled Persons as identified by the Township who are physically unable to place the Cart at Curbside for collection by Contractor at the designated time and date contemplated by this Agreement. In no case will the quantity of persons receiving Non-Curbside Services exceed two percent (2%) of the total Residential Premises located in the City. Contractor shall provide Non-Curbside Service at no additional charge than the Service Fees then in effect for those residents not physically able to take Carts to Curbside, provided however,

that such exemptions will be granted only if there is no other occupant of the Residential Premises physically capable of placing the Cart at Curbside. Prior to Contractor being required to provide such Non-Curbside Service to any person, any such person requesting Non-Curbside Service must obtain a physician's certificate certifying such disability and provide the physician's certificate to the Contractor. In no event will Non-Curbside Service be provided at a distance of more than 150 feet from the public roadway. In the event Non-Curbside Service is provided pursuant to this Section 3.3, the Disabled Person shall use the Cart for storage of Residential Solid Waste but must place the Residential Solid Waste in bags, designed to accommodate storage of waste, each bag not to exceed 30 pounds in weight. Non-Curbside Services are not available for the collection of Yard Trash, commercial solid waste, Bulky Waste or White Goods and shall only be provided to Disabled Persons at Residential Premises.

3.4 Location of Carts for Collection

Carts shall be placed at Curbside for collection service as described herein. Carts shall be placed as close to the roadway as practicable without interfering with or endangering the movement of vehicles or pedestrians. When construction work is being performed in the right-of-way, Carts, and if applicable Yard Trash, shall be placed as close as practicable to an access point for the Contractor's collection vehicle that permits access by Contractor's collection vehicle to the Carts without endangering Contractor's employees or equipment. Contractor may decline to collect any Residential Solid Waste, Bulky Waste, White Goods or Yard Trash from any Cart, container, bag or bundle not so placed or any such Residential Solid Waste not placed in the Cart in accordance with this Agreement.

3.5 Hours and Days of Operation; Holidays

3.5.1 Collection of Residential Solid Waste under this Agreement shall not start before 7:00 am nor continue after 7:00 pm each day and shall not take place on any Sunday.

3.5.2 The following shall be holidays for the purpose of this Agreement (each a "Holiday").

New Year's Day
 Martin Luther King Birthday
 Memorial Day
 July 4th
 Labor Day
 Thanksgiving Day
 Day after Thanksgiving
 Christmas Eve
 Christmas Day

Contractor may decide to observe any or all of the above mentioned Holidays by suspension of Services on the Holiday, but such decision does not relieve the Contractor of its obligation to provide the Residential Solid Waste, Recyclables, Yard Trash, Bulky Waste and White Goods collection service at least once per week (Monday - Saturday) within the week the

Holiday occurs (a "Holiday Week"). The Contractor will not be allowed to perform collection Services on Sunday during a Holiday Week. The Contractor shall be responsible for properly publicizing any changes in collection schedules due to observance of Holidays or for other reasons; provided that the Township shall be responsible for all publicizing expenses.

3.6 Routes of Collection

Collection routes shall be established by the Contractor. Contractor shall submit a map designating the collection routes with the days of pick-up to the Township for its approval, which approval shall not be unreasonably withheld. The Contractor may from time-to-time propose to Township for approval changes in routes or days of collection, which approval shall not be unreasonably withheld.

3.7 Complaints; Missed Collections

3.7.1 Contractor shall furnish the Township instructions for contacting the Contractor in the event of Customer complaints. All complaints made to Contractor shall be given prompt and courteous attention.

3.7.2 In the case of alleged missed scheduled collections (a "Missed Collection"), Contractor shall investigate and advise the Township how it will address the issue within twenty-four (24) hours after the complaint is received. Contractor will be responsible for receiving all reports of Missed Collections from Residential Premises and resolving the Missed Collection with the Customer located at the Residential Premises. In the event the Missed Collection was due solely to the fault of the Contractor and such Missed Collection was not due to an event of Force Majeure, Contractor shall collect the Residential Solid Waste, Recyclables, Yard Trash, Bulky Waste and White Goods from such Residential Premises within one day of receipt of the complaint, except if Missed Collection deadline falls on Sunday. In the event the Missed Collection was due to any act or failure to act by the Customer and/or the Township or its employees, agents or representatives, Contractor shall have the right to charge, and the Township agrees to pay, the Service Fees for the additional.

3.8 Collection Equipment and Personnel

3.8.1 The Contractor shall provide an adequate number of vehicles and personnel for regular collection Services. All collection vehicles and other equipment shall be kept in good repair, normal wear and tear excepted. Each collection vehicle shall have clearly visible on each side the identity and telephone number of the Contractor. All Residential Solid Waste and Recyclables hauled by the Contractor shall be so contained, tied, covered, or enclosed such that leaking, spilling, or blowing are prevented.

3.8.2 The Contractor shall assign a qualified person or persons to be in charge of its performance of this Agreement. The Contractor's employees performing the Services contemplated hereunder shall wear a uniform or shirt bearing the Contractor's name. Each employee of Contractor who drives a vehicle pursuant to his or her duties in the performance of

this Agreement shall, at all times, carry a valid CDL driver's license for the type of vehicle he or she is driving. The Contractor shall provide operating and safety training for all personnel.

3.9 Access

The Contractor shall be required to provide the collection Services described herein to all Residential Premises located on publicly-owned roadways accessible to standard solid waste collection vehicles. The Township shall maintain all publicly-owned roads and bridges in a condition that affords safe access by Contractor's standard solid waste collection vehicles. The Township shall require occupants of Residential Premises to place Carts at Curbside for collection in accordance with the terms and conditions of this Agreement. The Township shall require the Customer located at the Residential Premises not accessible to standard solid waste collection vehicles to place Carts at an accessible location on a publicly-owned roadway as determined by the Contractor. If the Cart, or any Bulky Waste, White Goods or Yard Trash to be collected pursuant to this Agreement, is blocked in any way so as to prohibit collection, Contractor shall have the right to charge, and the Township agrees to pay, for an additional pick-up as contemplated by Section 3.7.2. Contractor shall not be liable in any way, and shall not be deemed to be in breach of this Agreement, for the failure to collect any materials in the event Contractor did not have or was denied access to the Residential Premises or to the Customer's Cart and other materials to be collected as provided hereunder.

3.10 Office

The Contractor shall maintain an office or such other facilities through which it can be contacted. It shall be equipped with sufficient local service telephones and shall have a person to answer such telephones from 7:00 a.m. to 5:00 p.m. daily Monday through Friday.

3.11 Natural Disasters

In the event of a hurricane, tornado, major storm or other natural disaster, the Contractor's sole responsibility shall be to reestablish regular routes and schedules for the Services as soon after the natural disaster as possible. The collection of Residential Solid Waste, Recyclables, Yard Trash, Bulky Waste and White Goods shall be the highest priority. The collection of debris generated by a natural disaster shall not be the responsibility of the Contractor. Under a separate agreement, the Township shall procure collection services for debris generated by a natural disaster. The Contractor agrees to provide reasonable cooperation, at no additional cost to the Contractor unless agreed to by the parties, with the Township and the person or entity collecting the debris in the aftermath of a natural disaster in an effort to return the Township to pre-disaster state. The Contractor shall resume its performance of Services as soon as commercially practicable after such storm or disaster.

3.12 Compliance With Law; Permits

The Contractor shall comply with all applicable local, state and federal laws, rules, regulations, ordinances and statutes in the performance of this Agreement; provided, however that this Agreement shall govern the obligations of the Contractor where there exists conflicting

ordinances of the Township on the subject, and the Township agrees to waive the requirements of such ordinances in the event of such a conflict. In the event that the collection or disposal of any solid waste hereunder shall become restricted or prohibited by any such applicable law, ordinance, statute, rule or regulation, such type of waste shall be eliminated from the requirements and provisions of this Agreement. Contractor shall obtain all applicable permits, licenses and other approvals necessary to perform the Services.

3.13 Delinquent and Closed Accounts

The Contractor shall discontinue the Services at any Residential Premises if directed to so, in writing, by the City. Upon further written notification by the City, the Contractor shall resume the Services contemplated hereunder on the next regularly scheduled collection day. The Township shall indemnify and hold the Contractor harmless from any claims, suits, actions, losses, damages, liabilities or expenses (including but not limited to expenses of investigation and attorney's fees) resulting from the Contractor's discontinuing service at any location at the direction of the City.

Section 4.0 – Township Responsibilities

4.1 Initiation of Accounts and Billing

The Township will be responsible for billing and collecting the Service Fee for the Services rendered by Contractor from all Residential Premises (based upon occupancy permits issued by the City/tax rolls/other). The Township will also be responsible for setting up all new accounts with respect to newly constructed Residential Premises and receiving any necessary information from such new Residential Premises and for referring the owners of such new Residential Premises to the Contractor so that the Contractor can initiate service.

4.2 Public Education and Outreach

The Township will be responsible for conducting all formal public education programs and outreach related to the Services. The Township will provide all public education/information materials to the Contractor as camera-ready copy, including information to be included in packages to be distributed by the Contractor with the Carts.

4.3 Service Referrals

The Township will be responsible for referring to Contractor any service requests by the Customers and/or complaints of which the Township becomes aware that are not reported directly to the Contractor.

4.4 Compliance With Law

The Township shall comply with all applicable local, state and federal laws, rules, regulations, ordinances, consents, judgments and statutes in the performance of this Agreement.

Section 5.0 – Compensation

5.1 Fees and Payment

5.1.1 Beginning on the Effective Date, for and in consideration of the Services to be performed in accordance with this Agreement, the Township will pay the Contractor the Service Fees set forth on Exhibit A attached hereto and incorporated herein, as may be adjusted pursuant to the terms of this Agreement. The Township shall pay the Service Fees to Contractor by the tenth (10th) day of each calendar month for the Services rendered during the previous calendar month. The Township shall submit, together with payment, a statement of the Service Fees that the Township believes to be due and owing to Contractor for the Services rendered by the Contractor during the previous calendar month (the "Statement of Fees") based the terms and conditions of this Agreement. Such Statement of Fees shall include the number of Residential Premises receiving the Services. The Township shall pay to the Contractor the amounts set forth in the Statement of Fees and otherwise as contemplated hereby. Upon receipt of the Statement of Fees issued by the City, the Contractor shall notify the Township of any dispute it may have with respect to the City's Statement of Fees, provided that the Township shall pay all undisputed amounts in accordance with this Agreement. If the parties are unable to settle any such disputes with respect to any Statement of Fees within a commercially reasonable time, then the parties shall submit such dispute to the dispute resolution procedure set forth in Section 10.2.

5.1.2. The Township shall submit statements and collect the fees for the Services rendered by Contractor from all Residential Premises, including those accounts which are delinquent. The Contractor shall be entitled to payment for Services rendered irrespective of whether or not the Township collects amounts owed from the Residential Premises. For purposes of calculating the amount of the Service Fees to be paid to the Contractor, the number of Residential Units shall be based on the City's current tax records for the applicable calendar month.

5.2 Service Fee Adjustments

5.2.1 The Service Fees payable to the Contractor pursuant to this Agreement will be automatically adjusted on each one-year anniversary date of the Effective Date of this Agreement during the Term hereof, beginning on October 1, 2019, such that the Service Fees for the immediately ensuing twelve (12)-month period shall be increased based on the pricing in Attachment A.

5.2.2 The Contractor shall have the right to receive reimbursement from the Township for increases, if any, in the cost of diesel fuel during the Term of this Agreement. On or before _____ beginning on _____ (the "Fuel Adjustment Date"), the Contractor may notify the Township in writing of the amount of such reimbursement as calculated pursuant to this Section 5.1 (the "Fuel Adjustment Notice"). Within thirty (30) days after the receipt by the Township of the Fuel Adjustment Notice, the Township shall reimburse the Contractor an amount equal to any increases in the average cost of diesel fuel as reported by the U.S. Department of Energy, Energy Information Administration, www.eia.doe.gov, Lower Atlantic

East Lower Atlanta (PADD 1C) No 2 Diesel Ultra Low Sulfur (0-15ppm) Retail Sales by All Sellers (the "Index") during the preceding twelve month period (the "Service Fee Fuel Adjustment") over the Base Cost per Gallon of Diesel Fuel. For purposes of the Service Fee Fuel Adjustment, the Base Cost per Gallon of Diesel Fuel as of the date hereof shall be \$ _____. In the event of an increase in the average Base Cost per Gallon of Diesel Fuel as reported by the Index on the Fuel Adjustment Date, Contractor shall certify to the Township the number of gallons of diesel fuel consumed by Contractor in the performance of this Agreement during the preceding twelve-month period. The Service Fee Fuel Adjustment shall then be calculated based on such number of gallons of diesel fuel multiplied by the increase, if any, in the average cost per gallon of diesel fuel as reported by the Index over the Base Cost per Gallon of Diesel Fuel.

5.3 Other Service Fee Adjustments

In addition to the adjustments to the Service Fees set forth in Section 5.2, the Service Fees shall also be adjusted to compensate Contractor due to increases, if any, in the Contractor's costs of disposal of the solid waste collected by Contractor in connection with the Services, including without limitation, due to any increases in transportation cost due to changes in location of the final disposal facility accepting such solid waste. The Township agrees that Contractor may also increase rates from time to time, to adjust for increases in operational costs or expenses incurred by Contractor: (a) as a result of a Change In Law, whether imposed retroactively or prospectively. A Change In Law means any amendment to, or promulgation of any federal, state, city, or local statute, regulation, or ordinance after the date of this Agreement that imposes, changes, modifies, and/or alters requirements upon (i) performing the Services; (ii) the operation of the applicable disposal facility accepting the solid waste collected pursuant to this Agreement; or (iii) the disposal of Residential Solid Waste, Yard Trash, Bulky Waste and/or White Goods, or the processing of Recyclables, which statute, regulation, or ordinance requires the Contractor to seek either an amendment or modification to, or reissuance of any required permits, licenses, certificates of public convenience and necessity, approval or authorization issued by any governmental body entitling the Contractor to perform the Services; (b) due to any new or additional Fees and Taxes imposed after the date hereof. Fees and Taxes means any federal, state, local or other taxes, assessments, fees, host charges, surcharges, or similar charges directly or indirectly related to the Collection Services which are imposed on the Contractor by law, ordinance or regulation and/or agreement with a governmental body, whether imposed retroactively or prospectively; and (c) a result of an event of Force Majeure that materially and adversely affects the cost of collection, transportation or disposal of solid waste by Contractor. In addition to the foregoing, the Contractor shall be permitted to charge for Non-Curbside Collection if during the preceding period, the number of Service Units qualifying for such Collection reached two percent (2%) of Residential Premises.

Section 6.0 - Indemnity

The Contractor will indemnify, defend and hold harmless the City, its officers, agents, and employees (the "Township Parties") from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, including reasonable attorney's fees ("Damages"), arising out of the negligent act or failure to act of the Contractor its officers, agents, and employees in the

Contractor's performance of this Agreement; provided however, nothing herein shall require Contractor to indemnify, defend or hold the Township Parties harmless from any such Damages that result from, are due to or arise in connection with the acts of, or any failure to act by, any Township Party. The Township will indemnify, defend and hold harmless the Contractor, its parent corporation, affiliates and their respective officers, directors, agents, members, servants, representatives and employees from and against any and all Damages, arising out of the negligent act or failure to act of the Township Parties or any breach by the Township of any covenant, agreement, obligation, representation or warranty set forth herein.

Section 7.0 – Insurance

The Contractor shall at all times during the Agreement maintain in full force and effect Employer's Liability, Worker's Compensation, Automobile Liability, and Commercial General Liability. The Contractor agrees to furnish the Township certificates of insurance or other evidence satisfactory to the Township to effect that such insurance has been procured and is in force upon request.

For the purpose of this Agreement, the Contractor shall carry the following types of insurance in at least the limits specified below:

- a) Commercial general liability insurance with a limit of not less than the greater of (i) \$1,000,000 per occurrence and (ii) \$2,000,000 general aggregate.
- b) Vehicle liability insurance, including coverage for owned, now-owned and hired vehicles, with a combined single limit of not less than the greater of (i) \$1,000,000 and containing the broad form pollution endorsement.
- c) Worker's compensation insurance in the amount of state and federal statutory requirements; and
- d) Employer's liability insurance with a limit of not less than \$1,000,000.
- e) Excess Liability coverage with a limit of not less than \$5,000,000.

Contractor shall cause the Township to be named as an additional insured on the Commercial General Liability Policy, and the Automobile Policy. All insurance contracts to be procured and maintained by Contractor pursuant to this Agreement shall be written with a carrier whose A.M. Best rating is not less than A+ X. Prior to commencement of Contractor's Services, Contractor shall provide Township with certificates of insurance evidencing the same. Coverage shall be written on a primary and non-contributory basis.

Section 8.0 – Title to Waste

Title to the Residential Solid Waste, Yard Trash, Bulky Waste and White Goods to be collected under this Contractor shall pass to the Contractor once it is placed in the vehicle under control of the Contractor; provided however, that the Contractor shall not accept title to waste or materials that are Unacceptable Waste regardless of whether the Unacceptable Waste is loaded in the vehicle or unloaded,

and title to such waste shall remain at all times with the Township and/or the generator thereof. Title to Recyclables shall pass to the Contractor once they are placed at Curbside by the Customer. The Contractor shall not be required to collect or dispose of Unacceptable Waste set-out by any Residential Premises.

Section 9.0 – Events of Default; Remedies

9.1 **Events of Default by Contractor.** The following shall constitute events of default on the part of the Contractor except to the extent caused by the occurrence of an event of Force Majeure or the acts of, or failure to act by, the City, its officers, employees, agents or representatives:

9.1.1 Failure by the Contractor to perform any material obligation of the Contractor under the terms of this Agreement, and the continuance of such failure after (i) written notice thereof has been provided by the Township specifying such failure and requesting that such condition be remedied, and (ii) Contractor's failure to cure the default or immediately initiate and diligently pursue reasonable action and cure such non performance within fifteen (15) days after receiving notice from the Township (provided, if such failure is of a nature that it cannot be cured within such fifteen (15) day period, Contractor shall not be in default if Contractor commences the curing of such failure within such fifteen (15) day period, and diligently pursues the curing thereof; or

9.1.2 The Contractor becomes insolvent or bankrupt and cannot to pay its when they become due, files a petition in bankruptcy or has such a petition filed against it (and fails to lift any stay imposed thereby within ninety (90) days after such stay becomes effective), has a receiver appointed with respect to all or substantially all of its assets; makes an assignment for the benefit of creditors; or ceases to do business in the ordinary course.

9.2 **Events of Default by Township.** The following shall constitute events of default on the part of the City, except to the extent excused by the occurrence of an event of Force Majeure or the act of, or failure to act by, the Contractor:

9.2.1 A failure by the Township to timely perform any obligation under the terms of this Agreement, and the continuance of such failure after (i) written notice thereof has been provided by the Contractor specifying such failure and requesting that such condition be remedied, and (ii) City's failure to cure the default or immediately initiate and diligently pursue reasonable action and cure such non performance within fifteen (15) Days after receiving notice from the Contractor (provided, if such failure is of a nature that it cannot be cured within such fifteen (15) day period, the Township shall not be in Default if Contractor commences the curing of such failure within such fifteen (15) day period, and diligently pursues the curing thereof; provided however, the Township shall immediately be in default of this Agreement in the event the Township fails to pay any amount owing to Contractor when due, and Contractor shall have no such obligation to

provide any notice thereof to the Township or to provide the Township with such fifteen (15) day period to cure such default; or

- 9.2.2. The Township becomes insolvent or bankrupt and cannot to pay its when they become due, files a petition in bankruptcy or has such a petition filed against it (and fails to lift any stay imposed thereby within ninety (90) days after such stay becomes effective), has a receiver appointed with respect to all or substantially all of its assets; makes an assignment for the benefit of creditors; or ceases to do business in the ordinary course.

9.3. Remedies Upon an Event of Default

9.3.1 If a party is in default pursuant to this Section 9, then at the option of the non-defaulting party, this Agreement may be immediately terminated or suspended upon written notice to the defaulting party as contemplated by this Section 9, or this Agreement may be continued in force and the non-defaulting party shall have the right to take whatever action at law or in equity deemed necessary or desirable to collect any amounts then due or thereafter to become due under this Agreement, or to enforce performance of any covenant or obligation of the defaulting party under this Agreement; provided however, notwithstanding any alleged default by Contractor, or the election of any remedy by Township in the event of such default by Contractor, Township agrees to pay the Service Fees due and owing to Contractor for all Services rendered in accordance with this Agreement.

9.3.2. The rights and remedies under this paragraph shall be in addition to those otherwise allowed by law or in equity. All and all rights and remedies which either party may have under this Agreement, at law or in equity, shall be cumulative and shall not be deemed inconsistent with each other, and any two or more of all such rights and remedies may be exercised at the same time insofar as permitted by law. Any rights of the Contractor not expressly granted in this Agreement are reserved by Contractor.

9.3.3 The failure of either party at any time to require performance by the other party of any provisions hereof shall in no way affect the right of such party thereafter to enforce the same. No waiver by either party of any breach of any provisions hereof shall be deemed a waiver of any succeeding breach of such provisions or as a waiver of any provision itself. Further, each party agrees that the Contractor would be irreparably damaged if any provisions of this Agreement were not performed in accordance with its specific terms or was otherwise breached by the City. Therefore, the parties agree that the Contractor shall be entitled to an injunction or injunctions, without being required to post any form of bond, to prevent breaches of this Agreement or any of its provisions by the Township and to specifically enforce this Agreement or any of its terms and provisions, in addition to any other remedy to which the Contractor may be entitled, at law or in equity.

9.3.4 In addition to the forgoing and any other rights or remedies that Contractor may have pursuant to this Agreement or at law or in equity, in the event the Township fails to make any payment to Contractor when due as required by the provisions of this Agreement, the Township shall immediately provide Contractor with a complete list of all Residential Premises

and any other person or entity receiving collection Services by Contractor as provided for hereunder, such list to include such information as Contractor deems necessary. The Township expressly acknowledges and agrees that in such an event of default by City, Contractor shall have the right, but not the obligation, without any further action by the parties hereto, to bill such Residential Premises and any other person or entity directly for the collection Services rendered by Contractor, to terminate or suspend any collection Services immediately upon nonpayment by such Residential Premises and to pursue any rights and remedies available to Contractor at law or in equity as a result of such nonpayment.

9.4 Force Majeure

Except in the case of nonpayment of the Service Fees by the Township and the agreements and obligations by the Township set forth in Section 2.2 and 2.3, in the event either party is rendered unable, in whole or in part, to perform its obligations hereunder due to an event of Force Majeure, it shall notify the other party of such event and the obligations of such party may be suspended during the continuation of any inability so caused by such event of Force Majeure. Except in the case of nonpayment of the Service Fees by the Township and the agreements and obligations by the Township set forth in Section 2.2 and 2.3, neither party shall be liable in any manner, and neither party shall be considered in default hereunder, for any failure to perform its respective obligations under this agreement if such failure to perform is due to an event of Force Majeure.

Section 10.0 – Miscellaneous Provisions

10.1 Notice Any notice, demand, communication, or request required or permitted hereunder shall be in writing and delivered in person or sent by a nationally recognized overnight delivery service, or certified mail, postage prepaid as follows:

As to the City:

Attn: _____
Phone: _____

With a copy to

Attn: _____
Phone: _____

As to Contractor:

Attn: _____
Phone: _____

With a copy to

Attn: _____
Phone: _____

Notices shall be effective upon delivery or refusal of delivery at the address as specified above. Changes in the respective addresses to which such notice is to be directed, may be made from time to time by written notice.

10.2 Choice of Law; Attorney's Fees

(a) This Agreement shall be governed by and interpreted under the laws of the State of Michigan. Any dispute or difference between or among any of the parties hereto arising out of or in connection with this Agreement or the transactions contemplated hereby which such parties are unable to resolve themselves will be submitted to a mediation process in accordance with a mutually agreeable mediation procedure to be completed no later than thirty (30) days following a written request for mediation by either party. Any dispute which cannot be resolved through the mediation process will be submitted to and resolved by arbitration before a single arbitrator, for amounts in dispute under Five Hundred Thousand and 00/100 Dollars (\$500,000.00) and otherwise before a panel of three (3) arbitrators pursuant to the Commercial Arbitration Rules of the American Arbitration Association, as supplemented or modified by the provisions of this Section 10.2. The arbitrator(s) will consider the dispute at issue in _____, _____ within one hundred twenty (120) days (or such other period as may be acceptable to the Parties to the dispute). The arbitrator(s) will be bound to follow the laws of the State of Michigan, decisional and statutory in reaching any decision and making any award and will deliver a written award including written findings of fact and conclusions of law, with respect to the dispute to each of the arbitrating Parties, who will promptly act in accordance therewith. Any award of the arbitrator(s) will be final, conclusive and binding on the arbitrating parties. Any party to an arbitration may enforce any award rendered pursuant to the arbitration provisions of this Section 10.2 by bringing suit in any court of competent jurisdiction. All costs and expenses attributable to the arbitrator(s) will be allocated between the parties to the arbitration in such manner as the arbitrator(s) determine to be appropriate under the circumstances. Any party may file a copy of this Section 10.2 with any arbitrator or court as written evidence of the knowing, voluntary and bargained agreement among the parties hereto with respect to the subject matter of this Section 10.2.

(b) In the event that either party is required to take any legal action to enforce the terms and conditions of this Agreement because of the breach of or failure to perform any term or condition by the other party, the non-prevailing party agrees to pay all costs expended by the other party, including reasonable attorney fees.

10.3 Independent Contractor

Contractor, in the performance of this Agreement, is acting as an independent contractor and not as an employee, agent, partner or joint venturer of City, and neither party shall not hold itself out as such or knowingly permit another to rely on such belief. Nothing in this Agreement is intended or shall be construed to create any association, partnership, joint venture or employment relationship between the parties, nor shall Township have any right to enter into any agreement or commitment on behalf of Contractor or to bind Contractor in any respect whatsoever. Contractor's personnel shall not be considered employees of the Township by reason of their performance of the Services or other work or services contemplated by this Agreement and Contractor shall bear sole responsibility for all payroll and employment taxes relating to Contractor's personnel.

10.4 Entire Agreement; Binding Agreement

This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representation or modifications concerning this instrument shall be of no force or effect and this Agreement may not be amended or modified except by a subsequent modification in writing signed by the parties hereto. This Agreement shall inure to the benefit of and shall be binding upon the Contractor, the Township and their respective successors and assigns, subject, however, to the limitations contained in this Agreement.

10.5 Severability

If any part of this Agreement for any reason is declared invalid, such decision shall not affect the validity of any remaining portion which remaining portion shall remain in force and effect as if this Agreement had been executed with the invalid portion thereof eliminated. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. It is hereby declared the intention of the parties that they would have executed the remaining portion of this Agreement without including any such part, parts or portions which may, for any reason, be hereinafter declared invalid.

10.6 No Waiver

Neither any failure nor any delay by any party in exercising any right, power or privilege under this Agreement or any of the documents referred to in this Agreement will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege.

10.7 Captions

The titles or headings preceding any section or paragraph are for reference and convenience only and shall be in no way construed to be a material part of this Agreement.

10.8 Assignment

No assignment or transfer of this Agreement or any right occurring under this Agreement shall be made in whole or part by the Contractor without the express written consent of the City, such consent not to be unreasonably withheld or delayed; provided however, the Contractor may assign or transfer this Agreement to an affiliate without the consent of the City.

10.9 Counterparts

This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

10.10 Representations The Township represents and warrants to Contractor and covenants and agrees as follows:

(a) The parties signing this Agreement on behalf of the Township have been authorized to do so by specific action of _____ adopted the _____ day of _____, 20__ in open meeting and of record in its official minutes.

(b) The Township validly exists as a political subdivision under the laws of the State of Michigan. The Township has full power and authority to enter into this Agreement and to fully perform all of its duties and obligations hereunder. The City's _____ has duly authorized the execution and delivery of this Agreement and the City's performance of all of its duties and obligations contained herein on this Agreement constitutes a valid and legally binding obligation of the City enforceable in accordance with its terms. Without limiting the generality of any of the foregoing, the Township has provided all public notices and held all public meetings, hearings, and the like required by applicable law, rule, regulation or ordinance in connection with the City's and execution of this Agreement.

(c) No consents or approvals are needed for the entering into or performance of this Agreement by the City. Neither the entering into nor the performance of this Agreement by the Township will result in a violation of or be in conflict with any statute, rule, regulation, ordinance, agreement, instrument, judgment, decree, or order to which the Township is a party or by which the Township or its assets is bound. This Agreement is in accordance with the _____ local Solid Waste Management Plan.

(d) There is no action, suit, judgment, consent order or investigation or proceeding pending or, to the best of the City's knowledge and belief, threatened, relating to this Agreement. The Township will notify Contractor promptly if any such action, suit, investigation or proceeding is instituted or threatened. In connection with the execution, delivery and performance of this Agreement, the Township is in compliance with all applicable federal, state and local laws, rules, regulations, orders, ordinances, judgments permits, licenses, approvals, and variances, and the Township has not received any notice of any complaint or violation of any of the foregoing. The Township will notify the Contractor promptly upon receipt of any complaint or notice of non-compliance with any of the foregoing.

(e) The representations and warranties of the Township are true and correct in all material respects at and as of the Effective Date and continuing during the Term of this Agreement.

DRAFT

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date evidenced on the first page hereof.

TOWNSHIP OF _____

Witness

By: _____
Name: _____
Title: _____

Notary Public

Attest: _____

ADVANCED DISPOSAL SERVICES
_____, LLC

Witness

By: _____
Name: _____
Title: _____

Notary Public

Attest: _____

DRAFT

EXHIBIT A
SERVICE FEES

GENOA TOWNSHIP
APPENDIX "A"

The following is the price per unit not including any fuel adjustment charges as agreed to in section 5.2.2 of this agreement. Unit pricing includes collection, disposal and processing of Solid Waste, Recyclables and Bulk Items. Yard Waste collection will be on a subscription basis for \$10.00 per unit per month for every other week pickup with a limit of 15 bags per pickup.

Year One: October 1, 2018 to September 30, 2019	\$12.32 per unit per Month
Year Two: October 1, 2019 to September 30, 2020	\$12.68 per unit per Month
Year Three: October 1, 2020 to September 30, 2021	\$13.07 per unit per Month
Year Four: October 1, 2021 to September 30, 2022	\$13.46 per unit per Month
Year Five: October 1, 2022 to September 30, 2023	\$13.87 per unit per Month

MEMORANDUM

TO: Township Board

FROM: Michael Archinal 

DATE: 6/15/2018

RE: Filmore Park Cost Sharing

As you are aware Livingston County has received a grant to develop a park on the Filmore property located in Section 1 of Genoa Township. In February the Board approved a contribution of \$3,000. Marion and Oceola Townships contributed as well. The project is over budget by \$17,879 as was noted by the Livingston County Planning Director, Kathleen Kline-Hudson at your 6/4/2018 meeting. Some of this overage is due to items raised during the site plan review process.

We are fortunate to have this asset in our community. At one time Genoa Township was seeking County permission to develop a park on the Filmore property at Township expense. The County has typically not undertaken projects of this type. In order to foster a positive cooperative relationship with the County and assure that the park development move forward I am requesting that the Board consider covering half of the overage or \$8,940.

Please consider the following action:

Moved by _____, supported by _____, to authorize payment in the amount of \$8,940 to Livingston County for development of a County park on the Filmore property.



2911 Dorr Road
 Brighton, MI 48116
 810.227.5225
 810.227.3420 fax
 genoa.org

March 8, 2016

Gary Childs, Chair
 Livingston County Parks and Open Space Advisory Committee
 304 E. Grand River Ave.
 Howell, MI 48843

Dear Gary,

This letter is to inform you that the Genoa Charter Township Board of Trustees have committed up to \$3,000 in funds to be applied to the 25% Livingston County match for a 2016 Michigan Department of Natural Resources Trust Fund grant. The Board committed the funds for the Fillmore County Park grant during the March 7, 2016 meeting. Please see the attached minutes.

Please contact me if you require anything further regarding Fillmore County Park. Thank you for your efforts on this recreational opportunity that will greatly benefit the residents of Livingston County. We are pleased to be able to collaborate with the County on the mutually-beneficial endeavor.

Sincerely,

Michael C. Archinal
 Township Manager

CC: Kathleen Kline Hudson; Genoa Township Board

SUPERVISOR

Gary T. McCririe

CLERK

Paulette A. Skolarus

TREASURER

Robin L. Hunt

TRUSTEES

H. James Mortensen

Jean W. Ledford

Todd W. Smith

Linda Rowell

MANAGER

Michael C. Archinal



Livingston County Department of Planning

March 1, 2018

Kathleen J. Kline-Hudson
AICP, PEM
Director

Robert A. Stanford
AICP, PEM
Principal Planner

Scott Barb
AICP, PEM
Principal Planner

Bill Rogers, Supervisor
Genoa Charter Township
2911 Dorr Road
Brighton, MI 48116

Dear Bill

We sincerely appreciate the \$3,000 contribution from Genoa Charter Township as match assistance for the Land and Water Conservation Grant for Phase I development of Fillmore County Park.

We will keep you informed of development progress on the park and let the Township know when the recreational features within the park will be available to residents of Genoa Charter Township.

If you have any comments or questions, please feel free to contact me at (517) 540-8734.

Sincerely,

Kathleen J. Kline-Hudson, Director
Livingston County Planning Department

Department Information

Administration Building
304 E. Grand River Avenue
Suite 206
Howell, MI 48843-2323

cc: Gary Childs, Chair, Livingston County Parks & Open Space Advisory Committee
Don Parker, Chair, Livingston County Board of Commissioners

•
(517) 546-7555
Fax (517) 552-2347
•

Web Site
livgov.com

CONTRIBUTION AGREEMENT

This is an agreement between Genoa Charter Township, a Michigan Municipal Corporation (hereinafter referred to as "TOWNSHIP"), located at 2911 Dorr Road, Brighton, Michigan 48116, and County of Livingston, a Michigan Municipal Corporation (hereinafter referred to as "COUNTY"), located at 304 E. Grand River Avenue, Howell, Michigan 48843.

WHEREAS, the County of Livingston has been approved by the MDNR for a Land and Water Conservation Fund grant for Phase I development of Fillmore County Park pending final approval by the National Park Service; and,

WHEREAS, the Fillmore County Park is available to the residents of the Township and the Township wishes to support the development of Fillmore Park to provide recreation and open spaces to residents of the Township and County.

NOW THEREFORE, the Township and the County agree to the following:

1. The Township shall pay the sum of \$3,000 to the County in match assistance for the Land and Water Conservation Grant for Phase I funding of Fillmore County Park. These monies shall be payable upon execution of this agreement.
2. The County shall use the money from the Township solely for the costs associated with the Land and Water Conservation Grant for Phase I funding of Fillmore County Park.

IN WITNESS WHEREOF, the authorized representatives of the parties hereto have entered into this Contribution Agreement as of this 26TH day of FEBRUARY, 2018.

COUNTY OF LIVINGSTON

By: Don Parker
Don Parker, Chairman
Livingston County Board of Commissioners

Dated: 2-26-18

<p>Approved as to Form for County of Livingston: COHL, STOKER & TOSKEY, P.C. By: Richard McNulty On: April 5, 2017</p>
--

GENOA CHARTER TOWNSHIP

By: Bill Rogers
Supervisor

Dated: 2/21/18

By: P. Schauer
Clerk

Dated: 2/22/18

Signatures authorized by Genoa Charter Township Board of Trustees Resolution 2/19, 2018

Mike Archinal

From: Kathleen Kline-Hudson <KKline-Hudson@livgov.com>
Sent: Monday, June 11, 2018 11:47 AM
To: Mike Archinal
Subject: RE: Fillmore County Park Phase I Improvements

We sure do appreciate your efforts, and we'll hope for the best!

From: Mike Archinal <Mike@genoa.org>
Sent: Monday, June 11, 2018 11:27 AM
To: Kathleen Kline-Hudson <KKline-Hudson@livgov.com>
Subject: RE: Fillmore County Park Phase I Improvements

Kathleen,

I am prepared to put this on the agenda for Monday as an action item. I gave up guessing what seven people are going to do a long time ago but I think folks will be o.k. with splitting the overage.

Michael C. Archinal, AICP MPA
 Manager
 Genoa Charter Township
 810.227.5225
mike@genoa.org



From: Kathleen Kline-Hudson [<mailto:KKline-Hudson@livgov.com>]
Sent: Thursday, June 07, 2018 11:47 AM
To: Mike Archinal
Subject: RE: Fillmore County Park Phase I Improvements

Mike,

I will get right back to you after I talk to Ken Hinton and ask him if I should pull the resolution for the \$17,879 out of the process. If you have a meeting on 6/18, is it very likely that they would make a decision that night?

The reason that I ask is because the construction bid we wish to award is only good for sixty days and our time will run out July 9. This factors into our decision of whether or not to pull the resolution and re-submit later.

Thanks,
Kathleen

From: Mike Archinal <Mike@genoa.org>
Sent: Thursday, June 07, 2018 11:04 AM
To: Kathleen Kline-Hudson <KKline-Hudson@livgov.com>
Cc: Polly <pskolarus@genoa.org>; Robin Hunt <Robin@genoa.org>; Bill Rogers <Bill@genoa.org>; Kelly VanMarter <Kelly@genoa.org>
Subject: RE: Fillmore County Park Phase I Improvements

Kathleen,

Thank you. Very helpful. Just to be clear; the \$17,879 is the nut we are trying to crack and the request to the Commissioners is pending? When is the matter going to be considered? I would be happy to try and get support to split the costs of the overage. We have a meeting on 6/18 and I can put this on the agenda. For timing and to build goodwill it would probably be better if Genoa took action first.

Please let me know your thoughts.

Michael C. Archinal, AICP MPA
Manager
Genoa Charter Township
810.227.5225
mike@genoa.org



From: Kathleen Kline-Hudson [<mailto:KKline-Hudson@livgov.com>]
Sent: Wednesday, June 06, 2018 5:38 PM
To: Mike Archinal
Subject: Fillmore County Park Phase I Improvements

Hi Mike,

I cannot tell you how much I appreciate you, Bill, Polly and others at Genoa Charter Township for your consideration of the development costs associated with the Fillmore County Park Phase I Improvements project! I will do my best to explain our Land and Water Conservation Fund grant budget and our financial shortfalls.

The Land and Water Conservation Fund (LWCF) grant budget for Phase I Improvements at the park allowed for a construction budget of \$98,000. This budget was established in 2016 when the LWCF grant application was submitted. (See Section C from Grant Application). The construction budget of

our grant totaled \$149,600 and three expenses in this budget were to be paid by owner and not by the contractor; they were \$47,600 5-K Natural Surface Trail, a \$700 entry sign, and a topo survey which actually came in less than budgeted at \$3,300 (\$149,600-\$51,600 in owner expenses = \$98,000 construction budget).

Unfortunately due to construction costs that have risen since 2016, and two construction addendums (see attached), none of the construction bids came in, at or under, \$98,000. The four (4) companies that submitted construction bids on May 9, 2018 varied from \$114,879.00 to \$270,042.00. Heystek Contracting Inc. was the lowest bidder at \$114,879.00. A post bid addendum was issued on May 15, 2018 and Heystek submitted a cost addition of 1,000 and they remained the low bidder in the amount of \$115,879.00 (see Bid Recommendation Letter).

Our Project Manager, Landscape Architects and Planners, noted the following regarding the Heystek Contracting Inc. bid: 1.) parking lot and drive cost came in about \$12,000 higher than we anticipated; \$6,150 of that cost is due to the additional drive width and firetruck turnaround 2.) The remaining \$6,000 of the parking/drive overage is because we had estimated the parking, drive, and associated materials to cost approximately \$18 a square yard and the bid came in at approximately \$21 a square yard 3.) The remaining bid overage is due to the mobilization cost came in about \$4,700 higher than we estimated. Mobilization always seems to vary quite a bit from contractor to contractor (as you can see from the bids we received) so it's often a difficult thing to predict.

As this bid is over the LWCF construction budget of \$98,000, there is a need for additional project funds. Therefore, after much consultation between Livingston County Planning, Facility Services, Purchasing and Finance departments, we submitted the attached resolution to the Livingston County Board of Commissioners for the authorization of a supplemental appropriation of \$17,879 from the General Fund Contingency Fund to continue with and complete this project. This requested amount will cover the exact shortfall in construction costs associated with a construction services agreement with Heystek Contracting, Inc. This request to the Board of Commissioners does not include the recommended 10% contingency; therefore we have no contingency and must make a subsequent request for funds if there are any unforeseen expenses during the construction process.

I hope that this explanation has provided some clarity regarding our Land and Water Conservation Fund grant budget and our financial shortfalls. Thank you again for your consideration of the Fillmore County Park Phase I Improvements project.

Best Regards,

Kathleen

Kathleen J. Kline-Hudson, Director
LIVINGSTON COUNTY PLANNING DEPARTMENT
304 East Grand River Avenue
Howell, MI 48843
Phone: 517.546.7555
KKline-Hudson@livgov.com

Land and Water Conservation Fund Application 2016

Organization: Livingston County

LW16-0003

Section C: Project Details

Applicant's current control of the site:

✓ Fee Simple

Road or Utility Easement (entrance only)

*Age of Park 10 Years

*Acres 198

Project Cost Estimate Table

List the specific development scope items (Select from dropdown list). Do not include ineligible items such as engineering costs beyond 15% of the subtotal and contingencies. NOTE: ALL OVERHEAD UTILITY LINES MUST BE BURIED.

<u>SCOPE ITEM</u>	<u>IS SCOPE ITEM OF UNIVERSAL DESIGN?</u>		<u>QUANTITY</u>	<u>TOTAL ESTIMATED COST</u>
Access Road	No	✓ Yes	1	\$16,100.00
Crushed Stone Parking Lot	No	✓ Yes	1	\$10,300.00
Access Pathway 6' wide or more	No	✓ Yes	1	\$6,500.00
Vault/Pit Toilet(s)	No	✓ Yes	1	\$26,600.00
Other: Multi-Purpose Playfield	✓ No	Yes	1	\$17,100.00
Entry and Wayfinding Signage	No	✓ Yes	1	\$11,600.00
Barrier Free Parking Signs	No	✓ Yes	1	\$300.00
Security Barriers	✓ No	Yes	1	\$3,200.00
Topographic Survey	✓ No	Yes	1	\$7,700.00
5-K Natural Surface Trail	✓ No	Yes	1	\$47,600.00
LWCF Sign	✓ No	Yes	1	\$1,100.00

Do not list the aspects of project execution, such as labor, construction equipment, contingency or raw materials. (New rows will appear as rows are completed and Saved)

Permit Fees \$1,500.00

Subtotal \$149,600.00

Engineering (These fees may not exceed 15% of subtotal) \$22,400.00

Total Estimated Cost (Must equal Total Project Cost amount on Section B page.) \$172,000.00

RESOLUTION**NO:** [Title]**LIVINGSTON COUNTY**
date.**DATE:** [Click here to enter a date.](#)

RESOLUTION AUTHORIZING A SUPPLEMENTAL APPROPRIATION AND AN AGREEMENT TO AWARD HEYSTEK CONTRACTING, INC. FOR FILLMORE COUNTY PARK PHASE 1 IMPROVEMENTS – Planning /Facility Services/Parks & Open Space Advisory Committee

WHEREAS, Livingston County received a Land and Water Conservation Fund grant for 50% funding of Fillmore County Park Phase 1 Improvements; and

WHEREAS, with assistance from Landscape Architects and Planners, Inc., as Project Manager, and in accordance with the County’s Purchasing Policy, bids were received for this project (see attached bid tabulation); and

WHEREAS, the recommendation is to award construction services of \$115,879 to Heystek Contracting, Inc. of Montrose, MI, who submitted the lowest bid; and

WHEREAS, as this bid is over the construction budget of \$98,000 for the project, there is a need for a transfer of \$17,879 from the General Fund Contingency fund to continue with and complete this project. In addition, a budget amendment to the Planning Federal Grant Fund 238 72100 will be required.

THEREFORE BE IT RESOLVED that the Livingston County Board of Commissioners authorizes a budget amendment to the 2018 budget to cover this project as stated below and authorizes the County Treasurer to transfer \$17, 879 from the General Fund to Fund 238:

ORG	CURRENT BUDGET	PROPOSED BUDGET AMENDMENT	PROPOSED AMENDED BUDGET
10196641-999238	\$42,721,073	\$17,879	\$42,738,952
23872100-699101	\$238,000	\$17,879	\$255,879

THEREFORE BE IT FURTHER RESOLVED that the Livingston County Board of Commissioners hereby authorizes entering into an agreement with Heystek Contracting, Inc. for construction services of \$115,879 for Fillmore County Park Phase 1 Improvements pending Michigan Department of Natural Resources approval.

BE IT FURTHER RESOLVED that the Chairman of the Livingston County Board of Commissioners is authorized to sign all forms, assurances, contracts/agreements, renewals and future amendments for monetary and contract language adjustments related to the above upon review and/or preparation of Civil Counsel.

#

#

#

MOVED:
SECONDED:
CARRIED:
ROLL CALL VOTE:

POST-BID ADDENDUM NUMBER 1

Designers:
Landscape Architects & Planners, Inc.
Oakland Center
809 Center Street, Suite 1
Lansing, MI 48906
(P) (517) 485-5500
(F) (517) 485-5576

Owner: Livingston County Planning Department
304 E. Grand River Ave. Suite 206
Howell, MI 48843
(P) (517) 546-7555

Project: FILLMORE COUNTY PARK PHASE I IMPROVEMENTS

Date: 5/14/2018

TO ALL BIDDERS

The purpose of this Addendum is to clarify and/ or modify the Bidding Documents, including drawings and specifications, for this project. This Post-Bid Addendum shall take precedent over the original bidding documents and any previous addenda issued for this project. This Post-Bid Addendum must be returned to the Livingston County Planning Department 304 E. Grand River Ave. Suite 206 or emailed to nwallace@lapinc.net no later than 3:00 PM, Tuesday, May 22, 2018.

(Signature Acknowledging Receipt of this Addendum)

.....
ITEM 1: Change to culvert pipe size and material

This Post-Bid Addendum is only addressing the costs associated with changing the 55' length of 12" diameter ADS Dual wall corrugated pipe and ADS flared-end sections as called-out on sheet C4 of the construction drawings and shown in detail 4 of sheet C5 to a 55' length of 15" diameter CMP pipe with metal flared-end sections.

The additional price to the project construction including equipment, installation, bonds and insurance to complete the work is as follows:

ADD: _____ (dollars) \$ _____

ADDENDUM NUMBER 2

Designers:
Landscape Architects & Planners, Inc.
Oakland Center
809 Center Street, Suite 1
Lansing, MI 48906
(P) (517) 485-5500
(F) (517) 485-5576

Owner: Livingston County Planning Department
304 E. Grand River Ave. Suite 206
Howell, MI 48843
(P) (517) 546-7555

Project: FILLMORE COUNTY PARK PHASE 1 IMPROVEMENTS

Date: 5/3/2018

TO ALL BIDDERS

The purpose of this Addendum is to clarify and/ or modify the Bidding Documents, including drawings and specifications, for this project. This Addendum shall take precedent over the original bidding documents and any previous addenda issued for this project. All addenda received must be listed on the Proposal Form and shall be clearly indicated on the outside of the sealed envelope containing the bid for this project. Any bid proposal received without each addendum listed by number and date received on the outside of the bid proposal envelope, may be declared a non-responsive bid.

.....

ITEM 1: Change

Sheets C2, C3, C4

Drive entry moved approximately 21' to the east.

ITEM 2: Change

Sheets C2, C3, C4

Drive widened to 26'. Firetruck turnaround added to north end of parking lot.

ITEM 3: Change

Sheets C2, C3, C4

Firetruck hammerhead turnaround added to north end of parking lot.

ITEM 4: Change

Sheets C2,

Entry Sign moved to the east to align with new drive alignment.

ITEM 5: Clarification

Sheets C2,

Concrete parking spaces and walk shall be all 4" reinforced concrete.

ITEM 5: Clarification

Sheets C4,

Note added: Cutoff ditching shall be provided in cut areas as necessary to provide positive drainage away from field, as directed by engineer.

ITEM 6: Clarification

Sheets C5,

Material for the gravel drive and parking lot shall be crushed concrete.

ITEM 7: Clarification

Aggregate testing shall be owner responsibility. Contractor to provide material info and source via submittal.

ITEM 8: Clarification

The Livingston County Road Commission does not require a bond for the LCRC driveway permit. However the contractor will need to submit a certificate of insurance listing the road commission as additional insured. See attached sample certificate with the specific language required with regard to being additional insured.

ITEM 9: Clarification

See attached notes from Pre-Bid meeting held 4/25/2018

Fillmore County Park – Phase 1
Pre-Bid meeting 4/25/2018

Meeting Notes

General Statements

- This is not a prevailing wage project.
- After receiving review comments from the fire marshal there will be changes to the drive and parking layout that will be addressed in a forthcoming addendum.
- Entry sign panel to be provided by owner, all other materials and installation required for construction of entry sign shall be by contractor.
- Some items shown on the drawings are not in the contract scope and are so noted, including the 5-K natural surface trail, to be constructed by County's jail inmate labor.
- Toilet vault installation must be overseen by or installed by a licensed septic installer.
- Total grant funding for the project is \$172,000. Budget for the contract portion of the project based on grant funds is \$98,000

Contractor Questions and responses

Q. What is to be done with removed topsoil?

A. Topsoil is to be used where needed for multi-purpose field grading and the remainder is to be stockpiled in the areas as indicated in the drawings.

Q. Who is responsible for construction layout and staking?

A. County will stake property corners and drive centerline, all other staking and layout will be by contractor.

Q. What is material on the restroom building?

A. Standard barn wood wall and standard cedar shake as called out on the CXT precast Gunnison vault toilet.

Q. Who is responsible for concrete testing?

A. Contractor is responsible for concrete testing.

Q. Will additional silt fence and construction access drive mud mat be needed per SESC permitting?

A. County is going through the permitting process. If additional items are required it will be addressed via addendum or bulletin.

Q. What is the bid bond percentage?

A. The bid bond is 5%.

Q. What does misc. removals line item include?

A. line item includes tree and brush removal, and removal of stone and boulders discovered on site. All natural materials shall be stockpiled on site.

Q. What is the construction schedule?

A. Contractor to include a written schedule detailing scope of work and estimated start and end dates. Contractor shall commence work within 10 calendar days of receiving notification that the project contract has been signed by the owner.

Q. Will county jail inmate labor conflict with contractors work?

A. Work by County jail inmate labor is independent of contract work, and may take place during and/or after contract work. County will coordinate inmate labor so as to avoid conflicts with contractor work.

Additional contractor questions to be answered in addendum.

Q. Clarify what aggregate material is to be used for the access drive and parking lot?

Q. Who is in charge of Aggregate Testing?

Q. Does the contractor need a bond for the ROW permit?



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Sample Excavating 123 One Way Road No Where, Michigan 41234	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2">CONTACT NAME:</td> </tr> <tr> <td>PHONE (A/C, No, Ext):</td> <td>FAX (A/C, No):</td> </tr> <tr> <td colspan="2">E-MAIL ADDRESS:</td> </tr> <tr> <td colspan="2" style="text-align: center;">INSURER(S) AFFORDING COVERAGE</td> </tr> <tr> <td style="width: 80%;">INSURER A:</td> <td>NAIC #</td> </tr> <tr> <td>INSURER</td> <td></td> </tr> <tr> <td>INSURER</td> <td></td> </tr> <tr> <td>INSURER</td> <td></td> </tr> <tr> <td>INSURER</td> <td></td> </tr> </table>	CONTACT NAME:		PHONE (A/C, No, Ext):	FAX (A/C, No):	E-MAIL ADDRESS:		INSURER(S) AFFORDING COVERAGE		INSURER A:	NAIC #	INSURER		INSURER		INSURER		INSURER	
CONTACT NAME:																			
PHONE (A/C, No, Ext):	FAX (A/C, No):																		
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INSURER A:	NAIC #																		
INSURER																			
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Sample

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	<input checked="" type="checkbox"/>		ABC123456	10/31/11	10/31/12	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS			FG55555	10/31/11	10/31/12	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ 500,000 BODILY INJURY (Per accident) \$ 1,000,000 PROPERTY DAMAGE (Per accident) \$ 1,000,000 \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		<input type="checkbox"/> Y <input type="checkbox"/> N	XYZ654321	10/31/11	10/31/12	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 100,000 E.L. DISEASE - EA EMPLOYEE \$ 100,000 E.L. DISEASE - POLICY LIMIT \$ 500,000

Sample

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

The Board of Livingston County Road Commissioners, the Livingston County Road Commission, and their officers, agents and employees are listed as Additional Insured.

Please make sure this wording is added! If this wording is not on the certificate of insurance, or an endorsement is provided, we cannot issue a permit.

CERTIFICATE HOLDER Livingston County Road Commission 3535 Grand Oaks Drive Howell, Michigan 48843	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
---	--



LIVINGSTON COUNTY PURCHASING

LIVINGSTON COUNTY, MICHIGAN

304 E. Grand River Ave., Suite 204 Howell, MI 48843

**ROBERTA BENNETT, CPPB
PURCHASING AGENT**

**TEL: (517) 540-8741
FAX: (517) 546-7266**

May 3, 2018

RFP-LC-18-08: Fillmore Park Phase 1 Improvements

RE: Addendum #2 – Pre-Bid Meeting - Companies in attendance

The companies in attendance at the pre-bid meeting held on April 25, 2018 were:

**Bob Myers Inc.
Anglin Civil
Weatherain LLC
Envision
Heystek Contracting, Inc.
Cornerstone Industrial
Farmland Services
Grostic Cattle Co.**



LAP + CREATIVE
Landscape Architects and Planners.

809 Center St, Suite 1 | Lansing, MI 48906 | info@lapinc.net | (ph) 517-485-5500 | (fax) 517-485-5576

May 24, 2018

Ms. Kathleen Kline-Hudson, Director
Livingston County Planning Department
304 E. Grand River Ave. Suite 206
Howell, MI 48843
P: 517-546-1549

RE: Recommendation Project # 13040.02 Fillmore County Park Phase 1 Improvements

Dear Ms. Kline-Hudson,

Bids were opened on Wednesday, May 9, 2018 at 2:00 pm at the Livingston County Planning Department office. There were 4 companies that placed bids. The bids varied from \$114,879.00 to \$270,042.00, with Heystek Contracting Inc. being the lowest bidder at \$114,879.00. A copy of the bid tab has been attached.

A post bid addendum was issued on May 15, 2018 and addenda were received from two bidders before the due date of May 22, 2018 at 3:00 pm. Heystek submitted a cost addition of \$1,000.00 and Bob Meyers Excavating submitted a cost addition of \$575.00. With the additional \$1,000.00 Heystek's bid total is \$115,879.00 and they remain the low bidder. Copies of the post-bid addenda have been attached.

We have reviewed the low bid and found the costs provided to be reasonable and in accordance with the contract documents. The variation in bid pricing seems to be a result of less precise estimating methods and/or differing unit prices that result in higher costs. We believe the contractor's bid is complete and accurate with three exceptions. The bid quantities for type A and type B grading appear to be lower than our estimated quantities as well as the bid quantity for seeding and mulch. This seems to be a result of less precise estimating methods. Any errors in estimated quantities is solely the responsibility of the contractor and as a result will not have any effect on the bid provided.

We have not worked with Heystek before, but they are a well-established and reputable company and We have no reason to doubt their ability to complete this project in a competent and timely manner.

It is our official recommendation that the bid be awarded to **Heystek Contracting, Inc.** in the amount of **\$115,879.00**.

If you have any questions about the information above, please contact our office.

Sincerely,

Robert Ford,
Project Manager / Landscape Architect

BID TABULATION
Fillmore County Park Phase 1 Improvements

ITEM OF WORK	UNIT	Hestek Contracting, Inc.		Envision		Gibraltar Construction Co.		Bob Myers Excavating	
		BID QTY	COST	BID QTY	COST	BID QTY	COST	BID QTY	COST
Mobilization	LSUM	1	\$11,000.00	1	\$5,800.00	1	\$24,000.00	1	\$1,000.00
SESC Measures	LSUM	1	\$500.00	1	\$2,320.00	1	\$1,200.00	1	\$6,200.00
Topsoil Stripping and Stockpiling	CY	900	\$1,980.00	4,750	\$30,305.00	5,000	\$31,220.00	5,975	\$29,500.00
Tree and shrub clearing for entry drive	LSUM	1	\$1,525.00	1	\$6,380.00	1	\$24,900.00	1	\$1,275.00
Type A Grading (fine grading within areas noted on drawings)	SY	9,150	\$10,065.00	19,552	\$24,948.00	18,500	\$22,230.00	7,600	\$10,750.00
Type B Grading (fill in depressions and minor leveling within areas noted on drawings)	SY	7,000	\$4,200.00	16,693	\$17,426.00	16,000	\$18,850.00	16,200	\$23,000.00
Placement of Topsoil (From Stockpile)	CY	1,000	\$1,500.00	4,000	\$32,480.00	2,830	\$24,000.00	2,550	\$10,500.00
Seeding and Mulch Installed	SY	16,150	\$8,882.50	34,400	\$59,873.00	35,000	\$35,000.00	23,775	\$21,700.00
4" Reinforced Concrete Installed	SF	750	\$5,625.00	754	\$5,655.00	772	\$5,280.00	750	\$4,500.00
Striping and Handicap Symbols - ADA Parking	LSUM	1	\$2,500.00	1	\$1,044.00	1	\$750.00	1	\$775.00
Signage for ADA Parking Space	EA	2	\$1,000.00	2	\$2,088.00	2	\$750.00	2	\$1,100.00
21AA Parking Lot and Drive, Installed	SY	1,835	\$29,176.50	1,835	\$26,606.00	1,484	\$17,155.00	1,835	\$16,250.00
Drive Culvert, Installed	LF	55	\$2,200.00	55	\$1,914.00	55	\$4,000.00	55	\$3,800.00
Precast Concrete Wheel Stops	EA	2	\$500.00	2	\$423.00	2	\$250.00	2	\$450.00
Prefab Restroom Building and Vault, or equivalent, Installed	LSUM	1	\$31,400.00	1	\$44,080.00	1	\$36,818.00	1	\$31,500.00
Wayfinding Sign, Installed	LSUM	1	\$500.00	1	\$580.00	1	\$800.00	1	\$900.00
MDNR Trust Fund Sign, Installed	LSUM	1	\$500.00	1	\$580.00	1	\$800.00	1	\$1,300.00
Installation of Entry Sign (sign manufactured by others - see Div. 2 specs for details)	LSUM	1	\$1,825.00	1	\$7,542.00	1	\$1,500.00	1	\$1,150.00
SESC Permit - By Owner	-	-	-	-	-	-	-	-	-
Building Permit - By Owner	-	-	-	-	-	-	-	-	-
County Road Permit - By Owner	-	-	-	-	-	-	-	-	-
Total (Equal to Base Bid)	LSUM	-	\$114,879.00	-	\$270,042.00	-	\$249,503.00	-	\$166,150.00

Additional Work Unit Prices

Class II Sand, Undercut - CY	\$14.00	\$46.40	\$50.00	\$15.75
Silt Fencing	\$1.00	\$2.32	\$1.55	\$1.55
Geogrid - SY	\$1.05	\$6.96	\$6.00	\$2.10

POST-BID ADDENDUM NUMBER 1

Designers:
Landscape Architects & Planners, Inc.
 Oakland Center
 809 Center Street, Suite 1
 Lansing, MI 48906
 (P) (517) 485-5500
 (F) (517) 485-5576

Owner: Livingston County Planning Department
 304 E. Grand River Ave. Suite 206
 Howell, MI 48843
 (P) (517) 546-7555

Project: FILLMORE COUNTY PARK PHASE I IMPROVEMENTS

Date: 5/15/2018

TO ALL BIDDERS

The purpose of this Addendum is to clarify and/or modify the Bidding Documents, including drawings and specifications, for this project. This Post-Bid Addendum shall take precedent over the original bidding documents and any previous addenda issued for this project. This Post-Bid Addendum must be returned to the Livingston County Planning Department 304 E. Grand River Ave. Suite 206 or emailed to w.wallace@lapnc.net no later than 3:00 PM, Tuesday, May 22, 2018.



(Signature Acknowledging Receipt of this Addendum)

.....

ITEM 1: Change to culvert pipe size and material

This Post-Bid Addendum is only addressing the costs associated with changing the 55' length of 12" diameter ADS Dual wall corrugated pipe and ADS flared-end sections as called-out on sheet C4 of the construction drawings and shown in detail 4 of sheet C5 to a 55' length of 15" diameter CMP pipe with metal flared-end sections.

The additional price to the project construction including equipment, installation, bonds and insurance to complete the work is as follows:

ADD: FIVE HUNDRED AND SEVENTY FIVE (dollars) \$ 575.00

MAY 21, 2018

BOB MYERS EXCAVATING, INC.
 8111 HAMMEL ROAD
 BRIGHTON, MI 48116
 810-231-2044

ESTIMATOR - KONRD JAGER
EMAIL - KONRD@MYERSEXC.COM

POST-BID ADDENDUM NUMBER 1

Designers:
Landscape Architects & Planners, Inc.
Oakland Center
809 Center Street, Suite 1
Lansing, MI 48906
(P) (517) 485-5500
(F) (517) 485-5576

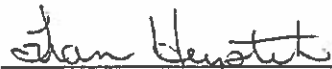
Owner: Livingston County Planning Department
304 E. Grand River Ave. Suite 206
Howell, MI 48843
(P) (517) 546-7555

Project: FILLMORE COUNTY PARK PHASE 1 IMPROVEMENTS

Date: 5/15/2018

TO ALL BIDDERS

The purpose of this Addendum is to clarify and/ or modify the Bidding Documents, including drawings and specifications, for this project. This Post-Bid Addendum shall take precedent over the original bidding documents and any previous addenda issued for this project. This Post-Bid Addendum must be returned to the Livingston County Planning Department 304 E. Grand River Ave. Suite 206 or emailed to nwallace@lapinc.net no later than 3:00 PM, Tuesday, May 22, 2018.



(Signature Acknowledging Receipt of this Addendum)

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The additional price to the project construction including equipment, installation, bonds and insurance to complete the work is as follows:

ADD: One thousand and 00/100 (dollars) \$ 1,000.00

Board Correspondence

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF LIVINGSTON

GENOA CHARTER TOWNSHIP,

Case No. 18-____-CK

Plaintiff,

v.

Hon.

HEALY HOMES, LLC, JACK HEALY AND
THE WESTERN SURETY COMPANY,

Defendants.

SEWARD HENDERSON PLLC

By: T. Joseph Seward (P35095)

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E: jseward@sewardhenderson.comCOMPLAINT FOR DECLARATORY JUDGMENT

NOW COMES Plaintiff, GENOA CHARTER TOWNSHIP, by and through its attorneys, SEWARD HENDERSON PLLC, and for its Complaint for Declaratory Judgment, states as follows:

INTRODUCTION

1. That the Plaintiff, GENOA CHARTER TOWNSHIP ("GENOA"), is seeking a judgment requiring HEALY HOMES, LLC AND JACK HEALY ("HEALY") to be ordered to complete the improvements on Lawson Road and the intersection of Lawson and Grand

River pursuant to the Planned Unit Development Agreement. Although obligated to make these improvements, HEALY has refused to do so.

2. That on April 19, 2002 a Planned Unit Development Agreement was reached for the construction of residential units commonly referred to as the Summerfield Pointe Development.

3. That on February 21, 2003 the Planned Unit Development Agreement for the Summerfield Pointe project was amended and restated.

4. That pursuant to the amended and restated Summerfield Pointe Planned Unit Development Agreement, a copy of which is attached as Exhibit A, the owner agreed:

"... at its expense and subject to the approval from the Michigan Department of Transportation and the Livingston County Road Commission, shall be required to improve the intersection of Lawson Drive and Grand River Avenue as follows: (i) Lawson Drive will be improved to accommodate three lanes of vehicular traffic which shall include one separate right turn lane and one separate left turn lane; (ii) the Grand River Avenue intersection with Lawson Drive shall include an acceleration lane for vehicles exiting Lawson Drive and a de-acceleration lane for vehicles entering Lawson Drive; (iii) at the north terminus of Lawson Drive a radial cul-de-sac will be constructed by MDR owner (successor in interest Healy) within the public right-of-way; and (iv) one-half of the cost of the purchase and initial installation of a traffic control device when approved by the Michigan Department of Transportation at Lawson Drive and Grand River Avenue intersection."

Furthermore, the owner agreed:

"... will be required at a future date to grant a reciprocal easement, satisfactory to the Township Board, for a connection road between Summerfield Pointe Planned Unit

Development and the adjoining property located to the west, to allow ingress and egress from and to the development from both Grand River Avenue and Latson Road.”

5. That HEALY has been requested to fulfill their obligations in the Planned Unit Development Agreement, HEALY has been asked to perform the necessary construction of Lawson and Grand River Avenue.

6. That HEALY has acknowledged his obligations to have the improvements made to Lawson Road and Grand River Avenue but to date has failed or refuses to pay for the improvements to Lawson Drive and Grand River Avenue.

WHEREFORE, GENOA prays for a Judgment in its favor having the court declare:

- a. That HEALY is obligated to immediately ___ the construction of the improvements to Lawson Drive and Grand River Avenue intersection as set forth in paragraph 3.1 of the amended and restated Summerfield Pointe Planned Unit Development Agreement; and
- b. Award GENOA its costs and attorney fees so wrongfully incurred.

COUNT II

7. That HEALY obtained a bond guaranteeing the performance of HEALY performing the road improvements as set forth in the Summerfield Pointe Planned Unit Development.

8. That HEALY did not and continues to refuse to perform their obligations to make the improvements to Lawson Drive and Grand River Avenue intersection.

9. That HEALY'S failure to perform has triggered WESTERN SURETY COMPANY ("WESTERN") obligation to perform pursuant to its bond issued on October 15, 2003, bond number 69599491, attached hereto as Exhibit B.

10. That demand has been made upon WESTERN to perform as obligated pursuant to these bond, but WESTERN refuses to do so.

11. That WESTERN does not have any legal or factual basis upon which to refuse to perform as required by its obligations in the bond.

WHEREFORE, GENOA prays for a Judgment in its favor and against WESTERN:

- a. Declaring that it issued a performance bond in favor of GENOA;
- c. That HEALY has failed and refuses to perform its obligations to make road improvements;
- d. That WESTERN issued a performance bond guaranteeing the performance of HEALY to make the road improvements as set forth in the Summerfield Pointe Planned Unit Development Agreement.
- e. That HEALY'S failure and refusal to make the road improvements has triggered WESTERN'S obligation to undertake the construction and payment of the road improvements set forth in paragraph 3.1 of the restated and amended Summerfield Pointe Planned Unit Development Agreement; and
- f. That the Court award GENOA its costs and attorney fees so wrongfully incurred.

Respectfully submitted,

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