

AGENDA
WYOMING CITY COUNCIL MEETING
CITY COUNCIL CHAMBERS
MONDAY, DECEMBER 17, 2018, 7:00 P.M.

1) Call to Order

2) Invocation – Pastor Wayne Ondersma, The Pier Church

If you wish and are able, please stand for the invocation. The Pledge of Allegiance will immediately follow the invocation.

3) Pledge of Allegiance

4) Roll Call

5) Student Recognition

6) Approval of Minutes

From the December 3, 2018 Regular Meeting

7) Approval of Agenda

8) Public Hearings

If you wish to speak to an item during a public hearing you are welcome to do so. It is important to note this is not an opportunity for dialog or debate; this is an opportunity to provide comment to the City Council. Comments made during a public hearing may become part of the meeting's permanent record. Upon approaching the podium, please begin by providing your name and address. There is a 3 minute limit per person.

7:01 p.m. To Consider Approval of an Application for an Industrial Facilities
Exemption Certificate in the City of Wyoming for HME Incorporated

9) Public Comment on Agenda Items

This public comment period is reserved for comment on agenda items only. If you wish to speak about an item that is not on the agenda, please hold your comments until the acknowledgement of visitors at the end of the meeting. It is important to note this is not an opportunity for dialog or debate; this is an opportunity to provide comment to the City Council. Upon approaching the podium, please begin by providing your name and address. There is a 3 minute limit per person.

10) Presentations and Proclamations

- a) Presentations
- b) Proclamations

11) Petitions and Communications

- a) Petitions
- b) Communications

12) Reports from City Officers

- a) From City Council
- b) From City Manager

18-07 Acceptance of a Utilities Easement for 2234 Denwood Avenue SW (Joseph A. and Elizabeth J. Marsiglia)

13) Budget Amendments

14) Consent Agenda

All items under this section are considered to be routine and will be enacted by one motion with no discussion. If discussion is desired by a Councilmember, that member may request removal from the Consent Agenda.

- a) To Appoint Rosemary Davis as a Member of the Tree Commission for the City of Wyoming
- b) To Reappoint Members to the Downtown Development Authority for the City of Wyoming
- c) To Approve Traffic Control Orders No. 1.01-18, 1.03-18, 3.01-18, and 3.04-18

15) Resolutions

- d) To Approve the Application of HME Incorporated, Located at 1905 Chicago Drive SW, for an Industrial Facilities Exemption Certificate in the City of Wyoming
- e) To Approve a Police Support Contract Form

16) Award of Bids, Contracts, Purchases, and Renewal of Bids and Contracts

- f) To Approve a Cost Sharing Agreement for Certain Improvements at the Reserve at Rivertown and to Authorize the Related Budget Amendment (Budget Amendment No. 44)
- g) To Approve a Professional Services Agreement with Dixon Environmental Consulting, Inc. for Jackson Park Environmental Work
- h) To Authorize the Mayor and City Clerk to Execute an Agreement for Engineering Testing Services
- i) To Authorize the Mayor and City Clerk to Execute an Agreement for Surveying Services
- j) To Authorize the Mayor and City Clerk to Execute an Agreement for Property And Right-of-Way Acquisition Services
- k) To Concur with Additional Work for Re-Roofing the Material Storage Building and to Authorize Payment
- l) To Authorize the Purchase of Tasers
- m) For Award of Bids
 - 1. Video Surveillance System (Budget Amendment No. 43)
 - 2. Engine Oil
 - 3. Gas Chromatography System

17) Ordinances

- 21-18 To Amend Chapter 86, Article III of the City Code to Update the City's Sanitary Sewer Use Requirements (Final Reading)

18) Informational Material

19) Acknowledgment of Visitors

This public comment period is an opportunity to share concerns or present topics to the City Council that were not part of this meeting's agenda. This is not an opportunity for dialog with Council, but Council may make referrals or request staff to follow up. Please provide your name and address when approaching the podium. There is a 3 minute limit per person.

20) Closed Session (as necessary)

21) Adjournment

City of **Wyoming** Michigan

City Manager | 1155 28th St SW, Wyoming, MI 49509
616.530.7272 | Fax 616.261.7103 | wyomingmi.gov

December 17, 2018

Wyoming City Council
Wyoming, Michigan

City Manager's Report No. 18-07

Subject: Acceptance of a Utilities Easement for 2234 Denwood Avenue, SW (Joseph A. and Elizabeth J. Marsiglia)

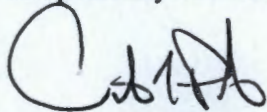
Councilmembers:

Joseph A. and Elizabeth J. Marsiglia, owners of 2234 Denwood Avenue, SW, have submitted the following described Utilities Easement. The Utilities Easement conveys rights to construct and maintain multiple utilities, including watermain, storm sewer and sanitary sewer. The easement area is shown on the attached Estimate of Just Compensation drawing.

Grantor:	Joseph A. and Elizabeth J. Marsiglia
Parcels:	41-17-11-253-024
Right-of-way Size	2,358 sf – Utilities Easement
Consideration:	\$1,310.00

It is recommended that the City Council accept the Utilities Easement which has been approved as to form by the City Attorney.

Respectfully submitted,



Curtis L. Holt
City Manager

Attachments: Utilities Estimate
Estimate of Just Compensation



CITY COUNCIL

Sheldon DeKryger

Dan Burrill

Kent Vanderwood

Marissa Postler

Robert Postema

Sam Bolt

Jack A. Poll, Mayor

**CITY OF WYOMING
UTILITIES EASEMENT**
Parcel No. 41-17-11-253-024

The Grantor, **Joseph A. Marsiglia & Elizabeth J. Marsiglia**, husband and wife, whose address is 2234 Denwood Avenue, SW, Wyoming, MI 49509

DOES HEREBY GRANT AND CONVEY TO:

CITY OF WYOMING, a Michigan Municipal Corporation, whose address is 1155 28th Street, SW, Wyoming, Michigan 49509 (the "City" herein) a **Utilities Easement** for Sanitary Sewer, Storm Sewer and Watermain purposes (herein after referred to as "Utilities"), including the right to enter upon the real property at any time and to construct, reconstruct, replace, repair, operate and maintain the Utilities and appurtenances in, over, under, across, through and upon said real property together with the right to excavate and refill ditches and/or trenches for the location of said Utilities and appurtenances, and the further right to remove trees, bushes, undergrowth, and other obstructions interfering with the location, construction, reconstruction, replacement, repair, operation, and maintenance of said Utilities and appurtenances in, over, under, across, through and upon said real property located in the City of Wyoming, County of Kent, State of Michigan, as follows:

See Exhibit A attached hereto for the **Utilities Easement Area and Utilities Easement
Legal Description (Parcel No. 41-17-11-253-024)**

For the full consideration of One Thousand Three Hundred Ten Dollars and No Cents (\$1,310.00).

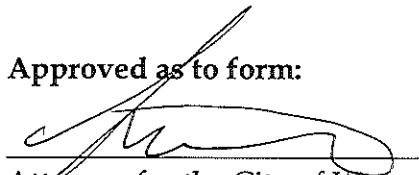
The City shall have the right to use the Grantor's property outside the Easement area but adjoining the Easement area to accomplish the work; provided however, that the City shall restore the portion of the Grantor's property adjoining the Easement area to as good or better condition than it was prior to any work having been performed.

Grantor shall not construct, install, or place any buildings, permanent structures, or obstructions in the Easement Area which would interfere with the intended use of the Easement.

Grantor shall not grant an easement to any other party within the Easement Area without the prior written consent of the City of Wyoming.

DATED: 10/29/18

Approved as to form:


Attorney for the City of Wyoming

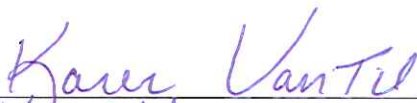
GRANTOR:


Joseph A. Marsiglia


Elizabeth J. Marsiglia

STATE OF MICHIGAN)
)ss.
COUNTY OF Kent)

The foregoing instrument was acknowledged before me in Kent County,
Michigan on this 29 day of October, 2018, by Joseph A. Marsiglia &
Elizabeth J. Marsiglia, husband and wife.


Karen VANTIL, Notary Public
State of Michigan, County of Kent
My Commission Expires: May 20, 2020
Acting in the County of: Kent



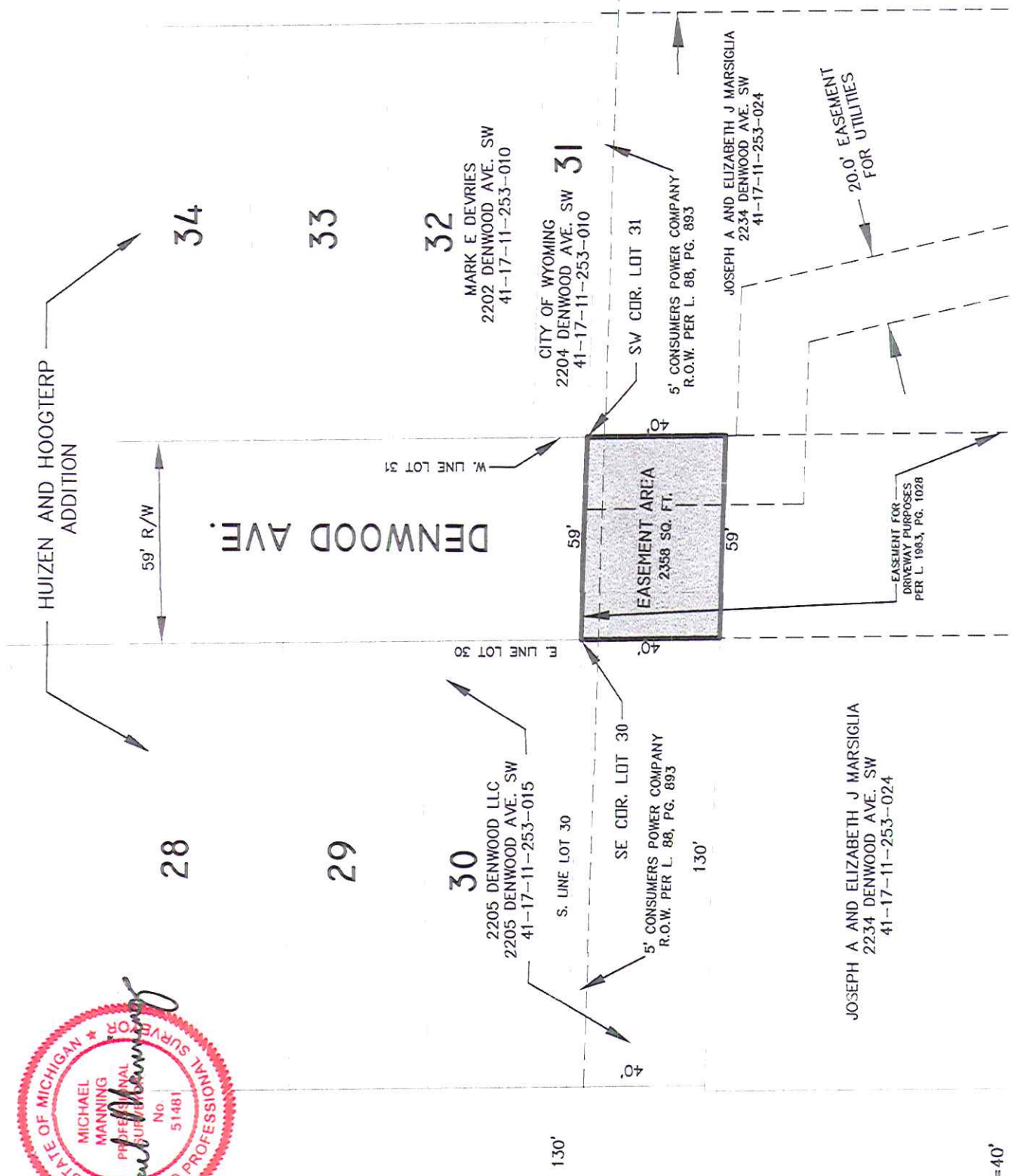
Prepared by and after recording return to:
Deborah S. Poeder
Land Matters, LLC
11230 Tallmadge Woods Drive
Grand Rapids, MI 49534

Legal Description by:
Meyers, Bueche & Nies, Inc.
Michael Manning, P.S.
1638 Leonard Street, NW
Grand Rapids, MI 49504



FOR: CITY OF WYOMING
DATE: 10-05-18
PROJECT NO: 18048 ESMT

EASEMENT DESCRIPTION: THAT PART OF THE NORTHEAST 1/4 OF SECTION 11, TOWN 6 NORTH, RANGE 12 WEST, CITY OF WYOMING, KENT COUNTY, MICHIGAN, DESCRIBED AS: BEGINNING AT THE SOUTHEAST CORNER OF LOT 30, HUIZEN AND HOOGERP ADDITION; THENCE SOUTHERLY 40 FEET PARALLEL WITH THE EAST LINE OF SAID LOT; THENCE EASTERLY 59 FEET PARALLEL WITH THE SOUTH LINE OF SAID LOT; THENCE NORTHERLY 40 FEET ALONG THE WESTERLY LINE OF LOT 31 EXTENDED TO THE SOUTHWEST CORNER OF SAID LOT 31; THENCE WESTERLY 59 FEET TO THE POINT OF BEGINNING.



THIS DRAWING WAS MADE FROM THE LEGAL DESCRIPTION SHOWN HEREON, THE DESCRIPTION SHOULD BE COMPARED WITH THE ABSTRACT OF TITLE OR TITLE POLICY FOR ACCURACY, EASEMENTS, AND EXCEPTIONS.

meyers, buche & nies, inc.
civil engineers/surveyors
1638 leonard st nw
grand rapids, mi 49504
616-457-5030
fax 616-457-8244

LEGEND

□ WOOD STAKE (SET)
○ IRON STAKE (SET)
● IRON STAKE (FOUND)
— FENCE
M = MEASURED
P = PLATTED

SCALE: 1"=40'

CITY OF WYOMING
ESTIMATE OF JUST COMPENSATION

PROJECT: Denwood Avenue Improvements

PURPOSE OF REPORT: The purpose of this report is to estimate the Fair Market Value of the land to be acquired and to estimate the Just Compensation for the conveyance of land and the granting of permanent and temporary Easements. The compensation will be based upon the land values obtained from the Wyoming Assessor's Records. This method of compensation is authorized by the Wyoming City Council per Resolution No. 18464 (City Policy Manual).

SITE DATA:		Permanent Parcel No.: 41-17-11-253-024	
Parcel:	Joseph A. Marsiglia & Elizabeth J. Marsiglia	Land Use:	Residential Improved Size: 1.32 Ac (total)
Address:	2234 Denwood Avenue, SW	Zoning:	401

ACQUISITION DESCRIPTION:

Square foot values based on Land Values obtained from the City of Wyoming website.

Summary of Costs:

Utilities Easement:
A rectangular shaped parcel as shown on the sketch.

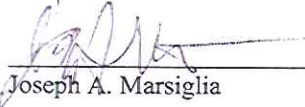
Area: 2,358 s.f.

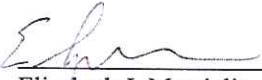
SKETCH:

COMPUTATION OF VALUE:			
LAND ACQUISITION, UTILITIES EASEMENT			
2,358 s.f. (Area)	X	\$ 1.85 @ 30% Easement Factor/ s.f. = \$1,308.69 ~ Round to \$1,310.00	\$1,310.00

REMARKS:

Signed: 
Land Matters, llc
Deborah S. Poeder

Agreed to by: 
Joseph A. Marsiglia


Elizabeth J. Marsiglia

For information call 616.791.9805

\$1,310.00

RESOLUTION NO. _____

RESOLUTION TO APPOINT ROSEMARY DAVIS AS A MEMBER OF THE
TREE COMMISSION FOR THE CITY OF WYOMING

WHEREAS:

1. Rosemary Davis has submitted an application requesting appointment to the Tree Commission for the City of Wyoming.
2. A vacancy exists in an unexpired term ending June 30, 2022.
3. Mayor Jack Poll has recommended that Rosemary Davis be appointed as a member of the Tree Commission for the City of Wyoming.

NOW, THEREFORE, BE IT RESOLVED:

1. The City Council for the City of Wyoming, Michigan, does hereby confirm the appointment of Rosemary Davis to the Wyoming Tree Commission for the unexpired term ending June 30, 2022.

Moved by Councilmember:

Seconded by Councilmember:

Motion Carried Yes
 No

I hereby certify that the foregoing Resolution was adopted by the City Council for the City of Wyoming, Michigan at a regular session held on December 17, 2018.

Kelli A. VandenBerg, Wyoming City Clerk

Resolution No. _____

RESOLUTION NO. _____

RESOLUTION TO REAPPOINT MEMBERS
TO THE DOWNTOWN DEVELOPMENT AUTHORITY
FOR THE CITY OF WYOMING

WHEREAS:

1. The term of office for some members of the Downtown Development Authority expires on January 1, 2019.
2. It is the desire of Mayor Jack A. Poll that members be reappointed to serve on the Downtown Development Authority for the City of Wyoming:

BOARD, COMMISSION OR COMMITTEE

TERM ENDING

Downtown Development Authority

Steven Harkema

01/01/23

Douglas Kochneff

01/01/23

NOW, THEREFORE, BE IT RESOLVED:

1. That the City Council for the City of Wyoming, Michigan, does hereby confirm the reappointment of members to the Downtown Development Authority for the City of Wyoming to the terms so stated.

Moved by Councilmember:

Seconded by Councilmember:

Motion Carried Yes
 No

I hereby certify that the foregoing Resolution was adopted by the City Council for the City of Wyoming, Michigan at a regular session held on December 17, 2018.

Kelli A. VandenBerg, Wyoming City Clerk

Resolution No. _____

RESOLUTION NO. _____

RESOLUTION TO APPROVE
TRAFFIC CONTROL ORDERS NO. 1.01-18, 1.03-18, 3.01-18, AND 3.04-18

WHEREAS:

1. Traffic Control Orders No. 1.01-18, 1.03-18, 3.01-18, and 3.04-18, as set forth in the exhibits attached hereto and made a part of this Resolution, have been proposed in the City of Wyoming.
2. It is recommended by the City Traffic Engineer, as required by the Uniform Traffic Code for Cities, Townships and Villages, Part 2, Section R 28.1153, issued in October 2002 by the Commissioner of the Michigan State Police and adopted by the City of Wyoming, that said Traffic Control Order should be approved by the City Council as permanent.

NOW, THEREFORE, BE IT RESOLVED:

1. That such final approval be and is hereby granted that the aforesaid Traffic Control Orders No. 1.01-18, 1.03-18, 3.01-18, and 3.04-18 be made a permanent part of the Traffic Control Order files of the City of Wyoming.

Moved by Councilmember:

Seconded by Councilmember:

Motion Carried Yes
 No

I hereby certify that the foregoing Resolution was adopted by the City Council for the City of Wyoming, Michigan at a regular session held on December 17, 2018.

Kelli A. VandenBerg, Wyoming City Clerk

ATTACHMENTS:

Traffic Control Order No. 1.01-18, with map
Traffic Control Order No. 1.03-18, with map
Traffic Control Order No. 3.01-18, with map
Traffic Control Order No. 3.04-18, with map

Resolution No. _____

City of **Wyoming** Michigan

Traffic Department | 2660 Burlingame Ave SW, Wyoming, MI 49509
616.530.7263 | Fax 616.249.3487 | wyomingmi.gov

December 17, 2018

PERMANENT TRAFFIC CONTROL ORDER NO. 1.01-18

Pursuant to provisions of Wyoming City Code, Chapter 78, Article II, adopting Sections R 28.1125 and R 28.1153 of the Michigan Uniform Traffic Code, the following regulatory order has been issued and shall take effect immediately:

1. LOCATION:

Valduga Dr at its intersection with 60th St

2. REGULATION:

All traffic shall stop before entering the intersection

3. SIGNS:

"Stop"

4. EFFECTIVE:

Immediately

Authority,

William D. Dooley, PE
Traffic Engineer

WDD:kn

cc: Police Dept



CITY COUNCIL

Bill VerHulst

Dan Burrill

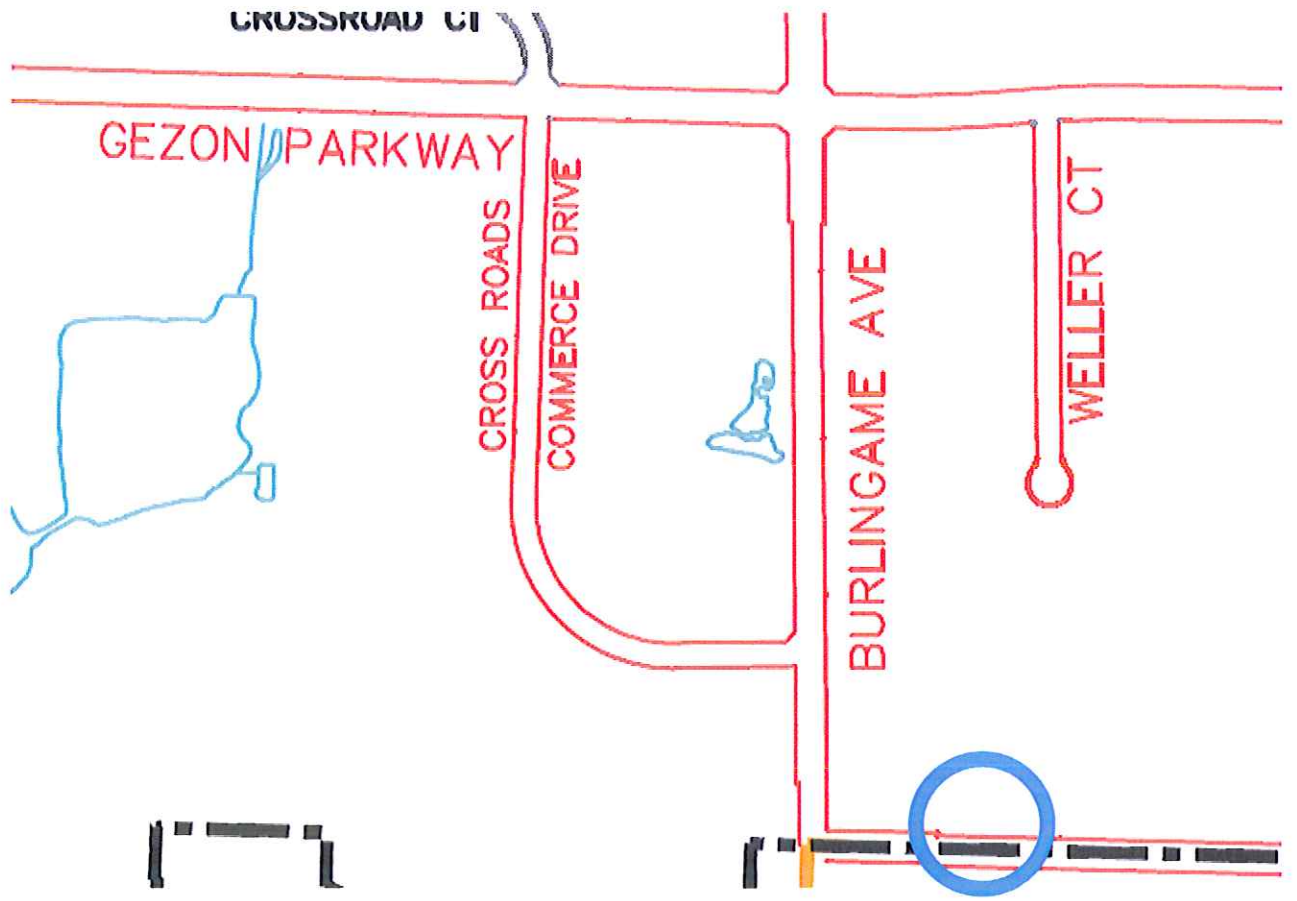
Kent Vanderwood

Marissa Postler

Robert Postema

Sam Bolt

Jack A. Poll, Mayor



City of **Wyoming** Michigan

Traffic Department | 2660 Burlingame Ave SW, Wyoming, MI 49509
616.530.7263 | Fax 616.249.3487 | wyomingmi.gov

December 17, 2018

PERMANENT TRAFFIC CONTROL ORDER NO. 1.03-18

Pursuant to provisions of Wyoming City Code, Chapter 78, Article II, adopting Sections R 28.1125 and R 28.1153 of the Michigan Uniform Traffic Code, the following regulatory order has been issued and shall take effect immediately:

1. LOCATION:

Cleveland Ave at its intersection with Lee St

2. REGULATION:

A. Traffic Control Order No. 1.02-86, dated February 17, 1986, is hereby amended to all way stop

B. All traffic shall stop before entering the intersection

3. SIGNS:

"Stop" with "All Ways" panel

4. EFFECTIVE:

Immediately

Authority,



William D. Dooley, PE
Traffic Engineer

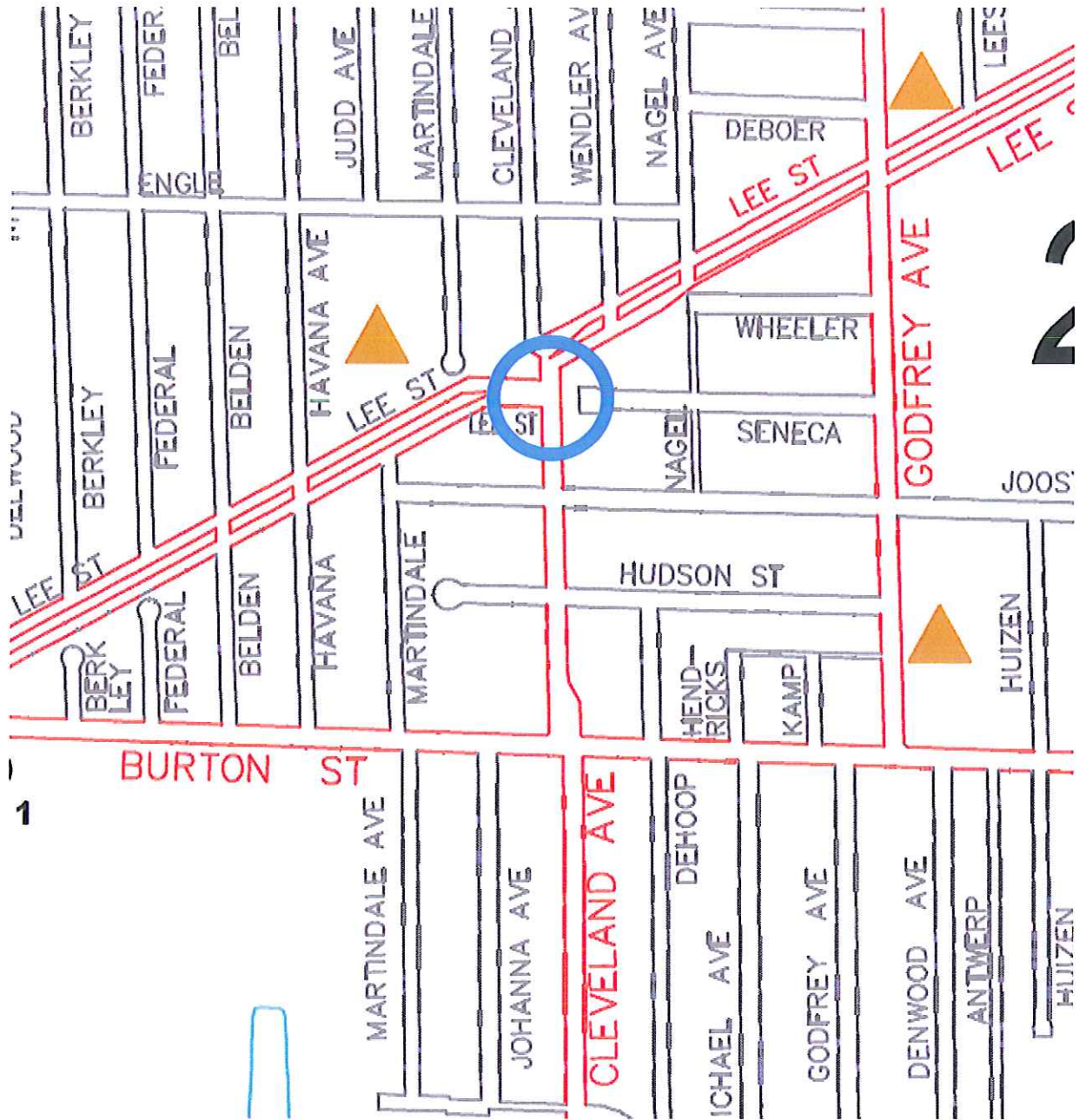
WDD:kn

cc: Police Dept



CITY COUNCIL

Bill VerHulst Dan Burrill Kent Vanderwood Marissa Postler Robert Postema Sam Bolt
Jack A. Poll, Mayor



City of **Wyoming** Michigan

Traffic Department | 2660 Burlingame Ave SW, Wyoming, MI 49509
616.530.7263 | Fax 616.249.3487 | wyomingmi.gov

December 17, 2018

PERMANENT TRAFFIC CONTROL ORDER NO. 3.01-18

Pursuant to provisions of Wyoming City Code, Chapter 78, Article II, adopting Sections R 28.1125 and R 28.1153 of the Michigan Uniform Traffic Code, the following regulatory order has been issued and shall take effect immediately:

1. LOCATION:

Wilbur St SE, north side, from approximately 75-feet east of Division Ave going east approximately 75-feet

2. REGULATION:

No parking from 8:00 a.m. until 5:00 p.m.

3. SIGNS:

No parking symbol with appropriate arrows and "8:00 AM – 5:00 PM" placard

4. EFFECTIVE:

Immediately

Authority,



William D. Dooley, PE
Traffic Engineer

WDD:kn

cc: Police Dept



CITY COUNCIL

Bill VerHulst

Dan Burrill

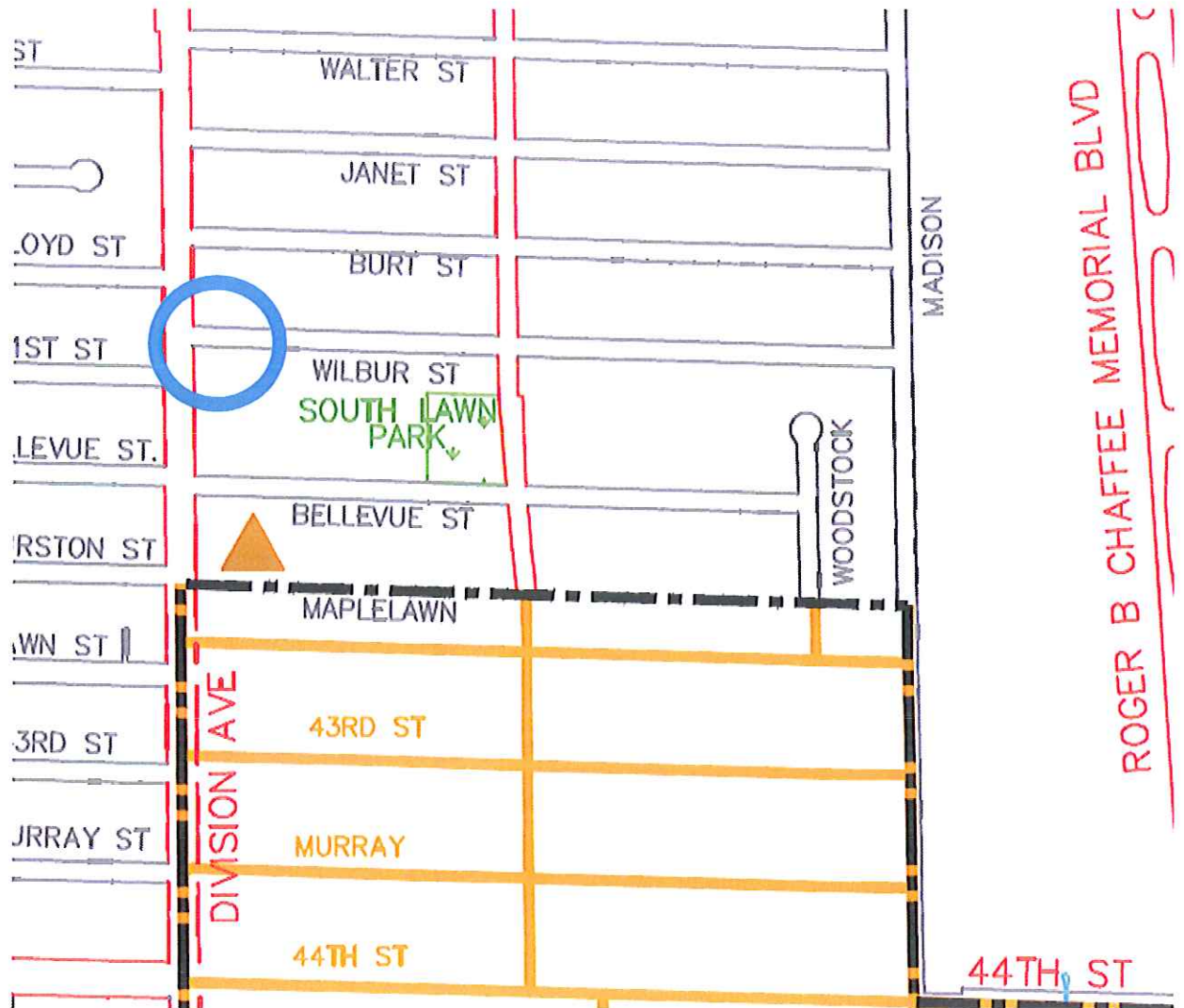
Kent Vanderwood

Marissa Postler

Robert Postema

Sam Bolt

Jack A. Poll, Mayor



City of **Wyoming** Michigan

Traffic Department | 2660 Burlingame Ave SW, Wyoming, MI 49509
616.530.7263 | Fax 616.249.3487 | wyomingmi.gov

December 17, 2018

PERMANENT TRAFFIC CONTROL ORDER NO. 3.04-18

Pursuant to provisions of Wyoming City Code, Chapter 78, Article II, adopting Sections R 28.1125 and R 28.1153 of the Michigan Uniform Traffic Code, the following regulatory order has been issued and shall take effect immediately:

1. LOCATION:

Cleveland Ave, both sides, from Burton St to Lee St

2. REGULATION:

A. Traffic Control Order No. 3.15-76, dated August 2, 1976, is hereby amended to extend from Alger to Lee with bike lanes

B. No parking

3. SIGNS:

No parking symbol with appropriate arrows

4. EFFECTIVE:

Immediately

Authority,



William D. Dooley, PE
Traffic Engineer

WDD:kn

cc: Police Dept



CITY COUNCIL

Bill VerHulst

Dan Burrill

Kent Vanderwood

Marissa Postler

Robert Postema

Sam Bolt

Jack A. Poll, Mayor



RESOLUTION NO. _____

RESOLUTION TO APPROVE THE APPLICATION OF
HME INCORPORATED, LOCATED AT 1905 CHICAGO DRIVE SW,
FOR AN INDUSTRIAL FACILITIES EXEMPTION CERTIFICATE
IN THE CITY OF WYOMING

WHEREAS:

1. The City established Industrial Development District Number 303, under Act 198, Public Acts of 1974, as amended, by adopting Resolution Number 26043 on April 16, 2018.
2. HME Incorporated has filed an application for an Industrial Facilities Exemption Certificate under PA 198 of 1974, with respect to modifying their facility located within Industrial Development District 303, with an estimated cost of \$1,550,000 for real property to be located at 1905 Chicago Drive SW.
3. Before acting on this application, the City Council held a public hearing on December 17, 2018, in the Council Chambers, City Hall, 1155 28th Street SW, Wyoming, Michigan, at 7:01 p.m., at which hearing the applicant, the Assessor, and a representative of the affected taxing units were afforded an opportunity to be heard on this application.
4. Construction had not begun earlier than six (6) months before November 15, 2018, the date of acceptance of the application for the Industrial Facilities Exemption Certificate.
5. Completion of the facility is calculated to and will, at the time of issuance of the certificate, have the reasonable likelihood to retain, create or prevent the loss of employment in the City of Wyoming.
6. The aggregate SEV of real and personal property exempt from ad valorem taxes within the City of Wyoming, after granting this certificate, will not exceed 5% of an amount equal to the sum of SEV of the unit, plus SEV of personal and real property thus exempted.

NOW, THEREFORE, BE IT RESOLVED:

1. The Wyoming City Council finds and determines that the granting of the Industrial Facilities Exemption Certificate considered together with the aggregate amount of certificate previously granted and currently in force under PA 198 of 1974, as amended and PA 225 of 1978, as amended shall not have the effect of substantially impeding the operation of the City of Wyoming, or impairing the financial soundness of a taxing unit which levies ad valorem property taxes in the City of Wyoming.
2. The application from HME Incorporated for an Industrial Facilities Exemption Certificate, with respect to modification of the facility on the following described parcel of real property situated within Industrial Development District 303, to wit:

Address: 1905 Chicago Drive

Tax Parcel No.: 41-17-03-401-003

Legal Description:

Y88: PART E 1/2 OF SEC COM 1063.1 FT ELY A- LONG CL OF STL M21 FROM CL OF ACME PLASTER CO'S SPUR TRACK TH NELY ALONG SD HWY CL 229.6 FT TH N PAR WITH E SEC LINE 841.04 FT TO S LINE OF C&O RR MAIN-LINE R/W TH SWLY ALONG SD R/W LINE TO INT OF A LINE WHICH IS PERP TO SD HWY CL AT THE PLACE OF BEG TH SELY 710.06 FT TO BEG SEC 3 T6N R12W 6.74 A.

be the same as hereby approved.

3. The Industrial Facilities Exemption Certificate, when issued, shall remain in force for a period of twelve (12) years.

Moved by Councilmember:

Seconded by Councilmember:

Motion Carried Yes
 No

I hereby certify that the foregoing Resolution was adopted by the City Council for the City of Wyoming, Michigan at a regular session held on December 17, 2018.

Kelli A. VandenBerg, Wyoming City Clerk

ATTACHMENT: IFT Agreement (excerpt)
 Exhibit A

Resolution No. _____

INDUSTRIAL FACILITIES TAX ABATEMENT AGREEMENT

This Industrial Facilities Tax Abatement Agreement is made as of December 17, 2018 between the City of Wyoming, a Michigan municipal corporation the address of which is 1155 – 28th Street SW, PO Box 905, Wyoming, MI 49509-0905 (the “City”) and HME, Inc. a corporation, the address of which is 1905 Chicago Drive SW, Wyoming, MI 49519 (the “Company”).

RECITALS

- A. Pursuant to 1974 PA 198, as amended, MCL 207.551 *et seq.* (“Act 198”), the City Council may, after a public hearing, approve an application for an industrial facilities exemption certificate.
- B. Act 198 also requires a written agreement between the City and the Company.
- C. This Agreement is intended to ensure that the industrial facilities exemption certificate will result in the employment and tax base enhancements that provided the reasons for the City Council to approve it and that the certificate, once granted, will not impair the soundness of any taxing unit whose tax revenues will be affected by the granting of the certificate.
- D. The Company filed an application for an Industrial Facilities Tax Abatement pursuant to Act 198 a copy of which is attached as Exhibit A and incorporated by reference (the “Application”).
- E. Following a public hearing on December 17, 2018 the City Council adopted a resolution to approve the issuance of an industrial facilities exemption certificate for a period of 12 years for the property located at 5252 Clay Ave SW, in the City (the “Site”) conditional upon the parties entering into this Agreement (the “Tax Abatement”).
- F. The City Council did so upon the Company’s representations in the Application and upon the understanding that doing so would enhance the City’s employment and tax base as indicated in the application and as stated at the public hearing which enhancements would exceed the term of the Tax Abatement.

TERMS AND CONDITIONS

In exchange for the consideration in and referred to by this Agreement, the parties agree:

- 1. The Company affirms the statements in the application and the statements at the public hearing that it will invest not less than \$1,550,000 in improvements to its property in the City and that at least 5 new job(s) will be created at the Site and at least 8 jobs will be retained at the Site as a result of that investment. The Company further pledges that those improvements will remain in place at the Site or be replaced by comparably valued improvements for at least 2 years after the expiration of the term of the Tax Abatement and the jobs created and maintained will remain at the Site for at least 2 years after the expiration of the term of the Tax Abatement.
- 2. The City is relying upon, and the Company agrees the City may rely upon, the representations in the preceding paragraph, in the Application, and at the public hearing, for purposes of determining the length of the Abatement, the amount of the Abatement, and other terms of the Abatement.
- 3. Beginning on December 31 of the year which is 2 years after the Abatement is granted (*i.e.*, 2020) and each December 31 thereafter the Company shall submit a letter to the City, stating:
 - (a) The number of new jobs projected in the Application to be created and retained at the Site upon the project’s completion and the actual number of new jobs created and retained at the Site.

- (b) The number of employees at the Site at the time of the Application and the current number of employees at the Site.
- (c) The estimated project cost stated in the Application and the actual project cost.
- 4. Upon receipt of the letter provided for in the preceding paragraph:
 - (a) The City may either:
 - (1) Apply the criteria in the City's Act 198 Tax Abatement Policy in effect as of the date of this Agreement and increase or decrease the term of the Tax Abatement to the maximum number of years allowable under that Policy based on the Company's actual employment levels at the Site and project costs as stated in the letter, or
 - (2) If the number of new jobs at the Site or the cost of the project is substantially below that stated in the Application, the City Council may recommend revocation of the Tax Abatement.
 - (b) The City may, in its discretion, waive its right to reduce the term of the years of the Abatement or to revoke the Tax Abatement if:
 - (1) The Company has substantially met its stated goals, with only minor deviations which are not expected to reduce the anticipated benefits of the City, or
 - (2) Upon a finding of changed circumstances not reasonably anticipated by the Company at the time it made Application.
 - (c) The City shall provide the Company written notice of and an opportunity to address the City Council prior to formally considering any such actions.
- 5. The Company intends to continue operations within the City for the time period at least equal to two years beyond the expiration of the term of the Tax Abatement as granted.
 - (a) If, at any time during the term of the Tax Abatement or two years following the expiration or early termination of the Tax Abatement, the City determines based on a Company announcement or other reasonably reliable information that the Company is intending to discontinue or substantially curtail its operations at the Site, or the City determines that the Company has discontinued or substantially curtailed its operations at the Site, or the company no longer employs at the Site the number of employees represented in the Application and in this Agreement:
 - (1) The City Council may, in its sole discretion, request revocation of the Tax Abatement; and
 - (2) The City Council, in its sole discretion, may require the Company to pay the City all or any part of an amount equal to the total taxes abated by the City under the Tax Abatement.
 - (b) If, at any time during the term of the Tax Abatement or two years following the expiration or early termination of the Tax Abatement, the Company contends in any appeal taxable value of its property at the Site should be less the Company's cost to acquire the property and construct and install the project plus the value of the property prior to undertaking the project, as reflected in the Application, any certification made by the Company under Act 198, any letters filed with the City pursuant to this Agreement, or any other statements made by or on behalf of the Company in applying for or complying with the terms of the Tax Abatement and this Agreement:
 - (1) The City Council may, in its sole discretion, request revocation of the Tax Abatement; and
 - (2) The City Council, in its sole discretion, may require the Company to pay the City all or any part of an amount equal to the total taxes abated by the City under the Tax Abatement.

(c) In making any decision under the preceding subparagraphs (a) or (b), the City Council shall consider whether:

(1) Due to events or conditions which were unforeseeable by either party on the date of this Agreement, and absent the fault of either party, it has become impossible or commercially impractical for the Company to continue its operation at the Site; or

(2) The Company has substantially complied with all requirements of this Agreement, such that the Company's failure to comply fully with all requirements was neither willful nor intentional, and the City has reasonably received the benefits anticipated from granting the Tax Abatement.

(d) The City shall provide the Company written notice of and an opportunity to address the City Council prior to formally considering any such actions.

6. This Agreement is entered into according to Section 22 of Act 198, as amended, MCL 207.572, is in addition to the other requirements of Public Act 198, and does not modify or waive any requirements of Act 198.

7. This is the entire agreement between the parties as to its subject matter. No unwritten agreements shall have any effect. This Agreement may be modified only with a written agreement signed by both parties following approval of the City Council.

The parties have signed this Agreement as of the date first written above.

CITY OF WYOMING

HME, INC.

By: _____
Jack Poll, Mayor

By: _____
_____, _____

By: _____
Kelli A. VandenBerg, City Clerk

By: _____
_____, _____

Date signed: _____, 2018

Date signed: _____, 2018

Exhibit A

RECEIVED

Michigan Department of Treasury
1012 (Rev. 04-14), Page 1 of 4

NOV 15 2018

Application for Industrial Facilities Tax Exemption Certificate

Issued under authority of Public Act 198 of 1974, as amended. Filing is mandatory.

INSTRUCTIONS: File the original and two copies of this form and the required attachments (three complete sets) with the clerk of the local government unit. The State Tax Commission (STC) requires two complete sets (one original and one copy). One copy is retained by the clerk. If you have any questions regarding the completion of this form, call (517) 373-3302.

To be completed by Clerk of Local Government Unit	
Signature of Clerk	Date Received by Local Unit
STC Use Only	
Application Number	Date Received by STC

APPLICANT INFORMATION

All boxes must be completed.

1a. Company Name (Applicant must be the occupant/operator of the facility) HME Incorporated		1b. Standard Industrial Classification (SIC) Code - Sec. 2(10) (4 or 6 Digit Code) 4225	
1c. Facility Address (City, State, ZIP Code) (real and/or personal property location) 1905 Chicago Drive, Wyoming MI 49519		1d. City/Township/Village (Indicate which) City of Wyoming	1e. County Kent
2. Type of Approval Requested ☒ New (Sec. 2(5)) ☐ Transfer ☐ Speculative Building (Sec. 3(8)) ☐ Rehabilitation (Sec. 3(6)) ☐ Research and Development (Sec. 2(10)) ☐ Increase/Amendment		3a. School District where facility is located Wyoming	3b. School Code 41026
		4. Amount of years requested for exemption (1-12 Years) 12	

5. Per section 5, the application shall contain or be accompanied by a general description of the facility and a general description of the proposed use of the facility, the general nature and extent of the restoration, replacement, or construction to be undertaken, a descriptive list of the equipment that will be part of the facility. Attach additional page(s) if more room is needed.

New construction of a 20,000 sqft building for HME Parts distribution facility.

6a. Cost of land and building improvements (excluding cost of land) * Attach list of improvements and associated costs. * Also attach a copy of building permit if project has already begun.	▶ 1,550,000
6b. Cost of machinery, equipment, furniture and fixtures * Attach itemized listing with month, day and year of beginning of installation, plus total	▶ 100,000
6c. Total Project Costs * Round Costs to Nearest Dollar	▶ 1,650,000 1,550,000
Total of Real & Personal Costs	

7. Indicate the time schedule for start and finish of construction and equipment installation. Projects must be completed within a two year period of the effective date of the certificate unless otherwise approved by the STC.

	Begin Date (M/D/Y)	End Date (M/D/Y)	
Real Property Improvements	▶ 6/25/18	1/18/19	▶ ☒ Owned ☐ Leased
Personal Property Improvements	▶ 9/1/18	1/18/19	▶ ☒ Owned ☐ Leased

8. Are State Education Taxes reduced or abated by the Michigan Economic Development Corporation (MEDC)? If yes, applicant must attach a signed MEDC Letter of Commitment to receive this exemption. ☐ Yes ☒ No

9. No. of existing jobs at this facility that will be retained as a result of this project. 8 jobs	10. No. of new jobs at this facility expected to create within 2 years of completion. 5 new jobs
--	--

11. Rehabilitation applications only: Complete a, b and c of this section. You must attach the assessor's statement of SEV for the entire plant rehabilitation district and obsolescence statement for property. The Taxable Value (TV) data below must be as of December 31 of the year prior to the rehabilitation.

a. TV of Real Property (excluding land)	
b. TV of Personal Property (excluding inventory)	
c. Total TV	

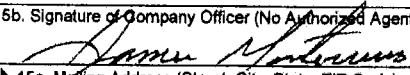
12a. Check the type of District the facility is located in:
☒ Industrial Development District ☐ Plant Rehabilitation District

12b. Date district was established by local government unit (contact local unit) April 16, 2018	12c. Is this application for a speculative building (Sec. 3(8))? ☐ Yes ☒ No
---	---

APPLICANT CERTIFICATION - complete all boxes.

The undersigned, authorized officer of the company making this application certifies that, to the best of his/her knowledge, no information contained herein or in the attachments hereto is false in any way and that all are truly descriptive of the industrial property for which this application is being submitted.

It is further certified that the undersigned is familiar with the provisions of P.A. 198 of 1974, as amended, being Sections 207.551 to 207.572, inclusive, of the Michigan Compiled Laws; and to the best of his/her knowledge and belief, (s)he has complied or will be able to comply with all of the requirements thereof which are prerequisite to the approval of the application by the local unit of government and the issuance of an Industrial Facilities Exemption Certificate by the State Tax Commission.

13a. Preparer Name Todd Grasman	13b. Telephone Number 616.538.6337	13c. Fax Number	13d. E-mail Address todd@jagdevelopmentinc.
14a. Name of Contact Person Todd Grasman	14b. Telephone Number 616.538.6337	14c. Fax Number	14d. E-mail Address
▶ 15a. Name of Company Officer (No Authorized Agents) James Monterusso			
15b. Signature of Company Officer (No Authorized Agents) 		15c. Fax Number	15d. Date 11/15/18
▶ 15e. Mailing Address (Street, City, State, ZIP Code) 1950 Byron Center Avenue		15f. Telephone Number 616.534.1463	15g. E-mail Address jmonterusso@hmetruck.co

LOCAL GOVERNMENT ACTION & CERTIFICATION - complete all boxes.

This section must be completed by the clerk of the local governing unit before submitting application to the State Tax Commission. Check items on file at the Local Unit and those included with the submittal.

▶ 16. Action taken by local government unit ☐ Abatement Approved for _____ Yrs Real (1-12), _____ Yrs Pers (1-12) After Completion ☐ Yes ☐ No ☐ Denied (Include Resolution Denying)		16b. The State Tax Commission Requires the following documents be filed for an administratively complete application: Check or Indicate N/A if Not Applicable ☐ 1. Original Application plus attachments, and one complete copy ☐ 2. Resolution establishing district ☐ 3. Resolution approving/denying application. ☐ 4. Letter of Agreement (Signed by local unit and applicant) ☐ 5. Affidavit of Fees (Signed by local unit and applicant) ☐ 6. Building Permit for real improvements if project has already begun ☐ 7. Equipment List with dates of beginning of installation ☐ 8. Form 3222 (if applicable) ☐ 9. Speculative building resolution and affidavits (if applicable)
16a. Documents Required to be on file with the Local Unit Check or Indicate N/A if Not Applicable ☐ 1. Notice to the public prior to hearing establishing a district. ☐ 2. Notice to taxing authorities of opportunity for a hearing. ☐ 3. List of taxing authorities notified for district and application action. ☐ 4. Lease Agreement showing applicants tax liability.		
16c. LUCI Code		16d. School Code
17. Name of Local Government Body		▶ 18. Date of Resolution Approving/Denying this Application

Attached hereto is an original application and all documents listed in 16b. I also certify that all documents listed in 16a are on file at the local unit for inspection at any time, and that any leases show sufficient tax liability.

19a. Signature of Clerk	19b. Name of Clerk	19c. E-mail Address
19d. Clerk's Mailing Address (Street, City, State, ZIP Code)		
19e. Telephone Number	19f. Fax Number	

State Tax Commission Rule Number 57: Complete applications approved by the local unit and received by the State Tax Commission by October 31 each year will be acted upon by December 31. Applications received after October 31 may be acted upon in the following year.

Local Unit: Mail one original and one copy of the completed application and all required attachments to:

**Michigan Department of Treasury
State Tax Commission
PO Box 30471
Lansing, MI 48909**

(For guaranteed receipt by the STC, it is recommended that applications are sent by certified mail.)

STC USE ONLY				
▶ LUCI Code	▶ Begin Date Real	▶ Begin Date Personal	▶ End Date Real	▶ End Date Personal

RESOLUTION NO. _____

RESOLUTION TO APPROVE A POLICE SUPPORT CONTRACT FORM

WHEREAS:

1. From time-to-time there may be special events or other activities attracting numbers or patrons, heavy traffic or creating other circumstance for which sponsors or others seek special police support.
2. The City's Department of Public Safety can provide that added support providing the costs incurred to do so are paid by those sponsors or others.
3. When requests for such special police support are made and details of that support are finalized there is often insufficient time to seek City Council approval of each contract.
4. The Public Safety Department, City Manager and City Attorney have developed a form for such contracts that can be applied to most situations in which they are appropriate alleviating the need for the City Council's approval of each individual contract and providing better service to local institutional, business and community endeavors.

NOW, THEREFORE, BE IT RESOLVED:

1. The form of the Police Support Contract attached with its instructions as Exhibit A is approved subject to its completion and such changes as from time-to-time approved by the City Manager, Public Safety Director and City Attorney and the City Manager is authorized and directed to sign such completed contracts on behalf of the City.
2. All resolutions and parts of resolutions are, to the extent any conflict with this Resolution, rescinded.

Moved by Councilmember:

Seconded by Councilmember:

Motion Carried Yes

 No

I certify that this resolution was adopted by the City Council for the City of Wyoming, Michigan at a regular session held on December 17, 2018.

Kelli A. VandenBerg, Wyoming City Clerk

ATTACHMENTS:

Staff Report

Police Support Contract and Instructions

Resolution No. _____

STAFF REPORT

Date: December 6, 2018
Subject: Resolution to Approve a Police Support Contract Form
From: Scott Smith, City Attorney
Meeting Date: December 17, 2018

Background:

From time-to-time the Wyoming Department of Public Safety (“WDPS”) is asked to provide police support for institutional, business or other community endeavors that exceed what would normally be provided. Such support is sometimes sought when an event could create traffic or parking challenges, could attract large numbers of patrons, may involve collections of unusually large sums, or could present other public safety challenges. Those seeking the additional support are willing to pay the City’s added cost for providing it and understand that support is subject to limits and conditions. Written documentation of the arrangement was recently enhanced with a Police Support Contract with the promoters of “The Haunt.”

Following that event, WDPS personnel noted the WDPS has often provided additional support to some businesses related to “Black Friday” and wondered if such arrangements should be similarly documented. The purpose of the documentation is to ensure there is a common understanding of (i) costs and amounts to be paid the City, (ii) the services that will and will not be provided, (iii) when those services will be provided, (iv) WDPS’s sole command of WDPS personnel, (v) WDPS’s ability to dispatch assigned officers as may be needed to address other matters, etc. A pre-approved common contract form is advantageous because (a) the terms and conditions are clearly stated, avoiding omissions or misunderstandings, (b) discussions about such services begin with the form so it is easier to avoid deviations when “everyone is given the same terms,” (c) if deviations are needed, they are documented, (d) the contract can be used in a collection action if someone fails to pay, (e) if an incident occurs, the contract clearly sets out the applicable rights and obligations, and (f) WDPS can provide better customer service with a form to be signed by the City Manager rather than individual contracts needing City Council approval.

Recommendation:

Adopt the “Resolution to Approve a Police Support Contract Form.”

Sustainability Criteria:

Environmental Quality – Approval will not affect environmental quality.

Social Equity – Everyone seeking such services will be provided the same terms and conditions.

Economic Strength – Payment and service terms are clearly stated minimizing opportunities for disagreements or failures to pay.

Quality Customer Service – Use of a pre-approved contract form enables quicker response to institutional, business and other community requests for special police support services.

POLICE SUPPORT CONTRACT

(_____)¹

This Police Support Contract is made as of _____, 20____², between the City of Wyoming, a Michigan municipal corporation of 1155 28th Street SW, Wyoming, MI 48509 (the "City") and _____³, a _____⁴ doing business as "_____"⁵, of which is _____⁶, _____⁷ _____⁸, _____⁹ with a local address of _____¹⁰, Wyoming, MI 40509 (the "Company").

RECITALS

- A. The Company intends to operate a _____¹¹ (the "Event"), _____¹² as depicted in the attached Exhibit A ("Company's Premises") with parking in the surrounding parking lots as also depicted on the attached Exhibit A ("Event Parking Areas").¹³
- B. The Company expects to draw _____¹⁴ patrons¹⁵ on _____ ("Operation Hours").
- C. The Company intends to sell _____¹⁶.
- D. Some Operation Hours will overlap with _____¹⁷.
- E. While it has its own security team, the Company, as part of an overall cooperative and foresighted effort to attend to the safe operation of the Experience, believes a local police presence within the Event Parking Areas will help the Company ensure the safety of Company patrons, the general public and Company personnel during the operation of the Event.
- F. The City is amenable to assigning police officers to provide that local police presence in accordance with this Contract.

TERMS AND CONDITIONS

In exchange for the consideration in and referred to by this contract, the City and the Company agree:

1. Assignment. The City will schedule _____¹⁸ police officers selected by the City Police Department to be in the Event Parking Areas and other areas surrounding the Company's Premises in accordance with the scheduled hours that comprise the written operations plan agreed upon between the Company and the City Police Department Community Service Team.

A. This Contract provides for City Police presence, not any special or enhanced duties or services. Assigned officers will be under normal City Police Department command and will act in accordance with City Police Department policies, procedures and protocols. Company personnel shall have no ability to direct the assigned police officers. Company personnel may make requests of the assigned officers who will respond to those requests in accordance with City Police Department direction, policies, procedures and protocols. If Company personnel believe different actions or responses are appropriate, Company personnel may direct any such concerns to City Police Department command personnel.

B. Assigned officers will remain outside the Company's Premises unless summoned by Company personnel to address a particular situation within the Company's Premises.¹⁹

C. One or both assigned officers will accompany Company personnel as they make deposits at the bank located near the Company's Premises.

D. Assigned officers will use their discretion, as provided within City Police Department direction, policies, procedures and protocols to attend to vehicular traffic, pedestrian travel, specific situations, and particular incidents around the Company's Premises, the surrounding streets, and the Event Parking Areas. Assigned officers shall have no special duties or special obligations to the Company, Company personnel, Company patrons or the general public. This Contract provides for City Police presence, not any special or enhanced duties or services.

E. In accordance with its normal practice, the City will assign other officers to duties related to the _____¹⁷.

F. If, in the sole discretion of City Police Department command personnel, another situation away from the Company's Premises and the Event Parking Areas requires an intensive police response, City Police Department command personnel acting in their sole discretion, may dispatch the officers assigned to the areas around the Company's Premises to that other situation until, in the sole discretion of City Police Department command personnel, the other situation has been addressed in a manner that those officers (or replacement officers) can be returned to the areas around the Company's Premises to resume the services provided pursuant to this Contract. If such a circumstance occurs, the assigned officers will notify Company personnel that they are leaving and the Company will be provided a direct contact number for City Police Department command personnel on duty that evening.

G. It is intended the officers assigned to perform services under this Contract will interact with Company personnel, Company patrons and the general public in a manner similar to that in which such officers would interact during similar events and assignments.

H. Similarly, it is intended that the Company and Company personnel will interact with the assigned police officers in a manner similar to that of other businesses, organizations, events and individuals interacting with City police officers in similar situations.

I. Nothing in this Contract shall limit the lawful authority of or the lawful exercise of that authority by the City, the City Police Department or any City Police Department personnel, including without limitation, any officers who may from time-to-time be involved in providing services pursuant to this Contract.

2. Payment. The Company will pay the City for the service provided under this Contract at the rate of \$ _____²⁰ per officer per hour. The Company and City currently estimate _____²¹ hours will be paid under this Contract for a total of \$ _____.²² If the hours worked are more or less than the estimated number of hours, the Company will be billed for only those hours actually worked or reimbursed for any hours for which it has paid but officer did not work.

A. The Company will pay \$ _____²³ to the City not later than _____, 20____,²⁴ as a deposit toward the amount to be paid under this Contract.

B. Not later than _____, 20____,²⁵ the City will provide the Company an invoice detailing any additional amounts due or the amount to be refunded to the Company from the deposited amount.

C. Any payment or refund shall be paid within 15 days of the date of the invoice.

3. Responsibility for Personnel. Both the City and the Company will be solely responsible for the statements, acts and omissions of their respective personnel. Neither party shall be responsible for the statements, acts and omissions of the other party's personnel. Neither party shall be responsible to insure the other party or the other party's personnel.

4. Term. This Contract shall take effect as of the date first written about and shall remain in effect until all amounts required to be paid under this Contract have been paid in full.

5. General Provisions.

A. This is the entire agreement between the parties as to its subject matter. It shall not be amended or modified except in writing signed by both parties. It shall not be affected by any course of dealing and the waiver of any breach shall not constitute a waiver of any subsequent breach of the same or any other provision.

B. This Contract and the rights and obligations of the parties under this Contract shall be governed by, and construed and interpreted in accordance with, the laws of the State of Michigan.

C. The captions are for reference only and shall not affect the interpretation of this Contract. However, the recitals are an integral part of this Contract.

D. This Contract and the rights and obligations under this Contract are unassignable and non-transferable without the consent of the other parties. It shall, however, be binding upon any successors or permitted assigns of the parties.

E. This Contract shall be enforceable only by the parties and no other person shall have the right to enforce any provision.

F. To the extent permitted by law, the jurisdiction and venue for any action brought pursuant to, arising from or to enforce any provision of this Contract shall be solely in the state courts in Kent County, Michigan and the prevailing party in any such action shall, in addition to any other remedy, be entitled to recover its costs, including, without limitation, actual, reasonable filing fees, legal fees, expert fees, discovery expenses and other costs incurred to investigate, bring, maintain or defend any such action for its first accrual or first notice thereof through all appellate and collection proceedings.

G. Each individual signing this Contract on behalf of a party attests and promises she/he has the authority to sign this Contract on behalf of that party.

The parties have signed this Contract as of the date first written above.

CITY OF WYOMING

3

By: _____
Curtis L. Holt, City Manager

By: _____
_____, _____
26 27

Date signed: _____, 20__

Date signed: _____, 20__

Approved as to form:

Scott G. Smith, City Attorney

Exhibit A – Depiction of Company's Premises & Event Parking Areas

INSTRUCTIONS FOR COMPLETING POLICE SUPPORT CONTRACT

This is intended to guide departmental completion of the Contract. Once completed, it can be sent for approval as to form. It is set for the City Manager to sign.

Numbers correspond to blanks in the Police Support Contract form. Some numbers are used more than once indicating a subsequent blank should be filled-in identically to the earlier one.

¹A short name identifying the project or contract (e.g., "The Haunt – 2018"). (Also fill-in blank in footer.)

²The month, day and year the contract is to take effect. Generally, this will be after the date the Contract is approved and signed.

³The proper name for the contracting entity. It should be the full name of the property owner or other contracting party. Checks should be made of state records to ensure the right name is used. If you have questions, check with the City attorney's office.

⁴The contracting party's state of formation and type of entity, e.g., Delaware corporation, Michigan non-profit corporation, Texas limited liability company, Illinois limited partnership, etc.

⁵This is filled in only if the entity is operating under a different name (e.g. "The Haunt").

⁶Street address and suite number, if applicable.

⁷City.

⁸2-letter state abbreviation.

⁹Zip.

¹⁰Street address(es) of its Wyoming operation(s).

¹¹Describe what the event, on-going activity or other special reason for enhance police effort is.

¹²Describe the property, building, suite, or other space the activity will use. Get a drawing to attach as an exhibit.

¹³If there is no parking, this can be deleted. However, it seems that parking areas used by patrons may require extra police attention and should ordinarily be included.

¹⁴Enter number of persons expected to attend.

¹⁵List the dates, days, times, etc. for the operation.

¹⁶List the items to be sold, the expected volume of sales, etc. If a lot of money will be paid, special security measures may be needed for deposits.

¹⁷Describe any other community events, e.g., high school football games, events by other merchants, etc. that may impact crowds, parking, excitement, etc.

¹⁸How many officers are being provided. If that will vary during the event, provide sufficient detail about how many officers will be present on what days and during what times.

¹⁹If officers will be inside a building, contact the City attorney for suggested additional language describing officers' activities and locations.

²⁰Enter the hourly rate, including benefits, overtime, etc.

²¹Enter the estimated total number of officer hours for the entire Event.

²²Enter the estimated total amount to be paid (Line ²⁰ x Line ²¹).

²³It is recommended that this amount be at least 50% of the estimated total amount to be paid (Line ²²).

²⁴This should be at least several days before the first day of the Event.

²⁵The faster an invoice is sent, the better the chance for full and quick payment. Usually, the invoice should be sent within 7 to 14 days after conclusion of the Event. Enough time needs of have elapsed to ensure all the payroll numbers are in.

²⁶The name of the person signing.

²⁷The title of the person signing.

RESOLUTION NO. _____

RESOLUTION TO APPROVE A COST SHARING AGREEMENT FOR CERTAIN
IMPROVEMENTS AT THE RESERVE AT RIVERTOWN AND TO AUTHORIZE
THE RELATED BUDGET AMENDMENT

WHEREAS:

1. At its December 3, 2018 meeting, the City Council granted preliminary plat final approval for the Rivertown Valley Plat IV (a/k/a “The Reserve at Rivertown – Phase IV,” “Rivertown Valley Plat – Phase IV,” “The Reserve,” and “The Reserve at Rivertown – Phase I”) (“**Plat IV**”) subject to conditions including that not later than December 30, 2018, the developer must enter an agreement with the City to participate in cost sharing for the Regional Storm Sewer System.
2. Development of the Plat is part of a large planned unit development (the “**Development**”) that will entail construction of public sanitary sewer, water, and storm water lines and facilities that will involve oversizing and extensions to accommodate utility needs for property other than the Development Property the incremental cost for which the City will reimburse the developer.
3. One or more of the areas or parts of the areas described in Recital 2 above may be developed by parties other than the identified developer and the City therefore believes it is prudent to set out and record with the Kent County Register of Deeds their respective expectations and obligations concerning storm water management and participation in the Regional System.
4. A budget amendment is needed to pay for this cost sharing.

NOW, THEREFORE, BE IT RESOLVED:

1. The Utilities Cost Sharing Agreement between the City and TMGB Wilson, L.L.C. is approved in substantially the form attached as Exhibit 1, subject to such changes as are approved by the City Manager and City Attorney, and the Mayor and City Clerk are authorized and directed to sign it and record it on behalf of the City.
2. The attached budget amendment is authorized.
3. All resolutions and parts of resolutions are, to the extent any conflict with this Resolution, rescinded.

Moved by Councilmember:

Seconded by Councilmember:

Motion Carried Yes
 No

I certify that this resolution was adopted by the City Council for the City of Wyoming, Michigan at a regular session held on December 17, 2018.

Kelli A. VandenBerg, Wyoming City Clerk

CITY OF WYOMING BUDGET AMENDMENT

Date: December 17, 2018

Budget Amendment No. 044

To the Wyoming City Council:

A budget amendment is requested for the following reason: To appropriate \$44,000.00 of additional budgetary authority to fund the utility cost sharing agreement for Rivertown Valley Plat Phase IV as per the attached resolution.

<u>Description/Account Code</u>	<u>Current</u>	<u>Increase</u>	<u>Decrease</u>	<u>Amended</u>
<u>Water Fund</u>				
Public Works - Capital Outlay - Capital Outlay Watermains				
591-441-57300-972.573	1,577,142.47	44,000.00		1,621,142.47
Fund Balance/Working Capital (Fund 591)	\$	\$	44,000.00	

Recommended:

Senior Accountant

City Manager

Motion by Councilmember _____, seconded by Councilmember _____
that the General Appropriations Act for Fiscal Year 2018-2019 be amended by adoption of the
foregoing budget amendment.

Motion carried: Yes _____, No _____

I hereby certify that at a _____ meeting of the Wyoming City Council duly held on _____ the foregoing budget amendment was approved.

City Clerk

STAFF REPORT

Date: December 12, 2018
Subject: Resolution to Approve Utilities Cost Sharing Agreement
From: Scott Smith, City Attorney
Meeting Date: December 17, 2018

Background:

TMGB Wilson, L.L.C. (the “Developer”) is developing a site of over 187 acres for commercial, platted single-family residential lots, and apartments, townhouses and/or single-story flat multi-family units. As it does so, the Developer will need to participate in the City’s Regional Storm Water System for which fees are calculated under a standard City formula based on the impervious surfaces over the entire developed acreage. In addition, the Developer will construct and install public water, sanitary sewer and storm sewer lines to serve users within the development. The City would like to see some oversizing and extensions of those lines to ensure they can also help address the public utility needs of property outside the development. The City normally reimburses a developer for the incremental costs incurred for the oversizing and extension of utility lines to accommodate utility needs outside a development.

The proposed Utilities Cost Sharing Agreement will address those Developer and City obligations for the entire development. Because it is anticipated that the Developer could engage with other entities to develop one or more parts of the development, the proposed Agreement is in a recordable form so that all parties who may be interested in parts of the property are aware of it.

Recommendation:

Adopt the “Resolution to Approve a Cost Sharing Agreement for Certain Improvements at the Reserve at Rivertown.”

Sustainability Criteria:

Environmental Quality – Approval will address storm water by use of the City’s Regional Storm Water System and will also provide for needed capacity in public water, sanitary sewer and storm sewer lines to address the needs of property outside the development.

Social Equity – Approval ensures public water, sanitary sewer and storm sewer lines within the development can also address the needs of property outside the development and ensures that everyone using the Regional Storm Water System help pay the costs to construct it.

Economic Strength – Approval pays incremental costs of increasing utility line capacity or extending lines within a development to serve areas outside a development. This is less expensive than constructing separate lines or later having to replace or extend lines to do so. Approval also pays a portion of the capital cost of the Regional Storm Water System.

Quality Customer Service – Far-sighted approaches such as paying now for oversizing and extending utility lines minimize the time, cost and expense others might incur when utility capacity is needed outside this development. The Regional Storm Water System reduces the costs incurred for and land encumbered by storm water management on individual parcels.

UTILITIES COST SHARING AGREEMENT
(GRANGER GROUP OF COMPANIES, LLC)

This Utilities Cost Sharing Agreement is made as of _____, 2018, between the City of Wyoming, a Michigan municipal corporation, of 1155 28th Street SW, Wyoming, MI 49509 (the “**City**”) and TMGB Wilson, L.L.C., a Michigan limited liability company of 2221 Health Drive SW, Suite 2200, Wyoming, MI 49519 (the “**Developer**”).

RECITALS

A. At its December 3, 2018 meeting, the City Council granted preliminary plat approval for the Rivertown Valley Plat IV, also known as “The Reserve at Rivertown – Phase IV” and sometimes previously referred to as “Rivertown Valley Plat – Phase IV,” “The Reserve” and “The Reserve at Rivertown – Phase I,” (“**Plat IV**”) subject to conditions including that not later than December 30, 2018, the Developer must enter an agreement with the City, in a form and substance approved by the City Manager and City Attorney, to participate in cost sharing for the Regional Storm Sewer System (the “**Regional System**”).

B. Development of Plat IV is part of a large planned unit development (the “**Development**”) on 187.26 acres of property (the “**Development Property**”), 98.4 acres of which is described on the attached **Exhibit A**, for which the Planning Commission approved modifications to the overall development plan on August 21, 2018 (the “**ODP-Rev.**”), a copy of which is an exhibit to a Stipulated Final Order in the case of *Granger Group of Companies, LLC et al v City of Wyoming*, Kent County Circuit Court case number 2018-03060-AW, and recorded at 20180905-0069241 with the Kent County Register of Deeds (the “**Final Order**”), and which provides four broad areas of development: a **commercial area** along Wilson Ave SW, just south of 56th Street SW, a multi-family apartment and/or townhouse area east of the commercial area designated on ODP-Rev. as “**Area 3**,” an area south of Area 3 along Wilson Ave SW to be developed as single story apartments designated on the ODP Rev. as “**Area 2**,” and an area east of Areas 2 and 3 to be developed as single family residential plats (including the Plat) designated on the ODP-Rev. as “**Area 1**.”

C. The Development will entail construction of public sanitary sewer, water, and storm water lines and facilities (the “**Public Utilities**”) that will involve oversizing and extensions to accommodate utility needs for property other than the Development Property (“**Other Property**”) the incremental cost for which the City will reimburse the Developer in accordance with the City’s Utility Cost Sharing Policy, a copy of which is attached as **Exhibit B** (the “**City Policy**”) that can include the incremental costs (“**Added Costs**”) for oversizing the Public Utilities (generally only incremental materials costs for a larger diameter pipe), extending the Public Utilities, or increasing the depth at which the Public Utilities are constructed and installed in order to serve Other Property (“**Public Utility Enhancements**”).

D. This Agreement is intended to meet the condition referred to in Recital A and to provide key terms for the arrangement described in Recital C.

E. The Developer has been fully authorized by the owners of all property comprising the Development Property to commit to and bind those owners to the terms of this Agreement.

TERMS AND CONDITIONS

In exchange for the consideration in and referred to by this Agreement, the parties agree as follows.

1. Plans, Specifications, and Reimbursement. The Developer will construct within the Development Property the Public Utilities in accordance with plans and specifications prepared by the Developer and

approved by the City Engineer. Those plans and specifications shall provide for construction and installation of those Public Utilities in a size, configuration and with materials and other specifications required by the City Engineer in accordance with (i) the City's standards for the Public Utilities and (ii) the City's Public Utility Enhancements as provided in the City Policy.

A. Each time the Developer seeks final site plan approval, preliminary plat final approval, or building plan or building permit approval (except for an individual single family home on a platted lot) for any part of the Development, the City Engineer will determine and communicate to the Developer what, if any Public Utility Enhancements are needed to serve the Development Property and Other Property as provided in the City Policy. The Developer shall modify the Developer's plans and specifications as required by the City Engineer. The City Manager on behalf of the City and the Developer will sign a document referring to this Agreement that identifies by verbal or pictorial description the parts of the Development Property to which it applies and details the Public Utility Enhancements and the initially estimated Added Costs.

B. If the City Engineer requires Public Utility Enhancements, the City shall reimburse the Developer for the Added Costs.

1. The parties will initially estimate the Added Costs based on the bid prices the Developer obtains for the Public Utility Enhancements. The Developer shall bid the work in a manner that will provide an accurate accounting of the Added Costs. The Developer shall submit the Developer's bid documents to the City Engineer for the City Engineer's review and approval to ensure they will provide an accurate estimate of and accounting for the Added Costs.

2. The City will encumber funds sufficient to pay the estimated Added Costs plus 5.0% of the estimated Added Costs for contingency.

3. The actual Added Costs will be finalized based on as-built measurements and as-build quantities in accordance with the City Policy when (a) the work is completed, (b) the Public Utilities are tested, (c) the Public Utilities are inspected and approved by the City, (d) the Public Utilities are conveyed to and accepted by the City, and (e) any needed easements are conveyed to the City.

4. The City will reimburse the Developer for the Added Costs in a single payment that will be made only when the Developer submits a request for reimbursement accompanied by (i) proof that the Developer has paid the contractor for the Added Costs, (ii) certification of the engineer that the work was completed in accordance with the approved plans and specifications, (iii) waivers of liens in a form acceptable to the City Engineer and City Attorney, (iv) a bill of sale or other document in a form acceptable to the City Engineer and City Attorney conveying title to the Public Utilities to the City, (v) easements as provided in this Agreement, and (vi) any other information reasonably required by the City.

4. Reimbursements for Added Costs will normally be made within 30 days of the City's receipt of an invoice and the other documents and information required in paragraphs 1.B.3 and 1.B.4 above. If the City disputes the amount of any reimbursement, the City shall pay the uncontested amount and the dispute shall be resolved as provided below.

2. Construction, Inspection, and Acceptance. The Developer shall ensure the Public Utilities are constructed in accordance with the plans and specifications approved by the City Engineer. The City shall have a right but shall have no obligation to inspect the Public Utilities and the Developer shall ensure opportunity is provided the City Engineer to do so before they are covered. The Developer shall pay the cost of City inspections in accordance with the City's standard practice and policy. The City will accept the Public Utilities if (i) they are constructed in accordance with the plans and specifications certified the Developer's engineer or inspection and, if the City inspects, by the City's inspector(s), (ii) they are constructed and tested as required by the Plat Improvements Construction Agreement between the parties dated as of September 5, 2018, and (iii) they are conveyed to the City together with any needed easements as provided in this Agreement.

3. Location of Public Utilities. The Public Utilities will either be constructed within rights-of-way dedicated to the City within easements conveyed to the City in a form and substance acceptable to the City Engineer and City Attorney to provide for the City's operation, use, maintenance, repair, replacement, and improvement of the Public Utilities.

4. Storm Water Fee. The Developer shall pay the City the amounts required to participate in the Regional System based on the standard City computation of impervious area over the developed acreage before final plat approval of any plat within the Development Property and before beginning any construction in any of the commercial area, Area 2 or Area 3.

5. Public Utilities and Storm Water Fee for Plat IV.

A. The approved estimates for the Added Cost for the Utility Enhancements in Plat IV are detailed in **Exhibit C**. The maximum amount to be reimbursed for Added Costs related to Plat IV is also detailed in Exhibit C.

B. The Developer shall pay the fee to be paid under paragraph 4 for Plat IV before final plat approval.

6. Risk Allocation. The Developer is solely responsible for (i) the means and methods of the work and services provided under this Agreement, (ii) the conduct of its officers, employees, subcontractors and consultants, and (iii) for any injuries or property damage occurring as a result of its work under and performance under this Agreement. The Developer shall hold the City and the City's officers and employees harmless from and defend them (with legal counsel reasonably acceptable to the City) against any claims made by persons other than the City as a result of the Developer's work under or performance of this Agreement. The Developer shall reimburse the City for or pay in the City's stead any costs the City may incur as a result of claims, demands, judgments, administrative actions, or any order to pay any amounts made or entered against the City or City officers or employees as a result of the Developer's work under or performance of this Agreement.

7. Insurance.

A. The Developer shall obtain and maintain the following insurance with one or more carriers rated A or better by A. M. Best.

COMMERCIAL GENERAL LIABILITY
Minimal limits: \$5,000,000 Each Occurrence Limit \$5,000,000 Personal & Advertising Injury Limit \$5,000,000 General Aggregate Limit \$5,000,000 Products/Completed Operations Coverage shall include the following: (A) contractual liability; (B) products and completed operations; (C) independent contractors coverage; (D) broad form general liability extensions or equivalent, if not already included; (E) deletion of all explosion, collapse, and underground (EXU) exclusions.
AUTOMOBILE LIABILITY INSURANCE
Minimal limits (hired and non-owned automobile coverage): \$2,000,000 per person \$5,000,000 per occurrence
WORKERS' DISABILITY COMPENSATION
Minimal limits: Coverage shall be in accordance with applicable Michigan statutes. Waiver of subrogation, except where waiver is prohibited by law.
EXCESS/UMBRELLA INSURANCE
Required liability limits may be obtained using an Excess-Umbrella Liability policy in addition to primary liability policy(ies). If Excess and/or Umbrella coverage is used to satisfy coverage limits, coverage must follow the form of the primary liability policy(ies).
ADDITIONAL INSURED
General Commercial Liability, Automobile Liability and Excess/Umbrella Liability insurance shall include an endorsement stating the following are Additional Insureds: the City and all City elected and appointed officials, employees, volunteers, agents, boards, and commissions. Coverage is to be primary and any insurance the City may have will be secondary and/or excess.

B. Before beginning any construction or other work under this Agreement, the Developer shall provide the City a copy of one or more certificates of insurance showing the required insurance to be in place and

the premiums to have been paid. Upon the City's request, the Developer shall provide the City a copy of all policies and endorsements.

C. All policies shall include endorsements providing they may not be terminated or modified without at least 30 days prior written notice to the City Clerk of the City.

8. Dispute Resolution.

A. The parties want to resolve disputes before involving a court. Therefore, they agree to follow a pre-court process.

1. A party believing itself aggrieved (the "aggrieved party") shall submit to the other party (the "responding party") a written explanation of and information supporting the aggrieved party's position.

2. Within 14 days (or a longer time if the parties agree) of the its receipt of the aggrieved party's written submission, the responding party shall submit to the aggrieved party a written explanation of and supporting information for the responding party's position.

3. Within 21 days after the aggrieved party's receipt of the responding party's written submission, representatives of the parties shall meet to discuss a mutually acceptable resolution of their respective concerns.

4. If that meeting is unsuccessful and the parties believe subsequent meetings may be beneficial, the parties may schedule additional meetings and, if they wish to do so, may agree upon a neutral party to help facilitate such meetings.

B. However, when, after the initial meeting, either party determines additional meetings are unlikely to lead to an acceptable resolution, that party shall communicate that determination to the other party and the parties will then have all remedies available at law or in equity.

C. This provision shall not prohibit any party from initiating litigation where failure to do so would result in loss of a claim for any reason, such as non-compliance with a statute of limitations.

D. If the dispute involves an engineering or construction question, the parties' respective engineers shall engage a third civil engineer who is not currently working for either party and who has extensive experience in the design and construction of public water, sanitary sewer and storm sewer facilities and, unless that third engineer's opinion is dependent upon a question of law on which the parties disagree, the third engineer's opinion shall resolve the dispute.

9. Authority to Sign. By signing this Agreement, the Developer represents and covenants it has been authorized to do so by all owners of all of the Development Property and that this Agreement is binding on all those owners. The Developer will hold the City (including the City's officers, employees, consultants and representatives) harmless from, defend it for, and defend it (with legal counsel reasonably acceptable to the City) against any claims, defenses, counterclaims, causes of action, demands, lawsuits, administrative actions, judgments or awards brought, interposed, or maintained by any party having an interest in any of the Development Property on the date this Agreement is signed.

10. General Provisions.

A. This is the entire agreement between the parties as to its subject matter. It shall not be amended or modified except in writing signed by all the parties. It shall not be affected by any course of dealing and the waiver of any breach shall not constitute a waiver of any subsequent breach of the same or any other provision. The captions are for reference only and shall not affect the interpretation of this Agreement. However, the recitals are an integral part of this Agreement.

B. This Agreement was made in Kent County, Michigan. This Agreement and the rights and obligations of the parties under this Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of Michigan.

C. Unless otherwise provided in this Agreement, (i) no right or duty of the Developer under this Agreement may be assigned or delegated without the City's prior written consent and (ii) no other individuals or entities are intended to be beneficiaries of this Agreement. This Agreement shall be enforceable only by the parties and no other person shall have the right to enforce any provision.

However, this Agreement will be binding upon any successors or permitted assigns of the parties. Any subsequent owner or other successor in interest of the Developer's interest in any part of the Development Property shall be bound by the terms and conditions of this Agreement which is intended to run with the Development Property.

D. No delay on the part of any party in the exercise of any right or remedy shall operate as a waiver of such right or any other right; a waiver on any one occasion shall not be construed as a bar to or waiver of any subsequent breach of the same or any other provision of this Agreement on a future occasion.

E. To the extent permitted by law, the jurisdiction and venue for any action brought pursuant to, arising from or to enforce any provision of this Agreement shall be solely in the state courts in Kent County, Michigan and the prevailing party in any such action shall, in addition to any other remedy, be entitled to recover its costs, including, without limitation, actual, reasonable filing fees, legal fees, expert fees, discovery expenses and other costs incurred to investigate, bring, maintain or defend any such action for its first accrual or first notice thereof through all appellate and collection proceedings.

F. Reference to by office to any City officer includes that City officer's designee.

The parties have signed this Agreement as of the date first written above.

CITY OF WYOMING

**STATE OF MICHIGAN
COUNTY OF KENT**

By: _____
Jack A. Poll, Mayor

Acknowledged before me in Kent County, Michigan, on _____, 2018, by Jack A. Poll, Mayor of the City of Wyoming, and Kelli A. VandenBerg, City Clerk of the City of Wyoming.

By: _____
Kelli A. VandenBerg, Clerk

Approved as to form:

_____, Notary Public
Kent County, Michigan
Acting in Kent County, Michigan
My commission expires: _____

Scott G. Smith, City Attorney

TMGB WILSON, L.L.C.

STATE OF MICHIGAN
COUNTY OF KENT

By: _____
Gary Granger, Managing Member

Acknowledged before me in Kent County,
Michigan, on _____, 2018, by Gary
Granger, known to me as the Managing Member
of TMGB Wilson, L.L.C.

_____, Notary Public
_____ County, Michigan
Acting in Kent County, Michigan
My commission expires: _____

No transfer tax is due because no interest is conveyed by this document.

Drafted by:
Scott G. Smith, City Attorney
Wyoming City Hall
1155 28th Street SW
Wyoming, MI 49509

When recorded, return to:
Kelli A. VandenBerg, City Clerk
Wyoming City Hall
1155 28th Street SW
Wyoming, MI 49509

EXHIBIT A
LEGAL DESCRIPTION

That part of Section 32, Town 6 North, Range 12 West, City of Wyoming, Kent County, Michigan, described as: **COMMENCING** at the West one-quarter corner of said Section 32; thence South 89°20'00" East 208.71 feet along the East-West one-quarter line of said section; thence South 00°30'42" West 33.00 feet parallel with the West line of said section to the **PLACE OF BEGINNING**; thence South 89°20'00" East 535.02 feet parallel with the East-West one-quarter line of said section; thence South 00°05'41" East 132.00 feet parallel with the East line of the Northwest one-quarter of the Southwest one-quarter of said section; thence South 89°20'00" East 357.50 feet parallel with the East-West one-quarter line; thence South 00°05'41" East 206.50 feet parallel with aforesaid East line; thence South 89°20'00" East 194.50 feet parallel with the East-West one-quarter line; thence South 00°05'41" East 286.41 feet along aforesaid East line; thence South 89°15'46" East 1302.35 feet along the South line of the North one-quarter of the Southwest one-quarter of said section; thence North 00°41'53" West 329.44 feet along the West line of Rivertown Valley No. 1 (as recorded in Liber 116 of Plats, Pages 34-39, Kent County Records) to the Northwest corner of said plat; thence South 88°43'51" East 850.02 feet along the North line of said plat; thence North 00°50'03" West 330.22 feet; thence South 88°43'51" East 184.97 feet along the East-West one-quarter line of said section; thence South 00°58'14" East 273.00 feet along the East line of said plat; thence South 88°43'51" East 274.00 feet along said plat line; thence South 00°58'14" East 2365.71 feet along the East line of the Southwest one-quarter of the Southeast one-quarter of said section and along said Rivertown Valley No. 1 and Rivertown Valley No. 2 (as recorded in Instrument No. 20050506-0053371, Kent County Records) and Rivertown Valley No. 3 (as recorded in Instrument No. 20141230-0107083, Kent County Records); thence North 88°44'39" West 1320.76 feet along the South line of said section to the South one-quarter corner of said section; thence North 89°03'22" West 590.93 feet; thence North 00°55'52" East 24.89 feet; thence North 64°00'47" East 244.37 feet; thence North 00°09'52" East 69.00 feet; thence North 79°08'21" West 220.27 feet; thence North 00°55'52" East 53.06 feet; thence North 79°14'20" West 39.28 feet; thence North 88°22'48" West 225.95 feet; thence North 00°55'52" East 35.20 feet; thence North 89°05'48" West 545.98 feet; thence North 46°50'27" West 87.16 feet; thence North 77°12'44" West 40.33 feet; thence North 89°04'08" West 78.37 feet; thence South 56°10'58" West 192.21 feet; thence South 51°25'18" West 82.57 feet; thence South 57°16'21" West 141.62 feet; thence North 89°59'59" West 646.88 feet; thence North 20°57'58" West 74.90 feet; thence North 00°30'42" East 717.87 feet parallel with the West line of said section; thence South 89°11'36" East 830.00 feet parallel with the North line of said section; thence North 00°30'42" East 370.00 feet parallel with the West line of said section; thence North 89°11'36" West 607.00 feet along the South line of the North one-half of the Northwest one-quarter of said section; thence North 00°30'46" East 495.17 feet; thence North 89°17'12" West 217.64 feet; thence North 00°17'13" West 77.24 feet; thence North 12°58'33" East 62.02 feet; thence North 00°30'42" East 88.70 feet; thence

August 31, 2018

p:\170151\Survey\Descriptions\Overall Reserve.docx

North 23°15'36" West 43.85 feet; thence North 00°30'42" East 342.50 feet parallel with the West line of said section; thence North 89°20'00" East 158.70 feet parallel with the East-West one-quarter line; thence North 00°30'42" East 175.71 feet parallel with the West line of said section to the place of beginning.

ALSO that part of the Northwest one-quarter of Section 5, Town 5 North, Range 12 West, City of Wyoming, Kent County, Michigan, described as: **COMMENCING** at the Northwest corner of said Section 5; thence South 01°18'49" West 41.42 feet along the West line of said section; thence North 88°41'11" West 50.00 feet perpendicular to said West line to the **PLACE OF BEGINNING**; thence North 51°57'16" East 48.07 feet; thence South 89°16'09" East 152.92 feet; thence South 40°00'36" East 129.11 feet; thence South 08°04'56" East 33.22 feet; thence South 36°18'05" East 27.99 feet; thence South 13°39'09" East 31.33 feet; thence South 49°22'44" East 35.55 feet; thence South 73°54'42" East 45.81 feet; thence North 88°14'37" East 44.28 feet; thence South 47°29'32" East 50.61 feet; thence South 89°03'23" East 570.41 feet parallel with the North line of said section; thence North 00°56'41" East 152.46 feet; thence South 89°03'22" East 156.51 feet parallel with the North line of said section; thence South 51°09'35" East 207.91 feet; thence South 89°03'22" East 656.30 feet parallel with the North line of said section; thence North 00°55'52" East 235.25 feet; thence South 89°03'22" East 590.93 feet along the North line of said section; thence South 01°05'59" West 279.99 feet along the North-South one-quarter line of said section; thence North 89°03'23" West 2145.19 feet parallel with the North line of said section; thence North 46°59'48" West 49.61 feet; thence South 88°14'37" West 39.71 feet; thence North 73°54'42" West 53.30 feet; thence North 49°22'44" West 46.34 feet; thence North 13°39'09" West 33.77 feet; thence North 36°18'05" West 29.01 feet; thence North 08°04'56" West 32.52 feet; thence North 40°00'36" West 114.22 feet; thence North 89°16'09" West 136.72 feet; thence South 51°57'16" West 57.43 feet; thence North 01°18'49" East 25.87 feet parallel with the West line of said section to the place of beginning.

EXHIBIT B
CITY'S UTILITY COST SHARING POLICY

5.05 Utility Cost Sharing Policy

STORM SEWER - Refer to City Code

SANITARY SEWER

It is the City's philosophy that the costs incurred in development of the trunk sanitary sewer system are borne by the City at large through the use of the Street Sewer and Water Improvement Fund or the General Obligation Bonds originally used for the construction of the Wastewater Treatment Plant. Also, all properties within the City have the responsibility to pay their fair share of a sanitary sewer collection system that services their properties.

A trunk sanitary sewer is defined as a sewer that is 12" or larger in diameter serving predominantly residentially zoned property, or 15" or larger in diameter serving commercial/industrial property.

A. Assessment rates (per foot) for trunk sewers will be the established rates set by the City Council.

B. Developments which connect to the trunk system with a dedicated collector system (8" in diameter or larger) to service multiple facilities will be assessed for the trunk sewer. The assessment amount shall equal the assessment rate per foot times the length of property adjacent to the trunk system (but not less than the minimum street frontage required for such a development) minus the cost to construct the dedicated collector system. If the amount is equal to or less than zero, no assessment will be required.

C. Developments which connect to the trunk system with a service or collector system to service a single facility will be assessed for the trunk system as defined above based on the lengths of property adjacent to the trunk system but no less than the minimum street frontage required for such a development.

D. A developer will be required to construct a trunk sanitary sewer within his development if that trunk sewer location is designated as such in the City's Master Plan. The developer will be reimbursed all costs over and above that which he would normally incur in servicing the development (oversizing, additional depth, and extensions through the property). The City's share will be determined based on bid prices submitted by the developer and approved by the City.

E. The City will not reimburse the developer for costs incurred in extending the sewer system from an existing system to the proposed development. All costs for such extensions will be borne by the developer and no reimbursement will be made from outside properties connecting to the extended system.

F. A developer may be required to extend a service main to the limits of a development to service adjacent properties. The City will reimburse the developer all additional costs for said extension and will assess the adjacent properties served on a per foot cost. Said cost will be collectable upon hookup to the extended sewer.

G. When the City schedules full improvements within an area, a special assessment district is established for the improvements, including the utilities. The property abutting a previously extended sewer shall be assessed for the sewer lateral only. Upon hookup, payment for the previously extended sewer shall be by lien contract in an amount equal to the City's prevailing assessment rates.

WATER MAIN

A. Extensions of watermains to service developments are the responsibility of the developer unless oversizing is required by the City. Oversizing is considered when watermains larger than 8" in diameter in residential areas, and 12" in diameter in industrial areas, are required to be installed. In cases where oversizing is required, the City will reimburse the developer the difference in construction cost and the material cost of the oversized watermain construction and the size required to service the development. The City's share will be determined based on bid prices submitted by the developer and approved by the City.

- B. If extensions of the watermain are required to service property outside the development, the total cost of that extension will be paid by the City, which in turn will be assessed to the adjacent properties served on a per foot cost. Said cost will be collectable upon hookup to the extended watermain.
- C. The developer may be required to extend the watermain through his development and connect to another existing watermain (looping of the system).
- D. Any property connecting to a watermain constructed by a developer shall make a connection payment, in full or by lien contract with the City, in an amount equal to the City's prevailing assessment rate.
- E. When the City schedules full improvements within an area, a special assessment district is established for the improvements, including the utilities. The property abutting a previously extended watermain shall be assessed for water services only. Upon hookup, payment for the previously extended watermain shall be by lien contract in an amount equal to the City's prevailing assessment rates.
- F. Relocation of watermain to accommodate a development is the responsibility of the developer. When the developer chooses to replace a greater length of said public watermain in order to reduce the possibility of a future watermain failure negatively impacting their development, the City may elect to reimburse the developer the construction and the material cost if said main has reached approximately half its widely estimated useful life of 100 years. The City's share of said cost will be based upon the remaining useful life of the watermain and bid prices submitted by the developer and approved by the City. The City's cost share, as a percentage of the approved construction and material cost, is equal to the age of the watermain.

EXHIBIT C
DETAILED COSTS FOR RIVERTOWN VALLEY PLAT IV
UTILITIES FACILITIES OVERSIZING AND EXTENSIONS

TMGB WILSON, L.L.C.
RIVERTOWN VALLEY PHASE IV
CITY OF WYOMING, KENT COUNTY, MICHIGAN

KENTWOOD EXCAVATING BID - CITY OF WYOMING REIMBURSABLE ESTIMATE

Item No.	Proposal Item	Unit	Contract Quantity	Unit Price	Assumed Unit Price For 12" Watermain Items*	Unit Price for Reimbursement	Amount	Asbuilt Quantity	As-built Amount
A. WATERMAIN ITEMS									
6	16" D.I. Watermain w/ Sand Backfill	Lft	1,348	\$ 83.00	\$ 62.25	\$ 20.75	\$ 27,971.00		
10	16" Valve & Box	Each	3	\$ 7,000.00	\$ 5,250.00	\$ 1,750.00	\$ 5,250.00		
14	16"x8" Cross	Lft	2	\$ 2,082.00	\$ 1,561.50	\$ 520.50	\$ 1,041.00		
15	16"x6" Tee	Lft	4	\$ 1,768.00	\$ 1,326.00	\$ 442.00	\$ 1,768.00		
18	16"x6" Reducer	Lft	2	\$ 1,560.00	\$ 1,170.00	\$ 390.00	\$ 780.00		
19	16" Sleeve	Lft	1	\$ 1,300.00	\$ 975.00	\$ 325.00	\$ 325.00		
Total Watermain Items =							\$ 37,135.00		
* Assume 12" equals 75% of 16"									
B. STORM SEWER									
37	42" Concrete Storm Sewer, C76 III	Lft	154	\$ 106.00			\$ 16,324.00		
38	30" Concrete Storm Sewer, C76 III	Lft	50	\$ 80.00			\$ 4,000.00		
39	24" Concrete Storm Sewer, C76 III	Lft	327	\$ 62.00			\$ 20,274.00		
46	5' Diameter Storm Manhole	Each	1	\$ 2,500.00			\$ 2,500.00		
47	6' Diameter Storm Manhole	Each	1	\$ 4,500.00			\$ 4,500.00		
48	8' Diameter Storm Manhole	Each	1	\$ 8,000.00			\$ 8,000.00		
Total Storm Sewer Items=							\$ 55,598.00		
Total Watermain and Storm Sewer=							\$ 92,733.00		
Engineering, Staking, Inspection (13%) =							\$ 12,055.29		
Contingencies (5%) =							\$ 4,636.65		
Total Reimbursement=							\$ 109,424.94		

M+B
12/11/2018

RESOLUTION NO. _____

RESOLUTION TO APPROVE A PROFESSIONAL SERVICES AGREEMENT
WITH DIXON ENVIRONMENTAL CONSULTING, INC. FOR JACKSON
PARK ENVIRONMENTAL WORK

WHEREAS:

1. The City requested written proposals from environmental firms to undertake environmental assessments and related professional environmental consulting services prior to bidding planned improvements at Jackson Park.
2. Dixon Environmental Consulting, Inc. ("Dixon") provided a proposal the City staff believes to it is best to accept.
3. The current estimated cost of the work is less than \$8,500, but it is possible the needed work could exceed that estimate if additional sampling or other reports or plans are needed.
4. Because the City hopes to bid the Jackson Park improvements early in 2019, time is of the essence in completing the environmental work, so the City Council's approval of the Dixon proposal is prudent even if the costs of the services will be below the amount for which City Council approval is required.

NOW, THEREFORE, BE IT RESOLVED:

1. The Profession Agreement between the City and the Dixon Environmental Consulting, Inc. is approved, subject to such changes as are approved by the City Manager and City Attorney, and the City Manager is authorized and directed to sign it on behalf of the City.
2. All resolutions and parts of resolutions are, to the extent any conflict with this Resolution, rescinded.

Moved by Councilmember:

Seconded by Councilmember:

Motion Carried Yes
 No

I certify that this resolution was adopted by the City Council for the City of Wyoming, Michigan at a regular session held on December 17, 2018.

Kelli A. VandenBerg, Wyoming City Clerk

ATTACHMENT:

Professional Services Contract

STAFF REPORT

Date: December 12, 2018

Subject: Resolution to Approve Professional Services Agreement with Dixon Environmental Consulting, Inc.

From: Scott Smith, City Attorney

Meeting Date: December 17, 2018

Background:

A recently completed geotechnical investigation of the Jackson Park revealed some soils on the site contained concrete and asphalt millings and 2 of 11 samples seemed to have a “petrol odor.” Subsequent reviews of aerial photos indicate the area around the site may have undergone some “filling” in the 1960’s.

We plan to bid the Jackson Park improvements project in mid-January because early bidding often yields better pricing. But it is prudent to first understand whether or not there are any environmental conditions that may affect the project. If there are, it is likely best if improvement plans and specifications can be modified before bidding rather than by change orders after bidding.

The City sought proposals from 3 firms and obtained two proposals. Dixon Environmental Consulting Services, Inc. submitted the best proposal and the most cost effective one. The City Engineer has successfully worked with Dixon on other projects. The proposal is well below the \$8,500 threshold requiring City Council approval. But, if additional soils or groundwater sampling and analysis is needed or other assistance is needed, that threshold may be exceeded. In order to work bid the Jackson Park improvements as soon as practical, it seemed prudent to receive City Council approval now rather than holding up additional work awaiting subsequent City Council approval.

Recommendation:

Adopt the “Resolution to Approve a Professional Services Agreement with Dixon Environmental Consulting, Inc. for Jackson Park Environmental Work.”

Sustainability Criteria:

Environmental Quality – Approval will enable the City to determine what, if any, environmental conditions need to be addressed during the Jackson Park improvements project.

Social Equity – Approval will ensure the City undertakes any obligations it may have related to any environmental condition at Jackson Park.

Economic Strength – Approval enables the City to stay as close as possible to the bidding of the Jackson Park project in hopes of obtaining the lowest possible construction pricing.

Quality Customer Service – Approval enables the City to address any environmental condition that could be of concern to Jackson Park users.

CITY OF
Wyoming
MICHIGAN

STANDARD CITY PROFESSIONAL SERVICES CONTRACT

CITY OF WYOMING, MICHIGAN
(\$8,600 OR LESS)

This Contract is made as of the Effective Date between the City and the Professional.

"City" means: City of Wyoming
A Michigan municipal corporation
1155 28th Street SW
Wyoming, MI 49509

"City Professional Services Contract Standard Terms and Conditions" means the 2-page document attached as Exhibit A entitled "City of Wyoming, Michigan City Professional Services Contract Standard Terms and Conditions."

"Effective Date" means: December 10, 2018.

"Professional" means: Dixon Environmental Consulting, Inc.
[Name of professional entity]
A Corporation
[State and type of entity, e.g., corporation, limited liability company, etc.]
1560 North Taylor Avenue
[Professional's street address]
Grand Rapids, Michigan 49505
[Professional's city, state & zip]

"Proposal" means the Professional's proposal for the Services attached as Exhibit B.

"Services" means: Environmental Consulting for the Jackson Park Improvements Project
[Detail the work: e.g., "design and construction services for . . .," "appraisal of . . .," "delineate wetlands at . . .," etc.]

TERMS AND CONDITIONS

In exchange for the consideration in and referred by this Contract, the parties agree:

1. The Professional will perform the Services as detailed in the Proposal. Except as otherwise provided in the Proposal, the Professional will provide all qualified personnel, supplies and tools needed to perform the Services as described in the Proposal.
2. The City will pay the Professional in accordance with the Proposal. The City will, on a timely basis, provide any information and services the Proposal identifies as being provided by the City so the Professional can perform the Services as described by the Proposal.
3. The Professional represents and warrants, except for those specifically waived in this paragraph it is complying with and will comply with the City Professional Services Contract Standard Terms and Conditions. Waived conditions are as follows:

None

[Identify those the City Attorney have agreed may be waived or write "None."]

4. This is the only agreement between the parties regarding the Services that are the subject of the Proposal and there are no other agreements, representations or warranties except as are stated in the Proposal. This contract can be amended only in writing signed by both the City and Professional.

The City and Professional have signed this Contract as of the Effective Date.

City of Wyoming

By: _____
Curtis L. Holt, City Manager

Date signed: _____, 20__

Approved as to form:

Scott G. Smith
Scott G. Smith, City Attorney

James E. Dixon

[Professional's name]

By: _____

[Signature officer, director or principal of Professional]

James E. Dixon, President

[Typed/Printed Name & Title of Person Signing for Professional]

Date signed: December 10 2018

CITY PROFESSIONAL SERVICES CONTRACT STANDARD TERMS AND CONDITIONS

1. **Applicability.** These Standard Terms and Conditions apply to all professional services contracts to which the City of Wyoming (the "City") is a party ("City Contracts") except as expressly modified in writing signed by the Mayor and City Clerk or the City Manager. By signing a City Contract or acknowledging below, the party contracting with the City ("Professional") attests it complies with and will comply with these Standard Terms and Conditions.

2. **Legal Compliance.** Professional will comply with all applicable (i) laws, rules, regulations, codes, and ordinances, (ii) license and permit requirements, and (iii) orders of any governmental agency, official or court of competent jurisdiction. This includes, for example and without limitation, complying with federal Occupational Safety and Health Administration (OSHA) and Michigan Occupational Safety and Health Act (MIOSHA) safe practices.

3. **Approvals.** Unless the City Contract or the Proposal states otherwise, Professional will, without expense to the City, obtain all permits and other approvals required to lawfully perform the services under the City Contract and, upon the City's request, will furnish copies of them to the City.

4. **Grant Compliance.** If state or federal grant funds have been identified to Professional as a source of payment for any part of the services, by signing the contract, Professional (i) represents Professional has reviewed the grant agreement and (ii) agrees to comply with any grant agreement terms and conditions that are applicable to the City Contract.

5. **Qualifications.** Professional represents and promises that:

A. Professional has and will maintain and any personnel Professional engages to provide services under the City Contract have and will maintain (i) any needed licenses, registrations, certifications, memberships, or other approvals needed to perform such services or work in Michigan and (ii) the experience and other qualifications stated in the Proposal.

B. Neither Professional nor any subcontractor or their respective principals, owners, officers, shareholders, key employees, directors or member partners: (i) are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency; (ii) have within 3-years preceding the City Contract been convicted of or have a judgment against them for fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; (iii) are presently indicted for or otherwise criminally charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in this certification; and (iv) have within 3-years preceding the City Contract had one or more public transactions (federal, state or local) terminated for cause or default.

C. If the City Contract is for a CDBG, federal and/or state funded project, Professional and any subcontractors are not listed on the US-HUD listing of debarred and suspended participants.

D. Professional and any subcontractor is not on and will remain off the Federal Excluded Parties List ("EPLS"). If Professional or any subcontractor is on the EPLS when signing or during the term of the City Contract, in addition to any other remedies to which it may be entitled the City may recover all moneys paid to Professional, all consequential damages (including the loss of grant funding or the required return of grant funding), and reasonable attorney fees (including the costs of in-house counsel) sustained as a result of non-compliance with this representation and promise.

E. Neither Professional nor any subcontractor is an "Iran linked business" under Michigan's Iran Economic Sanctions Act, 2012 PA 517.

6. **Diversity and Inclusion.** Professional and subcontractors shall not discriminate against an employee or applicant for employment with respect to hiring, tenure, terms, conditions, or privileges of employment, or directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, mental or physical disability, or any other reason prohibited by law (e.g., Elliott-Larsen Civil Rights Act, 1976 PA 453, Persons with Disabilities Civil Rights Act, 1976 PA 220, and <https://www.eeoc.gov/>).

7. **Ethical Standards.** Professional and its directors, members, partners, officers and employees, as well as any parent, affiliate, or subsidiary organization or subcontractor of Professional has not engaged in and shall refrain from: (i) holding or acquiring an interest that would conflict with the City Contract; (ii) engaging in any act that creates an appearance of impropriety with respect to the award or performance of the City Contract; (iii) attempting to influence or appearing to influence any City elected or appointed officer or employee by a direct or indirect offer of anything of value; or (iv) paying or agreeing to pay any person, other than its employees and consultants, any consideration contingent upon the award of the City Contract. No owner, director, officer, member, partner or key employee of Professional and no owner, director, officer, member, partner or key employee of any parent, affiliate, or subsidiary organization or subcontractor of Professional is a spouse, parent, child, grandchild, or sibling of the mayor, city council member, or any other elected or appointed officer or board/commission member of the City except as already disclosed in writing to the City when submitting its proposal. Professional will immediately notify the City of any violation of these standards.

8. **Media Releases.** Media releases (including promotional literature and commercial advertisements) pertaining to the City Contract or a project to which it relates shall not be made without the City Manager's prior written approval and only in accordance with the written terms provided in that approval.

9. **W-9.** Professional and all its subcontractors will, before beginning work complete and return by email to the City Finance Department at accountspayable@wyomingmi.gov an IRS W-9 form (available at www.irs.gov).

10. **Document Ownership and Use.** All documents Professional generates as part of its services under the City Contract, whether in paper, electronic or other media or format, including for example and without limitation, any plans, specifications, bid documents, drawings, designs, and manuals, shall belong to the City upon the City's payment of any amounts due the

Professional under the City Contract. The City will hold Professional harmless from and indemnify Professional for any liability that results from the use of those documents for any purpose or project beyond those purposes and projects for which they were provided to the City.

11. Intellectual Property Guaranty. Professional guarantees the sale or use of software, records or other intellectual property provided under or used to perform the City Contract will not infringe any copyright, patent, trademark or other intellectual property rights. Professional will, without expense to the City, defend every action brought against the City or the City's officers or employees for any alleged infringement of any intellectual property rights by reason of their use as part of the City Contract and will pay all costs, damages, and profits recoverable in any such action.

12. Taxes. The City is generally exempt from federal and state taxes and a copy of its Tax Certificate of Exemption can be requested by contacting the City Finance Department.

13. Disposal. Unless the City Contract or Proposal expressly states otherwise, Professional will remove and dispose of all materials, equipment or other items demolished, removed or replaced during the work and cleanup and remove all debris resulting from the work. Disposal will comply with applicable laws, rules and regulations and Professional will retain and, upon request, provide the City copies of any required manifest or other required disposal documentation.

14. Restoration. Professional shall restore, without expense to the City, any property damaged as a result of any services under the City Contract to a condition similar to and equal to that existing before such damage. If Professional fails to make such repairs or restorations, the City, after 48-hours' notice to Professional, may do so and deduct the cost the City incurs to do so from any amounts due Professional.

15. Risk Allocation. Professional is solely responsible for (i) the means and methods of services provided under the City Contract, (ii) the conduct of its officers, employees, subcontractors and consultants, and (iii) any injuries or property damage during the Professional's performance of services under the City Contract. Professional shall hold the City and the City's officers and employees harmless from and defend them (with legal counsel reasonably acceptable to the City) against any claims made by persons other than the City for personal injuries or property damage occurring during and as a result of Professional's performance of services under the City Contract, but not for any negligence or wrongdoing of the City or the City's officers or employees.

16. Professional Responsibility. Unless the Proposal provides a higher standard of care, Professional will perform Professional's services under the City Contract consistent with the standard of practice and care of other, similar professionals performing similar services in Michigan.

17. Insurance.

COMMERCIAL GENERAL LIABILITY

Minimal Limits:
\$1,000,000 Each Occurrence Limit
\$2,000,000 General Aggregate Limit
Coverage shall include the following: (A) Contractual Liability; (B) Independent Contractors Coverage; (C) Broad Form General Liability Extensions or equivalent, if not already included; (E) Deletion of all Explosion, Collapse, and Underground (EXU) Exclusions, if applicable.

AUTOMOBILE LIABILITY INSURANCE

Minimal Limits (hired and non-owned automobile coverage):
\$1,000,000 per person
\$1,000,000 per occurrence

WORKERS' DISABILITY COMPENSATION

Coverage shall be in accordance with applicable Michigan statutes. Waiver of subrogation, except where waiver is prohibited by law.

PROFESSIONAL LIABILITY INSURANCE

Professional liability insurance shall be in a minimum amount of the greater of \$250,000 or the amounts to be paid Professional for services under the City Contract.

EXCESS/UMBRELLA INSURANCE

Required liability limits may be obtained using an Excess-Umbrella Liability policy in addition to primary liability policy(ies). If Excess and/or Umbrella policy used to satisfy coverage limits, coverage must follow the form of the primary liability policy(ies).

Upon the City's request, Professional will provide to the City's Purchasing Department copies of certificates of insurance, policies and endorsements.

18. Records. Because the City is a public entity and because it receives funds from other governmental agencies, the City is required to retain, be able to obtain, and/or audit records related to City contracts. Professional will retain copies of all records related to the City Contract for at least 6 years after completion of the City Contract. Professional will, upon the City's request, allow inspection, auditing and copying of all retained records.

19. Assignment/Beneficiaries. Unless otherwise provided in the City Contract, (i) no right or duty of Professional under the City Contract may be assigned or delegated without the City's prior written consent and (ii) no other individuals or entities are intended to be beneficiaries of the City Contract.

20. Independent Contractor. Professional is wholly independent of the City and none of Professional's personnel shall be or be represented to be City officers or employees. Professional is solely responsible for the acts, omissions and statements of Professional's personnel. Professional is solely responsible for any compensation and benefits to be provided Professional's personnel for services or work provided under the City Contract. The City has no responsibility to supervise, compensate or insure Professional or Professional's personnel.

ACKNOWLEDGEMENT

Professional acknowledges receipt of these Standard Terms and Conditions and acknowledges that, unless modified by the City Contract, (i) they apply to the City Contract and (ii) Professional complies with and will comply with them.


[Signature]

James E. Dixon, President

[Printed Name and Title of Person Signing]

James E. Dixon

[Printed Name of Professional]

Date signed: December 10, 2018

Exhibit B
Proposal



December 10, 2018

Mr. Scott G. Smith, City Attorney
City of Wyoming
1515 28th Street, SW
Wyoming, Michigan 49509

Re: **Proposal to Conduct a Phase I Environmental Site Assessment and Limited Phase II Environmental Site Assessment at:
Jackson Park Property (Approximate 13.64 Acres)
3235 Robin Avenue, SW
Wyoming, Kent County, Michigan
Tax Parcel Identification Number: 41-17-14-302-026
DEC Project No: 18-12-001**

Dear Mr. Smith:

Dixon Environmental Consulting, Inc. (DEC) has provided the following proposal in response to the City of Wyoming's December 6, 2018 **Invitation for Proposals, Environmental Consulting, Jackson Park Improvements Project (RFP)** for the above referenced project/property. Based on the information presented in the RFP, observations presented in geotechnical soil borings supported that environmental conditions may exist on the subject property relating to impacted historical fill located on the northern portion of the park property. The City of Wyoming also wishes to improve portions of the park in the near future and further understand how these observations may affect the development and use of the subject property. The general purpose of this environmental investigation is to collect additional existing/historical information relating a standard environmental due diligence investigation and also to provide some preliminary soil/groundwater data at specific locations. The process is defined henceforth in this proposal as a Phase I Environmental Site Assessment (ESA) and a Limited Phase II ESA. In an effort to expedite the process, the Limited Phase II ESA will be conducted simultaneously with the Phase I ESA.

Phase I Environmental Site Assessment

DEC proposes to prepare a Phase I ESA consistent with the scope of work derived by the ASTM International (ASTM), Standard Practice E 1527-13 and with the Environmental Protection Agency's (EPAs) Federal Regulation: 40 CFR Part 312 - Standards and Practices for All Appropriate Inquiries (AAI). The ASTM practice is the nationally recognized standard for conducting Phase I ESA's consistent with good and customary practices by environmental professionals assessing environmental due diligence on property.

The purpose of the Phase I ESA is to identify, to the extent feasible pursuant to the process prescribed herein, recognized environmental conditions (RECs) in connection with the subject property in accordance with the ASTM, Standard Practice E 1527-13. The term recognized environmental condition (REC) means the presence or likely presence of any hazardous substances or petroleum products in, on, or at a property: (1) due to any release to the environment; (2) under conditions indicative of a release to the environment; or (3) under conditions that pose a material threat of a future release to the environment. *De minimus conditions* are not recognized environmental conditions.

The ASTM E 1527-13 Phase I ESA Standard includes the following scope of services:

1. **Records Review:** The purpose of the records review is to obtain and review records that will help identify RECs in connection with the subject property. The records review will consist of the following:
 - A. **Standard Environmental Record Sources:** A computer search of reasonably ascertainable and practically reviewable government agency databases will be performed to determine if the subject property, its adjoining properties, or properties in the surrounding area are included on government agency databases indicative of potential environmental problems or notifications. At a minimum, government agency databases to be reviewed for the environmental profile will include those listed in the Standard.
 - B. **Physical Setting Source:** A current USGS 7.5-minute topographic map showing the area where the subject property is located will be reviewed. That portion of the topographic map showing the subject property will be presented as a figure in the ESA report. Consultant should consult other sources as needed to understand the physical setting of the subject property. These sources may include soil surveys and groundwater availability maps, among other readily available resources.
 - C. **Historic Use Review:** Historical resources (city directories, aerial photographs, fire insurance maps) shall be conducted to develop a history of the previous uses of the subject property, its adjoining properties, and properties in the surrounding area in order to help identify the likelihood of past uses having led to RECs in connection with the subject property.
2. **Site Reconnaissance:** A site reconnaissance shall be performed to obtain information indicating the likelihood of identifying RECs in connection with the subject property. The site reconnaissance should consist of a site visit to observe the interior and exterior portions of the subject property and evaluate current and former uses. The current uses of adjoining properties will be identified to the extent

that they are visually and/or physically observable during the site visit or from public areas.

3. **Interviews:** Consultant shall make reasonable attempts to conduct interviews with past and/or present subject property owners, operators, and occupants in order to obtain information indicating RECs. Consultant should interview state and/or local government officials to obtain information indicating RECs in connection with the subject property.
4. **Report:** Consultant shall prepare a Phase I ESA report describing the scope of services performed, the findings including the identification of RECs, the Environmental Professional's (EP's) opinion(s) of the impact of identified RECs on the subject property, and the EP's opinion regarding whether additional appropriate investigations would be necessary to detect the presence of hazardous substances or petroleum product. The ESA report will include the EP's qualifications, signature, and declaration, as required by the Standard.

The scope of services for the ASTM E1527-13 Phase I ESA Standard does not include sample collection and/or chemical analysis of any environmental media. In addition, the scope of work does not include asbestos-containing materials, radon, lead-based paint, lead in drinking water, wetlands, regulatory compliance, cultural and historic resources, industrial hygiene, health and safety, ecological resources, endangered species, indoor air quality, biological agents and mold. Furthermore, issues regarding ionizing radiation, oil/gas production, mineral rights and mining and geotechnical suitability are also considered beyond the scope of this project.

Limited Phase II Environmental Assessment

Under the RFP, the City of Wyoming also wished to assess certain soil/groundwater conditions based on observations identified in soil boring logs generated from a recent geotechnical investigation. Two geotechnical soil borings noted "petrol odors" and various soil borings supported that fill material (asphalt, concrete, etc.) existed at various locations across the northern portion of the park property. The Phase I ESA process would, most likely, identify this information as a REC. DEC has presented a scope of work to assess the two locations (soil/groundwater) under a Limited Phase II ESA. The two soil borings would collect and visually assess representative soil samples to prepare a lithological profile for a boring log. One soil sample from each boring is also proposed for collection, transport and chemical analysis by an independent laboratory for various parameters commonly sought to assess urban fill material and petroleum related substances.

The representative soil samples will be submitted to an independent laboratory for chemical analysis of volatile organic compounds (VOCs) via EPA Method 8260 Standard

*Mr. Scott Smith, City Attorney
Phase I ESA/Limited Phase II ESA Workplan
Jackson Park Property
3235 Robin Avenue, SW
Wyoming, Michigan
December 10, 2018
Page 4 of 5*

List, polynuclear aromatic hydrocarbons (PNAs) via EPA Method 8270, polychlorinated biphenyls (PCBs) via EPA Method 8082 and the Michigan 10 Metals via various EPA approved methods. The Michigan 10 Metals include arsenic, barium, cadmium, chromium (total), copper, lead, mercury, selenium, silver and zinc. Based on the recent geotechnical soil boring logs, the groundwater will be encountered at or near 5 feet below grade limit. Both shallow boreholes will be advanced at least one foot below the groundwater and converted into a temporary monitor well for groundwater assessment and sampling. The PVC monitor well (3 foot #10 slot screen with riser pipe) will be installed and developed prior to collecting representative groundwater samples. The sampling methods will be conducted in accordance with the MDEQ's low flow sampling guidance memorandums. The groundwater samples will be chemically analyzed for VOCs, PNAs and the Michigan 10 Metals. (PCBs do not commonly release into the groundwater.) The temporary monitor wells will be removed and the boreholes permanently abandoned with bentonite chips and soil cuttings.

The Limited Phase II ESA investigation and sampling results will be described and presented in an independent Limited Phase II ESA report, which will include the laboratory reports, tables, soil boring logs and conclusions regarding whether the subject site is a "facility" as defined under Part 201.

If the subject property is defined as a "facility," then Due Care obligations (also defined under Part 201) would likely require the owner/operator to provide additional consideration for the future development and use of the subject property. The Due Care obligations will be assessed and documented under a separate proposal, however, preliminary consulting may be conducted on a time and materials basis in accordance with the attached 2018 Fee Schedule.

SCHEDULE

Assuming the contract is released on or before December 14, 2018, DEC will conduct the Phase I and Limited Phase II ESA within four weeks. DEC understands that the contract required completion, including reports, by January 14, 2019.

COST

DEC will provide the services outlined in this proposal for a lump sum fee of **\$6,850**. A cost analysis worksheet is attached as a component of the proposal. Additional services or change orders may be necessary to facilitate this process due to discovery or additional work directed by the client. DEC will not be engage additional services without prior written approval from the client. The scope of work is defined in this proposal. Terms of payment are due upon receipt of invoice and subject to 1-1/2 percent monthly surcharge for an

*Mr. Scott Smith, City Attorney
Phase I ESA/Limited Phase II ESA Workplan
Jackson Park Property
3235 Robin Avenue, SW
Wyoming, Michigan
December 10, 2018
Page 5 of 5*

invoice exceeding 30 days. An invoice will be electronically distributed at the completion of work.

ACCEPTANCE OF PROPOSAL

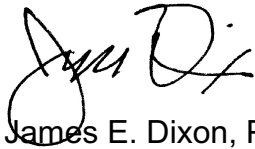
If this proposal is accepted, please sign and return as authorization to proceed.

DEC has also submitted this proposal as an excerpt of the City of Wyoming's Standard City Professional Services Contract, which details other terms and insurance requirements. DEC's terms of payment are due upon receipt of work product/invoice with a 30 day grace period, unless specifically arranged otherwise in writing.

DEC looks forward to assisting you with this project. Please contact me if you have any questions related to the project or this proposal.

Sincerely,

DIXON ENVIRONMENTAL CONSULTING, INC.



James E. Dixon, P.E.
Principal Engineer

PROPOSAL ACCEPTED BY:

Client: **CITY OF WYOMING**

Signature: _____

Title: _____

Date: _____

ATTACHMENTS:

**PROJECT COST
&
2018 FEE SCHEDULE**

**PROJECT COST ESTIMATE SUMMARY
PHASE II ENVIRONMENTAL SITE ASSESSMENT
JACKSON PARK PROPERTY
3235 ROBIN AVENUE, SW
WYOMING, MICHIGAN
DEC PROJECT NUMBER: 18-12-001**

Task 1: Phase I Environmental Site Assessment

Phase I Environmental Site Assessment (ASTM-1527-13) Report (Lump Sum) 2,000.00

SUBTOTAL TASK 1 **\$2,000.00**

Task 2: Lim. Phase II ESA Soil/Groundwater Sampling and Chemical Analysis

Drilling, Sample Collection and Delivery - Field Scientist (12 hrs)	1,080.00
Drill Support Vehicle/Equipment Charge, plus mileage est. (1 day)	70.00
Photoionization Device (1 day)	100.00
Well and Restoration Materials (Lump Sum)	120.00
Sample Collection Charge (glassware, handling) (4 samples)	120.00

Chemical Analysis 4 total samples - standard turnaround)	
VOCs - EPA Method 8260 (2 soil/2 groundwater samples)	640.00
PCBs - EPA Method 8082 (2 soil samples)	340.00
PNAs - EPA Method 8270 (2 soil/2 groundwater samples)	340.00
Michigan Ten Metals (2 soil/2 groundwater samples)	720.00

TASK 2 SUBTOTAL **\$3,530.00**

Task 3: Limited Phase II ESA Report

Project Scientist Summary Report (6 hrs)	600.00
ACAD Operator Boring Logs & Figures, Doc Prep & Output (6 hrs)	420.00
Principal Engineer Review/Project Management (2 hrs)	300.00

TASK 3 SUBTOTAL **\$1,320.00**

TOTAL COST PHASE I/LIMITED PHASE II ESAS (Task 1, 2 & 3) **\$6,850.00**

DIXON ENVIRONMENTAL CONSULTING, INC.
2018 SCHEDULE FOR FEES

<u>Code</u>	<u>Professional Service</u>	<u>Unit Price</u>
90	Principal Engineer	\$150.00/hr
85	Associate Engineer/Scientist	\$120.00/hr
80	Project Engineer/Scientist	\$100.00/hr
70	Senior Field Engineer/Scientist	\$100.00/hr
60	Field Engineer/Scientist	\$90.00/hr
50	CAD Operator	\$75.00/hr
45	Senior Field Technician	\$75.00/hr
40	Technician	\$50.00/hr
35	Administrative Staff	\$35.00/hr
30	General Clerical	\$30.00/hr

Project Related Expenses

Cost + 20%

- * Level C Protection add 50% to above unit rate.
 ** Level B Protection add 100% to above unit rate.

<u>Code</u>	<u>Monitoring Equipment</u>	<u>Unit Price</u>
941	Photoionization Detector	\$100.00/day
942	LEL/O ₂ /CO ₂ Meter	\$60.00/day
943	Temp/Conductivity/pH/Dissolved O ₂ Meter	\$80.00/day
944	Dissolved Oxygen Meter	\$50.00/day
945	Water Level Tape Measure	\$50.00/day
946	Oil/water Interface Detector	\$50.00/day
947	Metal Pipe Locator	\$200.00/day
950	Low Flow Sampling Pump/Meters/Equipment	\$300.00/day
960	Metals Filter pump (with filter)	\$25.00/sample
961	Sampling Charge (glassware/PPE/decon equipment)	\$30.00/sample
970	Hand Auger and Extensions	\$50.00/day
971	Hammer Drill/Core Machine	\$125.00/day
980	Earthprobe Sampling Device	\$1,900/day
990	Drilling Support Vehicle	\$70.00/day
991	Miles (over 30)	\$0.40/mile

RESOLUTION NO. _____

RESOLUTION TO AUTHORIZE THE MAYOR AND CITY CLERK TO
EXECUTE AN AGREEMENT FOR ENGINEERING TESTING SERVICES

WHEREAS:

1. The City of Wyoming utilizes the engineering testing services of a professional laboratory for the testing of materials associated with the development and construction of City street and utility projects.
2. The City requested proposals to perform engineering testing services from local testing firms to perform laboratory testing for preliminary engineering and construction material testing.
3. On November 27, 2018, the City received two (2) responses to its request for proposals with Materials Testing Consultants, Inc. (MTC) submitting a very qualified and competitive proposal.
4. MTC has performed said services for the City over the past several years and is very familiar with the City's requirements and procedures.
5. It is in the best interest of the City of Wyoming to execute an Agreement with Materials Testing Consultants, Inc. to perform the City of Wyoming's Engineering Testing Services for 2019, 2020, and 2021.

NOW, THEREFORE, BE IT RESOLVED:

1. The City Council hereby authorizes the Mayor and City Clerk to execute the attached Agreement with Materials Testing Consultants, Inc. for Engineering Testing Services.

Moved by Councilmember:
Seconded by Councilmember:
Motion Carried Yes
 No

I hereby certify that the foregoing Resolution was adopted by the City Council for the City of Wyoming, Michigan at a regular session held on December 17, 2018.

Kelli A. VandenBerg, Wyoming City Clerk

ATTACHMENT:
Professional Services Contract

Resolution No. _____

CITY OF
Wyoming
MICHIGAN

STANDARD CITY PROFESSIONAL SERVICES CONTRACT

CITY OF WYOMING, MICHIGAN
(CONTRACT OVER \$8,500)

This Contract is made as of the Effective Date between the City and the Professional.

"City" means: City of Wyoming
A Michigan municipal corporation
1155 28th Street SW
Wyoming, MI 49509

"City Professional Services Contract Standard Terms and Conditions" means the 2-page document attached as Exhibit A entitled "City of Wyoming, Michigan City Professional Services Contract Standard Terms and Conditions."

"Effective Date" means: January 1, 2019.

"Professional" means: Materials Testing Consultants, Inc.
[Name of professional entity]
A Michigan corporation
[State and type of entity, e.g., corporation, limited liability company, etc.]
693 Plymouth NE
[Professional's street address]
Grand Rapids, MI 49505
[Professional's city, state & zip]

"Proposal" means the Professional's proposal for the Services attached as Exhibit B.

"Services" means: to provide engineering testing services in accordance with the Proposal.
[Detail the work: e.g., "design and construction services for . . .," "appraisal of . . .," "delineate wetlands at . . .," etc.]

TERMS AND CONDITIONS

In exchange for the consideration in and referred by this Contract, the parties agree:

1. The Professional will perform the Services as detailed in the Proposal. Except as otherwise provided in the Proposal, the Professional will provide all qualified personnel, supplies and tools needed to perform the Services as described in the Proposal.
2. The City will pay the Professional in accordance with the Proposal. The City will, on a timely basis, provide any information and services the Proposal identifies as being provided by the City so the Professional can perform the Services as described by the Proposal.
3. The Professional represents and warrants, except for those specifically waived in this paragraph it is complying with and will comply with the City Professional Services Contract Standard Terms and Conditions. Waived conditions are as follows:

None

[Identify those the City Attorney have agreed may be waived or write "None."]

4. This is the only agreement between the parties regarding the Services that are the subject of the Proposal and there are no other agreements, representations or warranties except as are stated in the Proposal. This contract can be amended only in writing signed by both the City and Professional.

The City and Professional have signed this Contract as of the Effective Date.

City of Wyoming

By: _____
Jack A. Poll, Mayor

By: _____
Kelli A. Vandenberg, City Clerk

Date signed: _____, 20__

Approved as to form:

Scott G. Smith, City Attorney

Materials Testing Consultants, Inc.

[Professional's name]
By: _____
[Signature officer, director or principal of Professional]
Tim Lautenbach, PE
[Typed/Printed Name & Title of Person Signing for Professional]

Date signed: 12-12, 2018

CITY PROFESSIONAL SERVICES CONTRACT STANDARD TERMS AND CONDITIONS

1. Applicability. These Standard Terms and Conditions apply to all professional services contracts to which the City of Wyoming (the "City") is a party ("City Contracts") except as expressly modified in writing signed by the Mayor and City Clerk or the City Manager. By signing a City Contract or acknowledging below, the party contracting with the City ("Professional") attests it complies with and will comply with these Standard Terms and Conditions.

2. Legal Compliance. Professional will comply with all applicable (i) laws, rules, regulations, codes, and ordinances, (ii) license and permit requirements, and (iii) orders of any governmental agency, official or court of competent jurisdiction. This includes, for example and without limitation, complying with federal Occupational Safety and Health Administration (OSHA) and Michigan Occupational Safety and Health Act (MIOSHA) safe practices.

3. Approvals. Unless the City Contract or the Proposal states otherwise, Professional will, without expense to the City, obtain all permits and other approvals required to lawfully perform the services under the City Contract and, upon the City's request, will furnish copies of them to the City.

4. Grant Compliance. If state or federal grant funds have been identified to Professional as a source of payment for any part of the services, by signing the contract, Professional (i) represents Professional has reviewed the grant agreement and (ii) agrees to comply with any grant agreement terms and conditions that are applicable to the City Contract.

5. Qualifications. Professional represents and promises that:

A. Professional has and will maintain and any personnel Professional engages to provide services under the City Contract have and will maintain (i) any needed licenses, registrations, certifications, memberships, or other approvals needed to perform such services or work in Michigan and (ii) the experience and other qualifications stated in the Proposal.

B. Neither Professional nor any subcontractor or their respective principals, owners, officers, shareholders, key employees, directors or member partners: (i) are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency; (ii) have within 3-years preceding the City Contract been convicted of or have a judgment against them for fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; (iii) are presently indicted for or otherwise criminally charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in this certification; and (iv) have within 3-years preceding the City Contract had one or more public transactions (federal, state or local) terminated for cause or default.

C. If the City Contract is for a CDBG, federal and/or state funded project, Professional and any subcontractors are not listed on the US-HUD listing of debarred and suspended participants.

D. Professional and any subcontractor is not on and will remain off the Federal Excluded Parties List ("EPLS"). If Professional or any subcontractor is on the EPLS when signing or during the term of the City Contract, in addition to any other remedies to which it may be entitled the City may recover all moneys paid to Professional, all consequential damages (including the loss of grant funding or the required return of grant funding), and reasonable attorney fees (including the costs of in-house counsel) sustained as a result of non-compliance with this representation and promise.

E. Neither Professional nor any subcontractor is an "Iran linked business" under Michigan's Iran Economic Sanctions Act, 2012 PA 517.

6. Diversity and Inclusion. Professional and subcontractors shall not discriminate against an employee or applicant for employment with respect to hiring, tenure, terms, conditions, or privileges of employment, or directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, mental or physical disability, or any other reason prohibited by law (e.g., Elliott-Larsen Civil Rights Act, 1976 PA 453, Persons with Disabilities Civil Rights Act, 1976 PA 220, and <https://www.eeoc.gov/>).

7. Ethical Standards. Professional and its directors, members, partners, officers and employees, as well as any parent, affiliate, or subsidiary organization or subcontractor of Professional has not engaged in and shall refrain from: (i) holding or acquiring an interest that would conflict with the City Contract; (ii) engaging in any act that creates an appearance of impropriety with respect to the award or performance of the City Contract; (iii) attempting to influence or appearing to influence any City elected or appointed officer or employee by a direct or indirect offer of anything of value; or (iv) paying or agreeing to pay any person, other than its employees and consultants, any consideration contingent upon the award of the City Contract. No owner, director, officer, member, partner or key employee of Professional and no owner, director, officer, member, partner or key employee of any parent, affiliate, or subsidiary organization or subcontractor of Professional is a spouse, parent, child, grandchild, or sibling of the mayor, city council member, or any other elected or appointed officer or board/commission member of the City except as already disclosed in writing to the City when submitting its proposal. Professional will immediately notify the City of any violation of these standards.

8. Media Releases. Media releases (including promotional literature and commercial advertisements) pertaining to the City Contract or a project to which it relates shall not be made without the City Manager's prior written approval and only in accordance with the written terms provided in that approval.

9. W-9. Professional and all its subcontractors will, before beginning work complete and return by email to the City Finance Department at accountspayable@wyomingmi.gov an IRS W-9 form (available at www.irs.gov).

10. Document Ownership and Use. All documents Professional generates as part of its services under the City Contract, whether in paper, electronic or other media or format, including for example and without limitation, any plans, specifications, bid documents, drawings, designs, and manuals, shall belong to the City upon the City's payment of any amounts due the

Professional under the City Contract. The City will hold Professional harmless from and indemnify Professional for any liability that results from the use of those documents for any purpose or project beyond those purposes and projects for which they were provided to the City.

11. Intellectual Property Guaranty. Professional guarantees the sale or use of software, records or other intellectual property provided under or used to perform the City Contract will not infringe any copyright, patent, trademark or other intellectual property rights. Professional will, without expense to the City, defend every action brought against the City or the City's officers or employees for any alleged infringement of any intellectual property rights by reason of their use as part of the City Contract and will pay all costs, damages, and profits recoverable in any such action.

12. Taxes. The City is generally exempt from federal and state taxes and a copy of its Tax Certificate of Exemption can be requested by contacting the City Finance Department.

13. Disposal. Unless the City Contract or Proposal expressly states otherwise, Professional will remove and dispose of all materials, equipment or other items demolished, removed or replaced during the work and cleanup and remove all debris resulting from the work. Disposal will comply with applicable laws, rules and regulations and Professional will retain and, upon request, provide the City copies of any required manifest or other required disposal documentation.

14. Restoration. Professional shall restore, without expense to the City, any property damaged as a result of any services under the City Contract to a condition similar to and equal to that existing before such damage. If Professional fails to make such repairs or restorations, the City, after 48-hours' notice to Professional, may do so and deduct the cost the City incurs to do so from any amounts due Professional.

15. Risk Allocation. Professional is solely responsible for (i) the means and methods of services provided under the City Contract, (ii) the conduct of its officers, employees, subcontractors and consultants, and (iii) any injuries or property damage during the Professional's performance of services under the City Contract. Professional shall hold the City and the City's officers and employees harmless from and defend them (with legal counsel reasonably acceptable to the City) against any claims made by persons other than the City for personal injuries or property damage occurring during and as a result of Professional's performance of services under the City Contract, but not for any negligence or wrongdoing of the City or the City's officers or employees.

16. Professional Responsibility. Unless the Proposal provides a higher standard of care, Professional will perform Professional's services under the City Contract consistent with the standard of practice and care of other, similar professionals performing similar services in Michigan.

17. Insurance.

COMMERCIAL GENERAL LIABILITY

Minimal Limits:

\$1,000,000 Each Occurrence Limit

\$2,000,000 General Aggregate Limit

Coverage shall include the following: (A) Contractual Liability; (B) Independent Contractors Coverage; (C) Broad Form General Liability Extensions or equivalent, if not already included; (E) Deletion of all Explosion, Collapse, and Underground (EXU) Exclusions, if applicable.

AUTOMOBILE LIABILITY INSURANCE

Minimal Limits (hired and non-owned automobile coverage):

\$1,000,000 per person

\$1,000,000 per occurrence

WORKERS' DISABILITY COMPENSATION

Coverage shall be in accordance with applicable Michigan statutes. Waiver of subrogation, except where waiver is prohibited by law.

PROFESSIONAL LIABILITY INSURANCE

Professional liability insurance shall be in a minimum amount of the greater of \$250,000 or the amounts to be paid Professional for services under the City Contract.

EXCESS/UMBRELLA INSURANCE

Required liability limits may be obtained using an Excess-Umbrella Liability policy in addition to primary liability policy(ies). If Excess and/or Umbrella policy used to satisfy coverage limits, coverage must follow the form of the primary liability policy(ies).

Upon the City's request, Professional will provide to the City's Purchasing Department copies of certificates of insurance, policies and endorsements.

18. Records. Because the City is a public entity and because it receives funds from other governmental agencies, the City is required to retain, be able to obtain, and/or audit records related to City contracts. Professional will retain copies of all records related to the City Contract for at least 6 years after completion of the City Contract. Professional will, upon the City's request, allow inspection, auditing and copying of all retained records.

19. Assignment/Beneficiaries. Unless otherwise provided in the City Contract, (i) no right or duty of Professional under the City Contract may be assigned or delegated without the City's prior written consent and (ii) no other individuals or entities are intended to be beneficiaries of the City Contract.

20. Independent Contractor. Professional is wholly independent of the City and none of Professional's personnel shall be or be represented to be City officers or employees. Professional is solely responsible for the acts, omissions and statements of Professional's personnel. Professional is solely responsible for any compensation and benefits to be provided Professional's personnel for services or work provided under the City Contract. The City has no responsibility to supervise, compensate or insure Professional or Professional's personnel.

ACKNOWLEDGEMENT

Professional acknowledges receipt of these Standard Terms and Conditions and acknowledges that, unless modified by the City Contract, (i) they apply to the City Contract and (ii) Professional complies with and will comply with them.

(Signature)

Tim Lautenbach, PE

(Printed Name and Title of Person Signing)

(Printed Name of Professional)

Date signed: 12-12-18

Exhibit B
Proposal

2019 – 2021 ENGINEERING TESTING SERVICES

City of Wyoming

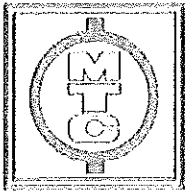
Unit Price Sheet

1. Mobilization
 - Mobilization for soil borings or coring only, one Mobilization per project truck or trailer mounted rig only. \$450.00 / lump
2. Soil Borings
 - Auger Borings \$11.00 / foot
 - Hollow Stem Auger Borings (Split spoon)
 - * less than 50 blows per foot \$13.00 / foot
 - * 50 blows per foot or greater \$21.00 / foot
3. 3-Point Proctor (Standard or Modified) \$95.00 / each
4. 5-Point Proctor (Standard or Modified) \$130.00 / each
5. Aggregate Sieve Analysis (including loss by wash) \$110.00 / each
6. Topsoil Analysis
 - ph and Organic content \$85.00 / each
 - Organic content only \$60.00 / each
7. Batch Plant Inspection
 - Concrete (technician) \$55.00 / hour
 - Asphalt (technician) \$55.00 / hour

(Asphalt extractions performed at plant will not be paid separately.)
8. Breaking Concrete cylinders (including curing & cylinder molds) \$15.00 / each
9. Cores (coring note below)
 - Concrete \$13.00 / inch
 - Asphalt \$11.00 / inch

(includes all costs, except mobilization, if applicable)
10. Penetration on Asphalt Cement (A.C.) Samples \$60.00 / each
11. Asphalt Extraction \$275 / each
(including gradation of aggregate & percent crushed)
12. Penetration on Recovered Asphalt Cement \$220.00 / each

Coring Note: Billing thickness includes entire pavement section to be cored, a minimum of 18 inches. Coring cost does not include traffic control; traffic control cost will vary on each project from none to a two-man flagging crew. Any necessary traffic control will be billed separately per project.



**Materials
Testing
Consultants, Inc.**



**CITY OF WYOMING
PROPOSAL FOR 2019 – 2021
ENGINEERING TESTING SERVICES**

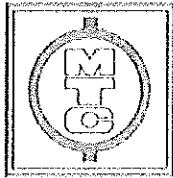
Prepared For:

**THE CITY OF WYOMING,
MICHIGAN**

Prepared By:

**MATERIALS TESTING CONSULTANTS, INC.
Grand Rapids, Michigan**

November 2018
MTC Proposal No. 14053



**Materials
Testing
Consultants, INC.**

MATERIALS Engineers, Independent TESTING Laboratories, Geotechnical & Environmental CONSULTANTS — Since 1958

Corporate Office
693 Plymouth NE • Grand Rapids, MI 49505 • (616) 456-5469 • FAX (616) 456-5784
Southeast Michigan
2680 Dodge Drive, Suite B • Ann Arbor, MI 48103 • (800) 968-8378 • (734) 616-8368

November 28, 2018
Proposal No. 14053

City of Wyoming
Engineering Department
2660 Burlingame Avenue SW
Wyoming, Michigan 49509

Attention: Mr. Russell Henckel, P.E.
Assistant Director of Public Works - Engineering

Reference: Proposal for 2019 – 2021 Engineering Testing Services

Dear Mr. Henckel:

We are pleased to present this summary of our qualifications in response to your Request for Proposals dated November 14, 2018. For 50 years, Materials Testing Consultants has been actively helping our clients “build with confidence.” With our extensive pertinent qualifications and proven track-record we can provide the requested services to help the City of Wyoming realize value in their construction-related endeavors. Materials Testing Consultants is a family-owned company and this is evident throughout the company. Nearly all project managers, engineers and senior field technicians in each division have over 10 years of experience at Materials Testing Consultants. This family atmosphere helps us provide our services as if we were in your backyard. We utilize a state-of-art system Laboratory Information Management System (LIMS) to help control project scheduling, report processing, and budgets to ultimately provide prompt, superior service. Our mission is to provide:

- Cost Effective and Creative State-of-the-Art Solutions; and the
- Confident Assurance of Quality on our projects.

With the combined abilities of our subsidiary MATECO, we have the unique abilities to productively manage projects with our in-house personnel and equipment, controlling the approach, cost, safety and technical aspects of our engagements.

Materials Testing Consultants, INC.

Mr. Russell Henckel, P.E.
City of Wyoming Engineering Department
Proposal No. 14053
November 28, 2018
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MTC QUALIFICATIONS

As a company and as individuals, we actively strive to successfully meet the needs of our clients in our technical areas of service and to excel as leaders among our profession. MTC is one of the few firms in the state, and the only West Michigan-based firm to hold AASHTO accreditation in soil, aggregate, hot mix asphalt (HMA), and Portland cement concrete. Our laboratory fully meets the requirements of the Special Provision for acceptance of hot mix asphalt mixture on local agency projects including participation in the MDOT HMA round-robin along with our current AASHTO accreditations. A copy of our AASHTO R18 Certificate of Accreditation is attached. We are the MDOT Grand Region's HMA laboratory, we employ the Grand Region's traveling mix inspector (TMI), and we hold annual geotechnical and testing as-needed contracts with the MDOT Grand Region, Southwest Region, and North Region.

Our technical areas of service include:

- Construction materials testing
- Geotechnical engineering
- Asbestos and lead consulting
- Environmental consulting

CONSTRUCTION MATERIALS TESTING

On construction materials testing projects, our goal is to provide the essential level of assurance to Owners and other members of the design and construction team that the primary construction materials meet established criteria through accepted standardized testing protocol. Engineering support, team approach and trained technical personnel have been keys to our decades of success. We routinely perform special inspections in accordance with the 2012 Michigan Building Code.

MTC uses laboratory information management system (LIMS) software developed specifically for our testing operations. Our LIMS system contains all of the project information; testing budget, report distribution lists, typed reports, lab test assignments and status of lab tests, etc. that enable our Project Manager to accurately track the testing hours and budget, report status, lab status, etc. at any time. From the minute your Field Inspector contacts our field scheduling manager, the call is entered into the Dispatch side of the LIMS system so each scheduling request, time onsite, tests needed, etc. is accounted for. As of 2019, with mobile capability, test results will now be entered electronically in the field. In addition, with mobile project access the project plans, specifications, and other resources are now available from within the electronic file. Our client is e-mailed PDFs copies of our reports daily as well as being provided access to view all reports posted to the project specific website for easy batch download.

Materials Testing Consultants, Inc.

Mr. Russell Henckel, P.E.
City of Wyoming Engineering Department
Proposal No. 14053
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We are accredited by AASHTO to meet the requirements of AASHTO R-18 and are accredited to meet the requirements of ASTM C1077, D3666, D3740, E329. These are the standards that set minimum requirements for laboratories conducting tests on concrete and aggregates, bituminous paving materials, soil and rock. We maintain a quality assurance manual for our in-house laboratory under the supervision of our Quality Assurance Manager. We participate in AMRL and CCRL reference sample programs and independent reviews of our internal quality program.

MTC's experience and construction material field and laboratory capabilities allow us to provide a broad range of construction material testing services to our clients. These services include, but are not limited to the following:

- Inspection Services utilizing FieldBook software
- Soil Compaction and Analysis
- Concrete Compression and Strength Testing
- Aggregate and Pavement Compaction Testing
- Subgrade Inspection
- Aggregate Laboratory Testing
- Quality Assurance/Quality Control for Bituminous Mixes and Pavements
- Bituminous and Concrete Pavement Coring
- Extraction Laboratory Testing
- Determination of HMA Compaction through the use of Laboratory Bulk Density
- Maximum Density/Optimum Moisture Testing (in accordance with MDOT certifications)
- Bituminous Plant Inspections
- Pipe Sampling and Testing
- Ground Penetrating Radar (GPR) for identification of buried utilities and reinforcing steel
- Nondestructive testing of steel, welding and fabrication and Welder Inspection

GEOTECHNICAL ENGINEERING

Geotechnical engineering requires the ability to assess accurately the mechanical properties of soil or rock matrix and to evaluate the response of the material when subjected to various loading and geometric conditions. Knowledge of foundation and geotechnical construction practices along with the high level of confidence in the engineering abilities, field subsurface and laboratory data are essential to safe and sound practices without excess and unnecessary expenditures. Through our experienced engineering staff, our hundreds of successfully completed projects, our test drilling support services and our complete laboratory capabilities in-house, we offer to our clients comprehensive geotechnical engineering consultation and design services for successful completion of almost any size and complexity project.

Materials Testing Consultants, INC.

Mr. Russell Henckel, P.E.
City of Wyoming Engineering Department
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Our projects spanning five decades include treatment facilities, underground infrastructure, multi-span bridges, high-rise buildings, power plants, hydroelectric facilities, dams, industrial developments, retail centers, electric substations, and the full range of commercial, industrial, institutional, governmental and residential development. Inclusive in our capabilities are deep and shallow foundation systems, subgrade improvement, retention systems evaluation and design, landfill evaluation and a wide array of specialized geotechnical services.

Field engineering and testing capabilities are critical to geotechnical projects. Through our field engineering staff and our subsidiary MATECO Drilling Company, we offer both normal and highly specialized field testing capabilities, including Menard Pressuremeter, Dutch Cone Penetrometer, Permeability Testing, Environmental Soil Probe, Earth Resistivity Testing, Diamond Core Drilling, and a host of other services. All-Terrain and low-clearance equipment is available for both marine and onshore projects.

Based on our experience and field-testing capabilities, we are able to provide the following geotechnical services to our clients:

- Soil Boring, Pavement and Rock Coring
- Soil Dynamics Studies
- Machine Auger Borings
- Split Spoon Testing and N-values
- Soil Investigations, Analysis and Laboratory Testing
- Investigation and Remediation of Soil-Related Failures
- Vibration Monitoring and Evaluation
- Slope Stability Evaluations
- Design Recommendations for foundations, underground construction, and earthwork
- Dewatering
- Pavement Design Recommendations

PROJECT EXPERIENCE

Over the years, we have successfully completed numerous projects for the City of Wyoming. This includes the contract for Engineering Testing Services from 2011 to 2015 and 2016 to 2018. Under these contracts we have provided our testing and inspection services on road projects including the 44th Street Reconstruction, resurfacing of Roger B. Chaffee Memorial Boulevard, the 28 West Place project, the M-6 West outlot project, Dehoop Avenue Watermain, the annual Wyoming resurfacing contracts as well as many other smaller projects. Recent Building project within the City of Wyoming include the Metro Hospital, Town Place Suites, Holiday Inn Express, Michigan Turkey Producers, Gordon Food Service Headquarters, the Donald K. Shine

Materials Testing Consultants, Inc.

Mr. Russell Henckel, P.E.
City of Wyoming Engineering Department
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Water Treatment Plant, the Carbon Facility and Raw Water Line project, the Biosolids Wyoming Pumping facility and the City of Wyoming Clean Water Plant. Recent Geotechnical investigations include Dehoop Avenue, 56th Street, the Interurban Sanitary line from 56th to 60th, The City Library, and Fire Station No. 4.

Some of our other most significant recent and current regional projects in which we have provided geotechnical or construction materials services include:

- Amazon Distribution Center in Caledonia
- Gun Lake Casino (multiple phased projects)
- 140 Ottawa (Post-Tension)
- 150 Ottawa (Post-Tension)
- The Venue at 20 Fulton
- Byron Center Middle Schools and High School
- Kent County Landfill
- Numerous City of Grand Rapids Road Projects
- Embassy Suites Hotel
- Fredrick Meijer Gardens (all phases past and present)
- FedEx Ground Distribution Facility in Walker
- Grand Rapids Biodigester Plant
- LG Chem Additions
- Mercy Health Muskegon
- Zeeland Clean Water Plant
- J.H. Campbell Unit 1 and Unit 3 expansions
- Hudsonville Public Schools – High School
- Holland Waste Water Treatment Plant
- MSU Spartan Stadium Addition and campus Steam Tunnel Addition
- BRT Silver Line
- Downtown Market
- 9 Wind Farm projects within Michigan, Iowa and Texas
- J.W. Marriott Alticor Hotel and Parking Ramp
- Grand Rapids Convention Center
- Van Andel Institute – Phase 2
- Helen DeVos Children's Hospital
- Various M-6 South Beltline projects, multi-year and multi-phase
- Grand Rapids CSO (West and East Side) projects
- Cherry/Commerce Parking Ramp
- Wyoming Clean Water Plant Headworks and Sludge Storage Tank

Materials Testing Consultants, Inc.

Mr. Russell Henckel, P.E.
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- Monroe Avenue and Trunk Sewer Relocation
- Grand Rapids Water Plant Improvement Study
- Wealthy Street Extension
- S-Curve, Quality Assurance testing under contract to MDOT
- MDOT Bituminous QA Testing, Grand Region Annual Contract
- MDOT Geotechnical Services, Grand Region Annual Contract
- I-196 reconstruction, from Grand River bridge to 44th St.
- GVSU Health Professions Building, a high-rise educational and research facility
- Spectrum Health Heart Center
- VanAndel Institute
- GVSU DeVos Downtown Campus
- GVSU Eberhard Center
- VanAndel Arena
- DC Cook ISFSI Nuclear Storage Pad
- Big Rock ISFSI Nuclear Storage Pad
- Palisades ISFSI Nuclear Storage Pad
- Palisades/Big Rock ISFSI Storage Casks
- Fermi 2 Nuclear Plant Diesel Enclosure

QUALIFIED STAFF

Our staff numbers approximately 80 with nearly 40 certified technicians. Our professional personnel include:

- Steven M. Elliott, P.E., President. As President of MTC, Mr. Elliott provides professional oversight to each of our technical areas of service. Mr. Elliott is the past Chairman of the American Council of Independent Laboratories Construction Materials Engineering and Testing Section and is a past member of ACIL's Board.
- Douglas W. Sabin, P.E., Geotechnical Division Manager. Mr. Sabin is currently involved with several projects for City of Grand Rapids streets, and is managing numerous MDOT funded geotechnical investigations for state trunkline projects throughout Michigan.
- Nicholas W. Fransted, P.E., CMET Division Manager. Mr. Fransted has managed a variety of building, utility, and roadway projects throughout the state. Recent project participation includes managing the construction materials testing at the Amazon Distribution Center in Caledonia, multiple Wind Farm projects, and the Post Tension Deck projects at 140 and 150 Ottawa in Grand Rapids.
- Timothy J. Lautenbach, P.E., CMET Senior Project Engineer and Quality Assurance Manager. Mr. Lautenbach will serve as MTC's Project Manager on this project. Mr.

Materials Testing Consultants, INC.

Mr. Russell Henckel, P.E.

City of Wyoming Engineering Department

Proposal No. 14053

November 28, 2018

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Lautenbach is currently the lead project manager for all road projects including the 2016-2018 City of Wyoming testing contract and for all laboratory projects including our existing Grand Region HMA and TMI contracts. Mr. Lautenbach also serves as MTC's QA Officer with responsibilities for the maintenance and implementation of our Quality Management System. Mr. Lautenbach is very familiar with the testing of construction materials both in the field and in the laboratory.

- Curtis A. Weaver, *CMET Field Service Manager*. Mr. Weaver is responsible for the general operations of our CMET field department including supervision of engineering technicians, review of quality assurance programs, testing equipment maintenance, staffing and client relations.
- Christopher J. Kestner, C.I.E., *Environmental Project Manager*. Responsibilities include overseeing project and personnel management, review of quality assurance programs, training new employees in analytical procedures and techniques, client and public relations, method and new business development for the Environmental Division, Baseline Environmental Assessments, Section 7a Compliance, stormwater issues, UST investigations, implementation of operation and maintenance contracts.

In addition, we typically have, during the peak of the construction season approximately 40 construction materials engineering technicians with appropriate certifications in concrete, aggregates, density or bituminous testing. Please refer to the attached resumes for further information regarding the qualifications of our personnel.

SAFETY POLICY

As evidenced by the attached excerpt from our Safety Policy, we consider no phase of our operation more important than safety and health protection. Poor health and safety practices endanger our employees, increase our costs of business, and reduce efficiency of our operations. We want our staff to have a safe and productive environment in which to work and to understand what is required for safe work practices. We provide and maintain safe and healthful working conditions and establish and insist upon safe work methods and practices at all times. Safety and health are an integral part of all of our operations whether they include working in our laboratory, on a construction site, in the field during an environmental or geotechnical investigation, logging soil test boring, traveling, engineering, designing, planning, or administration. Accidents or injuries have no place in our company.

We work consistently to maintain safe and healthy working conditions, to adhere to proper operating practices and procedures designed to prevent injury and illness, and to observe Federal, state, local, and company safety and health regulations. Each of our employees is to reflect an interest in our company safety and health objectives and is required to abide by these rules as

Materials Testing Consultants, Inc.

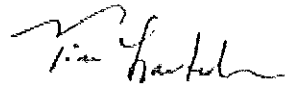
Mr. Russell Henckel, P.E.
City of Wyoming Engineering Department
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part of their normal work routine. Our management's commitment to safety is vocal, visible and continuous. Our management sets the example by complying with the guidelines for safety and health protection. With total commitment, elimination of accidents and injuries is our achievable goal.

Please review the enclosed information. Should you have any questions or desire any additional information, please contact me at your convenience.

Sincerely,

MATERIALS TESTING CONSULTANTS, INC.



Timothy J. Lautenbach, P.E.
CMET Senior Project Engineer

attachments: MTC Qualifications:
 AASHTO Certificate of Accreditation
 Resumes
 Safety Program
 Insurance Certificates
 Fee Summary Sheet

RESOLUTION NO. _____

RESOLUTION TO AUTHORIZE THE MAYOR AND CITY CLERK TO
EXECUTE AN AGREEMENT FOR SURVEYING SERVICES

WHEREAS:

1. The City of Wyoming utilizes the surveying services of a professional surveying firm for the development and construction of City street and utility projects.
2. The City requested proposals to perform surveying services from local surveying firms to perform preliminary surveying services and construction staking.
3. On November 27, 2018, the City received one (1) response to its request for proposals with Meyers, Bueche and Nies, Inc. (MBN, Inc.) submitting a very qualified and competitive proposal.
4. MBN, Inc. has performed said services for the City over the past several years and is very familiar with the City's requirements and procedures.
5. It is in the best interest of the City of Wyoming to execute an Agreement with Meyers, Bueche and Nies, Inc. to perform the City of Wyoming's Surveying Services for 2019, 2020, and 2021.

NOW, THEREFORE, BE IT RESOLVED:

1. The City Council hereby authorizes the Mayor and City Clerk to execute the attached Agreement with Meyers, Bueche and Nies, Inc. for Surveying Services.

Moved by Councilmember:

Seconded by Councilmember:

Motion Carried Yes
 No

I hereby certify that the foregoing Resolution was adopted by the City Council for the City of Wyoming, Michigan at a regular session held on December 17, 2018.

Kelli A. VandenBerg, Wyoming City Clerk

ATTACHMENT:

Professional Services Contract

STANDARD CITY PROFESSIONAL SERVICES CONTRACT

CITY OF WYOMING, MICHIGAN

(CONTRACT OVER \$8,500)

This Contract is made as of the Effective Date between the City and the Professional.

"City" means: City of Wyoming
A Michigan municipal corporation
1155 28th Street SW
Wyoming, MI 49509

"City Professional Services Contract Standard Terms and Conditions" means the 2-page document attached as Exhibit A entitled "City of Wyoming, Michigan City Professional Services Contract Standard Terms and Conditions."

"Effective Date" means: January 1, 2019.

"Professional" means: Meyers, Bueche and Niles, Inc.
[Name of professional entity]
A Michigan corporation
[State and type of entity, e.g., corporation, limited liability company, etc.]
1638 Leonard St NW
[Professional's street address]
Grand Rapids, MI 49504
[Professional's city, state & zip]

"Proposal" means the Professional's proposal for the Services attached as Exhibit B.

"Services" means: surveying services in accordance with the Proposal.
[Detail the work: e.g., "design and construction services for . . .," "appraisal of . . .," "delineate wetlands at . . .," etc.]

TERMS AND CONDITIONS

In exchange for the consideration in and referred by this Contract, the parties agree:

1. The Professional will perform the Services as detailed in the Proposal. Except as otherwise provided in the Proposal, the Professional will provide all qualified personnel, supplies and tools needed to perform the Services as described in the Proposal.
2. The City will pay the Professional in accordance with the Proposal. The City will, on a timely basis, provide any information and services the Proposal identifies as being provided by the City so the Professional can perform the Services as described by the Proposal.
3. The Professional represents and warrants, except for those specifically waived in this paragraph it is complying with and will comply with the City Professional Services Contract Standard Terms and Conditions. Waived conditions are as follows:

None

[Identify those the City Attorney have agreed may be waived or write "None."]

4. This is the only agreement between the parties regarding the Services that are the subject of the Proposal and there are no other agreements, representations or warranties except as are stated in the Proposal. This contract can be amended only in writing signed by both the City and Professional.

The City and Professional have signed this Contract as of the Effective Date.

City of Wyoming

Meyers, Bueche and Niles, Inc.

[Professional's name]

By: _____
Jack A. Poll, Mayor

By: Bradley E. Meyers
[Signature officer, director or principal of Professional]

Bradley E. Meyers, President

[Typed/Printed Name & Title of Person Signing for Professional]

By: _____
Kelli A. Vandenberg, City Clerk

Date signed: 12-12, 2018

Date signed: _____, 20__

Approved as to form:

Scott G. Smith
Scott G. Smith, City Attorney

CITY PROFESSIONAL SERVICES CONTRACT STANDARD TERMS AND CONDITIONS

1. **Applicability.** These Standard Terms and Conditions apply to all professional services contracts to which the City of Wyoming (the "City") is a party ("City Contracts") except as expressly modified in writing signed by the Mayor and City Clerk or the City Manager. By signing a City Contract or acknowledging below, the party contracting with the City ("Professional") attests it complies with and will comply with these Standard Terms and Conditions.

2. **Legal Compliance.** Professional will comply with all applicable (i) laws, rules, regulations, codes, and ordinances, (ii) license and permit requirements, and (iii) orders of any governmental agency, official or court of competent jurisdiction. This includes, for example and without limitation, complying with federal Occupational Safety and Health Administration (OSHA) and Michigan Occupational Safety and Health Act (MIOSHA) safe practices.

3. **Approvals.** Unless the City Contract or the Proposal states otherwise, Professional will, without expense to the City, obtain all permits and other approvals required to lawfully perform the services under the City Contract and, upon the City's request, will furnish copies of them to the City.

4. **Grant Compliance.** If state or federal grant funds have been identified to Professional as a source of payment for any part of the services, by signing the contract, Professional (i) represents Professional has reviewed the grant agreement and (ii) agrees to comply with any grant agreement terms and conditions that are applicable to the City Contract.

5. **Qualifications.** Professional represents and promises that:

A. Professional has and will maintain and any personnel Professional engages to provide services under the City Contract have and will maintain (i) any needed licenses, registrations, certifications, memberships, or other approvals needed to perform such services or work in Michigan and (ii) the experience and other qualifications stated in the Proposal.

B. Neither Professional nor any subcontractor or their respective principals, owners, officers, shareholders, key employees, directors or member partners: (i) are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency; (ii) have within 3-years preceding the City Contract been convicted of or have a judgment against them for fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; (iii) are presently indicted for or otherwise criminally charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in this certification; and (iv) have within 3-years preceding the City Contract had one or more public transactions (federal, state or local) terminated for cause or default.

C. If the City Contract is for a CDBG, federal and/or state funded project, Professional and any subcontractors are not listed on the US-HUD listing of debarred and suspended participants.

D. Professional and any subcontractor is not on and will remain off the Federal Excluded Parties List ("EPLS"). If Professional or any subcontractor is on the EPLS when signing or during the term of the City Contract, in addition to any other remedies to which it may be entitled the City may recover all moneys paid to Professional, all consequential damages (including the loss of grant funding or the required return of grant funding), and reasonable attorney fees (including the costs of in-house counsel) sustained as a result of non-compliance with this representation and promise.

E. Neither Professional nor any subcontractor is an "Iran linked business" under Michigan's Iran Economic Sanctions Act, 2012 PA 517.

6. **Diversity and Inclusion.** Professional and subcontractors shall not discriminate against an employee or applicant for employment with respect to hiring, tenure, terms, conditions, or privileges of employment, or directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, mental or physical disability, or any other reason prohibited by law (e.g., Elliott-Larsen Civil Rights Act, 1976 PA 453, Persons with Disabilities Civil Rights Act, 1976 PA 220, and <https://www.eeoc.gov/>).

7. **Ethical Standards.** Professional and its directors, members, partners, officers and employees, as well as any parent, affiliate, or subsidiary organization or subcontractor of Professional has not engaged in and shall refrain from: (i) holding or acquiring an interest that would conflict with the City Contract; (ii) engaging in any act that creates an appearance of impropriety with respect to the award or performance of the City Contract; (iii) attempting to influence or appearing to influence any City elected or appointed officer or employee by a direct or indirect offer of anything of value; or (iv) paying or agreeing to pay any person, other than its employees and consultants, any consideration contingent upon the award of the City Contract. No owner, director, officer, member, partner or key employee of Professional and no owner, director, officer, member, partner or key employee of any parent, affiliate, or subsidiary organization or subcontractor of Professional is a spouse, parent, child, grandchild, or sibling of the mayor, city council member, or any other elected or appointed officer or board/commission member of the City except as already disclosed in writing to the City when submitting its proposal. Professional will immediately notify the City of any violation of these standards.

8. **Media Releases.** Media releases (including promotional literature and commercial advertisements) pertaining to the City Contract or a project to which it relates shall not be made without the City Manager's prior written approval and only in accordance with the written terms provided in that approval.

9. **W-9.** Professional and all its subcontractors will, before beginning work complete and return by email to the City Finance Department at accountspayable@wyomingmi.gov an IRS W-9 form (available at www.irs.gov).

10. **Document Ownership and Use.** All documents Professional generates as part of its services under the City Contract, whether in paper, electronic or other media or format, including for example and without limitation, any plans, specifications, bid documents, drawings, designs, and manuals, shall belong to the City upon the City's payment of any amounts due the

Professional under the City Contract. The City will hold Professional harmless from and indemnify Professional for any liability that results from the use of those documents for any purpose or project beyond those purposes and projects for which they were provided to the City.

11. Intellectual Property Guaranty. Professional guarantees the sale or use of software, records or other intellectual property provided under or used to perform the City Contract will not infringe any copyright, patent, trademark or other intellectual property rights. Professional will, without expense to the City, defend every action brought against the City or the City's officers or employees for any alleged infringement of any intellectual property rights by reason of their use as part of the City Contract and will pay all costs, damages, and profits recoverable in any such action.

12. Taxes. The City is generally exempt from federal and state taxes and a copy of its Tax Certificate of Exemption can be requested by contacting the City Finance Department.

13. Disposal. Unless the City Contract or Proposal expressly states otherwise, Professional will remove and dispose of all materials, equipment or other items demolished, removed or replaced during the work and cleanup and remove all debris resulting from the work. Disposal will comply with applicable laws, rules and regulations and Professional will retain and, upon request, provide the City copies of any required manifest or other required disposal documentation.

14. Restoration. Professional shall restore, without expense to the City, any property damaged as a result of any services under the City Contract to a condition similar to and equal to that existing before such damage. If Professional fails to make such repairs or restorations, the City, after 48-hours' notice to Professional, may do so and deduct the cost the City incurs to do so from any amounts due Professional.

15. Risk Allocation. Professional is solely responsible for (i) the means and methods of services provided under the City Contract, (ii) the conduct of its officers, employees, subcontractors and consultants, and (iii) any injuries or property damage during the Professional's performance of services under the City Contract. Professional shall hold the City and the City's officers and employees harmless from and defend them (with legal counsel reasonably acceptable to the City) against any claims made by persons other than the City for personal injuries or property damage occurring during and as a result of Professional's performance of services under the City Contract, but not for any negligence or wrongdoing of the City or the City's officers or employees.

16. Professional Responsibility. Unless the Proposal provides a higher standard of care, Professional will perform Professional's services under the City Contract consistent with the standard of practice and care of other, similar professionals performing similar services in Michigan.

17. Insurance.

COMMERCIAL GENERAL LIABILITY

Minimal Limits:

\$1,000,000 Each Occurrence Limit

\$2,000,000 General Aggregate Limit

Coverage shall include the following: (A) Contractual Liability; (B) Independent Contractors Coverage; (C) Broad Form General Liability Extensions or equivalent, if not already included; (E) Deletion of all Explosion, Collapse, and Underground (EXU) Exclusions, if applicable.

AUTOMOBILE LIABILITY INSURANCE

Minimal Limits (hired and non-owned automobile coverage):

\$1,000,000 per person

\$1,000,000 per occurrence

WORKERS' DISABILITY COMPENSATION

Coverage shall be in accordance with applicable Michigan statutes. Waiver of subrogation, except where waiver is prohibited by law.

PROFESSIONAL LIABILITY INSURANCE

Professional liability insurance shall be in a minimum amount of the greater of \$250,000 or the amounts to be paid Professional for services under the City Contract.

EXCESS/UMBRELLA INSURANCE

Required liability limits may be obtained using an Excess-Umbrella Liability policy in addition to primary liability policy(ies). If Excess and/or Umbrella policy used to satisfy coverage limits, coverage must follow the form of the primary liability policy(ies).

Upon the City's request, Professional will provide to the City's Purchasing Department copies of certificates of insurance, policies and endorsements.

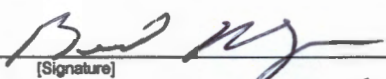
18. Records. Because the City is a public entity and because it receives funds from other governmental agencies, the City is required to retain, be able to obtain, and/or audit records related to City contracts. Professional will retain copies of all records related to the City Contract for at least 6 years after completion of the City Contract. Professional will, upon the City's request, allow inspection, auditing and copying of all retained records.

19. Assignment/Beneficiaries. Unless otherwise provided in the City Contract, (i) no right or duty of Professional under the City Contract may be assigned or delegated without the City's prior written consent and (ii) no other individuals or entities are intended to be beneficiaries of the City Contract.

20. Independent Contractor. Professional is wholly independent of the City and none of Professional's personnel shall be or be represented to be City officers or employees. Professional is solely responsible for the acts, omissions and statements of Professional's personnel. Professional is solely responsible for any compensation and benefits to be provided Professional's personnel for services or work provided under the City Contract. The City has no responsibility to supervise, compensate or insure Professional or Professional's personnel.

ACKNOWLEDGEMENT

Professional acknowledges receipt of these Standard Terms and Conditions and acknowledges that, unless modified by the City Contract, (i) they apply to the City Contract and (ii) Professional complies with and will comply with them.


[Signature]
Brad Meyers, President
[Printed Name and Title of Person Signing]

[Printed Name of Professional]

Date signed: 12-12-18

Exhibit B
Proposal

Unit Price Sheet

(Submit prices in separate envelope provided.)

1. Preliminary Survey Field Work:

- a. 100 foot right-of-way 2.50 per lineal ft.
- b. 80 foot right-of-way 2.35 per lineal ft.
- c. 66 & 60 foot right-of-way 2.15 per lineal ft.
- d. Cross-country easement 1.90 per lineal ft.
- e. Open area < one acre 0.010 per square ft.
> one acre 300.00 per acre

2. Preliminary Survey Plotting:

- a. 100 foot right-of-way 1.50 per lineal ft.
- b. 80 foot right-of-way 1.40 per lineal ft.
- c. 66 foot or less right-of-way 1.15 per lineal ft.
- d. Cross-country 1.15 per lineal ft.

3. Grid Section Field Work and Plotting:

- a. > 1 Acre 0.01 per square ft.
- b. < 1 Acre 0.015 per square ft.

4. Reestablishing Lot Corner: 85.00 hourly

5. Construction Staking:

- a. 2-person crew 85.00 hourly
- b. 3-person crew 99.50 hourly
- c. Office calculations 49.50 hourly

Date: 11/27/18

Contact Person: Bradley E. Meyers, President

Company Name: Meyers, Bueche & Nies, Inc.

Company Address: 1638 Leonard Street, N.W.

Grand Rapids, Michigan 49504

Phone No.: (616) 457-5030



*meyers, bueche & nies, inc.
1638 leonard street, n.w.
grand rapids, mi 49504
616-457-5030 fax: 616-457-8244*

November 27, 2018

Mr. Russell Henckel, P.E.
Assistant Director of Public Works/Engineering
City of Wyoming
Engineering Department
2660 Burlingame Avenue, S.W.
Wyoming, Michigan 49509

RE: 2019-2021 Surveying Services – Request for Qualifications/Proposals

Dear Mr. Henckel:

Enclosed is the information you requested in your Request for Qualifications/Proposals dated November 14, 2018. We understand this information will be utilized in evaluating each firm's capabilities to perform preliminary surveying, drafting and construction staking for street and utility projects in the City of Wyoming for the years 2019 thru 2021.

Mr. Bradley Meyers will be our contact person with the City of Wyoming as he has been for the last 15 years. He will continue to be involved in the preliminary survey, construction staking as a party chief, CAD operations and provide the quality control on all projects, as he has done for the past 25 years.

Mr. Michael Manning, Professional Surveyor (MBN director and employee), will be involved with all aspects of our survey operations with the City of Wyoming.

Meyers, Bueche & Nies, Inc. has performed the services requested for the City of Wyoming since 1993. We have continually upgraded our facilities and personnel so that we can provide the most efficient services to the City of Wyoming. This firm has been in business since 1988 and has furnished engineering and surveying services to several municipal clients in addition to the City of Wyoming.

CITY OF WYOMING

November 27, 2018

Over the past 25 years we have become very familiar with the City of Wyoming requirements and procedures and look forward again to working with you.

Very truly yours,

Meyers, Bueche & Nies, Inc.

A handwritten signature in black ink, appearing to read "B. Meyers", with a stylized flourish at the end.

Bradley E. Meyers
President

BEM:eak

Enclosures: Resumes



meyers, bueche & nies, inc.
1638 leonard street, n.w.
grand rapids, mi 49504
616-457-5030 fax: 616-457-8244

Resume

BRADLEY E. MEYERS: OWNER; SURVEY PARTY CHIEF AND SUPERVISOR;
CAD OPERATOR AND SUPERVISOR;
PROJECT MANAGER

Experience:

From March, 1987 to October, 1988: Employed by the firm of Olson, Meyers & May, Inc. (OMM Engineering)

Started out as a rod person and eventually worked up to the position of survey party chief. Work included preliminary survey and construction staking of a number of civil engineering projects.

In addition, was trained in the use of Nuclear Density equipment and performed numerous compaction tests during construction.

From October, 1988 to present: Employed by the firm of Meyers, Bueche & Nies, Inc.

Is a principal (President) of Meyers, Bueche & Nies, Inc.

Started out as an instrument person and presently holds the positions of survey party chief and department supervisor; and CAD (AutoCAD) operator and supervisor. Has been involved in CAD operations since equipment was obtained 26 years ago. In addition, has been the resident inspector on several projects in Georgetown and Jamestown Townships and would be our resident engineer on projects in the City when that service is requested.

Has performed numerous preliminary surveys for civil engineering and architectural projects. Also, on many of these projects, was in charge of construction staking, soils and materials testing.

Served as CAD operator and survey party chief (1993-2018) on a number of preliminary survey and construction projects in the City of Wyoming and is the contact person on all projects with the City of Wyoming.

Also, became President of Meyers, Bueche & Nies, Inc. in February, 2009.



meyers, bueche & nies, inc.
1638 leonard street, n.w.
grand rapids, mi 49504
616-457-5030 fax: 616-457-8244

Resume

MICHAEL J. MANNING, P.S.: SURVEY DEPARTMENT MANAGER

REGISTRATION: MICHIGAN, 2004
LICENSE NO. 51481

Experience:

From 1999 (Summer): Employed by Jonker Land Surveys, P.C.

Survey Crew Rod Person.

From 2000 – 2007: Employed by Focus Engineering and Surveying

Survey Crew Instrument Person; Survey Crew Chief; AutoCad Draftsperson and
Survey Project Manager.

From 2007 – 2008: Employed by Infrastructure C&E

Survey Department Manager.

From September, 2012 to present: Employed by Meyers, Bueche & Nies, Inc.
Survey Department Manager and on the Board of Directors.

Education:

Michigan Technological University (2000) – B.S. in Land Surveying



*meyers, bueche & nies, inc.
1638 leonard street, n.w.
grand rapids, mi 49504
616-457-5030 fax: 616-457-8244*

Management Summary:

From the inception (1988) of Meyers, Bueche & Nies, Inc. (MBN), Richard Meyers had been involved in the overall operation of the firm. Those duties now reside with Brad Meyers being the day to day operational director and President. Richard Meyers has been limited in activities due to health reasons and has retired from his operational position. Richard's proven work ethic and eye for detail has been passed along to the current staff with Brad Meyers implementing many of the methods and procedures that have been used to establish a 25 year working relationship with the City of Wyoming.

A key component to our survey department operations is Mike Manning, P.S. Mike has been involved with the City of Wyoming projects from preliminary surveys, construction staking, property surveys and numerous descriptions for easements/right-of-way acquisitions. Mike is the head of our survey department and a member of the Board of Directors.

Our staff that have been involved in the CAD phase of our operation and would continue to be so would be Brad Meyers, Mike Manning and Brendan Meyers.

Field surveying would be directed and supervised by Brad Meyers and Mike Manning.

MBN has the ability to place 2 survey crews in the field. Additional staff that make up those crews would be Matt Korzeniauskas and Brendan Meyers. Both of these individuals have several years of experience with the City of Wyoming projects and procedures.

Prior Experience:

MBN has been involved with the City of Wyoming for 25 years. We have construction staked everything from the 42" transmission waterline to hundreds of sidewalks for the new construction. Also, we have been involved in almost every preliminary topographic survey done by the City for proposed construction since 1993 (those must number at least one hundred).

Additional clients that we serve are: Ottawa County Road Commission, Kent County Road Commission and numerous private clients.

Quality Control:

The process of quality control we have instituted is twofold, we have a system designed for our field crews and another one framed for our CAD department.

First the field crews are required to keep and record notes and sketches of all their daily work items. This can consist of a field drawing detailing the elevations used to stake a sidewalk or the cuts placed on the stakes for a sanitary sewer. This process is used for all field work. Field crews hand off this information and it is checked for errors and completeness. Review is made the evening the work is done or that next morning by

Brad Meyers or Mike Manning. All this information is stored in a job file which has a MBN project number assigned to it for future retrieval.

Secondly, the CAD department is required to have a plot/print review (red line) done by Brad Meyers prior to submitting to client. CAD standards are in place for all the City of Wyoming projects and they are updated according to specific needs. Review plot/prints are kept and filed by MBN project number.

Insurance:

On file with the City of Wyoming (current contract).

RESOLUTION NO. _____

RESOLUTION TO AUTHORIZE THE MAYOR AND CITY CLERK
TO EXECUTE AN AGREEMENT FOR
PROPERTY AND RIGHT-OF-WAY ACQUISITION SERVICES

WHEREAS:

1. The City of Wyoming periodically acquires properties or portions of properties for right-of-way and other miscellaneous reasons.
2. The City requested proposals to perform property and right-of-way acquisition services from local firms to provide these services.
3. On November 28, 2018, the City received two (2) responses to its request for proposals with Land Matters LLC submitting a very qualified and competitive proposal.
4. Land Matters LLC has performed said services for the City over the past several years and is very familiar with the City's requirements and procedures.
5. It is in the best interest of the City of Wyoming to execute an Agreement with Land Matters LLC to perform the City of Wyoming's Property and Right-of-way Acquisition Services for 2019, 2020, and 2021.

NOW, THEREFORE, BE IT RESOLVED:

1. The City Council hereby authorizes the Mayor and City Clerk to execute the attached Agreement with Land Matters LLC for Property and Right-of-way Acquisition Services.

Moved by Councilmember:

Seconded by Councilmember:

Motion Carried Yes
 No

I hereby certify that the foregoing Resolution was adopted by the City Council for the City of Wyoming, Michigan at a regular session held on December 17, 2018.

Kelli A. VandenBerg, Wyoming City Clerk

ATTACHMENT:

Professional Services Contract

CITY OF
Wyoming
MICHIGAN

STANDARD CITY PROFESSIONAL SERVICES CONTRACT

CITY OF WYOMING, MICHIGAN
(CONTRACT OVER \$8,500)

This Contract is made as of the Effective Date between the City and the Professional.

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A Michigan municipal corporation
1155 28th Street SW
Wyoming, MI 49509

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"Effective Date" means: January 1, 2019.

"Professional" means: Land Matters LLC
[Name of professional entity]
A Michigan limited liability company
[State and type of entity, e.g., corporation, limited liability company, etc.]
0-11230 Tallmadge Woods Dr
[Professional's street address]
Grand Rapids, MI 49534
[Professional's city, state & zip]

"Proposal" means the Professional's proposal for the Services attached as Exhibit B.

"Services" means: property and right-of-way acquisition services in accordance with the Proposal.
[Detail the work: e.g., "design and construction services for . . .," "appraisal of . . .," "delineate wetlands at . . .," etc.]

TERMS AND CONDITIONS

In exchange for the consideration in and referred by this Contract, the parties agree:

1. The Professional will perform the Services as detailed in the Proposal. Except as otherwise provided in the Proposal, the Professional will provide all qualified personnel, supplies and tools needed to perform the Services as described in the Proposal.
2. The City will pay the Professional in accordance with the Proposal. The City will, on a timely basis, provide any information and services the Proposal identifies as being provided by the City so the Professional can perform the Services as described by the Proposal.
3. The Professional represents and warrants, except for those specifically waived in this paragraph it is complying with and will comply with the City Professional Services Contract Standard Terms and Conditions. Waived conditions are as follows:

None

[Identify those the City Attorney have agreed may be waived or write "None."]

4. This is the only agreement between the parties regarding the Services that are the subject of the Proposal and there are no other agreements, representations or warranties except as are stated in the Proposal. This contract can be amended only in writing signed by both the City and Professional.

The City and Professional have signed this Contract as of the Effective Date.

City of Wyoming

By: _____
Jack A. Poll, Mayor

By: _____
Kelli A. VandenBerg, City Clerk

Date signed: _____, 20__

Approved as to form:

Scott G. Smith, City Attorney

Land Matters LLC

[Professional's name]

By: Deborah S Poeder/kij
[Signature officer, director or principal of Professional]

Deborah S. Poeder, President

[Typed/Printed Name & Title of Person Signing for Professional]

Date signed: Dec 12, 2018

Exhibit A
CITY OF
Wyoming
MICHIGAN

CITY PROFESSIONAL SERVICES CONTRACT STANDARD TERMS AND CONDITIONS

1. Applicability. These Standard Terms and Conditions apply to all professional services contracts to which the City of Wyoming (the "City") is a party ("City Contracts") except as expressly modified in writing signed by the Mayor and City Clerk or the City Manager. By signing a City Contract or acknowledging below, the party contracting with the City ("Professional") attests it complies with and will comply with these Standard Terms and Conditions.

2. Legal Compliance. Professional will comply with all applicable (i) laws, rules, regulations, codes, and ordinances, (ii) license and permit requirements, and (iii) orders of any governmental agency, official or court of competent jurisdiction. This includes, for example and without limitation, complying with federal Occupational Safety and Health Administration (OSHA) and Michigan Occupational Safety and Health Act (MIOSHA) safe practices.

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A. Professional has and will maintain and any personnel Professional engages to provide services under the City Contract have and will maintain (i) any needed licenses, registrations, certifications, memberships, or other approvals needed to perform such services or work in Michigan and (ii) the experience and other qualifications stated in the Proposal.

B. Neither Professional nor any subcontractor or their respective principals, owners, officers, shareholders, key employees, directors or member partners: (i) are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency; (ii) have within 3-years preceding the City Contract been convicted of or have a judgment against them for fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; (iii) are presently indicted for or otherwise criminally charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in this certification; and (iv) have within 3-years preceding the City Contract had one or more public transactions (federal, state or local) terminated for cause or default.

C. If the City Contract is for a CDBG, federal and/or state funded project, Professional and any subcontractors are not listed on the US-HUD listing of debarred and suspended participants.

D. Professional and any subcontractor is not on and will remain off the Federal Excluded Parties List ("EPLS"). If Professional or any subcontractor is on the EPLS when signing or during the term of the City Contract, in addition to any other remedies to which it may be entitled the City may recover all moneys paid to Professional, all consequential damages (including the loss of grant funding or the required return of grant funding), and reasonable attorney fees (including the costs of in-house counsel) sustained as a result of non-compliance with this representation and promise.

E. Neither Professional nor any subcontractor is an "Iran linked business" under Michigan's Iran Economic Sanctions Act, 2012 PA 517.

6. Diversity and Inclusion. Professional and subcontractors shall not discriminate against an employee or applicant for employment with respect to hiring, tenure, terms, conditions, or privileges of employment, or directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, mental or physical disability, or any other reason prohibited by law (e.g., Elliott-Larsen Civil Rights Act, 1976 PA 453, Persons with Disabilities Civil Rights Act, 1976 PA 220, and <https://www.eeoc.gov/>).

7. Ethical Standards. Professional and its directors, members, partners, officers and employees, as well as any parent, affiliate, or subsidiary organization or subcontractor of Professional has not engaged in and shall refrain from: (i) holding or acquiring an interest that would conflict with the City Contract; (ii) engaging in any act that creates an appearance of impropriety with respect to the award or performance of the City Contract; (iii) attempting to influence or appearing to influence any City elected or appointed officer or employee by a direct or indirect offer of anything of value; or (iv) paying or agreeing to pay any person, other than its employees and consultants, any consideration contingent upon the award of the City Contract. No owner, director, officer, member, partner or key employee of Professional and no owner, director, officer, member, partner or key employee of any parent, affiliate, or subsidiary organization or subcontractor of Professional is a spouse, parent, child, grandchild, or sibling of the mayor, city council member, or any other elected or appointed officer or board/commission member of the City except as already disclosed in writing to the City when submitting its proposal. Professional will immediately notify the City of any violation of these standards.

8. Media Releases. Media releases (including promotional literature and commercial advertisements) pertaining to the City Contract or a project to which it relates shall not be made without the City Manager's prior written approval and only in accordance with the written terms provided in that approval.

9. W-9. Professional and all its subcontractors will, before beginning work complete and return by email to the City Finance Department at accountspayable@wyomingmi.gov an IRS W-9 form (available at www.irs.gov).

10. Document Ownership and Use. All documents Professional generates as part of its services under the City Contract, whether in paper, electronic or other media or format, including for example and without limitation, any plans, specifications, bid documents, drawings, designs, and manuals, shall belong to the City upon the City's payment of any amounts due the

Professional under the City Contract. The City will hold Professional harmless from and indemnify Professional for any liability that results from the use of those documents for any purpose or project beyond those purposes and projects for which they were provided to the City.

11. Intellectual Property Guaranty. Professional guarantees the sale or use of software, records or other intellectual property provided under or used to perform the City Contract will not infringe any copyright, patent, trademark or other intellectual property rights. Professional will, without expense to the City, defend every action brought against the City or the City's officers or employees for any alleged infringement of any intellectual property rights by reason of their use as part of the City Contract and will pay all costs, damages, and profits recoverable in any such action.

12. Taxes. The City is generally exempt from federal and state taxes and a copy of its Tax Certificate of Exemption can be requested by contacting the City Finance Department.

13. Disposal. Unless the City Contract or Proposal expressly states otherwise, Professional will remove and dispose of all materials, equipment or other items demolished, removed or replaced during the work and cleanup and remove all debris resulting from the work. Disposal will comply with applicable laws, rules and regulations and Professional will retain and, upon request, provide the City copies of any required manifest or other required disposal documentation.

14. Restoration. Professional shall restore, without expense to the City, any property damaged as a result of any services under the City Contract to a condition similar to and equal to that existing before such damage. If Professional fails to make such repairs or restorations, the City, after 48-hours' notice to Professional, may do so and deduct the cost the City incurs to do so from any amounts due Professional.

15. Risk Allocation. Professional is solely responsible for (i) the means and methods of services provided under the City Contract, (ii) the conduct of its officers, employees, subcontractors and consultants, and (iii) any injuries or property damage during the Professional's performance of services under the City Contract. Professional shall hold the City and the City's officers and employees harmless from and defend them (with legal counsel reasonably acceptable to the City) against any claims made by persons other than the City for personal injuries or property damage occurring during and as a result of Professional's performance of services under the City Contract, but not for any negligence or wrongdoing of the City or the City's officers or employees.

16. Professional Responsibility. Unless the Proposal provides a higher standard of care, Professional will perform Professional's services under the City Contract consistent with the standard of practice and care of other, similar professionals performing similar services in Michigan.

17. Insurance.

COMMERCIAL GENERAL LIABILITY

Minimal Limits:

\$1,000,000 Each Occurrence Limit

\$2,000,000 General Aggregate Limit

Coverage shall include the following: (A) Contractual Liability; (B) Independent Contractors Coverage; (C) Broad Form General Liability Extensions or equivalent, if not already included; (E) Deletion of all Explosion, Collapse, and Underground (EXU) Exclusions, if applicable.

AUTOMOBILE LIABILITY INSURANCE

Minimal Limits (hired and non-owned automobile coverage):
\$1,000,000 per person
\$1,000,000 per occurrence

WORKERS' DISABILITY COMPENSATION

Coverage shall be in accordance with applicable Michigan statutes. Waiver of subrogation, except where waiver is prohibited by law.

PROFESSIONAL LIABILITY INSURANCE

Professional liability insurance shall be in a minimum amount of the greater of \$250,000 or the amounts to be paid Professional for services under the City Contract.

EXCESS/UMBRELLA INSURANCE

Required liability limits may be obtained using an Excess-Umbrella Liability policy in addition to primary liability policy(ies). If Excess and/or Umbrella policy used to satisfy coverage limits, coverage must follow the form of the primary liability policy(ies).

Upon the City's request, Professional will provide to the City's Purchasing Department copies of certificates of insurance, policies and endorsements.

18. Records. Because the City is a public entity and because it receives funds from other governmental agencies, the City is required to retain, be able to obtain, and/or audit records related to City contracts. Professional will retain copies of all records related to the City Contract for at least 6 years after completion of the City Contract. Professional will, upon the City's request, allow inspection, auditing and copying of all retained records.

19. Assignment/Beneficiaries. Unless otherwise provided in the City Contract, (i) no right or duty of Professional under the City Contract may be assigned or delegated without the City's prior written consent and (ii) no other individuals or entities are intended to be beneficiaries of the City Contract.

20. Independent Contractor. Professional is wholly independent of the City and none of Professional's personnel shall be or be represented to be City officers or employees. Professional is solely responsible for the acts, omissions and statements of Professional's personnel. Professional is solely responsible for any compensation and benefits to be provided Professional's personnel for services or work provided under the City Contract. The City has no responsibility to supervise, compensate or insure Professional or Professional's personnel.

ACKNOWLEDGEMENT

Professional acknowledges receipt of these Standard Terms and Conditions and acknowledges that, unless modified by the City Contract, (i) they apply to the City Contract and (ii) Professional complies with and will comply with them.

Deborah S Poeder /kij
[Signature]

Deborah S Poeder, President
[Printed Name and Title of Person Signing]

Land Matters LLC
[Printed Name of Professional]

Date signed: Dec. 12, 2018

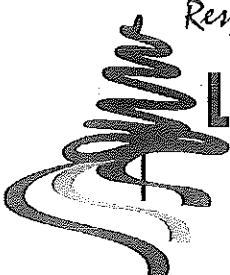
Exhibit B
Proposal

*Proposal for
Property & Right-of-Way
Acquisition Services*

Submitted to the



Engineering Department
2660 Burlingame Avenue
Wyoming, MI 49509

Respectfully submitted by,
 **Land Matters||c**
November 28, 2018

Business Organization

1. Name, Address, and Location

Land Matters LLC
11230 Tallmadge Woods Drive
Grand Rapids, MI 49534
(616)791-9805 phone
(616)791-9815 fax
Website: www.landmattersllc.com
Email: dpoeider@landmattersllc.com

2. License

Land Matters is a woman owned business licensed to operate and practice in the State of Michigan. Our Federal ID Number is 20-2932054. Deborah Poeder, President of Land Matters is a Real Estate Broker, License Number 6505359652.

3. Scope of Services that may be subcontracted

Land Matters enjoys a good working relationship with many specialized sub consultants who may be called upon, contingent on authorization and approval from the City of Wyoming. Such services may include the specific items such as asbestos testing and parking lot studies as listed in the Request for Proposals.

We typically rely on the preparation of certified legal descriptions by a licensed professional surveyor. Land Matters can assist with the preparation of any necessary exhibits for presentation purposes. If a certified exhibit map is required by a professional surveyor that would typically be subcontracted to the surveyor that prepared the legal description.

Appraisals and appraisal reviews are obtained when MDOT standards require the same. For example, if an estimated good faith offer exceeds \$10,000, or if the property owner demands a written appraisal, Land Matters would contract, upon concurrence with the City of Wyoming, with a state approved and qualified appraiser to prepare any necessary value of part taken or before and after appraisals. On large projects with multi-zoned properties and estimated compensation amounts that are high, we may recommend that a state approved qualified appraiser prepare a formal market study. On a typical acquisition, Land Matters prepares estimates of value based on available City and County records. Appraisers that we have used and may recommend include Maturen & Associates, R.S. Thomas & Associates, Genzink Appraisal Company, VanNoord & Associates, and others.

Services for disposal of improvements and salvage values, pending the specific issues, are areas which we may perform or seek a qualified sub consultant. We are currently working for MDOT to coordinate and oversee demolitions of various homes and businesses throughout the State. Our work includes coordination of asbestos testing and reporting, utility disconnects and permits. This experience can be used to assist the City of Wyoming if the need arises.

Scope of Services that Land Matters will perform

With a Real Estate Broker, Limited Appraiser, and Professional Engineers on staff, Land Matters typically provides all services necessary for property and right-of-way acquisition services, including the following specific items list in the Request for

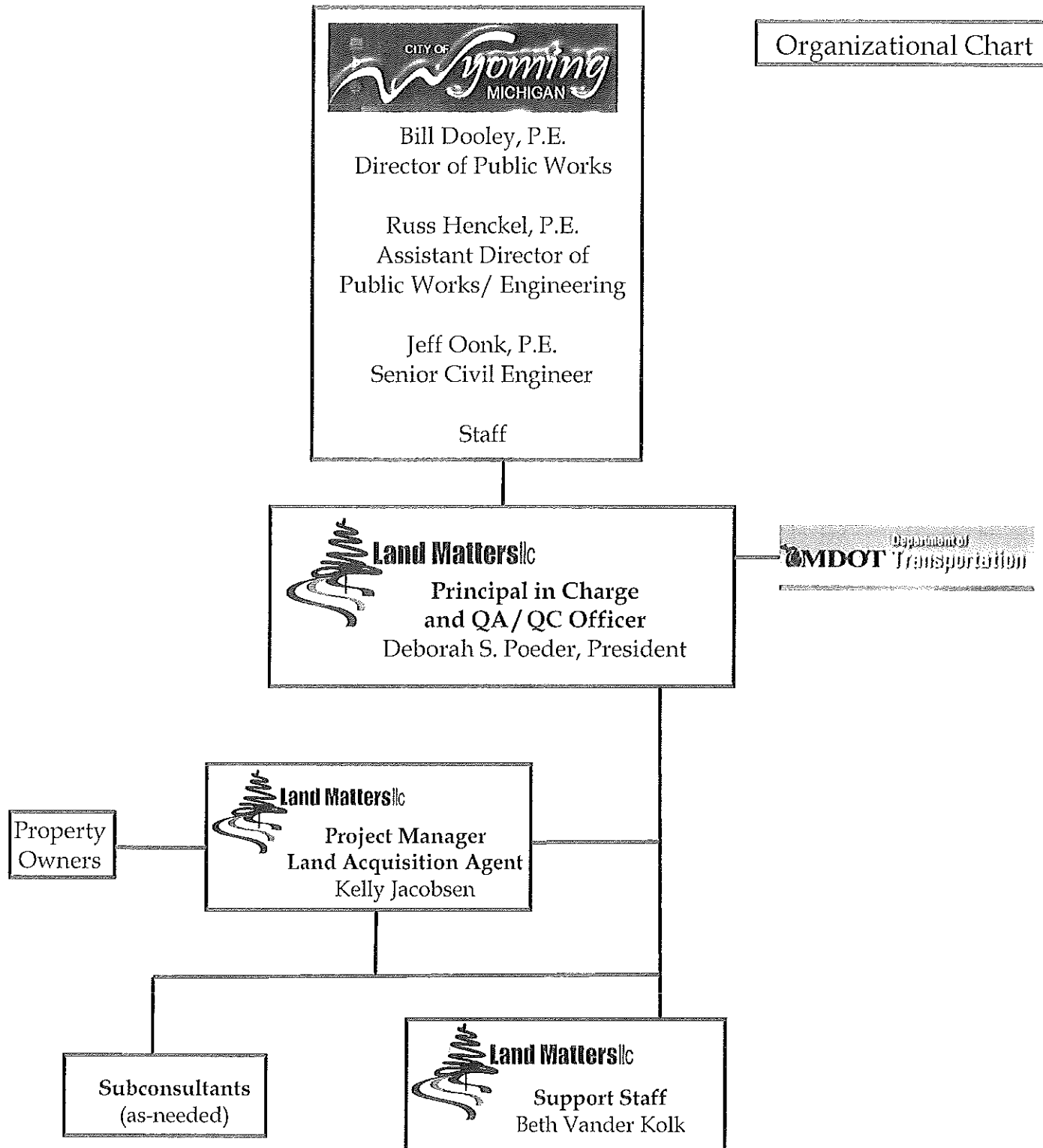
Proposal:

- Public meetings
- Obtain and review title commitments or title reports
- Right-of-Way estimates
- Conduct title searches
- Preliminary interviews of property owners
- Market studies where applicable
- Appraisal problem analysis
- Negotiations and Acquisitions
- Preparation of legal documents for real property or easement conveyance
- Conduct closings
- Relocation plans
- Relocation determinations, assistance and advisory services
- Inventory of improvements that are required
- Land inventory of apparent excess property
- Maintain an approved Quality Assurance Program

4. **Organizational Chart**

An Organizational Chart proposed for the City of Wyoming property and right-of-way acquisition services is included on the following page.

Organizational Chart



Principal in Charge and Point of Contact:
Deborah S. Poeder, President
Land Matters
11230 Tallmadge Woods Drive
Grand Rapids, MI 49534
616.791.9805 phone
616.791.9815 fax
616.446-1178 cell
dpoeder@landmattersllc.com

Management Summary

1. Land Matters Management Structure

Deborah S. Poeder is the Owner and President of Land Matters, a woman owned business. Professional services delivered to our clients and all day to day operations are under her direct management and supervision. She is the Principal in Charge for all property and right-of-way acquisition projects.

Kelly Jacobsen, a licensed Real Estate Salesperson, is a Project Manager and Land Acquisition Agent. She manages specific projects, including the coordination of all right-of-way tasks and negotiations necessary to accomplish the work. She reviews all titlework, provides mapping and easement analysis. Beth VanderKolk coordinates titlework, prepares various easement and right-of-way acquisition documents and keeps files in accordance with MDOT requirements. All staff members are familiar with all projects, allowing and enabling teamwork when necessary.

2. Individuals that will perform the work for the City of Wyoming

Principal in Charge: Deborah S. Poeder, President

Quality Control & Quality Assurance Officer: Deborah S. Poeder

Project Manager: Kelly Jacobsen

Land Acquisition Agents: Deborah S. Poeder
Kelly Jacobsen

Support Staff: Beth Vander Kolk

3. **Key employees responsible for the work**

The Principal in Charge and Quality Control & Quality Assurance Officer will be Deborah S. Poeder. She will be the point of contact for any new acquisition work and directly involved with all phases of the property and right-of-way acquisition process. She will assist the Project Manager with property owners and meetings, estimates of compensation and Good Faith Offers, legal document final review, coordination of sub consultants and schedules, and overall project direction and review.

She will also be the direct contact for any requested MDOT reviews for MDOT right-of-way certification.

The Project Manager and Land Acquisition Agent proposed for the City of Wyoming is Kelly Jacobsen. She has worked hand in hand with the City of Wyoming under our recent contract for Property and Right-of-Way Acquisition Services. City staff is very familiar with, and has worked closely with, Kelly.

She has an extensive background in engineering, easement and right-of-way acquisition, public relations and negotiations, and will be working directly with the City of Wyoming and negotiating with property owners to acquire property and right-of-way in a fair and just manner. Specific tasks will include public and individual meetings, negotiations, review of titlework and legal descriptions, document preparation, compensation review, preparation of good faith offers and purchase agreements for incidental items, and closing of transactions with and approval of final payments to property owners.

The Support Staff proposed for the City of Wyoming project is Beth Vander Kolk. She will assist in the collection of necessary data, preparation of project summaries and updates throughout the process, drafting of legal documents for review, payment requests, and recording of deeds. She will also be responsible to assure files are kept in accordance with City and MDOT requirements.

Prior Experience

Land Matters has provided land acquisition services for private and public underground utilities, roads and intersections, trails, pedestrian sidewalks and pathways, bridges, railroads, and airports for locally and grant funded projects. All acquisition work for the City of Wyoming will be done in conformance with all applicable local, state, and federal guidelines, and all property owners will be treated with integrity and respect.

Land Matters is approved by and has an excellent working relationship with the Michigan Department of Transportation (MDOT). We have an "As-Needed Contract for Real Estate Acquisition & Relocation Services" as well as an "Indefinite Services for Real Estate Services" with MDOT. We are knowledgeable in the requirements and have much experience with MDOT and federally funded projects, and are highly capable to complete the necessary tasks to acquire the right-of-way and easements. Land Matters is approved as a land acquisition agent by MDOT and has consistently met all applicable right-of-way certification requirements. A Real Estate Broker license is also held by the owner of Land Matters and this is highly recommended by the State for all state and federally funded projects.

We handle all necessary components to meet federal and state guidelines to ensure timely acquisitions consistent with funding requirements. Services typically provided during the acquisition process by Land Matters include:

- Estimates for acquisition costs for use in project planning
- Review of engineering plans & drawings
- Review of and coordination of titlework to ensure clear title
- Coordination of survey, legal description & mapping work
- Review of legal descriptions and maps
- Coordination of necessary appraisals and legal services
- Land valuations, recommendations, and project budgeting
- Legal document preparation
- Offers, negotiations & property settlements
- Mortgage releases as necessary
- Attachment "B" Right-of-Way Certification

Quality Assurance and Quality Control is also an integral part of the service provided.

We have recently been awarded a contract with MDOT to coordinate demolition efforts on various properties, and that experience can also be used by the City of Wyoming as needed.

Land Matters has appreciated and enjoyed a good working relationship with the City of Wyoming, and has performed the following necessary property and right-of-way acquisition services in the City of Wyoming. A very brief description of each is included.

2011

- Gezon Parkway - Acquisition of Joint Driveway Easement between two commercial establishments to improve traffic flow and ingress/egress. Coordinated Titlework and Survey Exhibit Maps.
- 36th & Michael - Acquisition of clear vision corner, including consent of tenant. Coordinated Titlework and Survey Exhibit Maps.
- 54th & Clyde Park - Acquisition of a Highway Easement and Temporary Permit for construction from a commercial establishment. Coordinated Titlework and Survey Exhibit Maps. Prepared Estimate of Just Compensation.

2012

- Division Avenue, Southbound at 54th - Acquisition of a Highway, Sidewalk and Utility Easement from a gas station. Coordinated Titlework and Survey Exhibit Maps.
- 44th Watermain - Acquisition of three Watermain Easements from a large residential complex and a commercial property. Coordinated Titlework and Survey Exhibit Maps.

2013

- Wrenwood Street - Acquisition of Quit Claim Deed for Highway Purposes. Coordinated Survey Exhibit Maps.
- Bike Trail, Division Avenue - Coordinated an Amendment to License for a new trail crossing Consumers Energy property. Also acquired a Non-Motorized Trail Easement from a commercial establishment. Prepared an Agreement for Incidental Items as well as Estimate of Just Compensation. Coordinated Titlework and Survey Exhibit Maps.
- Division Avenue, 54th to 60th - Acquisition of four Easements for Highway, Sidewalk, Public & Private Utilities and Vegetation Management, including Bus Rapid Transit purposes for one of the parcels. Acquisition of fourteen Warranty Deeds for public right of way purposes. Coordinated sign replacements for all affected parcels and acquired estimates for sign relocation on behalf of the City of Wyoming. Project also included acquisition of Temporary Permits and preparation of Estimates of Just Compensation for all parcels. Prepared Consent to Easement and Warranty Deed documents as well as Agreements for Incidental Items for several parcels as needed. Coordinated Titlework, Survey Exhibit Maps, Appraisals and Review Appraisals for all properties.

2014

- Storm Sewer and Public Easement - Met with affected property owners who were experiencing storm water flooding problems. Also met with Wyoming Staff to review all the issues, which resulted in a change in scope from the original project. Acquired a Storm Sewer Easement.

2015

- Clyde Park Resurfacing - Coordinated property acquisition with both City of Wyoming and City of Grand Rapids. Coordinated Titlework. This project is still in progress and will likely include a Warranty Deed for Highway Purposes and a Temporary Permit for construction purposes

from commercial properties in Wyoming, and may include either Warranty Deeds or Highway Easements for three properties in the City of Grand Rapids.

2016

- 28 West Place, Phase I - Included acquisition of two Deeds and one Easement for Highway, Sidewalk, Public & Private Utilities and Vegetation Management. Acquisition of Watermain Easements, Utility Easements and Temporary Permits as needed. Coordinated appraisals and review appraisals. Prepared Estimates of Just Compensation for all parcels and Consent to Easement document as needed.
- 36th and Buchanan - Obtain two Non-Motorized Trail Easements and Temporary Permits necessary for the extension of the existing Non-Motorized Trail system. Prepared necessary Estimate of Just Compensation documents and coordinated Titlework and Survey Exhibit Maps.
- Buchanan Bike Trail - Acquisition of seven Non-Motorized Trail Easements along Buchanan Avenue. Also, coordinated with Consumers Energy for necessary License Agreement. Included preparation of Estimate of Just Compensation, and obtaining Consent to Easement documents from mortgage companies as needed. Also, coordinated landscaping quotes and Agreement for Incidental Items for various properties. Coordinated Titlework and Survey Exhibit Maps.

2017

- 56th Street - Ivanrest to Byron Center - Acquisition of fourteen Warranty Deeds for public right of way purposes and one Easement for Highway, Sidewalk, Public & Private Utilities and Vegetation Management. Coordinated sign replacements for affected parcels and acquired estimates for sign relocation on behalf of the City of Wyoming. Project also included acquisition of Temporary Permits and preparation of Estimates of Just Compensation for all parcels. Prepared Consent to Easement and Warranty Deed documents as well as Agreements for Incidental Items for several parcels as needed. Coordinated Titlework, Survey Exhibit Maps, Appraisals and Review Appraisals for all properties.
- 32nd and Buchanan - Acquisition of Warranty Deed for public right of way purposes. Coordinated landscaping quote and prepared Agreement for Incidental Items and Estimate of Just Compensation. Coordinated Titlework and Survey Exhibit Maps.
- DeHoop Avenue Non-Motorized Trail - Acquisition of three Non-Motorized Trail Easements along DeHoop Avenue near 28th Street. Coordinated landscaping quotes, Agreements for Incidental Items and

Estimates of Just Compensation.

- Reith Riley - Coordinated sale of City surplus property to Reith-Riley, including retaining Easement rights across property.

2018

- 54th Street Improvements - Acquisition of four Warranty Deeds for public right of way purposes. Coordinated sign relocation/replacement for an affected business on behalf of the City of Wyoming. Project also included acquisition of Temporary Permits and preparation of Estimates of Just Compensation for various parcels. Coordinated Titlework, Survey Exhibit Maps, Appraisals and Review Appraisals for all properties.
- Interurban Trail - Coordinate License Agreement with Consumers Energy and METC. Included multiple meetings and on-site walk through with Consumers Energy. Discussions with various neighbors as well as obtaining signed Trail Acknowledgement documents from neighbors with existing license agreements with Consumers Energy.
- Denwood Avenue Improvements - Met with affected property owner at the end of Denwood Avenue to discuss possible cul-de-sac options or Utility Easement options. Coordinated signature of Utility Easement and Estimate of Just Compensation as necessary for project. Coordinated Titlework and Survey Exhibit Maps.
- Various projects - Worked on various "clean-up" projects for the City, including obtaining Easements which were necessary as part of the Bayberry Flooding Improvement project, and sale of surplus property on Beckie Court and Wrenwood Street.

All work for the above projects was under the supervision of Russ Henkel, P.E., Assistant Director of Public Works - Engineering, phone (616)530-7254.

Successful work on the above projects done directly for the City of Wyoming is the most applicable and best prior experience as City Staff knows us and our work.

Other clients that we regularly work for on an ongoing basis and their contact information is as follows:

Mr. Brett Laughlin, P.E.
Ottawa County Road Commission
(616)842-5400
Email: balaughlin@ottawacorc.com

Ms. Christine Barfuss
City of Grand Rapids
(616)456-3842
Email: cbarfuss@grand-rapids.mi.us

Quality Control and Quality Assurance

Deborah S. Poeder, Owner and President of Land Matters is the Quality Control and Quality Assurance Control Officer. Our Quality Control and Quality Assurance process is crucial to the satisfactory completion of each project. Land Matters follows an unprecedented property and right-of-way acquisition process. At the onset of each project, a complete review of the plans, project requirements, funding, and other issues are reviewed with the client, project managers and support staff. A right-of-way checklist is contained in each project folder and updated throughout the duration of each project. Summary sheets specific to each project are reviewed at weekly staff meetings along with any issues, schedules, and deadlines that must be adhered to. Legal documents and Good Faith Offers are drafted and reviewed by Managers, and a final quality review is done by the QA / QC Officer.

Land Matters not only provides a quality review of our own work, but our experience allows us to provide a review of work by others, i.e. legal descriptions, clouded title, engineering plans, and survey drawings.

Communication is open and outstanding with the management and staff at Land Matters. Good sense, practical guidelines, and respect are common factors and each staff member takes pride in the quality of his or her work. Communications will be maintained with the City of Wyoming staff on a regular basis. Land Matters appreciates and welcomes any and all comments, criticisms, or compliments at any time and will respond in a prompt manner.

Insurance

Included in the back of this Proposal is our Certificate of Liability Insurance. The insurance requirements were not listed in the Request for Proposals, and if the City of Wyoming requires any other insurance or limits, Land Matters is willing and able to obtain additional insurance to comply with said requirements.

Fee Schedule

Shown on the following page is the proposed Land Matters Hourly Rate Schedule. The hourly rates listed include labor, overhead, and profit. Please note that we have minimally modified our rate schedule with the City of Wyoming since 2010. These rates will be used the term of the As-Needed Contract with the City of Wyoming.



11230

Tallmadge Woods

Drive

Grand Rapids

MI 49534

Phone:

616 791 9805

Fax:

616 791 9815

2019-2021 HOURLY RATE SCHEDULE

Hourly Rates

Principal in Charge	\$ 98.50
Project Manager/Land Acquisition Agent	\$ 80.00 - \$85.00
Administrative Staff	\$ 62.00

Out-of-Pocket Expenses:

Mileage	Federal Rate (currently \$0.545/ mile)
Copies	\$0.12 / legal \$0.10 /letter
Plotter Copies	\$ 2.50 - \$ 5.00
Title Commitments and Subconsultants	At cost
Recording Fees, Postage, etc.	At cost

Statement of Agreement

Land Matters has reviewed the Request for Proposals and Services and is qualified to perform the property and right-of-way acquisitions for the City of Wyoming. All work to be performed by Land Matters will be consistent with local, state, and federal land acquisition requirements.

Respectfully submitted,

Deborah S. Poeder

President



Deborah S. Poeder

President and Owner ~ Founded Land Matters in 2005

Ms. Poeder founded *Land Matters LLC* in 2005 and specializes in sensitive land, right-of-way, and easement acquisition issues for private and public agencies. This woman owned business enterprise is highly qualified and capable of performing right-of-way easement, land acquisition, relocation and related services to ensure clear title to property needed for State, Municipal and Private needs. Ms. Poeder's success is based on a reputation for timely, credible, and reliable land acquisition and related serviced for cities, villages, townships, counties, private developers, public and private utility companies, and the Real Estate Division and Bureau of Aeronautics of the Michigan Department of Transportation.

Licenses and Associations

- Michigan Real Estate Broker (License 6505359652)
- Provider of Real Estate Acquisition Services, Michigan Department of Transportation
- Approved Land Acquisition Consultant with the Michigan Department of Aeronautics
- International Right-of-Way Association, Active Member and Vice President

Representative Projects

- **Cottonwood Drive Reconstruction.** The Cottonwood Drive project is located in Ottawa County and included tree cutting, utility installation and road widening and reconstruction along a one and a half mile portion of the street. As a part of the project, Land Matters acquired Public Highway Easements for 85 parcels and one fee, total take acquisition. The project was funded in part by Federal Funds and the Ottawa County Millage. This project required the coordination of appraisers and review appraisers, surveyors, and County staff, as well as the preparation of Good Faith Offers and negotiations. County surveying staff and engineering staff provided the necessary exhibit maps and legal descriptions for the acquisitions. This project was completed and the right-of-way was successfully certified to MDOT in March 2018.
- **Simpson-Batavia Transmission Line, St. Joseph and Branch Counties.** This project involved the construction of an approximate 25 mile new 138kv line through two counties and various townships to upgrade Michigan's transmission grid to accommodate future economic and population growth and improve overall reliability. Services included property owner meetings and assistance in route determination based on the needs of the transmission company and property owners (including farmers) through irrigated agricultural areas and residential areas. Services also included project meetings, tracking and scheduling, comprehensive due diligence, market value research, document preparation, individual negotiations and assistance in collocating a portion of the line with Consumers Energy. Easements and Vegetation Management rights on this project consisted of coordination with approximately 200 property owners. Services also included construction updates with property owners, temporary access agreements, restoration issues, crop damage claims and payments.

Deborah S. Poeder

Page Two

- **28th Avenue, Georgetown Township, Ottawa County.** Seventy four parcels were affected by the widening of 28th Avenue. Work included title review, preparation of Public Highway Easements and Quit Claim Deeds, open house meetings, coordination and review of appraisals, meetings and negotiations with property owners and the Ottawa County Road Commission, preparation of purchase agreements for incidental items, closing with property owners, coordination of final payment, and recording of legal documents. This project also included the relocation of a displaced property owner. All acquisition work was completed in accordance with FHWA regulations and was reviewed and approved by the Michigan Department of Transportation.
- **Ottawa County Road Commission.** Hundreds of parcels have been acquired either in fee, easement or temporary since 2005 throughout Ottawa County. Typical right-of-way and easement acquisition services included the preparation of deeds, easements, grading permits, agreements for incidental items, determination of compensation based on land values and / or appraisals, review of titlework, meetings, correspondence, negotiations with property owners, payment requests, and recording of executed documents.
- **West Centre Sidewalks, City of Portage, Kalamazoo County.** Services included preparation and acquisition of sidewalk easements, verification of title work and legal descriptions, plan review, estimate of compensation based on available City information, coordination with Engineering and City staff, meetings and negotiations with property owners (21 parcels).



Kelly Jacobsen

Ms. Jacobsen gained vast experience dealing with engineers and municipalities in her fifteen years at Moore & Bruggink, Inc, an engineering firm. She managed and was responsible for the ten person CAD department and handled all GIS and CAD work for staff engineers.

In 2006 she joined Land Matters, and used her knowledge obtained during her previous employment and education in the preparation of Phase I Environmental Site Assessments. She also provided support in preparing documents, maps, and spreadsheets for various land acquisitions. In 2010 she began assisting as a Project Manager and Land Acquisition Agent from preliminary research and interviews to closings on various right-of-way and easement acquisition projects.

Education:

B. S. Natural Resource Management - Grand Valley State University

Continuing Education:

Environmental Due Diligence 101

Environmental Due Diligence and Liability 604

Licenses and Associations:

Michigan Real Estate Salesperson (License 6501388625)

International Right-of-way Association, Active member

Representative Land Acquisition Projects:

- Coventry Wixom and Majestic Lulu ~ Acquisition of Vegetation Management Easements for 117 properties in Oakland, Washtenaw and Monroe Counties.
- City of Wyoming
 - Buchanan Non-Motorized Bike Trail ~ Acquiring easements on 7 residential properties for a new 10' wide Non-Motorized Bike Trail
 - Division Avenue - 56th Street to 60th Street ~ Acquiring Warranty Deeds and/or Easements on 19 commercial properties for Street Improvements.
 - 56th Street - from Ivanrest to Byron Center ~ Acquiring Warranty Deeds, Easement and /or Temporary Permits on 22 residential and commercial properties for Street Improvements.
 - Interurban Transit Partnership ~ This project involved acquiring license agreements for twenty-three properties needed for the construction for bus stations for the Silver Line Bus Loop in the Cities of Grand Rapids and Wyoming.

Representative Phase I Site Assessments:

355 Wilson Ave ESA
Tallmadge Industrial Park
501 State Street ESA
Golden Corral ESA
1720 Sternberg, Norton Shores
Sparta Airport Properties

Menards, Alpine Township
5253 52nd Street
Grayden's Crossing
Lacks Industries
Riverstone Townhomes
Cambridge House

RESOLUTION NO. _____

RESOLUTION TO CONCUR WITH ADDITIONAL WORK FOR RE-ROOFING
THE MATERIAL STORAGE BUILDING AND TO AUTHORIZE PAYMENT

WHEREAS:

1. City Council adopted Resolution number 26199 on October 1, 2018 authorizing American Classic Construction to re-roof the material storage building at a cost of \$21,600.
2. As detailed in the attached Staff Report, additional work was required in order to complete the project increasing the total cost by \$4,750.
3. Sufficient funds are available in the motor pool fund account number 662-441-58500-977000.

NOW, THEREFORE, BE IT RESOLVED:

1. The City Council does hereby concur with the additional work for re-roofing the materials storage building.
2. The City Council does hereby authorize payment to American Classic Construction in the total amount of \$4,750.

Moved by Councilmember:

Seconded by Councilmember:

Motion Carried Yes
 No

I hereby certify that the foregoing Resolution was adopted by the City Council for the City of Wyoming, Michigan at a regular session held on December 17, 2018.

ATTACHMENT:
Staff Report

Kelli A. VandenBerg, Wyoming City Clerk

Resolution No. _____

STAFF REPORT

Date: December 5, 2018

Subject: Authorize Additional Expense of Re-roofing Public Works Material Storage Building

From: Lisa Barnes, Office Manager

Meeting date: December 17, 2018

RECOMMENDATION:

It is recommended the City Council authorize payment for removal of an additional layer of shingles on the Public Works Material Storage Building by American Classic Construction in the amount of \$4,750.

SUSTAINABILITY CRITERIA:

Environmental Quality:

The material storage building provides a covered area to store various maintenance materials preventing runoff into area ponds and storm sewers.

Social Equity:

The various materials are used throughout the city during maintenance operations without regard to income level or socio-economic status.

Economic Strength:

The new shingles will provide a better protective shield from the weather and reduce maintenance expenses going forward. Shingle costs are also expected to increase in the near future.

DISCUSSION:

On August 21, 2018 four bids were received for re-roofing the salt storage dome at the Public Works Facility. Seventy-five invitations were sent to prospective bidders. On September 4, 2018, City Council awarded the bid for re-roofing the salt storage dome to American Classic Construction.

The salt dome roof bid was awarded for \$59,849, lower than the anticipated \$85,000 that was budgeted. The nearby material storage building was also in need of a new roof. Given that American Classic was already here working on removing and replacing the salt dome shingles and had their equipment on site they were asked to provide an estimate to tear off and replace the shingles on the material storage building. They informed us their crew could be available immediately following the salt dome roof project to roof the material storage building. Although their roofing material costs saw an increase in price, they could complete the work while the equipment was already on site for \$21,600.

Unfortunately, during the shingle tear-off process they found an additional layer of shingles that needed to be removed. The additional work increased both the labor time and disposal fees for the extra debris. These additional expenses total \$4,750.

Based on the need for a new roof and the work that has been completed, it is recommended the City Council authorize payment of the additional expense to American Classic Construction for removal and disposal of the additional layer of shingles on the material storage building in the amount of \$4,750.

BUDGET IMPACT:

Sufficient funds are available in the Motor Pool Fund 662-441-58500-977000.

RESOLUTION NO. _____

RESOLUTION TO AUTHORIZE THE PURCHASE OF TASERS

WHEREAS:

1. As detailed in the attached Staff Report it is recommend the City purchase twenty-seven Taser X-26P CEW's (Conducted Electrical Weapons).
2. It is recommended the City Council authorize the purchase from Axon Enterprise, Inc. in the total amount of \$30,240.
3. Funds for the purchase are available in the Drug Law Enforcement Fund/Forfeiture account number 265-305-31500-973.014.

NOW, THEREFORE, BE IT RESOLVED:

1. The City Council does hereby authorize the purchase of twenty-seven Taser X-26P CEW's in the total amount of \$30,240.
2. The City Council does hereby waive the provisions of Sections 2-252, 2-253, 2-254 and 2-256 of the City Code regarding publication and posting of bid notices, notification of bidders and the bid opening procedure.

Moved by Councilmember:

Seconded by Councilmember:

Motion Carried Yes
 No

I hereby certify that the foregoing Resolution was adopted by the City Council for the City of Wyoming, Michigan at a regular session held on December 17, 2018.

ATTACHMENTS:
Staff Report
Brochure

Kelli A. VandenBerg, Wyoming City Clerk

Resolution No. _____

STAFF REPORT

DATE: December 11, 2018

SUBJECT: Replacement of TASER

FROM: Lt. Eric Wiler

MEETING DATE: December 17, 2018

RECOMMENDATION:

It is recommended the City Council approve the purchase of twenty-seven (27) TASER X-26P CEW's (Conducted Electrical Weapons) for the total purchase price of \$30,240.00

SUSTAINABILITY CRITERIA:

Environmental Quality: The Department strives to be environmentally responsible and is contracting with a reputable company for its equipment needs. This proposal will have no impact on the environment or our natural resources.

Social Equity: This recommendation will provide service to all residents of the City of Wyoming and any other individuals entered into the Criminal Justice System through the Wyoming Department of Public Safety, without regard to income level or socio-economic status.

Economic Strength: The Wyoming Department of Public Safety is committed to providing excellent customer service. The City of Wyoming is able to take full economic advantage of this purchase through Axon Enterprise, Inc.

Quality Customer Service: The Department of Public Safety relies on its employees to provide quality customer service to the City of Wyoming residents and its visitors. To this end we strive to provide quality equipment to ensure the safety of our staff to fulfill its mission. We also regard the core values of the City of Wyoming, one of those being fiscal responsibility.

DISCUSSION:

The Wyoming Department of Public Safety issues conducted electrical weapons (CEW), also known as TASER, to sworn police officers of the department. The CEW is a less lethal force option for officers when dealing with situations that pose an increased risk to citizens and police officers. The primary purpose of a CEW application is to reduce the possibility of injury to both the subject and the officer. The officers of the department currently carry the TASER X26 and TASER X26P. The TASER X26 was purchased by the department over 10 years ago. The

majority of officers are carrying the TASER X26, which has become obsolete and replaced by the TASER X26P. As with any electronic device, TASER's have a shelf life and warranties expire. Axon Enterprise, Inc., the manufacturer of TASER, is no longer providing service or support for the TASER X26.

With several of the TASER X26's not functioning properly, we need to start the process of updating the entire department issued TASER's to the X26P.

We are recommending the purchase of twenty-seven (27) TASER X26P's at a cost of \$30,240.00 from Axon Enterprise, Inc. Axon Enterprise, Inc. is a sole source provider for law enforcement TASER's.

BUDGET IMPACT:

There are sufficient funds available for the purchase of the TASER X26P's in the Drug Law Enforcement Fund / Forfeiture Account under account number 265-305-31500-973.014.



THE TASER X26P: SMART IMPROVEMENTS TO THE ORIGINAL X26



X26P

Enhanced features in
a compact size

THE ORIGINAL X26E MADE BETTER

All-Digital Platform | Lightweight and Easy to Carry

Produced with superior quality and reliability in mind, the TASER X26P conducted electrical weapon (CEW) is a dependable piece of law enforcement equipment that's been improved inside and out. Our TASER Smart Weapons enable advanced capabilities like charge metering and self-diagnostics, making our devices safer and more effective than ever.

800-978-2737 [axon.com](https://www.axon.com)

X26P FEATURES AND BENEFITS

COMPACT SIZE: Comparable in size and weight to the original X26E device.

CAMERA ADD-ON: Accommodates TASER CAM HD attachment to provide a record of deployments.

CHARGE METERING: Designed to optimize the amount of current output.

PERFORMANCE POWER MAGAZINE: Offers 300 more discharges than the original X26E DPM.

APPM: Provides an audible alert and shuts off the discharge cycle automatically after 5 seconds.

WEATHER RESISTANCE: Holds up better to rain, humidity and other elements.

SELF-DIAGNOSTICS: Complex analysis of the weapon's internal systems.

INTERNET UPDATES: Firmware updates over the internet (no need for complex manufacturer support).

EVIDENCE.COM INTEGRATION: Manage weapon data for free with Evidence Lite.

WORKS WITH SIGNAL PPM: Reports armed status to nearby Axon cameras so they can begin recording.

X26P SPECIFICATIONS

WEATHER RESISTANCE IEC 60529 IPx2 (rain), MIL-STD-810G Method 510.5, Procedure 1 (dust)

HOUSING High-impact polymer

POWER ACTIVATION Ambidextrous safety switch

OPERATING TEMPERATURE - 4 °F to 122 °F [-20 °C to 50 °C]

STORAGE TEMPERATURE - 4 °F to 122 °F [-20 °C to 50 °C]

DROP TEST 4 feet

HUMIDITY 80% non-condensing

WARRANTY 1 year from date of receipt

TASER devices are part of the Axon network

▲, ▲ AXON, Axon, Evidence.com, Evidence Lite, Evidence.com Lite, X26P, TASER and © are trademarks of Axon Enterprise, Inc., some of which are registered in the US and other countries.

For more information, visit www.axon.com/legal. All rights reserved. © 2017 Axon Enterprise, Inc.



RESOLUTION NO. _____

RESOLUTION FOR AWARD OF BIDS

WHEREAS:

1. Formal bids have been obtained on the below listed items.
2. The bids received have been reviewed and evaluated as per the attached staff reports.

NOW, THEREFORE, BE IT RESOLVED:

1. The City Council does hereby award the bid for the listed items as recommended in the attached Staff Report and summarized below.
2. The video surveillance system will require approval of the attached budget amendment.

Item	Recommended Bidder	Cost
Video Surveillance System	Knight Watch, Inc.	Bid prices as shown on the attached staff report
Engine Oil	J&H Oil Company & Great Lakes Lubricants (FKA Kamp Oil)	Bid prices as shown on the attached staff report
Gas Chromatography System	PerkinElmer Health Sciences, Inc.	\$33,201.89

3. The City Council does hereby approve the attachment budget amendment which is required for the video surveillance system.

Moved by Councilmember:

Seconded by Councilmember:

Motion Carried Yes
 No

I hereby certify that the foregoing Resolution was adopted by the City Council for the City of Wyoming, Michigan at a regular session held on December 17, 2018.

ATTACHMENTS:

Budget Amendment
Staff Reports

Kelli A. VandenBerg, Wyoming City Clerk

Resolution No. _____

CITY OF WYOMING BUDGET AMENDMENT

Date: December 17, 2018

Budget Amendment No. 043

To the Wyoming City Council:

A budget amendment is requested for the following reason: To appropriate \$16,555.00 of additional budgetary authority to fund the replacement of the security system system at the Wyoming Library as per the attached resolution.

<u>Description/Account Code</u>	<u>Current</u>	<u>Increase</u>	<u>Decrease</u>	<u>Amended</u>
<u>Library Maintenance and Capital Fund</u>				
Facilities - Facilities Maintenance - Capital Outlay				
401-267-26700-975.000	156,133.46	16,555.00		172,688.46
Fund Balance/Working Capital (Fund 401)	\$	\$	16,555.00	

Recommended: Hadi Kargar
Senior Accountant

City Manager

Motion by Councilmember _____, seconded by Councilmember _____
that the General Appropriations Act for Fiscal Year 2018-2019 be amended by adoption of the
foregoing budget amendment.

Motion carried: Yes _____, No _____

I hereby certify that at a _____ meeting of the Wyoming City Council duly held on _____ the foregoing budget amendment was approved.

City Clerk

STAFF REPORT

Date: December 10, 2018

Subject: Wyoming Public Library Security Camera Project

From: Patrick Firestone, Director of Information Technology
Rebecca Rynbrandt, Director of Community Services

Meeting Date: December 17, 2018

RECOMMENDATION:

That the City Council accepts the lowest bid from Knight Watch, Inc. in an amount of \$35,450 and to authorize the attached budget amendment in the amount of \$16,555.

SUSTAINABILITY CRITERIA:

Environmental Quality – The Wyoming Library is a facility that provides programs and services for the citizens of Wyoming. Use of the facility for programs and services should be provided as safely and securely as possible so as to protect community investments and ensure to the greatest extent possible public safety. A video surveillance system will allow staff to monitor the building, its entry points, hallways, and multiple meeting rooms from a centralized location. The video surveillance system may also provide information that could be used by law enforcement if necessary.

Social Equity – The City Council identified the need for this project within the community's FY 2019 budget. Our programs, facilities and services create community for individuals and neighborhoods by fostering connections for families and friends while building strong minds and bodies.

Economic Strength – The City of Wyoming strives to provide a safe, convenient, and pleasant living environment, with minimal burden to the taxpayer. Public facility investments directly impact property values, community aesthetics and the economic vitality of the city.

DISCUSSION:

This project replaces deteriorated and obsolete security camera equipment and expands surveillance coverage to additional library areas. The installation of a video surveillance system at the library will assist in providing a safe and secure facility for the programs, services, and activities that take place there. A video surveillance system will improve safety and security at the library when there is minimal or no staff on-site.

City of Wyoming staff, including information technology, facilities, and Kent District Library staff, worked with a security vendor who acted on our behalf as a non-bidding consultant, who

assisted in the creation of a system design specification for a video surveillance system. Once the design was completed, a full Request for Proposal (RFP) was published and bids received on December 4th. Eighty-seven invitations to bid were sent to prospective bidders, the two bids are shown below:

BIDDER	ORIGINAL BID	ADJUSTED BID TO MEET SPECIFICATIONS	NOTES ON ADJUSTED BID
MidState Security	40,223.32	Bid Met Specifications	No adjustments needed.
Knight Watch, Inc.	35,450.00	Bid Met Specifications	No adjustments needed.

Both bids received, standardized on Avigilon hardware and software, as required in the bid specification. Bidder reference checks were not performed, as both the bidders have significant and recent experience with projects at the City. After reviewing the bids, it is recommended that the lowest bid from Knight Watch, Inc., be accepted and approved.

BUDGET IMPACT:

Funds were planned for this investment in the FY 2019 Library Maintenance and Capital budget. As detailed in the tables below, the original budget was established at \$25,000. Since the establishment of the budget, the cost of design, bidding, product, and installation, including a 10% contingency, has increased to \$41,555.

Bid & Remaining Project Costs	
Knight Watch, Inc.	\$35,450
Project Contingency (10%)	\$3,545
Remaining Project Cost (Rounded)	\$38,995

Project Funding	
Initial project set aside in Library Capital Budget for pre-construction activities 401-267-26700-975.000	\$25,000
Consultant expense for camera system design, construction documents, and bidding	(\$2,560)
Remaining budget project set aside	\$22,440
Product and Installation Bid & Contingency Costs	\$38,995
Library Maintenance and Capital (Fund Balance Request)	\$16,555

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STAFF REPORT

DATE: December 4, 2018

SUBJECT: Bid Award – Bulk Engine Oil

FROM: Ted Seil, Fleet Services Supervisor

Date of Meeting: December 17, 2018

RECOMMENDATION

The Public Works Department recommends that the City Council award the bid for the purchase of 5W40 engine oil to the lowest bidder, Great Lakes Lubricants, and 5W20 engine oil to the lowest bidder, J&H Oil Company, for the unit prices as stated in the attached bid tabulation.

SUSTAINABILITY CRITERIA

Environmental Quality

Fleet Services strives to use synthetic oils that extend maintenance intervals and reduce dependence on crude oil.

Social Equity

Engine oil is used in the maintenance of all City of Wyoming vehicles and equipment, which are used throughout the City without regard to income or socio-economic status.

Economic Strength

With proper maintenance intervals the changing of engine oil reduces maintenance costs and the need for major repairs on all city equipment. When bought in bulk the cost per gallon is reduced.

DISCUSSION

On October 30, 2018, the City Clerk received two bids for bulk engine oil out of twenty-four requests for bids that were sent out. Bids received are tabulated on the following page.

The City uses a variety of oils for vehicle maintenance. Out of the two bids received, Great Lakes Lubricants submitted the lowest bid for bulk 5W40 Kendal synthetic engine oil at \$14.99 per gallon and J&H Oil Company submitted the lowest bid for bulk 5W20 Kendal engine oil at \$11.16 per gallon, These two oil specifications are used on the majority of City vehicles and equipment

The Public Works Department purchases approximately \$17,000.00 of engine oil a year.

BUDGET IMPACT

Sufficient funds have been budgeted in the Motor Pool Maintenance Supply Account 661-441-58200-775.000.

Item Description	Size	J&H Oil Company	Great Lakes Lubricants (FKA Kamp Oil)
Synthetic Bulk Engine Oil	Per Gallon	\$ 15.49	\$ 14.99
		Phillips 66 Triton ECT 5w40	Kendall SHP Full Synthetic 5w40
Kendall Bulk	Per Gallon	\$ 11.16	\$ 11.99
		Kendall GT1 5w20	Kendall GT-1 5w20 Full Synthetic Available in Drum Only

STAFF REPORT

Date: December 11, 2018
Subject: Bid Award for Purchase Gas Chromatography System
From: Jaime Fleming, Laboratory Services Manager
Date of Meeting: December 17, 2018

Recommendation

It is recommended that the bid for a gas chromatography system be awarded to Perkin Elmer, Inc. in the amount of \$33,201.89.

Sustainability Criteria:

Environmental Quality – The Water Treatment Plant is actively engaged in the protection of the public health of Wyoming’s citizens. A large part of this work is conducting laboratory analysis to quantifiably document our compliance with regulatory limitations and treatment success.

Social Equity – The Utility function within the City of Wyoming provides the same high quality service to all areas of the City without regard to income level or socio-economic status. All of Wyoming’s residents enjoy equal access to the benefits of our state-of-the-art drinking water treatment technologies.

Economic Strength – By maintaining our own independent laboratories in the Utilities Department, we are able to keep our costs as low as possible, while generating more analytical data, in which we have higher confidence.

Quality Service Impact:

Quality Service at the Water Treatment Plant depends upon our ability to meet regulatory standards for safe drinking water. The data produced by the gas chromatography system confirms the success of our drinking water treatment processes in meeting these standards.

Discussion:

A gas chromatography (GC) system is an advanced laboratory instrument that can detect organic compounds in water. When naturally occurring organic matter in Lake Michigan water comes in contact with the chlorine disinfectant used to make it safe to drink, disinfection by-products can be formed. Haloacetic acids (HAAs) are one type of these disinfection by-products. Because HAA’s have been linked to an increased risk for certain cancers, there is a Maximum Contaminant Limit set by the USEPA for HAA’s in drinking water.

In order to demonstrate that our drinking water does not exceed the allowable level for HAAs we are required to test samples on a quarterly basis from various locations in our distribution system. These samples must be tested at a certified drinking water laboratory. Wyoming is fortunate to have laboratory team members that are skilled in gas chromatography analysis. It is their expertise that

allows Wyoming to be the *only drinking water utility laboratory in the State of Michigan* with certification for HAA analysis. Under this certification, our laboratory processes our own samples and those of our wholesale customers. We also provide contracted services for a small number of other nearby communities.

The current GC system is nearing the end of its expected lifetime. Due to the age of the instrument, replacement parts are becoming more difficult to find. Over time, analytical instruments become less reliable and accurate. Because of the important role the GC system plays in regulatory compliance and maintaining our laboratory certification, the current system needs to be replaced.

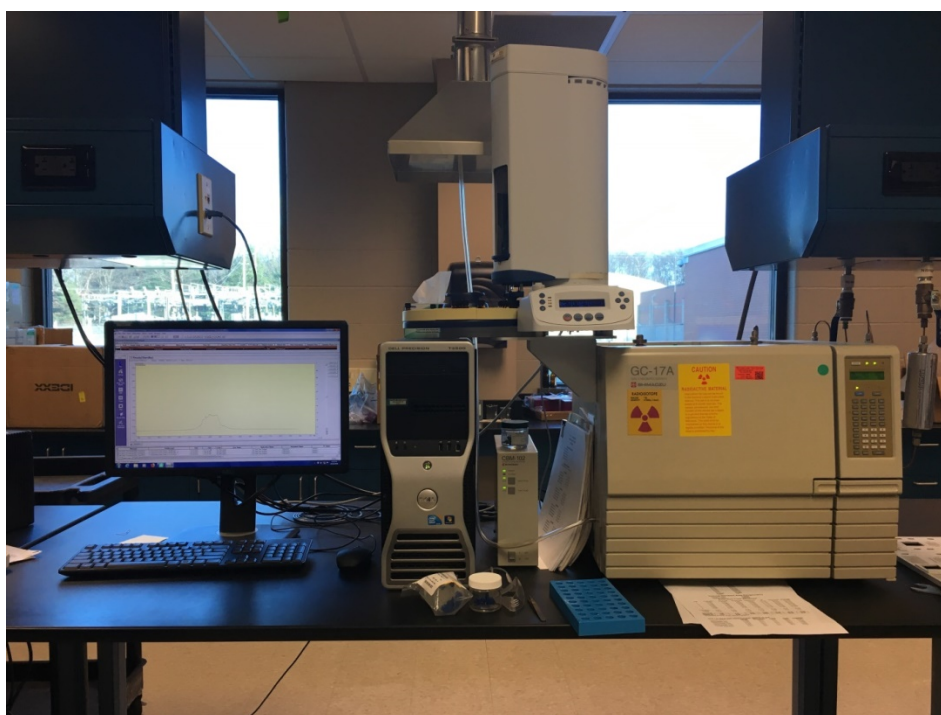
Budget Impact:

Three responses to the GC system bid were received. Forty-three invitations to bid were sent to prospective bidders. All of the bids met the specification requirements and include shipping, installation, and on-site training.

Bidder	Total Bid Price (Includes Trade-In Value)
PerkinElmer Health Sciences, Inc.	\$ 33,201.89
Shimadzu Scientific Instruments	\$ 37,895.20
Thermo Electron North America LLC	\$ 48,352.74

It is recommended that the bid be awarded to Perkin Elmer Health Sciences, Inc. for the amount of \$33,201.89.

Sufficient funds are available in the Water Fund Capital Outlay Account # 591-591-57300-986.444.



Gas Chromatography System

ORDINANCE NO. 21-18

ORDINANCE TO AMEND CHAPTER 86, ARTICLE III OF THE CITY CODE TO UPDATE
THE CITY'S SANITARY SEWER USE REQUIREMENTS

THE CITY OF WYOMING ORDAINS:

Section 1. That Chapter 86, Article III of the Code of the City of Wyoming is amended by to read as follows:

ARTICLE III. - SANITARY SEWER SYSTEM
DIVISION 1. – GENERALLY

Sec. 86-130. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(a) *25 percent rule* means that the combined depth of oil and grease and other solids (floating and settled) in any chamber of a trap shall not be equal to or greater than 25 percent of the total operating depth of the trap. The operating depth of a trap is determined by measuring the internal depth from the water outlet invert elevation to the inside bottom of the trap.

(b) *Act* means the Federal Water Pollution Control Act and the Clean Water Act, Public Law 92-500, as adopted in 1972 and amended on February 4, 1987, as amended.

(c) *Alternative discharge limit* means limits set by the city in lieu of the promulgated National Categorical Pretreatment Standards for integrated facilities in accordance with the combined wastestream formula, as established by the EPA.

(d) *Authorized representative when used in relationship to an industrial user* means an individual meeting the requirements in 40 CFR §403.12(l).

(e) *Biochemical oxygen demand (BOD)* means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures (without the addition of nitrification inhibitors, and expressed in terms of milligrams per liter).

(f) *Building drain* means that part of the lowest horizontal piping of a drainage system that receives wastewater from inside the walls of the building and conveys it to the building sewer, beginning five feet outside the inner face of the building wall.

(g) *Building official* means the director of utilities, building inspector, the city engineer or another designated agent of the city or that individual's designee.

(h) *Building sewers* means the extension from the building drain to a public sewer or other places of disposal.

(i) *Cesspool* means an underground pit into which raw sewage or other untreated liquid waste is discharged and from which the liquid seeps into surrounding soil or is otherwise removed.

(j) *Chemical oxygen demand (COD)* means a measure of the oxygen-consuming capacity of inorganic and organic matter present in water or wastewater. It is expressed as the amount of oxygen consumed from a chemical oxidant in a specified test. It does not differentiate between stable and unstable organic matter and thus does not necessarily correlate with biochemical oxygen demand. It is also known as OC and DOC, oxygen consumed and dichromate oxygen consumed, respectively.

(k) *Chlorine demand* means the difference between the amount of chlorine added to water or wastewater and the amount of residual chlorine remaining at the end of a specified contact period. The demand for any given water varies with the amount of chlorine applied, time of contact and temperature.

(l) *City* means the City of Wyoming, Kent County, Michigan.

(m) *Combined wastestream* means the wastestream at industrial facilities where regulated process effluent is mixed prior to treatment with wastewaters other than those generated by the regulated process. Where required by federal or state law, and only to the extent required by federal or state law, the combined wastestream formula provided in 40 CFR 403 will apply to the limits applicable to a combined wastestream.

(n) *Compatible pollutant* means a substance amenable to treatment in the wastewater treatment plant such as biochemical oxygen demand, suspended solids, and fecal coliform bacteria, plus additional pollutants identified in the NPDES permit if the publicly owned treatment works was designed to treat such pollutants, and in fact does remove such pollutant to a substantial degree. Examples of such additional pollutants may include: chemical oxygen demand, total organic carbon, phosphorus and phosphorus compounds, nitrogen compounds, fats, oils and grease of animal or vegetable origin.

(o) *Composite sample* means a series of representative samples taken over a specific time period and combined into one sample.

(p) *Debt service charges* means the charges levied to users of the system which are used to pay principal, interest and administrative costs of retiring the debt incurred for construction of the sewage works.

(q) *Director* means the city's director of utilities or that person's designee.

(r) *Domestic users* means all users of the sewage works whose discharge into the system is domestic wastewater.

(s) *Domestic wastewater* means wastewater consisting primarily of household and human waste.

(t) *Dwelling unit* means the same as found in chapter 90 of this Code (i.e., the city's zoning ordinance).

(u) *Environmental Protection Agency (EPA)* means the U.S. Environmental Protection Agency, including its administrator or other duly authorized official.

(v) *Garbage* means liquid and solid wastes from the storage, preparation, cooking and dispensing of food and from the growing, handling, storage or sale of produce or other edible products.

(w) *Grab sample* means a sample which is taken from a wastestream on a one-time basis with no regard to the flow in the wastestream and without consideration of time.

(x) *Grease trap* means a device designed to separate and retain fats, oils, and grease from liquid waste and permit the liquid waste to discharge into the sewer system.

(y) *Holding tank waste* means any waste from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks or vacuum-pump tank trucks.

(z) *Incompatible pollutant* means any pollutant which is not compatible with biological treatment or removal of which is not designed into the treatment process.

(aa) *Industrial wastes* means the wastewater discharges that are not domestic wastewater, wastewater discharges from industrial, manufacturing, trade or business processes, or wastewater discharge from any structures with these characteristics.

(bb) *Integrated facilities* means industrial facilities where wastestreams are combined prior to treatment.

(cc) *Interference* means any discharge which alone or in conjunction with discharges from other sources, both:

- (1) Inhibits or disrupts the POTW and any of its process or operations, or its sludge use or disposal; and
- (2) Therefore is a cause of a violation of any requirement of the POTW's NPDES permit, including an increase in the magnitude or duration of a violation, or of the prevention of sewage sludge use or disposal.

(dd) *National categorical pretreatment standard* means any federal regulation containing pollutant discharge limits promulgated by the EPA which applies to a specific category of industrial users.

(ee) *National Pollution Discharge Elimination System permit (NPDES permit)* means a permit issued pursuant to section 402 of the Act (33 USC 1342), as amended.

(ff) *National prohibitive discharge standard or prohibitive discharge standard* means any regulation developed under the authority of section 307(b) of the Act and 40 CFR 403.5, as amended.

(gg) *Natural outlet* means any outlet into a watercourse, pond, ditch, lake or other body of surface water or groundwater.

(hh) *New source* means:

(1) Any building, structure, facility or installation from which there may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under section 307(c) of the Clean Water Act which will be applicable to such source if such standards are thereafter promulgated in accordance with that section provided that:

- a. The building, structure, facility, or installation is constructed at a site at which no other source is located;
- b. The building, structure, facility or installation totally replaces the process or production equipment that causes discharge of pollutants at an existing source; or
- c. The production or wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant and the extent to which the new facility is engaged in the same general type of activity as the existing source will be considered.

(2) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of subsection (1)b or (1)c of this definition but otherwise alters, replaces or adds to existing process or production equipment.

(3) Construction of a new source as defined under this definition has commenced if the owner or operator has:

- a. Begun, or caused to begin as part of a continuous on-site construction program:
 1. Any placement, assembly, or installation of facilities or equipment; or
 2. Significant site preparation work including clearing, excavation or removal of existing buildings, structures or facilities which is necessary for the placement, assembly or installation of new source facilities or equipment;
- b. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering and design studies do not constitute a contractual obligation under this definition.

(ii) *Operation and maintenance* means all work, materials, equipment, utilities, administration and other efforts required to operate and maintain the sewage works including the cost of replacement.

(jj) *Pass through* means a discharge which exits the POTW into waters of the state in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, causes a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation).

(kk) *Penalty* means a charge for discharge of noncompatible substances including pH in violation of the wastewater discharge permit.

(ll) *pH* means the logarithm (base 10) of the reciprocal of the concentration of hydrogen ions expressed in grams per liter of solution.

(mm) *Pollutant* means any of various chemicals, substances and refuse materials such as solid waste, sewage, garbage, sewage sludge, chemical wastes, biological materials, radioactive materials, heat and industrial, municipal and agricultural wastes which impair the purity of the water or soil.

(nn) *Pollution* means the manmade or man-induced alteration of the chemical, physical, biological or radiological integrity of water.

(oo) *Premises* means a lot, parcel or plot of land including the buildings or structures thereon or any part thereof.

(pp) *Pretreatment or treatment* means the reduction of the amount of pollutants, the elimination of pollutants, the alteration of the nature of pollutants or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into the sewage works. The reduction or alteration can be obtained by physical, chemical or biological processes, process changes or other means, except as prohibited by 40 CFR 403.6(d), as amended.

(qq) *Pretreatment facilities* means devices or structures for use in treating industrial waste prior to discharge into public sewers.

(rr) *Pretreatment requirements* means any substantive or procedural requirement for treating of a waste prior to discharge to the sewers.

(ss) *Pretreatment standards* means National Categorical Pretreatment Standards, alternative discharge limits or other federal, state or local standards, whichever are applicable.

(tt) *Private sewage works* means any sewage works or part thereof not connected to a public sewer and shall include, but not be limited to, septic tanks, cesspools and seepage pits.

(uu) *Public nuisance* means anything which is injurious to health, is indecent or offensive to the senses, or is an obstruction to the free use of property so as to interfere with human comfort or enjoyment of life or property, whether affecting individual interests per se or affecting at the same time an entire community or neighborhood of any considerable number of persons, although the extent of the annoyance, interference or damage may not be inflicted equally upon the persons therein.

(vv) *Public sewer* means a city sewer or any part thereof.

(ww) *Publicly owned treatment works (POTW)* means a treatment works as defined by section 212 of the Clean Water Act, which is owned in this case by the city. This definition includes any devices and systems used in storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances if they convey wastewater to a POTW treatment plant.

(xx) *POTW treatment plant* means that portion of the POTW which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste.

(yy) *Quality control* means a formal program designed to monitor the reliability (accuracy and precision) of reported analytical results.

(zz) *Replacement* means the replacement, in whole or in part, of any system equipment to ensure continuous treatment of wastewater in accordance with the NPDES permit and other state and federal regulations.

(aaa) *Sanitary sewer* means a sewer designed to carry sewage only.

(bbb) *Seepage pit* means an underground enclosure constructed of concrete blocks, bricks or similar material loosely laid with open joints so as to allow the septic tank overflow or effluent to be absorbed directly into the surrounding soil.

(ccc) *Septic tank* means a receptacle receiving sewage and having an inlet and outlet designed to permit the separation of solids in suspension from such wastes and to permit such retained solids to undergo decomposition therein.

(ddd) *Sewage or wastewater* means the liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities and institutions, together with any groundwater,

surface water and stormwater that may be present, whether treated or untreated, which is contributed into or permitted to enter the sewage works.

(eee) *Sewage works* means the sanitary sewage collection system any part thereof and the wastewater treatment facility.

(fff) *Sewer* means a pipe or conduit for carrying sewage.

(ggg) *Sewer connection permit* means, as set forth in section 86-137, a written permit issued by the city prior to using, connecting, altering or opening any public sewer or appurtenance thereof.

(hhh) *Sewer service charge* means any applicable user charges, surcharges and debt service charges.

(iii) *Significant industrial user* means, except as provided in subsection (3) of this definition:

(1) All industrial users subject to categorical pretreatment standards under 40 CFR 403.6 and 40 CFR chapter I, subchapter N; and

(2) Any other industrial user that: discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); contributes a process wastestream which makes up five percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or is designated as such by the city on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.

(3) Upon finding that an industrial user meeting the criteria in subsection (2) of this definition has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the city may at any time, on its own initiative or in response to a petition received from an industrial user, determine that such industrial user is not a significant industrial user.

(jjj) *Significant noncompliance* means one or more of the following:

(1) Chronic violations of wastewater discharge limits, defined here as those in which 66 percent or more of all of the measurements taken during a six-month period exceed, by any magnitude, the daily maximum limit (or grab sample limit) or average limit (or composite limit) for the same pollutant parameter;

(2) Technical review criteria (TRC) violations, defined here as those in which 33 percent or more of all measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily maximum limit (or grab sample limit) or the average limit (or composite limit) multiplied by the applicable TRC value (TRC=1.4 for BOD, TSS, oil and grease, and 1.2 for all other pollutants except pH);

(3) Any other violation of a pretreatment effluent limit that the city determines has caused, alone or in combination with other discharges, interference or pass through, including endangering the health of POTW personnel or the general public;

(4) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority to halt or prevent such a discharge;

(5) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in the wastewater discharge permit or other enforcement orders for starting construction, completing construction or attaining final compliance;

(6) Failure to provide, within 30 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

(7) Failure to accurately report noncompliance; or

(8) Any other violation or group of violations which the city determines will adversely affect the operation or implementation of the local pretreatment program.

(kkk) *Slugload* means any pollutant, including compatible pollutants, released in a single extraordinary discharge episode of such volume or strength as to cause interference to the sewage works.

(lll) *Standard industrial classification (SIC)* means a classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, 1972, as amended.

(mmm) *Storm sewer or storm drain* means a sewer designed to carry stormwater and surface water and drainage only.

(nnn) *Subsurface disposal field* means a system for the distribution of septic tank overflow or effluent below the ground surface through a line or a series of branch lines, of drain tile laid with open joint to allow the overflow or effluent to be absorbed by the surrounding soil throughout the entire field.

(ooo) *Surcharge* means a charge to cover the cost of treating sewage which exceeds limits as established in this article. A surcharge is appropriate to cover costs of treating extra strength compatible waste which are authorized by order of determination. A surcharge is not acceptable as a sole remedy for violations of limits.

(ppp) *Suspended solids* means the total suspended matter that floats on the surface of, or is suspended in, water, wastewater or other liquids, and which is removable by laboratory filtering.

(qqq) *System* means the City's sanitary sewer system including all collection lines, mains, pumps, chambers, the POTW and all components and facilities.

(rrr) *Toilet* means a privy, outhouse, septic tank, septic toilet, chemical closet or other device designed for the disposal of human excreta.

(sss) *Total toxic organics (TTO)* means total toxic organics, which is the summation of all quantifiable values greater than 0.01 milligrams per liter for toxic organics listed in the federal categorical pretreatment standards or as defined by the director.

(ttt) *Toxic pollutant* means any pollutant or combination of pollutants which is or can potentially be harmful to the public health, treatment or environment, including those listed as toxic in regulations promulgated by the administrator of the Environmental Protection Agency, under the provisions of CWA 307(a) or other acts, as amended.

(uuu) *Upset* means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the industrial user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(vvv) *User* means any person who contributes, causes or permits the contribution of wastewater into the sewage works.

(www) *User charge* means a charge levied to users of a treatment works for the cost of sewage works including operation, maintenance and capital charges.

(xxx) *User class* means the kind of user connected to sanitary sewers including, but not limited to, the following:

(1) *Domestic user.* A user of a dwelling unit discharging domestic wastewater.

(2) *Industrial user.* Any user that discharges any industrial wastewater or that contributes, causes or permits the contribution or introduction of wastewater or pollutants into the POTW, whether intentionally or unintentionally, and whether directly or indirectly. *Wastewater* means the liquid and water-carried industrial or domestic waste from dwellings, commercial buildings, industrial facilities, and institutions including, without limitation, contaminated groundwater and landfill leachate, whether treated or untreated, that is contributed, introduced or discharged into the POTW.

(yyy) *Wastewater discharge permit* means as set forth in section 86-251, a written permit issued by the director to nondomestic users of the POTW.

(zzz) *Watercourse* means a channel, natural or artificial, in which a flow of water occurs, either continuously or intermittently.

(aaaa) *Waters of the state* means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state or any portion thereof.

Sec. 86-131. - Abbreviations.

The following abbreviations shall have the designated meanings:

- (1) *BOD* means biochemical oxygen demand;
- (2) *CFR* means Code of Federal Regulations;
- (3) *COD* means chemical oxygen demand;
- (4) *EPA* means United States Environmental Protection Agency;
- (5) *L* means liter;
- (6) *MDEQ* means Michigan Department of Environmental Quality;
- (7) *mg* means milligrams;
- (8) *mg/l* means milligrams per liter;
- (9) *NPDES* means National Pollutant Discharge Elimination System;
- (10) *SIC* means standard industrial classification;
- (11) *SS* means suspended solids;
- (12) *TTO* means total toxic organics;
- (13) *USC* means United States Code;
- (14) *O&M* means operation and maintenance;
- (15) *CWA* means Clean Water Act;
- (16) μg means micrograms;
- (17) *POTW* means publicly owned treatment works;
- (18) *ppm* means parts per million;
- (19) *ppb* means parts per billion;
- (20) *ppt* means part per trillion.
- (21) *MG* means million gallons;
- (22) *gpd* means gallons per day;
- (23) *Cd* means cadmium;
- (24) *Cr* means chromium;
- (25) *Cu* means copper;
- (26) *Pb* means lead;
- (27) *Ni* means nickel;
- (28) *Zn* means zinc;
- (29) *CN* means cyanide;
- (30) *Ag* means silver;

(31) *Hg* means mercury;

(32) *As* means arsenic; and

(33) *Be* means beryllium.

Sec. 86-132. - Designation of officials and agencies.

Whenever this article refers to any governmental agency it shall include any successor or replacement agency. Whenever this article refers to any governmental officer or official, it shall include that officer or official's successor and designee(s).

Sec. 86-133. - Water pollution; abatement of water pollution.

(a) No person shall discharge or allow to be discharged into any natural outlet or watercourse within the city or in any area under the jurisdiction of the city, any sewage, industrial waste or other pollution.

(b) If the building official determines from any investigation that there is a health or environmental hazard caused by sewage from any property being exposed to the surface of the ground or being permitted to drain under the surface of the ground or into any ditch, storm sewer, lake or stream, or that the presence of any sewage on the property has an obnoxious or detrimental odor or creates a public nuisance, the owner of such property must connect to the public sewer forthwith, whenever such property abuts any public right-of-way in which a public sanitary sewer is located, and the structure is within 200 feet of said sanitary sewer. If such property does not abut a public right-of-way in which a public sanitary sewer is located within 100 feet from an intersection of any line of the property with such right-of-way, the owner of such property shall forthwith construct, repair or replace the private sewage works so that the conditions which led to the determination by the building official are abated.

Sec. 86-134. - Private sewer system.

If property does not meet the 100-foot requirement of section 86-133, the building sewer of the property shall be connected to a private sewage works which shall be operated in a sanitary manner at all times. At such time as the property is connected to the public sewer, the property owner is responsible for all maintenance that is required for that portion of the connection located outside the city right-of-way or easement.

Sec. 86-135. - Disposition of private system upon connection to public sanitary sewer.

If any property is connected to a public sanitary sewer and there exists on the property a septic tank, cesspool, seepage pit or other similar private sewage facility, any sewage in the septic tank, cesspool, seepage pit or other similar private sewage facility shall be removed and disposed of in a sanitary manner, and the septic tank, cesspool, seepage pit or other private sewage facility shall be filled with sand or gravel.

Sec. 86-136. - Construction, repair or enlargement of private sewage works.

No private sewage works may be constructed, repaired or enlarged if any part of a residential structure, excluding any attached garage, on said property is within 200 feet of a public sanitary sewer, except as provided for in section 86-133.

Sec. 86-137. - Sewer connection permit—Generally.

No person shall uncover nor make any connections with, or openings into, use, alter or disturb any public sewer or appurtenance thereof, without obtaining a written permit from the city. All permit applications for industrial connections shall contain information outlined in section 86-253. Information submitted shall be approved by the director prior to issuance of a permit. Any sewer connections or work done within the city's right-of-way shall require a street opening permit from the city engineer.

Sec. 86-138. - Same—Classification.

There shall be two classes of building sewer permits:

(1) Residential and commercial domestic; and

(2) Commercial industrial and industrial.

In either case, the owner or the owner's agent shall make application on the form furnished by the city. The permit application shall be supplemented by any plans, specifications or other information considered

pertinent by the city. Applications for an industrial or commercial industrial permit shall be submitted with a copy to the wastewater department. Permit and inspection fees shall be paid in the amounts specified from time to time by resolution of the city council.

Sec. 86-139. - Multiple sewer connection system.

A separate and independent building sewer shall be provided for each building. However, where any existing building is so located on an interior lot so that no private sewer is available nor can one be constructed to the building through an adjoining alley, courtyard or driveway, more than one building may be served with the same building sewer subject to approval by the city. In areas where laterals have not been constructed to the property and complete street improvements have been made or where unusual lot splits have occurred leaving only one lateral for two properties, if there is no health or other danger, the director may approve joint use of that lateral with the connection being made to the city sewer. All discharge limits in this article apply to that portion as the lateral emanating from a single building. Compliance with pretreatment standards or local discharge limits prescribed by this article shall be determined within each tributary to the common lateral prior to commingling with other wastewater.

Sec. 86-140. - Existing building sewer examination.

Existing sewers shall meet all requirements of this article. Whenever an examination determines that an existing building sewer does not meet the requirements of this article and the building official determines that the connection is creating a health hazard, odor or public nuisance, or environmental hazard the sewer shall be reconstructed at the owner's expense.

Sec. 86-141. - City of Grand Rapids sanitary sewer system.

If a significant industrial user located in the city is connected to the sanitary sewer system of the City of Grand Rapids, the terms of the City of Grand Rapids Sewer Use Ordinance (and the Interjurisdictional Agreement (IJA) executed by both the City of Grand Rapids and City of Wyoming pursuant to MCL 124.1 *et seq.* shall apply and are hereby incorporated by reference. Copies of the relevant portion of the Grand Rapids City Code and the IJA are on file with the city clerk and available to the public.

Secs. 86-142—86-160. - Reserved.

DIVISION 2. - ADMINISTRATION AND ENFORCEMENT

Sec. 86-161. - Rates, surcharges and penalties to be set by city council.

Rates, surcharges and penalties shall be paid by the user as set by resolution of the city council from time to time and on file in the city hall. Sec. 86-162. - Surcharge calculation and billing; penalty for violation of wastewater discharge permit.

(a) All nondomestic users of the city sewage works shall pay a surcharge for effluent containing the compatible pollutants in excess of baseline concentrations specified in section 86-292. For suspended solids, BOD, COD, phosphorus, grease and oil, or other specific compatible pollutants, the city may accept payment in lieu of the user meeting baseline concentration limits, subject to section 86-292. The city may use the test results from a COD analysis as an alternative means of surcharging for BOD. Surcharges for compatible pollutants shall be calculated as follows:

$$(\text{Average} - \text{Baseline}) \left(\frac{\text{mg}}{\text{L}} \right) \times \text{Flow (Mgal)} \times \text{Rate} \left(\frac{\$}{\text{lb}} \right) \times 8.34$$

(b) The city shall collect at least three composite or grab samples quarterly and base the surcharge cost upon such samples. If the director determines based on information made available to the director that more frequent sampling may more accurately provides a basis for the amount of surcharges, the city, may collect more frequent sample and base the surcharge on the more frequent sampling. If the user does not agree with the sampling or testing method of the city, the city may agree to an independent company, approved by the city, taking such samples, at the user's expense, under conditions and standards as determined by the city. The surcharge shall be calculated and billed quarterly by the city unless another time period is designated by the director (*e.g.*, monthly). City employees and officials shall not be involved directly or indirectly with any company performing tests on any samples where such tests are to be used by the city.

(c) A violation of a wastewater discharge permit is a municipal civil infraction. The city council may from time to time by resolution establish penalties for violation of a user's wastewater discharge permit. Penalties may be based on either a grab, composite or in the case of pH, on the basis of results from a pH recorder. Penalties will be assessed for any sample exceeding limits established from time to time by a resolution of the city council. Unless otherwise specified in such a resolution, any user who violates any provision of this article, or permits issued under this article, shall be penalized in an amount not to exceed \$10,000.00 (or the maximum penalty allowed under state law). Each day on which noncompliance shall occur or continue shall be deemed a separate and distinct violation. Payment of penalties does not constitute compliance with the permit. In addition to these penalties, (i) those violating this article shall be subject to all other consequences of such violations as provided in this article and, (ii) continued, habitual or gross violations or those caused by negligence or failure to install and operate property pretreatment units will be enforced under sections 86-165, 86-167 and 86-297.

Sec. 86-163. - Delinquent accounts.

If any amounts owed to the city for the use of the public sewer system are not timely paid as required by this article, other parts of this code of ordinances, the terms of any contract, or the terms of any arrangement made with the city to pay such amounts, the city may pursue all remedies available at law or in equity including, to the extent not otherwise precluded or limited by law, one or more of the following:

- (1) A lawsuit against the property owner or any other person responsible for payment;
- (2) Suspending, terminating or otherwise discontinuing city sanitary sewer service, water service or both services to the premises;
- (3) Setting off the unpaid amounts against any amounts owed by the city to the owner of the premises or other responsible party; or
- (4) Certifying such charge to the city assessor who shall assess the charge against the lot or parcel of land upon which is situated the premises served. The assessment shall then be collected or returned in the same manner as real property taxes.
- (5) The city may also require an escrow deposit against future delinquent payments of such amounts. The deposit may be up to an estimated one-quarter's billing for sanitary sewer service, including any estimated surcharges, late payment fees, and interest. The deposit shall be held in a non-interest bearing escrow account to be used or applied against any amounts due for sanitary sewer service that are not paid when due. The amount used from the escrowed funds will be added to the amounts owed such that the user shall be obligated to maintain that escrow and timely pay all charges for sanitary sewer service in order to preclude use of the remedies provided in this section.

Sec. 86-164. - Public nuisance abatement.

A violation of this article is a public nuisance per se. The director or the building official may require the abatement of any public nuisance under this article by giving the owner of such property notice to eliminate such conditions. The time limit shall be stated in the notice commensurate with the type of nuisance. The director or building official may discontinue water and sewage service to the property if the owner or other responsible party fails to abate such nuisance. All work required to abate such nuisance shall be performed in compliance with this article at the owner's expense. Alternatively, or in addition, the city attorney may bring a lawsuit to abate the nuisance.

Sec. 86-165. - Harmful contributions.

The director may suspend sewer and water service when such suspension is necessary to stop an actual or threatened discharge which may present an imminent or substantial endangerment to the health or welfare of persons or the environment, cause interference to the sewage works or cause the city to violate any condition of its NPDES permit. Any person notified of a possible suspension of water or wastewater treatment service shall immediately stop or eliminate the contribution. If that person fails to voluntarily comply with any discharge permit, the city may take such steps as deemed necessary including immediate suspension of sewer and water service, to prevent or minimize damage to the sewage works or endangerment of any individuals. The director shall reinstate the sewer and water and service upon proof of the elimination of the noncomplying discharge provided the city manager determines necessary steps have

also be taken to prevent recurrence of such noncompliance. The noncomplying user shall submit to the director a detailed written statement describing the cause(s) of the noncompliance and the measures taken to prevent any recurrence within 15 days of the date of occurrence.

Sec. 86-166. - Official determination of hazard.

If the building official determines that there is a health or welfare hazard created by the emanation of sewage by being exposed to the surface of the ground or draining of sewage from the property under the surface of the ground or into any ditch, storm sewer, lake or stream and that the continuance of the use of the private sewage works for the property poses an immediate threat to humans or natural resources, the building official may order and require the occupants to vacate any structure on the property forthwith.

Sec. 86-167. - Notification of violation of article.

If the city finds that any user has failed to comply with or is failing to comply with any provision of this article, the city may serve upon such person a written notice stating the nature of the noncompliance and require a plan to correct it and prevent recurrence. Within 30 days of the date of the notice or such shorter time as the city may require in the notice in order to protect the environment or the public health, safety or welfare, a plan for the satisfactory correction of all violations shall be submitted by the user to the city for approval. Failure to respond in 30 days or shorter time as provided in the notice, or to develop a satisfactory plan shall constitute an additional violation of this article, and the city shall take such action as deemed necessary, including suspension of water or sewer service, or both.

Sec. 86-168. - Show cause hearing.

(a) Any user subject to enforcement action under the provisions of this article may, within 10 days, make a written request for a hearing before the city manager which request shall be filed with the director or the city clerk. If any user so requests a hearing, the city manager shall hold a hearing concerning the violation, any reasons for the action, remedial actions taken following the violation, steps and plans to prevent further noncompliance with this article, and any proposed enforcement actions. The city manager shall allow the user to show cause why the proposed enforcement action should not be implemented.

(b) The city manager may conduct the hearing and take the evidence or may designate any officer or employee to:

- (1) Issue in the name of the city manager notices of hearing requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in such hearings;
- (2) Take the evidence, inquire of witnesses or other persons presenting information or arguments, review any exhibits or records, allow for any pre-hearing or post-hearing written submissions; and
- (3) Transmit a report of the evidence and hearing, including transcripts and other evidence, together with recommendations to the city manager for action thereon.

(c) At any hearing held pursuant to this article, testimony taken may, but doesn't need to be, under oath and recorded. The transcript will be made available to any member of the public or any part to the hearing upon payment of charges for copying. Rules of civil procedure and rules of evidence do not apply. Information normally relied upon in the conduct of serious business may be presented and considered. While either the city or the user may be represented by legal counsel, legal counsel is not required. The city manager or the person designated by the city manager to conduct the hearing may consult with the city's legal counsel as either deems needed or helpful.

(d) After the city manager has reviewed the available information, an order may be issued to the user responsible for the discharge directing that, following a specified time period, the sewer service be discontinued unless acceptable treatment facilities, devices or other related appurtenances shall have been installed on existing treatment facilities and that such devices or other related appurtenances are properly operated. Further orders and directives as are necessary and appropriate may be issued.

(e) The city manager may also establish appropriate surcharges or fees to reimburse the city for the additional cost of operation and maintenance of the wastewater treatment works due to any violations of this article.

(f) Any order or directive by the city manager may be appealed to a board of referees consisting of two registered professional engineers authorized to practice in Michigan who experience in wastewater issues, one of who shall be selected by the city and one by the user, and a third engineer selected by the first two engineers. None of three engineers shall be in the employ of, a party to any contract with, or an officer or employee of a party to a contract with either the city or the user. The appeal shall be made in writing to the director within 10 days of any order or directive resulting from the hearing before the city manager. Selection of referees shall be made within 10 days of the filing of the appeal.

(g) Within 10 days after receiving notice of the selection of the referees, the city manager shall file with the referees a copy of his determination and the results of his investigation supporting such determination. Within 10 days thereafter the appellant shall file its reply together with supporting documentation. The referees may thereafter require additional information and may, if they choose, hold a hearing at which both sides may present evidence and arguments. The referees shall, by a majority vote, render a written opinion within ten days after the last documents are filed, and such opinion shall be binding upon all parties. The review by the referees shall be *de novo* but based on the information that was in the record at the completion of the city manager's hearing.

(h) The referees shall be entitled to reasonable compensation and expenses with the costs to be borne equally by the city and the user.

(i) Any party may seek judicial review of a referee decision in circuit court. The circuit court shall uphold the city manager's decision if it is based on competent, material and substantial evidence.

Sec. 86-169. - Legal action.

If any person discharges sewage, industrial wastes or other wastes into the city's wastewater disposal system contrary to the provisions of this article, federal or state pretreatment requirements, or any order of the city, the city attorney may commence an action for appropriate relief.

Sec. 86-170. - False information.

No person shall knowingly make any false statements, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this article nor shall falsify, tamper with or knowingly render inaccurate any monitoring device or method required under this article.

Sec. 86-171. - Affirmative defense.

A user shall have an affirmative defense in any action brought against it alleging a violation of the general prohibitions of this article and the specific prohibitions in subsections (2), (4), (8), (10) and (12) of section 86-291 where the user can demonstrate that:

(1) It did not know or have reason to know that its discharge, alone or in conjunction with a discharge or discharges from other sources, would cause pass through or interference; and

(2) Either:

a. A local limit designed to prevent pass through or interference was developed for each pollutant in the user's discharge that caused pass through or interference and the user was in compliance with each such local limit immediately before and during the pass through or interference; or

b. A local limit was not applicable and immediately before and during the pass through or interference the user's discharge did not substantially change in volume or constituents from the user's previous discharges when the POTW was regularly in compliance with its NPDES permit and, in the case of interference, all applicable requirements for sludge use or disposal.

Sec. 86-172. - Publication of list of industrial users in significant noncompliance.

As required by federal regulations, the city shall at least annually, before April 1, publish in a newspaper of record a list of industrial users which during the previous calendar year were in significant noncompliance of applicable pretreatment standards or other pretreatment requirements. For the purposes of this section significant noncompliance is defined in section 86-130.

Sec. 86-173. - Conflicts.

Should any existing agreements, orders or permits be in conflict with this article, then they shall be revised so as to comply with this article.

Sec. 86-174. - Municipal civil infraction—Penalty.

Any violations of the provisions of article not specifically designated a misdemeanor shall be a civil infraction for which the user shall be responsible for a civil fine in the amount not to exceed \$10,000.00 for each violation.

Sec. 86-175. – Other amounts owed for violations.

In addition any other amounts or remedies under this article, anyone violating or responsible for a violation of any provision of this article shall be responsible for paying all costs incurred by the city as a result of such violation, including for example and not for limitation, (i) any fines or penalties the city may be obligated to pay as a result of such violation or any violation of any permit issued to the city that results from the person's violation of this article, (ii) any costs incurred to reactivate, repair, improve, or replace any part of the system or any processes within the system, (iii) any costs for engineering, legal, environmental consultant or other professional services, (iv) any overtime or other personnel costs, (v) the cost of any contract services such as hazardous waste disposal costs, added sludge handling or disposal costs, pumping costs, laboratory fees, or other expenses, (vi) added materials costs such as in the city's laboratory; (vii) added special equipment costs such as pumps or payments for use of equipment in the city's motor pool, (viii) any publication or public information expenses, (ix) costs of any special clothing for or to replace any clothing or personal articles of city personnel, (x) any filing fees, appeals costs, collection expenses, discovery costs, cost of exhibits, or other expenses related to any legal or administrative proceeding, (xi) any first aid or medical expenses for due to any illness, injury or reasonable diagnostic test needed to rule out any illness or injury to any city employee or agent, and (xii) any costs the city is obligated to pay any third party such as another user of the system, including any incidental or consequential damages paid to any such third party.

Secs. 86-176—86-200. - Reserved.

DIVISION 3. - BUILDING SEWERS

Sec. 86-201. - Material specifications.

All materials used on construction of laterals and building sewers shall be of the type approved by the applicable construction code and as required by the city.

Sec. 86-202. - Pipe size.

The size of a residential building sewer shall not be less than 4 inches in diameter. All other sewer sizes shall be determined by the city based upon the type of facility and the applicable construction code.

Sec. 86-203. - Sewer slope.

Building sewers shall be constructed to slopes consistent with the provisions of the applicable plumbing code, but not less than 1/8-inch per linear foot.

Sec. 86-204. - Location and elevation.

Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. Building sewers shall not be laid parallel to nor within 3 feet of any bearing wall. The depth shall be sufficient to be protected against frost. The building sewer shall be laid at uniform grade and in straight alignment insofar as possible. Changes in alignment shall be made only with properly curved pipe or long radius fittings. Changes in direction having bends of 45 degrees or more shall have a cleanout.

Sec. 86-205. - Floor drains.

Floor drains which are connected to the building sewer shall be required for all basements or cellars if the elevation of the public sanitary sewer will service the building.

Sec. 86-206. - Lift pump.

In all buildings in which any building drain is too low to permit gravity flow to the building sewer, sanitary sewage carried by such drain shall be lifted by means of a pump or other approved means and discharged into the building sewer.

Sec. 86-207. - Construction procedures to be in accordance with city's standard construction specifications; exception.

All construction procedures shall be in accordance with the city's standard construction specifications, with the exception that tunneling of laterals will be allowed if it is determined that the proper alignment and slope can be maintained on the lateral.

Sec. 86-208. - Grease, oil and sand interceptors.

(a) All establishments where food is manufactured, sold or prepared, except for small areas designated as employee break areas or the equivalent, discharging wastewater containing fats, oils, and grease (FOG) to the system shall install, operate, and maintain a sufficiently-sized oil and grease, water and solids separator (hereinafter called grease trap) necessary to achieve and maintain compliance with the limits indicated in section 86-292.

(b) Unless otherwise authorized by the director, all grease traps shall be of the outdoor, inline variety. With special authorization by the director, grease traps of the indoor, under-counter, stand-alone variety may be allowed. In this case, maintenance of indoor grease traps shall be performed at frequencies necessary to protect the capacity of the sewer system against accumulation of grease and oils, as required by the "25% rule" as defined herein. Under no condition shall an indoor grease trap be cleaned at intervals less frequent than once every 14 days.

(c) Grease, oil and sand interceptors shall be provided when they are necessary for the proper handling of liquid wastes containing grease in excessive amounts or any flammable wastes, sand or other harmful ingredients. Such interceptors shall not be required for dwelling units. All interceptors shall be of a type and capacity approved by the director and shall be located so as to be readily accessible for cleaning and inspection.

(d) Grease and oil interceptors shall be constructed of impervious materials capable of withstanding abrupt and extreme changes in temperature. They shall be of substantial construction, watertight and equipped with easily removable covers which, when bolted in place, shall be gastight and watertight.

(e) Where installed, all grease, oil and sand interceptors shall be cleaned and maintained by the owner and shall be operated continuously in an efficient manner whenever the facility is in operation. The city shall have the right to inspect maintenance and disposal records related to the operation of grease, oil and sand interceptors.

(f) The user shall be responsible for the proper removal and legal disposal of the grease trap waste. All waste removed from each grease trap must be disposed of at a facility permitted to receive such waste. No grease trap pumpage may be discharged to the city sewer system. Maintenance shall include the complete removal of all contents, including floatable materials, wastewater, sludges and solids and jet flushing to remove measurable build-up on tank walls. Top skimming of outdoor grease traps, decanting or back flushing of the grease trap or its wastes for the purpose of reducing the volume to be hauled is prohibited.

(g) There shall be ample room and reasonable access to interceptors to allow accurate sampling and preparation of samples for transport and analysis.

(h) Grease traps and other interceptors shall be installed in compliance with the current plumbing codes adopted by the city. The director shall make final determination and approval of a grease trap's size. If additional pretreatment and/or maintenance is required to meet the provisions in this section, the director, may require that the establishment in existence prior to the effective date of this section upgrade to the requirements provided.

(i) Maintenance of an outdoor grease trap shall be performed at frequencies necessary to protect the capacity of the sewer system against accumulation of grease and oils, as required by the "25 percent rule" and at intervals no less than once every 90 days.

(j) Use of any bacteriological, chemical or enzymatic addition for the purpose of maintaining a grease trap is prohibited unless written approval is obtained from the director.

(k) The user shall be responsible for maintaining records and/or manifests as to the dates of service, quantity and waste hauler name at the user's location for a period of three years, which records shall be subject to review by the city without prior notification.

(l) Should any user fail to properly clean and maintain a grease trap as required herein, the city, at its option may contract for appropriate cleaning and maintenance by a licensed contractor, the cost of which shall be collectable by the city from the user at a charge of actual cost plus 100%.

Sec. 86-209. - Tests.

All tests of building sewers shall be made in conformance with the applicable plumbing code.

Sec. 86-210. - Completion notification.

The applicant for the building sewer permit shall notify the plumbing inspector when the building sewer is ready for inspection and connection to the public sewer. The connection shall be made under the supervision of the city's plumbing inspector.

Secs. 86-211—86-250. - Reserved.

DIVISION 4. - PUBLIC SEWER USE Subdivision I. - In General

Sec. 86-251. - Wastewater discharge permits—Generally.

The director shall by written permit establish the maximum relative strength of sewage and industrial waste to be discharged into the public sewer by nondomestic users. Prior to the initial issuance of a permit or 90 days prior to the expiration of an existing permit, nondomestic users shall submit the information outlined in section 86-253. Wastewater discharge permit fees shall be paid in the amount as set from time to time by resolution of the city council. Permits shall contain, at a minimum, the following conditions:

- (1) A statement of duration (in no case more than five years);
- (2) A statement of non-transferability without, at a minimum, prior notification to the POTW and provision of a copy of the existing control mechanism to the new owner or operator;
- (3) Effluent limits based upon applicable general pretreatment standards in 40 CFR 403, categorical pretreatment standards, local limits, and state and local law;
- (4) Self-monitoring, sampling, reporting, notification and recordkeeping requirements, including an identification of the pollutants to be monitored, sampling location, sampling frequency, and sample type, based upon general pretreatment standards in 40 CFR 403, categorical pretreatment standards, local limits, and state and local law;
- (5) A statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule; and
- (6) A statement to enable authorized representatives of the POTW, state, and EPA to enter and inspect the premises of nondomestic users.

Sec. 86-252. - Same—Review and adjustment.

Any permit issued by the director shall be periodically, not less frequently than once every 5 years, reviewed and adjusted.

Sec. 86-253. - Wastewater contribution information.

(a) All nondomestic users proposing to connect to or to contribute to the sewage works shall submit information on their processes and wastewater to the city before connecting to or contributing to the sewage works. All existing industrial users connected to or contributing to the sewage works shall submit this information upon request of the director. At least 90 days prior to the commencement of discharge, new sources and sources that become industrial users subsequent to the promulgation of an applicable

categorical standard shall be required to submit to the city a report which contains the information in this section. New sources shall also be required to include in this report information on the method of pretreatment the source intends to use to meet applicable pretreatment standards. New sources shall give estimates of the information requested in subsections (a)(4) and (a)(7) of this section. The information submitted shall be sufficient for the city to determine the impact of the user's discharge on the sewage works and the need for pretreatment. Any statements or information submitted in connection with this section shall be signed by an authorized representative of the company. The user shall submit, in units and terms appropriate for evaluation, the following information:

- (1) Name of the operator and owners, facility name, address and location.
- (2) A list of any environmental control permits held by or for the facility.
- (3) SIC number according to the Standard Industrial Classification Manual, Bureau of the Budget, 1972, as amended.
- (4) Measurement of pollutants. For industrial users subject to categorical pretreatment standards, the user shall submit the results of sampling and analysis identifying the nature and concentration (or mass where required by standard or control authority) of regulated pollutants in the discharge from each regulated process. Both daily maximum and average concentration (or mass where required) shall be reported. The sample shall be representative of daily operations.
 - a. A minimum of four grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organics. For all other pollutants, 24-hour composite samples must be obtained through flow proportional composite sampling techniques where feasible. The city may waive flow proportional sampling for any industrial user that demonstrates that flow proportional sampling is infeasible. In such cases samples must be obtained through time proportional composite sampling techniques or through a minimum of four grab samples where the user demonstrates that this will provide a representative sample of the effluent being discharged.
 - b. The user shall take a minimum of one representative sample to compile the data necessary to comply with the requirements of this section.
 - c. Samples should be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed prior to pretreatment the user should measure the flows and concentrations necessary to allow use of the combined wastestream formula.
 - d. Sampling and analysis shall be performed in accordance with the techniques prescribed in 40 CFR 136 and amendments thereto. Where 40 CFR 136 does not contain sampling or analytical techniques for the pollutant in question, or where the director determines that the 40 CFR 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties approved by the director.
 - e. If this report is a baseline report, the city may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures. The baseline report shall indicate the time, date and place of sampling; the methods of analysis; and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW.
- (5) Average rate of production.
- (6) Time and duration of contribution.
- (7) Average daily and maximum wastewater flow rates from all regulated process streams and other waste streams as necessary to allow use of the combined wastestream formula, including daily, monthly and seasonal variations, if any. The city may allow for verifiable estimates of these flows where justified by cost or feasibility considerations.

(8) Industries identified as significant industries or subject to the national categorical pretreatment standards or alternative discharge limits or those required by the city must submit site plans, floor plans, mechanical and plumbing plans and details to show all sewers, sewer connections, and appurtenances by the size, location and elevation. For industrial users subject to categorical pretreatment standards, a schematic process diagram identifying the location of points of discharge from all regulated processes as well as the pretreatment standards applicable to each regulated point of discharge shall also be submitted.

(9) Description of activities, facilities and plant processes on the premises including all materials or pollutants which are or could be discharged.

(10) The user shall submit a certification statement reviewed and signed by an authorized representative indicating whether or not the pretreatment standards are being met on a consistent basis and, if not, whether additional operation and maintenance and/or additional pretreatment is required by the industrial user to meet applicable pretreatment standards.

(11) If additional pretreatment or O&M will be required to meet the pretreatment standards, the user will provide the shortest schedule by which the user will provide such additional pretreatment. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. The following conditions shall apply to this schedule:

a. The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment facilities required for the user to meet the applicable pretreatment standards.

b. No such increment shall exceed nine months.

c. No later than 14 days following each date in the schedule and the final date for compliance, the user shall submit a progress report to the director including, as a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress; the reason for delay; and the steps being taken by the user to return the construction to the schedule established. In no event shall more than nine months elapse between such increments of progress.

(12) Type and amount of raw materials.

(13) Number and type of employees, hours of operation of plant and proposed or actual hours of operation of pretreatment system.

(14) Location of sampling manhole.

(15) Any other information as may be deemed by the city to be necessary to evaluate the impact of the discharge on the sewage works.

(b) Any industrial user must inform the appropriate authorities upon discharge of hazardous waste as follows:

(1) Any industrial user shall notify the POTW, the EPA regional waste management division director, and state hazardous waste authorities in writing of any discharge into the POTW of a substance, which if otherwise disposed of, would be a hazardous waste under 40 CFR 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR 261, the EPA hazardous waste number, and the type of discharge (continuous, batch or other). If the industrial user discharges more than 100 kilograms of such waste per calendar month to the POTW, the notification shall also contain the following information to the extent such information is known and readily available to the industrial user: An identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during the calendar month, and an estimation of the mass of the constituents in the wastestream expected to be discharged during the following 12 months. Industrial users shall provide this notification no later than 180 days after the discharge of the listed or characteristic hazardous waste commences. Any notification under this section need be submitted only once for each hazardous waste discharged. The notification requirement in this section does not apply to pollutants already reported under the self-monitoring requirements in this article.

(2) Dischargers are exempt from the requirements of subsection (b)(1) of this section during a calendar month in which they discharge no more than 15 kilograms of hazardous wastes unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e). Discharge of more than 15 kilograms of non-acute hazardous waste in a calendar month, or of any quantity of acute hazardous waste as specified in 40 CFR 261.30(d) and 40 CFR 261.33(e) requires a one-time notification. Subsequent months during which the industrial user discharges more than such quantities of any hazardous waste do not require additional notification.

(3) In the case of any new regulations under section 3001 of RCRA identifying additional characteristics of hazardous wastes or listing any additional substances as hazardous wastes, the industrial user must notify the POTW, the EPA regional waste management waste division director, and the state hazardous waste authorities of the discharge of such substances within 90 days of the effective date of such regulations.

(4) In the case of any notification made under subsection (b) of this section, the industrial user shall certify that it has a program in place to reduce the volume and toxicity of hazardous waste generated to the degree it has determined to be economically practical.

(c) All users shall be required to maintain records of wastewater contribution information for a period of at least three years.

Sec. 86-254. - Confidential information.

(a) Information and data on a user obtained from reports, questionnaires, permit applications, permits and monitoring programs and from inspections shall be available to the public or other governmental agency without restriction unless the user specifically requests and is able to demonstrate to the satisfaction of the city that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the user and that such information need not be disclosed in accordance with any applicable Freedom of Information Act or any other applicable law. When requested by the person furnishing a report which might disclose trade secrets, such report shall be kept confidential to the extent permitted by law except that the report shall be made available upon written request to governmental agencies for uses related to this article, the NPDES permit or any pretreatment programs, and it shall be available for use by the state or any state agency in judicial review or enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics will not be recognized as confidential information.

(b) Except as otherwise required by applicable law, information accepted by the city as confidential shall not be transmitted to any governmental agency or to the general public by the city unless and until a 10-day notice is given to the user. If an applicable state or federal law, rule, or regulation conflicts with a provision in this article by requiring greater disclosure, that state or federal law, rule, or regulation shall govern.

Sec. 86-255. - Wastewater discharges.

No person shall discharge into the waters of the state within the city or in any area under the jurisdiction of the city or to the system except as authorized by the director in accordance with the provisions of this article.

Sec. 86-256. - Liquid discharges.

No person shall discharge or cause to be discharged any type of liquid into any sewer except in accordance with this article.

Sec. 86-257. - Waste hauler discharges.

Waste haulers authorized to discharge into the POTW shall be required to pay fees established from time to time by resolution of the city council, in addition to any surcharges. Discharge shall be allowed only at such points as designated by the city. Waste haulers applying for discharge authorization shall submit the information requested in section 86-253 prior to receiving authorization.

Sec. 86-258. - Discharge regulations, charges and fees.

Wastewater discharges shall be expressly subject to all provisions of this article and all other applicable regulations, user charges and fees established by the city. In addition, the city may:

- (1) Establish unit charges, surcharges or a schedule of user charges and fees for the wastewater to be discharged into the sewage works;
- (2) Limit the average and maximum wastewater constituents and characteristics;
- (3) Limit the average and maximum rate and time of discharge or make requirements for flow regulations and equalization;
- (4) Require the installation and maintenance of inspection and sampling facilities;
- (5) Establish specifications for monitoring programs which may include sampling locations, frequency of sampling, number, types and standards for tests and reporting schedule;
- (6) Establish compliance schedules;
- (7) Require submission of technical reports or discharge reports;
- (8) Require the maintaining, retaining and furnishing of plant records relating to wastewater discharge as specified by the city, and affording city access thereto, and copying thereof;
- (9) Require notification of the city of any new introduction of wastewater constituents or any substantial change in the volume or character of the wastewater constituents being introduced into the wastewater treatment system;
- (10) Require notification of slug discharges;
- (11) Require other conditions as deemed appropriate by the city to ensure compliance with this article.

Sec. 86-259. - Monitoring facilities.

(a) The city may require a user to provide, maintain and operate monitoring facilities at the user's expense. Such facilities may include any or all of the following: a source of power, a sampling manhole meeting the specifications required by the city, an approved sampler, and flow monitoring devices as required by the director to allow for inspection, sampling and flow measurement of the building sewer and internal drainage systems. Such facilities shall be kept free of snow, parked vehicles or other obstructions. The monitoring facility shall be situated on the user's premises in an area accessible to a vehicle, but the city may, when such a location would be impractical or cause undue hardship on the user, allow the facility to be constructed in a public street or sidewalk area and located so that it will not be obstructed by landscaping or parked vehicles. There shall be ample room in or near such sampling manhole or facility to allow accurate sampling and preparation of samples for analysis. The facility, sampling and measuring equipment shall be maintained at all times in a safe and proper operating condition at the expense of the user. Whether constructed on public or private property, the sampling and monitoring facilities shall be provided in accordance with plans and specifications submitted to and approved by the city and all applicable local construction standards and specifications. Construction shall be completed within 90 days following written notification by the city of requiring such facilities unless the completion date is extended by the director at his discretion.

(b) Flow measurement devices on building sewers shall be checked and necessary repairs made on an annual basis. Such maintenance and checks shall be performed by the equipment manufacturer or an authorized designee who shall certify in writing to the director as to the accuracy of the equipment.

Sec. 86-260. - Meters required.

All users shall have meters on all water sources that ultimately discharge into the sewage works or shall meter the liquid wastes at the point of discharge into the sewage works. All meters and metering plans shall be approved by the city.

Sec. 86-261. - Inspection and sampling.

(a) The city may inspect the premises and facilities of any user to ascertain whether the requirements of this article are being met. Persons or occupants of premises where wastewater is created or discharged shall

allow the city's representatives access to all parts of the premises for the purposes of inspection, sampling, records examination, record copying or any other task necessary in the performance of their duties. Nondomestic users shall be subject to inspection fees as stipulated by resolution of the city council from time to time and on file in city hall.

(b) The city shall have the right to set up on the user's property such devices as are necessary to conduct sampling, inspection, compliance monitoring and metering operations. Where a user has security measures in force which would require property identification and clearance before entry into their premises, the user shall make necessary arrangements with their security guards so that upon presentation of suitable identification, personnel from the city will be permitted to enter, without delay, for the purposes of performing their specific responsibilities.

(c) Refusal to allow duly authorized representatives entry shall be considered a violation of this article and may be considered grounds for discontinuing of sewer or water services, or both.

Sec. 86-262. - Refusing entry for inspection; issuance of search warrant.

Whenever the building official or director deems it necessary to enter upon any property at a reasonable hour for the purposes of inspection, observation, measurement, sampling and testing of enforcement in accordance with the provisions of this article and is refused such entry, the official who is refused such entry may make an affidavit in writing, under oath to the district court stating the facts of the case so far as it may be known to the complainant. The court may issue an administrative search warrant or inspection or other order allowing the director, building official or his representatives to enter upon such property to the extent and time necessary to enforce and carry out the provisions of this article.

Sec. 86-263. - Sampling and analytical fee.

Industrial users may be charged a sampling and analytical fee in cases where the city must utilize the analytical capabilities of a private laboratory in order to determine compliance with pretreatment standards. This fee shall be equal to the actual costs incurred by the city plus an additional administrative fee to compensate the city for the staffing time, billing and collection expenses.

Sec. 86-264. - Self-monitoring.

The city may require industrial users to conduct self-monitoring. The city shall determine the frequency of self-monitoring necessary to assess and assure compliance by the industrial user with applicable pretreatment standards and requirements. The city may require the industrial user to provide a split of self-monitoring samples. The city shall require appropriate reporting from industrial users required to conduct self-monitoring.

Sec. 86-265. - Sampling and analysis procedures and methods.

All sampling and analyses conducted shall be performed in accordance with the procedures and methods required by 40 CFR Part 136.

Sec. 86-266. - Laboratory utilized by industry conducting self-monitoring to be approved by city; quality control documentation required.

(a) Each laboratory utilized by industries conducting self-monitoring as required by the city shall be approved by the city and required to operate a formal quality control program as required by 40 CFR Part 13.

(b) Laboratories conducting analyses for industrial users must submit a copy of the formal quality control documentation prior to approval by the city. Approval of laboratories shall be subject to periodic review. The city shall have the right to issue blind standards to be analyzed by other laboratories being utilized for self-monitoring. In the case of resolving disputes between analytical data generated by the city and another laboratory, any data without documented supporting quality control data will be rejected.

Sec. 86-267. - User notification to POTW of spills, etc., or change in volume or character of discharge; requirements.

All industrial users shall notify the POTW immediately of any accidental spills, unusual discharges, or slugloads. All industrial users shall promptly notify the POTW in advance of any substantial change in the

volume or character of pollutants in their discharge, including the listed or characteristic hazardous wastes for which the industrial user has submitted initial notification under 40 CFR 403.12(p) or 40.24(2) or this article. If self-monitoring performed by an industrial user indicates a violation, the user shall notify the city within 24 hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results to the city within 30 days after becoming aware of the violation. The industrial user is not required to resample if:

- (1) The city performs sampling at the industrial user at a frequency of at least once per month.
- (2) The city performs sampling at the industrial user between the time when the user performs its initial sampling and the time when the user receives the results of this sampling.

Sec. 86-268. - Pretreatment compliance reporting.

(a) Within 90 days following the date for final compliance with applicable pretreatment standards or, in the case of a new user, following commencement of the introduction of wastewater into the sewage works, any user subject to pretreatment standards and requirements shall submit to the director information requested in section 86-253. For industrial users subject to equivalent mass or concentration limits established by the city in accordance with the procedures in 40 CFR 403.6, this report shall contain a reasonable measure of the user's longterm production rate. For all other industrial users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period. This report shall include the certification statement as required in section 86-253. This statement shall be signed by an authorized representative as outlined in section 86-131.

(b) Periodic compliance reports shall be submitted by users as follows:

(1) Any user discharging into the sewage works shall submit to the director semiannually, unless required more frequently in the pretreatment standards or by the director, a report indicating the nature and concentration of pollutants in the effluent which are limited by such pretreatment standards. In addition, this report shall include a record of all daily flows which during the reporting period exceeded the average daily flow reported in section 86-253. The reports required in this section shall be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data is representative of conditions occurring during the reporting period. The city shall require that frequency of monitoring necessary to assess and ensure compliance by the industrial user with applicable pretreatment standards and requirements. If an industrial user subject to the reporting requirements in this section monitors any pollutant more frequently than required by the city, the results of this monitoring shall be included in the report. At the discretion of the director, the director may alter the months during which the above reports are to be submitted. This report shall include the certification statement as required in section 86-253. This report shall be signed by an authorized representative as outlined in section 86-131. In the case of significant noncategorical industrial users, where the POTW itself collects all the information required for the report, the noncategorical significant industrial user will not be required to submit the report.

(2) The director may also impose mass limitations on users using dilution to meet applicable pretreatment standards or requirements, or in other cases in which the imposition of mass limitations is appropriate. In such cases, the report required by subsection (b)(1) of this section shall also indicate the mass of pollutants regulated by pretreatment standards in the effluent of the user.

Secs. 86-269—86-290. - Reserved.

Subdivision II. - Prohibited Discharges and Pretreatment Standards

Sec. 86-291. - General discharge prohibitions.

No person shall contribute nor cause to be contributed, directly or indirectly, any of the following substances into the sewage works:

- (1) Any liquids, solids or gases which by reason of their nature or quantity are, or may be, sufficient either alone or by interaction with other substances to cause fire or explosion hazard in the POTW (including, but not limited to, wastestreams with a closed cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees

Celsius using the test methods specified in 40 CFR 261.21) or be injurious in any other way to the sewage works or to the operation of the sewage works.

(2) Solid or viscous substances which may cause obstruction to the flow in a sewer to other interference with the operation of the wastewater treatment facilities.

(3) Any wastewater having a pH of less than 5.0, or greater than 10.5, or other than that range established by the wastewater discharge permit, or any wastewater having any other corrosive property capable of causing damage or hazard to structures, equipment or personnel of the sewage works. In any event, a minimum pH of 5.0 is necessary in order to comply with 40 CFR 403.5.

(4) Any pollutant, including oxygen demanding pollutants released in a discharge at a flow rate and/or pollutant concentration which will cause interference with the POTW.

(5) Any wastewater containing toxic pollutants in sufficient quantity, either alone or by interaction with other pollutants, to injure or interfere with any wastewater treatment process, constitute a hazard to humans or animals, create a toxic effect in the receiving waters of the sewage works or exceed any limitation set forth in the EPA categorical pretreatment standard, or any other applicable federal, state or county standards.

(6) Any noxious or malodorous liquids, gases or solids which either singly or by interaction with other wastes are sufficient to create a public nuisance or hazard or are sufficient to prevent entry into the sewers for maintenance and repair.

(7) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems.

(8) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through.

(9) Any substance which may cause the sewage works' effluent, or any other product of the sewage works such as residues, sludges or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process.

(10) Any substance which, alone or in conjunction with a discharge or other discharges, causes pass through as defined in section 86-131.

(11) Any wastewater with objectionable color not removed in the treatment process, such as, but not limited to, dyes, wastes and vegetable tanning solutions.

(12) Any wastewater having a temperature which will inhibit biological activity in the sewage works. Wastewater with a temperature at the introduction into the sewage works which exceeds 49 degrees Celsius (120 degrees Fahrenheit) or is lower than 0 degrees Celsius (32 degrees Fahrenheit) is prohibited.

(13) Any slugload.

(14) Any wastewater containing radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the director in compliance with applicable state or federal regulations.

(15) Any wastewater which can cause any hazardous situation or creates a public nuisance.

(16) Any wastewater containing noncompatibles in excess of the limits contained in the wastewater discharge permit.

(17) Any trucked or hauled pollutants except, at discharge points designated by the POTW.

Sec. 86-292. - Discharge standards and limits.

(a) All nondomestic users who discharge compatible pollutants shall be subject to the requirements itemized below.

(1) Upon approval of the director and issuance of a wastewater discharge permit, and if the discharge complies with the requirements of subsection (3) herein, wastewater not in excess of user-specific maximum mass limits may be discharged. These limits will be established by the

director by an appropriate allocation of the wastewater treatment plant's approved maximum allowable headworks loadings for the following parameters:

Parameter	MAHL (lb/day)
5-day BOD	85,000
Suspended Solids	51,600
Total Phosphorus	1,800
Ammonia Nitrogen	4,800

(2) Upon approval of the director and issuance of a wastewater discharge permit, wastewater containing pollutants not in excess of the following maximum concentration limits may be discharged:

Parameter	Daily Average Concentration (mg/L)	Single Grab Concentration (mg/L)
Fats, Oils and Grease	470	830

(3) Discharges of compatible pollutants shall also be subject to a surcharge in accordance with section 86-162 when exceeding any of the following baseline levels:

Parameter	Daily Average Concentration (mg/L)
5-day BOD	460
Suspended Solids	260
Phosphorus	12
Fats, Oil and Grease	91
Ammonia Nitrogen	32

(b) All nondomestic users who discharge incompatible pollutants shall be subject to the requirements itemized below.

(1) Primary toxic pollutants.

a. Upon approval of the director and issuance of a wastewater discharge permit, wastewater not in excess of the following limits may be discharged:

Parameter	Daily Maximum Concentration (mg/L)
Arsenic, Total	0.061
Cadmium, Total	0.1
Chromium, Total	2.9
Copper, Total	2.1
Lead, Total	1.9
Mercury, Total	<0.0002
Molybdenum, Total	0.19
Nickel, Total	1.2
Selenium, Total	0.04
Silver, Total	0.15
Zinc, Total	4.0

Cyanides, Total	0.2
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(2) *Secondary toxic pollutants.*

- a. Upon approval of the director and issuance of a wastewater discharge permit, wastewater containing pollutants not in excess of the following limits may be discharged:

Parameter	Daily Average Concentration (mg/L)
2-Butanone (Methyl Ethyl Ketone)	760
Butyl Benzyl Phthalate	6.4
4-Chloro-3-Methyl Phenol (p-Chloro-m-Cresol)	1.0
1,4-Dichlorobenzene	0.48
bis 2-Ethylhexyl Phthalate	0.19
4-Methylphenol (p-Cresol)	4.7
Naphthalene	1.9
Phenol *	42
Toluene	3.5

Notes:

*Based on discharge of any or all of the following phenolic compounds: 2-Chlorophenol; 4-Chlorophenol; 2,4-Dichlorophenol; 2,4-Dimethylphenol; 2,4-Dinitrophenol; 2-Methylphenol; 4-Methylphenol; 2-Nitrophenol; 4-Nitrophenol; and Phenol. Discharge of other phenolic compounds is prohibited, except as specifically authorized by the director.

- a. Should pollutants other than specified above be received or anticipated, corresponding discharge limits may be established by the City via an appropriate mass allocation of the wastewater treatment plant's approved maximum allowable headworks loadings. The City reserves the right to enter into local initiatives with industrial users setting out special terms under which they may discharge to the POTW. In no case will any special agreement waive compliance with a pretreatment standard or requirement.

Sec. 86-293. - National categorical pretreatment standards.

Upon the promulgation of any national categorical pretreatment standards, alternative discharge limits or other federal or state limitations, for a particular industrial subcategory, the pretreatment standard, if more stringent than limitations imposed under this article for uses in that subcategory, shall immediately supersede the limitations imposed under this article and shall be considered part of this article. Compliance by existing sources with categorical pretreatment standards shall be within three years of the date the standard is effective unless a shorter compliance time is specified in the appropriate subpart of 40 CFR chapter I, subchapter N. Direct dischargers with NPDES permits modified or reissued to provide a variance pursuant to section 301(i)(2) of the Act shall be required to meet compliance dates set in any applicable categorical pretreatment standard. Existing sources which become industrial users subsequent to promulgation of an applicable categorical pretreatment standard shall be considered existing industrial users except where such sources meet the definition of new source as defined in section 86-131. New sources shall install and have in operating condition, and shall start up all pollution control equipment required to meet applicable pretreatment standards before beginning to discharge. Within the shortest feasible time (not to exceed 90 days), new sources must meet all applicable pretreatment standards. The director shall notify all affected users of the applicable reporting requirements.

Sec. 86-294. - Equivalent mass and concentration limits.

When the limits in a categorical pretreatment standard are expressed only in terms of mass of pollutant per unit of production, the city may convert the limits to equivalent limitations expressed either as mass of

pollutant discharged per day or effluent concentration for purposes of calculating effluent limitations applicable to individual industrial users. The city shall calculate equivalent mass-per-day limitations and equivalent concentration limitations in accordance with 40 CFR 403.6(c)(2)-(4) and 40 CFR 403.6(c)(6)-(7). Equivalent limitations calculated in accordance with these sections shall be deemed pretreatment standards for the purposes of section 307(d) of the Act and this article. Industrial users shall comply with the equivalent limitations in lieu of the promulgated categorical standards for which the equivalent limitations were derived. Any industrial user operating under a wastewater discharge permit incorporating equivalent mass or concentration limits calculated from a production based standard shall notify the city within 2 business days after the user has a reasonable basis to know that the production level will significantly change within the next calendar month. Any user not notifying the city of such anticipated change will be required to meet the mass or concentration limits in its wastewater discharge permit that were based on the original estimate of the long-term average production rate.

Sec. 86-295. - Net/gross calculation.

Categorical pretreatment standards may be adjusted to reflect the presence of pollutants in the industrial user's intake water in accordance with 40 CFR 403.15.

Sec. 86-296. - Discharge modifications.

Within 6 months of the promulgation or revision of any applicable pretreatment standard, all affected users must submit to the city the information required by section 86-253(a)(8) and (a)(9).

Sec. 86-297. - Application of state requirements or limitations.

State requirements or limitations on discharges shall apply whenever they are more stringent than national categorical pretreatment standards or limitations provided in this article. State and federal requirements may not be appealed.

Sec. 86-298. - Compliance with pretreatment standards.

Industrial users shall provide necessary wastewater treatment as required to comply with this article and shall achieve compliance with all pretreatment standards within the time limitations specified by the federal pretreatment regulations, state regulations and as required by the city. Any facilities required to pretreat wastewater shall be provided, operated and maintained at the user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to and approved by the city before construction of the facility. The review of such plans and operating procedures will in no way relieve the user from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the city under the provisions of this article. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to and be acceptable by the city prior to the user's initiation of the changes.

Sec. 86-299. - User to initiate construction of facilities necessary to comply with discharge limitations.

If pretreatment facilities are necessary to comply with wastewater discharge permit limitations, industrial users shall initiate construction of such facilities within 6 months and complete construction within 18 months from the date of notice of noncompliance by city.

Sec. 86-300. - Increase of process water to dilute excessive discharge.

No user shall ever increase the use of process water or in any way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in the national categorical pretreatment standards, alternative discharge limits or in any other pollutant-specific limitation adopted by the city or state.

Sec. 86-301. - Procedures for prevention of accidental and slugload discharges; notification if discharge occurs.

Users shall provide protection from slugload discharges or accidental discharges of prohibited materials or other substances regulated by this article. If deemed reasonably necessary by the director or as otherwise required by state or federal laws or regulations, the city may require the user to implement procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants

(including solvents) and/or measures and equipment for emergency response. Facilities to prevent slugload discharges or accidental discharges of prohibited material shall be provided and maintained at the user's cost and expense. Detailed information and plans showing facilities and operating procedures to provide this protection including descriptions of discharge practices and stored chemicals shall be submitted to the city for review and approval by the city before construction. All users shall complete construction of required facilities within the time period specified by the director. New users shall not be permitted to introduce pollutants into the system until approved accidental discharge facilities have been constructed. Review and approval of such plans and operating procedures shall not relieve the user from the responsibility to modify the facility as necessary to meet the requirements of this article or from otherwise meeting requirements of this article. In the case of a slugload discharge or an accidental discharge, the user shall immediately notify the director of the incident. The notification shall include location of discharge, type of waste, concentration and volume and corrective actions. Accidental discharge shall also include any discharge where such discharge has the possibility of entering into any waters of the state.

(1) Within 5 working days following a slugload or accidental discharge, the user shall submit to the director a detailed written report describing the cause of the discharge and the measures to be taken by the user to correct the situation and to prevent similar future occurrences. Such notification shall not relieve the user of any expense, penalty, loss, damage or other liability which may be incurred as a result of damage to the sewage works treatment process, nor any other damage to person or property, nor shall such notification relieve the user of any fines, civil or other liability which may be imposed by this article or other applicable law.

(2) A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees of the persons to notify in the event of an accidental discharge. Employers shall advise all employees who may cause or suffer such a dangerous discharge to occur of the emergency notification procedure.

Sec. 86-302. - Upset to constitute affirmative defense.

(a) An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of subsection (b) of this section are met.

(b) An industrial user wishing to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An upset occurred and the industrial user can identify the causes of the upset;

(2) The facility was at the time being operated in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures;

(3) The industrial user has submitted the following information to the POTW and control authority within 24 hours of becoming aware of the upset (if this information is provided orally, a written submission must be provided within five days):

a. A description of the indirect discharge and cause of noncompliance;

b. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and

c. Steps being taken or planned to be taken to reduce, eliminate, and prevent recurrence of the noncompliance.

(c) In any enforcement proceeding, the industrial user seeking to establish the occurrence of an upset shall have the burden of proof.

(d) In the usual exercise of prosecutorial discretion, the city's enforcement personnel should review any claims that noncompliance was caused by an upset. No determinations made in the course of the review constitute final city action subject to judicial review. Industrial users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.

(e) The industrial user shall control production or all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility

until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost or fails.

Sec. 86-303. - Bypass.

For the purpose of this section, bypass shall mean the intentional diversion of wastestreams from any portion of the industrial user's treatment facility. An industrial user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to ensure efficient operation. These bypasses are not subject to subsections (1) and (2) of this section.

(1) If an industrial user knows in advance of the need for a bypass, it shall submit prior notice to the city, if possible, at least ten days before the date of the bypass. An industrial user shall submit oral notice of an unanticipated bypass that exceeds applicable pretreatment standards to the city within 24 hours from the time the industrial user becomes aware of the bypass. A written submission shall also be provided within five days of the time the industrial user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate and prevent reoccurrence of the bypass. The city may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

(2) Bypass is prohibited, and the city may take enforcement action against an industrial user for a bypass, unless:

a. Bypass was unavoidable to prevent loss of life, personal injury or severe property damage. Severe property damage shall mean substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgement to prevent a bypass which occurred during periods of equipment downtime or preventative maintenance;

c. The industrial user submitted notices as required under subsection (1) of this section.

(3) The director may approve an anticipated bypass, after considering its adverse effects, if the director determines that it will meet the three conditions listed in subsection (2) of this section.

Secs. 86-304—86-320. - Reserved.

DIVISION 5. - LIQUID WASTE

Sec. 86-321. - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(a) *Liquid waste* means any liquid, gaseous or waterborne waste or sludge materials resulting from or incidental to any process of industry, manufacturing, mining or agricultural operations or any mixture of these waste materials with water or domestic sewage and domestic sewage.

(b) *Liquid waste disposal system* means any facility primarily designed or operated for the purpose of processing or storing liquid waste.

(c) *Structure* means the area in which the liquid industrial waste or liquid waste is stored on the premises for treatment or processing and shall include holding tanks.

Sec. 86-322. - Storage, removal, transfer, unloading, offering for sale, trade or exchange restricted to areas zoned for such dealings.

No person shall engage in the storage, removal, transfer, unloading, offering for sale, trade or exchange, or in any manner dealing in liquid wastes in the city except at such locations as are provided for in the zoning provisions of this Code.

Sec. 86-323. - Accumulations and deposit.

No person shall deposit, cause to be deposited or permit to accumulate any liquid waste or liquid industrial waste upon any public or private premises within the city in such a manner so as to emit noxious or offensive odors or dust or to become unsanitary or injurious to public health.

Sec. 86-324. - Storage and treatment.

The following provisions shall govern the operation for storage and treatment of all liquid waste on any property, excluding industries generating such liquid wastes which do not store or treat such liquid wastes:

- (1) Whenever liquid wastes are placed into any area for the purpose of removing liquids or portions of liquids from such waste, such liquid waste shall be placed in structures according to provisions as stated in this section.
- (2) None of the liquid waste shall be allowed to spill outside of the structures, and, if it is spilled outside, it shall be removed immediately.
- (3) No liquid waste shall be allowed to discharge on or into the groundwaters or surface waters.
- (4) Any liquid waste which has spilled onto the apron around the structure shall be washed into the structure or removed from the apron immediately after the spillage.
- (5) The entire area in which the structures are located shall be enclosed by a chain-link fence and a chain-link gate which shall be locked so as to prevent entrance by any unauthorized person when the area is unattended.
- (6) No liquid waste shall be allowed to dry to the extent that the waste would generate dust.
- (7) All liquid waste placed into any open structure shall be a minimum of six inches below the top of the structure at all times.
- (8) Reasonable means shall be used to prevent any spillage from any vehicles while they are carrying any liquid waste on any street to and from the location of the liquid waste site. If there is any spillage, the spillage shall be removed immediately.
- (9) Any person operating a facility handling liquid wastes shall have provisions for accumulating data so as to measure any dust being generated from the property because of the liquid waste. Such equipment shall be capable of monitoring the air on a 24-hour basis and shall be approved by the city, which approval shall be based upon the ability of the equipment to perform as required. Upon request, such information shall be furnished to the city.
- (10) Every person operating a liquid waste disposal system shall be required to obtain a license and pay the fee as set by resolution of the city council from time to time and on file in city hall.
- (11) All liquid wastes placed into the city sewer system shall meet all requirements of this article pertaining thereto.
- (12) There shall be no storage of any liquid waste except for the purpose of treatment. All liquid wastes shall be treated within a reasonable time after being brought to the site.

Sec. 86-325. - Transporting vehicle standards.

All vehicles used for transporting liquid waste shall be completely sealed and shall be in good repair and free from any leaks so as to prevent spillage or discharge any place. All such vehicles shall be clean and odorfree prior to any movement on any city streets.

Sec. 86-326. - State approval required for deposit or storage on city lands.

When required, no person shall engage in the pickup or disposal of liquid waste material to deposit, discharge, store or stockpile such waste material on any lands in the city unless such land has been approved as a site for the disposal of such liquid waste by the state department of natural resources.

Sec. 86-327. - Use of storm drains, inlets, streets, or lands.

No person shall deposit or discharge any liquid waste material into any public or private storm drains, inlets, streets or lands.

Sec. 86-328. - Storage or treatment facilities require pollution prevention plan.

Any person desiring to operate a new facility for the storing or treating of liquid waste shall submit a pollution prevention plan to the city for approval at the time application is made for a building permit for the construction of any structures to be used primarily for the treatment, storage, transfer or handling of industrial wastes. The following shall be included:

- (1) Chemical composition of the liquid wastes to be processed or treated, including estimated volumes or quantities and identification of all toxic elements.
- (2) Chemical composition of the expected resultant effluent, subsequent to treatment, to be discharged to the city sewer, including estimated volumes per day and quantities of heavy metals.
- (3) Complete technological description of the treatment process, including complete plans and specifications of all equipment and structures to be used in the process or at the site.
- (4) Complete description of method of handling wastes, including transporting, loading and unloading, as well as a description of equipment and vehicles used for handling wastes.
- (5) Location of approved disposal sites for any liquid wastes resulting from the company's processing that cannot be discharged into a city sewer.
- (6) Proof of licenses and permits that may be required from other governmental agencies for the hauling and disposal of liquid wastes.
- (7) List of the names and addresses of industries from which liquid wastes will be collected and transported to the facility for treatment, including estimated volumes of liquid waste from each industry and a description of such wastes.
- (8) Methods and equipment that will be used to monitor effectively and measure on a regular basis the quality of the air, groundwater and surface waters, soils and discharge to the city sewer system. Sampling and testing procedures shall be included in the plan as well as the frequency of such sampling and testing.

Sec. 86-329. - Inspection of liquid waste businesses.

The city by its authorized representatives shall have the right at all reasonable times to make inspections of any business subject to the provisions of this division governing liquid wastes.

Secs. 86-330—86-350. - Reserved.

Section 2. This ordinance shall be in full force and effect on _____, 2018.

Kelli A. VandenBerg
Wyoming City Clerk

Ordinance No. 21-18

ARTICLE III. - SANITARY SEWER SYSTEM

DIVISION 1. – GENERALLY

Sec. 86-130. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(a) *25 percent rule* means that the combined depth of oil and grease and other solids (floating and settled) in any chamber of a trap shall not be equal to or greater than 25 percent of the total operating depth of the trap. The operating depth of a trap is determined by measuring the internal depth from the water outlet invert elevation to the inside bottom of the trap.

(b) *Act* means the Federal Water Pollution Control Act and the Clean Water Act, Public Law 92-500, as adopted in 1972 and amended on February 4, 1987, as amended.

(c) *Alternative discharge limit* means limits set by the city in lieu of the promulgated National Categorical Pretreatment Standards for integrated facilities in accordance with the combined wastestream formula, as established by the EPA.

(d) *Authorized representative* when used in relationship to an ~~of~~ industrial user means:

(1) See CFR 403.12 If the industrial user is a corporation, a director, or a responsible corporate officer such as:

a. President, secretary, treasurer, or vice-president in charge of principle business function, or any other person who performs similar policy or decision making processes for the corporation.

b. A manager of one or more manufacturing, production, or operation facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25,000,000.00 (in second quarter 1980 dollars).

(2) A general partner or proprietor if the industrial user is a partnership or proprietorship, respectively.

(3) A member of a limited liability company.

(4) For any other entity, any officer, director or board member.

(4) A duly authorized representative of the individuals designated in subsections (1) through and (24) of this definition if:

a. The authorization made in writing by the individuals described in subsections (1) and (2) of this definition and;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the industrial discharge originates, such as the position of plant manager, or a position of equivalent responsibility, or having responsibility for environmental matters for the company; and

c. The written authorization is submitted to the city.

(e) *Biochemical oxygen demand (BOD)* means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures (without the addition of nitrification inhibitors, and expressed in terms of milligrams per liter).

(f) *Building drain* means that part of the lowest horizontal piping of a drainage system that receives ~~the drainage from soil, waste and other drainage pipes~~ wastewater from inside the walls of the building and conveys it to the building sewer, beginning five feet outside the inner face of the building wall.

(g) *Building official* means the director of utilities, building inspector, the city engineer or another designated agent of the city or that individual's designee.

(h) *Building sewers* means the extension from the building drain to ~~the a~~ a public sewer or other places of disposal.

(i) *Cesspool* means an underground pit into which raw sewage or other untreated liquid waste is discharged and from which the liquid seeps into surrounding soil or is otherwise removed.

(j) *Chemical oxygen demand (COD)* means a measure of the oxygen-consuming capacity of inorganic and organic matter present in water or wastewater. It is expressed as the amount of oxygen consumed from a chemical oxidant in a specified test. It does not differentiate between stable and unstable organic matter and thus does not necessarily correlate with biochemical oxygen demand. It is also known as OC and DOC, oxygen consumed and dichromate oxygen consumed, respectively.

(k) *Chlorine demand* means the difference between the amount of chlorine added to water or wastewater and the amount of residual chlorine remaining at the end of a specified contact period. The demand for any given water varies with the amount of chlorine applied, time of contact and temperature.

~~(l) *City* means the City of Wyoming, Kent County, Michigan.~~

~~(l) *Combined sewer* means a sewer receiving both surface runoff and sewage.~~

(m) *Combined wastestream* means the wastestream at industrial facilities where regulated process effluent is mixed prior to treatment with wastewaters other than those generated by the regulated process. Where required by federal or state law, and only to the extent required by federal or state law, the combined wastestream formula provided in 40 CFR 403 will apply to the limits applicable to a combined wastestream.

(n) *Compatible pollutant* means a substance amenable to treatment in the wastewater treatment plant such as biochemical oxygen demand, suspended solids, and fecal coliform bacteria, plus additional pollutants identified in the NPDES permit if the publicly owned treatment works was designed to treat such pollutants, and in fact does remove such pollutant to a substantial degree. Examples of such additional pollutants may include: chemical oxygen demand, total organic carbon, phosphorus and phosphorus compounds, nitrogen compounds, fats, oils and grease of animal or vegetable origin.

(o) *Composite sample* means a series of representative samples taken over a specific time period and combined into one sample.

~~(p) *Cooling water* means the water discharged from any use such as air conditioning, cooling or refrigeration, or to which only heat is added.~~

~~(q)(p)~~ *Debt service charges* means the charges levied to ~~customers~~ users of the ~~wastewater~~ system which are used to pay principal, interest and administrative costs of retiring the debt incurred for construction of the sewage works.

~~(r)(q)~~ *Director* means the city's director of utilities or ~~the authorized deputy, agent or representative that person's designee.~~

~~(s)(r)~~ *Domestic users* means all users of the sewage works ~~where the~~ whose discharge into the system is ~~primarily household and human waste~~ domestic wastewater.

~~(t)(s)~~ *Domestic wastewater* means wastewater consisting primarily of household and human waste. ~~Dosing chamber means a watertight tank or receptacle used for the purpose of retaining the overflow of effluent from a septic tank, pending its automatic discharge to a selected point.~~

~~(u) *Dry well* means a seepage pit.~~

~~(v)(t)~~ *Dwelling unit* means the same as found in chapter 90 of this Code (i.e., the city's zoning ordinance).

~~(w)(u)~~ *Environmental Protection Agency (EPA)* means the U.S. Environmental Protection Agency, including its administrator or other duly authorized official.

~~(x) *Footing drain* means a pipe or conduit which is placed around the perimeter of a building foundation and which intentionally admits groundwater.~~

~~(y)(v)~~ *Garbage* means liquid and solid wastes from the storage, preparation, cooking and dispensing of food and from the growing, handling, storage or sale of produce or other edible products.

~~(z)~~(w) *Grab sample* means a sample which is taken from a wastestream on a one-time basis with no regard to the flow in the wastestream and without consideration of time.

~~(aa)~~(x) *Grease trap* means a device designed to separate and retain fats, oils, and grease from liquid waste and permit the liquid waste to discharge into the sewer system.

~~(bb)~~(y) *Holding tank waste* means any waste from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks or vacuum-pump tank trucks.

~~(cc)~~(z) *Incompatible pollutant* means any pollutant which is not compatible with biological treatment or removal of which is not designed into the treatment process.

~~(dd)~~(aa) *Industrial wastes* means the wastewater discharges that are not domestic wastewater, wastewater discharges from industrial, manufacturing, trade or business processes, or wastewater discharge from any structures with these characteristics.

~~(ee)~~(bb) *Integrated facilities* means industrial facilities where wastestreams are combined prior to treatment.

~~(ff)~~(cc) *Interference* means any discharge which alone or in conjunction with discharges from other sources, both:

(1) Inhibits or disrupts the POTW and any of its process or operations, or its sludge use or disposal; and

(2) Therefore is a cause of a violation of any requirement of the POTW's NPDES permit, including an increase in the magnitude or duration of a violation, or of the prevention of sewage sludge use or disposal.

~~(gg) Laboratory determination means the measurements, tests and analyses of the characteristics of waters and wastes in accordance with the methods contained in the latest edition at the time of any such measurement, test or analysis of Standard Methods for Examination of Water and Waste Water, a joint publication of the American Public Health Association, the American Waterworks Association and the Water Pollution Control Federation or in accordance with any other method prescribed by or approved by EPA or MDEQ.~~

~~(hh)~~(dd) *National categorical pretreatment standard* means any federal regulation containing pollutant discharge limits promulgated by the EPA which applies to a specific category of industrial users.

~~(ii)~~(ee) *National Pollution Discharge Elimination System permit (NPDES permit)* means a permit issued pursuant to section 402 of the Act (33 USC 1342), as amended.

~~(jj)~~(ff) *National prohibitive discharge standard or prohibitive discharge standard* means any regulation developed under the authority of section 307(b) of the Act and 40 CFR 403.5, as amended.

~~(kk)~~(gg) *Natural outlet* means any outlet into a watercourse, pond, ditch, lake or other body of surface water or groundwater.

~~(ll)~~(hh) *New source* means:

(1) Any building, structure, facility or installation from which there may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under section 307(c) of the Clean Water Act which will be applicable to such source if such standards are thereafter promulgated in accordance with that section provided that:

a. The building, structure, facility, or installation is constructed at a site at which no other source is located;

b. The building, structure, facility or installation totally replaces the process or production equipment that causes discharge of pollutants at an existing source; or

c. The production or wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility

is integrated with the existing plant and the extent to which the new facility is engaged in the same general type of activity as the existing source will be considered.

(2) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of subsection (1)b or (1)c of this definition but otherwise alters, replaces or adds to existing process or production equipment.

(3) Construction of a new source as defined under this definition has commenced if the owner or operator has:

a. Begun, or caused to begin as part of a continuous on-site construction program:

1. Any placement, assembly, or installation of facilities or equipment; or

2. Significant site preparation work including clearing, excavation or removal of existing buildings, structures or facilities which is necessary for the placement, assembly or installation of new source facilities or equipment;

b. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering and design studies do not constitute a contractual obligation under this definition.

~~(mm)~~(ii) *Operation and maintenance* means all work, materials, equipment, utilities, administration and other efforts required to operate and maintain the sewage works including the cost of replacement.

~~(nn)~~(ii) *Pass through* means a discharge which exits the POTW into waters of the state in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, causes a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation).

~~(oo)~~(kk) *Penalty* means a charge for discharge of noncompatible substances including pH in violation of the wastewater discharge permit.

~~(pp)~~(ll) *pH* means the logarithm (base 10) of the reciprocal of the concentration of hydrogen ions expressed in grams per liter of solution.

~~(qq)~~(mm) *Pollutant* means any of various chemicals, substances and refuse materials such as solid waste, sewage, garbage, sewage sludge, chemical wastes, biological materials, radioactive materials, heat and industrial, municipal and agricultural wastes which impair the purity of the water or soil.

~~(rr)~~(nn) *Pollution* means the manmade or man-induced alteration of the chemical, physical, biological or radiological integrity of water.

~~(ss)~~(oo) *Premises* means a lot, parcel or plot of land including the buildings or structures thereon or any part thereof.

~~(tt)~~(pp) *Pretreatment or treatment* means the reduction of the amount of pollutants, the elimination of pollutants, the alteration of the nature of pollutants or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into the sewage works. The reduction or alteration can be obtained by physical, chemical or biological processes, process changes or other means, except as prohibited by 40 CFR 403.6(d), as amended.

~~(uu)~~(qq) *Pretreatment facilities* means devices or structures for use in treating industrial waste prior to entry-discharge into public sewers.

~~(vv)~~(rr) *Pretreatment requirements* means any substantive or procedural requirement for treating of a waste prior to discharge to the sewers.

~~(www)~~(ss) *Pretreatment standards* means National Categorical Pretreatment Standards, alternative discharge limits or other federal, state or local standards, whichever are applicable.

~~(xx)~~(tt) *Private sewage works* means any sewage works or part thereof not connected to a public sewer and shall include, but not be limited to, septic tanks, cesspools and seepage pits.

~~(yy) Properly ground garbage means garbage or vegetable wastes that has been ground to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-eighth of an inch in any dimension. The use of garbage grinder installations are restricted to locations where food is prepared for consumption on the premises. Installation of a garbage grinder with a three-fourths horsepower motor or greater shall be subject to approval by the director.~~

~~(zz) Property from which sanitary sewage emanates means any parcel of land as described in the last recorded deed of conveyance pertaining thereto on which there is located a structure in which water is used or is available for use to household, commercial, industrial or other purposes.~~

(aaa)(uu) *Public nuisance* means anything which is injurious to health, is indecent or offensive to the senses, or is an obstruction to the free use of property so as to interfere with human comfort or enjoyment of life or property, whether affecting individual interests per se or affecting at the same time an entire community or neighborhood of any considerable number of persons, although the extent of the annoyance, interference or damage may not be inflicted equally upon the persons therein.

(bbb)(vv) *Public sewer* means a city sewer or any part thereof.

(ccc)(www) *Publicly owned treatment works (POTW)* means a treatment works as defined by section 212 of the Clean Water Act, which is owned in this case by the city. This definition includes any devices and systems used in storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances if they convey wastewater to a POTW treatment plant.

(ddd)(xx) *POTW treatment plant* means that portion of the POTW which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste.

(eee)(yy) *Quality control* means a formal program designed to monitor the reliability (accuracy and precision) of reported analytical results.

(fff)(zz) *Replacement* means the replacement, in whole or in part, of any system equipment ~~in the wastewater transportation or treatment systems~~ to ensure continuous treatment of wastewater in accordance with the NPDES permit and other state and federal regulations.

(ggg)(aaa) *Sanitary sewer* means a sewer designed to carry sewage only.

(hhh)(bbb) *Seepage pit* means an underground enclosure constructed of concrete blocks, bricks or similar material loosely laid with open joints so as to allow the septic tank overflow or effluent to be absorbed directly into the surrounding soil.

(iii)(ccc) *Septic tank* means a receptacle receiving sewage and having an inlet and outlet designed to permit the separation of solids in suspension from such wastes and to permit such retained solids to undergo decomposition therein.

(jjj)(ddd) *Sewage or wastewater* means the liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities and institutions, together with any groundwater, surface water and stormwater that may be present, whether treated or untreated, which is contributed into or permitted to enter the sewage works.

(kkk)(eee) *Sewage works* means the sanitary sewage collection system any part thereof and the wastewater treatment facility.

(lll)(fff) *Sewer* means a pipe or conduit for carrying sewage.

(mmm)(ggg) *Sewer connection permit* means, as set forth in section 86-137, a written permit issued by the city prior to using, connecting, altering or opening any public sewer or appurtenance thereof.

(nnn)(hhh) *Sewer service charge* means any applicable user charges, surcharges and debt service charges.

~~(eee)~~(iii) *Significant industrial user* means, except as provided in subsection (3) of this definition:

(1) All industrial users subject to categorical pretreatment standards under 40 CFR 403.6 and 40 CFR chapter I, subchapter N; and

(2) Any other industrial user that: discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); contributes a process wastestream which makes up five percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or is designated as such by the city on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.

(3) Upon finding that an industrial user meeting the criteria in subsection (2) of this definition has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the city may at any time, on its own initiative or in response to a petition received from an industrial user, determine that such industrial user is not a significant industrial user.

~~(ppp)~~(iii) *Significant noncompliance* means one or more of the following:

(1) Chronic violations of wastewater discharge limits, defined here as those in which 66 percent or more of all of the measurements taken during a six-month period exceed, by any magnitude, the daily maximum limit (or grab sample limit) or average limit (or composite limit) for the same pollutant parameter;

(2) Technical review criteria (TRC) violations, defined here as those in which 33 percent or more of all measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily maximum limit (or grab sample limit) or the average limit (or composite limit) multiplied by the applicable TRC value (TRC=1.4 for BOD, TSS, oil and grease, and 1.2 for all other pollutants except pH);

(3) Any other violation of a pretreatment effluent limit that the city determines has caused, alone or in combination with other discharges, interference or pass through, including endangering the health of POTW personnel or the general public;

(4) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority to halt or prevent such a discharge;

(5) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in the wastewater discharge permit or other enforcement orders for starting construction, completing construction or attaining final compliance;

(6) Failure to provide, within 30 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

(7) Failure to accurately report noncompliance; or

(8) Any other violation or group of violations which the city determines will adversely affect the operation or implementation of the local pretreatment program.

~~(qqq)~~(kkk) *Slugload* means any pollutant, including compatible pollutants, released in a single extraordinary discharge episode of such volume or strength as to cause interference to the sewage works.

~~(rrr)~~(lll) *Standard industrial classification (SIC)* means a classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, 1972, as amended.

~~(sss)~~(mmm) *Storm sewer or storm drain* means a sewer designed to carry stormwater and surface water and drainage only.

~~(ttt)(nnn)~~ Subsurface disposal field means a system for the distribution of septic tank overflow or effluent below the ground surface through a line or a series of branch lines, of drain tile laid with open joint to allow the overflow or effluent to be absorbed by the surrounding soil throughout the entire field.

~~(uuu) Superintendent means the wastewater treatment plant superintendent, or his duly authorized representative.~~

~~(vvv)(ooo)~~ Surcharge means a charge to cover the cost of treating sewage which exceeds limits as established in this article. A surcharge is appropriate to cover costs of treating extra strength compatible waste which are authorized by order of determination. A surcharge is not acceptable as a sole remedy for violations of limits.

~~(www)(ppp)~~ Suspended solids means the total suspended matter that floats on the surface of, or is suspended in, water, wastewater or other liquids, and which is removable by laboratory filtering.

~~(qqq) System means the City's sanitary sewer system including all collection lines, mains, pumps, chambers, the POTW and all components and facilities.~~

~~(xxx)(rrr)~~ Toilet device means a privy, outhouse, septic tank, septic toilet, chemical closet or other device designed for the disposal of human excreta.

~~(yyy)(sss)~~ Total toxic organics (TTO) means total toxic organics, which is the summation of all quantifiable values greater than 0.01 milligrams per liter for toxic organics listed in the federal categorical pretreatment standards or as defined by the director.

~~(zzz)(ttt)~~ Toxic pollutant means any pollutant or combination of pollutants which is or can potentially be harmful to the public health, treatment or environment, including those listed as toxic in regulations promulgated by the administrator of the Environmental Protection Agency, under the provisions of CWA 307(a) or other acts, as amended.

~~(aaa)(uuu)~~ Upset means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of ~~factors~~facts ~~conditions or circumstances~~ beyond the reasonable control of the industrial user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

~~(bbb)(vvv)~~ User means any person who contributes, causes or permits the contribution of wastewater into the sewage works.

~~(ccc)(www)~~ User charge means a charge levied to users of a treatment works for the cost of sewage works including operation, maintenance and capital charges.

~~(ddd)(xxx)~~ User class means the kind of user connected to sanitary sewers including, but not limited to, the following:

- (1) ~~Residential~~Domestic user. A user of a dwelling unit discharging domestic wastewater.
- (2) Industrial user. Any user that discharges any industrial wastewater ~~nondomestic user which also or that~~ contributes, causes or permits the contribution or introduction of wastewater or pollutants into the POTW, whether intentionally or unintentionally, and whether directly or indirectly. ~~For purposes of this article, industrial users may also meet the definitions of governmental, commercial or institutional users.~~
- (3) ~~Commercial user~~. ~~Commercial users are divided into two categories, namely commercial domestic and commercial industrial. Commercial industrial means any commercial user where there is or can be any discharge into the sewage system other than normal domestic waste because of the particular type of operation including, but not limited to, carwashes, bakeries and restaurants. All other commercial users shall be called commercial domestic.~~
- (4) ~~Institutional~~. ~~Any establishment involved in a social, charitable, religious or educational function which, based on a determination by the director discharges primarily domestic waste.~~
- (5) ~~Governmental~~. ~~Any federal, state or local governmental unit or agency.~~

~~(eeee)~~(yyy) *Wastewater* means the liquid and water-carried industrial or domestic waste from dwellings, commercial buildings, industrial facilities, and institutions including, without limitation, contaminated groundwater and landfill leachate, whether treated or untreated, that is contributed, introduced or discharged into the POTW.

~~(ffff)~~(zzz) *Wastewater discharge permit* means as set forth in section 86-251, a written permit issued by the director to nondomestic users of the POTW.

~~(gggg)~~(aaaa) *Watercourse* means a channel, natural or artificial, in which a flow of water occurs, either continuously or intermittently.

~~(hhhh)~~(bbbb) *Waters of the state* means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state or any portion thereof.

Sec. 86-131. - Abbreviations.

The following abbreviations shall have the designated meanings:

- (1) *BOD* ~~means~~ biochemical oxygen demand;
- (2) *CFR* ~~means~~ Code of Federal Regulations;
- (3) *COD* ~~means~~ chemical oxygen demand;
- (4) *EPA* ~~means~~ United States Environmental Protection Agency;
- (5) *L* ~~means~~ liter;
- (6) *MDEQ* ~~means~~ ~~state~~ Michigan department ~~Department~~ of ~~environmental~~ Environmental quality ~~Quality~~;
- (7) *mg* ~~means~~ milligrams;
- (8) *mg/l* ~~means~~ milligrams per liter;
- (9) *NPDES* ~~means~~ National Pollutant Discharge Elimination System;
- (10) *SIC* ~~means~~ standard industrial classification;
- (11) *SS* ~~means~~ suspended solids;
- (12) *TTO* ~~means~~ total toxic organics;
- (13) *USC* ~~means~~ United States Code;
- (14) *O&M* ~~means~~ operation and maintenance;
- (15) *CWA* ~~means~~ Clean Water Act;
- (16) *µg* ~~means~~ micrograms;
- (17) *POTW* ~~means~~ publicly owned treatment works;
- (18) *ppm* ~~means~~ parts per million;
- (19) *ppb* ~~means~~ parts per billion;
- (20) ppt means part per trillion.
- ~~(2021)~~ *MG* ~~means~~ million gallons;
- ~~(2122)~~ *gpd* ~~means~~ gallons per day;
- ~~(2223)~~ *Cd* ~~means~~ cadmium;
- ~~(2324)~~ *Cr* ~~means~~ chromium;
- ~~(2425)~~ *Cu* ~~means~~ copper;

- (~~25~~26) Pb means,—lead;
(~~26~~27) Ni means,—nickel;
(~~27~~28) Zn means,—zinc;
(~~28~~29) CN means,—cyanide;
(~~29~~30) Ag means,—silver;
(~~30~~31) Hg means,—mercury;
(~~31~~32) As means,—arsenic; and
(~~32~~33) Be means,—beryllium.

Sec. 86-132. - ~~Water pollution.~~ Designation of officials and agencies.

~~Whenever this article refers to any governmental agency it shall include any successor or replacement agency. Whenever this article refers to any governmental officer or official, it shall include that officer or official's successor and designee(s). No person shall discharge nor allow to be discharged into any natural outlet or watercourse within the city or in any area under the jurisdiction of the city, any sewage, industrial waste or other pollution.~~

Sec. 86-133. - Water pollution; Abatement of water pollution.

(a) No person shall discharge or allow to be discharged into any natural outlet or watercourse within the city or in any area under the jurisdiction of the city, any sewage, industrial waste or other pollution.

(b) If ~~Whenever~~ the building official determines from any investigation that there is a health or environmental hazard caused by sewage from any property being exposed to the surface of the ground or being permitted to drain under the surface of the ground or into any ditch, storm sewer, lake or stream, or that the presence of any sewage on the property has an obnoxious or detrimental odor or creates a public nuisance, the owner of such property must connect to the public sewer forthwith, whenever such property abuts any public right-of-way in which a public sanitary sewer is located, and the structure is within 200 feet of said sanitary sewer. If such property does not abut a public right-of-way in which a public sanitary sewer is located within 100 feet from an intersection of any line of the property with such right-of-way, the owner of such property shall forthwith construct, repair or replace the private sewage works so that the conditions which led to the determination by the building official are abated.

Sec. 86-134. - Private sewer system.

~~Whenever~~ If property does not meet the 100-foot requirement of section 86-133, the building sewer of the property shall be connected to a private sewage works which shall be operated in a sanitary manner at all times. At such time as the property is connected to the public sewer, the property owner is responsible for all maintenance that is required for that portion of the connection located outside the city right-of-way or easement.

Sec. 86-135. - Disposition of private system upon connection to public sanitary sewer.

~~Whenever~~ If any property is connected to a public sanitary sewer and there exists on the property a septic tank, cesspool, seepage pit or other similar private sewage facility, any sewage in the septic tank, cesspool, seepage pit or other similar private sewage facility shall be removed and disposed of in a sanitary manner, and the septic tank, cesspool, seepage pit or other private sewage facility shall be filled with sand or gravel.

Sec. 86-136. - Construction, repair or enlargement of private sewage works.

No private sewage works may be constructed, repaired or enlarged if any part of a residential structure, excluding any attached garage, on said property is within 200 feet of a public sanitary sewer, except as provided for in section 86-133.

Sec. 86-137. - Sewer connection permit—Generally.

No person shall uncover nor make any connections with, or openings into, use, alter or disturb any public sewer or appurtenance thereof, without obtaining a written permit from the city. All permit applications for industrial connections shall contain information outlined in section 86-253. Information submitted shall be approved by the director prior to issuance of a permit. Any sewer connections or work done within the city's right-of-way shall require a street opening permit from the city engineer.

Sec. 86-138. - Same—Classification.

There shall be two classes of building sewer permits:

- (1) Residential and commercial domestic; and
- (2) Commercial industrial and industrial.

In either case, the owner or ~~his-the owner's~~ agent shall make application on the form furnished by the city. The permit application shall be supplemented by any plans, specifications or other information considered pertinent by the city. Applications for an industrial or commercial industrial permit shall be submitted with a copy to the wastewater department. Permit and inspection fees shall be paid in the amounts specified from time to time by resolution of the city council ~~from time to time and on file in the city hall.~~

Sec. 86-139. - Multiple sewer connection system.

A separate and independent building sewer shall be provided for each building. However, where any existing building is so located on an interior lot so that no private sewer is available nor can one be constructed to the building through an adjoining alley, courtyard or driveway, more than one building may be served with the same building sewer subject to approval by the city. In areas where laterals have not been constructed to the property and complete street improvements have been made or where unusual lot splits have occurred leaving only one lateral for two properties, if there is no health or other danger, the director may approve joint use of this-that lateral may be approved by the city engineer with the connection being made to the city sewer ~~if there is no health or other danger.~~ All discharge limits ~~contained~~ in this article apply to that portion as the lateral emanating from a single building. Compliance with pretreatment standards or local discharge limits prescribed by this article shall be determined within each tributary to the common lateral prior to commingling with other wastewater.

Sec. 86-140. - Existing building sewer examination.

Existing sewers shall meet all requirements of this article. Whenever ~~any~~ examination determines that an existing building sewer does not meet the requirements of this article and the building official determines that the connection is creating a health hazard, odor or public nuisance, or environmental hazard the sewer shall be reconstructed at the owner's expense.

Sec. 86-141. - City of Grand Rapids sanitary sewer system.

~~In the event~~ if a significant industrial user located in the city is connected to the sanitary sewer system of the City of Grand Rapids, the terms of the City of Grand Rapids Sewer Use Ordinance (~~Chapter 27 of the Grand Rapids City Code~~) ~~as amended~~, and the Interjurisdictional Agreement (IJA) executed by both the City of Grand Rapids and City of Wyoming pursuant to MCL 124.1 *et seq.*, ~~as amended~~, shall apply and are hereby incorporated by reference. Copies of the relevant portion of the Grand Rapids City Code and the IJA are on file with the city clerk and available to the public.

Secs. 86-142—86-160. - Reserved.

DIVISION 2. - ADMINISTRATION AND ENFORCEMENT

~~Sec.~~ 86-161. - Rates, surcharges and penalties to be set by city council.

Rates, surcharges and penalties shall be paid by the user as set by resolution of the city council from time to time and on file in the city hall.

Sec. 86-162. - Surcharge calculation and billing; penalty for violation of wastewater discharge permit.

(a) *Calculation formula.* All nondomestic users of the city sewage works shall pay a surcharge for effluent containing the compatible pollutants in excess of baseline concentrations specified in section 86-292. For suspended solids, BOD, COD, phosphorus, grease and oil, or other specific compatible pollutants, the

city may accept payment in lieu of the user meeting baseline concentration limits, subject to section 86-292. The city may use the test results from a COD analysis as an alternative means of surcharging for BOD. Surcharges for compatible pollutants shall be calculated as follows:

$$(\text{Average} - \text{Baseline}) \left(\frac{\text{mg}}{\text{L}} \right) \times \text{Flow (Mgal)} \times \text{Rate} \left(\frac{\$}{\text{lb}} \right) \times 8.34$$

(b) *Sampling methods and billing.* The city shall collect at least three composite or grab samples quarterly and base the surcharge cost upon such samples. If the director determines based on information made available to the director that more frequent sampling may more accurately provides a basis for the amount of surcharges, the city may collect more frequent sample and base the surcharge on the more frequent sampling. If the user does not agree with the sampling or testing method of the city, the city may agree to an independent company, approved by the city, taking such samples, at the user's expense, under conditions and standards as determined by the city. The surcharge shall be calculated and billed quarterly by the city unless another time period is designated by the director (e.g., monthly). City employees and officials shall not be involved directly or indirectly with any company performing tests on any samples where such tests are to be used by the city.

(c) *Penalties for violation of discharge permit.* A violation of a wastewater discharge permit is a municipal civil infraction. The city council may from time to time by resolution establish Penalties-penalties listed in a resolution set by the city council from time to time and on file in city hall shall be assessed for violation of ~~the a user's~~ wastewater discharge permit. Penalties may be based on either a grab, composite or in the case of pH, on the basis of results from a pH recorder. Penalties will be assessed for any sample exceeding limits ~~listed in established from time to time by~~ a resolution ~~set by of~~ the city council ~~from time to time and on file in city hall~~. Unless otherwise specified in such a resolution ~~set by the city council from time to time and on file in city hall~~, any user who ~~is found to have violated-violates~~ any provision of this article, or permits issued under this article, shall be penalized in an amount not to exceed to exceed less than \$10,000.00 (or the maximum penalty allowed under state law). Each day on which noncompliance shall occur or continue shall be deemed a separate and distinct violation. Payment of penalties does not constitute compliance with the permit. In addition to these penalties, (i) those violating this article shall be subject to all other consequences of such violations as provided in this article and, (ii) continued, habitual or gross violations or those caused by negligence or failure to install and operate property pretreatment units will be enforced under sections 86-165, 86-167 and 86-297.

Sec. 86-163. - Delinquent accounts.

~~Should any monies~~If any amounts owed to the city for the use of the public sewer system ~~be unpaid are~~ not timely paid as required by this article, other parts of this code of ordinances, the terms of any contract, or the terms of any arrangement made with the city to pay such amounts, the city may pursue all remedies available at law or in equity including, to the extent not otherwise precluded or limited by law, one or more of the following: collect same by one or more of the following methods:

(1) ~~Litigation;~~ A lawsuit against the property owner or any other person responsible for payment;

(2) ~~Shutting-Suspending, terminating or otherwise off and~~ discontinuing city sanitary sewer service, water service or water or both services to the premises;

(3) Setting off the unpaid amounts against any amounts owed by the city to the owner of the premises or other responsible party; or

(34) Certifying such charge to the city assessor who shall assess the charge against the lot or parcel of land upon which is situated the premises served. The assessment shall then be collected or returned in the same manner as real property taxes.

The city may also require an escrow deposit against future delinquent payments of such amounts. The deposit may be up to an estimated one-quarter's billing for sanitary sewer service, including any estimated surcharges, late payment fees, and interest. The deposit shall be held in a non-interest bearing escrow account to be used an applied against any amounts due for sanitary sewer service that are not paid when due. The amount used from the escrowed funds will be added to the amounts owed

such that the user shall be obligated to maintain that escrow and timely pay all charges for sanitary sewer service in order to preclude use of the remedies provided in this section.

Sec. 86-164. - Public nuisance abatement.

A violation of this article is a public nuisance per se. The director or the building official may require the abatement of any public nuisance under this article by giving the owner of such property notice to eliminate such conditions. The time limit shall be stated in the notice commensurate with the type of nuisance. The directo building official ~~shall have the power to may~~ discontinue water and sewage service to the property if the owner or other responsible party fails to abate such nuisance. All work required to abate such nuisance shall be performed in compliance with this article at the owner's expense. Alternatively, or in addition, the city attorney may bring a lawsuit to abate the nuisance

Sec. 86-165. - Harmful contributions.

The ~~city manager~~director may suspend sewer and water service when such suspension is necessary to stop an actual or threatened discharge which may present an imminent or substantial endangerment to the health or welfare of persons or the environment, cause interference to the sewage works or cause the city to violate any condition of its NPDES permit. Any person notified of a possible suspension of water or wastewater treatment service shall immediately stop or eliminate the contribution. ~~In the event of a failure f that person of the person fails~~ to voluntarily comply with any discharge permit, the city may take such steps as deemed necessary including immediate suspension of sewer and water service, to prevent or minimize damage to the sewage works or endangerment of any individuals. The ~~city manager~~director shall reinstate the sewer and water and service upon proof of the elimination of the noncomplying discharge provided the city manager determines necessary steps have also be taken to prevent recurrence of such noncompliance. The noncomplying user shall submit to the director Aa detailed written statement ~~submitted by the user~~ describing the cause(s) of the ~~harmful contribution noncompliance~~ and the measures taken to prevent any ~~future ore~~ recurrence ~~shall be submitted to the city~~ within 15 days of the date of occurrence.

Sec. 86-166. - Official determination of hazard.

~~Whenever If~~ the building official determines that there is a health or welfare hazard created by the emanation of sewage by being exposed to the surface of the ground or draining of sewage from the property under the surface of the ground or into any ditch, storm sewer, lake or stream and that the continuance of the use of the private sewage works ~~by for~~ the property poses an immediate threat to humans or natural resources, the building official may order and require the occupants to vacate any structure on the property forthwith.

Sec. 86-167. - Notification of violation of article.

~~Whenever If~~ the city finds that any user ~~has violated or is violating~~has failed to comply with or is failing to comply with any provision of this article, the city may serve upon such person a written notice stating the nature of the ~~violation noncompliance and require a plan to correct it and prevent recurrence.~~ Within 30 days of the date of the notice or such shorter time as the city may require in the notice in order to protect the environment or the public health, safety or welfare, a plan for the satisfactory correction of all violations shall be submitted by the user to the city for approval. ~~A shorter notice commensurate with the danger to the health and welfare of persons or environment may be given.~~ Failure to respond in 30 days, or shorter time as provided in the notice, or to develop a satisfactory plan shall constitute an additional violation of this article, and the city shall take such action as deemed necessary, including suspension of water or sewer service, or both.

Sec. 86-168. - Show cause hearing.

(a) *Request for hearing.* Any user subject to enforcement action under the provisions of this article may, within 10 days, make a written request for a hearing before the ~~director the city manager~~ which request shall be filed with the director or the city clerk ~~within ten days of receipt of notification of such action.~~ If any user so requests a hearing, the city manager shall hold Aa ~~hearing is to be held by the director~~ concerning the violation, ~~the any~~ reasons for the action, remedial actions taken following the violation, steps and plans to prevent further noncompliance with this article, and any proposed enforcement

actions. The city manager shall allow ~~and directing~~ the user to show cause why the proposed enforcement action should not be implemented.

(b) *Conduct of hearing.* The ~~director-city manager~~ may conduct the hearing and take the evidence or may designate any officer or employee to:

(1) Issue in the name of the ~~director-city manager~~ notices of hearing requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in such hearings;

(2) Take the evidence, inquire of witnesses or other persons presenting information or arguments, review any exhibits or records, allow for any pre-hearing or post-hearing written submissions; and

(3) Transmit a report of the evidence and hearing, including transcripts and other evidence, together with recommendations to the ~~director-city manager~~ for action thereon.

(c) *Testimony; transcription; advice.* At any hearing held pursuant to this article, testimony taken may, but doesn't need to be, under oath and recorded ~~stenographically~~. The transcript will be made available to any member of the public or any part to the hearing upon payment of charges for copying. Rules of civil procedure and rules of evidence do not apply. Information normally relied upon in the conduct of serious business may be presented and considered. While either the city or the user may be represented by legal counsel, legal counsel is not required. The city manager or the person designated by the city manager to conduct the hearing may consult with the city's legal counsel as either deems needed or helpful.

(d) *Issuance of orders and directives.* After the ~~director-city manager~~ has reviewed the evidence available information, an order may be issued to the user responsible for the discharge directing that, following a specified time period, the sewer service be discontinued unless acceptable treatment facilities, devices or other related appurtenances shall have been installed on existing treatment facilities and that such devices or other related appurtenances are properly operated. Further orders and directives as are necessary and appropriate may be issued.

(e) *Surcharges and fees.* The ~~director-city manager~~ may also establish appropriate surcharges or fees to reimburse the city for the additional cost of operation and maintenance of the wastewater treatment works due to any violations of this article.

(f) *Appeals.* Any order or directive by the ~~director-city manager~~ may be appealed to a board of referees consisting of two registered professional engineers authorized to practice in Michigan who experience in wastewater issues, one of who shall be selected by the city and one by the user, and a third engineer selected by the first two engineers. Neither None of such referees three engineers shall be in the employ of, a party to any contract with, or an officer or employee of a party to a contract with the party making the selection either the city or the user. The appeal shall be made in writing to the director within ~~ten-10~~ days of any order or directive resulting from the hearing before the ~~director-city manager~~. Selection of referees shall be made within ~~ten-10~~ days of the filing of the appeal.

(g) *Determination by director; reply of appellant; decision.* Within ~~ten-10~~ days after receiving notice of the selection of the referees, the ~~director-city manager~~ shall file with the referees a copy of his determination and the results of his investigation supporting such determination. Within ~~ten-10~~ days thereafter the appellant shall file its reply together with supporting documentation. The referees may thereafter require additional information and may, if they choose, hold a hearing at which both sides may present evidence and arguments. The referees shall, by a majority vote, render a written opinion within ten days after the last documents are filed, and such opinion shall be binding upon all parties. If the referees cannot agree, they shall select a third referee having the same qualifications, and a decision of the majority shall be binding. If the referees cannot agree to a third referee, the city council shall select the third referee. The review by the referees shall be *de novo* but based on the information that was in the record at the completion of the city manager's hearing.

(h) *Compensation of referees.* The referees shall be entitled to reasonable compensation and expenses with the costs to be borne equally by the city and the user.

(i) *Judicial review.* Any party may seek judicial review of a referee decision in circuit court. The circuit court shall uphold the ~~director~~ city manager's decision if it is based on competent, material and substantial evidence.

Sec. 86-169. - Legal action.

If any person discharges sewage, industrial wastes or other wastes into the city's wastewater disposal system contrary to the provisions of this article, federal or state pretreatment requirements, or any order of the city, the city attorney may commence an action for appropriate relief.

Sec. 86-170. - ~~Falsifying False~~ information.

No person shall knowingly make any false statements, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this article nor shall falsify, tamper with or knowingly render inaccurate any monitoring device or method required under this article.

Sec. 86-171. - Affirmative defense.

A user shall have an affirmative defense in any action brought against it alleging a violation of the general prohibitions of this article and the specific prohibitions in subsections (2), (4), ~~(7)~~, (8), (10) and (12) of section 86-291 where the user can demonstrate that:

(1) It did not know or have reason to know that its discharge, alone or in conjunction with a discharge or discharges from other sources, would cause pass through or interference; and

(2) Either:

a. A local limit designed to prevent pass through or interference was developed for each pollutant in the user's discharge that caused pass through or interference and the user was in compliance with each such local limit immediately before and during the pass through or interference; or

b. A local limit was not applicable and immediately before and during the pass through or interference the user's discharge did not substantially change in volume or constituents from the user's previous discharges when the POTW was regularly in compliance with its NPDES permit and, in the case of interference, all applicable requirements for sludge use or disposal.

Sec. 86-172. - Publication of list of industrial users in significant noncompliance.

As required by federal regulations, ~~40 CFR 403.8(f)(2)(vii)~~, the city shall at least annually, before April 1, publish in a newspaper of record a list of industrial users which during the previous calendar year were in significant noncompliance of applicable pretreatment standards or other pretreatment requirements. For the purposes of this section significant noncompliance is defined in section 86-1301.

Sec. 86-173. - Conflicts.

Should any existing agreements, orders or permits be in conflict with this article, then they shall be revised so as to comply with this article. ~~Any conflict with this article would be in violation of 40 CFR 35.929 which requires a users charge system under which each user bears a portion or share of wastewater treatment plant operation and maintenance cost.~~

Sec. 86-174. - Municipal civil infraction—Penalty.

Any violations of the provisions of article ~~III of this chapter~~ not specifically designated a misdemeanor shall be a civil infraction for which the user shall be responsible for a civil fine in the amount of up to less than \$10,000.00 for each violation.

Sec. 86-175. – Other amounts owed for violations.

In addition any other amounts or remedies under this article, anyone violating or responsible for a violation of any provision of this article shall be responsible for paying all costs incurred by the city as a result of such violation, including for example and not for limitation, (i) any fines or penalties the city may be obligated to pay as a result of such violation or any violation of any permit issued to the city that results from the person's violation of this article, (ii) any costs incurred to reactivate, repair, improve, or replace

any part of the system or any processes within the system, (iii) any costs for engineering, legal, environmental consultant or other professional services, (iv) any overtime or other personnel costs, (v) the cost of any contract services such as hazardous waste disposal costs, added sludge handling or disposal costs, pumping costs, laboratory fees, or other expenses, (vi) added materials costs such as in the city's laboratory; (vii) added special equipment costs such as pumps or payments for use of equipment in the city's motor pool, (viii) any publication or public information expenses, (ix) costs of any special clothing for or to replace any clothing or personal articles of city personnel, (x) any filing fees, appeals costs, collection expenses, discovery costs, cost of exhibits, or other expenses related to any legal or administrative proceeding, (xi) any first aid or medical expenses for due to any illness, injury or reasonable diagnostic test needed to rule out any illness or injury to any city employee or agent, and (xii) any costs the city is obligated to pay any third party such as another user of the system, including any incidental or consequential damages paid to any such third party.

Secs. 86-~~175~~176—86-200. - Reserved.

DIVISION 3. - BUILDING SEWERS

Sec. 86-201. - Material specifications.

All materials used on construction of laterals and building sewers shall be of the type approved by the applicable ~~plumbing or building construction~~ code and as required by the city.

Sec. 86-202. - Pipe size.

The size of a residential building sewer shall not be less than ~~four~~ 4 inches in diameter. All other sewer sizes shall be determined by the city based upon the type of facility and the applicable ~~plumbing or building construction~~ code.

Sec. 86-203. - Sewer slope.

Building sewers shall be constructed to slopes consistent with the provisions of the applicable plumbing code, but not less than ~~one-eighth of an~~ 1/8-inch per linear foot.

Sec. 86-204. - Location and elevation.

Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. Building sewers shall not be laid parallel to nor within ~~three~~ 3 feet of any bearing wall. The depth shall be sufficient to be protected against frost. The building sewer shall be laid at uniform grade and in straight alignment insofar as possible. Changes in alignment shall be made only with properly curved pipe or long radius fittings. Changes in direction having bends of 45 degrees or more shall have a cleanout.

Sec. 86-205. - Floor drains.

Floor drains which are connected to the building sewer shall be required for all basements or cellars if the elevation of the public sanitary sewer will service the building.

Sec. 86-206. - Lift pump.

In all buildings in which any building drain is too low to permit gravity flow to the building sewer, sanitary sewage carried by such drain shall be lifted by means of a ~~sump~~-pump or other approved means and discharged into the building sewer.

Sec. 86-207. - Construction procedures to be in accordance with city's standard construction specifications; exception.

All construction procedures shall be in accordance with the city's standard construction specifications, with the exception that tunneling of laterals will be allowed if it is determined that the proper alignment and slope can be maintained on the lateral.

Sec. 86-208. - Grease, oil and sand interceptors.

(a) All establishments where food is manufactured, sold or prepared, except for small areas designated as employee break areas or the equivalent, discharging wastewater containing fats, oils, and grease (FOG) to the ~~City of Wyoming sewage works and/or the POTW system~~ shall install, operate, and maintain a sufficiently-sized oil and grease, water and solids separator (hereinafter called grease trap) necessary to achieve and maintain compliance with the limits indicated in section 86-292 ~~of this Code~~.

(b) Unless otherwise authorized by the director, all grease traps shall be of the outdoor, inline variety. With special authorization by the director, grease traps of the indoor, under-counter, stand-alone variety may be allowed. In this case, maintenance of indoor grease traps shall be performed at frequencies necessary to protect the capacity of the sewer system against accumulation of grease and oils, as required by the "25 ~~percent~~-% rule" as defined herein. Under no condition shall an indoor grease trap be cleaned at intervals less frequent than once every 14 days.

(c) Grease, oil and sand interceptors shall be provided when they are necessary for the proper handling of liquid wastes containing grease in excessive amounts or any flammable wastes, sand or other harmful ingredients. Such interceptors shall not be required for dwelling units. All interceptors shall be of a type and capacity approved by the director and shall be located so as to be readily accessible for cleaning and inspection.

(d) Grease and oil interceptors shall be constructed of impervious materials capable of withstanding abrupt and extreme changes in temperature. They shall be of substantial construction, watertight and equipped with easily removable covers which, when bolted in place, shall be gastight and watertight.

(e) Where installed, all grease, oil and sand interceptors shall be cleaned and maintained by the owner and shall be operated continuously in an efficient manner whenever the facility is in operation. The city shall have the right to inspect maintenance and disposal records related to the operation of grease, oil and sand interceptors.

(f) The user shall be responsible for the proper removal and legal disposal of the grease trap waste. All waste removed from each grease trap must be disposed of at a facility permitted to receive such waste. No grease trap pumpage may be discharged to the city sewer system. Maintenance shall include the complete removal of all contents, including floatable materials, wastewater, sludges and solids and jet flushing to remove measurable build-up on tank walls. Top skimming of outdoor grease traps, decanting or back flushing of the grease trap or its wastes for the purpose of reducing the volume to be hauled is prohibited.

(g) There shall be ample room and reasonable access to interceptors to allow accurate sampling and preparation of samples for transport and analysis.

(h) Grease traps and other interceptors shall be installed in compliance with the current plumbing codes adopted by the city. The director shall make final determination and approval of a grease trap's size. If additional pretreatment and/or maintenance is required to meet the provisions in this section, the director, may require that the establishment in existence prior to the effective date of this section upgrade to the requirements provided.

(i) Maintenance of an outdoor grease trap shall be performed at frequencies necessary to protect the capacity of the sewer system against accumulation of grease and oils, as required by the "25 percent rule" and at intervals no less than once every 90 days.

(j) Use of any bacteriological, chemical or enzymatic addition for the purpose of maintaining a grease trap is prohibited unless written approval is obtained from the director.

(k) The user shall be responsible for maintaining records and/or manifests as to the dates of service, quantity and waste hauler name at the user's location for a period of three years, which records shall be subject to review by the city without prior notification.

(l) Should any user fail to properly clean and maintain a grease trap as required herein, the city, at its option may contract for appropriate cleaning and maintenance by a licensed contractor, the cost of which shall be collectable by the city from the user at a charge of actual cost plus 100 ~~percent~~%.
Sec. 86-209. - Tests.

All tests of building sewers shall be made in conformance with the applicable plumbing code.

Sec. 86-210. - Completion notification.

The applicant for the building sewer permit shall notify the plumbing inspector when the building sewer is ready for inspection and connection to the public sewer. The connection shall be made under the supervision of the city's plumbing inspector.

Secs. 86-211—86-250. - Reserved.

DIVISION 4. - PUBLIC SEWER USE

Subdivision I. - In General

Sec. 86-251. - Wastewater discharge permits—Generally.

The director shall by written permit establish the maximum relative strength of sewage and industrial waste to be discharged into the public sewer by nondomestic users. Prior to the initial issuance of a permit or 90 days prior to the expiration of an existing permit, nondomestic users shall submit the information outlined in section 86-253. Wastewater discharge permit fees shall be paid in the amount as set from time to time by resolution of the city council ~~from time to time and on file in city hall~~. Permits shall contain, at a minimum, the following conditions:

- (1) A statement of duration (in no case more than five years);
- (2) A statement of nontransferability without, at a minimum, prior notification to the POTW and provision of a copy of the existing control mechanism to the new owner or operator;
- (3) Effluent limits based upon applicable general pretreatment standards in 40 CFR 403, categorical pretreatment standards, local limits, and state and local law;
- (4) Self-monitoring, sampling, reporting, notification and recordkeeping requirements, including an identification of the pollutants to be monitored, sampling location, sampling frequency, and sample type, based upon general pretreatment standards in 40 CFR 403, categorical pretreatment standards, local limits, and state and local law;
- (5) A statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule; and
- (6) A statement to enable authorized representatives of the POTW, state, and EPA to enter and inspect the premises of nondomestic users.

Sec. 86-252. - Same—Review and adjustment.

Any permit issued by the director ~~may shall~~ be periodically, not less frequently than once every 5 years, reviewed and adjusted.

Sec. 86-253. - Wastewater contribution information.

(a) *Information required.* All nondomestic users proposing to connect to or to contribute to the sewage works shall submit information on their processes and wastewater to the city before connecting to or contributing to the sewage works. All existing industrial users connected to or contributing to the sewage works shall submit this information upon request of the director. At least 90 days prior to the commencement of discharge, new sources and sources that become industrial users subsequent to the promulgation of an applicable categorical standard shall be required to submit to the city a report which contains the information in this section. New sources shall also be required to include in this report information on the method of pretreatment the source intends to use to meet applicable pretreatment standards. New sources shall give estimates of the information requested in subsections (a)(4) and (a)(7) of this section. The information submitted shall be sufficient for the city to determine the impact of the user's discharge on the sewage works and the need for pretreatment. Any statements or information submitted in connection with this section shall be signed by an authorized representative of the company. The user shall submit, in units and terms appropriate for evaluation, the following information:

- (1) Name of the operator and owners, facility name, address and location.

- (2) A list of any environmental control permits held by or for the facility.
- (3) SIC number according to the Standard Industrial Classification Manual, Bureau of the Budget, 1972, as amended.
- (4) Measurement of pollutants. For industrial users subject to categorical pretreatment standards, the user shall submit the results of sampling and analysis identifying the nature and concentration (or mass where required by standard or control authority) of regulated pollutants in the discharge from each regulated process. Both daily maximum and average concentration (or mass where required) shall be reported. The sample shall be representative of daily operations.
- a. A minimum of four grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organics. For all other pollutants, 24-hour composite samples must be obtained through flow proportional composite sampling techniques where feasible. The city may waive flow proportional sampling for any industrial user that demonstrates that flow proportional sampling is infeasible. In such cases samples must be obtained through time proportional composite sampling techniques or through a minimum of four grab samples where the user demonstrates that this will provide a representative sample of the effluent being discharged.
 - b. The user shall take a minimum of one representative sample to compile the data necessary to comply with the requirements of this section.
 - c. Samples should be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed prior to pretreatment the user should measure the flows and concentrations necessary to allow use of the combined wastestream formula.
 - d. Sampling and analysis shall be performed in accordance with the techniques prescribed in 40 CFR 136 and amendments thereto. Where 40 CFR 136 does not contain sampling or analytical techniques for the pollutant in question, or where the director determines that the 40 CFR 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties approved by the director.
 - e. If this report is a baseline report, the city may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures. The baseline report shall indicate the time, date and place of sampling; the methods of analysis; and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW.
- (5) Average rate of production.
- (6) Time and duration of contribution.
- (7) Average daily and maximum wastewater flow rates from all regulated process streams and other waste streams as necessary to allow use of the combined wastestream formula, including daily, monthly and seasonal variations, if any. The control authority may allow for verifiable estimates of these flows where justified by cost or feasibility considerations.
- (8) Industries identified as significant industries or subject to the national categorical pretreatment standards or alternative discharge limits or those required by the city must submit site plans, floor plans, mechanical and plumbing plans and details to show all sewers, sewer connections, and appurtenances by the size, location and elevation. For industrial users subject to categorical pretreatment standards, a schematic process diagram identifying the location of points of discharge from all regulated processes as well as the pretreatment standards applicable to each regulated point of discharge shall also be submitted.
- (9) Description of activities, facilities and plant processes on the premises including all materials or pollutants which are or could be discharged.

(10) The user shall submit a certification statement reviewed and signed by an authorized representative indicating whether or not the pretreatment standards are being met on a consistent basis and, if not, whether additional operation and maintenance and/or additional pretreatment is required by the industrial user to meet applicable pretreatment standards.

(11) If additional pretreatment or O&M will be required to meet the pretreatment standards, the user will provide the shortest schedule by which the user will provide such additional pretreatment. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. The following conditions shall apply to this schedule:

a. The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment facilities required for the user to meet the applicable pretreatment standards.

b. No such increment shall exceed nine months.

c. No later than 14 days following each date in the schedule and the final date for compliance, the user shall submit a progress report to the director including, as a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress; the reason for delay; and the steps being taken by the user to return the construction to the schedule established. In no event shall more than nine months elapse between such increments of progress.

(12) Type and amount of raw materials.

(13) Number and type of employees, hours of operation of plant and proposed or actual hours of operation of pretreatment system.

(14) Location of sampling manhole.

(15) Any other information as may be deemed by the city to be necessary to evaluate the impact of the discharge on the sewage works.

(b) *Hazardous waste information requirement.* Any industrial user must inform the appropriate authorities upon discharge of hazardous waste as follows:

(1) Any industrial user shall notify the POTW, the EPA regional waste management division director, and state hazardous waste authorities in writing of any discharge into the POTW of a substance, which if otherwise disposed of, would be a hazardous waste under 40 CFR 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR 261, the EPA hazardous waste number, and the type of discharge (continuous, batch or other). If the industrial user discharges more than 100 kilograms of such waste per calendar month to the POTW, the notification shall also contain the following information to the extent such information is known and readily available to the industrial user: An identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during the calendar month, and an estimation of the mass of the constituents in the wastestream expected to be discharged during the following 12 months. Industrial users shall provide this notification no later than 180 days after the discharge of the listed or characteristic hazardous waste commences. Any notification under this section need be submitted only once for each hazardous waste discharged. The notification requirement in this section does not apply to pollutants already reported under the self-monitoring requirements in this article.

(2) Dischargers are exempt from the requirements of subsection (b)(1) of this section during a calendar month in which they discharge no more than 15 kilograms of hazardous wastes unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e). Discharge of more than 15 kilograms of nonacute hazardous waste in a calendar month, or of any quantity of acute hazardous waste as specified in 40 CFR 261.30(d) and 40 CFR 261.33(e) requires a one-time notification. Subsequent months during which the industrial user discharges more than such quantities of any hazardous waste do not require additional notification.

(3) In the case of any new regulations under section 3001 of RCRA identifying additional characteristics of hazardous wastes or listing any additional substances as hazardous wastes, the industrial user must notify the POTW, the EPA regional waste management waste division director, and the state hazardous waste authorities of the discharge of such substances within 90 days of the effective date of such regulations.

(4) In the case of any notification made under subsection (b) of this section, the industrial user shall certify that it has a program in place to reduce the volume and toxicity of hazardous waste generated to the degree it has determined to be economically practical.

(c) ~~Maintenance of records.~~ All users shall be required to maintain records of wastewater contribution information for a period of at least three years.

Sec. 86-254. - Confidential information.

(a) Information and data on a user obtained from reports, questionnaires, permit applications, permits and monitoring programs and from inspections shall be available to the public or other governmental agency without restriction unless the user specifically requests and is able to demonstrate to the satisfaction of the city that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the user and that such information need not be disclosed in accordance with any applicable Freedom of Information Act or any other applicable law. When requested by the person furnishing a report which might disclose trade secrets, such report shall be kept confidential to the extent permitted by law except that the report shall be made available upon written request to governmental agencies for uses related to this article, the NPDES permit or any pretreatment programs, and it shall be available for use by the state or any state agency in judicial review or enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics will not be recognized as confidential information.

(b) Information accepted by the city as confidential shall not be transmitted to any governmental agency or to the general public by the city until and unless a ten-day notification is given to the user ~~and in accordance with applicable law.~~ If any applicable state or federal law, rule or regulation conflicts with any provision in this article by requiring a greater degree of disclosure, that state or federal law, rule or regulation shall govern.

Sec. 86-255. - Wastewater discharges.

No person shall discharge into the waters of the state within the city or in any area under the jurisdiction of the city or to the ~~sewage works any wastewater system~~ except as authorized by the director in accordance with the provisions of this article.

Sec. 86-256. - Liquid discharges.

No person shall discharge or cause to be discharged any type of liquid into any ~~sanitary sewer unless specifically permitted by the director except in accordance with this article.~~

Sec. 86-257. - Waste hauler discharges.

Waste haulers ~~who are~~ authorized to discharge into the POTW shall be required to pay fees ~~as established from time to time by resolution of the city council from time to time and on file in the city hall,~~ in addition to any surcharges. Discharge shall be allowed only at such points as designated by the city. Waste haulers applying for discharge authorization shall submit the information requested in section 86-253 prior to receiving authorization.

Sec. 86-258. - Discharge regulations, charges and fees.

Wastewater discharges shall be expressly subject to all provisions of this article and all other applicable regulations, user charges and fees established by the city. In addition, the city may:

- (1) Establish unit charges, surcharges or a schedule of user charges and fees for the wastewater to be discharged into the sewage works;
- (2) Limit the average and maximum wastewater constituents and characteristics;

- (3) Limit the average and maximum rate and time of discharge or make requirements for flow regulations and equalization;
- (4) Require the installation and maintenance of inspection and sampling facilities;
- (5) Establish specifications for monitoring programs which may include sampling locations, frequency of sampling, number, types and standards for tests and reporting schedule;
- (6) Establish compliance schedules;
- (7) Require submission of technical reports or discharge reports;
- (8) Require the maintaining, retaining and furnishing of plant records relating to wastewater discharge as specified by the city, and affording city access thereto, and copying thereof;
- (9) Require notification of the city of any new introduction of wastewater constituents or any substantial change in the volume or character of the wastewater constituents being introduced into the wastewater treatment system;
- (10) Require notification of slug discharges;
- (11) Require other conditions as deemed appropriate by the city to ensure compliance with this article.

Sec. 86-259. - Monitoring facilities.

(a) The city may require a user to provide, maintain and operate monitoring facilities at the user's expense. Such facilities may include any or all of the following: a source of power, a sampling manhole meeting the specifications required by the city, an approved sampler, and flow monitoring devices as required by the director to allow for inspection, sampling and flow measurement of the building sewer and internal drainage systems. Such facilities shall be kept free of snow, parked vehicles or other obstructions. The monitoring facility shall be situated on the user's premises in an area accessible to a vehicle, but the city may, when such a location would be impractical or cause undue hardship on the user, allow the facility to be constructed in a public street or sidewalk area and located so that it will not be obstructed by landscaping or parked vehicles. There shall be ample room in or near such sampling manhole or facility to allow accurate sampling and preparation of samples for analysis. The facility, sampling and measuring equipment shall be maintained at all times in a safe and proper operating condition at the expense of the user. Whether constructed on public or private property, the sampling and monitoring facilities shall be provided in accordance with plans and specifications submitted to and approved by the city and all applicable local construction standards and specifications. Construction shall be completed within 90 days following written notification by the city of requiring such facilities unless the completion date is extended by the director at his discretion.

(b) Flow measurement devices on building sewers shall be checked and necessary repairs made on an annual basis. Such maintenance and checks shall be performed by the equipment manufacturer or an authorized designee who shall certify in writing to the director as to the accuracy of the equipment.

Sec. 86-260. - Meters required.

All users shall have meters on all water sources that ultimately discharge into the sewage works or shall meter the liquid wastes at the point of discharge into the sewage works. All meters and metering plans shall be approved by the city.

Sec. 86-261. - Inspection and sampling.

(a) The city may inspect the facilities, premises and facilities of any user to ascertain whether the requirements of this article are being met. Persons or occupants of premises where wastewater is created or discharged shall allow the city's representatives access to all parts of the premises for the purposes of inspection, sampling, records examination, record copying or any other task necessary in the performance of their duties. Nondomestic users shall be subject to inspection fees as stipulated by resolution of the city council from time to time and on file in city hall.

(b) The city shall have the right to set up on the user's property such devices as are necessary to conduct sampling, inspection, compliance monitoring and metering operations. Where a user has security measures in force which would require property identification and clearance before entry into their

premises, the user shall make necessary arrangements with their security guards so that upon presentation of suitable identification, personnel from the city will be permitted to enter, without delay, for the purposes of performing their specific responsibilities.

(c) Refusal to allow duly authorized representatives entry shall be considered a violation of this article and may be considered grounds for discontinuing of sewer or water services, or both.

Sec. 86-262. - Refusing entry for inspection; issuance of search warrant.

Whenever the building official or director deems it necessary to enter upon any property at a reasonable hour for the purposes of inspection, observation, measurement, sampling and testing of enforcement in accordance with the provisions of this article, and is refused such entry, the official who is refused such entry may make an affidavit in writing, under oath to the district court stating the facts of the case so far as it may be known to the complainant. The court may issue an administrative search warrant or inspection or other order allowing the director, building official or his representatives to enter upon such property to the extent and time necessary to enforce and carry out the provisions of this article.

Sec. 86-263. - Sampling and analytical fee.

Industrial users may be charged a sampling and analytical fee in cases where the city must utilize the analytical capabilities of a private laboratory in order to determine compliance with pretreatment standards. This fee shall be equal to the actual costs incurred by the city plus an additional administrative fee to compensate the city for the staffing time, billing and collection expenses.

Sec. 86-264. - Self-monitoring.

The city may require industrial users to conduct self-monitoring. The city shall determine the frequency of self-monitoring necessary to assess and assure compliance by the industrial user with applicable pretreatment standards and requirements. The city may require the industrial user to provide a split of self-monitoring samples. The city shall require appropriate reporting from industrial users required to conduct self-monitoring.

Sec. 86-265. - Sampling and analysis procedures and methods.

All sampling and analyses conducted shall be performed in accordance with the procedures and methods detailed in the most current version of: 40 CFR part 136 the manner required by the MDEQ.

~~(1) "Standard Methods for the Examination of Water and Wastewater," American Public Health Association.~~

~~(2) "Manual of Methods for Chemical Analysis of Water and Wastes," United States Environmental Protection Agency.~~

~~(3) Any other method as may be approved by the city.~~

Sec. 86-266. - Laboratory utilized by industry conducting self-monitoring to be approved by city; quality control documentation required.

(a) Each laboratory utilized by industries conducting self-monitoring as required by the city shall be approved by the city and required to operate a formal quality control program as ~~outlined in the most current version of:~~ required by the MDEQ.

~~(1) "Handbook for Analytical Quality Control in Water and Wastewater Laboratories," United States Environmental Protection Agency.~~

~~(2) "Standard Methods for the Examination of Water and Wastewater," American Public Health Association.~~

(b) Laboratories conducting analyses for industrial users must submit a copy of the formal quality control documentation prior to approval by the city. Approval of laboratories shall be subject to periodic review. The city shall have the right to issue blind standards to be analyzed by other laboratories being utilized for self-monitoring. In the case of resolving disputes between analytical data generated by the city and another laboratory, any data without documented supporting quality control data will be rejected.

Sec. 86-267. - User notification to POTW of spills, etc., or change in volume or character of discharge; requirements.

All industrial users shall notify the POTW immediately of any accidental spills, unusual discharges, or slugloads. All industrial users shall promptly notify the POTW in advance of any substantial change in the volume or character of pollutants in their discharge, including the listed or characteristic hazardous wastes for which the industrial user has submitted initial notification under 40 CFR 403.12(p) or 40.24(2) or this article. If self-monitoring performed by an industrial user indicates a violation, the user shall notify the city within 24 hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results to the city within 30 days after becoming aware of the violation. The industrial user is not required to resample if:

- (1) The city performs sampling at the industrial user at a frequency of at least once per month.
- (2) The city performs sampling at the industrial user between the time when the user performs its initial sampling and the time when the user receives the results of this sampling.

Sec. 86-268. - Pretreatment compliance reporting.

(a) *Compliance date report.* Within 90 days following the date for final compliance with applicable pretreatment standards or, in the case of a new user, following commencement of the introduction of wastewater into the sewage works, any user subject to pretreatment standards and requirements shall submit to the director information requested in section 86-253. For industrial users subject to equivalent mass or concentration limits established by the city in accordance with the procedures in 40 CFR 403.6, this report shall contain a reasonable measure of the user's longterm production rate. For all other industrial users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period. This report shall include the certification statement as required in section 86-253. This statement shall be signed by an authorized representative as outlined in section 86-131.

(b) *Periodic compliance reports.* Periodic compliance reports shall be submitted by users as follows:

(1) Any user discharging into the sewage works shall submit to the director semiannually, unless required more frequently in the pretreatment standards or by the director, a report indicating the nature and concentration of pollutants in the effluent which are limited by such pretreatment standards. In addition, this report shall include a record of all daily flows which during the reporting period exceeded the average daily flow reported in section 86-253. The reports required in this section shall be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data is representative of conditions occurring during the reporting period. The city shall require that frequency of monitoring necessary to assess and ensure compliance by the industrial user with applicable pretreatment standards and requirements. If an industrial user subject to the reporting requirements in this section monitors any pollutant more frequently than required by the city, the results of this monitoring shall be included in the report. At the discretion of the director, the director may alter the months during which the above reports are to be submitted. This report shall include the certification statement as required in section 86-253. This report shall be signed by an authorized representative as outlined in section 86-131. In the case of significant noncategorical industrial users, where the POTW itself collects all the information required for the report, the noncategorical significant industrial user will not be required to submit the report.

(2) The director may also impose mass limitations on users using dilution to meet applicable pretreatment standards or requirements, or in other cases in which the imposition of mass limitations is appropriate. In such cases, the report required by subsection (b)(1) of this section shall also indicate the mass of pollutants regulated by pretreatment standards in the effluent of the user.

Secs. 86-269—86-290. - Reserved.

Subdivision II. - Prohibited Discharges and Pretreatment Standards

Sec. 86-291. - General discharge prohibitions.

No person shall contribute nor cause to be contributed, directly or indirectly, any of the following substances into the sewage works:

- (1) Any liquids, solids or gases which by reason of their nature or quantity are, or may be, sufficient either alone or by interaction with other substances to cause fire or explosion hazard in the POTW (including, but not limited to, wastestreams with a closed cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Celsius using the test methods specified in 40 CFR 261.21) or be injurious in any other way to the sewage works or to the operation of the sewage works.
- (2) Solid or viscous substances which may cause obstruction to the flow in a sewer to other interference with the operation of the wastewater treatment facilities.
- (3) Any wastewater having a pH of less than 5.0, or greater than 10.5, or other than that range established by the wastewater discharge permit, or any wastewater having any other corrosive property capable of causing damage or hazard to structures, equipment or personnel of the sewage works. In any event, a minimum pH of 5.0 is necessary in order to comply with 40 CFR 403.5.
- (4) Any pollutant, including oxygen demanding pollutants released in a discharge at a flow rate and/or pollutant concentration which will cause interference with the POTW.
- (5) Any wastewater containing toxic pollutants in sufficient quantity, either alone or by interaction with other pollutants, to injure or interfere with any wastewater treatment process, constitute a hazard to humans or animals, create a toxic effect in the receiving waters of the sewage works or exceed any limitation set forth in the EPA categorical pretreatment standard, or any other applicable federal, state or county standards.
- (6) Any noxious or malodorous liquids, gases or solids which either singly or by interaction with other wastes are sufficient to create a public nuisance or hazard or are sufficient to prevent entry into the sewers for maintenance and repair.
- (7) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems.
- (8) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through.
- (9) Any substance which may cause the sewage works' effluent, or any other product of the sewage works such as residues, sludges or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process.
- (10) Any substance which, alone or in conjunction with a discharge or other discharges, causes pass through as defined in section 86-131.
- (11) Any wastewater with objectionable color not removed in the treatment process, such as, but not limited to, dyes, wastes and vegetable tanning solutions.
- (12) Any wastewater having a temperature which will inhibit biological activity in the sewage works. Wastewater with a temperature at the introduction into the sewage works which exceeds 49 degrees Celsius (120 degrees Fahrenheit) or is lower than 0 degrees Celsius (32 degrees Fahrenheit) is prohibited.
- (13) Any slugload.
- (14) Any wastewater containing radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the director in compliance with applicable state or federal regulations.
- (15) Any wastewater which can cause any hazardous situation or creates a public nuisance.
- (16) Any wastewater containing noncompatibles in excess of the limits contained in the wastewater discharge permit.
- (17) Any trucked or hauled pollutants except, at discharge points designated by the POTW.

Sec. 86-292. - Discharge standards and limits.

- (a) All ~~nonresidential-nondomestic~~ users who discharge compatible pollutants shall be subject to the requirements itemized below.

(1) *User-specific maximum limits.* Upon approval of the director and issuance of a wastewater discharge permit, and if the discharge complies with the requirements of subsection (3) herein, wastewater not in excess of user-specific maximum mass limits may be discharged. These limits will be established by the director by an appropriate allocation of the wastewater treatment plant's approved maximum allowable headworks loadings for the following parameters:

Parameter	MAHL (lb/day)
5-day BOD	85,000
Suspended Solids	51,600
Total Phosphorus	1,800
Ammonia Nitrogen	4,800

(2) *General maximum limits:* Upon approval of the director and issuance of a wastewater discharge permit, wastewater containing pollutants not in excess of the following maximum concentration limits may be discharged:

Parameter	Daily Maximum Concentration (mg/L)
Fats, Oils and Grease	830

(3) *Surcharge threshold standards.* Discharges of compatible pollutants shall also be subject to a surcharge in accordance with section 86-162 when exceeding any of the following baseline levels:

Parameter	Daily Average Concentration (mg/L)
5-day BOD	460
Suspended Solids	260
Phosphorus	12
Fats, Oil and Grease	91
Ammonia Nitrogen	32

- (b) All ~~nonresidential-nondomestic~~ users who discharge incompatible pollutants shall be subject to the requirements itemized below.

(1) Primary toxic pollutants.

a. *General maximum limits.* Upon approval of the director and issuance of a wastewater discharge permit, wastewater not in excess of the following limits may be discharged:

Parameter	Daily Maximum Concentration (mg/L)
Arsenic, Total	0.061
Cadmium, Total	0.1
Chromium, Total	2.9
Copper, Total	2.1

Lead, Total	1.9	
Mercury, Total	<0.0002	
Molybdenum, Total	0.19	
Nickel, Total	1.2	
Selenium, Total	0.04	
Silver, Total	0.15	
Zinc, Total	4.0	
Cyanides, Total	0.2	

(2) *Secondary toxic pollutants.*

a. *General maximum limits.* Upon approval of the director and issuance of a wastewater discharge permit, wastewater containing pollutants not in excess of the following limits may be discharged:

Parameter	Daily Average Concentration (mg/L)
2-Butanone (Methyl Ethyl Ketone)	760
Butyl Benzyl Phthalate	6.4
4-Chloro-3-Methyl Phenol (p-Chloro-m-Cresol)	1.0
1,4-Dichlorobenzene	0.48
bis 2-Ethylhexyl Phthalate	0.19
4-Methylphenol (p-Cresol)	4.7
Naphthalene	1.9
Phenol *	42
Toluene	3.5

Notes:

*Based on discharge of any or all of the following phenolic compounds: 2-Chlorophenol; 4-Chlorophenol; 2,4-Dichlorophenol; 2,4-Dimethylphenol; 2,4-Dinitrophenol; 2-Methylphenol; 4-Methylphenol; 2-Nitrophenol; 4-Nitrophenol; and Phenol. Discharge of other phenolic compounds is prohibited, except as specifically authorized by the director.

a. Should pollutants other than specified above be received or anticipated, corresponding discharge limits may be established by the City via an appropriate mass allocation of the wastewater treatment plant's approved maximum allowable headworks loadings. The City reserves the right to enter into local initiatives with industrial users setting out special terms under which they may discharge to the POTW. In no case will any special agreement waive compliance with a pretreatment standard or requirement.

Sec. 86-293. - National categorical pretreatment standards.

Upon the promulgation of any national categorical pretreatment standards, alternative discharge limits or other federal or state limitations, for a particular industrial subcategory, the pretreatment standard, if more stringent than limitations imposed under this article for uses in that subcategory, shall immediately supersede the limitations imposed under this article and shall be considered part of this article. Compliance by existing sources with categorical pretreatment standards shall be within three years of the date the standard is effective unless a shorter compliance time is specified in the appropriate subpart of 40 CFR chapter I, subchapter N. Direct dischargers with NPDES permits modified or reissued to provide a variance pursuant to section 301(i)(2) of the Act shall be required to meet compliance dates set in any

applicable categorical pretreatment standard. Existing sources which become industrial users subsequent to promulgation of an applicable categorical pretreatment standard shall be considered existing industrial users except where such sources meet the definition of new source as defined in section 86-131. New sources shall install and have in operating condition, and shall start up all pollution control equipment required to meet applicable pretreatment standards before beginning to discharge. Within the shortest feasible time (not to exceed 90 days), new sources must meet all applicable pretreatment standards. The director shall notify all affected users of the applicable reporting requirements.

Sec. 86-294. - Equivalent mass and concentration limits.

When the limits in a categorical pretreatment standard are expressed only in terms of mass of pollutant per unit of production, the city may convert the limits to equivalent limitations expressed either as mass of pollutant discharged per day or effluent concentration for purposes of calculating effluent limitations applicable to individual industrial users. The city shall calculate equivalent mass-per-day limitations and equivalent concentration limitations in accordance with 40 CFR 403.6(c)(2)—(4) and 40 CFR 403.6(c)(6)—(7). Equivalent limitations calculated in accordance with these sections shall be deemed pretreatment standards for the purposes of section 307(d) of the Act and this article. Industrial users ~~will be required to~~ shall comply with the equivalent limitations in lieu of the promulgated categorical standards for which the equivalent limitations were derived. Any industrial user operating under a wastewater discharge permit incorporating equivalent mass or concentration limits calculated from a production based standard shall notify the city within ~~two~~ 2 business days after the user has a reasonable basis to know that the production level will significantly change within the next calendar month. Any user not notifying the city of such anticipated change will be required to meet the mass or concentration limits in its wastewater discharge permit that were based on the original estimate of the long-term average production rate.

Sec. 86-295. - Net/gross calculation.

Categorical pretreatment standards may be adjusted to reflect the presence of pollutants in the industrial user's intake water in accordance with 40 CFR 403.15.

Sec. 86-296. - Discharge modifications.

Within ~~six~~ 6 months of the promulgation or revision of any applicable pretreatment standard, all affected users must submit to the city the information required by section 86-253(a)(8) and (a)(9).

Sec. 86-297. - Application of state requirements or limitations.

State requirements or limitations on discharges shall apply whenever they are more stringent than national categorical pretreatment standards or limitations provided in this article. State and ~~national~~ federal requirements ~~are not subject to any appeal procedures~~ may not be appealed.

Sec. 86-298. - Compliance with pretreatment standards.

Industrial users shall provide necessary wastewater treatment as required to comply with this article and shall achieve compliance with all pretreatment standards within the time limitations specified by the federal pretreatment regulations, state regulations and as required by the city. Any facilities required to pretreat wastewater shall be provided, operated and maintained at the user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to and approved by the city before construction of the facility. The review of such plans and operating procedures will in no way relieve the user from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the city under the provisions of this article. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to and be acceptable by the city prior to the user's initiation of the changes.

Sec. 86-299. - User to initiate construction of facilities necessary to comply with discharge limitations.

~~Where~~ If pretreatment facilities are necessary to comply with wastewater discharge permit limitations, industrial users shall initiate construction of such facilities within ~~six~~ 6 months and complete construction within 18 months from the date of notice of noncompliance by city.

Sec. 86-300. - Increase of process water to dilute excessive discharge.

No user shall ever increase the use of process water or in any way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in the national categorical pretreatment standards, alternative discharge limits or in any other pollutant-specific limitation adopted by the city or state.

Sec. 86-301. - Procedures for prevention of accidental and slugload discharges; notification if discharge occurs.

~~When required by the city, a user~~ shall provide protection from slugload discharges or accidental discharges of prohibited materials or other substances regulated by this article. If deemed reasonably necessary by the director or as otherwise required by state or federal laws or regulations, the city may require the user to implement procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents) and/or measures and equipment for emergency response. Facilities to prevent slugload discharges or accidental discharges of prohibited material shall be provided and maintained at the user's cost and expense. Detailed information and plans showing facilities and operating procedures to provide this protection, including descriptions of discharge practices and stored chemicals, shall be submitted to the city for review and approval by the city before construction. All users shall complete construction of required facilities within the time period specified by the director. New users shall not be permitted to introduce pollutants into the system until approved accidental discharge facilities have been constructed. Review and approval of such plans and operating procedures shall not relieve the user from the responsibility to modify the facility as necessary to meet the requirements of this article or from otherwise meeting requirements of this article. In the case of a slugload discharge or an accidental discharge, ~~it is the responsibility of the user to~~ shall immediately notify ~~immediately~~ the director of the incident. The notification shall include location of discharge, type of waste, concentration and volume and corrective actions. Accidental discharge shall also include any discharge where such discharge has the possibility of entering into any waters of the state.

(1) *Written notice.* Within five working days following a slugload or accidental discharge, the user shall submit to the director a detailed written report describing the cause of the discharge and the measures to be taken by the user to correct the situation and to prevent similar future occurrences. Such notification shall not relieve the user of any expense, penalty, loss, damage or other liability which may be incurred as a result of damage to the sewage works treatment process, nor any other damage to person or property, nor shall such notification relieve the user of any fines, civil or other liability which may be imposed by this article or other applicable law.

(2) *Notice to employees.* A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees of the persons to notify in the event of an accidental discharge. Employers shall advise all employees who may cause or suffer such a dangerous discharge to occur of the emergency notification procedure.

Sec. 86-302. - Upset to constitute affirmative defense.

(a) An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of subsection (b) of this section are met.

(b) An industrial user ~~who wishes~~wishing to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An upset occurred and the industrial user can identify the causes of the upset;

(2) The facility was at the time being operated in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures;

(3) The industrial user has submitted the following information to the POTW and control authority within 24 hours of becoming aware of the upset (if this information is provided orally, a written submission must be provided within five days):

a. A description of the indirect discharge and cause of noncompliance;

- b. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
- c. Steps being taken or planned to be taken to reduce, eliminate and prevent recurrence of the noncompliance.

(c) In any enforcement proceeding the industrial user seeking to establish the occurrence of an upset shall have the burden of proof.

(d) In the usual exercise of prosecutorial discretion, the city's enforcement personnel should review any claims that noncompliance was caused by an upset. No determinations made in the course of the review constitute final city action subject to judicial review. Industrial users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.

(e) The industrial user shall control production or all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost or fails.

Sec. 86-303. - Bypass.

For the purpose of this section, bypass shall mean the intentional diversion of wastestreams from any portion of the industrial user's treatment facility. An industrial user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to ensure efficient operation. These bypasses are not subject to subsections (1) and (2) of this section.

(1) If an industrial user knows in advance of the need for a bypass, it shall submit prior notice to the city, if possible, at least ten days before the date of the bypass. An industrial user shall submit oral notice of an unanticipated bypass that exceeds applicable pretreatment standards to the city within 24 hours from the time the industrial user becomes aware of the bypass. A written submission shall also be provided within five days of the time the industrial user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate and prevent reoccurrence of the bypass. The city may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

(2) Bypass is prohibited, and the city may take enforcement action against an industrial user for a bypass, unless:

- a. Bypass was unavoidable to prevent loss of life, personal injury or severe property damage. Severe property damage shall mean substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
- b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgement to prevent a bypass which occurred during periods of equipment downtime or preventative maintenance;
- c. The industrial user submitted notices as required under subsection (1) of this section.

(3) The director may approve an anticipated bypass, after considering its adverse effects, if the director determines that it will meet the three conditions listed in subsection (2) of this section.

Secs. 86-304—86-320. - Reserved.

DIVISION 5. - LIQUID WASTE

Sec. 86-321. - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

| (a) *Liquid waste* means any liquid, gaseous or waterborne waste or sludge materials resulting from or incidental to any process of industry, manufacturing, mining or agricultural operations or any mixture of these waste materials with water or domestic sewage and domestic sewage.

| (b) *Liquid waste disposal system* means any facility primarily designed or operated for the purpose of processing or storing liquid waste.

| (c) *Structure* means the area in which the liquid industrial waste or liquid waste is stored on the premises for treatment or processing and shall include holding tanks.

Sec. 86-322. - Storage, removal, transfer, unloading, offering for sale, trade or exchange restricted to areas zoned for such dealings.

No person shall engage in the storage, removal, transfer, unloading, offering for sale, trade or exchange, or in any manner dealing in liquid wastes in the city except at such locations as are provided for in the zoning provisions of this Code.

Sec. 86-323. - Accumulations and deposit.

No person shall deposit, cause to be deposited or permit to accumulate any liquid waste or liquid industrial waste upon any public or private premises within the city in such a manner so as to emit noxious or offensive odors or dust or to become unsanitary or injurious to public health.

Sec. 86-324. - Storage and treatment.

The following provisions shall govern the operation for storage and treatment of all liquid waste on any property, excluding industries generating such liquid wastes which do not store or treat such liquid wastes:

(1) Whenever liquid wastes are placed into any area for the purpose of removing liquids or portions of liquids from such waste, such liquid waste shall be placed in structures according to provisions as stated in this section.

(2) None of the liquid waste shall be allowed to spill outside of the structures, and, if it is spilled outside, it shall be removed immediately.

(3) No liquid waste shall be allowed to discharge on or into the groundwaters or surface waters.

(4) Any liquid waste which has spilled onto the apron around the structure shall be washed into the structure or removed from the apron immediately after the spillage.

(5) The entire area in which the structures are located shall be enclosed by a chainlink fence and a chainlink gate which shall be locked so as to prevent entrance by any unauthorized person when the area is unattended.

(6) No liquid waste shall be allowed to dry to the extent that the waste would generate dust.

(7) All liquid waste placed into any open structure shall be a minimum of six inches below the top of the structure at all times.

(8) Reasonable means shall be used to prevent any spillage from any vehicles while they are carrying any liquid waste on any street to and from the location of the liquid waste site. If there is any spillage, the spillage shall be removed immediately.

(9) Any person operating a facility handling liquid wastes shall have provisions for accumulating data so as to measure any dust being generated from the property because of the liquid waste. Such equipment shall be capable of monitoring the air on a 24-hour basis and shall be approved by the city, which approval shall be based upon the ability of the equipment to perform as required. Upon request, such information shall be furnished to the city.

(10) Every person operating a liquid waste disposal system shall be required to obtain a license and pay the fee as set by resolution of the city council from time to time and on file in city hall.

(11) All liquid wastes placed into the city sewer system shall meet all requirements of this article pertaining thereto.

(12) There shall be no storage of any liquid waste except for the purpose of treatment. All liquid wastes shall be treated within a reasonable time after being brought to the site.

Sec. 86-325. - Transporting vehicle standards.

All vehicles used for transporting liquid waste shall be completely sealed and shall be in good repair and free from any leaks so as to prevent spillage or discharge any place. All such vehicles shall be clean and odorfree prior to any movement on any city streets.

Sec. 86-326. - State approval required for deposit or storage on city lands.

When required, no person shall engage in the pickup or disposal of liquid waste material to deposit, discharge, store or stockpile such waste material on any lands in the city unless such land has been approved as a site for the disposal of such liquid waste by the state department of natural resources.

Sec. 86-327. - Use of storm drains, inlets, streets or lands.

No person shall deposit or discharge any liquid waste material into any public or private storm drains, inlets, streets or lands.

Sec. 86-328. - Storage or treatment facilities require pollution prevention plan.

Any person desiring to operate a new facility for the storing or treating of liquid waste shall submit a pollution prevention plan to the city for approval at the time application is made for a building permit for the construction of any structures to be used primarily for the treatment, storage, transfer or handling of industrial wastes. The following shall be included:

(1) Chemical composition of the liquid wastes to be processed or treated, including estimated volumes or quantities and identification of all toxic elements.

(2) Chemical composition of the expected resultant effluent, subsequent to treatment, to be discharged to the city sewer, including estimated volumes per day and quantities of heavy metals.

(3) Complete technological description of the treatment process, including complete plans and specifications of all equipment and structures to be used in the process or at the site.

(4) Complete description of method of handling wastes, including transporting, loading and unloading, as well as a description of equipment and vehicles used for handling wastes.

(5) Location of approved disposal sites for any liquid wastes resulting from the company's processing that cannot be discharged into a city sewer.

(6) Proof of licenses and permits that may be required from other governmental agencies for the hauling and disposal of liquid wastes.

(7) List of the names and addresses of industries from which liquid wastes will be collected and transported to the facility for treatment, including estimated volumes of liquid waste from each industry and a description of such wastes.

(8) Methods and equipment that will be used to monitor effectively and measure on a regular basis the quality of the air, groundwater and surface waters, soils and discharge to the city sewer system. Sampling and testing procedures shall be included in the plan as well as the frequency of such sampling and testing.

Sec. 86-329. - Inspection of liquid waste businesses.

The city by its authorized representatives shall have the right at all reasonable times to make inspections of any business subject to the provisions of this division governing liquid wastes.

Secs. 86-330—86-350. - Reserved.